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"Courting" Time: Assessing the Policy and Planning Issues Related to Adoption of Case Processing Standards in the Kentucky Judicial System

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University of Kentucky Capstone Project

Title

"Courting" Time

Topic

Assessing the policy and planning issues related to adoption of case processing standards in the Kentucky judicial system

Presented by

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Spring/Fall 2010

For Professor

Dr. Edward Jennings - PA 681

Under the Advisement of

Dr. Ginny Wilson

Research Topic

What issues should Kentucky officials consider prior to adopting case processing standards for the judicial system? I conducted a comparative and pre-implementation analysis to determine the factors that should guide this policy decision.

Problem Statement

Several events have taken place that raise questions about the effectiveness of the current process of managing case flow in the Kentucky judicial system. In 2003, the Courier-Journal newspaper published in Louisville, KY, embarked on a series of articles looking at court cases that appeared to have "fallen through the cracks" of the criminal justice system. A case that has "fallen through the cracks" is a case that has been brought before a judge, the proceedings have begun and at some point stops, with no further actions and without an adjudication. A typical scenario is when an attorney is granted a requested extension, with no future court date set on the case. Thus a case not placed on the court's docket¹ can get lost in the daily shuffle since numerous cases continue to flow into the judicial system. Another example could be that the case has been submitted for final adjudication, the judge fails to rule on the case and then the court loses track of said case. If the attorney does not file subsequent paperwork, the case could sit under a judge's review for a long period of time. One of the issues raised in the series of Courier-Journal articles was the fact that,

"(m)any other states have rules that guarantee speedy trials or time limits for prosecutors and judges to try cases, and with good results. But some Kentucky officials, including (former Chief Justice) Lambert, are reluctant to embrace those ideas....Chief Justice Lambert said he is skeptical of the need for either time standards or a speedy-trial law in Kentucky, though he said he would be willing to listen to arguments in favor of those and might be persuaded to change his mind." (Dunlop and Riley, 2003)

¹ Dockets are lists of cases that will occur on a particular court date.

There are many stakeholders involved in each court case and some cases have more stakeholders than others. A typical criminal case will consist of the following stakeholders: a judge, a defendant, an attorney for defendant, a prosecutor and in some instances, a jury. The stakeholders are mentioned only to point out that, while the judge *may* be ultimately responsible for case flow, the progress of each case can be impeded or expedited by other stakeholders while the case moves through the judicial process from filing to disposition. Should the system be at the mercy of delay tactics or should the judge alone have the power to determine the flow of cases? For instance, as reported out of one London, England court, "LAWYERS are deliberately spinning out court cases in the hope of getting their clients off serious charges... hoping that witnesses will fail to show up for the trial, or that a busy court schedule will allow them to 'plea bargain' for a lesser offence," (Johnston, 2003). Richard Schauffler, Director, Research Services at the National Center for State Courts (NCSC), made the following argument on February 8, 2010:

Adopting and enforcing [*case processing*] time standards is essential for understanding whether state courts are being efficient and effective. Taking this step is a recognition that the timeliness of court proceedings is an essential element of their fairness and influences the quality of justice; the expression "justice delayed is justice denied" applies here. However, merely adopting standards is meaningless unless state courts can measure whether those standards are being met. State courts must ensure that their information systems provide consistent and meaningful data that allow accurate measurements of timeliness to be made across jurisdictions. (Schauffler email to Dobson on 2/8/2010)

The essential question of this assessment was what would be the impact, the important implementation issues, and likely outcomes for the state court system if Kentucky joined 39 other states in implementing case processing standards. Case processing can be defined as the amount of time from the filing of a court case until the final adjudication of that case². The initial approach to addressing this question is a review of the experiences of the states that have implemented case processing standards.

² In some states the time begins from the arrest instead of the date the case is filed with the court.

Research Design

The research design portion of this project consists of three parts. Those parts are:

1. Analysis of National Center for State Courts (NCSC) data on all states' case processing standards.
2. Analysis of 2 surveys, 1 for states with case processing standards and the other for states with no case processing standards.
3. Analysis of Kentucky court data compared to national case processing standards.

First to be considered is a compilation of information from the NCSC. The NCSC is a national organization providing services to the participating states on items such as research and education. NCSC also provides consultation on various projects. (About Us, 2010) For instance if a court system is looking to establish electronic filing, the NCSC will review all other electronic filing processes or do a best-practices assessment based on a methodology they deem suitable for the project. The NCSC recently consulted with the Kentucky Administrative Office of the Courts on hiring a new CIO, as one example. There are other areas that the NCSC can assist and each project is addressed accordingly.

The NCSC has surveyed all states regarding various aspects of their case processing standards at least twice over the last 10 years and has provided that information via a Microsoft Access database. The information from the survey includes numerous items dealing with case processing standards. From this database I selected the following elements for my analysis:

- State: name of the state providing the data.
- Authorization: who provided the authority to start collecting, and in some cases enforcing the standards.
- Category Name: the type of case that was being tracked, for this research only criminal cases are considered.
- Court Type Name: the jurisdiction of the court, for example, trial or appellant. The actual types are numerous and vary by state.
- Status: explains whether the State's case processing standards are mandatory or voluntary.

The objective is to determine some base-line national results for later comparison with Kentucky data. Two variables are used as primary data filters. The first variable filtered is the type of court. Those listed as

having case processing standards for trial courts were included in the comparisons. The other variable used to filter the results exclude all states that do not have case processing standards for criminal courts. The main factors for considering criminal courts are (1) to minimize scope and (2) because criminal courts have "due process" requirements as defined by the U.S. Constitution and interpreted by the U.S. Supreme Court. (Constitution, Amendment 14)

In minimizing the scope and focusing on criminal cases because of due process concerns, as the literature review addresses, I am able to focus on the main issues involved in this policy discussion: delays in criminal case processing. Civil cases are not discussed as much mainly because they do not require a person to be incarcerated while the court proceedings progress toward a resolution.

The second part of the research consists of two surveys. The first survey was for all states that currently have case processing standards for criminal trial courts. The survey was faxed to different staff in each state as obtained from NCSC. The second survey was for all states that do not have case processing standards for criminal trial courts. The surveys are intended to gather the following information:

- Descriptions of the case flow process before standards were implemented, if available
- Opinions about changes in case flow after the standards were implemented
- Descriptions of any case processing measuring methods that have been implemented

The surveys are shown in Appendix A for states with current case processing standards and Appendix B for states that do not currently have case processing standards.

The final part of the research includes an examination of Kentucky data provided by the Administrative Office of the Courts. The data consists of a five-year report containing the times from filing to disposition for court cases disposed between 2005 and 2009. The KY data was compared to the national case processing standards, (Table 1), as defined by the American Bar Association and Conference of State Court Administrators, to determine how the processing times of past cases in Kentucky would have compared to national case processing standards. The main objective of this data analysis is to identify the

speed of Kentucky courts compared to national standards.

Table 1: National Case Processing Standards

Criminal**	Council Of State Court Administrator & Council Chief Judges (COSCA)	American Bar Association (ABA)
Felony	180 days	90% in 120 days 98% in 180 days 100% in 12 months
Misdemeanor	90 days	90% in 30 days 100% in 90 days

(Viewed 9/13/2009, http://www.ncsconline.org/D_Research/TCPS/Measures/me_2.1.1.htm)

Literature Review

A pre-implementation analysis seeks to identify the risks associated with policy implementation. This type of analysis allows policy makers and stakeholders to be aware of potential problems before the policy is implemented. Pre-implementation analysis also serves as a road map for internal control during the implementation phases of the policy.

A comparative analysis was performed of the various states that have instituted some level of case processing standards versus the states that have not instituted case processing standards. The comparative analysis information can be coupled with the pre-implementation analysis to provide useful information on the entire process of implementing or not implementing case processing standards. Here are a few potential outputs from this type of analysis:

- If Kentucky decides to implement case processing standards, a comparative analysis could inform policy design. This could include specification of the elements of this policy, such as measuring/reporting of effectiveness and possible enforcement requirements.
- If Kentucky decides to not implement case processing standards, a comparative analysis could still assist with case flow methodology or administrative rules for better monitoring court processes without the formalization of case processing standards.

This literature review concentrates on defining how case processing is derived by focusing on the following areas (1) history of case processing standards, (2) case processing flow complexities and (3)

states using case processing standards.

History of Case Processing Standards

Early research on case processing standards sought to examine why some cases had long delays in the criminal justice system. This has been a concern since the days of Shakespeare (Luskin, 1986). Like many research areas, case processing factors and the study thereof vary widely and produce many different results. For instance, in 1982 the NCSC found the following to be evident of case processing:

- Trial court delay is *not* (emphasis added) inevitable;
- Different courts process cases at widely varying speeds with widely varying numbers of dispositions per judge;
- The pace of litigation is *not* (emphasis added) significantly affected by court size, individual caseloads, or the percentage of cases that go to trial;
- The pace of litigation is more the result of "local legal culture" than of court structure, procedures, caseload, or back log. (Carlson, Tan, and Aikman, 1982)

The local legal culture consists of the norms that are evident in the relationship between the judge and the local attorneys. An example of this type of local culture in Kentucky can be described as a judge allowing an attorney to have all of his or her cases heard sequentially so that attorney could leave the courtroom to attend to other matters. Gallas (1986), noted that, "[t]he concept 'local legal culture' was developed from research findings that participants in federal and state courts in the same locale had relatively consensual views of the appropriate length of time to disposition for cases." Using Gallas' information, we can conclude that the relationship between the judge and the lawyer is a major factor that determines the speed to disposition of each case.

Research by Luskin (1986) identified several flaws in other research on case processing time, and suggested key elements to be considered when trying to understand the construction of case processing standards. The questions raised by Luskin are as follows:

- What is the beginning point of a case?
- Should standards include "skip time", which is the time when a defendant is not present due to failing to appear?
- Should standards include other time that is in all technical aspects outside of the control of the judge? These are items such as psychiatric evaluation time.

- How to control for continuances?
- What effect does the type of attorney have on case processing?

In total, Luskin (1986) used 21 different elements to measure case processing. Unlike Carlson's (1982) conclusion in which local legal culture was the primary factor affecting case processing times, Luskin concluded that "[t]he point is that non-structural as well as structural effects suggest ways in which court policies and behaviors may intentionally or unintentionally affect processing times."

Based on these two studies, no conclusive evidence is presented on what can make case processing times faster. However, I would point out that neither concluded that court case flow works better without any case processing standards in place. In the research conducted by Nuebauer, one of the main themes presented deals with the major problem of identifying fair and measurable outputs of the case process, similar to Luskin. However, Luskin and Nuebauer slightly disagree on what should be considered in case processing measurements. Nuebauer (1983) provides 4 guidelines used in his study.

1. the need to focus on appropriate time frames;
2. the necessity of limiting analysis to time under control of the court;
3. simple visual statistical techniques for examining variation; and
4. ways to highlight changes over time.

Nuebauer, concluded "[a]s research on court delay emerges from infancy, a host of subsidiary research problems arise. What one chooses to measure and which statistical measurements one chooses have important consequences for the determination of case processing time." This leads to the thought that for effective policy creation for case processing standards, the policy makers should focus on relevant and measurable goals in order to achieve successful implementation and compliance.

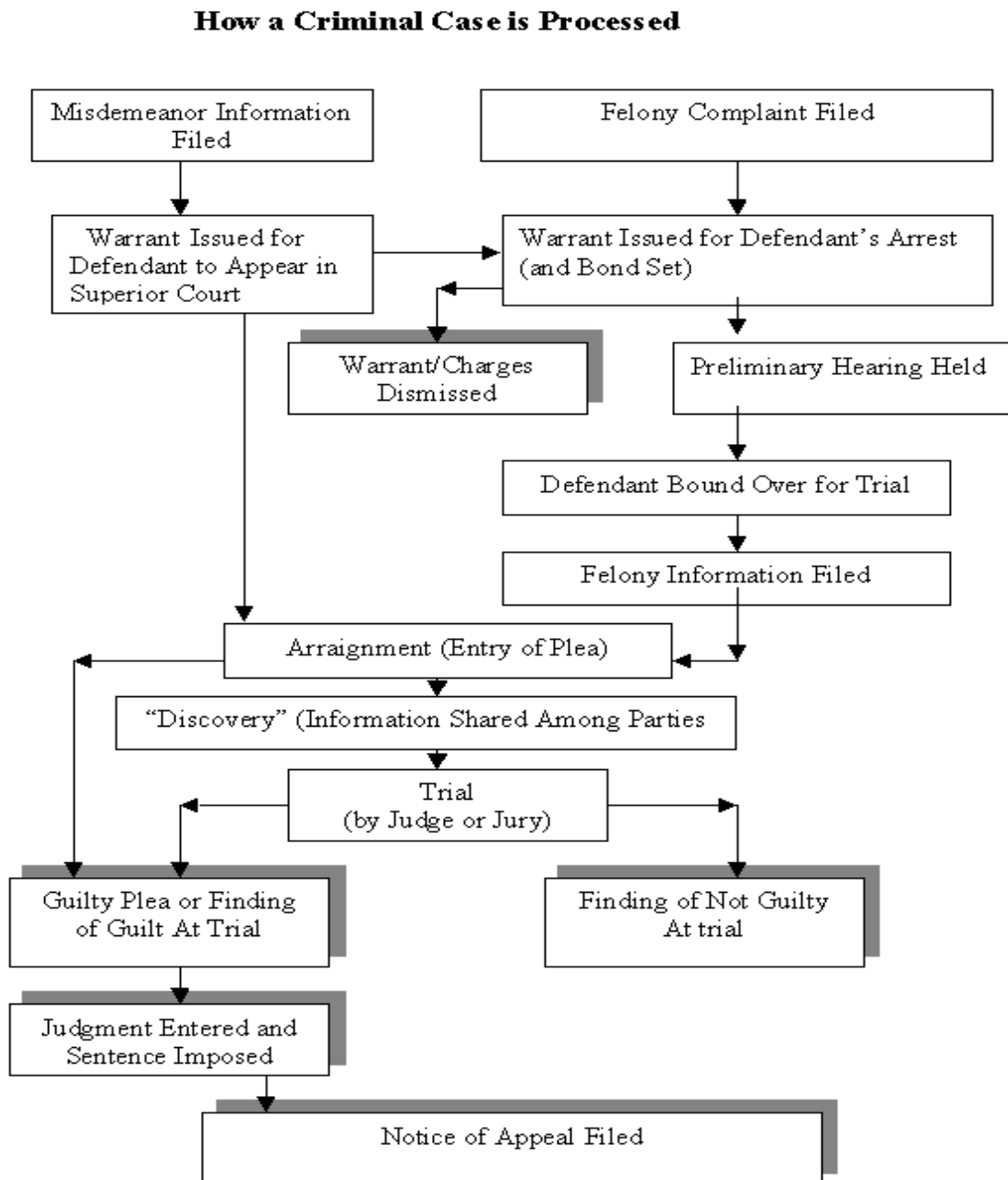
Case Processing Flow Complexities

In order to understand the effect of case processing standards on a criminal case, it is important to first understand the basics behind the process in which a criminal case maneuvers through the criminal justice system. The Kentucky Revised Statutes (KRS 431.060) defines the two different criminal types:

(1) **Felonies** are offenses punishable by death or confinement in the penitentiary, whether or not a fine or other penalty may also be assessed.

(2) **Misdemeanors** are offenses punishable by confinement other than in the penitentiary, whether or not a fine or other penalty may also be assessed.

Figure A: How a criminal case is processed.



("Superior court of," 2004)

In reviewing case processing standards, each type of case has a different time allowed for completion. This is due to the different requirements and outcomes of each type of case. For example, in the KRS cited above felony cases are punishable by death, or incarceration in the penitentiary thus the processing time is increased due to of the type of case and amount of work that goes into preparation and adjudication. Misdemeanor cases on the other hand require less time because less work is normally required to process these types of cases. To illustrate the case flow process, refer to Figure A, which is a representation of a typical criminal case flow diagram for one court.

From Figure A, case flow has a straightforward step-by-step process that it follows. However, many courts are faced with backlogs that have "clogged the system" (Courier-Journal, 2009). Therefore, "(a)s criminal courts become more crowded, prosecutors and judges feel increased pressure to move cases quickly through the system." (Bergan, 2010) However, "[n]ational researchers on state and local court felony case processing have found that trial courts that manage caseload well promote not only higher quality justice but also better use of court, prosecutor and public defender resources than less timely trial courts are able to do." (Steelman, 2009)

A major issue with the development of case processing standards is defining who is in charge of the case flow process. The Michigan Supreme Court issued an Administrative Order to provide clarity on who was in charge and ended up settling on the fact that ". . . the management of the flow of cases is properly the responsibility of the judiciary." Kentucky faces the same concerns in identifying the leader of the process. Information from a Courier-Journal survey of Kentucky judges and county and commonwealth attorneys compiled in 2003 revealed that there was no clear consensus among stakeholders about who has the primary responsibility for progressing criminal cases through the criminal justice system. Below is the data from the Courier-Journal outlining the results from a survey about who is responsible for moving criminal cases through the system:

- 13 prosecutors think it is their job

- 5 prosecutors think it is the judge's job
- 16 judges think it is their job
- 1 judge thinks it is the prosecutor's job

Table 2: How Delay Undermines the Purpose of the Courts and the Criminal Case Process

Purpose	Effects of Delay
1. To do individual justice in individual cases	The American method of ascertaining the facts – the adversary system – is memory dependent. Memory diminishes with time. The longer the period between the commission of an offense and the trial or other case disposition, the less reliable the fact-finding process (and thus the less likely that individual justice will be done in individual cases).
2. To appear to do justice in individual cases	When delays are lengthy, people lose confidence in the courts and question their capacity to find facts and apply the law consistently and fairly. People understand that lengthy delays undermine the courts' capacity to provide justice.
3. To provide a forum for the resolution of legal disputes	When lengthy delays exist, the people involved in a case – the defendant, the victim, the witnesses, and others whose lives are affected by the case – cannot put the case behind them and get on with their lives. Delay in resolving the case prolongs the anxiety and uncertainty that is part of every criminal case.
4. To protect against the arbitrary use of government power	When cases drag on because of attorney unwillingness to proceed or because of the court's inability to schedule and hold a trial promptly, there are several negative effects on the lives of such people as (a) defendants held longer in jail than necessary, or (b) victims and witnesses who must wait longer than necessary for case outcomes.
5. To make a formal record of legal status	The longer a case drags on, the longer the period of uncertainty regarding the defendant's legal status.
6. To deter criminal behavior	To be most effective in deterring both the defendant and others, a sanction must be imposed reasonably close in time to the commission of the offense. Even if a defendant is ultimately found (or pleads) guilty, a sentence imposed long after the fact will be less likely to deter future criminal behavior.
7. To help rehabilitate persons convicted of crime	The potential for rehabilitation diminishes as time passes. Just as with deterrence, the swiftness with which adjudication is made is important if we are serious about trying to rehabilitate offenders when that would serve the interests of society.
8. To separate persons convicted of serious offense from society	Lengthy delays mean that some offenders who will ultimately be sent to the state prison either (a) remain at large in the community or (b) are locally detained while they await trial or plea, and convicted felons may remain in a local jail while they await sentencing and transfer to prison.

Alaska (2009)

According to Steelman (2008), "[a] basic tenet arising from case flow management research in the last twenty years is that the court, and not the other case participants, should control the progress of cases. The court should accept responsibility for case movement from the time that it is filed, assuring that every case has no unreasonable interruption in its procedural progress from initiation through the completion of all court work."

Failure to identify the leading stakeholder in the case process indeed has an effect on the entire process of case management. However, many of the policies currently implemented by states that have case processing measures do not stipulate who holds the primary responsibility of shepherding a case through the system.

A final issue to consider is the purpose of the courts and criminal justice system as a whole and the impact on that system when the complexities of case processing are not properly handled. A very summary of the impact of case processing delays on the justice system comes from an Alaska (2009) review of their case flow management system. Table 2 highlights eight reasons poor case processing has an adverse impact on all the stakeholders in criminal court proceedings.

States with Case Processing Standards

According to data from the National Center for State Courts, there are 39 states that have established some form of case processing standards for criminal trial courts. While not all states clearly explain why they have standards in place, a few do. For example, Alabama started its processing standards using a \$178,000 grant to address a problem with delays in criminal cases (Martin, 1980). Alabama's implementation of case standards was divided into four phases:

- Phase I: Planning and analysis of current case flow and management procedures
- Phase II: Management staff used a survey instrument to gather information from judges and court officials
- Phase III: The data from Phase II was used to form a comprehensive plan for each of the selected pilot locations
- Phase IV: Implementation of the plans developed in Phase III

The phases are clearly and concisely presented, however they lack one key essential element. How and when is measuring conducted after implementation? According to Richard Schauffler of the NCSC, case processing standards are meaningless without any measurement of efficiency. This is consistent with the NCSC overall stance and thus a reason the NCSC developed CourTools. CourTools is a framework for measuring court performance by using a set of ten variables. The CourTools measure that lines up with this assessment is Measure 3. Measure 3 is defined as, "[t]he percentage of cases disposed or otherwise resolved within established time frames."³ Five reasons are provided for why measuring is important:

1. The collected data would show if a court was efficient or not. Thus users of the criminal justice system, as well as administrators, could rely on collected data, instead of perception.
2. The ability to identify where resources should be allocated would become more efficient.
3. Employees would have measures that would allow them to engage on how effective they are and thus become more connected to the court process.
4. The decisions for budget allocation could be matched with data collection.
5. The courts would increase their transparency in operations to the public.

Based on these rationales, it can be argued that case processing standards provide greater meaning than simply stating if a court meets those standards. These processing standards become intertwined with court culture and also spill out into the community. Case processing standards do not have to be the end-all solution for case processing efficiency. However, analysis shows they can be used "to provide an overview of the situation and an assessment that could help spur planning and action aimed at remedying the problems." (Mahoney, 1992)

Analysis and Findings

The findings are presented in three parts as described in the research design section. The first part is a collection of information from the National Center for State Courts and their findings from a series of surveys. The second part addresses the results of my survey of all 50 states to determine general information about why states did or did not implement case processing standards and other impacts to be considered in the implementation or review phases. The final part focuses on how Kentucky courts

³ To view all of the measures with explanation, go to www.courtools.org.

currently rank when the national case processing standards are applied to Kentucky historical data.

National Center for State Courts Data

The NCSC data comes from a report that began in 1984, and was subsequently updated in 1999, 2002, and 2007. The report is the result of a survey that was provided to the court administrators or other designated court personnel in each state. The survey resulted in a response from 41 states. The NCSC approach for collecting data about case processing standards was to include all case types and all types of courts in the survey. An example of case types includes civil, small claims, probate, criminal and appellant. Examples of the types of courts include appeals, civil, family court and trial courts. My research only includes criminal case types in trial courts. Trial courts are the lower courts where the majority of cases are first filed or processed. Criminal case types include cases that are punishable by fine and/or incarceration.

The states vary in how case processing standards were developed. Table 1 contains some recommended case processing standards from two leading associations connected with judicial governance. A few states adopted those national association standards as-is and others decided to develop a state-specific set of case processing standards. Table 3 contains some general overview statistics on how varied the case processing standards are across all participating states. In some situations, state officials believe that courts should take the same amount of time to process a felony case as it does to process a misdemeanor case. In some states the times are relaxed, allowing up to 365 days to process a misdemeanor case, while other states aggressively only allow 30 days to process similar case types. Likewise, with felony cases some states have standards indicating that a felony case should be finalized within 80 days and other states allow a full year.

Table 3: General statistics on states with case processing standards

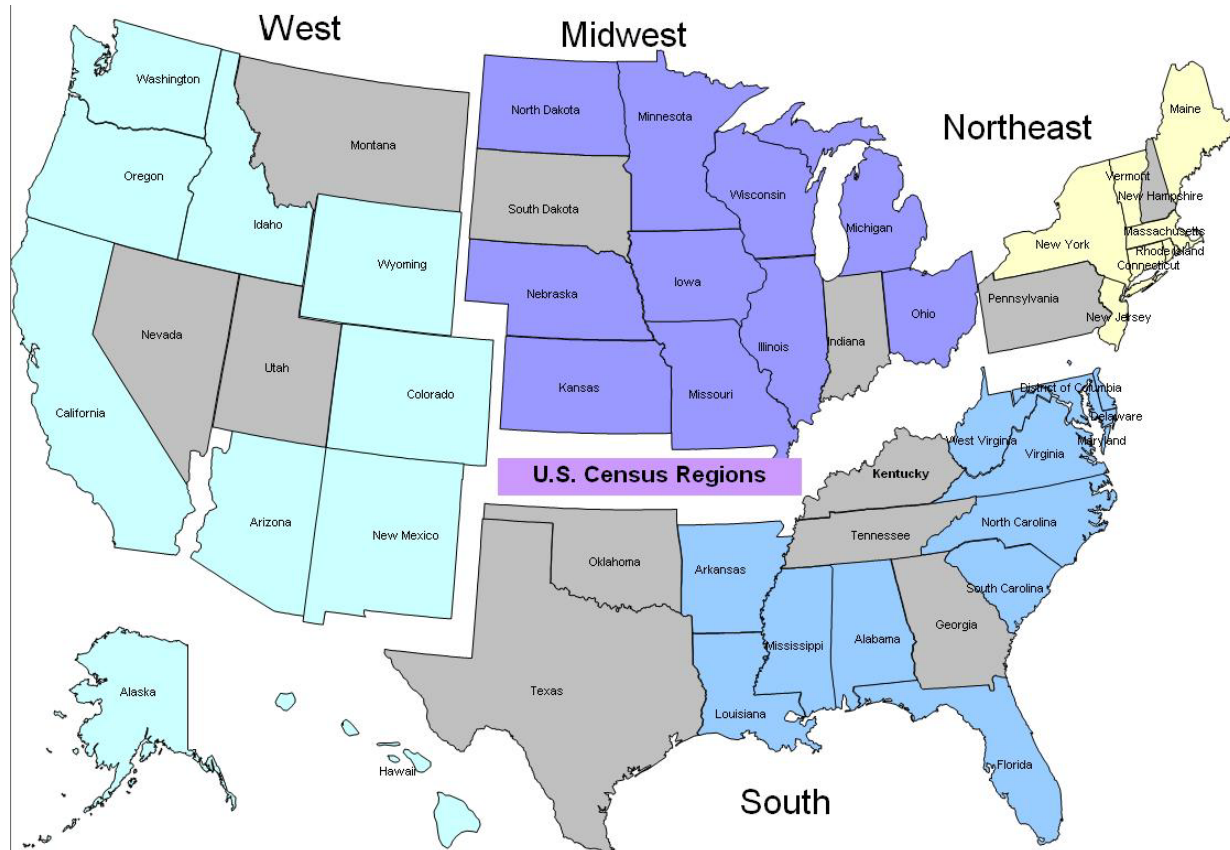
	Felony (Days)	Misdemeanor (Days)
Maximum days allowed	365	365
Minimum days allowed	80	30
Average days allowed	233	136
Median days allowed	180	105
Mode days allowed	180	90

When does the clock begin for tracking case processing times? Some state standards identify the starting point of case processing measuring at arrest and other state standards identify the starting point begins at arraignment or the first court appearance. The difference in start times can be up to several days depending on when the offense occurred and how the jurisdiction schedules court hearings. Further study of state data collection processes may lead to decisions on when to start the clock on case processing. Some data systems, like the one in Kentucky, do not collect arrest information and, thus, would only have the option of calculating time from the initial court appearance. This is neither good nor bad, it just needs to be addressed in order to write clear policy that addresses the starting point for case processing standards.

The NCSC data provided information on 39 states that currently have case processing standards for criminal case types in trial courts. The other 11 states have not implemented case processing standards for criminal case types in trial courts. In order to provide comparable information, the U.S. Census Main Regions were used to categorize the states regionally. The U.S. Census main regions consist of a West, Midwest, South and Northeast region. States that have case processing standards make up the following numbers by census region: Midwest (10), Northeast (8), South (11), and West (10). The states that do not have case processing standards comprise the following numbers by census region: Midwest (3), Northeast (2), South (5), and West (2). This is graphically represented in the Figure B. States within a particular

region shaded in gray indicate the state had no case processing standards. The other shading is to separate the regions into more readable format.

Figure B: Case processing standards status by U.S. Census Main Region
(States shaded in gray have not adopted case processing standards.)



(U.S. Census website, 2009 and NCSC, 2007)

There appears to be some regional patterns among case processing standards. For felony case processing standards the average allotted time is presented in Table 4. The Midwest region has the largest difference with states allowing on average almost 50 days less time than the other regions to process felony cases. States in the South, the region that includes Kentucky, allows an average of 245 days to process felony cases. The average in the South is however, more closely aligned with the national standards recommendation on case processing time.

Table 4: Average Case processing standards by U.S. Census Regions

Region	Type	Total
Midwest	Number of States	10
	Average ⁴ Felony Time (Days)	197
	Average Misdemeanor Time (Days)	162
Northeast	Number of States	7
	Average Felony Time (Days)	245
	Average Misdemeanor Time (Days)	82
South	Number of States	12
	Average Felony Time (Days)	245
	Average Misdemeanor Time (Days)	105
West	Number of States	10
	Average Felony Time (Days)	251
	Average Misdemeanor Time (Days)	160
Number of States		39
Total Average Felony Time (Days)		233
Total Average Misdemeanor Time (Days)		135

(U.S. Census website, 2009 and NCSC, 2007)

For misdemeanor case processing standards, the average allotted time is also presented in Table 4. For misdemeanor case processing standards, the Northeast region is the most aggressive in how quickly states are supposed to process cases. The South region is also fairly aggressive, with a goal that misdemeanor cases be resolved in 105 days or fewer.

Out of the 39 states with case processing standards, 13 states have mandatory requirements. The administration and monitoring of those mandatory requirements vary by state. Some require written reports to be submitted, while others do case samplings. Consequences vary from conferencing with struggling courts to disciplinary actions upon a sitting judge. Wyoming has mandatory participation, however unlike

⁴ Average Felony Time and Average Misdemeanor Time (Days) is defined as the difference between the case filing date and the case disposition date divided by the total number of cases.

the other 12 states with mandatory participation, Wyoming does not have outcome tracking of case processing. This increases the difficulty for reviewing whether a court is compliant with the standards.

There are 26 states with voluntary compliance requirements listed in their case processing standards policy. By voluntary, I mean the court does not have to follow any special rules of processing or meet any performance standards. Eighty percent, or 21, of the 26 states with voluntary participation tracked the outcomes of the case processing standards. The remaining 5 states did not track outcomes. So why did those state officials elect to implement any case processing standards if they are strictly voluntary and are not tracked? The NCSC concludes that states having voluntary participation and tracking do so mainly to help identify areas where efficiency could be improved. The voluntary participation is less frequently used as a means for punitive actions for non-compliance. (NCSC, 2007)

Authorization focuses on the governing body that established and implemented case processing standard rules. For each of the 39 participating states, the authorization came from some type of judicial body. In some cases the authorization came directly from the state Supreme Court, which is typically the highest level of court in the state, and in others the authorization came from a volunteering body of judicial officers. In the majority of the states, whether voluntary participation or mandatory participation, there were no sanctions established for courts that did not meet the standards. Instead, the case processing standards were more like case processing guidelines.

Survey Findings

The survey instruments administered by the author are shown in Appendix A and Appendix B. Unfortunately, the response to the surveys was quite limited. Out of the 39 states with case processing standards, only six survey responses were received and out of the 11 states without case processing standards, only one response was received. The information provided is still judged useful as a qualitative method to determine some pre-implementation considerations, but is not presented as representative of the experiences of all states.

When dealing with pre-implementation information, the respondents were asked to provide information on why their state implemented case processing standards. The responses vary, but can be summed up as follows:

- To provide accountability and increase efficiency in the judiciary.
- To have disposition standards as recommended by the ABA and the National Center for State Courts.
- To implement delay reduction techniques discussed at a national conference.
- To implement change from new progressive leadership.
- To better monitor state performance after creating a newly unified courts system.

The results are interesting, especially the first reason that mentioned accountability. One survey question asked if there was any public opinion about the implementation of case processing standards. None of the responses said they directly measured public opinion, however most said that there was no "perceived" change in how the public felt about the judicial process after implementation of the case processing standards. Therefore, in this case what body would be holding the judicial process accountable? Was it more to the legislative body, other stakeholders like attorneys, defendants or to the judicial branch alone? This is something that should be considered in further analysis of this topic.

Out of the responses, only one responded to the question about the intended consequences of case processing implementation. The others either did not respond or stated that the case processing standards are only guidelines so they had no expectation of consequences. North Dakota's response to this survey question is as follows:

"The intended outcome was to provide notice to judges and litigants what the Supreme Court's expectations are in regard to how quickly decisions should be made. An additional outcome was to provide notice of possible sanctions if a case goes beyond time standards. Finally, to use the Judicial Conduct Commission as a way to force judges to comply with the standards. The first two outcomes have been met. The final outcome has not primarily due to a combined reluctance of presiding judges to refuse to waive cases and to refer individual judge to the Judicial Conduct Commission."

As previously mentioned in the NCSC findings section, few states have sanctions to go along with the case processing standards.

One survey response was provided for a state that currently does not have any case processing standards. The primary reason for that state not implementing case processing standards was 1) lack of a unified judicial system 2) individual jurisdictions develop and implement their own local standards and 3) courts are funded locally. Based on these responses, KY is in a different position, because the judicial branch is 1) unified under laws created in 1976, 2) governed under rules from the Supreme Court or Kentucky Revised Statute and 3) centrally funded by the legislative body.

Kentucky Case Processing Data Compared to National Standards

The final phase of the analysis portion was accessing how information from the Administrative Office of the Courts (AOC) on Kentucky court case processing compares to the national standards. The data were gathered from two ad-hoc reports. The data contain all cases that were disposed during calendar years 2005 thru 2009. The report was organized by county, case types of misdemeanor or felony and contained a statewide roll up. The data were analyzed to determine how Kentucky case processing times compared with the national case processing standards.

To better understand the data set, I will briefly describe how it was derived. All cases in the data set must first have had a disposition date between January 1, 2004 and December 30, 2009. Next, the difference between the filing date and disposition date for each of those cases was calculated and grouped by county and calendar year. This yielded a total number of cases for the county and the total days from filing to disposition for each case. It was important to have a time to disposition for each case because the national standards require a certain percentage of cases to be adjudicated within a certain time frame.

In order to better understand where Kentucky data ranks in comparison to the national standards, we must revisit the figures in Table 1. There are two sets of national standards for misdemeanor cases. The standards can be interpreted as, did the court adjudicate at minimum 90 percent of all of its cases within 30 days and did the court adjudicate 100 percent of its cases within 90 days.

Table 1: National Case Processing Standards
(Copied from previous section for review only)

Criminal	Council Of State Court Administrator & Council Chief Judges (COSCA)	American Bar Association (ABA)
Felony	180 days	90% in 120 days 98% in 180 days 100% in 12 months
Misdemeanor	90 days	90% in 30 days 100% in 90 days

(Viewed 9/13/2009, http://www.ncsconline.org/D_Research/TCPS/Measures/me_2.1.1.htm)

Both national standard measures are used for this review. The COSCA and ABA both require 100 percent of the cases to be adjudicated within 90 days, however the ABA extends its measure to state that at least 90 percent of cases to be adjudicated in 30 days.

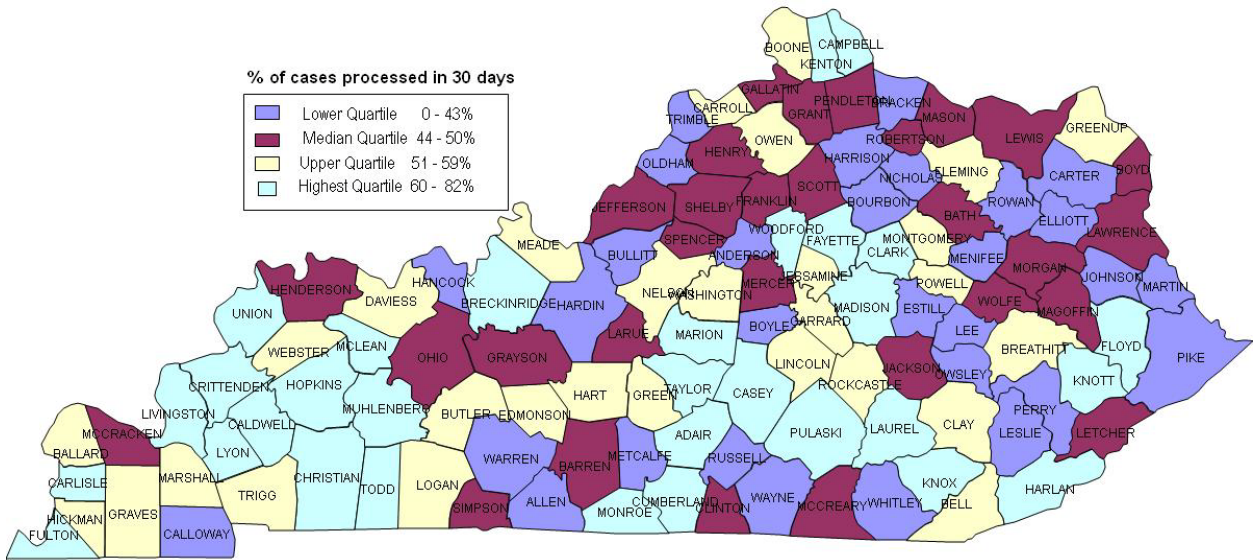
Kentucky data was compared to these two standards and the results are discussed here. Using the 5 years of data provided for Kentucky, no counties met or exceeded the national standards. That means that during the 5 years studied no Kentucky court was able to process, on average, their misdemeanor cases within the 30 or 90 day standards. Bell and McClean County held consistent in adjudicating about 90 percent of their cases within 90 days, but never had a year that would have been in compliance. Hopkins County was the lone county that was able to adjudicate at least 80 percent or more of its cases within 30 days. All other counties fell below that measurement. Hopkins County stayed consistent in the 80 percent range from 2005 until 2008, and after that the numbers dropped down into the 70 percent range of cases being adjudicated within 30 days.⁵ Further analysis should be conducted to determine the cause of the decline. Research to consider could include, but not limited too:

1. Change in the county's case flow process.
2. Change of elected officials.
3. Change of adjusting priorities and responsibilities.

⁵ It should be noted that a major election of almost all Judicial Branch elected officials occurred in 2008.

Still considering the misdemeanor data, a map was designed to provide a visual representation of the differences of how each county compared to the national standards. The data presented in the map was categorized into quartiles based on the ABA standards of adjudicating at least 90 percent of cases within 30 days. (See Figure C)

Figure C – Kentucky standards compared to national standards categorized by Quartile (Misdemeanor, 2005)



The map represents four categories. The first category is called the lowest quartile and it represents all counties that adjudicated between 0 and 43 percent of their cases within 30 days. The second category is called the median quartile, which represents counties that adjudicated between 44 and 50 percent of their cases within 30 days of filing. The next category is the upper quartile and has a range of 51 to 59 percent of counties that adjudicated cases within 30 days. The final category is referred to as the highest quartile. This category has counties that were able to adjudicate between 60 and 82 percent of their cases within 30 days of filing.

As previously discussed no counties in Kentucky achieved the desired goals of the national standards. Looking at the map we also see that at least 75 percent of the counties did not adjudicate at least 60 percent of the cases filed in their court.

The data were also separated by Supreme Court region to provide a different perspective and see if any patterns existed based on that type of categorization. The data stayed consistent across each region. The data tables used for this analysis are not included in the paper since the information would not bring any further discussion on this implementation topic.

The final analysis of the misdemeanor data was performed at the statewide level. This data is presented in Table 5. Since no Kentucky court met the national case processing standard, the entire state view is going to reflect lower than the national standard as well. On average for the five year period studied the range stayed at and average of around 55 percent of the cases being adjudicated within 30 days around roughly 79 percent of cases being adjudicated within 90 days. The usefulness of this data for decision makers is that if Kentucky officials are to consider case processing standards similar to the national standards, there is a definite starting point toward improving.

Table 5: Kentucky Statewide Data for 2005 – 2009 with National Case Processing Standards applied (Misdemeanor)

County	Year	# of Cases	Adjudicated within 30 days		Adjudicated within 90 days	
			Cases	Cum %	Cases	Cum %
Statewide	CY 2005	168,035	90,803	54%	132,030	79%
Statewide	CY 2006	162,757	89,831	55%	129,001	79%
Statewide	CY 2007	167,499	91,168	54%	133,255	80%
Statewide	CY 2008	163,068	89,303	55%	129,363	79%
Statewide	CY 2009	152,031	82,326	54%	119,542	79%

Similar to the misdemeanor study of Kentucky data compared to the national standards, the felony case data for Kentucky was compared. Again, referring back to Table 1, the national standards for felony cases have two sets for comparison. The COSCA standards require 100 percent of cases to be adjudicated within 180 days. The ABA standards have three categories; 1) adjudicating 90 percent of cases within 120 days, 2) 98 percent within 180 days and 3) 100 percent of cases within 12 months. For

The next category is the upper quartile and has a range of 43 to 54 percent of counties that adjudicated cases within 180 days. The final category is referred to as the highest quartile. This category has counties that were able to adjudicate between 55 and 98 percent of their cases within 180 days of filing.

Personal knowledge of the data collection process for Kentucky enables me to provide other relevant information for this discussion. While Kentucky may not compare favorably to the national standards, there are some key factors that should be mentioned that might explain part of the difference. Most states with case processing standards also have definitions of when a case is filed and disposed along with how to handle "skip time"⁶ between those two periods. While the business flow can be properly handled, this is not always reflected in the data collection systems. When attempting to gather the process for handling "skip time", most state officials responded that data could be provided on how many defendants had a failed to appear, but did not track when that failure to appear occur and ended. Thus, "skip time" was not built into their data collection process. Likewise with the Kentucky data set, case-processing calculations did not account for "skip time".

Another factor to consider for felony cases is a change in legal representation. A judge is required to allow a new legal team to properly prepare the case for court proceedings. This however, does not start the time frame over and creates another avenue for "skip time" to affect the final processing time that is used in the comparison to national standards. This situation is not unique to Kentucky and should be noted that this same scenario would affect all states.

⁶ "Skip time", is the time when a defendant is not present due to failing to appear. It can also be broadened to consider any time in which a case has begun, but no proceedings are occurring because of some external issue that causes the case to halt.

Other States Case Processing Outcomes

In an attempt to compare the results from Kentucky case processing with other states, a review of different reports were analyzed from different state court websites. The reports available vary state by state.

Wisconsin has the following case processing standards: 90% of felony cases and 95% of misdemeanor cases processed within 180 days. Wisconsin makes a report available titled, "Age At Disposition Summary Statewide Report", which lists the measurements. According to the report, in calendar year 2009, there were 61% of the felony cases and 81% of the misdemeanor cases cleared in the allotted time. So on a statewide measurement neither misdemeanor cases nor felony cases are meeting the state standards. I did not find anything listed that explained any steps being taken to bring the case processing times into compliance.

Alaska has the following case processing times, as of 2000.

Table 6: Case processing times for Alaska Trial Courts (Alaska, 2010)

	% CLEARANCE RATE		
	75%	90%	98%
FELONY COMPLETIONS	120 Days	210 Days	270 Days
MISDEMEANORS	75 Days	120 Days	180 Days

However, the annual report that is produced by Alaska only contains information for the Supreme Court and not for the trial courts. Therefore, there is no way to extrapolate if Alaska is performing better or worse than Kentucky for case processing.

Vermont's information is similar to that from Alaska. Vermont has case processing standards for misdemeanors ranging from 9 weeks to 18 weeks for disposition. For felonies the case processing range is 18 weeks to 12 months. Vermont makes all of their reports available via the web at <http://www.vermontjudiciary.org/JC/Shared%20Documents/Forms/AllItems.aspx>, however the reports lack the necessary case breakdown to perform any analysis of whether the standards are being met or not.

After reviewing about a dozen additional state sites, a pattern emerged that the data is not available in an easily consumable method for the public. It is up to state officials to determine if case processing data is made available via the web or requiring the public to go through the open records request process. Unfortunately, there was not enough data available to compare the pattern of Kentucky case processing to other states at this time.

Items to Consider in a Kentucky Case Processing Standards Policy

Should KY implement case processing standards, a variety of considerations need to be addressed to ensure fairness, responsiveness to case delay, and an attainable measure that does not adversely affect the criminal justice process. A policy implementation should at minimum consider these elements.

- I. Authorizing Body**

The authorizing body who established the standards in over three-quarters of the states that have standards was the Supreme Court. Although not directly stated, this may be due to the fact that the Supreme Court, or court of last resort, is the highest court in most jurisdictions. Based on the purpose of case processing standards to reduce delays in court cases it makes sense that Kentucky follow this model.
- II. Separation of measures for different case types (i.e. felony and misdemeanor)**

Ensuring that each case type has its own standard allows for the proper case flow to occur. As previously mentioned some case types are more complex than others and there is an expectation that some will conclude sooner than others. This should be duly reflected in the standards.
- III. Starting Point**

This is to ensure that all users of the system have a clear understanding of when the process begins whether at arrest or at first court appearance. In similar articles on this topic by the Courier-Journal, some stakeholders were confused on when a particular event was considered starting. This caused confusion on when an expected decision should be reached.
- IV. Standards Model**

National case processing standards have been adopted as-is by 13 states, while officials in 26 states have developed their own measure of standards. No conclusive information was drawn on which method is better and most states did not keep specific statistics to measure the before and after effects of implementation. Kentucky would be wise to establish a purpose for implementation and then build a model based on that purpose.
- V. "Skip Time"**

For more accuracy in reporting and acceptance of the standards, Kentucky should address the handling of "skip time" in a more formal manner. This could include new rules to handle for continuances from attorneys in order to improve in the court case management system and

address delays caused by defendants who fail to appear.

VI. Designating the Leader of the Process

Kentucky officials should establish in its policy the authorizing stakeholder charged with keeping a case moving and ultimately responsible for its processing time. As mentioned in the 2003 survey by the Courier-Journal, there was confusion about who had the responsibility of moving the case along.

VII. Measurements of Compliance

Few states have ongoing measures of compliance in place and even fewer have disciplinary sanctions in place. According to Richard Schaffler, standards and measurements go hand-in-hand. Kentucky should include processes for how individual courts as well as court administrators will be able to monitor compliance and react to repeated failure to meet standards.

Conclusions

Case processing standards exist because many courts were seeking methods to address the delays in the timely processing of criminal cases. The goal of case processing standards is to create a guideline to expedite the movement of cases from arraignment to adjudication. Several factors have been presented about how case processing standards have been implemented and measured over the years. Major factors reviewed include the impact of local court culture, how to define and properly handle "skip time," variations in case processing standards by state and U.S. census region, the public impact of an inefficient judicial system and theories about what impacts case processing efficiencies.

Each area presented unique concerns and challenges for implementation purposes. While all states like to start at the beginning for creating policy, Kentucky has the example of other states to use in developing its own policy. With 39 other states having implemented criminal case processing standards for trial court, Kentucky has an opportunity to select from policy elements already in use.

A final thought on this study is the fact that I was unable to gather direct information from any state official, or from the information gathered by the NCSC to definitely state that case processing standards are of value to the court systems. While, on paper, the idea sounds like a home run to implement, however the actual history of implementation has not produced statistical results confirming overall success or failure.

Appendix A - Case Processing Standards Survey

Hello, my name is John Dobson, I am currently pursuing my Masters of Public Administration at the University of Kentucky. I also have served in various roles at the Kentucky Administrative Office of the Courts for the last 14 plus years. As part of my thesis, which is called a Capstone at UK, I will be addressing the following topic:

What issues should Kentucky consider prior to revising its policy on case processing standards for the judicial system? A comparative and pre-implementation analysis will be conducted to determine the factors that should guide this policy decision.

Let me start by saying, thank you in advance for taking this opportunity to share your insight into this topic. This survey will be used to provide the qualitative, and quantitative depending on the data you collect, aspects of my capstone. The survey should take approximately 10 minutes to complete, plus additional time if you have reports that you can provide.

If you would like to contribute extra thoughts outside of this survey, please send those thoughts to john.dobson@uky.edu, by fax at 678-550-2516 or by phone at 859-982-9322.

There are 14 questions in this survey

Your Information

This is general information about the person taking the survey.

1 What is your position? *

Please write your answer here:

You can enter a generic title for this question. Something like Administrator, Judge or Manager.

2 Is your position an Elected position? *

Please choose **only one** of the following:

- Yes
- No

State Information

Please provide information about your State.

3 What state do you represent? *

Please write your answer here:

You may enter the full name or abbreviation.

4 Does your state have a unified judicial system? *

Please choose **only one** of the following:

- Yes
- No

For this question a Yes means all of your trial courts operate under the same sets of laws; they are all administered under one single authority (ie. Supreme/Superior Court) or have a state statute unifying the judicial system.

5 Does your State have the statute, regulations or ordinances that govern case processing standards available online? If yes, would you provide the link. If not, could you fax or email a copy using the contact information provided. *

Please choose **only one** of the following:

- Yes
- No

Make a comment on your choice here:

6 Does your State impose any sanctions against the courts that do not meet the standards? If yes, please explain those steps. *

Please choose **only one** of the following:

- Yes
- No

Make a comment on your choice here:

Results/Outcome Information

These are questions about the outcome of case processing standards.

7 List three (3) key reason(s) that led your state to implement case processing standards. For example, was this in response to media coverage and public pressures, recommendation from National Center for State Courts or some other event. *

Please write your answer here:

8 Are there any studies, internal or external, that indicate the effects of implementing case processing standards for your State? If yes, would you please email the results to john.dobson@uky.edu. If they are in paper format, could you please fax to 678-550-2516. *

Please choose **only one** of the following:

- Yes
- No

9 If no, do officials in your State plan to objectively measure the results of implementing case processing standards? If so, how and when do you expect that to happen?

Please write your answer here:

10 Did your elected/appointed officials embrace the standards or was there resistance? Explain for each type of elected official response. For example judges had ..., or the legislators had *

Please write your answer here:

11 Has implementing case processing standards had an impact on the public's opinion of the judiciary? If yes, in what way? *

Please write your answer here:

12 Have there been any unintended consequences from establishing case processing standards? For instance, more cases being overturned on appeal, more dismissals, etc. *

Please write your answer here:

13 Do all court cases have a predefined work flow diagram/chart? An example is a diagram that explains how each case type moves from one point to the next in the court system. If so, would please send a copy using the contact information provided. *

Please choose **only one** of the following:

- Yes
- No

14 Based on the implementation of case processing standards, what impact did that have on staffing requirements? Was additional staff needed, reduced, or stayed the same? Please explain how your State made that decision. *

Please write your answer here:

Please submit by 2010-03-19 00:00:00

Please fax your completed survey to: 678-550-2516 Submit your survey.

Thank you for completing this survey.

Appendix B -- No Case Processing Standards

You are receiving this survey, because according to the National Center for State Courts, your State currently does not have case processing standards for courts classified as Criminal Trial courts. If this is not the case, please contact me and do not complete this survey.

This survey is available to be completed online by going to the short URL of <http://fwd4.me/GR6>.

Hello, my name is John Dobson, I am currently pursuing my Masters of Public Administration at the University of Kentucky. I also have served in various roles at the Kentucky Administrative Office of the Courts for the last 14 plus years. As part of my thesis, which is called a Capstone at UK, I will be addressing the following topic:

What issues should Kentucky consider prior to revising its policy on case processing standards for the judicial system? A comparative and pre-implementation analysis will be conducted to determine the factors that should guide this policy decision.

Let me start by saying, thank you in advance for taking this opportunity to share your insight into this topic. This survey will be used to provide the qualitative, and quantitative depending on the data you collect, aspects of my capstone. The survey should take approximately 10 minutes to complete, plus additional time if you have reports that you can provide.

This survey is available to be completed online by going to the short URL of <http://fwd4.me/GR6>.

If you would like to contribute extra thoughts outside of this survey, please send those thoughts to john.dobson@uky.edu, by fax at 678-550-2516 or by phone at 859-982-9322.

There are 9 questions in this survey

Your Information

This is general information about the person taking the survey.

1 What is your position? *

Please write your answer here:

You can enter a generic title for this question. Something like Administrator, Judge or Manager.

2 Is your position an Elected position? *

Please choose only one of the following:

* Yes

* No

State Information

Please provide information about your State.

3 What state do you represent? *

Please write your answer here:

4 Does your state have a unified judicial system? *

Please choose only one of the following:

* Yes

* No

For this question a Yes means all of your trial courts operate under the same sets of laws; they are all

administered under one single authority (ie. Supreme/Superior Court) or have a state statute unifying the judicial system.

Results/Outcome Information

5 List three (3) key reason(s) why your state has not implemented case processing standards. *

Please write your answer here:

6 Are there any studies, internal or external, that indicate the effects of implementing case processing standards that has kept your State from implementing these types of standards? If yes, would you please email the results to john.dobson@uky.edu. If they are in paper format, could you please fax to 678-550-2516.

Please write your answer here:

7 Do you think implementing case processing standards would have an impact on the public's opinion of the judiciary? If yes, in what way? * *

Please write your answer here:

8 Do all court cases have a predefined work flow diagram/chart? An example is a diagram that explains how each case type moves from one point to the next in the court system. If so, would please send a copy using the contact information provided. *

Please choose only one of the following:

* Yes

* No

9 How do you currently determine staffing needs for each jurisdiction? *

Please write your answer here:

Please submit by 2010-03-15 00:00:00

Please fax your completed survey to: 678-550-2516 Submit your survey.

Thank you for completing this survey.

Appendix C - Acronym Meanings Found In This Research

ABA	American Bar Association
AOC	Administrative Office of the Courts
CCJ	Council of Chief Judges
COSCA	Council of State Court Administrators
KBA	Kentucky Bar Association
KPI	Key Performance Indicators
KY-AOC	Kentucky - Administrative Office of the Courts
LBA	Louisville Bar Association
NCSC	National Center for State Courts

Appendix D - Kentucky data compared to national standards (Misdemeanor)

- Section intentionally left blank due to length of spreadsheet. Available upon request.

Appendix E - Kentucky data compared to national standards (Felony)

- Section intentionally left blank due to length of spreadsheet. Available upon request.

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