



AMERICAN UNIVERSITY

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SCHOOL OF PUBLIC AFFAIRS  
JUSTICE PROGRAMS OFFICE

**BJA Criminal Courts Technical Assistance Project: TA Report No. 7-172,186/187/188**

**Review of Criminal Caseflow Practices  
in the 31<sup>st</sup>, 38<sup>th</sup> and 39<sup>th</sup> Circuits  
of Missouri and  
Recommendations for Improvement**

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**February 2012**

*This report was prepared under the auspices of the Bureau of Justice Assistance (BJA) Criminal Courts Technical Assistance Project at American University, Washington, D.C. This project was supported by Grant No. 2010-DD-BX-K037 awarded to American University by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions in this document are those of the author and do not represent the official position or policies of the U.S. Department of Justice.*

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## I. INTRODUCTION

In November 2010, Missouri State Court Administrator (OSCA) Gregory Linhares requested the Bureau of Justice Assistance (BJA) Criminal Courts Technical Assistance Project (CCTAP) at American University to review caseload processes at several courts that were "...struggling with criminal caseload management" and to also provide training for OSCA staff in conducting caseload management reviews in other trial courts in the state. Mr. Linhares also requested training and assistance for OSCA staff on Differentiated Case Management (DCM) strategies that could be included in judicial benchbooks, court clerk procedure manuals as well as other training resources.

On April 18, 2011, Richard Hoffman of the CCTAP staff and Judge Ronald Taylor (ret.), former Chief Judge of the Unified Trial Court in Berrien County, Michigan, and an experienced caseload management consultant with expertise in DCM, met in Jefferson City with Mr. Linhares, members of the OSCA staff, and leaders of the state prosecutorial and defender offices, as well as judges, prosecutors, and defenders from Greene, Christian, and Taney Counties. During the meeting, discussion focused on caseload management issues circuit courts in Missouri were addressing, and on strategies for implementing DCM. These discussions pointed to the desirability of conducting several site visits to criminal courts in counties of varying sizes to review current criminal caseload processes and practices so as to enable the CCTAP to provide both recommendations to the specific circuits and training for OSCA caseload management staff in conducting these assessments. It was therefore agreed that a CCTAP study team would visit Greene County (31<sup>st</sup> Circuit); Christian, and Taney Counties (38<sup>th</sup> Circuit); and Barry County, one of the counties in the 39<sup>th</sup> Circuit.

Greene County had a 2009 population of 269,630 and in FY 2010, disposed of a total of about 5,000 felony cases, with less than 3,000 more pending at yearend. Seven thousand misdemeanors were resolved, with about 11,000 remaining pending. Greene County had not met time standards in any case category and the average age of felony cases in 2010 was 288 days.

In Christian and Taney Counties, with a population of 125,478, about 2,500 felony cases were disposed of, with about 1,700 pending, and about 4,000 misdemeanors resolved and about 3,700 pending. The 38<sup>th</sup> Circuit has not met time standards for the criminal case category and the average age of felony cases in 2010 was 250 days (274 in Christian County and 226 in Taney County).

Barry County, with a population of 35,597, had 332 felony cases filed in FY 2010 and disposed of 312, with 216 pending at year-end. According to a 2007 weighted case study, the Circuit is short 1.44 judges. Barry County has not met time standards for the criminal case category; the average age of felony cases in 2010 was 234 days.

As noted above and further discussed in the sections which follow, each of the jurisdictions visited had not met time standards in FY 2010 and FY 2011 and each was short several judges, based on the statewide case weighted study recently conducted in Missouri.

Review of FY 2011 case disposition data indicates that, with the exception of Greene County, each of these courts has achieved some reductions in the percentage of disposed cases over 14 months since FY 2010, and have made progress in reducing the average age of cases at disposition. The percentage of cases over 14 months old in Greene County, however, increased from 19% in FY 2010 to 20% in FY 2011 and the average age of cases at disposition increased from 288 to 295 days.

**Table 1. Age of Circuit Felony Cases at Disposition, FY 2011: Barry, Greene, Christian and Taney Counties**

COUNTY	0-10 Months (Standard: 90% in 10 months)			10-14 Months (Standard: 95% in 14 months)			Over 14 Months			Total Cases Dispos.	Avg Age (in days)
	N	%	Cum %	N	%	Cum %	N	%	Cum %		
<b>Barry</b>	<b>190</b>	<b>75%</b>	<b>75%</b>	<b>23</b>	<b>9%</b>	<b>85%</b>	<b>39</b>	<b>14%</b>	<b>100%</b>	<b>262</b>	<b>217</b>
<b>Greene</b>	<b>1,219</b>	<b>67%</b>	<b>67%</b>	<b>241</b>	<b>13%</b>	<b>80%</b>	<b>362</b>	<b>20%</b>	<b>100%</b>	<b>1,822</b>	<b>295</b>
<b>Christian</b>	<b>309</b>	<b>70%</b>	<b>70%</b>	<b>51</b>	<b>12%</b>	<b>81%</b>	<b>82</b>	<b>19%</b>	<b>100%</b>	<b>442</b>	<b>237</b>
<b>Taney</b>	<b>358</b>	<b>76%</b>	<b>76%</b>	<b>48</b>	<b>10%</b>	<b>86%</b>	<b>68</b>	<b>14%</b>	<b>100%</b>	<b>474</b>	<b>212</b>

Source: Annual Report of the Missouri Courts, FY 2011, Table 67

Following the April 18<sup>th</sup> meeting, the OSCA and CCTAP staff arranged for the site studies at the courts identified for review. The site visit for the 31<sup>st</sup> and 38<sup>th</sup> Judicial Circuits was scheduled for August 8-11, 2011. Due to difficulties in scheduling the site visit to Barry County, it was delayed until November 21-22, 2011.

The CCTAP study team conducting the site visit to the 31<sup>st</sup> and 38<sup>th</sup> Circuits consisted of Mr. Hoffman, Judge Daniel R. Deja (ret.), also from Berrien County, Michigan experienced with caseload management who was available to replace Judge Taylor on short notice when the latter was unable to travel at that time, and two members of the OSCA staff, Martha Denney and Joseph Vradenburg, both of whom brought experience in the implementation of OSCA's state court information system to the assessment. Mr. David Slayton, Director of Court Administration in Lubbock County, Texas, conducted the November site visit to Barry County.

The following sections of this report provide a summary description of the criminal case process in each of the Circuits visited, observations regarding issues affecting the efficiency of the criminal caseload process, and recommendations for improvements in each of the Circuits.

This report was submitted in draft form to the OSCA on January 30, 2011 for review for accuracy and adequacy in assisting the OSCA in furthering its caseload management improvement efforts and in addressing relevant caseload management issues in the three jurisdictions visited. Comments received from OSCA staff and from local officials in the three jurisdictions have been incorporated, as appropriate, into this final report.

## II. JURISDICTIONS VISITED: SUMMARY DESCRIPTION

### A. 31<sup>st</sup> Circuit Court of Missouri (Greene County)

The 31<sup>st</sup> Circuit Court of Missouri covers Greene County whose seat is Springfield. The court has five Circuit Judges: two handling civil cases and three handling criminal cases. There are four Associate Circuit Judges: two each for civil and criminal. The judges are supported by four Family Court Commissioners, one Probate Commissioner and one Drug Court Commissioner. As noted earlier, Greene County has not met time standards in any case category and the average age of felony cases in FY 2010 was 288 days and 295 days in FY 2011.

**Note:** Each associate circuit judge may hear and determine certain cases or classes of cases specified by law. All criminal misdemeanors and infractions are heard and decided by the associate circuit judge. In felony criminal cases, the associate circuit judge conducts a preliminary hearing to determine whether there is probable cause to find that a felony has been committed and that the defendant committed it. If probable cause is found, the defendant is "bound over" for trial in the circuit court. Associate circuit judges also may hear all civil cases.

According to a recent weighted case study conducted statewide in Missouri, the 31<sup>st</sup> Circuit (Greene County) should have seven more Circuit Judges. The judges and court staff interviewed all pointed to that study as a reason for not meeting time standards.<sup>1</sup>

During the site visit, the CCTAP study team met with:

Hon. J. Dan Conklin, Greene County Circuit Judge  
Rod Hackathorn, Public Defender for the 31<sup>st</sup> and 38<sup>th</sup> Circuits  
Hon. Calvin Holden, Greene County Circuit Judge  
Thomas E. Mountjoy, Greene County Circuit Judge  
Jerry Moyer, Greene County Court Administrator  
J. Daniel Patterson, Greene County Prosecutor

### B. 38<sup>th</sup> Circuit Court of Missouri (Christian and Taney Counties)

The 38<sup>th</sup> Judicial Circuit Missouri covers Christian County, whose seat is in Ozark, and Taney County, whose seat is in Forsyth, and includes the resort town of Branson within its bounds. The court has one Circuit Judge; there are four Associate Circuit Judges, two each for Christian and Taney Counties. In each county, one Associate Circuit Judge is dedicated to criminal work. As noted above, the 38<sup>th</sup> Circuit has not met time standards for the criminal case category and the average age of felony cases in 2010 was 250 days (274 in Christian

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<sup>1</sup> The CCTAP study team is aware of the recommendation for additional judges. However, the scope of the CCTAP review can only focus on the current circumstances and make recommendations based on those findings.

County and 226 in Taney County). In FY 2011, the average age had been reduced to 237 days (Christian County) and 212 days (Taney County).

According to a recent weighted case study conducted statewide in Missouri, the 38<sup>th</sup> Circuit should have four additional Judges. As in Greene County, the judges and court staff interviewed all pointed to that study as a reason for not meeting time standards, but, as noted, this review can only address issues existing in the current circumstances and make recommendations based on those findings.

During the visit to the two counties, the study team met with the following persons:

Barbara Barnett-Stillings, Clerk of Court, Christian County  
Sue Davison, Chief Deputy Clerk of Circuit Court, Taney County  
Donovan D. Dobbs, First Assistant Prosecuting Attorney, Christian County  
Amy J. Fite, Christian County Prosecutor  
Rod Hackathorn, Public Defender for the 31<sup>st</sup> and 38<sup>th</sup> Circuits  
Chris Lebeck, Assistant Prosecuting Attorney, Christian County  
Jeffrey M. Merrell, Taney County Prosecutor  
Hon. Mark Orr, Christian and Taney County Circuit Judge  
Hon. John S. Waters, Christian County Associate Circuit Judge  
Hon. Tony Williams, Taney County Associate Circuit Judge  
Alissha Woody, Office Manager, Taney County Prosecutor's Office

### **C. 39<sup>th</sup> Judicial Circuit Court of Missouri (Barry County)**

The 39<sup>th</sup> Judicial Circuit of Missouri covers Barry, Lawrence and Stone Counties in Southwestern Missouri. All three counties had about the same population in 2010: 32,202 in Stone; 35,597 in Barry; and 38,634 in Lawrence. The seats of the counties are Galena (Stone County), Cassville (Barry County) and Mount Vernon (Lawrence Country). The court in Barry County has one Circuit Judge, whose responsibility covers all three counties in the circuit, and two Associate Circuit Judges. In addition to the Circuit Judge, the Associate Circuit Judges assist by dividing the workload of the circuit, with each handling some portion of the felony docket. As noted above, Barry County has not met time standards for the criminal case category; the average age of felony cases in FY 2010 was 234 days. In FY 2011, the average age of felony cases had been reduced to 217 days.

According to a 2007 weighted case study conducted statewide in Missouri, the 39<sup>th</sup> Circuit should have one more judicial officer in the circuit. As in the other circuits visited, the judges and court staff interviewed all pointed to a need for additional staff resources as a reason for not meeting time standards.

During the visit to Barry County, Mr. Slayton met with the following persons:

Johnnie Cox, Barry County Prosecuting Attorney  
Hon. Robert Foulke, Associate Circuit Judge, Barry County  
Hon. Victor Head, Associate Circuit Judge, Barry County



Pam Musgrave, District Public Defender for the 39<sup>th</sup> Judicial Circuit  
Hon. Robert Wiley, 39<sup>th</sup> Judicial Circuit Judge  
Craig Williams, Circuit Clerk, Barry County

### III. ANALYSIS OF EXISTING SITUATION

#### A. Overview

##### 1. Thirty-First Circuit (Greene County)

Three of the five Circuit judges in Greene County are now committed to the criminal felony caseload; however, the newly added judge, transferred from civil, has been working for less than one year and still has 700 civil cases to manage to disposition. His criminal caseload is building as new filings enter the system. He was not given an initial full criminal caseload nor was his civil caseload transferred to other judges. The impact of the addition of this third criminal judge is therefore not yet fully reflected in the court statistics on case dispositions.

Greene County adopted a “Docket Management Plan” (DMP) in 2007. The DMP divides all criminal cases into three categories: Complex, Standard and Expedited. The DMP defines each of these categories and sets out timelines for events for each. In all cases, the first initial event is scheduled 90 days from the initial arraignment in Circuit Court. The DMP also requires early plea negotiations. All judges follow the DMP although each has made modifications to it in practice which are not adopted across the court. All judges indicated that cases where the defendants are in custody take a priority position among their criminal cases when scheduling events, particularly trials. The prosecutor has participated in the development of the DMP. Both the prosecutor and the public defender follow the DMP.

The Greene County Prosecutor’s Office is virtually paperless in that all of the charges, discovery and other information on cases is entered (scanned or otherwise) into the prosecutor’s system. The policy of the Greene County Prosecutor is to place a plea offer into the electronic file as soon as the cases enter the system. This offer is transferred electronically to the Public Defender’s Office immediately after an arrest is made and charge filed. The Prosecutor’s Office maintains an open file policy and, when files are updated, a new electronic version is forwarded to the Public Defender’s Office. Private attorneys have the same availability of information but often get it on a compact disc rather than over the internet. The plea offer is often accompanied by a caveat that the offer will be withdrawn if preliminary examination is not waived. Although the Greene County Docket Management Plan contains a section which automatically withdraws pleas if agreements are not reached by pretrial or a “plea setting” date, it appears that plea negotiations continue up to the trial date<sup>2</sup>. There is no “plea cut-off date” set by the court after which pleas are accepted only to the charged offense. Virtually all cases are “bound over” to the Circuit Court by preliminary examination or waiver, with the vast majority, perhaps 80% - 90%, by waiver. Grand Juries are seldom used. A significant number of felony cases are disposed at the Associate level as misdemeanors. The prosecutor’s office has three attorneys for each of the three Circuit Judges and two in a warrant unit who, along with two investigators, are dedicated to screening charges before filing.

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<sup>2</sup> Greene County Docket Management Plan, Section 5.3

The Public Defender's Office is responsible for both the 31<sup>st</sup> and 38th Circuits. It has twenty attorneys, six of whom are dedicated solely to the 38th Circuit (three in each of the two counties.) The Defender's Office takes all petitions for indigent counsel and makes a determination based on those petitions, although seldom is information verified by them due to time and manpower considerations. The Public Defender's Office has made arrangements to receive case files from the Prosecutor's Office electronically, including all discoverable information and a plea offer. Public Defender attorneys handle all misdemeanors as well as all felonies and keep felony files from the initial hearings through trials.

The 31<sup>st</sup> Circuit Court, Greene County, operates a Drug Court with one Commissioner and supervised by the Presiding Judge. The County Commission maintains a pre-trial services department to screen arrestees prior to trial. That department is currently using a risk assessment tool to determine suitability for release on bond.

## 2. Thirty-Eighth Circuit (Taney and Christian Counties)

The 38<sup>th</sup> Circuit has one Circuit Judge and four Associate Circuit Judges, two each for Taney and Christian Counties. The Circuit Judge maintains one trial week each month in each county. This is generally limited to three days, at least in Taney County, because of law days scheduled for Thursdays and Fridays in the other county. Civil cases have priority in the scheduling of jury trials over criminal cases. Each trial cycle has both civil and criminal cases scheduled. If all civil cases dispose without trial before the trial date, criminal cases are then tried. Approximately 8 – 10 civil cases are scheduled for each trial date, according to Circuit Judge Orr, and as many criminal cases as the prosecutor decides to schedule behind the civil docket. The prosecutor in each county and sometimes the defense counsel are the primary sources for determining which cases have priority for trial. Cases involving incarcerated defendants, and high priority cases, such as sex cases, tend to take priority among the criminal cases. The Circuit Judge recently hired a "Presiding Judge's Secretary" whose primary responsibility is to keep the trial docket. At the time of the site visit in August 2011, cases were being scheduled into 2012.

In 2010, the Circuit saw an overall decrease in felony filings from the prior year, but disposed of fewer cases than were filed. Christian County felony dispositions exceeded filings but Taney County dispositions fell short of filings.<sup>3</sup> In 2010, 22 jury trials were conducted in the 38<sup>th</sup> Circuit: nine civil and 13 criminal. Taney County had three times as many civil jury trials start than Christian County, and less than half as many criminal cases tried.<sup>4</sup>

The Prosecutor's Office in Christian County has five prosecutors; there are five in the Taney County office. The County Prosecutor's offices in both Christian and Taney Counties are moving toward a paperless system using a software package designed for Missouri Prosecutor offices. All of the charges, discovery, and other information on cases are entered (scanned or otherwise) into the prosecutor's system. Both prosecutors have begun to transfer discovery information from their files to the Public Defender's Office electronically. Plea

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<sup>3</sup> See Table 2 below.

<sup>4</sup> See Table 3 below.

offers are not transferred to the Public Defender immediately upon filing the case, but are given at or before the preliminary examination stage.

**Table 2. Filings, Dispositions and Change in Felony Cases: 38<sup>th</sup> Circuit, FY 2010**

County	Filed	Disposed	Pending At Yearend	D/F Ratio	% Change In Filings: FY 09-FY 10
Christian	453	457	332	1.01	6.1%
Taney	494	474	386	0.96	-7.5%
<b>Circuit Total</b>	947	931	718	0.98	-1.5%

Source: Missouri Office of the State Court Administrator

**Table 3. Jury Trials in 31<sup>st</sup> and 38<sup>th</sup> Circuits, FY 2010**

	Trial Begun, No Verdict		Verdict Returned		Total Jury Days	
	Civil	Criminal	Civil	Criminal	Civil	Criminal
Greene	8	11	30	25	107	103
Christian	0	2	2	9	6	24
Taney	0	1	7	4	24	5

Source: Missouri Office of the State Court Administrator

The Taney County Prosecutor requests to have cases put on the trial docket when they are ready for trial. Sometimes the defense attorney will make the request and sometimes the judge will place cases on the trial calendar on his own initiative, although nearly always the cases are put on the docket at the request of either attorney. On any trial date, there are as many as 20 criminal cases scheduled, all of which (with some exceptions at the Judge’s initiative) serve as back-up cases to the civil trial docket. The prosecutor makes a decision regarding which cases will be prepared for trial on any given trial date. There are three public defenders assigned to Taney County. With a limited number of prosecutors, only select cases can be prepared for trial. It is uncertain how plea negotiations are conducted on the cases which will not be tried (those which are not prepared for trial by a prosecutor). A plea offer is made on most cases at or prior to the preliminary examination or waiver thereof. The prosecutor indicated that his office has insufficient staff to review the file and plea offer from the time of the bind-over (by waiver or preliminary examination) to the time the case is scheduled for trial.

The court schedules several “reappearance” dates as a means to assure defendants, witnesses and attorneys that the case is still active. The prosecutor seldom participates in these hearings and no plea discussions take place.

In Christian County there is a significant delay in filing cases because of a lack of clerical staff. The 2007 weighted case study indicated that Christian County needs an additional 8.9 clerical persons<sup>5</sup>. The oldest case waiting to be filed on the day of this team’s

<sup>5</sup> Missouri Clerical Weighted Workload Model for FY12 Budget using CY 07-09 Filings

visit (August 8) was from June – over 60 days from when the prosecutor delivered the case to the court for filing.

The Christian County Prosecutor also delivers discovery and other information to the defense bar electronically, either over the Internet or by compact disc. Felony trials are scheduled in Christian County in the same manner as in Taney County. The prosecutor is more pro-active with plea negotiations than in Taney County. Jury trials are scheduled as back-up to civil cases, as in Taney County.

As noted earlier, the Public Defender's Office responsible for the 38<sup>th</sup> Circuit has six attorneys, of whom three are dedicated to Taney County and three to Christian County. It is also responsible for the 31<sup>st</sup> Circuit (Greene County). Office facilities for the Public Defender's Office are maintained in Springfield in Greene County. The Defender Office takes all petitions for indigent counsel and makes a determination based on those petitions, although seldom is information verified by them due to time and manpower considerations. The Defender Office has made arrangements to receive case files from the Prosecutors' Offices electronically, including all discoverable information and a plea offer. Public Defender attorneys handle all misdemeanors as well as all felonies and, as noted earlier, keep felony files from the initial hearings through trials.

The 38th Circuit Court also operates a Drug Court supervised by the Circuit Judge and, at the time of the site visit, reportedly had approximately 40 defendants participating. There is no pre-trial service agency in either Taney or Christian County to screen arrestees prior to trial. Jail facilities as well as court facilities in both counties are modern and adequate. The new Christian County Courthouse has only one jury courtroom, but uses a jury courtroom in the old courthouse across the street from the new building.

### 3. Thirty-Ninth Circuit (Barry County)

Judge Robert Wiley, Circuit Judge of the 39<sup>th</sup> Judicial Circuit, is assigned to handle cases in the three counties of the circuit. The two Associate Circuit Judges in Barry County assist with the criminal felony caseload, along with handling the misdemeanor, traffic, domestic, juvenile, probate caseloads and some of the civil caseload. Judge Head handles the majority of proceedings on felony cases through the case being bound over to Circuit Court. Judge Foulke handles approximately half of the felony caseload proceedings after the case is bound over to Circuit Court, with Judge Wiley handling the remaining felony caseload. The most serious felony cases (A and B felonies) are initially assigned to Judge Wiley, with the remaining cases assigned to Judge Foulke, unless there is a judicial conflict.

The Circuit Judge maintains one trial week each month in each county, along with another week each month where lengthier cases can be set for trial. The trial weeks in each county are limited to three days because of "law days" being scheduled on Monday and Tuesday of those weeks. Judge Foulke conducts simultaneous "law days" with Judge Wiley in Barry County. Criminal cases are assigned priority over other case types, with incarcerated defendants having priority over released defendants. Preliminary hearings are currently being

scheduled five months into the future while trials are being scheduled at least eleven months out. The jurisdiction has failed to meet the time standards for the past five fiscal years.

**Table 4. Age of Barry County Felony Cases at Disposition, FY 2010**

COUNTY	0-10 Months (Standard—90% in 10 months)			10-14 Months (Standard—95% in 14 months)			Over 14 Months			Total Cases Dispos	Avg Age (in days)
	N	%	Cum %	N	%	Cum %	N	%	Cum %		
<b>Barry</b>	231	74%	74%	28	9%	83%	53	17%	100%	312	234

Source: Annual Report of the Missouri Courts, FY 2010, Table 67

**Table 5. Age of Barry County Misdemeanor Cases at Disposition, FY 2010**

COUNTY	0-6 Months (Standard—90% in 6 months)			6-8 Months (Standard—95% in 8 months)			Over 8 Months			Total Cases Dispos	Avg Age (in days)
	N	%	Cum %	N	%	Cum %	N	%	Cum %		
<b>Barry</b>	990	69%	69%	134	9%	78%	315	22%	100%	1,439	161

Source: Annual Report of the Missouri Courts, FY 2010, Table 68

Since 2008, Barry County has seen a gradual increase in felony filings, increasing 10% since that time. While the dispositions during that period have increased by 11%, dispositions have lagged behind filings every year since 2006, with the clearance rate in 2010 equaling 94%. Because of this lag in dispositions, the number of pending felony cases in Barry County continues to rise. In regard to misdemeanors, after having consistently fewer dispositions than filings of misdemeanor cases prior to FY 2009, Barry County has had significantly more misdemeanor dispositions than filings for the past two years with the 2010 clearance rate being 122%. There were only three dispositions by trial in 2010, with all of those being jury trials in felony cases.<sup>6</sup>

**Table 6. Barry County (39<sup>th</sup> Circuit) Criminal Filings, Dispositions, & Pending Cases: FY 2005 – FY 2010**

CATEGORY	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
<b>Felony Filed</b>	332	298	332	301	306	332
<b>Felony Disposed</b>	254	323	316	281	303	312
<b>Felony Pending</b>	193	164	179	189	191	216
<b>D/F Ratio</b>	0.77	1.08	0.95	0.93	0.99	0.94
<b>Misd Filed</b>	1,011	949	899	993	764	747
<b>Misd Disposed</b>	994	826	846	776	800	910
<b>Misd Pending</b>	922	1,024	1,083	1,271	1,201	1,037
<b>D/F Ratio</b>	0.98	0.87	0.94	0.78	1.05	1.22

Source: Missouri Office of State Court Administrator

<sup>6</sup> Annual Report of the Missouri Courts, 2010, Table 51 & 52

The Barry County Prosecuting Attorney’s Office has one full-time prosecutor, with one part-time assistant prosecutor. Child support enforcement cases are handled by a separate office. The office has four full-time clerical staff. As in the other Circuits studied, the prosecutor in Barry County is moving toward a paperless system using the software package developed for Missouri Prosecutor offices. All of the charges and hearing information are entered into the system. Felony charges are typically filed within 24 hours of receipt by the law enforcement agencies. Misdemeanor filing decisions are currently 90 days behind. The information from the prosecutor’s system updates the court’s information system, but the data transfer from the court’s system to the prosecutor’s system does not exist. Discovery is not required by Missouri law to be transmitted until after the case is bound over to Circuit Court. However, the Barry County Prosecutor makes the discovery available for viewing to interested defense attorneys.

After the case is bound over, the discovery is made available to defense counsel on a CD. Plea offers are generally made upon case filing in misdemeanor, class C and D felony, property and drug offense cases. Plea offers in other case types are generally made the week before or on the day of a scheduled preliminary hearing. The prosecutor indicated that his office has insufficient staff to review the file and provide a plea offer from the time of the bind-over (by waiver or preliminary examination) to the time the case is scheduled for trial. Rather, negotiation is typically happening at the law day setting. There is no “plea cut off” date, and plea offers generally improve as cases get closer to trial.

The Circuit Clerk’s Office maintains the court’s calendar. The Circuit Clerk has designated one of his staff to prepare the calendar for all of the criminal cases. After initial arraignment and prior to the case being bound over to Circuit Court, the case is often reset a number of times to allow defense counsel and the state to confer and exchange information. The cases are generally reset for a hearing 30-60 days from the initial hearing. If the defendant is incarcerated, the reset is generally within a couple of weeks. Half of the filed cases get set for a preliminary hearing, with the majority of those eventually waiving prior to the hearing. Thirty-nine preliminary hearings were held in 2010.

**Table 7. Barry County: Method of Disposition of Associate Felony Cases. FY 2010**

<b>Method of Disposition</b>	<b>Guilty Plea</b>	<b>Dismissed by State</b>	<b>Dismissed by Court</b>	<b>Bound Over by Indictment</b>	<b>Bound Over w/ Prelim</b>	<b>Bound Over w/o Prelim</b>	<b>Other</b>	<b>Total</b>
Number	85	122	9	0	39	287	40	582
Percent	15%	21%	2%	0%	7%	49%	7%	100%

Once a case is bound over to Circuit Court, the case is scheduled for arraignment at the next law day, generally within 30 days. At the conclusion of the arraignment, the Court provides a next setting for the next law day that is 30 days later. The purpose of the next setting is to check to see if discovery has been exchanged and if a plea offer has been made. If the defendant does not have counsel and wishes to hire counsel, the defendant is typically given between 3 - 4 law days to do so. If the defendant does not do so by this time, it will ultimately be set for trial or the Court will appoint the public defender. The monthly law day

settings will continue until the prosecutor or defense counsel request that the case be set for trial. As in the 38<sup>th</sup> Circuit, these “reappearance” dates at law day are meant to inform defendants, witnesses and attorneys that the case is still active. The Court is currently scheduling 5-6 criminal trials per week. Cases being set as the fourth case on the docket were being set eleven months out. In order to obtain a number one setting on the docket, a case would need to be scheduled at least 14 months out.

Both the prosecutor and the public defender indicated that they do not prepare all of the cases on the trial docket, as they are insufficiently staffed to do otherwise. Instead the offices prepare one to two of the cases for trial. Agreed resets are commonly allowed, with a form having been created to simplify the process of resetting a case. Cases that are not reached for trial get reset to the next available trial date, typically months later.

The Public Defender’s Office responsible for the 39<sup>th</sup> Circuit has six attorneys, of whom two are assigned to Barry County. The Defender Office takes all petitions for indigent counsel and makes a determination based on those petitions, although seldom is information verified by them due to time and manpower considerations. Individuals meeting the statewide standard of indigence are provided counsel immediately. Cases are distributed between the assistant public defenders evenly, and those defenders maintain the case through disposition. Each of the two public defenders in Barry County have between 140-160 active cases and well exceed the state standard of 235-240 cases per year per attorney. In addition to the two public defenders, there are two private defense attorneys who handle the majority of the non-indigent caseload.

There is no pre-trial service agency in Barry County to screen arrestees prior to trial. Jail facilities as well as court facilities are modern and adequate. The Barry County Judicial Center has only one jury courtroom and two non-jury courtrooms.

## **B. Filing and Case Processing**

### **1. Thirty-First Circuit (Greene County)**

Cases are filed by the prosecutor in the Associate Circuit Court division of the court. Electronic versions of the file are transferred to the defense bar (Public Defender or known retained counsel) including a plea offer on the case. The Public Defender assigned to the case will keep the file for the duration of the case. The Prosecutor assigned may, and usually is, a junior attorney with limited authority over the case.<sup>7</sup>

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<sup>7</sup> Based on comments on the draft of this report, there appears to be disagreement as to whether the assigned prosecutor has only limited authority. The statements in this report are based on information received from interviews with all parties involved in the management of criminal case; clerks, judges, administrator, prosecutors and defense attorneys. Although some *policies* regarding case management were noted, the report attempts to focus on what is actually occurring with regard to caseflow practice in the courts. This may or may not mirror policies of the various agencies involved. However, it would be worthwhile to review the policies of the prosecutor to ensure (1) that they are being honored by the assistant prosecutors in practice, such as the policy of giving associate prosecutors authority to dispose of cases, and (2) to determine if they are, in fact, feasible -- particularly in regard to the policy of having two associate prosecutors in court for all hearings -- in



**Table 8. Greene County (31<sup>st</sup> Circuit) Filings, Dispositions, and Pending Cases**

<b>CATEGORY</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
<b>Criminal Filed</b>	2085	2183	2191	2161	2078	1847
<b>Crim Dispos</b>	1925	1886	2085	2077	2339	1806
<b>Crim Pending</b>	1604	1882	1794	1902	1687	1719
<b>Civil Filed</b>	2153	1767	1821	2033	2078	1987
<b>Civil Dispos</b>	1725	1540	1513	1789	2314	2122
<b>Civil Pending</b>	3451	3025	2743	2938	2699	2478

Source: Missouri Office of State Court Administrator

A first court appearance usually occurs within 30 days of filing of the case. This time is shorter for defendants in custody. At the first court hearing, the prosecutor and defense attorney discuss the case and the initially-offered plea. In nearly all cases not disposed as misdemeanors the preliminary examination is waived and the case is set for a plea (either guilty or not guilty) in Circuit Court within two weeks. Defendants who wish to hire private attorneys but who have not done so by the initial hearing are given a 30 days continuance of their case in order to do so. Attorneys sometimes appear for the limited purpose of negotiating a plea at the Associate Circuit court level. If a plea agreement is not reached, the attorney often requests a continuance for the defendant to obtain funds for payment of accrued attorney fees or funds for retention of future counsel. In a select few cases, a preliminary examination is scheduled. If a preliminary examination is required, it is scheduled at this initial hearing. These hearings usually result in the case being bound over for trial in Circuit Court.

By statute, Associate Circuit Judges have the authority to take guilty (and not guilty) pleas in felony cases. Guilty pleas are sometimes taken by Associate Circuit Judges but this occurs infrequently. In cases where guilty plea agreements have been negotiated at the Associate Court level, pleas are taken in the Circuit Court and the matter scheduled for post-plea proceedings (these can include a drug court disposition.) Guilty pleas are scheduled in the Circuit Court on “law days” for the judge to whom the case is assigned. Associate Circuit Judges, formerly limited jurisdiction judges prior to unification, still maintain their limited jurisdiction responsibilities and are obligated to meet separate time standards for disposition of misdemeanor cases and felony cases through “bindover” to Circuit Court or plea to a lesser, misdemeanor, charge at the Associate Court level. Pleas taken by Associate Circuit Judges to felony charges after a “bindover” and dispositions by felony trials conducted by Associate Circuit Judges are not tracked at the Associate Circuit Court level for time standards compliance but, rather, at the Circuit Court level.<sup>8</sup>

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light of the number of matters needing to be addressed, the number of associates available to address them, and the addition of the third criminal judge.

<sup>8</sup> Associate Circuit Court judges must meet case processing time standards applicable to the cases they handle and therefore may not be in a position to take on additional Circuit Court level cases for which they receive no credit in terms of the case processing time standards which they are obligated to meet.

**Table 9. Criminal Circuit Trial Dispositions: Jury and Nonjury, FY 2010: Greene, Christian and Taney Counties**

COUNTY	Jury Trial Dispositions		Non-Jury Trial Dispositions	
	Felony	Misdemeanor	Felony	Misdemeanor
Greene	23	2	26	93
Christian	7	1	6	25
Taney	4	1	5	13

Source: Annual Report of the Missouri Courts, 2010, Table 51

Cases scheduled for trial are placed on one of three case tracks set forth in the Greene County Circuit Court Docket Management Plan (DMP). These tracks are: Expedited, Standard and Complex. All result in a first hearing 90 days from the arraignment (Circuit Court) date. Defendants without counsel are required to obtain counsel within that period. Those who do not retain counsel within that period are normally granted a 90 day continuance in order to do so. Standard and Complex cases are scheduled for pre-trial conferences within 90 of arraignment. Expedited cases are scheduled for a disposition hearing 90 days from arraignment. In all cases, the prosecutor is required, if this has not previously been done, to convey a plea offer to defendant. If a disposition is not reached at the 90 day disposition date in expedited cases, it is scheduled for trial within 60 days. Standard cases may have as many as three pre-trials and complex cases are managed based on necessity of the case.

Each of the criminal court Circuit Judges has one or two trial weeks per month. All cases scheduled for trial are set on these dates. Cases given priority are based on type of case (sex cases for example are given priority), age of the case, and whether the defendant is incarcerated. Felony jury trials normally take two to three days to try. Cases scheduled for trial but which are not tried (usually because they were too far down the list and were not expected to be tried) or disposed of by plea, are continued for another trial date. This number is estimated by some to be as high as 20% of cases set for trial. Twenty or more cases may be scheduled for each trial week.

## 2. Thirty-Eighth Circuit (Taney and Christian Counties)

Cases are filed by the prosecutor in the Associate Circuit Court division of the court. Electronic versions of the file are transferred to the defense bar (Public Defender or known retained counsel). As in the 31<sup>st</sup> Circuit, the Public Defender assigned to the case will keep the file for the duration of the case. The Prosecutor's offices in each county of the 38<sup>th</sup> Circuit are relatively small and attorneys assigned to a case will generally keep the file from the Associate Court through felony disposition in Circuit Court.

When a case is filed, the date from which time to disposition is measured is the date that the prosecutor files the case with the court. In Christian County, case files are often not prepared for as long as 90 days from the date they are received from the prosecutor. The court cannot begin to process the case until the files are prepared and the case is officially entered into the court's system. This time is counted for calculating compliance with Missouri time standards.

A first court appearance usually occurs within 30 days of filing of the case or approximately 30 days from when the court file is prepared. This time is often shorter for defendants in custody. At the first court hearing, the prosecutor and the defense attorney discuss the case and the initially-offered plea is usually made at this time. In nearly all cases not disposed as misdemeanors the preliminary examination is waived and the case is set for a plea (either guilty or not guilty) in Circuit Court on the law days for that county. In both Taney and Christian County, Law Days are one day a week for three of the four weeks per month. Each county has three Law Days per month and they are shared with civil cases.

Defendants who wish to hire private attorneys but who have not done so by the initial hearing are given a continuance of their case in order to do so. Attorneys sometimes appear for the limited purpose of negotiating a plea at the Associate Circuit Court level. If a plea agreement is not reached, the attorney often requests a continuance for the defendant to obtain funds for payment of accrued attorney fees or funds for retention of future counsel. In a select few cases (4% in 2010)<sup>9</sup>, a preliminary examination is held. If a preliminary examination is required, it is scheduled at this initial hearing. These usually result in the case being bound over for trial in Circuit Court. Interviews from Taney County officials indicate that felony cases sometimes take as long as six months to be disposed of (e.g., with the preliminary examination held or waived) in the Associate Court.

As noted earlier, by statute, Associate Circuit Judges have the authority to take guilty (and not guilty) pleas in felony cases. Guilty pleas are sometimes taken by Associate Judges but this is an infrequent occurrence. In cases where guilty plea agreements have been negotiated at the Associate Court level, pleas are taken in the Circuit Court and the matter scheduled for post plea proceedings (these can include a drug court disposition.) Guilty pleas are scheduled with the Circuit Court on Law Days.

Associate Judge Waters in Christian County stated that he will convene juries several times a year on an as-needed basis but that most cases plea before the trial. In fact, in 2010 there was only one misdemeanor trial held. He schedules trials for dates when Circuit Judge Orr is in Taney County because there is only one jury courtroom in the new Christian County courthouse. The Clerk of Court indicated that she has used the jury courtroom in the old courthouse for jury trials when needed.

Cases are scheduled for trial by the prosecutor and are placed on a trial docket for a jury date in the particular county where it is filed. Around 20 cases are set for each jury trial date. The Circuit Judge has a Presiding Judge's Secretary who maintains the jury trial dockets for each county in the circuit. The criminal cases serve as back-up to the 15 or so civil cases also scheduled for the jury trial date.

Each of the counties in the Circuit has one trial week per month. All cases scheduled for trial are set on these dates. Cases given priority are based on type of case (sex cases for example are given priority), age of the case, and whether the defendant is incarcerated. The

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<sup>9</sup> Statistics provided by Missouri Office of State Courts Administrator

prosecutor in each county determines which cases his office will prepare for trial. This is usually done in consultation with the judge and defense attorney. Felony jury trials normally take two to three days to try. Cases scheduled for trial but which are not tried (usually because they were too far down the list and were not expected to be tried) are continued for another trial date. Twenty or more cases may be scheduled for each trial week.

### 3. Thirty-Ninth Circuit (Barry County)

Cases are filed by the prosecutor in the Associate Circuit Court Division of the court. The Prosecutor and Public Defender assigned to the case will keep the file for the duration of the case. When a case is filed, the date from which time to disposition is measured is the date that the prosecutor files the case with the court.

A first court appearance usually occurs within 30 days of filing of the case. This time is cut to 1-2 days for defendants in custody. The case is then reset for one week later to have their counsel appear with them. It is at this second hearing that the prosecutor and the defense attorney discuss the case and the initially-offered plea is usually made at this time for less serious offenses. In nearly all cases not disposed as misdemeanors the preliminary examination is waived and the case is set for a plea (either guilty or not guilty) in Circuit Court on the law days for the county. This process may take multiple resets before it gets to the preliminary hearing stage, which is typically set four to six months later. Law Days are scheduled for two days per month with both the Circuit Judge and Associate Circuit Judge having felony cases scheduled for the law days. Law Days are shared with civil cases.

Defendants who wish to hire private attorneys but who have not done so by the initial hearing are given a continuance of their case in order to do so. Attorneys sometimes appear for the limited purpose of negotiating a plea at the Associate Circuit Court level.

If a plea agreement is not reached, the attorney often requests a continuance for the defendant to obtain funds for payment of accrued attorney fees or funds for retention of future counsel. In a select few cases (39 cases, or 7% in 2010)<sup>10</sup>, a preliminary examination is held. These usually result in the case being bound over for trial in Circuit Court. Interviews indicate that felony cases sometimes take as long as 6-8 months to be disposed in the Associate Court.

As noted above, by statute, Associate Circuit Judges have the authority to take pleas (guilty and not guilty) in felony cases. In Barry County, one of the Associate Circuit Judges takes half of the felony caseload from filing to disposition. In cases where guilty plea agreements have been negotiated at the Associate Court level, pleas are taken in the Circuit Court and the matter scheduled for post plea proceedings (these can include a drug court disposition.) Guilty pleas are scheduled with the Circuit Court on Law Days. Most cases are disposed of by guilty plea (85% in 2010), and very few are disposed of by trial (3 cases, or 1% in 2010). Trials are scheduled by the Circuit Judge on Wednesday-Friday of a week when he has law days in another county or during the fourth week of the month for lengthier trials.

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<sup>10</sup> Statistics provided by Missouri Office of State Courts Administrator

The Associate Circuit Judge will also schedule trials as necessary. Five to six cases are set for trial on a given jury trial date. The Circuit Clerk has a deputy clerk who maintains the jury trial docket. Cases are given priority based upon the type of case, age of the cases, and whether the defendant is incarcerated. The prosecutor determines which cases his office will prepare for trial, which generally means that only 1-2 trials are prepared. This process is usually done in consultation with the judge and the defense attorney. Felony jury trials normally take two to three days to try. Cases scheduled for trial but which are not tried (usually because they were too far down the list and were not expected to be tried) are continued for another trial date, typically months later.

### C. Observations

#### 1. Thirty-First Circuit (Greene County)

As noted earlier, the 31<sup>st</sup> Circuit Court has not met time standards in any case category according to 2010 and 2011 statistics from the Missouri Office of Court Administration. The court, however, consistently disposed of more cases than were filed for several years until 2011, when that did not occur. It is difficult to pin point a reason for this change. The addition of a third Criminal Court Judge in 2010 should make a positive difference.<sup>11</sup>

The prosecutor's policy of maintaining an open file and including an early plea offer helps promote early disposition of the case as well as the ends of justice. The offer, however, is generally considered by the defense bar to be the initial offer which will get better over time. In addition, the prosecutors who are present at the initial hearing in the Associate Judge's court are often not the attorneys who will ultimately be responsible for trying the case and therefore do not have the necessary authority to negotiate with the defense attorney assigned to the case.

Defendants are often given multiple continuances at the preliminary examination stage in order to hire private attorneys. Similarly, privately hired attorneys are given continuances at this stage and throughout the case in order to give time for their clients to pay attorney fees for the case.

Continuances often result from delays in obtaining forensic and laboratory results. The opening of a state lab in Springfield has helped reduce these delays. Some delays are the result of the Public Defender having to obtain permission from his state office to obtain certain tests such as DNA tests and mental health evaluations. This is the result of budgetary

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<sup>11</sup> The Greene County Prosecutor has noted, however, that, while the addition of this court certainly presents the opportunity for the resolution of more cases, it also further stresses the system. The Prosecutor's Office and the Public Defender's Office now both have a third court to appear in which increases the number of routine appearances that must be made by each office, thereby diluting the effectiveness of their fixed staffs as those attorneys have less time out of court to work on, prepare and negotiate cases. This situation will need to be considered in addressing the recommendations for improved efficiency in case scheduling presented in Section IV and should be alleviated with the improved scheduling practices recommended – e.g. scheduling cases for events that contribute to their disposition and ensuring greater scheduling certainty.

control imposed statewide in the public defender system. Regardless, it results in significant delays, particularly in the most complex and sensitive of cases.

The DMP is adhered to generally by all three of the Circuit Judges dedicated to criminal matters, but each has made various modifications to the plan over time. The prosecutor's office and public defender's office have adapted to these individual arrangements but to do so requires these offices to master three case management approaches. One of the three criminal court judges has recently (within the past six months) experimented with drastically reducing the time between events in the DMP. He reports that the attorneys have adjusted to the change and it has resulted in cases moving significantly faster.

All judges set numerous cases for trial on their scheduled trial weeks. The number of cases set for each week is approximately 20. The average length of a jury trial is 2 – 3 days. All report that those cases most likely to be tried during that trial week, approximately the first eight listed for trial, are the ones which settle by plea before the actual trial date. Plea negotiations continue up to the actual trial date. Both the prosecutor and public defender expressed the need to make determinations as to which cases on any judge's trial list they will prepare to try. By limiting the cases they prepare, they in effect determine which cases from the list will potentially be tried in any given week. As noted earlier, judges will place certain cases in a priority position, such as sex cases and cases where defendants are incarcerated. Juries report as directed for each trial week and are dismissed if no trials are held.

Two other areas where the Greene County Circuit Court has taken positive steps to improve the efficiency of the case process are with jury call-ins and use of Associate Circuit Judges to back up Circuit Judges. Greene County uses a jury call-in system which notifies prospective jurors of the necessity of reporting for jury duty. Jurors can call the phone number 24 hours per day and check on the status of their panel, minimizing the costs and travel for prospective jurors. The Greene County court also instituted a plan in 2010 for the Associate Circuit Judge to back-up the Circuit Judges during their respective trial weeks. This plan has been utilized on a limited basis and has been effective when it was used. The plan could be more effective with greater participation of the judges. The Court has a local court rule (6.6 Acting for Another Judge) which authorizes judges to act in behalf of other judges and to take felony guilty pleas, which the Associate Circuit Judges do.

## 2. Thirty-Eighth Circuit (Christian and Taney Counties)

Two significant observations stand out above all others from the interviews conducted in the 38<sup>th</sup> Circuit.

First: need for additional judicial and clerical support. This is nearly universally given as a solution to caseload issues in all courts in all jurisdictions, domestic and foreign. Sometimes, as in the 38<sup>th</sup> Circuit, this is backed by a weighted caseload or other study. Usually, however, it is not the solution, although the solution is inevitably offered. While this technical assistance review is designed to focus on areas where changes can be made to the existing situation to manage cases better in the current circumstances, it is clear that there is a

serious need for additional clerical staff support in Christian County and a need to increase the availability of judicial resources applied to criminal felony cases. Judge Orr in his opening comment at the interview in Taney County may well be correct when he said “it is shocking we do as well as we do.” There are ways in which the judicial resources might be addressed in the 38<sup>th</sup> Circuit and they are covered in the recommendations below.

Second: the manner in which felony cases are managed in the Circuit Court, with criminal cases tried as back-up cases to the civil cases which are set for trial during the same trial cycle. This situation is the direct opposite of the practice in most other jurisdictions where criminal cases are given priority for trial dates as well as other scheduled events. In addition, both civil and criminal cases on the 38<sup>th</sup> Circuit become ready for trial when the attorneys indicate that they are ready for trial rather than in accordance with a schedule for the case process which the court manages and of which all parties are on notice. In the case of felonies, “readiness for trial” is primarily determined by the prosecutor since it is usually an advantage to the defense to delay the trial for as long as possible.

The 38<sup>th</sup> Circuit is served by two elected Prosecutors. Each has his or her own staff of attorneys. They each manage their files differently. Both offices use the electronic file management system used statewide by prosecutors. In Christian County, cases are screened and filed in a timely manner but the cases are delayed at the court due to a lack of clerical staff support there. Plea offers are made at a fairly early stage and cases negotiated throughout the life of the case. The concern in Christian County is that there are not enough trial days to try the cases needing to be tried and to bring the sense of immediacy which causes cases to be settled by plea. In 2011, the first available criminal trial date did not occur until June. In spite of these challenges, the Christian County court disposed of slightly more felony cases in 2010 as were filed (453 filed, 457 disposed)<sup>12</sup>.

In Taney County the prosecutor makes his offer after allowing time to consult with victims and to assess the case. This occurs before the end of the Associate level stage (prior to bind-over). Ostensibly due to staffing challenges in the office, files are not reviewed again until the time scheduled for trial. Often cases are reduced to misdemeanors on the eve of trial or sometimes dismissed. There are significant challenges in Taney County regarding witness availability due to the transient nature of the population of Branson, from which a significant number of cases emanate. As cases age, the interest of victims in pursuing the case, and location of witnesses and sometimes defendants becomes less certain. Taney County felony dispositions in 2010 fell short of dispositions by 4% (494 filed, 474 disposed)<sup>13</sup>. Overall the number of filings in the 38<sup>th</sup> Circuit exceeded the number of felony dispositions. Not only were time standards not met, but a backlog of cases is being created.

Defendants are often given multiple continuances at the preliminary examination stage in order to hire private attorneys. Similarly, privately hired attorneys are given continuances at this stage and throughout the case in order to give time for their clients to pay attorney fees for the case. Continuances often result from delays in obtaining forensic and laboratory

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

results. The opening of a state lab in Springfield has helped reduce these delays. Some delays are the result of the Public Defender having to obtain permission from his state office to obtain certain tests such as DNA tests and mental health evaluations. As noted earlier, this is the result a budgetary control imposed statewide in the public defender's system. Regardless, it results in significant delays particularly in the most complex and sensitive of cases.

Judge Orr does not have a continuance policy as such, but tries to limit continuances to three before firmly setting a trial date.

Numerous cases are set for trial on the scheduled trial weeks in each county. The number of cases set for each week is approximately 20. The average length of a jury trial is 2 – 3 days. All report that those cases most likely to be tried during that trial week, approximately the first eight listed for trial, are the ones which settle by plea before the actual trial date. Plea negotiations continue up to the actual trial date. The judge will place certain cases in a priority position, such as sex cases and cases where defendants are incarcerated, but primarily the prosecutor schedules the cases to be tried.

Juries report as directed for each trial week and are dismissed if no trials are held. In Christian County, Judge Waters indicated that he will schedule misdemeanor trials for weeks in which Judge Orr is not using his courtroom since there is only one jury courtroom in the new Christian County Courthouse, although a jury courtroom exists in the old courthouse. Judge Waters often settles all cases before or on the trial date.

### 3. Thirty-Ninth Circuit (Barry County)

There are multiple issues contributing to the difficulties of the Circuit Court in Barry County meeting time standards. The first focuses on the need for additional judicial and prosecutorial support. While, as noted earlier, this proposed solution is nearly universally given as a solution to caseload issues in all courts in all jurisdictions, it clearly is appropriate for the 39<sup>th</sup> Circuit where there is a serious need for additional prosecutors and a need to increase the availability of judicial resources applied to felony cases. In Barry County, the prosecutor was required to prosecute over 5,500 criminal cases in 2010. While he does have access to a part-time assistant prosecutor, it is obvious that it is difficult for him to move cases faster without additional resources. There is also a need for additional judicial resources to handle the felony caseload. An additional Circuit Judge would allow more cases to be processed.

However, in addition to the need for additional resources, there is also room for improvement within the framework of current resources.

One of the most serious issues affecting the Barry County is the lack of a caseload management plan. Instead, cases are allowed to be reset multiple times, thereby exponentially increasing the workload of all of the stakeholders in the system. Cases appear to be arbitrarily reset in 30-day increments with no real expectations for results at the next setting. This situation seems to result in additional settings and frustration by the parties involved in the



case. A caseflow management plan developed by the stakeholders in the criminal justice system would dramatically improve the case processing system, as well as reduce the workload of the principal players.

Another issue that was observed was that there is no expectation that defendants will appear for scheduled appearances. It was observed that a number of court hearings had to be reset due to the fact that the defendant simply did not appear. It was stated that some defendants had failed to appear for multiple settings. The absence of the defendant is contrary to moving cases toward disposition but may reflect the opinion that nothing substantive will occur at the scheduled hearing.

The fact that defendants are allowed multiple settings at the pre-bind-over stage and then the preliminary hearing is scheduled 4-6 months later makes it virtually impossible to meet time standards. The lack of preliminary hearings actually occurring seems to indicate that the delay is designed to prevent the case from moving forward.

As in the other circuits, defendants are often given multiple continuances at the preliminary examination stage in order to hire private attorneys. Similarly, privately hired attorneys are given continuances at this stage and throughout the case in order to give time for their clients to pay attorney fees for the case. Continuances also often result from delays in obtaining forensic and laboratory results which, as noted earlier, have been somewhat reduced as a result of the opening of the state lab in Springfield.

The judges in Barry County do not appear to have a formal policy regarding continuances and find that there is a good deal of other work to do when a continuance is granted.

The current practice of “law day” seems to be a holdover from previous practice. These hearings seem to result in tremendous time requirements for the judges with few cases resolved or moved closer to resolution. One of the judges indicated that it was a practice of “hurry up and wait.” Six cases were called within 45 minutes of observation by the technical assistance consultant; each case took approximately two minutes of court time once called. It was also noted that these cases were not called by the Court; rather, defense attorneys notified the Court when they were ready for the case to proceed.

Numerous cases are set for trial on the scheduled trial weeks. The number of cases set for each week is approximately 5-6. The average length of a jury trial is 2-3 days. As in the other circuits visited, all report that those cases most likely to be tried during that trial week, approximately the first or second case listed for trial, are the ones which settle by plea before the actual trial date. Plea negotiations continue up to the actual trial date. The judge will place certain cases in a priority position, such as sex cases and cases where defendants are incarcerated but primarily the prosecutor schedules the cases to be tried in consultation with the judge and defense attorney.

## IV. RECOMMENDATIONS

### A. Overview

The recommendations submitted below are designed to address the most pressing caseflow management issues identified during the course of the CCTAP study team's site visits. Although each jurisdiction presented special issues, certain common needs emerged, including those calling for:

- (1) Development of comprehensive caseflow management plans that promote the court's responsibility for the timely management of the criminal caseload and utilize Differentiated Case Management (DCM) principles;
- (2) Development of written policies regarding the continuance of scheduled events;
- (3) Early case screening by prosecutors as well as by judges at each stage of the criminal case process;
- (4) Establishment of and adherence to plea cut-off dates;
- (5) Practices that ensure greater scheduling certainty and predictability that scheduled events will, in fact, occur;
- (6) Enhanced involvement of associate judges in the felony case process; and
- (7) Consideration given to organizing local criminal justice coordinating councils to promote regular communication among the court and criminal justice agencies regarding issues impeding the efficient caseflow process as well as suggestions for improvements.

### B. Thirty-First Circuit (Greene County)

**Recommendation One:** *The Circuit Judges hearing criminal cases should meet specifically for the purpose of reviewing case processing procedures in their divisions, and specifically to review the Docket Management Plan (DMP) to ensure that all are using the same procedure.*

The Circuit Judges hearing criminal cases should meet specifically for the purpose of reviewing case processing procedures in their divisions, and specifically to review the Docket Management Plan (DMP) to ensure that all are using the same procedure. Consideration should be given to including the Prosecutor and Public Defender in such meetings as necessary. The DMP can also be reviewed by the Criminal Justice Coordinating Council, if one is established.

**Recommendation Two:** *The DMP should be reviewed in terms of the feasibility of reducing time periods between certain scheduled events.*

Most timeframes in the DMP are set at 90 days. One judge has reduced many of these to 30 days and has experienced mostly compliance. This type of adjustment in timeframes should be considered for all divisions.

**Recommendation Three:** *Attorneys appearing in Court should have full authority to dispose of the case.*

Every attorney handling a case file, whether prosecutor or defense counsel, at any hearing should have full authority to dispose of that case.

**Recommendation Four:** *Plea offers should be transmitted as early as possible and should not change.*

The prosecutor should not make a plea offer after the initial offer is made which is better than the initial offer presented except for good reason, such as changed circumstances in the case. Defense counsel should not be rewarded for delaying the case.

**Recommendation Five:** *The court should set a firm final date for a defendant to accept the plea offered by the prosecutor.*

This "plea cut-off" date is usually very close to the trial date and is designed to determine which cases will actually be tried before a jury is brought in. This system, coupled with an environment where offers do not get better over time (as recommended in *Recommendation Four* above), will dispose of more cases earlier while cases needing trial can more quickly be identified. Defendants may always plea to the charge.

**Recommendation Six:** *The court should limit the time for a defendant to obtain private counsel.*

The court should limit the time for a defendant to obtain private counsel. A compromise might be to give a short continuance after which (assuming the defendant has not hired an attorney) the public defender is appointed for the next hearing with the understanding that the defendant may hire a private attorney by that date. Similarly, consideration should be given to shortening both the number and duration of (if not eliminating completely) continuances for payment of attorney fees.

**Recommendation Seven:** *Consideration should be given to scheduling fewer cases for trial each week to promote scheduling certainty.*

By limiting the number of cases scheduled for trial each week, to eight cases, for example, the attorneys will be certain which cases will likely be tried and will have a strong expectation that their case will be tried. Such a practice would also facilitate the trial preparation process for both the prosecutor and the defense and increase the certainty of trial as well as enhance the plea negotiation process for those cases. Two trial cycles, one at the start of the week and one mid-week with, for example, eight cases scheduled for each, may potentially result in the disposition of as many as sixteen cases in one week as opposed to scheduling sixteen cases for one week and disposing of only the eight which the attorneys feel are most likely to be tried. Complex cases may need to be scheduled differently.

The goal of this recommendation is to develop a system where it is anticipated by all parties that all cases set on any particular trial date will be either tried or otherwise disposed of. By limiting the number of cases scheduled for trial on any particular date to a number which the court is able to hear the parties can be assured that their case will be tried if not settled on that date. Experience in other jurisdictions which follow this practice – e.g., scheduling only those cases for trial which the court can hear on that date -- has resulted in disposition rates of 95%+ of cases set. Continuances in these jurisdictions, are a rare exception and usually limited to unforeseen circumstances occurring in a case

As a corollary to this scheduling practice, many courts are deferring the setting of the trial date until after it can be determined that the case is not likely to be disposed of through a non-trial method so that only those cases most likely to require trial are actually scheduled for trial. This practice promotes the ability of the judge to manage the docket and reduces the likelihood that the trial docket will collapse because the prosecutor has determined that no cases are available and/or ready for trial. It also reduces the needless call for jurors.

When everyone knows more cases are scheduled for trial than can be heard the trial date doesn't have credibility --for the litigants, the witnesses, the public -- and therefore parties frequently do not prepare for trial, at least on the first or second settings. By scheduling fewer cases for trial but with great certainty that they can, in fact, be heard, the trial calendar can/will have more credibility.

To further explore the utility of this approach in Greene County, information should be compiled regarding:

- (1) the frequency with which cases set for trial in Greene County are continued on/near the trial date and the reasons for the continuances;
- (2) the number of trial settings in a case prior to disposition; and
- (3) the method of disposition and number of trial settings for all cases scheduled for trial.

If this data is not readily available, consideration should be given to tracking it over the next few months to provide a more concrete picture of the situation.

**Recommendation Eight:** *Although communication among criminal justice actors in the 31st Circuit is generally good, the Circuit could benefit from a formal mechanism to address criminal justice related issues, including case processing.*

The prosecutor indicated that he attends a monthly courts meeting but as an observer only. A formal Criminal Justice Coordinating Council comprised of the three Circuit Judges dedicated to criminal cases, the Prosecutor, the Sheriff, the Court Administrator, the Clerk of the Court, and the Public Defender could provide a forum for addressing issues confronting the system in a coordinated manner.

**Recommendation Nine:** *The proposed Criminal Justice Coordinating Council, or key criminal justice actors including the presiding Circuit Judge, should assist the Public Defender in devising a more efficient system for managing requests for lab testing in criminal cases.*

This is a matter mostly out of the control of the Greene County system, especially since it is tied to state budgets, but by making the issue of the excessive delay known from all key criminal justice actors in the county, the Public Defender's Office at the state level may become sensitized and motivated to address the problem. As noted in this report, the problem exists in other circuits as well.

**Recommendation Ten:** *Consideration should be given to making more use of pretrial services.*

Greene County's pretrial services office prepares bond reports on defendants after interviewing them within two weeks from first appearance but is understaffed. This office should be staffed so that interviews may be conducted immediately, a recommendation on bond made to the court, and release with supervision made a regular practice.

### **C. Thirty-Eighth Circuit (Christian and Taney Counties)**

**Recommendation One:** *The Circuit Court should develop a comprehensive caseflow management plan under which the Court assumes responsibility for managing cases after arraignment once they are docketed and Differentiated Case Management (DCM) principles are applied.*

The Circuit Court should develop a comprehensive caseflow management plan. The plan should provide for the court to assume responsibility for managing a case after arraignment once it has been docketed. Cases should be set for conferencing, with a trial date set at the final pre-trial conference for those cases which then appear to warrant a trial. Serious consideration should be given to developing a DCM system.<sup>14</sup>

The plan should draw on the elements of effective criminal caseflow management practices as articulated by Maureen Solomon<sup>15</sup>, and adopted by many local courts, summarized as follows:

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- **Early Availability of Arrest Report**

*The law enforcement agency assures rapid transmission of the arrest report to the prosecutor, possibly requiring that the report be submitted by the conclusion of the officer's shift.*

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<sup>14</sup> See *Differentiated Case Management Implementation Guide*. Bureau of Justice Assistance. 1991 (available at [www.american.edu/justice](http://www.american.edu/justice)).

<sup>15</sup> See Maureen Solomon. *Improving Criminal Caseflow*. Bureau of Justice Assistance. 2008 (available at [www.american.edu/justice](http://www.american.edu/justice)).

- **Early Attachment of Counsel and Prompt Client Interviews**  
*Defense counsel is notified of assignment to a case promptly and interviews the client prior to his or her court appearance.*
- **Realistic Charging**  
*Experienced prosecutors screen cases early and usually charge only what they are confident can be proved should the case go to trial.*
- **Early Exchange of Information Between Prosecution and Defense**  
*Basic information, including the arrest report and available discovery, is exchanged early, preferably prior to preliminary hearing (in felonies) but no later than arraignment. Decisions about case disposition can be made only when the lawyers have the necessary information. In some courts, a significant number of dispositions occur at first appearance or at arraignment.*
- **Emphasis on Early Disposition**  
*An “early disposition climate” is created by a process which focuses judge and lawyer attention to the case at the earliest possible time, requires counsel to meet with the client as soon as possible, creates a structured opportunity for serious negotiation between the lawyers, and incorporates meaningful judicial participation throughout.*
- **Case Screening by Prosecution, Defense, and Judge**  
*Beginning with the initial charging decision and continuing through the early stages of the case, the prosecutor’s, defense counsel’s, and judge’s experience is used to assess case complexity and the most likely case outcome based on the charge, evidence, and other case characteristics. This assessment is facilitated by a judicial conference within 30 days of arraignment. Early case differentiation will assist in the identification of cases that can be disposed of early. At the same time, the court will be able to flag more complicated cases which may need special attention and a longer disposition timetable.*
- **Early, Realistic Disposition Offers that are Unlikely to Improve Substantially Over Time**  
*Timely disposition depends on early and accurate case evaluation by the prosecutor, coupled with early realistic plea offers based on what the prosecutor believes could be proven at trial. In many courts, a major disincentive for early disposition exists because the defense knows that the prosecutor’s offer will improve significantly solely due to the passage of time.*
- **Cases Always Assigned a Future Date Certain for a Specific Purpose**  
*Realistic, enforced deadlines are used to create the essential “expectation of timeliness” that stimulates timely preparation and disposition. If a disposition is not entered at arraignment, a future action date for a specific purpose<sup>16</sup> (such as a case management conference or motions hearing) is assigned before the parties leave. Consultation with the prosecution and defense in setting the date helps assure compliance.*

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**ESSENTIAL ELEMENTS OF CASEFLOW MANAGEMENT<sup>17</sup>**

- |                        |                                  |
|------------------------|----------------------------------|
| 1. Judicial Leadership | 6. Case management procedures    |
| 2. Goals               | 7. Mechanisms for accountability |

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<sup>16</sup> The likelihood of appropriate attorney preparation is enhanced by the knowledge of what the court expects to accomplish at the next appearance.

<sup>17</sup> From Ernest C. Friesen, Jr., Barry Mahoney, and Maureen M. Solomon, *Caseflow Management, Principles and Practices: How to Succeed in Justice*. Institute for Court Management of National Center for State Courts, 1991) at pp. 11-13

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|-------------------|---------------------------|
| 3. Information    | 8. Administrative support |
| 4. Communications | 9. Education and training |
| 5. Commitment     | 10. Backlog reduction     |

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*Note that the firm future action dates need not be trial dates. In fact, setting future trial dates which everyone acknowledges are a fiction is detrimental to the creation of an “early disposition climate”. Motions deadlines, case management conference dates, and other meaningful events satisfy the requirement for always setting a “future action date” deadline. By assuring that the sum of all future action deadlines adds up to, or is less than, the outside time limit for disposition (i.e., the speedy trial limit), the court essentially gives early notice of the approximate trial date if one is needed and assures that the time limit will be met.*

- ***Every Proceeding Used as an Opportunity to Dispose of the Case or Move It Toward Disposition***  
*Each scheduled appearance has a purpose directly related to making progress toward disposition. In other words, it is a “meaningful event”. Conferences or status hearings held solely for the purpose of inquiring about counsel’s progress or setting a date for another conference are avoided. When the defendant and lawyers are present, it should be for activities that can lead to disposition.*
- ***Trial Dates Scheduled Only if Needed***  
*Trial dates are assigned only for those cases likely to require a trial after other hearings have been completed and efforts to reach an alternative disposition appear to have failed. This approach produces several positive results. First, it assures early trial date availability for those cases that need a trial by not filling the calendar with cases that ultimately will reach a non-trial disposition. Second, the availability of early open dates on the trial calendar provides the defendant and counsel a high degree of certainty that the case will proceed as scheduled and will not be continued due to over-scheduling.*

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In developing the recommended caseflow management plan, serious consideration should be given to incorporating a Differentiated Case Management (DCM) system. A DCM system is premised on the recognition that all cases are not alike in terms of the time and judicial system resources needed for their disposition. Developing a DCM system in the 38<sup>th</sup> Circuit would entail designing several case processing tracks to which cases could be assigned, based on the degree of their complexity and judicial supervision required.

The Court should take the lead in bringing both Prosecutors’ Offices, the Clerks’ Offices, and the Public Defender together to develop a comprehensive Differentiated Case Management plan for the Circuit. The plan should describe the tracks that are adopted, how cases will be processed within each track, including the key events and timeframes for each track and the requisite activities that need to occur between events. Ideally, the active pending cases could then be assigned to appropriate case processing tracks, with subtracks constituting the cases of pretrial jail detainees.

Employment of Differentiated Case Management has the potential of saving court costs in the following areas: prisoner transportation, jail, juror, police/witness, and indigent defense days, number of processing events (including cost of issuing and delivering notices, motions, court appearances, grand jury presentations, etc.), and judge “down time”.<sup>18</sup>

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<sup>18</sup> See, for example, Thomas A. Henderson, Janice Munsterman, and Robert W. Tobin, *Differentiated Case Management: Final Report*. U.S. Department of Justice, Office of Justice Programs (1990) at p. 3. The authors

When trials are set, it should be highly likely, if not totally assured, that they will be tried. In order to achieve this, plea negotiations must be concluded in advance of trial. (See: 31<sup>st</sup> Circuit - *Recommendation Two* above).

**Recommendation Two:** *The Court should determine the frequency and most common reasons for the granting of continuances in order to regulate their occurrence and adopt a written continuance policy to be applied uniformly.*

A strict continuance policy is a key element to achieving effective caseload management. Allowing lawyers to stipulate to continuances undercuts the entire effort to move cases expeditiously to resolution. As a result, use of “short scheduling” – e.g., for cases meriting a continuance, resetting them to a close future date that permits the time needed and no more -- in the granting of continuances will produce the best results for the court and counsel. Counsel will become oriented and accustomed to seeking only the actual extra time needed for any designated task rather than asking for an automatic 30, 60, or 90 days, when in reality, only 15 or 20 days are truly required.

For the same reason, requests for continuances should be required to be in writing. First, it will impress on counsel that the granting of continuances is a matter within the court’s sound discretion, not of right. Second, it will enable the court’s administrators to keep account of how many continuances are granted, the reasons for granting them, and the impact of continuances on the court’s success in expeditiously disposing of its caseload.

Requests for continuances from defendants for time to hire attorneys should be limited both in number and duration. At least at the second request, any continuance should be accompanied by a simultaneous appointment of the Public Defender. The Public Defender can be substituted if a private attorney is hired but the court will be able to proceed with its hearings in either event, and the appointment of a Public Defender will move the defendant to either hire an attorney or accept the appointment. Similarly, continuances to allow time for private attorneys to be paid should be limited in both time and number. Attorneys will soon acclimate by ensuring that they are either paid in advance or by making arrangements outside the court environment and without court support.

**Recommendation Three:** *Mechanisms should be developed to promote early screening by prosecutors as well as by the judges at each stage of a criminal case, i.e., in both Associate Circuit and Circuit Court.*

Most courts have found that one of the best prosecutor office practices is for a senior prosecutor to screen a case when it is received. The prosecutor’s offices should consider having one comprehensive screening conducted at the very start of the process by a senior prosecutor. Courts across the country have found that this early screening is the most effective means of removing – as soon as possible – those cases that clearly should not be

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were careful in drawing cost-benefit conclusions because the expenses that were directly attributable to DCM were difficult to determine. Nonetheless, the study did show that DCM reduced the time to disposition and the total number of aged cases in the system for two of the counties studied.



prosecuted fully for various reasons. In some jurisdictions, the prosecutor requires the charging police officer to appear personally so that the prosecutor may assess the strength of the case as related directly by the most knowledgeable participant.

**Recommendation Four:** *Judicial resources should be available for every trial week in both counties of the 38<sup>th</sup> Circuit to try felony cases.*

Associate judges should be considered as additional judges to be available for trial weeks to back-up the Circuit Judge. Although the Associate Judges have not met time standards for criminal cases (misdemeanor and felony cases through preliminary examination or waiver), they are much closer to doing so than the Circuit Court. The Associate Judges disposed significantly more criminal cases, both misdemeanor and felony, than were filed in 2010.

Additional efficiencies can be gained by coupling misdemeanor and felony trial days. Fewer jurors can be called if the pools are shared and the clerical time spent for additional jurors if brought in for the same dates is minimal. Jury courtrooms are available in both counties if the old courthouse jury courtroom is used in Christian County. When Associate Judges are likely to not be available and that is known in advance, pairing<sup>19</sup> judges should be considered as an alternate possibility. Pairing may also be useful in situations in which requests to recuse a judge may affect the trial docket.<sup>20</sup>

Clearly, and noted by the assessments of all the criminal court actors interviewed in the 38<sup>th</sup> Circuit, the addition of additional judicial resources will have a significant positive impact on the disposition rate of felony cases. Not only will more cases be tried, but more cases will plea as a result of the added certainty of a trial.

**Recommendation Five:** *The small pretrial staff in the 38<sup>th</sup> Circuit needs to be augmented so that pretrial services may make bond or release recommendations to the court. (See Recommendation Ten for the 31<sup>st</sup> Circuit above)*

**Recommendation Six:** *Consideration should be given to organizing a criminal justice coordinating council for the 38<sup>th</sup> Circuit.*

There is a need for agreement among the major units of the criminal justice system in the 38<sup>th</sup> Circuit—the Prosecuting Attorneys from Christian and Taney County, the Sheriff,

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<sup>19</sup> The system of “pairing judges” was outlined in the Chief Justice’s 2008 State of the Judiciary Address. It is a system used effectively in many Missouri counties and routinely in Greene County. The system “pairs” counties with a lighter judicial workload with counties who have an excessive judicial workload. Judges from the paired counties travel to the partner county to hear cases in the busier counties. Greene County has a “paired” judge on a fulltime basis for civil matters. The further use of pairing judges can help with the added workload and especially when Associate Circuit Judges are not available.

<sup>20</sup> Defense lawyers in Missouri are entitled to an automatic recusal of a judge without having to allege a reason. The study team did not get the impression that this situation caused insurmountable problems but, in the event a situation arises that cannot be addressed through the use of visiting judges, the “pairing” system may also be useful.

the Clerks of the Courts in both counties, the Public Defender. Meetings with some regularity are necessary to consider common challenges. There should be a regular established meeting of actors in the justice system to address mutual or individual concerns of these components and in dealing with county and state officials on issues. The Court should assume a leadership role by having the Circuit Judge convene this group.

This is a propitious time for the 38th Circuit Court to address matters on a cooperative level. There is a concern and general agreement that it is necessary to work together particularly in light of the limited resources available in the Circuit. The prosecutor's offices in each county, Taney and Christian, are independent, but share the same judicial resources at the felony level, and the same Public Defender's Office. For these reasons alone, they ought to meet together and with other actors to determine where they can modify their practices for the good of all. The new Council could address largely technical but thorny and long-lasting problems such as the need for having judges available to take pleas, including the use of Associate Judges.

The system is in need of some mechanism for adopting changes with full respect for sometimes conflicting interests and demands. Change will, by its very nature, call upon the actors to modify their historical practices. As a mechanism both to initiate and support necessary improvements in the criminal process in the 38th Circuit, it will be vital to establish a council for criminal justice agencies to build a foundation for justice system improvement and provide a vehicle to put change into practice. Other jurisdictions have used councils to coordinate activities and address issues in a collegial setting. The councils vary in their memberships and purposes, but all are aimed toward seeking just and efficient coordination of the various independent offices and officials in the jurisdiction. The councils provide an opportunity for those wishing to bring about change to lead discussion and persuade agencies to come together and harmoniously adopt new ways of doing things. One of the main reasons for systemic delay and failure to meet time standards is "a failure of communication." Criminal justice coordination councils meeting frequently allow participants to communicate in a forum with others in attendance.

#### **D. Thirty-Ninth Circuit (Barry County)**

**Recommendation One:** *The court should shorten the time between case filing and preliminary hearing.*

The delay between case filing and preliminary hearing is contributing significantly to the inability to meet the state time standards. The court should reevaluate its scheduling mechanism to shorten the time between the case filing and preliminary hearing. Events that do not contribute to the disposition of a case between the case filing and preliminary hearing should be reduced or eliminated.

**Recommendation Two:** *Consider replacing “law day” with separate events that are meaningful events in disposing of the case.*

It seems to be accepted by the criminal justice stakeholders that “law day” is a day to have cases set, but with little anticipation that a resolution will occur at these settings unless the case has been set numerous times. Since each of these settings are 30 days apart, this contributes significantly to the delay in cases. By replacing the “law day” setting with a setting designed to resolve the case, delay would be reduced and the workload of the players would also fall. It would also reduce down time for the judges.

**Recommendation Three:** *Plea offers should be transmitted as early as possible and should not change.*

Consistent with recommendations for the other circuits studied, the prosecutor should not make a plea offer after the initial offer is made which is better than the initial offer presented except for good reason such as changed circumstances in the case. Defense counsel should not be rewarded for delaying the case.

**Recommendation Four:** *The court should limit the time for a defendant to obtain private counsel.*

The court should limit the time for a defendant to obtain private counsel. A compromise might be to give a short continuance after which (assuming the defendant has not hired an attorney) the public defender is appointed for the next hearing with the understanding that the defendant may hire a private attorney by that date. Similarly, consideration should be given to shortening both the number and duration of (if not eliminating completely) continuances for payment of attorney fees.

**Recommendation Five:** *The court should set a firm final date for a defendant to accept the plea offered by the prosecutor.*

This “plea cut-off” date, which can be set close to the trial date, will permit the identification of which cases will actually be tried before a jury is brought in. This system, coupled with an environment where offers do not get better over time (as recommended in *Recommendation Three* above), will result in the disposition of more cases earlier while cases needing trial can more quickly be identified. As noted above, defendants may always plea to the charge.

**Recommendation Six:** *The court should reconsider the current system for assigning felony cases to Associate Circuit and Circuit Judges.*

Complex felony cases are currently assigned to the Circuit Judge with less complex felony cases assigned to one of the Associate Circuit Judges. While this practice results in a reduction of workload for the Circuit Judge, it may not be the most effective way to dispose of cases. Rather, the court should consider whether it is effective to allow the Associate

Circuit Judge to preside over all felony cases and utilize the Circuit Judge's availability in the county to hear cases as needed. If "law day" is continued, the Associate Circuit Judge should consider moving the "law day" to a date that is different from the Circuit Judge's "law day" to allow cases to be reset to a "law day" that is sooner (i.e., if the Associate Circuit Judge's "law day" is two weeks after the Circuit Judge's "law day," the Circuit Judge could reset cases for two weeks later rather than one month later). With a revised case assignment system, the Associate Circuit Judge could then handle the caseload of the Circuit Judge as needed.

**Recommendation Seven:** *The Court should determine the frequency and most common reasons for the granting of continuances in order to regulate their occurrence and adopt a written continuance policy to be applied uniformly.*

As noted elsewhere in this report, a strict continuance policy is a key element to achieving effective caseflow management. Allowing lawyers to stipulate to continuances undercuts the entire effort to move cases expeditiously to resolution. As a result, use of "short scheduling" – e.g., for cases meriting a continuance, resetting them to a close future date that permits the time needed and no more -- in the granting of continuances will produce the best results for the court and counsel. Counsel will become oriented and accustomed to seeking only the actual extra time needed for any designated task rather a longer period of time that is provided simply pro forma.

For the same reason, requests for continuances should be required to be in writing. First, it will impress on counsel that the granting of continuances is a matter within the court's sound discretion, not of right. Second, it will enable the court's administrators to keep account of how many continuances are granted, the reasons for granting them, and the impact of continuances on the court's success in expeditiously disposing of its caseload. Third, the Court should be required to rule on continuances, not just be automatically granting them when requested.

Requests for continuances from defendants to hire attorneys should be limited both in number and duration. At least at the second request, any continuance should be accompanied by a simultaneous appointment of the Public Defender. The Public Defender can be substituted if a private attorney is hired but the court will be able to proceed with its hearings in either event, and the appointment of a Public Defender will move the defendant to either hire an attorney or accept the appointment. Similarly, continuances to allow time for private attorneys to be paid should be limited in both time and number. Attorneys will soon acclimate to this situation by ensuring that they are either paid in advance or by making arrangements outside the court environment and without court support.

**Recommendation Eight:** *Judicial resources should be available for every trial week to try felony cases.*

Associate judges should be considered as additional judges to be available for trial weeks to supplement the Circuit Judge. Although the Associate Judges have not met time standards for criminal cases, they are much closer to doing so than the Circuit Court. The

Associate Judges disposed of significantly more criminal cases, both misdemeanor and felony, than were filed in 2010. While care would have to be given to allow the prosecutor time to prepare between trials, having more than three days available per month for trial could result in increased dispositions and provide added certainty of a trial for those cases scheduled.

**Recommendation Nine:** *The court should take whatever action is necessary to ensure that defendants understand the requirement that they appear at scheduled hearings and do, in fact, appear.*

The presence of defendants at scheduled hearings is required in order to effectuate a meaningful hearing in moving the case toward disposition. The case will not be able to be resolved with the defendant absent. The court should make clear to defendants the requirement that they appear at scheduled hearings and the consequences if they fail to appear as required. Changing this pattern of behavior may require working with the Sheriff.

**Recommendation Ten:** *Although communication among criminal justice actors is generally good, Barry County could benefit from a formal mechanism to address criminal justice related issues, including case processing.*

There is currently no formal mechanism for meetings among the judges and other criminal justice stakeholders in Barry County. A formal Criminal Justice Coordinating Council comprised of the Circuit Judge, the Associate Circuit Judges, the Prosecuting Attorney, the District Public Defender, the Circuit Clerk, the Sheriff and perhaps private defense counsel could address issues confronting the system in a coordinated manner.

**Recommendation Eleven:** *After consultation with the proposed Criminal Justice Coordinating Council, if it is created, the Court should develop a comprehensive caseflow management plan to promote court control of the case process to promote greater timeliness, efficiency and predictability.*

The court should assume responsibility for managing a case after arraignment once it has been docketed. Cases should be set for conferencing, with a trial date set at the final pre-trial conference for those cases which then appear to warrant a trial. As in the 38<sup>th</sup> Circuit, serious consideration should be given to developing a DCM system. The plan should draw on the elements of effective criminal caseflow management practices articulated by Maureen Solomon and adopted by many local courts, which are summarized above.

As discussed earlier with respect to the 38<sup>th</sup> Circuit, a DCM system is premised on the recognition that all cases are not alike in terms of the time and judicial system resources needed for their disposition. The Court should take the lead in bringing the Prosecutor's Office, the Clerk's Office, and the Public Defender together to develop a comprehensive caseflow management plan for the Circuit using a DCM approach. The plan should describe the DCM tracks, the key events and anticipated timeframes applicable to each track, how cases will be processed and the timeframes and requisite activities between events.

As also noted earlier, it should be highly likely, if not totally assured, that cases set for trial will be tried. In order to achieve this, plea negotiations must be concluded in advance of trial. The "plea cut-off" date is usually very close to the trial date and is designed to determine which cases will actually be tried before a jury is brought in. If such a system were employed in Barry County, coupled with an improved environment where offers do not get better over time (as recommended in *Recommendation Three* below), more cases will be disposed of at an earlier stage and cases needing trial can more quickly be identified. This would have the effect of reducing workload through less churning of cases over time.

**Recommendation Twelve:** *The Office of State Court Administrator should attempt to integrate the court case management system with the prosecutor's case management system, particularly regarding scheduling and resets.*

One of the areas of main concern is the lack of prosecutor time. The prosecutor indicated that it would be extremely beneficial to him if the case resets were automatically updated into his system, just as the information is transferred from the prosecutor's system to the court case management system.

#### **E. Additional Issues Raised**

1. Incorporating Deferred Prosecution Practices in State Time Standards Reporting

Although beyond the scope of this caseflow management review, comment is made on an issue that was raised during the course of the site visit: how to incorporate the prosecutor's practice of deferred prosecution with the Court's ability to meet current time standards. While the consensus among interviewees was that the deferred prosecution system is a good option for defendants which should be maintained, the referenced data reporting problem results from cases referred for deferred prosecution not being taken off the pending list for time standard compliance purposes. To resolve this problem the OSCA should develop whatever mechanisms are needed to accommodate the deferred dispositions in calculating time standards. The time that a case is in the deferred system should not be counted as a pending case for time standard calculations.

2. Instances of Prosecutorial Dismissals and Then Re-Filing of Cases in Response to a Judge's Attempt to Expedite the Case Process

To the extent this practice may exist, it should be obviated with the adoption of a case management system in which the judge takes control of the docket and schedules cases based on a logical process for case review, classification, and preparation. If the practice of prosecutorial dismissals and subsequently re-filing is routine, data should be compiled as to the frequency and circumstances under which it occurs for further review.

## V. SUMMARY

The observations and recommendations presented in this report are designed to provide a framework for improving caseflow management in both the jurisdictions visited as well as for the general caseflow management improvement efforts the Missouri OSCA is undertaking. While the caseflow process in no two local jurisdictions is identical -- reflecting the “local legal culture” as well as available resources at hand -- certain principles regarding the timely and efficient management of the case process should apply. These principles require that the case process, from initial filing to final disposition, proceed in a logical and efficient manner, with all parties – including the public -- on notice of the events and timeframes that will apply to the caseload. The effective application of these principles, discussed in the preceding sections of this report, require a collaborative effort on the part of the prosecutor and defense offices and other agencies involved in the case process under the court’s leadership.

Limited additional technical assistance is available through May 15, 2012 to assist the Missouri OSCA and the jurisdictions involved in this technical assistance study with implementing the recommendations submitted.