



# ***Criminal Pretrial Settlement Conferences: Best Practice Lessons from Urban Trial Courts, including the Superior Court of Arizona for Maricopa County***

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## **Introduction**

This white paper outlines best practices from urban trial courts around the country, with particular reference to experience in the Maricopa County Superior Court in Phoenix, Arizona. The overall theme is that successful use of criminal pretrial/settlement conferences requires that they be part of a broader effort by the court and its justice partners to see that justice is done in a prompt manner that serves the interests of both case participants and taxpayers.

## **Lessons from Urban Trial Courts Generally**

A trial court's use of settlement/pretrial conferences in felony matters can be an important part of a caseload management effort.<sup>1</sup> In order for criminal pretrial conferences to work successfully, the following are critical:

- Court commitment to achieving justice promptly;
- A strong commitment by the prosecutor's office to speedy case processing; and
- Commitment by public defenders and others representing criminal defendants not only to providing effective assistance of counsel, but also to resolving cases expeditiously in recognition of speedy trial requirements.

In view of the fact that about 95% of all criminal cases in American trial courts are disposed by plea or other nontrial means, criminal caseload management should focus on ways to provide for meaningful plea discussions between prosecution and defense counsel, beginning at an early stage of proceedings. This includes the following:

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<sup>1</sup> See Barry Mahoney and Dale Sipes, "Toward Better Management of Criminal Litigation," 72 *Judicature* (No. 1, June/July 1988) 29.

- Early determination of defendant eligibility for counsel at public expense, so that defendants can be represented by counsel as soon as possible after arrest and initial appearance;
- Early opportunities for defense counsel to meet with their clients;
- Prompt provision of arrest reports, recorded statements and other police information by law enforcement officers to the prosecutor's office;
- Prosecution provision of an early "discovery package" to defense counsel to promote meaningful early discussion of disposition options between prosecution and defense counsel;<sup>2</sup>
- Realistic plea offers by the prosecution as early as possible;<sup>3</sup>
- Defense counsel preparation to negotiate, balancing the best interests and constitutional rights of their clients, and including meetings with their clients;
- Court insistence that counsel meet deadlines for case preparation and monitoring of the scheduling of pretrial settlement conferences to identify and resolve reasons for unnecessary continuances and rescheduling;
- Early court decisions (preferably before pretrial settlement conferences) on admissibility of evidence, most notably regarding defense motions to suppress evidence;
- Court and prosecution commitment to enforcing a "plea cutoff date" policy; To help prosecution and defense counsel be focused on achievement of negotiated pleas as part of the pretrial settlement conference process, court provision of firm and credible trial dates.

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<sup>2</sup> Unless and until the prosecution has provided suitable discovery to the defense attorney, there can be no meaningful opportunity for plea discussions. To avoid unnecessary multiple rescheduling of criminal pretrial settlement conferences, it is critical for this to be addressed as early as possible in the felony process.

<sup>3</sup> A realistic plea offer is one that can be seen by defense counsel and the defendant as being sound on the specific evidence in the case and reflects a reasonable prediction of the likely outcome in the case. Unless a prosecutor is willing to make such offers, defense counsel will maintain that "justice delayed is justice achieved," and criminal pretrial settlement conferences will fail to achieve early case dispositions.