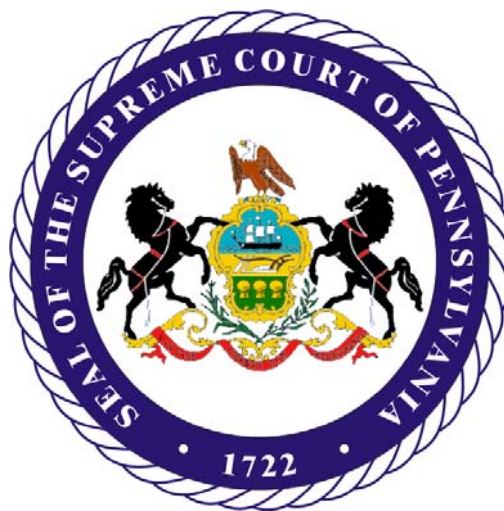


The Reform Initiative:
First Judicial District Criminal Courts
Commonwealth of Pennsylvania

Interim Report
July 2011



ACKNOWLEDGEMENT

This Interim Report illustrates the substantial steps taken by the all the participants in Philadelphia's criminal justice system to address critical systemic problems in the fair, efficient and timely disposition of criminal justice. The Supreme Court acknowledges and is grateful for the considered involvement of those who contributed positively to the efforts underway to improve Philadelphia's criminal justice system. Special thanks are given to the committee members for their contribution of time, energy and knowledge to this cause. Lastly, the Court acknowledges the leadership of Justice Seamus P. McCaffery for his dedication in addressing these issues in a comprehensive manner as illustrated throughout this interim report.

Ronald D. Castille
Chief Justice

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INTRODUCTION

This is an interim status report of the First Judicial District (“FJD”) Reform Initiative.

The Reform Initiative (the “Initiative”) was established by the Pennsylvania Supreme Court following a series of articles published by *The Philadelphia Inquirer* (“*Inquirer*”) in December 2009 that described the Philadelphia criminal justice system as being in disarray. In January 2010, Chief Justice Ronald D. Castille, who is also the Supreme Court’s liaison to the FJD, assigned Supreme Court Justice Seamus McCaffery to initiate a comprehensive review of Philadelphia’s criminal courts and to implement necessary reforms under the aegis of the Initiative. Justice McCaffery was uniquely qualified to lead this review, as he was intimately familiar with Philadelphia’s criminal justice system as a result of his past service as a Philadelphia police officer, Administrative Judge of the Philadelphia Municipal Court and Pennsylvania Superior Court Judge.

To assist Justice McCaffery in the Initiative, the Supreme Court established an Advisory Board comprised of judges, attorneys and criminal justice experts with diverse backgrounds to represent the many perspectives that exist within the criminal justice system. Its members include:

- Thomas A. Bello, Esquire
- Honorable John L. Braxton, Philadelphia Court of Common Pleas, Senior Judge
- Bruce L. Castor, Jr., Esquire, County Commissioner, Montgomery County
- Steven L. Chanenson, Associate Dean for Faculty Research, Professor of Law, Villanova University School of Law
- Roy DeCaro, Esquire
- Charles J. Grant, Esquire
- Syndi L. Guido, Esquire, Deputy Counsel, Pennsylvania State Police
- Honorable Renée Cardwell Hughes, Philadelphia Court of Common Pleas (retired)

- Michael Kane, Esquire, Executive Director, Pennsylvania Commission on Crime and Delinquency (former)
- David L. Lawrence, Court Administrator of the First Judicial District (former)
- Honorable Benjamin Lerner, Philadelphia Court of Common Pleas
- Walter M. Phillips, Jr., Esquire, Chairman, Pennsylvania Commission on Crime and Delinquency (former)
- Honorable Alan M. Rubenstein, Bucks County Court of Common Pleas

To further assist in the Initiative, the FJD engaged the independent consulting services of Chadwick Associates, Inc. (“Chadwick”) to assess the performance of Philadelphia’s criminal courts and assist in implementing reforms.

Advisory Board

Thomas A. Bello, Esquire
Honorable John L. Braxton
Bruce L. Castor, Jr., Esquire
Professor Steven Chanenson
A. Roy DeCaro, Esquire
Charles J. Grant, Esquire
Syndi L. Guido, Esquire
Honorable Renee Cardwell Hughes
Michael Kane, Esquire
David L. Lawrence
Honorable Benjamin Lerner
Walter M. Phillips, Jr., Esquire
Honorable Alan M. Rubenstein

The Initiative also received technical assistance from the National Consortium for Justice Information and Statistics (also known as “SEARCH”), the Pretrial Justice Institute (“PJI”), The National Center for State Courts (“NCSC”) and the Department of Justice, Law and Society at American University. Funding for the technical assistance was secured through the United States Department of Justice, Office of Justice Programs.

Beginning on January 27, 2010, Justice McCaffery held a series of meetings with judges, court officials and other criminal justice stakeholders, including the Philadelphia Police Department, the District Attorney’s Office, the Defender Association of Philadelphia, the Philadelphia Prison System, and the private defense bar (collectively “the justice partners”) to discuss the *Inquirer’s* findings concerning Philadelphia’s criminal justice system. The systemic

problems revealed by the *Inquirer* series presented an unprecedented opportunity to fix a flawed court system. Initially, each of the criminal justice partners was given the opportunity to respond in writing to the *Inquirer’s* findings, to provide an assessment of problems in the criminal justice system from the perspective of the agency each represented, and to offer recommendations for reform.

For the past eighteen months, Justice McCaffery, the Advisory Board and Chadwick Associates, Inc., have worked with the justice partners to identify systemic problems and to implement reforms. This report describes the Initiative's work to date, the reforms that have been implemented since its inception, and the effect that the reforms have had, where quantifiable.

The term "Initiative," as used in this report, refers collectively to the Advisory Board, Chadwick Associates and FJD officials who collaborated under Justice McCaffery's leadership to address the problems and implement the reforms described in this report.

PHILADELPHIA'S CRIMINAL JUSTICE SYSTEM

Criminal justice in Philadelphia is administered through multiple agencies within the executive and judicial branches of government. These include the Police Department and Prison System, which are departments of Philadelphia city government reporting to the Mayor; the District Attorney's Office and Sheriff's Office, the leaders of which are independently elected; and the criminal courts and support divisions of the FJD, including the Office of the Clerk of Courts, which in 2010 assumed the functions previously performed by the Office of the Clerk of Quarter Sessions.

The FJD is governed by an Administrative Governing Board ("AGB") comprised of the President Judge and the Administrative Judges of each of the three divisions of Common Pleas Court, the President Judge of the Municipal Court, the President and Administrative Judges of Traffic Court, and the Court Administrator of Pennsylvania. The Supreme Court appoints the chairperson of the AGB. The day-to-day operations of the FJD are overseen by the FJD Court Administrator.

The Pennsylvania Supreme Court designates one of its justices as liaison to the FJD. The liaison justice is responsible for exercising administrative oversight over the FJD and serving as a link to the Pennsylvania Supreme Court. Chief Justice Castille has been the liaison justice to the FJD since January 2007.

Several aspects of the FJD's criminal courts differ from other judicial districts in Pennsylvania. Other judicial districts have a single court of record, the Court of Common Pleas, in which all felony and misdemeanor cases are tried. In those districts, preliminary hearings are conducted by Magisterial District Judges, who are not required to be law-trained. Philadelphia, uniquely, has a second court of record, the Municipal Court, in which all felony and misdemeanor cases are heard initially. Municipal Court judges conduct preliminary hearings in felony cases and trials without juries in misdemeanor cases, subject to the defendants' rights to appeal *de novo* to the Common Pleas Court.¹ Because of Municipal Court's dual jurisdiction, its judges handle all of the 55,000 felony and misdemeanor cases that are filed each year in Philadelphia, either as misdemeanor trials or as preliminary hearings in felony cases. Municipal Court's heavy caseload is processed through lengthy daily lists of cases.

The Court of Common Pleas is the court of general jurisdiction and is organized into a Trial Division, a Family Division and an Orphans' Court Division. The majority of criminal cases are tried in the Trial Division of Common Pleas Court after the defendant has been held for court at a preliminary hearing in Municipal Court. Juvenile delinquency matters and cases in which a juvenile is the victim of a crime are handled in the Family Division. The Trial Division also has a number of support units including the Pretrial Services Division, which administers the court's bail and pretrial supervision programs, and the Probation and Parole Department, which produces presentence reports.

THE *INQUIRER* SERIES

The four-part *Inquirer* series "Justice: Delayed, Dismissed, Denied" was published beginning December 13, 2009. The series examined data concerning the outcomes of four categories of violent felonies (homicide, rape, robbery and aggravated assault) committed in Philadelphia during 2006 and 2007. The series pointed out high withdrawal and dismissal

¹ In other counties, preliminary hearings are heard by Magisterial District Judges and all felony and misdemeanor cases are tried in the Court of Common Pleas.

rates,² low conviction rates, evidence of witness intimidation and witness fear, a massive fugitive problem and a bail system in disarray.

Using data supplied by the Administrative Office of Pennsylvania Courts (“AOPC”), the *Inquirer* tracked a cohort consisting of all defendants arrested for the four categories of violent crimes in 2006 and 2007 whose cases had been resolved by the end of 2008. The *Inquirer’s* analysis concluded that conviction rates for violent crimes were alarmingly low, particularly when contrasted with the number of violent felonies that the City of

... of 10,000 defendants who walked free on their violent-crime cases ... 92 percent had their cases dropped or dismissed [without a trial].

Philadelphia Inquirer

Philadelphia reported to the Federal Bureau of Investigations (“FBI”) for that two-year period. For example, the *Inquirer* found that of 20,120 aggravated assaults reported to the FBI during the two-year period, 10,076 defendants were arrested and charged, and 862 had been convicted of aggravated assault by the end of 2008,³ representing a conviction rate of less than 10 percent on the major charge for resolved cases. Similarly, the newspaper found that of 21,229 robberies reported to the FBI during the period, 6,559 defendants were arrested and charged, and 1,143 had been

convicted of robbery by the end of 2008,⁴ representing a conviction rate of 19 percent on the major charge for cases that had been resolved.⁵ The conviction rates for both offenses rose to only 35% when convictions for lesser charges were included in the calculations.

The *Inquirer’s* analysis also revealed that half of the robbery and aggravated assault cases filed were never listed for trial in Common Pleas Court because the cases were withdrawn by the District Attorney or dismissed by the court at the preliminary hearing stage.

The newspaper also reported that of 10,000 defendants who walked free on their violent-crime cases in 2006 and 2007, 92 percent had their cases dropped or dismissed without a trial. Although reliable data was unavailable to show the underlying reasons for the

² Cases are withdrawn on the motion of the District Attorney; they are dismissed by order of the court.

³ 8,951, or 88.3 percent, of aggravated assault cases were resolved by 12/31/08.

⁴ 5,992, or 91.36 percent, of robbery cases were resolved by 12/31/08.

⁵ The conviction rates and held for court rates were higher for murder and rape. Far fewer cases were filed and the District Attorney’s Office and the courts dedicate greater resources to these crimes.

withdrawals and dismissals of these violent felony cases, anecdotal evidence supported the following factors as the causes of the systemic failure:

- Witness intimidation
- Witness fatigue caused by multiple listings of cases
- Gamesmanship by defense attorneys
- High failure-to-appear rates by defendants enabled by a bail system with little consequence for absconders
- Unavailability of police witnesses due to scheduling conflicts
- Logistical problems in transporting prisoners to court
- An increasing caseload without a similar increase in the number of judges hearing criminal cases

In addition to its findings about conviction rates for violent felonies, the *Inquirer* series documented high fugitive rates for defendants, a huge backlog of bench warrants for fugitive defendants that had never been served, and approximately \$1 billion in bail owed to the city by fugitive defendants that had never been pursued.

The series and subsequent columns and editorials in the *Inquirer* concluded that the system's poor performance had bred a culture of disrespect for the criminal justice system that had contributed to Philadelphia being "America's most violent big city" with the highest "violent-crime rate among the nation's 10 largest cities" "for three consecutive years."⁶

Reaction to the *Inquirer* series by criminal justice officials was mixed. Police Commissioner Charles H. Ramsey found the reported conviction rates "very unfortunate". Then-District Attorney Lynne M. Abraham called the national statistics about Philadelphia's crime rate "skewed" and rejected the *Inquirer's* analysis, saying, "You can't do justice by the numbers."

Court officials were also skeptical of the *Inquirer's* findings and sensitive to its criticism of the criminal court system. Some officials believed that the newspaper had exaggerated and sensationalized the court system's problems and ignored its positive achievements. They

⁶ McCoy, Craig R., Nancy Phillips and Dylan Purcell. "Justice: Delayed, Dismissed, Denied." *Philadelphia Inquirer* 12/13/2009. The article cites FBI figures as the source of its statistics.

also suspected that the *Inquirer* had failed to account for the different case numbering systems used in Municipal Court and Common Pleas Court in calculating withdrawal and dismissal rates for violent felony cases.

To resolve doubts about the *Inquirer's* analysis and to reconcile the disparate views of the performance of the FJD's criminal courts, Chadwick Associates, at the direction of Chief Justice Castille and Justice McCaffery, examined the *Inquirer's* methodology, findings and conclusions. Chadwick's review confirmed that the *Inquirer's* methodology was sound, that its calculations of withdrawal, dismissal and conviction rates were accurate, and that its conclusions drawn from the court data about the performance of the criminal court system were similarly accurate.

The disparity between the *Inquirer's* assessment and the court system's own view of its performance was attributable to a number of factors.

First, the *Inquirer* measured the extent to which the *criminal justice system as a whole* was holding perpetrators of violent felonies accountable for their crimes. Its analysis included the number of reported crimes and clearance rates in addition to the outcomes of cases actually filed in the court system. FJD court officials were focused primarily on managing their caseloads and secondarily on holding perpetrators of crimes accountable for their offenses. Some court officials believed that tracking case outcomes - conviction rates in particular - was, first and foremost, the responsibility of the District Attorney's Office.

Second, the two criminal courts of the FJD, the Criminal Division of Municipal Court and the Criminal Division of Common Pleas Court, are not unified. Each operates independently and, prior to the Initiative's review, saw its role in isolation without reference to the whole. As a result, no agency in the FJD was tracking case outcomes across the two criminal divisions from arrest through case resolution.

Third, FJD court officials did not measure performance using objective standards derived from the judiciary's overall mission and objectives. To the extent that court officials measured performance, FJD officials tended to focus on case inventory and dispositions

without reference to the outcomes of the underlying cases. Although Municipal Court officials were generally aware that a large number of cases were being withdrawn by the District Attorney or dismissed by the court at preliminary hearings, the officials did not track dismissal rates for specific crimes. In addition, the Municipal Court's view of its mission, influenced in large part by its history, was not entirely consistent with the generally accepted role of the judiciary to adjudicate cases fairly, promptly and efficiently. The Municipal Court was established in 1968 to reduce the backlog of cases in Common Pleas Court, primarily by hearing misdemeanor cases without juries, but it had come to see its role at preliminary hearings as filtering felony cases to keep weaker cases out of Common Pleas Court.

Fourth, problems with data integrity, data analysis capabilities and the reliability of standardized reports made it difficult to impossible for FJD officials to understand with certainty how the system was performing, particularly in Municipal Court.

In summary, the absence of a unified organizational structure within the criminal courts, differing views of the court's mission, the absence of objective performance standards, and the problems with data integrity and tools to analyze performance all contributed to the disparity between the *Inquirer's* assessment of court performance and the court's own view of its performance. These issues demonstrated a compelling need for a comprehensive examination of the operations of FJD's criminal courts.

THE REFORM INITIATIVE'S STRATEGY

The Initiative established as its mission the implementation of reforms necessary to ensure that Philadelphia's criminal courts afford fair, prompt and cost-effective adjudications of cases, with special attention to the rights of victims and witnesses, to instill public confidence in, and respect for, the administration of justice in Philadelphia.

A two-pronged approach was devised to accomplish this mission.

The first prong was to implement performance-based management for the criminal courts of the FJD. Performance based management uses objective performance standards derived

from the organization’s mission to measure performance. It helps to ensure that the organization achieves its mission by enabling it to hold managers accountable using readily identifiable objective standards.

The National Center for State Courts (“NCSC”) advocates performance-based management as a necessary tool for managing modern court systems and has developed “CourTools,” a framework for measuring judicial performance that has been widely adopted by court systems throughout the United States. Of the reasons cited by the NCSC for the need to measure judicial performance, one resonates, in particular, against the backdrop of the *Inquirer* series:

Perceptions and beliefs of court insiders about how work is getting done are not always accurate. As a result, positive anecdotes and personal accounts are dismissed by court critics who see what is happening in terms of their personal, and perhaps negative, experiences. In contrast to endless debate over conflicting images, performance data allow everyone to test the reality of their assumptions of how well things are going. Performance evaluation sorts out whether what court insiders think is going on is, in fact, taking place.⁷

For these reasons, the Initiative is presently in the process of implementing performance-based management for the criminal courts of the FJD. The results of that process will be addressed subsequently.

FOCUS AREAS

Case Processing in Municipal Court
Appearance of Defendants at Judicial Proceedings
Witness Intimidation
Information Technology

The second prong of the Initiative’s approach was to address readily identifiable problems on an expedited basis so that necessary reforms could be implemented while the Initiative’s work proceeded. The members of the Initiative had extensive experience with Philadelphia’s criminal courts and were well-acquainted with systemic problems that had persisted for

decades. Areas of focus were:

⁷National Center for State Courts. “CourTools: Giving Courts the Tools to Measure Success,” 2005.

- Case Processing in Municipal Court
- Ensuring the Appearance of Criminal Defendants at Judicial Proceedings
- Witness Intimidation
- Information Technology

The remainder of this report addresses reforms that have been implemented to date.

FOCUS AREAS

I. CASE PROCESSING IN MUNICIPAL COURT

The Initiative first examined the manner in which criminal cases were processed in Municipal Court list rooms, where multiple cases are listed each day for preliminary hearings or trials. Preliminary hearings in felony cases were prioritized because of the seriousness of the charges, the high withdrawal and dismissal rates for violent felony cases at this stage of the proceedings, and the consensus of the Initiative that this was the critical area with the greatest need for immediate improvement. Commissioner Bruce Castor of Montgomery County, formerly District Attorney of Montgomery County, and Judge Alan Rubenstein of the Bucks County Common Pleas Court, formerly District Attorney of Bucks County, co-chaired the subcommittee that examined case processing at the preliminary hearing stage and recommended reforms.

A key focus was the extent to which preliminary hearings were conducted differently in Philadelphia as opposed to other Pennsylvania counties, and how Philadelphia's unique practices affected the fairness, promptness and efficiency of preliminary hearings and advanced the legal objectives for affording defendants preliminary hearings.

A preliminary hearing affords the defendant the right to have a judge determine whether probable cause exists to require the defendant to stand trial. The burden of proof at a preliminary hearing – establishing a *prima facie* case – is the same in Philadelphia as in other counties and is among the lowest burdens in the law. As a result of the low burden of proof and because law enforcement has already made the probable cause determination at the time of the arrest, held-for-court rates at preliminary hearings outside of Philadelphia are generally 80 to 90 percent. In Philadelphia, however, preliminary hearings have become a legal battleground where defense attorneys often succeed in having their cases withdrawn

or dismissed,⁸ and held-for-court rates hovered around 50 percent in the years prior to the Initiative.

The following table shows the outcomes of all felony cases disposed by the Philadelphia Municipal Court between 2007 and 2009:

Municipal Court Felony Dispositions⁹						
	2009		2008		2007	
Held for Court	16,025	51%	16,811	49%	15,528	48.5%
Guilty	1,779	6%	1,752	5%	1,974	6%
Not Guilty	169	0.5%	201	0.6%	219	0.7%
Other	921	2.9%	896	2.6%	907	2.8%
Dismissed by the Court	5,109	16%	5,917	17%	5,994	19%
Withdrawn by the District Attorney	7,666	24%	8,717	25%	7,407	23%
TOTAL	31,669		34,294		32,029	

It was the consensus of the Initiative that Philadelphia's unique procedural practices in conducting preliminary hearings,¹⁰ many of which have developed informally over time, impair the fairness, promptness, and cost-effectiveness of preliminary hearings while not necessarily advancing the underlying legal purposes for affording defendants preliminary hearings as to the charges.

The Initiative determined that reforms were needed to conform Philadelphia's practices to those in other Pennsylvania counties. Many of these reforms involved amendments to the

⁸ The *Inquirer* calculated that of violent felony cases that did not result in a conviction, 92 percent were withdrawn or dismissed.

⁹ In the past, felony cases that were remanded to Municipal Court for trial on misdemeanor charges were not included in felony disposition statistics; however, that practice has changed and these statistics now include remanded cases. The statistics also include certain possession of controlled substance cases that, although graded as felonies, are within the jurisdiction of the Municipal Court because of the maximum statutory penalties.

¹⁰ These include incorrectly applying evidentiary standards that are applicable at trial; excluding hearsay testimony even in cases involving property crimes; permitting extensive cross-examination of witnesses; and applying a higher burden of proof than the applicable legal standard.

Pennsylvania Rules of Criminal Procedure (“Pa.R.C.P.”) and Administrative Directives by the Pennsylvania Supreme Court.

In addition, Chief Justice Castille and Justice McCaffery addressed this issue in a meeting with the Municipal Court Board of Judges where they emphasized the court’s mission and stressed the need for judges to follow the law as it is written.

Additional reforms to improve case processing focused on:

- Improving the quality and integrity of case activity information by transferring the duties of the Clerk of Quarter Sessions to the FJD;
- Improving the processing of misdemeanor cases by expanding diversion programs for less serious offenses to enable the courts to prioritize serious cases
- Using video conferencing to expedite hearings for incarcerated defendants
- Reducing continuances caused by requests to appoint conflict counsel for indigent defendants who cannot be represented by the Defender Association
- Reorganizing the criminal courts geographically in the Zone Court model
- Improving the quality of the charges filed by reorganizing the District Attorney’s Charging Unit

Reform Initiatives

Amended Rules of Criminal Procedure

In response to the Initiative’s recommendations and advocacy, the Pennsylvania Supreme Court issued an Administrative Directive to improve case processing in Municipal Court and amended several rules of criminal procedure.¹¹

¹¹ While the criminal procedural rules are applicable statewide, Rules 1000 through 1037 (Chapter 10) apply exclusively to the Philadelphia Municipal Court and Philadelphia Traffic Court.

On April 5, 2010, the Supreme Court issued Administrative Directive No. 344 establishing rules for processing cases in the Municipal Court of Philadelphia. The directive addressed concerns that gamesmanship by the parties in Municipal Court list rooms was causing cases to be continued unnecessarily, thereby impairing the promptness and effectiveness of the judicial process. The directive provided specific rules for judges to follow in managing lists of cases, including:

- The court must determine first whether defense counsel is ready to proceed; after this determination is made, it may then determine whether the Commonwealth is ready to proceed
- Cases cannot be continued prior to 11 a.m. without prior approval of all counsel
- The list of cases must be called at least three times and no case can be marked “ready not reached”, i.e., every case that is ready to proceed must be heard by the court that day
- Preliminary hearings “have the first priority of cases being heard,” which requires a defense attorney to attend FJD preliminary hearings before attending any other proceedings in any other judicial district in the Commonwealth or in federal court without prior approval or unless the defense attorney is on trial

On April 5, 2010, the Supreme Court also amended Rule 1003 of the Pennsylvania Rules of Criminal Procedure, extending the time for the first listing of the preliminary hearing from 3 to 10 days after the defendant’s preliminary arraignment to 14 to 21 days. This change addressed the concern that only 13 percent of preliminary hearings proceeded at the first listing because 3 to 10 days allowed insufficient time for the prosecution and defense to prepare for the hearing.

On January 27, 2011, the Supreme Court amended Rules 542 and 1003 of the Pennsylvania Rules of Criminal Procedure to clarify that hearsay testimony is admissible at preliminary

hearings to establish ownership, non-permission, valuation and damage in property crime cases:¹²

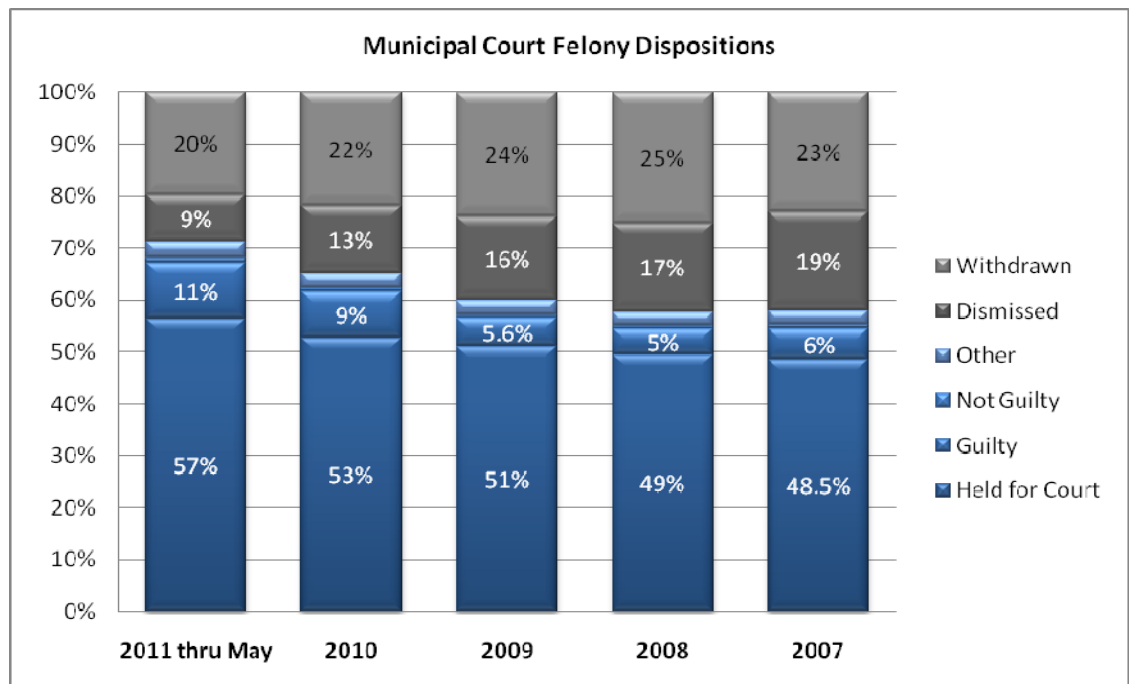
Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

In property crimes such as burglary and auto theft, the victim is often not a witness to the commission of the crime, but in the past had been required to appear at the preliminary hearing to testify as to ownership and non-permission despite having provided that same information to police officers. Although prior case law had already established the admissibility of hearsay evidence at a preliminary hearing to establish ownership and non-permission, the ruling had not been codified in the rules of criminal procedure and was not the practice of many Municipal Court judges, despite that it was followed in most other counties.

Since the Supreme Court's rule changes and administrative directive, held-for-court rates have continued to increase and dismissal rates have continued to decline. In 2009, 41 percent of felony cases were withdrawn by the District Attorney's Office or dismissed by Municipal Court judges at the preliminary hearing. By the first quarter of 2011, that number had fallen to 30 percent, with 9 percent of cases dismissed and 21 percent withdrawn. Significantly, dismissal rates were reduced by more than half, falling from 16 percent to 9 percent. During the same period, the held-for-court rate increased from 54 percent to 59 percent.

¹² After the case is held for court, the standard rules of evidence apply at the trial in Common Pleas Court.

Municipal Court Felony Dispositions					
	2011 (thru May)	2010	2009	2008	2007
Held for Court	57%	53%	51%	49%	48.5%
Guilty	11%	9%	6%	5%	6%
Not Guilty	0.9%	0.6%	0.5%	0.6%	0.7%
Other	3.2%	2.9%	2.9%	2.6%	2.8%
Dismissed by the Court	9%	13%	16%	17%	19%
Withdrawn by the District Attorney	20%	22%	24%	25%	23%



Likewise, since April 2010, when the changes to Rule 1003 took effect, a greater percentage of felony preliminary hearings are being resolved in fewer days and with fewer listings.

Municipal Court Felony Dispositions		
	May – December 2010	2009
Resolved within 30 days of preliminary arraignment	27%	22%
Resolved within 60 days of preliminary arraignment	48%	43%
Resolved at first listing	27%	16%

While early statistics are encouraging, more time is needed to gauge the full impact of these rule changes.

On December 22, 2010, the Supreme Court amended Rule 1002 of the Pa.R.C.P. to revise procedures for Philadelphia Municipal Court cases in which the defendant is charged with a summary offense. The previous rule, which required that a bench warrant be issued when a defendant failed to appear for trial on a summary charge, had resulted in a large inventory of outstanding bench warrants for defendants charged with summary offenses. The amended rule now requires that, if the defendant fails to appear:

the trial shall be conducted in the defendant's absence, unless the judge determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the judge shall issue a bench warrant for the defendant's arrest.

The revised rule now requires that defendants be advised at the time of the issuance of the citation that their failure to appear at trial will constitute consent to a trial in their absence.

The revised rule also dispenses with the requirement that the observing law enforcement officer testify at the summary trial, and allows, as an alternative, for the allegations in the citation to be recited by the law enforcement officer's representative or designee.

As a result of these rule changes, most defendants charged with summary offenses who fail to appear for their trials are now tried in absentia, fined, and the judgment is referred to a private agency for collection. This has greatly reduced the number of outstanding bench warrants for summary cases and has increased collection of fines, fees and court costs. During the period February 20, 2011, the effective date of the revised rule, to May 31, 2011, 2740 summary cases were listed in Municipal Court. 1862 (68%) of these cases resulted in convictions and a total of \$759,712 in fines was imposed, \$24,365 of which has been collected. During the same period, 451 bench warrants were issued. The number of bench warrants issued has declined substantially each month from 234 in March, to 138 in April, and 79 in May.

FJD Assumption of the Clerk Function

The court clerk is responsible for maintaining the official record of criminal judicial proceedings. The clerk's office records, indexes and files all Municipal Court transcripts and Common Pleas bills of information; posts case activity information and judicial orders and decisions to case dockets; accepts bail payments and executes judicial orders for bail forfeitures; and collects fines and costs. The performance of these duties in a diligent, accurate and timely manner affects every aspect of the criminal court system. Accurate data is critical to measuring performance and identifying problems as they develop.

Prior to April 2010, when the clerk function was performed by the independent Office of the Clerk of Quarter Sessions, a crisis of confidence existed in the ability of that office to perform its duties.¹³ In April 2010, at the direction of the Supreme Court and with legislation from Philadelphia City Council and Mayor Michael Nutter, the FJD assumed the functions of the Clerk of Quarter Sessions. Joseph Evers, the Prothonotary of the FJD's civil division, heads the recently created Office of the Clerk of Courts, while maintaining the role of Prothonotary. Upon assuming these functions, the Clerk of Courts Office undertook numerous reforms, including:

¹³In the words of one stakeholder "all statistical data extracted ... is suspect until a comprehensive audit [of the Office of Clerk of Quarter Sessions] is performed."

- Stringent quality control measures to improve data integrity
- Organizational restructuring to promote accountability
- A renewed emphasis on creating a culture of customer service
- Additional staffing to improve the clerk-to-courtroom ratio to address the problem of unattended courtrooms
- Revised communication procedures, including the “Print to Prison” program that ensures the prison receives timely case information, and another initiative ensuring that the Department of Transportation receives timely information regarding dispositions that affect drivers' privileges
- Enhancements to information technology, including the FJD's first paperless courtroom and a new Clerk of Court Intranet to enable staff to share information more effectively
- Enhanced education and training programs

The Office of the Clerk of Courts is also planning to introduce an electronic document management system for the criminal courts that will enable the transfer of documents from the state's court management system to a Philadelphia-based document management system.

Expanded Diversion Programs

Municipal Court officials, working with the District Attorney's Office, added two new diversion programs - Accelerated Misdemeanor Program and Small Amounts of Marijuana – designed to reduce case inventories and to conserve judicial resources for more serious cases. Misdemeanor diversion programs afford offenders the opportunity to avoid criminal convictions by attending classes and other programs related to their particular needs and infractions. When an offender successfully completes the requirements imposed by the program, which range from fines, fees and restitution, to performing community service, the case is discharged and a defendant can seek to expunge his or her arrest record.

Accelerated Misdemeanor Program

The Accelerated Misdemeanor Program (“AMP”) was created to address the limitations of two existing programs, Accelerated Rehabilitative Disposition (“ARD”) and Community Court. ARD is available only for first-time offenders, and funding for the current Community Court program expired June 30, 2011. Community Court has been administered by Philadelphia’s Center City District since 2002 as a problem-solving court that combines criminal justice and social services to address quality-of-life crimes committed in Center City and surrounding neighborhoods. Community Court was designed to reduce repeat offenses by providing on-site social services to address defendants’ underlying needs.

In creating AMP, the FJD drew on its experience with other community-based court programs. In June 2010, Justice McCaffery, members of the Advisory Board and court officials visited the Red Hook Community Justice Center in Brooklyn, New York, to observe a successful community court operation. Established in 2002, Red Hook was the nation’s first multi-jurisdictional community court. It was designed to solve neighborhood problems associated with drugs, crime, domestic violence and landlord-tenant disputes. In Red Hook, one judge hears neighborhood cases that would otherwise proceed through three different courts. The goal is to address problems in a coordinated manner. The judge has a variety of sanctions to impose and services available to provide, including community restitution, educational workshops, General Equivalency Diploma classes, drug treatment and mental health counseling, all with rigorous monitoring. In addition, the Red Hook courthouse was designed to accommodate programs that engage the community in aggressive crime prevention in an attempt to solve local criminal issues before they are addressed in court hearings.

The FJD’s current AMP program is a first step in developing a more extensive community-based court along the lines of the Red Hook initiative program. Originally established in the Southwest Police Division, AMP’s initial aim was to channel defendants at the time of their arrests into diversion programs that imposed community service and court costs. AMP was an immediate success and now operates citywide. It has resulted in cost savings for the

court and for the Police Department by eliminating the need for police officers to attend multiple trial listings of misdemeanor cases. From July through December 2010, 618 cases were diverted through the AMP program.

The City of Philadelphia provided the FJD with an additional \$280,000 for AMP in 2011, which partially funds the program. Expanding AMP into all areas of the City would require an estimated \$800,000 in combined funding to the FJD, the District Attorney's Office, the Defender Association and Philadelphia's Public Health Management Corporation. It is estimated that such an expansion would save \$1.4 million annually in police overtime and the costs of incarcerating and transporting detained defendants to court.¹⁴ Moreover, AMP cases are resolved more quickly than other misdemeanor cases; the time to disposition is about 30 days compared to an estimated six months for other misdemeanor cases.

The FJD is receiving technical assistance from the National Center of State Courts and American University to create a strategic plan to expand AMP and its ancillary services. The strategic plan will:

- Document the current processes and performance of the program
- Document the operational and inter-agency and private sector relationships involved in the program
- Review the design and performance characteristics of other community courts
- Develop a preliminary design, garner feedback and provide recommendations for a full-service, community-based Municipal Court program for a range of offender categories handled by the Municipal Court, including case processing, staffing, facility and intervention resources, and related cost estimates

¹⁴ Cost savings are based on the following: \$95 per day per person for incarceration, \$48 per hour for police appearances in court; \$79 per trip for transportation from prison and \$150 per test for laboratory analysis.

- Provide a timetable for implementation, including necessary agreements between judicial system agencies and private sector collaborators and partners

While limited resources might necessitate a scaled back version of the Red Hook model, the FJD has fully embraced the advantages that community-based courts offer to the court system, defendants and the community.

Small Amounts of Marijuana Program

Working with the District Attorney's Office and the Defender Association, the FJD instituted the Small Amounts of Marijuana ("SAM") program to divert cases involving small amounts of marijuana from traditional prosecution. The Chief Defender shared her perspective in a comment to the Advisory Board:

There are far too many minor cases coming into the system that should never have been charged criminally in the first place, or the charge should have been diverted at an early stage ... for example, defendants charged with possession of a small amount of marijuana. Many of these minor cases clog up the trial rooms.

Under the SAM program, the District Attorney may elect to divert cases involving possession of less than 30 grams of marijuana into the SAM program where the defendant is required to attend classes and pay fines and court fees. When these court-imposed requirements are met, the criminal charge is dismissed and the defendant's record can be expunged.

SAM is expected to divert 4,000 cases a year that would otherwise have been listed for trial in Municipal Court.

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It is estimated that the SAM program will save approximately \$2.5 million annually in police overtime, in the costs of laboratory analyses of evidence, and in the costs of incarcerating and transporting detained defendants. The minimal additional costs associated with overtime for Saturday SAM classes are offset by the fees paid by SAM

participants.

Although the program has been successful in reducing caseloads and achieving cost-savings, the failure-to-appear rate for program participants has been high. The FJD is presently exploring strategies with the District Attorney to ensure that there are consequences for SAM participants who fail to appear in court or for the required class.

Video Crash Court

The FJD has conducted some judicial proceedings at the prison for more than twenty years. Known as Crash Court, the program's purpose is to resolve open misdemeanor cases against incarcerated defendants - most often by stipulated trial - and eliminate the need to transport the prisoners to the Criminal Justice Center ("CJC"). In the past, judges and attorneys went to the prison and conducted Crash Court in person. In February 2010, Municipal Court began holding Crash Court by video conference. Video Crash Court further expedites the adjudication of open misdemeanors and saves the costs of transporting judges, attorneys and court personnel to the prison.

Following the implementation of Video Crash Court, the number of negotiated guilty pleas increased substantially. In 2009, 450 negotiated guilty pleas were entered in Crash Court. In the last 11 months of 2010, after Video Crash Court was implemented, 1,105 negotiated guilty pleas were entered, even as the number of misdemeanor cases filed fell from 2009 to 2010. It is estimated that Video Crash Court will save the criminal justice system \$2.3 million annually, primarily by reducing the amount of time that defendants are held in custody. Additional savings will be realized from eliminating the need for police and civilian witnesses to appear to appear in court.

Appointment of Private Counsel for Indigent Defendants

Most criminal defendants in Philadelphia are indigent and are provided counsel at public expense. Seventy percent of these defendants are represented by the Defender Association. In cases with multiple defendants, conflicts among the defendants can prevent the same attorney or law firm from representing more than one defendant in the case.

When this happens, and the other defendants are also indigent, private attorneys must be appointed to represent the other defendants. Two problems arise in this situation.

First, because the conflict often is raised for the first time at the bar of the court at the listing of a case that is otherwise ready,¹⁵ the case is usually continued so that counsel can be appointed and prepare to represent the defendant. Continuing a case that is otherwise ready inconveniences the victim, the witnesses and the defendant, deprives everyone of a prompt hearing of the case, and wastes judicial resources. Moreover, the Initiative was informed that, in the past, Municipal Court judges frequently continued cases on conflict grounds without making specific inquiries into the nature of the alleged conflict or applying the legal standard for determining whether a conflict exists. Commissioner Bruce Castor, co-chair of the subcommittee on Municipal Court case processing, noted in his report:

I observed that the court routinely continued cases where co-defendants were both represented by the Public Defender without considering whether there was truly a conflict requiring the appointment of counsel. It was just presumed that a conflict situation existed and both cases were continued. My guess is that both cases would ultimately be resolved with guilty pleas and they both could be handled by the public defender. In any event, delays for the appointment of counsel based on a conflict should occur only upon showing that a reasonable likelihood of a conflict exists, and should not simply just be presumed to be the case.

Two reforms addressed the problem of continuances caused by requests for the appointment of conflict counsel. As previously described, the Supreme Court amended the Pa.R.C.P. to extend the time for the first listing of the preliminary hearing from 3 to 10 days to 14 to 21 days. This allowed more time between the preliminary arraignment and the first listing of the preliminary hearing for the Defender Association to prepare the case and identify and resolve conflicts prior to the first listing. Second, Municipal Court judges are now required to examine conflict claims more closely at preliminary hearings to ensure that only cases with actual conflicts are continued.

¹⁵This happens most frequently at the first listings of felony cases for preliminary hearings.

A problem that arises when private conflict attorneys must be appointed to represent co-defendants is the cost associated with such an appointment. Philadelphia's conflict counsel program is funded by City Council and administered by the FJD. Pennsylvania is the only state in which representation of indigent defendants is funded entirely by the individual counties.¹⁶ Moreover, it is not typical for courts to administer conflict counsel programs directly, particularly the payment of conflict counsel, because "a public defense system managed and operated by the court probably violates [the] principle"¹⁷ that public defense is supposed to be independent.¹⁸

To compound the problem, City Council routinely underfunds the program that provides private legal representation to indigent defendants both in its initial appropriation to the FJD and in later supplemental appropriations. For fiscal year 2011, City Council initially appropriated \$7 million for the private representation of indigent defendants, which included funding for conflict counsel, and later supplemented the appropriation with an additional \$2 million. For fiscal year 2012, despite the FJD's request for \$10.5 million for the program, City Council appropriated \$8.5 million, which, again, will necessitate a supplemental appropriation. Inadequate and untimely funding significantly impairs the ability of FJD officials to manage this program.

Because of the funding issues and the concerns raised by the National Center for State Courts about the propriety of the FJD administering the program, the FJD is examining alternate approaches to funding and administering the program including transferring responsibility for the program to the executive branch of city government.

Zone Court

On November 2, 2010, with the support of the Initiative and criminal justice stakeholders, the FJD, the District Attorney's Office, and the Defender Association of Philadelphia established the Zone Court structure for criminal cases.

¹⁶National Center for State Courts. Correspondence, February 2011.

¹⁷National Center for State Courts. Correspondence, February 2011.

¹⁸"ABA Ten Principles of a Public Defense Deliver System," February 2010.

Zone Court organizes criminal cases geographically by police division and vertically by prosecutors; it enables the same team of assistant district attorneys to handle all cases from a particular police division from the first listing in Municipal Court through Common Pleas Court to final disposition. The structure also enables prosecutors to become familiar with specific neighborhoods in order to identify crime patterns as they develop.¹⁹

In announcing the Zone Court structure, the FJD, the District Attorney's Office, and the Defender Association of Philadelphia jointly stated:

[Zone Court is] a wide-ranging plan to tackle some of the major challenges presented by the thousands of criminal cases that come into the courts each year. The aim is [to] wisely invest judicial resources - including time, space, finances, and personnel - in order to schedule and dispose of the remarkable volume of criminal cases each year.

Implementing Zone Court required moving preliminary hearings from outlying police districts into the CJC so that all cases from a particular police division could be heard on the same floor with the same prosecutors. Centralizing victims, witnesses, police and prosecutors on the same floor of the CJC is believed to reduce witness intimidation, continuances caused by unavailability of police witnesses, and police overtime costs.

To address concerns that Zone Court would strain the capacity of the CJC by adding 25,000 preliminary hearings a year, court officials analyzed visitor flow and made substantial adjustments to accommodate the additional traffic. As a result, anticipated problems of long lines and crowding did not materialize. In fact, many have commented that the CJC seemed less crowded and more efficiently run after the transition to the Zone Court model. Court officials continue to monitor the flow of visitors, judges, staff, and attorneys to ensure smooth operations.

District Attorney's Charging Unit

In most other Pennsylvania Counties, police departments file criminal charges directly with the courts. In Philadelphia, however, the District Attorney's Office has elected to exercise

¹⁹Certain cases, such as homicide and sexual assault cases, are excluded from Zone Court.

the charging function, and its prosecutors file charges based on recommendations made by the police department. In the past, Municipal Court officials had expressed concerns that the District Attorney's Office was charging indiscriminately, and in many cases overcharging, which required Municipal Court judges at preliminary hearings to sort out the appropriate charges. This concern is supported, to some extent, by withdrawal and dismissal rates that approached 50 percent during the period of the *Inquirer's* analysis.²⁰

To address this problem, in January, 2010 the District Attorney made two key changes to improve the quality of charging decisions made by the District Attorney's Office. First, he appointed a prosecutor with courtroom experience as Chief of the Charging Unit and assigned seasoned senior attorneys to serve in the unit. Second, with the assistance of the police department, the District Attorney's Office developed investigative protocols to promote more thorough police work and ensure that cases presented to the District Attorney were supported by sound evidence.

Charging accurately from the outset allows cases to enter the system on the right track, which has several benefits: it reduces the instances in which misdemeanor charges are reduced to summary charges, or felony charges are reduced to misdemeanor charges, after several listings of the case; it leads to fewer continuances and thereby more prompt adjudications; and it enables the early identification of cases that are appropriate for diversion programs such as AMP or SAM.

The impact of these measures to date has been inconclusive. One indication is the percentage of cases in which the District Attorney's Office declined police recommendations to charge felonies and instead charged misdemeanors. In 2010, felony declinations rose to 11.5 percent of felony recommendations. However, by the first quarter of 2011, the declination rate had returned to its previous level.

²⁰However, withdrawal and dismissal rates may also be affected by witness intimidation, witness fatigue and other factors.

Charging Decisions – District Attorney’s Office										
	2011 1st QTR		2010		2009		2008		2007	
	Police	DA	Police	DA	Police	DA	Police	DA	Police	DA
Felony	6,850	6,163	29,193	25,825	31,907	28,674	35,007	32,067	34,496	31,806
Misdemeanor	6,459	7,146	26,107	29,385	26,608	29,841	27,767	30,707	25,474	28,164
TOTAL	13,309		55,210		58,515		62,774		59,970	
Recommended Felonies Charged as Misdemeanors	687		3,368		3,233		2,940		2,690	
% of Recommended Felonies Charged as Misdemeanors	10.0%		11.5%		10.1%		8.4%		7.8%	

Other indicators of the quality of charging decisions are withdrawal, dismissal and held-for-court rates at preliminary hearings, which have consistently been improving, as mentioned previously.

Additional Initiatives under Consideration

Other opportunities exist to improve case processing in Municipal Court courtrooms. Some, such as enforcing the cap on the number of criminal cases that a defense attorney is permitted to handle at one time, can be implemented administratively. Others, such as merging the Philadelphia Municipal Court into the Court of Common Pleas, require amending the Pennsylvania Constitution.

Initiatives currently under consideration include:

- Reducing the length of time between continuances for defendants charged with rape and murder by adding an additional court day per week to hear these preliminary hearings
- Reducing the size of case lists for misdemeanor trials to a maximum of 20 cases per day

- Expanding the role of Arraignment Court Magistrates to handle routine matters that do not require a judge
- Eliminating suppression hearings in Municipal Court
- Assigning experienced prosecutors and defenders to bench warrant revocation hearings to resolve cases at the revocation hearing instead of automatically relisting the case for a plea
- Enforcing the timeliness with which Municipal Court judges appear on the bench
- Developing a bench book for judges referencing common rules, procedures and practices and providing, in particular for Municipal Court judges, more continuing legal education
- Soliciting input from court personnel and others (defense bar, District Attorney's Office, victims, etc.) regarding suggestions for improvements in the system
- Developing a team approach to courtroom operations by cross-training court personnel so they can share job duties and responsibilities
- Increasing hiring standards for all court personnel, developing better training manuals and providing regular training

Instituting an internal audit function within the FJD to bring a disciplined systematic approach to evaluating and improving the operations of the court system

II. ENSURING THE APPEARANCE OF DEFENDANTS AT JUDICIAL PROCEEDINGS: BAIL, PRETRIAL RELEASE AND BENCH WARRANTS

The Initiative's second area of focus was the FJD's processes for ensuring the appearance of criminal defendants at judicial proceedings. The FJD suffers from a severe breakdown in this area. The *Inquirer*, Temple University Professor John Goldkamp,²¹ and the Philadelphia

²¹Goldkamp, John S., E. Rely Vilcica, Doris Weiland, and Wang Ke, "Confinement and the Justice Process in Philadelphia: Its Features and Implications for Planning." Crime and Justice Research Center, November, 2006.

Research Institute of the Pew Charitable Trusts,²² in research that predated the Initiative, each independently found failure-to-appear (“FTA”) rates in excess of 30 percent in Philadelphia. The Pretrial Justice Institute, which assessed the court’s bail program, confirmed that figure, calculating the FTA rate in the range of 33 percent.²³ Moreover, \$1 billion is owed by defendants who violated the conditions of their bail by failing to appear in

court, and, as of the beginning of 2010, approximately 61,000 bench warrants were outstanding, some of which were issued as long as fifty years ago. John F. Patrignani, acting United States

- A failure-to-appear rate in excess of 30 percent
- \$1 billion in bail owed by defendants who had jumped bail
- 61,000 outstanding bench warrants dating back fifty years

Marshall of the Eastern District of Pennsylvania, has called Philadelphia’s fugitive problem “one of the worst in the country.”²⁴

The willful failure of a criminal defendant to appear at a judicial proceeding risks undermining the mission of the criminal courts in at least three ways. First, it diminishes the efficiency of the judicial process by wasting the resources of the judiciary, law enforcement and civilian witnesses who take time from their lives and incur personal expenses to attend criminal proceedings. Second, it increases the likelihood that the case will not be adjudicated on its merits because multiple listings wear out witnesses and reduce the likelihood that they will appear at subsequent listings. Third, it undermines public confidence in the administration of justice and, even further, breeds disrespect for the criminal justice system, particularly when defendants suffer no consequences for

²² Shubik-Richards, Claire. “Philadelphia’s Crowded and Costly Jails: The Search for Safe Solutions.” The Pew Charitable Trusts, May 2010.

²³ For years, the FJD has used a different formula for calculating its FTA rate and has reported that its FTA rate has been in the range of 6.1 percent. The PJI, in connection with its engagement by the FJD, analyzed this discrepancy and reported that the FJD’s “6.1 percent rate also included all defendants who were incarcerated at the time of their scheduled appearance, thus having no opportunity to fail to appear. As a result, the 6.1 percent figure is not a valid measure of the extent of failure to appear in Philadelphia.” Clark, John, Daniel Peterca, and Stuart Cameron, “Assessment of Pretrial Services in Philadelphia.” Pretrial Justice Institute, February 2011.

²⁴ McCoy, Craig R, and Nancy Phillips. “U.S. Marshals Offer Phila. Help with Fugitives.” *Philadelphia Inquirer*, 2/26/2010.

disregarding judicial process; as a result, victims and witnesses are often more reluctant to cooperate with the police.²⁵

The Pretrial Services Division of Common Pleas Court (“Pretrial Services”) is responsible for supervising criminal defendants who are released prior to trial. Pretrial Services assesses each defendant after arrest using an empirically derived matrix designed to determine the likelihood of the defendant appearing in court. The matrix was last updated in 1995 and should be revised.

An Arraignment Court magistrate²⁶ uses the pretrial assessment to arraign the defendant, to determine whether the defendant should be released pretrial, and to determine the terms of that release – whether and how much bail is required and the level of supervision upon release. In 2010, 61 percent of defendants arraigned in Municipal Court were required to post bail; 37 percent were released with some level of supervision; and less than one percent were held without bail.²⁷

One of the key reasons for Philadelphia’s high FTA rate is that there are few meaningful consequences for a defendant who fails to appear. For example, defendants who are released with some level of supervision are required to attend an orientation within four days of their release. In 2009, more than half of these defendants - 56 percent - did not appear for the orientation.²⁸ The only consequence these defendants suffer as a result of their violation of the release conditions is the receipt of a letter from Pretrial Services informing them of their violation. No further action is taken.

In the past, stakeholders pointed to the decades-long problem with prison overcrowding as the rationale for many criminal justice decisions, including decisions made about the terms and conditions of a defendant’s pretrial release. But the prison population declined by 23

²⁵Phillips, Walter M., Esquire, "Report of Subcommittee on Trying Fugitive Defendants in Absentia," May 21, 2010.

²⁶Arraignment Court Magistrates are judicial officers appointed by the Municipal Court Board of Judges.

²⁷"Trends Report for Common Pleas Court," 2008-2009-2010.

²⁸Clark, John, Daniel Peterca, and Stuart Cameron, "Assessment of Pretrial Services in Philadelphia." Pretrial Justice Institute, February 2011.

percent, from 9,787 to 7,575²⁹ inmates, between January 2009 and January 2011, effectively eliminating the overcrowding problem. This extra capacity should be used in conjunction with revised pretrial release procedures to penalize effectively those defendants who fail to appear; instead, the city reduced funding to the prisons by \$15 million.³⁰ The result is that defendants released pretrial still have little incentive to appear in court because failing to appear in Philadelphia rarely leads to pretrial incarceration.

The Initiative resolved to examine the FJD’s current programs and explore alternatives to reduce the FTA rate and restore public confidence in the criminal justice system. To that end, the Initiative engaged the PJI, recognized experts in the field, to evaluate Philadelphia’s pretrial release system. Funded by a grant awarded by the Bureau of Justice Assistance,³¹ PJI undertook an assessment of Philadelphia’s pretrial release decision-process and an assessment of the operations of the FJD’s Pretrial Services Division. PJI issued its report,

“Assessment of Pretrial Services in Philadelphia,” on February 17, 2011. PJI concluded that Philadelphia was incarcerating defendants who posed a low risk of flight because they were unable to post the 10 percent cash bail, while releasing other defendants who posed a greater risk of flight who were able to post the 10 percent cash bail.

PJI recommended that pretrial release options be better tailored to the risks posed by individual defendants, and recommended the implementation of a system-wide policy with “meaningful, swift and certain” responses for failing to appear in court and for violating pretrial release conditions. It stressed that its

recommendations for changing the “culture of disrespect” could not be implemented without a substantial commitment of additional resources.

[The] haphazard approach in dealing with fugitives may well explain why Philadelphia has one of the highest fugitive rates in the country and why so many defendants thumb their noses at the system.

Walter M. Phillips, Esquire

“Report of Subcommittee on Trying Fugitive Defendants in Absentia”

²⁹“Trends Report for Common Pleas Court,” 2008-2009-2010.

³⁰Shubik-Richards, Claire. “Philadelphia’s Crowded and Costly Jails: The Search for Safe Solutions.” The Pew Charitable Trusts, May 2010.

³¹The Bureau of Justice Assistance is a component of the Office of Justice Programs, which includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime.

In addition to examining the FJD's current Pretrial Services Program and its bail matrix, the Initiative resolved to examine alternative bail models, including cash bail models using private bail companies, and hybrid models. Advisory Board members Senior Judge John L. Braxton of the Philadelphia Common Pleas Court, Charles Grant, an attorney in private practice and Professor Steven Chanenson, co-chaired the subcommittee to examine these issues. Individuals involved with these issues on a day-to-day basis were asked to consider the types of changes required and how those changes could be instituted.

Thomas McCaffrey, Director, Pretrial Services Department, Allegheny County, made a presentation to the Advisory Board regarding Allegheny County's 2007 transition to a non-monetary bond system. Under its new system, Allegheny County Pretrial Services makes non-monetary release recommendations derived from a risk-based assessment, but judges are not required to follow the recommendations and may set cash bail for some defendants. Director McCaffrey described the process and shared the results of what he described as a "very progressive pretrial program aligned with notable best practices in the pretrial field."

The Initiative ultimately determined that reforms were needed to improve the pretrial release program and the bail system in order to lower the FTA rate in Philadelphia. As with case processing, many of these reforms involved amendments to the Pennsylvania Rules of Criminal Procedure.

Additional reforms to lower the FTA rate focused on:

- The FJD's assumption of the responsibilities of the former Clerk of Quarter Sessions to restore functionality to the Clerk's bail responsibilities
- Reforming the bail system to impose meaningful sanctions on those who violate the conditions of release
- Reducing the inventory of outstanding bench warrants
- Reducing bring-down failures by easing the burden on the Philadelphia Sheriff's Office for transporting incarcerated defendants to court from state prison

Reform Initiatives

Amended Rules of Criminal Procedure

It was the consensus of the Initiative that a highly effective measure to reduce the failure-to-appear rate would be standardizing the use of trials in absentia.³² When defendants learn that the consequence of failing to appear for court is not merely the issuance of a bench warrant but also that their case will proceed in their absence and, upon conviction, sentence will be imposed, then defendants will be much more likely to appear for their trial court listing. Trials in absentia are permitted under existing law but have not been standard practice in the FJD.

Accordingly, in response to the Initiative's recommendations and advocacy, in 2010, the Supreme Court amended the Pa.R.C.P. relating to trials in absentia. First, the Supreme Court amended Rule 1003 of the Pa.R.C.P. to require that defendants be advised at their preliminary arraignments that their preliminary hearings will proceed in their absence if they fail to appear without good cause after notice of the scheduled hearing. Although existing rules already required the preliminary hearing to proceed in that situation, there was no provision for *notifying* defendants that the hearing would proceed without them. Specifically, the amended rule requires that defendants be advised that:

... failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued.

In the seven months immediately following the amendment of Rule 1003, which provided for preliminary hearings in absentia upon the request of the District Attorney, 83 such

³²Advisory Board Member Walter M. Phillips, Jr., an attorney in private practice who is also the former Chairman of the Pennsylvania Commission on Crime and Delinquency (PCCD), submitted a report to the Advisory Board, "Trying Fugitive Defendants in Absentia," that found: (1) both the United States Supreme Court and Pennsylvania courts have held that trials in absentia are not unconstitutional; (2) New York City, which makes extensive use of trials in absentia, has a fugitive rate of 16 percent, compared to Philadelphia's 30 percent.

hearings were held. However, since April, the number of preliminary hearings in absentia has declined to fewer than 10 per month, and in November 2010, no preliminary hearings in absentia were held.

As described above in the section on case processing, on December 22, 2010, the Supreme

... the [previous] Clerk of Quarter Sessions was “lacking any serious mechanism to collect some of the \$1 billion dollars in outstanding bail money owed from defendants who jumped bail.

Alan Butkovitz, City Controller

Testimony before the Pennsylvania
Senate Judiciary Committee
August 9, 2010

Court amended Rule 1002 of the Pa.R.C.P. to require that defendants who fail to appear for non-traffic summary cases be tried in absentia “unless the judge determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence.” Similarly to Rule 1003, this rule requires the court to “advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial de novo.”³³ This rule has

substantially reduced the number of bench warrants issued in summary cases. Most failures to appear now result in a conviction in absentia, the imposition of a fine, and the referral of the judgment to a private agency for collection.

Establishment of Clerk of Courts Office within the FJD

Before its dissolution in 2010, the Office of the Clerk of Quarter Sessions had a \$4.5 million annual budget and was responsible for collecting bail money, collecting fines in criminal cases, maintaining criminal court records, and staffing criminal courtrooms with court clerks. The office faced intense criticism for many years and over many issues, including its inability to account for the majority of the money paid in 10 percent bail posted by defendants and its failure to collect the remaining 90 percent bail that various judges had ordered sued out (“BOSO”) for defendants who had failed to appear.

³³Supreme Court of Pennsylvania, No 396, Criminal Procedural Rules, In Re: Amendment of Rule 1002 of the Pennsylvania Rules of Criminal Procedure, December 22, 2010.

In April 2010, these issues led the Supreme Court to issue an order for the FJD to assume the functions of the Office of the Clerk of Quarter Sessions. In October 2010, City Council and Mayor Michael A. Nutter officially abolished the Office of the Clerk of Quarter Sessions and merged its functions into the newly established Office of the Clerk of Courts within the FJD. The new office commenced a review of the office's financial records, updated files with the most accurate information possible, and established policies and procedures to ensure the accurate accounting of funds due to the court and to defendants. The review is ongoing at the time of this report and is expected to be completed within six to twelve months.

Reforms in Bail Collections and Returns

The FJD has administered the bail bond process for almost forty years. Under the current system, defendants pay 10 percent of the set bail amount to the court as a condition of release, and only owe the remaining 90 percent if they violate a condition of release, such as the requirement to appear at all judicial proceedings in the case.

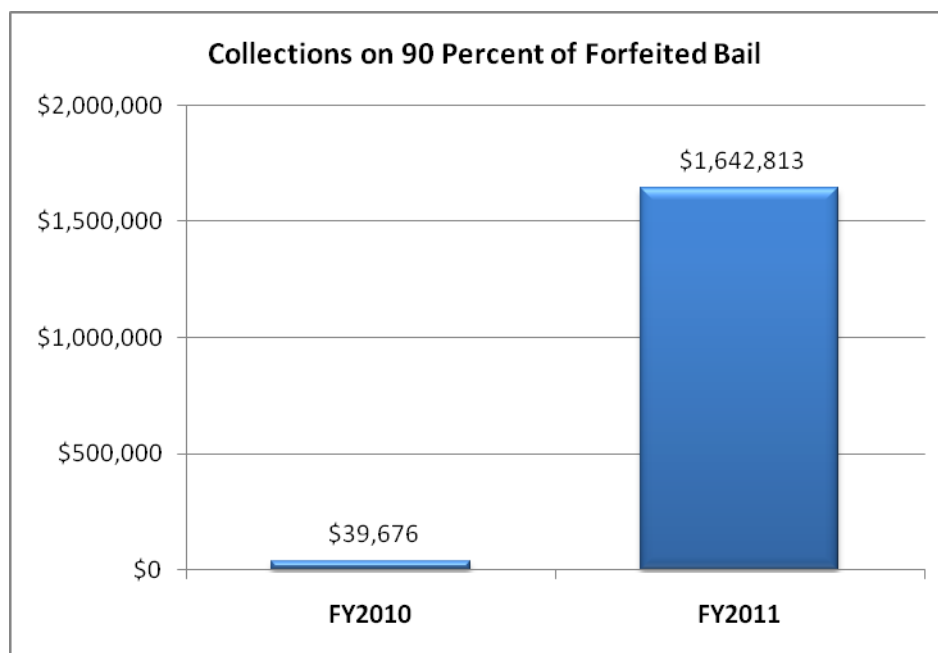
Prior to its dissolution, the Office of the Clerk of Quarter Sessions systematically failed to execute judicial orders to collect the forfeited 90 percent bail owed by violating defendants. As such, the practical consequence of violating the conditions of bail in Philadelphia was reduced to forfeiting the 10 percent posted bail deposit.

In the summer of 2010, the FJD instituted an aggressive program to pursue the more than 320,000 individuals who owed in excess of \$1.5 billion in uncollected bail, court fees, fines and restitution. About \$1 billion of that amount represented the 90 percent of bail owed by defendants who had failed to appear in court. As an initial step, the FJD began requiring defendants whose cases had concluded to satisfy outstanding obligations to the court for bail, fines, fees and restitution before their 10 percent posted bail was returned.³⁴

In addition, in July 2010, the court began sending letters to individuals with outstanding balances instructing them to contact the court to establish a payment plan. As a result of

³⁴Prior to 2010, the posted bail was released without determining whether the defendant owed other obligations to the court.

this initiative, collections of the 90 percent of forfeited bail increased by \$1.6 million for the fiscal year beginning July 1, 2010 over the same period in 2009.



In January 2011, the FJD granted a two-month amnesty period to individuals with outstanding balances, allowing them to contact the court and establish a payment plan prior to February 28, 2011, without incurring the standard penalties for nonpayment. Individuals with balances were informed that, if they failed to contact the FJD by that date, the FJD would pursue aggressive measures to collect the debt, including seizing property and garnishing wages. During the moratorium, collections of the 90 percent of forfeited bail increased by \$437,000 over the same period in the prior year, and average monthly collections have increased from \$3,300 a month to \$137,000 a month.

The FJD has begun referring those who did not respond to the letters to third-party collection agencies, which will charge the debtors an additional 17 percent fee to collect the outstanding balances. As a third step in the escalation of efforts to collect these funds, the FJD has started to assign cases to private law firms for collection, with the law firms earning 25 percent of funds collected. To date, more than \$270 million in outstanding bail, fees and restitution claims have been assigned to six law firms. To manage these efforts, the FJD has

established the Office of Court Compliance, headed by a Deputy Court Administrator who oversees a staff of six individuals.

For various reasons – poor record keeping by the Clerk of Quarter Sessions, the age of most of the debt and a 70 percent unemployment rate among defendants – a large portion of the outstanding debt realistically will never be collected. However, the reforms implemented to date will ensure the responsible management of these critical processes going forward.

Reduction of Inventory of Outstanding Bench Warrants

In early 2010, Chief Justice Castille directed the District Attorney's Office to review its cases which had outstanding bench warrants, identify cases with which the District Attorney would not proceed if the defendants were apprehended, and petition the court to withdraw the bench warrants on those cases. After conducting the review, the District Attorney's Office petitioned the Court of Common Pleas to withdraw 21,210 bench warrants on cases it determined it would not pursue even if the defendants were apprehended, either because of the age of the case or the nature of the charge. In July and August 2010, Judge D. Webster Keogh, Administrative Judge, Trial Division, Court of Common Pleas, and Judge Marsha H. Neifield, President Judge, Municipal Court, granted the District Attorney's petitions and issued two orders withdrawing the selected warrants issued between 1969 and 1998. The order provided, in part:

... in order to ensure that current fugitives who have failed to appear for court can be effectively pursued, to efficiently use available resources, and to implement efforts to enter all current bench warrants into the National Crime Information Center (NCIC) computer system, it is hereby ORDERED that non-viable and out-of-date arrest or bench warrants issued ... shall be cancelled.³⁵

As of December 31, 2010, the total bench warrant inventory was 41,680 – one-third less than it had been just six months earlier.

³⁵CP-51-AD-0000001-2010, July 13, 2010 Order, In Re: Cancellation of Out-of-Date First Judicial District Bench Warrants, 1969-1980; and CP-51-AD-0000002-2010, August 12, 2010, In Re: Cancellation of Out-of-Date First Judicial District Bench Warrants, 1981-1998.

While some members of the public and the media questioned the “wholesale dismissal”³⁶ of bench warrants, the District Attorney stressed that reducing the number of outstanding bench warrants permitted the system to prioritize the most serious cases; in fact, it facilitated the entry of the remaining active warrants into the FBI’s National Crime Information Center database. The District Attorney also assured the public that the withdrawal of a bench warrant did not preclude the case from being re-opened and prosecuted, if appropriate.

Philadelphia’s bench warrant inventory will be further reduced only if the number of bench warrants executed exceeds the number of new warrants issued. Additional resources are needed to execute more bench warrants, but measures previously discussed to impose consequences on defendants who fail to appear will likely reduce the number of bench warrants issued.

Reduction of Bring-Down Failures

Another circumstance that contributed to defendants not appearing in court was that the Philadelphia Sheriff’s Office, which was responsible for transporting defendants incarcerated in state prisons to court on the day of their hearings, often failed to do so because of the logistical complexities involved. Frequently these prisoners were incarcerated in state facilities located a substantial distance from Philadelphia.³⁷

To address this problem, the Pennsylvania General Assembly enacted Act 82 in September 2008. Effective in April 2009, the act requires the Pennsylvania Department of Corrections, rather than the Philadelphia Sheriff, to transport state prisoners to the state prison nearest to the county where the defendant is scheduled to appear in court. This relieves the counties of the responsibility for transporting prisoners from state prisons in distant counties to their county prison prior to the hearing. County sheriffs are now responsible

³⁶“When justice gets lost: Wholesale dismissal of cases may be right - but was handled poorly.” *Philadelphia Daily News*, 11/17/2010.

³⁷Bring-down failures have the same consequences for victims, witnesses and police officers as do willful failures to appear, and they waste judicial resources in the same way.

only for transporting the defendant from the nearest state prison to the county courthouse on the day of the hearing.

At about the same time, the Philadelphia Managing Director's Office implemented new measures to reduce the number of prisoner bring-down orders that were routinely being cancelled. These measures, collectively, have substantially reduced bring-down failures. Chip Junod, Director of Criminal Justice Population Management for the City of Philadelphia, reported that bring down failures have been "miniscule" since the measures were adopted. Junod's statistics show that at the outset of the new program, an average of 59 defendants per week were transported to Philadelphia from state prisons. During a recent 10-week period, that number had fallen to an average of 35 defendants per week, suggesting that the measures have reduced the relisting of hearings for defendants who were not brought down.

Next Steps

To continue the progress that has been made over the last year, the Initiative intends to follow up on several additional reforms.

First, to strengthen the rules regarding trials in absentia, the Initiative has sought to amend Pa.R.C.P. 602, Presence of the Defendant, to replace the current language "The defendant's absence without cause shall not preclude proceeding with the trial" with a requirement that the case proceed in absentia upon the request of the District Attorney's Office:

If the defendant fails to appear at any proceeding without establishing cause for the failure, the court shall upon request of the Commonwealth conduct the proceeding, including the return of the verdict and the imposition of sentence, in the defendant's absence.

A related amendment to Pa.R.C.P. 526, Conditions of Bail Bond, would require defendants released on bail to be notified that the case will proceed in their absence if they fail to appear without cause.

In addition, based on PJI's recommendation, the Initiative will pursue funding for a validation study of Philadelphia's pretrial release guidelines. Given current economic constraints, prior to launching some of the suggested changes, the Pretrial Services Division will evaluate the costs and the potential cost savings of: (1) expanding pretrial release options by tailoring options to individuals based on the risk the individual poses; and (2) using a non-cash bail system entirely. In conjunction with other criminal justice agencies, the court must establish "meaningful, swift and certain"³⁸ responses when defendants violate release requirements, including the opportunity to incarcerate more violators given the falling prison population.

The Initiative intends to evaluate the advantages and disadvantages of increasing the use of commercial bail companies, including the impact on a defendant's ability to be released pretrial by posting bail, the effect of commercial bail alternatives on the failure to appear rate, and the economic impact on the FJD's budget of a commercial bail alternative.

The Initiative has determined that the judicial system should develop benchmarks for measuring the system's effectiveness in ensuring the appearance of criminal defendants at judicial proceedings and to quantify the impact of specific reforms. The Initiative recommends developing monthly and yearly metrics regarding a defendant-based failure to appear rate, including the ability to evaluate the failure-to-appear rate for each pretrial release option. The Initiative recommends maintaining a monthly bench warrant inventory report, analyzing the impact of holding hearings in absentia, evaluating how frequently judges are conducting hearings in absentia, and compiling the results for such hearings.

The Initiative further recommends that the Pretrial Service Division's Warrant Unit continue to work with the Eastern District of Pennsylvania's U.S. Marshal's Fugitive Task Force, as well as the FBI's Philadelphia Violent Crime/Fugitive Task Force. Given the limited resources of the FJD's Warrant Unit, inter-agency coordination and cooperation is critical to reduce the

³⁸Clark, John, Daniel Peterca, and Stuart Cameron, "Assessment of Pretrial Services in Philadelphia." Pretrial Justice Institute, February 2011.

number of outstanding bench warrants. In addition, the Initiative recommends pursuing additional federal funding to capture Philadelphia fugitives.

III. WITNESS INTIMIDATION

The Initiative's third area of focus was witness intimidation.

A core tenet of fairness in the American criminal justice system is the right of every defendant to confront his or her accuser:

In all criminal prosecutions the accused hath a right to ... to meet the witnesses face to face³⁹

This right of confrontation requires the victim of a crime to come face-to-face with the person accused of committing the offense. When the crime is violent, and the victim, witnesses and defendant all reside in the same community, this face-to-face encounter can seem particularly daunting. In these situations, victims and witnesses are often vulnerable to intimidation by defendants and their supporters; such intimidation tactics often result in

victims and witnesses changing their testimony or not appearing in court at all.

"Without the witnesses, you don't have no case. No witness, no crime."

"These rats deserve to die, right or wrong? My war is with the rats. I'm a hunt every last one bitch that I can, and kill 'em."

Kaboni Savage, convicted drug dealer

In a conversation secretly recorded by the FBI, convicted drug dealer Kaboni Savage, a Philadelphia defendant who was accused in 2009 of ordering multiple witness-related murders, including the murder of four children, said: "Without the witnesses, you don't have no case. No witness, no crime."

Savage later added: "These rats deserve to die, right or wrong? My war is with the rats. I'm a hunt every last one bitch that I can, and kill 'em."⁴⁰

Savage's expressed intention to murder witnesses represents intimidation at its extreme, but witness intimidation takes other forms as well: physical violence, explicit threats of

³⁹"Constitution of the Commonwealth of Pennsylvania." Article I, § 9.

⁴⁰Nancy Phillips, Craig R. McCoy and Dylan Purcell, "Witnesses fear reprisals, and cases crumble." *Philadelphia Inquirer*, 12/14/2009.

physical violence, property damage, looks, gestures and other threats, such as challenges to child custody and immigration status. Intimidation may be conveyed verbally, through notes, letters and nuisance phone calls, and by parking or loitering outside the homes of witnesses. It may also be directed at witnesses' children, spouses, parents and other family members, friends, and neighbors.⁴¹

The *Inquirer* reported in the second article of its series, "Justice: Delayed, Dismissed, Denied," that 13 witnesses were killed in the last 10 years as a result of testimony they were expected to give; 300 people each year are charged with witness intimidation; and the conviction rate for witness intimidation cases is 28 percent.⁴²

Witness intimidation has an insidious and deleterious effect on the entire criminal justice system, because the very testimony needed to achieve justice can put the victims' and witnesses' safety in jeopardy. Witness intimidation can be difficult for law enforcement to identify and quantify, which makes it particularly insidious. Prosecutors, detectives, and even some defense lawyers say witness fear has become an unspoken factor in virtually every court case involving violent crime in Philadelphia.

Michael Kane, former Executive Director of the Pennsylvania Commission on Crime and Delinquency, has observed:

Though intimidation can take place anywhere and a defendant who is determined to dissuade a victim or witness will seek him or her out, often intimidation is a crime of opportunity precipitated by the victim or witness coming into close proximity of the accused or allies. That opportunity is nowhere more likely than when the parties are at the courthouse during scheduled court appearances. Even if not subjected to actual threatening conduct, victims and witnesses often feel vulnerable to potential violence

⁴¹US Department of Justice Office of Community Oriented Policing Services, Problem-Oriented Guides for Police Problem-Specific Guides Series, No. 42, July 2006.

⁴²Phillips, Nancy, Craig R. McCoy, and Dylan Purcell. "Witnesses fear reprisals and cases crumble." *Philadelphia Inquirer*, 12/14/2009.

simply by having to appear in court at the same time as the defendant. Often, the uncertainty is sufficient to cause them to fail to appear.⁴³

Courts have a complex but critical role in affording defendants the right to confront witnesses while assuring witnesses that they can testify without fear of retaliation. The Initiative examined several reforms to address these issues:

- The use of indicting grand juries as an alternative to preliminary hearings
- The use of video surveillance cameras in and around courtrooms
- The publication of a bench book for Pennsylvania judges addressing witness intimidation

Reform Initiatives

Proposed Amendments to the Rules of Criminal Procedure

In an effort to curb witness intimidation and its deleterious effects on criminal justice, and in response to the Initiative's recommendations, the Criminal Procedure Rules Committee of the Pennsylvania Supreme Court is currently reviewing a proposed rule change that would authorize the use of indicting grand juries as an alternative to preliminary hearings in certain instances. The proposed rule would give prosecutors the option of presenting a case to a grand jury in a secret proceeding as an alternative to presenting the evidence in open court at a preliminary hearing, and would preserve the rights of defendants to challenge the evidence before trial.⁴⁴

⁴³Kane, Michael J. "Use of Video Surveillance In and Near Courtrooms to Reduce Victim and Witness Intimidation," 2010.

⁴⁴The subcommittee's proposal was controversial for some members of the Advisory Board. Some were concerned that prosecutors might abuse the grand jury powers, espousing a common complaint that the grand jury serves overzealous prosecutors, and as such does not protect defendants, as was the original intent of the framers of the U.S. Constitution. These members recommended pursuing, as an alternative, reforms to the preliminary hearing process that would protect witnesses from intimidation. Some members advocated that if indicting grand juries were restored, stringent controls should be imposed on District Attorneys and the use of grand juries should be restricted to a very small percentage of cases.

Under the current legal structure, the preliminary hearing is Pennsylvania's primary mechanism for establishing the requisite probable cause to try a defendant in the Court of Common Pleas.⁴⁵ Forty-eight states, however, regularly use indicting grand juries to mitigate the risk of witness intimidation, especially in cases involving violent crimes.

Advisory Board members A. Roy DeCaro, Esquire, and Walter M. Phillips, Jr., Esquire, co-chaired a subcommittee that researched both witness intimidation and the grand jury process, and submitted a comprehensive report recommending that the rules of criminal procedure be amended to allow prosecutors, at their option, to proceed by way of grand jury indictment as an alternative to a preliminary hearing in certain cases.

The Grand Jury Subcommittee reported:

One of the root causes in Philadelphia of witness reluctance to testify, either as a victim or as merely an eyewitness, can be found in how charges are processed from arrest, arraignment, preliminary hearing and finally to the filing of an information by the District Attorney....

Under Philadelphia's current system, witnesses and victims of a crime often have to appear multiple times at preliminary hearings, because it is not uncommon for hearings to be postponed several times. Each time, they must go to police districts or the CJC, where most preliminary hearings are held, and where they find themselves in close quarters with the defendants against whom they are to testify as well as the defendant's friends and family. Then, when the hearing does take place, they are subjected to harsh cross-examination by hostile defense counsel.

If the District Attorney had the option of proceeding directly from arraignment to an indicting grand jury, rather than having to go through a preliminary hearing, it would eliminate these problems.

The subcommittee concluded that proceeding by grand jury indictment rather than by preliminary hearing in certain cases would substantially address the problem of witness

⁴⁵Although Pa.R.C.P 565 permits the Court of Common Pleas to grant the Commonwealth leave to file an information without a preliminary hearing upon a showing of good cause that a preliminary hearing cannot be held, the comment to the rule makes clear that its applicability is "limited to exceptional circumstances only." Accordingly, the rule is infrequently invoked.

intimidation in several ways. First, the victim and witnesses would no longer have to interact directly with the defendant prior to trial. In addition, prosecutors would be able to use grand jury testimony in future proceedings in the event a victim or witness subsequently changed his or her testimony. As a result, witness intimidation would be less effective and therefore less likely to occur. Finally, allowing the use of indicting grand juries would reduce the number of times victims and witnesses must appear since, unlike preliminary hearings, grand jury proceedings are rarely postponed.⁴⁶

Videography in the Courthouse

The Initiative has recommended to the Supreme Court that video surveillance cameras be used in and around courtrooms to reduce instances of witness intimidation. Because Rule 112 of the rules of criminal procedure prohibits “the taking of photographs, video, or motion pictures of any judicial proceedings or in the hearing room or courtroom or its environs during the judicial proceedings,” cameras would be directed at courtroom galleries, not at the proceedings, and there would be no audio component.

Advisory Board member and former Executive Director of the Pennsylvania Commission on Crime and Delinquency, Michael J. Kane, Esquire, researched whether this measure would violate Rule 112. He advised that because the original purpose of Rule 112 was to prevent the creation of a *de facto* secondary recording of the judicial proceedings, it was unlikely that Rule 112 would be interpreted to prohibit video recording of galleries and corridors “under tightly controlled policies to enhance the court’s own security and that of the litigants, jurors, witnesses and the public.”⁴⁷

⁴⁶DeCaro, A. Roy and Phillips, Walter M. Jr. “Grand Jury Subcommittee Report to the Advisory Board,” 2010.

⁴⁷Kane, Michael J. “Use of Video Surveillance In and Near Courtrooms to Reduce Victim and Witness Intimidation,” 2010.

Bench Book for Pennsylvania Judges

Two Advisory Board members, retired Judge Renée Cardwell Hughes, Court of Common Pleas, and Michael J. Kane, Esquire, were part of a team that developed the bench book “Free to Tell the Truth – Preventing and Combating Intimidation in Court: A Bench Book for Pennsylvania Judges”⁴⁸ – a best practices guide for judges and their staffs that assists in identifying and responding to cases of witness intimidation. The bench book emphasizes the court’s responsibility to create an environment in which truth can be spoken, and encourages judges to be attentive to conduct that might intimidate a witness while fostering an environment that affords the defendant the presumption of innocence.

The following key areas are addressed in the bench book:

- Intimidation both outside and inside the courtroom
- Creating a safe and secure courtroom through:
 - Judicial control of the courtroom
 - Protective orders restricting conduct outside the courtroom
 - Use of an anonymous jury
 - Bail as a deterrent to witness intimidation
 - Excluding spectators
 - Testimony from outside the courtroom
 - Use of the court’s contempt powers

The FJD will continue to provide information and training for judges and other FJD personnel on this important issue.

Ongoing Steps

Some of the reforms addressed earlier in this report will also address the problem of witness intimidation. A reduction in the number of times cases are listed, which is described in

⁴⁸Support for the development of this publication was provided by the Pennsylvania Commission on Crime and Delinquency using federal funds.

Section I, will limit opportunities to intimidate witnesses. The Zone Court model, also described in Section I, provides a safer, more controlled environment, with a heavy concentration of law enforcement personnel near the courtrooms. The coordination of police work schedules within the FJD's case management system will ensure that necessary police personnel are in court to support victims

The District Attorney's Office has worked with the Philadelphia Police Department to develop an investigative protocol to ensure that witness intimidation cases are properly investigated and charged. The department has also begun tracking court dates for witness intimidation cases together with cases involving the underlying crime. The District Attorney's Office now specially assigns each case involving witness intimidation to a single prosecutor who handles the case from outset through resolution.

The FJD is coordinating with the District Attorney's Office to identify cases with claims of witness intimidation early in the process so that the cases can be fast-tracked. Consideration is being given to assigning a specific judge to hear intimidation cases.

The Pennsylvania General Assembly, in its 2011-2012 budget, appropriated \$1.133 million to the Pennsylvania Attorney General's Office to fund local witness protection efforts across the Commonwealth. Historically, 70 percent of the Attorney General's witness protection funds have been directed to Philadelphia.

IV. INFORMATION TECHNOLOGY

As its fourth area of focus, the Initiative examined whether information technology was being used effectively to advance the objectives of the FJD and the larger criminal justice system. Three key areas were examined:

- The integrity and accuracy of case activity information available to FJD officials
- The FJD's capabilities for analyzing data and producing standardized, replicable management reports

- The sharing of information among the criminal justice agencies

To facilitate the Initiative's work in this area, the Court Data Working Group ("CDWG") was established comprised of AOPC and FJD officials, Advisory Board Members Steve Chanenson and Syndi Guido, and principals of Chadwick Associates, Inc.

Technical assistance was provided by the National Training and Technical Assistance Center. As a result, SEARCH, The National Consortium for Justice Information and Statistics, conducted an independent assessment of the current structure and processes for information sharing among Philadelphia's criminal justice stakeholders.⁴⁹

Data Integrity and Accuracy

In the past, the reliability of case activity information in the FJD's electronic files was compromised by the poor data entry practices of court clerks under the former Clerk of Quarter Sessions. While general information about case activity was recorded in the official records, more detailed information, such as the specific reasons for continuances, withdrawals and dismissals, was often lacking. The unavailability of such information made it difficult to determine the exact causes for the court system's poor performance. The transfer of the clerk function to the FJD has addressed part of this problem through better management and training of personnel. However, part of the problem derived from a proliferation of redundant and confusing case activity codes that court clerks are required to use in entering case activity information into the court's case management system. To address this problem, the CDWG has begun a project to revise and streamline case activity codes to ensure that accurate information needed for legal and court administration purposes is captured and entered into the system. As part of this project, the CDWG is developing a guide for court clerks to use in the courtroom, developing training to ensure that clerks are knowledgeable in data entry, and auditing outcomes for quality control purposes.

⁴⁹The technical assistance grant was funded by the Bureau of Justice Assistance of the United States Department of Justice.

Data Analysis and Standardized Reporting

The CDWG also examined the FJD's resources for analyzing case activity information and producing management reports.

The FJD has used the AOPC's Common Pleas Case Management System ("CPCMS") application for case management since the fall of 2006. CPCMS provides case management, accounting and reporting functions to every judicial district in the Commonwealth. While AOPC information technology officials work with FJD officials to address the FJD's case processing, data analysis and reporting needs, the FJD's volume of cases, complex structure and diversity of specialized programs require resources beyond those available from the AOPC. Upon the recommendation of the CDWG and with the support of the AOPC, the FJD is in the process of hiring a statistician who will report to the Court Administrator and be responsible for analyzing data and assisting in the development of standardized management reports.

During the course of its review of FJD statistics, the CDWG identified a significant error in the transfer of case information from the Philadelphia Police Arrest Reporting System ("PARS") to CPCMS that caused a large number of misdemeanor cases to be tracked as felonies despite that felonies had never been charged. Although this error did not affect individual defendants, it materially distorted the court system's performance in CPCMS reports, for example, by making it appear that a large number of felony cases had resulted in misdemeanor convictions. The Initiative has worked with the FJD and the AOPC to correct this error both prospectively and retroactively so that revised reports showing true trends since 2006 could be produced.

Another challenge to analyzing data was the FJD's use of different case numbering systems for Municipal Court and Common Pleas Court cases which contributed to the initial confusion about the accuracy of the *Inquirer's* analysis. To address this issue, the Municipal

Court is planning to switch from its current case numbering system to the more widely used Offense Tracking Number⁵⁰ (“OTN”) system.

The CDWG is also working to revise past practices in report compilation that resulted in skewed data that then distorted performance data integrity. A number of the problems resulted from the complex operations and two-tiered structure of the FJD’s criminal courts that caused cases to be counted more than once in various categories. For example, when defendants charged with felonies were held on misdemeanor charges only, the case was counted twice, once as a felony disposition at the preliminary hearing, and again as a misdemeanor disposition after the Municipal Court trial.

Improved data integrity and enhanced ability to analyze data and produce standardized, replicable management reports are all necessary precursors to the implementation of performance-based management.

Information Sharing

Information sharing is a critical component of a coordinated, efficient and cost-effective criminal justice system. Ideally, each agency has access to the information it needs to fulfill its own role in the process, while avoiding redundancies and protecting the confidentiality of sensitive information. Toward this end, the Initiative examined how information is shared among Philadelphia’s criminal justice agencies and, on a larger level, among federal, state and local national agencies. As previously described, SEARCH, The National Consortium for Justice Information and Statistics, performed an independent assessment of the current structure and processes for information sharing among Philadelphia’s criminal justice stakeholders.

Information Sharing within the Philadelphia Criminal Justice System

SEARCH conducted a series of site visits with criminal justice agencies to review the information flow within the Philadelphia criminal justice system and to identify gaps in

⁵⁰ The *Inquirer* used OTNs for its analysis.

business processes and technologies. Based on discussions with officials from Municipal Court, the Court of Common Pleas, the AOPC, the Police Department, the District Attorney's Office, the Defender Association, the Sheriff's Office and the Prison System, SEARCH identified three major gaps in Philadelphia's criminal justice information sharing process:

- Lack of a formalized, cross-agency governance structure dedicated to information sharing and technology management
- Lack of a strategic plan for information sharing
- A heavy reliance on paper-based transactions

In its report, SEARCH recommended several measures to address these gaps. Its key recommendation was that Philadelphia establish an information-sharing governance structure to develop and implement a strategic plan for sharing electronic information among its criminal justice agencies.

To implement SEARCH's recommendation, the Philadelphia Criminal Justice Advisory Board ("CJAB") Technology Subcommittee secured a \$100,000 grant from the Pennsylvania Commission on Crime and Delinquency, and an ad hoc interagency group was formed to work with SEARCH to develop the strategic plan. The strategic plan sets forth the group's mission and vision and identifies seven specific goals:

1. Institutionalize the planning and funding process
2. Document the end-to-end criminal justice process in Philadelphia
3. Identify quick wins and develop action plans for expedited implementations
4. Create effective communications for schedules and notifications
5. Support data collection and reporting that reinforce effective system-wide justice administration
6. Reinforce data quality assurance and integrity
7. Create a scalable and flexible technology environment to meet business goals

The subcommittee is currently reviewing proposed governance agreements provided by SEARCH to identify a governance structure that best meets Philadelphia's needs. CJAB continues to support interagency efforts to implement SEARCH's recommendations for achieving a unified system of information sharing.

Information Sharing among Federal, State and Local Agencies

An individual's criminal history is among the most widely used record in the criminal justice system and informs decisions at nearly every stage of criminal justice process. For obvious reasons, it must be current, accurate and detailed, and provide a single comprehensive record of all of the individual's warrants, arrests and case dispositions from jurisdictions nationally. The national repository for criminal history information is the FBI's NCIC database. While NCIC records are broad in scope, they frequently lack disposition information for FJD cases. Conversely, local CPCMS summary reports for individual defendants are comprehensive as to Philadelphia cases, but lack information from other counties and states. Insuring an accurate decision making process presently requires referring to both databases. The missing FJD dispositions in NCIC are the result of a breakdown in the sharing of information among the local, statewide and nationwide information systems. The Initiative is working with the AOPC and the FJD to resolve the information-sharing problems that are currently preventing FJD dispositions from being entered in NCIC.

Other Initiatives

Additional initiatives to improve the information sharing process in Philadelphia's criminal justice system, many developed in response to the SEARCH recommendations, are currently underway. Most notable is an effort to identify and adopt a standard architecture for information exchanges among agencies that conforms to national standards.

The SEARCH report also recommended implementing electronic discovery to enable discovery documents to be transferred earlier in the process from the police to the District

Attorney's Office and then to defense attorneys. Toward this end, the police and the District Attorney's office are working together, with assistance from the CJAB and the SEARCH team, to establish the necessary policies, procedures and mechanisms to accomplish this goal.

In addition to digitizing the discovery process, efforts are underway to eliminate paper transactions wherever possible throughout the court system, including the Clerk's Office and the Probation and Parole Department.

CONCLUSION

This interim report has described the work of the First Judicial District Reform Initiative and specific reforms that have been implemented during the last eighteen months. The Initiative acknowledges the dedication and hard work of the court officials with whom we have worked, particularly those in Municipal Court where many of our efforts have been focused.

It is encouraging that empirical evidence is beginning to show progress in improving the performance of Philadelphia's criminal court system. However, much remains to be done as we work to instill public confidence in this critical institution.

A top priority of the Initiative in the coming months is to complete the implementation of performance based management so that the system's performance can be measured objectively and reported publicly. The Initiative will continue its work of identifying problems and implementing solutions based on established best practices.
