

MICHIGAN SUPREME COURT

STATE COURT ADMINISTRATIVE OFFICE

**Trial Court Performance Measures
Committee Report**

OCTOBER 2011

TRIAL COURT PERFORMANCE MEASURES COMMITTEE

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Honorable Paul J. Sullivan
17th Circuit Court
Kent County

Committee Members

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Honorable Shana Lambourn
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Honorable Marilyn Atkins
36th District Court
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Honorable Kirk Tabbey
14A District Court
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37th Circuit Court
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Background

Performance measurement is widespread. Imagine an investor who does not provide return rates, surgeons who do not calculate survival rates, carmakers who do not measure fuel efficiency, or philanthropic foundations that do not measure outcomes. Virtually all areas of modern life actively use performance measurement.

Organizations are often required to measure performance, or conduct a formal evaluation, to receive federal or state funding. In Michigan, drug courts are required to measure recidivism and schools are required to assess student scores on standardized tests. This requirement has trickled down to local funding units. County services, including the trial courts in Kent County, are required to measure performance and post results on the county's website.¹

Over the past few years, many judges and court administrators have attended seminars on the importance of performance measurement. In December 2008, Ingo Keilitz from the National Center for State Courts presented to chief judges and court administrators on the ten common arguments to not measure court performance and why those arguments fail.²

For example, there is a fear that performance measures will be intentionally or unintentionally miscalculated or misused. Efforts must be made to ensure that calculations are fair and accurate and placed into context. A court that aggressively enforces court-ordered payments may still see a drop in its collection rates simply due to a weak economy. Providing the performance measure in context ensures that local funding units and the public understand the work of the court and can contribute to its success.

Performance measurement should not be rejected because someone may draw a false conclusion. People are already drawing conclusions about the court based on rumor, anecdotes, and headlines. The court is the only local organization that can counter misinformation with convincing and reliable information about the court's performance.

¹ <http://www.accesskent.com/YourGovernment/CountyAdministrator/Dashboard//>

² <http://made2measure.blogspot.com/2008/11/ten-reasons-not-to-measure-court.html>

In response to the argument that performance measurement threatens judicial independence, Dr. Keilitz writes:

“The very idea of court performance measurement – this wild-card argument goes – is antithetical to the principles of judicial independence and separation of powers. It rests most of its weight on the assumption that performance measurement is imposed by forces external to the court – legislatures, state, county or city executives. Even if a court has a strong hand in the design and use of the performance measures, the argument goes, performance measurement will expose a court to external scrutiny and meddling and, in so doing, hand over control in ways that will erode independence and blur the separation of powers.

No doubt, this reason resonates with many judges and court managers. Not so with the Nation’s state court leadership.

In various policy statements and resolutions, state court leaders link independence to accountability, and accountability to performance measurement. For example, with Joint Resolution 14, In Support of Measuring Court Performance, adopted on August 3, 2005, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) first join independence and accountability by recognizing that accountability fosters an environment where legislators, executive agencies, and the public understand the judiciary’s role and are less likely to interfere with the judiciary’s ability to govern itself. Institutional strength and integrity are protected, the members of the conferences suggest, not by isolation but instead by openness, transparency and collaboration. The conferences next make the link of judicial independence and performance measurement by declaring that ‘judiciaries need performance standards and measures that provide a balanced view of court performance in terms of prompt and efficient case administration, public access and service, equity and fairness, and effective and efficient management.’ In short, the counter argument is that performance measurement strengthens independence through accountability rather than weakening it.”

Trial Court Performance Measures Committee

In June of 2009, the State Court Administrative Office (SCAO) formed a Trial Court Performance Measures Committee chaired by the Honorable Paul J. Sullivan of the 17th Circuit Court. The state court administrator asked the committee to:

1. Promote the use of valid and reliable performance measures by the trial courts.

2. Promote dialogue regarding court performance and data sharing between each court and its funding unit.
3. Develop and implement strategies to accomplish the objectives.

During 2009 and 2010, the trial court performance measures committee and the SCAO staff provided several formal presentations to judges and court administrators to highlight the benefits of performance measures and provide real-world tips for trial courts starting to measure performance. These presentations included the following messages:

When it comes to performance measures, one size does not fit all. In other words, each trial court may approach performance measures in a different way using different measures. There are, however, some fundamental measures that apply to all courts: clearance rates, case age disposition rates, and collection rates. Clearance rates compare the incoming caseload to the outgoing caseload to assess whether the court is keeping up. Case age disposition rates measure the extent to which cases are disposed within the time guidelines established by the Michigan Supreme Court. Collection rates compare the amount collected with the amount ordered (after adjusted) to assess the extent to which court orders are enforced. Collection rates are applicable to all courts except probate. These three measures are available from the SCAO for each trial court on an annual basis and from case management systems on a more frequent basis.

Courts differ from other locally funded departments. Maintaining a separation of powers is essential, but should not preclude a court from measuring performance and sharing that information. In fact, if a trial court fails to develop and implement its own performance measures, it leaves that opportunity to the local funding unit or other parties interested in the court's performance. The committee agreed that it is far more preferable for the judiciary to measure its own success than to leave it to less informed persons, regardless of how good their intentions.

Courts that have a strong relationship with their funding unit are in the best position to explain the performance measures and the possible implications of the data. For

example, these courts can explain that the circuit court collection rates are generally much lower than district court collection rates due to the nature of the cases. Without the corresponding explanation, the performance measures could be misunderstood.

CourTools

The National Center for State Courts (NCSC) developed a set of ten performance measures, with corresponding instructions, that reflect a wide variety of key performance areas for courts. These are called CourTools and instructions for using them are available on the web. In July of 2010, the committee determined that it would conduct pilot projects in local trial courts to test these CourTools. Four trial courts volunteered for the project: the Barry County Trial Court, the 37th Circuit Court (Calhoun County), the Ogemaw County Probate Court, and the 14A District Court (Washtenaw County, excluding the city of Ann Arbor and Ypsilanti Township).

The Trial Court Services division (TCS) of the SCAO managed the pilot projects. TCS reviewed the ten CourTools to determine which could be most appropriately used in Michigan courts. In addition, TCS limited the number of piloted tools to ensure that each tool would be piloted in more than one court. TCS selected #1 Access and Fairness, #2 Clearance Rates, #3 Time to Disposition, #4 Age of Active Pending Caseload, #5 Trial Date Certainty, #6 Reliability and Integrity of Case Files, #7 Collection of Monetary Penalties, and #8 Effective Use of Jurors.

TCS specifically excluded #9 Court Employee Satisfaction and #10 Cost Per Case from the pilot projects. Employee satisfaction was excluded because TCS wanted to limit the number of CourTools piloted. Cost per case was excluded from the pilot project for a couple of reasons. This CourTool requires compilation of a significant amount of data over a long period of time. To assess the cost per case, the court must classify employees and judicial officers by case types and determine how much time they spend on each case type. In most trial courts, employees do not work within the confines of a specific case type. Instead, they work across case types and, in some courts, across court types. The best available means to calculate the time each employee spends on case types is to require the employees to track the time spent in each day. This would require the employees to track their time over a significant period. The next step is to determine the total court expenditures. In states where court funding is paid by the state, this step would be

relatively simple. In Michigan, court funding is provided by hundreds of local funding units. Each one may include or exclude different items in the court's budget. For example, in County A the court's budget may include the cost of renting space. In County B, the court's building may be owned by the county so facility costs are not in the court's budget. County B's cost per case would appear to be significantly lower than County A's cost per case, but that difference would be highly misleading. More work in this area is needed

After TCS slightly narrowed the field of available CourTools, the pilot courts selected the following performance measures for the pilots:

Barry County Unified Trial Court

- #2 Clearance Rates
- #3 Time to Disposition
- #4 Age of Active Pending Caseload
- #6 Reliability and Integrity of Case Files
- #7 Collection of Court-Ordered Financial Obligations

37th Circuit Court (Calhoun County)

- #2 Clearance Rates
- #3 Time to Disposition
- #4 Age of Active Pending Caseload
- #5 Trial Date Certainty
- #6 Reliability and Integrity of Case Files
- #7 Collection of Court-Ordered Financial Obligations
- #8 Effective User of Jurors

Ogemaw County Probate Court

- #2 Clearance Rates
- #3 Time to Disposition
- #4 Age of Active Pending Caseload
- #6 Reliability and Integrity of Case Files

- #7 Collection of Court-Ordered Financial Obligations

14A District Court (Washtenaw County, excluding Ann Arbor and Ypsilanti Township)

- #2 Clearance Rates
- #7 Collection of Court-Ordered Financial Obligations

None of the pilot courts selected #1 Access and Fairness.

Customizing CourTools for Michigan Trial Courts

The NCSC CourTools were developed from a national perspective, without specific instructions for each state. The next step in the pilot projects was for TCS to customize the CourTools for Michigan trial courts. TCS tailored the language to terms used in Michigan, simplified the language, modified the data to be collected, and provided tips for administering each tool. The following is a summary of how each selected tool was modified and the benefits and drawbacks of each tool:

#2 Clearance Rates

Clearance rates are calculated by dividing the number of outgoing cases by the number of incoming cases. This CourTool was modified to ensure that the definitions of “incoming” and “outgoing” cases match the definitions provided in the SCAO’s caseload reporting requirements.

This CourTool is easy to understand and clearly identifies when the court is creating or eliminating a backlog. Clearance rates are also published annually by the SCAO. The only identified drawback to this tool is the limited amount of information it provides. If the rate is low or high, the court would have to engage in deeper analysis to determine why.

#3 Time to Disposition

The time to disposition tool measures the percentage of cases disposed or otherwise resolved within the time guidelines established by the Michigan Supreme Court. TCS eliminated the detail on how to calculate the time to disposition and, instead, provided instructions on how to generate the “Case Age Summary Report” on the Michigan Court Application Portal (MCAP).

In addition, courts can generate similar case age reports on their individual case management systems on a more frequent basis.

This tool is easy to generate and understand. The reports clearly demonstrate low performing areas requiring the court's attention. The major drawback to this tool is that it functions as a high level analysis. While the court may be able to determine that a problem exists, it may be difficult to assess the cause of any delays.

#4 Age of Active Pending Caseload

This tool measures the age of active pending cases, measured as the number of days from filing until the time of measurement. TCS eliminated the discussion of active and inactive status of cases, as this is already accounted for in the case age detail reports. The discussion about sampling was also removed as an option because case management systems are programmed to provide the case age on all cases. Finally, instructions on running the "Case Age Detail Report" in MCAP were added.

This tool is easy to generate and understand. The results can be used to improve a court's caseflow management. The drawback to this tool is that the case age detail reports do not provide any case specific information. For example, the report may indicate that six cases are pending outside of a specific guideline, but it does not identify those six cases. The court needs to run additional reports to determine which cases are outside of the guidelines and then look at each case individually to determine the reason the case is still pending.

#5 Trial Date Certainty

The trial date certainty tool measures the number of times cases that are disposed of by trial were scheduled for trial. Trial courts should strive to conduct trials on the first date that they are scheduled. Consistently achieving that goal provides the participants with confidence that the trial date scheduled is a firm trial date. TCS added a "tips" section that includes a list of questions that a court administrator can ask to evaluate the data obtained from this tool.

The trial date certainty tool is easy to understand and can be used to improve a court's caseflow management. However, this tool is time consuming; it requires a careful review of the register of action (ROA) for cases disposed of on the day of trial. In cases where the ROA does not contain specific details, the entire case file must be reviewed. The analysis of the data obtained by using this tool is contingent upon specific details that are not always easily categorized.

#6 Reliability and Integrity of Case Files

The reliability and integrity of case files tool measures three separate indicators: the time to retrieve a case file, the reliability of the contents of the file, and the organization and completeness of the case file.

Time to Retrieve a Case File

The tool was amended to change how files are selected for the timing exercise. The NCSC CourTool has the court select files based on whether they are open or closed. TCS modified the tool to have the court select files based on storage locations.

This tool is easy to complete, it provides a quick success story for most courts, and it directly relates to customer service. Court staff enjoyed this activity in each of the pilot courts.

Reliability of the Contents of the Case File

TCS changed how the samples are selected. Instead of a large sample size, the tool now requires the court to identify the number of personnel that enter data on the ROA and place documentation into the files. If one or two staff members are responsible, then a smaller sample is all that is necessary. If more people are responsible, the court must select a larger sample size. In addition, the sample was limited to active case files only, because the court cannot correct mistakes in inactive files.

This tool measures an extremely important aspect of the court's work: whether the court's files are accurate. This tool is labor intensive. For every file reviewed, staff must go through each file page-by-page and compare it with the ROA, determining if

everything in the file is on the ROA and everything on the ROA that requires a corresponding document is in the file. It also identifies areas of concern that can be easily addressed. For example, if the court determines that the ROA is not accurate because proofs of service are not documented, the court can reeducate staff regarding what must be documented. One of the drawbacks to this tool is that it is an all or nothing measure; if the file being reviewed has one error, it is scored the same way as a file with a hundred errors. In addition, the person reviewing the files must be knowledgeable about specific types of court files in order to know what they are looking for and to be able to understand the codes used on the ROA. Circuit courts may have additional issues with controlling the file contents, as the county clerk is the holder of the records.

Organization and Completeness of the Case File

TCS added a “completeness chart” that lists the elements of a complete file and referenced the case file management standards. This measure assists the courts in identifying areas where the court is not meeting case file management standards.

The benefit of this tool is that it allows the court to ensure that its files are being maintained in accordance with statewide standards. It also ensures that files have the required documentation for each case type. However, it is a labor intensive task that requires each file be reviewed page-by-page. In addition, all of the files pulled for this exercise must be refiled by staff.

#7 Collection of Court-Ordered Financial Obligations

The collection of court-ordered financial obligations tool measures the payments collected within established time frames, expressed as a percentage of the assessments ordered in a calendar year. This tool was altered significantly from the NCSC CourTool. First, the SCAO determined that, for practical reasons, the court should use the data it already collects for the SCAO collections reporting. The data the SCAO collects includes monetary penalties, as well as restitution, cost of care, and cost of services. Therefore the name was changed from “Collection of Monetary Penalties” to “Collection of Court-Ordered Financial Obligations.” The NCSC tool takes the amount assessed and the amount due during a reporting period to get a preliminary compliance

rate. Then the tool requires the court to take the total hours of community service or jail in lieu of fines and convert it to a dollar value, per penalty assessed. Because Michigan courts do not collect this data, again, the SCAO changed the tool to use data collected by the court. The tool now takes the amount assessed in a calendar year and provides the percentages collected at specified intervals.

Courts can use this tool to identify trends, evaluate the effectiveness of collections programs or tools, and determine when receivables are no longer collectable. It also forces courts to look closely at collections practices. The biggest drawback of this tool is that it is very complicated. It does not provide “one” collection rate. Using this tool is time consuming; it requires the user to run six reports, place those reports into a template, and then graph the data. It is extremely important that the person reviewing the data understands collections and the variables that effect collection rates.

#8 Effective Use of Jurors

The objective of this measure is to minimize the number of citizens who are summoned, qualified, and report for jury service, and who are not needed. The percentage of citizens available to serve relates to the integrity of the source list, the willingness of citizens to serve, and the effectiveness of jury management practices. TCS simplified the tool, tied it to court scheduling, and added tips for analyzing the results.

If a court can increase its juror usage rates, it improves public relations for the court, saves the court money, and saves staff time. Although the data necessary for this tool is often contained in the court’s case management system, the analysis is more complicated.

Site Visits and Final Reports

For each pilot court, TCS conducted site visits to collect data, review files, and speak with court staff. Court staff, such as court administrators and clerks, worked side-by-side with TCS during this process to provide the local court with direct experience implementing these measures and to assist TCS in understanding the local data. TCS analyzed the data for each court and provided each court with a final report summarizing the data gathered.

All four pilot courts had positive responses to the reports. The final reports gave the pilot courts the chance to compare their performance to regional courts and statewide. The courts found the reports useful for identifying areas that need attention, as well as confirming that the courts are doing well in some areas. After reviewing their reports, some courts found that they had data entry errors. They used this as an opportunity to cleanup the data. In addition, one pilot court indicated that court staff used the final report as a refresher for experienced staff and a training tool for new workers.

The courts found the performance measure on collection of court-ordered financial obligations, the most difficult to understand. One court recommended that the collection rates be provided without including restitution amounts. The tool was not modified to accommodate this because the courts can not currently extract that information from their systems.

Self-Directed Pilots

After the completion of the four pilot projects, two additional courts were asked to implement at least one performance measure without any assistance from TCS. The Ionia County Probate Court (including the juvenile division of family court) implemented CourTool #6 - Reliability and Integrity of Court Files. The 61st District Court (Grand Rapids) implemented CourTool #2 Clearance Rates, #5 Trial Date Certainty, and #8 Effective Use of Jurors. Both courts indicated that the compilation of some of the data (in tools #6, #7, and #8) was time consuming and cumbersome. Both courts indicated that the data confirmed what they already believed to be true and they were able to identify areas of concern and positive practices of the court. Both courts thought it was a useful exercise for improving court performance.

The SCAO submitted a final report of the pilot project to the committee on September 22, 2011.

The Future of Performance Measures

This committee, in existence for just over two years, has seen a shift in the SCAO's position regarding performance measures. Until recently, the SCAO and this committee have communicated to courts that the use of performance measures is entirely voluntary. Governor

Snyder, however, brings a new perspective to state government. The Governor's website contains a dashboard of state-level performance measures for the Department of Education, the state, and the health and wellness of its citizens.³ Local measures are also available on the web for each individual school.⁴

The Governor also expects the judiciary to develop an online dashboard of state-level performance measurements and dashboards for each local trial court. He is currently promoting legislation that will withhold state funding (court equity and drug and drunk driving funds) from trial courts that do not implement a performance measures dashboard. Although the committee has told judges that performance measurement is voluntary, this legislation is likely to make performance measurement a requirement. Because the committee agrees that performance measurement is a best practice of trial courts, it will continue serving, as needed, to advise the SCAO as it implements this "dashboard" requirement.

Recommendations

1. Each trial court should embrace performance measures by approaching this as an opportunity to improve its services and increase the efficiency of the court and not be overly concerned about the effect of publishing negative performance rates.
 - a. When framed in context, performance measures can be used to the court's advantage in seeking additional assistance from funding units.
 - b. Trial courts have already implemented some performance measures in the data they submit to the SCAO, including clearance rates, time to disposition rates, and collections rates. Embracing performance measures means that the court will use this information to improve itself.

2. The SCAO should provide specific instructions on how to find and use relevant performance measures, such as the performance measures tested during the pilot project. The specific instructions should include templates that allow the courts to input their data

³ <http://www.michigan.gov/midashboard>
<https://www.mischooldata.org/>

and have it represented graphically. By providing these templates, there may be some consistency in how dashboards look across the state.

3. Each trial court should start by selecting a few relevant performance measures that can be feasibly measured and posted to a dashboard. The SCAO should assist courts in selecting relevant measures, without dictating specific measures. While the CourTools tested during the pilot projects provide an excellent set of measures for courts to consider using, courts should be free to utilize other performance measures.
4. Initially, each trial court should avoid selecting too many performance measures. While each court should measure as many aspects as it meaningfully can measure, the initial effort should be to select only a few measures that are easy to implement and understand. As the court gains proficiency and confidence in using performance measures, the court can select more complicated measures. The SCAO should assist with recommendations regarding specific measures.
5. When necessary, local funding units, and their information technology departments, should assist their courts in posting performance measures to a website. For a court that does not have a stand-alone website, its performance measures could be posted to the funding unit's website.
6. Each trial court should take the initiative to explain to its funding unit the performance measures in its dashboard. Trial courts have had success in using performance measures to secure against unnecessary budget cuts and to direct resources where they are most needed.