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Trends in State Courts 2022

2022 Review Board & Trends Committee

Trends in State Courts 2022 articles have been through a rigorous review process. The members of the 2022 Review Board and Trends Committee have provided valuable feedback on this edition. The patience and commitment of the Review Board and Trends Committee are greatly appreciated.

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Call for Article Submissions

Trends in State Courts is an annual, peer-reviewed publication that highlights innovative practices in critical areas that are of interest to courts, and often serves as a guide for developing new initiatives and programs and informing and supporting policy decisions. *Trends in State Courts* is the only publication of its kind and enjoys a wide circulation among the state court community.

Submissions for the 2023 edition are now being accepted. Please email abstracts of no more than 500 words by October 17, 2022 to John Holtzclaw at jholtzclaw@ncsc.org. Abstracts received after this date are welcome and will be considered for later editions or for our online version of *Trends*.

Visit the *Trends in State Courts* website at ncsc.org/trends for more information and detailed submission guidelines.



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Trends in State Courts 2022

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*To promote the rule of law and improve
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Preface

Mary Campbell McQueen
NCSC President

Outside events have a way of driving change—and change has a way of driving innovation. That is the overarching theme of not only *Trends in State Courts 2022* but also all prior editions of this series: change and innovation, both immediate and gradual, that improves the effective administration of justice.

Take, for example, the emergence of COVID-19. Courthouses and businesses were disrupted nationwide. Even as medical science has developed vaccines and improved methods of treatment, we are still dealing with the pandemic's aftermath, and the justice system has been forced to adapt. But the courts have also learned many pandemic-based lessons that have post-pandemic applications, as are identified in our first *Trends* article: "Creating a Post-Pandemic Eviction Court."

As the justice system continues to address racial justice issues, the NCSC is leading a major national initiative: *The Blueprint for Racial Justice*. Our second article in this year's edition, "Action Steps to Eliminate Racism and Bias in the Courts," focuses on the journey of the Massachusetts Trial Court to improve racial diversity, fairness, and inclusion.

Other *Trends 2022* articles discuss how courts have changed the ways they reach out and work with different groups of litigants. Maryland shares how its courts are assisting self-represented litigants to navigate the system via their *Justice Passport* app and how to better inform the public about court-provided services via advertising. Courts in Atlantic and Cape May counties, New Jersey, are also improving ways to contact litigants outside the courthouse with their *Bus Station Outreach Program*. Other articles examine how courts work with people of different ages and health status—such as parents and truant children, "emerging adults" (age 18-25), and those who are subject to guardianship.

Trends 2022 also addresses the daily challenges of routine court operations—particularly how data can inform policies. One article applies a "user-centered" process to case management, while another proposes a new tool for estimating court case backlogs. A discussion of the National Open Court Data Standards (NODS) highlights the need for consistent, comparable data about court operations.

Change is the one constant in our society, and the courts must embrace the opportunities that change can generate. NCSC hopes that you find this year's edition of *Trends in State Courts* a roadmap for change and innovation as your court system strives to improve its operations and service to the public.

01

Creating a Post-Pandemic Eviction Court

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The COVID pandemic has forced permanent changes in how courts handle eviction cases. Courts can make a positive difference in tenants' lives through eviction diversion programs by partnering with communities, sharing information between stakeholders, and building more time into the eviction process.

In the early months of the COVID-19 pandemic, fears began to surface of an impending eviction tsunami that could displace tens of millions of Americans. Fortunately, that worst-case scenario was avoided, first by federal and state eviction moratoria, and then by a combination of unprecedented sums of rental assistance and forward-thinking state and local courts that launched new programs to divert litigants toward those resources (Panfil and Spievack, 2022). As courts adapted to a rapidly changing landscape, they found success collaborating with legal aid and community partners and rethinking how they scheduled and handled their eviction dockets. Through these efforts, eviction court emerged as a place where landlords and tenants could quickly and easily access community resources, rather than a last resort.

While many changes and reforms were initially spurred by public health guidance and aided by federal funding, their success demonstrates the potential for permanent changes to the eviction court landscape. Courts have learned a tremendous amount over the last two years and have an opportunity to institutionalize the best practices of the pandemic. Evictions were at crisis levels well before the pandemic, and state

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and local courts now have the tools and knowledge to design sustainable eviction court programs that incorporate stabilizing services and holistic referrals. Not every eviction can or should be avoided, and courts must maintain their neutrality. Diversion programs and court reform efforts, however, can prevent avoidable evictions, mitigate the harm of those that must proceed, and improve the court experience for all litigants.

Eviction Diversion Programs

Eviction diversion programs, whether court based or court adjacent, offer alternatives to the traditional, adversarial litigation process by providing landlords and tenants with time, information, and referrals to help them resolve housing disputes in the least harmful way. Diversion programs vary widely in design, a reflection of the vast differences between state and local courts and their governing eviction laws. They may be optional, strongly encouraged, or even mandatory as a prerequisite to litigation. They may focus primarily on upstream interventions before a lawsuit is filed or serve as a backstop once a dispute has escalated and is already pending before the court. They may incorporate connections to a wide variety of legal, financial, and social services at different stages of the eviction process, sometimes even co-locating services directly in the courthouse.

Across the many different models of diversion programs, however, there are commonalities. State and local courts of different sizes and structures, and with different rulemaking and governing authority, have found that successful programs rely on the same strategies. The most successful eviction diversion programs emphasize: 1) establishing community partnerships, 2) sharing information effectively between stakeholders, and 3) building additional time and capacity into the eviction process.



1. Housing instability should be addressed collaboratively through established partnerships with a range of community partners

Landlords and tenants may not be able to resolve their housing problems without help, even if they are motivated to do so. Eviction diversion programs rely on a wide variety of legal, financial, and social services to help facilitate early and sustainable resolutions when possible.

Legal aid and pro bono organizations, often operating at the courthouse, can provide legal information and advice to both landlords and tenants to help them better understand the eviction process and assess their options. Mediators also play an important role in many diversion programs, helping landlords and tenants to find common ground and memorialize their agreements. Many diversion programs rely on limited-scope, or unbundled, legal services to increase their capacity to provide high-volume services quickly. Most states have adopted rules that allow lawyers to provide limited legal advice or representation for a defined time. By leveraging the local limited-scope rules, attorneys can screen cases for possible defenses and assist in negotiating or drafting settlement agreements without filing an appearance or committing to an extended engagement. For more information on limited-scope representation rules and practices in each state, visit the ABA's [Unbundling Resource Center](https://perma.cc/M74R-X4HB) (perma link: <https://perma.cc/M74R-X4HB>).

Financial assistance programs also play an important role in diversion programs. During the pandemic, rental assistance has been a key ingredient of many diversion programs as the federal government allocated tens of billions of dollars in Emergency Rental Assistance to help tenants impacted by COVID pay their rent in arrears. Even before the pandemic, some courts had forged partnerships with state or local rental programs or private foundations offering rental or cash assistance. While more limited in capacity, these programs still offered a critical lifeline for tenants who could pay their rent going forward and needed one-time assistance covering a temporary loss or managing their budget. As Emergency Rental Assistance programs wind down, courts should continue to explore other rental or cash assistance programs that may operate in their area. These programs have enormous potential to benefit both landlords and tenants equally.

Human services providers can offer wraparound support to help stabilize other aspects of a litigant's life that may be contributing to housing instability. Legal problems rarely occur in isolation, and they are often interconnected with other legal and nonlegal problems. Many tenants in eviction court also need help locating new housing, accessing financial counseling services, applying for public benefits or VA benefits, or accessing domestic violence or mental health services. To have the most effective referral partnerships with community organizations,

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courts should take steps to understand what services are offered, which intake or other eligibility criteria may apply, and how best to facilitate referrals. Strong referrals require courts to communicate regularly with their partners and to be responsive to their needs.

A strong diversion program will build relationships with and enhance connections to the service providers in the community so that housing issues can be addressed holistically when possible. Community members have generally shouldered the burden of finding and applying for the legal and supportive services that could help them in times of crisis. Courts can change this by serving as bridges to information, referrals, and services and by sharing data and information with service providers to assist them in their work. Courts can reduce barriers to accessing these vital services by offering space in the courthouse for service providers to meet with litigants, by using technology to facilitate easier referrals, and by establishing formal referral relationships with their outside partners to allow for warm handoffs. Strong partnerships with legal and social service providers can improve outcomes and experiences for both landlords and tenants.

2. Outreach and communications strategies are necessary to ensure litigants understand the benefits of participating in a diversion program and can access available resources

Eviction diversion programs, even mandatory ones, cannot work if the litigants do not know about them or do not appear at their scheduled court dates. Eviction courts have historically seen high rates of default judgments, and courts must encourage participation in both the court process and diversion programs.

One way to encourage participation is to share information about diversion programs as early as possible and through many different channels. During the pandemic, many courts implemented requirements that eviction complaints include information about diversion programs, rental assistance, or other relevant services. By sharing that information as early as possible, litigants have a better chance of accessing services before they appear in court. Including information about services alongside the court papers can also help alleviate negative perceptions about the court process. Courts should strive to spread the message that diversion resources are available and to encourage and welcome all litigants to fully participate in the court process. Courts should also consider using technology to supplement paper notices by exploring text-messaging and email-notification systems.

Beyond pleading requirements, information about diversion programs and resources can also be shared through other methods, including websites, chatbots, and social media accounts for both the court system and governmental and community partners. A consistent message promoted by all stakeholders can help boost awareness and participation among community members. Judges can promote eviction diversion programs through opening statements and information shared directly with litigants when their cases are called. Targeted outreach to housing providers and landlord groups is also crucial to building trust and awareness of eviction diversion programs.

Courts can also look to trusted community partners to help promote eviction diversion programs. Litigants often turn to their local community for help with legal issues before they turn to the court or the legal community. Jurisdictions have had success partnering with public libraries, faith-based organizations, small businesses, and other community-based groups. Courts should have open channels of communication with these trusted intermediaries to share information about diversion programs and other resources and to hear concerns and challenges that may be impacting litigants and interfering with their access to diversion program resources. Outreach and communications strategies should be user tested and continuously refined to ensure the information is accurate and the messages are reaching the intended audience.

3. Courts should build in enough time for landlords and tenants to effectively use the resources offered by eviction diversion programs

State and local eviction laws often require that housing cases move quickly as compared with other civil matters. They should not move so quickly that litigants cannot properly access the resources and referrals available through eviction diversion programs. Courts have taken many different approaches to temporarily pausing or slowing down eviction proceedings while litigants are participating in a diversion program. Some courts have implemented a mandatory waiting period before an eviction judgment can be entered if the parties are participating in a diversion program. Other courts have added case management dates or settlement conferences to steadily move cases forward in a way that also allows the parties time to reach a resolution before trial. Depending on the structure of a particular program, the pause or additional court date may apply to all eviction cases or may be limited to those where one or both parties have opted to use a diversion program.

Courts should communicate directly with the legal, financial, and human services providers they have partnered with to understand how much time is needed to screen cases and provide services or financial assistance. Courts should make sure that litigants have a reasonable

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amount of time to meet with the service providers or to access financial support when it may aid in reaching a resolution to the legal problem. Courts and partner agencies should also explore data-sharing arrangements that can allow for services to be delivered more quickly and for real-time updates between program partners. With careful planning and input from all stakeholders, courts can ensure that diversion programs incorporate the necessary time to work effectively, while also maintaining their neutrality and operating within any time constraints or other limitations that may be placed on them under state and local law.

Eviction Court Reforms

Eviction diversion programs work most effectively when coupled with other court reforms designed to increase access to justice and remove barriers that may prevent or discourage full participation in the court process. Courts have undertaken a wide variety of efforts to simplify and streamline court procedures, to make courts more user-friendly and accessible, and to improve and expand self-help resources and services. NCSC has developed and compiled many [resources for courts](https://perma.cc/C629-FEAE) (perma link: <https://perma.cc/C629-FEAE>) seeking to improve their eviction and other high-volume dockets. Some of these changes that began as temporary pandemic response efforts are poised to change the design and process of eviction court permanently.

- 1. Staggered Schedules:** Many large jurisdictions have long relied on high-volume eviction “cattle calls” that can lead to crowded courtrooms, long wait times, and challenges for the judges and court staff, who must manage large numbers of cases at once. During the pandemic, initially as a public health safety measure, some courts began to implement staggered schedules allowing courts to hear cases in smaller batches. These changes can reduce wait times and crowding for both litigants and lawyers and have been positively received in many states. Staggered schedules have also proven beneficial to eviction diversion programs as they can prevent referral partners from being overwhelmed and allow for a more predictable flow of referrals.
- 2. Remote Hearings:** State and local eviction laws often allow for relatively short notice periods before a court date, which can be challenging for tenants who may need to coordinate childcare or work obligations. It can also pose scheduling problems for legal aid and pro bono lawyers who may need to appear on very short notice. Allowing for remote participation in eviction court dates can greatly expand access to the court for both lawyers and litigants, so long as accommodations are also made for those

who lack the technology to participate remotely. Remote technology can also be a valuable tool in connecting litigants with legal, financial, and human service providers. Community partners may not be able to provide on-site support in the courthouse, but they may be able to have a presence using remote technology. See "[Remote Hearings and Services](https://perma.cc/RBV7-9HLY)," NCSC website (perma link: <https://perma.cc/RBV7-9HLY>).

- 3. Self-Help Resources and Referrals.** Not every eviction case is well-suited for diversion, and not every eviction can or should be prevented. For litigants who will continue through the traditional eviction court process, courts should provide access to high-quality self-help resources and services. These may include print and electronic materials, court navigators, self-help desks, chatbots and hotlines, or some combination of these resources. Courts should also share information about legal aid and lawyer referral services.
- 4. Plain-Language Communications:** Information about eviction diversion programs and eviction court procedures are most effective when written in plain language and user tested by community members. Dense text or complicated legal information can be enhanced with infographics, process maps, and other visual depictions of information and instructions. Incorporating a plain-language assessment of court communications can help ensure that the intended audience is able to fully understand and act on the information being shared. Information should also be made available in commonly spoken languages in the community in addition to English (see National Association for Court Management, 2019).
- 5. Data Collection and Sharing:** Courts should assess their current data collection practices to ensure they are tracking important information about eviction filings, litigant demographics, referrals to diversion programs, and outcomes. When measuring outcomes, courts should think expansively as diversion programs are important tools in both preventing evictions and minimizing the harm of displacement. While some tenants may remain housed, especially if rental assistance can cover their arrearages or legal aid can identify a meritorious defense, other tenants may ultimately move out even after going through diversion. However, they may be able to do so without an eviction or money judgment on their record, and in a way that gives them both dignity and time. Robust data collection efforts coupled with a broad understanding of the many ways that diversion programs can reduce harm are important to fully evaluating their impact.

Conclusion

Not every court and not every community is the same. Eviction diversion programs and court reform efforts should respond to the realities and needs of the community they seek to serve. Whether establishing a new program or revisiting an existing one, courts should consider these strategies for success.

Jurisdictions looking to establish new programs or revamp existing ones can start by using [NCSC's Eviction Diagnostic Tool](https://perma.cc/9RX4-DDXL) (perma link: <https://perma.cc/9RX4-DDXL>) to consider different models and determine which may be best for their needs. NCSC also hosts a number of helpful [resources for courts](#) on its website, including [best practices](#) (perma link: <https://perma.cc/NB63-JQB8>), [real world examples](#) (perma link: <https://perma.cc/2MAB-R8P4>), and [webinars](#) (perma link: <https://perma.cc/UJZ7-7GKN>) that can help courts move from planning to implementation.

Moving forward, NCSC will continue its work to identify best practices for eviction diversion programs through its new [Eviction Diversion Initiative \(EDI\)](#) grant program. NCSC has awarded grants to twelve courts seeking to make systemic, permanent changes to the eviction court process. The lessons learned through this grant program and the related evaluation process will offer more concrete recommendations and guidance to court systems looking to redesign their eviction courts and to continue the work started during the pandemic.

As two EDI Advisory Council members wrote for the *New York Times*, "eviction diversion and prevention programs can work. They can prevent unnecessary evictions, and they can mitigate the harm of those that must move forward. They can change the way community members perceive and interact with housing courts. They can turn housing courts into points of connection to a wide range of legal and supportive services rather than places of last resort" (see Blackburne-Rigsby and Hecht, 2022). NCSC's Eviction Diversion Initiative will serve as a resource to support courts in accomplishing this goal.



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...eviction diversion and prevention programs can work. They can prevent unnecessary evictions, and they can mitigate the harm of those that must move forward.

References

Blackburn-Rigsby, A., and N. Hecht (2022). "[It Should Take More than 10 Minutes to Evict Someone.](#)" Guest essay, *New York Times*, January 16.

National Association for Court Management (2019). [Plain Language Guide: How to Incorporate Plain Language into Court Forms, Websites, and Other Materials](#). Williamsburg, VA: National Association for Court Management. Perma link: <https://perma.cc/QYE8-YTRC>.

Panfil, Y., and D. Spievack (2022). "[What Happened to the Eviction Tsunami?](#)" *FiveThirtyEight*, January 11.



02

Action Steps to Eliminating Racism and Bias in the Courts

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It will take the collective efforts of courts and all justice system partners to eradicate racism in our justice systems and beyond. The Massachusetts Trial Court has embarked on an intentional journey to address issues related to diversity, equity, and inclusion using a comprehensive, research-based, and data-driven approach.

An integral part of the mission of state court systems is to provide services and deliver justice in a manner that inspires public trust and confidence. All individuals must be treated fairly and impartially at every point they intersect with the court system. To achieve public trust and confidence, the existence of systemic racism in the courts must be acknowledged. Specifically, courts must recognize that Black and other individuals of color who interact with the legal system are often not treated equitably or with the same dignity and respect as their White counterparts.

Over the last decade, numerous studies have documented how racial disparities and high rates of incarceration in our nation's criminal justice system have had a devastating impact on communities of color. Massachusetts has one of the lowest overall incarceration rates in the nation, but some of the highest rates of disparity in incarceration. As the late Supreme Judicial Court Chief Justice Ralph Gants noted in his [2016 State of the Judiciary](https://perma.cc/UWZ5-XKHQ) (perma link: <https://perma.cc/UWZ5-XKHQ>) speech, data collected by the Sentencing Commission showed that the national

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rate of imprisonment for African Americans was 5.8 times greater than for Whites; whereas, in Massachusetts, it was nearly 8 times greater. Moreover, as a nation, in 2014 the rate of imprisonment for Hispanics was 1.3 times greater than for Whites; in Massachusetts, it was nearly 5 times greater. After acknowledging these disparities, Chief Justice Gants announced that he had asked Harvard Law School to convene a team of independent researchers to analyze the data and “find out why” (Gants, 2016: 5.)

After four years of research and review, in September 2020, Harvard released the results of its study in a report: [Racial Disparities in the Massachusetts Criminal Justice System](https://perma.cc/3BZD-DD4J) (perma link: <https://perma.cc/3BZD-DD4J>). Based on available data from 2014 to 2016, the researchers found that “Black and Latinx people sentenced to incarceration receive longer sentences than their White counterparts, with Black people receiving sentences that are an average of 168 days longer, and Latinx people receiving sentences that are an average of 148 days longer.” The researchers also concluded that defendants of other races, including Asian, Cape Verdean, Native Hawaiian/Pacific Islander, American Indian/Alaskan, and Other Race/Multi-Race received longer sentences than their White counterparts. Furthermore, the regression analysis used in the study “indicates that even after accounting for factors such as criminal history and demographics, charge severity, court jurisdiction, and neighborhood characteristics, Black and Latinx people are still sentenced to 31 and 25 days longer than their similarly situated White counterparts” (Bishop et al., 2020: 1). While the Harvard study was limited in scope due to obstacles relating to data, the overall conclusion was anticipated and led the trial court to further prioritize its efforts to address systemic racism.

Even before the publication of the Harvard report, the Massachusetts Trial Court engaged in comprehensive efforts to address issues of bias impacting both criminal and civil cases within the court system. These efforts have resulted in a systematic and transparent approach to our work that includes data collection, experiential training, and accountability.

In 2013 the trial court began its intentional journey to address issues related to diversity, equity, and inclusion, after judges of color and female judges expressed through a survey that they had been treated differently based upon their race or gender. In examining these issues, we now understand that disparities did exist, and this conclusion led to the reflection that if judges experienced this treatment, court employees and users were likely having similar experiences.

In September 2015, the trial court held a mandatory conference to open a dialogue among Massachusetts judges to consider the impact of implicit bias on the work they do in courthouses across the commonwealth. Following the conference, each of the seven trial court departments developed implicit bias bench cards, which were provided to all judges and magistrates.



In 2016 the trial court established a Race and Implicit Bias Advisory Committee (TRIBAC) to address bias issues related to race and gender within the organization. The trial court also established an Office of Diversity, Equity, Inclusion and Experience (ODEIE), which works to create an inclusive culture and support continuous systemic improvement within the court system. In connection with these efforts, the trial court retained two nationally recognized consultants from Columbia Law School's Center for Institutional and Social Change (CISC) to help develop strategies for the trial court to address racial bias and construct a leadership curriculum.

Working together, trial court leadership, TRIBAC, ODEIE, and CISC sought to transform trial court culture by integrating diversity, equity, and inclusion efforts into all aspects of court operations, including recruitment, hiring, training, conflict resolution, and strategic planning. The trial court developed and implemented a system-wide, evidence-based curriculum and methodology that brings together employees with different roles and identities and builds the capacity to engage and address issues related to diversity, equity, and inclusion of employees throughout the court system. Employees are encouraged to self-reflect and discuss race and bias openly, to intervene constructively and appropriately when issues involving race and bias arise, and to hold each other accountable. The objective is to build a self-sustaining infrastructure, so that issues surrounding race and bias remain at the forefront for all trial court employees and leadership. Court leaders and staff also collaborated to create a video urging everyone inside and outside the court system to be an "Upstander"—to stand up against acts or words reflecting conscious or unconscious bias.

The trial court has implemented strategies to eliminate racism and bias through several programs administered by ODEIE. More than 130 trial court judges and staff members participated in Leadership Capacity Building workshops designed to support judges and court staff in leading difficult conversations on race and identity and addressing issues involving diversity, equity, and inclusion. Additionally, nearly all trial court personnel have completed the Signature Counter

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Experience training—a program centered on customer service and designed to ensure that all court users, both internal and external, are treated respectfully and professionally throughout the courthouse. ODEIE also recently created a program titled Beyond Intent: Understanding the Impact of our Words and Actions, which seeks to educate court personnel about the impact of words and actions on the development of a safe, healthy, and inclusive workplace and to identify actionable steps to embed more inclusive practices into daily responsibilities and actions. In addition, ODEIE's Cultural Awareness and Racial Empathy (CARE) program is an opportunity for all trial court employees to engage in safe discussion and dialogue with each other to gain a greater understanding of the history of the marginalization of communities and individuals of color and to reflect on their personal identity and the identity of others.

In 2019 the trial court established the Office of Workplace Rights and Compliance (OWRC) to address and investigate concerns and complaints of discrimination, harassment, or retaliation involving protected classes, including race, gender, and disability. OWRC is also responsible for enforcing the Trial Court's Policy Prohibiting Discrimination, Harassment and Retaliation, which was promulgated in 2019 and applies to employees and court users.

In the summer of 2021, the trial court convened the Committee to Eliminate Racism and Other Systemic Barriers. The committee is charged with advising the chief justice of the trial court and the court administrator regarding policies and initiatives to address institutional racism and systemic barriers based on race, ethnicity, gender, gender identity, sexual orientation,

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A court workforce that mirrors the diversity of our Commonwealth also promotes litigants' trust in the equity of our judicial system.

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mental or physical disability, age, socioeconomic status, or other matters of identity that may give rise to inequity among trial court users, judicial officers, or court personnel. The committee comprises nine working groups: education and training, policies and protocols, case management process, data collection and analysis, public forums—outreach, human resources, communication, employee well-being, and jury and jury pool issues.

Another means of addressing racial and ethnic inequity in our legal system is by increasing the diversity of court personnel. A more diverse workforce brings a broader range of perspectives into the courts and helps to educate us all about the experiences of those who are different from us in race and ethnicity, as well as in gender identification, sexual orientation, or class background. A court workforce that mirrors the diversity of our commonwealth also promotes litigants' trust in the equity of our judicial system. As stated in the [Trial Court's Strategic Plan 3.0](https://perma.cc/C9HG-R5SL) (perma link: <https://perma.cc/C9HG-R5SL>), "we want our workforce to reflect the diversity of our users and to be culturally competent and welcoming" (Massachusetts Trial Court, 2019: 8).

Accordingly, the court has made it a strategic priority to increase the diversity of the workforce through recruitment, outreach, career development, and promotion. To measure progress toward this goal, the trial court instituted an [Annual Diversity Report](https://perma.cc/TC4P-X7BT) (perma link <https://perma.cc/TC4P-X7BT>). The [initial Diversity Report](https://perma.cc/9EMH-PE5S) (perma link: <https://perma.cc/9EMH-PE5S>), issued for fiscal year 2017, showed that 23 percent of trial court employees were members of racially/ethnically diverse groups, which was consistent with the overall race/ethnicity percentage (21 percent) of the Massachusetts labor market as reported in the 2010 census (Carey and Williams, 2017). Since then, the trial court has continued to move forward, and as of fiscal year 2021, the percentage of racially/ethnically diverse trial court employees increased to 27 percent. The trial court has also made improvements in the percentage of racially and ethnically diverse employees in its managerial ranks. Between fiscal year 2017 and fiscal year 2021, the percentage of racially/ethnically diverse employees increased from 16.1 percent to 22.5 percent of officials and administrators, and from 23.2 percent to 25.6 percent of professionals.

Each year, trial court celebrates its increased diversity with annual cultural appreciation events that encourage court staff to share and learn more about each other's cultural heritage. What began as a single-day cultural appreciation event has evolved into a week, sometimes a month, of events celebrated in courts throughout Massachusetts.

Trial court leadership also strives to educate themselves on the tragic history of racism in this country and how to combat it more effectively. In April 2019, 50 judges traveled together on a personally funded trip to Montgomery, Alabama to visit the Legacy Museum and the National Memorial for Peace and Justice commemorating victims of lynching, both created by Bryan Stevenson's Equal Justice Initiative. In October 2019, Bryan Stevenson in turn visited the trial

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court and spoke to more than 140 judges at a forum sponsored by the Flaschner Judicial Institute. And in July 2020, the Flaschner Institute arranged for Professor Ibram X. Kendi, author of *How to Be an Antiracist* (perma link: <https://perma.cc/WJH7-8RFW>), to present to more than 115 judges via Zoom.

Notwithstanding these efforts, there is still much work to do to root out bias in all aspects of court operations. After the release of a 2021 report from the Supreme Judicial Court's Committee on Lawyer Well-Being, summarizing a series of town hall meetings with Affinity Bar members, the court learned of the negative experiences of many attorneys of color when engaging with the court system—experiences such as being mistaken for a criminal defendant or being treated unkindly when entering the courthouses and courtrooms to provide services to their clients. In response, meetings were held with Affinity Bar leaders to engage in open dialogue to collaborate on strategies the trial court could undertake to address the issues raised.

In response to the discussions, the trial court security department reached out to ODEIE to facilitate a session of the Beyond Intent program to engage their personnel in discussions on how to best interact with court users in a more respectful and culturally proficient manner. During the session, attendees worked through scenarios of interactions with court users who were identified through the Affinity Bar discussions as exhibiting bias and how best to approach each interaction with respect for the individual identities that enter the courts.

OWRC also established a telephone hotline, email address, and anonymous form that attorneys and members of the public can call to either lodge a complaint about acts of bias by judges or court staff or to advise of specific conduct and request that it be addressed.

The trial court appreciates the importance of open communication and direct outreach to communities of color so that the court can better understand the experience of these communities and can work to address their concerns. Massachusetts was among six states chosen nationally by the National Center for State Courts (NCSC) to participate in a pilot community engagement program to collectively expand gateways to substance use treatment in the courts. Additionally, ODEIE has worked with local court and community leaders to hold a variety of public engagements designed to increase public trust and confidence in the courts by providing the opportunity for communities of color to share their experiences with the justice system and provide feedback on how the courts can become more equitable and just. Access to Justice also organized several virtual town hall sessions, which engaged local court leaders and officials to share information on court operations during the COVID-19 pandemic. Additionally, the trial court conducted listening sessions at houses of correction, in which judges and staff from the Massachusetts Probation Service and Trial Court Security

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Department met with detainees and heard their thoughts and concerns regarding their experience with the justice system.

The trial court also provided forums for internal listening sessions where employees shared their experiences working in the courts. The internal platform was challenging, and facilitation of discussions about race and bias was difficult due to participant hesitancy. Since these sessions, the court found that some new initiatives, including Beyond Intent and the CARE programs, offer a safer and more intimate space to foster internal engagement. There are plans from subcommittees of the Committee to Eliminate Racism to revamp these listening sessions to continue to engage employees.

State court systems have a long way to go to address the effects of systemic racism and bias in the courts and to eliminate racism and other systemic barriers. Leaders of state court systems hold unique positions and need to be comfortable with being uncomfortable, because this work is not easy. The courts need to be more introspective about the fact that what they do, and what they fail to do, impacts the lives of others who have experienced the indignities of racism and injustice throughout their lives. Courts need to listen to the experiences of diverse populations as they work to change their systems. The time is now, and it will take collective efforts to eradicate racism in the justice system. Failure is not an option. As a nation, and as a system committed to equitable justice for all, the state courts must not rest until they have eliminated these barriers.

References

Bishop, E. T., B. Hopkins, C. Obiofuma, and F. Owusu (2020). "[Racial Disparities in the Massachusetts Criminal System](#)." Report, Criminal Justice Policy Program, Harvard Law School, September. Perma link: <https://perma.cc/3BZD-DD4J>.

Carey, P. M., and J. S. Williams (2017). "[Massachusetts Trial Court: Annual Diversity Report, Fiscal Year 2017](#)." Executive Office of the Trial Courts, John Adams Courthouse, Boston. Perma link: <https://perma.cc/TB3U-FC5C>.

Gants, R.D. (2016). "[Annual Address: State of the Judiciary](#)." Great Hall, John Adams Courthouse, Boston, October 20. Perma link: <https://perma.cc/AW3D-BYEX>.

Kendi, I. X. (2019). [How to Be an Antiracist](#). New York: One World; imprint of Random House.

Massachusetts Trial Court (2019). "[Trial Court's Strategic Plan 3.0](#)." Boston, July 22. Perma link: <https://perma.cc/DTU3-2MGX>.

03

The Maryland Justice Passport: Making Effective Referrals from Court Help Centers

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The **Maryland Justice Passport** is a trauma-informed technology designed to help people navigate the legal system. Maryland Court Help Centers use the tool to make referrals that promote fairness, track data about referrals, and support litigants in managing their case and working with referral resources.

Helping Courts Become Better Partners with the Community

Courts are critical partners in the delivery of legal services. Individuals come to court in crisis, often expecting to begin the process of solving their legal problem. Court help centers are often available to provide them much needed legal assistance, forms, and procedural information. Court help centers play important roles in helping the self-represented decide when to seek representation or other assistance and making referrals to a legal services provider or to private counsel.

One key function of court help centers is to refer litigants for full representation when they would benefit from the help of an attorney. Factors court help center staff consider when determining whether a case is

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appropriate for self-representation include the complexity of the legal problem and the litigant's ability to understand relevant statutes and procedures. Additionally, court help centers weigh the harm the litigant will experience if they do not successfully represent themselves, such as the loss of housing or custody of their child. Maryland Court Help Center attorneys can refer people to one of the state's nearly 40 civil legal aid providers or to the private bar. If the litigant needs another type of assistance, help center staff may refer them to a social service agency or other service provider. People often leave a help center with a list of places to contact and things to do.

How can court help centers make referrals in a way that promotes fairness? Is there a way to facilitate referrals that are easy and effective for both the person they hope to help and the provider or attorney to whom they are being referred? Making the right referrals is an important part of the judiciary's mission to provide fair, effective, and efficient justice for all.

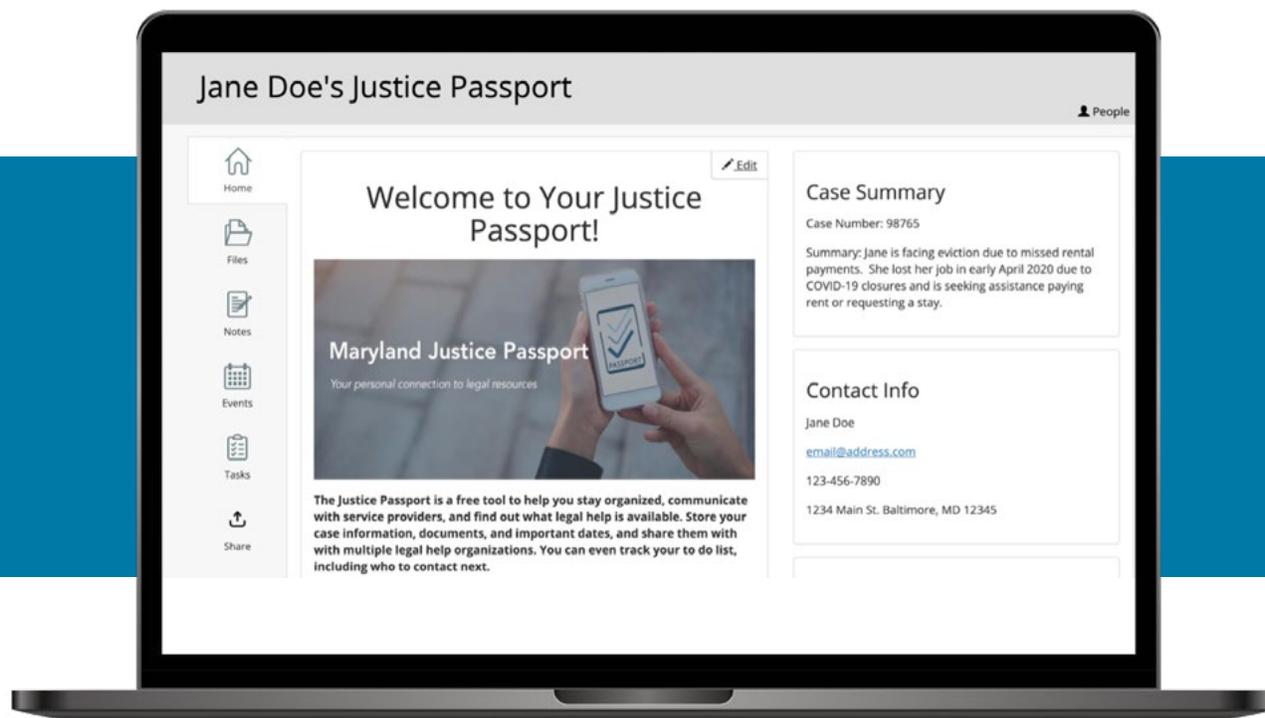
A new and valuable tool to enhance referrals is the [Maryland Justice Passport](#), which uses trauma-informed technology to help people navigate the legal system (perma link: <https://perma.cc/SB32-VFXK>). The Justice Passport was designed to help people without lawyers and the organizations that serve them. It is an app that can be used on a computer or mobile device to help individuals keep track of:

- what program they visited
- next steps they will need to take
- where they have been referred
- important paperwork

The application also helps people without lawyers avoid being re-traumatized by having to tell their story repeatedly. Information about their case is transmitted seamlessly and securely to the referral resource via the app. The program does not rely on artificial intelligence. Rather, court help center staff and a program administrator currently support litigants to develop their case summary, upload case documents, and navigate the legal services delivery system.



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The project grew out of a partnership between the Maryland Judiciary's Access to Justice department and Civil Justice, Inc., a Maryland nonprofit civil-legal-aid provider focused on low- and moderate-income Marylanders. Project partners envisioned a client-driven tool that would permit warm referrals—those where organizations relay the litigant's case and contact information directly to another organization—while protecting client data and documents. The tool would permit referrals and, with the client's permission, forward client information to the referral resource. A goal was to track referrals to ensure they were being made fairly and equitably and to permit analysis of the impact of those referrals. The system needed to be easy for clients to use, empower clients to follow through on next steps, help them manage their cases, and communicate effectively with the organizations or attorneys to whom they had been referred.

Civil Justice and A2J Tech, an organization building technology to improve access to justice, launched the Justice Passport's web-enabled platform, with judiciary grant funding from the Access to Justice department. Because building custom technology is both expensive and potentially insecure, the team identified technologies that already had most of the desired features, such as document sharing, but could also be customized to match the needs of users. The team selected a technology that offered both bank-grade security and many needed features.

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Although the Justice Passport permits referrals from any organization to any other, the project team chose for its initial focus facilitating referrals from the Maryland Court Help Centers to civil-legal-aid providers in the state in cases where the help center visitor needs full representation. Access to Justice staff and Civil Justice met with, trained, and provided ongoing support to attorneys with the Maryland Center for Legal Assistance, the contractor that operates the Maryland Court Help Centers for the Maryland Judiciary.

The project's success is buoyed by the early engagement of crucial referral organizations willing to participate in the Justice Passport. The Maryland Center for Legal Assistance, Community Legal Services of Prince George's County, and the Pro Bono Resource Center of Maryland all served as early partners, creating a network of organizations receiving and making referrals between the court help centers and legal services organizations.

Putting People Behind the Product

Technology works best when it enhances or amplifies human service. To increase the effectiveness of the Justice Passport, Access to Justice funded new positions at the Maryland Court Help Center to “connect the dots” between the center, the client, and the referral resource. The Maryland Court Help Centers then developed a referral process internally using the Justice Passport. When a help center attorney decides the visitor with whom they are meeting merits a referral for additional assistance, the individual is routed to one of two referral coordinators. The referral coordinator creates a Justice Passport for the individual using information provided by the attorney and the client. If the visitor has numerous documents relating to their case, the specialist can scan and upload the documents into the Justice Passport. If the visitor is online or on the phone, the coordinator guides them in uploading their own documents. All data are owned and controlled by the client, not the help center or the referral program. Once the Justice Passport has been created, the help center's access expires. The litigant has full access to the program and can upload additional documents or add tasks to aid them in managing their case.

Referral coordinators provide a hands-on approach that allows the technology to be most effective. They do significant legwork to ensure referred clients are moving forward. They make sure the receiving organization will have all the information they need to complete the intake by prepping the client. The referral coordinator then checks back to ensure the client made the connection with the receiving organization.

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For example, one client needed representation and was referred to a partner organization. She later appeared again at the help center saying the organization never called her. The referral coordinator noted the client's voicemail was full. Once the client cleared her voicemail, she was able to connect with the referral organization. If the litigant does not have documents during the referral interview, the coordinator creates a checklist in the Justice Passport with steps the client should follow when they get home. In November 2021 referral coordinators uploaded 147 documents for litigants. Referral coordinators can ask clients about the best time for a callback and provide that information to the receiving organization so they are more likely to make the connection.

The client can use the Justice Passport to follow through on the referrals made by the help center. When the client contacts the referral resource, they can give the new provider access to their Passport by using a personal identification number. If the client consents, the Maryland Court Help Centers can also notify the referral program, so they can reach out to the client.

Referral coordinators have done extensive outreach to promote the Justice Passport and encourage receiving organizations to accept referrals. They spend time meeting with Maryland legal services partners. They are also working on ways to capture effective follow-up data to track program efficacy and are exploring ways to automate collection from receiving organizations.

One help center visitor arrived on a Thursday with a failure-to-pay-rent case scheduled for the following Monday. A help center referral coordinator created a Justice Passport and electronically notified the Pro Bono Resource Center of Maryland. The referral coordinator also worked with the client to upload all relevant documentation they would need to make their case. The Pro Bono Resource Center was able to arrange for representation, and the person was represented at the Monday hearing. This is a prime example of a successful referral, as the litigant's case information was transmitted seamlessly to the legal services organization, allowing the litigant to avoid time-consuming phone calls, eligibility screening, and resharing of their stressful situation. With a court hearing in one business day, the legal services organization was able to represent the client at a potentially life-changing court hearing.

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For those Justice Passports created by Maryland Court Help Centers, the referral coordinators collect the outcomes of those referrals. Before the Justice Passport project, there was little or no data available on the outcome of referrals. By tracking these data, legal services providers, including the Maryland Court Help Center staff, can understand the effectiveness of referrals they make, and the refinements needed to improve the process. Project data are available on the Maryland Justice Passport website, www.mdjusticepassport.org (perma link: <https://perma.cc/R78D-ZM4H>). There were 412 passports created during 2021. An analysis of 66 recent referrals yielded valuable information about outcomes (see Table 1).

Table 1: Outcomes of Maryland Court Help Center Referrals

	Total
Accepted/Assisted	9
Referred to Civil Justice Network attorneys	14
Assistance pending	5
Given legal advice	6
Representation no longer needed	4
Denied due to case type	2
Denied due to other reasons	3
Did not respond/Unable to reach	23

The Maryland Justice Passport helps litigants feel empowered, organized, and able to manage their legal problems. One client was able to go home after the referral interview and upload 23 documents. Another client, who initially felt defeated and overwhelmed, when contacted a few weeks later reported that she felt calmer and was grateful knowing that the receiving organization had called her back to follow up on her legal problem. The impact is evident to the attorneys at the help centers. According to Emily Angel, managing director of the Maryland Center for Legal Assistance, "Maryland Court Help Center litigants are utilizing the Maryland Justice Passport to connect to other legal service providers across Maryland. The relief brought to litigants by having legal service providers reach out to them to set up possible representation is making a huge difference for litigants facing stressful situations in Maryland's civil courts."

Clearly, attention must be paid to the significant number of litigants who did not respond or could not be reached. Because the outcome of legal referrals has not been tracked before, we cannot determine whether this is unusual. Factors preventing a litigant from responding likely include disrupted phone service, a litigant's time constraints and work obligations, and the limited capacity of service organizations to make multiple follow-up calls.

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Although the judiciary has developed a referral protocol for the Maryland Court Help Centers to use the Justice Passport, the Justice Passport can be a tool for referrals between participating providers. Litigants can also create their own Justice Passport by visiting the project website, and an enhancement is in the works for them to set up their accounts directly on the mobile app. Litigants complete a simple form explaining their legal issue and need for assistance. Like court-help-center visitors, litigants who sign up for their own Justice Passport benefit from human service. When someone signs up, the project manager reviews their request for assistance, including their geographic region and legal matter. With that information, the project manager curates referrals from approximately 40 legal services providers and provides legal content from the People's Law Library, Maryland's legal information website.

Reaching Marylanders in Need

With funding from the Maryland Judiciary, the team has increased the visibility of the Justice Passport by developing marketing materials, placing ads, and launching a social media campaign. Working collaboratively, Access to Justice and the team created two videos to inform Marylanders about the Justice Passport. Additionally, posters and flyers are now available at legal services organizations and court help centers.

Maryland Justice Passport poster



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With the launch of a social media advertising campaign, the number of Justice Passports requested by Maryland litigants increased dramatically. While 69 Maryland litigants have requested creation of a Justice Passport, 40 of those sign-ups occurred after the launch of the social media advertising campaign in November 2021.

To inform an outreach strategy, the team collects data about how Marylanders are learning about the Justice Passport. As the chart below demonstrates, in addition to social media, some litigants sign up for the Justice Passport after visiting a court help center, consulting legal services organizations, or learning about the platform via an Internet search (see Table 2).

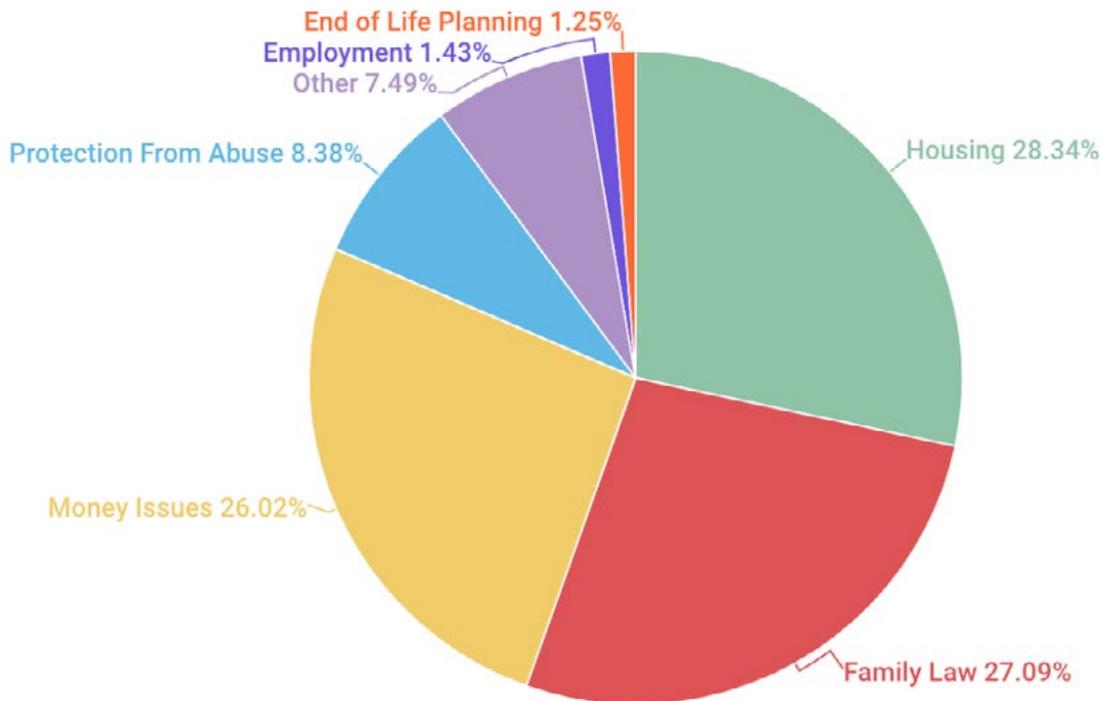
Table 2: How did you learn about the Justice Passport?

Other	24	11%
Social Media	22	42%
Court Help Center	15	29%
Legal Aid	6	12%
Google Search	2	6%
Total	69	100%

The Justice Passport team also collects data to inform stakeholders about who is using the platform, what their legal needs are, and what organizations are receiving referrals. For example, because of the social media advertising campaign, the Justice Passport team learned that 67 percent of those who viewed the social media advertisements were 55 and older. This information identified the crucial need to make the platform accessible for older adults who need legal assistance but may have special technology requirements.

Additionally, the Justice Passport provides data on the legal needs of people who use the app. Most Justice Passport users seek assistance with housing, domestic, and money issues. These data inform the team about what legal information should be curated in Justice Passports—particularly those self-created by litigants. For example, a Marylander seeking initial information about their divorce may not only need a referral to a family court help center for initial advice but may also benefit from general divorce information from the People’s Law Library (see Figure 1).

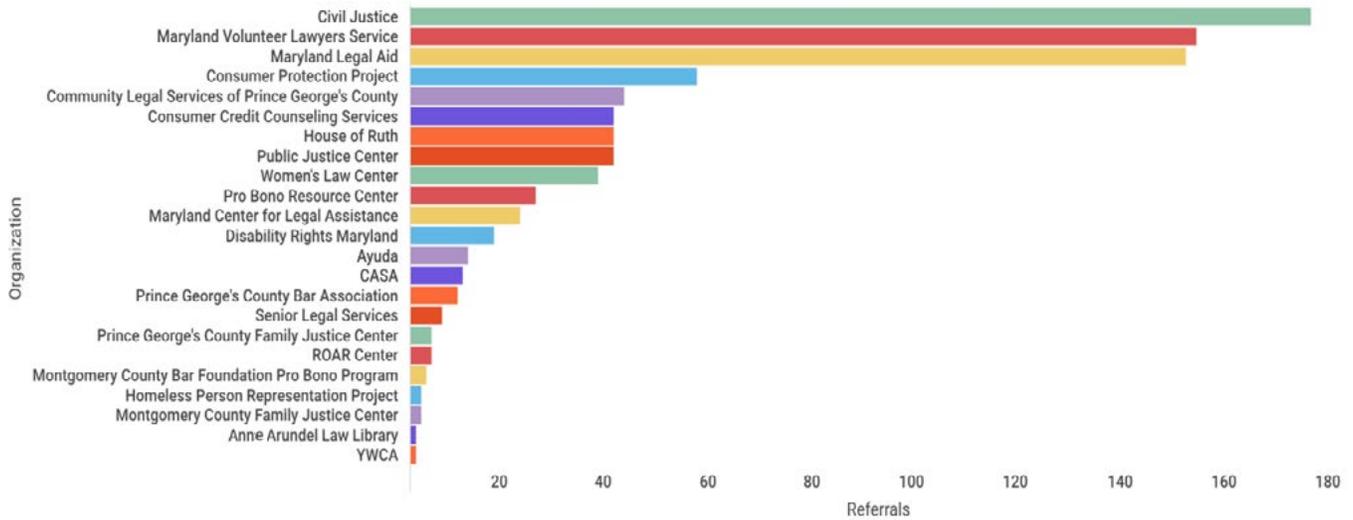
Figure 1: Legal Issues of Justice Passport Users over 12-Month Period



Finally, the Justice Passport tracks where litigants are referred. Before the Justice Passport, information was scarce about which legal services organizations received referrals and with what frequency. In the last 12 months, 24 different agencies received referrals via the Justice Passport. Referral organizations include traditional legal services organizations, domestic violence services providers, and financial counseling agencies, which can work with financially vulnerable individuals on economic issues that compound legal problems. This information lets the team identify potential new partner organizations; it provides information to receiving organizations about where their referrals are coming from and the scope of demand for their services (see Figure 2).

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Figure 2: Justice Passport Referrals to Service Organizations over 12-Month Period



Civil Justice, the only organization serving all jurisdictions to provide affordable legal services to moderate-income Marylanders, often serves as a catch-all referral when litigants do not qualify for free legal help. Program visitors who do not qualify for free legal help are often referred for reduced fee services through Civil Justice. This is likely the reason the organization receives the largest number of Justice Passport referrals.



User Feedback

The Justice Passport team consistently seeks feedback from litigants who are using the platform. The Justice Passport team takes a multipronged approach to solicit user feedback. In addition to surveys in each Justice Passport, the team contacts 10 percent of users to solicit feedback each quarter. In October 2021, the project manager contacted 40 Justice Passport users and spoke with 23 individuals.

This feedback helps inform user design, identify needed technology enhancements, and evaluate effectiveness of the Justice Passport in improving the ability of Marylanders to find legal assistance. Recently, for example, user feedback revealed that the feature permitting users to share their Justice Passport was difficult to find and hard to use. As a result, the team renamed and customized the appearance of this feature.

Court-operated services, like the Maryland Court Help Centers, can have a significant impact on the unrepresented, connecting them with additional legal help when needed. The courts must make those referrals in a fair manner, ensuring the best fit for the court visitor while simultaneously avoiding improperly favoring one provider over another. The Justice Passport provides significant benefits to individuals who visit these programs, providing more effective referrals for legal help and supporting and empowering those individuals to prepare for their case and better assist the attorney or program to whom they were referred. Data from the application allows providing programs and courts to see the impact of their efforts.

User feedback affirms that the Justice Passport is meeting its intended goals. Recent feedback highlighted that users appreciated that documents and photos could be easily uploaded to their Justice Passport. Others commented that the homepage dashboard was easy to use and that they appreciated not having to retell their story numerous times. One user responded, “First time using it but it’s definitely helpful! All I can say is keep up the good work.”

04

Meet People Where They Are!

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Superior Court of New Jersey,
Atlantic and Cape May Counties

To address accessibility issues, Atlantic and Cape May County Superior Courts have been providing community-based court services since 2015. Reaching court users through community outreach increases access and fairness and builds public trust and confidence in the courts.

Imagine you need assistance from the courts, but you have transportation issues, mental and physical challenges, or a substance use problem. Where do you turn? The Superior Court of New Jersey in Atlantic and Cape May Counties has been providing court services in the community since 2015 to address these accessibility issues. The focus of this article, the Bus Station Outreach Program, is a monthly outreach collaborative at the Atlantic City Bus Station staffed by members of the judiciary and various social service agencies. With little more than a laptop and remote access to judiciary databases, court staff allay concerns related to incarceration and the inability to find gainful employment. Although court staff focus primarily on bench warrants and expungement eligibility, they also assist with all court-related matters, including unresolved criminal court dates and outstanding fines, family and civil cases, and court diversionary programs. This intervention signals an important first step in court users resolving their underlying offenses and arrest records, so they may resume productive, fulfilling lives in their communities.

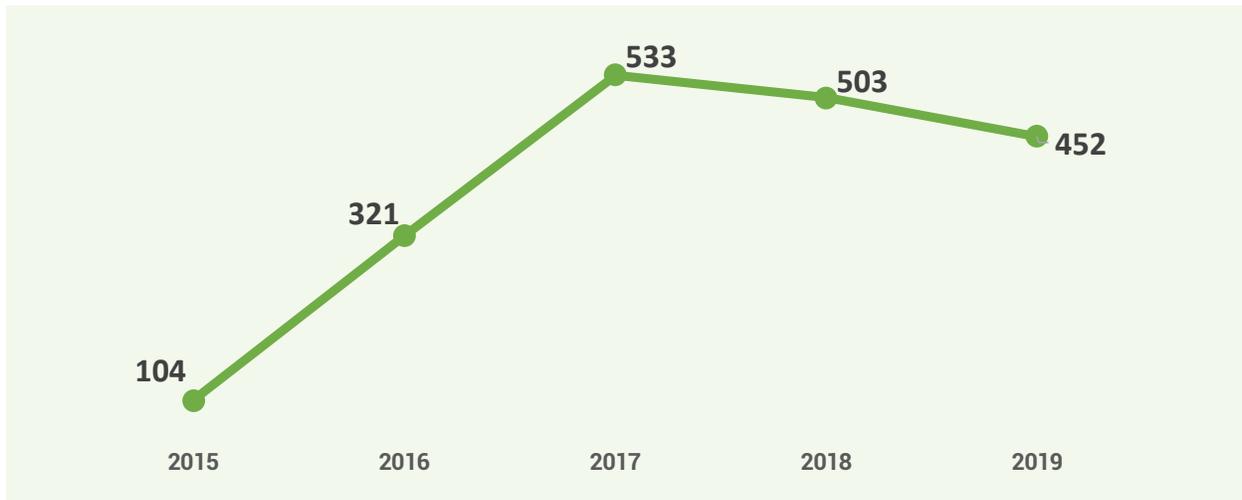
Statement of the Problem and History

The Bus Station Outreach Program was not the first outreach initiative implemented by Atlantic and Cape May County Courts. For several years, the courts had been hosting various events at courthouses, including landlord/tenant seminars, child support sessions, and résumé-writing workshops. Despite offering a variety of topics and marketing the events in creative ways, large numbers of community members were simply not attending. Motivated by the reality that these efforts were not bringing about the desired result, the courts proposed a different strategy—offer life-changing services in community locations outside of the courthouse. From this strategy came the Bus Station Outreach Program.

Before the program began in 2015, the Atlantic and Cape May County courts realized that the needs of their communities were changing. Although education related to court processes was important, it paled in comparison to the impact that outstanding bench warrants and the fear of incarceration was having on communities. As a result, Atlantic County hosted its first statewide Fugitive Safe Surrender event in 2012. Different from educational seminars that attracted small numbers, this event drew nearly 3,000 participants. This experience became a springboard to hosting smaller, more frequent safe surrender events in the community. Although the first event hosted at the county's homeless shelter, the Atlantic City Rescue Mission, only attracted 15 to 20 people, it still far surpassed participation at past educational seminars. Steadfast in their commitment to education, the courts did not abandon that goal; they simply became more strategic about achieving it. Atlantic and Cape May County Courts began offering legal procedural information to the growing number of participants at safe surrender events, capitalizing on their success.

As the number of attendees and participating social service agencies grew, so did the need for more space. Undeterred, the courts approached a community partner, the Atlantic City Transit Police Department's Community Police Unit, for permission to hold the event at the Atlantic City bus terminal. In May 2015, the courts, along with several social service agencies, held their first outreach event at the bus station. Starting with quarterly events, an increase in the number of those needing services demanded more frequent events. Since mid-2016, the courts have been hosting events monthly, experiencing growth of 335 percent from 2015 to 2019.

Bus Station Outreach Growth



Due to COVID, bus station outreach events were suspended for one year beginning in March of 2020. In total, the program has served 2,163 people: 104 in 2015; 321 in 2016; 533 in 2017; 503 in 2018; and 452 in 2019. Seventy-seven people were served in January and February of 2020, and 173 were served from April to December 2021.

The courts have seen a decline in attendees at the Bus Station Outreach events (see graph). This is not interpreted as a decline in need. Anecdotally, the courts have identified these possible causes for the decline:

- **COVID**—not simply the pandemic, but also the likely shift in priorities. When individuals have food and housing issues, outstanding warrants and unresolved court issues take a back seat. Additionally, at the direction of the AOC, fewer bench warrants were issued due to the pandemic to keep jail population numbers down.
- **Lower-jurisdiction court dismissals**—in January 2019, the New Jersey Supreme Court dismissed approximately 790,000 outstanding municipal cases and warrants for minor offenses that had been pending for more than 16 years, implementing a key recommendation from a critical report on the municipal court system.
- **Virtual access**—individuals fearful of stepping into a physical courthouse to resolve their issues could access the court through virtual doors. Individuals that would have received assistance at the bus station were assisted by court staff remotely through Microsoft Teams and Zoom.

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Program Design and Implementation

The purpose of these events is to address or recall bench warrants and link the attendees with available social services with an overall goal of enhancing trust in the courts. Participants report to the bus station on the last Tuesday of the month between 8:00 and 11:00 am. A registration table is set up in the lobby manned by a court employee, a staff member of one of the participating social service agencies, or both. Participants complete a needs assessment and registration form with their name, address, and identifiers. They are then given a ticket with an ID number. The ID number tracks the number of participants and ensures that all are seen in the order of arrival. Court staff and social service agency employees review the needs assessment and direct participants to the appropriate resources present at the event. Participating social service agencies provide housing and employment assistance, legal aid, healthcare, and substance abuse counseling.

While participants meet with the resource providers, court staff perform criminal background checks to identify outstanding bench warrants. Court staff contact the appropriate municipal courts to request recall of the bench warrants and new court dates. Participants are then seen individually by a court staff member to receive information about their outstanding matters, such as proof the warrant has been recalled, a future court date, or information on outstanding fines/fees. Court staff then email a copy of any forms given to the participants to the respective courts to complete the data entry.

Bench warrants eligible for recall

- Warrants issued by Atlantic and Cape May County Municipal Courts.
- Warrants issued in Superior Court of New Jersey-Atlantic and Cape May Counties for failure to appear on all third- and fourth-degree charges, second-degree charges for drug distribution in a school/public zone, and failure to pay fines.
- Most child support warrants.

Bench warrants not eligible for recall

- Out-of-county warrants.
- Warrants for failure to appear on a driving-under-the-influence ticket.
- Open warrant complaints (i.e., defendants eligible under the new Criminal Justice Reform law who have not been arrested).

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- Bench warrants on first- or second-degree offenses (aside from second-degree charges for drug distribution in a school/public zone).
- Violations of probation (some VOP warrants may be recalled; court staff contacts the probation division if it appears the bench warrant should be recalled).
- Violations of parole.
- Child support warrants that cannot be recalled—participants are given information on how to address the case at the courthouse.

Participants who have warrants that are not eligible for recall are given information needed to address the matter on their own, offered the opportunity to surrender in a safe environment, or both. However, anyone who does not wish to surrender is not arrested and is permitted to leave.

Results

This transformative program has improved the court's relationship with the community and created a greater sense of teamwork in the organization. Divisions with case-specific expertise—civil, criminal, family, municipal, and probation—participate in the event and field questions based on their respective areas. Feedback from employees staffing the event and those served at the events has been overwhelmingly positive.

This qualitative data has been reinforced by quantifiable results, attracting both state and national attention. Citing the measurable differences the program has made, the New Jersey Supreme Court convened the Supreme Court Committee on Municipal Court Operations, Fines, and Fees. Among other recommendations, the committee strongly encouraged all courts in New Jersey to adopt a similar program. In addition, the Mid-Atlantic Association for Court Management selected the program in 2020 for their annual John Neufeld Award, which recognizes a significant or unique educational program or court management system.

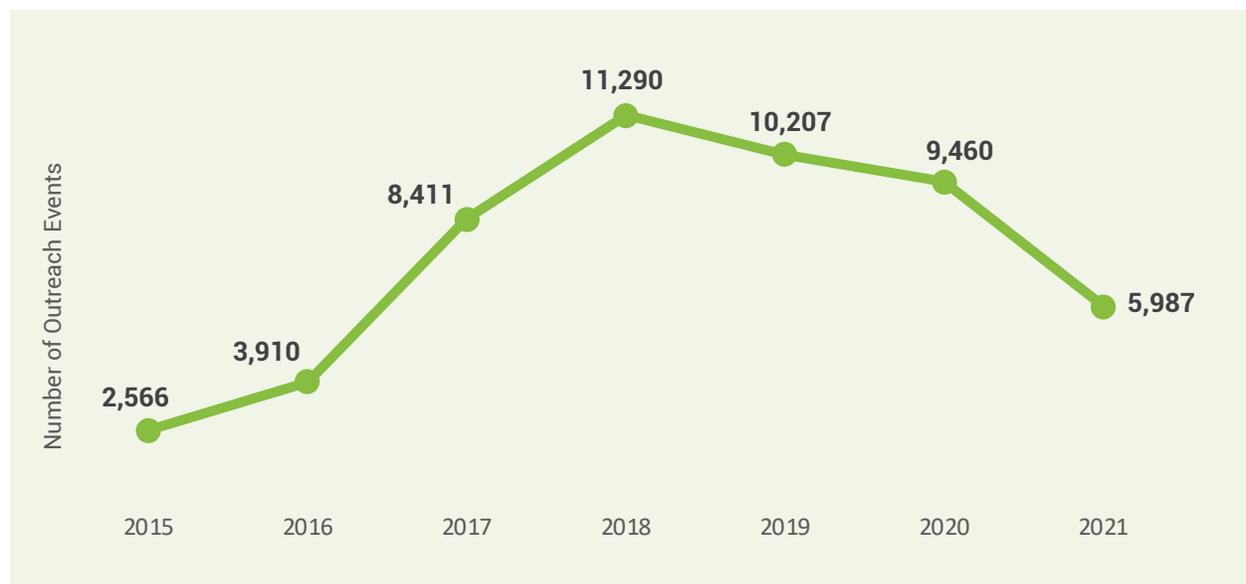
Currently in New Jersey, there are close to two million outstanding municipal court bench warrants for failure to appear and failure to pay fines. These warrants often only involve minor offenses and minimal amounts, yet they result in major costs and devastating consequences to individuals and families, particularly the underserved and indigent. The Bus Station Outreach Program works because we balance those scales, providing access and effective disposition of court matters through a nonpunitive, community-based response.

MEET PEOPLE WHERE THEY ARE!

Although COVID-19 has presented obstacles to hosting outreach in a traditional sense, it has not deterred the courts from serving their communities. Whether connecting with students in the One Judge-One School program or with local partners in community outreach events, the courts continued to meet and assist the community and court users where they are and based on their needs. As their needs changed due to stay-at-home orders, unemployment, and food insecurity, the courts adapted, developing different ways to serve in remote and in-person environments. In-person, and in the spirit of the Bus Station Outreach concept, the courts supplemented traditional services to address skyrocketing unemployment and food insecurity resulting from the pandemic. Beginning in June 2020, court staff began assisting social service partners with food and bookbag distribution events. Over the past 18 months, staff have assisted in the distribution of thousands of pounds of food and hundreds of bookbags to those most in need.

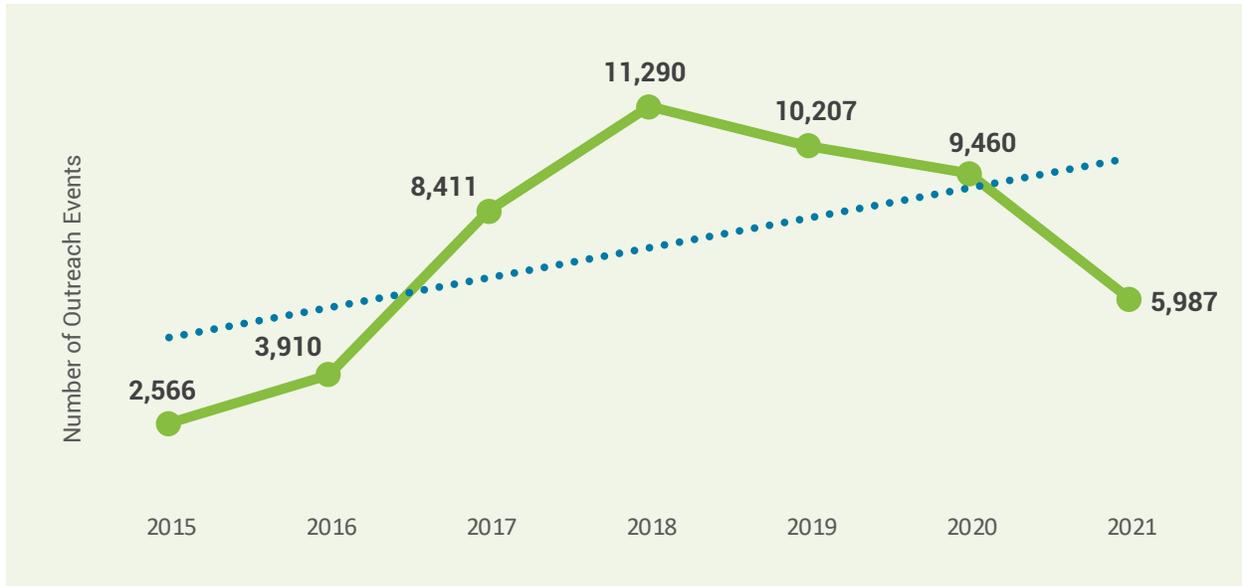
Social service partners continue to frequently contact court staff to assist someone who walks into their office and says, "How can I get in touch with one of the bus station court people?" Bench warrants have been recalled, lost court dates have been provided, and expungements have been filed by assisting court users over the phone, virtually, and through the mail. Due to the trust established over the past few years of working with people face-to-face, the public knows the courts are still just a phone call away. This has also resulted in overall growth in outreach.

Outreach Events



The trending line in this table illustrates that the decline the court had due to COVID is trending upward.

Outreach Events



New partnerships also formed from the bus station program. James McClain, an attorney with South Jersey Legal Services, Inc., stated, "My program has participated in several outreach events sponsored by the Superior Court of New Jersey, Atlantic County at the Atlantic City Bus Terminal, local churches, and the All Wars Memorial Building [a community center] in Atlantic City. The monthly outreaches at the Atlantic City Bus Terminal that we attend with court staff provide immediate relief to those in the community involved in matters pending in the municipalities of Atlantic County by getting warrants rescinded, the scheduling of new court dates and negotiating new payment plans for fines and costs owed by an individual to the court, and otherwise providing general information regarding municipal court matters. At a recent outreach at the Atlantic City Bus Terminal, court staff provided clothes and assorted toiletry items to passersby in need. The expungement outreaches conducted at venues like the All Wars Memorial Building give members of the community proof that my program serves immediate relief in filing expungement cases on the spot through eCourts. Moreover, Jill Houck and I also recorded a television program on expungements that airs on a local television channel, the Stockton Channel. All of these outreach events have had a positive impact on our community and have increased public trust in the judiciary."

MEET PEOPLE WHERE THEY ARE!

Ernestine Smith, a leader in a grassroots community program called the Mt. Zion Social Justice Project, stated that their partnership with the superior court and the Coalition for a Safe Community removed barriers for their community members who had legal issues or had been incarcerated. Ms. Smith added that the expungement project allowed those community members to start anew with the opportunity for a second chance with a clean criminal record. The effects of this partnership and the expungement project have been truly life changing.

Ms. Smith said, "the partnership allows the community to see the Judicial System working for the people. Honorable Judge Mendez and his administration believe in working to not only reduce factors that lead people to criminal charges but also support people after they have been processed through the legal system. They believe all people should be treated with dignity, humanity, and respect. This is what happens when every aspect of a community comes together."

Bringing people together in safe havens, communities in which they trust the court's social service partners, is at the heart of Bus Station Outreach Program. In Atlantic and Cape May County Superior Courts, the "bus station" encompasses much more than a building; it encompasses a commitment to serving court users where they are, whether it be at a church, a community center, or a food or bookbag drive. Reaching court users through community outreach increases access and fairness and builds public trust and confidence in the courts—meet people where they are!



“

Whether connecting with students in the One Judge-One School program or with local partners in community outreach events, the courts continued to meet and assist the community and court users where they are and based on their needs. As their needs changed due to stay-at-home orders, unemployment, and food insecurity, the courts adapted, developing different ways to serve in remote and in-person environments.

05

Promoting Public Awareness of Court Resources by Advertising

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Courts should consider advertising to extend the reach and impact of their public legal resources. This article shares tips and tricks that demystify an affordable advertising campaign of the Maryland Judiciary.

With the increased availability of court-based help programs, it is important that these programs be top of mind when the public thinks about where to go to solve a legal problem. Although courts are not usually in the business of marketing their services, advertising can be an important tool for raising public awareness. The goal of court-driven marketing is to ensure that the public benefits from resources available through the courts.

The Maryland Judiciary has led the charge in developing services for the self-represented. Services include a Court Help App, Guide and File-form-completion interviews, educational videos, Court Help Centers, and other services at which litigants can meet with a lawyer free. These resources, however, can benefit the public only if the public is aware of their existence.

The Maryland Judiciary has promoted these services by engaging in paid advertising. In the past few years, the Maryland Judiciary completed campaigns across a variety of media, including newspaper, radio, billboard, buses (interior, exterior, and bus stop posters), television, and digital (Google and Bing) advertisements. These campaigns have translated into increased use of the promoted services. Based on Maryland's experience, here is a list of questions that courts should consider at the outset to maximize the effectiveness of any advertising effort.

Who Is the Target Audience?

This may seem like an obvious question with an obvious answer, but it warrants some deep reflection. In general, Maryland's campaigns have sought to reach self-represented litigants and underserved populations. The Maryland Judiciary gathered information about who these people may be from demographic survey responses completed by those who have used court services previously.

In 2020 the Maryland Judiciary's Access to Justice (ATJ) Department engaged a consultant to prepare a marketing study to review our advertising efforts and make recommendations. The final report provided target audience profiles to guide future campaigns. These were profiles of hypothetical people who are likely interested in court services and how those people might be reached. This made it easier to explain the judiciary's target market/demographic to advertisers. Courts cannot say to a radio conglomerate that they want to reach "self-represented litigants" because it is not a commonly understood term in the marketing world. Be prepared to use more specific terms by noting, for example, a goal of reaching women aged 30-50 who earn less than \$75,000 per year.

The marketing study suggested that the courts might more consistently reach their target audience by layering different forms of advertising. This means running the same ad in different media instead of repeated investment in any one source. A campaign will reach more members of the target audience by placing consistently branded ads and announcements in a variety of settings—on bus shelters and buses, on the radio, in print media, and on digital platforms—thereby increasing the likelihood of exposure. Moreover, if persons see the same ad twice in different contexts, it may increase their likelihood of engaging with the service.

The barriers to accessing public court resources are greater for those who do not speak English, so it is particularly important for courts to advertise in different languages. In Maryland, this proved to be easier than one would think. Spanish-language radio stations included translation of English ads as part of their services. Similarly, a Mandarin-language newspaper translated and designed print ads as part of their advertising package.

What Should the Advertisements Look Like?

Consider consistency in design across campaigns. It is important to develop a brand or a theme that will become recognizable and trusted in the community. For example, the Maryland Judiciary designed the logo below and required advertisers to incorporate it into visual designs.

Figure 1.
Maryland Court Help Logo

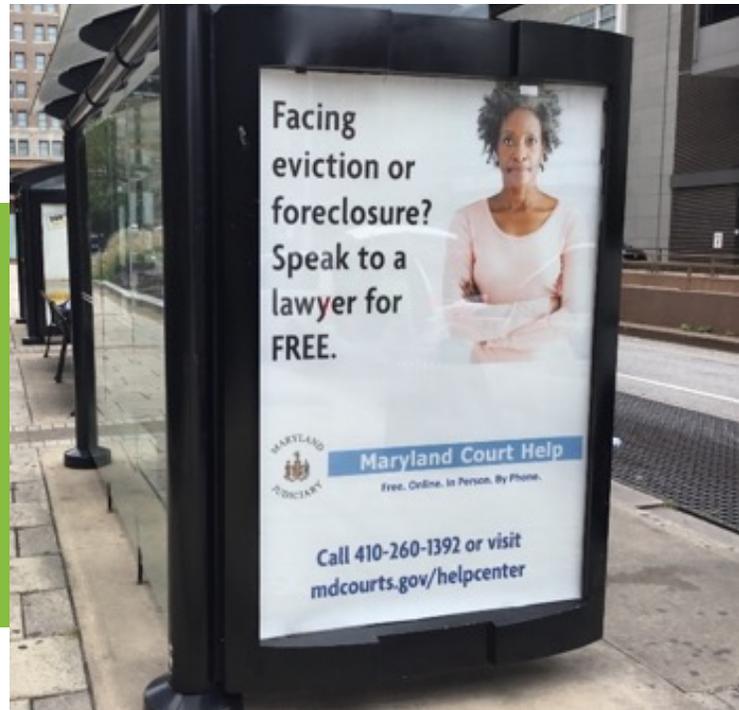


The Maryland Judiciary has largely relied on the support of creative design services provided by advertising companies. Most print and digital advertisers offer this service, although it is most cost-effective to design the ads internally. Development through an external party often requires a lot of direction and input. Be sure you are getting an ad that conveys your brand.

What Will the Text in the Ad Say?

Ads are limited by duration or physical space. Do not try to explain every aspect of the service you are promoting. The ad should say just enough to relate what you are advertising to the needs of the target audience. Try to anticipate how your audience may describe their situation. For instance, it is more effective to mention specific issues such as “rent court” or “divorce” than it is to refer to a generic “legal problem.” The public may not identify with “legal problem” as it is too vague and not relatable. Language used in ads should be as direct as possible and free from jargon. For instance, “Get legal help” is not as clear as “Talk to a lawyer.” Finally, if the service is free, be sure to include that. The public often associates legal services with some level of cost and may decline to engage if they sense it is something they cannot afford.

**Figure 2.
Maryland
Transit Ad**



How Long Will the Campaign Run?

Conventional advertising wisdom is that consumers need to see an ad more than once before they will act on it. Repeated viewership of an ad will help grow the product's legitimacy and develop its presence in the mind of consumers. Unfortunately, financial resources limit how long a campaign can run and the number of impressions it may generate. For these reasons, select a longer duration campaign even if that means fewer total ads. When the judiciary ran ads on Maryland Public Television, they were offered two options based on the same budget—run ads in a two-month period or run the same number of ads across a six-month period. One should only choose the shorter option if the service being promoted is time sensitive, meaning users need to access the service before or on a certain date. If the service is evergreen, however, the latter option is preferable as this increases the likelihood of the same audience seeing the ad multiple times.

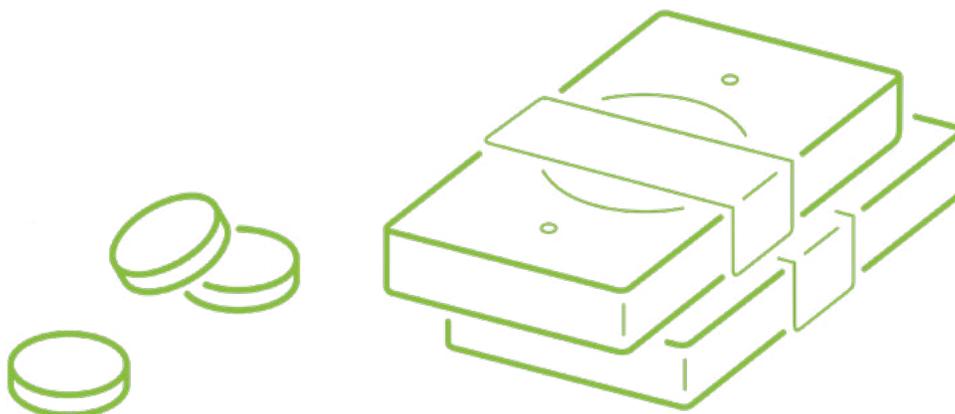
What Are the Costs for the Campaign?

If you have read this far, you are probably thinking, “This all sounds great, but what will this cost me?” Advertising costs can add up quickly, but they are scalable. Decide before you contact advertisers how much you are willing to spend and what audience you want to reach. If possible, when speaking with an advertiser, name your price and see what can be provided at that cost. Then, adjust campaign duration and number of ads accordingly.

Advertising comes in many forms. Be creative and look for unique opportunities. You may be surprised at what you find. One of the Maryland Judiciary’s earliest and longest duration campaigns is through a partnership with the Motor Vehicle Administration. Their offices have television screens, which play video ads in the waiting areas. They permit fellow government agencies to run one 30-second ad every quarter hour free. The judiciary had to develop the 30-second ad, so there was some cost involved.

There may be other free, short-term opportunities in your community. Consider reaching out to news outlets, like local TV and radio. They may be interested in doing a story about the service you are offering. Promotion of Maryland’s newest Court Help Center was bolstered by short segments run on two local news stations.

Most importantly, include a line item for marketing and advertising in project budgets. Letting the public know about these critical resources is an important aspect of operating a public service. The public may not be aware that there are some key programs and resources available to them through the courts.



How Will the Court Measure the Success of the Campaign?

Tracking the impact of a campaign is important to confirm you have spent your money wisely and to inform your future planning. Digital advertisements offer the most reliable form of tracking. For digital ads, the advertising service will be able to tell you how many people clicked on the ad. If the ad was for a service that users must sign up for or download, that can also be tracked. These are referred to as “conversions.” In some cases, a digital advertiser can even provide some demographic information about who clicked on the ad. The Maryland Judiciary is running ads on Google and Bing. They contracted with a third-party marketing firm to assist in design, placement, and tracking of the ads and to provide a monthly report on the ads' success.

Initially, the judiciary planned to contract with Google and Facebook directly for placement of the ads. This plan turned out to be a challenge. Digital advertisers offer formal contracts for their services, and their terms are not negotiable. The language of their contracts conflicted with the courts' procurement policy. For this reason, the judiciary pivoted to contracting with a third-party advertising agency to place the ads. In hindsight, this was a better option as the courts have benefited from the expertise around ad placement and performance measurement that an advertising agency offers. Had the courts placed the ads, they probably would not have reached as wide an audience.

Tracking the success of non-digital ads is more difficult. One can track the number of visitors to a website, as well as the number of people who use a Court Help Center each month. It is difficult to know when an uptick in use is directly related to a specific ad campaign versus some other factor. Nevertheless, use of services such as Court Help Centers continues to rise at a rapid pace. This service has been most consistently supported by our advertising efforts.

A final thought on measuring campaign success is to consider whether you are reaching third-party validators. Examples of third-party validators include nonprofit and community-based organizations, churches, attorneys, and legal services providers. They may support your efforts by spreading awareness, making referrals, and bolstering the legitimacy of the service in the eyes of the community. Courts want partners at other government agencies to refer the public to court services. Validators are reached incidentally by a general distribution campaign. Consider reaching out directly by physical and digital mailings, as well.

Conclusion

Hopefully, this information will help you craft a successful advertising campaign. One more suggestion if you are unsure how to begin is to spend time talking to sales representatives from advertisers to the extent court procurement policies allow. These conversations will help you consider your options as the salesperson is usually willing to share suggestions and answer questions. They may ask you important questions that you have not yet considered. You will usually leave these conversations with helpful information about prices, audiences you can reach, and impression numbers a campaign may generate.

Courts operate many public services. A core component of delivering those services is making sure the public is aware so people can benefit from those programs and resources. A well-thought-out marketing strategy can help keep the “public” in “public service.”



06

Truancy CARE Court: The Unique Role of the Collaborative Court Judge*

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This article will discuss a collaborative court approach for hearing criminal court truancy cases filed against parents whose children are truant: CARE Court in Santa Clara County, California. It will address the importance of judicial involvement and the unique role of the judge in a collaborative court proceeding.

Courts have long recognized the importance of education both to the individual and to society.¹ Education is a major determinant of an individual's chances for economic and social success. Chronic absenteeism, commonly referred to as truancy, is linked to a wide variety of short-term and long-term negative consequences for the student, including an increased risk for academic failure and dropping out. Moreover, truancy correlates with an increased risk for substance abuse, psychiatric problems, incarceration, unemployment, homelessness, and a negative impact on the financial health of the community (Kearney et al., 2019: 1).

* The author expresses appreciation to the following for their help with this article: Alisha B. Schoen, deputy district attorney, Santa Clara County; Guadalupe Ramirez, LCSW, Department of Behavioral Health Services, Santa Clara County; Catherine Adams, courtroom clerk, Santa Clara County; Jonathan T. Su, law student intern, Hastings College of the Law; Katie Rizkalla, college intern, University of Chicago; and Judge Erica Yew, Santa Clara County Superior Court.

¹ *In re James D.* (1987) 43 Cal.3d 903, 915.

TRUANCY CARE COURT: THE UNIQUE ROLE OF THE COLLABORATIVE COURT JUDGE

Over the last 40 years, California has employed two different approaches to address truancy. The first approach was student focused and emphasized holding the *child* accountable through juvenile court intervention. The second approach was adult focused and emphasized holding the *parent* accountable through adult criminal court intervention. Due to valid concerns about the “school-to-prison pipeline” the first approach is slowly disappearing throughout the state and ended in Santa Clara County in 2017. The second approach is still used in California. However, as this article will discuss, truancy usually involves complex family problems, which require a more holistic approach than the traditional student-focused or parent-focused paradigms still embedded in the law.

Truancy Law

Every school-age child in California is subject to compulsory education. California law requires a parent to ensure the regular school attendance of his or her child. A parent who “continually and willfully fails to respond to the directives of the school attendance review board or services provided” may be guilty of an infraction punishable by a fine.² A child is truant if they have three or more unexcused absences in a school year and is chronically truant if he or she misses at least 10 percent of the school year. A parent whose child is chronically truant may be guilty of a misdemeanor punishable by a fine or county jail.³

Santa Clara County Truancy CARE Court

Up through 2019 the Santa Clara County Superior Court heard all adult criminal truancy cases on the general misdemeanor calendar. However, in 2020 Santa Clara County established its first Truancy CARE Court calendar at the request of, and in coordination with, the Santa Clara County District Attorney’s Office.

The purpose of Truancy CARE Court is to divert parents charged with the crime of truancy from the general adult misdemeanor criminal court docket onto a collaborative court docket that emphasizes problem solving and uses a trauma-informed, culturally sensitive, and strength-based approach.⁴

² Cal. Education Code § 48260.5, subd. (b); see also 48200, 48260, 48260.5, 48293.

³ Cal. Penal Code § 270.1.

⁴ A collaborative court, also known as a therapeutic jurisprudence court or problem-solving court, is one which emphasizes the integration of services and deemphasizes the traditional adversarial process. For a concise description of the components of a collaborative court approach, see Judicial Council of California, 2022.

The goal of Truancy CARE Court is to help parents improve their child's school attendance, get their criminal case dismissed, and avoid a conviction and fine. In Santa Clara County, the district attorney currently files truancy cases as adult criminal court infractions. The district attorney offers every parent the opportunity to get their case dismissed by completing a parenting class and working with the school to improve their child's school attendance. The specific details will be discussed below.

Families in Crisis Need Support Not Punishment

The judge's role in collaborative court is different than the traditional role of a judge hearing a general misdemeanor criminal court calendar. The traditional approach focuses on moving a large volume of cases in a short amount of time with an emphasis on settlements, pleas, and sentences. Traditional criminal court calendars move quickly and afford minimal time for meaningful discussion.

On the other hand, a collaborative court calendar is focused on problem solving. The pace is slower, the discussions are deeper, and the focus shifts from punishment to encouragement and support. That is because the collaborative court judge understands that truancy is much more than a child simply missing school. Truancy is complex and involves challenges affecting not only the child, but also the family, the school, and the community. Behind every truant child is a family in crisis. These families need support, not punishment.

The California Supreme Court observes that school attendance problems "are often traceable to family instability, poverty, homelessness, transportation issues, safety concerns, trauma, mental health challenges, or learning disabilities, and that appropriate guidance and assistance to students and their families can ameliorate such problems."⁵

The California Judicial Council recognizes that effective intervention is grounded in the recognition that students and their families are likely to be experiencing problems that contribute to truancy or behavior issues. "Effective intervention is . . . based on a shared understanding that no one system or agency can handle these problems alone and that truancy and school discipline problems are community problems" where collaboration is critical (Judicial Council of California, 2012: 11).

⁵ *In re A.N.* (2020), 9 Cal.5th 343, 365 (Liu, J., concurring).

A Trauma-Informed Approach Is Essential

Given the fact that most families struggling with truancy also struggle with trauma, the collaborative court judge must use a trauma-informed approach during hearings. According to the federal Substance Abuse and Mental Health Services Administration (SAMHSA):

A program, organization, or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved in the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization (SAMHSA's Trauma and Justice Strategic Initiative, 2014: 9).

In practical terms, being “trauma informed” means “understanding the natural reactions of people to trauma and being able to help them process what has happened to them instead of focusing on what is wrong with them.”

If the Court Must Get Involved, the Collaborative Model Is Preferred

Truancy CARE Court picks up where the standard school-based truancy interventions end. Most truancy issues are successfully resolved on the school or school district level. The court only gets involved when the school and district have exhausted their options for helping the child reengage regularly in school. The unfortunate reality is that sometimes the authority of the court is needed to get the attention of the parent and improve cooperation between the parent and school.

The collaborative court model has already proven effective over the last 30 years for handling criminal cases involving substance abuse and mental health issues. In fact, the drug court collaborative model is the most successful justice intervention in American history (see National Association of Drug Court Professionals, 2018). It makes sense that the collaborative court model will apply with equal effectiveness to adult criminal court truancy proceedings involving families in crisis.

The Unique Role of the Collaborative Court Judge

A collaborative court approach to truancy requires the judge to assume multiple roles.

First, the judge serves as a **convener**. Collaborative court judges play an important role in bringing together stakeholders to identify the ways in which different systems can work together to solve difficult problems. In truancy cases this often involves school, mental health, and public health service providers.

The judge serves as a **facilitator**. The judge helps facilitate communication between the family and school officials. By the time truancy court proceedings commence, communication between the student, parents, and the school has often stopped. In many instances, communication can be improved by asking the school to identify one person at the school to be the consistent point of contact for the parent to call when problems arise. The point of contact should be someone who knows the family and speaks their language. Sometimes, the judge must remind the parents that regular communication with the school is not optional. The judge ensures that all voices are heard.

The judge serves as a **listener**. The judge and team listen to each family's story and to the concerns expressed by school officials. The judge listens for trauma clues and cultural issues that may be impeding communication and trust. Parents' stories are often painful and compelling. Due to embarrassment or fear they often do not share their story with the school. The judge and team must promote a supportive environment conducive to parents sharing difficult underlying issues.

The judge serves as an **encourager**. The judge and team encourage the parents by identifying and affirming family strengths. The team affirms every success, however small. Positive feedback from the judge has been shown to improve outcomes (National Association of Drug Court Professionals, 2018: 23). The judge uses every opportunity to cultivate hope for success.

The judge serves as an **issue spotter**. The judge and team help identify the problems and barriers that prevent the student from attending school regularly. Sometimes, the cause for truancy is explicit: victimization at school, inappropriate academic placement, learning disabilities, or miscommunication between parents and school officials. But sometimes the cause of truancy is more subtle: substance abuse; anxiety or depression; domestic violence; physical or sexual abuse; homelessness; poverty; transportation difficulties; medical issues affecting the child or other family members; unsafe neighborhoods; systemic racism; prior

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negative school experiences; and parental illiteracy or non-English proficiency. Parents are more likely to disclose underlying challenges when they are invited into discussion with an open-ended question like “What challenges are you facing as a family that prevent your child from attending school regularly?”

The judge serves as a **trauma monitor**. Most families affected by truancy have a history of trauma or cumulative trauma. The judge understands that simply walking into a courthouse can be a trauma trigger for many people. The judge and team look for ways to prevent or reduce further re-traumatization for each family based on each family’s unique story.

The judge serves as a **service connector**. The judge and the team help connect the family to available community resources. Community services often exist in discipline-specific silos that may not be known to other professionals in the community. Educational systems sometimes have their own list of resources that may not encompass the full array of services currently available in the community.

“

The judge plays a unique and pivotal role in cultivating trust and engagement by the family, and in bringing together key community stakeholders to help the family.

Truancy CARE Court in Action

The Santa Clara County Truancy CARE Court program began in January 2020. The experience has been overwhelmingly positive. The district attorney's office has taken the lead.

The district attorney's office arranged for school and district officials to attend all CARE Court hearings. School officials provide real-time updates regarding student attendance and efforts by the school to engage the family. By attending hearings, school officials often learn more about the complexity of the challenges faced by the family, which puts the school in a better position to support the student and family.

The district attorney's office arranged for a social worker from the Department of Behavior Health Services to attend CARE Court hearings. The social worker both provides invaluable support to students and parents and helps schools connect families to existing community services.

The district attorney's office arranged for representatives from a parent education program called the Parent Project to attend court hearings. The representatives provide the court with updates regarding parent participation in parenting classes. They also offer to meet with parents before or after hearings to help them register for classes.

Most recently, the district attorney's office hired a service navigator to help families with their greatest needs by providing practical problem-solving assistance in between reviews.

The district attorney's office also gives notice for court hearings. Even more important, they provide parents with reminders of upcoming court hearings via mail, email, or text message.

CARE Court review hearings are conducted in a supportive, nonadversarial manner that values the voices of all team members: parent, DA, DA support staff, school representative, social worker, parenting-class representative, service navigator, and the judge. Calendars are heard two full days each month.

Despite the COVID-19 pandemic—and the transition to virtual court appearances—parents have continued to regularly attend their CARE Court hearings and have succeeded in getting their cases dismissed. Parenting-class providers also transitioned to virtual class sessions, which allowed parents to attend and complete their classes from home. At court hearings, parents often express their appreciation for the support they received from all team members and for the instruction received at their parenting classes.

TRUANCY CARE COURT: THE UNIQUE ROLE OF THE COLLABORATIVE COURT JUDGE

Each case begins with the DA filing a criminal infraction charge against the parent.⁶ At the arraignment hearing, the judge informs the parent of the charge, constitutional rights, and potential consequences if convicted. The DA then offers to dismiss the case if three conditions are met: one, the parent agrees to complete a parent education class; two, the parent agrees to work with the school to improve their child's attendance; and three, the student demonstrates improved school attendance.

If the parent accepts the DA's offer, which almost all parents do, then the parent is asked to enter a plea of not guilty, waive their right to a speedy trial, and agree to return to court for periodic pretrial review hearings every 30-60 days to discuss progress made toward dismissal. Upon completion, the DA moves to dismiss the case, the team conducts a brief graduation ceremony for the parent, and the judge presents a graduation certificate. If the parent contests the charge and declines the DA's offer, then the matter is set for trial.

While the number of new cases, participants, and graduations dropped significantly in 2020 due to the pandemic, CARE Court saw an 11 percent increase in the percentage of successful dismissals. Graduating parents uniformly expressed gratitude to the CARE court team for their support and encouragement.

Conclusion

The collaborative court model is proving to be an effective tool for helping children and families struggling with truancy. The difficult problems faced by these families often require a multidisciplinary approach and team effort. No single agency can solve the problem alone. The judge plays a unique and pivotal role in cultivating trust and engagement by the family and in bringing together key community stakeholders to help the family. CARE Court hearings require more time and resources than are usually available on a crowded general misdemeanor calendar. But the benefit to the family and community cannot be overstated given the critical importance of education to a child's trajectory and success in life. Of all the various collaborative courts in operation, Truancy CARE Court perhaps affords us the farthest reach upstream to prevent a child from future juvenile and criminal court involvement.

⁶ Cal. Education Code § 48260.5.

References

Judicial Council of California (2022). [Collaborative Justice Courts](#). Webpage.

– (2012). "[Truancy and School Discipline: An Overview of the Literature and Statistics](#)." AOC Briefing, November. Perma link: <https://perma.cc/5GQ2-2PGJ>.

Kearney, C. A., C. González, P. A. Graczyk, and M. J. Fornander (2019). "[Reconciling Contemporary Approaches to School Attendance and School Absenteeism: Toward Promotion and Nimble Response, Global Policy Review and Implementation, and Future Adaptability \(Part 1\)](#)." 10 *Frontiers in Psychology*, October 16. Perma link: <https://perma.cc/T3R8-BWPV>.

National Association of Drug Court Professionals (2018). [Adult Drug Court Best Practice Standards, Volume 1](#). Alexandria, VA: NADCP. Perma link: <https://perma.cc/3P64-M2V5>.

– (2012). "[Treatment Courts Work](#)." Webpage, Alexandria, Virginia.

SAMHSA's Trauma and Justice Strategic Initiative (2014). [SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach](#). HHS Publication No. (SMA) 14-4884. Rockville, MD: Substance Abuse and Mental Health Services Administration. Perma link: <https://perma.cc/ZH5X-HDUJ>.



07

Meeting the Needs of Emerging Adults in the Justice System*

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Emerging adults aged 18 to 24 are developmentally distinct from fully developed adults and require different justice system responses. Court-related programs and practices for this age group should include building community collaboration, connecting emerging adults to their community, and individualizing program responses.

Emerging adults, also referred to as young adults and defined as those aged 18 to 24, should be provided with differential treatment within the justice system that considers their developmental needs and unique social challenges. While some state approaches have extended the juvenile court jurisdiction or juvenile probation supervision period into young adulthood, some scholars have instead argued that a developmentally informed approach would recognize emerging adults as different from both juveniles and adults over 25, warranting a separate justice system or justice system responses (Farrington, Loeber, and Howell, 2012; Scott, Bonnie, and Steinberg, 2016).

In most states, the maximum age of juvenile court jurisdiction is 17 years old; however, recent reforms have led some states (e.g., Vermont) to extend the maximum age of juvenile jurisdiction to include 18

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MEETING THE NEEDS OF EMERGING ADULTS IN THE JUSTICE SYSTEM

and 19 year olds (with supervision extending until aged 21.5 years old). Several other states have considered similar policy changes that would extend the juvenile jurisdiction to ages 19 or 20 (e.g., California, Connecticut, Illinois, and Massachusetts). The rationale underlying these reforms, in part, is the developmental similarity between emerging adults and older adolescents (age 16 to 17). Because the adolescent brain does not drastically transform into a fully mature brain at 18, setting the boundaries of juvenile jurisdiction at this age is somewhat arbitrary and not supported by developmental science (Fountain, Mikytuck, and Woolard, 2021) or by criminological research on the age-crime curve (Hirschi and Gottfredson, 1983). Despite this, state policies and interventions for emerging adults fall predominately within the adult criminal justice system.

In many respects, developmental science indicates that the emerging adult brain is more akin to an older adolescent's brain than a full-grown adult's brain, and that brain development continues through an individual's mid-20s (Sowell et al., 2001; Farrington, Loeber, and Howell, 2012). These differences are especially pronounced in the prefrontal cortex, the part of the brain that controls impulse and assesses risk (Cohen et al., 2016; Farrington, Loeber, and Howell, 2012). While cognitive capacity—the ability to reason logically—reaches adult levels during late adolescence (16 to 17 years old), psychosocial maturity—individuals' ability to restrain themselves in the face of emotional, exciting, or risky stimuli—continues developing well into young adulthood.



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Because of this, emerging adults do not exercise self-restraint as well as fully developed adults can when emotionally aroused (Icenogle et al., 2019). More specifically, experimental research has shown that emerging adults between 18 and 21 have diminished cognitive control in both brief and prolonged emotionally charged situations, as compared to older adults (Cohen et al., 2016).

Similarly, criminological research on the age-crime curve also supports the need for specialized justice responses for emerging adulthood. Studies demonstrate that offending rates increase during adolescence, peak around age 19 to 20, and decrease thereafter (Farrington, Loeber, and Howell, 2012). Longitudinal studies, which follow participants over many years to understand how individuals change over time, further indicate that the decline in criminal behavior during adulthood is due in part to biological changes to the brain (Loeber et al., 2012).

Social factors also make this stage in life particularly vulnerable to criminal behavior, but also more susceptible and amenable to justice system responses than fully developed adults. Emerging adulthood is thought to be the most unstable period of the lifespan, where changes in love relationships, work, and education are most frequent (Arnett, Žukauskienė, and Sagimura, 2014; Loeber et al., 2012). Although this instability is partly derived from identity explorations, it is also associated with economic and social dynamics. This life stage is marked by higher unemployment than later life and is greatly impacted by socioeconomic disparities. As an example, privileged emerging adults are more likely to be in college, an environment tailored to their developmental stage and where they are more likely to receive informal disciplinary actions through campus disciplinary codes for minor law violations, compared to disadvantaged peers who are not in college and are more likely to receive formal criminal justice responses for minor law violations.

Moreover, this age group is overrepresented at every stage of the criminal justice system, including prison and jail (Pirius, 2019; Bronson and Carson, 2019), with emerging adults of color disproportionately represented (Kovera, 2019). At a time when emerging adults should be creating social bonds that contribute to being productive members of their community, it is important that court involvement or incarceration not disrupt the healthy development of education, career, family, or other prosocial engagements. Justice responses instead should increase positive societal connections, rather than create barriers that hinder healthier development.

Applying Science to Practice

A growing number of jurisdictions are implementing programming and practices for emerging adults that address the unique needs identified by developmental science. Leaders from three such programs were interviewed for this article: Judge Bruce Chan from San Francisco's young adult court; Judge Cindy Leos and Tanya Tijerina from the 2nd Judicial District Young Adult Court in Albuquerque, New Mexico; and Elizabeth Henneke from the Lone Star Justice Alliance in Texas. Several themes emerged from these interviews that can help other jurisdictions looking to improve their approach to emerging adults.

Build a Community Collaboration

The courts cannot meet the needs of emerging adults alone. As Judge Leos stated, "It's a community problem, so we need a community solution." While young adult courts in San Francisco, Albuquerque, and other jurisdictions have promising outcomes, communities should focus on building a continuum of care that expands beyond the courthouse walls. Emerging adults should receive supportive resources before and after becoming involved with the court. Young adult courts should be reserved for individuals with the highest level of risk and needs because the programs are resource intensive, providing not only a higher level of case management and support, but also additional judicial time. Court judicial leaders can use their power to convene community stakeholders, build shared understanding of the unique needs of emerging adults, and work together to strengthen the infrastructure of communities to effectively address those needs.

Key stakeholders include the district attorney, public defenders, probation, pretrial services, law enforcement, and community treatment providers. Behavioral treatment providers are critical to this work, as emerging adults have high levels of problematic substance use and untreated mental health issues (Davis et al., 2013). Henneke suggested starting with engaging community support and treatment providers, including mental health and substance use professionals and employment skill organizations, noting that it can be easier to bring the justice system along because they interact with this population regularly. All interviewees emphasized the importance of stakeholders having the same understanding of the needs of emerging adults and noted that training on brain development and the impact of trauma can help develop the shared understanding. Joint training helps to ensure that the same messages are reinforced at every opportunity.

"Have neuroscience training for everyone across the board," said Chan, "It's not just the right thing to do—the science backs it up."

Connections to the Community

Ideally, justice-involved emerging adults should remain in their community and receive community-based services whenever possible; however, even when they are placed elsewhere, they will one day return to their community. Programs should implement strategies for connecting emerging adults to positive prosocial relationships through education, housing, family, employment, and other supportive resources (Schiraldi, Western, and Bradner, 2015). This connection starts while an individual is participating in the program, through case coordination with treatment providers and meaningful community engagement opportunities. Henneke noted that while high levels of community engagement can be a better predictor of positive outcomes than a strong relationship with a case manager, a trusted relationship with a case manager can develop bridges to community connections. This way, the case manager is not the sole support system for the individual, which creates a vacuum of support when the individual completes the program. Rather, the case manager can identify community engagement opportunities aligned with the individual's skills and interests, make necessary introductions, and encourage the individual to continue engagement after program completion.

Unlike early adolescents, emerging adults might be especially open to nonparental adult role models and might have greater motivation to build profound and long-lasting relationships (Yu and Deutsch, 2019). Program case managers should leverage this openness by helping emerging adults forge prosocial relationships in the community that continue after program completion, which can help them adopt social and emotional roles that contribute to positive behavioral change.

Individualized Responses

Each interviewee emphasized the importance of responding to emerging adults in an individualized way by understanding their story and being responsive to their unique needs. All programs interviewed use standardized screening and assessment tools to identify the needs of participants. Currently, there is not a specific tool validated on the emerging adult population, and the programs in this article use an array of screening tools and assessments. Information gleaned from the screening-and-assessment process, along with building a trusting relationship, allows programs to tailor services and requirements to each young person. For instance, programs demonstrated individualization through customizing community service options to accommodate interests or work schedules, providing flexibility within program parameters, and setting personalized goals. As Judge Chan said, "When you have people with different educational levels, cognitive abilities, mental health needs, success is defined differently."

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It is critical that individuals who work with emerging adults are willing to be flexible and forgiving. Relationships are important to individuals of this age group, and relationships are developed through being present to help emerging adults navigate life. Case managers in the programs often help emerging adults prioritize tasks and complete routine life skills, such as going to the DMV or calling to make appointments. These routine life skills may sound simple; however, many emerging adults have been deprived of nourishing interpersonal relationships that facilitate the development of proper skills to face the challenges of this life stage independently. While a case manager's presence and support help teach practical life skills, these small instances also build a trusting relationship and demonstrate to the emerging adult that they are cared for and valued. Only after those trusting relationships are built can a program produce change. Ms. Tijerina stated, "Our biggest strength is getting to know each participant and getting creative in addressing issues that come up. Not being afraid to try something new."

This age group is also influenced by peers, and while peer mentors can be a powerful tool for mentees, it is also a meaningful relationship for mentors. Judge Leos and Ms. Tijerina described their court's peer mentor training as a strategy to counteract the self-sabotage they often see emerging adults experience as they come close to completing the program. In their court, participants who are near the end of their participation can be trained as certified peer mentors as a way for them to "step forward" rather than step back.

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In addition to emerging adults' underdeveloped brain and its impact on psychosocial immaturity, social factors also make this stage in life particularly vulnerable to criminal behavior, but also more susceptible and amenable to justice system responses than fully developed adults.

Conclusion

Individuals aged 18 to 24 straddle an imaginary line between youth and adulthood. Their brain is still developing problem-solving, prioritization, and emotional regulation skills. Most emerging adults are amenable to change, but they need trusted advisors who see their value and support them as they continue to develop. This age group also needs to be connected to their community in a manner that outlives their participation in any program. Continuing to treat emerging adults in our justice system in the traditional ways comes at a cost to communities, governments, and families (Pirius, 2018). Investing in developmentally aligned, trauma-informed, and community-centric interventions, however, can have a positive impact on young adults for a lifetime, addressing the underlying factors that led to the criminal behavior, cultivating positive connections to their community, and reducing the likelihood of continued court involvement.

As Judge Leos stated, “This is an amazing population to work with—there is never a dull moment. They are at a place in their life where they are trying to figure it out, and even just for a moment, they are grateful for the chance to feel valued. They come to you broken, oppositional—once you pull back those layers, they are just looking for guidance. To be a part of that is powerful.”



References

- Arnett, Jeffrey J., Rita Žukauskienė, and Kazumi Sugimura (2014). "The New Life Stage of Emerging Adulthood at Ages 18–29 Years: Implications for Mental Health." 1 *Lancet Psychiatry* 569.
- Bronson, J., and E. A. Carson (2019). *Prisoners in 2017*. Washington, DC: Bureau of Justice Statistics.
- Cohen, B., et al. (2016). "When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts." 27 *Psychological Science* 549. <https://doi.org/10.1177/0956797615627625>
- Davis, M., et al. (2013). "Prevalence and Impact of Substance Use Among Emerging Adults with Serious Mental Health Conditions." 35 *Psychiatric Rehabilitation Journal* 235.
- Farrington, D. P., R. Loeber, and J. C. Howell (2012). "Young Adult Offenders: The Need for More Effective Legislative Options and Justice Processing." 11 *Criminology and Public Policy* 729.
- Fountain, E., A. Mikytuck, and J. Woolard (2021). "Treating Emerging Adults Differently: How Developmental Science Informs Perceptions of Justice Policy." 7 *Translational Issues in Psychological Science* 65.
- Hirschi, T., and M. R. Gottfredson (1983). "Age and the Explanation of Crime." 89 *American Journal of Sociology* 552.
- Icenogle, G., et al. (2019). "Adolescents' Cognitive Capacity Reaches Adult Levels Prior to Their Psychosocial Maturity: Evidence for a 'Maturity Gap' in a Multinational, Cross-Sectional Sample." 43 *Law and Human Behavior* 69.
- Kovera, M. B. (2019). "Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions." 75 *Journal of Social Issues* 1139.
- Loeber, R., et al. (2012). "Findings from the Pittsburgh Youth Study: Cognitive Impulsivity and Intelligence as Predictors of the Age-Crime Curve." 51 *Journal of the American Academy of Child and Adolescent Psychiatry* 1136.
- Pirius, R. (2019). *The Legislative Primer Series for Front-End Justice: Young Adults in the Justice System*. Washington, DC: National Conference of State Legislatures. Retrieved from: https://www.ncsl.org/Portals/1/Documents/cj/front_end_young-adults_v04_web.pdf

MEETING THE NEEDS OF EMERGING ADULTS IN THE JUSTICE SYSTEM

Schiraldi, V., B. Western, and K. Bradner (2015). "Community-Based Responses to Justice-Involved Young Adults." *New Thinking in Community Corrections*. September, Harvard Kennedy School. Retrieved from: <https://www.ojp.gov/pdffiles1/nij/248900.pdf>

Scott, E. S., R. J. Bonnie, and L. Steinberg (2016). "Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy." *85 Fordham Law Review* 641.

Sowell, E. R., et al. (2001). "Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation." *21 Journal of Neuroscience* 8819.

Yu, M. V. B., and N. L. Deutsch (2019). "Aligning Social Support to Youth's Developmental Needs: The Role of Nonparental Youth-Adult Relationships in Early and Late Adolescence." *25 Applied Developmental Science* 133.

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They are at a place in their life where they are trying to figure it out, and even just for a moment, they are grateful for the chance to feel valued. They come to you broken, oppositional—once you pull back those layers, they are just looking for guidance. To be a part of that is powerful.

08

Effective Monitoring of Guardianship and Conservatorship Cases

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EFFECTIVE MONITORING OF GUARDIANSHIP AND CONSERVATORSHIP CASES

Courts are responsible for monitoring guardianship and conservatorship cases throughout the life of the case. New tools are available to courts, including the recommendations of the Fourth National Guardianship Summit, the Judicial Response Protocol to Guardianship and Conservatorship Abuses, and the Conservatorship Accountability Project data standards.

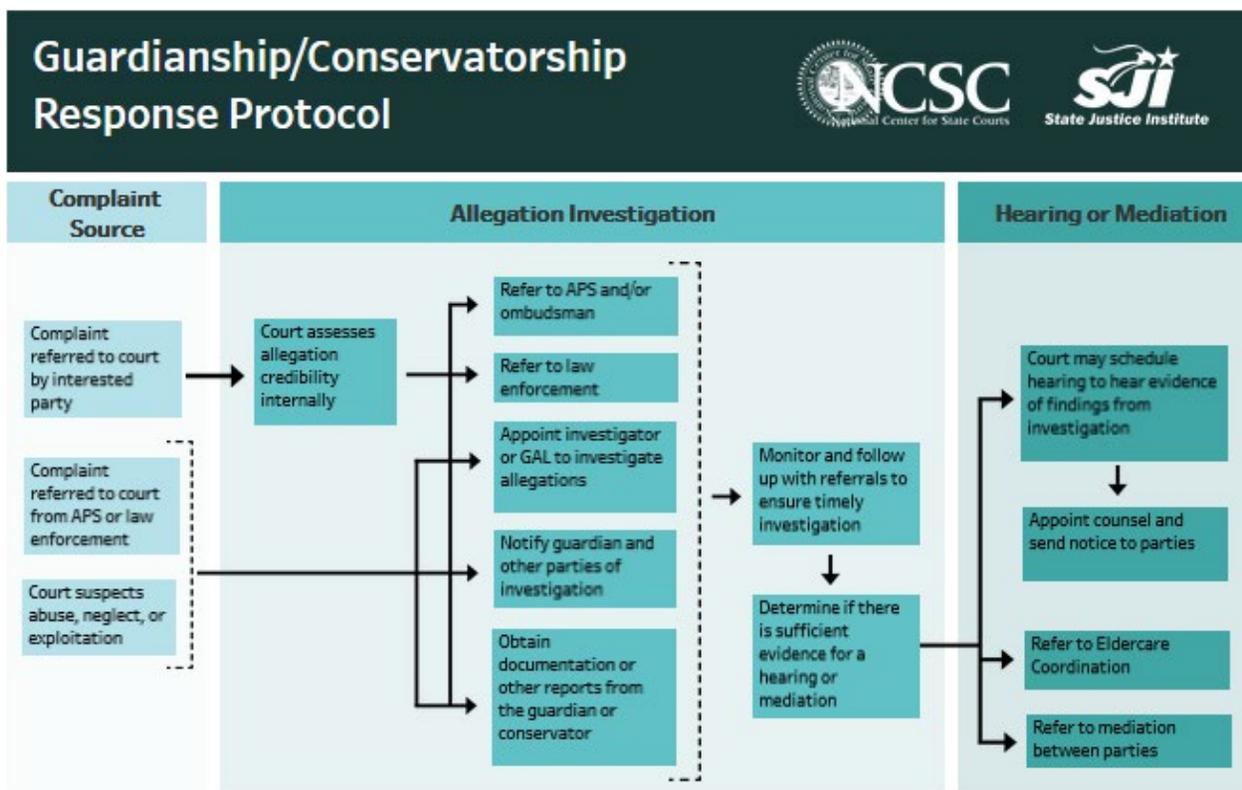
While most court personnel never expected to be regularly asked about Britney Spears, her guardianship (called a conservatorship in California) spotlighted the need for ongoing monitoring of guardianship and conservatorship cases.¹ This monitoring includes reviews of the person's well-being, as well as finances. Critically, it must also include an assessment of the ongoing need for the guardianship or conservatorship. Accomplishing this requires collection of relevant data at case filing and throughout the case. Guardianships and conservatorships differ from most other court cases in that courts retain responsibility for the well-being of the individuals involved long after the adjudication.

¹ For purposes of this article, guardianships refer to guardian of the person and conservatorships refer to guardian of the estate.

Judicial Response Protocol for Guardianship and Conservatorship Abuses

One tool useful for state court judges faced with an allegation of abuse or neglect in a guardianship case is the Judicial Response Protocol for Guardianship and Conservatorship Abuses. This interactive tool, published at www.eldersandcourts.org, provides guidance and options for judges (Figure 1). The tool includes a protocol spanning consideration of the source of the complaint to the investigation, hearing, determination, and resulting judicial actions. A team of judicial experts developed the tool, and states can tailor it to conform with their own laws and court rules.

Figure 1: Guardianship/Conservatorship Response Protocol



Monitoring to Detect Fraud, Abuse, or Neglect

Concerns about guardian and conservator performance can come to the court's attention from the rigorous review of required annual reports and financial accounts or from concerns brought to the court by loved ones or other interested parties or the person subject to the guardianship or conservatorship. Rigorous review includes setting and clearly communicating due dates, ensuring that reports are timely received, and conducting meaningful review of the reports. Such a robust process includes collecting data elements necessary to monitor the case, such as those recommended by the Conservatorship Accountability Project (Robinson, Holt, and Boyko, 2020). It also requires using personal-care and financial plans filed early in the case as a benchmark for monitoring. Well written personal-care plans include information about the person's primary residence, treatment, care, and activities. Well-written financial plans include a budget and plan for the person's financial resources to support the person throughout the guardianship.

To encourage guardians and conservators to submit the information needed by the court to monitor the guardianship or conservatorship, reporting forms should be readily available and written simply and clearly, in languages commonly used in the community. [New Mexico](#) provides the standard guardian and conservator reports as fillable forms in English and Spanish on the courts' website. The conservator report requires three years of summary information to enable judges to see the change in the person's assets at a glance. [Minnesota's](#) guardians submit reports online through the MyMNGuardian and MyMNConservator portals. Clark County, Nevada, and the state of Oregon have developed dashboards that pull data from the electronic case management system. These dashboards allow staff to see in real time which cases comply with reporting, as well as whether staff have reviewed and, if warranted, investigated reports.

One judge, when recently asked if his court would know if there were concerns about a protected person's well-being, said, "It's a small town, I'd hear." Courts in small and large communities alike need a clear method for persons subject to guardianship or conservatorship to report concerns. They also need a clear method for loved ones or other community members to report concerns even if they are not parties to the case. [Idaho's](#) process to receive complaints is published on their website, along with the appropriate form to use. The State of [Washington](#) also provides a simple form with instructions. While complaints coming from adult protective services or law enforcement are likely to warrant a hearing as the next step,

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a complaint coming from an interested party will typically move to an investigation. The court must first ascertain the credibility of the complaint and then either collect additional information or refer it to an outside agency, such as adult protective services, law enforcement, or an ombudsman. [Wayne County Probate Court](#) (Michigan) uses an ombudsman's office to determine which cases need to move on to a hearing. Other courts use court visitors, who may be volunteers, at this stage to go to the residence of the person as part of the investigation. From there, it is vitally important that the court monitor and follow up on referrals to ensure timely investigation.

Unfortunately, in a survey conducted in 2020, only 20 percent of judges and court administrators reported that they had sufficient resources for monitoring (Robinson, Trescher, and Hamilton, 2021). Some jurisdictions have pooled resources to address this problem. Texas has created the Guardianship Abuse, Fraud and Exploitation Deterrence Program (GAFEDP) to use staff members from the Office of Court Administration (OCA) to review guardianships and conservatorships in local courts to identify missing or incomplete reports, audit accountings, and provide information to the local judge. In fiscal year 2021, reviews found that 13 percent of cases were out of compliance in courts required to employ support staff to assist in the monitoring of their guardianship cases, but 39 percent of cases were out of compliance in courts that typically rely on county clerk staff to monitor guardianships (Texas Judicial Branch Office of Court Administration, 2021). New Mexico courts have a memorandum of understanding with the state auditor's office to assist the courts with auditing expertise.

Nebraska has a system to use experienced court staff in lower-workload courts to supplement the staff in high-volume courts in other counties. Called guardian/conservator extra duty specialists, they can step in to assist in training new county court staff, answering questions, and doing the reviews for particularly complex or time-consuming guardian/conservator annual reports.

If the court determines that a hearing on a problematic guardianship or conservatorship is necessary, counsel is appointed, and notice given to parties. Alternatively, the court may make referrals to mediation or [eldercaring coordination](#). Mediation is appropriate when the underlying issues are disputes between concerned parties (typically not the protected person) and may be ordered from a hearing or in place of a hearing. [Eldercaring coordination](#) is a newer dispute resolution process using specially trained facilitators to resolve family conflicts over the care, autonomy, and safety of older adults. Rather than being mired in a court battle, families acquire the tools they need to communicate more effectively, to listen, and to cooperate in developing a support system that meets the person's needs (see Eldercaring Coordination, 2020).



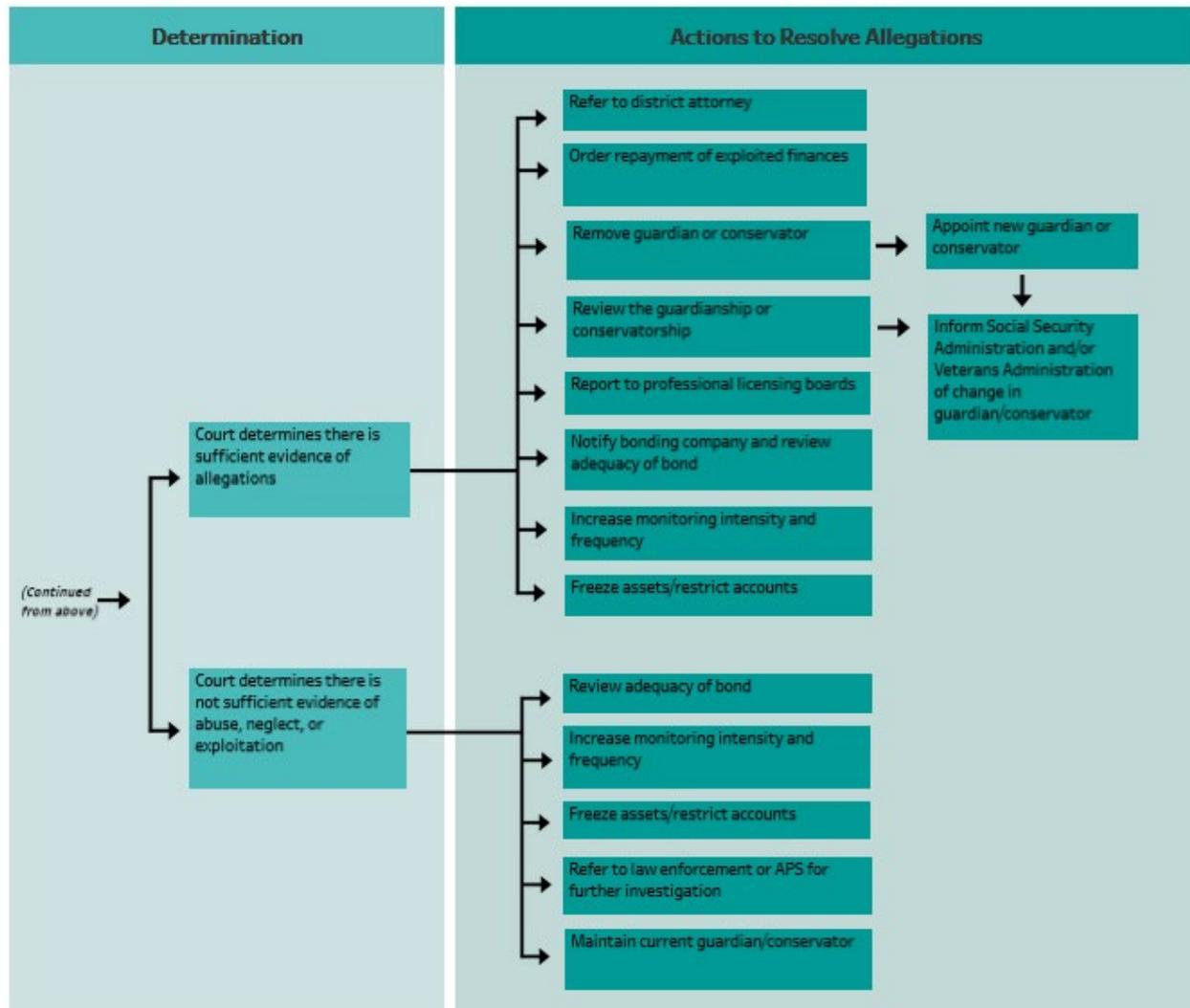
Responding to Fraud, Abuse, or Neglect

When the court determines that sufficient evidence exists of abuse, neglect, or fraud, the court has options beyond removing the guardian (Figure 2). While instances of guardianship fraud and abuse perpetrated by professional guardians tend to be the ones that make the news, many problems arise when the guardian/conservator is a friend or family member. These problems may result from a lack of understanding of the guardian's responsibilities and unfamiliarity with legal processes. While removing the guardian may be necessary when a guardian has abused his or her powers, the court may find that the person's well-being or assets can be protected with additional safeguards while retaining the guardian. Additional safeguards may include additional training for the guardian or conservator, increasing the bond, ordering restricted accounts, freezing assets, and increasing the monitoring intensity and frequency. [Idaho](#) uses a Differentiated Case Management Tool to identify cases requiring higher levels of monitoring. Even if the court does not find evidence of abuse, neglect, or fraud, there may still be concerns, and increased monitoring or other safeguards may be appropriate.

When the court removes a guardian or conservator for cause, courts should take action to protect other individuals who may have the same guardian or conservator. Pennsylvania has implemented a Guardianship Tracking System that allows for automatic notification of all courts using a particular guardian when wrongdoing is found. Courts should also report a guardian or conservator who has been removed for cause to professional licensing boards (e.g., the bar association for attorneys, the Center for Guardianship Certification for certified guardians, or the state guardian oversight board).

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Figure 2: Court Responses



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Assessing Ongoing Need for Guardianship and Conservatorship

An essential element of monitoring is meaningful periodic reviews by courts of whether it is necessary to continue the guardianship or conservatorship. The Fourth National Guardianship Summit, held virtually in May 2021, recommended that courts ensure that protected persons have access to a full or partial restoration of rights at the earliest opportunity (Recommendations of the Fourth National Guardianship Summit, 2021). In addition to periodic reviews, additional recommendations include annual notice to the person of the opportunity to restore their rights, legal representation of the person throughout the case, and training for guardians, attorneys, and courts on the restoration process.

One alternative to full guardianship is supported decision making, which refers to “a series of relationships, practices, arrangements, and agreements, of more or less formality and intensity, designed to assist an individual with a disability to make and communicate to others decisions about the individual’s life” (Fourth National Guardianship Summit, 2021). Another alternative is a limited guardianship, narrowly targeted to the functional limitations of the adult. The Fourth National Guardianship Summit (2021) recommended that “states should eliminate plenary guardianship, allowing people to retain the maximum of rights, and if guardianship is imposed, require tailored guardianship orders in all cases.” Further, it specified that courts should review existing plenary, or full, guardianship orders with the presumption that continuation is not warranted.

Collecting Data

The need for timely guardianship data cannot be overstated for both tracking and monitoring cases. This includes technology to enhance the court’s capacity to track compliance with court orders, validate reports, and flag potential problems. While typical court case management systems are designed primarily for cases from filing to disposition, the court’s responsibilities in guardianship and conservatorship cases continue through the life of the guardianship. Correspondingly, the court must capture information on changes over the life of the case.

The court should track each guardianship and conservatorship case at every step of the process from the initial petition to the disposition and continuing through the final closing

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order. For each guardianship the court orders, the court should track the due dates and submission dates and review all initial required reports, potentially including the inventory, the care plan, and the bond. The court then needs to track the annual accountings and the status reports of the person throughout the life of case. The court must maintain current contact information for the guardian or conservator and for the person, as it can be difficult to monitor the adult's well-being if the court has lost track of that person. This should include the residence of the person, as well as the guardian's mailing address, cell phone, and email address.

The current status of the case is an essential data point and courts must be able to distinguish between cases with a petition pending and those for which the courts have adjudicated incapacity and have an ongoing duty to monitor the guardianship or conservatorship. The National Open Court Data Standards use "open/pending" and "disposed/set for review" to distinguish cases pre- and post-adjudication.

Financial data, including the assets at appointment and the assets reported at each successive accounting, help courts ensure that financial resources are being managed in a way that conserves the person's resources for lifetime care.

Conclusion and Recommendations

Courts maintain responsibility for protected persons throughout the life of the guardianship or conservatorship. To monitor the guardianship or conservatorship, the court must, at a minimum:

- provide necessary forms and instructions to the guardian or conservator;
- provide timely and meaningful review of required reports;
- establish a mechanism for interested individuals, including the person subject to guardianship or conservatorship, to submit concerns to the court;
- respond appropriately and effectively to allegations of abuse, neglect, or fraud;
- assess the ongoing need for the guardianship or conservatorship and hold periodic hearings on the need to continue the guardianship/conservatorship; and
- collect the data at case filing and throughout the case necessary to uphold these responsibilities.

Including these safeguards can help courts fulfill their duties to adults subject to guardianship or conservatorship throughout the life of the guardianship, protecting the person and the

estate. Reviewing reports, considering and responding to complaints or grievances, and holding periodic reviews of the guardianship or conservatorship case also helps the court to determine if the guardianship is still necessary or whether less restrictive alternatives might be appropriate to protect the person and estate while providing greater autonomy.

References

Elder Justice Initiative on Eldercaring (2020). [Eldercaring Coordination](#).

Minnesota Judicial Branch (n.d.) [MyMNConservator](#) (MMC). Website. Perma link: <https://perma.cc/7KS9-WCRC>.

New Mexico Courts (2021). [Adult Guardianship](#). Website. Perma link: <https://perma.cc/R9ZT-T8GY>.

Fourth National Guardianship Summit (2021). *Recommendations of the Fourth National Guardianship Summit*. Syracuse, NY: Syracuse University.

Robinson, D, S. Trescher, and M. Hamilton (2021). [Adult Guardianship Monitoring: National Survey of Court Practices](#). Williamsburg, VA: National Center for State Courts. Perma link: <https://perma.cc/68MJ-HDLF>.

Robinson, D., K. Holt, and C. Boyko (2020). [Guardianship/Conservatorship Monitoring Recommended Data Elements](#). Williamsburg, VA: National Center for State Courts. Perma link: <https://perma.cc/FZD5-RTKA>

State of Idaho Judicial Branch (2021). [Guardianship/Conservatorship—Filing a Complaint](#). Website. Perma link: <https://perma.cc/3NYF-S8AJ>.

- (n.d.) [Guardianships and Conservatorships](#). Website. Perma link: <https://perma.cc/N2UJ-TFYN>.

Texas Judicial Branch Office of Court Administration (2021). "[Texas Guardianship Compliance](#)." Perma link: <https://perma.cc/CVW4-H9TL>.

Washington Courts (2022). [Court Forms: File a Guardianship and/or Conservatorship Complaint](#). Website. January. Perma link: <https://perma.cc/E3HX-RY9T>.

Wayne County Probate Court (2020). [Guardianship and Estates Ombudsman](#). Website. March. Perma link: <https://perma.cc/ZE82-GWGC>.

09

Reimagining Civil Case Management

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State courts are embracing a broad view of civil case management that encompasses court rules, business practices, culture and governance, and staffing and technology infrastructure. More significant is the shift from effective case management as an end to “user-centered case management” that achieves greater justice for all litigants.

Concerns about the slow pace, high costs, procedural complexity, and lack of predictable outcomes in civil litigation have been raised repeatedly for more than a century. Responses were focused on internal procedures to ensure timely decisions concerning motions, evenhanded and consistent enforcement of procedural rules, and case-calendaring practices to ensure sufficient capacity for hearings.

However, seismic shifts in societal conditions, such as increased recognition of individual civil rights and advances in science and technology, have affected the justice system. Keeping abreast of these developments in complex cases garnered most of the attention of the civil bench and bar, but similar changes also occurred in routine consumer law, especially small claims, landlord/tenant, and consumer debt collection cases. The increased cost of legal services caused self-representation rates to skyrocket (see Hannaford-Agor, Graves, and Miller, 2015; Family Justice Initiative, 2018).

This essay briefly describes the evolution of case management and discusses common themes of contemporary case management across civil, family, and criminal caseloads. In the wake of the COVID-19 pandemic, these themes offer courts a comprehensive approach to manage their way out of case backlogs and embrace a commitment to timely, cost-effective, and procedurally fair justice.

Highlights in the Evolution of Civil Case Management

A crystalizing event in the development of case management practice and theory was the U.S. Supreme Court decision in *Klofer v. North Carolina*, 386 U.S. 213 (1967). *Klofer* ruled that the Sixth Amendment speedy trial guarantee was so fundamental to justice that it applied to trials in state and federal courts. While *Klofer* did not specify a precise time frame for trying a criminal defendant, the decision prompted federal and state legislation setting strict time limits for completing various stages of a criminal prosecution. Because trials are typically the last court event at the trial court level, the time frames established by these statutes set the presumptive maximum time for resolving criminal cases. Nevertheless, many of these statutes provided numerous exemptions that provided ample opportunities for prosecutors and defense counsel to extend the time frame for case resolution.

Early success with criminal case management in the 1970s and 1980s led to similar statutory and regulatory time frames for family and civil cases. Efforts to ensure timely case processing took on added importance as limited financing for state courts, the static number of judgeships, increased filings, and growing numbers of litigants without formal legal expertise created increasingly crowded dockets and longer delays (Steelman, 2008). In part to address how loopholes in speedy trial statutes allowed cases to languish, many states began to adopt time standards setting statewide expectations for case resolution. The American Bar Association began publishing recommended time standards for civil cases beginning in 1976, with amendments in 1984 and 1992 (Van Duizend, Steelman, and Suskin, 2011: 1). The 1992 standards specified that 90 percent of civil cases should be closed within 120 days, 98 percent within 180 days, and 100 percent within 354 days. These proved wildly optimistic, and state courts routinely failed to meet them.

In 2011 the National Center for State Courts (NCSC) developed the *Model Time Standards for State Trial Courts*, which were “intended to establish a reasonable set of expectations for the courts, for lawyers, and for the public” (Van Duizend, Steelman, and Suskin, 2011: 1). The *Model Time Standards* adopted a framework similar to the ABA standards but extended the time frames for concluding civil cases and lowered the percentages for each specified time frame. A significant difference in the *Model Time Standards* was the implied expectation that a very small percentage of cases (2 percent) would not resolve within the maximum time frame articulated in the standards. Instead, some cases are so inherently complex, or encounter unusual obstacles, that it is unreasonable to expect them to resolve within that time frame.



The development and adoption of time standards pushed state courts to pay greater attention to timely case processing, but speed is not the only, nor necessarily the most important, performance measure for the American justice system. Quality, accuracy, fairness, transparency, accessibility, and cost-effectiveness are also critical factors for the fair and efficient adjudication and disposition of cases. Beginning in the 1990s, NCSC undertook a national research project to develop performance standards and measurement tools for state courts to assess these aspects of their operations. The *Trial Court Performance Standards* were the first large-scale effort to introduce performance measurement to judicial policymakers and encourage its routine use in court management. However, few courts had case management systems that were technologically sophisticated enough to easily automate data collection, and most had insufficient resources and expertise to manually collect and analyze data for more than a small handful of measures.

What was needed was a simplified, well-balanced set of measures. Such was the genesis of *CourTools* in 2004, which developed ten trial court performance measures focused primarily on access to justice, expedition and timeliness, and equality, fairness, and integrity. Although not as comprehensive as the *Trial Court Performance Standards*, *CourTools* provided a dashboard view that would indicate areas of court performance that might merit additional attention.

REIMAGINING CIVIL CASE MANAGEMENT

As state courts became more familiar with performance measures, they used them for both monitoring internal operations and offering transparency to public-funding agencies. However, state and local legislators had also become more skeptical about the relationship between court performance and funding. It was no longer a given that court requests for increased funding would be blindly granted by legislators. Instead, they began to demand reliable data to support court budget requests, especially evidence showing that increased funding would result in improved performance. Workload assessments thus became a vital component of court performance measurement.¹

Sophisticated and highly motivated state trial courts used performance measurement to improve court operations, but also drew on other sources to better articulate their vision for improved court management, to develop concrete plans to achieve that vision, and to document whether they had achieved it. NCSC published the *High Performance Court Framework* (Ostrom and Hanson, 2010) to provide guidance to state courts on conducting robust self-assessments and identifying strategies for improved court management.

Each of these initiatives advanced the theory and practice of case management. Over the past 50 years, various state and local courts have made concerted efforts to implement case management practices to reduce cost and delay, often with demonstrable success (see Mahoney et al., 1988; Hewitt, Gallas, and Mahoney, 1990; Rau, 2019). But many courts have struggled to maintain effective case management over time, especially in civil dockets. Some of the difficulty reflects deep-seated beliefs about judicial involvement in the management of disputes between private parties. In most criminal and some family cases, judicial control is often required to ensure compliance with statutory mandates. In contrast, civil cases have very few externally established timelines. State statutes or court rules generally set strict deadlines for service of process on and responsive pleadings by defendants in civil cases, but the prevailing practice for most jurisdictions has been to allow the parties to negotiate their own timeline for completing each stage of litigation.

¹ Workload assessment employs a sophisticated multimethod approach to translating caseload into workload.

A Case Management Renaissance

Despite decades of experience with proven case management techniques, cost and delay continued to plague civil litigation in state courts. The Conference of Chief Justices authorized the creation of the CCJ Civil Justice Improvements Committee (CJI Committee) in 2013 to examine the civil justice system and develop recommendations to ensure the “just, speedy, and inexpensive resolution of civil cases.”² Most committee members began their work believing that the major problems causing cost and delay involved more complex tort and business litigation, especially related to pleadings, discovery and e-discovery, and dispositive motions. However, findings from *The Landscape of Civil Litigation in State Courts* (Hannaford-Agor, Graves, and Miller, 2015) revealed that most civil cases involve straightforward facts and law with relatively small monetary amounts-in-controversy. Defendants are overwhelmingly self-represented. Very few cases are adjudicated on the merits; instead, most are disposed by default judgment or dismissal. The CJI Committee concluded that its recommendations had to be comprehensive in scope, with respect to both the full range of civil cases filed in state courts and the methods employed to manage these cases.

The first of its 13 recommendations was that *courts* (not just judges) exercise ultimate responsibility for managing civil cases from filing to disposition (CJI Committee, 2016). The remaining 12 recommendations then set out a comprehensive plan for doing so. This plan featured triage at filing to ensure that civil rules and court resources are matched to the needs of each case; a staffing model for civil case processing that delegates substantial responsibility for routine case management to specially trained professional staff; and a renewed focus on high-volume calendars, including improved access for SRLs, greater attention to uncontested cases, and greater scrutiny of claims to ensure procedural due process.

The scope of the CJI recommendations focused exclusively on general civil cases, but it quickly became apparent to court professionals that the CJI recommendations applied just as well to family court cases. The Cady Initiative for Family Justice Reform used the CJI framework as a template for its *Principles for Family Justice Reform* (Family Justice Initiative, 2019).

² CCJ Resolution 5 to Establish a Committee Charged with Developing Guidelines and Best Practices for Civil Justice (adopted January 30, 2013). The committee consisted of 24 members, including judges and court administrators representing all levels of state courts, plaintiff and civil defense attorneys, corporate counsel, legal aid, and academia. It was chaired by Chief Justice Thomas Balmer, Supreme Court of Oregon, and staffed by the National Center for State Courts and the Institute for the Advancement of the American Legal System.

REIMAGINING CIVIL CASE MANAGEMENT

The *Principles* likewise embraced case triage at filing, reserving the topmost tier for cases in which family violence, substance abuse, physical and mental health, or similar issues make it inadvisable for parties to attempt to resolve disputes without close judicial supervision. In addition to managing routine case management, specially trained court staff are tasked with helping litigants access support services, including self-help resources, educational information, and nonadversarial dispute resolution processes.

Another major NCSC research project focused on criminal case management, studying criminal case characteristics and outcomes in 136 courts across 21 states. Based on data analyses and site visits with high-performing courts, the Effective Criminal Case Management (ECCM) project identified five essential elements of effective case management for criminal cases. Although organized differently, the ECCM elements had much in common with the CJI and FJI, especially early and active court control over case processing, clear roles for judges and court staff, and predictable and productive court events.

By March 2020, when the COVID-19 pandemic abruptly suspended state court operations across much of the United States, all three case management initiatives—civil, family, and criminal—had published their findings and recommendations for effective case management and had begun education and technical assistance to support implementation. The timing for this renaissance in effective case management could not have been more prescient, as successive waves of the virus closed courthouses and delayed in-person court hearings, especially jury trials, over the next two years. Many courts transitioned to remote hearings to ensure the continuation of critical court functions, but disruptions from the pandemic caused massive case backlogs. The impact has been especially severe on civil dockets, which have had to take a backseat to criminal and family law cases that are subject to statutes and court rules with strict deadlines for completing essential litigation tasks. Education and resources on effective case management became staples of the CCJ/COSCA Rapid Response Team (RRT) guidance to state courts, with NCSC subject-matter experts regularly coordinating on the development of those tools to ensure the greatest possible applicability across court dockets.



The Path Forward

As they worked together on resources for state courts to maintain essential court operations, NCSC staff were struck by the commonality of core elements of effective case management across case types. They compared notes and learned from each other how to adapt innovations from one case type to others. They identified five core components of case management that will form the basis for continued study and refinement:

- 1. Leadership and Collaboration**
- 2. Proactive and Flexible Triage**
- 3. Effective Resource Allocation**
- 4. User-Centered Process**
- 5. Data-Driven Performance Management**

For civil justice, the Leadership and Collaboration component is encapsulated in CJI recommendation 1, as well as the CJI implementation guidance on identifying and engaging civil justice stakeholders for state and local task forces. Leadership is especially important to address lingering attitudes that case management is best left to the parties, but courts are rarely successful in achieving long-term changes in court culture unless they invest time and energy in stakeholder engagement to ensure that legitimate perspectives are considered, and innovative solutions are not overlooked. Indeed, the participation of the broad array of stakeholder interests on the CJI Committee was fundamental to the scope and ultimate impact of the CJI recommendations.

The rejection of a one-size-fits-all approach to civil case processing and its replacement by a "Pathway Approach" in CJI recommendations 2 through 6 was one of the first areas of consensus for the CJI Committee (2016). They were especially insistent that the Pathway Approach is not a tiered structure of general- and limited-jurisdiction courts or Differentiated Case Management (DCM) by another name. This approach is both more flexible, allowing cases to move from a streamlined to a complex pathway or vice versa if the needs of the case change over time. Case triage in the Pathway Approach also takes place very early in the case, ideally at filing, rather than at a case management conference, which in many courts takes place only in a very small proportion of cases and often too late for the case to benefit from early oversight and support from specially trained court staff. For maximum effectiveness, it is also important that court rules for each pathway explicitly define the expectations for case management, including explicit time frames to complete essential litigation tasks and timely notification of the rules in case management orders issued at filing.

REIMAGINING CIVIL CASE MANAGEMENT

Effective resource allocation refers to staffing and technology support for civil case management as described in CJI recommendations 7 through 10. Some of the rationale for this component involves efficiency and cost-effectiveness. Judges are the single most expensive human resource in the court. To the extent that routine case management tasks can be delegated to specially trained court staff, judges become free to focus on tasks that require unique judicial expertise and authority. Similarly, automating routine clerical functions allows court staff to focus on more complex tasks requiring greater expertise or discretion. This component also has broader implications for courts, especially for employee satisfaction. Court staff that are empowered to assume a more meaningful role in case management find their work more fulfilling, and judges that have time to give cases full attention to the legal and factual issues on which their decisions are based ultimately deliver better justice. Many courts invested in their technology infrastructure during the COVID-19 pandemic, allowing them to streamline internal workflows and to work more efficiently, but additional investments in effective training for both the bench and court staff are key to fully realizing the benefits of this component of civil case management.

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Court staff that are empowered to assume a more meaningful role in case management find their work more fulfilling, and judges that have time to give cases full attention to the legal and factual issues on which their decisions are based ultimately deliver better justice.

Implementing a user-centered process for civil cases requires courts to first recognize who the litigants are in their civil caseloads and make appropriate accommodations to ensure that they benefit from the courts' efforts to deliver timely, cost-effective, and fair resolutions to litigation. Most civil cases have at least one SRL, most often the defendant. They lack legal training to easily navigate court rules and procedures designed primarily for the convenience of judges and lawyers. During the pandemic, judicial policymakers learned that conducting court hearings remotely, especially for non-evidentiary matters, often requires additional preparation and training for court staff, but also offers much greater convenience and flexibility to litigants that can ultimately improve their experience and the case outcome. Process simplification is thus a critical step in civil justice reform to remove procedural barriers that unnecessarily complicate litigation. In most instances, process simplification benefits all litigants, not just SRLs, insofar that it often eliminates time-consuming and expensive procedures that increase costs for represented litigants without significantly moving the case toward resolution.

Stakeholder engagement is likewise an important aspect of a user-centered process. It ensures that court users receive clear communication about case management objectives at every stage of the litigation. Technology, especially electronic notification systems, are especially useful for communicating upcoming deadlines, informing court users of the consequences of failure to comply with court rules and orders, and alerting them to necessary next steps. To ensure maximum effectiveness, the court must have mechanisms to monitor compliance with court rules and procedures to intervene when litigants fail to comply, which also rewards professionalism and disincentivizes gamesmanship and sharp practices that otherwise occur when lawyers believe that the court is not watching.

The final component of effective civil case management is an ongoing commitment to data-driven performance management. Just as courts need to implement effective mechanisms to monitor case progress toward resolution, they should also implement mechanisms to monitor their own performance. Several tools and resources developed for the CJI Implementation Plan involved self-assessment, including a questionnaire for courts to gauge their existing compliance with the CJI recommendations, a do-it-yourself guide on conducting a landscape study of civil litigation, and key performance measures for civil justice reform. Courts can use these tools in conjunction with the *High Performance Court Framework* to assess progress toward case management goals, identify and implement improvements, and assess the impact of those improvements as part of a recurring "quality cycle" of court improvement. Because high-quality data are essential to this process, implementing the National Open Court Data Standards (NODS) can greatly assist courts in performance management by facilitating accurate and meaningful data collection and interpretation.

REIMAGINING CIVIL CASE MANAGEMENT

The past 50 years have seen incredible advances in civil case management, but also frequent backsliding as court rules were enacted, but were later discarded by subsequent leadership or simply became ineffective due to lack of enforcement. The crisis of COVID-19 backlogs provides courts with ample opportunities to finally embed effective case management into their routine business practices. The CJI recommendations and innovative techniques borrowed from effective case management in other court dockets offer a solid path for moving toward a civil justice system that provides greater justice for all litigants.



References

Civil Justice Improvements Committee (CJI, 2016). *Call to Action: Achieving Civil Justice for All*. Williamsburg, VA: National Center for State Courts. Perma link: <https://perma.cc/26CC-FBKM>.

Family Justice Initiative (2019). *Principles for Family Justice Reform*. Williamsburg, VA: National Center for State Courts. Perma link: <https://perma.cc/JNC6-QM9S>.

Hannaford-Agor, P., L. Hamblin, B. Via, and N.A. Knowlton (2018). *The Landscape of Domestic Relations Cases in State Courts*. Williamsburg, VA: National Center for State Courts. Perma link: <https://perma.cc/3URJ-J9C2>.

Hannaford-Agor, P., S. Graves, and S. S. Miller (2015). *The Landscape of Civil Litigation in State Courts*. Williamsburg, VA: National Center for State Courts. Perma link: <https://perma.cc/2M2T-ES5B>.

Hewitt, W. E., G. Gallas, and B. Mahoney (1990). *Courts That Succeed: Six Profiles of Successful Courts*. Williamsburg, VA: National Center for State Courts.

Mahoney, B. et al. (1988). *Changing Times in Trial Courts*. Williamsburg, VA: National Center for State Courts.

Ostrom, B., and R. Hanson (2010). *Achieving High Performance: A Framework for Courts*. Williamsburg, VA: National Center for State Courts.

Rau, L. M. (2019). "The Philadelphia Experiment in Civil Case Management: From Disaster to Model Court." Thesis, Master of Judicial Studies degree. University of Nevada, Reno, December. Perma link: <https://perma.cc/RU47-7DUQ>.

Stelman, D. (2008). "Caseflow Management." In C. R. Flango, A. M. McDowell, C. F. Campbell, and N. B. Kauder (eds.), *Future Trends in State Courts 2008*. Williamsburg, VA: National Center for State Courts.

Van Duizend, R., D. C. Stelman, and L. Suskin (2011). *Model Time Standards for State Trial Courts*. Williamsburg, VA: National Center for State Courts.



10

Moving Court Cases Forward: Simulating the Impact of Policy Changes on Caseloads

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MOVING COURT CASES FORWARD: SIMULATING THE IMPACT OF POLICY CHANGES ON CASELOADS

Courts across the country have advanced their use of data analytics and visualizations to support effective decision making. The Court Backlog Reduction Simulator (CBRS) makes this information actionable through evidence-informed forecasts of future pending and age of pending caseloads.



Making the Most Out of Your Data

Achieving fair and timely case processing takes planning and commitment. In the best of circumstances, it is a challenge for courts to coordinate the flow of cases through the system without delay, while also ensuring every person has the right to their day in court. With few exceptions, courts across the country are struggling with ongoing disruptions to customary case-processing practices since the COVID-19 pandemic, often leading to mounting backlogs. For example, some cases filed shortly after the pandemic are still active nearly two years later owing, in part, to court closures, staff shortages, and suspended jury trials. Regardless of the reasons, rising backlogs are pervasive and threaten to become a feature of the court landscape for years to come.

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While established case management tools, such as tracking monthly filing and disposition patterns, remain important, they are not directly focused on managing backlog. Data analytics that incorporate time to disposition and age of pending caseload can show where backlogs have occurred historically. To be clear, measuring past case-processing trends and performance is a critical first step in understanding a court's success in managing its workload. The next step is to make these data actionable to inform case management going forward. Incorporating a future orientation allows courts to anticipate upcoming trends in caseloads, including backlogs, and to design and evaluate plans before acting.

Courts need data-informed solutions to address a large and growing volume of pending and backlogged cases. Looking into the future can help solve that problem. It is possible to produce accurate predictions of future trends by using a court's local data. Simulation is a method that uses existing data as inputs to make informed estimates about future outcomes and develop data-driven strategies. Simulation helps make a court proactive rather than reactive.

This article provides an overview of the Court Backlog Reduction Simulator (CBRS), including its current features and assumptions, key takeaways from sites piloting the tool, and the suite of resources being developed to support its use. It concludes with plans for future development and implementation.

Court Performance and CBRS

To help courts better understand and address backlog-related issues, the National Center for State Courts (NCSC) developed the CBRS with funding by the State Justice Institute. The tool is designed to help courts translate existing performance data into forward-looking models of policy and practice changes. Simulation allows courts to project the impact of interventions and estimate the future impact on backlog reduction. Interventions are strategies designed to reduce backlog and often feature efforts to increase the number of dispositions, triage cases for early resolution, or focus on resolving the oldest pending cases. Specific interventions include adding a visiting judge, expanding court hours, and dedicating staff to a dismissal docket for inactive cases. Simulating the impact of various scenarios supports court efforts to set reasonable and measurable goals, evaluate progress toward meeting those goals, and adjust business practices as needed.

The CBRS is designed to be straightforward to use for those interested in moving beyond performance monitoring to data-driven decision making. First, it employs data elements and definitions consistent with select NCSC [CourTools](#) performance measures (see Figure 1).

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The simulator relies upon readily available aggregate data for the past 12 months on filings, dispositions, and pending cases to produce historical metrics and future estimates. This allows courts to estimate and monitor the impact of various interventions on the clearance rate, time to disposition, and age of active pending caseload.

Figure 1: *CourTools* Measures Built into CBRS

Measure	Source	Definition	Data Elements Included in CBRS
Clearance Rate	<i>CourTools</i> Measure 2	The number of outgoing cases as a percentage of the number of incoming cases	Number of filings Number of dispositions
Time to Disposition	<i>CourTools</i> Measure 3	The percentage of cases disposed or otherwise resolved within established time frames	Number and percent of disposed cases within each time frame
Age of Active Pending Caseload	<i>CourTools</i> Measure 4	The age of the cases pending before the court, measured as the number of days from filing until the time of measurement	Number and percent of active pending cases within each time frame

- **Clearance Rate** examines a court's success in keeping current with the incoming flow of cases. Simply put, it measures whether more cases are being added to the court's caseload than are being disposed. If the number of resolved cases falls short of filings, a potential backlog is automatically created. Does the intervention improve clearance rates?
- **Time to Disposition** calculates the length of elapsed time from the date of case filing to case resolution, with the recommendation that the result be compared to an agreed-upon case-processing time standard. Obviously, the greater the number of days, the longer the waiting time for the parties and others interested in the court's decision. Does the intervention lead to some cases being resolved in earlier time periods?
- **Age of Active Pending Caseload** counts the number of days cases have been pending or awaiting resolution. It is an important companion measure to Time to Disposition because a court might demonstrate expeditious processing of recently disposed cases only to have undesirably high figures for the age of its active pending caseload (due to cases that linger longer than necessary). Does the intervention take into consideration the age of pending cases and focus on the older cases?

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Second, incorporating these three performance measures allows courts to develop a consistent measure of backlog. All courts have pending cases, but not all pending cases are backlog. Backlog is a term reserved for a court's older cases. A standard definition of backlog involves cases that are pending beyond a certain time frame. For courts that have adopted time standards, backlogs are identified as the share of cases exceeding time standards (e.g., cases more than 365 days old). For courts that do not currently have time goals or that want to benchmark against national time standards, these visualizations provide that framework.

Third, the simulator provides data visualizations to bring greater visibility to estimated future trends in the flow of specific types of cases into and out of the courts. In so doing, the visual format brings greater clarity to the interplay between possible court interventions and outcomes as measured by *CourTools*. Simulation helps think through the anticipated benefits of any intervention by gauging expected impact in light of key performance measures.

Fourth, and most importantly, by using historical case-processing information to make projections about increases or decreases in the number and age of future pending cases, and tracking outcomes over time, courts can better support management of case assignments, resource allocation, and strategic priorities. With estimates on the impacts of local policy interventions on pending caseloads and backlogs, courts can harness more dynamic data to anticipate future trends.

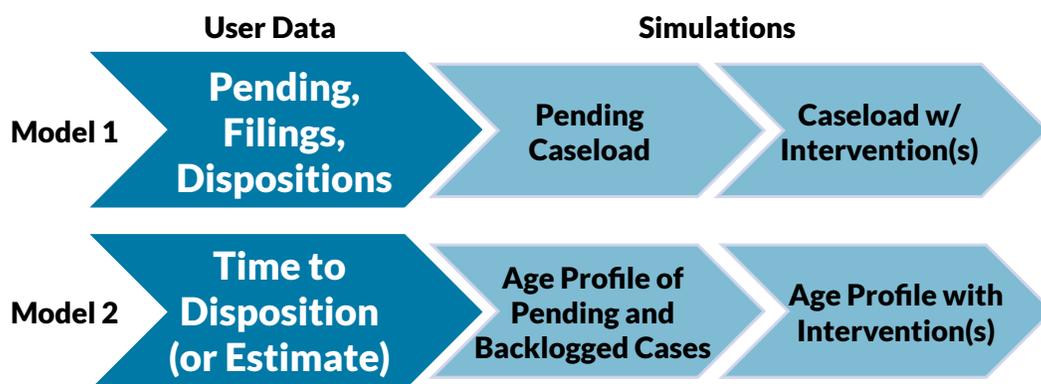


CBRS Features and Assumptions

CBRS can be used across court levels and case types. Because the tool supports data-informed decision making, the user must have some basic, readily available data that can be manually entered or formatted for uploading. Users can create an account or use a guest login to securely input information, generate visualizations, customize their experience, and save or print CBRS output. Users will also be able to review and accept the data-use-and-protection policy, which outlines how NCSC will collect and store the data, as well as make improvements to CBRS based on submitted data. Having participating courts collaborate with NCSC makes it possible to fulfill a key goal of CBRS to improve forecasting accuracy over time.

Once launched, the tool will be a public-facing and user-friendly web application that allows users to visualize their data and potential future impacts on caseloads. Figure 2 depicts the tool's inputs and outputs.

Figure 2: Functionality



The data elements used as inputs for the simulator draw on a court's experience over a recent 12-month period. The primary inputs are total active pending, monthly filings, and monthly dispositions. The tool uses these inputs to calculate the clearance rates and annual totals and produce a baseline simulation of pending cases over the next 12 months.

**MOVING COURT CASES FORWARD:
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Figure 3: Example of Primary Inputs

Simulation Period (start of next 12 months)

Enter Current Month and Year

February-22

Historical Metrics (prior 12 month period)

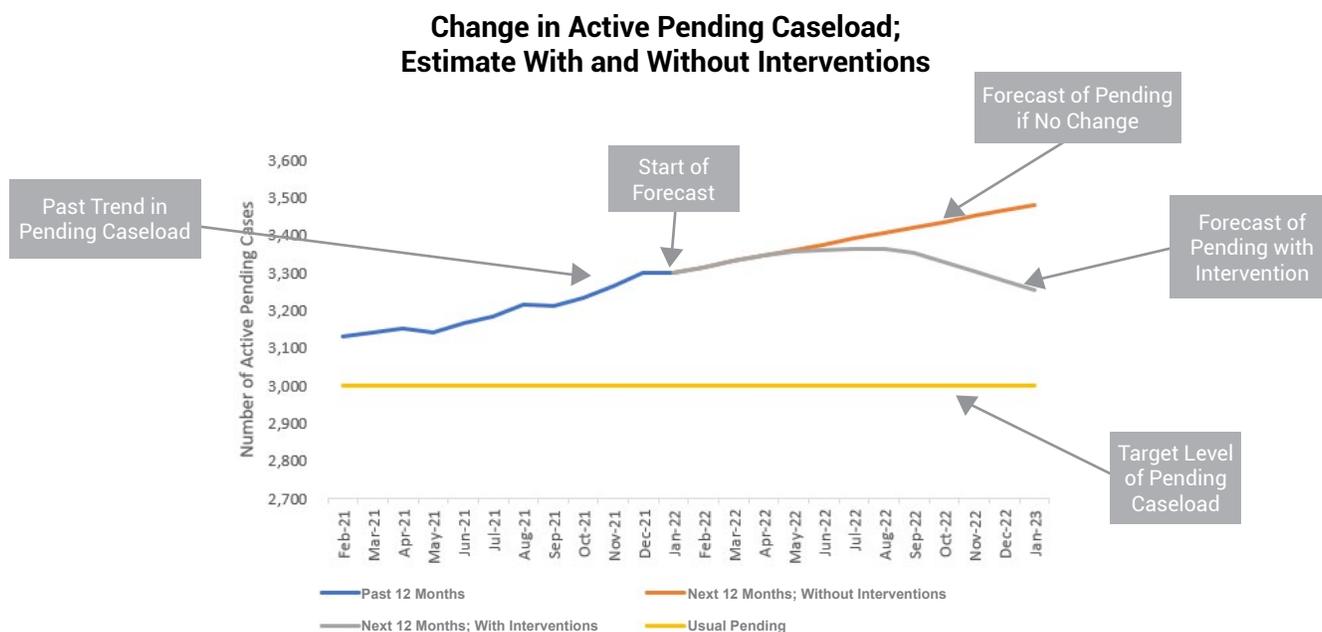
Active Pending As Of: **February 1, 2021**

3,100

	<i>Filings</i>	<i>Dispositions</i>
February-21	250	220
March-21	250	220
April-21	250	240
May-21	250	260
June-21	300	275
July-21	300	280
August-21	320	290
September-21	300	302
October-21	250	230
November-21	250	220
December-21	250	213
January-22	260	280

Drawing on the historic aggregate data (Figure 3), CBRS first produces a forecast of pending caseload over the next 12 months if current trends continue. The accompanying visualization brings together current pending caseload, the forecast of pending cases if no changes are made, and the estimated change in pending caseload brought about by a proposed intervention (see Figure 4).

Figure 4: Change in Active Pending Caseload

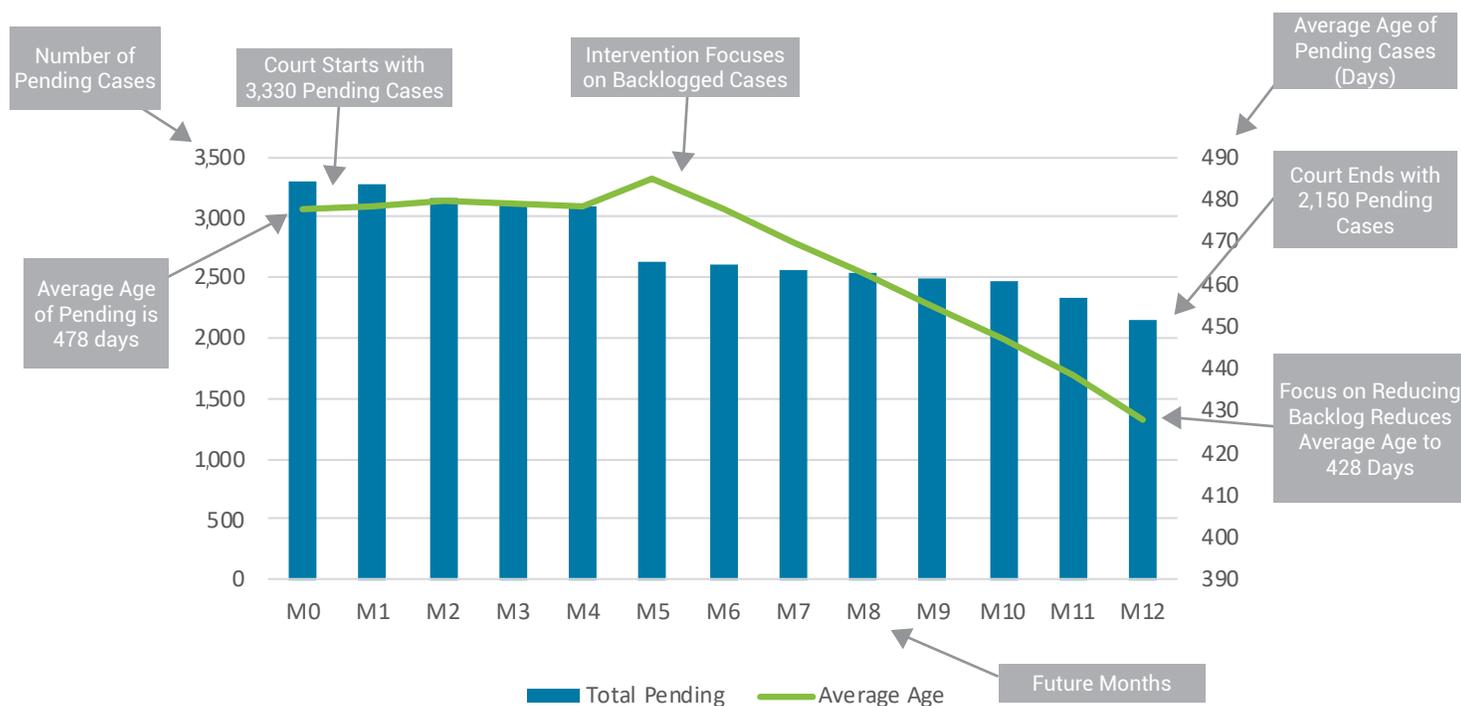


If available (though not required), there is space for a court to input data on the age of disposed and pending cases. As the simulator will be forecasting both the number and age of pending caseloads (including backlog), users are given multiple options for describing their court's time to disposition and age of pending caseload. If age data are not readily available, the simulator includes sample data from a range of courts (e.g., faster, midrange, slower) that a participating court can select based on background and experience to run the simulation.

When running a simulation, users can draw on their own court data or use simulator-guided estimates to examine the age profile of the pending caseload and drill down on the defined backlog (e.g., cases pending beyond 365 days). Focusing on these older cases, courts can explore possible interventions for effectively moving cases to disposition. Information on possible interventions is made available within the tool itself but can also be manually entered based on a user's specific choices. Once the choice of interventions is made, the tool simulates the impacts on caseloads and age of pending cases, allowing for a comparison across the types of solutions considered. An example of a court that plans to start focusing on its oldest (backlogged) pending cases is shown in Figure 5.

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Figure 5: Total and Average Age of Pending



Conclusion

Several courts across the country have already participated in a pilot of CBRS. Primary interest lay with demonstrating the impact of the pandemic on pending caseloads and case backlogs both currently and into the future. While criminal case backlogs were the most common area of concern, other courts that were successful managing criminal cases were looking to reduce delay in civil or family law cases.

Some of the benefits described included its usability, ease of interpretation, and utility for performance management, resource allocation, and advancing strategic priorities. In particular, the simulations made it possible to assess the number of months it could take to reach a certain goal and identify the resources required to make it happen. At the same time, there were some notable challenges around the availability of data, particularly on case age, and the lack of common time standards. Identifying available intervention options and their direct impacts posed an additional challenge.

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... the simulations made it possible to assess the number of months it could take to reach a certain goal and identify the resources required to make it happen.

NCSC is developing solutions to these challenges while retaining the necessary level of flexibility within the application to adapt to different court contexts and constraints. One such solution discussed above is the use of “guided estimates” to become more familiar with CBRS features before taking time to produce a court’s actual data. Another has been to include resources such as case-type-specific management guides and research summaries to support users as they consider policy options. The tool will be made available on NCSC’s website in 2022.

With uncertainty around how best to tackle backlogs and reduce delay, courts are seeking tools that support long-term planning and reinforce effective case management practices. Courts can use the simulator to run projections of how the number and age of their pending caseload will change over the next 12 months with various court-implemented interventions. The results of the simulation will be displayed visually and incorporate anticipated outcomes drawing on three caseflow management *CourTools* measures. Finding better ways to manage case backlogs that can be sustained over time is the goal. The CBRS is the right fit for courts looking to bolster these efforts.

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National Open Court Data Standards (NODS)

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The need for robust and consistent case data is central to the core purposes of courts: to keep records of legal proceedings and to provide timely and efficient administration of justice. The National Open Court Data Standards help courts meet this need.

The need for robust and consistent case data is inherent in the core purposes of courts to keep records of legal proceedings and provide timely and efficient administration of justice. The pandemic highlighted the need for state courts to use timely, accessible, and accurate data to make decisions in a volatile environment. While many courts were able to use data very effectively to manage cases, monitor facilities and budgets, and adjust human resources, other courts struggled. Meanwhile, external data requests continued apace, and court leadership attempted to meet the demand while also addressing internal needs for data.

Those outside the court system sometimes use data in ways that frustrate court staff and judges. There is a perception that data are often misunderstood and that journalists, researchers, commercial data vendors, and others present misleading conclusions as a result. This is understandable given the wide variety in laws, court rules, and case management systems, many of which use “highly configurable” as a selling point. Similar or identical terms may mean different things even in adjoining jurisdictions. Court staff and external users alike tend to assume that the terms they use or are most familiar with are universal. This can lead to confusion and incorrect analyses. For data to be

NATIONAL OPEN COURT DATA STANDARDS

understandable and usable across jurisdictional lines, it must be standardized. With the help of a strategic initiatives grant from the State Justice Institute (www.sji.gov), NCSC is assisting a number of jurisdictions to implement the National Open Court Data Standards, or NODS (perma link: <https://perma.cc/WT93-NSRP>).

Who Uses Court Data?

Internal users of court data include judges, administrators, and other court staff. Data are used to manage individual cases and to manage the court's caseload. Court leaders increasingly understand that while monitoring specific cases is important, it is also necessary to have an overview of the caseload to ensure that backlogs are not occurring and that courts are serving their communities well. Many courts also have data partners (see Table 1).

Table 1: Sample Data Exchange Partners

Organization	Type of Data
State Drivers' License Agencies	Traffic and Criminal Data
National Crime Information Center (NCIC)	Criminal Data
State Crime Information Centers	Criminal Data
Child Welfare Agencies	Dependency Data

Data requests also come from individuals and organizations outside of the justice system. Before the pandemic, many courts struggled with the volume of external data requests from journalists, researchers, companies that provide criminal- or driving-records checks, and other users. These requests only intensified during the pandemic, which created a growing burden on courts to respond.

Some courts respond to data requests on a case-by-case basis. Depending on the specific elements requested, producing reports may require a programmer to pull the data from the database, data warehouse, or data lake and an analyst to formulate the data, provide context, and note limitations. While some jurisdictions charge for this service, others do not. Some courts also provide a bulk data service, providing regular automated updates of data.

These external requests have been difficult to manage given the many demands on courts, programmers, and analysts.

Many jurisdictions are moving toward greater self-service but making data more readily available also increases the risk that the data will be used without regard to nuances or limitations. It also limits the ability of court staff to provide context to help with interpretation of the data. Courts with online repositories of legal filings often have a de facto self-service option accessed through automated data collection, often called web scraping. Although some courts provide data dictionaries, others do not.

What Are NODS?

NODS are an effort of the Conference of State Court Administrators (COSCA) and the National Center for State Courts (NCSC) to respond to the increasing demand for court data by making court data more accessible, reducing the burden on court staff to respond to data requests, and to reduce the potential misinterpretation of court data by researchers, journalists, and others. This does not require courts to change their case management systems but does require matching fields and data values from the case management system to the standard definitions of NODS. This process is often called mapping. Once this work is completed, courts can direct data requesters to the NODS standards to formulate their data requests. In this way, courts can respond more efficiently by using established scripts or standardized data sets. With standardized data sets, formulation of the data and noting limitations of the data can also become standard.

The data elements and definitions included in NODS are not a complete list of all data elements courts might or should collect. The emphasis is on those data elements that are more likely to be requested or shared. Courts are not required to adopt NODS and may decide to adopt any portion of the standards. Supplements to NODS are being developed to assist courts in specific case management needs, including data elements recommended by the Conservatorship Accountability Project. These are additional data elements that go beyond the scope of NODS in areas where additional data standards are helpful.

How Are States and Individual Jurisdictions Using NODS?

In many states, individual courts, counties, or jurisdictions adopt their own electronic case management systems. Some of these states are using NODS to create data standards for in-state data warehouses for uniform reporting purposes. One example is Georgia, where courts use a variety of different case management systems and lack a common set of standards. Because of this, the ability to use statewide data and respond to questions about the judicial system is limited. An ad hoc committee of the [Georgia Judicial Workload Assessment Committee](https://perma.cc/BBT2-LS7A) (perma link: <https://perma.cc/BBT2-LS7A>) is evaluating which NODS data standards will be adopted for the state. This committee includes members of the state administrative office of the courts, as well as local courts. NODS is sparking discussions on accurate case counting, data quality, and the ability to share information with justice partners.

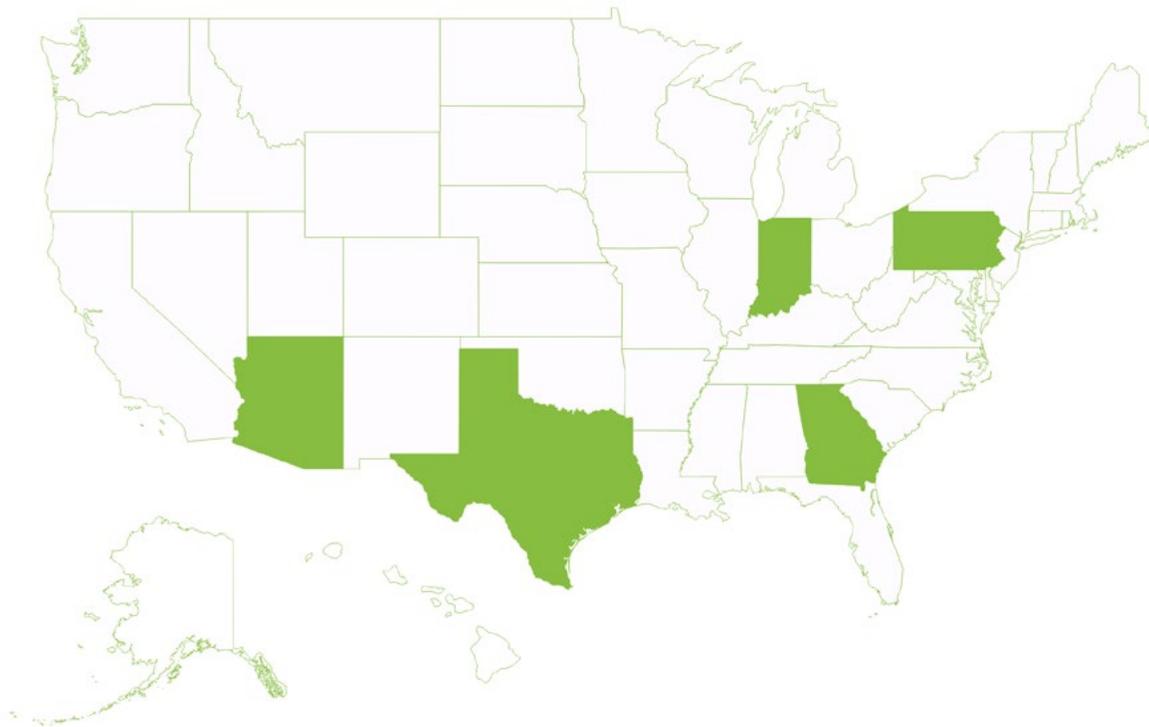
Texas is another state in which courts use many different case management systems. Statewide data are collected only in the aggregate. This does not allow for detailed analyses. The Office of Court Administration (OCA) has a goal of collecting case-level data statewide to allow for more thorough research and to identify trends at a local level so that more resources and assistance can be provided to local courts. NODS data elements have served as a foundation to develop common data definitions. Currently, the OCA has mapped Texas terms to NODS data elements for several case types. The next step is to identify which data elements are a priority to the state for courts to report on, considering the number of courts and various case management systems being used statewide.

States and local courts are not required to adopt all the NODS standards. The Arizona Judicial Branch created a [steering committee](https://perma.cc/ZW8A-RFQH) (perma link: <https://perma.cc/ZW8A-RFQH>) to go through the NODS standards and determine which data elements are highest priority and required in their state. Courts will be asked to ensure that the required data elements are in their case management systems regardless of the system used. The next step is to develop implementation plans and a compliance checklist for the selected data elements. A separate data standardization workgroup meets monthly. It is currently reviewing not only the NODS data elements but also standardizing data needed for integration projects with justice partners to increase data consistency and quality.

NATIONAL OPEN COURT DATA STANDARDS

Pennsylvania is using NODS to create and share business intelligence. The Administrative Office of Pennsylvania Courts has partnered with a case management system vendor serving multiple counties to create data exchange protocols for civil case data. The standardized civil and family data made possible by NODS implementation will be used to provide data dashboards to local courts. This will enable those courts to use their data for more effective case management. This is a valuable resource for courts that do not have local data analysts to do this work.

Indiana is also using NODS to create and share business intelligence. The Office of Judicial Administration (OJA) is expanding its data analytics capabilities to support the efforts of state's Coalition for Court Access and Innovation Initiative, including its three subcommittees focusing on technology, family law, and civil litigation. OJA's innovation team is focusing first on understanding the extent to which parties are represented by counsel in civil cases in detail. Building a data warehouse around NODS will provide flexibility to 1) integrate data from multiple applications, such as Indiana's e-filing system, case management system, and its Roll of Attorneys licensing application; 2) extend the understanding of the data through a visualization tool, such as Tableau or Power BI; and 3) share lessons learned with other jurisdictions considering applying NODS.



Data Quality

NODS can also be a tool to allow courts to identify and address data-quality issues. Once common data standards are identified, it becomes possible to examine data in a meaningful way and to highlight data-quality problems by examining inconsistencies and outliers. For example, if one court in a state has a much lower per capita rate of domestic case filings than any other court in the state, it may reveal a problem with how those cases are counted.

One important aspect of data quality is ensuring that cases have the correct case status. With the adoption of NODS, courts can adopt common case-status terms or map their local terms to the NODS standards. This enables courts to easily identify dependency and guardianship cases that are “set for review” (adjudicated but requiring ongoing court action). Because local courts sometimes use different terminology for case status, it can be difficult to have an accurate assessment of how many cases require the court’s attention. Anyone who does not work for a specific court is likely to have trouble interpreting case status if it is not mapped to standard terms.

NODS Resources

The NODS data elements, as well as a leadership guide, user guide (see Figure 1), data-mapping tool, technical notes, and technical data model, are all available at www.ncsc.org/nods. Additional resources at that site include a data governance policy guide, recommended data elements for guardianship and conservatorship monitoring, and a resource for collecting race and ethnicity data.

Figure 1: Sample Mapping Guidance from the User Guide



Data element	Map this value	To this NODS value
Initial probate pleading type	Standby petitions	<i>Emergency/Temporary/Special</i>
Initial probate pleading reason	Intellectual, physical, and developmental disabilities	<i>Disability</i>
Subsequent probate pleading reason	Reaching age of majority	<i>Restoration</i>
	Removal (of guardian/conservator) for cause	Select the value based on the underlying reason for the removal, such as <i>abuse</i> or <i>neglect/abandonment</i>
	Request for visitation	<i>Other</i>

Implementing NODS

The implementation of NODS standards is allowing courts to make better use of their data collected as part of daily operations. The pandemic highlighted the need for courts to be able to access and use timely, accurate, standardized data. Data standards can help courts to respond to the increasing demand for data by making court data more accessible, reducing the burden on court staff to respond to data requests, and to reduce the potential misinterpretation of court data by researchers, journalists, and others. Data standards also help courts to ensure that they are collecting and using accurate and timely data to effectively manage caseloads. Courts have an obligation to litigants, to justice system partners, and to the public to use data for the timely and efficient administration of justice.



12

Exploring the Utility of a DCM Method to Improve Pre-indictment Dispositions

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This article summarizes a DCM study on grand jury filings during a three-year period in a large urban county. Recommendations include developing greater collaboration with affected stakeholders and instituting accountability measures throughout the pre-indictment process to effectively manage cases.

Background

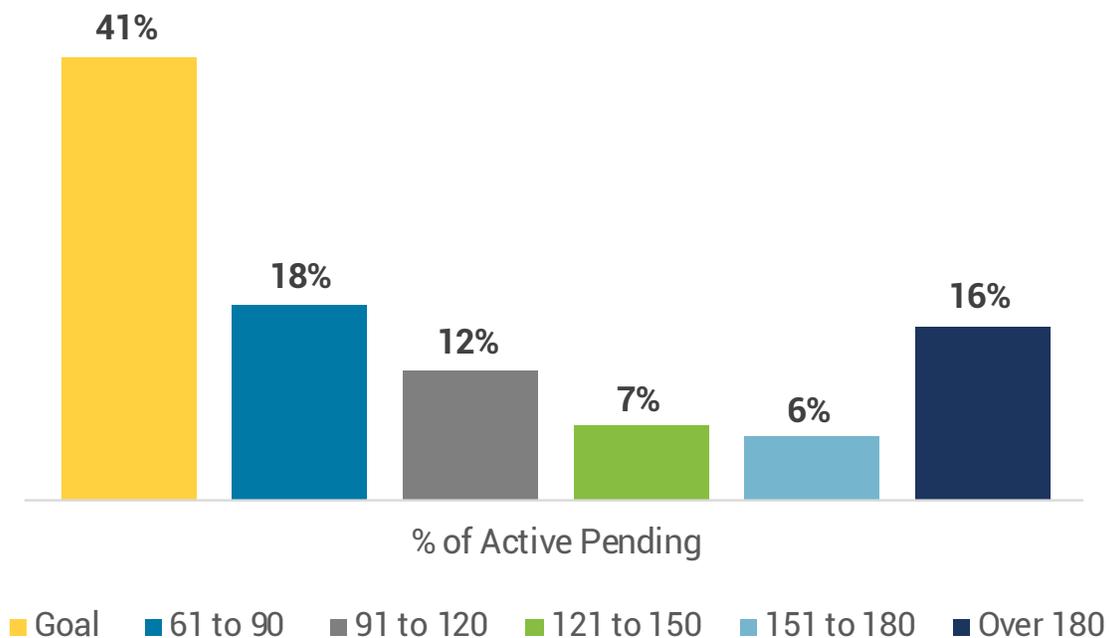
The Fifth Amendment of the U.S. Constitution states, “no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.” Most states, as well as the District of Columbia, use grand juries to obtain an indictment in at least some criminal cases. Connecticut and Pennsylvania are the only exceptions, having abolished the proceeding in 1982 and 1976. However, these states continue to use grand juries to investigate criminal activity. Because of the potential impact that management has on overall caseflow outcomes during these stages of the criminal justice process, Imperiole County Court (ICC; pseudonym) conducted a three-year study of its pre-indictment docket to assess the efficacy of applying a Differentiated Case Management (DCM) method on grand jury dispositions. The court sought to improve the efficiency by which pre-indictment cases are disposed by exploring the impact of a DCM technique on its benchmark performance standard. Matters presented before the ICC grand jury begin as complaints filed by a police officer or civilian. Before designating the case to grand jury, the

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prosecutor's office screens it twice. The complaint is initially reviewed after the defendant is charged and bail set at the municipal-level court (limited-jurisdiction court). If the case is not downgraded, it is transferred to the district-level court (general-jurisdiction court), where a bail hearing is held, and it is again evaluated to determine if it should proceed to grand jury.

The ICC pre-indictment goal is 60 days from filing to disposition (true bill or no bill). It should be noted that the state where ICC is located divides the criminal process into "pre-indictment" and "post-indictment" dockets. Thus, while a case constitutes the same defendant or set of defendants, this judiciary separates the process into two distinct dockets such that a "true bill" or "no bill" is considered a "pre-indictment disposition." The term "layover" signifies an "adjournment or continuance" of the pre-indictment matter wherein the case was scheduled for a hearing and, due to a variety of reasons, was not presented in whole or in part to the grand jury on that date. The data show that most cases (59 percent) were already over-goal at the time of this year-end snapshot (see Figure 1).

Figure 1: Active Pending Pre-Indictment Filings in Days, June 30th Year One



The principal goals of investigating the DCM method specific to the pre-indictment docket were twofold: first, to ascertain if grouping and scheduling cases based on ostensible complexity improved benchmark performance from filing to indictment, and second, to determine if such a method increased the disposition rate. The purposes of the courts impacted by the findings of this study included individual justice in individual cases (appearance and actual outcome) and the protection of individuals from the arbitrary use of government power.

Methodology

The prosecutor's office assigns cases to one of nine units known as special squads: arson, child abuse, internal affairs, domestic violence, economic crime, homicide, organized crime, and sexual assault, and a "consolidated" unit, which manages indictments for narcotics and lower-level felonies. Apart from scheduling grand jury sessions based only on squad-type, jury management, in collaboration with the prosecutor's office, used a DCM method. This method integrates the case-related variables of defendant status (jail or bail) and number of witnesses, victims, defendants, and charges/counts to estimate the total number of cases assigned to a panel on a particular day. Thus, the amount of time allocated when scheduling a case to the grand jury was commensurate with its complexity. Differentiating and scheduling the caseload based on these factors would make the process more efficient and enable grand jury panels to hear and dispose of more cases in aggregate. Disposition data for years two and three were subsequently compared to year one to determine if differentiating the calendar along these parameters affected caseflow outcomes. Data were collected and analyzed using cross-tabulation and measurements of central tendency and included 19,085 grand jury filings.

Findings

The results showed little to no difference in disposition rate between year one and comparison years two and three of the study. This implies that apart from administrators simply instituting proven DCM techniques, they must also consider other critical elements, such as workplace culture, processes, and accountability measures, which have shown to hamper caseflow.

The data show that despite arranging the calendar during years two and three and considering squad-type and case-related variables (defendant status and number of witnesses, victims, defendants, and charges/counts), it had no impact on the number of disposed cases (see

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Table 1). The mean number of cases disposed per session decreased in years two and three compared to year one. Similarly, the DCM method did not seem to have any significant effect on the total number of layovers and delays.

Table 1. Imperiole County Court Grand Jury Caseload Summary by Court Year*

Court Year	N Sessions Calendared	N Cases Scheduled	Cases Disposed			N Layovers	N Delays
			N	% Rate	Mean per Session		
One	395	7,072	4,776	67.5	12.1	2,296	216
Two	400	5,444	3,412	62.7	8.5	2,032	255
Three	369	6,569	4,185	63.7	11.3	2,384	251

*Note: Refers to the respective court year beginning July 1 and ending June 30.

Given that the overwhelming majority of cases scheduled for grand jury were assigned to the consolidated squad, it was unsurprising that those units disposed more of the total pre-indictment caseload (see Table 2). These cases involved crimes that were comparatively less serious in nature, such as theft, burglary, robbery, aggravated assault, possession of stolen property, low-level drug offenses, and resisting or eluding arrest. More notable was that special squads had a comparatively higher disposition rate. A discrete review of the disposition rate shows that special-squad performance was unaffected by measures to differentiate cases, whereas the consolidated squad rate appeared adversely affected. The average number of disposed cases per grand jury session for the consolidated squad remained relatively the same (approximately 12 cases) between years one and three, while the average number for special squads decreased from 11.3 to 8.8 during the same period.

Table 2. Grand Jury Case Dispositions by Squad Type and Court Year

Court Year	Consolidated Squad				Special Squad			
	N GJ Sessions	N Cases Scheduled	N Cases Dispositions	Disposition Rate	N GJ Sessions	N Cases Scheduled	N Cases Dispositions	Disposition Rate
One	273	5,092	3,391	66.5%	122	1,980	1,385	69.9%
Two	269	4,011	2,403	59.9%	131	1,433	1,009	70.4%
Three	240	4,946	3,049	61.6%	129	1,623	1,136	69.9%

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The following layover categories had the greatest impact on grand jury caseload: police witness unavailable, police witness failed to appear, further investigation, and layperson witness failed to appear (see Table 3). Although incorporating the said case-related factors into the scheduling did not have a measurable impact on the total number of layovers, some effect was observed, particularly on adjournments perpetuated by prosecutors (further investigation) and those responsible for scheduling police officer and layperson witnesses. These improvements, however modest the gains would have been, were tempered by the significant increase in the number of police officers who failed to appear, which accounted for 25 percent of layovers. At the request of the ICC court administrator and presiding judge, jury management began collecting data on police departments during year three of the study as it related to respective officers who failed to appear. Of the 32 police organizations operating in the district, almost 80 percent of the layovers due to a police witness failing to appear were attributable to only four police departments.

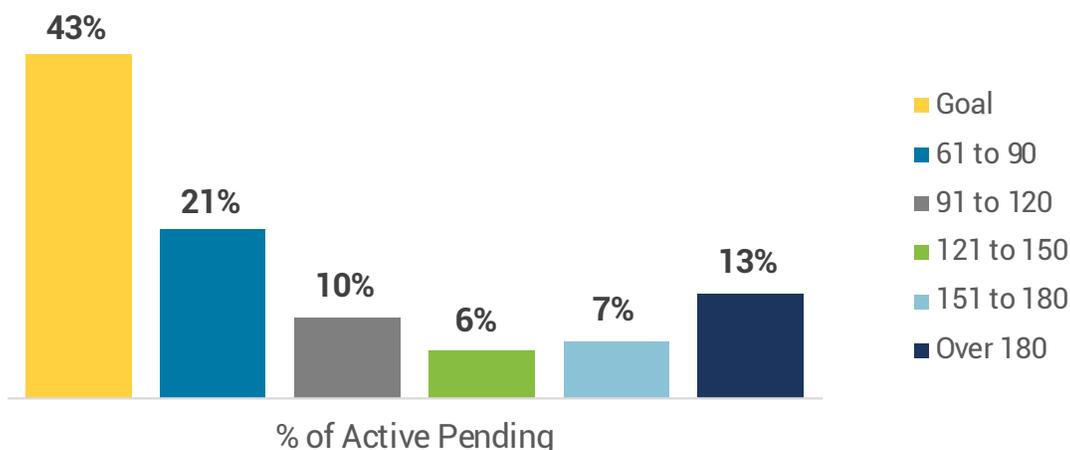
Table 3. Rate of Grand Jury Layover by Type and Court Year

Layover Type	Court Year One		Court Year Two		Court Year Three	
	N	%	N	%	N	%
Further investigation	544	23.7	459	22.6	467	19.6
Layperson witness failed to appear	269	11.7	230	11.3	233	9.8
Police witness failed to appear	302	13.2	486	23.9	595	25
Police witness unavailable	888	38.7	754	37.1	826	34.6
All other categories	293	12.8	103	5.1	263	11
<i>Total</i>	<i>2,296</i>	<i>100</i>	<i>2,032</i>	<i>100</i>	<i>2,384</i>	<i>100</i>

Conclusions

There are two overarching conclusions derived from this study. First, the impact of the DCM method on caseload efficiency was, overall, unremarkable, but the data did point to the importance of screening cases during multiple points of the caseload. Despite differentiating and scheduling cases in accordance with relative complexity, 57 percent of the active pending caseload at year-end three remained over-goal (see Figure 2).

Figure 2: Active Pending Pre-Indictment Filings in Days, June 30th Year Three



DCM assesses case management on a dual basis—court and attorney resources and the time required to move the case to disposition. At its core DCM is a strategic approach that considers the amount of preparation and supervision required to resolve a particular case. This same principle applied to ICC's grand jury proceedings. While the goal was to dispose cases within a specified time frame, not all cases directed to grand jury required the same human capital to meet performance objectives. Standard practices were unchanged from that of other dockets and applied specifically to grand jury filings. The process described in this study constituted a subsequent "filtering" of cases—a *third* screening of case-related criteria to determine prosecutor squad assignment and grand jury session based on expected level of operational input. Incidentally, this particular screening also gave the prosecutor another opportunity to reconsider its position in light of practicable proofs and divert the case to a "pre-indictment disposition" trial court so that the defendant could plea to the accusation or be downgraded to a lower court. This regular monitoring and evaluation of each case by the court in collaboration with the state is pivotal to eliminating unnecessary delay.

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The second major implication of the research showed that *any* DCM plan devoid of stakeholder accountability will not be effective in meeting organizational targets. However exemplary or well-intentioned the design, a slower court will remain slow if its leaders abdicate their duty to reduce the extent to which layovers hinder cases from being disposed. Overall, while scheduling grand jury filings in accordance with relative complexity did not improve the disposition rate, there were some noticeable changes in stakeholder behavior. For instance, although the number of police officers who failed to appear continued to increase between years two and three, it did level off when the court began collecting and promulgating the police department assignment of these officers. Likewise, there was a considerable decrease in the number of prosecutors who were not fully prepared to present their cases before the grand jury, resulting in a “further investigation” layover. A similar reduction was noted for layperson witnesses who failed to appear.

Several techniques exist for managing caseflow; however, a few concepts have been universally accepted and proven successful. The conclusions of this study were not an exception. In *Changing Times in Trial Courts*, Mahoney et al. (1988) identified 10 essential components—leadership, goals, information, communications, caseflow management procedures, judicial responsibility and commitment, administrative staff involvement, education and training, backlog reduction/inventory control, and *mechanisms for accountability*. In that same work the authors found that procedures employed by the prosecutor's office and police department have a significant impact on case-processing time.

Similarly, Tobin (1999) noted that factors such as indiscriminate scheduling and lack of accountability and case information often contribute to delay. The most significant cause among the reasons he cited was the court's lack of control over actual case processing. These determinants (scheduling of witnesses and further investigation) were in fact evidenced as protracting the caseflow, notwithstanding the method that was employed in ICC to make the process more efficient. Hence, conclusions revealed that grand jury processes are not unlike those at other points in the life of a case. It showed that attorneys generally dispose of cases and not judges, juries, or administrators. Prosecutors manage (for better or worse) much of the activity in reaching a disposition, such as reviewing discovery and interviewing police officers, witnesses, and victims.

Despite the realities accompanying caseflow management, if DCM is expected to generate the intended outcomes of its design, then the court must commit itself to holding stakeholders and their respective organizations accountable. The unintended benefit manifested by the pandemic has been the technological applications enabling courts to reduce the number of individuals from testifying in person. However, the secrecy that governs the grand jury could make this unfeasible.

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Accordingly, summoning practices should ensure that witnesses are scheduled to testify for a day that does not pose a conflict for them. The district attorney's office should more seriously review and manage witnesses who blatantly disregard a subpoena. Of course, inducing prosecutors to act on witnesses who fail to appear will prove difficult because of the interagency reliance they have with police and the rapport they seek to develop with case-related witnesses. Indeed, this was the foremost challenge for court administrators and staff whenever appealing to the sensibilities of assigned prosecutors. Prosecutors rarely displayed any urgency to compel witnesses (particularly police officers) to attend grand jury proceedings after initially failing to appear.

A corollary to accountability deserving attention here is the importance of collaboration. Improving grand jury efficiency requires collaboration among the various stakeholders who through their action (or inaction) can affect the caseflow. In *Collaborative Leadership*, Chrislip and Larson defined collaboration as “[a] mutually beneficial relationship between two or more parties to achieve common goals by sharing responsibility, authority, and accountability for results. The purpose of collaboration is to create a shared vision and joint strategy to address concerns that go beyond the purview of any particular party” (1994: 5). Therefore, bona fide collaboration exists when individuals take the initiative to understand and accommodate the challenges of other stakeholders for the common good.

A steering committee can accomplish this by routinely bringing together key court personnel, prosecutor office supervisors, and police department heads (particularly for those agencies that have the largest impact on the number of layovers). Besides establishing strong leadership, monthly meetings can solidify expectations and accountability by ensuring information is shared and consensus is built around agreed-upon rules and policies. While instituting collaboration is not a panacea to address all case management problems, it does provide the court with leverage to do more without the need to increase resources.

Solomon and Somerlot (1987) posited that effective case processing is grounded upon judicial leadership and commitment, consultation with the bar, court supervision of case progress, standards and goals, a monitoring and information system, trial date credibility, and controlling continuances. A DCM plan is not a substitute for these fundamental caseflow management practices. This study demonstrated that exploring the wider use of case tracking by weighting pre-indictment filings earmarked for the grand jury may create greater efficiencies in the caseflow. More importantly, it still requires the court to collaborate with its justice system partners while scrutinizing outcomes to adapt (if at all) its approach, rather than simply overseeing the process. Managing delay is a requisite part to assuring the substantive and procedural due process in which the system is based. This is what defines justice—and it is achieved incrementally in the day-to-day management of cases.



References

Chrislip, D. D., and C. E. Larson (1994). *Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference*. San Francisco: Jossey-Bass.

Mahoney, B. et al. (1988). *Changing Times in Trial Courts: Caseflow Management and Delay Reduction in Urban Trial Courts*. Williamsburg, VA: National Center for State Courts.

Solomon, M., and D. K. Somerlot (1987). *Caseflow Management in the Trial Court: Now and for the Future*. Chicago: American Bar Association.

Tobin, R. W. (1999). *Creating the Judicial Branch: The Unfinished Reform*. Williamsburg, VA: National Center for State Courts.

13

Essential Elements and Ethical Principles for Trustworthy Artificial Intelligence Adoption in Courts

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Artificial Intelligence-based tools are already being used by courts in the United States. The importance and challenges of these technologies, including legal and ethical ones, require special attention and urgent steps.

Tasks in courts have rapidly evolved from manual to digital work. In these innovation processes, theory and practice have demonstrated that adopting technology *per se* is not the right path. Innovation in courts requires specific plans for digital transformation, including analysis, programmatic changes, or skills. Artificial Intelligence (AI) is not an exception.

The use of AI in courts is not futuristic. From efficiency to decision-making support, AI-based tools are already being used by U.S. courts. To cite some examples, AI tools allow the discovery of divergences, disparities, and dissonances in jurisdictional activity. At a higher level, AI helps improve internal organization. AI helps with judicial decision consistency, exploiting a large judicial knowledge base in the form of big data, and it makes the judge's work more agile with pattern and linguistic recognition in documents, identifying schemes and conceptualizations.

AI could bring considerable benefits to the judicial system. However, the risks and challenges are also enormous, posing unique hurdles for user trust. Some of the most internationally controversial and discussed

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cases are from the United States.¹ These tools could even impact important aspects such as the due process of law,² including potential discrimination (see U.S. Government Accountability Office, 2021; Chohlas-Wood, 2020). The legal and ethical implications of technology will play an important role to protect citizens' rights. These implications are intimately linked to civil and human rights' guarantees and basic principles of the rule of law.

As the European Commission for the Efficiency of Justice (2018) underlines on the use of AI in judicial systems, it is critical to preserve “the guarantees of the rule of law, together with the quality of public justice.” Therefore, we must be prepared for the proper adoption and use of AI-based technologies, understanding first the inferred meaning, before deciding if, when, and how AI should be used.

This article defines AI in relation to courts to understand challenges and implications and reviews AI components with a special focus on characteristics of trustworthy AI. It also examines the importance of a new policy and regulatory framework, and makes recommendations to avoid major problems.

What Does Artificial Intelligence Mean, and Why Are Data So Important?

The judicial sector is increasingly aware of the importance of the data-related ecosystem and its applicability, including elements like open data, data management, data governance, or data standardization. It is also relevant to understand AI's role and how it is linked to the courts. The magnifying effect of these technologies can be very positive, but they could generate unexpected negative effects if they are not used correctly.

¹ For example, risk assessment instruments, such as Correctional Offender Management Profiling for Alternative Sanctions (COMPAS). See also, Završnik, 2020.

² *State v. Loomis* 881 N.W.2d 749 (Wis. 2016); *State of Kansas v. John Keith Walls*, Opinion No. 116,027, Court of Appeals of the State of Kansas (2017).

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Improvements in algorithms, data science, big data, and distributed data processing have brought AI to reality (Jimenez-Gomez, Cano-Carrillo, and Falcone-Lanas, 2020). But what does AI exactly mean? AI is a concept used for technologies able to autonomously make predictions, explanations, or recommendations. AI is based on data and advanced algorithms. According to Organisation for Economic Co-operation and Development (OECD) (2019), an AI system may be a “machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments. AI systems are designed to operate with varying levels of autonomy.”

To use a cooking analogy, the *algorithm* is the recipe, the *data* are the ingredients, and the resulting *final model* is the finished dish. This cooking analogy is only useful to understand the components and the importance of how they are combined. In general, the models can be based on supervised, unsupervised, or reinforcement learning techniques. The process of building a final AI model is recursive and complex. Depending on the learning technique, models can even be capable of learning from their errors.

Different data sets are used first to train the model and then to test and validate the final model. Results are based on statistical analysis and mathematical probabilities, which means that levels of *accuracy* and *errors* are components of the process. Following the culinary example, once a model has been trained, it is possible to estimate (predict, explain, or recommend) whether a particular dish is at its proper cooking point, or how much closer (what percentage) it is to the desired degree of doneness.

AI systems learn from the data selected for training the model. Therefore, data are an essential factor to be considered before an AI system is created. Data sets have a very high level of sensitivity in determining results. It is critical to have guarantees along the full process, from data selection to the results, because a fine line separates a trustworthy result from a dangerously biased result.

Data will serve to train and build the models that will become the tools used to autonomously make predictions, explanations, or recommendations. There is no AI without data. Data sets used to train AI systems are critical to avoid future errors and biases. Data elements such as quality, accuracy, or completeness will play a critical role in developing AI technologies.

In this new paradigm, ethics is an essential principle. The OECD (2021) and the United Kingdom Government Digital Service (2020) explain the importance of ethics, data, and data science as central elements in the design and use of AI tools in public organizations. In the field of justice, this characteristic has also been highlighted by the European Ethical Charter

on the Use of Artificial Intelligence In Judicial Systems and Their Environment (European Commission, 2018). Indeed, the ethical component is so relevant that ethics have already been placed at the core of new AI international standards.³

Key Principles for Trustworthy AI Adoption in Judicial Systems

The nature, implications, and components of AI tools will require observing special guarantees and agreed-upon principles. From interoperability to audit operations, trustworthiness will require specific attributes that will have to be taken into account for AI adoption.⁴

AI tools should reinforce the idea that information and computing enable effective judicial protection, as well as greater access to justice. For example, it could bring us to more informed justice decisions based on accurate data or the improvement of processes at judicial, administrative, and technological levels. A *smart justice* concept should include not only intelligent technologies but also a “social smartness” to protect the rights of and provide the best services to citizens. This component should include legal and social digital services.

To that end, the “European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment” addresses different principles related to AI adoption: compatibility with fundamental rights (including the design and implementation processes); nondiscrimination (i.e., individuals, groups, and sensitive data); quality and security (i.e., traceability sources of information, certified data, and secure environments); transparency, impartiality, and fairness (data-processing methods explainable and auditable); and “under user control” (informed, with control on results).

³ Within the IEEE Ethics in Action in Autonomous and Intelligent Systems, standards: IEEE 7000-2021 IEEE Standard Model Process for Addressing Ethical Concerns during System Design; IEEE 7001 on Transparency of Autonomous Systems; and IEEE P7003 on Algorithmic Bias Considerations.

⁴ “Interoperability” is understood as the basis for shared services, information, and data between different sources and public bodies.

ESSENTIAL ELEMENTS AND ETHICAL PRINCIPLES FOR TRUSTWORTHY ARTIFICIAL INTELLIGENCE ADOPTION IN COURTS

In the United States, the Institute of Electrical and Electronics Engineers (IEEE-USA, 2020) Artificial Intelligence Policy Committee recommends the development and adoption of explicit risk-benefit analysis frameworks, as well as a set of recommendations, standards, and principles.⁵ The National Institute of Standards and Technology is currently developing a framework to manage risks, proposing a methodology to consider an AI task's risk level and the user decision, based on nine factors that contribute to a human's potential trust in an AI system: accuracy, reliability, resiliency, objectivity, security, explainability, safety, privacy, and accountability (Stanton and Jensen, 2021).

Other organizations, like the Government Accountability Office (GAO, 2021) or the [Joint Technology Committee](#) (JTC, 2020), are likewise highlighting the importance of different AI adoption components. Describing practices for federal agencies and other entities, GAO is proposing an Artificial Intelligence Accountability Framework that highlights four complementary components to be addressed: governance through accountability; data in terms of quality, reliability, and representativeness; performance through consistent results; and monitoring for reliability and relevance. JTC talks about *common sense and ethics*, referring mainly to the U.S. Department of Defense (DoD) Ethical Principles for Artificial Intelligence: responsible, equitable, traceable, reliable, and governable. Finally, other authors, like Wing (2021), talk about a broad set of overlapped properties, including accuracy, robustness, fairness, accountability, transparency, interpretability and explainability, and ethics, as well as reliability, safety, security, privacy, availability, and usability.

Principles and components follow different perspectives and granularity levels, depending on the approach (see Table 1). An analysis of the different cases shows links between components, as seen in the IEEE-USA or NIST elements, which could be also explained within the European Commission (2018) ethical charter. Therefore, we should pay attention to a comprehensive perspective, including both explicit and implicit (and underlying) components that are also linked to social and legal implications of these technologies.

⁵ See also IEEE Ethically Aligned Design initiative.

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Table 1: Summary of Components Highlighted

	European Commission (EU-Justice)	GAO (US Gov-Administration)	IEEE-USA (Standards)	NIST (US Gov-Technology)	US DoD (US Gov-Defense)	Wing, J. (2021)
Accountability			✓	✓		✓
Accuracy				✓		✓
Availability						✓
Awareness of misuse			✓			
Competence			✓			
Data (quality, reliability, representativeness)		✓				
Data agency control			✓			
Effectiveness			✓			
Equitable (minimize bias)					✓	
Ethical						✓
Explainability				✓		
Fairness						✓
Fundamental rights	✓					
Governable (control)					✓	
Governance (accountability)		✓				
Human rights			✓			
Interpretability/Explainability						✓
Monitoring (reliability and relevance)		✓				
Non-discrimination	✓					
Objectivity				✓		
Other						✓
Other: Auditing standards		✓				
Other: Open data	✓					
Other: Openness			✓			
Other: Organizational measures					✓	
Other: Responsible use		✓				
Other: Risk management	✓	✓	✓	✓	✓	
Other: Standards	✓		✓	✓	✓	
Performance (consistent results)		✓				
Privacy				✓		✓
Quality and security	✓					
Reliability				✓		✓
Reliable (safety, security, effectiveness)					✓	
Resiliency				✓		
Responsible (judgment and competence)					✓	
Robustness						✓
Safety				✓		✓
Security				✓		✓
Traceable (transparency and audit)					✓	
Transparency			✓			✓
Transparency, impartiality, and fairness	✓					
Usability						✓
User control	✓					
Well-being			✓			

The Human Factor, the Organizational Implications, and the Importance of a New Policy and Regulatory Framework

To achieve the goals of the justice system and provide better services to citizens and society, AI adoption will require courts to be aware of a multidisciplinary perspective. The socio-technical implications of technology will play a key role for the rule of law and the quality of the justice in preserving citizens' rights. Critical components are also linked to what could be called the "human factor." Policymakers, designers, and implementers can shape the AI process and results because of their adoption or rejection of the results offered by AI tools.

As Reiling (2020) states, judges need to understand how AI works. Recent research shows the importance of being well prepared for the correct adoption and use of AI. According to Raunak and Kuhn (2021), AI users could either overly trust the results of AI systems and follow incorrect recommendations, or overly distrust them and reject correct recommendations. Green and Chen (2021) highlight how AI-based tools can even alter human decision-making processes in harmful ways.

The need for trustworthy AI is defining the right path to be followed by courts. This complex path will be facilitated by the adoption of a specific new generation of standards, rules, norms, protocols, and mechanisms where human factors and the organizational context will play an important role. These essential elements are closer to social attributes than technological components, moving from skills to governance of organizational-related components.

Innovations in digital justice, new digital procedures, and new digital tools, like videoconferencing or digital signatures, can even require regulatory changes based on the legal implications of technologies. With AI we probably are facing one of the most disruptive and transformative components in the history of justice and courts' modernization. To preserve the rule of law and, eventually, the rights of our citizens in our society, AI adoption in courts will require an urgent review of the regulatory and policy framework, as well as guidelines on the use of these technologies.

ESSENTIAL ELEMENTS AND ETHICAL PRINCIPLES FOR TRUSTWORTHY ARTIFICIAL INTELLIGENCE ADOPTION IN COURTS

A new regulation on AI in the European Union mentions the importance of addressing risks of potential biases, errors, and opacity in the administration of justice, highlighting explicitly that “certain AI systems intended for the administration of justice and democratic processes should be classified as high-risk, considering their potentially significant impact on democracy, rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial.”⁶ The regulation seeks to ensure that AI systems respect the existing laws on fundamental rights, enhance governance and effective law enforcement, and facilitate the development of lawful, safe, and trustworthy AI.

⁶ Regulation of the European Parliament and of the Council. Laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts. COM (2021) 206 final.



Recommendations

We have seen that the use and adoption of trustworthy AI tools require a multidimensional approach, including technical, organizational, legal, governance, and strong data and ethical-related components. The ethical perspective is not secondary, and it should be seen as a core element, especially in the courts. Based on the previous points discussed, we conclude with some recommendations:

- ***Develop a trustworthy AI adoption framework, including AI risks management and mitigation incorporating AI guidelines and standards from internationally trusted sources such as IEEE.*** It should guide courts on key principles and elements, considering the specifics of the U.S. judiciary and courts. To solve complex legal problems while avoiding new ones, court IT managers will have to take very seriously the criteria on how these tools are designed, developed, implemented, used, monitored, and evaluated.
- ***Prepare a trustworthy AI regulatory framework, implementing agreed-upon policies and recommendations from sources like CCJ/COSCA and JTC, addressed to reinforce the ethical and trustworthy AI adoption in courts.*** Additional regulation in fields such as privacy or security will play also an important role.
- ***Adopt a strategic digitalization perspective for a data-driven court.*** This includes policies focused on data quality; data management or data governance; new roles such as data scientist or chief data officer; and strong mechanisms of data-driven AI techniques evaluation, for direct support of jurisdictional decision making.
- ***Advance toward an open justice perspective also linked to AI, efficiency, and interoperability.*** Sharing digital services, information, and data will require actions addressed to transparency and accountability in the use of models, algorithms, and data and adoption of open standards on data, taking advantage of initiatives like the NCSC [National Open Court Data Standards](#).
- ***Strengthen AI-related literacy, knowledge, skills, and capabilities in the workforce.*** Understanding these technologies and principles will be critical to use AI adequately.

References

Chohlas-Wood, A. (2020). "[Understanding Risk Assessment Instruments in Criminal Justice.](#)" Report, Brookings Institution, Washington, D.C., June 19. Perma link: <https://perma.cc/L8KK-84S3>.

European Commission for the Efficiency of Justice (2018). "[European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and Their Environment.](#)" Council of Europe. Perma link: <https://perma.cc/5VSD-AXMB>.

Green, B., and Y. Chen (2021). "[Algorithmic Risk Assessments Can Alter Human Decision-Making Processes in High-Stakes Government Contexts.](#)" *Proceedings of the ACM on Human-Computer Interactions*, October. Perma link: <https://perma.cc/ZGR2-9X3L>.

Harvard Law Review (2017). "[State v. Loomis: Wisconsin Supreme Court Requires Warning Before Use of Algorithmic Risk Assessments in Sentencing.](#)" 130 *Harvard Law Review* 1530. Perma link: <https://perma.cc/A3DK-M5JW>.

Institute of Electrical and Electronics Engineers (IEEE-USA, 2020). "[Artificial Intelligence: Accelerating Inclusive Innovation by Building Trust.](#)" Position statement. Adopted by IEEE Board of Directors, July 21. Perma link: <https://perma.cc/PWD3-ENKF>.

Jimenez-Gomez, C.E., J. Cano-Carrillo, and F. Falcone-Lanas (2020). "[Artificial Intelligence in Government.](#)" *Computer*, October, 23-27.

Joint Technology Committee (JTC, 2020). "[Introduction to AI for Courts.](#)" *JTC Resource Bulletin*, March 27. Perma link: <https://perma.cc/4PCH-MHSZ>.

Kehl, D., P. Guo, and S. Kessler (2017). "[Algorithms in the Criminal Justice System: Assessing the Use of Risk Assessments in Sentencing.](#)" Responsive Communities Initiative, Berkman Klein Center for Internet and Society, Harvard Law School. Perma link: <https://perma.cc/76CS-ZFTW>.

Organisation for Economic Co-operation and Development (2021). [Good Practice Principles for Data Ethics in the Public Sector](#). Digital Government and Data Unit. Perma link: <https://perma.cc/NB9E-JD8A>.

— (2019). [Recommendation of the Council on Artificial Intelligence](#). Adopted May 21. OECD/LEGAL/0449.



Reiling, A. D. (2020). "Courts and Artificial Intelligence." 11(2) *International Journal for Court Administration* 8.

Raunak, M., and R. Kuhn (2021). "[Explainable Artificial Intelligence and Machine Learning](#)." *Computer*, October, 25-27.

Stanton, B., and T. Jensen (2021). "[Trust and Artificial Intelligence](#)." Interagency/Internal report (NISTIR). National Institute of Standards and Technology, Gaithersburg, Maryland. Perma link: <https://perma.cc/5PTK-LNF7>.

United Kingdom Government Digital Service (2020). "[Data Ethics Framework](#)." Perma link: <https://perma.cc/FTK7-KLNQ>.

U.S. Government Accountability Office (GAO, 2021). [Artificial Intelligence: An Accountability Framework for Federal Agencies and Other Entities](#). Washington, DC: GAO. GAO-21-519SP. Perma link: <https://perma.cc/X5A6-K6C6>.

Wing, J. M. (2021). "[Trustworthy AI](#)." *Communications of the ACM*, October, 64-71. Perma link: <https://perma.cc/HXR6-2CQ5>.

Završnik, A. (2020). "Criminal Justice, Artificial Intelligence Systems, and Human Rights." 20 *ERA Forum* 567.

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