



**The Fair and Timely Resolution of Criminal Cases:
North Dakota's Transformational System of
Effective Caseflow Management**

National Center for State Courts

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Introduction

Criminal cases are the most publicly visible matters that courts handle. Despite their importance, delay in criminal case processing remains an ongoing problem for state courts in both rural and urban settings. Previous efforts to identify the drivers of criminal case delay have focused almost exclusively on urban jurisdictions.¹ In addition, past attempts to identify causes of delay have been hampered by lack of empirical data. This study expands our understanding of court delay by examining the practice of criminal case management in the more rural environment of North Dakota.² North Dakota proves to be a particularly beneficial research location as the state has been active in developing the system necessary to effectively manage and monitor the resolution of criminal cases. This work has occurred in the smallest, most rural counties and in the largest, most urban counties. This systematic approach provides a solid foundation to isolate the root causes of delay and tailor solutions to each problem across the courts.

North Dakota is a rural state, yet the state courts received nearly 39,000 new incoming criminal cases in 2022.³ This puts North Dakota in first place nationally among states with unified court structures when criminal caseloads are adjusted for population, with a rate of 4,900 criminal cases per 100,000 residents.⁴ The result is sustained caseload pressure on many North Dakota trial courts relative to the resources available to process them. In response, North Dakota has been at the forefront of efforts to reduce and avoid delay through a systems-based approach to caseflow management, which involves the entire set of actions that a court takes to schedule, monitor, and control the progress of criminal cases, from initiation through trial, to make sure that timely justice is achieved.

The strength of the North Dakota model is that caseflow management is seen as more than just a way to minimize delay; it is understood to be the key to a successful system that maximizes the use of a court's resources. In managing a court, judges and court staff should focus on building a system of caseflow management – not just to address issues of backlog or delay – but, more importantly, because it is the foundation of overall performance. An effective caseflow management system that incorporates the real-time use of information allows courts to better understand current work practices, to identify process needs and improvements, and to deliver a higher quality of justice. This report will show that the timeliest

¹See, e.g., Church, Carlson, Lee & Tan, 1978; Luskin & Luskin 1987; Neubauer & Ryan, 1982; Eisenstein, Flemming, & Nardulli, 1988; Ostrom & Hanson, 1999. The Effective Criminal Case Management Project (Ostrom, et al., 2020), discussed below, is an exception in that it included both urban and rural courts.

² This report was developed under a grant from the Bureau of Justice Assistance Justice Reinvestment Initiative: Reducing Crime by Improving Justice System Performance, grant number 15PBJA-21-GG-04272-JRIX. The opinions and points of view expressed in this report are those of the authors. The views expressed do not necessarily represent the official position or policies of the Bureau of Justice Assistance or the State of North Dakota.

³ Court Statistics Project, NCSC.

⁴ North Dakota population is estimated to be 784,000. The smallest county in North Dakota has a 2024 population of 666, while the largest county has a 2024 population of 200,011. U.S. Census Bureau.

courts in North Dakota have an effective criminal caseload management program that serves as a philosophy guiding general court management and as a visible feature of the court's ability to avoid delay.

There is a broad literature on caseload management that focuses on important factors deemed essential for success, central to which are leadership, goals, data to monitor and manage the caseload, communication, involvement of court staff, and defined case management procedures and expectations.⁵ The theory of caseload management is well-documented. Far less developed, though, is how to take the conceptual ideas and create a practical system of caseload management that can be implemented and sustained. A critical step is to turn abstract advice into actionable solutions. The timeliest courts in North Dakota provide a concrete example of how to put theoretical concepts into practice and build a workable system of criminal caseload management.

The purpose of this report is to describe the steps taken in North Dakota to build a comprehensive system of criminal caseload management and to explain how the system is designed to work in practice. At a high level, the goal of successful caseload management is to identify a path for cases from filing to disposition that combines reasonable time expectations with a clear understanding of the work facing a particular court. To do this, it is essential to document the measurable characteristics of the court's workload to identify the volume of case events to be scheduled and held, the resources available to handle the work, and a set of caseload strategies that create the best opportunity for timely case resolution within expectations. Our goal is to describe in detail how this approach works to stay current with incoming criminal cases, avoid delay, and achieve effective criminal caseload management.

Four of North Dakota's eight judicial districts agreed to participate in this project.⁶ The four judicial districts include 25 of the 53 counties, accounting for two-thirds of the state's population. By looking closely at each judicial district's case management practices in combination with data measuring key dimensions of case processing time, it is possible to identify drivers of delay and appropriate responses to bring case processing time back in line with expectations.

In the original grant application, NCSC staff anticipated that they would be working with North Dakota courts to evaluate current practices and introduce and employ traditional basics of caseload management that address the sources of delay. However, what NCSC staff discovered were some of the timeliest courts in the country, made possible through an empirical approach to caseload management. Based on this finding, NCSC reoriented the project to clarify and document what we refer to as the "systems approach" used in North Dakota's more timely districts. We believe that the approach described

⁵ Steelman, 2000; Ostrom & Hanson, 2010; Friesen, 1984; Mahoney & Sipes, 1988.

⁶ The four participating districts are East Central Judicial District, Northeast Central Judicial District, Northeast Judicial District, and South Central Judicial District.

in this report has direct relevance and applicability to courts throughout the country. Thus, the report is organized into two parts to first describe the North Dakota system and then present findings on specific topics identified by North Dakota stakeholders as current obstacles to timely case processing.

Part I illustrates the problem-solving process used in North Dakota to develop and implement a *system* of criminal caseflow management that supports the effective resolution of criminal cases. It is designed for readers interested in learning more about this approach. This part of the report breaks down the process across four sections to clarify the larger goals and purpose of such a system and how it is designed to work in practice. The sections follow the basic strategy used most effectively in North Dakota: (1) set expectations and build the data foundation, (2) evaluate current practice, (3) understand the principles of caseflow management (defined later as *essential elements*) and implement docket management concepts that get the most out of available resources (defined later as *means* and *conditions*), and (4) bring together the *essential elements*, *means*, and *conditions* to design a successful system of criminal caseflow management and ensure that timely data is available both for case-level decision making and for overall court management.

Section one highlights the role of state court leadership in establishing North Dakota's embrace of documented expectations for criminal case processing and commitment to data-driven management. Expectations refer to reasonable time frames, as determined by the court, to resolve various aspects of criminal cases. Typically, as in North Dakota's Administrative Rule 12, these expectations are expressed as time standards or goals. In North Dakota, expectations also implicitly include interim events. This section also offers a summary of North Dakota's approach to enhancing the quality and delivery of case processing data that is essential to understanding and managing its statewide criminal caseload. The culmination of this work is an electronic case management system (CMS), augmented with data dashboards, that provide all local courts with detailed and accurate caseflow management information in real time.

Section two provides an overview of current felony case processing in North Dakota in comparison to other courts nationally. In presenting this information, we underscore the interplay of expectations and accurate data to meaningfully evaluate current practice. The analysis of North Dakota felony case processing shows districts that are among the timeliest in the country. The time covered includes the COVID-19 period, and we show the pandemic's effect on case processing time in the state's courts and how the systems recovered from the impact. Documenting the state's success in timely case processing also helps make the case for why it is worthwhile to examine more deeply the system that achieved this.

Section three provides an overview of the principles of criminal caseflow management. These principles provide conceptual guidance on basic methods or techniques that courts can employ to succeed

in this area, such as early court intervention, continuous court control of case progress, realistic schedules, and meaningful events. From this summary, the main thrust of this section is to show how North Dakota has taken these theoretical concepts and translated them into a practical, data-driven caseflow management system. As we will show, the *systems approach* is central to their success. We refer to the system design concepts as *essential elements* shaped by local *conditions* and the specific caseflow management tools and techniques employed as *means*.

Section four uses an in-depth example to demonstrate the unique approach used in North Dakota to create a docket management system in balance with existing resources and caseload volume.⁷ The goal is to show how the interconnection between essential elements, conditions and means determine the design and operation of an effective criminal caseflow management system in a real-world environment. While the systemic approach differs from traditional single-issue solutions, we believe the concepts have merit for every court system, regardless of size or jurisdiction. Seeking system balance refers to creating a path to resolve cases without delay that explicitly recognizes local conditions (e.g., the number of staff, public defenders, courtrooms), the volume of cases entering the court, and the requisite court events to schedule and hold. If the court hopes to meet its expectations in terms of timeliness and fairness, it is necessary to strategically deploy limited resources. The likelihood of success is furthered through access to real-time data that enables caseflow management teams to proactively address bottlenecks, optimize court schedules, and allocate resources more effectively. The role that each court employee plays in managing the caseload must be clear. Supplemental materials include an Essential Elements Worksheet and PowerPoint presentations to further illustrate and explain the concepts.

Part II of the report introduces a set of topics that were identified by North Dakota as possible sources of delay impacting felony case processing in the three years following the COVID-19 pandemic. It is specific to the participating study districts and the Administrative Office of the Courts (AOC). A statewide analysis of administrative data is presented before our qualitative research findings for the four North Dakota districts. This section draws on the geographic context and structure of the North Dakota courts, variation in calendaring and scheduling practices, and the influence of factors outside of the court's control. It brings together statewide data and caseflow management system concepts to isolate, identify, and explain causes of felony case delay. For North Dakota, we discuss case management practices and scheduling options directed at the case processing needs of large, medium, and small counties; approaches to help in executing a caseflow management plan and overcome COVID-19 related slowdowns; and the impact of bench warrants on timely case processing. Potential solutions are provided.

⁷ This section draws extensively on the approach developed and implemented in the East Central Judicial District (ECJD), where many of these concepts originated.

Part I

1. Set Expectations and Build the Data Foundation

Effective caseflow management is a data-driven enterprise. Two fundamental ingredients of success are commitment from court leadership to the expectation of timely case processing and the availability of data necessary to measure and monitor the caseflow process.

A. Time Standards

Time standards help courts set expectations that meet both the goals of timeliness and effective case processing that ensures due process for all criminal defendants. One of the important roles of courts is to balance the competing interests of efficiency with individual justice. Courts must constrain the natural conflicts and strategies of prosecutors and defense attorneys while managing their own resources wisely to ensure that the quality of justice is not denigrated by a process that is either too speedy or too slow. But what is the “optimal” balance between expedition and quality justice? Since their first formal articulation, time standards have attempted to address this question.⁸ Time standards can provide general boundaries for case processing by balancing “quality” and “timeliness” concerns. One view is that time standards in criminal cases reflect an appropriate time frame to ensure the timely and fair resolution of felony and misdemeanor cases. These time frames should be considered reasonable for most cases.

Time standards provide important measuring posts for improving the system. How long it takes a case to conclude is meaningful to victims who need closure, the public that seeks accountability, defendants as they prepare for their defense, and the jail that houses pre-trial detainees. It is important that the court, as an institution, has standards as a foundation for society's confidence and respect. The court should reflect on better options for handling criminal cases when constant deviation from the standard occurs.

The North Dakota Case Management Time Standards for District Courts, Administrative Rule 12 (AR-12), establishes time standards to promote the fair, efficient, and timely disposition of cases.⁹ AR-12 states that the time standards were promulgated to guide the North Dakota trial courts in the management of dockets to avoid unnecessary delay. The rule establishes that the court should control the progress of

⁸ At the national level, after having adopted speedy trial rules for criminal cases in 1968, the American Bar Association adopted time standards for other case types as well in 1976, amending them in 1984 and again in 1992. The Conference of State Court Administrators promulgated national time standards for cases in state courts in 1983. Following a two-year review of the more than 40 years of experience with time-to-disposition standards, the NCSC set forth a new set of state court time standards in 2011. The model time standards are similar in design and purpose to North Dakota's Administrative Rule 12.

⁹ N.D. Sup. Ct. Admin. R. 12

cases from initiation to final resolution and ensure that all procedural events are scheduled in a manner that minimizes delay. The rationale for the time standards is to assist courts in managing their dockets and to help identify cases in need of attention. Responsibility for the management of cases rests with all court employees. Each court is also expected to collaborate with other judges, support staff, and other justice system partners in achieving timely disposition of cases. In other words, North Dakota makes case management a team sport.

The time standards run from the filing date to the date of disposition. AR-12 states that the running of time is suspended when a case is inactive for occurrences such as the filing of an interim appeal or issuance of a warrant. The time standards provide an important benchmark against which to compare actual case processing times. The AR-12 time standards for completion of felony cases are:

- ***75% within 120 days***
- ***90% within 180 days***
- ***100% within 365 days***

Setting time expectations should extend to intermediate court events. This typically happens in two ways. First, in most if not all state courts, timely court appearances are required for initial arraignment, for determining eligibility for pretrial release, and for public-funded defense counsel. Second, a court creates time goals for other key court events as part of its caseflow management system. In North Dakota's most timely courts, time expectations are set for hearings, such as the preliminary hearing, dispositional conference, and trial, and for events, including filing and replying to motions and for the exchange of discovery. This process is described in Section 4.

B. The North Dakota Case Management System and Data

Case management data is essential to the success of caseflow management efforts. Understanding this, North Dakota has made a substantial investment in the quality of case-level data collected and in making relevant case management information readily available to all necessary personnel and agencies statewide. Effectively facilitating the criminal caseflow requires court managers to assemble an in-depth and empirically based understanding of how cases move through the system.

The transformation of North Dakota court data began in 2006, with the decision to replace the old mainframe data collection system and paper files with an internet-based electronic Case Management System (CMS) and electronic files. In 2011, North Dakota implemented a CMS statewide and converted existing data from 1989 onwards. All case information is electronic. No paper files are used.

Currently, all of North Dakota’s criminal data is kept on the statewide CMS and case management data is available in real time to all users. This real-time information is integral to North Dakota caseflow management efforts. Separate data dashboards, selectively designed for the business needs of judges, court administrators and court staff, provide each position with targeted information such as status of the day’s docket, cases requiring judicial action, upcoming hearing dates, and age of pending cases. Moving from paper files and static reports to a paperless process with real-time information has greatly facilitated caseflow management decision-making.

The utility of court data depends on completeness and accuracy. Quality control measures implemented by North Dakota include consistent electronic filing requirements¹⁰ and a detailed electronic data policy manual for court staff. Policy manual updates are managed by a statewide user group operating under specific goals set by the judiciary. In addition, a consistent and limited number of statewide codes are used to describe events (e.g., bench warrant issued) and hearing types (e.g., initial appearance). These codes are searchable in the CMS, allowing for efficient collection of data. North Dakota also has a standard set of codes that describe criminal charges and case types (e.g., felony).

For case management purposes, it is essential that the status of a case be recorded using uniform descriptions.¹¹ Case status distinctions relevant to the current analysis include:

- **Active:** a case is pending and under current court control
- **Inactive:** a case has not been resolved, but the case is outside of current court control due to a bench warrant, competency proceedings,¹² or an interim appeal
- **Closed:** identifies a case that has reached disposition
- **Reopened:** a status occurring after initial disposition, usually for some kind of enforcement action (e.g., probation revocation)

Differentiating active and inactive cases is important for effective criminal case management to isolate sources and causes of delay.

North Dakota tracks the time a case is under management as “time clock” days (active case processing time). “Calendar” days include all days between filing and disposition, including inactive days (total case processing time). This method of case status classification allows for a separate analysis of delay caused by inactive time (primarily bench warrants).

¹⁰ *ND Rules of Ct. Rule 3.5*

¹¹ These definitions align with the National Open Court Data Standards NODS: <https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>.

¹² North Dakota uses the term "Fitness to Proceed" to refer to an evaluation or court process to determine if a defendant is able to understand court proceedings and assist with his or her defense. Nationally, "competency" is the most common terminology used for this type of event, so we choose to use that term for this report.

2. Evaluate Felony Case Processing Time

This section provides an empirical profile of felony case processing practices in North Dakota. Given that the primary national concern of criminal court delay is the handling of the more serious and resource-intensive felony caseload, this study focuses on felonies. The four judicial districts participating in the study are examined most closely, though summary statewide findings are also presented. The findings come from an analysis of data provided by the AOC consisting of case-level data on felony dispositions from 2018-2023. The dataset provides extensive information on the number and type of procedural events, key event dates and outcomes, charges, dispositions, and other case information.

To evaluate criminal court delay, it is first necessary to define it. Delay is any elapsed time beyond that necessary to effectively prepare and efficiently resolve a criminal case. The role of time standards is to identify the goals for timely case processing. Therefore, delay refers to cases resolved outside the time standards, with this set of cases making up the court's backlog.

In this report, criminal court delay is assessed in terms of time to disposition, a widely understood and measurable outcome. As discussed above, some judges and attorneys express concern about the emphasis on compliance with time goals at the possible expense of due process. Time standards, often misconstrued as “requirements,” are in fact a marker to assess whether cases are moving faster or slower, allowing the court to determine where potential problems might lie. Good case management is about ensuring that parties have reasonable preparation time while eliminating unnecessary delay between meaningful events. Less wasted courtroom time and greater predictability have collateral benefits for everyone involved with the court in a well-managed system.

Time to disposition in the North Dakota judicial districts provides important context for comparison with the timeliness achieved by a large sample of courts outside of North Dakota that were part of the *Effective Criminal Case Management (ECCM)* project.¹² The Effective Criminal Case Management project was a national initiative designed to discover and document effective practices that drive high performance in handling criminal cases in the state courts.¹³ ECCM, concluded in 2020, produced the largest case-level data set of criminal cases ever created at that time. Nearly 1.2 million cases from over 130 state courts in 21 states, including both urban and rural counties, were represented in the data. The data show that several North Dakota districts are among the timeliest courts in the country.

¹² Ostrom et al (2020a)

¹³ ECCM methods and results are maintained at: <https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/caseflow-management/effective-criminal-case-management>.

A. Overview of ECCM

The percentage of felony cases resolved within 365 days was calculated for all ECCM courts. While there was wide variation across courts as to timeliness, ECCM found that the courts could be readily sorted into three groups based on case processing time, measuring calendar days from filing to disposition. “Court time groups” were made based on the percentage of cases that were disposed within 365 days (benchmarked at 90% or better, 80-90%, and less than 80%).

Exhibit 2.1: ECCM Findings (Calendar Days)

Court Time Group (% of Felony Cases Resolved within 365 Days)	Number of Courts	Average Number of Cases	Average Days to Disposition
More Timely = 90% or more	15	3,555	213
Midrange = 80% to 90%	40	4,339	243
Less Timely = 80% or less	22	3,461	313
Overall Average	77	3,785	256

ECCM sought to discover the factors that explain why some courts are timelier than others. One possibility is that more timely courts have fewer serious felony cases or lower trial rates. The project found that there is no significant difference across the three groups of courts in the composition of felony caseloads or the manner in which felonies are resolved. ECCM next looked at a wide range of court-level factors that might influence outcomes. Considerable variation exists among state courts in size of court (e.g., number of judges), court structure (e.g., single- tiered v. two-tiered), and organizational features (e.g., method of judicial selection). However, there is no correlation between timeliness of criminal case processing and the size or organizational characteristics of the court, including the number of judges, size of population served, method of judicial selection, or filings per judge.¹⁴

What does explain differences in timeliness is that more timely courts are more effective at caseload management – the court’s policies and practices. This finding means any court can become timelier and even meet the criteria for a “more timely” court. Becoming a high-performance court starts with gathering the information needed to appraise the results of current practice, make necessary changes, and measure progress toward the court’s goals.

¹⁴ This result is discussed in detail at: https://www.ncsc.org/data/assets/pdf_file/0032/69890/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us-v2.pdf (Ostrom et al. 2020b)

B. North Dakota Criminal Case Processing

A primary lesson from ECCM is that timely case processing is a leading indicator of effective criminal case processing. For that reason, we look more closely at time to disposition in North Dakota districts and use findings from ECCM as a useful benchmark to evaluate North Dakota's success.

Statewide

Exhibit 2.2 provides an overview of average case processing time across the eight North Dakota districts for the six-year period from 2018 to 2023. Average time from filing to disposition for the ECCM courts is provided for comparison. Overall, North Dakota courts are timely, with six of the eight districts and the state overall demonstrating faster criminal case processing times, on average, than the most-timely category of ECCM courts.

Exhibit 2.2: Felony Average Time to Disposition (T2D), 2018 to 2023 (Calendar Days)

		Total Dispositions (2018-2023) and Average Time to Disposition by District							
Statewide		ECJD	NCJD	NECJD	NEJD	NWJD	SCJD	SEJD	SWJD
Number of cases	43,206	10,637	4,719	4,546	3,003	3,898	11,386	3,276	1,740
Average T2D	190	178	215	163	201	240	185	174	212
ECCM									
Most Timely	213								
Midrange	243								
Less Timely	313								

Some believe that the composition of a court's felony caseload is a primary determinant of case processing time. Composition may matter if certain types of cases (e.g., violent/sex offenses) are inherently more complex (e.g., more motions, more trials) and thereby require more court time and attention to resolve. In addition, judges and prosecutors may believe that more serious cases deserve more time and attention from the court and may establish explicit or implicit priorities to meet that goal. ECCM found that most courts are similar in their case composition. Better case management practices, however, allow more timely courts to consistently resolve the same mix of cases within tighter time frames. Exhibit 2.3 shows North Dakota's felony case mix in relation to the ECCM courts. While there is some variation in the Property and Drug categories (the composition is opposite for these two categories), the case mix is largely similar.

Exhibit 2.3: Composition of Felony Caseload for North Dakota and ECCM Courts

Courts	Case Type						Criminal Traffic
	Homicide	Other Violent	Property	Drug	DUI	Public Order	
North Dakota	1%	26%	27%	34%	2%	9%	1%
ECCM	1%	23%	35%	27%	2%	10%	2%

The manner of felony case disposition is another factor shaping time to disposition, as jury trials typically take more time to resolve than guilty pleas. Exhibit 2.4 compares the manner of felony dispositions and the average time for each type in North Dakota district courts to ECCM courts. Trial rates are somewhat lower and guilty plea rates somewhat higher in North Dakota. North Dakota is timelier across all types of dispositions. While North Dakota’s felony case composition and manner of disposition are not fully aligned with what is observed on average across the ECCM courts, they are more similar than different. We believe it is reasonable to compare case processing results in North Dakota with ECCM.

Exhibit 2.4: Manner of Disposition and Average Time to Disposition for North Dakota and ECCM Courts

Court	Disposition Type				
	Jury Trial	Bench Trial	Guilty Plea	Dismissed	Other
North Dakota	<1%	<1%	85%	13%	1%
ECCM	2%	3%	74%	18%	1%

Court	Average Time to Disposition (Calendar Days)				
	Jury Trial	Bench Trial	Guilty Plea	Dismissed	Other
North Dakota	321*	321*	173	211	236
ECCM	452	425	202	274	248

*It was not possible to distinguish trial time to disposition by trial type.

Study Districts

Four of North Dakota’s eight judicial districts agreed to participate in the project. The four judicial districts – East Central (ECJD), Northeast Central (NECJD), Northeast (NEJD), and South Central (SCJD) – include 25 of the 53 counties, accounting for 66% of the states’ population (Exhibit 2.5). The remainder of this section focuses on the four districts participating in the study.

Exhibit 2.5: Study District Characteristics

	ECJD	SCJD	NECJD	NEJD
Number of Judges (2018 – 2022)	9	10	5	6
Number of Judges (2023)	11	10	6	6
District Population as Percent of State Population	25%	21%	10%	9%
Counties (by County Population Rank)	Cass (1) Traill (18) Steele (49)	Burleigh (2) Morton (6) McLean (15) Mercer (17) Sioux (29) Emmons (33) Grant (40) Oliver (48) Sheridan (51)	Grand Forks (3) Nelson (34)	Rolette (11) Ramsey (12) Walsh (14) Pembina (19) Bottineau (20) Benson (21) McHenry (23) Pierce (27) Cavelier (31) Renville (42) Towner (46)

ECCM was completed prior to the start of the COVID-19 pandemic, with all data collected during the period from 2016 to 2018. Exhibit 2.6 provides a more direct comparison of North Dakota case processing practice with ECCM results, using data from the pre-COVID period. This exhibit focuses on felony cases resolved in the four study districts in 2018. The four study districts all show more timely average case processing times than the more timely ECCM courts. The exhibit also shows the average case age when different proportions of cases are resolved. For example, the median, or midpoint of disposition times, was between 112 days (ECJD) and 129 days (SCJD) – all similar to the 120 days in the more timely ECCM courts. The table also shows the average age when 75% and 90% of cases are disposed, percentile groups that relate directly to the North Dakota AR-12 time standards (75% within 120 days and 90% within 180 days).

Exhibit 2.6: 2018 Filing to Disposition for Study Districts and ECCM Courts (Calendar Days)

Court	Number of Counties	Number of Felony Cases	Average Time to Disposition	25%	50%	75%	90%
ECJD	3	1,476	149	54	112	189	295
NECJD	2	612	163	84	122	188	306
NEJD	9	456	171	62	122	204	355
SCJD	11	1,902	168	60	129	198	331

ECCM	Number of Counties	Average Number of Felony Cases	Average Time to Disposition	25%	50%	75%	90%
More Timely	15	3,555	213	70	120	210	360
Midrange	40	4,339	243	80	150	270	480
Less Timely	22	3,461	313	105	195	360	570
National Avg.		3,785	256	85	153	280	470

Exhibit 2.7 shows how the four study courts and ECCM courts performed against the North Dakota time standards in terms of calendar days. The table shows the challenge courts face in meeting the time standards when expressed in percentage goals, as all four districts are below expectations at all time points. The difference is greatest in meeting the target of 75% disposed of within 120 days.¹⁵ All four

¹⁵ We note here, but further develop later, some of the challenges facing North Dakota courts (and other courts around the country) in meeting the earliest of the time standards (i.e., 75% of cases resolved within 120 days of filing). The timeliest North Dakota districts routinely set their cases for trial at about 115 days from the initial appearance. However, the time from filing to initial appearance (about 20 days on average in North Dakota), bench warrants, continuances and other factors impact this time frame.

districts are at about 50%. The courts get relatively closer to the goals as cases age. Despite not meeting the targets, the table also shows that North Dakota courts are among the timeliest in the country across all percentage time goals when compared to ECCM courts.

Exhibit 2.7: 2018 Filing to Disposition by Calendar Days and Time Standards

Court	Number of Counties	Number of Felony Cases	Average Time to Disposition	% at 120 days (goal 75%)	% at 180 days (goal 90%)	% at 365 days (goal 100%)
ECJD	3	1,476	149	52%	74%	94%
NECJD	2	612	163	50%	74%	92%
NEJD	9	456	171	49%	71%	91%
SCJD	11	1,902	168	47%	71%	91%
ECCM						
More Timely	15	3,555*	213	51%	70%	91%
Midrange	40	4,339*	243	41%	58%	85%
Less Timely	22	3,461*	313	39%	45%	75%

* Average Number of Felony Cases Across ECCM Courts

The advent of the COVID-19 shutdown played havoc with criminal court processing around the country. Exhibit 2.8 shows the impact of COVID-19 on average felony case processing times in the North Dakota study courts. For the years 2020-2021, referred to here as the COVID years, case processing time increased dramatically in all four study courts from the pre-COVID period of 2018-2019. What we refer to as the post-COVID years of 2022 and 2023 highlight results that will shape the discussion in later sections of the report. Largely due to the flexibility of the system of caseflow management, average case processing time in two of the districts (NECJD and SCJD) has returned to 2018 levels. This pattern of recovery from the system shock of COVID-19 is also shown in Exhibit 2.9, with time standards expressed as percentage goals.

Exhibit 2.8: Average Filing to Disposition by COVID-19 Period and Year (Calendar Days)

Period	Year	Average Time to Disposition			
		ECJD	NECJD	NEJD	SCJD
Pre-Covid	2018	149	163	171	168
	2019	147	152	183	164
Covid	2020	183	180	190	201
	2021	194	166	213	204
Post-Covid	2022	198	155	220	204
	2023	186	163	220	164
Six-Year Average		178	163	201	185

Exhibit 2.9: Percent of Cases Resolved Within Time Standards by COVID-19 Period (Calendar Days)

Period	Time Standards	% Cases Disposed of W/in Time Standard			
		ECJD	NECJD	NEJD	SCJD
Pre-Covid	% at 120 Days	52	52	51	47
	% at 180 Days	73	75	71	71
	% at 365 Days	95	93	90	92
Covid	% at 120 Days	40	43	45	39
	% at 180 Days	60	67	64	59
	% at 365 Days	90	74	85	87
Post-Covid	% at 120 Days	44	51	43	47
	% at 180 Days	63	74	60	67
	% at 365 Days	89	93	82	90

The calculations above use calendar days to facilitate direct comparison with ECCM courts. The North Dakota time standards apply to time clock days. Time clock days are calculated by removing inactive time. For felony cases, the greatest determinant of inactive time is when there is a failure to appear, and a subsequent bench warrant is issued. Exhibit 2.10 shows the prevalence of bench warrants in the four study districts and the average amount of time a case with a bench warrant is on inactive status. Bench warrant rates for the 2018-2023 period vary between 19% (NECJD) and 29% (ECJD and SCJD). The percentage of cases involving bench warrants is fairly consistent year to year in each location, though the average inactive time shows variation.

Exhibit 2.10: Percent of Felony Cases with a Bench Warrant (BW) and Average Inactive Time

Disposition Year	ECJD		NECJD		NEJD		SCJD	
	% Cases w/ BW	Avg. Time Inactive	% Cases w/ BW	Avg. Time Inactive	% Cases w/ BW	Avg. Time Inactive	% Cases w/ BW	Avg. Time Inactive
2018	25%	96	19%	128	24%	125	27%	116
2019	29%	93	19%	133	22%	231	26%	103
2020	31%	114	21%	82	18%	168	28%	126
2021	32%	116	21%	76	21%	124	31%	94
2022	29%	141	18%	63	19%	162	32%	111
2023	26%	152	17%	109	19%	213	27%	89
2018-2023	29%	119	19%	98	20%	170	29%	107

Exhibit 2.11 compares calendar days and time clock days for the period between 2018 and 2023. The average statewide time to disposition is 190 calendar days and 161 time clock days. The data show that 26% of cases in North Dakota have a bench warrant, with the case out of court control for 115 days on average. When the bench warrant time is spread across all cases, the average impact is 29 days (the difference between calendar and time clock days).

Exhibit 2.11: Comparing Calendar Days to Time Clock Days, 6-Year Average (2018-2023)

	Statewide	ECJD	NECJD	NEJD	SCJD
Avg. Filing to Dispo (calendar days)	190	178	163	201	185
Bench Warrant percent	26%	29%	19%	20%	29%
Avg. Bench Warrant inactive time	115	119	98	170	107
Avg. Filing to Dispo (timeclock days)	161	143	145	167	154
Avg. Bench Warrant Impact	29	35	18	34	31
	Overall	25%	50%	75%	90%
Statewide Average Inactive Days	29	10	13	18	66

The North Dakota time standards highlight two ways of looking at court performance. The first is the average active time to disposition, while the second is the percentage of active cases that are resolved within select time periods. With respect to average active time, the time standards set an implicit goal of:

$$\text{Average active time goal} = (75\% \times 120) + (15\% \times 180) + (10\% \times 365) = 154 \text{ days}$$

Exhibit 2.12 shows filing to disposition using “time clock” or active days both in terms of average days and percentage resolved within time standard goals. Three of the four study districts meet or exceed the

average active time standard of 154 days. Using active time also shows that the courts get closer to meeting the percentage time goals relative to calendar days. In comparison with the ECCM courts that also measure active time, the North Dakota study courts all perform better than the national average.

Exhibit 2.12: Felony Filing to Disposition, 2018 to 2023 (Time Clock Days)

Court	Number of Counties	Number of Cases	Average	% at 120 days	% at 180 days	% at 365 days
ECJD	3	10,637	143	51%	72%	95%
NECJD	2	4,546	145	51%	76%	95%
NEJD	9	3,003	167	51%	70%	89%
SCJD	11	11,386	154	50%	71%	93%
ECCM						
National Avg.	56	3,785*	228	N/A**	63%	86%

*Average Number of Cases Across ECCM Courts

**ECCM calculated at % at 90 days (Model Time Standards)

The data show that North Dakota courts were among the timeliest in the country in the pre-COVID-19 period. In fact, using time clock days, the more efficient North Dakota districts meet the average active AR-12 time standards even when the COVID years are included. The exogenous shock of COVID impacted the operation of North Dakota courts, just as it did elsewhere around the world, but some districts have already recovered to pre-pandemic status in terms of average case processing time. We believe this return to a high level of performance reflects the resiliency of the principles and design of the caseflow management system. That system is discussed next.

3. Turn Principles into an Effective System of Criminal Caseflow

The purpose of this section is to summarize the basic principles of criminal caseflow management that have emerged over the past 40 years and show how they have been operationalized in North Dakota. This is a major step because translating theoretical concepts into a practical, data-driven caseflow management system is crucial. North Dakota's unique approach to caseflow management showcases their innovative adaptation of traditional practices.

While not intentional, the conventional view of caseflow management can come across as a loose collection of concepts without clear guidance on how the pieces fit together or should be applied in practice. In contrast, the North Dakota approach is to build a system of caseflow management where the component parts are empirically assessed and interconnected in a coherent whole. Court expectations, demands, and resources are defined and quantified to identify the details of the caseflow process that creates the best opportunity for fair and timely case resolution.

We refer to the system design concepts as *essential elements* shaped by local *conditions*, and the specific caseflow management tools and techniques employed as *means*. However, before outlining the North Dakota systems approach later in this section and using an in-depth example to illustrate how it works in Section 4, we review the traditional concepts of caseflow management to orient the discussion.

A. Traditional Basics of Criminal Caseflow Management

In this section, we discuss important caseflow management concepts designed to move a case effectively and efficiently from the date of filing to resolution. The caseflow management literature highlights several interdependent features necessary for success, with the key pieces being leadership, expectations, data, and case management concepts. At the center of successful caseflow management is the recognition that judges, with the assistance of court administration, must make a commitment to manage and control the flow of cases through the court. While this responsibility by judges and court managers should be tempered by continuing consultation with attorneys and others on the best means for improvement, a court must lead the effort if it is to succeed. As discussed in Section 1, North Dakota state court leadership has made a strong commitment to clear expectations in the form of time standards and has invested significant resources in the development of a statewide CMS and data dashboards.

With respect to managing the timely resolution of criminal cases, a first step is early and continuing court attention to managing case progress. A court should set the tone for criminal case processing by insisting that cases move expeditiously from filing to initial appearance or bail hearing through plea or trial to sentencing and resolution of any post-sentence matters in the trial court. To ensure that dates are always assigned to events in every case, the court should enter a scheduling order early in every case. If

both prosecution and defense lawyers have had early access to the evidence in a case, the court can schedule case events at appropriate intervals and insist that counsel meet deadlines for case preparation.

Second, timeliness is enhanced by creating the expectation that court events are meaningful; that is, 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. The scheduling of pretrial matters calls for careful exercise of judicial control. It is essential to balance the need for reasonably prompt completion of necessary case-related steps, with reasonable accommodation for the demands placed on the time of the participants in the proceedings. By trying to make all pretrial case events meaningful opportunities for resolution, by promoting early and meaningful plea discussions, and by ruling early on suppression and other motions likely to be dispositive, the court should be able to resolve many cases well in advance of trial.

A third factor is controlling continuances. While courts must allow adequate time to accomplish necessary tasks, events should also be scheduled sufficiently soon to maintain awareness that the court wants reasonable case progress and will not allow cases to linger indefinitely simply because participants are not prepared. Key to successful caseflow management is finding a way to manage the need for continuances while keeping cases on track for timely disposition.

In summary, effective court management involves the creation of reasonable goals and expectations about what constitutes success. However, the literature on caseflow management remains largely conceptual, using terms like “continuous control”, “meaningful events”, and “control of continuances.” It is worthwhile being acquainted with the underlying theory. The challenge, though, is how to put this good advice into practice. The timeliest courts in North Dakota provide a concrete example of how to put theoretical concepts into practice and build a workable system of criminal caseflow management.

And to be clear, North Dakota district courts have much in common with other courts across the US: limited resources, multiple court locations, and shortages of staff. They, like all courts, weathered the COVID-19 years and the associated challenges to effective criminal case processing. Yet, as can be seen in Section 2 (Exhibit 2.7, particularly in the pre-COVID period), several districts are amongst the timeliest courts in the country. How did North Dakota achieve their results? That is explained below.

B. Systems Approach to Caseflow Management

What sets North Dakota apart from most jurisdictions is an explicit commitment to viewing caseflow management as a system. Building the system starts by documenting essential system elements, which entails determining the measurable characteristics of the court’s environment that identify the work to be performed, the resources available to handle it, and the details of the caseflow process that create the best

opportunity for fair and timely case resolution within expectations. The proactive step of attending to the elements of system design is crucial for success in caseflow management. Without it, addressing the problem of court delay can become a well-intentioned though ultimately unsatisfying search for just the right tweak to restore order.

The urge to act on delay is why most judges and court staff have been introduced to the idea of criminal caseflow management. They may read about it, join a webinar, or attend a training session on the topic. Participants often come away inspired to make an effort to improve the timeliness of criminal case processing. This may lead to internal discussions about what tools to employ, such as the need for firm trial dates; developing a continuance policy; and assessing the merits of an individual calendar relative to a master calendar. A court may then select a technique that is said to have worked well elsewhere (e.g., a continuance policy) and work to incorporate it into their existing process. While the idea of a quick-fix solution may seem appealing, this type of “plug and play” strategy impedes the empirical, systems approach to designing a caseflow process for the particular court environment.

The persistent attempt to solve the problem of court delay before clearly documenting what is needed to create an effective caseflow management *system* for a specific court is a core issue in court management. Because the symptoms of delay like long periods of time between case events, unprepared lawyers, and many continuances are visible, it is understandable why opting for “symptomatic solutions” to address a particular problem is enticing. But it diverts attention from taking the time required to more fully grasp the intricacies of the system and all the moving parts that must be managed. North Dakota views the problem of court delay with a more holistic perspective.

The main reason that it is hard to borrow apparently good ideas or even “best practices” from one court and smoothly integrate them into the processes of another court relates to complexity in the caseflow process. The complexity arises from the need to recognize, accommodate, and combine multiple pieces into an effective whole: the volume of incoming cases, required case events to be scheduled and held, needed resources, and reasonable certainty of events being held as scheduled and within expectations. This interconnectedness can make it a challenge when designing a case management system to ensure that all parts align smoothly to reach the goal of timely case processing and can adapt to the particular circumstances of each case and to local conditions. Overlooking or underestimating key system design elements will preclude a court’s ability to create an effective system of caseflow management that works by being intentionally tailored to a court’s particular circumstances. Success in caseflow management begins with careful attention to the essential elements of system design.

Essential Elements

The goal of successful caseload management is to delineate a path from filing to disposition for cases that incorporates reasonable expectations with practical realities. The essential elements ask court leaders to identify priorities, assemble relevant data, assess conditions, and consider various means as the system is designed. The essential elements are briefly defined below. These elements will be developed in greater detail in the next section. While it is important that each element be addressed, the specific means employed may vary based on local conditions. It is important to note that the essential elements are not just theoretical concepts. A true strength is that they are empirically based and can be objectively computed.

A. Effectiveness: setting reasonable expectations and verifying outcomes. The court must set reasonable expectations for the overall time needed to resolve cases and the time to complete intermediate events like discovery, motions, and all other necessary pre-disposition events. These are the time markers used to measure the performance of the system, with results used to make appropriate adjustments. Whether these expectations are achieved must be measured and verified to determine effectiveness.

B. Capacity: establishing reasonable certainty of event occurrence. Based on historical data, capacity relates to the ability to maximize the number of cases a court can schedule, hold, and resolve within expectations, as scheduled and with reasonable (not absolute) certainty. This supports the development of a repeating scheduling system based on judicial rotation.

C. Flexibility: creating predetermined options within expectations. A court's ability to adapt to abnormalities, continuances, and rescheduling and still meet expectations by creating multiple, pre-determined options for adjustment, while mitigating the "friction" of rescheduling. This element becomes particularly important in the period between the completion of discovery and final disposition, where flexibility is vital to creating opportunities and options to resolve cases within expectations.

D. Workability: allocating resources and managing pinch points. A court's ability to get resources where needed, as scheduled, and to identify and overcome constraints caused by lack of necessary resources at needed times. This analysis helps identify a given court's weakest link.

Attention to the elements of a caseload management system helps bring the big picture into focus by articulating system goals, clarifying the purpose and function of the caseload process, and specifying the system's interconnections. To be clear, this step in creating the system takes work and creativity, but it is worth the investment. Every court has some version of a caseload management "system" in place because cases continue to be filed and disposed regardless of the outcomes achieved. Every system, whether "good" or "bad," acts to encourage and incentivize certain types of individual behaviors. An

inefficient system leads to delay, while an effective system of caseflow management works to shape practices and behaviors to deliver fair and timely case resolution without delay. Investing the time to thoughtfully consider the design criteria incorporated in the essential elements is crucial to creating an environment where the desired types of caseflow management actions become likely. A powerful insight is recognizing how a particular system causes its own behavior.

These essential elements provide clarity on the purpose and function of the caseflow management system. A well-functioning system

- defines expected time frames;
- estimates the volume of incoming cases;
- clarifies the specific case events to be scheduled;
- identifies the historical rate at which scheduled events are held;
- sets events with reasonable certainty;
- determines judge and staff responsibilities and how they will be assigned;
- anticipates the availability of prosecutors, public defenders, and other justice system partners; and
- verifies the data essential for ongoing management and monitoring.

Means and Conditions

From this foundation, it is possible to determine the *means* or best configuration of specific caseflow management tools and practices (e.g., scheduling order, continuance policy, judicial calendar) that best meet local settings and circumstances. Because time was spent defining the essential elements, features such as a scheduling order have a clear place and purpose and will ensure reasonable certainty of events occurring as scheduled. This allows a scheduling order to be integrated seamlessly into the method of judicial docket assignment and rotation. In addition, the timing of scheduled events can be sequenced to allow space to accommodate the predictable need to reset events while still resolving the case within expectations. Moreover, as judicial calendars are clearly known and available to all parties, court staff can easily reset an event with a minimum of friction.

Another factor shaping the specific features of the system is the local *conditions* in each particular jurisdiction (e.g., number of judges, number of courtrooms, number of prosecutors and public defenders, number of days that court is held (in rural locations)). Again, these considerations are incorporated in the essential elements assessment. Consequently, as the conditions vary, so might the means. For example, in a rural environment where court is only held one day per month, the matters set on the judicial calendar look very different than in an urban location where multiple judges with specialized dockets hold court daily. A scheduling order may be used in each place, but rather than the possibility of a jury trial being

heard every day as in an urban court, there will likely be fewer trial date options annually in the rural court. In a rural location with limited court dates, there is also priority to ensure options for flexibility to mitigate the impact of continuances.

A focus on essential elements is critical to success and universally applicable to courts of all sizes and structures. Knowledge gained directly shapes the parameters and design of the caseflow management system. This system perspective then informs the choice and purpose of the particular caseflow management *means* used to best fit the *conditions* of each locality. Courts skip the first step of clarifying objectives and gathering the relevant information identified in the essential elements to their detriment.

Essential Elements	Conditions	Means
<ul style="list-style-type: none">▪ <i>Effectiveness</i>: Time expectations▪ <i>Capacity</i>: Expected # of filings, events to set on the calendar, & events that will be held▪ <i>Flexibility</i>: Provide multiple options to resolve case within set time frames▪ <i>Workability</i>: Resources to hold events	<ul style="list-style-type: none">▪ Size & features of jurisdiction (distance to court, transportation, community factors)▪ Court & jail space available, including remote/hybrid options.▪ Current staffing & resources for criminal caseflow	<ul style="list-style-type: none">▪ Case management plans▪ Repeating, rotating calendar/docket system▪ Established time standards.▪ Dashboard and data management▪ Scheduling orders▪ Dispositional conferences▪ Continuance policy

4. Build and Verify the Effectiveness of the Criminal Caseflow Management System

The purpose of this section is to provide an example of how the *essential elements, means, and conditions* can be woven together to create a successful system of criminal caseflow management. The approach described below draws on the method used in the more timely North Dakota districts. A foundational piece of the system is a repeating, rotating method of judicial scheduling. This method of scheduling has been used over many years throughout North Dakota in areas with as few as 3 and as many as 11 judges. To keep the discussion manageable, we select one district, the East Central Judicial District, to demonstrate how the caseflow management system addresses a given set of essential elements for each time the number of judges or other conditions vary. The example selected clearly demonstrates the use of this scheduling system to meet the essential elements of timely case resolution and provides an important illustration of why changing conditions requires reassessment of the essential elements and means needed to be effective.

This section draws on docket management concepts developed over many years in the East Central Judicial District. The approach is summarized here and developed in more detail in *The Essentials of Timely Case Resolution*.¹⁶ The main idea is that the system draws on the essential elements of (A) incorporating expectations, (B) clarifying capacity, (C) integrating flexible options, and (D) identifying pinch points and accounting for resources. These key components support each other and encompass the range of issues to be considered when developing a workable caseflow management system.

To provide additional insight into what is required when assessing the essential elements, Appendix A provides a sample worksheet. For the specific court going through this exercise, it focuses on setting time expectations, listing necessary resources, and estimating the number of events to be scheduled and held. Some sample values are shown in red.

Successful docket management starts with the creation of an organized system of criminal case resolution. A system is built around the demands and resources of the court, a clear calendaring structure that accounts for judicial rotation, the development and communication of expectations for key events, and active monitoring of cases and overall performance. When the system is functioning properly, the result is fair and timely case resolution and the elimination of unnecessary delay and cost to the public and litigants. Moreover, when the court controls the pace of litigation, the system manages cases with the goal of timely disposition, while also creating space to respond to the unexpected. In essence, criminal

¹⁶ Racek & Dearth (2017)

caseflow management is the means to meet the court’s mission of “fair and timely resolution of disputes” without delay.

A. Effectiveness

For caseflow management purposes, expectations begin with overall time to disposition expectations but should be augmented to include time to key events. Based on event time expectations, a scheduling order can be developed that incorporates time to key intermediate events within the larger umbrella of overall time to disposition. North Dakota time standards focus on overall time to disposition:

- **Time to complete 75% of cases: 120 days (time clock—active time)**
- **Time to complete 90% of cases: 180 days (time clock—active time)**
- **Time to complete 100% of cases: 365 days (time clock—active time)**

As noted, AR-12 states that the time standards track time clock days (active time). Given that many state court case management systems do not consistently track time out of court control and therefore cannot calculate active time, traditional time standards typically measure Filing to Disposition in calendar days, which includes both active and inactive time. For example, the Model Time Standards (2011) use calendar days.¹⁷

In an important sense, both measures of time to disposition have value – both calendar days and time clock days should be monitored. To the public, delay is delay. However, distinguishing between time clock (active) and calendar (active and inactive) days is vital to case management so the causes of delay, which often come from multiple sources, can be isolated and identified. Moreover, explicitly documenting the time when a case is under court control (time clock days) and distinguishing it from calendar days is important for judicial acceptance and the belief that time to disposition is being calculated fairly.

The study of time to disposition and time to event in time clock days works to verify that a court system is designed and performs in a way that meets expectations. If not, the system components need to be examined. The study of inactive time (e.g., bench warrants) will identify and quantify the impact of disruptors on the normal operation of the system. These disruptors need to be identified, mitigated, and/or avoided to achieve maximum system effectiveness.

¹⁷ Model Time Standards can be found at: https://www.ncsc.org/_data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf

The recommendation is that case management time expectations be extended to include key intermediate case events (e.g., preliminary hearing, dispositional conference) as well as time to the targeted completion of discovery and motions. An example is shown in Exhibit 4.1. A scheduling order can be developed, based on a repeating schedule, and distributed at the initial appearance with scheduled dates for future key events to be held. For example, the preliminary hearing can be set for the next reoccurring time approximately 30 days after the initial appearance and the dispositional conference at about 100 days. In addition, reasonable time expectations can be used to help manage discovery and motions. This is already established procedure in many North Dakota courts.

Exhibit 4.1: Example of Event Expectations

Time to Complete Events: Case Processing Expectations											
Case Events							Compliance Deadlines				
	Initial App.	Prelim Hrg	Motion Hrg	Dispo. Conf.	Change of Plea	Jury Trial	Bench Trial	Discov. Req.	Discov. Reply	Motion File	Motion Reply
Days	1	30	90	100	115	115	115	10	25	50	65

Practical caseflow management concepts:

- Adopt time standards for overall time to disposition.
 - Develop a scheduling order that is provided at the initial appearance that establishes expectations for (1) hearing dates for all potential future court events and (2) dates for submission of motions and completion of discovery.
-

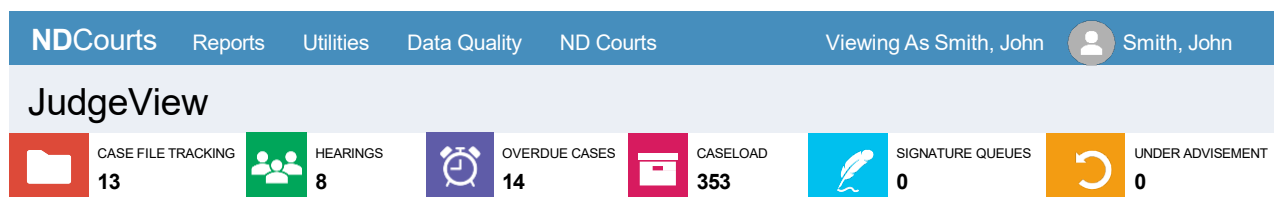
Real time data to manage the system (verification)

A key part of effective caseflow management is verification of system performance. Verification takes place in three fundamental ways. First, caseflow data provides the means to determine the ongoing accuracy of capacity estimates related to the number of cases, scheduled events, and held events that underlie the rotating, repeating judicial scheduling structure. Second, data is used to measure the extent to which a court is meeting expectations in terms of the time to intermediate events and overall time to disposition. Third, data provides detailed insight into the nature and status of the current pending caseload being handled by each judge, including matters on the daily docket, the timing of upcoming case events, and any cases that are older than established timelines.

North Dakota has developed and implemented judicial dashboards incorporating real-time data. Moving from paper files and static reports to a paperless process with real-time information has greatly facilitated caseload management decision-making. This approach is crucial for letting the caseload management team of judges, administrators, and court staff make the best use of time and resources. The case management system as described has a clearly established structure and well-defined roles for judges and court staff. This clear division means judges can focus on their work in the courtroom, while court staff handle administrative tasks to support the smooth functioning of the judicial process. The judicial calendar and rotation let everyone know a particular judge's availability for specific case events now and in the future, aiding court staff in resource planning. Court staff can confidently assign resources based on the judge's schedule, ultimately optimizing the management of judge and case-related needs. With a detailed scheduling order in place, potential case events are set well in advance, allowing ample time to address conflicts. When a change is needed, court staff are empowered to handle most reassignments. They know the available openings for each judge. This proactive approach minimizes disruptions and the friction of rescheduling.

Separate dashboards have been developed for the specific business needs of judges and court staff. Taking the judicial dashboard as an example, Exhibit 4.12 shows the summary data available at the top of the first screen on the dashboard. The summary tracks the count within each of the dashboard categories. The details on each category are found on separate screens.

Exhibit 4.12: Summary Section of Judicial Dashboard



Each judge has continuously updated information on the following:

- Case file tracking: shows the cases where there is a need for judicial action and the type of action required.
- Hearings: the type; time; and location of each hearing on the day's docket.
- Overdue cases: the case type and age; next hearing type, date, and time; and notes on progress for all cases that are older than established time standards.
- Caseload: the case type and age; next hearing type, date, and time; time standard target date; and description for all assigned pending cases.
- Signature queue: the list of documents requiring judicial signature.
- Under advisement: all case matters that are currently under advisement.

As new information emerges (e.g., a case settles), the system and dashboard are updated in real time.

Real-time data displayed in a dashboard format provides instant insights. This visual presentation allows for quick monitoring and decision-making, as judges are immediately made aware of the status of their entire caseload. The judge can immediately focus on cases that are potentially in need of attention, listed by age. In most circumstances, this should be no more than 10% of the pending caseload (about 20 cases in this example). The "system" is managing the work on the other 90%. For example, the judge can quickly see if the next case event is already scheduled or if one needs to be set. The dashboard provides constant, real-time verification of whether the system is functioning properly.

Trends and patterns, such as certain case types exceeding time standards, can be easily identified and assessed. The dashboards provide positive redundancy in quality control, as many different judges, clerks, administrators, and schedulers are constantly reviewing caseload status. Success of the case management system is dependent on each member of the team knowing their role and its importance and having the information they need to smoothly coordinate with the goal of fair and timely case resolution. Said somewhat differently, success begins by setting expectations and ends with verification.

B. Capacity

A court's capacity to resolve cases is not determined merely by the number of cases a court receives. Capacity must also be measured by how many cases can be scheduled and resolved within expected timelines. Every judicial district has a regular influx of new cases. A well-managed court will structure the required work to maximize the number of cases it schedules, hears, and resolves in a timely fashion that explicitly accounts for the availability of limited court staff, courtrooms, and other resources.

A key resource constraint is often the number of judges in a particular court. The method of judicial scheduling is at the core of maximizing the capacity of any court. The timeliest districts in North Dakota use a rotating, repeating system that clarifies the precise type of hearings a particular judge will be handling each day for the foreseeable future. As an example, we use the judicial rotation schedule developed for nine judges in the ECJD.¹⁸ As shown in Exhibit 4.2 below, there is a 9-week rotation with each judge taking responsibility for one of the weeks.

¹⁸ In 2023, two additional judges were added to the ECJD for a total of 11 judges. As a result, the rotation schedule was expanded by two weeks. We use the nine-judge rotation as an example because the data for the 2018-2023 period examined reflects almost exclusively the work of nine judges. The 11-judge rotation is later used to empirically show why adding resources without first re-analyzing the essential elements can result in negative impacts.

Exhibit 4.2: ECJD Judicial Rotation Schedule

Week 1	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Revocations/ Motions	Arraignments/ Dispo. Hearing	Preliminary Hearings	Arraignments	Arraignments
Afternoon	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings
Week 2	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Opinion	Opinion	Opinion	Opinion	Opinion
Afternoon	Opinion	Opinion	Opinion	Opinion	Opinion
Week 3	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Change of Plea	Trials	Trials	Trials	Trials
Afternoon	Bench Trials	Trials	Trials	Trials	Trials
Week 4	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Trials	Trials	Trials	Trials	Trials
Afternoon	Trials	Trials	Trials	Trials	Trials
Week 5	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings
Afternoon	Arraignments	Revocations/ Motions	Arraignments/ Dispo. Hearing	Preliminary Hearings	Arraignments
Week 6	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Opinion	Opinion	Opinion	Opinion	Opinion
Afternoon	Opinion	Opinion	Opinion	Opinion	Opinion
Week 7	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Change of Plea	Trials	Trials	Trials	Trials
Afternoon	Bench Trials	Trials	Trials	Trials	Trials
Week 8	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Trials	Trials	Trials	Trials	Trials
Afternoon	Trials	Trials	Trials	Trials	Trials
Week 9	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Trials	Trials	Trials	Trials	Trials
Afternoon	Trials	Trials	Trials	Trials	Trials

Red text indicates scheduled events anticipated to be for criminal cases.

Blue text indicates scheduled events anticipated to be for civil cases.

Each week, the judges rotate to the docket assignments covered in the following week. That is, if a judge started in the Week 1 position covering criminal events in the morning and civil events in the afternoon, they would then move to writing opinions the following week (Week 2), then to full day criminal work the week after that, and so on. Once a judge completes the Week 9 dockets, they start back again on Week 1. They rotate through the 9-week schedule and, when completed, repeat the process. Over the course of a year, each judge rotates through the 9-week schedule about 5.77 times ($52/9$).

This rotating, repeating method has several advantages. It makes clear the availability of each judge for any specific court event (e.g., preliminary hearing, jury trial) at all points in the future. This makes possible the use of a scheduling order assigned at the initial appearance specifying future event dates for all potential court events (e.g., preliminary hearing, dispositional conference, jury trial) that align exactly with a judge's position on the 9-week rotation. Exhibit 4.3 provides an example scheduling order. Everyone involved in the case (e.g., judge, prosecutor, public defender, sheriff, court staff) know well in advance the exact date of each future hearing and can plan accordingly, thereby increasing the certainty that the event will be held as scheduled. In addition, the setting of future dates on the scheduling order can integrate adherence to interim court event time standards (e.g., dispositional conference within 110 days) and overall time to disposition goals (e.g., 90% of felonies disposed of in 180 days).

Exhibit 4.3: Scheduling Order

IN DISTRICT COURT	COUNTY OF CASS	STATE OF NORTH DAKOTA
State of North Dakota		Case #
Plaintiff,		
vs.	Defendant,	SCHEDULING ORDER- A

PLEASE TAKE NOTICE:

1. The Honorable _____ has been assigned to this case
2. Defense Attorney is _____
3. Prosecuting Attorney is _____

You must comply with the following SCHEDULING ORDER. All documents filed with the court must contain the above case number. In addition, defendants are required to inform the Clerk of District Court of any address change.

YOU MUST PERSONALLY APPEAR IN COURT AT THE FOLLOWING TIMES:

1. Preliminary Hearing (if not waived) and Arraignment: Thursday, February 3, 2022 at 1:30 P.M. (Preliminary hearing and arraignment is scheduled for felony cases only)
****NOTICE: Parties seeking a contested preliminary hearing must give sufficient advanced notice to the prosecuting attorney to ensure attendance of an appropriate witness. Failure to do so may result in the Court continuing the hearing to a later date.
2. Motion(s) Hearing (attendance not required if no motions filed): Tuesday, April 5, 2022 at 3:00 P.M.
3. Dispositional Conference: Thursday, April 7, 2022 at 3:00 P.M.
DEFENDANT MUST APPEAR IN PERSON.
4. Jury Selection and Trial: Tuesday, April 19, 2022 at 9:00 A.M. with a pretrial conference at 8:30 A.M.
5. Bench Trial (if jury trial waived): Monday, April 18, 2022 at 1:30 P.M.
6. Change of Plea: Monday, April 18, 2022 at 9:00 A.M.

YOU MUST COMPLY WITH THE FOLLOWING DEADLINES:

1. Last day to make a Rule 16 Discovery request: January 17, 2022
2. Last day to reply to Rule 16: February 1, 2022
3. Deadline for the filing, service and noticing of all other Motions: February 28, 2022
4. Last day to reply to other Motions: March 15, 2022

Dated on this the ____ day of _____, _____

BY THE COURT:
Judge _____
East Central Judicial District

Using the language of caseload management, the goal is for court events to be so likely to occur that the parties consider them to be certain. Within the structure of the judicial rotation, the court can effectively plan to use the fewest number of days to resolve the largest possible number of cases. A capable case management system uses a rotating, repeating judicial rotation method to accomplish three things: 1) schedule all necessary events, 2) hear all necessary events, and 3) account for the capacity of all necessary resources.

A clear understanding of system capacity to hold all events as scheduled is predicated on the idea of reasonable certainty. One possible concern with the use of a scheduling order that specifies the dates for all potential future court events is that some spots on the upcoming judicial calendar will appear

overbooked. For example, 50 cases set for jury trial on a particular judge’s criminal trial week. Here is where reliance on data showing the actual rate of event occurrence is vital. Historical data on the rate that potential events are actually held provides information essential to gauging capacity – it is an essential foundation for the strategic deployment of resources. Jury trial rates are a good example. In North Dakota, the data in Section 2 (Exhibit 2.3) show that the jury trial rate for felony cases is approximately 1%. In ECJD, for example, no more than 40 criminal jury trials (misdemeanor and felony) have been held annually since 2018. For every 100 felony cases set for jury trial in ECJD, less than one will be resolved that way. Thus, in the example where 50 cases are set for jury trial in one week, we have reasonable certainty that less than one case will go that route, with the rest being resolved by other means such as a plea of guilty.¹⁹

Maintaining the system's capacity to hear all necessary events depends on balancing the number of case events the court needs to set to spur case resolution, and the number of case events a court traditionally hears. The rotating, repeating schedule allows one to determine the actual number of “slots” available on judicial calendars to hold all particular court events (e.g., initial appearances, preliminary hearings, jury trials) over the course of a year. Using ECJD as an example, Exhibit 4.4 below, abstracted from Exhibit 4.2, shows the four weeks in the nine-week rotation devoted to criminal cases. Note that each week, there are four judges assigned to criminal matters, with two judges handling criminal pretrial matters (input) and two judges available to resolve cases through change of plea, bench trial, or jury trial (output). In total, there are 6 sessions for initial appearances/arraignments each week (3 for the judge in week 1 of the rotation and 3 for the judge in week 5 of the rotation). Similarly, there are 2 sessions for preliminary hearings (1 each in weeks 1 and 5), 2 sessions for change of plea (1 each in weeks 3 and 7), and so on for each of the major case events. Exhibit 4.5 summarizes the number of each event type scheduled per week and over the course of one year (weekly totals are multiplied by 52 weeks per year). This provides an assessment of the available capacity to handle criminal case events.²⁰

¹⁹ One alternative to reasonable certainty is setting each of the 50 cases to its own individual trial day. However, there are not enough days in the year with other judicial work to do this. Worse yet, on average 99 percent of these event slots would be wasted, along with the allocated resources, when those cases settle. For case management purposes, the court does not need to know which case is going to trial, the court only needs to know with reasonable certainty that no more than one case will go to trial.

²⁰ Exhibit 4.5 shows 4 jury trial sessions available per week because each session is allotted two days.

Exhibit 4.4: Criminal Weeks in the Judicial Rotation

Week 1	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Revocations/ Motions	Arraignments/ Dispo. Hearing	Preliminary Hearings	Arraignments	Arraignments
Afternoon	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings

Week 3	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Change of Plea	Trials	Trials	Trials	Trials
Afternoon	Bench Trials	Trials	Trials	Trials	Trials

Week 5	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings	Civil Hearings
Afternoon	Arraignments	Revocations/ Motions	Arraignments/ Dispo. Hearing	Preliminary Hearings	Arraignments

Week 7	Monday	Tuesday	Wednesday	Thursday	Friday
Morning	Change of Plea	Trials	Trials	Trials	Trials
Afternoon	Bench Trials	Trials	Trials	Trials	Trials

Red text indicates scheduled events anticipated to be for criminal cases.

Blue text indicates scheduled events anticipated to be for civil cases.

Exhibit 4.5: Annual Availability of Case Events

Events	Judges Available each Week	Sessions per Week	Sessions per Year (x52)
Initial appearance/Arraignment	2	6	312
Preliminary Hearing	2	2	104
Motions	2	2	104
Disposition Conference	2	2	104
Change of Plea	2	2	104
Jury Trial	2	4	208
Bench Trial	2	2	104

The next step is to estimate the number of scheduled events that will actually be held using data provided by the CMS (round numbers are used here for purposes of illustration). North Dakota is a unified court system, with both felony and misdemeanor cases handled by the district courts. Suppose ECJD receives about 6,000 new criminal cases each year, comprised of 1,800 felonies and 4,200

misdemeanors. All felonies and misdemeanors receive a scheduling order at the initial appearance. For each of the 6,000 cases, there will be dates set for up to six events – preliminary hearing (felony only), motions hearing, dispositional conference, change of plea, bench trial, and jury trial, though only one of the last three will ever be held to resolve the case. Exhibit 4.6 provides data on the actual occurrence rate for preliminary hearings and jury trials per year and the number of each event held per year based on historical data. It also provides information about the number of available sessions per year, the average number of cases with the event actually held in each session, and the length of time each individual session receives on a judge’s docket.²¹

Exhibit 4.6: Preliminary Hearings and Jury Trials (Felonies and Misdemeanors)

<u>Events</u>	<u>Number From Scheduling Order</u>	<u>Percent Cases with Event Held</u>	<u>Number Cases with Event Held</u>	<u>Sessions per Year (x52)</u>	<u>Average held per Session</u>	<u>Length of Session (Minutes)</u>
Preliminary Hearing	1,800	10%	180	104	1.7	180
Jury Trial	6,000	< 1%	40	208	0.2	720

Notably, considerably more cases are scheduled than are eventually held. For example, of the 1,800 preliminary hearings scheduled, less than 180 (or 10%) are held. In terms of capacity, the judicial calendars have 104 sessions available each year to handle preliminary hearings, with each session scheduled for 180 minutes on the judge’s docket. The data tells us that under normal circumstances, the court should hold around two (1.7) preliminary hearings each session during the 180 minutes of docket time. With reasonable certainty, based on North Dakota practice, the 180 minutes available will be sufficient to complete the number of preliminary hearings on the docket. If practices differ in another jurisdiction (e.g., preliminary hearings require more time), then the needed time can be integrated into the schedule during the assessment of required capacity.

Of course, there may be (rare) occasions where the normal pattern breaks down; for example, a larger number than average of the scheduled preliminary hearings are held or there is a set of more complex, time consuming preliminary hearings. This may lead to the need to reset one or more of them. While outliers exist, they are not the norm and are best handled as atypical deviations from usual practice. The use of historical data and patterns to set judicial schedules works for most cases and offers all parties

²¹ Average Held per Session is calculated by dividing Number Cases with Event Held by Sessions per Year. The Length of Session is taken from the time allotted on the judicial calendar.

"reasonable" (not absolute) certainty that their event will be held when scheduled, and therefore they must be prepared.

Likewise, the example court expects fewer than 40 jury trials to be held each year. With 208 two-day blocks and jury panels available, there is significant redundancy built in should more than 40 jury trials occur, should a trial last longer than two days, or should a scheduled trial need to be reset to a later date. The assembled data help to highlight another aspect of capacity: a well-managed system will provide more capacity than is historically needed for larger events, possibly several times more, to ensure “reasonable certainty.”

Over a year, more than enough sessions will exist to handle the processing requirements of all pending cases, while the court still maintains a limit on the times it schedules hearings. When done correctly, even a substantial fluctuation in the docket can be handled without any changes to the system. Scheduled dates must be viewed as certain because of the high likelihood the court will get to each case.

In an important sense, this approach furthers due process. When cases are first initiated, there is uncertainty about which ones will require, for example, a preliminary hearing, a motions hearing, or a jury trial – though we know that relatively few ultimately will. Giving every case a future space on a judge’s docket for all potential options allows the individual dynamics of each case to play out and be resolved in the way deemed most appropriate by the parties and provides fair and timely resolution for all cases.

Nevertheless, it is important not to overstate the ease with which all potential court events can be handled. For example, the experience of ECJD in the pre-pandemic year of 2019 illustrates how the capacity to handle select events can be compressed when the full range of criminal business is considered. The example in Exhibit 4.6 focuses just on new filings. In addition, criminal courts handle reopened cases, arrests on bench warrants, and other types of miscellaneous matters (e.g., requests to vacate no-contact orders, bail reviews and off-schedule change of pleas). Exhibit 4.7, based on historical data, incorporates this share of the work in examining capacity using the following counts for three event types:

- ***Initial Appearance:*** 1,800 felonies; 4,200 misdemeanors; 1,000 re-opened cases; 1,200 bench warrants; and 600 miscellaneous, for a total of 8,800 cases.
- ***Dispositional Conference:*** 6,000 felony and misdemeanor cases
- ***Change of Plea:*** 6,000 felony and misdemeanor cases

Exhibit 4.7: Criminal Case Initial Appearance, Dispositional Conference, and Change of Plea

Events	Number From Scheduling Order	Percent Cases with Event Held	Number Cases with Event Held	Sessions per Year (x52)	Average held per Session	Length of Session (Minutes)	Time per Each Case (Minutes)
<i>Pretrial</i>							
Initial appearance/Arraignment	8,800	100%	8,800	312	28.2	150	5.3
Disposition Conference	6,000	50%	3,000	104	28.8	90	3.1
<i>Manner of disposition</i>							
Change of Plea	6,000	50%	3,000	104	28.8	180	6.2

The table shows that the court held about 28 of each event per session, though the available time per session varied. The last column estimates how much time the judge has to handle each case during an initial appearance (5.3 minutes)²², dispositional conference (3.1 minutes), and change of plea session (6.2 minutes). This requires each session to begin promptly, with clear expectations for each participant. It is achievable and verifiable by letting the system work, as evidenced by ECJD resolving all felony cases within an average time to disposition of 147 days in 2019.

Practical caseflow management concepts:

- A capable case management system uses a rotating, repeating judicial rotation method for calendaring and resource allocation to increase the certainty that events will be held as scheduled.
-

C. Flexibility

The previous two sections made the case for setting expectations for timeliness and developing a rotating, repeating judicial scheduling system with reasonable certainty. This section brings these two ideas together. An effective system will schedule all necessary case events in a way that gives the parties sufficient preparation time for each proceeding and still resolves the case within expectations. In North Dakota, overall time to disposition standards are set by AR-12 and include felony time standards of 90% disposed of within 180 days and 100% disposed of within 365 days. Flexibility introduces the notion that

²² The calculation was verified for initial appearances in 2022. In that year, nine different judges held 312 initial appearance sessions; the total number of appearances was 9,130 (29.3 per session). The total hearing time for the 312 sessions was 565 hours and 27 minutes (108.7 minutes per session). The average length of a felony initial appearance was 4.5 minutes, and the average length of a misdemeanor appearance was 4.3 minutes.

the scheduling system should be able to accommodate changes to the original dates set on the scheduling order while still meeting the time standards.

To illustrate this concept, we again use the ECJD judicial rotation schedule discussed in the previous section (Exhibit 4.2). Earlier we showed the capacity of the four weeks devoted to criminal cases in the nine-week rotation to meet the demands of incoming felony cases. Now we look at the timing of the different types of criminal case events available to one judge (we will call her Judge Smith) as she rotates through the nine-week schedule. Assume that Judge Smith is currently working in Week 1 of the rotation and conducts a felony initial appearance/arraignment for Mr. Jones. At that time, Judge Smith issues a scheduling order with all potential future events that align with her availability as she moves through the judicial rotation. As shown in Exhibit 4.8, the arraignment is set in week one, a preliminary hearing is set for Thursday afternoon of week five, and a motions hearing is set for Tuesday of week 14. A dispositional conference is set for Wednesday of week 14. The disposition options of change of plea, bench trial, or jury trial are all available during week 16, well ahead of the time goal of week 26 (or 180 days). The scheduling order also gives dates for discovery requests and replies and for filing and replying to motions.

Exhibit 4.8: Judicial Rotation Scheduling Example

Week	Arraign- ment	Preliminary Hearing	Motion Hearing	Disposition Conference	Jury Trial	Bench Trial	Change of Plea	Discovery Due	Motions Due
1	X								
2									
3									
4								X	
5		X							
6									
7									
8									
9									
10									
11									X
12									
13									
14			X	X					
15									
16					X	X	X		

If the case proceeds smoothly, any discovery requests and motions activity have been resolved before the dispositional conference set about 100 days after initial appearance, and the case is set to be resolved by plea or trial at about day 115. Incorporating interim and overall time standards into the analysis shows if this outcome meets expectations. Examples of interim time standards are:

- 100% of initial appearances held within the time specified by state law.
- 90% of preliminary hearings held within 60 days of initial appearance.
- 90% of dispositional conferences held within 100 days of initial appearance.

If the Mr. Jones case in Exhibit 4.8 resolves using the dates set on the scheduling order, it will also meet the time standard expectations. However, not all cases move so smoothly. A flexible scheduling system accommodates requested changes in the original scheduling order dates while keeping the case on track to meet time expectations. Say, for example, the public defender for Mr. Jones asks for a reset on the date of the Preliminary Hearing because the exchange of discovery is delayed. Judge Smith can accommodate this change because she has another slot for preliminary hearings in week 10 of her rotation that can be used without disrupting the other event date settings on Mr. Jones's case (Exhibit 4.9). Following the completion of the preliminary hearing in week 10, there is still sufficient time to prepare for the dispositional conference set in week 14.

Exhibit 4.9: Scheduling Flexibility Example – Late Discovery and Reset Preliminary Hearing

Week	Arraign- ment	Preliminary Hearing	Motion Hearing	Disposition Conference	Jury Trial	Bench Trial	Change of Plea	Discovery Due	Motions Due
1	X								
2									
3									
4								X	
5		X						↓	
6									
7									
8								X	
9									
10		X							
11									X
12									
13									
14			X	X					
15									
16					X	X	X		

Continuing this example, suppose Mr. Jones's case gets to the dispositional conference and the defense asks the case to be resolved by jury trial. However, the prosecution has a conflict during the originally scheduled jury trial time in week 16 and requests the jury trial day be reset. Judge Smith has multiple options available on her schedule, as her rotation provides four more times for criminal jury trials in weeks 21 and 26 (Exhibit 4.10). She can work with the attorneys to select a workable jury trial day. The critical thing to note is that the rotating, repeating scheduling system provides structured flexibility to

move case events off the original scheduling order dates and still resolve the case within the time standard of 180 days (26 weeks).

Exhibit 4.10: Scheduling Flexibility Example Continued – Reset Jury Trial

Week	Arraign- ment	Preliminary Hearing	Motion Hearing	Disposition Conference	Jury Trial	Bench Trial	Change of Plea	Discovery Due	Motions Due
1	X								
2									
3									
4								X	
5		X						↓	
6		↓							
7									
8								X	
9									
10		X							
11									X
12									
13									
14			X	X					
15									
16					X	X	X		
17					↓				
18									
19									
20									
21					X	X	X		
22					↓				
23									
24									
25					↓				
26					X	X	X		

To be explicit, the rotating, repeating system eliminates one of the great destroyers of timely case processing: the “friction of rescheduling.” Consider a situation where a criminal motion is scheduled for a hearing. The defendant and his court-appointed attorney both must be present. At the same time, in a different courtroom, a second judge schedules the same public defender to appear in an unrelated case. Counsel cannot be in two places at once, so one judge must yield and reschedule the hearing. Friction results because someone must now do the rescheduling through a process where they check with the judge, contact the attorneys, wait for replies, and re-coordinate court staff, jail transportation, and other resources – all to reschedule a single event for one case. The lack of a functional system will perpetually result in these unnecessary delays that clog the court. The rotating, repeating system minimizes the friction of rescheduling by having a clear and formal calendar structure that allows court staff to easily move the event to a predetermined future date. Everyone, including judges, clerks, and attorneys, knows

what the scheduling date options are, and they have known them since the case began at the initial appearance.

Practical caseflow management concepts:

- Incorporate flexibility into the scheduling system while remaining guided by time goals.
 - Seek to reduce the friction of rescheduling with established reset options.
-

D. Workability

i. Scheduling Design Features to Optimize Use of Resources

One source of success for the rotating, repeating system is the positive redundancy built in through providing sufficient capacity and necessary resources to accommodate fluctuations from the original event dates set on the scheduling order. Redundancy in a court scheduling system is a design approach that involves intentionally building more capacity than will usually be needed to improve reliability and performance. This design feature not only accommodates the need to reschedule but provides ample unscheduled preparation and opinion writing time for the judge; a process to handle unusually long trials; redundant resources to handle vacations, illness, and other absences; and sufficient time to respond to emergency events. Positive redundancy in a caseflow management system acts as a fail-safe when problems or unexpected issues emerge to help prevent system breakdown and resolve cases within expectations.

Another design feature based on the time standards is that the goal of the scheduling system is to resolve 90% of the cases within 180 days. Another way of thinking about this is that the system should be built to handle the typical requirements of 90% of felony cases. The remaining 10% of cases are comprised of unusual, complex, or lengthy cases that are exceptions to regular case processing. The system addresses these anomalous cases, but they may involve adjustments to established practice, with the goal of resolving these cases within 365 days.

With respect to case event scheduling, reasonable continuances are predictably unavoidable (e.g., slow discovery, conflict on trial date).²³ In fact, the system expects and is built to accommodate granting

²³ Although requests for continuances are foreseeable, the time required to accommodate a request may vary. For example, the delay necessary to accommodate an attorney conflict may differ from the delay needed for a mental health competency evaluation. Multiple options are better suited to address these variations. The rotating, repeating schedule allows the additional time to be closely tied to the specific nature of the continuance.

more time without sacrificing expectations. More time granted within the structure of the system is not a problem; rather, it can be viewed as a system benefit to deal with the inevitable circumstances that can arise in a complex, interdependent setting like the criminal justice system. The examples above demonstrate how the system can handle the necessary resetting of a preliminary hearing, a motions hearing, and a change of plea, bench trial, or jury trial date, all while continuing to meet time to disposition expectations.

The one event in North Dakota that should seldom move, however, is the dispositional conference. This event is the linchpin of system operation, and its setting date is strategic. The dispositional conference is typically set at about 100 to 120 days after the initial appearance. At this point, for the standard 90% of felonies, there has been sufficient time for any discovery and motions activity to be completed, and the attorneys should have a good idea of the manner in which the case will be resolved (e.g., plea or trial). Enough time has passed to allow for due diligence by all parties so that an informed decision can be made on how the case is to be resolved, or the specific reason it cannot be resolved as set can be identified. All cases should reach an end, and making a final decision about the type of case resolution is the purpose of the dispositional conference.²⁴

The long-established date of the dispositional conference and knowledge that it will be held as scheduled if the case has not resolved earlier provides the impetus for attorney preparation and decision-making. Once the disposition path is determined, multiple motion hearing, change of plea, and trial date opportunities are available if the original date from the scheduling order needs to be reset, allowing the court to grant more time and still resolve the case within expectations. Holding firm on the original scheduled date for the dispositional conference allows the court to maximize its capacity and flexibility to provide timely case processing. Resetting the dispositional conference compresses the time and scheduling options available to resolve the case within 180 days. Case management data confirm that continuing the dispositional conference leads to an increase in case processing time, or delay.

Another problem with resetting the dispositional conference date is that it increases the number of cases set for the next dispositional conference as the rotating, repeating schedule moves forward in time. In ECJD, for example, the dispositional conference is the hearing type with the lowest capacity on the schedule (Exhibit 4.7). Increasing the expected number of hearings to be heard because of earlier continuances reduces the time available for all dispositional conferences and increases the likelihood of

²⁴ The dispositional conference should be set around the time expectation for the completion of discovery and motions (i.e., about 110 days after initial appearance). Many courts set this event in relation to the actual trial date. Unlinking the dispositional conference date from the trial date makes clear the role of the dispositional conference to determine the ultimate method of disposition and preserves flexibility as to when the final dispositional event (e.g., plea, trial) will be held.

additional continuances. This situation can create a vicious circle, where the growth in the number of continuances reinforces itself along with the prospect of increasing delay. If not properly managed, the dispositional conference can become a bottleneck or pinch point limiting system performance.

ii. Identifying and Mitigating Pinch Points

In this section, we use data from ECJD as an example to further illustrate the concept of pinch points. The rotating, repeating scheduling system is designed to withstand many external shocks, such as the need to reset events, while still meeting time to disposition expectations. Sometimes, however, external events can overwhelm a system. The onset of COVID was one such shock. ECJD has a long history of timely case processing, but the data show time to disposition increased after 2019 as the impact of the COVID shutdown was felt (Exhibit 2.7). In 2020, for example, jury trials were suspended for significant periods of time. In addition, annual caseload levels were also rising, bringing added pressure to the nine judges working in ECJD and potentially increasing time to disposition.

A traditional strategy to combat delay is to increase the number of judges available to handle the criminal caseload. According to North Dakota's weighted caseload model, ECJD was underjudged, and in 2023, two additional judgeships were added. This increased the total number of judges from nine to eleven in ECJD. Two additional judges result in a change of conditions that warrant re-computation of the essential elements.

On paper, the additional judges lower the average number of cases handled per judge. However, to assess the potential impact of the increase in judges on case processing time, it is necessary to incorporate other resources into the analysis, such as availability of court staff, public defenders, and courtroom space. Conducting the essential elements calculation points to courtroom space as a key limiting factor for ECJD. The Cass County courthouse has seven total courtrooms, with only three secure courtrooms to handle criminal cases (e.g., separate circulation systems for the public and prisoners). Assembling relevant essential elements data suggests the limitation on criminal courtroom space creates a pinch point. One likely result of the increase in judicial resources without a corresponding increase in court space is actually an increase in the time to disposition for criminal cases, evoking the law of diminishing returns:

“The law of diminishing returns says that, if you keep increasing one factor in the production of goods (such as your workforce) while keeping all other factors the same, you’ll reach a point beyond which additional increases will result in a progressive decline in output. In other words, there’s a point when adding more inputs will begin to hamper production process.”²⁵

²⁵ <https://www.britannica.com/money/diminishing-returns>

In this example, the number of judges is the increasing factor, and the number of secure courtrooms is the fixed factor, leading to the possibility that “production” (i.e., time to disposition) may worsen.

By running through the logical implications of the essential elements data, it is possible to identify potential pinch points and their implications. In this instance, two more judges means that the 9-week rotating, repeating schedule shown in Exhibit 4.2 expands to an 11-week rotation. However, the weeks in the schedule available for handling criminal matters remains at four, as was the case in the 9-week rotation.²⁶ Note in Exhibit 4.4 how four judges are scheduled to accommodate the constraint of three courtrooms and no change in the number of secure courtrooms has been made to relieve that constraint.²⁷ The result is that all court hearings devoted to criminal cases are now spread across an 11-week period rather than a 9-week period.²⁸ Rather than 5.7 rotations through the schedule annually, there are now 4.7 ($52/11 = 4.72$). This effectively reduces the available number of all criminal court events by 18% annually per judge (Exhibit 4.11). The courtroom limitation means that the two new judges cannot be as efficiently deployed on criminal matters as they could be in the absence of the constraint.

Exhibit 4.11: Events Available per Year Under 9-Week and 11-Week Rotation

Event	Events per Rotation	9-week (x 5.77)	11-week (x 4.72)	Decrease
Initial Appearance	6	34.6	28.3	18.2%
Prelim. Hearing	2	11.5	9.4	18.2%
Dispositional Conf.	2	11.5	9.4	18.2%
Jury Trial	4	23.1	18.9	18.2%
Bench Trial	2	11.5	9.4	18.2%
Change of Plea	2	11.5	9.4	18.2%
Revocation Hrg.	2	11.5	9.4	18.2%
Motion Hrg.	2	11.5	9.4	18.2%

Fewer, more spread-out hearing options per year increase delay, not decrease it. Due to the courtroom constraint, even though judge numbers increased, there are still only two judges per week “inputting” new cases at initial appearances. If 100 new cases appear each week, each of the two hearing judges will put

²⁶ The additional two weeks in the rotation provide one week for civil jury trials and one week for signing orders.

²⁷ An even number of judges is needed to balance incoming cases with outgoing cases. To get to four judges (with only three courtrooms), one judge handles criminal matters in the morning in secure courtroom A and changes courtrooms in the afternoon to handle civil matters, while a different judge moves to secure courtroom A to handle criminal matters in the afternoon.

²⁸ Whether there are nine or eleven judges, there is only space for four judges at a time to handle criminal matters.

50 new cases into the “pipeline,” which is the same number as before the increase in judges. Likewise, there are only two judges “outputting” cases each week through plea or trial. These 100 cases entering the flow each week need to be resolved with 18% fewer event times per year, spread farther apart, meaning longer case processing times and longer jail stays for pretrial detainees and those waiting for revocation hearings. To get relief, the 100 incoming cases each week need to be divided by more than two judges, both for purposes of case initiation and case resolution; otherwise, the same number of criminal cases are traveling down a longer pipeline.

Every system, no matter how well it performs, has at least one constraint that limits its performance – the system's "weakest link." The essential elements analysis helps explicitly direct attention to a resource constraint that otherwise may fly under the radar. Any pinch point created by the weakest link will set the limit for performance of the system as a whole. In this example, courtroom space is the limiting factor; however, the weakest link can be the lack of any necessary resource and can vary by location (e.g., number of public defenders). A well-functioning system is built around identifying and seeking to eliminate these critical bottlenecks.

Practical caseload management concepts:

- Design the system to resolve 90% of cases 100% of the time within 180 days.
 - Build more calendaring capacity (positive redundancy) than will usually be needed to improve reliability and performance.
 - Account for resources and identify the weakest link.
-

Part II

Diagnosing and Overcoming Sources of Delay in North Dakota’s Criminal Case Processing

Part I introduced the systems approach to caseflow management used in the North Dakota courts. Section one emphasized the importance of setting expectations for timely case processing and building the data framework to monitor performance. The data in Section two (Exhibit 2.7) show that North Dakota courts are among the most timely courts in the country compared to the courts in the Effective Criminal Case Management (ECCM) study. Section three provided an overview of the North Dakota approach through discussion of the role of *essential elements*, *means*, and *conditions* in designing and implementing an effective system of criminal caseflow management. The essential elements (*effectiveness*, *capacity*, *flexibility*, and *workability*) make explicit court caseflow management priorities and the data and information necessary to make informed decisions about system design, function, and purpose.²⁹ Section four provided an overview of the rotating, repeating docket management system used by several courts in North Dakota and the primary design features in place in the most efficient North Dakota judicial districts.

The purpose of Part II of this report is to describe the findings of an in-depth assessment of criminal case processing practices in North Dakota. As in all states, there is variation in the extent to which local courts have been able to put caseflow management “best practices” in place to attain and sustain timely case processing over time. Four of North Dakota’s eight judicial districts agreed to participate in this project. The four judicial districts include 25 of the 53 counties, accounting for two-thirds of the state’s population. By looking closely at each judicial district’s case management practices in combination with data measuring key dimensions of case processing time, it is possible to identify drivers of delay and appropriate responses.

What NCSC researchers found was that the North Dakota districts participating in this study have established caseflow management plans and processes that have enabled them to handle felony cases largely within expectations. Through our analysis, it was uncovered that the statewide average time to disposition from 2018 to 2023 was 190 (calendar) days, noticeably faster than the average of 213 days found for the most timely courts examined in ECCM.

²⁹ Part I of the report provides an in-depth explanation of the essential elements and their importance in a systems-based approach to caseflow management.

The advent of COVID-19 led to a decline in efficiency and an increase in time to disposition for the North Dakota courts. During the “pre-COVID” period, the study districts disposed of over 90% of felony cases within a year. This fell to below 90% from 2020 to 2021, with two of the study districts returning to 90% or above between 2022 and 2023. This, together with the original impetus in the grant application to explore drivers of delay in North Dakota, informed our selection of a set of topics to explore further. These topics relate to how North Dakota’s rural geography and additional factors external to the courts shape the case processing and timely administration of justice.

Part II presents an overview of our findings on the successful caseflow management practices implemented across the four study districts and highlights the caseflow management plans adopted by each court. We then review information on local judicial scheduling practices and data assembled from the statewide case management system (CMS) to examine the operation of the docket management system in the post-pandemic period across all North Dakota districts. In addition, given that the districts are comprised of multiple counties of different population sizes, some discussion focuses on county-level practice. Finally, we explore a selection of topics in greater depth based on the information collected during site visits to each of the four participating districts and a series of focus groups held with judges, court staff, prosecutors, and defense counsel from these same districts. These topics span different phases in the process where improvements could be made to build upon the existing strengths of the docket management systems in place. The topics are as follows:

- Case management practices and scheduling options directed at the case processing needs of large, medium, and small counties.
- Approaches to address processes and external factors, like crime lab and competency evaluations, that can be felt by court stakeholders as contributing to unnecessary delay.
- Understanding the impact of bench warrants on timely case processing.

The analysis in this section distinguishes the various sources and their individual effect on delay and offers some options to help mitigate the impact.

A. Successful Caseflow Management Practices

Through virtual and in-person focus groups with the four judicial districts, several successful caseflow management practices were identified. These practices were credited for enabling the districts to resolve nearly two-thirds of their felony cases within the state’s standard of 180 days and close to the model time standards of 365 days for felony cases. Exhibit 5.1 below presents the average (calendar) days to disposition and the share of cases disposed within the state and model time frames.

Exhibit 5.1: Felony Disposition Times, by District, Average Calendar Days, and Time Standards, (2018 – 2023)

Judicial District	Average Calendar Days	% at 120	% at 180	% at 365
ECJD	178	45%	65%	91%
NECJD	163	48%	72%	93%
NEJD	201	46%	65%	86%
SCJD	185	44%	65%	90%
Benchmarks				
ND Standards	–	75%	90%	100%
National Model Standards	–	–	90%	98%

A key theme was that a systems approach to case management improves case processing for judges, clerks, attorneys, and other court staff. Although variation still exists across judges and counties, there was general agreement in the focus groups that the district-level and cross-county “harmonization” and coordination of scheduling practices reduced conflicts and helped to keep cases on track. Attorneys stated, for example, that they did not have to be in different courtrooms at the same time or travel long distances between hearings because of the docket management system. This systemic approach includes case management plans that outline the calendaring structure and expectations for time frames and events; clear communication and understanding across stakeholders about their role and responsibilities in the caseload process; and a data and information sharing framework that enables real-time performance monitoring and collaboration to keep cases moving.

A valuable resource for implementing the systems approach are the comprehensive case management plans outlining court processes and policies related to criminal, civil, and juvenile cases developed by all North Dakota districts. The plans describe basic case management goals to efficiently manage caseloads and judge and court staff responsibilities to meet those objectives. With respect to general procedures, the plans describe such features as the court commitment to docket currency (or timeliness), the judicial rotation schedule, courtroom assignments, and various court policies (e.g., method of transcript requests, media policy). For specific case type areas (e.g., criminal cases), the plan includes details on a wide range of case processing procedures (e.g., scheduling procedures, search warrants, failure to appear, and bond hearings). Although not uniformly utilized, the setting of firm dates for trial readiness or “dispositional” conferences was identified as important to create a path for case resolution.

In addition to establishing a structured scheduling system and procedures for more consistent and predictable criminal case processing, courts within the four judicial districts demonstrate clear

communication and understanding about each person’s roles and responsibilities for moving cases forward. The use of an established calendaring system and scheduling order (SO) to set key event dates and deadlines means that clerks can enter dates into the calendar and identify upcoming actions in a case. Attorneys know in advance when key events will be held, when discovery must be provided, and when witnesses need to be available. A focus group in the SCJD noted that it is possible to keep trial dates even when a warrant is issued because they are set in the scheduling order at the start of a case (i.e., at the initial appearance – IA – or preliminary hearing – PH).

A key factor in North Dakota’s success has been the development of information management tools to monitor the progress of cases through the court and evaluate the effectiveness of various case management policies. The courts previously relied on a “docket currency” report that was produced to inventory the cases that exceeded the time to disposition standards. Staff conducted a manual review of these cases twice a year to identify the reasons for delay. North Dakota now utilizes case management dashboards to assist with monitoring individual cases in real time and identifying cases that are overdue or require court action. The dashboards have made it possible to actively manage pending cases, with an eye towards preventing delay. This instant access to – and regular use of – case management information makes it much less likely for cases to “fall through the cracks.” Separate views or permissions allow for information sharing between attorneys, judges, clerks, court administration, and others regarding their assigned caseload. The dashboard provides evidence for the benefits of the calendaring system.

Exhibit 5.2: Study District Practices

Successful Practices	ECJD	NECJD	NEJD	SCJD
Early court control	Judge assigned at IA	Judge assigned at IA	Judge assigned when plea entered, usually at PH	Judge assigned at IA
Scheduling	SO issued at IA	SO issued at IA	Some judges use SO	SO issued at IA
Control of continuances	Multiple pre-set options (ex. 4.9)	Continuance policy	Continuance Policy	Continuance Policy
Exchange of discovery	Set in SO at IA (ex. 4.3)	Set in SO at IA (ex. 4.3)		4 weeks after IA
Monitoring time goals	Judges monitor with dashboard	Judges monitor with dashboard	Judges and staff monitor with dashboard	Judges monitor with dashboard, system alerts on overdue cases
Interim event management	Set in SO at IA (ex. 4.3)	Set in SO at IA (ex. 4.3)		Some events set in SO at IA
Remote hearings	Authorized: <i>ND Rules of Crim. Proc. Rule 43</i>			

B. Right-Sizing Case Management Practices

County size groupings. Here we look at the use and possible modifications of the scheduling system to best meet the needs of courts of different sizes throughout the state. To do this, we break the state’s 53 counties into three groups³⁰:

- Large: 8 counties with population over 17,000 (ranging between 21,000 to 200,000)
- Medium: 10 counties with population 8,000 to 17,000
- Small: 35 counties with population less than 8,000

The eight districts in North Dakota range in size from two counties (NECJD) to 14 counties (SEJD), and there is at least one large county in seven of the districts (NEJD is the exception). With respect to judges, 38 of a total of 54 judges statewide have their chambers in one of the large counties, with ten in medium counties and 6 in small counties. This means that North Dakota judges tend to travel to provide coverage in the more rural counties.

Exhibit 5.3 shows statewide summary information across the three county groupings for the period 2018-2023. The eight largest counties contain 72% of the state’s population and account for 79% of the state’s felony filings. Across these eight counties for the six-year period examined, the average time to disposition (in calendar days) was 187 days, and the median was 138 days. The medium and small sets of counties each make up 14% of the state population and, together, account for 20% of the state’s felony filings. Time to disposition is slowest in the small counties.

Exhibit 5.3: Statewide Time to Disposition by County Size (Calendar Days), 2018-2023

Statewide							
County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	8	564,815	72%	34,341	79%	187	138
Medium	10	110,464	14%	5,731	13%	194	134
Small	35	108,647	14%	3,133	7%	225	154
Total	53	783,926	100%	43,205	100%	190	138

Exhibit 5.4a shows similar information at the district level for each of the four study districts: ECJD is comprised of 3 counties (1 of each group); NECJD has 2 counties (1 large and 1 small); NEJD has 11 counties (3 medium and 8 small); and SCJD has 9 counties (2 large, 2 medium, and 5 small). One thing to

³⁰ These groups differ from the Census definitions, which consider all counties with a population under 250,000 to be small.

note is that most felony cases are handled in the large counties (98% in ECJD, 98% in NECJD, 90% in SCJD). Consequently, time to disposition at the district level is driven almost exclusively by case processing practices in the largest jurisdictions. In the two study districts with both large and medium counties, the time to disposition is similar between these two groups. However, across all districts, case processing time is slowest in the smallest counties, where caseloads are low and court is not held daily (e.g., dockets are monthly).

Exhibit 5.4a: Study District's Time to Disposition by County Size (Calendar Days), 2018-2023

East Central

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	1	196,362	95%	10,461	98%	178	137
Medium	1	7,908	4%	153	1%	160	134
Small	1	1,782	1%	23	0.2%	194	211
Total	3	206,052	100%	10,637	100%	178	137

Northeast Central

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	1	72,708	96%	4,444	98%	161	123
Medium							
Small	1	2,991	4%	102	2%	239	145
Total	2	75,699	100%	4,546	100%	163	123

Northeast

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large							
Medium	3	33,496	48%	1,727	58%	182	120
Small	8	35,693	52%	1,276	42%	226	148
Total	11	69,189	100%	3,003	100%	201	131

South Central

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	2	133,907	82%	10,272	90%	184	137
Medium	2	18,141	11%	884	8%	181	125
Small	5	12,227	7%	230	2%	208	141
Total	9	164,275	100%	11,386	100%	185	136

Exhibit 5.4b provides the same information for the four non-study districts. NWJD and NCJD both include three counties (1 of each group); SEJD has 14 counties (1 large, 2 medium, and 11 small); and SWJD has eight counties (1 large and 7 small).

Exhibit 5.4b: Remaining District's Time to Disposition by County Size (Calendar Days), 2018-2023

Northwest

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	1	39,113	70%	2,535	65%	251	168
Medium	1	14,252	26%	1,288	33%	218	150
Small	1	2,135	4%	75	2%	255	220
Total	3	55,500	100%	3,898	100%	240	162

North Central

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	1	68,332	86%	4,250	90%	213	141
Medium	1	9,383	12%	403	9%	235	157
Small	1	2,134	3%	66	1%	246	172
Total	3	79,849	100%	4,719	100%	215	142

Southeast

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	1	21,392	25%	1,077	33%	132	99
Medium	2	27,284	32%	1,276	39%	185	145
Small	11	36,770	43%	923	28%	208	150
Total	14	85,446	100%	3,276	100%	174	126

Southwest

County		Population		Felony Filings		Time to Disposition (days)	
Size	Number	Number	Percent	Number	Percent	Average	Median
Large	1	33,001	69%	1,302	75%	196	144
Medium							
Small	7	14,915	31%	438	25%	259	169
Total	8	47,916	100%	1,740	100%	212	148

Breaking down time to disposition. To examine different issues related to timely case management, we break down the overall time to disposition into three distinct time periods: time from arrest to filing, filing to initial appearance, and time from initial appearance to disposition. Time from arrest to filing covers the time from arrest to appearance before a magistrate and initiation of a court filing. Filing to initial appearance includes felony case initiation by arrest, arrest warrant, or summons until the defendant reaches an initial appearance. Time from initial appearance to disposition focuses on the time when the case is under active court control and a scheduling order has been issued that establishes the events and event dates for resolving the case in timely fashion. Suggested case processing improvements for the first two time periods are at the state level, while recommendations for improving timeliness in the third period vary based on court/county population size (i.e., small, medium, and large).

i. Arrest (A) to Filing (F)

The North Dakota CMS starts tracking criminal cases at the filing date. However, some cases begin at arrest, prior to charges being filed with the court. The court has responsibility in these cases, even though no case has yet been commenced in the CMS. Rule 5 of the North Dakota Rules of Criminal Procedure lays out the requirements for initial appearance before a magistrate.³¹ The rule requires first that an arrested person be brought before the nearest available magistrate without unnecessary delay. Second, if an arrest is made without a warrant, the magistrate must promptly determine whether probable cause exists, and if so, a complaint or information must be filed in the county where the offense was allegedly committed within a reasonable time. In defining a reasonable time frame, the US Supreme Court has ruled that a judge must find probable cause to hold someone within 48 hours of their arrest. For North Dakota, this time period is confirmed in *State of North Dakota v. Robert Vigil Bolinske Sr.* | 2022 ND 18.

North Dakota has an electronic warrant process that facilitates information sharing with the clerk's office once someone has been arrested. However, only three counties are currently using the system. The reasons for the lack of widespread adoption should be explored. Additionally, we recommend that a uniform procedure be put in place to verify all Rule 5 and Bolinske requirements are complied with in real time. There is currently no uniform procedure in place to confirm compliance prior to a case being filed in the CMS.

ii. Filing (F) to Initial Appearance/Arraignment (IA)

The data in Exhibit 5.5 show the time from filing to initial appearance takes an average of 22 days statewide, with a median of one day. The difference between the average and the median values indicates

³¹ *ND Rules of Crim. Proc. Rule 5.*

a need to distinguish between the two primary ways individuals get to the initial appearance. First, a person may be arrested for being suspected of committing a felony criminal offense or on an active warrant. Second, an arrest warrant can be issued for a suspect when a case is filed, or a summons may be issued directing an individual to come to court.

Exhibit 5.5: Time from Filing to Initial Appearance (calendar days), Statewide (2018-2023)

District	N	Average Days	Median Days	Average Overall T2D	% F to IA
ECJD	10,637	23	1	178	13%
NCJD	4,719	22	1	215	10%
NECJD	4,546	21	1	163	13%
NEJD	3,003	33	13	201	16%
NWJD	3,898	12	1	240	5%
SCJD	11,386	24	1	185	13%
SEJD	3,276	22	5	174	13%
SWJD	1,740	18	1	212	8%
Total/Average	43,206	22	1	190	12%

A summons directs an individual to appear in court on a given future date. In larger locations, the timing may be two to three weeks after receipt, while the length of time may be longer in more rural counties where court is not held daily. The time to initial appearance will be longer in situations where the suspect requests an extension of time due to conflict. Although a summons may create some time lag, these defendants are not in custody. Therefore, we can surmise that the median value for days from filing to initial appearance (1 day) primarily reflects the time to initial appearance for suspects arrested and held in jail.

There are opportunities for reducing the time to initial appearance for cases where an arrest warrant is issued. First, there is the possibility of enhanced electronic transfer of information between the court and law enforcement. Currently, the court transfers the arrest warrant, which names the defendant and describes the charge, to law enforcement. Information on the arrest warrant is then entered into the law enforcement database but may need to be augmented by additional information (e.g., social security number) to verify the suspect's correct identity. Significant time may be spent by law enforcement assembling and manually entering all required data. As the required data are largely available in the court's CMS, a recommendation is to continue the effort to link court and law enforcement data systems to transmit electronically not only the warrant information, but also the additional data needed for input into law enforcement systems.

Second, when an arrest warrant is delivered to law enforcement, there is not a consistent procedure to notify the court if the suspect is in custody elsewhere and unavailable to appear locally in court. Another recommendation is to develop a process for law enforcement to notify the court if the subject of the warrant is located in custody elsewhere. With this information, the court can send a public defender application to the defendant and possibly commence resolution of the case earlier.

iii. Arraignment/Initial Appearance (IA) to Disposition (D)

The initial appearance is where discovery and other hearing dates should be set, and a scheduling order issued. At this point, a court, no matter the size of the population served, should control the progress of the cases. However, size does matter when building the specific design of the scheduling system and determining how to accommodate county-level variation in such features as the number of days court is held and the timing and frequency of key events (e.g., dispositional conference, jury trials).

In a practical sense, local conditions play a large role in North Dakota criminal case processing. Court operations are affected by statutes and court rules, and available resources (e.g., number of judges, court staff, prosecutors, public defenders, and facilities) are largely determined by state and local funders. A key challenge facing any court is to best apply its finite resources to meet the needs of court users, while complying with various policy mandates (including the essential elements described in Part I of this report). Given the variation in court size across urban and rural counties in North Dakota, it is difficult to efficiently deploy resources, balance the components of an effective system, and eliminate inconsistencies in case management practice. However, there are opportunities for North Dakota to make the structure of its criminal case processing system more consistent across the state's varied counties and further improve disposition times.

Using the components of the docket management system reviewed in Section 4, NCSC next provides scheduling options and recommendations to consider for courts operating in counties of each of the three different tiers of population size.

1. Eight largest counties (72% of state population)

At least five of these counties use scheduling orders, and a minimum of three counties already use a rotating, repeating scheduling system.³² Districts that use these systems in their largest counties all have disposition times faster than the state average:

³² All eight districts have written case management plans available on the North Dakota Courts website.

Exhibit 5.6: Average Time from Initial Appearance to Disposition (calendar days), 2018-2023

	Statewide	ECJD	NECJD	SCJD	SEJD
Average Time	168	155	142	161	152

Each of the eight largest counties should first compute their essential elements and then use a scheduling order to set all discovery deadlines and hearing dates at the initial appearance. Placing a priority on holding the dispositional conference as originally scheduled allows judges to provide multiple options to conclude the case within expectations, while avoiding the “friction” of rescheduling. The supplemental Caseflow Management PowerPoint describes in detail the components of this system and the scheduling order design.

Care should be taken to ensure system integrity based on local circumstances. For example, about 50% of preliminary hearings in the four study districts get reset. The structure of the scheduling system must allow for this possibility without the need to reschedule all subsequent events on the scheduling order. This situation is described in Exhibit 4.9.

In some instances, the sites report that preliminary hearings get reset due to anticipated unavailability of witnesses. Some scheduling orders, for example the one used in ECJD (see Exhibit 4.3), include language clarifying that if parties seek a contested preliminary hearing, they must give sufficient advance notice to the prosecuting attorney to ensure attendance of an appropriate witness. Another option to consider prior to rescheduling is the likelihood that a contested preliminary hearing will be held regardless of the witness’s attendance. Exhibit 4.6 shows that in ECJD about 10% of scheduled preliminary hearings are contested. The defendant may choose to waive a contested preliminary hearing even in the absence of the witness. In instances where a contested preliminary hearing is requested and a witness is absent, the hearing can be reset to the next available date.

One question that emerged in some site visits was what to do if there is an increase in the number of jury trials. Computation of capacity will provide the answer: is there still reasonable certainty that the trial can be held? If the increase is only short term or there is a particularly long trial, there should be enough capacity within a properly constructed rotating, repeating system to handle these anomalous events. On the other hand, if the increase in the trial rate is sustained and impacts reasonable certainty, the rotating, repeating schedule may need to be adjusted to ensure sufficient capacity. Ideally, each district’s scheduling system is designed to provide three to four times the number of possible trial dates relative to

the number of cases actually tried. Specifics of the scheduling system (e.g., number and length of available jury trial sessions) should be based on local historical practice.³³

2. Ten Medium Counties (14% of state population)

Currently, the smallest of these counties (Traill) uses a scheduling order that sets all discovery deadlines and hearing dates at the initial appearance, like the larger counties. The one distinction with the scheduling order is that trial dates are pre-set for four times a year. The idea is that fewer date options are used for trials in smaller jurisdictions because trials occur so infrequently.

The ECJD has significant experience with this type of order in mid-size Traill County and can share experience with other districts in its design and use. In the larger districts, dates for all events on the scheduling order, including trials, change weekly as judges rotate through the system. For smaller jurisdictions, the same trial dates are used on the scheduling order for multiple weeks. This approach balances the components of a good structural system but recognizes there are not enough cases to justify more frequent trial dates and the associated jury expenditures. There may be enough volume in some of the larger counties in this mid-tier group to have five or six trial date settings annually, and still resolve enough cases to justify the work and cost of summoning jurors. Fewer than four trial dates per year would create too long a delay if a trial were continued.

3. Thirty-five Small Counties (14% of state population)

In these counties, discovery deadlines and hearing dates should be set at the initial appearance, like other counties, with the exception that the scheduling order should specify a “ready for dispositional conference” date, with reference to the time standards. The judicial dashboard or a CMS time standard could be used to track the age of pending cases, and when a county has enough accumulated cases past the “ready” date, a dispositional conference should be set for those cases. If the parties opt for jury trial at the dispositional conference, a trial date can be set. As a fail-safe, for counties that do not accumulate a quantity of “ready” cases, a dispositional conference should be set for any case reaching a certain age. The NCSC project team suggests setting the dispositional conference when four or more cases are past the “ready” date or when any case reaches 150 days.

C. Strategies to Improve Execution of a Caseflow Management Plan

A system of caseflow management, such as the one reviewed in Section 4 of Part I, can appear straightforward. The challenge, of course, is putting the plan into action, particularly in an environment as

³³ As discussed above, North Dakota’s largest county has a significant and costly pinch point due to an insufficient number of secure courtrooms. This single item significantly slows nearly a quarter of the state’s criminal caseload. A supplemental PowerPoint details how the law of diminishing returns impacts this county.

complex and interdependent as the criminal justice system. Drawing on the rotating, repeating docket management system in combination with caseflow data from the CMS, provides a means to identify points in the process where timeliness is threatened and to develop possible solutions to reduce delay. In North Dakota specifically, slowdowns in the dispositional conference, crime lab, competency evaluation process, cases involving serious felonies including family or sexual violence, and appointment of public defenders threaten both timely and fair case processing. These issues might present in only a small share of complex cases, yet they are highly visible for the court staff in terms of their recognizable impacts on the process and are worth exploring for possible solutions.

i. Don't Move the Star – The Dispositional Conference

Currently, although average disposition times meet expectations, none of the study districts meet the specific goal of resolving 90% of cases within 180 calendar days. Holding the dispositional conference as scheduled is a linchpin of system performance and every effort should be made to determine how to reduce continuances of this event. If held as scheduled, the system maintains one or more of the multiple options available in a rotating, repeating scheduling system to effectively resolve the case within expectations, while still providing the parties with more time. Resetting the dispositional conference to a later date reduces the options available to resolve the case within expectations. This principle is explained in the supplemental PowerPoint presentation titled “Don’t Move the Star.”

As a centerpiece of timely case processing, the timing of the dispositional conference should be guided by an explicit “interim event time standard” expectation. Historically, in ECJD and NECJD, the time expectation for scheduling and holding the dispositional conference is 100-110 days from the initial appearance. SCJD also uses a dispositional conference, although the time expectation is unclear, while NEJD uses a pretrial conference tied to the trial date instead. Exhibit 5.7 shows the time from initial appearance to the dispositional conference (pretrial conference in NEJD) in the four study districts. The median number of days reflects the midpoint, or the time at which 50% of dispositional conferences have been held. The median values indicate that ECJD and NECJD were typically meeting expectations (100-110 days) in 2018 and 2019; however, the COVID-19 pandemic proved to be a major disruptor from which these two districts have not yet recovered.

Exhibit 5.7: Time from Initial Appearance to Dispositional Conference (calendar days)

Year	ECJD		NECJD		NEJD		SCJD	
	Average	Median	Average	Median	Average	Median	Average	Median
2018	128	100	145	108	163	145	150	132
2019	136	100	137	108	188	140	173	139
2020	161	125	190	143	209	156	219	192
2021	161	124	151	140	222	158	217	167
2022	179	125	154	139	225	175	214	163
2023	178	124	167	139	205	158	171	109
Overall	157	116	157	130	202	155	191	150

As all North Dakota districts continue to recover post-COVID, we posit three suggestions to improve the timeliness of the dispositional conference. First, the leadership within each district should revisit the purpose of the dispositional conference as a key part of an effective system of criminal case processing. Second, each district should set a time expectation for holding the dispositional conference (e.g., 100 to 110 days from initial appearance). Third, leadership should encourage commitment to “Don’t Move the Star.” Examining the essential elements for each district may reveal other opportunities for improvement.

ii. Create a State Crime Lab Resource

Over 30% of the criminal cases in this study were drug/alcohol related. The crime lab tests samples for these and other cases. Focus groups cited delay in case processing due to the absence of crime lab reports (i.e., pinch point), and the crime lab reported it would be helpful if it were notified when cases were resolved so that they did not perform unneeded tests. It is recommended that North Dakota develop a means to notify the crime lab of case status.³⁴ One option is that these cases could be tracked, with the ability to be sorted by next court date and by whether the case is active, closed, or inactive. If cases were closed, the lab would be able to eliminate unneeded tests. Likewise, the lab would be able to sort cases by future court date to develop a real time priority list identifying which lab tests may be needed first. Cases that are inactive due to a warrant or matter unrelated to the lab would be a lower priority.

iii. Mental Health Competency Evaluations

The increased workload associated with cases requiring a mental health competency evaluation was a topic of discussion in every focus group and an obvious source of frustration. As shown in Exhibit 5.8, these evaluations have historically occurred in only a small percentage of all cases disposed of by North Dakota courts (less than 1%).

³⁴ A common reference point may be the law enforcement report number or citation number.

Exhibit 5.8: Mental Health Competency Evaluation Ordered

Evaluation Ordered	Cases	Percent
No	42,412	99.1%
Yes	397	0.9%
Total Cases	42,809	

While these cases have little effect on overall system performance, they are more likely to experience delayed dispositions. Exhibit 5.9 shows the time to disposition, in both calendar and time clock days, for the 397 cases with a mental health competency evaluation ordered between 2018 and 2023. The average is 306 days (calendar) and 289 days (time clock). Recall Exhibit 2.10 shows that the average overall time to disposition for all cases was 190 days (calendar) and 161 days (time clock) for the same time period. The data suggests that delay in the competency evaluation phase is leading to longer case processing times. If mental health competency evaluations are expected to be completed in 45 days, the CMS should track the time from the order for evaluation to the time the evaluation is completed. It is expected that the data will show that the time consistently exceeds this time goal.

Exhibit 5.9: Time to Disposition: MH Competency Evaluation 2018-2023

	N	Mean	25th	50th	75th	90th
Calendar Days	397	306	173	265	395	532
Time Clock Days	397	289	170	257	376	496

The AOC has been active in bringing together all justice system partners involved in the process (e.g., court, public defense, state hospital) to jointly determine how to solve this problem. Through this collaboration, it was made clear that there was confusion about the requirements for a competency evaluation (also known as a fitness to proceed evaluation) compared to an evaluation of criminal responsibility because both types of evaluations are included in the same order. Criminal responsibility evaluations require more extensive information, including discovery material, to determine mental state at the time of the alleged crime. Requests for competency evaluations do not require such extensive information and can occur much earlier in the process, before discovery is exchanged. Two separate orders have since been developed to resolve this issue and a checklist of the documentation and records needed for each type of evaluation has been created. Additionally, new codes in the CMS have been developed to notify human services when evaluations are ordered and to identify when reports are filed so that time requirements can be tracked.

Importantly, the data suggests there may be an increase in the incidence of cases involving an order for a mental health competency evaluation. Exhibit 5.10 shows that there has been a relatively large increase in the number of evaluations ordered over the past few years.

Exhibit 5.10: Trend in the Number of Mental Health Competency Evaluations, 2018-2023

Year	Total Cases	Evaluations Ordered	Percent
2018	6,886	3	0.04%
2019	7,279	3	0.04%
2020	6,507	3	0.05%
2021	8,061	63	0.78%
2022	7,002	135	1.93%
2023	7,074	190	2.69%
Total	42,809	397	0.93%

Requests for mental health evaluations spiked in 2022, and those cases are reflected, in large part, in 2023 dispositions. Because this dramatic increase occurred immediately post-COVID, insufficient time has passed to determine whether this increase was a singular event impacted principally by COVID or an ongoing change in the trend. Monitoring the number of mental health evaluations and the time to complete this event type should continue going forward.

iv. Family/Sexual Violence Cases

The AOC reported concern among some judges and administrators about the impact of family/sexual violence cases on case processing time. These cases present a range of potential challenges affecting time to disposition, including their emotional difficulty for victims, discovery issues related to physical evidence and lab results, and the complexity of guiding each case through the court process. To examine this issue, the first step is to identify the subset of cases to be defined as family/sexual violence cases. Exhibit 5.11 shows the charge categories included in the analysis. All charges included in the analysis are felonies and classified as violent offenses.

Exhibit 5.11: North Dakota Family/Sexual Violence Offense Categories

Offense Category	N.D. Offense Code	Sub-Sections	Number of Charges
Sex Offenses	12.1-20	03, 03.1, 04, 05, 05.1, 06, 06.1, 07, 11, 12, 12.1, 12.2,	1,706
Sexual Performance by Children	12.1-27.2	02, 03, 04, 04.1, 04.2, 05	2,494
Disorderly Conduct Restraining Order	12.1-31.2	01, 02	375
Assault-Threats-Coercion-Harrassment	12.1-17	01.2, 02, 03, 04, 04.1, 05, 06, 07, 07.1, 07.2	11,040

Exhibit 5.12 displays statewide time to disposition by major case type category over the six-year period. Because the family/sexual violence cases are part of the violent crime case type, they are broken out into a separate subgroup. The 8,200 family/sexual violence cases make up two-thirds (67%) of the total violent offense caseload of 12,162 cases.

Exhibit 5.12: Statewide Time to Disposition by Case Category, 2018-2023 (Calendar Days)

Charge Type	N	Mean	25th	Median	75th	90th
Violent (overall)	12,162	207	97	151	252	421
Violent, non FV	3,962	212	93	150	256	455
Family Violence	8,200	204	98	151	251	403
Property	11,351	198	70	140	237	412
Drug	14,446	174	63	127	210	354
DUI	819	173	85	139	205	307
Public Order	4,143	185	63	126	220	387
Criminal Traffic	285	147	56	112	183	308
Total	43,206	190	73	138	230	389

The overall average time to disposition for all case types is 190 days, with violent and property case types slightly above the average. Other than the small number of criminal traffic cases, there is a high level of consistency across the case categories, ranging from 173 days (DUI) to 207 (violent overall). Family/sexual violence cases have a statewide average case processing time of 204 days, which is very similar to the remaining types of violent cases (212 days).

Tentative support for the hypothesis that family/sexual violence cases take longer during the discovery phase (prior to the dispositional conference) can be found in the time taken to resolve 25% of the caseload: 98 days. While this value is similar to other violent cases (93 days), it is about four to five weeks longer than the other larger case categories of property (70 days), drug (63 days), and public order (63 days) offenses. The time distribution across case categories is reduced to about two to three weeks at the median (or 50%) mark.

Another way to look at the caseload process is by the percentage of cases disposed within the time standards (Exhibit 5.13). As with other violent offenses, at 120 days, the percentage of family/sexual violence cases resolved is lower than the other case type categories. However, the rates tend to converge when measured at 180 days and 365 days. All in all, there is little evidence that the group of family/sexual violence cases systematically take longer to resolve.

Exhibit 5.13: Statewide Time to Disposition by Time Standards, 2018-2023 (Calendar Days)

Case Type	N	Average	% at 120 days	% at 180 days	% at 365 days
Violent (overall)	12,162	207	37%	60%	87%
Violent, non FV	3,962	212	37%	60%	86%
Family Violence	8,200	204	37%	60%	88%
Property	11,351	198	43%	63%	88%
Drug	14,446	174	48%	68%	91%
DUI	819	173	43%	67%	94%
Public Order	4,143	185	48%	67%	89%
Criminal Traffic	285	147	55%	74%	93%
Total	43,206	190	44%	65%	90%

v. *Public Defender Appointments/Assignments*

Fair and timely criminal case processing depends on early appointment of counsel for indigent defendants. All focus groups identified this as an area of concern. Exhibit 5.14 shows that 84% of defendants in the study districts were eligible for appointed counsel. Smaller courts may have a need to appoint contract attorneys if there are not enough public defenders to handle this volume. Additional data is needed to identify the percentage of eligible people who have an attorney appointed and their attorney type (i.e., public defender, contract attorney, private).

Exhibit 5.14: Cases Eligible for Appointed Counsel

	Total Cases	Total Eligible	% (of cases)
Statewide	43,206	35,168	81%
Study Districts	29,572	24,945	84%
ECJD	10,637	9,406	88%
NECJD	4,546	3,842	85%
NEJD	3,003	2,260	75%
SCJD	11,386	9,437	83%

During our focus groups and site visits, participants pointed to barriers in the indigent defense application, eligibility, and assignment process that can result in continuances. A judge may continue a case pending the application process or an attorney may request a continuance to locate and speak with

their client in the community. Stakeholders in the study districts explained that it typically takes one to two weeks to appoint a public defender.

Application. The application for indigent defense can be completed on paper or electronically through the ND courts website.³⁵ However, stakeholders from the participating courts stated that some defendants do not apply or submit a complete application in a timely fashion. People who are in custody may not be given access to the electronic application and may instead receive a paper form. Both versions of the form contain eight sections to complete, although only a subset of the sections are required for those who can provide evidence that they receive government benefits. Submission of this documentation may present unintended challenges for both in custody and out of custody defendants, who may not have an easy way to send these documents, which can lead to a delay of weeks for an application to be submitted, and they may be rejected, requiring the defendant to reapply. The application also states that there is a \$35 fee, unless waived, but explicit instructions are not provided.³⁶ The form itself could provide directions for requesting such a waiver, provide a checkbox if the defendant is seeking a waiver, or note that the application will not be rejected if the fee is not paid at the time it is filed.³⁷ Application assistance could also be provided by the clerk's office or through the pretrial services program. Expanding pretrial services statewide and five days per week could support early appointment of counsel and appearance rates to, ultimately, improve fair and timely justice.

Eligibility Determination. The state indigent defense office, part of the executive branch, sets guidelines for eligibility but does not make these determinations. The local court (judge, clerk, or pretrial program officer) reviews applications for eligibility and makes determinations. This is supposed to happen within a day after an application is submitted. However, it can take longer or be delayed if an application needs to be resubmitted. Once determined, the notice of eligibility is entered into the electronic CMS and automatically populates in the system for the state indigent defense office to make an appointment. This allows the statewide office to make prompt appointments. It may be possible to further streamline the process so that the eligibility decision can be made more efficiently, such as through the adoption of a presumption of indigency for those in custody or through automated scoring based on responses to the application.

Appointment. There is also variation across the districts in how attorneys are appointed. In some courts, attorneys track with a judge, meaning they are appointed for cases that are assigned to a certain judge. In other courts, attorneys stay with the same defendant. In yet others, there could be a combination

³⁵ <https://forms.ndcourts.gov/indigentdefense>

³⁶ <https://www.indigents.nd.gov/sites/www/files/documents/standards-and-policies/CriminalCases.pdf>

³⁷ <https://www.indigents.nd.gov/sites/www/files/documents/Guidelines%20version%202021.pdf>

of these or other strategies to appoint attorneys. Some attorneys and judges stated that it was not always clear when the public defender has been appointed. Others expressed concern about the number of conflicts that occur. When conflicts arise, it takes time to reassign the case, and another conflict can still arise in that case. In addition, defendants may not have a good phone number or permanent address, and the attorney may only receive a jail address. Attorneys are then unable to make initial contact, making continuances necessary.

We recommend that the application and assignment process and rules be reviewed for alignment with the ABA standards.³⁸ For instance, Principle 5 states, “The process of applying for public defense services should not be complicated or burdensome, and persons in custody or receiving public assistance should be deemed eligible for public defense services absent contrary evidence.” The attorney eligibility and assignment procedures can then be discussed with all relevant court and justice partners, including judges, indigent defense, clerks, and attorneys.

Simple changes could be readily made to improve the assignment process, such as including contact information for the assigned public defender in a scheduling order. Defendants could then be directed to immediately contact their attorney. The court or pretrial services staff could also collect defendant and family member contact information upon release. Pretrial services staff offered to coordinate with attorneys and the people they monitor to ask if they have made contact and remind them of their hearing date. Moreover, some districts assign the same public defender to a person when they have a new case with the court. This provides continuity in communication with clients.

To more fully understand the timing of assignment of indigent defense counsel across the state, North Dakota should identify ways to consistently track data on time from the application submission to the notice of eligibility to appointment. This would allow the state to isolate the sources of delay and determine the areas most in need of attention. For each judicial district, data can be compiled on days between the following case events:

- Initial appearance (IA) to notice of eligibility of appointed counsel (NEAC), with the goal of less than one time clock day;
- NEAC to assignment of public defender, with the goal of less than one calendar day; and
- Assignment of public defender to public defender contact with client (provided by the Office of Indigent Defense), with the goal of one calendar day.

³⁸ ABA (2023): https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lsc-laid-ten-princ-pd-web.pdf

Other approaches to address these challenges may be outside of the court’s control. One approach is to encourage jails to make the online application available for defendants in custody to expedite the time from the initial appearance to submission of the application. Additionally, statutory changes could allow for attorneys to provide an initial consultation in the jail with all newly arrested defendants prior to their initial court appearances. This could occur before they apply and qualify for services if conflict of interest rules could be waived to allow for limited public defender representation in these circumstances. Providing limited representation at the initial appearance not only safeguards due process protections but offers a chance for earlier resolution and reduction in the number of hearings and related justice system costs.³⁹

Another recommendation is to adequately fund public defense to meet the fundamental right to counsel for those who cannot afford an attorney. There are potential cost savings for courts and the state when there are enough public defenders and contract attorneys for the caseload, and they can be appointed early in a case. Early appointment of counsel may reduce pretrial incarceration and associated jail costs and expedite the case process through timely exchange of discovery and plea negotiations. Moreover, adequate funding could improve attorney retention and result in reduced costs associated with fewer reassignments or conflicts. The time it takes a new attorney to become familiar with the case can contribute to delays.

vi. Examining Bench Warrants to Reduce the Rate of Nonappearance

If the expectation is that 90% of cases are to be completed in 180 days, all cases should be tracked in both time clock and calendar days to determine if the overall goal is met, and if not, how “active” and “inactive” time affected the outcome. North Dakota is one of the few court systems studied by NCSC that consistently compiles data allowing for the study of “inactive time.” In North Dakota, this time includes bench warrants and interim appeals. It is assumed for this study that time lost to interim appeals is immaterial. Reference to inactive time refers to the period between the initial appearance and disposition. In North Dakota, bench warrants have a significant impact on average case processing time; however, NCSC has limited data from other jurisdictions for comparison (Exhibit 5.15).

³⁹ See examples from other jurisdictions at <https://www.nlada.org/sites/default/files/NLADA%20CAFA.pdf> (Mrozinski, Buetow, Mrozinski, & Buetow 2020)

Exhibit 5.15: Impact of Bench Warrants: 6-Year Average (2018-2023)

	Statewide	ECJD	NECJD	NEJD	SCJD
Avg. Filing to Dispo (calendar days)	190	178	163	201	185
Bench Warrant percent	26%	29%	19%	20%	29%
Avg. Bench Warrant inactive time	115	119	98	170	107
Avg. Filing to Dispo (timeclock days)	161	143	145	167	154
Avg. Bench Warrant Impact	29	35	18	34	31

In North Dakota, bench warrants occur in 19% (NECJD) to 29% (ECJD and SCJD) of cases. Average inactive time due to a warrant ranges from 98 days (NECJD) to 170 days (NEJD) in the study districts, compared to 115 days statewide. Identifying causes of bench warrants could lead to significant reductions in calendar day case processing time. Bench warrant average impact on caseload statewide is 29 days. Average impacts between districts vary from 18 days (NECJD) to 35 days (ECJD).

In 2024, NCSC published the Court Appearance Rate Report Card⁴⁰ which examines missed court appearances in six selected states. The report identified a set of policies to improve appearance rates. North Dakota already incorporates many of the recommendations, including the following:

- i. *Liberal court appearance rules*
- ii. *North Dakota has policies providing for flexibility in the disposition of cases.*
- iii. *North Dakota sets a limited number of court hearings, and many courts notify defendants of future court dates at the IA and provide a written scheduling order.*
- iv. *North Dakota has an available public website to search case information.*
- v. *North Dakota has a system to provide electronic notices to parties.*

North Dakota Rule 43 of the Rules of Criminal Procedure clarifies whether a defendant's presence is required or not at court proceedings.⁴¹ A defendant is *required* to be present at the initial appearance, the arraignment, and the plea; every trial stage, including jury empanelment and the return of the verdict; and sentencing. Given the large geographic area and mostly rural character of the state, the rule facilitates access by allowing appearance through remote electronic means. Attending remotely is considered

⁴⁰ The Appearance Rate Report Card can be found at: <https://ncsc.app.law/ncsc-appearance-rate-report-card/27155599> (NCSC 2024)

⁴¹ ND Rules of Crim. Proc. Rule 43.

present for the purposes of this rule. Defendant presence is *not required* under any of the following circumstances, if necessary written legal documents are filed:

- For felony offenses, the preliminary hearing, arraignment, and entry of a not guilty plea may occur in the defendant's absence. In addition, if the offense is a Class C felony, entry of a guilty plea or sentencing may occur in the defendant's absence.
- For misdemeanor offense or infractions, the arraignment, plea, trial, or sentencing may occur in the defendant's absence.
- Defendants are not required to attend a proceeding that involves only a conference or hearing on a question of law or a proceeding that involves the correction or reduction of a sentence.

North Dakota's practice of requiring defendant presence in only a small number of hearings helps reduce the rate of nonappearance. It also benefits defendants directly in reducing the need to take time off work, find childcare, or absorb the time and expense of coming to the courthouse.

Suggestions for Examining the Source of Nonappearance Rates

North Dakota should use its CMS to isolate details relating to bench warrants so that causes can be identified and addressed. The first step in this process is to distinguish and quantify the drivers of pre-disposition bench warrants, which may be due to a failure to appear (FTA) or a violation of a release condition. The next step is to track data on each bench warrant to determine whether specific defendant and case characteristics are associated with higher rates of nonappearance and conduct a robust evaluation of nonappearance. Examples of important indicators and the questions they can help resolve are described below:

1. Stage in the proceedings where bench warrants occurred. Did it occur early on or did delay or a relatively large number of events in the case precede the issuance of a bench warrant?
2. Status of contact with the Office of Public Defense. Was the defendant in contact with the public defender ahead of the hearing? Is lawyer-client communication an issue?
3. Time of day of missed event. Are there certain times of day that result in a higher percentage of missed appearances?
4. Location of missed event (e.g., courthouse, sheriff's office, etc.). Are some locations more difficult to access (e.g., lack of public transportation)?
5. Zip code of defendant. Do some locations present greater challenges to access (e.g., greater distance to the courthouse)? Do some locations have more non-resident defendants?

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6. Pretrial release type and risk of nonappearance. How does the type of bail (e.g., personal recognizance, 10% bond) relate to risk of nonappearance and actual appearance rates? Are release conditions being informed by a validated risk assessment?
 7. Use of scheduling order. Was a scheduling order issued at initial appearance? Do scheduling orders improve appearance rates?
 8. Electronic notification. Were electronic court reminders, such as text messaging, being used?
 9. Defendant pretrial status. Was the defendant in a pretrial release program?
 10. Defendant appearance history. How many predisposition bench warrants were issued in the case?

A reduction in nonappearance rates is one anticipated outcome of pretrial services programs and for the setting of pretrial conditions, such as electronic monitoring and supervision. A pretrial services program was launched in North Dakota on a pilot basis in 2020. District stakeholders spoke about the goals for the pretrial services program in terms of improved access to justice, accountability, and case readiness. The districts are at different stages of implementation, and the programs operate differently among the districts. However, there was stakeholder support for the program and the role of pretrial staff in screening and assessing pretrial risk, providing release recommendations to the court, monitoring pretrial defendants, assisting with the indigent defense application and services in the community, and coordinating with attorneys, judges, and defendants.

Preliminary findings from a 2021 study by researchers at the North Dakota State University found lower rearrest and failure-to-appear violations among pretrial supervision clients across all pilot sites, though there were no significant differences between pretrial clients and non-clients, likely due to the small sample size and low rates of misconduct.⁴² A closer look at bench warrant rates in the context of these programs is one way to gauge effectiveness, along with other outcome measures. There is insufficient evidence from this analysis to determine the causes for pre-disposition bench warrants. There may be more clarity if North Dakota reduces the variation in active case processing time through more consistent statewide criminal case management, as recommended. Also, if more states start to track “inactive time,” there will be more information available for comparison. Finally, if North Dakota can compile more specific data as outlined above, it may be possible to identify specific causes of delay. It is clear, however, that bench warrants are a significant factor in case delay, with significant variation across the state.

⁴² Myer & Hunter (2021) (available upon request from the primary author)

Conclusion

The current NCSC study in North Dakota empirically demonstrates that the fair and timely resolution of criminal cases is an achievable goal. To meet this goal requires finding the most efficient balance of capacity, flexibility, and workability – understanding the parameters of the system – that can be objectively planned for, implemented, and verified. Finding the right balance starts with reasonable expectations to gauge effectiveness.

The principal purpose of this study was to find the causes and effects of delay. Originally, NCSC expected that this search would follow traditional lines – examining the impact of discrete features such as continuances, impacts of poverty, mental health, serious felonies, leadership, and collaboration. Instead, what we found in North Dakota was a unique systemic approach, supported by empirical data, that encompassed all of these issues and broke down the systems components in a way that allows causes and effects resulting in delay to be isolated and identified. North Dakota still has room for continued improvement in both data completeness, particularly to measure inactive time, and in the ongoing effort to recover from the impact of the COVID-19 pandemic.

The results of past studies, including ECCM, could only point to correlations between outcomes. For example, ECCM found a correlation between the number of continuances and the length of delay. The causes, however, of both continuances and delay are multiple, and single-issue solutions like continuance policies have proven ineffective.

The current study delves deeper in its analysis of delay and not only examines systemic outcomes, but also assesses the component parts of the system to isolate and diagnose the causes and effects of delay. While North Dakota already uses a complex and systematic approach to address and avoid many sources of delay, additional opportunities exist to better isolate and study the causes and effects of inefficiency within the system. The current study identified “moving the star” and “violating the law of diminishing returns” as potential sources of delay that may impact some jurisdictions. That is, rescheduling the dispositional conference and maintaining an imbalance in resources, respectively, represent pinch points to be addressed. This report also highlighted North Dakota’s flexible options for calendar adjustment as a means of avoiding the friction of rescheduling while maintaining expectations around interim event scheduling. By studying the causes of bench warrants and the process of appointing public defenders, further improvements can be made to North Dakota’s – or any other jurisdiction’s – system of case management.

The courts are multi-dimensional, complex systems, but empirical caseflow management and fair and timely resolution of criminal cases is possible. North Dakota provides such an example.

Courts seeking improvement in this area should begin by asking themselves the following questions:

1. Do you have reasonable expectations for completion of all significant events in the case process?
Without these, you have nothing to measure and no way to provide accountability.
 2. Do you have sufficient capacity with reasonable event certainty? You need the expectation that events will go as scheduled.
 3. Do you have flexibility in scheduling? You need options to right size reasonable requests for more time and still meet expectations.
 4. Is your system workable? Can you get needed resources where needed, as scheduled?
 5. Do you have data to verify you meet expectations and the ability to diagnose system performance (active time), system disruptors (inactive time), and performance (execution)? Breaking down data into time clock and calendar days and segregating time periods between events isolates these factors for analysis.
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