



Measuring Civil Justice for All

What Do We Know? What Do We Need to Know?
How Can We Know It?





A REPORT FROM THE
MAKING JUSTICE ACCESSIBLE INITIATIVE

Measuring Civil Justice for All

What Do We Know? What Do We Need to Know?
How Can We Know It?

AMERICAN ACADEMY OF ARTS & SCIENCES
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From the President

The civil justice gap—the difference between the number of Americans who need civil legal assistance and the very few who receive help of any kind—has been widening for decades, especially for low-income Americans. One of the most significant challenges we face as we try to close this gap is the absence of basic, reliable national data about the people who need help most, the kinds of help they need, and the innovations and interventions that would be most beneficial. *Measuring Civil Justice for All*, a white paper of the American Academy’s Making Justice Accessible initiative, identifies the essential facts that should be collected about civil justice activity in the United States and the entities best placed to collect that information. It also describes a range of data access standards that would help to guide the use of civil justice data for administrative and research purposes.

The Academy conceived the Making Justice Accessible initiative in November 2015 during a two-day conference at its headquarters in Cambridge, Massachusetts. The conference brought together federal and state judges, lawyers, legal scholars, legal aid providers, officials from each level of government, and business leaders concerned about the state of legal services for poor and low-income Americans. They gathered to explore the scope and consequences of inadequate access to civil justice.

Three related efforts grew out of the conference:

- the Winter 2019 issue of the Academy’s journal *Dædalus* on “Access to Justice”;
- *Civil Justice for All*, a report with recommendations for closing the civil justice gap; and
- this white paper, *Measuring Civil Justice for All*.



The Academy is grateful to the data project cochairs: John Mark Hansen, Charles L. Hutchinson Distinguished Service Professor at the University of Chicago, and Rebecca Sandefur, Professor at the School of Social and Family Dynamics at Arizona State University, and Faculty Fellow at the American Bar Foundation. We are also grateful to Erika Rickard, director of the Civil Legal System Modernization project at the Pew Charitable Trusts, for taking on a leadership role as the work progressed.

Very special thanks go to David M. Rubenstein, cofounder and coexecutive chairman of The Carlyle Group, who funded this project as an expression of his abiding faith in the future of American institutions.

Thanks as well to the Academy staff who made this work possible: John Tessitore and Natalia Carbullido, who shepherded the work for several years, and the publications team—Scott Raymond, Heather Struntz, and Peter Walton (with editorial assistance from Christopher Davey), led by Phyllis Bendell—who edited and published this paper.

As our *Civil Justice for All* report makes clear, “Equal justice is a right, not a privilege.” For too long, the civil justice gap has been allowed to widen. We hope that this report helps courts, legal services providers, and scholars gather the data necessary for an accurate assessment of the gap and potential remedies, so that every American, irrespective of income, will have access to legal advice and assistance when they need it most.

Sincerely,
David W. Oxtoby
President, American Academy of Arts and Sciences

Essential Facts about Civil Justice in the United States: What We Need to Know and How to Learn It



Introduction

Democracy requires and relies on a fair and equitable justice system that is accessible to the people it serves and provides equal justice under the law. When the justice system is closed to some, or treats them unfairly, public trust in justice suffers, and people are less likely to comply with the law.

A growing body of evidence, including two recent publications of the American Academy of Arts and Sciences,¹ suggests that the United States faces a serious crisis known as the civil justice gap: the great difference between the number of Americans who need civil legal assistance and the very few who receive help of any kind.

Most justice problems do not end up in court. Disagreements between two parties, bureaucratic oversights, or simple mistakes in paperwork can sometimes be solved with a little expert guidance. But when civil problems end up in court and one or both parties are unrepresented by lawyers (often because they cannot afford or do not know where to find legal assistance), people can unknowingly give up important rights or inadvertently fail to meet their responsibilities under the law. The consequences for individuals, families, and communities can be disastrous.

The consequences for the justice system can also be serious, as it is often overwhelmed by the number of people trying to navigate complicated legal processes unassisted. Many court systems are not able to meet their statutory responsibilities to litigants, such as providing legally mandated language interpretation services to those who need them.²

Researchers have started to document the effects of the civil justice gap across U.S. communities. Available evidence suggests the problem is a threat not only to the people and communities who experience justice problems but to the promise of justice itself. Nevertheless, researchers have only a general understanding of the problem. They simply do not know enough about who faces civil justice issues, which issues they face, and what consequences these issues have for long-run outcomes. And the data that do exist are often inaccessible to researchers, policy-makers, and

others who want to understand this problem so that they can work to solve it. In the absence of hard facts about the civil justice gap, attempts to address the problem have been scattershot and incomplete. Policy-makers and legal services providers struggle to formulate workable solutions because they do not even know which problems they are trying to solve.

For example, little is known about which justice issues become court cases and which do not. Once a justice issue becomes a court case, little is known about what happens (e.g., motions, orders to show cause), who participates (lawyers, nonlawyer advocates, the litigants themselves), for how long (case duration), what the legal outcomes are (judgment, dismissal, etc.), and how these in turn result in human consequences for the people and communities involved (loss of home, family security, sustenance). Courts and legal professionals do not always collect the data needed to answer these questions. Or they do not collect data in a way that can be shared and compared with data from other jurisdictions. And few have structured their privacy and confidentiality agreements in ways that allow them to protect the interests of those with the most at stake while safely sharing data with researchers and others.

Though the civil justice gap has persisted for decades, scholarly research on the issue has been relatively haphazard. Important studies have responded to the specific needs of the policy community or to the curiosity of individual scholars. But no clear research agenda has emerged. Nor have practitioners—lawyers, courts, legal clinics, and so on—organized themselves to advance the knowledge of the field. This white paper outlines a fundamental research agenda for an area in which studies are proliferating but are not yet connected and guided by a set of integrating questions. It also outlines practical steps for taking action on that agenda.

Methodology

The American Academy conceived this project in November 2015 during a conference that brought together a diverse group of federal and state judges, lawyers, legal scholars, legal aid providers, officials from each level of government, and business leaders concerned about the state of legal services for poor and low-income Americans. They gathered to explore the scope and consequences of inadequate access to civil justice for Americans who most need it.

This white paper outlines a fundamental research agenda for an area in which studies are proliferating but are not yet connected and guided by a set of integrating questions. It also outlines practical steps for taking action on that agenda.



Three related efforts grew out of the conference: the Winter 2019 issue of the Academy's journal *Dædalus* on "Access to Justice"; *Civil Justice for All*, a report that advances clear recommendation for closing the civil justice gap; and this blueprint for data collection.

In advance of the first meeting of this project, in June 2018, the project committee distributed an informal survey to courts, legal aid organizations, social service providers, law firms, and others—many of whom shared the questionnaire through their networks—asking them to help identify valuable and relevant data sets, including records from courts, unions, legal services providers, social worker associations, and housing authorities. The committee received 134 responses. And while the committee hoped to discover new pockets of as yet unrecognized data, concerns about the lack of information were strongly confirmed. Few organizations collect data about civil legal matters in the form, and with the kind of granularity and specificity, that would enable a serious discussion about the nature of the problem and possible remedies. Those that do collect the kind of data needed are hampered by red tape and outdated approaches to data privacy and other access issues. As a result of this early survey, the committee decided to divide into two working groups: one to identify the essential facts that should be collected about civil justice activity and entities who already hold that information or are well-placed to collect it; and one to develop a set of data access standards to help guide the use of civil justice data for research purposes.

In addition to the early survey, this report reflects 27 months of work by a panel of 20 experts on civil justice, representing both the worlds of policy and practice and the academic disciplines of law, sociology, and political

science. It also draws on the findings of the committee—close to 100 participants—that wrote the Academy's *Civil Justice for All* report.

Stakeholders

Many groups have a stake in this issue, including those who want to understand and improve the quality of justice in this country; those who want to investigate how the lives of individuals, families, and communities can be improved in the face of challenges like eviction, debt collection, family separation, aging, and illness; and those who want to support and experience America's promise of equal justice under the law.

Researchers and policy-makers seek data to better understand the functioning of the civil justice system. For example, they want to know who is able to turn to the courts when they face justice problems and how court outcomes differ for people represented by counsel as opposed to those who are not. They also want to know whether civil justice outcomes differ based on litigant demographics such as race, gender, age, and income. In addition to understanding how courts operate, researchers are interested in linking civil justice data with other data sets to investigate the economic, demographic, and social antecedents of civil justice involvement and its downstream consequences for health, housing security, education, and economic security.

Courts require data to understand their operations, decide how to allocate their resources fairly across many urgent needs, identify patterns and trends of fairness and unfairness in the cases that come before them, and design and implement effective interventions to improve the quality of justice. They are interested in whether

particular actors are frequent users of the courts, whether those actors are imposing excessive demands on the courts or on their adversaries, and whether certain litigants suffer from power imbalances in the courts. They are interested in assuring that their practices do not discriminate with respect to race, ethnicity, gender, disability, and other demographic dimensions and qualities of the litigant population. Courts want to know that their practices are effective in providing justice and that people with legal concerns are able to obtain the forms of relief that are uniquely available from courts. Finally, courts have an important stake in making the complexity of justice systems comprehensible to people who would otherwise know the courts only as opaque and intimidating institutions.

Legal services providers require civil justice data to reveal pockets and patterns of unmet legal needs and the presence of underlying systemic problems. They require these data to set priorities for the allocation of legal resources and to assess whether particular legal interventions make a difference in outcomes. Data are necessary to assess the quality of

legal services and can help providers make the strongest case for sustaining and expanding financial support for their work.

The largest and most important constituency with a direct stake in the increased disclosure of civil justice data is the public. Data provide perspective on the quality of justice Americans receive and are especially important in this time of heightened concern about the rule of law and the treatment of vulnerable people in, and outside, the nation's courts. Members of the public cannot understand what courts are actually doing, and the degree to which they are fair in their actions, without information about those activities. Organizations across the nonprofit sector that promote good government, social justice, racial justice, gender justice, economic justice, health justice, or other goals essential to the public all have an interest in information that helps illuminate problems, define solutions, and evaluate progress. Likewise, officials in all houses of government, journalists reporting on a multiplicity of fields, and leaders of law enforcement, among others, also need civil justice data to support their missions.

Many groups have a stake in this issue, including those who want to understand and improve the quality of justice in this country; those who want to investigate how the lives of individuals, families, and communities can be improved in the face of challenges like eviction, debt collection, family separation, aging, and illness; and those who want to support and experience America's promise of equal justice under the law.



Essential Questions



I. Is justice open to all?

A. Who is able to access the courts?

In a fair and accessible justice system, people with justice problems are able to turn to the courts for help. To know whether this is the case in the United States and who is and is not able to access the courts, four kinds of information are required:

- the different kinds of civil justice problems experienced by Americans and their prevalence across the population;
- information about people experiencing these problems, such as their age, gender, income, English language facility, and race/ethnicity;
- the numbers of cases of different types filed in America's courts; and
- information about the characteristics of the litigants in those cases, such as whether they are people or organizations and, if they are people, their age, gender, income, English language facility, disability status, and race/ethnicity.

What is and is not already being collected?

Currently, more data exist about court cases and litigants than about justice problems occurring outside the justice system.

As a matter of standard operating procedure, courts compile case files for matters that come

before them. These files contain basic information about cases and the litigants who are parties to them, including such details as the party's name and usually address; dates and results of hearings; and motions, pleadings, and other documents filed by parties to each case. In many instances, this information is a matter of public record.

Nevertheless, with rare exceptions, courts do not typically collect information about the race/ethnicity, gender, language facility, age, ability, or income of parties. Since the discovery of bias or disparity in civil justice would require some knowledge of these basic facts about litigants, assessment of whether courts are open to all is not currently possible.

But most of the civil justice problems experienced by Americans never become court cases and would not show up in court data even if the courts collected more information on individual cases. Some justice problems are processed by administrative authorities (e.g., benefits offices), and these authorities often record information about the cases they process. For example, U.S. Department of Veterans Affairs

(VA) offices know the number of benefits applications they receive, as well as information about those they deny and those they approve, including some demographic information about the veterans petitioning for benefits. But many civil justice problems cannot be assessed by any arm of government or by any other institution that might collect pertinent information. For example, veterans may not be aware that they are eligible for benefits and so never apply. Or tenants may be informally evicted from their apartments without landlords ever filing eviction lawsuits.

To describe justice issues handled outside the justice system, the information collected by courts and other government agencies must be supplemented by information from other sources. In many other countries, including England and Wales, Colombia, and South Africa, pertinent data about civil justice are collected by central statistical authorities. In the United States, however, central statistical authorities like the U.S. Bureau of the Census and the Bureau of Justice Statistics have, to date, never collected data about the kinds of

civil justice problems that people, small businesses, or larger organizations experience, or about the characteristics of the people and organizations that experience those problems. Nor do courts, legal services providers, policy-makers, scholars, or other interested parties have straightforward access to synthesized data sets connecting different sources of information, such as court and government agency data, about people facing justice issues.

B. Who is able to get help with their civil justice problems?

In a fair and accessible justice system, people with justice problems who want to pursue a legal remedy but cannot pursue it on their own would be able to follow procedures designed for their use and would have access to the help they need to navigate those procedures. Some people simply need information. Others need more intensive assistance, which might involve legal advice or representation. Still others require services that make information or assistance usable; for example, reasonable accommodations or interpretation

At present, no set of standards exists that provides guidance about what information should be collected consistently across different sectors—for example, in legal services, in human services, in benefits offices. Developing such standards is an important step in collecting reliable, consistent, and useful information.



and translation services. Three basic kinds of information are needed to determine whether people are getting the help they need:

- information about who is experiencing justice problems and whether these problems involve courts;
- information about what kinds of help they currently receive; and
- information about whether that help is adequate to their needs.

What is and is not already being collected?

When people seek help for justice problems, whether from legal services providers, community nonprofits, or others, these service providers usually collect some information about who the people are and which problems they face. Sometimes, these organizations also collect information about people who seek assistance but are turned away. These practices are followed by legal services providers like civil legal aid organizations, court-based self-help centers, law school clinics, and private practice lawyers. They are also followed by benefits agencies and social services organizations like offices of the VA and the Social Security Administration, as well as by community nonprofits that assist specific demographic groups, such as the elderly, and organizations such as tenants' unions that assist people with specific kinds of problems (e.g., eviction and rental housing conditions). Sometimes these organizations record information about which services are provided; sometimes they do not. Sometimes they collect information about the effectiveness of the aid that was provided; sometimes they do not. Some organizations collect information

about the characteristics of those who seek or receive help, such as their race/ethnicity, gender, language facility, age, or income; others do not.

At present, no set of standards exists that provides guidance about what information should be collected consistently across different sectors—for example, in legal services, in human services, in benefits offices, and in courts. Developing such standards is an important step in collecting reliable, consistent, and useful information.

In some situations, assessing the help people receive is straightforward. In others, assessment requires follow-up to determine whether the assistance received was sufficient. For example, if a person seeking help states that she cannot read English, it is relatively simple to record whether the assistance she receives includes interpretation and translation services. But if a person receives assistance in preparing paperwork prior to a hearing to appeal a denial of benefits, it is not possible to know until after the hearing has occurred whether this assistance was sufficient or whether the person also needed representation in that hearing. In part because following up with clients is often costly and difficult, little of this information is currently collected.

But most civil justice problems are almost entirely invisible to researchers, since they are not taken to offices of government or to community nonprofits for assistance. Most are handled by people on their own or with the assistance of family and friends. Currently, only very limited information is available about these problems, who has them, and their impacts.

II. Is the justice system fair to all?

**Who is able to resolve their justice problems lawfully?
Who is not able to do so?**

In a fair and accessible justice system, everyone would have the same chance to receive a lawful and just resolution to their justice problems, whether they were rich or poor, whatever their race, and whatever their age, national origin, or disability. To assess whether people are able to resolve their justice problems lawfully, three kinds of information are required:

- the number of different kinds of justice problems experienced by Americans;
- information about people experiencing such problems, including their age, gender, income, English language facility, disability, and race/ethnicity; and
- information about how those problems progressed and were resolved.

Determining whether a justice problem has been lawfully resolved can be challenging, but it is not always so. At base, a lawful resolution means that the result is accurate, given the facts of the situation and the applicable law, producing a resolution that falls within the bounds prescribed by the law. For example, an informal eviction, in which a landlord removes a tenant's goods from an apartment and changes the locks so that the tenant is locked out, is not a lawful resolution to the justice problem of unpaid rent. Laws in every state say that landlords cannot lock out tenants from their rented homes without first going through a formal court process.

For some justice situations, the determination of accuracy is straightforward. For example, if someone is eligible for Social Security survivors' benefits and submits sufficient documentation as required by the Social Security Administration, the lawful resolution is that the person receives the benefit. However, a justice problem can sometimes have several lawful resolutions. For example, when a landlord files a lawsuit to evict a tenant for non-payment of rent, that justice problem could be resolved lawfully by the tenant and landlord settling informally for the tenant to pay the rent arrears; the landlord may then choose to drop the lawsuit. Or, the tenant and the landlord could reach a formal settlement that is reviewed by a judge and filed with the court. Or, the case could proceed to a trial and a judgment. If the judgment reflected a proper application of appropriate law to the actual facts, it would be a lawful resolution. The lack of information about different lawful resolutions makes it challenging to compare outcomes across different cases.

When accuracy is too difficult to determine practically, the analysis can instead focus on *disparities*, comparing the outcomes achieved by distinct groups, such as elderly and young veterans, African-American and Latino and White tenants, or men and women petitioning for orders of protection for domestic violence.

What is and is not already being collected?

Courts and other hearing authorities compile case files for the matters that come before them. These files include a range of pieces of information that would be useful, particularly in assessing disparities. Courts often know, for example, which cases are involuntarily dismissed,

In a fair and accessible justice system, everyone would have the same chance to receive a lawful and just resolution to their justice problems.



meaning that one or both of the parties wanted to continue the litigation but were not permitted to do so. Court files contain the content of orders and judgments. Court files also include information about the duration of cases.

With rare exceptions, courts do not collect information about the race/ethnicity, gender, language facility, disability, age, or income of parties. This means that courts do not collect or share information that allows assessment of whether they achieve their aim of ensuring that “all parties to a dispute—regardless of race, ethnicity, gender, English proficiency, disability, socio-economic status or whether they are self-represented—have the opportunity to meaningfully participate in court processes and be heard by a neutral third-party who will render a speedy and fair decision.”³

The information in court files is often necessary but not sufficient to assess whether a justice situation has been resolved lawfully. If a case resolves with a settlement or a judgment, lawful resolution requires the compliance of both parties with the content of the settlement or judgment. For example, if a landlord receives a judgment that she must repair an apartment but never completes the repair, the problem has not been resolved lawfully. Similarly, if a tenant receives a judgment requiring her to pay rent arrears and never pays them, the problem has not been resolved lawfully.

If a person with a civil justice problem does not end up in court but does receive some kind of service, some information may be collected about the problem, who has it, and some outcomes. As a matter of standard operating procedure, service providers collect some information about people who seek assistance and the problems they bring. Thus, some organizations already possess relevant data but little of it is organized, analyzed, or compatible with other systems in ways that would allow for sharing.

Lawful resolution is often possible to assess only long after a service is received. Collecting and analyzing information about the experiences of a client once that person has moved on is costly, and few organizations currently do so. In addition, no set of standards exists that provides guidance about what information should be collected consistently across sectors—legal services, human services, benefits offices, and so on. Developing such standards is an important step in collecting reliable, consistent, and useful information.

Available evidence suggests that most of the civil justice problems experienced by Americans are not taken to courts, or to lawyers, or to offices of government, or to community nonprofits for assistance. People take no action about many justice problems. Little information is available about these problems, who has them, or their impacts.⁴

Summary and Recommendations



Summary

As the companion report from this initiative, *Civil Justice for All*, shows, there is a crisis in civil justice in this country. Many people are not able to get the legal help they need, access the courts, or arrive at fair resolutions to civil justice problems. Currently, the essential facts necessary to answer fundamental questions about the fairness and accessibility of American civil justice are sorely lacking.

However, there are important opportunities to remedy these shortcomings, engaging both public and private actors and reaching out beyond lawyers and the courts.

Recommendations

- Existing surveys fielded by government statistical agencies, like the United States Bureau of the Census, should add questions about the justice experience to regularly administered surveys, including the American Community Survey. Such additions would provide valuable information about who experiences justice issues, whether those issues land in court, and how those issues affect the people who experience them. Similarly, the Bureau of Justice Statistics' annual National Crime Victimization Survey should be expanded to include civil justice issues. When necessary, federal statutes should be modified to require the collection of civil justice data.
- Legal needs often accompany other kinds of needs, such as needs for medical care, income support, or housing. Organizations that provide services to the public, such as social and human services, health services, and legal services, should learn about, identify, and collect data about their clients' civil legal needs. This information could be linked to the demographic data about race/ethnicity, gender, language facility, age, ability, and income that these organizations often collect.
- Information about people's needs and problems is often revealed through their searches for information. Search engine and social media companies should collaborate with researchers, courts, and legal services providers to identify common legal needs based on the searches people initiate.
- Courts should collect and distribute information about cases and litigants using case definitions and record-keeping standards that are consistent across jurisdictions.⁵ States should make the data collected available to researchers and the public.
- To understand the effectiveness and impact of legal services, service providers should follow up with recipients to inquire about the outcomes and impacts of the problems for which they provide help. Alternatively, they could connect their records with other administrative records that provide information about the outcomes of justice problems.

How to Acquire Essential Facts about Access to Justice in the United States



Improving access to the essential facts described in the first section of this report will help scholars and policy-makers, courts and legal services providers, social services organizations, legislators, and the public better understand the scope and importance of the civil justice gap, how it manifests in the lives of individual Americans, and the vital importance of our courts and other justice system institutions. Only with these essential facts in hand can the United States ensure a legal system that is open and transparent and make changes to improve fairness and equity.

Collecting and releasing such data present a range of challenges. The courts and legal services providers must overcome technical limitations in their capacity to collect and share data, honor expectations of privacy, and assure appropriate use of data when it is shared. This section offers practical suggestions and tools for making facts accessible and thereby helping to make justice more accessible. It offers a model data use agreement that can be adapted to meet the needs of different stakeholders, further identifies core concepts in data access, and makes recommendations about a range of data collection practices, including a call for data scraping and the creation of a data commons.

Some data held by data keepers raise true concerns about individual privacy and data security provisions. People seeking the intervention of courts may understand that many court records are public records. Nonetheless, asking people who face potentially

life-altering court cases to report on their demographic characteristics—such as race, ethnicity, and gender—may feel intrusive to some or may prompt concern that such disclosures might adversely influence decision-making. People seeking help from legal services providers expect their personal and legal information to be held in confidence and may also be reluctant to share information that does not seem directly pertinent to their claims. The lines surrounding expectations of privacy are important to the individuals themselves and are also important to judges, lawyers, and organizations that are data keepers. Trust from clients, from litigants, and from the public generally is essential for these institutions to maintain their credibility and perform their roles effectively.

This report offers four approaches that can allow data keepers to collect, maintain, and safely share even sensitive data with scholars and other interested members of the public.

Together, these four approaches can help to liberate civil justice data.

I. Liberating Civil Justice Data

A. Public Records

Most information about cases and litigants, as currently collected by courts, is a matter of public record and can be requested by researchers. This includes the personal identifying information of the parties. As court case records increasingly become electronic and as access to those records can be made available online rather than in the courthouse or the benefits office, courts and other government entities grapple with the loss of “practical obscurity” of their records. One consequence is the increasing risk that electronic records will be used by private entities and government agencies to monitor court involvement and curtail access to public benefits and private goods and services, like housing or employment.

What information is available now, and who uses it?

At present, most courts report at least some information in the aggregate, such as the number of cases heard in specific kinds of courts or the percentage of defaults in a particular kind of case, such as debt collection. These reports are sometimes posted publicly or shared in reports to funders such as legislators, but they are not standardized across states or from year to year.

Many courts make case-level data available through means only accessible to commercial data aggregators. These for-profit companies draw together public records as information resources that they then sell to private third parties. For example, these companies sell information to landlords who want to know whether potential tenants have ever been evicted, have a criminal history, or have sued previous landlords for repairs under housing laws. They also sell information to employers wishing to perform criminal background checks.

This report offers four approaches that can allow data keepers to collect, maintain, and safely share even sensitive data with scholars and other interested members of the public.



Researcher Tools: FOIA and Public Records Requests

Federal agencies are required to make much of their data public under the Freedom of Information Act (FOIA).⁶ Of relevance to civil justice are records and information collected by such agencies as the Department of Homeland Security, the Department of Housing and Urban Development, the Department of Labor, and the Department of Justice. While FOIA is the primary statutory mechanism for accessing such public records, the Privacy Act also provides rights to and limitations on public access to government information.⁷ The Privacy Act governs the “collection, maintenance, use and dissemination” of agency records containing personal identifying information about U.S. citizens and lawful residents.⁸ Notably, the Privacy Act rarely allows the disclosure of individually identifiable records without the written consent or request of the individual identified by the record, unless that disclosure is required by FOIA.⁹

Although nonfederal entities such as state and local governments are not covered under FOIA or the Privacy Act, many states have enacted their own public records laws. State sunshine laws, sometimes known as open records laws or public records laws, govern public access to governmental records in each state. These rules mandate varying degrees of accessibility to public records, however. In more than a dozen states, the state judiciary is exempt from state public records laws; a similar exemption applies in the District of Columbia.¹⁰ Some court rules provide access to court records. Most states have rules governing the bulk distribution of electronic case information, which vary from jurisdiction to jurisdiction.¹¹ Each state and the federal court has its own

privacy policies for court records with different levels of restrictions.¹² At least one state has enacted a provision that allows researchers access to confidential court data involving children.¹³

B. Confidential Data

Information about cases and clients collected by legal services organizations, pro bono programs, and other direct service entities are typically not a matter of public record. Indeed, individual data collected during the course of legal representation are generally protected by the duty of confidentiality and attorney-client privilege.¹⁴

Depending on the agency or entity seeking to share data, other professional rules or laws may also be implicated. In the medical-legal partnership arena, for example, the Health Insurance Portability and Accountability Act (HIPAA) presents some obstacles to information sharing between physicians and attorneys. However, such partnerships, in order to further the legal representation and the patient’s medical treatment, often do share data after obtaining patient/client consent. Such consent indicates the person or agency to whom the identifiable information will be provided, the purpose of the disclosure, and the nature and scope of the information being disclosed. Consent-form requirements vary depending on what information is being shared and by whom. HIPAA, for example, has its own requirements for the sharing of protected health information. The sharing of data with research institutions will also implicate federal institutional review board (IRB) requirements.

II. Data Use Agreements

Few courts and legal services providers have structured their privacy and confidentiality agreements in ways that allow them to lawfully share data while preserving the privacy of litigants. When data are shared, each agreement and relationship between a data keeper and researcher is structured on an ad hoc basis, making the process unnecessarily burdensome as data keepers and data users reinvent procedures each time. Common language in a standard data use agreement can be a useful starting point for negotiating the appropriate and safe sharing of civil justice data.¹⁵

What are Data Use Agreements (DUAs)?

Improving data sharing among and between courts and other agencies and institutions can be facilitated through the use of a memorandum of understanding (MOU), a written agreement that outlines the relationship between two or more parties. Data use agreements (DUAs) are a type of MOU to facilitate transfer or use of data. Well-executed agreements govern who, when, how, and why individuals and entities will be able to access and use the data, in addition to ensuring compliance with regulatory structures.

What is the purpose of a DUA?

The overall goal of a DUA is to facilitate sharing of data while ensuring that information exchange rests on a solid legal framework and protects individual privacy. DUAs serve two important practical purposes for the parties. First, they protect the agency providing the data, ensuring that the data will not be misused. Second, they play an important role in guiding parties to think through

otherwise unanticipated details of a data sharing relationship.

Are there legal restrictions on types of data that may be shared?

All federal laws and most state laws allow for the sharing of data, even individually identifiable information, for certain purposes. At the same time, federal and state laws restrict the use of certain types of data, including the following major categories restricted by federal regulations:

- **Health Information.** HIPAA applies to “protected health information” provided to health plans, doctors, hospitals, and other healthcare providers. HIPAA only applies when the information is produced by specific entities, such as healthcare providers. When health-related information is produced by a court or another legal entity, HIPAA would likely not apply. Note that courts are restricted in their ability to receive data that are protected by HIPAA.¹⁶
- **Education Records.** The Federal Education Rights and Privacy Act (FERPA) applies to education records, broadly defined as records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.¹⁷ FERPA does provide for the release of de-identified records if certain requirements are met.
- **Alcohol and Substance Abuse Treatment Records.** Part 2 of Title 42 of the Code of Federal Regulations protects the confidentiality of alcohol and substance abuse treatment records regardless of who has possession of them, as long as the information was “received or acquired by a federally assisted alcohol or drug program.”¹⁸
- **Homelessness Data.** Federal law protects the confidentiality of data collected through

the Homeless Management Information System, a data collection system that exists in most locations, under the guidance of the U.S. Department of Housing and Urban Development.¹⁹

Even with these legal restrictions, government entities with data that fall under these federal regulations have successfully structured agreements that, while preserving the privacy of individuals, allow them to lawfully share data. For example, scholars have linked federal tax records and other data sources in strictly controlled confidential data sites, creating so-called big data about individuals that can be used in scientific analysis.

In addition to federal and professional restrictions on data sharing, vendor services agreements between data keepers and the companies that provide their data management tools may limit sharing. Both courts and legal services providers often use case-management systems that are designed and operated by third-party vendors. Courts and providers may not be aware of who “owns” the data—whether it is themselves or the software vendor—and what authority they have to share the data with others under the terms of their service agreement.

What are the elements of a DUA?

Importantly, DUAs are made between organizations, not individuals. As a result, these agreements become organizational responsibilities and last longer than the tenure of a particular staff person.

The items in Table 1 on page 16 are typically found in data use agreements.

Appendix A on page 22 includes a data use agreement template.

Limitations of DUAs

DUAs are an important mechanism to give researchers access to civil justice data, but they have significant limitations. They require finding data holders willing to enter into such agreements. In each case, the researchers and data holders need to devote resources to negotiating agreements that will vary from institution to institution and researcher to researcher. This approach is labor intensive, slows down the research process, and creates barriers to cross-jurisdictional comparisons, deterring researchers from entering the field.

A. Individual Consent and Participation in Human Subjects Research

Sometimes the use of data held by a data keeper requires the consent of the individual who is the subject of the record; sometimes this consent is not required. The principles governing the need for informed consent are contained in federal policy guiding the protection of people participating as subjects of research (also known as the Common Rule).²⁰ The Common Rule directs that an IRB will oversee and determine whether individual consent is required. When determining whether individual consent should be obtained from the subjects of the records, the intended use of the data must be considered.

The Common Rule allows for individual consent requirements to be waived when

- the research involves no more than minimal risk to the subjects;

Table 1: Items Typically Found in Data Use Agreements

Item Name	Description
Parties involved	The name of the agency or programs entering into the agreement. <i>Note:</i> Be sure to specify who is a data provider and who is a data receiver.
Purpose of the agreement	The reason for the agreement and the allowed uses of the data.
Data description	The fields to be included, the level of detail, and the time period the data represent.
Data transmission	The file format and approved methods for transmission.
Data storage and security	Specifications of any security measures and, if appropriate, a date by which the data should be returned or destroyed.
Conditions for release of data to third parties	Provisions for the release of the file to third parties or prohibitions on such actions.
Conditions for release of results of analysis	Provisions for the release of any data analysis or results, including suppression rules to avoid identification of any individuals or agency names.
Fees and costs	A listing of all fees to be paid, including any associated fees or costs.
Time frame	Time period the agreement is in force and how often it must be renewed.
Amendment process	The process for amendments to the agreement.
Termination	The reasons why and the process by which either organization can terminate the agreement.
Signatures	Signatures by persons who have the right and authority to execute the agreement on behalf of the contracting agencies.

- the waiver or alteration will not adversely affect the rights and welfare of the subjects;
- the research could not practicably be carried out without the waiver or alteration; and
- whenever appropriate, the subjects will be provided with additional pertinent information after participation.

Researchers have successfully launched research projects that involve obtaining individual consent, in collaboration with courts, legal services providers, and other civil justice data keepers.

Publicly available data such as court records are largely exempt from human subjects' review.

Most data privacy laws authorize the use of administrative data for public purposes such as evaluation, audit, and research without individual consent under certain conditions. In these cases, although individual identifiers are used to link records across data sets, typically only de-identified information will be released to the researcher, auditor, or evaluator. Where no identifying information is released, individual consent is not necessary.

B. Researchers and Secondary Uses of Data

For administrative data or other data in which individual consent is not required, secondary uses do not typically require IRB approval, but, even when they do, researchers can seek expedited review or exempt status under Exempt Category 4, particularly when the data being analyzed are publicly available.²¹

In 2017, the Common Rule was modified to permit pooling of data and secondary uses of personally identifying information (PII).²² While the HHS Secretary's Advisory Committee on Human Research Protections published detailed "Recommendations for Broad Consent Guidance" in 2017,²³ no guidance has yet been promulgated by HHS. In the absence of formal guidance, many academic IRBs have declined to implement broad consent within their universities.²⁴

Academic institutions should adopt and promulgate guidance that can make effective use of the revised Common Rule. Guidance and a broad consent template that is directly applicable to civil justice data has been created by the University of Denver.²⁵ The core elements of broad consent are as follows:

1. Researchers must be able to provide a general description of the types of research that may be conducted with the PII and which types of information might be used in research.
2. Researchers must be clear about the period of time the PII will be available for future research and the types of institutions or researchers that might have future access to that information.
3. Research participants must be told that they will not be provided with details about future research studies using the PII.
4. Participants must be given contact information for questions and the opportunity to withdraw consent. If participants withdraw consent, their data must be able to be taken out of storage and no longer shared.

The technology and data structuring required to isolate and remove individual participants from shared research repositories may be the most significant barrier to the implementation of broad consent. However, this barrier is not insurmountable.

III. Alternative Strategies for Accessing Data

The sharing of administrative record data by the courts and other entities through DUAs is the means by which these data have traditionally been acquired, but it is not the only or necessarily the best way of doing so. The volume of data for civil justice problems is quite limited. But when these matters make their way to courts, they become part of stores of administrative records that date back decades and can provide valuable insights to important questions about access to justice. While courts continue to improve the processes for gathering and managing administrative records, they have not been eager to share these data. Even when the courts are willing, they may not be able to share data in standard formats because of a lack of computing resources or because the laws governing data sharing in specific states can be cumbersome. Negotiation of an acceptable DUA, for example, can take up to two years. Given these limitations, it seems appropriate not only to expand opportunities for sharing but to explore other means of obtaining relevant administrative record data on civil matters from the courts. Specifically, researchers may consider using public records requests and bulk downloading of data, including website data scraping, as means of acquiring administrative record data on the processing of civil matters in courts.

Public Records Requests

The FOIA allows citizens access to information about how the federal government conducts the people's business, and almost every state has a similar law relevant to state government. These laws specify the processes for requesting this information, and annual reports describe responses to these requests. Reporters have used this lever to great effect, but researchers have not used it to the same degree.

The Criminal Justice Administrative Records System (CJARS) at the University of Michigan is acquiring criminal justice data from the courts and other agencies. It has already obtained over 1.7 billion records from these organizations, approximately 17 percent of which were acquired through data requests. Their holdings include records for more than 21 million persons (47 percent of which were obtained from data requests).²⁶ Measures for Justice is a nonprofit trying to assemble administrative record data from prosecutors and state courts throughout the nation.²⁷ It has assembled data from more than 20 states, and it, too, relies on a mixed strategy of DUAs, information requests, and bulk downloads. While the criminal side of the court system differs from the civil side in many important ways, the success of these efforts on the criminal side are worthy of investigation as a strategy for acquiring the necessary administrative records on civil justice.²⁸

Bulk Download

An alternative to establishing a DUA or submitting FOIA requests is accessing court data through bulk downloads, either by scraping court websites or obtaining access to internal electronic records. State court rules vary

on whether bulk downloading of records is permitted, some prohibiting bulk downloads altogether, others requiring permission from the state judiciary, and still others freely allowing the download of electronic files.²⁹

Bulk data downloading is a common procedure already used by data aggregators, investigative journalists, and, increasingly, the academic research community to gather and analyze data available on the Internet. Gathering research data in this manner is considerably less time consuming than the process of establishing formal agreements, though it requires some basic knowledge of computer programming and an ability to process and store large volumes of data. Data scraping, in its most general form, refers to a technique in which a computer program extracts data from output that is generated by another program. For court records, that means culling information from case search websites that were originally designed to display information for individual cases in the same way that physical case files were pulled by court clerks. Scraping programs can be used to search individual cases in rapid succession and capture the information that appears for each search result. These programs can be written narrowly to capture a few pieces of information from each case, or they can be written broadly to capture

all data that are displayed and to make copies of associated files.

Although the information architecture for court records varies widely from one jurisdiction to the next, the data that are available can be invaluable for understanding how civil legal problems are processed in U.S. courts. Most case search websites provide unique case numbers, names of litigants, filing and hearing dates, the legal issue in question, names of associated attorneys (or null fields when no attorney is present), names of presiding judges, and judgment details. Many jurisdictions also include the street address of litigants and attorneys. This information can be used to build detailed profiles of the civil legal docket, measure the growth or decline in adjudicated legal matters, detect geographic patterns for different legal issues, identify repeat litigants, and more. In recent years, court data have been used to identify abusive debt collection practices, monitor the eviction crisis, highlight discriminatory practices in civil forfeiture, and focus public attention on the wildly varying fines and fees that are levied in courts.³⁰

Working with data accessed through a bulk download process can be challenging, however. Administrative data often require a tremendous amount of cleaning to be usable in

Researchers may consider using public records requests and bulk downloading of data, including website data scraping, as means of acquiring administrative record data on the processing of civil matters in courts.



analysis, and documentation is rarely available to explain the contents of the downloaded data or any anomalies that might be found. Analysts should also be careful about the process they use to capture court data. They should read and respect the terms of service listed on case search websites and use programming techniques that dynamically delay the rate of data capture to avoid taxing court servers, particularly during peak business hours.³¹ But the value of this information to illuminate pressing public policy questions is clear.

The traditional practice of negotiating access between a single research team and a single institution is giving way to new approaches for data access.

IV. Moving toward a Civil Justice Data Commons

In health science research and other fields, data sharing systems, known as “data commons,” have emerged that facilitate access by researchers and stakeholders to data and incorporate best data governance practices to protect data privacy and security and the anonymity of data subjects.³² This model should be applied to the civil justice domain to facilitate the sharing of data by courts, legal services providers, and administrative agencies.³³

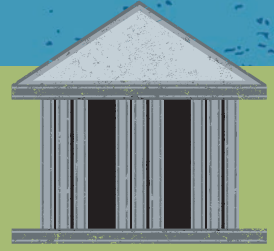
A civil justice data commons would allow researchers to investigate questions about the basic functioning of the civil justice system, including whether legal representation makes a difference in outcomes and whether race, ethnicity, national origin, gender, or other demographic characteristics contribute to what happens in court. It would also facilitate the linkage of court data with financial,

health, educational, and other data sets so that researchers could better understand the antecedents of civil justice problems—providing a basis for downstream interventions to prevent their emergence—and the long-term effects of involvement in the civil justice system on health, economic and housing security, and well-being. A civil justice data commons would also provide civil justice institutions and the public the ability to monitor organizational activities and patterns.

In other domains, data repositories facilitate the sharing of data, and computational science produces insights relevant to public policy. There has been no similar surge of computational social science research in the civil justice field. A civil justice data commons would improve the functioning of courts, agencies, and legal services providers in a community and help communities describe the consequences of civil justice issues like debt and eviction, causally test what effect interventions like legal aid have on parent and child outcomes, and build predictive models for targeting limited legal resources to the households most in need.

How a Data Commons Would Work

To address the different interests of stakeholders, a civil justice data commons would provide a tiered system of “frictionless and facilitated” access to different types of civil justice stakeholders. In the first tier, authorized researchers would have access to cleaned and harmonized data and statistical software packages to do computational analyses. They would also have tools to link data sets from different civil justice institutions as well as data sets from other sources. A civil justice data commons would allow researchers to find, access, and analyze data to answer questions such as,



A civil justice data commons would allow researchers to investigate questions about the basic functioning of the civil justice system, including whether legal representation makes a difference in outcomes and whether . . . demographic characteristics contribute to what happens in court.

How prevalent are various civil legal problems across jurisdictions? How often do individuals experience multiple civil legal problems simultaneously? Do particular events, such as a job loss or medical debt, increase the likelihood of involvement in the civil justice system? Does having a lawyer make a difference in case outcomes? If so, in what ways? Do inequities exist in court practices, and, if so, how can they be mitigated?

The next tiers would be designed and built to provide courts, legal services providers, and other civil justice institutions with near real-time information to help them understand their functioning and allocate resources equitably and efficiently. A dashboard or visualization might help a court administrator spot an increase in self-represented litigants. Similar tools would allow legal services providers to follow trends that relate to the service delivery model, including patterns in the types of matters they take or decline, applicant and client demographics, and geographic and other gaps in the distribution of their services. They could also use the information captured to demonstrate the effectiveness of their services to funders. Other forms of access might be provided to community groups, which might have an interest in how court involvement affects members of the community. The

public could also have some form of access to civil justice data to understand better how the civil justice system works. In all cases, the commons would be designed to provide information tailored to the specific interests of the intended users.

Data commons are created through a governance regime established by the data sharers and other parties involved. The terms of that regime dictate the requirements of data sharing, access, and use. The terms also specify the privacy, confidentiality, and security controls that apply to the data. These requirements are built into the technical infrastructure of the data commons. Educational institutions already have extensive experience administering data commons and ensuring that governance terms are adhered to. The trust they have already accrued as faithful stewards makes them an ideal partner for any new data commons involving civil justice data.

At present, the development of data commons in the civil justice arena faces challenges, including lack of shared case taxonomies, regulatory barriers, organizational skepticism, and costs. But if these barriers can be overcome, a civil justice data commons promises to accelerate the production of knowledge about the civil justice system.³⁴

Appendix A: Memorandum of Understanding



[GREEN] = to be personalized [BLUE] = for agreements with PII
italics = instructions

MEMORANDUM OF UNDERSTANDING BETWEEN [DATA RECEIVER] AND [DATA PROVIDER]

FOR THE SHARING OF [PERSONALLY IDENTIFIABLE/DE-IDENTIFIED] INFORMATION

1. Purpose/Authority

This Memorandum of Understanding (MOU) is entered into by [DATA RECEIVER] and [DATA PROVIDER]. The purpose of this MOU is to share data and expertise between the two parties, while providing for the protection and confidentiality of the exchanged information. [DATA RECEIVER] will ensure that any agent, including employees and subcontractors, to whom it provides information under this MOU, executes a written agreement obligating the agent or subcontractor to comply with all the terms of this MOU.

Nothing in this MOU may be construed to allow either party to maintain, use, disclose, or share confidential or protected information in a matter not allowed under state or federal law or regulation.

2. Requested Information

[DATA PROVIDER] agrees to provide [DATA RECEIVER] with [*select one: de-identified information OR personally identifiable information ("PII")*] as described below.

[*Enter description of the requested data, with as much detail as possible. It is recommended that Data Receiver specify data fields or variables requested, according to Data Provider's data dictionary, if available. Also specify the scope of the data, including any inclusion/exclusion criteria, such as types of individuals or cases.*]

[*If PII, include the following language: [DATA PROVIDER] shall obtain consent, authorization, or permission from the individuals that may be required by applicable state or federal laws and/or regulations prior to transmitting any PII pertaining to individuals in the data set.*]

The above-described data shall be provided by [DATA PROVIDER] to [DATA RECEIVER] in the following format: [*indicate a format: csv file, excel file, relational database file(s), pdf records, etc.*].

The above-described data shall be provided at the following specified time(s): [*select one*: within a reasonable amount of time upon the execution of this MOU OR [list specific dates] OR upon request by [DATA RECEIVER]].

3. Data Transfer

[*If data request is for individuals specified by DATA PROVIDER*: [DATA RECEIVER] shall provide [DATA PROVIDER] with an encrypted electronic file containing unique identifiers of the request individuals' records or information. These unique identifiers shall be in the form of [*select one or more*: name, date of birth, Social Security number]. [DATA RECEIVER] will also provide the authentic copies of any signed authorizations in the same form as Exhibit A [*include agreed-upon authorization form as Exhibit A*], for each individual whose records are to be disclosed.]

[DATA PROVIDER] shall transmit the above-described records to [DATA RECEIVER] in accordance with this MOU. Any sensitive [or personally identifying information ("PII")] shall be transmitted through a secure file transfer system.

4. Data Storage and Security

Both parties shall exercise reasonable and prudent procedures to protect such information, reports, returns, and other documents in their possession, including electronic versions thereof, from any unauthorized access and/or disclosure.

[*For high-security PII*: PII will be used solely to aid in the creation of a unique linking identifier. The unique linking identifier is not derived from PII or any elements thereof. [DATA RECEIVER] shall store PII separately from the remaining de-identified data set, which shall include the unique linking identifier as the only reference to the PII.]

[DATA RECEIVER] maintains and uses appropriate administrative, technical, and physical safeguards to preserve the integrity and confidentiality of and to prevent non-permitted use or disclosure of any information provided by [DATA PROVIDER]. [DATA RECEIVER]'s computers, networks, and file transfer mechanisms must be properly maintained (i.e., regular software patching will be conducted) and must run software that will protect against malicious code infecting and/or causing improper operation of computers and networks.

5. Confidentiality

The parties agree that their agents, employees, and subcontractors with access to this data shall comply with all laws, regulations, and policies that apply to protection of the confidentiality of the data. [DATA RECEIVER] will not use or disclose information other than as permitted or required by this MOU or as required by state and federal law or as otherwise authorized by [DATA PROVIDER].

[DATA RECEIVER] may pass information to any of its agents, employees, or subcontractors for use in fulfilling the obligations of this MOU as long as they adhere to the conditions of this MOU. This includes, but is not limited to, data being sent directly to any agent, employee, or subcontractor to be used in data aggregation and quality assurance.

[If PII: No PII shall be included in any report, summary, data dashboard, or publication produced as a result of, or in conjunction with, the use of the data. The obligation to protect the privacy of PII is continuous and survives any termination, cancellation, expiration, or other conclusion of this MOU. [DATA RECEIVER] will mitigate, to the extent practicable, harmful effects of a use or disclosure of PII by [DATA RECEIVER] or its workforce in violation of the requirements of this MOU.]

[DATA RECEIVER] will report to [DATA PROVIDER], in writing, any use and/or disclosure of information that is not permitted by this MOU of which [DATA RECEIVER] becomes aware. Such report shall be made in the most expedient time possible and without unreasonable delay. This reporting obligation shall include breaches by [DATA RECEIVER], its agents, employees, and/or subcontractors.

6. Publicity and Publication

[DATA RECEIVER] may share publicly (in writing, online, verbally) any resulting aggregate summaries, reports, or publications, provided that such disclosures do not contain PII or confidential information.

7. Fees and Costs

[Select one option:

1. [DATA PROVIDER] will not charge [DATA RECEIVER] any fees for the work associated with the delivery of the data described in this MOU.

2. [DATA RECEIVER] will be responsible for fees and costs associated with the delivery of the data, as described in this MOU. Those fees are defined as [XXX]. If costs are anticipated to exceed the defined amount in excess of [XX]%, [DATA PROVIDER] shall provide notice to [DATA RECEIVER] before incurring such costs and modify this agreement accordingly.]

Any costs associated with [DATA RECEIVER]'s storage and maintenance of data are the responsibility of [DATA RECEIVER].

8. Ownership of the Data

Nothing in this MOU shall be construed as granting [DATA RECEIVER] any right, title, or interest in or to any license of any data. Ownership of the data remains that of the [DATA PROVIDER].

9. Term, Modification, and Termination

This MOU shall become effective on the date it is signed by both parties and shall remain in effect until [Select one: [Date] OR [Event] OR until modified or canceled by either party OR all PII provided by [DATA PROVIDER] is destroyed or returned to [DATA PROVIDER]].

This MOU may be modified at any time by written agreement of both parties.

Either party may cancel this MOU upon thirty (30) days written notice to the other party for any or no reason. In the event of a default under, or violation of, any of the provisions of this MOU by [DATA RECEIVER], [DATA PROVIDER] [select one:

1. may suspend the MOU and further disclosure of information to [DATA RECEIVER] until [DATA PROVIDER] is satisfied that corrective action has been taken and there will be no further violation. In the absence of prompt and satisfactory corrective action, the MOU will be terminated.

2. may terminate this MOU upon notice to [DATA RECEIVER].]

In the event that this MOU is cancelled or terminated, any data in the possession of [DATA RECEIVER], in whatever format it may be stored or maintained, shall remain subject to the terms and conditions of this MOU. The obligation of [DATA RECEIVER] to protect the confidentiality of the data is continuous and survives any termination, cancellation, expiration, or other conclusion of this MOU.

[If PII: Upon termination of the contract or upon written demand from [DATA PROVIDER], [DATA RECEIVER] agrees to immediately return or destroy, except to the extent infeasible, all PII received from, created by, or received by [DATA PROVIDER] including all such information disclosed to its agents, employees, and/or subcontractors.]

IN WITNESS WHEREOF the parties approve this MOU, effective upon last dated signature. The persons signing below have the right and authority to execute this MOU for their respective entities, and no further approvals are necessary to create a binding MOU.

By: _____
[DATA PROVIDER] Date

By: _____
[DATA RECEIVER] Date

Appendix B: Project Participants



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Self-Represented Litigation Network

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Jefferson Burrus-Bascom Professor of Law,
University of Wisconsin Law School

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College of Law, University of Utah

Elizabeth Chambliss

Henry Harman Edens Professor of Law,
Director, NMRS Center on Professionalism,
University of South Carolina School of Law

April Faith-Slaker

Associate Director of Research Innovations,
Access to Justice Lab, Harvard Law School

Jim Greiner

The Honorable S. William Green Professor of
Public Law, Faculty Director, Access to Justice
Lab, Harvard Law School

Margaret Hagan

Director, Stanford Legal Design Lab

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Endnotes



1. American Academy of Arts and Sciences, *Civil Justice for All* (Cambridge, Mass.: American Academy of Arts and Sciences, 2020), <https://www.amacad.org/publication/civil-justice-for-all>; and “Access to Justice,” *Dædalus* 148 (1) (Winter 2019), <https://www.amacad.org/daedalus/access-to-justice>.
2. American Academy of Arts and Sciences, *Civil Justice for All*, 22.
3. National Center for State Courts, *Guiding Principles for Post-pandemic Court Technology: A Pandemic Resource from CCJ/COSCA*, version 1, July 16, 2020, https://www.ncsc.org/__data/assets/pdf_file/0014/42332/Guiding-Principles-for-Court-Technology.pdf (accessed December 7, 2020).
4. World Justice Project, *Global Insights on Access to Justice* (Washington, D.C.: World Justice Project, 2019), 108, <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf>.
5. The National Center for State Courts has developed National Open Court Data Standards, which can be found at <https://www.ncsc.org/services-and-experts/areas-of-expertise/court-statistics/national-open-court-data-standards-nods>.
6. 5 U.S.C. § 552.
7. 5 U.S.C. § 552a.
8. *Bartel v. FAA*, 725 F.2d 1403, 1407 (D.C. Cir. 1984). See also 5 U.S.C. § 552a(a)(2) (defining *individual* as “a citizen of the United States or an alien lawfully admitted for permanent residence”).
9. 5 U.S.C. § 552a(b)(1)-(12).
10. “How Open Is Your Government? Find Out,” Muckrock, <https://www.muckrock.com/place/> (accessed December 8, 2020).
11. “Rules on Bulk Data—Privacy/Public Access to Court Records State Links,” National Center for State Courts, <https://www.ncsc.org/topics/access-and-fairness/privacy-public-access-to-court-records/state-links> (accessed December 8, 2020).
12. “Privacy Policies for Court Records—Privacy/Public Access to Court Records State Links,” National Center for State Courts, <https://www.ncsc.org/topics/access-and-fairness/privacy-public-access-to-court-records/state-links4> (accessed December 8, 2020).
13. Wis. Stat. § 48.396(1), <https://docs.legis.wisconsin.gov/statutes/statutes/48/vii/396> (accessed December 8, 2020).
14. See, for example, American Bar Association, Model Rules of Professional Conduct, Rule 1.6 Confidentiality of Information, Rule 1.8(b) Conflict of Interest: Current Clients: Specific Rules, Rule 1.9(c) Duties to Former Clients, and Rule 1.18 Duties to Prospective Client. Protected information can be disclosed with the client’s informed consent.
15. See Appendix A for a template data use agreement.
16. HIPAA, 42 U.S.C. §§ 1320d et seq., 45 C.F.R. Part 162.
17. 34 C.F.R. § 99.3.
18. 42 C.F.R. § 2.11-2.12.
19. HMIS, 24 C.F.R. § 578.57.
20. U.S. Department of Health and Human Services, *Federal Policy for the Protection of Human Subjects (“Common Rule”)*, <https://www.hhs.gov/ohrp/regulations-and-policy/regulations/common-rule/index.html>.
21. *Publicly available* is defined as “data and/or bio-specimens that are accessible to anyone in the general public, without the need for special permissions or privileges. In these cases, participants do not have a reasonable expectation of privacy of their data/bio-specimens. Examples include data/biospecimens available for purchase, searchable online, or available at a library. Researchers may be subject to an agreement with the entity releasing the data/biospecimens prior to receipt and use (such as a Data Use Agreement).” Brown University, *HRPP Glossary*, <https://www.brown.edu/research/conducting-research-brown/>

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28. “Rules on Bulk Data,” National Center for State Courts, <https://www.ncsc.org/topics/technology/records-document-management/state-links3> (accessed December 8, 2020).
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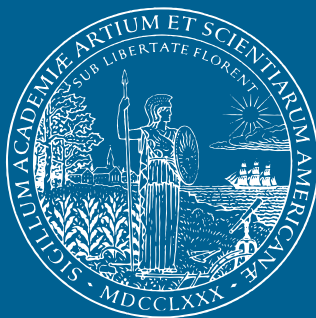
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33. Margaret Hagan, Jameson Dempsey, and Jorge Gabriel Jiménez, “A Data Commons for Law (Part 1),” *Legal Design and Innovation* [blog], *Medium*, April 1, 2019, <https://medium.com/legal-design-and-innovation/a-data-commons-for-law-60e4c4ad9340> (accessed December 8, 2020).

34. Other models exist for justice and administrative data repositories. In addition to CJARS, models include the NYU Administrative Data Research Facility, the Coleridge Initiative (<https://coleridgeinitiative.org/>), the District of Columbia’s Statewide Longitudinal Education Data System (<https://sled.osse.dc.gov>), Harvard University’s Dataverse (<https://dataverse.harvard.edu/>), the Children’s Data Network (<https://www.datanetwork.org>), ICPSR at the University of Michigan (<https://www.icpsr.umich.edu/icpsrweb/>), and South Carolina’s Integrated Data System (<https://www.rfa.sc.gov/> and <https://www.aisp.upenn.edu/network-site/south-carolina-rfa-2/>).





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