

PROMOTING INNOVATION IN PROSECUTION

PROSECUTOR'S GUIDE
TO
MISDEMEANOR CASE MANAGEMENT



JEFFERSON INSTITUTE FOR JUSTICE STUDIES

PROSECUTOR'S GUIDE

TO

MISDEMEANOR CASE MANAGEMENT

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September 2001

This project is supported by a Federal grant from the Missouri Division of Highway Safety to the Missouri Office of Prosecution Services and a contract between the Missouri Office of Prosecution Services and the Jefferson Institute for Justice Studies, Washington, D.C. (Contract No. 01-J7-03-17). Points of view or opinions in this document are those of the authors and do not represent the official position or policies of the Missouri Office of Prosecution Services or the Missouri Division of Highway Safety.

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Acknowledgements



This guidebook addresses the issues and problems associated with the prosecutor's management of misdemeanor cases.

It results from the recognition by the Missouri Department of Highway Safety (DHS) and Missouri Office of Prosecution Services (MOPS) that there is a critical need for tools to help prosecutors ensure the safety of the community through well-managed misdemeanor prosecution systems.

DHS's focus on reducing drunk driving, driving under the influence, aggressive driving, running red lights and other serious moving violations provided support for this effort.

MOPS's focus on improving prosecution services allowed us to present highway safety issues within a larger context, namely the prosecution of all misdemeanor cases.

Both agencies recognized the value of developing a guide that is applicable to prosecutors nationwide. As a result of their vision, this guide is designed to be relevant to a broad audience of local prosecutors operating in widely diverse environments.

We also acknowledge and thank the Missouri prosecutors who completed our survey, opened their offices for site visits and participated in our focus group meeting.

Additional thanks are extended to the prosecutors in Florida, Maryland and Colorado who also participated in the study and ensured its relevance to other local prosecutors throughout the United States.

To each of these participants and supporters, we extend our appreciation for your dedication to improving the quality of misdemeanor prosecutions nationwide.

Joan E. Jacoby
Executive Director
Jefferson Institute for Justice Studies
September 2001

We gratefully acknowledge the support, expertise and vision of the principals who made this guide possible.

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Missouri Prosecutor's Focus Group Meeting

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 Honorable Kevin Walden, Carroll County
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 Honorable Douglas Gansler
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Introduction





Thinking About Misdemeanors

Most citizens who are exposed to the system of criminal justice that is designed to serve and protect them have their first and often only public contact with it in misdemeanor courts. Their impressions of fairness and justice are often defined by the quality of services in these high volume courts,

Misdemeanors encompass a wide variety of crimes requiring many different responses.

Offenses range from running red lights, driving while under the influence or with revoked or suspended licenses to domestic violence, disorderly conduct, shoplifting, theft, trespassing, assaults, neighborhood disputes unleashed dogs, poaching, writing bad checks and drug possession.

Although misdemeanors do not command the same level of interest as serious felonies, they give a common face to crime that is easily recognized by most citizens.

The prosecutor may be placed in the awkward position of balancing a set of priorities that reflect the interests of the public and their protection and safety with the resources in his office.



In small rural offices supported by one attorney, often part-time, the difficulty is keeping up to speed on all types of cases even though the numbers are small.

Very small offices have little flexibility in responding to situations that require substantial changes in workload or expertise.

In medium size offices with adequate resources and a more manageable caseload, balancing the priorities of the community with those of prosecution may be less disruptive than in larger metropolitan offices.

Misdemeanor court often is the public's first and only contact with prosecution and the criminal justice system.

Misdemeanors encompass a wide variety of crimes requiring many different responses.

Prosecutors may have to strike a balance between competing sets of priorities.

Small offices have less flexibility in responding to changes in workload.



Thinking About Misdemeanors

continued

In large offices, identifying cases that need priority attention and applying resources to them without increasing delays in the remaining caseload is a difficult task. It is made more so if prosecutors have to rely on inexperienced attorneys and have little time for their training and supervision in high volume courts.

The different perspectives and priorities held by the parties involved in misdemeanor prosecutions create potential conflicts. These parties include the public, law enforcement, the courts, defense counsel, and, of course, the prosecutor.



Some parties, like the public, may perceive misdemeanor cases as less serious than felonies. Others may be strong advocates for prosecuting certain types of crimes. Their priorities may conflict with those of the prosecutor.

Public priorities may not match criminal justice system priorities. A good example is when a community demands the elimination of prostitution and solicitation only to encounter the court's revolving door created by judges imposing fines for these offenses.

Conflict may be further exacerbated if a jurisdiction is active in community policing since this activity tends to increase the number of arrests for "quality of life" offenses and demands by the public for prior priority attention.

However, there is little public consensus about priorities and/or the seriousness of the offenses nationwide or even within a community. Priorities vary greatly according to the characteristics of the community and the policy of the prosecutor.



Public advocacy groups press for strong prosecutions of certain offenses. The business community supports the prosecution of bad check cases and, sometimes, the media steps in with a focus on particularly egregious crimes.

The problems faced by medium and large size office differ greatly. Larger offices are at a disadvantage.

Different perspectives create potential conflicts.

When the priorities of the various parties do not match, conflicts result.

Public priorities may not match criminal justice system priorities.

Community policing heightens attention to misdemeanors.

There is little public consensus about priorities for prosecution



Thinking About Misdemeanors

continued

As the number of public issues and priorities grow, the various interests may even begin to compete for the same set of fixed prosecution resources.

Public interests compete for prosecution resources

There is one reality about misdemeanors. There are rarely enough prosecution resources available to respond to all the priorities of all the interests.

There are rarely enough prosecution resources to respond to all priority interests.

In the formal criminal justice system, the misdemeanor process is often managed less carefully by law enforcement, the courts and defense counsel and with a reduced emphasis on efficiency and productivity .

With few exceptions, law enforcement agencies process misdemeanor offenses as routine paperwork using summonses or citations. Police reports contain little factual information about the offense or even the offender. There is little incentive for law enforcement to provide complete and timely reports unless the prosecutor insists on it.



The misdemeanor process is managed with reduced emphasis on efficiency or productivity.

It is not surprising, therefore, for some jurisdictions to have a substantial backlog of pending misdemeanor cases that are three or four years old.

In the courts, judges attach differing priorities to misdemeanor cases. Many have different sets of priorities from those of the prosecutor.



In small offices, it is easy to know what is important to judges and how cases will be disposed. For example, if a defendant commits family violence and the prosecutor seeks a jail sentence, it may be a hard sell

to a judge who prefers to impose suspended imposition of sentences so the defendant does not have a record.

Unless the prosecutor insists on it, there is little incentive for law enforcement to provide complete or timely reports.

The courts have a powerful voice in determining priorities for prosecution.

Judicial interest in the type of case is very important. In small communities, if the prosecutor's priorities do not match court priorities, then the prosecutor has to look for other approaches or back off.



Thinking About Misdemeanors

continued

In large offices, conflicts with judicial priorities lead to increased judge shopping, jury trial demands and other delaying tactics.

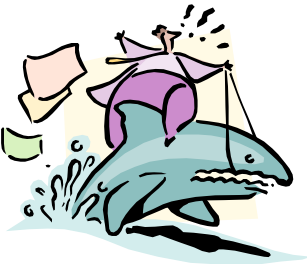
Defense counsel priorities and interests in a misdemeanor environment are not substantially different from the felony environment. From their perspective if defendants are released, the best strategy is to delay disposition for as long as possible.



Delaying dispositions for traffic and moving violations avoids the imposition of sanctions including loss of license, increased points and higher insurance costs.

Delay also brings with it a hope for a weaker case at trial or a better plea offer because of its age.

Controlling the misdemeanor environment is difficult but not impossible. It involves refusing or dismissing weak cases, sending some cases to programs outside the formal criminal justice system for disposition, and processing and disposing of the rest in a timely and effective manner.



At the core of misdemeanor case management are prosecutors who establish priorities and communicate them to the other parties so all are operating off the same page.

If the prosecutor's priorities do not match court priorities, then the prosecutor has to look for other approaches or back off.

Delay in moving a case forward is in the defendants' best interests if they are released

The key to misdemeanor case management is to get the system under control

Prosecutors need to establish priorities and communicate them.



Purpose

This guide is for prosecutors. It is designed to help them think about misdemeanor cases and improve management and operations in this high volume process.

It asks prosecutors to think about why they are prosecutors, what they hope to achieve with the resources they have and what guidelines and priorities need to be established for the protection of the public.

It is designed to help prosecutors identify areas that may need change or areas where better or different procedures would improve the quality of prosecution in their communities

It presents potential actions to mitigate many misdemeanor problems and issues.

How important are misdemeanor cases?

Which ones are affecting the quality of life in my community?

What can I do as a prosecutor?



Background

Taking Note of Differences

If management guides are to be relevant to a variety of prosecution settings, they should recognize that differences in court systems affect misdemeanor case processing and that differences in demographic and legislative environments define what courses of actions are available for prosecution use.

A number of factors were identified that affect the ability of prosecutors to manage their caseloads. They included the size of the prosecutors' offices, local court and prosecution environments, differences among state statutes and prosecution policies.

It is our assumption that while the task of prosecuting misdemeanor does not vary widely as an activity, the task of managing the caseloads depends strongly on the volume of cases, the size of the

Guides should recognize differences in court systems and demographic environments

Managing misdemeanor caseloads depends on its volume, the size of office and resources.



Background

continued

office and the resources that are available.

The primary environmental difference is the size of office. The "solo" prosecutor works in an environment that is less formal and less flexible than prosecutors in large urban offices. The problems faced by different sizes of offices differ substantially.

Legislation defines limits on activities. For example, legislation that permits the use of a suspended imposition of sentences (SIS) for enhancement purposes places the prosecutor in a stronger position for second and third offenses than a legislative environment that defines an SIS as a non-conviction.



Court systems that are not unified and use magistrates, commissioners or justices of the peace to determine probable cause for warrants create significant problems for prosecutors in processing citizen complaints.

The existence of diversity had to be recognized and accounted for if we were to produce a guide that is relevant to many jurisdictions nationwide.

Identifying Issues

Because of the differences among states, court systems and local prosecution policies and practices, issues that are important to one prosecutor may be non-issues to another.

For example, prosecutors who are not required by statute to review and charge cases before filing in the court face different problems than prosecutors who must authorize charges. The issue for the first office is gaining control over intake; for the second office, it is improving the intake process.

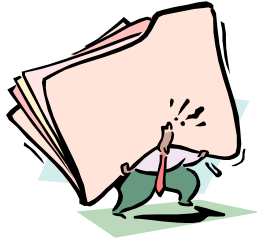
The size of office defines most of the prosecutor's capabilities and activities

Legislation and statutes profoundly affect misdemeanor prosecutions

Magistrate systems create problems with citizen complaints

Diversity must be recognized for a guidebook to be relevant to many offices nationwide.

What is an issue in one office may be a non-issue in another

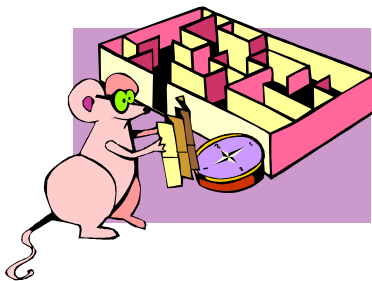


Background

continued

Project Tasks and Activities

To observe and assess variations in misdemeanor case management and identify issues, a team consisting of the Advisory Committee and consultants made on-site visits to five out-of-state offices. After each visit, the team members submitted their notes and findings to the Jefferson Institute. To ensure that issues facing Missouri prosecutors were identified and incorporated into the guide, the consultants visited four Missouri offices.



The Advisory Committee, consultants and project staff held a synthesis meeting to synthesize the knowledge accumulated during the course of the project. At this meeting, the major issues and problems were identified and the scope and content of the guidebook was outlined.

A focus group meeting for Missouri prosecutors was held to obtain their reaction to the major issues identified and to incorporate their interpretations of the importance of these issues into the final report.

Organization

This guide is divided into three parts.

Part I contains a **Self-Assessment** questionnaire that is designed to help prosecutors start to think about misdemeanor cases, their priorities for prosecution, the misdemeanor environment and the efficiency of the office in processing misdemeanor cases. A diagnosis is presented at the conclusion of the self-assessment to assist prosecutors in identifying areas of interest.

On-site visits to:
Five offices in Colorado, Florida and Maryland,
Four offices in Missouri

Synthesis Meeting

Focus group meeting with Missouri prosecutors

Part I. Self-Assessment

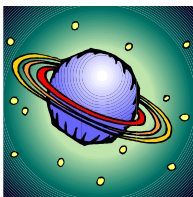


Background

continued

Part II presents the major topic, **Issues in Managing Misdemeanor Cases**. It examines three areas in detail: Controlling Intake, Managing Misdemeanor Prosecutions and Managing Resources.

The format used in discussing issues accommodates the diversity in our audience. Our approach is first to present a description of the activities that would be found in the prosecutors' perfect world if one existed.



In a perfect world the prosecutor engages in activities that make misdemeanor case management simple, efficient, productive and equitable.

Since a prosecutor's perfect world doesn't exist, Part II discusses the primary issues that inhibit perfection and provides examples of how prosecutors have taken action to mitigate the problems they face.

The reader should recognize that because there is diversity in prosecutorial environments, some issues will not apply to them.

It is up to each prosecutor to identify the issues important to him or her and examine the potential actions for practices that may be useful to his or her environment.



Part III presents **Some Practical Steps Towards A Perfect World**. It is designed as a working document to help prosecutors focus on issues that are important to them and to assess potential actions that may be feasible in their jurisdictions.

Each of the potential actions has been observed or documented in the real world of prosecution. Some may be feasible, some are not.

The prosecutor should check those that could be adapted by his office and use the results as background and direction for developing a prosecution plan for misdemeanors. First steps for developing action plans are described.

Part II. Issues in Managing Misdemeanor Cases

In a perfect world the prosecutor engages in activities that make misdemeanor case management simple, efficient, productive and equitable.

Part III. Some Practical Steps Towards A Perfect World

Self one Assessment





Self assessment

Test One

What are your misdemeanor prosecution priorities?

You only have a fixed set of resources to handle a high volume of cases, some of which are more important to you and your community than others.

Check which of the following offenses you would give priority to in your office. Indicate how satisfied you are currently with their prosecutions.

Type of Offense	<i>Is this a priority in your office?</i>	<i>Are you satisfied with their prosecutions?</i>
Auto theft		
Assaults		
Bad checks and restitution		
Citizen complaints		
Domestic/family violence		
DUI, DUR, DUS		
Drug possession		
Sex crimes		
Soliciting		
Traffic violations		
Other misdemeanors		





Self assessment

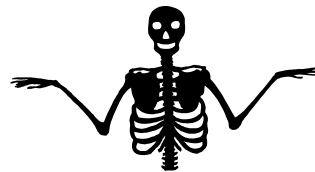
Test One

continued

What process steps are troublesome?

Some case processing steps may create problems for your office.
In the table below, identify those steps that are most problematic.

<i>Case Processing</i>	<i>Is this a problem area?</i>	<i>If yes, is it correctable?</i>
Compliance review		
Concurrent jurisdiction		
Continuances		
Court interpreters		
Defense counsel assignments		
Jury trial demands		
Revocations		
Trials de novo		
Other—specify		





Self assessment

Test Two

Do you control your misdemeanor environment?

Check each of the following statements if they apply to your office.

- ☐ 1. Misdemeanor charges cannot be filed in court without the prosecutor's review and authorization
- ☐ 2. The final misdemeanor charging decision is made or approved by an experienced trial attorney
- ☐ 3. Charges are only filed after a warrant has been served.
- ☐ 4. Citizen complaints are investigated by law enforcement before they are referred to the prosecutor's office.
- ☐ 5. Less serious misdemeanor and traffic cases are prosecuted in municipal courts or courts having concurrent jurisdiction.
- ☐ 6. There is a cutoff date for making charging decisions about pending cases.
- ☐ 7. The office returns cases that are pending further information to the originating law enforcement agencies after a specified cut-off date.
- ☐ 8. Charges and recommendations are available at the first plea opportunity.
- ☐ 9. More than 50 percent of traffic and misdemeanor cases are disposed at the first opportunity to plea
- ☐ 10. Alternatives to prosecution are available such as mediation and/or dispute resolution programs.

TOTAL NUMBER OF BOXES CHECKED _____





Self assessment

Test Three

Does your office operate efficiently and productively?

Check each of the following practices that apply to your office.

- ☐ 1. The court limits the number of counsel status hearings allowed
- ☐ 2. Defense counsel receive discovery and plea offers immediately upon assignment
- ☐ 3. Domestic or family violence cases are expedited
- ☐ 4. Prosecutor reviews cases for their eligibility for diversion, or other special programs.
- ☐ 5. Jury trial demands are scheduled for trial within two weeks
- ☐ 6. The court limits motions for continuances once the misdemeanor case is set for trial.
- ☐ 7. Most of the misdemeanor cases are handled only two times, at intake and at disposition.
- ☐ 8. Publications, brochures and notices are available that describe the procedures that will be followed for certain types of cases and the expected sentences that will be imposed.
- ☐ 9. The first plea offer is the best offer made.
- ☐ 10. Different procedures are set up to handle different types of cases. E.g. domestic violence, bad checks, citizen or neighborhood disputes, shoplifting etc.

TOTAL NUMBER OF BOXES CHECKED _____





Self assessment

DIAGNOSIS

1. Priorities for Prosecution

Most prosecutors do not have enough resources to process all cases with the same amount of attention.

Some court procedures also may impede effective prosecutions and may not be correctable. For these two reasons, it is important that prosecutors set realistic priorities for prosecution and recognize where misdemeanor prosecution problems exist.

The purpose of this test is to help you identify areas of importance so you can focus on issues that are problematic and are discussed in Part II.

2. Misdemeanor environment

Of the 10 favorable conditions., how many did you check? _____

Prosecutors can either control or substantially influence their misdemeanor environments

Each box you checked represents a favorable condition that allows you to take charge of cases coming into the office and decide how they will be prosecuted and disposed.

The ideal environment would be to have all the boxes checked. However, we recognize

that some conditions may not be in existence or may take a long time to achieve.

These include such legislative changes as having charging review authority before filings or working in a unified court system.

Even within environments that pose difficulties for misdemeanor prosecutions, the prosecutor can control the gate to the court with good management.

3. Speedy dispositions

Of the 10 good practices, how many did you check? _____

The number of boxes checked in this test indicate the number of practices you employ that support speedy dispositions.



As you can see, many of these practices involve coordination with the court and defense counsel, but they are doable.

Note the practices you did not check. They may indicate areas where you might be able to improve productivity.

Issues

INNO

Managing Misdemeanor Cases

Controlling Intake

"In the prosecutor's perfect world"

Traffic cases are handled
administratively or in civil courts

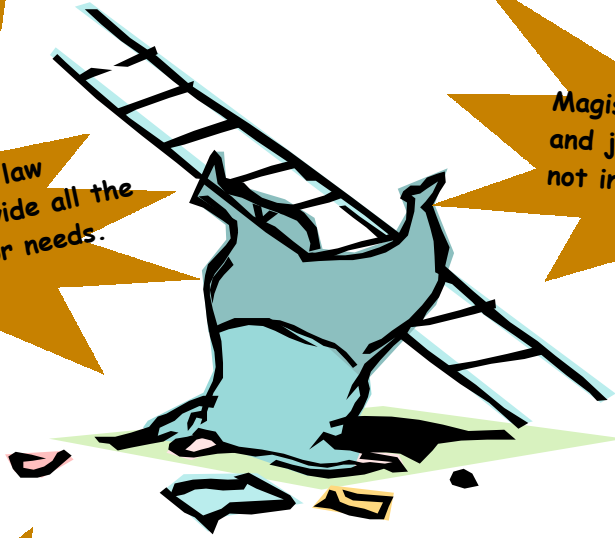
Municipal courts process
cases that the state does
not want

Within 24 hours of arrest law
enforcement agencies provide all the
information the prosecutor needs.

Magistrates, commissioners
and justices of the peace do
not initiate criminal complaints

Citizen complaints are reviewed
by law enforcement before referral
to prosecutors

All charges and warrant requests are
authorized by prosecutors before they
are filed in court



Law Enforcement Reports Incomplete or Late

Accurate Charging Decisions Not Always Possible

Issue 1

In Pinellas County, FL, the state's attorney has designed a "green sheet" (it's printed on green paper) for all felony and misdemeanor cases. The form collects standardized information, sufficient to determine charges. (See Appendix A for an example).

In Florida, the defendant can appear and plea on a notice to appear which acts as a formal charge. This eliminates the need for a prosecutor to draft and sign a formal information.

In Colorado Springs, CO, law enforcement officers write a brief report on the back of the citation thereby saving time for both police and prosecutor.

It is difficult to make accurate charging decisions based on incomplete information. If charges are filed, subsequent plea offers may be too lenient. If driving records are not available for cases involving DUI's, DUR's and DUS's, the sanctions may be inappropriate .



Some prosecutors hold cases pending the receipt of additional information. This may result in cases being held in limbo for three or four years. Unless the prosecutor imposes deadlines after which cases are declined, office staff has little incentive to follow up on these pending cases, especially in high volume courts.

Some law enforcement citations are deliberately incomplete because they were issued for preventive reasons such as breaking up a barroom fight. Under these circumstances it is important that the prosecutor's staff determine whether police want to go forward with the case or not before filing.

When law enforcement reports are late, it starts a cycle of lost opportunities for early dispositions and unproductive court time. This is especially apparent at first appearances or the first court setting where experience has shown that up to 60 percent of traffic and misdemeanor cases can be disposed of at this hearing.



The key to mitigating some of these problems is to establish management controls that use standardized forms, set cutoff dates and install follow up procedures. With law enforcement agencies

Municipal Courts and Other Agencies MAY Offer Relief

Mutually Agreed Upon Guidelines Essential

Issue 2

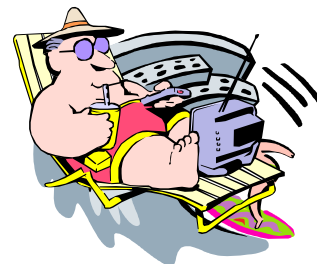
In Colorado Springs, CO tickets are processed administratively. Offenders have 20 days to mail their fine to the state and receive an automatic reduction in points. If the ticket is not prepaid, the case is automatically docketed.

In Pinellas County, FL two courts handle all traffic cases unless they are contested with the possibility of jail time. ASAs are not present in traffic court.



Municipal courts may also provide relief by conducting bond hearings as long as they do not involve extradition.

Minor traffic and moving violations could be processed administratively or carry civil penalties thereby freeing up time and staff to concentrate on more serious violations such as DUIs and repeat offenders. However disruptions may occur in the administrative process if the offender contests the citation and requests a jury trial.



Courts with concurrent jurisdiction could prosecute many minor traffic violations and some lesser misdemeanors that clog the state courts. BUT without agreed upon guidelines the state's interests and priorities may be subverted by the lower courts.

Municipal courts benefit from handling lesser misdemeanors because the fines and fees collected remain in the municipality. But this incentive may work against the state's interests and priorities if cases that the state would like to prosecute such as DUI's, DUR's, DUS's, or serious assaults among others are disposed in municipal court to keep higher fines. Fines and fees should not be criteria for referrals.

Municipal court dispositions may also prevent prosecutors from seeking enhancements of drunk driving cases and other offenses where legislative authority exists.



The key is to develop mutually agreed upon guidelines about which cases are to be referred to state court and working procedures to ensure their conduct. Law enforcement agencies play a critical role in the development process since they will be the referring agencies.

Citizen Complaints Pose Vexing Problems

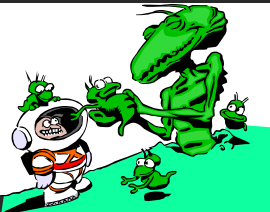
Warrants Issued by Magistrates are Major Cause

Issue 3

In Howard County, MD citizen complaints are reviewed every Wednesday. District court judges will not allow commissioners to hold warrants or summons until the state's attorney's office (SAO) has reviewed them.

The SAO and the police department are attempting to work out a procedure where the police would delay service of the summonses or warrants when possible for 3 to 8 days until the Wednesday review.

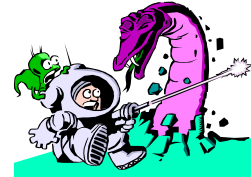
Over 40 percent of the citizen initiated complaints are removed from the criminal system.



In Montgomery County MD the State's Attorney created a Citizen's Complaint Bureau (CCB). A senior ASA is assigned to it for one week to interview citizens.

Of the approximately 3,000 complaints annually: 27 percent don't show 23 percent are nolledd 20 percent go to volunteer-run mediation

There is little prosecutors can do to reduce the number of legally insufficient cases produced by magistrate court systems except make arrangements for their early review so they can be resolved quickly.



Because so many citizen complaints issued by magistrates are nolledd, resolved informally, or fall apart, a "cooling off period" is needed before summons or warrants are served and before the victims or witnesses are interviewed by prosecutors,

Sometimes citizens' expectations about the outcomes of their complaints are unrealistic. Other times they may be satisfied with simple, nonjudicial solutions. Interviews are a necessity.

Many complaints may not be prosecutable. Serving warrants before prosecutors can review them and interview witnesses creates unnecessary work for law enforcement and clerks of court. Delaying service for 72 hours or more gives the prosecutor time to evaluate the strength of the case. Some offices estimate that up to one half of the summons would be declined or dismissed by the prosecutor, This would substantially reduce work for clerks and police.

Expungement problems may occur if cases are nolledd or dismissed and the subject of the complaint is not aware of its existence. In some instances the burden may be on the accused to expunge his record.

Even if magistrate systems do not exist, some prosecutors choose to review citizen complaints without law enforcement investigation. This practice increases the office's workload, changes its working hours to accommodate the public, expands the duty prosecutors' work and produces filing decisions based on biased complaints.



The key is to develop opportunities that increase prosecution review after law enforcement's investigation and before summons and warrants are served.

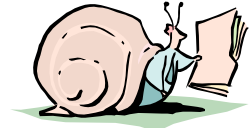
Backlog in Charging Decisions Unnecessary

Prosecutors Can Control Pre-filing Delays

Issue 4

In Randolph County MO according to office policy all charging decisions have to be made within a week. The first two hours before the court opens are reserved for intake,

If prosecutors review cases before they are filed in court, there is little incentive to make charging decisions in a timely manner especially if cases are weak or lack information. Legal limbos may be created for many cases even when the prosecutor is required to authorize charges before filing.



The key is to establish a clearly stated policy about how long cases can be held before they are either charged or declined. Simple tickler files can monitor the age of cases pending charging decisions.

Charging Decisions and Inexperience are Bad Mix

Opens Door to Bad Decisions, Assistant Shopping, Uneven Justice

Issue 5

In Montgomery County MD a preliminary inquiry increases case review time. First misdemeanors and citizen complaint cases are examined by a misdemeanor ASA and law students. They make recommendations that are approved by the ASA. Then cases are sent to the screening unit which has a 30-45 day window to review and prepare before the trial date.

Major problems occur when assistants who are untrained and unsupervised are allowed to make charging decisions. If prosecutors want to involve assistants in the charging process, they should ensure that all charging recommendations are reviewed and authorized by experienced trial attorneys.



Some prosecutors believe that making charging assistants responsible for prosecuting the cases they charge will increase the quality of cases accepted. Unfortunately this practice also supports assistant shopping and decreases uniformity in charging. It also works against the office being able to respond uniformly to public safety issues.



The key is review and supervision by experienced trial attorneys

First Appearances Offer Big Disposition Opportunities

Organization and Staffing Key Elements

Issue 6

In El Paso County (Colorado Springs) CO

the First Appearance Center (FAC) handles up to 350-400 misdemeanor and traffic cases in a morning.

Staffed by one intern and three DDAs and supplemented by other DDAs as they free up from their courtrooms (typically 7 or 8 additional DDAs).

The FAC has access to the duty week judge and the ADAs assigned to the judge's division. Morning cases are *pro se*. FAC does not handle insurance cases, they are handled by the clerk.

In 2000, 60% of the cases were resolved at the first appearance.

See Appendix A for more details.

Experience has indicated that more than half of the misdemeanor and traffic caseload will be disposed at first appearance if the prosecutor's office is organized to make recommendations and has enough attorneys to handle the volume.

To ignore the potential of these hearings as dispositional outlets, or assign too few attorneys to the court, results in unnecessary continuances and more cases disposed later in the process.

The value of the first appearance court hearing should not be underestimated. It is the prosecutor's first opportunity to control and reduce the number of cases that will have to be managed and disposed later.



The key to taking advantage of first appearances for increasing dispositions is to adequately staff the courtrooms and to coordinate procedures with the judges and clerks of court.



Managing Misdemeanor Cases

"In the prosecutor's perfect world"

Cases handled only twice, once for review, once for disposition
Cases are classified by type of prosecution

Administrative settings separated from substantive ones by the court.
Continuances are rare

Decisions about defense counsel and assignments made at or before first appearance

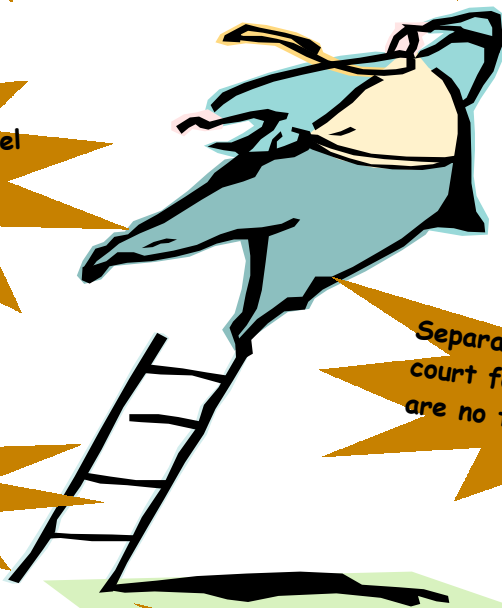
Complete discovery, including a plea offer and recommendation, is available promptly

Separate dockets set by the court for dispositions. There are no trials de novo

Wide variety of alternatives to prosecution is available. Information is routinely provided to defendant and others

Plea offers accepted on day of first court appearance.

After all pretrial matters are resolved, trials are set and held on the day requested at pretrial.



Continuances Cause Delay, More Work, Backlog

Prosecutor's Goal: Handle Each File Only Two Times

Issue 7

In Pinellas County FL cases are assigned to a trial division when the sheriff's office books the defendant. The computer balances the assignments to equalize the caseload

Each time a case is handled without a disposition another case is not being processed.



The goal is to touch the file only two times, once for case review, the second for disposition or trial.

This can be done if your office is organized to support assembly line processes.

Although prosecutors cannot eliminate continuances, they can at least make sure that they are not the cause by offering prompt discovery, reasonable offers and always being prepared.



The key is to have a strong court that doesn't tolerate abuse, always keep the "ball in the other guy's court" and be prepared for every hearing.

Defense Counsel Issues Need Attention

Delay and Abuse Likely if Ignored

Issue 8

In Mecklenburg County NC, at the first administrative hearing, if the defendant is indigent, an attorney is appointed. If the defendant says he plans to hire counsel, he signs a waiver of no-counsel. The case is set over for a month. If he has no attorney at the next setting, he is declared pro se for screening

Each court setting that is continued because a determination about defense counsel representation has not been made adds delay to the court and creates unnecessary work for all parties.



Private attorneys may seek continuances until they are paid and are more likely to go to trial than public defenders. Pro se defendants don't know the procedures and slow down the process. They also are less likely to accept plea offers since they do not understand the implications of the offers. Some prosecutors believe that there is an ethical dilemma if offers are made to pro se defendants.



The key is to work with the courts to develop procedures that will control on this abuse.

First Plea Offer is the Best Offer

Principle Speeds Up Plea Negotiation Process

Issue 9

In Buchanan County (St. Joseph) MO the prosecuting attorney has a plea offer policy that presents defense counsel with early discovery, a plea offer and a deadline for acceptance.

On the day the case is set for trial, all offers are taken off the table, never to be reinstated, and additional charges are filed for trial.

This victim-sensitive policy provides incentives for early pleas and supports the goal of establishing a pure trial docket.

Expediting plea negotiations is often difficult if defense counsel assume that delaying the process will produce a "better deal" because the strength of the case may deteriorate or the prosecutor will be pushed to obtain a disposition.



Plea offers should be based on the seriousness of the case, strength of evidence and aggravating or mitigating circumstances.

Defense counsel should not be given "a better deal" than the standard offer. The public should be treated consistently, with basic fairness and cases should be judged on their merits.

Strangely enough, even after protracted negotiations or delays, the end result usually differs little from the original offer. The reality is that there is a limited range of sanctions available for misdemeanor cases and the response of defendants can be predicted by the associated costs.



The key to expediting pleas is to make the first offer the best offer. Delay should not be rewarded!

Misdemeanor Priorities and Outcomes Vary Widely

Different Processing Procedures Required

Issue 10

In Polk County, FL the Citizen Dispute Settlement Center (CDS) reviews all non-arrest cases at intake and diverts those eligible to other programs at arraignment. This is close to handling cases only twice.

The high volume and wide variation in misdemeanor cases makes them candidates for triage as they enter the system. Triage will reduce workload and increase the productivity of the office in reaching appropriate dispositions.



The problem facing prosecutors is to identify the appropriate responses to various types of offenses and then separate those that can be handled routinely from those bound for trial.



Some broad categories of cases lend themselves to triage. They include:

Cases involving incarceration, e.g. DUI's and assaults are most likely to go to trial

Cases requiring immediate action e.g. domestic or family violence

Cases requiring restitution and monitoring e.g. shoplifting, bad checks, consumer fraud

Cases amenable to mediation or dispute resolution e.g. neighborhood and citizen complaints

Cases amenable to treatment and/or rehabilitation programs, e.g. simple possession of drugs, public drunkenness,

In El Paso County, Co a Domestic Violence Fast Track program holds advisements and first bond settings by video and gives the defendant a 3-day TRO to be released. When there are few injuries, the defendant is given a deferred sentence, and community service.



The key is to sort and classify cases by the type of response such as expediting domestic violence and assault cases, obtaining the necessary information needed for prosecution such as criminal histories, lab tests or traffic reports, and assigning appropriate personnel to the work.

Program Alternatives to Prosecution Save Resources

Prosecutors Need to Authorize Referrals

Issue 11

In Missouri the victim-advocate network provides regional specialists or services to smaller jurisdictions. Regional specialists may represent up to 20 counties.

In the past 10 years the state has moved from 12 regional service agencies to 40 or 50.

The lack of alternatives to prosecution such as mediation, drug and alcohol treatment programs, anger management and traffic safety courses place unnecessary strain on the courts.



Sometimes, this lack is linked to the size of the jurisdiction. Some smaller, more rural jurisdictions lack alternatives because there is too little demand to support them. This does not mean that the need is not there, just that the volume does not justify programs. To cope with this situation a growing number of services are being provided on a regional basis by regional service centers.

Even if alternatives are available, they may conflict with prosecutor's priorities if referrals are made to programs without the approval of the prosecutor. Prosecutors should have the authority to decide who should be referred to programs. With few exceptions, prosecutor review and recommendations should be required for eligibility into programs.

In Montgomery County MD the State's Attorney's office refers defendants with no prior record and a minor abuse problem to drug abuse counseling programs.

In El Paso County CO a Neighborhood Justice Center provides mediation for minor disputes between parties having ongoing relationships. Referrals are made by police or the misdemeanor secretary bypassing first appearance.



The key to increasing alternatives to prosecution is the leadership of the prosecutor in supporting or seeking out alternatives including the establishment of regional services for smaller, more rural jurisdictions.

Jury Trial Demands and *De Novo* Appeals Trouble Spots

Abuse May Cause Delay or Foster Judge Shopping.

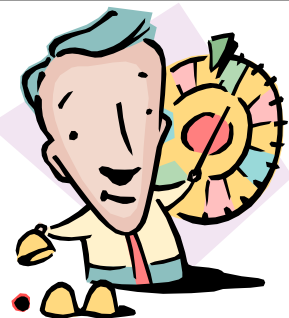
Issue 12

In Pinellas County FL two to three attorneys are trained to argue motions in order to more effectively deal with experienced defense attorneys.



In Howard County, MD there is a separate unit of three ASAs who follow the cases to circuit court for disposition or trial.

When the lower court is not a court of record, jury trial demands and trials *de novo* appeals may be used to delay the disposition of cases or for judge shopping in the felony court. Both abuses place unnecessary demands on the felony court.



If left unchecked, trial courts may be overwhelmed and the ability of the office to give full attention to cases with legitimate issues is diminished.

There are personnel issues that are created by these two practices. Prosecutors have to decide who will be responsible for these cases. If the misdemeanor attorneys who originally prosecuted the case move with them, it may provide the attorneys with additional training in felony court but disrupt misdemeanor processing.

If felony attorneys are assigned to handle *de novo* appeals, the effect is that they will carry a reduced felony caseload. If the volume is large enough, prosecutors may have to specially designate attorneys to prosecute these cases, thereby reducing the number of felony trial attorneys.

If *de novo* appeals and jury trial demands are used for judge shopping, then only a strong court and uniform judicial assignment procedures can be effective. Prosecutors may influence the rate of jury trial demands if their first offer is the best offer, but otherwise may contribute to the problem if it is not.

The key is to work with the court to develop procedures that reduce incentives to transfer the cases in the first place and to ensure that the first offer is the best offer.



Managing Resources

"In the prosecutor's perfect world"

Ample space and advanced equipment support the work of the office

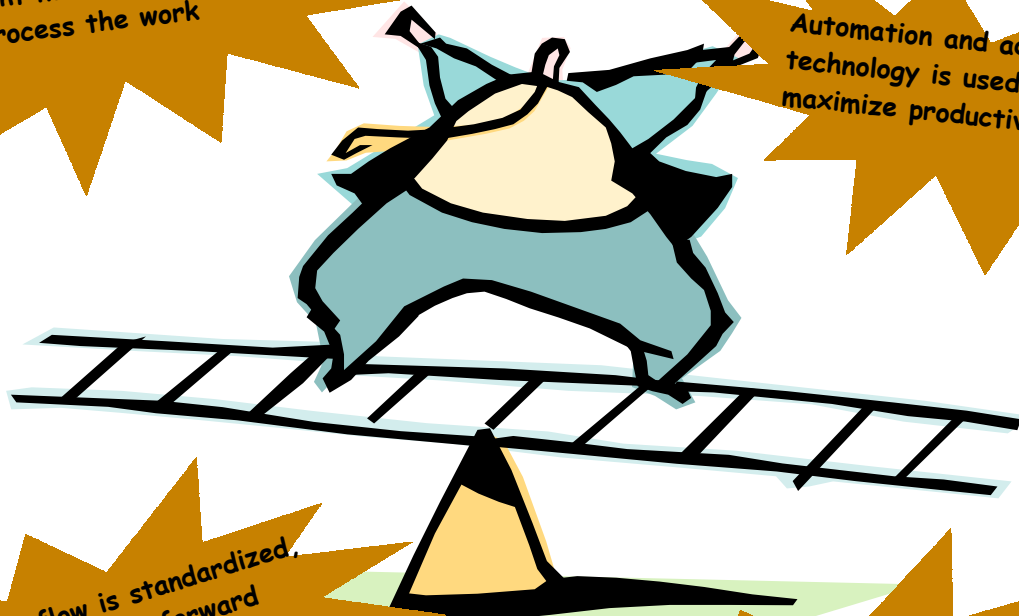
Chief prosecutor is creative, a visionary, and a leader

Sufficient number of attorneys and staff process the work

Automation and advanced technology is used to maximize productivity

Paperwork flow is standardized, simple, and straightforward

Attorneys and staff are organized to manage the workload and make decisions that are uniform and consistent with policies & priorities



Prosecutors Work with Fixed Set of Resources

Misdemeanor and Traffic Courts Usually Suffer

Issue 13

In Montgomery County, MD an administrative assistant is in charge of the intern program, a full-time and part-time legal assistant and a retired homicide detective.

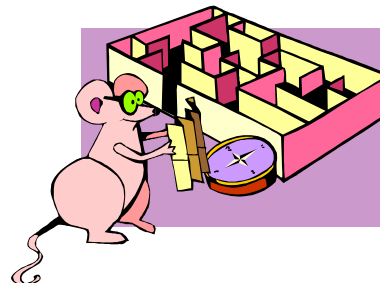
The unit reviews all misdemeanor cases and some unresolved citizen complaints and police reports.

Typically interns screen by telephone to determine whether the APO is serious about the case.

Interns make recommendations, such as diversion, dropping charges, community service, parenting classes, anger management etc. After intern screening the cases are sent to the district court ASA for review and charging.

In Mecklenburg County NC the district attorney supplements state appropriated positions with grant and county funded positions

Most prosecutors work with a fixed set of resources that grow slowly over time and usually do not keep pace with the volume of work. Misdemeanor units are typically operated by experienced support staff and inexperienced attorneys.



In truly understaffed offices prosecutors tend to rob Peter to pay Paul. To adequately support the felony division, first they reduce staff in the juvenile unit then the misdemeanor division.

Other offices may appear to be understaffed because they are poorly organized or managed. In poorly managed environments, attorneys may be doing work that does not require legal training, and staff may be making legal decisions that should be made or at least authorized by attorneys. The issue of staff responsibility and accountability becomes important under these circumstances. Does every case coming in need the attention of an attorney?

If there is little hope for increases in staff, then the productivity of the office has to be increased. This is most easily achieved if attention is paid to how personnel are organized and used.



The key to successful prosecutions is well-managed personnel and work. This sets the base for maximizing productivity and efficiency. Add to this mix, creative ways to supplement the resources of the office by a variety of tactics including the use of volunteers, interns and supplemental or grant funds.

Poorly Organized Offices Reduce Efficiency

Lack of Supervision Creates Inequitable Decisions

Issue 14

In Howard County, MD, support staff are divided into three-person teams for traffic and criminal. The ASAs are assigned to court by trial date. An ASA contacts all civilian witnesses prior to trial. Unless there is a question about the case, police officers are not contacted prior to trial.

In Pinellas County FL, misdemeanor assistants make charging decisions and sentence recommendations. Charges are reviewed and authorized by the lead trial attorney in each misdemeanor division. All sentence recommendations for arrest and non-arrest cases are reviewed daily by 3-4 senior attorneys.

In many misdemeanor divisions inexperienced attorneys may be allowed to make charging decisions and recommendations that are not reviewed by more experienced trial attorneys.



It is difficult to make organizational changes. Support staff **generally** define operating procedures and little attention is given by office managers or heads to the need for change in misdemeanor processing.

A misdemeanor screening unit is a good first step in larger offices because it gives recognition to the value of these cases to the prosecutor. It should be supervised by an experienced trial attorney.

Trial teams assigned to either courtrooms, judges, or cases accepted during designated time periods (like duty week) provide the strongest organizational bases. Assigning individual attorneys to specific cases runs the risk of scheduling conflicts when more than one assigned case is scheduled at the same time.

Some offices have organized their prosecution teams into special bureaus or units for specific crimes such as domestic violence. These units prosecute both felony and misdemeanor cases thereby eliminating the distinction between felony and misdemeanors.



The key is to organize your office so that it supports uniformity and consistency in decision-making and holds attorneys accountable for their decisions and actions

Productivity Depends on Proper Personnel Use

Communications is Vital to Office's Image

Issue 15

In Montgomery County MD a competitive intern program recruits volunteers every 3 months who may be law students, criminal justice majors, retired police officers and lawyers. Interns make calls to victims, witnesses and defense counsel; do in court screening and make non-binding recommendations for disposition.



In El Paso County (Colorado Springs) CO the misdemeanor division has a separate telephone line.

Personnel represent the largest cost in an office's budget. This means that attorneys should be doing legal work and non-attorney staff should be providing support. Some cases such as bad checks, some domestic violence cases and others that are disposed outside the criminal justice system should require only minimal attorney attention.



Reducing or eliminating unnecessary work increases productivity. One area that is time-consuming and labor-intensive is responding to telephone inquiries. Both the image and the productivity of the office is affected by long waits and non-responsiveness.

Communications technology is available to lessen this irritant but its use in some offices is deficient. Menus and separate numbers for high volume inquiry areas and the use of e-mail can reduce wait time.

Attorneys also have a responsibility to return calls. Even if this task is delegated to others, the attorney should be held accountable for ensuring that the call was returned.

Ways need to be found to eliminate calls that do not move the case forward. Calls about case status constitute the largest proportion of calls. Some can be referred to other departments such as the clerk's office, others can be eliminated such as inquiries about the status of restitution.



The key is to use the appropriately trained personnel for each work activity and improve the image and effectiveness of the office by improving the communications systems and procedures.

Specialization Benefits High Volume Courts

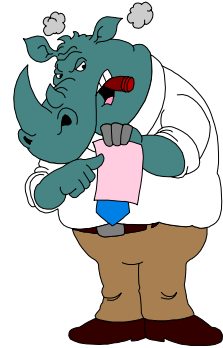
Increases Accountability, Fewer Cases Fall Through Cracks

Issue 15

In El Paso County (Colorado Springs) CO, the 14 investigators are not process servers. They conduct interviews, locate witnesses, obtain and annotate evidence. One is assigned to county court, 2 to economic crimes, 1 to juvenile and the rest are in district court.

In Montgomery County MD the office is divided into 5 geographical areas aligned with police districts. Each area has a team composed of with staff assigned to administration, circuit court, district court, juvenile, DV and economic crimes.

Specialization fosters expertise, improves efficiency and increases accountability by assigning special activities to a small group of people.



At the misdemeanor level there is a serious need for specialization because of the typical division between inexperienced attorneys and experienced support staff.

Bond hearings, domestic violence cases, appeals, and backup attorneys are some of the activities or areas where specially designated personnel can be used in addition to their other duties.



The key is to increase accountability by limiting the number of persons responsible for certain activities, and provide opportunities for more training and experience.

Training Important for Misdemeanor Attorneys

Few Structured Training Programs Exist, Opportunities Rare

Issue 16

In Montgomery County MD, training for district court ASAs is held every other week, Weekend training is once a month. They do mock trials and their performance is critiqued by the deputy SA.

Interns receive a 2-day orientation including mock cases, how to fill out case reports and handling DV cases. They receive detailed training manuals.



In

Because most misdemeanor divisions are overworked, it is difficult to free up time for formal training. Opportunities for attending courses offered by the Trial Advocacy Center or the state may be difficult to arrange. As a result, on-the-job training for new assistants tends to be based on case-by-case discussions with more experienced trial attorneys.



Some offices have developed structured programs and communication plans that include at least monthly attorney and/or staff meetings, and meetings on a regular basis with policymakers. These take time to develop but the results are better misdemeanor prosecutions and dispositions.

There is a progression in training new assistants that starts with answering their questions about "what do I do?" and ends with "why am I doing this?".

In the beginning new attorneys focus on learning procedures that are typically explained by experienced support staff. Later their questions are directed to learning the policies and priorities of the office. Brochures and notices published by the office for offenders and victims may serve as valuable training aids if they describe procedures and policy.

Evaluations of attorney performance generally are based on in-house performance. Evaluations should be supplemented by supervisors checking with those outside the office such as law enforcement, judges and defense counsel.



The key to successful training is to seize every opportunity including courtroom observation, serving as second chair, case review, specialization and formal training.

High Volume Workload Requires Automated Systems

Office Recordkeeping Systems May Increase Costs

Issue 17

In Buchanan County, MO, the prosecutor uses software available from office supply stores to monitor and analyze case trends and outcomes. He even provides judges with monthly reports of the number of continuances each granted.

Traditionally the automated misdemeanor systems used by prosecutors were produced by the clerk's office as calendars or dockets. Now, their information is being supplemented by automated systems that support the prosecutors' work. Increasingly these systems are used on PCs. Automated systems make work easier and free up more resources to work on other tasks.



In Pinellas County FL, an old CJIS system has been reconfigured to satisfy almost all management needs.

In Florida, the state uses a standardized bar code system for traffic offenses which includes the sentence for the offense

In Montgomery County MD case information is kept on an ACCESS database



Nevertheless, good manual paperwork systems provide the foundation for efficiency in the office whether it is automated or not. This is especially important for misdemeanor cases since a substantial part of case processing can be conducted routinely.

The problems that paperwork systems spotlight indicate weaknesses in administration, management and operations. They may include among others, lost files, methods for handling records retention and archiving, tickler files for pending cases, bar coding, color coding files and compiling attorney case inventories.

The key to efficient paperwork systems is the prosecutor's support and insistence on automated systems, both in the office and in other agencies particularly law enforcement's reports



Prosecutor's Space and Equipment Needs Under Valued

Inadequate Space and Equipment Impede Justice

Issue 18

Jackson County MO has a program called Combat funded by a drug sales tax of a quarter of a cent that generates about \$14 million annually. Forty five percent of the funds go to law enforcement and prosecution services. For prosecutors, this translates into funds for about 17 prosecutors. The remainder is used for treatment and prevention programs.



Inadequate space can destroy the delivery of equitable prosecution services. Lack of space produces lack of privacy when conferences have to be held in hallways; lack of confidentiality when papers and files on desktops are accessible to non-authorized persons; and lack of security when victims and witnesses cannot be separated in the office. Lack of space contributes to lost or missing files and usually the elimination of centralized files rooms.



Space needs affect all personnel. Some offices assign adequate space and better equipment to the felony division ignoring the needs of the misdemeanor division. Yet, the public's first impression of justice is most likely to occur here.

Prosecution services are also impeded if offices are scattered among many sites. In multi-county jurisdictions or large urban counties, branch offices may be necessary. However, branch offices require an additional one third of an attorney to handle administrative matters. It is preferable for prosecutors to operate within a single office environment.

Equipment deficiencies hurt the delivery of prosecution services. There are still offices today that do not have copy machines, telephone answering systems, fax machines, cell phones for duty attorneys and PCs on each employee's desk. If an office does not use e-mail regularly and does not have access to the Internet, its productivity suffers drastically.

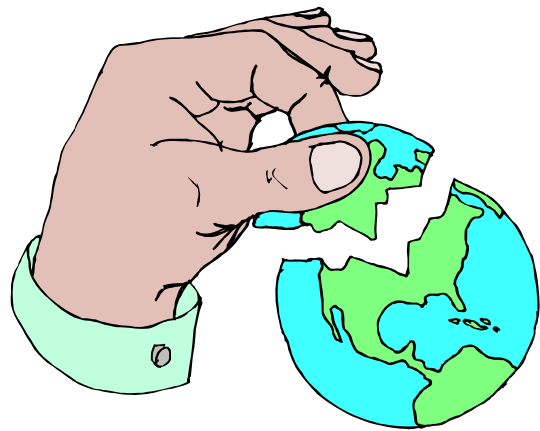


The solution to these inadequacies is simple - more money. But obtaining funds within a competitive budget environment may be very difficult. **The key** is to always be prepared to request necessary funds and become creative and proactive in obtaining funds from other sources.

Some Practical Steps



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Prosecutor's Perfect World

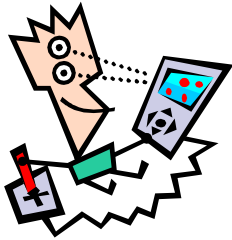
Are law enforcement reports on time with adequate information for charging?

- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issue 1

Support Advanced Technology for LE

- 1** Actively support law enforcement's efforts to put computers and video cameras in police cars so police reports are completed on-scene in a standardized format



Modify Police Citations

- 2** Work with police to modify citations so they present a brief summary of events on the back of the ticket.

Develop Report Forms

- 3** Develop a standardized form for criminal misdemeanors that is completed by either law enforcement or your own staff, and collects sufficient information for case review and recommendations.

Make Case Status Determinations

- 4** For questionable cases such as assaults, determine whether the officer wants to proceed with the case or whether the arrest was made for "cooling off" purposes.

Track Pending Cases

- 5** Use a temporary "DA" number to track warrants in the office where arrests are still pending. Keep these "cases" out of court until charging

Set Deadlines for Pending Cases

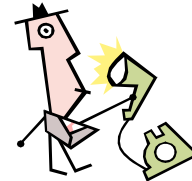
- 6** Establish cut-off dates for cases pending investigation after which they will be dismissed or declined if information is not received. File or track cases by date received

Return Police Reports

- 7** Save filing space by returning pending reports to the originating law enforcement agency after the cut-off date has been reached. Prosecutor keeps refusal form stating reason and what is lacking.

Prioritize Report Preparation

- 8** With police departments and sheriff develop a schedule that gives priority to their report preparation for certain cases such as domestic violence, assaults, DUI's, DUR's, or DUS's




Fast Track Cases

- 9** Develop fast track procedures in your office to ensure the receipt and review of your priority cases before first appearance.

Record the ID #'s of the options that seem feasible

Do you have problems with concurrent jurisdiction cases?

- No, good, go to the next page. 
- Yes, see if any of these **options** are feasible



Issue 2

Develop Mutually Agreed upon Guidelines

1 With law enforcement agencies, municipal court prosecutor, clerks and judges develop and promulgate mutually agreed upon guidelines for referring cases to the state court for prosecution, especially DUI, DUR and DUS cases.

Evaluate Guideline Effectiveness

3 Hold periodic meetings with law enforcement, municipal court judges, clerks of court and defense bar to monitor whether the guidelines are working.

Designate Minor Offenses as Civil Matters

5 Designate minor traffic offenses and some lesser misdemeanors as civil (not criminal) violations.

Establish a Procedures Task Force

2 Establish a task force composed of clerks of court, prosecutorial staff and the court to develop work flow between municipal and state courts



Spend Less Time on Traffic Cases

4 Handle traffic cases administratively. Provide discounts for the early payment of tickets





Hold Bond Hearings in Municipal Court

6 Support change so municipal courts can conduct bond hearings if they do not require extradition

Record the ID #'s of the options
that seem feasible

Do you have effective ways to handle citizen complaints?

- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issue 3

Support Court Reform

- 1** Support court reform efforts to convert magistrates, commissioners, or justice of the peace into associate judges of the lower court.; or give them only civil jurisdiction.



Establish Referral Guidelines

- Establish guidelines with police for the referral of neighborhood disputes to citizen dispute resolution programs
- 2**

Reduce Warrants

- Ask magistrates to issue summons instead of warrants to reduce the workload on law enforcement.
- 3**

Give Magistrates Materials

- 4** Provide magistrates with materials you have prepared that describe the prosecution process. Ask them to make the materials available to the complainant before a complaint/warrant is issued.

Delay Serving Warrants or Summons

- 5** Ask law enforcement agencies to delay serving warrants or summons for at least 72 hours so that interviews can be conducted with complaining witnesses or victims before service.

Establish Same Day Procedures

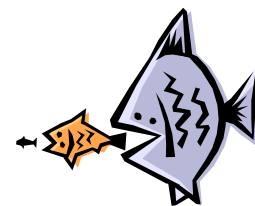
- 6** Establish procedures to forward citizen complaints from magistrates to the prosecutor on the same day charges are filed.

Interview Witnesses

- 7** Make appointments for witnesses to be interviewed in the office. Ask witnesses what they would like the court to do and what they hope will happen. If they do not show, dismiss or nolle the cases unless special circumstances apply

Expunge Declined Cases

- 8** Develop procedures with the court for the expungement of complaints and records if cases are declined.




Refer Citizen Complaints

- 9** Refer all citizen complaints to law enforcement agencies for investigation before the prosecutor's review and warrant recommendation.

Record the ID #'s of the options that seem feasible

Is there a backlog of cases pending charging decisions?
Are misdemeanor charges or recommendations made without supervision?

- No to both, good, go to the next page. 
- Yes to either, see if any of these **options** are feasible



Issues 4 & 5

Maintain Daily Log

- 1** Log in the date reports or summons were received or the bond date if arrested so that the length of time in the office pending review can be calculated.



Establish a Cut-Off Date for Decisions

- 2** Establish an office policy that all cases are to be reviewed and decided within a specified time period like one week

Keep Track of Times

- 3** Maintain a tickler file for cases pending review and charging. Dismiss or nolle those exceeding the cut-off date. Provide the misdemeanor chief with a list of cases dismissed for this reason.

Delegate Initial Case Screening

- 4** Use legal assistants and interns for initial screening of criminal and serious traffic cases. Have them submit recommendations to the misdemeanor attorneys for approval.

Establish Stated Policies for Plea Offers

- 5** Establish guidelines or stated policy for plea offers to DUI's, DUS's and DUR's. Require their approval by senior or experienced attorneys or the chief of the misdemeanor division



Establish Same Day Procedures

- 6** Require all cases and recommended offers be authorized by senior or experienced trial attorneys or the chief of the misdemeanor division on the day charges are filed.



Record the ID #'s of the options
that seem feasible

Do first appearances dispose of a substantial number of cases?

- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issue 6

Use Many Assistants

1

Assign as many assistants to first appearance courts as are available. Have additional assistants help out when their courts close down.



Publish Sanctions

3

Make a list of typical sanctions (fines and points) available for most traffic and moving violation offenses.

Have Assistants Make Offers

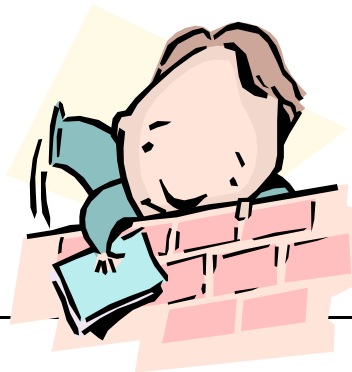
4

Have assistants make an offer to every defendant who appears. If accepted, coordinate with the clerk's office for processing and the payment of fines.

Provide Defendants with Videotaped or Written Advisements



2

Provide offenders with written or video taped advisement of rights and the likely consequences for cases with potential incarceration. Provide translated materials for non-English speaking citizens.



*Record the ID #'s of the options
that seem feasible*

Are there excessive continuances in misdemeanor court?

- NO, good, go to the next page. 
- Yes, see if any of these **options** are feasible 

Issue 7

Have Prosecutors Present and Ready

- 1** The prosecutor is always present and ready for every scheduled court hearing.



Use Standardized Forms

- 2** Standardized forms ensure the consistent collection of information for charging documents. Ask your staff to evaluate their effectiveness.

Prepare Efficiently and Promptly

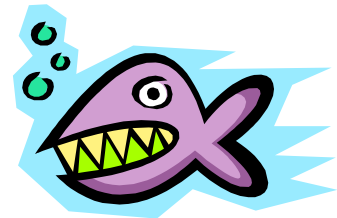
- 3** Prepare charges, discovery and plea recommendations at the same time and provide discovery promptly to defense counsel

Use Video Arraignments

- 4** Use video arraignments to reduce sheriff and court processing time

Publish Office Policies about Prosecution and Sentencing

- 5** Make available the office's standard policies and procedures describing what the defendant can expect for a sentence three to four weeks down the road when the court date has been set for disposition



Use Administrative Hearings



- 6** Use administrative hearings to determine whether the defendant is entitled to counsel, whether counsel is waived, to take pleas or set a trial date

Work to Restrict Continuances

- 7** Request the court to restrict continuances once the case is set for trial except for unusual circumstances. For example, if the case has been set for trial four weeks hence, there will be no more continuances. It is up to the prosecutor to be ready for trial.

Record the ID #'s of the options
that seem feasible

Does defense counsel status cause delay? Do plea negotiations take too long?

- No to both, good, go to the next page. 
- Yes to either or both, see if any of these **options** are feasible 

Issues 8 & 9

Hold Hearings Quickly

- 1 Work with court to have administrative hearings or counsel status hearings one week after arraignment



Limit Hearings

- 2 Work with the court to limit the number of counsel status hearings that will be set.

For example, two settings might extend the life of the case another four weeks. A policy limiting the number of hearings would end the matter. If the defendant doesn't have an attorney and doesn't qualify for a public defender, then the court could declare that he is pro-se

Separate Cases By Type of Counsel

- 3 Separate private attorney cases from public defender cases. Provide each with prompt discovery and plea recommendations. Since the prosecutor is responsible for discovery and an immediate offer, there is little reason to delay.

Keep Separate Plea Dockets

- 4 Establish a separate plea setting docket for private attorney cases and contested cases



Make the First Offer the Best

- 5 Make the offer presented at first appearance the best offer. There are no rewards for delay. This means that recommendations must be based on a good review and a decision whether you can go above your offer if it is not accepted.

Build a Case



- 6 To support the first offer as the best, be prepared at sentencing to present reasons for the recommendation. This means building a case to include aggravating or mitigating circumstances. For DUI's, include BAC, field test results and driving record.

Think about Sentence Implications

- 7 Think carefully about sentences and their implications. For example, suspended imposition of sentence (SIS) means no sentence and no record while suspended execution of sentence (SES) means a sentence and conviction.

Record the ID #'s of the options
that seem feasible

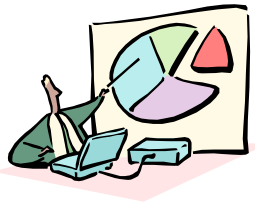
Are cases organized according to priorities and expected outcomes?

- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issue 10

Differentiate Between Cases

1 Organize the office to respond to different types of cases, processing steps and expected outcomes. Develop different procedures for each type of case (e.g. domestic violence, DUI etc.) that help ensure that the outcomes are within the desired range.



Expedite DV Cases

3 Expedite processing domestic violence cases (misdemeanor and felony). Develop policies and procedures jointly with law enforcement agencies.

Develop and Coordinate Policies

4 Develop policies and procedures for priority cases such as DUI's, and coordinate them with law enforcement agencies and the courts.

Publicize Policies

5 Make brochures, notices or letters available to the public describing the procedures followed for each different program, the criteria for referral to them, and the expected sanctions that the office intends to seek.



Identify Responses

2 Identify programs or responses needed for various types of cases such as dispute resolution and determine whether they are available or who can supply them.



Record the ID #'s of the options
that seem feasible

Is an adequate range of alternatives to prosecution available?

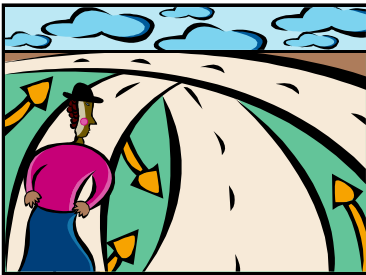
- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issue 11

Match Needs with Availability

1

Take an inventory of alternatives that are available in the community and match them with those you need for your caseload



Develop Programs

4

Develop programs in-house, like citizen complaint bureaus or bad check programs, using volunteers and interns

Make Guidelines Available

5

Publish guidelines about the criteria for participation in the alternatives and make them available to potential clients.

Coordinate with Other Agencies to Increase Access

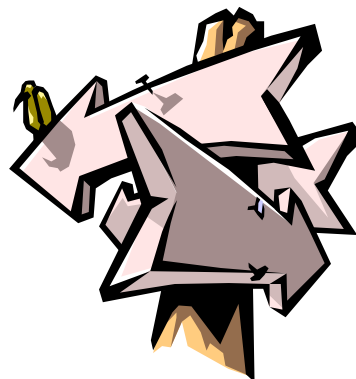
2

Meet and work with state and local government officials, community colleges and business groups to develop access to programs that are needed

Create a task force for new procedures



3

Designate staff to work with other agencies or organizations to plan and implement procedures. Seek grant funds to provide for new programs or services.



Record the ID #'s of the options
that seem feasible

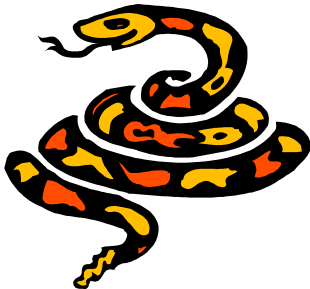
Are jury trial demands and *de novo* appeals being abused?

- No, good, go to the next page. 
- Yes, see if any of these **options** are feasible 

Issue 12

Support Court Unification

- 1 Support court unification efforts to eliminate trials *de novo*



Develop and Publish Sentencing Policy

- 3 Develop and publish office policy about sentence recommendations for serious traffic and misdemeanor cases> This should increase the predictability of the sanctions that will be sought and reduce delay in the plea process.

Investigate Patterns of Abuse

- 4 Review court rules and procedures of disciplinary organizations to determine whether jury trial demands by chronic *pro ses* or private attorneys support patterns of judge shopping and/or inappropriate delay.

Designate a Team

- 2 Designate a misdemeanor court team or use the same misdemeanor attorneys to handle trials *de novo* in the felony court.

Review Charging Policies

- 5 Review your charging policies for some cases if filing reduced counts with lower sanctions would negate requests for jury trials. This may not be feasible if it means DUI's DUS's or DUR's would be reduced.


Work for Same-Day Trials

- 6 To reduce continuances and judge shopping, work with the trial court to provide same day trials for jury trial demand cases if there is court capacity.



Record the ID #'s of the options
that seem feasible

Are there problems allocating attorneys and staff, to the misdemeanor and traffic courts?

- No, good, go to the next page. 
- Yes, see if any of these **options** are feasible

Issue 13

Reduce Non-Legal Activities

- 1 Examine what attorneys do. Then reduce the level of attorney participation in non-legal activities.

Use Non-Attorney Staff for Dispute Resolution Programs

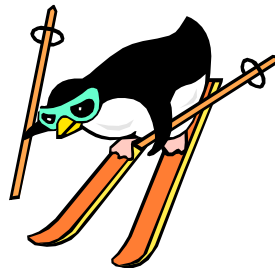
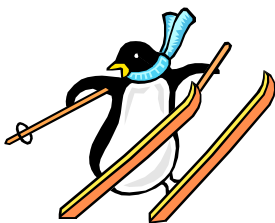
- 3 Operate dispute resolution programs with volunteers, interns and non-attorney staff

Use Interns and Legal Assistants

- 5 Use interns (third year law students) and legal assistants for case review, initial recommendations and preparation prior to attorney review

Process Some Traffic Cases Without Attorneys

- 2 Process non-incarcerable traffic offenses without attorneys present



Use V-W Coordinators



- 4 Use victim-witness coordinators/advocates for processing misdemeanor domestic violence cases

Convince Local Government to Conduct Bond Hearings

- 6 If there is a county or municipal attorney, convince the local government that it is their money and they should be responsible for staffing all bond hearings except those involving extradition which are coordinated through the prosecutor's office.

Record the ID #'s of the options that seem feasible

Are personnel being used efficiently? Are the benefits of specialization being tapped?

- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issue 14 & 15

Reduce Unnecessary Calls

1

Reduce unnecessary telephone calls. For example, there is little need to routinely provide updates about the status of restitution over the telephone.

Establish Specialized Bond Hearings

4

Work with the court and defense counsel to establish specialized bond hearings that handle all motions for judgment in a special court or docket.

Specially Designate Attorneys

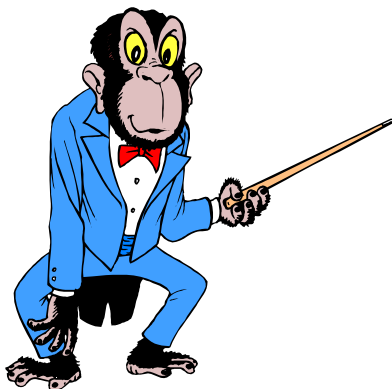
6

Specially designate attorneys for motions so that assistants gain experience and responsibility is centralized

Examine Bad Check Collection

2

Examine the effect on work created by collecting bad check payments. Consider instead initiating notices to pay and dismissing cases once restitution is made. Ask, "Can others do the collection?"



Use Liaison Officers to Reduce Overtime

7

Use police liaison officers to determine which officers will be needed for a hearing, make arrangements for their appearance, schedule traffic hearings for dates the police officers are working and check dockets for defendants with outstanding warrants.

Use e-mail and Separate Phone Lines

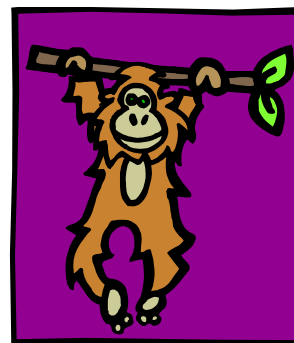
3

Use e-mail for intra-office communication. It will reduce telephone calls significantly and increase productivity. In high volume jurisdictions, install separate phone lines for the misdemeanor division

Use the Least Number of Attorneys to Review Cases



5

Have charge recommendations for arrest and non-arrest cases reviewed by the smallest number of senior attorneys possible.



Record the ID #'s of the options
that seem feasible

Are personnel properly organized and supervised?

- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issue 16

Augment the Screening/Review Process

1 Augment the screening/case review process using law students, interns, legal assistants or support staff under the supervision of an experienced attorney

Utilize Interns

2 Use interns aggressively in activities like in-court screening, interviewing witnesses, gathering evidence, talking to defense counsel, assessing the prosecutorial merit of cases and the credibility of witnesses, and making recommendations. Just be careful that interns and first year law students are not doing work that more experienced staff should be doing.

Integrate V-W Coordinators

3 Integrate victim-witness coordinators/advocates into trial preparation.

Cross-Train VW Staff

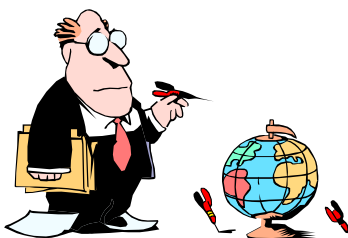
4 Cross-train all victim-witness staff in domestic violence matters.

Make Job Distinctions

5 Distinguish between investigators and process servers. Use investigators to conduct interviews, locate witnesses, obtain and annotate evidence, coordinate evidence collection with secretaries. Do not use investigators as process servers.

Rotate New Attorneys

6 Assign brand new attorneys to first appearances only for 90 days.



Use Trial Teams

7 To the extent possible, use trial teams to support each misdemeanor court. Teams may include two attorneys, at least one support staff and a victim-witness coordinator.

Designate Attorney for Operational Problems

8 Designate a backup or floater attorney to respond to problems. The backup attorney may handle all bond hearings especially serious felonies; assist the ADA in the courtroom; interview civilian walk-ins or answer questions. If a courtroom frees up, he is available to handle cases from other courtrooms

Centralize Attorney Location

9 If the office is involved in community prosecution and attorneys are assigned to geographic areas, keep the attorneys' offices in one location to provide flexibility and help balance the court's workload. Designate one assistant as a neighborhood prosecutor. Reduce his caseload to about five cases per year.



Refer Citizen Complaints

10 In unified courts, refer all citizen complaints to law enforcement agencies for investigation before the prosecutor's review and warrant recommendation.

Record the ID #'s of the options
that seem feasible



Are misdemeanor attorneys being trained and evaluated?

- Yes, good, go to the next page. 
- No, see if any of these options are feasible 

Issue 17

Train Third Year Law Students

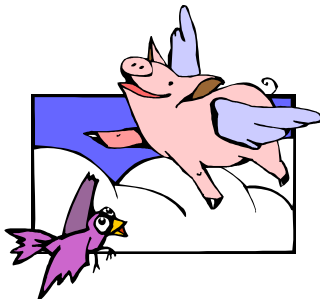
- 1** Train third year law students who are potential employees in misdemeanor case processing

Establish Training Schedule

- 2** Establish a regular training schedule for new attorneys.

Conduct Feedback Sessions

- 3** Conduct periodic feedback sessions with the supervising attorney



Give Orientation to Interns

- 4** Provide interns with a two-day orientation that includes sample cases, how to fill out case re-ports and the procedures used for processing domestic violence cases.

Document Procedures

- 5** Document and update procedures for major areas of work and use them as training materials.

Monitor Attorney Performance

- 6** If courtrooms have closed circuit TV, use it to periodically monitor courtroom performance.

Allow Attorneys to Observe Trials or Second Chair

- 7** Allow misdemeanor attorneys to second chair criminal trials or observe trials



Ask Around



- 8** Routinely consult with law enforcement, judges and defense counsel about the performance of the attorneys and interns

Establish Evaluation Schedule

- 9** Establish a schedule for formal written evaluations

Record the ID #'s of the options that seem feasible

Are your space, equipment, or systems adequate?

- Yes, good, go to the next page. 
- No, see if any of these **options** are feasible 

Issues 18 & 19

Identify Problem Areas

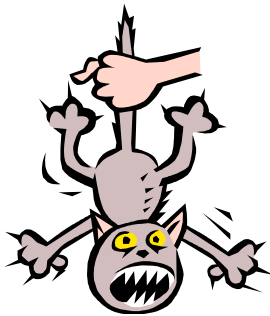
- 1** Meet with support staff to identify areas where paperwork is being delayed or lost. Ask them to recommend solutions

Form an Information Systems Group

- 2** Form a criminal justice information systems group, if none exists, to explore the development of systems to support misdemeanor prosecutions, record dispositions and monitor compliance with court-ordered conditions.

Create Partnerships

- 4** Partner with other agencies or programs to gain additional space. Space may be available in other agencies for activities like bad check programs, dispute resolution programs, and community service.



Combine Efforts with Law Enforcement

- 6** Work with local law enforcement agencies on joint grant-funded programs so that some of the grant funds can be used for equipment for your office or additional space.

Link Locally

- 7** Work with the local government agencies to establish links to their e-mail and Internet access systems

Identify the Types of Information You Need.

- 3** Refer to the *Prosecutor's Guide to Management Information* available at www/ijjs.org or from the Jefferson Institute for tips on how to use management information

Use Alternative Funding

- 5** Use grant funds or other fees to purchase equipment and communications technology that is not available from your regular funding sources.



Record the ID #'s of the options
that seem feasible

First Steps



Developing a Prosecution Plan

Step One

Identify areas of potential agreement and conflicts



Case Type	Prosecution	Media	Law Enforc.	Judges	Community	Advocacy Grps.
Auto theft						
Assaults						
Bad checks & restitution						
Citizen complaints						
Domestic/family violence						
DUI, DUR, DUS						
Soliciting						
Traffic violations						
Other misdemeanors						
Other						
Other						
Case Processing						
Compliance review						
Concurrent jurisdiction						
Continuances						
Court interpreters						
Defense counsel assignment						
Jury trial demands						
Revocations						
Trials de novo						
Other - specify						

Case Type

Place a check in each box if a misdemeanor is a priority for prosecution. Then check the offenses that you think are priorities for other agencies, the community or public advocacy groups.

Case Processing

Place a check in each box if the process step is troublesome to your operations



Look at the offenses you checked for priority attention. If your priorities match those of the other groups, then you should encounter little controversy about your priorities for prosecution. All parties agree.

If not all parties agree with your priorities, then conflicts may occur and you may need to deal with them.

Step Two

Discuss your priorities with others



Meet with chiefs of police and sheriff.

1

Discuss your priorities and the issues that affect your ability to prosecute these cases



Meet with representatives from the public, business groups, advocacy groups and local government officials.

3

Discuss community values, needs and areas that might have conflicting priorities.

Don't sacrifice your guidelines for high priority crimes or for the public interest

Meet with the judges to obtain the court's reaction to your priorities.

2

In small offices you know the judges and defense counsel so it is easy to know what is important to them and what the likely outcome will be.

If your priorities do not match court priorities, then you have to look for other options. It becomes a question of how much of your resources do you want to invest without



4

Revise your list after these meetings to reflect what's doable.

Step Three

Design a two year prosecution priority plan for misdemeanors



State your policy and priorities for various types of misdemeanor and traffic cases.

1

Describe what are you trying to accomplish and how you expect to get there.

Identify strategies and procedures that minimize processing issues

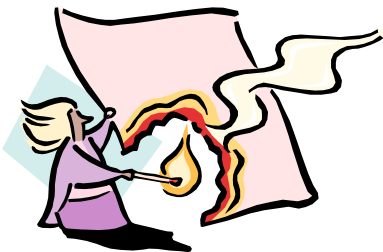
4

List expected results and assign responsibility to specific staff members for achieving them. Meet regularly with staff to monitor their progress or problems

Identify present resources and focus on doing the best you can do with what you have

2

Reserve capacity in the court for priority cases. Capacity includes the number of courtrooms, the number of cases and the number of prosecutors



Describe expected sanctions for your priority cases.

3

Specify the expected level of sanction for your priority cases such as incarceration, probation, fines, restitution or the use of other alternatives to prosecution.

Revisit your plan every two years.

5

Evaluate how well you have achieved your goals. Determine whether your priorities for misdemeanors have changed over the past two years. If they have, revise your plan and start the meeting/discussion process again.



Remember, it is you, the prosecutor, who has the community-wide overview of changing crime trends

Appendix

Example of a Green Sheet

INVEST: 1/2/01

DICTATED: 1/5/01

TRANS'D: 3/15/01

ATT/DIV: MCCULLOUGH/H

WORK TYPE: 1

IPO: Ann Campbell

CASE #: 30036818

JOB #: 81765

DEFENDANT'S NAME: DONNA DEFENDANT, SPN 00999999

W/F; DOB: 08/30/63

SSN: 333-33-3333

OFFENSE: RETAIL – THEFT

ARREST DATE: 12/21/00

WITNESSES APPEARING AND SWORN IN:

WITNESSES NOT APPEARING:

____ Joe Friday, PPPD
Anthony Manager, Asst, Mgr, Winn Dixie
Winn Dixie, victim, 6501 102nd AV, Pinellas Park FL
Ofc: W. Holmes, PPPD

RECOMMENDATION

File Petit Theft

PROOF

This offense occurred on 21/21/00 at 1634 hours at Winn Dixie, 6501 102nd Av. Pinellas Park, Pinellas County, Florida.

On that date and time the defendant went into Winn Dixie, took two packages of Gillette razors, put them down her pants and attempted to leave the store. The alarms activated, she was approached by management and took off running. She was chased, got into the parking lot where she was caught. She was seen throwing one pack of Gillette razors on the ground. She was then found to have a second pack in her waist band. This was done without the permission of Winn Dixie.

Example of a Green Sheet

Continued

ID:

State witnesses

SUMMARY:

Anthony Manager will testify he is Asst. Manager of Winn Dixie and that defendant came in, stuck the razors in her waist band and exited the store, at which point, the alarm sounded. He approached her, she ran. He caught her in the parking lot, She threw one pack out of her pants, and the other was found in her waistband.

Ofc. Holmes served as backup to Officer Friday and assisted in the investigation.

Ofc. Friday will testify to arriving on scene and taking statements of witnesses, particularly from the victim/witness, Manager to the extent that he ran the defendant down and recovered the items. He will also testify that he made contact with the defendant at which point she immediately began to say that what she had done was stupid and would never happen again. She does have one prior. He did read her Miranda. She agreed to answer the questions. He will testify that she stated that she took the razors from the shelf, placed them in her waist band, and that she was going to try to sell them for money so she could buy her crack. She also admitted to running from the store. He will testify she was trespassed from the property.

RESTITUTION: None

VICTIM CONTACT: None, items recovered

POST-MIRANDA: Defendant admits taking the items without the permission of the store, leaving the store and attempting to flee the store.

RELATIONSHIP:

NOTE TO SECRETARY: Please run a hard G, BL and a Rap on defendant

First Appearance Center

Colorado Springs has a First Appearance Center (FAC) operated in conjunction with the clerk of the court's office. At first appearance the defendant can plead to the summons unless it is a DV or assault case which requires a victim interview. The deputy district attorney (DDA) **does not need to sign a misdemeanor summons**, therefore, there is no need to screen cases before first appearance. If the defendant pleads not guilty then the next court date is set 60-90 days in advance which gives the DDA a window for screening

The First Appearance Center handles up to 350-400 cases in a morning. Staffed by one intern and three DDAs and supplemented by other DDAs as they free up from their courtrooms the staffing may increase to 7 or 8 DDAs. Typically there are 4 DDAs in the FAC. The Center is staffed by the duty week judge and the DDAs assigned to the judge's division. Morning cases are pro se. FAC does not handle insurance cases. They are handled by the clerk and are dismissed if they get insurance. In 2000, 60% of cases were resolved at the first appearance.

Defendants are scheduled alphabetically to appear at three assigned times: A-G at 8AM, H-L at 9, and M-Z at 10. Defendants go to FAC as scheduled. They form a line and are called to the clerk's desk and given either a written advisement or sent to a video advisement

If the offense is punishable by incarceration, the clerk gives them a written explanation of the procedure that will be followed. They are sent to a courtroom to watch a videotaped advisement by a judge explaining the procedure and their rights

In the courtroom there are 3 large charts on the wall – one is a Statement of Rights and Penalties, the second outlines Possible Penalties and Traffic Point System, the third is Criminal Penalties Presumptive Range for Felony, Misdemeanor and DUI's. The video discusses the \$25 jury demand fee, TRO's and penalties, the criminal penalty chart on the wall and also listed on the written advisement and the three classes of misdemeanors.

The advisement is taped also in Spanish, Chinese and Korean and available at listening centers. One potential problem with the video advisement is that it eliminates the ability of the judge to determine whether individuals understood their rights and was not under the influence of any drugs etc.

If it is a non-incarcerable offense, offenders are sent to the first appearance center with a written advisement to read.

After the video advisement, defendants sit in large room until called by the DDA. There are 5 interview rooms and the hallway (for overflow). The defendant then sees one of four DDAs who are assigned to the docket for that day. Deputies have guidelines for offers but can go outside them. The DDA explains the state's recommendation. If this is not acceptable the defendant is given a new court date and is allowed to leave. If it is acceptable the defendant sees a clerk to complete the paperwork. The plea and sentence forms are then signed by a judge. If the sentence is a fine, the defendant is sent to the clerk's office to pay it. If there are some other dispositions the defendant is sent to the appropriate person (e.g. mediation)

DDAs will meet with attorneys. If a DDA makes an offer, the defendant can consult with his attorney, the DDA keeps the offer open.

After meeting with DDA for 3-5 minutes and if they accept the offer, they return to the large room until the clerk has prepared the papers and completed data entry. Then they are called by the clerk to her module (four modules are available) and sign the papers. If there is a fine they are sent across the hall to pay the fine.