

# Children, Family and Elders Overview: Addressing Backlog and New Filings

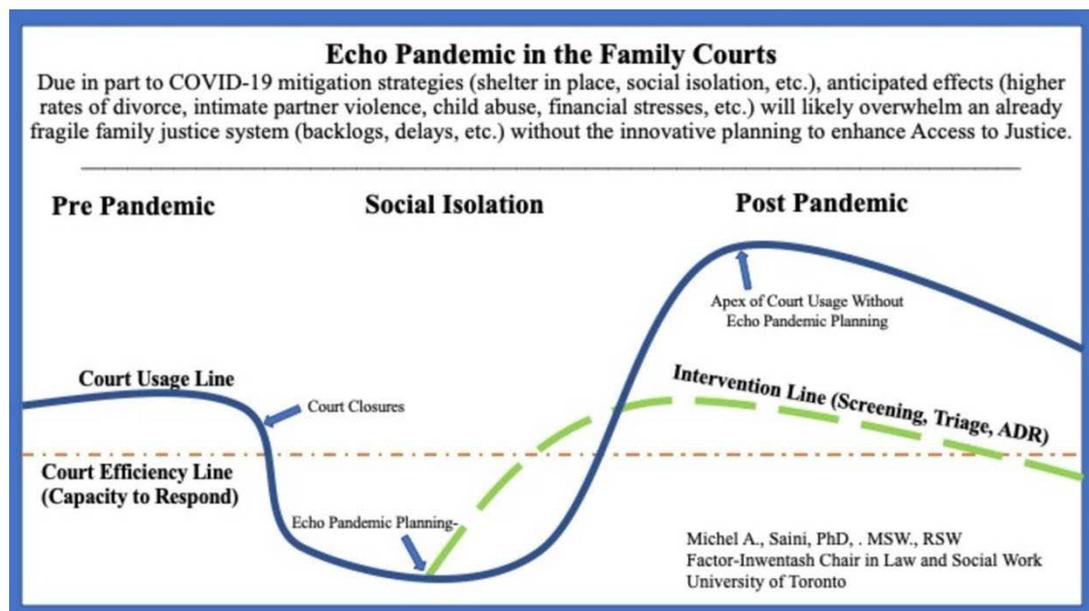


## A Pandemic Resource from NCSC

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### A Filings Tsunami in Probate and Family Courts?

Experts have predicted a filings boom and a backlog in family and juvenile cases as a result of the COVID shutdown. Some courts received only emergency filings during the shutdown, others deferred hearings, and some courts are facing furloughs and budget cuts. In probate, juvenile, and family courts, cases delayed put vulnerable persons at higher risk. Active case management is essential.



### The Need for Active Case Management to Address Incoming Filings and Reduce Backlog

As courts resume operations they will have to address backlogged cases as well as new filings. Case management principles for each of these case types are presented in these Issue Briefs:

- [Domestic Relations: Addressing Backlog and New Filings](#)
- [Child Welfare: Addressing Backlog and New Filings](#)
- [Delinquency: Addressing Backlog and New Filings](#)
- [Guardianships and Conservatorships: Addressing Backlog and New Filings](#)

**12 Steps to Tackle Backlog** developed by the Civil Justice Initiative, adapted to Family Law:

### 1. Provide Information to Parties (Consistent, Clear Notifications)

Increased communication with parties can be made through websites, kiosks, portals, apps, texting or telephone. Since COVID, court staff communicate much more with parties to ensure that they understand the next steps and participate in live or virtual proceedings. The **Detroit area child support enforcement agency uses the [Setmore application](#) to notify parties when they are ready to proceed.**

### 2. Double Check That Traditional Paper Notifications Are Consistent with Electronic Notifications

Notifications should be consistent, whether the delivery method is paper or electronic. This can reduce confusion and help ensure that recipients without consistent access to electronic notifications have correct information.

### 3. Triage Existing Cases (Backlog) and All New Cases Upon Filing *Triage and Differentiated Case Management (DCM)*

- Triage refers to early assessment of party and case needs to assign appropriate resources to resolve the case. When routine case management is delegated to court staff supported by technology, judicial officers can dedicate their time to matters that require their experience and authority.
- Effective use of triage has
  - a. dramatically accelerated the resolution of **Dissolution** cases [while maintaining party satisfaction](#).
  - b. helped stretch limited court resources and improve **Child Welfare** outcomes in [Oregon](#) and Massachusetts and in **Delinquency**, and
  - c. identified “red flag” **Guardianship** cases needing review in several states including Minnesota and Arizona.

### 4. Embed Flexibility into Case Processing Pathways

Pathways must be flexible, allowing cases to move between pathways in the event additional information or subsequent events suggest reassignment is appropriate.

### 5. Get Cases That Need Judicial Attention in Front of a Judge As Soon As Possible

- Cases involving high complexity or high conflict require specialized knowledge and expertise to handle them safely and appropriately. Early judicial attention can prevent the revolving door in family cases.
- Family courts are experiencing a spike in filings. To provide more judge calendar time, courts should consider expanding case disposition capacity, including calling back retired judges, using judges pro tempore, and allowing judges to

preside over child, family and elders cases. If state laws and court rules allow, the following are possibilities:

- Reassign civil or traffic judges to hear the time-sensitive, priority cases
- Assign judges to typically overloaded magistrate/commissioner calendars
- Assign appellate judges to hear trials temporarily
- Recruit senior judges to hear cases remotely. (Courts are investigating the availability of CARES Act funding for this purpose.)

## 6. Develop Agreed-Upon Processes for the Entire Court (Standardization), then Automate as Much as Possible

1. The first step to Backlog Reduction is to **assess court data** to determine the depth and breadth of the backlog.
2. Courts can then bring together key individuals, including court administrators and attorneys, who frequently participate in the specific case type to **develop a court-wide case management plan**. In doing so, the court may identify opportunities to simplify or automate processes, resulting in time savings.
3. A case management plan may include “Time Sanctuaries” or a Meshing model.
  - a. Under the **Time Sanctuary** model, the court might designate one week/month or a portion of each day to address backlogged cases, and the other three weeks represent normal operations.
  - b. In a **Meshing Model** the court hears cases as part of a normal caseload, with priorities established by case type. (See Arizona priorities pyramid below.)

## 7. Use Case Scheduling Orders with Built-In Deadlines

Case scheduling orders guide parties through the court process and reduce the need for continuances. Using scheduling orders with built-in deadlines can help the case to progress by establishing the completion of certain tasks by a certain date. [Colorado Rules of Civil Procedure 16.2](#) provides an excellent example.

## 8. Work with Attorneys to Present Information on Vulnerable Clients and to Narrow Issues

More than ever, attorneys for vulnerable or disadvantaged clients are being called to provide status reports on children, youth and protected persons (See Child Welfare and Guardianship Issue Briefs). It is also helpful when attorneys work with parties to narrow the issues in the case, seeking judicial intervention when necessary to protect parties.

## 9. Use ODR to Provide Opportunities for SRLs to Negotiate Settlements

Online Dispute Resolution can be used to resolve various issues in cases concerning children, family and elders. ODR presents opportunities for courts to expand services for SRLs while reducing costs and improving customer experience and satisfaction.

## 10. Outsource case management tasks to the attorneys/parties (e.g., scheduling hearings)

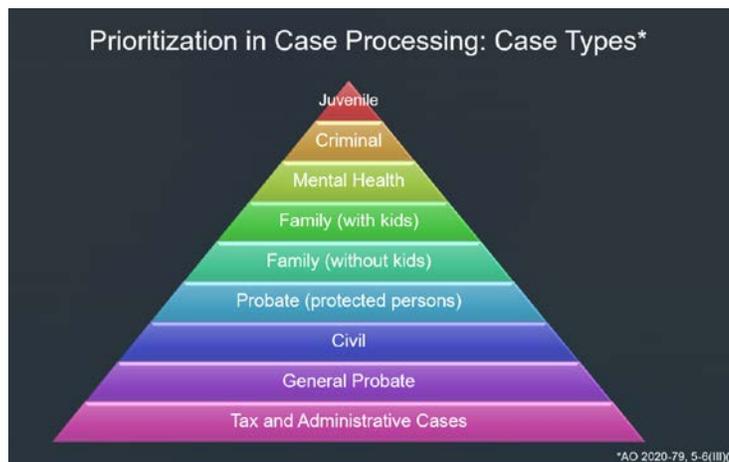
- Different cases need different levels of case management and different rules-driven processes. Where appropriate, attorneys and parties can be deployed to perform case management tasks.
- In Family proceedings with self-represented parties, court employees can prepare final orders for review and signature by the parties.

## 11. Use “nudge techniques” to move cases

Nudge management techniques can be useful tools to help provide fast and broadly correct decisions. Using prioritization of cases and tickler systems can simplify the choices that case managers must make, thus improving timeliness of proceedings and helping to protect children, families and elders.

## 12. Prioritize the hearing of cases

- Child and youth cases are governed by strict federal timelines.
- Child, youth and elder cases often involve the safety and well-being of vulnerable parties.
- A number of courts have established priorities for child, family and elders’ cases because of the risk of harm when cases are not monitored.
- The Arizona Courts published [Administrative Order 2020-79](#) that prioritizes hearing of the most time-sensitive cases as shown in the diagram below.
- We recommend that courts communicate the rationale for prioritizing specific case types and publish this communication effectively across the court websites, social media platforms, and press releases. Clear communication about shifting priority of cases will help provide transparency to the public about changing court processes.



## COVID Silver Linings

Some courts have referred to the innovations and expanded uses born of necessity as “COVID Silver Linings” because they offer improved service to the public.

In addition to the strategies provided above such as improved communication and streamlined processes, almost all courts are [conducting telephonic or web proceedings](#). Numerous Michigan courts are using the Zoom waiting room feature to hold hearing participants until they can individually admit people. Many courts have expressed that it is essential to give explicit instructions on how to participate in the virtual hearing (“do not come to court” and to keep parties apprised of their status in the queue so that parties do not disconnect while they are waiting. Zoom and other platforms provide alerts for meeting details, status changes in hearings and cancellations.

## Upcoming Webinars and Other Resources

Throughout July and August, the NCSC will be showcasing strategies and solutions being employed by various courts. If you would like to contribute to this document or future webinars, please contact the CCJ/COSCA Pandemic Advisory Committee on Children, Families and Elders through [adavis@ncsc.org](mailto:adavis@ncsc.org).