



Immigration-related
needs and demands on the **courts** are shaped by a variety of **factors**

Immigration and the State Courts Assessment and Measurement Framework

By John A. Martin, Steven Weller, David A. Price, Angie Lederach, and Jeff Yoder

For well over a year now, the State Justice Institute supported Center For Public Policy Studies' Immigration and the State Courts Initiative has been working to help courts across the nation

address the needs and problems of immigrants in state court cases by:

- inventorying the policy, organizational and operational

challenges, and opportunities trial courts and state court systems need to address when serving immigrants in the courts;

- working with diverse court jurisdictions across the nation to develop and implement assessment and improvement strategies for serving immigrant populations;
- preparing electronic, interactive, bench guides to assist judges adjudicate criminal, family, dependency, and juvenile cases involving legal permanent resident and unauthorized immigrants;
- preparing an interactive, electronic guidebook for court managers and personnel to help address the impacts of immigration in the state courts;
- developing educational and training courses for judges and court personnel to increase understanding about how to address the impacts of immigration;
- preparing a policy paper to inform the U.S. Congress and federal executive agencies about the impacts of immigration policy and practice on the state courts and how these impacts should be taken into account during emerging efforts for national immigration reform; and
- facilitating federal/state/local dialogs to promote better collaboration between federal, state, and local court and justice systems when addressing immigration issues that affect the state courts.

To date, the collective experience of initiative participants has revealed that three of the biggest questions facing both individual trial courts and state court systems when grappling with immigration-related issues are:

- how to summarize, succinctly, why immigration is an important topic that needs to be addressed by a particular court;

- how to assess the challenges immigration poses for a court and subsequently develop and implement solutions to identified challenges; and
- how to measure court performance when serving immigrant populations.

In this article, we present an assessment and measurement framework that includes a set of concepts and vocabulary designed to help courts think and communicate about how federal, state, and local law, policy, and practice might impact the work of the courts and how the courts can improve services for addressing the needs of immigrants. In addition, we integrate into the discussion of the framework suggestions for how courts can measure how well they serve immigrants and the impacts serving immigrants have on court costs and operations. Our conclusions stress the ongoing need for the court management profession, state court systems, and individual trial courts to address the following critical strategic choices regarding the extent to which they should and can:

- adjudicate cases involving undocumented immigrants;
- assure comparable procedural justice for all immigrants regardless of immigration status;
- minimize the unintended consequences of state court action on immigration status;
- explicitly or implicitly assist the federal government in regulating immigration; and
- provide services to immigrants of differing immigration status.

An Assessment and Measurement Framework for Addressing Immigration in the State Courts

The structure of the framework for addressing immigration in the state courts presented in Figure 1 (page 43) stresses that state courts need to:

- understand the numerous factors shaping immigration-related needs and demands on courts;
- have a clear, commonly shared set of goals and values regarding how immigrants should be served by the courts;
- have a clear, commonly shared understanding of the desired outcomes of state court case processing of cases involving immigrants;
- have reached agreement among court policymakers regarding the strategic choices listed above;
- be clear about how the needs of immigrants and the complexities of federal immigration law, policy, and practice affect the numerous work processes used in criminal, civil, family, juvenile, and probate case processing; and
- provide court and justice infrastructure that supports effective case processing in cases involving immigrants.

There are a variety of assumptions about the relationships among the five key components built into the framework. Specifically, the logic of the framework stresses that immigration-related needs and demands on the courts need to be accounted for in the strategic goals and values

and other aspects of the strategic direction established by the courts when addressing immigration-related issues. In turn, the characteristics of work processes should reflect the court's chosen strategic direction, and work processes should result in well-articulated outcomes. The framework also stresses that both inter-organizational justice system and court specific infrastructure should support work processes and reflect fundamental strategic goals and values.

The framework's five key components and the measurement requirements accompanying each component are described below.

Immigration-Related Needs and Demands on the Courts

Immigration-related needs and demands on the courts are shaped by a variety of factors. For example, the size of the immigrant presence in a state trial court is influenced by numerous global, national, state, and local economic, demographic, social, and policy trends such as:

- labor force trends;
- population aging trends among the native-born U.S. population, including aging of the baby-boom population, as well as the age structure of more recent immigrant populations;
- industry location trends, including the location of key industries that depend heavily on immigrant labor, such as food processing, farming, ranching, construction, computer science, hospitality, and the medical industry;
- trade and labor force regulation trends; and

- immigration enforcement policies and practices.

Previously in *Court Manager*, we have shown that size and age-structure, family composition, economic, employment, education, country-of-origin, and federal immigration status of immigrant populations varies greatly from jurisdiction to jurisdiction across the nation and that these differences can have profound effects on the workload demands placed on the courts. Similarly, differences in state statutes designed to address immigration issues can shape demand on the state courts.¹

In particular, immigration-related needs and demands on the courts are shaped by intersections of federal, state, and local immigration law, policy, and practice, such as:

- federal voluntary removal practices;
- citizenship eligibility law and practices;
- practices regarding enforcement of state document fraud laws;
- eligibility of different classes of immigrants for services;
- pre- and post-conviction detention practices;
- sentencing practices;
- local/state court level prosecutorial charging practices;
- plea acceptance practices;
- law enforcement citation and release practices;

Moreover, immigration-related needs and demands on courts are shaped by the capacity of immigrants to use state courts, such as:

- Language-based capacity, including English and other language skills and literacy;

- Culture-based capacity, such as gaps between court system and litigant assumption and beliefs about motivations for change, how to structure activity, gender roles, illness, discipline, contrition, authority, respect, and change; and
- Social and community factors such as mistrust and fear of government personnel, including justice system and court personnel, by immigrants.

Key performance measurement questions about demands on courts potentially stemming from immigrant populations include:

- What is the relative size of the immigrant population within a jurisdiction?
- What are the relative sizes of the legal permanent resident and undocumented populations within the immigrant community?
- What is the age structure within the immigrant population?
- What is the family composition within the immigrant population?
- What is the immigration status of families within the immigrant population?
- What are the levels of language proficiency within the immigrant population?
- What are the education levels within the immigrant population?
- What are the cultural gaps between immigrant populations and the court workforce?

Useful and readily obtainable measures to assist in answering these questions include:

- the size of the foreign-born population as a percentage of total population;
- the size of the legal permanent resident immigrant population as a percentage of total population;
- an estimate of the size of the illegal immigrant population as a percentage of total population;
- the percentage of total population reporting languages other than English as the preferred language used in the home; and
- the percentage of total population with limited English proficiency.

The assessment and performance measurement summary presented in Figure 2 (page 44) identifies the four key performance measurement questions courts need to address and offers some example measures for addressing each of the four key questions.

Strategic Direction

With regard to strategic direction, perhaps the biggest challenge to addressing the impacts of immigration on state courts is the current lack of either clear policy direction or shared values about the role of state courts in immigration matters or how immigrants should be treated in state courts. Our experience to date has been that, typically, courts have not articulated a set of values or policies regarding case processing involving immigrants. Moreover, we have seen that in many jurisdictions there is disagreement among court personnel about what these values and policies might be.

At the same time, court participants in the Center for Public Policy Studies Initiative routinely report that there

needs to be court-wide agreement about values and policies because without agreement, judges and staff fall back on their personal values, create their own policies, and, as one result, decisions and practices that should be uniform vary greatly from individual to individual. The lack of well-articulated values and policies is particularly difficult for court personnel who deal directly with clients, such as litigant assistance personnel, family court staff, dependency and juvenile court staff, treatment providers, and pretrial release and probation staff. Moreover, the lack of a clearly articulated court-wide strategic direction is especially difficult for line staff when working with individuals who have self-identified or been identified by other justice and human service organizations as undocumented immigrants or are family members in unauthorized households that include undocumented immigrants.

For example, to date, few courts have addressed questions regarding the extent to which the following values should accompany the processing of cases involving immigrants in state courts.

- *Transparency* — Assure that the decisions made and work processes used in matters involving immigrants are open and understandable to litigants and local, state, and federal court and justice partners.
- *Cost-Effective Service Provision* — Assure that federal, state, and local law, policy, and practice are coordinated.
- *Timeliness* — Exchange information across and among local, state, and federal agencies; link litigants with interpreters and other resources; and complete case events in concert across agencies to assure expedient case processing.

- *Equal Access and Consistency* — Provide access to needed defense, litigant assistance, treatment, language, and other services for all who use the courts, regardless of their ethnicity, income, education, or immigration status.
- *Comprehensiveness* — Provide a range of forums and services to address the potentially multiple needs of all court users, including immigrants and their families.
- *Culturally Appropriate* — Provide services that help all those who use the courts to successfully navigate the courts and justice system, process information, make wise decisions, and understand and comply with court orders.

Similarly, with regard to policies, our experience to date has revealed that there is likely little agreement in most jurisdictions about what should be the extent of state court efforts to:

- Adjudicate cases involving undocumented/illegal immigrants?
 - Should undocumented immigrants be taken into custody and potentially be removed from the United States by Immigration and Customs Enforcement (ICE) at any point prior to state court case disposition?
 - Should undocumented immigrants be taken into custody and potentially be removed from the United States by ICE post-sentencing or after they have completed all or a portion of a sentence?
 - Should child protection and juvenile cases involving undocumented family members

and violence against women cases be processed any differently than cases involving lawful permanent residents and U.S. citizens?

- Assure procedural justice for immigrants? Should the courts promote:
 - Respect and Understanding — the extent to which lawful and undocumented immigrants are treated with dignity and understand what is happening in court?
 - Voice— the extent to which lawful and undocumented immigrants are given a chance to be heard?
 - Trust — the extent to which judges and court staff provide the impression that they care about lawful and undocumented immigrants’ needs?
 - Neutrality — the extent to which judges can instill confidence that they are treating lawful and undocumented immigrants fairly?
- Minimize the unintended consequences of state court actions, in part by assuring that state court judges and personnel understand the consequences of state court decisions on immigration status?
- Assist the federal government in regulating immigration? Should the courts:
 - Provide state court case information in formats that can be used in co-occurring or subsequent federal immigration case processing?

- Check litigant immigration status?
- Report suspected undocumented immigrants?
- Provide services to immigrants?
 - Should the state courts provide lawful and undocumented immigrants needed state court case processing, sanctioned treatment, and other services at the same levels available to non-immigrant court users?

Work Processes and Procedures

The third component in the Immigration in the State Courts Assessment Framework — work processes and procedures with immigration status consequences — focuses on where and how work processes used in cases involving immigrants might differ from processes used for non-immigrants. For example:

- State laws may limit bail eligibility for undocumented immigrants in some types of cases and thus bail determination processes might be altered.
- Federal pre-hearing detention or release practices might interfere with access to immigrant litigants also involved in state court cases, such as access to undocumented immigrant parents involved in child protection and juvenile cases including cases involving U.S. citizen children and access to immigrant criminal defendants on probation.
- Immigration status may interfere with immigrant litigant eligibility for and access to certain benefits and services.

- Defense and interpreter assignment practices might need to be altered to link immigrant litigants with justice professionals earlier in case processing than is the usual practice.
- Court records processes might need to be altered to include information elements typically required in concurrent or subsequent federal immigration court matters.

Key performance measurement questions here address service delivery costs, efficiency, and effectiveness, such as:

- What are the workload, caseload, and caseload impacts of cases involving both legal permanent residents and undocumented immigrants?
- Do cases involving immigrants take longer to process than cases involving other court users?
- Are more hearings required per case?
- Are additional types of hearings required, such as hearings to determine bail eligibility?
- Are trials demanded more often in minor criminal cases?
- Do cases involving immigrants complicate evidentiary practices?
- Are more interpreters required?
- Are different forms of probation monitoring required?
- Are others types of court services more frequently required in cases involving immigrants?

Useful measures for assessing workload and efficiency include:

- immigration-related requests for records processed;

- language and culture assistance services provided to immigrants;
- interpreter services provided;
- case processing times; and
- number of events per case.

Specifying and Measuring Outcomes

The desired outcomes of court and justice system action in cases involving immigrants make up the fourth component in the framework. However, our experience has been that few courts have articulated the desired outcomes of cases involving immigrants and how those outcomes should or should not differ from those for other groups of court users. At a minimum, we have urged courts participating in the Immigration and the State Courts Initiative to consider and reach agreement among judges and court personnel about the following potential case processing outcomes.

- *Closure — Cases Involving Immigrants Are Completed.* Lawful and undocumented immigrants in state courts receive needed services, including immigrant offenders, victims, children and juveniles, small claims and other civil court users, conservatees, and wards in cases of guardianship. Example services include:
 - Litigant assistance
 - Probation services, including domestic violence, substance abuse, and other treatment services attached to probation
 - Participation in victim restoration and other community programs
 - Child protection services

- Medical and mental health treatment services, especially for children; and
- Victim protection services.
- *Immigrants Comply With Court Orders.* Examples include immigrants:
 - Attending treatment services and meeting other conditions for probation;
 - Making restitution payments and other victim compensation;
 - Attending parenting, domestic violence, and other courses; and
 - Serving state court sentences.
- *Harm to Individuals and Community is Reduced.*
 - Recidivism is reduced within immigrant communities.
 - Individuals change destructive behavior, such as substance use.
 - Individuals within immigrant communities report crime and assist law enforcement, such as serving as witnesses, and report to authorities when harm is observed such as domestic violence or child abuse.

Court and Justice System Infrastructure

A variety of hard and soft court and justice infrastructure for effectively supporting cases involving immigrants are incorporated into the final component of the assessment and measurement framework. Hard infrastructure includes the technology, equipment, and facilities required to support case processing involving immigrants that is both efficient and consistent with the values, strategic direction, and outcomes courts have

chosen to guide them when serving immigrants in court. Soft infrastructure includes the budgeting and finance, policy-making, dispute resolution, staffing, training, communications, coordination, leadership, and management required to support case processing involving immigrants in a manner consistent with chosen values, strategic policies, and desired outcomes.

Our experience in the learning sites has been that the infrastructure demands on state courts in cases involving immigrants can be extensive and complicated. Moreover, the scope and complexity of infrastructure needs on the courts when processing cases involving immigrants can be shaped greatly by the choices courts make about values, strategic direction, and desired outcomes. In particular, the infrastructure required to process cases involving immigrants often becomes more extensive and complicated than that required to process cases involving non-immigrants because of the routine involvement or potential involvement of numerous federal agencies — such as Immigration and Customs Enforcement detention and law enforcement units, the federal immigration courts, the federal courts, federal probation and parole — in addition to the extensive coalition of state and local partners who form local justice systems. For example, some of the more important infrastructure demands on state trial courts accompanying immigration case processing that are being explored in the learning sites include:

- Information systems for determining the identities of immigrants;
- Management information systems capable of exchanging information about identity, litigant location, and case status among local, state, and federal agencies;

- Multi-system-wide case tracking technology;
- Resources for tracking decision outcomes across multiple agencies; and
- Multi-agency policy and planning forums to address federal, state, and local issues regarding case processing involving immigrants.

The inventory presented in Figure 3 (page 46) provides additional examples of critical infrastructure needed for supporting case processing in cases involving immigrant litigants.

Conclusion

Two critical lessons have been learned to date by participants in the Immigration and State Court Initiative from developing and using the assessment and measurement framework presented in this document.

First, courts across the nation need to make some difficult strategic policy choices about how they are going to address the nexus of federal, state, and local immigration law, policy, and practice. There are numerous difficult decisions state courts must make about the extent to which they should

or should not: (1) adjudicate cases involving undocumented as well as legal permanent resident immigrants that appear before the court, (2) provide services to court users regardless of immigration status, (3) minimize the unintended consequences for immigrant court users, (4) or actively or passively assist the federal government in its role of regulating immigration. Also, there are many other difficult choices that have to be made by state courts about how to establish and maintain the processes and infrastructure required to support effective case processing involving immigrant court users.

Moreover, increased federal efforts over the past months to remove from the United States illegal immigrants who are criminals, buttressed by far-reaching approaches to determine the citizenship status of every person processed in a local jail, coupled with increased federal, state, and local emphasis on limiting service eligibility for undocumented immigrants, make it increasingly difficult for state court systems to provide equal access and comparable services for all court users. In short, state courts need to address these issues sooner rather than later.

Second, the state courts need to have an informed voice in emerging

federal immigration reform efforts, both because federal immigration policy can greatly affect state court operations and outcomes and because state court action can profoundly affect federal immigration status for immigrants and their families. Ultimately, many of the difficult strategic choices confronting state courts when working with immigrant populations result from ambiguities in federal immigration law, policy, and practice and conflicts between the role of the federal government in immigration law enforcement and the state courts' role in providing access and services for all who come before the courts.

ABOUT THE AUTHORS¹

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NOTES

1. See for details, John Martin, Steven Weller, David Price, Angie Lederach, and Jeff Yoder, "Addressing Immigration in the State Courts," *Court Manager* (Vol. 24, No. 1, Spring 2009): 16.

Figure 1: Immigration and the State Courts Assessment Framework

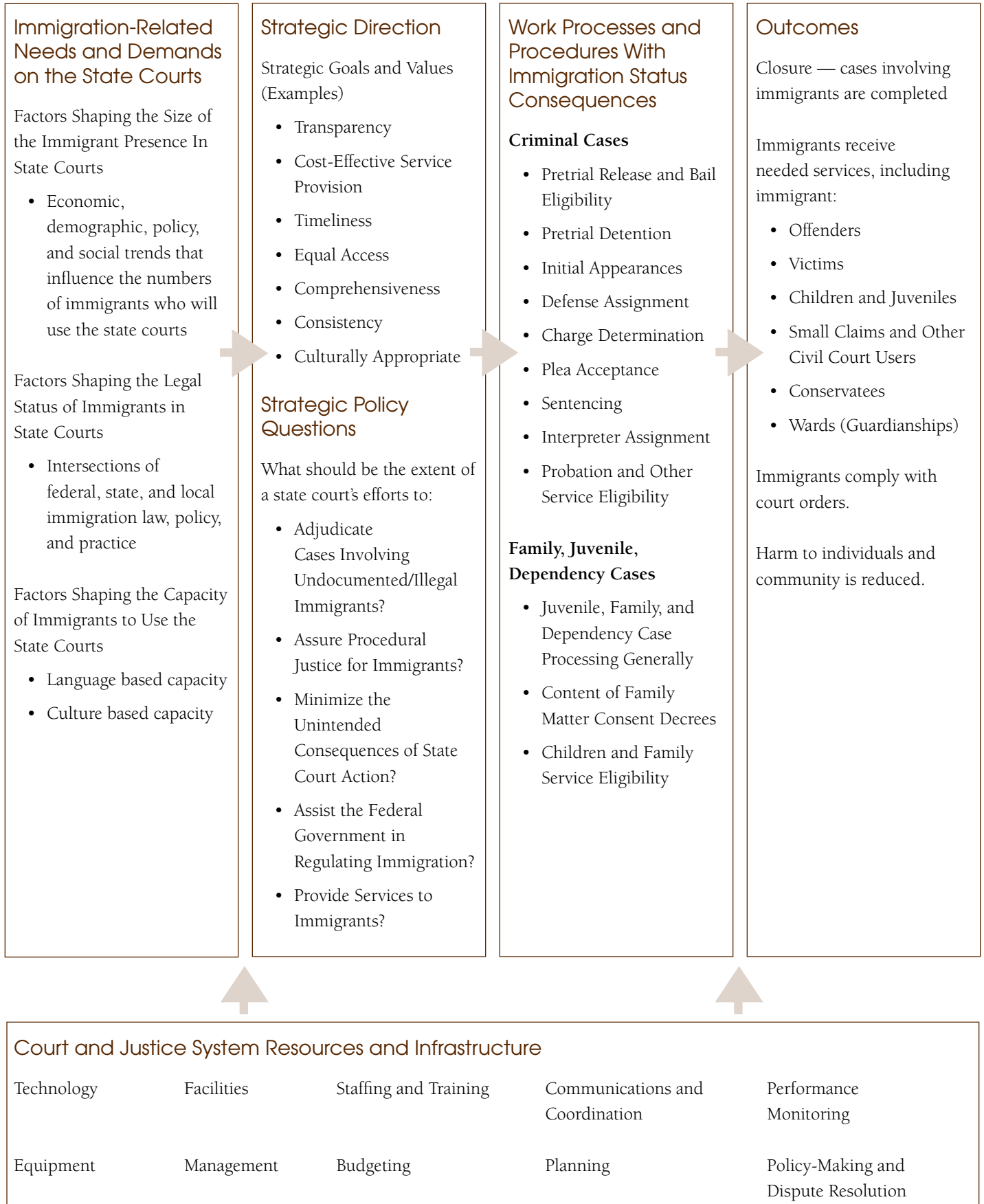


Figure 2: Immigration and the State Courts Performance Measurement Summary

Measurement Questions	Example Measures
<p>Immigration-Related Workload Demands on State Courts</p> <p>What is the relative size of the immigrant population within a jurisdiction? What are the relative sizes of the legal permanent resident and undocumented populations within the immigrant community? What is the age structure within the immigrant population? What is the family composition within the immigrant population? What is the immigration status of families within the immigrant population? What are the levels of language proficiency within the immigrant population? What are the education levels within the immigrant population? What are the magnitudes of the cultural gaps between immigrant populations and the court workforce?</p>	<ul style="list-style-type: none"> • Foreign-born population as a percentage of total population • Legal permanent resident immigrant population as a percentage of total population • Estimate of illegal immigrant population as a percentage of total population • Percentage of total population reporting languages other than English as language used in the home • Percentage of total population with limited English proficiency
<p>Support For Court Values and Outcomes</p> <p>What should be the extent of a court’s efforts to support fundamental and traditional public service values when serving immigrants in court? These values might include transparency, cost-effective service provision, timeliness, equal access and consistency, comprehensiveness, and cultural appropriateness.</p> <p>What are the outcomes of cases involving immigrants? Are cases involving immigrants completed at the same rates as are cases for other groups of court users? Do immigrants receive needed services at rates comparable to other court users? Do immigrants comply with court orders at rates comparable to other court users? Is the harm to individuals and communities attributable to immigrants at rates comparable to other court users? Are immigrant victimization rates comparable to those of other populations?</p>	<ul style="list-style-type: none"> • Closure rates — cases involving immigrants are completed • Service rates — lawful and undocumented immigrants receive needed services • Compliance rates — immigrants comply with court orders • Participation rates — individuals within immigrant communities report crime and assist law enforcement, such as serving as witnesses, and report to authorities when harm is observed

Figure 2: Immigration and the State Courts Performance Measurement Summary (continued)

Measurement Questions	Example Measures
<p>Addressing Key Immigration and the State Courts Policy Questions</p> <p>What should be the extent of a court’s efforts to:</p> <p>Adjudicate cases involving undocumented immigrants in the country illegally? Assure procedural justice for immigrants? Minimize the unintended consequences of state court action in cases involving immigrants? Provide services to immigrants? Assist the federal government in regulating immigration?</p>	<ul style="list-style-type: none"> • Litigant satisfaction with the courts — was the process seen as understandable, timely, and fair?
<p>Assessing Service Delivery Costs, Efficiency, and Effectiveness</p> <p>What are the workload, caseload, and caseflow impacts of cases involving both legal permanent resident and undocumented immigrants? Do cases involving immigrants take longer to process than cases involving other court users? Are more hearings required per case? Are additional types of hearings required, such as hearings to determine bail eligibility? Are trials demanded more often in minor criminal cases? Do cases involving immigrants complicate evidentiary practices? Are more interpreters required? Are different forms of probation monitoring required? Are others types of court services more frequently required in cases involving immigrants?</p>	<ul style="list-style-type: none"> • Immigration-related requests for records processed • Language and culture assistance services provided to immigrants • Interpreter services provided • Case processing time • Number of events per case



Figure 3: Types of Infrastructure Required to Support Court Service Delivery In Cases Involving Immigrants

Technology

- Information systems for determining the identities of immigrants
- Management information systems capable of exchanging information about identity, litigant location, and case status between local, state, and federal agencies about immigrant case status
- Multi-system-wide case tracking technology
- Valid, best-practice-based, and readily accessible assessment and treatment tools that are applicable to immigrant populations
- Management information systems that share definitions, standards, and guidelines across local, state, and federal agencies

Equipment

- Accessible and well-maintained multi-systems hardware and software

Facilities

- Accessible, dispersed, community-based facilities
- Sufficient space for co-locating local, state, and federal system partners throughout communities

Budgeting and Finance

- Sufficient, predictable, and stable resources for providing litigant assistance, treatment, and other services for immigrants
- Flexibility to change during a budget cycle and over the long term to meet changing demands and needs, including increasing resources and modifying expenditures as needed in light of changes in size of immigrant populations
- Budget, service procurement, and other business processes that encourage health care, treatment, detention, probation, and other resource sharing across local, state, and federal agencies and organizations
- Fiscal processes that allow flexible use of funds, moving resources across agencies and organizations when needed
- Funding set aside for multi-system-wide innovation and improvements
- Predictable long-term financing that allows long-term system and multi-system budgeting and planning
- Resources available to track decision outcomes across multiple agencies

Figure 3: Types of Infrastructure Required to Support Court Service Delivery In Cases Involving Immigrants (continued)

Planning

- Operational planning to ensure consistent responses across agencies and personnel
 - Multi-system-wide, long-range, and operational planning to create linkages among agencies
-

Policy Making and Dispute Resolution

- Capacity to address disputes among federal, state, and local court and justice agencies
 - Policy is based on research, national practices, and best practices
 - A decision-making structure at the multi-system leadership level that is educated on the roles of all system partners
 - Policies for establishing and maintaining consistent decision-making practices across agencies and organizations
 - Transparent decision-making processes
-

Staffing/Training

- Multi-system, federal, state, and local training of all personnel involved in case processing involving immigrants
- Cultural competency training
- Training about specific tools such as assessment and evaluation tools designed for immigrant populations
- Capacity to cross train staff through coordination of staff development efforts
- Staff available with decision-making authority to help litigants and families navigate successfully through multiple systems

Communications and Coordination

- Timely access to information across agencies about cases involving immigrants
 - Capacity to communicate the results of assessments and evaluations with appropriate personnel across multiple systems
 - Capacity to track case progress within and across agencies and systems
 - Capacity to monitor caseloads across agencies and systems
 - Shared case management planning that addresses the multiple needs of litigants, children, and families and meets the mandates of system organizational partners
 - Development of multiple system-wide performance measurements for both processes and outcomes
-

Leadership and Management

- Multiple system-wide and agency leaders to: (1) establish long-term strategic direction for systems as well as individual agencies and organizations regarding immigration policies and practices; (2) develop long-term system capacity to provide services; (3) establish and monitor inter-agency, multiple system infrastructure for supporting services; (4) establish and maintain effective inter-organizational work processes; (5) monitor multiple system performance; and (6) work cooperatively to establish a strong fiscal foundation for ongoing service delivery
- Capacity to work across multiple systems and agencies collaboratively and proactively
- Capacity of the interagency management structure to insure fair workload distribution