CORE COMPETENCY: ACCOUNTABILITY AND COURT PERFORMANCE- PART B

PUBLIC ACCESS TO COURT DATA: CHOICES AND BEST PRACTICES

NACM 2020 VIRTUAL CONFERENCE

SEPTEMBER 3, 2020

LEARNING OBJECTIVES

- Participants will:
  - Become familiar with the trends driving the increased expectation of data openness
  - Understand the relevance of data openness to the NACM Core Competency of accountability and court performance
  - Learn what researchers want and expect when using court data
  - Consider what questions courts might ask when creating or updating data access policy
  - Learn what opportunities proactive data governance might offer for minimizing expected risk while broadening public access to court data

REASONS TO MAKE DATA OPEN

- Accountability to the public: Those outside the courts expect to be able to use court data to draw their own conclusions about court performance, processes, outcomes, etc.

- Evidence Based Policy/Interoperability: Greater insights available for data combined with other related data or made available for outside analysis

- Legal Requirement: Federal law already exists, state requirements vary

ACCOUNTABILITY

NACM Core Competency: Accountability and Court Performance

- What part does data play in the effective external **communication** of court performance?

- How does data collection and publication align with the public's **expectations** for court performance? **Procedural Fairness**?

- How does data collection and publication demonstrate the **effectiveness** and **efficiency** of the court?

PERFORMANCE MEASURES ENABLE COURT LEADERSHIP TO:

- Identify inefficiencies in the court system;

- Provide objective support for policy decisions;

- Make court operations more transparent; and

- Promote efficacy and attract funding.

Walter, K., & Israel, B. (2012) Policy Brief: Use of Data in Criminal Court Performance Measurement. Chicago, IL: Chicago Appleseed Fund for Justice. Retrieved from http://www.chicagoappleseed.org/wp-content/uploads/2012/12/Data-in-Criminal-Courts-FINAL.pd

COURT PERFORMANCE MEASURES: A HISTORY
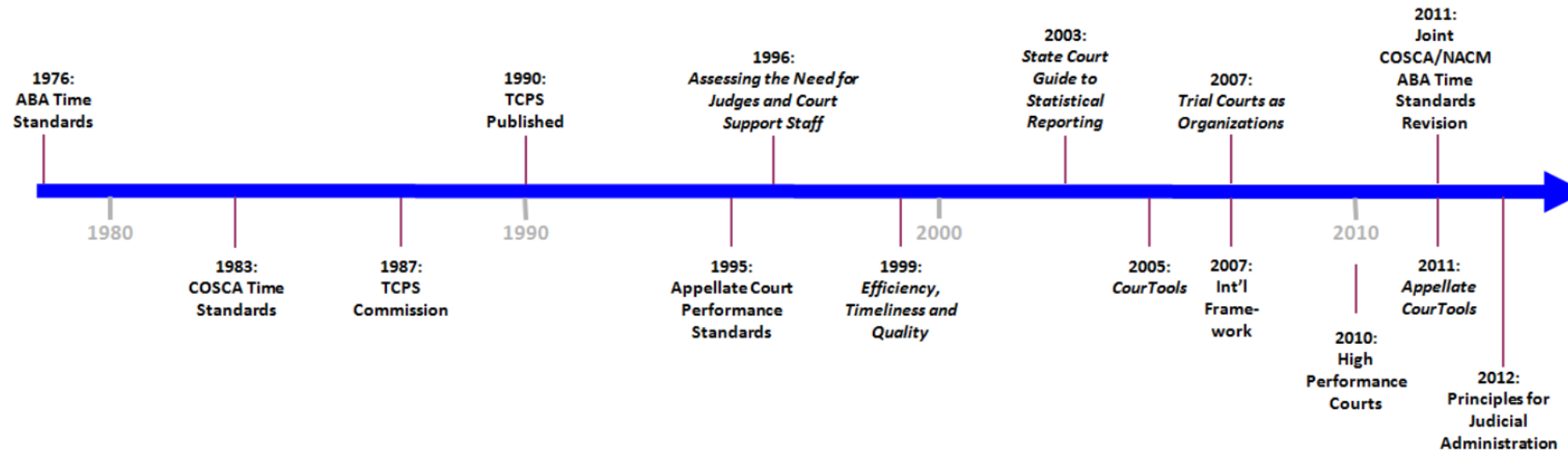
THE HIGH PERFORMANCE COURT FRAMEWORK

Quality Cycle: Family Law Case Example
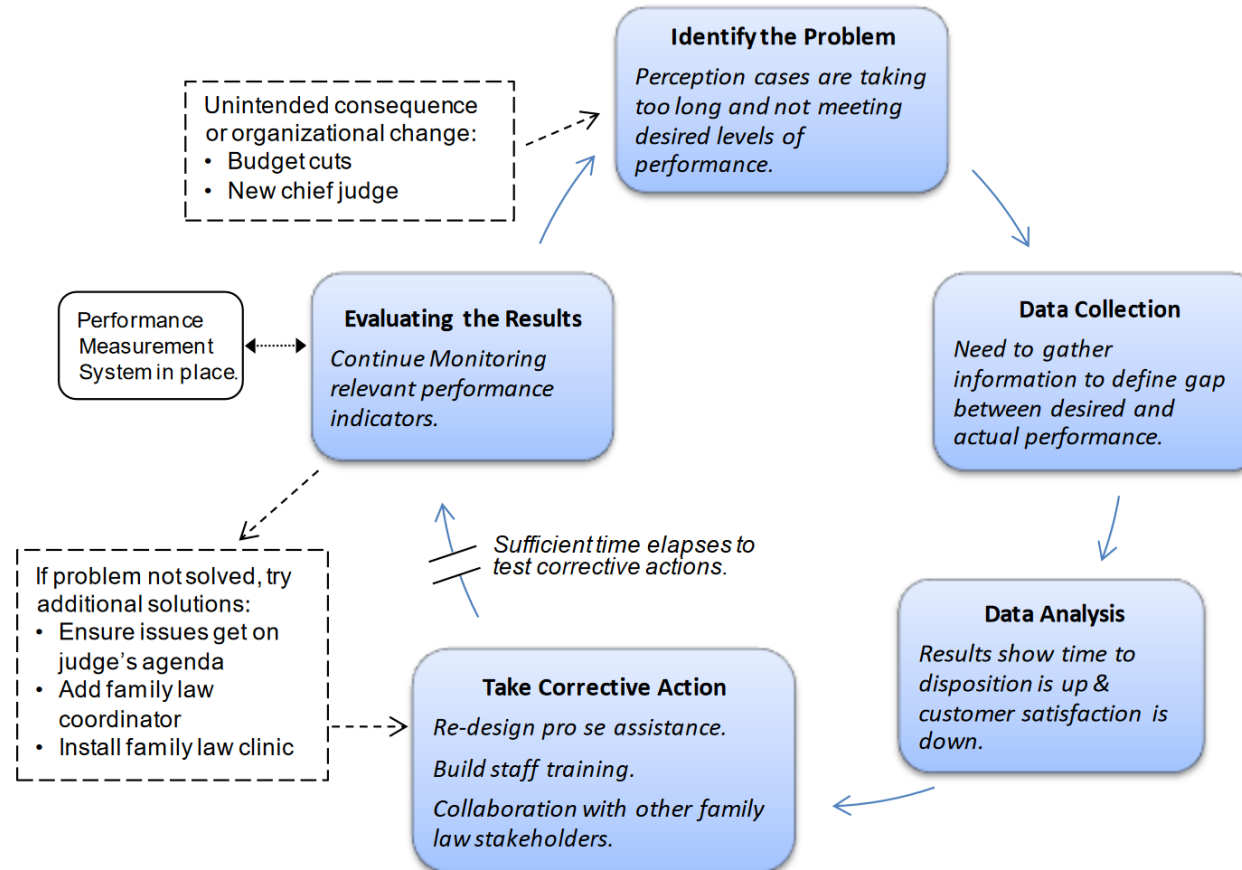
ACCOUNTABILITY: PUBLIC REPORTING

CaseAgeC53.pdf

https://courts.michigan.gov/education/stats/performance-measures/Documents/Timeliness/CaseAgeC5...

1 of 9   Automatic Zoom

2018 Circuit Court Criminal Case Age Rates by Court

Courts are sorted by court number and county.
Rates are not calculated for courts with fewer than 10 cases disposed or pending over the guideline.
Felony = AX, FC, FH, FJ

		Disposed During 2018				Pending December 31, 2018				Percent Disposed		
		Within 91 Days	92-154 Days	155-301 Days	After 301 Days	Through 91 Days	92-154 Days	155-301 Days	Over 301 Days	Within 91 Days	Within 154 Days	Within 301 Days
Time Guidelines										70%	85%	98%
Statewide Court Average										**65%**	**84%**	**96%**
C53	Cheboygan	162	23	5	2	29	1	0	0	84%	96%	99%
C53	Presque Isle	34	9	9	1	7	3	1	0	60%	80%	98%

ACCOUNTABILITY: PUBLIC ACCESS TO COURT DATA
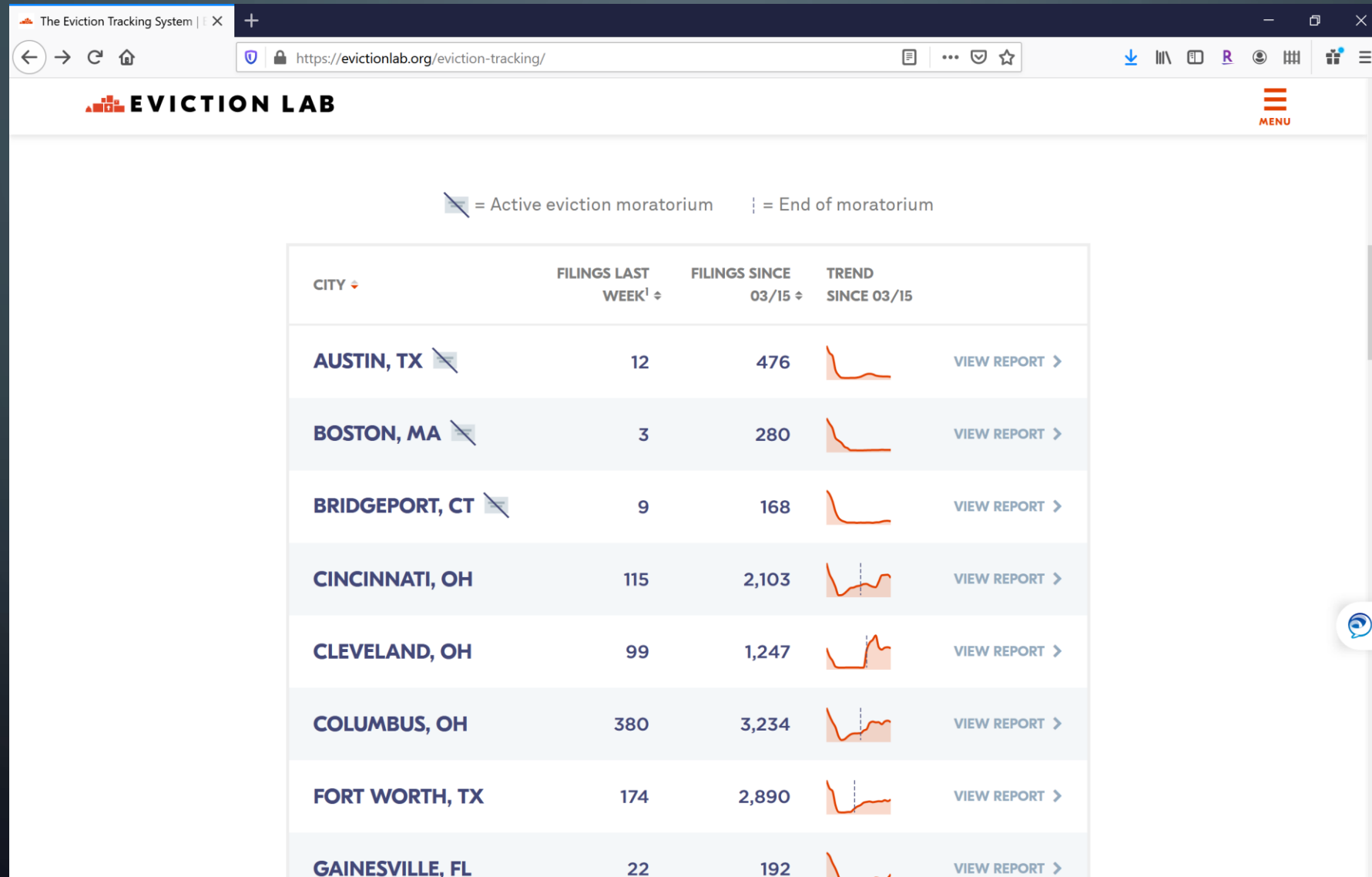
EVIDENCE-BASED POLICY / INTEROPERABILITY
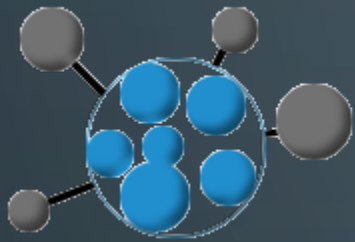
Many requirements and initiatives around data openness relate to sharing interoperable data among agencies

The Foundations for Evidence-Based Policymaking Act (**FEPA**) requires federal agencies to use their data in evaluations of effectiveness.

- Started as executive order in 2013, signed into law January 2019
- These mandates vary from state to state. In Kentucky legislation and court orders require judicial agencies like Pretrial Services and Specialty Courts to do evidence-based reporting of the effectiveness of their central mission

EVIDENCE-BASED POLICY / INTEROPERABILITY

- Agencies with shared access to interoperable data can automate overlapping processes, e.g. courts and child welfare agencies
- Deeper insights available when data is combined than is available to any single agency's internal analysis
- Intra-agency analytical insight limited compared to analysis of combined data
- Makes outside expert insights available, especially for analysis outside the internal capacity of courts

LEGAL REQUIREMENT

- Open, Public, Electronic and Necessary (**OPEN**) Government data Act. Requires agencies to create data inventory and that data be made publicly available in machine readable format.
  - **Machine-Readable:** Definition from the law: "data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost."
    - YES: HTML, XML, CSV, Spreadsheet with column headers, barcode
    - NO: image, chart, scanned pdf, (but machine interpretation of these is improving).
  - Privacy: Confidential stays confidential, secret stays secret, proprietary stays proprietary. Everything else belongs to the taxpayer. *(Paraphrasing Sen. Brian Schatz)*
  - Will this be the new normal?

REASONS OPEN DATA CAN BE RISKY

- Chasing after "Bad" interpretations

- Privacy Concerns

- Costs

- Revenue: both cost and benefit

"BAD" INTERPRETATIONS

Yesterday's results
What was the best part of the Super Bowl?
73% No
28% Yes

- "Bad": Malicious or heavily biased by underlying agenda.
  - Agencies play catchup after zinger headline designed to mislead
  - This can be of particular concern for elected officials during elections

- "Bad": *Less-Than-Perfect* communication or conclusion
  - Well-meaning, honest people will take court reports and reuse them in other contexts or make incorrect interpretations

- "Bad": Otherwise dubious purpose
  - AI algorithm now better than human lawyers at predicting civil outcomes and recommending location and judge most likely to give favorable ruling
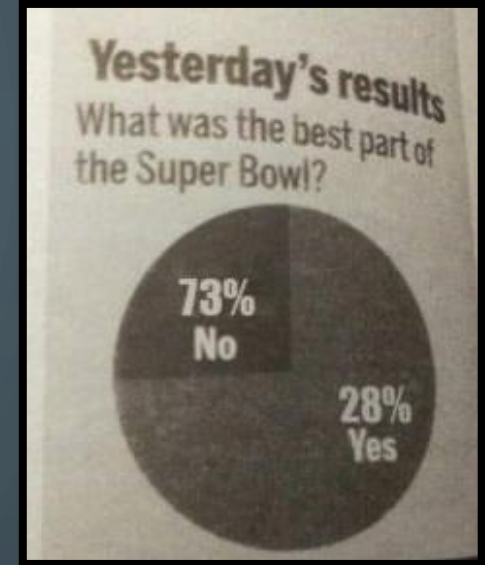
PRIVACY CONCERNS

- "Practical Obscurity": availability of single paper record at the courthouse vs. instantaneous ability to keyword search all non-confidential court records.

- "Right to be Forgotten" Copies of statistical data held by third parties vs. true expungement? Is it too easy for employers to use minor criminal records or records of non-conviction to screen applicants before consideration?

  - Kentucky expungement law: Heavy fees on one side, and now automatic expungement for certain records that will hurt our ability to report statistics of criminal offenses charged.
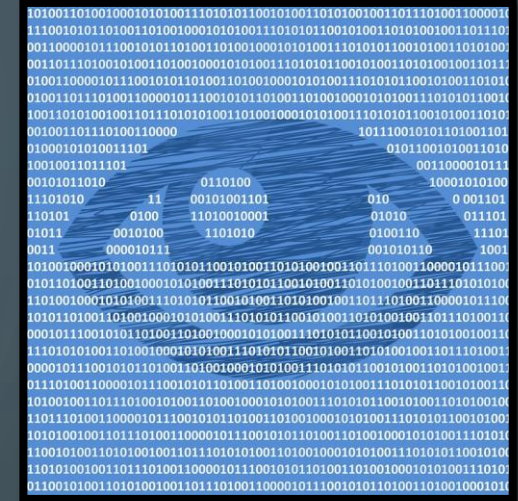
COSTS

- Technical: compiling and distributing machine-readable datasets including only the fields appropriate for reporting requires extra technical infrastructure
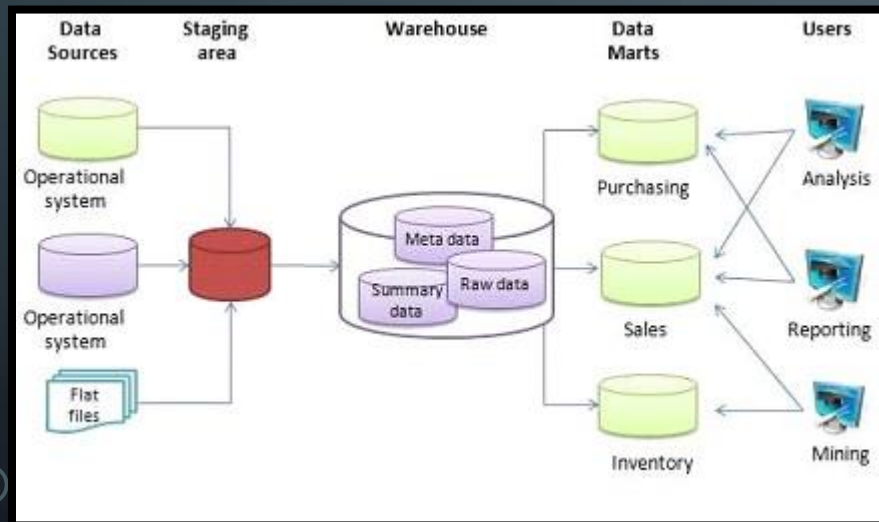
- Labor: Reporting or compiling data efficiently and effectively requires high-demand technical specialization.
  - If this expertise exists in courts, these people are probably already very busy
  - If not, the court will have to compete with the private sector to find these specialists.

REVENUE

Some courts use data access as a source of revenue

- Firms will pay for data because they can automate processes to collect insights customers will pay for.
  - Market efficiency or arbitrage? Both?
  - Equal access to justice?
  - Is funding vulnerable to changing legal requirements?

BEST OF BOTH WORLDS
MAXIMIZE ACCOUNTABILITY & MINIMIZE RISK

How can we increase openness without an equivalent increase in risk?

Data Governance!

If your organization treats data like a scary mystery, it will stay risky and costly.

Strategic governance choices and norms allow the organization to reap the most benefit from its data.

DATA LEADERSHIP:
WHO MAKES STRATEGIC DECISIONS ABOUT DATA?

Questions and decisions about public access to data will arise, and much of the outcome will be shaped by who is making decisions and why.

- New open data policy will be most successful when part of larger data governance strategy.

- Data Officer, Data Steward, etc.: ensure strategic approach to court data

- Public Access Manager:
  - Manage all public facing data presentation and data access
  - Coordinate response to ad hoc data and statistical requests

IS YOUR DATA STANCE REACTIVE OR PROACTIVE?

Reactive

- Statistical Reports or datasets provided by request (internal or external)
- Requestors determine specifics, limited by available options
- "Report Factory" – analysts stay busy compiling new reports, likely not attached to strategic purpose

Proactive

- Emphasis on standard reports and datasets aligned to court's goals
- Leadership determines specifics based on court performance narratives, etc.
- More effort to set up initially, but (automated) standard reports instantly satisfy many would-be ad hoc requests.

IS YOUR DATA STANCE REACTIVE OR PROACTIVE?

Tips from Kentucky:

✓ To be proactive, learn to say "no" to requests in order to prioritize your own goals.

✓ TEMPLATES!
Making a standard format easily replicated with only small changes makes repetitive, similar reporting easier.

DO YOU HAVE DIFFERENT PROCESS FOR BULK DATA VS. AGGREGATE REPORTS?

Bulk Data: any data structure where one row = one record

Sometimes further distinction between "bulk" and "compiled".

Bulk = largely unmodified, comprehensive, standard dataset typically provided by subscription

Compiled = one-row-per-record data designed to contain specific fields, combinations of data, or filters built to fulfill a specific purpose – typically an ad hoc request.

Aggregate Report: contains aggregations such as counts, averages, percentages, etc.

DECISIONS TO MAKE ABOUT BULK DATA

- Do you charge for bulk (or compiled) data?
    - Do you make exceptions for academic researchers, the media, government, etc.?

- Does the use of bulk data come with a user agreement or legal contract (MOU / MOA)?
    - Data storage, deletion, limited use, publication restrictions, review?

- Is access to bulk data limited to specific types of requestors or purposes (e.g. prohibiting commercial use)?

- Do you anonymize Personally Identifying Information from publicly available compilations of public record (e.g. name, address)?
    - How does expungement fit into your plan?

- Do you provide anonymized bulk data derived from confidential records? (e.g. juvenile cases, for academic or policy research, names replaced with serial numbers) Does this data come with extra restrictions?

DECISIONS TO MAKE ABOUT BULK DATA

Tips from Kentucky

✓ MOU boilerplate is starting point for any bulk data request (excluding some data interchange among government agencies).

✓ Kentucky AOC Legal determines any specific requirements for each request, so there is not truly a "standard agreement."

✓ If we provide it, all bulk data is free, but commercial use is prohibited.

   ✓ (There is a metered API / Subscription Application allowing users to look up individual records with various levels of access. Some of these subscriptions cost money. Free prohibiting commercial use refers to datasets compiled for ad hoc requests).

✓ In my opinion this stance is appropriately risk-sensitive, but labor-intensive. Efforts focus on standardizing the datasets to reduce labor.

DECISIONS TO MAKE ABOUT AGGREGATE DATA

- There can still be privacy/confidentiality concerns in aggregate reports.

  - Imagine a request from a Robertson County (pop. 2,135) resident for a report of the number of Domestic Violence cases filed during March 2020 grouped by the race, ethnicity, and age of the respondent.

- Do all reports use standard fields and definitions?

  - If not, what do you do when similar reports don't match?

  - If so, who decides that the standard fields and definitions are?

Robertson County

County in Kentucky

Robertson County is a county located in the U.S. Commonwealth of Kentucky. As of the 2010 census, the population was 2,282. Its county seat is Mount Olivet, Kentucky. The county is named for George Robertson, a Kentucky Congressman from 1817 to 1821. Wikipedia

Area: 100 mi²

Founded: 1867

Population: 2,135 (2018)

Largest city: Mount Olivet

Cities: Mount Olivet

Rivers: Licking River, West Creek, Five Lick Creek, Johnson Creek, MORE

DECISIONS TO MAKE ABOUT AGGREGATE DATA

Tips from Kentucky

- Have a public-facing Reporting Policy/Procedure

- The "Stu Rule": No cell or mark in an aggregate report of confidential data may describe fewer than six individuals. Reports always show numbers six or higher, and blanks indicate "0 to 5 records".

Verified Petition for Involuntary Treatment (Substance Use Disorder)

Judicial Region1		2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Grand Total
1 - Purchase	Cases			6	6								17	16	41	60	62	235
	Documents			6	6								18	16	41	60	62	238
2 - Green River	Cases			7			6	8	6			12	14	50	71	76	79	345
	Documents			7			7	11	6			13	16	53	74	79	83	367
3 - Cumberland	Cases		27	11	7	8	10			9	15	26	31	65	77	173	276	746
	Documents		34	15	10	8	10			9	15	28	31	65	86	183	289	794

DECISIONS TO MAKE ABOUT AGGREGATE DATA

Tips from Kentucky

- Moving from "Report Factory" to standard online reports and ad-hoc report templates.

- Every report comes with extensive documentation of definitions etc. This is labor-intensive; we are moving toward standard reports using data dictionaries.

HOW DO YOU HANDLE REPORT REQUESTS?

- Who receives the requests?

- Who completes the requests?

- Who approves the reports?

- How is prioritization among concurrent requests determined?

- Are there individuals who should be notified about certain reports requested/completed? Think elections.

- Do you allow individual parties (judges, attorneys, complaining witnesses, other parties) to be identified in aggregate reports of publicly available records?

- If you have standard reports, who decides if/when to do something different when requested?

HOW DO YOU HANDLE REPORT REQUESTS?

Tips from Kentucky

- All requests routed to online request form & group email to my team; routed from there.

- Centralizing request response to data specialists will overload your busiest, most competent people.
Spread out and simplify the work with:
  - Templates and defaults
  - Data Stewards
  - Distributed Business Intelligence

To request statistical reports, press **Start**

Start

RESOURCES

- Statistical Analysis Considerations
- Statistical Codes & Definitions
- Glossary of Terms
- CourtNet Disclaimer
- Research & Statistics Reporting Procedure

Uniform Offense Reporting Codes

- UOR disclaimer
- UOR Code List
- Search UOR Codes

WHO DECIDES WHAT DATA IS REPORTABLE?

Without standards applied to all reports, the same data may be reported inconsistently

- Do labels etc. of datapoints as entered match what should be reported?

- Is all data entered reliably enough to reported? Would "Other / Unknown" be a problem in some instances?

- How far back into the past can data be reported?
  - Does this vary for different data?

Tip from NCSC Data Governance: a Data Governance Committee with stakeholders, data specialists, and domain experts should make this decision

WHAT CAN YOU DO TO MAKE YOUR DATA INTEROPERABLE TO OTHER JURISDICTIONS, STATES, OR NATIONAL DATA?

To understand commonalities and differences among data from different sources, it must be interoperable

In states where different jurisdictions use different data structures, creating a structure of interoperable data is critical to having timely insights statewide

Especially if this structure can be populated automatically

WHAT CAN YOU DO TO MAKE YOUR DATA INTEROPERABLE TO OTHER JURISDICTIONS, STATES, OR NATIONAL DATA?

Starts with Data Entry/Collection

1. **Relevant**: only enter/collect data that will be used

2. **Actionable**: Entry and access is driven by business process. Data should help staff find and understand information efficiently

3. **Reportable**: meaningful, communicable, and related to courts goals

4. **Shareable**: Structure and meaning common to others' data, connections available to related data sources

WHAT CAN YOU DO TO MAKE YOUR DATA INTEROPERABLE TO OTHER JURISDICTIONS, STATES, OR NATIONAL DATA?

Tips from NCSC:

- Consider a data warehouse (database specifically used for reporting).

- **NODS:**

  - Common content, structure, and relationships with standard interpretation make misinterpretation less likely.

  - Aspirational & divisible: Use the pieces where change is tractable, leave the rest for later.

OPEN DATA ON YOUR OWN TERMS

Planning ahead for the increasing expectations and requirements of openness will help keep courts accountable and responsive.

Resources:

NODS: https://www.ncsc.org/services-and-experts/areas-of-expertise/court-statistics/national-open-court-data-standards-nods

Court Statistics Project: Data Governance http://www.courtstatistics.org/state-courts/data-governance-policy-guide