

Speed, justice issues sparked by sentencing

By JOE LAMBE

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Justice can move quickly in Jackson County Circuit Court. It usually has no choice.

County prosecutors, for one thing, filed more than half of Missouri's 26,000 felony cases last year. The county also is under a federal court order to keep down the population of its jail, where most prisoners are awaiting trial.

But old issues of speed, justice and constitutional rights flared last week when a Circuit Court judge ordered an assistant public defender to jail for 15 days. His crime: One too many delays.

Mingled among those longstanding concerns was a new twist: Should judges delay rape cases almost a year to allow DNA testing for both the prosecution and defense?

"The minute you allow a case to be delayed for something like DNA, there will be DNA requests filed in every case," Circuit Judge William F. Mauer said. "The Circuit Court needs to have a policy on this."

Mauer sentenced John Anthony Picerno to jail
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Monday after the defense lawyer refused to start trial. Picerno said he had been working on too many other cases to be ready for the trial of alleged rapist James Hamilton.

Prosecutors and Mauer said Picerno had refused to participate in other scheduled trials. Mauer noted that Hamilton had repeatedly delayed trial as he shifted among three assistant public defenders.

Picerno said he needed more time to prepare Hamilton's defense — in part for DNA tests on a case that is now more than a year old.

Such test results usually take at least four months. The prosecution had already ordered tests and found insufficient DNA to yield valid results.

An appeals court delayed Picerno's

no jail sentence while it reviews his alleged courtroom mutiny and Mauer's reasoning.

Rarely do lawyers disobey a judge, but some delays are part of the legal game.

"Delays are endemic to the litigation system. It's part of the deal," said Robert Popper, a professor at the University of Missouri-Kansas City law school.

"Both sides use them," he said. "Sometimes it's the prosecutor, more often it is the defendant who doesn't want to face the music."

Jackson County Public Defender Joe Elmer said it was natural for defense lawyers to delay more than prosecutors, who already have worked their cases when they file them.

Minimal delays even serve a purpose, judges agree, because more

than 90 percent of all cases end in plea bargains.

Among the reasons for routine delays:

■ A change of judge. Each side can do this once to send a case to the back of another judge's docket.

■ A mental exam of the defendant, often good for a six-week delay. Medical experts rarely find a person unfit to stand trial.

■ Prosecutors dismiss cases as trials are to begin because they cannot find key witnesses, and then they refile the cases later.

■ A continuance, which is a trial delay requested for a variety of reasons — perhaps a witness not found, or a lawyer engaged in another trial elsewhere. Jackson County judges often grant these several times, and each can delay a trial for weeks to months. Federal

judges rarely do.

"There has been a culture in Jackson County that everybody gets so many continuances before everybody gets serious," said County Prosecutor Claire McCaskill. "The system can do better, and we will do better."

Part of the problem is the heavy workload for prosecutors and defense lawyers, she said, but lawyers should expect hard work in the state's busiest court.

Popper said Jackson County must be careful not to lose sight of individual rights in the quest for speed. Fairness and justice might sometimes dictate time for DNA tests, he said.

"DNA presents an extraordinary dilemma," Presiding Judge John R. O'Malley said. "I don't believe it is necessary in every rape case."