

NH JUDICIAL COUNCIL REPORT ON FELONIES FIRST

Executive Summary

Felonies First was implemented “to more effectively manage the flow of felony cases and related misdemeanors and violation level charges from case initiation through disposition. The general court finds that this will result in significant time savings for the court, lawyers, and litigants, leading to more effective justice earlier in the court process.” (See Senate Bill 124, including Statement of Purpose (Session Year 2015)).

Senate Bill 124 also tasked the Judicial Council (Council) with issuing annual reports on its recommendations and the implementations of Chapter 592-B. The following guidance was provided in the legislation:

The judicial council shall survey the municipalities, and counties affected by the felonies first project in order to obtain cost and effectiveness opinions. The judicial council shall evaluate the number of probable cause hearings requested, waived, denied, and held and the final disposition of each probable cause hearing held. The judicial council shall also evaluate the number of discovery depositions requested, denied and approved. Beginning July 1, 2017 and ending in January 2020, the judicial council shall issue an annual report on its recommendations and the implementation of this chapter to the senate president, the speaker of the house of representatives, and the chairpersons of the senate and house judiciary committee.

In drafting this report, the Council’s role was to gather information from participants in the system. All interviewees generously shared their time and insights throughout this process. These stakeholder opinions will provide the legislature with perspectives from multiple criminal justice players, at different phases in the Felonies First process. The stakeholder comments are contained in the appendices. Though cognizant of the subjective nature of such comments, and their origin in single contexts, the Council has chosen not to filter or confirm any of this content. Instead, in keeping with its understanding of the legislature’s directive to survey opinions, the Council limited its role to that of an objective reporter. This report is submitted in that spirit.

While anecdotal information provides limited insight into Felonies First, a scarcity of data precludes a more objective empirical analysis. To fully assess the impact of Felonies First, data sets from numerous stakeholders must be collected and analyzed. At this time, all relevant data is not even being captured. The Council hopes to remedy this for future reports.

The Council did not receive any additional resources, such as funding or increased staffing, to assist with this report writing obligation. This work was done amidst the Council’s regular responsibilities and against the backdrop of the opioid crisis. Drug arrests continue to rise while local communities struggle to provide an appropriate and effective response. Data provided by

The Council of State Governments Justice Center shows that between 2014 and 2015, New Hampshire’s drug arrest volume increased by 73%. The opioid crisis has occurred simultaneously to the implementation of Felonies First, clouding the data and altering the criminal justice landscape. This report focuses on the counties that have already implemented Felonies First.¹

Limited data is included for review and context. While statistics are included in this report, it should be noted that there are limitations to any serious statistical analysis. These limitations include inconsistent and missing data across regions, different Felonies First implementation dates and external influences such as the opioid crisis.

Information on statewide probable cause hearings and discovery depositions is contained in Table 1.

Table 1. Probable Cause Hearings and Discovery Depositions under Felonies First

| DISCOVERY DEPOSITIONS REQUESTED | DISCOVERY DEPOSITIONS APPROVED | DISCOVERY DEPOSITIONS DENIED | PROBABLE CAUSE HEARINGS REQUESTED | PROBABLE CAUSE HEARINGS DENIED | PROBABLE CAUSE HEARINGS GRANTED | PROBABLE CAUSE HEARINGS HELD | HEARING OUTCOMES | |
|---------------------------------|--------------------------------|------------------------------|-----------------------------------|--------------------------------|---------------------------------|------------------------------|------------------|----|
| 6 | 3 | 3 | 39 | 8 | 31 | 5 | PC FOUND | 4 |
| | | | | | | | PC NOT FOUND | 1 |
| | | | | | | | WITHDRAWN | 11 |
| | | | | | | | GUILTY PLEA | 3 |
| | | | | | | | INDICTED | 9 |
| | | | | | | | NOL PROSSED | 2 |
| | | | | | | | PENDING HEARING | 1 |

This data was provided by the Trial Court Center. It covers 1/1/16 - 6/30/17.

Felonies First is still in its infancy. At the time of the writing of this report, the two largest counties had not implemented Felonies First and only three counties had been up and running for more than one year. It is premature to draw conclusions on all aspects of Felonies First, but the following observations are noted.

1. Data is not being thoroughly or consistently collected by many stakeholders.
2. Stakeholder interviews occurred during the implementation period, as players were facing challenges inherent with a change of this magnitude.
3. Without exception, all criminal justice stakeholders have striven to make Felonies First a success.
4. Felonies First has improved communication throughout the criminal justice system.

Felonies First will be state-wide by October 1, 2017. As with any system overhaul of this magnitude, the implementation phase will have some bumps. Those counties with a later implementation date will have the benefit of earlier counties’ experiences. Due to the unique nature of each county, certain issues will arise that require county specific solutions.

¹ Hillsborough and Sullivan Counties will implement Felonies First on September 1, 2017 and Rockingham will implement on October 1, 2017.

Felonies First is transforming the practice of criminal law in New Hampshire. A successful transition requires all players to focus on the greater good of the system and the principles of justice. All individual stakeholders must adjust certain policies and practices to support the overall goals of Felonies First.

Cheshire County

Implementation Date: January 1, 2016

The Council did not generate any of the data included in this report. All data was provided by other entities to assist the Council with its reporting obligations. The Council did not independently review or confirm the data contained in this section.

According to data provided by the Trial Court Center, Cheshire County experienced a 48% increase in felony cases when Felonies First was implemented. (See Table 2).² Most counties saw a spike in felonies during the initial transition period, as pending felony charges were still bound over from the circuit court and new felonies were filed in the superior court. The circuit court felonies leveled off after 90 days. While felony cases decreased in the first half of 2017, there is still a 29% increase over the same period in 2015. This data shows a correlation between the implementation of Felonies First and the increase in case numbers, but correlation does not imply causation.

Table 2. Cheshire Superior Court Felony Cases

| Timeframe | Number of Felony Cases Filed |
|------------------|-------------------------------------|
| 1/1/14-6/30/14 | 170 |
| 1/1/15-6/30/15 | 158 |
| 1/1/16-6/30/16 | 234 |
| 1/1/17-6/30/17 | 205 |

Data provided by the Trial Court Center
Does not include cases that have since been annulled

There was concern among some defense counsel that by eliminating the opportunity for a circuit court resolution, Felonies First would result in fewer felonies resolving as misdemeanors. The Public Defender program has provided statistics comparing Cheshire County misdemeanor resolution rates pre and post-Felonies First. (See Stakeholder comments p. 21). This data does not capture cases that were never filed, or those cases that upon review by the County Attorney's Office (CAO), are charged as misdemeanors in the first instance. Due to limitations of its case management system, the Judicial Branch is not able to provide its own data comparing these resolution rates.

In addition to the impact on the defendant, rising felony charges have a fiscal impact, as felonies are more costly to defend. As the Public Defender is the State's institutional provider of indigent-defense services it absorbs modest increases and decreases in the charge level with no change in the cost of its operations. Contract attorneys are reimbursed \$300 for a circuit court misdemeanor and \$825 for a felony. The assigned counsel cap for misdemeanors is \$1,400 and the cap for felonies is \$4,100.

² The highlighted section in each table indicates the date of Felonies First implementation.

Felonies First requires every court event to be meaningful, which includes an opportunity for discussion and negotiation between parties. This approach should result in fewer court hearings over the life of the case. The Cheshire County Sheriff’s Department has been transporting inmates to all Superior Court hearings since Felonies First was implemented. (See Table 3). An analysis by the Trial Court Center shows that the average number of transports per case has declined by 39% between 2015 and the first half of 2017. (See Table 4).

Table 3. Cheshire County Sheriff’s Transport History

| Year | Number of transports |
|----------------|-----------------------------|
| 2013 | 2,988 |
| 2014 | 2,979 |
| 2015 | 2,792 |
| 2016 | 2,659 |
| 1/1/17-6/30/17 | 1,110 |

Data provided by the Cheshire County Sheriff’s Department

Table 4. Trial Court Center Analysis of Average Number of Transports per Case

| Year | Number of Transports | Cases Filed | Average Number of Transports/Case |
|----------------|-----------------------------|--------------------|--|
| 2013 | 2,988 | 292 | 10.23 |
| 2014 | 2979 | 337 | 8.84 |
| 2015 | 2792 | 315 | 8.86 |
| 2016 | 2659 | 451 | 5.90 |
| 1/1/17-6/30/17 | 1,110 | 205 | 5.41 |

This analysis was conducted by the Trial Court Center based on its data and data from Cheshire County Sheriff’s Department.³

One of the goals of Felonies First was to resolve cases more quickly. The 2-4 month bind-over that occurred while a case transitioned from a circuit court to a superior court has been eliminated. The Judicial Branch’s case management system is only able to run a “Time to Disposition Report” on a calendar year basis so data for 2017 is not yet available. In 2016, Cheshire County saw a 5-day decrease in the average time to disposition. (See Table 5). This is in addition to the elimination of the bind-over period.

³ The Trial Court Center analysis involved dividing the reported number of transports by the number of cases filed in superior court. While it doesn’t account for transports on misdemeanors, the Trial Court Center found that the numbers were consistent from 2013 forward. It also does not account for the fact that the sheriff is transporting felony arraignments to superior court only. Prior to Felonies First, each defendant was transported to numerous different district divisions for a probable cause hearing.

Table 5. Time to disposition

| Year | Days to Disposition |
|-------------|----------------------------|
| 2013 | 342 |
| 2014 | 201 |
| 2015 | 180 |
| 2016 | 175 |

Data Provided by the Trial Court Center

This information does not include district division and bound-over time for these cases.

Strafford County

Implementation Date: January 1, 2016

The Council did not generate any of the data included in this report. All data was provided by other entities to assist the Council with its reporting obligations. The Council did not independently review or confirm the data contained in this section.

According to data provided by the Trial Court Center, Strafford County experienced a 35% increase in felony cases when Felonies First was implemented. (See Table 6). This follows a 26% increase between the first six months of 2014 and the same period in 2015. The first six months of 2017 saw 100 fewer felony cases filed than during the same period in 2016. It appears that part of the 2016 increase was due to the initial overlap of circuit court and superior court felonies.

Table 6. Strafford Superior Court Felony Cases

| Timeframe | Number of Felony Cases Filed |
|------------------|-------------------------------------|
| 1/1/14-6/30/14 | 335 |
| 1/1/15-6/30/15 | 423 |
| 1/1/16-6/30/16 | 573 |
| 1/1/17-6/30/17 | 473 |

Data provided by the Trial Court Center
Does not include cases that have since been annulled

The Public Defender program has provided statistics comparing Strafford County misdemeanor resolution rates pre and post-Felonies First. (See Stakeholder comments p. 21). Due to its case management system, the Judicial Branch is not able to provide its own data comparing these resolution rates. This data does not capture cases that were never filed, or those cases that upon review by the CAO, are charged as misdemeanors in the first instance.

The Strafford County Sheriff's Department has been transporting inmates to all Superior Court hearings since Felonies First was implemented. (See Table 7).

Table 7. Strafford County Sheriff's Transport History

| Year | Number of transports |
|----------------|-----------------------------|
| 2013 | 6,568 |
| 2014 | 7,875 |
| 2015 | 4,979 |
| 2016 | 4,360 |
| 1/1/17-6/30/17 | 2,002 |

Data provided by the Strafford County Sheriff's Department

A result of Felonies First is fewer court hearings over the life of the case. An analysis by the Trial Court Center shows that the average number of transports per case has declined by 63% between the peak in the first six months of 2014 and the same period in 2016 – when Felonies First was implemented. (See Table 8).

Table 8. Trial Court Center Analysis of Average Number of Transports per Case

| Year | Number of Transports | Cases Filed | Average Number of Transports/Case |
|----------------|-----------------------------|--------------------|--|
| 2013 | 6,568 | 621 | 10.58 |
| 2014 | 7,875 | 704 | 11.19 |
| 2015 | 4,979 | 955 | 5.21 |
| 2016 | 4,360 | 1062 | 4.11 |
| 1/1/17-6/30/17 | 2,002 | 473 | 4.23 |

This analysis was conducted by the Trial Court Center based on its data and data from the Stafford County Sheriff's Department.

According to data provided by the Trial Court Center, there has been a 5 day increase in the time to disposition period since the implementation of Felonies First. (See Table 9). This data does not capture the elimination of the bind-over period.

Table 9. Time to disposition

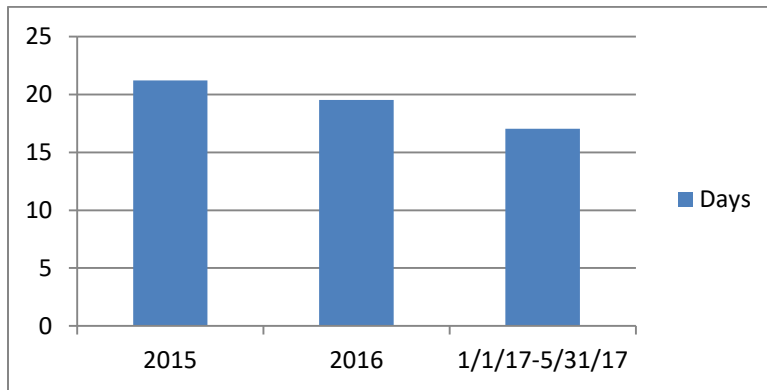
| Year | Days to Disposition |
|-------------|----------------------------|
| 2013 | 226 |
| 2014 | 202 |
| 2015 | 202 |
| 2016 | 207 |

Data Provided by the Trial Court Center

Some defendants are held pretrial in the local county House of Corrections. Strafford is one of just a few counties in the state that has pretrial services. Data provided by the Strafford County House of Corrections (SCHOC) shows that the average length of pretrial detention has decreased by 18% since Felonies First was implemented.⁴ (See Graph 1). This shows correlation, not necessarily causation, as other factors, like pretrial release, could impact this number.

⁴ This data includes pretrial incarceration stays for both felonies and misdemeanors. The SCHOC database was not able to cull out by case type.

Graph 1. Average Length of Pretrial Incarceration in Strafford County



Data was provided by the Strafford County House of Corrections and includes felonies and misdemeanors.

Belknap County

Implementation Date: July 1, 2016

The Council did not generate any of the data included in this report. All data was provided by other entities to assist the Council with its reporting obligations. The Council did not independently review or confirm the data contained in this section.

Belknap County implemented Felonies First later than Cheshire and Strafford Counties. As a result, the data below focuses on a different time period. According to data provided by the Trial Court Center, Belknap County Superior Court saw a 15% increase in felony cases during the 12 month period before implementation. (See Table 10). During the 12 month period following implementation, this court experienced a 57% increase in felony cases.

Table 10. Belknap Superior Court Felony Cases

| Timeframe | Number of Felony Cases Filed |
|------------------|-------------------------------------|
| 7/1/14-June 2015 | 349 |
| 7/1/15-June 2016 | 403 |
| 7/1/16-June 2017 | 635 |

Data provided by the Trial Court Center
Does not include cases that have since been annulled

Public Defender program has provided statistics comparing Belknap County misdemeanor resolution rates pre- and post-Felonies First. (See Stakeholder comments p. 22). This data does not capture cases that were never filed, or those cases that upon review by the CAO, are charged as misdemeanors in the first instance. Due to limitations of its case management system, the Judicial Branch is not able to provide its own data comparing these resolution rates.

To help implement the goals of Felonies First, the Belknap County Sheriff’s Department has been transporting inmates to all Superior Court hearings since Felonies First was implemented. (See Table 11). An analysis by the Trial Court Center shows that the average number of transports per case has declined by 39% between 2015 and the first six months of 2017. (See Table 12).

Table 11. Belknap County Sheriff’s Transport History

| Year | Number of transports |
|----------------|-----------------------------|
| 2013 | 2,269 |
| 2014 | 2,318 |
| 2015 | 2,095 |
| 2016 | 2,591 |
| 1/1/17-6/30/17 | 1,380 |

Data provided by the Belknap County Sheriff’s Department

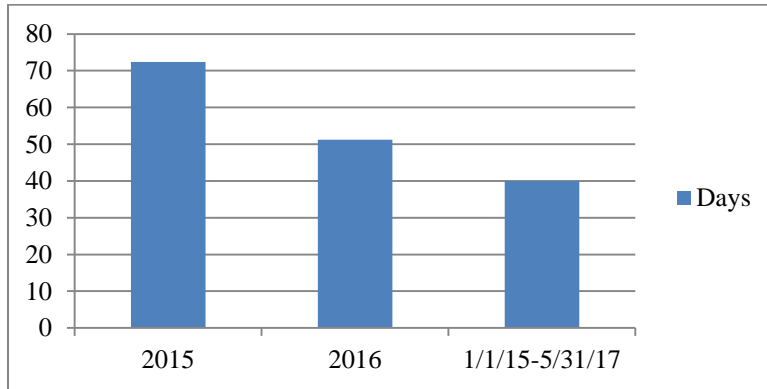
Table 12. Trial Court Center Analysis of Average Number of Transports per Case

| Year | Number of Transports | Cases Filed | Average Number of Transports/Case |
|----------------|----------------------|-------------|-----------------------------------|
| 2013 | 2,269 | 352 | 6.45 |
| 2014 | 2,318 | 326 | 7.11 |
| 2015 | 2,095 | 366 | 5.72 |
| 2016 | 2,591 | 565 | 4.59 |
| 1/1/17-6/30/17 | 1,380 | 301 | 4.58 |

This analysis was conducted by the Trial Court Center based on its data and data from the Belknap County Sheriff's Department.

Data from the Belknap County House of Corrections shows that the average length of a pretrial stay decreased by 29% between 2015 and 2016. During the first five months of 2017, it decreased by an additional 21%. (See Graph 2). This results in cost savings for the county as there is decreased need for inmate meals, medical treatment, inmate supplies, and similar expenses.

Graph 2. Average Length of Pretrial Incarceration in Belknap County



Data was provided by the Belknap County House of Corrections and only includes felony level offenses.

As Felonies First was implemented in the middle of 2016, there is no time to disposition data available for a full year of Felonies First.

Merrimack County

Implementation Date: January 1, 2017

The Council did not generate any of the data included in this report. All data was provided by other entities to assist the Council with its reporting obligations. The Council did not independently review or confirm the data contained in this section.

As Merrimack County implemented Felonies First on January 1, 2017, the felony caseload data focuses on the same six month window for the past 3 years. According to data provided by the Trial Court Center, Merrimack County Superior Court saw a 23% increase in felonies between the first six months of 2015 and the same period in 2016. (See Table 13). New felony cases then rose by an additional 43% in the first six months of 2017. (See Table 13). Due to the recent implementation date, it is not possible to determine if part of this increase is a temporary spike during the circuit court and superior court period of overlap.

Table 13. Merrimack Superior Court Felony Cases

| Timeframe | Number of Felony Cases Filed |
|------------------|-------------------------------------|
| 1/1/15-6/30/15 | 377 |
| 1/1/16-6/30/16 | 467 |
| 1/1/17-6/30/17 | 668 |

Data provided by the Trial Court Center

Does not include cases that have since been annulled

The Public Defender program has provided statistics comparing Merrimack County misdemeanor resolution rates pre and post-Felonies First. (See Stakeholder comments p. 22). Due to the recent implementation, this data is more limited in nature. Both the Public Defender data and the Concord City Prosecutor indicated that approximately 25% of felonies charges in Concord Circuit Court were resolved as misdemeanors.⁵

The Merrimack County Sheriff's Department has been transporting inmates to all Superior Court hearings since Felonies First was implemented. (See Table 14). An analysis by the Trial Court Center shows that the average number of transports per case has declined by 39% between the first six months of 2015 and the same period in 2017. (See Table 15).

⁵ See Stakeholder Interviews, p. 42.

Table 14. Merrimack County Sheriff's Transport History

| Year | Number of transports |
|----------------|-----------------------------|
| 2013 | 5,416 |
| 2014 | 5,469 |
| 2015 | 6,041 |
| 2016 | 6,657 |
| 1/1/17-6/30/17 | 3,651 |

Data provided by the Merrimack County Sheriff's Department

Table 15. Trial Court Center Analysis of Average Number of Transports per Case

| Year | Number of Transports | Cases Filed | Average Number of Transports per Case |
|----------------|-----------------------------|--------------------|--|
| 2013 | 5,416 | 723 | 7.49 |
| 2014 | 5,469 | 751 | 7.28 |
| 2015 | 6,041 | 794 | 7.61 |
| 2016 | 6,657 | 889 | 7.49 |
| 1/1/17-6/30/17 | 3,651 | 668 | 5.47 |

This analysis was conducted by the Trial Court Center based on its data and Cheshire County Sheriff's Department data.

Since Felonies First was implemented at the beginning of 2017, there is no time to disposition data available for a full year of Felonies First.

Grafton County

Implementation Date: April 1, 2017

Due to the recent implementation date of Felonies First, the currently available data is limited in nature. Thus, the Grafton County section consists solely of stakeholder interviews. A more detailed review of this county will be included in the next report.

Carroll County

Implementation Date: April 1, 2017

Due to the recent implementation date of Felonies First, the currently available data is limited in nature. Thus, the Carroll County section consists solely of stakeholder interviews. A more detailed review of this county will be included in the next report.

Coos County

Implementation Date: April 1, 2017

Due to the recent implementation date of Felonies First, the currently available data is limited in nature. Thus, the Coos County section consists solely of stakeholder interviews. A more detailed review of this county will be included in the next report.

Conclusion

RSA 592-B:2, VI, obliges the Judicial Council to include recommendations in its annual report on Felonies First. At its April 28, 2017 meeting, the Judicial Council authorized the Executive Committee and the Indigent Defense Subcommittee to approve this report prior to its submission. This report was drafted by the Council's Executive Director, with input, review and approval by these members.

Felonies First will be implemented statewide by October 1, 2017. Due to the short timeframe since implementation, and the lack of available data, it is premature to make recommendations at this time. Stakeholders will be asked to collect and report the data necessary for a meaningful evaluation.

Appendix A

General Stakeholder Comments

The Executive Director of the Judicial Council requested comments from Chief Justice Nadeau, NH Public Defender (NHPD) Executive Director Randy Hawkes, and David Bennett as they can provide a high-level assessment of Felonies First. Chief Justice Nadeau was asked to respond to certain concerns that were raised by individual stakeholders.

Tina Nadeau, Chief Justice, New Hampshire Superior Court

In 2015 the Legislature passed the Felonies First law, which requires all felonies and directly related misdemeanors to be filed in Superior Court. In passing this law, the Legislature recognized that the duplicative, inefficient and time-consuming process that has been in place for close to 100 years created unnecessary delay for the victims of crime and for the defendants awaiting resolution of their cases. Since only the Superior Court has jurisdiction to resolve felonies, it made sense to initiate those cases in Superior Court. Under the old system, a defendant charged with a felony appeared in Circuit Court for an arraignment, a bail hearing and a probable cause hearing (which defendants waived 87% of the time). The case was then sent to the Superior Court where no action could occur until a Grand Jury returned an indictment, usually four months or more after the initial arrest. The defendant then appeared in Superior Court for another arraignment and bail hearing. Often the County Attorney's Office was not involved in evaluating the case until it received the file from the arresting police department months after arrest, even though the County Attorney is responsible for making the decision about whether to proceed with felony charges.

Under the new system, now in place in seven of the ten counties, felonies and directly related misdemeanors are filed in Superior Court by the County Attorney, bypassing the initial, duplicative process in Circuit Court. In addition, the Public Defender's Office appears at almost all arraignments. This new process means that the assistant county attorney and public defender are involved in the case immediately after arrest and can begin working together to resolve the case from its inception. An additional benefit of the change is that if the County Attorney determines the case should be resolved as a misdemeanor, the Superior Court judge can take the misdemeanor plea immediately. Since a Superior Court judge has jurisdiction over misdemeanors as well as felonies, there is no need to compound the inefficiencies by sending the case back to Circuit Court.

The results are positive and the Felonies First law is accomplishing its goals of delivering the same or better justice sooner in the process. We are consistently seeing a reduction in the number of days defendants spend in pre-trial detention, a

reduction in the number of transports of incarcerated defendants to court over the life of his/her case, earlier exchange of discovery, earlier resolution of cases, more active involvement of judges in managing the cases, greater communication between law enforcement and the County Attorney, reduced overtime expenses for law enforcement, and a more efficient and streamlined criminal justice system.

Felonies First allows for the early provision of discovery, which means the defendant receives police reports and information about the case much earlier in the process. This new approach means lawyers on both sides will be more fully informed about the facts of a case soon after arrest and can have meaningful discussions about the appropriate resolution of the case as soon as the defendant's first appearance in court. Strafford County reports this approach means appropriate candidates for drug court are identified early and can start treatment sooner. Studies show that when a defendant enters treatment soon after arrest, the likelihood of reoffending in the future is significantly reduced.

Because the successful implementation of Felonies First requires close communication and cooperation between law enforcement and the County Attorneys, new innovations regarding the exchange of information have developed. For example, almost all the County Attorneys are now receiving police reports electronically, which ensures an efficient exchange of information. In addition, many County Attorney offices provide passwords to defense attorneys that allow them to access discovery electronically.

The judicial branch has worked hard to ensure a smooth transition to Felonies First. In each county, we have conducted brown bag trainings for judges, staff, law enforcement, attorneys, sheriffs, superintendents, and bail commissioners. We have recommended the creation of local working groups to establish procedures specific to the county, and in each county those working groups have been integral to the success of the roll out. In addition, we have separate meetings with various stakeholders several months after roll out so that we can address concerns and make adjustments where needed. While I believe the transition has been smooth, it is not without challenges.

For example, the initial Felonies First deadline for filing an indictment was 60 days from filing a complaint in Superior Court. This is a significant reduction in time from the old process where the County Attorney would have 90 days *after the case was sent to Superior Court* in which to indict a defendant. In most cases, that meant 120 – 180 days after arrest. As a result of this tightened deadline, the County Attorneys often requested an extension of time in which to file indictments, or cases were being dismissed only to be filed again later by direct indictment. In July, 2016, six months after the first two counties rolled out, the

judicial branch met with public defenders and prosecutors to discuss extending the indictment deadline to 90 days from filing the complaint in Superior Court, which continued to be a significant reduction in time from the old system. After that meeting, the group agreed to delay consideration of this extension until several other counties rolled out.

In May, 2017, the judicial branch convened another meeting with the public defender, prosecutors and a private defense attorney to discuss the extension of the indictment deadline to 90 days. After considering their input, the decision was eventually made to extend the deadline to 90 days for several reasons. Although some public defenders have raised concerns that the 90 day deadline delays case resolution, the extension actually has *enhanced* the opportunity for early resolution of cases. For example, often times a defendant is engaged in treatment soon after arrest and holding off on indictment allows a defendant to demonstrate success in treatment and enter a pre-indictment plea of guilty. In addition, the county attorneys reported that they were rushing to obtain indictments and were unable to spend time analyzing whether cases were appropriate for early case resolution. Finally, since cases start in the court with jurisdiction to resolve them, and since each case is scheduled for a dispositional conference regardless of whether a defendant has been indicted, the timing of the indictment is less relevant. A defendant can always choose to waive indictment and enter a guilty plea at the time of the dispositional conference. This is occurring with more frequency in all the Felonies First counties resulting in more prompt resolution of cases.

In fact, I personally have been presiding in several Felonies First Counties to assess the success of the changes, and I have seen first-hand that cases are actually resolving *prior to* indictment because the prosecutor and defense attorney are actively involved in the case from the time of the first arraignment in Superior Court. Whether the indictment occurs 60 or 90 days from arraignment does not affect the ability of prepared lawyers to solve the cases early.

The judicial branch works regularly and constantly with all the criminal justice stakeholders in each county to address issues that arise during and after roll out. Superior Court administrator, Karen Gorham, has made herself available around the clock to consider suggestions from those in the field and to implement changes when good ideas make sense.

No doubt, change is difficult, especially in a system with varied and often conflicting roles. I have been impressed with the cooperation from the stakeholders and their willingness to take on the challenge of improving an antiquated system. Indeed, we could all examine the criminal justice system from only our place in the process without regard to consideration of the system as a

whole. To address reform from such a narrow perspective would make improvement a very confining and unproductive endeavor. Because the tendency to protect our own interest can make objective evaluation of the process difficult, it is important for me to address some specific concerns that have been raised.

One example is the suggestion from some that Felonies First has caused an increase in transports of defendants from the jail to the courthouse because arraignments in Superior Court are not conducted by video from the jail. While certain counties have seen an increase in transports because of an increase in overall arrests, an objective analysis of arrest and transport data reveals the increase has nothing to do with Felonies First. In fact, the evidence shows that had the old system remained in place, even more transports would have been required.

Merrimack County, for example, has seen a significant increase in felony case filings since 2014. The trend has continued through 2016 and into 2017, before Felonies First rolled out. Thus, it is the increase in criminal arrests, not in person arraignments (which almost always occurred in Superior Court) that likely caused the need for increased transports.

A more meaningful measure of the effects of Felonies First on transports is a comparison of the average number of transports per case before and after Felonies First rolled out. As described in the body of the report, transports per case have decreased in every county since the inception of Felonies First.

In person arraignments in Superior Court are important to effective case management. When all parties are present in the courtroom, more meaningful hearings can occur, which results in bail agreements, and occasional pleas. The in person arraignments often mean fewer transports to court later in the case. Notwithstanding the effectiveness of in person arraignments, I appreciate the concern of some sheriffs that transporting defendants for arraignment who are incarcerated in other counties on other charges can sometimes mean long commutes for the sheriff. As a result of this concern, and after meeting with the sheriffs, we have instituted a policy that provides for video arraignments when defendants are incarcerated out of county. Video arraignments also occur when the sheriff informs the court that a case implicates security concerns. It is this type of collaboration that will continue to make Felonies First successful.

Another data point that is difficult to analyze is whether the number of misdemeanor resolutions has declined in the new system. That is because the current data does not reflect the 150+ felony arrests that *were never filed in court*. That means no charges were ever filed because the County Attorney reviewed the files and determined the defendant should not be charged. In the old system, these

cases may have been filed by law enforcement in Circuit Court, and though they may have resulted in misdemeanor guilty pleas, or dismissals, the defendant would have been subject to court process that the County Attorney in the current system would not have pursued.

The current data also fails to account for the number of felony arrests that were filed as misdemeanors in Superior Court because the County Attorney believed a felony arrest was not supportable. Under the new system, a prosecutor with the County Attorney's office is reviewing all felony arrests and making a determination as to the appropriate charges. This means better charging decisions at the beginning of the case, and makes a fair comparison difficult at best. Indeed, the first Felonies First case in Merrimack County Superior Court was filed as a misdemeanor after the County Attorney reviewed the file and determined the case should not be pursued as a felony. I have personally presided over cases in Belknap County where the County Attorney elected to file misdemeanors after a felony arrest.

Finally, the current data does not reflect the fact that drug arrests in New Hampshire have increased by 72% in the last two years. In addition, the nature and toxicity of new drugs like fentanyl and carfentanil have caused law enforcement to reevaluate the proper resolution of those cases. In fact, the Attorney General has recently taken over all prosecutions of any case involving carfentanil, which could also contribute to the possible rise in felony resolution of some drug cases.

Everyone in the Superior Court has worked hard to ensure a smooth transition to Felonies First, and I am proud of them. I have witnessed extraordinarily positive communication among the many stakeholders: prosecutors, sheriffs, corrections, defenders, county officials, and I could not be more impressed by the roll-up-your-sleeves cooperation on this project. Change is not easy, but in the Counties that have implemented Felonies First victims get better support, serious criminal cases now are processed in one court rather than in two separate jurisdictional venues, artificial delays in bringing cases to final disposition have been eliminated.

Even though implementation is happening in the final counties, there is no finish line. People have made suggestions about how to improve criminal case processing in the Superior Court, and I am committed to continuing to work with all of the stakeholders to make genuine improvements to the criminal justice system.

Randy Hawkes, Executive Director, NH Public Defender Program

As a supporter of Felonies First, NHPD has worked hard to adjust to the new system in order to assure clients receive competent representation and just results. One of the issues I have been asked to examine is whether the number of felony cases being resolved by non-felony dispositions has remained the same or similar to the number of felonies resolved through non-felony dispositions prior to the implementation of Felonies First. To quantify and measure whether that is occurring, I compiled New Hampshire Public Defender data for the two years prior to FF going into effect and compared it to data from the post-FF era.

I compiled data on felonies in the district courts and the superior court in each county, including the number of felonies opened and closed, and how they were resolved in each court. I determined the number and percentage of felonies that were *nol prossed*, dismissed, diverted, placed on file, had a finding of no probable cause, resolved as misdemeanors, or pled to the felony charged. I removed and discounted withdrawals, failures to appear, deceased, and any other cases that were closed, but not resolved, by NHPD.

I organized the statistics by each of the district courts in a county, by the county's district courts combined, by the superior court, and by all district courts and the superior court in the county combined. A year-by-year juxtaposition of all felonies resolved in a county's district and superior courts tracks the evolution from "substantial F resolutions in DCt" (historical) to "limited F resolutions in DCt" (1st year of FF operation) to "zero F resolutions in DCt" (thereafter).

NHPD's statistics indicate a decline in the percentage of *non-felony* resolutions of felony charges in Felonies First counties. Below are the actual percentages of NHPD felonies resolved without a felony conviction:

Strafford County – FF in effect 1/1/2016

- 64% in 2014 (DCt and SCt)
- 62% in 2015 (DCt and SCt)
- 54% in 2016 (including 12% resolved in DCt)
- 40% YTD (SCt only)

Cheshire County – FF in effect 1/1/2016

- 60% in 2014 (DCt and SCt)
- 62% in 2015 (DCt and SCt)
- 59% in 2016, (including 12% resolved in DCt)
- 49% YTD (SCt only)

Belknap County – FF in effect 7/1/2016

- 58% in 2014-15 (DCt and SCt)
- 55% in 2015-16 (DCt and SCt)
- 45% in 2016-17, (including 20% resolved in DCt)

Merrimack County - FF in effect 1/1/2017

- 62% in 2015 (DCt and SCt)
- 59% in 2016 (DCt and SCt)
- 45% in 2017 (including 33% resolved in DCt)

Carroll County – FF in effect 4/1/2017

- 61% in 2015 (DCT and SCt)
- 61% in 2016 (DCt and SCt)
- 57% in 2017 (including 29% resolved in DCt)

Grafton County – FF in effect 4/1/2017

- 63% in 2015 (DCt and SCt)
- 63% in 2016 (DCt and SCt)
- 64% in 2017 (including 37% resolved in DCt)

Coos County – FF in effect 4/1/2017

- 70% in 2015 (DCt and SCt)
- 65% in 2016 (DCt and SCt)
- 29% (including 14% resolved in DCt)

It should be noted that these statistics account for less than half of the felonies that NHPD opens each year as the majority of our felony cases are in Rockingham and Hillsborough Counties. It is still early in the implementation of the program. However, if there continues to be a decline in the non-felony resolution rate, I do anticipate some additional costs in staffing.

I would also like to note that Rockingham and Hillsborough Counties are just coming on board. The most recent reliable historical data for Felonies First shows a 47% disposition rate of NHPD's felonies opened and resolved in the district courts of Rockingham County and Hillsborough South. In Hillsborough North, the percentage is 27%.

Public Defender staffing and caseload management depend upon certain efficiencies. Historically, one such efficiency has been the disposition of non-violent felonies in district courts. Most felonies that resolved in district court did so within 30 days. Unless and until robust and effective Early Case Resolution programs are adopted, these once *readily-resolved* felonies will be treated like any other, thereby increasing felony caseloads and potentially requiring additional staff.

David Bennett, Criminal Justice Reform Consultant

Video arraignments are an excellent proceeding for misdemeanor cases and in felony cases where the arraignment is simply perfunctory. It allows the court to conduct the hearing without having to transport the defendant, thereby saving both the cost of transportation and eliminating security concerns. Defendants charged with misdemeanor offenses frequently elect to resolve their case and plead guilty via video.

A goal of Felonies First is to resolve cases at the earliest possible point. A resolution to a felony case requires all of the parties to be in the courtroom at the same time. For a felony video arraignment, if the defense attorney is in the jail with their client, they cannot have a sidebar conversation with the county attorney regarding case resolution or establishing pre-trial release conditions. If the defense attorney is in the courtroom, they cannot have the required communication with their client. Even if a secure phone line is set up, the ability for a meaningful hearing is compromised.

Furthermore, it is important for both the defendant and the judge to be able to look each other in eye when the terms of a plea agreement are discussed - that ability is unnecessarily compromised via video, despite today's advanced technology. For cases that are not going to be concluded at the arraignment, the process begins with this hearing and it is critical that all parties are in the courtroom.

Yes, technically we can conduct video arraignments in felony cases; however, it is likely to simply be a perfunctory hearing that will require an additional in-court hearing in the future, thereby delaying the resolution of the case.

This report is based largely on anecdotal information and the reader can see that at times the anecdotes contradict each other and/or are in conflict with the presentation of the limited available rudimentary data – case-filing data, days to disposition data, inmate transport data, and public defender resolution rates and

drug charge resolution. Additional data collection is necessary to complete an evaluation of the program.

The data to be collected needs to include, but not be limited to:

- Arrest and booking data by charge class (misdemeanor/felony); category (domestic violence, other person crime, property crime, narcotics, drunk driving, public order, or traffic); type of drug if narcotics
- County Attorney filing data (same as above)
- Disposition data (same as above) along with type of disposition (trial, plea, dismissal) including waivers of grand jury
- Process times between major events in the system (booking, filing, grand jury indictment, arraignment, disposition, sentencing)
- Sentence information (prison, jail, probation), risk/needs, substance abuse, mental health status
- Defendant demographics – prior criminal history, residency, employment, treatment, supervision along with risk/needs data, age, gender, race
- Type of Counsel (public defender, other appointed, retained, no)
- Outcome data from supervision
- Cost analysis

Without this detailed information collected over time, it is not possible to evaluate the effectiveness of the program. The evaluation should include a period of time prior to implementation of Felonies First and a period of time after implementation.

Regarding the public defender concern of fewer misdemeanor dispositions. The premise of the program is that experienced prosecutors and defense attorneys will exchange available discovery and that the county attorney will make fair, aggressive plea offers. The public defender is under NO obligation to accept the offer. The check and balance on this system is for cases to be taken to trial when a negotiated settlement is not reached. It will take time for the attorneys to change the old culture and take advantage of the efficiencies of the new system.

In fact, the program cannot be successful without a certain number of cases being taken to trial. The county attorney cannot be giving away cases and the public defender has to effectively represent their clients. Across the country we know that 95% of criminal cases resolve with the defendant accepting responsibility and entering a plea of guilty. Many times those cases resolve on the eve of trial after both sides had spent months churning the case. In this system, where attorneys

responsible for the case appear early in the process, the opportunity to reach a fair resolution earlier is available. We expect to see 40% of the cases being successfully negotiated and pled prior to grand jury indictment, leaving more time for the attorneys to resolve the difficult cases later, and take those to trial where no resolution is possible. Same Justice Sooner.

Regarding the use of disposition data from the prior police prosecutor system of reducing and resolving cases. Many (most) of these resolutions of felony arrests occurred without knowledge or involvement of the county attorney. This is a problem that the legislature has fixed with Felonies First. Absent the above recommended comprehensive data collection; it is not a fair comparison to use this data to show that the program is being too harsh. There are 10-independently elected county attorneys in New Hampshire and it is difficult to conceive that with the implementation of this program there has been a dramatic statewide shift in charging practices.

Appendix B

Cheshire County Stakeholder Interviews

Stakeholder input is county specific, and is not necessarily an indication of the experience in other counties. The Council did not independently review or confirm the data or other information contained in this section. The views and opinions expressed herein do not necessarily reflect the views and opinions of the Council or its individual members. This report aspires to be an honest chronicle of the feedback received from different actors in the criminal justice system. Recognizing that certain issues are part of the tension inherent in the adversarial setting, and that the initial implementation of a large scale transition will have challenges, the hope of this report is that everyone involved in the criminal justice system will be receptive to changes that are necessary to enhance the quality and effectiveness of Felonies First.

Christopher McLaughlin, Cheshire County Attorney

Other than the expense of a new prosecutor (approximately \$90,000/year), this office has not incurred any additional expenses as a result of Felonies First. Attorneys are assigned to arraignment coverage for weeklong shifts. Depending on the number of arrests, the attorney on call and his/her assistant are usually very busy and rushed during that period. Prosecutors have had to handle some independent misdemeanors, mainly as a result of cases that were mischarged as felonies.

This office does have Early Case Resolution (ECR) in place. Attorney McLaughlin reviews every case that comes into the office and designates those cases he finds appropriate for ECR. There is one Assistant County Attorney (ACA) and one Victim Witness Coordinator (VWC) assigned to handle all ECR cases. Once a case is designated as ECR, the ECR prosecutor notifies defense counsel and a form is filed with the court notifying it of the ECR status.

Felonies First has not created any efficiencies or savings for this office, but police departments are saving time and money by not having to send officers to court for probable cause hearings and by submitting cases via ShareFile. For defendants and the Courts, doing away with the bindover time lag has resulted in the cases being scheduled for a dispositional hearing 45 days after arrest/arraignment.

Attorney McLaughlin observed that cases are resolving more quickly to the extent that the bindover time has been eliminated, and that there is now an ECR track. But overall, the amount of time between arraignment and resolution has not shortened significantly for most cases.

Victim Witness Coordinators are now responsible for making the initial contact to obtain a victim's input before arraignment. It is often difficult to contact victims in that short window.

Attorney McLaughlin noted that both his office and the court went through some growing pains figuring out the most effective way to deal with non-incarcerated defendant arraignments. These arraignments are now scheduled for the first Thursday afternoon no sooner than 10 days nor later than 20 days from the date of arrest. Attorney McLaughlin's office still struggles with getting the necessary information from police departments on these non-detained defendants, and occasionally, the bail commissioners enter the wrong arraignment date or file the paperwork with the Circuit Court instead of the Superior Court.

The discovery deadline often results in barebones discovery going out to comply with the very short turnaround time (10 days for detained defendants and 20 days for non-detained defendants). This results in the remainder of the discovery coming into the CAO in a haphazard fashion and going out to defense counsel piecemeal.

Attorney McLaughlin was not surprised that Public Defender data shows a decrease in the number of felonies reduced to misdemeanors since the implementation of Felonies First. He attributes some of this to a difference in philosophy between his office and Circuit Court prosecutors. Factors like the defendant's criminal record and the type of drug involved play a role in the decision-making. Each situation is case specific, fact driven, and depends on the nature of the charges. It is difficult to track the number of cases reduced to misdemeanors because, prior to Felonies First, many cases were downgraded before even reaching his office.

Attorney McLaughlin reported that the number of people held pretrial has decreased, but he believes this is unrelated to Felonies First. Most pretrial inmates are detained on serious charges and held long-term.

Attorney Alex Parsons, Managing Attorney, Keene NHPD Office

When Felonies First was initially implemented, Attorney Parsons was concerned that fewer felony charges would resolve as misdemeanors. Data provided by the Public Defender indicates a 13% drop in Cheshire County's misdemeanor resolution rate between 2015 and 2017. (See Stakeholder comments p. 21).

Incarcerated arraignments can be very time-consuming, requiring approximately 2 hours of attorney time per arraignment (including time in and out of court). Probable cause hearings have been practically eliminated as a result of Felonies First. (See Table 1, p. 2 for data on statewide probable cause and discovery deposition requests).

Discovery is generally received on time. Even when discovery is not received by the deadline, it is received in time to do an initial assessment prior to the dispositional conference. Given attorney caseloads, monitoring discovery deadline compliance is not a priority, so it is difficult to track. Settlement offers are received prior to the dispositional conference, though frequently less than 14 days prior to the dispositional conference. Attorney Parsons reported that this delay has not been problematic.

Attorney Parsons reported that the impact of shorter time periods on attorney-client relationships is impossible to quantify. Getting clients to accept “good” offers (heavy consequences that the attorney knows could be significantly worse), is frequently difficult, particularly in the most serious cases with the most at stake. Attorney Parsons found that probable cause hearings served as one of the best opportunities to earn these clients’ trust early on and to provide a reality check to these clients regarding the evidence. Consequently, the virtual elimination of probable cause hearings has made it more difficult to get these clients to accept good offers.

Captain Russo, Keene Police Department

Felonies First has not resulted in any additional expense to this department. Minimal cost savings have resulted from the use of Share File to provide discovery to the County Attorney’s Office. Even before Felonies First, Keene police officers were required to complete a basic report before going on days off or before the end of a shift in which a suspect was held. The Department office manager is the contact for the CAO.

Felonies First was expected to reduce overtime costs for local police departments and to increase officer time for community policing. Keene’s overtime costs are tracked by general category (court time, patrol time, etc.) so it is not possible to calculate the exact cost-savings attributable to Felonies First. Anecdotally, Captain Russo has heard of a slight increase in OT to comply with new discovery deadlines.

Table 16. Keene Police Department Fiscal Year Overtime Costs for all Court Appearances

| Time period | Court Overtime Costs |
|-------------|------------------------|
| FY2014/2015 | \$46,763 |
| FY2015/2016 | \$51,686 |
| FY2016/2017 | \$40,094 (estimate) |

Data provided by the Keene Police Department.

Richard Van Wickler, Superintendent of Cheshire County House of Corrections

Superintendent Van Wickler reported that Felonies First has been a cost neutral issue for his facility. Since this facility does not actually handle the transport, sending inmates to one court as opposed to another does not impact it. The only “cost” seems to be the Superintendent’s time going through overnight arrests and identifying inmates that fall under Felonies First and then notifying the court and County Attorney.

No efficiencies have developed as a result of Felonies First. This facility does not offer any pretrial services. Superintendent Van Wickler noted that though the number of pretrial offenders coming into the jail has not really changed, the length of time these individuals stay before resolution of the case seems much shorter. (See Table 17). He further noted that pretrial cases appear to resolve much more quickly under Felonies First. There also appears to be a number of cases that are released on bail conditions much sooner and may be resolved without additional

jail time served. Since Felonies First was implemented, the average length of pretrial incarceration is 41.5 days. Pre-Felonies First data is not available.

During pretrial detention, inmates do not have access to the educational and rehabilitative programs offered at the jail. They are not eligible for work release or to perform certain work crew assignments. In general, the jail benefits from having more sentenced inmates as they are available for work crew positions.

Table 17. Cheshire County HOC history of inmates held pretrial

| Calendar year | Number of Pretrial Inmates |
|----------------|----------------------------|
| 2015 | 571 |
| 2016 | 532 |
| 1/1/17-4/30/17 | 276 |

This data was provided by the CCHOC.

Eliezer Rivera, Cheshire County Sheriff

Sheriff Rivera reported that Felonies First has not had any negative impact on his department and that his department has actually seen a decrease in transports as a result of Felonies First and Circuit Court video arraignments as reflected in Table 3, p. 5.

Richard Guerriero, Criminal Defense Attorney

Attorney Guerriero has found that when the prosecutor is committed to fast and fair resolutions for nonviolent, first time drug offenders, or offenders who committed other crimes with no immediately identifiable victim, the Felonies First process works well. He feels that when the prosecutor initially takes a hard line on a harsh sentence and/or when the prosecutor does not provide complete early discovery, there is no benefit to Felonies First. He recommended a focus on selecting the right personnel to be prosecutors and giving them the tools and authority to resolve cases efficiently and justly.

Appendix C

Strafford County Stakeholder Interviews

Stakeholder input is county specific, and is not necessarily an indication of the experience in other counties. The Council did not independently review or confirm the data or other information contained in this report. The views and opinions expressed herein do not necessarily reflect the views and opinions of the Council or its individual members. This report aspires to be an honest chronicle of the feedback received from different actors in the criminal justice system. Recognizing that certain issues are part of the tension inherent in the adversarial setting, and that the initial implementation of a large scale transition will have challenges, the hope of this report is that everyone involved in the criminal justice system will be receptive to changes that are necessary to enhance the quality and effectiveness of Felonies First.

Thomas Velardi, Strafford County Attorney

Felonies First has created no added expense for this office. Attorney Velardi has not seen an increase in cases due to Felonies First. His office did add an attorney and two legal assistants due to overall rising caseloads but Attorney Velardi does not attribute this to Felonies First.

He indicated the ECR program continues to function efficiently due to immediate review and assignment of all incoming cases as well as skilled prosecutors and defense lawyers who communicate openly on a regular basis. He mentioned that the public defender's office is willing to plead drug cases without lab results and willing to plead cases even when every scrap of conceivable discovery is not exchanged in cases where it is recognized that the early resolution is in the best interests of the client and is consistent with the client's wishes.

Attorney Velardi observed that intra-office case flow has been streamlined as a result of Felonies First. He also noted that communication with victims occurs faster and with more robust input.

Attorney Velardi also commented on the 30 day extension to the indictment period. He was part of a group which had both public defender and private bar representation. The group met several times and the issue of the constant need to seek indictment extensions (primarily for drug cases) was recognized by all as proof that the 60 day limit did not work in practice, and a rule change would eliminate the need for extensions while not being a weighty detriment to persons accused of crimes.

David Betancourt, Managing Attorney, Dover NHPD Office

Attorney Betancourt calculates that, between the court time and the client interviews, arraignment coverage requires about 2-3 hours per week of additional attorney time. Another .5

hour per week is spent on the administrative end making sure that there are personnel each day to staff the arraignments. The Public Defender assists at the non-incarcerated arraignments as well, which takes two attorneys at least an additional hour twice a month, because of the number of non-incarcerated arraignments.

One of Attorney Bettencourt's chief concerns was obtaining the same percentage of misdemeanor resolutions for clients as before Felonies First. Data provided by the Public Defender indicates a 19% drop in Strafford County's misdemeanor resolution rate from 2015 to 2017. (See Stakeholder comments p. 21).

This office has not had a probable cause hearing since Felonies First was implemented. Attorney Betancourt believes that the standard for obtaining a probable cause hearing is too stringent. He said if a hearing is granted due to lack of discovery, then discovery is quickly provided. Attorney Betancourt said the Strafford County Attorney's Office usually provides discovery on time. In general, plea offers are received before the dispositional conference, although it is dependent on the individual prosecutor.

While resolutions are prosecutor and case specific, it has become harder to get low grade felonies, such as shoplifting and possession cases, reduced to a misdemeanor because there's no longer the artificial jurisdictional barrier of the probable cause hearing. The case starts as a felony, and there is no leverage point to convince a prosecutor to reduce the charge to a misdemeanor, hence, the decline in misdemeanor resolutions.

Difficulty getting clients to accept offers has not been as problematic as Attorney Betancourt anticipated. The time period between arrest and resolution seems to have lengthened, especially for non-incarcerated clients, so he is not seeing that the timeframe has been compressed. A dispositional conference is scheduled two months from the arraignment. At that conference, easy cases are resolved and more complex cases are scheduled for a trial six to seven months later. This timeframe is sufficient in 90% of their cases, but for those matters that require more time, the Court will schedule for a later date. However, most serious negotiations still take place around or after the final pre-trial, which is the same as how it's always been.

Lt. Brant Dolleman, Dover Police Department

Felonies First has not created any additional expenses for the Dover Police Department. It has saved money by reducing police overtime for probable cause hearings. The exact amount saved cannot be quantified with any degree of accuracy, as the overtime rate would vary dramatically from officer to officer, and attendance at probable cause hearings had not incurred overtime costs in every case. Lieutenant Dolleman estimates that Felonies First saved over \$1,000 in overtime costs, but probably not much more than \$5,000.

The report writing deadlines have not posed any challenges to their officers. A Detective Lieutenant serves as the liaison to the County Attorney's Office with a specific back-up if the liaison is unavailable for an extended time (such as vacation or training assignment).

While there is no specific metric for assessing the impact on victims, Lt. Dolleman indicated that it is commonly accepted that the quicker a case is resolved, the better for the victims.

Daniel Auger, Executive Director of the Strafford County Sheriff's Office

The impact of Felonies First on this office has been minimal. The Strafford County Jail is very close to the Strafford County Superior Court. The Sheriff's Department routinely transports inmates already scheduled at Superior Court at the same time as those appearing for Felonies First arraignments.

Kimberly Shoen, Criminal Defense Attorney

Attorney Shoen reported that, some cases have been dismissed at arraignment because there has not been enough initial information from the police department. She also expressed concern about the scheduling of arraignments for drug sick clients, who are unable to meaningfully participate in the proceeding. She recommended that the jail notify the court in advance and the court continue those arraignments for the next day. Attorney Shoen noted that the speed of the arraignments can be counter-productive. She said the schedulers are amazing at getting counsel in place, but when there is only a couple of hours between appointment and arraignment, it is very hard to check out housing options, verify the client's story, etc. As a result, the arraignment ends up as a triage first appearance and she has to file bail motions later. In the easy cases where the client can get out on personal recognizance or into the community corrections program,⁶ she finds that the quick process benefits clients. But in the more difficult cases, extra time to prepare would be helpful.

Attorney Shoen praised the staff at Strafford County Superior Court and credits them with moving cases along to a quicker resolution.

⁶ Strafford County has a Community Corrections Program which oversees offenders outside of jail or prison, while the criminal case is pending.

Appendix D

Belknap County Stakeholder Interviews

Stakeholder input is county specific, and is not necessarily an indication of the experience in other counties. The Council did not independently review or confirm the data or other information contained in this report. The views and opinions expressed herein do not necessarily reflect the views and opinions of the Council or its individual members. This report aspires to be an honest chronicle of the feedback received from different actors in the criminal justice system. Recognizing that certain issues are part of the tension inherent in the adversarial setting, and that the initial implementation of a large scale transition will have challenges, the hope of this report is that everyone involved in the criminal justice system will be receptive to changes that are necessary to enhance the quality and effectiveness of Felonies First.

Melissa Countway Guldbrandsen, Belknap County Attorney⁷

Attorney Guldbrandsen reported that the cost of a new prosecutor (\$89,329/year) continues to be the only additional expense caused by Felonies First. While this office has experienced a large spike in cases in the last year, she did not attribute this to Felonies First. She does not anticipate that any additional prosecutors will need to be hired. The office's VWC reports that Felonies First has increased her workload and she would benefit from extra help. Attorney Guldbrandsen confirmed that the VWC's workload has increased and that CAO administrative staff workloads have also increased, but the increase is not all attributable to Felonies First.

While this office does not have a formal ECR in place, all prosecutors have the authority to resolve cases early and to basically offer a "discount" in terms of sentencing for an early resolution. Early plea deals require a waiver of grand jury indictment. Attorney Guldbrandsen recommended removing the part of the waiver form which requires the prosecutor's signature as an affidavit that is notarized.

The biggest efficiency that this CAO's office has seen is that, as a result of being informed by the police departments about cases more quickly, prosecutors are made aware sooner rather than later when one defendant "racks up" multiple different charges. This is more efficient for global resolutions. Police departments are utilizing electronic means to send cases to the CAO which is also more efficient.

The CAO's staff is able to be in touch with victims from day one, instead of weeks later which keeps them better informed. Overall, Attorney Guldbrandsen has found that cases are resolving more quickly, especially when calculated from the date of arrest. This quicker resolution time is

⁷ Attorney Guldbrandsen is now a Circuit Court Judge and Attorney Andrew Livernois is serving as the Belknap County Attorney.

also better for victims. However, Attorney Guldbrandsen also noted that there have been a lot of “failures to appear.”

Attorney Guldbrandsen was not surprised that Public Defender statistics show a decrease in the misdemeanor resolution rate. Previously, some Circuit Court resolutions were happening without the knowledge of the County Attorney Office. The culture at the CAO is not to resolve felonies as misdemeanors and there is not a huge incentive to reduce a charge if the defendant is already a convicted felon, but Attorney Guldbrandsen believes that this situation could be open to change.

Attorney Jesse Friedman, Managing Attorney, Laconia NHPD office

Attorney Friedman attributes the post-July 2016 felony caseload increase to Felonies First and the County Attorney’s increased staffing. He has found that when a CAO adds a prosecutor, the need to justify the position results in an increase in the number of charges being filed.

Attorney Friedman has been concerned that one of the impacts on Felonies First would be a reduction in the misdemeanor resolution rates. Data provided by the Public Defender indicates a 21% drop in the misdemeanor resolution rate for this county. (See Stakeholder comments p. 22).

There is significant pressure on defense counsel to resolve cases as quickly as possible. In this climate, clients, who may already be distrustful of assigned counsel, can get the impression that no one is working for them.

Attorney Friedman reports a good working relationship with the Belknap County Attorney’s Office. Attorneys in this office now spend approximately 2 hours per day handling arraignments. The Belknap County House of Corrections has a dedicated phone line for attorneys, which has been crucial in preparing for arraignments.

Keith Gray, Superintendent of Belknap House of Corrections

Felonies First has not created any additional expenses for the Belknap County House of Corrections. There has been some savings due to less pretrial incarceration time. Superintendent Gray sees the reduction of pretrial incarceration time as a benefit since sentenced inmates are able to attend more programming and participate in work release and electronic monitoring. Belknap County operates a pilot program called Corrections Opportunity for Recovery and Education (CORE). Only sentenced inmates are entered into the program. There are also some grant programs funded by the NH Department of Education that are only available to sentenced inmates. More inmates participating in work release and electronic monitoring brings in additional revenue to the county.

The average length of pretrial stay for felony level offenses has decreased since Felonies First was implemented. In 2015, the average pretrial stay for these offenses was 72.43 days. In 2016, it was 51.22 days. During the first five months of 2017, the average length of stay is 39.96

days. (See Graph 2, p. 11). Superintendent Gray noted that the length of stay numbers show a quicker resolution to these cases.

Superintendent Gray estimates that their incarceration numbers have increased by about 15% since Felonies First was implemented. He does not attribute this to Felonies First, but believes it is due to an increase in drug cases in Belknap County.

Lieutenant Richard Simmons, Laconia Police Department

Lieutenant Simmons reported that the Laconia Police Department cannot specifically track OT costs or savings that are directly attributable to Felonies First. During the initial roll-out, there was a concern that the savings from fewer probable cause hearings that officers had to attend could be offset by new costs incurred by officers staying late to complete paperwork to meet the new report deadlines. Lieutenant Simmons believes that the OT savings has at least covered the additional overtime for people staying late. While it is still a challenge getting that paperwork completed, as with anything new, the more the officers do it, the more proficient they are becoming at completing the paperwork on time. This department has a discovery sharing system with the CAO that works out well. All felony arrests go into a bin that gets picked up by the department's legal secretary every morning and are then sent right over to the CAO. Any supplemental reports that come in to the department after the initial arrest are stamped "continuing discovery" and get sent right over to the CAO. Officers dictate their reports, and all felony cases get priority.

Laconia Police Department has appointed one County Attorney liaison for detective cases and one for patrol cases. This arrangement works well, and it also illustrates the need for a similar set-up in in other large police departments. When prosecutors contact the involved officer directly, it can cause delays and other issues. If the involved officer is out of the office, there may be a delayed response to the prosecutor. In addition, police supervisors are unaware of the need for the involved officer or another officer to follow up with the prosecutor.

Although Lieutenant Simmons does not work directly with victims, he believes that Felonies First has a positive impact on victims because the suspect is being brought to court more quickly, and the overall resolution is faster.

In order to make sure there are no issues making time lines, this department is more apt to send cases over to the county attorney's office for indictment prior to an arrest. However, there is no way to track this as the case is closed out the same way regardless of the arresting agency.

David Perkins, Chief Deputy, Belknap County Sheriff's Office

Chief Deputy Perkins reported that as a result of Felonies First, the Sheriff's department has to have an extra person in court every day to provide security for hearings. The cost to the county for this added service is approximately \$30,000. The department is transporting inmates for all

Superior Court status conferences and arraignments. Chief Deputy Perkins agrees with the premise of Felonies First, and believes that it will be a great thing once the kinks are worked out. However, it has increased their costs. The number of transports for this department is available at Table 11, p. 10.

Appendix E

Merrimack County Stakeholder Interviews

Stakeholder input is county specific, and is not necessarily an indication of the experience in other counties. The Council did not independently review or confirm the data or other information contained in this report. The views and opinions expressed herein do not necessarily reflect the views and opinions of the Council or its individual members. This report aspires to be an honest chronicle of the feedback received from different actors in the criminal justice system. Recognizing that certain issues are part of the tension inherent in the adversarial setting, and that the initial implementation of a large scale transition will have challenges, the hope of this report is that everyone involved in the criminal justice system will be receptive to changes that are necessary to enhance the quality and effectiveness of Felonies First.

Scott Murray, Merrimack County Attorney

Catherine Ruffle, Deputy County Attorney

Attorney Murray reported that his office could not have handled Felonies First without increased staffing. The Merrimack CAO caseload has increased since the rollout of Felonies First, which Attorney Murray attributes to a combination of Felonies First and a surge in drug arrests. In 2016, this office experienced an 18% increase in indictments – roughly 40% of which were drug crimes. Based on the numbers obtained during the first six months of 2017, Attorney Murray anticipates a 25 - 30% overall increase in indictments in 2017. He noted that in light of the fact that the Superior Court calculated a 16% resolution rate for felonies in the Merrimack County Circuit Courts under the old system, it is quite understandable that their numbers would be up, given that all felonies now begin in the Superior Court. Table 13 on page 12 shows the increase in felony cases at Merrimack Superior Court.

To handle the increase, the office added two prosecutors and an assistant at a cost of approximately \$226,000/per year. Attorney Murray clarified that the increased staffing is necessary because of the structure of the Felonies First program, not just the increased caseload. During the first 6 months of Felonies First, this office had to initiate Superior Court process for 151 defendants who were arrested and held overnight on bail. This constitutes a new function which must be completed quickly and accurately in order to meet the daily court deadline (11:00 a.m. to file complaints) and ensure public safety with appropriate bail recommendations. It could not have been effectively implemented by existing staff who already had commitments to dockets in both Superior and Circuit Courts.

Attorney Murray explained that the increased staffing is also necessary to facilitate the ECR program that was requested by the Superior Court Administration and advocated by their expert (David Bennett). The CAO started ECR in July 2017, after adding an additional prosecutor and

is beginning to see some progress with ECR, as 12 defendants have either pled out or reached agreements to do so. Attorney Murray has high hopes that the program will continue to yield positive results.

Cases received from police agencies under Felonies First are generally less well developed and not as complete as those received under the old system. These cases now require the immediate attention of prosecutors and an investigator in order to assure the accuracy of charging decisions and bail recommendations, where defendants are held overnight for arraignment. In order to comply with RSA 21-M:8-k (Victim's Bill of Rights) it is necessary to assign a VWC to Felonies First arraignments on a daily basis. This allows victims to be kept apprised of pending arraignments and bail orders and also allows prosecutors to get necessary input from victims. This has created a lot of additional work for the VWCs.

One of the most significant challenges is the compressed time period for investigations and the burden on the prosecutor to make charging decisions with less information than was previously provided. Some cases should still be brought in the Circuit Court, but by the time a prosecutor has determined that the crime is a misdemeanor, the case must remain in Superior Court.

The new process also results in police and investigation reports reaching the CAO in a piecemeal fashion as they are generated and completed, which in turn results in discovery "trickling out" to defense counsel. It is more difficult for the CAO to issue and monitor discovery under Felonies First. Discovery is now provided to the Public Defender via an electronic drop box.

Drug cases have created unique challenges for all stakeholders. In certain cases, there is confusion about what actual drug is involved in a charge, leading to some hesitancy in seeking an indictment when lab results are not yet available. Between 40 and 45 % of the Merrimack CAO's indictments are drug cases (sales or possessions). During the first 6 months of 2017, 431 of 1054 indictments were drug related.

This office has found that the standard scheduling track is not appropriate for all cases. Attorney Murray recommends a separate track for complex cases.

Both Attorney Murray and Ruffle agree the increase to the indictment period from 60 to 90 days was necessary. Local police departments, especially the smaller ones, are struggling with the quicker deadlines required under Felonies First. According to Attorney Murray, Felonies First appears to shorten the sentencing timeline for victims. Although this creates additional burdens on his staff, he sees and appreciates the benefit to victims.

Tracy Scavarelli, Managing Attorney, Concord Public Defender Office

Attorney Scavarelli agrees with the Felonies First focus on motives and outcomes but the actual implementation has caused several concerns, chief among these is the reduction of misdemeanor resolutions. This county implemented Felonies First recently, yet preliminary data from the

Public Defender indicates a drop in the number of misdemeanor resolutions. (See Stakeholder comments, p. 22).

This office is experiencing a high felony case load, and most new cases are drug-related. These cases present unique challenges, based in part on the lack of treatment programs available. Some clients reoffend with new possession charges while they are on bail.

Attorney Scavarelli notes that court staff, including Merrimack County Superior Court (MCSC) Clerk Uhrin and Deputy Clerk Frazier have been extremely helpful throughout the process.

Another challenge Attorney Scavarelli identified relates to discovery disclosure. Attorney Scavarelli has discovered that police departments have not turned over all discovery in their possession to the CAO. In one such case, the Gerstein affidavit referenced a rape kit and other documentation that had not been turned over.^[1] The County Attorney does not appear to be engaged in problem-solving with regard to this issue.

Initially, early plea offers by the prosecutors were not always reasonable. Attorney Scavarelli explained that defendants are generally not enthusiastic about early offers and that a certain stigma attaches to attorneys who review an offer early on in the process.

Attorney Scavarelli is optimistic about the ECR program. When we spoke, the County Attorney had recently hired an experienced criminal attorney to handle ECR. Attorney Scavarelli selected an attorney from her office, with input from the CAO, to work on ECR. Utilizing dedicated and experienced ECR attorneys should improve the efficacy of this program.

To determine the length of time needed to handle the arraignments, Attorney Scavarelli handled all Felonies First arraignments for the first three months. Now, attorneys are assigned particular days for arraignment coverage, but this does not necessarily mean they will handle the case through resolution. An attorney can handle up to three incarcerated arraignments per day and the process usually takes 1-2 hours. On heavy arraignment days, additional attorneys are sent to court.

Attorney Scavarelli noted that her office would no longer be able handle arraignments if they are conducted via video because they do not have the staff to accommodate that process. If the client remains at the Merrimack County House of Corrections (MCHOC), an attorney will be required to drive there (50 minutes roundtrip), meet with the client, obtain all relevant bail information, fax the information to the NHPD's office and wait at the MCHOC until all video arraignments are complete. A second attorney will be required to appear in MCSC to talk to the prosecutor about their position or recommendation for bail with respect to that same client. That information will have to be conveyed from the lawyer in court to the lawyer at the MCHOC. Attorneys are not permitted to bring cell phones into the MCHOC, and all phone calls will need to be made

^[1] If a person is arrested without a warrant, and detained in lieu of bail, an affidavit that complies with *Gerstein v. Pugh*, 420 U.S. 103 (1975) must be filed. See NH Rules of Criminal Procedure (Felonies First Counties) 3.C.

through processing at the MCHOC. NHPD attorneys would have to make special arrangements with the MCHOC to have clients brought to processing in order to meet with them and to make phone calls to the court attorney or NHPD office. It is unclear whether confidentiality would be provided for these phone calls. The attorney at the MCHOC will then review that recommendation with the client and then call the court attorney back to advise whether the client agrees or will require a hearing. On occasion family members or friends need to be contacted prior to the hearing to discuss living options and ability to post a cash amount. In those circumstances, the attorney at the MCHOC would need to ask to use the phone at the MCHOC in processing to call the NHPD office and have the information passed to the court attorney. The Court attorney will need to contact the family members. That process is time consuming and may not be completed when the case is called. The court attorney will then present the bail information to the Court on behalf of a client with whom s/he has never met or spoken. These additional steps translate into a significant increase in resources.

Tracy Uhrin, Clerk, Merrimack County Superior Court

Clerk Uhrin indicated that the Merrimack Superior Court staff has taken on some additional duties. They are now responsible for the daily and weekly opening of felony criminal cases, which used to occur in Circuit Court. Arraignments for incarcerated defendants are held daily at 1:00 p.m., and non-incarcerated arraignments are held on Thursday afternoons. Direct indictments are mailed out, and the Public Defender will be copied. The MCHOC e-mails the court a list of inmates being arraigned that day. The County Attorney, Public Defender and Conflict Case Administrators (CCA) are copied. Another consequence of the opioid crisis is that inmates are often under the influence at the time of arraignment. Defendants must now be medically cleared by the jail before they are transported to the court, which has addressed this issue.

The County Attorney's staff copies the Public Defender when they e-mail the complaint and affidavit to the court around 11:00 a.m. The County Attorney's staff also provides advance notice to the Public Defender about the amount they will be seeking for bail. Incarcerated defendants are usually transported between 12:15 p.m. and 12:30 p.m. for 1:00 p.m. arraignments. Clerk Uhrin noted that variations in the number of defendants, the complexity of the defendants' criminal histories or pending cases, and mental health or substance abuse issues can complicate communication between a defendant and a public defender, who are likely meeting for the first time that afternoon. In order to provide the defendant with a meaningful bail hearing at the beginning of his or her case, the attorney may try to make phone calls to determine where a defendant would reside if released and collect other information relevant to the factors the judge must consider in setting bail. Due to these and other factors, bail hearings are not always ready to begin at 1:00 p.m.

Bradley Osgood, Chief of Concord Police Department

Chief Osgood reported initial trepidation regarding the implementation of Felonies First in Merrimack County, especially with regard to the impact on transportation. However, due to his

department's proximity to the Superior Court, transportation has not been a problem. Chief Osgood is concerned about the shorter deadlines for documentation, and he believes that better communication about timing between his department, the County Attorney and the court would help.

Per Chief Osgood, the Concord Police Department has experienced an increased case load, which is due to the current environment and drug crisis, not Felonies First. The increase in cases is also partially due to funding from Granite Hammer as Concord received approximately \$75,000 for overtime for the express purpose of developing more cases and making more drug arrests.

Chief Osgood addressed the critical nature of the drug crisis in Concord. He noted that overdoses and deaths from methamphetamines and opioids are increasing. He expressed frustration at the lack of resources, processes and system in place locally to adequately address this issue and respond to the need. He also expressed frustration with the courts when dealers are returned to the street without appropriate accountability for prior convictions. This department has a program and protocol for someone who shows up at 2:00 a.m. and says they're homeless, but the system for helping those who show up at 2:00 a.m. saying "I'm a heroin addict" is non-existent.

Like many of his colleagues in law enforcement, Chief Osgood has developed a thorough understanding and knowledge of addiction. He reported that when a person reaches out for help, there is a 20 minute window to act. This is part of the reason why the Safe Stations have been so effective – there is a 10 minute assessment at the fire station and then a social worker comes in to take that person to aid.⁸ Due to lack of resources, if someone shows up at the Concord Fire Department which is not part of the Safe Stations program, the only option is to transport this person to the hospital, which is not geared toward treatment.

Chief Osgood provided an example of the impact the opioid crisis has on those in the community who have no connection to addiction. Recently, during the course of one hour, Concord experienced three calls for overdoses. The responses required 6 police officers, 1 supervisor and 3 ambulances. This meant that there were limited resources available for other calls for service in the community during that time period.

Chief Osgood observed that the current local funding is insufficient to deal with a crisis of this magnitude, and state and Federal help is needed.

⁸ Every fire station in Manchester, NH, is a designated safe haven for people struggling with addiction who want to enter treatment and begin their path to recovery. Available 24 hours a day, seven days a week, any person can go to any fire station in the city, speak with the firefighters on duty, and immediately get connected to treatment support and services.

Stephen S. Pecora, Chief of Hopkinton Police Department

Chief Pecora credited Scott Murray with his department's smooth transition to Felonies First. They have had three Felony First arrests since implementation. He initially had a lot of concerns about the potential impact on his department. Merrimack County Sheriff Scott Hilliard had informed the chiefs that individual departments might be responsible for their own court transports but this has not come to pass. This department employs eight law enforcement officials, including the chief. The department has not noticed an appreciable difference in overtime costs. It has been a bit of a challenge completing reports and affidavits within the new deadlines, but the deadlines are not overly restrictive. The County Attorney resources are always available to them. Chief Pecora has found Felonies First to have worked out well and he has no complaints.

Tracy Connolly, Concord City Prosecutor

The Concord City Prosecutor handles cases for Bow, Loudon, Dunbarton and Concord. This office has a unique setup as Attorney Connolly is a sworn ACA and there is a pretrial services program. In consultation with Attorney Murray, Attorney Connolly routinely resolved approximately 25% of felonies filed in the Circuit Court.⁹ These cases would resolve as misdemeanors, or, if a defendant successfully completed a diversion program, there would be no conviction.

Attorney Connolly was able to resolve such a significant percentage of felonies based, in part, on the relatively small geographical area she serves, her familiarity with defendants and victims and her relationship with local law enforcement. She received early notice of new charges which lead to global resolutions. Because the CAO is receiving cases throughout the county, this level of local knowledge may be lost.

Attorney Connolly favored the prior procedure and saw a benefit in having different judges reviewing a felony. She also indicated that the Circuit Court, known as the "people's court," was less intimidating for defendants. Per their office policy, any defendant who wants to speak to a prosecutor at arraignment may do so. In almost all cases, Attorney Connolly's staff will make an offer at that time. Defendants who wish to proceed without an attorney can negotiate directly with the prosecutor and speak with a judge. When a defense attorney is present, they will often answer procedural questions for these defendants. In addition, David Croft, head of the diversion program, is at court on Mondays and can answer questions about diversion.

There are currently three attorneys working under Attorney Connolly, but the city is considering eliminating one of these positions (at a savings of approximately \$80,000) if there is a significant decrease in the Circuit Court caseload.

⁹ This resolution rate is consistent with Public Defender data which shows Merrimack misdemeanor resolution rates between 26 and 27% before Felonies First.

John Draghi, Criminal Defense Attorney

Attorney Draghi practices in Merrimack County and he praised the court and the County Attorney for the smooth transition to Felonies First. He acknowledged that he had doubts about it at the beginning, but has seen nothing but benefits for his clients and himself. Because his office is located in Concord, Attorney Draghi has seen a reduction in his travel time as he is no longer travelling to outlying Circuit Courts for felony arraignments and probable cause hearings.

Scott Hilliard, Merrimack County Sheriff

Major Robert Krieger, Merrimack County Sheriff's Office

Captain Todd Corey, Merrimack County Sheriff's Office

Sheriff Hilliard's major concern with Felonies First is the impact on transports to Merrimack Superior Court. This issue is exacerbated by inadequate holding facilities at the court and by requests from judges and the public defender to have in-person arraignments. Sheriff Hilliard noted that the increased caseload is a combination of the opioid epidemic and Felonies First. Of the 3,651 transports in 2017, Sheriff Hilliard reported that 297 were for Felonies First. (See Table 14 p. 13). He recommended using the existing video system for Superior Court arraignments. In his opinion, transporting inmates for 5 minute arraignment is catering to attorneys. Major Krieger recommended expanding the deadline for arraignments from 24 to 36 or 48 hours.

The schedule becomes even more complicated when this department is required to transport an inmate from a jail in another county. Sheriff Hilliard mentioned a recent case where his staff had to transport from the Strafford County jail – a trip that took a total of 4 hours.

Sheriff Hilliard stressed that Merrimack cannot replicate the “one stop shop” of smaller Strafford County, which leads to more transports. Additionally, there is an issue with separation of defendants in the current Merrimack courthouse, occasionally requiring defendants to be held in the coffee room or squad cars under supervision. He recommended a separate judge and courtroom for Felonies First once the new courthouse is completed.

The increase in case load, in part because of Felonies First, is responsible for additional spending. For example, 75% of the FY17 overtime budget was spent in only the first half the year, mostly from arraignments running late. Sheriff Hilliard estimates this cost at \$3,395 for 97 hours of overtime.

In FY17 the Sheriff's Office added a full-time employee from part-time at a cost of approximately \$27,910. Sheriff Hilliard anticipates adding another full-time employee in FY18.

The Sherriff, Captain, and Major emphasized that Judge Nadeau and the Merrimack County Superior Court staff have been fantastic to work with in implementing Felonies First. The Sheriff, who serves on the Governor's Judicial Selection Commission, also noted the need for additional judges.

The Honorable John Kissinger, Superior Court Judge

Judge Kissinger, who currently sits in Merrimack County, was in Cheshire County Superior Court when Felonies First was implemented in January of 2016. He reported that the transition went very well there, due in large part to the good working relationship between the County Attorney's Office and the Public Defender.

Judge Kissinger believes that the court with ultimate jurisdiction should be involved in a case as quickly as possible. He pointed to benefits to the entire criminal justice system of resolving cases more quickly.

Judge Kissinger was aware of the concern regarding the misdemeanor resolution rate. He indicated that part of this is education of the County Attorney office. He also indicated that it was possible that some cases were inappropriately resolved as misdemeanors in the Circuit Court.

Judge Kissinger believes that the new process requires all parties to think about the case earlier on in the process. It forces the state to think about charges and the indictment becomes almost a non-event. Parties have to get used to the early time frame. While there is more work up front, the new process allows more attention to be paid to those cases that are more likely to be litigated.

Judge Kissinger highlighted the importance of in person arraignments. To effectuate the goal of earlier resolutions, each hearing must be meaningful and this is not possible with a video arraignment. Attorneys must decide whether to appear with their client and lose the ability to discuss the case with the prosecutor, or to appear at the court and lose the ability to speak confidentially and contemporaneously with their clients. Judge Kissinger noted that there is no comparison between 15 minutes of live communication and a video arraignment. He also raised the possibility that if the attorney is not physically present with defendants, defendants could try to discuss the charges in open court, thereby incriminating themselves.

Judge Kissinger described himself as a hands-on judge, and he believes this approach assists in guiding cases toward resolution. Parties are generally prepared for dispositional conferences. In Cheshire these conferences were held 45-60 days after the arraignment. There is a meaningful discussion about suppression or other issues, and they can determine what track the case should be placed on. Judge Kissinger does not like to arraign defendants without counsel as information gets lost in translation.

When asked about problems with discovery not being turned over because it is with the police department, Judge Kissinger acknowledged that this can be a problem. If the defense is missing important discovery at the time of the dispositional conference another dispositional hearing would be scheduled.

Jessica Clarke, VWC for the Merrimack CAO

Ms. Clarke reported that Felonies First has led to a significant increase in her caseload. Many of these cases would have previously resolved as misdemeanors in Circuit Court. Now, if a prosecutor determines that a case is actually a misdemeanor, there is no mechanism to return the case to Circuit Court.

The new procedure has opened up a line of communication with the victim much earlier in the process. These Coordinators often speak with the victim just hours after the incident. A faster turn-around is generally better for victims, and Ms. Clarke observed that cases are resolving more quickly. However, she also reported that the new timeframes are not always beneficial for the victim. Victims may still be in the hospital, or not prepared to make a decision about whether they want contact with the defendant. There is extraordinary pressure on the VWC to obtain this information before the arraignment.

Previously, victims could have been unserved for months before the County Attorney received the file. The passage of time also made it more difficult to contact victims. She noted that even calculating in the loss of the bound-over period, cases appear to be resolving more quickly.

Ms. Clarke recommended a mechanism to allow stand-alone misdemeanors to be returned to the Circuit Court. She also reported that her office would benefit from an additional Coordinator position.

Chuck Keefe, Criminal Defense Attorney

Chuck Keefe spoke on behalf of the NH Association of Criminal Defense Lawyers. Of particular concern was the recent amendment to court rules increasing the indictment period that went into effect on June 15, 2017. The temporary amendment caught the private defense bar off guard because it had no opportunity to weigh in. This change does not appear to comport with the stated goal of Felonies First – to resolve cases more quickly. This amendment lengthens the time for the state, thereby increasing the length of time to resolution. In general, Attorney Keefe sees the rules of criminal procedure being changed without attention being paid to the input of the defense bar. He noted that while the defense bar is sometimes included on committees, changes are made either without their input or with little regard for their input.

Attorney Keefe heard back from several attorneys about their experiences with Felonies First and there is a consensus that the process is very personality driven. He discussed the cultural differences between District and Superior Courts and determined that the mentality in Circuit Court is to resolve a case as quickly as possible while Superior Court is used to a much longer timeframe. Attorney Keefe shares the widespread concern about the impact on misdemeanor resolution rates. When asked if he thought this might be attributable to the fact that these cases were inappropriately reduced, he responded that he had never heard any concern about that and Circuit Court prosecutors were never challenged.

Appendix F

Coos County Stakeholder Interviews

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John McCormick, Coos County Attorney

Attorney McCormick noted that due to the short period of time since implementation, it is not possible to draw any concrete conclusion on the impact of Felonies First. He plans to start using Share File in the near future, but for now discovery is being e-mailed to his office from local police departments.

This office has had to hire a third full-time attorney for Felonies First at a cost of approximately \$80,000 per year. All attorneys handle arraignments and tend to continue to handle those cases they arraign. Each attorney averages between 2 to 5 arraignments per week. This office has an informal ECR in place. All attorneys are allowed to make such offers.

Delays at the state lab have made complying with the indictment deadline difficult. Most defense attorneys will not waive lab results. This office would proceed with indictment even if drug results were not available.

Since implementation, Attorney McCormick has sent a few charges back to the police instead of filing them. He reported that their local jail numbers are way down. He suspects that some local police departments may be holding cases to resolve as misdemeanors. This office has had a few cases that have unraveled soon after charging.

Marcie Hornick, Managing Attorney, Littleton NHPD Office

The Littleton office handles all Coos County felony and misdemeanor cases and some Grafton County felony cases and misdemeanors out of certain circuit courts. Attorney Hornick has observed that the success of Felonies First is very much personality driven, meaning that depending on who your judge, your jailer and your prosecutor are, how the cases are resolved, and how quickly and efficiently, will vary.

This office does not get consistent notification about incarcerated arraignments from the House of Corrections. The clients are not transported from the jail to the courthouse for arraignments because it is about an hour each way to the courthouse and there is no full-time sitting judge in Coos County. There is a judge every odd numbered month but typically no judge is present during even months. (Video arraignments were already in effect before Felonies First at the Circuit Court and Superior Court level.)

The office is supposed to receive complaints by 11:30 a.m. and the arraignments are held at 1:30 p.m. Attorneys cannot call into Coos County House of Corrections to speak to clients due to the lunch schedule at the Coos County jail between 11:25 a.m. and 1:00 p.m. This can delay a proceeding indefinitely, as attorneys cannot provide constitutionally adequate representation at arraignment without first speaking confidentially with their client. The Littleton office is scheduled to get a video setup which may help to improve the ability to communicate with their clients. Sometimes the attorneys are allowed to speak to their clients via the video hook up at 1:30 p.m., keeping the judge and court staff and prosecutor out of the courtroom (This is not an ideal method of communicating for obvious reasons). Attorney Hornick personally offered to give the jail a separate telephone for use for Felonies First pre-arraignment interviews.

In mid-July of 2017, Attorney Hornick provided additional input on Felonies First. She noted that the bail being set in Superior Court is excessively and unnecessarily high. Due to the distance from the Littleton office to the Superior Court, arraignment coverage takes a minimum of 90 minutes. Recently, an attorney returned to the Littleton Office after appearing for an arraignment, only to have the court schedule a second arraignment for later on that same day. This necessitated another roundtrip to the courthouse.

Staff at the CAO is new and relatively inexperienced adding to the challenges already inherent in a transition of this scope. There have been several issues with late discovery and plea offers. Cases that would have been resolved in Circuit Court at the time of the probable cause hearings are not being resolved early in large part because the attorneys in the Coos County Attorney's office have no experience in Circuit Court.

Attorney Hornick has requested three probable cause hearings and believes the standard for a probable cause hearing is too high and is therefore having a negative impact on clients. She also noted that in order to assist with the goal of moving cases more quickly, it might help if judges took a more active role in discussions of potential resolutions.

Attorney Hornick expressed concern about the impact Felonies First will have on misdemeanor resolution rates in this county.

William Colburn, Chief, Lancaster Police Department

Chief Colburn noted there is only one state trooper for the entire county and only one Lancaster Police Department officer on night duty. Most of the Coos County Police departments are very small and don't have 24-hour coverage. In the Chief's opinion, one of the challenges in this county is a weaker CAO that is not well-staffed.

The new discovery deadlines are challenging and represent the biggest issue with Felonies First. In one instance, the court dumped a case after 6 days and no explanation was provided to law enforcement. When queried about the possibility of using direct indictments instead of making arrests as a way to slow down the clock, Chief Colburn expressed a concern that this would create liability issues for his department. It is his understanding that the court would rather have an arrest.

Chief Colburn believes that low level felonies should be resolved in Circuit Court. The local police departments often have better knowledge of the defendant due to their history in the community. This local knowledge is crucial when it comes to charges against drug dealers. It is frustrating for law enforcement to see a drug dealer (especially fentanyl dealers) receiving low bail, and in some cases this is the result of a lack of local knowledge. He has observed that defendants are not concerned about missing court because they know they will just be assigned another court date. The County Attorney's Office does not communicate effectively with his department, so officers are not involved in negotiations and often find out about pleas after the fact.

The police no longer have discretion about whether a case is charged as a felony or a misdemeanor. Once the bail commissioner is called the matter is on a Felonies First track. Chief Colburn believes that Felonies First is all about benefiting the court, at the cost of other players in the criminal justice system.

Benjamin H. Champagne, Superintendent, Coos County Department of Corrections (DOC)

According to Superintendent Champagne, while Felonies First has not had an enormous impact on transports for his facility, it has still had an impact. He noted that the video arraignment process set up in this county makes complete sense and is necessary in light of the geographic challenges.¹⁰

Superintendent Champagne observed that Felonies First has resulted in several efficiencies to the overall system. Offenders are being arraigned "immediately" and this expedites the process for pleas, sentencing and ultimately decreases the number of pretrial days served. He also noted that

¹⁰ This set-up is specific to Coos County and is based, in part, on the limited judicial presence at the Court and the geographic location of the jail.

having the DOC serve as “back-up” reporting agency has been helpful. Superintendent Champagne provides the county attorney, public defender and court with a daily list of inmates that will be transported for arraignment, thereby closing the gap on misreporting or failure to report the felony arrest.

Appendix G

Grafton County Stakeholder Interviews

Stakeholder input is county specific, and is not an indication of the experience in other counties. The Council did not independently review or confirm the data or other information contained in this report. The views and opinions expressed herein do not necessarily reflect the views and opinions of the Council or its individual members. This report aspires to be an honest chronicle of the feedback received from different actors in the criminal justice system. Recognizing that certain issues are part of the tension inherent in the adversarial setting, and that the initial implementation of a large scale transition will have challenges, the hope of this report is that everyone involved in the criminal justice system will be receptive to changes that are necessary to enhance the quality and effectiveness of Felonies First.

Lara Saffo, Grafton County Attorney

This county has experienced a significant caseload increase over the past two years, and Felonies First has added to that increase. In calendar year 2015, the Grafton County Attorney's office received 750 referrals, and in calendar year 2016 it received 894 referrals. During the first six months of 2017, there was an increase of 81 referrals over the same period from 2016. The County Commissioners recommended a new prosecutor and a new administrative assistant position to help manage this increase. The delegation approved a second additional prosecutor in January of 2018 to assist in establishing a sex crimes unit after a dramatic increase in referrals to the Grafton County Child Advocacy Center was noted for the first five months of 2017 (40 more referrals over the same period in 2016). In addition, Grafton County is part of a Sexual Assault Justice Initiative grant and will have access to significant expertise, another reason to establish a unit.

Regarding Felonies First, the Grafton County HOC provides a list of newly arrested and incarcerated individuals each morning. Accordingly the CAO receives notice of the arrest of these incarcerated individuals from both the HOC and the law enforcement agency. This double notification has ensured that the CAO is aware of all arrests of incarcerated individuals. Since Felonies First was implemented, the prosecutors have additional work to do in the morning to get these complaints and probable cause affidavits filed by 11:00 a.m. The office is optimistic that the new position will assist in this increase in work and caseload. Attorney Saffo's office has a support person (the intake coordinator) arrive by 7:30 a.m. to start opening files of new arrests.

As in other counties, arraignments for non-incarcerated defendants are a challenge. The court provides only some arraignment notices, and not for all non-incarcerated defendants. The court has been asked to provide this information, and the administrative office of the courts indicated that CAO would be receiving the bail paperwork on new arrests. To date this has not happened. At the time of the interview, bail orders on three cases were vacated because the County Attorney's Office did not learn about the cases from the law enforcement agency in time,

and thus could not file the complaints and affidavits by the deadline.¹¹ Because there are currently no checks and balances in place, meaning the office only receives notices from one source, the law enforcement agency, it fears that arraignments will continue to be missed. This would not occur if the county attorney's office received a copy of the bail paperwork from either the bail commissioner or the court. The county attorney's office hopes that this will occur in the near future.

Another concern has been the people arrested after 8:00 a.m. but before 1:30 p.m. in the afternoon. These individuals have to be arraigned within 24 hours, so before the next day's traditional arraignment time of 1:30 p.m. Sometimes they are added to the arraignments for that day, making everyone scramble to get the information necessary to file the complaints and the PC affidavits. Otherwise, the court had to schedule an arraignment before 24 hours from the date of arrest occurs. If someone is arrested after 8:00 in the morning, having the necessary paperwork to the county attorney's office so it can file complaints before the court closes that same day is problematic.

One of the biggest challenges facing the Grafton CAO results from the new discovery procedures. This has proven to be extremely time consuming for law enforcement agencies and CAO support staff. For incarcerated defendants, according to the statute, the State must provide everything in the agency's possession within ten days. Then, as the investigation continues, discovery must be provided "as it becomes available." The first round of discovery is provided to the Grafton County Attorney's Office, numbered ("Bate stamped"), a cover letter generated and a copy sent to defense. Then, each time the law enforcement agency finishes another part of the investigation, they must provide it, in pieces, to the county attorney's office which, in turn, must number it, generate another cover letter, and send it to defense. Prior to Felonies First, discovery was often complete by the time the County Attorney received the case. The prosecutor reviewed the entire file and organized the material. Then the support staff Bate stamped all discovery and sent it out in one mailing. Now, as discovery is coming in in pieces, support staff have to retrieve discovery from law enforcement agencies, retrieve the file, generate multiple discovery letters, and send pieces of discovery to defense multiple times for the same file. This takes significantly more time than sending discovery in one fell swoop. Support staff often have to review information coming in from law enforcement agencies to ensure it is not a duplicate to what was already sent. This all must be done in an expedited fashion.

Moreover, because the material in a file is Bate stamped as it is received, not after the file is organized by a prosecutor, the files can't be organized before being Bate stamped. This is especially difficult with complex cases that involve large files.

¹¹ These charges can still be brought forward, but the bail conditions would be vacated in the interim.

The local police departments are very worried about discovery obligations. Attorney Saffo has informed law enforcement that if bail conditions aren't necessary, the police can forego an immediate arrest. The arrest would then happen after a direct indictment. If there isn't an arrest, the time frameworks are not applicable at all, which does not facilitate speedy resolution.

Attorney Saffo reported that the process for getting a stand-alone misdemeanor charge back to the circuit court is too cumbersome. Oddly enough, county prosecutors are authorized to file felonies and misdemeanors in superior court, but are not authorized to file misdemeanors in circuit court. Accordingly, for felony arrests that the CAO felt were better prosecuted as "misdemeanors only", the prosecutor had to file the misdemeanors in superior court. If the county prosecutor wanted the misdemeanor to be filed in circuit court, the prosecutor would have to ask the law enforcement agency to obtain a new warrant or approval to arrest (in cases where a warrant was not initially needed), re-arrest the defendant (which would understandably confuse the defendant), and (re) call a bail commissioner to set bail, this time filing the charges in circuit court instead of superior court. Initially, the Superior Court reasonably questioned why misdemeanor only cases would be brought in superior court. The county prosecutors have explained why, but it does seem to be an inefficient use of superior court resources to bring "misdemeanor only" cases to superior court on a regular basis.

There is widespread confusion about what a "directly related" misdemeanor means for purposes of joinder/consolidation. This issue has not been litigated and Attorney Saffo noted that there may not be any clarity until this happens.

Felonies First has increased the workload for VWCs. There is a good deal of difficulty reaching a victim in the short window before arraignment. Moreover, the morning after an arrest, the victims have a significant number of questions previously handled by law enforcement or crisis program advocates. Now these questions are going directly to the Victim Witness Program at the county attorney's office. While the Victim Witness Program is more than happy to assist, it is time consuming. Attorney Saffo has two VWCs and more funding towards an assistant, but would like to obtain funding for a third VWC. Since interactions with victims are very time consuming, even a small increase in case numbers has a substantial impact on staff.

Attorney Saffo's office has attempted to use ECR in the past, but the Public Defender office was not usually responsive to these offers. She is hiring an ECR prosecutor for cases where the facts are easily evaluated, such as many habitual offender cases, third strike willful concealment cases and drug possession cases, and notes that the ability of these cases to be resolved at dispositional conferences will be instrumental. She also noted that some defense attorneys are uncomfortable pleading without drug results, so ECR is almost impossible for these cases. Similarly, certain prosecutors have concerns about filing an initial complaint without lab results, as there have been cases where the lab ultimately shows no illegal substances. Attorney Saffo understands this

concern and is willing to file those complaints herself with sufficient safeguards, but notes that this issue should be clarified.

Attorney Saffo has found that the key to Felonies First and to resolving cases more quickly is to have meaningful dispositional conferences prior to grand jury in cases where the investigation is sufficiently complete. She recommends that the court system discuss this issue with the judges to ensure the judges have everything they need to have productive dispositional conferences.

Jamie Brooks, Managing Attorney, Orford NHPD Office

Yvonne Hersh, Office Administrator, Orford NHPD Office

This office has some unique challenges as all the courts in which its attorneys appear are 30-45 minutes away. Arraignments for incarcerated defendants are scheduled for 1:30 p.m. The complaint is supposed to be filed by 11:00 a.m., and the CAO forwards it to the Public Defender.

Due to the location of the court and the travel time it would be helpful to hold non-incarcerated and incarcerated arraignments at the same time. This request has been made to the court but was denied.

During the initial implementation of Felonies First, there was some confusion about the scheduling of arraignments, specifically non-incarcerated arraignments. The Court is now providing the Felonies First arraignment docket approximately one week in advance to ensure appropriate arraignment coverage. This arrangement appears to address the initial issues that came up.

Attorney Brooks noted that the County Attorney's office has been very good at providing discovery and offers in a timely manner. However, there is a good deal of concern over the decision to extend the indictment deadline. This extension undercuts one of the main goals of Felonies First which is to resolve cases more quickly. Attorney Brooks described this change as a "bait and switch." He noted that no similar accommodations were made for the defense, whose deadlines all still run from the date of the complaint. This change impacts incarcerated defendants. Attorney Brooks observed that even before this extension, cases did not appear to be resolving more quickly.

One of the biggest concerns facing this office is the impact on the misdemeanor resolution rates. While there is insufficient data to comment on this now, it will be tracked for upcoming reports. This office has not had any probable cause hearings.

Carin Sillars, Victim Witness Coordinator, Grafton County Attorney's Office

Ms. Sillars serves as a VWC in Grafton County. She has noticed both advantages and disadvantages since Felonies First was implemented. Ms. Sillars has found that the new

procedures have not just front loaded work, but have also added to the workload. By eliminating Circuit Court involvement in these cases, certain tasks which used to be completed before the County Attorney received the case, must now be completed by the VWCs. Ms. Sillars and her colleagues now have full responsibility for connecting victims to services.

The VWCs have become front-line responders with a quick deadline for making initial contact with a victim before the arraignment. Due to the turnaround time, there are just a few hours to determine if the victim wants a no contact order in place.

Ms. Sillars personally prefers to be involved in a case from the beginning, and believes that it benefits the victim. She did note that some cases should take longer to resolve, as victims need some distance from the traumatic event before providing input.

Ms. Sillars also recommended use of settlement conferences for certain cases. This had initially been part of the Felonies First model, but it does not appear that most counties are utilizing this approach. She reported that this county needs funding for another Victim Witness Coordinator.

Appendix H

Carroll County Stakeholder Interviews

Stakeholder input is county specific, and is not an indication of the experience in other counties. The Council did not independently review or confirm the data or other information contained in this report. The views and opinions expressed herein do not necessarily reflect the views and opinions of the Council or its individual members. This report aspires to be an honest chronicle of the feedback received from different actors in the criminal justice system. Recognizing that certain issues are part of the tension inherent in the adversarial setting, and that the initial implementation of a large scale transition will have challenges, the hope of this report is that everyone involved in the criminal justice system will be receptive to changes that are necessary to enhance the quality and effectiveness of Felonies First.

Michaela Andruzzi, Carroll County Attorney

Attorney Andruzzi has been serving as County Attorney since January of 2017. Due to the Felonies First deadlines, her office faces pressure to make an offer without complete discovery. Dispositional conferences have been scheduled too early, which diminishes their effectiveness.¹²

ECR has been attempted, but has not yet been successful in speeding up resolutions. Attorney Andruzzi's office has not received any responses to ECR offers, and has received requests for the ECR offers post-indictment. Attorney Andruzzi would like to have a functional ECR program, as well as a drug court and a full scale diversion program. She found these programs to be very successful when implemented in her prior office.

Carroll County Superior Court currently averages 2 incarcerated arraignments per week. Arraignments are done by video, with the defendant and County Attorney in the room and the Public Defender and judge appearing by video. Supplemental discovery goes out every 48 hours.

Attorney Andruzzi prefers to have early involvement in cases, which is one of the benefits of Felonies First. There has been one case where she decided that there was no charge to go forward on. After immediate review of discovery, there have been cases that Attorney Andruzzi decided not to prosecute because there was no charge on which to proceed.

Jesse Friedman, Managing Attorney, Laconia NHPD Office.

This office handles both Belknap and Carroll County cases. As a result, Attorney Friedman and his staff have the advantage of already having transitioned to Felonies First in their Belknap County cases. He reported that this process has been much more challenging in Carroll County.

¹² Per the Trial Court Center, all Felonies First courts will begin to schedule dispositional conferences 45-60 days after arraignment.

A number of factors play into this. While the Belknap County Jail provides its inmate list by 7:30 a.m., Carroll County's list is not sent until 10:00 a.m. Attorneys then have a very short window to prepare for an arraignment at 1:00 p.m. Further, some police departments detain arrested individuals at their local facilities and the Public Defender does not always receive notice that these individuals have been arrested and scheduled for arraignment. Discovery is not being provided on time, preventing attorneys from having meaningful conversations with clients and being adequately prepared for dispositional conferences.

Attorney Friedman also is concerned with sentence creep and misdemeanor resolution rates. While there is insufficient data to comment on these issues now, they will be tracked for upcoming reports.

Diana Bolander, Criminal Defense Attorney

Attorney Bolander has had a few dispositional conferences in Carroll County. Neither discovery nor a plea offer was provided before the conference. She attempted early on to speak to the prosecutor who she thought was handling the case, but was informed that the signature on the complaint is not necessarily the attorney that will be handling the case. She does not fault the County Attorney for this, but believes that the speed with which the court wants these cases processed does not allow even the State time to obtain all of the information before bringing a complaint. It does not make sense to put the State, defense or defendant in a position where all of the facts are not available.

Attorney Bolander objects to the premise of ECR because attorneys cannot look at a felony and make a decision on whether it will plea out. Search warrants are sealed, lab reports are not available, etc. She stressed that these charges are too serious to decide in a moment's notice. Clients have no incentive to plea early as discovery is not provided. She has found that plea offers get better as the case goes on because she has had the time to really look at the case and file motions that result in a weaker case for the State. The State will not budge on offers until it sees holes in the case.

She is experiencing a lot of difficulty in contacting clients. The court is not getting backup phone numbers or e-mails. When she is unable to reach a client before the court date, the client has not looked at the discovery and is just hearing the plea offer for the first time at the dispositional hearing.

Attorney Bolander noted that discovery used to be sent to the defense after arraignment, after an indictment. The CAO staff now has to send discovery to the defense attorney after the complaint is filed. At the complaint level, the police may not even have their police reports written yet and if are they written, they may not yet be approved by the supervisor so they cannot be released. Carroll County has small police departments with part-time officers and maybe a secretary.

Attorney Bolander said that the State cannot make an offer if it does not have all of the police reports. She noted that Felonies First may work in urban areas like Manchester or Nashua but rural areas do not have the same staff available to meet the time tables and the towns are not going to increase budgets to hire staff to do that.

Attorney Bolander made it clear that she does not fault the State for the issues with Felonies First. She faults the court's attempt to put criminal cases on a fast track before anyone has the information necessary to make decisions. That information can be provided only so fast and by people the court has no authority over.

Attorney Bolander stressed that there are corners you cannot cut if the client is going to receive his/her constitutional rights and the attorney is going to do the job required by the constitution and the rules of professional responsibility. She pointed to a recent case in which the police drug test said the substance in her client's possession was cocaine. The lab said it was not a controlled substance at all. She believes it would be malpractice to waive lab results.

She recommended scheduling dispositional conferences after indictment.