

HIGH PERFORMANCE COURTS

CASE FLOW MANAGEMENT PLUS IN SHEEP'S CLOTHING

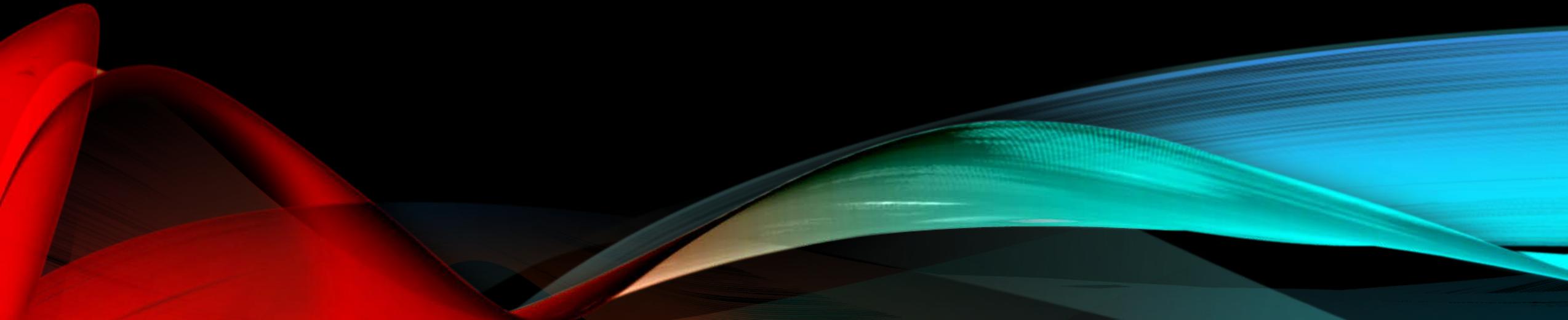
Adapted from material published by NACM

PURPOSES OF COURTS

- To do individual justice in individual cases
- To provide a forum for the resolution of legal disputes
- To protect citizens against arbitrary use of government power
- To make a formal record of legal status
- To deter criminal behavior
- To help rehabilitate persons convicted of crimes
- To separate persons convicted of serious offenses from society

Time destroys the purposes of courts. The purpose underlying CFM is not faster and faster and more and more, it is justice. CFM is a justice, not an efficiency driven, activity.

PROVEN CASE MANAGEMENT PRINCIPLES AND PRACTICES



SINE QUA NON

THE COURT IS RESPONSIBLE FOR SUPERVISING CASE PROGRESS
An Essential Ingredient to Success of a High Performance Court

ABA STANDARDS RELATING TO COURT DELAY REDUCTION

Standard 2.50

Case flow Management and Delay Reduction: General Principle

From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation. A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.

THREE THINGS THAT HIGH PERFORMANCE COURTS MUST HAVE

- Leadership
- Standards
- Information Related to Standards
 - Timely
 - Accurate
 - Clearly Presented
 - Used for Continuous Improvement

CHARACTERISTICS OF SUCCESSFULLY MANAGED COURTS

- Accountability
- Persistence
- Willingness to initiate change
- Continuity of action

JUDICIAL VISION, LEADERSHIP, & COMMITMENT

- This is the key element
- The presiding judge sets the tone
- All judicial officers must:
 - Work effectively with each other, with Presiding Judge *managing*
 - Work within parameters of established court-wide policy
 - Be committed and show commitment
 - Establish partnership with court administrator and the clerks
 - Involve other agencies in decision making

CASEFLOW ANALYTICAL STANDARDS



TYPES OF STANDARDS

MACRO

- Filing to disposition all case types
- Pending cases all case types

MICRO

- Time between events
- Individual cases

RELATED GOALS

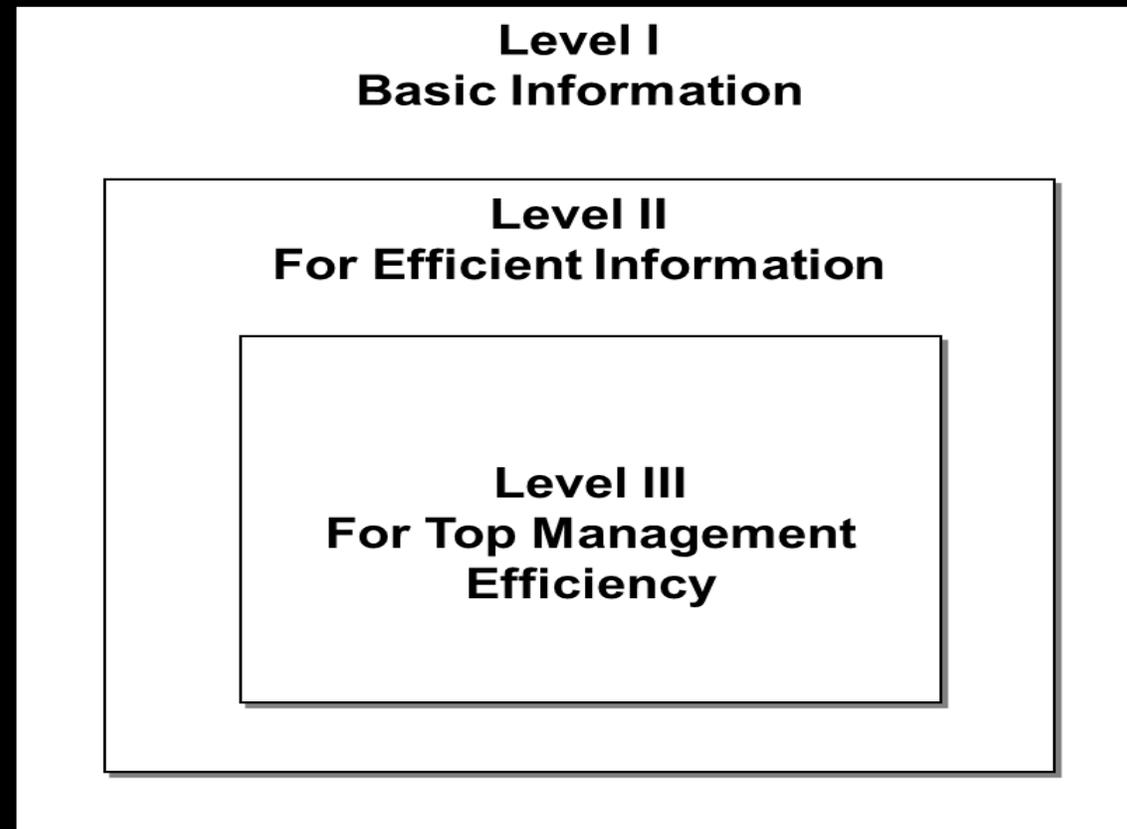
- Continuances
- Cases over standard

SAMPLE CASE-SPECIFIC TIME STANDARDS

Table 2
AMERICAN BAR ASSOCIATION TIME STANDARDS*

	<i>Time Within Which Cases Should be Adjudicated or Otherwise Concluded</i>		
<i>Case Type</i>	<i>90%</i>	<i>98%</i>	<i>100%</i>
Civil	12 months	18 months	24 months
Criminal Felony	120 days	6 months	365 days
Criminal Misdemeanor	30 days	---	90 days
Domestic Relations	3 months	6 months	12 months

CASEFLOW MANAGEMENT INFORMATION SYSTEMS: MONITORING LEVELS



LEVEL I

BASIC INFORMATION

Questions you must be able to answer for basic CFM and docket management

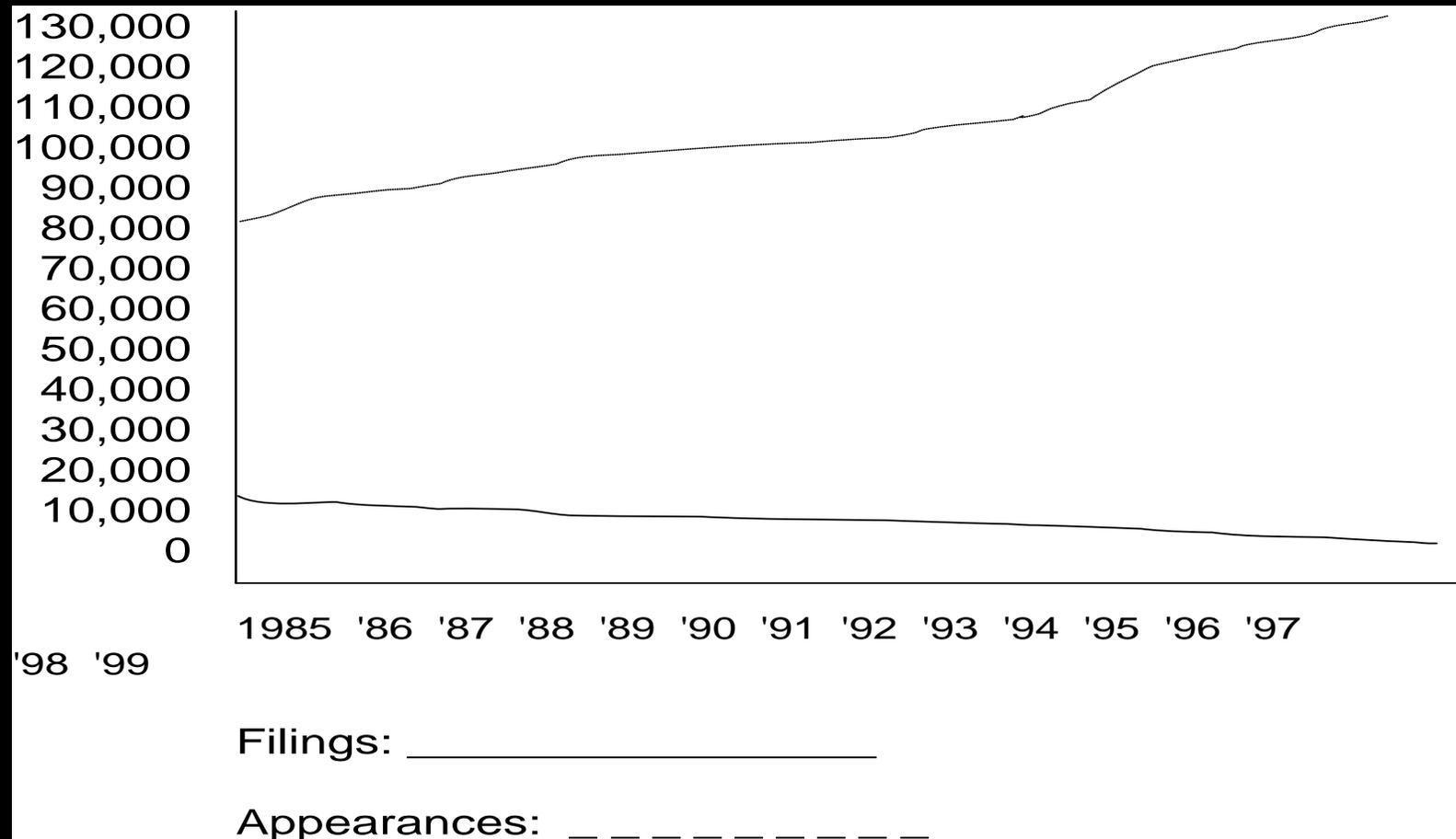
- How many cases are filed each year?
- How many cases are pending?
- How many cases are pending on each judicial officer's docket?
- How old are the pending cases?
- What is the status of each case? What was the last event? When did it occur? What is the next event? When is it scheduled?
- How many cases are disposed each year? How many cases do each judge dispose each year, month, week, and day?
- How do the cases reach disposition, i.e., how many by jury, bench trial, settlement/plea, dismissal, etc.?
- How old are the cases when they reach disposition?

LEVEL II

EFFICIENCY INFORMATION

- How old are all pending cases?
- How old are cases at disposition?
- When do dispositions occur?
- How many cases settle on the day of trial?
- How many settle before a trial date is set?
- How many events are set?
- How many events are meaningful?
- How many events are adjourned / continued / dismissed?
- What is the continuance rate for events other than trials?
- What is the trial rate?
- How many cases are scheduled for trial that never result in a trial?
- How many appearances are there per case?
- How many appearances per case would there be if continuances were eliminated?

PERCEPTION V. REALITY FILINGS VERSUS APPEARANCES



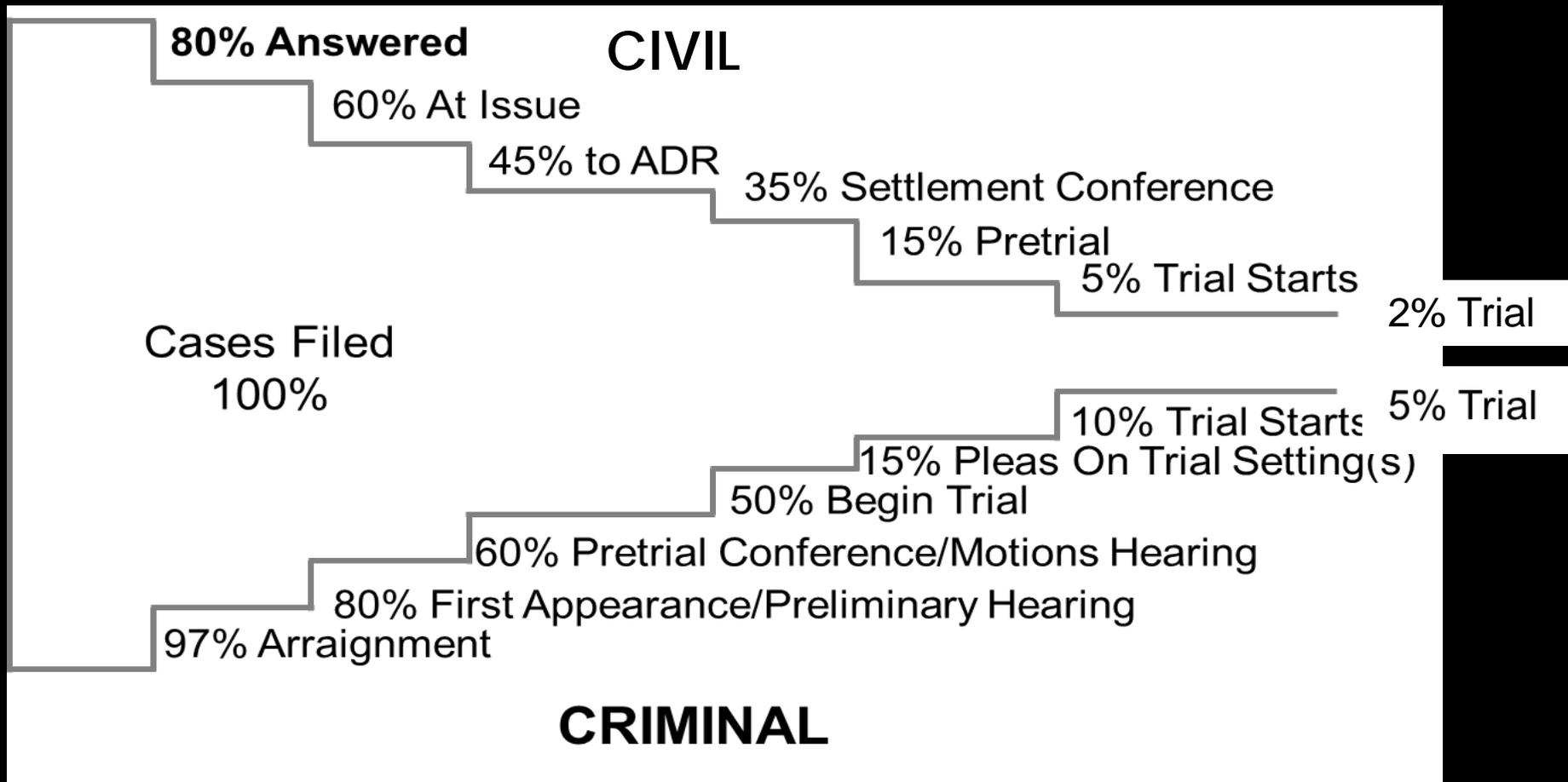
LEVEL III

HIGH PERFORMANCE COURT

- How do the flow chart and the reverse telescope compare with court perceptions of the system?
- What are the trial probability rates for each type of case?
- Is judge time being efficiently utilized?
- What are the short- and long-term trends? Based on the data, what problems can be anticipated? What steps can be taken now to avoid future problems?
- What are system strengths and weaknesses? What can be done to improve the system?
- What is the source of docket problems? Which cases are getting old? Why? Who is responsible?

PERCEPTION V. REALITY

REVERSE TELESCOPE



PERFORMANCE MEASURES

CLEARANCE RATES

Definition: The number of outgoing cases as a percentage of incoming cases.

- Tight measurement criterion showing at a glance whether the court is keeping current with its caseload.

PERFORMANCE MEASURES TIME TO DISPOSITION

Definition: The percentage of cases resolved or otherwise disposed within an established timeframe.

- Shows whether the Court complies with disposition goals and standards.

PERFORMANCE MEASURES AGE OF ACTIVE PENDING CASELOAD

Definition: The age of active pending cases before the Court, measured as the number of days between case filing and the report.

- Critical to know how many cases are in the Court's open case inventory and each of the case's age.
- Also indicates whether a case backlog exists and its severity.

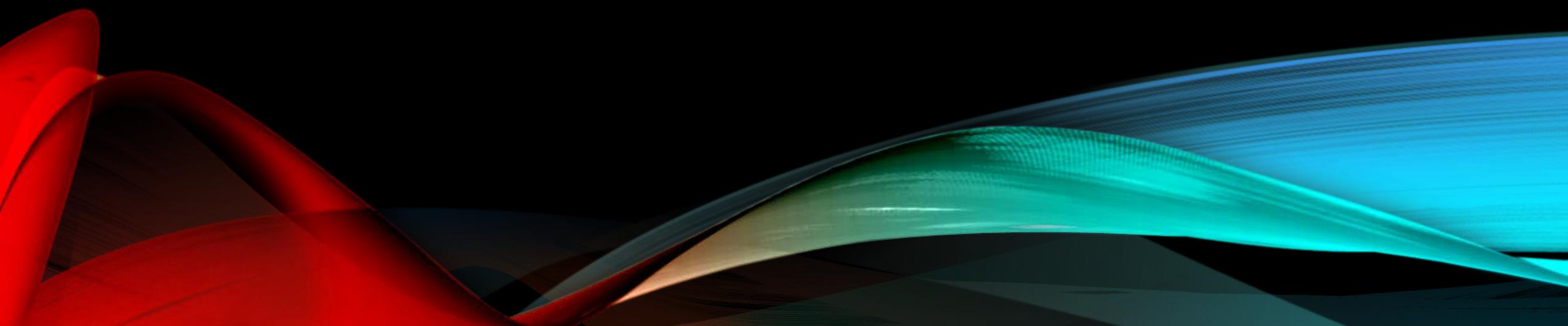
PERFORMANCE MEASURES

TRIAL DATE CERTAINTY

Definition: The number of times cases disposed of by trial are set for trial.

- Powerful measurement criteria indicating:
 - Whether trial calendar is predictable
 - What frequency trials occur when they are scheduled

THE SAME OR BETTER JUSTICE SOONER HIGH PERFORMANCE COURT PRACTICES IMPLEMENTATION



CASE RESOLUTION THREE AXIOMS

1. Lawyers settle cases, not judges
2. Lawyers settle cases when prepared
3. Lawyers prepare for significant events

CASE RESOLUTION

FOUR JUDICIAL PRINCIPLES

1. Early positive control
2. Continuous control
3. On a tight and predictable schedule
4. Create the expectation and reality that events happen when scheduled

CASE RESOLUTION

DIFFERENTIATED CASE MANAGEMENT SOLUTION

Differentiated Case Management (DCM)

Definition: The process of developing and following, for each case, a schedule of events that achieves the case's earliest disposition consistent with fairness and due process.

DCM Objectives:

- Same or better justice sooner
- Timely disposition consistent with the needs of an individual case
- Improved use of court resources

CASE RESOLUTION

DIFFERENTIATED CASE MANAGEMENT SOLUTION

Differentiated Case Management (DCM) Elements

- Multiple disposition tracks with custom procedures and standards according to case requirements
- Early case screening for complexity based on established criteria
- Assignment to unique case tracks
- Continuous monitoring of case progress
- Allowance for changing case track, with *compelling* justification

CASE RESOLUTION

KEY ELEMENTS SUPPORTING CASE RESOLUTION

- Close court supervision of case progress
 - Ensure actions occur when they need to occur
 - Manage time between court events
 - ❖ Long enough to allow for preparation
 - ❖ Short enough to encourage continuous preparation
- Create meaningful case events
 - Design predictable and meaningful case events
 - Set specific expectations for each event
 - Hold unprepared participants equally accountable

CASE RESOLUTION

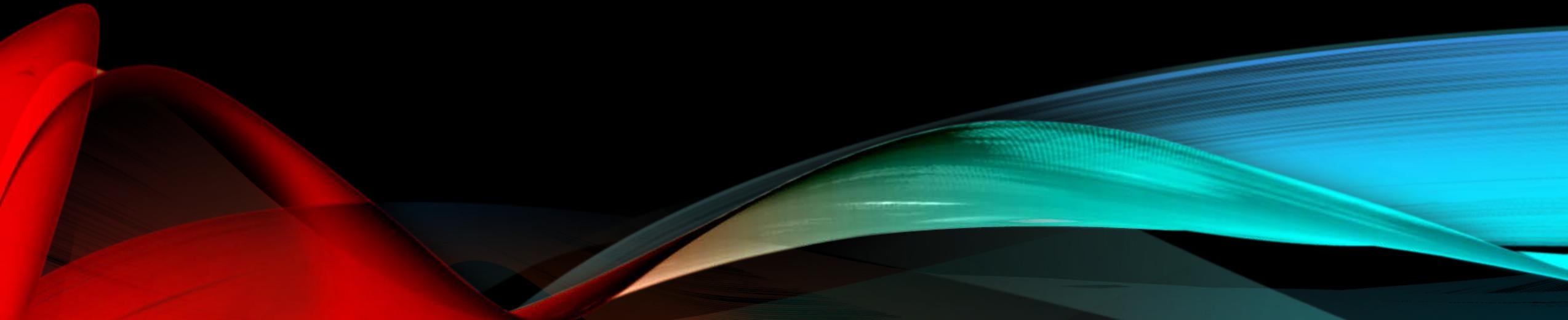
KEY ELEMENTS SUPPORTING DCM

- Close court supervision of case progress
 - Ensure actions occur when they need to occur
 - ❖ Control continuances
 - Manage time between court events
 - ❖ Long enough to allow for preparation
 - ❖ Short enough to encourage continuous preparation
- Create meaningful case events
 - Design predictable and meaningful case events
 - Set specific expectations for each event
 - Hold unprepared participants equally accountable

SPOKANE MUNICIPAL COURT THE NEXT LEVEL

A High Performance Court Roadmap

DIFFERENTIATED CASE MANAGEMENT (DCM)



DCM³¹ SYSTEM REALITIES

- Local system has operated basically the same way for 30+ years
- Attorneys are familiar / comfortable with the current system
- System doesn't require attorney preparedness at all hearings
- Each of our hearings is not a meaningful event requiring outcomes
- Attorneys have rarely been held accountable for case delay
- Principle of institutional resistance = All change is threatening/bad

INITIAL CASE TRACK OVERVIEW

Track 1 – In Custody = 60 days

Track 2 – Out of Custody = 90 days

Track 3 – Expedited DCM Track = 120 days

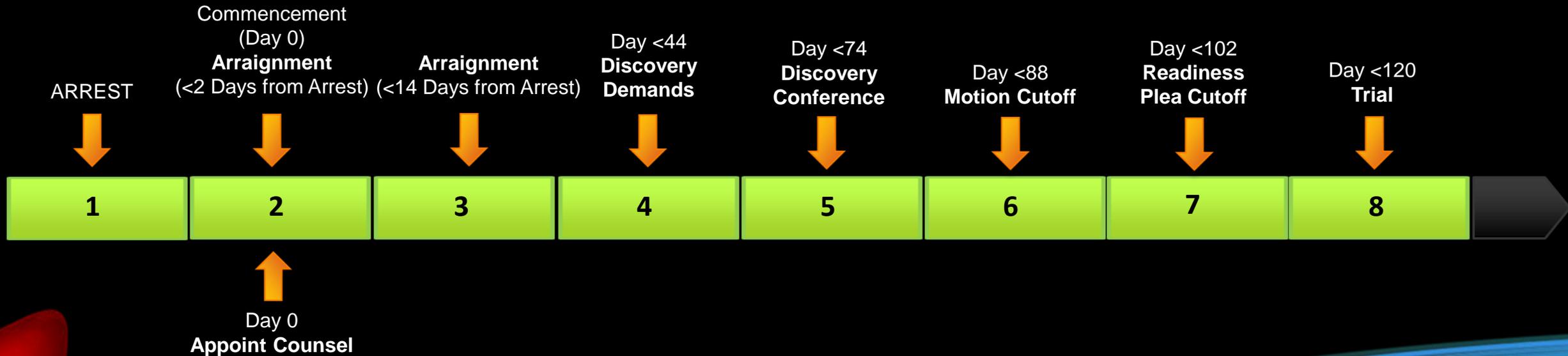
Track 4 – Standard DCM Track = 180 days

Track 5 – Complex Track = 270 days

Problem Solving Courts = No Initial DCM Plan

DCM

TRACK TIMELINE – 60 DAY IN CUSTODY

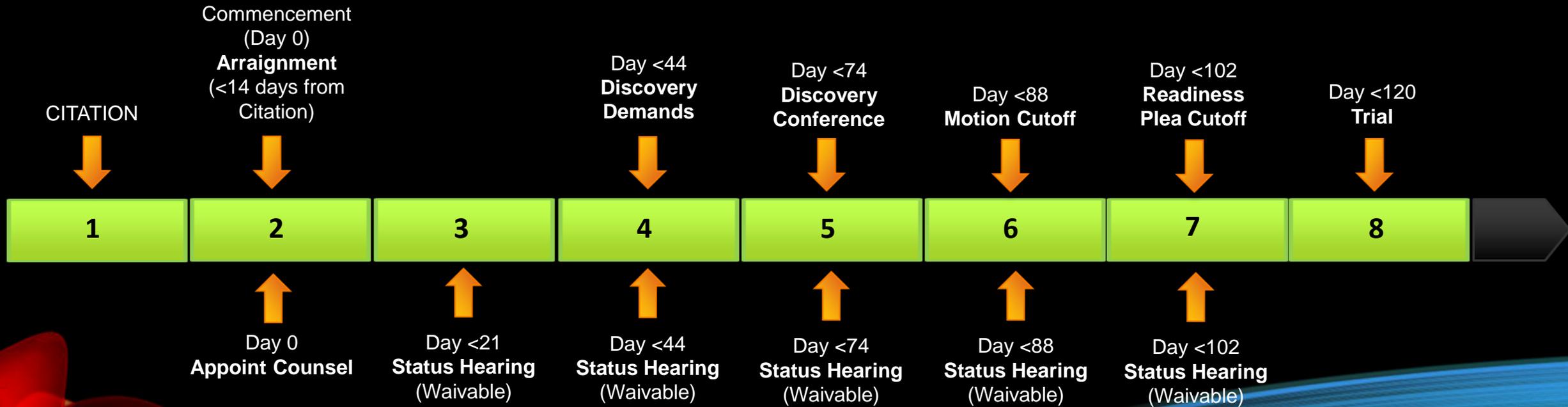


DCM

60 DAY IN CUSTODY TRACK

- Default Track for all in custody defendants
 - Court Rule mandated
- Applies until defendant consents to presumptive charge track
- Early engagement of legal counsel highly beneficial

DCM EXPEDITED TRACK TIMELINE – 120 DAYS

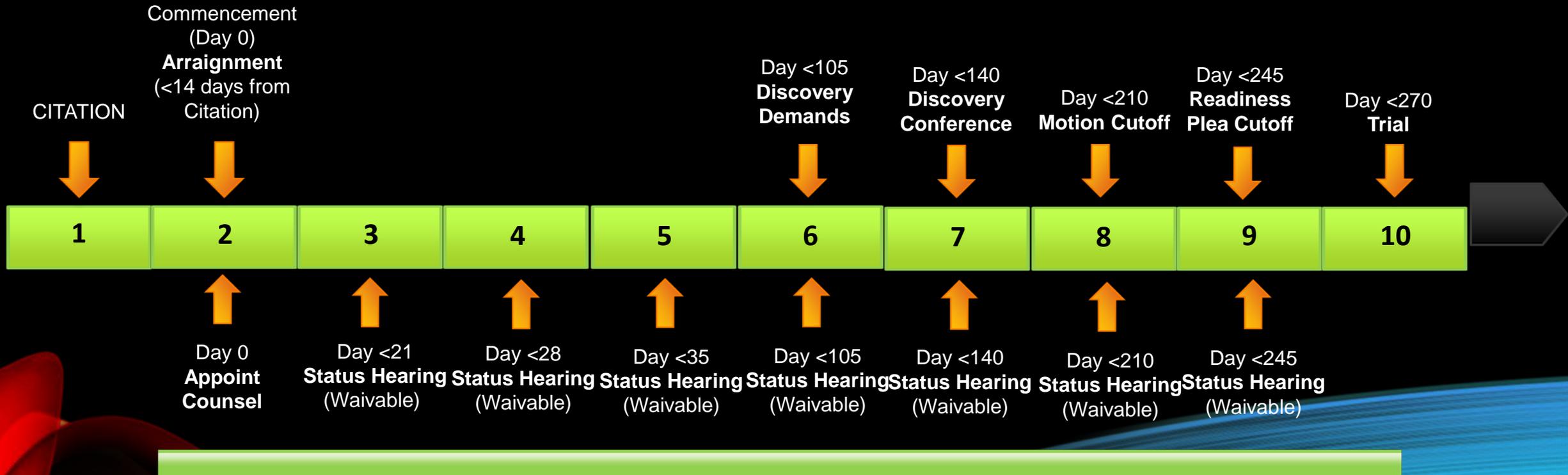


DCM EXPEDITED CHARGES

- Presumptive Track Assignments by Negotiated Stakeholders
- Noise
- Pedestrian Interference
- Malicious Mischief
- Trespass
- Animal Control Cases (some)
- Code Cases (some)

DCM

COMPLEX TRACK TIMELINE – 270 DAYS

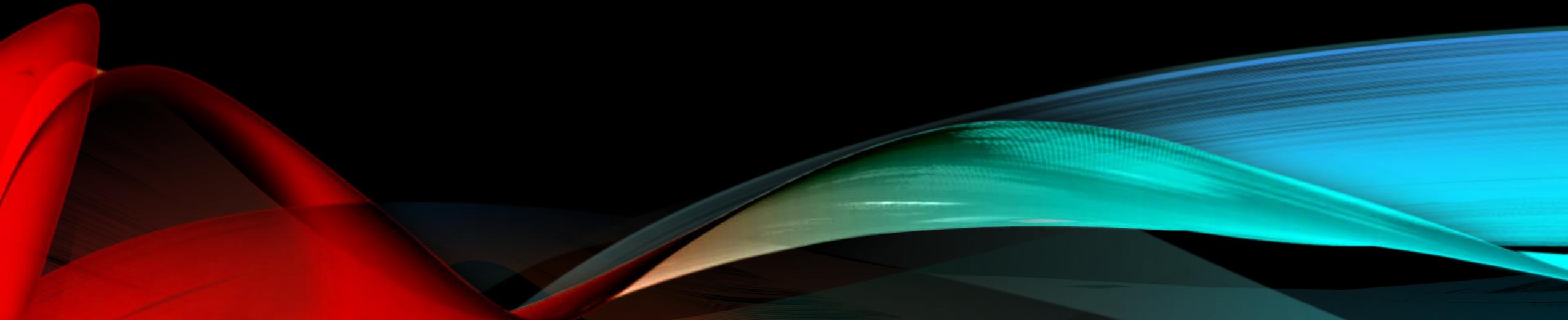


DCM

COMPLEX TRACK – APPROPRIATE CHARGES

- DUI
- Physical Control
- Negligent Driving 1
- Reckless Driving
- DWLS 1
- Stalking/Cyberstalking
- Animal Cruelty 2
- All Domestic Violence Offenses

POSITIVE CONTROL – PROVEN TECHNIQUES



POSITIVE CONTROL PROVEN TECHNIQUES / CRIMINAL CASES

- Realistic charging by prosecuting authority
- Court attention to cases early in the process
- Early evaluation & appointment of counsel, where appropriate
 - Enforcing defendant cooperation with appointed counsel
 - ❖ Additional public defender recoupment fee assessment
 - ❖ Constructive waiver of right to counsel
- Expedited availability of discovery / open file discovery policy
- DCM track set at arraignment in consultation with parties
- Continuous case control, with enforced event deadlines

POSITIVE CONTROL PROVEN TECHNIQUES / CRIMINAL CASES

- Permitting dispositions at arraignment
 - Requires meaningful *arraignment only* ECR offers by prosecution
- Reasonable post arraignment offers by prosecuting authority
 - Plea cutoff dates
- Every court event is meaningful
 - Parties must be prepared for each hearing
 - Each hearing has required outcomes
- Established motion cutoff dates

POSITIVE CONTROL

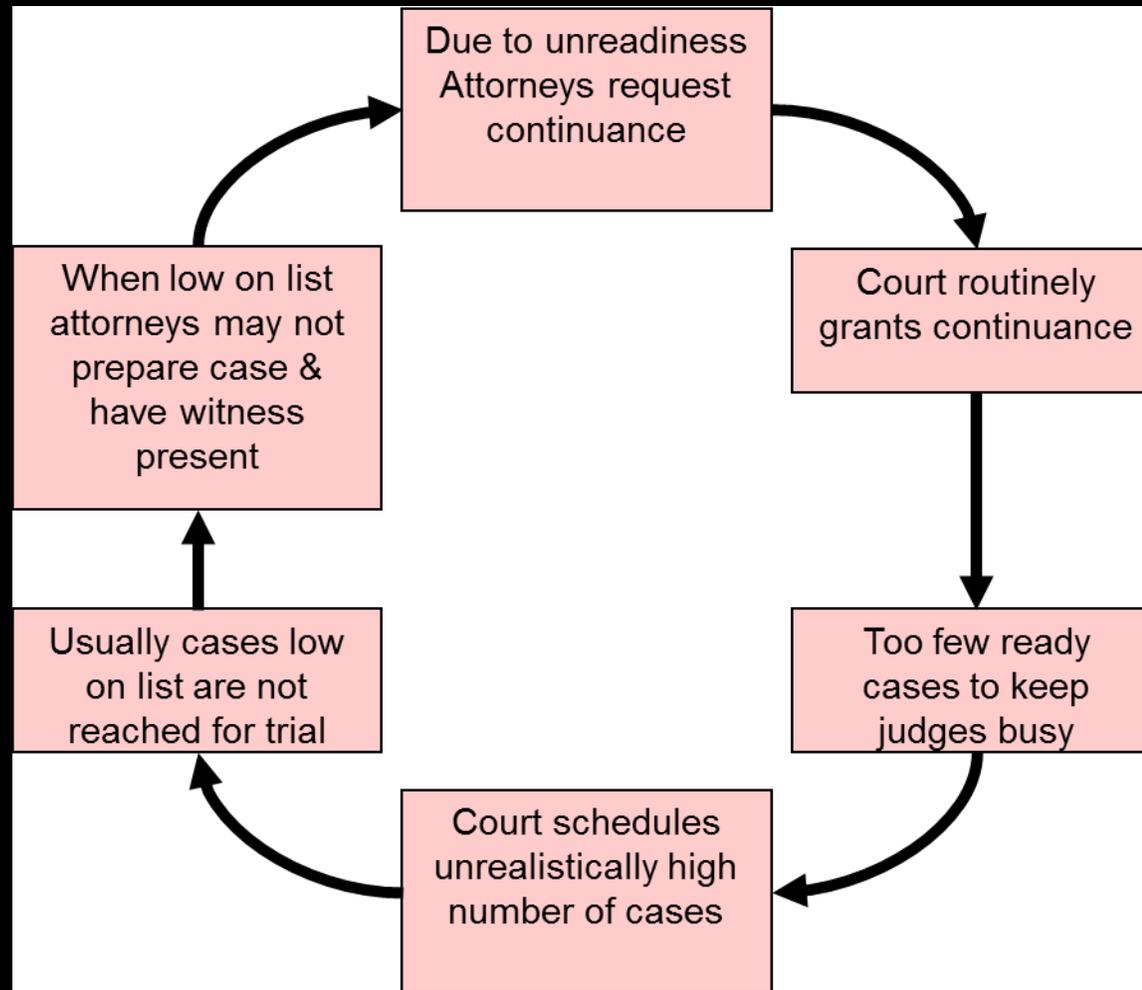
Controlling Continuances

CONTROLLING CONTINUANCES THE ELEPHANT IN THE ROOM

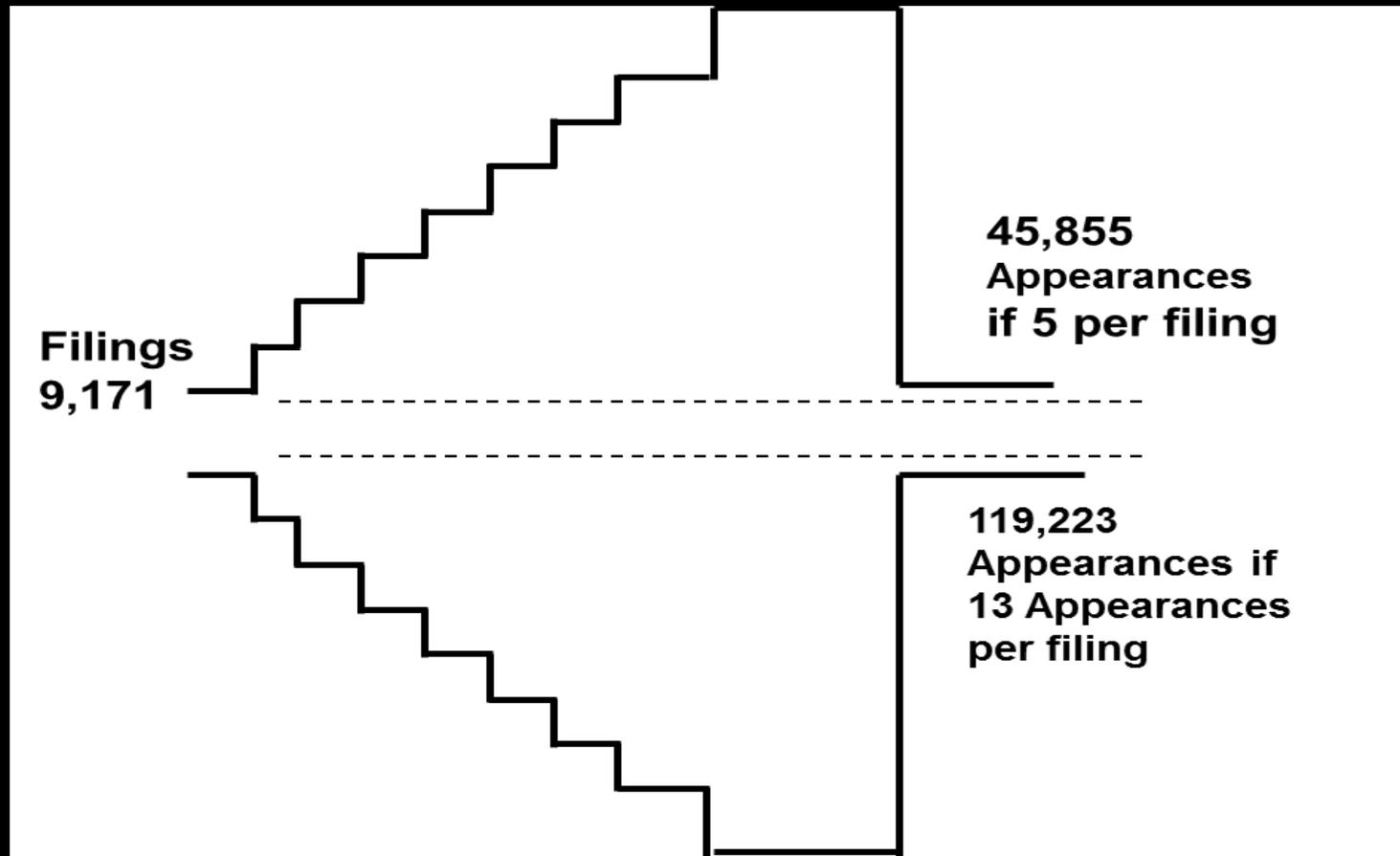
No case management system will work
if unjustified continuances are routinely allowed

CONTROLLING CONTINUANCES⁴⁴

THE CONTINUANCE CONUNDRUM



CONTROLLING CONTINUANCES⁴⁵ CONTINUANCE WORKLOAD EXPANSION



CONTROLLING CONTINUANCES⁴⁶

IMPACT OF DECREASING CONTINUANCES

119,223 Appearances @ 13 / case

45,855 Appearances @ 5 / case

73,368 Fewer Appearances Means .

- Better use of judicial resources and time
- Fewer FTA warrants
- Additional detention space for *appropriate cases*
- Less work for court personnel
- Reduced attorney load
- Reduced litigant inconvenience
- Reduced costs

CONTROLLING CONTINUANCES⁴⁷

TRIAL CONTINUANCES

How to Multiply Your Trial Workload



1st Trial Date



2nd Trial Date



3rd Trial Date



Questions?

CONTROLLING CONTINUANCES⁴⁸

REASONS WHY TRIALS ARE CONTINUED

- **Poorly trained attorneys**
- **Too few early and too many late dispositions**
- **Calendars overset and set too early**
- **Poor use of DCM**
- **Parties not prepared**
- **Attorney conflicts**
- **Lack cut-off dates for motions, evidentiary hearings**
- **Scheduling backup trials**

CONTROLLING CONTINUANCES⁴⁹

GUIDELINES FOR SETTING FIRM TRIAL DATES

- **Schedule as few cases for trial as possible**
 - Goal: Percentage of cases scheduled for trial not more than twice the actual trial rate.
 - This goal not easily attainable, as trial is set at Arraignment to comply with time for trial standards.
- **Set firm trial dates. Only set trial date when case is trial-ready after all pretrial matters have been resolved.**
 - Goal: 15% continuances or less.
- **Do it once**
- **Consider every event a disposition opportunity**

CONTROLLING CONTINUANCES⁵⁰

TRIAL RESETS – ANOTHER LOOK

- **Sample jurisdiction**
 - 26,612 filings
 - 532 trials
- **512 x 6 (Judge/Clerk/Prosecutor/Defense/ 2 Witnesses) = 3,072 people**
 - Continue once – $3,072 \times 2 = 6,144$ people
 - Continue twice – $3,072 \times 3 = 9,216$ people
 - Continue thrice – $3,072 \times 4 = 12,288$ people

CONTROLLING CONTINUANCES⁵¹

TARGET CONTINUANCE RATE

- 15% for all hearings, *including* trial settings

POSITIVE CONTROL - CONTINUANCES

CONTINUANCE POLICY - BACKGROUND

- Model developed by David C. Steelman, Principal Court Management Consultant, National Center for State Courts
- Can be modified to meet local needs
- Once adopted, it must be uniformly enforced
- Is the backbone of effective case management / DCM

POSITIVE CONTROL - CONTINUANCES

CONTINUANCE POLICY – VALID BASIS

- Reasons considered a **valid** basis to continue hearing
 - Sudden medical emergency (not elective medical care) or death of a party, counsel, or material witness who has been subpoenaed;
 - A party did not receive notice of the setting of the trial date through no fault of that party or that party's counsel;
 - Facts or circumstances arising or becoming apparent too late in the proceedings to be fully corrected and which, in the view of the Court, would likely cause undue hardship or possibly miscarriage of justice if the trial is required to proceed as scheduled;
 - Unanticipated absence of a material witness for either party;
 - Illness or family emergency of counsel.

POSITIVE CONTROL - CONTINUANCES

CONTINUANCE POLICY – INVALID BASIS

- Reasons considered **not a valid** basis to continue hearing
 - Counsel or the parties agree to a continuance;
 - The case has not previously been continued;
 - The case probably will settle if a continuance is granted;
 - Discovery has not been completed;
 - Defendant has failed to schedule or keep appointments with court appointed or private counsel.
 - A notice of withdrawal and substitution is filed in the case or a notice of intent to withdraw is filed by defense counsel;

POSITIVE CONTROL - CONTINUANCES

CONTINUANCE POLICY – INVALID BASIS

- Reasons considered **not a valid** basis to continue hearing
 - Failure to comply with a motion cutoff date;
 - Unavailability of a witness who has not been subpoenaed;
 - A police officer or other witness is either in training or is on vacation;
 - Exception: Court is advised of the conflict soon after the case is scheduled & sufficiently in advance of the trial date;
 - A party or counsel is unprepared to try the case;
 - Any continuance of trial beyond a second trial date setting.

HIGH PERFORMANCE COURT

Implementation Strategy

HIGH PERFORMANCE COURT⁵⁷ IMPLEMENTATION – JUDICIAL BUY IN

What's in this for me (Courts)?

- Efficiency & Accountability
 - Greatest dissatisfaction with courts is delay
 - Reduces overall cost of case disposition
- Institution of unassailable performance measures
- Reduce FTAs & Associated Costs

HIGH PERFORMANCE COURT⁵⁸ IMPLEMENTATION – ATTORNEY BUY IN

What's in this for me (Prosecution & Defense)?

- Case predictability.
- Smaller active caseload to manage.
- Less inference in client & witnesses lives.
- Better time management.
- More time to spend on each case.

HIGH PERFORMANCE COURT⁵⁹ IMPLEMENTATION – STAKEHOLDERS

Who are the stakeholders?

- Prosecutors
 - Required for ECR offers not to repeated after Discovery Conference
 - Required for assessment of reasonable charges
- Public Defenders
 - Largest potential pocket of institutional resistance
 - Largest individual defense firm caseload
- Private bar

HIGH PERFORMANCE COURT IMPLEMENTATION PLAN

- Court assigns a project manager to coordinate effort
- Court project charter drafted
- Initial organizational meetings held with stakeholders
- Differentiated Case Management tracks formulated
 - Charges selected for each track
- Case management / DCM policies and forms developed
- Case system management modifications implemented
- JustWare case management reports developed / refined
- DCM implemented court-wide

QUESTIONS?