



Midwestern Regional Office

Night Court

Is it a Solution to Hennepin County (MN) Jail Overcrowding?

Final Report

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I. Introduction

The National Center for State Courts was invited by the Fourth Judicial District Court of Minnesota to examine the criminal case processing of the District Court to determine whether the establishment of night court sessions would significantly affect the current severe overcrowding in the Adult Detention Center (ADC). The Fourth Judicial District Court has criminal jurisdiction over felony and misdemeanor offenses committed in Hennepin County which includes Minneapolis and 45 suburban communities.

National Center staff visited the District Court in November 1989 to become familiar with the intake procedure for defendants entering the criminal justice system in Hennepin County and to study the initial stages of criminal case processing of the Fourth Judicial District Court. The project staff interviewed a wide range of individuals who play prominent roles in the criminal justice system: District Court judges, county and city prosecutors, public defenders, sheriff's department representatives, court administrators, and representatives from the Bureau of Community Corrections. (A list of persons interviewed is attached as Appendix A.) In addition, the project staff collected a large amount of information, data, and internal memoranda relating to the operation of the criminal courts, the jail (the ADC), previous experiments with weekend court operations, and current efforts to expedite criminal case processing.

The primary focus of the National Center review and analysis of criminal case processing in Hennepin County was to determine (1) whether operating a night division of the District Court would have any meaningful effect on reducing overcrowding in the jail and (2) whether

the establishment of a night court division could be justified in terms of the personnel and financial resources that would have to be committed to operating a division of the District Court at night.

The National Center project staff feels that on the basis of the conversations with the full range of persons involved in the criminal justice system and after review of the material provided by the District Court, that it has a fairly clear understanding of the initial stages of the criminal case processing and prisoner processing in Hennepin County. Although this study was in the nature of a brief overview, the project staff nevertheless feels that it got a good sense of the daily operations of the Court, the processing of misdemeanor and felony cases, and the acute overcrowding at the jail. As a result, the National Center project staff felt comfortable in evaluating the criminal case processing methods used by the by the District Court and associated agencies and in making recommendations both with regard to night court and other aspects of the criminal case processing by the District Court.

II. Defendant Intake and Processing

A. Misdemeanors and Gross Misdemeanors. There are two types of misdemeanors in Minnesota. A standard misdemeanor has a range of punishment of up to 90 days confinement and a fine of up to \$700.; a gross misdemeanor has a range of punishment of up to one year confinement and a fine of up to \$3,000. Gross misdemeanors include such offenses as aggravated driving violations, some assault offenses, and certain theft, property, and prostitution offenses. Misdemeanor defendants are handled one of three ways: (1) they may be given a citation for the offense

charged; (2) they may be brought to the booking unit of the local police department where they are normally released within four hours; or (3) they may be brought to the jail (ADC) and booked. Those brought to the jail are generally charged with more serious offenses. For those brought to the jail, there is a bail schedule and misdemeanor defendants who can post bail are released from the jail. All misdemeanor defendants are evaluated by jail personnel for release without bail and many misdemeanants are released on that basis.

Those unable to post bond initially are brought into court the next morning for the 9:00 A.M. "arraignment calendar." The vast majority of misdemeanor defendants who remain confined for any extended period of time are those arrested for domestic assault. In each domestic assault case, bail is set at \$1,200. When a domestic assault defendant is unable to make bail, an accelerated pre-trial conference is scheduled within ten days and a concerted effort is made to dispose of the case rapidly.

Persons arrested for gross misdemeanors are processed by city attorneys in essentially the same fashion as felony defendants. (See discussion below.)

Jail officials report that the average time a misdemeanor defendant is confined is 1.08 days.

B. Felonies. Persons arrested for felony offenses, referred to in Hennepin County as "probable cause arrests," are confined in the jail pending a review of the case by the county attorney and the filing of a complaint. According to the Minnesota Rules of Criminal Procedure, the complaint must be presented to a judge "without unnecessary delay, and in any event, not more than 36 hours after the arrest." (Rule 4.02 subd.

5(1).) Excluded from this 36 hours are the day of arrest, Sundays, and legal holidays. The charging decision is made by the county attorney screening the case, based on a review of the arrest reports and an interview of the detective handling the case. If the county attorney decides to proceed on a felony charge, the complaint is drafted and the county attorney makes a recommendation on the bail amount. The complaint with the bail recommendation is filed with the district court clerk and reviewed by a judge who issues the criminal process.

After the complaint is filed and prior to a defendant's first appearance in court, a confined felony defendant is interviewed by a case aide from the Pre-trial Bail Evaluation Unit of the Probation Office who conducts a bail evaluation and makes recommendations with regard to bail or whether the defendant qualifies for a conditional release or release without bail (NBR- no bail required). A pre-trial release evaluation form is prepared which is reviewed by the judge conducting the first appearance hearings in the district court.

Felony first appearance dockets are held every working day at 1:30 PM. Defendants whose complaints are filed by 11:30 AM, appear in court that afternoon. Defendants are informed of the charge or charges against them, the bail initially set on the basis of the complaint is reviewed by the judge along with the recommendation from the Bail Evaluation Unit; an attorney is assigned if it appears that the defendant is indigent; and a date for a probable cause hearing is set. The review of the bail setting at this stage is based primarily on the information provided by the defendant to the probation office and summarized on the pre-trial release evaluation form. Much of that information is unverified or unverifiable.

C. Saturday Judicial Review. In an effort to reduce weekend overcrowding in the jail, the Court has established a procedure of conducting an informal bail review on Saturdays at the jail. Each Saturday, a District Court judge meets at the jail with city and county prosecutors, and representatives from the probation department, the sheriff's department, and the police department. The judge reviews the files of those defendants confined within the previous 24 hours to identify those defendants who are candidates for release, either without bail or on some sort of conditional release.

The Saturday bail review has recently been expanded on some three day weekends to include two or three days of review depending on the level of crowding in the jail.

III. Night Court as an Answer to ADC Overcrowding

Traditionally, night courts have been used in general jurisdiction trial courts where there are not enough courtrooms to accommodate the number of judges. Where there are insufficient courtrooms, courts have been able to expand their capacity by establishing a night division, thereby forestalling the construction of an additional courtroom or a new courthouse. Night courts are also used in municipal courts and some limited jurisdiction trial courts for adjudicating minor offenses such as traffic offenses or municipal code violations to accommodate persons with day-time employment responsibilities.

Night courts, in general, are unable to take advantage of the economies of scale in terms of clerical, security, probation office, and data processing support that are available to day-time courts. Night courts are, therefore, considered very expensive and inefficient to

operate. Many jurisdictions have found that while paying clerical, security, and associated support personnel for a eight hours, that the night courts do not operate for a full eight hours. As a result, when the court's work is completed, the judge and his or her support staff depart having worked less than the full eight hours for which they are paid.

The rationale for examining the possibility of establishing a night court in Hennepin County stems from neither insufficient courtrooms or from a desire to accommodate the working public charged with minor offenses. The question being raised is: Would a night court serve to reduce overcrowding in the jail? For some, that is the only question. However, the National Center feels that the issue must be raised in terms of: Would a night court serve to reduce overcrowding significantly? and would the reductions achieved through a night court justify the costs associated with operating a night court?

The National Center's examination of the night court issue was without preconceived opinion or preference. Upon speaking with the various participants in the criminal justice system, however, it was clear that the notion of a night court is not seen as a realistic answer to the overcrowding problems in the jail by either judges, county prosecutors, public defenders, or court administrators. The primary sentiment in favor of night court operations comes from the Sheriff's Department. The City Attorney's office representative indicated a rationale for a night court that was made independent of cost considerations. (This rationale is summarized in Appendix B.)

It is obvious that inmate overcrowding in the Adult Detention Center is a critical problem. With a capacity of 394 beds, the jail is

consistently seriously overcrowded. Over the Columbus Day holiday weekend this year, 604 inmates were incarcerated in the ADC on October 10th--the Tuesday morning following the long weekend. Due to overcrowding, ADC inmates are regularly housed at the Hennepin County Adult Correctional Facility and at eight to ten other Minnesota County jails. The jail overcrowding is a chronic and unremitting problem that can only be relieved by the construction of an additional facility."

The National Center found no advocates for, and no rationale to support, moving an existing daytime District Court into the evening. To eliminate a daytime Court division and move it to the evening to create a night division makes no sense and would have no noticeable effect on the jail overcrowding problem. No one the National Center Staff spoke with advocated this position. The Sheriff's Department advocated the creation of an additional judgeship and the establishment of an ongoing night court division to handle a full range of criminal matters.

One argument put forth for a night court, essentially, is to provide an in-court proceeding for the District Court to make bail and NBR (no bail required) decisions earlier in the process. Establishment of a night court would provide those misdemeanor and (primarily) gross misdemeanor defendants who are not booked in time to make the 9:00 AM misdemeanor arraignment calendar, and those felony defendants who do not make the 11:30 AM cut off for the 1:30 PM first appearances, the opportunity to have their cases and bond reviewed at night. It is argued that these proceedings would result in the release of a certain number of prisoners who would otherwise occupy ADC beds, thereby reducing the overcrowding in the jail. Sheriff's Department officials concede that

this night court bond review would not solve the overcrowding problem and would have only a marginal effect on overall jail overcrowding. The sheriff's position is that any reduction in the ADC population is worth pursuing.

In the month of October 1989, an average of 34 confined misdemeanor defendants appeared each morning at the 9:00 AM arraignment. (There was a high of 59 and, obviously, some days there were less than 30.) The vast majority of these defendants made bond or were released within the next 24 hours. With the exception of domestic abuse cases, the vast majority of booked misdemeanor defendants are released on a makeable bail or without bail. As a result, the average misdemeanor defendant was confined 1.08 days in 1989.

It is apparent that misdemeanor defendants are not a major factor contributing to the overcrowding of the jail. The establishment of a night court division, as far as misdemeanor defendants are concerned, would not significantly reduce the ADC population. Any reduction that would be achieved would be along the lines of expediting the release of 10-20 misdemeanor defendants, at most, at the conclusion of night court, rather than sometime the next day.

Similarly, for felony defendants, an in-court bond review of recently confined felony defendants, it is argued, might be held at night. This felony first appearance would allow a bond review in those cases where the complaint is filed after the 11:30 AM cut off and up until the time of the night court session. Currently, between twelve and twenty felony defendants appear in District Court at the daily 1:30 PM first appearance session. For argument sake, if night court were held at 8:00 PM for the

purpose of bail reviews, perhaps six to ten defendants would appear. Even if all of these six to ten defendants were released (an unlikely scenario), that release would not by itself have a significant effect on the jail overcrowding. And the release after the 8:00 PM night court session, would only accelerate the normal release which would take place after the 1:30 PM first appearance docket the following afternoon.

For the period September 18, 1989 to October 15, 1989, the average daily total inmate count in the ADC was 530. With a physical capacity of 394 , it is obvious that the jail, on an average, is 130 beds over capacity (based on the September and October figures). The numbers of inmates which would be released through a night court bail review proceeding would not make a significant dent in the overall jail overcrowding problem. The night court bail review might accelerate the release of misdemeanor defendants by 12-14 hours and felony defendants by 16-18 hours. But the numbers released would be insignificant in terms of the overall overcrowding of the ADC and the persons released would be those who would eventually be released in the ordinary course of the Court's operations under the current schedule.

It is the conclusion of the National Center that night court operations for the purpose of conducting a bail review for confined misdemeanor and felony defendants would not have the effect of releasing significant numbers of ADC inmates. Night court operations would not result in the release of sufficient numbers of ADC inmates to contribute significantly to a reduction in the overcrowding of the jail.

A. Cost of Operating a Night Court. While the Fourth Judicial District Court has not had recent experience with a night court, the Court experimented in late 1987 and early 1988 with formal Saturday court sessions. The Saturday court sessions dealt with defendants appearing for felony and gross misdemeanor first appearances, misdemeanor arraignments, and bench warrant arrests. The Saturday hearings were primarily used to set or reduce bail, release defendants on personal recognizance, accept pleas of guilty, and permit dismissal of charges. The Saturday calendar consisted of defendants confined too late to be included on the Friday calendar who were unable to post bond or to be released by the Sheriff on their own recognizance.

The Saturday court sessions required a total of 28 county employees to support and operate the court. The Court convened at 9:00 AM and recessed as late as 2:30 PM and as early as 11:45 AM. The daily cost (based on 1987 salary figures) of operating this Court was computed to be \$3,400. per day with an estimated annual cost of \$176,800. The average number of defendants appearing in court each Saturday was 45. (This figure does not include probable cause arrestees whose cases were reviewed by the judge, but who did not appear in court; 25 such files were reviewed each week). Over the course of the experiment with Saturday court, it was determined that the cost per defendant released was \$97.00.

These figures clearly illustrate the high costs of operating a weekend court. Operating a full scale night court would be equally as substantial. It is an enormously expensive proposition.

While the cost of operating a night court for the purpose of conducting only bail reviews would not necessarily involve the same numbers of personnel, it could be anticipated that substantial personnel expenses would also be required. Personnel from the Sheriff's Department, Court personnel, Probation Department Personnel, prosecuting attorneys, and security guards would clearly have to be provided. Access to the data processing system, heating, and light would all have to be provided regardless of the nature of the proceedings. While there is no data available on the cost of operating a bail review only court session, it would undoubtedly be 60-70% of the costs of operating the full scale weekend court--\$2,000.-\$2,400. per night session, or close to \$10,000. per week.

The costs of the informal judicial review (the Saturday bail review), currently conducted at the jail were compared in March of 1988 by the Court Administrator's Office, with the costs of the formal Saturday Court. That comparison reflected the following:

	<u>Formal Court</u>	<u>Saturday Bail Review</u>
Average Weekly Cost	\$ 3,400.00	\$ 745.00
Seven Week Cost	\$ 23,800.00	\$ 5,215.00
Average Cost Per Defendant	\$ 50.32	\$ 12.36
Average Cost Per Weekend Release	\$ 96.75	\$ 35.72
Estimated Annual Cost	\$176,800.00	\$38,740.00

During the period of time that the above figures were compiled, fourteen more defendants were released per formal court session than were released as a result of a single judicial review. Given the disparity in judicial bail and release philosophies, this difference is not significant. In terms of the cost differentials and the impact on the

total overcrowding situation in the jail, the advantage of formal court over informal judicial review in the jail is negligible.

It is therefore the conclusion of the National Center that (1) the establishment of a night court would have only a very marginal impact on reducing the overall overcrowding of the ADC; (2) at best, night court would serve to accelerate the release of misdemeanor and felony defendants by a matter of hours, and these defendants could be expected to be released at the next scheduled court session; (3) the substantial cost of operating a night court cannot be justified in terms of the numbers of defendants that would be released or in terms of the cost of available alternatives.

What follows are a series of recommendations and recommended actions that should be considered by the Fourth Judicial District Court which may have an effect on reducing the ADC inmate population.

IV. Recommendations.

Although the primary focus of this study was to evaluate the utility of establishing a night court in the District Court, in the course of becoming familiar with criminal case and inmate processing, the National Center Staff has made note of some practices and procedures which are worthy of note and comment.

A. Judicial Review. The Saturday judicial review appears to be an effective means of reviewing cases and identifying those defendants who can be released at a reduced bail or on personal recognizance. The rationale which makes this review worthwhile on Saturdays, would seem to

be equally persuasive on Sundays, given the large numbers of persons arrested Saturday nights and Sunday mornings. The Court should consider scheduling an early Sunday afternoon judicial review which would take some of the weekend arrest pressure off of the jail.

Similarly, the jail reaches its highest inmate count over three day weekends. It should be an established policy that judicial reviews will be conducted each of the days of three day weekends. Given the exceptions to the 36 hour rule (See discussion of Rule 4.02 below.), a person arrested for a felony at 12:15 AM on the Friday preceding a three day weekend, need not be brought before a judge until 12:15 PM Tuesday afternoon. Practically speaking, without a weekend judicial review, that defendant would not appear in Court until the 1:30 PM felony first appearance hearing on the Tuesday following the three day weekend. Clearly, the weekend bail review is essential over long weekends, and the Court should consider conducting it on each day of three day weekends.

The Court has indicated that the felony arraignment judge is available and on call for emergency matters every evening, and that this judge is available for in person bail reviews if needed. The availability of what could be considered a "duty" judge should be made more apparent to the Sheriff's Department, and it should be made clear that this judge is available at any time to review bail settings, make release decisions, or for any consultation that is needed. The Court has indicated that that is currently the policy, but it does not appear to be well known at the jail, and there appears to be some reluctance on the part of ADC personnel to contact the "duty" judge in the evening.

The effectiveness of the Saturday judicial reviews is readily apparent. Sheriff's Department statistics for 1989 indicate that of the files reviewed on any given Saturday, 32% of those defendants are released by Monday morning. A high of 39 defendants were released September 9, 1989, and as few as 11 defendants were released on other weekends. But the review procedure does serve to relieve some of the pressure on the ADC. No single step will totally solve the jail overcrowding problem given the level of arrests in Hennepin County. But expanding the judicial review effort, along with other steps, can relieve some of the overcrowding.

B. Pre-Trial Release. The persistent overcrowding of the jail means that large numbers of inmates are inevitably going to have to be released on some sort of recognizance bail. At the present time, bail and release decisions for gross misdemeanor and felony defendants are made on the basis of a pre-trial evaluation conducted at the jail by the case aids of the Pre-trial Bail Evaluation Unit. (Misdemeanor bail and release decisions are made by jail staff.) The case aides conduct an interview with the defendant in an effort to determine criminal history, employment, and ties to the community. Verification of the information provided is often difficult to obtain within the short time frames available to the limited staff. In addition, the Bail Evaluation Unit does not have access to defendants' criminal conviction data (only arrests) or out of state criminal histories. As a result, judges are often called upon to make release decisions with incomplete, fragmentary, or unverified information, despite the best efforts of the Bail Evaluation Unit.

As the press of overcrowding in the jail becomes more pronounced, the Court will be forced to release greater numbers of defendants. And, as now, defendants who in previous years would not have been candidates for release, are regularly going to have to be returned to the streets. As a result, it will become increasingly important to be able to identify the best candidates for release and to monitor those defendants more closely.

Therefore, it is strongly recommended that an expanded pre-trial release program be authorized and funded for all gross misdemeanor and felony defendants. This expanded pre-trial release and monitoring program should allow for 24 hour, seven days a week, coverage at the jail by the Bail Evaluation Unit. It should have resources for electronic monitoring of released defendants, daily monitoring by a pre-trial release staff, and facilities for urinalysis screening of defendants prior to their release, and while they are out on bail. The program should be set up for close and continuous contact with defendants until their cases are resolved and the monitoring should include procedures for notification of court dates.

A pre-trial release unit that is provided the means for evaluating defendants more comprehensively and monitoring them more closely will allow judges to make more informed judgments about which candidates for release pose the least risk to the community. Given the overcrowding in the jail, the numbers of defendants who will inevitably have to be released will be considerable. Daily monitoring, electronic or otherwise, will be necessary to provide a modicum of assurance that defendants have not fled the jurisdiction or are not engaged in further criminal activity.

With an enhanced pre-trial release staff, judges will make more informed decisions. And with increased monitoring, judges may be in a better position to release more confined defendants, thereby reducing, albeit marginally, the overcrowding in the jail.

C. The 36 Hour Rule. Rule 4.02, subd. 5(1) of the Minnesota Rules of Criminal Procedure provides that a person arrested and not released "shall be brought before (a judge of the district court) without unnecessary delay, and in any event, not more than 36 hours after the arrest, exclusive of the day of arrest, Sundays, and legal holidays, or as soon thereafter as such judge or judicial officer is available." The Minnesota 36 hour rule, by excepting the day of arrest, immediately becomes a 60 hour rule for those arrested shortly after midnight. For those arrested shortly before midnight, the rule is effectively a 36 hour rule.

Sheriff's Department officials indicate that there is a significant problem at the ADC with defendants arrested on felony or gross misdemeanor charges and who are confined under the 36 hour rule. Referred to as "probable cause bookings," this category of defendant was found in a recent study to occupy an average of 64 beds per day in the ADC.

In an effort to evaluate the extent to which probable cause bookings contribute to overcrowding in the jail, an analysis was recently done by the Minneapolis Police Department and the City Attorney's Office of all probable cause bookings August 17-September 8, 1989. That study found that of 353 suspects booked as probable cause felons: 36% were charged at the felony level; 16% were charged with misdemeanors; 26% were closed without charge at the police level; in 10% of the cases prosecution was

declined by the county attorney's office; and 9% of the cases remained open pending further investigation but formal charges were not issued.

It is not uncommon for an arrest to be made but formal prosecution not be initiated. Prosecution may be declined for a variety of reasons--failure of witnesses to cooperate, witness credibility problems, search and seizure judgments by the prosecuting attorney, drug analysis results, suitability of the case for the criminal justice system, etc. These are the inevitable problems, judgment calls, and charging decisions that are made by careful screening procedures in a good, conscientious prosecuting attorney offices.

However, given the fact that approximately 45% of the suspects booked are not charged with either a felony or a misdemeanor, it is clear that probable cause bookings and the 36 hour rule have major implications for jail overcrowding in Hennepin County.

In an effort to deal with the overcrowding, the National Center would recommend that the District Court study thoroughly and consider adopting a straight 36 hour rule which would require a complaint be filed within 36 hours of a suspect's booking in the ADC. This would be a local rule which would provide no exceptions for day of arrest, Sunday's, or holidays in the 36 hour computation. This time frame would require the police department to proceed without delay to investigate a crime, round up witnesses, prepare a police report, and present the case to the county or city attorney within a day and a half of a suspect's arrest. Exceptions to the local 36 hour rule would be granted only upon personal application by either a county attorney or the primary investigating officer to a judge. The Sheriff would be instructed by the Court to release any suspect for whom a complaint has not been filed and a order of detention received within 36 hours of booking.

This procedure would force police to expedite their investigations. In most criminal cases, the evidence that police have at the time of arrest is the evidence that the prosecution will have to rely on at trial. Cases rarely get stronger with the passage of time. Forcing the police department to focus its energies and its investigative resources within that 36 hours after arrest may, in fact, result in better cases being presented for prosecution. The luxury of having 50 or 60 hours after booking to present a case can result in an indifferent "let the detectives handle it tomorrow" attitude which does not enhance the resolution of criminal investigations.

A strict 36 hour rule would require the county and city attorneys to initiate weekend, and possibly evening, screening hours. It will force the police and prosecutors to separate out the wheat from the chaff at an earlier stage. A meaningful 36 hour rule will allow the release of those 45% of probable cause felony bookings who are not charged under the current operation of the 36 hour rule, within a more reasonable time frame.

Illustrative of the burden placed on the ADC by probable cause arrestees were the findings of a 1989 study of probable cause bookings conducted by the County Office of Planning and Development. This study examined the length of stay of persons arrested in Hennepin County (Minneapolis and suburban arrests) from the time of booking until the person was released or formally charged. The study found that "the average length of stay for all detainees in the study weekends was 43.3 hours. The detainees whose cases were either declined or tab charged stayed an average of 50 hours, 10 hours longer than those who were formally charged." Focusing strictly on Minneapolis felony arrests, the

study found that in those cases where the person was charged by the county attorney with a felony, the person arrested was confined for an average 61.1 hours before being formally charged; in those cases where prosecution was declined, the average period of confinement was 59 hours; where the person arrested was tab charged (given a citation), the average period of confinement was 53.0 hours; and where no charges were applied for, the period of confinement was 46.2 hours.

The 36 hour rule, as the Comments to Rule 4.02 indicate, does not prescribe a 36 hour automatic holding period. Individuals arrested are to be brought before the court at the earliest possible time within the time period. Given the crisis levels of overcrowding in the jail, it is the National Center's view that the exceptions to the 36 hour rule ought to be foregone and that police, prosecutors, and judges ought to consider adopting practices and procedures which would implement a local rule requiring a charging document to be filed with the Court within 36 hours of an arrested subject's booking.

Caveat. It should be clear that the adoption of a straight 36 hour rule will have significant costs associated with it. It's adoption would require a major revamping of the way the various Hennepin County police departments do business. It will require additional prosecutor availability and resources as well as Clerk's Office resources and judicial availability. As with the concept of establishing a night court, this recommendation merits thorough and careful study, weighing the costs and the benefits. As with the night court idea, it may well prove that the costs involved produce only marginal benefit.

There is, however, a "due process" cost to citizens, as well as a burden on the jail, associated with those arrested who spend an average

of 59 hours confined and are never charged. A 36 hour rule is not excessively onerous. It allows a day and a half from the time of arrest to the time a complaint is presented to a judge for a probable cause determination. Many jurisdictions operate under considerably more severe time constraints: Florida--24 hours, Missouri--20 hours.

In any case, the impact and cost of probable cause bookings ought to continue to be examined and explored, as has recently been done. The question of whether adopting a straight 36 hour rule would have a meaningful impact on jail overcrowding and whether the benefits outweigh the costs, ought to be carefully and dispassionately studied. It is certainly an area worth exploring.

D. Domestic Assault Cases. Although persons arrested for domestic assaults do not constitute a major proportion of the confined ADC population, their arrests and relatively high bail requirements mean that domestic assault defendants do occupy a significant number of beds, even for a short period of time. These types of husband/wife, boyfriend/girlfriend offenses pose a serious dilemma for the criminal justice system. Some of the cases are extremely serious and volatile while others are far less so. The dilemma is separating out the two.

An enhanced pre-trial bail evaluation and screening process should attempt to assess and scrutinize closely the domestic assault cases in an effort to determine which cases justify the \$1,200 bail setting, and in which cases a conditional recognizance release would not pose a threat to the complaining victim. The current blanket bail policy fails to distinguish, or to make any effort to distinguish, the serious case from those cases not suitable for the criminal justice system.

E. Pre-Sentence Investigations. Minnesota law currently requires a judge to order a pre-sentence investigation of any defendant who pleads or is found guilty of a felony offense. Although there are certain cases where it is abundantly clear that a defendant is not going to be granted probation, the District judges have no discretion to forego a pre-sentence investigation and sentence that defendant. Most of those defendants continue to occupy ADC space pending the completion of the PSI when the chances for probation are non-existent. Efforts should be undertaken to alter the existing law to make pre-sentence investigations discretionary with the trial judge.

F. Bail Reviews. An issue raised by some defense attorneys was a policy attributed to some judges of permitting only one bail review. As a result, some defense attorneys were reluctant to "waste" their sole chance for a bail review at the felony first appearance when they were relatively unfamiliar with their client. They preferred to wait until they became more acquainted with the background and history of their defendants before requesting a bail review.

This practice does not appear to be a uniform throughout the Court. The Court should allow reasonable requests for additional bail reviews subsequent to the first appearance where there are additional facts, a change in circumstances, or a change in financial wherewithal which make a bail review justifiable and worthwhile.

G. Departmental Booking. In an effort to reduce the number of probable cause bookings at the ADC, the various Hennepin County police departments have instituted policies whereby individuals arrested in certain categories of cases are booked by the local police department and

released, pending warrant application. If, following a review by the appropriate prosecuting attorney, charges are filed, a summons for the defendant's appearance is issued rather than an arrest warrant. An arrest warrant would mean the defendant would have to be booked and make bail set at the ADC. A summons merely requires the defendant's appearance in court.

This policy of relying initially on a summons should be employed judiciously, but should be among the tools employed in an effort to reduce the overcrowding in the ADC.

V. Final Thoughts

The National Center project staff was struck by the willingness and openness of the judges and the Court administration to consider any and all suggestions designed to expedite the processing of criminal cases and to reduce the overcrowding in the jail. The Court, and all of the players in the criminal justice area, appear remarkably able, hard working, conscientious, and attuned to the problems of jail overcrowding and criminal case processing. The Court, in fact, indicated a willingness to establish a night court or a weekend court if it could be demonstrated that either of those options would affect the jail overcrowding in a significant, and reasonably cost effective, manner.

Many of the problems associated with the criminal justice system are beyond the control of courts. Poverty, unemployment, family disintegration, and drugs contribute to rising crime rates and increasing levels of incarceration. As a result, courts must attempt to contend with the fallout of many societal problems beyond their control. The

Fourth Judicial District Court and associated agencies appear willing to grapple with the problems resulting from increasing criminal caseloads and prisoner incarceration with diligence and innovative measures. Solutions will not be easy nor will they be inexpensive. But Hennepin County is fortunate to have persons throughout its criminal justice system who are hard working, diligent, and committed to attempting to solve the problems of the criminal justice system.

It was obvious to the National Center Staff that the judges of the Fourth Judicial District Court and the Criminal Justice Task Force are open to, and have initiated, a number of thoughtful and reasonable measures which are designed to reduce jail overcrowding and reduce the time it takes to dispose of its criminal cases.

List of Persons Interviewed

Mr. Roger Battreall

Ms. Patricia Botes

Judge Kevin Burke

Mr. Michael Cuniff

Mr. David Edstrom

Mr. Robert Fellows

Judge Robert Forsythe

Mr. Thomas Frost

Mr. Mike Hickey

Insp. David Hile

Ms. Shirley Iverson

Mr. David Knudson

Judge Roberta Levy

Capt. Allan Moran

Mr. Jack Muller

Mr. John Pederson

Judge Charles Porter

Mr. Jack Provo

Mr. Mitch Rothman

Ms. Celeste Shahidi

Mr. Ted Wilson

A Night Court Rationale

In addition to the Sheriff's Department, a representative of the City Attorney's Office articulated a rationale for night court that merits attention.

This argument for night court points out that a previous study found that 37% of misdemeanor defendants and 19% of gross misdemeanor defendants, when released on a citation, fail to appear in court. When these defendants are subsequently booked on a bench warrant for their failure to appear, they constituted 20% of the misdemeanor sample and 8% of the gross misdemeanor and felony sample. Because more than half of all misdemeanor cases are resolved at arraignment, this rationale argues for holding at the local police department misdemeanor defendants who might otherwise be released, for a night court arraignment. The argument asserts that it is preferable to hold defendants who would otherwise be released for night court arraignment the day of the arrest, rather than to release them, have them fail to appear, then to have to arrest and book them for their failure to appear.

It is argued that this day of arrest arraignment process would reduce misdemeanor bench warrants by 50% and that this would reduce overall jail misdemeanor bookings by 10%. The proponent of this rationale acknowledges that this reduction in misdemeanor bookings alone would not justify the operation of an arraignment courtroom during the evening hours.

The proponent of this rationale indicated that he was not specifically advocating a night court, but that if a night court were established, this is one of the ways that it could be utilized.

The National Center concluded that this rationale, put forward independent of cost considerations, does not offer the significant reduction in jail bookings or jail population to offset the cost of a night court operations, even when combined with the other proceedings which might be combined with night court.