



A Roadmap to a Better Criminal Justice System

*...practical strategies to increase D.C. public safety
and save taxpayer dollars*

District of Columbia Criminal Justice Resource Project
Report Summary and Recommendations
April 2001

The Council for Court Excellence

April 2001

Dear Fellow Citizen:

Fair, effective, and efficient criminal justice processes are at the heart of the District of Columbia community's capacity to provide a safe environment for its citizens, to encourage economic growth, and to develop a broadly shared sense of justice.

The report summary that follows is the result of a fifteen-month-long study by the Council for Court Excellence and the Justice Management Institute of major aspects of the District of Columbia criminal justice process.

The unabridged final report provides empirical findings and reform proposals particularly regarding the issue of police officer overtime expenditures for prosecutorial and court proceedings in the District of Columbia. The study documents areas of operational inefficiency across the D.C. justice system and outlines, in twenty-seven recommendations, steps that should be taken to reform the current system.

The complete 100-plus page *March 2001 Final Report and Recommendations on Management of District of Columbia Criminal Justice Resources* by the Council for Court Excellence and the Justice Management Institute may be accessed on the Council for Court Excellence website at <http://www.courtexcellence.org/>. The report was prepared for the D.C. Criminal Justice Coordinating Council under federal grants from the U.S. Department of Justice through the D.C. Deputy Mayor for Public Safety and Justice.

On behalf of the Council for Court Excellence and the Justice Management Institute I wish to thank the many D.C. and federal agency representatives, and judges of the District of Columbia Superior Court who contributed to the research and development of this study.

Your attention is invited both to the report summary that follows and to the entire report, which includes great detail regarding the findings, recommendations, statistical appendices, and benchmarking reports of several independent consultant organizations.

Please feel free to contact us should you have any questions on this report.

Sincerely,

Timothy J. May, President
The Council for Court Excellence

District of Columbia Criminal Justice Resource Management Project

Report Summary and Recommendations

EXECUTIVE SUMMARY

Today's criminal justice system in the District of Columbia takes too much time, costs too much money, and misuses too many police and other resources. The system has been essentially static for decades. There is a striking absence of operational standards and incentives; little use is made of modern information and communication technologies; virtually every case is treated to the full panoply of dated procedures; and there are inadequate alternatives for low-level offenders.

The result is an expensive and congested court system that can only erode the public's confidence in our criminal justice. In D.C., criminal justice is delayed far beyond standards set forth by the American Bar Association. Police manpower resources are already overwhelmed by the task of providing for public safety, and law enforcement budgets are strained to meet minimal training and other vitally important support needs. Yet, at any given time, fully one fifth of the District's entire police resources is in or around the court system at a cost of over \$10 million in annual overtime.

All is not lost—far from it. The District has incredible strengths and many achievements that can be built upon and brought to bear on today's problems. Huge opportunities exist to dramatically improve the overall quality of justice and to promote greater public safety. The potential solutions are realistic ones that call for no new statutory authorization, require little or modest additional staff resources, and use existing, inexpensive technology.

THE PROJECT

The D.C. Criminal Justice Resource Management Project is sponsored by the District of Columbia Criminal Justice Coordinating Council. The co-authors of this Report are the Council for Court Excellence, a nonprofit civic organization that works to improve the administration of justice in the local and federal courts, and related agencies, and The Justice Management Institute, a nonprofit organization that works with courts and other justice system agencies, conducting technical assistance, education and training, and research projects across the country.

The Project began out of concern over the large amount of time spent by D.C. police officers in court and court-related activities. It quickly became apparent, however, that the reasons for the inordinate amount of police time required in these activities are to be found in procedures and processes scattered throughout the entire D.C. criminal justice system. Therefore, any effective solution for police resource and budget issues required a broader study of the criminal justice system as a whole, and has resulted in recommendations calling for major changes in case management at all levels and all stages.

Major system-wide changes are essential if the District is to overcome these problems, and meet current and near term critical needs. At a minimum, there must be:

- Full-scale felony and misdemeanor papering reform;
- Major changes in case scheduling philosophy and practice;
- Rapid deployment of modern technology in key areas;

District of Columbia Criminal Justice Resource Management Project

- Differentiated treatment of offenses and cases to proportionally match the consequences and procedures imposed; and
- Operational standards, incentives, and enforcement sanctions.

The Project developed 27 specific Recommendations to implement these and other necessary changes. These Recommendations, in-depth commentary, and all supporting background and reference documents are presented in a 100-plus page Report that is available on the Council for Court Excellence Web Site, www.courtexcellence.org, or from the Council's offices, 1717 K Street, N.W., Suite 510, Washington, D.C. 20036. . This Executive Summary is intended to provide but a prelude to the complete study.

PROJECT GOALS

A fair, effective, and efficient criminal justice system is at the heart of any community's efforts to insure the public's safety, to encourage economic growth, and to develop a shared sense that justice will be done. The Project's main objective is and has been to help improve the District's criminal case management system in order to:

- Achieve a better overall quality of justice;
- Make more effective, and economical use of available resources, most particularly those of the D.C. Metropolitan Police Department; and
- Foster greater public safety.

THE APPROACH

The Project acquired the necessary background through numerous interviews, data collection and analysis, first-hand observations, an extensive review of relevant literature and documents, and the examination of the experiences of other major U.S. cities.

More than 60 participants in the District of Columbia's criminal justice system were interviewed, including those in law enforcement, pretrial services, the prosecution, the defense bar, the court, offender supervision, and corrections. Data was collected and analyzed that showed court case processing times, court case scheduling and continuance practices, and police officer time spent in court and prosecutorial-related activities. Police arrest and booking processes were observed first hand, as were the prosecutors' screening and charging operations, and actual court proceedings. Finally, the Project reviewed the following:

- All prior D.C. court system studies;
- The Booz, Allen, and Hamilton D.C. policing study;
- The annual reports of the D.C. courts and other entities;
- National standards, such as those of the American Bar Association; and
- Practices of other jurisdictions.

The Project first identified the volume and nature of criminal caseloads in the District of Columbia, and described in detail the current caseflow processes from arrest to disposition. It then analyzed D.C.'s procedures in light of the practices in other

jurisdictions and in view of national standards. The District's strengths and weaknesses were assessed, and priority needs and opportunities were then identified.

The system-wide examination focused primarily on the caseflow process, and the interrelationships between the many agencies and institutions involved. It identified key performance measures and evaluated existing operations in light of these measures, practices in other jurisdictions, and national standards. Input as to possible improvements was sought from the interviewed participants. Finally, the 27 Recommendations were developed to help improve the use of criminal justice resources in D.C.

WHAT IS WORKING

1. Excellent and committed leadership.

Within the last several years, key leaders in the D.C. criminal justice system have begun a coordinated approach to identifying problems and developing systemic solutions. Successful inter-agency efforts undertaken thus far include:

- The Halfway House initiative;
- The Domestic Violence initiative; and
- The earlier D.C. Drug Court reform; and
- The MPD-U.S. Attorney's Office Community Prosecution Pilot Program.

2. Improved communication.

The development of the D.C. Criminal Justice Coordinating Council has noticeably improved communications among the various components of the criminal justice system, both at the leadership and at the senior deputy levels. The Coordinating Council, when used, provides a needed vehicle for problem identification, the sharing of differing institutional perspectives, the exchange of information and ideas, and the collaborative development of plans for improvements.

3. Well-developed education and training programs.

Many of the organizations that make up D.C.'s criminal justice system have highly regarded education and training programs that will be critical to the implementation of the Project's Recommendations.

4. Rapid completion of the initial stages of criminal case processing.

The arrest-to-court arraignment process typically takes less than 24 hours in lockup cases. The process in citation cases is longer—less than 30 days in over two-thirds of the cases—but still shorter than many urban areas. The preparation and transmission of initial police reports, prosecutorial screening and charging, and appointment of counsel for indigent defendants are all completed rapidly in D.C.

5. Considerable information base.

Considerable information gets into D.C.'s criminal justice system, some of it very quickly. The automated Criminal Justice Information System used by police, prosecutors, pretrial services, and the court has an excellent data base and is capable of generating essential dockets, notices, forms, and management information reports. The MPD and the Pretrial Services Agency also have extensive databases with individual case information.

The integrated JUSTIS system now under development should improve the overall capacity to better use and exchange this considerable information.

WHAT ISN'T WORKING

1. The absence of operational goals for caseload management.

At present there are some generally phrased goals, such as to “ensure the effective and efficient use of court resources,” but meaningful *operational* goals on the part of the courts, the prosecutors, and other key stakeholders are seriously lacking. Prosecutors must present lockup cases for first appearance within set times, but there are no such standards for the completion of misdemeanor or felony cases, or for the completion of intermediate stages. There are no standards whatsoever as to what constitutes effective trial scheduling or trial continuance practices.

The District of Columbia is significantly below standards for criminal case resolution set by the American Bar Association. The ABA standards require that 90% of all misdemeanor cases be adjudicated within 30 days, and 100% by 90 days. In the District of Columbia, the Project learned that only 8.8% of “lockup” misdemeanor cases were completed within 30 days after arrest, and only 62.4% were completed within 90 days.

ABA standards call for 90% of all felony cases to be adjudicated within 120 days of arrest; 98% within 180 days; and 100% within one year. In the District, only 40.6% were completed within 120 days; 52.6% within 180 days.

2. Caseload management practices.

As currently structured, the post-arraignment court process is simply not designed to facilitate the rapid disposition of simple cases. Instead, the current practice keeps every case in the system for long periods once charges have been filed.

At arraignment, all misdemeanor cases are scheduled for trial, with dates set 30-45 days out. Far more trials are scheduled than can ever be held. Potentially dispositive motions are deferred until the trial date. There is no current structure to identify cases that might be candidates for early resolution and to facilitate early negotiations that might lead to a rapid, non-trial disposition.

In a three-month period in 1999 that was studied, 5% of scheduled misdemeanor trials were held on the date set; 42% were continued.

The practice of setting all cases for trial means that many cases stay in the system much longer than necessary, leading inevitably to docket congestion, delays, high continuance rates, and the unnecessary calling of police and other witnesses. Police officers' time in court for events that do not take place is time that cannot be spent on the street or, if the officer is not on regular duty, time that must be compensated for at overtime rates. Victims and other civilian witnesses lose time from work and family, and the attorneys lose effectiveness by having to prepare repetitively or by not preparing in expectation of continuances.

These scheduling and caseload management practices result in a serious misuse of available resources, most particularly those of the MPD.

An unnecessarily large number of police officers are notified to appear for prosecutorial and court-related proceedings. Project research documented that of over six police officers on average are called for each felony proceeding. Over three officers, as an average, are called for misdemeanor activities.

- In a two-week period in September 2000, an average of 670 MPD officers a day appeared in court and prosecutorial-related proceedings. *This represents a fifth of the District's entire police force.*
- These same two-week period appearances resulted in 20,602 hours billed by police officers for activities related to felony and misdemeanor prosecutions, and an additional 1,984 hours expensed to prosecutorial papering/charging activities, mainly for felony and misdemeanor cases, at a cost to MPD of \$823,000 in overtime. The study found that overtime billings within this two week period were nearly twice as high as normal. *Thus, in 2000 MPD spent \$10,000,000 for such overtime.*

Again, these resources are called upon in a criminal justice system where only 5% of scheduled misdemeanor trials are held on the date scheduled, 42% are continued, 20% end in pleas, 18% are dismissed, and 5% are *nolle prossed*; and where preliminary hearings are scheduled for all felony cases.

3. Little use of new technology.

Although all participating organizations use computers for some purposes, most are “legacy” systems designed many years ago. There is little capacity for information exchanges between or even within most D.C. criminal justice agencies. Much of the individual case information is manually prepared and transmitted. There is a great deal of duplicative interviewing and data entry. Available technology could be used to produce very rapid reports on tests of suspected drugs. Video conferencing is non-existent.

4. Inadequate range of dispositional alternatives for low-level offenders.

The highly successful experience with the D.C. Drug Court suggests that there may be room for greater use of diversion and other types of non-incarcerative dispositional alternatives.

Many defendants charged with misdemeanors ultimately have the charges *nolle prossed* or dismissed, often after a case has been in the system for several months. Many guilty pleas are entered weeks after arraignment, and the sentence imposed by the court is a small fine and/or unsupervised probation. These cases might have been resolved far more quickly—and with more meaningful consequences for defendants, greater benefit for the community, less cost in defense counsel fees and in police and prosecution time, and less congestion of the court—if a broader range of dispositional alternatives existed and the system was structured to encourage a focus on early resolution that would utilize the alternatives.

5. Lack of incentives to improve.

The lack of incentives relates in part to the absence of operational goals focused on effective case processing and resource utilization. There are no criminal justice agency

or system benchmarks by which to measure performance of the system or of individual components.

To the extent that incentives of any kind exist in the D.C. system, they tend to mitigate *against* swift and cost-effective case processing. For example:

- Assigned counsel compensation policies based on hours billed and number of court appearances may tend to create economic incentives for multiple appearances;
- Extensive police involvement in the “papering” process, witness conferences, preliminary hearings, and trials produces significant overtime compensation for police officers, and may contribute to implicit support for continuation of existing practices; and
- The court’s practice of routinely accepting late pleas after a “firm” trial date has been set (sometimes with a better offer than at earlier stages) is also a disincentive to early case resolution.

THE PLAN

The District of Columbia obviously needs to improve the quality of its criminal justice and to better use limited resources. It is clear that what is called for is nothing short of a major, comprehensive overhaul of the District’s criminal case management system, starting with the point of arrest and ending with the final disposition of a case.

The Project’s proposed plan has two core components:

1. The modernization of the arrest-to-arraignment procedure so that for the vast majority of felonies and misdemeanors it becomes essentially an electronic, paperless process (Recommendations 1-11); and
2. The redesign of the post-arraignment court process for both misdemeanor and felony cases (Recommendations 12-25).

In addition, the plan also includes recommendations that call for:

- The expansion of the use of diversion and other dispositional alternatives for low-level offenders (Recommendation 26); and
- A pilot community court experiment to strengthen community responsiveness (Recommendation 27).

MODERNIZATION OF ARREST-TO-ARRAIGNMENT PROCESS

The arrest-to-arraignment process has three main objectives:

- To acquire and organize information required for early decisions by the prosecution (screening, charging, conditions of release, and possible pleas); judicial officers (release, detention, and case scheduling); and defense counsel (meaningful consultation, and possible non-trial dispositions);
- To provide the foundation for speedy and effective post-arraignment processing; and
- To minimize police officers’ time off the street.

Five institutions have key roles in the arrest-to-arraignment process and each will have to be involved in the modernization:

- The police department;
- The prosecutors;
- The Pretrial Services Agency;
- The defense bar; and
- The D.C. Superior Court.

D.C CRIMINAL JUSTICE RESOURCE MANAGEMENT PROJECT RECOMMENDATIONS

Recommendation 1.

Improve the quality, completeness, and timeliness of police reports by:

- a. Continuing training for officers, including sergeants and other supervisors, in arrest procedures and report preparation;**
- b. Maximizing use of computers for report preparation;**
- c. Using personnel other than the arresting officers to complete forms; and**
- d. Setting time standards for report completion.**

Recommendation 2.

Use LIVESCAN technology in all police district stations.

Recommendation 3.

Use electronic delivery as normal means of transmitting police reports to prosecutors.

Recommendations 1-3 focus on improvements in the initial arrest and report preparation stages of criminal cases. The actions taken at these stages—including the decision to arrest or issue a citation, the obtaining of identification and prior record information, and the preparation and transmission of necessary reports—are crucially important to a well functioning criminal justice system. The information obtained during these initial stages will be the foundation for everything that subsequently takes place in a case. Improvements are already underway in these stages in D.C., but much more can be done to improve the quality of reports and to use computer technology more effectively to prepare reports and to transmit them to prosecutors.

Recommendation 4.

Develop rapid lab test turnaround capability, especially for tests of suspected drugs.

Delay in getting lab test results is one of the main reasons for delays in resolution of a number of misdemeanor and low-level felony cases. Rapid turnaround, with disclosure to defense counsel, will often result in early non-trial disposition.

Recommendation 5.

Expand D.C. MPD's use of citation release.

- a. Involve Pretrial Services Agency (PSA) to help verify risk factors;**
- b. Set goal that most citation cases must have first appearance within 14 days, all within 30 days, and that reports for charging are transmitted to prosecutor 7 days after citation and 7 days before appearance;**
- c. Send copy of citation to PSA so that it can notify releasee of arraignment date, and follow-up in case of failure to appear; and**
- d. Review and revise MPD citation release guidelines to provide for PSA involvement.**

Recommendation 6.

Expand the Papering Reform Pilot Project to include both misdemeanor and felony cases.

The "papering" process is one of the most controversial aspects of D.C.'s arrest-to-arraignment process. Beginning in February 2001, the MPD and the Corporation Counsel's Office are pilot testing new procedures designed to improve the quality of police reports and to sharply reduce the time spent by police officers at the courthouse in connection with the papering of a case. That test is focusing on electronic transmissions, quality control, timeliness, and performance measures.

Recommendation 7.

Develop video conferencing capabilities to enable prosecutors to confer with arresting officers and eliminate unnecessary police travel.

Recommendation 8.

Provide for early delivery of discovery packet and dispositional offer by prosecutor to defense counsel in order to facilitate early disposition of misdemeanor cases. Pilot test the following:

- a. Provide packet as part of the "papering" process, and include all police reports, prior record information, and plea offer and sentence recommendation;**
- b. File packet with the Clerk at least two hours prior to first appearance;**
- c. Provide for prosecutor's withholding of information for cause;**
- d. Court inquiry at arraignment as to packet delivery and discussions on possible early disposition;**

e. Court imposition of seven-day deadline for cases in which no packet was delivered.

The response of both the Office of the Corporation Counsel's and the U.S. Attorney's Office to the initial draft of this recommendation suggests that, particularly in misdemeanor cases and in less serious felony cases, it should be possible to develop a system in which broad discovery is routinely provided very rapidly. Such an approach would be consistent with the American Bar Association Standards for Discovery in Criminal Cases, which call for full and free exchange of appropriate discovery, procedural pressures for expediting the processing of cases, and time limits for discovery "as early as practicable in the process."

Recommendation 9.

Give defense counsel opportunity for meaningful consultation with the defendant prior to first appearance by:

- a. Providing counsel with the charging documents, the PSA report, and basic discovery, including the police report, at least two hours prior to first appearance; and**
- b. Renovating current facilities to enable counsel to discuss the case privately before arraignment.**

The current system in D.C. is excellent at providing for early contact between counsel and the defendant, and for representation at first court appearance. However, since the defense counsel lacks basic information about the case and about the disposition sought by the prosecution at the time of the initial interview, the opportunity for counsel to have *meaningful* early consultation with the defendant and early negotiations with the prosecutor is lost.

Recommendation 10.

The Court should use arraignment as a key control point to effectively control misdemeanor case scheduling and to establish a focus on early case resolution. It should:

- a. Inquire about the provision of discovery and dispositional offer;**
- b. Direct rapid provision of discovery and dispositional offer; and**
- c. Set the case for a disposition/case scheduling conference to be held within 14-21 days after arraignment.**

This recommendation incorporates one of the key precepts of modern caseflow management: *court supervision of case progress, beginning at the earliest possible point*. It also provides for a major change in case scheduling practices: instead of setting all misdemeanor cases for trial at the first appearance, they would be set for a very prompt *disposition/status/ scheduling conference*, at which the judge would review the status of discovery and plea discussions. As provided in Recommendation 20, misdemeanor cases would be set for trial only if and when it became clear that a trial is necessary.

Recommendation 11.

Establish guideline amounts for compensation of appointed defense counsel.

Currently, compensation for appointed counsel is based in part on the number of court appearances made—a disincentive for early resolution of cases. The D.C. Courts (through the governing body, the Joint Committee on Judicial Administration) are proposing to establish guideline amounts to be paid to indigent defense counsel appointed under the Criminal Justice Act in cases involving various offenses.

REDESIGN OF POST-ARRAIGNMENT PROCESSES

Recommendation 12.

Establish operational caseflow management and scheduling goals in at least the following areas:

- a. Case processing times, for different categories of cases—overall standards for major case types and time standards for completion of each major stage of a case;**
- b. Firmness/reliability of case scheduling—standards that call for a high degree of certainty that scheduled court events will take place when scheduled; and**
- c. Timeliness, accuracy, and completeness of court information that supports scheduling and caseflow management.**

This recommendation calls for the establishment of operational goals as a top priority in improving post-arraignment case processing, the overall flow of criminal cases, and the effective utilization of the resources of the Court and of the other organizations involved in criminal case processing.

Recommendation 13.

Institute major changes in case scheduling philosophy and practice, incorporating principles of differentiated case management and effective caseflow and trial management.

The basic premise of differentiated case management (DCM) is that criminal cases—even cases of the same broad general category, such as misdemeanors and felonies—vary considerably in complexity and in the nature and extent of the court and other criminal justice resources that are needed to bring them to resolution. An important corollary is that relatively few cases will actually be tried.

With development of procedures designed to fit the needs of cases of differing degrees of complexity, it is possible to plan for the very rapid resolution of a high proportion of cases. Recommendations 14-23 outline key practices and procedures to be incorporated into a system that uses DCM.

Recommendation 14.

Bring all “old” cases to resolution. Elements of plan to eliminate backlog should include:

- a. Establishment of goals for phased elimination;**
- b. Inventory of backlog by age, case type, lawyers involved, custody status, status of plea negotiations or trial preparation, and other factors relevant to resolution;**
- c. Identification of cases with defendants in more than one pending case;**
- d. Scheduling of conferences to facilitate plea offers and to set short plea cut-off dates;**
- e. Preparation for prompt trial of any that cannot be resolved by plea or dismissal;**
- f. Review of sentencing options that can be used, to assure that there are available sanctions (including non-incarcerative “intermediate sanctions”) that are appropriate for the seriousness of the offenses involved;**
- g. Monitoring of the backlog reduction program to track progress in reaching the goals, identify problems that arise, and devise solutions; and**
- h. Identification of the *temporary* additional resources needed.**

Recommendation 15.

Encourage early, and broad, prosecutorial file disclosure, subject to withholding for cause shown.

The reason for a broad disclosure policy is simple: Once defense counsel knows the strength of the prosecutor’s case, it is much easier for counsel to have a realistic discussion with the defendant about the likely outcome of a trial and about the relative merits of going to trial or negotiating a plea to a reduced charge that will result in a less severe sentence. It also provides the foundation for realistic negotiations between defense counsel and the prosecutor concerning a plea or other disposition.

In D.C., disclosure policies vary by type of case. Both the U.S. Attorney’s Office and the Office of the Corporation Counsel have a policy of ordinarily providing disclosure at arraignment in misdemeanor cases. In felony cases, all of which are handled by the U.S. Attorney’s Office, the disclosure is more restrictive. Defense counsel in less serious felony cases are sometimes provided with early discovery, but in many instances are given only what the prosecutor is required to provide under applicable statutes and by Criminal Rule 16 of the Superior Court. Assistant U.S. Attorneys may sometimes, in their discretion, provide additional disclosure information as part of the plea negotiation process, but the general presumption is against full disclosure. By contrast, many prosecutors in urban areas outside the District routinely provide extensive disclosure in felony cases even though not required to do so by statute.

Recommendation 16.

Eliminate preliminary hearings in most or all felony cases after implementing procedures for early disclosure.

Preliminary hearings are held in all felony cases approximately two weeks after first appearance. Except in preventive detention or other incarcerated-defendant cases, there appears to be no good reason to conduct these hearings. The hearings persist as a discovery device in the absence of early discovery. The current process is wasteful and should be eliminated. Providing early discovery (see Recommendation 15) will be the most direct route toward eliminating these hearings. Alternatively, it should be possible to hold accelerated grand jury proceedings in a high proportion of cases, producing a decision on indictment within 7-14 days after the defendant's first appearance.

Recommendation 17.

Revise case scheduling practices to focus on early resolution and to avoid over-setting of trials. Set cases for trial at arraignment only in extraordinary cases where parties are ready for a rapid trial and there is a high probability that a trial—with sworn witnesses—will be held on the scheduled date.

Instead of simply scheduling every case for trial at arraignment, the Court should schedule intermediate events. In misdemeanor cases, it should schedule:

- Completion of discovery and proffer of plea offer and sentence recommendation within seven days after first appearance;
- A disposition/case scheduling conference, to be held within 14-21 days after first appearance.

In felony cases, there should only be one event scheduled at arraignment — a scheduling conference, to be held within 14 days. At or before that conference, the prosecutor should be required to provide discovery and a plea offer.

Recommendation 18.

Hear and resolve motions earlier, including those that require evidentiary hearings.

Motions often involve issues that determine the outcome of a case. Current practice in the Superior Court is to schedule evidentiary hearings for the same day as trials, the reasoning, apparently, being to require witnesses to appear only once. The difficulty is that, by following this practice, a very high percentage of cases stay in the system much longer than would be necessary if the motions were heard and resolved at a very early point in the life of the case.

Recommendation 19.

Establish a plea cut off system.

One of the major prevailing legal culture problems in the Superior Court is a broadly shared expectation that cases will be resolved on the day the trial is scheduled to begin. This practice contributes mightily to police officer overtime costs. There is no structured way for misdemeanor cases to be resolved prior to a trial date and little emphasis on early non-trial resolution in felony cases.

Under a plea cut-off system, cases would not be set for trial in the Superior Court until after discovery has been completed, a plea offer has been made, and motions have been filed and ruled upon. At this point, the issues will have been narrowed, lawyers on both sides will be more familiar with their cases, and it should be possible to arrive at a negotiated resolution. If a negotiated resolution is not reached, the time for reaching an agreement to reduced charges would then be over and the case would be set for trial—optimally within 2-4 weeks. It should be clear that, absent extraordinary circumstances, a trial will take place, or a plea will be entered to the charges in the indictment.

Recommendation 20.

Schedule trials only when needed.

Implementation of this recommendation should result in the earlier disposition of a high proportion of cases, focus lawyers (and defendants) on the outcome of the case at an early stage, and drastically reduce the number of trials set. With far fewer trials set, less time of both prosecutors and court-appointed defense counsel will go into trial preparation, and fewer police and private citizen witnesses will be called for trial testimony. Trial dates will have much more credibility. Cost savings—especially in reduced costs for police time at court—should be substantial.

Recommendation 21.

Require a trial management conference for all trials that take more than one day.

The trial management conference in a felony case should be held 7 to 21 days before a scheduled trial date, and would include the trial judge, prosecutors, and defense counsel. It can be held on the same day that plea cut-off occurs. The conference should focus on what will actually happen at trial,

The trial management conference is explicitly *not* a settlement conference. By timing the conference to take place on the plea cut-off date and focusing on what will happen at the trial, it should have two major benefits: (1) it will force counsel on both sides to focus on preparation for trial, and thus heighten the likelihood of an effective and

well-conducted trial; and (2) it will provide one last chance for the lawyers—having prepared and with opportunity for the defense attorney to consult with the defendant—to reach a negotiated resolution on their own, with the realization that the case really will go to trial on the charges in the indictment if they cannot agree upon a negotiated resolution. This approach is explicitly called for by the American Bar Association’s Standards for Trial Management.

Recommendation 22.

Establish trial readiness review procedures and improve procedures for managing witness appearances.

There have to be procedures in place ensuring that cases set for trial are actually ready for trial and that witnesses—particularly police witnesses—are available when needed, but are not required to spend time at court unnecessarily. For example, the Superior Court should plan to place and maintain up-to-date calendars on the Criminal Justice Information System or an Internet website. Police could then look up the status of cases, plan their schedules accordingly, and thus reduce the amount of police overtime expense.

Recommendation 23.

Develop management information reports and caseflow management staff support for revised procedures.

In order to manage the caseflow process effectively, court leaders need to have good information—information that is accurate, current, and relevant to caseflow management goals and objectives—about the age and status of pending cases, and about case scheduling effectiveness.

The management information system currently used by the Superior Court is old, but nevertheless capable of producing useful management information reports. In recent years, however, the Court has not devoted the necessary staff resources to produce and use these reports for purposes of analysis, problem identification, and planning.

Recommendation 24.

Use educational and training capabilities of the Superior Court, MPD, and other agencies to educate practitioners about the changes in caseflow processes and their new or revised duties.

Recommendation 25.

Develop improved systems for monitoring the numbers of MPD officers summoned for court-related activities, and seek to reduce the numbers of officers involved.

- a. Strengthen and expand the MPD Court Liaison Division’s oversight role and daily case coordination relationships with the U.S. Attorney’s Office, the Office of Corporation Counsel, and the D.C. Superior Court;**
- b. Move the MPD Court Liaison Division back into the courthouse;**
- c. Explore adoption of a Key Police Officer witness system whereby no more than two officers would routinely be notified for any proceeding;**
- d. Institute a pilot criminal case coordinator system in the Superior Court Criminal Division to monitor case management changes on a daily basis, and to update the MPD and others of late developing case-related actions; and**
- e. Establish a program, by the D.C. Criminal Justice Coordinating Council, or alternatively, by the D.C. Office of Budget and Planning, to monitor MPD officer time expended by court, charge, and type of proceeding, on at least a monthly basis.**

An average of 7.3 police officers were notified for each felony case proceeding in the District. For felony trial proceedings—as distinct from grand jury proceedings and witness conferences—prosecutors notified an average of 6.5 MPD officers per felony trial per day, while less than 2 police officers actually testified. In nearly 60% of the time that police billed for D.C. Superior Court felony trials, the actual proceedings did not occur on the day the officers had been notified to appear in court.

The Court supports this recommendation but says (a) that space shortages may make it impractical to move the MPD Court Liaison office back into the courthouse; and (b) that in order to implement the case coordinator system it would need additional staffing. The potential savings from improved monitoring and case coordination warrant a search for ways to find space in the courthouse for the MPD Court Liaison function and to provide the needed personnel resources for the Court. This recommendation would result in significant savings in police overtime and would appear to make a great deal of sense from a resources standpoint. Well-organized police overtime monitoring programs are already in operation in the municipal budget offices in San Francisco, and King County (Seattle).

NON-INCARCERATIVE DISPOSITIONAL ALTERNATIVES

Recommendation 26.

Expand the use of diversion and other non-incarcerative dispositional alternatives for low-level offenders.

- a. Review existing alternatives, their eligibility requirements, and the extent of current use, in order to identify needs and gaps;**
- b. Identify potential funding sources and sponsorship for needed new programs; design to meet D.C. needs; and**
- c. Develop central intake screening capacity to enable early identification of defendants potentially eligible for specific programs.**

This recommendation is aimed at developing a range of alternatives that meets the needs of the D.C. criminal justice population, focusing particularly on options—including diversion and deferred judgment—that are appropriate for defendants in misdemeanor and relatively low-level felony cases. It is likely that a significant proportion of these cases involve persons with mental health problems, and it should be worth exploring the possibility of a “mental health court” program similar to those developed in King County (Seattle) and Fort Lauderdale.

COMMUNITY RESPONSIVENESS

Recommendation 27.

Enhance community prosecution and use pilot program to explore community court.

Since the mid-1990s the U.S. Attorney’s Office has used a community prosecution approach for many criminal cases handled in the Superior Court. The initial 5th Police District pilot project evaluation study documents clearly the important public safety benefits that accrue when prosecutors and police work together day by day in the same geographic locale. The program has since been expanded citywide by the U.S. Attorney, with Community Outreach Specialists stationed in each police district and prosecutors throughout the office assigned to handle cases in the seven police districts.

The first community court, initiated in midtown Manhattan, addresses quality-of-life offenses by responding quickly to these cases and channeling offenders rapidly into community service programs as the principal sentencing alternative. Community courts have also been launched in Portland, Oregon; Hartford, Connecticut; and Minneapolis. A community court program can:

- Increase the city’s ability to deal with “quality-of-life” offenses;
- Provide a well-organized group of pretrial diversion and sentencing alternative programs;
- Move this visible part of the judicial process closer to the public;
- Provide a location proximate to a police district for first appearances to be heard in some criminal cases, drawing as well on the presence of community prosecutors and defenders; and
- Greatly reduce the time and expense required to resolve these cases.

It may be necessary to develop the community court through grant funding in view of the added costs the court and other components of the justice system will incur should this initiative operate outside the courthouse. Once the experiment demonstrates its value to both the community and the city as a whole, it is likely that support for the endeavor will grow and that adequate funding will be provided for ongoing operations.

NEXT STEPS

The D.C. Criminal Justice Coordinating Council, the D.C. Council, and the U.S. Congress all must embrace, support, and help implement these Recommendations if the dramatic improvements needed and possible are to be achieved. With the leadership of these organizations, the D.C. community will enjoy increased public safety at a lower cost to its taxpayers. In addition, there are numerous other benefits that will be realized from an improved criminal justice system, such as:

- Fair process;
- Expeditious resolution of all cases;
- Minimal wait time for cases to be heard;
- Reduced costs for police appearances;
- Increased public safety;
- Minimal intrusions on lives of victims and witnesses;
- Greater *perception* of public safety;
- Increased public trust and confidence in criminal justice system;
- More manageable caseloads for courts, prosecutors, and defense;
- Reduction in repetitive and duplicative paper work for all involved;
- Reduction in costs for detention;
- Avoidance or delay in need for new detention facilities;
- Improved prospects for rehabilitation when offense and sanction are closer related in time;
- Better utilization of limited resources; and
- Greater focus on top priority cases by all institutions, agencies, and practitioners involved.

About the **Council for Court Excellence:**

The Council for Court Excellence, founded in 1982, is a nonprofit civic organization that works to improve the administration of justice in the local and federal courts, and related agencies, in the Washington metropolitan area and in the nation. The Council accomplishes its goals by: improving public understanding of the justice system; enhancing public support for the justice system; identifying and analyzing public policy issues; developing and advocating solutions; and facilitating the adoption of new technology and procedures.

About **The Justice Management Institute:**

The Justice Management Institute (JMI) is a non-profit organization based in Denver, Colorado, with offices in San Francisco, and Washington, D.C. JMI's mission is to improve the administration of justice by helping courts and other justice system institutions and agencies achieve excellence— individually and in their inter-relationships with each other and the public— in leadership, operations, management and services. For further information contact:

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To obtain a copy of the *March 2001 Final Report and Recommendations on Management of District of Columbia Criminal Justice Resources*, please visit the Council for Court Excellence website at www.courtexcellence.org.

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