

## **National Center for State Courts**

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# Implementation Plan

## Survey of State Court Criminal Appeals: Design and Development

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November 19, 2009

This project was supported by Grant No.2008-BJ-CX-K047 awarded by the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

## Acknowledgements

This project benefited from the guidance of Thomas Cohen, Don Farole, and Duren Banks of the Bureau of Justice Statistics. The National Center for State Courts contracted with Westat, a leading statistical survey research organization. Westat senior statistician James Green contributed the sample design portion of this product. Invaluable insight and advice was provided by an advisory board. We thank the following individuals for contributing their time and expertise to this project:

- Thomas E. Baker, Professor of Law, Florida International University College of Law
- Peter Haas, Director of Technology, Supreme Court of Louisiana, (representing the Conference of Appellate Technology Officers)
- Thomas D. Hall, Clerk of Court, Supreme Court of Florida (representing the National Conference of Appellate Court Clerks)
- John Olivier, Clerk of Court, Supreme Court of Louisiana (representing the National Conference of Appellate Court Clerks)

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## Background

In 2008, the National Center for State Courts (NCSC) was awarded a grant from the Bureau of Justice Statistics (BJS) to develop an implementation plan for a national study of criminal appeals. The goal of the national survey is to generate knowledge about the criminal appellate process and statistics, including the collection of data on the types and dispositions of criminal cases appealed, the impact of appellate litigation on trial court outcomes, and appellate case processing time. Six objectives guided the design and development phase, which is considered a prelude to conducting a national survey:

1. To develop a data collection instrument to obtain information on criminal cases appealed from a state trial court to an intermediate appellate court and/or court of last resort;
2. To develop various sampling methodologies for producing reliable estimates of state criminal appellate litigation in both intermediate appellate courts and courts of last resort;
3. To develop statistical models for assessing the reliability of the proposed sampling frameworks;
4. To conduct field tests of the data collection instrument in a range of intermediate appellate courts and courts of last resort;
5. To develop methods to encourage participation from key professional appellate court agencies; and
6. To provide an implementation plan for the national data collection.

This implementation plan addresses each objective and offers recommendations, a timeline with task plan, and supplemental information necessary to administer the national survey.

## Recommendations from the Design and Development Phase

The design and development phase took place between September 1, 2008 and December 31, 2009. An advisory board of experts, representing academia, the National Conference of Appellate Court Clerks, and the Conference of Appellate Technology Officers guided the project throughout the grant period.<sup>1</sup> Project activities revolved around the design and pilot test of the data collection instruments and the development of a nationally representative sample design. The following recommendations should be considered for the implementation of the national survey:

1. Base the sample on appellate courts rather than trial courts,
2. Restrict the data collection to direct appeals,
3. Select a reasonably precise and cost-effective probability sample of appeals, and
4. Provide technical assistance funds to produce and market deliverables.

### 1. Base the Sample on Appellate Courts

The national survey of criminal appeals can be based on cases from appellate courts, trial courts, or a combination of both. The determination of the most suitable approach is influenced by the types of research questions to be answered and the feasibility of the various approaches. A key issue that was addressed during the early stages of the design phase was the feasibility of compiling data that could be used to calculate the rate of criminal appeals. To establish a rate of criminal appeals, the project would have to begin with cases heard in the trial court and then follow the cases to determine if they were appealed to a higher court. Thus, the advantages and

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<sup>1</sup> A representative from the Council of Chief Judges of the State Courts of Appeal (CCJSCA) served on the board but was unable to fully participate in the project.

disadvantages of pulling a sample from either the trial courts (i.e., a “bottom up” approach) or the appellate courts (i.e., a “top down” approach) were weighed.

Ultimately, the NCSC/Westat research team, BJS, and the advisory group concluded that the “top down” approach, which concentrates on appellate court data, offers the most cost-effective approach at this time. The basic reasons for this decision are:

- A “master list” of trial courts with jurisdiction over criminal cases in the United States does not exist. This is in contrast to the finite number of appellate courts, each clearly defined by the state (see Appendix A and B).
- Misdemeanors and felonies are often handled by different levels of trial courts (limited versus general jurisdiction courts). Consequently, reliance on trial court data to establish a sampling frame requires multiple steps to identify appropriate courts.
- Most lower-level courts are not capable of providing automated data on criminal cases, especially misdemeanors. Generally, appellate courts are more likely to have automated systems in place and better documentation of cases than trial courts.
- It would be time-consuming and challenging to learn which cases from the trial court were formally filed with the appellate court.

While the “top down” approach precludes the ability to calculate rates of appeal, the determination of the sampling frame generates the types of research questions that can be addressed in the national survey. In particular, the national survey can address questions that revolve around issues of case types, timeliness, and outcomes, as demonstrated in the following set of research questions.

### *Case Types*

- What proportion of direct appeals are based on the conviction? Sentence? Both?
- How do appeals vary by type of conviction (capital felony crimes, non-capital felonies, misdemeanors)?
- What are the criminal offenses in those cases being appealed (i.e., murder, assault, burglary, drug offenses)?
- What types of legal issues are raised on appeal?
- How do the types of cases reviewed by intermediate appellate courts (IACs) differ from those reviewed by the courts of last resort (COLRs)?

- How does the nature of criminal appeals vary from state to state?
- What percentage of appeals involved representation by a public defender? Self-represented defendants?
- If the case is then appealed to the COLR from the IAC, what types of appeals are accepted by the COLR?

### ***Timeliness***

- What are the processing times for appeals resolved in IACs and COLRs (e.g., record filed to briefing completed to decision)?
- Which courts are most and least expeditious?
- How do state laws (e.g., appeal by right versus appeal by permission jurisdiction) impact processing times?

### ***Outcome***

- What percentage of appeals “wash out” (withdrawn voluntarily, abandoned, or dismissed by the court)?
- Of those cases appealed, how many are decided in favor of the criminal defendant?
- How often is the trial court decision affirmed, reversed, modified or remanded for a new trial?
- How often does the COLR affirm, reverse or modify the findings of the IAC?

## **2. Restrict Cases to Direct Appeals**

National surveys face an imposing challenge: states often use different definitions and classifications.<sup>2</sup> As a result, there is always a danger of mixing a variety of case types into a single “basket” as to make comparisons meaningless. In this study, four case types were used: direct appeals, post-conviction appeals, cross-appeals, and interlocutory appeals.

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<sup>2</sup> See Appendix C for a diagram of the general appellate court process.

Direct appeals occur when the defendant appeals the final judgment of the trial court. The appeal can be either by right or by permission and can be taken from the final judgment of the defendant's conviction, sentence, or both. The state may also file a direct appeal in some instances, e.g. the state may be able to file an appeal of the defendant's sentence.

Post-conviction appeals occur when the defendant challenges the constitutionality of his or her conviction or sentence or the conditions of his or her confinement. Post-conviction appeals do not address the facts of the case, e.g. a defendant may file a writ of habeas corpus.

Cross-appeals occur when the defendant and state both appeal a trial court judgment or sentence.

Interlocutory appeals occur when the defendant or state appeal a non-final judgment of the trial court.

While direct appeals tend to be readily identified, other appeal types may include an array of cases and may be handled quite differently across states. To help determine the procedure for and distribution of appeal types, the NCSC research team, with assistance from members of the advisory board, collected information from listserv inquiries and through the distribution of a data collection form. In April 2009, two questions were sent to the NCACC and CATO listservs:

Question #1: How common are interlocutory appeals filed by defendants in criminal cases? Is this type of appeal identified in your case management system? If defendants cannot appeal, can they seek some sort of other interlocutory review, and if they can, please answer the questions with that information.

Question #2: According to some, there is an increase in the number of appeals filed in regard to the length of the criminal sentence. For instance, a defendant appeals the amount of time deducted from his sentence for good behavior. Are these types of cases included in your criminal appellate court caseload? How are they addressed?

Listsers responses were received from appellate courts in several states and the District of Columbia. Generally, interlocutory cases are considered uncommon in most states. In regard to

the handling of sentencing issues, there was considerable variance among the courts. In an attempt to further clarify classification schemes and counts across states, a data collection form was created and sent to nine appellate courts (see Appendix L for the form). The results from six responding courts are shown below.<sup>3</sup>

Court	No. of Criminal Appeals	Percent Direct Appeals	Percent Post-conviction appeals	Percent interlocutory appeals	Percent “other” appeals
New York Court of Appeals	2,690	100%	0%	0%	0%
Virginia Court of Appeals	2,480	98%	0%	1%	1%
Minnesota Court of Appeals	765	81%	19%	0%	0%
Oregon Supreme Court	796	66%	34%	0%	4%
Florida 2 <sup>nd</sup> District Court of Appeal	3,455	49%	46%	2%	3%
Texas Court of Criminal Appeals	6,651	21%	68%	11%	0%

The data from this small sample of courts show that (1) interlocutory appeals are not common, and (2) there is considerable variance in the inclusion of post-conviction appeals in the criminal caseload. For example, Florida has a growing body of law in which an individual isn’t challenging the original sentence, but rather the amount of time actually served. This is a type of “quasi-criminal” case that in the past was considered civil, but is currently being processed as a criminal appeal. Other states, such as New York, treat writs of habeas corpus and other post-conviction appeals as civil appeals. Consequently, the inclusion of post-conviction appeals in the study may jeopardize the comparability of cases across states.

As part of this project, NCSC staff tested the validity of the coding forms on a variety of criminal appeals. This pilot test showed that both post-conviction and interlocutory cases were

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<sup>3</sup> Those courts that did not complete and return the data summary sheet include the Illinois Appellate Court (1<sup>st</sup> District), Utah Court of Appeals, and the California Supreme Court.

extremely difficult to code. The coding forms developed for the project proved insufficient to capture the complexity of these cases, and coders found that it took approximately twice as long to code them as compared to direct appeals. Due to this difficulty it would be necessary to create new coding forms specific to these case types if they are included in the national survey. For these reasons, NCSC recommends that the national study focus on direct appeals.<sup>4</sup>

### 3. Select a Reasonably Precise and Cost-Effective Probability Sample of Appeals

The criminal appeals sample design should meet the following analytic objectives. First, the sample design should provide nationally representative estimates of the number of criminal appeals in process at a given point in time. Second, the design should include the analytic subgroups of courts of last resort (COLR) and intermediate appellate courts (IACs).

A “top down” design would involve a sample of appellate courts and a sample of cases within those courts. Three variations of a “top down” design were considered:

1. A single-stage design that includes all COLRs and IACs with certainty and selects cases within each court.
2. A two-stage design that draws a sample of both COLRs and IACS and selects cases within each court (Designs 1A and 1B in Table 1).
3. A two-stage design that includes all COLRs with certainty and a sample of IACs. A sample of cases would be selected within each court (Design 2 in Table 1).

The appellate court population consists of 52 courts of last resort<sup>5</sup> and 91 intermediate appellate

Average cost of adding a court to the sample:  
COLR: \$1,480  
IAC: \$1,760

Average cost of adding a case to the sample:  
COLR: \$110  
IAC: \$120

*Average costs take into account variations in access to electronic data and the complexity of cases found in COLRs and IACs.*

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<sup>4</sup> The coding forms and instructions for direct criminal appeals can be found in Appendices D through K.

<sup>5</sup> Two COLRs – Oklahoma Supreme Court and Texas Supreme Court – do not have criminal jurisdiction..

courts<sup>6</sup>. Because the number of courts in total (143) is somewhat large, and the incremental average cost of bringing a court into the sample is large compared to the incremental average cost of sampling cases within courts, we recommend against further consideration of the first design variation given above.

Table 1 presents several relevant decision-making measures for the remaining design variations. For each design evaluated, Table 1 includes:

- a name for each design
- the type of court stratification (COLR, IAC)
- The court (N1h) and case (N2h) population sizes
- The court (n1h) and case (n2h) sample sizes proposed for each design
- The incremental costs of bringing a court (C1h) and case (C2h) into the sample
- The total cost (C) for each design (excluding project management/administration)
- The design effect, or differential weighting effect, for each design
- The effective sample size offered for each design

The sample sizes offered by the various designs presented in Table 1 range from 1,000 to 2,500 in increments of 500. This range was chosen based on the minimum levels of precision and maximum levels of cost, effort, and manageable size envisioned for the study. NCSC recommends that the national survey be carried out over a three-year period—two years to collect and deliver the data to the Bureau of Justice Statistics, and a third year of technical assistance to address data issues, draft reports, and market product deliverables.<sup>7</sup> Based on previous experiences with national studies of appeals, project manageability is enhanced if the final sample of cases is between 1,000 and 2,500 cases.

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<sup>6</sup> Five IACs – Alabama Court of Civil Appeals, Indiana Tax Court, Oklahoma Court of Appeals, Pennsylvania Commonwealth Court, and Tennessee Court of Appeals – do not have criminal jurisdiction.

<sup>7</sup> Funding for the third year would be contingent on the successful completion of the data collection stage.

Table 1: Designs, strata, population and sample sizes, costs and effective sample sizes

Design	Type of Court	Population		Sample		Cost per Court	Cost per Case	Cost Total	Differential	Effective Sample Size
		N1h	N2h	n1h	n2h	C1h	C2h	C	Weighting Effect Weff	Effn
1A - Proportional at stage 1 n = 1,000	COLR	52	26,911	36	360	\$1,480	\$110	\$92,880	0.2649	
	IAC	91	60,229	64	640	\$1,760	\$120	\$189,440	0.7464	
	Total	143	87,140	100	1,000			\$282,320	1.0114	989
1A - Proportional at stage 1 n = 1,500	COLR	52	26,911	36	540	\$1,480	\$110	\$112,680	0.2649	
	IAC	91	60,229	64	960	\$1,760	\$120	\$227,840	0.7464	
	Total	143	87,140	100	1,500			\$340,520	1.0114	1,483
1A - Proportional at stage 1 n = 2,000	COLR	52	26,911	36	720	\$1,480	\$110	\$132,480	0.2649	
	IAC	91	60,229	64	1,280	\$1,760	\$120	\$266,240	0.7464	
	Total	143	87,140	100	2,000			\$398,720	1.0114	1,978
1A - Proportional at stage 1 n = 2,500	COLR	52	26,911	36	900	\$1,480	\$110	\$152,280	0.2649	
	IAC	91	60,229	64	1,600	\$1,760	\$120	\$304,640	0.7464	
	Total	143	87,140	100	2,500			\$456,920	1.0114	2,472
1B - Proportional at stage 2 n = 1,000	COLR	52	26,911	31	310	\$1,480	\$110	\$79,980	0.3077	
	IAC	91	60,229	69	690	\$1,760	\$120	\$204,240	0.6924	
	Total	143	87,140	100	1,000			\$284,220	1.0000	1,000
1B - Proportional at stage 2 n = 1,500	COLR	52	26,911	31	465	\$1,480	\$110	\$97,030	0.3077	
	IAC	91	60,229	69	1,035	\$1,760	\$120	\$245,640	0.6924	
	Total	143	87,140	100	1,500			\$342,670	1.0000	1,500
1B - Proportional at stage 2 n = 2,000	COLR	52	26,911	31	620	\$1,480	\$110	\$114,080	0.3077	
	IAC	91	60,229	69	1,380	\$1,760	\$120	\$287,040	0.6924	
	Total	143	87,140	100	2,000			\$401,120	1.0000	2,000
1B - Proportional at stage 2 n = 2,500	COLR	52	26,911	31	775	\$1,480	\$110	\$131,130	0.3077	
	IAC	91	60,229	69	1,725	\$1,760	\$120	\$328,440	0.6924	
	Total	143	87,140	100	2,500			\$459,570	1.0000	2,500
2 - All COLRs n = 1,000	COLR	52	26,911	52	520	\$1,480	\$110	\$134,160	0.1834	
	IAC	91	60,229	48	480	\$1,760	\$120	\$142,080	0.9953	
	Total	143	87,140	100	1,000			\$276,240	1.1787	848
2 - All COLRs n = 1,500	COLR	52	26,911	52	780	\$1,480	\$110	\$162,760	0.1834	
	IAC	91	60,229	48	720	\$1,760	\$120	\$170,880	0.9953	
	Total	143	87,140	100	1,500			\$333,640	1.1787	1,273
2 - All COLRs n = 2,000	COLR	52	26,911	52	1,040	\$1,480	\$110	\$191,360	0.1834	
	IAC	91	60,229	48	960	\$1,760	\$120	\$199,680	0.9953	
	Total	143	87,140	100	2,000			\$391,040	1.1787	1,697
2 - All COLRs n = 2,500	COLR	52	26,911	52	1,300	\$1,480	\$110	\$219,960	0.1834	
	IAC	91	60,229	48	1,200	\$1,760	\$120	\$228,480	0.9953	
	Total	143	87,140	100	2,500			\$448,440	1.1787	2,121

The national survey will be stratified by type of court (COLR, IAC). Within each major stratum, courts could be further stratified by size (estimated number of appeals.) Depending on the details of the final design chosen, some courts may be included in the sample with certainty, and cases within these courts would be sampled at the overall rate for the study and type of court. The variations in sample allocations presented in Table 1 introduce some deviations from proportional allocation, especially for Design 2 where all COLRs are included. Although this allocation works to the benefit of COLR specific estimates, it works to the detriment of the precision of overall estimates. The effect of this deviation from proportional allocation is measured as the design effect due to differential weighting (Weff). The effective sample size, the last column in Table 1, is calculated as the actual sample size divided by the weighting effect and is used as a substitute for the simple random sampling (SRS) sample size in precision calculations. The loss of precision in Design 2 (the inclusion of all COLRs), combined with high anticipated costs, led to the decision to focus on the proportional sampling frames (Designs 1A and 1B).

Table 2 presents the precision that would be expected from the effective sample sizes offered by the remaining proportional designs (Design 1A and Design 1B) for various analytic scenarios. For each scenario evaluated, Table 2 includes:

- The postulated population proportion (P)
- The balance given the proportion ( $Q = 1-P$ )
- The effective sample size (n) – from Table 1
- The variance of the proportion
- The standard error of the proportion
- The relative standard error of the proportion (RSE)
- The lower and upper confidence interval endpoints (LCI, UCI) on P

Note that since the effective sample sizes offered by the proportional designs (designs 1A and 1B) are very similar, they are represented via the actual sample sizes (a close approximation) in Table 2. The precision scenarios presented in Table 2 are intended to be illustrative and apply to both overall estimates and estimates for subgroups (COLRs, IACs.)

Table 2: Precision offered by designs 1A, 1B (approximate sample sizes)

P	Q	n	Variance	Standard Error	RSE	LCI	UCI
30%	70%	1,000	0.00021	0.01449	4.83%	27.16%	32.84%
40%	60%	1,000	0.00024	0.01549	3.87%	36.96%	43.04%
50%	50%	1,000	0.00025	0.01581	3.16%	46.90%	53.10%
60%	40%	1,000	0.00024	0.01549	2.58%	56.96%	63.04%
70%	30%	1,000	0.00021	0.01449	2.07%	67.16%	72.84%
30%	70%	1,500	0.00014	0.01183	3.94%	27.68%	32.32%
40%	60%	1,500	0.00016	0.01265	3.16%	37.52%	42.48%
50%	50%	1,500	0.00017	0.01291	2.58%	47.47%	52.53%
60%	40%	1,500	0.00016	0.01265	2.11%	57.52%	62.48%
70%	30%	1,500	0.00014	0.01183	1.69%	67.68%	72.32%
30%	70%	2,000	0.00011	0.01025	3.42%	27.99%	32.01%
40%	60%	2,000	0.00012	0.01095	2.74%	37.85%	42.15%
50%	50%	2,000	0.00013	0.01118	2.24%	47.81%	52.19%
60%	40%	2,000	0.00012	0.01095	1.83%	57.85%	62.15%
70%	30%	2,000	0.00011	0.01025	1.46%	67.99%	72.01%
30%	70%	2,500	0.00008	0.00917	3.06%	28.20%	31.80%
40%	60%	2,500	0.00010	0.00980	2.45%	38.08%	41.92%
50%	50%	2,500	0.00010	0.01000	2.00%	48.04%	51.96%
60%	40%	2,500	0.00010	0.00980	1.63%	58.08%	61.92%
70%	30%	2,500	0.00008	0.00917	1.31%	68.20%	71.80%

The information presented in Tables 1 and 2 were used to determine that Design 1B (proportional to caseload) is slightly preferable to Design 1A (proportional to courts). In particular, the differential weighting effect (Weff) for Design 1B is 1.000, slightly better than the Weff for Design 1A (1.011).

**NCSC recommends using Design 1B to draw the sample of courts and cases.**

A related issue arose during the advisory board discussion of the sample design: the value of an oversample of cases heard by both the IAC and the COLR. At issue is whether cases appealed and heard at both the IAC and COLR can be distinguished from the general population of IAC appeals. For example, are there different issues in cases solely heard by the IAC versus those that are eventually addressed by both the IAC and the COLR? An oversample of cases heard at both levels would permit a number of comparisons that would enable researchers and practitioners to identify events/issues at the IAC level that may influence subsequent filings at the COLR.

The current sampling framework involves coding only the case file as it relates to the particular court. The COLR case is coded, not the underlying IAC case. Since some COLR cases will have passed through the IACs initially, an opportunity presents itself to collect each court's data on a single case. There are some possible data collection economies as a result, and such cases may be rather unique and interesting analytically. We propose an oversample of such cases with a sample size of 300—a sample size that provides basic levels of precision, without adding too much additional costs to or diversion of resources from the primary study.<sup>8</sup>

**NCSC proposes an oversample of cases from those already selected from the COLR sample in which the underlying IAC case will be coded.**

Design 1B was used to estimate the costs of carrying out the survey. The data below provide cost options based on (1) sample size, in increments of 500, and (2) an oversample of 300 cases. The minimal expected cost—that of sampling 1,000 cases while excluding the oversample – is estimated to be \$655,000. The oversample raises the cost of sampling 1,000 cases to approximately \$700,000. Administrative costs rise as the sample size increases, as

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<sup>8</sup> For a proportion of 50 percent, a sample size of 300 cases will yield an approximate confidence interval from roughly 45 to 55 percent.

demonstrated by the most costly option of sampling 2,500 cases, which raises the expected cost to over \$1,000,000. A breakdown of costs can be found in Appendix M.

	n=1,000	n=1,500	n=2,000	n=2,500
<b>Total Costs</b>	<b>\$654,892</b>	<b>\$782,446</b>	<b>\$910,002</b>	<b>\$1,037,557</b>
Oversample (300 appeals)	\$42,051	\$42,051	\$42,051	\$42,051
<b>Total Costs with Oversample</b>	<b>\$696,943</b>	<b>\$824,497</b>	<b>\$952,053</b>	<b>\$1,079,608</b>

#### **4. Provide technical assistance funds to produce and market deliverables.**

Traditionally, BJS grant funds have been used to create large datasets that can be generalized to the population. Funding generally expires before the grantee can provide technical assistance and follow-up activities to clarify data issues, increase the visibility of product deliverables, and assure distribution to the appropriate group of practitioners.

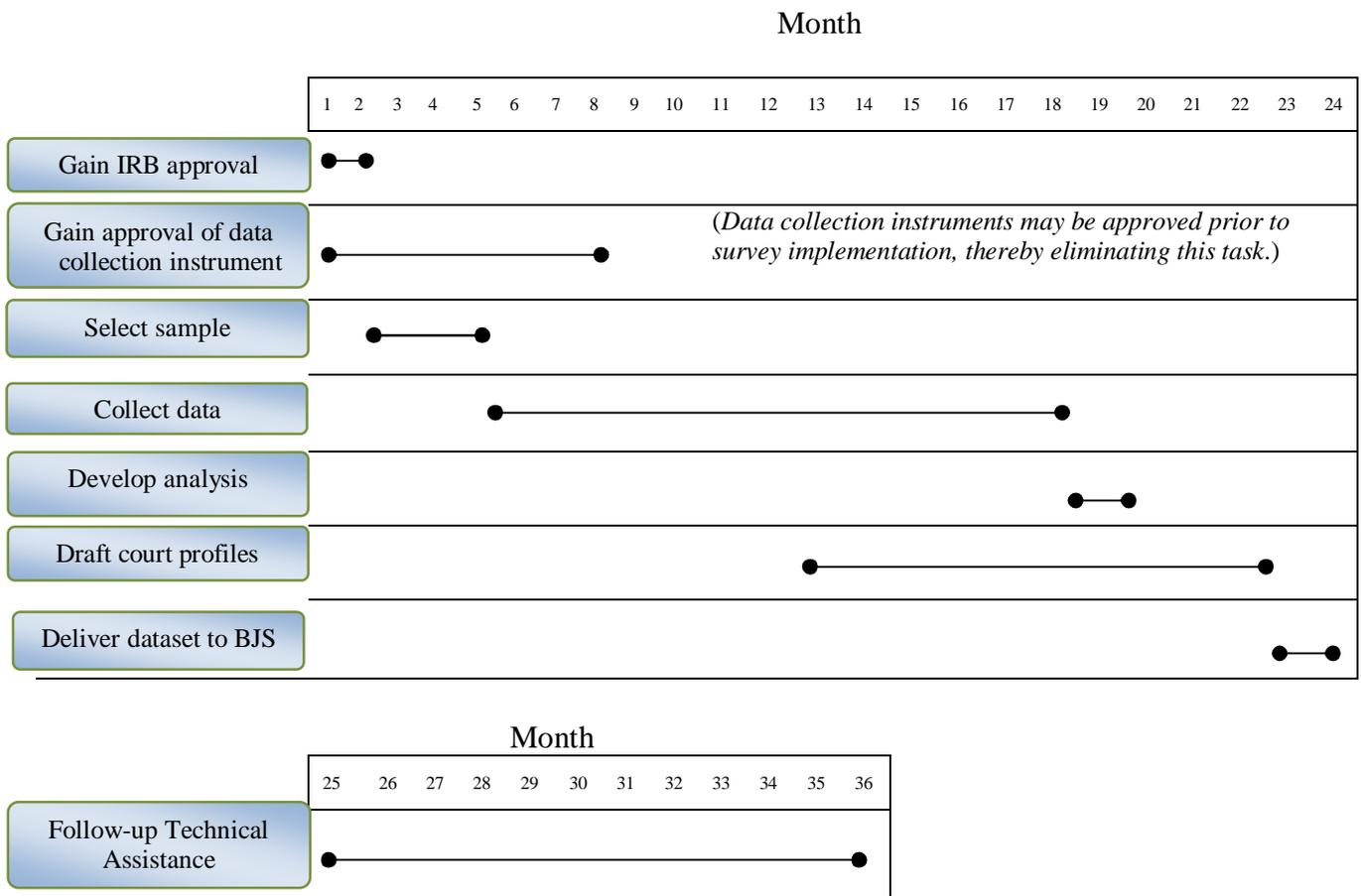
Consequently, the impact of findings from national surveys and their application to practitioners in the justice field may be diminished. NCSC proposes that BJS consider a new model that will increase the accuracy, impact, and application of products.

Generally, the review and dissemination process occurs following the conclusion of the grant. In the past, grant recipients have provided technical assistance to clarify data requests and to assist with publications, typically at their own expense. This practice limits the amount of time and effort that can be devoted to assuring accurate and timely products that reach the practitioner audience. NCSC recommends that the grant period be for three years—with the third year of technical assistance contingent on the successful completion of the survey. The following activities would be carried out under the technical assistance component of the grant:

- Responding to data questions,
- Providing additional documentation as requested,
- Drafting and/or reviewing publications,
- Disseminating products to appropriate judicial organizations, and
- Participating in conferences or workshops to promote products.

## Project Implementation Steps and Proposed Timeframe

There are eight primary steps in carrying out a national survey of criminal appeals, as demonstrated below. Next to each project step is a proposed timeframe for its completion during the 36-month period. The first 24 months will be used to carry out the survey and deliver the dataset to BJS. Funding for the final year of the project, contingent on the successful delivery of the dataset, will focus on technical assistance. See Appendix N for a sample court profile template.



Project management will be an ongoing activity throughout the duration of the project. NCSC recommends continued participation from an advisory board. Ideally, the advisory board should

be comprised of members of the following organizations and will serve as a conduit to practitioners.

- Conference of Appellate Technology Officers (CATO)
- National Conference of Appellate Court Clerks (NCACC)
- Council of Chief Judges of the State Courts of Appeal (CCJSCA)

Additionally, members of the Conference of State Court Administrators (COSCA) and the Conference of Chief Justices (CCJ) should be asked if they would like to appoint a representative to serve on the board.

## Appendices<sup>9</sup>

- A. Courts of Last Resort (COLRs) Sorted by Number of Criminal Appeals
- B. Intermediate Appellate Courts (IACs) Sorted by Number of Criminal Appeals
- C. Appellate Court Process Summary
- D. COLR Coding Form
- E. IAC Coding Form
- F. COLR Coding Instructions
- G. IAC Coding Instructions
- H. Conviction/Charge Codes
- I. Issues on Appeal Codes
- J. Resolution Codes
- K. Miscellaneous Coding Instructions
- L. Caseload Inventory and Record Availability Summary
- M. Estimated Costs and Tasks of Survey Implementation
- N. Sample Court Profile Template

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<sup>9</sup> Coding forms, coding instructions, and all coding sheets apply to direct appeals only.

## Appendix A: COLRs Sorted by Number of Criminal Appeals

		<b>No. of Criminal Appeals</b>	<b>Percent of Total</b>
CALIFORNIA	Supreme Court	3,899	13.4%
NEW YORK	Court of Appeals	2,525	8.7%
TEXAS	Court of Criminal Appeals	2,098	7.2%
MICHIGAN	Supreme Court	1,646	5.7%
LOUISIANA	Supreme Court	1,559	5.4%
OKLAHOMA	Court of Criminal Appeals	1,365	4.7%
VIRGINIA	Supreme Court	1,312	4.5%
ILLINOIS	Supreme Court	1,298	4.5%
NEW JERSEY	Supreme Court	1,101	*Estimate 3.8%
NEVADA	Supreme Court	1,038	3.6%
OHIO	Supreme Court	906	3.1%
DISTRICT OF COLUMBIA	Court of Appeals	662	2.3%
INDIANA	Supreme Court	569	2.0%
ARIZONA	Supreme Court	558	1.9%
MASSACHUSETTS	Supreme Judicial Court	542	1.9%
ALABAMA	Supreme Court	507	1.7%
MISSISSIPPI	Supreme Court	478	*Estimate 1.6%
COLORADO	Supreme Court	457	*Estimate 1.6%
IOWA	Supreme Court	451	1.6%
WASHINGTON	Supreme Court	449	1.5%
OREGON	Supreme Court	410	1.4%
NORTH CAROLINA	Supreme Court	409	1.4%
WISCONSIN	Supreme Court	408	1.4%
KENTUCKY	Supreme Court	386	1.3%
MINNESOTA	Supreme Court	382	1.3%
DELAWARE	Supreme Court	339	1.2%
ARKANSAS	Supreme Court	312	1.1%
NEW MEXICO	Supreme Court	273	0.9%
NEW HAMPSHIRE	Supreme Court	265	0.9%
HAWAII	Supreme Court	240	0.8%
MONTANA	Supreme Court	209	0.7%
MAINE	Supreme Judicial Court	180	0.6%
PUERTO RICO	Supreme Court	175	0.6%
GEORGIA	Supreme Court	170	0.6%
WEST VIRGINIA	Supreme Court of Appeals	169	0.6%
IDAHO	Supreme Court	165	0.6%
NORTH DAKOTA	Supreme Court	153	0.5%
CONNECTICUT	Supreme Court	137	0.5%
NEBRASKA	Supreme Court	132	*Estimate 0.5%
WYOMING	Supreme Court	121	0.4%
SOUTH DAKOTA	Supreme Court	106	0.4%
VERMONT	Supreme Court	104	0.4%
RHODE ISLAND	Supreme Court	62	0.2%
FLORIDA	Supreme Court	61	0.2%
MARYLAND	Court of Appeals	58	0.2%
UTAH	Supreme Court	58	0.2%
ALASKA	Supreme Court	57	0.2%

KANSAS	Supreme Court	34	0.1%
TENNESSEE	Supreme Court	29	0.1%
SOUTH CAROLINA	Supreme Court	23	0.1%
PENNSYLVANIA	Supreme Court	21	0.1%
MISSOURI	Supreme Court	10	0.0%

29,078

Source: NCSC Court Statistics Project (CSP) and state annual reports.

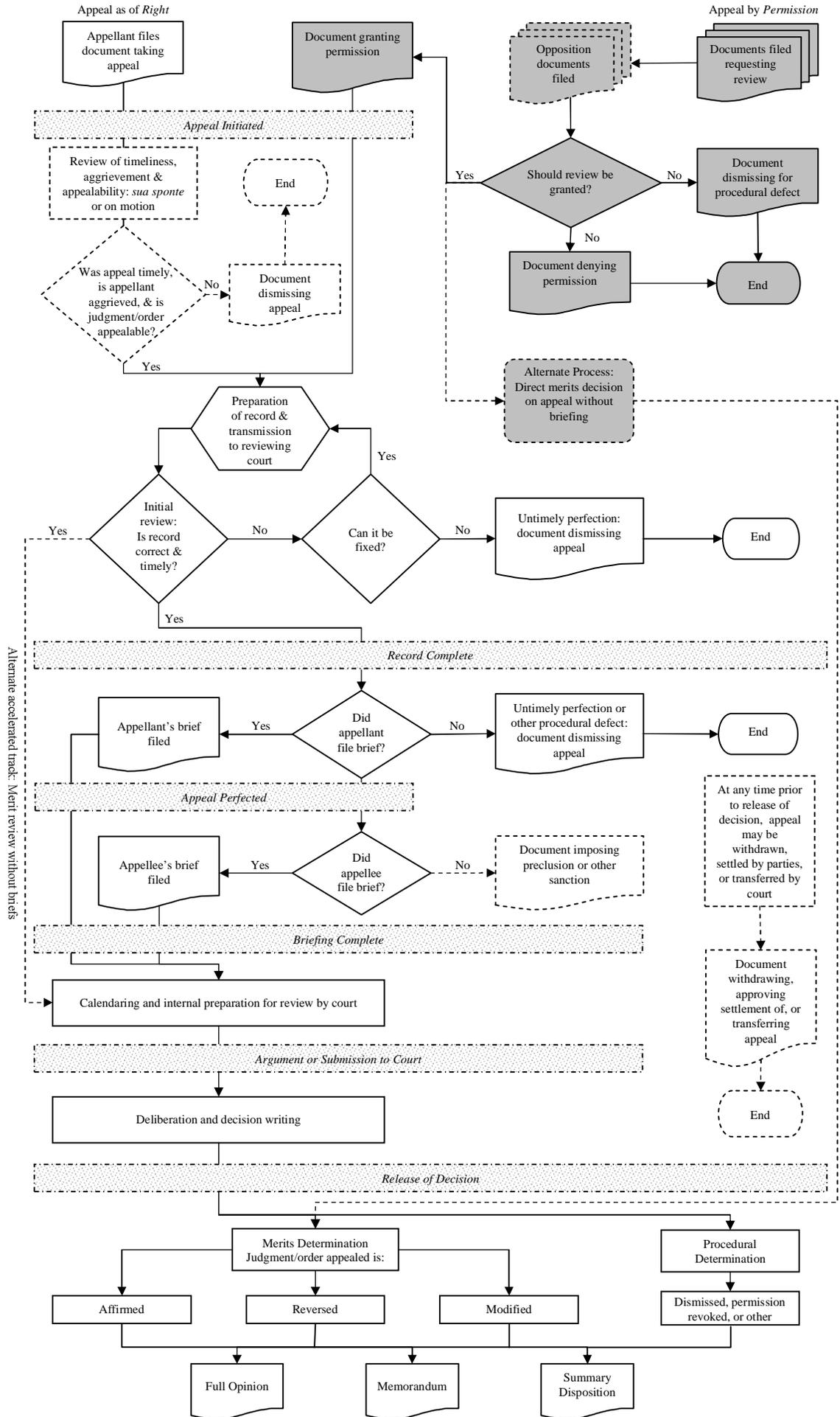
## Appendix B: IACs Sorted by Number of Criminal Appeals

		<b>No. of Criminal Appeals</b>	<b>Percent of Total</b>
PENNSYLVANIA	Superior Court	4,853	6.0%
FLORIDA	Second District Court of Appeal	4,129	5.1%
FLORIDA	First District Court of Appeal	3,363	4.2%
FLORIDA	Fifth District Court of Appeal	3,248	4.0%
FLORIDA	Fourth District Court of Appeal	3,152	3.9%
NEW JERSEY	Appellate Division of the Superior Court	3,060	*Estimate 3.8%
MICHIGAN	Court of Appeals	2,838	3.5%
VIRGINIA	Court of Appeals	2,471	3.1%
ALABAMA	Court of Criminal Appeals	1,876	2.3%
ILLINOIS	Appellate Court, First District	1,863	2.3%
CALIFORNIA	Courts of Appeal, Second Appellate District	1,826	2.3%
FLORIDA	Third District Court of Appeal	1,719	2.1%
OREGON	Court of Appeals	1,651	2.0%
CALIFORNIA	Courts of Appeal, Fourth Appellate District	1,571	1.9%
WISCONSIN	Court of Appeals	1,410	1.7%
INDIANA	Court of Appeals	1,351	1.7%
TEXAS	Courts of Appeal, Fifth District	1,211	1.5%
TENNESSEE	Court of Criminal Appeals	1,153	1.4%
KANSAS	Court of Appeals	1,151	1.4%
GEORGIA	Court of Appeals	1,079	1.3%
LOUISIANA	Courts of Appeal, Fourth Circuit	1,079	1.3%
COLORADO	Court of Appeals	1,071	1.3%
LOUISIANA	Courts of Appeal, First Circuit	1,053	1.3%
CALIFORNIA	Courts of Appeal, Third Appellate District	1,002	1.2%
NEW YORK	Supreme Court, Appellate Division, First Department	858	1.1%
KENTUCKY	Court of Appeals	854	1.1%
MASSACHUSETTS	Appeals Court	845	1.0%
MINNESOTA	Court of Appeals	825	1.0%
MARYLAND	Court of Special Appeals	820	1.0%
CALIFORNIA	Courts of Appeal, First Appellate District	814	1.0%
LOUISIANA	Courts of Appeal, Third Circuit	800	1.0%
NEW YORK	Supreme Court, Appellate Division, Second Department	784	1.0%
OHIO	Eighth District Court of Appeals	763	0.9%
SOUTH CAROLINA	Court of Appeals	751	*Estimate 0.9%
PUERTO RICO	Circuit Court of Appeals	748	0.9%
ILLINOIS	Appellate Court, Second District	672	0.8%
CALIFORNIA	Courts of Appeal, Fifth Appellate District	671	0.8%
OHIO	First District Court of Appeals	670	0.8%
NORTH CAROLINA	Court of Appeals	669	0.8%
LOUISIANA	Courts of Appeal, Second Circuit	657	0.8%
TEXAS	Courts of Appeal, First District	649	0.8%
TEXAS	Courts of Appeal, Fourteenth District	641	0.8%
ARIZONA	Court of Appeals, Division 1	636	0.8%
NEW YORK	Supreme Court, Appellate Division, Fourth Department	602	0.7%
OHIO	Fifth District Court of Appeals	594	0.7%

WASHINGTON	Court of Appeals, Division Two	582	0.7%
OHIO	Second District Court of Appeals	581	0.7%
LOUISIANA	Courts of Appeal, Fifth Circuit	579	0.7%
NEBRASKA	Court of Appeals	570	*Estimate 0.7%
ILLINOIS	Appellate Court, Fourth District	547	0.7%
IDAHO	Court of Appeals	545	0.7%
WASHINGTON	Court of Appeals, Division One	538	0.7%
TEXAS	Courts of Appeal, Second District	521	0.6%
OHIO	Tenth District Court of Appeals	501	0.6%
NEW YORK	Supreme Court, Appellate Term, 2nd, 8th, 9th, 10th & 11th Judicial Districts	482	0.6%
CALIFORNIA	Courts of Appeal, Sixth Appellate District	467	0.6%
ILLINOIS	Appellate Court, Third District	455	0.6%
MISSOURI	Court of Appeals, Eastern Division	446	0.6%
NEW MEXICO	Court of Appeals	423	0.5%
NEW YORK	Supreme Court, Appellate Division, Third Department	415	0.5%
ARKANSAS	Court of Appeals	410	0.5%
TEXAS	Courts of Appeal, Third District	400	0.5%
OHIO	Twelfth District Court of Appeals	396	0.5%
TEXAS	Courts of Appeal, Thirteenth District	395	0.5%
OHIO	Ninth District Court of Appeals	386	0.5%
TEXAS	Courts of Appeal, Fourth District	383	0.5%
TEXAS	Courts of Appeal, Seventh District	367	0.5%
OHIO	Third District Court of Appeals	349	0.4%
OHIO	Sixth District Court of Appeals	345	0.4%
WASHINGTON	Court of Appeals, Division Three	340	0.4%
ALASKA	Court of Appeals	336	0.4%
MISSOURI	Court of Appeals, Western Division	306	0.4%
OHIO	Eleventh District Court of Appeals	299	0.4%
ARIZONA	Court of Appeals, Division 2	287	0.4%
TEXAS	Courts of Appeal, Sixth District	286	0.4%
TEXAS	Courts of Appeal, Twelfth District	275	0.3%
TEXAS	Courts of Appeal, Ninth District	271	0.3%
MISSISSIPPI	Court of Appeals	257	*Estimate 0.3%
OHIO	Fourth District Court of Appeals	250	0.3%
ILLINOIS	Appellate Court, Fifth District	247	0.3%
IOWA	Court of Appeals	244	0.3%
TEXAS	Courts of Appeal, Tenth District	233	0.3%
CONNECTICUT	Appellate Court	227	0.3%
MISSOURI	Court of Appeals, Southern Division	219	0.3%
UTAH	Court of Appeals	219	0.3%
TEXAS	Courts of Appeal, Eleventh District	198	0.2%
TEXAS	Courts of Appeal, Eighth District	184	0.2%
OHIO	Seventh District Court of Appeals	179	0.2%
HAWAII	Intermediate Court of Appeals	131	0.2%
NEW YORK	Supreme Court, Appellate Term, First Judicial Department	75	0.1%
NORTH DAKOTA	Court of Appeals	-	0.0%
		80,649	

Source: NCSC Court Statistics Project (CSP) and state annual reports.

# Appellate Court Process Summary



Appendix D: COLR Coding Form for the Criminal Appeals Study  
Court of Last Resort  
[Court Name]

Defendant Last Name: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

Trial Court County, State: \_\_\_\_\_

Intermediate Appellate Court Case Number: \_\_\_\_\_

1. Court of Last Resort Docket Number: \_\_\_\_\_

2. Petitioner (from Trial Court case):  State  Defendant  
 Transfer from IAC

3. Is it an appeal from:  Conviction  Sentence  Both

4. Appeal milestones: DATE:

a. Appeal requested: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

b. Appeal granted/denied: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

c. Initiated Documentation: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

d. Record filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

e. Transcript filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

f. Petitioner brief filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

g. Respondent brief filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

h. Reply briefs: (list additional on back)  
Petitioner  DK \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK  
Respondent  DK \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

i. Amicus briefs filed?  Yes

j. Briefing Completed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

k. Oral argument: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

l. Decision/Disposition: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK

5. Type of Conviction: \_\_\_\_\_  DK  
 Capital Felony  Non-Capital Felony  Misdemeanor  DK

6. Total # of issues presented in the appellant's initial brief: \_\_\_\_\_  
a. 1<sup>st</sup> issue on appeal: \_\_\_\_\_ b. 2<sup>nd</sup> issue on appeal: \_\_\_\_\_  
c. 3<sup>rd</sup> issue on appeal: \_\_\_\_\_ d. 4<sup>th</sup> issue on appeal: \_\_\_\_\_  
e. 5<sup>th</sup> issue on appeal: \_\_\_\_\_ f. 6<sup>th</sup> issue on appeal: \_\_\_\_\_

7. Appellate court disposition (Check all that apply):  
a. Review/transfer not granted or dismissed due to:  
 Appeal improvidently granted  Lack of jurisdiction  
 Denied (discretionary review)  Procedural Error  
 No valid issue on appeal  Unknown

b. Appeal withdrawn before decision:  
 By petitioner  Transfer/certified to IAC  Unknown

c.  Affirmed in whole  
d.  Reversed in whole (explain effect below)  
e.  Reversed in part (explain effect below)  
f.  Remanded (explain effect below)  
g.  Conviction/sentence modified (explain effect below)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Type of Decision:  No Opinion (N/A)

Full Opinion  
 Majority #Concurring \_\_\_\_\_  
#Dissenting (with reason) \_\_\_\_\_  
 Memorandum  
 Summary/Dispositional Order  
 Other Opinion

9. Total # of issues addressed by Opinion: \_\_\_\_\_  Opinion Pending

a. Issue 1 1. Issue addressed \_\_\_\_\_  
2. Resolution \_\_\_\_\_  
b. Issue 2 1. Issue addressed \_\_\_\_\_  
2. Resolution \_\_\_\_\_  
c. Issue 3 1. Issue addressed \_\_\_\_\_  
2. Resolution \_\_\_\_\_  
d. Issue 4 1. Issue addressed \_\_\_\_\_  
2. Resolution \_\_\_\_\_  
e. Issue 5 1. Issue addressed \_\_\_\_\_  
2. Resolution \_\_\_\_\_  
f. Issue 6 1. Issue addressed \_\_\_\_\_  
2. Resolution \_\_\_\_\_

10. Present status of appeal:  Closed  Pending

11. Request to reconsider/rehear:  
a. \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK  None (skip to Q12)  
b. Reconsideration/rehearing granted?:  Yes  No  DK

12. Any further appeal?:  
a.  Yes  No (explain) \_\_\_\_\_

13. Defendant's counsel:  Public defender/court appointed  
 pro se / pro per

Name: \_\_\_\_\_  
City & State: \_\_\_\_\_, \_\_\_\_\_  
Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

14. State's counsel (lead counsel or counsel of record):  
Name: \_\_\_\_\_  
City & State: \_\_\_\_\_, \_\_\_\_\_  
Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Please use the back of this form to state additional comments about this case, including any deviations from typical appeal processing.

[OMB language here]

Coder's initials: \_\_\_\_\_ Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Appendix E: IAC Coding Form for the Criminal Appeals Study  
Intermediate Appellate Court  
[Court Name]

Defendant Last Name: \_\_\_\_\_

Trial Court County, State: \_\_\_\_\_

Trial Court Case Number: \_\_\_\_\_

- 1. Appellate Court Docket Number: \_\_\_\_\_
- 2. Appellant (from Trial Court case):  State  Defendant
- 3. Is it an appeal from:  
 Conviction  Sentence  Both
- 4. Appeal milestones: DATE:  
  - a. Initiated Documentation: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - b. Record filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - c. Transcript filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - d. Appellant brief filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - e. Appellee brief filed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - f. Reply briefs: (list additional on back)  
    - Appellant  DK \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
    - Appellee  DK \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - g. Briefing Completed: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - h. Oral argument: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - i. Decision/Disposition: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
- 5. Type of Conviction: \_\_\_\_\_  DK  
 Capital Felony  Non-Capital Felony  Misdemeanor  DK
- 6. Total # of issues presented in the appellant's initial brief: \_\_\_\_\_  
  - a. 1<sup>st</sup> issue on appeal: \_\_\_\_\_
  - b. 2<sup>nd</sup> issue on appeal: \_\_\_\_\_
  - c. 3<sup>rd</sup> issue on appeal: \_\_\_\_\_
  - d. 4<sup>th</sup> issue on appeal: \_\_\_\_\_
  - e. 5<sup>th</sup> issue on appeal: \_\_\_\_\_
  - f. 6<sup>th</sup> issue on appeal: \_\_\_\_\_
- 7. Appellate court disposition (Check all that apply):  
  - a. Review/transfer not granted or dismissed due to:  
 Appeal improvidently granted  Lack of jurisdiction  
 Denied (discretionary review)  Procedural Error  
 No valid issue on appeal  Unknown
  - b. Appeal withdrawn before decision:  
 By appellant  Transfer/certified to COLR  Unknown
  - c.  Affirmed in whole
  - d.  Reversed in whole (explain effect below)
  - e.  Reversed in part (explain effect below)
  - f.  Remanded (explain effect below)
  - g.  Conviction/sentence modified (explain effect below)

- 8. Type of Decision:  
 Full Opinion  No Opinion (N/A)  
 Memorandum  
 Summary/Dispositional Order  
 Other Opinion
  - 9. Total # of issues addressed by Opinion: \_\_\_\_\_  
 Opinion Pending  
    - a. Issue 1  
      - 1. Issue addressed \_\_\_\_\_
      - 2. Resolution \_\_\_\_\_
    - b. Issue 2  
      - 1. Issue addressed \_\_\_\_\_
      - 2. Resolution \_\_\_\_\_
    - c. Issue 3  
      - 1. Issue addressed \_\_\_\_\_
      - 2. Resolution \_\_\_\_\_
    - d. Issue 4  
      - 1. Issue addressed \_\_\_\_\_
      - 2. Resolution \_\_\_\_\_
    - e. Issue 5  
      - 1. Issue addressed \_\_\_\_\_
      - 2. Resolution \_\_\_\_\_
    - f. Issue 6  
      - 1. Issue addressed \_\_\_\_\_
      - 2. Resolution \_\_\_\_\_
  - 10. Present status of appeal:  Closed  Pending
  - 11. Request to reconsider/rehear:  
    - a. \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK  None (skip to Q13)
    - b. Reconsideration/rehearing granted?:  Yes  No  DK
  - 12. Appealed to State Court of Last Resort?:  
    - a.  Yes  No (skip to Q13)  DK
    - b. Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
    - c. Petition granted?  Yes  No  DK
    - d. Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  DK
  - 13. Defendant's counsel:  Public defender/court appointed  
 pro se / pro per  
Name: \_\_\_\_\_  
City & State: \_\_\_\_\_, \_\_\_\_\_  
Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_
  - 14. State's counsel (lead counsel or counsel of record):  
Name: \_\_\_\_\_  
City & State: \_\_\_\_\_, \_\_\_\_\_  
Phone: (\_\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_
- Please use the back of this form to state additional comments about this case, including any deviations from typical appeal processing.
- [OMB language here]
- Coder's initials: \_\_\_\_\_ Date: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

# Appendix F: COLR Coding Instructions

## GENERAL CODING INSTRUCTIONS COURT OF LAST RESORT CODING FORM

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Thank you for agreeing to assist the National Center for State Courts (NCSC) and the Bureau of Justice Statistics (BJS) with this very important project. We cannot emphasize enough how crucial it is that you read and understand *all* of these instructions because many questions that may arise will be answered by the following information. Please be sure to code each case as accurately, consistently, and completely as possible. We have included two sample coding forms at the end of these instructions. They have been completed in a manner consistent with these instructions. Please refer to them as you read these instructions. To assure complete and accurate data, please abide by the following basic rules for coding:

- **Every case coded for this study *must* be a direct appeal of a criminal case (i.e., capital felony, non-capital felony, misdemeanor) in which a verdict or judgment was entered in a trial court.**

A direct appeal occurs when the defendant 1) appeals the final judgment of a trial court to an intermediate appellate court, 2) appeals the final judgment of a trial court to a court of last resort, or 3) appeals the final judgment of a trial court to a court of last resort following an appeal to an intermediate appellate court. The appeal can be taken either by right or by permission and can be taken from the final judgment of the defendant's conviction, sentence, or both. The state may also file a direct appeal in some instances, e.g., the state may be able to file an appeal of the defendant's sentence.

### Notes:

- a. If you discover a case on the list that was not appealed (i.e., no notice given to the appellate court), please make a note of the case name and number and notify the NCSC. If for any reason you cannot locate a case or if a case on the list does not seem to fit the description of the sample (i.e., a direct criminal appeal filed during 2008), please notify the NCSC for further instructions.
  - b. If a case was dismissed for procedural error and a subsequent appeal was filed, we are interested in the subsequent appeal only if that resolved the case on the merits. If the subsequent appeal results in a second dismissal for procedural error, exclude the second appeal and only code the first appeal.
- **When in doubt about how to code something**, please call the National Center for State Courts (NCSC). *Please do not guess how to code something*. It is **strongly encouraged** that you code two or three appeals and then call your court liaison to discuss the coding process and ask any questions that arose. While coding, keep a list of questions (and the docket number that is affected), then call [appropriate project staff name] toll-free at

**1-800-616-6109** Monday through Friday, 8:30 a.m. to 5:00 p.m., Eastern Time.

- **Write CLEARLY!**
  - Shape your numbers and letters CLEARLY and DISTINCTLY. This is a very important way to ensure that the data are entered, stored, and reported accurately.
  - Use a PENCIL so you can erase and re-enter the data clearly, if necessary.
  - See the **SAMPLE CODING FORMS** for examples.
  
- **Code each item accurately.**
  - If the item requires checking a box, be certain that you check the one that you intend to check.
  - Be certain that you write the numbers for DATES in the correct order. For example, July 1, 2008 should be coded as: **7 / 1 / 08** (month/ day/ year). If this is coded 1 / 7 / 08, it will create an error of 6 months.
  - See the included “Miscellaneous Coding Instructions” document for additional examples of scenarios that you may encounter while coding. Use those examples as a supplement to, rather than as a substitute for, the instructions provided below.
  
- **If the data item DID NOT OCCUR** (e.g., no reply briefs were filed), write “**DNO**” in the blank. However, **if the event DID OCCUR**, but you **DON'T KNOW** the answer (e.g., you know that a request to reconsider/rehear was made, but you do not know if it was granted), mark “**DK**” (for “Don’t Know”) in the checkbox provided. Please use “DK” sparingly—make every attempt to find and enter the correct information.
  
- **If there is something peculiar or particularly interesting about the case**, please include comments on the back of the coding form, including an explanation of how you determined codes for the case. This detail will assist the NCSC and BJS in analyzing the data that you provide about each appeal.

## **SPECIFIC DATA ITEMS**

---

In this study, we are *only* collecting information about **direct appeals of a criminal case (i.e., capital felony, non-capital felony, misdemeanor) in which a verdict or judgment was entered in a trial court.** For the purpose of this study, do not include appeals of cases that are not included on the list provided to you by the NCSC. If you find a case that you believe should be included in the study, please notify the NCSC for further instructions.

**Defendant’s Last Name:** Write the last name of the defendant in the trial court case. If there was more than one defendant write the last name of the defendant that filed the current appeal.

**Trial Court County, State:** Write the county and state of the trial court from which the case was appealed.

**Trial Court Case Number:** Write the number assigned to the trial court case. Be sure to record the complete number, including any prefixes or suffixes. (The appellate court docket numbers, to be completed below and in Question 1, will be different than the Trial Court case number recorded here.)

**Intermediate Appellate Court Case Number:** Write the number assigned to the intermediate appellate court case. Be sure to record the complete number, including any prefixes or suffixes. (The Court of Last Resort docket number, to be completed in Question 1 below, will be different than both the Trial Court case number [reported above] and the Intermediate Appellate Court case number recorded here.)

**1. Court of Last Resort Docket Number:** Write the number assigned to the appeal by the Court of Last Resort (**COLR**). Be sure to record the complete number, including any prefixes or suffixes. (The Court of Last Resort docket number will be different than the Trial Court and Intermediate Appellate Court case numbers that you recorded above.)

**2. Petitioner (from Trial Court case):** Check the box next to the party who filed this appeal. Please note that both parties may appeal the same or different issues (e.g. the defendant may appeal a judgment for the State, while the State may appeal an interlocutory ruling of the court).

- Note: for the purposes of this project, references to the party initiating the appeal will be the “**petitioner**.” Some courts refer to this party as the appellant. Similarly, for purposes of this project, references to the party responding to the initial petitioner will be “**respondent**”. Some courts refer to this party as the appellee. The use of appellant and appellee will be reserved for parties at the Intermediate Appellate Court.

In some instances, neither the petitioner nor respondent has filed the appeal; instead, the Intermediate Appellate Court has decided not to resolve the issues of the appeal and transfers or certifies the case to the Court of Last Resort. The Court of Last Resort may also decide that the issues on appeal have important policy implications so they decide to transfer the case from the Intermediate Appellate Court prior to that court making a decision in the case. If the case was transferred or certified by the Intermediate Appellate Court to the Court of Last Resort, check the “Transfer from IAC” box.

**3. Is it an appeal from: Conviction, Sentence, Both:** Record the phase of the trial court criminal case from which the appeal is being taken.

**4. Appeal Milestones:** Write the date that each of the following events occurred. If the event has not yet occurred or if the appeal was withdrawn, abandoned, dismissed or otherwise terminated before the event was necessary, enter “**DNO**” to indicate the event did not occur. While it is likely that these events will occur chronologically in the order they appear on the coding form, they will not necessarily occur in this order.

**a) Appeal requested:** write the date on which the Petitioner filed a request for certiorari or review of a trial court or an IAC decision.

**b) Appeal granted/denied:** write the date on which the COLR granted or denied the Petitioner's request for certiorari or review.

**c) Initiated Documentation:** write the date on which the appellate court first received jurisdiction of this case. This date will usually be the date that the notice of appeal is filed or docketed with the appellate court. If the petitioner mistakenly filed the notice of appeal with the wrong court, and the notice of appeal was forwarded to the proper court, write the date on which the appropriate court received the notice. If there is no notice of appeal date listed, and if this court utilizes docketing statements, write the date on which the docketing statement was filed. A docketing statement is a form filed by the petitioner and often used by the court for scheduling and assignment purposes. Some courts use other names for these forms, such as "case information sheet" or "statement of the case."

**d) Record filed:** write the date on which the complete trial court record was filed with the COLR (excluding the transcript). If the parties filed a joint statement of the case (or some other abbreviated record) in lieu of a complete trial record, note the date on which this statement was filed. At times there may be multiple record submissions. If this is the case, use the latest date to indicate when the COLR received the full record.

**e) Transcript filed:** write the date on which the complete transcript was received by the COLR. If the transcript is not recorded separately, but is part of the record, use the date the court received the record.

**f) Petitioner brief filed:** write the date on which the petitioner filed its brief with the COLR. For this question, we are interested only in briefs on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court judgment.

**g) Respondent brief filed:** write the date on which the respondent filed its response brief with the COLR. For this question, we are interested only in briefs that respond to the petitioner's brief on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court judgment.

**h) Reply briefs:** write the dates on which any reply briefs were filed with the COLR. Be sure to assign the date of the brief to the appropriate party (petitioner or respondent). If the parties filed more than one reply brief, indicate the filing date and filing party on the back of the coding form, labeling each clearly as reply briefs. If a reply brief is filed and you know the date, but do not know which party filed the brief, enter the date and mark the "DK" box. Likewise, if you know that the petitioner filed the brief, but you do not know the date of the brief, mark the "DK" box.

**i) Amicus briefs filed?:** check the “Yes” box if any amicus briefs were filed in this case. An amicus brief is a brief filed by a person or group that is not a party to the case.

**j) Briefing Completed:** write the date on which all petitioner and respondent briefs were submitted to the COLR in preparation for oral arguments or decision. If there are different dates for fully briefed and submitted, please use the latest date to indicate when all documents are submitted to the appellate court. Do not include the filing of amicus briefs in this calculation as the briefs of interest are those filed by the parties to the case.

**k) Oral argument:** write the date on which oral arguments were held before the COLR. Write “DNO” in this space (do not check “none”) if no oral arguments were held because the appeal was withdrawn, dismissed, or otherwise terminated before oral arguments were necessary. If there are multiple dates listed in which oral arguments were heard, list the latest date on record.

**l) Decision/Disposition:** write the date on which the COLR issued a final decision for the appeal OR the date on which the appeal was dismissed. Do not include the dates on which the court decided motions or preliminary issues.

**5. Type of Conviction (use codes):** Using the attached list of crime codes, indicate the category that accurately captures the most severe crime for which the defendant was convicted. There are five primary conviction categories. The first digit reflects the general category of the crime and the second digit indicates a more detailed sub-category. For purposes of determining the severity of the crime, the general, but not definitive, rule is that the lower the first digit number, the more severe the offense. Attempted offenses are included within each crime type (i.e., it is implied that, for example, conviction/charge code 20 includes attempted burglary). If Conviction code 50 (“Other criminal offense”) is used, be sure to explain the offense on the back of the page.

Indicate the level of severity for the offense by marking one of the following boxes: **Capital Felony**, **Non-Capital Felony**, or **Misdemeanor**. Be sure to indicate the severity of the offense even if the conviction offense cannot be identified.

- A felony should be classified as a **capital felony** only if the defendant has been sentenced to death.
- **Note:** Do not assume the level of severity of an offense since, with limited exceptions, these offenses may be classified as a felony or a misdemeanor depending upon state statute. Look to the statement of facts or the opinion to see if either document specifies the conviction type and/or the level of severity of the offense.

**6. Total # of issues presented in the petitioner’s initial brief:** Indicate the total number of issues raised on appeal by the petitioner in the petitioner’s initial brief. We are only interested in issues that were actually briefed. This information should therefore be obtained from the briefs only; do not tally the number of errors assigned by the petitioner in the notice of appeal or other preliminary documents.

**6a thru 6f: Issue on appeal (use codes):** Using the attached list of issue codes, indicate the category that accurately captures the legal issue presented in the petitioner’s brief. There are eight primary categories for “issue on appeal.” The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 (“Other trial court error”) is used, be sure to explain the error on the back of the page. In addition, please note the type of error on the back of the page whenever any of the “other” issue codes are used. These codes will be the same codes used for categorizing “issues addressed” by the court in Question 9, but note that the issues raised in the briefs may or may not be the same issues that are addressed by the court in the opinion.

The total number of issues entered **must match** the number coded for Question 6(a) thru 6(f), **unless** the petitioner raises more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the brief). If the party’s brief raises more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write “3” in Question 6 and list 3 codes for Questions 6a, 6b, and 6c. If there are 8 issues on appeal, write “8” in Question 6 but list only the first 6 codes for Questions 6a through 6f.

**7. Appellate court disposition:** Check the manner in which the appeal was resolved at the COLR. While it is possible that only one option will apply to a case, the options listed are not necessarily mutually exclusive; please check all options that apply. Please be thorough and precise when coding the dispositions. If the appeal is still pending, skip to Question 10 and check the box marked “Pending.”

***a. Review/transfer not granted or dismissed due to:***

***Appeal improvidently granted*** – the appeal was initially accepted by the court, but it was later determined that the appeal should have been rejected for some reason. Typically this code will be used for appellate courts with discretionary (or by permission) jurisdiction over criminal cases.

***Lack of jurisdiction*** – the appeal was dismissed because it was filed in the wrong court or because this court has no jurisdiction over the case’s subject matter or there is a lack of jurisdiction because the trial court has issues pending and thus still has jurisdiction over the case.

***Denied (discretionary review)*** – the case is a by permission appeal (meaning that the court has discretionary jurisdiction over the appeal), and the court denies review.

***Procedural error*** – a procedural error prevents COLR review of the issues raised. For example, the petitioner missed the deadline for filing a notice of appeal. This option also includes appeals that are extinguished by the filing of a timely post-verdict motion in the trial court.

***No valid issue on appeal*** – the notice of appeal did not allege a reviewable error. Trial court decisions may only be appealed if the errors were prejudicial, were preserved during trial, and were identified and explained in an appellate brief. If a notice of appeal fails to allege that the error was

prejudicial, or if the errors alleged were not objected to during trial, then the appeal fails to present a “valid question” – thus there are “no valid questions on appeal.”

**Unknown** – the appeal was not accepted, but the reason underlying the rejection is not apparent.

**b. Appeal withdrawn before decision:**

**By petitioner** – the petitioner withdrew the appeal before the COLR issued an opinion.

**Transfer/certified to IAC** - the appeal was transferred to the state’s Intermediate Appellate Court before review by the COLR. For example, this may occur when a COLR transfers a case to the IAC due to the IACs current handling of several appeals with errors related to those raised by the current appeal.

- Note: the transfer or certification of a case to the IAC is a disposition for the case, but it does not resolve the issues on appeal. As such, if this disposition is chosen there will not be an opinion written in the case, and the “No opinion” box should be checked in Question 8.

**Unknown** – the appeal was clearly withdrawn and is no longer pending, but the withdrawing party is unknown.

**c. Affirmed in whole:** the COLR affirmed the entire trial court decision or judgment.

**d. Reversed in whole:** the COLR reversed the entire trial court decision or judgment. Include here any judgments that are “vacated in whole.” **Be sure to explain the effect of the reversal in the space below.**

**e. Reversed in part:** the COLR reversed only part(s) of the trial court decision or judgment. This is also referred to as “affirmed in part/reversed in part.” Include here any judgments that are “vacated in part.” **Be sure to explain the effect of the reversal in the space below.**

**f. Remanded:** the court sent the case back to the lower court for additional proceedings. Check this even if the lower court will revisit only some of the issues. **Be sure to explain the effect of the remand in the space below.** Do not include the court’s *reasons* for remanding the case; include only the *effect* of the remand, (e.g., Remand to the trial court for a new trial, in light of the improper jury verdict forms.) If the court reversed the trial court decision in whole or in part and remanded the case, check both (f) remanded and (d) or (e).

**g. Conviction/sentence modified:** This option is applicable if the COLR modified the trial court’s resolution of at least one issue without remanding the case. A separate issue may be remanded and coded as such. **Be sure to explain the effect of the modification, below.** Do not include the court’s *reasons* for modification here; include only the *effect* of the modification, (e.g.,

Sentence reduced from 2.5 years to 1.5 years). If the court reversed the trial court decision in whole or in part and modified the conviction or sentence, check both (g) modified and (d) or (e).

**8. Type of Decision:** Indicate the format of the court’s opinion. An opinion on the merits is one in which the court has considered the arguments of the parties, either following oral arguments or based on a review of the briefs only (i.e., in a judicial conference). If the court does not consider the merits of the appeal (i.e., there is no resolution of the issues in the case), select “No Opinion” (Question 8) and **DO NOT** code any issues in Question 9.

**Full Opinion:** The appellate court produces an expansive discussion and elaboration of the merits of the case or the defect or procedural error. The elaboration may include statements of fact, issues, and the court’s reasoning.

**Memorandum:** The appellate court produces a limited discussion of the merits of the case or the procedural determination. The discussion will only include some statements of fact, issues, or the court’s reasoning.

**Summary/Dispositional Order:** The appellate court produces a document that has no discussion of the facts or merits of the case, or no discussion of the defect or error, and gives no reasons for the court’s decision (e.g., “Affirmed. No opinion.” or “Denied. No opinion.”)

**Other Opinion:** if the type of decision is not listed above. Use this sparingly.

**No Opinion:** The appellate court did not issue an opinion on the merits of the case.

**9. Total # of issues addressed by Opinion:** Indicate the total number of issues addressed by the court in the dispositive opinion. Mark the “OPINION PENDING” checkbox if the appeal is currently awaiting the release of the final opinion. If the opinion is released at a later date, please return to this question to complete the coding.

**1. Issue Addressed:** Using the attached list of issue codes, indicate the category that accurately captures the legal issue addressed by the court. There are eight primary categories for “issue on appeal.” The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 (“Other trial court error”) is used, be sure to explain the error on the back of the page. In addition, please note the type of error on the back of the page whenever any of the “other” issue codes are used. These issues may or may not be the same issues presented in the petitioner’s brief as listed in Question 6.

The total number of issues entered **must match** the number coded for Question 9(a) thru 9(f), **unless** the opinion addresses more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the opinion). If the opinion addresses more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write “3” in Question 9 and list 3 codes for Questions 9a(1),  
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9b(1), and 9c(1). If there are 7 issues on appeal, write “7” in Question 9 but list only the first 6 codes for Questions 9a through 9f.

- 2. Resolution:** Enter the appropriate resolution using the attached list of five codes for each of the “issues addressed” by the court. Code the court’s resolution only for opinions that are dispositional in nature. If Resolution code 4 (“Other or unknown resolution on the merits”) is used, be sure to explain the other resolution on the back of the page.

**10. Present status of appeal:** Indicate whether the appeal has been closed (for any reason) or is still pending. An appeal is considered closed only if the court has issued a final order or opinion dismissing or resolving the appeal. This includes appeals that are dismissed at the request of either party. If the appeal is STILL PENDING, skip to Question 13. If any further appeal is pending, the case should be considered closed at the COLR.

**11. Request to reconsider/rehear:**

- a. If applicable, write the *first* date on which either party requested that the COLR reconsider or rehear the issues. If no request was made, check “none” and skip to Question 12. Do not answer this question if the COLR has not yet issued a decision for this case or if the deadline to move for reconsideration or rehearing has not yet expired (a motion could still be filed).
- b. **Reconsideration/rehearing granted:** if you recorded a date for part a, indicate whether the COLR granted the request to rehear or reconsider the appeal. If a decision was made, but you are unsure of the results, mark the “DK” box to indicate you “don’t know”. If no request for reconsideration/rehearing was made, do not check either box. If the court modified its original judgment after rehearing or reconsideration, please note the effect of the modification on the back of this coding form.

**12. Any further appeal?:** Identify the court and status, if known, of any additional appeals initiated by either party.

**13. Defendant’s counsel:** Write the name, address, and telephone number of the defendant’s counsel for the COLR appeal. If the defendant has more than one attorney simultaneously, write the name and contact information that appears first in the COLR record. If the defendant changed counsel during the COLR appeal, write the name and contact information of the most recent attorney. Please check if the defendant was assigned either a public defender or court appointed counsel. If the defendant does not have counsel, check “pro se / pro per” and complete the blanks with the defendant’s contact information. An attorney representing him or herself is NOT considered pro se (in this situation, write the name and contact information of the defendant).

**14. State’s counsel:** Write the name, address, and telephone number of the state’s counsel for the COLR appeal. If the state has more than one attorney simultaneously, write the name and contact information of the lead counsel or counsel of record.

**Please use the back of this form to state additional comments about this case, including any deviations from typical appeal processing:** On the back of the coding

form, please list any additional information that might be useful in understanding the appeal, particularly any unique processing events.

**Coder's initials & date:** Please print your initials and date each coding form as it is completed.

# Appendix G: IAC Coding Instructions

## GENERAL CODING INSTRUCTIONS INTERMEDIATE APPELLATE COURT CODING FORM

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Thank you for agreeing to assist the National Center for State Courts (NCSC) and the Bureau of Justice Statistics (BJS) with this very important project. We cannot emphasize enough how crucial it is that you read and understand *all* of these instructions because many questions that may arise will be answered by the following information. Please be sure to code each case as accurately, consistently, and completely as possible. We have included two sample coding forms at the end of these instructions. They have been completed in a manner consistent with these instructions. Please refer to them as you read these instructions. To assure complete and accurate data, please abide by the following basic rules for coding:

- **Every case coded for this study *must* be a direct appeal of a criminal case (i.e., capital felony, non-capital felony, misdemeanor) in which a verdict or judgment was entered in a trial court.**

A direct appeal occurs when the defendant 1) appeals the final judgment of a trial court to an intermediate appellate court, 2) appeals the final judgment of a trial court to a court of last resort, or 3) appeals the final judgment of a trial court to a court of last resort following an appeal to an intermediate appellate court. The appeal can be taken either by right or by permission and can be taken from the final judgment of the defendant's conviction, sentence, or both. The state may also file a direct appeal in some instances, e.g., the state may be able to file an appeal of the defendant's sentence.

### Notes:

- a. If you discover a case on the list that was not appealed (i.e., no notice given to the appellate court), please make a note of the case name and number and notify the NCSC. If for any reason you cannot locate a case or if a case on the list does not seem to fit the description of the sample (i.e., a direct criminal appeal filed during 2008), please notify the NCSC for further instructions.
  - b. If a case was dismissed for procedural error and a subsequent appeal was filed, we are interested in the subsequent appeal only if that resolved the case on the merits. If the subsequent appeal results in a second dismissal for procedural error, exclude the second appeal and only code the first appeal.
- **When in doubt about how to code something**, please call the NCSC. *Please do not guess how to code something.* It is **strongly encouraged** that you code two or three appeals and then call your court liaison to discuss the coding process and ask any questions that arose. While coding, keep a list of questions (and the docket number that is affected), then call [appropriate project staff name] toll-free at **1-800-616-6109** Monday through Friday, 8:30 a.m. to 5:00 p.m., Eastern Time.

- **Write CLEARLY!**
  - Shape your numbers and letters CLEARLY and DISTINCTLY. This is a very important way to ensure that the data are entered, stored, and reported accurately.
  - Use a PENCIL so you can erase and re-enter the data clearly, if necessary.
  - See the **SAMPLE CODING FORMS** for examples.
  
- **Code each item accurately.**
  - If the item requires checking a box, be certain that you check the one that you intend to check.
  - Be certain that you write the numbers for DATES in the correct order. For example, July 1, 2008 should be coded as: **7 / 1 / 08** (month/ day/ year). If this is coded 1 / 7 / 08, it will create an error of 6 months.
  - See the included “Miscellaneous Coding Instructions” document for additional examples of scenarios that you may encounter while coding. Use those examples as a supplement to, rather than as a substitute for, the instructions provided below.
  
- **If the data item DID NOT OCCUR** (e.g., no reply briefs were filed), write “DNO” in the blank. However, **if the event DID OCCUR**, but you **DON'T KNOW** the answer (e.g., you know that the case was appealed to the Court of Last Resort but do not know on what date the appeal was requested), mark “DK” (for “Don’t Know”) in the checkbox provided. Please use “DK” sparingly—make every attempt to find and enter the correct information.
  
- **If there is something peculiar or particularly interesting about the case**, please include comments on the back of the coding form, including an explanation of how you determined codes for the case. This detail will assist the NCSC and BJS in analyzing the data that you provide about each appeal.

## SPECIFIC DATA ITEMS

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In this study, we are *only* collecting information about **direct appeals of a criminal case (i.e., capital felony, non-capital felony, misdemeanor) in which a verdict or judgment was entered in a trial court**. For the purpose of this study, do not include appeals of cases that are not included on the list provided to you by the NCSC. If you find a case that you believe should be included in the study, please notify the NCSC for further instructions.

**Defendant’s Last Name:** Write the last name of the defendant in the trial court case. If there was more than one defendant write the last name of the defendant that filed the current appeal.

**Trial Court County, State:** Write the county and state of the trial court from which the case was appealed.

**Trial Court Case Number:** Write the number assigned to the trial court case. Be sure to record the complete number, including any prefixes or suffixes. (The appellate court docket number, to be completed in Question 1 below, will be different than the Trial Court case number recorded here.)

**1. Appellate Court Docket Number:** Write the number assigned to the appeal by the Intermediate Appellate Court (**IAC**). Be sure to record the complete number, including any prefixes or suffixes. (The appellate court docket number will be different than the Trial Court case number that you recorded above.)

**2. Appellant (from Trial Court case):** Check the box next to the party who filed this appeal. Please note that both parties may appeal the same or different issues (e.g. the defendant may appeal a judgment for the State, while the State may appeal an interlocutory ruling of the court).

- Note: for the purposes of this project, references to the party initiating the appeal will be the “**appellant**.” Some courts refer to this party as the petitioner. Similarly, for purposes of this project, references to the party responding to the initial appellant will be “**appellee**”. Some courts refer to this party as the respondent. The use of petitioner and respondent will be reserved for parties at the Court of Last Resort.

**3. Is it an appeal from: Conviction, Sentence, Both:** Record the phase of the trial court criminal case from which the appeal is being taken.

**4. Appeal Milestones:** Write the date that each of the following events occurred. If the event has not yet occurred or if the appeal was withdrawn, abandoned, dismissed or otherwise terminated before the event was necessary, enter “**DNO**” to indicate the event did not occur. While it is likely that these events will occur chronologically in the order they appear on the coding form, they will not necessarily occur in this order.

**a) Initiated Documentation:** write the date on which the appellate court first received jurisdiction of this case. This date will usually be the date that the notice of appeal is filed or docketed with the appellate court. If the appellant mistakenly filed the notice of appeal with the wrong court, and the notice of appeal was forwarded to the proper court, write the date on which the appropriate court received the notice. If there is no notice of appeal date listed, and if this court utilizes docketing statements, write the date on which the docketing statement was filed. A docketing statement is a form filed by the appellant and often used by the court for scheduling and assignment purposes. Some courts use other names for these forms, such as “case information sheet” or “statement of the case.”

**b) Record filed:** write the date on which the complete trial court record was filed with the IAC (excluding the transcript). If the parties filed a joint statement of the case (or some other abbreviated record) in lieu of a complete trial record, note the date on which this statement was filed. At times there may be multiple record submissions. If this is the case, use the latest date to indicate when the IAC received the full record.

**c) Transcript filed:** write the date on which the complete transcript was received by the IAC. If the transcript is not recorded separately, but is part of the record, use the date the court received the record.

**d) Appellant brief filed:** write the date on which the appellant filed its brief with the IAC. For this question, we are interested only in briefs on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court judgment.

**e) Appellee brief filed:** write the date on which the appellee filed its response brief with the IAC. For this question, we are interested only in briefs that respond to the appellant's brief on the merits of the appeal. Do not include briefs supporting or opposing any preliminary motions, such as motions for temporary stays of the trial court judgment.

**f) Reply briefs:** write the dates on which any reply briefs were filed with the IAC. Be sure to assign the date of the brief to the appropriate party (appellant or appellee). If the parties filed more than one reply brief, indicate the filing date and filing party on the back of the coding form, labeling each clearly as reply briefs. If a reply brief is filed and you know the date, but do not know which party filed the brief, enter the date and mark the "DK" box. Likewise, if you know that the appellant filed the brief, but you do not know the date of the brief, mark the "DK" box.

**g) Briefing Completed:** write the date on which all appellant and appellee briefs were submitted to the IAC in preparation for oral arguments or decision. If there are different dates for fully briefed and submitted, please use the latest date to indicate when all documents are submitted to the appellate court. Do not include the filing of amicus briefs in this calculation as the briefs of interest are those filed by the parties to the case.

- Note: an amicus brief is a brief filed by a person or group that is not a party to the case.

**h) Oral argument:** write the date on which oral arguments were held before the IAC. Write "DNO" in this space (do not check "none") if no oral arguments were held because the appeal was withdrawn, dismissed, or otherwise terminated before oral arguments were necessary. If there are multiple dates listed in which oral arguments were heard, list the latest date on record.

**i) Decision/Disposition:** write the date on which the IAC issued a final decision for the appeal OR the date on which the appeal was dismissed. Do not include the dates on which the court decided motions or preliminary issues.

**5. Type of Conviction (use codes):** Using the attached list of crime codes, indicate the category that accurately captures the most severe crime for which the defendant was convicted. There are five primary conviction categories. The first digit reflects the general category of the crime and the second digit indicates a more detailed sub-category. For purposes of determining the severity of the crime, the general, but not definitive, rule is that the lower the first digit number, the more severe the offense.

Attempted offenses are included within each crime type (i.e., it is implied that, for example, conviction/charge code 20 includes attempted burglary). If Conviction code 50 (“Other criminal offense”) is used, be sure to explain the offense on the back of the page.

Indicate the level of severity for the offense by marking one of the following boxes: **Capital Felony**, **Non-Capital Felony**, or **Misdemeanor**. Be sure to indicate the severity of the offense even if the conviction offense cannot be identified.

- A felony should be classified as a **capital felony** only if the defendant has been sentenced to death.
- **Note:** Do not assume the level of severity of an offense since, with limited exceptions, these offenses may be classified as a felony or a misdemeanor depending upon state statute. Look to the statement of facts or the opinion to see if either document specifies the conviction type and/or the level of severity of the offense.

**6. Total # of issues presented in the appellant’s initial brief:** Indicate the total number of issues raised on appeal by the appellant in the appellant’s initial brief. We are only interested in issues that were actually briefed. This information should therefore be obtained from the briefs only; do not tally the number of errors assigned by the appellant in the notice of appeal or other preliminary documents.

**6a thru 6f: Issue on appeal (use codes):** Using the attached list of issue codes, indicate the category that accurately captures the legal issue presented in the appellant’s brief. There are eight primary categories for “issue on appeal.” The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 (“Other trial court error”) is used, be sure to explain the error on the back of the page. In addition, please note the type of error on the back of the page whenever any of the “other” issue codes are used. These codes will be the same codes used for categorizing “issues addressed” by the court in Question 9, but note that the issues raised in the briefs may or may not be the same issues that are addressed by the court in the opinion.

The total number of issues entered ***must match*** the number coded for Question 6(a) thru 6(f), **unless** the appellant raises more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the brief). If the party’s brief raises more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write “3” in Question 6 and list 3 codes for Questions 6a, 6b, and 6c. If there are 8 issues on appeal, write “8” in Question 6 but list only the first 6 codes for Questions 6a through 6f.

**7. Appellate court disposition:** Check the manner in which the appeal was resolved at the IAC. While it is possible that only one option will apply to a case, the options listed are not necessarily mutually exclusive; please check all options that apply. Please be thorough and precise when coding the dispositions. If the appeal is still pending, skip to Question 10 and check the box marked “Pending.”

**a. Review/transfer not granted or dismissed due to:**

**Appeal improvidently granted** – the appeal was initially accepted by the court, but it was later determined that the appeal should have been denied for some reason. Typically this code will be used for appellate courts with discretionary (or by permission) jurisdiction over criminal appeals.

**Lack of jurisdiction** – the appeal was dismissed because it was filed in the wrong court or because this court has no jurisdiction over the case’s subject matter or there is a lack of jurisdiction because the trial court has issues pending and thus still has jurisdiction over the case.

**Denied (discretionary review)** – the case is a by permission appeal (meaning that the court has discretionary jurisdiction over the appeal), and the court denies review.

**Procedural error** – a procedural error prevents IAC review of the issues raised. For example, the appellant missed the deadline for filing a notice of appeal. This option also includes appeals that are extinguished by the filing of a timely post-verdict motion in the trial court.

**No valid issue on appeal** – the notice of appeal did not allege a reviewable error. Trial court decisions may only be appealed if the errors were prejudicial, were preserved during trial, and were identified and explained in an appellate brief. If a notice of appeal fails to allege that the error was prejudicial, or if the errors alleged were not objected to during trial, then the appeal fails to present a “valid question” – thus there are “no valid questions on appeal.”

**Unknown** – the appeal was not accepted, but the reason underlying the rejection is not apparent.

**b. Appeal withdrawn before decision:**

**By appellant** – the appellant withdrew the appeal before the IAC issued an opinion.

**Transfer/certified to COLR** - the appeal was transferred to the state’s Court of Last Resort before review by the IAC. For example, this may occur when a COLR transfers a case from the IAC due to the potential policy implications of the appeal’s outcome or if the COLR has granted review of an appeal raising errors related to those raised by the current appeal.

- Note: the transfer or certification of a case to the COLR is a disposition for the case, but it does not resolve the issues on appeal. As such, if this disposition is chosen there will not be an opinion written in the case, and the “No opinion” box should be checked in Question 8.

**Unknown** – the appeal was clearly withdrawn and is no longer pending, but the withdrawing party is unknown.

**c. Affirmed in whole:** the IAC affirmed the entire trial court decision or judgment.

**d. Reversed in whole:** the IAC reversed the entire trial court decision or judgment. Include here any judgments that are “vacated in whole.” **Be sure to explain the effect of the reversal in the space below.**

**e. Reversed in part:** the IAC reversed only part(s) of the trial court decision or judgment. This is also referred to as “affirmed in part/reversed in part.” Include here any judgments that are “vacated in part.” **Be sure to explain the effect of the reversal in the space below.**

**f. Remanded:** the court sent the case back to the lower court for additional proceedings. Check this even if the lower court will revisit only some of the issues. **Be sure to explain the effect of the remand in the space below.** Do not include the court’s *reasons* for remanding the case; include only the *effect* of the remand, (e.g., Remand to the trial court for a new trial, in light of the improper jury verdict forms.) If the court reversed the trial court decision in whole or in part and remanded the case, check both (f) remanded and (d) or (e).

**g. Conviction/sentence modified:** This option is applicable if the IAC modified the trial court’s resolution of at least one issue without remanding the case. A separate issue may be remanded and coded as such. **Be sure to explain the effect of the modification, below.** Do not include the court’s *reasons* for modification here; include only the *effect* of the modification, (e.g., Sentence reduced from 2.5 years to 1.5 years). If the court reversed the trial court decision in whole or in part and modified the conviction or sentence, check both (g) modified and (d) or (e).

**8. Type of Decision:** Indicate the format of the court’s opinion. An opinion on the merits is one in which the court has considered the arguments of the parties, either following oral arguments or based on a review of the briefs only. If the court does not consider the merits of the appeal (i.e., there is no resolution of the issues in the case), select “No Opinion” (Question 8) and **DO NOT** code any issues in Question 9.

**Full Opinion:** The appellate court produces an expansive discussion and elaboration of the merits of the case or the defect or procedural error. The elaboration may include statements of fact, issues, and the court’s reasoning.

**Memorandum:** The appellate court produces a limited discussion of the merits of the case or the procedural determination. The discussion will only include some statements of fact, issues, or the court’s reasoning.

**Summary/Dispositional Order:** The appellate court produces a document that has no discussion of the facts or merits of the case, or no discussion of the defect or error, and gives no reasons for the court’s decision (e.g., “Affirmed. No opinion.” or “Denied. No opinion.”)

**Other Opinion:** if the type of decision is not listed above. Use this sparingly.

**No Opinion:** The appellate court did not issue an opinion on the merits of the case.

**9. Total # of issues addressed by Opinion:** Indicate the total number of issues addressed by the court in the dispositive opinion. Mark the “OPINION PENDING” checkbox if the appeal is currently awaiting the release of the final opinion. If the opinion is released at a later date, please return to this question to complete the coding.

1. **Issue Addressed:** Using the attached list of issue codes, indicate the category that accurately captures the legal issue addressed by the court. There are eight primary categories for “issue on appeal.” The first digit reflects the general category of the issue and the second digit indicates a more detailed sub-category. If Issue code 90 (“Other trial court error”) is used, be sure to explain the error on the back of the page. In addition, please note the type of error on the back of the page whenever any of the “other” issue codes are used. These issues may or may not be the same issues presented in the appellant’s brief as listed in Question 6.

The total number of issues entered **must match** the number coded for Question 9(a) thru 9(f), **unless** the opinion addresses more than six issues on appeal. For this question, we are interested only in the **first six** issues raised (listed in the order they appear in the opinion). If the opinion addresses more than six issues, code only the first six issues. For example, if there are 3 issues on appeal, write “3” in Question 9 and list 3 codes for Questions 9a(1), 9b(1), and 9c(1). If there are 7 issues on appeal, write “7” in Question 9 but list only the first 6 codes for Questions 9a through 9f.

2. **Resolution:** Enter the appropriate resolution using the attached list of five codes for each of the “issues addressed” by the court. Code the court’s resolution only for opinions that are dispositional in nature. If Resolution code 4 (“Other or unknown resolution on the merits”) is used, be sure to explain the other resolution on the back of the page.

**10. Present status of appeal:** Indicate whether the appeal has been closed (for any reason) or is still pending. An appeal is considered closed only if the court has issued a final order or opinion dismissing or resolving the appeal. This includes appeals that are dismissed at the request of either party. If the appeal is STILL PENDING, skip to Question 13. If pending in a COLR, the case should be considered closed at the IAC.

**11. Request to reconsider/rehear:**

- a. If applicable, write the *first* date on which either party requested that the IAC reconsider or rehear the issues. If no request was made, check “none” and skip to Question 12. Do not answer this question if the IAC has not yet issued a decision for this case or if the deadline to move for reconsideration or rehearing has not yet expired (a motion could still be filed).
- b. **Reconsideration/rehearing granted:** if you recorded a date for part a, indicate whether the IAC granted the request to rehear or reconsider the appeal. If a decision was made, but you are unsure of the results, mark the “DK” box to indicate you “don’t know”. If no request for reconsideration/rehearing was made, do not check either box. If the court

modified its original judgment after rehearing or reconsideration, please note the effect of the modification on the back of this coding form.

**12. Appealed to State Court of Last Resort:**

- a. **Appealed COLR:** If the IAC has issued a decision, indicate whether either party has filed an appeal with the state court of last resort (COLR). If you cannot determine this, mark “DK.” If the appeal was transferred to the COLR as an action of the IAC (not the parties), mark “Transfer/Certified to COLR” as noted in 7b and do not complete this section.
- b. **Date:** Write the date on which the petition or notice of appeal was filed. Do not include interlocutory appeals. If no further appeal has been filed, skip to Question 13. If the date is unknown, mark “DK.”
- c. **Petition granted?:** Indicate whether the COLR granted the petition for appeal or certiorari. If you cannot determine this, mark “DK.”
- d. **Date:** Write the date on which the petition was granted or denied. If the date is unknown, mark “DK.”

**13. Defendant’s counsel:** Write the name, address, and telephone number of the defendant’s counsel for the IAC appeal. If the defendant has more than one attorney simultaneously, write the name and contact information that appears first in the IAC record. If the defendant changed counsel during the IAC appeal, write the name and contact information of the most recent attorney. Please check if the defendant was assigned either a public defender or court appointed counsel. If the defendant does not have counsel, check “pro se / pro per” and complete the blanks with the defendant’s contact information. An attorney representing him or herself is NOT considered pro se (in this situation, write the name and contact information of the defendant).

**14. State’s counsel:** Write the name, address, and telephone number of the state’s counsel for the IAC appeal. If the state has more than one attorney simultaneously, write the name and contact information of the lead counsel or counsel of record.

**Please use the back of this form to state additional comments about this case, including any deviations from typical appeal processing:** On the back of the coding form, please list any additional information that might be useful in understanding the appeal, particularly any unique processing events.

**Coder’s initials & date:** Please print your initials and date each coding form as it is completed.

## Appendix H: Conviction Codes

The type of conviction (Question 5) will be identified by a two-digit code. The first digit indicates the general category of crime (i.e., person, property, drug, or public order) and the second digit indicates the more detailed offense. Attempted offenses are included within each crime type (i.e., it is implied that, for example, conviction code 20 includes attempted burglary). Please note that, with limited exceptions, these offenses may be classified as a felony or a misdemeanor depending upon state statute.

Person Offenses: 10-level codes refer to offenses against a person defined by the FBI's Uniform Crime Reporting (UCR) Program as those offenses involving force or the threat of force.

10	Murder	Homicide, non-negligent manslaughter, voluntary homicide
11	Sex offenses	Forcible intercourse, sodomy, penetration with a foreign object, carnal knowledge of minor, internet sex crimes, pornography, nonviolent or non-forcible sexual assault
12	Robbery	Unlawful taking of anything of value by force or threat of force; armed, unarmed, and aggravated robbery, car-jacking, armed burglary, armed mugging
13	Assault	Aggravated assault, aggravated battery, attempted murder, assault with a deadly weapon, felony assault or battery on a law enforcement officer, simple assault, and other felony or misdemeanor assaults
14	Other person offense	Vehicular manslaughter, involuntary manslaughter, negligent or reckless homicide, kidnapping unlawful imprisonment, child or spouse abuse, cruelty to a child, reckless endangerment, hit-and-run with bodily injury, intimidation, and extortion

Property Offenses: 20-level codes refer to property offenses defined by the FBI's Uniform Crime Reporting (UCR) Program as the taking of money or property, or the damage of property, without the use or threat of force against the victims.

20	Burglary	Any type of entry into a residence, industry, or business with or without the use of force with the intent to commit a felony or theft
21	Larceny/theft	Unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Grand or petty theft or larceny, shoplifting, or the stealing of any property or article that is not taken by force and violence or by fraud such as thefts of bicycles, motor vehicle parts and accessories
22	Motor vehicle theft	Auto theft, conversion of an automobile, receiving and transferring an automobile, unauthorized use of a vehicle, possession of a stolen vehicle, larceny or taking of an automobile
23	Fraud/Forgery	Forging of a driver's license, official seals, notes, money orders, credit or access cards or names of such cards or any other documents with fraudulent intent, uttering a forged instrument, counterfeiting, possession and passing of worthless checks or money orders, possession of false documents or identification, embezzlement, obtaining money by false pretenses, credit card fraud, welfare fraud, Medicare fraud, insurance claim fraud, fraud, swindling, stealing a thing of value by deceit, and larceny by check
24	Other property offense	Receiving or buying stolen property, arson, reckless burning, damage to property, criminal mischief, vandalism, criminal trespassing, possession of burglary tools, and unlawful entry for which the interest is unknown

## Conviction Codes (continued)

Drug Offenses: 30-level codes refer to drug offenses defined by the FBI's Uniform Crime Reporting (UCR) Program as the violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use.

- |    |                     |  |
|----|---------------------|--|
| 30 | Drug trafficking    | Trafficking, sales, distribution, possession with intent to distribute or sell, manufacturing, and smuggling of controlled substance |
| 31 | Other drug offenses | Possession of controlled substances, prescription violations, possession of drug paraphernalia, and other drug law violations        |

Public Order Offenses: 40-level codes refer to public order offenses akin to the public nuisance defined by *Black's Law Dictionary* as any unreasonable interference with rights common to all members of community in general and encompasses public health, safety, peace, morals, or convenience.

- |    |                    |  |
|----|--------------------|--|
| 40 | Weapons            | The unlawful sale, distribution, manufacture, alteration, transportation, possession or use of a deadly weapon or accessory  |
| 41 | Driving-related    | Driving under the influence of drugs or alcohol, driving with a suspended or revoked license, and any other felony in the motor vehicle code   |
| 42 | Probation/parole   | Technical violations of conditions of parole or probation  |
| 42 | Other public order | Flight/escape, prison contraband, habitual offender, obstruction of justice, rioting, libel, slander, treason, perjury, prostitution, pandering, bribery, disturbing the peace, indecent exposure and tax law violations |

Other Offense: A code "50" refers to any other type of offense not otherwise addressed by the categories described above.

- |    |                        |  |
|----|------------------------|--|
| 50 | Other criminal offense |  |
|----|------------------------|--|

## Appendix I: Issues on Appeal

### Arrest/Charge

10	Indictment defects	Includes improper/defective indictment, lack of specificity or amendments to charging documents
11	Guilty plea challenges	Includes issues of informed consent, voluntariness or coercion of the plea, competence, factual basis, knowing and voluntary waiver of right to trial and jury and counsel etc.
19	Other arrest/charge	Other issues involving arrest or charge such as police impropriety

### Pretrial Management

20	Trial court jurisdiction/venue	Trial court lacked jurisdiction, problems with the location of the prosecution
21	Suppression issues	Includes statements, identification issues, coerced confessions, illegal search and seizure, and the denial of other motions <i>in limine</i>
22	Competency issues	Defendant's competency to stand trial or ability to understand the nature of the proceedings and assist in the defense or mental competency at the time of the offense
23	Language issues	Includes issues relating to limited English proficiency or hearing impairment that affect defendant's ability to understand the nature of the proceedings or assist in the defense
24	Joinder/sever	Issues involving multiple convictions arising out of the same fact patterns, lesser included offenses, or multiple defendants
29	Other pretrial management	Includes other pretrial management issues such as denial of motion for continuance, denial of motion for discovery or issues relating to preliminary hearings

### Trial Management

30	Judicial Bias	Disqualification of judge on basis of bias or conflict of interest
31	Prosecutor Misconduct	Includes perjured testimony, inappropriate comments, withholding exculpatory evidence, or improper jury argument
32	Ineffective counsel	Includes competency of representation issues such as failure to investigate, failure to object, and failure to appeal; denial of request to proceed pro se/pro per; denial of counsel of choice; denial of counsel; unintelligent waiver of counsel; and multiple conflicting representation of defendants
33	Jury management	Includes peremptory challenges, exclusion on the basis of race (Batson challenge), race neutral selection criteria (includes grand and petit jury selection), adverse pretrial publicity, or juror outside discussion or research (i.e. internet research or texting)
34	Court Interpreter	Issues involving providing or qualifications of court interpreter
39	Other trial management	Issues involving other procedural or discretionary rulings

### Evidence

40	Character testimony	Admission or exclusion of testimony as to the character of a witness, defendant or victim such as reputation for truthfulness or untruthfulness such as prior bad acts or convictions
41	Opinion evidence	Admission or exclusion of opinion evidence by expert witness or lay witness

## Issues on Appeal (continued)

42	Relevancy/prejudicial	Admission or exclusion of evidence based on a determination of the probative value in relation to the prejudicial effect
43	Exculpatory/mitigating Evidence	Admission or exclusion of evidence that may justify or excuse an accused defendant's actions or which may tend to show the defendant is not guilty or had no criminal intent
44	Sufficiency of Evidence	Has the prosecution met the burden of proving facts sufficient to satisfy each element of the crime charged beyond a reasonable doubt
45	New Evidence	New evidence, unavailable at the time of the conviction, was introduced or technology has advanced permitting the review of new evidence (e.g., DNA evidence).
49	Other evidence	Admission or exclusion of evidence including but not limited to issues involving hearsay, public records, authentication of documents, etc.

### Substantive Law

50	Statutory interpretation	Issues involving plain meaning, legislative intent, statutory construction, definitions
51	Defense	Includes disallowed proffer of a defense or refusal to allow alternative theory of defense, or affirmative defense
52	Jury Instructions	Instructional errors regarding substantive elements of the offense or lesser included offenses
59	Other substantive law	Other substantive law not covered by these codes

### Constitutional Issues

60	Statute Unconstitutional	Statute under which the conviction was obtained is unconstitutional
61	Speedy Trial	Issues related to delay in trial, length of delay, reason for delay
62	Double Jeopardy	Issues related to defendant being put on trial more than once for the same offense
63	Confrontation/ Cross examination	Issues related to defendant's ability to confront and cross examine witnesses
69	Other Constitutional	Other constitutional challenge not otherwise addressed by these codes (if underlying issue is already addressed by another code do not use this code i.e. conviction unconstitutional because of insufficient evidence or indictment defects)

### Sentencing Issues

70	Sentencing hearing	Problems with sentencing hearing or presentence report
71	Aggravating/mitigating factors	Exclusion or admission of aggravating or mitigating factors that might affect the severity of the sentence
72	Excessive/inconsistent	Excessive sentence or bail, sentence inconsistent with plea bargain or conviction, consecutive/concurrent sentences, mandatory minimums, time served
73	Probation revocation hearings	Issues related to revocation of a prior sentence for probation violations
79	Other sentencing	Denial of allocution (defendant's right to make a statement to the court on his own behalf), restitution

## Issues on Appeal (continued)

### Post Trial

- |    |                          |   |
|----|--------------------------|---|
| 80 | Set Aside Verdict        | Issues related to setting aside the jury's verdict                        |
| 89 | Other post trial motions | Includes motion for rehearing, motion for new trial, motion for acquittal |

### Other

- |    |                         |   |
|----|-------------------------|---|
| 90 | Other trial court error | Other type of trial court error not otherwise addressed by the categories described above |
|----|-------------------------|---|

## Appendix J: Resolution Codes (Q9)

- 1 No error: The trial court correctly resolved the issue that was raised on appeal.
- 2 Harmless error: The trial court incorrectly resolved the issue that was raised on appeal, but this error would not have changed the ultimate outcome of the trial.
- 3 Reversible error: The trial court incorrectly resolved the issue that was raised on appeal, and this error was substantial enough to potentially change the outcome of the trial.
- 4 Other or unknown resolution on the merits.
- 5 Non-meritorious resolution: The appellate court resolved the appeal, but it was unrelated to the merits of the issues raised on appeal (e.g., no jurisdiction, issue waived or not preserved for appeal, issues are moot, argument not supported by the trial record, etc.)

## Appendix K: Miscellaneous Coding Instructions

ISSUE	HOW TO CODE
<p>1. The initial appeal of the defendant and the cross-appeal of the state have been consolidated.</p>	<p>When cases are consolidated, the time of consolidation will determine whether both cases are coded separately or if only the initial defendant case is coded. If the consolidation occurs before briefs have been filed, code only the defendant's initial appeal and note on the back that the state filed a cross-appeal that was consolidated into the lead case. If consolidation occurs after briefs have been filed, code each case separately so as to capture the issues raised in each appeal.</p>
<p>2. The appellant mistakenly files an appeal with the Court of Last Resort when it should have been filed in the Intermediate Appellate Court.</p>	<p>Code the Intermediate Appellate Court case. The Initiated Documentation date will be the date that the case is filed with the <i>Intermediate Appellate Court</i>. We are interested in coding the first date upon which the correct court takes jurisdiction of the appeal.</p>
<p>3. The docket does not state that briefing was complete.</p>	<p>Look for phrases such as "case submitted" or "case assigned." If these phrases are not present, code the date that the last brief was filed.</p>
<p>4. The issue presented in the appellant's brief is that his conviction is unconstitutional because there was insufficient evidence to find him guilty.</p>	<p>Code the issue as <b>44</b> (sufficiency of evidence). We are interested in the underlying substantive issues that are presented in the brief. See the Constitutional issue codes 60-64 for a description of issues that would appropriately be coded as unconstitutional.</p>
<p>5. The issue presented in the appellant's brief is that her sentence should be set aside because she had ineffective counsel at trial.</p>	<p>Code the issue as <b>32</b> (ineffective counsel). We are interested in the underlying substantive issues that are presented in the brief. See the Sentencing issue codes 70-74 for a description of issues that would appropriately be coded as sentencing.</p>
<p>6. Issues coded as: <b>19</b> (other arrest/charge), <b>29</b> (other pretrial management), <b>39</b> (other trial management), <b>49</b> (other evidence), <b>59</b> (other substantive law), <b>69</b> (other constitutional), <b>79</b> (other sentencing), <b>89</b> (other post trial motions), or <b>90</b> (other trial court error).</p>	<p>Whenever you code an issue as "other," please <b><u>DESCRIBE THE ISSUE IN THE COMMENTS SECTION</u></b>. We might be able to use the description to reclassify the issue into a more specific category.</p>
<p>7. An appeal is disposed prior to a decision on the merits (e.g., not granted, dismissed, withdrawn).</p>	<p>Check "No opinion" in Question 8 and <b>do not</b> enter any issues for Question 9.</p>

<p>8. The IAC transfers or certifies the case to the COLR.</p>	<p>Code this disposition as “Withdrawn – Transferred/certified to COLR.” Also check “No opinion” in Question 8 and <b>do not</b> enter any issues for Question 9. A transfer does not resolve any issues in the case so even if the IAC produces an explanation for how they would have decided the case or explains their reasoning for transferring the case to the COLR, that document does not actually resolve the issues in the case so cannot be considered an opinion.</p>
<p>9. The court issues an opinion in which they find that no error occurred regarding the appellant’s issue that character testimony was erroneously excluded from the evidence. The opinion then states that the court will not address the appellant’s remaining issue regarding the relevancy of that character testimony.</p>	<p>Code the first issue addressed by the court as <b>40</b> (character testimony) with a resolution code <b>1</b> (no error). Code the second issue addressed by the court as <b>42</b> (relevancy/prejudicial) with a resolution code of <b>5</b> (non-meritorious resolution). The court can refuse to resolve issues presented in the brief by making statements such as “they will not address an issue” or “that a particular issue is moot.” The court may also refuse to resolve an issue by not mentioning that issue at all. Remember that the issues addressed by the opinion do not need to match those presented in the appellant’s brief.</p>
<p>10. How to determine Pro Se/Pro Per litigants when an attorney is the defendant in the case, and the attorney represents herself/himself.</p>	<p>In item 13, we ask if the defendant litigated <u>pro se</u> (or pro per). We want to know how many cases involve AMATEURS representing themselves in criminal cases. However, when an attorney represents herself, she is represented by an attorney, so you would not count her as pro se/pro per.</p>



# Appendix L: Caseload Inventory and Record Availability Summary

Name of Individual Completing Form: \_\_\_\_\_

Contact Email: \_\_\_\_\_ Contact Telephone: \_\_\_\_\_

## I. Caseload Inventory -- Please provide your court's 2008 caseload statistics for the following:

Type of appeal	Filings	Alternative terminology used by your court
Total appeals		
Criminal appeals		
Direct appeals		
Post-conviction appeals		
Interlocutory appeals		
Other (please specify):		
_____		
_____		
_____		

## II. Record Availability – Please check the case-level details that are captured in and can be retrieved from your court’s case management system or are available in an electronic format that is easily accessible (e.g., a data download from the case management system, a PDF document on the court’s Web site, etc.):

### Identifying information:

- County from which the case was appealed
- Trial court docket number
- Intermediate appellate Court (IAC) docket number
- Court of last resort (COLR) docket number
- Trial court party taking the appeal

### Whether the appeal is:

- Direct from conviction
- Direct from sentence
- Direct from both conviction and sentence
- Cross-appeal
- Interlocutory appeal

### Type of conviction:

- Crime type (assault, vandalism, etc)
- Severity type (capital, felony, etc.)

### Briefs:

- Appellant brief (electronic copy)
- Cross-appellant brief (electronic copy)

### Type of court disposition:

- Reason for review not granted, case dismissal, or case withdrawal
- Order regarding denial of review, case dismissal, or case withdrawal (electronic copy of document)
- Court decision (affirmed, reversed, etc.)
- Reason for reversal, remand, modification, etc.

### Court opinion:

- Court opinion (electronic copy)

### Counsel:

- Name of state counsel
- Contact information for state counsel (e.g., address, phone number)
- Name of defendant counsel
- Contact information for defense counsel (e.g., address, phone number)
- Defendant counsel a public defender
- Defendant pro se/pro per

Please fax back to 757-564-2059 or email to [buekert@ncsc.org](mailto:buekert@ncsc.org)

## Appendix M: Expected Costs and Tasks of Survey Implementation

Based on Sampling Design 1B by Sample Size	(n=1,000)	(n=1,500)	(n=2,000)	(n=2,500)
1 Data Collection/ Code Sample of Appeals	\$224,533.80	\$274,621.60	\$326,642.10	\$378,662.60
a. Hiring interns/coders				
b. Creating and administering coder quiz				
c. Developing training materials				
d. Implementing training program				
e. Scheduling and supervising coders				
f. Correspondence with courts				
g. Review and coding of court documentation				
2 Project Logistics and Data Quality	\$31,264.20	\$33,942.00	\$40,371.50	\$46,801.00
a. Collecting and reviewing forms				
b. Creating syntax for validity checks				
c. Design of data entry screen with pilot tests				
d. Data entry				
e. Variable recoding as needed				
f. Data manipulation and "cleaning"				
3 Project Management	\$34,106.40	\$34,106.40	\$34,106.40	\$34,106.40
a. Interfacing with BJS				
b. Designating and working with advisory group				
Subtotal of Personnel	\$284,220.00	\$342,670.00	\$401,120.00	\$459,570.00
4 Fringe	\$110,845.80	\$133,641.30	\$156,436.80	\$179,232.30
Subtotal of Direct Costs	\$395,065.80	\$476,311.30	\$557,556.80	\$638,802.30
5 WESTAT Subcontract	\$34,638.00	\$34,638.00	\$34,638.00	\$34,638.00
a. Developing sampling frame				
b. Determining replacement sample as needed				
d. Developing sample weighting scheme				
G&A on WESTAT				
Subtotal of Subcontracts	\$34,638.00	\$34,638.00	\$34,638.00	\$34,638.00
6 Overhead	\$225,188.00	\$271,497.00	\$317,807.00	\$364,117.00
7 G&A	\$89,936.80	\$108,432.20	\$126,927.75	\$145,423.30
Total	\$654,891.80	\$782,446.30	\$910,001.80	\$1,037,557.30
(8) Oversample (n=300 appeals)	\$42,051.00	\$42,051.00	\$42,051.00	\$42,051.00
Total (with Oversample)	\$696,942.80	\$824,497.30	\$952,052.80	\$1,079,608.30

### Notes:

Cost reflects any use of TOPs at full fringe, OH & G&A (TOPs normally include 11% Fringe, and 14.5% G&A, no OH).

Uses Design 1B for 100 courts. All rates are estimated.

(8) Oversample includes Westat costs for drawing sample (\$3,551) plus cost of retrieving and coding file information (\$38,500).

## Appendix N. Sample Court Profile Template Site Profile for Appellate Courts with Criminal Jurisdiction

Please review the following for accuracy and edit any incomplete or incorrect information. Thank you for your cooperation.

### Structure and Jurisdiction

<p><b>Geographic Jurisdiction</b> Jurisdiction served by the court</p>	<p><b>Appellate Review</b> Mandatory/discretionary jurisdiction</p>	<p><b>Death Penalty Jurisdiction</b> Does this court hear death penalty cases? Yes/no</p>
--	---	---

### Appellate Judges

<p><b># Authorized</b> authorized judicial positions</p>	<p><b>Judicial Selection</b> Election, appointment, or judicial selection</p>	<p><b>Term of Office</b></p>	<p><b>How Sitting (in panels/en banc)</b> How judges sit to hear cases. If there is variation, what is the regular practice for criminal appeals?</p>
--	---	------------------------------	---

### If in Panels:

<p><b>Size</b> Number of judges per panel</p>	<p><b>How Judges are Assigned to Panels</b> Judicial assignment, random assignment</p>	<p><b>Frequency of Rotation</b> Session-based, quarterly, etc.</p>
---	--	--

Notes and Comments:

«Full\_Court\_Name» Profile

---

### Notice of Appeal

---

**Time Limit**

Number of days after final judgment

**Where Filed**

Trial court, intermediate appellate court (IAC), court of last resort (COLR), trial court and IAC, trial court and COLR

**Filing Fee**


---

### Docketing Procedures

---

Procedures for receiving, verifying, recording, and storing case-related documents; may also include scheduling of events and assignment of cases.

---

### Court Record

---

**Who Prepares**

Trial court clerk, IAC clerk, court reporter, appellant, other

**Where Filed****Are record and transcript filed together?**

Yes/no

**Authority to Compel On-Time Filing**

How much authority does the appellate court have to deal with late records?

Notes and comments:

«Full\_Court\_Name» Profile

---

**Deadlines**


---

**Payment of  
Filing Fee****Record  
Preparation**  
Deadline for  
submission to court**Transcripts****Initial Brief****Reply Brief****Authority to Compel Parties  
to Meet Deadlines**


---

**Oral Argument**


---

**Rules for Granting Oral Argument****Time Limits for Arguments**


---

**Decision**

Disposition of the appeal (e.g., affirmed, reversed, remanded)

---

**Where Available**

Where the public can locate the decision (e.g., official reporters, online)

---

 Notes and comments:

«Full\_Court\_Name» Profile

### Opinion

(i.e., the rationale or explanation for the court's decision)

---

#### Where Available

Where the public can locate the opinion  
(e.g., in official reporters, online)

#### Rules for Making Available

Rules for determining whether or not an opinion is made public and  
what limits, if any, are placed on public access

---

### Rehearing Deadline

---

**Deadline for Requesting Rehearing**

---

Notes and comments:

«Full\_Court\_Name» Profile

---

### Technology

---

#### E-Filing

Does the court accept electronically submitted documents?  
Are electronic document submissions integrated into the court's case management system?

#### Case Management System (CMS)

Does the court have a database that tracks the progress of cases towards disposition, such as an internal case management system (CMS)? Is any of this information available online?

---



---

### On-Line Access (please provide links)

---

#### Case Information/Documents

Is there online public access to case information? Describe all forms of access, even if password-protected or limited to attorneys.

#### Opinions

Please provide separate links for published and unpublished opinions, if applicable.

---



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### On-Line Access (please provide links)

---

**Court Website URL**  
Court's general website

**Appellate Court Annual Reports and Statistics**

---

Notes and comments: