

Courts and the Economy

How fiscal constraints affect the judiciary and access to justice

The recession of 2008 put pressure on nearly every sector in society to do more with less. Unemployment and constrained investment by the private sector reduced economic output, which led to declining tax revenues for state and local governments. As with previous recessions, as the number of people out of work increases, the demand for government services tends to increase just as the money collected to provide those services declines. Elected officials face the difficult task of determining how to allocate increasingly scarce public dollars for essential services.

While unemployment benefits, Medicaid, Medicare, and other strands of the social safety net garner the most attention in downturns, our courts are a critical and constitutionally mandated function of government that is also impacted by fluctuations in economic activity. Courts enforce the rule of law, maintain public safety, and support economic and social relationships. A robust commitment to justice is at the foundation of American democracy, and the provision of open and accessible courts is memorialized in the text of the U.S. and state constitutions. Section 12 of Indiana's Constitution states that "[j]ustice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." Delays in contract disputes, home foreclosures, small claims, and criminal trials create a drag on economic activities that force private citizens and businesses to divert resources to their resolution. Thus, the economy affects the courts and the courts affect the economy (Shapiro, 2008).

Indeed, the 2008 recession has forced the judiciary to do more with less. Increases in case filings occurred just as courts were forced to reduce staff, freeze pay, delay or increase the time to disposition of cases, and in some cases shut operations down for entire days of the week in response to budget reductions by state legislatures (National Center for State Courts, 2012a). The severity of the problem varied by state, but a critical component of identifying solutions comes in comparing caseloads, finding lessons learned, and discussing how judicial structure and financing mechanisms affect delivery of service.

This report discusses how economic cycles affect demand for and delivery of court services in Indiana and across the country. Trends in court caseloads and financing are provided to make the connection between the courts and the economy. The structure and funding mechanisms are a critical component in this story, so Indiana's court structure and finances are compared to other states. Finally, best practices and efforts toward court unification are discussed to glean insight on "what works" and how state and local governments can ensure that future recessions do not compromise the ability of a co-equal branch of government to meet its constitutional mandate.



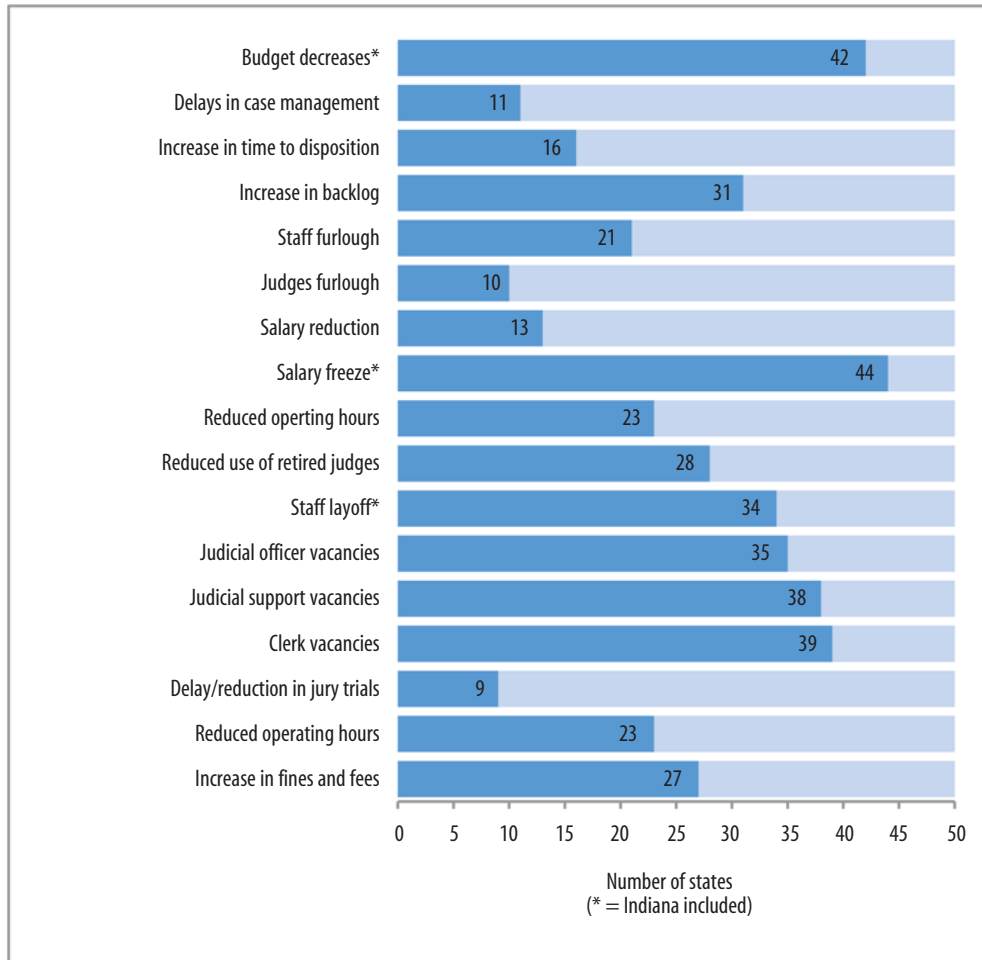
How the economy affects courts

Recessions put pressure on courts by (1) increasing demand for court services (i.e., caseloads) and (2) decreasing government revenues necessary to fund those services. Recessions strain household budgets, reduce income, and increase debt. Especially with the 2008 recession, job losses and increased personal economic distress lead to more criminal activity, higher numbers of mortgage foreclosures, contract disputes, divorce proceedings, etc. (Glaberson, 2009; Baar, Friesen, Reinkensmeyer, & Cooper, 2010). Unlike other units of government that can delay capital projects or curtail programmatic expenses in response to budget shortfalls, cuts

to the judiciary—with an overwhelming majority of their budget devoted to personnel—have an immediate and substantial impact. Reductions in court funding and court closures have produced measurable delays in criminal case processing. In Los Angeles, average time to disposition increased from less than two years to an estimated 4.5 years in 2012 (Weinstein & Porter, 2009).

In Kansas, 10 percent in budget cuts to courts forced some courts to suspend prosecutions of misdemeanor domestic violence cases (Sulzberger, 2011). Following steep reductions in state appropriations, municipal courts in California reported that couples were waiting 18 months for a divorce, and civil cases were expected to take five years (Townsend, 2011). In Georgia, which has seen a 25 percent decline in court funding over the last two years, the funding situation deteriorated to the point that courts

Figure 1: Cost saving measures by state courts, 2008-2011



Source: National Center for State Courts

solicited donations of pens and pencils from corporate sponsors due to a lack of designated funds (Mauro, 2011). In Iowa, across the board budget cuts resulted in the judicial branch suffering 49 percent of all state government layoffs, though it accounts for only 4 percent of that workforce (Iowa Judicial Branch, 2010).

A recent survey of state courts indicates that 42 states cut judiciary budgets in 2011, 34 states reduced staff, and 23 have reduced hours of operation (National Center for State Courts, 2012b) (Figure 1). With reduced court resources and a spike in case filings, some states saw the number of incoming cases per trial court judge reach into the thousands. South Carolina judges maintained the largest caseload, with incoming non-traffic cases totaling 5,011 per judge. Indiana, with 2,639 non-traffic cases per trial court judge, had considerably higher caseloads than the median caseload per judge among state courts (1,791).

The mix of revenue sources provides a general indication of the volatility inherent in the court financing system. State rev-

enues come primarily from taxes on income and consumption. Income and sales tax bases are particularly vulnerable to recessions, as job losses and decreased consumption decrease the amount of tax revenues accruing to government. So, courts that have a higher level of state funding might experience greater volatility in funds available to deliver services. Courts with higher shares of their funding derived from local property taxes suggest less volatility, as property taxes are generally accepted as a more stable source of revenue to government.

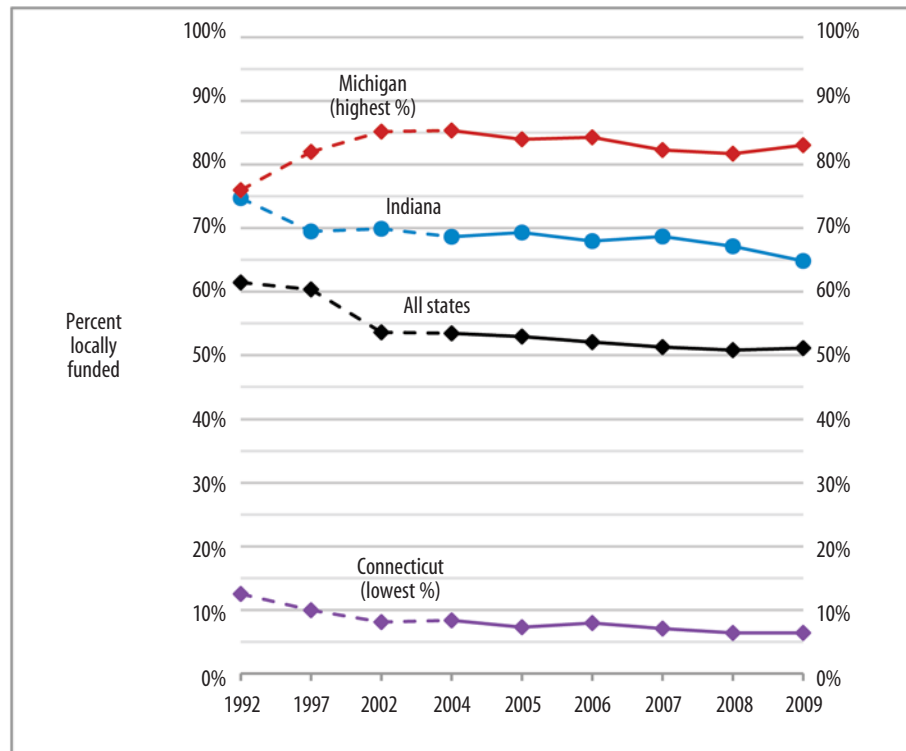
In practice, most states combine state and local funds for court operations, though there is considerable variation in court structure that makes direct comparisons difficult. Over the last several decades there has been a trend of more states moving toward state-funded models of court financing (Figure 2). Determining the preferred court funding mechanism requires considerations of the

consistency, stability, and sufficiency of revenue sources. However, it may be the case that the preferred funding structure in a healthy economy does not function well during economic downturns.

Impact on Indiana

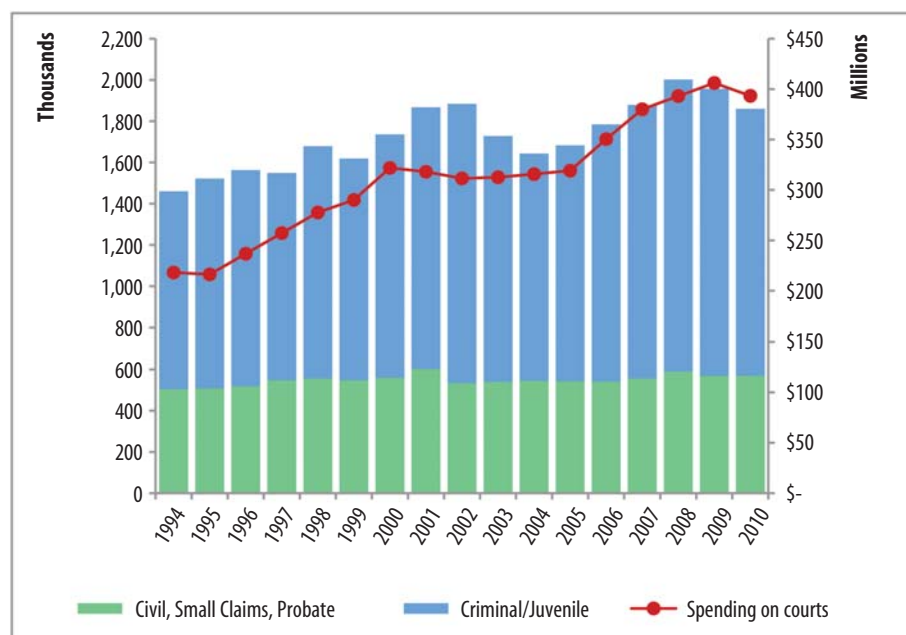
Since 1994, case filings have increased 27 percent in total and 1.5 percent on average annually (Figure 3). Filings increased most rapidly leading up to and during economic recession periods of 2001-02 and 2008-09, followed by general declines thereafter. The primary source of variation in case filings comes from criminal and juvenile cases, suggesting a link between economic distress, criminal activity, and the administration of law to combat that activity. Criminal and juvenile cases make up about 67 percent of total filings in normal (non-recession) periods and over 70 percent in recessions. However, civil cases are the fastest growing type among all filings: in the last decade, civil filings increased 42 percent, compared to 9 percent for criminal cases.

Figure 2: State funds as a share of total state and local court operating costs, selected years 1992-2009



Source: Census of Government Finance

Figure 3: Total cases filed in Indiana trial courts, by case type, 1994-2010



Source: Indiana Courts, Division of State Court Administration

Indiana state and local governments spent nearly \$400 million (2010 dollars) in public dollars to fund judicial system operations in 2010 (Figure 3), 66 percent of which came from county and municipal governments. Accounting for the annual number of filings and dispositions, the cost of administering courts has increased since 1994. Indiana trial courts now spend \$106 per filing/disposal, compared to \$78 in 1994. Costs increases have been driven primarily by increased probation filings, probation-solving courts, and upgrades to public defender resources. All of these have acted as offsets to prison and jail costs (Informal communication with Chief Justice Randall Shepard, 2012).

The increase in the cost of courts comes at the same time as funding for courts has shifted away from local sources (county and city/town governments) and toward state sources. In Indiana, the share of total court spending coming from local sources (county and municipal governments) decreased from 75 percent in 1992 to 65 percent in 2009. For all states in the country, the share of court spending coming from local sources also decreased, from 61 percent to 51 percent (US Census Bureau, 2012).

Indiana's court system is largely locally funded. Of the \$140 million in state-sourced expenditures on courts in FY2010, 65 percent went to salary and retirement benefits for local judges and county prosecutors. To maintain fiscal discipline, Indiana's courts were forced to lay off technology and support staff, to freeze salaries, and to reduce overall budget sizes (National Center for State Courts, 2012c). However, in comparison to other states around the nation, Indiana was generally better able to provide judicial services under budget constraints (see Figure 2).



How Indiana's court system works

Indiana trial courts remain locally controlled and not part of a unified court system (see Page 9 chart). Each trial court has a budget that is determined by county councils or other local governing entities. Indiana's trial courts are funded mainly by property taxes, but generate additional revenue through filing fees, court costs, fines, and other user fees. Collected by the Clerk of Courts, these revenues are then disbursed according to statute. Municipalities fund city and town courts primarily through general fund accounts. The majority of own-source fees, such as filing fees, are collected from litigants and transferred via Clerk of Courts to the state (Indiana Judicial Branch, Division of State Court Administration, 2012a).

Like many states, the salaries of judges, prosecutors, and magistrates in Indiana are paid by the state. Additionally, the state provides funding for partial reimbursement to qualifying counties for certain public defender expenses (Indiana Judicial Branch, Division of State Court Administration, 2012b) Counties must pay for other staff, expert witnesses in pauper defense cases, and probation officers, though counties do have access to some state funding for court appointed special advocate (CASA) services for abused and neglected children.

Allocating resources to local courts in an equitable and fair manner is made complex because some courts see a greater share of cases that require more effort to process than others. So, while two courts may see the same aggregate number of cases in a given year, the composition of those cases creates significant differences in the burden on the courts to hear them. In effect, county-level decisions about spending and state-level decisions about allocating judges mean that relative workloads and services can vary dramatically by locality. Indiana uses a weighted caseload system to account for these disparities by measuring the relative effort associated with various case types and to distributing funds and allocate staffing in accordance with relative (weighted) efforts. Courts that have a higher share of resource-intensive cases will tend to have a greater need for funding and staff to handle them. The system aims to equalize efficiency, regardless of where the case is heard.

Impact on the disadvantaged

Budget reductions have made it more difficult for underrepresented populations to get access to justice (District of Columbia Access to Justice Commission, 2009). The inadequacy of indigent legal service increases the number of litigants without assistance of counsel, which creates further delays. Nonprofit legal providers are in greater demand as a result. In November 2011,

President Obama signed an appropriations bill that reduced funding to the Legal Services Corporation (LSC) by 12 percent (Legal Services Corporation, 2012). LSC was created by Congress to ensure equal access to justice and to provide low-income Americans with quality legal assistance. LSC grants provide civil legal assistance to the more than 60 million Americans with incomes below 125 percent of the federal poverty line.

In addition to LSC grants, many nonprofit and pro bono legal service providers rely on charitable donations and Interest on Lawyers Trust Accounts (IOLTA) income to supplement their budgets. IOLTA is a program whereby interest accrued on client funds is pooled by banks and transferred to the Indiana Bar Foundation, which uses these funds for civil legal aid for underserved populations (IOLTA website, 2012). Because the revenue generated through IOLTA programs is highly sensitive to prevailing interest rates, efforts to support the economic recovery by holding interest rates at low levels has resulted in significant declines in IOLTA funds; from 2007 to 2009, IOLTA funds dropped nationally by over 66 percent (Pal, 2011).

Indiana Legal Services, a provider of legal assistance to low-income individuals and the sole recipient of Legal Services Corporation (LSC) field grants in Indiana, saw its 2012 funding reduced by over \$837,000, a 17 percent decline from 2011 (Legal Services Corporation, 2012). Furthermore, the Marion County Law Library, which provided legal materials for the nearly 3,000 residents that represent themselves in civil cases each year, was permanently closed as a result of budget cuts (Jarosz, 2010).

How courts affect the economy

As recessions increase demand for court services and reduce public funding for them, courts also affect economic productivity and personal well-being. Even at their most fair and efficient, court hearings on contractual disputes, bargaining on real and intellectual property, home foreclosures, adoptions, etc., all require time and resources from private parties. As court output slows and resources to administer justice become scarce, the time and money spent by citizens and businesses increases. More effort on judicial proceedings means less effort on core economic activities and less attention to personal well-being and social cohesion.

Without consideration for the impact of cuts to court funding, many reductions in court resources may actually be economically counterproductive. In 2010, the Georgia State Bar Association commissioned an economic analysis of the impacts of reductions in state court funding (The Washington Economics Group, Inc., 2011). The report estimated that the state's cuts to court funding lost between 3,457 and 7,098 jobs throughout the state, concentrated in high-wage, knowledge-based sectors. Total economic output was estimated to have been reduced by

\$337 million, to as much as \$802 million annually. A similar study of the Los Angeles court system, the largest in the nation, estimated that funding cuts to the courts cost \$15 billion in lost economic activity and \$1.6 billion in foregone state and local tax revenues (Weinstein & Porter, 2009).

Spending cuts also create losses in intangible benefits of a well-functioning judiciary. Having a state court system that resolves disputes in a fair, timely, and efficient manner contributes to a positive business climate where firms can expect that their legal rights will be enforced without undue delay. These “spillover” effects create efficiencies within a complex system of social interaction. Businesses react to the legal environment when making decisions on whether to invest in innovative technology, locate a business, or launch a new product line. The U.S. legal system provides an advantage, built up over the course of the last 150 years, that has contributed to making the United States the most prosperous, dynamic economy in the world (Shepard, 2011). In contrast, many international law practitioners describe the unreliability and delay that is typical of many foreign courts. In India, for example, it often takes 12 to 15 years for an intellectual property case to wend its way through the legal system (Shepard, 2011).

Court system unification and innovative practices

Clearly, the reduction of public revenues has impacted a constitutionally mandated function of government. Rather than simply relying on cost-cutting, layoffs, and similar strategies, state court systems are taking proactive and innovative approaches to improving operations. These approaches include a move toward unified and state-funded courts, professionalization of staff and management practices, and the use of electronic case management technologies.

Unification

The National Center for State Courts defines court unification as:

“... a collection of characteristics or processes: centralization of administrative authority, centralization of rulemaking powers, unitary budgeting, state (vs. local) funding of trial courts, and trial court consolidation.”

As of 2011, ten states and the District of Columbia were identified by NCSC as unified. While state versus local funding of courts is a distinct issue, it is clearly associated with the ability of courts to speak with a single voice when communicating and interacting with the other branches of government. Advocates for unified and state-funded courts argue that such systems improve access to and equality of justice by better allocating

resources across the state. Long-term planning and identification of needs seem to improve as well, though opponents of unification contend that unification reduces responsiveness to local conditions that are often idiosyncratic (National Center for State Courts, 2012d). It should also be noted that although trial court unification might enhance the long-term financial stability of state courts, the unification process itself may increase costs in the short-term as a result of administrative and organization restructuring.

The Justice Management Institute conducted an extensive study of tradeoffs between state- and locally-funded court systems (Carlson, Harrison, & Hudzik, 2008). Using New Jersey (primarily state-funded), Florida (recent shift from local to state funding), and Washington (primarily locally-funded) as case studies, the study did not find definitive evidence that either approach impacted the overall adequacy of state trial court funding better than the other. However, funding regimes appear to create tradeoffs. For example, moving from a locally-funded system to a state-funded system might diminish disparities in the quality of justice available by locality, but this increase in equity might result in reductions to local flexibility that stifles the development of innovative programs or service delivery models.

One clear advantage to the state-funded model is greater transparency and accountability from an improved ability to follow money and collect outcome data throughout the court system. This allows states to more effectively achieve strategic objectives and improve programmatic outcomes, but this often comes at the expense of localities’ ability to respond to unique local concerns. As state spending on courts increases, so too does the tension between the branches of government over who should set the priorities for the court system.

In a report to the House of Delegates in 2011, the American Bar Association’s Task Force on the Preservation of the Justice System produced a report describing the stresses facing judicial branches across the country and provided recommendations that might mitigate future disasters from economic downturns (American Bar Association, 2011). The report recommended structural and practical changes to state court systems under three general headings: (1) achieving financial predictability and adequacy; (2) increasing efficiency and reducing waste; and (3) communicating and advocating a stable and effective justice system. Among others, the report recommends that state court systems:

- Allow greater flexibility to courts in managing their funds,
- Reduce line items in court budgets and legislative restrictions on funds,



- Establish unified funding for courts at the state level with a funding formula that promotes fair and predictable funding,
- Eliminate unfunded mandates and unnecessary court functions,
- Incorporate business process management and enhanced use of technology,
- Streamline judicial process to eliminate unnecessary complexity,
- Promote effective communication and education of legislators and the public in the actual costs of court budget reductions, and
- Create advocacy coalitions for courts to include business leaders and community stakeholders.

The ABA views the court funding crisis as a serious threat to a fundamental service of government and has made the court funding crisis its top policy priority in 2012.

The Indiana Judicial Center commissioned the Indiana University Center for Urban Policy and the Environment (CUPE) to conduct research on how court unification has been achieved in other states. CUPE released its results in 2010, and found that Indiana's approach to these recommendations has been incremental change, mainly on an ad hoc basis without structural changes statewide. States that have attempted court reform in recent years were studied, with two states contiguous to Indiana (Michigan and Ohio) highlighting issues that can arise. In 1996, Michigan tried pilot projects that would experiment with court unification by combining multiple local courts into a single trial court with one budget (Palmer, Baker & McKinnis, 2010, p. 157). Judges had extensive discretion over the management of the courts in order to be responsive to local needs. The pilot projects were considered successful, and led to a call for legislation to implement the changes statewide. Despite this, CUPE noted that securing the necessary legislation to make statewide changes has apparently not occurred yet, as trial court consolidation is not universal in Michigan.

Unified Indiana courts?

Unification of Indiana's court system has been a topic of discussion in Indiana since the 1960s and is a primary component of the Indiana Judicial Center's Strategic Planning Committee Report (Indiana Judicial Board, Strategic Planning Committee, 2008). At the direction of Chief Justice Randall T. Shepard, the Judicial Conference Board of Directors met to strategically plan the future of Indiana's judicial system. The Committee, in collaboration with court officials statewide, identified three main

areas for improvement and made recommendations within those areas: (1) Enhanced Education for Judges & Court Staff; (2) Simplified Structure of Trial Courts; and (3) Improved System for Keeping Trial Court Records. The Committee stated that without a properly trained court staff, delivery of services can vary across counties, and this can compromise equal access to justice. It recommends establishing minimum standards for court staff and increasing the education requirements for the state's judges, simplifying Indiana's court structure and moving to a centralized funding system, redefining the traditional role of the Clerk of Court through better training on how to interact with the public, and moving the court record keeping responsibility out of the clerk's office and into the court itself.

Innovative practices

Out of necessity court leaders have designed solutions with low to no cost innovations. A 2008 article in *Judicature* lists seven methods that states have employed to deal with increasing burdens and decreasing resources (Broccolina & Zorza, 2008). One major trend is that courts are redefining the role of Clerk of Courts. Traditionally, they and their staff have not offered legal advice or assistance, at times causing litigants to incorrectly file paperwork due to a lack of understanding the process. Approximately one-third of the states have changed that process, and established clear guidelines and training on how clerks and staff can provide assistance to litigants while maintaining neutrality. This has greatly reduced staff frustration and had a "dramatic impact on the operation of the courts" (p. 125).

States have also standardized their legal forms, encouraged (with proper training) task sharing between litigant and attorney, implemented compliance checks at the beginning of cases, and better utilized resources such as student volunteers and law libraries (Marion County's law library closed in 2010 due to budget cuts). Finally, responding to the national trend of more self-represented litigants, and with high quality training, judges are taking a greater role in assisting litigants without compromising their neutrality. Harvard Law School launched a curriculum in 2007, and research shows that when using best practices, the cases run more smoothly and the judge has more information with which to make a decision (Broccolina & Zorza, 2008, p. 127).

Case study: Minnesota

Minnesota recently completed a court reform process dating to the early 1970s that shifted the state court system from a county-funded, locally-oriented confederation of trial courts to a unified system with state funding and a centralized governance structure (Dosal, 2008). By aligning the funding and organizational structure of state courts, Minnesota was able to reduce



conflict and confusion related to court function and to articulate and pursue stated goals more effectively.

Recognizing disparities in the delivery of judicial services across counties and confusion regarding accountability, the Minnesota legislature approved a phased transfer to state funding of court operations in 1989. As expenses shifted from counties to the state, county levy limits were reduced and funding was appropriated to provide for an expanded administrative infrastructure to manage the new statewide system.

Starting with 87 counties and 87 largely independent court systems, Minnesota managed to bring the entire state court system under a state umbrella headed by a 25-member Minnesota Judicial Council. This reengineering of the state court system has allowed for statewide policy implementation and addressed many of the concerns with the equity of judicial administration that existed under a county-oriented structure.

Moving to state funding is about more than simply who writes the check. Going from a confederation of county courts to a unified system of justice changes both how the system is perceived and how court services are delivered.

Sue Dosal, Minnesota State Court Administrator

Case Study: Utah

Like most state courts around the country, Utah courts experienced significant reductions in funding as a result of the economic downturn, which began in 2008. During the downturn, the Utah judiciary saw a cumulative nine percent reduction in its budget. While budget reductions resulted in staff reductions and delays in filling vacancies, it also spurred efforts to reorganize and reengineer the administration of state courts (National Center for State Courts, 2012e).

Utah aggressively pursued the implementation of technology to streamline court processes and initiatives to professionalize their staff. Efforts to implement electronic records statewide are projected to result in significant savings and provide a more efficient delivery of court services. E-filing, e-citations, e-warrants, electronic document management systems, and the centralization of court processes have successfully increased efficiency such that Utah courts have taken budget reductions as permanent cuts and have not had to ask for increased appropriations in subsequent budgets.

Moving towards a “paperless” court with a college-educated staff of professionals, Utah provides an example of the types of innovative reform efforts that can help courts operate under an ongoing difficult fiscal environment. The creation of a 21st century court system in Utah has created flexibility and productivity gains that have largely offset reductions in state appropriations.

In Utah, we strongly believe that everyone should receive equal justice regardless of where they happen to live. We can't wait until everyone is on board; we have a critical mass and we are moving forward with efforts to transform the way courts conduct their business.

Dan Becker, Utah State Court Administrator

The future of Indiana's courts

Just as the Indiana state government took over funding of public education, county welfare, and several other services with property tax reform in 2008, some see the need to move to a state-funded and unified system to ensure access to and equality of justice in the state.

Indiana's local governments were hit hard by the 2008 recession (Nagle, 2011). In addition, the state amended its constitution to cap the rate at which property is taxed and, by extension, the revenue-raising capacity of local units. Among other units, county and city/town governments must rely more on local income taxes and less on property taxes that infuses more volatility in revenues. The fiscal position of local governments will be strained for the next few years, as local option income tax distributions are flat lined and the lagged effects of the recession constrain property tax revenues (Nagle, 2011). Though Indiana's court system survived the 2008 recession relatively intact compared to other states, there is increased uncertainty for future years.

Also in short supply during times of economic distress are strategic investments in long-term planning for courts and in management training for court administrators. Without a unified body to assess the needs and resource utilization of courts around the state, the ability of courts to weather future budget shortfalls is uncertain.



Conclusions

The health of state judicial systems is a critical issue, especially in times of economic distress. Citizens and businesses expect that they will receive a fair hearing in a timely and equitable fashion and Indiana's Constitution requires it. As with all functions of government, budget deficits put greater constraints on the ability of courts to provide a constitutionally mandated service to the public.

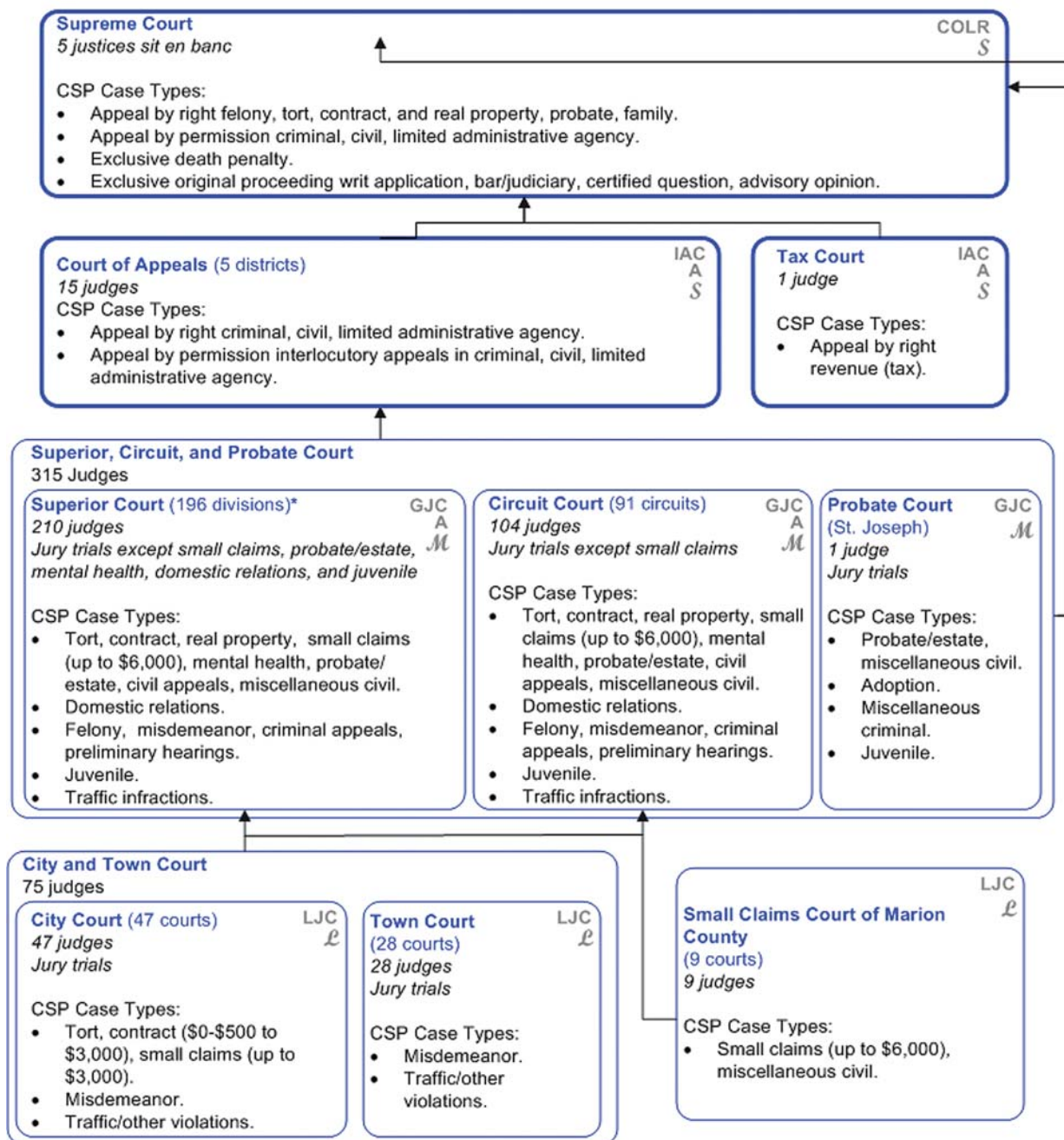
Elected leaders and officials of government face tough challenges in determining the most effective means of providing judicial services. From empirical evidence, those states that have moved toward a unified system of court administration have improved efficiency, effectiveness, and equality in their provision of justice. In addition, increased professionalization and management training appear to be critical components in operating a well-functioning court system. Judges, administrators, and staff should have the capability to manage increasingly large and complex caseloads. Evidence also suggests that significant

cost saving can be realized through the use of electronic case filing and management systems. However, implementing any or all of these approaches to judicial service provision requires careful planning, the buy-in of local judges and administrators, and adequate resources necessary to implement them.

Indiana courts have withstood the worst of the 2008 recession, but a revenue constrained environment in local government creates significant uncertainty in future years. Efforts to construct a vision for a unified court system present a significant first step in ensuring the health of the judiciary. Also critical are improvements in professional and management training, and an exploration of the roadblocks to electronic case management systems statewide. The Indiana judiciary can be cautiously optimistic for its future and should use the lessons from other states on how best to improve court operations.

Indiana

(Court structure as of Calendar Year 2009)



* Effective January 1, 1996, all Municipal Courts became Superior Court. Effective January 1, 2009, all County Courts merged with Superior Court.

Legend		
 	= Appellate level	COLR = Court of Last Resort
 	= Trial level	IAC = Intermediate Appellate Court
		GJC = General Jurisdiction Court
		LJC = Limited Jurisdiction Court
		↑ = Route of appeal
		A = Appeal from Admin. Agency
		S = State funded
		L = Locally funded
		M = Mixed: state and locally funded

AOC Web site: www.in.gov/judiciary/

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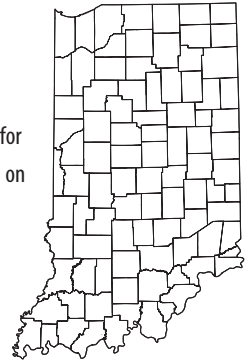


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This report discusses how economic cycles affect demand for and delivery of court services in Indiana and across the country. Trends in court caseloads and financing are provided to make the connection between the courts and the economy. The structure and funding mechanisms are a critical component in this story, so Indiana's court structure and finances are compared to other states. Finally, best practices and efforts toward court unification are discussed to glean insight on "what works" and how state and local governments can ensure that future recessions do not compromise the ability of a co-equal branch of government to meet its constitutional mandate.



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