

**PRELIMINARY REPORT ON ENHANCEMENTS TO
CRIMINAL CASEFLOW MANAGEMENT
LANE COUNTY CIRCUIT COURT - MAY 2006**

CRIMINAL CASEFLOW MANAGEMENT COMMITTEE:

Mary Ann Bearden, Presiding Judge
Karsten Rasmussen, Chief Criminal Judge
David Factor, Trial Court Administrator
Liz Rambo, Deputy Court Administrator
Carmen Phillips, Criminal Supervisor
Tana Tracewell, Court Services Supervisor
Doug Harclerod, District Attorney
Alex Gardner, Chief Deputy District Attorney
Greg Hazarabedian, Director, PDSL
Bob Homan, Assistant Director, PDSL
Marc Friedman, Indigent Defense Panel Administrator

Introduction:

Presiding Judge Bearden convened the Criminal Caseflow Management Committee in September 2005. The purpose of the Committee is three-fold: to provide a forum to communicate and resolve interagency issues; to look for methods to more effectively manage plea negotiations; and to establish regular meetings with prosecution and defense counsel representatives to work with the court on continuous improvement of criminal caseflow management.

This report provides some history of the work in Lane County on early case disposition. It also includes preliminary analysis of changes recommended by the Committee that the court implemented in November 2005 effective January 2006.

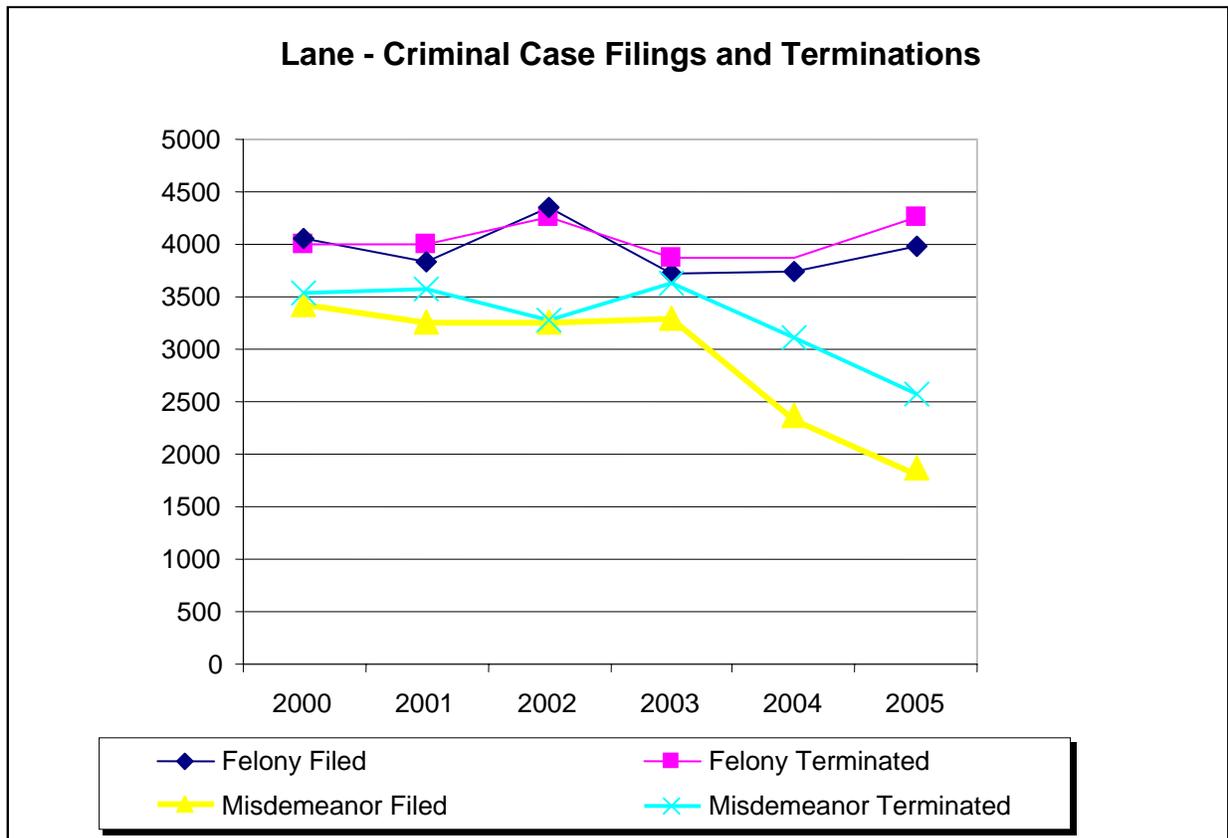
This committee was established concurrent with the Chief Justice's Criminal Justice Advisory Committee's Case Management Workgroup Pilot Project. Lane County is one of the six judicial districts selected to participate in this project. The Committee will represent Lane County on this project to implement best practices in caseflow management for criminal cases.

History:

An average of 6,500 new criminal cases per year (3,100 misdemeanor and 3,400 felony) were filed in Lane County Circuit Court from January 2000 through the end of December 2004 (see Figure 1 for case filing and termination trend data). In that same five year period, only 3% (200) of criminal cases were terminated by trial. This included an average of 110 jury and 90 bench or

stipulated facts trials per year. Given that 97% of criminal cases in Lane County are resolved by plea or other non-trial means, efforts aimed at early resolution provide positive benefits for the public and victims as well as the court, prosecution, defense counsel, and defendants. Early resolution yields fewer court appearances, fewer opportunities for failure to appear warrants and subsequently, reduced costs for all involved.

Figure 1



*Note: The Lane County District Attorney no longer has resources available to prosecute non-violent misdemeanors. Prior to 2003, the level of misdemeanors filed was consistent. Should resources become available, the DA would resume prosecuting the cases.

The Lane County Circuit Court, District Attorney’s Office and Public Defender Services of Lane County have a long history of working collaboratively to resolve criminal cases quickly. The court has held felony case pretrial conferences 35 days after arraignment for 20 years. Misdemeanors were added to that docket with court consolidation in 1998. The pretrial conference (35 Day Call) is a mandatory hearing at which the defendant is required to appear. The 35 Day Call docket is managed by the Presiding Judge in Lane’s master calendar system. At 35 Day Call each case is sent to a judge for a change of plea if settled, rescheduled if more time is needed for settlement, or placed on a list of cases to set for trial if determined to be ready for trial. 35 Day Call hearings are a venue for plea discussions between the prosecution and defense.

In 1987, the criminal justice system partners established the “arraign-o-rama” process. As part of this project, the District Attorney’s provided “blue sheet” offers at arraignment on

misdeemeanor cases. PDSLCL provided lawyers to discuss the offers with defendants and the court provided time at arraignment for plea and sentencing when negotiations were successful.

The District Attorney’s office expanded options for early offers differentiated case management by leading the establishment of the “Deferred Adjudication Program” (DAP) in 1997. DAP was a correspondence course offered to low risk offenders. Participants were offered the opportunity to have their case dismissed upon successful completion of the course. Payment for course fees and one hour of public defender services was generally required.

The District Attorney’s office is no longer able to prosecute non-violent misdemeanors due to budget shortfalls. Arraign-o-rama and DAP were designed for non-violent misdemeanors and both programs have been discontinued.

Criminal Case Processing through December 2005

Lane County Circuit Court performs better than other like-sized courts in the state and beat the statewide average on the Oregon Goals for Timely Disposition of criminal cases at the 90 and 180 day marks for misdemeanors and the 120 and 180 day marks for felonies. Although leading the pack, Lane did not meet the goals for those marks. The court did meet the goal of 100% case disposition by one year after arraignment. Please see Figures 2 (felony) and 3 (misdemeanor) for the 2005 report on criminal case disposition timeliness.

Figure 2 – Felonies 2005

<i>Felony</i>	90% Goal 120 Days		98% Goal 180 Days		100% Goal 1 Year		Beyond		Total
	Count	Pct	Count	Pct	Count	Pct	Count	Pct	
County (# of judges)									
Jackson (8)	1,743	69.0%	327	82.0%	376	96.9%	79	3.1%	2,525
Lane (15)	2,918	78.0%	490	91.0%	287	98.7%	48	1.3%	3,743
Marion (14)	2,299	65.7%	474	79.2%	499	93.5%	228	6.5%	3,500
Multnomah (38)	4,104	62.2%	1,350	82.6%	914	96.5%	233	3.5%	6,601
Clackamas (10)	1,598	73.9%	248	85.4%	218	95.5%	97	4.5%	2,161
Deschutes (7)	648	44.3%	299	64.7%	390	91.4%	126	8.6%	1,463
Washington (14)	2,455	66.3%	559	81.3%	614	97.9%	77	2.1%	3,703
Statewide (169)	24,243	66.9%	5,271	81.5%	4,956	95.2%	1,749	4.8%	36,219

Figure 3 – Misdemeanors 2005

<i>Misdemeanor</i>	90% Goal 90 Days		98% Goal 180 Days		100% Goal 1 Year		Beyond		Total
	Count	Pct	Count	Pct	Count	Pct	Count	Pct	
County (# of judges)									
Jackson (8)	2,864	78.5%	499	92.2%	238	98.7%	46	1.3%	3,647
Lane (15)	1,618	73.5%	404	91.8%	142	98.3%	38	1.7%	2,202
Marion (14)	2,616	70.9%	530	85.2%	308	93.6%	237	6.4%	3,691
Multnomah (38)	12,510	75.4%	2,707	91.8%	1,074	98.2%	292	1.8%	16,583
Clackamas (10)	3,462	80.0%	579	93.3%	202	98.0%	87	2.0%	4,330
Deschutes (7)	1,356	53.4%	571	75.9%	455	93.8%	158	6.2%	2,540
Washington (14)	4,695	74.9%	1,076	92.0%	452	99.2%	49	0.8%	6,272
Statewide (169)	43,102	73.4%	9,474	89.5%	4,510	97.2%	1,657	2.8%	58,743

A snapshot of the first one hundred defendants scheduled for 35 Day Call in January 2005 shows that only 48% had their cases resolved within 75 days after 35 Day Call and a disappointing 26%

were resolved at the time scheduled for trial or within one week before. Trials for out of custody defendants were being scheduled 120 days after filing, making timely resolution difficult. The volume of criminal cases settling on or near the trial date was creating a traffic jam at the time of trial, causing difficulty with trial date certainty, and additional expense for jurors.

New Initiative:

At its first meeting in September 2005, the Criminal Caseflow Management Committee began evaluating methods to assist the court with management of plea negotiations. 35 Day Call quickly became the focus, offering an opportunity to improve case processing and time to disposition. In-depth analysis of the current process showed the need for stricter management of plea negotiations by the court. The Committee then devised creative methods to make the 35 Day Call hearing a more meaningful event for case disposition. Based on recommendations from the Committee, in November 2005 the court implemented the following changes effective January 3, 2006:

1. All cases reporting ready for trial are now assigned to a judge for a settlement conference on the day of 35 Day Call.
2. 35 Day Call moved earlier in the day to create more time for settlement conferences.
3. All cases not settled at the settlement conference are given a trial date within 45 - 60 days and the trial notice is given to the parties before leaving the courthouse on the 35 Day Call date.

(See Attachment 1, Presiding Judge Mary Ann Bearden's memo to the Lane County Bar for details regarding the changes implemented on November 28, 2005).

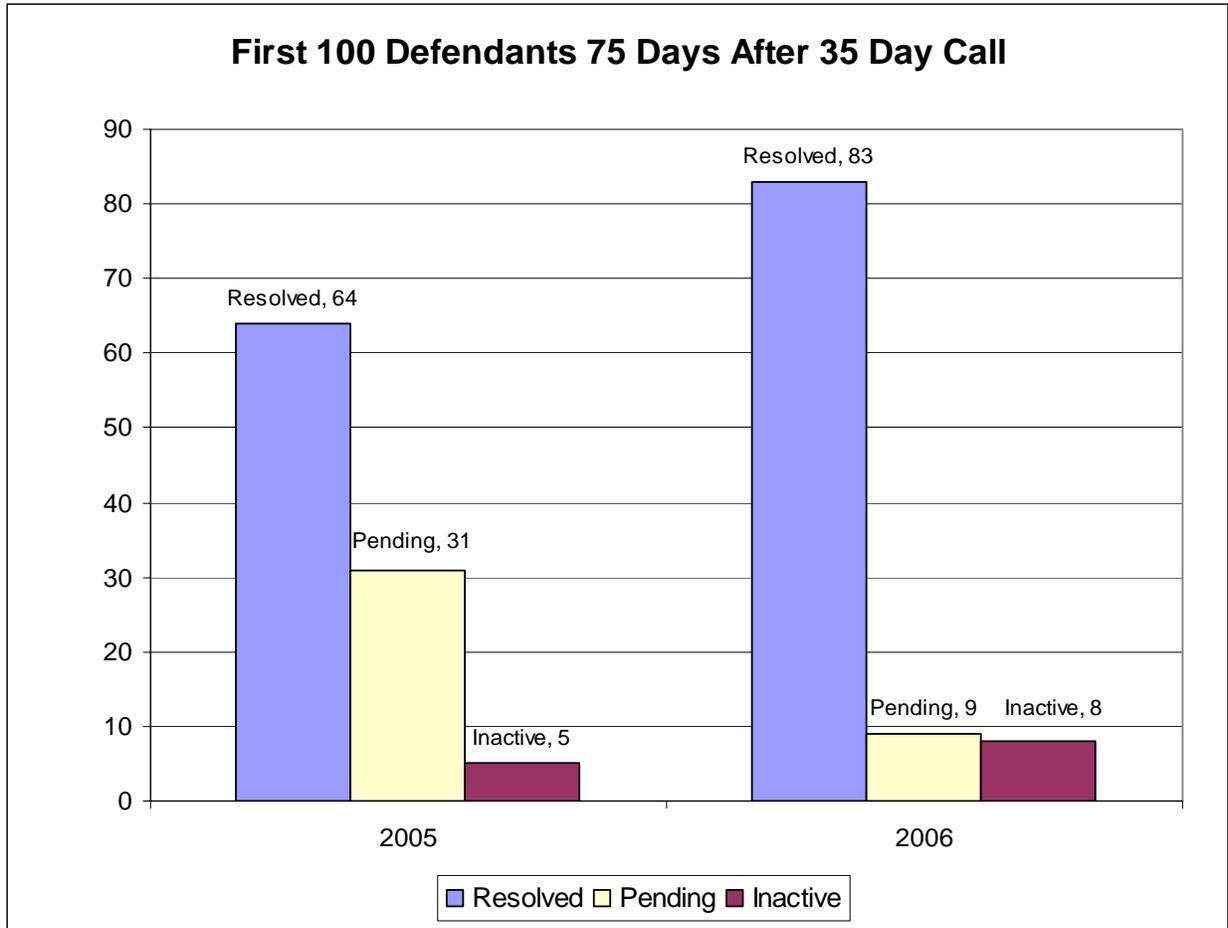
Progress Analysis:

It will take three to six months for the first group of cases processed in the new 35 Day Call hearings beginning January 3, 2006 to come to final disposition. Early analysis provides evidence that the changes have yielded a remarkable success. The following are the results of the first 100 defendants (152 cases) scheduled for 35 Day Call in 2006:

- 58 changes of plea by January 30th
 - 12 changes of plea in February
 - 8 changes of plea between March 1 and March 17
- ★ **Therefore, in 75 days, 78 defendants (78%) had changed their plea from not guilty to guilty as a result of a plea agreement.**

Figure 4 compares the first 100 defendants appearing at 35 Day Call in 2005 versus the first 100 appearing in 2006.

Figure 4



Resolved:	Sentenced or case dismissed.
Pending:	Case open and active, pending trial, drug court, or other future hearing date.
Inactive:	Case inactivated due to failure to appear or commitment to OSH.

75 days after 35 day call is 110 days after arraignment. This preliminary review is not broken down by misdemeanor and felony case type. 110 days after arraignment misses the first timeliness goal for misdemeanors of 90% in 90 days. The Committee has already identified the need to look more closely by case type in the early days of case processing.

Even prior to the planned review by case type, improvement can be seen toward meeting Oregon Standards for Timely Disposition of cases for both felonies and misdemeanors as evidenced by the number of cases resolved by the first timeliness goal (90/120 days). Figures five and six show felony and misdemeanor disposition timeliness from January 2001 – February 2006.

Figure 5 - Felonies

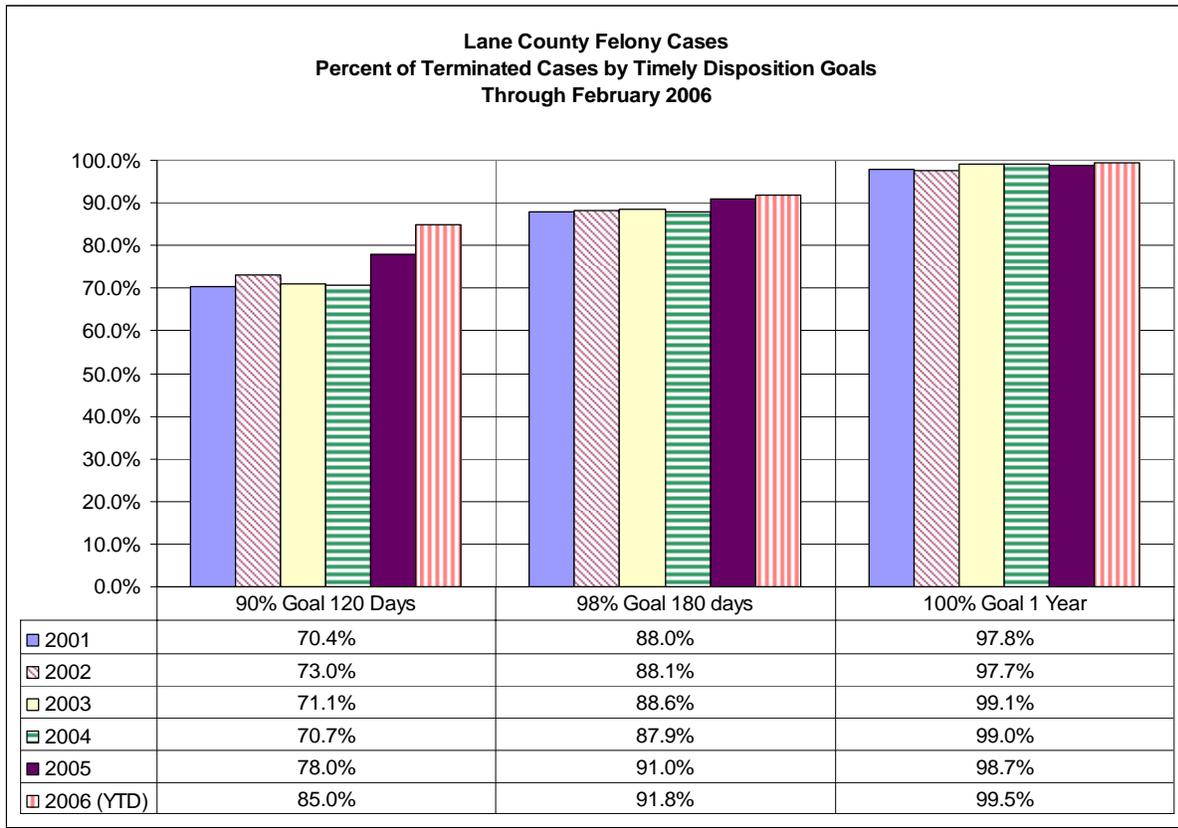
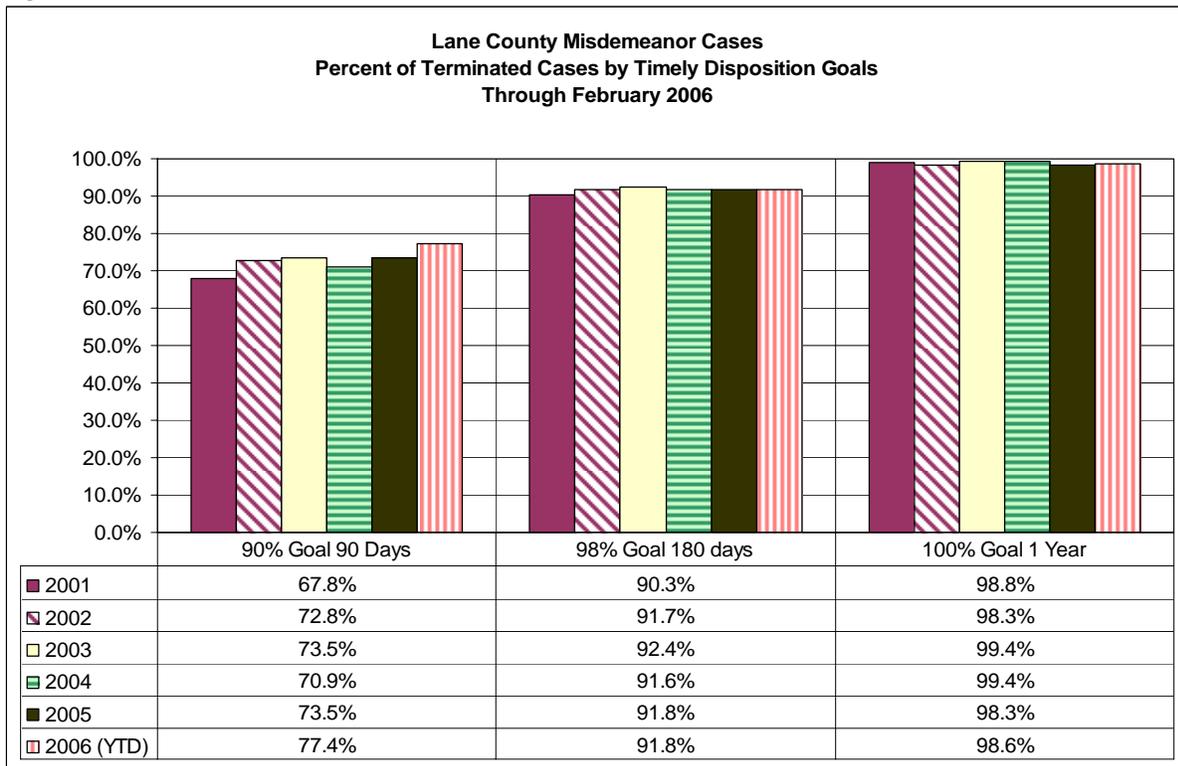


Figure 6 - Misdemeanors



Continuing Evaluation and Committee Work:

Lane County Circuit Court has the goal of becoming the first large metro court in Oregon to meet and exceed the timeliness standards for disposition of criminal cases. The presiding judge adopted performance measures to determine the success of the changes to management of plea negotiations. The court will measure the rate of settlement at 35 Day Call, evaluate the success of criminal case settlement conferences, count the number of cases scheduled for trial, and measure the effect of fewer scheduled appearances on the failure to appear rate. To exceed the time to disposition standards, the court will measure dispositions at 65 days after arraignment and evaluate specific case types looking for ways to facilitate earlier disposition

The Lane County Criminal Caseflow Committee, originally formed to address issues identified by the court, will continue to meet as the local implementation team for strategies arising from the Criminal Justice Advisory Committee's Case Management Workgroup Criminal Model Court Pilot Project.

The next step for the Committee will be to perform a self-assessment for case processing of felony and misdemeanor cases. This self assessment looks at the six proven strategies for criminal caseflow management developed by the National Center for State Courts. The six strategies are:

1. Early Assembly of Key Case Participants and Critical Case Information.
2. Early and Continuing Court Attention to the Management of Case Progress.
3. Early Disposition Programs and Differentiated Case Management (DCM) Screening by Court with Prosecution and Defense counsel.
4. Management of Plea Negotiations.
5. Early Decisions on Motions and Realistic Trial Scheduling.
6. Post-Disposition Management of Probation Violations that Involve New Offenses.

At its October 26, 2005 meeting, the Committee reviewed the Best Practices in Caseflow Management in Criminal Cases developed by the Chief Justice's Criminal Justice Advisory Committee (based on the six strategies above). Projects already identified from that list of best practices include:

- Documentation of procedures from first appearance to resolution.
- Continue to improve new process for conflict checks.
- Educate local bar association on the OJD case processing time goals.
- Evaluate, continue and improve early disposition programs and expand differentiated case management (DCM) to other case types or differentiate by charge.
- Document DCM procedures.

Attachment 1

Mary Ann Bearden
Presiding Judge

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**CIRCUIT COURT FOR THE STATE OF OREGON
FOR LANE COUNTY**

December 5, 2005

To: All Criminal Law Practitioners in Lane County

From: Mary Ann Bearden, Presiding Judge

Re: Changes in 35 Day Call and Criminal Case Processing

The Circuit Court will implement changes to criminal case management processes in an effort to more quickly resolve more cases. An average of 6,500 new criminal cases (approximately 3,100 misdemeanor and 3,400 felony cases) were filed in each of the last five years. In the same five year period, only 3% (approximately 200) of the criminal cases terminated each year went to trial (110 jury trials, and 90 bench or stipulated facts).

A process which better accommodates the reality that 97% of criminal cases are resolved by plea agreement will serve criminal defendants, the court, and the lawyers in a number of positive ways. Chief among them is a more timely resolution yielding a reduction in the number of court appearances, a reduction in the number of failure to appear warrants, and reduced costs for all involved.

Beginning November 28, cases placed on the 35 day call docket in January 2006, will be subject to the new procedures and timetables described below.

The Presiding Judge will call the 35 day call docket beginning at 2:30 p.m. in Courtroom 201, every Monday, Wednesday and Thursday. All criminal defendants, their lawyers, and deputy district attorneys with cases on the docket are required to attend. Defendants in custody at the Lane County jail, who are on the 35 day call docket, will be brought to the court house as soon as possible following conclusion of the 1:30 p.m. custody arraignment docket at the jail.

Attachment 1

When a case is called, the attorneys will report the status of the case related to such matters as:

1. whether a plea agreement has been reached;
2. whether a change of plea is ready to occur that afternoon, and if not, when it should be scheduled;
3. whether a set over of 35 day call is requested; and
4. whether a trial date is requested.

Cases reported as ready for change of plea will be sent to the judges available that afternoon. If not otherwise rescheduled by the Presiding Judge, cases reported as needing more time for the parties to reach agreement, and cases in which a trial date is requested, will be sent to the judges available that afternoon for a settlement conference.

Any case to be sent out for a settlement conference will be assigned a trial date by the Calendar Department, in consultation with the parties and the Presiding Judge. All parties must have information related to availability for trial with them. The trial date will be established before leaving 35 day call, and a trial notice will be generated and immediately delivered to the parties. In most instances trial dates will be within 45 to 60 days.

It is the intent of the Court to reach settlement agreements, perform change of plea hearings, and complete sentencing, in as many cases as possible every afternoon 35 day call is held. Sentencing at the time of the change of plea is strongly encouraged. Please be prepared to proceed with sentencing the same day whenever possible.

If no plea agreement is reached following the judicial settlement conference, and in the few cases where the change of plea is not accepted, the case will remain scheduled for trial on the already established date.

In the situation where a plea agreement is reached and change of plea accepted, but the sentencing hearing is postponed to another day, the judge who accepted the plea will schedule sentencing for a date and time in their own court, or contact the Calendar Department for a date and time in an available sentencing slot.

When setting a trial in a felony case, please take note whether an indictment has been returned, or a completed waiver of indictment has been accepted by the court. Without such a waiver, cases proceeding on the information alone are not in a proper posture for trial. Should the District Attorney elect to present the matter to Grand Jury, a voluntary appearance for arraignment on the indictment will be scheduled.

Your cooperation is appreciated. Please forward to the court any questions, concerns, or comments on these changes. Adjustments will be made as required. Thank you.

Attachment 2

Comments on Lane County's Preliminary Report on Enhancements to Criminal Caseflow Management by:

David C. Steelman, Principal Court Management Consultant, National Center for State Courts.

"...it's clear that the court and its justice partners in Lane County have done some very impressive things in terms of criminal caseflow management. It's a true pleasure for me to observe what is possible in a court system where the key actors "get it," have a history of caseflow management success, and want to push things to the next level."

The first thing I urge you to do is to tell the judges, staff, and other institutional actors that in my judgment you all appear to have a ***right to be exceedingly proud of your respective contributions to the creation and maintenance of an approach to caseflow management in Lane County that compares favorably to the best courts in the country.*** The risk you all face, however, is that reality may quickly squirm out from under your control if you decide simply to rest on your laurels.

The court's new "35 Day Call" improvement initiative appears to be well conceived and returning impressive early results.

It seems to me that the programmatic development that might have the greatest potential for sustained further improvement would be to explore ways to expand and enrich the early disposition programs and differentiated case management. I don't have the details about what you have now, but I would ask myself these questions:

- (1) are there further categories of lesser cases that might be amenable to really quick dispositions (i.e., in even less than 35 days)?
- (2) are there cases that now come in as felony charges, but which are typically disposed ultimately by plea as misdemeanors or otherwise on lesser-included charges, and which might be screened and potentially downgraded before, at, or soon after the 35-day call?
- (3) are there cases that might be scheduled for trial within 30 days after the 35-day call (that is, immediately after subpoenas or notices to witnesses), rather than within 45-60 days?
- (4) what is feasible for the system to do to expand the availability of drug court/mental health court/DV court/other problem-solving court programs, with suitable treatment program resources, to deal with defendants who are "frequent flyers" because of substance abuse or other personal problems?
- (5) at the other end of the complexity continuum, are there additional ways to identify more difficult cases so they can be put under closer scrutiny to eliminate causes of unnecessary delay and move more quickly to an early and credible trial date? and
- (6) can barriers (e.g., resource limits or institutional politics) be removed to allow implementation of any program options that come up under my questions (1) through (5)?

Beyond this set of ideas, I think you should develop ways to spot problems and develop solutions for snags and sub-optimization in the implementation of the "35 Day Call" improvement initiative that your draft paper describes. If I were looking for potential snags, I would be turning over stones, so to speak, in such areas as the following:

1. If indigent criminal defense is provided by a panel or consortium of private attorneys, it seems important to make sure that all or virtually all of the defense attorneys understand the program and how to make it work, distinguishing cases suitable for early pleas from those that really need further hearings or trial. This is probably something to be addressed through recurrent education programs, word of mouth from the most respected attorneys, and perhaps even a quiet avuncular discussion from time to time with any attorney who is unnecessarily creating difficulties.

2. Wrinkles in the up-front part of the process deserve critical attention. How well are the prosecutors screening cases and working with law enforcement on good charges? How well does the system use any pretrial release agency interview information? How well is the prosecution doing with transmission of documents necessary for provision of an early discovery package to the defense?

3. How well is the system doing in getting a defense attorney into the process as soon as possible, by determining eligibility for indigent defense counsel and staying on top of defendants who want to retain counsel? Once the defense attorney is in the case, is he or she getting early discovery and making contact with the client early enough and often enough for meaningful plea discussions? How quickly can the defense make reciprocal discovery available to the prosecution to allow for meaningful plea discussions?

4. How well does the system deal with suppression motions?

5. Are there any problems with what happens in cases as they come out of the 35-day call, either in terms of such things as paperwork getting from the PJ's courtroom through the clerk's office to the assigned judge; turnaround time for crime lab information; or prosecutor-defense counsel coordination and communication?

6. Ultimately, the utility of the 35-day call and other opportunities for early disposition of cases will be affected by whether the case participants face an oncoming express train in terms of early and credible trial dates. How well can the court's IT system provide information about the incidence of trial-date continuances and elapsed time from first-scheduled trial date to actual trial commencement or disposition by nontrial means? How well does the court do in terms of the kinds of things that help the certainty of trial dates, such as judge-to-judge consistency in limiting trial-date continuances; having "optimal setting levels," so that the number of cases listed for trial accommodates settlements and necessary continuances, keeps judges reasonably busy without overburdening other case participants, helps dispositions keep up with new cases, and helps the court meet time standards; and provision of some form of "backup judge" capacity for judges to help one another out.