

PROMOTING INNOVATION IN PROSECUTION

PROSECUTOR'S GUIDE
TO
INTAKE AND SCREENING



JEFFERSON INSTITUTE FOR JUSTICE STUDIES

PROMOTING INNOVATION IN PROSECUTION

**PROSECUTOR'S GUIDE
TO
INTAKE AND SCREENING**

Second edition

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PROSECUTOR'S GUIDE TO INTAKE AND SCREENING

INTRODUCTION

This guide is for prosecutors. It is designed to help them look at the management and operations of their intake and screening processes and identify areas that might be changed or improved. It also is designed to help them think about different ways of doing things. Although the guide may not necessarily solve specific problems, it should, at least, help prosecutors ask the right questions.

In this guide, we assume that every prosecutor faces the common problem of “separating the wheat from the chaff”, i.e. declining poor cases and accepting good ones for prosecution. This is the task of intake and screening. An experienced prosecutor can quickly tell whether most cases will ever be successfully concluded. If deficient cases are quickly removed from the office's inventory, time will not be wasted on them and can be invested in cases that need it.

How the prosecutor does this is usually decided by his policy towards prosecution, his resources and his coordination with other agencies, especially the police, and the courts.

ORGANIZATION OF THE GUIDE BOOK

This guide presents some of the choices that are available to prosecutors, and answers some of the basic questions that need to be asked about intake and screening. There are five sections.

The first section is a self-assessment that helps you determine the overall quality of your intake and screening function. It indicates how much control you exert over the gate to the courts and the extent to which you are weeding out cases that are insufficient.

The second section focuses on the need for screening and the various types of charging standards you may adopt. It defines the common types of policies, describes their impact on adjudication, discusses the types of attorneys needed to implement them, and looks at how charging standards place different demands on police and prosecutor relations,

The third section examines the staffing and organization of the intake process and its location.

The fourth section discusses operations: how cases are referred to the prosecutor; the location of the intake unit; and, its relation to special programs or enhancements.

The fifth section discusses the management and assessment of the intake process and the information you need to monitor and evaluate its performance.

READING THE GUIDE BOOK

The materials presented in the guide are presented in the form of questions and answers. Two types of questions are asked. One question gives you choices. The implications of each choice are discussed. It is important that you as prosecutor understand the potential effects of selecting one course of action over another, and be able to assess whether choices are feasible in your own criminal justice environment.

The second type of question does not involve choices. Its answers reflect principles or guides for effective intake operations. The answers are presented as a checklist to help you consider all the dimensions of the question.

An index to the questions is provided so you may pick and choose those areas that are of interest to you and skip those that are not. We hope that after using the guide, you will be able to identify areas and start the task of making change. You may still need help from others in the form of advice, technical assistance or training. But you should be able to seek this assistance with a better understanding of the dimensions of the problem that you are addressing.

We have attached an evaluation form at the end for your comments and critique. Please fax them to us. For other prosecutor's guides, check our website, www.jijs.org.

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SELF ASSESSMENT

SELF

Am I really controlling the gate to
the courts

And am I reducing unnecessary work,

Or do I just think I am?



TEST THE QUALITY OF YOUR INTAKE OPERATIONS

How many symptoms of deficiencies in intake and screening do you have right now?

ANSWER HERE



Q1. Do you routinely review and authorize charges before felony warrants are served by law enforcement agencies?

5 Yes 1 No

Q2. If yes, is authorization usually based on

1 Verbal report
 2 Written report
 3 Meeting officer with written report

Q3. Do you routinely review cases before prosecution charges are filed in the court?

Felony 5 Yes 1 No
Misdemeanor 5 Yes 1 No

Q4. When are most on-scene arrest cases presented to the prosecutor for review and charging?

Felony

5 After arrest, before first appearance for bond setting
 3 After arrest, at first appearance
 1 After arrest, before indictment or probable cause hearing

Misdemeanor

5 After arrest before court date
 1 After arrest, on day of court

Q5. Who most often makes the charging decisions?

Felony

5 First assistant
 5 ADA with long-term assignment
 5 Separate screening unit
 4 Trial team handling case
 2 Screening assistant on rotating schedule
 1 Any prosecutor available can make the decision anytime.

Misdemeanor

5 Separate unit or part of a unit with assigned prosecutor(s)
 3 Prosecutors rotate duty on a regular basis
 2 Any prosecutor is available to review and authorize
 1 No review for charging

Q6. How often do assistants who review felony cases have prior felony trial experience?

10 Always
 5 Frequently
 3 Sometimes
 1 Rarely or never

SCORE HERE



Q1. Enter number checked _____

Q2. Enter number checked _____

Q3. Enter number checked
Felony _____
Misdemeanor _____

Q4. Enter number checked
Felony _____
Misdemeanor _____

Q5. Enter number checked
Felony _____
Misdemeanor _____

Q6. Enter number checked _____

Subtotal

ANSWER HERE



Q7. What agency typically screens citizen complaints and request for warrants?

- 5 Law enforcement agencies
- 1 Prosecutor
- 3 Magistrate
- 3 Other

Q8. Are there mediation or diversion programs available to the prosecutor for designated sets of cases?

- 5 Yes
- 1 No

Q9. Does the office have written guidelines setting criteria for:

- Declining cases 5 Yes 1 No
- Ordering more investigation 5 Yes 1 No

Q10. Estimate the percent of all felony cases reviewed for charging that were declined for prosecution last year.
_____ %

Q11. Which is most like your felony charging standard?

- 1 Accept the case if the elements of the offense are present
- 5 Accept the case if it will survive a probable cause hearing.
- 10 Accept the case if it can be sustained at trial and convicted.

Q12. How often do police investigative files brought over for charging contain:

	5 <u>Mostly</u>	3 <u>Sometimes</u>	1 <u>Rarely/Never</u>
1. Incident/offense report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Arrest report (if arrested)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Criminal record	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Suspect's written statement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Written summary of witness testimony	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Property sheet for physical evidence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Written scientific or medical reports	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTALS	<input type="text"/>	<input type="text"/>	<input type="text"/>

SCORE HERE



Q7. Enter number checked _____

Q8. Enter number checked _____

Q9. Enter number checked
Declining Cases _____
Ordering more investigation _____

Q10. If 30 percent or more, score 5 _____
If 10 - 29 percent, score 3 _____
If less than 10 percent, score 1 _____

Q11. Enter number checked _____

Q12. Enter totals for:
Mostly _____
Sometimes _____
Rarely/Never _____

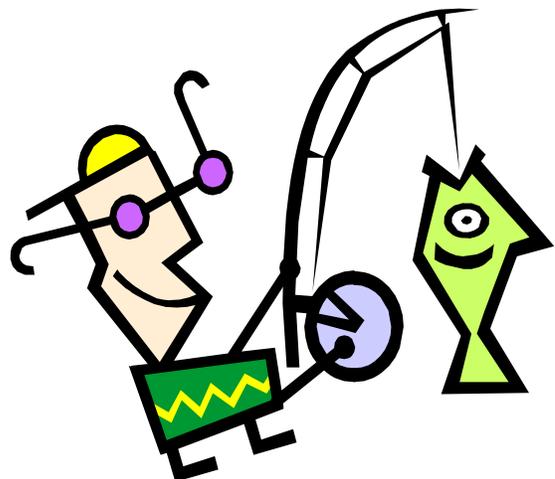
Subtotal:

Total score from page 1 and 2:

SCREENING AND CHARGING POLICY



- ✦ separates the wheat from the chaff
- ✦ controls the gate to the courts
- ✦ defines expectations about dispositions
- ✦ sets uniform charging standards
- ✦ ensures equity in prosecution





Question 2.1

Why should I screen cases?

Answers

To review and evaluate cases early.

To decline cases that can't be won or are not in the public interest.

You Need

Essential Elements for Screening

-  Attorneys who are competent trial attorneys and know prosecutor's objectives.
-  Policy and standards for declining cases and assigning priorities for prosecution.
-  Timely and complete investigation files from law enforcement.
-  Written records of screening decisions.
-  Notifications to law enforcement, victims and possible witnesses of decisions.
-  Procedures for appealing screening decisions.



"The prosecutor should file only those charges which he reasonably believes can be substantiated by admissible evidence at trial."

National Prosecution Standards, Second Edition, Guidelines 43.3



Question 2.2

Which felony charging policy should I use?

Choices

No Policy

Any assistant is allowed to make charging decisions.

No routine monitoring of charging decisions.
"I trust my assistants".

Legal Sufficiency

Accept cases for felony prosecution if the elements of the crime are present.

System Efficiency

Accept cases for felony prosecution if they can survive probable cause.

Seek earliest dispositions through plea bargaining, diversion, and other alternatives to prosecution.

Trial Sufficiency

Accept felony cases only if sustainable at trial.

Prosecute on original charge.
No changes to original charges without approval.

Definitions



"The prosecutor should establish, maintain, and follow guidelines in the exercise of the discretion in screening criminal charges."

National Prosecution Standards, Second Edition, Guidelines 42.2



Question 2.3

How does charging policy affect the office?

Choices

Effects

No Policy

No articulated standards for acceptance.

No control over the gate.

Decisions may not be consistent with elected prosecutor's policy.

Decisions may not be uniform among assistants.

Assistant shopping is likely.

Increases potential for inequity in prosecutions.

May accept cases that should not be prosecuted, or should have been charged at lower levels.

Wastes time and resources by allowing cases in that should be declined.

Legal Sufficiency

Minimal standards for accepting cases. Only the elements need to be present.

Standards easily understood and applied.

No guidelines for setting prosecution priorities.

Overloads courts, prosecution and jails.

High potential for lack of uniformity in negotiating dispositions.

System Efficiency

Higher standard for case acceptance. Must survive a probable cause hearing (or grand jury).

Needs case disposition policies.

Needs standards for plea bargaining.

Emphasis on obtaining dispositions as early in the process as possible (especially at probable cause hearing).

Needs alternatives to adjudication such as diversion.

Compatible with goals of prevention and rehabilitation.

Trial Sufficiency

Highest standard. Case will be disposed as charged and sustained at trial if necessary.

Case disposition policy applies at intake.

Limited plea bargaining except to the original charge.

Charges cannot be changed or cases dismissed without approval.

Little discretion needed by trial attorneys.



Question 2.4

What types of attorneys should I assign to intake and screening?

Choices

No Policy

Does not require any specific type of attorney.

Any attorney may make screening and charging decisions since there are no established acceptance standards.

Charging decisions will vary according to the experience and views of the assistants making them.

In one sense, each attorney assumes the discretionary authority and power of the elected prosecutor.

Legal Sufficiency

Attorney should know the elements of offenses.

Attorneys just admitted to the bar or new to the jurisdiction may not know the elements needed.

System Efficiency

Attorney should be a skilled plea negotiator and coordinator.

Should be able to identify those cases likely to survive probable cause hearings.

Should be able to identify the probable disposition and likely punishment.

Should be knowledgeable about prevention and rehabilitation options.

Should coordinate a network to refer cases to other alternatives.

Trial Sufficiency

Senior trial attorney

Assistant should have extensive trial experience, and be able to evaluate the most likely charge that will be sustained and the sentence imposed.



Remember!

Most often you only have a paper file at intake. No one has met and interviewed witnesses or seen the defense case at this stage.



Question 2.5

How does my charging policy affect police reporting procedures and training?

Choices

No Policy

No effect!

Police will develop their own reporting procedures.

Content or quality of police reports will vary from good to bad.

Legal Sufficiency

Need standardized reports and some legal training.

Law enforcement agencies' reports should describe the elements or allow the attorney to interpret them from the facts.

You should help police develop standardized reports for the most prevalent offenses.

Charging assistants should be available to answer police questions about elements needed.

Training (e.g. at roll call) should be provided by attorneys to keep police up-to-date.

System Efficiency

Requires police training in probable cause requirements, assistance with warrants, notification of dispositions.

Educate police about prosecution policies for screening and disposition.

Train police in requirements for probable cause.



"The prosecutor should not file charges for the purpose of obtaining from a defendant a release of potential civil claims against victims, witnesses, law enforcement agencies and their personnel, or the prosecutor and his personnel."

National Prosecution Standards, Second Edition, Guidelines 43.5

System Efficiency (cont.)

Written investigative reports should contain information about witness testimony, statements made and chain of evidence.

Criminal histories are mandatory for plea bargaining, diversion and other decisions.

Assistants should help police with search warrants, requests for wiretaps, etc. so arrests can survive probable cause and motions.

Need top level agreement between police and prosecutor to coordinate use of alternatives to prosecution e.g. treatment diversion, etc..

Notify police and victims of the disposition of cases and the reasons for the disposition especially if they were negotiated or other alternatives were used.

Trial Sufficiency

Requires police education about prosecutor's policy, assistance in investigations, and extensive case information.

The policy of the prosecutor needs to be explained to the police (both management and operations) because the number of cases declined for prosecution may increase.

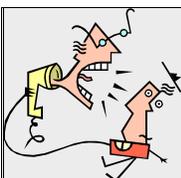
A reporting system should be designed to inform police and victims of the reasons why cases were declined.

Case review usually requires a face-to-face discussion between the screening prosecutor and the officer in charge and a complete investigative file.

The police should be informed that charge bargaining is not allowed.

Police and prosecutor should work together to bring cases up to charging standards.

The prosecutor should actively work with the police in investigations to ensure that the evidence collected can be sustained at trial.



Note:

The interface between the police and prosecutor is critical to efficient intake and case management. Refer to the "Prosecutors Guide to Police-Prosecutor Relations" for more information about this subject.



Question 2.6

Can I have more than one charging policy?

Answer

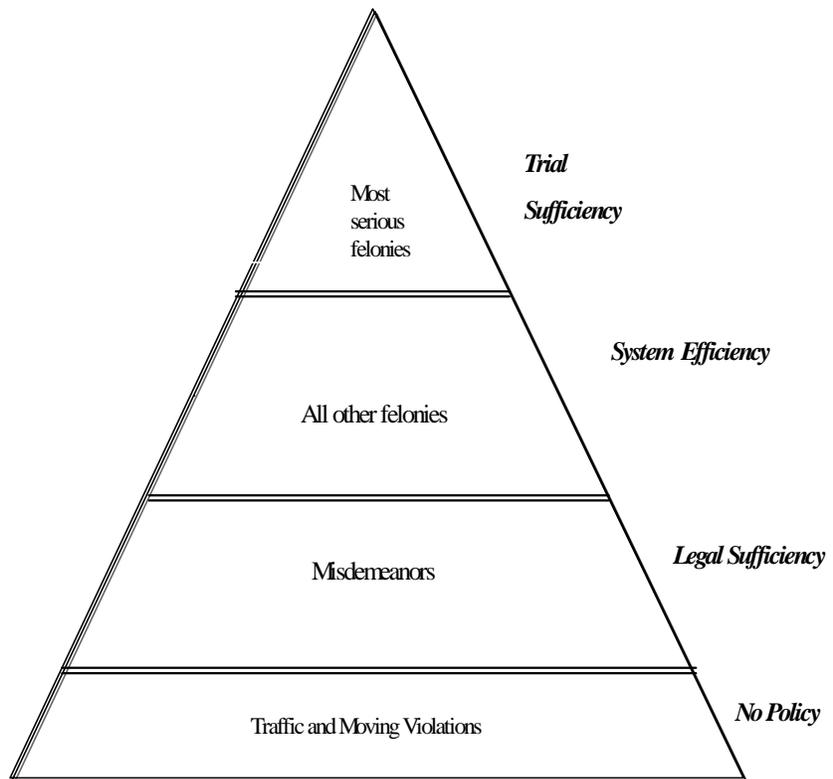


Yes,
if you classify each
policy by type of
offense or prosecution
effort.

You can build a policy pyramid that lets you use different screening and charging standards for different types of cases or for different types of crimes.

An example of a policy pyramid is below:

<p>Example</p> <p>Violent repeat offender programs use stringent trial sufficiency standards.</p> <p>Drug cases may use system efficiency standards for negotiations and the use of alternatives to prosecution.</p> <p>Misdemeanor screening uses a legal sufficiency standard since the information on police reports is minimal.</p>



Caution!

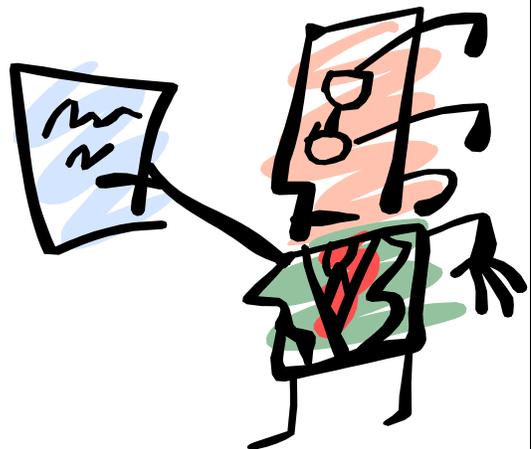
Policy pyramids should not be attempted until the most rigorous charging policy selected by the office is in place and operating to the police and prosecutor's satisfaction.

STAFFING AND ORGANIZING THE SCREENING PROCESS

Screening

Consider three issues:

- ✦ how many attorneys?
- ✦ what type of organizational structure?
- ✦ who supervises and monitors decisions?





Question 3.1

How many attorneys do I need to screen felonies?

Answer



Enough to keep current with the daily intake of cases.

Worksheet		Example
	Calculate	
A1. Enter number of felony cases screened annually	_____	<u>3000</u>
A2. Enter the annual number of days office is open for screening	_____	<u>300</u>
A3. Divide line 1 by line 2, Enter result on line A	_____	<u>100</u>
A. Average number of felony cases submitted daily	<input type="text"/>	<input type="text" value="100"/>
	Calculate	
B1. Enter your best estimate of average number of felony cases one attorney can review in one 8 hour day (<i>This will depend upon your policy.</i>)	_____	<u>50</u>
B2. Divide number in line A by B1, Enter number in line B		
B. Average number of attorneys for screening	<input type="text"/>	<input type="text" value="2"/>
	Calculate	
C1. What percent of time are attorneys absent for vacation and sick leave (<i>Typically about 20-25 percent</i>)	_____	<u>.25</u>
C1	<input type="text"/>	<input type="text" value=".5"/>
C3. Enter number of days a week when volume requires an additional attorney for screening (<i>Mornings only equals 1/2 day</i>)	_____	<u>.5</u>
C4. Divide C3 by 5 days per week	<input type="text"/>	<input type="text" value=".1"/>
C5. Add B + C2 + C4, Enter on line C	_____	<u>2+.5+.1</u>
C. Number of screening attorneys needed	<input type="text"/>	<input type="text" value="2.6"/>



Question 3.2

How should I organize the screening process?

Choices

Designate screening attorney and back up

Establish an intake and screening unit

Techniques

For small offices, when less than 2 full-time attorneys are needed to review cases.

Use experienced designated prosecutors.

Increase uniformity by minimizing the number of persons who make charging decisions.

Train younger attorneys to screen a set of serious misdemeanor cases under the supervision of the felony screeners.

When felony screening is full-time and requires 2 or more full-time attorneys.

Include felony and selected misdemeanor cases for screening.

Provide supervisory assistance and review for juvenile court cases.

Place clerical support for file preparation and victim-witness notifications under supervision of unit.

Use paralegals and investigators to reduce attorney time, improve quality of cases, and support special programs.

Staff victim-witness coordinators based on the number of cases requiring victim notification and assistance, not just offenses mandated by statute.



"A written record of the screening decision and reasons for the screening disposition of each matter should be retained by the prosecutor."

National Prosecution Standards, Second Edition, Guidelines 42.7

Assign trial teams to screening duty on rotating basis

Example
One team is assigned to screening duty for a week (or a term). All the cases that are referred to the office during that week will be screened by the team. Those accepted and charged, will be prosecuted by the team. The next week, the next team takes on screening duties and case assignment.

If you use trial teams in the courts, you may rotate screening among the trial teams.

Each team reviews and handles a representative sample of *all* cases coming into the office.

Each team is accountable for its own case management and satisfactory prosecutions in addition to charging decisions.

Each team lives with its own mistakes.

Depending on the cases that are processed by the courtroom, the team may also screen misdemeanors and/or juvenile cases in addition to felonies.

Screening burn out factor is reduced.

On-the-job training of less experienced attorneys is better supervised.

A weakness is potential for creating two or more units with different screening policies.

Need a top official (e.g. head of criminal or first assistant, etc.) to review the teams' screening and charging decisions for consistency with policy.



Designate charging attorneys by types of offenses.

Example
One screening team would review cases involving crimes against persons, another team would review crimes against property, a third team might focus on drug cases and all other felonies.

Organize screening activities by categories of offenses.

In smaller offices (either deliberately or by default), some attorneys become skilled in the prosecution of difficult cases such as child sexual abuse, drugs, rape, etc.

They know what will prevail at trial and where fatal weaknesses may lie.

In larger offices, the volume of cases may justify establishing screening teams specializing in a broad category of crimes.

Teams bring specialized knowledge to their case assessment tasks.

If the teams also prosecute the cases they accept, (i.e. vertical team prosecution) then a backup system is created so one team member can prosecute the case of another team attorney.

Paralegals and investigators can be assigned to teams according to their special needs.

	<p>Caution! Using trial teams to charge depends on court docketing procedures. If the court's assignment of cases to judges and trial teams occurs later than optimal for screening, screening may have to be done by non-team attorneys.</p>
---	--



Question 3.3

How do I get experienced trial attorney's to take case screening assignments?

Choices

Select assistants who are "burnt out".

Look for trial attorneys who are ready or need time away from the courtroom. Give them a respite. In the long run, they recognize the value of having "down time".

Rotate screening duty after specific lengths of time.

Establish a set time period for the duty, 6 months, one year, even two years. Don't be afraid to change the length of time if it does not seem to be working.

Let assistants choose a few cases for themselves.

If the screening assistant gets tired of just one duty, let him select one or two cases to try himself during his time on rotation.

Give assistants additional duties.

Experienced assistants may like additional duties. For example, they could handle grand jury and train younger attorneys to make presentations; head up or co-direct a plea bargaining unit tied to the intake unit; train police; or, revise police-prosecutor procedures. There are unlimited possibilities. Ask them for suggestions.

Build other benefits into the job.

There is nothing like pay incentives, regular working hours, or intellectual stimulation to make an important job attractive. Tailor the benefits to the individual.



Remember!

Screening is not an easy task. It is stressful for prosecutors. Police want cases accepted. Often they fail to realize that the court's standard of reasonable doubt is greater than their standard of probable cause.



Question 3.4

Who supervises and manages the intake process?

Answers

 ***IF screening unit or designated attorneys, the supervisor is the chief of the unit or senior designated attorney.***

 ***IF trial teams or specialized units, supervision is divided between heads of teams and chief deputy.***

Management Levels

Direct daily supervision and management is needed:

To ensure uniformity in charging decisions;
To increase consistency with the broad charging policies of the office;
To minimize assistant shopping.

Chief reviews declinations,
Resolves conflict between police and prosecutor,
Audits files for completeness.

Two tiers of management are needed.

Heads of the teams or units are responsible for internal consistency within the team or unit.

Chief of the criminal division or first deputy is responsible for maintaining uniform policy throughout the office and among the teams or units



Remember!

The intake process is the gate to the courts.
Screening and charging decisions should be made by competent trial attorneys following a written set of guidelines.



Question 3.5

Where should the intake and screening process be located?

Choices

Effects

Centralized, main office

Centralized operations at the main office have many advantages.

A single entry point for cases referred for prosecution.
Full-time assignment of attorney and support staff to intake.
Central location for files and case status information.
Convenient access to top policy makers in the office.
Convenient access to legal advice from attorneys and law libraries.
Reinforcement of the existing office policies through daily communication

Decentralized, branch offices

Branch offices create a separate set of issues for consideration.

Example

In a branch office, legal sufficiency policies may be your only option even though the main office uses a system efficiency standard for charging.

The charging policy may be different from the main office due to differences in the population, crime problem or expectations about law enforcement and prosecution.

The quality of the police reports from agencies servicing the branch office may not support the standards used for charging at the main office,

Branch offices require additional administration by the prosecutor, adding to his workload.



Note:

Branch offices may not serve the same constituency as the main office. As a result, the expectations of the population served by the branch office about law enforcement and prosecution may be different.

**Decentralized,
branch offices**
(con't)

Example
Cases received by a branch office located in a poor, blue-collar area will not reflect the diversity of crime processed by the main office.

If the branch office is manned full-time, then its screening and charging activities should parallel those of the main office.

If the branch office manned part-time, establish procedures with law enforcement and the sheriff that allow felony and serious misdemeanor cases to be reviewed at the main office. Fax police reports to the main office screening attorneys if face-to face discussion with arresting police officer is not possible.

Hold other less serious cases for review when the attorney is present for the next court session.

Stationhouse

Example
In Nashville, the District Attorney General has 2 experienced prosecutors assigned to the police department to expedite cases for grand jury indictments.

Prosecutors are assigned to law enforcement facilities (police stations, sheriff's office etc.) to screen cases either full-time or on a regularly scheduled basis. There are both advantages and disadvantages to this practice.

Stationhouse attorneys provide assistance, ensure that cases are legally sufficient, that the evidence will stand up in court and that the proper legal procedures have been followed in the execution of search warrants, wiretaps, surveillance etc.

The close working relationship between the police and prosecutors supports informal training and increases opportunities to improve police/prosecution coordination.

A major problem is the potential for the attorney to become co-opted by law enforcement, i.e. assume their values and priorities or become "closet cops". The system of checks and balances between the two agencies may be disrupted.

Assigning inexperienced prosecutors to stationhouses is discouraged. They are "at risk" because they operate without the supportive environment of a law office, access to other attorneys for advice and policy guidance, and the use of a law library.



Note:
A branch office serviced by small, rural law enforcement agencies may not receive the same quality of police reports as the larger urban area serviced by the main office.

INTAKE OPERATIONS

Flow

What is the best way to:

- ✦ get good files
- ✦ evaluate them early
- ✦ decline cases not prosecutable?





Question 4.1

What case identification numbers should be required in police reports?

Answers

Incident number or offense numbers

The incident number (or the police complaint number) identifies the incident to which the police responded.

It allows the prosecutor to link the defendant and co-defendants in a case even if they are given different case or docket numbers.

Police identification number based on defendant's fingerprint and photo

The police identification number (PDID) uniquely identifies the defendant each time he or she is arrested and brought over for charging.

It allows the prosecutor to consolidate other pending cases, or enhance his plea negotiations.

Police arrest number

The police arrest number identifies the department and the arrest charges.

It allows police and prosecutor to link their case files. The prosecutor can produce disposition reports for each department to let them know outcomes of their arrests.



Remember!

Top priority should be given to automating case status and management files.



Question 4.2

What police information is essential for intake and screening?

Answers

 **Police
investigative files**

Standard

Investigative files should set forth the facts of the case in sufficient detail such that a prosecutor can determine whether the case should be accepted and what the appropriate charge should be.

Definition

Investigative files should include:



Incident- offense report

Suspect's prior criminal record



Written statement made by suspect

Written summary of verbal statement made by suspect



Written statements made by each state's witness

Property sheet showing chain of custody for each item of physical evidence



Complete witness subpoena list with addresses and phone numbers

Written reports of all scientific or medical evidence collection procedures and status of laboratory work



Arrest report if suspect arrested

Photo copies of all documents involved and identification of witnesses to authenticate them.



Caution!

No investigative file should be accepted into the prosecutor's office unless the information it contains is sufficient to support the office's charging policy.



Question 4.3

How should cases be brought into the prosecutor's office for review and charging?

Choices Management Implications

Mail or courier

Reports mailed or brought by courier.

Requires the development of high quality, standardized police reports that contain at least enough information to support a legal sufficiency standard.

Liaison Officer

Reports brought by liaison officer.

Liaison officer reviews and sign offs on cases before transmittal to the prosecutor. Liaison officer should have rank of at least sergeant and be responsible for obtaining follow-up information or investigation.

Arresting police officer /Investigator

Arresting police officer or detective interviews.

The additional detail you receive permits higher standards for charging like system efficiency or trial sufficiency.

Additional information must be placed in writing before you accept the case.

Citizen walk-in

Screening citizen complaints.

This practice should be discouraged. It requires screening attorneys to make a decision about recommending a warrant based on one-sided, biased and often emotional testimony. Both the prosecutor and the complainant need to be protected from bad decisions.

Two procedures are possible. One is to interview citizens and refer them to the police for further investigation of the complaint if warranted. The preferred response is not to review citizen complaints unless they are referred from law enforcement agencies.



Question 4.4

What should happen when the prosecutor says the file doesn't support prosecution or the charge isn't proper?

Answers

Action Steps



Use a **Temporary Decline** to hold case in abeyance.



Prepare a **Further Investigation Order** (FIO) that identifies the information and actions needed to support prosecution.



Schedule an agreed upon **Completion Return Date** for the FIO.



Require the **Commanding Officer** to sign off on the FIO prior to its return to the prosecutor.



Notify the Victim of the status of your charging decision with a copy to the investigating officer.



Question 4.5

How do I screen misdemeanors, summons and complaints?

Choices

Informal Procedures

Establish a disposition day in court

Action Steps

1. Set aside specific court days for dispositions
2. Notify defendants of the court dates and times
3. Have defendants sign in when they appear
4. Assistant reviews cases and makes plea offer
5. If accepted, assistant presents offer to judge
6. Defendant is referred to clerk's office after sentencing
7. If no offer accepted, case is scheduled for trial

Site Example

In Smithfield, NC,

Disposition days are the 2nd and 4th Mondays
Calendar set for 350-450 cases each date

Court hours: 9-12:30 and 2-4
Defendants are scheduled to appear during these hours.

Essential elements for disposition days in court

-  Court approval and participation
-  Changes in police summons and citation process
-  Notifications to defendants.



Note:

You should expect about 60 percent of the misdemeanors and traffic cases to plead at first appearance if given the opportunity. The fact that police officers do not appear at this hearing saves time and money for law enforcement.



Question 4.5

How do I screen misdemeanors, summons and complaints? (cont.)

Choices

Formal Procedures

Establish a “first appearance” screening unit.

Action Steps

1. Obtain police reports for day of appearance
2. Check DMV and criminal history
3. Advance notification to victims when required
4. Advise defendants of their rights
5. Make plea offers from an approved schedule for most prevalent offenses
6. If accepted, have defendant sign offer and refer to clerk of the court
7. If not accepted, set court appearance date.

Site example

In Colorado Springs, the District Attorney has a screening/disposition unit that makes plea offers after defendants view a video where a judge describes the process, defendants’ rights and penalties for traffic and moving violations.

Essential elements for establishing a first

-  Court approval and participation
-  Changes in police summons and citation process
-  Develop new forms for plea offers
-  New procedures in clerk’s office
-  Notifications to defense counsel and victims.



Question 4.6

How can intake and screening relate to special programs or enhancements?

Answers

 ***Coordinate its operations with other special programs.***

 ***Initiate the paperwork to support enhancements.***

 ***Initiate a routing or referral process to other programs or agencies.***

Action Steps

Special programs operated by agencies or the courts, such as drug courts, pretrial release programs, diversion and treatment programs can benefit from the active support and coordination of intake.

Intake attorneys should coordinate their operations and policies with these programs to help them meet their goals even if it means modifying some existing charging policies or procedures.

Incoming cases should be screened to determine whether they are eligible for enhancements such as habitual offenders, mandatory minimums, and other special conditions established by statute.

Initiating paperwork at this early stage avoids delays later in the processing.

Intake staff should apply selection criteria for special programs such as career criminal programs, repeat offenders, violent offender, etc.

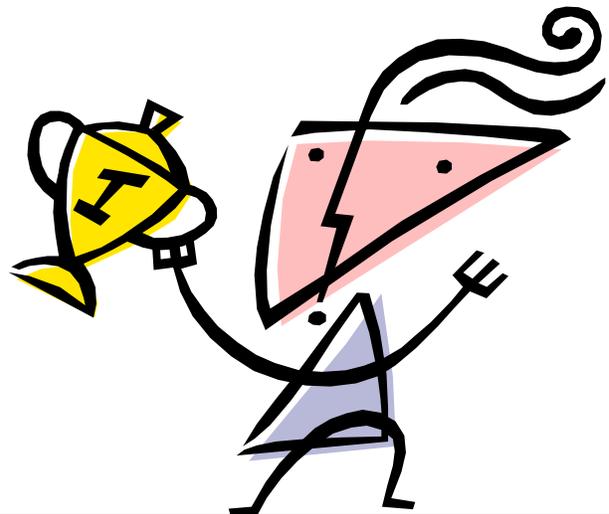
Staff should make referrals to appropriate attorneys, programs or agencies.

MANAGING THE INTAKE PROCESS

Failure

Every prosecutor needs to have accurate information about:

- ✦ changes in caseload
- ✦ workload of attorneys
- ✦ assistant shopping
- ✦ whether dispositions are acceptable





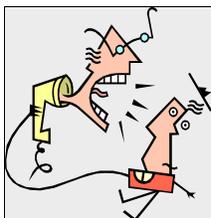
Question 5.1

What questions should I ask to make sure that intake and screening are operating properly?

Questions

Example
 The use of a case closing sheet allows the chief prosecutor to quickly review the performance of individual

	Yes	No
1. Have you specified in writing the conditions under which cases should be declined?	_____	_____
2. Do you have specially designated screening and charging assistants?	_____	_____
3. Do they have extensive trial experience?	_____	_____
4. Do your screening attorneys meet regularly with detectives about investigative reports?	_____	_____
5. Can all cases referred for prosecution be reviewed in the same day they were referred?	_____	_____
6. Are cases requiring further information or investigation returned on date scheduled?	_____	_____
7. Are the screening assistants notified about cases dismissed for reasons that may reflect poor screening?	_____	_____
8. Are case closing sheets or memos reviewed by the intake attorneys?	_____	_____
9. Have you separated felony case screening from misdemeanor case screening?	_____	_____
10. Do you monitor and audit the intake process annually?	_____	_____



Note: Dismissals that can be considered a loss:

1. Lack of evidence or proof	4. Complaining witness refused to cooperate
2. Lost files	5. Mistaken identity or inadequate identification
3. Constitutional issues	6. Other reasons that should have been detected.



Question 5.2

What are monitoring and audit systems and why should I have them?

Answer

 **Monitoring system ensures uniformity in charging**

Monitoring systems indicate whether you are taking in cases you cannot successfully prosecute and later have to dismiss or plead down.

There are a variety of ways to monitor intake.

1. Randomly select all work conducted in a specific time period. Have first assistant review the screening and charging decisions. Disagreements should be discussed at staff meetings to strengthen policy.

2. Examine closed case disposition sheets. Review cases with less than satisfactory dispositions/sentences for potential screening problems.

3. Use a simulated set of criminal cases to test uniformity among attorneys decisions. Ask whether they would accept the case for prosecution, what they would charge and what the expected disposition and sentence would be. Analyze results to note discrepancies and inconsistencies.

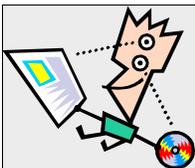
 **Audit system keeps accurate count of cases reviewed and dispositions**

Audits count and verify workload. They are used for budgeting, planning, and reallocating staff due to changes in workload.

A case audit is conducted like a financial audit. Annually, the number of cases referred to the office is reconciled with the cases accepted and rejected, or sent back pending further action.

Case status, dispositions and sentences are reconciled with other agency statistics, e.g. courts.

Annual reconciliation is not difficult if a management reporting system reconciles data on a weekly or monthly basis.



Important!

Cases should count defendants! A case is one defendant involved in a single incident that may result in one or more charges. The disposition of a case describes what happens to the defendant.

The
~~End~~ Beginning

