

from the Pandemic Rapid Response Team

Pandemic Rapid Response Team: Criminal Caseload Backlog Reduction Learning Collaborative Series


Resources

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Model Scheduling Order

Policy and Implementation Guide

This model scheduling order policy and implementation guide is intended to be used to aid courts in managing criminal dockets, keep cases within time standards, and ensure due process and procedural fairness for defendants, victims, and their families.

Executive Summary

In October 2023, the National Center for State Courts (NCSC) initiated a series of collaborative learning sessions that were specifically designed to aid courts in addressing key aspects of successful backlog reduction in criminal cases, including the design of a scheduling order. Courts from across the country were invited to participate in structured conversations and learn from NCSC staff and each other about innovative strategies. The participating courts in the Scheduling Order Learning Collaborative met virtually with NCSC staff over a six-month period to discuss current court processes, criminal caseflow management successes and challenges, and best practices in caseflow management.

This document includes guidance around scheduling practices and a model scheduling order policy, with implementation guidance to explain the policy provisions and how courts could craft their own policy specific to their jurisdiction. These resources were developed for the Learning Collaborative and are intended to be shared with the larger court community.

The NCSC staff gratefully acknowledges the following court officials and professionals for their engagement in this project. They provided knowledge, expertise, and feedback that was instrumental to the creation of this resource.

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The boxed notes seen below and throughout this guide after the policy excerpts are intended to offer guidance to courts implementing a scheduling order policy. The model policy template can be found in the [Appendix](#).

Introductory notes. This model policy is intended to apply to criminal proceedings scheduled before a judicial officer including pretrial, trial, and motion events. It is to be adapted as each court deems appropriate in consultation with judges, court staff, and justice partners. It is best practice to apply this policy in conjunction with other caseflow management practices as detailed in this implementation guide.

In the context of this policy, a scheduling order can be described as an order that establishes deadlines and procedures for a case before trial. They are sometimes referred to as case management orders. The Effective Criminal Case Management Project (ECCM) describes the importance of creating a process for the court and parties to set event dates that are achievable. “Many courts use processes that establish the dates for all case milestones and the duties of the parties to meet those milestones. This is often accomplished at the equivalent of a pretrial hearing and may include the issuance of a scheduling order that formalizes the timeframes.” A court implementing this policy may want to adapt these definitions or descriptions of a scheduling order for inclusion in its policy. For information and resources about the Effective Criminal Case Management initiative, see <https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/caseflow-management/effective-criminal-case-management>.

This policy can be used as a template for a local policy or statewide policy. It is important to tailor the policy to comply with your jurisdiction’s Supreme Court Rules, policies, and statutes. Throughout the policy, there are segments in shaded brackets (i.e., **[bold]**). This denotes where a court may select from the options in the brackets or insert language that is relevant to their court (e.g., court-specific time standards, the titles of judicial officers or staff). The development of this policy should be based on average cases and not outlier cases that will be more complex.

Before a policy is adopted and even as it is being developed (as the court leadership deems appropriate), the court should consult with its justice partners on policy provisions. Providing a space to obtain court stakeholder feedback can result in greater buy-in and ultimately, greater policy compliance from attorneys, clerks, and justice partners. This can be done over the course of several meetings where a structured forum will allow the court stakeholders to offer their perspectives while also giving the court an opportunity to explain the rationale of the policy and criminal case management strategies. This topic would be an excellent discussion item for a court’s criminal justice collaborative council, if such a group exists. A court may first want to identify who should be involved in such discussions; for example, prosecuting attorney/district attorney/solicitor, public defender, private defense counsel, clerks, treatment court staff, probation officers, and jail administration may be involved in these discussions.

Scheduling Order Policy of [insert name] Court

Purpose. It is the policy of this Court to provide equal justice for all without unnecessary delay and while efficiently using the resources of the Court. Such delay erodes public trust and confidence in the Court. The Court must control the pace of criminal cases, establish case timelines, and communicate those expectations to the parties. This can be accomplished by using a scheduling order, which sets deadlines and procedures for a case before trial.

Implementation note: Rescheduling may be necessary during the life of a criminal case. No policy will, nor should, eliminate continuances or rescheduling. However, the goal is to control the pace of each case based on established expectations for timeliness and to eliminate unnecessary delay. Delay is any amount of time beyond what is reasonably needed to resolve a case. Delays in court, due to avoidable continuances, result in inefficient use of court resources as the matter that was to be held must now be rescheduled. This requires a variety of tasks outside of court, parties (including witnesses, victims) to reappear, and additional court time to be set aside to hear the case on a future date. There are greater financial costs to the system if the defendant is in pretrial custody in a county or state detention facility as this lengthens the amount of time the person is in the facility, thus resulting in greater taxpayer costs. See the Cost of Delay Calculator at https://www.ncsc.org/__data/assets/pdf_file/0017/53234/ECCM-Cost-of-Delay-Calculator.pdf.

If ineffective scheduling practices become a part of court culture, the public begins to lose trust that the court system will resolve legal disputes fairly and expeditiously and use court resources efficiently. Further, unnecessary delays in criminal cases can have detrimental effects on the case itself. As cases are delayed, witness memories fade, arresting officers retire or transfer to other agencies, and victims may perceive justice as not being served. Meanwhile, the defendant may have to appear for multiple court dates (including those that do not occur), potentially causing time away from employment or lengthening their time in pretrial custody.

Effective court scheduling practices include setting reasonable goals for interim events in criminal cases and ensuring that the calendar can accommodate these events, such as through a caseflow management plan. Once established, a scheduling order policy could be adopted to formalize these timeframes and apply them in a reasonable, consistent, and firm manner in individual cases. Incorporating this policy into a well-defined caseflow management plan will have more positive effects on criminal cases than the policy alone. See a sample caseflow management plan at: <https://napco4courtleaders.org/wp-content/uploads/2018/11/CV-CR-Caseflow-Management-Plan-Sample.pdf>.

Active case management is also key. Employing active case management involves continuous court control of the pace of each case rather than attorney control. This includes judicial monitoring of case status and intermediate time standards (e.g., from arrest to first appearance, from filing to arraignment), ensuring actions by the parties meet the court's expectations, court-controlled calendaring, and predictable and productive court events.

Court control means that as each case passes a “milestone” (e.g., arraignment), it is clear what is expected to happen next. The next hearing or event will be scheduled. This prevents a case from being overlooked, which can create further case delays. A predictable event is one where the parties and attorneys have a general understanding that hearings/trials will occur as scheduled and continuances are not an expectation. A court that has a reputation for holding predictable events results in attorneys being prepared for matters when they are scheduled and reduces the number of unnecessary continuances. Productive events are hearings or events that are meaningful in that they progress the case to disposition. Having productive events can reduce court appearances for all involved, increase court efficiency since the time spent in court is meaningful, and reduce judicial and attorney burnout that can occur with excessive, often ineffective court appearances.

Documenting how court events should be scheduled over the life of a criminal case and implementing a scheduling order that establishes deadlines to exchange discovery, extend plea offers, and hold pretrial conferences sets expectations for the parties and encourages preparation early in the case. Together with a continuance policy, these practices would result in more effective case management.

Effective scheduling and active court case management has additional significant benefits. In a criminal matter, the state represents the interests of its jurisdiction and the victim while the defense advocates for the best interests of the defendant. Both have a vested interest in advancing the case or potentially delaying the case, as one or the other may be advantageous to the state or defense. When prosecutors or defense counsel control when cases are scheduled, the public, witnesses, victims, and court partners lose confidence in the court and the criminal justice system as impartial institutions. However, the court is a neutral party and does not advocate for either side as the arbiter of justice. Thus, it is logical that the court would control the flow of cases.

The court should also assess its court culture and the court processes that currently exist and determine if the calendaring system is working optimally in terms of capacity to handle the incoming cases, availability and allocation of judicial resources (i.e., staff, courtrooms, technology), and effectiveness of the calendaring and notification system. From that assessment, the court can identify various caseflow management strategies to reduce the opportunity for delay to occur, such as through active case management, court control, and predictable and productive events.

State courts often use different terminology for substantively similar events set in a criminal case. For example, courts variously refer to “arraignment,” “magistration,” and “initial appearance” for the first hearing to notify a person of the charges against them. Conversely, the purpose and definition of similarly named events may also vary by state. As courts elect to implement a scheduling order policy, the court’s rules and terminology should be incorporated into its policy to ensure consistency and compliance. The goal of the policy is to reduce unnecessary delays. Courts should take steps to mitigate scheduling delays regardless of the event terminology used in this guide. This policy should be adapted with that outcome in mind.

This policy sets forth the Court's expectations for utilizing scheduling orders in criminal cases to set the [dates/weeks/deadlines] for key events and to meet overall time goals. This policy also describes how and when a scheduling order is issued and how it can be modified, as well as the data the Court will collect and use to track adherence with scheduling orders. The [district/county] Judges are committed to effective criminal case management, which includes the consistent application of this policy by all judges.

Implementation note: *This policy may be adopted by a specific county, district, or jurisdiction depending on the court structure. For example, a court may choose to implement the policy specifically in district or superior court or in both divisions. Regardless, it is important that all judges and staff in the court(s) where the policy is implemented consistently follow and promote the policy so it becomes institutionalized in the court culture. Failure to do so can result in judge “shopping”, judicial disqualifications, and general impotence of the policy.*

Trial date certainty is closely connected to court control of the case. It encourages the parties to be prepared when it is reasonably certain that the trial will be held on the first date set. Trial date certainty is important because the inability of a court to hold trials as scheduled can impact a defendant's constitutional right to a speedy trial. Greater certainty can be achieved by setting a reasonable date for trial in the scheduling order and by holding meaningful pretrial or dispositional conferences to present a plea offer on the record and plan for either trial or a change of plea hearing. For more information about trial date certainty and other court performance measures, see CourTools at www.ncsc.org/courtools.

Case Management Expectations. Scheduling orders shall be set in each criminal case in accordance with the [Court/state/local] expectations for criminal case management, the timing of specific events and disposition time standards, and the established calendaring system. [Refer to criminal case management plan, criminal calendar.] Together with the Court's criminal case management expectations, the scheduling order allows the Court to:

- establish deadlines or expectations for key events and overall timelines,
- provide adequate notice and preparation time for parties in individual cases,
- create event date certainty and predictability,
- reduce rescheduling or calendaring changes, and
- communicate a path for case resolution within the time standards

The Court recognizes that events may need to be rescheduled or continued to a later date. Dates that have been established in the scheduling order may be updated or modified for good cause. [Refer to the Court continuance policy]. Rescheduled events should, in most cases, be set for the next available [date/week] on the publicly available [judicial calendar, master calendar] and in line with the time goals for that event. However, the Court shall consider the reason the event is being rescheduled when determining the next court date. Determination of the next event date will be made at the time the

request to reschedule is made. This method for rescheduling creates greater predictability where all parties are aware of the upcoming criminal event weeks and possible future dates. It also allows for flexibility in individual cases and the option to shift events within the overall time goals.

Implementation note: Courts should develop a clear and formal calendar structure and expectations for criminal case processing, such as through a caseflow management plan, to clarify the purpose and function of the court's criminal case process. Expectations include goals for both overall time to disposition and time to key events (e.g., preliminary hearing, dispositional conference, and completion of discovery and motions). A court should reference any such caseflow management plan and calendar or scheduling system in the policy. An effective, clearly communicated scheduling system makes it possible, in most cases, to schedule all necessary case events so that the parties have sufficient preparation time for each proceeding and the case can still be resolved within expectations.

From this foundation, caseflow management tools like a scheduling order have a clear place and purpose and provide reasonable certainty of events occurring as scheduled. A scheduling order can be developed that incorporates the key event time frames and distributed at the initial appearance. For example, the preliminary hearing can be set for the next available time approximately 30 days after the initial appearance and the dispositional conference at about 120 days. Reasonable time expectations can also be used to help manage discovery and motions. A scheduling order can also accommodate necessary changes to the original dates that fall within the overall time standards. A court should describe how events will be rescheduled and reference their continuance policy, if one exists.

Disposition Time Standards. Time standards assist the Court in monitoring case timeliness and represent a goal for achieving the final disposition in criminal cases. This policy is designed to ensure cases progress to disposition within the time standards adopted by this Court as set forth below. The time standards reflect the disposition goal for cases from the [initial filing of the criminal case, date of arrest, indictment] to the disposition of the case (e.g., dismissal, sentencing). Note: Time associated with [failures to appear or bench warrants, competency evaluations, appeals, inactive status] does not count toward the time standard goal. [Insert state-specific or local time standards to replace the National Model Time Standards.]

Felony	Misdemeanor	Traffic/Local Ordinance
75% within 90 days	75% within 60 days	75% within 30 days
90% within 180 days	90% within 90 days	90% within 60 days
98% within 365 days	98% within 180 days	98% within 90 days

Implementation note: Time standards provide a “yardstick” for measuring the effectiveness of court management and performance. Including court time standards in the scheduling order informs court partners and users of the goals and expectations for case resolution and serves as a reminder of the optimal time frames. This is not to suggest that all cases will be able to be disposed within time standards, but they are targets for which the court and attorneys should strive.

For the purpose of this policy, the National Model Time Standards are referenced in the model policy. The model time standards recognize that cases are unique and that creating a standard that all cases will meet (i.e., a 100% standard) is unrealistic. The 98% benchmark (rather than 100%) that recommends the resolution of all felony cases within 365 days reflects that there will be a small number of cases that will take longer to resolve due to various factors. A court may and should replace the national standards with the time standards for its state or jurisdiction. If a court does not have established time standards, this may be a topic for discussion at future collaborative meetings with court partners.

In considering the time to disposition, the starting point may vary by state depending on how and when criminal cases are initiated. The National Model Time Standards run from the filing of the initial complaint through disposition, which could be dismissal of the case or sentencing. The non-exhaustive examples in the model policy include the following: the initial filing of the criminal case, the date of arrest, and date of indictment. A court should modify the initial starting point to reflect how its time standards are measured.

Time to Interim Events. In addition to overall disposition time standards, interim event time goals represent the Court’s expectations for cases to proceed from the [initial filing of the criminal case, date of arrest, indictment] to each key event in the case [(e.g., initial appearance, arraignment, preliminary hearing, exchange of discovery, motions hearing, pretrial or dispositional conference, trial)]. The Court, Court Administrator, and justice partners will annually review this policy to ensure it is achieving its intended goal to reduce delay and improve case processing times. [Insert state-specific or local interim time standards to replace the example below.]

Event Type	Felony (in/out of custody)	Misdemeanor	Traffic/ Local Ordinance
Initial Appearance	1 day	1 day	7 days
Preliminary Hearing	14/30 days	7 days	-
Motions/Contested Hearing	90 days	30 days	30 days
Pretrial Conference	100 days	60 days	60 days
Trial	270 days	150 days	90 days
Disposition/ Sentencing	365 days	180 days	90 days

Implementation note: Including interim event time standards in the scheduling order policy informs court partners and users of the goals and expectations for individual case processing and serves as a reminder of the optimal time frames for each event to occur within the overall time goal. This is not to suggest that all events will always be held on the first date set. Rather, these time frames provide targets for the court to enter dates into the calendar, identify upcoming actions in a case, and mitigate scheduling conflicts. Attorneys know in advance when key events will be held, when discovery must be provided, and when witnesses need to be available. Close adherence to these time frames, with the ability to reschedule within the overall time standard, provides structured flexibility for individual cases.

The court should identify the key events to be scheduled from initial appearance through disposition and sentencing. Key events include those dictated to be held within set time frames by local statutes and rules. Other key pretrial case events include those that provide meaningful opportunities for resolution. The time to a dispositional conference, for instance, can be set around the time expectation for the completion of discovery and motions so that an informed decision can be made as to how the case will be resolved, whether through dismissal, plea, or trial. The court can resolve many cases well in advance of trial when events are meaningful and productive.

In monitoring the Court's case management performance, the Court measures [the age of active pending cases, the time to disposition, clearance rate, event date certainty, continuance rates] to ensure compliance with the Court's established goals.¹

Implementation note: During the development of its policy, a court should identify performance measures, such as time to disposition and/or pending median case age, that will help assess effectiveness and identify if the court is achieving the goal. These initial performance measures should be taken before implementation and months after implementation for comparison purposes. A court may opt to use the disposition time standard as a measure. For example, has the time to disposition improved since the implementation of the policy? Reviewing performance measures over time can show trends and help courts make more data-driven decisions regarding court operations.

Six months is recommended as an interim status check. This should allow enough time for a court to see a measurable difference, however a court may determine more or less time is needed to see impact. At the interim "check-in", the court should determine if modifications are necessary to achieve the intended outcome. The time standard data may be used in conjunction with reports referenced in the Case Management and Performance Data section of the policy.

¹ See CourTools at www.ncsc.org/courtools.

Scheduling Order Process. At [initial appearance, arraignment, or insert other initial proceeding], the Court will issue a scheduling order and set the dates on the calendar. The dates in the order [shall/may]:

- i. be entered on the record.
- ii. state the dates for key events, including deadlines for exchange of discovery and trial dates, based on the calendaring/scheduling rotation and as statutorily required.
- iii. provide reschedule or backup dates or time frames that are within the disposition time standards. This provides options for the Court to reset the hearing if a continuance is granted (i.e., for good cause) while maintaining a path to resolution.
- iv. be revised when [several settings need to be changed, the future settings cannot reasonably be held within the original time frame] and new dates can be accommodated within the [active/overall] time standard. The issuance of a new order should be limited and generally avoided for new settings that do not affect the remaining dates.

Implementation note: Establishing when and how a scheduling order may be issued will create uniformity and clear expectations for case management. The initial proceeding at which to issue a scheduling order should be early enough for the defendant and attorneys to receive the order and notice of the next scheduled court events. Defendants should receive the scheduling order regardless of whether they are represented by counsel. This process helps to reduce missed court appearances and rescheduling because all parties are aware of the event dates well in advance. Consistently issuing scheduling orders at the earliest event possible also makes it less likely for cases to fall through the cracks because there is no future date set. Instead, each case has a clear path for resolution with flexibility, or room, for rescheduling when necessary and appropriate.

The Court shall schedule the event dates and the dates shall be set with certainty. All dates in the scheduling order will be entered in the [calendar/docket, case management system] by [the court clerk, reporter, judicial assistant] [in the courtroom/within 2 business days]. [Subsequent settings (i.e., continuances) will only be set upon judicial order.] The Court [may consult with/shall provide notice to] the State and Defense Attorney, or defendant if they are unrepresented by counsel. To request a new scheduling order, a motion must be filed with the [the Court Clerk, judicial assistant]. The motion should include the reason the party is requesting a new scheduling order, a proposed new schedule, and indication as to whether all parties agree to it.

If the case becomes inactive due to a warrant, competency proceeding, or other stay, the Court will set the case for review every [____ (e.g., 60)] days and re-issue dates, if necessary, upon the case becoming active. This time will not count against the time standard but may require that a new scheduling order be issued.

Implementation note: Courts should develop a scheduling order form to encourage compliance with this policy. A sample form is included with this model policy and can be adapted to conform to a court's scheduling order policy. The practice for how the events will be scheduled should also be outlined. The options in the paragraph above offer guidance as to which court official will be responsible for calendaring, the location for where the dates will be entered, and the timing for those to be entered. These options serve as examples and are not an exhaustive list. The process to request or issue a new scheduling order can also be described. This is particularly important for cases that have been inactive for many months and require all new dates. It is recommended to set inactive cases for review periodically to revisit the status of the case and any actions needed.

Compliance. Scheduling orders should be entered and current for active cases. Active cases that do not have a scheduling order should be the limited exception and should meet one of the following criteria:

- Involve a [violent felony, specific charge(s), pre-trial diversion program, more than 2 defendants, more than # exhibits or discovery materials] [add applicable modifiers]
- Require witnesses that [insert reason that time will be delayed]
- Be impacted by a prolonged court closure, judicial absence, or complexity that requires greater flexibility in the schedule (i.e., for the health and safety of court participants).

[Court Administration, The Clerk, Case Management] will notify the [judicial division, assigned judge] if an active case does not have a current scheduling order so that the [judicial division, assigned judge] can identify cases that need a new order or the reason why the case cannot proceed.

Implementation note: Courts should strive to issue a scheduling order in most cases, recognizing that there will be exceptions or times when a scheduling order is impractical for some cases. This may include cases that involve more complex issues, extensive discovery or lab testing, many defendants or witnesses, a need for additional intermediate events (e.g., evaluations) or other extenuating circumstances. In these cases, a scheduling order may be counterproductive – setting events that cannot be productively held at the earliest possible time.

Case Management and Performance Data. To ensure time standard goals are being met, the Court will monitor and review time standard performance and will discuss performance and goals at regular bench meetings and justice partner meetings. Additionally, scheduling and event settings data elements will also be documented in the case management system to allow for the generation of event setting reports that will determine trends and adherence to the policy.

The data will be used to generate reports by the [court administrator/court coordinator] on [the number of settings for each event and case, the time to the interim event, the age of the pending case, the

time to disposition, and adherence to scheduling order dates]. These reports will be prepared on a [daily, weekly, monthly, quarterly] basis to be shared with the judges and discussed at justice partner meetings. At least once per quarter, the Court will work with the Bar and justice partners to seek resolution of any organizational or systemic problems that cause certain events to be continued or case type time goals to be exceeded for [over 10%] of cases in that case type.

Implementation note: *There is a management axiom that says, “What gets measured, gets managed.” This also applies to effective court management since a court should use court data to measure case progress, activity, and general court performance to understand if court processes are operating at optimal levels. As it relates to scheduling orders, it is important for the court to maintain data sufficient to monitor event settings and rescheduling and to generate reports in these areas. However, not all court case management systems may be able to track the level of data that is described below. Courts should be prepared to adapt to track the data and generate reports based on the capabilities of its case management system, which may not mirror what is recommended below.*

Scheduling order and event data elements that should be entered in the case management system include but are not limited to:

- *Date scheduling order issued*
- *The name of the judicial officer who issued the order*
- *Number of key events set and held*

For more information about court data definitions and how they are described and recorded and the importance of data governance, see the National Open Data Standards at <https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>.

A court may issue an administrative policy related to the entry and maintenance of court data in general and scheduling order data in the court’s case management system. Such a policy, or data integrity plan may specify who is responsible for certain entries and how to ensure data accuracy. If the case management system does not allow this level of detail or the tracking of the listed data elements, the court may consider consulting with the vendor to determine if the data elements can be tracked. If this information simply cannot be measured in the case management system, the court should consider tracking a minimum number of data points manually and generating reports through other software, such as spreadsheets and charts. At a minimum, a court should track the number of cases with a scheduling order by:

- *Date*
- *The name of the judicial officer*
- *The number of days the case has been pending and time to case disposition.*

Entering scheduling order data will be most impactful if a court can generate reports, use the data to guide court discussions about court practices, and share the information with justice system partners at regular meetings. It is recommended that a court generate monthly reports, share the reports with the judges, and discuss them at bench and court staff meetings. However, a court may determine to generate such reports with greater or less frequency. For example, a high-volume court with multiple criminal courts operating weekly may generate reports more frequently than a court with less volume and less frequent weekly criminal court sessions.

The person responsible for generating the report may vary by court — i.e., the court administrator, a case manager, court coordinator, judicial assistant, or court clerk. This level of transparency informs the stakeholders that the information is being reviewed and being used to improve court operation and also helps ensure accountability.

This policy shall be effective _____ until further notice.

Signatures of the Court

Date

Model Criminal Continuance

Policy and Implementation Guide

This model criminal continuance policy and implementation guide is intended to be used to aid courts in managing criminal dockets, keep cases within time standards, and ensure due process and procedural fairness for defendants, victims, and their families.

Executive Summary

In October 2023, the National Center for State Courts (NCSC) initiated a series of collaborative learning sessions that were specifically designed to aid courts in addressing key aspects of successful backlog reduction in criminal cases, including controlling court continuances. Courts from across the country were invited to participate in structured conversations and learn from NCSC staff and each other about innovative strategies. The participating courts in the Continuance Policy Learning Collaborative met virtually with NCSC staff over a six-month period to discuss current court processes, criminal caseflow management successes and challenges, and best practices in caseflow management.

As a result of the collaborative efforts, this document includes a model criminal continuance policy and a model motion for continuance. These resources were developed by the Learning Collaborative and are intended to be shared with the larger court community. Additionally, the Learning Collaborative created an implementation guide to explain the policy provisions, which courts could use when crafting their own continuance policy specific to their jurisdiction.

The NCSC staff gratefully acknowledges the following court officials and professionals for their engagement in this project. Without their knowledge, expertise, and dedication, this resource would not be possible.

Shelley Bacon, Deputy Court Administrator, Coconino County Superior Court (AZ)

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The boxed notes seen below and throughout this guide after the policy excerpts are intended to offer guidance to courts implementing a criminal continuance policy. The model policy template and accompanying motion for continuance form template can be found in the **Appendix**.

Introductory notes. This model policy is intended to apply to criminal proceedings scheduled before a judicial officer including pretrial, trial, and motion events. It is to be adapted as each court deems appropriate in consultation with judges, court staff, and justice partners. It is best practice to apply this policy in conjunction with other caseflow management practices as detailed in this implementation guide.

In the context of this policy, a continuance can be described as the postponement of a hearing, trial, or other court event that was scheduled to occur during a court date to a future court date. The Effective Criminal Case Management Project (ECCM) describes continuances as, “a court hearing that was continued to another date due to lack of time to fully resolve a case issue in one hearing, or a court hearing that was postponed due to lack of preparation or appearance.” A court implementing this policy may want to adapt these definitions or descriptions of a continuance for inclusion in its continuance policy. For information and resources about the Effective Criminal Case Management initiative, see <https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-management-and-performance/caseflow-management/effective-criminal-case-management>.

This policy can be used as a template for a local policy or statewide policy. It is important to tailor the policy to comply with your jurisdiction’s Supreme Court Rules, policies, and statutes. Throughout the policy, there are segments in shaded brackets (i.e., **[bold]**). This denotes where a court may select from the options in the brackets or insert language that is relevant to their court (e.g., court-specific time standards, the titles of judicial officers, or staff). The development of this policy should be based on average cases and not outlier cases that will be more complex.

Before a policy is adopted and even as it is being developed (as the court leadership deems appropriate), the court should consult with its justice partners on policy provisions. Providing a space to obtain court stakeholder feedback can result in greater buy-in and ultimately, greater policy compliance from attorneys, clerks, and justice partners. This can be done over the course of several meetings where a structured forum will allow the court stakeholders to offer their perspectives while also giving the court an opportunity to explain the rationale of the policy and criminal case management strategies. This topic would be an excellent discussion item for a court’s criminal justice collaborative council, if such a group exists. A court may first want to identify who should be involved in such discussions; for example, prosecuting attorney/district attorney/solicitor, public defender, private defense counsel, clerks, treatment court staff, probation officers, and jail administration may be involved in these discussions.

Continuance Policy of [insert name] Court

Purpose. It is the policy of this Court to provide equal justice for all without unnecessary delay while efficiently using the resources of the Court. Such delay erodes public trust and confidence in the Court. To avoid delays, the Court must control the pace of criminal case progress and limit continuances. Research shows that continuances are the most significant contributor to case delay. While some continuances may be outside of the Court's control, managing the number of continuances in a case will allow the Court to reduce delay while ensuring due process and procedural fairness.

Implementation note: *It is understood that some continuances may be necessary during the life of a criminal case. This policy or any policy will not eliminate all continuances. However, the goal is to eliminate excessive continuances and to limit continuances that result in unnecessary delay. Delay is any amount of time beyond what is reasonably needed to resolve a case. Delays in court, due to avoidable continuances, result in inefficient use of court resources as the matter that was to be held must now be rescheduled, which requires a variety of tasks outside of court, parties (including witnesses, victims) to reappear, and additional court time to be set aside to hear the case on a future date. There are greater financial costs to the system if the defendant is in pretrial custody in a county or state detention facility as this lengthens the amount of time the person is in the facility, thus resulting in greater taxpayer costs. See the Cost of Delay Calculator at https://www.ncsc.org/__data/assets/pdf_file/0017/53234/ECCM-Cost-of-Delay-Calculator.pdf.*

If continuances become a part of court culture, the public begins to lose trust that the court system will resolve legal disputes fairly and expeditiously and use court resources efficiently. Further, unnecessary delays in criminal cases can have detrimental effects on the case itself. As cases are delayed, witness memories fade, arresting officers retire or transfer to other agencies, and victims may perceive justice as not being served. Meanwhile, the defendant may have to appear for multiple court dates that do not occur, potentially causing time away from employment or lengthening their time in pretrial custody.

The ECCM project found that continuances are the most significant contributor to case delay. Adopting a policy to limit continuances and applying the policy in a reasonable, consistent, and firm manner is key to successful caseload management. Adopting other caseload management strategies in conjunction with a continuance policy will have more positive effects on criminal cases than the policy alone.

Limiting the opportunity for continuance requests to occur through active case management is a first step. Employing active case management involves the court controlling the pace of litigation rather than attorneys. This includes judicial monitoring of case status and intermediate time standards (e.g., from arrest to first appearance, from filing to arraignment), ensuring actions by the parties meet the court's expectations, court-controlled calendaring, and predictable and productive court events.

Court control also means that as each case passes a “milestone” (e.g., arraignment), the next hearing or event will be scheduled to prevent a case from being overlooked and creating further case delays. A predictable event is one where the parties and attorneys have a general understanding that hearings/trials will occur as scheduled and continuances are not an expectation. A court that has a reputation for holding predictable events results in attorneys being prepared for matters when they are scheduled and reduces the number of unnecessary continuances. Productive events are hearings or events that are meaningful in that they progress the case to disposition. Having productive events can reduce court appearances for all involved, increase court efficiency as the time spent in court is meaningful, and reduce judicial and attorney burnout that can occur with excessive, often ineffective court appearances. Continuance policies improve the likelihood that a trial (and hearings) will occur as scheduled. Another tool that courts can use to increase predictability and productivity is a scheduling order that clearly establishes deadlines for case events. Documenting how court events should be scheduled over the life of a criminal case and implementing a scheduling order that establishes deadlines to exchange discovery, extend plea offers, and hold pretrial conferences sets expectations for the parties and encourages preparation early in the case. Together with a continuance policy, these practices would result in more effective case management.

Active court case management has additional significant benefits. In a criminal matter, the state represents the interests of its jurisdiction and the victim while the defense advocates for the best interests of the defendant. Both have a vested interest in advancing the case or potentially delaying the case, as one or the other may be advantageous to the state or defense. When prosecutors or defense counsel control when cases are scheduled and continuances are an expectation, the public, witnesses, victims, and court partners lose confidence in the court and the criminal justice system as impartial institutions. However, the court is a neutral party and does not advocate for either side as the arbiter of justice. Thus, it is logical that the court would control the flow of cases.

A continuance policy is a best practice and will assist a court in limiting continuances if it is applied consistently by all judges and clearly sets out expectations. For maximum effectiveness, the court should also assess its court culture and the court processes that are creating the continuances. From that assessment, the court can identify various caseflow management strategies to reduce the opportunity for continuances to occur, such as active case management, court control, and ensuring predictable and productive events.

It is noteworthy that state courts use varying terminology in the context of continuances. For example, some courts distinguish between “continuances” and what may be referred to as “resets.” The definition of a “continuance” or a “reset” may vary by state. As courts elect to implement a criminal continuance policy, the court’s rules and terminology should be incorporated into its policy to ensure compliance and consistency with the court’s culture, policies, and practices. The ultimate goal of the policy is to reduce unnecessary delays. Courts should take steps to eliminate delays regardless of the local terminology used. This policy should be adapted with that outcome in mind.

This policy sets forth what the Court will consider good cause to request a continuance, the process to request continuances, the data the Court will collect in furtherance of efforts to reduce continuances, and how the data will be used. The [district/county] judges are committed to effective criminal case management which includes the consistent application of this continuance policy by all judges. For all criminal case types and dockets and in all [divisions] courtrooms, the Court looks with strong disfavor on motions or requests to continue court events, both hearings and trials, without good cause. To protect the credibility of scheduled trial dates, trial date continuances are especially disfavored. Parties should be prepared to proceed on the scheduled hearing or trial date.

Implementation note: This policy may be adopted by a specific county, district, or jurisdiction depending on the court structure. For example, a court may choose to implement the policy specifically in district or superior court or in both divisions. Regardless, it is important that all judges and staff in the court(s) where the policy is implemented consistently follow and promote the policy so it becomes institutionalized in the court culture. Failure to do so can result in judge “shopping”, judicial disqualifications, and general impotence of the policy.

Trial date certainty is closely connected to controlling continuances. Trial date certainty is a court measure that assesses the number of times cases that are disposed by trial are actually scheduled for trial. It is improved when the court holds predictable court events. Trial date certainty is important because the inability of a court to hold trials as scheduled can impact a defendant’s constitutional right to a speedy trial. As a result, courts may control trial date continuances more strictly. This may be reflected in some courts through the practice that only judicial officers or only the assigned judicial officer is permitted to grant a trial date continuance. For more information about trial date certainty measures and other court performance measures, see CourTools at www.ncsc.org/courtools.

Time Standards. Time standards assist the Court in monitoring case timeliness and represent a goal for achieving the final disposition in criminal cases. This policy is designed to ensure case progress to disposition within the time standards adopted by this Court as set forth below. The time standards reflect the disposition goal for cases from the [initial filing of the criminal case, date of arrest, indictment] to the disposition of the case (e.g., dismissal, sentencing). Note: Time associated with failures to appear or bench warrants does not count toward the time standard goal. [Insert state-specific or local time standards to replace the National Model Time Standards.]

Felony	Misdemeanor	Traffic/Local Ordinance
75% within 90 days	75% within 60 days	75% within 30 days
90% within 180 days	90% within 90 days	90% within 60 days
98% within 365 days	98% within 180 days	98% within 90 days

Implementation note: Time standards provide a “yardstick” for measuring the effectiveness of court management and performance. Including court time standards in the continuance policy informs court partners and users of the goals and expectations for case resolution and serves as a reminder of the optimal time frames, which are impacted by unnecessary continuances. This is not to suggest that all cases will be able to be disposed within time standards, but they are targets for which the court and attorneys should strive.

For the purpose of this policy, the National Model Time Standards are referenced in the model policy. The model time standards recognize that cases are unique and that creating a standard that all cases will meet (i.e., a 100% standard) is unrealistic. The 98% benchmark (rather than 100%) that recommends the resolution of all felony cases within 365 days reflects that there will be a small number of cases that will take longer to resolve due to various factors. A court may and should replace the national standards with the time standards for its state or jurisdiction. If a court does not have established time standards, this may be a topic for discussion at future collaborative meetings with court partners.

In considering the time to disposition, the starting point may vary by state depending on how and when criminal cases are initiated. The National Model Time Standards run from the filing of the initial complaint through disposition, which could be dismissal of the case or sentencing. The non-exhaustive examples in the model policy include the following: the initial filing of the criminal case, the date of arrest, and date of indictment. A court should modify the initial starting point to reflect how its time standards are measured.

In monitoring the effectiveness of the policy, the Court will consider if the time to disposition is reduced, if the time standards are being met, and if the continuance rate is reduced by [20%] within the first [6 months] of implementation. The Court, Court Administrator, and justice partners will annually review this policy to ensure it is achieving its intended goal to reduce delay and improve case processing times.

Implementation note: It is important to identify the anticipated results of implementing any new practice or policy before implementation. The same is true for implementing a continuance policy so a court can measure its effectiveness and determine if any changes are needed after the initial implementation of the policy. Prior to implementation, a court should clearly set out the intended outcome of the policy and then examine the change to determine if that outcome is being met. In the model policy above, an example of a 20% continuance rate reduction is referenced which can be modified by the court as needed. The court may need to determine how this outcome will be measured if no report exists in the case management system. Manually tracking cases continued on a calendar or docket compared to the total number of cases calendared may be an option if the court cannot generate a continuance report from the case management system.

During the development of its policy, a court should identify a performance measure, such as time to disposition and/or pending median case age, that will help assess effectiveness and identify if the court is achieving the goal. This initial performance measure should be taken before implementation and months after implementation for comparison purposes. A court may opt to use the disposition time standard as a measure. For example, has the time to disposition improved since the implementation of the policy? Have continuance rates dropped and if so, by what percentage? Reviewing performance measures over time can show trends and help courts make more data-driven decisions regarding court operations.

Six months is recommended as an interim status check. This should allow enough time for a court to see a measurable difference, however a court may determine more or less time is needed to see impact. At the interim “check-in”, the court should determine if modifications are necessary to achieve the intended outcome. The time standard data may be used in conjunction with continuance reports referenced in the Case Management and Continuance Data section of the policy.

After the interim “check-in” and the policy is fully implemented, each court should review the policy on an annual basis. As part of the review process, the court should consider the data gathered as recommended in the Case Management and Continuance Data section of the policy and how well the court is meeting the time standards.

Continuance Request Process. Absent good cause, a motion or request for continuance filed pursuant to [insert court rule, if applicable] shall be filed as soon as the party is aware of the need for a continuance but no later than [24 hours] before the scheduled hearing or trial. The motion shall:

- i. Be in writing (email or fax may be permitted by the Court);
- ii. state the good cause reasons for the request;
- iii. be signed by the attorney making the request (or the defendant if they are not represented by counsel) and the defendant, if possible;
- iv. state whether the defendant consents to the continuance, if requested by defense counsel;
- v. state the number of prior continuances granted and upon whose motion those continuances were granted, if known;
- vi. state whether or not the defendant is currently in custody, the date the defendant was arrested, and the total days in custody in the matter in which the continuance is requested;
- vii. state whether the opposing counsel or party consents or objects to the continuance; and
- viii. propose the next court date.

Implementation note: *The time frame within which the policy will require parties to submit their motions or requests for continuance (e.g., 24 hours before the scheduled hearing or trial) should be sufficient for the court to decide in advance of the scheduled court event. A court may opt to have different time frames for requesting a continuance for a trial or hearing although it is generally considered best practice that requests be submitted in writing in the form of a motion and contain specific information to allow the court to determine good cause.*

Good cause may be described as a legally sufficient reason or sufficient grounds or a substantial reason or legal justification. A court may want to provide a general definition of good cause in the policy. If applicable, the court may also elect to adapt the terminology to account for the distinctions between resets and continuances.

The attorney must sign the request/motion for continuance. When possible, it is recommended the defendant also sign the motion. This ensures that they are aware of the reason and request for the continuance. However, if the defendant is in custody in a remote location, obtaining their signature may not be practical. If a defendant is not represented by counsel, the defendant should sign the motion. Although consent by the opposing counsel does not constitute good cause, the requesting party should indicate opposing counsel's position and indicate when the hearing should be recalendared if the court grants the continuance. This should be a reasonable period of time to allow the attorney to address the issue that necessitated the continuance request, which will depend on the reason the continuance was requested. In short, the next court date should be tailored to the reason for the continuance.

Parties are encouraged but not required to use the continuance form that accompanies this policy. Continuance requests will be accepted by means other than writing (e.g., phone, text, in person) only in the following circumstances: if the request is not for a trial setting AND [no previous continuances have been granted in the case, the case type is not a felony, all parties agree, the disposition time standards will not be delayed, there is an emergency situation]. If continuances are granted in chambers or off the record, the information required in the motion stated above will be documented by the court official granting the continuance.

Implementation note: *Courts should develop a continuance motion and order form to encourage compliance with this policy. A sample form is included with this model policy and can be adapted to conform to a court's continuance policy. If a jurisdiction or court division accepts continuance requests that are not in writing, the options in the paragraph above offer guidance as to when it may be appropriate. These options serve as examples and are not an exhaustive list. Additionally, if non-written continuance requests are permitted, an adopted motion and order form will enable the court official (e.g., judge, clerk, court staff) to capture the majority of the information that the written request would have contained.*

The Court, in its discretion, will determine good cause to grant a continuance based on individual case circumstances. The following reasons, though not exhaustive, will generally be considered good cause to grant a continuance.

- i. Hearing commitment or conflict in another court.
- ii. Sudden medical emergency (not elective medical care) or death of a party, counsel, or subpoenaed material witness.
- iii. A party did not receive notice of the setting of the trial date through no fault of the party or the party's counsel.
- iv. A competency evaluation of the defendant is pending.
- v. A treatment or diversion court assessment/evaluation of the defendant is pending.
- vi. Unanticipated absence of a subpoenaed material witness.
- vii. Facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possible miscarriage of justice if the trial is required to proceed as scheduled.

The Court will determine if good cause does not exist to grant a continuance. The following reasons, though not exhaustive, will generally not be considered good cause to grant a continuance.

- i. A police officer or other witness is either in training or is scheduled to be on vacation unless the Court is advised of the conflict soon after the case is scheduled and sufficiently in advance of the trial date.²
- i. A party or counsel is unprepared to try the case for reasons including, but not limited to, the party's failure to maintain necessary contact with counsel.
- ii. Unanticipated absence of a witness who has not been subpoenaed.
- iii. Discovery is ongoing and has not been completed.
- iv. The parties are discussing a settlement or plea.
- v. New counsel has entered an appearance in the case or a party wants to retain new counsel.
- vi. Counsel or parties agree to the continuance.
- vii. The case has not previously been continued.

² A motion for continuance based on a conflict with a previously scheduled vacation shall state the date the vacation was set.

Implementation note: Including examples of what the court will consider good cause and also what will not be considered good cause provides guidance to all judges and attorneys and conveys the court's expectations. For example, many courts may allow continuances based solely on the fact that opposing counsel consents regardless of the reason. On its face, this alone should not be considered sufficient cause to grant a continuance.

The examples are NOT intended to replace judicial discretion. Further, including examples does not remove a judge's ability to deviate from the policy although consistency is best practice. The judge will always retain their authority to decide motions on an individual basis. As stated earlier, developing the continuance in collaboration with court partners is recommended. When identifying examples of good cause, obtaining, and considering court partner perspectives can improve the policy and compliance with the policy. It is important that the court partners understand that the reasons listed in the policy provide guidance, are not exhaustive, and that requests will be considered on a case-by-case basis.

The following factors will be considered, in addition to the totality of the circumstances of the case, to determine if good cause exists to grant a continuance.

- i. Weather or travel delays.
- i. Inability to transfer a defendant from where they are incarcerated.
- ii. Change in representation for the state or defense (e.g., District Attorney, Public Defender).
- iii. Due process issues (e.g., new evidence, delay of lab results).
- iv. Age of the case or the point in the court process.

In determining what constitutes good cause, the Court shall consider the age of the case, number of prior continuances, reason for continuance, due process concerns for the defendant, the pre-trial custodial status of the defendant, and speedy trial motions. The granting or denying of written continuance motions shall be made on the record, with an indication of who requested the continuance, the reasons for granting or denying the motion, and the next hearing date.

Implementation note: The factors listed above are special circumstances that are likely to add more weight to a continuance request but are not necessarily considered good cause or the absence of good cause on their own. These can be tailored by the court in the development of the policy.

While it is important for courts to control their dockets and reduce delays to ensure the just, expeditious and efficient resolution of cases, they should be mindful of when a continuance should be granted to protect against manifest injustice. **It is important for judges to know the controlling case law for their jurisdiction if such case law exists.** Courts are encouraged to identify the relevant rules and case law for their jurisdiction and reference it as appropriate in the court continuance policy to lend it credence.

Non-judicial officers such as [court administrators, court managers, clerks, case managers, judicial assistants, etc.] may grant continuances only if the [presiding judge, chief judge] grants such authority and only under the following conditions: if the request is not for a trial setting and [no previous continuances have been granted in the case, the case type is not a felony, AND all parties agree].

Implementation note: *If a jurisdiction or court division allows non-judicial officers to grant continuances, the paragraph above provides guidance as to when it may be appropriate for non-judicial officers to determine if good cause exists for a continuance. This serves as an example and is not an exhaustive list. If non-judicial officers are not permitted to grant continuance requests, the paragraph above may be deleted.*

When granting the continuance for good cause that is consistent with this policy, the Court shall schedule the next court date and the date shall be set with certainty. The Court shall consult with the state, defense attorney, or defendant if they have not been appointed counsel or are not eligible for court-appointed counsel and have not retained counsel. The next hearing date should be based on and tailored to the reason the continuance was requested to reduce the impact of the delay and to meet court time standards, if possible. For example, the Court may ask:

- i. Is discovery complete? If not, what is missing and when will it be complete?
- ii. Has the state made a plea offer?
- iii. Has the defense made a counteroffer?
- iv. Are the parties likely to settle and when?
- v. Are there any barriers to settlement?
- vi. Are there any pretrial motions or evidentiary issues pending?

Whenever possible, the Court shall hold the rescheduled court matter within a reasonable time frame as determined by the event but not later than [Insert time frame, e.g., 7 days] after the date from which it was continued, unless the Court determines a later date is needed after conferring with counsel (e.g., the reason for the continuance will not be resolved within the designated time frame).

Implementation note: *When the court grants a continuance, determining a future court date is best practice to ensure the case does not lose traction. The court should consider the date that is proposed in the motion as well as other factors, such as those examples shown above, when considering the next court date. This should be a reasonable period of time to allow the attorney to address the issue that necessitated the continuance request. The time frame will depend on the reason the continuance was requested and not necessarily be the next court session or an automatic granting of a 30-day continuance. The date selected should not be arbitrary. It should allow for the next hearing date to be meaningful and productive in order to progress the case to disposition.*

Case Management and Continuance Data. To ensure time standard goals are being met, the Court will monitor and review time standard performance and will discuss performance and goals at regular bench meetings and justice partner meetings. Additionally, continuance data elements will also be documented in the case management system to allow for the generation of continuance reports that will determine continuance trends and adherence to the policy.

Implementation note: *There is a management axiom that says, “What gets measured, gets managed.” This also applies to effective court management since a court should use court data to measure case progress, activity, and general court performance to understand if court processes are operating at optimal levels. As it relates to continuances, it is important for the court to maintain data sufficient to monitor continuance rates, continuance reasons, and to generate reports in these areas. However, not all court case management systems may be able to track the level of data that is described below. Courts should be prepared to adapt to track the data and generate reports based on the capabilities of its case management system, which may not mirror what is recommended below.*

Continuance data elements that should be entered in the case management system, include but are not limited to:

- *Date of request and date the matter was scheduled for hearing/trial*
- *How the request was made (motion, oral, phone, email)*
- *Party requesting the continuance (name of attorney and state or defense)*
- *The name of the judicial officer or staff (if applicable) who granted the continuance*
- *Reason for the request*
- *Date of the next hearing and the time between the continued hearing and the next hearing date*
- *Number of continuances for each hearing type*
- *Type of hearing continued (e.g., arraignment, motion)*
- *Case type continued (e.g., homicide, burglary)*
- *Whether the opposing party agreed to the continuance*

Developing a continuance motion form, such as the model form included with this policy, that includes each of these elements can help ensure this information is provided by the requesting party. For more information about court data definitions and how they are described and recorded and the importance of data governance, see the National Open Data Standards at <https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>.

A court may issue an administrative policy related to the entry and maintenance of court data in general and continuance data in the court's case management system. Such a policy, or data integrity plan may specify who is responsible for certain entries and how to protect data accuracy. To ensure consistency in tracking the reasons for continuances, courts may find it beneficial to allow court staff to select the continuance reason from a list of common options while also allowing an "Other" option. However, text boxes and choices of "Other" should be used sparingly, perhaps requiring an extra step or justification. The court may want to work with the court partners, including the clerk, to identify the common continuance reasons that can be selected in the case management system.

If the case management system does not allow this level of detail or the tracking of the listed data elements, the court may consider consulting with the vendor to determine if the data elements can be tracked. If this information simply cannot be measured in the case management system, the court should consider tracking a minimum number of data points manually and generating reports through other software, such as spreadsheets and charts. At a minimum, a court should track the number of continuances by:

- *Date of request and date the matter was scheduled for hearing/trial*
- *Party requesting the continuance (name of attorney and state or defense)*
- *The name of the judicial officer or staff (if applicable) who granted the continuance*
- *Reason for the request*
- *Date of the next hearing*

If a court allows continuances to be granted off the record, in chambers, and/or through other non-written means (phone), the same continuance data must be tracked in order to provide an accurate and comprehensive picture of court continuance practices. Therefore, having a model continuance order form (in addition to a model motion) to capture these elements would be beneficial to the judicial officer or non-judicial officer granting the continuance and the court staff entering data in the case management system.

The data will be used to generate reports by the [court administrator/court coordinator] on the number of continuances for each case, continuances granted by each judge, and the reason for the continuance. These reports will be prepared on a [monthly] basis to be shared with the judges and discussed at justice partner meetings. At least once per quarter, the Court will work with the Bar and justice partners to seek resolution of any organizational or systemic problems that cause cases to be continued or rescheduled that go beyond the unique circumstances of individual judicial officers or individual cases.

Implementation note: *Entering continuance data will be most impactful if a court can generate reports, use the data to guide court discussions about court practices, and share the information with justice system partners at regular meetings. It is recommended that a court generate monthly continuance reports, share the reports with the judges, and discuss them at bench and court staff meetings. However, a court may determine to generate such reports with greater or less frequency. For example, a high-volume court with multiple criminal courts operating weekly may generate reports more frequently than a court with less volume and less frequent weekly criminal court sessions.*

The person responsible for generating the report may vary by court — i.e., the court administrator, a case manager, court coordinator, judicial assistant, or court clerk. This level of transparency informs the stakeholders that the information is being reviewed and being used to improve court operation and also helps ensure accountability.

This policy shall be effective _____ until further notice.

Signatures of the Court

Date

Digital Evidence

Best Practices and Strategies for Courts

This document outlines best practices and strategies for courts to implement digital evidence platforms. The materials within this document can help to reduce case backlogs by streamlining processes and improving efficiency.

Executive Summary

In October 2023, the National Center for State Courts (NCSC) launched a series of collaborative learning sessions specifically designed to aid courts in backlog reduction efforts in criminal cases. These sessions provided a structured platform for courts to exchange ideas, learn from peers and experts, and identify actionable strategies.

A central focus of this initiative was the adoption of digital evidence platforms and practices. Over six months, participating courts engaged in virtual discussions on various aspects of digital evidence adoption, including planning and business process improvements, funding, records management, procurement, platform functionality, implementation, staffing, and equipment requirements.

Drawing on these discussions, this document outlines best practices and strategies for courts to implement digital evidence platforms. The materials within this document can help to reduce case backlogs by streamlining processes and improving efficiency. Summarized in the following pages, this guide is divided into eight categories:

- Advantages of Digital Evidence Platforms
- System Requirements & Development Considerations
- Implementation Considerations
- Records Management & Retention
- Managing and Displaying Evidence
- Managing Resistance & Gaining Buy-In
- Project Management
- Procurement & Vendor Selection

The intention of this document is to serve as a resource for courts to refer to as a whole or a specific subject area as needed.

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Advantages of Digital Evidence Platforms

Overview. This section outlines the transformative benefits of adopting digital evidence platforms. It highlights the limitations of traditional evidence management methods and explores how digital platforms address these challenges.

Key Findings and Recommendations.

- Traditional methods for evidence management (physical submissions, emails, SharePoint) are inefficient, fragmented, and prone to security risks.
- Digital platforms increase public access as authorized parties can access exhibits remotely without the need to visit a courthouse.
- Judges, court staff, jurors, and external users experience improved workflows, reduced burdens, and increased efficiency.
- Features such as renumbering, tagging, folder organization, and bookmarking optimize exhibit presentation and review.
- Centralized digital storage eliminates physical storage needs and lowers associated costs.



System Requirements & Development Considerations

Overview. This section details the essential functionalities, features, and technical considerations for developing and implementing a digital evidence platform. It emphasizes the importance of user-driven design, integration with existing systems, and iterative development to ensure scalability and adaptability for various court needs.

Key Findings and Recommendations.

- Ensure support for diverse file types (audio, video, documents, multimedia) and real-time access for remote and in-person participants.
- Design for varied user groups, including judges, court staff, attorneys, self-represented litigants, jurors, and appellate courts; addressing their unique workflows and responsibilities.
- Integrate with the court's case management system (CMS) to validate case details and minimize submission errors.
- Consider iterative development and regularly collect user feedback to refine and improve platform functionality.
- Conduct pilot tests and implementations to identify and resolve issues before full deployment.



Implementation Considerations

Overview. This section explores the practical aspects of implementing digital evidence platforms, including courtroom technology needs, staffing requirements, user support roles, training strategies, and policy updates. It emphasizes the importance of planning and stakeholder involvement to ensure a smooth transition to digital workflows.

Key Findings and Recommendations.

- Conduct assessments of courtroom technology, including hardware, software, and network capabilities, to identify gaps and compatibility issues.
- Consider introducing specialized roles, such as courtroom assistants, to manage the technical aspects of digital evidence systems and support court users during hearings.
- Establish a dedicated help desk and online resources, such as user guides and tutorials, to assist internal and external users with system navigation and troubleshooting.
- Provide virtual and in-person training tailored to specific court roles and users.
- Update court policies and procedures to accommodate digital evidence platforms including drafting rules to address submission, viewing, sharing, and storage of exhibits.



Records Management & Retention

Overview. This section examines the challenges and strategies associated with managing and retaining digital evidence. It addresses the impact of growing digital evidence submissions, storage considerations, retention policies, records destruction protocols, and workflow automation to streamline records management.

Key Findings and Recommendations.

- Clear guidelines should be established for submitting exhibits to reduce unnecessary data submissions and storage demands.
- Develop case-type-specific retention schedules and ensure retention policies apply uniformly to both digital and physical exhibits.
- Establish processes for identifying, notifying parties, and purging unused or outdated exhibits.
- Create a specialized records management group to oversee exhibit destruction and ensure compliance with policies.
- Automate exhibit lifecycle management, including retention tracking and destruction notices to reduce administrative workload.



Managing & Displaying Evidence

Overview. This section addresses best practices for managing access to digital evidence, mitigating user concerns, and presenting evidence in courtrooms. It focuses on access controls, strategies for evidence display, and solutions for addressing technical challenges during courtroom presentations.

Key Findings and Recommendations.

- Implement role-based access controls.
- Enhance transparency with audit trails and clear policies defining who can access evidence and when.
- Enable customizable sharing features, including user-defined preferences and automatic sharing based on case requirements or deadlines.
- Clearly define roles for courtroom evidence display and implement safeguards, such as blurring features or controlled display technologies, to prevent the inadvertent exposure of inadmissible or sensitive evidence to jurors.
- Publish clear guidelines for acceptable file types and formats to avoid complications in accessing evidence during hearings.
- Conduct routine technical checks of evidence files before hearings to resolve compatibility issues.



Project Management

Overview. This section outlines strategies for effective project management in implementing a digital evidence platform. It emphasizes assembling a diverse project team, managing competing priorities, fostering collaboration, and maintaining structured meetings to ensure the project remains on track and within budget.

Key Findings and Recommendations.

- Assemble a project team and include team members with technical, legal, and business process expertise, such as clerks, court administrators, IT specialists, and project managers.
- Establish specialized workgroups to address specific aspects of implementation such as legal compliance and potential policy implications.
- Designate a project manager or team to oversee timelines, budgets, and communication with leadership and vendors.
- Collaborate with senior leadership or a project committee to establish clear criteria for prioritizing initiatives and allocating resources.
- Schedule regular meetings with vendors to align on expectations, resolve technical issues, and review deliverables.
- Promote open communication where all team members, regardless of their role, feel empowered to contribute ideas and solutions.



Procurement & Vendor Selection

Overview. This section provides guidance on effective procurement strategies and vendor selection for digital evidence platforms. It emphasizes the importance of thorough market research, stakeholder involvement, clear RFP processes, and cost-saving approaches.

Key Findings and Recommendations.

- Conduct market research to evaluate available solutions and consider a buy/build analysis.
- Assess the vendor's ability to adapt their solution to court-specific needs.
- Evaluate the vendor's track record with judicial and law enforcement clients, focusing on reliability, integration capability, and experience with similar use cases.
- Prioritize solutions that ensure compatibility with existing court and law enforcement technologies.
- Consider long-term costs, including setup, licensing, maintenance, and support, alongside initial procurement expenses.
- Explore grant opportunities to fund implementation and staffing needs.



Advantages of Digital Evidence Platforms

Advantages of Digital Evidence Platforms



Traditional Exhibit Management Challenges and Post Pandemic Need. Physical submission methods and ad hoc digital solutions (emails, SharePoint, drop boxes) are inefficient and unreliable. Such processes for submitting and managing evidence are less secure, fragmented, and disorganized leading to challenges in tracking and accessing evidence when needed.

The COVID-19 pandemic exposed the inadequacy of existing systems and emphasized the need for a digital exhibit system. As remote hearings became the norm, traditional methods became impractical or impossible. The shift toward hybrid hearings highlighted the need for all participants, regardless of location, to have equal access to view evidence.



Expansion of Public Access. Current rules limit viewing exhibits exclusively within courthouse premises. However, the introduction of a digital evidence platform presents an opportunity to expand public access. The platform can enable controlled sharing of evidence with authorized parties. By facilitating digital sharing, the platform eliminates the necessity for individuals to physically visit the courthouse to view exhibits and can improve the timeliness of trials as all parties have access to the evidence. Moreover, it eliminates the need for staff to supervise parties during their review of the materials. As a result, this alleviates the workload on staff while affording parties the convenience and privacy of reviewing evidence remotely.



Cross-Utilization by Trial and Appellate Courts. There are system-wide benefits of digital evidence management between trial and appellate courts. Specifically, the digital platform offers dedicated access for appellate courts to review exhibits. When the appeal starts, appellate judges and clerks can access the system using their unique logins. This digital system eliminates the need to physically mail paper exhibits, which was a cumbersome process and often expensive and labor-intensive, particularly for imaging exhibits to the case management system.



Eliminates the Need for Physical Storage. Exhibits are centralized in one digital location which saves physical storage space and reduces the risk of lost or misplaced evidence. Furthermore, digital storage typically incurs lower costs compared to physical storage.



Mitigate Cybersecurity Concerns. There is a need to handle audio and video exhibits securely and efficiently. Reliance on physical media like flash drives for audio/video evidence poses cybersecurity risks. A cloud-based solution can mitigate these vulnerabilities.

Digital evidence platforms can provide a more comprehensive audit trail of everyone who has uploaded, viewed, shared, or touched the exhibit based automated rules that can be built within the application.

User Benefits and Improvement to Existing Workflow



External Users. Exhibits can be shared swiftly and securely, eliminating the delays and logistical challenges associated with physical transport of evidence to the courthouse.

Access to electronic evidence can occur remotely, saving time and resources.

Sharing of exhibits can be facilitated.

Eliminates the physical burden of transporting boxes or binders of evidence.



Judges. Judicial officers can access exhibits from anywhere with internet access, making it easier to refer to evidence when making decisions post-hearing.

Court Staff. Platforms typically allow multiple staff members to work simultaneously, increasing efficiency and expediting processing.

Saves time and reduces workload as digital storage of evidence eliminates the need for post-trial clerical work related to the physical handling and disposal of evidence.



Platforms typically allow for workflow automation, streamlining processes such as automating the record destruction process in accordance with retention rules.



Jurors. Improved control over reviewing evidence as jurors can independently review exhibits without the need to gather parties and reconvene in the courtroom to review. This enables jurors to review and discuss exhibits at the same time, thereby streamlining the trial process.



Exhibit Organization. Users can renumber exhibits to suit their presentation order and tag exhibits as sealed, graphic, or confidential.

Users can organize exhibits within folders. This includes the ability to name folders, typically by hearing date or subject matter, and relocate exhibits without removing them from the main list. Court staff can use this feature to streamline the juror review process by organizing relevant and admitted evidence in a folder for their juror consideration.

Some platforms support bookmarking within exhibits, allowing users to mark and easily return to specific sections.



Search and Filter. Users can sort and filter exhibits for easier access and review.

Users can search for exhibits based on their status (e.g., marked, admitted) or description.



Reporting and Data. Tailored reports and dashboards provide insights on the number of exhibits uploaded, exhibit statuses, and case types using the platform. This includes specialized reports for exhibit custodians to manage evidence destruction and purge processes. Access to these reports is determined by the user's profile, ensuring users have the information most relevant to their role.



System Requirements & Development Considerations

Key Functionalities and Features to Consider



Functional Requirements. Enable seamless presentation of digital evidence during fully remote, hybrid, and in-person court sessions.

Ensure evidence can be accessed in real-time by authorized participants irrespective of their physical location.

Allow submission and processing of various document formats, including large documents, PDFs, Word files, Excel sheets, images, and multimedia such as:

- Audio files from 911 calls or police interrogations.
- Video evidence from police body cams, dash cams, and surveillance footage.
- Digital photographs from crime scenes or incident documentation and property conditions.
- Electronic documents such as income and expense declarations, contracts, and leases.
- Digital communication records like emails, texts, and phone images of social media posts.
- Non-executable documents in various formats including PDFs, Word, Excel, JPEGs, and audio files.

Enable renumbering, tagging, and bookmarking of exhibits.

Provide functionality to organize exhibits into folders.

Enable search functionality and filtering capabilities to sort exhibits by defined parameters such as submission date, exhibit number, type, status, or tag.



Require Minimum Information During Exhibit Submission

Case Number

- Require the exact case number for exhibit submission.
- Retrieve and display the case caption for public cases upon submission for verification.
- Restrict case caption visibility for confidential cases.

Exhibit Type Selection

- Require submitter to specify the nature of the exhibit (e.g., document, video, audio, etc.).

Hearing Date

- Require cases to have an upcoming hearing date or require submitter to specify the hearing date to enable submission.

Confidential/Graphic Content Identification

- Prompt submitters to identify exhibits as confidential or graphic during upload.
- Trigger safeguards for flagged content when accessing and displaying in the courtroom.

Party Identification

- Require submitters to specify their role in the case (e.g., petitioner, respondent) using identifiers from the court's case management system (CMS).



Exhibit Submission Statuses. Implement statuses to provide submitters with clear indicators of their submission status. Statuses can assist users understand when submissions are considered officially presented and subject to review. Example of statuses: "Uploaded," "Marked," "Admitted," and "Stipulated."

Courts should aim to minimize the number of exhibit statuses to avoid confusion and ensure clarity. Focus on essential statuses such as:

- A status for when an exhibit is initially submitted to the platform.
- A status for when an exhibit is introduced in the courtroom but not yet formally admitted into evidence.
- A status for exhibits formally admitted into evidence by the judge.
- A status for exhibits that are no longer needed or required for the case and have been agreed upon by all applicable parties for removal.
- A status for exhibits admitted by mutual agreement.

Convene a working group to standardize and define statuses. To facilitate understanding and buy-in, create visual workflows to clarify how statuses impact case management and the evidence review process.

When developing statuses for the digital exhibit system, start with the established list from the court's case management system.

Avoid terms with ambiguous legal implications, ensuring that each status is clearly understood and uniformly applied across the court system.

Schedule periodic review of statuses and their application within the digital evidence system to determine relevancy.

Utilize exhibit statuses to automate workflows such as evidence presentation in the courtroom, access controls based on status, and automating deletion of exhibits post-trial or stipulation.



Accessibility and ADA Compliance. Design the platform to meet accessibility guidelines and ensure full compliance with ADA requirements.

Provide features like screen reader compatibility, adjustable font sizes, color contrast settings, text-to-speech options, and keyboard navigation.



Notifications. Notify users immediately if their submission fails. This notification allows users to take immediate action to rectify the issue by reattempting the upload or seeking technical support.

Send automated confirmation messages upon successful submission. Consider incorporating a unique confirmation ID and submission timestamp. This confirmation provides assurance to the submitter that their submission has been received and is accessible to the court.



Secured Digital Repository and Controlled Access. Implement a secure centralized repository for storing digital exhibits.

Program platform to adhere to retention policies and automate record deletion based on defined retention schedule.

Enable controlled access and viewing of evidence considering authorized use, confidentiality, and privacy.

Incorporate a submission audit trail, capturing detailed logs of all submission attempts, successes, and failures. It should log who uploaded, viewed, and accessed exhibits. This audit trail is useful in resolving disputes about missing or incomplete submissions.



Integration with CMS and Validation. Integrate the digital evidence platform with the court's CMS. This integration allows for real-time verification of case numbers and other relevant case details to ensure that submissions are accurately linked to the correct cases.

Implement automated validation checks within the digital evidence platform to catch common errors, such as incorrect case numbers or missing information, before submission.

Provide real-time feedback for missing or incorrect information to minimize submission errors.



Reporting and Analytics. Provide real-time reporting tools to monitor platform usage and activity such submission totals and system performance.



Submission Deadlines. Current digital evidence platforms do not impose built-in deadlines. Setting firm submission deadlines for digital evidence submissions presents a complex issue for courts. Proponents argue it enforces discipline and ensures all parties have access to exhibits in advance. Opponents caution against rigid deadlines, citing concerns over denying parties the opportunity to present their case, especially self-represented litigants unfamiliar with court rules. A strict deadline could inadvertently disadvantage someone with a legitimate need for a late submission.

The debate extends to handling last-minute uploads, with potential outcomes including proceeding without the late exhibit, delaying the hearing, or pausing proceedings to accommodate an on-the-spot upload.

While some courts may adopt policies requiring exhibits to be submitted 24 hours prior to a hearing, adherence can vary. Judicial officers may allow submissions during hearings.



Storage Considerations. It is essential to thoroughly assess the implications of introducing new functionalities, particularly regarding their impact on storage requirements. For instance, there have been discussions about incorporating editing capabilities into digital evidence platforms, enabling users to edit and trim exhibits. While this feature would allow users to isolate relevant portions of lengthy video exhibits, it also poses significant storage challenges as courts may need to retain both the original video and any newly edited versions.

If storage is a significant concern, consider limiting the length of audio or video submitted to only the content relevant to the case.

User-Driven Technology

The digital evidence platform should offer a user-friendly interface that caters to the varied needs of its users. Regularly collect and analyze feedback from both users and stakeholders to continuously refine the platform. Prioritize adjustments that streamline user experience and resolve practical issues faced by users.



Incorporate Feedback and Expertise from Judges and Judicial Staff. Identify judicial champions to guide the system's development and address various challenges.

Engage judicial assistants and other court personnel directly associated with judges. Judicial staff, closely connected to judicial officers, can serve as essential intermediaries, identifying the courtroom's day-to-day needs. Their involvement fosters buy-in, as they are directly impacted by the management and presentation of evidence in court.

Early and active efforts to engage judicial officers can greatly enhance the project's reception and integration into daily operations.



Engage Subject Matter Experts. Subject matter experts (SMEs) with firsthand court process experience can bridge the gap between technical solutions and practical application. SMEs help provide feedback and vet the solution during the design and testing phases.

Engage subject matter experts (SMEs) from various case types to ensure the platform meets the nuanced needs of different court processes, relevant legal processes, and requirements.

When selecting SME, aim for a mix of individuals who have extensive experience within the system and those who bring fresh, innovative perspectives. This diversity in experience allows the project to benefit from proven practices, innovative solutions, and lessons learned.

Potential Users and Capabilities

Develop for a wide range of users, including self-represented litigants (SRLs), attorneys, public defenders, district attorneys, victim services, probation officers, witnesses, and jurors. Outline specific roles and workflow to develop capabilities that meet the specific needs and responsibilities of each user group. Use the following example of users and capabilities as a starting point.



External Exhibit Users (Custodians, Attorneys, SRLs, Judicial Partners). Upload, display, offer exhibits at hearings, and share exhibits with other case parties.



Judicial Officers. Decide on the admissibility of exhibits and authorize display during hearings. The level of interaction may vary depending on support staff availability.



Court Staff. Mark exhibits as admitted as directed by the judge.

Prepare and manage exhibits for jury review.

Upload exhibits on behalf of case parties.

Facilitate the use of the platform during courtroom proceedings (courtroom assistants).

Produce reports, assist with evidence upload issues, and support various courtroom workflows (court administration).

Manage the receipt and destruction of admitted exhibits post-hearing (exhibit custodianship).



Jurors. Review exhibits independently during deliberations via a separate, secure portal designed to maintain the integrity of the deliberation process.



Witnesses. View exhibits during hearings as they are presented by the parties.



Appellate Court Staff. Access exhibits for cases on appeal in their original formats.



Court Reporters. Interact with the platform as necessary for the accurate recording and referencing of evidence during trials.

Iterative Development Approaches

Employ an iterative development approach, where the platform is developed, released, and improved in cycles. This approach ensures that the platform evolves in response to real-world use and stakeholder feedback, avoiding large-scale revisions later.



Core Product Development and Rollout. Consider developing a core product with essential functionalities. Set a clear timeline and prioritize addressing processes that are universally applicable across all case types. Under this approach, the integration of more complex case types or processes that require unique features is postponed until the core platform is stable, reliable, and functional across all courts. Once the core product is well-established, shift towards gradually incorporating

complex processes and enhancements. Ensure that any new features introduced during this phase are carefully integrated, so they do not interfere with or disrupt established functionalities.



Case Type Rollout. Implement the system progressively by case type, tailoring the functionality and interface to the unique requirements of each case type. The choice of which areas to prioritize may depend on a variety of factors, including case volume, the potential for remote handling, existing digital infrastructure, and the specific needs of each court jurisdiction. When deciding which case types to prioritize, it might be more strategic to start with those that present fewer complexities and lower risks such as small claims. These cases often involve self-represented litigants and typically resolve quickly, making them ideal for testing and refining the digital evidence system. Small claims proceedings have the added advantage of lower risk, simpler rules, and shorter retention periods for exhibits. Some proceedings might not be ideal for early implementation due to the specific challenges they present, for example:

- Sealed cases and juvenile proceedings require systems thoroughly tested and proven secure to meet the high security demands in managing access to sensitive and confidential information.
- Criminal cases often involve a high volume of evidence and high-risk due to the critical nature of trial proceedings.



Location Specific Rollout. Implementing the platform by geographic district enables customized strategies tailored to the readiness of each area, prioritizing court locations with advanced technology and resources or locations where judges are supportive of the initiative.



Rollout Considerations. The transition to digital evidence platforms can be challenging, with an expected learning curve as users adjust to new processes. Before full rollout, conduct pilot tests with a select group of judicial partners to assess the functionality and impact of the integration. Early feedback can help identify potential difficulties and areas for improvement.

Ensure there are alternative options for submitting evidence for those unable to navigate the digital system due to various barriers, including no internet access, lack of computer literacy, or language limitations.



Implementation Considerations

Courtroom Equipment Needs



Initial Assessment. Conduct a technology assessment to understand the current capabilities and assess compatibility for integrating digital evidence platforms.

Start with a broad survey of the court's existing technological infrastructure, courtroom sizes, and current capabilities for digital evidence presentation. This survey should include but not be limited to both hardware (screens, sound systems, Wi-Fi routers) and software (case management systems, document management systems) components.

Conduct specific tests to evaluate the strength, security, and capacity of Wi-Fi networks in court facilities. Separate Wi-Fi networks for court operations and public use may be necessary to enhance security and bandwidth. Ensuring the reliable operation of the digital platform is essential for encouraging user adoption and fostering trust in the system.

Involve technology specialists early in the process. These teams can provide expertise in evaluating current capabilities and identifying gaps that need to be addressed.

While direct visits to each courtroom might not be feasible, utilize a combination of in-person and remote assessments to gather spatial and technical needs and configurations. This hybrid approach allows for a realistic appraisal of equipment needs across different courtroom settings.



Equipment Needs and Set Up. Invest in necessary presentation equipment for both in-person and hybrid hearings, including displays for the witness stand, counsel tables, jurors, and the public.

Utilizing analysis from the technology assessment, consider standardizing courtroom equipment to minimize variability, implement consistent presentation processes, and maximize capabilities for evidence presentation. Standardization can also assist in streamlining training and maintenance efforts. It is important to note that courts operate in a variety of physical spaces. This diversity presents challenges in standardizing equipment and may require setups that cater to different courtroom sizes and other factors.

Courtroom Setup Example

- **Witness:** At least one display dedicated to the witness stand for presenting evidence directly to the witness during testimony.
- **Counsel:** Equip each counsel table with laptops or docking stations to manage and present digital evidence directly.
- **Public Gallery:** Large screens strategically placed within the courtroom to ensure visibility for all participants. These screens should also have the capability to show participants appearing remotely during hybrid hearings.
- **Jurors:** Large display monitors in jury deliberation room to facilitate collective evidence review.

Offer support (remote or in person) to local courts as they implement the recommended technology. This support should include troubleshooting any issues that arise during the set up or use of the technology. Some courts have created courtroom positions to assist both attorneys and self-represented litigants with the electronic evidence presentation system.

If procuring a third-party application, coordinate vendor application support as well to establish accounts, vendor help desk, and other application assistance.

Staffing Needs



Assessing Staff Involvement and Needs. Understand the current involvement of clerks and other court staff during trials and hearings to gauge the additional responsibilities digital evidence might introduce.

Identify tasks that will require staff time and efforts, such as assisting with uploading documents or media pre- and post-hearing or addressing technical difficulties reported by courtroom participants. Implementing digital evidence in courtrooms requires not only technological adjustments but also careful consideration of staffing needs to support new processes.

Address concerns regarding a potential shift or increase in workload of already overburdened staff by clearly defining responsibilities and providing adequate support and training to adapt to new roles.



User Technical Support Roles. Consider adding specialized roles, such as courtroom assistants (CAs), to assist not only traditional in-court tasks but also the technical demands of digital evidence. These roles can encompass setting up and managing electronic presentation equipment, assisting attorneys and self-represented litigants with the digital evidence platform and remote appearance tools.

Consider establishing an application support team and help desk/call center line to provide dedicated support for the court's digital and electronic systems to both internal and external users. This team can assist in managing system access, user training, and troubleshooting. To provide accurate and effective support, this team should receive ongoing training and remain up to date on system functionalities, updates, and fixes.

A dedicated help desk or call center line can provide immediate, over-the-phone assistance to users experiencing difficulties with digital evidence submission, remote hearing participation, or other related technologies. This resource can alleviate the burden on courtroom staff and improve the user experience for attorneys and the public.

Complement the support team and help desk services with online resources, including user guides, FAQs, and tutorial videos. These resources can help users self-resolve common issues, reducing the demand for help desk staff.



Training Strategies

Offer both virtual and in-person training sessions to accommodate different learning preferences and schedules.

Record and make accessible previous training sessions to allow users who could not attend or need a refresher to review the training at their convenience.

Conduct role-specific training sessions, such as dedicated sessions tailored to various roles and responsibilities to address the unique needs and questions of different court roles.

Provide access to a testing or quality assurance (QA) environment where court users can practice and test the system's features without affecting live data.

Conduct mock trials and walkthrough sessions to offer hands-on experience in a simulated court environment. Use court staff in roles such as jurors and invite individuals not associated with the court, such as friends and family of staff members, to participate in mock trials. This approach allows courts to test the system's usability from a variety of viewpoints, particularly from those unfamiliar with court processes.

Assign a training lead and assemble a team responsible for developing and delivering training content. Ensure the training team is involved in project implementation and testing. Their hands-on experience and familiarity with the system make them an essential resource for answering questions and addressing user concerns.

Develop a library of training videos and guides as well as frequently asked questions (FAQs) to cover common topics and issues. Make these training materials available on the court's public website.

Acknowledge language barriers and possible unfamiliarity with technology and legal terminology. Courts should provide training and resources in multiple languages and use simple, plain language to make the system accessible to all users.

Anticipate ADA accommodations in advance and be fully prepared to support accessibility needs.



Policy and Procedure Updates and Legal Considerations

Ensure the platform's development complies with legal standards and court policies.

Identify areas where current rules and policies conflict with the implementation of digital evidence platforms.

Ensure compliance with statutory access and due process requirements.

Engage in drafting provisional rules to accommodate new technologies, utilizing the authority granted by higher judicial bodies to enact these rules temporarily.

Establish protocols for exhibit submission, viewing, sharing, and storage.



Records Management & Retention

Records Management and Retention



Impact of Digital Proliferation. Recognizing the ease with which digital evidence can be created and submitted, courts must consider the implications of storing large volumes of digital data. The influx of extensive video evidence from law enforcement body cams to homeowner security footage can strain cloud storage capacities and increase storage costs.

Regularly assess storage needs and capacities to accommodate the growing volume of digital evidence. The assessment should include the types of evidence commonly submitted and their impact on storage resources. As new types of digital evidence become commonplace, courts should ensure the system is scalable and adaptable to future needs.

Courts should establish and communicate clear guidelines for evidence submission, emphasizing the need for presenting only the relevant portions of digital evidence. This could include instructions for trimming video evidence to the necessary segments before submission.

Judges play a crucial role in enforcing evidence submission standards, making it clear to parties that only the specific segments of evidence they wish to be considered should be provided. This practice should be uniformly applied across all cases to ensure consistency.



Storage Strategies. A critical lesson learned is the importance of understanding data governance to manage the storage, access, and security of digital exhibits effectively. Courts should conduct a thorough review of their data governance policies to understand the implications for where and how records are stored. It is important to determine what can be stored on the cloud and what must remain on-premises according to data governance policies.

Keep detailed records of both physical and digital exhibits in a unified digital exhibit system. This facilitates a complete and searchable record for each case and supports systematic retention and destruction in compliance with the retention policy. Courts are increasingly adopting digital evidence platforms as the primary method for storing digital exhibits ensuring all records whether used in court or not are digitized and retained as part of the official court record.

Deciding whether to use on-premises or cloud storage is a significant decision. Consideration must be made regarding the ease of access to stored records as well as the security and privacy of the information. Lastly, courts should evaluate cloud storage solutions and their scalability to meet future demand.



Retention Schedules. Develop clear retention policies that dictate the duration for which records must be kept and the conditions under which they are archived or deleted.

Recognizing the need for differentiated retention rules based on case type, set retention rules based on the legal requirements of each case type.

Small Claims example: Accommodate the expedited nature of small claims where cases are often resolved in a single day and exhibits can be quickly marked and purged post-hearing.

Align retention policies with the timeframes of appeals to ensure that exhibits for ongoing appeals are preserved.

Retention policies and procedures must be well-documented, easily accessible, and communicated to all relevant parties. Courts may need to revisit and update their retention schedules to expressly include digital exhibits. This clarity ensures digital records are explicitly covered by the policy and the retention schedule is applied uniformly to all exhibits.

Apply the same record retention schedule to both physical and digital exhibits to promote consistency regardless of the exhibit's format.

Educate users on the retention policies for digital exhibits to manage expectations regarding the longevity and disposal of submitted evidence.



Records Destruction. Address issues of unused exhibits by regularly identifying and purging unnecessary data to avoid excess storage costs.

Allow users to submit requests for the early deletion of exhibits before they are used.

Create protocols that allow for the destruction of evidence based on party stipulation or judge order, triggering a time clock for exhibit destruction after the appellate period.

Establish a specialized group, such as a records exhibit management group, responsible for overseeing the review process for exhibit deletion. This group will ensure that exhibits are evaluated according to the court's record retention policy and that the correct procedures are followed.

Establish a protocol for notifying parties well in advance of the intended destruction date for digital exhibits and provide the option to download copies before removal. Incorporate a buffer period (such as 15 days) before completing destruction.

When exhibits are uploaded, ensure that submissions are attributed to a party and that party contact information is captured, even in a manual upload process. This information will be crucial for the CMS to notify parties regarding the destruction of exhibits, whether digitally or through traditional mail service.



Automating Workflows. Develop automated systems to manage the lifecycle of digital exhibits by implementing an automated purging process. This process should identify and automatically remove eligible exhibits based on the defined retention schedule. Implementing automated retention policies can alleviate the burden on court staff.

Automate the generation of destruction notices through the digital evidence platform and aim to integrate destruction notices directly into the CMS to avoid the need for manual printing and scanning.



Managing & Displaying Evidence

Managing Digital Evidence Access & Sharing

Access and Authorization. Internal user accounts should be role-based, such as judicial officers, court staff, referees, appellate court users, and court administration. These groups determine the scope of access for each user category, aligning with their roles and responsibilities. Distinguishing user profiles by case type, such as differentiating between small claims clerks and general clerks allows for further control over who can access and manage exhibits based on the nature of the case. Court staff and clerks should generally have permission to display and access any submitted exhibits, except for materials in sealed exhibits and cases. Access to sealed information should be strictly limited to authorized individuals as determined by each court.

External users should operate under a single access profile restricting their visibility exclusively to exhibits uploaded from their own accounts.



Common User Access Concerns. The following user access concerns should be discussed and addressed as part of the implementation:

- The potential for premature disclosure of trial strategy to the opposing side or court officials.
- Uncertainty around when exhibits are reviewed by court staff and judges and who has access to these exhibits before they are officially offered at a hearing.
- For certain case types, attorneys are required to share their exhibits in advance of hearings. Judges have noted difficulties ensuring all parties adhere to these requirements. There are ongoing deliberations on whether exhibits should be automatically shared with all parties before the hearing.



Strategies to Mitigate User Access Concerns. Restrict visibility of exhibits to submitters preventing early exposure to opposing parties, unless explicitly shared by the submitter.

Establish and communicate transparent policies on who can access digital exhibits and when, emphasizing that neither judges nor court staff can review or interact with exhibits before they are formally presented during a hearing.


Enable an audit trail functionality that can track who has viewed the exhibits.

Implement a sharing feature that allows for flexibility in how and when exhibits are shared.


Enable users to set sharing preferences such as sharing with designated parties and automatic sharing of new exhibits to a previously established share list. This feature will assist attorneys in sharing exhibits with legal assistants or partners.

Enhance the platform to support and enforce mandatory sharing requirements. This could include automatic notifications reminding parties of sharing deadlines, automatically sharing exhibits based on predefined rules (with necessary safeguards), offering users the ability to flag exhibits as “share automatically,” or automate sharing based on case requirements.

Displaying Evidence in Courtrooms

-  **Define User Roles and Responsibility.** Clarify responsibilities and establish clear guidelines on who is responsible for displaying evidence in the courtroom. Judges most commonly mandate the person who submitted the exhibits the responsibility of displaying them in the courtroom. Some courts have considered involving law clerks or court staff in managing evidence display, especially during sensitive proceedings like jury trials. Although assigning law clerks or court staff the task of managing evidence display is a potential solution to prevent the accidental showing of inadmissible evidence, there are long-term concerns regarding attorneys' proficiency with using the platform and the potential strain on court resources.

In most courts, the responsibility for initially identifying exhibits as sealed or confidential and redacting any sensitive information falls on the parties submitting the evidence. Courts facilitate this process by placing clear advisories both on the main webpage and the upload interface informing parties of their obligations regarding confidentiality and redaction. While parties can pre-label exhibits as sealed, graphic, or confidential, in most courts, the ultimate determination of such designations rests with the judge presiding over the case. Following a hearing, clerks may be responsible for updating the exhibit's status in the system to reflect its official confidentiality status. This might involve marking an exhibit as confidential or removing the confidential tag if the judge determines the exhibit is not confidential.


-  **Preventing Inadmissible or Sensitive Evidence Exposure.** Implement technical safeguards within the digital evidence platform to restrict the display of what can be shown before judicial approval.

Develop presentation views or blurring features for sensitive or graphic materials to shield jurors from potentially distressing content until it is deemed necessary and appropriate for viewing.

Equip courtrooms with technology that allows for controlled evidence display, offering judges or designated court staff the ability to manage what jurors see. This might include disabling large screens until evidence is formally admitted or providing individual viewing devices to jurors without imposing undue financial burdens.

Mitigate risks by providing training sessions and resources for attorneys to learn and practice using digital evidence platforms. This could include mock trials, workshops, and online tutorials.

Create protocols for immediate remediation action if inadmissible evidence is accidentally shown, including potential instructions to jurors and corrective statements by the judge. Use instances of incorrect evidence sharing as learning opportunities to refine and improve protocols.

-  **Common Technical Issues During Courtroom Presentations.** The following technical issues should be discussed and addressed as part of the implementation:

- Problems caused by files that have been compressed or zipped for ease of uploading, which then become cumbersome to work with or inaccessible during crucial moments in court proceedings.

- Instances where evidence is uploaded in formats not supported by the system for playback. While users can upload various files successfully, the absence of a compatible in-system player means these files must be downloaded for playback.
- Necessity for specific proprietary software to display certain evidence types.



Strategies to Mitigate Common Technical Issues During Courtroom Presentations. Provide clear guidelines on acceptable file types and formats for submitting evidence, alongside instructions for converting files into compatible formats if necessary. This list should be publicly available and regularly updated reflecting the platform's capabilities and restrictions based on technical considerations. Guidelines should balance accommodating a wide range of file types necessary for court proceedings without compromising system integrity.

Restrict the upload of zip and executable files to the platform and require parties to upload individual files to avoid complications in accessing evidence and potential security risks.

For proprietary formats, such as dashcam or security camera footage, establish protocols that may include requiring parties to provide necessary playback software or converting files to a more accessible format.

Implement a routine technical check for all evidence files scheduled for presentation in upcoming hearings. This preemptive measure allows for the identification and resolution of issues related to file compatibility or access before the hearing date.

Assess the types of files being submitted to the digital evidence platform to understand user needs and system capabilities better. This process involves identifying the most commonly submitted file types and evaluating the platform's compatibility and sustainability in handling these files.

Continuously update and upgrade the platform to extend compatibility with newer file types and to improve the handling of a wide variety of formats and minimize the need for external applications or downloads.



Change Management Strategies

Introduce a Judicial Champion. Judicial champions are key figures who sponsor initiatives. They lend credibility and authority that can help overcome resistance and encourage adoption among their peers.

Bringing in a judicial champion is a key strategy for increasing buy-in from the judiciary. A respected figure within the judicial community can advocate for the project's benefits, emphasizing the direct impact on their work and encouraging active involvement.

This approach not only prepares judges for the change but also makes them active participants in the process.



Embrace opposition as an opportunity for dialogue and improvement. Incorporating feedback from those initially resistant to the adoption of a digital evidence platform has proven to be a pivotal strategy in gaining widespread buy-in and improving system adoption rates.

Specifically, personalized attention to address specific concerns can be highly effective. Courts have successfully turned critics into supporters by taking the time for one-on-one discussions, listening to issues, clarifying misconceptions, and providing tailored education about the platform's benefits and functionalities. The transformation of naysayers from opponents to supporters can have a significant ripple effect, encouraging adoption among their peers.



Conduct Outreach and Demonstrations. Bar associations consisting of practicing attorneys, play a significant role as influencers, given their direct engagement with the digital evidence system. Their feedback and acceptance are critical for the system's success and ongoing improvement.

Engaging in outreach efforts, such as presentations and demonstrations at bar associations and partner agency meetings, helps alleviate apprehension, addresses concerns, and provides an opportunity to showcase the platform's value. Often, users need firsthand exposure to the system to fully understand its benefits before committing their support and involvement.



Involve External Stakeholders Early. One of the primary lessons learned is the significance of including external stakeholders, such as attorneys and partners from the legal community, early in the project lifecycle. Although partner feedback was sought post-rollout, it became evident that gathering and integrating this feedback earlier could have informed improvements and adjustments before widespread implementation. This feedback has since been instrumental in making enhancements to the system.

Engaging with external stakeholders should be strategic, with a clear understanding of where their insights can have the most impact, rather than involving them in every meeting or conversation.



Cultivate Trust and Ownership. Demonstrating a commitment to listening and incorporating feedback is crucial for building trust and buy-in. Courts have found implementing suggestions from users and critics alike not only improves the system but also strengthens the users' sense of ownership



and satisfaction with the platform.

Facilitate Hands-On Experience. Allowing potential users to try the technology within the courtroom environment helps alleviate fear and build confidence. Ensuring external partners can test their equipment with the court's system before actual trials or hearings reduces anxiety and fosters a collaborative approach to adopting digital evidence technologies.



Manage Expectations. Keep all stakeholders informed through regular communications such as email updates, staff meetings, and informal check-ins.

During a pilot phase, openly communicate that the system may not be perfect and that feedback is crucial for improvements. Emphasize that challenges are expected and that the focus is on learning and refinement.

Deploy regular user surveys to gauge satisfaction, collect feedback, and adapt the system.

Acknowledge clerical staff concerns particularly regarding potential increases in workload. Identify and communicate how the digital system can streamline their current tasks and save time, providing tangible benefits.

Remind stakeholders of imperfections in the previous process such as the labor-intensive processes of making copies and managing physical evidence. Contrast this with the efficiencies gained through the digital system.

Rollout Communication Strategies

Internal Users. Utilize existing internal communication channels such as staff meetings, email, bi-weekly publications, or newsletters to keep staff informed about the platform's progress and upcoming features.



Conduct training sessions and create informational videos and release notes detailing enhancements.

Conduct pre-launch discussion with leadership such as administrative management and presiding/administrative judges to provide ample time to prepare for upcoming operational changes and strategize communication with staff.



External Users. Coordinate stakeholder and bar association outreach.

Plan for a public rollout through press releases, social media posts, and create FAQ section on the court's website.

For new features or significant changes, send direct email communications to registered platform users.

Place announcements on the landing page of the application to advise users of upcoming changes or system outage to deploy new features.

When communicating via email, take steps to confirm the authenticity of the communication, such as referencing information available on the public website.

Navigating the Transition to Digital Evidence Platforms



Standing Orders. Judges can foster uniform use of digital platforms by recommending or ordering their use in their courts. In some courts, judges have taken the initiative to issue standing orders mandating the use of digital evidence platforms for all litigants. This approach sets a precedent for broader adoption across courts and can encourage additional judges to consider similar measures.



Build on Existing Digital Foundations. Courts in jurisdictions that have implemented e-filing, remote hearings, and operate with virtually paperless case records offer a compelling blueprint for expanding digital initiatives to include evidence submission. The adoption of digital evidence platforms can be seen as a natural progression of these paperless goals.

Courts can draw from their experiences with implementing e-filing to outline a roadmap for digital evidence platform adoption.

Judges and courts that have implemented digital platforms can serve as case studies or demonstration sites for other courts. Sharing successes, challenges, and lessons learned from these early adopters can provide valuable guidance and encouragement for others.



Assemble Project Team

Diverse Skills, Experience, and Roles. Include both technical and business process staff in various positions from administrative staff to higher-level positions with prior court experience and business process knowledge.

Essential skills and areas of expertise to consider when gathering your team include exhibit management experience, stakeholder outreach and training, contract and project management skills, knowledge of exhibit management processes, finance and budgeting skills, development and programming experience, and integration experience with APIs.

Example of project members include clerks, supervisors, records managers, exhibit custodians, court administrators, staff attorneys, chief information officers, network managers, project managers, business analysts, developers, and programmers.

Team members should not only have technical or domain-specific knowledge but also the ability to think critically about how to improve existing processes and solve complex challenges.



Specialized Teams and Workgroups. Establishing formalized specialized groups such as a judicial working group and a policy group focused on addressing specific aspects of the system's implementation, such as policy implications and operational integration can be effective.



Project Manager. Designate a project manager or team to ensure the project remains on track, within budget, and aligned with the court's strategic objectives. The size and complexity of the project will determine whether a single project manager or a project management team is necessary. Their role is critical for maintaining transparency and facilitating effective communication with financial planners and executive leadership about the project's progress and resource needs. To facilitate these efforts, project managers are encouraged to utilize project management software for tracking progress, assigning tasks, and overseeing timelines effectively.



Adaptability and Flexibility. The composition of the team may evolve over time. Adapt the team structure based on the evolving needs of the project such as expanding into new case types or developing additional capabilities. This flexible approach ensures the platform's development and implementation remain responsive to the specific challenges and requirements of different case categories. Changes to the team composition may also be attributed to:

- Turnover due to natural career progressions, such as retirements, promotions, and members leaving the court system.
- Obligations to other significant projects and job duties.



Competing Priorities. Technology teams often oversee and maintain multiple projects simultaneously, which creates the challenge of managing competing priorities. These ongoing demands strain resources and limit the availability of essential staff.

To mitigate this issue, establish a clear set of criteria for prioritization. Deciding which project to prioritize involves assessing the importance of each initiative as other projects may be deemed more

critical to the organization's goals. The availability of funding and time to use these funds can also dictate a project's priority level. Additionally, it is important to work closely with vendors to set realistic timelines since their demands and expectations may influence prioritization, especially if vendor timelines are non-negotiable.

Setting criteria for prioritization includes determining who makes the final decision to ensure projects receive the necessary resources. Ideally, this should be senior leadership or a project committee with the capacity to weigh the benefits of each project against the organization's goal and resources.

Team Meetings



Establish Regular Meetings With the Vendor. Schedule recurring meetings with the vendor to discuss recent developments, upcoming needs, and address any technical or project-related issues. These meetings ensure both the project team and the vendor are aligned on expectations, timelines, and deliverables.



Organize Recurring Specialized Meetings. Schedule recurring meetings for specialized groups, such as internal SMEs and judicial working groups. These meetings allow for deep dives into specific areas of expertise and leverage the groups' expertise in refining the platform.



Convene Recurring Full Team Meetings. Separate from vendor meetings, there should be dedicated sessions for the internal project team. These meetings are dedicated to reviewing progress, analyzing business needs, identifying technical and business requirements, and addressing any issues. Prior to meeting with the vendor, the team should have a unified understanding of project priorities and the planned approach. This approach is key to ensuring meetings with vendors are not just routine check-ins but are focused and productive discussions.



Project Management Meetings. The project manager (PM), sponsors, and project owners may convene additional meetings as needed to guide the project's strategic direction, assess timelines, manage the budget, and tackle pressing challenges threatening the project's success.



Frequency of Meetings. Regular cadence helps maintain momentum and cohesion among the team. Increase the frequency of these meetings during critical project phases such as new product releases. This practice ensures continuous progress and allows for timely resolution of challenges.



Meeting Agenda and Goals. Develop meeting agendas collaboratively with input from both court staff and the vendor. Agendas should prioritize tasks based on the project's current needs and goals, ensuring that meetings are focused and productive.



Meeting Notes. Ensure meeting notes are promptly shared with all relevant stakeholders to document decisions, actions, and responsibilities. Consider a standardized format for these notes to maintain clarity and consistency. Supplement meeting notes with email updates highlighting progress and any significant developments. This practice keeps the team informed between meetings and maintains project momentum.

Designate a team member with the responsibility of creating and distributing meeting notes and updates. While this task can alternate between court staff and the vendor, the key is to maintain a consistent point of contact.



Collaborative Project Environment. Encourage open communication and collaboration among project team members. Creating an environment where everyone feels empowered to contribute ideas and suggestions is crucial. This collaborative environment allows for sharing best practices and ensures each team member, regardless of their role, has a voice in the project.



Procurement & Vendor Selection Strategies



Procurement Strategies. Conduct market research to understand the available solutions and vendors. This can include review of current technologies used by other courts or judicial partners, like law enforcement. Complete a buy/build analysis to determine if the solution should be built in-house or purchased through third parties based on the use case scenarios and needs of the court. For example, if a court is only implementing this for small claims and has a technology programming unit, that court may decide to create an in-house product.

Draft a Request for Proposal (RFP) package outlining the court's requirements for a digital evidence platform. This package should include technical specifications and performance needs, security requirements, user needs, operational workflows, and integration requirements with existing court systems.

Publicize the RFP utilizing court or governmental procurement websites and direct outreach to known vendors from previous market research.

Invite proposals that address the specified requirements to conduct demonstrations of their solutions. Request vendors to demonstrate the system in a court setting.

Educate potential vendors about the court's specific needs and processes during the RFP if necessary. This may involve sharing detailed use cases and outlining requirements that might differ significantly from non-court applications of the technology.

Involve a broad range of stakeholders in the vendor selection process including judges, court administrators, IT staff, and law enforcement representatives to ensure diverse perspectives are considered.

Maintain transparency in the decision-making process, providing clear rationale vendor selection.



Vendor Selection Strategies. Determine the vendor's ability to adapt their solution to the court's specific needs.

Evaluate the vendor's understanding of court operations, not just law enforcement operations; particularly, how digital evidence is managed, presented, secured, and viewed within the court environment.

Evaluate the platform's ability to handle sensitive information such as sealed, confidential, or graphic evidence.

Consider the vendor's experience with similar clients, particularly law enforcement agencies that may already use the vendor for body-worn camera evidence management as this can result in smooth integration and consistency across justice agencies.

Consider the vendor's track record with other judicial or law enforcement agencies. This information can provide insights into the system's capabilities and vendor reliability.

Assess the overall cost of the solution. Cost considerations should include not only the initial setup and licensing fees but also long-term maintenance and support costs.



Cost-Saving Strategies. Navigate budget limitations by creatively reallocating resources and exploring grant opportunities to fund new staffing needs. For example, positions previously focused on tasks reduced by electronic filing can transition to roles supporting digital evidence management. This transition toward digital evidence provides an opportunity for staff development, moving personnel from entry-level roles to more specialized positions within the courtroom setting.

Engage in discussions with judicial partners that create digital evidence, such as law enforcement, to understand their technology and systems such as body cameras or dash cams. Identifying compatible hardware and software for the equipment used can lead to more efficient evidence submission processes and reduce long-term costs related to specialized integration, conversion tools, and training. While coordinating with law enforcement and other judicial partners may be a substantial undertaking, the long-term benefits in terms of system compatibility and user-friendliness are significant.

Appendix A: Scheduling Order Policy and Scheduling Order Templates

Scheduling Order Policy of [insert name] Court

Purpose. It is the policy of this Court to provide equal justice for all without unnecessary delay and while efficiently using the resources of the Court. Such delay erodes public trust and confidence in the Court. The Court must control the pace of criminal cases, establish case timelines, and communicate those expectations to the parties. This can be accomplished by using a scheduling order, which sets deadlines and procedures for a case before trial.

This policy sets forth the Court's expectations for utilizing scheduling orders in criminal cases to set the [dates/weeks/deadlines] for key events and to meet overall time goals. This policy also describes how and when a scheduling order is issued and how it can be modified, as well as the data the Court will collect and use to track adherence with scheduling orders. The [district/county] Judges are committed to effective criminal case management, which includes the consistent application of this policy by all judges.

Case Management Expectations. Scheduling orders shall be set in each criminal case in accordance with the [Court/state/local] expectations for criminal case management, the timing of specific events and disposition time standards, and the established calendaring system. [Refer to criminal case management plan, criminal calendar.] Together with the Court's criminal case management expectations, the scheduling order allows the Court to:

- establish deadlines or expectations for key events and overall timelines,
- provide adequate notice and preparation time for parties in individual cases,
- create event date certainty and predictability,
- reduce rescheduling or calendaring changes, and
- communicate a path for case resolution within the time standards

The Court recognizes that events may need to be rescheduled or continued to a later date. Dates that have been established in the scheduling order may be updated or modified for good cause. [Refer to the Court continuance policy]. Rescheduled events should, in most cases, be set for the next available [date/week] on the publicly available [judicial calendar, master calendar] and in line with the time goals for that event. However, the Court shall consider the reason the event is being rescheduled when determining the next court date. Determination of the next event date will be made at the time the request to reschedule is made. This method for rescheduling creates greater predictability where all parties are aware of the upcoming criminal event weeks and possible future dates. It also allows for flexibility in individual cases and the option to shift events within the overall time goals.

Disposition Time Standards. Time standards assist the Court in monitoring case timeliness and represent a goal for achieving the final disposition in criminal cases. This policy is designed to ensure cases progress to disposition within the time standards adopted by this Court as set forth below. The time standards reflect the disposition goal for cases from the [initial filing of the criminal case, date of arrest, indictment] to the disposition of the case (e.g., dismissal, sentencing). Note: Time associated with [failures to appear or bench warrants, competency evaluations, appeals, inactive status] does not count toward the time standard goal.

[Insert state-specific or local time standards to replace the National Model Time Standards.]

Felony	Misdemeanor	Traffic/Local Ordinance
75% within 90 days	75% within 60 days	75% within 30 days
90% within 180 days	90% within 90 days	90% within 60 days
98% within 365 days	98% within 180 days	98% within 90 days

Time to Interim Events. In addition to overall disposition time standards, interim event time goals represent the Court's expectations for cases to proceed from the [initial filing of the criminal case, date of arrest, indictment] to each key event in the case [(e.g., initial appearance, arraignment, preliminary hearing, exchange of discovery, motions hearing, pretrial or dispositional conference, trial)]. The Court, Court Administrator, and justice partners will annually review this policy to ensure it is achieving its intended goal to reduce delay and improve case processing times.

[Insert state-specific or local interim time standards to replace the example below.]

Event Type	Felony (in/out of custody)	Misdemeanor	Traffic/ Local Ordinance
Initial Appearance	1 day	1 day	7 days
Preliminary Hearing	14/30 days	7 days	-
Motions/Contested Hearing	90 days	30 days	30 days
Pretrial Conference	100 days	60 days	60 days
Trial	270 days	150 days	90 days
Disposition/ Sentencing	365 days	180 days	90 days

In monitoring the Court's case management performance, the Court measures [the age of active pending cases, the time to disposition, clearance rate, event date certainty, continuance rates] to ensure compliance with the Court's established goals.³

Scheduling Order Process. At [initial appearance, arraignment, or insert other initial proceeding], the Court will issue a scheduling order and set the dates on the calendar. The dates in the order [shall/may]:

- v. be entered on the record.
- vi. state the dates for key events, including deadlines for exchange of discovery and trial dates, based on the calendaring/scheduling rotation and as statutorily required.
- vii. provide reschedule or backup dates that are within the disposition time standards. This provides options for the Court to reset the hearing if a continuance is granted (i.e., for good cause) while maintaining a path to resolution.
- viii. be revised when [several settings need to be changed, the future settings cannot reasonably be held within the original time frame] and new dates can be accommodated within the [active/overall] time standard. The issuance of a new order should be limited and generally avoided for new settings that do not affect the remaining dates.

The Court shall schedule the event dates and the dates shall be set with certainty. All dates in the scheduling order will be entered in the [calendar/docket, case management system] by [the court clerk, reporter, judicial assistant] [in the courtroom/within 2 business days]. [Subsequent settings (i.e., continuances) will only be set upon judicial order.] The Court [may consult with/shall provide notice to] the State and Defense Attorney, or defendant if they are unrepresented by counsel. To request a new scheduling order, a motion must be filed with the [the Court Clerk, judicial assistant]. The motion should include the reason the party is requesting a new scheduling order, a proposed new schedule, and indication as to whether all parties agree to it.

If the case becomes inactive due to a warrant, competency proceeding, or other stay, the Court will set the case for review every [____ (e.g., 60)] days and re-issue dates, if necessary, upon the case becoming active. This time will not count against the time standard but may require that a new scheduling order be issued.

Compliance. Scheduling orders should be entered and current for active cases. Active cases that do not have a scheduling order should be the limited exception and should meet one of the following criteria:

- Involve a [violent felony, specific charge(s), pre-trial diversion program, more than 2 defendants, more than # exhibits or discovery materials] [add applicable modifiers]

³ See CourTools at www.ncsc.org/courtools.

- Require witnesses that [insert reason that time will be delayed]
- Be impacted by a prolonged court closure, judicial absence, or complexity that requires greater flexibility in the schedule (i.e., for the health and safety of court participants).

[Court Administration, The Clerk, Case Management] will notify the [judicial division, assigned judge] if an active case does not have a current scheduling order so that the [judicial division, assigned judge] can identify cases that need a new order or the reason why the case cannot proceed.

Case Management and Performance Data. To ensure time standard goals are being met, the Court will monitor and review time standard performance and will discuss performance and goals at regular bench meetings and justice partner meetings. Additionally, scheduling and event settings data elements will also be documented in the case management system to allow for the generation of event setting reports that will determine trends and adherence to the policy.

The data will be used to generate reports by the [court administrator/court coordinator] on [the number of settings for each event and case, the time to the interim event, the age of the pending case, the time to disposition, and adherence to scheduling order dates]. These reports will be prepared on a [daily, weekly, monthly, quarterly] basis to be shared with the judges and discussed at justice partner meetings. At least once per quarter, the Court will work with the Bar and justice partners to seek resolution of any organizational or systemic problems that cause certain events to be continued or case type time goals to be exceeded for [over 10%] of cases in that case type.

This policy shall be effective _____ until further notice.

Signatures of the Court

Date

Scheduling Order Template

<p>State of _____</p> <p>County/Judicial District _____</p> <p style="text-align: center;">STATE</p> <p style="text-align: center;">VS.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Defendant</p>	<p style="text-align: right;">Case/File Number</p> <p style="text-align: right;">_____</p> <p style="text-align: center;">Scheduling Order</p>
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ORDER

Attorneys and the defendant must comply with the following SCHEDULING ORDER. All documents filed with the Court must contain the above case number. In addition, defendants are required to inform the Clerk of District Court of any address change.

- The Honorable _____ has been assigned to this case.
- The Defense attorney is _____.
- The Prosecuting attorney is _____.
- The Defendant entered a plea of “not guilty” on _____, 20____.
- Based upon the date of the Defendant’s entry of plea, the speedy trial deadline is _____, 20____.
- This matter is set for ☐ jury ☐ bench trial on _____, 20____, at _____ .m.
- The Defendant is ☐ in custody ☐ released on bond with/without conditions. The defendant shall appear at every hearing unless excused by the Court.
- Preliminary hearing is set for _____, 20____, at _____ .m. / Defendant waives preliminary hearing.
- The People shall file all motions and notices no later than _____, 20____.
- The Defendant shall have ____ days to file responses to any motions or notices. Motions hearing will be held on _____, 20____, at _____ .m.
- The parties shall endorse all witnesses, including expert witnesses, no later than _____, 20____. Late discovered witnesses may be endorsed with leave of the Court. Expert witnesses shall be specifically endorsed as experts, and the endorsing party shall provide summary of expected testimony, or a report from the expert indicating the summary of his/her testimony.
- Pre-Trial readiness/dispositional conference shall be held on _____, 20____, at _____ .m.

- If the matter is set for a jury trial, the People shall file a complete set of proposed jury instructions, including verdict forms no later than five (5) days prior to the pre-trial readiness conference.
- All parties shall comply with rules of discovery, as set forth by (statute/rule). Discovery should be completed by _____, 20 ____.
- Requests for continuance must be filed pursuant to the Continuance Policy of this Court.
- The Court further orders: _____.

PLEASE TAKE NOTICE:

- Preliminary Hearing and Arraignment: _____
- Motion(s) Hearing (if motions filed): _____
- Pre-Trial / Dispositional Conference: _____

ATTORNEY AND THE DEFENDANT MUST APPEAR IN PERSON FOR THE FOLLOWING EVENTS:

- Jury Selection and Trial: _____
- Bench Trial (if jury trial waived): _____

ATTORNEYS AND SELF-REPRESENTED DEFENDANTS MUST COMPLY WITH THE FOLLOWING DEADLINES:

- Request for Discovery: _____
- Reply to Discovery: _____
- Filing, service, and noticing of all other motions: _____
- Reply to other motions: _____
- Last Date to Change Plea: _____

This the _____ day of _____, 20____.

Presiding Judge

Appendix B: Continuance Policy and Motion for Continuance Templates

Continuance Policy of [insert name] Court

Purpose. It is the policy of this Court to provide equal justice for all without unnecessary delay and while efficiently using the resources of the Court. Such delay erodes public trust and confidence in the Court. To avoid delays, the Court must control the pace of criminal case progress and limit continuances. Research shows that continuances are the most significant contributor to case delay. While some continuances may be outside of the Court's control, managing the number of continuances in a case will allow the Court to reduce delay while ensuring due process and procedural fairness.

This policy sets forth what the Court will consider good cause to request a continuance, the process to request continuances, the data the Court will collect in furtherance of efforts to reduce continuances, and how the data will be used. The [district/county] judges are committed to effective criminal case management which includes the consistent application of this continuance policy by all judges. For all criminal case types and dockets and in all [divisions] courtrooms, the Court looks with strong disfavor on motions or requests to continue court events, both hearings and trials, without good cause. To protect the credibility of scheduled trial dates, trial date continuances are especially disfavored. Parties should be prepared to proceed on the scheduled hearing or trial date.

Time Standards. Time standards assist the Court in monitoring case timeliness and represent a goal for achieving the final disposition in criminal cases. This policy is designed to ensure case progress to disposition within the time standards adopted by this Court as set forth below. The time standards reflect the disposition goal for cases from the [initial filing of the criminal case, date of arrest, indictment] to the disposition of the case (e.g., dismissal, sentencing). Note: Time associated with failures to appear or bench warrants does not count toward the time standard goal. [Insert state-specific or local time standards to replace the National Model Time Standards.]

Felony	Misdemeanor	Traffic/Local Ordinance
75% within 90 days	75% within 60 days	75% within 30 days
90% within 180 days	90% within 90 days	90% within 60 days
98% within 365 days	98% within 180 days	98% within 90 days

In monitoring the effectiveness of the policy, the Court will consider if the time to disposition is reduced, if the time standards are being met, and if the continuance rate is reduced by [20%] within the first [6 months] of implementation. The Court, Court Administrator, and justice partners will

annually review this policy to ensure it is achieving its intended goal to reduce delay and improve case processing times.

Continuance Request Process. Absent good cause, a motion or request for continuance filed pursuant to [insert court rule, if applicable] shall be filed as soon as the party is aware of the need for a continuance but no later than [24 hours] before the scheduled hearing or trial. The motion shall:

- i. Be in writing (email or fax may be permitted by the Court);
- ii. state the good cause reasons for the request;
- iii. be signed by the attorney making the request (or the defendant if they are not represented by counsel) and the defendant, if possible;
- iv. state whether the defendant consents to the continuance, if requested by defense counsel;
- v. state the number of prior continuances granted and upon whose motion those continuances were granted, if known;
- vi. state whether or not the defendant is currently in custody, the date the defendant was arrested, and the total days in custody in the matter in which the continuance is requested;
- vii. state whether the opposing counsel or party consents or objects to the continuance; and
- viii. propose the next court date.

Parties are encouraged but not required to use the continuance form that accompanies this policy. Continuance requests will be accepted by means other than writing (e.g., phone, text, in person) only in the following circumstances: if the request is not for a trial setting AND [no previous continuances have been granted in the case, the case type is not a felony, all parties agree, the disposition time standards will not be delayed, there is an emergency situation]. If continuances are granted in chambers or off the record, the information required in the motion stated above will be documented by the court official granting the continuance.

The Court, in its discretion, will determine good cause to grant a continuance based on individual case circumstances. The following reasons, though not exhaustive, will generally be considered good cause to grant a continuance.

- i. Hearing commitment or conflict in another court.
- ii. Sudden medical emergency (not elective medical care) or death of a party, counsel, or subpoenaed material witness.
- iii. A party did not receive notice of the setting of the trial date through no fault of the party or the party's counsel.
- iv. A competency evaluation of the defendant is pending.
- v. A treatment or diversion court assessment/evaluation of the defendant is pending.
- vi. Unanticipated absence of a subpoenaed material witness.

- vii. Facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possible miscarriage of justice if the trial is required to proceed as scheduled.

The Court will determine if good cause does not exist to grant a continuance. The following reasons, though not exhaustive, will generally not be considered good cause to grant a continuance.

- i. A police officer or other witness is either in training or is scheduled to be on vacation unless the Court is advised of the conflict soon after the case is scheduled and sufficiently in advance of the trial date.⁴
- ii. A party or counsel is unprepared to try the case for reasons including, but not limited to, the party's failure to maintain necessary contact with counsel.
- iii. Unanticipated absence of a witness who has not been subpoenaed.
- iv. Discovery is ongoing and has not been completed.
- v. The parties are discussing a settlement or plea.
- vi. New counsel has entered an appearance in the case or a party wants to retain new counsel.
- vii. Counsel or parties agree to the continuance.
- viii. The case has not previously been continued.

The following factors will be considered, in addition to the totality of the circumstances of the case, to determine if good cause exists to grant a continuance.

- i. Weather or travel delays.
- ii. Inability to transfer a defendant from where they are incarcerated.
- iii. Change in representation for the state or defense (e.g., District Attorney, Public Defender).
- iv. Due process issues (e.g., new evidence, delay of lab results).
- v. Age of the case or the point in the court process.

In determining what constitutes good cause, the Court shall consider the age of the case, number of prior continuances, reason for continuance, due process concerns for the defendant, the pre-trial custodial status of the defendant, and speedy trial motions. The granting or denying of written continuance motions shall be made on the record, with an indication of who requested the continuance, the reasons for granting or denying the motion, and the next hearing date.

Non-judicial officers such as [court administrators, court managers, clerks, case managers, judicial assistants, etc.] may grant continuances only if the [presiding judge, chief judge] grants such authority

⁴ A motion for continuance based on a conflict with a previously scheduled vacation shall state the date the vacation was set.

and only under the following conditions: if the request is not for a trial setting and [no previous continuances have been granted in the case, the case type is not a felony, AND all parties agree].

When granting the continuance for good cause that is consistent with this policy, the Court shall schedule the next court date and the date shall be set with certainty. The Court shall consult with the state, defense attorney, or defendant if they have not been appointed counsel or are not eligible for court-appointed counsel and have not retained counsel. The next hearing date should be based on and tailored to the reason the continuance was requested to reduce the impact of the delay and to meet court time standards, if possible. For example, the Court may ask:

- i. Is discovery complete? If not, what is missing and when will it be complete?
- ii. Has the state made a plea offer?
- iii. Has the defense made a counteroffer?
- iv. Are the parties likely to settle and when?
- v. Are there any barriers to settlement?
- vi. Are there any pretrial motions or evidentiary issues pending?

Whenever possible, the Court shall hold the rescheduled court matter within a reasonable time frame as determined by the event but not later than [Insert time frame, e.g., 7 days] after the date from which it was continued, unless the Court determines a later date is needed after conferring with counsel (e.g., the reason for the continuance will not be resolved within the designated time frame).

Case Management and Continuance Data. To ensure time standard goals are being met, the Court will monitor and review time standard performance and will discuss performance and goals at regular bench meetings and justice partner meetings. Additionally, continuance data elements will also be documented in the case management system to allow for the generation of continuance reports that will determine continuance trends and adherence to the policy.

The data will be used to generate reports by the [court administrator/court coordinator] on the number of continuances for each case, continuances granted by each judge, and the reason for the continuance. These reports will be prepared on a [monthly] basis to be shared with the judges and discussed at justice partner meetings. At least once per quarter, the Court will work with the Bar and justice partners to seek resolution of any organizational or systemic problems that cause cases to be continued or rescheduled that go beyond the unique circumstances of individual judicial officers or individual cases.

This policy shall be effective _____ until further notice.

Signatures of the Court

Date

Motion for Continuance

Case/File Number _____

State of _____

County/Judicial District _____

STATE

MOTION AND ORDER TO CONTINUE

VS.

Defendant

MOTION FOR CONTINUANCE

1. The ☐ State ☐ Defendant ☐ Parties jointly request(s) the ☐ hearing ☐ trial scheduled on _____ at _____ in the above captioned case be continued to _____ (date) or at a later time convenient for the court.
2. Good cause for the continuance exists for the following reason(s):
 - ☐ There is a conflict with another court hearing or trial in case/file # _____ in _____ court at _____ am/pm.
 - ☐ There is a sudden medical emergency of _____.
 - ☐ The competency evaluation of the defendant is pending.
 - ☐ The evaluation has been scheduled for _____, 20__.
 - ☐ The evaluation has not been scheduled because: _____
 - ☐ Results of the evaluation are expected on or before _____, 20__.
 - ☐ A treatment or diversion court assessment/evaluation of the defendant is pending.
 - ☐ The assessment/evaluation has been scheduled for _____, 20__.
 - ☐ The assessment/evaluation has not been scheduled because: _____
 - ☐ Results of the assessment/evaluation are expected on or before _____, 20__.
 - ☐ There is the unanticipated absence of _____, who is a subpoenaed material witness.
 - ☐ There are facts or circumstances that have come to light that would cause an undue hardship or possible miscarriage of justice if the trial or hearing is required to proceed. Please explain.

- ☐ The ☐ State ☐ Defendant did not receive notice of the trial or hearing date through no fault of the party or the party's counsel.
- ☐ Other. Please explain

3. ☐ The defendant consents to the motion for continuance in this matter. (Select only if defense counsel is the movant.)
4. Movant has conferred with opposing counsel/party and
☐ Opposing counsel consents to the motion for continuance.
☐ Opposing counsel objects to the motion for continuance.
☐ The parties stipulate to the continuance.
5. ☐ No prior continuances have been granted in this matter.
☐ ____ prior continuances have been granted in this matter. The continuances were granted on the motion of
☐ State ____ ☐ Defendant ____ ☐ Both ____.
6. ☐ The defendant was arrested on _____ and has been in pretrial custody for this matter at
_____ for _____ days.
☐ The defendant is not currently in custody.
7. This request is not made for purposes of delay but in the interest of a fair and impartial hearing.
8. The State ☐ has conferred ☐ has not conferred with the victim regarding this request and the victim:
☐ Consents to the continuance
☐ Objects to the continuance: _____
☐ Takes no position on the continuance
☐ This case is not subject to the Victims' Rights Act.

This the _____ day of _____, 20____.

Movant/Attorney

ORDER

Having reviewed the Motion for Continuance made by the ☐ State ☐ Defendant ☐ Parties jointly, the Court hereby:

- ☐ Finds good cause does not exist to continue this matter. The Court denies the motion for continuance.
- ☐ Finds good cause exists to continue this matter. The Court grants the motion for continuance. The matter will be set for
_____ at _____ am/pm. All subpoenas are continued to this date.
- ☐ The State ☐ has ☐ has not complied with the Victims' Rights Act (victim's notification), if applicable.

This the _____ day of _____, 20____.

Presiding Judge

from the Pandemic Rapid Response Team

ncsc.org



COSCA
Conference of State Court Administrators

