An Analysis of Criminal Felony Case Processing in Administrative Unit One, North Dakota

Institute for Court Management
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Dennis Herbeck
Trial Court Administrator
Administrative Unit One
North Dakota

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ABSTRACT

Unit One makes up two judicial districts and 13 counties in northeastern North Dakota. North Dakota has a Unified Court System and the Courts are general jurisdiction Courts. The Northeast Judicial Districts makes up 11 counties and had 3,764 criminal filings in 2007. The Northeast Central Judicial District makes up two counties and had 3,178 criminal filings in 2007. The focus of this research project is to analyze caseflow management practice in the Northeast and Northeast Central Judicial District and the combined districts as Unit One in the North Dakota Judicial System.

The research project utilized the CourTool Measures developed by the National Center for State Courts to determine the status of felony caseload from January 1 to June 30, 2008. CourTools 2 -- Clearance Rates, CourTools 3 -- Time to Disposition, CourTools 4 -- Age of Pending Cases and CourTools 5 -- Trial Date Certainty are the primary research instruments used in the research.[1] Data was pulled from the automated case management system that identified all cases cleared by disposition for the time of the study. Further identification was made of the amount of time each case took to final disposition. Age of pending cases selected data from the UCIS management information system for each month of the study period to determine the age of cases pending since the initiation period.

Trial date certainty identified data that indicates the number of times a trial date set is actually held and counts the number of settings for the period.

The statistical review of the caseload indicates that each district, and therefore the Unit, is managing its cases at or close to standard. With the exception of some peaks and valleys the

[1] The National Center for State Courts, **CourTools**, 2005.

work is getting done in a timely manner in Unit One. Analysis suggests the development of certain practices that will assist the court in Unit One to continue in meetings the standards and improve practice with justice partners. These responses would include:

(1) Formally establishing a case management committee

(2) The North Dakota Judiciary is in the initial phase of changing its management information system and any changes should include reports relating to CourTools 2, 3, 4, and 5.

(3) Review and establish reasonable trial setting practices

(4) Establish a schedule Statewide for management information reporting

(5) Set a training and information schedule for justice partners

The results of the study show that both districts are meeting expectations through time standards recommended or dictated by the North Dakota Supreme Court. Although there were time periods where cases lagged there were catch up periods that brought cases back to time standard. A look at one of the CourTools and not all them combined might suggest minor concern; however a look at all four suggests the districts in Administrative Unit One are within or very close to the standards set.

Although the initial view of the data or a single CourTool would suggest that Unit One is not meeting standard. However a composite view suggests Unit one is meeting standard. Good business practice suggests continued review of caseflow in Unit One.. With continued opportunity for data collection and review as part of the normal cycle of business, Unit One should be able to remain at a high level in moving felony cases through the system.

INTRODUCTION

North Dakota has a Unified Court System with the exception of municipal courts which have the option to maintain their own courts or transfer jurisdiction to the State Courts. There are 53 counties in North Dakota most of which are large in geographic size but small in population. Unit One which makes up the thirteen counties in northeastern North Dakota will be the area included in the research project. Unit one is divided into two judicial districts, the Northeast Central and Northeast Judicial Districts. The Northeast Central Districts includes the city of Grand Forks which holds the largest population and one additional small county in its district. The Northeast which is made up of eleven counties make up the second district and combined with the Northeast Central District makes up Administrative Unit One.

The Project will look at felony case filings in each of the two districts and compare the results. North Dakota has been at the forefront in establishing expected time standards. The study will identify if Unit One is meeting the time standards established by the North Dakota Judiciary and National Standards such as those established by the Conference of State Court Administrators (COSCA) and the American Bar Association (ABA) related to case processing standards. North Dakota has an excellent docket currency process and the time management of cases is reviewed in this way. As far as this author can tell there has not been a formal study of the case management practices in the state of North Dakota. Using the National Center for State Courts' CourTools 2, 3, 4 and 5, (all related to caseflow management) it is possible to determine exactly how the Unit is doing related to moving cases in a timely manner through the Court system. Although the data suggests courts are meeting standard in North Dakota and Administrative Unit One, this study will show exactly how Unit One Courts are doing.

The time of the study will include data extracted from the State Judiciaries management information system from January 1, 2008 to June 30, 2008. The goal is to determine if the two districts which make up Unit One are meeting time standards as it relates to timely clearance rates, time to disposition, age of pending cases and if cases go to trial on the first date set for trial.

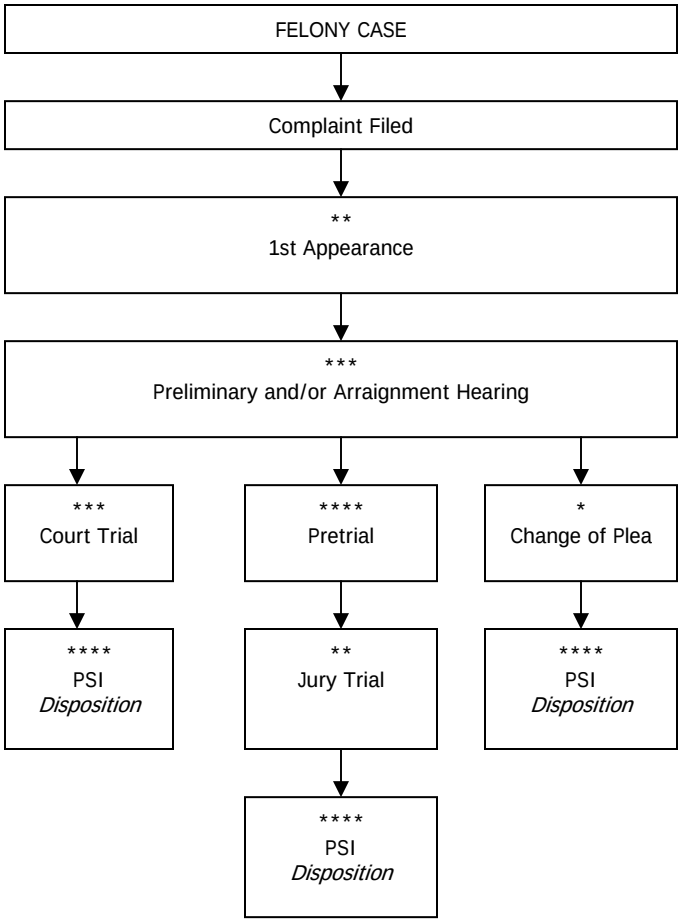
This project is not initiated by any obvious identified problem but rather a review of the work the Unit does. What is important in good case flow management is that such assessments are made in order that data can be assessed through accepted collection methods and reviewed systematically rather than an anecdotal review. Further it would be a good management practice for Unit One and the State Judiciary to consider this type of review as a standard so that accurate information can be gleaned to assess how cases are moving through the system and if they meet standard.

North Dakota has no time standards for trial date settings. The study will look at trial date settings per CourTool 5 and assess how Unit One is doing in relation to settings and standards developed nationally for court performance in trial settings.

The following is a flow chart of felony cases for the Northeast Central Judicial District. The time lines shown with asterisks indicate the time frames to each event. The time period by standard is 180 days.

ADMINISTRATIVE UNIT ONE
Felony Criminal Case Predisposition Flowchart

(* 1 Week ** 2 Weeks *** 3 to 4 weeks **** 4 to 6 Weeks)



Felony Case Summary
Court Trial: 18 weeks/4 months
Pretrial/Jury: 20 weeks/ 4 to 5 months
Change of Plea: 15 weeks/3 months

JUDGE ASSIGNMENT

Grand Forks, Nelson, Bottineau, Walsh, Renville, McHenry, Pierce, Pembina, Cavalier & Rolette:
The judge is assigned to the case when proof of service, i.e. warrant/summons served, criminal citation, is filed with the clerk's office.

Ramsey, Towner & Benson:
The judge is assigned to the felony case at the preliminary/arraignment hearing.
The judge is assigned to the misdemeanor/infraction case when the trial is scheduled.
The judge is assigned to the criminal case at disposition, if not previously done.

LITERATURE REVIEW

Caseflow management is one of the most critical elements in modern court management. It is the duty and responsibility of the Court Manager and Judges in a joint leadership role to determine how their courts are doing in relation to moving cases in a timely manner to conclusion. Regardless of the size of court or the type, be it limited or general jurisdiction, courts need to rely on the principles of sound caseflow management. Roscoe Pound an early leader in court reform was a harsh critic of courts in the early 20th century.

In his 1906 speech "The Causes of Popular Dissatisfaction with the Administration of Justice", Pound indicated "a wide spread feeling that the courts are inefficient".[2] Pound concluded that a direct cause of dissatisfaction dealt with inefficiencies in organization and procedure that resulted in court delays, uncertainty in case status and the expenses associated with such delay.

Although Roscoe Pound was essentially dismissed by Judges at the time for his remarks it was from these beginnings that reflection and serious review of how the courts did their business began.

Although a number of efforts were started prior to the 1970's it was this period where we see the development of new court professionals called Court Administrators who paid greater attention to issues of delay and court efficiency. In 1973 Maureen Solomon, in her book Case flow Management in the Trial Court emphasized the need for commitment by judges to control the progress of litigation, using the services of a court administrator to coordinate the process in

[2] Roscoe Pound, **"The Causes of Popular Dissatisfaction with the Administration of Justice,"** American Bar Association Reports 29 (1906).

keeping with case processing time standards and other system performance standards adopted by judges and administrators.[3]

Maureen Solomon lists four prevailing principles for caseflow management strategies. These include:

Judicial Leadership and Commitment
Standards and Goals
Monitoring Performance Measurement
Communication/Consultation with the Bar[4]

One of the first studies in 1977 by Steven Flanders of the Federal Judicial Center concluded that "fast courts were distinguishable from other courts in several ways".

> "*Strictly monitored pleadings began and completed discovery within a reasonable time and promptly initiated a trial if it was needed.
> *Delegated all docket control, attorney contacts, and most conferences to a courtroom deputy clerk or magistrate until discovery was complete.
> *Had Judges who normally initiated settlement negotiations only when a case was nearly ready for trial."[5]

Further in 1976 Thomas Church and fellow researchers from the National Center for State Courts published five elements to reduce delay in the court.

1. Establish management systems by which the court, and not the attorneys, controls the process of cases.
2. Use trial-scheduling practices and continuance policies that create an expectation on the part of all concerned that a trial will begin on the first date scheduled.
3. Emphasize readiness to try rather than settle cases, as a means to induce settlements.
4. Increase judicial accountability and productivity in civil cases, perhaps through institution of the "individual calendar" method of assigning cases to judges.
5. Increase effectiveness of speedy-trial standards for criminal cases through introduction of operational consequences for violation of the standards and through reduced ease of waiver by defendants.[6]

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[3]Maureen Solomon, **Caseflow Management in the Trial Court** (Chicago: American Bar Association 1973), pp. 29-30.
[4] **Loc. Cit.**
[5] Steven Flanders, **Case Management and Court Management in the United States District Courts** (Washington, D.C.: Federal Judicial Center, 1977), p. 1.
[6] Thomas Church et.al, **Justice Delayed: The Pace of Litigation in Urban Trial Courts** (Williamsburg, Va.: National Center for State Courts, 1978).

Much of what is written in the research of caseflow management and the courts is the issue of delay. British statesman William E. Gladsone said in the nineteenth century, "justice delayed is justice denied".[7] There are few who have not heard this quote and have some understanding of its meaning. It is also likely that no one, other than court professionals understand its real meaning and the measures needed to effectively reduce such delay to the point where the pursuit of justice might be accomplished without undue delay.

Professor Ernie Friesen suggests that delay undermines the very purpose of the courts.

> "The study of delay is not the study of inefficiency, but is the study of the very purposes for which courts exist…Justice is lost with the passage of time….No matter how you look at it, whether it's a civil or criminal matter, time destroys the purposes of courts. We study case management because case management is the way we get rid of the waiting time, [by] which we control delay, [and by] which we enhance the purposes of courts. Case management is what we're about in controlling delay."[8]

What are the purposes of courts? What are the important goals of a trial court administrator? As one looks at management in general the emphasis is often related to human resources. Hiring staff, performance reviews, morale and all of the things related to the human condition. This is time consuming and important work. Budgeting and finance are also critical elements to the health and well being of the court. Management information systems, access and fairness, jury and facilities take up a great deal of the Court Administrator's day. However it is caseflow management that is the most important in terms of the purpose of the court and often least attended to as part of the daily operations of the court.

According to David Steelman:

> "None of the other responsibilities of court managers – such as personnel management, financial management, records management, and facilities

[7] Bruce and Allan Zullo,eds,.and Kathryn Zullo, comp. **Lawyer's Wit and Wisdom: Quotations on the Legal Profession, In Brief** (Philadelphia, Pa.: Running Press, 1995), p.139.
[8] Ernest C. Friesen, **"The Delay Problem and the Purposes of Courts,"** in National Center for State Courts, Institute for Court Management, **Caseflow Management Principles and Practices: How to succeed in Justice** (Videotape, 1991).

management – is as closely and directly related to the basic purposes of courts as the reduction and avoidance of delay through caseflow management."[9]

Both David Steelman and Ernie Friesen address an important topic in their rationale for effective case flow management and that is the purpose of the courts. Although delay may be the primary cause it is the purpose of the courts that should drive the cause for solutions to such delay. If the courts are to be successful in effective caseflow management we will need to remember as the court as well as our justice partners that the purpose of the courts is the pursuit of justice to the citizens represented. The belief that justice becomes more difficult to attain with the passage of time then effective caseflow management is required to see that courts are managing caseflow in such a way that cases are concluded in a timely manner.

How then should courts approach caseflow management with the goal of reducing delay?

The following from shared writings by Solomon and Church found in the book **Courts That Succeed--Six Profiles of Successful Courts**, by Hewitt, Gallas and Mahoney suggest the following:

> * Delay is case processing time beyond that which is necessary for a fair resolution of a case, and such delay has a negative effect on the quality of justice;
>
> * Delay is a problem of major public importance and is perceived as such by the American public;
>
> * While delay exists in many courts, it is not inevitable. It is avoidable through actions courts can take within their own authority, and where delay exists it can be reduced dramatically.[10] [11]

In "**Six Profiles"** the views of caseflow management authors Solomon and Church point to a medical model. This model denotes the courts as diseased in the sense of case flow. The

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[9]David C. Steelman, **Improving Caseflow Management: A Brief Guide**, National Center for State Courts, Draft March 8, 2004.
[10]William E. Hewitt, Geoff Gallas and Barry Mahoney, **Courts that Succeed--Six Profiles of Successful Courts**, National Center for State Courts, 1990, 1991 Inclusions from Maureen Solomon and Douglas K. Somerlot (1987) **Case flow Management in the Trial Courts: Now and for the Future** (Chicago: American Bar Association).
[11]Thomas W. Church, **Justice Delayed: The Pace of Litigation in Urban Trial Courts**, National Center for State Courts, 1978.

symptoms of a diseased system are the lack of leadership and lack of control of cases that pass through the courts.

> "The first assumption is that courts engaged in monitoring time to disposition are regularly monitoring their performance, which is a prerequisite for good health over the long term.
>
> Second, a more speculative assumption is that those courts that take the symptom of delay seriously are probably paying attention to their health in other areas as well."[12]

Barry Mahoney, the author of *Changing Times in Trial Courts* describes ten common elements of successful programs (shown in Figure 1). [13]

[12]William E. Hewitt, Geoff Gallas and Barry Mahoney, **Courts that Succeed, Six Profiles of Successful Courts**, National Center for State Courts, 1990, 1991, page vii.
[13]Barry Mahoney, **Changing Times in Trial Courts**, **Six Profiles of Successful Courts**, National Center for State Courts, 1988, cited in **Courts that Succeed,** Hewitt, Gallas and Mahoney, NCSC, 1990, 1991, page viii.

Graph 1

Figure 1

Common Elements of Successful Programs: A Synergistic Relationship

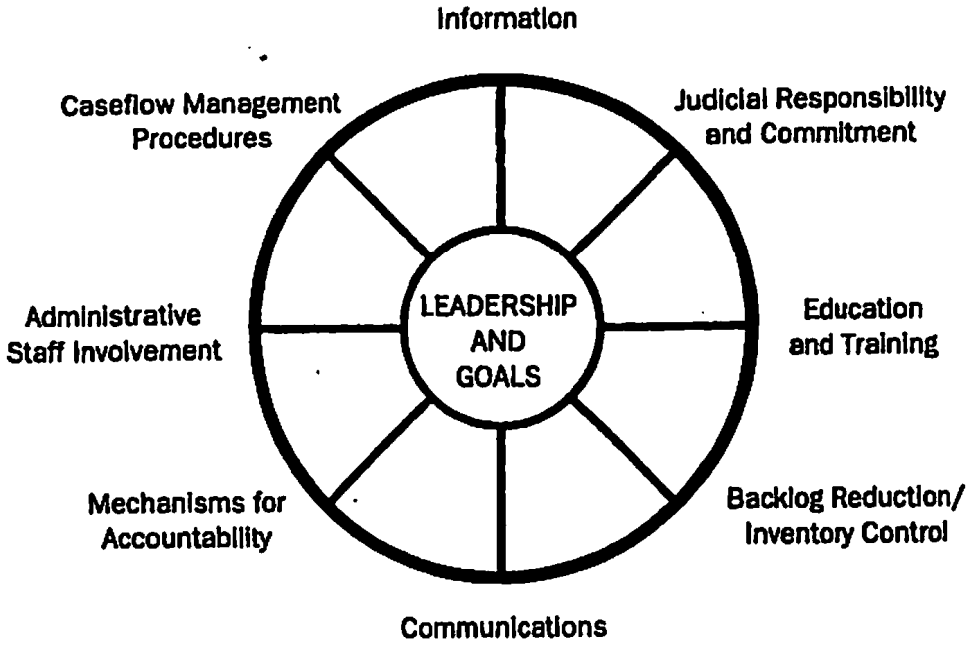

Figure 1 entitled "Common Elements of Successful Programs: Synergistic Relationship" identifies what court managers need to be aware of in terms of caseflow management. The critical elements are Leadership and Goals which Figure One shows as the hub. The others are elements that need to be considered and understood as part of a framework for caseflow management. A more detailed discussion of the critical leadership role will follow.

Being a professional in court administration, a judge or as a lay person, there are generally some forms of explanation as to the need for caseflow management. To blindly accept the slow and sometime erratic movement of cases through the courts is a reminder in celebrated cases. The courts blame the attorneys and the attorneys point to the court or look at the profession as a whole and suggest it is a system that is inherently problematic and cannot be

reasonably solved. In the book Examining Court Delay, The Pace of Litigation in 26 Urban Trial Courts, 1987 the authors describe issues of delay in the trial courts.

> "Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts, increasing the costs for all litigants, pressuring judges to take shortcuts, interfering with the prompt and deliberate disposition of those causes in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. But even these are not the worst of what delay does. The most erratic gear in the justice machinery is at the place of fact finding, and possibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If we do not get the facts right, there is little chance for the judgment to be right."
>
> -Southern Pacific Transportation Co. v. Stoot, 530 S.W. 2d930 (1975) [14]

This short piece from Southern Pacific Transportation v. Stoot case sums up very well the consequences of delay. Is there consideration for financial costs or consideration for those who have been wronged, the accused or the victim? What about the passage of time and its relationship to the final judgment? It is understandable that with delay most things break down and the freshness of events begins to fade with time.

It is also suggested that the speed of litigation can also be the enemy of a reasoned outcome. If the only interest is in speed, how do litigants get their say in court, surely there needs to be time spent, especially in complex serious cases? "Sarat, for instance, suggests we must at least consider the possibility that 'slow justice is more certain justice'".[15]

As is often the case, the truth of the matter was the opposite. Through effective caseflow management the courts would systematically approach cases based on their needs. With the advent of time standards those cases with complex civil litigation or serious criminal matters would be afforded the time necessary for participants to receive a fair trial beyond what would be

[14] John Goerdt, Christ Lomvardias, Geoff Gallas and Barry Mahoney, E**xamining Court Delay, The Pace of Litigation in 26 Urban Trial Courts**, 1987, Williamsburg, Va.: National Center for State Courts, 1987, page 3.
[15]**Loc. Cit**.

expected. The fact that most cases are not complex and can move expeditiously through all systems reminds us that for the majority of cases that courts deal with, complexity is not the problem. Some court systems today work within the concept of differentiated case management. This process considers the needs of complex cases and determines the amount of attention such cases will require. Time standards that are typically used will not apply in these cases.

What can and often is the problem is how courts do business with those cases and what the court culture is that either requires cases to move within time standards or to wallow in some wasteful time warp. Clearly the latter serves no justice and respect to any of the participants. Effective caseflow management will keep the courts on top of their cases and their conclusions in a timely manner.

> "The ordinary administration of criminal and civil justice…contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem and reverence towards the government."
>
> - Alexander Hamilton, The Federalist, No. 17 (1787) [16]

Here Hamilton defines for us the importance of the administration of justice. To suggest anything less is to say that professionals in the courts are not mindful of its most important role.

From the Bureau of Justice Assistance, Trial Court Performance Standards with Commentary under Expedition and Timeliness the issue of unnecessary delays is addressed. Terms like responsibility, timeliness, and repercussions are echoed in the print to remind us of the concerns related to delay and the timely movement of cases through the court system. Although all of the standards are significant the following seem to address caseflow management directly.

There are three standards under Expedition and Timeliness from the Trial Court Performance Standards that need to be included in the discussion on caseflow management.

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[16] **Trial Court Performance Standards With Commentary**, Bureau of Justice Assistance, Washington, DC 1997, page 1.

> "Standard 2.1 Case Processing
> The trial Court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.
>
> Standard 2.2 Compliance with Schedules
> The trial Court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.
>
> Standards 2.3 Prompt Implementation of Law and Procedure
> The trial court promptly implements changes in law and procedure."[17]

Performance standards identify for the courts what its obligation are to the public and the profession. Under each of the standards identification is made which allows the courts to determine how it is keeping up with the standard. Although it does not give us a specific method such as CourTools its does identify what it is that needs to be measured. The development of CourTools has made the research on such subjects much easier by the use of evidence based methods which guide the courts to collection of data and interpretation of those results. A further discussion on CourTools will follow.

If a case has been made for sound caseflow management and techniques have been reviewed that might guide us, then it is time to begin monitoring our caseloads and set standards to guide their accomplishments.

The strategies necessary for a sound caseflow management system can be found in Solomon and Somerlot's text Caseflow Management in the Trial Court.

> "Through empirical research and the experience of court administrators, the hypotheses and observations of the original ABA caseflow monograph have been validated and corollary theorems and axioms developed. It is now widely

[17] **Ibid,** page 11.

accepted that to achieve the goals mentioned earlier a court must incorporate the following into its caseflow system."[18]

Further in a new release by Thomas M. Clarke, et al., A Unifying Framework for Court Performance Measurement describes the following:

> "Performance measurement is crucial to a court's ability to provide high quality service to its customers in a cost-effective and efficient manner. Evaluation of performance enhances a court's capacity to:
>
> 1) Determine whether it is meeting performance expectations;
> 2) Measure performance in areas important to different stakeholders;
> 3) Prepare, justify, and present budget requests based on performance data;
> 4) Focus investment to improve the provision of services to customers; and
> 5) Demonstrate accountability to the court's customers and community in general."[19]

Sound management principles guide the court and its administration of justice. Performance management principles as described by Clarke above requires that the Court, Administration and Justice partners must begin the task of assessing its process and procedure as a commitment to moving cases through the Court system. The following elements are crucial to this end.

Judicial Commitment and Leadership

Solomon and Somerlot have identified Judges and particularly the Presiding Judge in each district as key players in the development of successful caseflow management programs. Further it is common that the Supreme Court of the state through their leadership and support will help ensure success of such plans. The trial court administrator together with the presiding judge and the support of other members of the bench are critical elements in successful caseflow management systems.

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[18]Maureen Solomon, Douglas K Somerlot, **Caseflow Management in the Trial Court, Now and for the Future**, American Bar Association, Chicago, Illinois, 1987, page 7.

[19] Thomas M. Clarke, Richard Y. Schauffler, Brian J. Ostrom, Charles Ostrom and Roger Hanson, **A Unifying Framework for Court Performance Measurement**, National Center for State Courts and State Justice Institute 2008.

Court Consultation with the Bar

It is crucial that the Bar be involved with caseflow. This group has the most at stake and will be a pivotal partner in caseflow development. The message that caseflow management is of vital importance to their cases and their movement through the system must be included from the very beginning.

Court Supervision of Case Progress

It is the court that must take the primary responsibility in managing cases.

> "Effective coordination of multiple resources in the court environment can only be effected from a single position. Neither the trial bar, nor the prosecutor in criminal cases, is organized in such a way as to provide centralized control benefiting all cases. The bar and the prosecutor represent partisan interests and are usually concerned with individual cases rather than the caseload as a whole. The court, as a neutral agency, is the logical central focus from which to control, coordinate and balance the competing interests of all parties."[20]

Standards and Goals

Here Solomon and Somerlot suggest that the system must incorporate three types of standards and goals.

1. overall time standards
2. intermediate standards governing elapsed time between major events
3. system management standards relating to continuances[21]

Monitoring and Information System

Here the authors indicate the necessity of a management information system that keeps and allows the collection of data for determining caseflow.

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[20] See Note 18, **supra.**

[21] David C. Steelman with John A. Goerdt and James E. McMillan, **Caseflow Management, The Heart of Court Management in the New Millennium**, The National Center for State Courts, 2000.

Scheduling for Credible Trial Dates

Here Solomon and Somerlot discuss the necessity of credible trial dates. If the court does not enforce such dates then they are not meaningful and the likelihood of compliance is minimized.

Court Control of Continuances

The court must control the process and timing of continuances.

> "An Atmosphere must be fostered in which timely, high-quality attorney preparation minimizes the need for a continuance". [22]

In conclusion Steelman, Goerdt and McMillan, Caseflow Management, The Heart of Court Management in the New Millennium, suggest three critical elements in the process.

A. Leadership
B. Commitment to a Shared Vision
C. Communications[23]

Leadership has been discussed before and the earliest authors of caseflow management ring a familiar refrain, however Steelman, Goerdt and McMillan discuss the issue in this way. Leadership requires the ability to,

> ". . . motivate others to invest themselves in the proposed program. He or she might do this by (1) articulating a vision of how change will improve the system, (2) showing how individual persons will benefit from them, and (3) showing ongoing commitment to the effective operation of the proposed program through dissemination of information on program process and rewards to those who help the program achieve its goals."[24]

David Osborne and Ted Gaebler write in Reinventing Government,

> ". . . it is not enough that a leader has a vision of change; he or she must get other community leaders to buy into that vision. The key element is a collective vision of a city or state's future—a sense of where it's headed. . . . If you can't put that

[22]See Note 18, **supra.**
[23]See Note 21, **supra.**
[24] **Loc. Cit.**

> together, it's difficult to make these innovative approaches work, because people . . . become confused about why government is changing".[25]

Therefore the vision to believe courts can achieve greater things and the ability to convince others that it is in their best interest to participate are key elements to leadership and commitment to a shared vision.

Communications

The judiciary in this country is a great mix of elected officials that include Judges, Clerks and States Attorneys. Resources to operate come from various sources. As Steelman suggests, the goals and interests of these players are different from each other. What is required is communication among these varied groups. The sense of responsibility should be mutual for they are mostly justice partners at one level or another.

> "Courts, like other units of government, cannot be "run like a business." Yet, like well-run private businesses, they need effective communication to succeed in their efforts to achieve prompt and affordable justice in the environment in which they operate". [26]

In conclusion the following reference from Giving Courts the Tools to Measure Success, CourTools, from the National Center for State Courts describes why we must proceed with assessment and measurement of our work.

> ". . . attention to the results of court activities is more than just a polite gesture to the outside world. For the nation's courts, failure to highlight performance goals and measure them undermines the judiciary's proclaimed ability and need to govern its own affairs. Formal performance assessment signals a court's recognition, willingness, and ability to meet its critical institutional responsibilities as part of the third branch of government."[27]

In measuring performance in criminal felony cases for Unit One, North Dakota CourTools 2, 3, 4 and 5 will be used.

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[25] David Osborne and Ted Gaebler, **Reinventing Government: How the Entrepreneurial Sprit is Transforming the Public Sector** (New York: Penguin Books, 1993, p. 327.
[26]See Note 21, **supra.**
[27]See Note 1, **supra,** page 3.

North Dakota and particularly Unit One is engaged in the same issues discussed in the literature review. Court delay is a problem in rural courts as well as urban courts. Judges and court personnel need to be aware of the consequences of delay. The problems associated with delay are more than not meeting standards, but strains the desired outcomes associated with fairness and justice. The literature review has made it crystal clear that all courts urban or rural must be aware of the concerns associated with unnecessary delay. The confidence of citizens we serve, procedural fairness and justice are all at stake. Caseflow management and the use of statistical analysis such as CourTools will help courts stay on course.

METHODOLOGY

Data for the project was gleaned from queries from the North Dakota Management Information System called Unified Court Information System or UCIS. [28] The methodology of collection followed the recommended collections outlines in CourTools Measures 2, 3, 4 and 5.

Statistical data collection from UCIS was taken for the months January, February, March, April, May and June 2008 and included 1,413 cases reviewed. Data was extracted for both the Northeast and the Northeast Central Judicial District and will be compared. Data for the two districts will then be combined to show findings for the Northeast Judicial District, Northeast Central Judicial District and a combined total representing Administrative Unit One.

A review of the literature gave a history of issues in court delay and was used to consider issues that courts may encounter in caseflow management.

Further a look to the calendar year 2007 was made and 3,307 cases viewed in relation to CourTools 2 and 3 to be used as comparisons when reviewing data from the six month period. Because of the variations that resulted in the six month view it was felt a full year would be an important comparison. The current management information system was not able to collect data for the year 2007 for CourTools 4 and 5.

The following CourTools Measures were used in the study:

CourTools 2 – Clearance Rates

Clearance rates help the court determine if they are keeping up with new or incoming caseload. The measurement is a single number that allows the court to compare itself within the court for all case types from month to month, year to year and or between courts. The

[28] http://www.ndcourts.gov/_court/committees/ct_tech/agendaaug2002/counties_using_ucis.pdf

methodology for CourtTool 2 is to calculate clearance rate by dividing the sum of outgoing cases by the sum of incoming cases. [29]

Disposition types used include: (1) Entry of Judgment; (2) Reopened Dispositions and; (3) Placed on Inactive Status. The types of incoming cases includes: (1) New filings; (2) Reopened Cases and; (3) Reactivated Cases. These can be found in the State Court Guide to Statistical Reporting.[30] Courts should attempt to have a clearance rate of 100% or higher. This would indicate the court is disposing of as many cases as it receives in a given time period.

CourTools 3 – Time to Disposition

As defined in CourTools 3, Time to Disposition is the, "The percentage of cases disposed or otherwise resolved within established time frames." [31]

Measure 3 used in conjunction with Measure 2 allows the court to determine how much time it takes to process cases through the courts. The court can then compare their time to disposition with local and national guidelines for processing standards. COSCA or the Conference of State Court Administrators recommends 100% of cases processed within 180 days of filing on felony cases. The American Bar Association, ABA recommends 90% within 120 days, 98% within 180 days and 100% within one year on felony cases. The North Dakota Supreme Court has established by policy that felony cases be processed within 180 days.

Data will be collected and compared using the three standards listed above to determine if we are meetings time to disposition standards.

Methodology requires a list of all cases that were disposed or otherwise resolved during the reporting period and have an entry of judgment. These also include reopened or reactivated cases.

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[29] See Note 28, **supra.**
[30] National Center for State Courts and State Justice Institute, **State Court Guide to Statistical Reporting**, NCSC, 2001
[31] **Loc. Cit**.

CourTools 4 – Age of Pending Caseload

For felony cases reports were produced that calculates the time, in days, from filing of the case until the date established for the reporting period being examined. This study looked at reports from January 1, 2008 to June 30, 2008.

The age of active cases that are pending before the court, measured as the number of days from filing until the time of measurement make up age of pending caseload.[32] This measure allows the court to determine where the greatest volume of cases resides and allows the court to determine cause and response to these areas. North Dakota's UCIS system was able to extract the information required for this report, although data collected from the previous year was not available for study.

CourTools 5 – Trial Date Certainty

Trial date certainty measures the number of times cases disposed by trial is scheduled for trial. A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition.[33] Data was collected on this measure to include jury trials and bench trials for felony cases.

The IT department was asked to search for all of the cases disposed of by trial during the reporting period and organize them for felony cases only and determine if they were bench or jury trials. The minimum number of trial dates set for any case on this list will be one, since all the cases on the list have at least one trial setting.

All cases in the study include case number, type of case, type of trial and the number of trial dates set. North Dakota has no standard as it relates to trials actually going to trial on the first or second scheduled trial date.

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[32] **Loc. Cit**.
[33] **Loc. Cit**.

FINDINGS

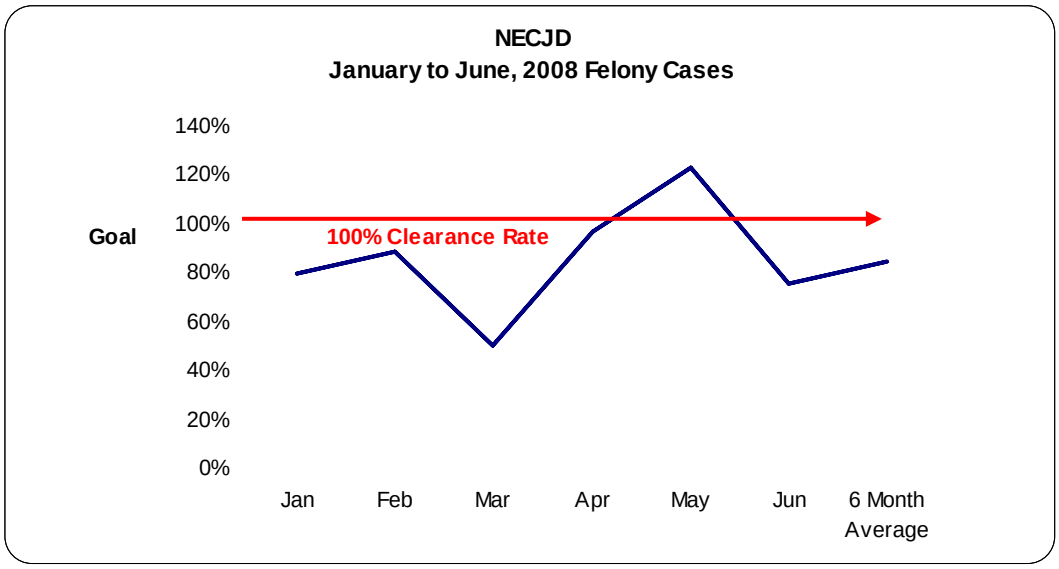
The following graphs, charts and tables identify Clearance Rates, Time to Disposition, Age of Pending Case and Trial Date Certainty as outlined in CourTools. The data will reflect how caseflow is occurring in Administrative Unit One.

Measure 2 -- Clearance Rates

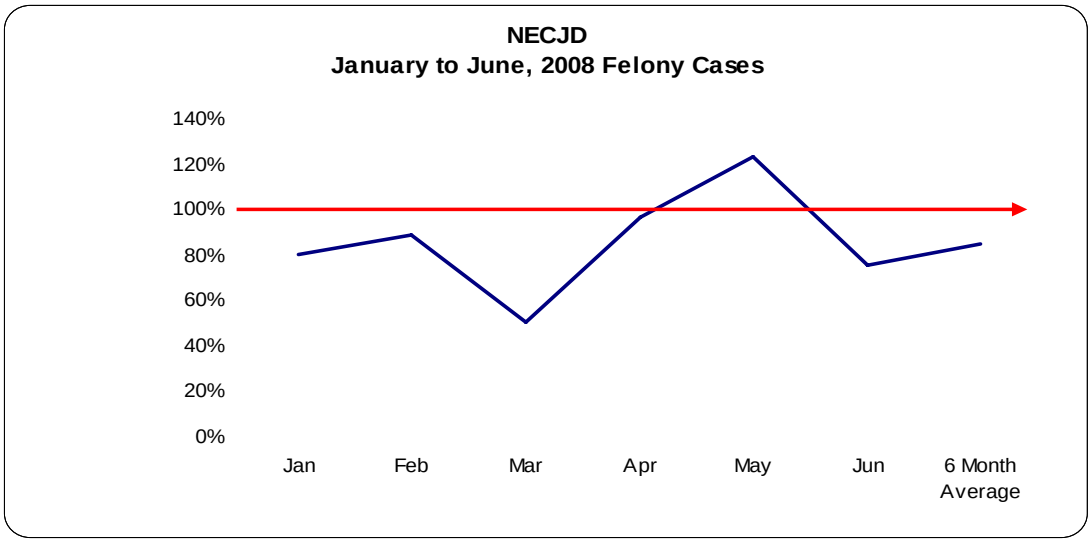
The below graph shows a clearance rate goal of 100% for the Northeast Central Judicial District (red line). Looking at the six month period it shows an average clearance rate of 85%.

The blue line on the graph identifies the month clearance rates. The lowest clearance rate occurred in March at 51% and a high in May and 124%. Why there is a dramatic reduction in clearance rates for the month of March at 51% will be addressed in the conclusions and is likely due to time of year and availability of judges.

Graph 2 – NECJD Clearance Rates

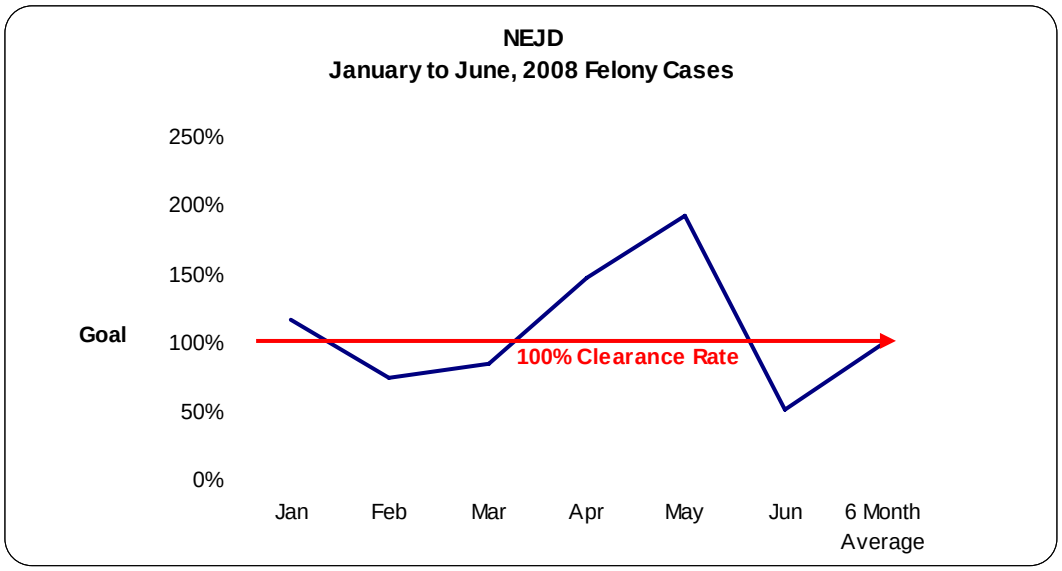


Graph 3 – NECJD Clearance Rates Analysis



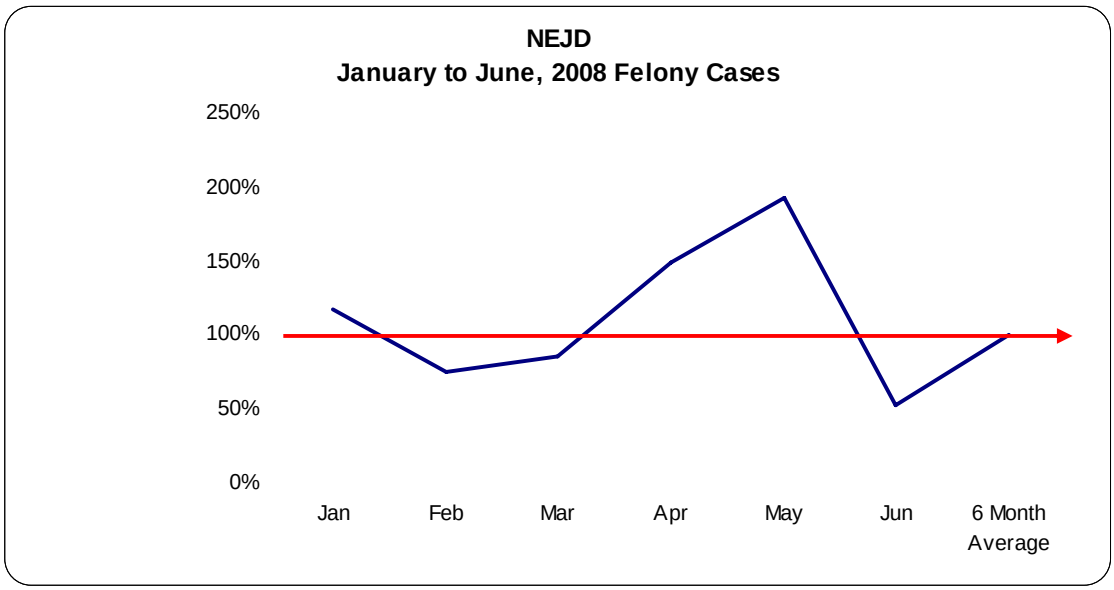
The graph of the Northeast Judicial District shows that the NEJD is meeting standard for clearance rates. It shows an average clearance rate of 101% which exceeds the clearance rate goal. Although the overall looks very good we do see a low of 53% in June with a 194% high in May. Analysis of Unit clearance rates will help us understand and identify potential concerns.

Graph 4 – NEJD Clearance Rates



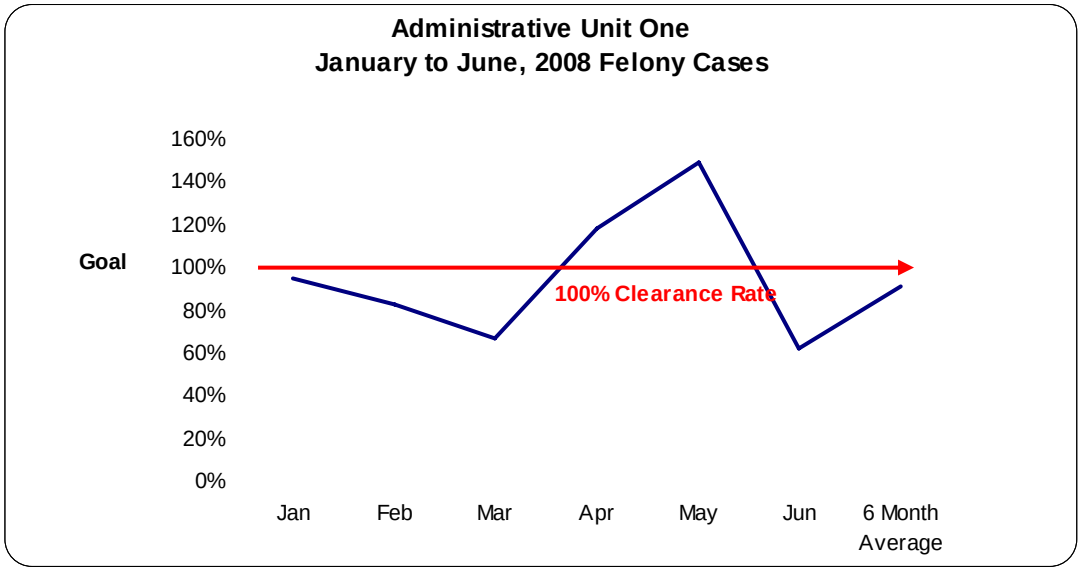
The Northeast Judicial District is meeting standard per the graph above at 92%.

Graph 5 – NEJD Clearance Rates Analysis



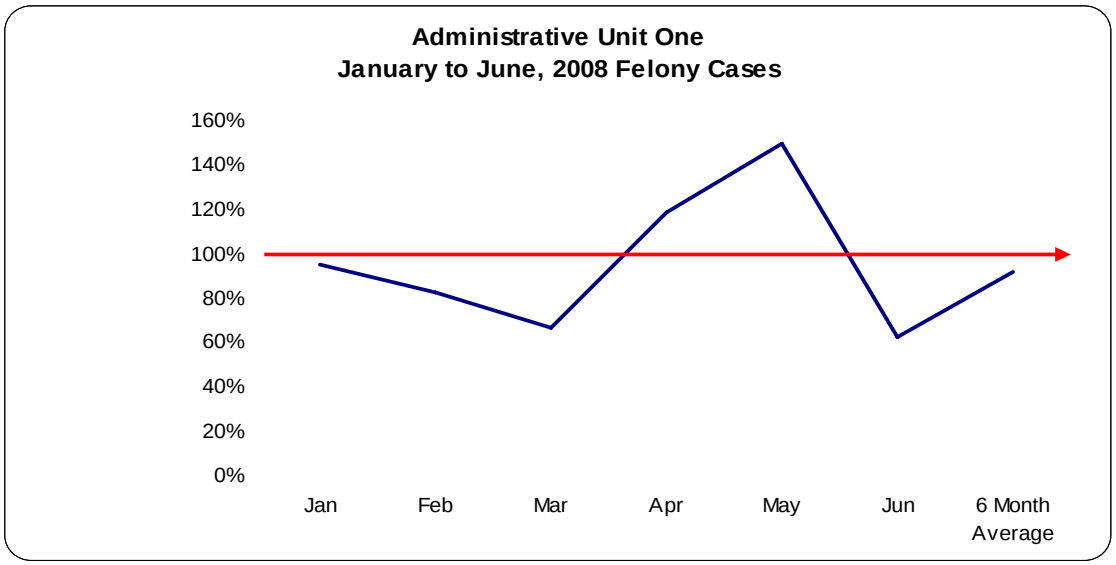
NEJD has overall clearance rate in Administrative Unit One of 92%.

Graph 6 – AU1 Clearance Rates



Administrative Unit One, combined clearance rates at 92%

Graph 7 – AU1 Clearance Rates Analysis



AU1 clearance rate at 92%

Table 1 – Clearance Rates 2008

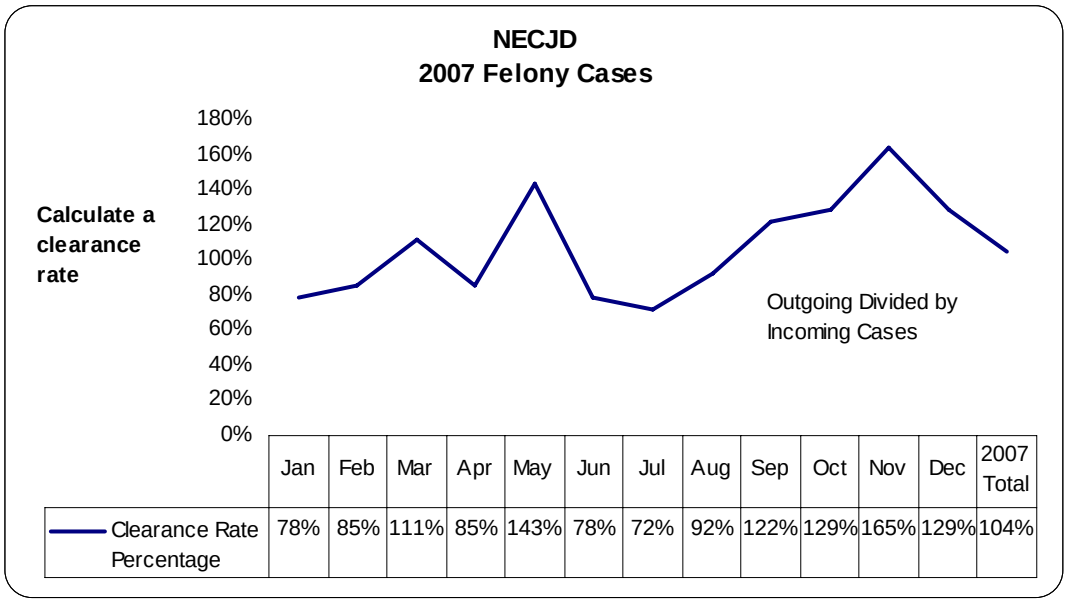
6 Month Average Clearance Rates for accessing comparative performance		Criminal Cases	Above 100%
	NECJD	85%	
	NEJD	101%	X
	AU1	92%	

6 Month Clearance Rates for analyzing trends		Jan	Feb	Mar	Apr	May	Jun	6 Month Average
	NECJD	80%	89%	51%	97%	124%	76%	85%
	NEJD	118%	76%	85%	149%	194%	53%	101%
	AU1	95%	83%	67%	119%	150%	63%	92%

The following is a review of clearance rates for the year 2007. By gleaning data for the full calendar year 2007 it suggests that the six month review is too short a time period to give the detail required. As the 2007 graph indicates much of the catching up is done in September, October and November which are not included in the six month study. By reviewing these rates

for a full year (2007) we can better see when clearance rates are high and low within a full year's time.

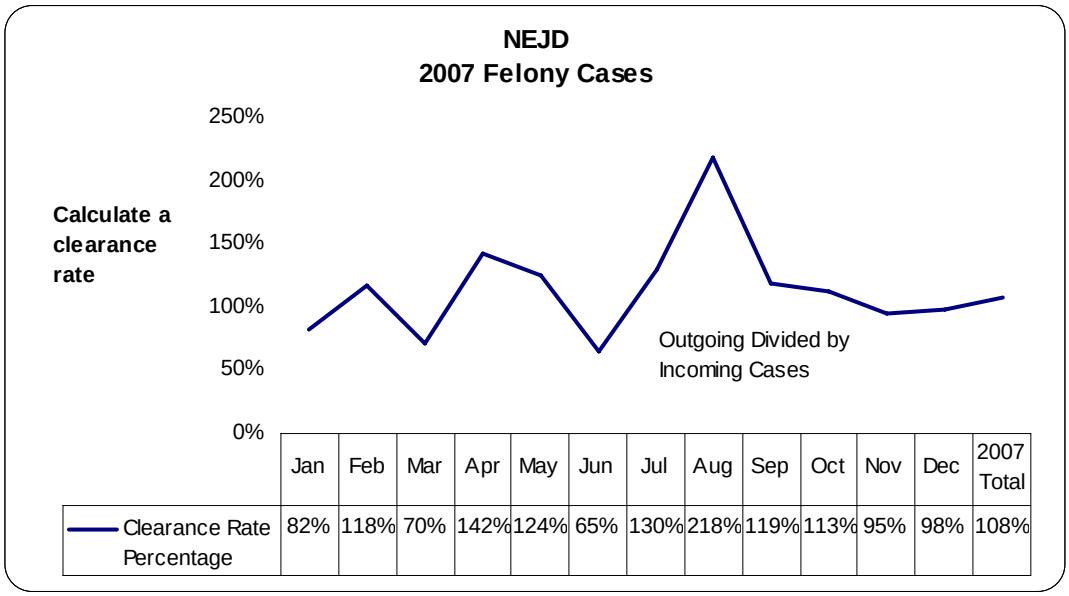
Graph 8 – NECJD Clearance Rates 2007



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2007 Total
Clearance Rate Percentage	78%	85%	111%	85%	143%	78%	72%	92%	122%	129%	165%	129%	104%

2007 full year clearance rates for the Northeast Central Judicial District are 104%.

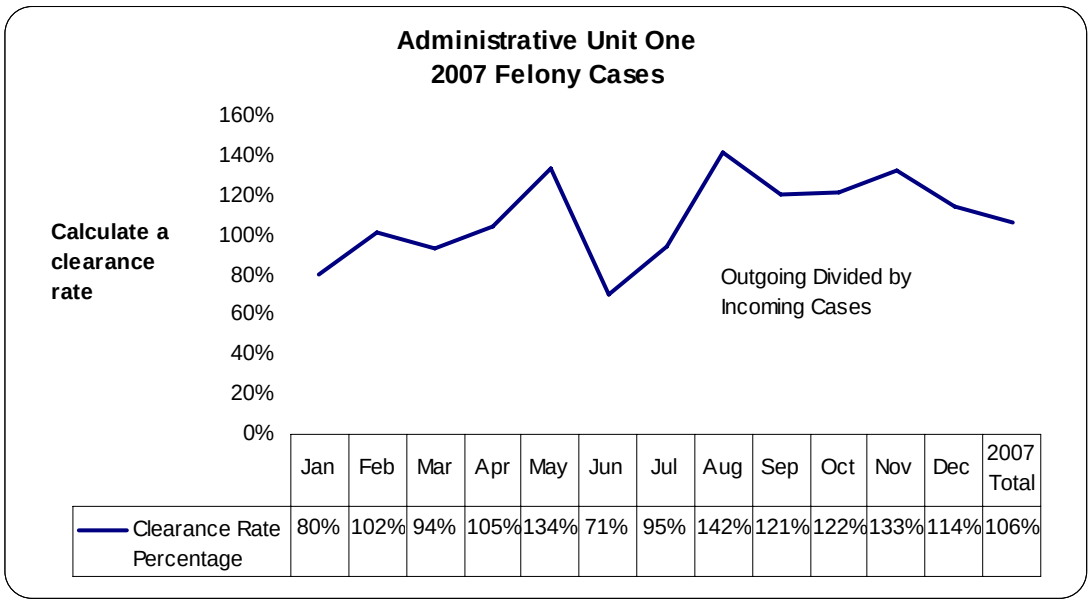
Graph 9 – NEJD Clearance Rates 2007



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2007 Total
Clearance Rate Percentage	82%	118%	70%	142%	124%	65%	130%	218%	119%	113%	95%	98%	108%

Clearance rates for the Northeast Judicial District are 108%.

Graph 10 – AU1 Clearance Rates 2007



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2007 Total
Clearance Rate Percentage	80%	102%	94%	105%	134%	71%	95%	142%	121%	122%	133%	114%	106%

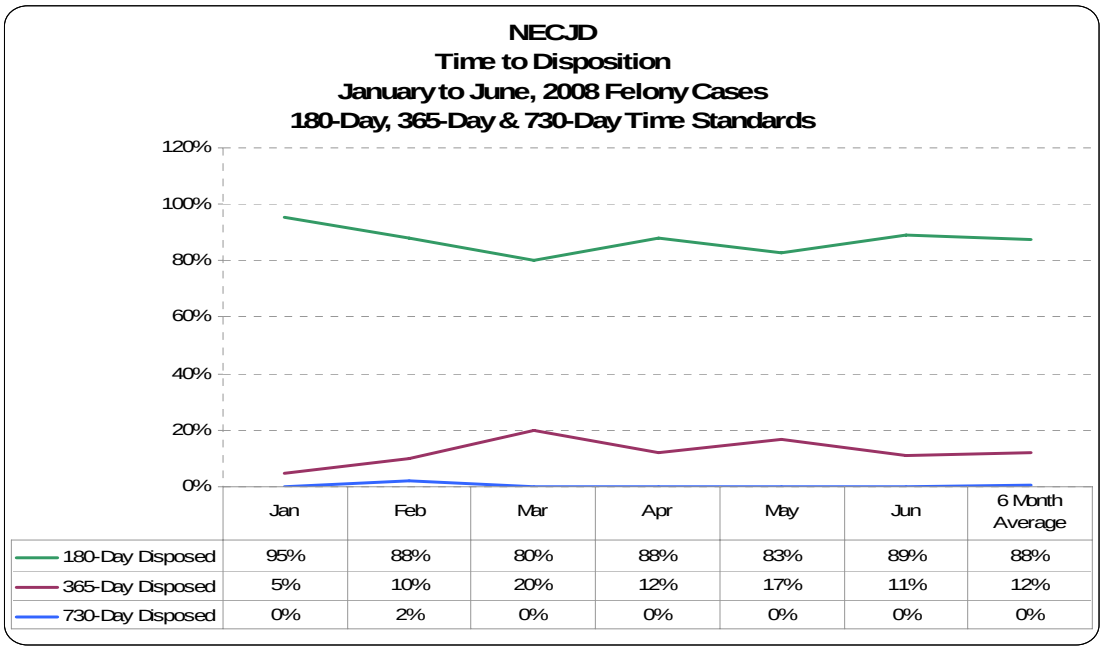
The above graph illustrates the 2007 clearance rates for the year in the NECJD and NEJD of Unit One at 106%.

Measure 3 – Time to Disposition

The goal for Measure 3 is as follows:

North Dakota Judiciary Standard:	Criminal Felony cases 100% in 180 days
COSCA Processing Standards:	Criminal Felony cases 100% in 180 days
ABA Processing Standards:	Criminal Felony cases 98% in 180 days

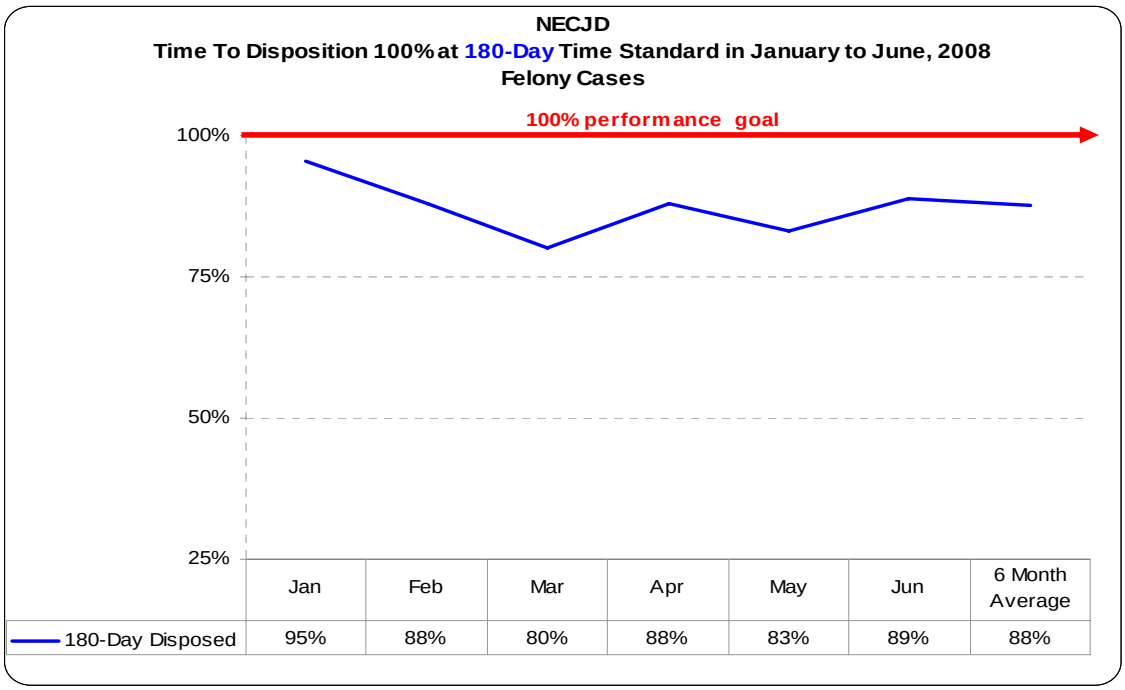
Graph 11 – NECJD Time to Disposition 180-Day, 365-Day & 730-Day Time Standards



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180-Day Disposed	95%	88%	80%	88%	83%	89%	88%
365-Day Disposed	5%	10%	20%	12%	17%	11%	12%
730-Day Disposed	0%	2%	0%	0%	0%	0%	0%

This graph represents that NECJD is disposing of 88% of its cases in 180 days. 12% of its cases are disposed of in 365. No cases show a disposition longer than 365 days.

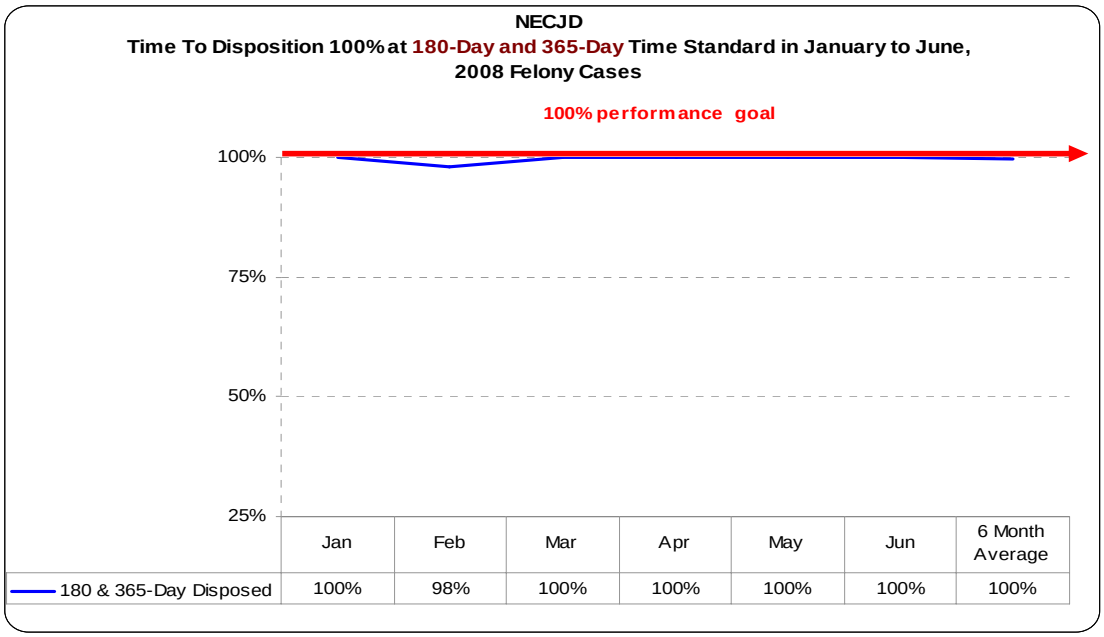
Graph 12 – NECJD Time to Disposition 100% at 180-Day Time Standard



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180-Day Disposed	95%	88%	80%	88%	83%	89%	88%

Graph 12 shows NECJD at 88% on average disposed in 180 days.

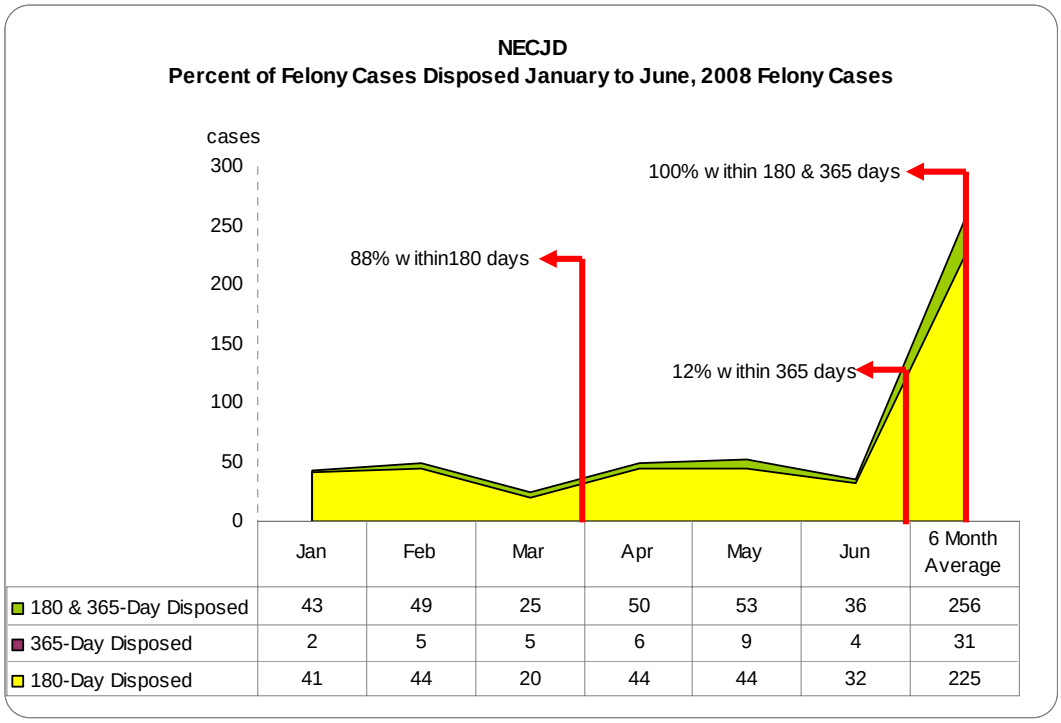
Graph 13 – NECJD Time to Disposition 100% at 180-Day and 365-Day Time Standard



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180 & 365-Day Disposed	100%	98%	100%	100%	100%	100%	100%

Graph 13 reflects the remaining 12% of cases disposed of in 365 days.

Graph 14 – NECJD Percent of Felony Cases Disposed



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180 & 365-Day Disposed	43	49	25	50	53	36	256
365-Day Disposed	2	5	5	6	9	4	31
180-Day Disposed	41	44	20	44	44	32	225

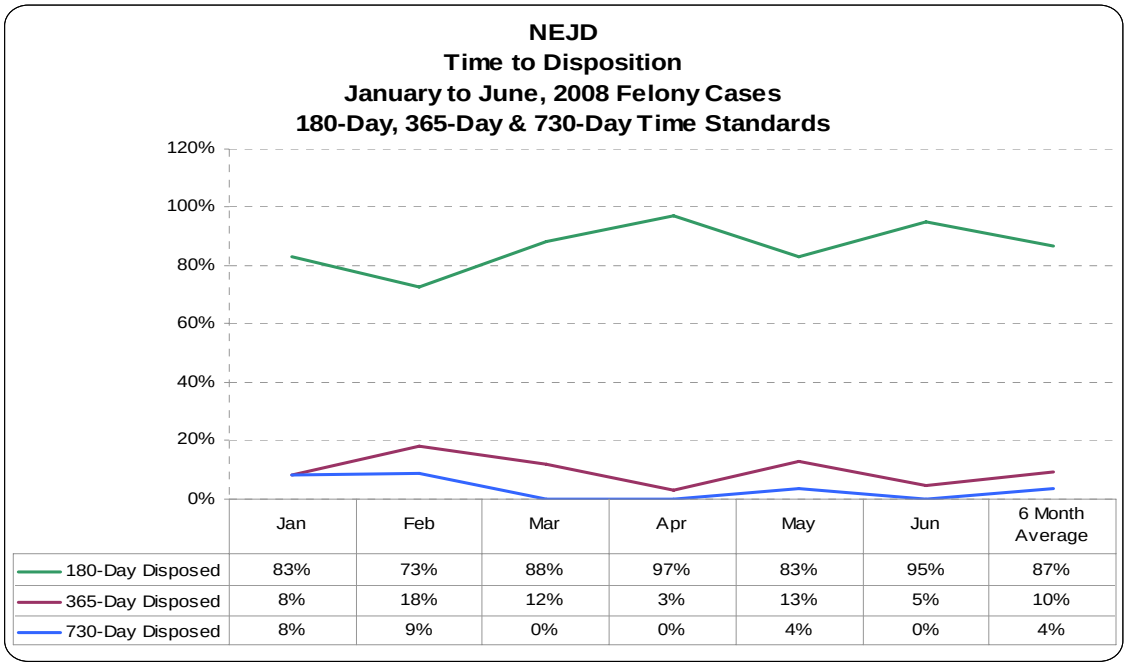
Graph 14 reflects felony disposed in 180 days, 365 days and over 365 days as a percentage.

Table 2 – NECJD Percentage of Cases Disposed

NECJD	Percentage of Cases Disposed				Number of Days	
	180 Days		365 Days			
Division	Current	Goal	Current	Goal	Mean	Median
Criminal	88%	98%	100%	100%	43	38

The Northeast Judicial District has a disposition rate of 87% of its cases within 180 days. The NEJD also shows 10% disposed within one year and 4% disposed within two years.

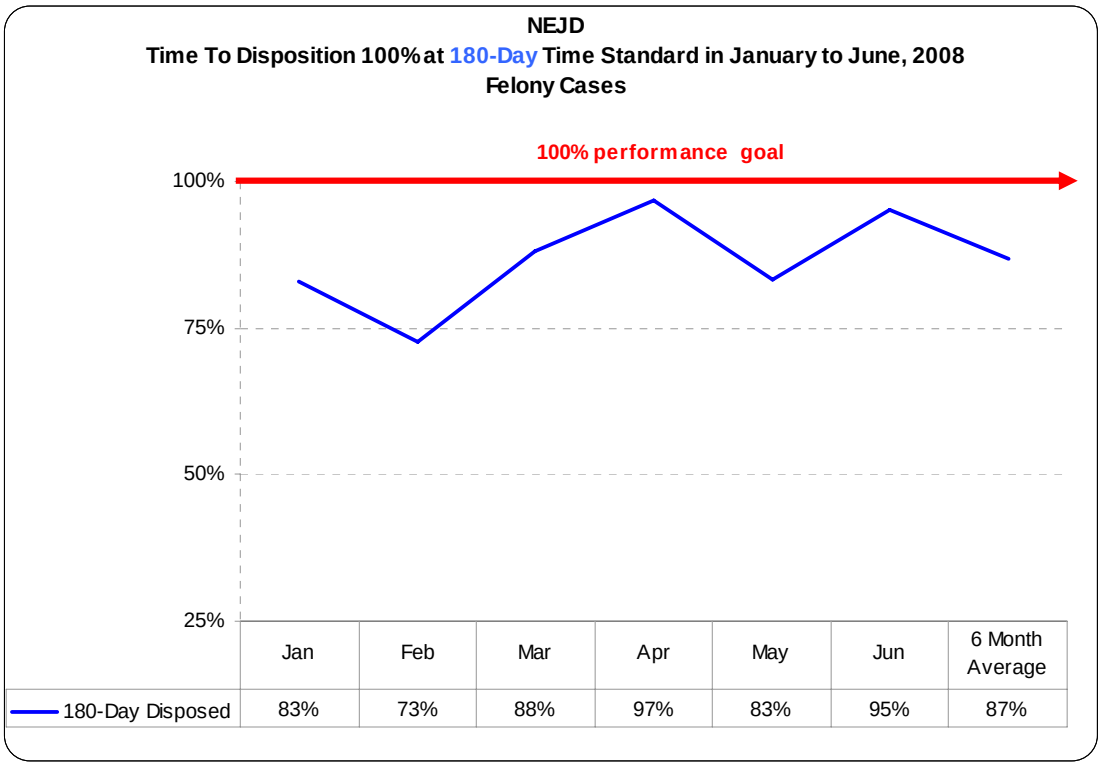
Graph 15 – NEJD Time to Disposition 180-Day, 365-Day & 730-Day Time Standards



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180-Day Disposed	83%	73%	88%	97%	83%	95%	87%
365-Day Disposed	8%	18%	12%	3%	13%	5%	10%
730-Day Disposed	8%	9%	0%	0%	4%	0%	4%

Graph 15 reflects time to disposition in the Northeast Judicial District and their six months averages as percentages.

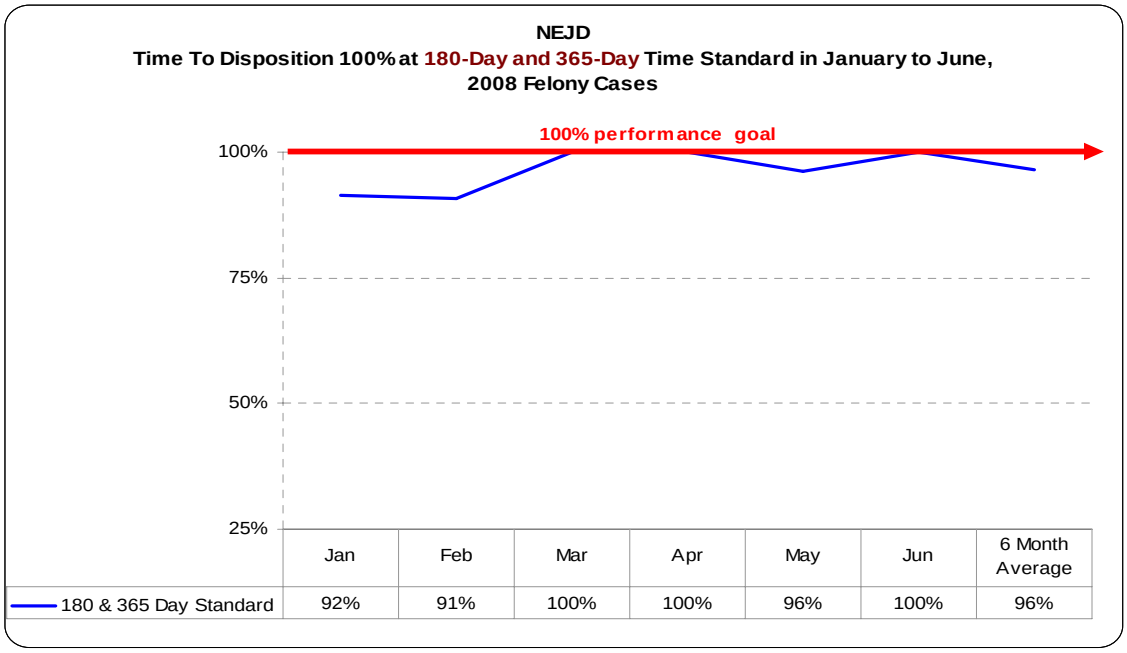
Graph 16 – NEJD Time to Disposition 100% at 180-Day Time Standard



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180-Day Disposed	83%	73%	88%	97%	83%	95%	87%

Graph 16 shows the NEJD time to disposition at 180 days and a percentage disposition of 87%.

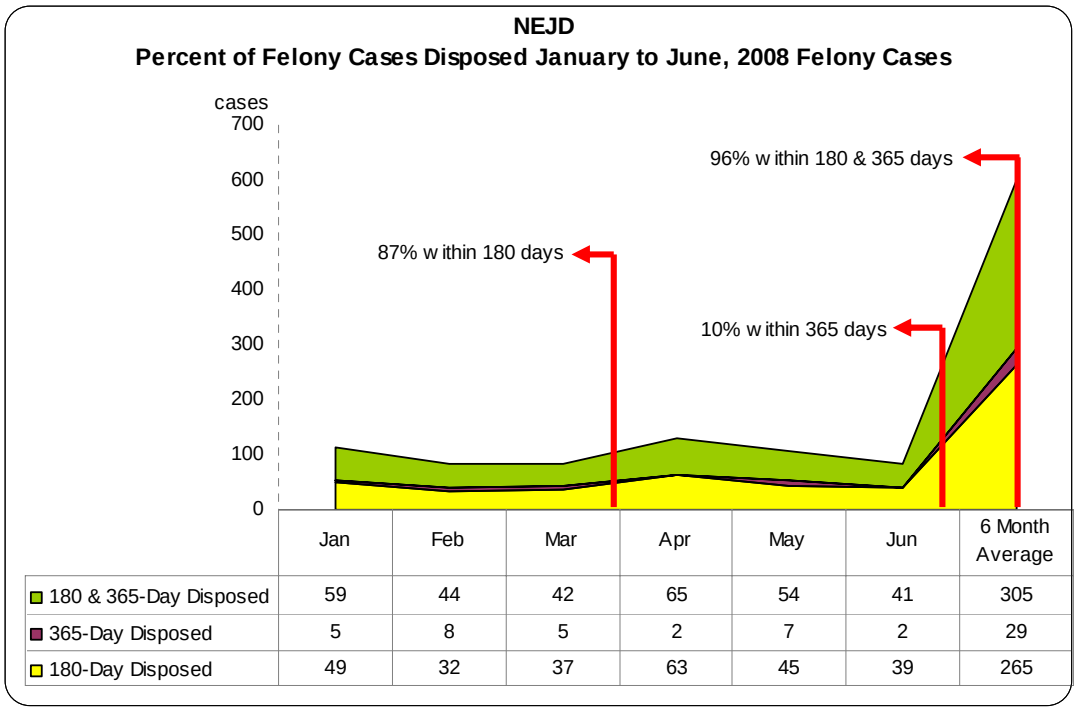
Graph 17 – NEJD Time to Disposition 100% at 365-Day Time Standard



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180 & 365 Day Standard	92%	91%	100%	100%	96%	100%	96%

Graph 17 represents the NEJD time to disposition at 96% as a six month average.

Graph 18 – NEJD Percent of Felony Cases Disposed



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180 & 365-Day Disposed	59	44	42	65	54	41	305
365-Day Disposed	5	8	5	2	7	2	29
180-Day Disposed	49	32	37	63	45	39	265

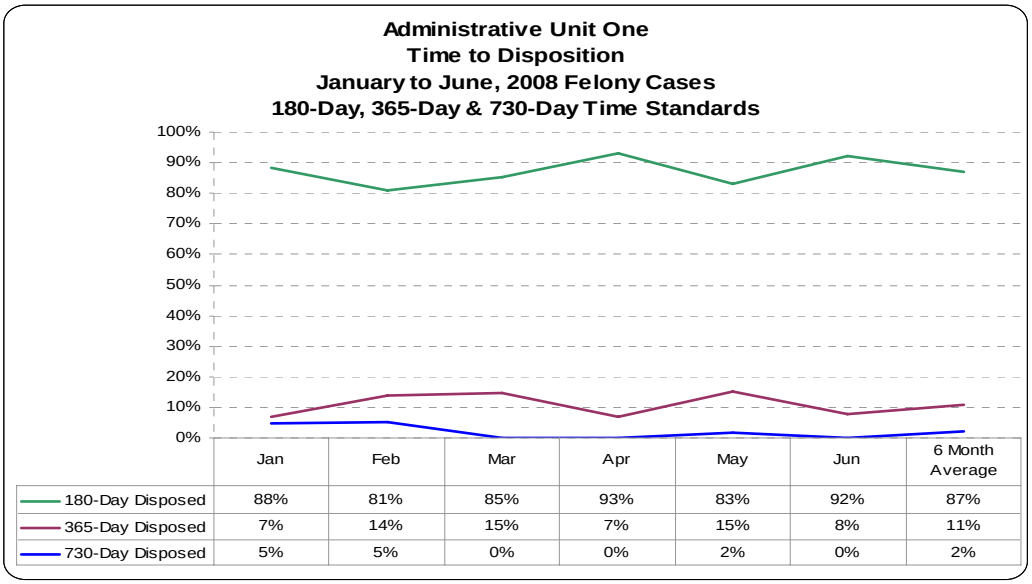
Graph 18 reflects the NEJD as a percentage of 180 days, 365 days and over 365. NEJD is disposing 87% of its cases in 180 days, 96% in 180 to 365 days and 10 % within 365 days.

Table 3 – NEJD Percentage of Cases Disposed

NEJD	Percentage of Cases Disposed				Number of Days	
	180 Days		365 Days			
Division	Current	Goal	Current	Goal	Mean	Median
Criminal	87%	98%	96%	100%	49	54

Combined as Administrative Unit One the Unit time to disposition rate if 87% of the goal of 100%

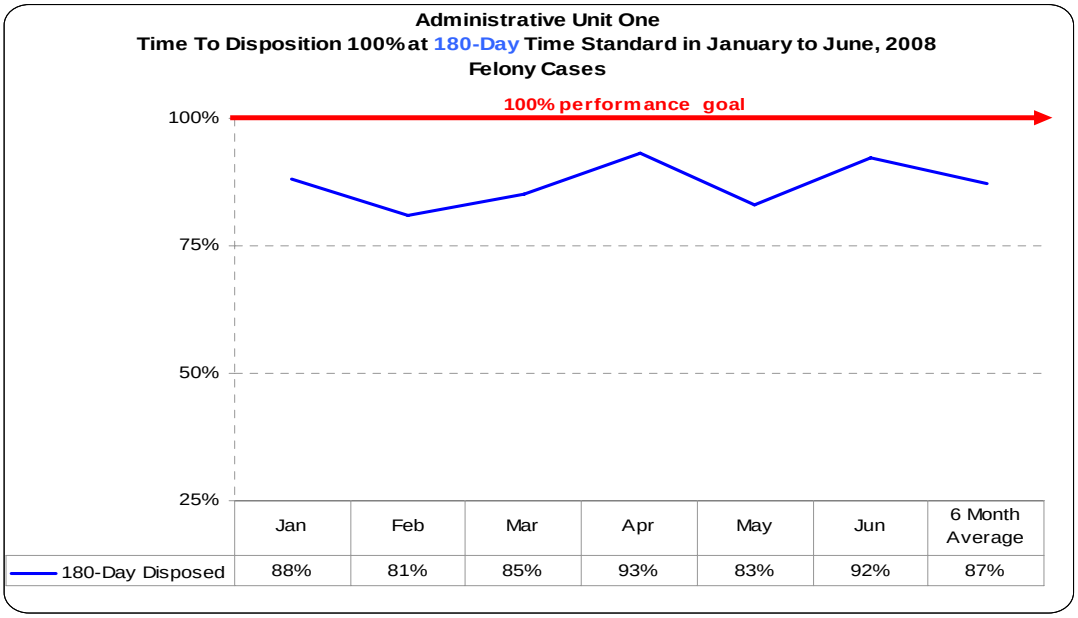
Graph 19 – AU1 Time to Disposition 180-Day, 365-Day & 730-Day Time Standard



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180-Day Disposed	88%	81%	85%	93%	83%	92%	87%
365-Day Disposed	7%	14%	15%	7%	15%	8%	11%
730-Day Disposed	5%	5%	0%	0%	2%	0%	2%

Graph 19 reflects time to disposition in administrative unit one at 87% with 180 days, 11% within 365 days and 2% over 365 days.

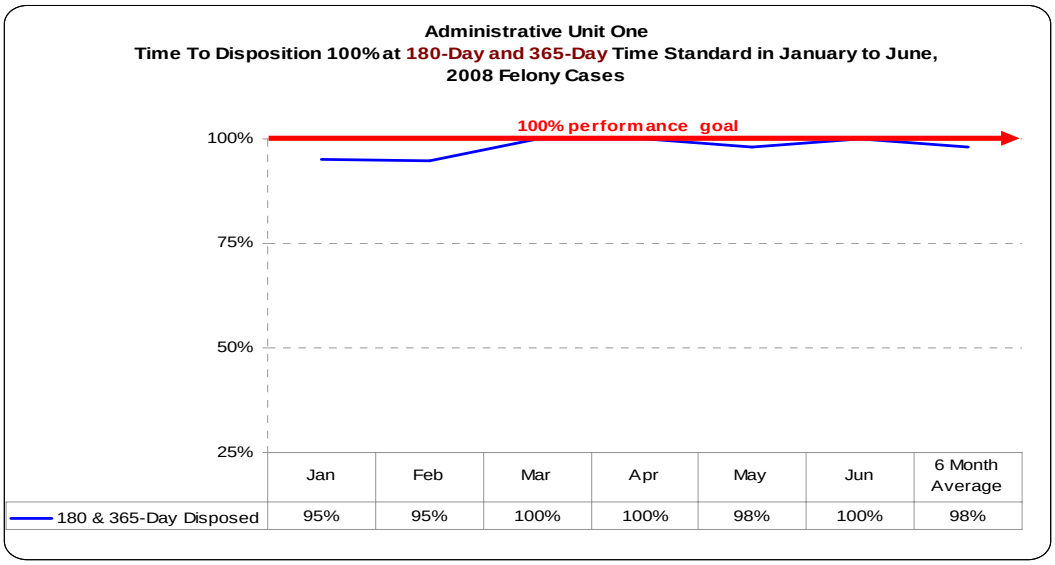
Graph 20 – AU1 Time to Disposition 100% at 180-Day Time Standard



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180-Day Disposed	88%	81%	85%	93%	83%	92%	87%

Graph 20 reflects Administrative Unit One time to disposition at 180 days at 87%.

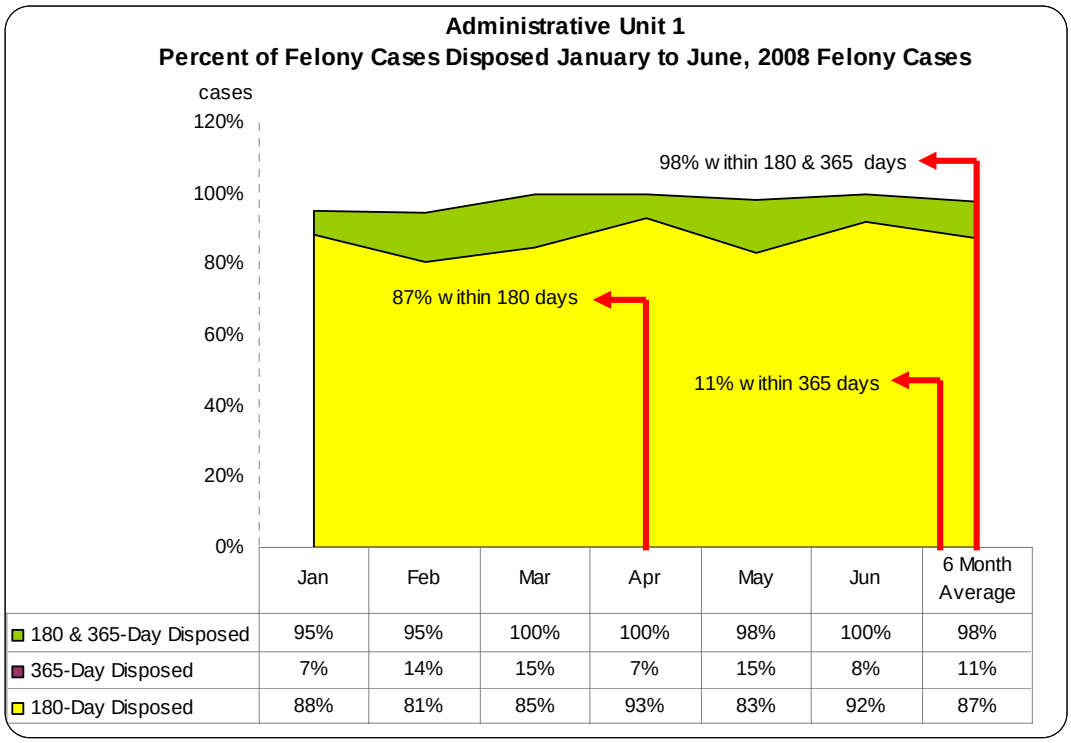
Graph 21 – AU1 Time to Disposition 100% at 180-Day and 365-Day Time Standard



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180 & 365-Day Disposed	95%	95%	100%	100%	98%	100%	98%

Graph 21 reflects 96% within the 180 to 365 day range.

Graph 22 – AU1 Percent of Felony Cases Disposed



	Jan	Feb	Mar	Apr	May	Jun	6 Month Average
180 & 365-Day Disposed	95%	95%	100%	100%	98%	100%	98%
365-Day Disposed	7%	14%	15%	7%	15%	8%	11%
180-Day Disposed	88%	81%	85%	93%	83%	92%	87%

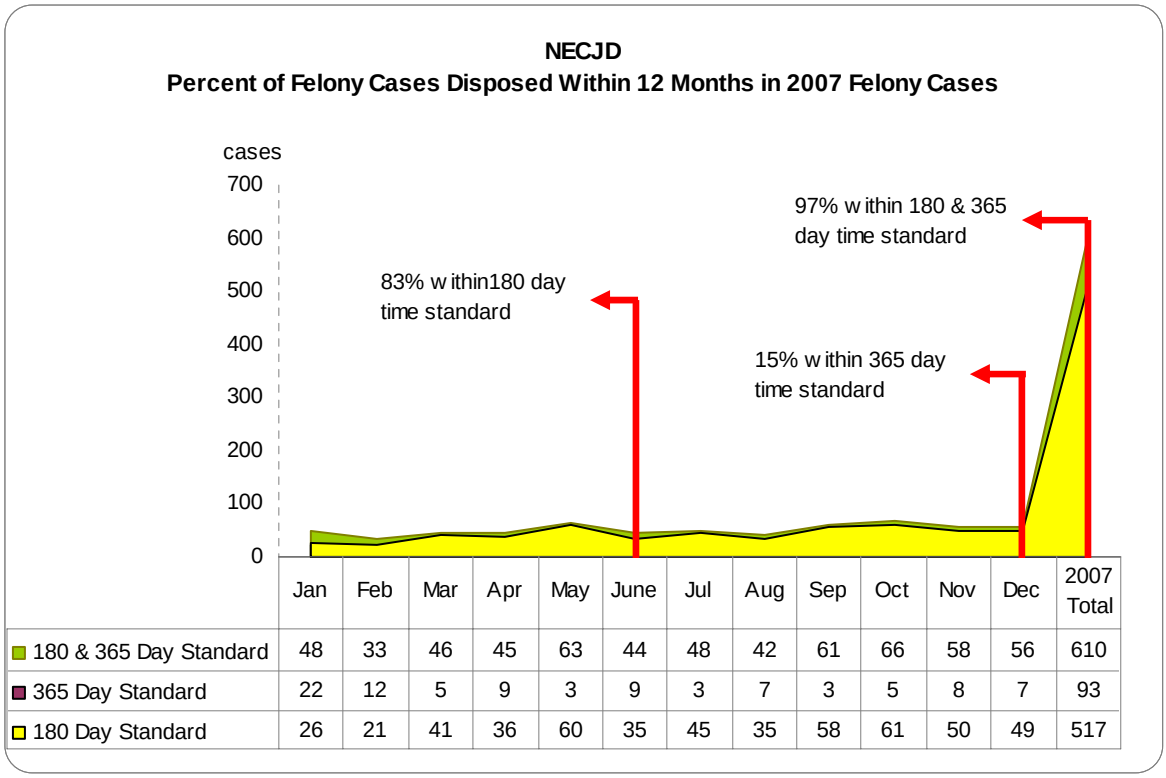
Graph 22 reflects Administrative Unit One felony cases disposed at 180 days, 365 days and 180 and 365 days.

Table 4 – AU1 Percentage of Cases Disposed

AU1	Percentage of Cases Disposed				Number of Days	
	180 Days		365 Days			
Division	Current	Goal	Current	Goal	Mean	Median
Criminal	87%	98%	98%	100%	46	46

The following data is reflection of time to disposition for year 2007. This data is consistent with the 2008 six month projects which the study is based upon. The 2007 date should be viewed in relation to a full year's view of time to disposition as opposed to the six month study.

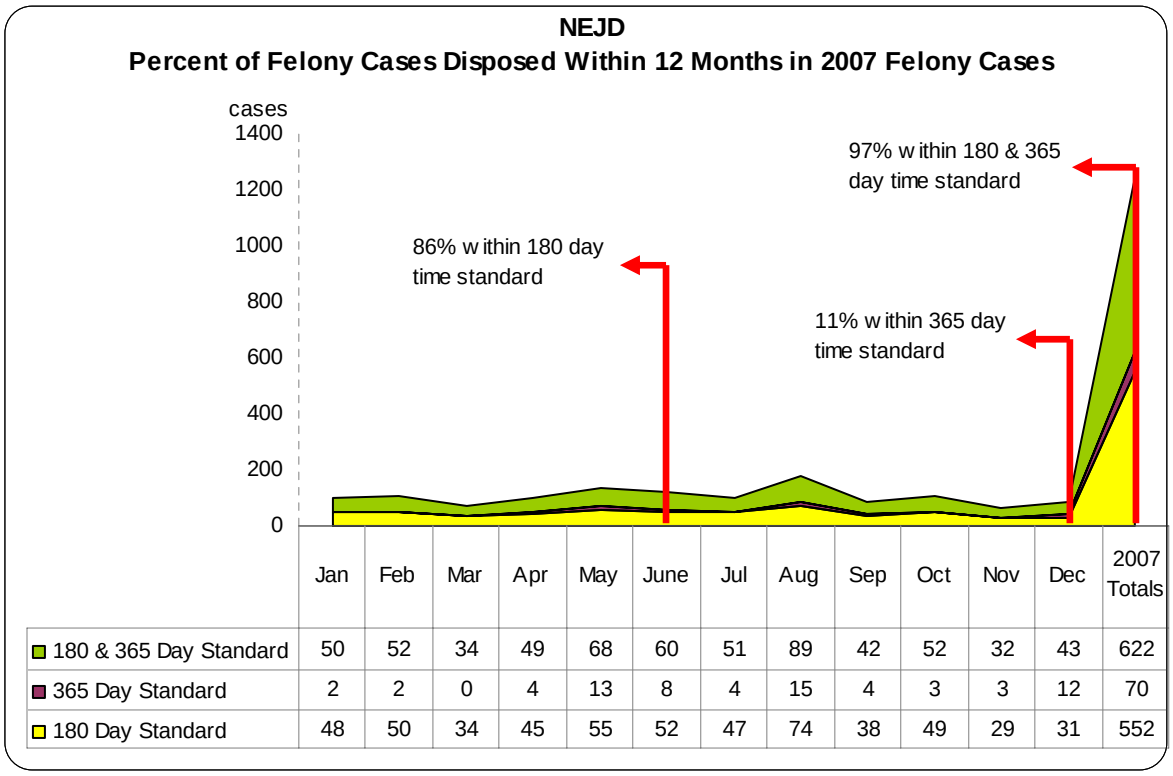
Graph 23 – NECJD Percent of Felony Cases Disposed 2007



	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sep	Oct	Nov	Dec	2007 Total
180 & 365 Day Standard	48	33	46	45	63	44	48	42	61	66	58	56	610
365 Day Standard	22	12	5	9	3	9	3	7	3	5	8	7	93
180 Day Standard	26	21	41	36	60	35	45	35	58	61	50	49	517

Graph 23 represents the Northeast Central Judicial District for 2007 as a percent of cases disposed within the 180, 365 and combined.

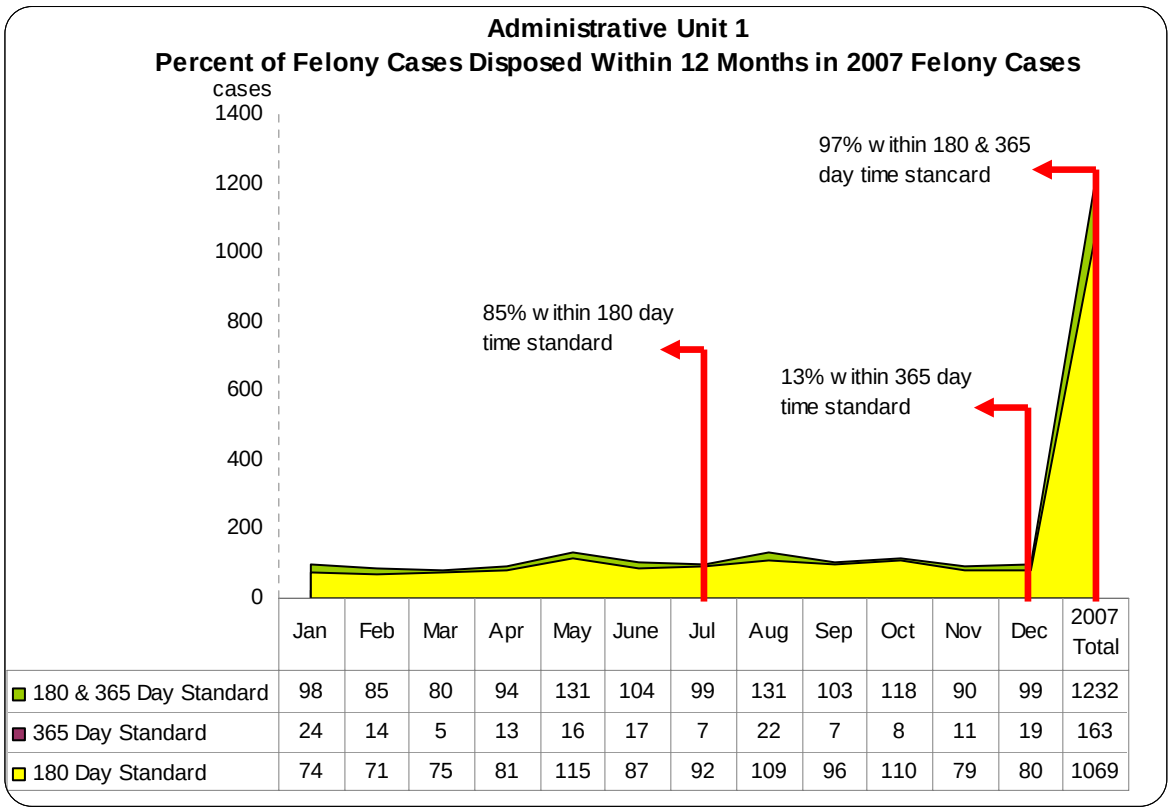
Graph 24 – NEJD Percent of Felony Cases Disposed 2007



	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sep	Oct	Nov	Dec	2007 Totals
180 & 365 Day Standard	50	52	34	49	68	60	51	89	42	52	32	43	622
365 Day Standard	2	2	0	4	13	8	4	15	4	3	3	12	70
180 Day Standard	48	50	34	45	55	52	47	74	38	49	29	31	552

Graph 24 reflects the Northeast Judicial District in 2007 of cases disposed in 180, 365 or longer.

Graph 25 – AU1 Percent of Felony Cases Disposed 2007



	Jan	Feb	Mar	Apr	May	June	Jul	Aug	Sep	Oct	Nov	Dec	2007 Total
180 & 365 Day Standard	98	85	80	94	131	104	99	131	103	118	90	99	1232
365 Day Standard	24	14	5	13	16	17	7	22	7	8	11	19	163
180 Day Standard	74	71	75	81	115	87	92	109	96	110	79	80	1069

Graph 25 shows Administrative Unit One (combined Northeast Central and Northeast Judicial Districts) as felony cases disposed within time standards for year 2007.

Measure 4 – Age of Pending Cases

A review of age of pending cases suggests consistency within 1% in the two districts. The table indicates that 89% of cases are pending within the 61 to 120 day period with a 49% average within 60 days. Only 11% of cases appear to be pending after 180 days and only 1% from 301 to 365 days.

Table 5

NECJD Age of Active Pending Caseload January to June, 2008			
Age (days)	Number of Cases	Percent	Cumulative Percent
0-60	849	47%	47%
61-120	478	27%	74%
121-180	281	16%	89%
181-240	95	5%	95%
142-300	59	3%	98%
301-365	19	1%	99%
over 365	13	1%	100%
Total	1794		

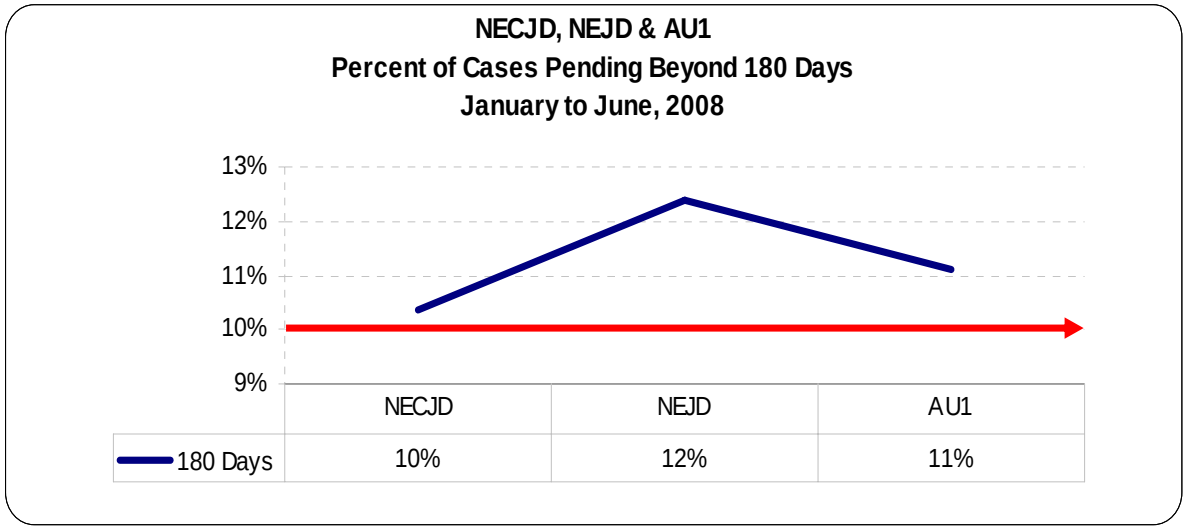
Table 6

NEJD Age of Active Pending Caseload January to June, 2008			
Age (days)	Number of Cases	Percent	Cumulative Percent
0-60	541	52%	52%
61-120	274	26%	78%
121-180	96	9%	88%
181-240	62	6%	94%
142-300	27	3%	96%
301-365	15	1%	98%
over 365	25	2%	100%
Total	1040		

Table 7

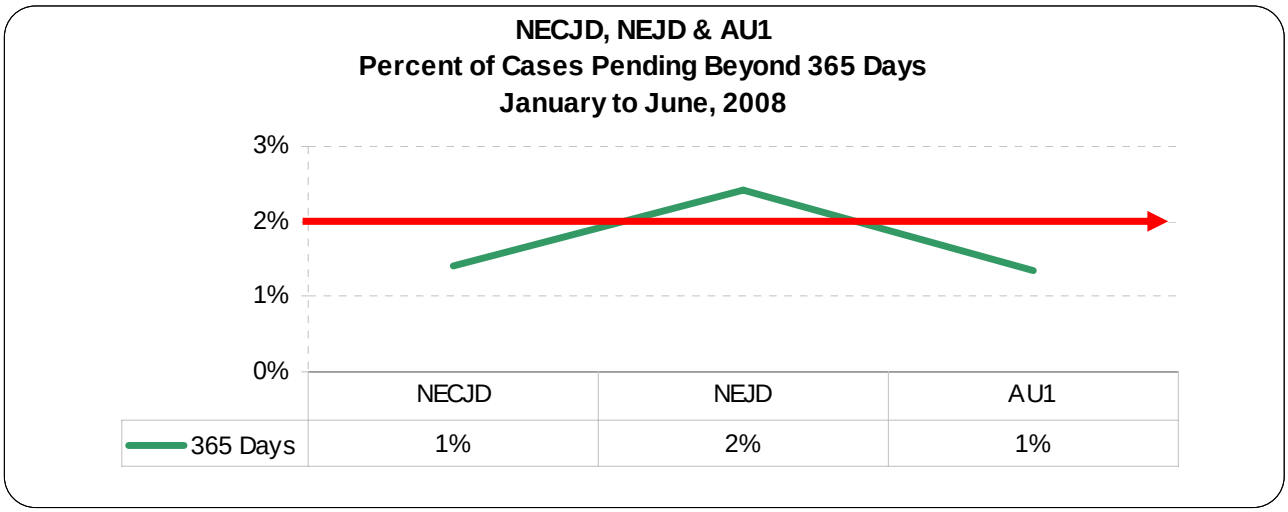
AU1 Age of Active Pending Caseload January to June, 2008			
Age (days)	Number of Cases	Percent	Cumulative Percent
0-60	1390	49%	49%
61-120	752	27%	76%
121-180	377	13%	89%
181-240	157	6%	94%
142-300	86	3%	97%
301-365	34	1%	99%
over 365	38	1%	100%
Total	2834		

Graph 26 – NECJD, NEJD & AU1 Percent of Cases Pending Beyond 180 Days



Graph 26 reflects NECJD, NEJD and AU1 as a percentage of cases pending beyond 180 days.

Graph 27 – NECJD, NEJD & AU1 Percent of Cases Pending Beyond 365 Days



The following focuses on cases that have exceeded 365 days in the NECJD and the NEJD. An analysis of all cases below lends themselves to special circumstances and case complexities that have caused cases to go beyond 365 days. These are cases that exceptions to the standard are justified in order that a proper disposition is made.

Table 8 – NECJD Cases That Exceed 365 Days

NECJD

Focusing on the Cases That Exceed 365 Days

January to June, 2008

Case Numbers	Case Type	Age-Days	Next Action	Location	Judge
18-06-K-2290.001	Aggravated Assault	540	Sentencing	Grand Forks	M
18-06-K-2331.001	Gross Sexual Imposition	538	Sentencing	Grand Forks	M
18-07-K-231.001	Poss. Of Marijuana w/Intent to Deliver	374	Sentencing	Grand Forks	M
18-07-K-1385.001	Criminal Trespass	378	Pretrial Conference	Grand Forks	M

Table 9

NEJD

Focusing on the Cases That Exceed 365 Days

January to June, 2008

Case Numbers	Case Type	Age-Days	Next Action	Location	Judge
36-06-K-933.001	Delivery of Controlled Substance (Marajuana)	539	Jury Trial	Ramsey	F
34-07-K-60.001	Attempted Murder	408	PSI & Set Sentencing Date	Pembina	LF
40-05-K-18.001	Poss. Of Stolen Property	380	Bench Trial	Rolette	Mc

Table 10

NECJD

Summary Report of Trial Settings

Number of Settings

January to June, 2008

Case Type	Trial Type	One	Two	Three	Four	Total Cases
Felony	Jury	38	12	2	1	53
Felony	Bench	0	0	0	0	0
						Total Trial Settings
Felony	Jury	38	24	6	4	72
Felony	Bench	0	0	0	0	0

Table 11

NEJD

Summary Report of Trial Settings

Number of Settings

January to June, 2008

Case Type	Trial Type	One	Two	Three	Four	Total Cases
Felony	Jury	56	14	8	1	79
Felony	Bench	6	1	2	0	9
						Total Trial Settings
Felony	Jury	56	28	24	4	112
Felony	Bench	6	2	6	0	14

Table 12

AU1

Summary Report of Trial Settings

Number of Settings

January to June, 2008

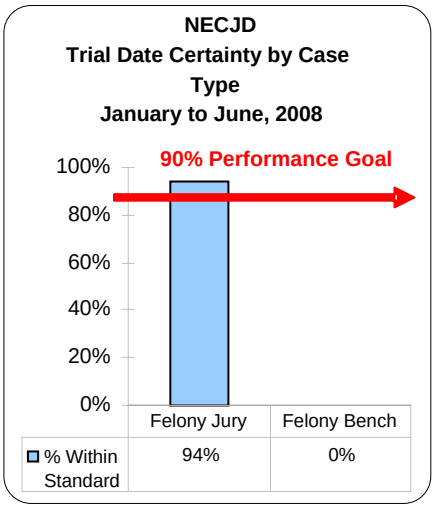
Case Type	Trial Type	One	Two	Three	Four	Total Cases
Felony	Jury	94	26	10	2	132
Felony	Bench	6	1	2	0	9
						Total Trial Settings
Felony	Jury	94	52	30	8	184
Felony	Bench	6	2	6	0	14

Measure 5 – Trial Date Certainty

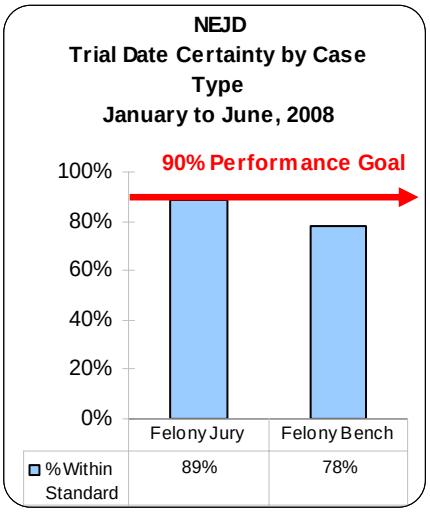
The following illustrates the number of bench and jury trials set from January 1, 2008 to June 30, 2008 in the NECJD and the NEJD and composite AU1. Although not established by policy in the State of North Dakota the accepted standard of excellent performance as measured by a 90% rate of cases going to trial on the first date set for trial. The data suggests that the NECJD and the NEJD are meeting the 90% measure of first setting of trial going to trial on the date set for both bench and jury trials.

In the NECJD there were no bench trials for the time studied. In the NEJD there were six bench trial and 56 jury trials.

Graph 28



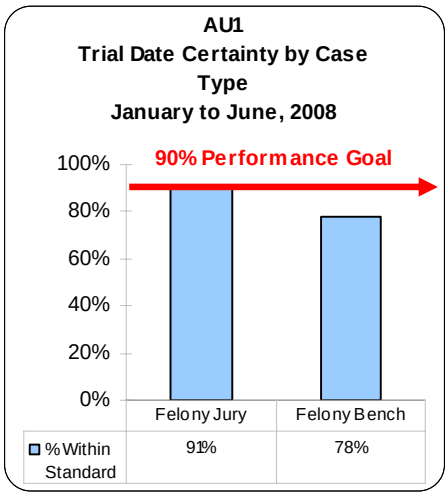
Graph 29



Graph 28 shows the NECJD at 94% which 4% above standard for the time period studied.

Graph 29 shows the NEJD at 89% of felony jury and 78% at felony bench trials.

Graph 30



Graph 30 shows the combined districts (AU1) at 91% for felony jury and 78% for felony bench trials.

Table 13

NECJD

Calculate Average Number of Trial Settings

January to June, 2008

Case Type	Trial Type	Total Trial Settings	Total Cases	Average Trial Settings
Felony	Jury	72	53	1.36
Felony	Bench	0	0	0.00

Table 14

NEJD

Calculate Average Number of Trial Settings

January to June, 2008

Case Type	Trial Type	Total Trial Settings	Total Cases	Average Trial Settings
Felony	Jury	112	79	1.42
Felony	Bench	14	9	1.56

Table 15

AU1

Calculate Average Number of Trial Settings

January to June, 2008

Case Type	Trial Type	Total Trial Settings	Total Cases	Average Trial Settings
Felony	Jury	184	132	1.39
Felony	Bench	14	9	1.56

Tables 13, 14, and 15 indicate the actual numbers of trial types, trial settings and total cases within the districts and as combined for Administrative Unit One.

CONCLUSIONS AND RECOMMENDATIONS

In conclusion, Administrative Unit One is managing its cases within or close to time standards. There are some areas which are slightly below standard and efforts should be made to meet or exceed standard.

One example of potential concern is fluctuations in the NECJD. For instance Graph 2 shows the lowest clearance rate occurred in March at 51% and a high in May at 124%. Why the dramatic reduction in clearance rates for the month of March at 51%. This is likely do to Judges availability and influx of case related to post holiday activity. It further shows in May that these cases are being caught up at 124%. There is concern that the Court could get behind and stay behind. Continued monitoring will be required to follow this activity.

Continued review in some areas will need to be watched. Overall the courts are meeting the standards. The court's judicial leadership and commitment is critical to the success of an efficient and effective court. Goals and standards together with monitoring and measuring performance allows the court insight into what is occurring in their work environment and allows better communication and access for the bar and the public.

What is crucial to the administration of justice and the effective and efficient flow of cases is the foundations established as part of the literature review. The foundation includes judicial leadership and commitment, goals and standards, monitoring performance and communication with the bar.

In a brief review of the foundations in Unit One the Northeast Central Judicial District and the Northeast Judicial District has a strong history of supporting innovation and has been at the forefront of project development and testing. This history suggests that the Judges in Unit

One and more specifically the two presiding judges in the Unit would be supportive of assessment, goal setting and monitoring caseflow practice in Unit One. For the most part the North Dakota Unified Court System has adopted standards that are either the same or in some cases more stringent than the national standards. With the exception of trial date certainty standards North Dakota has adopted goals and standards in the State. Although a statistical review would suggest~~s~~ the courts are doing well with trial settings a standard could and should be adopted for Unit One and the State as a whole so that benchmarks can be set to see if the State is meetings its goals.

The inclusion of the Bar is necessary and welcome as part of our goals of caseflow management standards. There is an active Bar Association in both districts and access and participation would be pursued.

The North Dakota Unified Court system is currently working with a Management Information System vendor and will be converting to a new system beginning in the fall of 2009. As a part of that process North Dakota has asked that CourTools be written into the program so that access to data for monitoring purposes can become a part of a routine report within the North Dakota Judiciary. This will ensure that information is available to assess and monitor caseflow management in North Dakota courts.

The following recommendations are made based on the analysis of the data from CourTools 2, 3, 4, and 5 and consideration as to what would help to meet standards set by the court.

Maneuvering through the bureaucracy can be daunting and the following Bob Dylan chorus rings some truth on the issue.

> "And though the rules of the road have been lodged
> Its only people's games you've got to dodge

And its alright ma, I can make it."[34]

From this chorus of Bob Dylan's, 1965 song, it might be suggested that courts like other institutions have traditional ways of operating and cultures that are hard to move away from. The rules have been lodged whether by tradition and or court culture. In suggesting that its ". . . people's games you got to dodge"[35] is a metaphor for the diverse institutional goals that separate us. Steelman suggests this under his point on communication and David Osborne and Ted Gaebler write in Reinventing Government the difficulties associated with effective visioning and the communication required in bringing down barriers.

"And it's alright ma, I can make it"[36] suggests that court can likely "make it" regardless of the road taken. Dylan was likely looking at the frustrations associated with social justice; however a different interpretation for purposes of this study might suggest the following. Although the road is not always easy courts can make it. It is not to assume that it will be easy. If lessons are learned and recommendations of caseflow management that the authors referenced in this paper are followed courts can better understand the obstacles and have a good path laid out for those who wish to make the trip. A reflection on the literature review suggests the issue of delay becomes a constant reminder that courts need to move through the benign at reasonable speed and accept the complexities associated with complex cases. However, the mere fact that cases are complicated does not diminish the findings and thoughts of the lit review authors. That is, that good case management will both protect the rights of those involved, but also assure those protections through efficiency and predictability. It is how courts should operate with Administrative Unit One and the state of North Dakota.

---

[34] Bob Dylan, **Its Alright Ma (I'm Only Bleeding) Bringing it All Back Home**, Columbia Records, 1965.
[35] **Loc. Cit.**
[36] **Loc. Cit.**

Recommendations

1. Establish two caseflow committees in administrative unit one. This would include one for the Northeast Central Judicial District and one for the Northeast Judicial District. The committees should include from each district the Presiding Judge, one at large Judge, States Attorney, Public Defenders Office, a representative from the local Bar Association and the Trial Court Administrator. The purpose would be to review, on a routine basis, elements related to caseflow management and the ten CourTools for Court Management as it relates to each of the two judicial districts. The meetings would establish permanent items for review and as needed issues that arise out of practice within the specified district.

2. That the state of North Dakota Judiciary make as part of its implementation of a new management information system access to retrieve reports as they relate to CourTools 2, 3, 4, and 5 and other CourTools as applicable. This will create an expectation that these performance measures be used on a routine basis for the court's review of its statistical data on caseflow management.

3. Adopt processing goals and standards for CourTools 5, Trial Date Certainty and for any other areas not yet formally adopted.

4. To adopt a management information reporting schedule so that fully developed data can be explored by Court Administration, Judges, Bar, Public Defenders and other Justice partners to more fully understand the goals and their role in the court process.

5. Set a time for training and explanation centered on the findings in this project. The training would be for judges, clerks, and other justice partners.

The above recommendations are made to insure that timely disposition of cases is made within Administrative Unit One. The review of the court's own work product gives greater credence to the effort given and the satisfaction that data collected is proof of the work being

done. The formalization of the process and the development of a working group would show the commitment and desire to improve court services to the public in our state.

APPENDICES

APPENDIX A

CourTools | *Trial Court Performance Measures*

National Center for State Courts

Clearance Rates

Measure 9

Definition: The number of outgoing cases as a percentage of the number of incoming cases.

Purpose: Clearance rate measures whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, from month to month and year to year, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and indicate where improvements may be made. Courts should aspire to clear (i.e., dispose of) at least as many cases as have been filed/reopened/reactivated in a period by having a clearance rate of 100 percent or higher.

Method: Computing a clearance rate requires a count of incoming cases and outgoing cases during a given time period (e.g., year, quarter, or month).

Step 1 Incoming cases are summed using three kinds of cases: *New Filings, Reopened* cases, and *Reactivated* cases. If *Reopened* and *Reactivated* cases cannot be counted, just use *New Filings*.

Sum incoming cases	New Filings	812
	Reopened Cases	+ 162
	Reactivated Cases	+ 109
	Total Incoming Cases	= 1,083

Step 2 Outgoing cases are summed by using three kinds of dispositions: *Entry of Judgment, Reopened Dispositions*, and *Placed on Inactive Status*. If *Reopened Dispositions* and *Placed on Inactive Status* cases cannot be counted, just use *Entry of Judgment* cases.

Sum outgoing cases	Entry of Judgment	684
	Reopened Disposition	+ 137
	Placed on Inactive Status	+ 92
	Total Outgoing Cases	= 913

Step 3 The clearance rate is calculated by dividing the result of Step 2 by the result of Step 1.

Calculate clearance rate	913 ÷ 1,083 = 84%

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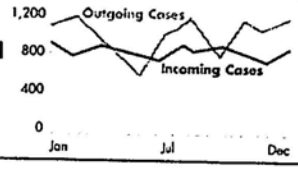
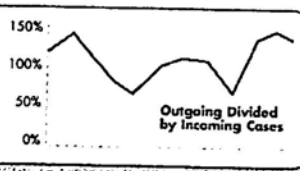
Analysis and Interpretation

The process...

Plot incoming and outgoing cases over time



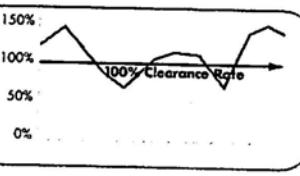
Calculate a clearance rate



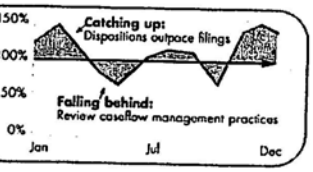
	Outgoing		Incoming		Clearance Rate
Apr	855	÷	843	=	101%
May	734	÷	825	=	89%
June	635	÷	774	=	82%
July	1,016	÷	965	=	105%

* partial data shown

Set a clearance rate goal



Monitor, analyze, take action



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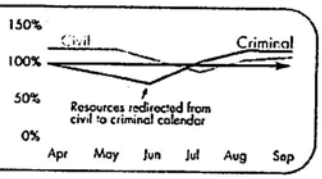
Clearance Rates

Measure 2

This chart shows clearance rates for two case types (Civil and Criminal) for six months. The Civil clearance rate was above the target level of 100 percent at the beginning of this period. However, the Criminal clearance rate was falling significantly below the target level. The court implemented new caseflow management practices and redirected resources from the Civil calendar to the Criminal calendar to improve Criminal case processing. The chart shows that the Criminal clearance rate improved. By the end of the six-month period, the clearance rates for the two case types were in balance. Clearance rate data allow the court to see whether its caseflow management changes had the desired effect.

Monthly Clearance Rates for managing criminal and civil caseloads



Further analysis shows how clearance rates can be compared on an annual basis to assess the impact of new policies. For example, highlighting districts that reach a clearance rate target allows court managers to assess the effectiveness of caseflow management practices across court divisions, court locations, or courtroom by courtroom.

Annual Clearance Rates for assessing comparative performance

	Criminal Cases	Above 100%	Civil Cases	Above 100%
District 1	87%		103%	X
District 2	105%	X	92%	
District 3	93%		102%	X
District 4	90%		101%	X
District 5	107%	X	83%	

Three years of data provides a more representative picture of clearance rate trends by smoothing yearly fluctuations.

3-Year Clearance Rates for analyzing trends

	2002	2003	2004	3-Year Average
District 3	105%	114%	99%	106%
District 2	106%	100%	101%	102%
District 1	100%	99%	97%	99%
District 4	99%	98%	95%	97%
District 5	96%	90%	89%	91%

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Terms You Need to Know

Entry of Judgment: A count of cases for which an original entry of judgment–the court's final determination of the rights and obligations of the parties to a case–has been filed. For cases involving multiple parties/issues, the manner of disposition should not be reported until all parties/issues have been resolved.

New Filing: A count of cases that have been filed with the court for the first time.

Placed on Inactive Status: A count of cases whose status has been administratively changed to inactive because the court will take no further action in the case until an event restores the case to the court's active pending caseload.

Reactivated: A count of cases that had previously been placed in an inactive pending status, but for which further court proceedings and activities can now be resumed so that the case can proceed to disposition.

Reopened: A count of cases in which judgments have previously been entered but which have been restored to the court's pending caseload due to the filing of a request to modify or enforce the existing judgments. When a Reopened Case is disposed of, report the disposition as a Reopened Disposition.

Reopened Disposition: A count of cases that were disposed of by a modification to, and/or enforcement of, the original judgment of the court. For cases involving multiple parties/issues, the manner of disposition should not be reported until all parties/issues have been resolved.

For a full discussion of these definitions, see the *State Court Guide to Statistical Reporting*, available at: www.ncsconline.org/d_research/statistical_reporting.

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CourTools

Project Directors: Brian J. Ostrom and Daniel J. Hall
Series Editor: Richard Y. Schauffler
Senior Contributors: William E. Hewitt and Ingo Keilitz
Information Design: Neal B. Kauder
Design and Layout: Graphics 3

Developed by the NCSC Court Performance Community of Practice.

APPENDIX B

CourTools | Trial Court Performance Measures

National Center for State Courts

Time to Disposition

Measure 3

Definition: The percentage of cases disposed or otherwise resolved within established time frames.

Purpose: This measure, used in conjunction with *Measure 2 Clearance Rates* and *Measure 4 Age of Active Pending Caseload*, is a fundamental management tool that assesses the length of time it takes a court to process cases. It compares a court's performance with local, state, or national guidelines for timely case processing. When the underlying data conform to the *State Court Guide to Statistical Reporting*, the measure takes into account periods of inactivity beyond the court control (e.g., absconded defendants, cases suspended pending decision on an appeal) and provides a framework for meaningful measurement across all case types.

The case processing time standards published by the American Bar Association (ABA) and those published by the Conference of State Court Administrators (COSCA) provide a starting point for determining guidelines. Many states and individual courts have adopted their own guidelines, and certain case types (e.g., juvenile) have been the focus of more detailed guidelines by a variety of organizations. Courts should take note of existing guidelines and rules of court in their jurisdiction when developing their own guidelines for each case type.

COSCA Case Processing Standards	ABA Case Processing Standards
Civil • Non-Jury Trial – 100% within 12 months • Jury Trial – 100% within 18 months	**Civil** • 90% within 12 months • 98% within 18 months • 100% within 24 months

Criminal
• Felony – 100% within 180 days
• Misdemeanor – 100% within 90 days
	Criminal
	• Felony
	  • 90% within 120 days
	  • 98% within 180 days
	  • 100% within 1 year
	• Misdemeanor
	  • 90% within 30 days
	  • 100% within 90 days

Juvenile
• Detention and Shelter Hearings – 100% 24 hours
• Adjudicatory or Transfer Hearings
  • Concerning a juvenile in a detention or shelter facility – 100% within 15 days
  • Concerning a juvenile not in a detention or shelter facility – 100% within 30 days
	Juvenile
	• Detention and Shelter Hearings – 100% 24 hours
	• Adjudicatory or Transfer Hearings
	  • Concerning a juvenile in a detention or shelter facility – 100% within 15 days
	  • Concerning a juvenile not in a detention or shelter facility – 100% within 30 days

Domestic • Uncontested – 100% within 3 months • Contested – 100% within 6 months	**Domestic** • 90% within 3 months • 98% within 6 months • 100% within 1 year

Source: National Center for State Courts Web site, www.ncsconline.org/WC/Publications/KIS_CasManCPTSPub.pdf

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Method: This measure should be reviewed on a regular (e.g., monthly, quarterly, annual) basis. If reviewed regularly, the court can observe trends as they develop, then aggregate the data for annual reporting.

For each case type, the first task is to compile a list of all cases that were disposed or otherwise resolved during the reporting period. For the purpose of this measure, "disposed or otherwise resolved" is defined as having had an *Entry of Judgment*. If the data for the measure are not available in automated form, and data collection requires manual review of case files, then the measure will likely need to be taken on an annual basis. Sampling is an option in courts where case volumes are high.

Sampling

This measure should be calculated for all cases disposed or otherwise resolved during the reporting period. However, sampling will be necessary in courts where case volumes are high. A complete report cannot be produced by most case management systems. In most instances, a sample of 300 cases will be sufficient. To obtain a random sample, requires a list of all cases in the population, a unique identification number for each case, and a method for selecting cases. A straightforward method is systematic sampling, where only the first case is randomly selected and then every nth case from a listing is selected for the sample, i.e., if the total number of civil cases in a court was 3,000, and the sample size was to be 300 cases, select every tenth case (3000/300=10).

Which Cases Are Included?

There are two kinds of cases for which the time to disposition can be computed. The first are typical cases that move through the system without interruption. When these cases are disposed or otherwise resolved by *Entry of Judgment* during the reporting period, they should be counted. The filing dates for these cases will vary, but what qualifies them for inclusion is the fact that the disposition dates all fall within the reporting period (e.g., the calendar year).

The second kind are cases that had their progress interrupted and underwent a period of inactivity, but were *Reopened* or *Reactivated* by the court and disposed of during the reporting period. An example of this is a contract case that is *Placed on Inactive Status* pending the outcome of bankruptcy proceedings. Following those proceedings, the contract case resumes and is disposed. Another example is a criminal case in which the defendant absconds after the case was filed. The case is *Placed on Inactive Status* during this time, but when the defendant is apprehended and returned to court, the case resumes and is disposed.

Cases in which judgment was previously entered but which have been *Reopened* due to a request to modify or enforce existing judgments are also included. For example, the court might grant a motion to consider newly discovered evidence, and thus reopen a case. In juvenile cases, a case might be reopened due to violation of probation, or due to failure of parents to comply with a court order. When these *Reopened* cases are disposed during the reporting period, they should be included in this measure. In all these examples, the time that is counted starts when the case is reopened, not with the date of the original filing.

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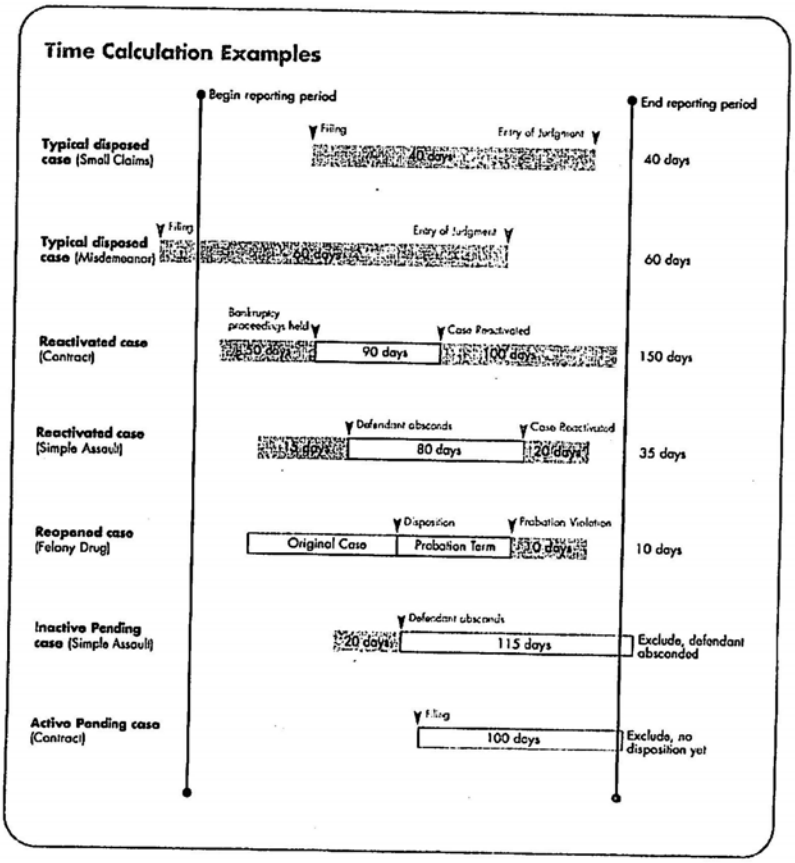
Cases that are in an official period of inactivity at the end of the reporting period should *not* be included in this measure. As this type of case is considered to be among the court's *Inactive Pending* cases at the end of the reporting period (i.e., they are not moving toward disposition for a known and legitimate reason and the court is aware of this), they should be excluded from the analysis. *Active Pending* cases are excluded from analysis, since no disposition has been reached.



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Time to Disposition

Measure

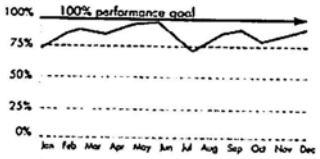
Analysis and Interpretation

Superior Court

	Percentage of Cases Disposed				Number of Days	
	180 days		365 days			
Division	Current	Goal	Current	Goal	Mean	Median
Criminal	70%	98%	97%	100%	170	121
Civil	82%	na	95%	90%	151	93
Domestic	90%	98%	92%	100%	158	105

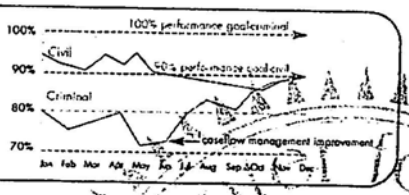
This table summarizes time to disposition in one court across three case types. The court is almost meeting its 365-day standard in criminal cases, exceeding its 365-day standard in civil cases, and lagging behind in domestic cases. The court should examine criminal caseflow management in the first 180 days, the period in which the court is furthest from its goal.

Time to Disposition in Felony Cases- 100% at 365-Day Time Standard



This court has adopted the ABA standard for felony cases. The court was steadily improving, and nearly met this goal in June, but in the months following, time to disposition increased. The court needs to examine what happened in July and October to determine the source of the periodic drops in performance.

Comparing Time to Disposition in Civil and Criminal Cases (using a 365-Day Time Standard)



Increases in the criminal caseload caused the court to shift judicial officers from civil to criminal cases and initiate caseflow management improvements in June. Time to disposition for criminal cases did improve, but not without an increase in time to disposition for civil cases.

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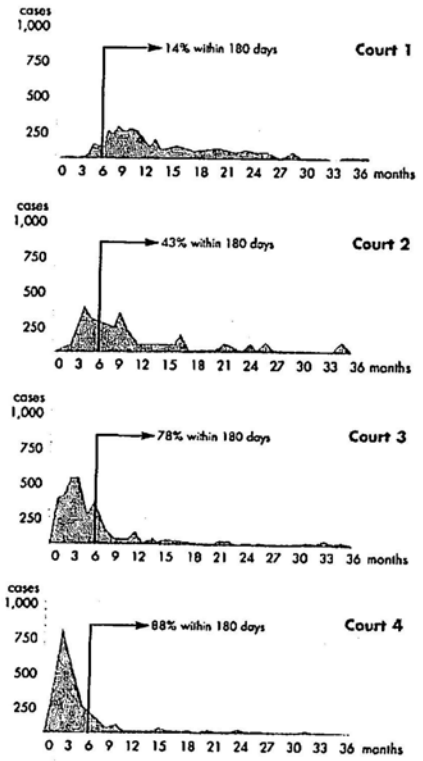
The graphics here show one way to display time to disposition data for felony cases in four courts. The data show that the vast majority of cases are resolved within six months in the two faster courts, compared to about eighteen months in the two slower courts. The profile of felony case time to disposition in different courts may vary due to the seriousness of the case mix, charging and pleading practices, and the manner of disposition. Of course, differences in time to disposition will also result from variation in court case management practices. Documenting differences in case processing time among courts is the first step in analyzing the reasons for those differences.

For all types of cases, time to disposition is a basic court management tool. Compiling data on the timing of key case events, consistent definition of terms, and distinguishing between active and inactive cases are basic ingredients to understanding and improving caseflow management.

Percent of Felony Cases Disposed Within 36 Months...



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Terms You Need to Know

Active Pending: A count of cases that, at the end of the reporting period, are awaiting disposition.

Entry of Judgment: A count of cases for which an original entry of judgment–the court's final determination of the rights and obligations of the parties to a case–has been filed. For cases involving multiple parties/issues, the manner of disposition should not be reported until all parties/issues have been resolved.

Mean: The average value of a set of numbers, equal to the sum of all values divided by the number of values.

Median: The middle value in a distribution of numbers. Half of the values will be above this point, half will be below.

Percentile: A percentile is a score below which a given percentage of the cases falls. Thus, if cases aged 120 days represent the 90th percentile of a court's pending caseload, it means that 90% of those cases are aged 120 days or less. Spreadsheet and statistical software can calculate percentile ranking of data.

Placed on Inactive Status: A count of cases whose status has been administratively changed to inactive because the court will take no further action in the case until an event restores the case to the court's active pending caseload.

Random Sample: A sample chosen that minimizes bias in the selection process. A random sample of case files is typically generated by a computer or selected from a random number table. Systematic samples require a randomly selected starting point, then the taking of every *nth* case, i.e., if the total number of civil cases in a court was 3,000 and the sample size was to be 300 cases, select every tenth case (3,000 ÷ 300 = 10).

Reactivated: A count of cases that had previously been placed in an Inactive Pending status, but for which further court proceedings and activities can now be resumed so that the case can proceed to disposition.

Reopened: A count of cases in which judgments have previously been entered but which have been restored to the court's pending caseload due to the filing of a request to modify or enforce the existing judgment.

Reopened Disposition: A count of cases that were disposed of by a modification to and/or enforcement of the original judgment of the court.

Time Standards: An acknowledged measure of comparison, measured as the time (in days) it takes to process a case, from filing to disposition. A time standard is expressed in terms of the percentage of cases that should be resolved within a certain time frame (e.g., 98% within 180 days).

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CourTools

Developed by the NCSC Court Performance Community of Practice.

Project Director: Brian J. Ostrom and Daniel J. Hall
Series Editor: Richard Y. Schauffler
Senior Contributors: William E. Hewitt and Ingo Keilitz
Information Design: Neal B. Kauder
Design and Layout: Graphics 3

APPENDIX C

CourTools | *Trial Court Performance Measures*

National Center for State Courts

Age of Active Pending Caseload

Measure 4

Definition: The age of the active cases that are pending before the court, measured as the number of days from filing until the time of measurement.

Purpose: Cases filed but not yet disposed make up the court's pending caseload. Having a complete and accurate inventory of active pending cases as well as tracking their number and age is important because this pool of cases potentially requires court action. Examining the age of pending cases makes clear, for example, the number and type of cases drawing near or about to surpass the court's case processing time standards. Once the age spectrum of cases is determined, the court can focus attention on what is required to ensure cases are brought to completion within reasonable timeframes.

Method: For each case type being analyzed, the court should produce a report that calculates the time, in days, from filing of the case until the date established for the reporting period being examined (e.g., last day of the month, last day of the year). A report, similar to the one below, can be used to display the age of pending cases in time periods relevant to the court. Success in achieving a particular case processing time goal is easily monitored by referring to the Cumulative Percent column. In the example below, 85 percent of the General Civil cases are being disposed in 540 days or less, close to meeting the court's goal of resolving 90 percent within this timeframe.

Age of Active Pending Caseloads

General Civil

Age (days)	Number of Cases	Percent	Cumulative Percent
0-90	344	18%	18%
91-180	410	21%	39%
181-270	245	13%	52%
271-365	267	14%	66%
366-450	189	10%	76%
451-540	168	9%	85%
541-630	90	5%	90%
631-730	124	6%	96%
over 730	76	4%	100%
Total	**1,913**		

Felony

Age (days)	Number of Cases	Percent	Cumulative Percent
0-60	438	21%	21%
61-120	559	26%	47%
121-180	785	37%	84%
181-240	82	4%	88%
241-300	92	4%	92%
301-365	123	6%	98%
over 365	32	2%	100%
Total	**2,111**		

Approaches the court's goal of resolving 90% of cases within 18 months.

This measure should be used in conjunction with *Measure 2 Clearance Rates* and *Measure 3 Time to Disposition* to get an accurate picture of how a court is managing its caseload. For example, a court may have a high clearance rate, and score well on Measure 2, yet still be building up an inventory of older cases (evaluated by using Measure 4). This measure differs from *Measure 3 Time to Disposition* in that the cases being analyzed here have not reached a disposition in the court.

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Williamsburg, Virginia 23185
800-466-3063

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To use this measure accurately, a court must be able to identify and count cases that have been *Placed on Inactive Status*. These are cases that have ceased movement toward a disposition as the result of events beyond the court's control (e.g., a defendant who absconds, the initiation of bankruptcy proceedings, etc.). The ability of a court to track its pending cases will also allow the court to return an *Inactive* case to *Active* status if the case has been *Reactivated*. At the time of measurement, the court should remove *Inactive* cases from the pending inventory because these cases are not directly comparable to *Active* cases and will exaggerate the age of the pending caseload.

This measure should be taken on a regular (e.g., monthly, quarterly, or annual) basis. The measure can be used to report age of the pending caseload for any case type. (Primary case types are defined in the *State Court Guide to Statistical Reporting*.)

Sampling

This measure should be calculated for all cases in the Active Pending inventory. However, sampling will be necessary in courts where case volumes are high if a complete report cannot be produced by the case management system. In most instances, a sample of 300 cases will be sufficient. To obtain a random sample requires a list of all cases in the population, a unique identification number for each case, and a method for selecting cases. A straightforward method is systematic sampling where only the first case is randomly selected and then every nth case from a list is selected for the sample, i.e., if the total number of civil cases in a court was 3,000 and the sample size was to be 300 cases, select every tenth case (3000/300=10).

Which Cases Are Included?

Only *Active Pending* cases are included in this measure, and other cases should be excluded. Rules for counting, as defined in the *State Court Guide to Statistical Reporting*, are summarized below and illustrated in the figure.

The most straightforward cases to count are those that are moving through the system without interruption and are active and pending at the time of measurement.

A second category are cases that had their progress interrupted and underwent a period of inactivity but were *Reactivated* by the court prior to the time of measurement. An example of this is a contract case that is *Placed on Inactive Status* pending the outcome of bankruptcy proceedings. Following those proceedings, the contract case resumes, and is counted as a *Reactivated* case (not as a new filing). Another example is a criminal case in which the case is filed and the defendant absconds for a period of time. The case is *Placed on Inactive Status* during this time, but when the defendant is apprehended and returned to court, and case is *Reactivated*.

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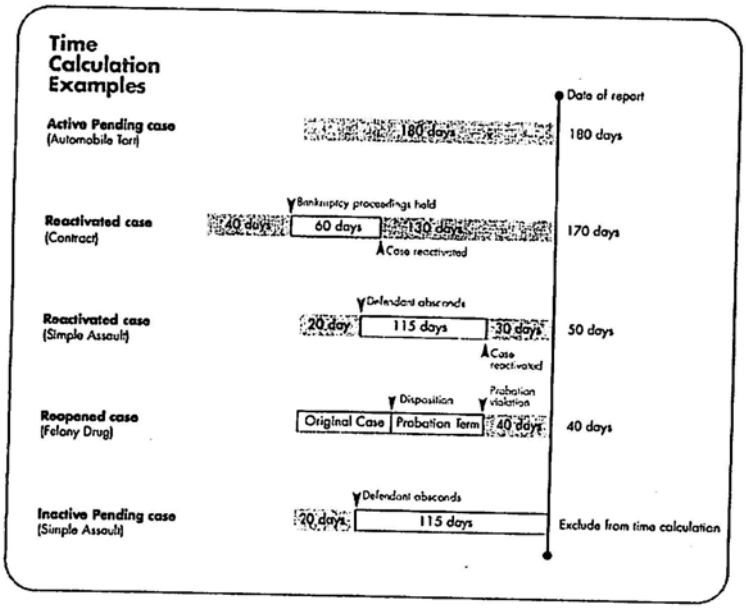
Following those proceedings, the contract case resumes, and is counted as a *Reactivated* case (not as a new filing). Another example is a criminal case in which the case is filed and the defendant absconds for a period of time. The case is *Placed on Inactive Status* during this time, but when the defendant is apprehended and returned to court, the case is *Reactivated*.

A third category are cases in which judgment was previously entered, but which have been *Reopened* due to a request to modify or enforce existing judgments. These cases have been restored to the court's *Active Pending* caseload. For example, the court might grant a motion to consider newly discovered evidence, and thus reopen a case.

A fourth category are cases that should not be included in this measure. These are cases that are in an official period of inactivity at the date of report. As these cases are considered to be among the court's *Inactive Pending* cases (i.e., they are not moving toward disposition for a known and legitimate reason and the court is aware of this) they should be excluded from the analysis.



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Age of Active Pending Caseload

Measure 4

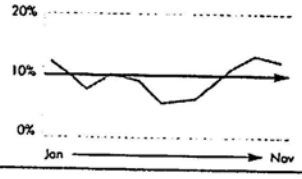
Analysis and Interpretation

The data collected for this measure allow the court to look at cases that are exceeding its time standards. *Measure 3 Time to Disposition* asks, "What percentage of our cases are being processed within our time standards?" Measure 4 asks, "What percentage of our cases exceed our time standards?" A court may be handling its current caseload, but at the same time have old cases that are lingering on. The top graph indicates that this court is managing its caseload effectively, and at the 180-day mark, the court is close to its goal of having no more than 10 percent of its active cases pending beyond 180 days.

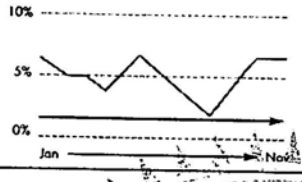
The bottom graph indicates, however, that the court is having a harder time meeting its standard at the 365-day mark. The red line indicates the goal is to have no more than 2 percent of its active caseload pending at 365 days from time of filing. The court is unable to meet this standard.

Identifying specific cases and analyzing their status (e.g., by location, by judge, by type of proceeding) will allow the court to know whether the active pending cases are being appropriately managed. In this example, the court has extracted descriptive information on cases pending beyond 365 days to begin its case-level analysis.

Percent of Cases Pending Beyond 180 days



Percent of Cases Pending Beyond 365 days



Focusing on the cases that exceed 365 days...

Case Numbers	Case Type	Age-Days	Next Action	Location	Judge
SC-F-136	Murder	536	Jury Trial	Scott	Jones
SC-F-468	Drug-Sale	382	Motion Hearing	Colton	Smith
SC-F-771	Fraud	439	Bench Trial	Jersey	Kearn

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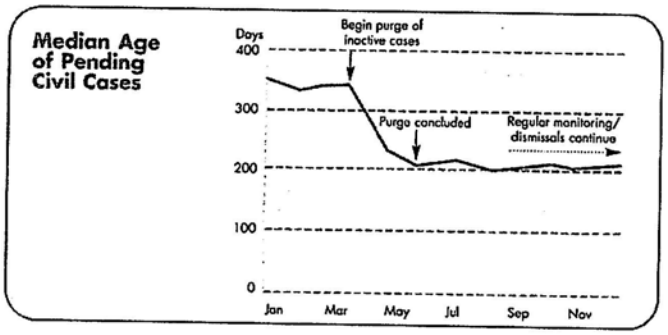

Analysis of the age of the *Active Pending* caseload over time can be used to determine whether caseflow management practices are having their intended effects. This figure shows how a court's decision to undertake an intensive program to identify and dispose of stagnant civil cases has caused a noticeable drop in the median age of its pending civil caseload. These stagnant cases appeared to be active cases, but examination of the files and communication with parties revealed the cases had either settled out of court or were no longer being pursued.

Who Sets Time Standards?

The Conference of State Court Administrators (COSCA) and the American Bar Association (ABA) have offered specific time standards for case processing. The question of whether these standards are attainable is an empirical one that remains largely unanswered. Time standards are expressed as the percentage of cases that should be resolved within a certain elapsed period. For example, the ABA offers the following standards:

Civil cases	Domestic cases	Felony cases
90% within 12 months	90% within 3 months	90% within 120 days
98% within 18 months	98% within 6 months	98% within 180 days
100% within 24 months	100% within 12 months	100% within 1 year

Juvenile cases
Detention & shelter: 100% within 24 hours
Adjudicatory or transfer (Detention or shelter): 100% within 15 days
Adjudicatory or transfer (Not in Detention or shelter): 100% within 30 days

Source: National Center for State Courts Web site, www.ncsconline.org/WC/Publications/KIS_CasManCPTSPub.pdf.

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Terms You Need to Know

Active Pending: A count of cases that, at the end of the reporting period, are awaiting disposition.

Inactive Pending: A count of cases that, at the end of the reporting period, have been administratively classified as inactive. Such circumstances may be defined by statewide court administrative rule or order.

Percentile: A percentile is a score below which a given percentage of the cases falls. Thus, if cases aged 120 days are in the 90th percentile of a court's pending caseload, it means that 90% of those cases are aged 120 days or less. Spreadsheet and statistical software can calculate percentile ranking of data. The percentiles a court selects should be chosen based on its own state or local time standards or those suggested by the Conference of State Court Administrators (COSCA) or the American Bar Association (ABA).

Placed on Inactive Status: A count of cases whose status has been administratively changed to inactive because the court will take no further action in the case until an event restores the case to the court's *Active Pending* caseload.

Random Sample: A sample chosen that minimizes bias in the selection process. A random sample of case files is typically generated by a computer or selected from a random number table. Systematic samples require a randomly selected starting point, then the taking of every *n*th case, i.e., if the total number of civil cases in a court was 3,000 and the sample size was to be 300 cases, select every tenth case (3,000 ÷ 300 = 10).

Reactivated: A count of cases that had previously been placed in an inactive pending status, but for which further court proceedings and activities can now be resumed so that the case can proceed to disposition.

Reopened: A count of cases in which judgments have previously been entered but which have been restored to the court's pending caseload due to the filing of a request to modify or enforce the existing judgments.

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Series Editor: Richard Y. Schauffler
Senior Contributors: William E. Hewitt and Inga Kalitis
Information Design: Neal B. Kauder
Design and layout: Graphics 3

CourTools | Trial Court Performance Measures

National Center for State Courts

Trial Date Certainty

Measure 5

Definition: The number of times cases disposed by trial are scheduled for trial.

Purpose: A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition. This measure provides a tool to evaluate the effectiveness of calendaring and continuance practices. For this measure, "trials" includes jury trials, bench trials (also known as non-jury trials or court trials), and adjudicatory hearings in juvenile cases.

Method: Measuring trial date certainty requires identifying all cases disposed by trial during a given time period (e.g., a year, quarter, or month). After the cases are identified, additional information must be collected to determine whether those cases were tried on the first date they were set for trial or were continued one or more times before the trial actually began.

Step 1: Create and Sort the List of Cases Disposed by Trial

Prepare a list of all of the cases disposed by trial during the reporting period and organize them by case type. Next examine the case record to determine the number of trial dates set in the case and record them. The *minimum number* of trial dates set for any case on this list will be 1, since all the cases on the list have at least one trial setting. The list should contain the case number, the type of case, the type of trial, and the number of trial dates set (including the date upon which the trial ultimately began).

After the list is compiled, it should be sorted within case types by trial type, and then by number of trial dates set. Sorting the list in this fashion will facilitate the creation of a summary table showing the number of cases of each type with one date set for the trial to begin, those with two trial-start dates, and so on, up to the maximum number of dates on which the trial was set to begin, by case type and type of trial.

Summary Table for Capturing Trial Dates

Court Case Number	Case Type	Trial Type	Number of Trial Dates Set
CV246-357	General Civil	Jury	1
CV555-121	General Civil	Jury	1
FE123-456	Felony	Jury	3
FE654-321	Felony	Bench	4
DO369-123	Domestic	Bench	2
DO212-609	Domestic	Bench	5
⌄	⌄	⌄	⌄
⌄	⌄	⌄	⌄
⌄	⌄	⌄	⌄

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Step 2: Sort the Cases by Frequency of Trial Settings

Prepare a summary table from the sorted list. In the example below, the court had 73 general civil and felony cases disposed by trial during the reporting period, and has sorted them by case type and trial type into columns indicating how many times each case was set for trial. For example, the table below indicates there were 2 Felony Jury cases disposed by trial that were set for trial 1 time; 14 cases set for trial 2 times, 6 cases set for trial 3 times, and so on.

Annual Summary Report of Trial Settings

		Number of Settings								
Case Type	Trial Type	One	Two	Three	Four	Five	Six	Seven	Eight	Total Cases
General Civil	Jury	2	3	7	2	2	0	1	1	18
General Civil	Bench	2	2	6	3	1	1	0	0	15
Felony	Jury	2	14	6	3	2	1	0	0	28
Felony	Bench	3	4	2	2	1	0	0	0	12

Analysis and Interpretation

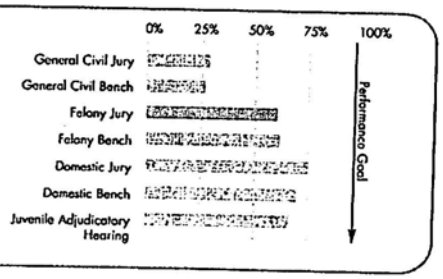
The first way to examine the data is to look at the proportion of cases that meet a specific performance goal set by the court for trial date certainty. For example, the court may seek to have 90 percent of its cases go to trial in no more than two trial settings. Excellent performance would be measured by 90 percent of the cases disposed by trial actually going to trial on the first or second scheduled trial date.

To illustrate, we use data from the table above for a single case type and a single trial type, Felony-Jury, to determine that 57 percent of the cases disposed by trial are meeting the court's goal: 90% of the cases disposed with 2 or fewer trial settings. This can also be determined for all case types and trial types, for comparison.

To determine Felony Jury performance:

Cases with 1 trial setting	2
Cases with 2 trial settings	+14
Total	16
Total Cases Disposed	28
Percentage within standard	16÷28 = 57%

Trial Date Certainty by Case Type



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Trial Date Certainty

Measure 5

Computing the Averages by Case Type

A second way to look at the data is to determine the average (mean) number of trial settings by case type. Averages should be interpreted with caution, since a few cases with a high number of trial settings will make the average appear artificially high.

To compute the average, first calculate the total number of trial settings by case type and trial type. Multiply the frequency label in the column heading by the number of cases in each row and add the results. Then divide the Total Trial Settings by the Total Cases Disposed by Trial for that case type/trial type combination to determine the average (mean) number of trial settings per case.

For example, the result in the column labeled "Three" settings for Felony Jury is 18 (3 x 6). Doing this calculation for each column across the Felony Jury row shows that there were 76 Total Trial Settings for the 28 cases of this case type and trial type. Dividing 76 by 28 results in the average: 2.7 trial settings per case.

Annual Summary Report of Trial Settings

		Number of Settings								
Case Type	Trial Type	One	Two	Three	Four	Five	Six	Seven	Eight	Total Cases
General Civil	Jury	2	3	7	2	2	0	1	1	18
General Civil	Bench	2	2	6	3	1	1	0	0	15
Felony	Jury	2	14	4	3	2	1	0	0	28
Felony	Bench	3	4	2	2	1	0	0	0	12

3 x 6 = 18

										Total Trial Settings
General Civil	Jury	2	6	21	8	10	0	7	8	62
General Civil	Bench	2	4	18	12	5	6	0	0	47
Felony	Jury	2	28	18	12	10	6	0	0	76
Felony	Bench	3	8	6	8	5	0	0	0	30

Calculate Average Number of Trial Settings

Case Type	Trial Type	Total Trial Settings		Total Cases		Average Trial Settings
General Civil	Jury	62	÷	18	=	3.4
General Civil	Bench	47	÷	15	=	3.1
Felony	Jury	76	÷	28	=	2.7
Felony	Bench	30	÷	12	=	2.5

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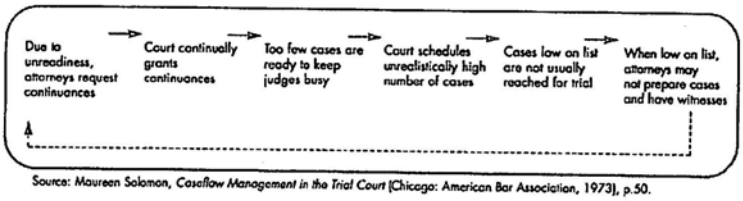
Effect of Scheduling and Continuance Policy

Credible trial dates require a firm and consistently applied policy to limit the number of trial day continuances. If continuance practices are too lenient, attorneys are less likely to be properly prepared on the trial date, which increases the likelihood of a breakdown in the trial calendar. The result is judge and court staff time are wasted.



Source: Maureen Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association, 1973), p.50.

Ongoing feedback on calendar dynamics greatly increases the odds that the court can sustain improvement in trial management. Addressing the larger issue of the underlying causes affecting trial date certainty is critical for creating the expectation that case events will proceed as scheduled. For example:

- *Is rescheduling often necessary because there are not enough judges to hear the cases on a given trial day?* If so, the trial-setting practices, whether explicit in formulas or intuitively applied by judges, need to be revised.
- *Are trials routinely rescheduled at the request of counsel (one or both)?* If so, it is likely that an initiative is needed to realign the attitudes of both bench and bar about the importance of trial date certainty. Judges should set trial dates in consultation with counsel to carefully consider necessary preparation time and their future schedule to avoid conflicts; bar members need to be convinced not to agree to a trial date they are not prepared to meet; the court should commit to having a judge available to try the case on the scheduled date; and requests for continuances should rarely be granted.

Terms You Need to Know

Bench Trial Disposition: A case disposition is counted as a bench trial disposition when the first evidence is introduced, regardless of whether a judgment is reached. Also known as a court trial or non-jury trial.

Jury Trial Disposition: A case disposition is counted as a jury trial disposition when the jury has been sworn, regardless of whether a verdict is reached.

Mean: The average value of a set of numbers, equal to the sum of all values divided by the number of values.

Trial Disposition: Dispositions that involve an examination of facts and law presided over by a judicial officer in order to reach a judgment in a case. These include jury trials and bench trials (also known as non-jury trials or court trials). Adjudicatory hearings in juvenile cases are also counted as trials.

Trial Setting: Action taken by the court to set a date upon which a trial is scheduled to begin.

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