



State of New Mexico Office of the State Auditor

CONSTITUENT SERVICES
(505) 476-3821

November 20, 2019

Via E-Mail (albdxw@nmcourts.gov)

Hon. Stan Whitaker
Chief Judge
Second Judicial District Court
400 Lomas Blvd NW
Albuquerque, New Mexico 87102

Re: Special Audit of the Bernalillo County Criminal Justice System

On May 23, 2018, then State Auditor Wayne Johnson designated a special audit of seven (7) different entities within the Second Judicial District. Former State Auditor Johnson indicated the objective of the designation was to identify weaknesses in the processes from arrest to confinement, which potentially reduce the overall effectiveness of the criminal justice system in Bernalillo County. The original concept for the designations was to have each of the seven (7) entities reviewed independently and, upon completion, the Office of the State Auditor (OSA) was to consolidate the findings into one (1) comprehensive report. This original concept has been re-evaluated and based on the circumstances, the OSA has determined consolidating the results will not provide readers with the comprehensive understanding initially contemplated.

In response to the designation, on June 26, 2018, the Second Judicial District Court requested an opinion from the New Mexico Office of the Attorney General (NMAG) regarding whether the OSA's designation for this purpose exceeded the OSA's constitutional authority. Despite that request, five (5) of the engagements were completed and the reports are available on the OSA's website. The Bernalillo County Sheriff's Office and the Metropolitan Detention Center reports were combined and OSA has released four (4) separate reports. The two (2) remaining entities designated for the special audit, the Law Office of the Public Defender and the Albuquerque Police Department have not complied with the special audit designation pending receipt of an opinion from the NMAG. As of this date no opinion has been issued.

In this instance the special audit of the criminal justice system in Bernalillo County did not have a sufficiently defined scope to properly analyze the system in its entirety. Instead the scope emphasized process and did not sufficiently consider the complexity of the criminal justice system as a whole and the many nuances relating to the protection of defendants' constitutional rights, victims' rights, and adherence to statutes and rules of criminal procedure. Despite these issues, recommended actions presented in each of the reports and observations from other evaluations are intended to improve the best practices of each of the agencies involved.

At the time of the designation of this special audit by former State Auditor Johnson, the Legislative Finance Committee (LFC) was in the final stages of completing its own evaluation of the Bernalillo County criminal justice system. Initiated in late 2017, the LFC sought to assess trends and the current situation of crime and the justice system as a whole. That report, #18-05, was published on July 19, 2018 and is a comprehensive 123 page evaluation with recommendations and responses.

After thorough review and in light of the contemporaneous evaluation of the Bernalillo County Criminal Justice System made by the LFC it was found that the special audit initiated by former Auditor Johnson was superfluous. Moreover, taken together the completed reports from the special audit and the LFC amount to a comprehensive review of the Criminal Justice System in Bernalillo County.

Therefore, it has been determined that the OSA will not enforce the designation of the final two (2) engagements as the information and data presented in the LFC report in conjunction with those contained in the completed special audit reports together provide a sufficient basis to evaluate the system. At this time the OSA is concluding the Criminal Justice Special Audit and encourages all entities to consider the recommendations to improve the Bernalillo County Criminal Justice System.

Respectfully,



Brian S. Colón, Esq.
New Mexico State Auditor



**REPORT OF INDEPENDENT ACCOUNTANTS'
CONSULTING PROCEDURES**

**SECOND JUDICIAL DISTRICT COURT
SECOND JUDICIAL DISTRICT
CRIMINAL JUSTICE SYSTEM
SPECIAL CONSULTING REVIEW**

October 25, 2018

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REPORT OF INDEPENDENT ACCOUNTANTS' CONSULTING PROCEDURES

To Honorable Nan Nash, Chief Judge
Second Judicial District Court,
James Noel, Executive Officer
Second Judicial District Court,
and
Wayne A. Johnson, New Mexico State Auditor

Subject: Consulting procedures performed for the Second Judicial District Court in connection with the Second Judicial District Criminal Justice System Special Consulting Review

Thank you for the opportunity to work with you to complete this consulting engagement for the Second Judicial District Court (SJDC). This report summarizes our objectives, scope of work, procedures and discussion in relation to these consulting procedures.

We have performed the consulting procedures enumerated in the list of procedures below which were agreed to by responsible management of the Second Judicial District Court and the Office of the State Auditor, solely to assist you in evaluating the selected transactions, amounts and results of the procedures performed. Our engagement procedures were directed to the criminal case population during calendar years 2017 and 2018 to date.

This consulting engagement was conducted in accordance with the 12-6 NMSA 1978 and 2.2.2.15 NMAC and the *Standards for Consulting Services* established by the American Institute of Certified Public Accountants. The scope of the engagement is outlined in the body of our report. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the consulting procedures described below either for the purpose for which this report has been contracted or for any other purpose. The responsible party who is a part of the Criminal Justice System for the second district is the Second Judicial District Court.

ENGAGEMENT PROCEDURES AND SCOPE

The following procedures are taken from the contract for the engagement.

Step 1-Review process for setting up defendant case file and assigning case numbers.

A. Review process for setting up defendant case file and assigning case numbers.

Step 2-Examine a sample of cases.

- A. Walk through a sample of cases that are handled by Second Judicial District Court.
- B. Determine how cases are "tracked" or kept under control and examine whether any of the tracking or control processes are contributing to weaknesses in the process.
- C. Determine how "cases" are handed off to the next entity and assess whether the transfer of cases from one entity to another is the source of any weaknesses in the process.
- D. Determine how "case numbers" are handled during transfers from one agency to another and assess whether the assignment of case numbers by different agencies is a source of any weakness in the process.
- E. Determine if the name of the accused is used as an identifier and whether the use of names as an identifier is causing any weakness in the process.

Step 3-Review the policies of various organizations.

- A. Provide an assessment of any weaknesses in the process or interface between entities which are identified by the IPA but not listed in this scope of work.
- B. Determine what standard reports are generated on a regular periodic basis and provided to another entity, and whether such report(s) are contributing to efficiencies in the process, or whether there are reporting processes which are a source of weaknesses in the system.

Definitions and Acronyms Used in This Report

CMO – “Case Management Order” is a local rule governing the time limits in criminal cases including the disposition by plea or trial as well as discovery and the filing of evidentiary motions. The CMO was adopted by State Supreme Court order in 2015 and has been modified twice after input by the second judicial district criminal justice stakeholders since that time. The most recent modified CMO went into effect in 2018. The intent is to provide a timeframe for processing cases through the system.

Nolle Prosequi – “Nolle” – This is the ability of the District Attorney (DA) to dismiss a case for any reason at any point in the process.

Bernalillo County Criminal Justice Coordinating Council – “CJCC.” The CJCC is composed of members of stakeholder agencies of the Second District Criminal Justice system. It was originally established by Legislative resolution, later continued by the New Mexico Supreme Court and became a stand-alone council in 2017. It meets monthly, utilizes subcommittees and addresses issues that affect the criminal justice system.

Stakeholders in the Second Judicial District Criminal Justice System including members of the CJCC

Second Judicial District Court	SJDC
Second Judicial District Attorney	DA

Legal Office of the Public Defender	LOPD
Albuquerque Police Department	APD
Bernalillo County Sheriff's Office	BCSO
Bernalillo Metropolitan Court	METRO COURT
Metropolitan Detention Center	MDC
Bernalillo County	BernCO
City of Albuquerque	COA

Not in the Second Judicial District

New Mexico Department of Corrections	DOC
New Mexico Sentencing Commission	-
New Mexico Criminal Defense Lawyers Assn.	-

Step 1

A. Review process for setting up defendant case file and assigning case numbers.

The criminal cases brought to the Second Judicial District Court (SJDC) originate with the District Attorney (DA). Initial steps at the Bernalillo County Metropolitan Court ("Metro Court") include the filing of a complaint/information which may lead to a preliminary hearing to establish probable cause. Alternatively, probable cause may be established through indictment by Grand Jury. The defendant shall be arraigned on the complaint/information or indictment within 15 days of filing the bind over order if not in custody and in a shorter time frame if in custody. Grand jury proceedings are conducted at the SJDC. The cases are filed manually by bringing necessary case documents to the clerk's office at the District Court. New criminal cases are opened with the SJDC Court Clerk's office by the DA filing a criminal information or complaint. Docketing clerks open a new criminal matter in the Court's electronic case management system (CMS), Odyssey, where each case is given a new case number in sequential order that is unique to each judicial district throughout the state. Typical criminal cases receive a "CR" case number. In addition to CR cases, the SJDC also docket some criminal matters as "LR" cases, including appeals from the Metro Court, and motions for preventive detention. Social security numbers and date of birth are recorded as case file information in the docket.

The Bernalillo County Metropolitan Detention Center (MDC), which houses criminal defendants who are arrested but not yet convicted, as well as individuals convicted of a misdemeanor offense whose sentence is less than 365 days incarceration, has access to the Court's electronic CMS, Odyssey, through the NM judiciary's Secured Online Public Access system, known as SOPA. Other agencies in the criminal justice system also use SOPA to access Odyssey information and filings. While opening a new criminal matter at all district courts throughout the state remains a manual process, the SJDC along with the Twelfth Judicial District are piloting electronic filing of criminal matters, which will mirror the existing e-file system for civil matters.

Summary Comment

We noted that the SJDC is moving to a full e-file capability. This appears positive for quality and efficiency purposes. We did not identify any weaknesses in assigning case numbers and setting up files beyond the manual process.

Step 2

A. *Walk through a sample of cases that are handled by Second Judicial District Court.*

We selected a sample of 40 criminal cases at random using the built-in Odyssey functionality for random selection. The cases were selected from calendar year 2017 for the case histories contained in Odyssey. As criminal cases proceed, most do not end in trial. Many are dismissed by the DA through the Nolle process, and many are resolved through a plea agreement with the defendant. Plea agreements are negotiated agreements between the DA and the defendant (through counsel, typically the Law Office of the Public Defender (“LOPD”)), that must ultimately be reviewed and approved by a judge. Most plea agreements negotiated between the DA and defense counsel are accepted by the judge. We then selected 5 more cases that went through the entire adjudication process, including trial with a jury rendering a verdict. Our table of the cases and their outcomes and history is presented in Exhibit 1. We determined the following discussion items in our sample work.

ITEMS OF NOTE FROM WALK THROUGH OF 45 CASES

Grand Jury and Preliminary Hearing Contrasted – Out of 45 cases in our sample, 41 cases established “probable cause” through an indictment by a Grand Jury. Grand Jurors are empaneled by the SJDC’s Jury Division. Grand jury proceedings are conducted by the DA in secret proceedings closed to the public. In contrast, only four cases in our sample came to SJDC from a preliminary hearing, which is a proceeding open to the public. Both grand jury proceedings and preliminary hearings are meant to establish whether there is probable cause that a crime was committed by the defendant. Interviews with SJDC officials revealed that there are tradeoffs between these two paths to moving cases forward. A grand jury proceeding does not require all witnesses or defense counsel to be present. Often, a law enforcement official will read a police report to the Grand Jury to establish probable cause. This process can be quicker than a preliminary hearing. In contrast, a preliminary hearing requires both attorneys for the prosecution and defendant to present evidence about the case including the presentation of witness testimony and introduction of other evidence.

The preliminary hearing gets everyone in the room and hence is a more involved process. Arguably, the preliminary hearing process involves the investment of more time and effort on the front end of a criminal proceeding than presenting to the Grand Jury, but in looking at the life cycle of a criminal case from initiation to resolution, the preliminary hearing process is a better at establishing whether the DA has the necessary evidence to proceed. Moreover, because all relevant individuals are in the same room during a preliminary hearing there is a better chance of an early plea or other resolution.

This is reflected in the data we collected on the frequency of use of Nolles by the DA in grand jury cases compared to preliminary hearing cases. There are corresponding costs to have a case be dismissed after progressing some distance through the Court system. Individuals must take time off work to sit on the Grand Jury and there are required management and administrative procedures all along the way. The SJDC reports that it spent \$75,143 to conduct grand juries from July 1, 2017, through December 31, 2017, and a jury clerk and court monitor add \$193 per day as administrative costs. The time off costs of work for jurors are difficult to measure. Cost is not the only consideration, but a discussion of other factors is beyond the scope of our engagement.

As of early 2018, Metro Court automatically schedules all new cases for preliminary examination as ordered by the New Mexico Supreme Court. Either Metro Court or the SJDC can conduct a preliminary hearing. In most New Mexico jurisdictions the magistrate judges conduct preliminary hearings, however in the second judicial district preliminary hearings are conducted by both courts. The SJDC voluntarily set up additional available times for preliminary hearings in their court to help the DA alleviate his backlog of cases. Per interviews, the DA has not fully utilized the preliminary hearing slots provided by SJDC or Metro.

Another factor to consider is the length of time a case is in the SJDC system until resolution. We previously noted a preliminary examination can assist in determining the case's strength and can help ensure appropriate resource allocation.

Please refer to Exhibit 2 that presents data on the length of time from beginning to end to arrive at Nolle Prosequi outcomes for cases that come to SJDC from complaint/information (preliminary examination) or from the grand jury indictment. Please note the scale on the two graphs: the number of grand jury cases on its graph is larger (721 grand juries and 489 preliminary hearings) but the elapsed time for Nolle to begin and end is much shorter for the preliminary examination. For cases that results in Nolle, the resolution of such a case early on is preferable and saves time and resources.

Summary Comment

It appears there are different perspectives between the DA and the SDJC over the use of grand juries contrasted to the preliminary examination to initiate the process of felony prosecutions. These differences appear to be affecting court schedules and elapsed time of proceedings that end in a Nolle outcome. Exhibit 2 indicates the advantage of the preliminary examination for resolving cases that end in Nolle. Exhibit 2 does not consider additional upfront costs incurred for the preliminary examination. These differences in perspective and preference for utilization may decrease as the stakeholders work through the issue. We note that a closer alignment of the stakeholders in how to conduct felony prosecutions in the early stages could provide more efficiency in the adjudication process.

Failure to Transport – Among the 45 cases reviewed there was one case dismissed by the District Judge for “failure to transport.” The defendant has the right to be present during all stages of the adjudication process, which in this case required him to be transported from a Department of Corrections facility to court for the hearing. Transport services are also required for the MDC inmates. In our test case, the defendant was in DOC the entire time, so transportation of the defendant, a requirement by law of the DA, should have been accomplished. The failure to transport occurred four times as noted by the Odyssey court docket. In interviews, SJDC officials indicated failure to transport can be an issue, and we did have this occurrence in our sample.

Summary Comment

Dismissed cases for “failure to transport” should be reviewed with the objective of determining possible improvements to this part of the process.

Nolle Prosequi – The ability to exercise a Nolle Prosequi is an inherent power of the DA. For example, a Nolle might be used when a witness will not cooperate or is not available, or there are problems relating to the soundness or integrity of evidence. In our test work, we identified nine instances of Nolles. The reasons given for the Nolles include the following: one defendant died; two defendants pled in other related matters; two cases were dropped when witnesses were not willing to cooperate; two Nolles did not have explanatory information in the DA's filing; in one case the judge prohibited a witness from testifying; and one case was Nolled when, due to evidentiary reasons, the state could not proceed. We note that it appears that Nolles can be a useful part of the plea bargain process either for individual counts or for entire cases.

Summary Comment

Out of our nine observed Nolles, perhaps five Nolles might have been identified earlier in a preliminary hearing saving time and resources in those instances.

Competency Evaluations – In our test work, five instances occurred whereby the court ordered a competency evaluation of the defendant. A competency hearing “stays” the running of the CMO time period but lengthens the calendar time to complete a case. An important point is that currently New Mexico Department of Health has only two professionals providing competency evaluations for defendants and they are booked well in advance. Per our interviews, the defendant profile of Bernalillo County includes a significant number of competency evaluation candidates. The availability of only two professionals for competency evaluation undoubtedly slows down case progression although such evaluations trigger a “stay” in the running of CMO. The rate paid to professionals providing competency evaluations is set by statute and is lower than commercial practice.

The SJDC is working with the New Mexico Department of Health to establish a pilot project in Bernalillo County to improve the efficiency and timeliness of completing competency evaluations, and is optimistic the pilot will be established this fiscal year.

Summary Comment

It appears the competency evaluation process could be completed faster from beginning to end with the allocation of additional professionals and institution of increased pay rates. The competency evaluations are essential to the court’s ability to hear cases and to the rights of the defendant.

B. Determine how cases are “tracked” or kept under control and examine whether any of the tracking or control processes are contributing to weaknesses in the process.

Odyssey software is primarily a “case management” software that together with the CMO provides the framework for tracking cases. Under the CMO there are overall time limits to bring a case to trial for three different tracks. Track 1 is for simpler cases and establishes a 210 day schedule from the date of arraignment within which a case must be brought to trial. Track 2 is selected for a more complex case that may involve witnesses and it must come to trial in 345 days. Track 3 cases are the most complex and must come to trial in 445 days. Within these time frames the CMO provides additional time deadlines to perform interviews, to complete evidence procedures, etc. The time periods allowed for the specified procedures are quite structured. The docket is opened in Odyssey and is added to as new documents, pleas, procedures, and orders are generated by the case. Criminal Justice stakeholders from all other agencies have access to the electronic docket.

Within Odyssey is an application called “the Wheel” which is a process of assigning cases to judges. The assignments are made on a random basis built into the Wheel with provision for reassignment of cases to reflect attorney motions or requests or out of balance caseloads that may occur. The Chief Judge makes these reassignments when needed. The Wheel application produces printouts that are monitored by SJDC management up to two times per day. The Wheel is available to the DA.

Summary Comment

The combination of deadlines imposed by the CMO and on-line availability of case data and monitoring of the caseloads together sufficiently tracks and provides a significant control over the criminal case process. We did not identify any weaknesses to the tracking and control process.

C. Determine how “cases” are handed off to the next entity and assess whether the transfer of cases from one entity to another is the source of any weaknesses in the process.

The SJDC as a court of higher jurisdiction does not routinely hand off cases to other agencies in the criminal justice system. Processes that approximate handoffs or transfers to other parts of the SJDC are as follows.

1. The DA, and/or LOPD (or other defense counsel), and/or the pretrial services officer (PSO) and/or the assigned judge may identify potential individuals for Drug Court, DWI Court or any other treatment court. The treatment court judge determines whether or not the referred defendant meets the requirements for the specific treatment court. These courts operate under the SJDC umbrella.

An individual must be identified and qualify as a candidate for a treatment court. The treatments courts may be pre-plea or post-plea.

Reviewing two post-plea treatment courts, DWI Court and Drug Court, the recidivism statistics are impressive. DWI court has 33 graduates since 2013 and to date there has been 0% recidivism. There are 33 additional individuals currently in the program. The DWI court program represents a big commitment for those who enter the program and can involve attending up to 3-4 meetings a week. The required time under the program (18 – 24 months) may turn out to be longer than the time a defendant would have spent in jail had the defendant not entered the treatment court.

For the Drug Court, there have been 216 graduates since 2014 with 8.6% recidivism. The focus of these two specialty courts is on the treatment of addiction. It is known that jail does not always work for these types of cases.

Additionally, the relative costs of these courts are favorable. Per SJDC officials, the approximate cost to treat someone through the specialty courts is \$14.70 per day while incarceration cost is approximately \$123.97 per day.

These programs take dedicated staff to administer the programs. Funding of positions is very important. The programs are intense and are not a fast process. SJDC officials indicated that these programs are not at capacity.

2. Another essential service provided by the SJDC is pretrial supervision for defendants whose cases are unresolved and remain pending. There are multiple levels of supervision that can be assigned to these individuals. The goal of pretrial services is not to determine guilt or innocence; rather, pretrial services is aimed at ensuring that the individual shows up for all court hearings and does not pick up new charges during the pendency of the case. Pretrial Services provides services such as reminder phone calls to defendants, drug testing and other supervision. Mental health services may also be facilitated during this phase. Most positions connected with pretrial services depend on specific funding which is currently coming principally from Bernalillo County.

3. The SJDC is responsible for sending out court orders to release individuals from either MDC or DOC. The SJDC does this by sending out emails to all other agencies and most importantly to MDC or DOC. An MDC liaison is present in the SJDC to connect to all court actions involving the MDC. There does not appear to be any weakness in this process. Should there be a breakdown in communications directing the release of prisoners, an individual may spend one or more additional nights in jail.

Summary Comment

There are two alternative post-plea programs that have demonstrated significant decrease in recidivism for both the DWI and Drug Court. They require significant participation from the defendants admitted into the courts and require an extended time period and administrative resources to conduct these programs. Currently, these programs may not be at capacity.

There are new programs developing for Children and Young Adults. The continuing support of these areas of the Criminal Justice System is strongly encouraged.

D. Determine how “case numbers” are handled during transfers from one agency to another and assess whether the assignment of case numbers by different agencies is a source of any weakness in the process.

SJDC receives cases from the DA and Metro Court. Cases coming to SJDC are noted as LR in the case of preventive detention cases and most other criminal matters are noted as CR. Upon indictment or bind over, the LR numbers in preventive detention motions are consolidated with the related CR case to avoid multiple sets of case numbers. Social security number and date of birth are recorded on the case file information in the docket. The other agencies in the criminal justice system have access to the Odyssey and hence the case number.

Summary Comment

Per discussion with court officials, a universal numbering system for case files between jurisdictions is not useful because the origin of cases from other jurisdictions (which are numbered differently) provides additional useful information and would be lost with a universal system. There does not appear to be any weakness or other disadvantage from the current numbering system inherent with Odyssey case management software.

E. Determine if the name of the accused is used as an identifier and whether the use of names as an identifier is causing any weakness in the process.

In the SJDC, cases have unique case numbers assigned. The defendant’s social security number and date of birth are entered into the case docket. There are no weaknesses noted with this case numbering system.

Step 3

A. Provide an assessment of any weaknesses in the process or interface between entities which are identified by the IPA but not listed in the scope of work.

With the help of the SJDC, we were able to load criminal case history for calendar years 2017 and 2018 to date and were able to develop an exhibit presenting the average time that a case concludes.

The data presented in Exhibit 2 are for all completed cases that resolved due to Nolle Prosequi under two classifications (1) Preliminary Examination (2) Grand Jury Indictment.

The graphs indicate that there were more grand jury indictments in total (721 grand jury proceedings and 489 preliminary hearings). The conclusion of a case by Nolle occurred quickly under the preliminary examination.

We also inquired about any weakness in the communications between agencies. Our inquiry leads us to document that officials of the SJDC are part of the Criminal Justice Coordinating Council (CJCC). The CJCC is composed of members of associated agencies of the Second District Criminal Justice System including some external groups to the Second District Criminal Justice System. We consider it broad based in representation. The CJCC meets monthly and has subcommittees that meet regularly. The SJDC participates in all regular and subcommittee meetings of the CJCC. Other information indicated that the CJCC is active and appears to present a very useful group for administering the Criminal Justice System.

The SJDC also meets regularly with various criminal justice stakeholders outside of the CJCC meetings.

We did not identify any weakness in the formal communication committee for the Criminal Justice System.

B. Determine what standard reports are generated on a regular periodic basis and provided to another entity, and whether such reports are contributing to efficiencies in the process, or whether there are reporting processes which are a source of weakness in the system.

Odyssey includes all case management features including the Wheel which operates to randomly assign cases to SJDC judges. The Wheel produces online reports which can be printed out and are monitored by management of SJDC to propose recommendations for reassignment or other pertinent information to the Chief Judge. There are numerous reports prepared for internal management use, the New Mexico Supreme Court, the LFC and the DFA. The reference system for the stakeholders in the Criminal Justice System is on-line dockets in the Odyssey software which is available for transparency purposes to the public and news media. The Odyssey software can run many reports, but the system focus is the case management capabilities.

OTHER ITEMS OF DISCUSSION

Courtroom Facilities – The SJDC is a divisionalized court. In total, there are 27 judges on the SJDC bench. Ten of those judges are assigned to the Criminal Bench, and are randomly assigned criminal cases through the Court's CMS, Odyssey. The SJDC has 8 criminal courtrooms. It was noted by SJDC officials that they are planning for an additional criminal courtroom(s) which in their view would increase efficiency of case management and scheduling. The Court has submitted an FY20 capital funding request to build out existing space into an additional criminal courtroom with a jury box.

Funding of Component Agencies – We noted that the DA received a supplemental appropriation of \$2,000,000 during fiscal year ending June 30, 2018. During our engagement, we gained an appreciation for the interrelationships of the member agencies comprising the criminal justice system for Bernalillo County. We suggest that increased funding for the DA exclusively, will have associated effects downstream with other agencies. As the backlog is reduced and the current year's cases continue to come in to the SJDC, the SJDC caseload is increasing and it is anticipated that there will be constraints in resources at SJDC if their funding remains relatively static compared to increased funding elsewhere.

Summary Comment

We recommend that the entire Criminal Justice System be considered in relation to increased funding provided to meet identified objectives. An increased volume of cases has been filed in the SJDC by the DA, straining already limited resources. The special appropriation objective of reducing backlog and prosecuting needed cases may not be fully realized as a result.

Value of the CMO – The SJDC is a proponent of the CMO as a framework for driving the conduct of criminal trials. As noted, there are overall time frames to get a case to trial and there are subsidiary time frames within the overall time limits to accomplish procedures necessary to the conduct of a trial. The SJDC represented that they have conducted all trials within the time frames mandated by the CMO. Out of our sample of 45 cases, we identified 8 cases where the calendar time exceeded the CMO time frame but in each case, there was a stay in effect for a competency evaluation or a continuance had been granted as permitted under the CMO. Based on interviews, there is some disagreement about the benefits of the CMO among certain stakeholders other than SJDC.

Summary Comment

Based on our test work, it appears that all cases are initiated in accordance with the time frames of the CMO. Cases are pled or brought to trial under the time frames of the CMO.

Preventive Detentions – Before criminal cases are opened at the SJDC, criminal defendants appear at the Metro Court for what is their felony first appearance. At the appearance, the DA may seek to have a defendant held in custody for the entire period before trial. In such situations, the DA must file with the Metro Court a motion for preventive detention, which then must be heard by a SJDC judge within five days. The matter is opened as an “LR” case type in the SJDC, and the matter is set for an evidentiary hearing before a criminal judge. We noted in a letter by the Chief Judge and Presiding Judge dated July 20, 2018, that there is a high volume of preventive detention motions made by the DA in Bernalillo County. In fact, while approximately 40% of all criminal cases throughout the state of New Mexico are filed in the SJDC, 80% of all preventive detention motions are filed by the DA, leaving the remaining 20% to all 12 other District Attorneys in the state. This raised the question with us as to whether preventive detention motions are being appropriately, judiciously, effectively and efficiently filed by the District Attorney in Bernalillo County.

To evaluate this, we turned to the SJDC’s risk assessment tool, which is used by the Metro Court and the SJDC criminal judges as an indicator of the extent to which any given defendant presents a risk to the public or to reoffend. This tool, known as the PSA, or Public Safety Assessment tool, is an empirical risk assessment tool that focuses on eight specific predictive criteria for public safety. As a risk assessment tool, it is peer reviewed and validated nationally. There are six different variable risk assessment outcomes (recommendations) for any given defendant, from least restrictive to most restrictive. At one end of the spectrum is release on the defendant’s own recognizance, without any supervision. At the other end of the spectrum is a recommendation to detain the defendant until trial. Judges are in no way bound by the risk assessment outcome. Instead the risk assessment outcome is provided to the Judge, along with argument of counsel, to assist the Judge in making a determination as to the release conditions for any given defendant.

The SJDC has compiled data regarding PSA risk assessments on defendants from June 12, 2017, through October 4, 2018, and have compared that data to the District Attorney’s use of preventive detention motions. The results of this data are striking as noted below.

Of the 8,915 criminal defendants for whom a PSA risk assessment was completed during this time period, 2,007 of them received a PSA outcome of “Detain.”

Of those 2,007 defendants who received a PSA risk assessment outcome of “Detain” (those who represent the greatest risk to public safety) the District Attorney filed only 463 preventive detention motions for those defendants – less than 25 % of them. Of those 463 defendants who posed this greatest risk to public safety, over 70% of them were granted by SJDC judges.

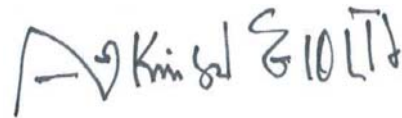
In stark contrast, the District Attorney filed 1,015 preventive detention motions on defendants whose PSA outcome was to release either on their own recognizance or with some level of pretrial services supervision. As one might imagine, the District Attorney’s rate for which these motions were granted for defendants who represented the least risk to public safety was less than 17%.

In total, the District Attorney filed 1,478 preventive detention motions, of which 70% of them were for defendants who did not represent the greatest risk to public safety in accordance with the PSA risk assessment tool. As a consequence, most of those lower risk individuals were not held in pretrial detention (appropriately, in accordance with the public safety risk assessment), which then begs the question as to whether the use of judicial resources as well as resources of the District Attorney and Public Defenders office is being optimized. The DA in public comment has criticized the risk assessment tool and this report does not address what methods he is using to move for preventive detention.

Summary Comment

Continuing to monitor the use of preventive detention motions on defendants falling throughout the spectrum of public safety risk will continue to provide a feedback loop to both the District Attorney and the Court as to whether such motions are being used in a prudent and effective manner.

We wish to thank the management personnel of the Second Judicial District Court who consistently gave us interview time and provided all requested information.

A handwritten signature in black ink, appearing to read "Atkinson & Co., Ltd." with a stylized initial "A" and a checkmark-like flourish.

Atkinson & Co., Ltd.

Albuquerque, New Mexico
October 25, 2018

Second Judicial District Court
 Sample of cases
 For the year ended 12/31/17

Sample Selection - The Senior Software Application Developer, queried the Odyssey system for all cases that started in 2017. Using that query, and a random number generation from Excel, the following 40 cases were selected. Additionally she followed the same process with the exception that the query was of cases that went to trial. From that query a sample of 5 cases were selected. The following attributes were tested for each of the cases selected.

Note 1 - References below to "the State" would be referring to the District Attorney as well as related law enforcement as they are the representatives of "the State" which is the entity bringing the charges against the defendant.

CMO dates are as follows (based on the CMO at 8101):
 Track 1 - 210 days (8101, page 4/11)
 Track 2 - 300 days (8101, page 5/11)
 Track 3 - 455 days (8101, page 6/11)

Case Number	Track	Case Type	Grand Jury or Preliminary	Charge Date	Preventive Detention Order?	Date of Indictment or Bind Over	Date of Start of CMO Arraignment	Scheduling Order	Date of Trial or Plea	Calculation of CMO period (in days)	Was CMO Exceeded	Notes	Possible Effect on the Report
D-202-CR-2017-00064	Track 1	FPE	Grand Jury	08/03/16		01/09/17	01/27/17	02/20/17	05/25/17	118	-	Plea of no contest	
D-202-CR-2017-00110	Track 1	FPP	Grand Jury	11/17/16		01/11/17	01/17/17	02/16/17	04/06/17	79	-	Nolle	
D-202-CR-2017-00156	Track 2	FDG	Grand Jury	10/11/14		01/13/17	01/27/17	02/16/17	10/16/17	262	-	Plea of guilty	
D-202-CR-2017-00321	Track 1	FPE	Grand Jury	01/09/17		01/27/17	02/03/17	02/21/17	11/16/17	286	Exceeded	This case was combined with 2017-00342. In conjunction with a guilty plea on 00342, the prosecutor Nolle this case. The case exceeded the CMO because on 04/26/17 a competency evaluation was performed that appeared to take until the first part of July 2017. Also, there were a number of warrants issued for failure to appear violations.	Competency evaluations cause cases to go longer due to limited resources to perform the competency evaluations.
D-202-CR-2017-00408	Track 3	FHO	Grand Jury	01/18/17	02/03/17	02/02/17	02/10/17	03/02/17	NA			This case was appealed to the court of appeals / supreme court. As such, final resolution is still pending and the CMO time period stops at the time of appeal.	
D-202-CR-2017-00500	Track 2	FPP	Grand Jury	11/30/16		02/09/17	03/06/17	08/25/17	02/05/18	336	Exceeded	2 charges were dismissed by plea agreement and 2 were plea of no contest. There were a number of warrants that had to be issued for failure to appear. On 12/14/17 a new scheduling order was issued, and defendant was put in pretrial detention.	
D-202-CR-2017-00531	Track 1	FDG	Grand Jury	01/31/16		02/10/17	09/01/17	10/13/17	01/23/18	144	-	Nolle	
D-202-CR-2017-00599	Track 3	FPP	Grand Jury	01/01/13 02/01/13 03/01/13 04/01/13		02/16/17	02/27/17	03/16/17	02/28/18	366	-	6 charges dismissed by prosecutor per plea agreement and 2 charges were plea of no contest. 4 charges dismissed by prosecutor plea agreement and 1 charge was plea of no contest. Defendant received a deferred sentence as he successfully completed first offenders program	
D-202-CR-2017-00620	Track 1	FDG	Preliminary	11/20/16		02/16/17	03/20/17	04/13/17	08/23/17	156	-	Defendant received a deferred sentence as he successfully completed first offenders program	
D-202-CR-2017-00720	Track 1	FPP	Grand Jury	02/04/17		02/24/17	03/03/17	03/21/17	08/09/17	169	-	Plea of no contest to 2 charges.	
D-202-CR-2017-00741	Track 1	FDG	Preliminary	08/04/16		02/24/17	06/16/17	08/22/17	12/13/17	180	-	1 charge dismissed by prosecutor plea agreement and 1 charge plea of no contest	
D-202-CR-2017-00791	Track 3	FPE	Grand Jury	02/12/17		03/01/17	03/10/17	03/31/17	05/14/18	430	-	20 charges dismissed by prosecutor plea agreement and 3 charges plea of no contest. There was an extension of the deadline for good cause.	With 20 of the 23 charges being dismissed, this would seem to be a case of "over charging"
D-202-CR-2017-01045	Track 1	FPE	Grand Jury	01/01/17 01/21/17 01/29/17 02/27/17		03/20/17	03/24/17	04/18/17	09/22/17	182	-	5 charges appear to be dismissed for lack of discovery, and the notation was that the prosecution was unable to proceed. 6 charges were "Dismissed - State Failure to Transport Defendant."	Based on a review of the Odyssey record, yes, it appears the first five charges were dismissed because of multiple discovery violations by the State. In addition, the detective did not appear at the hearing on the discovery matter. The remaining charges were dismissed after the State failed to transport defendant to four separate hearings over the course of three months. Defendant was in DOC during that entire time period--thus the State should have been able to have defendant transported (as he was in the State's custody during the entire period). (See, Order Granting Defendant's Motion to Dismiss, filed on October 17, 2017.) Yes, the dismissal was done by the Court, but it was dismissed without prejudice, meaning the case can be refiled by the State should it be prepared to go forward in the future.

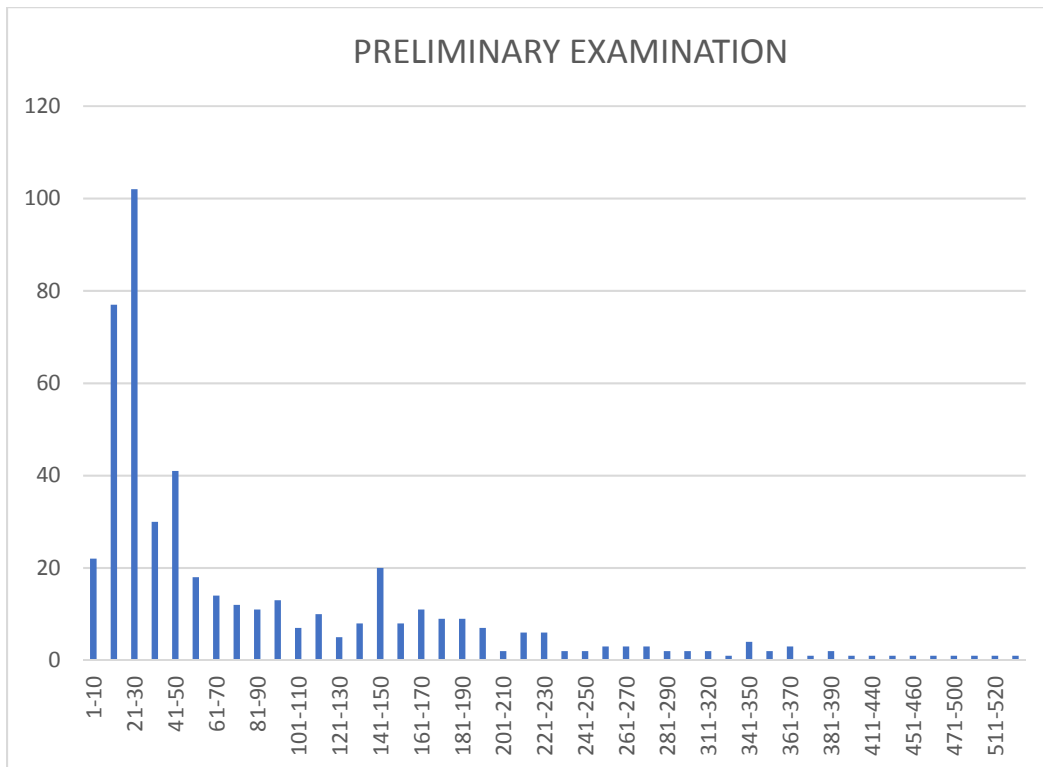
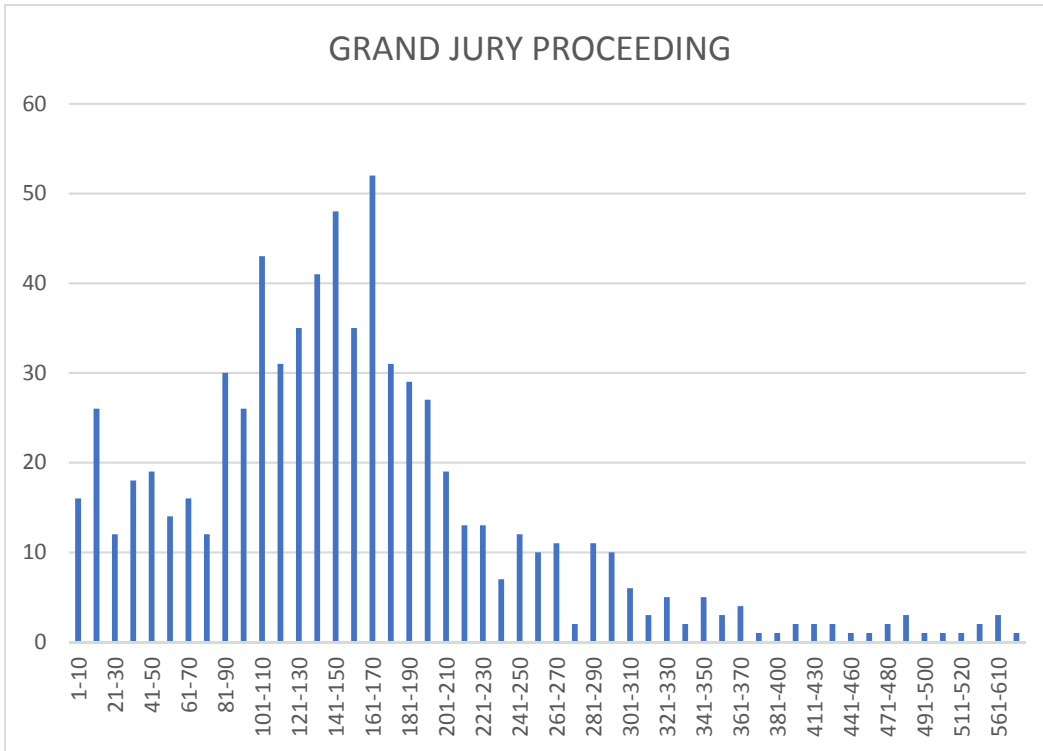
D-202-CR-2017-01194	Track 1	FDG	Grand Jury	06/22/16		03/29/17	04/07/17	04/26/17	01/22/18	290	Exceeded	Plead no contest to charge 1 and remaining 3 charges were suspended on condition that defendant entered drug court. <u>Defendant failed to stay in drug court</u> and so he was remanded to custody pending sentencing on 03/02/18. The CMO date was exceeded because the defendant failed to appear to a hearing on 05/24/17 after which a warrant was issued. The individual was not picked up on the warrant until 12/12/17.	
D-202-CR-2017-01238	Track 3	FPE	Grand Jury	02/06/17 12/25/16 12/28/16		03/31/17	04/07/17	05/05/17	04/18/17	11	-	Dismissed - Failure to Complete Discovery (Sanction)	Notes state that this was dismissed without prejudice due to the state's failure to complete pre-trial interviews
D-202-CR-2017-01341	Track 2	FPE	Grand Jury	01/03/11 to 05/13/15	05/08/17	04/07/17	04/28/17	05/17/17	01/09/18	256	-	3 charges dismissed by prosecutor plea agreement. Guilty on 1 charge plea no contest	This individual was released on probation and picked up new charges while on probation.
D-202-CR-2017-01433	Track 3	FSX	Grand Jury	02/11/17		04/17/17	04/24/17	04/27/17	05/21/18	392	-	Plead no contest to 6 charges and 17 charges were dismissed under the plea agreement.	
D-202-CR-2017-01445	Track 2	FPS	Grand Jury	02/11/17		04/18/17	05/01/17	05/19/17	09/19/17	141	-	12 charges dismissed by prosecutor plea agreement and 5 charges plead no contest.	This would seem like a possible case of over charging.
D-202-CR-2017-01567	Track 1	FPP	Grand Jury	03/10/15		04/27/17	05/08/17	05/26/17	11/21/17	197	-	The defendant entered into a <u>pre prosecution diversion</u> program on 11/21/17 at which time there was a stay / suspension of the proceedings.	
D-202-CR-2017-01599	Track 1	FDG	Preliminary	03/25/16		04/28/17	06/01/17	07/07/17	07/27/17	56	-	Nolle	Notation stated that the case was nolle by the State without prejudice due to evidentiary issues and lack of resources the State cannot proceed.
D-202-CR-2017-01631	Track 1	FPP	Grand Jury	06/29/16		05/03/17	01/12/18	01/25/18	04/27/18	105	-	1 charge dismissed by prosecutor plea agreement and 1 charge no contest	
D-202-CR-2017-01784	Track 3	FSX	Grand Jury	04/25/14		05/15/17	05/26/17	06/20/17	06/22/18	392	-	There was a mistrial on 06/22/18. The case was rest to a track 2 and a new trial date was set for 03/18/19.	
D-202-CR-2017-01898	Track 1	FPS	Grand Jury	11/12/16		05/23/17	05/30/17	06/22/17	NA			A <u>competency evaluation</u> was ordered on 09/11/17 and the case was stayed pending the results of that evaluation. This effectively stops the clock for the CMO. The stay was lifted on 08/22/18. Also there were a number of warrants issued throughout the case. The case is still in process.	Competency evaluations cause cases to go longer due to limited resources to perform the competency evaluations.
D-202-CR-2017-01931	Track 1	FPP	Grand Jury	12/08/16 04/23/17 04/27/17 05/04/17 05/18/17 05/22/17 05/25/17		05/25/17	06/30/17	07/20/17	01/16/18	200	-	1 charge dismissed by prosecutor plea agreement and 1 charge no contest.	Defendant subsequently violated probation and was remanded into custody.
D-202-CR-2017-02093	Track 3	FPE	Grand Jury	06/13/17		06/19/17	07/17/17	03/15/18		269	-	15 charges dismissed by prosecutor plea agreement and 4 charges plead no contest.	This would seem like a possible case of over charging.
D-202-CR-2017-02169	Track 2	FPP	Grand Jury	02/18/16		06/19/17	06/23/17	07/21/17	11/06/17	136	-	4 charges dismissed by prosecutor plea agreement and 1 charge guilty and sentence deferred.	Defendant subsequently violated probation and was remanded into custody.
D-202-CR-2017-02482	Track 1	FPE	Grand Jury	06/09/17		07/20/17	07/28/17	08/17/17	12/31/17	156	-	Nolle	Victim was unwilling to cooperate in the prosecution.
D-202-CR-2017-02491	Track 2	FPE	Grand Jury	07/06/17	07/28/17	07/21/17	07/28/17	08/17/17	01/11/18	167	-	Nolle	Alleged victim not willing to cooperate with the prosecution of this case.
D-202-CR-2017-02620	Track 3	FPP	Grand Jury	10/26/16		08/03/17	08/14/17	09/25/17	NA			Defendant entered into a <u>pre prosecution program</u> on 08/30/18 at which time there was a stay / suspension of the proceedings.	
D-202-CR-2017-02725	Track 2	FPE	Grand Jury	06/05/17		08/11/17	08/25/17	08/31/17	03/22/18	209	-	Plead no contest to 2 charges and 1 charge was deferred while the defendant entered Veterans Court.	
D-202-CR-2017-02878	Track 3	FPE	Grand Jury	08/07/17	09/01/17	08/24/17	09/01/17	09/19/17	06/28/18	300	-	5 charges dismissed by prosecutor plea agreement and 5 charges plead guilty. A competency evaluation was ordered on 10/11/17 and the case was stayed at that time. The competency evaluation was withdrawn and the stay lifted on 11/17/17.	Competency evaluations cause cases to go longer due to limited resources to perform the competency evaluations.
D-202-CR-2017-02879	Track 3	FPE	Grand Jury	08/07/17	09/01/17	08/24/17	09/01/17	09/19/17	NA			Competency evaluation was ordered on 12/13/17 and the case was stayed at that time. The competency evaluation was completed and the defendant was found competent on 03/19/18. On 05/07/18 the case was amended to a track 2. A new competency evaluation was ordered on 06/26/18 and the defendant was again found to be competent on 08/03/18. On 08/29/18 the case was moved to a track 1 and the trial date is scheduled for 05/13/19.	Competency evaluations cause cases to go longer due to limited resources to perform the competency evaluations.
D-202-CR-2017-03291	Track 1	FSX	Grand Jury	08/01/14		10/06/17	10/16/17	11/08/17	05/15/18	211	Exceeded	Plead no contest to all 10 charges. Calculates 1 day past CMO timing of 210 days and there were a couple of warrants that had to be ordered.	

D-202-CR-2017-03396	Track 2	FPE	Grand Jury	09/29/17	10/23/17	10/17/17	10/23/17	11/14/17	05/24/18	213	-	1 charge dismissed by prosecutor plea agreement and 2 charges no contest. The case was suspended / stayed on 12/19/17 and a competency evaluation was ordered on 01/10/18. The competency evaluation was withdrawn on 02/20/18 and the stay was lifted. At this time the case was moved to a track 1.	Competency evaluations cause cases to go longer due to limited resources to perform the competency evaluations.
D-202-CR-2017-03511	Track 1	FPS	Grand Jury	10/05/17	10/11/17	10/24/17	11/03/17	07/10/18	09/11/18	312	Exceeded	Nolle. A warrant was issued on 12/01/17 and was not served until 07/03/18. This caused the delay in meeting the CMO.	Note was that the court suppressed deputy due to the State not being able to retrieve supplemental report; deputy was a necessary witness.
D-202-CR-2017-03643	Track 1	FPP	Grand Jury	10/02/17		11/02/17	11/06/17	11/30/17	01/05/18	60	-	Nolle. Defendant is deceased	Note to the above. Based on the documentation, it appears that because the DA / Law Enforcement was not able to provide a "supplemental report", the Judge determined that the law enforcement office would not be allowed to provide testimony. Since the officer was crucial to the case, the DA was not able to continue and Nolle'd the case. Defendant was to enter drug court, but failed to do so. After warrant was issued, the defendant was found to be deceased.
D-202-CR-2017-03696	Track 2	FPP	Grand Jury	09/30/17		11/08/17	11/17/17	12/07/17	07/20/18	245	-	The charge on this case was dismissed by prosecutor plea agreement. However, there were two other cases where the defendant plead no contest on the same plea agreement.	Defendant was placed on probation in 2017-03703 and subsequently violated probation and was remanded into MDC.
D-202-CR-2017-03827	Track 2	FPP	Grand Jury	10/12/17		11/20/17	12/01/17	12/18/17	NA			There was an extension of time granted on 07/20/18 to 09/20/18. Also, on 09/20/18 there is a notice of for hearing to change plea and that is set for 10/04/18.	
D-202-CR-2017-03872	Track 1	FPE	Grand Jury	11/05/17		11/27/17	12/08/17	01/26/18	06/15/18	189	-	Nolle. Prosecutor plea agreement dismissed the charges on this case and 1 on another case. Defendant plead no contest to 2 charges in other case.	
D-202-CR-2017-04144	Track 2	FHO	Grand Jury	11/27/17	03/30/18	12/14/17	12/29/17	01/16/18	NA			Trial set for 11/26/18	
D-202-CR-2017-00742	Track 2	FHO	Grand Jury	01/21/17		02/24/17	03/03/17	03/28/17	12/06/17	278	-	Acquittal	
D-202-CR-2017-00875	Track 3	FHO	Grand Jury	08/10/16	08/10/17	03/07/17	04/14/17	05/08/17	04/05/18	356	-	Guilty	
D-202-CR-2017-02190	Track 2	FSX	Grand Jury	12/19/15	07/03/17	06/21/17	07/03/17	08/03/17	05/09/18	310	Exceeded	Based on a review of the Odyssey record, the case was originally scheduled to go to trial on April 9, 2018, which would have been within the CMO timeline. After the Motion to Move Case to Track 3 or Motion for Continuance in the Alternative (and Defendant's subsequent motion to reconsider after the Court denied the first Motion), while the Court again orally denied the motion to set the case on a Track 3 timeline, it appears it did allow a 30-day continuance for trial (which is allowed under the CMO provisions). The trial was then scheduled for May 7, 2018. Trial was later moved two days to May 9 because of scheduling issues. The case went to trial on May 9, 2018 and ended on May 14, 2018 with the result being a mistrial due to a hung jury on all counts. This case is already set up to go to trial for a second time on October 15, 2018.	
D-202-CR-2017-02983	Track 1	FPS	Preliminary	06/13/17		10/19/17	10/27/17	11/13/17	06/01/18	217	Exceeded	Trial was originally scheduled for May 14, 2018 which was within CMO timeline. The Judge then granted the defendants motion for continuance (extension of time) for good cause due to change in defendants counsel. The trial date was then moved to May 30, 2018. The trial ended with an acquittal of all charges on June 7, 2018.	
D-202-CR-2017-04097	Track 1	FPE	Grand Jury	05/05/17		12/22/17	12/27/17	07/23/18		213	Exceeded	Not guilty. There was a request for continuance and an order extending the date of the trial. It appears that the trial date was originally set within the time limits, but appears to have been extended for good cause.	

General notes from testing

- There are only two individuals that will work with the Second Judicial District Court to perform competency evaluations. This is because the court only pays a very low fixed fee for the evaluations and the individuals that perform this make significantly more doing this in private practice or other means than working for the court. Also, this is a slow, clumsy process that can drag the time frame out by up to a year. It was noted that when this evaluation is done, the timing for the CMO stops until it is completed since the courts and attorneys don't have any control over how quickly this occurs.
- Evidenced by the testing, the DA appears to follow a strategy of "over charging" or charging as many items as they can for the cases, then when it comes time to a plea agreement then they can seem like they are giving in more by dismissing more charges. However, most of these are smaller and likely would not affect much if the case were to go to trial or if the DA actually had to go to trial on all the charges, they would end up dropping them because it would be too much work to follow through with all the charges.

FHO	Felony Homicide
FPS	Felony Public Safety
FPS	Felony Public Safety
FPE	Felony Crimes against Persons
FDG	Felony Drug Offenses
FPP	Felony Crimes against Property
FSX	Felony Sex Offenses



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