

CRIME & JUSTICE BULLETIN 5

**Study on Court Delays in Relation to Criminal Cases in
Barbados**

**NATIONAL TASK FORCE ON CRIME PREVENTION
OFFICE OF THE ATTORNEY GENERAL**

Foreword

This Report is the fifth in a series of publications that are designed to disseminate information on the criminal justice system in Barbados, as well as to inform policy makers and practitioners.

It sheds some light on the reasons for court delays in Barbados and makes recommendations on how these delays can be reduced.

Our Consultants Aguda Quality Solutions Inc. were instrumental in conducting the fieldwork as well as for putting this report together. We are grateful to all of those persons who would have provided expert opinions, data, and feedback on this publication.

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Contents

1. Executive Summary	4
2. Background Information.....	5
3. Methodology	6
3.1 Objectives	6
3.2 Approach to gathering information for research.....	6
3.3 Sample Size.....	7
3.4 Presentation of Information	8
4. Overall Findings.....	9
4.1 Baseline Measurements	9
4.2 Investigation-Related Delays.....	12
4.3 Court Delays – Reasons for Adjournments	15
4.3.1 Magistrates Court.....	15
4.3.2 High Court	24
4.3.3 Appeal Court.....	29
4.4 Summary of Findings.....	31
5. Recommendations	33
5.1 Police Procedures.....	33
5.2 Court Management Technology – Scheduling / Court Reporting	34
5.3 Witness Warnings.....	34
5.4 Additional Assistance for Accused Persons	35
5.5 Penalties for Late Adjournment Requests.....	35
6. Conclusions.....	36

Figures & Tables

Fig. 1 Length of time of Magistrates’ Court Criminal Cases 1999 - 2001

Fig. 2 Length of time of Magistrates’ Court Criminal Cases 2000 - 2002

Fig. 3 Length of time of High Court Criminal Assizes 2000 - 2002

Fig. 4 Magistrates Court Criminal Cases (April 2003)

Fig. 5 Magistrates Court - Reasons for Adjournment (April 2003)

Fig. 6 High Court Criminal Assizes (2001 - 2002)

Fig. 7 High Court - Reasons for Adjournment (2001 - 2002)

Table 1 Adjournments in the Magistrates’ Courts

Table 2 Adjournments in the High Courts

1. Executive Summary

The study on Court Delays was conducted to determine as objectively as possible the causes of delays within the court system in Barbados, and to carry out a baseline measurement to evaluate any changes that are implemented. For the purpose of this study, the delays that were considered were specifically adjournments of cases within the courts. The baseline measurement focuses on the length of time taken for cases to be completed currently. A reduction in the delays and adjournments is expected to result in cases being completed in a shorter period of time.

The study followed a two-pronged approach consisting of the collection of quantitative as well as qualitative data from court records, database of sentences, and discussions with key personnel with the justice system. This allowed for an objective assessment of the main reasons for adjournments, as well as insight into and further explanation of the various causes of delays. The effectiveness of the recommendations in reducing delays in completion of cases can be measured over time using the baseline measurements included as part of this study.

It was found that the majority of adjournments can be attributed to a few main reasons: Case file not ready or lost; Attorney absent; Accused absent; Accused not represented; Witnesses absent; Notes of evidence for record of appeal awaited; and Scheduling of appeal hearing. These key causes of delays are directly addressed by the recommendations outlined in this report: Change in police procedures to reduce bureaucracy; Introduction of court management technology for scheduling and court reporting; Assignment of responsibility for witness warnings to specific persons; Additional assistance for accused persons; and Penalties for late adjournment requests. In addition, education of justice system employees to the importance and means of reducing delays is essential. To facilitate similar studies in the future, court records should always include the reasons for adjournments, as inadequate records placed significant limitations on this study.

2. Background Information

From recent research carried out in the Magistrates' courts in Barbados, it has been found that there are substantial delays in the resolution of a large proportion of criminal cases. It was found that the more serious cases (i.e. those involving violent offences) are the ones most likely to take over 6 months to be completed, and cases that take over 6 months are most likely to be dismissed or discontinued. This would suggest that a substantial number of cases involving violent offences are eventually dismissed. Therefore, in addition to the delays in trying criminal cases, many of the more serious cases are eventually dismissed and the perpetrators of the offences never punished.

In order to determine the most effective ways of reducing these delays in the criminal courts, and in turn reducing the proportion of serious cases that are dismissed, it is essential to have a clear understanding of what causes the delays.

There are 3 levels of courts in Barbados; the Magistrates Court, the High Court and the Court of Appeal. All criminal cases (both summary and indictable) go to the Magistrates Court first. The indictable cases proceed to the High Court after a preliminary inquiry is conducted to determine that there is a prima facie case to answer. The summary cases are heard in the Magistrates Court. Once judgment is passed, a case may be appealed by either party and will then proceed to the Appeal Court. The number and severity of criminal cases dealt with by each level of the courts varies, as does the level of detail that is recorded (specifically the reasons for adjournment). Therefore the causes of delays can vary and need to be examined and analyzed separately.

This study examined the delays experienced in criminal cases at each level of the Courts, to establish the causes of these delays and make clear recommendations for reducing them. It also estimates the length of time taken to complete cases in each court, which can then be used as a baseline against which to measure reductions in delays and the effectiveness of any new procedures that are introduced.

3. Methodology

3.1 Objectives

There were two main objectives for this study:

1. Determine the main causes of delays in each level of the courts, and rank them according to importance in terms of the causes of the most delays and the longest delays;
2. Estimate the length of time taken to complete cases in each level of court, for use as a baseline for reductions in delays.

3.2 Approach to gathering information for research

The approach used was as follows:

- Information provided by NTFCP database of sentences over the 3-year period from 1999 to 2001 was examined and analyzed.
- Observation of court proceedings over a period of 2 days;
- Discussions with the following key personnel in order to gain an understanding of the causes of delays from their perspectives:
 - Chief Justice
 - 2 High Court Judges
 - 5 Magistrates
 - Registrar
 - 3 Senior Legal Assistants – Magistrates', High and Appeal courts
 - 4 Court Clerks
 - Police Prosecutors
 - Senior officers from the Criminal Investigations Department
 - Defence attorney

Approach – continued:

- Examination of a selection of court records over a 4-week period within the Magistrates courts to establish reasons for adjournment. This was completed in conjunction with the Court Clerks who provided valuable additional information not included in the records;
- Examination of a selection of High Court records of the criminal assizes over a period of 1 year;
- Examination of Appeal Court records for both magisterial and High court appeals over the 2-year period 2001 to 2002;
- Compilation of the quantifiable results from the records, court observation, and discussions, and analysis of same;
- Preparation of a report on the causes of delays in the courts and recommendations for reducing them, including baseline data for each level of the courts.

3.3 Sample Size

The sample size of cases that were examined for each of the Courts was determined based on a confidence level of 95% and a confidence interval of 5%.

For the Magistrates Courts with a total of 14,225 criminal cases lodged between 2000 and 2002, the sample size was 367 cases. For the High Court with a total of 466 criminal cases set down for the same period, the sample size was 264 cases.

The number of appeals that were lodged for the 2-year period 2001 – 2002 was low (Magisterial appeals – 22; High Court appeals – 99), therefore the sample size was equal to the population size.

3.4 Presentation of Information

This report presents the findings of the study starting with the baseline data to be used to determine the effects of any measures put in place to reduce delays in the criminal justice system. This is followed by a section on investigation related delays, and then by the results of findings from each of the Courts, starting with the quantitative data collected from the court records, and continuing with the qualitative information and opinions given by the various persons who were interviewed. The opinions offer some explanation of the findings from the quantitative data, although there are some contradictions as to the magnitude of the effect that particular causes may have on court delays. In such cases, the quantitative data is considered to be more accurate.

The findings are presented and discussed for the different courts separately, with a section on delays at the investigation stage included for completeness. The reasons for adjournment are also examined based on defence-, prosecution-, and court-related reasons, as well as a number of miscellaneous reasons for delays.

Recommendations for reducing the delays are targeted at the causes of 80% of delays and are discussed in the section following the findings.

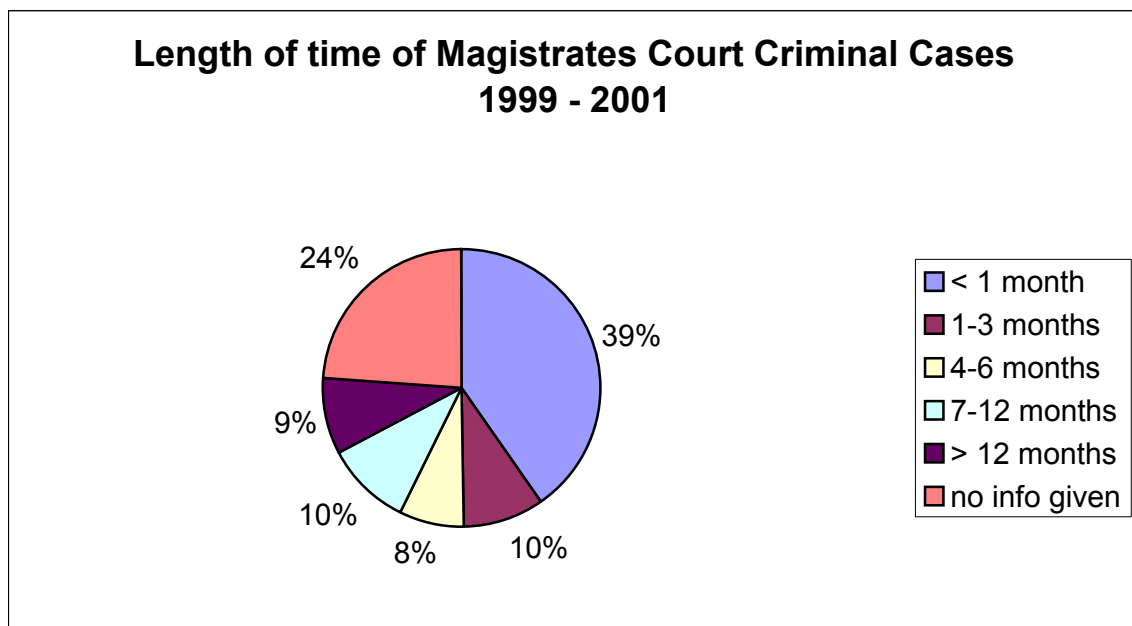
4. Overall Findings

4.1 Baseline Measurements

The baseline data collected related directly to the length of time taken for cases to be completed. A database of sentencing provided by the NTFCP, as well as a selection of court records were used as sources of the baseline data. The database of sentencing had a significant amount of information missing for the length of cases in the High court criminal assizes, and therefore only the information relating to the Magistrates' courts was used.

From database of sentencing:

Fig. 1



As can be seen from the 2 charts relating to the Magistrates courts, between 40% and 56% of cases take less than 1 month. The study on sentencing that is referenced here found that these cases were generally the simple cases, and cases in which the accused person pleaded guilty. More serious and violent cases were more likely to take longer than 6 months, and in turn were more likely to be dismissed or discontinued.

Figure 1 shows 24% of cases where no information was given on the length of time taken. From the greater percentage of cases resolved in less than 1 month shown in Figure 2 and the similarity of the figures for the other time periods, it can be concluded that a significant proportion of the cases where no information was given were those likely to have been resolved in under 1 month.

From selection of court records:

Fig. 2

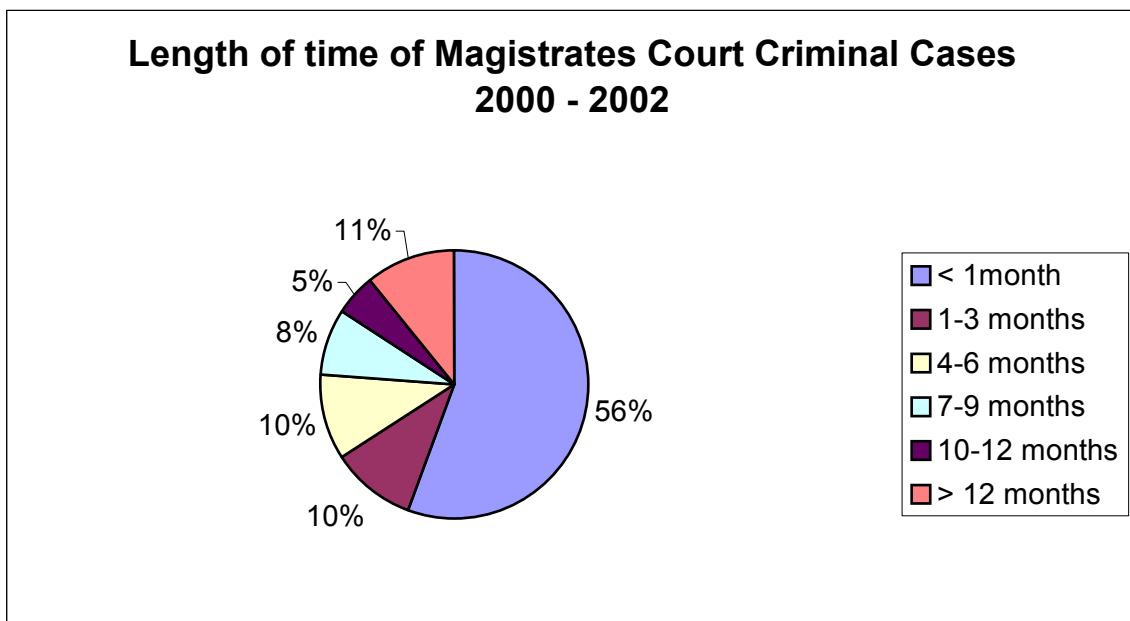
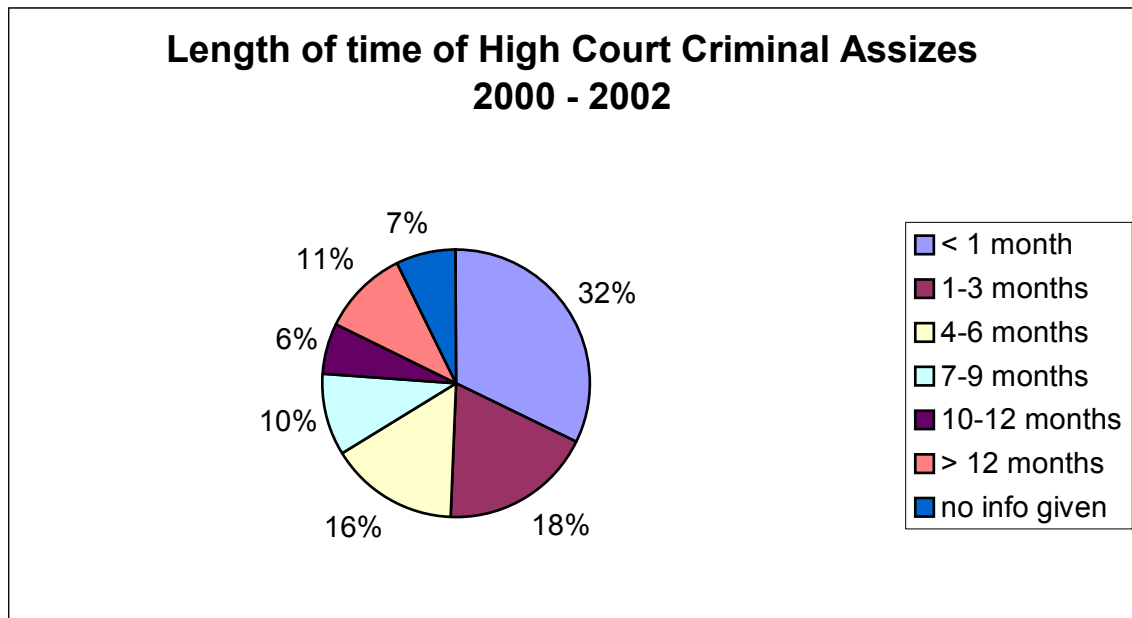


Fig. 3



The more serious cases are heard in the High Court criminal assizes, after having a preliminary inquiry at the Magistrates' Court level. These High Court cases have therefore already been in the criminal justice system for some time before they are heard in the assizes. The lengths of time shown in Figure 3 above indicate the time taken within the High Court only, and do not include the time taken in the Magistrates' Court first.

Although 66% of cases are completed within 6 months of being in the High Court, at least 11% of cases still take more than 12 months at this level.

4.2 Investigation-Related Delays

Although the scope of this study was not intended to include delays that occur before a case gets to court, during the course of the research it became clear that the investigation process contributed significantly to delays in the criminal justice system (12.8% in the Magistrates Courts – see Table 1). This section is therefore included in the report as additional information for better understanding of the overall causes of delays. It should be noted that this is an area that would benefit from further research in order to provide fully comprehensive recommendations for reduction of investigation-related delays.

Before a case goes to trial in either the Magistrates' court or the High court, the investigation by the police must be completed. The investigation is typically completed before a case is scheduled for hearing at the High Court criminal assizes, and therefore the reasons for adjournment in the High Court rarely include the case file not being ready. Investigation-related delays are nonetheless significant, and despite the efforts of the police force, there are some delays that continue to occur during the investigation for reasons that are discussed here.

Case file preparation process

The process of preparation of case files is bureaucratic, and requires several ranks of police officers to check the files and verify that they are ready to go to trial. For summary cases, a Constable may investigate the case and then the files are examined by Sergeant, Station Sergeant and Inspector before being passed for trial. For indictable cases, an Assistant Superintendent and occasionally the Director of Public Prosecutions will examine the file before it goes to trial. This multi-tiered system of verification is to ensure that there is a prima facie case to answer so that it is not dismissed prematurely, but this causes considerable delays as the senior officers have many files to verify. This not only engages senior officers in routine tasks that reduce the amount of time they have available for strategic analysis, planning and management, but also reduces the

accountability of junior officers. The junior officers do not have ultimate responsibility for the case files they prepare and are less inclined to do a thorough and complete job.

Witnesses

During investigations, the police must ensure that everyone mentioned in the case is interviewed as a potential witness. It is estimated that approximately 10% of potential witnesses will try to evade the police because they are apprehensive of standing as a witnesses to a crime that has been committed. This is especially the case when the accused person is known to be a violent person and the witness fears a reprisal. It can also be challenging to locate some of the witnesses because the police may only have an alias to refer to.

Complexity of cases

Crimes are increasing in complexity and sophistication, and so require greater resources from the police to investigate them. This includes the number of witnesses to be interviewed and the use of sophisticated technology to perpetrate or cover up the crime. There are also a greater number of crimes committed and investigated on average in Barbados than there were 15 years ago, for instance, thus increasing the police workload.

Inadequate Training of Police

Police officers attend a training course for 6 weeks, after which they start work in the field alongside more experienced officers. It is felt that this period of training is inadequate and cannot sufficiently prepare them for the work in the field, resulting in mistakes being made and investigations taking longer than necessary. Detectives have to be dedicated to their jobs in order to carry out a thorough investigation, and many are young and inexperienced, resulting in several of the cases being assigned to more experienced and dedicated detectives, resulting in excessive workloads. The number of police officers is often felt to be inadequate, although opinion on this varies as some senior police officers feel that efficiency needs to be increased instead, for example by scheduling static shift periods for officers instead of rotating shifts which are more difficult to manage.

Pre-trial disclosure

Pre-trial disclosures (copies of the prosecutions' witness statements) are often requested by the defence Attorneys, whether the case is summary or indictable. There is a significant cost in terms of resources such as time and stationary for preparing these and currently they are prepared by the investigating officers, reducing the amount of time available for them to spend on carrying out investigations.

4.3 Court Delays – Reasons for Adjournments

The data that was gathered from court records give the most accurate picture of reasons for delays in each of the courts. For the Magistrates court and the High court, this data has been presented in the form of bar charts for ease of presentation and understanding.

For the Appeal court, the data is presented as figures and explanations given. This is because the reasons for delay in each case was not clear, and had to be deduced from the length of time taken from the date of appeal to the receipt of the record of appeal from the Magistrates and High courts. The time taken from receipt of the record of appeal to the final hearing was also considered for the cases that had been completed.

4.3.1 Magistrates Court

The adjournments that are initiated by the defence constitute approximately 44% of the total, and were found to be mainly due to either the Attorney or the accused person(s) being absent. Approximately 8.7% of cases are adjourned because the witnesses called by the defence are absent.

Adjournments initiated by the prosecution constitute 27% of adjournments. Typically, a case is lodged in court by the prosecution, and a date of hearing given by the court. The investigation may not be complete by the given date, and the case is adjourned to a later date, with the reason given as “file not ready”. Prosecution witnesses being absent is another reason for prosecution related adjournments.

There are other adjournments for miscellaneous reasons. A number of cases are presented in court to enable the accused person an opportunity to be granted bail if appropriate. The law requires that persons remanded in custody appear in court at least every 4 weeks (previously weekly) even before the date for trial arrives (6.8%). However, it may be argued that this would not strictly be considered a cause of court delays as this is a necessary procedure in the course of a trial.

Case overload occurs when the one or more of the cases set down for that particular day takes longer than anticipated. This prevents the remaining cases from being heard on the same day. In 16.1% of cases, there was no reason given for the adjournment which compromises the study as this is a sizeable percentage of cases, and conclusions and recommendations are made based on the cases for which there is adequate data only.

Fig. 4

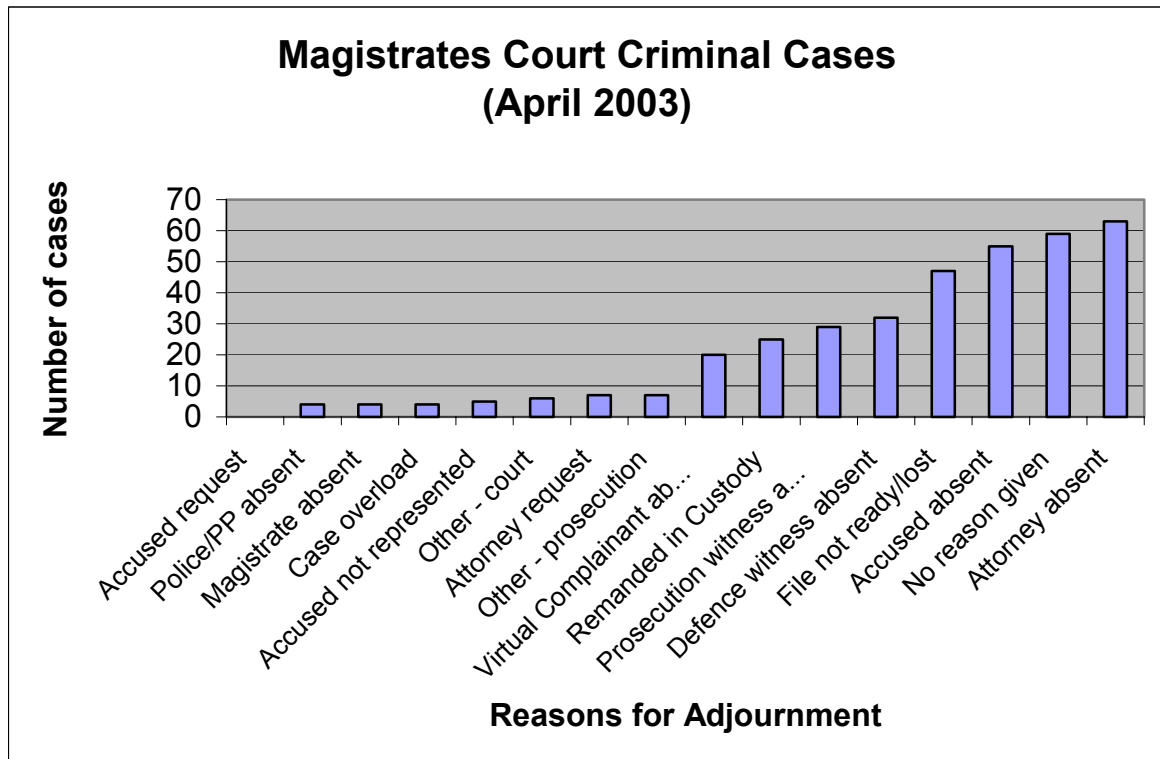


Fig. 5

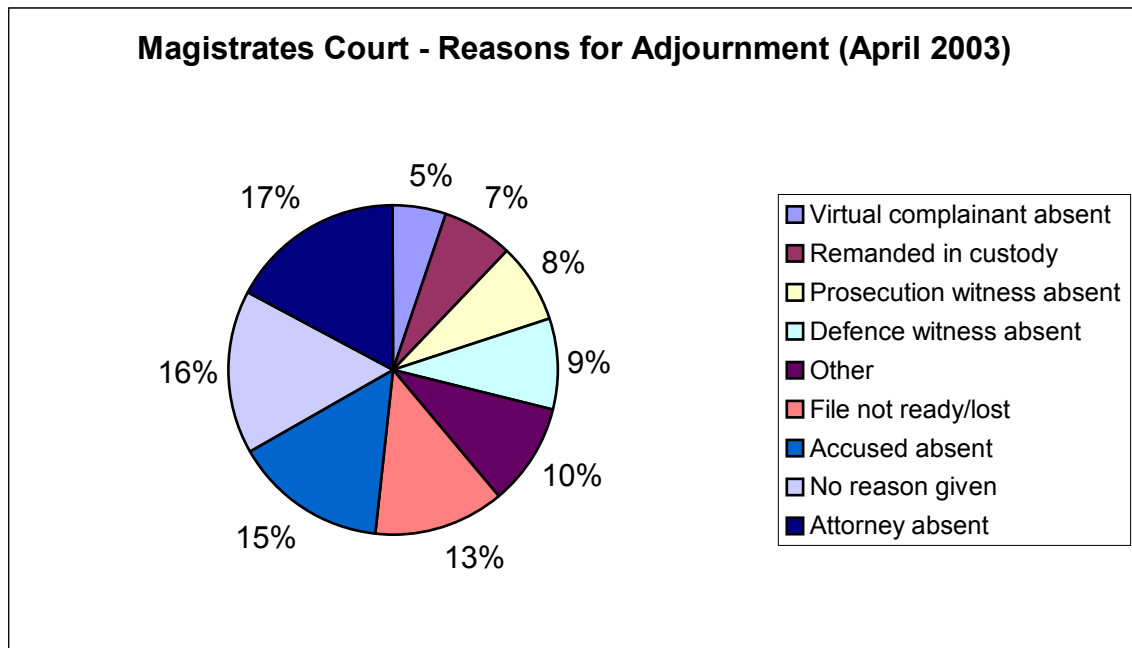


Table 1 - Adjournments in Magistrates' Courts

Reasons for Adjournment	% of Total
Accused request	0.0
Police/Prosecutor absent	1.1
Magistrate absent	1.1
Case overload	1.1
Accused not represented	1.4
Other - court	1.6
Attorney request	1.9
Other - prosecution	1.9
Virtual complainant absent	5.4
Remanded in custody	6.8
Prosecution witness absent	7.9
Defence witness absent	8.7
File not ready/lost	12.8
Accused absent	15.0
No reason given	16.1
Attorney absent	17.2
	100.0

In the Magistrates court as a whole, the 4 top reasons for adjournment are:

- Attorney absent (17.2%)
- Accused absent (15%)
- File not ready / file lost (12.8%)
- Witness absent – prosecution and defence (16.6%)

In addition, the number of cases where no reason for adjournment was given in the file and the clerk could not recall the reason was 16.1%. These 5 categories make up 77.1% of adjournments in the Magistrates court.

Defence-Related Adjournments

A significant number of adjournments in the Magistrates Court are initiated by the defence, both counsel and accused, although opinions about what proportion can be attributed to the defence varies from 30% to 70%. There are a number of reasons for these defence-initiated adjournments, the principal ones being:

Attorneys at other courts

The High court takes precedence over the Magistrates court, therefore during the assizes many attorneys are unavailable to attend trials in the Magistrates court.

Magistrates' court schedules are not synchronized which leads to attorneys being scheduled to appear in more than one court on the same day. In addition, if a case is adjourned for a day or two, the attorney may not be available to appear in court because of the short notice given.

Attorneys have not been retained

An accused person may have briefed the attorney but not retained his/her services by paying part of the attorney's fee. In such cases, the attorney may not appear in court on the day of the hearing, or may request an adjournment.

In addition, the accused person may not have briefed (and retained) an attorney and requests an adjournment in order to do so, either privately or using legal aid through the Community Legal Services Commission (CLSC). It is estimated that 40% of accused persons defend themselves. Legal aid is not available for most criminal cases, with the exception of the most serious crimes such as murder.

Lack of defence attorneys

Although there are a large number of attorneys practicing in Barbados, a very small number of them specialize in criminal law as it is considered less profitable than commercial law, for instance. The probability of an attorney being unavailable because s/he is attending another court is therefore much higher than it would be if more attorneys specialized in this area of the law.

Pre-trial disclosure not received

The defence is entitled to receive the pre-trial disclosure from the prosecution – this is a file containing all the evidence that the prosecution is going to use. Although the defence can request this for summary as well as indictable cases, the prosecution often does not respond to such requests in a timely manner, leading to a request for adjournment from the attorney.

Accused absent from court

An accused person may have cases in other courts on the same day, or may not keep a good record of the next date of hearing for a particular case and fails to appear in court. When there are multiple accused persons, if any one of them is absent from court, the case may have to be adjourned until another date. In such complex cases with multiple-accused, it is often quite difficult to ensure that all the accused are in court on the given date, except if they are all on remand at HM Prisons. A warrant may be issued for an accused person who fails to appear in court.

Attorney unprepared

There are times when the attorney is just unprepared and will either fail to attend the court on the appointed day, or request an adjournment if they do attend.

Prosecution-Related Adjournments

In criminal cases in Barbados, the prosecution is almost always the police prosecutors, or the department of public prosecutions (DPP).

Prosecution not ready

In some cases, the investigation has not been completed when the case is due to be heard, and therefore the prosecution is not fully prepared. Reasons for delays in investigations are discussed under the section “Investigation-related Delays”.

For cases which require forensic tests as part of the investigation, such as murder, rape, firearm and drug related cases, the results of such tests must be awaited from the Forensic department. This department is a very busy one and has to prioritize its work - the police investigators often do not inform the department of the court date that the results are for, and an adjournment has to be requested when the test results are not ready for that date.

In serious, complex and some indictable cases, the police prosecutors will pass the case file to the DPP for advice. This is an important part of the preparation, but increases the time taken for the prosecution to be ready for the hearing.

Witnesses not warned / not available

The prosecution witnesses are often given very little warning prior to the date of hearing. This makes it difficult for many of them to attend the hearing, especially for professional/expert witnesses who may already have a number of other appointments for that date. Witnesses who are employed may have difficulty obtaining leave from their place of work at such short notice.

In addition to that, some witnesses are reluctant to give evidence in court for fear of retaliation from the accused or his/her associates.

Witnesses not found

The longer a case is in court, the likelihood of witnesses moving to a new house or employer increases. Very often, the person does not inform the court of his/her new contact details and that makes it very difficult or nearly impossible to inform them when a hearing date is set.

Virtual Complainant not Ready

For some particularly traumatic cases such as rape, the virtual complainant may need time to prepare for the emotional and psychological effects of recounting the events in court and to being cross-examined by the defence.

Police Officers not Available.

The investigating officer may be unavailable for a number of reasons, and therefore unable to give evidence in court on the scheduled date. S/he may be involved in other investigations or police work, giving evidence in another court (High court takes precedence), on holiday or sick leave from work.

Court-Related Delays

Cases in other Courts

The High Court takes precedence over the Magistrates court, and so if attorneys, witnesses, policemen or any other person are required for a case that is being heard in the High court, they will be unavailable to appear in a Magistrates court.

In addition, schedules for the Magistrates courts are not centralized, and attorneys may have cases scheduled in more than 1 court at the same time.

Magistrates Time

If the Magistrate for a particular court is absent for any reason (on holiday or on sick leave), the cases that are to be heard in that court are adjourned.

When cases that have been heard are appealed, Magistrates have to take the time to prepare a file containing the reasons for their decisions and the notes of evidence, for forwarding to the Court of Appeal.

Long Hearing

Several cases are set down to be heard for any given date, but some of them may take longer than expected to be heard. This results in several cases being adjourned to another date.

Notes of Evidence

Magistrates are required to write notes of evidence by hand during the hearing of every case. This is laborious and time consuming, resulting in everyone who gives evidence or conducts a cross-examination having to speak slowly so that their words can be recorded by the Magistrate. It is also tiring for the Magistrate, and although some courts may sit for up to 6 hours in a day, 4 hours is more common bearing in mind that the Magistrate also requires time to prepare his/her judgments, among other responsibilities.

Other Reasons for Delays

It seems to have become the accepted norm for several adjournments to be made when a case is before the courts. The workload of the court is high, and the coordination that is required between court, prosecution, and defence is not always achieved. There are also cases in which the court will allow a delay in the hearing in order to give the accused an opportunity to make repayments where a case involves money and so on.

Traffic

There are an extremely high number of traffic cases passing through the courts. Many of them are dealt with on the first date they are set down, but others may be adjourned because police officers often have other commitments and cannot attend the traffic court.

Additionally, in many cases, if the accused person does not appear in court, s/he can be hard to find, especially if a false address has been given or if they have moved.

Drugs / Firearms

This has been dealt with under the section “Prosecution-Related Delays”, but is mentioned here for completeness. Cases involving drugs and/or firearms cannot proceed until the forensic report on the drug-substance or the firearm, ammunition, and related substances has been completed.

4.3.2 High Court

Defence-related adjournments constitute approximately 51% of adjournments occurring in the criminal assizes, with accused not represented being 44% of that total, and attorney absent a further 29% of that total.

Of all the adjournments in the criminal assizes, no reason for adjournments are given in 31% of cases in the records, and it was not possible to determine a likely reason. This hampers the results of the study somewhat, as it constitutes a significant proportion of cases.

Fig. 6

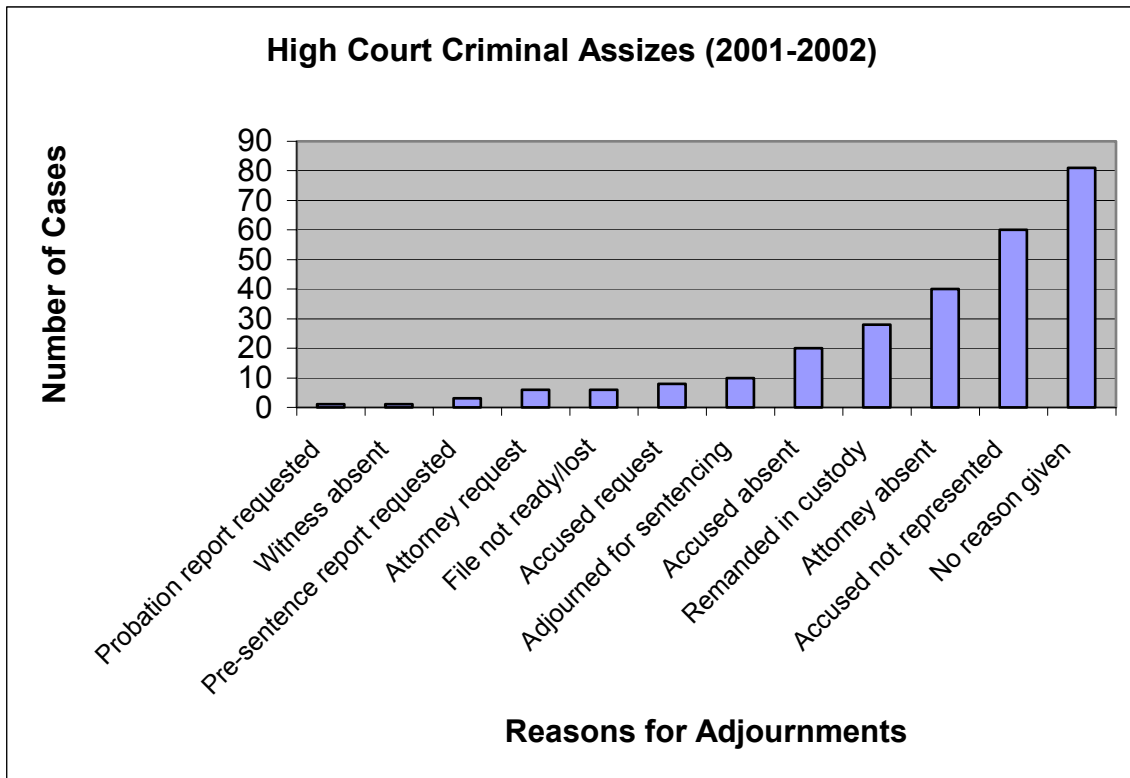


Fig. 7

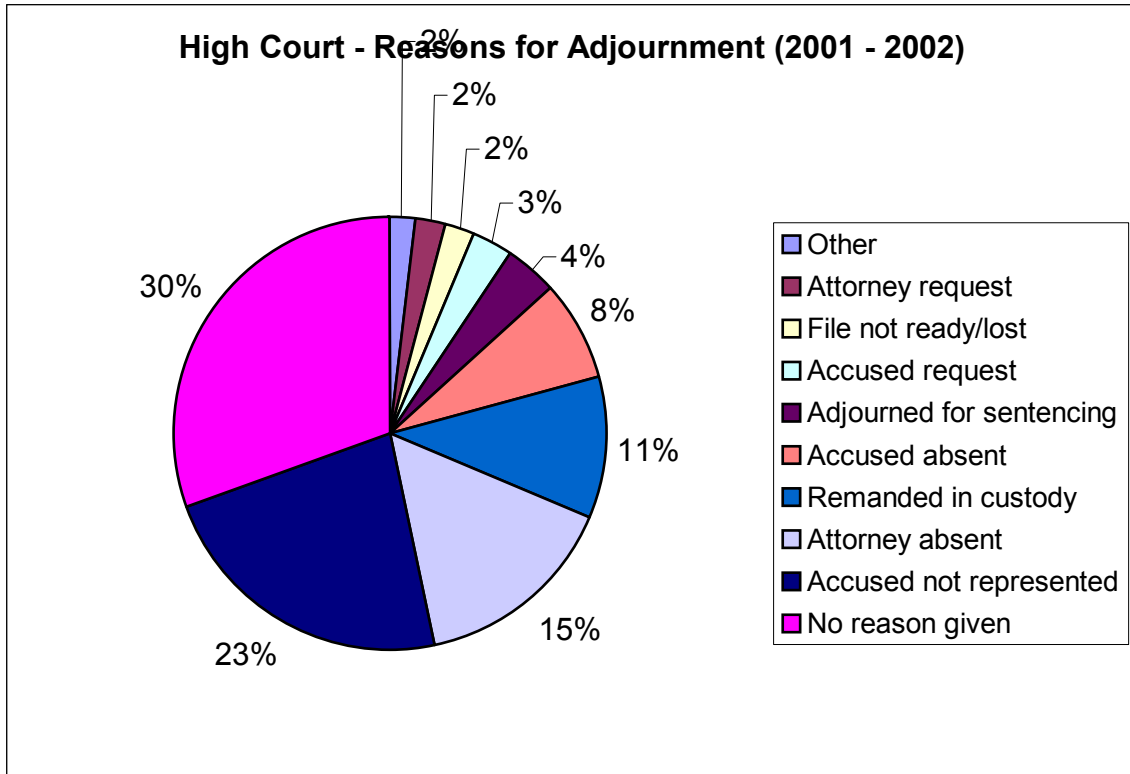


Table 2 - Adjournments in High Court

Reasons for Adjournment	% of Total
Other	1.9
Attorney request	2.3
File not ready/lost	2.3
Accused request	3.0
Adjourned for sentencing	3.8
Accused absent	7.6
Remanded in custody	10.6
Attorney absent	15.2
Accused not represented	22.7
No reason given	30.7
	100.0

In the High court as a whole, the 3 top reasons for adjournment are:

- Accused not represented (22.7%)
- Attorney absent (15.2%)
- Remanded in custody (10.6%)

In addition, the number of cases where no reason for adjournment was given in the file and was very high at 30.7%. These 4 categories make up 79.2% of adjournments in the High court. However, the category “remanded in custody” represents a requirement by law for persons on remand to appear in court at least once every 4 weeks while awaiting trial. It cannot strictly be considered a cause of court delays as it is a necessary procedure in the course of a trial.

Defence Related Adjournments

From the interviews conducted with respect to adjournment of cases in the High Court criminal assizes, it is widely believed that the majority of the adjournments are initiated by the defence. The schedule of cases for each assizes is set by the Department of Public Prosecutions, and therefore cases are only included if the prosecution is ready to go to trial. In an effort to reduce the number of adjournments and improve scheduling for the assizes, case files are checked by the Deputy Registrar to ensure that the case is ready to go to trial. Another initiative that was introduced was the “practice direction” in which the defence attorneys completed a form declaring that they were ready to go to trial. The attorneys did not make adequate use of this initiative, however, and it was therefore ineffective. They were also required to sign next to each case they had on the proposed schedule, at the beginning of the assizes, to indicate the cases for which they were ready and had been properly retained.

Counsel not retained

Although it is not always stated explicitly, it is understood that when an Attorney requests an adjournment because s/he has not been retained by the client it is because the client has not paid the Attorney the required fees to appear on their behalf in court. It is estimated that this is the reason for up to 80% of counsel-requested adjournments.

Unavailability of Attorneys

There are only a small number of defence Attorneys in Barbados, which has an impact on the scheduling of cases in the assizes. The number of assizes courts was increased from 2 to 3 in order to speed up the hearing of criminal matters, but the scheduling of cases was

challenged by the availability of the Attorneys as two or more cases being defended by the same Attorney could not be scheduled for trial simultaneously. There are currently only 2 courts in session during the assizes. It is widely believed that commercial work is more lucrative for Attorneys and therefore more attractive than criminal defence cases.

Strategic Adjournments

Strategic delaying of cases by the defence is sometimes used when it is felt that the judge or the jury before which the case is being tried, or is scheduled to be tried, are biased in some way. In such cases, the defence attorney may request an adjournment under a different pretext in order that the case is traversed to the next assizes when there is a different jury and perhaps a different judge. In addition, the longer a case is dragged out, the weaker the prosecution's case may become as witnesses cannot recall details of what happened and it is not general practice to remind them of any evidence they may have given during the investigation.

Accused Not Represented

Legal aid is only available for particular types of cases, typically those for which capital punishment may be an option, and for those cases that the judge considers to be too complex for the accused to defend him/herself. This results in a significant number of cases where the accused person(s) are not represented by counsel as they cannot afford to retain an Attorney and are not eligible for legal aid. In such cases, the judges are more inclined to grant adjournments when requested by the accused in order to allow him/her more time to study the deposition and prepare their case, or more time to (accumulate the funds to) retain an Attorney.

Late Adjournment Requests

Instead of applying in chambers for another trial date, defence Attorneys will often call at short notice to inform the court that they cannot attend on the date scheduled, and request an adjournment. This results in the court's time being wasted and another case then has to be scheduled at short notice in its place.

Prosecution Related Adjournments

Witnesses unavailable

Even with adequate notice, there are occasions when prosecution witnesses are unavailable to attend the hearing of a case for a variety of reasons. This is not seen as a major cause of adjournments as it is not perceived that this occurs very often for the duration of a particular assizes. If a witness cannot attend court on a particular day, s/he is usually available within the next few days, and the case does not have to be traversed to the next assizes.

Complex cases

For complex cases with multiple accused and multiple Attorneys it is a challenge to schedule the case for trial when all the parties are ready and available to attend court. This may result in a case being part heard and then traversed to the next assizes in order to accommodate the various parties.

Re-scheduling of cases

There are times when a case is finished sooner than expected or it is traversed to the next assizes, and another case originally scheduled for later in the assizes may be moved up at short notice so as not to waste the courts time. This means that all the parties in the case such as the accused, defence Attorneys, and witnesses are called at short notice and may not always be available, resulting in further adjournments.

Courts

Part-heard and older matters take precedence over unheard matters. Although this is logical and would appear to be fair, it can mean that more recent cases are not scheduled for trial in a particular assizes even though they may be ready to proceed.

4.3.3 Appeal Court

Magisterial Appeals:

Over the 2-year period 2001 to 2002, a total of 22 magisterial appeals were lodged. Of those, 4 appeals (18%) have not been heard. The average time from the date of appeal to the date of hearing is 3.8 months, and the median time is 4 months.

High Court Appeals:

Over the 2-year period, a total of 98 High court appeals were lodged of which 44% have been completed, and 7.1% abandoned. A further 31% have had record of appeal documentation submitted to the Appeal court by the High court and are awaiting the appeal hearing. The remaining 18.4% of High court appeals lodged are awaiting record of appeal documentation. From 2002, 27.5% of cases are awaiting record of appeal documentation from the High Court, 50% are awaiting a hearing, and only 17.5% of cases are completed, with 5% being abandoned. From 2001, 12.1% of cases appealed are awaiting documentation and 17.2% awaiting hearing, while 62.1% of cases are completed and 8.6% abandoned.

Defence Related Adjournments

Attorney not ready

In some cases, the grounds for appeal are submitted later than the 21-day guideline for submitting them, which begins the delay in the appeal process. This is especially important when the defendant has been given a prison sentence and cannot be granted bail. In addition, there are occasions when the court is ready to hear an appeal, but the Attorney requests an adjournment as s/he is not ready.

Change of Attorney

Appellants will sometimes opt to change the Attorney who is to represent them, even after the relevant documents on the case have been sent to the original Attorney by the

Appeal court. The new Attorney then has to be sent the same documents and given time to prepare the appeal before it is heard.

Court Related Adjournments

Delay in preparation of Record of Appeal

The Judges or Magistrates notes accompany the documentation presented by the High court or Magistrates' court on any case that is being appealed. There are often major delays in the receiving these from both the Magistrates and High courts, even though the computer aided technology used in the criminal assizes should help to reduce this delay from the High courts. The Magistrates' courts do not use computer-aided technology, and the notes of evidence along with the reasons for the decision made by the Magistrate must be prepared by the Magistrate. This is in addition to the workload of current cases being heard in his/her court, and may not be of the highest priority.

Appellate Judges

For each appeal case, three appellate judges must hear the appeal. If one of the judges is unavailable for any reason including holidays, sickness and so on, no appeals can be heard. On average, the Appeal court has a sitting 4 days a week when all the judges are available.

Defence / Prosecution Availability

The date of hearing of an appeal must be scheduled on a mutually convenient date for the defence and prosecution representatives (usually attorneys), as well as the appellate judges. Scheduling of High court appeal hearings are likely to be impacted by the assizes that take place over several months of the year, during which both defence and prosecution attorneys are often unavailable for appeal hearings.

4.4 Summary of Findings

In summary, although for a substantial proportion of adjournments no reason was recorded, of the adjournments for which reasons were either recorded or recalled, the main causes of delays are (by level of court):

Magistrates' court:

- Attorney absent
- Accused absent
- File not ready / file lost
- Witnesses absent

High court:

- Accused not represented
- Attorney absent

Appeal court:

- Record of appeal documentation awaited
- Scheduling of appeal hearing

From the interviews that were conducted, it was found that the main reasons for the above causes of delays were as summarized below:

Attorneys absent

- During the assizes, the High court takes precedence over the Magistrates' court
- Magistrates' court schedules are not synchronized and attorneys may be scheduled to appear in more than one court on the same day.
- Attorney has not been retained by the client
- Small number of defence attorneys in Barbados

Accused not represented

When the accused person(s) is not represented by counsel, the judges tend to take a more lenient approach and will allow adjournments to give the accused more time to study the depositions and prepare for trial.

Case file not ready

In cases where the reason for adjournment is that the case file is not ready, this is due to delays within the investigation process. The main causes of these delays are:

- Lengthy process for preparing case files
- Inadequate training of Police officers / increased complexity of cases

Accused absent

The absence of accused persons is thought to be mainly due to the following reasons:

- Accused has cases in other courts
- Complex cases - multiple accused / multiple attorneys – difficult to schedule hearing

Witnesses absent

The absence of both prosecution and defence witnesses is to be directly related to:

- Witnesses given inadequate warning
- Witnesses not found

5. Recommendations

From the quantitative and qualitative studies carried out, it was found that nearly 80% of adjournments are due to reasons outlined in *4.4 Summary of Findings*. In order to eliminate the majority of adjournments, therefore, the following recommendations address the most common causes of adjournments and also incorporate suggestions offered by several of the interviewees within the justice system.

It should be noted that a number of persons who work within the justice system feel that most of the delays are inevitable and there is little that can be done to reduce them significantly. This would indicate that an education program would be useful to sensitize employees within the criminal justice system to the importance of reducing delays, and the part each person plays in doing so. In addition to this, the court records should always include the reasons for adjournments in order to facilitate future studies of this nature.

5.1 Police Procedures

The investigation of a case by the police is the first phase in which delays are introduced. Some of these delays are due to the complexity of cases, but a significant factor is the bureaucratic procedure for preparing and approving case files for court hearings. The current process not only wastes police time but also reduces the level of accountability of junior officers. Junior officers should be required to complete case files and take responsibility for them, ensuring that all the investigation is complete and the necessary information has been included in the file. A system of rewards for proper case file preparation should be introduced to encourage junior officers to take greater pride in this aspect of their work.

5.2 Court Management Technology – Scheduling / Court Reporting

Scheduling of court hearings and trials should be coordinated among the various courts, preferably using technology to achieve this, specifying both date and time of day (morning/afternoon). It can then be ensured that the various parties to each case (the attorneys, prosecutors, witnesses, accused, virtual complainants) are not scheduled to appear in another court on the same day or at the same time.

In addition, real time court reporting would play a significant part in reducing the time taken for each hearing, as the proceedings are currently recorded by hand in the Magistrates' courts. Delays are also experienced in the High court, as not all the court reporters record the proceedings in real time. Not only would the introduction of real time court reporting reduce the time taken for each hearing, it would also reduce the physical demands on the Magistrates (and in some cases, the Judges) thereby freeing them up to focus on the evidence being presented and allowing for more improved decision making. The current hold ups experienced in the Appeal Court which are due to delays in the Magistrates and Judges submitting their notes of hearing would also be reduced significantly. Such hold ups account for 22% of Magisterial appeals, and 30% of High court appeals over the last two years.

5.3 Witness Warnings

Police prosecutors need to warn their witnesses a minimum of 10 days in advance, and not the day before. Procedure for serving police witness with summons to court needs to be revised. It seems reasonable that the police stations to which such summons are submitted should be responsible for ensuring that the individual police officers receive their summons. These summons need to be served at least a week in advance to allow witnesses to adjust their schedules to accommodate the court hearing.

It would be useful to assign the task of warning witnesses, accused, virtual complainants and so on of the date of hearing, to specific officers or civilians working within the police force. These persons would work alongside the Court Process Office to ensure that the warnings, summons and warrants are delivered at least a week before the date of the hearing. They would also be responsible for other administrative tasks such as preparing pre-trial disclosures to presentation to the defence in the appropriate time frame.

5.4 Additional Assistance for Accused Persons

In only the most serious of cases do accused persons currently qualify for legal aid-funded representation in court. However, a significant number of adjournments in the High court are due to the Judges granting accused persons who are not represented by counsel additional time to prepare their cases. This should be structured so that the accused persons who cannot afford an Attorney and do not qualify for legal aid are required to prepare their cases before the date of the hearing. This can be achieved if a free or low-cost facility is set up for accused persons to be given advice and assistance in preparing their cases, and they are properly informed of their obligation to be ready for the hearing. This recommendation also applies to accused persons who have not retained an Attorney, even though they may have briefed him/her, as this also causes delays and requests for adjournments.

5.5 Penalties for Late Adjournment Requests

Adjournments need to be requested before the date of the court hearing. At present, a large proportion of adjournments are requested on the day of the hearing, either explicitly or by default when one of the persons required for the hearing is absent. This wastes court time, and causes delays in other cases that might have been scheduled for that day if the adjournment was requested in good time. A system of penalties for late adjournment requests should be introduced, with care taken to avoid the brunt of these penalties being borne by the accused or the virtual complainant when they are not at fault. These penalties should apply to both the defence and the prosecution.

6. Conclusions

The study on Court Delays was conducted to determine as objectively as possible the causes of the most number of delays within the court system in Barbados. Court records were used in the quantitative part of the study in order to allow for objectivity, as opinions are many and varied as to the main causes of these delays. For the purpose of this study, the delays that were considered were specifically adjournments of cases within the courts.

The majority of adjournments can be attributed to seven (7) main causes: Case file not ready or lost; Attorney absent; Accused absent; Accused not represented; Witnesses absent; Notes of evidence for record of appeal awaited; and Scheduling of appeal hearing.

Five (5) major recommendations were made which address these main causes, and these are: Change in police procedures to reduce bureaucracy; Introduction of court management technology for scheduling and court reporting; Assignment of responsibility for witness warnings to specific persons within police force; Additional assistance for accused persons; and Penalties for late adjournment requests.

The value of these recommendations in reducing delays in completion of cases can be measured over time using the baseline measurement for the three (3) levels of court included as part of this study.