

THE CUMBERLAND UNIFIED CRIMINAL DOCKET

An Evaluation of the First 18 Months



Report to the Supreme Judicial Court

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EXECUTIVE SUMMARY

In 2007, the Supreme Judicial Court identified several serious problems caused by the procedures used in District and Superior Courts throughout the state for the processing of criminal cases. Those problems included:

- ◆ duplication of efforts by Judicial Branch staff, exacerbating staffing shortages;
- ◆ repetitive court appearances by defendants, lawyers, law enforcement, and victims that did not foster resolution of cases;
- ◆ lack of certainty in scheduling, including the scheduling of trials;
- ◆ unnecessary delay; and,
- ◆ a process by which the right to a jury trial could be forfeited by default.

At the request of Chief Justice Leigh I. Saufley, Associate Justice Ellen A. Gorman convened a planning group in 2008 to design a new model for processing criminal cases in Cumberland County. The planning group recommended the creation of a Unified Criminal Docket (UCD). Portland was selected as the pilot site, and on January 4, 2009, the Cumberland UCD commenced operation there. This report describes the UCD model and provides information about the UCD's first 18 months of operation.

The UCD model:

- ◆ represents a single unified process for criminal cases, thereby reducing duplication of work by clerks;
- ◆ reduces the number of court appearances by establishing 4 core events (initial appearance/arraignment, dispositional conference, motion hearing and jury trial) and creating firm expectations as to what will be accomplished when a defendant appears for each court event;
- ◆ utilizes date-certain scheduling, including the assignment of dates for all future events that may be necessary at the time of a defendant's initial appearance;

- ◆ provides defendants with early and enhanced access to case evidence and advice from lawyers;
- ◆ affords criminal defendants automatic access to a jury trial;
- ◆ provides for judicial participation in case resolution discussions to promote the prompt and fair resolution of cases; and,
- ◆ utilizes technological improvements, including a new criminal history report, a new docket management tool, and computers in the courtroom.

During its first 18 months of operation the UCD showed great promise.

- ◆ The demands on the clerk's office were reduced, enabling the clerks to operate effectively and efficiently with fewer employees assigned to the criminal caseload.
- ◆ All parties benefited from knowing the important dates in advance, as did victims of crime and potential witnesses.
- ◆ Most cases resolved quickly and with fewer court appearances.
 - More than half of the cases resolved at initial appearance.
 - Nearly 70% of the cases that were scheduled for a second court event (the dispositional conference) resolved at that time.
 - The average age of the UCD's pending caseload was lower than the statewide average for both the Superior and District Courts.
 - The average age of a UCD case at disposition was also lower than the statewide average for both the Superior and District Courts.
- ◆ The District Attorney's office experienced a dramatic reduction in the number of subpoenas issued, thereby reducing the burden on its staff.
- ◆ Law enforcement officers spent less time in court or serving subpoenas, thereby reducing costs for law enforcement.

- ◆ Judges from both trial courts were cross-trained in all aspects of criminal cases.

The UCD received positive feedback from participants.

- ◆ The District Attorney noted that resolutions are being reached earlier in the process and that the team approach her office utilizes has enhanced the professional development of the prosecutors by exposing them to a broader range of cases.
- ◆ Criminal defense attorneys reported that the UCD imposes no undue or excessive pressure to resolve matters prior to trial and that the accelerated pace at which cases are concluded still preserves all of defendants' constitutional protections.
- ◆ Victim advocates reported that expedited case processing in the UCD facilitated victim engagement in the court process and reduced victims' frustration over repeated continuances.

Based on the statistical evidence to date and the reports of UCD participants, the first 18 months of operation demonstrated that the Cumberland UCD resulted in more efficient case processing without diminishing the rights of defendants. It also reduced the need for resources both in the Judicial Branch and in criminal justice agencies.

CREATION OF THE CUMBERLAND UNIFIED CRIMINAL DOCKET

1. The Existing Criminal System

In 2007, the Maine Supreme Judicial Court, under the leadership of Chief Justice Leigh I. Saufley, identified several inefficiencies and inadequacies in the Judicial Branch's handling of criminal cases. Prominent among them were redundancies and overlap in processing cases that resulted in additional staffing costs. In the existing system misdemeanor criminal complaints are filed in the District Court but, because only the Superior Court conducts jury trials, any defendant wishing to exercise his/her right to a jury trial must file a jury trial request in the District Court within 21 days after the first court appearance. M.R. Crim. P. 22(a). Upon submission of a jury trial request, the case is transferred to the Superior Court for trial. M.R. Crim. P. 22(b). This dual system requires staff to process cases twice, delays the resolution of cases and, in some cases, creates inadvertent loss of the right to trial.

The difficulties created by this process are discussed below.

- **Lack of Certainty in Scheduling and Excessive Delay.** The existing system causes unnecessary delay for transferred cases. The docket call system historically used by the Superior Court requires the parties to attend the call of the docket to report whether a matter is ready for trial and could be scheduled for jury selection or whether an agreement has been reached

for resolution of the matter prior to trial. This system can result in the repeated rescheduling of cases, as there are often far too many unresolved matters to be heard in the time allotted, and any cases ready for trial but not actually scheduled for the jury selection dates associated with that docket call are continued until the next docket call. Each continuance makes it more difficult for victims and witnesses to participate, makes it more difficult for interested members of the public to follow the progress of the case, adds costs to law enforcement and State-paid lawyer programs, and adds to the uncertainty about when the matter would be finally resolved. Moreover, particularly in misdemeanor cases, the parties had little incentive to resolve cases promptly, given the strong likelihood that the matter would be continued to the next docket call.

- **Duplication of Work for Clerks.** The existing system of requiring jury trial requests, often resulting in late requests or motions, also causes a duplication of effort in court clerk's offices. When a misdemeanor case filed in the District Court is transferred to the Superior Court for a jury trial, the Superior Court clerk must create an entirely new case file. In addition, there is a cumbersome system for transferring bail posted for a District Court case that is later transferred to Superior Court. This creates significant and unnecessary work for clerks in both courts.

- **Court Appearances that did not Result in Resolution.** Motion practice in the Superior Court created additional inefficiency. M.R. Crim. P. 12(b)(3) requires that motions be filed within 21 days after entry of plea at first appearance and, as a result, motions were routinely filed as a matter of course. Although those motions were unlikely to require a hearing, they were nonetheless scheduled on so-called “trriage” days. Any motions not withdrawn or resolved on triage day were scheduled for hearing on a later motion day. This system was developed in response to a change in the Maine Rules of Criminal Procedure that shifted responsibility from the District Court to the Superior Court for hearing all motions filed in misdemeanor cases transferred for jury trial. As created and implemented, the system allowed the parties an opportunity to discuss possible resolution, but provided little incentive to do so.

- **Methodology that Failed to Promote Protection of Right to Jury Trial also Caused Excess Work for Courts.** Many of the defendants who are not represented by counsel often fail to understand, or promptly accomplish, the steps needed to preserve their right to a jury trial. When those self-represented defendants appear for scheduled bench trials and complain about losing a substantive right simply by failing to act, presiding judges are faced with deciding whether to allow a “late” request for a jury

trial at a time when the State has already subpoenaed its witnesses and is prepared to present its case. Even defendants who have lawyers, either retained or appointed, frequently fail to file timely requests for jury trials because they do not meet with those lawyers until after the 21-day period to request a jury trial has expired. As a result, lawyers often move for permission to file late jury trial requests. These motions, like the late requests made by self-represented defendants, create additional work for clerks, prosecutors, and judges.

- **Delay in Provision of Counsel to Indigent Defendants.** Finally, the existing system compromised the provision of court-appointed counsel to indigent defendants. Defendants requesting court-appointed counsel were required to fill out multi-page applications and then meet with “screeners” to review the information on the application forms. The screeners made recommendations to the court, based on the applications and interviews. A judge then reviewed the screeners’ recommendations and, if he or she determined that counsel should be assigned, the court clerk sent notice of the appointment by mail to the defendant and counsel. It was not uncommon for defendants to first learn that counsel had been assigned two weeks after the arraignment or first appearance date. Delay in the participation of appointed counsel created extra work for clerk’s offices related to late filings and

motions to extend deadlines. It further retarded the court's ability to address the case and created more confusion for witnesses and victims. The delay was also detrimental to defendants who were unable to post bail.

2. The Planning Group

In an effort to address the Court's concerns with criminal processing, Associate Justice Ellen A. Gorman convened a planning group in the spring of 2008 to design a new model for processing criminal cases in Cumberland County. The planning group selected Portland as the pilot site for testing the UCD based on its heavy criminal caseload, the availability of judicial and clerical resources in the Cumberland County Courthouse, and the willingness of Cumberland County District Attorney Stephanie Anderson to participate in a process to improve the administration of criminal justice. The planning group, consisting of Superior Court Justices Roland A. Cole and Robert E. Crowley, and District Court Judges E. Paul Eggert and Keith A. Powers, together with the Court's Information Technology Project Manager, Doug Birgfeld, and Criminal Process Manager, John Pelletier, conducted weekly planning sessions. The planning group also obtained valuable input and cooperation from District Attorney Stephanie Anderson and representatives of the defense bar.

Although the planning group set core requirements for the recommended new model, the various participants suggested and designed their own methods for

meeting these requirements. The District Attorney's office suggested an innovative team approach to case management, for example, and the clerks suggested a block scheduling model.

The resulting recommendation was for the creation of a Unified Criminal Docket (UCD), through which all criminal cases would flow. Based on the planning group's research and recommendations, the Judicial Branch implemented the Cumberland UCD in January of 2009.¹

3. Funding and Staffing the UCD

Despite the economic challenges facing the Judicial Branch, in order to obtain the anticipated long-term savings and improved public service through this innovation, the Supreme Judicial Court diverted existing resources to the planning and initial implementation of the UCD pilot project. UCD-related technology projects were given priority status, funding for Lawyers of the Day was approved, and the judges assigned to the UCD spent hours meeting with each other and the stakeholders while creating the process, and then additional hours undergoing training, in order to become familiar with their expanded responsibilities.

Personnel for the UCD were drawn from existing District Court and Superior Court employees. Because the planning group had determined that the

¹ In addition to processing criminal cases filed in Portland, the Cumberland UCD also handles criminal cases transferred from the Bridgton and West Bath District Courts. Any Cumberland County case not resolving at initial appearance in Bridgton or West Bath is transferred to the Cumberland UCD for all further proceedings.

UCD would consist of a distinct docket within the Cumberland County Superior Court responsible for receiving and processing all adult criminal filings, all District Court staff members assigned to criminal matters were transferred to the newly unified criminal division in the Superior Court clerk's office. UCD Clerk Penny Whitney-Asdourian took on the responsibility of managing the combined criminal staff. She reported directly to Cumberland County Superior Court Clerk Sally Bourget.²

As planning progressed, it was decided that 8 judges—four Superior Court justices and 4 District Court judges—would be assigned to the UCD on a rotating basis.³ For a 2-month time period 4 judges would preside over criminal matters in the UCD while the other 4 judges handled non-criminal matters. At the end of 2 months, the judges would change assignments. Those that had been doing non-criminal work would be assigned to the UCD, while the 4 who had been working in the UCD took on non-criminal caseloads. This pattern was to continue throughout the year. As individual justices and judges were selected to staff the UCD, they also became part of the planning group designing it.

² In late 2009, the District and Superior Court Clerk's offices were fully merged, and Sally Bourget became the Clerk of the newly-consolidated office.

³ The number of judges chosen reflected a wish to ensure that the responsibility for handling the criminal docket was shared equally between the courts, and that there would be some consistency in the handling of cases.

The Clerks proposed that the UCD operate on a block schedule. For each 2-week scheduling block, a particular judge or justice would be assigned to a particular stage of the process; arraignment and motion hearings; dispositional conferences; jury selection and jury trials; or “fourth judge,” a position assigned to assist the other 3 stages.

Because both Superior Court justices and District Court judges participate in the UCD, those justices and judges underwent training to become more familiar with tasks most often performed in the other court: Superior Court justices now preside over many more initial appearances, for example, and District Court judges now conduct jury matters.⁴ At Justice Gorman’s suggestion, the planning group also created a UCD “bench book” that sets forth the precise procedures to be followed at each stage of a criminal case.

4. UCD Technology

The Judicial Branch is currently in the process of developing the MEJIS II information system. Although the MEJIS II criminal module is not yet in production, the Judicial Branch’s Office of Information Technology (OIT) worked diligently to ensure that some of the new applications associated with MEJIS II would be available to the UCD. One of the most important of these new

⁴ This comports with previous recommendations and legislative changes allowing and encouraging judicial cross-assignments. 4 M.R.S. §§ 120, 157-C (2008).

applications is the MEJIS II Docket Manager. This tool has been essential to the clerk's implementation and management of the UCD schedule.

Technology also improved the criminal history information available to the parties and the court when bail is reviewed for in-custody defendants and when sentences must be determined. OIT created a report, based on data already maintained in the MEJIS database, that contains complete and accurate information on a defendant's criminal history in the Maine courts. The new report supports informed decisions by making reliable and readable criminal history information available to all interested parties.

In addition, UCD clerks now have access to a computer in each courtroom and at the dispositional conference. This allows them to docket events as they happen, thereby eliminating a backlog of case files in the clerk's office awaiting docketing. Computers in the courtroom also allow a clerk to immediately obtain information about other pending cases involving the defendant that might come to light during a particular proceeding.

THE UNIFIED CRIMINAL DOCKET MODEL

The UCD model is designed to:

- Reduce the workload of an overburdened clerk's office by eliminating duplication of tasks for cases transferred between courts, eliminating unnecessary filings, and reducing the number of times that a clerk must handle a file over the course of an individual case;

- Protect the rights of criminal defendants by providing (1) a jury trial in every case unless the defendant affirmatively waives that right, (2) early and automatic access to the State's investigatory materials, (3) access to defense attorneys at the initial court appearance, and (4) immediate appointment of counsel to those who qualify;
- Reduce the number of court appearances required for each case by establishing date-certain scheduling and creating firm expectations as to what will be accomplished at each of a defendant's court appearances in a matter;
- Improve public/victim understanding of process and thereby increase likelihood of their meaningful involvement; and,
- Promote the fair and prompt resolution of cases through judicial participation in case resolution discussions.

The Cumberland UCD model is built on four specific events: the initial appearance; the dispositional conference; motion hearing; and trial. Each event has been created to maximize opportunities for resolution of disputes while reducing unnecessary court appearances. A brief explanation of the UCD process follows. Please refer to Appendix A for a more detailed discussion of each event.

A UCD arraignment session is similar to an arraignment session in any court in Maine. The UCD model, however, includes several changes that encourage parties to dispose of cases that would benefit from an early resolution. First, defendants have access to an attorney and to the State's evidence at the arraignment session. Second, the UCD incorporates a vertical prosecution model, meaning that the prosecutor who handles the case at arraignment will be responsible for the case at trial. Third, the schedule is designed to ensure the

presiding judge has time to take any pleas that may result from a defendant's wish to resolve a case on the day of arraignment. Finally, a defendant pleading not guilty receives the dates for all future court events at the time of his/her arraignment.

The next event, the dispositional conference, is a core element of the UCD. The UCD rules require the prosecutor and the defendant, along with his/her attorney, to attend a dispositional conference and participate in meaningful discussions about the case. This event is scheduled to occur before either party has spent substantial time or resources preparing for trial. The role of the court is to assist the parties in evaluating the strengths and weaknesses of their case, organize the case for trial, address potential motions and, where possible and appropriate, assist the parties in reaching a fair and acceptable agreement. The judge presiding at the conference does not preside at any later adjudicatory events without the parties' express agreement. The UCD rules provide that substantive motions be served on the opposing party at least 10 days before the conference but specifically directs that such motions not be filed with the court at that time. This allows for issues to be discussed at the conference but saves a significant piece of work for the clerks, because such motions are filed with the court only if the issues identified in them are not resolved at the conference.

If a case does not resolve at arraignment or dispositional conference, it proceeds expeditiously to final resolution. Unresolved motions are promptly filed with the court and heard within two weeks on the date assigned at the time of arraignment. The matter then proceeds to jury selection or bench trial within four weeks of the conference, again on a date assigned at the time of arraignment. For the most part, motion hearings, jury selection, and trial do not differ from similar events held in courts around the state.

CUMBERLAND UCD OUTCOMES—THE FIRST 18 MONTHS

1. Statistical Measures

During its first 18 months of operation, there were 14,065 cases filed in the UCD; 12,647 UCD cases were disposed. This number, however, actually understates the number of cases that were resolved under the UCD process. When the UCD commenced operations on January 4, 2009, cases that had been filed under the old system remained pending in both trial courts. Each of these cases was assigned a dispositional conference date and was resolved by UCD judges during the UCD's first 18 months. UCD judges disposed of 2,024 cases pending under the old system, as well as 12,647 cases filed in the UCD. Thus, the total number of case dispositions between January 2009 and June 2010 was 14,671.

The available statistical data indicate that the UCD is effective in decreasing the average length of time a criminal matter is pending in the court system. The Administrative Office of the Courts tracks the average age of pending cases as well as the average age of cases at the time of disposition. At the end of June 2010, the average age of cases pending in the UCD was 72 days. During its first 18 months of operation, UCD cases were fully resolved within 74.5 days on average.

In contrast, only one Superior Court had an average case age of fewer than 100 days for its pending criminal docket, and many exceeded 100 days by a substantial margin. Statewide, the average age of the Superior Court's pending criminal caseload was 171 days at the end of June 2010. Although several District Courts had an average pending case age of fewer than 72 days, the statewide average for the District Court was 85 days.

During the first 18 months of operation, the average age of a UCD criminal case at disposition was 74.5 days. Although some District Court locations averaged fewer days to disposition, the statewide average for the District Court was 113.5 days. No Superior Court maintained an average age at disposition of fewer than 100 days. In fact, only two Superior Court locations maintained an average age at disposition below 150 days. The chart below compares these case aging statistics in the UCD with the statewide averages for District Court and Superior Court.

Court	Average Age of Pending Cases as of June 30, 2010	Average Age of Cases at Disposition between January 2009 & June 2010
UCD	72 Days	74.5 Days
Superior Court	171 Days	213 Days
District Court	85 Days	113.5 Days

In sum, with initial additional resources and focused attention, the Unified Criminal Docket has been demonstrated to substantially improve case aging statistics in both felony and misdemeanor cases.

District Attorney Anderson maintained statistics on the percentage of cases resolved at the arraignment/initial appearance and at the dispositional conference. These statistics demonstrate that most UCD cases resolved quickly and with fewer court appearances. On average, more than 50% were completed at the defendant's initial appearance. Of the cases scheduled for a second court event (the dispositional conference), nearly 70%, on average, resolved at that time.

In addition, the new UCD process resulted in a dramatic reduction in the number of subpoenas issued by the District Attorney. During 2009, the number of subpoenas generated each month declined 79% on average. This trend continued during 2010.

2. Participants' Anecdotal Perspectives

A. Clerks

Sally Bourget, Clerk of the consolidated clerk's office in Portland, and UCD Clerk Penny Whitney-Asdourian both report substantial benefits from adoption of the UCD format. Eliminating the jury trial request process has ended the duplication of clerk effort in processing those requests, as well as the cumbersome process for transferring bail on cases from the District Court to the Superior Court. Time spent docketing and scheduling motions has also diminished, because the parties no longer file substantive evidentiary motions on cases that are resolved before or during the dispositional conference. Finally, the clerk's office extols the benefits of the technological improvements available in the UCD.

The practice of scheduling all court events for the entire duration of a case at one time has greatly reduced the number of times the clerk's office handles each file. In addition, because defendants receive notice of these events at their arraignment/initial appearance, the clerk's office now mails out far fewer notices, saving both time and mailing costs.

In general, the clerks observe that the cases appropriate for resolution are getting resolved much more quickly, which they attribute to the fixed scheduling process and the availability of judicial resources. Moreover, motion lists and jury

trial lists are sufficiently limited in number to allow all matters on a list to be heard, obviating the need for continuances and further encouraging resolution.

The clerks report that the physical move from the first floor District Court clerk's office into the second floor Superior Court space presented the biggest challenge in transitioning to the UCD process. In addition, it took time for the Superior Court staff to become accustomed to the higher volume of District Court cases. Although the early months of the UCD presented some difficulty because the clerks were processing cases that had originated on three different dockets (the District Court, the Superior Court, and the UCD), both clerks commend their staff for successfully navigating these challenges. The clerk's office has been running smoothly after working its way through the initial transition period.

Finally, it is noteworthy that the number of clerk's office staff devoted to criminal cases in Portland has been reduced. Before the UCD, there were 23.8 positions assigned to criminal case processing in Portland. There are now 20.8 staff positions assigned to the UCD, a reduction of 3 positions.

B. District Attorney

District Attorney Stephanie Anderson's decision to work in partnership with the Judicial Branch to improve the system was crucial to the success of the UCD. District Attorney Anderson and members of her staff report positive outcomes from the UCD process. Although the new discovery requirements place an

increased burden on her office, District Attorney Anderson is committed to complying with those requirements to facilitate the UCD's utility. The success of the UCD in this regard is reflected in the case disposition rates in the statistics set forth above.

District Attorney Anderson points out that many of the cases that were resolved at a motion list or a docket call list under the old system are now resolved at the dispositional conference, which occurs much earlier in the process. Because witnesses or law enforcement officers are not required to appear in court for the dispositional conferences, the DA's office and law enforcement agencies have many fewer subpoenas to prepare and serve, resulting in a savings of time and effort for all.

In addition, due to the early and complete provision of discovery, the creation of "date-certain" events, and the assignment of the same prosecutorial team for all steps of each case, many more matters are resolved without repeated continuances. The inconvenience suffered by victims and witnesses under the previous system, including law enforcement witnesses, was substantial. Those individuals were often subject to subpoenas requiring them to make themselves available for triage lists, motion lists, and trial lists involving an unknown number of days over the course of a 3-week period. When any of those events did not occur, for whatever reason, the case was continued to another set of dates entirely.

The UCD, in contrast, allows the prosecutors to issue witness subpoenas only when the case is ready for trial, and for a shorter period.

District Attorney Anderson also reports that the utilization of prosecutorial teams, a system she created specifically for the UCD, has enhanced the professional development of the attorneys in her office. Formerly, certain staff members were assigned to felony cases in the Superior Court, while others were assigned to handle misdemeanor cases in the District Court. The Superior Court staff tended to be attorneys with more experience, and the turnover among that staff was low. Hence, the District Court staff had little opportunity to gain experience handling more serious cases. Under the UCD, all attorneys in the office prosecute a variety of cases, and the former District Court staff now has the opportunity to gain broader experience. Although there was some concern that the more senior staff would not enjoy working on the more routine cases, one such attorney states that the new mix of cases is a good break from a steady flow of the most serious cases and allows more focus on the serious matters that now make up a smaller percentage of the caseload. This attorney also stated that the UCD process has facilitated the development of stronger relationships among a team of attorneys and the designated group of law enforcement agencies responsible for those cases.

Assistant District Attorneys welcome the elimination of motion practice related to late jury trial requests, and note that the UCD procedure has also greatly reduced what they perceived as a largely formulaic motion practice. They report that the dispositional conference process spurs appropriate case resolution, and that the number of jury trials in misdemeanor cases has not increased.

Despite these benefits, several ADAs express some concern over certain aspects of the UCD process. If, over time, the State does not make its best offer at the dispositional conference, but rather offers a better deal at a later stage, the incentive for defendants to resolve cases at the dispositional conference would be eroded.

C. Defense Attorneys

All of the defense attorneys consulted described their initial trepidation at the prospect of judicial involvement in case resolution discussions, fearing that the defendants' rights could be compromised by undue pressure from the bench. In practice, however, these attorneys have found the dispositional conference process helpful in resolving cases without imposing undue pressure on the defendant to plead guilty. These attorneys also felt that the dispositional conference provided an opportunity for the State to engage in meaningful discussions early on in the

case.⁵ In general, the defense attorneys consulted are persuaded that the UCD is operating successfully. One stated that “cases that should be dealt with early are getting dealt with,” and another noted that the dispositional conference initially occurred too early in the more serious cases and welcomed the planning group’s decision to adjust the scheduling of those conferences.

D. Law Enforcement Agencies

One urban and one suburban law enforcement agency were interviewed for this report. They pointed out several differences under the new system, including that officers are not required to appear at the courthouse as often and are asked to serve far fewer subpoenas. One officer also acknowledged that working regularly with a defined team of prosecutors has fostered a better working relationship among them. Further, both agencies also report that their “court overtime” accounts, which were often subject to a shortfall before the UCD was initiated, are now showing surpluses. The suburban department, for example, estimated that it is experiencing a 7% to 10% reduction in court overtime costs.

E. Victim Advocates

Members of the victim advocacy community also note that cases are being resolved much more quickly in the UCD system. They report that the shortened time periods have improved efforts to keep victims engaged in the process and

⁵ Interestingly, both the ADAs and the defense attorneys reported that, before the UCD, the other was reluctant to engage in meaningful resolution discussions early in the case.

have reduced the likelihood that they will lose contact with victims due to long delays. They also report “much less frustration” on the part of victims now that dates are known in advance and cases move expeditiously through the judicial system without repeated continuances.

Of concern, they report that in cases going to trial, the short time frame between dispositional conference and trial can present difficulties in contacting and preparing victims for court. Finally, advocates caution that the new UCD procedures to expedite hearings on motions to amend bail may not always allow sufficient time for the State to obtain case information and victim input relevant to the bail decision.⁶

F. General Observations

Law enforcement officials described a perception among officers that the UCD process generates additional pressure to dispose of cases, causing ADAs to decline prosecution in more cases and to agree to more lenient outcomes in the cases they do prosecute. Although they acknowledge that this has always been a source of tension between law enforcement and prosecutors, they perceive that this tension has increased under the UCD. Upon further questioning, however, it

⁶ Title 15 M.R.S. § 1028 permits any defendant aggrieved by the bail decision of a bail commissioner or a District Court judge to have a de novo determination of bail in the Superior Court. Having judges from both of the trial courts handle initial appearances in the UCD caused some confusion when requests for de novo bail were filed. As a result, UCD Rule 46 was amended in March 2010 to make it clear that each defendant was entitled to a de novo bail determination, and to specify the process for that determination. The timeframes chosen mirror the timeframes required by 15 M.R.S. § 1028, so it is not clear why the advocates were concerned by the rule.

became clear that most of the actual complaints concerned new policies in the District Attorney's office regarding the prosecution of drinking in public and some other "status" offenses. District Attorney Anderson acknowledged that the changes in prosecutorial charging policies occurred in the fall of 2008, just before the UCD was implemented. She reports that these changes were driven entirely by the constant under-funding of the District Attorney's office and the consequent reduction in her office's ability to devote resources to all case types. District Attorney Anderson's new policies for charging and prosecuting certain offenses are aimed at more effective use of DA resources and a reduction in court congestion.

CONCLUSION

1. Challenges

Both the statistics and the near universal perception of those consulted for this report convey that the UCD pilot project has improved the quality and efficiency of the criminal justice system in Cumberland County. The challenge for the future will be to determine whether these benefits are sustainable, and if so, whether they can be replicated in other parts of the State.

Although few, if any, complaints or problems have been reported, several issues require monitoring to determine if the benefits initially observed will be maintained:

- Will parties continue to engage seriously and in good faith at dispositional conferences or will old habits of delay and intransigence creep back into the system;
- Will efficiencies observed as compared to “the old system” translate into sustainable cost savings and allow resources to be diverted for use in other areas; and, finally,
- Will the lessons learned in the Cumberland UCD process translate into improvements in Maine’s other courts, either through implementation of the UCD model or through the gradual importation of those lessons into the criminal process in other courts?

In addition, it should be noted that the Judicial Branch committed significant time and resources to the planning and implementation of the UCD pilot project, including the allocation of substantial judicial resources. In a time when the Judicial Branch is faced with severe budgetary restrictions and limited resources, it is difficult to commit the resources necessary to plan and implement other models around the State. Several factors, including geography, the number of court locations in a region, the variation in size of the criminal caseload at different court locations, the number of vacancies, and other factors unique to each region indicate a need for careful planning.

Nevertheless, when it became apparent that the Cumberland UCD was running smoothly and effectively during its first year, the Judicial Branch decided to pilot the UCD in a second location. The opening of the new Penobscot Judicial Center and the consolidation of the Penobscot Superior and Bangor District Court Clerk’s offices presented a unique opportunity to implement the UCD model in

Bangor. Following the move to the new courthouse, the Penobscot UCD began operating in 2010. At this juncture it is too early to report the progress made and any lessons learned from its implementation at that location.

Other areas of the State face many of the same challenges that led to the development of the UCD. Lack of transparency in scheduling, duplication of efforts by court staff, unnecessary delay, repetitive court appearances that do not lead to resolution of the case, and a process that does not always effectively protect an individual's right to a jury trial are issues encountered in any criminal docket. Because each region is unique, there must be careful planning before changes in process can be implemented. A major challenge, therefore, is to find the resources necessary to plan and effectuate improvements elsewhere in the state.

2. Benefits

By identifying opportunities for improved efficiencies in court practices, representatives from all of the stakeholders who work within the criminal justice system, acting collaboratively, created a new procedure for handling criminal cases that has substantially improved the provision of justice in Cumberland County. After 18 months of operation, numerous benefits to the criminal process have been identified:

- Cases are resolved more quickly and with fewer court appearances;
- All parties know the important dates in advance, thereby benefiting victims of crime and potential witnesses;

- Elimination of duplicative filings, repeated continuances, and unnecessary motions has reduced the demand on the clerks and enabled the clerk's office to operate effectively with 3 fewer employees assigned to the criminal caseload, allowing the addition of much-needed security resources;
- Technology, together with revised scheduling and motion practice, is easing the burden on the clerk's office;
- Defendants have improved access to counsel and to the information they need to make informed decisions about their cases, while maintaining the absolute right to a jury trial;
- The team approach has improved professional development for lawyers in the District Attorney's office, and the issuing of fewer subpoenas has reduced the burden on the DA's support staff; and,
- Local law enforcement costs have been reduced by eliminating redundant or duplicative court dates, and law enforcement officers are spending less of their valuable time waiting in court or serving subpoenas.

New efficiencies in clerk's office operations are evident, law enforcement agencies have experienced budgetary relief in the payment of court overtime, and cases are being resolved without undue delay. Defendants, victims, and witnesses are spared the cost, time, disruption and uncertainty associated with multiple case continuances and court appearances that do not move cases toward resolution. Although there is a common cliché that criminal defendants always benefit from delay, criminological theory suggests that defendants, as well as victims and society as a whole, benefit from a prompt acceptance of responsibility and the swift imposition of consequences by a system that is perceived to be fair.

Moreover, when cases are overcharged or simply lack merit, defendants benefit from an early opportunity for serious discussions with the prosecutor and the court, which may result in dismissal or reduction of the charges, or a prompt trial on the merits of the case.

In conclusion, the UCD has substantially improved the processing of criminal cases in Cumberland County. Defendants and others involved in the criminal justice system have benefited from these improvements.

Appendix A

THE UNIFIED CRIMINAL DOCKET MODEL

The UCD model is designed to:

- Reduce the workload of an overburdened clerk's office by eliminating duplication of tasks for cases transferred between courts, eliminating unnecessary filings, and reducing the number of times that a clerk must handle a file over the course of an individual case;
- Protect the rights of criminal defendants by providing (1) a jury trial in every case unless the defendant affirmatively waives that right, (2) early and automatic access to the State's investigatory materials, (3) access to defense attorneys at the initial court appearance, and (4) immediate appointment of counsel to those who qualify;
- Reduce the number of court appearances required for each case by establishing date-certain scheduling and creating firm expectations as to what will be accomplished at each of a defendant's court appearances in a matter;
- Improve public/victim understanding of process and thereby increase likelihood of their meaningful involvement; and,
- Promote the fair and prompt resolution of cases through judicial participation in case resolution discussions.

The Cumberland UCD model is built on four specific events: the initial appearance; the dispositional conference; motion hearing; and trial. Each event has been created to maximize opportunities for resolution of disputes while reducing unnecessary court appearances.

1. The Initial Appearance

In all criminal cases, after being charged with either a misdemeanor or felony crime, the defendant appears in court at an arraignment and is asked to plead either guilty or not guilty. Under the existing criminal process, some defendants face this decision without access to the advice of a lawyer and many face the decision without any opportunity to review the evidence against them. By contrast, at their first court appearance in the UCD, defendants have access to the State's evidence and to legal advice.

The UCD obtained the cooperation of the Cumberland County District Attorney to provide the State's investigatory materials, or "discovery," to defendants at or before their first appearance in court, including those materials formerly deemed "automatic discovery," and those materials formerly disclosed to the defendant only if he or she requested them.⁷

The UCD assigns two Lawyers of the Day to each court session involving arraignments in misdemeanor cases and initial appearances in felony cases.⁸

⁷ The procedural changes discussed herein are set forth in the Unified Criminal Docket Rules of Procedure promulgated by Administrative Order of the Supreme Judicial Court dated November 1, 2008. The Rules may be found on the Judicial Branch website at:

http://www.courts.state.me.us/court_info/opinions/adminorders/JB-08-2.html.

⁸ During the first half of 2008, the Lawyer of the Day Program throughout the State was curtailed for arraignment and initial appearance sessions that did not involve defendants in custody. As of July 1, 2008, the statewide Lawyer of the Day Program was reinstated for these so-called walk-in arraignment sessions. The UCD required that any lawyer seeking to participate in the reinstated program file an application to do so. The planning group reviewed these applications and established a roster of attorneys eligible to act as lawyers of the day, as well as a shorter roster of experienced attorneys eligible to serve at

Discovery is available to the assigned lawyers on the afternoon before the defendant's first court appearance, and those attorneys are expected to review the discovery before the defendant's court appearance the next day. Accordingly, each defendant has access to counsel who has reviewed the State's evidence before being called upon to enter a plea of guilty or not guilty to a particular charge.

At the start of the arraignment/initial appearance sessions, and before a judge is in the courtroom, defendants are shown a video presentation that informs them of their rights and explains UCD procedures.⁹ Each defendant is then provided the opportunity to review the discovery packet in his or her case before the beginning of the session. Each discovery packet contains a proposed sentence that the State agrees to recommend to the court should the defendant decide to plead guilty that day. When the presiding judge takes the bench, he or she reiterates to the assembled defendants the options available to them, reminds them of the availability of a Lawyer of the Day, and then starts calling the defendants up to the podium one at a time.

For those cases involving a right to appointed counsel that are not resolved at arraignment, defendants who desire appointed counsel fill out a simplified

sessions involving defendants who were in custody. Two lawyers are available at each of these walk-in arraignment sessions.

⁹ Use of a video to inform defendants of their rights is common in Maine courts. The planning group prepared a script for a video tailored to the UCD, and a new video for use in the UCD was created.

single-page affidavit of indigency. The court reviews this affidavit immediately, issues a decision on the assignment of counsel before the defendant's case is completed for the day, and supplies the defendant with the name and telephone number of the lawyer who has been assigned to his or her case.¹⁰

The court gives those defendants who plead not guilty the dates for their dispositional conference, any motion hearing that might become necessary, and for jury selection, and reminds the defendants that this is the only notice they will receive of their future court dates.

These dates certain are calculated according to the block-scheduling model developed by the UCD Clerk and the planning group. Arraignment/initial appearance sessions, dispositional conference sessions, and motion hearing sessions occur at fixed times during the UCD weekly schedule. Jury selection occurs every other week, and juries are selected for a two-week trial period. By projecting the UCD schedule well into the future, the clerk's office is able, at the time of a defendant's initial appearance, to assign dates for all future events that may be necessary to resolve the case.

Based on this scheduling matrix, District Attorney Anderson reorganized case assignments in her office to avoid the delays that had historically occurred when the prosecutor assigned to a given case was not available. District Attorney

¹⁰ Since July 1, 2010, the Maine Commission on Indigent Legal Services has been responsible for the appointment of counsel.

Anderson organized the Assistant District Attorneys into teams of four lawyers. Each prosecutorial team is assigned to the cases from a particular set of law enforcement agencies. The members of that team review the police reports filed by those agencies, and make decisions about which cases to prosecute from those agencies. This allows the team members to develop a better working relationship with the law enforcement agencies responsible for the cases to which those prosecutors are assigned.

The team assigned to a law enforcement agency handles each arraignment/initial appearance session for that agency, and is also assigned to the dispositional conference session, motion hearing session, and trial term connected with each arraignment/initial appearance date. Members of each team are expected to be familiar with the cases assigned to the team, so that various team members are available to make decisions regarding any case.

With the exception of the modest changes noted above, an arraignment session in the Cumberland UCD looks very much like an arraignment session in any District Court in Maine. The biggest differences are: the defendant has access to virtually all of the State's discovery either before or at the arraignment session; the prosecutor who handles the case at arraignment will also be responsible for the case at trial; and, the UCD schedule has been created to make sure that the presiding judge has time to take any admissions and pleas that occur as a result of a

defendant's wish to resolve the case that day. Those three changes encourage the parties to dispose of those cases that benefit from early resolution.

2. The Dispositional Conference

The next case event, the dispositional conference, is a core element of the new UCD procedure. UCD Rule 18 requires each defendant and his or her attorney, if represented, to attend a dispositional conference and to engage in meaningful discussions aimed at resolving the case. Dispositional conferences are scheduled in discrete time blocks to reduce waiting time for both defendants and attorneys.

The parties are expected to appear at a conference with an in-depth understanding of the factual and legal issues involved in the matter.¹¹ The role of the court in a dispositional conference is to address potential motions when possible, to organize the case for trial, to assist the parties in evaluating the relative strengths and weaknesses of their cases, and/or to assist them in reaching an agreement that is fair and acceptable to the State, the defendant, the alleged victim, and the court. The judge or justice presiding at the dispositional conference for any given case does not preside in any later adjudicatory events for that case, unless the parties expressly agree. At the launch of the UCD, a second justice or

¹¹ Initially, dispositional conferences were scheduled to occur 8 weeks after arraignment. At the request of defense counsel, and with agreement from the DA's office, that interval was extended to 12 weeks approximately 8 months after the UCD was launched. This is but one example of how the planning group monitored and improved the process during the first months of operation.

judge was routinely assigned to process any plea agreements reached during a dispositional conference so that once an agreement was reached, that agreement could be finalized without the need for the defendant to return to court on another date. As the judges and the attorneys became more familiar with the process, however, and as the backlog of cases was resolved, the need for a “back-up” judge at this stage has been reduced.

As mentioned above, any issues subject to motion practice are discussed at the dispositional conference. The UCD rule on motions, which differs from M.R. Crim. P. 12(b)(3), requires that substantive motions addressing evidentiary issues be served upon the opposing party at least 10 days before the dispositional conference, but specifically directs that those motions are not to be filed with the court at that time. This practice enables the parties to address any issues at the conference, but eliminates what was once a significant piece of unnecessary work for the clerks. Even if a case is not completely resolved, if agreement can be reached on the issues highlighted by the motion, there is no need to file those motions with the court. If a motion is not resolved at the dispositional conference, the moving party may file the motion in court, and it will be heard on the date previously assigned at the initial appearance/arraignment.

Dispositional conferences are the most “innovative” part of the UCD, at least on first blush. In Cumberland County, however, the Superior Court justices

had a long-standing and very successful practice of making themselves available on the date of jury selection to those parties who wanted assistance in resolving criminal cases without the expense and/or uncertainty of trial. The UCD dispositional conferences represent an attempt to improve on this practice by creating a formal process for the conferences, inserting them earlier in the process, and building a time for them to occur that would neither delay the case nor put additional demands on witnesses or victims.

3. Resolution of Contested Matters

UCD matters not resolved at the arraignment/initial appearance or at the dispositional conference proceed expeditiously toward final adjudication. Unresolved substantive motions are heard on the previously assigned motion day, which occurs within 2 weeks after the dispositional conference. Whether or not motions are filed, the matter then proceeds to jury selection or bench trial on the date previously designated at arraignment, which occurs within 4 weeks after the dispositional conference. The vast majority of matters are fully resolved within this time frame, rather than being subject to repeated continuances.¹²

Again, motion hearings, jury selection, jury trials, and bench trials in the Cumberland UCD do not differ in most respects from those events in the District or Superior Courts around the State. The only differences are that judicial officers

¹² The small percentage of matters that are continued generally comprises serious cases in which the investigation is incomplete or the results of scientific analysis of evidence are not yet available.

from both trial courts preside at all four events, and that the same prosecutor—or subgroup of prosecutors—is involved throughout the whole process.