STATE OF WISCONSIN
SUPREME COURT
P.O. BOX 1688
MADISON, WISCONSIN
53701-1688

CHAMBERS OF
CHIEF JUSTICE SHIRLEY S. ABRAHAMSON

16E CAPITOL BLDG.
MADISON, WI 53702
(608) 266-1885
FAX: (608) 261-8299

Presentation by

Chief Justice Shirley S. Abrahamson

before the

Legislative Council Special Committee on Criminal Justice Funding and Strategies

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Thank you for inviting me to appear before you today to discuss important issues in the criminal justice system. Public safety is a prime objective of the criminal justice system. The court system has been studying effective justice strategies and has piloted several programs to improve public safety and reduce recidivism.

Criminal cases make up a significant percentage of trial and appellate dockets. (If you want additional information on this topic, we can provide it.)

As background, I remind you that the Wisconsin appellate courts are wholly State funded; the circuit courts are jointly funded by the State and counties. The circuit court is Wisconsin's court of general jurisdiction and consists of 249 judicial branches (judges) in 69 judicial circuits (each county is a circuit with the exception of six counties paired to form three circuits).

Funding for the court system is a very small part of the state budget. In 2008-2009, the court system's share of GPR expenditures was 0.9%, and 0.34% of total (all funds) state expenditures.

For well over a decade, improvement of the court system funding structure has been identified as a priority for the court system by the Supreme Court's Planning and Policy Advisory Committee (PPAC). In 2004, after lengthy study PPAC concluded that the trial court system in Wisconsin should continue to remain a partnership between counties and the State, with the long-term goal of the State increasing its responsibility for funding court services.

The State provides the following direct support to the circuit courts: (1) personnel and travel costs of judges and court reporters; (2) automated case management and IT support through the Consolidated Courts Automation Programs (CCAP); (3) partial reimbursement of county court interpreter expenses; and (4) the Circuit Court Support and Guardian ad Litem (GAL) payment programs, distributed by formula to counties.

The Circuit Court Support and GAL payment programs were created in 1993, funded through a new court support services surcharge (CSSS) on court fines and forfeitures. Counties had hoped these state financial assistance programs would shift an equitable portion of the funding of the circuit courts from property taxes to the State. However, over the years additional funding was not provided to offset increasing costs at the county level even as the number of circuit court branches and CSSS revenues increased. In 2009-10, CSSS revenues totaled $51.7 million, while $23.2 million was appropriated for the court support programs. The remaining $28.5 million went to other GPR-funded programs. It is interesting that with the numerous surcharges created by the Legislature over the years, this surcharge, identified as a surcharge to support the courts, is not specifically designated to go to that specific purpose.

The court has in recent years submitted budgets requesting that a greater share of revenue of a surcharge designed to support court operations be used for that purpose. These requests for an increased portion of the surcharges have not been successful.

While I am on the topic of surcharges, let me discuss a troubling trend in this regard. There has been a proliferation of court surcharges and fees over the years. It seems that every new program remotely connected to the justice system is now funded with new or increased surcharges or fees. We all must be cognizant that access to the court system cannot be reserved only for those who can pay. The continued proliferation of surcharges both jeopardizes access to the court system and questions the fairness of our penalty structure — the punishment may no longer fit the offense. For example, an infraction for speeding 1 to 10 miles per hour on the Interstate results in forfeiture of $50, but with surcharges, the total assessment is $200.50. The irony of this example is that speeding is a civil offense; the surcharges bring in revenue because of the high volume of cases. The surcharges, however, fund a variety of criminal justice programs. A $100 fine on a misdemeanor case, with basic surcharges, will result in a total charge of $379. If the fine is for certain types of offenses, additional surcharges will apply, ranging from $10 for a drug diversion surcharge to $365 for a driver improvement surcharge.

There is also the problem of diminishing returns. Many state programs are funded in whole or in part by court fees and/or surcharge revenues. The ability to pay has not increased along with these increased fees and surcharges; indeed, the troubling fiscal climate has reduced many citizens' ability to pay. As a result, funding for existing programs is in jeopardy. For example, the justice information system surcharge (JISS)

was increased by nearly 80% in the last biennial budget. While the surcharge amount going to CCAP remained unchanged, CCAP's JISS revenues in 2009-2010 decreased by 12%. (The JISS is the only surcharge collected by the courts that directly funds a court program).

Although we are, of course, concerned about state support for the court system, we also have broader concerns about the funding of the criminal justice system. The court system is part of a larger, interrelated criminal justice system. Our courts become backlogged when other justice partners, particularly the district attorney and public defender offices, lack resources.

In our appearances before the Joint Finance Committee and in our conversations with legislators, the Governor, and members of the executive branch, John Voelker, Director of State Courts, and I have urged the Legislature and Governor to support the district attorney and public defender requests to be properly staffed and funded. A circuit court cannot function in many criminal cases unless a prosecutor and defense counsel are present. It is important not only to have adequate staffing in these offices but also to retain experienced prosecutors and public defender defense counsel by providing these attorneys with adequate compensation.

While indigent defense is a state executive, not judicial, branch function, the efficient delivery of this constitutional right affects the fairness and efficiency of the entire court system. We supported, and applaud, the enactment of legislation last session to update the State Public Defender indigency guidelines so that it can once again fully perform this mandated function.

There are a number of trends that have put increasing stress on our courts. One trend is the increasing number of self-represented litigants appearing before our courts. This trend is most noticeable in family court, but affects the entire system. The operating principle on which our courts are founded is that parties approach the court as adversaries represented by attorneys who know and understand the process. Self-represented litigants place an added burden on judges and court staff and tend to slow court processes.

The number of limited English speaking persons appearing before our courts is also increasing. This population has been growing 4.0% each year for the last five years. The Census Bureau projects that this trend will continue until 2025. The need for interpreters in rarer languages has also increased, and qualified interpreters are harder to find in these languages. Accurate interpretation is crucial to the integrity of court proceedings to ensure equal and fair access to justice.

Another trend is the increasing number of individuals who are repeatedly appearing before our courts with alcohol or other drug abuse, or mental health problems. Some circuit courts have developed specialty treatment programs, such as drug courts. These courts provide an increased focus on treating those problems (e.g. alcohol, drugs, mental conditions) that have resulted in the behaviors bringing persons into the criminal justice system. Programs to aid veterans in receiving federal treatment are also being established. These courts are staff intensive and need additional resources; they have been funded predominantly by federal and foundation grants and the counties. The legislative TAD (Treatment Alternatives and Diversion) program has been important in funding pilot programs for effective justice strategies. Nevertheless, every day, persons who likely could succeed in these less costly, and perhaps more effective programs are sentenced to jail or prison because of the lack of resources.

Another innovation is the development of evidence-based risk and needs assessments that give judges information they need to make informed sentencing decisions. The AIM (Assess, Inform and Measure) projects currently operating in seven counties are intended to enhance the quality and scope of information provided to the court about a specified target population, and to provide feedback to judges on case outcomes. An evaluation of the AIM approach is currently being conducted by the National Center for State Courts.

These innovative programs are described in greater detail on the court's website—wicourts.gov and the judicial members of the committee can provide further insight.

As you look deeper at the issue of funding the criminal justice system, please keep in mind that courts, prosecutors, defense counsel, the department of corrections, county boards, and treatment providers are all part of the system and should be working together for public safety and to reduce recidivism.

Again, let me thank you for this opportunity to appear before you today. I shall try to provide further information in response to your questions and, if I cannot provide the information today, I shall ask court staff to provide it, if available.