



# **BJA CRIMINAL COURTS TRAINING AND TECHNICAL ASSISTANCE INITIATIVE**

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## ***RETHINKING FELONY CASEFLOW MANAGEMENT TO CREATE A CULTURE OF HIGH COURT PERFORMANCE***

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# Executive Summary

National data reported by the US Justice Department's Bureau of Justice Statistics show a disturbing increase in state court felony delay after 2000. From 2002 through 2006 (the latest year for which national felony data for state courts are available), there was an alarming increase in median times from felony arrest to sentencing, going from a median time of 149 days in 1996 to a median time of 265 days in 2006. This was an increase of 78% in the median time to sentencing, even though the increase in felony convictions from 1996 to 2006 (13%) was in fact less than the increase in total judicial officers (14%).

This dramatic increase in state court delay was thus not necessarily a result of insufficient resources, nor was it evidence that the principles and techniques of caseflow management are wrong. Instead, it reflects the failure in many jurisdictions to appreciate the difficulty of changing the management culture of the courts ("court culture"), with the result that widespread and sustained commitment to managing the pace of felony litigation has not been achieved in the wider local legal community in many jurisdictions. The requirements for sustained success are suggested in this pyramid:



Sustained success in felony caseflow management calls for judicial leaders, court managers, and their criminal justice partners to (a) focus on the strengths and weaknesses of the court culture in their respective communities, and then (b) use the ideas of “high court performance” as a framework for understanding what must be done in order to manage felony cases in a way that promotes prompt and affordable justice. It is important for courts to apply demonstrated techniques for the management of felony cases. While necessary, however, it is not enough just to apply the techniques for managing case progress. Instead, there must be an understanding of what is required for performance management – accountability based on goals and performance measurement. When performance management and the application of demonstrated techniques have begun to produce results, they must be embedded in the local culture. The creation and maintenance of a culture of “high performance” that supports and promotes sustainable caseflow management effectiveness calls for there to be (a) active court leadership of the local criminal justice community; (b) broad support and commitment of judges and other key stakeholders; (c) regular communication by court leaders with the other key stakeholders; (d) regular education and training; and (e) ongoing attention to creating and maintaining external support from the public and from state and local public funding bodies.

# RETHINKING FELONY CASEFLOW MANAGEMENT TO CREATE A CULTURE OF HIGH COURT PERFORMANCE

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## I. Introduction

Since the late 1970's, it has been demonstrated time and again that delay in criminal cases can be reduced and avoided through active court management of the pace of litigation.<sup>1</sup> For felony cases in state trial courts, court control of the processing of cases, or "caseflow management," has been shown to promote quality of justice, timeliness, and avoidance of wasted resources.<sup>2</sup> According to the National Association of Court Management (NACM), the exercise of active court control of case progress is a core responsibility for judicial leaders and court administrators in the management of a court:<sup>3</sup>

Caseflow management is the process by which courts carry out their primary function: moving cases from filing to closure. This includes all pre-trial events, trials, and increasingly, events that follow closure to ensure the integrity of court orders and timely completion of post-disposition case activity. Effective caseflow management makes justice possible not only in individual cases, but also across judicial systems and courts, both trial and appellate. Caseflow management helps ensure that every litigant receives procedural due process and equal protection. Properly understood, caseflow management is the absolute heart of court management.

Court delay has long been recognized as less a consequence of formal aspects of court structure, procedures, and workload than of the informal attitudes, concerns, and practices of all members of a "local legal culture."<sup>4</sup>

In this paper, the authors assert that the recent evidence of erosion in state court efficacy in the management of felony litigation is not evidence that caseflow management ideas are wrong. Instead,

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<sup>1</sup> See E. Freisen, M. Geiger, J. Jordan, and A. Sulmonetti, "Justice in Felony Courts: A Prescription to Control Delay - A Report on a Study of Delay in Metropolitan Courts During 1978-1979," 2 *Whittier L. Rev.* (1979-1980) 7,

<http://heinonline.org/HOL/LandingPage?handle=hein.journals/whitlr2&div=9&id=&page=>; D. Steelman, "What Have We Learned About Court Delay, 'Local Legal Culture,' and Caseflow Management Since the Late 1970s?," 19 *Justice System Journal*, No. 2 (1997), 145,

<http://www.jstor.org/discover/10.2307/27976937?uid=3739800&uid=2129&uid=2&uid=70&uid=4&uid=3739256&sid=21102927698847>; and Steelman, "Caseflow Management," in Flango, McDowell, Campbell, and Kauder (eds.), *Future Trends in State Courts 2008* (NCSC, 2008), 8, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1258>.

<sup>2</sup> See B. Ostrom and R. Hanson, *Efficiency, Timeliness and Quality: A New Perspective from Nine State Criminal Trial Courts* (NCSC, 1999), <http://www.ncjrs.gov/pdffiles1/nij/181942.pdf>, and [http://www.ncsconline.org/WC/Publications/Res\\_CasMan\\_EfficiencyPub.pdf](http://www.ncsconline.org/WC/Publications/Res_CasMan_EfficiencyPub.pdf).

<sup>3</sup> NACM, "Core Competencies>Caseflow Management," [https://nacmnet.org/CCCG/cccg\\_CoreCompetencies.html](https://nacmnet.org/CCCG/cccg_CoreCompetencies.html).

<sup>4</sup> See T. Church, et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts* (NCSC, 1978), p. 52,

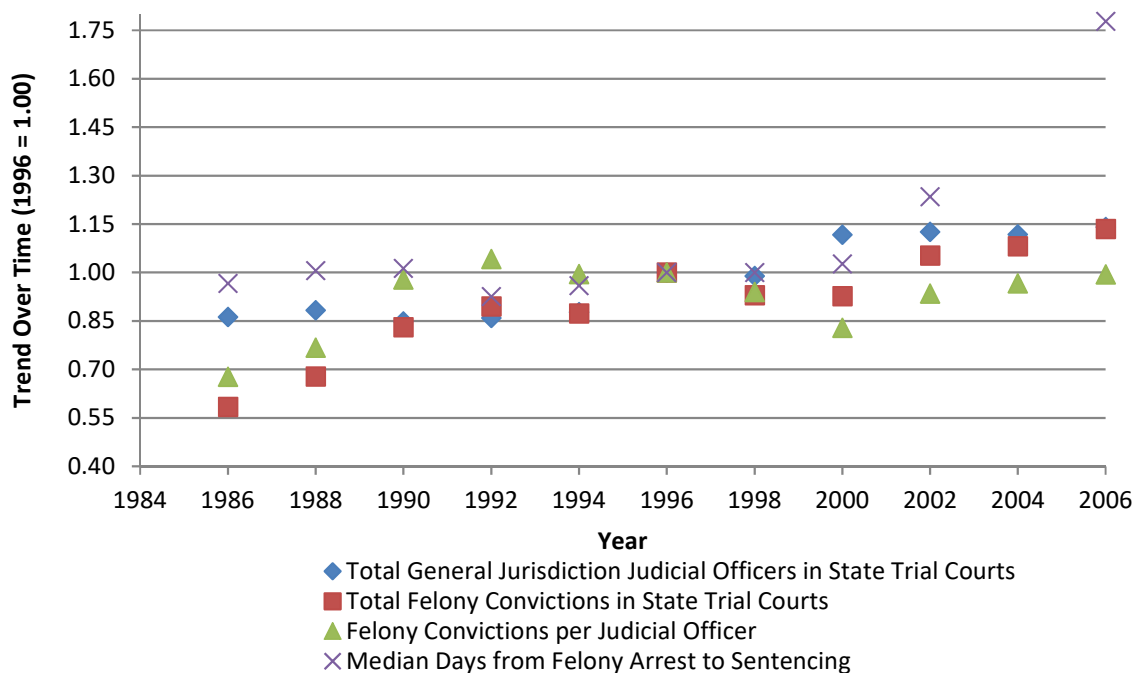
<http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/0>.

it reflects the failure in many jurisdictions to appreciate the difficulty of changing the management culture of the courts (“court culture”), with the result that widespread and sustained commitment to managing the pace of felony litigation has not been achieved in the wider local legal community in many jurisdictions. The authors argue that sustained success in felony caseflow management calls for judicial leaders and court managers to (a) focus on the strengths and weaknesses of the court culture in their respective communities, and then (b) use the ideas of “high court performance” as a framework for understanding what must be done in order to manage felony cases in a way that promotes prompt and affordable justice.

## II. National Data on Increasing Felony Delay in State Courts

As gathered and reported by the Bureau of Justice Statistics (BJS), national data on felony disposition times in state courts show that state trial courts around the U.S. demonstrated considerable success with felony caseflow management from the mid-1980s through the entire decade of the 1990s. See Figure 1.

**Figure 1. Judicial Officers, Felony Convictions, and Felony Timeliness in State Courts, 1986-2006<sup>5</sup>**



As Figure 1 illustrates, total felony convictions in state trial courts increased dramatically during the period from 1986 through 1996, without any appreciable change in median times from arrest to

<sup>5</sup> Sources: Totals for general-jurisdiction judicial officers in state trial courts are from the NCSC’s Court Statistics Project. Data on total felony convictions in state courts and median days from arrest to sentencing in state court felony cases are from the Bureau of Justice Statistics (BJS). Figures on felony convictions per judicial officer are the result of dividing total convictions by total judicial officers. Note: BJS data on time from arrest to sentencing are not available for 2004 felony convictions.

sentencing, even though the number of judges and other judicial officers increased by a much smaller degree than the number of felonies. In 1996, which was the midpoint of the period shown in Figure 1, the state courts had 415,000 more felony convictions than in 1986 (an increase of 71%), with only 16% more judicial officers. Yet the median time from arrest to sentencing in 1996 (149 days) was only 3% longer than it was in 1986 (144 days). In other words, the state courts, through steps including the effective application of caseflow management techniques, were able to avoid increased delays even as the increase in total felony workload far outstripped the increase in total available judicial resources.

Yet Figure 1 also shows disturbing results for state courts hearing felony cases after 2000. From 2002 through 2006 (the latest year for which national felony data for state courts are available from BJS<sup>6</sup>), felony convictions grew much more than the number of available judicial officers. There was an alarming increase in median times from felony arrest to sentencing, going from a median time of 149 days in 1996 to a median time of 265 days in 2006. This was an increase of 78% in the median time to sentencing, even though the increase in felony convictions from 1996 to 2006 (13%) was less than the increase in total judicial officers (14%).

Not surprisingly, the increase in median felony times from arrest to sentencing reflects the fact that almost all felony cases took longer to be processed in state trial courts. The American Bar Association (ABA) first adopted speedy trial standards for criminal cases in 1968, after which it adopted standards for other case types as well in 1976, amending them in 1984 and again in 1992. The Conference of State Court Administrators (COSCA) promulgated national time standards for cases in the state courts in 1983. Over three quarters of the states have now adopted their own case disposition targets. In 2011, new national “Model Time Standards for State Trial Courts” were approved by the Conference of Chief Justices, COSCA, the National Association for Court Management (NACM), and ABA.

For felony cases, Table 1 compares the COSCA, ABA and Model Time Standards in terms of expectations for elapsed time from arrest to disposition. Table 2 then shows how elapsed times from arrest to sentencing for all felony convictions in state courts in 2000, 2002, and 2006 compare with the Model Time Standards.

**Table 1. Comparison of COSCA, ABA, and Model Felony Time Standards<sup>7</sup>**

COSCA (1983)	ABA (1992)	Model (2011)
100% within 180 days	90% within 120 days 98% within 180 days 100% within 365 days	75% within 90 days 90% within 180 days 98% within 365 days

<sup>6</sup> See BJS, “Data Collection: National Judicial Reporting Program (NJR),” <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=241> (as last viewed on December 19, 2013).

<sup>7</sup> See R. Van Duizend, D. Steelman and L. Suskin (reporters), *Model Time Standards for State Trial Courts* (NCSC, 2011), pp. 3-4, <http://ncsc.contentdm.oclc.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1836>. In the COSCA and ABA Time Standards, the prescribed time is from arrest to trial or nontrial disposition. In the Model Time Standards, it is from arrest to sentencing.

**Table 2. Cumulative Percent of Felony Convictions in State Courts, 2000-2006, within Days after Arrest Specified in the Model Time Standard for Felony Cases<sup>8</sup>**

Sentenced Within	Model Time Standard	Cumulative Percent for All Felony Convictions in State Trial Courts, by Year		
		2000	2002	2006
90 Days after Arrest	75%	30%	26%	14%
180 Days after Arrest	90%	58%	49%	33%
365 Days after Arrest	98%	86%	78%	67%

For felony cases sentenced in the year 2000, the cumulative percent of cases that were concluded within 365 days after arrest was short of the time standard, but state courts were nonetheless meeting the one-year time expectation in a very large portion of their felony cases. By 2006, however, the percentage of cases taking longer than a year had more than doubled, from 14% to 33%.

The application of caseload management techniques to felony cases was demonstrably successful immediately after their adoption by many state courts in the mid-1980s. Yet advocates of caseload management did not succeed in making the ideas of caseload management a universal feature of how state courts operate. Indeed, available national data suggest that there has been a clear erosion of state courts’ ability to manage the pace of felony litigation in recent years.

### III. Caseload Management and the High Performance Court Framework (HPCF)<sup>9</sup>

Research and experience in state courts show that there are additional factors affecting a court’s chances for successful implementation of a felony caseload management program, which must be taken into account in any improvement effort. Work in the past decade by NCSC researchers and consultants, as well as other court and caseload management experts, has formed a basis for the following observation:<sup>10</sup>

As long as judges and court administrators who are trained in and committed to caseload management practices are involved, the practices, for the most part, achieve the desired outcomes. Nevertheless, evidence demonstrates that these measures have not been integrated into most courts’ organizational culture, governance structure or delivery systems for court services. The use of these procedures often has been personality-based rather than institutionalized. The failure to move these practices

<sup>8</sup> Source: Nationwide data for state court felony cases in 2000, 2002 and 2006 are from BJS. Data for 2004 are not available, and data for years after 2006 had not yet been published when this article was being prepared. For the model time standard applicable to felony cases, see *Model Time Standards* (2011), pp. 3-4.

<sup>9</sup> For a full explanation, see B. Ostrom and R. Hanson, *Achieving High Performance: A Framework for Courts* (Williamsburg, VA: National Center for State Courts, April 2010), [http://www.ncsc.org/Services-and-Experts/Technology-tools/Court-Technology-Framework/~media/Files/PDF/Services%20and%20Experts/CTF/Achieving\\_HPC\\_April\\_2010.ashx](http://www.ncsc.org/Services-and-Experts/Technology-tools/Court-Technology-Framework/~media/Files/PDF/Services%20and%20Experts/CTF/Achieving_HPC_April_2010.ashx).

<sup>10</sup> M. McQueen and R. Baldwin, “Caseload Management – The New Era,” attachment in electronic mail message (December 12, 2012) to Hon. William F. Dressel, President, The National Judicial College (NJC). The message presented NCSC comment on a draft “Caseload Management Summit Report” prepared as part of a project supported by a grant to NJC by the Bureau of Justice Assistance (BJA).



from the individual leaders to the court as an institution has produced uneven long-range success.

If there is merit in this assertion, then the challenge becomes one of assuring that demonstrably successful caseload management practices must be systematically institutionalized into the structure, culture, and behavior of courts.

The laudable ventures of the past have proven that justice outcomes are enhanced when there is early court intervention and continuous control of case progress, when courts set meaningful events and deadlines throughout the life of a case, when credible trial dates are set, when continuances are limited, when case disposition time standards are set and applied, when effective calendaring and docketing measures are employed, and when technology is utilized to monitor status of cases. For caseload management to succeed over time, it is important to view it in terms of the overall purposes and performance objectives of courts.

This can most reliably be done by assuring that caseload management practices are implemented within the context of the “High Performance Court Framework” (HPCF). The HPCF could be called “a blueprint” for improving court management since it provides a guide for the creation and maintenance of successful court management practices. Here are the other key elements of the HPCF that can serve to foster implementation of caseload management practices.

#### **A. Strategic Perspectives**

What constitutes “high performance” in a court is multifaceted. In fact, it calls for courts to produce important results from four different perspectives:

- **Customer Perspective:** How case participants are treated in the legal-judicial process.
- **Internal Operating Perspective:** How efficient and productive the court is in the management of its work.
- **Innovation Perspective:** How well the court applies its productive resources to respond and adapt to new circumstances and challenges.
- **Social Value Perspective:** How responsive the court is to the concerns and expectations of the public and of state or local funding authorities.

For more on court performance from the viewpoint of these perspectives, see Table 3 below.

**Table 3. Strategic Perspectives on Managing for High Court Performance\***

Perspectives	Assessment Areas	Measures/Issues
<b>Customer Perspective:</b> How are participants treated in the legal-judicial process?	<b>Procedural Satisfaction</b> Litigants are provided fair and accessible service by judicial officers and staff	Observations; interviews; surveys Are customers treated with respect? Is there an opportunity for defendants to tell their story? Do the judge and staff put customer needs ahead of their own? Are customers treated in a fair, unbiased fashion?
	<b>Effectiveness</b> There is a match between the goals of the court and their achievement	Performance data; interviews Trial date certainty; enforcement of penalties; continuance practices; self-help information is available and understandable
<b>Internal Operating Perspective:</b> How efficient and productive does the court manage its work?	<b>Efficiency</b> Key caseflow and workflow processes are viable/stable	Performance data; interviews; business process assessment Clearance rates, age of pending caseload; transaction times
	<b>Productivity</b> Key caseflow and workflow processes make the best use of judge and staff time	Performance data; observations Time to disposition; simplified workload processes; employee empowerment and accountability; no appreciable case backlog
<b>Innovation Perspective:</b> Does the court respond and adapt well to new circumstances and challenges?	<b>Organizational Capital</b> The judge and staff are organized in ways that achieve the best use of time in relation to justice system partners	Observations; interviews Limited “red tape;” clear roles/responsibilities; supportive “local legal culture;” stakeholder consultations regarding improvements
	<b>Human Capital</b> Input and feedback on ideas for improvement and better performance are solicited and used by court leaders	Observations; interviews; noted innovations Court leaders tap worthwhile ideas; staff is well trained with resources to do their jobs successfully; open communications
	<b>Information Capital</b> Evidence-based data to measure, analyze and evaluate court performance is pursued	Performance data; case management system Ongoing attention to measurement and analysis to ensure accuracy and meaningfulness; data is used to improve processes
	<b>Technology Capital</b> Technology is used to achieve greater efficiency and quality in managing court judicial and business processes	Observations; interviews; demonstrations High-tech / high-touch applications are used in ways to enhance factual understandings and modernize caseflow methods
<b>Social Value Perspective:</b> Does the court respond responsibly to the public and funding authorities?	<b>Public Trust and Confidence</b> The court seeks to demonstrate and communicate a record of successful job performance	Observations; interviews Compliance with court orders; satisfaction regarding processes by prosecutors and defense lawyers; observable due process steps
	<b>Support of Legitimized Authorities</b> The court demonstrates an efficient use of public resources in facilities, procedures, time and staffing	Observations; interviews; historical review Funding levels effectively improve and advance the tools and infrastructure necessary for fair and efficient case processing

\* Source: Brian Ostrom and Roger Hanson, “High Performance Court Framework: A Roadmap for Improving Court Management” (Copyright ©National Center for State Courts, 2010), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/2040>.

## B. Administrative Principles

“High performance” in a court is defined by four basic principles that reflect what a well-run court wants to achieve in terms of the delivery of court services. These principles translate the complex meaning of quality into more familiar and observable terms. The principles include the following: (1) giving every case individual attention, (2) treating cases proportionately, (3) demonstrating procedural justice, and (4) exercising judicial control over the legal process.

The meaning of these principles can be seen in their application to any specific area of court management, and most significantly when applied to caseflow management. The administrative principles emphasize the centrality of caseflow management to court performance, as is demonstrated when one considers how basic caseflow management practices<sup>11</sup> correspond to the four HPCF administrative principles:<sup>12</sup>

- **Giving every case individual attention**
  - *Early court intervention*: The start of each case triggers the effort to resolve the case as early in the process as reasonable and to reduce the time and costs for the parties and the court without sacrificing rights or interests.
  - *Continuous court control*: For each case, realistic pretrial schedules are established so that progress to each scheduled event is appropriate and can be monitored to minimize unnecessary delay.
- **Treating case proportionately**
  - *Differentiated case management*: Cases are screened in terms of complexity, priority, and other aspects of importance so as to best allocate the amount of time and type of appropriate proceedings that each case warrants.
- **Demonstrating procedural justice**
  - *Procedural fairness*: Individual court users’ perceptions of how they are treated in court, and also whether the court’s process of making decisions seems fair, are both recognized as important by all judges and court staff members.<sup>13</sup>
- **Exercising judicial control of the legal process**
  - *Meaningful pretrial court events*: The court communicates to all participants in the legal process the purpose, deadlines, and possible outcomes of all proceedings to ensure all events occur as scheduled and contribute substantially to the resolution of the case.
  - *Firm and credible trial dates*: Trials regularly commence on the first date scheduled after the court determines no other case resolution options are possible.

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<sup>11</sup> See D. Steelman, with J. Goerdt and J. McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (NCSC, 2004 edition), pp. 1-20, available online at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1498>; <http://www.justpal.org/LinkClick.aspx?fileticket=K0zY2upe4OM%3D&tabid=103&mid=449>; or <http://www.yourhonor.com/pdfs/PDP10/Caseflow.pdf>.

<sup>12</sup> See B. Ostrom, “Caseflow Management Profile” (draft, December 2011).

<sup>13</sup> “Procedural justice” and “procedural fairness” are themes most prominently explored by Professor Tom R. Tyler. See T. Tyler, *Why People Obey the Law* (Princeton University Press, 2006). For a judicial perspective, see K. Burke and S. Leben, “Procedural Fairness: A Key Ingredient in Public Satisfaction” (A White Paper of the American Judges Association), 44 *Court Review* (2008) 4, <http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2BurkeLeben.pdf>. On procedural fairness in relation to caseflow management, see Steelman, et al., *Caseflow Management* (2004), “Maintaining Equality, Fairness, and Integrity,” pp. 82-83.

- *Managing court events after initial disposition:* The court assures compliance with its judgments, controls the pace of such post-sentence court events as those relating to probation violations and postconviction review petitions, and includes attention to such events in its management of how court resources are allocated.

### C. Dominant Court Management Culture

The “culture” of a court can be seen as the set of beliefs and behaviors shaping “the way things get done” by the judges and court managers who are responsible to assure that cases are resolved fairly and expeditiously.<sup>14</sup> The culture of a court is determined by the level of solidarity (beliefs about the importance of working toward common ends) and sociability (beliefs about the importance of working cooperatively with one another) among judges and managers. As Figure 2 illustrates, classifying courts in terms of high or low solidarity and sociability produces four distinct types of cultures – communal, networked, autonomous, and hierarchical.

**Figure 2. Court Culture Classifications<sup>15</sup>**

		<b>Sociability</b>		
		<b>High</b>		
<b>Solidarity</b>	<b>Low</b>	<p style="text-align: center;"><b>Communal</b></p> <p>Judges and administrators emphasize getting along and acting collectively.</p>	<p style="text-align: center;"><b>Networked</b></p> <p>Judges and administrators emphasize collaborative work environments and effective communications.</p>	<b>High</b>
	<b>High</b>	<p style="text-align: center;"><b>Autonomous</b></p> <p>Judges and administrators emphasize allowing judges to have wide discretion in conducting their business.</p>	<p style="text-align: center;"><b>Hierarchical</b></p> <p>Judges and administrators emphasize established rules and procedures to meet court-wide objectives.</p>	
		<b>Low</b>		

Among judges, court managers, and lawyers, these four cultural types reflect different notions about how courts should manage the felony adjudication process.<sup>16</sup> What should judges do to promote case resolution? Should they limit themselves to their traditional role as impartial decision makers on questions of fact and law? What role should court administrators have in managing court caseloads? Figure 4 shows the bearing of a court’s management culture on such questions as these.

<sup>14</sup> B. Ostrom, C. Ostrom, R. Hanson, and M. Kleiman, *Trial Courts as Organizations* (Philadelphia, PA: Temple University Press, 2007), p. 22. That publication is based on the authors’ report entitled, “The Mosaic of Institutional Culture and Performance: Trial Courts as Organizations” (November 2005), produced with the support of the National Institute of Justice (2000-IJ-CX-0030), and available online at <https://www.ncjrs.gov/pdffiles1/nij/grants/212083.pdf>.

<sup>15</sup> Source: B. Ostrom and R. Hanson, “High Performance Court Framework: A Roadmap for Improving Court Management” (NCSC, 2010), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/2040>.

<sup>16</sup> B. Ostrom, et al., *Trial Courts as Organizations*, *supra*, p. 69.

**Table 4. Understanding the Values and Features of Different Court Management Cultures\***

Management Culture	Communal	Networked	Autonomous	Hierarchical
<b>Key Cultural Values</b>	<ul style="list-style-type: none"> <li>Flexibility</li> <li>Negotiation</li> <li>Trust</li> <li>Collegiality</li> <li>Egalitarian</li> </ul>	<ul style="list-style-type: none"> <li>Judicial Consensus</li> <li>Innovation</li> <li>Visionary</li> <li>Teamwork</li> <li>People Development</li> </ul>	<ul style="list-style-type: none"> <li>Self-managing</li> <li>Continuity</li> <li>Independence</li> <li>Sovereignty</li> <li>Personal Loyalty</li> </ul>	<ul style="list-style-type: none"> <li>Rule Oriented</li> <li>Modern Administration</li> <li>Standard Operating Procedures</li> <li>Chain of Command</li> <li>Merit</li> </ul>
<b>Dominant Caseflow Management Style</b>	There is general agreement on performance goals, but centralized judge or nonjudge leadership is downplayed and creativity is encouraged. As a result, individual judges apply court rules, policies, and procedures in alternative, acceptable ways.	Judicial expectations concerning the timing of key procedural events come from a working policy built on the deliberate involvement and planning of the entire bench. Follow through on established goals is championed and encouraged by a chief or presiding judge.	There is limited discussion and agreement on the importance of court-wide performance goals. Individual judges are relatively free to make their own determinations on when key procedural events are to be completed.	Judges are committed to the use of caseflow management (e.g., early case control, case coordination, and firm trial dates) with the support of administrative and courtroom staff. Written court rules and procedures are applied uniformly by judges.
<b>Caseflow Management Improvement Potential</b>	<p>Either a <b>Communal</b> or a <b>Networked</b> court management culture can support good practices in caseflow management, but only under certain conditions. The primary requirements for success are that the judges:</p> <ul style="list-style-type: none"> <li>Agree to use identified best practices for case management.</li> <li>Assign a high value to maintaining consistency in the use of those practices.</li> <li>Be effective in socializing new judges to the practices and to the importance of maintaining consistency in their implementation.</li> </ul>		<p>In this culture It can be very difficult to improve case management, because there are no consistent policies established or implemented for case management. Consequently, the bar will not consistently be properly prepared for meaningful court events, and they may practice a form of judge shopping. If all or most judges agree to implement good case management practices, those practices will steadily erode as judges turn over.</p>	<p>In this culture, the judges cede policy-making to a governing judge or committee and agree to implement the policies adopted. The culture can be supportive of caseflow management because it results in the implementation of consistent policies. Maximum case management information system support can often be available because there is a mechanism for making decisions about the way in which the process will work in all chambers and a way to make decisions about the content, format, and use of standard performance reports.</p>

\* Sources: B. Ostrom, R. Hanson, C. Ostrom, and M. Kleiman, "Court Cultures and their Consequences," *Court Manager*, Vol. 20, No. 1 (Spring 2005), 14, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/986>; T. Clarke and J. Greacen, "High Performance Court Case Management Profile," presentation at the Western Regional Conference on Caseflow Management and the High Performance Courts Framework (November 2011).

## D. Performance Measurement

In order to determine how well a court is performing in terms of time standards and other relevant expectations, the court must make use of information technology and other means at its disposal to assess its actual operations in view of such expectations. Performance measurement provides an assessment of how courts relate to established performance standards, desired outcomes, and management objectives. Successful integration of these practices into court behavior requires numerous other performance measures beyond time standards. Based on the Trial Court Performance Standards, the set of core performance measures, called “CourTools,” is particularly helpful.<sup>17</sup> Together, the strategic “customer” and “internal operating” perspectives discussed above in Section II.A offer four broad areas for measurement of felony caseflow management performance: (1) effectiveness, (2) procedural satisfaction, (3) efficiency, and (4) productivity. See Table 5.

**Table 5. Indicators of High Performance in Felony Caseflow Management<sup>18</sup>**

Indicator	Definition	Benchmark
<i>Effectiveness (measures the match between stated goals and their achievement)</i>		
CourTools Measure 5, Trial Date Certainty	The likelihood that a case will be tried on or near the first scheduled trial date, as measured by the number of times cases listed for trial must be scheduled and rescheduled for trial before they go to trial or are disposed by other means.	Average number of trial dates per trial list case: <ul style="list-style-type: none"> <li>• Acceptable: an average of 2.0 or fewer settings per case</li> <li>• Preferred: an average of 1.5 or fewer settings per case</li> </ul>
Compliance with Court Orders, including CourTools Measure 7, Collection of Monetary Penalties	Payments collected and distributed within established timelines, expressed as a percentage of total monetary penalties ordered in specific cases.	Benchmarks set by court for following goals: <sup>19</sup> <ul style="list-style-type: none"> <li>• To hold defendants accountable for their actions</li> <li>• To improve the enforcement of court judgments</li> <li>• To reduce judicial and clerical efforts required to collect court-ordered financial obligations</li> <li>• To ensure prompt disbursement of court collections to receiving agencies and individuals</li> <li>• To achieve timely case processing</li> </ul>

<sup>17</sup> See NCSC, “CourTools: Trial Court Performance Measures,” <http://www.courtools.org/Trial-Court-Performance-Measures.aspx>.

<sup>18</sup> Source: David Steelman refinement in November 2013 of felony caseflow management performance indicators suggested by Brian Ostrom in December 2011.

<sup>19</sup> See Michigan State Court Administrative Office, *Trial Court Collections Standards & Guidelines* (July 2007).

**Table 5 (continued). Indicators of High Performance in Felony Caseflow Management**

Indicator	Definition	Benchmark
<i>Procedural Satisfaction (measures whether court is providing fair and accessible service)</i>		
CourTools Measure 1, Access and Fairness	Ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.	<ul style="list-style-type: none"> <li>• A survey on access and fairness is conducted at least once each year.</li> <li>• The survey results are discussed in a meeting of all judges each year, and any result less favorable than the prior year is a topic for appropriate remedial action.</li> </ul>
<i>Efficiency (measures return on effort from resource application management in key processes)</i>		
CourTools Measure 2, Clearance Rate	The number of outgoing cases as a percentage of the number of incoming cases.	100% clearance rate each year
CourTools Measure 3, Time to Disposition <ul style="list-style-type: none"> <li>• Date of filing of complaint with court to date of sentencing</li> </ul>	The percentage of cases disposed or otherwise resolved within established time frames.	Model Time Standards for State Trial Courts (NCSC, 2011): <ul style="list-style-type: none"> <li>• 75% within 90 days, 90% within 180 days, 98% within 365 days</li> </ul>
CourTools Measure 4, Age of Pending Caseload <ul style="list-style-type: none"> <li>• Age of all active pending cases</li> <li>• Percent of active pending cases that are "backlogged"</li> </ul>	The age of the active cases pending before the court, measured as the number of days from filing until the time of measurement. Cases that are "backlogged" are those that have been pending longer than the time standard for felony cases.	Model Time Standards for State Trial Courts (NCSC, 2011): <ul style="list-style-type: none"> <li>• No more than 25% beyond 90 days, 10% beyond 180 days, 2% beyond 365 days</li> </ul>
Elapsed time between major case processing events: <ul style="list-style-type: none"> <li>• Date of arrest to date of first appearance</li> <li>• Date of filing of criminal complaint to date of arraignment on indictment or information</li> <li>• Date of filing of complaint to date of disposition by plea or trial</li> </ul>	The percentage of cases meeting time standards for the elapsed time between key intermediate case events. (This indicator complements CourTools Measures 3 and 4.)	Model Time Standards for State Trial Courts (NCSC, 2011): <ul style="list-style-type: none"> <li>• In 100 % of cases, the time elapsed from arrest to initial court appearance should be within that set by state law appearance.</li> <li>• In 98% of cases, the arraignment on the indictment or information should be held within 60 days [filing to arraignment].</li> <li>• In 98% of cases, trials should be initiated or a plea accepted within 330 days [complaint to plea or trial].</li> </ul>

**Table 5 (continued). Indicators of High Performance in Felony Caseflow Management**

Indicator	Definition	Benchmark
<i>Productivity (measures whether process make best use of judge and staff time)</i>		
CourTools Measure 10, Cost per Case	The average cost of processing a single case, by case type.	<ul style="list-style-type: none"> <li>• Statewide average</li> <li>• Average for courts of like size in state</li> </ul>
Judicial and staff case weights by major case type	The average amount of time that judges and staff spend to handle each case of a particular type, from case initiation/filing through all post-judgment activity.	<ul style="list-style-type: none"> <li>• Statewide average</li> <li>• Average for courts of like size in state</li> </ul>
Meaningful court events	The expectation is created and maintained that case events will be held as scheduled and will contribute substantially to progress toward resolution. Courts that choose to monitor continuances routinely make a record of (a) the type of event continued; (b) which party made the request; and (c) the reason the request was granted.	<ul style="list-style-type: none"> <li>• The official purpose of any event (e.g., motion hearing, pretrial conference) is achieved more often than not, or else substantial progress is made toward case resolution, as through a plea agreement.</li> <li>• After arraignment on an indictment or information, more cases are settled by plea or other nontrial means before they are listed for trial than after being listed for trial.</li> <li>• The average number of settings for each kind of court event before trial is less than 1.5 per case.</li> <li>• The most common reasons for the grant of continuances are regularly identified by the court and discussed by court, prosecution and defense leaders to reduce the frequency of their occurrence.</li> </ul>



## E. Performance Management

To help a court assure that its actual performance is consistent with relevant expectations, judges and court managers must take responsibility to identify and apply practices and procedures in concert with criminal justice partners that will promote effective and efficient application of available time and other resources. “Performance management” efforts refine court practices on the basis of evidence-based innovations. There is an extensive amount of literature on caseflow management showing that there are proven techniques for the management of case progress, regardless of the type of case.<sup>20</sup>

**Importance of Taking an Integrated Approach to Control of Case Progress.**<sup>21</sup> In a high-performance court, the activities of judges, court managers, court staff, and other case participants can and should be managed in consideration of the manner in which those activities interact with one another. Under the rules of court procedure for any type of case, the process is one that follows four broad stages: (1) claims relating to whether a matter requires the court process; (2) development through discovery, disclosure, or expert inquiry of a factual basis for a court decision; (3) actual resolution by trial or nontrial means; and (4) actions relating to compliance with the court’s decision. While any matter proceeds through these broad stages, there is a process operating in parallel to court procedures, by which court personnel create the case record, update the record with subsequent filings, record the manner of disposition, and keep a record of any post-judgment proceedings.

Caseflow management for any case type can also be properly understood as requiring attention at all four of these broad stages of case processing. See Table 6 for a representation of how caseflow management aligns with court procedures and manual or automated recordkeeping. With specific examples for felony cases, those four main stages are the following:<sup>22</sup>

- **Exercising Early Control and Triage:** Empirical evidence from courts around the country supports the proposition that the achievement of prompt and affordable justice in criminal cases is promoted by early court involvement and control of case progress. This should begin at the initial appearance, and it involves court efforts to determine probable cause for any warrantless arrest and for felony prosecution; determination of pretrial release; determination of eligibility for indigent defense services; case screening with prosecution and defense counsel to determine mental health issues or need for a court interpreter; and determination if a case

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<sup>20</sup> For discussion of the application of such techniques in civil, criminal, traffic, domestic, juvenile, and probate cases, see Steelman, Goerdts and McMillan, *Caseflow Management: The Heart of Court Management in the New Millennium* (Williamsburg, VA: NCSC, 2004 edition), Chapters II and III, <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/ctadmin&CISOPTR=1498>.

<sup>21</sup> In an effort funded by the State Justice Institute, consultants from the NCSC and court managers from all of the different levels of trial courts found for purposes of process re-engineering that the trial-level court process is one that, regardless of case type, has substantial common elements across four stages of case processing – case initiation, pretrial, adjudication, and post-trial – for which broad and meaningful improvements in day-to-day case processing are possible. See D. Steelman and P. Wentland, *Process Improvement and Re-engineering Efforts in New Hampshire Courts* (NCSC, 2005), p. 2.

<sup>22</sup> See M. Solomon, *Improving Criminal Caseflow* (Bureau of Justice Assistance Criminal Courts Technical Assistance Project, American University, 2008). See also, Steelman, et al., *Caseflow Management* (2004), pp. 32-38.

**Table 6. Aligning Caseflow Management Practices with Requirements of Court Procedures, Records Management, and Case Management Information Systems**

General Stage of Court Proceedings	Caseflow Management	Criminal Case Proceedings	Civil, Family, or Probate Case Proceedings	Records Management and CMIS
Presentation of Claims	Early Case Evaluation and Triage	Charges, Arraignment, Initial Plea	Complaint, Responsive Pleadings	Case File and Record Creation
Preparation for Resolution	Assurance of Meaningful Court Events	Discovery Exchange and Motions	Discovery Exchange and Motions	Case File or Record Update
Resolution of Claims	Protection of Trial Date and Trial Integrity	Dismissal, Guilty Plea, or Trial	Dismissal, Settlement, or Trial	Finding and Judgment Record
Enforcement of Resolution	Assurance of Judgment Compliance	Jail, Fine, Probation Supervision	Execution or Modification of Judgment	Post-Judgment Record

can be resolved by an early plea, referred to diversion or a problem-solving court program, or made subject to a scheduling order for differentiated case management (DCM).

- Assuring Meaningful Court Events before Trial:** Almost all criminal cases are resolved by negotiation between the parties, and the most recent available data indicate that fewer than 5% of all criminal cases are resolved by trial. The central theme of any case management approach should therefore be to promote circumstances for prosecutors and defense counsel to identify the cases requiring trials as early as is just and feasible, and to reach nontrial outcomes sooner rather than later for all other cases. An optimal time for lawyers to make a decision on whether to try or settle an individual case is typically after they have learned enough about the case but before they have become so committed to the cost of expert witnesses and other expensive discovery that they might as well set a case for trial. Consequently, the essence of case management by the court in criminal cases is to create circumstances for the prosecutors and defense counsel to avoid unnecessary delay in the

resolution of motions (and especially motions to suppress evidence), provision of disclosures and discovery, and realistic discussion of plea prospects.

- **Scheduling for Trial-Date Credibility:** Exposing cases to the realistic expectation of imminent trial is a powerful case management tool for courts to prompt lawyers and parties to prepare their cases, decide whether resolution by trial is necessary, and then be ready for actual trial commencement. A court's ability to create and maintain an atmosphere in which it is more likely than not that trial will commence at or near the first-scheduled trial date is closely associated with timely case disposition.<sup>23</sup> In addition to (a) achieving disposition whenever possible before cases are listed for trial, (b) applying a continuance policy with reasonable consistency, and (c) having some kind of last-minute backup judge capacity, trial date credibility is affected by a court's trial setting practices, including optimizing the level of "overbooking" that may be done.<sup>24</sup>
- **Exercising Control of Post-Judgment Court Events:** Most research on delay reduction and caseflow management has focused on events leading up to trial commencement or entry of a negotiated outcome, and sometimes up to sentencing or the entry of judgment in a noncriminal matter. Yet, a considerable amount of effort in a trial jurisdiction can be directed toward the handling of events after the initial entry of judgment. In any kind of case, case oversight may include monitoring compliance with a judgment, determining the relation of any case to other matters, and even the task of determining when a case can be considered closed.<sup>25</sup> Of greatest concern in the management of felony cases is the manner in which probation violations are managed, whether they involve claims of "technical" violations or of new criminal charges. Drug court and other problem-solving court dockets, such as reentry programs, may require a considerable amount of time for judges, staff, and lawyers. Monitoring compliance with obligations to pay monetary penalties or restitution is another area of concern for probation officers and others. And petitions for postconviction relief or other forms of collateral review must also be managed.

It may be tempting to treat caseflow management techniques as if they were items on a buffet menu, so that a court might choose to implement a technique at one stage of case processing without giving attention to considerations at other stages that might affect the potential success of the chosen technique. For example, the introduction of a court policy limiting continuances might fail unless due attention was given to discovery problems, enforcement of deadlines, prosecution charging and plea negotiation tactics, identification of conflicts for defense counsel, or defense attorney contact with clients.

Indeed, it is important to understand the cascading consequences of actions taken at one phase of a case on those occurring at a different point. Thus, early court intervention can serve to identify cases

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<sup>23</sup> Trial-date credibility is a key measure of trial court performance. See NCSC, *CourTools*, Measure 5, "Trial Date Certainty," [http://www.courttools.org/~media/Microsites/Files/CourTools/courttools\\_Trial\\_measure5\\_Trial\\_Date\\_Certainty.ashx](http://www.courttools.org/~media/Microsites/Files/CourTools/courttools_Trial_measure5_Trial_Date_Certainty.ashx).

<sup>24</sup> See Steelman, et al., *Caseflow Management* (2004), pp. 6-11.

<sup>25</sup> *Ibid.*, pp. 17-19.

suitable for diversion or early disposition, while the early establishment and enforcement of expectations for the completion of discovery can forestall subsequent problems with the scheduling of meaningful pretrial conferences. Court creation of an ongoing expectation that trials will be held on or near the first scheduled trial date has the effect of causing prosecutors and defense attorneys not only to prepare their cases for trial, but also to give cases closer scrutiny in the earlier stages of case progress, so that those likely to be resolved by plea can be addressed sooner rather than later.

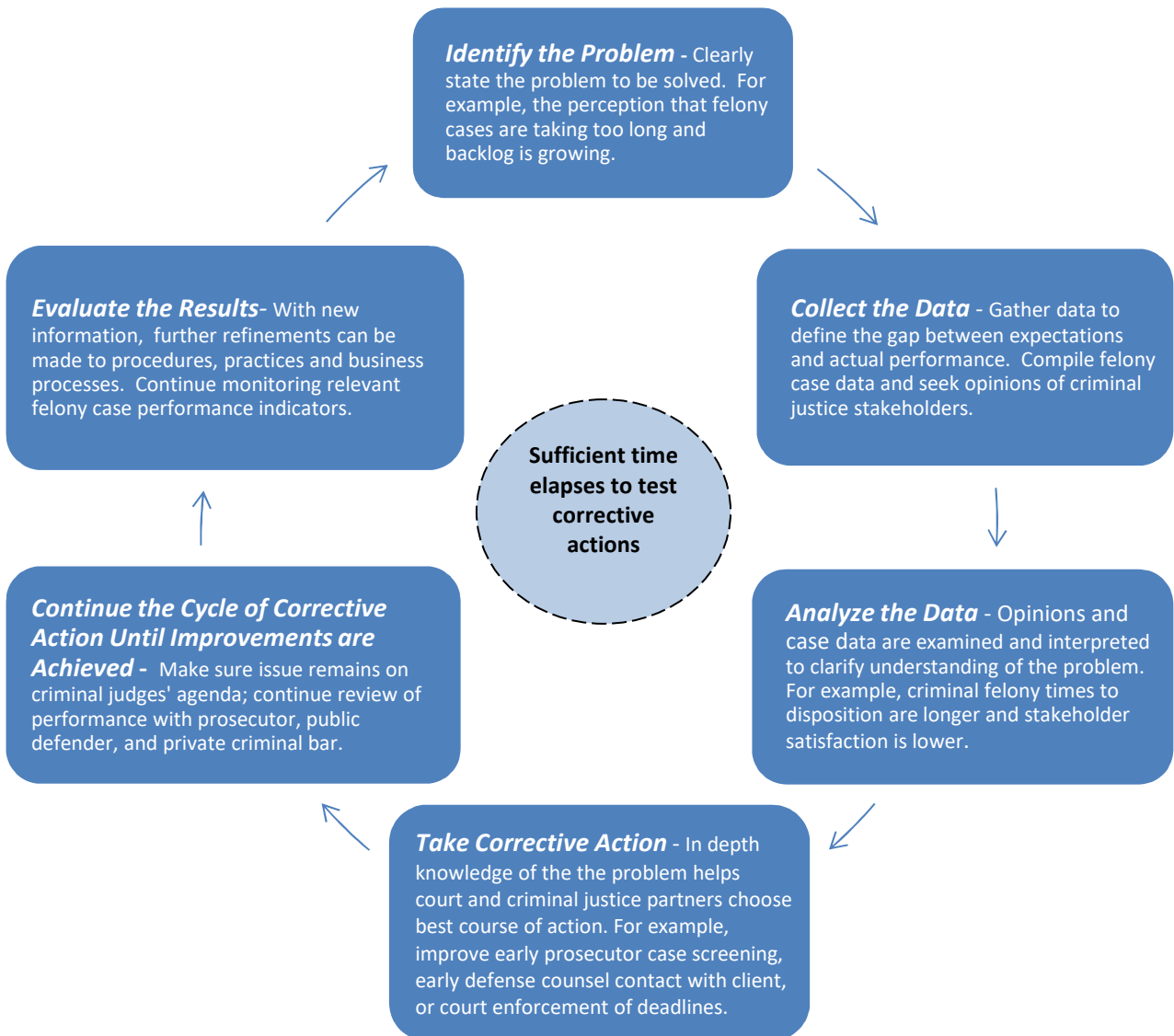
## **F. Quality Cycle**

The steps to develop and implement evidence-based criminal case management improvements can and should proceed in a sensible fashion that allows for refinements to be integrated into the ongoing operation of the criminal justice process. The Quality Cycle is an iterative approach that involves the following steps:

1. Identify the problem
2. Collect the data
3. Analyze the data
4. Take corrective action
5. Evaluate the results
6. Make ongoing refinements based on evaluation of results

With due attention to change management, these steps allow judge leaders and court managers to link together the other elements of the HPCF and support constant performance improvement. The recognized caseflow management practices are best put into operation through the rigor of the Quality Cycle. For an example of how the “Quality Cycle” approach might be applied in an effort to improve felony caseflow management performance, see Figure 3 below.

**Figure 3. An Example of How a “Quality Cycle” Approach Might be Used to Make Evidence-Based Improvements to Felony Caseflow Management<sup>26</sup>**



<sup>26</sup> Source: This example was developed by David Steelman, following the “Family Law Case Example” in Brian Ostrom and Roger Hanson, “High Performance Court Framework: A Roadmap for Improving Court Management” (NCSC, 2010), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/2040>.

## IV. Current National Concerns about Factors Now Affecting State Court Felony Delay

To learn more about the dynamics of felony case processing in state courts that might help explain the national trends illustrated in Figure 1 and Table 1 in Section II above, a team from the NCSC asked state court representatives to respond to a survey on felony case processing challenges and performance.<sup>27</sup> The HPCF was made part of the structure of the survey, so that it was an exploration of felony caseflow management in the context of the four perspectives shown in Table 2 above, which reflect how the interests of participants in the court process are affected by the way a court carries out its operations with regard to felony cases, and which can therefore help efforts to achieve high court performance in this regard: (a) service to customers; (b) internal operating practices; (c) application of key resources to changing circumstances and new challenges; and (d) external support from the public and from funding bodies.

### A. Customer Service to Felony Case Participants

This has to do with how well a court provides service to felony case participants. The survey addressed service in terms of both *procedural satisfaction* and *effectiveness* in meeting stated goals.

**1. Procedural Satisfaction.** Survey responses suggest that most court officials do not appear to contemplate procedures in felony cases in terms of “procedural fairness.” Courts in many jurisdictions make only limited use of practices and procedures for felony cases (such as differentiated case management, or “DCM”) that might allow prosecution and defense to make a full presentation of their cases in proportion to the scope and difficulty of each matter. Among the most significant challenges courts face in terms of procedural satisfaction in felony cases are the following:

- The need for more judges, prosecutors, and indigent defenders
- Limited alternatives to incarceration and substance abuse treatment programs
- Insufficient resources for persons needing mental health services
- Lack of timely sharing of discovery
- Appearance conflicts for attorneys
- Frequent rescheduling of court events
- Attorney gamesmanship

**2. Effectiveness in Meeting Stated Goals.** In many states, felony cases scheduled for trial are not routinely heard on the first scheduled trial date. Compliance with court orders is not monitored very closely by courts. Survey respondents were mixed on whether their respective courts schedule and complete probation violation hearings promptly and within applicable time expectations. Among the

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<sup>27</sup> The survey was conducted under the Criminal Courts Training and Technical Assistance Project, funded by Grant No. 2011-DP-BX-K001 awarded by the Bureau of Justice Assistance. A total of 26 judges and administrators from 15 states responded to the survey. See NCSC, “Analysis of Responses to Critical Needs Survey” (August 2012), available at [\[enter link for document on NCSC website for this project\]](#).

most significant challenges courts face in terms of compliance with stated goals for felony cases are the following:

- Continuances and trial setting practices generally. Attorneys cite discovery problems as a primary reason for delay; most judges are reluctant to deny requests for continuances.
- Challenges to timeliness for felony trials are problems with scientific discovery results (DNA, etc) and competency/responsibility examinations.
- In too many courts, the biggest challenge to establishing and meeting goals is that all judges operate independently of each other.
- Attorney readiness for scheduled appearances and compliance with deadlines for submission of documents are problems.
- Delays in discovery exchange and having attorneys scheduled to be in multiple places at the same time constrain a court's ability to meet goals in many jurisdictions.

## **B. Internal Felony Case Management Operations**

This has to do with how well a court manages the felony case process in terms of *productivity* and *efficiency*. Each of these involves a central theme of caseload management – *court control of felony case progress* – and this is significantly affected by whether the *court culture* among judges and court managers supports high performance.

**1. Indicators of Productivity.** The survey results suggest that most courts routinely monitor and document the average time from arrest and filing to disposition for felony cases. Most also monitor the rescheduling of court events or the average number of scheduled court appearances from filing to disposition for felony cases.

**2. Indicators of Efficiency.** Perhaps only about half of the courts identify and actively manage the backlog of cases older than established benchmarks. In terms of information or data about the age of pending felony cases, only some courts actively monitor the age of pending cases, while others pay some level of attention to pending case age. A majority of courts keep up with their incoming felony caseload by disposing of as many cases as are filed each year. With regard to data about felony case “clearance rates,” most can either give a specific numerical clearance rate or give specific data on filings and dispositions from which a clearance rate can be calculated.

**3. Court Control of Felony Case Progress.** Regarding court exercise of early and continuous control of felony case processing, challenges include the following:

- Prompt transmission of arrest reports by enforcement agencies to the prosecutor's office.
- Making an early determination of a felony defendant's eligibility for representation at public expense and ensuring that defense counsel interviews the client before his or her court appearance.
- Working with the prosecutor's office to assure that early screening of felony cases is done by experienced prosecutors, and that they do not “overcharge” felony cases.

- Working with prosecution and defense to encourage early discovery, no later than the arraignment of a felony defendant on an indictment or information.
- Court consultation with prosecution and defense counsel and setting realistic deadlines for the completion of actions to be taken by each side.
- Early felony case screening by prosecution, defense counsel, and the court to assess relative case complexity and likely outcomes and to identify cases that can be disposed early in the court process are valuable ways to assure that the attention judicial officers give to each felony case is proportional to the needs of that case.
- Although many respondents indicate that their courts are pretty active in their efforts to “triage” cases, formal differentiated case management (DCM) programs are relatively uncommon.

**4. Alternative Disposition Approaches.** To provide for more timely and resource-efficient dispositions in felony cases, as well as to produce more satisfactory results, state courts have generally found such alternative dispositional approaches as felony diversion, settlement conferences, and drug courts or other problem-solving court programs to be successful. The most significant challenges that courts have faced in terms of providing alternative dispositional approaches in felony cases include (a) funding constraints, and (b) stakeholder resistance.

### **C. Court Culture and Case Management Style of Judges**

In terms of felony case management style, it appears from the survey that judges in almost half of the courts are *self-managing*, in that individual judges are relatively free to make their own determinations on when and how key procedural events are to be completed. The word *flexibility* characterizes about one-fourth of the judges, in that they may follow accepted principles for the timing of key procedural events, but are comfortable fashioning their own approach to “do the right thing.” For many fewer courts, the words *judicial consensus* or *rule oriented* would describe the case management style of the judges.

### **D. Use of Key Resources to Meet Felony Case Management Challenges**

This perspective involves how well a court uses its “capital resources” – i.e., its available productive assets, including *court organization*, *human resources*, *information*, and *technology* – to do justice in the face of changing circumstances and new challenges.

**1. Court Organization.** On the question having to do with whether the judges of a court are organized in divisions, survey responses suggest that it is less common for judges to hear felony cases in a separate criminal division than for judges hearing felony matters to hear civil or other case types as well. In a number of courts, cases are assigned on what is essentially an individual calendar basis, while a smaller number use a master calendar system. There can be considerable variation within a state. Management of cases can be affected by the manner in which a clerk of court is elected or appointed, and there is considerable variation in this respect. In a majority of courts, it appears that the responsibility of a trial court chief or presiding judge and trial court administrator are clearly



defined. A number of court officials responding to the survey could not answer this question, however.

**2. Human Resources.** Survey respondents suggested that a wide range of human resource challenges can affect felony case processing in state courts, including the following:

- Court personnel turnover
- The impact of budget cutbacks on court staffing levels
- Judge preferences
- Having staff at multiple locations
- The fact that the court must rely on personnel employed by court-related agencies and not the court

**3. Information Resources.** This is a critical management issue. Although many survey respondents indicated that they have few difficulties in this area, just as many have further steps to take to improve case information. Use of information for evidence-based practices is a relatively new idea that is only in limited use.

**4. Technological Resources.** To assess how well respondents' courts use technology to achieve greater efficiency and quality, the NCSC survey asked questions based on the "capability maturity" model.<sup>28</sup> Although it was originally developed at Carnegie Mellon in the area of software development, a maturity model can be viewed as a set of specific levels to describe how well the behaviors, practices, and processes of a court can reliably and sustainably produce desired outcomes. The term "maturity" relates to the degree of formality and optimization of court processes, ranging from (a) having no more than ad hoc practices, to (b) having formally defined steps that allow the repetition of best practices, to (c) having performance measures used for improved management, and ultimately to (d) using performance measurement data for active optimization of court processes.

Survey responses suggest that few state courts now apply technology to business processes that are ad hoc and undefined. Most court officials perceive that they have technology processes that are sufficiently documented to promote the repetition of best practices, and a number of courts have begun to use technology as a tool to measure performance for improvement of court management.

## **E. Social Value and External Support for Felony Court Operations**

"Social value" involves the level of external support that a court is able to generate, based on how responsive it is to the public (as measured by *public trust and confidence*) and to state or local funding bodies, thereby gaining the *support of legitimizing authorities*.

**1. Public Trust and Confidence.** In terms of public trust and confidence in the judiciary, one important problem for many courts has to do with providing public information about court processes for felonies

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<sup>28</sup> For an understanding of the capability maturity model and its use for integrated process improvement in an organization, see the Carnegie Mellon "CMMI Institute" website at <http://cmmiinstitute.com/>. For an example of the application of the capability maturity model in a court setting, see the US Government Accounting Office (GAO) report at <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-02-584/html/GAOREPORTS-GAO-02-584.htm>.

and other types of cases. For some courts, the survey responses suggest that publicity and the news media are sources of difficulty. The most common means respondents use to demonstrate a record of successful performance to the public is through annual reports.

**2. Support of Legitimizing Authorities.** In terms of support from legitimizing authorities, state court officials must all address issues in their relations with funding bodies over budget issues. Responses to the survey suggest that few courts work with funding bodies to base appropriations explicitly on court performance or the efficient use of public resources.

## **V. Current Examples of Corrective Action Steps Needed in Specific State Trial Courts**

To assist state court officials and their justice partners in addressing such concerns about felony case processing as those summarized above, NCSC consultants engaged in a set of technical assistance efforts. In those efforts, NCSC consultants offered recommendations for specific courts to promote their adoption of promising operational practices relating to due process, efficiency, court and case management, interagency relations, and the image of the courts in the communities that they serve. As one might expect, the following brief review of those technical assistance recommendations confirms the perceptions expressed by state court officials about factors affecting felony delay in response to the survey discussed above.

### **A. Recommendations for Improved Felony Caseflow Management Performance**

Of course, a substantial amount of attention in the technical assistance efforts was given to what might be the best set of interactive caseflow management practices to achieve the end of prompt and affordable felony justice. Almost every report included improvement recommendations for managing each key stage in the process: (1) exercising early control and triage; (2) assuring meaningful court events before trial; (3) scheduling for trial date credibility; and (4) exercising control of post-judgment court events.

It is instructive to see the recommendations that were most common overall:

- Improve disclosure and discovery exchange.
- Improve management of plea negotiations.
- Improve management of continuances.
- Create a culture of having prepared lawyers at every court event.

The recurrence of such recommendations in court after court confirms the high importance of attention to these management concerns. Also important for many courts were other suggestions for early management of the process:

- Prompt law enforcement provision of arrest reports and evidence to prosecutor.
- Making careful provision for structured early judicial intervention.

**Table 7. Examples of Recommendation Actions to Improve Caseflow Management<sup>29</sup>**

Area of Suggested Change in Caseflow Management	Consultant Recommendation	Jurisdiction
<i>Early Intervention and Triage</i>	Prompt arrest reports and evidence to prosecutor	AZ Gila River MI Genesee County WA Grant County
	Improve defense counsel access to in-custody defendants	CA Orange County IL Lake County
	Improve disclosure and discovery exchange	AZ Gila River CA Santa Cruz County CA Orange County FL Ninth Circuit IL Lake County MI Genesee County NH Superior Court NM Association of Counties ND Northwest District WA Pierce County
	Structured early judicial intervention	CA Santa Cruz County CA Orange County IL Lake County
	Improve operation of initial arraignment docket	CA Orange County IL Lake County
	Reform approach to preliminary hearings	CA Santa Cruz County MI Genesee County
	Develop specialized calendars to process selected cases expeditiously	CA Santa Cruz County
	Expand early intervention to all felonies	FL Ninth Circuit
	Expand differentiated case management (DCM) program	LA Jefferson Parish
	Use risk/needs assessment instruments to aid pretrial release decisions	NM Association of Counties
<i>Meaningful Events</i>	Create culture of having prepared lawyers at every court event	AZ Gila River CA Santa Cruz County CA Orange County IL Lake County WA Grant County
	Improve communication among all parties	CA Orange County WA Grant County
	Address delays in crime lab evidence processing	IL Lake County
	Improve criminal settlement conference process	CA Santa Cruz County NH Superior Court
	Greater control of failures to appear	FL Ninth Circuit ND Northwest District

<sup>29</sup> Source: Technical assistance reports by consultants under BJA Criminal Courts Training and Technical Assistance Initiative. For a listing of the reports, see the Appendix, “BJA Criminal Courts Technical Assistance Efforts.”

**Table 7 (continued). Examples of Recommendation Actions to Improve Caseflow Management**

Area of Suggested Change in Caseflow Management	Consultant Recommendation	Jurisdiction
<i>Meaningful Events (continued)</i>	Improve management of plea negotiations	AZ Gila River CA Santa Cruz County CA Orange County FL Ninth Circuit IL Lake County MI Genesee County NH Superior Court ND Northwest District WA Grant County WA Pierce County
	Improve management of continuances	AZ Gila River CA Santa Cruz County CA Orange County IL Lake County LA Jefferson Parish NH Superior Court ND Northwest District WA Grant County
	Adopt written continuance policy	NH Superior Court WA Grant County
	Strict court enforcement of timetables and expectations, with sanctions if appropriate	WA Grant County
<i>Trial-Date Certainty</i>	Resolve more cases before trial list	FL Ninth Circuit WA Grant County WA Pierce County
	Improve attorney estimates of trial date readiness	IL Lake County WA Grant County
	Establish firm trial dates	LA Jefferson Parish WA Grant County
	Make operational improvements in trial setting and assignment	CA Orange County MI Genesee County
<i>Post-Judgment Court Events</i>	Greater efficiency in handling probation violations	CA Orange County NM Assn of Counties

**B. Recommendations for Change in Local Culture**

Of particular note is the scope of the recommendations offered in the technical assistance efforts – that is, the fact that they are not limited to just caseflow management practices, but that they involve a much broader set of suggested changes in each local legal community. In fact, consultants made recommendations in many jurisdictions that urged a critical change in the local court culture – the set

of shared expectations about how the criminal court process should operate. Table 8 presents the technical assistance recommendations bearing on internal court culture and the culture of the local legal community.

**Table 8. Examples of Corrective Actions Recommended for Local Legal Cultures<sup>30</sup>**

Aspect of Suggested Change in Local Culture	Consultant Recommendation	Jurisdiction
<i>Exercise of Court Leadership of Entire Criminal Justice Community</i>	Adopt and publish formal case management plan	AZ Gila River AZ Santa Cruz AZ Yavapai CA Santa Cruz County
	Improve court coordination with system partners	AZ Gila River AZ Santa Cruz AZ Yavapai CA Santa Cruz County CA Orange County FL Ninth Circuit LA Jefferson Parish ND Northwest District WA Grant County
<i>Internal Court Relations and Practices Among Judges</i>	Build greater consistency among judges' adjudication and courtroom practices	CA Santa Cruz County IL Lake County
	Consider consistency and best practices in calendaring judicial work weeks	LA Jefferson Parish
	Report caseflow timelines and measures by division to promote competition among judges in meeting goals	LA Jefferson Parish
	Consider establishing local guidelines for voir dire to allow for improved consistency and compliance with rules	LA Jefferson Parish
	Standardize use of court forms by judiciary	MI Genesee County
<i>Caseflow Management Education and Training</i>	Include training sessions on caseflow management during judicial conference or at least once annually	AZ Santa Cruz AZ Yavapai LA Jefferson Parish

The most frequent area of suggested change was for the court to exercise greater leadership, especially through greater coordination with prosecution, the defense bar, and other criminal justice partners. A second common theme had to do with the internal culture of a court, in terms of the level of consistency in practices from one judge to the next. In one jurisdiction, there was a recommendation that caseflow management education and training programs be scheduled and held each year.

<sup>30</sup> Source: Technical assistance reports by consultants under BJA Criminal Courts Training and Technical Assistance Initiative. For a listing of the reports, see the Appendix, "BJA Criminal Courts Technical Assistance Efforts."

### C. Recommendations for Innovation and Change in Allocation of Key Resources

Also included among the recommendations offered in the technical assistance efforts were a variety of suggestions for courts to make innovative changes in the manner of their application of key resources. Recommendations for seeking additional resources were limited to what might predictably yield a demonstrable “return on investment” in terms of cost savings in another area, such as the creation of a pretrial services unit to reduce local pretrial detention costs. Much more common were changes in the organization and structure of court dockets, as Table 9 indicates.

**Table 9. Examples of Recommended Innovations in the Application of Key Resources<sup>31</sup>**

Resource Area for Suggested Change	Consultant Recommendation	Jurisdiction
<i>Court Organization</i>	Consider holding problem solving (drug court and DUI court) on civil days or certain criminal days	LA Jefferson Parish
	Consider extension of chief judge term beyond two years so that priorities of court can be addressed	LA Jefferson Parish
	Create pretrial services unit for felony cases	LA Jefferson Parish
	Consider options to promote more early resolution of felony charges in limited-jurisdiction courts	MI Genesee County
	Explore possibility of hybrid-team assignment system	MI Genesee County
	Establish probation violation and bench warrant calendars	MI Genesee County
	Consider direct felony filing in general jurisdiction court	NH Superior Court
	Consider scheduling cases at staggered times, including at least a morning and afternoon docket, to reduce waiting times	WA Grant County
<i>Human Resources</i>	Have circuit court judges make better use of their judicial assistants	FL Ninth Circuit
	Encourage more active participation of calendaring hearings by judicial staff	MI Genesee County
	Improve indigent representation	IL Lake County MI Genesee County ND Northwest District
	Improve court Interpreter system	IL Lake County
<i>Information Resources</i>	Obtain a monthly report from the Sheriff about the pretrial detainee population	LA Jefferson Parish
	Develop means to exclude warrant time from case aging	IL Lake County
	Develop accurate, timely, and useful caseflow management data	AZ Santa Cruz AZ Yavapai CA Santa Cruz County CA Orange County MI Genesee County WA Grant County WA Pierce County

<sup>31</sup> Source: Technical assistance reports by consultants under BJA Criminal Courts Training and Technical Assistance Initiative. For a listing of the reports, see the Appendix, “BJA Criminal Courts Technical Assistance Efforts.”

**Table 9 (continued). Examples of Recommended Innovations in the Application of Key Resources**

Resource Area for Suggested Change	Consultant Recommendation	Jurisdiction
<i>Information Resources (continued)</i>	Develop plan for review of case age and reduction of backlogs	CA Santa Cruz County IL Lake County ND Northwest District WA Grant County
	Gather and analyze data on cases washing out before initial pretrial conference	ND Northwest District
	Consolidate proceedings to reduce redundancy	CA Orange County
	Review algorithm for case assignment (allotment) to assure balance among all divisions	LA Jefferson Parish
	Gather and regularly review failure-to-appear (FTA) and open warrant information	LA Jefferson Parish ND Northwest District
	Streamline management of multi-defendant cases	MI Genesee County
	Reduce conflicts among courtrooms on availability of attorneys	MI Genesee County
<i>Technology Use</i>	Consider options for electronic exchange of disclosure materials	IL Lake County WA Grant County
	Improve delivery of information and reporting to Bond Court	IL Lake County
	Expand use of audio-video appearances	MI Genesee County

Some recommendations shown in Table 9 had to do with the manner in which human resources were being deployed. Some had to do with the manner in which judges made use of their chambers support staff. Others had to do with resources outside the court, such as the organization of indigent defense services, and that might not be available among court employees, such as the provision of court interpreters.

Effective use of information resources has long been recognized as an important element of successful caseflow management.<sup>32</sup> Table 9 shows that most common among the technical assistance recommendations in this area were those that had to do with assuring the availability of basic information for managing case progress – i.e., the need to develop accurate, timely, and useful caseflow management data; and the need to develop means for review of case age and reduction of backlogs. Others had to do with problems that predictably arise in the management of case progress, including reports on the number and length of stay for pretrial detainees, reports on the status of outstanding warrants, identification of conflicts in multi-defendant cases, and scheduling conflicts for attorneys set for appearances in more than one courtroom at the same time.

<sup>32</sup> See B. Mahoney, A. Aikman, P. Casey, V. Flango, G. Gallas, T. Henderson, J. Ito, D. Steelman, and S. Weller, *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts* (NCSC, 1988), pp. 199-200, <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/7>. See also, Steelman, et al., *Caseflow Management* (2004), pp. 83-84.

Finally, Table 9 includes recommendations about improved use of technology. It is interesting that all three examples relate to greater effectiveness and efficiency at the early stages of court processing: (1) greater capacity for regular provision of information for use in making pretrial release (“Bond Court”) decisions; (2) use of audio-video technology for such purposes as arraignments and other events in which a defendant may be detained and his or her physical presence is not required in the courtroom; and (3) use of technology to promote more efficient transmission and disclosure of digital evidence.

**D. Examples of Recommended Corrective Actions to Improve External Support**

In the technical assistance efforts under the BJA initiative, some – but not much – attention was given to how external support from the public and from funding authorities might be promoted. As Table 10 shows, however, some jurisdictions were able to recognize the importance of working with local funding authorities in such areas as mental health and corrections.

**Table 10. Examples of Corrective Actions Relating to Promoting External Support<sup>33</sup>**

External Support Area for Suggested Change	Consultant Recommendation	Jurisdiction
<i>Public Trust and Confidence</i>	Publicize results of court continuances granted	CA Santa Cruz County
<i>Support of Funding Bodies</i>	Address issues of pretrial detainees with mental health issues	NM Association of Counties
	Avoid undue case processing impact on local government costs for jail population	LA Jefferson Parish NM Association of Counties

**VII. Creating a Court Culture that Supports Successful Felony Caseflow Management**

How might we correct the relative inability of state trial courts after 2000 to maintain the level of timely felony dispositions achieved in the 1990s? The obvious answer – to add more judicial resources – is difficult in times of restricted budgets. Indeed, the national data do not seem to support such a proposed solution, since state court felony workloads increased less than total numbers of general-jurisdiction trial court judicial officers between 1996 and 2006. If the national data for felony cases in state trial courts show much poorer results after 2000 in terms of timely dispositions, and if more resources is not necessarily the answer, what other steps should be considered?

One possible approach would be to renew our emphasis on the importance and techniques of caseflow management, through such means as increased training and educational programs, expanded technical assistance to the courts, and the dissemination of more materials to explain the key concepts of caseflow management. Although each of these steps might be worthwhile, it is not clear that a

<sup>33</sup> Source: Technical assistance reports by consultants under BJA Criminal Courts Training and Technical Assistance Initiative. For a listing of the reports, see the Appendix, “BJA Criminal Courts Technical Assistance Efforts.”



renewed emphasis on the essential elements of caseflow management would alone produce any different outcomes.

If a proponent of caseflow management improvements hopes to succeed with any substantial changes, he or she must be prepared to deal with how judges and court managers approach court work (“court culture”) and how judges, lawyers, and others expect cases to progress from initiation to conclusion (“local legal culture”).

### **A. Identifying the Current Local Court Culture**

Caseflow management practices will always be affected by the court culture, so their execution must be undertaken within the context of the actual court management culture in a jurisdiction, as described above in Section III.C. It is therefore critical that judge leaders and court managers wishing to improve felony caseflow management understand the court culture in which they are working. To do otherwise sets the court up for failure.

Judges and court managers seeking to improve caseflow management for criminal cases should use the “Court Culture Assessment Instrument”<sup>34</sup> to identify what decision-making style judges currently use for case management and what style they would prefer to use. They should compare that to the style preferred by court administrators. A discussion on how to make a transition from the current to the desired decision style can be part of the “Quality Cycle” process of identifying the specific kinds of caseflow management techniques that might be needed for improvement.

### **B. Understanding the Symptoms and Causes of the Problem in a Local Culture**

How does an advocate of improved caseflow management encourage trial courts, judges, and local legal communities to embrace and sustain evidence-based practices for high performance over the long-run, without constantly slipping back into the same problems all the time? What are the symptoms of the problem?

- No sustainable change;
- Re-occurring problems;
- No serious, data-driven problem identification;
- No collective sense of urgency about improvements; and
- No consistent leadership.

What are the underlying problems? Professors Ron Heifetz and Marty Linsky of the Harvard Business School perceive that organizations face two different types of problems – technical and adaptive – that must be addressed in different ways to ensure lasting improvement:

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<sup>34</sup> See National Archive on Criminal Justice Data, “Understanding Court Culture and Improving Court Performance in 12 Courts in California, Florida and Minnesota, 2002” (ICPSR 20366) by Brian J. Ostrom, Charles W. Ostrom, Roger A. Hanson, and Matthew Kleiman, at ‘Dataset(s)>DS0:Study-Level Files: Documentation: Questionnaire.pdf,’ <https://www.icpsr.umich.edu/icpsrweb/NACJD/studies/20366?q=%22To+protect+respondent+privacy+certain+identifying%22>.

Problems that we can solve through the knowledge of experts or senior authorities are technical challenges. Problems that the experts cannot solve are called adaptive challenges. Solving technical problems involves an appeal to the mind, to logic, and to the intellect. Most social problems are adaptive. They are not resolved with a logical argument. Organizations, communities, and individuals would prefer to treat adaptive problems as technical ones. That way, we could solve the problem without changing, taking a loss, or giving up anything. Adaptive challenges lie in the stomach and the heart. To solve them, we must change people's values, beliefs, habits, ways of working, or ways of life.<sup>35</sup>

For judges and court administrators in a court that has been able to create and maintain a local culture that is supportive of caseload management, making adjustments is primarily a matter of addressing "technical" problems, for which ready-made, tactical solutions may already exist with ample evidence of their efficacy. Many caseload management problems may be complex, and yet they may often be no more than an exercise in finding technical solutions to technical problems. For example, developing and maintaining capacity to track and record every continuance motion, which party requested a continuance, and the reason for the continuance may be complex, and yet it is essentially a technical problem.

Adaptive problems, on the other hand, have no ready-made solutions. How, for example, can a court introduce and apply a continuance policy, which most of its judges will consistently follow most of the time, so that it becomes clear to lawyers that any request to continue a trial date is more likely than not to be denied in the absence of exceptional circumstances?

The solutions to adaptive problems have to be invented, and they require a fundamental change in the attitudes, values, and beliefs of those with the problem. The biggest reason for the lack of sustainable change is the failure to embrace adaptive solutions.

### **C. Importance of Acting within the Local Culture to Promote Adaptive Change<sup>36</sup>**

When leaders promote change and improvement (challenging the status quo), how can they minimize resistance and backlash? What must perceptive leaders understand to more easily persuade people to follow? How can sustainable change be achieved in any one of the four dominant kinds of court management culture identified above?

Successful leaders accomplish change by both challenging the organizational culture and conforming to it. That is, they balance their challenge to the organizational status quo with the need to conform to that organizational culture. If they engage in too much challenging, they will be rejected. If they

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<sup>35</sup> R. Heifetz and M. Linsky, "When Leadership Spells Danger: Leading Meaningful Change in Education takes Courage, Commitment, and Political Savvy," *Educational Leadership* (April 2004) 33, at 35, [http://oln.educationnorthwest.org/webfm\\_send/14](http://oln.educationnorthwest.org/webfm_send/14).

<sup>36</sup> See R. Goffee and G. Jones, *Why Should Anyone Be Led by You? What It Takes to Be an Authentic Leader* (Harvard Business Press, 2006).

conform too much, they will be ineffective. Good leaders “tease” the organization. They conform “enough” but don’t lose their insistence on change.

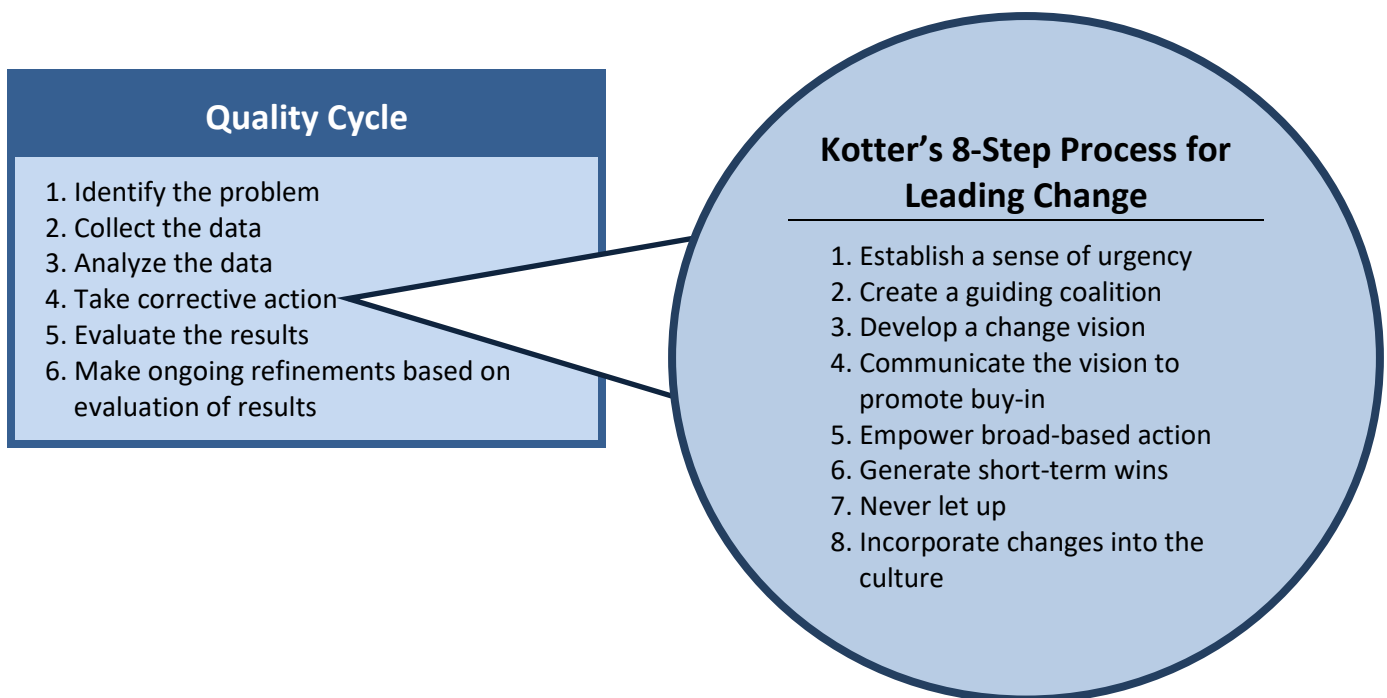
#### D. Using the Eight-Step Process to Lead Change

The “Quality Cycle” approach to creating a high-performance court culture is not self executing. To “take corrective action” (Step Four in the Quality Cycle), it is necessary to have a strategic approach. One valuable approach is to apply the “8-Step Process for Leading Change” devised by Dr. John P. Kotter.

Based on many years of research, Kotter has concluded that 70% of all major change efforts in organizations fail. The reason he offers is that organizations often do not take a holistic approach required to complete the desired change. For a graphic display of how that process might be conceived in relation to the Quality Cycle, see Figure 4. For a brief description of each step in the process, see Table 11.

By following a disciplined approach such as the eight-step process, Kotter maintains that organizations like a court can avoid failure and achieve what Heifetz and Linsky would call adaptive change. By improving their ability to change, he argues, organizations can increase their chances of success, both today and in the future. Without ability to adapt continuously, he says that organizations cannot thrive.

**Figure 4. John Kotter’s Change Process and the “Quality Cycle”<sup>37</sup>**



<sup>37</sup> See Kotter International, “8-Step Process for Leading Change,” <http://www.kotterinternational.com/our-principles/changesteps/changesteps>, based on John P. Kotter, *Leading Change* (Harvard Business Review Press, 1996).

**Table 11. Kotter’s 8-Step Process for Leading Change<sup>38</sup>**

No.	Step	Description
1	Establish a sense of urgency	Help others see the need for change and they will be convinced of the importance of acting immediately.
2	Create a guiding coalition	Assemble a group with enough power to lead the change effort, and encourage the group to work as a team.
3	Develop a change vision	Create a vision to help direct the change effort, and develop strategies for achieving that vision.
4	Communicate the vision to promote buy-in	To promote buy-in, make sure as many as possible understand and accept the vision and the strategy.
5	Empower broad-based action	Remove obstacles to change, change systems or structures that seriously undermine the vision, and encourage risk-taking and nontraditional ideas, activities, and actions.
6	Generate short-term wins	Plan for achievements that can easily be made visible, follow-through with those achievements and recognize and reward employees who were involved.
7	Never let up	Use increased credibility to change systems, structures, and policies that don't fit the vision, also hire, promote, and develop employees who can implement the vision, and finally reinvigorate the process with new projects, themes, and change agents.
8	Incorporate changes into the culture	Articulate the connections between the new behaviors and organizational success, and develop the means to ensure leadership development and succession.

#### **F. Developing a Vision of High Court Performance in Felony Caseflow Management**

Step 3 in Kotter’s scheme for leading change is to “develop a change vision.” Kotter reasons that effective visions have six key characteristics:

- **Imaginable:** They convey a clear picture of what the future will look like.
- **Desirable:** They appeal to the long-term interest of those who have a stake in the enterprise.
- **Feasible:** They contain realistic and attainable goals.
- **Focused:** They are clear enough to provide guidance in decision making.
- **Flexible:** They allow individual initiative and alternative responses in light of changing conditions.
- **Communicable:** They are easy to communicate and can be explained quickly.

Following Kotter’s suggestion, we can begin to consider how successful caseflow management might work. As part of that vision, Figure 4 shows two different scenarios together: (1) case progress and the incidence of court events if there were no delays; and (2) additional time and court events arising from delays. If there were no unnecessary delay, Figure 4 depicts what would happen. With cases being resolved and falling out of the case process along the way, the appearance of a “reverse telescope” is created.<sup>39</sup>

<sup>38</sup> Source: *supra* note 37.

<sup>39</sup> The notion of a "reverse telescope" was originally conceived by Professor Ernest Friesen of the California School of Law to help conceptualize what happens in criminal and civil cases in view of the fact that less than one case in 20 is resolved by an actual trial. Following Friesen’s suggestion, one can observe what occurs to cases once they are filed and see that, with

Under optimal circumstances, all but the most difficult and complex cases would be disposed promptly within agreed time standards, without undue waste of time for the parties and other case participants. A small percentage of cases might be resolved at a criminal defendant's initial appearance in court for arraignment on a police complaint and determination of pretrial release. In many other cases, there might either be a finding that there was not probable cause for felony prosecution or a resolution by plea or other nontrial means around the time of arraignment on an indictment or information. After completion of discovery, prosecution and defense might consider the case appropriate for disposition by plea, so that no more than one-fourth of all cases would have to be listed for trial. Of those, the certainty of imminent trial would itself result in the need for only a handful of cases to require an actual trial.

**1. Visualizing Additional Time and Court Events Arising from Delays.** If undue delays and wasted time were not avoided, however, many fewer cases would be resolved early in the process. Because of such problems as incomplete discovery and the number of matters to be scheduled, lawyers would not be prepared on the date of a scheduled court event, so that the purpose of that event would not be achieved, and it would have to be rescheduled to a subsequent date. There would then be a "cascade" effect, so that lawyers would have even more cases and files for each scheduled court event, causing even more rescheduling. Ultimately, cases might be listed for trial as a way to "up the ante." Yet with so many cases on a trial list, the certain imminence of an actual trial would be destroyed. Instead, a case might be scheduled for trial several times, reaching disposition only because all opportunities to avoid speedy trial deadlines had been exhausted.

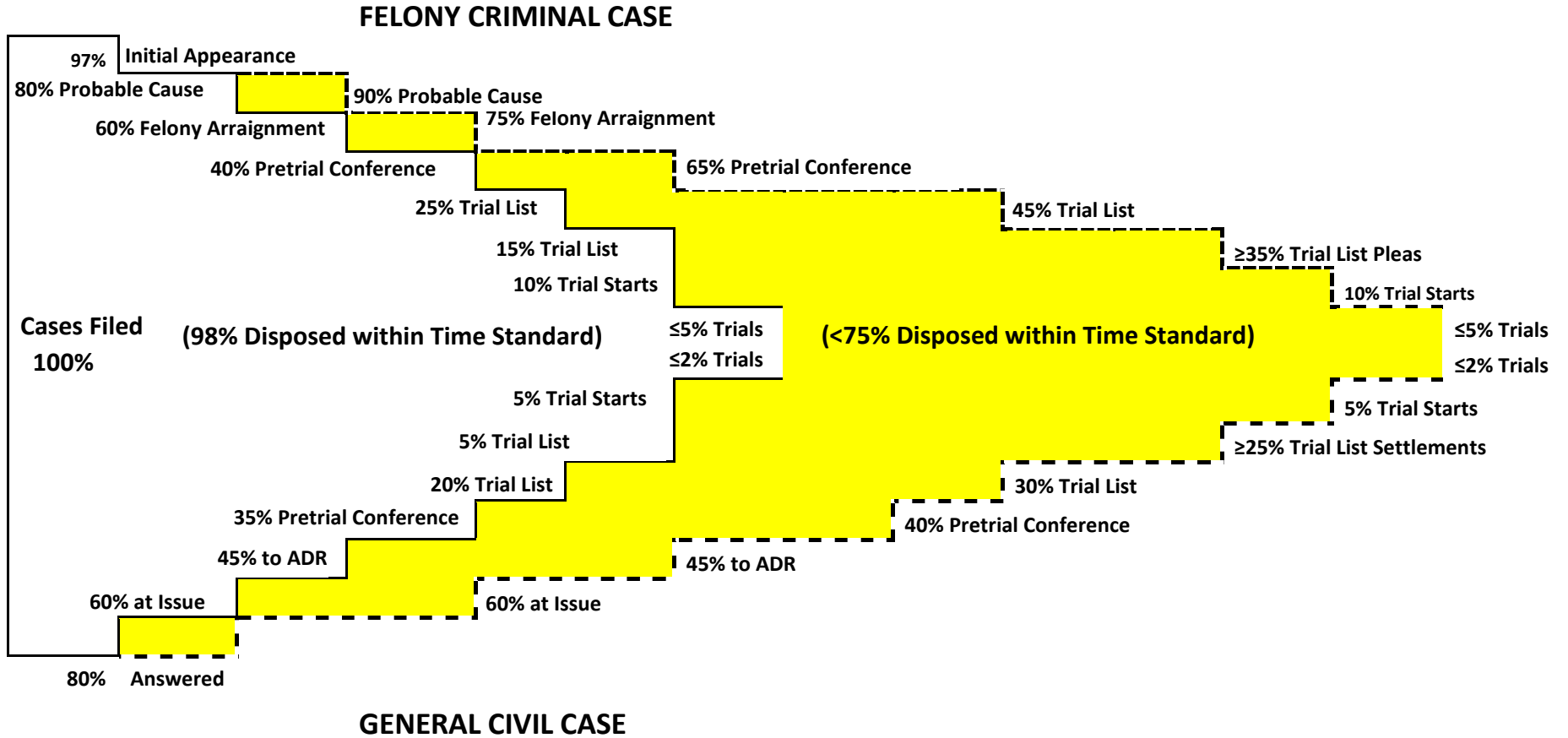
Figure 5 shows that the "reverse telescope" with delays looks very different from that without them. It presents a visual display of what would happen as a result of undue delay in the court process. For every 100 cases filed, having a lower percentage of early dispositions where appropriate would mean many more cases still pending at each subsequent stage in the court process. As a result of volume, fewer cases would be resolved at each stage, so that more court events would have to be rescheduled. The amount of wasted time and cost, as well as the effects of longer elapsed times to disposition, is illustrated by the yellow portion of the illustration.

One of the most striking features of Figure 5 is the indication that the portion of cases resolved by actual trial remains unchanged regardless of the amount of delay leading up to trial. Instead, it takes a longer elapsed time, with more scheduled court events and more cost to the system, for most cases to be resolved by plea or other nontrial means before the matters that must be tried are actually disposed.

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each significant event, a percentage of cases are either settled or dismissed. See National Conference of State Trial Judges, Court Delay Reduction Committee, *Litigation Control: The Trial Judge's Key to Avoiding Delay* (ABA, 1996), p. 12, [http://www.americanbar.org/content/dam/aba/migrated/jd/ncstj/pdf/Litigation\\_Control\\_1996.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/jd/ncstj/pdf/Litigation_Control_1996.authcheckdam.pdf).

Figure 5. Visualizing Impact of Unnecessary Delays on Case Time to Disposition



Legend:  = Case progress and court events if no delays  = Added time and court events due to delays

## **2. Visualizing How Felony Caseflow Management Can Promote Achievement of High Court Performance.**

As the preceding discussion in this article indicates, the NCSC urges that a court seek a workable combination of demonstrated steps at all stages of case progress, from initiation to conclusion. If such an approach is not taken, the effects of problems at one stage of case processing will reverberate through the processing of all cases to cause cascading problems of delay. If by contrast a court takes a broad approach in recognition of the interaction of events at all stages of case progress, then positive synergy can be brought about to promote achievement of the kinds of expectations reflected in HPCF administrative principles, time standards, the expectations of participants in the “local legal community,” and the expectations of both funding bodies and members of the public. Figure 6 presents a visualization of the kind of “virtuous cycle” that could be created through the implementation of such an integrated approach.

### **G. Kotter’s Final Step: Anchoring New Felony Caseflow Management Approaches in the Local Culture for Sustained Change**

As we have noted, any culture is made up of shared values, beliefs, expectations and norms. To seek fundamental change in any local culture can be an exceedingly difficult undertaking, as Niccolo Machiavelli observed 500 years ago:<sup>40</sup>

It should be kept in mind that there is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to manage, than to introduce a new system of things; for the introducer has as his enemies all those who benefit from the old system, and lukewarm defenders in all those who would benefit from the new system.

The problem identified by Machiavelli has been revisited much more recently by Jon Katzenbach, who leads the Katzenbach Center, focusing on the application of innovative ideas for organizational culture and change. In a 2012 journal article for which he was the lead author, Katzenbach wrote:<sup>41</sup>

Too often a company’s strategy, imposed from above, is at odds with the ingrained practices and attitudes of its culture. Executives may underestimate how much a strategy’s effectiveness depends on cultural alignment. Culture trumps strategy every time.

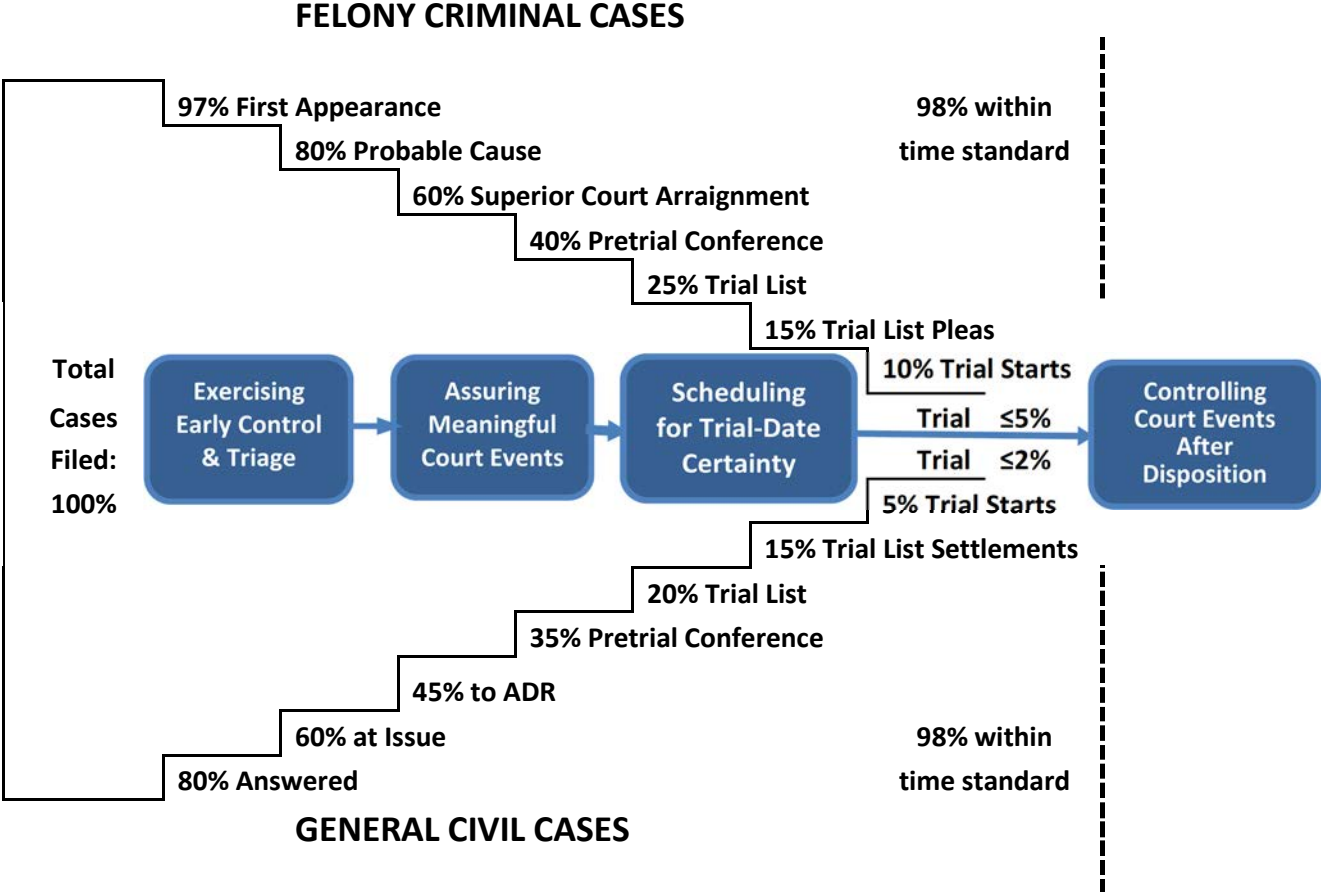
The social forces in any culture are powerful, so that any proposed changes – however consistent or inconsistent they may be with the existing culture – are difficult to make permanent. For this reason, Kotter would argue that new caseflow management practices must be carefully nurtured to take root and remain firmly embedded in the local court and legal culture. Consequently, he urges that cultural

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<sup>40</sup> Machiavelli, *The Prince* (as translated and edited by Mark Musa), in *Machiavelli's 'The Prince': A Bilingual Edition* (St. Martin's Press, 1964), p. 43.

<sup>41</sup> J. Katzenbach, I. Steffen, and C. Kronley, “Culture Change that Sticks: Start with what’s Already Working,” *Harvard Business Review* (July-August 2012) 110, at 113, <http://hbr.org/2012/07/cultural-change-that-sticks/ar/1>.

**Figure 6. Vision of How Successful Application of Caseflow Management Techniques Promotes High Court Performance**





change should come at the end of the process, and not at its beginning. He offers the following general rules about changing the local culture:<sup>42</sup>

- Cultural change comes last, not first
- The proponent of change must be able to prove that the new way is superior to the old
- The success must be visible and well communicated
- Leaders must expect to lose some people in the process
- Leaders must find ways to reinforce new norms and values with incentives and rewards
- Court leaders must reinforce the new culture with every new judge, every new court employee, and with other new members of the local court community.

### **VIII. Conclusion: Requirements for Sustainable Felony Caseflow Management**

The tools and practices requisite for such an institutional approach to sustain caseflow management initiatives over the long run are now in place. These include CourTools, the Model Time Standards, and now the HPCF, as discussed here. These are mechanisms designed to promote an institutional approach to caseflow management. These mechanisms must merge fairness, access, and governance as well as timeliness and productivity. In addition, an integrated and comprehensive approach must take into consideration the organizational, technological, human, and information capital available to the court.

Conceptualizing felony caseflow management efforts in the context of HPCF builds upon lessons learned from the past experiences which include profiting from and tackling the known weaknesses of earlier undertakings. Such an approach translates into a strategy that can promote ongoing commitment to the established and verified caseflow management practices, ensure that the scope of action expands beyond the primary issue of timeliness, and allow for institutionalization of these methodologies.

The dramatic national increase in state court delay shown above in Figure 1 and Table 2 was not necessarily a result of insufficient resources, nor was it evidence that the principles and techniques of caseflow management are wrong. Sustained success in felony caseflow management calls for judicial leaders, court managers, and their criminal justice partners to (a) focus on the strengths and weaknesses of the court culture in their respective communities, and then (b) use the ideas of “high court performance” as a framework for understanding what must be done in order to manage felony cases in a way that promotes prompt and affordable justice.

It is clear that courts apply demonstrated techniques for the management of felony cases can achieve clear results in the reduction of delay. This is especially so in jurisdictions where the court and its criminal justice partners understand of what is requirement for performance management – accountability based on goals and performance measurement. When performance management and

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<sup>42</sup> Kotter International, “Step 8: Make It Stick,” <http://www.kotterinternational.com/our-principles/changesteps/step-8>.

application of demonstrated techniques have begun to produce results, they must be embedded in the local culture.

The creation and maintenance of a culture of “high performance” that supports and promotes sustainable caseflow management effectiveness calls for there to be (a) active court leadership of the local criminal justice community; (b) broad support and commitment of judges and other key stakeholders; (c) regular communication by court leaders with the other key stakeholders; (d) regular education and training; and (e) ongoing attention to creating and maintaining external support from the public and from state and local public funding bodies.

# Appendix

## BJA Criminal Courts Technical Assistance Efforts

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Under the BJA Criminal Court Training and Technical Assistance Initiative, felony caseflow management technical assistance efforts were undertaken in several states, resulting in reports for the following courts.

**Arizona:** G. Griller and R. James, “Criminal Caseflow Study: Gila River Criminal Justice System” (June 2013).

**Arizona:** J. Cornell, “Superior Court Criminal Case Processing Data and Caseflow in Santa Cruz County” (September 2013).

**Arizona:** J. Cornell, “Criminal Case Information and Caseflow Management, Superior Court in Yavapai County” (September 2013).

**California:** G. Griller and L. Webster, “Criminal Caseflow Review: Superior Court of California in Orange County: Suggestions for Improving Efficiencies, Reducing Costs and Enhancing Case Processing Operations” (April 2013).

**California:** G. Griller and H.J. Coker, “Criminal Felony Caseflow Review: Superior Court of California in Santa Cruz County: Suggestions for Improving Efficiencies, Reducing Costs and Enhancing Case Processing Operations” (September 2013).

**Florida:** D. Steelman and J. Farina, “Improving the Scheduling and Management of Felony Cases in the Ninth Judicial Circuit” (May 2013).

**Illinois:** H.J. Coker and P. Knox, “Improving Criminal Caseflow: Nineteenth Judicial Circuit Court, Lake County” (October 2013).

**Louisiana:** G. Donahoe and P. Knox, “Improving Criminal Caseflow: Twenty-Fourth Judicial District Court, Jefferson Parish” (March 2013).

**Michigan:** H.J. Coker and P. Knox, “Improving Criminal Caseflow: 7<sup>th</sup> Judicial Circuit and 67<sup>th</sup> & 68<sup>th</sup> District Courts, Genesee County” (October 2013).

**New Hampshire:** D. Steelman and A. Davenport, “Toward the Creation of Uniform Goals and Standards for Criminal Caseflow Management in the Superior Court” (May 2013).

**North Dakota:** D. Cullen, “Northwest Judicial District Calendaring Practices Study” (October 2013)>

**New Mexico:** D. Steelman and G. Griller, “Reducing Pretrial Average Length of Stay in County Jails by Improving Felony Case Processing in Courts” (June 2013).

**Washington:** N. Raaen and A. Kim, “Grant County Superior Court Caseflow Management Assessment” (September 2013).

**Washington:** G. Donahoe and P. Knox, “Improving Criminal Caseflow in Pierce County” (December 2013).