

## **SUPPORTING STATEMENT**

### **State Court Organization, 2011**

The Bureau of Justice Statistics (BJS) proposes to implement a census of the structure and overall framework of the nation's trial and appellate courts. This census will build on previous censuses of the nation's state court organizational characteristics. Similar to the previous iterations of this project, State Court Organization 2011 will focus on the organizational structure of state courts throughout the country. Emphasis will be placed on collecting information pertaining to the number of trial and appellate court judges, the selection of judicial officers, the governance of the judicial branch, the funding and budgets of state courts, appellate and trial court staffing, the use of juries, and sentencing procedures. Moreover, information will be collected on the utilization of information technology systems in state courts. The reference date for this project will be December 31, 2011. The selected data in State Court Organization will be integrated into a web-based query tool hosted by the data collection agent – National Center for State Courts. Through this process, State Court Organization will become a more interactive and web-based product than previous versions.

#### **A. Justification**

##### **1. Necessity of Information Collection**

Under Title 42, United States Code, Section 3732 (see Attachment A), the Bureau of Justice Statistics (BJS) is directed to collect and analyze statistical information concerning the operation of the criminal justice system at the federal, state and local levels. An essential component of the criminal justice system is the judicial system.

Since 1980, the Bureau of Justice Statistics (BJS), in partnership with the National Center for State Courts (NCSC), has sponsored a data collection examining the organizational characteristics of state courts throughout the country.<sup>1</sup> The State Court Organization or SCO data collection series serves as the primary source for detailed information on the structure and framework of state trial and appellate courts. SCO obtains organizational, operational, governance, staffing, and budgetary information for the trial and appellate courts of the nation's 56 court systems located in all 50 states, the District of Columbia, Puerto Rico, and the U.S. territories including American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands.<sup>2</sup>

Some of the information collected from these trial and appellate courts include the overall number of judges in the nation's state courts; the gender and racial/ethnic composition of the nation's judiciary; the procedures and processes used to select and retain trial and appellate court judges; the legal credentials required for sitting judges; the role of judicial nominating commissions; the governance, funding and administration of the judicial branch; the role of legal clerks at the trial and appellate court levels; the function and staffing of a state's administrative

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<sup>1</sup> Prior State Court Organization (SCO) censuses were fielded in 1980, 1987, 1993, 1998, and 2004. See control number 1121-0283 for OMB documentation for the previous SCO census.

<sup>2</sup> It should be noted that SCO examines the jurisdictional categories of trial and appellate courts and not actual courthouses or court facilities. More details on the data collection procedures and processes are provided in the section B of the supporting statement.

office of the courts; the procedures associated with the nation's appellate courts; the administration, procedures, and specialized jurisdiction of state trial courts; the composition and workings of state juries; the sentencing context; and the overall structure of appellate and trial courts in each state. In addition, the current SCO will attempt to detail the presiding judge's role; the functions of trial court clerks and administrators; the characteristics of problem solving and tribal courts; the utilization of media in the courts; and the employment of court interpreters.

SCO will also endeavor to collect new information on information technology systems in state courts. Some of the electronic information collected will include the responsibilities and functions of a court's IT staff; the employment of e-filing procedures in trial and appellate courts; the accessibility of court information through online systems; and the implementation of case management systems as a means of organizing and managing a court's caseload. These data were last collected by the National Center for State Courts in 2004.

The SCO data have been used to generate several BJS reports on the organizational structure of the nation's state trial and appellate courts. These reports titled *State Court Organization* have been published every several years from 1980 through 2004. In addition, BJS has used the SCO data to publish topically driven reports examining trends in state court organization from 1987 through 2004.<sup>3</sup> The reports that summarize SCO data can be accessed at the following internet link < <http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=284>>.

Findings from the various SCO reports have generated a great deal of attention and interest among state court administrators, state legislators, court clerks and managers, trial and appellate court judges, attorneys, scholars, policymakers, and the general public. The New York Times, for instance, used SCO statistics to show how most state courts employ elections as a means for filling vacant judicial positions and retaining judges.<sup>4</sup> In addition, state legislators and court administrators have used SCO for budgetary and staff planning purposes. The importance of SCO has also been stressed in the Committee on National Statistics (CNSTAT) report on BJS programs. The CNSTAT report described SCO as an important data collection program for BJS' Prosecution and Adjudications unit.<sup>5</sup>

## 2. Needs and Uses

The SCO series is a unique reference, used routinely by judges, court administrators, court managers, chief technology officers, and other members of the court community, as well as by federal and state policy-makers, criminologists, researchers, journalists, members of the public, and others interested in state courts. There is no other authoritative, comprehensive source of information about the organization of state courts.

An up-to-date SCO is essential for understanding the diverse ways in which state courts structure, organize, and administer their appellate and trial courts. State court systems vary

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<sup>3</sup> See *State Court Organization, 1987 – 2004*; *State Court Organization, 2004*; and *State Court Organization, 1998* at <http://bjs.ojp.usdoj.gov/index.cfm?ty=dcdetail&iid=284>. Prior iterations of *State Court Organization* are available only in paper copy at the National Criminal Justice Reference Service storage facility.

<sup>4</sup> Adam Liptak, *Rendering Justice, With One Eye on Re-election*, New York Times, May 25, 2008.

<sup>5</sup> See Groves, Robert and Daniel Cork (Eds.) (2009). *Ensuring the Quality, Credibility, and Relevance of U.S. Justice Statistics*. National Research Council of the National Academies at <<http://www.nap.edu>>.

widely, making intelligent comparisons between and among states challenging and difficult. The variation takes place along many dimensions; for example, courts differ in how they select and retain judges, employ electronic information systems, structure their courts of general and limited jurisdiction, and administer their judicial and administrative staff. In order to make accurate comparisons about these and other essential characteristics of state court systems, it is critical to engage in the continual update of these types of information.

The basic information about state court systems also varies in how often and how dramatically it changes; in the current economic and political environment, more changes are taking place than in normal times, as state court systems struggle to absorb budget reductions and alter the way they do business. Given the current economic environment and cutbacks that have occurred in state courts court systems, SCO 2011 will be able to capture more changes than many of its predecessors. Basically, the current SCO will have the capacity for measuring how the economic recession has affected the staffing, budgets, and governance of the nation's state trial and appellate courts.

An equally important reason for updating SCO and adding in new tables concerns the need to reflect on the current interests and concerns of the U.S. Department of Justice, the state court community including state court administrators, managers, and judges, and those who work in and study the courts. Since 2004, there have been many changes to the nation's state courts especially in the area of information technologies and the web. The current SCO will be able to update and provide a new picture of how information technologies are being employed by state courts. For example, SCO will be able to show how many courts allow for online web access of their individual case files or allow lawyers to electronically file complaints, motions, or other court documentation.

### 3. Use of Information Technology

Respondents will be encouraged to complete online data collection spreadsheets for this survey. It is anticipated that most of the SCO data collection will occur online. Links to an online survey form, which will be in a spreadsheet format, will be sent to respondents who will then log into a data collection system and complete the submitted forms. If internet access is not available, respondents will have the option of completing the data collection spreadsheets on a laptop or desktop computer and sending these spreadsheets back to the collection agent in a diskette. It is anticipated, however, that some courts will not have access to the software or hardware needed to transmit data electronically or place their data online. In these jurisdictions, the SCO information will be transcribed on paper data collection instruments and will be mailed to the data collection agent for further processing.

The publication of SCO, 2011 will be generated in both printed *and* electronic formats. The electronic version of SCO will allow for this report to be integrated into a web based query system. The web based query system will be hosted on the NCSC website and will be formatted in a way that allows users to access the SCO data by clicking on each state or trial/appellate court area of interest. For example, users will be able to query the interactive dataset and generate customized tables on the types of judicial selection process for the entire country or for the state trial or appellate courts of individual or groups of states. The online tables will be designed to

facilitate printing from the user's Web browser, as well as downloading easily transformed data files (e.g., excel spreadsheet files) to maximize their utility and customizability. Although the Web site will be hosted by the NCSC, it will appear to users as a BJS Web site so that federal sponsorship of this project is highlighted and emphasized.

In addition, the SCO report will be available on the BJS webpage in a PDF file and the tables in this report will be available on the BJS webpage in an Excel format. Unlike previous iterations, the BJS SCO report will not cover all the tables collected for this project. The entire universe of SCO tables will exist on the NCSC website through the web based query tool. The BJS SCO report, however, will highlight key aspects of this project. Moreover, the data for SCO will be available for downloading and further analysis at the Inter-University Consortium for Political and Social Research. This will enable researchers to download electronic versions of the SCO data for further analysis.

#### 4. Efforts to Identify Duplication

A search of the National Criminal Justice Reference Service repository and other internet search engines such as Westlaw and Lexis did not reveal any duplication. The information sought is not attainable from any other internal data source. BJS, moreover, will work closely with other agencies at the Office of Justice Programs such as the National Institute of Justice and the Bureau of Justice Assistance to ensure that duplication does not occur.

#### 5. Efforts to Minimize Burden

NCSC, in consultation with BJS, attempted to create data collection forms and instructions that are accurate, easy to understand, and which imposed the least possible burden on the subjects being surveyed by consulting with an advisory group of state court administrators and judges. In an effort to minimize respondent's burden, the data collection plan also allows for respondents to submit data through an automated online system. Prior SCO projects have demonstrated that the data collected are readily available from current reporting and record keeping practices of its respondents. BJS and NCSC will also take advantage of information available through prior iterations of SCO to further minimize respondent burden by pre-populating the online data collection spreadsheets when it's sensible to do so. For example, information on judicial qualifications tends to change very slowly, if at all, in state courts. Therefore, information on judicial qualifications will be pre-populated from earlier versions of SCO allowing the respondents to verify whether this information has changed rather than engage in an entirely new data collection effort for this type of information.<sup>6</sup>

#### 6. Consequences of Less Frequent Collection

Less frequent data collection would lead to a significant gap in the information available on the organizational structure of state trial and appellate courts. Though the framework and structure of state courts does not change rapidly from year to year, changes do occur over an extended period of time. Hence, it is necessary every five to six years to update the tables in SCO and to devise

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<sup>6</sup> See respondent burden section for more information about the utilization of pre-populated data collection forms and burden hours.

new tables, which reflect the current interests of the state court community. A data collection effort every five to six years, therefore, is crucial so that judges, state court administrators, court managers and clerks, legislators, researchers, and policymakers have updated information on the overall structure of the nation's state courts.

In addition to keeping current with the interests of the state court community, the economic recession has resulted in severe cutbacks to state court budgets and personnel. Unlike prior iterations, the current SCO will be able to assess how the recession has affected the staffing, budgets, administration, and governance of the nation's state trial and appellate courts. An updated SCO will provide crucial information on which state courts have been affected most dramatically by the recession and which state courts have endured the economic downturn relatively unscathed. By being able to compare court budgets and staffing across the states, court administrators will be able to determine how their counterparts are dealing with the economic crises and use that information as a template for addressing their own budgetary environments.

#### 7. Special Circumstances

No special circumstances have been identified for this project.

#### 8. Adherence to 5 CFR 1320.8(d) and Outside Consultations

BJS and NCSC consulted with policymakers, survey practitioners, research specialists, and practitioners who specialize in state trial and appellate court structure and organization. Some of the specialists consulted include staff from the Conference of State Court Administrators (COSCA), the Conference of Chief Justices (CCJ), the National Association for Court Management (NACM), the American Judges Association (AJA), the National Council of Juvenile and Family Court Judges (NCJFCJ), the National Conference of Appellate Court Clerks (NCACC), and the key committees of COSCA, including the COSCA-NACM Joint Technology Committee and the COSCA-CCJ Management Committee. Academic researchers (e.g., scholars of empirical legal studies, public policy and public administration, political science) were also consulted. Finally, NCSC tapped experts within its own organization including units involved with the Center for Jury Studies, the Court Consulting Services, the Center for Elders and the Courts, and the Center for Sentencing Initiatives. The results of these inquiries were evaluated by the advisory committee for the SCO project which consisted of NCSC and BJS staff and members of the COSCA court statistics project committee.

These discussions led to modifications of the elements being collected and to the collection of new data elements for the SCO project. For example, through these outside consultations several new elements were added to the SCO project including information on a court's information systems such as external information exchanges, IT responsibilities and staffing, electronic filing capacity, remote online access, and case management system capacities. In addition, advice from these experts led to revisions of the data elements that had been collected in previous SCO censuses including the role of presiding judges, the minimum qualifications required to serve as an appellate court clerk, and the staffing and functions of the administrative office of a state's court.

BJS will publish the 60 day and 30 day notices in the Federal register to inform and seek comment from the public.

#### 9. Paying Respondents

Not applicable. BJS or NCSC will not provide any payment or gift of any type to respondents. Respondents participate on a voluntary basis.

#### 10. Assurance of Confidentiality

The data collected will detail the organizational characteristics of the nation's state trial and appellate courts and are in the public domain. SCO provides organizational data at the state level or at the jurisdictional levels for the participating state trial and appellate courts. Sometimes the jurisdictional level court and courthouse will coincide. For example, most states have one court of last resort which is basically the equivalent of a US Supreme Court for a particular state. In these cases, the state court of last resort resides in one building and hence information for that courthouse will be identifiable through the SCO publications.

Other courts, especially at the trial level, will have too many court buildings for the data to be made applicable at the courthouse level. Virginia, for example, has one general jurisdiction trial court called the circuit court and one limited jurisdictional trial court labeled the district court. The circuit court alone has 120 courthouses or offices, while the district court has an estimated 191 courthouses or offices. SCO will only report information for the two levels of trial court in Virginia – circuit and district – and will not provide organizational information for all the state's estimated 311 courthouses or offices. For more information on how the SCO data are reported at the state or jurisdictional trial or appellate court levels, please see the attached 2004 SCO report (attachment 1).

Although BJS' confidentially statute (42 U.S.C. § 3789g) is not being invoked for this project, the names of respondents who completed the data collection forms will be kept confidential. BJS, through collaboration with NCSC, will take all precautions to ensure that no outside parties will be able to identify the respondent(s) participating in the SCO project. First, NCSC has several safeguards in place to maintain confidentiality of the participating respondents. These include the utilization of firewalls, virus protection software, and security login checks to safeguard the confidentiality of the respondents participating in this project. NCSC will also store any paper data collection forms submitted with respondent's names in a locked file. Before submitting the final dataset to BJS, NCSC will purge any information that could be used to identify individual respondents who assisted in the SCO data collection.

#### 11. Justification for Sensitive Questions

There are no questions of a sensitive nature.

#### 12. Estimate of Respondent Burden

The SCO data collection forms will be sent to each of the nation's 56 court systems (those for the 50 states, the District of Columbia, Puerto Rico, and the U.S territories including American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands). The data collection instruments will be in the form of spreadsheets that will basically mirror the electronic and PDF tables produced for this report. There are a total of 62 spreadsheets that the respondents will be asked to complete for their individual states or courts and a copy of all spreadsheets is included as an attachment to this document (see attachment 2). Consistent with past data collections, recurring tables will be populated with data previously reported in prior SCO publications. For example, tables 2 and 3 (number of trial and appellate court judges) were reported in the 2004 SCO publication. These tables will be populated with the SCO 2004 judicial numbers and the respondents will be asked to review the populated fields and update them if necessary. Some of the populated tables such as the number of appellate court judges change very little from prior SCO surveys and hence do not require as many hours as the new tables to complete. Previous SCO surveys, along with pretests of the current data collection spreadsheets, have shown that it should take an estimated half an hour for the 56 court systems to review and revise each pre-populated spreadsheet. Since 38 of the 62 spreadsheets hail from prior SCO surveys, the total burden hours to review, revise, and update the pre-populated SCO spreadsheets for each of the court systems should be about 19 hours (38 spreadsheets \* half an hour per spreadsheet = 19 hours per state or U.S. territory). Given there are 56 court systems reviewing and revising SCO spreadsheets, the total burden hours to complete this portion of the SCO data collection will be 1,064 hours (19 hours to review and revise 38 spreadsheets per court system \* 56 respondents = 1,064 hours).

For new spreadsheets, no historical data will be available, and the data collection forms will be blank. Pretests have shown that it should take an hour to provide the requested information for each data collection spreadsheet. Since 24 of the 62 spreadsheets involve the collection of new SCO data, the total burden hours to collect the requested data for each court system should be about 24 hours (24 spreadsheets \* one hour per spreadsheet = 24 hours per state or U.S. territory). Given there are 56 court systems providing data for new SCO spreadsheets, the total burden hours to complete this portion of the SCO data collection will be 1,344 hours (24 hours to provide data for 24 spreadsheets per court system \* 56 respondents = 1,344 hours).

Therefore, it is estimated that the 56 court systems should require 2,408 hours (1,064 hours to revise and update 38 prior SCO spreadsheets + 1,344 hours to provide data for 24 new SCO spreadsheets) to complete data collection for the SCO project.

These burden estimates were determined based on in-person meetings held with the State Court Organization Advisory Committee, the Court Statistics Project Advisory Committee, and the Court Information Technology Officers Consortium (CITOC). The members of the advisory committees represent the Conference of State Court Administrators (COSCA) -- it is their staff that will complete the majority of the tables -- and the CITOC members were involved in creating the bulk of the new tables (those regarding technology). Together, these groups completed a detailed review of each of the 63 tables included in the survey. The suggested time required to complete the survey tables was deemed a reasonable estimate proposed by these groups. The burden hours for SCO 2011 are further summarized in the table below.

**Estimate respondent burden for State Court Organization, 2011**

SCO data collection spreadsheets involving	Number of spreadsheets	Estimated time to respond (in hours) per total time		Number of respondents*	Total burden
		spreadsheet	(in hours)		
Review of data	38	0.5 hrs	19 hrs	56	1,064
Request for new data	24	1.0	24	56	1,344
<b>Total</b>	<b>62</b>	<b>--</b>	<b>43</b>	<b>56</b>	<b>2,408</b>

\* Total number of respondents includes all 50 states, District of Columbia, Puerto Rico, and the following U.S. territories American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands.

**13. Estimate of Respondent’s Cost Burden**

We do not expect respondents to incur any costs other than that of their time to respond. The information requested is of the type and scope normally carried in their records and no special hardware or accounting software or system is necessary to provide information for this data collection. Respondents are not expected to incur any capital, start-up, or system maintenance costs in responding. Further, purchasing of outside accounting or information collection services, if performed by the respondent, is part of the usual and customary business practices and not specifically required for this information.

**14. Costs to Federal Government**

The total expected cost to the Federal Government for this data collection is \$489,786 all to be borne by the BJS. This work consists of planning, developing the questionnaire, preparation of materials, collecting the data, evaluating the results, and generating the PDF and web based query reports. A BJS GS-Level 14 statistician will be responsible for overseeing the NCSC’s work on this project. The budge for this project is shown below.

**Estimated costs for the State Court Organization (SCO) project**

BJS costs		
	<b><u>Staff salaries</u></b>	
	GS-12 Statistician (25%)	\$17,000
	GS-14 Senior Statistician (33%)	\$37,000
	GS-14 Supervisory Statistician (3%)	\$5,600
	GS-13 Editor (10%)	\$10,000
	Other Editorial Staff	\$5,000
	Front-Office Staff (GS-15 & Directors)	\$3,000
	Subtotal salaries	\$77,600
	Fringe benefits (28% of salaries)	\$21,728



	Subtotal: Salary & fringe	\$99,328
	Other administrative costs of salary & fringe (15%)	\$14,899
	<b>Subtotal: BJS costs</b>	<b>\$114,227</b>
	<b>Data Collection Agent (NCSC)</b>	
	Personnel	\$129,630
	Fringe Benefits	\$50,554
	Travel	\$30,450
	Consultant	\$17,000
	Total Indirect	\$147,925
	<b>Subtotal Data Collection Agent (NCSC)</b>	<b>\$375,559</b>
	<b>Total estimated costs</b>	<b>\$489,786</b>

15. Reason for Change in Burden.

Reinstatement, with change, of a previously approved collection for which OMB approval has expired.

16. Project Schedule

The project will be completed through the following schedule.

**Planning and preparation**

(Includes OMB review): November 2009 – April 2011  
 Data collection: May 2011 – December 2011  
 Data review and evaluation: January 2012 – March 2012  
 Publication: April 2012 – December 2012

After securing OMB approval, the SCO data collection will occur from March through December 2011. During the first three months of 2012 BJS and NCSC will engage in a series of procedures to clean and verify the data submitted for analysis. After the cleaning process is completed, data from the SCO 2011 project will be published through a web-based query tool. The web-based tool will be hosted on the NCSC website and will display all 62 SCO tables in an electronic format. Some topics covered in these web-based tables will include information on courts and judicial staffing, judicial selection and service, appellate and trial court budgets and governance information, the role of juries, the sentencing context, and the overall organizational structure of state trial and appellate courts. These electronic tables will be formatted in a way that allows users to access the SCO tables for all 50 states, District of Columbia, Puerto Rico, and the US territories or for selecting individual or groups of states for further analysis.

In addition, a modified SCO report will be available on the BJS webpage in a PDF file and the tables in this report will be available on the BJS webpage in an Excel format. The BJS SCO report will highlight several key components of this project and examine trends in state court organization. The BJS report will also be printed for users who do not have internet access to the

entire universe of SCO tables. The SCO web tables and report will be published sometime in mid to late 2012 (a copy of the 2004 report is attached for additional reference).

Lastly, the data for State Court Organization will be available for downloading and further analysis at the Inter-University Consortium for Political and Social Research (ICPSR). ICPSR has in place several safeguards to ensure respondent confidentiality. ICPSR conducts a disclosure risk review of every dataset to determine whether any data items could be used to identify individual respondents. ICPSR ensures respondent confidentiality by removing, masking, or collapsing variables within public-use versions of the datasets.

#### 17. Display of Expiration Date

The expiration date will be shown on the survey form.

#### 18. Exception to the Certificate Statement

Reinstatement, with change, of a previously approved collection for which OMB approval has expired.

