

# INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE

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## ***Global Measures of Court Performance***

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## **Chapter I**

### **Introduction**

The ***International Framework for Court Excellence (IFCE)*** is a quality management system designed to help courts to improve their performance. Performance measurement and performance management are integral components of the ***IFCE***. This primer for policymakers and practitioners, ***Global Measures of Court Performance (Global Measures)***, describes eleven focused, clear, and actionable *core court performance measures* aligned with the values and areas of court excellence of the ***IFCE***. It deconstructs the key question “How are we performing?” by addressing two enabling questions: What should we measure? How should we measure it?

1. ***Court User Satisfaction***. The percent of court users who believe that the court provides procedural justice, i.e., accessible, fair, accurate, timely, knowledgeable, and courteous service.
2. ***Access Fees***. A measure of accessibility defined as the average court fees paid per civil case.
3. ***Case Clearance Rate***. The number of finalized (outgoing) cases expressed as a percentage of registered/filed (incoming) cases.
4. ***On-Time Case Processing***. The percentage of cases resolved or otherwise finalized within established timeframes.
5. ***Pre-Trial Custody***. The average elapsed time criminal defendants are jailed awaiting trial.
6. ***Court File Integrity***. The percentage of case files and records that meet standards of accuracy, completeness, currency, and accessibility.
7. ***Case Backlog***. Percentage of cases in the court system longer (“older”) than established timeframes.
8. ***Trial Date Certainty***. The proportion of important case processing events (trials) that are held when first scheduled.

9. **Employee Engagement.** The percent of judicial officers and other court employees who indicate that they are productively engaged in the mission and work of the court (a proxy for court success).
10. **Compliance with Court Orders.** Recovery of criminal and civil court fees as a proportion of fees imposed (a measure of compliance with law and of efficiency).
11. **Cost Per Case.** Money expenditures per case (net cost per finalization).

These eleven core measures are aligned with universally accepted judicial values and areas of court excellence identified by the *IFCE* and are seen as the key to the successful functioning of courts. Many terms and phrases referring to these values, like accountability and transparency, have been used so frequently that they often lose their meaning. *Global Measures* helps to define these values clearly in terms of measures of results-based outputs and outcomes in ways that ensure that the values and the areas of court excellence become the foundation of all activity. Transparency and accountability, for example, means responsibility for performance assumed by the courts that is shared by all actors and organizations engaged in justice. Transparency and accountability are defined further in operational terms as the as the existence of a performance measurement system employing one or more of the core global measures in ways that address the fundamental question “How are we performing?”

## Background

The current version of the *IFCE*<sup>1</sup> places relatively limited emphasis on court performance measurement, particularly the identification of specific indicators of performance. It describes, in general terms, what countries associated with the International Consortium for Court Excellence have done in measuring their success using short case study summaries, but there is very little discussion of what are appropriate indicators.

For example, in a brief paragraph in the main text under the heading of “Performance Measurement Tools” the *IFCE* notes that there are “several measurement instruments or tools that can be used by the courts in forging the path of court excellence. The type of tools that a court might select depends on the situation and the needs of the courts. Some courts will implement all the tools listed. Others will select and implement a limited number of tools.”<sup>2</sup> Several pages of tables map the core values and the measures of various court performance systems to the *IFCE*.

Appendix B of the *IFCE* contains brief summaries of topics related to various court performance measurement approaches and tools including quantitative measurement, court user satisfaction survey, court policy and leadership audit, court information audit, court peer review, court audit, and performance measurement for specialized courts (e.g., drug courts).

Three additional appendixes of the *IFCE* provide further information. Appendix C (Lessons Learned for International Experience) contains summaries of how courts in Australia, Europe, Singapore, and the United States are using performance measurement. The summaries include references to more detailed information about court performance tools provided by various

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<sup>1</sup> International Consortium for Court Excellence (2008). *International Framework for Court Excellence*. <http://www.courtexcellence.com/pdf/IFCE-Framework-v1.2.pdf>.

<sup>2</sup> *Id.* at 39.

organizations including the Balanced Scorecard Institute, the Danish Courts, the Dutch Quality Agency for the Judiciary, the European Commission for the Efficiency of Justice, the U.S. Federal Judicial Center, the U.S. National Center for State Courts, Praxiom Research Group, the U.S. National Center for State Courts, the Netherland's Rechtspraak, Finland's Rovaniemi Court of Appeal, Singapore's Subordinate Courts, the University of Western Australia, the U.S. Utah State Courts, and the World Bank.

Finally, Appendix D, E, and F (Court Excellence Case Studies) present an overview of performance measurement and related topics in Europe, Australia, Singapore, United States, and various international bodies.

All this information may appear kaleidoscopic and complex in its enormity to some or even most readers. Three sources alone – the Australian Government Productivity Commission's *Report of Government Services 2012*,<sup>3</sup> the European Commission for the Efficiency of Justice,<sup>4</sup> and the National Center for State Court's *CourTools*<sup>5</sup> – provide thousands of pages of information that easily can overwhelm even those well versed in justice system performance measurement.

### **Purpose, Aim, and Organization of this Primer**

The purpose of *Global Measures* is to bring this disparate information referenced in the *IFCE* together in a way that is more helpful for courts and their justice system<sup>6</sup> partners to improve their performance. It will guide policymakers and practitioners in the selection, development, and use of the right court performance measures that are aligned with their values, missions, and strategic goals. Its ultimate aim is to establish international standards and common definitions of court performance measurement that would, first, provide

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<sup>3</sup> Australian Government Productivity Commission. *Report of Government Services 2012*.

[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0007/114937/21-government-services-2012-chapter7.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0007/114937/21-government-services-2012-chapter7.pdf).

<sup>4</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1389931&Site=COE>.

<sup>5</sup> *CourTools* is a set of ten trial court performance measures that offers court managers a balanced perspective on court operations. In designing the *CourTools*, the National Center for State Courts integrated the major performance areas defined by the *Trial Court Performance Standards* with relevant concepts from successful performance measurement systems used in the public and private sectors. A full description of the *CourTools* is available online at NCSC <http://www.courttools.org/Trial-Court-Performance-Measures.aspx> and <http://www.courttools.org/Appellate-Court-Performance-Measures.aspx>.

<sup>6</sup> Civil and criminal justice administration require the provision of government services for crime prevention, detection and investigation, judicial processes, offender and prisoner management, and rehabilitation services. In organizational terms, a justice system can include not only courts but all “formal and informal institutions that address breaches of law and facilitate peaceful contests over rights and obligations” spanning all three branches of government and multiple non-state actors – police, prosecutors, public defenders, state and civil society legal aid providers, alternative dispute resolution providers, administrative adjudication and enforcement mechanisms, customary and community-based institutions, anticorruption and human rights commissions, ombuds offices, and property and commercial registries. See The World Bank (2012). *New Directions in Justice Reform*. Paper No. 70640. Washington, DC: Legal Vice Presidency, The World Bank. Online at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2012/09/06/000386194\\_20120906024506/Rendered/PDF/706400REPLACEMENT0Justice0Reform0Final.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2012/09/06/000386194_20120906024506/Rendered/PDF/706400REPLACEMENT0Justice0Reform0Final.pdf). “Justice sector services” in Australia, for example, comprise civil and criminal courts administration, police services, and adult corrective services. Other agencies also deliver some of these functions (e.g., government departments may investigate and prosecute social security fraud or tax evasion). Other government services that contribute to criminal and justice outcomes in Australia also include” legal aid services; public prosecutions; alternative dispute resolution services; offices of fair trading or consumer affairs; victim support services; and prisoner reintegration services. Australian Government Productivity Commission, *supra* note 1, Section C, Justice Sector Summary, at c.2.

[http://www.pc.gov.au/\\_data/assets/pdf\\_file/0007/114937/21-government-services-2012-chapter7.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0007/114937/21-government-services-2012-chapter7.pdf).

individual courts, justice systems, and countries a guide of good practices for successful performance measurement and performance management and, second, encourage comparative analysis and benchmarking across different jurisdictions.<sup>7</sup>

**Global Measures** is organized in five chapters. The first four chapters introduce the discipline of justice system performance measurement and orient readers to the detailed descriptions of eleven core performance measures of the **IFCE** in Chapter 5. Following this Introduction, Chapter 2 provides definitions of court performance measures and court performance measurement (including performance management). Chapter 3 introduces some of the more important principles and concepts of court performance measurement. Chapter 4 maps the eleven court performance measures against the **IFCE's** core values and areas of court excellence and suggest why and how continuous and regular performance measurement, anchored in the eleven core court performance measures, is a critical element of the **IFCE**.

Chapter 5 of **Global Measures** is the most extensive. It includes generally uniform descriptions of all eleven of the core performance measures including their operational definitions, purposes, methodologies (including how the measures are calculated and reported) and, for several of the measures, alternative approaches and options.

For example, Measure 9, *Court Employee Engagement*, is defined as percent of court employees -- disaggregated by organizational unit of the court or justice system -- who indicate in response to a 20-item survey that they are productively and positively engaged in the mission and work of the court. It is characterized as a proxy for court excellence insofar as employee engagement correlates with individual, group and organizational performance in areas such as retention, turnover, productivity, customer service and loyalty. The measure's purpose refers to research showing that a high level of employee engagement – its creation and maintenance – is one of the most crucial imperatives of any successful organization. It is calculated in terms of the percent of respondents who agree and strongly agree with the items in a survey administered to all employees.

$$\text{Percent Agree and Strongly Agree} = ((A + B)/(A + B + C + D - E)) \times 100$$

A = Strongly Agree

B = Agree

C = Disagree

D = Strongly Disagree

E = Undecided or Unknown

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<sup>7</sup> In this context, comparative analysis and benchmarking refers to the process of comparing the performance – particularly in terms of outcomes and outputs -- of one judicial system against those of other countries that are considered models on various dimensions of efficiency, effectiveness, and quality. The work of Maria Dakolias and colleagues at the World Bank is an example. See Maria Dakolias (1999). *Court Performance around the World*. World Bank Technical Paper No. 430. Washington, DC: World Bank <http://documents.worldbank.org/curated/en/1999/07/440392/court-performance-around-world-comparative-perspective>; Edgardo Buscaglia and Maria Dakolias (1999) *Comparative International Study of Court Performance Indicators: A Descriptive and Analytical Account*. Legal and Judicial Reform Series. Washington, DC: World Bank <http://documents.worldbank.org/curated/en/1999/08/728946/comparative-international-study-court-performance-indicators-descriptive-analytical-account>.

## Chapter 2

### What Are Core Performance Measures?

A core performance measure is a primary performance measure that is aligned with, but distinguished from, subordinate measures in a hierarchy of measures. The word "core" refers to the idea that the measure is strategic, not just operational or tactical. Core measures have most of the following characteristics and attributes:

- *Linkage to Values, Mission and Strategic Goals* - They are aligned with one or more of a court's key performance areas or key success factors. (It is this linkage with key performance areas that limits the number of core measures to a vital few.)
- *Aggregation* - They are a combination, an index, or a conjunction of a number of measures, variables or aspects of court performance that may be identified with subordinate measures in a hierarchy.
- *Outcome Orientation* - They emphasize the condition or status of the recipients of court services or the participants in court programs (outcomes) over that of internal aspects of court processes, programs and activities (inputs and outputs) - that is, they indicate results rather than resources and level of effort.
- *Consistency Across Entire Court* - They are consistent from the top to the bottom of the organization of the court. Each may sit at the top of a hierarchy of related measures and indicators.
- *Drivers of Success* - They serve both as incentives and practical tools for improvement. The key to collecting data for court performance measurement is identifying those performance measures that will actually help to achieve the desired results (i.e., measures that are drivers of success).
- *Emblem or Symbol* - Its meaning and significance are easily understood by the court and its stakeholders.

The eleven core court measures described by **Global Measures** are being used, more or less, throughout the world by many individual courts and justice systems that have embraced performance measurement and performance management (the latter is the effective use of performance data). They are linked to key values and principles of the **IFCE**; represent a limited and manageable core set of performance measures, a vital few instead of a trivial many metrics that form a "balanced scorecard of a court's or court systems performance; are sustainable; have been shown to be feasible; and are focused on outcomes, i.e., how well the courts are making things better as a result of their efforts instead of how much their efforts has been expended or by what resources. In other words, **Global Measures** show a strong preference for *outcome* measurement that gauges the impact of services on the status or condition of those served, instead of measurement of *outputs* (amount of effort made and number of service units delivered), and *inputs* (resources such as the number of staff, costs, or hours worked by judges and staff).

## Chapter 3

### What Is Court Performance Measurement?

Court performance measurement is the process of monitoring, analyzing and using performance data on a regular and continuous basis for the purposes of transparency and accountability, and for improvements in efficiency, effectiveness, and the quality of justice. This definition encompasses both performance measurement *per se* and the use of performance data in management (referred to as performance management). As noted in the beginning of this primer, performance measurement and performance management are components of the *IFCE*.

Measurement of performance is a practical tool that helps organizations gets results that focus on mission and goals. It is increasingly is seen by courts as the best way both to improve the quality of programs and services and also to achieve major policy and organizational transformation.

An effective court performance measurement system enables court leaders and managers to:

- Translate vision, mission and broad goals into clear performance targets.
- Communicate progress and success succinctly in the language of performance metrics.
- Respond to legislative and executive branch representatives' and the public's demand for transparency and accountability.
- Respond quickly to performance downturns and upturns in performance.
- Formulate and justify budget requests.
- Provide incentives and motivate court staff to make improvements in programs and services.
- Make resource allocation decisions.
- Set future performance expectations based on past and current performance levels.
- Insulate the court from inappropriate performance audits and appraisals imposed by executive and legislative agencies.

The imperative of performance measurement and performance management folds well into a broad vision of judicial leadership of self-governed, well managed, effective, and operationally efficient courts. This imperative rests on five basic assumptions that speak to the relationship between judicial leadership and performance measurement.

First, **performance matters**. Successful leaders show a strong preference for outcome measurement that gauges the desired results of program of services instead of measures of inputs (such as the number of staff, costs, or hours worked by judges and staff). Nothing else really matters as much as results defined in terms of quality, i.e., the achievement of good results as efficiently as possible. The quality of courts' success should not be measured by how many hearings are held or even by the number of cases that are resolved, or by the number of programs and processes they call for. What is important are outcomes that matter to the people served by courts?<sup>8</sup>

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<sup>8</sup> The Australian Government has taken a clear position on this issue with a restrictive definition of "outputs" and "outcomes" noting that "[t]o date, no specific outcome indicators have been identified for court administration. Australian Government Productivity Commission, *supra* note 1, at Section 7, page 7.52

Effective performance measures focus on ends, not the means to achieve them. They emphasize the condition or status of the recipients of services or the participants in court programs (outcomes) rather than the internal aspects of processes, programs and activities (inputs and outputs). They focus on results rather than quantification of resources or level of effort. Traditionally, court managers have relied on measures of volume or frequency in three categories: (a) amount of work demand (such as the number of cases filed); (b) number of products or services delivered (such as the number of cases filed); and (c) the number of people served. Increasingly, there is the recognition that while such measures show demand and how much effort has been expended to meet that demand, they reveal nothing about whether the effort has made any difference – i.e., whether anyone is better off as a result.

Second, **performance is not about the numbers.** Performance measurement uses numbers, but it is not about the numbers. It is about the perception, the understanding and the insight required of effective leadership. Ultimately, it is not the measure itself that is important, but rather the questions that it compels judicial leaders to confront, questions such as:

- How well is the court, court system, or justice system performing?
- Where is the court now (performance level, baseline)? What is the current performance level compared to established upper and lower “controls” (e.g., performance targets, objectives, benchmarks or tolerance levels)?
- How well is the court performing over time? Is performance better, worse or flat? How much variability is there? (trend analysis)
- Why is this particular performance happening (analysis and problem diagnosis)? What happened to make performance decline, improve or stay the same. What are some credible explanations?
- What is the court doing to improve or maintain performance levels? (planning future outcomes)
- What actions should be started, continued, or stopped altogether as a result of what the measure reveals? What should be done to improve poor performance, reverse a declining trend, or recognize good performance? (strategy formulation)
- What performance targets and goals should we set for future performance (goals)?

Third, **courts must count what counts and measure what matters.** Figuratively and literally, performance does not count unless it is related to the things that really matter and are critical to the success of a court. Key success factors have been referred to in the literature of organizational performance measurement as major performance areas, high level goals and objectives, standards of success, perspectives, domains, performance criteria, key results factors, and key outcomes. Whatever they are called, they form the framework of a court’s accountability and transparency to the public and other stakeholders.

Alignment of performance measurement with purpose and fundamental responsibilities is vital. Well conceived performance measures serve to align an organization’s efforts with the achievement of its mission. The requirement of linkage of performance measures to a court system’s mission and strategic goals is vital.

Fourth, **performance measurement is a powerful antidote for too much information.** Information overload is one of the biggest irritations of modern life. And it seems to be getting worse. It can make justice system executives and managers feel anxious and powerless, reduce their creativity, and render them less productive. A profusion of

phrases describe the anxiety and anomie caused by too much information: data asphyxiation, data smog, information fatigue syndrome, and cognitive overload. Surveys have found that most managers believe that the data deluge has made their jobs less satisfying or hurt their relationships. Some think that it has damaged their health. Many managers think most of the information they receive is useless. The explosion of information hitting the courts is going off within systems too fragmented and disorganized to absorb it. Performance measurement, supported by business intelligence tools like performance dashboards, is an antidote and a remedy to data fog. It focuses on what counts and filters out the rest.

Finally, **measuring and managing court performance is an essential survival skill for court leaders and managers.** The right performance measures effectively delivered are clear, unambiguous and actionable. Focus and clarity are factors of effective leadership. Above all, leaders need to be clear. Performance measures such as clearance rates or court user/citizen satisfaction focus on a limited number of success factors like access, fairness, and timeliness of case processing. They count only what counts and measure only what matters.

The discipline of performance measurement provides a conceptual shortcut to a host of organizational competencies like strategic planning, resource management, and communication with stakeholders. The benefits of an effective court performance measurement and management system are the same, for example, as those of strategic planning – i.e., accountability, consensus building, focus, coordination, control, learning, communication, hope and inspiration.

To identify the right performance measures, a court must address the same fundamental questions about guiding ideals, values, mission, goals and broad strategies as it must address in strategic planning. When it identifies a core performance measure such as court user/citizen satisfaction with court services, for example, it communicates a clear, simple and penetrating theory of its “business” – its ideals and purpose -- that informs decisions and actions.



## Chapter 4

### How Does Performance Measurement Fit Into the Framework?

Well conceived performance measures serve to align an organization's efforts with the achievement of its mission and goals. The requirement of linkage of performance measures to a court system's values, mission, strategic goals, and distinctive role in society is vital. If policymakers and practitioners define what they are trying to achieve very clearly, then the ideas for how to measure those achievements present themselves more easily.

Why is performance measurement an important part of the *IFCE*? What are the benefits of performance measurement and performance management?

The *IFCE* is a quality management system designed to assist courts wishing to improve their performance. Courts are essential to good government and stable society. To maintain legitimacy and public trust and confidence courts must perform their roles well and be perceived as doing so. The hallmark of a court that has achieved excellence as prescribed by the *IFCE* is the capacity and the political will to engage in rigorous performance measurement and management that addresses the key question "How are we performing?"

### Alignment with the *IFCE*'s Core Values and Areas of Court Excellence

Courts should count what counts, and measure what matters. Figuratively and literally, performance does not count unless it is related to the things that really matter and are critical to the success of a court. The *IFCE* refers to these key success factors in terms of high level goals and objectives expressed in terms of ten values and seven areas of court excellence. In building the *IFCE*, the International Consortium for Court Excellence recognized broad international agreement about the most important values that embody the purpose and fundamental responsibilities of courts in society including equality before the law, fairness, impartiality and independence, competence and integrity, accessibility, timeliness and certainty, and transparency. The *IFCE* also captures seven areas of court excellence that focus a court's governance, organization, and operation.

The eleven core court performance measures are anchored in the core court values and areas of excellence. Together, they form the framework of a court's accountability to the public and other stakeholders.

### Mapping Performance Measures to Core Values and Areas of Excellence

Table 1 and Table 2 align the eleven core court performance measures with one or more of the ten court values and seven areas of court excellence of the *IFCE*.<sup>9</sup> For example, *Case Clearance Rate* says little to nothing about a court's equality, impartiality, and integrity, but indicates quite a bit about a court's productivity, accessibility, timeliness and certainty; it is in complete alignment with the value of transparency insofar as clearance indicates whether the court is keeping up with its incoming workload. *Court Use Satisfaction* is a measure that focuses on accessibility and procedural fairness from the perspective of those served by the court and aligns well with all the core court values. All eleven core measures give operational meaning to the value of transparency and accountability insofar as they keep judicial

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<sup>9</sup> The *IFCE* provides a similar mapping of court performance measurement systems and court values and areas of court excellence. *IFCE*, *supra* note 1, at 18.

institutions responsible to the citizens, and keep people informed about how the courts are performing.

*Revision Note: Table 1 and 2 are difficult to read in their present form. Ideally they should be populated by Harvey Balls (below), round ideograms used for visual communications of qualitative information commonly used in comparison tables to indicate the degree to which a particular item meets a particular criterion. Because inserting them here is tricky, this discussion draft uses numbers 1 – 5 to represent the five Harvey Balls from left to right suggesting no or little alignment (1) to perfect alignment (5).*



**Table 1. Alignment of the Ten Core Court Values and Eleven Core Court Performance Measures of the IFCE**

Performance Measures	Core Court Values									
	Equality	Fairness	Impartiality	Independence	Competence	Integrity	Transparency	Accessibility	Timeliness	Certainty
Court User Satisfaction	4	5	2	2	3	4	5	4	3	3
Access Fees	3	3	2	1	1	2	5	5	1	1
Case Clearance Rate	1	1	1	1	3	1	5	3	3	3
On-Time Case Processing	2	3	3	1	4	2	5	4	5	4
Pre-Trial Custody	4	4	4	2	1	2	5	2	4	1
Court File Integrity	3	4	3	1	4	4	5	3	2	3
Backlog	2	3	2	1	3	3	5	3	4	4
Trial Date Certainty	3	3	3	1	3	4	5	3	4	5
Employee Engagement	3	3	3	3	4	4	5	3	3	3
Collection of Fines and Fees	3	3	3	2	4	4	5	2	2	2
Cost Per Case	1	1	1	2	4	2	5	3	1	1

**Table 2. Alignment of the Seven Areas of Court Excellence and Eleven Core Court Performance Measures of the IFCE**

	Areas of Court Excellence

Performance Measures	Court Management and Leadership	Court Policies	Human, Material, And Financial Resources	Court Proceedings	Client Needs and Satisfaction	Affordable and Accessible Court Services	Public trust and Confidence
Court User Satisfaction	3	3	1	3	5	5	4
Fees Paid	2	2	2	1	3	4	3
Case Clearance Rate	2	2	2	3	3	3	4
On-Time Case Processing	2	2	2	3	3	3	3
Pre-Trial Custody	2	2	1	3	3	2	3
Court File Integrity	2	2	2	3	3	3	2
Backlog	2	2	2	3	3	3	3
Trial Date Certainty	2	2	2	3	3	3	3
Employee Engagement	4	4	4	4	4	4	4
Collection of Fines and Fees	3	3	2	2	3	1	5
Cost Per Case	2	2	4	2	2	3	4

### How to Use Table 1 and Table 2

Tables 1 and 2 map the eleven core court performance measures against the core court values and areas of court excellence of the **IFCE**. Like the mapping of court values and court performance systems highlighted in the IFCE, the specific alignment noted in each of the cells of the two tables is meant to be illustrative.

Ultimately, the fundamental questions of what to measure and how to measure it must be answered by individual courts or justice systems. Court policymakers and practitioners should do a similar mapping exercise to that illustrated in Table 1 and Table 2 that is unique to their circumstances and needs. While the Consortium for Court Excellence believes that the **IFCE's** core values and areas of excellence have universal appeal and can serve as guides, it recognizes that high level goals and objectives are best formulated by the courts and justice systems themselves who must give meaning to the performance measured aligned with their own values and success factors (see Box 1, “Animating Court Performance Measures”).

#### Box 4-1

#### Animating Court Performance Measures\*

*We must breathe life into the prescriptions for the performance measures that we exhort courts to use on a regular and continuous basis.*

The connection between well known health indicators like blood pressure, cholesterol level, and blood glucose and our health is self-evident to most people. We know that these indicators mean something vital and important to our well being. When the indicators fall below or above normal ranges most of us know that we must take corrective actions, even when we fail to do so.

The same cannot be said about the connection between core measures of court performance, on the one hand, and core court values and areas of court excellence, on the other. Many policymakers and practitioners, judges and court managers view such measures as mere “statistics” that are disconnected from the fundamental responsibilities of courts and are the domain of those for whom it’s all about the numbers -- the number crunchers, the spreadsheet guys, and the IT folks who manage the case management system. The measures, quite simply, do not matter to them.

This state of affairs, if accurately perceived, cannot be blamed on judges and managers. It is in my view largely the fault of those of us who preach the gospel of court performance measurement and management. We have failed to breathe life into the prescriptions for the performance measures that we exhort courts to use on a regular and continuous basis.

The need for animating court performance measurement came to mind as I watched a video of a presentation by [Albie Sachs](#) at the Open Society Institute. Sachs is a passionate man and his views evoke strong emotional responses from an audience. He is former judge on the Constitutional Court of South Africa, an activist, and a leading campaigner in the fight against apartheid. In the video, Sachs discusses his 2011 book, [The Strange Alchemy of Life and Law](#). He talks about his deprivations of access to justice and solitary confinement and *time in detention without trial* during his struggles for rights in South Africa under the apartheid regime. In 1988, while in exile in Mozambique, he lost an arm and sight in one eye by a bomb placed in his car by South African security agents.

Of course, stripped of Albie Sach’s animation, the *time in detention without trial* is no more than a portion of the measure of [time to disposition](#) for defendants in custody before trial. Sach’s account of his detention without trial bears no resemblance to how we often characterized the measure. The typical description is lame and lifeless compared to his. He speaks of his delay and denial of justice in terms of a denial of rights, in terms of deprivations of liberty, in terms of a failure of democracy -big important things that matter.

While I know we cannot match Albie Sach’s passion and eloquence, I know we can (and should) do a much better job at aligning court performance measures with the higher values, mission, fundamental responsibilities, and obligations of courts to ordinary citizens. For example, the measure of [trial date certainty](#) should be made vital by not only connecting it to more effective calendaring and a court’s continuance policies and practices, but by aligning it with the certainty that is a universal principle defining the rule of law. And the measure of [collection of monetary penalties](#) should be shown to be much more than merely a measure of revenue generation by a court but, instead, like blood pressure is to health, described as a measure of a court’s performance of its fundamental obligation to enforce its orders and maximize compliance with law.

\* Adapted from [Made2Measure](#), July 17, 2012.

## Chapter 5

### Core Court Performance Measures

This chapter contains descriptions of eleven core performance measures. Each measure is described, generally, in a uniform fashion including a brief operational definition, purpose, methodology (and, for several of the measures, alternative approaches and options), and some commentary on effective use.

The descriptions of nine of the measures in this chapter are adaptations – in some cases close adaptations – of the corresponding measures described in the *CourTools*<sup>10</sup> for trial courts and appellate courts. The descriptions and methodology of the *CourTools* include operational definitions, examples of analyses and interpretations, templates for calculating the measures, as well as reports of courts that have experiences with various measures. Readers are encouraged to review both the descriptions of the measures in this chapter and the descriptions of the corresponding measures in the *CourTools*, especially if they are in the design stage of a performance measurement initiative.

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<sup>10</sup> A full description of the *CourTools* is available online at NCSC <http://www.courtools.org/Trial-Court-Performance-Measures.aspx> and <http://www.courtools.org/Appellate-Court-Performance-Measures.aspx>.

## Measure I. Court User Satisfaction.

### Definition

The percent of court users who believe that the court provides procedural justice, i.e., accessible, fair, accurate, timely, knowledgeable, and courteous services.

### Purpose

It is often assumed that "winning" and "losing" is what matters most to those who have encounters with courts. However, it is not what counts most in shaping the public's trust and confidence in the courts. Research consistently shows that it is people's personal perceptions of how they were treated by the court and whether the court makes its decisions fairly including accessibility to the court, procedural fairness, expeditious resolution of cases, no undue influence from outside sources and equal and courteous treatment of all court users.

To realize the values and to succeed in the areas of court excellence of the *IFCE*, it is imperative that a court continuously receive and evaluate citizen feedback about how they were treated when they use the courts, and whether the court's processes of making decisions seem fair. This measure provides an effective tool to survey court users about their experiences. The court user data allows for analysis by court location, division, type of user, and across courts.

The perceptions and opinions of citizens who receive services increasingly are used as a major source of performance feedback by public agencies including courts. This measure gauges critical areas of access to justice, timeliness, procedural fairness, and the overall effectiveness of the courts as seen from the perspectives of those "using" the courts on a typical day.

This measure has its origins in a ten-item survey, the "Q-10," developed in 2003 by the USAID- sponsored Court Modernization Project for the Macedonia Judiciary as a reliable, speedy instrument to assess the public response to key issues of public satisfaction. Results over a period of five years were made available to the public through press releases.

The Q-10 was a dramatic breakthrough in assessing public satisfaction with court performance. In a direct, transparent way, it gave immediate voice to all court users without jargon or methodological barriers. Where there's a will, there's a way: the courts of Macedonia can be proud of dramatic increases in user satisfaction especially in categories of judicial fairness, promptness, and overall effectiveness. <sup>11</sup>

### Methodology

The approach for taking this measure is a close adaptation of the corresponding measure in the *CourTools* and closely follows the methods prescribed for that measure.<sup>12</sup> Reviewing the descriptions and methodology of the *CourTools*, particularly those related to this measure, which includes definitions, examples of analyses and interpretations, templates for calculating

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<sup>11</sup> Court Modernization Project. *An Effective Judiciary – Court Modernization Project 2002 -2007*. USAID Court Modernization Project.

<sup>12</sup> *CourTools*, *supra* note 5.

the measure, as well as report of courts that have taken this measure, will be of benefit to courts seriously considering measuring *Court User Satisfaction*.

Everyone in the court on a “typical day”<sup>13</sup> – litigants and their families and friends, victims and witnesses including experts for the case, attorneys, law enforcement officers, and other groups that are not identified as employees on that specific court– is asked to fill out a brief self-administered questionnaire (see below a sample questionnaire as part of a USAID project in Kosovo) as he or she exits the courthouse.

### **Preparatory Stage**

The questionnaire should be prepared and printed out in an easy-to-read and attractive format, and if possible, to fit all the questions on a single sheet, using both sides if necessary, to avoid a cluttered and confusing look. It should have clear and precise instructions and guidelines for the respondents, covering all possible groups eligible to take the survey. The survey team should prepare a check list for all the steps and items that need to be taken care of before the start of the survey.

### **Sampling Design**

The self-administered questionnaire is given to *all* the individuals that are part of the groups identified above, who “use” the court on a given day. Instead of probability sampling, this measure uses purposive sampling (a type of non-probability sampling) whereby every user of the courthouse(s) on a single typical day is surveyed. A typical day is a day considered *generally* representative of all “court” days. If the day is typical of most days at the courthouse then it can be assumed that the responses will be received from a broad cross-section of those using the court. The survey is conducted every six months.

### **Survey Administration**

The court should identify a group of people (survey team) who will be working on this measure. This group will include court staff, but can also include, for example, interns working in the court and/or law students. This assistance is done on volunteer basis. The survey facilitators should get enough training so they are familiar and feel comfortable with the questions and the whole process. The facilitators should also be able to train other staff members or other identified survey facilitator (that will be used in other occasions), on the purpose and the methodology of the given survey.

The size of the survey team should be determined by the maximum numbers of individuals exiting the courtroom during any hour of the day.<sup>14</sup> A team of six to eight should be able to handle as many as 100 respondents exiting the courthouse over the course of an hour.

Courts considering taking this measure should consider the minimum questionnaires that need to be completed in order for the survey results to be considered valid.<sup>15</sup> For this, they

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<sup>13</sup> A typical day in this context means any regular day with regular activities taking place in the courthouse

<sup>14</sup> It is useful for the team members to do an observation during a “typical day” to have an approximate number of people visiting the court during an hour, and also find out the busiest periods of the day.

<sup>15</sup> While there is no hard and fast scientific rule regarding survey response rates, generally response rates below 50% are questionable on grounds of what researchers refer to as “response bias,” i.e., the possibility that those that did respond do not represent the Court’s users/clients population. Questions such as these arise: Are the folks who responded particularly prone to answer questions in a much different way than those litigants who did

should take into consideration the population size covered by the particular court. Courts where the number of users per day is less than 30 should expand the administration of survey to two days or more.

Survey facilitators should be aware that it is very important how they treat the respondents. They should treat them with respect, be very patient and ready to help the respondent if he or she requests it. Another important aspect is that the facilitator should also provide for an anonymous and confidential environment, and explain at all times that the survey is anonymous and no personal information is needed. Facilitators should restrain from making remarks or suggestions regarding the responses that are to be given by the survey takers.

Team members should approach the users that are exiting the building and ask them to participate in the survey and direct them to a table or the place where they can complete the questionnaire. They should try not to block the entrance/exit as much as possible, so they don't create any confusion to those entering the building, and also to the security guards. Respondents with difficulties reading or writing (and any other difficulty) should be assisted by the facilitators. Respondents should be instructed to place completed questionnaires in a nearby receptacle instead of simply handing it to one of the team members. This makes it clear to respondents that their responses are anonymous and confidential. In cases when this is done by the facilitator, he/she should put the questionnaire in the box right away

### **Data Collection**

Survey facilitators should be stationed near the court exit(s) and distribute the questionnaire to the all individuals (belonging to the groups identified above) who exit the courthouse on that single day. It is to be assumed that some of the users will refuse or simply will not want to take part in the survey. Therefore, survey facilitators should assign people from their group to take notes on those who refuse to fill the questionnaire, such as the number of people refusing, the group they belong to (as much as possible, i.e. if they are known to be lawyers, their gender, ethnicity, etc.) and also emphasize the reasons for refusal, if possible (i.e. no time, I don't want to..., etc). Survey facilitators should advise the respondents to answer all the questions in both sheet sides, and also check (if possible) that the respondents did answer all the questions

Tables and chairs should be placed around the exit(s) to the courthouse(s) to accommodate the maximum number of survey respondents' filling out questionnaires and members of the team assisting them at the peak of courthouse use. The tables and chairs should accommodate around 10-15 people at the same time, the number varying from court to court. The team is responsible for the arrangements of the tables and chairs and their number (keeping in mind the court size, number of visitors, and size of entrance/exit area), so the tables and chairs don't block the entrance.

It is recommended to put posters around the waiting area and near the exit and entrance to get the attention of the users coming in the court. This will give some time to the court users to get prepared for filling out the survey. It is also recommended that the survey facilitators approach users entering the court house and explain shortly about the survey and ask them to stop by on their way out. The posters should be in all the official languages that are spoken in the community so everybody coming to the court can understand it. The questionnaires should also be provided in all the official languages spoken in the community. The area where

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not respond? Are they more negatively or positively inclined toward the Court? Absent evidence that there is no response bias, the Court takes a risk of basing strategy on erroneous or misleading results.



the tables are placed can be decorated with balloons, or flags, or any other distraction. After the questionnaire is completed, the respondents can receive a sticker, balloon, candy, etc. (as decided and if there are enough funds).

### **Data Organization, Analysis and Interpretation**

Compute the percent of total respondents in the following ways: (1) overall across all ten items<sup>16</sup>; (2) for each single response category (e.g., strongly agree) and category of background information (e.g., lawyers); and (3) for every cross-tabulation<sup>17</sup> (e.g., lawyers who have come to the court the first time).

#### **Box 5-1. Formula for the Calculation of Court User Survey Results**

$$\text{Court User Satisfaction} = ((A + B)/(A + B + C + D - E)) \times 100$$

**A = Strongly Agree**

**B = Agree**

**C = Disagree**

**D = Strongly Disagree**

**E = Undecided or Unknown**

These simple computations enable the powerful functions of this performance measure: establishing a baseline for current performance, indicating whether performance is within determined boundaries or tolerances (controls), identifying and diagnosing problems, determining trends, and planning. For example, assume that 25 percent of the survey respondents strongly agree and 42 percent agree that they were treated with courtesy and respect (Questionnaire Item 5). Combining the “strongly agree” and “agree” categories, yields a *baseline* of 67 percent of the respondents. When this baseline performance is compared to a hypothetical goal of 75 percent set by the court, the computation enables the *control* function by answering the question of whether performance is at acceptable levels or within tolerable boundaries established by the court.

These performance measurement functions are enhanced by further analysis that “filters” the overall survey results by the various background variables of the survey respondents: by gender and race of the respondent; by type of case or by matter that brought them into the courthouse, and so forth. For example, a simple analysis compares respondents who are in the courthouse frequently (daily or weekly) versus those who are in the courthouse infrequently (no more than several times a year). This analysis may show that frequency of court use is consistently associated with greater satisfaction across all areas of performance.

### **Effective Use**

This measure should be assessed on a regular and continuous basis – preferably every six months. By tracking the average rating with one or more areas identified in the survey over time, court managers will be able to ascertain trends or changes associated with improvement initiatives.

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<sup>16</sup> The convention is to compute the overall metric in terms of the percent of respondents who “strongly agree” and “agree.”

<sup>17</sup> Cross-tabulation or crosstabs refers to the means for organizing or displaying the values or levels of one variable (e.g., item number 5 of the survey) according to the values or levels of a second variable (e.g., frequency using the court).

For most court systems, comparisons of survey results across locations can be a useful basis for identifying successful improvement strategies. Different courts (of the same level) might be compared, for example, on the percent of users who felt that they were treated with courtesy and respect. Follow-up queries can then be made that probe the comparisons. Why do one or more locations seem to be more successful than others? What are they doing that the other locations are not? Asking staff in both the most successful and least successful locations these simple questions can help to identify “evidenced based” best practices.

For courts or court systems with multiple locations, comparisons of survey results across locations can be a useful basis for identifying successful improvement strategies. Different locations might be compared, for example, on the percent of users who felt that they were treated with courtesy and respect. Follow-up queries can then be made that probe the comparisons. Why do one or more locations seem to be more successful than others? What are they doing that the other locations are not? Asking staff in both the most successful and least successful locations these simple questions can help to identify “evidenced based” best practices.



## KQ10 Kosovo Court Performance User Satisfaction Survey

Please take few minute to complete this very brief survey. Your responses will help the court to evaluate and improve its services. All responses are confidential – we do not need to know your name. Thank you for your help.

**Directions:** Please respond to the statements below based on your experience in the courthouse. For each statement below, circle the number that best describes your agreement or disagreement. Circle only one number for each statement. If the statement does not apply to you, place a check in the “not applicable” box in the last column.

1.	It was easy to find the courthouse.
2.	It was easy to find where I needed to go inside the courthouse.
3.	I felt safe in the courthouse.
4.	I was able to get the information I needed at the courthouse.
5.	I was treated with courtesy and respect
6.	My needs and concerns were considered
7.	The way my case was handled was fair.
8.	I was able to do my court business in a reasonable amount of time
9.	I was treated equally. My ethnic background, gender, economic status, or age made no difference.
10.	My court experience gave me the confidence and trust in the Court.

Please provide the court with some additional information about yourself and what brought you to the court. Your answers will help the court understand the results of the survey. Remember that your responses are confidential.

A. What is your gender?

\_\_\_\_\_ Male                      \_\_\_\_\_ Female

B. What is your nationality (please check ONE only)?

- |                                   |                                  |
|-----------------------------------|----------------------------------|
| <input type="checkbox"/> Albanian | <input type="checkbox"/> Bosnian |
| <input type="checkbox"/> Serb     | <input type="checkbox"/> Roma    |
| <input type="checkbox"/> Turkish  | <input type="checkbox"/> Ashkali |
| <input type="checkbox"/> Croatian | <input type="checkbox"/> Other   |

C. How often are you in the courthouse or one of the court facilities (please check ONE only)?

- |                                  |   |
|----------------------------------|---|
| <input type="checkbox"/> Daily   | <input type="checkbox"/> Several times a year |
| <input type="checkbox"/> Weekly  | <input type="checkbox"/> Once a year or less  |
| <input type="checkbox"/> Monthly |   |

D. Which court are you visiting today (please check ALL that apply)?

- |                                   |                                    |
|-----------------------------------|------------------------------------|
| <input type="checkbox"/> District | <input type="checkbox"/> Municipal |
|-----------------------------------|------------------------------------|

E. What type of case or matter brought you to the court today? (check ALL that apply)

- |  |   |
|--|---|
| <input type="checkbox"/> Major criminal                    | <input type="checkbox"/> Wills and inheritance  |
| <input type="checkbox"/> Minor criminal                    | <input type="checkbox"/> Juvenile   |
| <input type="checkbox"/> Commercial/Business claim         | <input type="checkbox"/> Enforcement of money judgments                                       |
| <input type="checkbox"/> Family (e.g. divorce, adaptation) | <input type="checkbox"/> Other Dispute or Legal Claim   |
| <input type="checkbox"/> Pay fines or fees                 | <input type="checkbox"/> Certification of documents (e.g.,<br>registration, Information, etc) |
|  | <input type="checkbox"/> Other  |

F. What was your role or how were you involved in the matter or business that you had with the court today? (please check ONE only)

- |   |  |
|---|--|
| <input type="checkbox"/> Attorney                           | <input type="checkbox"/> Friend or Family Member           |
| <input type="checkbox"/> Litigant (party to a legal matter) | <input type="checkbox"/> To request Information, Documents |
| <input type="checkbox"/> Victim or Witness                  | <input type="checkbox"/> Business user                     |

## Measure 2. Access Fees.

### Definition

The average court fee paid by litigants per civil case. *Access Fees* is derived by dividing the total court fees collected by the number of cases in a period of time (e.g., month, quarter, or year).

### Purpose

This measure is an indicator of the courts' and/or governments' success in keeping court services accessible to litigants, not only in terms of location, physical structures, procedures, and the responsiveness of personnel, but in terms of the costs of access to the court's services, proceedings, and records. Those costs, i.e., court fees largely related to civil cases, should be reasonable, fair, and affordable. Providing court service quality is held constant, lower court fees help keep courts accessible.

Accessibility is among the ten universally accepted judicial values underpinning the *IFCE*. It incorporates the ease of gaining entry to the legal process including reasonable filing fees and other costs.

The performance standards of the *Trial Court Performance Standards*<sup>18</sup> grouped in the area of access to justice require a court to eliminate unnecessary barriers to its services. Such barriers can be physical, geographic, attitudinal, procedural, and financial. Standard 1.5, "Affordable Costs of Access," recognizes the financial barriers to access to justice. Litigants and others who use the services of a court face three main financial barriers to effective access to the courts: court fees, third-party expenses (e.g., deposition costs and expert witness fees), and lawyer fees. Standard 1.5 requires that the court minimize its own fees<sup>19</sup> for access and participation in its proceedings and, where possible, scale its procedures and those of others under its influence or control to the reasonable requirements of matters before the court.<sup>20</sup>

The framework of performance indicators of the Australian Government Productivity Commission focuses on meeting common objectives for court administration. The first is to be "open and accessible."<sup>21</sup> The performance area of "equity" is currently represented by the indicator of average fees paid by applicants.

'Fees paid by applicants' is an indicator of governments' achievement against the objective of keeping services accessible. Court fees may have a range of functions,

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<sup>18</sup> Commission on Trial Court Performance Standards (1997). *Trial Court Performance Standards with Commentary* (Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice). Online at [http://www.ncsconline.org/D\\_Research/TCPS/index.html](http://www.ncsconline.org/D_Research/TCPS/index.html). See also Commission on Trial Court Performance Standards (1997). *Trial Court Performance Standards and Measurement System* (Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice). [http://www.ncsconline.org/D\\_Research/TCPS/index.html](http://www.ncsconline.org/D_Research/TCPS/index.html).

<sup>19</sup> In some countries and jurisdictions, court fees are set by government and not by court administrators.

<sup>20</sup> *Trial Court Performance Standards*, *supra* note 19 at 9.

<sup>21</sup> The others are to process matters in an expeditious and timely manner, to provide due process and equal protection before the law, and to be independent yet publicly accountable for performance. Australian Government Productivity Commission. *Report of Government Services 2012*. C. Justice Sector Summary, C.1. [http://www.pc.gov.au/data/assets/pdf\\_file/0007/114937/21-government-services-2012-chapter7.pdf](http://www.pc.gov.au/data/assets/pdf_file/0007/114937/21-government-services-2012-chapter7.pdf). Box 7.5, pp. 7.22.

including recovering costs and sending appropriate price signals to potential litigants (with the intention of ensuring that parties consider all appropriate options to resolve disputes). This measure monitors the affordability of average court fees paid by litigants. It is important to note, however, that court fees are only part of the broader legal costs faced by applicants.<sup>22</sup>

Australia may be most advanced in the development and use of this measure. The Australian Government Productivity Commission reported that in 2010-11, average court fees per lodgment<sup>23</sup> were greater in supreme courts than in district/county and magistrates' courts."<sup>24</sup> They were lowest on children's courts and in the family courts where "applications do not attract a few." However, in 2010-11 the federal government imposed minimum filing and hearing fees even for parties that are eligible for exemptions and waivers.<sup>25</sup>

## Methodology

Requirements for calculating this measure include the following data elements: (1) the total amount of court fees paid by all civil litigants over a specified period of time; and (2) the total number of civil cases filed over that same period of time. The result of the measure simply is the ratio of two elements – total court fees collected in a period of time (numerator) by the total cases (denominator) expressed as a percent:

$$\frac{\text{Total amount of fees collected}}{\text{Total number cases filed}}$$

In most jurisdictions, the data are collected and compiled by the court administrations or a court administration authority. In the other jurisdictions, it is collected and compiled by governing departments. Data reported for this indicator are comparable and especially informative when reported by disaggregation by civil case subtype, court location, court unit or level, case and litigant characteristics (e.g., corporations or individuals), and other variables.

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<sup>22</sup> Australian Government Productivity Commission, *supra* note 1, at 7.25.

<sup>23</sup> This term is comparable to "case." For an explanation of how lodgment data are collected in Australia, see Australian Government Productivity Commission, *supra*, note 1 at 7.6 (Box 7.4).

<sup>24</sup> *Supra* note 1 at 7.26. (Table 7.8 and accompanying text).

<sup>25</sup> *Id.*

## Measure 3. Case Clearance Rate

### Definition

The number of outgoing cases expressed as a percentage of incoming cases. For example, a court with which a total number of 100,000 cases are registered or filed over the course of a year and the court resolves or disposes total 95,000 cases in that same year has a case clearance rate of 95%.

### Purpose

A court's case clearance rate is an indicator of whether or not a court or court system is keeping up with the demands for judicial services in terms of its incoming caseload - simply, the number of outgoing cases represented as a percentage of the number of outgoing cases handled by a court or court system. If cases filed or referred to courts are not disposed in a timely manner, a backlog of cases awaiting disposition or will grow.

If a court is "clearing" (i.e., resolving or disposing) fewer cases than are registered or filed, a current inventory of pending cases or backlog of cases is inevitable.<sup>26</sup> In the example given in the Definition above, the court will carry over an inventory of 5,000 "old" cases from one year to the next. If it continues on this course over a period of ten years, it will have built up a backlog of 50,000 cases, which would take the court more than a half year to resolve or dispose even if it accepted no new cases.

Expressed as a single number, clearance rate can be compared across court systems of different countries, across courts in one country, and within a single court over time. Knowledge of clearance rates, especially by case types, courts, can help pinpoint emerging problems of court delay and congestion and suggest where improvement efforts can have the greatest effect.

The presentation of clearance rates of Australian courts in the Australian Government's Productivity Commission's *Report of Government Services 2012*<sup>27</sup> is exemplary and serves an excellent model along with the comparable measure of the *CourTools*. The description of the measure in the report is as follows:

The clearance indicator is derived by dividing the number of finalisations in the reporting period, by the number of lodgments [generally, demand for judicial services, case filings or referrals] in the same period. The result is multiplied by 100 to convert to a percentage. The clearance rate should be interpreted alongside lodgment and finalisation data [completion of matters in the court system], and the backlog indicator. Trends over time should also be considered. The clearance rate can be affected by external factors (such as those causing changes in lodgment rates), as well as by changes in a court's case management practices. The following can assist in interpretation of this indicator: • a figure of 100 per cent indicates that, during the reporting period, the court finalised as many cases as were lodged, and the pending caseload should be similar to the pending caseload 12 months earlier, • a figure greater than 100 per cent indicates that, during the reporting period, the court finalised more cases than were lodged, and the pending caseload should have decreased, • a figure less than 100 per cent indicates that, during the reporting period, the court finalised fewer cases than were lodged and the pending caseload should have increased.

<sup>26</sup> The terms "current inventory" and "backlog" refer to the two parts of a court's total active pending caseload. "Current inventory" refers to those active pending cases that are not yet "old," that is, not yet beyond the established time reference point. "Backlog" refers to all those active pending cases that have aged beyond the time reference point.

<sup>27</sup> [http://www.pc.gov.au/data/assets/pdf\\_file/0007/114937/21-government-services-2012-chapter7.pdf](http://www.pc.gov.au/data/assets/pdf_file/0007/114937/21-government-services-2012-chapter7.pdf)

The initial results from taking this measure can serve as a baseline, answering the question, "Where are we today?" Successive measures can show how the case clearance ratio is changing over time compared against the baseline measure. Such trend measures can quickly highlight changes in the clearance levels over time and answer the question, "How have we been doing in our efforts to manage the caseload over the last 12 months or several years?"

## Methodology

The approach for taking this measure is a close adaptation of the corresponding measure in the *CourTools* and closely follows the method prescribed for that measure.<sup>28</sup> Reviewing the descriptions and methodology of the *CourTools*, particularly those related to this measure, and which includes definitions, examples of analyses and interpretations, templates for calculating the measure, as well as reports of courts that have taken this measure, will be of benefit to courts seriously considering measuring *Case Clearance Rate*.

Descriptions and concise definitions of the work that is handled by courts are fundamental to transparency and accountability for performance. Both are critical to the methodology of performance measurement of efficient and effective case processing. For the purposes of performance measurement, for example, the Montana State District Courts classified their cases as follows<sup>29</sup>:

1. Criminal (DC)
2. Civil (DV)
3. Child Abuse and Neglect (DN)
4. Juvenile (DJ)
5. Adoptions [DA]
6. Domestic Relations [DR]
7. Paternity [DF]
8. Probate
9. Guardianship/Conservatorship
10. Commitments (DD and DI)

*Case Clearance Rate* requires information about the number of incoming and outgoing cases disaggregated by case type during a given period of time. Generally, an incoming case is one in which an initiating document filed. An outgoing case is one in which a case dispositional decision is issued. A case dispositional decision "issued" when the corresponding docket entry is entered in the case register.

The overall clearance ratio is calculated by dividing the total number of incoming cases by the number of outgoing cases. To obtain the clearance ratio for individual case types, the number of incoming cases is divided by the number of outgoing cases within each case type category.

### Box 5-2. Formula for the Calculation of Case Clearance Rate

$$\% \text{ Clearance} = (A + B + C) / (D + E) * 100$$

A = Cases closed within time period

B = Dispositions of reopened cases within time period

C = Cases placed in suspended status in time period

<sup>28</sup> *CourTools*, *supra* note 5.

<sup>29</sup> Solely for the purposes of performance measurement, two case types, Investigative Subpoena (IS) and Search Warrants (SW) were not considered.



D = Cases opened within time period
E = Cases reopened within time period

### Effective Use

Case clearance rate as a performance measure for courts and court systems is attractive for several reasons, not the least of which is that it is simple, clear, and actionable – all reasonable criteria of an effective performance indicator. A case clearance rate of 100% is an unambiguous benchmark few would argue. Clearance rates below 100% for a court system as a whole, for an individual court, a particular court location, or a segment of cases (e.g., commercial cases) are not good. Even for a relatively short period of time, clearance rates below 100% spell trouble in the form of delay, backlog, and congestion. And even in the absence of known causes, lower than expected case clearance rates are actionable insofar as variations in the rates across court levels, courts, court locations, case types, and other variables can pinpoint “trouble spots” where court leaders and managers can focus resources.

To obtain the clearance ratio for individual case types, the number of incoming cases is divided by the number of outgoing cases within each case type category. Table 4 includes test data from the full court automated case management system of cases filed (opened/reopened) and cases closed (closed/disposed) in Flathead County July through August 2008.

**Table 4. Flathead County Case Clearance Rates by Case Group**

County/Case Group	Cases	Cases	Clearance
	Closed/Reclose	Opened/Reopened	
Total Flathead	1314	1358	97%
Abuse & Neglect	14	19	74%
Civil	643	665	97%
Commitment	35	30	117%
Criminal	226	227	100%
Family	273	275	99%
Juvenile	39	35	111%
Probate/Guardianship	84	107	79%

## Measure 4. On-Time Case Processing

### Definition

The percentage of cases disposed or otherwise resolved (closed) within established time reference points (e.g., 365 days for serious criminal cases) by case type in a specified time period (e.g., month, quarter or year).

### Purpose

Court systems should resolve cases expeditiously. Although virtually all litigants and other court users want their cases resolved as quickly as possible, adequate review of a case requires careful consideration by a court. Thus, on-time case processing is a balance between the time needed for review and the court's commitment to expedite the issuance of a decision.<sup>30</sup>

By resolving cases within established time frames, the court enhances trust and confidence in the judicial process.<sup>31</sup> This measure – especially when used in conjunction with Measure 3, *Case Clearance Rate*, Measure 7, *Case Backlog*, and Measure 8, *Trial Date Certainty* -- is a fundamental management tool for courts to assess and to manage timeliness and efficiency.

*On-Time Case Processing* provides information about the length of time it takes to process cases. It allows comparison of case processing times to local, state or national guidelines, and evaluation of the degree of compliance with these guidelines. It is calculated from case processing information drawn from automated case information systems or collected from a random sample (or the population) of cases reaching the final outcome.

### Methodology

The approach for taking this measure is a close adaptation of the corresponding measure in the *CourTools* and closely follows the method prescribed for that measure.<sup>32</sup> Reviewing the descriptions and methodology of the *CourTools*, particularly those related to this measure, and which includes definitions, examples of analyses and interpretations, templates for calculating the measure, as well as reports of courts that have taken this measure, will be of benefit to courts seriously considering measuring *On-Time Case Processing*.

Requirements for calculating this measure include three critical elements: (1) the identification and definition of case types; (2) the operational definition of the filing (opening) and resolution (closing) of each type of case, as well as the significant case processing milestones in between; and (3) the establishment of time

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<sup>30</sup> In her comparison of court efficiency measures of various countries, Maria Dakolias points out what other scholars have suggested: the causal relationship between reforms and success in reducing on-time case processing may be difficult to ascertain. For example, courts in different jurisdictions and different countries will tend to adjust their timeliness of case processing to their unique equilibrium level. When workload increases and contributes to increased delay, they will become more efficient and return to their equilibrium level. See Maria Dakolias(1999). *Court Performance around the World*. World Bank Technical Paper No. 430. Washington, DC: World Bank.

<sup>31</sup> See Standard 2.50, "Caseflow Management and Delay Reduction: General Principle." *ABA Standards Relating to Court Delay Reduction*, *supra* note 2: "From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket."

<sup>32</sup> *CourTools*, *supra* note 5.

reference points, or the identification of established benchmarks and standards of timeliness for each case type (e.g., 150 days from filing to decision for criminal cases).

*On-Time Case Processing* is calculated for all cases aggregated (overall) and disaggregated by case type as described in the box below.

**Box 5-3. Formula for the Calculation of *On-Time Case Processing***

$$\% \text{ On-Time} = ((A + B)/C) * 100$$

A = Cases closed within the reporting period *that do not exceed* the time reference points (e.g., 150 days).

B = Cases suspended within the reporting period *that do not exceed* the time reference points

C = All cases closed or suspended within the reporting period

Calculations using this formula produce a single value expressed as a percentage for all cases overall and for each case type. In addition, for each case type (not overall), *On-Time Case Processing* may be expressed in terms of the number of cases, the mean elapsed days, the median elapsed days, and the 90th percentile of elapsed days. Further, for each case type, the measure can be expressed in terms of (a) the number of cases, (b) the percent, and (c) the cumulative percent of cases disposed in 25, 30, 60 or 90 day increments to some appropriate upper limit (e.g., over 730 days).

Much, if not all, of the information that is needed to make the calculations for this measure may be obtained from a court's automated case management system or collected from a random sample (or the population) of cases reaching the first and final outcome.

If all information is not available from the case management system, a court may need to evaluate whether information should be obtained manually or if reprogramming of the system is preferable. For each case that has achieved at least the first sequential milestone during the reporting period, the system should be queried to determine the number of days between the date of filing with the court, or achievement of the prior milestone and the docket entry for the latest milestone.

Because this measure is designed to illustrate the actual time that a case is active within the court, the number of days (if any) that a case was placed on inactive status during the reporting period may be subtracted from the number of total number of elapsed days counted for this measure. In such cases a court will take no further action until an event restores the case to the court's active pending caseload.

The time it takes courts to resolve cases is related to the accrual of cases in their inventories of pending cases. In the absence of specific data on time to disposition, a comparison of the number of resolved cases and the number pending cases has been used as an indicator of how long it takes courts to resolve cases. Two variations of this comparison – which is similar to the clearance rate – have been used.

Some courts have relied on a “backlog index,” which is determined by the number of cases pending at the start of the year divided by the number of cases pending at the end of the year. A higher value suggests longer times to case resolution. For example, if the ratio is greater than 1.0, a court did not dispose as many cases as it had pending at the start of the year. In 1999, Dakolias reported mean ratios of 0.04 for Singapore and 0.25 for France, values suggesting very fast times to case resolution compared to other countries like Chile with a ratio of 1.7 and Ecuador with a whopping ratio of 7.87.<sup>33</sup>

<sup>33</sup> Dakolias, *supra* note 7, at 18.

The European Commission for the Efficiency of Justice<sup>34</sup> requests that justice systems report a disposition time (DT) indicator which is calculated in two steps. First, the number of resolved cases during the observed period is divided by the number of unresolved cases at the end of the observed period expressed as a “case turnover ratio.” Second, this turnover ratio is divided by 365 so the DT indicator can be expressed in number of days, which the CEPEJ suggests simplifies understanding of the relationship between the number of cases resolved and the number of cases pending at the end of a period. The DT measures how quickly the judicial system turns over received cases – that is, how long it takes for a type of cases to be resolved.

## **Effective Use**

As a court uses and develops the measure of *On-Time Case Processing*, it can begin to look at a more finely-grained picture. For example, an appellate court might analyse and interpret breakouts of the overall value across all dimensions as follows.

### **Time From Appeal Request to Decision/Disposition**

- Overall across all case types and all courts
- By case type
- By legal or factual issues raised on appeal
- By type of conviction code/severity of offense
- By legal representation on appeal
- By state, region, county, and court
- By total number of issues presented
- By appellate court disposition (e.g., reversed, affirmed, dismissed)
- By type of opinion (e.g., full, memorandum)
- By total of issues addressed by opinion

### **Time Between Appeal Processing Milestones**

- Appeal requested
- Appeal granted/denied
- Record filed
- Transcript filed
- Appellant’s initial brief filed
- Reply briefs filed
- Briefing competed
- Oral argument
- Decision/disposition

### **Elements of Court Structure and Organization**

- Structure and jurisdiction of the court

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<sup>34</sup> European Commission for the Efficiency of Justice (2008). *CEJ Guidelines on Judicial Statistics*. Strasbourg, December 10-11, 2008. <https://wcd.coe.int/ViewDoc.jsp?id=1389931&Site=COE>

- Specific death penalty procedures, if applicable
- Number and characteristics of official positions
- Case processing milestone deadlines
- Authority to compel parties to meet deadlines
- Docketing procedures
- Sentencing guidelines
- Rules for decision/opinion availability
- On-line access

## Measure 5. Pre-Trial Custody

### Definition

The average elapsed time criminal defendants are jailed awaiting trial.

### Purpose

Some performance measures are better than others. They bring people together for joint performance across institutional boundaries – the courts, law enforcement, jails, prosecution and defense services. These measures can be used at the highest policy levels to measure progress toward an overarching purpose and shared strategic goal – as well as -- that the separate institutions are expected to achieve together.

Duration of pretrial custody -- expressed in terms of central tendencies (mean and median days) and ranges of length of pretrial detention -- is one such measure. Because it is clear, focused and actionable across all justice system partners, and taps fundamental values such as equality and access to justice embodied by the *IFCE* (see Box 1-1 *Animating Court Performance Measures*), duration of pretrial custody can be the rallying point of reform and improvement efforts that depend on justice system partners working together.

A court's use of the measure *Pre-Trial Custody* extends the relevance of the measures *On-Time Case Processing*, *Case Clearance Rate*, *Backlog*, and *Trial Date Certainty*. Many jurisdictions in the U.S. and other countries face mandates to alleviate jail overcrowding. Justice system leaders and managers can be seen as responsive, and reap considerable political capital in their criminal justice communities, simply by (a) establishing a baseline of the median number of days defendants spend in pretrial custody, and by (b) vowing to examine case processing and important pretrial issues (warrants, initial appearance/arraignment, plea agreements, bail decision making, pretrial services, alternative sentencing) that, if addressed, might reduce the number of days defendants spend in jail before trial. If, in fact, the trend of this measure is downward over time, it can be seen as a demonstration that courts are doing something to alleviate jail overcrowding.

As noted by the Vera Institute,<sup>35</sup> divergence of the mean and median days of pretrial custody may be an indicator of inequality of treatment. For example, long pre-trial detention may be concentrated in a small proportion of the detained population, inflating the mean but not the median. When mean and median diverge, it is a signal to identify the characteristics of those defendants with long stays.

### Methodology

This measure can be seen as more finely-grained variant of Measure 4, *On-Time Case Processing*, insofar as it focuses on time elapsed between two case processing milestones for a segment of criminal cases: the date a defendant in a criminal case is detained and taken into custody and the date of his or her trial. Readers should review the methodology of Measure 4 that pertains to *Pre-Trial Custody*. As suggested in description of the methodology of Measure 4, for example, most of the information that is needed to make the calculation for this measure may be obtained from a court's or jail's statistics (or even automated case management

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<sup>35</sup> Vera Institute (2003). *Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector*. New York: Vera Institute, 27-28. Online at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/VeraDFIDIndicatorsGuideNov2003.pdf>.

systems), though this is unlikely in many countries. Alternatively, it may need to be collected manually from a random sample (or the population).

Applying this measure requires, first, an operational definition of a *pre-trial detention day*. Similar but more restricted than those for the *On-Time Case Processing*, the requirements for taking this measure include: (a) the identification and definition of the criminal case types involving pre-trial detention; (b) the operational definition of the two case processing milestones, i.e., custody date and trial date; and (c) the number of elapsed days between those two milestones.

Simple statistics of central tendency and variation should be computed, first across all variables, as well as disaggregated by criminal case type, court location and unit, defendant characteristics, type of prosecution and defense, and other factors that may be available for review. Depending on the ease or difficulty of acquiring the required data, calculations may include the mean and median days that defendants are in custody, the 90th and 99th percentile in days, as well as the number of defendants, percent of defendants, and cumulative percentage in various durations of pre-trial detention (e.g., 10 days or fewer, 11 – 25 days, 26 – 50 days, 51 – 100 days, more than 100 days).

### **Effective Use**

As pointed out by the Vera Institute of Justice,<sup>36</sup> relying on the clear, focused, and actionable measure *Pre-Trial Custody* to reduce pretrial detention duration provides the quintessential opportunity to measure timeliness and responsiveness that depend on the combined efforts of courts, police, prosecution, defense and jails. Successfully implementing large-scale improvement initiatives that depend on the joint efforts across the justice system that are not as focused (e.g., eliminating jail overcrowding or integrated information technology) often run into intractable justice system governance issues that are impossible to tackle head-on. Consequently, important initiatives get diverted, unfocused, and little gets done.

Ideally, a coalition of justice system partners should build the business (e.g., identification of system success factors) and technical architecture (e.g., query and reporting application) to support continuous monitoring, analyzing and managing the performance of various partners using the measure.

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<sup>36</sup> Vera Institute (2003). *Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector*. New York: Vera Institute. Online at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/VeraDFIDIndicatorsGuideNov2003.pdf>.

## Measure 6. Court File Integrity

### Definition

The percentage of case files that meet established standards of accuracy, completeness, and currency, and that can also be retrieved in a timely manner and within established time guidelines.

### Purpose

Accurate, complete, up-to-date, and readily available case files and records are critical to the effectiveness and efficiency of daily court operations and the fairness of judicial proceedings decisions at both the trial and appellate level. They are fundamental to the values and responsibilities of courts recognized by the International Consortium for Court Excellence in building the *IFCE*. Court file integrity affects not only the decision-making process but also have direct impacts on the organizational effectiveness of a court. Measure 6 provides information regarding (a) availability, or how long it takes to locate a file or case record, (b) the accuracy of the file compared to case summary information, and (c) the organization and completeness of the file.

Trial courts have direct control of the petitions, notices, briefs and other documents filed with them. These materials are recorded and placed in case and record files. The case record, which is critical to the appellate review process, is constructed by the trial court or agency from which an appeal is taken. This construction of the case file is commonly at the direction, and according to the specifications of the parties. As a result, an appellate court may control the availability of the case record after it is received, but have only limited capacity to shape its accuracy and organization.<sup>37</sup>

### Methodology

The approach for taking this measure is a close adaptation of the corresponding measure in the *CourTools* and closely follows the method prescribed for that measure.<sup>38</sup> Reviewing the descriptions and methodology of the *CourTools*, particularly those related to this measure, and which includes definitions, examples of analyses and interpretations, templates for calculating the measure, as well as reports of courts that have taken this measure, will be of benefit to courts seriously considering measuring *Court File Integrity*.

This measure consists of three components: availability, accuracy, and organization and completeness. Each is assessed and calculated for a random sample of at least 50 cases of each case type.

#### Availability

The first component of this measure, availability or accessibility of the file, is measured by reviewing a random sample of case files or records, and individually documenting the amount

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<sup>37</sup> Nonetheless, more than 30 years ago the American Bar Association recognized that “management of that record is an essential part of appellate court administration. This includes not only monitoring preparations of the records, but also keeping them in order pending decision, returning them to the lower court when necessary, and providing their disposition in closed cases.” This view has prevailed today. American Bar Association Commission on Standards of Judicial Administration (1977). *Standards Relating to Appellate Courts* (Chicago: American Bar Association) 84.

<sup>38</sup> *CourTools*, *supra* note 5.



of time it took to retrieve each one. The actual times are then compared to a court's desired or established objective or performance target, e.g., 98% of all case files/records should be available within 15 minutes of the request of the case file. Varying objectives can be established for pending, closed (on-site), and closed (off-site) case files, as appropriate.

### **Accuracy**

Accuracy of the case files is measured by the extent of agreement between the case file summary and the actual file contents. The content and format of the case file summary (variously referred to as the case docket, case file register, register of actions, and so forth) vary across jurisdictions, but generally include a complete listing of the documents filed with the court for each case. This component measures whether the case file summary of documents accurately reflects all the documents filed with the court that are supposed to be in the file and, conversely, whether the documents in the file are accurately recorded on the summary of documents. This is measured by performing comparisons between entries on the summary of documents and the actual documents included in each file, and vice-versa. Again, results are compared to an established target, objective or standard.

This component of the measure examines agreement between the file contents and case file summary. It does not, however, explicitly investigate whether documents are missing from both the file and summary. That is done by the third component of this measure.

### **Organization and Completeness**

The final component of this measure considers how well the organization of the file contents comport with court requirements, as well as the completeness of the file — that is whether documents filed with the court are contained within the case file.

Many courts today use or plan to use digital files and case records. This will necessitate a modification of this measure to correspond with the specific features of the court's system.

## Measure 7. Case Backlog

### Definition

This measure is an assessment of the age of the pending cases awaiting resolution or disposition expressed in terms of the number of elapsed calendar days between the date of filing or start of processing of the case and the current date. It is expressed in terms of the percentage of all the pending cases that are considered to be a case backlog – that is, the proportion of cases that exceed the on-time case processing time reference points, benchmarks, and established time standards.<sup>39</sup>

### Purpose

Cases filed/registered but not yet resolved or disposed make up a court's active pending caseload. A complete and accurate inventory of active pending cases, as well as the number and age of the cases in the inventory, provide a the necessary data for a quantitative assessment of a court's timely case processing performance. Once the age spectrum of cases in various time periods and the court's backlog is determined, the court can focus its attention on what is required to ensure cases are brought to completion within reasonable time frames.

An appellate court in the United States, for example, may have established a time standard or target of resolving 80% of all active civil appeals within 540 days of filing and all active criminal appeals within 730 days of filing. This information should be compiled in a way that helps to determine the number of cases and percentage of total active pending caseload that fall within various time brackets. For instance; 0 – 90 days, 91-180 days, , 181 – 270 days, 271 – 365 days, 366 – 450 days, 451 – 540 days, 541 – 630 days, 631 – 730 days, and > 730 days. What distinguishes this information from Measure 4, *On-Time Case Processing*, which provides a quantitative assessment of the time from the opening to the closing of a case, is that this measure provides a court with the range of case age within the active pending caseload.

### Methodology

The approach for taking this measure is a close adaptation of the corresponding measure, *Age of Pending Caseload*, in the *CourTools* and closely follows the method prescribed for that measure.<sup>40</sup> Reviewing the descriptions and methodology of the *CourTools*, particularly those related to this measure, and which includes definitions, examples of analyses and interpretations, templates for calculating the measure, as well as reports of courts that have taken this measure, will be of benefit to courts seriously considering measuring *Case Backlog*.

Required data elements for this measure include: (1) the number of cases in the inventory of active pending cases by major case type; (2) the number of elapsed days each case in the inventory has been pending since registered, filed, or opened; and (3) the point of reference, benchmark or standard (in days) for on-time case processing of major case types (in the

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<sup>39</sup> The Australia Productivity Commission defines backlog as “the number of pending cases older than applicable reporting standards, divided by the total pending caseload (multiplied by 100 to convert to a percentage). Productivity Commission, *supra* note 1, at 7.63.

<sup>40</sup> *CourTools*, *supra* note 5.

example noted above, 540 days for civil cases and 730 days for criminal cases). Critical to this measure, are precise descriptions and concise definitions of the major case types, the identification time reference points, standards or time benchmarks (e.g., 240 days for civil cases), and the case processing events that constitute filing (opening) and resolution or disposition (closing) of cases by case type.

The first task is to compile a list of all pending cases for each case type. Next, arrange the cases according to their filing dates, beginning with the oldest pending case. This arrangement will permit the determination of how many cases fall within specified time intervals (e.g., the number of civil second instance cases pending in a district court for 240 days or more, the number of cases pending 300 days or more, and so forth).

“Backlog” refers to all those cases beyond the time reference point. If a court is disposing fewer cases than are filed, a growing inventory and/or backlog is inevitable. The words “inventory” and “backlog” refer to the two parts of a court’s total pending caseload. “Inventory” refers to those pending cases that are not yet “old,” that is, not yet beyond the established reference point.

The formula for the calculation of backlog is straightforward:

$$\frac{\text{Total Number of Cases in Backlog}}{\text{Total Number of Cases in Backlog + Inventory}} = X \ 100 = \% \text{ Backlog}$$

For example, a district court that has 45 cases in its backlog of criminal second instance cases (cases older than 240 days) and 211 cases in its inventory of pending cases (cases not yet 240 days old since the cases were opened) has a backlog of 21.3 percent.

$$\frac{45}{211} = 0.213 \times 100 = 21.3 \% \text{ Backlog}$$

Knowing the age of the active cases pending before the court is most useful for addressing three related questions: Does a backlog exist? Which types of cases (e.g., juvenile cases) and individual or subset cases of a particular type are a problem? Given past and present performance, what is expected in the future?

A comparison of the backlogs in various case categories with the overall backlog (the average backlog across all case categories) will pinpoint where case processing problems may be concentrated and where improvement efforts may prove most useful, especially if the problems persist over time.

Required data elements for this measure include: (1) the number of cases in the inventory of active pending cases; (2) the number of elapsed days each case in the inventory has been pending; and (3) the point of reference, benchmark or standard for on-time case processing of major case types or categories.

## Measure 8. Trial Date Certainty

### Definition

The certainty with which important case processing events are held when scheduled, expressed as proportion of trials that are held when first scheduled.

### Purpose

*Trial Date Certainty* quantifies the court's success in holding important case processing events on the dates they are scheduled to be held, and provides a tool to evaluate the effectiveness and efficiency of various case management processes such as calendaring and continuance practices. Aligned with the values of the **IFCE**, this core performance measure is an indicator of the certainty, predictability, timeliness and efficiency of case processing.

Setting firm trial dates is associated with shorter times to disposition of cases. For example, a higher proportion of trials that start on the first scheduled trial date is correlated with a more expeditious pace of litigation.<sup>41</sup> Effectively monitored, analysed, and managed, this performance measure points to various proven steps to ensure firm and credible dates for trials or adjudicatory hearings: (1) disposing of as many cases before the setting of trial dates for those cases; (2) having realistic calendar-setting practices; (3) limiting continuances; and (4) providing for "back-up" judges.<sup>42</sup>

### General Methodology

The approach for taking this measure is a close adaptation of the corresponding measure in the *CourTools* and closely follows the method prescribed for that measure.<sup>43</sup> Reviewing the descriptions and methodology of the *CourTools*, which includes definitions, examples of analyses and interpretations, and templates for calculating the measure not contained herein, will be of benefit to courts seriously considering measuring *Trial Date Certainty*.

This measure requires identifying all cases *disposed by trial*<sup>44</sup> during a given time period (e.g., a year, quarter, or month). After the cases are identified, additional information is collected to

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<sup>41</sup> John Goerdt, et al (1989), *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts, 1987* (Williamsburg, VA: National Center for State Courts), 32-35. See also Barry Mahoney, et al (1988) *Changing Times in Trial Courts: Caseload Management and Delay Reduction in Urban Trial Courts* (Williamsburg, VA: National Center for State Courts), 81-82.

<sup>42</sup> See David Steelman, John Goerdt and James McMillan, *Caseload Management: The Heart of Court Management in the New Millennium* (Williamsburg, VA: National Center for State Courts, 2000), pp. 9-16.

<sup>43</sup> *CourTools*, *supra* note 5.

<sup>44</sup> What is a trial? As part of its development of this measure in 2010, an advisory committee of the U.S. State of Montana defined a "trial" as a hearing at which the parties contest the facts in the case and present evidence before a judge in open court, and in which the judge or jury renders a decision that results in an entry of judgment in the case. *Most courts are able to provide information on jury trials, but the recording of non-jury trials may be more difficult.* Similarly, the adjudicatory hearing in a juvenile delinquency or child protection case may be called something different in one state than in another state. For purposes of simplicity in measurement, there are certain kinds of events that, while often dispositive, should not be called "trials" for purposes of this measure. A hearing on a motion for summary judgment should not be counted as a critical event; a contested omnibus hearing or suppression hearing should not be considered a critical event; nor should a default or show cause hearing be counted as a critical event. A summary judgment hearing is *not* a trial by this definition because the parties agree on the facts; appropriate application or interpretation of the law is the only issue at a summary judgment hearing. A contested omnibus hearing or suppression hearing should not be considered a critical event because it may or may not be dispositive, so that one cannot tell beforehand that it will result in the entry

determine whether those cases were tried on the first date they were scheduled for trial or were continued one or more times before the trial actually began.

After a list is compiled of cases disposed, it should be sorted within case types by trial type, and then by number of trial dates set. Sorting the list in this fashion will facilitate the creation of a summary table showing the number of cases of each type with one date set for the trial to begin, those with two trial-start dates, and so on, up to the maximum number of dates on which the trial was set to begin, by case type and type of trial. Then prepare a summary table of the list (see “Annual Summary Report of trial Settings” in the description of this measure in the *CourTools*).

#### **Box 5-4. Formula for the Calculation of Trial Date Certainty**

$$\% \text{ Cases with no more than } X \text{ trial settings} = (A/B) \times 100$$

**X = Number of prescribed or target trial settings (e.g., 2)**  
**A = Number of cases with no more than the prescribed or target settings**  
**B = Total number of closed trial cases**

*Trial Date Certainty* is calculated (to one decimal point) and expressed as percentages as follows: (1) a single percentage overall across all case types and (2) a percentage for trial cases in each of the case types and other factors or circumstances (e.g., court location or unit, and type of case processing).

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

For which type of cases or circumstances is *Trial Date Certainty* better or worse? This question can be answered by disaggregating the measure by case type, court or court location, court division or unit, attorney, judge, and case processing type (e.g., standard versus expedited processing). Answers provide helpful insight and understanding for improvement strategies. For example, the factors explaining significant differences in *Trial Date Certainty* in different locations can become the basis for improvement in the location with poorer performance.

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of a judgment. In contrast, the trial on a petition to terminate parental rights should be included in this measure, because it meets all the criteria above for a “trial.” See *CourTools* at [http://www.courttools.org/~media/Microsites/Files/CourTools/courttools\\_Trial\\_measure5\\_Trial\\_Date\\_Certainty.ashx](http://www.courttools.org/~media/Microsites/Files/CourTools/courttools_Trial_measure5_Trial_Date_Certainty.ashx) for “more terms you should know” related to this measure.

## Measure 9. Court Employee Engagement

### Definition

The percent of the judicial officers and staff in various departments or units of the court who indicate that they are productively engaged in the mission and work of the court. Engagement is defined as an emotional connection that a judicial officer or staff feels for his or her court that causes him or her to make efforts on behalf of the court that exceed minimal obligations imposed.

### Purpose

The greatest asset of most public and private organizations is the talent, energies, enthusiasm and interest of its employees – that is, high employee engagement. A measure of this asset is a proxy for an organization's overall success. Employee engagement is defined as "a heightened emotional connection that an employee feels for his or her organization, that influences him or her to exert greater discretionary effort to his or her work."<sup>45</sup>

The evidence from research is clear: a high level of employee engagement – its creation and maintenance – is one of the most crucial imperatives of any successful organization. Employee engagement correlates to individual, group and organizational performance in areas such as retention, turnover, productivity, customer service and loyalty. Successful courts have strong, vibrant workplaces in which judges, managers and court staff exhibit good working relationships. The most important variable in employee productivity and satisfaction is not pay, benefits or the physical workplace environment *per se*.

The results from the largest worldwide study of employee engagement, conducted by the Gallup Organization, and mounting evidence from the use of *CourTools* Measure 9, "Employee Satisfaction" at the trial court level,<sup>46</sup> indicate that in the most "engaged workplaces" employees tend to respond positively to simple questions about the quality of their relationships with supervisors or managers. These are organizations with higher levels of productivity, profits, worker retention rates and customer loyalty. Moreover, employees answered the questions differently according to the unit or division they worked in, rather than the company, indicating that the answers were largely formed by the quality of the relationships between the employees and their immediate supervisors.

### Methodology

This measure is a survey -- a self-administered anonymous questionnaire -- of the strength of the court's workforce and the quality of the relationships of its employees. It is adapted from the 20-item survey included in the National Center for State Courts' *CourTools* Measure 9, *Employee Satisfaction*.<sup>47</sup> The questionnaire asks respondents to rate their agreement with each of 20 statements on a five-point scale from "Strongly Disagree" to "Strongly Agree." (See the

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<sup>45</sup> See the 2006 report, "Employee Engagement, A Review of Current Research and Its Implications," [The Conference Board](#), a non-profit business membership and research organization.

<sup>46</sup> The Montana Supreme Court conducted a pilot of this measure on a limited basis in 2005.

<sup>47</sup> *CourTools*, *supra* note 5, at [http://www.ncsconline.org/D\\_Research/CourTools/Images/courtools\\_measure9.pdf](http://www.ncsconline.org/D_Research/CourTools/Images/courtools_measure9.pdf)

sample questionnaire adapted for the Kosovo courts by the National Center for State Courts in 2009.)

The percent of respondents who agree with statements about their encounter with the court and the court's treatment of them. Specifically, it is calculated in terms of the percent of respondents who agree and strongly agree with the items in the survey.

$$\% \text{ Agree and Strongly Agree} = ((A + B)/(A + B + C + D + E)) \times 100$$

A = Strongly Agree

B = Agree

C = Disagree

D = Strongly Disagree

E = Undecided or Unknown

Respondents are asked to provide their responses to each of the 20 survey items on a five-point scale from "strongly agree" to "strongly disagree". In addition to the 20 substantive items, respondents are asked to identify the organizational divisions, unit or location in which they work and other characteristics like gender, race and/or national origin, and experience. Simply by identifying other divisions or situations with superior results, good managers may be close to a solution to the problem. When employee engagement is assessed at the level of a department or division, managers can learn a lot about organizational performance. However, the inclusion of the latter items will require some attention to the likely size of the sample and trade-offs that may need to be made to protect anonymity of the respondents (e.g., responses in a unit of two employees may be traced to individuals).

The survey should be organized and administered by the facilitator/administrator. The administrator distributes the questionnaire to every employee working in the court. They will be instructed that after they fill the questionnaire, they should put it in a box with a small opening at the top. It is very important that the employees do this by themselves, without somebody collecting the questionnaires for them. This will ensure the confidentiality of the survey which is a very important element in this process. The survey facilitator/administrator should make sure that the employees are filling the questionnaires and also submitting them the same day.

Survey facilitator/administrator should provide for an anonymous and confidential environment, and explain at all times that the survey is anonymous and no personal information is needed. Facilitator should restrain from making remarks or suggestions regarding the responses that are given by the survey takers.

The percent of respondents in every rating category (e.g., strongly agree, agree and so forth) and unit should be computed. Categories can then be combined for analysis and interpretation. For example, assume that 25 percent of the survey respondents strongly agree and 42 percent agree that they "are able to do their best every day" (Item 4). Combining the "strongly agree" and "agree" categories, yields a *baseline* of 67 percent of the respondents who believe that they are able to do their best every day. . When this baseline performance is compared to a hypothetical goal of 75 percent set by the court, the computation enables the *control* function by answering the question of whether performance is at acceptable levels or within tolerable boundaries established by the court.

These performance measurement functions are enhanced by further analysis that “filters” the overall survey results by the various background variables of the survey respondents such as the court division specifications. For example, a simple analysis compares respondents from juvenile and civil divisions.

Court division:

Municipal Court

Civil

<b>Sample Questionnaire Adapted for the Kosovo Courts</b>	
1.	I am kept informed about matters that affect me.
2.	I understand what is expected of me.
3.	I have the resources (materials, equipments, supplies, etc.) necessary to do my job well.
4.	I am able to do my best every day.
5.	Communication within my division/department/unit is good.
6.	In the last month, I was recognized and praised for doing a good job.
7.	Someone at work cares about me as a person.
8.	I have opportunities to express my opinion about how things are done in my division.
9.	The Judicial Branch is respected in the community.
10.	My co-workers work well together.
11.	I am encouraged to try new ways of doing things.
12.	I understand the relationship between the work I do and the mission and goals of the Judicial Branch.
13.	My working conditions and environment enable me to do my job well.
14.	I feel valued by my supervisor based on my knowledge and contributions to my department, unit or division.
15.	I feel free to speak my mind.
16.	In the last month, someone at work has talked to me about my performance.
17.	I enjoy coming to work.
18.	My co-workers care about the quality of services and programs we provide.
19.	I am treated with respect.
20.	I am proud that I work in the Judicial Branch.

Criminal



## Effective Use

High levels of employee engagement – its creation and maintenance – is one of the most crucial imperatives of any successful organization. Employee engagement correlates to individual, group and organizational performance in areas such as retention, turnover, productivity, customer service and loyalty.

This measure is a tool for assessing employee opinion on whether staff have the materials, motivation, direction, sense of mission, and commitment to do quality work. Knowing how the workplace is perceived by those who work in it is essential to facilitate organizational development and change, assess teamwork and management style, enhance job satisfaction, and improve OJD's service to the public. This measure highlights the importance of our workforce and encourages managers to find ways to energize and engage employees.

This measure should be assessed on a regular and continuous basis – preferably every six months. By tracking the average rating with one or more areas identified in the survey over time, court managers will be able to ascertain trends or changes associated with improvement initiatives. For court systems, comparisons of survey results across locations can be a useful basis for identifying successful improvement strategies. Different courts (of the same level) might be compared, for example, on the percent of users who felt that they were treated with courtesy and respect. Follow-up queries can then be made that probe the comparisons. Why do one or more locations seem to be more successful than others? What are they doing that the other locations are not? Asking staff in both the most successful and least successful locations these simple questions can help to identify “evidenced based” best practices.

Primary users of results are the courts themselves. Once they start using the measure, the courts should set their benchmark and make adequate improvements and then the measure will be helpful to compare and check the progress.

## Measure 10. Compliance with Court Orders - Collection of Fines, Fees, and Other Monetary Penalties.

### Definition

The total amount of payments of monetary penalties (fines and fees) collected, <sup>48</sup>expressed as a percentage of the total amount ordered by a court in a given period, e.g., month or quarter. For example, a court that imposed a total of 2 million dollars of fines, fees, and other monetary penalties over the course of a year, and collected 500,000 dollars of payments in that same year, has a rate of compliance of 25 percent for that year.

### Purpose

Courts should not direct that certain actions be taken or be prohibited and then allow those bound by their orders to honor them more in the breach than in the observance. A court must practice consistent sentence enforcement and related policies and practices so that similarly situated defendants and respondents are treated alike. Standard 3.5 (Responsibility for Enforcement) of the *Trial Court Performance Standards*<sup>49</sup> encourages a trial court to ensure that its orders are enforced. The integrity of the dispute resolution process is reflected in the degree to which parties adhere to awards and settlements arising out of them. Noncompliance may indicate miscommunication, misunderstanding, misrepresentation, or lack of respect for or confidence in the courts.

While court orders establish a wide variety of sanctions, monetary penalties are clearly understood and easily measurable. Monetary penalties include such financial obligations as child support, civil damage awards, traffic fines, and criminal fines and fees, restitutions, reparations, and other remittances.

*Compliance with Court Orders* is an indicator of compliance with law, as well as the efficiency and cost-effectiveness of the process of collection of fines, fees and other monetary penalties by courts and other components of the justice system. It is premised on the principle that justice is not fully served until all court orders have been enforced and complied with and all parties are held accountable for their financial obligations under law.

Integrity and public trust in the dispute resolution process depends in part on how well court orders are complied with or enforced in cases of non-compliance. In particular, enforcement of fines, fees and other monetary penalties are issues of intense public interest and concern. The focus of this measure is on how well court orders are observed and the degree to which a court takes responsibility for the enforcement of its orders requiring payment of monetary penalties. It measures the success of judicial and staff actions, as well as the collaborative programs with other justice system partners that result in increasing the collection rate of all fees, fines and other monetary penalties.

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<sup>48</sup> The revenue from the collection of monetary penalties is distinguished from, and does not include court income derived from court library revenue, court reporting revenue, sheriff and bailiff revenue, probate revenue, mediation revenue, rental income and any other sources of revenue (excluding fines, fees and other income from the collection of monetary penalties). Total income from these other sources by the Australian, State and Territory courts was \$270 million in 2010-11. Productivity Commission, *supra* note 1, at table 7A.11.

<sup>49</sup> Commission on Trial Court Performance Standards (1997). *Trial Court Performance Standards and Measurement System* (Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice), 35.  
[http://www.ncsconline.org/D\\_Research/TCPS/index.html](http://www.ncsconline.org/D_Research/TCPS/index.html).

## Methodology

This measure is similar to the corresponding measure in the *CourTools*,<sup>50</sup> but its methodology is simpler.<sup>51</sup> The *CourTools* prescribed methodology has proven problematic for larger jurisdictions the U.S. that have attempted to use the measure. Nonetheless, reviewing the descriptions and methodology of the *CourTools*, which includes definitions, examples of analyses and interpretations, and templates for calculating the measure not contained herein, might be of benefit to courts seriously considering measuring *Compliance with Court Orders*.

This core measure uses a simple “accounts receivables” or “money owed” accounting approach similar to that of Measure 3, *Case Clearance Rate*. Using this approach, only two data elements are required: (1) the total amount of payments ordered in a specified time period by case type or category; and (2) the total amount of payments made in the same type or category in the same period of time. The result of the measure simply is the ratio of these two elements expressed as a percent:

$$\frac{\text{Total amount of monetary obligations paid and collected}}{\text{Total amount of monetary obligations imposed}}$$

Like the computation of Measure 3, *Case Clearance Rate* - the number of outgoing cases expressed as a percentage of incoming cases - the *individual* payments collected do not necessarily correspond to the *individual* monetary obligations imposed. Payments ordered in a specified period of time, are counted even if those payments are not made in that period of time. For example, a restitution payment of \$10,000 ordered to be paid in a criminal case in September of 2012 is counted as part of the total amount imposed (the bottom part of the ratio above) even if it is not paid yet by the end of 2012 (and not counted as part of the money paid and counted as part of the amount in the top of the ratio).

Like the other core measures, *Compliance with Court Orders* should be calculated, monitored, analyzed, and used in terms of the overall compliance rate across all breakouts (single value) and disaggregated into various breakouts including type of monetary penalties, case types, court locations and units, courts, and other variables.

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<sup>50</sup> See Measure 7 of the *CourTools*, *supra* note 5, at [http://www.courttools.org/~media/Microsites/Files/CourTools/courttools\\_Trial\\_measure7\\_Collections\\_Of\\_Monetary\\_Penalties.ashx](http://www.courttools.org/~media/Microsites/Files/CourTools/courttools_Trial_measure7_Collections_Of_Monetary_Penalties.ashx).

<sup>51</sup> Measure 10 differs from the corresponding *CourTools* measure in terms of (a) the range of cases included; and (b) the “timeliness” aspect of the measure. First, the *CourTools* Measure 7 includes only *criminal* penalties in *misdemeanor* cases, including restitution. Second, it include a “timeliness” indicator as prescribed by the *CourTools*, i.e., whether or not the payment is made and distributed on-time. See *id.*

## Measure II. Cost Per Case

### Definition

The average cost of resolving a single court case broken down by case type.

### Purpose

A primary obligation of courts is efficient and effective case processing. Efficiency within the context of case resolution means to use resources in their most productive fashion to produce the most of what a court system values. Gauging efficiency, then, requires careful examination of how the court can best use their personnel, procedures, and technology to achieve desired outcomes such as access, fairness, and timeliness.

*Cost Per Case* is a useful indicator of a court's efficient and effective use of its resources. It helps court managers forge a direct connection between how much is spent and what is accomplished. To many court observers, "quality" means the effective and efficient use of resources.<sup>52</sup>

How long does a case take to process? How much does it cost? Time and cost represent the two most fundamental concerns voiced by citizens and other stakeholders of court services,<sup>53</sup> though agreement on this point may not yet have reached a consensus in the courts community in some countries (see Box 5-5).

*Cost Per Case* provides important insights into the management of a court's limited resources. The benefits of changes in a court's case management policies and processes include, for example, shifting available resources from one type of case to another and lowering the cost of handling cases of that type. Tracking changes in the cost per case over time allows for a meaningful evidence-based assessment of court policies and the impact of case management practices. This measure also may provide valuable and useful information for the courts during budget negotiations.

*Cost Per Case* can be viewed as a proxy for efficiency. It can provide within-state, cross-court comparisons where separate courts utilize similar staffing and funding models. It allows costs to be compared across case types and over time. It can be used as a diagnostic tool to measure the impact of new policies, practices, and procedures (e.g. caseflow management practices such as expedited dockets, or specialized case assignments; implementation of enhanced technologies like electronic filing and document management; and innovative forms of alternative dispute resolution or settlement programs). Of course, many factors can contribute to significant differences in expenditures across jurisdictions including ones beyond the control of jurisdictions including geographic dispersion, economies of scale, socio-

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<sup>52</sup> Dakolias, *supra* note 7, at 24.

<sup>53</sup> Measure II focuses on the costs to the government (courts), and to citizens as taxpayers, of processing cases. It does not consider attorney fees and other costs borne by litigants. Many court systems pass higher case costs to users through court fees. Such costs can impede access by limiting who can bring a case to court, decrease compliance with law when court costs and fees are perceived as excessive, and reduce the efficiency that case are processed by the courts. See Standard I.5, "Affordable Costs," which states: "The costs of access to the court's proceedings and records – whether measured in terms of money, time, or the procedures that must be followed – are reasonable, fair and affordable." Commission on Trial Court Performance Standards (1997). *Trial Court Performance Standards with Commentary* (Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice). Online at [http://www.ncsconline.org/D\\_Research/TCPS/index.html](http://www.ncsconline.org/D_Research/TCPS/index.html).

economic factors, as well differences in justice policies and scope of services delivered by justice agencies.<sup>54</sup>

Monitoring cost per case, from year to year, provides a practical means to evaluate existing case processing practices and to improve court operations. Comparisons across court locations and courts on cost per case can lend insights about areas for improvement, especially when the cost of handling the same type of case is differs dramatically across courts or court locations.

The measure forges a direct connection between how much is spent and what is accomplished. It can be used to assess return on investment in new technologies, reengineering of business practices, staff training, or the adoption of “best practices.” It also helps determine where court operations may be slack, including inefficient procedures or underutilized staff.

### **Box 5-5. Why Is This Measure Not Used As Much As It Should?**

How long does it take? How much does it cost? These are the most frequently asked questions by customers, clients and other consumers of (or stakeholders in the provision of) services. We ask these questions when we consider seeking the assistance of a lawyer or getting our car fixed. The questions are fundamental for companies and service organizations.

Even though the cost analysis prescribed by Measure 11, *Cost Per Case*, is still relatively new in courts in the United States, it is somewhat of a mystery why courts are comfortably fixated on answers to the first question while all but neglecting answers to the second. *Measure 4, On-Time Case processing* -- the percent of cases resolved within established timeframes -- is a performance measure that has been around for more than 25 years and is used by a majority of courts. On the other hand, *Cost Per Case* is a performance measure that is considered seriously by only a handful of courts and court systems in the United States.

Time and cost go hand in hand. Why should a measure of one be embraced while a measure of the other shunned by most courts? The simple answer to the question is that the methods for *Cost Per Case* are not as well developed and accepted as those for *On-Time Case Processing*. A more complex, and more troubling, answer might be that court executives fear that cost data in the hands of groups and individuals unfriendly to the courts could be used to hurt the courts. They fear that *Cost Per Case* will always be seen as too high and, therefore, will be used as ammunition for budget cutters.

#### **Methods for Determining Cost per Case Not Developed in the U.S. Until 2000**

Effective court management requires sufficient resources to do justice and to keep costs affordable. While cost analysis in the courts has received considerable attention in the literature of court administration (see, for example, National Institute of Justice's 1987 *Analyzing Costs in the Courts*), performance measures of cost have not seen widespread use among state courts. Standard 4.2, *Accountability for Public Resources*, of the *Trial Court Performance Standards* (TCTS), requires courts to responsibly seek the resources needed to meet their judicial responsibilities, use those resources prudently (even if they are inadequate), and account for their use. *Cost Per Case* is not a performance

<sup>54</sup> Australian Government Productivity Commission. *Report of Government Services 2012*. Justice Sector Summary, C.9. [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0007/114937/21-government-services-2012-chapter7.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0007/114937/21-government-services-2012-chapter7.pdf).

measure identified in the TCPS. *Cost Per Case* was introduced as part of the *CourTools* in 2005. Its metric and calculation are relatively simple and straightforward.

### **Fear of Misuse**

Some court managers have expressed reservations about the use of *Cost Per Case* as a court performance measure. They see little value in using it for internal court management and they fear that others may use the measure in ways that are not in the court's best interest. It is best not to brush these reservations under the rug. They may be anchored in strong beliefs, assumptions and generalization including: (1) a fear of exposure to criticism from comparative performance measurement that may point out that a particular court does not "stack up" to other courts (Why hand over to anyone such potent ammunition?); (2) the conviction that no two jurisdictions are alike and thus our court is incomparable; (3) a concern that performance data can be misused; (4) worry that performance measurement takes too much time, effort and money; and (5) the belief that performance trend data, by themselves, do not tell us why things are different, only that they are different. (See I. Keilitz. "How Do we Stack Up Against Other Courts? The Challenges of Comparative Performance Measurement," *Court Manager*, Volume 19, Number 4, 2005).

Changing a negative mental model of performance measurement and overcoming the resistance to performance measurement of court leaders and managers, especially with regard to less familiar and more controversial measures such as *Cost Per Case*, is perhaps the greatest challenge in starting a performance management initiative. Many of the best ideas -- in particular our reliance on performance measurement for management decisions -- fail to get put into practice in courts and court systems because they conflict with powerful, tacit mental models. Because they are often below the level of awareness, mental models often remain unexamined and untested.

It is, perhaps, naïve to think that it is sufficient to proclaim the advantages of *Cost Per Case* and expect court managers to embrace the measure. We must first acknowledge and address the negative mental models that may impede its acceptance. The fear that measures such as *On-Time Case Processing* and *Cost Per Case* will put a court, or even an individual judge, in an unfavourable light is not necessarily unfounded. In any event, it is best to acknowledge the limitations of *Cost Per Case*, and threats to its use for internal court management and comparative performance measurement, to strive to minimize them in specific ways, and to demonstrate in specific terms that the benefits outweigh the real risks that these limitations and threats may pose for individuals and courts.

### **Methodology**

The methodology of this measure conforms closely to that prescribed in the *CourTools*.<sup>55</sup> Reviewing the descriptions and methodology of the latter, which includes definitions, examples of analyses and interpretations, and templates for calculating the measure not contained herein, might be of benefit to courts seriously considering measuring *Cost Per Case*.

*Cost per Case* requires the following data for a given time period (e.g., a month or a year):

- total court expenditures
- case dispositions (or filings) by major case type
- a complete inventory of all judicial officers and court staff

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<sup>55</sup> *CourTools*, *supra* note 5.

The court's allocation of personnel across case types is used to distribute the court's total expenses across case types. This method is used because the vast majority of court expenditures are personnel-related and courts generally allocate their judicial and staff resources rationally to accommodate their workload. Total costs by case type are then divided by the total number of cases to obtain the cost of a single case.

The primary use of this measure is within a court over time. The utility of the measure increases when it can be linked directly to other elements of court performance (as it provides important perspective for interpreting the relationship between cost and outcomes). Once a court determines how it is currently performing in different case type areas, court managers can make more informed decisions regarding the level of resources to devote to each case type.

The methodology of this measure requires four steps: (1) sorting of all court personnel by case types or, alternatively, determining the "weight" or complexity of the case types; (2) determining of the total court expenditures; (3) allocating total costs by case type using the results of the first two steps; and, finally, (4) calculating cost per case. While this measure and its calculation are relatively straightforward, sorting court personnel by case type (Step 1) may be more challenging for some courts as explained below.

### **Step 1. Sort Court Personnel by Case Type**

In this first step, the court's allocation of personnel across case types is used to distribute the court's total expenditures across case types, unless specific expenses can be directly related to a particular case type (e.g., case settlement program costs including only civil cases). For example, if 42 percent of a court's personnel are assigned to process civil cases, it is assumed that 42 percent of a court's total expenditures are associated with the processing of civil cases. This simple approach can be used because the vast majority of most courts' expenditures are personnel-related.

It is important to note that this approach encompasses all expenditures (e.g., equipment, supplies, and rental costs) and not only personnel costs. It simply uses the proportion of personnel associated with various types of cases to estimate the percent of overall expenditures associated with those case types.

First, using information about work assignments and job responsibilities of all employees (or, alternatively, the results of an abbreviated workload assessment study, as explained further below), sort all full-time and part-time judges and staff by case type in terms of full-time-equivalents (FTEs). Once all possible court personnel are classified by major case type, compute the proportion of the total *classified* personnel in each major case type by dividing the number of classified individuals in a case type by the total *classified* individuals. It is important to emphasize that this calculation is done using only those individuals classified in this step, not the total number of individuals in court's personnel directory (which includes those persons not classified because they support common functions not related to case types).

For example, assume an appellate court with a total staff of 55 FTE judges and staff, 48 of whom have responsibilities that can be related to one or more case types, allocated across major case types, as illustrated in Table 5-1, and the remaining seven personnel with general administrative duties that cannot be allocated to any particular case type. In this example, the allocation of all 48 personnel (100%) across four case types is as follows: *civil* = 20

personnel/total of 48 personnel = 42%; *criminal* 14/48 = 29%; *administrative agency* 9.5/48 = 20%; and *other* 4.5/48 = 9%. This allocation of personnel across case types is used in Step 2 to distribute the court’s total expenditures across case types. (Note, again, that the seven non-case related or general administrative personnel are excluded from this step.)

**Table 5 - 5. Example of Results of Step 1 for Measure 5, Cost -Effective Case Processing**

Personnel Classification	Case Type				
	Civil	Criminal	Administrative Agency	Other	Total
Judges	4	3	2	1	10
Law Clerks	8	6	4	2	20
Staff Attorneys	3	2	2	1	8
Court Clerks/Other	5	3	1.5	0.5	10
<b>Total FTE Personal (%)</b>	20 (42%)	14 (29%)	9.5 (20%)	4.5 (9%)	48 (100%)

As further explained below, the allotment in this hypothetical example can be the result of a simple classification or, alternatively, a systematic time study, workload analysis or an estimate based on expert opinion (i.e., the Delphi technique).<sup>56</sup>

### Alternative Approaches for Step 1

When a court routinely assigns cases to judges or staff based on case type (e.g., a family case coordinator), or a court has separate divisions or units identified with case types, as is done in many courts throughout the world, costs associated with personnel are allocated easily to those case types and Step 1 can be taken without difficulties. However, there are two problems using this approach for some courts. First, some courts make *general docket* assignments so that all (or most) judges and staff work with a mix of all case types instead of restricting their work mostly to one type of case. Second, some courts of last resort are responsible for overseeing the administration of the entire judicial system and regulating the practice of law (e.g., attorney disciplinary matters) in addition to the responsibility of deciding cases. Separating the amount of time spent on such “non-case related” responsibilities, and the corresponding costs, can present a challenge.

There are two alternatives to the approach taken in Step 1 described above, both designed to establish the relative “weights” of the case types in terms of time spent for an average case (e.g., 127 minutes for the average civil case):

<sup>56</sup> The burden of data collection may be a serious limitation of an abbreviated workload assessment based on a time study. Determining the amount of time devoted to major case types requires a significant commitment of time and effort by judges and staff. An alternative – referred to as the Delphi Technique – is to have judges and staff *estimate* the amount of time allotted to cases in major categories take, without directly measuring time spent on each case activity. See Chapter VII. “The Delphi Technique,” in V. Flango and B. Ostrom, *Assessing the Need for Judges and Court Support Staff*. National Center for State Courts, 1996.



## 1. Workload Assessment<sup>57</sup>

- An in-depth time study designed to determine the weight of various case types
- Labor intensive process
- Provides extensive information regarding relative case weights and distribution of efforts
- Relative weights are used to distribute costs by case type

## 2. Delphi Technique

- Essentially a focus group approach
- Compared to workload assessment, limited commitment of time and effort to develop relative case weights
- Some reduced degree of accuracy
- Conclusions can be used to distribute costs by case type

Both of these alternative methods yield “weights” (average processing time in minutes) of the major case types. The proportion of the weight of each case type, expressed as a percentage of the total weights of the case types (i.e., 100%) can then be used in the next steps, like the allotted percentages of personnel time across case types.

Typically, a workload assessment consists of a four to six week time study in which a representative sample or (ideally) all judges and staff participate. It includes a detailed accounting of time spent on various case processing activities by case type. Time spent per day is tabulated and divided by the number of cases processed in the time study period in order to arrive at preliminary results. A representative group of judges and staff then evaluate the preliminary results and reach consensus on the relative case weights, or average judge/staff time required. Developed as a systematic method for determining judge and court staff requirements based on caseload, the results, or average amount of time spent on particular case types, can also be used for projecting the cost per case.

The Delphi Technique presents a less complex, inexpensive alternative to a workload study. It is often used by courts as an interim method of periodically revising the results from a workload study. It entails the formation of a “focus group” of representative judges and court staff with broad knowledge of the case types and case processing requirements, estimating the time required for various case activities by case types. The group pays special attention to the inherent differences in case types and brings its collective knowledge and experience to achieving consensus on the average time requirements.

### **Step 2. Determine Total Court Expenditures**

Once the allotted percentages of personnel time across case types or, alternatively, the weights or complexity of the case types have been calculated, Step 2 requires the determination of the total expenditures of the court in the fiscal period. Total expenditures are used in this step (instead of total budget) because they are what a court actually spent instead what it planned to spend. All expenditures should be included (e.g., salaries and benefits, goods and services, facility expenses, and administrative overhead).

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<sup>57</sup> See, [Colorado Court of Appeals Workload Analysis: Final Report](#). National Center for State Courts. September, 2005 for an example of a full staff workload study.

Although assembling all expenditure data may be labor- intensive at first, once the initial total expenditures are defined and documented, relatively simple processes can be utilized to capture data on a routine basis.

Continuing with the hypothetical example used above, assume that the total expenditures of a court for the year is \$4,750,000, as illustrated in the first two columns in Table 5 - 2. (Note that expenditures pertaining to the civil settlement program are not distributed to all case types because this program handles only civil cases.)

**Table 5 - 6. Example of Results of Step 2 and 3 for Measure 5, Cost -Effective Case Processing**

Expenditures		Case Type			
	Total	Civil 42%	Criminal 29%	Administra tive Agency 20%	Other 9%
Salaries & Personnel	\$3,850,000	\$1,617,000	\$1,116,500	\$ 770,000	\$ 346,500
General Operating Costs	\$ 180,000	\$ 75,600	\$ 52,200	\$36,000	\$16,200
Civil Settlement Program	\$ 120,000	\$ 120,000	\$ 0	\$ 0	\$ 0
Facility	\$ 600,000	\$ 252,000	\$ 174,000	\$120,000	\$54,000
<b>Categorized Totals</b>	<b>\$4,750,000</b>	<b>\$2,064,600</b>	<b>\$1,342,700</b>	<b>\$926,000</b>	<b>\$416,700</b>

### Step 3. Allocate Total Cost Across by Case Type

Using the results of Step 1 and Step 2, the percentage allocation of personnel across case types is used to distribute the court's total expenditures across case types, unless specific expenses can be directly related to a particular case type (e.g., a settlement program) as illustrated in the table. Again, this simple approach can be used because the vast majority of court expenditures are personnel-related and the results will not be affected materially by using a more sophisticated process.

### Step 4. Calculate Cost per Case

Finally, in Step 4, the total costs by case type are divided by the total number of dispositions by case type to obtain the cost of a single case to yield the average cost per case (e.g., \$1,703 for a civil case).

**Table 5 - 6. Example of Results of Step 4 for Measure 5, Cost -Effective Case Processing**

	<b>Case Type</b>			
	<b>Civil</b>	<b>Criminal</b>	<b>Administrative Agency</b>	<b>Other</b>
<b>Distributed Expenditures</b>	\$2,064,600	\$1,342,700	\$926,000	\$416,700
<b>Dispositions by Case Type</b>	1,212	1,153	561	355
<b>Average Cost Per Case</b>	\$1,703	\$1,165	\$1,651	\$1,174