

Criminal Caseflow Management

Principles and Practice

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Caseflow Management

“Active oversight by the court of the progress of all cases filed by setting certain events for each case and providing for thoughtful, predictable and certain intervals between these events.”

ABA Standard 2.50

- ✓ Any elapsed time...other than reasonably required...is unacceptable and should be eliminated.
- ✓ To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation.
- ✓ A strong judicial commitment is essential to reducing delay, and once achieved, to maintaining a current docket.

Why it Matters...

- 👉 Equal treatment/access to courts
- 👉 Timely resolution of matters
- 👉 Enhanced quality of litigation
- 👉 Better use of time and resources
- 👉 Public trust and confidence in the judicial process

Definitions







Delay – Any elapsed time other than reasonably necessary to complete pleadings, discovery, and court events.

Backlog – The number of cases pending for more than an acceptable period of time, or, the number of cases pending for more than an established standard or goal.

Signs of Caseflow Problems

- Complaints of delay
- Specific case types are problems
- Too many continuances
- Lengthy pretrial detention
- High inventory of open cases

Fundamental Principles

-  Early and Continuous Control
-  Meaningful Court Events
-  Monitoring of Significant Events
-  Trial Date Certainty
-  Consultation with Stakeholders
-  Information and Feedback

Key Findings from Research

- Processing times vary widely
- Statutes, rules and case law do not always explain the differences
- Nor does caseload complexity
- Adding resources is seldom sufficient
- No one best way, but common elements
- Delay is one of the most frequently cited complaints of our judicial system

WHY IS THERE DELAY?

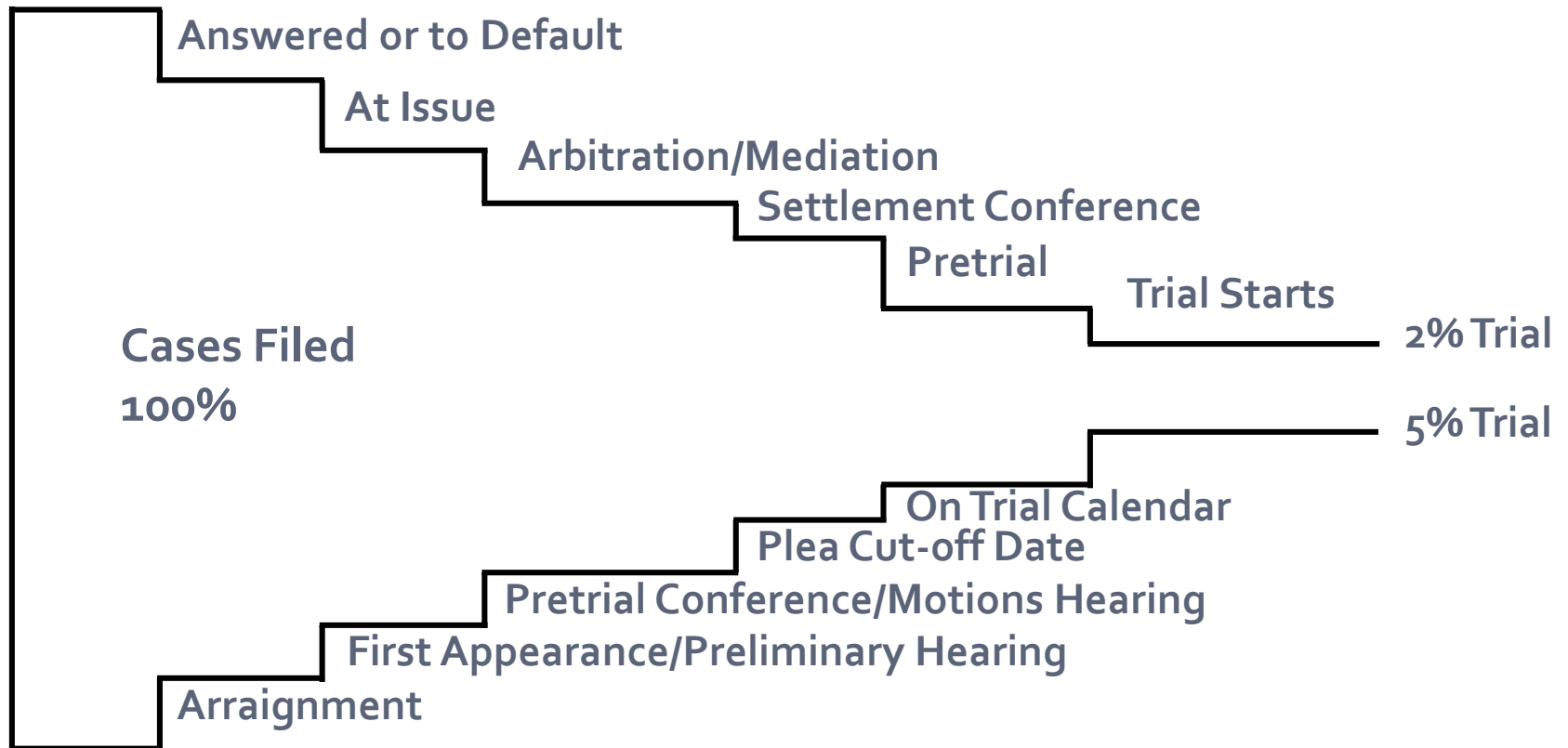
- **Local Legal Culture** -- Customs and expectations of lawyers and judges about the way work is done in OUR court
- **Internal Court Culture** – Attitudes about court management and individual judge autonomy
- **Conflict between Timeliness and Quality of Justice**
 - Efficiency is equated with assembly line justice, lawyers and judges concluding justice will suffer if it's "rushed"
 - Position that lawyers know more about their cases than the court and should therefore control case progress
- **Resources** -- Belief that resources of court, prosecution and defense are inadequate to dispose of cases sooner

Traditional Case Processing

- Most cases go on a trial track
- Cases follow similar procedures
- Continuances are easy to obtain
- Few incentives for early settlement
- Events, particularly trials, are overbooked to ensure time is used

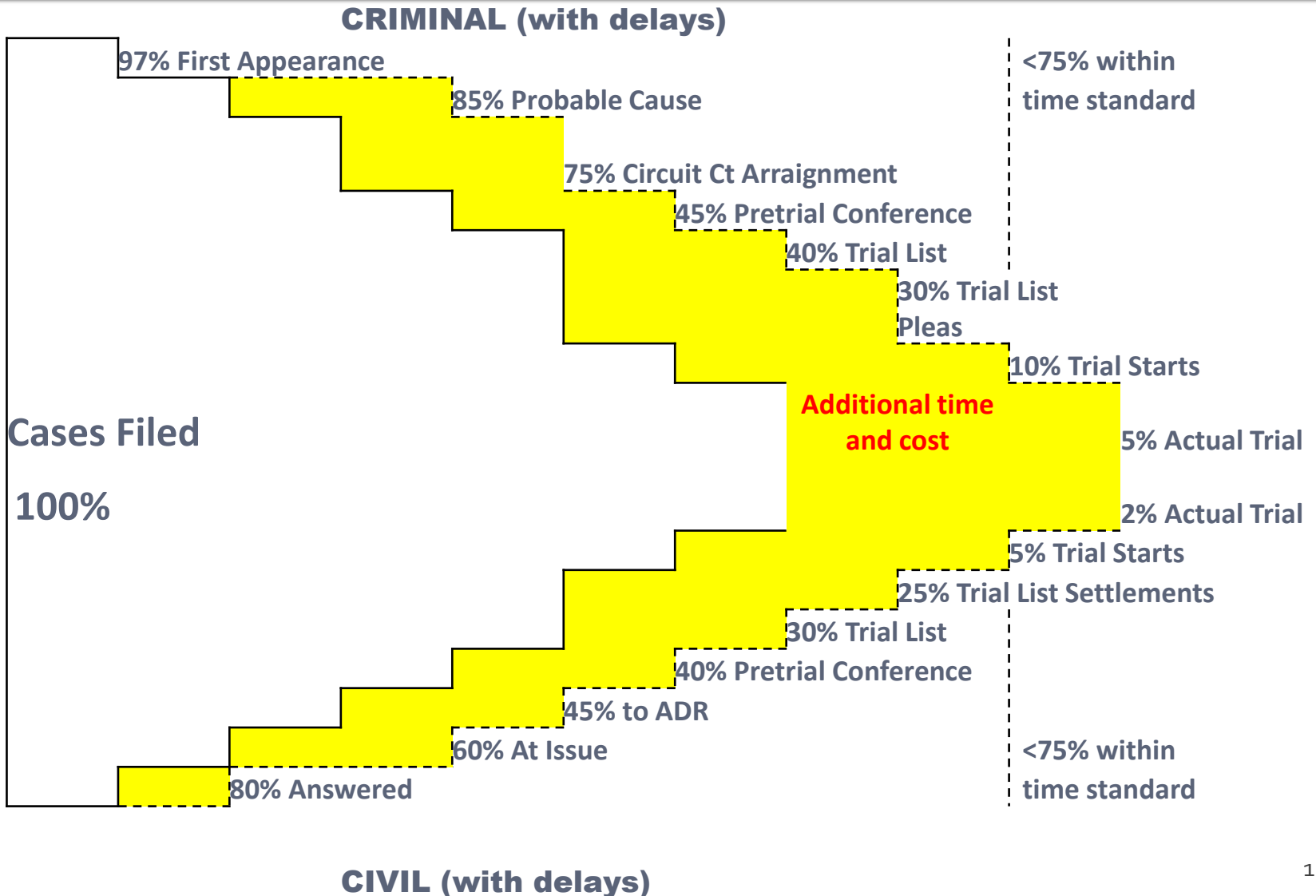
The “Reverse Telescope”

CIVIL



CRIMINAL

THE IMPACT OF DELAY



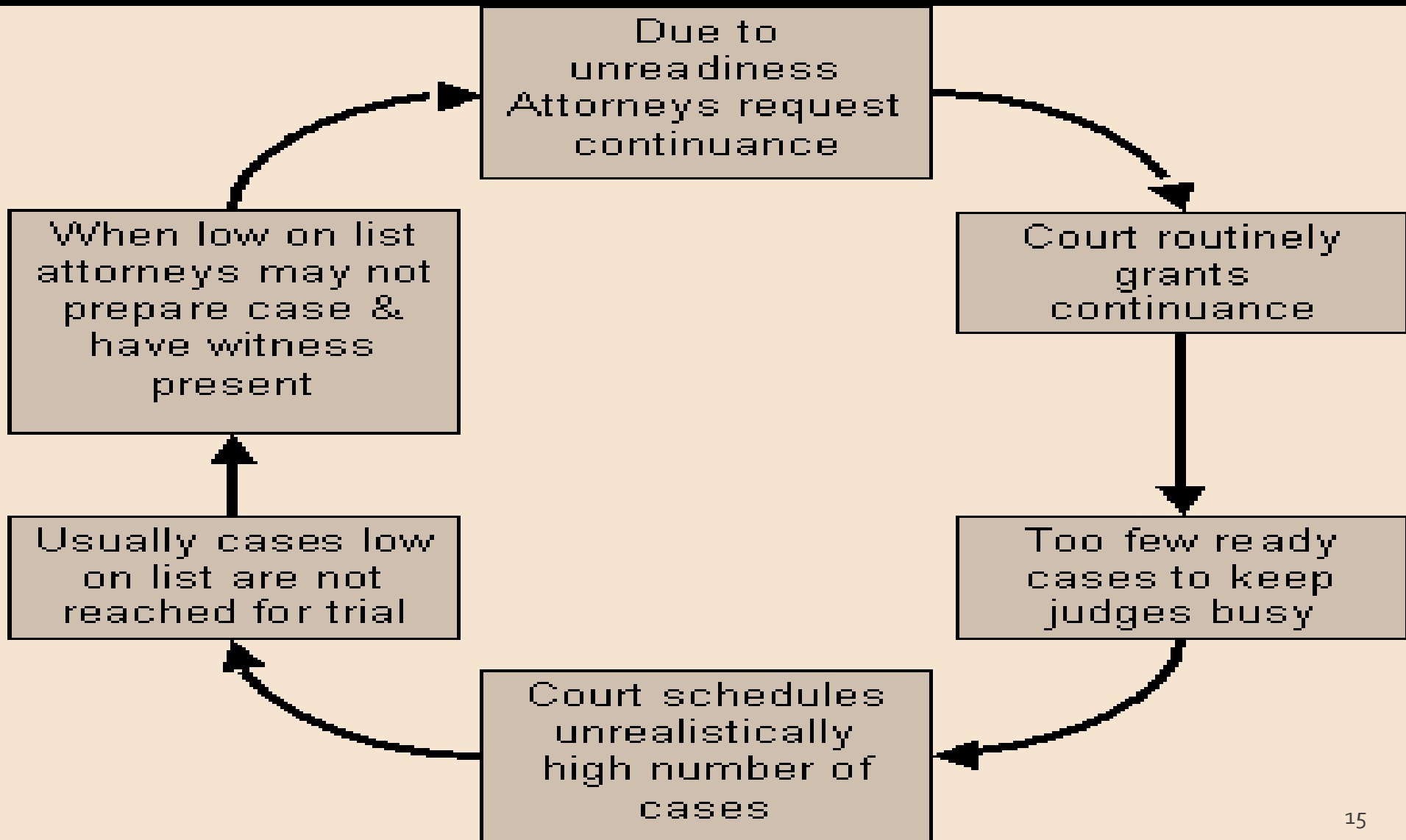
Early Court Engagement

- Monitor cases from initial filing or appearance
- Screen for diversion and early settlement
- Early determination of indigent status
- Prompt counsel consultation with client
- Early exchange of discovery
- Early opportunity for:
 - Identification of cases for early disposition
 - Determination of relative case complexity
- Agreement on case milestones
- Triage pre-sentence investigation (PSI) processes
 - By type of case
 - By time to complete PSI's
 - By offender risks and needs

Managing the Pretrial Phase

- Scheduling orders
- Early discovery exchange
- Prompt decisions on motions
- Prosecutor-defense pretrial conference with realistic plea offer
- Plea cut-off dates

The Continuance Cycle



The Impact of Continuances

- Wasted judge and court time
- Additional clerical work
- Reduced schedule predictability
- Wasted time for parties, witnesses, victims
- Increased juror costs and juror time
- Additional costs for represented litigants
- The loss of memory over time
- Availability of witnesses

Trial Readiness and Supervision

- Reasonable advance notice of deadlines
- Last and final offer date
- Completion of discovery / witness lists
- Consistent policies regarding extensions
- Judicial officer availability
- Agreement on estimated time of trial
- Address special needs in advance
(interpreters, video links, etc.)

Continuance Policies

- Continuances granted only for good cause
- Requests for continuances must be in writing
- Court records reasons for continuances
- Trial date continuances granted only in exceptional situations
- Continuance not automatic, even if both parties stipulate
- Policy is applied consistently

Other Effective Techniques...

Early assembly of key participants & critical case information:

- Early determination of eligibility for counsel
- Prompt provision of arrest information
- **Early provision of “discovery package”** to defense
- Avoidance of overcharging by prosecutor
- Early consideration of plea opportunities

Differentiated Case Management (DCM)

An approach to organizing cases that:

- Takes into account the varying degrees of complexity for certain types of cases
- Enables work on simple cases to be completed more rapidly to ensure adequate time for complex cases
- Better allocates court and attorney resources to resolve cases based on actual need

DCM Components

- Identify factors that impact complexity
 - Subject
 - Experts/witnesses
 - Likelihood of pretrial resolution
- Identify complexity tracks
 - Expedited/standard/complex
- Determine criteria for assignment
- Develop time frames and procedures for each track

Benefits of DCM

- Recognizes what everyone knows – some cases take longer and need more attention
- Provides a rational approach to scheduling and resource allocation
- Enables the court, lawyers and parties to plan and prepare accordingly
- Helps achieve more predictable and productive trials and events

Criminal Case DCM

Case Screening for DCM Track Assignment

- Opportunity to distinguish cases suitable for early disposition from those requiring more court & attorney resources
- Establish screening criteria with participation of prosecutor & public defender
- Screen in terms of such considerations as priority and complexity
- Prosecutor & public defender track assignment recommendation to court

Examples of Complexity Tracks

Low Complexity

- Police witness only
- 2 or fewer motions
- Motion hearings less than half day
- Less than six witnesses

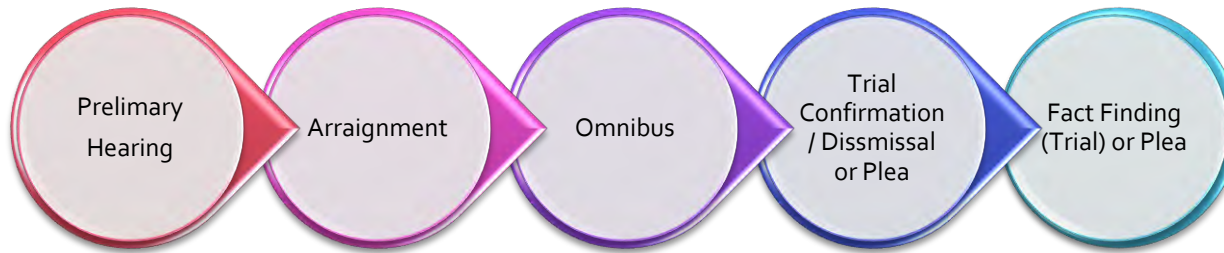
Medium Complexity

- 3 or more motions
- Expert witnesses other than drug analyst
- Motion hearings longer than half day


High Complexity

- Issues of defendant sanity or competency
- Multiple complex motions
- Extraordinary number of witnesses
- Defendant under interstate complaint or in prison

Okanogan, WA Superior Court *Felony Case Tracks*



NCSC CourTool Measures

1. Access and Fairness
 2. Clearance Rate
 3. Time to Disposition
 4. Age Of Active Pending Caseload
 5. Trial Date Certainty
 6. Reliability and Integrity of Case Files
 7. Collection of Monetary Penalties
 8. Effective Use of Jurors
 9. Court Employee Satisfaction
 10. Cost Per Case
- 
- Caseflow
Management
Measures**

CourTools (Continued)

Measure 2: Clearance Rate

Definition: The number of outgoing cases as a percentage of the number of incoming cases.

Purpose: Measures whether the court is keeping up with its incoming caseload.

CourTools (Continued)

Measure 3: Time to Disposition

Definition: The percentage of cases disposed or otherwise resolved within established time frames.

Purpose: Used in conjunction with Measure 2 and Measure 4 (Active Pending Caseload) to assess the length of time that it takes to process cases.

CourTools (Continued)

Measure 4: Age of Active Pending Caseload

Definition: The age of the active cases that are pending before the court. Measured as the number of days from filing until the time of measurement.

Purpose: Cases filed but not yet disposed of make up the court's pending caseload and workload.

CourTools (Continued)

Measure 5: Trial Date Certainty

Definition: The number of times cases disposed by trial are scheduled for trial.

Purpose: A court's ability to hold trials on the first date they are scheduled (trial date certainty). This measures and evaluates the effectiveness of calendaring and continuance practices.

Other Performance Measures...

- ✓ Event interval time
- ✓ Rate of continuances
- ✓ Pretrial detention costs/time
- ✓ Juror utilization
- ✓ Witness & officer costs/time
- ✓ Procedural satisfaction

Model Time Standards – 2011



Unified the current set of disparate standards:

- From date of filing
- Using a tripartite model
- Tracking interim events

Criminal Time Standards

Criminal Felony	75%	90 days
	90%	180 days
	98%	365 days
Misdemeanor	75%	60 days
	90%	90 days
	98%	180 days
Traffic and Ordinance	75%	30 days
	90%	60 days
	98%	90days

Statewide Planning Steps

- Adopt time standards/performance measures
- Collect data current practices and conditions
- Identify information needs
- Establish and evaluate pilot projects
- Review/modify existing court rules, statutes
- Develop CFM planning templates
- Provide training and information
- Develop a system for on-going evaluation & feedback

CASEFLOW MANAGEMENT FRAMEWORK

POLICY & GOVERNANCE

<i>Authority</i>	<i>Collaboration</i>	<i>Strategy</i>	<i>Performance Monitoring</i>
<ul style="list-style-type: none"> • Statutory/rule framework • Policies • Delegation of responsibility • Leadership commitment 	<ul style="list-style-type: none"> • Inter-agency work groups • Information sharing and training • Consultation with the bar, corrections and local agencies • Feedback 	<ul style="list-style-type: none"> • Written caseflow plan • Periodic review and updating • Strategic goals and objectives 	<ul style="list-style-type: none"> • Time standards • Performance goals • Communication • Periodic review and revision

PRACTICE

<i>Court Control</i>	<i>Date Credibility</i>	<i>Early Resolution</i>	<i>Process Analysis/Improvement</i>
<ul style="list-style-type: none"> • Judicial monitoring & enforcement • Limiting continuances • Case complexity management • Ongoing review of pending cases 	<ul style="list-style-type: none"> • Continuance policy & monitoring • Scheduling and discovery policy • Communication and sanctions • Adequate judicial resources available 	<ul style="list-style-type: none"> • Alternative dispute resolution • Differentiated case management • Screening for specialty dockets • Plea cut-off • Priority on in-custody cases 	<ul style="list-style-type: none"> • Judicial resource allocation • Allocation of staff • Process improvement • Resources and training for staff

INFORMATION

<i>Data</i>	<i>Accountability</i>	<i>Case Management Capability</i>	<i>Reporting</i>
<ul style="list-style-type: none"> • Timely, accuracy & complete • Periodic auditing of accuracy • Data entry standards • Availability of information 	<ul style="list-style-type: none"> • Clear assignment of duties • Management oversight • Auditing of processes & practices • Problems addressed promptly 	<ul style="list-style-type: none"> • Case events defined • Continuance tracking • Time interval tracking • Event monitoring 	<ul style="list-style-type: none"> • Aggregate information • Case specific information • Ad hoc reporting capability • Frequency & audience identified

INFRASTRUCTURE

<i>Records</i>	<i>Access</i>	<i>Technology</i>	<i>Physical Infrastructure</i>
<ul style="list-style-type: none"> • Reliability of paper and electronic records • Protection from loss or alteration • Availability of case information 	<ul style="list-style-type: none"> • Litigant access to information for informed decision-making • Availability of records & information systems. • Accessibility of proceedings for victims, witnesses & other participants. 	<ul style="list-style-type: none"> • On-going improvements • Consistency & quality of data • Technical system reliability and availability • Inter-agency information sharing/exchange 	<ul style="list-style-type: none"> • Consultation space • Facility location and convenience • Equipment & provisions for special needs (hearing impaired, interpreters, remote proceedings)