



# How will You Address COVID-caused Criminal Case Backlogs? New Research and Best Practices may Help

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*NAPCO Webinar Series*

## Presenters



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**Gordon Griller**  
Executive Director, NAPCO  
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**Hon. Sedrick Walker**  
Presiding Judge

County Criminal Courts of Law  
Harris County TX (Houston)

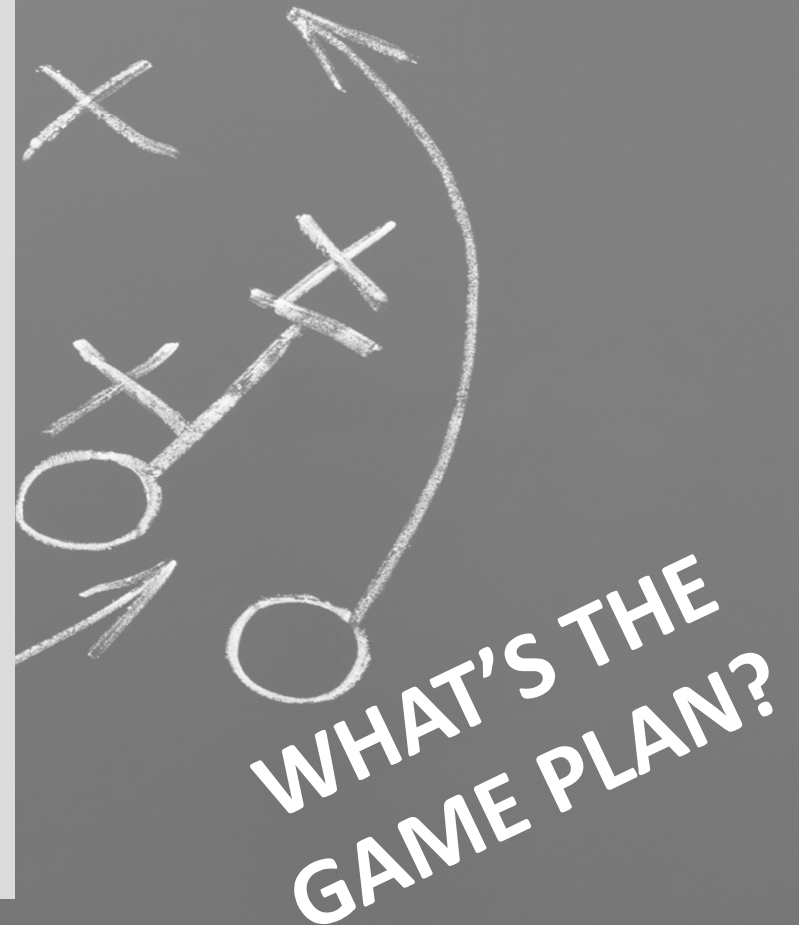


**Ed Wells**  
Court Manager

**Paula Hannaford-Agor**  
Director, NCSC Center for Jury Studies  
Williamsburg, VA



1. **NCSC New Research... Criminal Case Processing**
2. **Common Case Management Problems and Proven Solutions YOU can apply as a...**
  - Individual judge involving your docket
  - PJ / CEO regarding systemic improvements
3. **Limited Jurisdiction Courts: Best Practice Advice**
4. **General Jurisdiction Courts: Best Practice Advice**
5. **Dealing with COVID-caused JURY TRIAL BACKLOGS**
6. **Audience Q & A**



## New Research

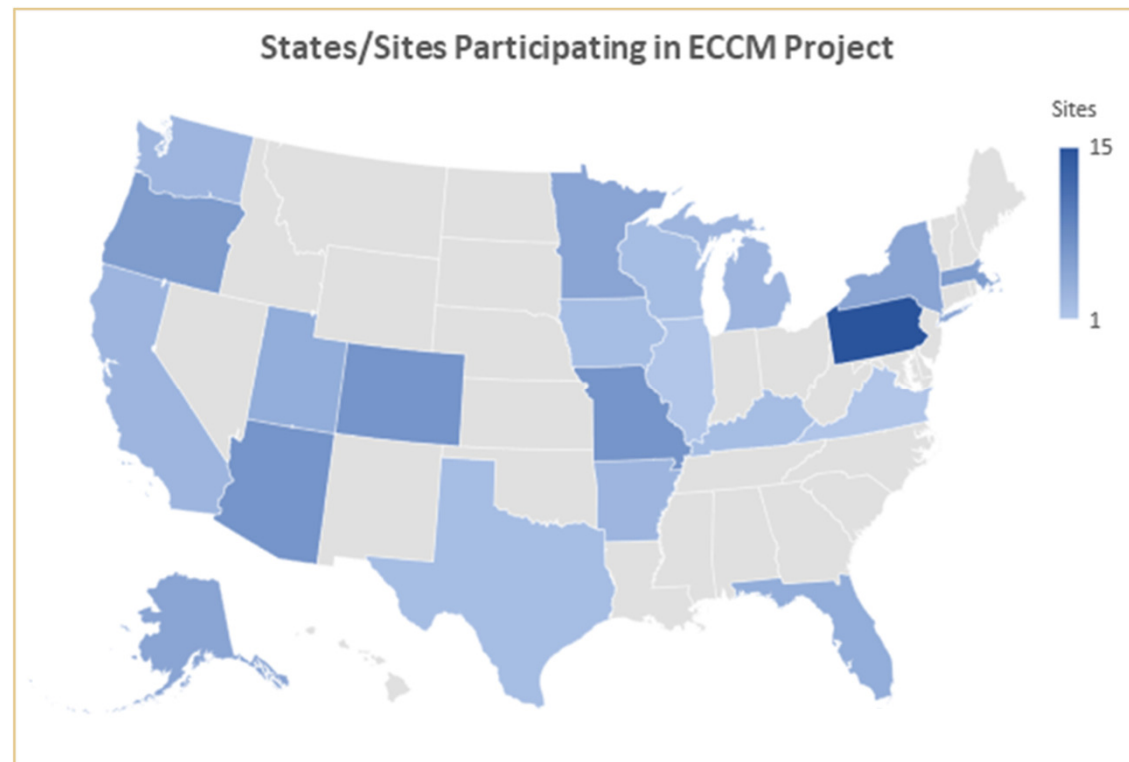
### Diagnosing & Improving Criminal Case Processing...



- 90+ state trial courts in 21 states
- Multiple types of court structure (e.g., one and two tier)
- 350K felony cases and 1M misdemeanor cases
- Recent 12-month period of dispositions
- Standard set of data elements and definitions

# ECCM Participating Sites

- Alaska - 5 Counties
- Arkansas - 3 Counties
- Arizona - 5 Counties
- California - 3 Counties
- Colorado - 7 Counties
- Florida - 2 Counties
- Iowa - 2 Counties
- Illinois - 1 County
- Kentucky - 2 Counties
- Massachusetts - 6 Counties
- Michigan - 3 Counties
- Minnesota - 5 Counties
- Missouri - 6 Counties (+ St. Louis)
- New York - 5 Counties
- Oregon - 6 Counties
- Pennsylvania - 15 Counties
- Texas – 2 Counties
- Utah - 4 Counties
- Virginia - 1 County
- Washington - 3 Counties
- Wisconsin - 2 Counties



## 18,000,000 Criminal Cases Resolved Nationwide Each Year\*

**National  
caseload  
estimate**

**5,000,000  
felonies  
resolved, ~40 per  
minute**

**13,000,000  
misdemeanors  
resolved, ~100  
per minute**

\* Effective Criminal Case Management Project (2020)

## Backlog and Model Time Standards\*

**Backlog:** number of cases in the inventory that are older than the time standard set by the Court

		Percent of Cases Disposed Within:			Mean # days	Median # days
		90 days	180 days	365 days		
<b>Felony</b> 75% within 90 days 90% within 180 days 98% within 365 days	<b>Felony</b>	30%	57%	83%	256	153
	<b>Misdemeanor</b>	55%	77%	91%	193	85
<b>Misdemeanor</b> 75% within 60 days 90% within 90 days 98% within 180 days						

Nationally, the average time to disposition is 256 days for felony cases and 193 days for misdemeanor cases, with wide variation among courts.

\* Approved in 2011 by: COSCA, CCJ, ABA, NACM



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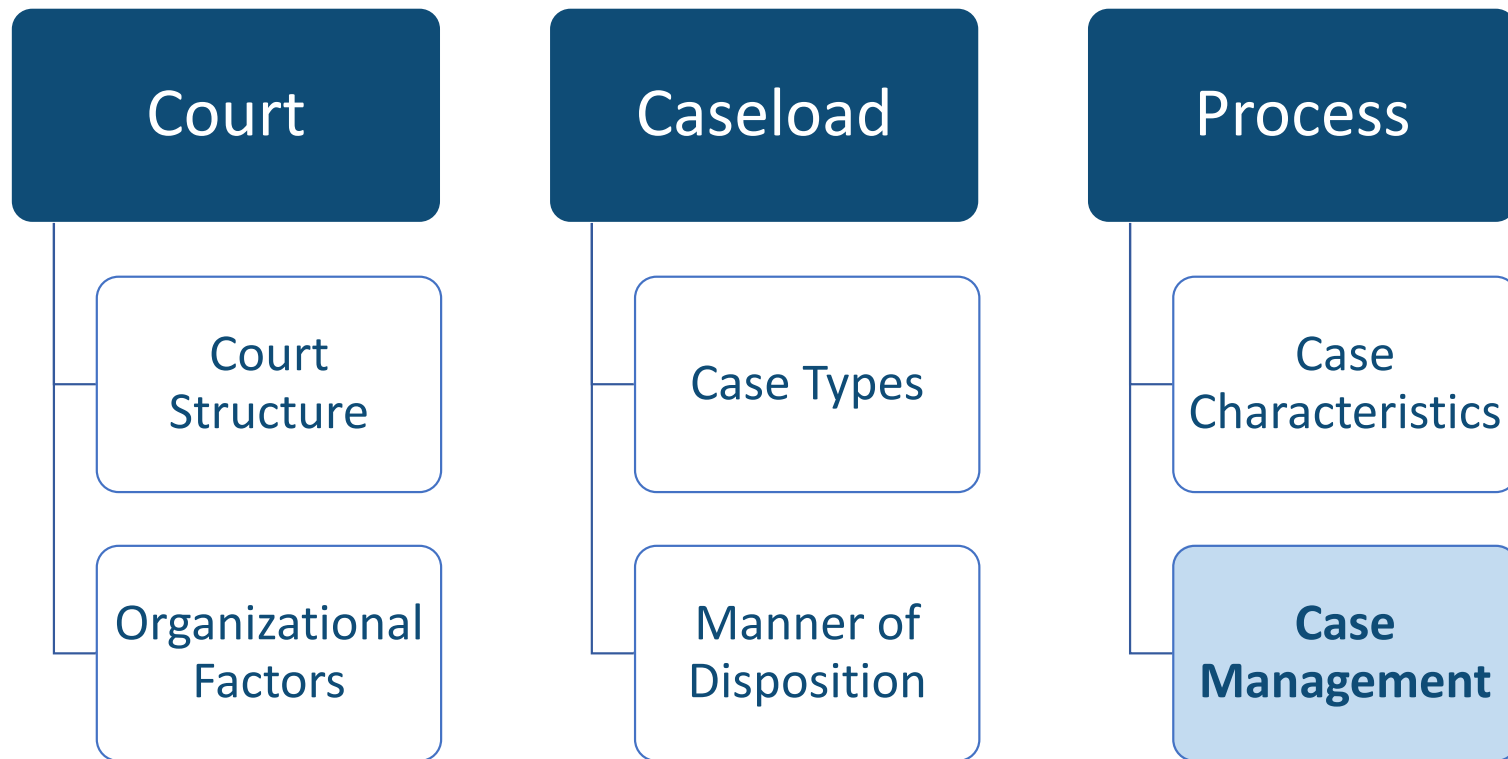
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# What Explains Timeliness?



## Major Findings

- Courts have much in common in the work they have to do, despite talk of differences
- Conventional wisdom challenged
- Primary drivers of CPT are number of continuances and number of hearings
- More timely courts better maintain control over scheduling
  - Reduce number of continuances and resolve cases with fewer hearings
  - Reduce time an additional continuance or hearing add to schedule
- *Why* some courts are able to resolve cases in tighter timeframes relates to case management practices

**Common  
Problems &  
Causes**

## **CRIMINAL CASEFLOW DIFFICULTIES**

### **PROBLEMS**

Discovery delays  
Unprepared lawyers  
Numerous continuances  
Complicated scheduling  
Meaningless hearings  
Little analytical capacity  
Limited team spirit



### **CAUSES**

Lax pretrial practices  
Minimal lawyer accountability  
No firm continuance policy  
Little judicial uniformity  
Focus is case status, not resolution  
Minimal useful caseflow data  
War of the parts against the whole

# EARLY COURT CASE OVERSIGHT

## Individual Judge Actions

- Prompt motion rulings
  - Oral/written tracks
  - Swift in-limine rulings
  - Motion cut-off
- Case-related questions
  - How old is it?
  - What's happened to date?
  - What must happen next?
  - By when?

## PJ/CEO Systemic Actions

- Identify and correct delays in arrest reports, witness, forensic data
- Encourage realistic charging
- Promote early discovery exchange
  - Push e-discovery
  - Champion a disclosure focus
- Urge firm plea cut-off points

# FIRM, CREDIBLE PRETRIAL EVENTS

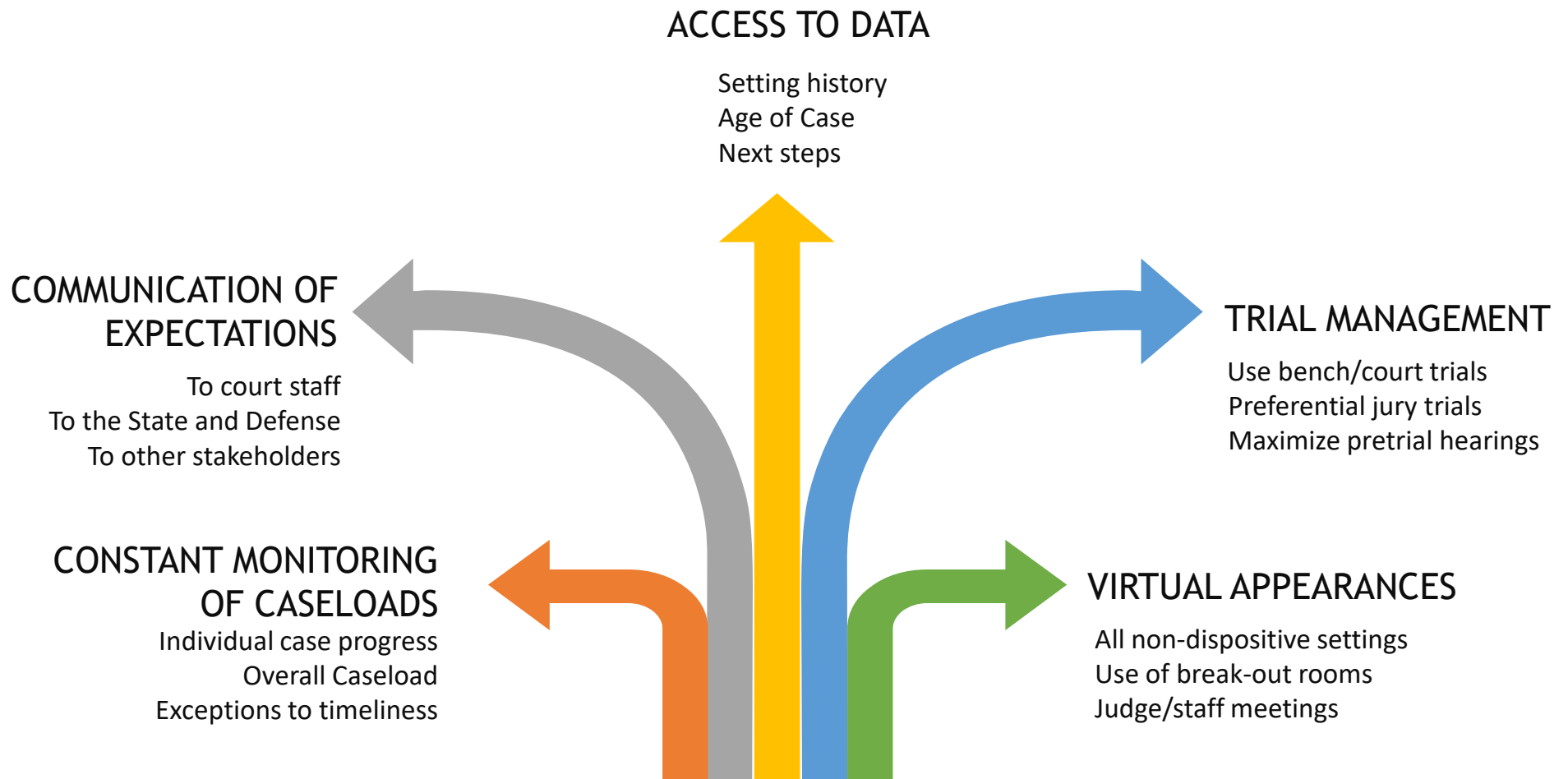
## Individual Judge Actions

- Touch a case sparingly
  - Utilize case mgmt. orders
  - Follow discovery deadlines
  - Clear pretrial expectations
- Employ criminal settlement conferences as possible
- Limit continuances
  - To the time required
  - Uniformity among judges

## PJ/CEO Systemic Actions

- Mgmt. staff monitor overall case movement
- Firm rule-base continuance policy
  - Track continuance data by judge, lawyer (party), length, reasons for requested delay
  - Make it more attractive to practice competently than incompetently
- Create Criminal Justice Coordinating Council to focus on needless delays

# LIMITED JURISDICTION COURT BEST PRACTICES ADVICE



# GENERAL JURISDICTION COURT BEST PRACTICES ADVICE

## SCREEN OUT CASES LIKELY TO SETTLE

Apply differentiated case management  
Rule on motions early and promptly  
Use nonjudicial staff to spark lawyer preparation

## RELY ON PRETRIAL DEADLINES

Create a culture of predictability  
Make events meaningful  
Avoid a clerical churn of cases

## IMPLEMENT FIRM PLEA CUT-OFF POLICIES

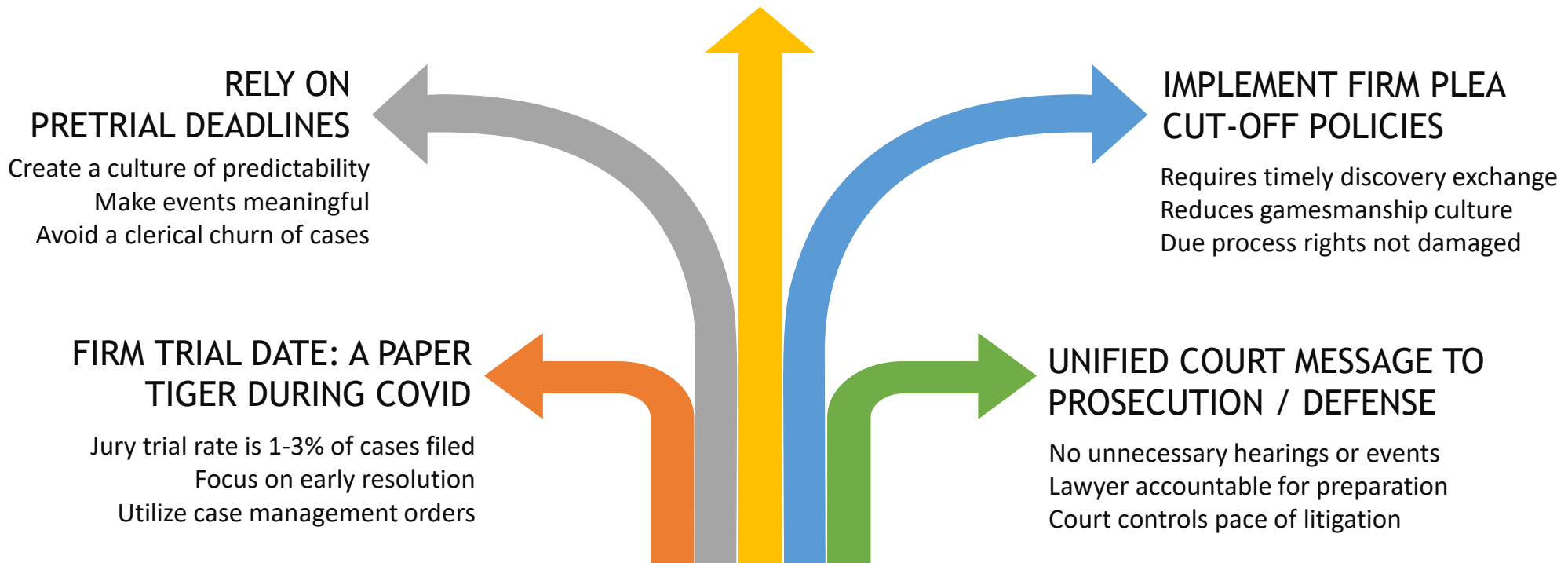
Requires timely discovery exchange  
Reduces gamesmanship culture  
Due process rights not damaged

## FIRM TRIAL DATE: A PAPER TIGER DURING COVID

Jury trial rate is 1-3% of cases filed  
Focus on early resolution  
Utilize case management orders

## UNIFIED COURT MESSAGE TO PROSECUTION / DEFENSE

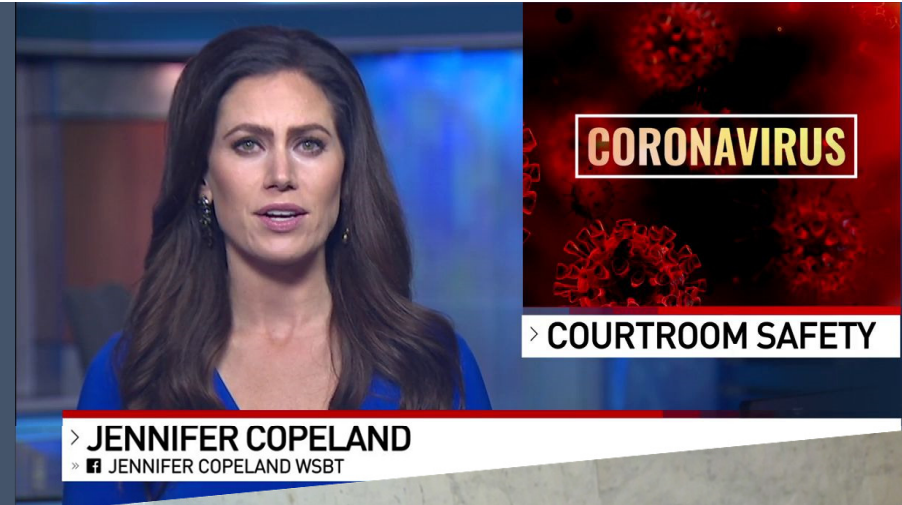
No unnecessary hearings or events  
Lawyer accountable for preparation  
Court controls pace of litigation





# Jury Trial Backlogs

- Projected In-person Jury Re-openings
- Legal Issues and Challenges for Court Leaders
- Advice on Juries and Jury Trials



## Projected 2021-22 Phases for In-Person Criminal Jury Trials

Phase	Time Period	Jury Trial Activities
High positivity; Continued virus spread. Regional pockets of reduced positivity in late-Feb. in limited regions. Schools begin to cautiously reopen	Q1 2021 January - March	Lockdown continues in high-risk regions. CR jury trials deferred. Jury re-starts occur in late-Feb. to mid-Mar. on limited basis in some trial courts where virus has subsided (HI; AK; VT)
Lower positivity rates. Reduced virus spread. Questions remain about viability of vaccine (vaccine prevents serious illness, but not protection against contracting the virus)	Q2 2021 April - June	Limited trial starts using high-level of courtroom precautions, including: <ul style="list-style-type: none"> <li>✓ Social distancing; masks required</li> <li>✓ Deep cleaning continues in courts</li> <li>✓ Juror screening remains difficult</li> <li>✓ Backlog cases triaged</li> </ul>
Herd immunity by the end of summer. (Dr. Fauci prediction)	Q3 2021 July – September	Increased trial starts. Significant jury pool problems continue. Additional CR judges – retired, pro tem, CV trial judges, etc.
“Consumer, voluntary” normalcy occurs by end of 2021. (Dr. Fauci prediction) <b>Jury trial normalcy delayed to mid-late 2022</b>	Q4 2021 October - December	CR backlogs somewhat reduced. Increased resources for CR trials continue into 2022. <b>Jury trial normalcy delayed to mid-late 2022</b>

## Legal Issues & Challenges

- ✓ Grand juries: challenges regarding secrecy; ability to assess credibility
- ✓ Petit juries: issues regarding risks vs constitutional right to fair trial and confronting witnesses (wearing masks)
- ✓ *Constitutional Considerations* are outlined in a CCJ/COSCA Rapid Response Team monograph concerning speedy trial, public trial, fair cross section of jurors, impartial jurors, the Confrontation Clause, and grand jury secrecy. The monograph is available at:  
[www.ncsc.org](http://www.ncsc.org)  
[www.napco4courtleaders.org](http://www.napco4courtleaders.org)



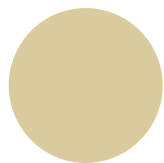
- **Expect legal challenges...if you wait the backlog will only get worse.**
- **Don't let absence of clear legal precedent prevent modified procedures.**
- **Make a clear record for use of modified procedures for appellate court purposes.**





# Advice on Juries / Jury Trials

- Priorities are the safety of all participants and a just outcome. Without rigorous public health compliance, a jury trial is a potential “super spreader event.”
- Provide COVID protections to all in the courtroom and STRICTLY enforce COVID protocols
- Explain safety measures to the all parties in advance
- Consider selecting alternate jurors
- Livestream proceedings to provide public access
- Develop a “Plan B” to deal with instances where a trial participant tests positive for COVID or exhibits symptoms
- Control timeliness of trial
  - Limited voir dire
  - Limited opening and closing arguments



Next NAPCO Webinar:  
Thursday, February 18, 2021 – 3 p.m. EST

*Judicial and Court Security: Lessons Learned  
in the Time of COVID and Domestic Terror*

<https://napco4courtleaders.org/>

