

### Trial Date Certainty

Measure

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**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 to be heard (trial date certainty) is closely associated with timely case disposition. This measure provides a tool to evaluate the effectiveness of calendaring and continuance practices. For this measure, "trials" includes jury trials, bench trials (also known as non-jury trials or court trials), and adjudicatory hearings in juvenile cases.

**Method:** Measuring trial date certainty requires identifying all cases disposed by trial during a given time period (e.g., a year, quarter, or month). After the cases are identified, additional information must be collected to determine whether those cases were tried on the first date they were set for trial or were continued one or more times before the trial actually began.

#### Step 1: Create and Sort the List of Cases Disposed by Trial

Prepare a list of all of the cases disposed by trial during the reporting period and organize them by case type. Next examine the case record to determine the number of trial dates set in the case and record them. The *minimum number* of trial dates set for any case on this list will be 1, since all the cases on the list have at least one trial setting. The list should contain the case number, the type of case, the type of trial, and the number of trial dates set (including the date upon which the trial ultimately began).

After the list is compiled, it should be sorted within case types by trial type, and then by number of trial dates set. Sorting the list in this fashion will facilitate the creation of a summary table showing the number of cases of each type with one date set for the trial to begin, those with two trial-start dates, and so on, up to the maximum number of dates on which the trial was set to begin, by case type and type of trial.

#### Summary Table for Capturing Trial Dates

Court Case Number	Case Type	Trial Type	Number of Trial Dates Set
CV246-357	General Civil	Jury	1
CV555-121	General Civil	Jury	1
FE123-456	Felony	Jury	3
FE654-321	Felony	Bench	4
DO369-123	Domestic	Bench	2
DO212-609	Domestic	Bench	5
∨	∨	∨	∨
∨	∨	∨	∨
∨	∨	∨	∨



## Step 2: Sort the Cases by Frequency of Trial Settings

Prepare a summary table from the sorted list. In the example below, the court had 73 general civil and felony cases disposed by trial during the reporting period, and has sorted them by case type and trial type into columns indicating how many times each case was set for trial. For example, the table below indicates there were 2 Felony Jury cases disposed by trial that were set for trial 1 time; 14 cases set for trial 2 times, 6 cases set for trial 3 times, and so on.

### Annual Summary Report of Trial Settings

Case Type	Trial Type	Number of Settings								Total Cases
		One	Two	Three	Four	Five	Six	Seven	Eight	
General Civil	Jury	2	3	7	2	2	0	1	1	18
General Civil	Bench	2	2	6	3	1	1	0	0	15
Felony	Jury	2	14	6	3	2	1	0	0	28
Felony	Bench	3	4	2	2	1	0	0	0	12

## Analysis and Interpretation

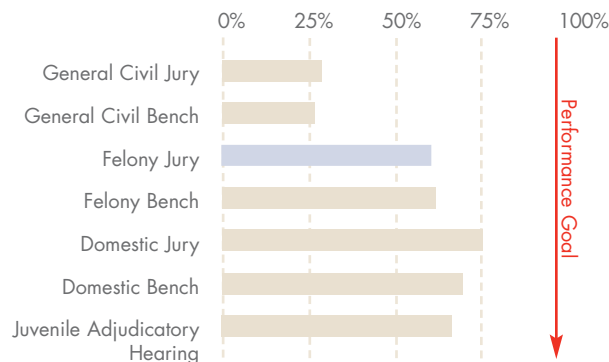
The first way to examine the data is to look at the proportion of cases that meet a specific performance goal set by the court for trial date certainty. For example, the court may seek to have 90 percent of its cases go to trial in no more than two trial settings. Excellent performance would be measured by 90 percent of the cases disposed by trial actually going to trial on the first or second scheduled trial date.

To illustrate, we use data from the table above for a single case type and a single trial type, Felony-Jury, to determine that 57 percent of the cases disposed by trial are meeting the court's goal: 90% of the cases disposed with 2 or fewer trial settings. This can also be determined for all case types and trial types, for comparison.

### To determine Felony Jury performance:

Cases with 1 trial setting	2
Cases with 2 trial settings	+14
Total	16
Total Cases Disposed	28
Percentage within standard	$16 \div 28 = 57\%$

### Trial Date Certainty by Case Type



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#### Computing the Averages by Case Type

A second way to look at the data is to determine the average (mean) number of trial settings by case type. Averages should be interpreted with caution, since a few cases with a high number of trial settings will make the average appear artificially high.

To compute the average, first calculate the total number of trial settings by case type and trial type. Multiply the frequency label in the column heading by the number of cases in each row and add the results. Then divide the Total Trial Settings by the Total Cases Disposed by Trial for that case type/trial type combination to determine the average (mean) number of trial settings per case.

For example, the result in the column labeled "Three" settings for Felony Jury is 18 (3 x 6). Doing this calculation for each column across the Felony Jury row shows that there were 76 Total Trial Settings for the 28 cases of this case type and trial type. Dividing 76 by 28 results in the average: 2.7 trial settings per case.

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Felony	Jury	2	14	6	3	2	1	0	0	28
Felony	Bench	3	4	2	2	1	0	0	0	12
		$3 \times 6 = 18$								
General Civil	Jury	2	6	21	8	10	0	7	8	62
General Civil	Bench	2	4	18	12	5	6	0	0	47
Felony	Jury	2	28	18	12	10	6	0	0	76
Felony	Bench	3	8	6	8	5	0	0	0	30
										Total Trial Settings

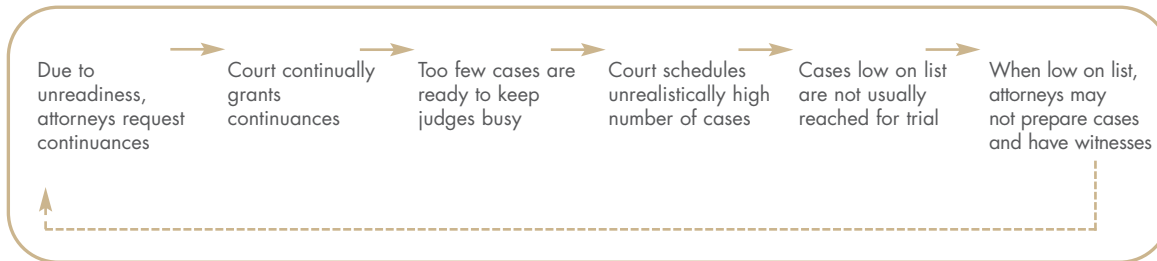
#### Calculate Average Number of Trial Settings

Case Type	Trial Type	Total Trial Settings	Total Cases	Average Trial Settings
General Civil	Jury	62	÷ 18	= 3.4
General Civil	Bench	47	÷ 15	= 3.1
Felony	Jury	76	÷ 28	= 2.7
Felony	Bench	30	÷ 12	= 2.5



## Effect of Scheduling and Continuance Policy

Credible trial dates require a firm and consistently applied policy to limit the number of trial day continuances. If continuance practices are too lenient, attorneys are less likely to be properly prepared on the trial date, which increases the likelihood of a breakdown in the trial calendar. The result is judge and court staff time are wasted.



Source: Maureen Solomon, *Caseload Management in the Trial Court* (Chicago: American Bar Association, 1973), p.50.

Ongoing feedback on calendar dynamics greatly increases the odds that the court can sustain improvement in trial management. Addressing the larger issue of the underlying causes affecting trial date certainty is critical for creating the expectation that case events will proceed as scheduled. For example:

- *Is rescheduling often necessary because there are not enough judges to hear the cases on a given trial day?* If so, the trial-setting practices, whether explicit in formulas or intuitively applied by judges, need to be revised.
- *Are trials routinely rescheduled at the request of counsel (one or both)?* If so, it is likely that an initiative is needed to realign the attitudes of both bench and bar about the importance of trial date certainty. Judges should set trial dates in consultation with counsel to carefully consider necessary preparation time and their future schedule to avoid conflicts; bar members need to be convinced not to agree to a trial date they are not prepared to meet; the court should commit to having a judge available to try the case on the scheduled date; and requests for continuances should rarely be granted.

## Terms You Need to Know

**Bench Trial Disposition:** A case disposition is counted as a bench trial disposition when the first evidence is introduced, regardless of whether a judgment is reached. Also known as a court trial or non-jury trial.

**Jury Trial Disposition:** A case disposition is counted as a jury trial disposition when the jury has been sworn, regardless of whether a verdict is reached.

**Mean:** The average value of a set of numbers, equal to the sum of all values divided by the number of values.

**Trial Disposition:** Dispositions that involve an examination of facts and law presided over by a judicial officer in order to reach a judgment in a case. These include jury trials and bench trials (also known as non-jury trials or court trials). Adjudicatory hearings in juvenile cases are also counted as trials.

**Trial Setting:** Action taken by the court to set a date upon which a trial is scheduled to begin.

