

Minutes
September 15, 2016 Committee Meeting

Present: Adams, Buck, Coleman, Holcombe, Huffman (ex officio), Jordan, Kemp, McLaurin, Murray, Smith (Reporter), Wagoner (Acting Chair).

After a welcome by Acting Chair Wagoner, the minutes from the Committee's August meeting were approved and the Committee turned to the NCSC report, Implementation of a Criminal Caseflow Management Plan. Lee Suskin, one of the reports co-authors began with an introduction discussing:

- Key elements of the report
- North Carolina case processing times as compared to model and state standards
- Identification of North Carolina practices that do not conform with best practices for criminal caseflow management
- The benefits from an improved caseflow management program
- The report's core recommendations

The substance of his comments is included in the PowerPoint presentation used in connection with his comments and posted on the Commission website. Additional content included:

- The impact of trial delays, including lengthy pretrial detentions for defendants and the possibility that some may plead guilty solely to be released from jail; wait time for victims to put the emotional damage of the event behind them and to obtain restitution; the fact that as time passes witnesses may become unavailable or their memories may fade; and wasted time by families, witnesses, and judicial system actors who repeatedly appear in court for trial dates that are routinely continued.

Discussion after this presentation covered a variety of topics, including:

- Concerns by Committee member McLaurin about the suggestion that magistrates should assign counsel for indigents as a procedure to ensure early appointment of counsel. Reporter Smith reminded Committee members that this suggestion was considered and rejected in connection with the Indigent Defense report in lieu of a proposal to amend the first appearance statute to require first appearances for all in-custody defendants within 48 hours (including in-custody misdemeanor defendants).
- Committee members posited a variety of reasons for case delays including: delays in receiving test results from the crime lab; delays in receiving officers' reports; lack of law clerks for trial judges; and a shortage of judges and courtrooms in some areas.
- Ex Officio Commission member Huffman suggested that inconvenience for families of defendants who repeatedly come to court should not be a factor in decision-making.
- There was discussion about the differences between North Carolina's urban and rural districts and an acknowledgment that a one-size-fits-all solution would not be appropriate. However, it was noted that North Carolina should have minimum uniform standards for administering justice in its criminal courts. How to achieve those standards may vary depending upon the relevant district.
- There was discussion about lack of basic data available from the court system's current computer system. For example, it is not possible to run a computer report to determine the number of continuances in cases; how many cases involve defendants who are detained pretrial; or how many DWI cases have been pending over 90 days.

- There was discussion about the fact that available data is not reliable because of inconsistency with respect to data entry (for example with respect to what constitutes “a case”).
- Lack of effective use of administrative settings in Superior Court was noted, as was the inefficiency of setting the first trial date in district court based on the officer’s court date, without a judicial determination that the parties will in fact be ready to try the case (for example that lab results have been received).
- It was noted that North Carolina could achieve significant improvement by adopting best practices, such as differentiated case management. DWI cases were identified as one type of misdemeanor district court case that may warrant a separate designation in a differentiated case management system.
- Accountability and the ability of the Supreme Court or other entity to enforce standards on elected officials (judges and prosecutors) was an issue of concern. It was noted that the Supreme Court had authority to adopt rules of practice for the district and superior courts and that judges would be required to follow those rules. Suskin noted that in other jurisdictions with elected judges that have implemented caseload management the state judicial standards body has been the enforcement mechanism to require judges to follow court rules.
- It was noted that if the court system could produce reliable, understandable data about work performance, that would enhance accountability.
- The legislative requirement of tracking judicial bench time was discussed. It was generally noted that bench time does not track all the time that judges spend doing judicial duties, such as issuing search warrants and dealing with post-conviction motions. Also it was noted that under current law the district attorney not the judge controls the calendar.
- The role of pilot projects in identifying best practices for North Carolina was discussed as a vehicle to identify best practices for different types of districts.
- There was some discussion about whether the court system needed to move away from 9 to 5 business hours.

After the lunch break Brad Fowler, NCAOC Planning and Organizational Development Officer, presented data from his pilot study of court dates in selected North Carolina counties. Among the most significant data points was the potential judicial system resources that would be freed up by even modest reductions in the number of court dates. A two-page sheet with the data he presented will be posted on the Commission website. Commissioner Buck noted that reducing court dates and freeing up resources would allow the system to make other recommended improvements, such as additional public defenders.

Committee members agreed that the data suggested that North Carolina should engage in criminal caseload management reform.

The Committee discussed whether it wanted to adopt the recommendations in the NCSC report or develop other recommendations. Discussion primarily focused on whether a caseload management reform project could begin in light of the vast existing deficiencies in the court system’s data collection and ability to produce meaningful reports for court actors. It was noted that improvements in data collection could occur simultaneously with implementation of pilot projects to test best practices for North Carolina and its varied jurisdictions. It was further noted that by adopting the recommendations in the report, the Committee was not adopting any specific prescriptions for criminal caseload management reform in North Carolina, other than that the Chief Justice appoint a board to engage in the process as outlined in that report, including among other things: adopting or modifying time and

performance standards; collecting information; identifying other information needs; establishing and evaluating pilot projects; and reviewing and modifying existing court rules. After discussion Committee members requested that Reporter Smith draft a short report synthesizing the Committee's direction on this issue. Smith asked for guidance from Committee members with respect to the relevant body to oversee a reform effort. Committee members were satisfied with the participants identified in the NCSC report and any other participants identified by the Chief Justice.

The Committee turned to its Indigent Defense report and the open issue of who should have authority to appoint Chief Public Defenders: the senior resident superior court judge or the IDS Commission. As in prior discussions on this issue, the Committee was deeply divided. The Committee decided that the final report would be silent on this issue. After it was determined that there were no other open issues regarding the draft report, Reporter Smith was asked to prepare a final report for consideration by the committee at its October meeting.

Emily Portner briefed the Committee on the summary of public comments regarding its reform efforts. A written summary of those comments has been sent to Committee members

The meeting was adjourned.