

EVIDENCE-BASED COURT STRATEGIES FOR EFFECTIVE CRIMINAL CASEFLOW MANAGEMENT

INTRODUCTION

More than 18 million people each year are charged with a felony or misdemeanor offense.¹ The US Constitution guarantees that each person charged with a criminal offense has the right to due process; that is, their interaction with the justice system must be appropriate and responsive to their individual case and the unique circumstances and issues they face. The concept of due process is founded on the fundamental value of fairness, the notion that every person has the right to their day in court. In addition, criminal courts are instructed to resolve cases without delay, to fulfill the right of each individual to a “speedy and public trial.” This person-centered perspective highlights the rights of the individual and demands that a well-functioning court system provide due process in individual cases while operating within predictable and proportionate time frames. Achieving these twin goals has proven challenging for criminal courts nationwide, in part due to the failure to implement effective caseflow management practices that enable people’s meaningful participation in the justice system.²

WHY DELAY MATTERS

The negative impact of delay falls most heavily on those charged with a criminal offense.³ For those held in pretrial detention and unable to post bail, delay means a longer time incarcerated while still legally innocent and a reduced ability to participate in their defense. With longer pretrial detention also comes added pressure to accept a guilty plea to regain their freedom.⁴ These delay-induced dynamics result in worse outcomes (including longer sentences) for detained individuals – an impact felt more severely by persons of color.⁵ Longer case processing time can also exacerbate the collateral consequences of justice system involvement such as those related to loss of child custody, ineligibility for public services, and loss of or barriers to finding employment and housing, again with a disproportionate impact on minority communities.

For individuals facing charges but able to avoid custody by posting bail, delay often means dealing with the financial and emotional costs of bail, ongoing pretrial supervision, and frequent court appearances.⁶ These costs can also include a bench warrant and possible arrest for missed court appearances. Remote options for attending court have proliferated since the onset of the COVID-19 pandemic and have

shown promise, reducing the impact of some barriers to court appearance such as the lack of adequate childcare, transportation to the courthouse, or authorized time off work. Likewise, remote hearings may expand access to courts for witnesses, victims, and other court stakeholders who live in remote locations or who fear for their safety in court. However, serious concerns about the use of remote hearings remain, related to such issues as the attorney-client relationship and secure communication during court proceedings, the ability to hold trials, the navigation of the system by self-represented people, and the persistent digital divide facing historically marginalized communities.⁷

In addition to imposing hardship on those involved with the criminal justice system, delay wastes public resources, particularly those related to the overconsumption of costly jail space. Therefore, attention to delay reduction is integral to efforts to improve due process, procedural fairness, transparency, and racial justice.

DELAY REDUCTION: CONNECTING TIMELINESS AND DUE PROCESS

Delay reduction begins by recognizing the need to understand and monitor the flow of criminal cases from start to finish. Tracking the length of time it takes to resolve criminal cases is a widely understood and measurable outcome. While some judges and attorneys may express concern about the emphasis on compliance with time goals at the possible expense of due process, compliance with time guidelines or goals is not the primary objective. Time guidelines are often misconstrued as “requirements,” when in fact they provide a marker to assess whether cases are moving faster or slower, allowing the court to determine where potential problems might lie. Good caseflow management involves ensuring that parties have adequate preparation time, eliminating unnecessary delay between events, and ensuring that events are productive.⁸

Timeliness in the context of effective caseflow management signals a much broader responsibility of the courts: to ensure that each person’s constitutional right of due process is honored in the process of seeking justice in individual cases. From this perspective, timeliness is a vital indicator of the health of a court and should provide comfort to those who fear that an emphasis on timely disposition of criminal cases is at the expense of “doing justice.”

EFFECTIVE STRATEGIES FOR IMPROVING CRIMINAL CASEFLOW MANAGEMENT

1. Institute leadership and governance

Caseflow management will never flourish without visible support and backing from judicial leadership. Effective leadership involves the articulation of the anticipated benefits of caseflow management and demonstration of an on-going commitment to caseflow principles. Judicial advocacy for caseflow management is necessary, as is

the ability to build consensus both within the court and with those agencies and providers that do business with the court. In addition, sustained success is contingent on continuity of able leadership from the presiding judge and court administrator over the long term.

A vital element for successful court leadership is to establish a governance structure that supports effective caseload management policies and good practice in day-to-day operations. This can be a challenge, as it involves assigning well-defined roles and responsibilities to judges and administrative staff. While overarching policy on caseload management is set by the judges, responsibility for implementation and daily operations belongs to the administrative staff. Judges should take steps to avoid micro-management on set policy and to provide clear authority to managers to ensure credibility and effectiveness in court governance. Such steps reduce the likelihood of undermining policy at the operational level. Therefore, it is particularly important in court management for the assignments and authority of leaders and managers to be clear, explicit, and included in the general orientation of new judges and staff as well as in the training of new and potential court leaders.

2. Collect data to inform decisions

Critical to effective caseload management is assembling the data necessary to measure performance against established standards and goals. This includes data on the case type and charge(s), time between key events for both closed and active cases, number of continuances, and how and when a case is resolved (e.g., dismissed, plea, trial verdict).⁹ As discussed below, collecting and analyzing these data makes it possible to assess the level of complexity of cases entering the courts, identify backlogs or impediments to case resolution, inform efforts to improve case processing, and document successes across several domains.

Being data-informed is only part of effective caseload management. Courts must balance this court-wide or aggregate view of process efficiency with the interests of the people involved in each case. The strategies below reflect the standpoint that the court, with ongoing consultation with defense and prosecution, should set the tone for fair and timely criminal case processing throughout the life of each individual case. Properly implemented, caseload management helps ensure all parties have adequate preparation time while ensuring cases are resolved in timeframes least harmful to the person involved in the justice system.

3. Make each court event meaningful

A key aspect of efficient caseload management is for all parties to be prepared so that each court event will meaningfully contribute to case resolution. Prolonged litigation and repeated court appearances can negatively impact justice involved individuals, especially when they are incarcerated. The timely resolution of a case also reduces workload burdens on public defenders, the prosecution, and the courts.

Court scheduling of case events should ensure that no case is unreasonably interrupted in its procedural process and that individual rights are preserved. Judges should communicate the purpose, deadline, and possible outcomes of the

proceedings to all relevant parties as early as possible. Case-scheduling orders, which ensure that dates are always assigned to events in every case, can be used to help with case planning and move cases expeditiously from arraignment through plea or trial and sentencing. Judges can also set deadlines for case preparation so that the attorneys can better prioritize their cases and be responsive to the court's expectations. Lastly, it is important that defendants are made aware of the process, can attend court, and know how to engage in each proceeding. These steps can make court events more productive while reducing the need for multiple proceedings and the associated burdens on people attending court.

What is caseload management?

To achieve both fair and timely criminal case processing, American courts have developed a set of principles and techniques referred to as "caseload management." Criminal caseload management involves the entire set of actions that a court takes to effectively monitor and manage the progress of cases, from initiation through final disposition. Several concepts are stressed in the caseload management literature, including greater communication and coordination among justice system partners; setting case processing time goals; and developing specific caseload management practices such as control of continuances, holding the right number of hearings and firm trial dates.

4. Use time standards to track time to disposition

Time standards assist the court in measuring the timeliness of case processing and represent a goal for achieving final disposition for various types of cases. Time guidelines should not be established based on the most difficult or complex cases, nor should they be set at a level that reflects the status quo for case processing. Time standards provide the necessary reference point and objective that all parties — law enforcement, prosecution, defense, and the court — are seeking to meet or exceed.

National leaders in the court community have promoted the development and implementation of time-to-disposition standards.¹⁰ In 2011, new national "Model Time Standards for State Trial Courts" were approved by the Conference of Chief Justices (CCJ), the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM), and the American Bar Association (ABA). Measuring time to disposition allows courts to document differences in the length of time to resolve cases. It can also help courts explore the reasons for variation in caseload management practices and outcomes, including those related to seriousness of the case mix, charging and pleading practices, and manner of disposition.

Beyond time-to-disposition standards, many high-performing courts also employ additional concrete measures of performance. Often based on the National Center for State Courts’ (NCSC) set of ten performance measures called CourTools,¹¹ relevant measures in assessing effectiveness in caseload management include clearance rate, age of active pending caseload, and trial date certainty. Adhering to defined performance measures can improve outcomes for people by encouraging prompt resolution of cases, reducing unintended consequences (e.g., lengthy pretrial detention, more severe case outcomes), and recognizing where issues in the process crop up for the parties involved. Making progress towards these goals may also mean that system-wide improvements – meaningful for people awaiting case resolution – are needed.

What is the right balance between expedition and quality justice?

Since their first formal articulation, time standards have served as an attempt to address this question.¹² In 2011, the National Center for State Courts, the American Bar Association, and the National Association for Court Management, with endorsement from the Conference of Chief Justices and the Conference of State Court Administrators, put forth a new set of Model Time Standards for State Trial Courts.¹³

Model Time Standards	
Felony	Misdemeanor
75% within 90 days	75% within 60 days
90% within 180 days	90% within 90 days
98% within 365 days	98% within 180 days

The very notion of criminal justice reflects two legitimate but competing perspectives. One perspective emphasizes the value of timely justice. The other perspective emphasizes due process, including the importance of thorough review in every individual case and the need to protect each person’s constitutional rights at all stages of the process. The Model Time Standards seek to provide a balance between the principles of timeliness and the quality of justice.

5. Track time between events using intermediate event time standards

Like time to disposition, tracking time between court events can help to determine whether an event contributed substantially to case resolution and, further, ensure that no case is overlooked. To do this, courts can compare the number of days between key intermediate stages from filing to disposition, such as time to first appearance and arraignment. Attention to this timing can reinforce a sense of urgency about case preparation and case progress among

attorneys. This is common practice for judges and court managers in their day-to-day functions as they consider the date of the last court event, whether the current scheduled event has been continued from a previous date, and when to set the date of the next court event. But time goals for these intermediate stages give the court more standard or consistent criteria for monitoring case progress and allow for the early identification of cases that may need further management attention to reach fair outcomes in a timely manner. Measuring what is happening at each case stage – particularly while people are detained – and recognizing the status of each person across these stages (i.e., whether they are available for court proceedings) can improve the timely administration of justice.

6. Hold the right number of court events and control the number of continuances

Time to disposition does not directly reflect when the system’s resources are being used well or wasted. To assess this issue, courts should examine the number of court hearings per disposition and determine if there is evidence of redundant and unnecessary work. Scheduling more hearings than necessary slows down the process, consumes court resources, and causes judges and attorneys to prepare for unneeded events. In addition, for out-of-custody individuals, additional hearings require more trips to the courthouse and managing the logistics of attendance (e.g., work leave). When hearings need to be held, targeted communication (e.g., hearing date reminders) can help ensure the parties involved attend court and engage in the process.

Another key to using court resources effectively is reducing the excessive use of continuances. While hearings can be continued for good cause, continuance practices that are too lenient fail to encourage attorneys to be prepared. Courts should establish a clear, short set of legitimate reasons for requesting a continuance, and all judges should adhere to this policy consistently. Courts should monitor the number of continuances granted over the life of a case. When continuances do happen, track whether the court, prosecution, or defense requested it. This makes it possible to pinpoint patterns in calendaring so that the court knows where to take a closer look at the process. This can help inform and target policy and practice changes, including those that can improve case preparation, to allow for more meaningful proceedings. In the ECCM study, NCSC found continuances to be the most significant contributors to case delay.

Relatedly, a court’s ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition. Credible trial dates associate a firm and consistently applied policy to limit the number of trial date continuances. If continuance practices are too lenient, attorneys are less likely to be properly prepared on the trial date, which increases the likelihood of a breakdown in the trial calendar.

Research from the Effective Criminal Case Management (ECCM) project

ECCM documented the landscape of criminal case processing by analyzing criminal cases in terms of time to disposition, a widely understood and measurable outcome.¹⁴ Results came from data collected on over 1.2 million criminal cases from 136 courts in 91 jurisdictions in 21 states. In general, ECCM found that differences in time to disposition cannot be explained by a range of organizational factors, including court structure type (single tier or two tier), type of calendar system (master, individual, or hybrid calendar), and method of selecting judges (elected or appointed). Similarly, ECCM found that differences in case composition (e.g., person, property, or drug crimes) and the manner of disposition (e.g., trials, dismissals, guilty pleas) do not explain why some courts are consistently more timely than others.

What the data do show is that the active management of cases matters. The expected relationship between timeliness and average number of continuances is supported: Over the life of a case, more timely courts tend to schedule and hold fewer hearings and to permit fewer continuances. Effective management of events over the life of a case—the heart of caseflow management—drives timely case disposition.¹⁵

7. Establish clear channels of communication with justice partners

Effective communication is essential to any effort to implement and sustain change in an organization. Chances of success in caseflow management are improved through regular communication between judges and court staff, as well as consultation among judges, prosecution, defense, the private criminal bar, and the sheriff's department. When caseflow management improvements are on the table, communication ensures that all participants have a solid understanding of what the change is, why it is needed, and what participants' respective roles are. Many courts have regular bench/bar meetings as a forum to discuss issues of mutual concern. Specific caseflow management committees are another venue for these discussions to take place. Additionally, many courts use a criminal justice coordinating council in their jurisdiction to discuss caseflow management issues.

CONCLUSION

While criminal case processing can involve complex and difficult matters, fostering efficient case processing can improve the justice experience for people impacted by pretrial and sentencing decisions. Shorter case processing times can shorten pretrial detention, limit collateral consequences for people awaiting case resolution in the community, and prevent other court interventions (e.g., bench warrants) during the pretrial period. With these practices in mind, courts can work to understand local case processing impacts on people and how best to tailor their policies and practices to improve efficiency and effectiveness.

ENDNOTES

- 1 Ostrom, Brian, Lydia Hamblin, & Richard Schauffler. 2020. *Timely Justice in Criminal Cases: What the Data Tells Us*. National Center for State Courts, available at: www.ncsc.org/eccm.
- 2 Ostrom & Hanson (1999) show a close connection between timely case processing and positive attorney perspective on delivery of effective advocacy and due process in courts where court practices are shaped and guided through conscientious judicial management of the process. Ostrom, Brian & Roger Hanson. 1999. *Efficiency, Timeliness and Quality*. National Center for State Courts.
- 3 Lui et al. (2021) state: “We find that lengthier case processing time is highly and positively associated with punitive outcomes at sentencing. The more time prosecutors spend on a case post-filing, the more likely defendants are to receive custodial sentences and longer sentences.” Lin Liu, R.R. Dunlea, and Besiki Luka Kutateladze. April 2021. Time for Time: Uncovering Case Processing Duration as a Source of Punitiveness. *Crime & Delinquency* 1-21.
- 4 Heaton, Paul, Sandra Mayson, & Megan Stevenson. 2017. The Downstream Consequences of Misdemeanor Pretrial Detention. *Stanford Law Review*, 69, 711.
- 5 Rabuy, Bernadette and Daniel Kopf. 2016. *Detaining the Poor*. Prison Policy Initiative, 2, available at <https://www.prisonpolicy.org/reports/DetainingThePoor.pdf>.
- 6 Some contend longer case processing time benefits the defendant as evidence decays and witnesses forget, lose interest, or move away, reducing the probability of conviction. Clearly, cutting case processing time too short may sacrifice the quality of justice, but beyond some reasonable bound, longer time is shown to be detrimental to many clients.
- 7 Banning, Alicia & Douglas Keith. 2020. *Principles for Continued Use of Remote Court Proceedings*. Brennan Center.
- 8 Additional sources for those individuals interested in the concepts of modern caseflow management include Success in Criminal Caseflow Management: Lessons from the Field (Brian J. Ostrom, et al. 2020. National Center for State Courts. Available at: https://www.ncsc.org/_data/assets/pdf_file/0018/53217/Success-in-Criminal-Caseflow-Management-Lessons-from-the-Field.pdf and Reimagining Civil Case Management (Hannafor-Agor, Paula. 2021. National Center for State Courts, available at: https://www.ncsc.org/_data/assets/pdf_file/0027/70668/NCSC-Reimagining-Civil-Case-Management.pdf)
- 9 National Open Court Data Standards (NODS) data definitions and Effective Criminal Case Management (ECCM).
- 10 The American Bar Association (ABA) first adopted speedy trial standards for criminal cases in 1968, amending the standards in 1976, in 1984, and again in 1992. The Conference of State Court Administrators (COSCA) promulgated national time standards for cases in the state courts in 1983.
- 11 <http://www.courtools.org/>.
- 12 After having adopted speedy trial rules for criminal cases in 1968, the American Bar Association adopted time standards for other case types as well in 1976, amending them in 1984 and again in 1992.
- 13 Model Time Standards for State Trial Courts. Available at: https://www.ncsc.org/_data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf.
- 14 Additional work is underway on more specialized topics, such as effective responses to individuals with behavioral health needs, that identify the specific challenges courts face and promising caseflow management solutions to these issues. (Mental Health Task Force 2021; see also Caseflow management | NCSC). https://www.ncsc.org/_data/assets/pdf_file/0018/66303/CCC-Caseflow-Mgmt.pdf
- 15 Ostrom et al., 2020.

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