

Choices in Charging:

Variations in Preparing Circuit Court Criminal Charging
Documents and Juvenile Petitions
by Maryland State's Attorneys
-- Questionnaire Responses

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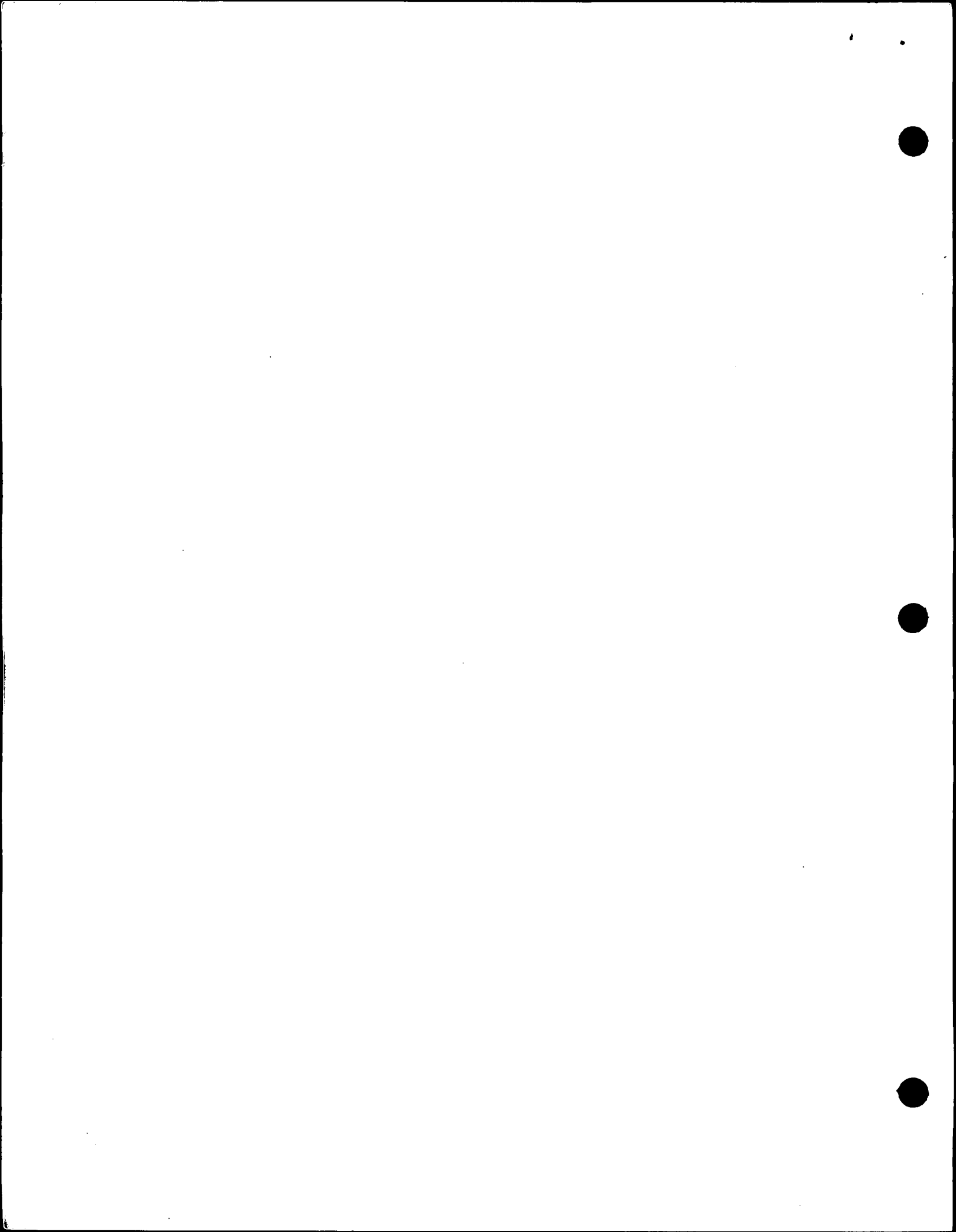
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A Report of the
ADMINISTRATIVE OFFICE OF THE COURTS
Statistical Auditing Unit
Eleanor K. Adams, Director

December 1981



Summary

Variations among State's Attorneys in charging patterns have, in the past, caused comparative criminal caseload statistics to take the form of "apples and oranges." Following a February 1980 report on the subject by the Statistical Auditing Project of the Administrative Office of the Courts, the State's Attorneys' Association took a strong interest in achieving comparability.

In January 1981 the Board of Directors of the State's Attorneys' Association recommended adoption of a consistent method of drawing up charging documents to be used in all courts. It was recommended that in order to facilitate statistical uniformity throughout the State, a charging practice should be established by each State's Attorney to provide for a single charging document for one defendant per single incident. Nineteen State's Attorneys responded to a follow-up questionnaire sent in September 1981.

Most counties now establish one charging document per defendant per single incident. Seventeen of 19 respondents now use this method, compared to 9 in prior years. Baltimore City uses a single charge per defendant.

Nine courts reported combining several incidents into one case in selected circumstances, usually amounting to less than 5 percent of charging documents.

The most common definition of an incident for purposes of drawing up a charging document is: a criminal act committed at a specified time and place.



More courts found benefits than found drawbacks. Both benefits and drawbacks were found for statistics, description, record-keeping, and case processing.

The AOC has asked State's Attorneys to help clerks of court to provide criminal history information by including the District Court case number on the charging document. The complete number needed includes a 1- or 2-digit district number, 1-digit subdistrict number, and 6-digit file-folder number. Eleven respondents provide the complete number, 2 provide part of it, and 6 provide no number.

The problems of comparing statistics for juvenile cases are the same as for criminal cases. Two-thirds of the respondents use a single incident per juvenile as the basis for preparing petitions, as they did in the 1980 report. Baltimore City uses the single incident approach, but 2 other metropolitan jurisdictions join incidents. For juvenile caseload statistics, comparing "apples and oranges" remains a problem.

Introduction

The Administrative Office of the Courts collects statistical information on court caseloads throughout the State. To compare workloads from court to court, the AOC needs comparable definitions of a case from all courts. In criminal and juvenile matters, the State's Attorney establishes a case by the manner of drawing up a charging document or petition. A 1979 telephone survey of clerks of court identified several variations. Findings were detailed in a report entitled "Apples and Oranges: Variations in Counting Practices for Maryland Circuit Court Statistical Reporting" issued February 1980.



In January 1981 the Board of Directors of the State's Attorneys' Association recommended adoption of a consistent method of drawing up charging documents to be used in all courts. It was recommended that in order to facilitate statistical uniformity throughout the State, a charging practice should be established by each State's Attorney to provide for a single charging document for one defendant per single incident.

To follow up on the resolution, the AOC sent a questionnaire to all State's Attorneys in September 1981. The questionnaire is shown as Exhibit 1.* This report describes the responses to the questionnaire. Responses were received from 19 of the 24 jurisdictions, including the 5 metropolitan courts.

Criminal Charging Practices

Of the 19 respondents, 17 reported preparing charging documents for one defendant per single incident. One used the method of one charge per case. One used the method of several incidents per case. Eight had changes from the latter method. Five of these had changed since the publication of the "Apples and Oranges" report, 2 of them since the resolution of the State's Attorneys' Association.

Of the 5 nonrespondents, only 1 was reported as combining several incidents into one charging document in 1980. In the 1980 study 10 courts were reported as sometimes combining incidents by the clerks of court. Four of these reported themselves as always having used the one-defendant-per-incident approach, 1 with no exceptions. One court now reporting as having recently changed is reported in 1980 as already using the one-defendant-per-single-incident method. The 1980 study was based on information supplied by

*Attached as Appendix.



clerks of court, while the present study used information from the State's Attorneys themselves. However, it may be that the perception of exceptions is at issue here.

Exceptions

Nine of the courts reported exceptions to the usual procedure of charging one defendant per single incident. Six respondents estimated the exceptions at from less than 1 percent to 5 percent, and 1 estimated 10 percent of all charging documents. Two did not make an estimate. Five of the exceptions were for incidents connected by a common scheme or plan. Four of the exceptions were for specific charges, in each court a different charge; they were: forgery, theft (if common scheme), CDS multiple sales if definite guilty plea, or welfare fraud. The courts reporting exceptions were about evenly divided between those always having used the method of charging one defendant per single incident (4 courts) and those having changed (5 courts). From the responses, it is unclear whether or not there is a significant difference between those who reported charging one defendant per single incident "except if there was a common scheme or plan" and those who were reported, in 1980, as sometimes charging one or more defendants with several incidents on the same document. It is certainly a question of degree rather than an absolute dichotomy. That the difference can be substantial is shown, however, by the experience of benefits and drawbacks, discussed below, by those who have changed their methods.

What Is An Incident?

The most common definition of an incident for purposes of drawing up a charging document is: a criminal act committed at a specific time and place.



These elements were stated by 9 respondents. Three of them added: against a single victim; while 1 stated: against one or more victims. In addition to the 9, 2 identified time but not place as part of their definitions; and 2 simply described an incident as an "event" and did not specify time, place, or victim.

Four courts defined an incident as a "continual situation," "continuous act or scheme," or "set of circumstances." Two others reported charging as one incident "the most serious crime first plus lesser related crimes." These definitions of an incident are similar to the exceptions to charging by incident noted by other courts. The apparent contradiction may not, however, mean the practice is different. The difference may simply reflect the common difficulty of defining a familiar and basic term.

Quantitative Impact

The purpose of the recommendation was to get better comparability among the courts. The survey shows that most courts now use approximately the same basis for preparing charging documents. Exceptions or variations probably account for 5 percent or less of the caseload. Only one large court uses a different method than the recommended one; unfortunately, this is the largest jurisdiction, the Baltimore City Supreme Bench. An analysis of filings reported was made to determine whether or not the rankings of the courts or the percent of the total filings either became more stable or changed in the expected direction following a change in charging practices. Since the last change was made in June 1981, the analysis was done comparing the first quarter of each fiscal year from 1977 through 1982.



This is a problematic type of comparison, since a number of factors can influence stability of rank. Changes in charging practices can interact with genuine changes in filings and reporting practices of clerks. The statistical system itself was not stable, undergoing major revision in January 1978 and again in July 1980. When dealing in ranks and percentages, erratic figures in some courts can affect all the others. Stability was found, therefore, only in the ranks of the 5 large courts. They used varied practices at different times, and the numbers and percentages were erratic. The medium (2 to 4 judges) and small (1 judge) courts showed stability as groups but not within each group. One can only assume that as practices have become more similar, the relative differences in reported caseload show relative workload differences more accurately.

Table A shows how the practices have changed. Respondents to this survey accounted for 94 to 97 percent of reported filings during the first quarter (July, August, September) of Fiscal Years 1977 to 1982 (calendar years 1976 to 1981). Baltimore City accounts for half the volume. The only responding court still frequently combining multiple incidents into one charging document, St. Mary's County, accounts for less than 1 percent of the filings. In 1977 and 1978, 20 percent of reported filings came from courts using a multiple-incident charging document. When Baltimore City is excluded from the calculations, one can see the counties changing from half using one practice and half another in 1977 to virtually all now using a comparable practice.



TABLE A

Percent of Maryland Circuit Court Criminal Filings
by Charging Document Preparation Method
First Quarter (July-September) Fiscal Year 1977-1982
for Baltimore City and 23 Counties

(NOTE: Totals may not add up to 100 percent because of rounding.)

Fiscal Year	Charging Document Preparation Method							
	Single Charge		Usually Single Incident		Frequently Multiple Incident		No Response	
	City and Counties	Counties Only	City and Counties	Counties Only	City and Counties	Counties Only	City and Counties	Counties Only
1977 (N= 8,223)	51.6	0	26.1	54.5	19.8	41.0	2.2	4.6
1978 (N= 8,638)	46.4	0	29.9	55.7	21.5	39.7	2.5	4.6
1979 (N= 8,596)	54.8	0	27.0	60.0	15.7	34.6	2.5	5.4
1980 (N= 9,255)	57.2	0	25.9	60.9	14.4	33.5	2.4	5.8
1981 (N=11,210)	53.1	0	30.5	65.1	14.5	30.8	2.0	4.2
1982 (N= 8,216)	44.3	0	53.6	96.5	0.5	0.8	1.8	3.2
Jurisdictions, years using method, listed in 1982 rank order within year group (rank in parentheses)	<u>1977-1982</u> Baltimore City (1)		<u>1977-1982</u> Baltimore Co. (2) Anne Arundel (4) Charles (9) Worcester (10) Carroll (11) Cecil (12) Washington (13) Garrett (17) Somerset (19)		<u>1977-1982</u> St. Mary's (18) <u>1977-1981</u> Prince George's (3) Montgomery (5) Frederick (14) Queen Anne's (20) <u>1977-1980</u> Wicomico (8) Calvert (16) <u>1977-1979</u> Howard (6) <u>1977-1978</u> Harford (7)		<u>1977-1982</u> Allegany (15) Dorchester (21) Talbot (22) Kent (23) Caroline (24)	
			<u>1979-1982</u> Harford (7)					
			<u>1980-1982</u> Howard (6)					
			<u>1981-1982</u> Wicomico (8) Calvert (16)					
			<u>1982</u> Prince George's (3) Montgomery (5) Frederick (14) Queen Anne's (20)					



Benefits and Drawbacks

More courts found benefits than found drawbacks to charging one defendant per single incident. Only 3 courts itemized no benefits, while 7 courts itemized no drawbacks. Overall, 28 benefits and 29 drawbacks were itemized. Of the 9 courts which had always used the one-defendant-per-incident method of establishing charging documents, 11 benefits and 6 drawbacks were listed. Of the 8 courts which had changed, 17 benefits and 21 drawbacks were listed. Of the 2 courts using other methods, no benefits and 2 drawbacks were itemized. Apparently, the types of benefits found overall outweighed the drawbacks. Where change had occurred, the courts were aware of the pros and cons and could describe them in greater detail.

While for the most part each itemized benefit or drawback was expressed in a unique way, there was some duplication. The numbers cited in the previous paragraph were the total number of items, irrespective of duplication. Despite the variations, the items can be broken down under several topics for both benefits and drawbacks: statistics, description, record-keeping, and case processing.

The initial interest of the Administrative Office of the Courts in varied methods of establishing charging documents was to achieve comparable workload statistics. The particular method used was not important; only that all courts use the same method. Since a majority charged one defendant per single incident, this seemed the reasonable approach to suggest that the minority adopt. Seven courts identified uniform statistics as a benefit of the method. In addition to uniform statistics for comparison among counties, several other benefits for statistics were noted: better basis for internal



statistical comparison; "assures accurate count of defendants (bodies rather than paper) and numbers of incidents in which each defendant is involved"; "on paper it will increase our caseload." Only 1 stated that uniform statistics would not be obtained by this method; but rather, that varied prosecution and trial practices would obviate this proposed benefit.

Related to statistics is the ability of a particular charging practice to create a useful description of the case. Six courts considered description beneficial, while 5 courts found drawbacks in description. Descriptive benefits included: "clarity"; "simplification"; "more complete information as to each defendant"; and "charging document accurately depicts crime." Descriptive drawbacks included: "fails to recognize that a single criminal escapade can involve several incidents"; "nol pros in statistics if not reality"; and "case by case need for multiplicity."

In the area of record-keeping, 4 courts said charging one defendant per single incident made filing easier in a variety of ways, specifically: "easier to keep files straight" and "easier document location." The most commonly mentioned drawback to the method was, however, more paperwork. This drawback was cited by 8 courts. Specific record-keeping drawbacks mentioned were: "duplication of docket entries," "more files," and "greater possibility of filing mishaps." One additional court, which uses a charge-based system and links each charge to a charge-based police arrest record, stated that it would be a "logistic nightmare" to provide disposition data on arrests to police using incident-based documents.

Nine courts found case processing benefits to charging one defendant per single incident while 8 courts found case processing drawbacks. Some case



processing benefits were an outgrowth of the clear-description benefit: "an accurate prosecution of the case"; "less confusion in trial of a case"; "reduces tendency toward 'discount' justice for multiple offenses"; "even a dullard such as the undersigned can try the case." Other benefits aid procedure: "better trial management"; "when co-defendants are charged, it gives each his own charging document which can be important when there are separate trials"; "scheduling of cases for trials and motions is made much easier as long as co-defendants are set together." Some case processing drawbacks were the opposite of the procedural benefits: "not convenient for discovery, motions, plea discussions"; "lose co-defendants." One expressed tongue-in-cheek as a drawback, the opposite of the clear description of the offense cited as a benefit by others: "A jury cannot be properly prejudiced against a defendant." Six courts expressed a problem with the need to consolidate cases for trial: "State must move to join defendants for trial"; "numerous consolidation issues with burden on State"; "potential to forget to move for consolidation"; "courts very reluctant to consolidate."

District Court Case Number

The District Court case number is a key piece of information in the criminal histories maintained by the State Police Criminal Records Central Repository (CRCR) in the Criminal Justice Information System (CJIS). Clerks of the circuit court submit the District Court case number, when available, on forms of the Administrative Office of the Courts. In creating a criminal history record, CJIS links police, District Court, and circuit court records. When the District Court case number is unavailable, the parts of the record cannot link. The clerks take the number from the District Court papers transmitted. However, the transmittals are not always submitted at the time



the State's Attorney files the information or indictment. Since the State's Attorney knows about the District Court case before preparing the charging document, the information can be made available to the clerk when the document is issued. The AOC requested, and the Board of Directors resolved, that State's Attorneys should provide this information to the clerk on the charging document.

A further CJIS requirement for linkage of records is that the District Court case number be complete. The complete number includes the 1- or 2-digit district number, 1-digit subdistrict number, and 6-digit file-folder number. If only the file-folder number is available, for example, the parts of the record will not link at CJIS.

Of the respondents to the questionnaire, 11 provided the entire number, 6 did not, and 2 provided it partially (1 provided the 6-digit number and 1 provided a CR prefix plus the 6-digit number). One provider and 1 non-provider reported that the District Court documents are kept in the circuit court clerk's office. Of those who reported providing the complete number, the majority were those who had changed their charging method in accordance with the resolution of the Board of Directors.

Juvenile Petitions

The problems of comparing statistics for juvenile cases are the same as for criminal cases. The 1980 study reported 16 courts preparing petitions for one juvenile per incident, 7 courts as combining multiple incidents, and 1 court as using charge. The present survey showed 13 respondents using a single incident as the basis, 5 using multiple incidents, and 1 inconsistent.



Four respondents who were reported as joining multiple incidents and the one court reported as using charge in 1980 reported themselves as using single incidents. The 1980 reports for the non-respondents were 4 using single incidents and 1 using multiple incidents.

The courts did not necessarily use the same method for establishing juvenile as for criminal cases. Only 5 of the 8 who had always used the single incident approach for criminal used it for juvenile. Six of the 8 who had changed to the single-incident basis for criminal also used that basis for juvenile. The court using the charge basis for criminal used the incident basis for juvenile.

The court using the multiple-incident basis for criminal was inconsistent in juvenile; the inconsistency was a result of being required to use citizen and District Court commissioner petitions. Overall, 11 used the same and 8 used different methods for juvenile as for criminal.

Differences in criminal charging documents and juvenile petitions are to be expected given the different legal issues. In criminal cases, a defendant is charged with committing an act or acts. In juvenile matters, a petition seeks to establish a status -- e.g., delinquent -- based, to be sure, on the act or acts, but more on their combined than their individual nature. The tendency to base petitions on single incidents probably results from the simplicity and clarity of the approach.



COURTS OF APPEAL BUILDING
ANNAPOLIS, MARYLAND 21401
269-2141

Exhibit 1



STATE COURT ADMINISTRATOR
WILLIAM H. ADKINS, II

DEPUTY STATE COURT ADMINISTRATOR
ROBERT W. MCKEEVER

September 15, 1981

Logan C. Widdowson
State's Attorney
Office of the State's Attorney
Courthouse
Prince William Street
Princess Anne, Maryland 21853

Dear Mr. Widdowson:

The Administrative Office of the Courts collects statistical information on court caseloads throughout the State. To compare workloads from court to court, we need comparable definitions of a case from all courts. In criminal and juvenile matters, the State's Attorney establishes a case by the manner of drawing up a charging document or petition. A 1979 telephone survey of clerks of court identified several variations. Findings were detailed in a report entitled "Apples and Oranges: Variations in Counting Practices for Maryland Circuit Court Statistical Reporting" issued February 1980.

The Board of Directors of the State's Attorneys' Association recommended in January 1981 adoption of a consistent method of drawing up charging documents to be used in all courts. It was recommended that in order to facilitate statistical uniformity throughout the State, a charging practice should be established by each State's Attorney to provide for a single charging document for one defendant per single incident.

This agreement is a model of cooperation and sense of common purpose possible. The Administrative Office of the Courts is highly gratified by the interest and action of the State's Attorneys' Association.

To follow up on this successful agreement, the enclosed questionnaire asks about your experiences and views in implementing the resolution. Through gathering this information from all the courts, the impact of the resolution on the statistics can be measured.



Questions 1-4 follow up on the resolution concerning criminal charging documents.

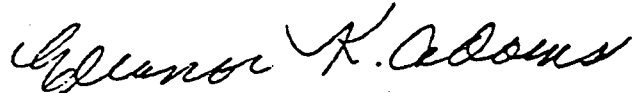
Question 5 deals with the provision of a key piece of criminal history information, the District Court case number. This information was also requested and its provision recommended at the January 1981 meeting of the Board of Directors.

Question 6 explores the issue of how juvenile cases are established.

Question 7 provides a space for further comments and expanded answers.

Please respond by October 2, 1981. If you have any questions or comments, please feel free to call me.

Sincerely,



Eleanor K. Adams
Director, Statistical Auditing
Project

EKA/mfb

Enclosure



ADMINISTRATIVE OFFICE OF THE COURTS
STATISTICAL AUDITING PROJECT

STATE'S ATTORNEYS' QUESTIONNAIRE

Jurisdiction: _____

1. How are your charging documents usually drawn up? If your office has made changes please indicate the dates (month and year) of use of each method.

<u>Method</u> (please check)	<u>Dates</u> (Month/Year)
_____ a. One incident/one defendant	_____
_____ b. One incident/many defendants	_____
_____ c. Many incidents/one defendant	_____
_____ d. Many incidents/many defendants	_____
_____ e. Charge (more than one charging document per incident)	_____
_____ f. Other or combination (please describe) _____	_____

2. What exceptions, if any, do you make to your usual procedure? What estimated percent of charging documents issued fall into the exception categories?

<u>Exception</u>	<u>Percent</u>
_____	_____
_____	_____
_____	_____

3. How do you define an incident for purposes of drawing up a charging document?

4. What, in your view, are the benefits or drawbacks to the one incident/one defendant approach?

Benefits: _____



Drawbacks: _____

5. Do you identify the complete District Court case number(s) on your charging documents? (The complete number includes one or two digit district, one digit subdistrict number, and six digit file folder number.)

___ Yes ___ No ___ Partial (Describe) _____

6. In drawing up juvenile petitions, do you use the same method as in criminal charging documents? (See Question 1 above.)

___ Yes ___ No

If No: What method do you use?

7. Comments: _____

If you have any questions, please call Eleanor Adams at (301) 269-2141.

Please return the questionnaire by October 2, 1981 to:

Eleanor K. Adams, Director
Statistical Auditing Project
Administrative Office of the Courts
P.O. Box 431
Annapolis, Maryland 21404-0431

Thank you for your cooperation.

