

## RESHAPING THE FACE OF JUSTICE: THE ECONOMIC TSUNAMI CONTINUES

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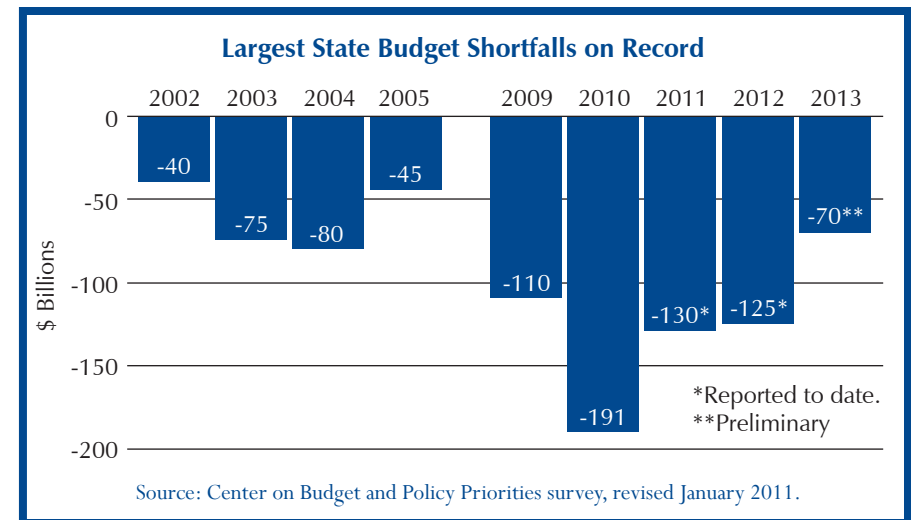
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*Courts are running out of options for dealing with the Great Recession. Reengineering court operations to improve service to the public gives the courts their best chance of weathering the “economic tsunami.”*

The Great Recession continues to leave state courts reeling. Across the country courts are being squeezed by eroding resources coupled with an increasing demand for services. Like compound interest, three years of the recession is having a cumulative impact on courts. Several years of cutting staff, reducing salaries, limiting the hours of operation, and shedding functions have forced many courts to cut services to the point where the hollowing out their organizations—permanently eroding the capacity to deliver services—is no longer a threat but a reality. The end of the recession is not in sight. However, through reengineering many courts are reshaping themselves to fit this new reality. These courts offer a beacon to guide courts from crisis to stability. This article chronicles that journey.

According to the Center on Budget and Policy Priorities, 46 state governments face budget deficits in FY 2011. Eighteen have shortfalls of over 20 percent; 10 states have budgets that are short between 10 percent and 20 percent; and 18 state budgets are between 1 percent and 10 percent short. Only a few state governments do not have a shortfall. Shortfalls projected through the first five years of this recession have reached \$626 billion. The last recession, which lasted four years, culminated in a \$240 billion shortfall. The next few years are not promising. Over the past four years the stimulus provided to states from the Recovery Act mitigated the shortfall by \$164 billion. From here on out there are few funds to cushion the shortfalls.

Budget cuts are having a cumulative negative effect on courts. State court administrators reported that 29 states had budget decreases for FY 2011. In FY



2010, 35 state courts reported deficits, and in FY 2009, 33 courts reported deficits. While 13 state courts reported small increases in FY 2011 over FY 2010, most of these increases are erased when looking at the cuts that were taken over the two previous years. Most courts have adopted strategies to meet immediate cuts, rather than developed strategies to address the long-term financial malaise. For the third year in a row, strategies have included holding clerical positions vacant, 31 states; holding judicial support positions open, 31 states; freezing salaries, 28 states; holding judicial positions vacant, 25 states; increasing fees and fines, 21 states; requiring staff furloughs with pay reductions, 15 states; reducing the hours of court operations, 14 states; reducing the use of retired judges, 14 states; laying off staff, 13 states; reducing salaries, 8 states; and furloughing judicial officers with a reduction in pay, 8 states (COSCA Budget Survey, NCSC, September 2010).

Three years of implementing these short-term strategies is beginning to hollow-out judicial institutions. For example, in small-to-medium-sized courts, staff shortages have led to errors that impact defendants by failing to cancel warrants in a timely manner, leading to wrongful arrests. There are fewer judicial support staff (court reporters and law clerks), which forces judges to prioritize the cases and limits the amount of judicial attention. There are more pro se litigants requiring more help and taking more time. Court staff is confronted by more socially challenged

people who feel the stress of their own financial situation. Large courts report that domestic-relations temporary orders and parenting-time disputes are delayed. The postponement of these hearings and dispositions has a profound effect on families during difficult emotional and economic times. Processing times for clerical operations, including data entry, records management, financial transactions, and customer service, are increasing. Delays in processing default judgments are becoming apparent in many jurisdictions. Early retirement incentives offered to experienced court staff are creating a “brain drain” throughout courts. As a final example, in Iowa, all courts now operate at 12 percent below staffing standards, causing significant delays in case processing. Even relatively small courts now take up to five days to process an order.

Some courts are having a difficult time keeping pace with the volume of litigation. In Massachusetts, while the clearance rate remains fairly stable, the number of cases pending beyond the time standards increased by almost 6,000 in the first six months of 2010. Backlogs and delays are increasing in Minnesota. Almost one-third of the serious felony dispositions in 2009 (29 percent) occurred beyond the 12-month time standards. Clearance rates for minor criminal cases have fallen below 100 percent for the last five years, resulting in increased numbers of pending cases. It now takes more than a year for a misdemeanor case to be set for trial in many areas of that state. The Utah courts are seeing considerable delay in civil cases. The average age of pending cases is up 84 days over the past two years, approximately 50 percent for many civil cases.

The unprecedented depth and length of the budget crisis pose a real threat to the judiciary. Courts need to take measures to avoid the hollowing out of their institutions. What is needed is an approach that delivers significant operational efficiencies while preserving or improving services. This is called reengineering, restructuring, streamlining, etc. Many courts are undertaking this type of effort. The National Center for State Courts (NCSC) has worked with six states that have significantly reengineered their services—Minnesota, Vermont, New Hampshire, Nebraska, Maine, and Oregon. Four states have done their own reengineering—Arizona, Iowa, Michigan, and Utah. NCSC has begun to work with New Mexico and Kansas. Individual courts, such as Sacramento and Orange County, California, have done significant work also. These pioneers are breaking ground for others to follow.

When looking to reengineer, court leaders should look for ideas that stretch their conception of how courts can operate. Through our work with numerous courts the NCSC has developed a reengineering menu of six items court leaders should consider as they look to restructure their courts.

1. Centralize and regionalize court functions and operations where possible
2. Identify all functions that can be automated and automate them to the maximum
3. Systematically apply case management, which may require overhauling the current system
4. Maximize the number of transactions that can be completed online
5. Reorganize the back office from top to bottom
6. Redistrict and redefine jurisdiction and venue

The table on the following page summarizes the tactics that reengineering courts have undertaken to date. These fall into five categories: centralizing select functions; expanding the use of video conferencing; changing court processes to become more efficient; looking at structural changes; and expanding the electronic environment. Other solutions have looked at leveling the workload throughout the court system, reorganizing the “back office,” and pursuing more flexibility in managing court operations. Other options, which have yet to be pursued because they are more difficult, include civil-rules reform, case triage, case review and unbundling, more virtual services, and maximizing online transactions.

In the face of severe and lengthy budget cuts, courts face no other choice than to reshape themselves if they are to remain relevant and vibrant institutions for the 21st century. Courts must not be afraid to ask what litigants and other users want courts to look like. Other industries such as banking give clues as to what customers of the 21st century expect. They want quality service while having a high degree of personal convenience, low transaction costs, reduced complexity, improved access, and high predictability. Courts committed to reshaping themselves offer lessons for others to follow to meet this new future.

### Reengineering Strategies from Various States

Centralization	Video Conferencing	Processes	Structure	E-Everything
Electronic payables (fines, fees, restitution, etc.)	Arraignments for incarcerated defendants	Statewide fine schedule for petty misdemeanors	Consolidation of judicial districts	E-file with an electronic document management system
Automated referral to collections	Detention hearings for detained juveniles	Expand the list of misdemeanors and ordinance violations that are payables	Court consolidation—single-tier trial court or single-tier limited-jurisdiction court	Electronic workflow
Traffic citations	Child support hearings	Courtroom docket entry into the case management system to prepare sentencing and other orders with electronic signatures (e.g., in court updating)	Review jurisdiction and venue as related to centralized filing of cases and centralized issuance of orders	E-filing <ul style="list-style-type: none"> <li>• Centralize/regionalize filing centers</li> <li>• Self-help software</li> <li>• Electronic citation by all law enforcement</li> </ul>
Call centers	Additional simple hearings	Digital recording of court proceedings	Expand use of subordinate judicial hearing officers	Electronic signatures on orders, notices, etc.
Jury management <ul style="list-style-type: none"> <li>• Summons</li> <li>• Qualification questionnaires</li> </ul>	Motions in civil cases that do not involve testimony		Consolidation of clerks/managers with expansion of responsibility to multiple locations	Availability of e-case files from every court at one or more call centers
Processing and issuance of default judgment orders	Interpreters			Virtual Web-based information centers providing direct access to records, etc.
Probate reports	Off-site live testimony			
Education				

### Improving court operations may involve overhauling a court's case management system in one of three ways:

**Civil Reform**—There are two options: (1) a civil track for lightweight processing that offers quicker, cheaper, simpler, and more predictable outcomes by restricting the degree of legal process, and (2) a less expensive process that limits discovery and expedites case events for more complex cases.

**Case Triage**—Using this approach, courts first determine, according to the issues, what type of processing a case requires: full, classic due process; modified due process; a problem-solving approach; or administrative resolution.

**Unbundled Case Review**—Some cases may be directed to the most efficient case management queue by staff, rather than judges, based on simple rules and easily identified case characteristics. The key principles are (1) a formal set of processes and (2) an escalation of case review to the next higher level of roles/legal skills only as required.