

National Center for State Courts

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Improving the Administration of Justice: *Commercial Driving Cases and the State Courts*

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Introduction

The National Center for State Courts¹ (NCSC) is a non-profit organization chartered to improve the administration of justice in our nation's state courts. NCSC serves the State Chief Justices, State Court Administrators, local courts, judicial and court associations and collaborates with these stakeholders to improve the administration of justice and strengthen the rule of law.

NCSC continues to provide leadership through the development of guides and frameworks to help state and local courts improve legal and business practices. The [Principles for Judicial Administration](#) set forth values that courts embrace and include commentary "designed as operational guides to assist courts as they face the challenges of the twenty-first century."²

The Federal Motor Carrier Safety Administration³ enforces Federal law and regulates commercial driving. As stated on [the FMCSA web site](#), its primary mission is to reduce crashes, injuries and fatalities involving large trucks and buses. FMCSA works with state and local government, the motor carrier industry, labor safety interest groups, and others to accomplish its mission. Evaluating state compliance with FMCSA law and regulation is an ongoing and dynamic process. A state may move in and out of compliance, closer to or further from compliance, over time. The FMCSA utilizes performance measures to help determine when and where it should conduct a compliance review on a State Driver Licensing Agency (SDLA) or common carrier. In conducting a compliance review, FMCSA documents its findings and then requires a state to develop an action plan to address the findings. A state that demonstrates good faith by taking corrective action may remain in good standing with FMCSA. A state that does not act in good faith to correct problems will first be warned that FMCSA may impose a penalty, withholding up to 4% of the state's Federal highway funds. Continued demonstration of bad faith may result in the imposition of this penalty, and may also escalate to withholding a higher percentage of Federal highway funds (road and bridge money).

Federal Motor Carrier Safety Administration (FMCSA) representatives informed NCSC that some states were not fully compliant with Federal law and regulations concerning commercial drivers. Determining a state's level of compliance involves multiple legal requirements and regulations. State courts may contribute to a state's non-compliance in two regulated areas, delay in reporting commercial driving convictions and/or courts participating in the prohibited process of masking. Both issues are discussed in this report. The term "state courts" as used in this report means any non-federal court within a state. "State courts" as used herein include local or municipal courts as well as those trial courts funded and supported by the state judicial branch. These state courts are defined in more detail in the *Organizational Capital* section of this report.

Having been made aware by FMCSA that courts can be an impediment to state compliance with commercial driving law and regulations, NCSC sought to study two general areas

¹ Visit the NCSC web site for more information <http://www.ncsc.org>.

² National Center for State Courts. 2012. *Principles for Judicial Administration*. Williamsburg, VA: National Center for State Courts. http://www.ncsc.org/information-and-resources/budget-resource-center/analysis_strategy/principles-of-judicial-administration.aspx

³ Visit the Federal Motor Carrier Safety Administration, U. S. Department of Transportation website for more information <http://www.fmcsa.dot.gov>.

involving state courts, one involving the administrative function of courts and the second involving the legal/case management function. For this study, NCSC applied its [High Performance Court Framework](#) (HPCF), a road map to help courts integrate performance management into ongoing operations.⁴ The HPCF uses a balanced scorecard approach incorporating a set of ten [CourTools](#) performance measures.⁵ Courts are at the center of an exchange of information: among lawyers and litigants, between courts and justice stakeholders, and others. Technology enables faster information exchanges and can produce efficiencies. NCSC sought to incorporate and leverage technology solutions as NCSC continues to play a role in court technology leadership, helping to develop technology standards. The [Court Technology Framework](#) (CTF) is intended to help courts better use technology.⁶

NCSC intends to use this report as one of the tools to help state courts and their stakeholders resolve issues of CDL conviction reporting and masking. NCSC's will use the report as a resource to improve court CDL conviction reporting and to help judges and other justice stakeholders work together to eliminate masking. Generally speaking, SDLA's are required to update commercial driver records within 10 days of conviction. Masking, including diversion of commercial drivers is prohibited. Federal law and regulations mandate the penalties that states must impose upon conviction of commercial drivers. This report explores potential barriers and impediments state courts face regarding CDL regulations. The report also suggests some solutions – steps forward that should improve state court CDL performance.

The facts as presented, opinions and recommendations are solely those of the project staff and do not represent any formal position of the NCSC, NCSC's Board, FMCSA or stakeholders referenced in the report.

⁴ National Center for State Courts. 2010. *High Performance Courts Framework*. Williamsburg, VA: National Center for State Courts. <http://www.ncsc.org/Information-and-Resources/High-Performance-Courts.aspx>.

⁵ National Center for State Courts. 2005. *CourTools*, Williamsburg, VA: NCSC. <http://www.courttools.org>.

⁶ National Center for State Courts, *Court Technology Framework*. <http://www.ncsc.org/services-and-experts/technology-tools/court-technology-framework.aspx>.

Nature and Scope of the Problems

The FMCSA views commercial driving problems from a highway safety perspective. The data in Figure 1 is but one example.

Year	Traffic Crash Deaths			In All Vehicle Crashes
	In Large Truck Crashes	In Bus Crashes	In Large Truck & Bus Crashes	
2014	3,424	233	3,649	29,989
2013	3,554	282	3,821	30,203
2012	3,486	252	3,726	31,006
2011	3,365	243	3,593	29,867

U.S. DOT Pocket Guide to Large Truck and Bus Crash Facts. 2016.

http://ntl.bts.gov/lib/59000/59100/59189/2016_Pocket_Guide_to_Large_Truck_and_Bus_Statistics.pdf

Figure 1. Traffic Crash Deaths

Performance outcome measures include data on loss of life, personal injury, and property loss. Systemic failures in the justice system that the law and regulations attempt to prevent, contribute to deaths, personal injury and property damage on our nations' highways. It is likely that public trust and confidence is diminished when a commercial driver who "should not have been driving," remains on the road due to a lapse or failure in the justice system. When these incidents occur, regulatory and funding authorities question the effectiveness of the governmental functions that failed. The CEO of the National Safety Council, Deborah A.P Hersman stated: "One hundred deaths every day should outrage us. Americans should demand change to prioritize safety actions and protect ourselves from one of the leading causes of preventable death."⁷

Legal Process Component – Masking and Sentencing

Plea bargaining is not prohibited by Federal law or by the Code of Federal Regulations (CFR), but extensive plea bargaining may prompt the question: Where does plea bargaining stop and systemic masking begin?

*The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the CDLIS driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or in another State.*⁸

Diversions programs have become one tool for prosecutors, defense counsel and judges to help correct bad driving behaviors. Diversions programs have been implemented, occasionally, to reduce jail populations, especially in locations overseen by Federal jail monitors. Diversions programs are perceived by many as producing positive results, correcting bad behavior, including those of motorists. Diversion is said to reduce continuances and reduce demand on court resources. These practices found in many local

⁷ "Motor Vehicles Fatalities Up 9%," *National Safety Council*, August 23, 2016. <http://www.nsc.org/Connect/NSCNewsReleases/Lists/Posts/Post.aspx?ID=134>.

⁸ 49 CFR 384.226

legal cultures⁹ and managerial cultures¹⁰ may result in prosecutors, defense counsel and judges being engaged, knowingly or unknowingly, in “masking.”

Legal cultures that embrace diversion may incorrectly offer a driver holding a commercial license a diversion alternative. Federal law and regulation require that commercial drivers be treated differently than drivers licensed to drive passenger vehicles only. Federal law and regulation prohibit the use of diversion for commercial drivers and arguments that the prohibition violates, equal protection have failed.¹¹

FMCSA conducts state compliance reviews. In doing so, FMCSA may compare citation data to the SDLA conviction data and the result may suggest that an examination of legal process and procedure may be pertinent to discover if masking is practiced. (*Note: NCSC has not examined FMCSA state reviews where allegations of masking have been made*).

When prosecutors or judges treat CDL holders differently, allowing their convictions to be deferred, dismissed, or to go unreported, this may be considered masking which is prohibited, by the FMCSRs and some state statutes.¹²

In addition to the prohibition of masking, the Code of Federal Regulations:

... establishes general standards for state compliance...and that each state impose license-based sanctions for traffic violations and unsafe driving consistent with the federally established penalties for major and serious traffic violations.¹³

The Federally imposed sanctions are similar to sentencing guidelines, except specific sanctions are required for specific offenses, reducing or eliminating sentencing discretion. The offenses and mandated penalties are defined in a series of four tables generally increasing in severity from first to subsequent offenses.¹⁴ The four tables included in Federal law that set forth specific convictions and the associated penalty to be imposed by the state are 49 CFR 383.51(b), (c), (d), and (e). Unlike sentencing guidelines that may provide a minimum and maximum penalty for a specific offense, judges may find that the CFR mandated penalties constrain them more. Some SDLA’s enforce a CFR mandated sentence even when the court imposed a less severe sanction on the commercial driver.¹⁵

NCSC has learned from previous research that local legal culture can result in delay of cases. The question must be asked, is that delay reasonable? If the goal is to get bad drivers off the road, then one must also ponder how many “bad commercial drivers” remain on the road during the time that lapses between the citation and the date of court disposition? The

⁹ Church, Thomas Jr., et al. 1978. *Justice Delayed: The Pace of Litigation in Urban Trial Courts*. Williamsburg, VA: NCSC.

¹⁰ Note: Managerial culture is discussed in the next section of this document.

¹¹ Shea, Kristen. 2011. “Unmasking CDL Convictions.” In *Between the Lines*, Vol. 19. No. 4. NDAA National Traffic Law Center. http://www.ndaa.org/pdf/BTL_JulAug_2011_Vol19_No4.pdf.

¹² Harmon, J., Ken Sellers, Kristen Shea, and Karen Whitman. 2012. *Commercial Drivers’ Licenses: A Prosecutor’s Guide to the Basics of Commercial Motor Vehicle Licensing and Violations* National District Attorneys Association National Traffic Law Center.

¹³ Shea, Kristen. 2011. “Unmasking CDL Convictions.” In *Between the Lines*, Vol. 19. No. 4. NDAA National Traffic Law Center. http://www.ndaa.org/pdf/BTL_JulAug_2011_Vol19_No4.pdf.

¹⁴ 49 CFR 383.51 (b) (c) (d) and (e)

¹⁵ See NCSC’s “Archived Webcast Series” at <http://cd.trafficresourcecenter.org>

Federal law creates timeliness expectations for reporting a conviction. The Federal law or regulations do not address timeliness from date of citation or date of filing in court to date of disposition. NCSC always raises timeliness as part of its *High Performance Court Framework and CourTools* performance measures (See a Summary of the ten *CourTools* performance measures in Appendix C). *CourTools Measure 3 Time to Disposition*, measures time it takes from the date of filing with the court to date of the court disposition. In traffic cases, the filing date is the date that the citation/complaint is filed with the court. Figure 2 below shows the amount of time between the date of citation and the date of conviction (disposition) using CDLIS data.

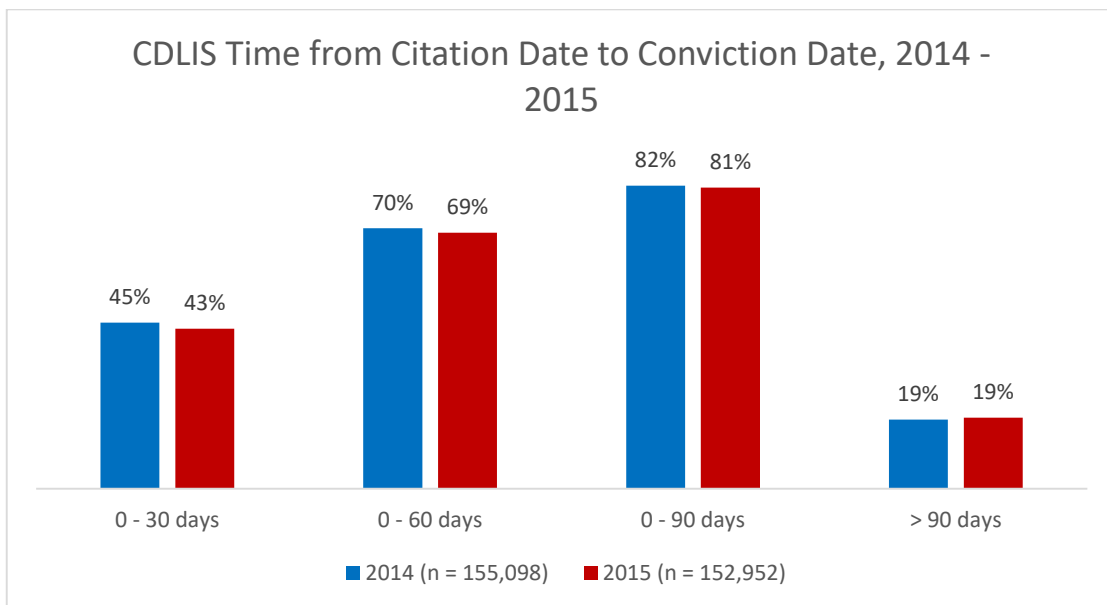


Figure 2. Time from Citation to Conviction

The Model Time Standards for State Trial Courts¹⁶ recommends that traffic cases be disposed in accordance to the timelines in Figure 3 below. Comparing the CDLIS data to the standard, it can be said generally that the time from citation to disposition for commercial driving cases exceeds the recommended standards. Almost 20% of commercial driver cases are taking over 90 days to reach disposition or conviction, those 90 days are days when the commercial drivers are likely still on the road.

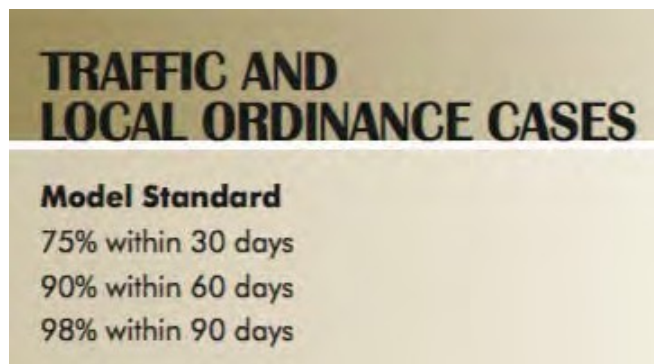


Figure 3. Model Time Standards for Traffic and Local Ordinance Cases

¹⁶ Van Duizend, R., David C. Steelman, and Lee Suskin. 2011. *Model Time Standards for State Trial Courts*. Williamsburg, VA: National Center for State Courts.

Administrative Component – Reporting Convictions Timely and Accurately

Convictions of commercial drivers should be found in the driver records in each state. The SDLA where the driver is licensed is known as the state of record (SOR). When a court in a state reports a conviction of a commercial driver licensed from another state to the SDLA within the convicting court's own state, then that SDLA is referred to as the state of conviction (SOC). The SDLA/SOC (state of conviction) is responsible for notifying the SOR (state of record that licensed the commercial driver). Notification takes the form of an electronic message entered into the [Commercial Driver's License Information System](#) (CDLIS), owned and operated by the American Association of Motor Vehicle Administrators (AAMVA). CDLIS "is a nationwide computer pointer system that enables the SDLA's to ensure that each commercial driver has only one commercial driver's license and one complete driver record."¹⁷ SDLA's are required to update both its in-state commercial driver records with any convictions and enter the message into CDLIS for convictions of out-of-state commercial driving licenses within 10 days of the date of conviction.¹⁸ State compliance relies on stakeholder cooperation – courts must report convictions of commercial drivers to its SDLA accurately and timely for SDLAs to meet federal timeliness requirements.

AAMVA produces a CDLIS Report that they share with state motor vehicle administrators that compares monthly data to baseline data for each SDLA in terms of timeliness of conviction reporting and rates of error. It classifies states as good, moderate, poor and unsatisfactory for convictions reported successfully within the ten-day rule. According to CDLIS baseline data for 2010, only 10 states sent out-of-state conviction messages electronically within 10 days of conviction 90 percent of the time or higher. In 2014, 18 states sent electronic conviction messages to CDLIS within 10 days of conviction with a frequency of 90 percent or higher. As of June 2016, 22 states are in compliance with the ten-day rule. The good news is that progress has been made between the years of 2010 and 2016 as demonstrated in Figure 4 below.

¹⁷ American Association of Motor Vehicle Administrators. "Commercial Driver's License Information System." Accessed September 12, 2016. <http://www.aamva.org/CDLIS/>.

¹⁸ C.F.R. § 384.225(c).

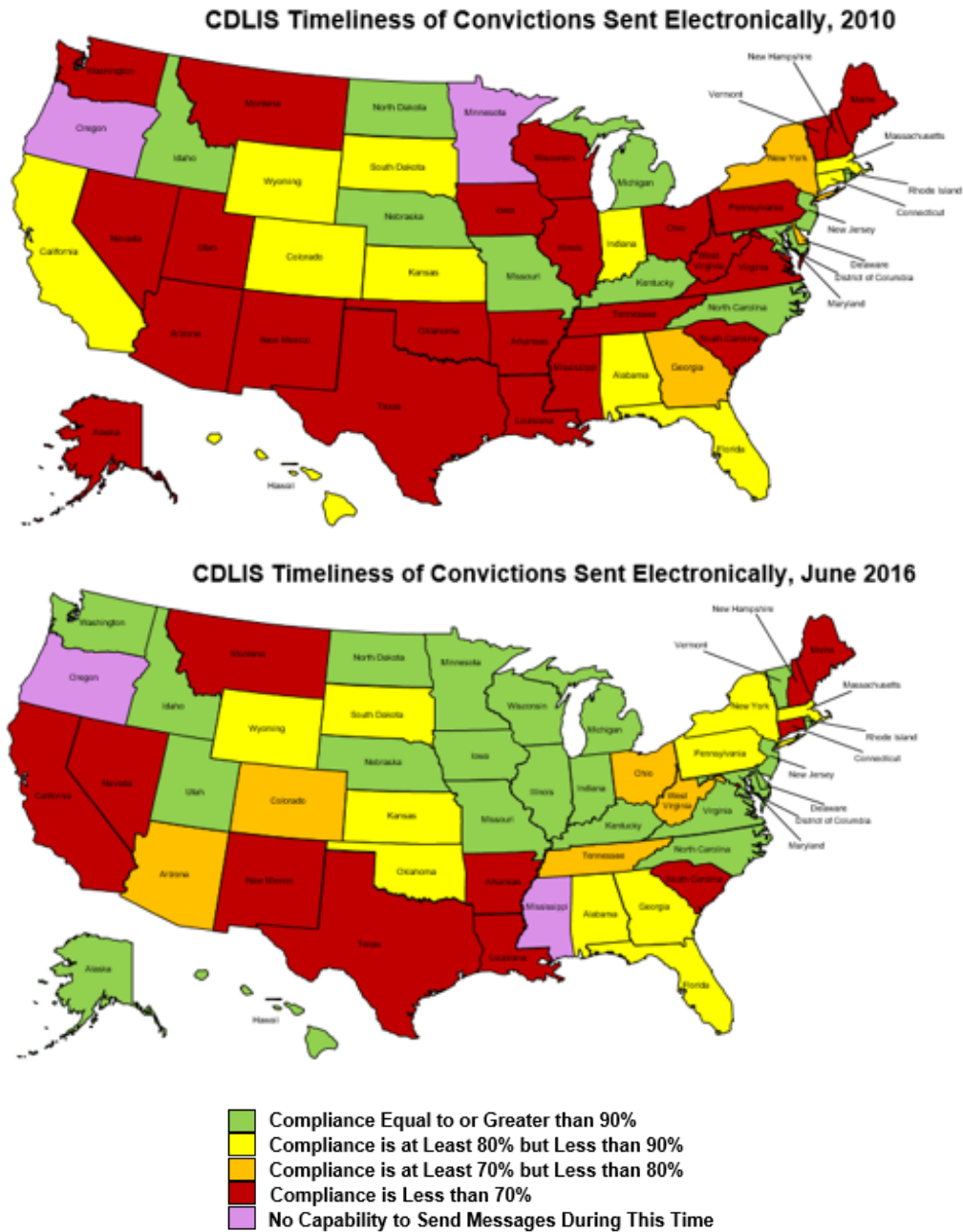


Figure 4. CDLIS Data Reporting

Although timely and accurately reporting dispositions of any case type is important, reporting a conviction of a commercial driver is similar to reporting a criminal disposition. These cases have an impact on the community and the safety of other individuals – the social value of quality information should not be underestimated. Quality conviction information is necessary for all justice stakeholders to do their respective roles. Both commercial driving convictions and criminal convictions must be reported to their respective state information repositories. Those state repositories in turn, may submit the data to national repositories. Certain criminal cases involving convictions of commercial drivers require reporting to both criminal repositories and to SDLA’s.

Timeliness of reporting is essential to help ensure that dangerous drivers do not continue driving, once convicted. Figure 5 below provides an external, regulator perspective. The graphic shows the time that lapsed between the conviction date and the date that the conviction was messaged into CDLIS (conviction reported to CDLIS), also demonstrating the improvement in timeliness of conviction reporting from 2014 to 2015.

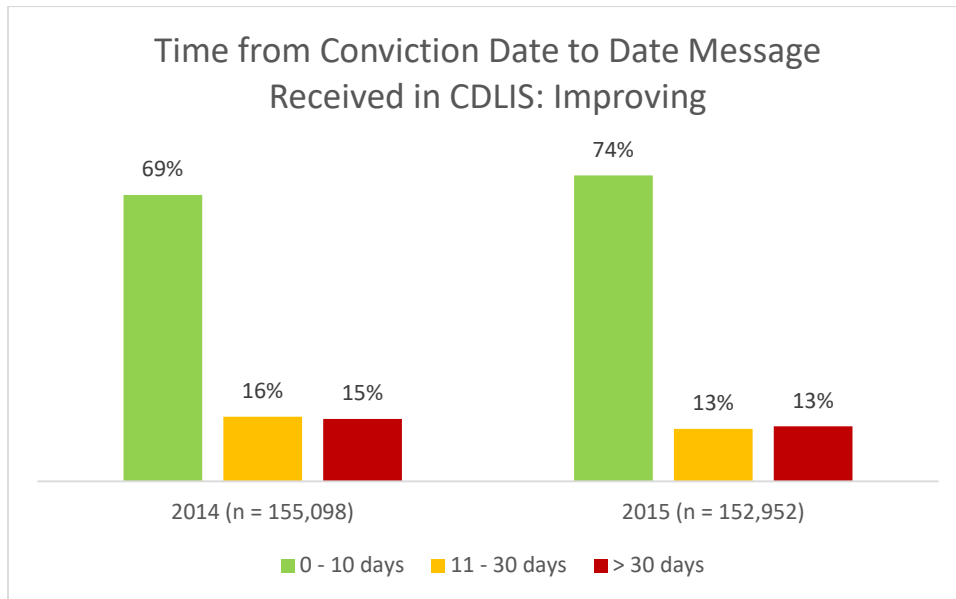


Figure 5. CDLIS Reporting Time

Administrative Principles

The NSCS High Performance Courts Framework highlights four administrative principles: (1) every case receives individual attention, (2) individual attention is proportional to need, (3) decisions demonstrate procedural justice, and (4) judicial control of the legal process. Commercial driving cases are a good case type to demonstrate how problematic it may be for a court to practice these four principles.

NCSC's has made a number of observations in its work to date on commercial driving cases concerning: access to courts, procedural fairness, caseload, participation of parties in a case, case file integrity, trial date certainty, time to disposition, plea bargaining, masking, and enforcement of penalties. A non-exhaustive list of those observations follows:

- Driver records were not available in the courtroom.
- Municipal prosecutors may be part-time and sometimes are present only at hearings where the charges considered more serious.
- Sometimes the citing officer is present in the courtroom and sometimes the officer is the only person appearing on behalf of the prosecution.
- Sometimes the state may be represented only in the judge's reading of the state's claim in the charges on the citation and/or complaint.
- Commercial drivers may be represented by counsel more frequently than the state.
- Defense counsel may argue that a conviction may result in the inability of the driver to earn a living and therefore, seeks to present a strong defense.
- The state may see the case as just another traffic matter in a sea of traffic, misdemeanor and possibly felony cases.

These observations raise many questions for NCSC, among them:

- How many times do commercial driving cases get rescheduled before they are heard?
- Do commercial driving cases get the individual attention they may require as a unique traffic case type?
- Are commercial driving cases given attention proportional to need?
- Do the stakeholders in traffic cases involving commercial drivers think that these cases should get proportionately more attention?

NCSC does not have answers to these questions, but the questions may get answered as NCSC continues its work on commercial driving issues.

Access and Fairness

Studies have consistently demonstrated that litigants, jurors, and other court users assess fairness in terms of how they were treated in court rather than assessing fairness by the outcome.¹⁹ That may be true, but outcomes are extremely important. NCSC learned that when some SDLAs concluded that a court did not impose the sentence specified in the CFR²⁰; the SDLA ignored the court's sentence and imposed the more severe penalty required by the CFR. NCSC was told that in some cases, counsel and the commercial driver returned to court to question the judge as to why the sentence imposed by the court was not honored by the SDLA? The action of the court may have allowed a commercial driver to continue driving, whereas the action of the SDLA precluded the driver from returning to commercial driving, temporarily or permanently. A driver in such a case paid for services of counsel, was subject to a court hearing or trial, and received judgment and a sentence. The executive branch agency disregarded the court outcome and created a different outcome, imposing a more severe penalty. In another state, a judge informed NCSC that the court only made a determination of guilt or innocence, informed the SDLA of the court decision and let the SDLA impose the sanction. It is important to note that in that state, the state law provides for that exact bifurcation of responsibility between the court and the SDLA in application of the CFR to convicted commercial drivers. Again, more questions are raised:

- How are courts perceived when the SDLA applies a penalty that a court of law did not?
- Is confidence in the rule of law lost?
- What is the role of courts in these cases?
- Should these cases be in court?²¹

Case flow management can be more complex in certain traffic matters, for example when commercial drivers are charged with DUI offenses. Perhaps similar arguments can be made and possibly, should be made for **ALL** cases involving commercial drivers. The law requires a commercial driver to be charged and if convicted, penalized according to the requirements for commercial drivers even when that driver was cited while driving a passenger vehicle. Typically, a complaint filed with the courts gets the attention of a prosecutor. However, that is not necessarily true for traffic matters. Frequently, deputy clerk personnel review the citations and rightly or wrongly, attempt to "perfect" the citation providing information that may be missing or in error. One could ask why an employee of the court has a role in perfecting the charging instrument? Many citations need "perfecting" for the matter to be scheduled for court. Prosecutors may not be available for these cases, or they may be part time. In smaller jurisdictions, part time prosecutors may have no supporting staff to help perfect the "charging instrument." The answer sometimes is that the clerk's office is an entity of the executive branch, not the judicial branch. In other instances, it is because it has always been that way! Frequently, if there is a person presenting the traffic charge in a hearing, it is the officer that issued the citation, but the citing officer is not always present at these appearances. In one of the site visits, NCSC project staff listened to a discussion as to whether it is the role of the judge to reject a plea, willingly entered into by the parties, that

¹⁹ Tyler, T. 2007. "Procedural Justice and the Courts." In *Court Review*, Vol. 44.

²⁰ Table 1 to 49 CFR 385.51(b)(2010) for example.

²¹ Flango, G. and F. Dale Kasparek, Jr. 2013. "Which Commercial Driving Cases Should Go To Court?" In *Future Trends in State Courts* 2013. Williamsburg, VA: NCSC. <http://www.ncsc.org/sitecore/content/microsites/future-trends-2013/home/2013-Print-Edition.aspx>

resulted in a penalty less severe than the one prescribed in the CFR? At a conference, judges debated the authority of a state judge and the ethics of a state judge to impose a sentence not directly provided for in the state code. In some states, the state traffic code is not aligned with the sentencing provisions of the CFR. The nature of commercial driving cases should beg application of the judicial administration principles²²: “giving every case individual attention,” “proportional” attention, and “exercising judicial control over the legal process” and “procedural justice.”²³ All of these observations suggest that triaging traffic cases and differentiated case management may be necessary to schedule them differently than typical traffic matters.

²² National Center for State Courts. 2012. *Principles for Judicial Administration*. Williamsburg, VA: National Center for State Courts. http://www.ncsc.org/information-and-resources/budget-resource-center/analysis_strategy/principles-of-judicial-administration.aspx

²³ See High Performance Court Framework, Appendix B

Court Managerial Cultures

A number of statements are made herein concerning obstacles that make state CDL compliance with Federal law and regulation, difficult. Who is in charge? Is anyone in charge? Do we have any leadership? Are judges, court administrators and clerks of court working together? Do they agree on work priorities? If some tasks in the clerk's office have to wait due to staffing constraints, is reporting commercial driver convictions one of the tasks in the queue? If it is a multi-judge court, do the judges agree on case management strategies?

The National Center for State Courts has developed the *Court Culture Assessment Instrument*²⁴ to help courts understand their current culture. Organizational culture is an important aspect of change: "Ignoring culture undermines reform efforts by unnecessarily risking indifference and resistance to new practices."²⁵

*The first dimension, solidarity, is the wide spectrum of beliefs on the extent to which it is important for judges and managers to work toward common ends. Solidarity refers to the degree to which a court has clearly understood shared goals, mutual interests, and common tasks. The second dimension, sociability, concerns the wide range of beliefs as to whether it is important for judges and managers to work cooperatively with one another. Sociability refers to the degree to which court personnel acknowledge, communicate, and interact with one another cordially.*²⁶

Judges employ differing case management styles within the same court. In fact, they may implement courtroom processes that differ from courtroom to courtroom, sometimes to the frustration of court management and perhaps counsel. As noted earlier, judges may hold differences of opinion on how to apply or reconcile Federal law and state law, as observed earlier in this paper. Judges in the same courthouse may handle commercial driving cases differently, illustrating perfectly the "autonomous" dimension within the Court Culture matrix.²⁷

A judge stated that the he had no authority to direct the elected clerk to prioritize reporting a commercial driver conviction over other "back office" work. In defense of the clerk, many clerk functions require immediate action once a court has acted: executing a protection order, reporting a criminal conviction to the state repository, entering a civil judgment so that judgment searches reveal liens on property, etc. The sociability dimension of court culture speaks to the importance of judges, court managers and clerks of court to work together on what is important. More often than not, Clerks of the court, elected or appointed, are influenced by organizational values, judges in multi-judge courts demonstrating solidarity and by judges possessing good situational leadership skills.

²⁴ Ostrom, B. J., and Roger A. Hanson. 2010. "Understanding Court Culture is Key to Successful Court Reform." In *Future Trends in State Courts 2010*. Williamsburg, VA: NCSC. <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1611>

²⁵ Ibid.

²⁶ Ostrom, B. J., and Roger A. Hanson. 2010. "Understanding Court Culture is Key to Successful Court Reform." In *Future Trends in State Courts 2010*. Williamsburg, VA: NCSC. <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/ctadmin/id/1611>

²⁷ Ostrom, B. J., and Roger Hanson. 2010. *Understanding Court Culture*.

*State Compliance with Federal Law and Regulations Concerning Commercial Driving:
Issues Involving State Courts*

To achieve consistent procedures and practices in a multi-judge court, court culture must move from an autonomous one to a networking & consensus culture possessing organizational values across the court and the internal stakeholders.

Customer Perspective

Good commercial drivers should not be impeded from making their living and bad commercial drivers should not remain on the road due to governmental inefficiencies, data errors, inadequacies of recordkeeping and poor information processing. During one site visit, NCSC observed a case involving a commercial driver continued because the driver record was not available. The case, involving a driver licensed from another state, had to be rescheduled. Delay may be detrimental to a driver as the customer in terms of uncertainty, time off the job and increased defense counsel fees. Delay can cause law enforcement officers to be in court more, taking them off patrols or creating overtime pay at the expense of taxpayers. Too much delay, may make law enforcement officers question why they make the commercial driver stop and issue the citation requiring a court appearance. If prosecutors are required, they too must make another appearance, the clerk send another notice, etc. Tasks and cost proliferate and the potentially bad driver remains on the road pending the delayed outcome.

As stated earlier, SDLAs qualify state residents and grant commercial drivers privileges on the basis of knowledge, skill, ability, medical condition and driving record. Perhaps it comes as no surprise to the reader that a state driver licensing agency also takes administrative action suspending, revoking the commercial license or disqualifying a commercial driver. As noted earlier, the SDLA sometimes enforces a more severe penalty than the court. One may be prompted to ask: if the executive branch agency grants the driving privilege why doesn't an administrative law judge adjudicate the violation and the executive branch agency issue the sanction required by the CFR?²⁸ In such an environment, courts would be used only to contest the excess of executive branch authority or a violation of constitutional right.

²⁸Flango, G. and F. Dale Kasperek, Jr. 2013. "Which Commercial Driving Cases Should Go To Court?" In *Future Trends in State Courts 2013*. Williamsburg, VA: NCSC. <http://www.ncsc.org/sitecore/content/microsites/future-trends-2013/home/2013-Print-Edition.aspx>

Innovation Perspective

Organizational Capital

Stakeholder structures and allocation of resources impact the ability to meet goals and provide efficient services. Efficiency and effectiveness may be determined through balanced scorecards. One measure in a balanced scorecard for courts is *CourTools Measure 3, Time to Disposition*.²⁹ How long it takes for a commercial driving case to be resolved should be a concern for stakeholders and citizens alike. Identifying cases involving commercial drivers can be problematic for courts. Courts depend upon law enforcement and prosecution to identify a driver possessing a CDL. Cooperation and coordination among stakeholders is needed to track, monitor and dispose of commercial driving cases in compliance with federal regulations. Structural and governance pose yet another challenge.

In 2015, NCSC's State Court Organization project estimated that there are over 15,000 courts within the United States and territories. Approximately 14,500 of them have some form of jurisdiction over traffic cases. Over 25,600 judges preside over these courts and traffic cases.³⁰ The large number of courts and judges only begins to illuminate the complexity. Within these 14,500 courts, a wide range of traffic cases with varying degrees of severity are processed. Traffic jurisdiction and how those cases are assigned to judges differs among the states. The majority of courts (10,484) have both criminal traffic (i.e., felony or misdemeanor motor vehicle cases) and traffic violation (i.e., non-criminal citations) jurisdiction. See Appendix A for more detailed information and a complete list of courts with traffic jurisdiction. Forty states have overlapping jurisdiction for traffic cases, meaning multiple courts have the authority to hear the same types of traffic cases. For example, in Georgia, each of five levels of courts can have jurisdiction over criminal traffic and traffic violation cases. Two additional courts have jurisdiction over criminal traffic matters only. For Georgia, a complete accounting of traffic cases and commercial drivers will require coordination among as many as seven court levels.

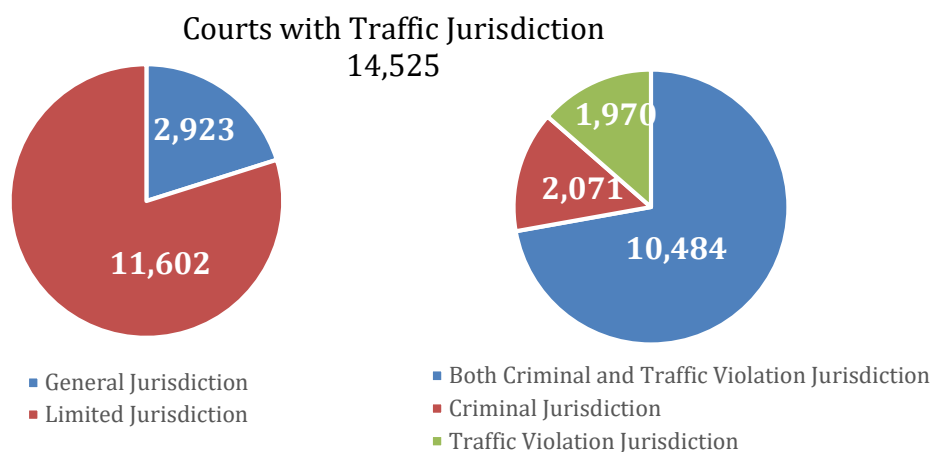


Figure 6. Courts with Traffic Jurisdiction

²⁹ National Center for State Courts. 2005. *CourTools Measure 3*. Williamsburg, VA: National Center for State Courts.

³⁰ S. Strickland, Richard Schauffler, Robert LaFountain & Kathryn Holt, eds. *State Court Organization*. Last updated January 9, 2015. Williamsburg, VA: National Center for State Courts. Accessed April 16, 2016 www.ncsc.org/sco

Beyond jurisdiction, additional complexity is introduced when considering structure of courts where traffic cases are heard: how those courts are funded, staffed, and governed. Traffic cases are filed, primarily, in courts of limited jurisdiction. Limited jurisdiction courts are often funded locally or through a mix of state, local and other means (such as fees). Judges’ salaries as well as court staff salaries are often dependent on local county or municipal funds creating a sense of independence or statutory independence from the state judicial branch and authority. Figure 7 below shows that local funding is the most common for salaries of judges, clerks, and trial court administrators.

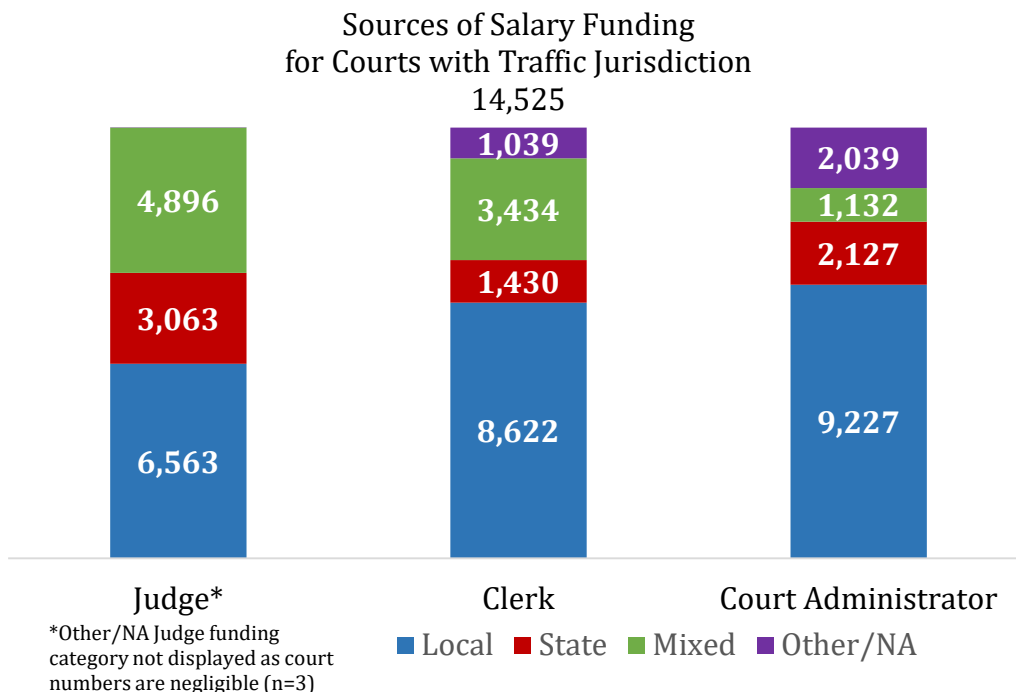


Figure 7. Funding Sources for Court Staff Salaries

The method of selection for judges also contributes to this independence and the performance of traffic case processing. In some states, judges that have traffic jurisdiction are selected in the same manner as other judges, have the same qualifications to become a judge, come under the same Judicial Canons, have the same continuing legal education requirements and come under the administrative oversight of the Chief Justice, Supreme Court or Judicial Council. In other states, judges with traffic jurisdiction may be appointed and removed by a Mayor or City Council, may be part time, may be paid by the municipality and may not be part of the state court system.

Courts are good examples of “loosely coupled” organizations.³¹ Loosely coupled organizations are characterized by individuals who maintain a high level of authority and autonomy within the larger organization. For courts, judges are highly autonomous in their work, as they are the final authority in the courtroom. However, this autonomy must be balanced with accountability. In CDL cases, federal regulations may be a source of tension.

³¹ McQueen, M. C. 2013. *Governance: The Final Frontier*. Executive Session for State Court Leadership. Williamsburg, VA: National Center for State Courts.

It may be helpful to think about the differences in state court organization by placing state courts along a continuum from complete local autonomy to completely centralized or unified. The majority of states fall somewhere in-between. Below are some examples of three states and where they fall on the continuum.

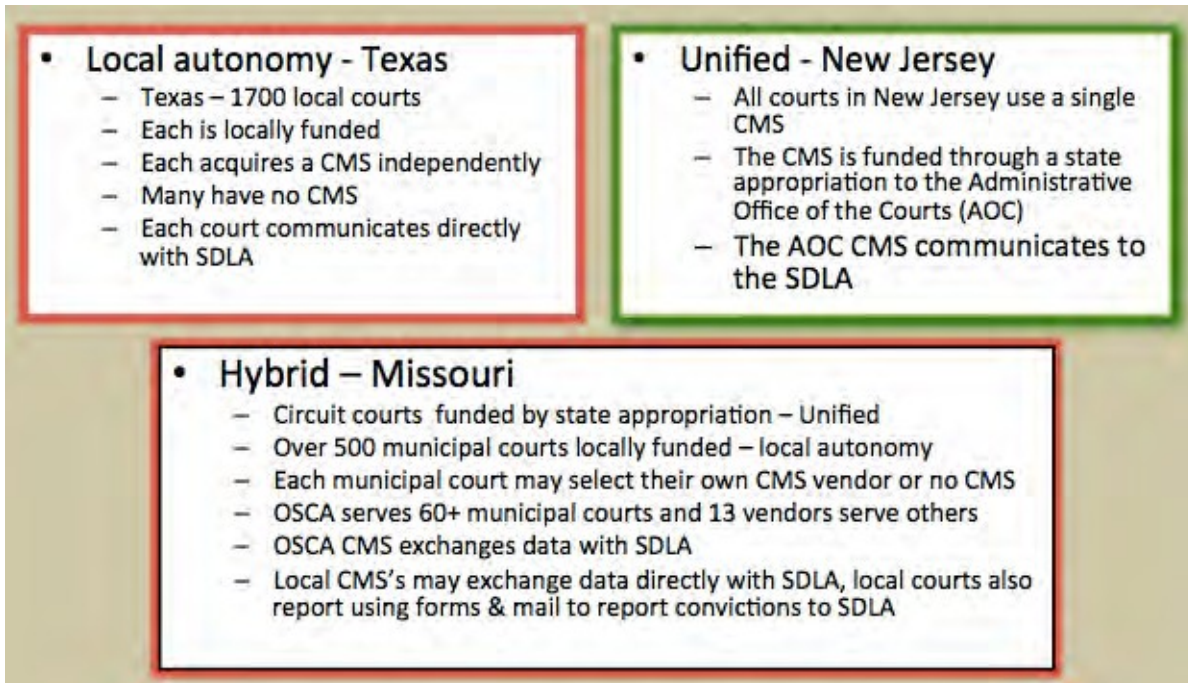


Figure 8. Diversity of State Court Organization

Each state faces barriers when working toward compliance with federal regulations, including organizational structure and capital. However, as long as courts have jurisdiction to adjudicate cases dealing with commercial drivers, then state courts should take responsibility for performance management.³²

State compliance requires cooperation and good communication among all stakeholders, including courts. Organizational diversity is a characteristic of all stakeholders. NCSC's knowledge of other stakeholders is understandably limited to information gathered from public sources. That information illustrates additional organizational challenges. In 2007, the Bureau of Justice Statistics (BJS) released a study on prosecutors in state courts. According to survey results, there were a total of 2,330 prosecutor offices with 346 of those part-time. It is important to note that we are left with little or no knowledge of the prosecutorial resources that are available in many traffic courts – "Neither census included offices of municipal attorneys or county attorneys, who primarily operate in courts of limited jurisdiction."³³

³² Ostrom, B. J., and Roger Hanson. 2010. *High Performance Court Framework: A Roadmap for Improving Court Management*. Williamsburg, VA: NCSC. http://www.ncsc.org/Information-and-Resources/~/_media/Files/PDF/Conferences_and_Events/4th_Symposium/HPC_Visual_Summary.ashx.

³³ Bureau of Justice Statistics. 2007. Prosecutors in State Courts, Statistical Tables.

The law enforcement community that issues traffic citations and files them in those 14,500 courts is equally diverse. NCSC has not documented the number of law enforcement entities within the states. It may be a reasonable assumption that in states with numerous municipal courts that they may have a similar number of municipal law enforcement entities. In addition, counties have sheriff departments that may also issue citations and each state has some form of state highway patrol. It is not unusual for incorporated and unincorporated municipalities, boroughs, townships and other small political subdivisions to contract law enforcement from neighboring communities, the Sheriff or State Patrol.

SDLAs may be under the state Department of Transportation (DOT), a stand-alone Department of Motor Vehicles (DMV), under the direction of the Commissioner or Department of Revenue (DOR), Department of Public Safety (DPS), Office of the Secretary of State (SOS), Motor Vehicle Commission (MVC), Motor Vehicle Administration (MVA) etc. It may be the reason that the Federal government refers to them as SDLAs (state driver licensing agencies) and the reason NCSC uses SDLA to refer to them in its initiatives. SDLAs qualify state residents and grant commercial driver privileges on the basis of knowledge, skill, medical condition and driving record. SDLAs also withdraw and/or revoke commercial driving privileges administratively.

NCSC observations lead us to believe members from stakeholder communities could benefit from increased exposure to one another in learning environments focused on commercial driving matters. Compliance requires multi-disciplined awareness that is only achieved through outreach, development, training and education. State compliance with the CFR requires cooperation among multiple stakeholders, each with complex organizational capital. The sheer number of courts, police departments, prosecutors, defense counsel and SDLA representatives creates a significant awareness challenge.

NCSC is engaged in awareness and outreach activities intended to help individual judges, court leaders and managers better understand laws and regulations regarding commercial drivers. Primary among these activities is the creation of NCSC's [Commercial Driving Resource Center](#). The goal of the Commercial Driving Resource Center is to make information and resources available to courts. NCSC continues work to produce awareness materials such as webcasts that are available 24-7 on the Commercial Driving Resource Center website.

The National Center for State Courts works with partners to address legal process and legal issues relevant to commercial driving. [The National Judicial College](#) (NJC) conducts webinars for judges concerning commercial driving. NCSC promotes those courses when it connects with judges seeking to learn more about commercial driving. NCSC also partners with the [National District Attorneys Association Traffic Law Center](#) (NTLC) to design awareness programs for delivery at state judges, court administrator and clerk of court conferences. These awareness programs are arranged through NCSC at no cost to the conference sponsors since these resources are currently provided through a grant from FMCSA.

Technology Capital

Through on site visits and telephone contacts, NCSC learned that each stakeholder involved in traffic matters had their own set of constraints. Courts frequently thought that they were at

the bottom of the food chain in the allocation of appropriations. Perhaps it may comfort some courts to know that some SDLA administrators share a similar opinion as to the amount of the appropriations made to them. Some SDLA representatives shared that older technology trickled down to SDLA's as executive branch priority areas received state of the art equipment and more technical staff to utilize it. In some states, SDLA's had state of the art technology and courts did not. In other states, courts had state of the art technology and SDLA's did not. At one time, these differences in technology between SDLA's and courts could create data exchange obstacles. Today, we have the means to make disparate systems exchange data with comparative ease (see data exchange solution under Performance Management below).

Economics have forced courts to take technology more seriously in search of efficiencies with particular attention to reducing labor related costs. It is important that traditional human capital (judges, court administrators, clerks of court, directors of probation, etc.) understand the technologists to make technology productive, to maximize the exchange of information with stakeholders, and to give court users access. Sometimes the lack of understanding and communication between court business people and IT (information technology) people limits our success.

Future guidance for courts on IT Governance is a project of the IT Governance Working Group of the Joint Technology Committee.³⁴ Differences in subject matter vocabularies, difficulty in describing justice goals and objectives, inadequate time to consider intricacies of business processes and failure to understand how technology may enable the organization have all contributed to failure of many technology projects. NCSC, in collaboration with the Joint Technology Committee (JTC), has developed the Court Technology Framework to help court professionals work together.

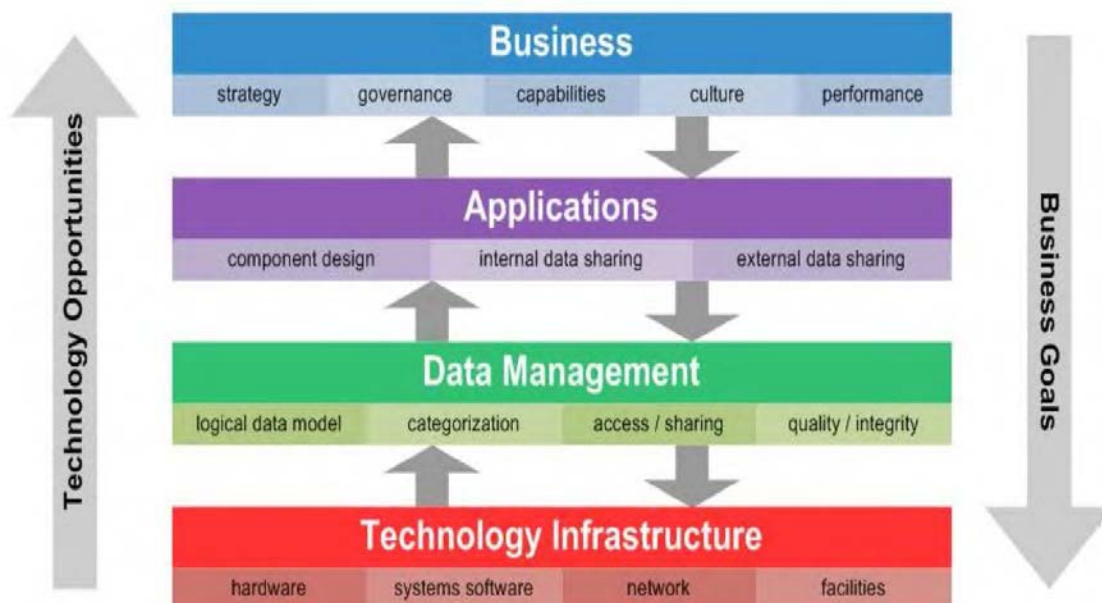


Figure 9. Court Technology Framework

³⁴ Joint Technology Committee is a collaboration of the National Center for State Courts, Conference of State Court Administrators and the National Association for Court Management <http://www.ncsc.org/about-us/committees/joint-technology-committee.aspx>

A multitude of business processes must work well to help courts perform their functions successfully, to interact with a multitude of court customers and to exchange information between and among justice stakeholders.

Courts do not act alone in the justice community. Courts receive traffic citations in both electronic form and paper. A goal of the Court Technology Framework is to help us automate business processes to make them more efficient. Walking the track from issuance of a paper citation to final disposition should be sufficient to convince the most ardent disbeliever in technology that paper traffic citations should be eliminated in favor of e-citations. Re-engineering the process holds even more value. Envision a law enforcement officer equipped with a mobile data terminal. The officer scans the driver's license to access data from the license (no matter the state of issuance) and registration that are used in the e-citation. The officer interacts with a mobile device to charge the driver using correct traffic code references the mobile unit and cloud software help validate information. The e-citation is messaged to appropriate law enforcement, prosecutor and court entities. The receiving entity information system validates the filing and electronic processing and scheduling begins without human intervention. Sitting in a traffic court will quickly reveal the inadequacies that this vision could eliminate. Sometimes it is the lack of understanding, communication and collaboration among the stakeholders choosing to operate within their domain silos.

Performance Management

When court appearances are continued for whatever reason, delay is likely to increase risk. Failure to report convictions, delay in reporting them or errors in the conviction reports can contribute to property loss, injury and death on our highways. Individual experiences and the media help shape Public Trust and Confidence in our nation's courts.³⁵ As evidenced in the video on the National Center for State Court's web site,³⁶ people lose faith in our justice system when people die in commercial vehicle crashes and learn afterward that the driver should not have been operating the commercial vehicle.

One must ask why resources are not assigned to correct inefficiencies? It is a vicious circle. In economic downturns, it is no secret that the branches of state government experience greater competition for appropriations.³⁷ State legislatures pass new laws that require SDLAs and State Courts to revise processes and systems by legislatively mandated due dates and frequently fail to provide additional resources to make the changes. Executive and legislative budget analysts and elected officials require courts to submit evidenced based data to support appropriation requests. One should see the legitimizing authority perspective as integrated with other HPCF perspectives. Legitimizing authorities are likely to view their responsibility from multiple perspectives as well. NCSC can only hope that legitimizing authorities will likely provide more resources to courts that institutionalize the HPCF.

Performance management is an activity – it requires action. Peter Drucker would tell us that: “leadership is doing the right thing.”³⁸ Performance management suggests that courts should ask: how are cases involving commercial drivers handled in our court? Upon concluding discovery, judges in a leadership role would act collectively to adopt “a common way of doing” commercial driving cases and court management, using Drucker's approach, would “do things right,” scheduling commercial cases timely, reporting convictions timely and accurately.

Law school curriculums' may encourage an autonomous approach to law practice. If so, it should come as no surprise for judges to favor an autonomous judicial role, addressing the litigation in their respective pending caseloads. Good case management principles encourage judges to proactively manage those caseloads, disposing of cases within prescribed timelines or guidelines.

It is not likely that judges join a court to embrace judges' meetings. Nor is it reasonable to believe that judges are taught to embrace good organizational governance as a “board” of judges to set court policy or establish court values, case disposition timeliness, for example. In fact, drawing autonomous judges into organizational decision-making processes is difficult as the HPCF suggests:

³⁵ Justice at Stake and National Center for State Courts. 2012. *Funding Justice: Strategies and Messages for Restoring Court Funding*. <http://www.ncsc.org/fundingjustice>.

³⁶ <http://cd.trafficresourcecenter.org>

³⁷ National Center for State Courts. 2012. Budget Resource Center. <http://www.ncsc.org/information-and-resources/budget-resource-center.aspx>

³⁸ Drucker, P. 2001. *The Essential Drucker: The Best of Sixty Years of Peter Drucker's Essential Writing on Management*. New York: HarperCollins.

State Compliance with Federal Law and Regulations Concerning Commercial Driving: Issues Involving State Courts

A challenge for court leaders is to encourage and facilitate collective decision-making among individual judges on what is best for the court as a whole. As a result, by focusing on solidarity and building consensus, a court can reduce the level of fragmentation and isolation, enabling it to more effectively apply the administrative principles.³⁹

A lesson learned from NCSC's field research on court culture was that it was difficult to get judges to make decisions collectively on what is best for the court as an organization. If the discovery process reveals differences in judicial practices, case management, court procedures or processes involving commercial driving cases, can court leadership resolve these differences in favor of a more uniform approach that may improve a state's compliance with commercial driving law and regulation?

What constitutes local court leadership? Is it informal or formal? What is the court culture and should it change? How does a court change the culture? In fact, how does a court institutionalize an approach to recognizing problems, analyzing problems and make changes to improve? These questions lead to a discussion of governance.

In July of 2012, the National Center for State Courts working in conjunction with other groups incorporated twenty-five (25) principles from a number of sources including the HPCF, into *Principles for Judicial Administration*.⁴⁰ The first principle states: "Effective court governance requires a well-defined governance structure for policy formulation and administration for the entire court system."⁴¹ Commentary to the *Principles* states:

Governance is the means by which an activity is directed to produce the desired outcomes. Good governance is necessary to accomplish the core purposes of courts: delivering timely, effective, fair and impartial justice.⁴²

Performance management is an activity – an activity requiring good governance. Absent good governance, courts as organizations are not likely to take the next step in the quality cycle – take corrective action. Courts that do practice good governance and demonstrate leadership may not be able to resolve problems concerning state compliance with Federal law and regulation concerning commercial drivers because those problems are not single stakeholder issues. All stakeholders must participate in good governance. Stakeholders engaged in enforcement, prosecution, adjudication, sentencing, implementation of sentence, administrative and technology concerns must come together to exercise good governance rather than remain in the culture of domain silos.

Identifying stakeholders involved in the legal process component: lawmakers (state and Federal), law enforcement, prosecutors, defense counsel, judges and state driving licensing agencies would most likely make the generic list for every state. Stakeholders involved in administrative process component include: entity administrators, program and technology support personnel for each stakeholder, regulators and perhaps some external service

³⁹ Ostrom, B. J., and Roger Hanson. 2010. *High Performance Court Framework: A Roadmap for Improving Court Management*, Williamsburg, VA: National Center for State Courts.

⁴⁰ National Center for State Courts. 2012. *Principles of Judicial Administration*.

⁴¹ Ibid.

⁴² Ibid., 2.

providers. If we accept the definition that governance is a means by which an activity is directed to produce a desired outcome, what governance body exists to set policy involving all the stakeholders necessary to resolve commercial driving issues?

In NCSC's work to date, few instances of formal governance addressing commercial driving issues were found. Formal governance, for the purpose of this discussion, is a body of stakeholders within a state authorized by state law and granted some authority under state law to set policy, establish priorities, make recommendations to the legislature, and set performance expectations for traffic related issues within the state. When NCSC relaxed the definition of formal governance to include a written Memorandum of Understanding signed by the executive in charge of each participating stakeholder that outlined responsibilities of the "governance body," the test for "formal" governance still found few instances addressing commercial driver issues.

NCSC did find a few states with informal governance bodies that coordinated traffic improvement initiatives. In these informal governance situations, high-level officials such as the State Court Administrator and the Administrator of the state driver licensing agency designated members of their staff to form and jointly lead a committee of court personnel and SDLA personnel to discuss problems, develop solutions and make recommendations to the respective appointing officials.

One cannot assume that informal governance is ineffective. On the contrary, NCSC field research proved that informal governance provisions were extremely successful in addressing problems and resolving them. In fact, the first pilot to test a proposed standard for data exchange was undertaken in an informal relationship state. NCSC found that some legislative changes originated from these informal governance relationships. It is obvious that the success of informal governance resides in the relationships that are developed by the designees, their leadership qualities and resources that they controlled.

Weaknesses of informal governance bodies were also identified. In those successful informal governance environments, leadership is situational. If one of the leaders would leave, success of the informal governance body would be at risk. There is no guarantee that a new official would recognize the importance of the group, reappoint the person that had been successful, nor is there any guarantee that a new official would give the informal governance body any credibility or assign resources for it to continue its work. In another state, these "designee" leaders and stakeholder staff developed solutions that were not implemented because policy, priorities and allocation of resources were determined by persons in higher authority.

Governance is important. Perhaps what is most important about governance, formal and informal, is that corrective action must be embraced and championed by stakeholder leaders.⁴³ Those leaders must convince governance stakeholders to take collective action, establish commercial driving issues as collective priorities and assign the necessary resources to collaborate on solutions embraced by each stakeholder. Policy governing bodies, formal or informal, sometimes exclude their CIO or IT Director, isolating them from policy discussions. Stakeholder CIO's/IT Directors must understand each other's business

⁴³ Webster, L. P. 2006. "Technology: The NCSC Court IT Governance Model." In *Future Trends in State Courts 2006*. <http://cdm16501.contentdm.oclc.org/cdm/ref/collection/tech/id/578>.

cases and requirements to enable what is technologically possible to improve state compliance. Unfortunately, stakeholders all too frequently, plan within their functional silos missing opportunities to make systemic improvement concerning commercial driving issues.

Why spend so much time on governance? Stakeholders have separate and distinct responsibilities involving commercial driving within a state. If only one stakeholder attempts or makes re-engineering or business process improvement, systemic improvement is not a likely outcome. Governance is also important to the legal process component within a state.

Corrective Action: Improving State Court Management of Commercial Driving Cases

The initial research and discovery led NCSC to believe that state courts' contribution to a state's compliance with CDL law and regulation is likely to be dependent upon the presence, absence, degree and quality of these factors:

- Governance;
- Policy formulation and priority determination;
- Alignment of state law with federal law;
- Court and local legal culture/organizational awareness;
- Dedicated capital/resources;
- Re-engineering and business process improvement; and
- Availability and quality of data.

The factors begged the question whether initiatives of NCSC and others, can improve the management of cases involving commercial drivers in the state courts? NCSC began to utilize the High Performance Court Framework to pursue the matter in more detail recognizing:

Courts are complex organizations that provide a unique set of services to the public, while being challenged to show they are fair, accessible, timely, and accountable. Balancing these competing values is a high-wire act, especially in lean budgetary times. Improvement and the pursuit of excellence are not easy. However, the Framework is grounded in the sensible belief that all courts can do better. Because no court is excellent in all respects, every court is capable of making positive headway.⁴⁴

Despite the complexity described in this report, NCSC believes that some improvement has been made over the last few years. However, NCSC's use of a quality improvement cycle to research commercial driving issues indicates much more work needs to be done. As stated in the introduction, problems of state compliance with Federal law and regulation governing commercial driving issues involves the state courts through two general components: an administrative process component and a legal process component. States are required to update commercial driver records and report convictions of commercial drivers within 10 days of conviction. Masking, including diversion of commercial drivers is prohibited. The Federal law and regulation mandates the penalties that states must impose upon conviction of commercial drivers.

Corrective Action: The Charging Phase

It is difficult to develop empirical support to prove that masking is actively practiced. Various factors contribute to plea negotiations prior to trial. Plea bargaining can also contribute to timely disposition of cases. Caution must be taken that plea bargaining does not become institutionalized to the extent that it becomes systemic masking. Judges frequently tell researchers that it is not about the numbers, it is about the law! Problems related to offense charging begin with the alignment of Federal law and regulation with state law and traffic codes. By whatever means that alignment is accomplished, law enforcement

⁴⁴ Ostrom, B. J., Matthew Kleiman, and Roger Hanson. 2011. "The High Performance Court Framework." In *Future Trends in State Courts 2011*. Williamsburg, VA: National Center for State Courts.

must be adequately trained. NCSC heard members of the law enforcement community express a need for more training of road patrol officers concerning commercial drivers. They also expressed a desire for more stakeholder collaboration. To help correctly charge violations by commercial drivers, each state's traffic citation process should be reviewed for methods that assist the officer in correctly citing commercial drivers.

How states reconcile their respective state codes with the Federal code varies. Some states have adopted the offense tables and associated CFR penalties by reference in the state code. Some have reconciled state codes with the Federal code by changing language in the pertinent sections of that state code, a monumental task in a legislative sense. Other states have chosen to implement the offense tables and penalties through SDLA/Court working groups that cross-walked SDLA CFR offense and sentencing tables to court offense and penalty tables to assist judges as they disposed of commercial driving cases.

Does the state have a uniform traffic citation (UTC)? How is this reconciliation then translated to a state's uniform traffic citation? How does a citing officer navigate the complexity resulting from the reconciliation? The first point of potential "failure" in a traffic matter is an imperfection in the citation. A citation with an imperfection or error may result in an outright dismissal of the charge or may force the prosecutor to plea bargain, agreeing to a reduced charge or dropping the matter via a *nolle prosequi* or similar action.

NCSC believes that it is important to improve the charging phase for commercial driving cases. Perfecting the charging phase requires involvement of many stakeholders: legislators, state patrol and local law enforcement, prosecutors and courts with traffic jurisdiction. In some states, control over the content of the UTC lies with the courts as does regulating e-filing solutions. In some states, the UTC may be the domain of the state's attorney general or other executive branch entity.

NCSC believes that improved accuracy and consistency of information at the point of citation, preparation of complaints, and notification of convictions would improve through increased use of electronic citations and e-filing with the state courts.

Corrective Action: Legal Process and Sentencing Phases

Local legal and court cultures continue to change, embracing both the spirit of the law (no diversion for commercial drivers) and letter of the law (do not contribute to systemic masking). NCSC heard a few people assert states' rights and heard a few counsel claim the equal protection doctrine required commercial drivers to be treated the same as other drivers. In fact, the equal protection argument that "the imposition of harsher penalties on CDL holders is constitutionally prohibited" has failed in appellate court rulings.⁴⁵ Those statements reinforce the need for continuing and expanded efforts to make all stakeholders aware of the provisions in the Federal law and regulations regarding prosecution, defense and sentencing.

In addition to knowing the law, local legal culture and court culture are important factors to consider in awareness efforts. States and communities have developed a plethora of

⁴⁵ National District Attorneys Association and National Traffic Law Center. 2012. *Commercial Drivers' Licenses: A Prosecutor's Guide to the Basics of Commercial Motor Vehicle Licensing and Violations*. p. 28.

corrective behavior approaches as a response to overcrowded jails. There has been increased pressure on the courts to achieve more positive outcomes rather than to serve in their historical, adjudicatory role alone. As a result, there has been significant growth in the number of “problem solving courts.” Diversionary programs have been created that prosecutors manage or recommend for defendants and drivers to be given opportunity to learn and adjust their behavior in return for reduced or dismissed charges. Such diversionary programs for commercial drivers would meet the definition of masking, prohibited by the CFR. As diversionary and specialized programs become more prevalent, it is important to raise awareness that diversion is not a viable option for CDL cases.

To increase state alignment with CFR sanctions, there need to be more opportunities for awareness, training and education. Judges and court personnel must be exposed in greater numbers to commercial driving awareness programs like those NCSC has arranged. Those opportunities to date have happened because NCSC was able to arrange the commercial driving programs at no cost to the state judiciaries because they were grant objectives funded by FMCSA. An important human capital aspect to consider, however, is that judges in most states are required to take a minimum number of continuing legal education hours. In many states, some of those hours may be mandated for certain subjects (ethics and substance abuse are two examples) leaving fewer CLE hours for elective subjects. A judge that presides in traffic court may elect to take courses on subjects that relate to a specific topic within their workload, blood-alcohol testing, search and seizure, etc. Commercial driving cases are a small subset of traffic cases and may generate less interest than other subject areas. The National Judicial College (NJC) has provided education on commercial driving cases in Reno and more recently, through state specific webinars.

NCSC recognizes that a significant effort has been made to educate, train and make members of the justice community aware of the provisions of the Federal law and CFR. In this report, NCSC has documented the sheer number of courts and judges that have traffic jurisdiction within the states and discussed the complexity of how those courts are organized. More education, training and awareness is necessary. NCSC believes that awareness programs should be intensified through collaboration with State Judicial Educators to offer more programs at state conferences and work with the State Judicial Educators and NJC to develop a standard conference curriculum on commercial driving. The effort should include certification of the program for state CLE credits to encourage judges and court personnel to attend. NCSC serves as the Secretariat to the National Association of State Judicial Educators. It is NCSC’s institutional capacity that may result in commercial driving awareness programs being offered to larger numbers of state judges.

In addition to the formal planned curriculum collaboration with State Judicial Educators that NCSC recommends, NCSC believes that providing CDL programs for state court groups has resulted in making more judges and more court personnel aware of the intricacies of commercial driving law and regulations. NCSC plans to continue these efforts, creating opportunities through current grants that have been awarded to it by FMCSA.

Corrective Action: Improving Conviction Reporting

From the inception of NCSC's work, numerous issues were found concerning conviction reporting. Many courts utilize paper workflow processes. Reporting commercial driving convictions timely in non-automated courts requires that judges and court personnel place a high value on the submission of paper conviction reports to state driver licensing agencies. In courts having automated case management systems, timely and accurate input of a conviction involving a commercial driver is critical. If the result of a court proceeding is not recorded into the case management system in the courtroom, the workflow involves a document that leaves the courtroom and follows some kind of manual process with a person entering the courtroom outcome into the automated case management system. If that document sits in a queue waiting to be entered into the case management system, then the case management system is not being used efficiently to improve timeliness of CDL conviction reporting. Creating court cultures where organizational values embrace timely CDL conviction reporting, manual or automated, is difficult in an environment of over 14,000 courts with 25,000 judges. Creating these values requires a significant investment in awareness and education.

Initially, NCSC believed that timeliness of reporting commercial driver convictions would vary depending upon the type of state court organization; centralized (unified) courts with single statewide Case Management Systems (CMS) would most likely be more timely. NCSC also conjectured that a decentralized (local autonomy) systems would be less timely and hybrid state court organizations would be somewhere in between. The assumption concerning centralized court CMS's proved not true. While a centralized CMS is more capable of providing timely commercial driver convictions to an SDLA, success is more dependent upon court culture, good governance and collaboration between the state court administrative technology group and the SDLA. Where governance fails, the reporting may be suspect. Courts having traffic jurisdiction may be created by local government. Some courts created under a local government may only be partially included in the state court organization. In strong local autonomy environments, local courts are strictly a creature of the local government that created it. Missouri is but one example, having a centralized CMS but have no control over conviction reporting for the approximately 500 courts with traffic jurisdiction. Only when courts with local autonomy agree to use the state court CMS, is reporting of commercial driver convictions "guaranteed" – at least in CMS capability, but necessarily by culture. Courts created by local government may have purchased or built a CMS. Local autonomy of courts may mean that the SDLA must obtain convictions from every court within the state rather than through a centralized state court CMS. Texas has over 1,700 courts having traffic jurisdiction, each a creature of local government and each with its own CMS or paper workflow processes.

Some courts and SDLA's continue to use older technology, in some localities even paper, to successfully report commercial driving convictions. For instance, NCSC found that some courts batch convictions to media, a courier carries the media to the SDLA and the SDLA loads the convictions into their driver license database. Other locations batched CDL (traffic) dispositions and exchanged that data through FTP (file transfer protocol) to the SDLA. There is a tendency to not break something that is working, even though it could be

more efficient. However, in decentralized states and hybrids, these data exchanges would require development of specifically designed point-to-point data exchanges between the SDLA and individual courts. Using Texas as a hypothetical, the SDLA would have to develop a location specific, point-to-point data exchange addressing the technical aspects of each of those 1,700 courts having differing case management systems. Each CMS may format and store case data differently. In all state environments, it would make more sense to utilize a standard data exchange so that only interfaces would need to be built. It has been estimated that using a standard, would save 80% of the costs involved in building point to point data exchanges. It may make more sense for local courts to make a data transfer to a state court CMS, leaving the problems of court organization to the state court to remedy. Then the SDLA would have one and only one interface to establish, the state court CMS gets CDL conviction reports from all local courts that have a CMS and the state court and SDLA use the standard to exchange CDL data.

Can we create a data exchange standard that could be used with all court case management systems and do so with less lost than the traditional point-to-point data transfers? Can we do it more securely? Can we do it with less cost? The answer to all these questions is: Yes, we can. With support of a grant from FMCSA, such a standard has been created.

NCSC began participating in the development of court technology standards through NCSC's creation of the Joint Technology Committee, a court technology governance body.⁴⁶ The development and adoption of Case Management Functional Requirement Standards was a significant first step.⁴⁷ The National Highway Traffic Safety Administration (NHTSA), through a grant to NCSC, helped the court community develop functional requirements standards for traffic case types. Functions 7.6 – 7.9 of the traffic standards⁴⁸ provide for data exchanges between courts and SDLAs. Those functional requirements were formally adopted as standards in 2005.⁴⁹

As of 2016, most public and private sector developers of case management systems (CMS) have built the functional standards into their CMS solutions. However, sometimes these functional capabilities are designed as modules and in vendor solutions, are not always “turned on” or implemented. Some vendor provided solutions require additional fees to license a feature set. Specific case management capabilities may pre-empt one another in organizational decisions about its needs and priorities. Available resources always force prioritization. Typical examples of choices that must be made include but are not limited to: improving case scheduling, automating protection orders, improved warrant handling, and revising and automating payment of fines and fees and system changes in response to legislative changes. Vendors, courts and other stakeholders must dedicate resources to implement or modify system functions.

⁴⁶ See Adoption Process of Technology Standards at <http://www.ncsc.org/services-and-experts/technology-tools/court-specific-standards/adoption-process.aspx>.

⁴⁷ A brief history of the development of these standards and the creation of a standards adoption process for the state courts (governance) can be found at <http://www.ncsc.org/services-and-experts/technology-tools/court-specific-standards/history.aspx>.

⁴⁸ Joint Technology Committee. 2005. *Functional Requirement Standards for Traffic Case Management Systems*. p.29 http://www.ncsc.org/Services-and-Experts/Technology-tools/~/_media/Files/PDF/Technology/TrafficStandards-Approved2005.ashx

⁴⁹ Ibid.

NCSC continued its involvement in technology standards development initiatives by participating in the Global Reference Architecture (GRA), endorsed by the U.S. Department of Justice and Office of Homeland Security and building upon the National Information Exchange Model (NIEM). Through a grant provided by the Federal Motor Carrier Safety Administration, NCSC convened a Commercial Driving Data Exchange Working Group to draft the GRA-NIEM service specification required to standardize data exchanges between courts and SDLA's. State teams consisting of law enforcement, SDLA's and courts participated in the working group along with AAMVA and FMCSA representatives. The collective effort resulted in a proposed GRA-NIEM compliant standard that is downloadable for use by courts and SDLA's from NCSC's [Commercial Driving Resource Center](#) (See Resources Tab).

The resulting GRA-NIEM compliant Court2SDLA CDL Data Exchange is currently being piloted by the Iowa Department of Transportation Driver Services and the Iowa Judicial Branch. It is important to note that Iowa sent an informal governance team to participate in the working group. That team has been responsible for year over year improvement in the timeliness of commercial driving convictions reported to CDLIS. Iowa is now working to implement the Court2SDLA Data Exchange to automate CDL conviction reporting so that when a conviction is entered into the centralized court CMS, a message is instantly sent conveying XML coded data to Iowa Driver Services. The solution can reduce delay of courts reporting convictions from days to seconds and also improves data quality, reducing the error rate.

The Iowa pilot has two performance measures that will be created and hopefully will serve as best practices for SDLA's and other courts to emulate. NCSC is currently working with Iowa DOT Department of Driver Services to create a best practice report that will document timeliness of conviction reporting by local courts in Iowa, including by in-state and out-of-state licensed commercial drivers. The Iowa Judicial Branch Administrative Office of the Courts can then examine automation and business processes to correct problems that contribute to delay in reporting CDL convictions. NCSC has summarized the top level base line IDOT data in Figure 10 below. As Iowa courts move to the Court2SDLA Data Exchange, the report should show a continuing reduction in the delay between the date of conviction and the date the conviction is received by Iowa Driver Services.

CDL Convictions Received by IDOT from Iowa Courts, 2015		
	<i>n</i>	%
Total CDL Convictions	47,558	100.0%
<i>In State</i>	31,568	66.4%
≤ 10 days	30,166	95.6%
> 10 days	1,402	4.4%
<i>Out of State</i>	15,990	33.6%
≤ 10 days	14,987	93.7%
> 10 days	1,003	6.3%

Figure 10. IDOT Report Convictions in 2015

NCSC has heard numerous criticisms of courts about their lackadaisical or non-existent CDL conviction reporting. However, prior to IDOT's Conviction Performance Report, NCSC was aware of one and only one court CDL conviction reporting performance report and that report was produced an SDLA at NCSC's request. A state court administrator, local court administrator, clerk of the court or judge could be more informed if they were to receive a performance report from the SDLA that indicated the timeliness of convictions that the court submitted. A report showing that the conviction reports were not timely should prompt corrective action on the part of the court involved. NCSC has not surveyed all state SDLA's. However, in conversations with some SDLA representatives, it does not appear that SDLA's have production performance reports on timely reporting by courts that they share with courts. The IDOT report should be shared with other SDLA's and offered as a best practice to be emulated or improved upon.

Currently, the Iowa Judicial Branch produces reports for its judges and administrators utilizing many of NCSC's *CourTools*. Judges with traffic jurisdiction get reports indicating the age of pending cases and time from filing to disposition. However, there is no CMS system capability to identify those cases that involve commercial drivers. The Iowa Judicial Branch and Iowa Driver Services is currently working on a solution to that problem in the pilot project (funded by another FMCSA grant). One solution is for the Iowa DOT TraCS (Traffic and Criminal Software) system to pass a flag to the Iowa Judicial Branch CMS for all commercial driver related cases. This requires changes in IDOT systems. A second alternative is a workaround in the Iowa Judicial Branch CMS that would identify cases using vehicle types involved but the method is a second choice because it would miss cases involving commercial drivers in personal vehicles. The Iowa Judicial Branch goal is to provide information to each judge to use in managing their CDL caseload as a subset of traffic cases.

The Joint Technology Committee and the Court Information Technology Officers Consortium, both staffed by NCSC, support the implementation of XML data exchanges and the use of standards like GRA-NIEM. As courts continue to implement these solutions and exchange data with other justice entities, state and Federal, it is important that other stakeholders work together with courts to help implement these data exchanges. In order to do so, there must be collaboration between courts and SDLA's. They must work to create good governance that establishes the exchange of commercial driver convictions as a priority at a policy level and work to insure that the required resources are made available to courts and SDLA's to implement solutions. The GRA-NIEM compliant Court2SDLA Data Exchange is one of those solutions. NCSC has been encouraging and recruiting additional pilots and through a grant from FMCSA, NCSC is able to offset some of the expense in a collaborative effort between an SDLA and state court.

NCSC has found numerous possible areas to address undesirable outcomes in cases involving commercial drivers:

- Inadequacies in uniform traffic citations (UTC);
- Paper citations filed with courts containing errors or lacking information;
- Illegible handwriting on citations or factual errors;
- Pleas may result from citations with imperfections;
- Delay may be encountered from filing to court disposition;

- Convictions are not sent to the SDLA or not sent daily;
- Convictions containing errors or missing information are sent to the SDLA;
- Courts lacking automation use the Postal Service to mail convictions to the SDLA;
- The SDLA may have to manually enter disposition data into the driver record or unable to update a record due to reporting errors; and
- When data is electronically exchanged between courts and the SDLAs, the data exchanges utilize methods that work but are less efficient (i.e., courier taking a tape from the court IT facility to the SDLA IT facility, FTP, etc.) than XML data exchange using web services, real time data exchange.

NCSC has also identified high-level Court Technology Framework business case elements that will be included in a web-enabled resource on NCSC's [Commercial Driving Resource Center](#).

NCSC has had the benefit of analyzing data from CDLIS and Iowa DOT. It is difficult to match cases appearing in both systems, but NCSC and IDOT are working together on a best practice report that would help solve that problem. NCSC's believes that its research and knowledge of CDL issues would benefit from walking the track of a commercial driver case from citation, through prosecution, through the courts to updating a driver record at the SDLA (SOC and/SOR). Sampling of this nature in few states may provide additional insight on weaknesses that could be used by stakeholders to collaborate on improvements. To the degree that NCSC can examine these issues further in its current work, it will do so. An application to conduct research that would walk the track, sampling cases and comparing data to better identify points for improvement has been submitted to FMCSA for consideration. Upon validation of results, NCSC would propose taking the next step, creation of a case management plan for commercial driving cases. DUI cases have long been a target for improvement. It is time that commercial driving cases be afforded similar consideration.

*State Compliance with Federal Law and Regulations Concerning Commercial Driving:
Issues Involving State Courts*

Appendix A

Traffic Jurisdiction*			
*Includes all courts with criminal traffic and/or traffic violations			
Summary			
Number of Courts	14,525		
Number of Judges	25,616		
Number of States	55		
Judicial Salary Funding			
	Courts	Judges	States
State	3,063	9,197	41
Local	6,563	7,728	23
Mixed	4,896	8,629	17
Other/Unknown/NA	3	62	3
Source of Authority			
	Courts	Judges	States
Constitution	9,190	18,492	46
State Legislation	3,905	5,682	23
Local Legislation	1,429	1,380	8
Other/Unknown/NA	1	62	2
Clerk Salary Funding			
	Courts	Judges	States
State	1,430	4,641	27
Local	8,622	11,658	27
Mixed	3,434	7,206	13
Other/Unknown/NA	1,039	2,111	7
TC Administrator Salary Funding			
	Courts	Judges	States
State	2,127	6,411	30
Local	9,227	11,197	22
Mixed	1,132	4,784	14
Other/Unknown/NA	2,039	3,224	14

*State Compliance with Federal Law and Regulations Concerning Commercial Driving:
Issues Involving State Courts*

Courts with both Criminal Traffic and Traffic Violation Jurisdiction				
States (54)	Court	Courts (10,484)	Judges (17,605)	
Alabama	District	67	106	
Alabama	Municipal	273	315	
Alaska	District	16	22	
Arizona	Justice of the Peace	63	87	
Arizona	Municipal	37	154	
Arkansas	District	84	110	
California	Superior	58	1695	
Colorado	County	64	103	
Connecticut	Superior	48	165	
Delaware	Alderman's	6	6	
Delaware	Justice of the Peace	15	58	
DC	Superior	1	62	
Florida	County	67	322	
Georgia	County Recorders	4	37	
Georgia	Municipal	373	351	
Georgia	Probate	159	171	
Georgia	State	70	123	
Georgia	Superior	159	209	
Guam	Superior	1	7	
Hawai'i	District	4	37	
Idaho	Magistrates Division	44	89	
Illinois	Circuit	24	514	
Indiana	Circuit	114	114	
Indiana	City	43	43	
Indiana	Superior	200	200	
Indiana	Town	24	24	
Iowa	District	99	191	
Kansa	District	105	246	
Kansas	Municipal	390	259	
Kentucky	District	60	116	
Louisiana	City & Parish	52	73	
Louisiana	District	43	218	
Maine	District	28	36	
Maryland	District	34	107	
Massachusetts	Boston Municipal Court Dept.	8	32	
Massachusetts	District Court Dept.	62	152	
Michigan	Municipal	4	4	
Minnesota	District	10	280	
Mississippi	Municipal	226	226	
Missouri	Circuit	45	334	
Montana	City	88	88	
Montana	Justice's Court	56	65	
Montana	Municipal	7	9	
Nebraska	County	93	58	
Nevada	Justice	42	67	
Nevada	Municipal	17	30	
New Hampshire	Circuit	10	67	
New Jersey	Municipal	525	311	

*State Compliance with Federal Law and Regulations Concerning Commercial Driving:
Issues Involving State Courts*

New Mexico	Magistrate	50	62
New Mexico	Metro. Ct. of Bernalillo County	1	16
New Mexico	Municipal	81	85
New York	City	61	162
New York	Criminal Ct of the City of NY	1	103
New York	District	2	49
New York	Town & Village Justice	1300	2049
North Carolina	District	42	268
North Dakota	District	44	44
North Dakota	Municipal	94	94
N. Marina Islands	Superior	1	5
Ohio	County	36	46
Ohio	Mayors	328	322
Ohio	Municipal	128	200
Oklahoma	District	77	241
Oregon	Circuit	36	173
Oregon	Justice	NA	NA
Oregon	Municipal	NA	NA
Pennsylvania	Magisterial District Judge	544	544
Pennsylvania	Philadelphia Municipal	1	25
Pennsylvania	Philadelphia Traffic	1	7
Puerto Rico	Court of First Instance	13	338
South Carolina	Magistrate	317	313
South Carolina	Municipal	208	321
South Dakota	Magistrate	63	14
Tennessee	General Sessions	95	154
Tennessee	Municipal	170	170
Texas	Constitutional County	254	254
Texas	County Courts at Law	238	238
Texas	Justice of the Peace	819	815
Texas	Municipal	926	1288
Utah	District	37	75
Utah	Justice	128	142
Vermont	Superior	14	32
Virgin Islands	Superior	2	NA
Virginia	District	32	223
Washington	District	50	117
Washington	Municipal	119	92
West Virginia	Magistrate	55	158
West Virginia	Municipal	NA	NA
Wisconsin	Circuit	69	249
Wyoming	Circuit	25	24

NA: Data not available

*State Compliance with Federal Law and Regulations Concerning Commercial Driving:
Issues Involving State Courts*

Courts with Only Criminal Traffic Jurisdiction			
States (35)	Court	Courts (2,071)	Judges (6,026)
Alabama	Circuit	41	144
Alaska	Superior	26	40
Arizona	Superior	15	174
Arkansas	Circuit	28	121
Colorado	District	22	168
Delaware	Court of Common Pleas	3	11
Delaware	Superior	3	21
Florida	Circuit	20	599
Georgia	Civil	2	4
Georgia	Magistrate	159	488
Hawai'i	Circuit	4	31
Idaho	District	7	45
Kentucky	Circuit	57	94
Maine	Superior	16	17
Maryland	Circuit	24	152
Massachusetts	Superior Court Dept.	14	80
Michigan	Circuit	57	217
Michigan	District	105	244
Mississippi	Circuit	22	53
Mississippi	County	21	30
Mississippi	Justice	82	197
Montana	District	56	46
Nebraska	District	93	55
Nevada	District	17	82
New Hampshire	Superior	11	22
New Jersey	Superior	15	359
New Mexico	District	28	75
New York	County	57	127
New York	Supreme	62	269
North Carolina	Superior	50	112
Ohio	Court of Common Pleas	88	384
Pennsylvania	Court of Common Pleas	60	449
Rhode Island	District	4	15
Rhode Island	Superior	4	25
South Carolina	Circuit	46	47
South Dakota	Circuit	63	41
Tennessee	Circuit	84	83
Tennessee	Criminal	33	33
Texas	District	457	457
Virginia	Circuit	31	133
Washington	Superior	30	189
West Virginia	Circuit	31	70
Wyoming	District	23	23

*State Compliance with Federal Law and Regulations Concerning Commercial Driving:
Issues Involving State Courts*

Courts with Only Traffic Violation Jurisdiction			
States (8)	Court	Courts (1,970)	Judges (1,985)
Colorado	Municipal	NA	250
Louisiana	Justice of the Peace	385	385
Louisiana	Mayors	255	255
Missouri	Municipal	639	385
Oklahoma	Municipal Court Not of Record	352	352
Oklahoma	Municipal Criminal Court of Record	2	2
Rhode Island	Traffic Tribunal	2	8
Vermont	Judicial Bureau	1	13
Wisconsin	Municipal	252	254
Wyoming	Municipal	82	81

NA: Data not available

HIGH PERFORMANCE COURT Framework

A Road Map for Improving Court Management

The High Performance Court Framework clarifies what court leaders and managers can do to produce high quality administration of justice. It consists of six key elements:

- 1. Administrative Principles** define high performance. They indicate the kind of administrative processes judges and managers consider important and care about.
- 2. Managerial Culture** is the way judges and managers believe work gets done. Building a supportive culture is key to achieving high performance.
- 3. Perspectives** of a high performing court include: (a) Customer, (b) Internal Operating, (c) Innovation, and (d) Social Value.
- 4. Performance Measurement** builds on *CourTools* to provide a balanced assessment in areas covered by the Customer and Internal Operating Perspectives.
- 5. Performance Management** concerns the Innovation Perspective and uses performance results to refine court practices on the basis of evidence-based innovations. It also fulfills the Social Value Perspective by communicating job performance to the public and policy makers.
- 6. The Quality Cycle** is a dynamic, iterative process that links the five preceding concepts into a chain of action supporting ever-improving performance.

Administrative Principles

The High Performance Court Framework rests on four principles that define effective court administration and are widely shared by judges and court managers. Administrative principles include the following: (1) giving every case individual attention; (2) treating cases proportionately; (3) demonstrating court procedures are fair and understandable; and (4) exercising judicial control over the legal process.

The Framework Emphasizes Four Administrative Principles

- Giving every case individual attention
- Treating cases proportionately
- Demonstrating procedural justice
- Exercising judicial control over the legal process

A high performing court embraces each principle and seeks to make it real in its own local court context. Despite broad agreement on the importance and relevance of these principles, they do not necessarily lead to universal practices due to substantial differences in court cultures.

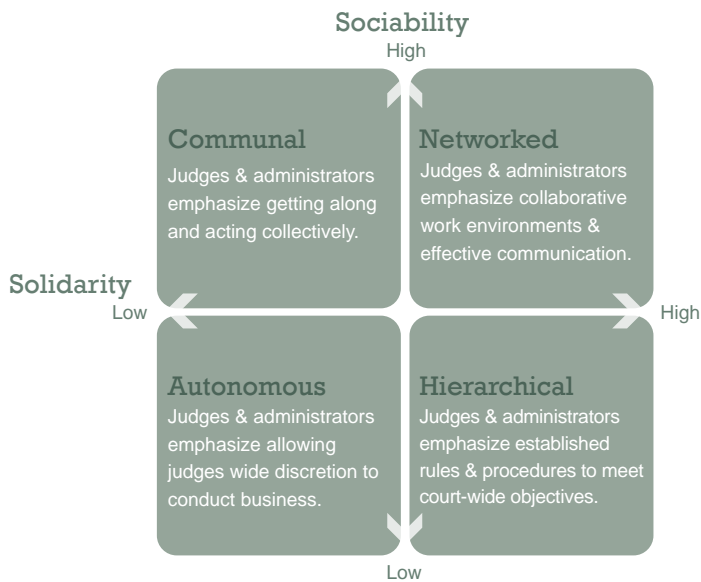
Managerial Culture

Court culture is the way judges and managers believe work currently gets done and the way they would like to see it get done in the future. Court culture acts as a filter between principles and practices. Different cultures apply the same administrative principles differently.

Managerial culture falls along two distinct “dimensions.” The first dimension, called solidarity, is the spectrum of beliefs about the importance of judges and managers working together toward common ends. Solidarity refers to the degree to which a court has clearly understood and shared goals, mutual interests, and common ways of doing things. The second dimension, called sociability, concerns beliefs as to whether it is important for judges and managers to work cooperatively with one another. Sociability refers to the degree to which

court personnel acknowledge, communicate, and interact with one another in a cordial fashion.

Classifying courts along both dimensions produces four distinguishable types of cultures: (1) communal, (2) networked, (3) autonomous, and (4) hierarchical. Each of the four cultures is a particular combination of solidarity and sociability, as shown below.



An essential lesson from field research is that a high degree of solidarity is necessary to support performance initiatives. Hence, a challenge for court leaders is to encourage and facilitate collective decision-making among individual judges on what is best for the court as a whole. As a result, by focusing on solidarity and building consensus, a court can reduce the level of fragmentation and isolation, enabling it to more effectively apply the administrative principles.

Performance Perspectives, Measurement, and Management

The High Performance Court Framework uses the concept of perspectives to help guide performance assessment. Perspectives highlight how the interests of different individuals and groups involved in the legal process are affected by administrative practices. The Framework's four perspectives provide an integrated approach to performance measurement and management, as shown in the diagram: High Performance Court Framework at a Glance.



Performance Measurement. Combining the Customer and Internal Operating Perspectives yields four measurable performance areas (effectiveness, procedural satisfaction, efficiency, and productivity). Illustrative measures of the performance areas are drawn from *CourTools*, previously developed by the NCSC.

Performance Management. In a complementary way, the Innovation and Social Value Perspectives emphasize a court's dynamic use and management of evidence-based information, not just anecdotes, informal feedback, or intuition. The Innovation Perspective outlines four forms of social capital critical to developing positive results on an ongoing basis (as summarized in the graphic). It offers an approach courts can use to augment problem-

The High Performance Court Framework at a Glance

The following diagram shows how four perspectives produce a workable strategy to guide performance assessment. The perspectives show how the interests of those involved in the legal process are affected by how a court conducts business.

Customer Perspective

How should we treat all participants in the legal process?

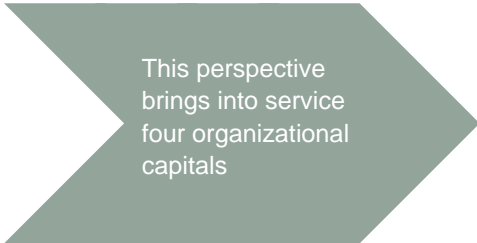
Internal Operating Perspective

What does a well functioning court do to excel at managing its work?



Innovation Perspective

How can court personnel learn to respond and adapt to new circumstances and challenges?



Social Value Perspective

What is a court's responsibility to the public and funding bodies?



The High Performance Court Framework at a Glance

Following from left to right, the diagram illustrates how the perspectives frame an integrated approach to performance measurement and management.

HPC Measurement: A Balanced Scorecard

Effectiveness

Gauges the match between stated goals and their achievement.

CourTools and Other Measures:

Measure 5: Trial Date Certainty
Measure 7: Enforcement of Penalties
Measure 8: Juror Usage

Procedural Satisfaction

Gauges if customers perceive the court is providing fair and accessible service.

CourTools and Other Measures:

Measure 1: Access
Measure 1: Fairness
Transaction time

Efficiency

Gauges the variability and stability in key processes.

CourTools and Other Measures:

Measure 2: Clearance Rate
Measure 4: Age of Pending Caseload
Measure 6: Case File Integrity

Productivity

Gauges whether processes make the best use of judge and staff time.

CourTools and Other Measures:

Measure 10: Cost Per Case
Measure 3: Time to Disposition
Workload Assessment

HPC Management: The Four Capitals

Organizational Capital

Organizing judges and staff to achieve the best use of time in pursuing common goals and communicating those goals clearly to justice system partners.

Technological Capital

Using technology to achieve greater efficiency and quality, while managing it competently. Implementing up-to-date technology in an integrated way is key to effectively managing court business processes.

Human Capital

Promoting the sharing of information and ideas on performance strategies, targets, and results. Input and feedback are solicited by court leaders from all personnel.

Information Capital

Pursuing a credible evidence-based system to evaluate court performance. Ongoing attention to measurement and analysis help to ensure data are valid and meaningful.

HPC Management: Strengthening the Role of Courts in Society

Public Trust and Confidence

Public support is recognized as critical for legitimacy and compliance with decisions. As a result, a court will seek to demonstrate and communicate a record of successful job performance.

Support of Legitimizing Authorities

Adequate funding from other branches of government is sought on the basis of measurable court performance, especially the efficient use of public resources.

solving skills so as to better diagnose and forecast challenges.

The Social Value Perspective stresses the use of information in communicating the work of the court to its partners in the justice system as well as members of the public and policy makers.

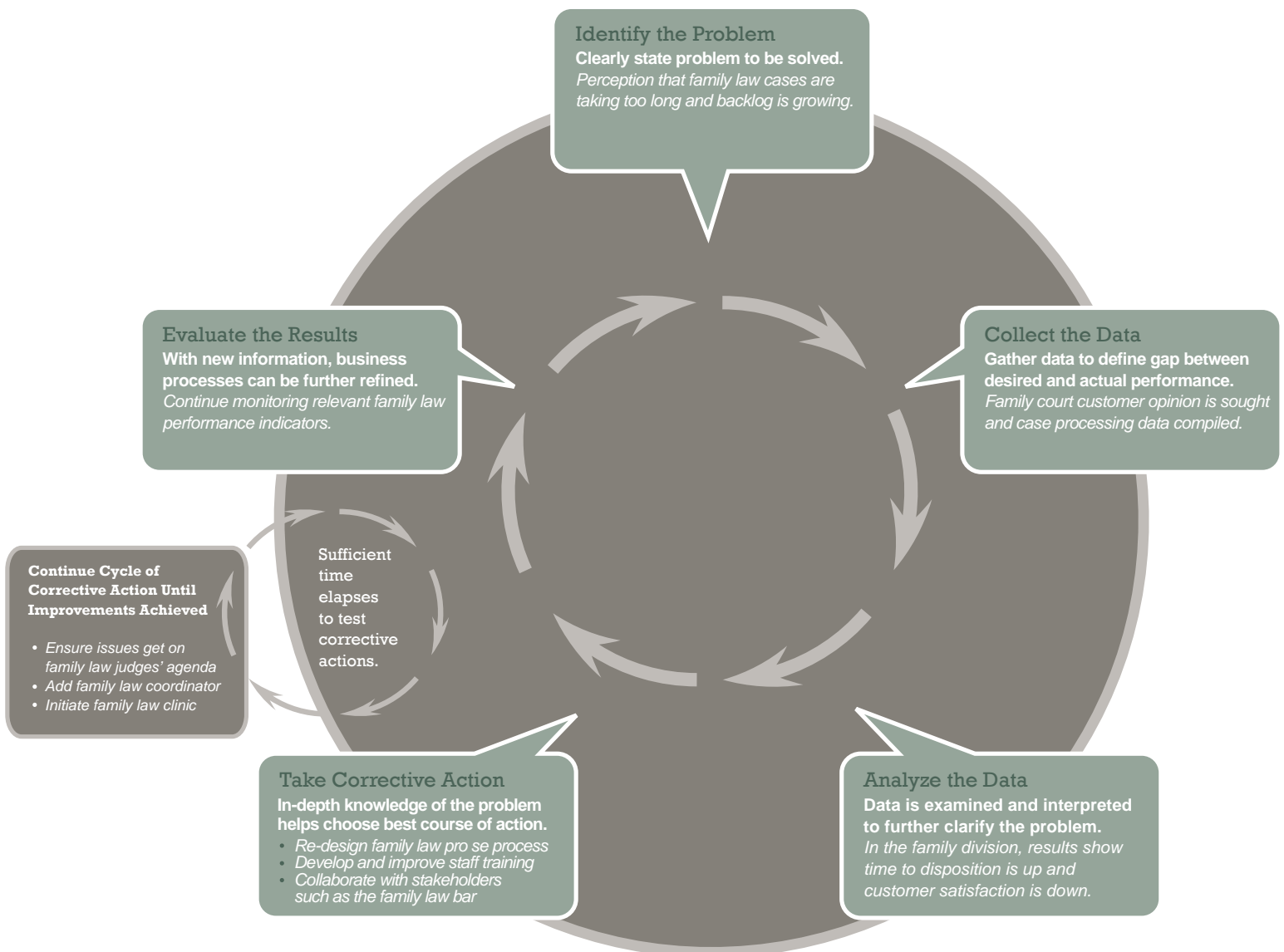
Quality Cycle

The Framework is a flexible set of steps a court can take to integrate and implement performance improvement into its ongoing operations, creating what can be called a “quality cycle.” The court

administration quality cycle includes five steps: determining the scope and content of a problem, information gathering, analysis, taking action, and evaluating the results.

In many courts, the road to high performance begins with the will to see how the four administrative principles are working out in practice and using data to gauge what “working out” means. In other words, when a court’s culture supports a commitment to high quality service, there is ongoing attention to identifying and resolving administrative problems. A clear statement of a specific problem is the first

Quality Cycle: Family Law Case Example



step in organizing a court's resources to effectively address it.

Collecting relevant data is the next key step of the quality cycle. A court can begin by consulting the Framework's proposed set of performance areas and accompanying measures (described in the first two perspectives) to gauge whether reality is consistent with expectations.

The third step in the cycle is examining and interpreting the results from the data collection and drawing out implications on what the real causes of the problem(s) are and what remedies might be appropriate. This step is clearly iterative. Once the basic character of a problem is identified, additional information can be gathered to further narrow and refine the problem and outline relevant responses.

The fourth step in the cycle is a fusion of performance measurement and management. Clearly specifying the problem allows court managers to marshal their resources (as

represented by the four capitals) and choose the new way of doing business that best fits the contours of the problem. As new information emerges, potential business process refinements and staff capability improvements will naturally evolve.

The fifth step involves checking to see whether the responses have had the intended outcomes and reporting those results. By gathering input from appropriate judges, court staff, and court customers and monitoring the relevant performance indicators, the court can determine if the problem is really fixed. The goal is not to temporarily change performance numbers, but to achieve real and continuing improvements in the process and in customer satisfaction.

Results also need to be shared with stakeholders in the legal process, members of the public, and policy makers in a clear and comprehensible manner. This narrative should indicate the net gains of past and current improvements and the status of mechanisms designed to avert problems in the future.

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Resources:

High-Performance Courts

www.ncsc.org/hpc

CourTools

www.courttools.org

Court Culture Assessment

www.ncsc.org/courtculture.ashx



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This summary is based on the National Center for State Courts Working Paper Series *Achieving High Performance: A Framework for Courts*. Copies can be obtained by contacting the NCSC Research Division at 1.800.616.6109. Information Design provided by VisualResearch, Inc. Copyright © 2010 by the National Center for State Courts. All rights reserved.



CourTools



*Courts have long sought a set of balanced and realistic performance measures that are practical to implement and use. The ten **CourTools** performance measures were designed by the National Center for State Courts to answer that call.*

*Measuring court performance can be a challenge. Understanding the steps involved in performance measurement can make the task easier and more likely to succeed. **CourTools** supports efforts toward improved court performance by helping:*

- *Clarify performance goals*
- *Develop a measurement plan*
- *Document success*

Effective measurement is key to managing court resources efficiently, letting the public know what your court has achieved, and helping identify the benefits of improved court performance.

*The National Center developed **CourTools** by integrating the major performance areas defined by the Trial Court Performance Standards with relevant concepts from other successful public- and private-sector performance measurement systems. This balanced set of court performance measures provides the judiciary with the tools to demonstrate effective stewardship of public resources. Being responsive and accountable is critical to maintaining the independence courts need to deliver fair and equal justice to the public.*

*Each of the ten **CourTools** measures follows a similar sequence, with steps supporting one another. These steps include a clear definition and statement of purpose, a measurement plan with instruments and data collection methods, and strategies for reporting results. Published in a visual format, **CourTools** uses illustrations, examples, and jargon-free language to make the measures clear and easy to understand.*

Measure 1

Access and Fairness

definition: Ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect.

purpose: Many assume that "winning" or "losing" is what matters most to citizens when dealing with the courts. However, research consistently shows that positive perceptions of court experience are shaped more by court users' perceptions of how they are treated in court, and whether the court's process of making decisions seems fair. This measure provides a tool for surveying all court users about their experience in the courthouse. Comparison of results by location, division, type of customer, and across courts can inform court management practices.

Measure 2

Clearance Rates

definition: The number of outgoing cases as a percentage of the number of incoming cases.

purpose: Clearance rate measures whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, on a monthly or yearly basis, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and indicate where improvements can be made.

Measure 3

Time to Disposition

definition: The percentage of cases disposed or otherwise resolved within established time frames.

purpose: This measure, used in conjunction with *Measure 2 Clearance Rates* and *Measure 4 Age of Active Pending Caseload*, is a fundamental management tool that assesses the length of time it takes a court to process cases. It compares a court's performance with local, state, or national guidelines for timely case processing.

Measure 4

Age of Active Pending Caseload

definition: The age of the active cases pending before the court, measured as the number of days from filing until the time of measurement.

purpose: Having a complete and accurate inventory of active pending cases and tracking their progress is important because this pool of cases potentially requires court action. Examining the age of pending cases makes clear, for example, the cases drawing near or about to surpass the court's case processing time standards. This information helps focus attention on what is required to resolve cases within reasonable timeframes.

Measure 5

Trial Date Certainty

definition: The number of times cases disposed by trial are scheduled for trial.

purpose: A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition. This measure provides a tool to evaluate the effectiveness of calendaring and continuance practices. For this measure, "trials" includes jury trials, bench trials (also known as non-jury or court trials), and adjudicatory hearings in juvenile cases.

Measure 6

Reliability and Integrity of Case Files

definition: The percentage of files that can be retrieved within established time standards and that meet established standards for completeness and accuracy of contents.

purpose: A reliable and accurate case file system is fundamental to the effectiveness of day-to-day court operations and fairness of judicial decisions. The maintenance of case records directly affects the timeliness and integrity of case processing. This measure provides information regarding (a) how long it takes to locate a file, (b) whether the file's contents and case summary information match up, and (c) the organization and completeness of the file.



Measure 7

Collection of Monetary Penalties

definition: Payments collected and distributed within established timelines, expressed as a percentage of total monetary penalties ordered in specific cases.

purpose: Integrity and public trust in the dispute resolution process depend in part on how well court orders are observed and enforced in cases of noncompliance. In particular, restitution for crime victims and accountability for enforcement of monetary penalties imposed on criminals are issues of intense public interest and concern. The focus of this measure is on the extent to which a court takes responsibility for the enforcement of orders requiring payment of monetary penalties.

Measure 8

Effective Use of Jurors

definition: Juror Yield is the number of citizens selected for jury duty who are qualified and report to serve, expressed as a percentage of the total number of prospective jurors available. Juror Utilization is the rate at which prospective jurors are used at least once in trial or voir dire.

purpose: The percentage of citizens available to serve relates to the integrity of source lists, the effectiveness of jury management practices, the willingness of citizens to serve, the efficacy of excuse and postponement policies, and the number of exemptions allowed. The objective of this measure is to minimize the number of unused prospective jurors—the number of citizens who are summoned, qualified, report for jury service, and who are not needed.

Measure 9

Court Employee Satisfaction

definition: Ratings of court employees assessing the quality of the work environment and relations between staff and management.

purpose: Committed and loyal employees have a direct impact on a court's performance. This measure is a powerful tool for surveying employee opinion on whether staff have the materials, motivation, direction, sense of mission, and commitment to do quality work. Knowing how employees perceive the workplace is essential to facilitate organizational development and change, assess teamwork and management style, enhance job satisfaction, and thus improve service to the public.

Measure 10

Cost Per Case

definition: The average cost of processing a single case, by case type.

purpose: Monitoring cost per case, from year to year, provides a practical means to evaluate existing case processing practices and to improve court operations. Cost per case forges a direct connection between how much is spent and what is accomplished. This measure can be used to assess return on investment in new technologies, reengineering of business practices, staff training, or the adoption of “best practices.” It also helps determine where court operations may be slack, including inefficient procedures or underutilized staff.

Giving Courts the Tools
to Measure Success

CourTools

