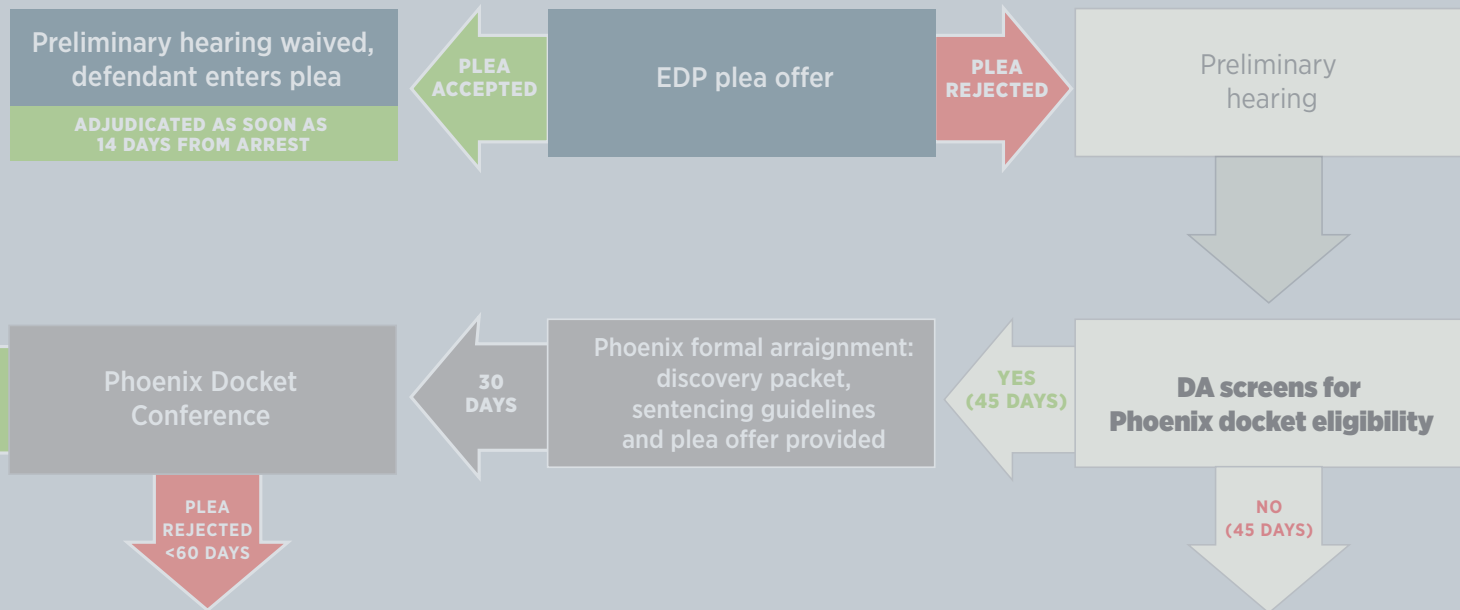


From Postponements to Efficiency: Expedited Case Disposition in Allegheny County Criminal Court



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The Allegheny County
Department of Human Services
One Smithfield Street
Pittsburgh, Pennsylvania 15222

PHONE 412.350.5701
FAX 412.350.4004
www.alleghenycounty.us/dhs

Allegheny County Department of Human Services

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Over several decades, backlogs in the voluminous load of cases adjudicated by Allegheny County Criminal Court gradually cascaded into a system plagued by inefficiencies that further slowed case disposition. Pretrial conference hearings were used primarily to set a trial date; the first scheduled trial date became an opportunity to begin negotiating a resolution of the case; and multiple postponements were common.

But eventually, this spiraling prevalence of backlogs and delays, which created unnecessary work for everyone involved in the process, inspired an effort to develop strategies to work smarter, not just harder, in the pursuit of justice.

Since 2007, the court has dramatically accelerated its handling of criminal cases. More than 3,300 times in 2013, the district attorney's office prepared an expedited plea offer for defendants prior to the preliminary hearing for criminal cases processed through Pittsburgh Municipal Court via both summonses and on-view arrests. In thousands more instances, the prosecution completed discovery and provided evidence at formal arraignment, enabling the case to proceed on a fast track.

While these actions have expedited the handling of lower-level cases, the court has also prioritized clearing its oldest ones. In fact, one judge places his oldest cases on what he calls his "Rocket Docket," setting a trial date about 30 days in the future and declaring that the case will go to trial on that day unless settled.

Statistics on case backlogs show the powerful impact of these changes. In 27 months, from September 2009 to December 2011, the number of active criminal cases in Allegheny County dropped by almost half, from 15,233 to 8,297. As of September 2014, the figure had fallen even further, to 7,327. Current President Judge Jeffrey A. Manning won a prestigious state award for his work in overseeing this dramatic turnaround during his five-year term (2008–2013) as administrative judge.

How did Allegheny County Criminal Court achieve this change? Is faster really better in a criminal court setting? What benefits have been gained, and how can speed of processing be enhanced without endangering fairness? These questions and others are addressed in the following pages.

SPEEDING UP

Efforts to improve court processing began around 2007, under the leadership of Donna Jo McDaniel, then the Criminal Division's Administrative Judge. An Expedited Disposition Program (EDP) was implemented that year, complementing a previously-existing first-offender diversion program and a small expedited docket known as PDQ. However, large numbers of postponements and reschedulings continued to plague court processing.

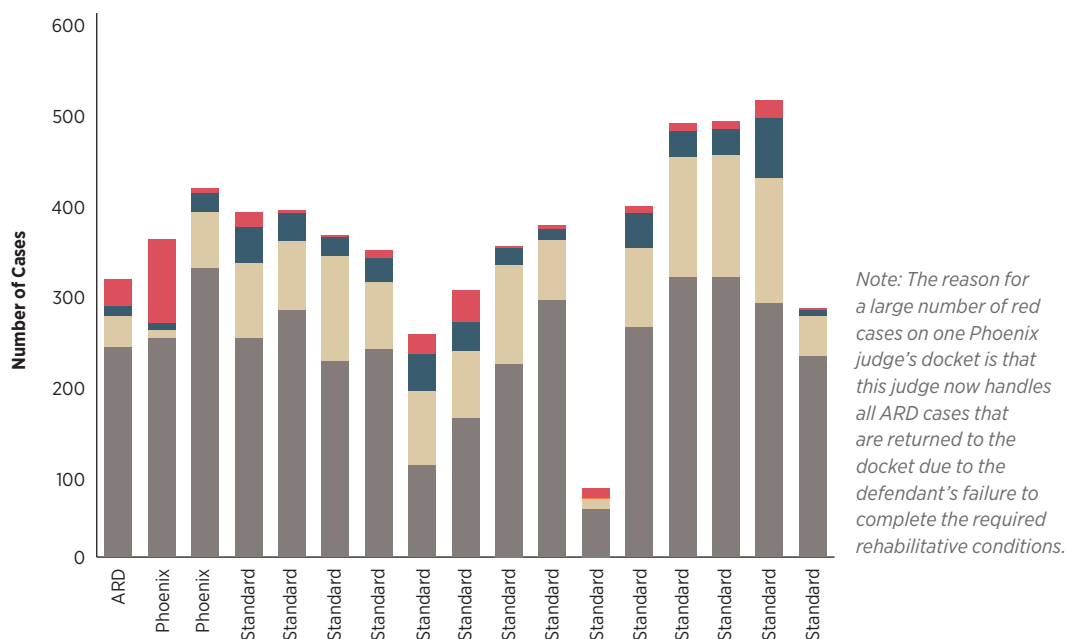
In November 2008, a team of judges, court administrators, the Chief Deputy District Attorney, and the Public Defender attended an intensive training course called "Reducing Delay in Metropolitan Courts," held in Phoenix and presented by the National Center for State Courts (NCSC). The team agreed to focus on three of NCSC's recommended performance measures as ways to improve court processing:

- *Clearance rate*: the number of concluded cases as a percentage of the number of incoming cases. To reduce the court backlog, this figure must be above 100 percent.
- *Time to disposition*: the percentage of cases concluded within a given time frame.
- *Age of active pending caseload*: the length of time since each unresolved case was filed.

Tracking these data enables judges to benchmark their administrative performance and set concrete goals, such as increasing the percentage of cases resolved within 180 days or sharply reducing the number of cases more than a year old. The following chart shows how Criminal Court has tracked each judge’s performance on the statistic of time to disposition. Allegheny County Criminal Court has used this chart to encourage judges to reduce their backlog, especially of the oldest cases. The chart highlights cases that have been pending for 720 days (shown in red) or from 360 to 720 days (in dark blue).

Number of Cases in Each Time Period as of End of October 2014

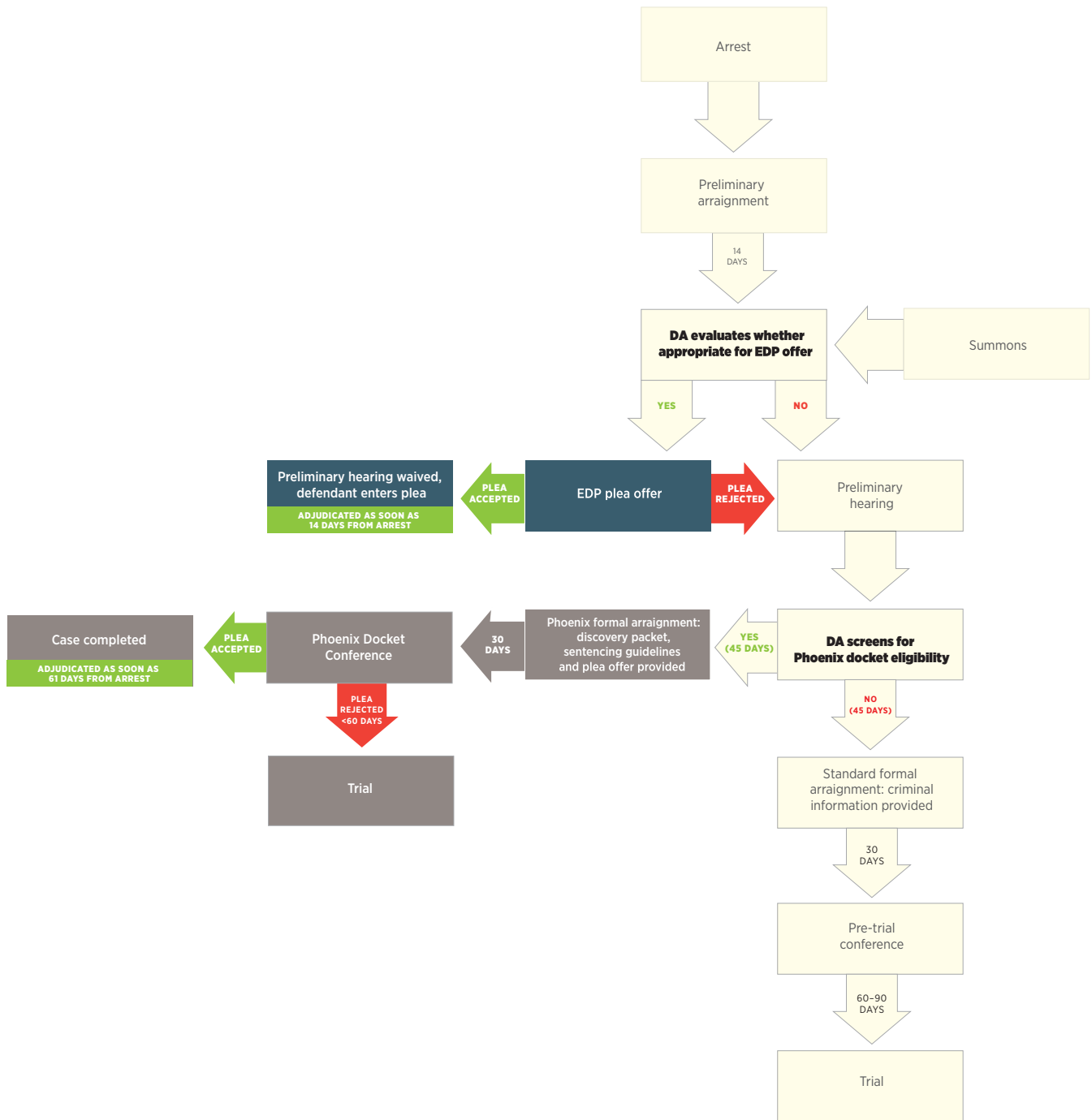
■ 1-180 Days ■ 181-360 Days ■ 361-720 ■ More than 720



Within a few months of attending the NCSC course, Allegheny County implemented a “Phoenix docket” (named after the course location) for a defined list of criminal charges — primarily Driving Under the Influence (DUI) cases with no accident or personal injury, drug-related offenses with no mandatory penalty, and other non-violent misdemeanor cases. In these types of cases, the DA does not need to consult with individual victims and can usually offer to accept a plea that would avoid jail time.

As shown in the accompanying flowchart, the Phoenix docket process deviates from a typical criminal case at the formal arraignment stage, when the charges against the defendant are presented. In a Phoenix case, this is when the defendant also receives the discovery packet, sentencing guidelines and the DA’s plea offer. The case is then scheduled for a call date within four weeks, at which time the defendant can accept the plea offer or request a trial within 60 days. Since this call date is not a trial date, no police officers or witnesses need to attend.

□ Standard Case Flow / All Cases ■ Expedited Disposition Case Flow ■ Phoenix Docket Case



In addition, the DA's office has ramped up its EDP activity, seeking to conclude lower-level cases even faster by giving defendants the option of accepting a plea offer at the preliminary hearing stage for cases processed through Pittsburgh Municipal Court. In 2013, the DA's office prepared 3,323 EDP plea offers at that venue, of which 1,926 (58 percent) were accepted. If the defendant declines an EDP offer, the case usually goes onto the Phoenix docket, which handled 4,466 cases in 2013.

OBVIOUS AND LESS OBVIOUS BENEFITS

EDP and the Phoenix process offer readily apparent benefits. Defendants prepared to admit guilt can resolve their cases quickly, knowing that the first offer from the DA's office will be its best

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offer. “I want to move on with my life’ is one of the phrases I hear most often,” said Judge Kelly Bigley, one of two judges who handle Phoenix cases. Municipalities save money when police have to make fewer court appearances; prospective witnesses face less life disruption and are more likely to testify at trial when not disillusioned by multiple court appearances and postponements; and caseloads of assistant district

attorneys and public defenders become more manageable.

Some less obvious benefits have resulted as well:

- **Better adjudication of more serious cases.** Judges greatly appreciate that the expediting of thousands of lower-level cases each year has enabled them to give fuller attention to complex cases involving more serious crimes — and, for that matter, to all cases that proceed to trial.
- **Improved engagement by defense counsel and prosecutors.** Frequent postponements and long delays often had a negative effect on the quality of representation, because the passage of time dulled attorneys’ memories. “Previously, when a case came up for reassignment to a new judge, the attorneys would come in, we’d ask questions about the nature of the case, and we’d get a lot of foggy answers because they were not sharp on the case details,” explained Harry Lorenzi, Criminal Court manager. “Now, when we ask them about details, they know the answers. It makes me feel more confident that justice is being served.”
- **More focus on problem-solving courts.** Current Administrative Judge David Cashman highlighted EDP and Phoenix’s contribution in making more time and resources available for the development of problem-solving courts, of which Allegheny County now has seven (including veterans, drug, DUI, mental health and prostitution courts, along with the mandated courts for sex offenders and domestic violence cases). The problem-solving courts address the underlying reasons for criminality among frequent offenders, which can result in decreases in overall recidivism.

“MINOR” ≠ UNIMPORTANT!

Criminal Court judges in Allegheny County consistently stress that the cases they expedite are less complicated but not less important. This sentiment comes across with unmistakable emphasis in their comments on Driving Under the Influence (DUI) cases, which make up about one-quarter of those receiving expedited processing.

Administrative Judge David Cashman compared those who commit DUI offenses to terrorists, because of the threat they pose to innocent people by driving while impaired. He stressed the urgency of getting offenders into treatment, such as Allegheny County’s intensive, weekend-long “DUI Hotel” rehabilitation program, in order to combat recidivism.

Judge Thomas Flaherty similarly highlighted the importance of treatment, saying that many of his Phoenix case postponements occur, at his initiative, if a defendant who would qualify for Accelerated Rehabilitative Disposition (ARD) has not agreed to do so. ARD offers expungement of criminal records to individuals who complete a rehabilitation program.

“DUI is one of the only crimes that people judge based on the result rather than the severity,” said Judge Kelly Bigley. “They’ll say, ‘Yes, his blood alcohol content was three times the limit, but nobody got hurt.’ In many cases, the reason why nobody got hurt was that an officer stopped the driver first.

“I’ve had a first-offense DUI defendant in my courtroom sobbing inconsolably because he crossed a double line and killed someone. That’s always the risk with this kind of behavior. So when people try to minimize the seriousness of this offense, I always talk back to them and say, ‘You’re not getting it.’”

- **Managing jail overpopulation.** Defendants incarcerated while awaiting trial contribute significantly to Allegheny County’s jail overcrowding problem. EDP has enabled hundreds of defendants to move from a holding cell to probation in weeks rather than months. Many appear before a judge by video from a courtroom in Pittsburgh Municipal Court (attached to the jail) rather than being escorted to the Courthouse, cutting prisoner transport demands on deputy sheriffs.
- **Cutting off escape routes for the guilty.** Some lawyers, Cashman said, “view postponements as a defense tool to make the victims so upset about repeatedly coming back that they won’t show up [to testify].” Similarly, DUI defendants use delaying tactics to keep their driver’s license, which they expect to lose once their case is heard. Curbing such delays is good for both justice and public safety.
- **A training trajectory for prosecutors.** “Because the Phoenix docket involves cases without victims, it has developed into a good intermediate training ground for trial assistant district attorneys,” said Rebecca Spangler, first assistant and chief of staff in the Allegheny County DA’s office.

ADDRESSING CONCERNS

The drive for efficiency brought with it some concerns that courts might begin to dispense “McJustice” — rushing defendants into quick decisions on plea offers without respecting their constitutional rights or glossing over the seriousness of minor crimes. Allegheny County Criminal Court appears to have addressed these concerns effectively.

“Sometimes people think the court is forcing people into taking pleas, but whether they accept the plea is not relevant to us,” emphasized Tom McCaffrey, Criminal Court administrator. “We’re here to administer justice smoothly, not to strong-arm people into accepting a plea offer.”

The statistics undermine any suspicion that defendants are acting under duress in agreeing to EDP offers, as only 58 percent are accepted. “I would be more concerned if there were an extremely high acceptance rate,” Lorenzi added, “because that would show that the prosecution is giving up too much to let cases be expedited.”

The judges handling expedited cases exhibit heightened sensitivity to the risk of rushed pleas, particularly since so many defendants in lower-level cases have mental health or substance abuse issues. In their brief colloquy with each defendant, they place special emphasis on the

question, “Are you pleading guilty because you are guilty?” In some instances, defendants have responded that they aren’t guilty but just want to get the case over with — in which case the judge politely declines to accept the guilty plea. “If I have any sense of ambiguity as to why they are pleading guilty, I stop [the plea],” said Phoenix Judge Thomas Flaherty.

“I joke [with defendants] that I don’t get commissions on pleas, so I have no personal interest in seeing you plead guilty,” stated Bigley, who had just rescheduled one defendant’s guilty plea for later that day because his lawyer was not present. “An attorney may be aware of rights that you have now and can’t raise later after you plead. So I want these pleas to be made knowingly.”

EFFECTIVENESS DOESN’T DEPEND ON THE JUDGE’S PERSONALITY

County judges vary considerably in style, demeanor and pace of deliberation. Each one is the master of his or her own courtroom; the president judge and administrative judge cannot tell their peers how to operate. But expediting has worked with all of them.

Allegheny County’s two current Phoenix judges are a study in contrasts. Flaherty is soft-spoken, calm and gentle on the bench; believing firmly that the accused have a right to their day in court, he rarely hands down sentences stiffer than the plea offer that a convicted defendant turned down in favor of going to trial. Bigley maintains a fast pace with her Type A, hard-driving style.

Despite their varied styles, Flaherty, Bigley and their colleagues are doing what’s necessary to reduce the court’s backlog: disposing of cases faster than they are coming in.

On a monthly basis, McCaffrey distributes a chart showing each judge’s outgoing cases as a percentage of incoming cases. Except for a senior judge who receives a limited number of special assignments, every judge in Criminal Court is scoring over 100 percent (which means that the total case backlog is being reduced). “This became our classic feel-good statistic,” said Judge Manning, who was primarily responsible for sensitively spurring his colleagues on toward greater efficiency.

They get extra prodding from one especially no-nonsense colleague, Joseph K. Williams III, who spent 24 years in private practice before becoming a Criminal Court judge.

“People in private practice are obligated to be efficient if they want to be successful,” Williams observed. “I did not divorce myself from a business model when I became a judge.” In addition, his strong math and statistical research background, dating back to his graduate study in clinical psychology, equipped him to carry out rigorous measurements of time and efficiency.

Williams began analyzing monthly printouts that showed the age of each pending case assigned to him and adopted a strategy of “attacking from the rear.” He and his judicial secretary, Lorna Shea, placed the cases that had been languishing the longest on their chamber’s “Rocket Docket.” Shea targets a disposition date within 45 days and tells both sides to come prepared for trial.

“After two years, you should know what you are going to do,” Williams said. “If you have a legitimate reason [for a postponement], I’m on board — you should be able to execute a viable defense. But we have a duty to move away from continuances as a means of delay, and I have a duty to the taxpayers to bring overhead costs down. Each time we have to revisit a case, there is an expense that comes with it.”

Williams admitted that there was some initial resistance to his approach, “but within months people began to embrace it, because their file cabinet was shrinking.”

WHAT’S NEEDED TO MAKE IT WORK

Conversations with court staff, judges and attorneys revealed various prerequisites for successful implementation of expedited processing.

- **Significant revamping of case handling in the DA’s office.** Spangler summarized the considerable reorganization steps involved: “The DA’s office had to create a procedure to identify Phoenix-eligible cases at the preliminary hearing, train the preliminary hearing ADAs [assistant district attorneys] in the Phoenix prerequisites and the identification procedure, create a Phoenix trial unit and develop the plea offer parameters, and establish an internal process for moving the Phoenix-identified cases through the system in an expedited fashion.” Except for one added clerical position, all the work was managed by reassigning staff; however, an ADA and a deputy spent substantial after-hours time to create the program. “All additional time spent after hours was uncompensated and provided willingly because of the perceived benefit to the system,” Spangler explained. McCaffrey called the DA’s office as crucial a player as the court in this effort: “The whole process hinged on the willingness of the DA’s office to restructure how it handled its caseload.”
- **Quicker work by prosecutors and defense counsel.** Expediting of lower-level cases requires the assistant DA to perform a thorough, prompt analysis prior to the preliminary hearing, so as to identify Phoenix-eligible cases and make reasonable EDP offers where appropriate. Moreover, the DA’s office must complete discovery quickly in Phoenix cases in order to provide a discovery packet to defendants at formal arraignment. Public defenders also have to pick up their pace, analyzing their cases quickly so as to make sound recommendations to their clients before the court appearance takes place.

“Technology put the spotlight on these issues. Until we started looking at the data in this way, no one questioned why a case was postponed five times or took 18 months to go to trial.”

— Criminal Court Administrator Tom McCaffrey

- **Good data tracking.** McCaffrey pointed to the statewide Common Pleas Case Management System (CPCMS), which became operational around the same time as the Phoenix court’s initiation, as an essential tool permitting court administrators to extract information such as the age of cases on each judge’s caseload.

- **Dedicated support staff.** The faster pace has placed intense demands on court clerks and administrative assistants. In Judge Williams' courtroom, clerk Kristin Reitmeyer was scheduling and Shea was preparing 20 to 30 cases a day until the backlog was under control. Said Bigley, "In Phoenix court, if you start getting behind on your orders, it will snowball. My court clerk, Toni Snelsire, is a perfect fit for me; usually when I finish speaking, she is already handing me the order."
- **More hands-on management.** Due to their high volume of cases, Bigley and Flaherty have a probation caseload of 6,000 defendants between them — far more than their colleagues — which means managing a larger number of probation violators. The Phoenix judges spend considerable time reviewing probation violation reports, checking for warrants and detainer requests, and consulting with probation officers so as to know the relevant circumstances before a defendant appears in court.
- **Saying no to unnecessary postponements.** The whole expediting initiative would collapse if judges didn't take a harder line on postponements and delays. When interviewed in November, Bigley said that lawyers who requested a January date were receiving a pleasant but firm response of "I still have open dates in December." To one defendant who requested a third delay while seeking a private attorney, Cashman said, "I will grant another postponement, but your bond is revoked." Within three days, that defendant, not inclined to sit in jail while awaiting trial, had found an attorney.
- **Camaraderie among judges.** With a different group of judges, Manning's practice of showing all judges each other's caseload statistics could have sparked friction. Instead, it motivated every judge to pursue improvements in courtroom efficiency. "We have great judges with a great deal of camaraderie, and everyone was in agreement on being more efficient and effective," Manning said. "All of them wanted to jump in the boat and pull an oar."

One other administrative change has enhanced efficiency with no loss of justice. Allegheny County Criminal Court's "one defendant, one judge" policy enables a judge to adjudicate multiple cases or probation violations involving the same defendant at one time. Contrary to fears that defendants might view judges before whom they had appeared in a previous case as more likely to be biased against them, not a single defendant has sought reassignment to a different judge.

SEEDS OF MORE SUCCESS

In July 2014, the Pennsylvania Conference of State Trial Judges gave Manning its Golden Crowbar Award, which honors jurists who have promoted and advanced the administration of justice, in recognition of the case management initiatives instituted during his tenure as administrative judge. By then, the median time from arrest to trial in Allegheny County Criminal Court had been cut from 435 days to 182.

Manning shares the credit not only with his fellow judges, but with the lawyers on both sides who have collaborated in making an adversarial process more efficient. “We could not have accomplished any of this without the significant cooperation of the district attorney, public defender and private bar,” he stressed.

Criminal Court has recently expanded the EDP approach into its problem-solving court for veterans. In this situation, the anticipated benefit of EDP is that a Veterans Affairs representative can attend the preliminary hearing, participate in the plea agreement and begin delivery of needed treatment immediately. Already, Allegheny County Justice Related Services — an office within the county Department of Human Services that provides treatment, support and recovery-oriented programming for people within the criminal-justice system — is frequently present at EDP court proceedings.

Reflecting the frequently-cited motto that “justice delayed is justice denied,” Criminal Court Manager Lorenzi views the consistent achievement of clearance ratios over 100 percent as a major improvement in the dispensation of justice. “We have a ‘Lake Wobegon’ court now in terms of timeliness,” he said. “All our judges are above average.”