

Reimagining the Civil Legal System

BY ANNE TEIGEN

When some people think of the justice system, they may envision gripping court room dramas, with innocent criminal defendants taking the stand and surprise witnesses and lawyers harping at each other in a battle of wits. But how often do dramatic criminal trials play out in real life?

While most Americans do come into contact with the court system, it is usually with the civil justice system, which handles critically important matters like debt collection, child custody, protection orders, evictions, foreclosures and bankruptcy, to name a few. These life-changing cases affect Americans every day. For example, debt collection lawsuits involving unpaid medical, auto loan or credit card bills have become the single most common type of civil litigation in our country—debt collection lawsuits more than doubled between 1993 and 2013. Eviction cases are also very common. Between 2000 and 2016, [61 million eviction cases were filed in the U.S.](#), an average of 3.6 million evictions annually, according to The Eviction Lab at Princeton University. This means in 2016, [seven evictions were filed every minute.](#)

The National Center for State Courts has said that America’s civil court system is “arguably the most complex and comprehensive in the world.” Even so, more than 30 million Americans encounter civil legal problems without the help of a lawyer each year, according to [The Pew Charitable Trusts](#). Without lawyers, people are often left with no guidance to navigate a highly complicated system with dense forms, multiple filing deadlines, delays and high fees—all while potentially facing an opposing party with more legal resources and expertise. Inadequate information and guidance, as well as complicated processes, can also make the court experience less efficient for litigants and court personnel.

A [2016 report](#) from the Conference of Chief Justices notes that most cases result in default judgment or dismissal because defendants do not show up to court, often because they were not properly



notified of the case against them. Lack of data also obscures the full scope of barriers litigants face as they attempt to resolve legal problems in court. Only 12 states publicly report information about debt lawsuits, for example, and only one state—Texas—reports debt claims data for courts at all levels and dollar amounts, including the outcomes of those cases.

In the last few years, state policymakers have joined other stakeholders to examine ways to make the civil legal system more open, efficient and equitable.

State Action

In the last decade, states have aimed to make the civil justice system more accessible and fairer to the average person by requiring the right to counsel, meaning the government must provide an attorney for those who cannot afford one. In 2009, California [enacted legislation](#) creating pilot programs for the right to counsel in civil matters involving critical issues for low-income parties.

Did You Know?

- In 2018 alone, more than half of all U.S. households experienced one or more legal issues that could have gone to court, including 1 in 8 with a legal problem related to debt.
- Default rates in debt collection cases are 50% higher nationwide than for any other case type, and as high as 95% in some areas.
- Most civil litigation involves small judgments. [One study found](#) that 90% of all judgments entered were less than \$25,000 and 75% were less than \$5,200.

COVID-19's Effect on Courts

- The sudden onslaught of the COVID-19 pandemic put unprecedented demands on the civil legal system, especially related to evictions.
- In the first few months of the pandemic, 34 states suspended in-person court proceedings statewide and 16 suspended them at the local level.
- Courts around the nation issued emergency orders to triage cases but many courts hearing civil cases are still closed.
- Forty-three states and the District of Columbia issued statewide guidance on evictions at the beginning of the pandemic, but in the months following, eviction-related protections expired, and eviction hearings have resumed in nearly half of those states as of August.
- In September, the Centers for Disease Control and Prevention (CDC) issued a nationwide moratorium on evictions if tenants meet certain criteria, effective through Dec. 31, 2020.
- New Hampshire, Rhode Island and Texas have adopted statewide orders implementing the CDC mandate.

A 2017 report on the pilot programs found that 27,000 Californians received legal help through the program in a five-year period. The report also noted that 67% of eviction cases where the tenants had legal representation through the program settled, compared to 34% of cases in which people represented themselves.

In the 2019 and 2020 legislative sessions, at least 14 states have enacted legislation requiring access to legal counsel for some civil cases, many of them family law and custody cases. Washington now requires the court to appoint counsel for parents in private guardianship proceedings and Georgia and Indiana now require the court to appoint an attorney for a minor seeking emancipation.

Some state policymakers are also instituting reforms related to common types of civil litigation like debt collection. Since 2009, seven states—California, Colorado, Connecticut, Maine, Minnesota, North Carolina and Oregon—have enacted laws to ensure all parties are aware of the debt collection suit, enforce statutes of limitations and require courts to examine the plaintiff's case before issuing a judgment.

Some state legislatures have increased appropriations to courts and legal aid organizations to support technological innovations that can improve access to the legal system for litigants navigating without lawyers. For example, in fiscal year 2020, the Massachusetts legislature increased appropriations to \$24 million, up by \$3 million from the previous year, to the Massachusetts Legal Assistance Corporation. Increased appropriations can help legal aid organizations pay for online legal

assistance portals, websites with self-help tools, answers to frequently asked questions, forms and letters, and even step-by-step instructions for resolving legal issues. Several states, including Connecticut, Illinois, Maine, Massachusetts, Michigan, Minnesota, Ohio and Vermont, have developed these web resources. Michigan also appropriated funds to expand the use of online dispute resolution from courts to its 83 counties. This technology affords litigants the opportunity to resolve a legal case almost entirely online, without setting foot inside a courtroom.

The COVID-19 pandemic has propelled state courts to expand technology innovation. The supreme courts in Michigan and Texas developed guidelines and resources for courts to help limit coronavirus transmission by operating effective, efficient and transparent court proceedings online. Other states, like Iowa, New Jersey and Utah, expanded the use of digital tools like electronic filing, which allows litigants to submit official documents online.

Federal Action

The 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act contained state-administered federal funds—known as pass-through funding—that are available to state courts. The funds can go toward implementing remote services and technologies to help civil courts operate during the pandemic and better serve their communities once the pandemic ends. The National Center for State Courts has more information and a short video on how courts can access and use federal-pass-through funding.

Additional Resources

- [“Call to Action: Achieving Civil Justice for All,” National Center for State Courts](#)
- [“How Debt Collectors are Transforming the Business of State Courts,” The Pew Charitable Trusts](#)
- [Civil Legal System Modernization, The Pew Charitable Trusts](#)

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