

NON-FELONY DRIVING WHILE INTOXICATED  
CASE PROCESSING IN WRIGHT COUNTY MINNESOTA

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### **Author's Note**

During the research and writing phases of this project, the author was the Court Administrator for Wright County District Court in Minnesota. The author currently works for the Colorado Judicial Branch.

## Table of Contents

Acknowledgments.....	ii
List of Figures.....	v
List of Tables .....	vi
Abstract.....	vii
Introduction.....	1
Literature Review.....	3
Methods.....	8
Findings.....	23
Conclusions and Recommendations .....	35

**CONCLUSION 1: TIME TO DISPOSITION OF NON-FELONY DWI CASES TAKES LONGER IN WRIGHT COUNTY DISTRICT COURT THAN IN SIMILARLY SIZED COUNTIES. TIME TO DISPOSITION OF NON-FELONY DWI CASES IN WRIGHT COUNTY DISTRICT COURT EXCEED THE MINNESOTA TIMING OBJECTIVES.**

Recommendation 1-1: Wright County District Court should adopt a more active case management strategy for non-felony DWI cases. The strategy should set a schedule for hearing types including expected days between hearings and expected number of hearings. The goal should be to conduct only meaningful court events and to reduce time to disposition.

Recommendation 1-2: A committee of stakeholders (private defense counsel, public defenders, prosecutors, judges and court administrators) should be formed to study reasons that privately represented defendants' cases take longer to dispose.

**CONCLUSION 2: THE COURT LACKS CONSISTENT AND ACCESSIBLE INFORMATION ABOUT THE OUTCOME OF HEARINGS AND THE TIMING OF EVENTS WITHIN CASES. FACTS, RATHER THAN PERCEPTION, ARE CRITICAL FOR THE DEVELOPMENT OF AN EFFECTIVE CASE MANAGEMENT PLAN.**

Recommendation 2-1: Wright County Court Administration should clearly establish data entry rules for hearing processing in the case management system so the number of continuances can be monitored.

Recommendation 2-2: The Minnesota State Court Administrator's office should enhance access to more sophisticated reports to allow event-based analysis of caseflow.

CONCLUSION 3: THIS PROJECT DID NOT IDENTIFY A BASIS TO TRIAGE  
FIRST-TIME OFFENSE DWI CASES FOR DIFFERENTIATED JUDICIAL  
ATTENTION.

Recommendation 3-1: The proposal to use the concept of triage based on  
anticipated outcomes rather than case characteristics should be investigated  
further.

References.....	39
Appendix A : DESCRIPTIVE STATISTICS FOR TIME TO DISPOSITION .....	43
Appendix B : DESCRIPTIVE STATISTICS FOR NUMBER OF HEARINGS .....	45
Appendix C : ANALYSIS OF VARIANCE (ANOVA) FOR PROSECUTING ATTORNEY .	46
Appendix D : ANALYSIS OF VARIANCE (ANOVA) FOR DEFENSE COUNSEL .....	47
Appendix E : ANALYSIS OF VARIANCE (ANOVA) FOR REPORTED BAC.....	48
Appendix F : ANALYSIS OF VARIANCE (ANOVA) FOR NUMBER OF HEARINGS AND TIME TO DISPOSTION BY CASE TYPE .....	49
Appendix G : HEARING GUIDELINES AND HEARING TYPE DESCRIPTIONS (FOURTH JUDICIAL DISTRICT, MINNESOTA).....	50

### **List of Figures**

Figure 1. Frequency of Number of Hearings to Disposition for Misdemeanor DWIs .....	30
Figure 2. Frequency of Number of Hearings to Disposition for Gross Misdemeanor DWIs .....	30
Figure 3. Average Gross Misdemeanor DWI Case Progression.....	31
Figure 4. Average Misdemeanor DWI Case Progression .....	31

## List of Tables

Table 1. Minnesota Judicial Branch Timing Objectives for Gross Misdemeanor and Misdemeanor Case Types .....	8
Table 2. CY2013 Time to Disposition Relative to Timing Objectives for Six Counties and Statewide .....	10
Table 3. Minnesota Classification of DWI Charges by Level of Offense .....	12
Table 4. Coding of Presentence Investigations for Sample of Misdemeanor Driving While Intoxicated Cases .....	21
Table 5. Initial Charges for CY13 Disposed Non-Felony DWI Cases .....	23
Table 6. Number of Cases by Prosecuting Attorney .....	24
Table 7. Number of Cases by Defense Counsel .....	25
Table 8. Descriptive Statistics for Time to Disposition and Number of Hearings .....	25
Table 9. Time to Disposition by Reported Blood Alcohol Content .....	26
Table 10. Analysis of Variance of Time to Disposition between Gross Misdemeanor DWI and Misdemeanor DWI Case Types .....	27
Table 11. Average Time to Disposition by Representation Category .....	28
Table 12. Average Time to Disposition by Number of Hearings .....	29
Table 13. Descriptive Statistics for Number of Hearings by Case Type .....	32
Table 14. Misdemeanor Case Sample by Chemical Assessment .....	33

**NON-FELONY DRIVING WHILE INTOXICATED  
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Peggy Gentles

**Abstract**

Driving while impaired incidents in Minnesota have significant public safety and criminal justice impacts. This project studied 2013 non-felony impaired driving (DWI) dispositions in Wright County, Minnesota. The Minnesota Judicial Branch has timing objectives for the disposition of cases, including non-felony criminal cases. The project sought to analyze the disposed cases to identify changes in case processing that could positively impact time to disposition in non-felony DWI cases. Additionally, the possibility of triaging first-time offenders' cases to both improve performance on the timing objectives as well as to reduce recidivism of those offenders is investigated.

The source data for the project were large data extracts from the Court's case management system. Case-level and hearing level data on non-felony DWI disposed cases were examined. The data sets were analyzed using descriptive statistics and variance analysis to identify any independent variable's impact on time to disposition. The level of offense, defendant's representation status (private counsel, public defender, and self-represented), and number of hearings were found to significantly impact time to disposition. Prosecuting agency and blood alcohol content were not found to impact time to disposition. A random sample of first-time offender cases was evaluated based on factors identified in research as predictive of recidivism.

At the beginning of the project, the author assumed that triaging cases could identify cases requiring less judicial intervention, freeing up court calendar time, without increasing

recidivism. The analysis revealed that cases identified through triage for less judicial intervention already were disposing quickly and with few hearings. Therefore, the hope that formal triage could be adopted to further reduce time to disposition was not borne out by the data. The project concludes that Wright County District Court's non-felony 2013 DWI dispositions did not meet state timing objectives. The Court's time to disposition compared favorably neither to the statewide averages nor to similarly sized counties.

The Court should establish a more active case management strategy for non-felony DWI cases. A committee of stakeholders should be formed to look specifically at the variables that were found to impact time to disposition and evaluate the necessity of their impact. The project also identified limitations in data quality and availability of data to court managers and therefore recommends improvements both for local court administration and the state court administrator's offices. Finally, the proposal to use the concept of triage based on anticipated outcomes rather than case characteristics should be investigated further. While the sample data in this project did not prompt a recommendation for further consideration in this project's context, additional scholarship may develop the efficacy, as well as potential ethical concerns, of such an approach.



## Introduction

In 2013, one of seven licensed drivers in Minnesota had an impaired driving (DWI) conviction (Office of Traffic Safety, 2014, p. 18). Thirty-eight percent of persons convicted for DWI had a previous DWI conviction (p. 29). The significant public safety threats of this risky behavior are well documented and continue to be the focus of public concern and enforcement activities (Goodwin, et al., 2013). A secondary cost to the significant number of DWI cases in Minnesota is the expense to the criminal justice system.

In calendar year 2013, 26,418 DWI cases (felony and non-felony) were filed in Minnesota courts. Workload measures of the Minnesota Judicial Branch indicate that 14.8 full-time judges would be needed to resolve the 2013 non-felony DWI cases (Minnesota Judicial Branch, January 31, 2015). Coincident with the significant public interest in reducing impaired driving is the need to effectively manage the court's caseloads and resources to most efficiently intervene in DWI cases. The National Center for State Courts' *Principles for Judicial Administration* (Principle 11) (2012) states, "Court procedures should be simple, clear, streamlined and uniform to facilitate expeditious processing of cases with the lowest possible costs" (p. 9). As described by Clarke and Flango (2011), judges are the "most expensive court resource" (p. 148).

This project investigated whether differing case management practices in one Minnesota county for specific DWI cases impacted court time used, time to disposition, and recidivism. The project focused on non-felony DWI cases. This group of cases was identified as they are a significant portion of the studied county's non-felony calendar time. Reducing time to disposition in those cases was expected to have significant deterrent effects for subsequent DWI offenses.

Wright County, Minnesota, is an exurban county west of Minneapolis. The county is served by a general jurisdiction trial court (District Court) with six full-time judges.

Wright County District Court hears all non-felony criminal cases on a master calendar.

Anecdotally, multiple settings and practices related to DWI cases result in significant calendar time. The Minnesota Judicial Branch has adopted time to disposition objectives for many case types. Wright County District Court is not meeting those objectives for its non-felony DWI cases.

This project analyzed 2013 non-felony DWI dispositions in Wright County. It investigated whether Wright County would benefit from changes in case processing for non-felony DWI cases. Additionally, the project investigated whether the first-time offender DWI cases could be expedited to save court time based on predicted recidivism. Additionally, the ethical and public safety implications of doing so are discussed.

## Literature Review

Time to disposition has long been a measure of the effectiveness of trial courts. Expectations have become more quantified through the National Center for State Courts (NCSC) Trial Court Performance Standards, ABA Standards, and NCSC CourTools. Many attempts have been made to determine the factors that influence time to disposition.

The National Center for State Courts' *High Performance Framework* (Ostrom & Hanson, 2010) identifies the following as fundamentals of effective caseflow management:

[A] set of meaningful events, a realistic schedule, clear expectations that events will occur as scheduled, firm control over the granting of continuances, share information among parties early in the process, and the use of data to monitor compliance with established case processing goals (pp. 15-16).

Time to disposition is influenced by the number of hearings prior to disposition and the time between those hearings. The number of hearings has been studied in a multitude of contexts including two counties in Florida (Steelman, Meadows, & Hall, 2010). The time between events is also important. A study of limited jurisdiction trial courts (Griller & Hall, 2009) noted that pretrial hearings were set three to four months after arraignment and identified that time lapse as “unnecessary waiting time” (p. 14). Steelman, Meadows, and Hall (2010) cite earlier research that in felony cases the costs to courts to reschedule cases is “burdensome” (p. 30).

“A court event is ‘meaningful’ when the activities for which it was scheduled actually occur as planned, and when substantial progress is made toward the disposition of the matter before the court” (Steelman, Meadows, & Hall, 2010, p. 1) According to Ostrom and Hanson (1999), research has consistently shown less than one half of the variation in case processing time is attributable to the characteristics of the case and defendant (p. 9). In their rigorous

statistical study of nine felony courts around the United States, they concluded that the type of attorney (publicly or privately funded) on a case did not impact case processing time (p. 59). However, potentially, in the subject DWI cases, that research is not borne out. The *Minnesota DWI Deskbook* (2013) states, “The defense attorney can use calendar congestion to his or her advantage” (p. 11-11).

The recent NCSC project in the Scottsdale, Arizona City Court (Ostrom, Kleiman, & Roth, 2014) resulted in a case management plan for DWI cases with two tracks based on representation status (p. 26). The shorter track (133 days) is for unrepresented defendants; the longer (180 days) for represented defendants. The NCSC Scottsdale project noted that “many existing practices had evolved to oblige and promote the interests of attorneys.” In that court, private counsel represented a “very high level” of DWI defendants (p. 25).

One objective of this project is to identify possible attributes of individual DWI cases in the Court’s caseload that could be used to triage the case processing to ensure each case gets the “appropriate” amount of judicial attention. Goodwin et al. (2013) note that for DWI offenders, “Deterrence works when consequences are swift, sure, and severe (with swift and sure being more important in affecting behavior than severe)” (p. 1-10). Since a significant number of first-time offenders are rearrested for impaired driving, a significant public safety interest exists to give appropriate attention to those first-time offenders.<sup>1</sup> Research has repeatedly indicated that people drive impaired in significantly higher numbers than those who are charged with DWI. “Appropriate” in this context is used in two distinct ways. First, calendar time is expensive and limited. Therefore, each hearing should be meaningful and cases should be expeditiously disposed. According to Steelman (2011),

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<sup>1</sup> The term “first-time offenders” is used in this paper to refer to defendants charged under Minnesota law with an

The central feature of caseload management is to see that available resources (especially the time of citizens, judges, court staff, lawyers and other participants in the court process) are not wasted, but are instead used in a prudent fashion to assure that justice is done in a timely manner within the constraints imposed by the availability of budgeted resources (p. 1).

The second dimension of “appropriate” for purposes of this project is to identify cases at filing for expedited processing with the desired outcome of reducing the Court’s time to disposition while positively affecting recidivism. While time to disposition is an important value, efficiency should not be pursued at the expense of effectiveness. Therefore, the group of cases targeted would need to clearly benefit from expedited processing. According to the Century Council [ (n.d.), “[S]wift and certain sanctions are more effective in deterring repeat DWI offenses than the punishment alone” (p. 12). Since the objective is to dispose some segment of the court’s DWI caseload more quickly and because the timeliness of consequences can impact recidivism, first-time offenses are identified for study.

Recent research has been done on the attributes of first-time DWI offenders. Caldwell-Aden, Kaczowka, and Balis (2009) reviewed criminal history data related to first-time DWI offenders from California, Florida, and New York from the early 2000’s. The study found that a significant number of the offenders had prior criminal behavior. “Multiple researchers identified the presence of prior nondriving criminal offenses as a signification factor in predicting recidivism among first-time DWI offenders” (footnote omitted) (p. 7). The American Probation and Parole Association (Lowe, 2014) undertook a project to develop an assessment tool to increase the probability of identifying an offender’s risk of future impaired driving. The tool was

piloted in four counties (two in Minnesota). DWI probationers with more extensive legal histories and more mood adjustment problems were more likely to fail probation (p. v).

According to DeMichele and Payne (n.d.), risk factors for predicting future criminal behavior are of two types: static and dynamic. Static risk factors are those individual attributes that do not change or change or only change in a single direction. Examples of static risk factors are age, race, gender, and criminal history. Dynamic risk factors are offender attributes that do change such as an offender's attitudes toward criminality; these risk factors are referred to as criminogenic needs (p. 9).

A recent National Center for State Courts report (Casey, Warren, & Elek, 2011) documented the rise of evidence-based practices at sentencing. Originating in post-sentence supervision of offenders, risk and needs assessments are now being used at sentencing. The principle is that the services and interventions should match an offender's level of risk (p. 4). This concept is applicable to DWI cases. "[A] low risk [DWI] offender who is very unlikely to re-offend does not need the same level of supervision and intervention as a high risk offender" (The Century Council, p. 15).

The *High Performance Court Framework* (Ostrom & Hanson, 2010) identifies four administrative principles that should drive any review of a court's case processing. These principles are the following: 1) each case receives individual attention; 2) individual attention is proportionate to need; 3) decisions demonstrate procedural justice; and 4) judges control the legal process. The concept of "proportionality" has been reinforced by more recent court administration work (p. 12). The National Center for State Court's *Principles of Judicial Administration* (2012) includes "Principle 13: The attention judicial officers give to each case should be appropriate to the needs of that case" (p. 10). Proportionality has recently been

recognized by the Minnesota Supreme Court in its adoption of amendments to the Rules of Civil Procedure:

It is the responsibility of the court and the parties to examine each civil action to assure that the process and the costs are proportionate to the amount in controversy and the complexity and importance of the issues. The factors to be considered by the court in making a proportionality assessment include, without limitation: needs of the case, amount in controversy, parties' resources, and complexity and importance of the issues at stake in the litigation (Minn. R. Civ. P. 1, 2014).

Proportionality in case processing has its roots in Differentiated Case Management which, in turn, grew out of a 1984 law review article on the Federal Rules of Civil Procedure (Steelman, Goerdts, & McMillan, 2004, p. 4). Differentiated Case Management has not been widely adopted (Clarke & Flango, 2011, p. 146). Recent scholarship has pointed to the concept of "triage" as a further refinement to allow for issue type, rather than case type, assignment to tracks. According to Clarke and Flango (2011, p. 147), those tracks should include at least:

1. The traditional court adversary process;
2. An adversary process modified to handle a high volume of "ordinary" cases;
3. A non-adversary process for cases requiring the solution to a problem;
4. A nonjudicial process better suited to administrative resolution.

The nature of DWI cases, in the absence of an established problemsolving court, is that they would require an adversary process.

## Methods

### Background

Minnesota's criminal offense structure establishes the following four levels of offense:

- Felony: imprisonment for more than one year, with or without a fine;
- Gross Misdemeanor: imprisonment for between 91 and 365 days, maximum fine \$3,000;
- Misdemeanor: imprisonment up to 90 days, maximum fine \$1,000;
- Petty Misdemeanor (non-criminal): fine up to \$300

(Minn. Stat. § 609.02, 2014).

As discussed more fully below, DWI cases can be charged under each level of offense except Petty Misdemeanor. This project analyzed the Gross Misdemeanor and Misdemeanor DWI cases that were disposed in 2013. For some purposes, the distinction between these two levels of offenses is not necessary for the discussion. When the level of offense is irrelevant, the term “non-felony” is used for brevity.

The Minnesota Judicial Branch has adopted time to disposition objectives for many case types including Gross Misdemeanors and Misdemeanors. The timing objectives are as follows:

**Table 1. Minnesota Judicial Branch Timing Objectives for Gross Misdemeanor and Misdemeanor Case Types**

Gross Misdemeanor	90% in 4 months 97% in 6 months 99% in 12 months
Misdemeanor	90% in 3 months 97% in 6 months 99% in 9 months



(Minnesota Judicial Council, 2010). Minnesota has a judicial weighted caseload workload measure that includes weighted caseload types of “Gross Misdemeanor DWI” and “Misdemeanor DWI.” Time to disposition data is available by weighted caseload type. Statewide, Gross Misdemeanor DWI and Misdemeanor DWI case types exceeded the timing objectives. Both case types also exceeded timing objectives in Wright County (*see* Table 2 below).

In Wright County in 2013, the average time to disposition for Gross Misdemeanor DWIs was 67% (268 days v. 160 days) higher than the statewide average. For Misdemeanor DWIs, the comparable number was 52% (183 days v. 120 days) higher than the statewide average. In comparison to the other five Minnesota counties (of 87) with 2013 judicial weighted caseload need of four to eight judges, Wright County had the highest average time to disposition for Gross Misdemeanor DWIs (range 268 days to 114 days). For Misdemeanor DWIs, Wright County had the second highest average days to disposition (range 220 to 105).

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**Table 2. CY2013 Time to Disposition Relative to Timing Objectives for Six Counties and Statewide**

		Percent of Total Cases 90th Percentile (N)	Percent of Total Cases 97th Percentile (N)	Percent of Total Cases 99th Percentile (N)	Percent of Total Cases Beyond 99th Percentile (N)	Average Days to Disposition
BLUE EARTH COUNTY	Gross Misdemeanor DWI	56.3% (108)	72.4% (31)	91.1% (36)	8.9% (17)	165
	Misdemeanor DWI	67.1% (143)	82.6% (33)	88.7% (13)	11.3% (24)	126
CROW WING COUNTY	Gross Misdemeanor DWI	63.2% (103)	76.7% (22)	93.3% (27)	6.7% (11)	135
	Misdemeanor DWI	60.7% (91)	80.0% (29)	88.0% (12)	12.0% (18)	153
OLMSTEAD COUNTY	Gross Misdemeanor DWI	73.6% (198)	83.3% (26)	95.5% (33)	4.5% (12)	114
	Misdemeanor DWI	72.4% (260)	90.0% (63)	93.9% (14)	6.1% (22)	105
SCOTT COUNTY	Gross Misdemeanor DWI	62.0% (145)	79.1% (40)	94.9% (37)	5.1% (12)	150
	Misdemeanor DWI	55.2% (164)	79.5% (72)	87.9 (25)	12.1% (36)	220
SHERBURNE COUNTY	Gross Misdemeanor DWI	37.7% (81)	66.5% (62)	94.4% (60)	5.6% (12)	168
	Misdemeanor DWI	60.3% (138)	86.0% (59)	93.9% (18)	6.1% (14)	102
WRIGHT COUNTY	Gross Misdemeanor DWI	26.0% (75)	50.0% (69)	83.3% (96)	16.7% (48)	268
	Misdemeanor DWI	43.2% (114)	71.2% (74)	85.6% (38)	14.4% (38)	182
STATEWIDE	Gross Misdemeanor DWI	56.7% (6,874)	73.4% (2,025)	92.7% (2,338)	7.3% (889)	160
	Misdemeanor DWI	62.0% (8,609)	83.1% (2,928)	91.6% (1,193)	8.4% (1,161)	120

*Note:* Data from Time to Disposition Report, Calendar Year 2013, MNJAD (January 8, 2015)

In Minnesota, Driving While Intoxicated (DWI) in a motor vehicle<sup>2</sup> is defined as

- (1) the person is under the influence of alcohol;
- (2) the person is under the influence of a controlled substance;
- (3) the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle;
- (4) the person is under the influence of a combination of any two or more of the elements named in clauses (1) to (3);
- (5) the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more;
- (6) the vehicle is a commercial motor vehicle and the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the commercial motor vehicle is 0.04 or more; or
- (7) the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

(Minn. Stat. § 169A.20 subd. 1, 2014).

Refusal to submit for a breath, blood or urine test is also a DWI violation (Minn. Stat. § 169A.20 subd. 2 , 2014). Driving While Intoxicated offenses are classified as Felony, Gross Misdemeanor, or Misdemeanor in the following scheme:

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<sup>2</sup> Watercraft, snowmobiles, all-terrain vehicles and off-road motorcycles and vehicles have the same restrictions except for the commercial driver's license provision.

**Table 3. Minnesota Classification of DWI Charges by Level of Offense**

Description	Level of Offense	Characteristics
First-degree DWI	Felony	Fourth (or more) offense within 10 years, previous felony DWI offense, or previous serious criminal vehicular crime
Second-degree DWI	Gross Misdemeanor	Two or more aggravating factors or refusal to test with one aggravating factor
Third-degree DWI	Gross Misdemeanor	One aggravating factor or refusal to test
Fourth-degree DWI	Misdemeanor	None of the above

(Minn. Stat. §§ 169A.24, 169A.25, 169A.26, 169A.27, 2014).

Aggravating factors are identified as:

- (1) a qualified prior impaired driving incident within the ten years immediately preceding the current offense;
- (2) having an alcohol concentration of 0.20 or more as measured at the time, or within two hours of the time, of the offense; or
- (3) having a child under the age of 16 in the motor vehicle at the time of the offense if the child is more than 36 months younger than the offender.

(Minn. Stat. § 169A.03 subd. 3 , 2014).

All defendants convicted of a DWI or a reduced charge must submit to a chemical use assessment (Minn. Stat. § 169A.70 , 2014). The assessments are done as part of the presentence investigation (PSI) process. PSIs for non-felony impaired driving cases are conducted by Wright County Court Services.

In Wright County, Gross Misdemeanor and Misdemeanor DWIs are filed by three different prosecuting agencies. The County Attorney prosecutes the bulk; two municipal prosecutors file the rest. The first hearing is the arraignment. That hearing is scheduled on a daily “in-custody” calendar if the defendant was arrested and not released; other defendants’ cases are scheduled on the “GMD/MD Calendar.” This calendar contains any hearings on any Gross Misdemeanor or Misdemeanor cases (not just DWI cases). The GMD/MD Calendar is a master calendar through which each judge rotates one week out of six.

### **Creation of Three Data Sets for Analysis**

The Minnesota Rules of Public Access to the Records of the Judicial Branch (2014) classify certain data elements (e.g., race) and documents (e.g., presentence investigation reports) as non-public. While the author had access to such information in the course of her work, this project was outside the scope of her role. Therefore, an order allowing the author access to non-public information and to disseminate information so long as individuals are not identified was procured from the Wright County District Court Administrative Judge Kathleen A. Mottl.<sup>3</sup>

The base data used in this project originated from the Minnesota Court Information System (MNCIS) (a commercial product from Tyler Technologies, Inc.). MNCIS has been used by all Minnesota District Courts since 2008. The data used for this project was provided through reporting writing tools which access MNCIS data.

The bulk of the data used for this project originated in two data extracts created by Dr. Marcy Podkopacz, Director Research and Business Practices Division, Fourth Judicial District, Minnesota. Both extracts included Wright County District Court 2013 disposed non-felony DWI cases. The extracts were delivered in Microsoft Excel format. One extract (Disposed Case

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<sup>3</sup> Order is on file in Wright County District Court Case No. 86-CV-14-2.

Extract) was a list of all cases disposed (originally 549) with 219 data elements including demographic characteristics of the defendant, most serious charge, disposition type, blood alcohol content (BAC), and days to disposition.<sup>4</sup> The Disposed Case Extract contained information related to the most serious charge in the case. The second data extract (Hearings Extract) is a list of every hearing for same cases. The Hearings Extract initially had 3572 rows of data and 161 data elements.

The Disposed Case Extract<sup>5</sup> was modified for ease of use by removing 59 data elements deemed not important for this project. Additional columns were added to calculate the following three values: offense date to filing date (in days), offense date to disposition date (in days), and defendant's age at offense date (in years and decimal fraction of years). A column was also added to calculate days between filing and disposition (which would not include dormant time) to identify cases in which warrants had been issued (*see* further discussion footnote 4).

This project draws conclusions about Wright County District Court non-felony DWI case processing from the 2013 case dispositions. The dependent variable is time to disposition. The data set includes 100% of the non-felony DWI dispositions in 2013. Therefore, the internal validity of any correlations between any of the independent variables and time to disposition is high. However, this project hopes to have results generalizable to processing of cases other than the 549 in the sample. Therefore, the external validity of the sample needs to be considered.

One threat to external validity was identified when the sample was reviewed. This threat was the presence of cases for which the time to disposition was impacted by statewide litigation.

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<sup>4</sup> The days to disposition removes “dormant” time such as while a warrant is active (Minnesota Judicial Branch, 2014, p. 6). This measure is consistent with recommendations from the National Center for State Courts for the time to disposition performance measure (National Center for State Courts, 2005, version 2.0 2013).

<sup>5</sup> The original Disposed Case Extract as well as the edited file (including a record of which cases were removed) is on file with the Minnesota Judicial Branch.

These cases were referred to colloquially as the “Source Code” cases. The Intoxilyzer 5000EN was the machine used in Minnesota by law enforcement for breath testing for alcohol levels. In 2006, as part of discovery in a DWI case, a defense attorney requested the source code computer program for the Intoxilyzer 5000EN stating that it was needed to adequately represent the client. The defense argument was that the source code was necessary to determine whether the breath alcohol result used to charge the defendant was reliable. This request became “standard litigation strategy in criminal DWI and [administrative driver’s license] proceedings” (Minnesota State Bar Association Continuing Legal Education, 2013, pp. 6-12 to 6-13). In 2010, the Minnesota Supreme Court consolidated all cases to a single trial court judge for determination. The trial court judge ultimately determined that the instrument reliably reported numerical results and defendants could not exclude the results from their trials. The trial court judge’s opinion was upheld by the Minnesota Supreme Court. (In re. Source Code Evidentiary Hearings in Implied Consent Matters; In re. Source Code Evidentiary Hearings in Criminal Matters, 2012). The Source Code cases were ultimately returned to the trial courts in August 2012. As a result, over 4,000 cases returned to trial courts throughout the state (Lore, 2011, p. 13).

In Wright County, 102 criminal cases had been part of the consolidated Source Code litigation. In September 2012, hearings were held on all the Source Code cases and many were disposed that day or soon thereafter. However, 19 of the non-felony cases were disposed in 2013. Those cases had average days to disposition of 1,387. As the disposition times for these cases were influenced significantly by events outside Wright County case processing culture, they were removed from the sample. The Source Code cases were three percent of the overall cases so their removal should not impact the findings. An additional four cases were removed

from the sample as they were dismissed by the prosecutor for non-case related reasons. Two defendants had died and two were dismissed in the interests of justice.

The author investigated two independent variables for possible correlation with time to disposition: prosecuting agency and defendant's representation status (publicly funded attorney, privately funded attorney, or self-represented). Four different agencies prosecute non-felony DWI cases in Wright County. A significant portion of cases are prosecuted by the Wright County Attorney's office. Non-felony DWIs in three cities are prosecuted by city attorneys (two of the cities were represented by the same person during the study period). The extracted data did not identify the prosecuting agency to correlate with the attorneys appearing on the cases as this data element is related to the split of fine revenue. The Disposed Cases Extract was edited to identify the four separate prosecuting agencies that appear in court; as two of the cities are represented by a single attorney, they were subsequently combined.

The research cited above in the Literature Review indicated that in felony cases defendant's attorney type did not impact case processing time. However, anecdotal information indicated that public defender caseloads are such that they were not able to focus on expediting case processing, especially in the non-felony area. The extract contained a field that identified private counsel, public defender, and self-represented. The MNCIS data field that was pulled in the extract is the current attorney assigned to the case. Of interest as an independent variable is the attorney type at disposition. Therefore, this data element needed to be compiled by individual case review.

The Disposed Cases Extract contained a data element for BAC level reported by law enforcement. However, for 153 cases, the BAC was reported as "#NULL!". Each of those 153 cases was reviewed to determine if a BAC was reported in charge information in MNCIS. That



review concluded that some BACs were not reported because the charge for which the case was disposed was not alcohol related (e.g., careless driving). In other cases, the defendant either refused the test or the alleged impairment was a result of controlled substance, rather than alcohol, consumption. Ultimately, 104 of the 523 cases in the data set did not have a BAC associated. The Disposed Case Extract contained a column which assigned BAC levels to the following four ranges:

- Less than or equal to 0.08 (Coded as “1.00”);
- 0.09 to 0.16 (Coded as “2.00”);
- 0.17 to 0.24 (Coded as “3.00”); or
- Greater than 0.24 (Coded as “4.00”).

Those cases for which the BAC was added were also coded to categorize them in the same ranges for analysis.

The Hearing Extract<sup>6</sup> consisted of a list of every hearing on cases disposed in 2013 with a judicial weighted caseload case type of Misdemeanor DWI or Gross Misdemeanor DWI as of November 5, 2014. The Extract included a calculation to establish a dichotomous variable (“1.00” or “0.00”) reflecting whether the hearing occurred on or before the disposition date. That variable was used to remove all post-disposition hearings from the Hearing Extract. The Hearing Extract was edited to remove 114 data elements deemed unnecessary for this project. The same 19 source code cases and four other non-substantive dismissals removed from the Disposed Cases Extract were removed from the Hearing Extract. These edits resulted in 1,837 rows of data (each row reflecting a hearing).

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<sup>6</sup> The original Hearing Extract as well as the edited file (including a record of which cases were removed) is on file with the Minnesota Judicial Branch.

MNCIS contains data elements related to hearing activity that allow court staff to capture information concerning the type of hearing, whether the hearing was held, who was present, and a narrative of what occurred. Unfortunately, neither the Minnesota Judicial Branch nor Wright County District Court has established clear expectations concerning proper entry of hearing level data. Therefore, hearing level data in MNCIS is not consistently entered, especially concerning whether hearings which do not occur are “continued,” “cancelled,” “reset,” or “rescheduled” as opposed to “held.” MNCIS has some limited reporting on hearings and whether they were “held,” “continued,” “reset,” or “cancelled.” Additionally, the type of hearing that is “scheduled” is distinguished from the type of hearing that is “occurred.” So, for instance, a defendant may come into the first hearing and enter a guilty plea. The scheduled hearing would be an “Arraignment” but the hearing type that is “occurred” is “Plea Hearing.” The potential impact on the data set of this inconsistency is that a hearing at which the parties appeared in court would not have been included in the Hearing Extract. A review of a few cases indicated that all the pre-disposition hearings meeting the definition of this study reflected in MNCIS were included in the Hearing Extract. However, that review was not extensive enough to determine reliably that every hearing was listed.

A column was added to the data to calculate the number of days between each hearing. However, the Hearing Extract contained no information to determine whether any of those days included time during which there was a warrant for the defendant’s arrest due to failure to appear at a hearing. In evaluating the Court’s case processing, time in warrant status is not considered (*see footnote 4*). Review of the over 1,800 hearings on the Hearing Extract was determined to be impractical. Therefore, the Disposed Cases Extract was modified to include a column which calculated the number of days between filing and disposition dates. This column was used to

identify which cases had warrants issued to exclude from the days-between-hearing analysis.

Forty-two cases with 211 hearings were excluded from the analysis leaving 482 cases with 1,626 hearings.

The average number of days between hearings was calculated for Gross Misdemeanor DWI cases and Misdemeanor DWI cases. The days between filing and the first hearing would be influenced greatly by whether the defendant is in custody or not. A person in custody must be brought before a judge within 48 hours (Minn. R. Crim. P 4.03 subd. 1, 2014). A column was added to the Hearing Extract to determine the days between filing and the first hearing.

Averages of days between filing and first hearing were calculated, excluding cases for which the first hearing was held less than three days after filing (i.e., excluding those defendants in-custody).

To investigate the potential for triaging first-offense DWI cases, the Disposed Cases Extract was filtered to identify only the cases in the Misdemeanor DWI judicial weighted caseload type. By definition, if a DWI case is filed as a Misdemeanor, the prosecutor has determined that a prior qualifying DWI conviction does not exist for enhancement and that no statutory aggravating factor is present. This resulted in a list of 268 cases. Using Excel's random number generator, twenty-four cases were selected for review of case files using the research documented in the Literature Review concerning DWI criteria that correlates with recidivism and probation success.

This project seeks to evaluate whether certain data known at filing concerning the defendant and the offense could be used to triage cases for less time spent in court. Therefore, the static factors described above which would not rely on an interview with the defendant were selected for review. The presentence investigation report (PSI) was printed for each of the cases.

These PSIs were all prepared by Wright County Court Services and all but one were provided in a standard format. The report contains standard demographic information – sex, race, ethnicity, date of birth, and age. In most cases this information was provided. The PSIs contain a section for prior record that contains any Minnesota cases filed, including juvenile and traffic. The statutorily required chemical assessment on the PSI includes a BAC and the following four classifications: “Chemically Dependent;” “Chemical Abuse;” “At Risk;” and “No Problem.” Wright County Court Services uses a Level of Service Inventory tool<sup>7</sup> for the risk-needs assessment for the PSI (M. Munson, personal communication, November 10, 2014).

Each PSI was reviewed and two data elements were identified to potentially measure the criminal history of the offender. The American Probation and Parole Association’s recent development of an Impaired Driving Assessment included measures to assess criminal history (Lowe, 2014, p. 27). Those items were:

- How many different **non-DWI or non-motor vehicle** involvements has this client had with the judicial system to include arrests, convictions, probation, or incarcerations?
- Number of prior DWI arrests (do not include current arrest)?

Because the PSIs only provided case level information, the questions were changed from referring to involvements or arrests to cases. The following three attributes were coded:

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<sup>7</sup> Level of Service Inventory – Revised: Screening Version © 1998 Multi-Health Systems.

**Table 4. Coding of Presentence Investigations for Sample of Misdemeanor Driving While Intoxicated Cases**

Non-DWI or non-motor vehicle cases	0=none 1=one 2=two 3=three or more
Number of prior DWI cases?	0=none 1=one 2=two 3=three or more
Number of Juvenile cases	0=none 1=one 2=two 3=three or more

In addition, race, ethnicity, and gender were coded as well as BAC from the PSI.

Finally, the chemical dependency assessment from the PSI was added. This data element clearly would not be available to triage cases at filing. However, it was captured to see if it would provide any support for the conclusion that triage could properly identify low risk reoffenders.

### **Analysis**

A significant question this research sought to answer is what variables may impact time to disposition (the dependent variable) in the non-felony DWI cases. Using Microsoft Excel 2010's data analysis tools, single factor analysis of variance (ANOVA) tests were conducted to determine if variances in the time to disposition based on each independent variable's value were due to chance. As suggested by the literature review, the number of hearings has been found to contribute to longer times to disposition. That hypothesis was tested. A separate potential hearing-related influence on time to disposition is the time between hearings. The author also analyzed the number of days between hearings to determine that variable's contribution to time

to disposition. Finally, a qualitative review was conducted of the Misdemeanor DWI sample for purposes of discussing the triage potential.

### Findings

This project studied 523 2013 disposed non-felony DWI cases. The most serious initial charges in those cases break down as follows:

**Table 5. Initial Charges for CY13 Disposed Non-Felony DWI Cases**

<b>GROSS MISDEMEANOR DWI</b>	<b>274</b>
Impaired by Alcohol	249
Impaired by Controlled Substance	10
Refusal to submit to test	13
Other traffic charges	2
<b>MISDEMEANOR DWI</b>	<b>249</b>
Impaired by Alcohol	216
Impaired by Controlled Substance	13
Under 21 alcohol and driving	14
Other traffic charges	5
Other nontraffic charge	1

Of these 523 cases, 508 were disposed by a conviction. Thirteen were dismissed and two received a stay of adjudication.<sup>8</sup> The most serious charge was reduced in 64 cases. Of those, overwhelmingly (62 cases), a Misdemeanor DWI charge was amended to careless driving.

The impact of an amendment to careless driving is minimal as the ability for an impaired driving incident to be used as an enhancement should there be a subsequent impaired driving

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<sup>8</sup> Statutory stays of adjudication are available for certain first time drug offenders. In such a disposition, the court defers proceedings and places the defendant on probation. Minn. Stat. § 152.17 (2014).

offense is also tied to license revocation, which is automatic at arrest. A person would need to prevail in an administrative challenge of the license revocation for the reduction to careless driving to impact subsequent incidents. The average age of the defendant at the date of offense was 34.46 years. Defendants charged with a Gross Misdemeanor DWI were slightly older at offense date (35.65 years) than those with Misdemeanor DWIs (33.15 years). Seventy-two percent of the defendants with gender reported<sup>9</sup> were male. Women were a large proportion (31%) of the Gross Misdemeanor defendants compared to Misdemeanor cases (25%). Overwhelmingly, the defendants were not a member of a racial group (78%) and non-Hispanic (88%).

As can be seen in Table 6, the bulk of the cases (87%) were prosecuted by the Wright County Attorney's office. Table 7 reflects that in a majority of cases (53%), the defendant was represented by private counsel at disposition. Twenty-five percent of the defendants were represented by the Public Defender.

**Table 6. Number of Cases by Prosecuting Attorney**

PROSECUTING ATTORNEY	
<b>Howard Lake City Attorney</b>	<b>5</b>
Gross Misdemeanor DWI	3
Misdemeanor DWI	2
<b>Wright County Attorney</b>	<b>454</b>
Gross Misdemeanor DWI	229
Misdemeanor DWI	225
<b>Annandale/Buffalo City Attorney</b>	<b>64</b>
Gross Misdemeanor DWI	42
Misdemeanor DWI	22
<b>Grand Total</b>	<b>523</b>

<sup>9</sup> Seven of the 523 cases did not have gender reported.



**Table 7. Number of Cases by Defense Counsel**

<b>DEFENSE COUNSEL</b>	
<b>Private Counsel</b>	<b>276</b>
Gross Misdemeanor DWI	161
Misdemeanor DWI	115
<b>Public Defender</b>	<b>130</b>
Gross Misdemeanor DWI	83
Misdemeanor DWI	47
<b>Self-Represented</b>	<b>117</b>
Gross Misdemeanor DWI	30
Misdemeanor DWI	87
<b>Grand Total</b>	<b>523</b>

The main focus of this project is time to disposition for the subject cases to develop recommendations for improvements. Some basic descriptive statistics for the time to disposition and number of hearings for all the cases were calculated using Excel 2010 data analysis (Table 8). The population standard deviation function (“STDEV.P”) was used rather than sample standard deviation to which Excel descriptive statistics defaults as the data set included all the dispositions (Schmuller, 2013, p. 121).

**Table 8. Descriptive Statistics for Time to Disposition and Number of Hearings**

<i>Time to Disposition</i>		<i>Number of hearings</i>	
Mean	180.7858509	Mean	3.489483748
Median	142	Median	3
Mode	44	Mode	1
Standard Deviation (stdev.p)	142.8605065	Standard Deviation (stdev.p)	1.965618513
Sample Variance	20448.22225	Sample Variance	3.871057779
Kurtosis	3.865747293	Kurtosis	0.592481303
Skewness	1.780518529	Skewness	0.70581227
Range	827	Range	13
Minimum	8	Minimum	0
Maximum	835	Maximum	13
Sum	94551	Sum	1825
Count	523	Count	523

Descriptive statistics for both time to disposition and number of hearings by the following dependent variables appear in Appendix A and Appendix B respectively:

- Weighted Caseload Type
- Prosecuting Attorney
- Defense Counsel
- Reported BAC.

The average time to disposition varies in some ways that would be expected. For instance, the average time to disposition is higher for Gross Misdemeanor DWIs (208.82 days) than for Misdemeanor DWIs (149.94 days). Given that the timing objective established by the Minnesota Judicial Branch is longer for Gross Misdemeanors, this outcome is unsurprising.

The average time to disposition by prosecuting agency varies from a high of 211.81 days to a low of 134. The average time to disposition for defense counsel varies from a high of 219.96 days to 81.16 days. A much less variable range exists for the recorded blood alcohol, as shown below in Table 5.

**Table 9. Time to Disposition by Reported Blood Alcohol Content**

<b>Reported Blood Alcohol</b>	<b>Average Time to Disposition</b>
Less than or equal to 0.08	165.42
0.09 to 0.16	162.68
0.17 to 0.24	195.74
Greater than 0.24	182.13
No BAC	205.55

To determine if any variance in the time to disposition is possibly due to anything other than chance, single factor Analysis of Variance (ANOVA) was conducted on the time to disposition of the various proposed independent variables. The first independent variable tested

was Weighted Caseload Type. As noted above, the established timing objectives are different for Gross Misdemeanor and Misdemeanor DWI cases. Such distinctions are common in case processing time standards as lower level offenses have lower fine and incarceration potential and fewer collateral consequences. If, as expected, variance in time to disposition between Gross Misdemeanor DWIs and Misdemeanor DWIs is significant, the other ANOVA tests should be done on each of those two case types to remove the possibility that any significant variance is coming from the case type rather than the tested independent variable.

The null hypothesis being tested is that there is not a significant difference in the time to disposition between Gross Misdemeanor DWI and Misdemeanor DWI case types. The ANOVA (alpha = .05) resulted in the following output:

**Table 10. Analysis of Variance of Time to Disposition between Gross Misdemeanor DWI and Misdemeanor DWI Case Types**

Anova: Single Factor

SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Gross Misdemeanor DWI	274	57216	208.8175182	18515.89
Misdemeanor DWI	249	37335	149.939759	20834.33

ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	452221.043	1	452221.043	23.04959	2.06595E-06	3.859369
Within Groups	10221750.97	521	19619.48363			
Total	10673972.02	522				

Since the P-value is less than 0.05, the null hypothesis can be rejected (Schmuller, 2013, p. 263).

In other words, the difference in time to disposition by weighted caseload case type is significant.

To control for the differences in time to disposition resulting from case type, ANOVA (alpha = 0.05) tests were conducted for the times to disposition for the independent variables separated into Misdemeanor and Gross Misdemeanor cases. Those results are in Appendix C, Appendix D, and Appendix E. None of the tests on Prosecuting Attorney or Reported BAC returned a P-value of less than 0.05. Therefore, the null hypotheses that the differences in time to disposition between prosecutors or blood alcohol levels are due to chance cannot be rejected. In other words, neither prosecutor nor BAC significantly impacted time to disposition. The ANOVA test for defense counsel returned P-values of less than 0.05 for both Misdemeanor and Gross Misdemeanor cases. Therefore, the null hypothesis that the variance is due only to chance can be rejected. The representation status of the defendant significantly impacted the time to disposition. The average time to disposition for each defendant representation category is as follows:

**Table 11. Average Time to Disposition by Representation Category**

<b>Representation Category</b>	<b>Number of Cases</b>	<b>Average of Time to Disposition</b>
<b>Private Counsel</b>	<b>276</b>	<b>219.96</b>
Gross Misdemeanor DWI	161	235.70
Misdemeanor DWI	115	197.93
<b>Public Defender</b>	<b>130</b>	<b>187.27</b>
Gross Misdemeanor DWI	83	189.63
Misdemeanor DWI	47	183.11
<b>Self-Represented</b>	<b>117</b>	<b>81.16</b>
Gross Misdemeanor DWI	30	117.63
Misdemeanor DWI	87	68.59
<b>Grand Total</b>	<b>523</b>	<b>180.79</b>

The average time to disposition generally increases as the number of hearings increase.

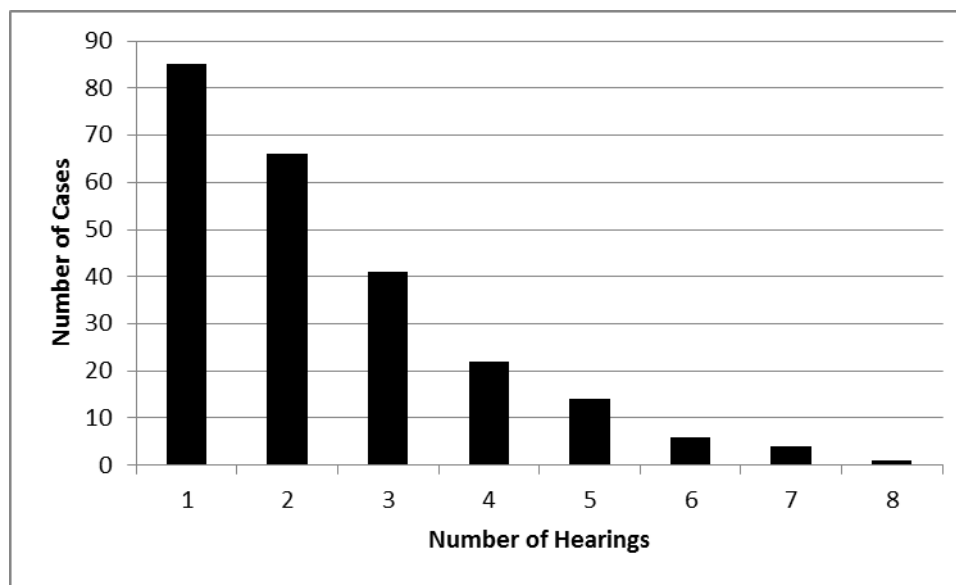
**Table 12. Average Time to Disposition by Number of Hearings**

<b>Number of hearings</b>	<b>Average Time to Disposition</b>	<b>Number of cases</b>
0.00	71.00	2
1.00	51.10	94
2.00	98.30	91
3.00	153.45	93
4.00	185.61	94
5.00	273.02	64
6.00	338.48	46
7.00	384.27	26
8.00	455.57	7
9.00	465.33	3
10.00	375.50	2
13.00	573.00	1

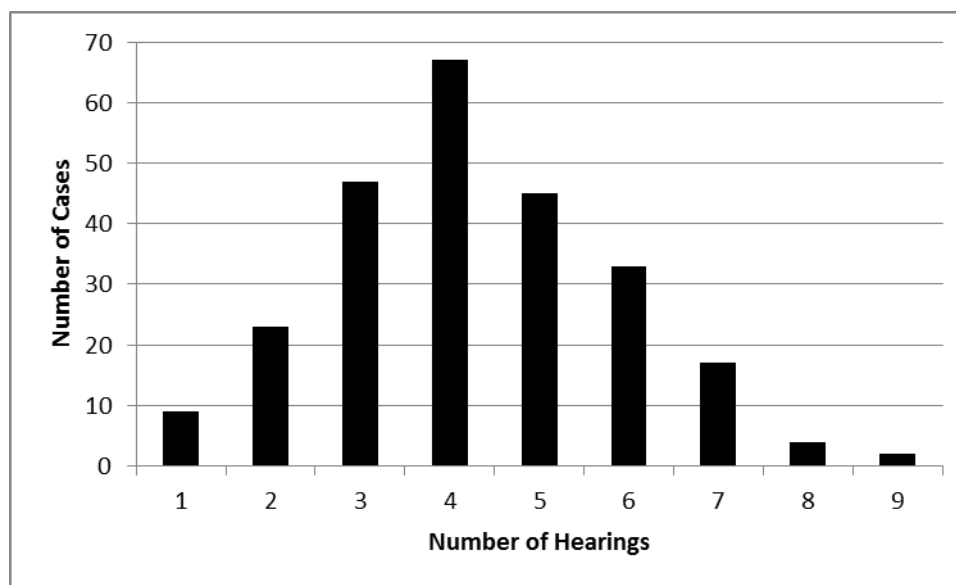
That trend does not hold for zero hearings and ten hearings; however, each of those is an average of only two cases. As identified above, the data indicates that time to disposition varies by case type. Therefore, to determine whether the time to disposition also varies by number of hearings, the average time to disposition by number of hearing data needs to be broken down by case type to remove any influence by case type. Single factor ANOVA ( $\alpha = 0.05$ ) was conducted for both case types (*See Appendix F*). For both Gross Misdemeanors and Misdemeanors, the P-value was less than 0.05. Therefore, the null hypothesis that any variation between times to disposition by number of hearings is due solely to chance can be rejected. The relationship between time to disposition and number of hearings, if any, is discussed later in the report as one potential way to shorten time to disposition may be to limit the number of hearings set.

Looking more closely at the data on hearings, histograms for the two case types show the number of hearings to dispose (Figure 1 and Figure 2 below). The highest number of Misdemeanor DWI cases (85) was disposed with one hearing (Figure 1). For the Gross

Misdemeanor DWIs (Figure 2), four hearings was the most frequent number of hearings to dispose (67 cases).



**Figure 1. Frequency of Number of Hearings to Disposition for Misdemeanor DWIs**

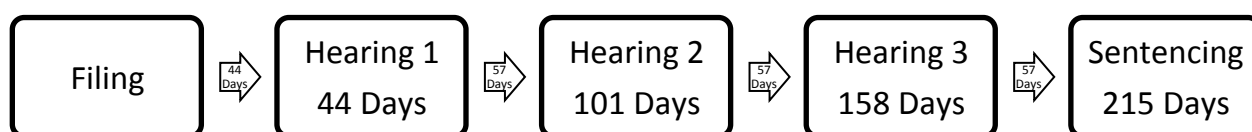


**Figure 2. Frequency of Number of Hearings to Disposition for Gross Misdemeanor DWIs**

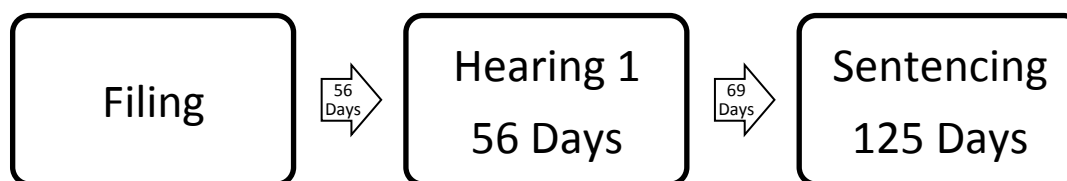
The average number of days between hearings for the cases in which no warrants were issued<sup>10</sup> was 56.84 days for Gross Misdemeanor DWIs and 69.20 days for Misdemeanor DWIs.

Excluding cases in which the defendant was presumably in custody at filing, the average days from filing to first hearing was 44.18 days for Gross Misdemeanors (145 presumed in-custody cases excluded) and 56.17 for Misdemeanors (3 presumed in-custody cases excluded).

As noted below in Table 13, the average number of hearings for Gross Misdemeanors is 4.42 and for Misdemeanors is 2.46. Assuming the averages should be considered typical (discussed further below) and rounding average number of hearings, the “average” case progression can be outlined.



**Figure 3. Average Gross Misdemeanor DWI Case Progression**



**Figure 4. Average Misdemeanor DWI Case Progression**

The current calendar plan limits when the first hearing in Misdemeanor cases can be set. That restriction may be the reason that the average number of days from filing the Hearing 1 is longer for Misdemeanor DWIs. In addition, the city prosecutors’ cases are only set certain days of the week. The impact of averages will determine whether the above caseflow is a good picture of the non-felony DWI case processing. For both case types, the average number of hearings was

<sup>10</sup> See discussion on page 18.

rounded down from a fraction that was close to one-half. Descriptive statistics for the number of hearings by case type are below:

**Table 13. Descriptive Statistics for Number of Hearings by Case Type**

<i>Gross Misdemeanor DWI Cases Number of Hearings</i>		<i>Misdemeanor DWI Cases Number of Hearing</i>	
Mean	4.423357664	Mean	2.46184739
Standard Error	0.110955132	Standard Error	0.09839754
Median	4	Median	2
Mode	4	Mode	1
Standard Deviation	1.836634235	Standard Deviation	1.552686992
Sample Variance	3.373225315	Sample Variance	2.410836896
Kurtosis	1.432866952	Kurtosis	0.658119595
Skewness	0.660878648	Skewness	1.081657057
Range	13	Range	8
Minimum	0	Minimum	0
Maximum	13	Maximum	8
Sum	1212	Sum	613
Count	274	Count	249

The average numbers of hearings (rounded), median, and mode of hearings to dispose for Gross Misdemeanor DWIs are the same - four. For Misdemeanor DWIs, the most frequent number of hearings was one but the average (rounded) and median was two. As all three measures of central tendency were the same for Gross Misdemeanors, using the averages may be a better picture of the case processing than for the Misdemeanors.

Of the sample of twenty-four Misdemeanor cases that were reviewed for the possibility to triage cases at filing for less judicial intervention, the cases break down on the chemical assessment done as part of the PSI as follows:



**Table 14. Misdemeanor Case Sample by Chemical Assessment**

<b>Chemical Assessment</b>	<b>Number</b>	<b>Average BAC (Number Reported)</b>	<b>Average of Age at offense date</b>	<b>Average of Offense date to filing</b>	<b>Average Number of Hearings to Resolve</b>	<b>Average Days to Dispose</b>	<b>Average number non DWI cases</b>	<b>Average of Number of DWI cases</b>	<b>Average of Number of Juvenile cases</b>
At Risk	6	0.12 (2)	37.82	46.67	2.83	153	0.67	0.17	0.17
Chemical Abuse	4	0.15 (2)	23.18	22.75	5.00	220	2.00	0.25	1.25
Chemical Dependence	4	0.12 (2)	32.78	95.50	3.25	154	2.25	0.00	0.00
No Problem	9	0.13 (8)	37.81	23.33	1.56	83	0.22	0.00	0.00
Unknown	1	None	21.37	39.00	3.00	206	3.00	0.00	1.00
<b>Total</b>	<b>24</b>	<b>0.13</b>	<b>33.85</b>	<b>41.75</b>	<b>2.79</b>	<b>141</b>	<b>1.08</b>	<b>0.08</b>	<b>0.29</b>

For triage to be effective, it would identify the cases in which the defendant's chemical assessment reflected "No Problem" for less judicial intervention. "No Problem" shows the lack of a risk factor of subsequent driving while impaired offense. The sample had ten cases without BAC levels recorded in MNCIS; six of those had BACs reported on the PSIs. However, any triage would need to be done at or close to filing so for purposes of this project would need to be presumed unavailable. For those defendants identified on the assessment at "No Problem," all but one did have a BAC reported. The average of those eight was 0.1325; the average of all available BACs in the sample was 0.14. The average BAC in the sample is identical to the average reported BAC for all the Misdemeanor DWIs (N=170).

The "No Problem" defendants had the lowest average of non-DWI and non-motor vehicle involvements. They also had an average of 0 prior DWI cases and juvenile cases. If cases were

screened to exclude any prior adult or juvenile cases, 13 of the 24 cases would have been considered for triage. The chemical assessments of those defendants is below:

At Risk	2 of 6
Chemical Abuse	1 of 4
Chemical Dependent	2 of 4
No Problem	8 of 9

Another question to be answered is, if cases could be triaged at filing for low risk of re-offense, can court time be saved? The data from the sample is not encouraging. As can be seen in the table above, the defendants in the targeted “No Problem” group averaged 1.56 hearings to resolve the cases. This compared to an average in the sample of 2.79 hearings. The time to disposition of these cases was 83 days; sample average was 141 days. This data suggests that these cases are falling out relatively early in the process. The timing objective for these cases is that ninety percent should be resolved in three months.

## **Conclusions and Recommendations**

**CONCLUSION 1:** TIME TO DISPOSITION OF NON-FELONY DWI CASES TAKES LONGER IN WRIGHT COUNTY DISTRICT COURT THAN IN SIMILARLY SIZED COUNTIES. TIME TO DISPOSITION OF NON-FELONY DWI CASES IN WRIGHT COUNTY DISTRICT COURT EXCEED THE MINNESOTA TIMING OBJECTIVES.

**Recommendation 1-1: Wright County District Court should adopt a more active case management strategy for non-felony DWI cases. The strategy should set a schedule for hearing types including expected days between hearings and expected number of hearings. The goal should be to conduct only meaningful court events and to reduce time to disposition.**

For both calendar management reasons and public safety, these cases should be resolved as quickly as possible. The analysis indicated that the variance of time to disposition and the number of hearings is not due to chance. Therefore, it is critical that each hearing be necessary and meaningful. These non-felony DWI cases are not processed in a vacuum; they are scheduled on a master calendar with all other gross misdemeanors and misdemeanors. The time between hearings may be related to the specific needs of the case; more likely, it is based on the “next available” date. Therefore, the most promising method of decreasing time to disposition, at least in the gross misdemeanor cases, is to reduce the number of hearings. As misdemeanors averaged only 2.46 hearings to dispose and same day sentencing is limited as the chemical assessment is required, the time between hearings would need to be reduced to meet the timing objectives. As a chemical assessment is necessary prior to sentencing, the judge’s ability to sentence on the same day as a determination of guilt is limited. Under the current court calendar, availability of dates for hearing is impacted by the prosecuting agency as the city prosecutors’ cases are only heard

on certain days.

**Recommendation 1-2: A committee of stakeholders (private defense counsel, public defenders, prosecutors, judges and court administrators) should be formed to study reasons that privately represented defendants' cases take longer to dispose.**

This project analyzed data on time to disposition and number of hearings to disposition. However, the data alone cannot explain why the cases of defendants represented by private counsel take longer to dispose. Local legal culture may be a significant influence as well as resources particularly in government-funded participants. To adequately evaluate where these cases can be shortened, the court participants need to identify their needs. For instance, a statutorily required chemical assessment must be completed before sentencing. Therefore, time to conduct the assessment (as well as a presentence investigation report) must be considered. Ultimately, the Court must determine which needs will continue to be met in management of the cases and which will not.

**CONCLUSION 2: THE COURT LACKS CONSISTENT AND ACCESSIBLE INFORMATION ABOUT THE OUTCOME OF HEARINGS AND THE TIMING OF EVENTS WITHIN CASES. FACTS, RATHER THAN PERCEPTION, ARE CRITICAL FOR THE DEVELOPMENT OF AN EFFECTIVE CASE MANAGEMENT PLAN.**

**Recommendation 2-1: Wright County Court Administration should clearly establish data entry rules for hearing processing in the case management system so the number of continuances can be monitored.**

This project confirmed the author's experience that this functionality is not consistently used. Therefore, this data cannot be relied upon to accurately identify the number of hearings to disposition on the time to disposition reports the Minnesota Judicial Branch produces. Even data

extracted from the databases as used in this project cannot be analyzed with 100% confidence. At least one District in Minnesota has established clear guidelines to deal with how hearings are reflected on performance measure reports. That document is attached as Appendix G.

**Recommendation 2-2: The Minnesota State Court Administrator's office should enhance access to more sophisticated reports to allow event-based analysis of caseflow.**

The Minnesota Judicial Analytical Database (MNJAD) is the reporting tool used for, among other products, many Court performance measure reports. Additionally, staff with specialized data analysis skills, such as the source for much of the data used in this project, can access the database and run customized reports. However, the staff resources available to provide on-request reports are limited by competing needs at a state level. If more flexible, user-friendly reports were available, more data-driven decisions could be made.

**CONCLUSION 3: THIS PROJECT DID NOT IDENTIFY A BASIS TO TRIAGE FIRST-TIME OFFENSE DWI CASES FOR DIFFERENTIATED JUDICIAL ATTENTION.**

This project attempted to evaluate whether certain first offense DWI cases could be identified and processed in a manner to use less calendar time. The sample from the 2013 dispositions did not support the potential for triaging in this manner. The proposed criterion to triage cases for less calendar time was the absence of prior criminal history. Sixty-one percent of the sample had a chemical assessment indicating "No Problem" which is encouraging that most are probably low risk/low need offenders. However, these cases are already disposing relatively quickly so for purposes of saving calendar time and reducing time to disposition the impact would be limited.

For the Court to consider alternatively treating certain DWI cases, especially in the name of efficient case management, would be potentially risky in the court and wider communities.

The appearance would probably be that the court is taking certain DWI cases “less seriously.”

To make the argument that such triaging is in the public interest, both in proper management of resources as well as outcomes, data would need to be compelling. The data developed in this project was not compelling.

**Recommendation 3-1: The proposal to use the concept of triage based on anticipated outcomes rather than case characteristics should be investigated further.**

This project adapted the concept of triaging based on the issues raised in the case, developed by Clarke and Flango, to triaging based on expected outcome. All the sources used for this project were assessing risk of reoffending at or after the time of sentencing. However, “[r]isk assessment can be used at different points in the criminal justice system for different purposes” (Casey, Warren, & Elek, 2011, p. 9). The assumption of this project was that certain first-time DWI offenders are not going to reoffend regardless of the amount of court time spent on their cases. Therefore, the hope was that those cases could be identified for fast tracking to help improve time to disposition on non-felony DWI cases. While the sample data in this project did not prompt a recommendation for further consideration in this project’s context, additional scholarship may develop the efficacy, as well as potential ethical concerns, of such an approach.

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## Appendix A: DESCRIPTIVE STATISTICS FOR TIME TO DISPOSITION

<b>Prosecuting Attorney</b>	<b>Average of TTD</b>	<b>Max of TTD</b>	<b>Min of TTD</b>	<b>StdDevp of TTD</b>
Annandale/Buffalo City Attorney	211.81	767.00	19.00	163.6731571
Howard Lake City Attorney	134.00	213.00	51.00	56.31696015
Wright County Attorney	176.93	835.00	8.00	139.7315756
<b>Total</b>	<b>180.79</b>	<b>835.00</b>	<b>8.00</b>	<b>142.8605065</b>

<b>Defendant Representation Status</b>	<b>Average of TTD</b>	<b>Max of TTD</b>	<b>Min of TTD</b>	<b>StdDevp of TTD</b>
Private Counsel	219.96	835.00	16.00	163.0876402
Public Defender	187.27	573.00	19.00	101.7807439
Self-Represented	81.16	427.00	8.00	58.17920404
<b>Total</b>	<b>180.79</b>	<b>835.00</b>	<b>8.00</b>	<b>142.8605065</b>

<b>Weighted Caseload Case type</b>	<b>Average of TTD</b>	<b>Max of TTD</b>	<b>Min of TTD</b>	<b>StdDevp of TTD</b>
Gross Misdemeanor DWI	208.82	767.00	8.00	135.8245551
Misdemeanor DWI	149.94	835.00	16.00	144.0508904
<b>Total</b>	<b>180.79</b>	<b>835.00</b>	<b>8.00</b>	<b>142.8605065</b>

<b>Blood Alcohol Content</b>	<b>Average of TTD</b>	<b>Max of TTD</b>	<b>Min of TTD</b>	<b>StdDevp of TTD</b>	<b>Count of bac</b>
Less than or equal to 0.08	165.42	325.00	36.00	82.07462508	26
0.09 to 0.16	162.68	835.00	13.00	144.2263755	237
0.17 to 0.24	195.74	767.00	8.00	144.6244581	140
Greater than 0.24	182.13	498.00	63.00	108.292356	16
No BAC	205.55	785.00	32.00	147.8718182	104
<b>Total</b>	<b>180.79</b>	<b>835.00</b>	<b>8.00</b>	<b>142.8605065</b>	<b>#NULL!</b>

<b>Number of Hearings</b>	<b>Average of TTD</b>	<b>Max of TTD</b>	<b>Min of TTD</b>	<b>StdDevp of TTD</b>	<b>Count of TTD</b>
0.00	71.00	129.00	13.00	58	2
1.00	51.10	145.00	16.00	22.40633893	94
2.00	98.30	213.00	8.00	37.07180277	91
3.00	153.45	430.00	19.00	58.71866881	93
4.00	185.61	581.00	45.00	77.70035435	94
5.00	273.02	785.00	57.00	158.035547	64
6.00	338.48	835.00	85.00	159.7305801	46
7.00	384.27	817.00	59.00	147.5162462	26
8.00	455.57	642.00	151.00	155.9449144	7

9.00	465.33	501.00	413.00	37.80946384	3
10.00	375.50	503.00	248.00	127.5	2
13.00	573.00	573.00	573.00	0	1
<b>Total</b>	<b>180.79</b>	<b>835.00</b>	<b>8.00</b>	<b>142.8605065</b>	<b>523</b>

Note: "TTD": Time to Disposition

## Appendix B: DESCRIPTIVE STATISTICS FOR NUMBER OF HEARINGS

<b>Prosecuting Attorney</b>	<b>Average number of hearings</b>	<b>Max number of hearings</b>	<b>Min number of hearings</b>	<b>StdDevp number of hearings</b>
Annandale/Buffalo City Attorney	3.89	8	1	1.913089676
Howard Lake City Attorney	3.60	5	1	1.496662955
Wright County Attorney	3.43	13	0	1.970813055
<b>Total</b>	<b>3.49</b>	<b>13</b>	<b>0</b>	<b>1.965618513</b>

<b>Defendant Representation Status</b>	<b>Average number of hearings</b>	<b>Max number of hearings</b>	<b>Min number of hearings</b>	<b>StdDevp number of hearings</b>
Private Counsel	3.67	9	0	1.844156629
Public Defender	4.50	13	1	1.88618459
Self-Represented	1.93	7	0	1.285863279
<b>Total</b>	<b>3.49</b>	<b>13</b>	<b>0</b>	<b>1.965618513</b>

<b>Weighted Caseload Case type</b>	<b>Average number of hearings</b>	<b>Max number of hearings</b>	<b>Min number of hearings</b>	<b>StdDevp number of hearings</b>
Gross Misdemeanor DWI	4.42	13	0	1.83327965
Misdemeanor DWI	2.46	8	0	1.54956601
<b>Total</b>	<b>3.49</b>	<b>13</b>	<b>0</b>	<b>1.965618513</b>

<b>Blood Alcohol Content</b>	<b>Average number of hearings</b>	<b>Max number of hearings</b>	<b>Min number of hearings</b>	<b>StdDevp number of hearings</b>
Less than or equal to 0.08	2.85	7	1	1.51129867
0.09 to 0.16	2.98	8	0	1.872400606
0.17 to 0.24	3.87	10	1	1.755981033
Greater than 0.24	4.00	7	2	1.322875656
No BAC	4.22	13	1	2.231577274
<b>Total</b>	<b>3.49</b>	<b>13</b>	<b>0</b>	<b>1.965618513</b>

## Appendix C: ANALYSIS OF VARIANCE (ANOVA) FOR PROSECUTING ATTORNEY

### MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Annandale/Buffalo	22	3660	166.3636	22242.81
Howard Lake	2	177	88.5	2812.5
Wright County	225	33498	148.88	20907.44

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	13736.75	2	6868.373	0.327879	0.720764396	3.032511609
Within Groups	5153177	246	20947.88			
Total	5166914	248				

### GROSS MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Annandale/Buffalo	42	9896	235.619	28735.22
Howard Lake	3	493	164.3333	3072.333
Wright County	229	46827	204.4847	16798.87

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	40405.11	2	20202.55	1.091827	0.337074376	3.02909359
Within Groups	5014432	271	18503.44			
Total	5054837	273				

## Appendix D: ANALYSIS OF VARIANCE (ANOVA) FOR DEFENSE COUNSEL

### MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Private Counsel	115	22762	197.9304	33300.59161
Public Defender	47	8606	183.1064	7821.836263
Self-Represented	87	5967	68.58621	1377.710505

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	892359.1	2	446179.5	25.67756565	7.45E-11	3.032512
Within Groups	4274555	246	17376.24			
Total	5166914	248				

### GROSS MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Private Counsel	161	37948	235.7019	21555.98556
Public Defender	83	15739	189.6265	12019.89539
Self-Represented	30	3529	117.6333	7719.895402

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	396370.8	2	198185.4	11.5291691	1.57E-05	3.029094
Within Groups	4658466	271	17189.91			
Total	5054837	273				

## Appendix E: ANALYSIS OF VARIANCE (ANOVA) FOR REPORTED BAC

### MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Less than or equal to 0.08	22	3345	152.0455	6703.665
0.09 to 0.16	158	22712	143.7468	23022.94
0.17 to 0.24	35	5532	158.0571	21926.53
Null	34	5746	169	19552.06

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	20815.38	3	6938.461	0.330332	0.803427	2.641445
Within Groups	5146099	245	21004.48			
Total	5166914	248				

### GROSS MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Less than or equal to 0.08	4	956	239	2924.667
0.09 to 0.16	79	15843	200.5443	14684.53
0.17 to 0.24	105	21872	208.3048	20350.91
Greater than 0.24	16	2914	182.125	12509.05
Null	70	15631	223.3	22628.68

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	35160.58	4	8790.146	0.471056	0.75697	2.405201
Within Groups	5019676	269	18660.51			
Total	5054837	273				



## Appendix F: ANALYSIS OF VARIANCE (ANOVA) FOR NUMBER OF HEARINGS AND TIME TO DISPOSTION BY CASE TYPE

### MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Number of Hearings	9	36	4	7.5
Average of TTD	9	2482	275.809902	30113.625

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	332462.8	1	332462.802	22.075059	0.000241635	4.49399848
Within Groups	240969	16	15060.5624			
Total	573431.8	17				

### GROSS MISDEMEANOR DWI

Anova: Single Factor

#### SUMMARY

<i>Groups</i>	<i>Count</i>	<i>Sum</i>	<i>Average</i>	<i>Variance</i>
Row Labels	12	68	5.66666667	15.333333
Average of TTD	12	3208	267.342279	33906.972

#### ANOVA

<i>Source of Variation</i>	<i>SS</i>	<i>df</i>	<i>MS</i>	<i>F</i>	<i>P-value</i>	<i>F crit</i>
Between Groups	410844.76	1	410844.758	24.222691	6.37009E-05	4.3009495
Within Groups	373145.36	22	16961.1525			
Total	783990.11	23				

Note: "TTD": Time to Disposition

## Appendix G: HEARING GUIDELINES AND HEARING TYPE DESCRIPTIONS (FOURTH JUDICIAL DISTRICT, MINNESOTA)

Fourth Judicial District  
Criminal MNCIS Policy/Procedure

# Hearing Guidelines and Hearing Type Descriptions

Issued date: July 10, 2014

Replaces issued date: February 15, 2011

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There are very specific directions that have been established by the state relating to rescheduling and canceling hearings. MNJAD reports collect the number of continuances on each judge's pending state report.

Scenario: The attorneys are granted a continuance on a case. The clerk cancels the trial date and sets a new date instead of rescheduling the date. Result: the information about the continuance is not collected for case management purposes and not counted on the case for that judge.

Any party (attorney(s), public defender or defendant) appears and the case is heard on or off the record, the hearing should be occurred/held.	Occur/Hold the Hearing (enter minutes)  <b>Note:</b> If parties appear and another hearing is required (more time is needed) occur/hold the hearing and schedule the next date from within the minutes.
If a hearing will not be occurring, no parties will appear however, it will happen on a different date/time or on another calendar session, the hearing should be rescheduled.	Reschedule the Hearing  Note: make sure to properly select Reset vs. Continuance to accurately record Reset – Requested by the <b>Court</b> Continuance – Requested by a <b>Party</b> on the case (defendant/prosecution )
If a hearing is no longer needed and will not be rescheduled to a different date and time, the hearing should be cancelled.	Cancel the Hearing
If a hearing was scheduled in error, the hearing should be deleted.	Delete the Hearing

Code	Description	Usage
ARG	Arraignment	Available for petty misdemeanor cases and misdemeanor cases.  A hearing before a judge during which the judge reads the charges to the defendant and the defendant pleads guilty or not guilty.
CRT	Court Trial	Available for all cases.  A hearing before a judge in which the judge hears testimony and determines if the defendant is guilty or not guilty of the charged offense.
EVD	Evidentiary Hearing	Typically used where an evidentiary hearing is held other than those related to a motion, restitution, or probation violation proceeding.
FAP	First Appearance	Available for gross misdemeanor and felony cases  A court appearance, in which the defendant is identified, rights are explained and bail is determined, by either County or District courts.  Appearance under Rule 5 or combined Rule 5 & 8 hearing.
HRG	Hearing	Typically used where no other hearing type is applicable.
JRY	Jury Trial	Available for misdemeanor, gross misdemeanor and felony cases. Misdemeanor and gross misdemeanor cases are determined by a jury of 6 people. Felony cases are determined by a jury of 12 people.  Juries hear testimony, Judges rule on any questions of law and the Jury determines if the defendant is guilty or not guilty of the charged offense.
MOT	Motion Hearing	Dispositive motion hearing set to dispose of all or part of the claims or parties, except motions for default judgment.  Non-Dispositive - All other motions, including but not limited to discovery, third party practice, temporary relief, intervention or amendment of pleadings.
OMN	Omnibus Hearing	A court proceeding with gross misdemeanor or felony cases, during which the judge considers many matters, including the legality of procedures followed in arrest or prosecution. The purpose of the omnibus hearing is to avoid a multiplicity of court appearances and hearings with a duplication of evidence, and to combine all of the issues that can be disposed of without trial into one appearance and hearing.  The Omnibus Hearing as provided for in Minn.R.Crim.P.11 is divided into three parts: 1) Rasmussen Hearing, 2) the hearing of pre-trial motions of the defendant and prosecution, and 3) the hearing on other pre-trial issues brought up on the court's initiative.
PLE	Plea Hearing	An agreement has been reached and a plea will be entered.

PRE	Pre-Trial Hearing	A court procedure during which the issues to be tried are narrowed and certain facts and admissions are agreed upon in order to speed up the trial. In gross misdemeanor cases probable cause issues are heard or acknowledged and waived. The defendant then enters a plea to the charges.
PVH	Probation Violation Hearing	Initial appearance where a defendant is charged with non-compliance with the terms and conditions of a stay of imposition or stayed sentence or probation on a probation violation and at which time the defendant may admit or deny violating terms of probation.
REV	Revocation Hearing	Formal contested evidentiary hearing (Morrissey) to address alleged probation violation(s).
RSH	Restitution Hearing	A proceeding to address a contested restitution claim.
RVH	Review Hearing	Typically used where a specific matter/condition is to be reviewed.
SNT	Sentencing Hearing	A court appearance, in which the judicial officer pronounces a disposition and orders the court decision.
SEC	Settlement Conference	A court appearance prior to trial, during which parties meet in an attempt to reach an agreement to resolve the case.
VOI	Violation Hearing	Initial appearance where a defendant is charged with non-compliance with the terms and conditions of an interim sentence and at which time the defendant may admit or deny violating