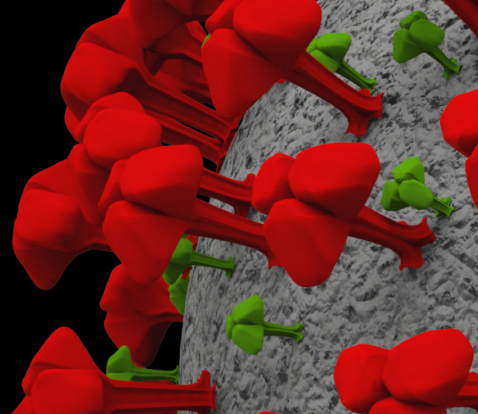


COVID-19

Case Backlog Q&A



CNA and the National District Attorneys Association (NDAA) partnered to actively develop and disseminate useful COVID-19 response resources to prosecutors and courts to support them during the COVID-19 pandemic. In recent months, we have received many questions focusing on case backlogs and prioritization of cases. This Q&A focuses on the experiences of Prosecuting Attorney Jacob Shellabarger in the rural county, Audrain County, Missouri.

QUESTION: FIRST, CAN YOU PLEASE PROVIDE US WITH SOME BACKGROUND INFORMATION ABOUT YOUR OFFICE?

Audrain County is a rural county in north central Missouri. We have a population of about 26,000. Our county seat, Mexico, has about 12,500 residents. [The Audrain County Prosecuting Attorney's Office](#) files about 1,200 cases per year, reviews all criminal offense reports, and files around 800 traffic tickets. We are responsible for everything from traffic violations and trespass infractions to rape and first-degree murder.

I am the elected prosecuting attorney, and I have one assistant prosecuting attorney, a victim advocate, an investigator, and support staffers, as well as a child support specialist through a state cooperative program. With one associate circuit judge, and a multi-county circuit with one circuit judge, we are always busy.

QUESTION: HAS YOUR JURISDICTION ADOPTED NEW TECHNOLOGY DURING THE COVID-19 PANDEMIC? HOW WAS THE EXPERIENCE OF IMPLEMENTING NEW TECHNOLOGY IN A RURAL JURISDICTION DIFFERENT?

Our court system began using video conferencing through the state court's Polycom system almost immediately. Initially, we were socially distant with masks in the courtroom, but through using WebEx and Scopia¹, we were able to access everything from our desks. I have been spending a lot more time at my desk attending court.

Between April and June of 2020, my whole staff was working remotely except for a rotating staff member who answered the phones and I. At that time, we scraped together laptops for remote access, using a technology grant from our Prosecutors' Association in 2019 and old reformatted laptops from my home. It was not pretty, but it worked.

We are fortunate to have gone almost paperless with PBK, our case management system, back in 2013. I have joked, "I was going to court most days with my wits and my laptop," and we got a chance to truly test that process during COVID-19. The court has gotten used to us having constant information access for criminal histories, file content, case summaries, and victim information with consistent communications.

In our rural area, broadband access is growing but not consistent. The county seat, Mexico, has Gigabit fiber access, but many of our residents are using cellular phones for data access. There is no public transportation and very limited public Wi-Fi access other than fast food places and the library. Judges have been willing to let defendants turn on video long enough to see them, and then turn it back off to save bandwidth. I have seen a lot of interesting backgrounds for court appearances, and our judge has been careful and gracious with technology-related complications.

¹ Please note that CNA & NDAA remain neutral, neither endorsing nor renouncing any specific vendors.

QUESTION: DID THE STATE COURTS TOLL SPEEDY TRIAL TIME AT THE ONSET OF THE COVID-19 PANDEMIC?

Yes, although a number of jurisdictions outside of our circuit have been resuming the most critical defendant in-custody cases with jury trials (some as early as last fall) depending on local health safety conditions. It is important to the system's integrity to maintain defendant's rights and access to court.

QUESTION: HAVE YOUR LOCAL COURTS RESUMED CALENDAR CALLS AND HEARINGS? IF SO, HOW PRODUCTIVE HAVE THE COURTS BEEN AT HEARING CASES?

We only had court dates truly cancelled in the spring of 2020. With the Supreme Court of Missouri's operating phases, we have had our usual schedule of dockets return. That means we are in court with different judges electronically throughout the week. For our higher public safety risk cases, the court has been consistently docketing cases with appearances of defendants who are incarcerated all by video. Defendants are only being transported in from our jail facility for certain in-person hearings.² We are careful to observe social distancing and masking when appropriate as we return to smaller dockets, spaced at time intervals: 20 defendants at 9:00 a.m., 20 defendants at 10:00 a.m., etc.

Returning to court, we have found that after initially delaying nearly everything, the courts are returning to expectations that defendants will appear for court, either by video or in person with social distancing. When defendants have excuses about COVID-19 exposure, the courts are requiring doctor's notes, health department paperwork, and some form of documentation. Otherwise, they are issuing warrants for failure to appear. We have held a number of hearings remotely, with witnesses testifying remotely from nearly anywhere. Those who do not have the technology to do so and who do not feel comfortable testifying in person can use one of my office's laptops in a conference area to testify. Judges have been more flexible with this. It cuts down on travel time for our probation officers, for sure.

QUESTION: HAS YOUR OFFICE TRIED ANY JURY TRIALS SINCE THE BEGINNING OF THE COVID-19 PANDEMIC? WHAT HEALTH SAFETY MEASURES HAVE BEEN PUT IN PLACE?

Although we have not gone back to jury trials yet, other counties in our circuit just had their first jury trial return in March 2021. With our lower numbers of incarcerated defendants—partially due to luck and partially to Missouri's bail reform—fewer of these cases have qualified for, or been ready for, the highest priority jury trials under the state COVID-19 protocols. [Operating Rules](#) specified that in-custody, speedy-trial cases would be priority, and then in-custody cases with injured victims (i.e., domestic or sexual violence, assaults).

Jurors will be distanced, masks will be worn, surfaces will be highly sanitized, and jurors will be in small pools of 20 instead of one mass panel as in the past. Jurors with signs or symptoms of COVID-19 will not be allowed in the courthouse, and caregivers or vulnerable populations will have the ability to delay service or selection.

QUESTION: AS A RESULT OF A LACK OF JURY TRIALS, HAS YOUR OFFICE EXPERIENCED ANY CASE BACKLOGS?

Yes. Our out-of-custody defendants do not have reset dates for jury trials at this point. For that reason, pretrial conditional release hearings are becoming more like mini-trials. I have a few out-of-custody cases set for jury trial pre-COVID-19 that will now be nearly three years old before the trial dates reset, if we're lucky. Driving while intoxicated (DWI), fraud and stealing, and controlled substances cases are all getting pushed—and this just represents our felony cases. Our misdemeanors are in a worse state than that—I am just not sure when we will be resuming those jury trials.

² Cases include those with witnesses and evidence presented, excluding probation violation hearings.

QUESTION: HAS A STRATEGY BEEN DEVELOPED TO ADDRESS THESE BACKLOGS AND PRIORITIZE SPECIFIC CASES?

The Supreme Court of Missouri Operating Rules specified that in-custody, speedy-trial cases would be priority, and then in-custody cases with injured victims (e.g., domestic or sexual violence, assaults). We are working with victims to determine whether probation can adequately address concerns they have, and deal with the stress and trauma of the continued court process. Our courts started using more specialized docketing, such as for domestic violence cases, so these cases can have a court date that focuses solely on similar cases.

We are asking that defendants be screened at release for our treatment courts when appropriate—can we get them into treatment, accountability, and resolution faster? This does work for DWI cases, controlled substances cases, and some stealing, fraud, and property crimes cases in which the victims also recognize the logistic, practical, and societal impacts of faster treatment.

QUESTION: TO YOUR KNOWLEDGE, ARE OTHER COUNTIES AROUND THE STATE EXPERIENCING SIMILAR CASE BACKLOGS?

Yes. From talking with other prosecuting attorneys around Missouri, we learned that we are all in a somewhat similar situation. Some of our surrounding counties have returned to nearly their pre-COVID-19 mode with space/time limitations, social distancing, and masking. Each circuit under the Supreme Court of Missouri plan is making local decisions about health safety requirements and precautions and then moving forward with appropriate actions. Our circuit is one of the more cautious in Missouri, considering our population is older and at higher risk of infection, and my office supports this decision.

QUESTION: WHAT DO YOU THINK WILL BE THE MOST CHALLENGING PART OF WORKING THROUGH THE CASE BACKLOGS AS A RURAL JURISDICTION?

Keeping victims and witnesses engaged will be the most difficult part for sure. It has always been a challenge to stay connected to witnesses and victims when cases take weeks or months to be heard in court. Now, with our current case backlogs, we have even greater pressure.

This answer is tangled up with our state's bond reform and can be especially challenging in smaller, more rural jurisdictions. When community members see my staff or me in the community, they are looking for someone to make it right, right now—and the system is not very satisfying now. For example, it is hard to run into my neighbors, our case victims, and our law enforcement personnel at the store, at sports practices, and at dinner and have to explain to them why the person who stole from their store, who drove drunk, or who won't quit harassing them has not been in court recently because of a system issue. Then to have to tell them that any potential trial is months, or a year, away is demoralizing.

This issue is somewhat worse regarding property crimes, drug crimes, and non-violent crimes. Our law enforcement officers are writing citations for crimes, including felonies, and letting defendants out to return to court another day instead of getting a case filed immediately. It is a mindset change.

QUESTION: HAS YOUR OFFICE ENACTED ANY OTHER PRACTICES TO HELP REDUCE CASE BACKLOGS?

I am more willing to announce that our office is not seeking a jail sentence at initial appearances of non-violent, first-time offenders and for common traffic tickets, particularly when restitution is not an issue. If a defendant is willing to admit they violated the law and is willing to accept a consequence, we are generally more willing to consider that in a recommendation to the court. If a defendant wants to meet me after an initial appearance and talk, I will take those meetings in person or via video conferencing. Practically speaking, I can tell them my recommendation and reasons for that, and then they can make the choice to get counsel or proceed. I never give legal advice, but the recommendation remains the same, whether defendants have a lawyer or not.

Additionally, I am working more hours, which I did not think was possible. Other than my assistant prosecutor, we do not have additional resources. Our county budget is tight, so we do not anticipate additional resources to help ease the burden. Prosecution is a lifestyle, and my family recognizes that. I am on call via my smartphone at all times, but remote access to PBK and an extra monitor at my home office have been helpful. I have supper with my family every night—read, play, and engage for a while—and then get back to work.

I cannot tell my constituents that the job is too hard or there is too much work to do. The other community members who work shift at our factories, have farms that need tending 24/7, or are in law enforcement deserve all I have to give. I do recognize, though, that my long-term wellness and mental/physical health require a better balance.

Relevant Resources:

- [NDAA Prosecutor Well-Being Events](#)
- [Virtual Discussion: Mental Wellness of Prosecutors and Court Staff](#)
- [Post-Webinar Document — Mental Wellness of Prosecutors and Court Staff](#)

QUESTION: WHAT WERE THE PRACTICAL CONSIDERATIONS YOU HAD TO WORK THROUGH REGARDING THIS INITIATIVE?

Practically, we are limited by time, both my assistant prosecutor's and mine. Also, calling and meeting with community members about ways we can become "smarter" on case resolutions, and being open-minded enough to realize that diversion, different recommendations, and alternative dispositions for cases are important, are necessary. The court's time is increasingly running short—having technical limitations and a small number of courtrooms mean we are running after office hours from time to time. It makes for long days for everyone in the system.

Early on, there were hardware and software limitations, but after resolving those initial challenges, we have moved on to other concerns, such as whether defendants have access to the dockets and the courthouse to resolve their cases. Because we have only one functional courtroom that allows for social distancing—our other courtroom is adequate for hearings but likely would allow only six people if we are distanced—availability is complicated.

QUESTION: HOW HAVE COVID-19-RELATED CHANGES BEEN FUNDED?

Our office is fortunate that our County Commission is very technology-focused. We have been upgrading technology on a schedule—and fortunately, we had just bought some new technology and still had access to the old laptops. Although our old laptops are five to ten years old, they could still help us alongside the new technology. We were also provided CARES Act funds—we purchased some remote access software and were repaid through a County reimbursement program. Largely, we are able to absorb those changes in technology by using general revenue—such as for headsets and hardware upgrades.

QUESTION: WHAT HAS YOUR OFFICE DONE TO CONTINUE COMMUNICATING WITH AND PROVIDING SERVICES TO VICTIMS OF CRIME?

Our victim advocate has been a phenomenal help during the past year. We have a policy to communicate with all our victims of crime before a charging decision and filing is made. We are starting to use email, when available, and phone calls rather than paper mail.

In domestic and sexual violence cases, our law enforcement officers carry an initial response packet, which includes best practices-based information for victims, including a form the officer and victim fill out together that gives us contact information, information releases, and best ways to stay in touch. Our victim advocate and local domestic violence/sexual violence shelter are able to respond to victims early and often.

We keep open lines of communication with the Chamber of Commerce and our large retailers, and they are supportive of initiatives to get first-time offenders and non-violent offenders accountability. Among those, Mexico participates in a "Getting

Ahead” sustainability project, a wraparound effort for social skills, employment, and positive social support to help individuals work out of poverty and strengthen the local workforce. We are proud to participate in that program and encourage completion of it by defendants as a condition of deferral, diversion, or probation.

QUESTION: WHAT STRATEGIES IMPLEMENTED DURING COVID-19 DO YOU THINK WILL ENDURE BEYOND THE PANDEMIC?

Electronic dockets with video conferencing are here to stay. I have found that being at my desk, with multiple monitors and access to all of my information in a user-friendly format, makes me more effective in court. It cuts down on travel time and maximizes productivity. Moving to smarter docket management and being more proactive will stay. Initial appearances, which used to clutter up the docket, are largely being continued by the court staff and reset, with an expectation that we will be better prepared at the first docket appearance to dispose of the case or set it for hearing.

The “great pause” caused by COVID-19 let us refocus on communicating and involving victims at each stage of the process. I hope we have the stamina and systems in place to keep this up because our victims deserve it. Our focus on trying to find community-based solutions for alternative resolutions will continue as well.

FOR QUESTIONS, CONTACT US AT COVID19_COURTS@CNA.ORG.