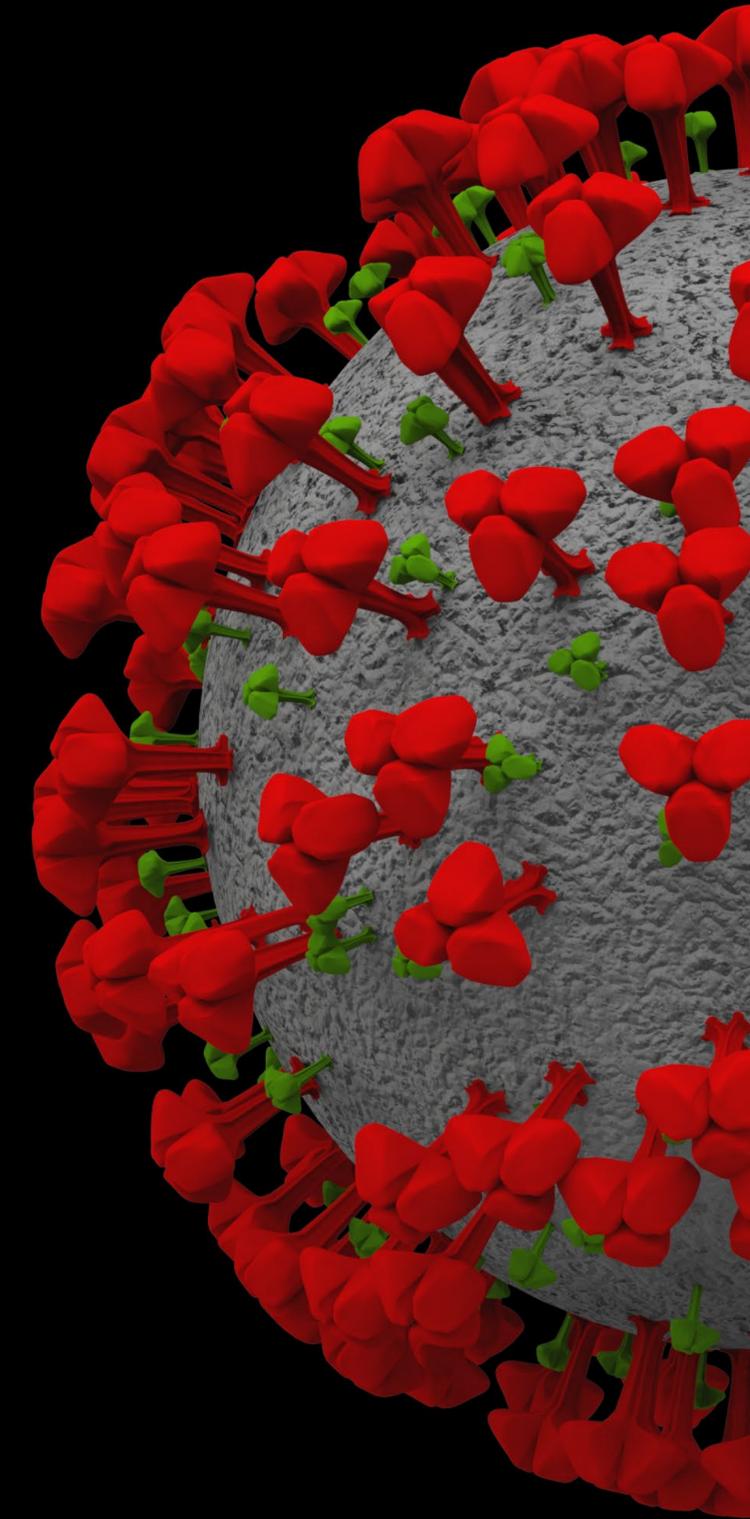
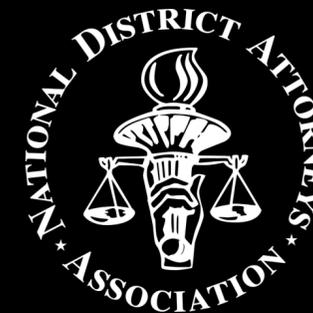




**CNA**  
ANALYSIS & SOLUTIONS



**COVID-19**  
RESPONSE FOR PROSECUTORS AND COURTS

[CLICK TO CONTINUE](#)

# Goodbye “Wet Ink” Signatures

Throughout the COVID-19 pandemic, CNA and the National District Attorneys Association collaborated to support prosecutors and courts by developing and disseminating COVID-19 response resources designed to help navigate an altered and unfamiliar criminal justice system. The pandemic has affected nearly every aspect of our society and has had a profound impact on the criminal justice system in particular—and notably on the operations of prosecutors and courts nationwide.

[CLICK TO CONTINUE](#)

# TABLE OF CONTENTS

WHAT ARE DIGITAL SIGNATURES?

THE ISSUE & INNOVATIVE SOLUTIONS

REMOTE ONLINE NOTARIZATION

DIGITAL SIGNATURES vs. eSIGNATURES

AUDIT TRAILS & THE ENCRYPTION PROCESS

VENDOR SELECTION

REFERENCES

THANK YOU

Visit our website for additional resources <https://www.cna.org/centers/ipr/jri/covid-courts>

# By Definition

A digital signature is a mathematical technique in the form of “an electronic sound, symbol, or process that is both attached to and associated with a record or contract,”<sup>1</sup> which is “used to validate the authenticity and integrity”<sup>2</sup> of the record or contract.

[CLICK TO CONTINUE](#)

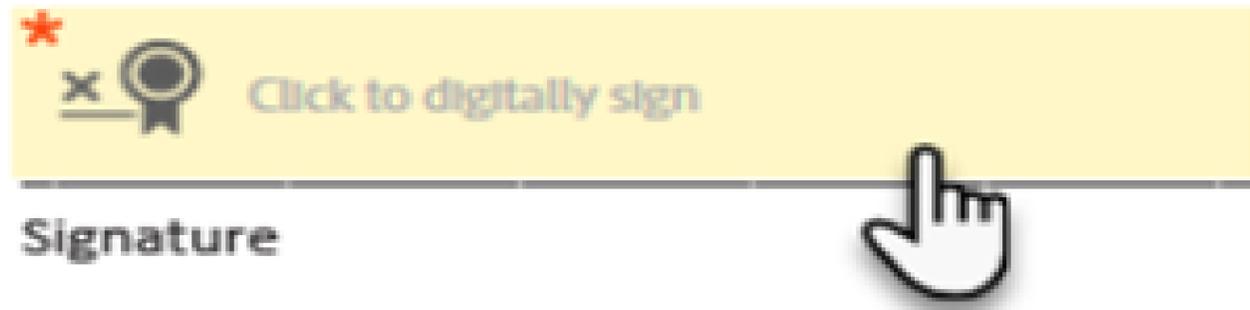
# Forms of Digital Signatures

A digital signature is a mathematical technique in the form of “an electronic sound, symbol, or process that is both attached to and associated with a record or contract,”<sup>1</sup> which is “used to validate the authenticity and integrity”<sup>2</sup> of the record or contract.

[CLICK TO CONTINUE](#)

# Digital and eSignatures come in a variety of forms<sup>3</sup>

## Clicking a digital icon



## Using digital/eSignature technology



A "wet" signature sent as a scanned PDF

/s/

Typing the signee's name in a specified field

# The Issue

Before the pandemic, digital and electronic signatures (eSignatures) typically were not accepted on civil and criminal court orders, notices, briefs, or other official court documents. To be legally binding and accepted by the court, these documents required notarization with in-person signatures.<sup>4</sup>

However, innovative alternatives to in-person requirements for signing legal documents have become the “new normal” in the face of social-distancing measures implemented across the country during the pandemic.

[CLICK TO CONTINUE](#)

# Innovative Alternatives

With limited methods to obtain “wet” signatures safely, jurisdictions began implementing changes when signing plea bargains, charging documents, indictments, and other essential court documents.

Such changes include allowing representing attorneys to sign documents on behalf of their clients, accepting affidavits with electronic signatures, and permitting incarcerated defendants to sign plea agreements remotely.

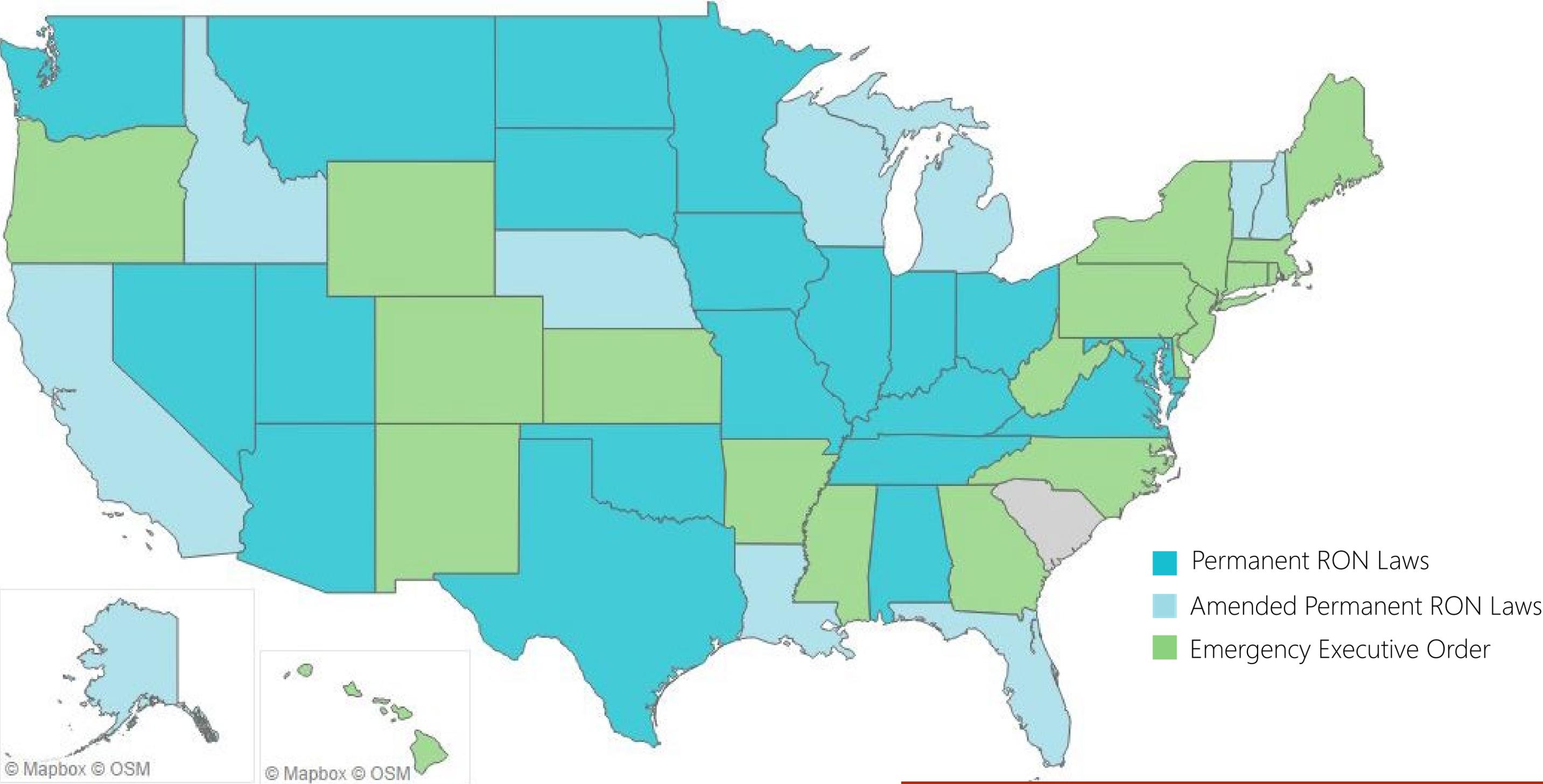
[CLICK TO CONTINUE](#)

# A Solution

Changing existing laws or issuing emergency orders lifting certain limitations to the use of digital and eSignatures enables attorneys and the courts to avoid potential bottlenecks caused by the increased time and effort it takes to obtain a “wet” signature.

This resource discusses the use of eSignatures and remote online notarization (RON) within the court system and reviews best practices for ensuring that electronically signed documents are accepted by the court.

In March 2020, states began amending existing RON laws and issuing emergency executive orders<sup>6</sup>



[CLICK TO CONTINUE](#)

Click on the state to view RON guidelines:<sup>7</sup>

[Alabama](#)

[Hawaii](#)

[Michigan](#)

[North Carolina](#)

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# Digital Signatures vs. eSignatures

It is important to note that digital signatures and eSignatures are not the same. **Digital signatures** can confirm the identity of the signatory, maintain a record of any changes made to the document, certify the authenticity of the document, and conform to US law. Alternatively, **eSignatures** are vulnerable to forgery, as the signer's identity is secured only via email or simple passwords or PINs, and can be contested in court.



Electronic Signature (eSignature)



Digital Signature



Any mark, image, or symbol that indicates consent.



Vulnerable to forgery. For internal use only.



Signer's identity secured via email, passwords, or pins.



Signatures can be contested in court.



Confirms signer's identity via encrypted electronic fingerprint.



Audit trails record all changes made to the file.



A digital certificate encrypts and authenticates the document.

0110010

Signatures are tied to PII and conforms to US law.

[CLICK TO CONTINUE](#)

# Digital Signatures vs. eSignatures

These differences are particularly important for official court documents, which must pass the court's authenticity bar for accepting documents without "wet" signatures. To meet these requirements, forensic authentication of a digital signature may be accomplished via an audit trail.

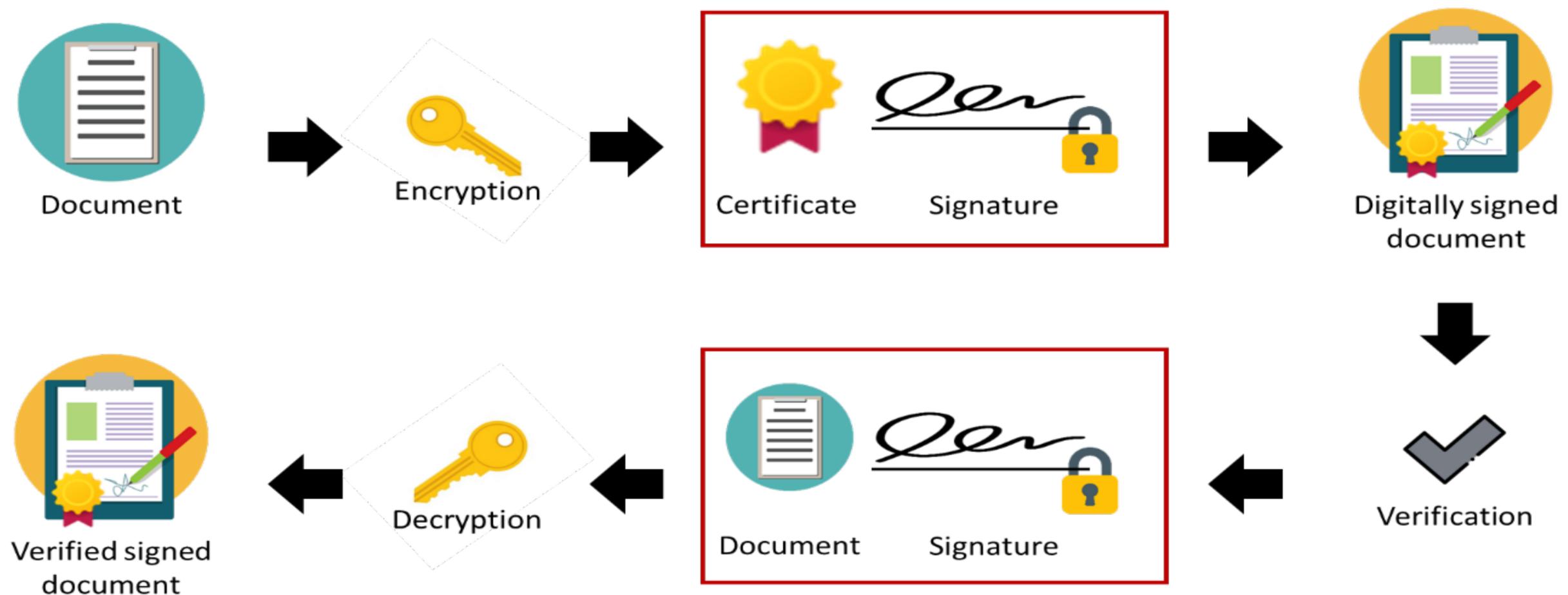
# Audit Trails

Audit trails are digital records that record and trace every action associated with a digitally signed document, including (1) when and to whom the document was sent; (2) the exact date and time it was opened and signed; (3) unique identifiers of the signatory (e.g., name, email address); and (4) IP addresses that can determine where a document was signed.<sup>8</sup>

[CLICK TO CONTINUE](#)

# Encryption and Verification Process

At each stage, unique information is captured and stored, which can be retrieved later. A digital tracking process ensures that representing attorneys and the court can be confident that digitally signed documents, if contested, can be reliably verified.



# eSignature Vendors

Many vendors provide digital and eSignature software. When choosing the appropriate vendor to execute digital and eSignatures, make sure the software produces documents with signatures that meet the following criteria outlined in the eSIGN Act:<sup>9</sup>

1. Verified association between the eSignature and the document
2. Verified identification of the signer
3. Confirmation that the signatory intended to sign the document
4. Consent among parties to use eSignatures
5. Retention of the document for a specified period of time according to state law

[CLICK TO CONTINUE](#)

# Vendor Selection Checklist

## Authentication

- ✓ Does the software ensure that the electronically signed documents are protected and secure?
- ✓ Are users required to provide identification when signing digitally?

## Audit trails

- ✓ Are all events of the signature process tracked, recorded, and stored?
- ✓ Does the software prevent tampering at both the signature level (cannot edit the signature itself) and the document level (cannot edit the document or its contents)?

## Reputation

- ✓ Does the vendor have a solid reputation within the digital signature technology community?
- ✓ Does the technology use reputable cryptographic tools that meet industry standards?
- ✓ Will the electronically signed documents continue to be valid in the long term?<sup>10</sup>

# Thank You

As we navigate a post-pandemic criminal justice system, we must remain adaptable and flexible and continue to explore innovative solutions to new and ever-changing obstacles. We hope this document provides useful information and guidance on the use of digital signatures.

Please visit our [website](#) to explore other resources on such topics as addressing post-pandemic case backlogs, prosecuting COVID-19 related crimes, and the mental wellness of prosecutors and court staff. Contact us at [COVID19\\_courts@cna.org](mailto:COVID19_courts@cna.org).

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**THANK YOU**