



# Trends in State Courts

2014



*Special Focus*

JUVENILE JUSTICE AND ELDER ISSUES



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# Trends in State Courts



2014

*Special Focus on Juvenile Justice and Elder Issues*

**Edited by**

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*This report is part of the National Center for State Courts' "Report on Trends in the State Courts" series. Opinions herein are those of the authors, not necessarily of the National Center for State Courts.*

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*Trends in State Courts 2014* articles have been through a rigorous review process. The members of the 2014 Review Board have contributed countless hours to providing valuable feedback on each submission. The patience and commitment of the review board and authors as they work through this process are greatly appreciated:

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The National Center for State Courts, Williamsburg, VA.

“ Courts must address the needs of the young and the old. This year’s edition of *Trends in State Courts* is focusing on what courts can do, and are doing, for juveniles and the elderly. ”



# Preface

The promise of “justice for all” is never more important than when it comes to the most vulnerable members of society: juveniles and the elderly. All too often, courts encounter youth and seniors who have been physically abused, sexually assaulted, or financially exploited by once-trusted friends and family members or predatory strangers. Yet abused seniors and juveniles often slip past the justice system. In some cases, seniors fear retaliation, suffer from a weakened mental state, or are simply too embarrassed to speak up, and youth are often tried and punished like adults—with little understanding of the very real differences in adolescent development that can inform risk assessment and more appropriate sanctions.

Courts must address the needs of the young and the old. This year’s edition of *Trends in State Courts* is focusing on what courts can do, and are doing, for juveniles and the elderly. Bobbe J. Bridge, the president and CEO of the Center for Children and Youth Justice in Seattle, begins by discussing the different “waves” of juvenile justice reform, leading up to the Models for Change Juvenile Justice Reform Initiative funded by the John D. and Catherine T. MacArthur Foundation. Other articles discuss:

- an initiative in Newton County, Georgia, for youth who appear in the child welfare and criminal justice systems;
- the importance of early appointment of counsel in juvenile cases;
- how Rapides Parish, Louisiana, is shifting juvenile offenders from courts to community-based resources for help;
- judicial leadership’s role in addressing adolescent mental health issues; and
- racial and ethnic disparities in juvenile justice.

Brenda Uekert of the National Center for State Courts’ Center for Elders and the Courts provides an overview about the “hidden nature” of elder abuse and how national organizations and courts are developing creative solutions to combat this problem. Other elder justice articles discuss:

- Contra Costa County, California’s elder court;
- elder law task forces in Pennsylvania and Texas; and
- Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), which improve adult guardianship practices.

Other articles in *Trends 2014* include improving jury service and aiding self-represented litigants via technology, procedural fairness, and the work of access to justice commissions in two states. The courts themselves participated in a new section that highlights key accomplishments in each state. Each state submitted information about a substantial program or initiative that improved operations and public service.

Each year, NCSC strives to improve the annual *Trends in State Courts* publication. I hope that you find this year’s edition informative and useful.

## **Mary Campbell McQueen**

President, National Center for State Courts





## INTRODUCTION

# Models for Change

# in Juvenile Justice Reform

Hon. Bobbe J. Bridge, Justice, Washington Supreme Court (Ret.), Founding President/CEO, Center for Children & Youth Justice, Seattle

*There have been four waves of juvenile justice reform in the United States since the 19th century. The newest wave, which includes the Models for Change Juvenile Justice Reform Initiative, encourages courts to adopt innovative practices and develop partnerships to improve outcomes for youth and their families.*

The United States' juvenile justice system began to take shape during the 19th century. In what is seen as the first of four waves of juvenile justice reform, the first juvenile detention facility opened in 1825, followed by the first juvenile court in 1899 (American Bar Association, 2007). Unlike the adult criminal justice system, the juvenile justice system provided individualized treatment and opportunities for the rehabilitation of young offenders.

Supreme Court decisions during the 1960s and 1970s marked the second wave of reform, which solidified the basic rights of juveniles, including their right to counsel.

A steep increase in violent juvenile crime during the mid-1990s launched the third wave of juvenile justice reform, eroding individualized treatment and limiting opportunities for offender rehabilitation. The juvenile and adult justice systems looked increasingly similar. Without sufficient data to analyze causes, let alone identify solutions, regressive,

fear-driven “get-tough-on-juvenile-offenders” policies and practices flourished nationwide. Reform was based on often-conflicting anecdotes: High recidivism was “the result of a system that was soft, ineffective and out of step” or “the consequence of a system that had failed to deliver on promised treatment.” Nationwide, more juveniles were sentenced in adult court, sanctions were harsher, and juveniles and adults were increasingly incarcerated in the same facilities.

We are now in what may be considered a fourth wave of juvenile justice reform. In this wave, the judiciary can play a significant role in implementing successful reform: introducing new policies and procedures grounded in research and proven to be effective. A poem, “The Calf Path” by Sam Walter Foss, tells of how a crooked path, made without thought by a young calf, became an official road followed by everyone for centuries. “For men are prone to go it blind/ Along the calf-paths of the mind,” the poem relates. Judicial leadership is a critical factor in stepping back, considering

“Unlike the adult criminal justice system, the juvenile justice system provided individualized treatment and opportunities for the rehabilitation of young offenders.”

the path, and making it straighter. I hope these stories will inspire the reflection and the action necessary to improve our juvenile justice system and the lives of the youth we serve.

### MacArthur Research Network on Adolescent Development and Juvenile Justice

In an effort to replace anecdote-influenced policy and practice with research-based, data-driven solutions, the John D. and Catherine T. MacArthur Foundation launched the MacArthur Research Network on Adolescent Development and Juvenile Justice in 1996. Driving the start of the fourth wave of juvenile justice reform, the network conducted research on teens' competence to stand trial (Grisso et al., 2003), on concepts of blameworthiness (Steinberg et al., 2009), and on the reasons why most youth age out of offending even without intervention (Mulvey et al., 2010). Bolstered by the ensuing developments in neuroscience, the MacArthur Research Network's findings demonstrated what many parents knew intuitively—that kids differ from adults significantly:

- in the way they recognize and respond to risks;
- in the way they control impulses;
- in the way they are influenced by their peers; and
- in their capacity for change.

From the network's research emerged a set of Core Principles characterizing a model juvenile justice system that responds to these differences.

- *Fundamental fairness:* All system participants, including youthful offenders, their victims, and their families, deserve bias-free treatment.
- *Recognition of juvenile-adult differences:* The system must take into account that juveniles are fundamentally and developmentally different from adults.
- *Recognition of individual differences:* Juvenile-justice decision makers must respond to individual differences in terms of young people's development, culture, gender, needs, and strengths.
- *Recognition of potential:* Young offenders have strengths and are capable of positive growth. Giving up on them is costly for society. Investing in them makes sense.
- *Safety:* Communities and individuals deserve to be and to feel safe.
- *Personal responsibility:* Young people must be encouraged to accept responsibility for their actions and their consequences.
- *Community responsibility:* Communities must safeguard the welfare of children and young people, support them when in need, and help them to grow into adults.
- *System responsibility:* The juvenile justice system is a vital part of society's collective exercise of its responsibility toward young people. It must do its job effectively.



Models for Change Website

### Models for Change—Core States

Recent juvenile justice reform has taken place at the local, state, and national levels. One of the most significant reform efforts was started in 2004 by the MacArthur Foundation. Armed with the results of the network's research and a set of Core Principles, the MacArthur Foundation launched one of the largest and most comprehensive reform efforts: the Models for Change Juvenile Justice Reform Initiative. Jurisdictions were challenged to develop fair, effective, developmentally informed juvenile justice practices; to challenge practices that did not create real and positive outcomes for kids; to apply research to practice; and to replace fear with facts.

The foundation selected four core states to lead reform efforts because of their commitment to and support of the Core Principles and juvenile justice reform. The foundation encouraged innovation and anticipated diversity in solutions. Pennsylvania, Illinois, Louisiana, and, my state, Washington, composed the core states. The core states' efforts were guided by the foundation, informed by a team of experts, collectively referred to as the National Resource Bank, and directed by a lead grantee, whose responsibilities included developing an overall juvenile justice reform work plan identifying specific areas in need of change.

Each core state has a unique juvenile justice system driven by varying resources, population demographics, and political and statutory landscapes. A number of reform issues, known as Targeted Areas of Improvement and Strategic Opportunities for Technical Assistance, were adopted by the core states. All four core states included racial and ethnic fairness among their

targeted areas of reform. Each state selected additional reform areas from the list below, depending on their reform priorities.

- *Racial-ethnic fairness*: Youth of color are overrepresented at every point in the juvenile justice system (Models for Change, 2014b). Projects identified disparity and improved interactions between the system and youth of color.
- *Community-based alternatives*: Projects explored local alternatives to formal processing and incarceration.
- *Aftercare*: There are approximately 100,000 juveniles leaving institutions each year. Aftercare projects addressed post-release services, supervision, and supports that help committed youth transition safely and successfully back into the community (Models for Change, 2014a).
- *Mental health*: Estimates indicate more than two-thirds of youth in the juvenile justice system have a diagnosable mental health disorder (Skowrya and Coccozza, 2006). Mental health projects focused on collaborating to meet the needs of youth without unnecessary juvenile justice system involvement.
- *Indigent defense*: Projects expanded meaningful access to quality legal counsel for all youth.
- *Multisystem collaboration and coordination*: Projects improved the way that child-serving agencies work together.
- *Rightsizing jurisdiction*: Projects restored policies and jurisdictional boundaries that recognize the real developmental differences between youth and adults.

### Models for Change—Action Networks

In addition to the core states, the MacArthur Foundation launched three Action Networks focused on a specific issue—mental health, racial-ethnic disparities, or indigent defense. For each Action Network, the four core states were joined by four additional states, expanding Models for Change participation to 16 states. The new states were California, Colorado, Connecticut, Florida, Kansas, Maryland, Massachusetts, New Jersey, North Carolina, Ohio, Texas, and Wisconsin.

While their individual methods varied, each Action Network sought to shape their own, and the nation's, responses to issues of juvenile justice. Each network shared practical information and expertise and created issue-oriented forums for exchanging ideas and providing peer-to-peer support.

While projects varied in each Action Network, all of the networks had four main objectives within Models for Change:

- to enhance progress and leadership in the existing Models for Change states and additional partner sites as added by providing them with the latest information and resources;
- to foster the development and exchange of ideas, leadership, and strategies among the Models for Change and partner sites;
- to develop and implement new solutions and strategies; and
- to disseminate the lessons learned from the Models for Change initiative across the country.

### Outcomes

Nine years into the initiative, the foundation has generously invested close to \$200 million in support of reform activities. Models for Change has developed an extensive network of committed partners and a long list of success stories, from local practice improvements to major reforms in state policy to tips to sustaining progress. A few of the core states' successes are highlighted below.

## Juvenile Law Center

### *Pennsylvania: Juvenile Law Center*

Local successes in Pennsylvania Models for Change projects are now being replicated in other counties and statewide.

Grantees and partners reduced high detention rates in Berks County, rates that affected minorities disproportionately, by instituting a Detention Assessment Instrument and opening an Evening Reporting Center. Juvenile justice leaders in five additional counties are following suit. More than a third of Pennsylvania counties have adopted the MAYSI-2, a validated mental-health-screening tool, to flag youth with possible behavioral-health problems at probation intake, and all counties are now using the Youth Level of Service Inventory. Pennsylvania established an intercounty collaboration to improve educational, career, and technical-training opportunities in residential facilities and the reintegration of youth returning home. The collaboration was so successful that it has been adopted by the state Department of Public Welfare.



### *Illinois: Loyola University of Chicago School of Law's Civitas ChildLaw Center*

Illinois Models for Change grantees and partners successfully advanced legislation to raise the age of juvenile

court jurisdiction to 18, separated the Department of Juvenile Justice from the Department of Corrections, and cut admissions to Illinois Department of Juvenile Justice in half through Redeploy Illinois, a highly successful program that creates fiscal incentives for treating youth in community-based settings, and through legislation requiring courts to use the least-restrictive alternatives in sentencing youth. Illinois also rolled back transfer laws, which overwhelmingly affected youth of color; developed innovative alternatives to secure confinement of youth charged with “adolescent domestic battery”; and developed and strengthened sustainable leadership structures at the state and local level.



*Louisiana: Louisiana State University Health Sciences Center—School of Public Health*

Louisiana Models for Change grantees and partners adopted the Structured Assessment of Violence Risk in Youth, a risk-and-needs-assessment tool, to help guide and inform objective decision making that accounts for young people’s actual levels of risk and individual needs. All parishes have developed local Functional Family Therapy, an evidence-based treatment in which teams provide proven treatment alternatives to incarceration of parish youth. An innovative “data group” led by the University of New Orleans ensures that the work is structured and documented so that results can be tracked and assessed.



*Washington: Center for Children & Youth Justice*

Washington Models for Change grantees and partners developed multiple model truancy programs that successfully return youth to school. New legislation expands



diversion strategies for youth with mental health needs and provides self-incrimination protections for juvenile-justice-involved youth completing behavioral-health screenings and assessments. Over one half of Washington’s juveniles reside in counties where policies and practices are being implemented to better serve youth and families that are involved with multiple systems. With the adoption of new court rules, standards for quality indigent defense have been enacted; training for defense counsel has been enhanced and no juvenile may waive the right to counsel without first consulting an attorney. At the request of the Washington State Supreme Court, there is publically available state and county data, which indicate whether youth of color are overrepresented at key decision-making points in Washington’s juvenile justice system.

**Next Steps**

True to the foundation’s vision, Models for Change has enjoyed many successes and generated practical models for replication that address many of the most pressing needs of young people who become involved with the system. However, the work is not done. The articles in this edition of *Trends* share the stories of projects from around the country, which address unmet needs in the juvenile justice system. Many of these projects arise from the research and model programs developed through Models for Change.

The foundation remains committed to juvenile justice reform. Capitalizing on more than two decades of experience, the foundation recently launched the Resource Center Partnerships, which focus on four areas of juvenile justice where reform will be pursued: mental health, multi-system-involved youth, indigent defense, and status offenders. Because of the continued commitment of communities around the country, youth involved in the juvenile justice system will have a better chance for a successful future. ☺

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# Dependency and Delinquency in SYNC

Jessica Heldman, Associate Executive  
Director, Robert F. Kennedy National Resource  
Center for Juvenile Justice, Robert F. Kennedy  
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Hon. Sheri Roberts, Presiding Judge,  
Newton County Juvenile Court

*Youth who touch both the child welfare and juvenile justice systems, known as dual status youth, present complex, resource-intensive cases and tend to experience poor outcomes. A recent initiative demonstrates how courts can support efforts to integrate and coordinate youth-serving systems, helping to improve both system performance and youth outcomes.*

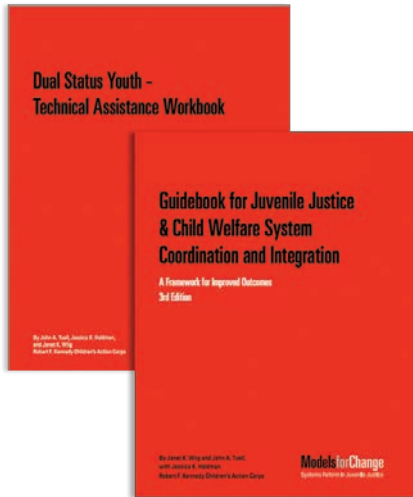
**Y**outh who come into contact with both the child welfare and juvenile justice systems are known as *dual status youth*. These youth tend to comprise a significant portion of local juvenile justice populations, but even where actual numbers are small, the fiscal and human toll of these cases on courts and youth-serving agencies can be substantial. Dual status youth are likely to present complex issues that challenge practitioners, demand extensive resources, and require non-traditional system responses. Furthermore, research shows that dual status youth experience particularly poor outcomes

compared to youth without multisystem involvement. Reforms aimed at integrating and coordinating agency and court practices affecting dual status youth can help streamline processes, identify and target high-risk and high-need youth for intervention, and engage youth and families in planning and services more effectively. Positive system outcomes can lead to the more effective and efficient use of resources and better outcomes for families and youths.

## **A Framework for System Coordination and Integration**

In 2012 a four-site demonstration project was launched, led by Robert F. Kennedy Children's Action Corps and jointly funded by the MacArthur Foundation and the Office of Juvenile Justice and Delinquency Prevention. This effort, built on a foundation of established and emerging research and more than a decade of field experience, used a framework detailed in the *Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration: A Framework for Improved Outcomes*, third edition (Wiig and Tuell, 2013). This established framework supports each unique jurisdiction in identifying its most pressing issues regarding dual status youth and in crafting new multisystem responses. This initiative spurred the development of new resources, tools,

and approaches informed by the dedicated work of judges, courts, agencies, and communities in Santa Clara County, California; Outagamie County, Wisconsin; Hampden County, Massachusetts; and Newton County, Georgia. This



project enhanced the existing framework and demonstrated that successful collaboration can produce a more efficient, cost-effective, and family-focused system more likely to meet the needs of deserving youth and families.

Where jurisdictions have succeeded in collaborative initiatives, strong judicial leadership often drives and sustains the effort. Local judges can leverage their positions to convene participants, lead the adoption of best or promising practices, and provide an example of self-reflection and commitment to change. Around the country, judges have motivated change specifically by 1) focusing on data and overcoming information-sharing barriers, 2) convening and leading multisystem teams to tackle reform, 3) leading discussion around vision and desired outcomes, and 4) identifying and initiating implementation of strategies for reform. These strategies were employed, with great success, in Newton County’s project: Serving Youth in Newton County (SYNC).

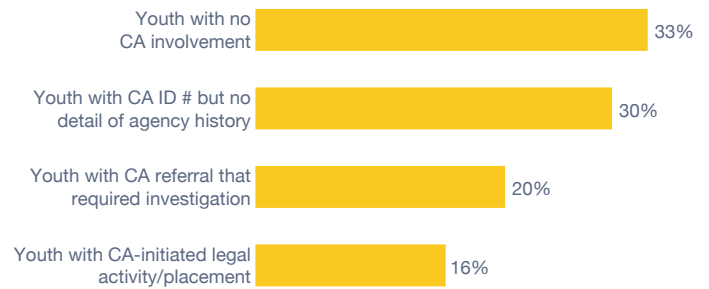
### Focus on Data and Information-Sharing Barriers

The initiative in Newton County, Georgia grew out of the observation that youth coming before the bench had multiple issues across many systems. It was essential at the outset to review the available data to determine if this view from the bench was anecdotal or based in reality. When initial data revealed that 56 percent of Newton County youth with new juvenile justice referrals had some involvement with child welfare, it became clear that this issue needed to be addressed.

In many jurisdictions, as in Newton County, data reveal a substantial number of dual status youth. This is not surprising given the increased risk of both juvenile delinquency and adult criminality among maltreated children (Widom and Maxfield, 2001). It follows that a significant number of delinquent youth have had involvement with child welfare agencies and dependency courts. For example, a recent study of 4,475 juvenile-justice-involved youth in King County, Washington found that two-thirds had some history with

the county’s child welfare system (Halemba and Siegel, 2011).

### Delinquent Youth with History of Children’s Administration (CA) Involvement, King County, Washington



Source: Halemba and Siegel, 2011

Additional research reveals that outcomes for dual status youth are particularly poor in multiple domains. For example, the King County study found that dual status youth had significantly higher rates of recidivism than other delinquent youth. Studies have shown that dual status youth are more likely to be detained and to spend more time in detention than youth without child welfare system involvement (Conger and Ross, 2001).

Newton County data revealed that dually involved youth had more continuances, more out-of-home placements, and more detentions for misdemeanor or status offenses. The county participants concluded that these outcomes were a result of juvenile justice and child welfare systems failing to join forces to look for the best and least restrictive outcomes. These observations, coupled with local data, supported the premise that unifying case management, coordinating service delivery, engaging families, and forming multisystem teams offered a promising strategy for families and for challenging economic times.

“As Judges, we can often become insulated and protected by staff, our peers, attorneys, and the position. How do we know if we are truly doing good work if we don’t look at the data and outcomes of our practice?”

~ Hon. Sheri Roberts

Obtaining access to this valuable multisystem data in Newton County required significant time and leadership by the court and child-welfare and juvenile-justice data, legal, and contract staff. This devoted cross-system team confronted legal, administrative, and cultural challenges in developing a data-sharing memorandum of understanding (MOU) and worked through numerous iterations before obtaining agency signatures and executing the court order required to release child welfare data. The complexity of ensuring access to necessary data is not unique to Newton County, and the local judge in any jurisdiction, in concert with agency staff, can lead the effort to address information and data-sharing barriers. Strategies outlined in the *Models for Change Information Sharing Tool Kit* (Wiiig et al., 2008) supported the work in Newton County, helping to guide the development of information-sharing policy and practice.

### Convening and Leading Multisystem Teams

Initiation of the change process in any jurisdiction requires identifying key leaders and constituents. Addressing the issues of dual status youth requires a variety of stakeholders, and leaders who can effectively guide and motivate the initiative. Convening such a group is often best accomplished with the help of a local judge. While it might look like an invitation, a request from a judge is really more; it is an acknowledgment that the recipient can and should be part of something important that most would rarely decline.

The local judge can be essential in leading multisystem teams charged with designing goals and strategies for reform. Therefore, it is necessary that the judge establishes relationships beyond his or her jurisdiction and remains current on research and best practice models via continuing education. This can be a challenge for any jurist who either is in a smaller jurisdiction or rotates between classes of court, but this effort is critical to ensuring that the community can create, adopt, and maintain quality outcomes for families. When judges work in partnership with other leaders empowered to make decisions, such as child welfare directors, probation directors, and court administrators, the strategies that emerge from the initiative have a greater likelihood of being adopted and institutionalized across systems, thereby increasing the potential for positive youth outcomes.



### Vision and Desired Outcomes

The initial goal in Newton County was developing creative and effective strategies to provide unified services across multiple agencies, community providers, and the court. Within months of working with local and state representation across all disciplines, a broader goal emerged: ensuring that dual status youth were identified at the earliest possible time and provided the most necessary services from appropriate providers across the community and state.

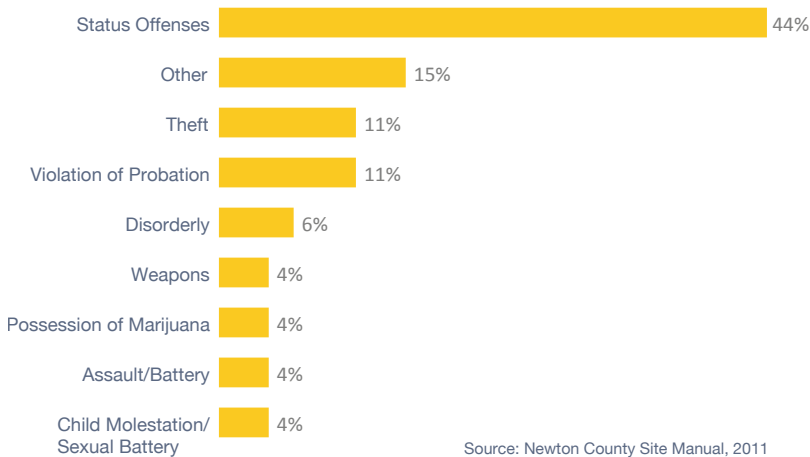
Developing this shared sense of purpose is often a challenge. While Newton County had a history of collaborative work, there were still those who believed that a child found delinquent, regardless of trauma, family instability, or educational delays, was the problem of the juvenile justice system and not appropriate for child welfare services or support. Many jurisdictions undertaking reform struggle with similar assumptions and limitations despite a desire to collaborate. Moving beyond this struggle requires a concerted effort to get participants to align their thinking. Leaders, including the local judge, can facilitate discussion around common goals, barriers to overcome, and desirable outcomes to achieve through collaboration.

An early collaborative task is reaching agreement on the initiative's target population. Ensuring the availability of data about the dual status population is vital to this process. In Newton County, data revealed that truancy was the single most common offense among dual status youth during the time frame examined. Stakeholders also expressed concern about the number of referrals for child molestation/sexual battery, particularly in light of the young age of those charged. Although the number was small, it was higher than anticipated and shined a light on a population of concern

“I have often said publicly that it is very nice to receive an invitation and that the recipient has the option to accept or regret; however, as the Judge, I have the power to convene.”

~ Hon. Sheri Roberts

## Newton County Dual Status Youth Offenses by Type, November 2012 - March 2013



to stakeholders. These findings helped the group come to consensus around the desire to include status offenders and those charged with sex offenses in the target population.

With much discussion, sometimes spirited debate, and the leadership of Judge Roberts, the group agreed upon a vision, mission, and purpose for the initiative, as well as the following desired outcomes:

- reduce juvenile justice involvement;
- reduce child welfare involvement;
- improve school outcomes;
- reduce detention; and
- increase youth competency and enhance connection to community.

Devising measures to evaluate success related to these outcomes contributes to the initiative's overall sustainability and accountability.

### Identifying and Initiating Implementation of Strategies for Reform

Courts are uniquely positioned to drive practice reform for dual status youth (Siegel and Lord, 2004). Over more than a decade, research and field experiences have yielded a set of recommended practices believed to be critical to improved handling of these youth, including:

- routine identification of dual status youth;
- use of validated screening and assessment instruments (See AOC Briefing, 2001);
- identification of alternatives to formal processing and detention and the use of a structured process for considering diversion and early intervention;
- development of procedures for routine, ongoing contact between probation officers and child welfare workers over the life of each dual status case;
- establishment of coordinated court processes; and
- engagement of families in decision-making processes (Wiig and Tuell, 2013).

To identify the most appropriate practices for a specific jurisdiction, participants must first look at current practices and processes, including those of the court. One method for this is caseload mapping. Mapping helps identify key decision points in each system, clarify staff responsibilities, and target priority areas for developing new or enhanced practices (see Tuell, Heldman, and Wiig, 2013). Mapping also educates participants across systems about how systems function. This is critical not only for identifying areas where reform is necessary, but for establishing a culture of shared understanding to help successfully implement integrated and coordinated processes.

“I believe that if you work in child welfare [or] juvenile justice...that you come to the work with a belief that you make a difference and that you can help someone else find success. As a Judge, operating from that assumption, you only need to tap into that desire and drive that you share with your stakeholders.” ~ Hon. Sheri Roberts

Newton County embraced the mapping process and designed the following reforms: 1) developing a process for routine identification of target-population youth; 2) adapting an established multisystem family meeting for use with the target population; 3) creating a policy for sharing assessment results while protecting the rights of families; 4) developing MOUs; and 5) developing a training plan.

## Conclusion

With targeted reforms identified, Newton County continues its collaborative work as it implements new practices and processes. Challenges are certainly present, particularly as staff adjust to new expectations, and the need to engage additional stakeholders, such as law enforcement and the education system, becomes increasingly important. Nevertheless, the juvenile court in Newton County has demonstrated an unwavering commitment to this area of reform and approaches these and other challenges with strong leadership and the expectation that dual status reform is not simply another initiative, but a truly transformational endeavor for the systems and the families they serve. 🌱

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We the undersigned parties agree to voluntarily enter the mediation process and understand and consent to the following:

1. **Definition of Mediation:** Mediation is a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.
2. **Role of the Mediator:** The mediator acts as a facilitator, not an arbitrator, judge, lawyer, or therapist. The mediator assists the parties in identifying and resolving any obstacles to communication, maximizing the chances that the parties reach voluntary agreement.



# The Importance of Early Appointment of Counsel in Juvenile Court

Hon. Kenneth J. King, Associate  
Justice, Middlesex County Juvenile Court,  
Massachusetts

Patricia Puritz, Executive Director, National  
Juvenile Defender Center

David A. Shapiro, Gault Fellow, National  
Juvenile Defender Center

*Judges must ensure due process in juvenile court. They must ensure that children are presumed indigent for purposes of counsel, that they are appointed counsel as early as possible, and that the right to waive counsel remains theirs and can only occur following consultation with an attorney.*

Children in conflict with the law are guaranteed constitutional rights that can only be protected if they are represented at every stage of delinquency proceedings. *In Re Gault*, 387 U.S. 1 (1967), gives youth the right to counsel, which is a bulwark of the right to due process. Courts must protect and give meaning to *Gault*. At a minimum, this requires that attorneys be appointed for children as early in the proceeding as possible; that where the appointment of counsel is not automatic, courts should presume that all

children in delinquency matters are indigent; and that when a child considers waiving counsel, courts allow the waiver only after the child has consulted with qualified juvenile defense counsel and the court has determined that the child is fully aware of the vast implications of the decision to proceed without counsel.

“Children in conflict with the law are guaranteed constitutional rights that can only be protected if they are represented at every stage of delinquency proceedings.”

Counsel in delinquency court is more important than ever, as delinquency offenses no longer stay in juvenile court to be left behind when the child enters adulthood. The fact that a complaint has been brought may cause the child to be excluded from school, cause his or her family to lose housing or other public assistance, and impede the child's efforts at employment or higher education. Children charged as delinquents are far more likely to have a trauma history, a diagnosable mental illness, or undiagnosed and unmet learning needs than their uncharged peers (Ford et al., 2007), as well as prior experience in status offense or child welfare proceedings. These children especially need the guiding hand of counsel.

### **The Need for Early Appointment of Counsel**

As in criminal court, young people in delinquency court are pitted against the government and its vast resources. The juvenile defender's job is to advocate zealously for the child, be the child's voice in the delinquency courtroom, and provide the child with the advice and counsel necessary to make good decisions. Unlike other stakeholders charged with doing what is perceived to be in the child's best interest, juvenile defenders are responsible for eliciting the youth's desired outcomes, counseling the child on the pros and cons of pursuing those objectives, and empowering the child to be engaged in the proceedings.

It takes time to build a relationship that will enable adequate and honest communication. Teenagers are often mistrusting of adults. Because many children charged as delinquents have abuse-and-neglect histories, they can be even more difficult to engage than their peers. Early appointment and a time-intensive commitment to develop the attorney-client relationship are needed to ensure that attorneys can execute their most basic duties. Attorneys who do not meet with their clients before the first hearing may not understand their clients' legal and nonlegal needs and are ill-equipped to properly advocate for them. Indeed, the failure of courts to appoint early counsel is one of the main impediments to competent, diligent, and zealous representation (National Juvenile Defender Center, 2012: 19).

Of course, the early appointment of counsel is also required to protect the rights of young people. Counsel appointed early is better positioned to file motions, conduct investigations, obtain discovery, and encourage the client to exercise other rights (such as the right to remain silent). Without early appointment of counsel, the right to counsel is as good as nonexistent.

In general, early appointment of counsel leads to better outcomes for youth. Counsel appointed in time for the planning stages of court diversion programs (where such programs occur before any court involvement) can help ensure the selection of the programs most appropriate for the

strengths and needs of the particular youth, thus increasing the likelihood the child will succeed and stay out of court. To be most effective, the attorney initially appointed as the

child's defender must follow the case to disposition and be available for post-adjudication hearings, including probation violation matters and related hearings, such as school-exclusion or special-education hearings.

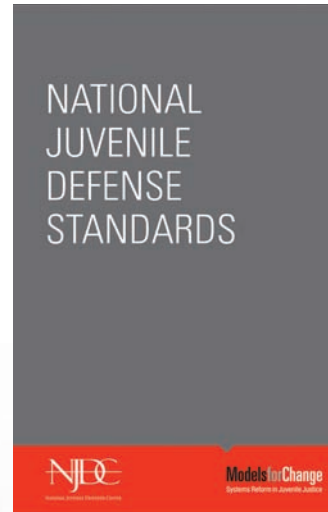
### **What Courts Can Do to Ensure Early Appointment**

In jurisdictions where attorneys are calendared weeks in advance, attorneys can be assigned delinquency cases when the case is first scheduled. In those courtrooms, the attorney should meet the client before the first appearance.

Courts must convey attorney information to children and their families as soon as the attorney is identified and, when possible, using multiple methods. Courts should also ensure that appointed counsel has sufficient time to consult with a new client before the first hearing and should grant requests for short recesses when counsel needs more time. While judges have a responsibility for managing their calendars effectively and ensuring that cases are processed judiciously, they also have a vital interest in ensuring that a child receives adequate, competent, and effective counsel.

### **The Problems of the Lack of Indigence Presumptions in Juvenile Court**

Courts can ensure that all children have timely access to counsel by presuming indigence for all youth. Children, in general, are not financially independent. Therefore, in jurisdictions where an assessment of a child's indigence is required before counsel can be appointed, courts tend to use family income. This process can be fraught with delays and can create conflicts of interest between youth and their families. Many courts assess fees to conduct indigence determinations. In some jurisdictions, public-defender-eligible applicants are not even told that fee waivers are available. Parents and guardians worried about fees may tell their children that counsel is unnecessary—not because it is true, but because the initial out-of-pocket expense is burdensome to cash-strapped families. Parents who must miss work to attend each hearing may also encourage their child to do whatever possible to speed the process along—even if such advice conflicts with the child's constitutional right to counsel.





In many jurisdictions, where parents have not filled out the entire indigence affidavit, counsel is simply not appointed (Minn. Stat. Ann. § 611.17 [b][4]). In one instance, a mother and child filled out an affidavit. The child was still found ineligible for appointed counsel because the father had not also filled out the affidavit (see *State v. D.V.S.*, 617 So.2d 1162 [Fla. Dist. Ct. App. 1993]). Even where young people and their families are willing and able to provide all requested information to prove indigence, in some jurisdictions the appointment of counsel can take days to process, thus postponing hearings for youth who try to exercise their right to counsel. This delay—or even the anticipation of the delay—may cause young people to forgo their right to counsel to speed up the process. In the worst case, the delay can mean that a child stays in detention while awaiting appointment of counsel; even where the child is not detained, the case often needs to be postponed to a later date when the indigence determination has been resolved. These practices are inexcusable.

“Parents and guardians worried about fees may tell their children that counsel is unnecessary—not because it is true, but because the initial out-of-pocket expense is burdensome to cash-strapped families.”

#### **What Judges Should Do Regarding Indigence in Juvenile Court**

Judges should advocate for court rules that presume indigence of all youth. If the jurisdiction refuses to allow for the presumption of indigence, judges should look for other ways to appoint provisional counsel until indigence can be determined. New Jersey and Washington statutorily authorize courts to appoint provisional counsel before a formal indigence assessment (N.J. Stat. Ann. § 2A:158A-14; Wash. Rev. Code § 10.101.020[4]). More jurisdictions should follow suit. Some jurisdictions have statutes or court rules that give judges the discretion to forgo the lengthy indigence-determination process and simply appoint counsel in the interests of justice. Should a formal and lengthier process later determine that a family is not indigent, the court can then recoup those costs from the family. Finally, initial indigence determinations should be made by court personnel



no later than the day of the child's first appearance. In cases where a parent or another family member is the complaining witness, appointment of counsel should be automatic.

#### **The Problem of Juveniles Waiving Their Right to Counsel**

Waiver of counsel before consultation is a nationwide problem in juvenile court. Courts should allow young people to waive their right to counsel only after the child has meaningfully consulted with a qualified juvenile-defense attorney. Adolescent-development research demonstrates that youth often have great difficulty understanding complex legal issues and abstract ideas and have difficulty weighing the long-term consequences of their decisions in the face of short-term desires or easy resolutions (see Brief for the American Psychiatric Association as Amici Curiae Supporting Respondent, *Roper v. Simmons*, 543 U.S. 551 [2004] [No. 03-633], 2004 WL 1636447). These cognitive challenges become more acute in high-stress environments, such as courtrooms (see Statement of Laurence Steinberg, Ph.D., United States Senate Judiciary Committee, June 11, 2007). Given the prevalence of mental illness and learning disabilities in youth charged as delinquents, these children are more likely to have great difficulty understanding the role and importance of counsel than youth generally.

When given access to a lawyer who can counsel them in the way *Gault* envisions, youth are better able to make informed decisions and be active participants in their cases (Steinberg et al., 2009). Consultation with a parent or guardian alone is rarely sufficient, given that even the most well-meaning of parents likely will not understand the myriad legal and practical consequences that can result without a qualified juvenile defender advocating for their child's rights.

#### **What Judges Must Do Regarding Waiver of Counsel**

At the very least, judges must be skeptical of any child's attempt to waive the right to counsel. Courts should not accept any waiver of counsel without prior consultation with defense counsel about the implications of that waiver and without conducting a detailed, case-specific colloquy with the child that elicits, in the child's own words, an understanding of the role of counsel generally and how counsel

may be helpful in the specific case. The colloquy must ensure that the waiver is knowing, intelligent, and voluntary. Well-documented research on child and adolescent development shows that what may be “knowing and intelligent” for an adult is quite different for a youth. Even where statutes or rules do not require prior consultation with a defense attorney, judges should use their discretion to appoint attorneys for the limited purpose of such a consultation. Courts should always ask specifically whether anyone has pressured the child into giving up the right to counsel or made promises to the child in exchange for giving up that right.

Finally, by their very nature, waivers made due to financial reasons are coercive and cannot be intelligent and voluntary. Even for non-indigent, low-income families, the pressure to waive counsel is substantial. Allowing finances to dictate the waiver of counsel creates massive inequality between wealthy and poor children to the detriment of a fair and just juvenile delinquency court.

### Conclusion

The issues of the timing of the appointment of counsel, the determination of indigence, and waiver of counsel are interrelated, and each is essential for the effective administration of justice in delinquency court. To ensure due process in delinquency court, counsel must be appointed as early as possible. Because of various coercive pressures young people face, their rights, particularly to counsel, are often at risk. Juvenile courts must facilitate each child’s exercise of

“To ensure due process in delinquency court, counsel must be appointed as early as possible.”

those rights. The earlier counsel is appointed, the less likely it is that a juvenile will waive counsel. Where indigence is presumed, juveniles will be less likely to waive counsel. Judges must do their part to ensure that every child before them, regardless of income, has early access to counsel, and that waivers occur only after discussion with counsel—not as a product of coercive, third-party pressure. Juvenile court judges and practitioners need to appreciate the role of competent, zealous counsel as an indispensable aid to the administration of justice—not as something nettlesome to be dealt with only when there is no other choice. In a country where delinquency courts have largely shed their original rehabilitative purpose in favor of a more punitive approach, all three of these reforms are necessary to ensure the protection of the rights and well-being of young people in conflict with the law. ☪



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# Keeping Kids Out of Court: Rapides Parish's Response to Status Offenses

Alessandra Meyer, Senior Program Associate, Center on Youth Justice, Vera Institute of Justice

Hon. Patricia Koch, Criminal Court Judge, Ninth Judicial District Court, Rapides Parish, Louisiana

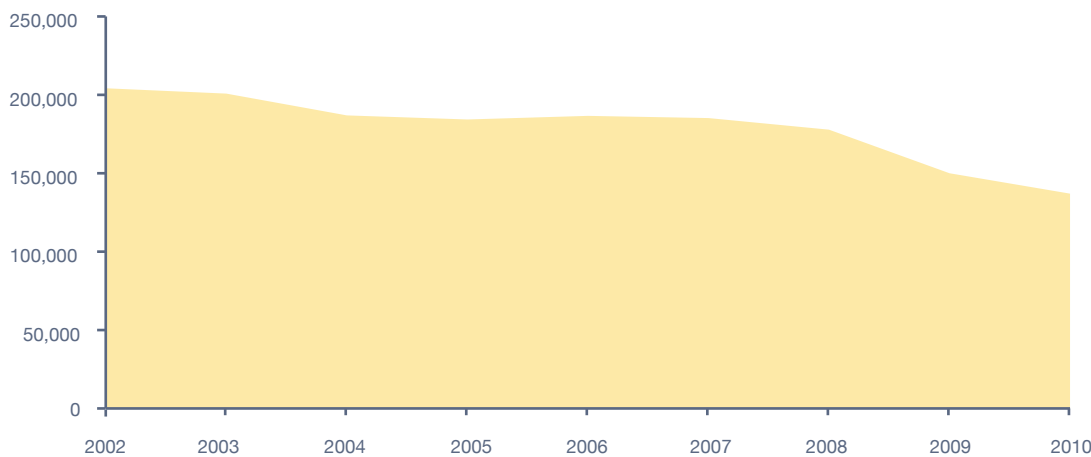
*A new paradigm in local and state responses to youth alleged of status offenses is connecting families with services in their communities, instead of turning to courts. This approach is grounded in the understanding that, with guidance and support, families can resolve the problems that led them to seek help.*

Increasingly, states and localities are developing and implementing strategies for safely and cost-effectively diverting youth from the juvenile justice system. Perhaps nowhere is this more necessary than in the response to, and treatment of, young people who are alleged to have committed status offenses—a range of behaviors, such as running away from home, skipping school, violating curfew, or flagrant disobedience, which are prohibited under law only because of an individual's status as a minor. Across the country, these youth, whose actions are problematic but certainly not criminal in nature, are frequently referred to juvenile court and subject to the same punitive interventions as those charged with serious crimes. In fact, according to the most recent

national data, 137,000 status-offense cases were processed in court in 2010, and young people in more than 10,000 of those cases spent time in a detention facility. Although the number of status-offense cases processed in court has declined in recent years, an encouraging trend indeed, courts are still handling far too many.

## Number of Status Offense Cases

Handled in Court, 2002-10



Source: C. Puzanhera and S. Hockenberry, *Juvenile Court Statistics*, 2010. Pittsburgh, PA: National Center for Juvenile Justice, 2013, p. 66



“The court was expected to assess the underlying circumstances that led to the status-offense behavior and match the family to services—something the court was not well-equipped to do.”

Both research and practice demonstrate that courts, and juvenile justice systems at-large, are often inappropriate and ill-equipped to provide the services these youth often need, and that community-based approaches to status-offense behaviors are far better for families and communities. By implementing immediate and family-focused alternatives to court intervention, many states and localities nationwide have begun to reduce court caseloads, lower government costs, and provide meaningful and lasting support to children and families.

As momentum builds from these efforts, a new paradigm is emerging: connect families with services in their communities, instead of turning to courts. This shift in approach is grounded in the understanding that families can resolve the problems that led them to seek help; they just need some guidance and support.

In Rapides Parish, Louisiana, the Ninth Judicial District Court has worked diligently in recent years to shift their approach for serving youth alleged of status offenses (known as FINS, or Families in Need of Services) from the court to the community. With support from the John D. and Catherine T. MacArthur Foundation’s Models for Change initiative and in collaboration with local stakeholders, the court

developed a system to keep young people who have not committed criminal acts away from the courtroom, the justice system, detention, and longer-term placement, thereby preserving the unity and integrity of families and preventing future delinquency behavior from occurring.

In Louisiana, youth who commit status offenses follow two pathways: informal FINS outside the court and formal FINS inside the court. Children referred to both systems are evaluated and matched with services. Service plans issued through formal FINS are binding, whereas any services issued through informal FINS are strictly voluntary. Before recent reforms, the court’s informal FINS program was frequently failing the parish’s families. On average, it took two weeks—more than enough time for a minor crisis to escalate—for staff to contact a referred family. This delay could put youth at risk and make it much harder for families to resolve their issues. And when the informal system responses were unsuccessful, youth were often funneled straight into court. The court was expected to assess the underlying circumstances that led to the status-offense behavior and match the family to services—something the court was not well-equipped to do.

Determined to find a better way to serve these young people and their families and knowing that any meaningful change to the court's approach would have to be developed in conjunction with local stakeholders, Judge Patricia Koch leveraged her then-position as the president of Rapides' Children and Youth Planning Board (CYPB) to spearhead a reform effort. A collaborative group of local leaders from a cross-section of disciplines, including the court, education, and mental health, sought to ground their work in data and best practice. They conducted a thorough analysis of the FINS system, including a detailed mapping exercise to track various entry points and collect key data. They also examined nationally recognized models from other jurisdictions including Florida, Orange County (New York), and Connecticut.

After looking at the system's shortcomings in relation to national models, they easily identified two reform goals: 1) to limit informal and formal FINS referrals when not truly necessary and 2) to make service delivery to FINS-involved youth more efficient and targeted when services are needed. Ultimately, they wanted to do right by the parish's families and keep nondelinquent youth out of court and provide them with community-based services and support.

Following in the footsteps of others who have made this shift from the court to the community, the group developed an approach consistent with the five hallmarks of an effective status-offense system:

**1. Diversion from court.** The fundamental intent of the informal FINS process is to divert status-offending youth from the juvenile justice system, so they put mechanisms in place throughout the FINS process to actively steer them away from court and toward community-based services. First, only those cases that satisfy all eligibility criteria are accepted into the informal program. For example, a case referred by the school system may only be accepted if the school documents, using the school-exhaustion form, show that it has made two prior attempts at intervention. This and

other measures, which did not require additional funding, ensure that referral sources exhaust all intervention efforts available to them before making a referral to the system. Second, for a case to be referred to formal FINS (or court), it must first go through the informal FINS process. And, even then, the informal FINS office may only refer cases to court that satisfy certain conditions (such as the youth has been gone from home for seven or more days and the guardians are requesting court intervention).

**2. An immediate response.** Beyond providing a timely response to all referrals, crisis-intervention services are offered to youth and families in critical emotional or mental distress. This rapid, community- and home-based service—something that may be necessary for some families trying to cope with status-offense behaviors—is available around the clock by mental health professionals and paraprofessional staff. Providing this immediate intervention to families in crisis helps to prevent the escalation of behaviors and family stress, which can unfortunately place a young person at risk for out-of-home placement, court involvement, and removal from school.

**3. A triage process.** Through careful screening and assessment, the informal FINS process identifies youth and family strengths, risks, and needs to triage cases and match families

“The fundamental intent of the informal FINS is to divert status-offending youth from the juvenile justice system, so they put mechanisms in place throughout the FINS process to actively steer them away from court and toward community-based services.”



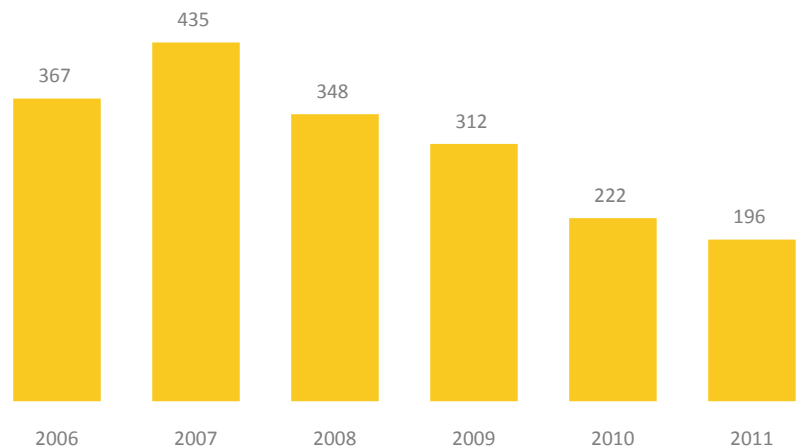
to services. In recognition that some families require only brief and minimal intervention to help navigate the issues at hand, whereas others need intensive and ongoing support and services to resolve problems, the intake process helps staff determine where a youth may fall and provide an appropriate level of services. Intake officers interview the young person and use the MAYSI-2, a screening instrument designed to identify self-destructive behaviors and mental health issues, to first identify which children are most in need of immediate care. They then use the information gathered through the intake process to provide services targeted to the youth's particular needs. For youth who are deemed low-need, staff work with them to develop a service plan without service referrals. For youth who are mid- or high-need, but have never gone through the FINS system, staff assist them in developing a service plan with referrals. And for those mid- or high-need youth who have already gone through the FINS system, a family team conference is convened to assist the family in service-plan development.

**4. Services that are accessible and effective.** The informal FINS department maintains a comprehensive and up-to-date inventory of local, community-based organizations providing different programs and services, many of which are evidence based. The programs and services in the directory are selected based on their quality and ability to provide timely responses to status-offending youth and their families. The areas of need they cover include alcohol and other drug use/abuse, adolescent behavior, mental and behavioral health, family functioning, educational and vocational issues, and health.

**5. Internal assessment.** The department's database and enhanced data-collecting, management, and reporting policies provide for the consistent collection and sharing of data. Internally, aggregate (or summary) information on the population served, referrals, screening/assessment, and service linkage is analyzed monthly and shared in monthly supervisory meetings. Externally, more-detailed case-level information is shared with the supreme court quarterly. This active and frequent review of data helps the informal FINS office make informed decisions about individual cases and work with local stakeholders to monitor, evaluate, and adjust practices as needed to ensure the system is providing appropriate and effective support to youth and families in need outside of the courtroom.

While Rapides Parish is new to this approach of shifting status-offending youth from the courtroom to the community, their reforms are already bearing fruit. From 2006 to 2011, the parish witnessed a 47 percent decrease (from 367 to 196) in informal FINS referrals. This decrease was largely propelled by a dramatic (79 percent) reduction in school referrals following the creation of a new school-exhaustion form, which was developed in close collaboration with the school system. In addition, the number of informal FINS referrals resulting in formal FINS petitions also dropped, decreasing by approximately 50 percent from 2006 to 2010, from 129 to 65 youth.

**Rapides Parish: Informal FINS (Families in Need of Services) Referrals, 2006-11**



Source: 9th Judicial District Court, Louisiana

These early successes are largely due to the communication and mutual accountability among the court and other key system stakeholders, like the school system, law enforcement, and service providers. Although Rapides' population has grown, the FINS process still operates with a more rural flair—stakeholders meet and collaborate regularly. By sharing and reviewing local FINS data regularly, the stakeholders have become more enlightened, involved, and committed to further reform. While there is still some ways to go, hopes remain high that the new process will eventually stop youth alleged of status offenses from reaching juvenile court altogether. ☺





# Judicial Leadership to Address Adolescent Mental Health Needs

**Kathleen R. Skowrya, Associate Director,  
National Center for Mental Health and Juvenile  
Justice, Policy Research Inc., Delmar, New York**

**Hon. Linda Tucci Teodosio, Judge, Summit  
County Juvenile Court, Akron, Ohio**

*Large numbers of youth involved with the juvenile justice system have significant mental health and substance abuse issues. Many of these youth could be better served in community settings, and juvenile court judges can lead or support community efforts to develop improved policies and service-delivery strategies for these youth.*

**Y**outh in the juvenile justice system are three times more likely to experience mental health disorders than the general youth population (Shufelt and Coccozza, 2006; Merikangas et al., 2010). Nearly 70 percent of youth in the juvenile justice system have a diagnosable mental health disorder; over 60 percent of youth with a mental health disorder also have a substance use disorder; and almost 30 percent of justice-involved youth have disorders serious enough to require immediate attention (Shufelt and Coccozza, 2006).

Trauma histories are the norm, especially among girls (Abram et al., 2004).

Judges who hear juvenile cases are likely not surprised by these statistics. Unfortunately, it is widely accepted that the juvenile justice system is the de facto mental health system for many youth. There is a growing sense that many of these youth could be safely and more appropriately treated with community-based services that address their mental health needs and keep them close to their families and schools—and out of trouble.

Juvenile court judges can wield extraordinary influence in a community. They ensure the appropriate administration of juvenile justice and often oversee juvenile probation and, sometimes, the juvenile detention facility. Judges can influence local policy, educate the public, and initiate collaborations with other service agencies, private businesses, and community organizations (Kurlychek, Torbet, and Bozynski, 1999). Judges can be especially helpful in improving a community's behavioral-health response to youth in the juvenile justice system.



### Judicial Leadership at Work: Ohio

Ohio is a good example of how judicial leadership can influence mental health program development and service. In 2001, under the leadership of Judge Elinore Marsh Stormer, the Akron Municipal Court became the first Ohio court to develop a docket to address mentally ill adults charged with misdemeanors. The court demonstrated that such a docket, using client treatment and accountability, could improve the lives of mentally ill defendants and break their criminal-behavior cycle.

### The Role of the Juvenile Court

What can judges do? For *individual clients*, they can start by asking the right questions:

- Has the youth received a mental health evaluation?
- Does the evaluation indicate a need for mental health treatment?
- Are there community mental health services that could treat the youth as an alternative to further processing within the justice system?
- Can local systems coordinate to manage the delivery of mental health services to youth?
- Are the services available to youth evidence based?
- If the seriousness of the offense prevents the youth from being treated in the community, are quality mental health services available in a residential placement?

A judge's ability to influence change, however, is not restricted to individuals. Judges can also play a critical role in changing community programming and systems operation. For example, juvenile court judges can lead or support efforts to:

- involve a broad group of stakeholders (juvenile justice, behavioral health, child welfare, education, family members) in juvenile justice reform;
- institute mental health screening and evaluation at key points of juvenile justice contact and policies and procedures to ensure this information is used appropriately;
- create more mechanisms and opportunities for diverting youth from the juvenile justice system early and into community-based treatment;
- ensure that existing resources support community-based mental health treatment services for youth, aiming for developing and implementing evidence-based practices and services whenever possible;
- lobby for additional resources to build evidence-based, community-based treatment; and
- advocate for enhanced training so that all juvenile justice staff (probation, detention, court, facility) receive basic training on adolescent development and mental health disorders.

“Judges can be especially helpful in improving a community's behavioral-health response to youth in the juvenile justice system.”

At the same time, other parts of the justice system were recognizing the importance of treatment for the mentally ill, as opposed to involvement in the criminal or juvenile justice systems. Crisis intervention team (CIT) training became widespread in Ohio, allowing police to intervene effectively to prevent the filing of criminal or juvenile complaints. These efforts were legitimized in 2001 under the leadership of Ohio Supreme Court Justice Evelyn Lundburg Stratton by the creation of the Supreme Court of Ohio Advisory Committee on Mental Illness and the Courts (ACMIC), which comprised mental health, law enforcement, and criminal justice professionals. ACMIC provided a platform for the statewide, cross-discipline exchange of information and practices on myriad issues presented by mentally ill individuals in the courts. This led to establishing numerous adult and juvenile mental health courts throughout Ohio.

Simultaneously, the Ohio Department of Youth Services (ODYS) and the Ohio legislature recognized the importance of community-based



services in meeting children's mental health needs. In response to a growing need for local alternatives for juvenile courts and overcrowded ODYS institutions, the Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM Ohio) initiative was created on July 1, 1993. It encouraged communities to provide programming by creating financial disincentives for committing youth to state correctional institutions when they can safely be treated in the community. In 2009 the state expanded efforts to encourage evidence-based practices or model programs in communities by instituting Targeted RECLAIM and Behavior Health Juvenile Justice (BHJJ) Initiative grants. Under the leadership of local judges throughout the state, communities used this funding to provide behavioral-health services. As a result, admissions to ODYS facilities have dropped. Key to the continued success of these initiatives is strategically reinvesting the savings realized from closing numerous state correctional institutions back to local communities and courts, allowing them the flexibility to meet their youth's needs.



*Turning lives around one child at a time.*

The benefits of providing treatment as an alternative or addition to juvenile justice involvement can be realized much earlier than when a youth is on the brink of commitment to a state correctional facility. Judicial involvement and leadership can help a community examine *all* resources for developing innovative programming for youth and families.

### Summit County Crossroads Program

In 1999 the Summit County Juvenile Court launched a drug court that addressed substance-abusing youth. In 2003 Judge Linda Tucci Teodosio convened local experts on mental health, substance abuse, and child welfare, as well as representatives from the schools, advocates, the medical community, the prosecutor's office, defense counsel, and local universities, to determine how the community could better address the mental health needs of court-involved

youth. Recognizing the close relationship between substance use and mental illness, the community embraced the notion of working with dually diagnosed youth on a specialized docket.

The result was the Crossroads Probation program, making the Summit County Juvenile Court one of the first U.S. juvenile courts to specifically target youth with co-occurring mental health and substance use disorders. Key components of the program include:

- a multisystem advisory board for planning and implementation;
- clear eligibility criteria and terms of participation;
- standardized mental health and substance use screening and evaluation;
- family involvement requirements;
- access to a range of community-based treatment services; and
- community supervision by specially trained juvenile probation officers.

Approximately 70 youth, aged 12-17, are referred to the program each year, post-adjudication, and can have their admitting charge and any probation violations expunged if they successfully complete the program. This docket focuses on youth with more-severe mental disorders, including major depression, bipolar disorder, posttraumatic stress, and psychotic spectrum disorders with co-occurring substance use. Youth with a history of serious felonies or gang involvement are not eligible. Youth participate in Crossroads for approximately one year; their length of contact varies depending on their initial charge.



Summit County Juvenile Court Website

Youth undergo substance abuse and mental health screening and follow-up assessment. A network of community agencies delivers services to youth and their families. A significant number of youth participate in the Integrated Co-occurring Treatment model. Family members are required to participate in court processes and in developing a case plan.

Probation officers receive specialized training and meet with youth under their supervision up to three times per week. The court can sanction youth who fail to meet program expectations. Youth can successfully graduate from the program if they abstain from substance use for at least three months, have had no new charges, and have completed a

substance-abuse-focused intervention. They must comply with prescribed medication and be considered stabilized in their mental health treatment. They must also be involved in some pro-social activity (organized sports, volunteer activities). Youth must apply, by letter, to be released from probation when they consider these conditions to have been met.

### Summit County Responder Program

In 2008 Ohio was selected for the John D. and Catherine T. MacArthur Foundation's Models for Change Mental Health Juvenile Justice Action Network, with Summit County as the local site to test

#### Defining "Success"

To date, in 75 percent of the cases in Summit County, youth successfully completed the terms of the program and showed increased school attendance and improved behavior as reported by their teachers. For these youth, there are no official referrals to court, so they end up with no official record of juvenile justice system involvement. The Summit County Juvenile Court is working with Case Western Reserve University to conduct an evaluation of the Responder Program, and once that is complete, there will be additional outcome information available for participating youth.

innovations developed by the Action Network. The Action Network first chose to focus on "early diversion," i.e., creating new opportunities for diverting youth with mental health needs from the juvenile justice system into community-based care as early as possible.

Summit County schools were a logical place to start. Teachers and school support staff were in an ideal position to note unusual behavior, a change in behavior, or a lack of regular school attendance. Additionally, zero-tolerance policies in local districts often resulted in court referrals for behaviors that could best be handled not by judicial sanctions, but by counseling or

psychiatric services. In many cases, court referral was the only option for addressing the behavior and connecting the student to mental health services.

Using start-up funding from the MacArthur Foundation, in conjunction with other states in the Action Network, the Summit County Juvenile Court collaborated with county partners, including the superintendent of the Akron City schools, to create the Responder Program. This school-based diversion initiative provides another option for addressing troubling behavior of youth that may be a symptom of an undiagnosed or untreated mental health disorder. Key components include:

- collaboration between the schools, the police (particularly school resource officers), the juvenile court, and community-based treatment providers;
- case managers who provide school-based intervention and case management services to youth;
- training for school staff; and
- parent support services.

The Responder Program initially targeted middle-school youth suspected of having mental health needs and whose behavior has brought them to the attention of school disciplinary staff. The program was quickly expanded to schools throughout Summit County. Mental health "responders," assigned to individual school buildings, help school personnel identify potential mental health needs in students and help link referred youth and their families to treatment and case management services.

The responders are case managers who work out of the Family Resource Center (FRC) at the juvenile court, which provides a wide array of services and support to families. Using a team approach that includes relevant school staff and any providers already working with the family, responders provide in-school intervention services and case management. They conduct mental health screens, arrange full assessments when needed, and work with families to develop service plans linked to community-based services, such as mental health care, substance abuse treatment, mentoring, and tutoring. School personnel receive training on how the program works, the types of behavior that might indicate an underlying mental health need, and how to make referrals to the program. The Responder Program also works with Mental Health America to provide parent peers who support families in the program.

Feedback from the schools, parents, and the juvenile court has been overwhelmingly positive. While a full evaluation of the program is planned for 2014, the program tracks each referred student, recording the reason for the referrals, the services received, indicators of progress, and changes in behavior. More than 75 percent of referred cases have been closed successfully. The Responder Program has expanded from 2 Akron middle schools in 2009 to 18 middle schools and



4 elementary schools throughout the county. The program is sustained with state and local funding, including Temporary Assistance for Needy Families funds from the Summit County Department of Job and Family Services and the juvenile court's RECLAIM grant.

### **Conclusion**

Juvenile court judges can play a significant role in ensuring that communities respond appropriately to juveniles' behavioral-health needs. Judges can initiate, lead, or support efforts to improve policies and practices for youth in the juvenile justice system and use their office to hold children and youth accountable for their behavior and systems accountable for meeting their needs. Because judges have a front-row seat for viewing family struggles, they can motivate systems to collaborate to meet the needs of children served by the court, as well as those who would be better off without the negative, long-term consequences of court involvement. As conveners and facilitators, judges must be careful listeners and take advantage of the opportunity to learn from experts in their communities. Judges can use the information they receive to encourage the cross-system use of resources to serve the best interests of the child. ↻

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# Reducing Racial and Ethnic Disparities in the Juvenile Justice System

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*Youth of color are overrepresented in the juvenile justice system. Judges and other decision makers must work together to overcome this disparity.*

Racial and ethnic disparities are one of the most pervasive and disturbing characteristics of our juvenile justice system. Youth of color are overrepresented at key decision points, including arrest, referral, detention, transfer to adult criminal court, and commitment to state custody. As the National Research Council (2013) noted in a comprehensive review of the literature, "Several recent careful reviews . . . have found that 'race matters' beyond the characteristics of an offense."

At the same time, many juvenile justice officials find it difficult to discuss racial bias. Avoidance, denial, and fear of accusations impede attempts at reform. Moreover, despite decades of efforts to study and address disparities, few jurisdictions have implemented reforms with measurable impacts on youth of color (National Research Council, 2013).

For all of these reasons, juvenile justice stakeholders, and particularly judges, should be aware of the scope of the problem, how it affects court proceedings, and effective remedial strategies.

“Several recent careful reviews...have found that ‘race matters’ beyond the characteristics of an offense.”

## Defining the Issue

“Racial and ethnic disparities” (also known as “disproportionate minority contact,” or DMC) include three separate but related issues (Soler, Shoenberg, and Schindler, 2009). First, there is *overrepresentation* of youth of color in the juvenile justice system. That is, the percentage of youth of color at a particular decision point in the juvenile justice system is higher than the percentage of youth in the general population or at a previous decision point in the system. Thus, the percentage of youth of color at arrest is usually higher than the percentage of youth of color in the general population,

and the percentage of youth of color in detention is often higher than the percentage of youth of color at arrest. The Relative Rate Index (RRI)—the indicator of disparities traditionally used by the federal Office of Juvenile Justice and Delinquency Prevention—measures overrepresentation.

A second aspect of the issue is *disparate treatment* of youth of color compared to white youth. This occurs when youth of color who are similarly situated to white youth are nevertheless treated more harshly. Research has shown that in many jurisdictions youth of color are more likely to be incarcerated, and to be incarcerated longer, than white youth, even when charged with the same offenses.

A third aspect is *unnecessary entry and movement deeper* into the juvenile justice system by youth of color. This occurs when youth of color are arrested when they could be diverted from the system, or when they are held in secure detention when they could be released to community-based alternative programs. Of course, white youth can also be subject to unnecessary entry and movement deeper into the system, but this problem affects youth of color disproportionately. System reform efforts aim to reduce *all three* types of disparities.

There are also specific issues involving Hispanic and Latino youth in the juvenile justice system (Villarruel and Walker, 2002):

- failure to capture ethnicity separately from race in data collection, which leads to undercounting Latino youth and other inaccuracies;
- lack of uniform definitions for “Latino” and “Hispanic”;
- failure to provide adequate bilingual services, written materials, and translators for Latino youth and their families;
- failure to ensure the cultural responsiveness of services and programs;
- consideration of immigration status at arrest and detention, resulting in incarceration, deportation, and permanent separation of youth from families; and
- anti-gang laws that sweep broadly to involve youth who are not gang members.

To be successful, reform efforts need to address these issues as well.

### **Research on Implicit Bias in the Juvenile Justice System**

At the individual level, reform efforts must recognize the implicit biases of key system decision makers. Implicit biases involve the use, unconsciously, of stereotypes. Such biases are common. For example, the public strongly associates crime with African-American males. Researchers at UCLA demonstrated the strength of this association (Gilliam and Iyengar, 2000). They showed test subjects three versions of an evening television newscast that included a story about an ATM robbery. In one version, the suspect’s race was not indicated. In another version, there was a close-up picture of the suspect, a white man. In the third version, the same picture was shown but the man’s skin was darkened technologically so that he appeared to be African-American.

After a period of time, test subjects were asked what they recalled

about the newscast and the alleged perpetrator. Among test subjects shown the picture of the black suspect, 70 percent recalled seeing a black man. Where the test subjects were *not* shown a picture of the suspect, 60 percent recalled seeing a picture of the suspect, and 70 percent of those recalled seeing a *black* suspect. Even where test subjects were shown a picture of a white suspect, 10 percent nevertheless recalled seeing a picture of a black suspect.

“...white youth can also be subject to unnecessary entry and movement deeper into the system, but this problem affects youth of color disproportionately.”

The authors of the study explain that, as a result of local news coverage and other influences, Americans have a “frame” for stories about crime that includes a black person as the perpetrator. When the information provided confirms that frame, as in the newscast that showed the black suspect, a very high percentage of people remember the person’s race. When a newscast leaves information about the suspect’s race blank, the “frame” of public perceptions supplies the missing information, i.e., a black suspect. Even when people are given explicit information that the suspect is white, the “frame” leads a portion of people to recall that the suspect is black.

Racial and ethnic disparities in the juvenile justice system are often the result of implicit bias by key decision makers. In the pioneering study in the field, researchers in Washington State did structured-content analyses of juvenile pre-disposition reports prepared by probation officers, and they compared reports on white youth and black youth who were charged with similar crimes and had similar delinquency histories (Bridges and Steen, 1998). They found that reports on black youth were significantly more likely to include negative internal attributions (i.e., the



crime resulted from the youth's values and personality) than reports on white youth. In contrast, reports on white youth charged with the same offenses and with similar delinquency histories were more likely to include negative *external* attributions (i.e., the crime resulted from peer pressure or a bad environment) than reports on black youth. These distinctions had a critical influence on dispositions given to the youth: black youth were judged to have a higher risk of reoffending than white youth and were given longer or more restrictive dispositions.

Judges are not free of bias. In the leading study, researchers administered the Implicit Association Test (IAT) to 133 trial court judges from three jurisdictions in different parts of the country (Rachlinski et al., 2009). This computer-administered test elicits responses to associations between words ("white," "black," "bad," "good"), pictures of faces, and other stimuli, and measures the amount of time the test subject takes to make the associations. The IAT is considered the gold standard in identifying implicit bias. Researchers have published hundreds of academic studies using the IAT, and more than four and a half million people have taken the test.

Research has consistently shown a strong "white preference" among white subjects.

This means, for example, that white participants more quickly associate stimuli such as faces of white individuals with positive words or concepts, and take more time to associate words like "black" and faces of African-Americans with positive words and concepts. Black test subjects have shown mixed results, with some showing a "white preference" and some showing a "black preference." In the second part of the study, the researchers gave the judges a series of vignettes or hypothetical cases to decide, then compared their race preference with their decisions. In some of the hypotheticals, the defendant's race was not presented, and in others it was explicit.

The researchers reported three conclusions. First, the IAT scores showed that judges, like everyone else, carry implicit biases concerning race. Second, the decisions in some of the hypothetical cases provided evidence that implicit biases can affect judges' judgments. Third, and most interesting, when judges are aware of the need to monitor their responses for the influence of implicit racial biases, and are motivated to do so, they can compensate for those biases. This occurred when some of the trial judges figured out the purpose of the exercise and became more careful about their

responses. When that happened, they showed no racial bias in their decisions.

### **How Implicit Bias Can Affect the Juvenile Justice Process**

Research suggests that many key decision makers in the juvenile justice system have implicit racial biases. This can affect the juvenile justice process in several ways. Judges are decision makers on the cases before them. Particularly in criminal and juvenile delinquency cases, judges must be aware that they likely have some implicit racial biases. In juvenile court, they particularly need to be watchful at key decision points, such as detention, violations of probation or other court orders, transfer to adult criminal court, and disposition (i.e., whether to commit the youth to state custody). Judges must ensure that their implicit biases do not affect their decisions. Research on trial judges indicates that such efforts may be very successful.

Judges are also managers of the courtroom and key participants in other aspects of the juvenile justice process. They need to be aware that other key decision-makers in the juvenile justice system also are likely to have implicit racial biases. Therefore, they must be watchful for bias at other points in the process, such as referrals to court by school administrators, arguments by prosecutors, presentations by defense attorneys, recommendations in mental health studies, and recommendations in pre-disposition reports. And, like judges, other key decision makers must be aware that they likely have some implicit racial biases and watchful that those biases do not affect their own decisions.

“...when judges are aware of the need to monitor their responses for the influence of implicit racial biases, and are motivated to do so, they can compensate for those biases.”



### System Reforms to Reduce Racial and Ethnic Disparities in Juvenile Justice

Judges and others related to the courts should also be aware of successful efforts to reduce racial and ethnic disparities at the system level. The Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI) has been working to reduce unnecessary secure detention, protect public safety, and reduce racial and ethnic disparities for the past 22 years. JDAI now includes some 250 sites in 39 states and the District of Columbia. Many JDAI sites have significantly reduced racial and ethnic disparities, particularly at the detention-decision point (see JDAI Help Desk at [www.jdaihelpdesk.org](http://www.jdaihelpdesk.org)).

The W. Haywood Burns Institute for Juvenile Justice Fairness and Equity in San Francisco has worked in more than 100 jurisdictions over the past ten years to reduce racial and ethnic

disparities. The Burns Institute also provides training on reducing disparities to JDAI sites (see [www.burnsinstitute.org](http://www.burnsinstitute.org)).

The John D. and Catherine T. MacArthur Foundation's Models for Change juvenile justice reform initiative has made reducing racial and ethnic disparities one of its key goals over the past ten years. The MacArthur Foundation also supported a DMC Action Network, managed by the Center for Children's Law and Policy, which involved 17 jurisdictions in eight states (see [www.modelsforchange.net](http://www.modelsforchange.net)).

All of these efforts use the same basic components in their approach:

- developing a collaborative of key stakeholders, including family members and community representatives, to govern the reform effort;
- identifying key decision points in the juvenile justice process where disparities occur;
- collecting and analyzing regularly data on youth at key decision points, the alternative-to-incarceration programs available to those youth, and the effectiveness of those programs;
- using objective screening and assessment instruments to determine which youth need to be detained and which can be safely supervised in the community;
- creating or enhancing alternative-to-detention programs in the community to meet the supervision needs of youth in custody;
- developing and implementing plans to reduce disparities that have measurable objectives; and
- monitoring and evaluating progress toward reduction of disparities regularly.

These strategies should be part of any effort to reduce racial and ethnic disparities affecting youth of color in the juvenile justice system. ↻

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**Alabama Uses Appellate Mediation Program**

The Supreme Court Committee on Appellate Mediation is a group of judges and lawyers who worked diligently to develop an appellate mediation program that can be used by the state's supreme court and court of appeals. This program provides a creative alternative to the appellate process that is more expeditious and less expensive for the citizens of Alabama.

**Alaska Improves Magistrate System**

Magistrates play a key role in serving remote areas of Alaska, and significant resources are devoted to their education and training. Chief Justice Dana Fabe implemented several changes in the magistrate system's structure. Magistrates are now *magistrate judges*, and all magistrate judges appointed after January 1, 2013, must be reappointed every four years following an evaluation by a panel of judicial officers. These changes are intended to enhance public confidence in the magistrate system.

**Arizona Courts Adopt Evidence-Based Practices**

Arizona reengineered adult and juvenile community supervision programs using evidence-based practices. Over the past five years, prison revocations have dropped by over 38 percent and felony convictions by persons on probation by 40 percent. In 2013 the number of juveniles committed to corrections dropped by 18 percent, and juveniles detained dropped 14 percent. The risk-assessment tool does not require an in-person interview with the defendant.

**Arkansas Improves Public Understanding of Courts' Mission**

Responding to a troubling lack of basic civics knowledge, the Supreme Court of Arkansas launched the Arkansas Courts and Community Initiative. ACCI is engaging all members of the public, from legislators to business leaders to civics clubs to students, to increase awareness about our system of government, with emphasis on the special role of state courts in administering and upholding the rule of law and our constitutional system.

**California Increases Transparency with New Budget Process**

The California Judicial Council adopted a new budget development and allocation process for trial courts based on workload. The funding methodology uses case weights and other parameters to determine court workload needs and then translates that to an allocation amount. It replaces the pro rata formula used since 1997 and, for the first time, shifts current baseline funding from some courts to others.

AR Supreme Court



**Colorado Builds Leadership and Fairness Through Education**

Colorado created the Colorado Judicial Executive Leadership Program, which focuses on strengthening individual leadership skills and engaging the workforce in planning efforts related to procedural fairness. In 2013 supreme court justices, 22 chief judges, the state court administrator, division directors, and 44 executive leaders throughout the state graduated from the institute. Colorado remains committed to building a culture of highly talented leaders through continuing education.

**Connecticut Expands Pro Bono Legal Services**

Changes in Connecticut's legal services practices allow attorneys to take on more pro bono cases without feeling overwhelmed. Authorized house counsel and retired attorneys can take part in pro bono programs under the supervision of a legal aid secretary, bar association, or Connecticut bar member. New rules also allow attorneys to file for limited appearances for specific court events and to file a Certificate of Completion terminating their client obligation after their limited appearance.

**Delaware Makes Tech Purchases More Efficient**

The Delaware Administrative Office of the Courts' Judicial Information Center (JIC) is working to improve the quality of various court systems statewide. The first project focused on the technology information helpdesk and looked at reducing the time to quote and purchase computers and software. By working with their hardware and software vendors, JIC dramatically reduced the average time frame from nine days to an hour. Additional projects are underway to improve efficiency.

Inset: DE Old State House

### **District of Columbia Courts Focus on Employee Engagement**

The District of Columbia Courts are “Building a Great Place to Work” so employees are highly productive, fully engaged, and eager to provide excellent public service. The courts chartered teams focusing on communication, performance management, work-life balance, and “Working on Wellness,” and internal surveys show improvement in these areas. Employee feedback informed division-level action plans, strategic human resources, cross-training, health and fitness programs, on-site child-care enhancements, a flex-place pilot program, and executive leadership outreach.

### **Florida’s Foreclosure Initiative Reaps Significant Results**

Culling from successful local strategies, the Florida judicial branch’s *Foreclosure Backlog Reduction Plan for the State Courts System* recommended three solutions to improve the just and timely processing of foreclosure cases: more active judicial or quasi-judicial case management and adjudication, additional case management resources, and deployment of technology to help judges move cases forward. The trial courts are now resolving, on average, 20,000 backlogged foreclosure cases per month.

IN Law Library



### **Georgia Adopts Standards for Accountability Courts**

Twenty years after the inception of drug courts in Georgia, the Judicial Council adopted operation and treatment standards for all accountability-court programs. When applied appropriately, standards ensure improvement and uniformity in the delivery of services to participants throughout the state’s 159 counties. Researchers at the Administrative Office of the Courts are collecting data to measure program quality and inform needs for technical assistance. Certification and peer-review processes are underway.

### **Hawaii’s Hope Program Expands Across the Country**

The HOPE program (Hawaii’s Opportunity Probation with Enforcement), which began in 2004, is now recognized internationally and nationally as a model that successfully deters crime and substance abuse through fairness, discipline, and compassion. More than 18 states across the country have used HOPE as a model. HOPE probation helps defendants succeed by reducing crime, substance abuse, and recidivism.

### **Idaho Courts Improving Response to “Silver Tsunami”**

As Idaho’s elder population grows by 147 percent in the coming years, its courts are protecting and empowering individuals under guardianship and conservatorship. Through judicial leadership, innovative policies, and partnership with stakeholders, the courts have established a public complaint process, procedures for finding missing guardians or conservators, post-appointment court monitoring of persons under guardianship and conservatorship, third-party review by court personnel of all conservatorship accountings, online training, and simpler standardized annual forms to collect information.



ME Penobscot Judicial Center

### **Illinois Makes Civil Justice More Accessible**

The Illinois Supreme Court established the Civil Justice Division within the Administrative Office of the Illinois Courts. The Civil Justice Division’s objective is to help the legal system efficiently deliver fair-and-accessible outcomes to all court users, particularly low-income, vulnerable individuals. This division is working to promulgate statewide standardized forms and provide language-access services and support across the state, among many other services.

### **Indiana Responds to the Needs of Incapacitated Adults**

A new resource to serve the potentially growing number of aging and incapacitated adults in Indiana was established by the legislature in 2014 and staffed by the Indiana Supreme Court’s Division of State Court Administration. More than \$300,000 in grants were made to nine volunteer-based guardianship programs serving over 300 individuals. The supreme court also funded a unique online guardianship registry, providing public access on the status of guardianship cases throughout Indiana.

### Iowa Establishes Business Specialty Court Pilot Project

The Iowa Supreme Court established a three-year pilot project for an Iowa Business Specialty Court for complex commercial cases with \$200,000 or more in dispute. This separately managed docket within Iowa's unified court system will leverage judicial expertise and litigants' desires to tailor case management practices best suited for resolving substantial business disputes fairly and expeditiously.

### Kansas Moving Toward e-Filing

Kansas is implementing a statewide e-filing system in several locations. By June 30, 2014, e-filing will be present in 11 of Kansas's 105 counties, and more than half of the state's nontraffic case filings will be eligible to use it. For appellate courts, the briefs and thousands of other pages of paper that can accompany an appeal are scheduled to be sent electronically from three urban counties: Sedgwick, Shawnee, and Johnson.

HI Supreme Court



### Kentucky Introduces e-Filing

The Administrative Office of the Kentucky Courts is implementing e-filing as part of its plan to update the court system's aging technology. e-Filing will be available in all 120 counties by the end of 2015. "This will transform the way Kentucky courts do business," said Chief Justice John D. Minton, Jr. "The cost savings will be substantial and the state's entire legal system will become more efficient when we process court cases electronically."

### Louisiana Improves Court Governance

A group of Louisiana judges and court administrators, with assistance from the Louisiana Judicial College, is developing a series of seminars designed to inform the judiciary on issues related to court governance. The goal of the seminars, which will continue through 2014, is to teach judges and administrators how to blend court administration with judicial independence.



KY Supreme Court Entrance

### Maine Speeds Up Criminal-Case Processing

The Unified Criminal Docket (UCD) pilot project creates a single efficient way of processing criminal actions and civil violations by allowing for early information sharing, quick access to appointed counsel for defendants unable to afford attorneys, and prompt judicial attention to resolving cases. UCD eliminates case transfers between district and superior courts, reduces the number of court appearances, and promotes public safety by reducing delay and providing a quick response to crime victims.

### Maryland Increases Access-to-Justice Outreach

The Maryland Access to Justice Commission, working with the Office of Communications and Public Affairs, produced four videos to help self-represented litigants use the courts. These videos are available online at [mdcourts.gov](http://mdcourts.gov): *Tips for Your Day in Court*, *Service of Process*, *Defending a Small Claim*, and *Finding Legal Help*. Another video, *The Maryland Court System*, is used to educate high-school students about the state's courts. Assistance is also available via live chat sessions.



The Great Hall of the John Adams Courthouse, MA Supreme Court

### Massachusetts Courts Expand Use of Evidence-Based Practices

Massachusetts trial court judges and the probation department are using evidence-based practices to inform judicial decision making. A strategic plan to expand specialty courts using criteria and outcome data was developed with the state public- and mental-health departments. The legislature has funded expansion of the HOPE/MORR national pilot project to reduce recidivism. The project is showing good compliance data from Essex County, resulting from a model that calls for swift, certain, and measured sanctions.

### Michigan Uses Grant Funds to Spur Court Innovation

Michigan provided grant funds to courts to support innovation in a diverse array of court services. Innovations include improving collections using social media; implementing a human-trafficking court; automating income-tax garnishment through e-filing and electronic service of writs; developing a smart-phone interface allowing attorneys and parties to electronically check in at court; testing methods for early appointment of counsel for indigent defendants to reduce jail overcrowding; and developing a court based on tribal peacemaking principles.

### Minnesota Courts Going “Paperless”

The Minnesota Judicial Branch completed a pilot program launching its statewide transition from paper-based to electronic case records by the end of 2016. Electronic filing (e-filing) of family and civil cases is mandatory in pilot district courts; for many other case types, it is optional. District courts have been converting paper case documents into digital images that are stored in the branch’s case management system. These images are viewable on public-access terminals in 44 courthouses.

### Mississippi Mandates e-Filing

The Mississippi Supreme Court made electronic filing mandatory for briefs and motions on January 1, 2014, and will implement other e-filing capabilities in later phases. Mississippi Electronic Courts (MEC) is adapted from the e-filing system used by the federal courts. Mississippi is the only state to obtain permission to use the federal court system. E-filing is currently used in 22 Mississippi trial courts in 13 of the state’s 82 counties.

### Missouri Chief Justice “Goes Undercover” for Access and Fairness Surveys

Adorned in the same bright green “You Be the Judge” shirt as her fellow surveyors from the state AOC, Chief Justice Mary Russell went incognito to courts in Osage and St. Louis counties to conduct public access and fairness surveys. By using the National Center for State Courts’ Access and Fairness *CourTools* survey, results can be compared across jurisdictions and other states. More survey sites are expected in the near future.

MS Supreme Court



### Montana Shares Case-Processing Info with Public

Montana began quarterly publication of case-processing measurements for the state’s trial courts. This follows on the heels of the implementation and distribution of case-processing standards for the state supreme court. The projects are part of the Montana Judicial Branch’s initiative to bring detailed case-processing information to citizens and improve understanding of the courts’ workload and time standards.

### Nebraska Develops Course for Guardians ad Litem

Through an SJI grant, Nebraska Judicial Branch Education built a six-hour Web course for attorneys interested in becoming guardians ad litem in juvenile court. Nebraska attorneys and judges provided input for a curriculum that was delivered to the National Council of Juvenile and Family Court Judges. This course requires attorneys to experience the progression of a case through juvenile court before being appointed to serve. Automatically scored exercises ensure attorneys have mastered the content.

### Nevada Launches First Appellate Court Apps

The Nevada Supreme Court was the first state appellate court in the nation to launch Apple and Android mobile applications. The applications provide access to a variety of supreme court case documents, oral argument calendars, recordings, decisions, court rules, and self-help resources.



NH Supreme Court

### **New Hampshire Call Center Saves Courts 1000s of “Work Days”**

Centralization, specialization, and automation have improved customer service and saved New Hampshire court resources. For example, all telephone calls to New Hampshire trial courts (500,000 annually) are routed to a call center. Agents trained in trial court subject matter, telephone tools and techniques, and customer service can use the courts’ case management system and respond to nearly 70 percent of calls, thus saving the trial courts 2,602 work days annually.

### **New Jersey Works to Improve Access to Justice**

In October 2013, the New Jersey Judiciary became the first court system to administer a statewide survey to assess court users’ perceptions about access and fairness. Based on NCSC’s *CourTools Access and Fairness Survey*, the New Jersey survey sought feedback on everything from court safety to interpreting services. The judiciary’s Access and Fairness Committee collected more than 16,000 responses to guide their efforts to improve court services for all users.

### **New Mexico Improves Case Management System**

Odyssey, New Mexico’s case management system, allows for increased efficiency and streamlined processes. This new system has been implemented in all state courts except the Bernalillo County Metropolitan Court, which will be fully converted to Odyssey in 2014, followed by the New Mexico Supreme Court and Court of Appeals. The system is frequently updated and will support the courts’ long-term case management needs.

### **New York Confronts Human Trafficking**

New York became the first state in the nation to implement a comprehensive response to human trafficking. Human-trafficking intervention courts now address 95 percent of the arrests for prostitution and prostitution-related offenses in the state. These courts are presided over by a specially trained judge who works with stakeholders to identify trafficked defendants and engage them with a full range of services to restore them to productive, law-abiding lives.

### **North Carolina Expands Language-Access Services**

The North Carolina unified court system has expanded its language-access services for all foreign languages to limited-English-proficient (LEP) individuals in all child custody and support proceedings. Court interpreters will be provided at the state’s expense. Child custody and child support trials have an immense effect on children and families and making language-access services more available will help mitigate negative impacts from these proceedings.

### **North Dakota Improves Decision Making on Youth Detention**

North Dakota’s statewide detention-screening tool helps reduce the disproportionate number of minority youth in pretrial detention. A two-year pilot project shows that the screening tool substantially reduced the number of children initially placed in detention and the number of days children were held. The court and the North Dakota Association of Counties produced a video about the legal and social concerns of youth detention, which is used to train law enforcement and juvenile court staff.

NY Court of Appeals Entrance





OH Supreme Court Bench Fascia

### **Ohio Adopts Rules Governing Visitation in Family Cases**

Ohio is one of the first states to establish a standardized, statewide scheme governing parenting coordination. Rules 90 through 90.13 of the Rules of Superintendence for the Courts of Ohio (effective April 1, 2014) address the circumstances under which parenting coordination should be used; the role and qualifications of a parenting coordinator; responsibilities of the court when ordering parenting coordination; and requirements when domestic abuse or domestic violence is alleged, suspected, or present.

### **Oklahoma Improving Court Interpretation**

The Oklahoma Supreme Court has appointed a new statewide board of examiners of certified courtroom interpreters to assist with adopting uniform rules and procedures for certifying and using language interpreters in the district courts. The court has also directed the Administrative Office of the Courts to increase public awareness of these services, expand the training available to judges and their staff, and expand the scope of language interpreter services through technology.

### **Oregon Provides Remote Interpreting Services**

The State Court Administrator's Court Interpreter Services Unit uses remote audio/video interpreting (RI) technology to deliver language and ASL services to courtrooms in 33 of Oregon's 36 counties. In 2013 RI assistance served speakers of 178 different languages in 1,078 nontrial court proceedings. An online feedback system measured 97.4 percent user satisfaction and resolved 74 system/user issues. RI equipment was added to court public counters in two counties as part of a grant-funded pilot project.

### **Pennsylvania Measures Problem-Solving Court Performance**

Pennsylvania launched a statewide case management system for problem solving courts. This system generates "real-time" performance data using measures, developed by the National Center for State Courts (NCSC), for mental health courts and adult drug and DUI courts. These performance measures are part of the management information system and can be generated as reports by each individual court, as well as statewide. Pennsylvania will be working with NCSC to develop similar measures for veterans courts.

### **Rhode Island Automates Payment of Indigent-Defense Attorneys**

The Supreme Court Judicial Technology Center's Indigent Defense Attorney Time Tracking System (IDATTS) handles payment requests from indigent-defense attorneys. IDATTS verifies specific business-rule requirements regarding indigent-defense payments, including attorney appointment to cases, fee schedules, payment request deadlines, attorney approval for specific defense panels, and case payment caps. Payment requests meeting the rules are automatically entered into an electronic file for processing. Any exceptions are held until resolved.

### **South Carolina Moves from Paper to Electronic Documents**

The South Carolina appellate courts have started going paperless by using a new Web-based case management system, iPads, and other devices to allow court staff to work without paper documents. In addition to reading and annotating pdf documents and having instant access to e-mail and court Web sites, judges use iPads to circulate opinions for approval and filing. Work that came in 32-pound boxes is now transmitted to a 23-ounce iPad.

### **South Dakota Recruits Attorneys for Rural Counties**

The South Dakota Legislature adopted a pilot program to recruit attorneys for rural areas. The program provides a financial incentive for attorneys to set up a practice in counties with a population of 10,000 or less, which accounts for 48 of the state's 66 counties. The attorney must practice in the rural county full-time for at least five years. The funding is a partnership between the state, the counties, and the state bar association.

### **Tennessee Uses Faith-Based Initiative for Pro Bono Services**

The Tennessee Faith and Justice Alliance was developed by the Tennessee Supreme Court Access to Justice Commission to bring together people needing legal help with pro bono attorneys at their houses of worship. It is the first program of its kind to align legal needs at local churches with nearby resources. Plans call for expanding it to all faiths and geographic areas of the state.



WA Temple of Justice Foyer

### **Texas Works to Close School-to-Prison Pipeline**

The Texas Judicial Council submitted proposals to modify the education, family, and penal code to help keep children who commit minor conduct offenses on school property out of the criminal court system. Almost all of the recommendations were compiled into one bill (SB 393) that passed with broad support through both houses and was signed into law by the governor. This law should decrease the flow of juveniles into the pipeline and reduce court caseloads.

### **Utah Mandates “e-Everything”**

In 2013 Utah courts reached an important milestone in their transition to electronic operation with mandatory e-filing of all civil, domestic, probate, and citation cases for every general and limited jurisdiction court statewide. Mandatory e-filing will be extended to criminal, juvenile, and appellate cases during 2014. In addition to e-filing, Utah’s definition of the e-record includes e-documents, e-payments, e-warrants, e-service and notice, and Judicial Workspace, an application tailored to the electronic needs of judges.

### **Vermont Works to Improve Customer and Employee Satisfaction**

The Vermont Judiciary simultaneously conducted customer service and employee satisfaction surveys using NCSC *CourTools* performance measures. The court administrator is traveling to judiciary work sites around the state to discuss the results and to thank employees for the high scores received on the Access and Fairness survey. Employees brainstorm ideas to make the judiciary a better place to work. The sessions will be followed by implementation of ideas based on the employee feedback.

### **Virginia Rolls Out e-Filing System**

The Virginia Judiciary e-Filing System (VJEFS) allows attorneys to file civil actions in circuit court electronically and is now live in 16 courts and continues to be rolled out statewide. VJEFS is a comprehensive automated system developed by the Office of the Executive Secretary to integrate with the circuit courts’ existing, statewide Circuit Case Management, Case Imaging, and Financial Management systems, thereby improving efficiency. VJEFS won the 2013 Governor’s Technology Award.

### **Washington Offers Limited-Legal-Practice Option**

In response to the growing needs among litigants, the Washington Supreme Court approved the Limited License Legal Technician Rule in which trained non-attorneys can help court users with less-complex legal needs, such as filling out and filing the correct paperwork. This rule makes Washington the first state legal system in the nation to join other professions in offering limited-practice options, which open doors to professional help for people with unmet, simpler legal needs.

### **West Virginia Assesses Felons’ Risks and Needs**

In January 2013, the West Virginia Supreme Court directed each felon be given a risk-and-needs evaluation upon finding of guilt. To perform those evaluations, every probation officer was directed by the court to be certified in administering the Level of Service/Case Management Inventory (LS/CMI) test. A new electronic offender management system integrates the standardized pre-sentence investigation reports with the LS/CMI results, creating a rich pool of data for determining the efficacy of offender programs.

### **Wisconsin Rolls out Evidence-Based Decision Making in Criminal Justice**

Milwaukee and Eau Claire counties, with assistance from the National Institute of Corrections, made significant progress in building a system-wide framework (arrest through final disposition and discharge) that results in more collaborative, evidence-based decision making and practices. The initiative provides local criminal justice policymakers with the information, processes, and tools that will result in measurable reductions of pretrial misconduct and post-conviction reoffending. These practices are now being expanded to other jurisdictions around the state.

### **Wyoming Improves Citations via Technology**

The Wyoming Supreme Court partnered with the Wyoming Highway Patrol in the creation of statewide eCitations. When combining this technology with the existing Wyoming ePay system, citations can be issued and then sent electronically to the court, and payment can be received in less than a 48-hour business cycle. The advent of eCitations also means only one justice agency is entering the data, accomplishing better efficiency and accuracy in government work.

WV Supreme Court of Appeals Entrance



# IMPROVING COURTS







# Using Technology to Improve Jury Service

**Hon. Stuart Rabner, Chief Justice,  
Supreme Court of New Jersey**

*Millions of people are summoned for jury service each year nationwide. The New Jersey Judiciary has used technology not only to summon jurors, but also to make it easier for them to serve.*

We are fortunate to live in a society in which we have the right to be judged by our peers. Along with that right comes responsibility. We must all serve when called, or the jury system we value will not work.

For our system to function properly, millions of citizens across the nation are summoned for jury service every year. Jurors who perform this basic duty of citizenship deserve our gratitude and respect. They also deserve to be treated by the courts in a manner that makes jury service as convenient as possible.

With that aim in mind, the New Jersey Judiciary has developed and used technology in a variety of new ways to enhance the way we interact with more than one million citizens summoned for jury duty each year.

As a first step, we developed a proprietary automated jury management system that greatly improved the judiciary's ability to select and manage juries and provided uniform operations statewide. Next, we developed an online juror questionnaire. After a substantial percentage of potential jurors switched to the online response system, the judiciary developed a program that invites jurors to submit

cell-phone numbers and receive text messages about their upcoming jury service. Most recently, in December 2013, we made available a new mobile app that allows jurors to get helpful, current information about jury service on their mobile devices, drawing on the judiciary's Web site, [www.njcourts.com](http://www.njcourts.com).

## **Jury Automated System**

Each improvement has rested on previously developed technology, so that every step forward became a stepping-stone for the next project. The judiciary began using a jury automated system (JAS) in the late 1990s to manage all aspects of jury operations. JAS merges four lists: registered voters, licensed drivers and photo-ID holders, filers of state personal-income-tax returns, and applicants for homestead rebates for property tax relief. JAS is also used to select jurors randomly, download summons information from each county to print juror summonses, track juror attendance, analyze juror use, record panel selection, verify service, process juror payments, and manage other issues, such as failures to appear.

JAS allows for local management but provides central office efficiencies. Each jury manager controls the number of summonses to be generated each week, but the central office prints and mails summonses as well as checks to jurors once their service ends.

The judiciary also implemented a barcode system for juror identification. A barcode is now included on the single-page, pressure-sealed summons that jurors receive.



Jurors are instructed to retain the bottom of the summons, which includes their juror badge and barcode, and to bring it with them to the jury office. The juror badge is scanned when a juror arrives, and each juror must wear the badge at all times. Attendance is tracked daily by scanning each juror's badge. This barcode system has been adopted by other jurisdictions.

JAS eliminated considerable data entry and other clerical functions, and it allowed local jury managers to focus instead on managing jurors in their own counties. Managers had more time for day-to-day operations and problem solving, and they continued to work with the judiciary's central office staff to improve operations.

### Jury Online System

A few years after the automated system was up and running, jury managers began receiving requests from jurors to interact with the courts online. As more people began to communicate and shop online, they looked for similar efficiencies in other areas, including jury service.

In response, in October 2010, the judiciary introduced an online response system that allows jurors to answer an initial summons by accessing a Web site and filling out a questionnaire. The judiciary modified the jury summons and explained how to access an easy-to-remember URL, njcourts.com/juror. As a result, anyone who receives a jury summons can complete the questionnaire online.

This jury online system (JOS) is fully integrated with JAS, so that the data jurors enter are automatically added to the statewide database. That eliminates even more data-entry work for court staff. Before JOS, staff members manually opened more than one million juror-qualification questionnaires each year, entered data for each juror,

“Each improvement has rested on previously developed technology, so that every step forward became a stepping-stone.”

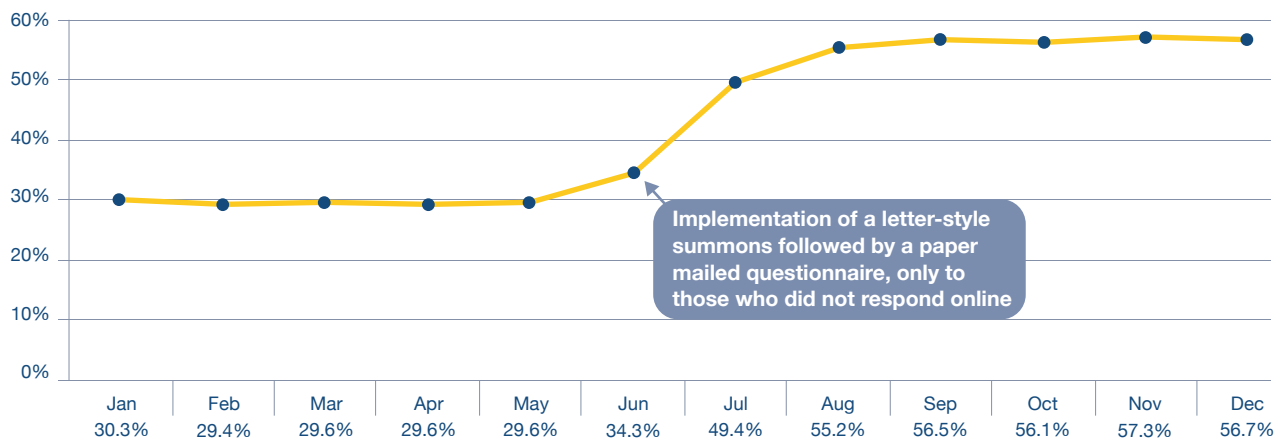
scanned barcodes, typed name and address changes, and processed disqualified jurors and people requesting postponements. After JOS, all of that work is done by jurors who complete their questionnaire online.

There are other benefits as well. New Jersey law requires the judiciary to retain completed paper questionnaires for three years. Electronic responses alleviate the need to store those records. Also, the traditional approach requires the judiciary to maintain a file-management system so that particular questionnaires can be retrieved when needed. With the online system, jurors can print a page that confirms whether they are qualified to serve. That has greatly cut down on phone calls to local jury management offices from jurors checking their status.

Because the benefits of the online system were so great, we decided to increase its use. In February 2011, we surveyed jurors about their use of the online system. Of particular interest were jurors who knew the system existed but chose not to use it. We were surprised to learn that 46 percent of those jurors did not use the online option because they preferred the convenience of completing the paper summons. As a result, we began a pilot program in one county and replaced the paper summons/questionnaire with a letter-style summons without the questionnaire.

Rate of Online Responses to Mailed Jury Summons

Statewide Average - 2013



Instead, the letter provided the URL and instructions on how to access the online questionnaire. The letter advised jurors that if they declined to use the online system, they would be sent a traditional paper questionnaire in about three weeks.

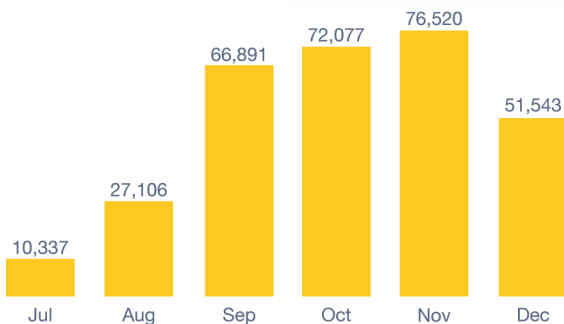
The percentage of online responses nearly doubled. We then fine-tuned the process and expanded to two more counties before implementing the approach statewide. Since June 2013, all 21 counties have been sending a letter-style summons first and mailing a paper questionnaire afterward only to those who have not responded online.

The judiciary used in-house programmers to develop this online system and integrate it with JAS. As a result, in-house IT staff will be able to maintain the system and upgrade it over time. (The programmers used ASPRunner, a packaged software that helped create a Windows-type interface for JOS users to enter information.) In addition, jury managers can now retrieve information from the database and make edits or write reports with that interface.

The online response system allowed the judiciary to roll out another convenient service for jurors: the option to receive text messages and e-mails about their upcoming jury service. Jury summonses are sent about eight weeks before the reporting date. In that time, some jurors are likely to forget or misplace a notice with reporting information. With the new online system, jurors can provide a cell-phone number or e-mail address when completing their online questionnaire so that the judiciary can send them reminders about their upcoming service.

Jurors first receive a reminder text or e-mail four days before their jury service. Since most jurors have Monday reporting dates, they receive a reminder message on the Thursday before their service starts. Starting on Sunday, jurors also get nightly updates telling them if they have to report to court the following day. That means jurors do not have to check the judiciary's Web site or call an automated jury line to find out about their reporting status.

**Number of Text Messages Sent to New Jersey Jurors in 2013**  
Program's First Six Months



These reminders and daily notices convey important messages. Jurors are reminded of their upcoming obligation, and they understand that the courts have not forgotten them. There is yet another message to jurors: we recognize their time is valuable.

Although the automated messages are produced by JAS, the judiciary employs a vendor to send jurors text messages. To sign up, jurors need to enter a cellphone number. The vendor identifies cell-phone service providers and manages the necessary relationships with each company to meet its individual requirements. The vendor, not judiciary staff, has the responsibility to adhere to FCC regulations and industry conventions. Using the vendor, initial start-up costs totalled about \$30,000, and each text message costs about five cents.

Cell-phone numbers and e-mail addresses are deleted 75 days after the conclusion of a juror's service. This added step helps protect jurors' privacy. The data needed to maintain necessary court records are maintained electronically, but personal information that is not needed to preserve the record is not retained.

In December 2013, the judiciary rolled out a new enhancement with the release of a mobile app for jurors. "NJ Juror" is now available at no charge in the Apple App Store. It takes jury information from the judiciary's Web site and conveniently packages it with one-touch links formatted for Apple iOS devices, including iPhones and iPads.

Jurors who download the app can find an extensive list of FAQs about jury service, watch the introductory video shown at the beginning of their jury service, and access the judiciary's social-media pages on Facebook, Twitter, and elsewhere.

The app also provides specific information for each location where juries are empanelled, including grand juries. Users can select a particular county and access directions to the courthouse, parking information, unscheduled closing announcements, contact information for the local jury manager, and a daily update on which juror numbers must report. There is even a link to Yelp to find nearby lunch locations.

Portions of the app—like the feature that provides jurors personalized directions from their home address—can be used by anyone traveling to New Jersey's courthouses.

The app was developed in-house using common app-development software. Apple reviewed it before adding it to their app store, but there was no cost for the review or placement. Similar apps for Windows and Android phones are now being developed.

The New Jersey Judiciary continues to seek improvements in its jury operations based on feedback we receive from jurors, jury managers, and other users. I am extremely proud of our jury and IT professionals, whose creativity and collaboration have led to each of these innovations. Through their work, we are able to interact with our fellow citizens and provide a jury system that is efficient, effective, and more convenient than ever. 🙌





# Access to Justice Commissions: Lessons from Two States

Hon. Nathan L. Hecht, Chief Justice,  
Supreme Court of Texas

Hon. Thomas L. Kilbride, Justice,  
Supreme Court of Illinois  
(Chief Justice, 2010-13)

*State access to justice commissions work with state supreme courts and civil justice stakeholders to expand access to justice; tap new sources of expertise, leadership, creativity, and support; and help state supreme courts in the administration of justice for low-income and vulnerable people. Illinois and Texas provide two good examples.*

Illinois and Texas, along with 30 other states and the District of Columbia and Puerto Rico, have created access to justice commissions that bring together the courts, the bar, civil legal aid providers, law schools, and other partners, such as legislators and business and community leaders, to address barriers to civil justice for low-income and other disadvantaged people. A number of state supreme courts are actively considering new commissions. The experiences of Texas and Illinois, one with a well-established commission and one with a brand new one, demonstrate what effective access to justice commissions can accomplish.

## Building a Culture of Support in Texas

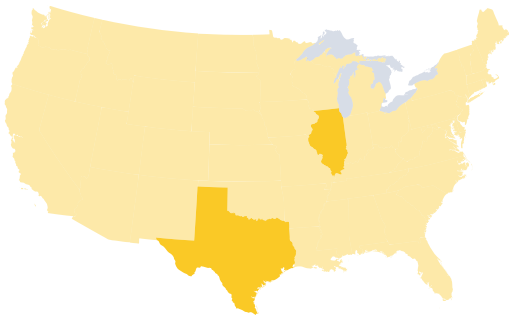
The Texas Supreme Court created the Access to Justice Commission in 2001, in the wake of an eye-opening court hearing the previous year that brought home the extent to which the civil legal needs of low-income Texans were going unmet. When the court became aware of the depth of the problem, several justices joined with representatives of the State Bar of Texas and the legal aid community to develop

solutions. Recognizing that uncoordinated and ad hoc steps would not do the job, the group recommended creating a commission that would engage all the major stakeholders in taking on the challenge. The entire Texas Supreme Court, including former Chiefs Tom Philips (1998-2004) and Wallace Jefferson (2004-13), has given unequivocal support to the commission and its efforts.

The state bar has provided staffing, including a full-time executive director for the commission. Chairs have come from the private bar, all well-respected leaders in the Texas legal community: founding chair John R. Jones; chair emeritus James B. Sales; and current chair Harry M. Reasoner.

## Expansion of Access to Justice Commissions

1994	Washington State
1995	Maine
1996	California
1997	
1998	
1999	
2000	
2001	Texas
2002	
2003	Arkansas, Colorado
2004	New Mexico, Vermont
2005	District of Columbia, Massachusetts, North Carolina
2006	Mississippi, Nevada
2007	Alabama, New Hampshire, South Carolina
2008	Hawaii, Maryland, Wyoming
2009	Tennessee, West Virginia, Wisconsin
2010	Kansas, Kentucky, New York
2011	Connecticut
2012	Illinois, Montana
2013	Delaware, Indiana, Virginia
2014	Arizona, Oklahoma, Puerto Rico



“The result [in Texas] is bipartisan consensus that providing assistance for those who cannot afford a lawyer is critical for the justice system and the integrity of the rule of law.”

Hundreds of volunteers—private attorneys, corporate counsel, legal aid staff, judges and court administrators, legal educators, librarians, IT professionals, public relations consultants, and others—serve on the commission’s committees.

An initial priority for the commission was expanding funding for civil legal aid. One of its first successes was obtaining a new funding stream from the legislature through the attorney general’s fund for crime victims. In 2009 the commission helped secure the first-ever state appropriation for civil legal aid to help address the shortfall in state Interest on Lawyers Trust Accounts funding, and in 2011 and 2013 it successfully championed preservation of the new funding stream.

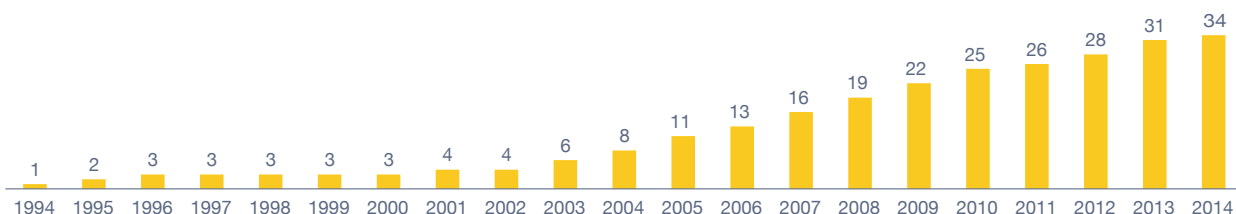
Achieving such results in hard economic times shows that access to justice has become a priority among Texas legislators across the political spectrum. Over the years, the commission has worked to raise the awareness of the legislature, the bench and bar, and the public about legal needs and the importance of the legal aid mission. It has made its case with editorial boards, corporations, and a broad range of organizations around the state. It has educated key legislators and recognized their support by presenting them with awards at large events in their districts. The supreme court has participated in this advocacy, making it clear that it regards legal aid funding as equal in importance to direct funding for the courts. The result is bipartisan consensus that providing assistance for those who cannot afford a lawyer is critical for the justice system and the integrity of the rule of law.

In addition, the commission has:

- developed and expanded new funding sources, including bar-dues assessments, *cy pres* awards, and a pro hac vice fee;
- mobilized new financial and pro bono resources for legal aid from corporate counsel;
- recruited technology leaders from large law firms to help upgrade the technological capacity of legal aid programs and provide cyber-security training and mentoring;
- created free advocacy training for legal aid lawyers taught by volunteer fellows of the American College of Trial Lawyers;
- convened a consortium of law schools that has developed programs, such as an annual Pro Bono Spring Break, to engage law students in serving low-income Texans;
- convened a task force of bar representatives, legal aid providers, court administrators, and court reporters to develop pro bono projects in underserved areas;
- highlighted the special legal needs of veterans at an annual gala, bringing in resources from new partners and supporting the development of new programs; and
- created an annual campaign around a voluntary contribution on the bar-dues statements, including an annual giving society (Champions of Justice Society) and statewide law-firm competition.

In 2010 the commission and the Office of Court Administration cosponsored a statewide summit on the needs of self-represented litigants. The commission’s Self-Represented Litigants Committee, created as a result of the summit, develops tools to help pro se litigants navigate the court system. Subcommittees examine policy, conduct trainings, and collaborate on state and local projects to improve services.

**Expansion of Access to Justice Commissions**  
Cumulative Growth in Number of States with Commissions



Over the past three years, the committee has:

- provided education to court clerks, judges, law librarians, legal aid staff, and the private bar on assisting pro se litigants without overstepping ethical duties;
- evaluated national support models for possible replication in Texas, including a mobile pro bono legal clinic for rural areas;
- provided technical assistance to courts and communities interested in developing or expanding self-help projects;
- created a “virtual file cabinet” of resources for self-help-center and law-library staff;
- presented seminars and webcasts for attorneys and judges on limited-scope representation, along with educational materials and risk management tools; and
- revised rules to ensure consistent treatment of affidavits of indigency.

In 2012 the commission provided valuable assistance to the Texas Supreme Court during the challenging process of developing and adopting statewide standardized forms for uncontested divorce. The commission developed proposed forms and a thorough report for the court’s advisory committee, with recommendations and extensive background material. The commission is currently helping to develop name-change, estate-planning, and probate forms.

Despite good intentions on all sides, the path has not always been easy. But the commission has provided a structure for resolving disagreements among stakeholders productively. It has engaged skeptics and potential opponents and often converted them into supporters.

The Texas Supreme Court convened two further hearings on civil legal needs (2004 and 2009), and access to civil justice remains a top priority in the court’s public statements. The commission conducts an ongoing communications campaign that includes regular CLE and other presentations at bench and bar events, newsletters, op-eds, videos aimed at particular legal audiences, and a speakers bureau. The result of these efforts is a culture of support for access to justice initiatives throughout the legal community and the general public.



### Access to Justice Commission Timeline

1990s

Access to justice commission is born as part of response by bench and bar across the country to civil-legal-aid-funding crisis.

2002

First National Meeting of State Access to Justice Chairs is attended by 80 state and national leaders.

2006

Plenary session at CCJ Midyear Meeting highlights commission model.

ABA creates Resource Center for Access to Justice Initiatives.

2010

Laurence Tribe, senior counselor for access to justice for the U.S. Department of Justice, addressing CCJ/COSCA, calls the development of access to justice commissions “one of the most important justice-related developments in the past decade.”

CCJ and COSCA adopt resolution supporting the creation of a commission in every state (goal reiterated in 2013)

Public Welfare Foundation recognizes the promise of the commission model and the importance of court leadership on access issues with major grants to the NCSC and the ABA. Kresge Foundation provides additional support to the ABA to expand its efforts supporting commissions.

With funding from the Public Welfare Foundation, the Kresge Foundation, and the Bauman Foundation, the ABA makes 26 Access to Justice Commission start-up and innovation grants.

NCSC launches Center on Court Access to Justice for All.

CCJ/COSCA Committee on Access, Fairness, and Public Trust highlights commission model and court role in expanding access.

Representatives of Supreme Courts from over 30 states are among 170 participants in 2012 and 2013 National Meeting of State Access to Justice Chairs, which include special programming for high court judges.

National Meeting of State Access to Justice Chairs held in May at Portland, Oregon.

ABA to issue evaluation findings and tools from its grant-funded projects.

2012-2013

2014

### Impressive Results from the Beginning in Illinois

The Illinois Supreme Court Access to Justice Commission was created in 2012 after extensive planning among leaders in the bar and legal aid community. The commission has met almost monthly and created a number of important working committees, each committee involving one or more commissioners. More than 300 lawyers, judges, clerks, law students, social service providers, and others have volunteered to work on commission projects.

In addition, more than 100 people attended the commission's First Annual Access to Justice Conference (2012); approximately 500 people attended access-to-justice-themed "listening conferences" in five locations across the state; and more than 400 people attended the commission's Second Annual Access to Justice Conference (2013). All seven justices of the Illinois Supreme Court attended these conferences, along with commissioners and leaders from the judiciary, legal aid organizations, and the private bar.

The commission's first annual conference (2012) highlighted three particular areas of high importance to the courts: standardized forms, language access, and guidance and education for court administrators and judges on dealing with self-represented litigants. The commission created working committees to develop specific initiatives and recommendations. Within less than a year, the court adopted commission proposals in each targeted area, including an amendment to the Judicial Canons to permit judges to make reasonable efforts to help self-represented litigants to be fairly heard; a model language-access plan/template for all courts; and a rule authorizing standardized plain-language forms.

These steps represent only the beginning of the commission's efforts. The commission is currently:

- finalizing standardized proposed forms for key matters, such as divorce, orders of protection, expungement, name change, and foreclosure;
- collaborating with the Administrative Office of Illinois Courts on a language-access policy to complement the language-access template for review and consideration in 2014;
- hosting, with the court, a series of regional language-access meetings to help prepare language-access plans statewide; and
- developing judicial training materials for dealing with self-represented litigants.

Other commission proposals adopted by the court in 2013 were a new pro hac vice rule with funds going to support civil legal aid and the commission; a new rule that eliminated licensing barriers for military spouses who are active attorneys in good standing in other U.S. jurisdictions and who reside in Illinois due to military orders; and rules expanding pro bono opportunities.

With the support of the commission, the Illinois legislature enacted a new Access to Justice Act in 2013 to fund pilot projects to provide court-based legal counsel for those who cannot afford a lawyer in civil cases, as well as projects to help disadvantaged veterans and military personnel. While Illinois has long had an effective coalition to support civil legal assistance, the commission's efforts increased the visibility of these issues and brought in new partners, helping to convince the legislature to provide additional resources.

The second annual conference (2013) focused on innovative, court-based pro bono models from Illinois and around the country, such as clinics, help desks, and mediation. The commission has developed a step-by-step checklist for starting and sustaining a court-based pro bono program, with links to supporting resources. Commission committees and subcommittees are supporting adoption and expansion of these models statewide.

During the first two years, the commission was chaired by Jeffrey Colman, a partner with Jenner and Block. Its committees and subcommittees are supported by volunteer staff assistance from the courts, legal aid, and private firms. The commission also benefits from special advisory committees, including the Deans' Advisory Committee (all nine deans of the law schools in Illinois); the Government Lawyers' Advisory Committee (the top government lawyers from the local and state executive and legislative branches); the Corporate Counsel Advisory Committee (many top corporate counsel); and a Medical Legal Partnership Advisory Committee (advocates working in medical legal partnerships or interested in starting such programs).

In two years, the commission has provided focus, coordination, and new energy to improving access to civil justice in Illinois. The commission looks forward to building on these initial successes much more in the months and years ahead.

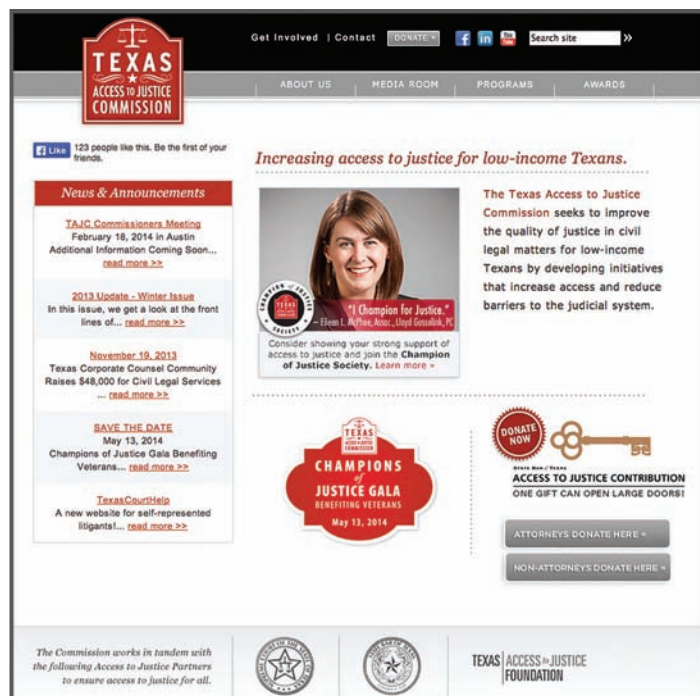
“The commission has provided focus, coordination, and new energy to improving access to civil justice in Illinois.”



## Reasons for Success

Texas and Illinois demonstrate that an access to justice commission can provide a powerful tool if its potential is realized. An effective commission can:

- focus the courts' attention on their responsibilities for ensuring access to civil justice for those who cannot afford attorneys;
- tap new sources of leadership, expertise, creativity, energy, and support to help the courts meet those responsibilities;
- expand funding, pro bono service, and other resources for civil legal assistance;
- ensure continuity and coordination among the institutions and organizations whose involvement is necessary for such efforts to succeed;
- promote the development of innovative responses to access challenges;
- provide a flexible process for developing proposals before official court action;
- provide a collaborative, informal process through which divergent opinions can be heard and differences resolved;
- speak with a voice separate from that of the courts to advocate positions that might be more difficult or less effective for the courts to promote;
- educate key decision makers, the legal community, and others about the importance of meeting civil legal needs, making it clear that advocacy supporting these goals is not based on institutional self-interest and transcends partisan politics; and
- foster understanding and support for access to justice in the general public.



Texas Access to Justice Website  
(www.texasatj.org)

## Additional Information and Resources

ABA Resource Center for Access to Justice Initiatives, resources on Access to Justice commission development leadership  
[www.ATJsupport.org](http://www.ATJsupport.org)

NCSC Center on Court Access to Justice for All, "Access Brief: Access to Justice Commissions" <http://www.ncsc.org/atj>

Texas Access to Justice Commission, semi-annual reports to Texas Supreme Court [www.texasatj.org](http://www.texasatj.org)

Four key factors underlie the success of the Texas and Illinois Access to Justice Commissions: court support and engagement; strong and effective leadership; a shared sense of mission and participation from other partners; and broad, bipartisan support.

Providing access to civil justice for those who cannot afford attorneys is essential to the administration of justice and among the responsibilities of the courts. But this responsibility cannot be fulfilled by the courts alone. An effective access to justice commission, embodying a partnership that extends across the legal community and beyond, can focus, complement, support, and leverage court leadership in achieving the promise of equal justice under law. ☺

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# Translate



# Video Remote Interpretation as a Business Solution

**Thomas Clarke, Vice President  
of Research and Technology,  
National Center for State Courts**

*Courts are under increasing pressure to provide broader interpreter services. One strategy for meeting the demand is video remote interpretation (VRI), and pilots of VRI are now demonstrating acceptable quality and cost.*

Courts have been using videoconferencing for some time in several capacities. Judicial training is probably the most widely used purpose, followed closely by video arraignments in criminal cases to avoid the cost and danger of prisoner transport. Until recently, any other court applications of videoconferencing were relatively rare and often not satisfactory because of quality issues. Those other uses included remote expert witnesses, remote interpreters, and remote testimony by juveniles who were being kept anonymous. All of these applications of videoconferencing were used only when physical participation in the court hearing was impossible. In other words, it was a last resort.

Fortunately, technical progress with videoconferencing in general has been both steady and significant over the last several years. Quality has improved in several ways. First, the general availability of high-definition video goes a long way toward reproducing an experience that more closely matches the direct physical experience by clearly showing important

aspects of body language. Second, most videoconferencing products, both hardware and software, are becoming more compliant with open technical standards, making it easier to reliably connect two parties. Finally, the cost of both hardware and software is speedily decreasing, as with all technology these days.

Of course, it does not matter how good or inexpensive videoconferencing technology is if a court or a remote participant in a court hearing cannot connect over a sufficiently fast Internet connection. Fortunately, the minimum requirement for a quality video and audio connection is at the very low end of what is now considered the broadband range, so individuals and courts are increasingly able to support that requirement.<sup>1</sup> Video connections can also be easily designed to “fail over” to audio-only connections if the bandwidth is insufficient. Since several states are currently using audio remote interpretation, it serves as a useful benchmark and starting point for video capabilities.

In the latest national survey, less than 6 percent of all households, and probably a lower percentage of courthouses, are unable to access at least a T1 level of throughput, which is 1.5 megabits per second. The proportion of households lacking broadband continues to decrease significantly each year, so we can expect this problem to continuously diminish in magnitude. Even better, courts will be motivated to upgrade their wide area networks to all courthouses to

support their e-courts initiatives adequately. That shifts some of the cost burden off of VRI and makes the business case easier to justify.

A range of video alternatives exist in the current marketplace. Choices will depend on the business requirements for particular hearing types; the degree to which courtrooms or hearing rooms already use technology, such as digital audio and cameras; and the budget constraints. Rather than mandating a single technology solution, courts might be wise to provide several tiers of remote capability suited to the situations and budgets of specific courts. For example, a remote rural court might use Skype or Jabber, while a large urban court with an advanced electronic courtroom might use the latest and greatest video equipment.

Once the technology infrastructure becomes capable of adequately supporting a court's need, the next step is working out pertinent policies and business processes to ensure sufficient legal quality. This kind of work is best done in real life using pilot implementations. No amount of legal or conceptual discussion can foresee what the experience will be like when participants in real court hearings try to use videoconferencing. As in all new business processes, some training and practice is necessary to attain the necessary skill levels and coordination.

Appropriate policies and processes are a tricky mix of legal protections and practical capabilities that influence each other. For example, one might restrict the use of VRI to very limited and controlled hearing types and translation situations if high definition is not available, because the lack of body language could meaningfully threaten due process. Most court hearings cannot appropriately use VRI if the reliability of the connection is questionable, since busy dockets cannot and should not wait for technical glitches to be solved.<sup>2</sup>

Another significant concern is quality assurance. Most states have established training requirements for their interpreters, and many vendors do the same. Any use of VRI must also provide for training and quality assurance. One way to do this, for a national cloud capability, is a contract provision specifying both training requirements and a quality-assurance process. Current state court policies, especially in jurisdictions piloting VRI, can be models or starting points.

It is unclear exactly what legal requirements should exist for video recordings of remote interpreters. If there is a need for such recordings, then storage-and-archiving requirements will need to be established. Most modern court case

THE NEW YORK STATE UNIFIED COURT SYSTEM

## Working with Interpreters by Video or Teleconference

TIPS FOR REMOTE INTERPRETING

**USE OF REMOTE INTERPRETING:**  
Remote interpreting is a useful alternative in providing court interpreting services, when availability or critical need renders on-site interpreting impractical. Telephone or video interpretation may be used in place of on-site interpreting whenever the quality of interpretation is not compromised and:

1. there is no on-site UCS staff or qualified freelance interpreter available, and there is a time-sensitive matter to be heard; or
2. there is no available on-site UCS staff or qualified freelance interpreter available for a less-immediate matter; or
3. it is more responsible to obtain the service by remote-means than to delay a court proceeding.

Remote interpreting may be considered a suitable option when there is a time-sensitive matter requiring interpretation and no other resources are available. Adhering to the following "tips" will help to ensure that the remote appearances run smoothly and efficiently.

**SCHEDULING A REMOTE INTERPRETER:**  
The Clerk (or appropriate court personnel) should provide as much advance notice as possible when an interpreter is needed. Requests for remote interpreting services may be submitted online, using the [Request for Remote Interpreting Services Form](#) that is available on courtnet, or by submission of a detailed e-mail to: [remotointerpreting@nycourts.gov](mailto:remotointerpreting@nycourts.gov).  
Include as much case information as possible with the request for interpreting services (e.g., case type, procedural phase, which party needs the interpreter), to help the interpreter prepare for vocabulary or legal terminology that may be used during the procedure.  
If it is the first time the court is conducting a remote session, a "test run" is strongly recommended. This test will confirm the clarity and proper use of video and/or telephonic connections and equipment to be used during the remote interpretation, and should be conducted at least 30 minutes prior to the remote session.

**BEFORE THE PROCEEDING:**

- Before the proceeding begins, the interpreter should be introduced (by the judge) to the court user, in order to ascertain that they understand and can hear one another.

**WORKING WITH INTERPRETERS BY VIDEO OR TELECONFERENCE**

**DURING THE PROCEEDING:**

- The Judge should have the interpreter state his/her name, spelling it out, for the record. Inquire whether any party knows the interpreter, to eliminate potential conflicts or the appearance of impropriety.
- Once the case is ready to proceed the interpreter can be sworn in. Administering the oath to the interpreter underscores the importance of adhering to the principles of clear and accurate court interpreting.

**SAMPLE OATH FOR THE INTERPRETER:**  
"Do you solemnly swear or affirm that you will interpret accurately, completely, and impartially, follow all official guidelines for legal interpreting or translating, and discharge all of the duties and obligations of legal interpretation and translation?"

- Remote interpretation should be done in the **consecutive mode**. All responses and verbal exchanges should include a **pause** after a sentence or two, in order for the interpreter to fully capture what is being said and to orally translate.
- If the court user and his/her attorney need to confer privately, the handset of the telephone may be used; if one receiver is utilized, it should be shared between the court user and the attorney.
- If needed, the court can utilize the "mute" button for in-court exchanges that do not involve the court user (similar to an off-the-record bench conference).
- Beware of shuffling papers or other activity near the microphones. All sounds near the unit will be transmitted and may interfere with the interpretation.

**EVALUATING THE REMOTE INTERPRETING SERVICE:**  
The court's observation can aid in the evaluation of an interpreter's performance. Accordingly, consider the following to determine if the interpreter is communicating effectively during the proceeding:

- Are there significant differences in the length of interpretation as compared to the original testimony?
- Does the individual needing the interpreter appear to be asking questions of the interpreter?
- Is the interpreter leading the witness, or trying to influence answers through body language or facial expressions?
- Is the interpreter acting in a professional manner?
- Is the interpretation being done in the first person? For example, while verbally translating what is being said in court, the interpreter must relay the statement as if he/she is the person speaking.
- In order to keep a clear record, does he/she address the Court in the third person? (e.g. "Your Honor, the interpreter could not hear the last question.")

At the conclusion of each Remote Session, please complete the **Remote Interpreting Assessment**, which is available online via courtnet. The Office of Court Interpreting Services (CIS) relies on your comments and suggestions in order to make remote interpreting a useful service.  
If an interpreter will be needed for a subsequent date, please submit a **Request For Remote Interpreting Services Form** to the Office of Court Interpreting Services, so that the remote arrangements can be made; scheduling arrangements for future assignments should not be made during the current video or telephonic remote interpreting appearance.

If you have any concerns or questions about an interpreter's performance, contact the Chief Clerk of the court. You may also contact the Office of Court Interpreting Services at (646) 386-5670 or by e-mail: [InterpreterComplaints@nycourts.gov](mailto:InterpreterComplaints@nycourts.gov)

THE NEW YORK STATE UNIFIED COURT SYSTEM

## Working with Interpreters by Video or Teleconference

TIPS FOR REMOTE INTERPRETING

source: www.nycourts.gov

management systems can store and link video files to docket entries for hearings, if necessary. The bigger problem, as for all electronic records, is preservation and access. How will courts guarantee that video-recording formats will be usable in the future and that the recordings will still be intact? These are open questions.

Thirteen states have implemented pilot VRI projects or are expanding existing projects. Another fourteen states are planning to explore or evaluate VRI capabilities during the next year. An even larger number of states are already using audio approaches to remote interpretation. This base of experience provides a solid starting point for establishing best practices.<sup>3</sup> One should not overstate the value of these pilot implementations for reducing the risk of large-scale use.<sup>4</sup> In most states, the courts actually using VRI are limited to a few jurisdictions and a small number of hearing types. VRI use at the counter and for non-courtroom hearings is even rarer.

Needless to say, the advent of operational VRI in courts has met with mixed support from professional interpreters. There are serious, valid concerns about appropriate use. Almost everyone can recall a bad experience of some kind with video conferencing in general, so we know that proper implementation is very important. We also know that interpreters and other hearing participants must adhere to best practices and become comfortable with the process. Not every interpreter can be a remote interpreter.

#### **North Carolina's Magistrate Video Project**

North Carolina's Magistrate Video Project (MVP) allows law enforcement and magistrates to conduct probable-cause determinations and initial appearances using video call technology. Using a laptop computer and wireless capability, a police officer can now contact a magistrate at any time from almost any location in the state. MVP has shown immediate benefits in cost and efficiency and has reduced risks related to transporting arrestees to magistrates' offices for law-enforcement officers. MVP was approved for use in 56 of North Carolina's 100 counties and has been implemented in 22 counties as of February 2014.

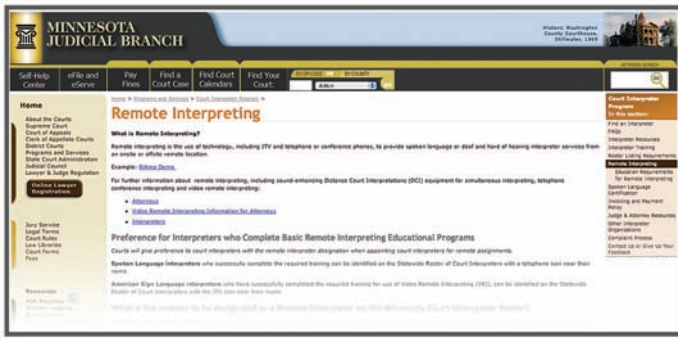
“...jurisdictions with many interpreters on staff for more common languages may find that they can augment revenues by selling the services of their interpreters to other courts.”

Fortunately, under the direction of the Conference of State Court Administrators (COSCA) Language Access Advisory Committee (LAAC), the Council of Language Access Coordinators (CLAC) is working on national guidelines now, and a number of states already use local guidelines.<sup>5</sup> In 2013 COSCA also passed a resolution authorizing LAAC and CLAC to establish best practices for the use of VRI and create a national database of qualified interpreters.

Each jurisdiction is in a different situation and will probably use VRI in different ways. For example, some states have many interpreters available for a majority of their core languages in many locations. They may have excess capacity that could be used by other, less fortunate states. At the other extreme, some more rural states may have very few practical interpreter resources and may need to do more hearings with VRI than others. Finally, there are many rare languages where few qualified resources are available nationally.

The last scenario illustrates a core business case for creating a national “cloud” VRI capability. While the cloud is definitely a buzzword now, we use it here to describe the ability of a court to schedule a remote interpreter for any language from any location using VRI. Depending on the capabilities of the cloud provider, remote interpreters may need to be scheduled, or they may be available in near real time. Cloud providers must respond to variations in demand across many courts without knowing ahead of time what that demand will be. The great advantage of a national cloud provider is that a court need not worry most of the time about finding the interpreter they need.

The first step toward a national cloud provider is creating a national database of qualified remote interpreters. This move alone would benefit most jurisdictions if it included many of the rarer languages, because finding and scheduling physical interpreters for the rarer languages is time-consuming and expensive. A national database of qualified interpreters matches supply to demand efficiently while eliminating travel costs.



Minnesota Judicial Branch: Remote Interpreting Website

VRI is obviously not a total solution to the interpreter problem. It is one strategy among several and should be used appropriately. VRI is probably a good solution when it is cost prohibitive to use a physical interpreter or when doing so would cause inappropriate case delays. When it is simply impossible to access a physical interpreter, VRI can be a solution. For most jurisdictions, VRI may be the best alternative for many rarer languages. Conversely, jurisdictions with many interpreters on staff for more common languages may find that they can augment revenues by selling the services of their interpreters to other courts.

While using large, high-definition screens definitely improves the body-language problem and high bandwidth mitigates audio-and-visual-quality issues, it is still not clear what hearing types will ultimately be judged appropriate for VRI. As use spreads, practical experience will help courts make that decision. It is already clear that using VRI and mobile end points will significantly mitigate translation problems at the counter and in informal hearing rooms. Encounters outside the courtroom may be perceived by case participants with interpretation needs as significant barriers. Courts should not concentrate their efforts exclusively on the courtroom and fixed VRI end points.

If the business case for VRI proves attractive to many jurisdictions, they will reap a bonus. The same high-performance videoconferencing infrastructure can be reused

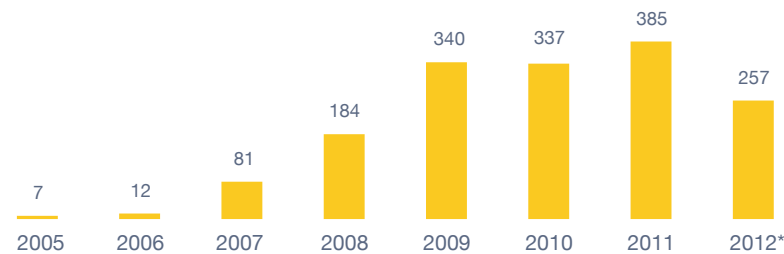
for other court purposes, such as remote expert witnesses or juveniles that need to remain anonymous. The hardware and software only needs to be purchased once.

Federal Department of Justice guidelines are broad and do include interpreter services outside the courtroom. Some courts are already experiencing a significant need for interpreters at the counter and elsewhere in the courthouse. As mentioned above, the use of mobile end points for VRI has the potential to readily support these additional needs. Courts will need to carefully consider when permanent fixed end points are appropriate and when mobile end points would be more advantageous.

American state and local courts can benefit from the experience of others with VRI. Other industries, such as health care, already make significant use of VRI. Other countries have used VRI for years, with Australia being one of the obvious leaders. U.S. courts and vendors can benefit from this prior experience and its hard-won lessons about how best to implement VRI. Because the technology used for VRI is evolving so rapidly, courts should be careful not to take these prior experiences too literally when it comes to making technology decisions.

It is safe to say that court use of VRI will increase along with improvements in the technical infrastructure and demand for qualified interpreters. Courts will incrementally add this new capability to their technology arsenal as needed. With luck, a national cloud VRI capability will also soon be available. ☺

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\* as of 8/31/2012

Source: "Management of Remote Interpreting Technology" workshop, October 2, 2012.

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- <sup>1</sup> For a proposed set of VRI business and technical requirements drafted by an informal group of court representatives from Florida, Kentucky, Texas, Oregon, Utah, West Virginia, South Dakota, Nebraska, and New York, see Clarke, 2012.
- <sup>2</sup> To see how courts are planning to deal with due-process issues, see the report on a new rule by the Arizona courts: "Report to the Arizona Judicial Council from the Criminal Rules Video-Conference Advisory Committee," Administrative Order 2008. See also the draft revisions of pertinent Michigan court rules: Supreme Court Order 2013-18. The latter also includes proposed standards for use.
- <sup>3</sup> For an interesting example of a pilot project that resulted in comprehensive recommendations for appropriate policies and business processes, as well as a quantitative business case, see the Wisconsin pilot report by Brummond and Mikshowsky (2012).
- <sup>4</sup> For a broader international view of appropriate practices for the use of remote appearances, see Schellhammer (2013). For a critical report on the use of VRI for sign language in Australia, see Napier (2011).
- <sup>5</sup> LAAC published its first version of business and technical requirements in July 2013. For an example of state guidelines for ASL, see Clark, Marx, and Varela (2012).







# Technology Solutions to Increased Self-Representation

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*Courts across the country are overwhelmed by litigants representing themselves in court proceedings, such as family law, small-claims, landlord-tenant, and domestic violence cases. New ways of addressing self-represented litigants are required to enable them to access the courts to resolve disputes.*

**T**he Legal Services Corporation (LSC) was established by the U.S. Congress in 1974 to provide equal access to justice and to ensure the delivery of high-quality, civil legal assistance to low-income Americans. The corporation currently provides funding to 134 independent, nonprofit legal aid programs in every state, the District of Columbia, and U.S. territories. LSC has been working with legal aid programs to identify better ways to address the challenge of increasing self-representation, many of which were developed at a Summit on the Use of Technology to Expand Access to Justice.

## **Tech Summit**

In late 2011, LSC, in conjunction with the National Center for State Courts, the American Bar Association, the National Legal Aid and Defender Association, the New York State Courts, the Self-Represented Litigation Network, and the U.S. Department of Justice's Access to Justice Initiative, formed a planning group to design a Summit on the Use of Technology to Expand Access to Justice (Summit). The group's mission statement reflects the magnitude of the

challenge: "to explore the potential of technology to move the United States toward providing some form of effective assistance to 100% of persons otherwise unable to afford an attorney for dealing with essential civil legal needs."

The work of the Summit was done by 75 leaders in legal services, the private bar, courts, libraries, IT development, legal academia, and other communities involved in providing access to justice. The process included two day-and-a-half working sessions and the preparation of numerous papers and analyses. The Tech Summit identified five strategies in December 2013:

1. Create unified "legal portals" in each state that direct persons needing legal assistance to the most appropriate form of assistance and guide self-represented litigants through the entire legal process via an automated triage process.
2. Deploy sophisticated document-assembly applications to support the creation of legal documents by both legal services providers and litigants that link the document-creation process to the delivery of legal information and limited-scope legal representation.
3. Take advantage of mobile technologies to reach more persons more effectively.
4. Apply business process analyses to all access-to-justice processes to make them as efficient as practicable.
5. Develop "expert systems" to assist lawyers and other service providers.



There are several innovative projects under way in the states that illustrate the document assembly envisioned in strategy 2, including New York and Minnesota. New Mexico is creating a legal portal that provides an “expert system” (discussed in strategies 1 and 5). Lone Star Legal Aid in Texas is revamping DisasterLegalAid.org to make it more accessible for mobile devices (as outlined in strategy 3). All are discussed below.

### The New York Do-It-Yourself Forms Project

In 2007 LSC made a Technology Initiative Grant (TIG) to Legal Assistance of Western New York to work with the New York Unified Courts to develop do-it-yourself forms for tenants. In 2008 these forms were completed over 8,000 times. The courts now have 24 different document-assembly forms available for housing, consumer, family, civil, wills and estates, and guardianship cases. In 2012 these forms were completed over 100,000 times.

These are free, step-by-step computer programs that ask the litigant a series of questions and use the answers to prepare personalized court forms that are ready to serve and file. Litigants can use the programs on the Internet or on terminals in courthouses. Some programs identify issues and produce information sheets.

The New York State Courts Access to Justice Program oversees the development of these programs to help unrepresented litigants navigate the court system. Programs were built using the A2J Author program and are hosted on LawHelp Interactive (LHI, a project of Pro Bono Net). Both were developed through LSC funding and are available to courts. A2J Author is available free, and licensing is available from LHI. LHI is used in 44 different states and had assembled over 1,000 documents per day as of August 2013.

At the start of this effort, New York evaluated the cost of building its own server. The idea was rejected as too expensive. The court system was not ready to invest hundreds of thousands of dollars building a server without knowing the benefits of the programs. Instead, they contracted with Pro Bono Net. Four court systems now contract with Pro Bono Net to host their document-assembly programs. Other courts partner with Legal Aid groups across the country to develop programs using A2J Author and HotDocs.

This is a good example of the value of partnerships between the courts and legal aid programs. It is also a fine example of the principle, “Buy it, don’t build it.”

One of the most popular forms used is for adult name changes. These are not high-priority cases for legal aid programs and lend themselves readily to do-it-yourself law.

The New York court system learned a great deal while working on this project. For example, it recognized the value of “plain language” and now targets forms to a fifth-to-seventh-grade reading level. An important byproduct of the project was a *Document Assembly Programs Best Practices Guide*: [http://www.nycourts.gov/ip/nya2j/pdfs/BestPractices\\_courtsystemdocument\\_assemblyprograms.pdf](http://www.nycourts.gov/ip/nya2j/pdfs/BestPractices_courtsystemdocument_assemblyprograms.pdf). The lessons contained in this guide should prove valuable to other courts as they move to using automated forms.



### The Minnesota E-Filing Project

As courts face shrinking budgets and increased caseloads, one bright spot is the use of technology to lower costs. The challenge of dealing with a huge number of self-represented litigants is pushing a drive for automated court forms to allow judges and court staff to spend less time explaining filing requirements and cases. This will allow the court to have all of the necessary and relevant information and will reduce errors by litigants. E-filing is also a cost-saving measure: electronic forms take less time to file and store.

What has been missing is a way to enable automated forms to be e-filed once completed and to store the data in the court’s case management system without requiring someone to type in the information all over again. There is a wealth of data in electronic documents that could save significant time for court staff and judges if the data could be extracted, stored in the court’s case management system, and then made available to be reused for dockets and orders without having to enter it manually. The innovative Minnesota E-Filing Project does just that.

The typical e-filing system requires users to register at a separate site, save documents to a computer, open a separate e-filing portal, answer e-filing questions, provide payment information, and upload documents to the e-filing portal. Through its TIG program, LSC is funding a partnership of Central Minnesota Legal Services and the 4th Judicial District Court of Hennepin County in Minnesota to develop an e-filing system that is more efficient and cost-effective for the court while accommodating the needs of low-income filers.

With funding from this grant, an e-filing option will be created in the documents-option page of LawHelp Interactive (LHI) to create a seamless system capable of creating an e-mail route to send documents to the signing judge, all without printing or scanning paper documents. The system is being built to enable data to flow from automated documents to the court's Tyler Odyssey EFM portal. The system will be ECF-4 compliant so that the new functionality is likely to benefit other states. The goal is for the system to serve as a model for other jurisdictions by demonstrating that an e-filing system is a viable tool for low-income, self-represented litigants. It will be possible to extend use to low-income persons in other places, such as shelters or social-services agencies. One barrier to filing from other locations is that forms must be notarized. This project will also seek to identify policy solutions to eliminate this barrier.



There are many benefits to implementing this system at the courthouse, including the ability to observe petitioners so as to enable court staff to provide assistance if problems arise and assess usability with a diverse user group; to submit complete and accurate “bug” reports; to log every technical issue; to resolve issues; and to make the system more user friendly before it is rolled out more broadly.

The grant also includes publication of *Principles and Best Practices for Access-Friendly Court Electronic Filing*. This document explains principles and best practices that help ensure that electronic-court-filing systems are deployed in a way that removes barriers to access, particularly for self-represented individuals. These practices have been developed with input from a wide variety of state and national stakeholders and are designed to use current technology and professional structures.



### The New Mexico Statewide Online Triage Tool

New Mexico Legal Aid is creating a statewide online triage tool for the major civil legal issues faced by low-income individuals and other vulnerable populations. “Triage” in this instance means that the system will use online, guided interviews to identify and recommend the best source of assistance for a litigant’s circumstances, such as location, income, and language. The system will direct users to the resources and services provided by New Mexico Legal Aid and five other legal aid programs in the state, in addition to court, self-help, and pro bono resources. New Mexico Legal Aid will be using Neota Logic to develop a system that can serve as a prototype for the legal portal.

### The Mobilization of DisasterLegalAid.org

Lone Star Legal Aid is revamping DisasterLegalAid.org (DLA) to make it more accessible for mobile devices. For many low-income people, their only access to the Internet is through their mobile phones. Recognizing that disasters can bring system outages, Lone Star Legal Aid is designing a mobile Interactive Legal Information Delivery System (I-LIDS) system for disaster survivors who may find themselves in areas without dependable Web access. Using commercially available, off-the-shelf components, the project team will assemble, configure, and deploy several I-LIDS systems that combine Bluetooth and Wi-Fi signals to communicate with people in close proximity to the I-LIDS unit. I-LIDS will quickly and conveniently deliver helpful, wireless, paperless information, including forms that they can file with FEMA and the courts to obtain the assistance to which they are entitled. Lone Star Legal Aid plans to deploy in the Texas service area to demonstrate an easily replicable concept tailored for disaster relief.



### Next Steps

Unfortunately, there is no national database on pro se litigation. A few states track pro se participation in some kinds of cases, but there is no uniform source of data. We are working with others in the legal community to encourage the development of such a database.

There is, however, extensive anecdotal data. At LSC's quarterly meetings of its board of directors, panels of judges from the surrounding jurisdictions discussed the impact of increasing self-representation in their courtrooms. In January 2013, LSC convened two panel discussions at its board of directors' meeting in Austin that examined the relationship of technology and self-representation. The first panel, "The Importance of Access to Justice to the Judiciary," included state and federal jurists from Arizona, Arkansas, California, Louisiana, and Texas, who eloquently outlined the limits on access to justice in their courtrooms and our need as a nation to do better. The second panel, "Technology Innovations Facilitating Access to Justice," outlined various technology projects under way to increase access to justice. Videos of board panels are available at [www.lsc.gov](http://www.lsc.gov). ↻

### Litigant Portals in Other Countries

The Netherlands and Canada are developing online portals to help litigants navigate the justice system. The Dutch are developing a portal strictly for divorce cases, which has yet to be completed or evaluated. Canada is asking litigants what they think is wrong with court processes and, what needs to change, and is working on a clear vision of what a litigant portal must do. The development of litigant portals will be the topic of an online Trends article by NCSC's Tom Clarke in September 2014 at [www.ncsc.org/trends](http://www.ncsc.org/trends).



# The Procedural-Fairness Movement Comes of Age

Hon. Steve Leben, Judge,  
Kansas Court of Appeals

*Research shows that public attitudes toward courts are driven more by how they are treated rather than by case outcomes. Courts can do much to improve public confidence in the justice system by focusing on procedural fairness, as shown in Alaska, Utah, and New York.*

Six years ago, National Center for State Courts researcher David Rottman called procedural fairness “the organizing theory for which 21st-century court reform has been waiting.” Recent developments in Alaska, Utah, and New York show that Rottman was right—a focus on procedural fairness is leading courts and judges toward better performance, better outcomes, and greater public approval.

Before we talk about those recent developments, let’s first be clear about what we mean by procedural fairness (also called procedural justice). For more than two decades, a number of social scientists—notably including Yale law and psychology professor Tom Tyler—have looked into how people react to their encounters with authority figures, including law-enforcement officers and judges. The research has shown that how disputes are handled has an important influence on people’s evaluations of their experiences in the

court system. In fact, these researchers have convincingly shown that the public’s view of the justice system is driven more by how they are treated by the courts than whether they win or lose their particular case.

Tyler (2008) has identified four basic procedural-fairness concepts that drive these reactions:

1. **Voice:** litigants’ ability to participate in the case by expressing their viewpoint;
2. **Neutrality:** consistently applied legal principles, unbiased decision makers, and a transparency about how decisions are made;
3. **Respect:** individuals are treated with dignity and their rights are explicitly protected; and
4. **Trust:** authorities are benevolent, caring, and sincerely trying to help the litigants—a trust garnered by listening to individuals and by explaining or justifying decisions that address the litigants’ needs.

People view fair procedures as the way to produce fair outcomes.

Although these ideas are distilled from careful research, they seem simple enough. But, traditionally, the focus of education and training for trial judges has been more on

learning legal rules (e.g., How do I rule quickly on a hearsay objection?) so as to avoid reversal on appeal than on how to deal with litigants so that they go away satisfied with their experience.

Successful efforts to refocus judges and court personnel are underway in Alaska and Utah. The developments there are worthy of national attention.

Let's start with Alaska. Under the leadership of present Chief Justice Dana Fabe and her predecessor, Walter L.

Carpeneti, all Alaska judges have received procedural-fairness training. But Chief Justice Fabe took things a step further in 2013: she posted a framed "Pledge of Fairness" in every courthouse in Alaska. In addition, she made the pledge a focus of her state-of-the-judiciary address to a joint session of the Alaska legislature, telling them, "What people should expect from a judge is courtesy, respect, and thoughtful consideration. And what they should expect from the process is to understand what happened, and why."

The poster makes these points in bold print. And it has been printed not only in English, but also in the six languages for which interpreter services are most often requested in Alaska: Hmong, Korean, Russian, Spanish, Tagalog, and Yupik.

Posting a fairness pledge in every courthouse—and announcing the move to the legislature and broadly to the public—served important purposes. First, Chief Justice Fabe emphasized that procedural-fairness principles were at the foundation of the court's mission. Second, she made the pledge a permanent statement to be read at a prominent location in each courthouse. It will serve as a reminder to

judges and courthouse personnel of a core aspect of their work. For members of the public, each time they step into the courthouse, they see an explicit performance promise that the courts must keep.

The statement has encouraged an understanding among courthouse employees that they have a shared mission with the judges in providing service to the public. Court clerks regularly see courthouse visitors reading the pledge, and the inclusion of a translation into several languages has

been a plus too—it has prompted courthouse visitors to ask about the language services that are available.

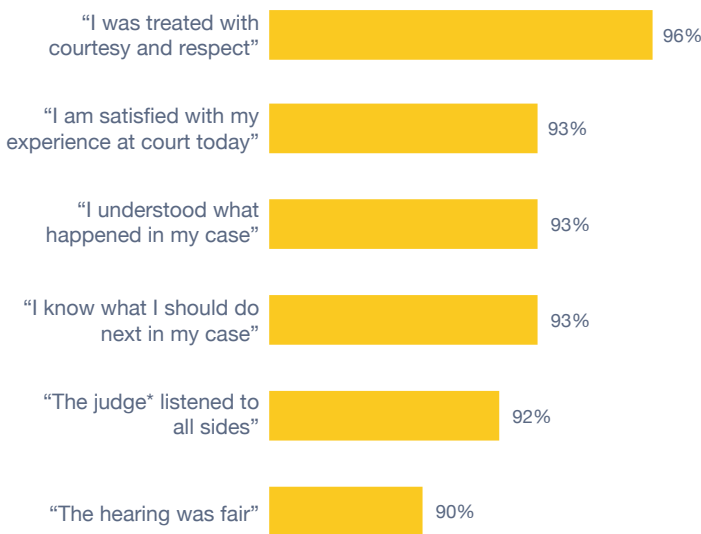
Now let's consider Utah. Its state courts present perhaps the most extensive emphasis on procedural-fairness principles anywhere. Like Alaska, all Utah judges have received procedural-fairness training at their state judicial conference. But Utah has something that no other state has—explicit and publicly available performance evaluations of every judge based on procedural-fairness principles. And that emphasis appears to be making a difference.

Utah has an independent Judicial Performance Evaluation Commission, established in 2008 with directions to have a system in place to provide public evaluations of Utah's judges by the time of its

2012 judicial-retention election. The statute creating the commission required that its evaluations be based in part on courtroom observation, and the commission adopted formal rules requiring that those evaluations be based on procedural-fairness principles. Volunteer citizen-observers fill out forms rating judges' performance on giving participants a voice in the proceedings, handling hearings in a neutral fashion, and showing respect for litigants and their rights.

What is important about this Utah experience is that it is having a measurable impact. Utah Chief Justice Matthew B. Durrant made procedural fairness the headline story for his 2014 state-of-the-judiciary address to the Utah legislature. He started with the number 93, which was the percentage of people leaving courthouses in Utah during a 2013 survey who said, “I am satisfied with my experience at court today.” That number was up from 87 percent in 2006. Chief Justice Durrant told the legislators about other positive numbers from the survey—broad agreement on a number of key statements:

### Survey of Utah Courthouse Visitors



\*Note: “Judge” also includes commissioners, referees, and mediators.  
Source: Utah Judicial Branch

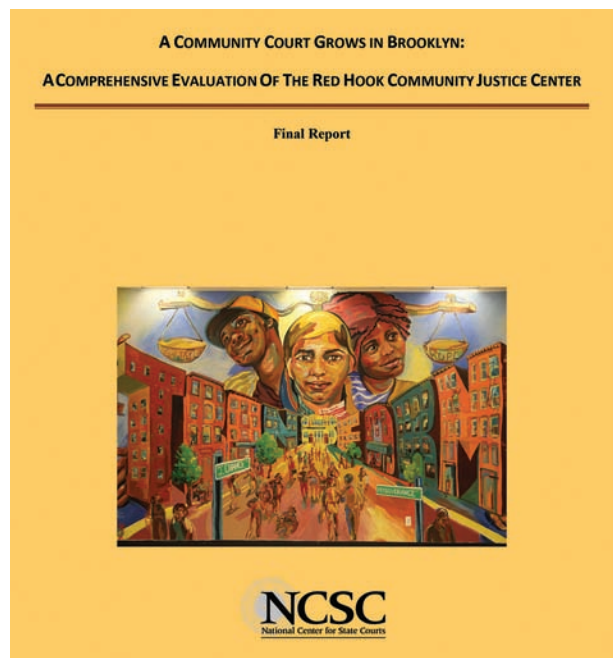
Chief Justice Durrant explained to legislators that “[w]hen people truly believe that they have been treated with respect, they in turn respect the process, regardless of the result.” He then explained the research on procedural fairness and told legislators that “we have taken the research in this area to heart. We have educated our judges and helped them hone these skills.” That’s a pretty good message to present to the public and the state legislature, and the Utah survey results show that its judges are, indeed, practicing these principles daily.

To be fair to Alaska, it too has formal judicial-performance evaluations and citizen-volunteers who report their courtroom observations of judges. While Alaska does not have formal rules explicitly adopting procedural-fairness principles for judging the judges, it probably is not a coincidence that the state courts in Alaska and Utah have a similar history of formal judicial-performance evaluations, including publicly released observations of judges’ courtroom behavior, combined with—perhaps leading to—

a statewide and public commitment from the state courts to procedural fairness.

So far, then, we have discussed two important developments. Alaska has proclaimed allegiance to procedural-fairness principles in large posters displayed in every courthouse—a useful reminder to judges and court staff, a promise to the public, and a valuable public-relations move so long as judges and court staff do their part. Utah has made procedural-fairness principles part of every judge’s exam grade. You might say that Utah judges have then “taught to the test,” but this is a test that every judge should be taught to perform well on. Who can complain if litigants leave the courthouse feeling that they were listened to, understanding what the court ruled and why, and knowing what they should do next in their case? Taken together, these developments help to improve public perceptions of the court system.

The third important recent development comes from research into a specific New York court—the often-studied Red Hook Community Justice Center in Brooklyn. A comprehensive evaluation of the court published in November 2013 looked to see why recidivism and crime had declined in the geographic area the court served. The researchers concluded that this “impact on crime and recidivism results primarily from the Justice Center’s ability to project its legitimacy to offenders and the local residential community rather than from strategies of deterrence or intervention.” And what leads to a feeling that an institution is legitimate, one that is entitled to be deferred to and obeyed? Tyler and others have shown that for courts and police, high performance in procedural fairness leads to a greater sense that their power is justified. Procedural fairness leads to greater respect



“Researchers found solid evidence that these procedural-fairness practices, combined with public perception that the court shares community values, helped to reduce recidivism rates.”

for the court as an institution, a sense that the court is a legitimate authority, and greater willingness to follow court orders.

Researchers found that Red Hook’s courthouse culture reflected a norm of being helpful to visitors to the courthouse, whether they came as defendants or otherwise, thus reinforcing a sense of procedural fairness. Red Hook’s judge exhibits procedural-fairness principles in his courtroom interactions. Researchers found solid evidence that these procedural-fairness practices, combined with public perception that the court shares community values, helped to reduce recidivism rates.

There have been other studies showing that adherence to procedural-fairness principles increases compliance with court orders and leads to a greater sense of the court’s legitimacy. But the Red Hook study is worthy of special note because the research design was exhaustive and looked

at a number of potential cause-and-effect relationships. Adherence to procedural-fairness principles and a sense of shared values seemed the most likely causes of the reduced recidivism.

So the promise that David Rottman spoke of six years ago is coming to fruition. Procedural fairness is moving into the mainstream as more states explicitly encourage their judges to practice these principles. There is substantial evidence that doing so improves public approval and acceptance of the courts—and even that it improves compliance rates with court orders and the law generally. As Rottman suggested, that is about as good a principle upon which to reform our courts as one could expect to find.

Going forward, judges and court administrators need to adopt—and even go beyond—the approaches now in place in Alaska and Utah. One good place to start is with court staff, who have a great deal of interaction with the people coming through our courthouses. Public proclamations of allegiance to procedural-fairness principles should be combined with effective staff training. In addition to learning these principles, court employees can benefit from procedural fairness too. Research shows that employees follow rules and do a better job when they perceive that workplace evaluations and procedures are fair. Focusing on using these same principles (voice, neutrality, respect, and trust) with employees as well as the public would go a long way toward creating a better courthouse culture.

Judges and court staff alike come to their jobs out of a desire to serve the public. Focusing every day on procedural fairness gives all of us a worthy and attainable goal that resonates with every court employee’s better self—the one that wants to serve. ☺

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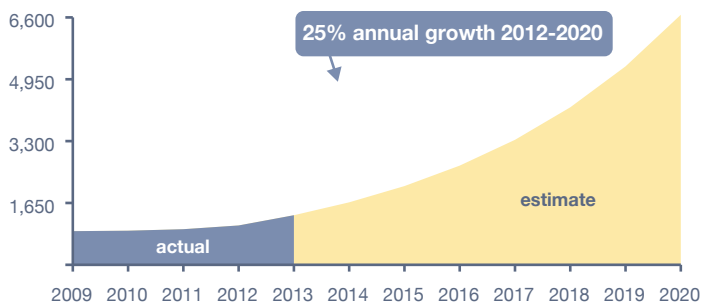
# Steps to Better Electronic Records Governance

Nial Raaen, Principal Court Management Consultant, National Center for State Courts

*The increasingly complex world of electronic records management requires new skills and approaches to maintaining and preserving court records. This includes greater attention to quality control; the adoption of standards; assessment of organizational capabilities; and, most of all, an approach that is both enterprise-wide and collaborative.*

The creation, acceptance, and preservation of records have always been among the core functions of the courts and are fundamental to protecting the rights and obligations of individuals and organizations. The information age continues to change the nature of recordkeeping profoundly. A 2012 market study commissioned by the EMC Corporation estimates that between 2012 and 2020 the digital universe in the United States will grow, on average, 25 percent each year, doubling every three years. Each new technological advancement—cloud computing, social media, e-filing—adds new challenges and complexities in managing records and information in today’s courts.

**Estimated Growth in U.S. Digital Data Usage**  
Exabytes of Digital Data Created and Consumed



Source: IDC's Digital Universe Study, Sponsored by EMC, 2012

Many of the fundamentals of good records management remain the same, regardless of whether the records we manage are paper or digital. Yet the move toward a more digitally dependent world requires a higher level of sophistication and greater collaboration on the part of judicial leaders than ever before. Court leaders not only need to manage records from the enterprise level, but also take advantage of resources and information available from the records management community at large.

## Take an Enterprise Approach

A wide range of information exists throughout any court’s enterprise, created and stored in different formats and across multiple technologies. Electronic records may be located in many different physical locations, including servers, desktop PCs, smart phones, and tablets. The potential for redundant information storage and version confusion grows as the volume of digital information and the speed at which information can be copied, printed, scanned, distributed, and read continues to increase. Further, electronic file formats have continuously evolved to meet user needs, creating new storage and preservation requirements.

Another challenge is the increasing quantity of “unstructured” information and records. Although the term is somewhat misleading, unstructured records include items that are not maintained in a structured file system or database, such as word-processing documents, spreadsheets, e-mail, and text messages. Many courts lack a coherent e-mail policy or have developed policies that routinely delete e-mail messages based on age or inbox volume. It is important to understand that an e-mail message is just like a piece of paper—it is the content that matters. As recent litigation has illustrated, organizations must be able to retain and produce e-mail content, which is considered a business record, according to established retention schedules; eliminate those items which are non-business-related or non-records; and maintain a defensible and uniform policy for e-mail deletion.

The management of records and information in this environment requires a holistic approach. Policies and procedures need to address information across the entire enterprise while maintaining appropriate levels of confidentiality and access control. The emergence of e-mail, scanning systems, collaboration forums, and other ways of exchanging information have had the unfortunate consequence of creating more information “silos” that impede effective information management. The concept of enterprise content management, or ECM, has been gaining more traction as organizations realize that the complete life cycle of content, from birth to death, must be managed across the organization.

### Assess Organizational Capabilities

The growing sophistication of electronic records and information management requires a greater level of technical and organizational sophistication than ever before. Increasingly, electronic images are being approved as original records, as long as there is a reasonable guarantee of integrity. With this development comes the need for a higher level of technical expertise and understanding by court managers.

As an example, courts often implement imaging systems without taking advantage of the possibilities for improved workflow. Too often, the result is that imaging often adds another layer of work without improving efficiency. Another tendency is to use imaging as an archival solution to saving space and improving access. However, massive transfers of paper files to imaging systems are often made without assessing access needs, creating reliable metadata and indexing systems, and ensuring that the court has the capacity to maintain a digital archive.

These examples point to the need to be a more educated consumer and to have the knowledge and skills to manage the increasingly complex and changing nature of records management.

To assist in this area, the National Center for State Courts has recently developed a Judicial Records Management Maturity Model as a tool to help courts assess their overall records management program. The tool is a set of questions under each of the standards established in COSCA’s recent white paper on records management, (as seen in the adjacent image).

An important lesson learned from organizations that practice effective records management is the need for a continuous process of monitoring and improvement. The challenge for leadership is to create a culture in which these principles are fully embraced and put into practice throughout the organization. Using the principles’ framework, the court

Please select the statement that most closely matches the current situation in your organization relative to digital records management:

**Governance**  
The principle of **Governance** addresses the need for organizational authority and control over records, as well as accountability for records management.

**Leadership Support (RM=Records Management)**

- No formal statement of management support for RM exists.
- Leadership is aware of the RM program.
- Leadership has formally endorsed the court’s RM program.
- Leadership actively participates in the development of RM strategy and policy.

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**Policies and Procedures:**

- RM policies and procedures have not been documented.
- Policies and procedures for some RM activities are documented.
- Policies and procedures for all RM activities and responsibilities have been approved and published.
- Published policies and procedures are regularly reviewed and updated by leadership with input from staff and users.

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**Training:**

- Staff training for RM has not been implemented.
- Informal, on-the-job training in RM occurs.
- RM training is provided to all staff with RM duties and responsibilities.

In addition to task-related training, staff receive RM training and information offered by outside agencies.

Excerpt from NCSC Judicial Records Management Maturity Matrix <http://survey.confirmit.com/wix8/p2776972228.aspx>.

“It is important to understand that an e-mail message is just like a piece of paper—it is the content that matters.”

can identify areas of strength and weakness and then develop an action plan and timetable for achieving performance improvement goals. In addition, a number of national and international records management organizations are excellent sources of information for the latest trends and best practices in information and records management. These include the U.S. National Archives and Records Administration,

the International Records Management Trust, ARMA International, and the Association for Information and Image Management.

### Apply Life-Cycle Concepts

All records have a life cycle, including, at a minimum, their creation, use, and

disposition. The continually decreasing costs of data storage contribute to a “save it and forget it” attitude to digital recordkeeping that results in increasing amounts of stored electronic information. While storage may be cheap, managing it is not. Consultation with technical staff or vendors to establish a regular program for assessing the condition of digital records for media stability and access should be part of a court’s overall plan.

Information governance must address both historical and legacy content, as well as remain forward-thinking to take advantage of emerging technologies and practices. It is easy to ignore aging electronic records, which are not immediately visible. Electronic records should be included in the court’s retention and destruction schedule.

Electronic record preservation strategies may require functionality for the migration of documents and data from online media to less costly secondary media as the frequency of access declines. Long-term retention requires planning to ensure processes are in place to migrate and preserve electronic records in a manner that ensures their integrity and continued accessibility.

### Conduct Regular Reviews and Audits

Ensuring the integrity, reliability, and accessibility of judicial records is critical to maintaining public trust and confidence in the courts. But doing so in an electronic world involves more than just pushing the save button. Audit and review mechanisms are necessary to ensure that procedures are being followed, controls are applied correctly, and record content is preserved and accessible. For optimal protection, audits and reviews should be performed on multiple levels, such as:

- regular checks of document-image quality, content, and metadata;
- retroactive review of system audit controls and quality-control logs to confirm that corrective actions were taken;
- audits of disposition actions and other documentation to verify that records were disposed of properly; and
- periodic reviews of document-imaging and electronic-record systems to ensure compliance with applicable laws, court rules, and standards.

By applying these levels of control, records managers can not only identify and correct errors, but also demonstrate that the document-imaging and electronic-retention program is operating in compliance with governing laws and rules of court. Routine internal audits can be conducted to check for data-entry errors, media integrity, and quality-control issues. Audits of a more technical nature, or designed to assess compliance with laws and regulations, may be better performed by independent external organizations.

### Adopt Standards and Performance Measures

Records management should be part of the court's performance measurement and improvement system. The *Trial Court Performance Standards Implementation Manual* and the National Center for State Courts' *CourTools* include standards for measuring file integrity, access, and consistency. Various other methods have been developed by trial courts across the country to assess the quality and effectiveness of their records management systems, which can be easily adopted by most courts.

The Conference of State Court Administrators recently released a white paper, "To Protect and Preserve: Standards for Maintaining and Managing 21st Century Court Records." This paper sets forth a set of principles as a framework for assessing and implementing effective judicial records management practices based on ARMA's Generally Accepted Recordkeeping Principles®. Six principles have been identified as central to judicial records management: compliance, access, integrity, preservation, disposition, and governance. The principles provide a framework courts can use to better manage both paper and electronic records.

There is also a growing body of records management standards available for reference and use, covering paper, microfilm, and electronic records. Recognized standards have been developed by the International Organization for Standardization (ISO), U.S. Department of Defense (DoD), ARMA International, the Association for Information and Image Management (AIIM), and the American National Standards Institute (ANSI). Court leadership and their technical partners should refer to these standards and adopt those that are relevant to the types of record systems under their control and care.

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### Be Collaborative

One of the unique challenges in managing judicial records is the fact that the responsibility for records is often shared among elected and appointed positions, as well as departments or divisions that may not be part of the judicial organization hierarchy. The responsibility for maintenance of supporting technology also varies. Larger courts may employ their own staff for information technology support and maintenance. Economies of scale in smaller courts often require these functions to be performed by information technology staff and support services that reside within departments under the control of the local executive branch. Even when technology staff works directly for the judicial branch, some functions, such as statewide case management systems and networks, are located in different levels of the judicial hierarchy.

“Ensuring the integrity, reliability, and accessibility of judicial records is critical to maintaining public trust and confidence in the courts.”

Court managers, clerks, judges, technical staff, and users need to work collectively in managing and selecting electronic records systems to ensure that strategic decisions take into account the needs of internal and external users, comply with legal requirements, meet accepted standards, and do not burden the organization with information that is no longer relevant or useful. The need for greater cooperation between clerks, judges, and court support staff has never been greater. Electronic records management is not just a technology issue; collaboration between court operations, legal, and technology staff is critical to managing complex issues and decisions in today's environment.

### **The Governance Age**

In the most recent issue of *Information Management*, ARMA International has identified the shift from records management to information governance as one of the five main trends that are reshaping records and information management today. The focus on governance recognizes the need for a more strategic and proactive approach characterized by a holistic view of information management throughout the entire life cycle of creation, use, and disposition. As this article suggests, effective governance in the judicial environment requires particular attention to collaboration between the various individuals and organizations that have a role in managing the information assets of a modern court. ☞





# Judicial Retirement and the Recession

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*Judicial retirement benefits—an important aspect of judicial compensation lacking the constitutional protections judicial salaries possess—have slowly eroded during the recent economic recession. This article examines the changing judicial retirement landscape, recent changes to two key aspects of judicial retirement plans, and the implications for adequate judicial compensation.*

The recent economic recession highlights the challenges to maintaining adequate compensation for state court judges. The failure of judicial salaries in most states to keep pace with inflation has received much comment, and even some relief. Less attention has been afforded the gradual erosion of judicial retirement provisions over the last five or so years. Although state constitutional provisions protect judicial salaries, no such restrictions safeguard judicial retirement benefits. State legislatures have trimmed judicial retirement plans in ways that potentially reduce judges' current and future benefits, effectively altering overall compensation. Retirement provisions are of particular importance to judges because judicial careers typically start in early middle-age, a very different scenario from other state employees.

While there is anecdotal information about changes to judicial retirement benefits, a longitudinal assessment of

those changes across the country is lacking. At the request of the Conference of Chief Justices (CCJ) Task Force on Politics and Judicial Selection/Compensation, the National Center for State Courts collected and analyzed data on judicial retirement benefits from 2008 to 2012. The objective was to provide an accurate and comprehensive resource for assessing the state of judicial retirement benefits as an important aspect of state court judges' compensation.

## **The Changing Context of Judicial Retirement Programs**

Judicial retirement benefits have increasingly become a target for budget cuts. For example, in 2013 Arizona legislation ended the Elected Officials Retirement Plan (EORP), of which judges were participants, and replaced it with a 401(k)-style plan. This change increased the retirement-fund contribution requirements of current judges. The legislation also took away pension payments guaranteed to continue until death and replaced them with a more limited 401(k)-style savings account. Similar changes have led to lawsuits in a number of states. Arizona and New Jersey judges filed lawsuits claiming that changes negatively affecting their retirement plans are an unconstitutional decrease of judicial salaries.

In the Arizona lawsuits, a pension reform increasing judges' contribution rates was held to be unconstitutional by an appellate court judge in February 2012 under the Arizona Constitution's contract and pension-protection clauses.<sup>1</sup> Likewise, in February 2014 the Arizona Supreme Court held

that a decrease in cost-of-living allowances for retired judges violated contract clauses in both the Arizona and United States' Constitutions.<sup>2</sup>

The New Jersey Supreme Court ruled last year that an increase in judges' contribution rates was an unconstitutional decrease in judicial salaries. The court noted that, in the past, an increase in contribution rates had been accompanied by an equivalent salary raise. Without this salary raise, the increase in contribution rates effectively diminished judicial salaries by up to \$17,000:

[A]n employer-generated reduction in the take-home salaries of justices and judges during the terms of their appointments [is] a direct violation of the No-Diminution Clause of our State Constitution.<sup>3</sup>

The constitutionality of reductions to cost-of-living adjustments (COLAs) in the salaries of sitting judges has also been successfully challenged in Illinois under the judicial-salary clause.<sup>4</sup> However, the constitutionality of reductions or suspensions to COLAs for *retirement* benefits has received limited attention. In Colorado, legislation that reduced COLAs for all retired state employees was challenged unsuccessfully under the contracts, due-process, and takings clauses. The challenge was unsuccessful at the district court level, but will be heard by the Colorado Supreme Court in 2014.<sup>5</sup>

Aside from arguments about the unconstitutionality of certain changes to judicial retirement plans, there are practical reasons for being concerned with reductions in the value of judicial retirement provisions. Reducing the take-home salaries of judges arguably decreases the attractiveness of a judicial career. Likewise, the uncertainty of future retirement benefits (and, therefore, compensation) also affects candidate willingness to ascend to the bench. The Texas Office of Court Administration has analyzed the reasons judges in Texas voluntarily leave the bench. Salary considerations influenced the decision for 48 percent of judges who left the bench either "to some extent" or to a "very great extent."<sup>6</sup> Likewise, 56 percent of judges cited retirement as a significant factor in their decision, with many referring to retirement-related financial considerations, such as being able to earn more by retiring from the judiciary or working in private practice.<sup>7</sup>

### Judicial Retirement Data Collection and Methodology

The initial focus of the trend analysis is on contribution rates, which are the percentage of a judge's salary that the judge pays into a defined benefit plan, and COLAs provided to retired judges' pension benefits. COLAs are typically set by statute and are meant to keep retirement benefits in line

with inflation. The relevant data were sought through a variety of methods, including obtaining information from state judicial retirement handbooks, Web sites, legislation, and state judicial retirement system officials.

For all states, NCSC collected data on contribution rates and COLAs from 2008 to 2012. For each year, states that changed their contribution rates or COLAs were identified. NCSC staff compared these features of judicial retirement plans between states and longitudinally (over time). Staff also identified states experiencing the largest cuts to retirement benefits and states experiencing only minor or no cuts. Using measurements of central tendency, such as the arithmetic mean and the median, NCSC examined how judicial retirement benefits among the states changed from 2008 to 2012.

### Analysis and Results

**Contribution Rates.** State judicial contribution rates increased from 2008 to 2012 in nearly one-half of the states, cutting into judges' take-home pay (see table). Of these states, the contribution rate changes were increases in all states but Washington (in 2009-10). Some of the states, such as Iowa and Wisconsin, experienced increases in more than one year during this time period. For the states included in the table, the average change from 2008 to 2012 was a 2.5 percent increase in contribution rates.

#### States Changing Pension Contribution Rates

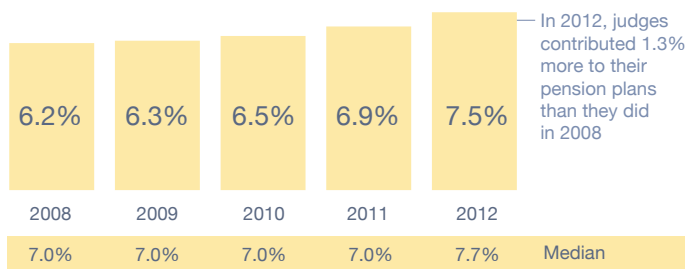
2008-2009	2009-2010	2010-2011	2011-2012
Iowa	Colorado	Alabama	Arizona
Kentucky	Iowa	Delaware	Hawaii
Nebraska	Mississippi	Florida	Idaho
Washington	Missouri	Louisiana	New Jersey
	New Mexico	Maryland	New Mexico
	Virginia	New Jersey	North Dakota
	Washington*	Vermont	Rhode Island
		Washington	Washington
		Wisconsin	Wisconsin

\* Washington lowered their rate from 2009-10; Washington's rates are based on Washington's Plan 2 rate, which changes yearly.

From 2008 to 2012, the arithmetic mean contribution rate of all states increased by 1.3 percent. The median rate (where one-half of the states' rates are above and one-half are below) experienced a smaller 0.7 percent increase (see graph). The difference between the change in these two measures of central tendency is partially the result of atypically large increases found in a few states—especially Virginia and Wisconsin.

To explore whether there is a relationship between changing contribution rates and how a judicial retirement plan was structured or administered, state judicial retirement

**Pension Contribution Rates as a % of Annual Judicial Salary**  
 Mean Increase Across All States, 2008-2012



systems are divided into three basic categories: independent systems, blended systems, and wholly integrated systems.

Independent systems are administered through a separate system, often termed a state’s “judicial retirement system.” These systems typically have a separate judicial retirement fund or separate sources of funding. Some independent systems are managed by a distinct board of trustees, apart from that of the state’s retirement system for other employees. In blended systems, judges have their own plan that is a part of a larger retirement system. Typically, these plans are managed and administered by a public employee retirement system and are often termed “judicial retirement plans.” Blended systems may have some of the features of independent systems, such as unique contribution rates or COLA rates for judicial employees. Some of these plans have discrete funds for judicial retirement. In wholly integrated systems, judges are not in a separate plan or system from other classes of state employees.

Independent judicial retirement systems are the most common, with 25 states using them. Twenty states use blended systems, and 5 states use wholly integrated systems.

Changes in retirement contribution rates varied somewhat based on the nature of the system.

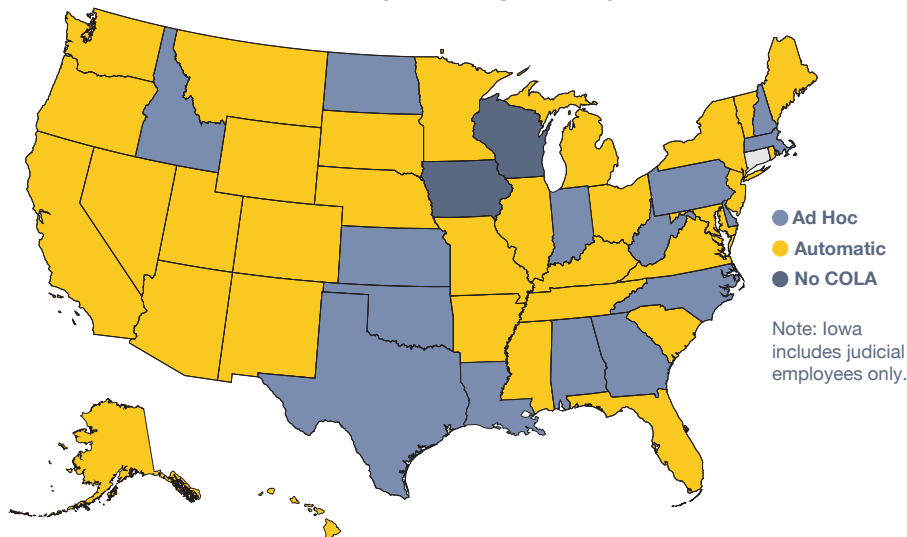
Contribution rates changed in 8 out of 26 (31 percent) independent systems, 11 out of 20 (55 percent) blended systems, and 3 out of 5 (60 percent) wholly integrated systems. Although this evidence does not necessarily confirm a relationship between the type of system and changing contribution rates, it does suggest that the contribution rates in states with blended or integrated systems were more likely to increase than those with independent systems.

*Cost-of-Living Adjustments (COLAs).* While contribution rates affect how much judges must pay into their retirement plan to receive benefits, COLAs for retired judges adjust the value of pension payouts to keep pace with cost-of-living increases. Before 2008, legislation in most states affecting COLAs was characterized by implementing adjustments where there had been none previously, or increasing adjustments in a way that kept pace with inflation. After 2008, a sharp trend in legislation decreasing or suspending COLAs occurred. Although many states have taken action that affects cost-of-living adjustments, the majority of states (28) did not change their COLA rates over 2008-12.

The mechanism for state judicial COLAs can be divided into three categories: states where rates are adjusted by the legislature ad hoc, where adjustments are automatic, and where there are no provisions for adjustments (see map).

Of the 15 states with ad hoc provisions for COLAs, six reduced the prescribed adjustments (Delaware, Indiana, Kansas, North Carolina, Oklahoma, and New Hampshire). Several states (Missouri, Tennessee, Utah, and Virginia) saw both increases and decreases between 2008 and 2012. For independent and blended judicial retirement systems, the type of judicial retirement system affected whether states changed their COLA for judges. About one-half of the

**Method of Implementing COLA by State**



states in both independent and blended systems experienced changes to their adjustment (12 of 25 for the independent system and 9 of 20 for the blended system). For the most part, changes to judicial COLAs followed the same pattern as changes to COLAs for nonjudicial state employees.

Retirement plans in wholly integrated systems were the least volatile in changing actual COLAs and COLA formulas. Possible reasons for this are that these plans may be more conservative in their allowances or because they incorporate a larger number of state employees due to the political influence of a large block of voters negatively affected by the change. The increased presence of unions, when various types of employees are included together in one retirement plan, also may make that plan more difficult to change.

### Conclusion

The recent recession produced significant inroads into the economic value of serving as a judge. Higher retirement plan contributions reduced the amount of judicial take-home pay in many states. The real value of a judicial pension also is being reduced in many states by less frequent cost-of-living adjustments needed to preserve the purchasing power of judicial retirement benefits.

Trends in judicial retirement benefits should be considered in the context of other changes taking place in virtually all state employment plans. Defined-benefit plans for all categories of state employees are being replaced with defined-contribution plans, and the real value of retirement benefits is being reduced through that and other means.

There are reasons, however, for treating judicial retirement provisions as a special case. Some reasons are practical. Lawyers become judges mid-to-late career, limiting

their ability to accrue years of service for contributing to a defined-contribution plan. Likewise, lawyers in private practice often have substantially higher salaries than judges. Generous and predictable judicial retirement benefits serve as an incentive to attract successful lawyers to join the

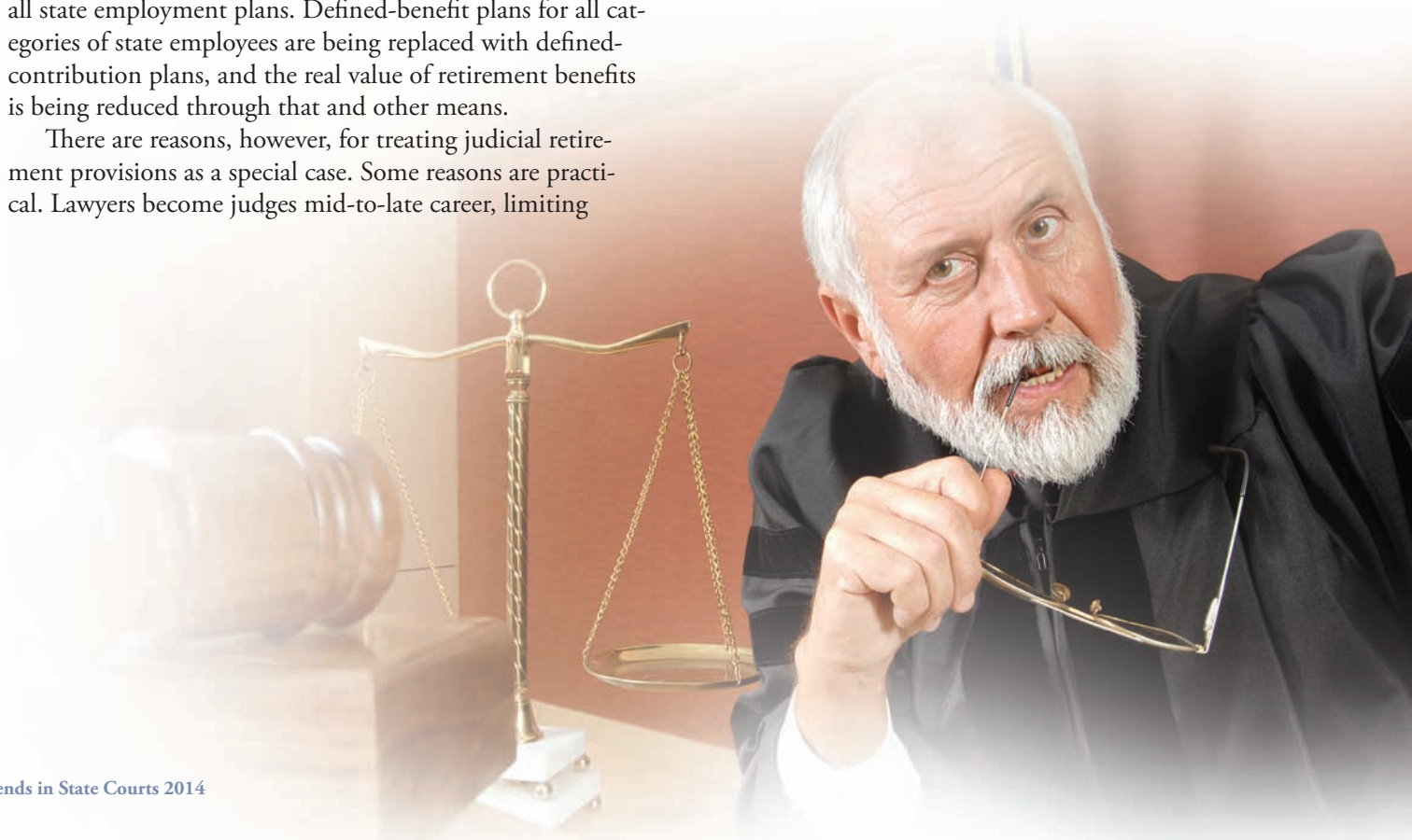
bench, in lieu of competitive salaries.

Other reasons have more to do with public-policy concerns. Changes to judicial retirement provisions are unique in raising issues of interbranch relations. Judicial independence is potentially implicated in the trends described here. To protect judges from outside influence and

encourage independent decision making, judicial salaries receive special protection in the federal and state constitutions. However, changing or reducing judicial pensions allows state legislatures to evade judicial-salary protections and indirectly reduce judicial compensation. Litigation in various states has addressed or is addressing the constitutionality of reducing judicial retirement benefits given constitutional prohibitions on reducing judicial compensation. More such lawsuits can be expected.

The National Center for State Courts will continue to monitor trends in judicial retirement benefits and to expand data on the provisions of those plans. ↻

“Generous and predictable judicial retirement benefits serve as an incentive to attract successful lawyers to join the bench, in lieu of competitive salaries.”





<sup>1</sup>*Barnes v. Arizona State Retirement System* 2012 WL 487873 (Ariz. Super. 2012). See also *Hall v. Elected Officials Retirement Plan* No. cv-2011-021234 (Ariz. Super. 2012) (filed in Maricopa County, in which that court granted plaintiff's motion for summary judgment that contribution rate increases violated the judicial salary, contract, and retirement clauses).

<sup>2</sup>*Fields v. Elected Officials Retirement Plan* 320 P.3d 1160 (Ariz. 2014).

<sup>3</sup>*Depascale v. State*, 211 N.J. 40 (2012), <http://www.leagle.com/decision/In%20NJCO%2020120724277>.

<sup>4</sup>*Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 300, 811 N.E.2d 652, 661 (2004).

<sup>5</sup>*Justus v. State of Colorado*, COA No. 11CA1507 (Colorado Court of Appeals 2012), available at <http://www.cobar.org/opinions/opinion.cfm?opinionid=8694>.

<sup>6</sup>Report on Judicial Salaries and Turnover, Texas Office of Court Administration (2011), [http://www.courts.state.tx.us/oca/pdf/judicial\\_turnover\\_rpt-fy10-fy11.pdf](http://www.courts.state.tx.us/oca/pdf/judicial_turnover_rpt-fy10-fy11.pdf).

<sup>7</sup>Judges who left the bench were polled as to their future plans. Sixty percent stated that they planned to work in private practice or take another position with better salary or benefits. Twenty-eight percent stated that a change in retirement benefits would have compelled them to continue serving as a state judge.





## INTRODUCTION

# The Growing Problems of Elder Abuse and Adult Guardianships: National, State, and Local Reform Efforts

Brenda K. Uekert, Principal Court Research Consultant, National Center for State Courts

*The abuse, neglect, and exploitation of older persons is very often a “hidden” problem in the justice system. The efforts undertaken by national organizations and state and local courts represent a symbolic shift to address the problem and develop creative responses.*

### **The Hidden Nature of Elder Abuse**

“Elder abuse” is generally defined to include abuse (physical, sexual, or emotional), financial exploitation, neglect, and abandonment (see U.S. Department of Health and Human Services’ National Center on Elder Abuse at <http://www.ncea.aoa.gov/faq/index.aspx> for a more detailed definition). Every state has an adult-protective-services law and a variety of civil or criminal laws that may be applied to incidents of elder abuse. Some states have very narrow definitions in

their criminal statutes that refer to abuse or endangerment of vulnerable adults or vulnerable elderly persons. Other states have criminal codes that call for enhancements for a subset of crimes in which the victim is considered elderly, vulnerable, or both. Due to the variances in laws and insufficient reporting mechanisms, national statistics on elder abuse crimes heard in the courts are lacking.

Elder abuse is referred to as a “hidden” crime in the justice system for several reasons. First, it is estimated that for every report of elder abuse to the authorities, 24 go unreported (see Lifespan of Greater Rochester et al., 2011). Second, in most jurisdictions, few cases are prosecuted on specific charges of elder or vulnerable-adult abuse—a consequence of narrow legal definitions, challenges to prove vulnerability, and lack of specialization. Third, capacity issues of some older victims of abuse and exploitation may confound the ability to prosecute a case. Finally, the majority of perpetrators of elder abuse are family members and

“...while elder abuse may be an underlying factor in a variety of court cases, it tends to be a hidden problem in the justice system.”

spouses/partners—a fact that may dissuade victims from participating in the justice system (see Acierno et al., 2009). Consequently, while elder abuse may be an underlying factor in a variety of court cases, it tends to be a hidden problem in the justice system.

### The Special Case of Adult Guardianships

The court has a special obligation to protect one of our nation’s most vulnerable populations: adults with limited capacity who are placed under a guardianship. (“Guardianship” as used in this article includes guardians of the person and guardians of the estate—conservators.) In 2013 the National College of Probate Judges released the revised *National Probate Court Standards*. The *Standards* make clear the court’s obligation to actively oversee guardianships.

Although probate courts cannot be expected to provide daily supervision of the guardian’s or conservator’s actions, they should not assume a passive role, responding only upon the filing of a complaint. The safety and well-being of the respondent and the respondent’s estate remain the responsibility of the court following appointment (Commentary from Standard 3.3.19).

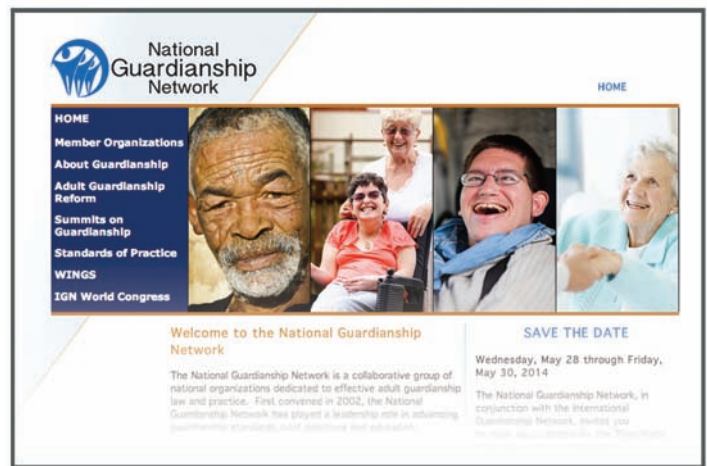
Yet, in many jurisdictions, the guardianship process is characterized by the lack of court oversight, questionable qualifications of guardians, the general lack of accountability, soaring caseloads, and poor data management (see Uekert and Dibble, 2008). Congressional hearings and federal reports from the Government Accountability Office continue to document cases of financial exploitation, neglect, and abuse of seniors in the guardianship system. For example, a 2010 report found that in the guardianship abuse cases under review, courts had inadequately screened potential guardians and failed to monitor the guardians after appointment (see United States Government Accountability Office, 2010).

### National, State, and Local Reform Efforts

The rise of problem-solving courts in recent decades has underscored the court’s powerful role in social and personal change. The application of the problem-solving model in a collaborative framework to address elder issues is in its

infancy. The next set of articles demonstrate how national, state, and local leaders are working to transform court processes to improve the experiences of older persons.

Alarms have been sounded on the problems of the adult guardianship process, and reform is slowly taking shape. In 2011 the ten National Guardianship Network (NGN) sponsoring organizations convened the Third National Guardianship Summit at the University of Utah. Among the recommendations was the call for Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS) to advance adult guardianship reform and implement the summit recommendations. In the article that follows, Erica Wood discusses the collaborative work being carried out by the WINGS pilot grantees in New York, Oregon, Texas, and Utah.




National Guardianship Network Homepage

At the state level, supreme court task forces have emerged to address issues surrounding elder abuse and guardianships. Pennsylvania and Texas are the two most recent states to have launched elder law task forces. In an interview, state court administrators Zygmunt Pines (Pennsylvania) and David Slayton (Texas) discuss the reasons behind the creation of the task forces, organizational structure, goals and activities, data-collection efforts, and learned experiences.

At the local level, judicial leaders in a number of jurisdictions have launched elder courts and elder justice centers. The first elder protection court was started by Judge Julie Conger in the Superior Court of California, Alameda County in 2002. The most recently created elder court and elder justice center is located in Cook County, Illinois, operating under the guidance of Judge Patricia Banks. Judge Joyce Cram’s article on the elder court discusses the court she helped develop in Contra Costa County, California—the court exemplifies best practices for managing elder abuse cases and integrating the missions and resources of stakeholders to provide more comprehensive and appropriate remedies for older victims.

## A Final Note on a Valuable New Resource

Training judges, judicial officials, court staff, and members of the justice system on elder abuse remains integral to system reform. In April 2014 the National Center for State Courts' Center for Elders and the Courts, in partnership with the University of California at Irvine School of Medicine's Center of Excellence on Elder Abuse and Neglect, launched an online training program: Justice Responses to Elder Abuse. This course, which was funded by the Retirement Research Foundation of Chicago and the State Justice Institute, provides the latest research on aging issues, including physical, cognitive, and emotional changes that can increase an older person's vulnerability to abuse. Medical, prosecution, and judicial experts discuss the dynamics of elder abuse that often create barriers for victims and challenges for the justice system and offer specific tools aimed at improving access to justice and enhancing outcomes for older victims of abuse. Access to the free course and supporting materials can be found at [www.eldersandcourts.org](http://www.eldersandcourts.org). 



Center for Elders and the Courts (CEC) Homepage

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# Elder Court:

## Enhancing Access to Justice for Seniors

**Hon. Joyce Cram, Judge, Contra Costa County, California (Ret.)**

*Elder abuse can take many different forms, which can require multiple legal forums. An elder court consolidates these cases and can improve access to justice for abused seniors and speed up the resolution of the issues they face.*

### **Case Study**

Alice, an 86-year-old widow, is in declining health and diagnosed with early Alzheimer's. She lives with her son Bob. Bob is chronically unemployed, with mental health and substance abuse problems that have worsened over time. Bob steals from Alice to buy drugs, is verbally abusive, and recently shoved Alice into a wall and fractured her elbow. He has added his name to the title on the home, borrowed heavily on it (it is now in foreclosure), and drained her bank account. Facing eviction and unable to care for herself alone, where does Alice turn for help?

This type of case could be heard in many different courts: there could be a pending criminal case based on physical or financial abuse; a guardianship/conservatorship because of her inability to manage her financial affairs and to provide for food, clothing, and shelter; a civil case to void the real-property transfer; or a restraining-order application based on either domestic violence or elder abuse. Resolution of all these issues could take years as each case works its way through the justice system.

In Contra Costa County, California, Alice would find herself in elder court, a specialized docket that hears all cases of physical, financial, or emotional abuse of elders (defined as 65 or older). Her cases would be coordinated and heard

by one judge, specially trained in issues relating to the elderly, with a goal of prompt, complete, and compassionate resolution.

### **Elder Protection Court**

In 2008 Presiding Judge Mary Ann O'Malley believed that Contra Costa County should create an elder court. To do so required a massive collaborative effort. She arranged numerous meetings with the court's justice partners: the Area Agency on Aging; district attorney's and public defender's offices; law enforcement; probation department; local bar association; county mental health department; county counsel; and local law schools. A steering committee was formed, and interested entities from the local aging network, governmental partners, and the public were invited.

The initial plan was to follow the model of neighboring Alameda County, where the first elder court was established in 2002, and expanded in 2005, by Judge Julie Conger. There, criminal cases and elder abuse restraining orders were all heard by one judge from start to finish. That program proved that such a calendar could assist seniors by providing early resolution, including active follow-up to ensure compliance with restitution orders and other terms of probation.

In planning meetings, it became clear that elder victims' legal problems were not confined to criminal cases and restraining orders. Therefore, a new, comprehensive model was created. Any case involving an elderly victim would be heard in this new court: civil, probate, conservatorship (adult guardianship), restraining orders (orders of protection), landlord/tenant, and even, in one case, adult adoption. Any case involving physical, financial, or emotional abuse of an elder was to be heard by the same trained, dedicated judge in the same location.

This court became a reality in November 2008, presided over by Judge Joyce Cram until her retirement in 2013. It now is part of the collaborative courts assignment, presided over by the same judge who hears drug court, mental health court, and domestic violence court.

### How It Works

One of the challenges in creating an elder abuse court is that cases often do not enter and leave the justice system labeled as “elder abuse.” Unless these cases are somehow “flagged” by the court, they will be treated as any other case. In Contra Costa County, the criminal elder abuse cases are vertically prosecuted by the district attorney’s elder abuse unit. They are clearly marked, and all of the arraignment judges know to set those cases in elder court. Civil cases, however, are not flagged. They are referred to elder court at the first case management conference, generally six months after the case is filed, although attorneys often request an early transfer to elder court, especially where other cases are pending that could affect the outcome. In the probate division, cases are referred whenever it appears the elder has been subject to physical or financial abuse or undue influence. Restraining-order applications, whether filed as elder abuse, domestic violence, or civil harassment, are all assigned to elder court based on the victim’s age. Any judge from any division can refer a case of alleged abuse at any time.

A goal of elder court is increased access for elderly victims. This requires consideration of the physical, mental, and cognitive changes experienced as a person ages. For example, the capacity of an older person to recollect events and testify competently may fluctuate with time of day, medications, etc. Since elderly litigants often have trouble getting to court at a typical 8:30 calendar call, and may also have trouble testifying in late afternoon, elder court evidentiary hearings are calendared for 10:00 or 10:30. Arrangements are also made for telephonic appearances if the elder cannot travel to the courthouse.

To provide full access, minor modifications had to be made to the courtroom to accommodate the sensory deficits some seniors experience. For example, litigants often get cues about what to expect in their cases by observing cases that precede theirs. But hearing loss is typical for the elderly population. Where the acoustics of the courtroom are such that the elder cannot hear what is going on, those cues are lost. In Contra

Costa County, this problem was solved simply by increasing the volume on the loudspeakers. Assistive-listening devices are also available on request. Some older litigants also have impaired vision and have trouble reading the small print on court forms or exhibits at trial. The court was fortunate to receive a grant to purchase a document reader, which enlarges the print onto a screen, to make forms or exhibits easier to read. Reading glasses in various strengths are available, thanks to a donation by a judge.



Contra Costa County

Physical accessibility must also be ensured. A wheelchair is available, and the route to the witness chair is ramped. But sometimes this is not enough. When this is the case, elder court can relocate. For example, in a criminal case involving severely disabled nursing-home residents, multiple sessions of the preliminary examination were held in a branch court more accessible to the parties, making allowances for the need for each to have a care provider present. In another case, involving a restraining-order application brought by a conservator, the elderly ward did not want to come to the witness stand. The judge came down from the bench to talk to him at eye level and was able to learn his wishes before issuing the order.

One of the benefits of an elder court, where all elder abuse cases are consolidated, is that early and consistent resolution becomes the norm. In criminal cases, both sides know that at sentencing early disposition and full restitution are rewarded. Active case management encourages commu-

nication between the attorneys, considers alternatives to a standard “jail plus fine” disposition, and monitors compliance with probation conditions, including no-contact and restitution orders. A measure of the success of the Contra Costa County Elder Court is that most cases resolve even before preliminary examination, and in the first four years, only one case went to jury trial, sparing the remaining victims from the stress of appearing in court and testifying against the perpetrator.

### Collaboration

Shortly after the court became a reality, it demonstrated that it was a magnet for much-needed services, provided at little

“One of the benefits of an elder court, where all elder abuse cases are consolidated, is that early and consistent resolution becomes the norm.”





to no cost to the court. First, the Senior Peer Counselor program, under the auspices of the county mental health department, approached Judge Cram and asked if they could staff the court. These volunteers, themselves seniors, agreed to meet with the litigants in advance of the hearing. They explain the process, review the papers, and give the victims the confidence to appear in court. Their program expanded to include follow-up with a reassurance call after the hearing to be sure orders were properly filed and complied with. In addition, they link victims with necessary social services, and they provide ongoing supportive counseling to deal with the emotional consequences of testifying, often against a beloved family member or caregiver.

Shortly thereafter, Senior Legal Services asked how they could help. The result was a Senior Self Help Center that is held during elder court hours. The court provided a computer, a file cabinet, and the use of a room once a week in exchange for three hours of free drop-in consultation to seniors who wanted to represent themselves in landlord/tenant, small-claims, consumer-remedies, and other matters. In addition, Senior Legal Services expanded their services and now holds monthly workshops in the law library, free of charge, for any self-represented litigant who needs help navigating the complicated process of establishing a conservatorship (adult guardianship) for family members who cannot care properly for themselves or their finances.

The court has also benefited from active collaboration with the local bar association and works closely with its Elder Law Section and with the recently established Elder Law Center to provide pro bono or low-cost legal services to seniors. Free or low-cost referrals are also available for mediation services through the Senior Conflict Resolution Program, part of the Center for Human Development.

### Why an Elder Protection Court?

The decision to establish an elder court was based on recognition of the increased needs of the senior population. According to U.S. Census Bureau projections, the percentage of Americans age 65 or older will increase from 12.4 percent in 2000 to 19.6 percent in 2030. In California, reports of elder abuse increased by 20 percent from 2006 to 2011, and cases of elder financial abuse increased 32 percent from 2001 to 2011. Elder victims of abuse are four times more likely to go into nursing homes and have a mortality rate three times that of non-victims.

Like other collaborative courts, such as drug, homeless, veterans, domestic violence, and mental health courts, elder courts provide a comprehensive and holistic approach to cases. But, in addition, elder court enhances access for the victim. Elders are often reluctant to use the court system for complex reasons, including fear, shame, or family loyalty. An effective elder court can overcome this reluctance through

its partnerships with social services agencies, outreach, and education. A history of positive outcomes can secure the confidence of victims to turn to the courts in time of need.

In these harsh budgetary times, courts have to make difficult decisions on how to allocate scarce resources, and creation of a specialized court may seem an unaffordable luxury. But Contra Costa has proven that such a court can be established and maintained with minimal cost, simply by reallocating its caseload and attracting volunteers to partner with the court. And even if a court cannot duplicate this comprehensive model, the important elements of such a court (specialized training of the judiciary, accommodation of the needs of the elderly in terms of scheduling and court accessibility, partnering with outside agencies, etc.) are easily replicated. For the senior population, this is not “luxury”; it is a matter of access to justice.

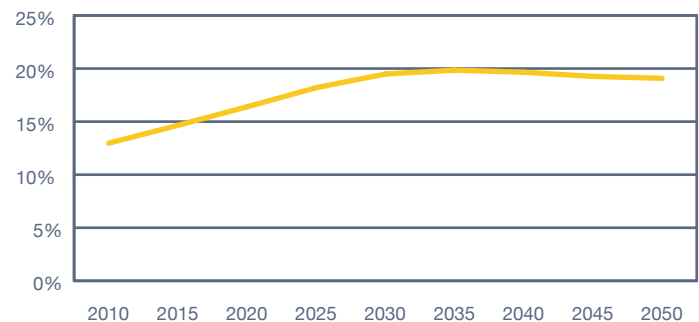
### Conclusion

Contra Costa County is justifiably proud of its innovative elder court, which in 2011 received the Ralph N. Kleps Award for Improvement in the Administration of the Courts. It acts as a mentor court for other jurisdictions within the state and throughout the country considering establishing such a court. But more important than any award or recognition is the satisfaction the elder court judges feel when they face an elderly litigant and can provide a timely and global resolution that ensures the safety and dignity of the senior.

As the population ages and the Baby Boom generation reaches senior-citizen status, more and more elderly victims will appear in our courts. The courts must adapt. When a victim such as Alice can get consistent, timely, and comprehensive resolution of her myriad legal problems, justice is served. Alice and all seniors deserve no less from our court system. ☺

### Projected Growth in the Percent of the U.S. Population

Age 65 and Older



Source: U.S. Census Bureau





# Addressing the Needs of Older Americans in the Pennsylvania and Texas Courts

**Brenda K. Uekert**, Principal Court Research Consultant, National Center for State Courts

**Zygmunt A. Pines**, Court Administrator of Pennsylvania

**David Slayton**, Administrative Director of the Texas Office of Court Administration

*The Conference of Chief Justices and Conference of State Court Administrators have adopted resolutions urging state court leaders to examine their responses to elder-related issues. Here, the state court administrators of Pennsylvania and Texas discuss the goals and activities of their elder law task forces and their personal experiences.*

**Brenda Uekert (BU):** *What were the reasons behind the creation of your elder law task forces?*

**Zygmunt A. Pines (ZP):** The Supreme Court of Pennsylvania recognizes that there is a growing need for changes in the way the court system addresses the needs of our state's older population. The increasing population of older Pennsylvanians impacts all the layers of the court system and all case types to one degree or another, especially in the areas of guardianships, elder abuse, and access to justice.

According to the U.S. Census Bureau, Pennsylvania currently ranks near the top in the nation in the percentage of people age 65 or older. Almost two million

Pennsylvanians—15.4 percent of the commonwealth's population—are over the age of 65. This population is projected to continue to increase substantially through the year 2020. The increasing elder population means that the number of older Pennsylvanians who will be plaintiffs and defendants in civil actions, defendants and victims in criminal actions, and witnesses and jurors in all actions will continue to increase.

The size of the older population and the complexity of cases place an additional strain on the resources of the court. For example, Pennsylvania's "orphans' courts" handle guardianship cases, which are increasing in number. This increase puts stress on the guardianship system and leaves older adults vulnerable to incompetent or overworked guardians, as well as abuse and neglect. Furthermore, the courts' ability to identify and respond to elder abuse and neglect cases often is impaired by a lack of education and training, insufficient coordination of these cases within the court system, the unavailability of data, and the lack of collaboration with other agencies.

**David Slayton (DS):** The population over age 65 in Texas will increase by almost 50 percent by 2020 and will more than double by 2040. Many of those individuals will need



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help managing their affairs—some through the appointment of a guardian. Texas currently has only 404 state-certified guardians who handle only approximately 5,000 of the more than 40,000 active guardianships. Families, friends, and attorneys serve as guardians in the remaining cases. Only 10 of our 254 counties have probate courts with resources to adequately prevent abuse. The exploding elderly population will stress our guardianship system.

**BU:** *How are your task forces organized? Tell us about the leadership role of the supreme court and collaboration efforts.*

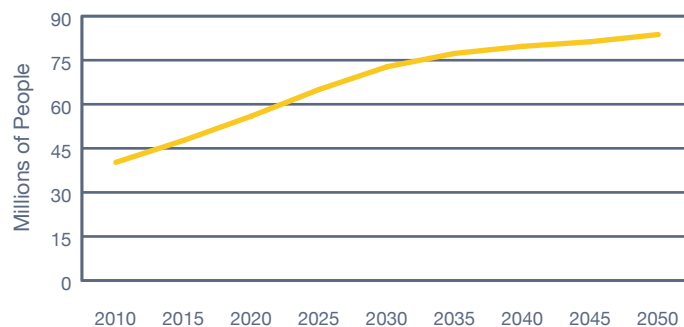
**ZP:** The Supreme Court of Pennsylvania formed the Elder Law Task Force in April 2013 to study the growing problems involved in guardianship, abuse and neglect, and access to justice for older adults. Chief Justice Castille charged the 38-member task force with recommending solutions that include court rules, legislation, education, and best practices. Three committees have been established: the Guardians and Counsel Committee, Guardianship Monitoring Committee, and Elder Abuse and Neglect Committee.

The court believes that membership on the task force should encompass representatives from all the various groups with an interest in elders and their interaction with the courts. One of the great benefits of the task force’s work that began to occur early on has been the forging of new collaborations between the courts and other elder-justice-related entities. Since it will likely take a combined, multiagency effort to build support and funding to carry out initiatives to be recommended by the task force, creating and maintaining ongoing interagency collaboration is vitally important.

**DS:** The Texas Judicial Council, which is the policymaking body for the state judiciary and is chaired by the chief justice, has formed an Elders Committee. In addition, the supreme court has taken a leadership role in the creation of the Texas Working Interdisciplinary Network of Guardianship Stakeholders (WINGS). Texas WINGS, which is deliberately structured to be collaborative, has representatives from the judiciary, Texas Legal Services, AARP, Disability Rights Texas, Alzheimer’s Association, Texas Guardianship Association, ARC of Texas, Social Security Administration, Texas Veterans Commission, Department of Aging and Disability Services, Department of Family and Protective Services, and the state bar.

### Projected Growth in the U.S. Population

Age 65 and Older



Source: U.S. Census Bureau

**BU:** *Can you share the goals of the task forces and highlight some of the activities carried out?*

**ZP:** The goal of the Elder Law Task Force is to study issues and problems involved in guardianships, elder abuse, and access to justice and recommend solutions that include court rules, legislation, education, and best practices. The task force will lay the foundation for substantive improvements in the way older Pennsylvanians interact with the court system. We hope that the results of our work with the Elder Law Task Force will generate good ideas about best practices that can be a model for other state court systems.

**DS:** The Elders Committee has been charged to assess the ways in which the Texas courts interact with the elderly, including guardianship, probate, elder abuse, and other proceedings, and to identify judicial policies or initiatives that could be enacted to protect and improve the quality of life for the elderly in Texas.

Texas WINGS will 1) identify strengths and weaknesses in the state's current system of adult guardianship and less restrictive decision-making options; 2) address key policy and practice issues; 3) engage in outreach, education, and training; and 4) serve as an ongoing problem-solving mechanism to enhance the quality of care and quality of life of adults in or potentially in the guardianship and alternatives system. To date, the WINGS group has held a strategic planning session and provided its support for the continuation of the Texas Department of Aging and Disability Services Guardianship Program, which provides guardianship services to individuals referred to the program by either the Adult Protective Services or Child Protective Services Divisions of the Texas Department of Family and Protective Services.

**BU:** *As part of your task force activities, a fair amount of effort was devoted to collecting and analyzing court data and survey responses. What strategies did you use to collect data and how are the findings being used? Did anything surprise you?*

**ZP:** The task force felt it was necessary to quantify and measure the practices and operations of the courts that handle guardianship cases. Surveys were created and distributed to the orphans' court clerk and judge in each county. The survey findings will provide context for the issues being addressed by the task force, as well as guide the types of recommendations that are needed. The survey results confirmed our belief that there is considerable need for more uniformity in data gathering and additional resources to support oversight responsibilities.

**DS:** We surveyed guardianship stakeholders across the state to assist the WINGS group in understanding which issues



should be prioritized for short-term and long-term planning and action purposes. We were pleasantly surprised by the number of responses we received and that all regions of the state were represented. The strong interest in the survey is an indicator of the importance of this issue in our state.

**BU:** *When is the task force expected to complete its work? What do you envision as the next step?*

**ZP:** The task force's research, studies, and meetings are anticipated to be completed around April 2014. A period of preparation of the task force's report and recommendations will follow. When the report is released, it will go to the supreme court for its review and consideration. We anticipate the court will consider whether to implement some or all of the judiciary-related recommendations, such as new court rules or procedures. Ideally, other elder law partners will work to implement nonjudicial recommendations, whether they take the form of local task forces, greater collaboration, new partnerships, or perhaps new state legislation.

**DS:** The WINGS group will be an ongoing, problem-solving workgroup. The Elders Committee hopes to have its inaugural year's work completed later this summer in time to prepare for the next legislative session.

**BU:** *What advice do you have for other states that are considering the creation of a task force or committee to address elder issues?*

**ZP:** A few things come to mind. First, I can't stress enough how important it is to have strong judicial leadership. Chief Justice Castille and Justice Todd have been wonderfully supportive of and champions for the task force. Their leadership and active engagement have contributed to the task force's enthusiasm for its work.

Invite persons to be task force members who are passionate about elder law issues, and utilize the wealth of knowledge and resources they bring. Everyone on our task force really believes in the work the group is doing.



Lastly, the success and sustainability of any task force's work will depend, in large part, on effective communication, collaboration among stakeholders and intergovernmental partners, and the institutionalization of best practices. In a recent article in the *Judges' Journal*, Jesse Rutledge and Bert Brandenburg stress the need to build broad coalitions with nontraditional partners and to communicate a judiciary's "success stories" in order to garner understanding and support from the legislature and the public. Those suggestions are indeed good ones as we tackle the challenges that impact the lives of our older adults and those who assist them.

*Thank you for your participation. We look forward to reading the final reports and learning how Pennsylvania and Texas will move forward to address elder issues. 🌟*

Be prepared to allocate staff to your task force or committee, particularly if it has a lot of members and a broad scope. The scope of issues being addressed by the Elder Law Task Force requires considerable coordination, research, and administrative services.

Be ambitious, but realistic about what your task force can accomplish. And recognize that a task force is but one step in a continual effort to address the challenges associated with our growing elder population.

**DS:** Many issues impacting the elderly also impact the disabled. It is important to include both elder and disability stakeholders when examining problems and potential solutions.

**BU:** *Is there anything else you would like to add?*

**ZP:** The importance of information technology, particularly the need for good data collection and the ability to use technology to help with guardianship monitoring. Education and training for guardians is another important area. Also, financial exploitation (including problems with powers of attorney) is a very big problem that seems to be increasing rapidly. There needs to be more focus on how we can collaboratively and meaningfully address the financial exploitation problem.



# WINGS: Court-Community Partnerships to Improve Adult Guardianship

Erica Wood, Assistant Director, American Bar Association Commission on Law and Aging

*Courts in four states are piloting Working Interdisciplinary Networks of Guardianship Stakeholders (WINGS), a collaborative approach toward ongoing problem solving to drive changes in adult guardianship practice. By combining the efforts of all stakeholders, states can improve judicial processes, better protect individual rights, and promote fiduciary standards and guardian accountability.*

The highest courts in four states are engaged in an innovative movement to improve adult guardianship: WINGS—Working Interdisciplinary Networks of Guardianship Stakeholders. This article will explain the concept, describe key hallmarks, and outline the launch of WINGS in four pilot states.

## Origin of WINGS

WINGS is a court-community partnership to improve practices in adult guardianship and provide less restrictive decision-making options. The creation of WINGS by all states was a core recommendation of the 2011 *Third National Guardianship Summit*, sponsored by the ten

National Guardianship Network (NGN) organizations and key cosponsors and funded by the State Justice Institute and the Albert and Elaine Borchard Foundation Center on Law and Aging. The Conference of Chief Justices and the Conference of State Court Administrators have urged implementation of the summit recommendations (July 2012). Moreover, the National Center for State Courts' *High Performance Court Framework* suggests that courts “engage in a vigorous campaign to organize and mobilize its partners in the justice system . . . [and] the many groups that use the legal process” (Ostrom and Hanson, 2010).

### About NGN

The National Guardianship Network, established in 2002, consists of 11 national organizations dedicated to effective adult guardianship law and practice, including the AARP, the American Bar Association Commission on Law and Aging, the ABA Section of Real Property, Trust and Estate Law, the Alzheimer’s Association, the American College of Trust and Estate Counsel, the Center for Guardianship Certification, the National Academy of Elder Law Attorneys, the National Center for State Courts, the National College of Probate Judges, the National Disability Rights Network, and the National Guardianship Association.



“Large-scale social change comes from better cross-sector coordination rather than from the isolated intervention of individual organizations.”

To promote WINGS, the NGN issued a request for proposals for incentive grants and technical assistance to the highest court in each state and selected four WINGS pilot grantees:

- the New York State Unified Court System
- the Oregon State Unit on Aging, with leadership from the Oregon Judicial Department
- the Texas Office of Court Administration
- the Utah Administrative Office of the Courts

Two additional states already had problem-solving groups. Ohio’s interdisciplinary Subcommittee on Adult Guardianship was established under the state supreme court’s Advisory Committee on Children, Families and the Courts. Missouri’s MO-WINGS grew out of a broadly inclusive task force convened by the Missouri Developmental Disabilities Council. Indiana’s Guardianship Task Force also has characteristics of WINGS. The NGN is developing a replication guide for other states to create WINGS groups.

### Collective Impact of WINGS

Over the past 25 years, adult guardianship reform recommendations have urged the creation of court-community partnerships. Yet states have lacked an ongoing mechanism to continually evaluate “on-the-ground” guardian practice, consistently target solutions for problems, and ensure a regular communication protocol among stakeholders. State task forces often discuss needed legislative changes and advocate effectively for them—only to disappear before the changes are fully implemented. Moreover, such state task forces may not always include essential stakeholders from the judicial, legal, aging, disability, guardianship, and mental health networks and may not examine the full range of constantly changing issues.

In “Collective Impact” (*Stanford Social Innovation Review*, 2011), John Kania and Mark Kramer said, “Large-scale social change comes from better cross-sector coordination rather than from the isolated intervention of individual organizations.” A follow-up article on “Channeling Change: Making Collective Impact Work” (Fay Hanleybrown, John Kania, and Mark Kramer, 2012) stated that “collective

impact” is not just the collaboration of public and private entities toward a common goal, but a “highly structured collaboration” that requires 1) a shared vision for change; 2) data collection and measurement of results; 3) different stakeholder activities coordinated through a “mutually reinforcing plan”; 4) consistent communication among stakeholders; and 5) a coordinating “backbone” entity. The authors noted that this kind of group “doing more with less” may be particularly compelling due to the continuing effects of the economic recession.

“Collective impact” brings a group of important actors from different sectors to a common vision concerning a challenging social problem, such as the uneven practice of adult guardianship and inadequate use of less restrictive decision-making options. Courts, adult protective services, aging and disability agencies, and other stakeholders have faced sobering budget constraints, and if guardianship is going to be improved, they must improve it together.







## WINGS Hallmarks

Based on the collective-impact concept and the experience of the 2013 WINGS pilots, below are ten hallmarks of WINGS groups.

**1. WINGS groups are ongoing and sustainable.** WINGS is not about tackling a single guardianship problem and closing the books. Instead, WINGS groups take a broader, long-term view. WINGS is about constant, measurable, incremental changes over a long period that gradually improve a system. In other words, do not just produce a handbook or pass a law, but galvanize a process to continually promote desired practices through the efforts of all stakeholders.

**2. WINGS groups are broad-based and interdisciplinary, including nonprofessionals.** Successful WINGS groups draw from the judicial, legal, aging, disability, guardianship, and mental health networks, and more. Required stakeholders in the 2013 pilots included the court, the state unit on aging, adult protective services, and the protection and advocacy agency providing legal services for people with disabilities. A broader range of stakeholders will spark more communication and heighten awareness statewide.

**3. WINGS groups are problem solving in nature.** WINGS groups bring stakeholders together regularly, opening doors to communication and focusing on problems that have seemed intractable. For example, how can solid screening for other decision-making options become a regular practice? How can family guardians best be supported and educated? How can courts with resource constraints best oversee and assist guardians? Since each stakeholder brings a unique perspective, structured consensus building often can produce imaginative solutions not yet tried.

**4. WINGS groups look primarily to changes in practice and are not dependent on legislation.** To generate real change, WINGS targets on-the-ground performance by each stakeholder group and continually assesses how performance changes are working. Although legislation is one element of change, WINGS is not dependent on a legislative body. WINGS looks beyond codifying change to implementing change. For example, legislation might provide for counsel for respondents, but counsel in practice may not always be vigorous advocates for the individual, may have conflicting roles, or may be insufficiently trained and paid. Or legislation might provide for guardians to submit annual reports, but in reality, some fail to timely report, leaving judges in the dark about the lives of individuals under their aegis.


**5. WINGS groups start with short-term, “low-hanging-fruit” solutions to generate momentum.** Groups that have brainstormed adult guardianship problems often come up with long, seemingly overwhelming lists. Money to “fix things” is scarce, and changes in entrenched practices seem daunting. One secret to success is a series of incremental changes adding up to a large-scale difference. To sustain initial momentum, WINGS looks first at accomplishing realistic, short-term efforts, showing that the group can produce results—and building hope for future success.

Examples of short-term objectives discussed by the 2013 WINGS pilot are development of a Web site for family guardians; court distribution of information on home- and community-based care to new lay guardians; and a meeting to improve coordination between court administration and the regional Social Security office.

**6. WINGS depends on “mutually reinforcing activities” and engenders trust and communications among stakeholders.** The core of the collective-impact idea is that while various stakeholders may have differing perspectives and skills, with proper coordination, they can all work around a common theme. Kania and Kramer said, “Collective impact initiatives [encourage] each participant to undertake the specific set of activities at which it excels in a way that supports and is coordinated with the actions of others.” For instance, courts may be more interested in achieving efficient case administration and better guardianship management, while disability advocates may list hearing and respecting the voices of individuals as the highest priorities. Each can work on objectives that fit the common vision of a better, more responsive, more person-centered system.

**7. WINGS focuses on rights and person-centered planning.** Because guardianship is a court process, it may be natural for groups to highlight judicial needs, such as improved petition and reporting forms; more informative assessment instruments; and better court data systems, training for judges and court administrators, and tools for monitoring guardians. But WINGS throws an equal spotlight on self-determination of individuals who are or may be in the adult guardianship system. Individual rights and person-centered planning were prominent 2011 summit themes.

**8. WINGS groups welcome public input and are transparent to the public.** As public-private entities, WINGS



groups should lean toward inclusivity and transparency. WINGS meetings should allow time for public input, or WINGS groups can sponsor public hearings that invite stories, complaints, and suggestions.

### **9. WINGS groups collect data, evaluate, and adapt.**

WINGS groups continuously evaluate the priorities and the effectiveness of their activities. As changes in law, administration, affected populations, practices, and resources occur, WINGS may alter its course. For example, if WINGS finds pressing mental health system problems affecting guardianship, it can shape its training and advocacy objectives to better meet specific needs.

### **10. WINGS groups see themselves as part of a national network.**

State WINGS groups are not alone. As more states develop WINGS groups, they will collectively change the face of guardianship and the ways decisions are made. WINGS groups in different states can benefit each another. For instance, in the 2013 pilots, one state created a guardianship-issues survey, which was adapted and used by two other states. WINGS can be a real force in driving change.

#### **Launch of WINGS in Four Pilot States**

WINGS groups are running in the four pilot states (and the states with preexisting groups). The state courts have been a driving force, with judges and court administrative staff taking lead roles. Although the WINGS groups are continually evolving, an early “snapshot” shows the following:

- The *New York* Unified Court System convened a full-day consensus summit in March 2014—“Setting the Agenda for Guardianship in New York: Fewer Resources, Greater Collaboration.” A survey helped identify initial priority issues. The summit’s working groups on pre-commencement guardianship issues, models of guardianship, and post-commencement guardianship issues (education, oversight, and resources) have made recommendations to guide WINGS in the coming months and years.
- The *Oregon* Department of Human Services and the Judicial Department are holding quarterly WINGS meetings. They developed an online, statewide issues survey to which 186 stakeholders from all counties responded. The highest-priority issue was establishment of statewide public guardianship services, followed by mandatory training and continuing education of professional guardians, training for lay guardians, standardized functional assessment forms, improvements in court monitoring, and mandatory training for court visitors.

Oregon WINGS has formed four work groups with short-, medium-, and long-term objectives: 1) training, education, and supports for system partners; 2) support services for lay/family guardians; 3) protected-person advocacy and system access; and 4) legislative/policy advocacy.

- The *Texas* Office of Court Administration convened a full-day WINGS meeting in November 2013 and will hold regular sessions. Nearly 300 individuals responded to a statewide survey before the meeting. The top overall issues were the need for 1) more focus on alternatives to guardianship; 2) statewide public guardianship; 3) support services of family/friends to become and to serve as guardians; and 4) a standardized assessment form.
- The *Utah* Administrative Office of the Courts convened a large steering committee, which produced an “issues matrix” for creating three working groups: 1) collective impact of multiple stakeholder entities, 2) evidence of capacity, and 3) person-centered planning and supported decision making. At a November 2013 summit, to be followed by regular WINGS meetings, these working groups made recommendations for ongoing action.

An unanticipated but very welcome aspect of the WINGS initiative is the strong involvement of the Social Security Administration. The SSA Office of the Commissioner has designated a regional SSA representative for each state WINGS group to enhance coordination between courts with guardianship jurisdiction and the SSA representative payee program. SSA also spearheaded the first of a series of calls to enhance collaboration between WINGS and SSA.

#### **Conclusion**

WINGS can breathe fresh air into the drive by courts and community stakeholders to advance adult guardianship reform. WINGS meetings have sparked numerable interactions that can improve guardianship trends and the lives of vulnerable people. The NGN is urging all states to develop WINGS groups for ongoing assessment and action in adult guardianship. The NGN replication guide (*WINGS Tips*) and technical assistance can help. For more information on WINGS and adult guardianship, see [www.nationalguardianshipnetwork.org](http://www.nationalguardianshipnetwork.org). For additional resources on adult guardianship, see the NCSC Center for Elders and the Courts, <http://www.eldersandcourts.org/Guardianship.aspx>. ↻



## Call for Article Submissions

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