



# Caseload Highlights

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## Achieving Timely Resolution for Criminal Appeals in State Courts

### Why Does Timeliness Matter?

Public confidence in state appellate courts is influenced by the ability of the justice system to detect and correct errors in trial court decisions and to provide fair, consistent, and timely resolutions to all appeals. To investigate the extent to which state appellate courts are meeting these goals, the NCSC collected data from all 143 state appellate courts with criminal jurisdiction for appeals resolved in 2010.<sup>2</sup> This report highlights timeliness and examines that issue through the lenses of case type, level of review, and appellate court structure.

Appellate courts must continually strive to administer quality justice efficiently. The expeditious resolution of appeals provides appellants or petitioners with a timely decision. Without it, the public perception will be that “inefficiency and delay will drain even a just judgment of its value,”<sup>3</sup> and create additional expense for the appellants and taxpayers. The ability to administer both quality and efficiency is affected by resources, rules, procedures, legal culture, and court structure. For example, appellate courts able to resolve appeals more quickly may accomplish this through delegation of certain aspects of their workload to law clerks and staff attorneys. Additionally, appellate courts operate within different administrative structures, leading to varying publication policies, rules on petitions for review, and filing deadlines that impact their ability to accomplish expedient resolution of appeals.

To represent the timeliness of appellate cases, the median is the best measure of central tendency. The median is the midpoint, meaning that half of the cases are above the median and half are below. This is a better measure than the average, which can be misleading if there are extreme high or low values. Unlike the average, the median is impervious to the influence of a small number of very old cases that may make courts appear to process appeals more slowly than they actually do.

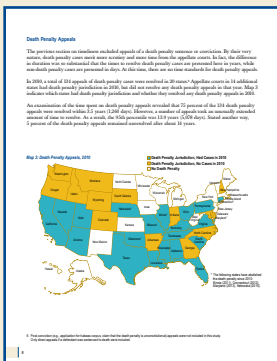
Across all appellate courts with criminal jurisdiction, half of all non-death penalty criminal appeals were resolved within 297 days – just under 10 months. A disaggregation of this time reveals that the median time to file the court record and transcripts was just over 2 months (69 days). Appellants/petitioners required nearly an additional 3 months (median of 81 days) to draft and submit appellate briefs. The median time for the court to resolve an appeal after submission of all briefs and documents was 3.5 months (107 days).

### What's Inside:

#### Appeals Reviewed on the Merits



#### Death Penalty Appeals



1 The authors gratefully acknowledge Anne Gallegos, James Green, Martha Rozsi, Shauna Strickland, and Deborah Smith for their valuable contributions.  
 2 For a fuller description of the methodology and dataset, see Waters, Gallegos, Green & Rozsi (July, 2015). *Criminal Appeals in State Courts*. Bureau of Justice Statistics. Bulletin NCJ 248874.  
 3 Burger, “What’s Wrong with the Courts: The Chief Justice Speaks Out,” *U.S. News & World Report* (vol. 69, No. 8, Aug. 24, 1970) 68 (address to the ABA meeting, Aug. 10, 1970).

## National Model Time Standards

While 40 percent of the states had state-specific appellate time standards for criminal appeals in place in 2010, a set of national *Model Time Standards for State Appellate Courts (Time Standards)* was released in 2014.<sup>4</sup> These standards are the result of efforts by the Joint Court Management Committee of the Conference of Chief Justices and Conference of State Court Administrators. The use of the national standards provides appellate courts with a set of national benchmarks that state appellate courts can adapt to their jurisdiction.

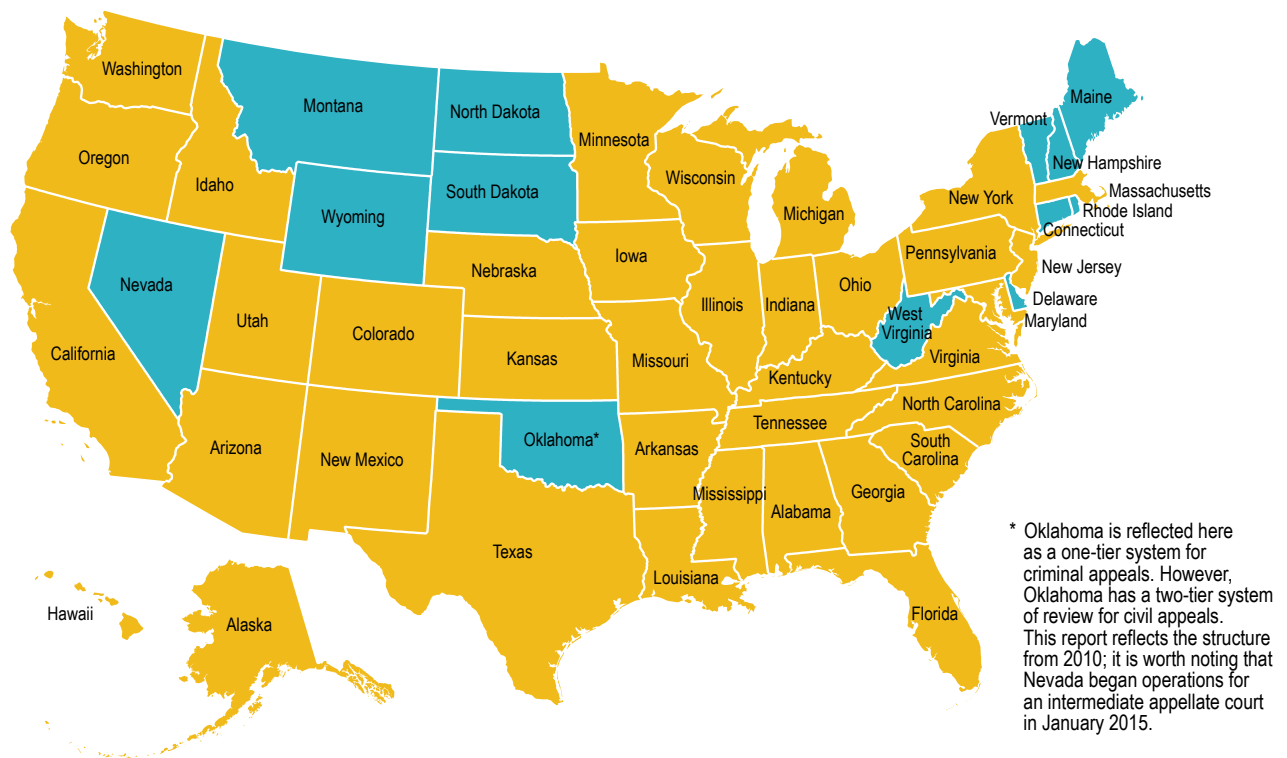
State appellate courts operate in either a 1-tier or 2-tier system for appellate review. States with one-tier systems have one appellate court—a court of last resort (COLR), whereas states with 2-tier systems have at least one intermediate appellate court (IAC) in addition to the COLR.

The *Time Standards* apply differentially depending on whether the COLR is part of a 1-tier or 2-tier review system and whether the court’s review of a case is by permission (discretionary) or by right (mandatory). An appeal by permission is an appeal that the court *can choose* to review. In such an appeal, the appellate court must either grant or deny further review.

The *Time Standards* account separately for this review by providing discrete standards for each time segment. In an appeal by right, the court *must* review the case. The standards for appeals by right apply to the entire duration of the appeal from start to final resolution.

**Map 1: Tier System for Criminal Appellate Court Review, 2010**

■ One-Tier (COLR Only) ■ Two-Tier (COLR and IAC)



4 Doerner (2014). Model Time Standards for State Appellate Courts. National Center for State Courts.

Court rules and operating procedures such as deadlines for filing briefs, court authority to compel parties to meet deadlines, and rules for granting oral arguments undoubtedly impact timely case processing. Therefore, modification of such rules and procedures should be informed by an understanding of the court’s ability to achieve timeliness goals. The *Time Standards* recognize that for some appellate courts, achieving the standards is aspirational. For that reason, the Committee also developed a set of progressive benchmarks for measuring a court’s interim progress toward a reduction in overall time to disposition.

Figures 1A-1D compare the standards (in gold) and the progressive benchmarks (in teal) to the actual time to resolution data from 2010, as indicated by a blue arrow. The standards and data represent the 75th percentile, or the number of days for appellate courts to resolve 75 percent of the appeals brought before them.

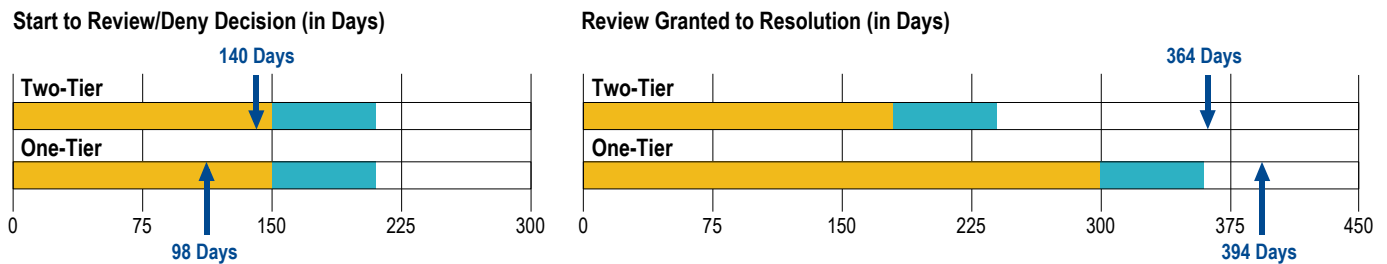
### Courts of Last Resort

Overall, COLRs resolved 50 percent of their appeals in approximately four months (116 days) and 75 percent of their appeals in just under seven months (204 days) [not shown]. Breaking this down further by case type (by permission or by right) and by structure (1-tier or 2-tier), the time to resolution for COLRs is compared (see Figures 1A and 1B) to the *Time Standards*.

#### Appeals by Permission

COLRs, regardless of structure, met the *Time Standards* (150 days) for granting or denying review of appeals by permission. COLRs rendered a decision to grant or deny further review within 140 days in 2-tier and 98 days in 1-tier systems. Regardless of structure, COLRs did not meet the *Time Standards* for the remaining time period (review granted to resolution).

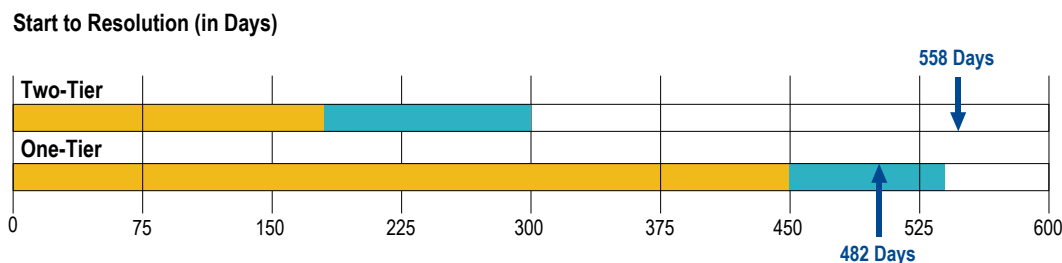
**Figure 1A: Courts of Last Resort — Appeals by Permission** ■ Standard ■ Benchmark ↓ 75th Percentile



#### Appeals by Right

While COLRs in 2-tier states took far longer (558 days) than either the time standards or progressive benchmarks suggest, COLRs in 1-tier states were able to resolve 75 percent of criminal appeals by right within the progressive benchmark. The 75th percentile for the 2010 data fell at 482 days, which was about one month longer than the time standards (450 days), but shorter than the progressive benchmarks (540 days).

**Figure 1B: Courts of Last Resort — Appeals by Right** ■ Standard ■ Benchmark ↓ 75th Percentile

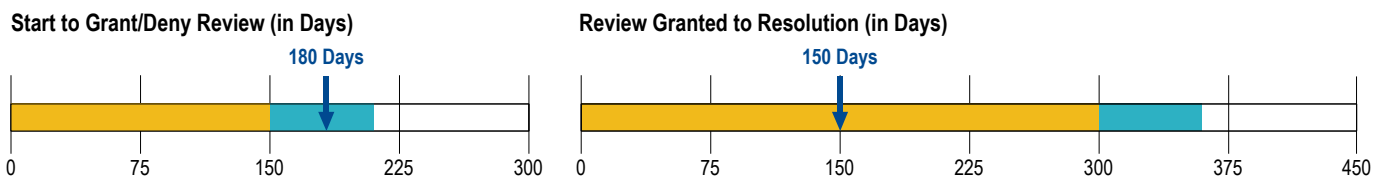


## Intermediate Appellate Courts

By definition, all IACs operate within a 2-tier system. IACs resolved 50 percent of appeals in just over one year (373 days) and 75 percent in 1.4 years (521 days) [not shown]. IACs were able to meet all progressive benchmarks and met the standards for one time segment (Review Granted to Resolution).

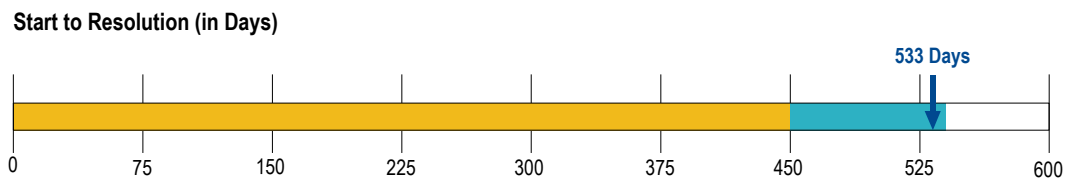
For appeals by permission, the 75th percentile from initiation or start of an appeal to a decision to grant/deny further review was 180 days (the standard is 150 days). The 75th percentile for the time between granting review to resolution was 150 days, well below the standard (300 days) and the timeframe set by the progressive benchmark (360 days).

**Figure 1C: Intermediate Appellate Courts — Appeals by Permission** ■ Standard ■ Benchmark ↓ 75th Percentile



For appeals by right, the IACs resolved 75 percent of the appeals within 533 days. This was above the standard of 450 days, but just within the progressive benchmark of 540 days.

**Figure 1D: Intermediate Appellate Courts — Appeals by Right** ■ Standard ■ Benchmark ↓ 75th Percentile



## Appellate Court Structures

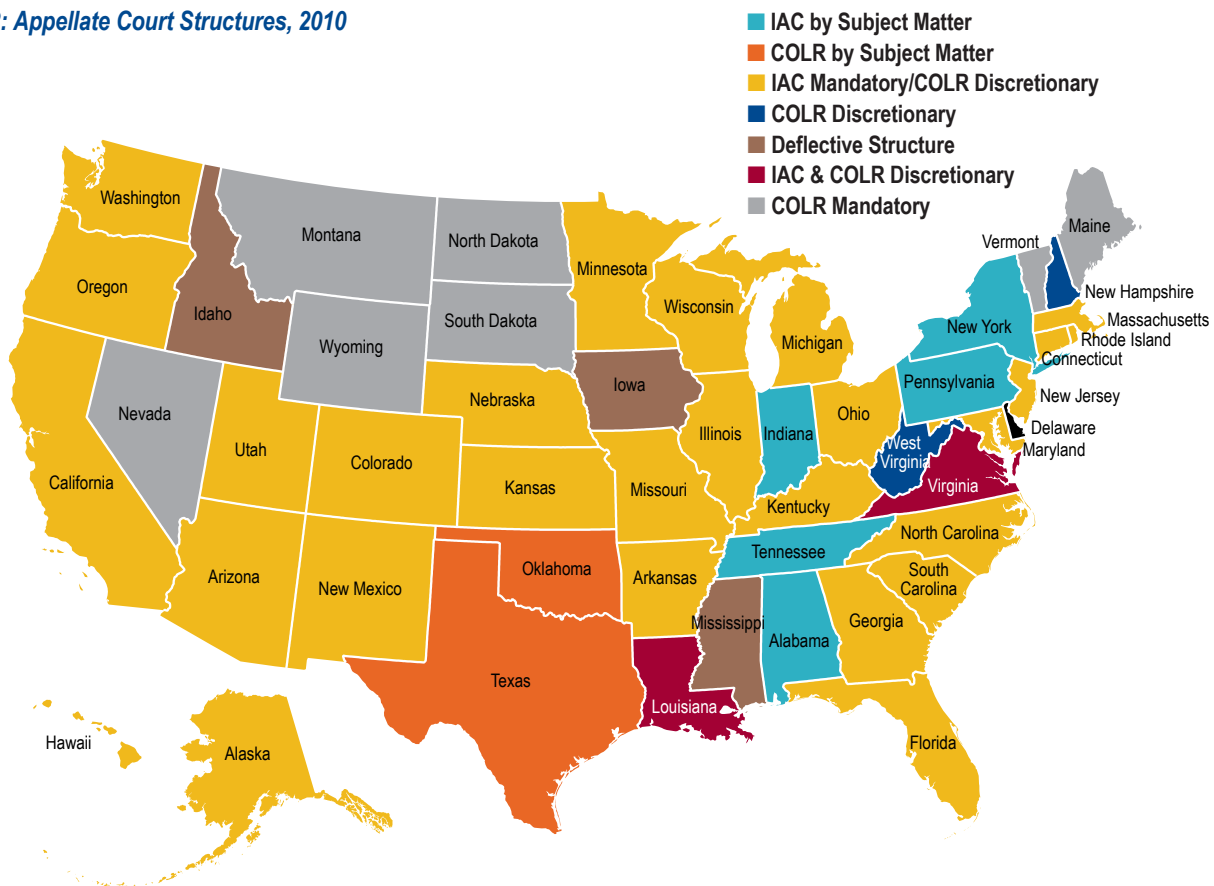
Appellate courts operate within 1-tier or 2-tier structures and hear appeals by right or by permission. Combined, these characteristics define an organizational structure that provides essential context when making comparisons across jurisdictions and for drawing accurate conclusions about key case and processing characteristics. These variations result in seven different appellate court structures in the nation's state judiciaries with criminal jurisdiction (see glossary on page 11).

Although not addressed here, additional factors influence case processing times. These factors include, but are not limited to, appellate workload (including the size of the jurisdiction, rate of appeal, and the number of appellate justices or judges) and records management (including procedures for developing the transcript and record).

Certain court structures offer advantages for improved timeliness at different stages of case processing. For example, in Iowa (under a defective structure), an appeal is fully briefed at the COLR before it is assigned to the IAC. In Virginia, both the IAC and the COLR have discretionary jurisdiction over the majority of their caseloads and therefore fewer appeals are granted review as compared to courts with appeals by right.

The most common appellate structure is for the IAC to have mostly mandatory review of its caseload and the COLR to have mostly discretionary review (see Map 2). Courts with mandatory jurisdiction take longer to resolve appeals, whereas courts with mostly discretionary review resolve appeals in a shorter time frame. This is due, in part, to the percentage of the caseload resolved on the merits of the case. States without an IAC and a mandatory review by the COLR (COLR Mandatory) had 78 percent of their caseload reviewed on the merits, compared to states with both an IAC and a COLR with discretionary review (IAC & COLR Discretionary). The latter structure resulted in 25 percent of its caseload being reviewed on the merits.

Map 2: Appellate Court Structures, 2010



## Case Processing Milestones

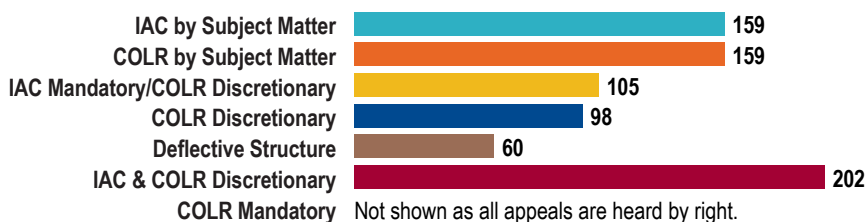
Once the trial court record and transcript are complete and have been filed with the appellate court, the appellant/petitioner will file an initial brief.<sup>5</sup> The appellee/respondent then files a response brief, followed by, if deemed necessary, reply and supplemental briefs. The appellate court may additionally consider an oral argument, after which the appeal is considered to be fully briefed and submitted to the appellate court for its decision.

These activities form three basic stages of the appellate process, and, thus, three primary time periods with event-level time standards: record preparation, briefing (including oral argument), and decision-making. Although the responsibility for efficient appellate case processing ultimately rests with the appellate court, the trial court of original jurisdiction and individual parties play a critical role in ensuring that appeals can be resolved within an appropriate length of time. For example, the trial court has primary responsibility for the record preparation stage; the appellant/petitioner and the appellee/respondent have responsibility for the briefing stage; and finally, the appellate court has responsibility for the decision-making stage. Throughout these stages, the appellate courts set and enforce deadlines and may establish and monitor performance against standards to reduce delay.

Disaggregating the time to resolution by stages of the appellate process provides a more nuanced way to illustrate the duration of an appeal. In addition to the three basic stages of appeal (record preparation, briefing, and decision-making), courts with discretionary review also manage the period of time to grant or deny review. Figure 2 displays the time, in days, for 75 percent of the appeals to be granted or denied further review. The data include both IACs and COLRs, as applicable. This stage is only applicable for appeals reviewed by permission, and ranged from 2 months (60 days) in courts with a defective structure to nearly 7 months (202 days) in courts with discretionary review at both the IAC and COLR.

**Figure 2: Time from Start to Grant/Deny Appeal, 75th Percentile (in Days)**

Data sorted by total duration (see Figure 3) and the colors correspond to Map 2.



### Virginia: How Court Process Affects Time from Start to Grant/Deny

Virginia is a state with a discretionary IAC and COLR, and there is an extensive petition process for review that clarifies issues to be presented in the brief. This contributes to the delay at this stage of the appeal.

The IAC in Virginia requires that a petition for review be filed prior to a single-judge decision on whether to grant review.

If the initial petition is denied by a *per curiam* order, the appellant can file for a 3-judge panel rehearing on the issues. If the 3-judge panel denies the petition, the appellant can file a petition for rehearing by the court *en banc* or file a notice of appeal with the COLR.



<sup>5</sup> Some appeals may not require a brief to be filed. For example, the IAC may not require additional briefing when a case was remanded by the COLR, when appeals are consolidated, or in some circumstances when the appeal presents arguments only pertaining to sentencing issues (such as excessive sentencing hearings in New Jersey).



## Appeals Reviewed on the Merits

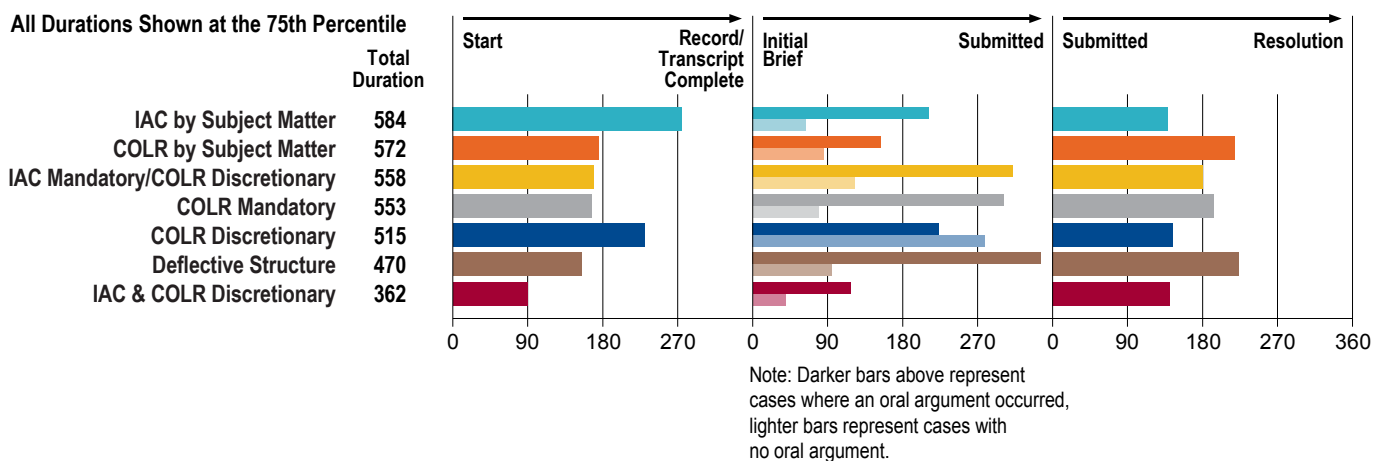
The next set of milestones compares the performance of state appellate courts by structure for appeals reviewed on the merits. In the record preparation stage, the trial court files the court record and a full transcript of its proceedings. The duration for this segment of the appeal ranged from 3 months (90 days) in courts with all discretionary review to just over 9 months (275 days) in courts with IACs differentiated by subject matter. Appeals with lengthy durations in this segment were typically the result of transcript preparation delay, rather than a delay in the filing of the court record. It is important to note that especially in trial courts where digital recording is not utilized, transcript preparation by a court reporter can be difficult for the trial court to manage, so a delay in this stage may not be within the appellate court’s control.

Less than one-quarter (22%) of appeals heard on the merits involved oral arguments; appellate review was primarily based on the written record and briefs. If no oral argument was held, 75 percent of appellants and petitioners completed the briefing process in just over nine months (279 days) for courts in which the COLR has discretionary review. The briefing process was complete in just over one month (40 days) in courts with discretionary review at both appellate levels when no oral argument was held. The duration of this formal briefing stage was expedited in some states due to petitioning processes. For example, in Virginia, the IAC requires a detailed petition for review prior to granting an appeal (see boxout on Page 6).

As expected, the duration was longer for appeals in which an oral argument was held. When an oral argument was held, the briefing stage for 75 percent of the appeals was extended to nearly four months (118 days) in courts where both the IAC and COLR had discretionary review and extended to nearly a year (346 days) in courts with a defective structure.

Once an appeal is fully briefed and/or oral arguments are held, it is submitted to the appellate court for a decision. Seventy-five percent of appeals in courts with primarily discretionary review were resolved in less than 5 months (150 days). The decision-making stage was closer to 7 or 8 months (224 and 230 days, respectively) in courts with a separate COLR for criminal appeals and in courts with a defective structure.

**Figure 3: Days between Milestones for IACs and COLRs**



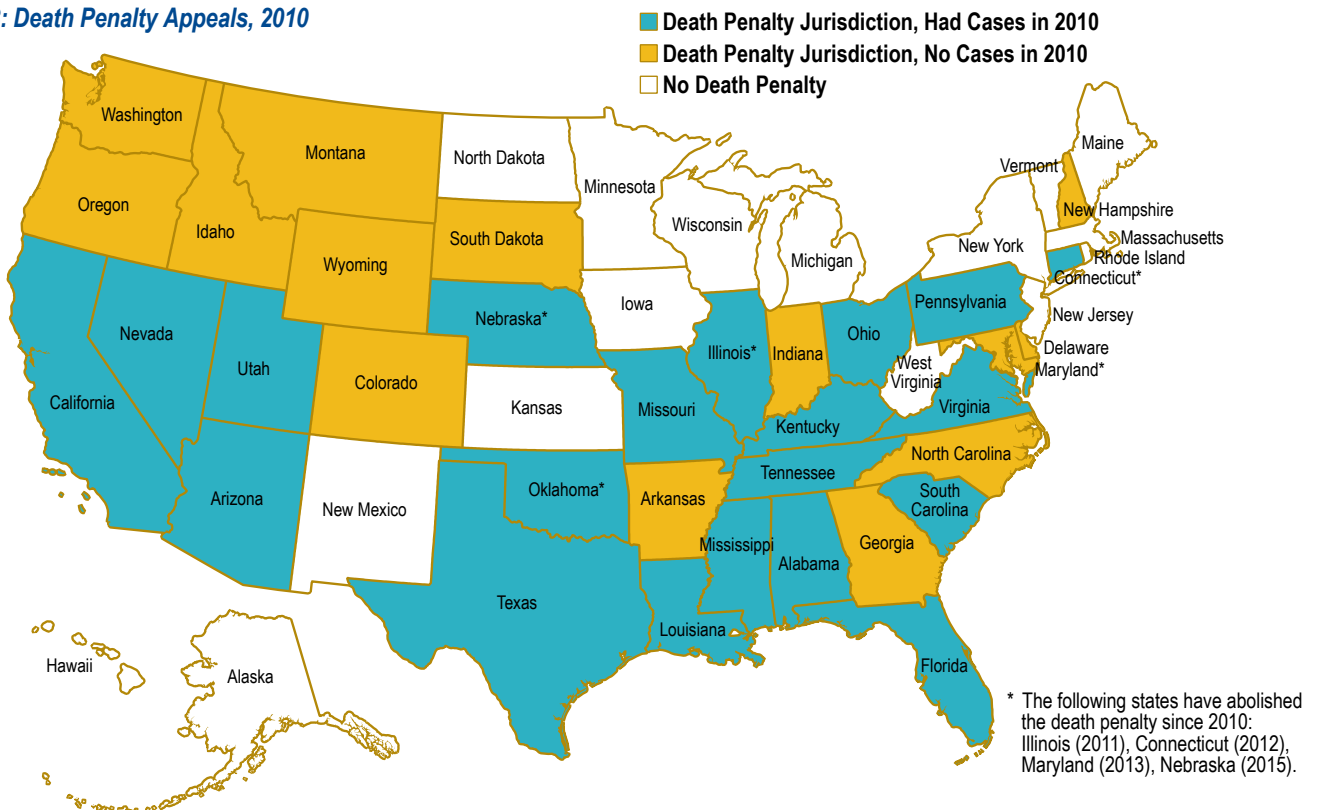
## Death Penalty Appeals

The previous section on timeliness excluded appeals of a death penalty sentence or conviction. By their very nature, death penalty cases merit more scrutiny and more time from the appellate courts. In fact, the difference in duration was so substantial that the times to resolve death penalty cases are presented here in years, while non-death penalty cases are presented in days. At this time, there are no time standards for death penalty appeals.

In 2010, a total of 134 appeals of death penalty cases were resolved in 20 states.<sup>6</sup> Appellate courts in 14 additional states had death penalty jurisdiction in 2010, but did not resolve any death penalty appeals in that year. Map 3 indicates which states had death penalty jurisdiction and whether they resolved any death penalty appeals in 2010.

An examination of the time spent on death penalty appeals revealed that 75 percent of the 134 death penalty appeals were resolved within 3.5 years (1,260 days). However, a number of appeals took an unusually extended amount of time to resolve. As a result, the 95th percentile was 13.9 years (5,078 days). Stated another way, 5 percent of the death penalty appeals remained unresolved after about 14 years.

**Map 3: Death Penalty Appeals, 2010**

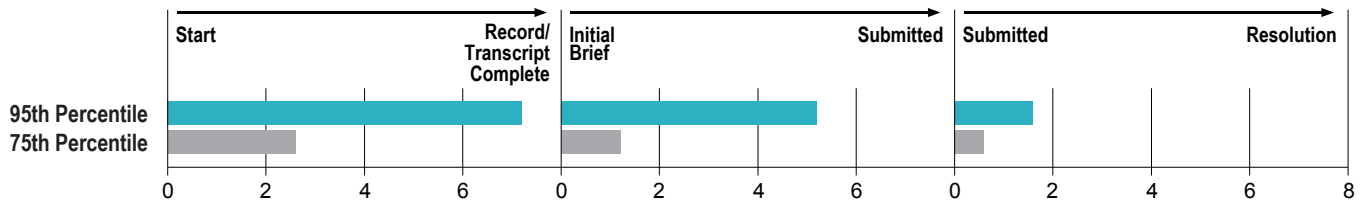


<sup>6</sup> Post-conviction (e.g., application for habeas corpus, claim that the death penalty is unconstitutional) appeals were not included in this study. Only direct appeals if a defendant was sentenced to death were included.



Dividing the appeals process by milestones provides a more detailed view of the differences in time to resolve 75 and 95 percent of death penalty appeals. Figure 4 shows a large difference between the time in which 75 percent and 95 percent of the death penalty appeals met each milestone. The differences were particularly profound when examining the first two appellate milestones (record preparation and briefing stages).

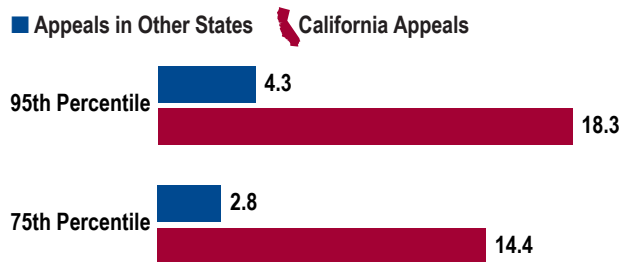
**Figure 4: Years Between Milestones for Death Penalty Appeals**



### The Story of Death Penalty Appeals in California

These national duration figures do not, however, reveal the entire story. The substantial change between the 75th and 95th percentiles was largely driven by 20 death penalty appeals that were resolved in California in 2010. These appeals accounted for the 20 longest total durations, ranging from just over 10 years to 18 years. In comparison, the duration of the 114 death penalty appeals heard in other states ranged from just under 2 months to 6 years. Figure 5 contrasts the entire duration of death penalty appeals in California to those heard in other states for the 75th and 95th percentiles of cases.

**Figure 5: Total Time from Start to Resolution for Death Penalty Appeals, 2010 (in Years)**

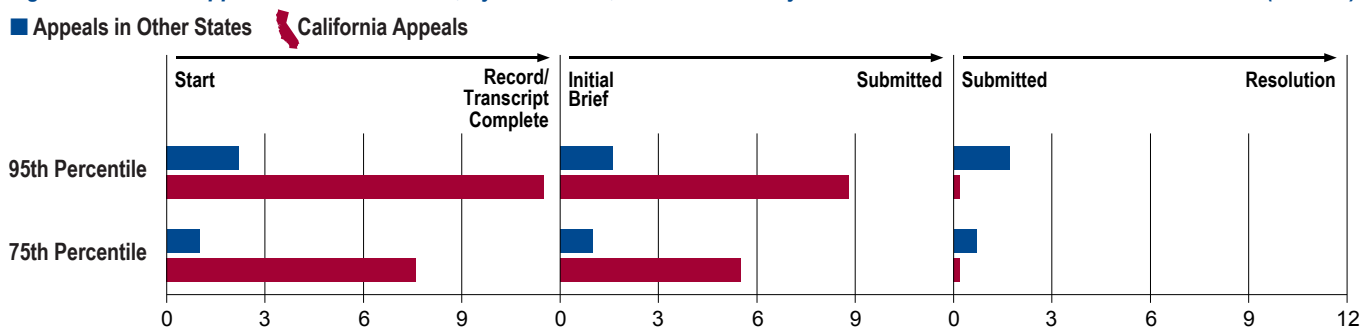


As shown in Figure 5, 75 percent of death penalty appeals in California were resolved within 14.4 years, while 75 percent of death penalty appeals in other states were resolved within 2.8 years. Ninety-five percent of death penalty appeals in California were resolved within 18.3 years, compared to 95 percent of death penalty appeals resolved within 4.3 years in other states. A court order issued in July of 2014 by U.S. District Judge Cormac J. Carney explored this issue in more depth, and provides possible explanations for this unusual delay, including inadequate funding, lack of availability of court-appointed counsel, and scheduling delays for oral arguments.<sup>7</sup>

<sup>7</sup> Jones v. Chappell, 31 F. Supp. 3d 1050 (C.D. Cal. July 16, 2014).

Figure 6 compares the time on appeal, by milestones, separately for California and non-California death penalty appeals resolved in 2010. Striking differences indicate that the time from the start of the appeal to the completion of the record and transcript and the time from initial brief to submission of the appeal were much longer for appeals heard in California appellate courts as compared to death penalty appeals resolved in other states. For example, the record and transcript were complete for 75 percent of the appeals in 7.6 years in California compared to 1 year in other states. The time from submission to resolution of the appeal was *shorter* in California (2.4 months) as compared to the other states (8.4 months), but that difference was not enough to compensate for the extended duration that occurred overall between the start of the appeal and submission to the appellate court for review.

**Figure 6: Time on Appeals Resolved in 2010, by Milestones, for Death Penalty Cases — California vs. Non-California Cases (in Years)**



## Conclusion

Appellate courts play an important role in improving the quality and consistency of trial court decisions and in providing clarity for future rulings. States have created various structures within which the appellate courts perform their roles; the most common being an IAC with primarily mandatory review and a COLR with primarily discretionary review. The most expeditious structure is one in which the COLR has discretionary review, but that benefit must be weighed against the fact that the expediency effect was driven primarily by reviewing fewer appeals on the merits.

Appellate courts must constantly balance the expectation of a thorough review with the need to provide appellants and petitioners with a timely resolution to their appeal. So, while appellate courts did not routinely meet the national model time standards, focusing on how each stage of an appellate case is handled can indicate where improvements can be made. Additional research into the methods the courts have employed to reduce delays in case processing will shed light on how improvements can be effectively implemented.

## Glossary of Terms

### Appellate Court Structures

**COLR Mandatory** – This structure is typically found in states with comparatively small volumes of appeals. There is only one appellate court, a court of last resort (COLR), and the court hears appeals by right.

**COLR Discretionary** – This structure is typically found in states with relatively small volumes of appeals. There is only one appellate court, a COLR, and the court hears appeals by permission.

**Deflective Structure** – In states with this structure, appeals are filed, and may be fully briefed and submitted with the COLR, which then retains select appeals and transfers others to the IAC.

**COLR Discretionary/IAC Mandatory** – This is the most common appellate court structure. The COLR hears appeals mostly by permission and the IAC hears appeals mostly by right.

**COLR and IAC Discretionary** – In states with this structure, both the COLR and IAC hear appeals mostly by permission.

**IAC by Subject Matter** – States with this structure have more than one IAC that is distinguished by subject matter. For example, one IAC is specialized for criminal appeals and the other IAC reviews civil appeals.

**COLR by Subject Matter** – States with this structure have more than one COLR that is distinguished by subject matter. For example, one COLR is specialized for criminal appeals and the other COLR reviews civil appeals.

### Appeal Milestone Dates

**Start** – This date captures the earliest date in the appellate court records. The calculation depended on the type of appellate review and court structure. For appeals by right, this date was when the appellate court first received jurisdiction of the case. For appeals by permission, this date was when the appellant or petitioner first requested court review. In an IAC with a deflective court structure, it was the date the appeal was assigned to the IAC by the COLR.

**Grant/Deny Review** – The date the appellate court rendered its decision to either grant or deny a request for certiorari or petition for additional appellate review. This was only applicable for appeals reviewed by permission.

**Record/Transcript Complete** – The date the appellate court received the complete transcript and the complete trial court record. If filed separately, this date was the later of the two submissions.

**Initial Brief Filed** – The date the petitioner/appellant filed its first brief addressing the merits of the appeal with the appellate court.

**Briefing Complete** – The date all briefs were submitted, or the date oral arguments were held, if applicable, whichever was later. This was the date the appeal was fully briefed and submitted for the court's consideration.

**Resolution** – The date the appellate court rendered its final decision that resolved the appeal. This date did not include requests to reconsider/rehear or initiate a further appeal with another appellate court.

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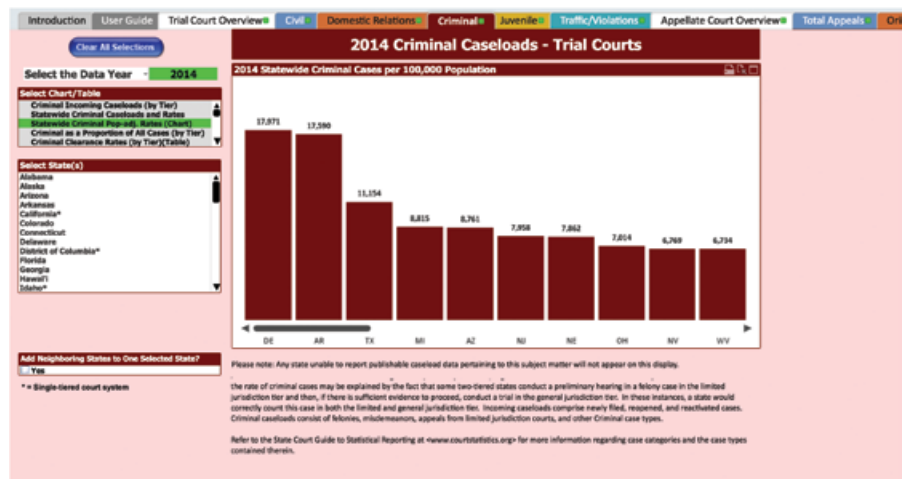


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