

## The Efficient Disposition of DWI Cases: Best Practices

One early goal of the grant we received from TxDOT was to increase the effectiveness of DWI adjudication in Texas by disposing of cases more promptly. To that end, Judge David L. Hodges, the Texas Judicial Resource Liaison, conducted a review of five Texas counties to determine what methods have proven successful in reducing the delays inherent in the prosecution and disposition of DWI cases. The counties were selected to include both rural and urban jurisdictions and were geographically and culturally dispersed to represent the rich diversity of our Texas courts. The “best practices” outlined in this article are the result of this study which was conducted over a period of several months taking into account the arrest, booking, screening, filing, and court administration practices of the five subject counties. The ideas and resources provided by the court administrators/managers in these counties were an invaluable resource in identifying common causes of delay in the filing and disposition of DWI cases, and in determining the most efficient and available solutions.<sup>1</sup>

In this study, we have attempted to conduct a thorough review of the entire process, from arrest to disposition. Since delays can occur at every stage of the case, the delays and recommended solutions have been categorized as follows:

- Offense Report
- Magistrate’s Warning, Setting Bond, Interpreters, and Appointing Attorneys
- Prosecution
- Court Administration

It will be obvious that some of the delays and solutions identified herein are within our judicial purview, and others are not. Some will also require the participation of other agencies and/or additional resources. However, it is hoped that we can all benefit from this systemic review and continue to learn from each other how to dispose of our cases more efficiently.

### Introduction

Without a constant review of how we do business, delay will insidiously work its way into every phase of the disposition process. Our Texas Supreme Court has stated:

*Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts . . . pressuring judges to take shortcuts, interfering with the prompt and deliberate disposition of those cases in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility... . [P]ossibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit.* Southern Pac. Transp. Co. v. Stoot, 530 S.W. 2d 930, 931 (Tex. 1975).

As gatekeepers to the doors of the criminal justice system, it is our job as judges to constantly review and revise the way we dispose of our criminal caseload. We know by intuition, and research confirms, that the more proximate in time disposition is to the date of arrest, the more effective the sentence will be. However, the Office of Court Administration Annual Report shows that more than two-thirds of DWI cases are disposed 90 days or more after arrest. The average disposition rate of DWI cases is much slower than other misdemeanor cases in most counties because of the inherent delays identified in this article. It is our goal to identify where these delays occur in the disposition process, and allow individual judges and prosecutors to decide which of these practices might be useful in their counties to eliminate or reduce those delays.

### Offense Report

In many jurisdictions, there is significant delay from the date of arrest until the date the offense report and criminal records check are received by the prosecution. In many jurisdictions, the local police

agency may take one to two weeks to transfer a written office report for prosecution review; smaller arresting agencies within the county may delay the preparation and transfer of an offense report by a month or longer. This obviously delays the ability of the prosecutor to review the facts surrounding the arrest, evaluate and file or decline the case, or request additional information from the arresting agency. It also requires additional staff time by the prosecutor's office to track down and request missing offense reports.

This problem has an easy and accessible solution. The Texas Municipal Police Association, with a grant from TxDOT, has created the LEADRS program, which allows the arresting officer to access an online web based program for creation of a DWI offense report. Not only does the program simplify and standardize the process, it also uses the information that the officer inputs to populate all of the additional forms required when a DWI defendant is arrested. This program benefits not only the arresting officer by reducing processing time by several hours, but also benefits the prosecutor who can be provided online, password-protected access to the offense report without delay. The program was initially "field tested" in ten Texas counties, and is now available statewide at no cost. The only requirement is for the officer to have online access to input the information. For more information on how to make this program available in your county, go to <https://www.leadrtexas.com>.

### **Magistrate's Warning, Setting Bond, Interpreters, and Appointing Attorneys**

After arrest, the law requires a defendant to appear before a magistrate to receive his/her statutory warning; have bond conditions set (including breath interlock); receive an indigency application; and have an attorney appointed, if necessary. Although the delays are as varied as the jurisdiction involved, common delays can be reduced by the following practices:

- having a magistrate available 24/7. If the jurisdiction's caseload does not warrant having a full-time magistrate at the jail, videoconferencing can be established between the jail and remote sites in the county where magistrates are available. The cost of the videoconferencing equipment can be recovered by reduced jail population and reduced jail staffing costs.
- having an interpreter available 24/7. Again, if the caseload does not warrant a full-time interpreter, videoconferencing can be used.
- having a court-appointed attorney available full-time, or on short notice, to consult with the defendant. If the defendant remains in jail, the consultation could also occur through videoconferencing. This significantly reduces time spent by the attorney waiting to see the defendant and can also reduce jail staff time by making defendants available for in-person consultation with attorneys. If the defendant is free on bond, many jurisdictions appoint an "attorney for the day" who is available in court for indigent defendants, instead of appointing a separate attorney for each individual defendant. One consistently identified source of delay results when appointed counsel is given inaccurate contact information for the defendant and is unable to contact and consult his/her client. It is therefore important that the person who generates the contact information provided to appointed counsel (magistrate, jail staff, PR bond coordinator, interpreter) make an effort to ensure accuracy of the contact information.

### **Prosecution**

Reasons for the delay in DWI prosecutions are generally the result of understaffing. Many prosecutors' offices assign DWI prosecutions to the least experienced prosecutors. It is obvious that a DWI case, especially a breath test case, involves the use of expert witnesses, video evidence, pleading and proving enhancement paragraphs, and other complications that a simple shoplifting or assault case will not require. Another grant awarded by TxDOT to the Texas County and District Attorney Association created a full-time Texas DWI Resource Prosecutor position. Clay Abbott, a former prosecutor with years of experience in prosecution and presenting, was selected as the Texas DWI Resource Prosecutor and has traveled throughout the state training prosecutors to effectively evaluate and try DWI cases. Since it is not unusual to have an inexperienced prosecutor oppose a very experienced defense attorney who specializes in DWI cases, Mr. Abbott is available to provide technical assistance and training to

prosecutors as they prepare and try these cases. Clay can be contacted by phone at 512-474-2436, or via email at [abb...@tdcaa.com](mailto:abb...@tdcaa.com).

An additional source of delay in the prosecutor's office results when the case is not expeditiously screened and filed or declined. In order to reduce that delay, Harris County has provided a prosecutor who is available 24/7 to review incoming DWI offense reports and accept or decline the case. This method, known as direct filing, allows the prosecutor's office to file written charges immediately and have the defendant standing before the judge in whose court the case is filed within 24 hours of arrest. Harris County by using the LEADRS offense report creation web site, the direct filing system, full-time screen prosecutor, "attorney for the day," and various other short scheduling practices, has been able to reduce its average disposition time for DWI cases from the statewide average of over six months to a little over 60 days.

In some counties, where it is not practical to have a prosecuting attorney available all the time, the Commissioners' Court can agree to pay overtime to prosecuting attorneys who will screen cases after hours and on the weekends. The theory is that the incremental pay is more than offset by reduced jail population.

In some counties, the pace of screening and filing cases has been stepped up by assigning one prosecutor to screen and file all cases, whether or not those cases are being assigned to that prosecutor. The duties of the screening prosecutor are to ensure that offense reports are received expeditiously from the arresting agency and request any additional information that may be required, including prior criminal history. The screening prosecutor then decides which, if any, charges will be filed and files the appropriate charges. The drawback to this type of system is that the prosecutor who files the charges might not be the one responsible for the prosecution. As a result, the screening prosecutor may be less discerning in which cases to file and which to refuse, since he or she will not have to follow the case to its conclusion. Also, the prosecutor responsible for proceeding with the case may be less invested if he or she did not participate in the filing decision.

In many counties, the prosecutor who is assigned a DWI case is the only one who is authorized to negotiate a plea on that case. This system can result in significant delays in disposing of cases that should be pled because overworked prosecutors are often unavailable to meet with defense counsel to discuss merits of the case and potential pleas. As result, defense counsel may make several trips to the prosecutor's office to discuss the case, or attempt to corner the prosecutor on plea day to work out pleas in the courtroom. If the prosecutor and defense attorney are unable to find a time to meet and discuss the case, it is not unusual for these cases to be postponed on the court's docket several times; it may be weeks or months before prosecutor and defense counsel ever meet to discuss the case. In addition, some defense counsel find it easier to move a case from the plea docket to the trial docket in order to buy more time and ensure they will get the prosecutor's individual attention. The result is that a court's trial docket is clogged with cases that neither side intends to ever go to trial.

Several solutions have been tried in various counties. One is to have each prosecutor set aside a designated period during each week when the prosecutor will be available to consult with defense counsel, and publish that schedule to the defense bar. This scheduling may require a measure of cooperation between the courts and the prosecution, but should inure to everyone's benefit. Another is to have the assigned prosecutor review the case immediately upon assignment and write a potential guilty plea recommendation for probation and/or jail time on the file. The defense attorney is allowed to access whatever portion of the file the prosecutor wants to make available, and access the recommendation without the necessity of the prosecutor's presence. Then, it is only necessary to meet with the prosecutor if the recommendation is not acceptable, or if the defense attorney wants to provide additional information to the prosecutor in order to change the plea recommendation. It is also helpful to have a plea recommendation written on the file, and allow anyone in the prosecutor's office to actually present the plea to the court. This can solve the problem of having an assigned prosecutor appear in several different courts on the same day, with resultant delays.

## **Court Administration**

Once a DWI case is filed, it is the judge's responsibility to see that the case is disposed of in a timely manner and with a meaningful result. An important first step is to set a goal. Without setting a goal or mark to be reached, we're allowing the tail to wag the dog. Once the goal is set (i.e., dispose of all DWI cases within three months from date arrest; reduce the average disposition date of all misdemeanor cases by 20%; etc.. etc.), then you can identify sources of delay in your system and began to eliminate them. It will be different for every county, and delays will be built into the system at every step. It is important to determine where these delays exist and establish realistic goals. In some cases, your goal may be to lessen the effect of the delay, rather than to eliminate it entirely.

Here are some global Court Management practices that can be applied:

1. Make sure some agency or staff member (pretrial services, probation, court administration staff, jail staff) is responsible for daily monitoring of the jail population and case disposition settings.
2. Never continue any case, motion hearing, or disposition without first assigning a subsequent, firm prospective hearing date.
3. Employ short scheduling. For instance, if defense counsel and prosecutor initially requested six weeks for further investigation and plea negotiations, and are back before the court requesting additional time, the subsequent date should be much closer in time. Each matter being reset on the court calendar should be rescheduled into a shorter time frame to create momentum toward disposition.
4. Set firm and meaningful trial and plea dates and grant continuances only when absolutely necessary. Many courts have established practical roadblocks to reduce rescheduling. These include:
  - having the prosecutor agree to the continuance or requiring a contested hearing
  - requiring the attorneys to have the judge's signature rather than that of the court administrator to continue a case
  - requiring the defendant to be present in open court and personally explain his reason for requesting the continuance
  - not granting more than one continuance without a contested hearing
5. Use pretrial hearings. The Code of Criminal Procedure requires that most pretrial motions be filed and heard at a pretrial hearing set by the Court, or they are waived. By setting all cases on the jury docket for a pretrial hearing, the Court will be more likely to weed out cases where the attorneys are only trying to buy time. In addition, many DWI cases can be disposed of at this level by a ruling on a defense Motion to Suppress, or other dispositive motions.
6. Adopt formal scheduling orders, as in civil cases, with established date parameters:
  - Target plea date
  - Date for pretrial motions to be filed
  - Pretrial hearing date
  - Final date to accept negotiated plea (do not allow negotiated plea on the day of jury selection)
7. Adopt a standing discovery order for all DWI cases and include the standing order in your local rules.

8. Consider the use of status hearings for all cases which exceed your targeted disposition date. The status hearing will require the presence of all parties and counsel with an explanation for all delays, and the setting of a firm, final disposition date.

9. Determine what data is being captured by your system and how it can be used. For instance, all systems keep track of the date of filing, date of disposition, and attorney representation. Ask the system to prepare a report for each attorney showing average disposition dates. If the report highlights certain attorneys who are abusing the system, determine how that is occurring and take steps to correct it.

Is it possible to more efficiently dispose of these cases and still provide the quality of disposition our constituents expect? This question was answered in the affirmative in an extensive study conducted by the National Center for State Courts for the National Institute of Justice and the State Justice Institute. The research, which included the participation of Texas courts, demonstrates that that greater efficiency enhances both timeliness and quality of outcome. *"Efficiency is fundamental to timeliness and a court system's provision of effective advocacy. Hence, a real need for courts is to learn from each other on how to get essentially the same job done in a tighter time frame."* Ostrom, Brian J., *Efficiency, Timeliness, and Quality: A New Perspective from Nine State Criminal Trial Courts*. Williamsburg, VA: National Center for State Courts, 1999, 18.

### **Conclusion**

One definition of insanity is to take the same action over and over again and expect a different result. It is a healthy exercise for us to step back occasionally and take a look at how we are accomplishing our job. This is especially true in Texas where we have such a large pool of qualified judges and court administrators from which to learn. Certainly not all of the "best practices" mentioned in this article will have practical application in your jurisdiction. However, quite a few of them are easily employed, and within your power to implement. Some of the others might take a little more political persuasion on your part; but you would not be where you are if you were not good at that also.

*"Concepts of justice must have hands and feet to carry out justice in every case in the shortest possible time and the lowest possible cost. This is the challenge to every lawyer and judge in America."* Justice Warren E. Burger

One of the main goals of our grant is to help us communicate and learn from each other. Many of our Texas judges and court administrators may have already solved problems that we face on a daily basis; all we need to do is facilitate the communication of our ideas to each other. This article is the beginning of that process. We are also currently developing our web site with a list serve that will allow us to communicate directly and immediately with each other. Stay tuned.

Judge David L. Hodges,  
Judicial Program Manager  
Texas Association of Counties

### **Additional References**

American Bar Association, *Defeating Delay: Developing and Implementing a Court Delay Reduction Program* (1986)

American Bar Association, *Standards Relating to the Prosecution Function and the Defense Function* (1971)

Banfield, Laura and C. David Anderson, *Continuances in Cook County Criminal Courts*, 35 U. Chi. L. Rev. 259 (1968).

Bazelon, David, *New Goods for Old: Efficient Courts in a Democratic Society*, 46 NYU L. Rev. 653 (1971).

Bureau of Justice Assistance, *Trial Court Performance Standards and Measurement System*. Program Brief (July 1997)

Casper, Jonathan D., *American Criminal Justice: The Defendant's Perspective*. Englewood Cliffs, N.J.: Prentice-Hall, Inc. (1972).

Chapper, Joy A., et al., *Attacking Litigation Costs and Delay*. Chicago: American Bar Association (1984)

Church, Thomas W., Jr. 1982. The 'Old' and the 'New' Conventional Wisdom of Court Delay, 7 *Just. Sys. J.* (1982).

Church, Thomas W., Jr., et al., *Justice Delayed: The Pace of Litigation in Urban Trial Courts*, Williamsburg, Va.: National Center for State Courts (1978).

Church, Thomas W., et al., *Pretrial Delay: A Review and Bibliography*. Williamsburg, Va.: National Center for State Courts (1978).

Commission on Trial Court Performance Standards, *Trial Court Performance Standards, With Commentary*. Williamsburg, Va.: National Center for State Courts (1990).

Fernette, Janice, *Bibliography: Caseload Management and Delay Reduction*. Unpublished paper, Williamsburg, Va., National Center for State Courts (1994).

Flanders, Steven, *Case Management and Court Management in U.S. District Courts*. Washington: Federal Judicial Center (1977).

Flango, Victor, and Brian Ostrom. *Assessing the Need for Judges and Court Support Staff*. Williamsburg, Va.: National Center for State Courts (1996).

Flemming, Roy, et al., *The Timing of Justice in Felony Trial Courts*, 9 *Law & Policy* 179. (1987).

Friesen, Ernest C., Jr., *Cures for Court Congestion*, 23 *Judges' J* 4 (1984).

Friesen, Ernest C., Jr., et al., *Arrest to Trial in Forty-Five Days*. Los Angeles: Whittier College School of Law (1978).

Goerdts, John, et al., *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts (1989).

Goerdts, John, et al., *Reexamining the Pace of Litigation in 39 Large Urban Courts*. Williamsburg, Va.: National Center for State Courts (1991).

Goerdts, John, and John Martin, *The Impact of Drug Cases on Case Processing Times in Urban Courts*, 13 *State Ct. J.* 4. (1989)

Hanson, Roger, et al., *Indigent Defenders: Get the Job Done and Done Well*. Williamsburg, Va.: National Center for State Courts. (1992).

Hanson, Roger, et al., *Comparing Publicly Appointed and Privately Retained Criminal Defense Attorneys*. Paper presented at the SATO Conference, Berkley, Calif., April 25-27, 1998.

Hausner, Jack, and Michael Seidel, *An Analysis of Case Processing Time in the District of Columbia Superior Court*. Washington: Institute for Law and Social Research (1979).

Hewitt, William, Barry Mahoney, Maureen Solomon, Marlene Thornton, and Ridge, Linda, *Courts That Succeed*. Williamsburg, Va.: National Center for State Courts (1990).

Jacoby, Joan E., *Pre-Trial Screening in Perspective*. Washington: U.S. Department of Justice (1976).

Luskin, Mary Lee, and Robert C. Luskin, 1986. *Why So Fast, Why So Slow: Explaining Case Processing Time*, 72 *J Crim Law & Crim* 190. (1986)

Luskin, Mary Lee, and Robert C. Luskin, *Case Processing Time in Three Courts*, 9 *Law & Pol* 207 (1987).

Mahoney, Barry, and Dale Anne Sipes, *Toward Better Management of Criminal Litigation*, 72 *Judicature* 29 (1988).

Mahoney, Barry, and Larry Sipes, *Zeroing in on Court Delay: The Powerful Tools of Time Standards and Managed Information*, *Ct Mgmt J* 8. (1985).

Mahoney, Barry, et al., *Implementing Reduction and Delay Prevention Programs in Urban Trial Courts: Preliminary Findings from Current Research*. Williamsburg, Va.: National Center for State Courts (1985).

Melcher, Frederick, *Setting Time Standards: How Much Delay is Too Much?* 23 (1) *Judges J* 48 (1984).

Nardulli, Peter F., et al., *The Tenor of Justice: Criminal Courts and the Guilty Plea Process*. Urbana: University of Illinois Press (1988).

Neubauer, David, et al., *Managing the Pace of Justice: An Evaluation of LEAA's Court Delay Reduction Programs*. Washington: GPO (1981).

Neubauer, David W., and John Paul Ryan, *Criminal Courts and the Delivery of Speedy Justice: The Influence of Cases and Defendant Characteristics*, 7 *Justice Sys J* 213 (1982).

Nimmer, Raymond, *A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing*, 48 *Denver L J* 206 (1976).

Nimmer, Raymond, *The Network System Change: Reform Impact in Criminal Courts*. Chicago: American Bar Foundation (1978).

Otto, Steve, *Court Delay: A Bibliography 1985a Ct Mgt J 20* (1985).

Pound, Roscoe. "The Cause of Popular Dissatisfaction with the Administration of Justice." (1906) Lecture. In *The Pound Conference: Perspectives on Justice in the Future*, edited by A. Leo Levin and Russell R. Wheeler. St. Paul, Minn.: West Publishing (1979).

Priest, George L., *Private Litigants and the Court Congestion Problem*, 69 *Boston U Law Rev* 527 (1989).

Sipes, Dale Anne, et al., *On Trial: The Length of Civil and Criminal Trials*. Williamsburg, Va.: National Center for State Courts (1988).

Solomon, Maureen, and Douglas Somerlot, *Caseflow Management in the Trial Court: Now and For the Future*. Chicago: American Bar Association (1987).

Trial Court Performance Standards Commission, *Trial Court Performance Standards, With Commentary*. Williamsburg, Va.: National Center for State Courts (1990).

Zeisel, Hans, et al., *Delay in the Court*. Boston: Little, Brown.(1959). 1 We wish to acknowledge and thank Mr. Bob Wessels (Harris Co.), Ms. Micah Mitchell (Dallas Co.), Ms. Sylvia Russell (Midland Co.), Ms. Cyndi Moore (McLennan Co.), and Ms. Aurora Zamora (Uvalde Co.).