

SUBCOMMITTEE ON COURT FINANCING

FINAL REPORT

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**Planning And Policy
Advisory Committee Of The
Wisconsin Supreme Court**

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Table of Contents

	<u>Page</u>
Executive Summary	i
Introduction	1
Wisconsin Circuit Courts and Their Financing	2
National Overview of Trial Court Financing	6
Historical Perspective	6
Methods of Financing	8
Functional Scope of Court Services and Their Financing	10
Court Financing in Other States	11
Previous Wisconsin Court System Studies	14
Citizens Study Committee on Judicial Organization -- 1973	14
Legislative Council Special Committee on Trial Court System	
Funding -- 1991	15
Commission on the Judiciary as a Co-Equal Branch of Government -- 1997	16
Wisconsin Blue-Ribbon Commission on State-Local Partnerships for the	
21 st Century (Kettl Commission) -- 2001	17
Governor's Task Force on State and Local Government -- 2003	17
Wisconsin Counties Association Court Funding Committee -- 2003	18
Core Court Services	18
Current Court Services Costs	21
State Expenditures for Circuit Court Operations	21
County Expenditures for Circuit Court Operations	21
Court Revenues	24
Court Services Funding Alternatives Considered	27
Fee-based Funding	27

Puerto Rico Model	29
Utilization of Non-profit Donations	29
Grant Revenues	29
Funding Mechanisms for Core Court Services	30
Blueprint for Possible Transitioning of Core Court Services to State Funding...33	
Calendar Year 2002 County Costs of Phase 1 Core Court Services	41
Uniform Levels of Court Services	43
Staffing Levels	43
- Judicial Weighted Caseload	43
- Other Court Staffing	43
- Supreme Court Rules	45
- County Court Staffing in 2002	46
Court Performance Standards	48
- Efficiency Measures – Case Processing Benchmarks	48
- Effectiveness Measures – NCSC Trial Court Performance Standards	49
Administrative and Operational Responsibilities	50
Personnel Issues	50
Court Administrative Structure	51
Differing State Funding Mechanisms	52
State-County Partnership	55
Appendix I: Summary of Benefits and Problems of State Court Financing	57
Appendix II: WCA Court Funding Committee Court Costs	58
Appendix III: 2002 Annual Report of Actual County Costs Form and Instructions..	59
Appendix IV: Time Standards (Benchmarks) for Circuit Court Case Processing ...	65
Appendix V: Trial Court Performance Standards	66
Resource Materials	69

EXECUTIVE SUMMARY

In response to the growing frequency of calls for full state funding of the Wisconsin Court System, at its May 2002 meeting, the Supreme Court's Planning and Policy Advisory Committee (PPAC) created an ad hoc Subcommittee on Court Financing to identify an effective and responsible financing system to support court services. The charge of the subcommittee was to sort through issues associated with the funding and delivery of court services and identify a stable, responsible and effective funding mechanism. As part of its charge, the subcommittee was assigned the following responsibilities:

- Review the current model for providing support to court operations.
- Review court financing models from additional sources, including other states and past Wisconsin reports and studies.
- Define a uniform level of court services that should be provided throughout the state.
- Determine what costs are associated with achieving the uniform level of court services.
- Identify implementation, administrative, and policy issues to provide uniform level of court services.
- Evaluate financing and administrative options to support court services, including the responsibilities of state and local governments.

The subcommittee, consisting of a Supreme Court Justice, Chief Judges of the Circuit Court, Circuit Court Judges, District Court Administrators, Clerks of Circuit Court, a County Board Chairperson, a County Executive and a Public Member, met seven times from December 2002 to January 2004 to review available information and formulate its findings.

The funding of the Wisconsin circuit court system primarily consists of a combination of state and county tax revenues, along with some user fees and grants. After reviewing prior court financing studies and the current Wisconsin circuit court funding model and examining court financing models in other states, the subcommittee concluded that there is no "right" way to finance the circuit courts. Each approach the subcommittee examined contained both potential strengths and weaknesses. The ideal of providing a stable, sufficient court financing mechanism impervious to the political and fiscal forces that affect the other branches of government is not realistic. Because the courts provide a basic government function under our democracy, a core level of funding for the courts must come from government revenues. This means that the court system cannot be immune from fluctuations in revenues and the resulting political budget processes of the other branches of government.

When it became evident that there is no “magic bullet” that would necessarily provide this stable, sufficient court financing mechanism, the subcommittee’s focus switched to the roles of the State and counties in financing the circuit courts (the appellate courts are fully state funded). This focus was spurred on by the Wisconsin Counties Association’s legislative agenda calling for state takeover of all county court costs, which received a surge of legislative interest in late 2002. In November 2002, the Wisconsin Counties Association (WCA) formed a Courts Funding Committee to define and measure “court costs” and to have a public policy discussion on the merits of the WCA proposal for state assumption of court costs. The WCA committee developed preliminary lists of items that could be considered court costs and items that could be considered court revenues.

These lists became the starting point for PPAC’s Subcommittee on Court Financing in its discussion of what constitutes a “court service.” For the WCA and some counties, the definition is broad and may include services provided by district attorneys, the State Public Defender, sheriffs, and corporation counsel. ***The subcommittee defined “court services” as those services directly provided by the circuit courts or court agencies that support the circuit courts.*** As such, court services are a subset of the services provided by the entire legal/justice system.

This distinction in no way diminishes the importance to the justice system of these other legal services upon which the courts rely. One service – court-appointed indigency counsel – merits specific mention. Under state law, indigent defendants are to be provided representation by the State Public Defender’s Office, an executive branch agency, or by private counsel appointed and paid by the State Public Defender. However, because the State Public Defender indigency standards have not been updated for 16 years, courts have been constitutionally required to appoint counsel for an increasing number of indigent defendants who do not qualify for Public Defender representation, with counties paying the appointed counsel costs. This has resulted in a dual system of indigent defense representation, which the State Public Defender program was originally intended to eliminate.

Since it is the court’s responsibility to see that the right to counsel for indigent defendants guaranteed under the U.S. Constitution is effectuated, some would argue that this is a court service. Further, many counties budget the costs of court-appointed counsel under the court’s budget. Nevertheless, the subcommittee concluded that under state statute indigent counsel in Wisconsin is an executive, not judicial, branch function. The subcommittee emphasized while indigency counsel should not be defined as a court service, it is a critical issue that needs to be addressed. ***The subcommittee strongly urges the Governor and Legislature to update the state indigency guidelines and fully fund***

the State Public Defender program to again allow the State Public Defender’s Office to provide legal representation to all indigent defendants and therefore eliminate the need for court-appointed counsel. Further, the subcommittee recommends state statutes be modified to again allow the State Public Defender’s Office to provide advocate counsel for indigents in Children in Need of Protection and Services (CHIPS) cases.

To define a uniform level of court services, the subcommittee made a distinction between innovative court services provided in some courts, such as drug courts, and the “core” court services that must be provided in every circuit court. Given these definitions, the subcommittee identified the following as core court services:

Core Court Services

- Circuit court automation program
 - Court facilities and utilities
 - Court interpreters
 - Courthouse security including court security officers and deputized bailiffs
 - Court-ordered medical and psychological exams, and court appointed witness and expert witness fees and transportation costs (including videotaping)
 - Court room videoconferencing equipment
 - Director of State Courts Office support to the circuit courts
 - Education and training:
 - For judges
 - For court commissioners
 - For other court employees
 - Family court counseling services/mediation
 - Guardians ad litem
 - Judicial/legal resources/legal research (not public law libraries)
 - Jury costs (excluding jury bailiffs)
 - Making the court record costs:
 - Equipment and supplies
 - Court-ordered transcripts
 - Office/facility services (e.g., janitorial services)
 - Personnel Costs:
 - Judges
 - Judicial assistants
 - Law clerks
 - Clerks of circuit court and staff
 - Registers in probate and staff (including juvenile clerks)
 - Court commissioners
 - Court reporters for judges and for court commissioners
 - Jury bailiffs (citizen bailiffs)
 - Personnel-related office supplies and equipment (including repairs and maintenance)
-

The subcommittee then asked, “How much are counties and the state currently spending on the circuit courts?” In state fiscal year 2002-2003, the State provided \$89.5 million to directly support the operation of the circuit courts, including over \$24.1 million to offset county circuit court costs through the circuit court support payment, guardian ad litem payment, and interpreter services reimbursement programs.

Under current law (see s. 753.19, Wis. Stats.), counties bear the costs of operation of the circuit courts unless specified otherwise by statute. While determining state expenditures for the circuit courts is relatively straightforward, determining county circuit court spending is problematic. Each county is organized differently, has differing definitions of what constitutes court services, provides varying levels of court services, and budgets and accounts for court costs differently.

To receive payment under the circuit court support payment program, counties annually report court expenditure information. Despite efforts by the Director of State Courts Office and this subcommittee, the information reported is inconsistent and incomplete. Statutes prohibit the Director of State Courts Office from requiring counties to submit audited reports to ensure accurate, uniform information. Specifically, s. 758.19 (5)(d), Wis. Stats., states that “no action is required of and no condition may be imposed on a county to receive a payment . . . including applying for, submitting information in connection with, entering into a memorandum of understanding concerning or making any other agreement regarding the payment.”

For state takeover of any county-funded court services, accurate cost data is essential. Without such information, core court system services would likely be underfunded. To improve the reporting of county court cost information, *the subcommittee recommends:*

- 1) *Including core court services costs that are not in court budgets in the annual report of actual costs;*
- 2) *Encouraging clerks of circuit court to work closely with the county financial officers in completing the annual form and require clerks of court to send a copy of the completed form to their county finance officer; and*
- 3) *Requesting a statutory change to allow for auditing of the county court cost information.*

Given the shortcomings and inconsistencies in the reported information, for calendar year 2002, counties reported \$139.7 million in total court costs, \$123.2 million of which were allowable court costs under the state circuit court support payment program. Counties

reported a total of 1,688 county court positions, of which 1,185 (70 percent) were in the clerks of circuit court offices.

When analyzing the true costs of the circuit courts, offsetting revenues must be considered. The clerks of circuit court collect court-imposed fees, fines, forfeitures, assessments and surcharges. In fiscal year 2002-2003, counties reported court-collected revenues of \$137.1 million. Generally court fees are split between counties and the state, with proceeds deposited to the general funds of the respective governments. As a result, with the exception of three statutory fees¹, these court-collected revenues are generally not retained directly by the court system. Perhaps the biggest misnomer is the court support services fee, deposited to the state general fund, which was originally created to provide State support for county court costs. This fee has been increased 69 percent since July 2002 to help alleviate the State's budget deficit, with no increase in circuit court support payments to counties. Most of the remaining court-collected payments are used by the State's common school fund and to fund executive branch programs at the county and state levels.

Counties receive other revenues collected by the courts. These include wholly-county retained fees, certain recoupments, federal reimbursements such as Title IV-D child support funding, other grant program funding and miscellaneous revenues such as copying charges and pamphlet sales. Because these revenues are not reported to the State, it is not known the extent to which these fees offset county court costs.

After reviewing Wisconsin's history of court funding and the experiences of other states, the subcommittee adopted the following premise:

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 certain core court services.

With this premise in mind, the subcommittee identified certain core court services currently funded in part or in whole by counties that could be transitioned to state funding. However, when the question was asked, "How will these changes improve circuit court functioning?" there were no clear answers.

As information collected from other states and court studies have found, no conclusive evidence exists that guarantees a move to state funding of the circuit courts would

¹ Revenue from the court information fee and six-ninths of the justice information fee revenue go to the Supreme Court to fund the circuit court automation program; and the family court counseling fee is deposited to a separate county account to be used exclusively for family court counseling services.

provide a better, more stable court system. Earlier efforts to implement state court financing were primarily intended to reform and improve the court system. In its 1973 report, the Citizens Study Committee on Judicial Organization recommended that “[t]he State of Wisconsin should assume full financial responsibility for its judicial branch of government, with the exception of municipal courts . . . Mixed state and local funding tends to diminish centralized authority within the judicial branch.” In 1990, then Chief Justice Nathan Heffernan testified before the Legislative Council Special Committee on Trial Court System Funding, “I urge that the state not merely assume the current inadequate level of county funding but that the legislation provide that the funding also be adequate to the needs of the judicial branch”

The current push towards state funding is largely driven from a fiscal perspective – county levy limits and intensified citizen complaints of high property taxes have forced counties to look for ways to cut costs. One area that counties have looked toward is the court system – counties believe the circuit courts are part of the state judicial system and, therefore, county property taxes should not be used to pay for the system. Conversely, counties have provided funding for the trial courts since Wisconsin was a territory. This history, along with the history of the courthouse being the cornerstone of county government and Wisconsin’s county-based circuit court administration structure headed by county-elected officials (judges and clerks of circuit court), could lead one to conclude that continued county funding of the courts is appropriate. The extent to which the State should take on county court costs and the appropriate administrative structures to do so remain to be answered.

It is in the court system’s interest to support whatever funding mechanism provides the most stable, effective and uniform circuit court structure, be it state, county or some combination. The subcommittee recognizes the pressures for change being brought at the state and local levels. Given the changing political realities across the State, practices and administrative structures that have worked in the past may no longer work in the future. In addition to providing fiscal relief to counties, state funding could provide the opportunity for a more uniform and judicial branch-centered approach to circuit court operations resulting in increased equity across the courts, greater efficiencies through economies of scale and more focused, improved management practices.

An example cited of how a state-based approach can work successfully is the Circuit Court Automation Program (CCAP), which is justifiably a model throughout the country. In looking at CCAP, however, two points should be noted. First, CCAP began as a voluntary program that started with circuit courts in those counties that did not have automated court information systems. As others have noted, it is far easier to build a new system than to change and merge many existing systems. Second, with the CCAP and

justice information fees, CCAP has had a stable source of non-tax supported revenue, which is not a feasible funding mechanism for the entire court system.

Other potential opportunities include increased compliance with model recordkeeping procedures, more efficient use of staff, improved ability for the chief judge to carry out his or her responsibilities under Supreme Court Rules, more uniform levels of service throughout the court system, more equalized staffing and salaries, and a streamlined job classification system.

Along with the opportunities under a state-funded circuit court system, there are also a number of concerns. First, while judges' inputs on budget or program issues generally carry some weight at the county level, these same recommendations would be diluted or lost as the Governor and Legislature address the broader interests of state government. Second, while uniformity necessitated by state funding may lead to increased equity among courts, it is feared it may be achieved only by sacrificing the local customs and community standards that make counties unique. Finally, it is possible that fiscal accountability may be lost when locally elected judges and clerks of circuit court do not have to respond to the local electorate on budget matters.

The experiences with state takeover of other parts of the criminal justice system have served to heighten court system concerns. Specifically, a state indigent defense program has resulted in severely outdated indigency standards, and state assumption of prosecutors' personnel costs and employment status has created tension and controversy between the county-elected district attorneys and state government.

Two criteria are critical for any state takeover of court costs to be successful in meeting the court system's requirements for the effective delivery of court services. First, ***adequate state funding must be provided to the court system.*** Other states with successful transitions from county to state funding had two things in common – sufficient planning time and adequate funding. Most of these transitions occurred when the states were able to inject significant amounts of additional resources – staff and funding – into the court system. There is no evidence from other states to suggest that a successful transition can occur without increased state funding. Second, ***the court system, including the Director of State Courts Office, judges and clerks of circuit court, must be involved in any decision-making process.*** It would be simply unacceptable for the other two branches of government to unilaterally dictate major changes in the judicial branch. A careful planning process is necessary, particularly if the conversion involves the transfer of court staff from county to state employment.

Because it is so crucial that the judicial branch be actively involved in any transition planning and decision-making, the subcommittee has developed a blueprint for how to approach state takeover of certain court costs should that become the policy directive. The following table identifies those core court services that currently are fully- or partially-funded by counties, but could be transitioned to full state funding, along with suggested phases for those changes. For each identified core court service, the current funding arrangement is described along with its strengths or weaknesses, followed by the potential strengths or problems with a transfer to state funding.

The phases for the change in funding are identified in the short term (Phase 1), intermediate term (Phase 2) and long term (Phase 3). Generally, the Phase 1 services are those that the subcommittee believes could be transferred with the least administrative difficulty, either because the State is already partially funding the services so some structure is already in place to provide for state funding of these services or it is envisioned that funding could be handled in a similar matter. Phase 2 core court services focus on court commissioners and family court counseling/mediation. While limited to those two areas, the variability in county funding, staffing and organization of these services offers challenges for state takeover. Phase 3 core court services, which are generally personnel-related, present the most difficult decisions and challenges. The first decision is whether these court staff positions should remain county employees or become state employees. Transfer to state employment may offer the most opportunities for uniformity and equity and improved services, but also present the greatest administrative challenges and would be more expensive.

Blueprint for Possible Transitioning of Core Court Services To State Funding

PHASE 1:

✓ COURT INTERPRETERS

Current Funding Arrangement: As required by statute, the Director of State Courts reimburses counties up to four times each year for the actual expenses (subject to certain limits) paid for interpreters required by circuit courts and clerks of circuit court staff to assist indigent persons with limited English proficiency under s. 885.38(8)(a)1, Wis. Stats. This reimbursement is limited to certain proceedings, unless the court determines that an interpreter is necessary. Mileage reimbursement is limited to 20¢ per mile and maximum hourly reimbursement for court interpreters is limited to \$40 for the first hour and \$20 for each additional 0.5 hour for certified interpreters and \$30 for the first hour and \$15 for each additional 0.5 hour for qualified interpreters.

Strengths or Weaknesses with Current Funding: Problems with this reimbursement program are: 1) the statutory restrictions on types of cases for which reimbursement is allowed and the requirement that only interpreters for indigent parties are reimbursed by the State do not match federal law requirements; and 2) the maximum hourly reimbursement amounts do not reflect the current market value of interpreter services. As a result, county court interpreter services cost more than allowable state reimbursement.

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **COURT INTERPRETERS** (continued)

Potential Strengths or Problems with State Funding: The statutes could be modified to require the State to fund court interpreter services in the short term. Statutory changes would be needed so all cases and parties regardless of indigency would be funded by the State according to federal requirements and at market rates (delete statutory rates and give the Director of State Courts the authority to establish rates). With the establishment of a court interpreter certification program, the Director of State Courts Office would be in a position to ensure the efficient delivery of a minimum level service to each circuit. However, state-funded staffing for this program is needed, since the one current position is funded through a one-time federal grant. State funding could be accomplished by expanding the current reimbursement program, or the reimbursement program could be dismantled to allow for the State to directly pay for all interpreter services provided to the circuit courts. If the reimbursement program were to continue, the amount appropriated would need to be increased to provide sufficient funds to fully reimburse counties for court interpreter services, and mechanisms would need to be established to ensure that court interpreter fees meet state payment standards. If a state court interpreter program were implemented, a new infrastructure would be required at the state level with a formal determination of the responsibilities that would be assumed by the counties versus the Director of State Courts. This approach could be similar to the approach the Director's Office takes in acquiring the services of freelance court reporters.

✓ **COURT-ORDERED MEDICAL AND PSYCHOLOGICAL EXAMS, COURT-APPOINTED WITNESS & EXPERT WITNESS FEES, AND TRANSPORTATION COSTS***

Current Funding Arrangement: Counties fund court-ordered medical and psychological exams and court-appointed witness and expert witness fees and transportation costs.

Strengths or Weaknesses with Current Funding: Each county has its own way of providing these services: most counties contract for services while some counties have staff doctors available. Through a statewide contract, Mendota doctors also may be available to conduct Chapter 51 evaluations. When local doctors are used, costs likely are higher. These costs are a product of both the need for these services and the management of those services. As a result, county costs vary year to year.

Potential Strengths or Problems with State Funding: The State could assume the funding responsibility for court-ordered medical and psychological exams and court-appointed witness and expert witness fees and transportation costs in the short term. Uniformity of services could be achieved through a reimbursement system under which the Director of State Courts Office would verify that only allowable expenditures are being incurred at the county level, or by having the State handle all expenditures directly. Under a reimbursement program, the Director of State Courts Office would need additional staff for its administration. Also, it is likely that many of the clerks of circuit court would need additional staff to complete required reimbursement reports. Costs could go up if judges are less sensitive to cost overruns at the state level. A statewide program that pays for court-ordered medical and psychological exams and court-appointed witness and expert witness fees and transportation costs would require new infrastructure at the state level and a formal determination of the responsibilities that would be assumed by the counties versus the Director of State Courts Office. While some cost efficiencies could potentially occur through a centralized contracting process, it is likely that costs would increase once all circuit courts begin to provide the same base level of services. It should be noted that county costs for court-appointed witnesses and expert witnesses (and to a lesser extent medical and psychological exams) are only a fraction of total county witness and expert witness costs because district attorneys and others generally obtain these services.

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ GUARDIANS AD LITEM

Current Funding Arrangement: Counties use a variety of methods for funding and recouping guardian ad litem (GAL) costs. Some counties contract with GALs, others pay for all GAL costs and then collect from those who can pay for the service, others require non-indigent persons to pay a retainer fee upfront to the county, while others pay only for those determined to be indigent. To offset some of the GAL costs incurred by counties, the State annually appropriates \$4.7 million paid to counties based on a statutory formula.

Strengths or Weaknesses with Current Funding: State funding for the GAL payment program, whose appropriation was originally set to cover all county GAL costs, has not been increased since its inception ten years ago. As a result, counties have been funding increasing amounts of GAL costs. Although statutory provisions do not allow a county's GAL payment from the State to exceed the county's GAL expenditures from the previous calendar year, the variety of methods counties have for providing this service and accounting for this expenditure does not ensure that each county is getting a uniform financial benefit.

Potential Strengths or Problems with Shift to State Funding: The state appropriation could be increased in the short term to fully fund GAL costs. This could be accomplished by continuing with the current GAL payment program as outlined in statutes and authorizing the Director of State Courts to provide direction on how counties account and report GAL costs to the Director of State Courts. Counties would need to continue efforts to recoup GAL costs. Alternatively, the State could assume direct payment of GAL costs. Authorizing the Director of State Courts to provide direction on the GAL program would help to ensure uniform application. However, it would be difficult to require all 72 counties to handle GAL expenditures in a uniform matter. The Director of State Courts does not have the authority or the ability to monitor each county's accounting practices. Alternatively, a new state GAL program would require new policies, procedures and infrastructure at the State level. Recoupment also could be more problematic. Efficiencies might be found in a state program if GAL appointments are established within districts.

✓ JUDICIAL/LEGAL RESOURCES/LEGAL RESEARCH (not public law library)*

Current Funding Arrangement: Under s. 757.40, Wis. Stats., a circuit court judge may purchase up to \$1,500 in law books and other legal subscriptions. The county board of supervisors must approve amounts over \$1,500. The \$1,500 limit was established in 1959. The State Law Librarian estimates, at today's prices, approximately \$5,000 per judge is needed annually for a core legal collection.

Strengths or Weaknesses with Current Funding: No guarantee exists that circuit court judges are getting the tools they need to make informed decisions, and the level of legal research support available for judges may vary considerably.

Potential Strengths or Problems with State Funding: The State could provide funding for judicial/legal resources and legal research tools in the short term. Since the Wisconsin State Law Library already provides similar judicial/legal resources/legal research tools to the appellate judges and justices in the State, moving this responsibility for the circuit courts under the control of the State Law Librarian would ensure that all circuit court judges are getting the basic resources to assist them in their judicial decision-making function. However, because different judges currently have different core collections, under standardization some judges would likely lose certain resources they currently have. A statewide program to pay for judicial/legal resources/legal research for all circuit court judges would require new infrastructure and staff at the state level especially within the Wisconsin State Law Library. Further, to the extent that some counties are not adequately supplying basic resources, costs could increase. Because of buying in volume, the State Law Librarian probably could assume some economies of scale that individual counties cannot achieve when buying books and subscriptions. However, counties would still

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **JUDICIAL/LEGAL RESOURCES/LEGAL RESEARCH** (continued)

be buying legal resource materials for their district attorney and corporation counsel offices, and some counties might lose economies of scale savings when no longer purchasing for judges.

✓ **JURY COSTS** (excluding jury bailiffs)*

Current Funding Arrangement: Counties pay the fees and other related costs for jurors and those citizens who are so summoned. Statutes set minimum per diem rates at \$16 (they range from \$16 to \$50) and specify the mileage rate to be paid to jurors, which is currently \$0.325 per mile. However, statutes give county boards discretion in determining compensation for “one day or one trial” service (see s. 756.25 (3), Wis. Stats.).

Strengths or Weaknesses with Current Funding: As required by statute, the presiding judge or the judge designated by the chief judge to supervise the jury system administers the jury system. Clerks of circuit court typically select and manage juries. The Supreme Court is responsible for the administration of an effective and efficient state jury system. Counties provide funding for this core court service; it is however an allowable cost under the circuit court support payment program. Currently, operational management of the jury system is aligned closely with the funding source. Jury system costs are a product of both the need for this service (number of jury trials) and the management of those services. As a result, county costs can vary year to year due to unusually lengthy trials and jury management practices. Juror per diem and mileage rates are not uniform across the State even though jurors are providing the same service to the court system.

Potential Strengths or Problems with Shift to State Funding: The State could assume the funding responsibility for juror fees and costs in the short term through a reimbursement program or by making direct payments to jurors and for related expenditures. State funding of jury costs should provide for uniform statewide payments to jurors for the same service to the court system. For the Supreme Court to manage an effective and efficient statewide jury system, either counties would need to document expenditures in a manner directed by the Director of State Courts or the State would need establish a system whereby the Director of State Courts Office pays jurors and related expenditures directly. A state-funded program should help even out the fluctuations in costs caused by occasional high-cost trials, but additional state funding could be required in years when demands for jury trials and their subsequent costs outstrip the budgeted amount. Under a reimbursement program, the Director of State Courts would need staff for its administration. Alternatively, a state juror management program would require new infrastructure at the state level and a formal determination of the responsibilities that would be assumed by the presiding judge for jury, the clerks of circuit court and the Director of State Courts.

PHASE 2:

✓ **FAMILY COURT COUNSELING SERVICES/MEDIATION***

Current Funding Arrangement: Counties finance family court counseling and mediation services. These costs are partially funded by a \$20 family court counseling fee that is assessed at the commencement of most family actions, collected by the clerks of circuit court and deposited in a separate county account to be used by the county exclusively for family court counseling services under s. 767.11, Wis. Stats.

Strengths or Weaknesses with Current Funding: Because counties provide these services, each county has its own way of prioritizing, organizing, staffing and charging for these services and, consequently, may provide different levels of service to court users.

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **FAMILY COURT COUNSELING SERVICES/MEDIATION** (continued)

Potential Strengths or Problems with Shift to State Funding: The State could assume the funding responsibility for family court counseling services/mediation in the intermediate term. Uniform services can be achieved by requiring either counties to request reimbursement so the State can verify only allowable expenditures are being incurred at the county level or have the State handle all expenditures directly. Further, it will be necessary to transfer the revenue generated from the family court counseling fee from the counties to the State at the time of funding transfer. It is not known how much of the costs for providing these services are covered by the family court counseling fee or through other fees charged to non-indigent families, so the net cost to counties for these services is not known. Under a reimbursement program, the Director of State Courts would need staff for its administration. Also, it is likely that many of the clerks of circuit court would need additional staff to complete reimbursement reports. Alternatively, a state family court counseling/mediation program would require a new infrastructure at the state level and a formal determination of the responsibilities that would be assumed by the counties versus the Director of State Courts. Efficiencies might be found in a state program if family court counseling services are established within districts. Because of differing organizational structures, some counties contract out for family court counseling services, while others employ family court counseling staff. The potential transfer of county staff positions to state service raises difficult issues with differing classifications, salary levels and potential union affiliations.

✓ **PERSONNEL COSTS:**

- **COURT COMMISSIONERS**
- **COURT REPORTERS FOR COURT COMMISSIONERS**
- **COURT COMMISSIONER OFFICE SUPPLIES & EQUIPMENT** (including repairs & maintenance)

Current Funding Arrangement: All counties are required by statute to appoint a family court commissioner. In addition, Milwaukee County is required to appoint full-time probate and small claims court commissioners. Beyond these statutory requirements, each county determines its use of circuit court commissioners.

Strengths or Weaknesses with Current Funding: Circuit judges and their court reporters are state-funded positions, while court commissioners and their court reporters are county paid. Court commissioners perform limited case functions that otherwise would be performed by judges, but also may have additional responsibilities. Use of court commissioners varies widely among counties, in part determined by the need for judges in that circuit. Court reporting for court commissioners also varies widely. In some counties, court reporters are hired as county employees for court commissioners; other counties use freelance court reporters, while others use recording devices in lieu of court reporters for some or most court commissioner proceedings. In one county, the administrator for court commissioners is paid more than circuit court judges.

Potential Strengths or Problems with State Funding: Transfer to state funding may mean counties are reimbursed by the State for the costs of court commissioners and commissioner reporting services or those county positions may become state positions. Either way, as state-funded positions, weighted caseload standards for court commissioners and standards regarding court commissioner duties would need to be developed. Current inequities among counties would be difficult to address without additional state funding.

One option is to reimburse counties for court commissioner use up to the caseload standards, which could allow counties to continue to fund positions above state standards. Such a reimbursement program would require additional staff in the Director of State Courts Office for proper administration. Another option would be to convert county court commissioners and court reporters to state employment. The State could provide more uniformity in salaries and fringe benefits and provide uniform job descriptions, and could assign court commissioners on a statewide basis using weighted caseload statistics. Although this would help move toward

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **COURT COMMISSIONER PERSONNEL AND OTHER COSTS** (continued)

uniform salary structures, difficulties with such a switch would involve the differing classifications, salaries and employment status and the fact that some county court commissioners and court reporters are unionized. Salary and fringe benefit costs would likely increase as staff in those counties with salary and benefit structures below that of the State are brought into state service. Such an increase in state court staff would require more staff in the Director of State Courts Office. Further, the addition of positions to state employment conflicts with the current Administration's goal to reduce state employment by 10,000 positions over the next several years.

✓ **EDUCATION AND TRAINING FOR COURT COMMISSIONERS**

Current Funding Arrangement: Continuing legal education for judges, as required by Supreme Court Rule, is paid for by the State. Supreme Court Rule also provides specific continuing legal education requirements for court commissioners. Although the State has this mandate, the State does not pay for the training; either the court commissioner and/or the counties are expected to pay this expense. Funding for the provision of any other court staff training is the responsibility of whoever funds the position (the State or counties).

Strengths or Weaknesses with Current Funding: The 2001-2003 biennial budget created a program revenue appropriation that allows the Director of State Courts to provide educational programs specifically designed for court commissioners. However, since statutes do not define who should pay the fees to support such an education program, it has not been established. For state-funded non-judicial staff, very little training dollars are available at the state level.

Potential Strengths or Problems with State Funding: Along with any transfer of funding for court commissioners from counties to the State, the State should pay for any required education requirements by establishing a formal court commissioner education program under the Office of Judicial Education within the Director of State Courts Office. As a state responsibility, funding for the court commissioner education program would have to be funded with general purpose revenue.

PHASE 3:

✓ **PERSONNEL COSTS:**

- **JUDICIAL ASSISTANTS**
- **LAW CLERKS**
- **CLERKS OF CIRCUIT COURT & STAFF**
- **REGISTERS IN PROBATE & STAFF** (including juvenile clerks)
- **PERSONNEL-RELATED OFFICE SUPPLIES & EQUIPMENT** (including repairs & maintenance)

Current Funding Arrangement: Circuit judges and official court reporters are state-funded positions, while other circuit court staff who answer to a state-paid circuit court judge currently are funded by county governments. This bifurcated structure has caused problems on defining who has ultimate supervisory authority over some positions, especially in the area of managing the duties of judicial assistants. Also, not all counties are willing to provide adequate staffing to state-paid judges so not all circuit court judges have a judicial assistant or a law clerk. Finally, judges who are state-paid must submit budgets for supplies and services to county boards.

Strengths or Weaknesses with Current Funding: The circuit courts are operated by county-elected officials (circuit court judges and clerks of circuit court) who respond to the needs and expectations of their local populations. This is a definite strength, but also is a weakness in that uniform court staffing levels cannot be achieved. In addition, job descriptions and position classifications vary widely from circuit court to circuit court.

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ PERSONNEL COSTS (continued)

Potential Strengths or Problems with State Funding: Since the greatest costs of court services are personnel costs, state takeover of court services would necessarily mean that staff of the circuit court be funded by the State. Because of both the costs and inherent difficulties of dealing with 72 different staffing and classification structures, this transfer of funding would have to occur in the long term [with the exception of court commissioners and their court reporters, who could be transitioned to state funding in the intermediate term]. This may mean counties are reimbursed by the State for those positions required to support each branch of a circuit court or it may mean all positions supporting the operation of the circuit courts become State positions.

This approach will improve circuit court operations **only if adequately funded by the State** to meet the staffing requirements as defined by SCR 70.39. While some circuit court judges might gain staff, other judges could lose staff if their counties are providing more staff than required by state standards. One option is to reimburse counties for the staff provided to circuit court judges, which could allow counties to continue to fund positions above state standards. Such a reimbursement program would require additional staff in the Director of State Courts Office for proper administration. Another option would be to convert county circuit court staff to state employment. Having all state positions could allow for some economies of scale on a district-wide basis. For example, any circuit court judge within a district could tap a pool of law clerks. Furthermore, the State could provide more uniformity in salaries and fringe benefits and provide uniform job descriptions, and could staff positions for circuit court judges on a statewide basis using weighted caseload statistics. Although this would help move toward uniform salary structures and would promote uniform staffing levels in each circuit, such a switch would be a long and difficult process given the differing classifications and salaries and the fact that most county circuit court staff are unionized. Sufficient lead time for such a transition is critical for developing classification and compensation and implementation plans. Salary and fringe benefit costs would likely increase as staff in those counties with salary and benefit structures below that of the State are brought into state service. With as many as 1,700 circuit court positions involved (the number of people would be greater), such a change would require significantly more staff in the Director of State Courts Office and in the district offices. Further, the addition of so many staff to state employment conflicts with the current Administration's goal to reduce state employment by 10,000 positions over the next several years.

✓ EDUCATION AND TRAINING FOR OTHER COURT EMPLOYEES

Current Funding Arrangement: Continuing legal education for judges, as required by Supreme Court Rule, is paid for by the State. Supreme Court Rule also provides specific continuing legal education requirements for court commissioners. Despite this mandate, the State does not pay for the training; either the court commissioner and/or the counties are expected to pay this expense. Funding for the provision of any other court staff training is the responsibility of whoever funds the position (the State or counties).

Strengths or Weaknesses with Current Funding: For state-funded non-judicial staff, very little training dollars are available at the State level. Training for county court employees likely varies considerably among counties.

Potential Strengths or Problems with State Funding: Funding for other court staff training should continue to be the responsibility of whoever funds the position (the State or counties). Should county court employees become state employees, the State would need to provide additional training funds for these employees. For staff currently county funded, training options might be more limited.

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **MAKING THE COURT RECORD** (includes equipment/supplies and court-ordered transcripts)

Current Funding Arrangement: Currently each circuit court judge appoints a state-employed official court reporter to his/her court room while the county provides court reporting services to circuit court commissioners. Most districts also have state-employed pool or district reporters who fill in for absent official reporters. Counties supply state-employed court reporters with varying levels of supplies and equipment to perform their job. Further, some counties use electronic recorders for their court commissioners as an alternative to court reporters.

Strengths or Weaknesses with Current Funding: There is no uniformity on what counties supply to county- or state-employed court reporters. For those counties with county-paid court reporters, there are differences in pay schedules, fringe benefits, and certifications requirements between the county- and state-paid court reporters.

Potential Strengths or Problems with State Funding: To implement a blended statewide system consisting of both court reporters and alternative reporting technologies, the State should be responsible for making the court record in the long term. This would include the State paying for all equipment and supplies for state-funded court reporters as well as paying for court reporting needed by court commissioners. This could be accomplished by the State reimbursing counties for court reporting needed by court commissioners or the State paying these types of expenses directly. Additional funding would be necessary to fund court reporting supplies and equipment. With the State assuming full responsibility to make the court record, staff would be needed within the Director of State Courts' Office to administer a reimbursement program or to process these expenditures directly to support 72 counties. Because of the complexities involved, this recommendation should be reexamined based on the outcomes of the current Chief Judges' Making the Record committee.

✓ **TRANSCRIPT REVENUE**

Current Arrangement: Transcript rates are set by state statute. State-employed official court reporters use their transcript income to pay for their equipment, supplies and training to the extent that counties do not supply these. Official court reporters must report their transcript income to the Director of State Courts Office, for which the Office pays the employer's share of employment taxes and retirement contributions. It is estimated that \$2.5 million in annual transcript revenue goes directly to official court reporters who produce transcripts.

Strengths or Weaknesses with Current Approach: No procedures are followed by the State to ensure that everyone who requests a transcript pays for the transcript.

Potential Strengths or Problems with State Receipt of Transcript Revenue: In the long-term, the State could receive transcript revenue to offset some of the costs associated with making the court record. The practice of having court reporters maintain their transcript income is long standing, in Wisconsin and nationally. Some increase in court reporters' state-paid salaries would likely be necessary as a trade-off for lost transcript income. The Director's Office would need to set up an elaborate accounts receivable system to ensure anyone requesting a transcript pays the fee. Further, the State would need to assume all the costs of court reporting equipment, maintenance, repair, and other supplies for official court reporters. Under the overtime provisions of the Fair Labors Standards Act, other new costs would be incurred by the State because an official court reporter would change from exempt to non-exempt status. If transcript production were state-funded, fees charged to other government agencies could be reconsidered. Because of the complexities involved, this recommendation should be reexamined based on the outcomes of the current Chief Judges' Making the Record committee.

*County provides primary funding for this core court service but it is an allowable court cost under the circuit court support payment program and some state funding offsets the costs to the county.

When considering additional state financing of court costs, it may be instructive to examine the un-audited 2002 county-reported costs for those core services identified in Phase 1 that could be transferred to the state in the short-term. ***It is important to note that calendar year 2002 county cost information on core court services, even if accurate, does not equate with funding needed to transfer those core court services to the state.***

Jury Costs (Excluding Jury Bailiffs). Counties reported jury costs, including jury bailiffs, of \$3.9 million, of which 89 percent (\$3.5 million) were juror per diem, meal, lodging and mileage expenses. Other juror expenses of \$0.4 million include mail costs and jury bailiff costs that are not separated out.

GAL Compensation. GAL compensation totaled \$9.6 million, of which counties recouped \$2.5 million. With state payments totaling \$4.7 million, counties net reported GAL costs totaled \$2.4 million. The percentage of GAL costs recouped varied by county, reflecting differing county practices in these collection efforts as well as income levels. A potential concern with state assumption of county GAL costs would be the possibility of minimizing county recoupment efforts if the state were paying these costs.

Court Interpreters. Counties reported \$0.9 million in interpreter costs, with state reimbursements totaling \$0.4 million, for a net cost of \$0.5 million. County costs resulted from interpreter expenses for cases not eligible for state reimbursement and for cases where the cost of the interpreter exceeded the state reimbursement limits. An analysis of these costs is complicated by the fact that statutory changes in court interpreter requirements and state reimbursements occurred on July 1, 2002. The impact these law changes will have on state reimbursements should be clearer with the 2003 county reports of actual court costs.

Court-ordered Medical and Psychological Exams and Court-Appointed Witness and Expert Witness Costs. Counties reported \$2.9 million in expenses for medical and other psychological exams; however, it is not known how much of this amount represents court-ordered exams. Court-appointed witness and expert witness costs were reported to total \$0.5 million, or 38 percent of the total witness and expert witness costs.

Judicial/Legal Resources/Legal Research (Not Public Law Library). Counties reported \$1.5 million in law library, books, subscriptions, reference materials, and electronic research. Since the costs of county law libraries are included, it is not known how much of the total would be attributable to judicial/legal resources and legal research.

In summary, counties reported a total of \$16.7 million in 2002 expenditures for the court services listed above. Subtracting out the state GAL payments and interpreter reimbursements, counties net reported spending was \$11.6 million. This total includes some costs (jury bailiffs, law libraries and medical and psychological exams not court ordered) that under the subcommittee's blueprint would not be transferred to the State.

Experiences of other states' conversions from county to state funding indicate that underfunding due to hidden costs would likely be a problem. *Careful transition planning and the willingness of the Governor and Legislature to acknowledge and budget for these potential costs are important steps to mitigate the problems that other states have encountered.*

As policy makers consider further shifts in circuit court funding from counties to the State, the subcommittee recommends the following principles be kept in mind:

General Principles of Court Financing

1. An essential principle in court financing should be effectiveness: What funding arrangement has the most potential to provide effective delivery of a uniform level of core court services?
2. Funding and operational responsibilities can, but need not, go hand in hand. Some court services could be state funded, with counties maintaining operational responsibility along with state policy and administrative oversight. To manage costs, uniform standards may need to be adopted, and the oversight role and responsibilities of chief judges will increase.
3. As part of the state-county partnership, counties should be encouraged to go beyond the core court services when funding the courts. Innovation in court procedures and programs are best approached at the local level.
4. The state should provide financial incentives to encourage local development of innovative programs. Research has shown investment in local court-related programs helps to reduce state correctional costs over time and make our communities safer.
5. The courts are just one piece of the justice system. Care must be taken at the local level to ensure that counties continue to fund the ancillary services on which the court relies. These include mental health and alcohol and other drug abuse programs.

Court Revenues

6. Because of the existing plethora of fees, surcharges and assessments attached to court fees, fines and forfeitures that may reduce access to the courts and may place an unreasonable financial burden on certain defendants, increased court fees should not be used as a stable source of court funding.
7. While court system funding should primarily come from state and county tax revenues and not user fees, continued efforts at the state and local levels should be encouraged to maximize the receipt of discretionary grant funding for court services and programs.
8. No efforts should be made on the part of the courts to establish non-profit entities to accept donations for use by the courts.
9. The clerks of circuit court have the responsibility for collection of court-ordered obligations, and must continue enhanced efforts at debt collection. To assist in this effort, disincentives for collection should be reduced wherever possible.
10. Currently, counties make varying efforts to recoup from non-indigent users the costs of certain county-paid court services, such as guardian ad litem services, expert witness fees, medical or psychological examinations, and home studies. If the State assumes funding for such services, mechanisms should be developed to maintain the base level of recoupments and to encourage enhanced recoupment efforts. This could include such mechanisms as county maintenance-of-effort requirements or performance-based reward systems.
11. The state share of revenues collected by the clerks of circuit court should increase proportionately at the time of any transfer of county court funding to the State. Further, a mechanism, perhaps through a courts committee or through the Wisconsin Clerks of Circuit Court Association, should be developed to assist clerks of circuit court in assuring that allowable federal reimbursements are properly received.

Transition to State Funding

12. If state funding for certain county personnel costs is provided, decisions will need to be made as to whether any or all of these county court positions become state employees. The subcommittee makes no recommendations in this regard.
13. Operational planning and policy development are necessary before any state assumption of additional circuit court costs. Even with careful transition planning, experiences in other states indicate that there will be hidden costs. The willingness of the Governor and Legislature to acknowledge and budget for potential unknown

costs, such as establishing a reserve account, are important steps to mitigate the problems that other states have encountered.

14. Accurate county cost information is a necessity for state financing of county court costs. To improve county court expenditure information: a) include core court services costs that are not in court budgets in the annual report of actual court costs; b) encourage clerks of circuit court to work closely with their county financial officers in completing the annual form and require the clerks to send a copy of the completed form to the county finance officer; and c) request a statutory change to allow for auditing of the county court cost information.
15. Any transition plan should include provisions to control transitional costs, such as not allowing counties to create new positions, modify the salaries of existing positions or fill certain vacancies without approval of the Director of State Courts and the chief judge of the district during a certain period of time preceding transfer to state funding.
16. The State should not take on county personnel in the short term. Before any transfer of personnel to state employment a classification and compensation study should be conducted to standardize position titles, classifications and functions of each affected position.
17. To determine uniform levels of core court services that should be provided under a state-funded system, the judicial weighted caseload measurement system should continue to be maintained to provide an up-to-date, objective measurement of judicial need; and prior to any state takeover of county staff costs, a weighted caseload study should be conducted to determine minimum circuit court staffing levels.
18. Transfer of court costs to state funding will increase the Director of State Courts Office's responsibilities. Any state funding initiatives must include sufficient funding and staffing resources to ensure proper central administration.
19. Other branches of government should work closely with the judicial branch in developing any statutory requirements affecting the circuit courts.

In transferring court funding to the State, the subcommittee notes the recommendation of the Kettl Commission that for every dollar of court costs the State assumes from the counties should result in a dollar for dollar reduction in the counties' tax levies.

As the Chief Justice of California stated in his 2003 State of the Judiciary address, "A fully functioning and accessible system of justice is essential not only for those who

appear at the courthouse door, but for all of society.” The circuit courts, on the front lines of the judicial system, work to provide the people of Wisconsin with independent, open, fair, and efficient resolution of disputes. Stable and adequate court financing is essential to enable the circuit courts to successfully fulfill this mission. This can occur only through the continued collaboration between the judicial branch and local and state elected officials in other branches of government who understand the role the courts play in our democratic form of government.

* * * *

INTRODUCTION

In April 2000, former Governor Tommy Thompson created the Governor's Blue-Ribbon Commission on State and Local Partnerships in the 21st Century (Kettl Commission) to develop a road map for reforming the state-local partnership in Wisconsin. The January 2001 report on the Commission's findings stated the "conflict in the state-local partnership in human services and criminal justice ranks with shared revenue as the toughest problems the Commission faced." The Commission recommended "state government ought to move, as soon as practical, to full funding of the justice system."

In response to this recommendation and to the growing frequency of calls for state funding of the court system, the Supreme Court's Planning and Policy Advisory Committee (PPAC) recommended at its May 2002 meeting that the Wisconsin Court System determine and collect information necessary to develop a responsible court system funding method. PPAC created the ad hoc Subcommittee on Court Financing to guide this study.

The multifaceted system of funding court services creates challenges for the administration of justice in Wisconsin. At the municipal and appellate levels, the courts are funded exclusively by one level of government. At the circuit court level, the funding responsibility is split between county and state government. This structure results in a range of services being provided throughout the State.

The charge of this subcommittee was to sort through the issues associated with the funding and delivery of court services and identify a stable, responsible and effective funding mechanism that promotes both efficiency and uniformity of services. As part of its charge, the subcommittee was assigned the following responsibilities:

- Review the current model for providing support to court operations.
- Review court financing models from additional sources, including other states and past Wisconsin reports and studies.
- Define a uniform level of court services that should be provided throughout the state.
- Determine what costs are associated with achieving the uniform level of court services.
- Identify implementation, administrative, and policy issues to provide uniform level of court services.
- Evaluate financing and administrative options to support court services, including the responsibilities of state and local governments.

The subcommittee met seven times from December 2002 to January 2004. During these meetings, a variety of documents were examined pertaining to court operations and funding in Wisconsin and other states to help identify the issues concerning court financing. The subcommittee members engaged in thoughtful discussions about what works and what does not under the current system of court financing and administration, and the ways the Wisconsin circuit court system currently is funded versus ways it could be funded in the future.

WISCONSIN CIRCUIT COURTS AND THEIR FINANCING

When Wisconsin became a state in 1848, the State Constitution required a separate “probate court” and authorized the Legislature “to establish inferior courts.” As a result, a myriad of specialized trial courts were created at the county and municipal levels. Effective January 1, 1962, the court system was restructured to consist of two trial courts of record, circuit courts and county courts. [Local units of government continued, and still continue, to have the discretion to create municipal courts with jurisdiction limited to municipal ordinance violations]. As part of the Court Reorganization Act following voter approval of amendments to the State Constitution in 1977, Wisconsin’s two trial courts were merged into a single level trial court, the circuit court, effective August 1, 1978.

The circuit court is Wisconsin's court of general jurisdiction and currently consists of 241 judicial branches in sixty-nine judicial circuits. Each county in the State is a circuit, with the exception of Pepin and Buffalo, Menominee and Shawano, and Forest and Florence, which are paired to form three circuits. Where the volume of litigation warrants, a circuit consists of more than one branch (judge). Of the sixty-nine circuits, thirty-nine contain multiple branches.

The circuit court has original jurisdiction in all criminal, civil, juvenile, family and probate cases unless exclusive jurisdiction has been given to another court. The court has appellate jurisdiction over orders and judgments of the municipal courts and the responsibility to review decisions and orders of state administrative agencies.

For purposes of management, the circuit courts are divided into ten administrative districts. Each district has a chief judge, appointed by the Supreme Court, and a district court administrator who administer that district’s circuit courts, in cooperation with the Director of State Courts and at the direction of the Chief Justice. The first judicial district (Milwaukee County) also has a deputy district court administrator. Additionally, each judicial administrative district has a district administrative assistant.

Each county has a clerk of circuit court, specified by the State Constitution to be elected to a two-year term. The clerk performs numerous court functions, including case scheduling, tracking and maintaining case records, collecting and dispersing payments to the court, and maintaining juror rosters. State statutes also require the appointment of the following circuit court positions: (a) a register in probate, appointed by the county's judges with the approval of the chief judge, who maintains court probate records and performs other duties as directed by the judge or clerk of circuit court; (b) a circuit court commissioner to supervise the office of family court commissioner, appointed by the chief judge of the judicial administrative district; and (c) Milwaukee County must appoint one full-time court commissioner to supervise the office of probate court commissioner and one full-time court commissioner to assist in small claims matters. Additional staffing and the court's organizational structure are determined by each county.

For many years the circuit courts have depended on funding from both state and county governments to fulfill their constitutional role. In state fiscal year 1971-72, the Citizens Study Committee on Judicial Organization, in its report to the Governor, estimated that 30 percent of total court costs were financed by the State and 70 percent by local governments (the state contribution included appellate costs). State funding included statutory salaries and fringe benefits for both circuit and county judges, with discretionary supplements provided by counties.

With the Court Reorganization Act, the State began to fund more of the trial courts' costs. Beginning July 1, 1980, circuit court judges and official court reporters became state employees, with the state paying their salaries, fringe benefits and travel costs. District court administrators and their assistants were hired as state employees, with their offices state funded. Beginning in 1987, the State has taken on the cost of the circuit courts' automation program (CCAP) and, beginning in 1988, has provided reimbursements to counties for a portion of court interpreter expenses. In 1993, the State created the circuit court support payment and guardian ad litem (GAL) payment programs and also transferred transcript fee payments for indigent clients from counties to the Office of the State Public Defender. For fiscal year 2002-03, the Director of State Courts Office estimates that the State finances approximately 47 percent of circuit court costs and approximately 52 percent of total court costs including the appellate courts.

The history of the circuit court support payment program illustrates the complex interrelationships between the court system, counties and other branches of Wisconsin's state government in regards to circuit court funding. While the adequacy of staffing directly affects judges' ability to carry out their constitutional and statutory missions, in a 1990 study, the Director of State Courts Office found that many counties did not provide clerical assistance to judges. In fact, judges spent over two hours per day, on average,

performing paraprofessional tasks such as scheduling, organizing files, answering phones and word processing. The Supreme Court subsequently adopted Rule 70.39 (11) (a) that states, “Each branch of circuit court should be staffed by one full-time judicial assistant.” Comments to the rule include that “[t]he position of judicial assistant should be in the state service.” [Note that in this rule, the word “should” is not mandatory.]

The Supreme Court’s budget requests for 1987, 1989, 1991, and 1993 included a request for a judicial assistant for each circuit court judge. In each legislative session beginning in 1985, legislation was introduced to create and fund a judicial assistant. In 1991 the Legislative Council introduced a legislative council study committee bill creating state-funded judicial assistants. The Governor’s budget bill in 1993-95 allowed for partial state funding of judicial assistants.

Instead, the 1993-1995 budget, 1993 Wisconsin Act 16, created the circuit court support grant program under s. 758.19(5), Wis. Stats., whereby “the Director of State Courts **shall provide a grant** [emphasis added] to each county to be used by the county to offset. . .” juror fees, witness and expert witness fees, and the salaries and fringe benefits for judicial assistants for circuit court judges. 1993 Wisconsin Act 16 also required counties to annually report their actual costs for these court services.

1993 Wisconsin Act 16 also created a court support services fee on forfeiture judgments and most civil court filing fees including garnishments, wage earner actions, small claim actions, and third-party complaints. The court support services fee became effective October 1, 1993. This fee is collected by the clerk of circuit court and paid to the State Treasurer for deposit into the state general fund. It was originally estimated that the fee would raise \$15.2 million annually.

At the 1992 Wisconsin Judicial Conference, providing judicial assistants to circuit court judges was established as a priority need. Therefore, upon passage of 1993 Wisconsin Act 16, the Director of State Court Office developed the circuit court support grant program in a fashion similar to grant programs administered by the executive branch. Not only would the Director’s Office reimburse counties quarterly for eligible court costs as listed in statutes, each county also was expected to signed a memorandum of understanding with the Director’s Office. This agreement stated that counties would be expected to first apply the grant funds to pay the salaries and fringe benefits of a judicial assistant for circuit court judges, and any leftover grant dollars could be used to offset other eligible court expenditures. A circuit court judge and his/her chief judge would have to waive the need for a judicial assistant for a county to not make judicial assistants a priority.

When counties were notified of these grant requirements, the Wisconsin Counties Association (WCA) sent a memo to all county board chairs stating that the Director of State Courts did not have the authority to create funding priorities and/or establish a system by “which judges may create or waive the same.” Both the Department of Administration and the Legislature agreed with WCA stating that it was not the intent of the legislation to restrict or prioritize the use of these funds; rather the legislation was written to provide counties flexibility. Subsequently, in November 1993, a number of counties, at WCA’s behest, filed a motion in Dane County Court for a declaratory judgment.

The counties, as plaintiffs, stated that the Director exceeded his lawful authority on how he planned on administering the circuit court support grant program. However, the Court ruled the Director of State Courts did have the discretion on how to administer the circuit court support grant program.

In late January 1994, the Legislature’s Joint Committee on Finance co-chairs drafted legislation to change the statutory language of s. 758.19(5), Wis. Stats. to obviate the Director’s planned administration of the grant program. 1993 Wisconsin Act 206 took out the word “grant” and referred to the program as the circuit court support payment program. Further, 1993 Wisconsin Act 206 specified that, except for the annual report of actual court costs, “no action is required of and no condition may be imposed on a county to receive a payment . . . including applying for, submitting information in connection with, entering into a memorandum of understanding concerning or making any other agreement regarding the payment.” (s. 759.19 (5)(d), Wis. Stats.).

Other legislative actions followed that continued to revise the circuit court support payment program and the court support services fee:

- 1993-1995 budget adjustment bill (1993 Wisconsin Act 437) clarified information in Act 16 regarding certain county payments and required county cost information to be annually reported to the Legislature and Governor.
- 1995-1997 biennial budget bill (1995 Wisconsin Act 27) increased the court support services fee from \$20 to \$40 effective October 1, 1995. The court support services fee also was expanded to include a \$100 fee on large civil claims and \$30 fee on small civil claims. Additional funds were provided to the counties under the circuit court support payment program (\$11.7 million in state fiscal year 1996 and \$16.5 million in state fiscal year 1997) and the formula was revised to include number of judgeships and population figures. The Act also widened the court costs allowable under the circuit court support payment program to include all court costs except for

those costs related to “court room security, rent, utilities, maintenance, rehabilitation and/or construction of court facilities.”

- In 1999 Wisconsin Act 9 (1999-2001 biennial budget act) the circuit court support payment was increased \$2,250,000 annually (to \$18.7 million) and increased the base payment per branch (judge). In state fiscal year 2000, the State collected \$26.9 million from the court support services fee.
- 2001 Wisconsin Act 109 (budget reform act) increased the court support services fee by 30 percent effective July 1, 2002. It was estimated that an additional \$8 million in revenue would be generated for the state general fund annually due to this increase (the State collected \$33.2 million in state fiscal year 2003 from the court support services fee).
- 2003 Wisconsin Act 33 (2003-2005 biennial budget act) again increased the court support services fee by 30 percent effective July 26, 2003. An increase of \$13.5 million annually in revenue was projected.

As reflected above, the relationships in Wisconsin among the courts, the counties and the other branches of state government have not always been smooth when dealing with court financing.

NATIONAL OVERVIEW OF TRIAL COURT FINANCING²

Historical Perspective. Trial court financing has been a topic of interest and concern for many years, both in Wisconsin and other states, in which the dominant discussion, in literature and in national court surveys, has been the issue of state versus local financing. Nationally, financing of trial courts was the responsibility of local governments until recent decades. Court reform efforts in the 1960s and 1970s focused on “unification” including structural consolidation, centralized management and budgeting, and state financing. Unification was viewed as a means of bringing about uniform statewide procedures and systems, more professionalism and improved court management. Most states adopted some form of consolidation, including Wisconsin. Centralized management and budgeting, brought about by state financing, were adopted by fewer states.

² The principle source for this overview section is Tobin and Hudzik, “The Status and Future of State Financing of the Courts”, from the Handbook of Court Administration and Management, edited by Hays and Graham, 1993.

In this “reformist” period, state financing was seen as a means to effect broad-based reform throughout the courts, leading to increased judicial efficiency and effectiveness. However, by the late 1970s, it was questioned whether any empirical evidence existed to support the claims of beneficial effects of state financing and budgeting on case flow, efficiency or available resources. Among the criticisms were:

- Removal of the courts from local government made them more remote from the local community and less service-oriented.
- Operating costs increased without any demonstrable gains in productivity because of increased bureaucracy and increased costs to reduce funding disparities among jurisdictions.
- Trial courts were denied any real role in the budget and purchasing processes and had little incentive to be efficient.
- Monitoring costs increased and bureaucratic rules proliferated.
- It was dangerous for courts to rely heavily on state financing because state sources of revenue were typically recession sensitive as well as under mounting pressure to expand support in other service areas.
- If state financing were adopted, it would be more prudent to have it done on a reimbursement basis to preserve local orientation of courts.

While reform of the state court systems was the initial motivation for state financing, fiscal relief for local governments has been the predominant motivation since the late 1970s. The driving force behind this push has been local government associations. This has stemmed from the increasing demands on local governments for social spending, increasing court costs (particularly volatile, mandated costs such as interpreter services, indigent defense, guardian ad litem, juror fees, and witness fees) and increasing taxpayer resistance to higher taxes.

While reformist objectives tended to focus on equity and efficiency issues, fiscal objectives focused debate on the reality of local fiscal distress and whether courts should place total reliance on the state and rise and fall with the relative fortunes of state government. If the primary objectives of state financing are fiscal (financial relief for counties or securing more resources for courts), when assessing its benefits and disadvantages, the questions that must be asked are: Will local governments receive the relief they seek? Will courts receive more money from the state than from the counties?

When considering the relative merits of state and local court funding, proponents of state financing point to property tax relief by relieving local governments of significant funding responsibilities. They also point to the potential for a more stable and equitable

source of funding, improved allocation of resources, savings of scale and other efficiencies, a more uniform system of justice, more accountability of trial courts and professionalism, and freedom from compromising situations involving local entities that fund the courts. Opponents claim that state financing will lead to undue centralization and bureaucracy, higher costs, insensitivity to local and public needs, loss of revenue for local governments, possible loss of employee jobs or diminution of benefits and status, and overdependence on one funding source.

Professor John Hudzik of Michigan State University and Alan Carlson of the Justice Management Institute completed an unpublished study in 2003 that reviewed a number of case studies conducted in several states and anecdotal evidence to determine whether the experiences of those court systems that have moved to state funding support the benefits and disadvantages asserted above. Of the asserted benefits of state court financing, indicators suggest that state-financed court systems fare slightly better in funding than non-state financed systems (it is unknown whether this was measured before the current states' fiscal crises). Evidence supports the assertions that state funding generally decreases inequities and makes it easier to temporarily shift resources/personnel on short notice. Evidence is mixed on the assertions that state funding results in better and more uniform financial management practices and improved personnel systems. Evidence is generally unsupportive of the assertion that state funding leads to greater efficiencies and cost savings through economies of scale.

In regards to the problems of state financing, evidence supports the assertions that state financing results in more recession-sensitive revenue sources; increased overall system costs; formula-driven, quantitative definitions of budget needs; greater scrutiny and predation of the judicial branch budget; and increased bureaucratic control, monitoring and red tape (except when using block grants for state financing). Strong evidence suggests that trial courts are placed in direct competition with one another. There is no evidence yet to support the assertions that local judges' power to allocate funds diminishes or that there is less attention to local perceptions of needs and services. **Appendix I** summarizes these preliminary findings.

Methods of Financing. Nationally, as in Wisconsin, courts have been funded using a variety of sources, including fees, fines, private contributions, local appropriations and, more recently, grants and state-generated revenues. State funding of trial courts can take a variety of forms, including:

- *Direct appropriation.* Funding can come from a state's general fund or through separate funds, typically funded through state fine, fee and surcharge revenues. County governments favor this method for state financing because it removes the expense of, and

responsibility for, the court system from local budgets. Limited flexibility and geographical separation of trial courts from decision-makers in state capitals most concern opponents of this approach. In Wisconsin, a portion of circuit court costs are funded by direct state appropriation: judicial and court reporter salaries and fringe benefits, circuit court automation expenses, and Director of State Courts Office support to circuit courts, including the district court administrators' offices. Court fees and surcharges fund circuit court automation expenses (CCAP), while the other expenses come from state general fund revenues.

- *Discretionary grants.* Grant awards require an application to document need and use of the funding. With discretionary grants, there is a concern as to the evenness of distribution, but the advantage is that they focus resources in areas of highest need if well administered. Wisconsin has had very little, if any, state discretionary grant funding administered by the Director of State Courts Office. However, the Director's Office has been awarded, and has issued to local governments, federal discretionary grant funds.

- *Block grants.* These are payments to local governments based on an established formula. The main concern of block grants is whether the subsidy disappears into local treasuries without accountability for its expenditure or whether the funds must be spent on courts. Moreover, counties are not able to agree on the most equitable method for allocating these financial assistance dollars. In Wisconsin, the circuit court support and guardian ad litem (GAL) payment programs fall under this category, although a county's payments under the programs are capped at actual expenditures. To date, only the GAL cap has been applied to a handful of counties.

- *Reimbursements.* A wide variety of programs exists whereby the State reimburses county court expenditures. Reimbursements, which may be partial or total, can include such items as juror costs, debt service on court facilities, mental commitment costs, and indigent defense. One potential shortcoming of reimbursement programs is that rates of reimbursements established by the state do not always keep pace with the actual costs incurred at the local level. In Wisconsin, the state partially reimburses county court interpreter costs.

- *Special funds.* Judicial retirement is the primary example of a state expenditure from a special fund, in Wisconsin and elsewhere. Oklahoma maintains a special fund for state judicial expenditures, funded from court-collected revenues and state appropriations.

- *User fees.* Some states rely heavily on user fees to finance trial courts, Oklahoma in particular. Controversy surrounds the concept of "entrepreneurial" courts

that attempt to generate their own resources. The key issue is whether adjudication is a fundamental aspect of justice at the core of government activity to be paid by the commonwealth, or a government-supplied service to be paid by those who use it. If the latter, access will be limited and unequal. In Wisconsin, court fees, such as filing fees, are shared between county and state governments. There are additional statutory surcharges on fees, fines and forfeitures used to fund a numerous state executive branch programs. Counties also may have additional court fees to help support county court costs.

- *Property taxes.* In addition to state assistance, federal grants, fine and fee revenues, and miscellaneous revenues, local property tax revenues support court costs in many jurisdictions, including most Wisconsin counties.

Functional Scope of Court Services and Their Financing. A number of functional areas may or may not be considered court services, depending on a state's traditions. These include adult and juvenile probation services; juvenile detention; child support enforcement; indigent defense; prosecution; psychiatric and medical services performed according to court order; clerks of circuit courts offices, which may perform both court and non-court functions; law libraries, which may be financed in whole or in part by bar associations; and sheriffs' expenses for services such as court room attendance, prisoner transportation, building and court room security, service of process, and detention of persons awaiting trial.

In Wisconsin, adult probation is a state executive branch function within the Department of Corrections. Determining and defining the other functional areas that the court system considers a "court service" was a primary task of this subcommittee and will be discussed in later sections of this report.

Many states, while moving to state financing, have excluded certain items, such as clerks of court offices and, most commonly, security and facility costs. Full state responsibility for trial court facilities is generally the last and most difficult cost to assume, since it involves great cost and a variety of legal, political and architectural complexities. Where states have assumed this financial responsibility, it has most often been in the form of reimbursement to counties, rather than the inclusion of court facilities in the state's capital budget. Where counties provide facilities without reimbursement, issues that arise include the state-county split of court revenues, and the concern that the court is considered a "state agency" in a county building and may play "second fiddle" to county agencies for resource allocation relating to repair, maintenance and construction of court room facilities.

The debate over state versus local court financing recently has been superseded in many states by state and local fiscal crises so that the issue has become finding necessary revenue from whatever source. Financial stress has forced a search for efficiencies, perhaps at the expense of effectiveness. The court system, like other public entities, has been forced to get along with less, regardless of whether funding comes from federal, state or local revenues. The impact these reductions will have on fair, equal and effective justice is not yet known.

Court Financing in Other States. The national trend of trial court funding has been a shift to state financing. While every state has assumed at least some responsibility for the salaries of trial court judges, the nature of the transition has varied greatly. The states with court systems that are solely state funded are Alaska, Connecticut, Delaware, Hawaii, Kentucky, Maine, Massachusetts, New Hampshire, Oregon and Rhode Island. States with state-funded court systems, except for some portion of security and/or facility costs, are California, Colorado, Iowa, New Jersey, New Mexico, New York, North Carolina, North Dakota, Vermont and Utah. The remaining states have some mixture of state and local financing, with Georgia relying most heavily on local funding.

The two states that recently have made the most significant shifts from local to state funding of trial courts have been New Jersey and California. As mandated by a state constitutional amendment passed in November 1992, New Jersey moved toward state funding of court operational costs, funded with new state general fund appropriations, in January 1995. On that date, more than 7,700 county court employees became state employees. For the next three years, counties reimbursed the state for a declining percentage of the court costs. By the fourth year, court operating costs (excluding facilities costs) were totally state funded. In exchange for state funding, county levy limits were reduced by the amount of the transfer. As a first step in the transition process, representatives of the Administrative Office of the Courts, the executive branch, and the counties association jointly developed a specific list of court responsibilities that met the constitutional mandate that counties would transfer to the state. Following that, trial court administrators worked extensively with the 22 New Jersey counties to get actual court costs of the specified items. Personnel issues proved to be the most difficult transition area.

California, after years of effort, adopted a system for state funding of the trial courts in 1997. In 1998, a constitutional amendment allowed the trial courts to unify into a single superior court. By 2001, 220 California trial courts had been consolidated to 58, one in each county. Finally, in September 2002, legislation was passed to transfer ownership and management responsibility for trial court facilities to the state over a period from 2004 to 2007, to be funded with increased and new assessments, penalties and surcharges

to be deposited into a newly-created state courthouse construction fund. Efforts to implement all these changes in a short time frame have been hampered by the state budget crisis in California. Since the transition is still continuing, the impact of these changes on court system operations is not yet fully known.

Other states that are moving toward state funding include Florida, Minnesota and Montana. In Florida, a constitutional amendment was passed in November 1998 that requires state financing of the state court system, the public defenders' offices, state attorneys' offices and court-appointed counsel by July 1, 2004. The definition of the state court system for purposes of funding includes judges and their essential staff, expenses and costs as provided by general law, jury costs, court reporting necessary to meet constitutional requirements, accommodations for disabled persons and foreign language interpreters. Counties will continue to be responsible for funding facilities, maintenance, utilities, security, communication systems, and existing court information systems. Clerks of court offices are to be funded separately through restructured court fees.

While it was envisioned that a phased-in transition to state funding would occur, the Florida Legislature did not enact legislation to effectuate the constitutional requirements until spring of 2003, so the transitional planning timeframe has been significantly shortened. According to a Florida court administrator, courts in some counties are expected to benefit, while others are losing staff. There is concern that court funding overall will be reduced with the move to state funding.

Minnesota, as part of a two-decade process of judicial reform, is phasing in state funding for certain trial court operations, by functional area and judicial district. Since 1989, the state has assumed costs statewide for district administration employees; court information systems; law clerk, court reporter, referee and judicial officer salaries and expenses; transcript costs; GAL and interpreter costs; and civil commitment psychological examinations. Additionally, state funding for the remaining court administrative functions has been provided in six of ten judicial districts. On July 1, 2000, approximately 400 employees in 42 counties were transferred into state employment, and on July 1, 2003, the state's two largest counties (in the Twin Cities area), with approximately 600 employees, were converted to state employment. Four more districts will be converted by July 1, 2005, which will complete the transition to state funding.

Based on the experiences in transferring four judicial districts to state funding, a Minnesota Conference of Chief Judges Funding Committee recommended, in a February 2001 report to the Legislature, that when transferring additional trial court operations to the state, a contingency fund of five percent of the estimated budgets be created to cover

shortfalls in state funding resulting from the transfer. Subsequently, 2001 legislation authorizing transfer of the remaining six districts created growth and contingency fund formulas, to be applied to 2001 county court costs, to be used to determine state appropriations.

In Minnesota, state funding has come from several sources: fee transfers and increases, local government aid shifts and state general fund appropriations. As expenses were transferred from counties to the state, county levy limits were reduced by the amount of the transfer. Additional state funding was provided to cover costs for those counties where court expenditures were higher than the amount of state aid they received, for new state court administrative staff, for pay differentials between county and state pay schedules, and for additional fringe benefit costs. The largest additional state cost has been the employer's share of employee health insurance benefits, which are significantly higher than employer costs at the county level.

Montana transferred the responsibility for certain court costs, including juvenile probation, to the state beginning in July 2002. Shortfalls in funding resulted the first year, primarily in unbudgeted personnel costs resulting from pay increases needed to bring certain county employees' salaries up to the minimum state pay schedules and higher fringe benefit costs.

The Commonwealth of Puerto Rico recently adopted a unique approach to court financing. Puerto Rico's court system is funded entirely by the Commonwealth (there are no separate counties). To provide fiscal autonomy of the Judicial Branch, beginning in 2003-2004, the Judicial Branch is assigned 3.3 percent of the average amount of the Commonwealth's general fund revenues over the last two fiscal years immediately preceding the current fiscal year, to be used for the operating expenses of the Judicial Branch. If the average amount of annual revenues is lower than that of the previous year the amount would be equal to the last annual funding amount. The percentage assigned to the Judicial Branch will increase by 0.1 percent in fiscal year 2004-05, and by 0.2 percent in the three subsequent fiscal years, up to a maximum of 4 percent of the general fund revenues in fiscal year 2007-08.

The Legislature will review the formula for assigning annual funds to the Judicial Branch every five years to determine whether the established percentages should increase or remain unchanged, and to guarantee compliance with its purposes. If the Judicial Branch needs additional funds for capital expenses or any other purpose, it must submit its request to the Legislature, along with necessary justifications. The provisions do not impair the power of the Legislature to fix the salaries of judges and justices. Many will be watching Puerto Rico's experience with autonomous court financing.

In 1995, the State Justice Institute hosted a National Interbranch Conference on Funding the State Courts. The 317 conference participants came from the legislative, executive and judicial branches, and from bar associations, county governments and the federal government. When considering court funding, the conference participants made the following recommendations, although not by unanimous support:

- Do not place total reliance on one funding source. Be alert to opportunities to supplement general fund appropriations and do not be dogmatic about the relative merits of state and county financing. Be pragmatic.
- Earmarked fees and costs may be necessary to fund a particular function, but courts should not depend on them and should be alert to their financial effect on litigants and to the problems that accompany the administration of such funds.
- Do not skew court objectives to obtain grants.
- Block grant funding is tough to get without getting in the trenches with other applicants. Either get in there or refrain from complaint.
- Take advantage of federal entitlement programs in the social area but do not become so dependent that imposition of caps or policy changes cripple court operations.
- Do not circumscribe goals based only on available court resources. Other government entities may share the court's vision and be willing to share resources to achieve it.

In summary, while a shift from county to state funding has been the national trend, the extent and funding mechanisms used to effectuate this transfer vary greatly by state. Most states' trial courts remain funded by a mixture of state and local revenues, generated by some combination of state and local taxes and fee, fine, forfeiture and surcharge revenues.

PREVIOUS WISCONSIN COURT SYSTEM STUDIES

In Wisconsin, numerous groups have studied the issue of trial court financing over the last 30 years, beginning with the Citizens Study Committee on Judicial Organization. These studies and their recommendations are briefly summarized below.

Citizens Study Committee on Judicial Organization -- 1973. This committee, which laid the groundwork for the constitutional amendments and court reorganization act, recommended “[t]he State of Wisconsin should assume full financial responsibility for its judicial branch of government, with the exception of municipal courts. State assumption

of full court financing in Wisconsin should occur on a gradual basis over a period of years. It should start with state payment of judicial or support employees' salaries, be extended to supplies and services, and finally to lease payments and renovation expenses for court room facilities." In its comments on the recommendation, the Committee noted that: (1) the 1971 National Conference on the Judiciary supported state financing of the courts; (2) state financing is essential for unified administrative leadership; (3) state funding would create more equitable expenditures for the courts throughout the state; (4) local political influences would be held to a minimum; and (5) county property tax burdens would be reduced. The fear on the part of some that state financing would diminish court responsiveness to local needs was acknowledged, as well as the county boards association's support for increased state funding of the judicial system.

Legislative Council Special Committee on Trial Court System Funding – 1991. This special committee made several recommendations concerning state funding of certain court costs. One recommendation would have required the state to: (1) hire law clerks to assist circuit court judges; (2) pay for transcripts requested by the State Public Defender in criminal cases; (3) and initially provide annual reimbursement to counties for law libraries, with state assumption of certain county law library functions beginning July 1, 1993. The Committee also recommended that, beginning January 1, 1992, every circuit judge have a full-time judicial assistant. Judicial assistants would have been state employees, except that existing judicial assistants would have had the option to remain county employees, with state reimbursement to those counties. The Committee also recommended the state pay for the services of jurors, witnesses and GAL. Finally, the Committee recommended abolishing the constitutional requirements for elected clerks of circuit court. The Legislative Council adopted the Special Committee's recommendations and introduced them as Senate bills, which did not pass in the 1991 legislative session. Instead, the 1993 Legislature created the three payment programs previously described to offset circuit court costs at the county level.

In invited testimony before the Special Committee, former Chief Justice Heffernan stated that the judicial branch historically has been more concerned with the adequacy of funding than with its source, and that adequate support for the court system was a major goal identified by judges at the 1990 Judicial Conference. He went on to support state funding of the court system if adequate, reiterating the recommendations of the 1973 Citizens Committee and stating his belief that the split source of court funding had become a primary reason for its inadequacy. He concluded, "I urge that the state not merely assume the current inadequate level of county funding but that the legislation provide that the funding also be adequate to the needs of the judicial branch."

Commission on the Judiciary as a Co-Equal Branch of Government – 1997. The State Bar of Wisconsin created this Commission to research the historical and current framework of the Separation of Powers doctrine, and to explore means by which the courts can properly maintain their independence while cooperating with the other branches of government, toward the goal of serving Wisconsin citizens with basic good government. The Commission’s report included the following recommendations pertaining to funding and allocation of resources:

- The State Bar of Wisconsin supports the Supreme Court’s efforts to reallocate judges throughout the state based on caseload need.
- Judicial compensation should be taken out of the political process by creation of a Judicial Compensation Commission comprised of members of the public and the three branches of government.
- The Supreme Court should consider the advisability of submitting its budget directly to the Legislature, in addition to submitting it to the executive branch.
- The Supreme Court and its agencies should reach out and educate judges about how the judiciary can better work with county boards and state legislators to define responsibilities and to make the needs of the judiciary known to enhance the quality of the judiciary’s work in Wisconsin.
- A committee or other body should be established to study in detail the advisability and feasibility of (a) adequately funding the judiciary, including facilities and support services, solely from state sources, without reliance on the counties and (b) submitting the judiciary’s budget directly to the Legislature in addition to submitting it to the executive branch.
- The State Bar of Wisconsin supports the efforts of the Director of State Courts and the Supreme Court to obtain funding for additional branches of the Circuit Court based upon available statistical information, studies and standards.

In discussing these recommendations, the report states “[t]here appears to be a widespread perception – both inside and outside the judiciary – that significantly more monies are needed to enable the courts to carry out their functions . . . The Commission believes that there is a real need for a greater degree of comity and respect among the three branches of government. The legislative and executive branches should and must recognize that the courts and the judiciary have constitutionally and statutorily mandated functions and obligations that require resources, support and funding at a level and in an amount sufficient to allow them to perform their functions and to meet their obligations in a way that does the public the greatest good. Conversely, the judicial branch must be

able and willing to communicate its role and needs to the executive and legislative branches.”

Wisconsin Blue-Ribbon Commission on State-Local Partnerships for the 21st Century (Kettl Commission) – 2001. In January 2001, the Kettl Commission recommended “state government ought to move, as soon as practical, to full funding of the justice system.” Further, “[p]riorities ought to be set to guide the state’s transition from a mixed state-county funded system to one that is state-funded and state-led. The state ought to assume the costs of programs in the following priority order: circuit court operations; juvenile justice programs . . .; child welfare programs . . .; other justice programs, including the costs of district attorneys and the state’s public defender program for indigent defendants; and finally, other human services programs. . . The state ought to assume the cost and leadership of circuit court operations on January 1, 2002. Counties are on a calendar-year budget. This would make the transition more workable.”

The Commission recommended the initial phase of state funding for the justice system and human services be funded by the shared revenue program and existing state aids for these programs. In its comments, the Commission expressed concern that overlapping responsibilities create significant inefficiencies in the system and that aligning responsibilities and funding could significantly improve the system’s functioning. The Commission acknowledged these changes would require careful planning to minimize adverse effects on state and county revenues and budgets and would require detailed state-county implementation planning, based on audits of costs and plans for the phase-out of county shared revenue to state funding. However, the implementation date recommended for state assumption of circuit court operations was less than a year after the recommendations were submitted to the Governor. This recommendation would have required legislative action, followed by substantial implementation planning. The implementation date recommendation, therefore, did not appear to recognize those significant and necessary planning and auditing requirements.

Governor’s Task Force on State and Local Government -- 2003. In March 2002, former Governor Scott McCallum created this task force to make recommendations to strengthen the partnership between the state and local governments. The January 2003 final Task Force report included the recommendation that “[t]he state should take over financial responsibility of the court system. A long-term solution for counties in the area of shared revenue is to trade a portion of their shared revenue in order for the state to take over the court system. This would improve accountability and line up taxing and spending with the entity that makes the decisions.” The report does not contain any comments specifically related to this recommendation and Task Force discussion of the

recommendation was limited. It was, however, noted that WCA suggested the recommendation.

Wisconsin Counties Association Court Funding Committee – 2003. WCA formed a Courts Funding Committee that met twice from November 2002 through January 2003. The committee’s goal was to define and measure “court costs” and to discuss the merits of WCA’s proposal for state assumption of court costs. The committee generated broad lists of items that could potentially be considered court costs and court revenues and, after hearing a presentation on the work of the PPAC Subcommittee on Court Financing, chose not to continue to refine the lists or attempt to gather county cost information. The committee identified the following potential non-personnel court costs that could be paid by the State: 1) adversary counsel; 2) jury costs; 3) witness costs; 4) court-ordered evaluations; and 5) indigent defense. The committee did not issue a report.

CORE COURT SERVICES

The Court Financing Subcommittee began its deliberations with a discussion of what constitutes a court service. As a starting point, the subcommittee used the broad list of items that could be considered court costs developed by the WCA Courts Funding Committee (see **Appendix II**). In reviewing the WCA committee list, it became apparent that it included not only services provided by the circuit courts, but also services provided by others in the legal/justice system, such as the services provided by district attorneys, public defenders and corporation counsel. The subcommittee determined it needed to make a distinction between “legal services” and “court services.” *The subcommittee defined “court services” as those services directly provided by the circuit courts or court agencies that support the circuit courts.* As such, court services are a subset of the services provided in the entire legal/justice system.

This distinction made by the subcommittee in no way diminishes the importance of these other legal services. Indeed, the court relies on these ancillary services in its decision making, which include mental health and alcohol and other drug abuse programs, pre- and post-dispositional alternative to incarceration programs, victim/witness programs, and alternative dispute resolution programs. Mental health problems and alcohol and other drug abuse contribute in a significant way to criminal activity and also negatively impacts on court processes due to failures to appear before the court as well as negative impacts on the jail and prison populations. With tighter budgets, these programs, which ultimately reduce costs and better protect the public, are often the ones that are reduced.

Beyond identifying court services, the subcommittee also was charged with defining a uniform level of court services that should be provided in all circuit courts. To

accomplish this, the subcommittee determined a distinction between those innovative services provided in some courts intended to enhance the effectiveness and efficiency of the court versus those “core” court services that must be provided in every circuit court as necessary. Examples of specialized court programs developed locally and often funded, at least initially, with discretionary grant funds are teen courts, drug courts and unified family courts. While these court programs have been successful in the communities they serve, the subcommittee concluded it is unrealistic to expect these services to be uniformly provided throughout the state as a core court service. ***The subcommittee believes that innovations in court procedures and programs are best approached at the local level, and encourages their continued development.***

In defining core court services, several items were not included but generated significant discussion to merit mention. The first is court-appointed indigency counsel. Under state law, indigent defendants are to be provided representation by the State Public Defender’s Office, an executive branch agency, or by private counsel appointed and paid by the State Public Defender. However, because the State Public Defender indigency standards have not been updated for 16 years, courts have been constitutionally required to appoint counsel for an increasing number of indigent defendants who do not qualify for Public Defender representation, with counties paying the appointed counsel costs. This has resulted in a dual system of indigent defense representation, which the State Public Defender program originally was intended to eliminate.

Since it is the court’s responsibility to see that the right to counsel for indigent defendants guaranteed under the U.S. Constitution is effectuated, some would argue that this is a court service. Further, many counties budget the costs of court-appointed counsel under the court’s budget. Nevertheless, the subcommittee concluded that under state statute indigent counsel in Wisconsin is an executive, not judicial, branch function. The subcommittee emphasized while indigency counsel should not be defined as a court service, it is a critical issue that needs to be addressed. ***The subcommittee strongly urges the Governor and Legislature to update the state indigency guidelines and fully fund the State Public Defender program to again allow the State Public Defender’s Office to provide legal representation to all indigent defendants and therefore eliminate the need for court-appointed counsel. Further, the subcommittee recommends state statutes be modified to again allow the State Public Defender’s Office to provide advocate counsel for indigents in Children in Need of Protection and Services (CHIPS) cases.***

Another critical service that the subcommittee agreed needs to be provided but did not identify as a court service is county law libraries. Currently, most counties have a law library used by county staff, the local bar and citizens, including self-represented litigants who are appearing before the courts in increasing numbers. Again, the subcommittee

believes maintenance of these law libraries is an executive branch function. The county law libraries are separate and distinguishable from the legal research materials and services provided to judges, which are a judicial necessity and therefore identified by the subcommittee as a core court service.

Table 1
Core Court Services

- Circuit court automation program
 - Court facilities and utilities
 - Court interpreters
 - Courthouse security including court security officers and deputized bailiffs
 - Court-ordered medical and psychological exams, and court appointed witness and expert witness fees and transportation costs (including videotaping)
 - Court room videoconferencing equipment
 - Director of State Courts Office support to the circuit courts
 - Education and training:
 - For judges
 - For court commissioners
 - For other court employees
 - Family court counseling services/mediation
 - Guardians ad litem
 - Judicial/legal resources/legal research (not public law libraries)
 - Jury costs (excluding jury bailiffs)
 - Making the court record costs:
 - Equipment and supplies
 - Court-ordered transcripts
 - Office/facility services (e.g., janitorial services)
 - Personnel Costs:
 - Judges
 - Judicial assistants
 - Law clerks
 - Clerks of circuit court and staff
 - Registers in probate and staff (including juvenile clerks)
 - Court commissioners
 - Court reporters for judges and for court commissioners
 - Jury bailiffs (citizen bailiffs)
 - Personnel-related office supplies and equipment (including repairs and maintenance)
-

Other critical services discussed by the subcommittee as court-related, but not identified as court services, include transport of inmates to court, juvenile intake services, pre-disposition and post-dispositional services (such as electronic monitoring, drug monitoring, and the mental health and alcohol and other drug abuse programs previously

mentioned), community service and restitution programs, diversion programs, and Court Appointed Special Advocates (CASA) programs. Again, the courts are just one piece of the justice system, and *the subcommittee recommends care be taken at the local level to ensure counties continue to fund these ancillary services upon which the court relies.*

Given the definitions and parameters established by the subcommittee, **Table 1** lists the core court services identified by the subcommittee.

CURRENT COURT SERVICES COSTS

When examining funding for core court services, the question that first must be asked is “how much are counties and the State currently spending on the circuit court system?” While a deceptively simple question, the answer is “no one knows.” Determining state expenditures for the circuit courts is relatively straightforward, however, determining county spending for the circuit courts is problematic. Each county is organized differently, has differing definitions of what constitutes court services, provides varying levels of court services, and budgets and accounts for court costs differently.

State Expenditures for Circuit Court Operations. In state fiscal year 2002-2003, the State provided \$89.5 million to directly support the operation of the circuit courts (indirect expenditures are not included). Specifically, the State provided:

- Over \$53 million annually to pay for the salaries, fringe benefits, and travel for circuit court judges, reserve judges, and official court reporters as well as to pay for the services of freelance court reporters;
- Over \$9 million to manage and support the automation of the circuit courts;
- Almost \$3 million to provide central and regional office support to circuit court operations; and
- Over \$24.1 million annually to offset county circuit court costs through the circuit court support payment program, the GAL payment program, and the interpreter services reimbursement program.

The first three categories reflect direct state funding. The last category reflects state financial assistance payments to counties for a portion of court costs incurred by the counties.

County Expenditures for Circuit Court Operations. Current law requires the costs of the operation of the circuit courts be borne by the county unless specified otherwise by

statute.³ These costs include: (1) personnel costs for the clerks of circuit court offices, court commissioners, registers in probate offices, security staff (bailiffs) and any judicial support staff provided by the county; (2) materials, equipment and office supplies for the offices; (3) construction and maintenance costs for court facilities; (3) county law libraries; and (4) court-related expenses such as jury, witness, interpreter and GAL costs.

Counties' fiscal years correspond with calendar years. To receive payment from the State under the circuit court support payment program, s. 758.19(6)(e), Wis. Stats., requires counties to submit to the Director of State Courts by May 15 of each year, in a format established by the Director, information regarding the amount of actual court costs the county incurred in the previous calendar year for the following categories: 1) juror fees; 2) fees for expert witnesses called by a GAL if the parties are unable to pay those fees; 3) witness and expert witness fees; 4) the salaries and fringe benefits for judicial assistants for circuit court judges; and 5) any other court costs, except costs related to court room security, including security personnel, and costs related to rent, utilities, maintenance, rehabilitation and construction of court facilities. The Director of State Courts has collected this court cost information since 1995.

Recent efforts by a Director of State Courts' committee and this subcommittee have resulted in better, albeit still problematic, information that attempts to identify county expenditures for court services. Counties were required to submit calendar year 2002 court cost information using a new format that provides more detailed information. Efforts were made to increase the accuracy of the information by developing detailed definitions on cost categories and having the district court administrators perform a cursory review of the information their counties submitted for reasonableness. The revised form and instructions can be found in **Appendix III**.

In reviewing the data it appears, however, inconsistencies in reporting continue, both among counties and within an individual county over time. Part of the problem is the form itself. The form excludes those core court costs that are not charged against a county court budget but are charged against a non-court department's budget. Because of the 72 different county organizational structures, the cost of a court service may be included in one county's report but excluded in another's. Another problem is the clerks of circuit court, who generally prepare the report, may not have complete county expenditure information. Further, counties handle indirect (overhead) costs in different ways. For example, the cost of a county human resources department's assistance to the clerk of circuit court's office may be included in one county's report but not in another.

³ See s. 753.19, Wis. Stats.

Finally, statutes prohibit the Director of State Courts from requiring counties to provide audited reports to ensure that accurate, uniform information is being submitted.

For state takeover of any county-funded court services, accurate cost data is essential. Without such information, core court system services would likely be underfunded. To further improve county court cost information, *the subcommittee recommends:*

- 1) *including core court services costs that are not in court budgets in the annual report of actual costs;*
- 2) *encouraging clerks of circuit court to work closely with the county financial officer in completing the annual form and require clerks of circuit court to send a copy of the completed form to the county finance officer; and*
- 3) *requesting a statutory change to allow for auditing of the county court cost information.*

Given the shortcomings and inconsistencies with the reported information, for calendar year 2002, counties reported \$139.7 million in total court costs, \$123.2 million of which were allowable court costs allowable under the state circuit court support payment program (excluding costs related to court room security, including security personnel, and costs related to rent, utilities, maintenance, rehabilitation and construction of court facilities). Specifically,

- Salaries and fringe benefits for judicial assistants totaled \$9.9 million;
- Juror fees totaled \$3.9 million;
- Witness and expert witness fees (including travel and other expenses) totaled \$1.2 million; and
- Other court costs except court room security, rent, utilities, maintenance, rehabilitation, and construction of court facilities totaled \$108.2 million.

Note that expenditures for salaries and fringe benefits for judicial assistants actually represent the cost of providing clerical assistance to circuit court judges. Many counties do not provide their circuit court judges with a position exclusively identified as a judicial assistant. As a result, these counties reported a portion of the salaries and fringe benefits of the county personnel who may perform one or more of the duties described in the judicial assistant job description statutorily developed by the Director of State Courts. Consequently, the reported salaries and fringe benefits of judicial assistants may reflect actual judicial assistant positions or may be a percentage of the salaries and fringe benefits for register in probate or clerk of circuit court staff who also provide clerical

assistance to the judge. Counties reported a total of 209.6 full-time equivalent positions providing clerical assistance to judges.

The majority (60 percent) of reported costs represented salaries and fringe benefits costs. Counties reported a total of 1,688 county court full-time equivalent positions (the number of employees would be higher), of which 1,185 (70 percent) were in the clerks of circuit court offices.

Table 2 shows the allowable county court costs as reported by counties over the last four years, along with state payments made under the circuit court support and GAL payment programs and the court interpreter reimbursement program.

Table 2				
Allowable County Court Costs as Reported by Counties*				
	<u>CY 1999</u>	<u>CY 2000</u>	<u>CY 2001</u>	<u>CY 2002</u>
Allowable Costs	\$ 90,756,582	\$ 96,135,499	\$ 104,524,635	\$ 123,215,522
State Payments	<u>\$ 22,536,391</u>	<u>\$ 23,699,959</u>	<u>\$ 23,736,266</u>	<u>\$ 23,832,227</u>
Net	\$ 68,220,191	\$ 72,435,540	\$ 80,788,369	\$ 99,383,295

Selected Reported County Court Costs*

Judicial Assistants	\$8,540,931	\$8,892,898	\$9,405,611	\$9,928,374
Witness/Expert Witness Fees	\$1,377,636	\$1,408,729	\$1,377,580	\$1,111,444
Net GAL Costs**	\$8,114,191	\$7,184,492	\$7,557,493	\$7,129,435

*The Annual Report of Actual Costs (Form CC-47) is completed annually by each county and submitted to the Director of State Courts as required by s. 758.19(5)(e), Wis. Stats. The information on this form is unaudited and the Director of State Courts cannot vouch for the accuracy of the information contained in the forms submitted.

**After recoupment of GAL costs

COURT REVENUES

The clerks of circuit court collect court-imposed fees, fines, forfeitures, assessments and surcharges. Casual observers might assume these revenues accrue to the court system to help pay for the costs of court operation. The reality is more complicated.

Court fees are typically assessed at the initiation of a court action, such as commencing legal actions, filing petitions for probating estates, filing motions, filing and docketing judgments, requesting a jury, and commencing appeals. Generally court fees are split

between counties and the state, with proceeds deposited to the general funds of the respective governments.

The Wisconsin Constitution requires that the clear proceeds from state fines and forfeitures be deposited to the State's common school fund for the support and maintenance of Wisconsin public schools and the purchase of library materials. As an administrative fee, counties retain ten percent of state fine and forfeiture revenues (50 percent of motor vehicle fines and forfeitures). Local governments retain 100 percent of forfeitures for ordinance violations.

Partially because of the limitation on the use of state fine and forfeiture revenue, the Governor and Legislature have created a myriad of additional fees, assessments and surcharges imposed on certain court fees, fines and forfeitures to fund state and county programs, two of which are deposited directly to the Supreme Court. The court information and justice information fees are assessed on most court filings and forfeitures. All of the court information fee revenue and six-ninths of the justice information fee revenue go to the Supreme Court to fund CCAP, which provides networked computers and software applications for circuit court case management functions, including management of the revenue collections.

The court support services fee, imposed on forfeiture judgments and most civil court filings, was created in 1993. As mentioned previously, this new fee was to provide partial state financing of county court costs through three new programs: (a) the circuit court support payment program; (b) the GAL program; and (c) funding for a new requirement that the State Public Defender, rather than counties, pay court reporters for requested transcripts. The court support services fee is deposited to the State's general fund and the county financial assistance programs are funded with general purpose revenues. The funding provided for the three court support programs each year since 1996-97 has been less than the amount of revenue generated from the fee. The court support services fee was raised by 30 percent in both August 2002 and July 2003, as part of measures to reduce the deficit in the State's general fund and to fund increased state, not county, court operating costs.

The remaining fees, assessments and surcharges on court-ordered payments are used to fund executive branch programs at the county and state levels. This ranges from the penalty assessment, which is 24 percent of most state fines and forfeitures and which generated \$10.8 million in state fiscal year 2002-2003, used to fund law enforcement training and a variety of other programs, to assessments on fines and forfeitures for specific violations, such as the fishing shelter removal assessment, which generated \$30 in state fiscal year 2002-2003. One county-retained fee is the jail assessment, deposited

to each county's jail fund to be used exclusively for construction or improvements to county jails. In state fiscal year 2002-2003, counties collected \$4.8 million in jail assessments. **Table 3** details the court-collected revenues reported to the State last fiscal year.

Not all county revenues collected or received by the courts are reported to the State. Miscellaneous revenues may be collected for such services as copying, which may accrue directly to a court account or go into the county general fund. Recoupments of court costs beyond those that are statutorily required to be reported are not known. Examples of court costs for which non-indigent court users pay recoupments include interpreter payments, medical and psychological examinations, expert witness fees and home studies. Another source of court funding may be federal reimbursement programs, including federal IV-D child support revenue, which is used in some counties to partially fund family court commissioner and other family court services related to child support collections. Costs associated with federal or executive-branch state grant programs may appear in the court costs totals, but the grant revenues are not reported. Because these revenues are not reported to the State, it is not known the extent to which they offset county court costs.

	Where Deposited	
	<u>County</u>	<u>State</u>
Circuit Court Fees	\$7,927,117	\$8,391,984
Probate Fees	\$1,930,418	\$3,642,813
Circuit Court Automation Fee	\$0	\$5,158,004
Justice Information Fee	\$0	\$6,218,430
Court Support Services Fee	\$0	\$34,153,641
Fines and Forfeitures	\$21,687,736	\$17,344,531
Reimbursement of Juvenile Legal Fees	\$123,578	\$371,682
County Jail Assessment	\$4,814,302	\$0
Other Fees, Assessments and Surcharges	<u>\$4,330,407</u>	<u>\$20,989,105</u>
TOTAL	<u>\$40,813,558</u>	<u>\$96,270,190</u>

Some counties are more aggressive than others in seeking recoupments and maximizing federal payments. *The subcommittee recommends the state share of revenues collected by the clerks of circuit court increase proportionately at the time of any transfer of county court funding to the State.* For example, if the state were to fund family court counseling/mediation services, family court counseling fee revenues should also be

transferred to the state. *Further, the subcommittee recommends a mechanism, perhaps through a court committee or through the Wisconsin Clerks of Circuit Court Association, be developed to assist clerks of circuit court in assuring allowable federal reimbursements are properly received.*

COURT SERVICES FUNDING ALTERNATIVES CONSIDERED

Once core court services were defined and the current status of circuit court funding examined, the subcommittee spent time outlining a vision for future court financing. The mission of the judicial system is to provide the people with an independent, open, fair and efficient system for the just resolution of disputes. The judicial system is a core function of government, a third branch that serves as a counterbalance to the power of the executive and legislative branches. For the court system to meet its constitutional responsibilities, a stable source and minimum level of court funding is necessary for the delivery of timely and real justice. This minimum funding is necessary in times of economic growth and times of economic uncertainty. This does not mean that the judicial branch, like the other branches of government, should not look for fiscal efficiencies. The recent budget shortfalls at both the state and county levels of government have resulted in the circuit courts being asked to do with less. These reductions have not been accomplished without stresses and strains, but also have provided an opportunity to take a fresh look at how the system is operating. The judicial branch must and will, however, continue monitoring the system to evaluate whether efforts to reduce expenditures jeopardize the courts' constitutional responsibilities.

The subcommittee examined a variety of court funding models, including full state funding, combined state and county funding, and fee-based funding. Unusual court funding mechanisms also were reviewed. This includes Puerto Rico's recent legislative action to give the state-funded court system a fixed percentage of general fund revenues, and the utilization of non-profit arrangements to allow the courts to accept donations.

Fee-based Funding. Current state fiscal crises have led several states to raise court fees to fund the court system. This generally has been accomplished in those states where court fees have been relatively low, with few non-court surcharges. As discussed above, Wisconsin has applied an ever increasing number of fees, assessments and surcharges to the basic court fees, fines and forfeitures imposed for law violations to fund a variety of programs, the majority not court-related. The court system is concerned that as these fees, assessments and surcharges increase, access to the courts may be limited. For example, the cost to file a small claims action is now \$82, an increase of \$21 since July 2002 due to the increases in the court support services fee. All branches of government must be cognizant that access to the court system cannot be reserved only for those who can pay.

While base fines and forfeitures imposed for law violations have remained the same, the cost of fees, assessments and surcharges associated with those fines and forfeitures have steadily increased. For example, the forfeiture for speeding 1 to 10 miles per hour above a fixed limit is \$30, while the total cost of the speeding ticket actually is \$154.20 (\$3.50 more in Milwaukee County). For law violations, a variety of assessments and surcharges are imposed, such as the \$7 crime lab and drug law enforcement assessment imposed in criminal and most forfeiture actions and the \$50 to \$70 crime victim and witness surcharge imposed if the court sentences or places a person on probation. Additional surcharges exist depending on the nature of the offense: the \$250 DNA analysis surcharge for certain sex offenses, the \$50 domestic abuse assessment for domestic abuse offenses, and the \$355 driver improvement surcharge for certain violations relating to operating while intoxicated. In addition, a defendant may be assessed costs not collected by the clerks of circuit court, such as restitution, probation or parole supervision fees, medical and dental services fees and room and board fees. Many defendants also are making child support payments. Because of the concerns expressed above, *the subcommittee recommends increased court fees not be used as a stable source of court funding.*

One result of these hefty assessments on a largely indigent population is the clerks of circuit court carry a significant amount of unpaid debts on their books. While it is unrealistic to expect courts to collect all of the amounts imposed, it is incumbent upon the clerks of circuit court to collect those debts that can be collected to uphold the integrity of court orders, reduce the debt owed to the court and bring in more monies for the counties and the State. In response to these concerns, the Wisconsin Clerks of Circuit Court Association convened an ad hoc collections committee to formulate steps to collect unpaid debts, identify when debts can and should be deemed inactive, and monitor collection plans. The resulting Collections Handbook, distributed to clerks of circuit court in October 2002, outlines collection approaches that can include payment plans, reminder notices, suspension of driver's licenses in traffic offenses, imprisonment for those who have the ability to pay, reduction of the debt to a civil judgment, referral to a collection agency, and certification of the account to the state Department of Revenue's tax refund intercept program. Anecdotal reports indicate that collections of unpaid debts have increased in those counties that have implemented the ad hoc committee's suggestions.

When the Court Financing Subcommittee discussed the fee collection issue, one concern expressed was that the costs of the collection efforts fall on the counties, while counties retain only 30 percent of the revenues collected. A recent law change allows counties to deduct collection agency costs from the proceeds, but this does not apply to those costs incurred by clerks of circuit court who rely on office staff to perform collection procedures. Others pointed out that counties need to acknowledge a portion of the state revenues make

their way back to counties, through funding for local law enforcement training, victim/witness programs, alcohol and other drug abuse programs, court support services and GAL payment programs and CCAP.

The subcommittee encourages continued efforts at debt collection, and recommends disincentives for collection be reduced.

Puerto Rico Model. The subcommittee determined the Puerto Rico approach to court funding, while intriguing, was not appropriate for Wisconsin at this time. First, to adopt the Puerto Rico approach, the court system would have to be fully state funded. Furthermore, while the model provides the court system with total control over its budget in a way not afforded other jurisdictions, the funding available will rise and fall along with state revenue collections. The subcommittee believes the courts need a stable funding source to maintain minimum levels of core court services.

Utilization of Non-Profit Donations. The utilization of non-profit arms to enable the courts to accept donations is controversial. For such an arrangement to be viable, courts must ensure the acceptance of donations does not compromise the integrity of the court or its decisions. In states where such organizations operate, they typically are designed for specific court-related community activities, such as CASA programs, substance abuse services and, in Los Angeles, providing teddy bears to children involved in court proceedings. In Wisconsin, state statutes currently allow the State Law Library and the Director of State Courts Office to receive gifts and donations, which have generally been targeted to support judicial education and staff training.

The issue of court-approved contributions to crime prevention organizations in Wisconsin has been controversial in recent years and resulted in statutory changes recommended by the chief judges. The issue recently has reemerged in response to district attorney practices to collect monies for groups such as DARE and Boys & Girls Clubs through the use of deferred prosecution agreements. ***The subcommittee recommends no efforts be made on the part of the courts to establish non-profit entities to accept donations for use by the courts.***

Grant Revenues. A final potential source of court funding is grant revenue, through the federal government, foundations or executive branch agencies. At the present time, the Supreme Court directly receives only one dedicated grant -- the federal Court Improvement Program grant that has been awarded since 1996 to state court systems for improving the processing of children in need of protection and services (CHIPS) cases. Other grants, received by the Supreme Court or by counties for their circuit courts, are discretionary and typically for a limited time period. To maximize the receipt of discretionary funding for

court programs, the Director of State Courts established a Grants Information Center, which serves as a clearinghouse for information about court-related grant opportunities and provides assistance to grant writers where needed. *The subcommittee recommends continued efforts at the state and local levels to maximize the receipt of discretionary grant funding for court services and programs.*

FUNDING MECHANISMS FOR CORE COURT SERVICES

The subcommittee's charge was to identify what funding arrangement has the most potential to provide the effective delivery of a uniform level of core court services in each circuit. The subcommittee identified certain core court services currently funded in whole or in part by counties that could be transitioned to full state funding. However, when the question was asked, "How will these changes improve the functioning of the circuit court?" there were no clear answers.

As information collected from other states and court studies have found, there is no conclusive evidence that a move to state funding of the circuit courts would provide a better, more stable court system. The current push towards state funding is largely driven from a fiscal perspective – county levy limits and intensified citizen complaints of high property taxes have forced counties to look for ways to cut costs. One area that counties have looked toward is the court system – counties believe the circuit courts are part of the state judicial system and, therefore, county property taxes should not be used to pay for the system. Conversely, counties have provided funding for the trial courts since Wisconsin was a territory. This history, along with the history of the courthouse being the cornerstone of county government and Wisconsin's county-based circuit court administration structure headed by county-elected officials (judges and clerks of circuit court), could lead one to conclude that continued county funding of the courts is appropriate.

The subcommittee 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 and administering certain core court services.* The extent to which the State should take on county court costs and the appropriate administrative structures to do so remain to be answered. In transferring court funding to the state, the subcommittee notes the recommendation of the Kettl Commission that for every dollar of court costs the state assumes from the counties should result in a dollar for dollar reduction in the counties' tax levies.

The court system's interest is to support whatever funding mechanism provides for the most stable, effective and uniform circuit court structure, whether it is state, county or

some combination. The subcommittee recognizes the pressures for change being brought at the state and local levels. Given the changing political realities across the State, practices and administrative structures that have worked in the past may no longer work in the future. State funding could provide the opportunity for a more uniform and judicial branch-centered approach to circuit court operations resulting in increased equity across the courts and more focused, improved management practices.

An example cited of how a state-based approach can work successfully is CCAP, which is justifiably a model throughout the country. In looking at CCAP, however, two points should be noted. First, CCAP began as a voluntary program that started with circuit courts in those counties that did not have automated court information systems. As others have noted, it is far easier to build a new system than to change and merge many existing systems. Second, with the CCAP and justice information fees, CCAP has had a stable source of non-tax supported revenue.

Other potential opportunities include increased compliance with model recordkeeping procedures, more efficient use of staff, improved ability for the chief judge to carry out his or her responsibilities under Supreme Court Rules, more uniform levels of service throughout the court system, more equalized staffing and salaries, and a streamlined job classification system.

Along with the opportunities under a state-funded circuit court system, there also are a number of concerns. First, while judges' inputs on budget or program issues generally carry some weight at the county level these same recommendations would be diluted or lost as the Governor and Legislature address the broader interests of state government. Second, while uniformity necessitated by state funding may lead to increased equity among courts, it is feared it may be achieved only by sacrificing the local customs and community standards that make counties unique. Finally, it is possible fiscal accountability may be lost when locally elected judges and clerks of circuit court do not have to respond to the local electorate on budget matters.

The experiences with state takeover of other parts of the criminal justice system have served to heighten court system concerns. Specifically, a state indigent defense program has resulted in severely outdated indigency standards, and state assumption of prosecutors' personnel costs and employment status has created tension and controversy between the county-elected district attorneys and state government.

Two criteria are critical for any state takeover of court costs to be successful in meeting the court system's requirements for the effective delivery of court services. First, *adequate state funding must be provided to the court system.* Other states with

successful transitions from county to state funding had two things in common – sufficient planning time and adequate funding. Most of these transitions occurred when the states were able to inject significant amounts of additional resources – staff and funding – into the court system. There is no evidence from other states to suggest that a successful transition can occur without increased state funding. Second, *the court system, including the Director of State Courts Office, judges and clerks of circuit court, must be involved in any decision-making process.* It would be simply unacceptable for the other two branches of government to unilaterally dictate major changes in the judicial branch. A careful planning process is necessary, particularly if the conversion involves the transfer of court staff from county to state employment.

Because it is so crucial that the judicial branch be actively involved in any transition planning and decision-making, the subcommittee has developed a blueprint for how to approach state takeover of certain court costs should that become the policy directive. **Table 4** identifies those core court services that currently are fully- or partially-funded by counties, but could be transitioned to full state funding, along with the possible phases for those changes. For each identified core court service, the current funding arrangement is described along with its strengths or weaknesses, followed by the potential strengths or problems with a transfer to state funding.

The phases for the change in funding are identified as the short term (Phase 1), the intermediate term (Phase 2) and the long term (Phase 3). Generally, the Phase 1 services are those that the subcommittee believes could be transferred with the least administrative difficulty, either because the State is already partially funding the services so some structure is already in place to provide for state funding of these services or it is envisioned that funding could be handled in a similar matter. Phase 2 core court services focus on court commissioners and family court counseling/mediation. While limited to those two areas, the variability in county funding, staffing and organization of these services offers challenges for state takeover.

Phase 3 core court services, which are generally personnel-related, present the most difficult decisions and challenges. The first decision is whether these court staff positions should remain county employees or become state employees. Transfer to state employment may offer the most opportunities for uniformity and equity and improved court services, but also present the greatest administrative challenges and would be more expensive.

Table 4

Blueprint for Possible Transitioning of Core Court Services To State Funding

PHASE 1:

✓ **COURT INTERPRETERS**

Current Funding Arrangement: As required by statute, the Director of State Courts reimburses counties up to four times each year for the actual expenses (subject to certain limits) paid for interpreters required by circuit courts and clerks of circuit court staff to assist indigent persons with limited English proficiency under s. 885.38(8)(a)1, Wis. Stats. This reimbursement is limited to certain proceedings, unless the court determines that an interpreter is necessary. Mileage reimbursement is limited to 20¢ per mile and maximum hourly reimbursement for court interpreters is limited to \$40 for the first hour and \$20 for each additional 0.5 hour for certified interpreters and \$30 for the first hour and \$15 for each additional 0.5 hour for qualified interpreters.

Strengths or Weaknesses with Current Funding: Problems with this reimbursement program are: 1) the statutory restrictions on types of cases for which reimbursement is allowed and the requirement that only interpreters for indigent parties are reimbursed by the State do not match federal law requirements; and 2) the maximum hourly reimbursement amounts do not reflect the current market value of interpreter services. As a result, county court interpreter services cost more than allowable state reimbursement.

Potential Strengths or Problems with State Funding: The statutes could be modified to require the State to fund court interpreter services in the short term. Statutory changes would be needed so all cases and parties regardless of indigency would be funded by the State according to federal requirements and at market rates (delete statutory rates and give the Director of State Courts the authority to establish rates). With the establishment of a court interpreter certification program, the Director of State Courts would be in a position to ensure the efficient delivery of a minimum level service to each circuit. However, state-funded staffing for this program is needed, since the one current position is funded through a one-time federal grant. State funding could be accomplished by expanding the current reimbursement program, or the reimbursement program could be dismantled to allow for the State to directly pay for all interpreter services provided to the circuit courts. If the reimbursement program were to continue, the amount appropriated would need to be increased to provide sufficient funds to fully reimburse counties for court interpreter services, and mechanisms would need to be established to ensure that court interpreter fees meet state payment standards. If a state court interpreter program were implemented, a new infrastructure would be required at the state level with a formal determination of the responsibilities that would be assumed by the counties versus the Director of State Courts. This approach could be similar to the approach the Director's Office takes in acquiring the services of freelance court reporters.

✓ **COURT-ORDERED MEDICAL AND PSYCHOLOGICAL EXAMS, COURT-APPOINTED WITNESS & EXPERT WITNESS FEES, AND TRANSPORTATION COSTS***

Current Funding Arrangement: Counties fund court-ordered medical and psychological exams and court-appointed witness and expert witness fees and transportation costs.

Strengths or Weaknesses with Current Funding: Each county has its own way of providing these services: most counties contract for services while some counties have staff doctors available. Through a statewide contract, Mendota doctors also may be available to conduct Chapter 51 evaluations. When local doctors are used, costs likely are higher. These costs are a product of both the need for these services and the management of those services. As a result, county costs vary year to year.

Table 4

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **COURT-ORDERED MEDICAL AND PSYCHOLOGICAL EXAMS, COURT-APPOINTED WITNESS & EXPERT WITNESS FEES (continued)**

Potential Strengths or Problems with State Funding: The State could assume the funding responsibility for court-ordered medical and psychological exams and court-appointed witness and expert witness fees and transportation costs in the short term. Uniformity of services could be achieved through a reimbursement system under which the Director of State Courts Office would verify that only allowable expenditures are being incurred at the county level, or by having the State handle all expenditures directly. Under a reimbursement program, the Director of State Courts Office would need additional staff for its administration. Also, it is likely that many of the clerks of circuit court would need additional staff to complete required reimbursement reports. Costs could go up if judges are less sensitive to cost overruns at the state level. A statewide program that pays for court-ordered medical and psychological exams and court-appointed witness and expert witness fees and transportation costs would require new infrastructure at the state level and a formal determination of the responsibilities that would be assumed by the counties versus the Director of State Courts Office. While some cost efficiencies could potentially occur through a centralized contracting process, it is likely that costs would increase once all circuit courts begin to provide the same base level of services. It should be noted that county costs for court-appointed witnesses and expert witnesses (and to a lesser extent medical and psychological exams) are only a fraction of total county witness and expert witness costs because district attorneys and others generally obtain these services.

✓ **GUARDIANS AD LITEM**

Current Funding Arrangement: Counties use a variety of methods for funding and recouping guardian ad litem (GAL) costs. Some counties contract with GALs, others pay for all GAL costs and then collect from those who can pay for the service, others require non-indigent persons to pay a retainer fee upfront to the county, while others pay only for those determined to be indigent. To offset some of the GAL costs incurred by counties, the State annually appropriates \$4.7 million paid to counties based on a statutory formula.

Strengths or Weaknesses with Current Funding: State funding for the GAL payment program, whose appropriation was originally set to cover all county GAL costs, has not been increased since its inception ten years ago. As a result, counties have been funding increasing amounts of GAL costs. Although statutory provisions do not allow a county's GAL payment from the State to exceed the county's GAL expenditures from the previous calendar year, the variety of methods counties have for providing this service and accounting for this expenditure does not ensure that each county is getting a uniform financial benefit.

Potential Strengths or Problems with Shift to State Funding: The state appropriation could be increased in the short term to fully fund GAL costs. This could be accomplished by continuing with the current GAL payment program as outlined in statutes and authorizing the Director of State Courts to provide direction on how counties account and report GAL costs to the Director of State Courts. Counties would need to continue efforts to recoup GAL costs. Alternatively, the State could assume direct payment of GAL costs. Authorizing the Director of State Courts Office to provide direction on the GAL program would help to ensure uniform application. However, it would be difficult to require all 72 counties to handle GAL expenditures in a uniform matter. The Director of State Courts does not have the authority or the ability to monitor each county's accounting practices. Alternatively, a new state GAL program would require new policies, procedures and infrastructure at the State level. Recoupment also could be more problematic. Efficiencies might be found in a state program if GAL appointments are established within districts.

Table 4

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **JUDICIAL/LEGAL RESOURCES/LEGAL RESEARCH (not public law library)***

Current Funding Arrangement: Under s. 757.40, Wis. Stats., a circuit court judge may purchase up to \$1,500 in law books and other legal subscriptions. The county board of supervisors must approve amounts over \$1,500. The \$1,500 limit was established in 1959. The State Law Librarian estimates, at today's prices, approximately \$5,000 per judge is needed annually for a core legal collection.

Strengths or Weaknesses with Current Funding: No guarantee exists that circuit court judges are getting the tools they need to make informed decisions, and the level of legal research support available for judges may vary considerably.

Potential Strengths or Problems with State Funding: The State could provide funding for judicial/legal resources and legal research tools in the short term. Since the Wisconsin State Law Library already provides similar judicial/legal resources/legal research tools to the appellate judges and justices in the State, moving this responsibility for the circuit courts under the control of the State Law Librarian would ensure that all circuit court judges are getting the basic resources to assist them in their judicial decision-making function. However, because different judges currently have different core collections, under standardization some judges would likely lose certain resources they currently have. A statewide program to pay for judicial/legal resources/legal research for all circuit court judges would require new infrastructure and staff at the state level especially within the Wisconsin State Law Library. Further, to the extent that some counties are not adequately supplying basic resources, costs could increase. Because of buying in volume, the State Law Librarian probably could assume some economies of scale that individual counties cannot achieve when buying books and subscriptions. However, counties would still be buying legal resource materials for their district attorney and corporation counsel offices, and some counties might lose economies of scale savings when no longer purchasing for judges.

✓ **JURY COSTS (excluding jury bailiffs)***

Current Funding Arrangement: Counties pay the fees and other related costs for jurors and those citizens who are so summoned. Statutes set minimum per diem rates at \$16 (they range from \$16 to \$50) and specify the mileage rate to be paid to jurors, which is currently \$0.325 per mile. However, statutes give county boards discretion in determining compensation for "one day or one trial" service (see s. 756.25 (3), Wis. Stats.).

Strengths or Weaknesses with Current Funding: As required by statute, the presiding judge or the judge designated by the chief judge to supervise the jury system administers the jury system. Clerks of circuit court typically select and manage juries. The Supreme Court is responsible for the administration of an effective and efficient state jury system. Counties provide funding for this core court service; it is however an allowable cost under the circuit court support payment program. Currently, operational management of the jury system is aligned closely with the funding source. Jury system costs are a product of both the need for this service (number of jury trials) and the management of those services. As a result, county costs can vary year to year due to unusually lengthy trials and jury management practices. Juror per diem and mileage rates are not uniform across the State even though jurors are providing the same service to the court system.

Potential Strengths or Problems with Shift to State Funding: The State could assume the funding responsibility for juror fees and costs in the short term through a reimbursement program or by making direct payments to jurors and for related expenditures. State funding of jury costs should provide for uniform statewide payments to jurors for the same service to the court system. For the Supreme Court to manage an effective and efficient statewide jury system, either counties would need to document expenditures in a manner directed by the Director of State Courts or the State would need establish a system whereby the Director of State Courts Office pays jurors and related expenditures directly. A state-funded program should help even out the fluctuations in

Table 4

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **JURY COSTS (continued)**

costs caused by occasional high-cost trials, but additional state funding could be required in years when demands for jury trials and their subsequent costs outstrip the budgeted amount. Under a reimbursement program, the Director of State Courts would need staff for its administration. Alternatively, a state juror management program would require new infrastructure at the state level and a formal determination of the responsibilities that would be assumed by the presiding judge for jury, the clerks of circuit court and the Director of State Courts.

PHASE 2:

✓ **FAMILY COURT COUNSELING SERVICES/MEDIATION***

Current Funding Arrangement: Counties finance family court counseling and mediation services. These costs partially funded by a \$20 family court counseling fee that is assessed at the commencement of most family actions, collected by the clerks of circuit court and deposited in a separate county account to be used by the county exclusively for family court counseling services under s. 767.11, Wis. Stats.

Strengths or Weaknesses with Current Funding: Because counties provide these services, each county has its own way of prioritizing, organizing, staffing and charging for these services and, consequently, may provide different levels of service to court users.

Potential Strengths or Problems with Shift to State Funding: The State could assume the funding responsibility for family court counseling services/mediation in the intermediate term. Uniform services can be achieved by requiring either counties to request reimbursement so the State can verify only allowable expenditures are being incurred at the county level or have the State handle all expenditures directly. Further, it will be necessary to transfer the revenue generated from the family court counseling fee from the counties to the State at the time of funding transfer. It is not known how much of the costs for providing these services are covered by the family court counseling fee or through other fees charged to non-indigent families, so the net cost to counties for these services is not known. Under a reimbursement program, the Director of State Courts would need staff for its administration. Also, it is likely that many of the clerks of circuit court would need additional staff to complete reimbursement reports. Alternatively, a State family court counseling/mediation program would require a new infrastructure at the state level and a formal determination of the responsibilities that would be assumed by the counties versus the Director of State Courts. Efficiencies might be found in a State program if family court counseling services are established within districts. Because of differing organizational structures, some counties contract out for family court counseling services, while others employ family court counseling staff. The potential transfer of county staff positions to state service raises difficult issues with differing classifications, salary levels and potential union affiliations.

✓ **PERSONNEL COSTS:**

- **COURT COMMISSIONERS**
- **COURT REPORTERS FOR COURT COMMISSIONERS**
- **COURT COMMISSIONER OFFICE SUPPLIES & EQUIPMENT (including repairs & maintenance)**

Current Funding Arrangement: All counties are required by statute to appoint a family court commissioner. In addition, Milwaukee County is required to appoint full-time probate and small claims court commissioners. Beyond these statutory requirements, each county determines its use of circuit court commissioners.

Table 4

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **COURT COMMISSIONER PERSONNEL AND RELATED COSTS (continued):**

Strengths or Weaknesses with Current Funding: Circuit judges and their court reporters are state-funded positions, while court commissioners and their court reporters are county paid. Court commissioners perform limited case functions that otherwise would be performed by judges, but also may have additional responsibilities. Use of court commissioners varies widely among counties, in part determined by the need for judges in that circuit. Court reporting for court commissioners also varies widely. In some counties, court reporters are hired as county employees for court commissioners; other counties use freelance court reporters, while others use recording devices in lieu of court reporters for some or most court commissioner proceedings. In one county, the administrator for court commissioners is paid more than circuit court judges.

Potential Strengths or Problems with State Funding: Transfer to state funding may mean counties are reimbursed by the State for the costs of court commissioners and commissioner reporting services or those county positions may become state positions. Either way, as state-funded positions, weighted caseload standards for court commissioners and standards regarding court commissioner duties would need to be developed. Current inequities among counties would be difficult to address without additional state funding.

One option is to reimburse counties for court commissioner use up to the caseload standards, which could allow counties to continue to fund positions above state standards. Such a reimbursement program would require additional staff in the Director of State Courts Office for proper administration. Another option would be to convert county court commissioners and court reporters to state employment. The State could provide more uniformity in salaries and fringe benefits and provide uniform job descriptions, and could assign court commissioners on a statewide basis using weighted caseload statistics. Although this would help move toward uniform salary structures, difficulties with such a switch would involve the differing classifications, salaries and employment status and the fact that some county court commissioners and court reporters are unionized. Salary and fringe benefit costs would likely increase as staff in those counties with salary and benefit structures below that of the State are brought into state service. Such an increase in state court staff would require more staff in the Director of State Courts Office. Further, the addition of positions to state employment conflicts with the current Administration's goal to reduce state employment by 10,000 positions over the next several years.

✓ **EDUCATION AND TRAINING FOR COURT COMMISSIONERS**

Current Funding Arrangement: Continuing legal education for judges, as required by Supreme Court Rule, is paid for by the State. Supreme Court Rule also provides specific continuing legal education requirements for court commissioners. Although the State has this mandate, the State does not pay for the training; either the court commissioner and/or the counties are expected to pay this expense. Funding for the provision of any other court staff training is the responsibility of whoever funds the position (the State or counties).

Strengths or Weaknesses with Current Funding: The 2001-2003 biennial budget created a program revenue appropriation that allows the Director of State Courts to provide educational programs specifically designed for court commissioners. However, since statutes do not define who should pay the fees to support such an education program, it has not been established.

Potential Strengths or Problems with State Funding: Along with any transfer of funding for court commissioners from counties to the State, the State should pay for any required education requirements by establishing a formal court commissioner education program under the Office of Judicial Education within the Director of State Courts Office. As a state responsibility, funding for the court commissioner education program would have to be funded with general purpose revenue.

Blueprint for Possible Transitioning of Core Court Services To State Funding

PHASE 3:✓ **PERSONNEL COSTS:**

- **JUDICIAL ASSISTANTS**
- **LAW CLERKS**
- **CLERKS OF CIRCUIT COURT & STAFF**
- **REGISTERS IN PROBATE & STAFF** (including juvenile clerks)
- **PERSONNEL-RELATED OFFICE SUPPLIES & EQUIPMENT** (including repairs & maintenance)

Current Funding Arrangement: Circuit judges and official court reporters are state-funded positions, while other circuit court staff who answer to a state-paid circuit court judge currently are funded by county governments. This bifurcated structure has caused problems on defining who has ultimate supervisory authority over some positions, especially in the area of managing the duties of judicial assistants. Also, not all counties are willing to provide adequate staffing to state-paid judges so not all circuit court judges have a judicial assistant or a law clerk. Finally, judges who are state-paid must submit budgets for supplies and services to county boards.

Strengths or Weaknesses with Current Funding: The circuit courts are operated by county-elected officials (circuit court judges and clerks of circuit court) who respond to the needs and expectations of their local populations. This is a definite strength, but also is a weakness in that uniform court staffing levels cannot be achieved. In addition, job descriptions and position classifications vary widely from circuit court to circuit court.

Potential Strengths or Problems with State Funding: Since the greatest costs of court services are personnel costs, state takeover of court services would necessarily mean that staff of the circuit court be funded by the State. Because of both the costs and inherent difficulties of dealing with 72 different staffing and classification structures, this transfer of funding would have to occur in the long term [with the exception of court commissioners and their court reporters, who could be transitioned to state funding in the intermediate term]. This may mean counties are reimbursed by the State for those positions required to support each branch of a circuit court or it may mean all positions supporting the operation of the circuit courts become State positions.

This approach will improve circuit court operations **only if adequately funded by the State** to meet the staffing requirements as defined by SCR 70.39. While some circuit court judges might gain staff, other judges could lose staff if their counties are providing more staff than required by state standards. One option is to reimburse counties for the staff provided to circuit court judges, which could allow counties to continue to fund positions above state standards. Such a reimbursement program would require additional staff in the Director of State Courts Office for proper administration. Another option would be to convert county circuit court staff to state employment. Having all state positions could allow for some economies of scale on a district-wide basis. For example, any circuit court judge within a district could tap a pool of law clerks. Furthermore, the State could provide more uniformity in salaries and fringe benefits and provide uniform job descriptions, and could staff positions for circuit court judges on a statewide basis using weighted caseload statistics. Although this would help move toward uniform salary structures and would promote uniform staffing levels in each circuit, such a switch would be a long and difficult process given the differing classifications and salaries and the fact that most county circuit court staff are unionized. Sufficient lead time for such a transition is critical for developing classification and compensation and implementation plans. Salary and fringe benefit costs would likely increase as staff in those counties with salary and benefit structures below that of the State are brought into state service. With as many as 1,700 circuit court positions involved, such a change would require significantly more staff in the Director of State Courts Office and in the district offices. Further, the addition of so many staff to state employment conflicts with the current Administration's goal to reduce state employment by 10,000 positions over the next several years.

Table 4

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **EDUCATION AND TRAINING FOR OTHER COURT EMPLOYEES**

Current Funding Arrangement: Continuing legal education for judges, as required by Supreme Court Rule, is paid for by the State. Supreme Court Rule also provides specific continuing legal education requirements for court commissioners. Despite this mandate, the State does not pay for the training; either the court commissioner and/or the counties are expected to pay this expense. Funding for the provision of any other court staff training is the responsibility of whoever funds the position (the State or counties).

Strengths or Weaknesses with Current Funding: For state-funded non-judicial staff, very little training dollars are available at the State level. Training for county-paid court employees likely varies considerably among counties.

Potential Strengths or Problems with State Funding: Funding for other court staff training should continue to be the responsibility of whoever funds the position (the State or counties). Should county court employees become state employees, the State would need to provide additional training funds for these employees. For staff currently county funded, training options might be more limited.

✓ **MAKING THE COURT RECORD (includes equipment/supplies and court-ordered transcripts)**

Current Funding Arrangement: Currently each circuit court judge appoints a state-employed official court reporter to his/her court room while the county provides court reporting services to circuit court commissioners. Most districts also have state-employed pool and district reporters who fill in for absent official reporters. Counties supply state-employed court reporters with varying levels of supplies and equipment to perform their job. Further, some counties use electronic recorders for their court commissioners as an alternative to court reporters.

Strengths or Weaknesses with Current Funding: There is no uniformity on what counties supply to county- or state-employed court reporters. For those counties with county-paid court reporters, there are differences in pay schedules, fringe benefits, and certification requirements between the county- and state-paid court reporters.

Potential Strengths or Problems with State Funding: To implement a blended statewide system consisting of both court reporters and alternative reporting technologies, the State should be responsible for making the court record in the long term. This would include the State paying for all equipment and supplies for state-funded court reporters as well as paying for court reporting needed by circuit court commissioners. This could be accomplished by the State reimbursing the counties for court reporting needed by circuit court commissioners or the State paying these types of expenses directly. Additional funding would be necessary to fund court reporting supplies and equipment. With the State assuming full responsibility to make the court record, staff would be needed within the Director of State Courts' Office to administer a reimbursement program or to process these expenditures directly to support 72 counties. Because of the complexities involved in the issue, this recommendation should be reexamined based on the outcomes of the current Chief Judges' Making the Record committee.

✓ **TRANSCRIPT REVENUE**

Current Arrangement: Transcript rates are set by state statute. State-employed official court reporters use their transcript income to pay for their equipment, supplies and training to the extent that counties do not supply these. Official court reporters must report their transcript income to the Director of State Courts Office, for which the Office pays the employer's share of employment taxes and retirement contributions. It is estimated that \$2.5 million in annual transcript revenue goes directly to those official court reporters who produce transcripts.

Table 4
Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **TRANSCRIPT REVENUE** (continued)

Strengths or Weaknesses with Current Approach: No procedures are followed by the State to ensure that everyone who requests a transcript pays for the transcript.

Potential Strengths or Problems with State Receipt of Transcript Revenue: In the long-term, the State could receive transcript revenue to offset some of the costs associated with making the court record. The practice of having court reporters maintain their transcript income is long standing, in Wisconsin and nationally. Some increase in court reporters' state-paid salaries would likely be necessary as a trade-off for lost transcript income. The Director's Office would need to set up an elaborate accounts receivable system to ensure anyone requesting a transcript pays the fee. Further, the State would need to assume all the costs of court reporting equipment, maintenance, repair, and other supplies for official court reporters. Under the overtime provisions of the Fair Labors Standards Act, other new costs would be incurred by the State because an official court reporter would change from exempt to non-exempt status. If transcript production were state-funded, fees charged to other government agencies could be reconsidered. Because of the complexities involved in this issue, this recommendation should be reexamined based on the outcomes of the current Chief Judges' Making the Record committee.

*County provides primary funding for this core court service but it is an allowable court cost under the circuit court support payment program and some state funding offsets the costs to the county.

Some points should be noted concerning the blueprint. First, the subcommittee did not recommend transferring any state funding responsibilities to the counties. Second, transfer of funding in the short term would not involve court personnel costs, with the exception of a limited number of court interpreter staff positions. In the intermediate term, personnel costs would be transferred for certain family court counseling services, and court commissioners and their court reporters. In the long term, it is envisioned that personnel costs for judicial assistants, and clerks of circuit court and registers in probate and their staffs would be paid by the State. It is further envisioned that counties would continue to retain the funding responsibility in the long term for court and court office facilities and utilities. This would include equipment (including court room video conferencing equipment), furnishings, repairs and maintenance, and facility services such as janitorial services.

The subcommittee focused some discussion on making the record (court reporting) issues. Because of the complexities involved that were determined to be beyond its scope, the subcommittee recommended to maintain the current mechanisms in the short and intermediate terms. In the long term, the subcommittee supported the recommendations found in the 1994 Legislative Audit Bureau evaluation of transcription technology in Wisconsin circuit courts to provide state funding of court reporter equipment, supplies and training, with the state retaining court transcript revenue. [A

Chief Judges committee has subsequently been formed to further study the issue of court reporting.]

Calendar Year 2002 County Costs of Phase 1 Core Court Services. When considering additional state financing of court costs, it may be instructive to examine the county-reported costs for those core services identified in Phase 1. These costs are allowable under the circuit support payment program as well as the GAL payment and interpreter reimbursement programs. It is important to note that calendar year 2002 county cost information on core court services, even if accurate, does not equate with funding needed to transfer those core court services to the State. As an example, counties provide different rates of compensation to jurors, with per diems ranging from \$16 to \$40 and mileage reimbursements, excluding Milwaukee County, ranging from \$0.29 to \$0.365 per mile (Milwaukee County pays a flat daily rate of \$3, plus provides a jury shuttle bus). A state juror payment system likely would require uniform rates and result in increased costs for some counties and decreased costs in others. Cost estimates would need to include estimated caseload growth and Director of State Courts Office processing and auditing costs.

With that in mind, it may be helpful to look more specifically at the un-audited calendar year 2002 county costs of those core services that the subcommittee has identified in the blueprint that could be transferred to the State in the short-term.

Jury Costs (Excluding Jury Bailiffs). Counties reported jury costs, including jury bailiffs, of \$3.9 million, of which 89 percent (\$3.5 million) were juror per diem, meal, lodging and mileage expenses. Other juror expenses of \$0.4 million include mail costs and jury bailiff costs that are not separated out.

GAL Compensation. GAL compensation totaled \$9.6 million, of which counties recouped \$2.5 million. With state payments totaling \$4.7 million, counties net reported GAL costs totaled \$2.4 million.

As required by statute, GAL cost information is collected by statutory chapter. While GAL compensation for Chapters 48 and 938 (Children's and Juvenile Codes respectively) cases represented 43 percent of total GAL costs, only six percent of the recouped funds were from those cases. Conversely, while Chapter 767 (Actions Affecting the Family) cases represented 35 percent of the total GAL costs, 76 percent of the recouped funds were from family cases.

The percentage of GAL costs recouped varied by county, reflecting differing county practices in these collection efforts as well as income levels. A potential concern with

state assumption of county GAL costs would be the possibility of minimizing county recoupment efforts if the State were paying these costs. ***The subcommittee recommends mechanisms to maintain the base level of recoupments and to encourage recoupment efforts be addressed in any proposal to transfer funding responsibility. This could include such mechanisms as county maintenance-of-effort requirements or performance-based reward systems.***

Court Interpreters. Counties reported \$0.9 million in interpreter costs, with state reimbursements totaling \$0.4 million, for a net cost of \$0.5 million. County costs resulted from interpreter expenses for cases not eligible for state reimbursement and for cases where the cost of the interpreter exceeded the state reimbursement limits. An analysis of these costs is complicated by the fact that statutory changes in court interpreter requirements and state reimbursements occurred on July 1, 2002. The impact these law changes will have on state reimbursements should be clearer with the 2003 county reports of actual court costs.

Court-ordered Medical and Psychological Exams and Court-Appointed Witness and Expert Witness Costs. Counties reported \$2.9 million in expenses for medical and other psychological exams; however, it is not known how much of this amount represents court-ordered exams. Court-appointed witness and expert witness costs were reported to total \$0.5 million, or 38 percent of the total witness and expert witness costs.

Judicial/Legal Resources/Legal Research (Not Public Law Library). Counties reported \$1.5 million in law library, books, subscriptions, reference materials, and electronic research. Since the costs of county law libraries are included, it is not known how much of the total would be attributable to judicial/legal resources and legal research.

In summary, counties reported a total of \$16.7 million in 2002 expenditures for the services listed above. Subtracting out the state GAL payments and interpreter reimbursements, counties net reported spending was \$11.6 million. This total, however, includes some costs (jury bailiffs, law libraries and medical and psychological exams not court ordered) that under the subcommittee's blueprint would not be transferred to the State.

Experiences of other states' conversions from county to state funding indicate that underfunding due to hidden costs would likely be a problem. ***The subcommittee recommends careful transition planning and the willingness of the Governor and Legislature to acknowledge and budget for these potential costs are important steps to mitigate the problems that other states have encountered.***

UNIFORM LEVELS OF COURT SERVICES

The subcommittee was charged with identifying a court funding mechanism that would promote efficiency and uniformity of services. Because circuit court operation has been a county responsibility, the range of core court services, and court-related services, varies considerably around the State. Perhaps the biggest challenge facing any plan to restructure the trial court financing system is the issue of uniform levels of services. The first goal of this effort should be to bring all courts up to minimum levels of services, which raises the issue of how to establish these minimum levels.

One way to accomplish this is to analyze staffing. First, the minimum number of judgeships needed should be determined, followed by the minimum level of staffing needed to support each judgeship. Another approach would be to determine objective measures of court performance to set minimum levels of acceptable performance. Such measures could include both efficiency measures, perhaps measured by case processing times or disposition rates, and effectiveness measures, which are harder to quantify.

Staffing Levels

Judicial Weighted Caseload. In Wisconsin and elsewhere, a weighted caseload measurement system is used to determine the need for judgeships based on objective factors. Under the methodology, judicial time needed is measured by totaling the various types of case filings and applying a relative weight, representing the average time needed to complete a case, to each type of case. Time available for case processing is the net of a full-time position, minus average leave time and average time spent on administrative tasks. These measures can be applied to each judicial circuit, providing an objective, albeit not perfect, way to estimate the relative caseload of each circuit. This information is useful in documenting the need for new judgeships and for chief judge use in assigning intra-district cases and determining the need for reserve judges. Under the most recent weighted caseload data (calendar year 2002), the calculated need for Wisconsin judgeships is 289.55, compared to the actual number of 241. Juneau County has the greatest need for a judgeship, with its one judge handling the workload of 2.05 judges. *The subcommittee recommends the judicial weighted caseload measurement system continue to be maintained to provide an up-to-date, objective measurement of judicial need.*

Other Court Staffing. Because counties fund circuit court staff with the exception of judges, official court reporters and Director of State Courts Office administrative staff, efforts to determine staff needed to support the circuit courts have been limited. At the

national level, the National Conference on State Courts' State Justice Institute in its 1996 monograph "Assessing the Need for Judges and Court Support Staff" describes, evaluates the criteria, and develops a range of alternative approaches for determining the need for judges and court support staff. According to the report, judicial productivity depends substantially on the effectiveness of trial court support staff. American Bar Association standards relating to court organization state: "The importance of capable and efficient professional assistance for an effective court system is second only to the importance of having competent judges." Despite this need, workload standards to assess the need for non-judicial employees have been underdeveloped in courts throughout the country. The State Justice Institute monograph concludes a weighted caseload system that explicitly accounts for the work required of court support staff both helps determine the adequate amount of time needed by court support staff to complete their workloads and provides people throughout the court system with a clearer understanding of the scope and content of the work performed by these employees.

One study did look at Wisconsin court staffing levels. "Court Staffing Levels in the Circuit Courts of Wisconsin: How Much is Enough?" prepared by Director of State Courts Office staff in 1992, evaluated whether the goal of timely and effective completion of tasks and duties of court support staff was being reached, what tasks were done and where there might be shortfalls. It also compared support staff increases with caseload increases and weighted caseload measures.

The study found that, other than constitutional and statutory provisions, there were no standards for staffing trial courts in Wisconsin. The study concluded that functionally, "the courts" and "support staff" are not separable. The adequacy of staffing directly affects a court's ability to carry out its constitutional and statutory mission. However, because objective standards are not available, decisions on staffing are rarely related to quantitative need.

To measure the objective of support staff performance of required work, the study looked at: 1) staff capacity to perform caseload-associated work; 2) performance of statutory duties of the clerk of circuit court; and 3) effective performance of non-statutory aspects of trial court responsibility. Staff capacity was measured by comparing 1981 and 1990 court staffing levels based on ratios of staff to judges and staff to caseload. The median staff-to-judge ratio increased over this time period, with the ratio decreasing in ten counties, with no change in three counties and with 58 counties increasing the staff to judge ratio. The ratio of staff to judicial weighted caseload also increased, but by a very small margin because caseload had grown faster than the number of judgeships. Wisconsin's staff-to-judge ratio was compared with two other states, with Wisconsin in the middle. It is important to note that in the 1992 study, law clerks, court

commissioners, court reporters, juvenile intake workers or other social workers were not included in the staff numbers, making comparisons of 1992 and 2002 staff-to-judge ratios not meaningful (2002 staff-to-judge ratios are described below).

Support staff also perform varied non-caseload related tasks, both statutory and other duties. A clerk of circuit court survey measured compliance in accomplishing these tasks. The results showed compliance with statutory requirements were most likely to be accomplished, while other tasks were less likely to be accomplished. The clerks identified tasks that could be improved with the addition of staff, a number of which relate directly to the National Center for State Court's (NCSC) five performance areas for which trial court performance standards have been established (see below for more information). For example, the Access to Justice performance area could be improved by reducing waiting time at the clerk's counter, better staff training in serving the public, and providing more assistance to self-represented litigants.

The findings of the study showed that while 1990 staffing levels appeared to be sufficient to perform case processing functions and state mandates, they were insufficient to support other required court functions. The study also showed a link between low staffing and inability to accomplish tasks. Recommendations included development of a weighted caseload formula for support staff case processing; assessment of staff levels necessary to perform judicial support and other functions not directly case-related; measurement of the public's opinions about court performance to be used in developing court management plans; and the identification of the most successful courts in meeting the NCSC trial court performance standards to develop models for operational organization, management and other factors that contribute to success.

Supreme Court Rules. Since the 1992 Wisconsin staffing study, the Wisconsin Supreme Court established the following staffing standards for circuit courts under Supreme Court Rules 70.39 (5) and (11). Note that in these rules, the word "should" is directory only, not mandatory, and connotes a duty or obligation to pursue a goal or objective.

Currently, s. 751.02, Wis. Stats., allows each circuit judge to appoint a full-time state-funded court reporter. The extent to which the other staffing standards are being met varies among counties. Further, while the Supreme Court rules establish directory standards for certain types of court support positions, they do not address staffing for case processing and other functions of the clerk of circuit court and register in probate/juvenile clerk.

SCR 70.39(5) Security -- personnel.

- (a) There should be no fewer than 2 properly trained, sworn officers acting as court security officers in each court room and each court commissioner hearing room when criminal, divorce, child custody and other family cases are before the court or when domestic abuse, harassment and child abuse injunction hearings are taking place. The judge or court commissioner may expressly direct otherwise. The judge or court commissioner in all other types of proceedings should be able to require the assignment of a court security officer to be present at particular proceedings.

SCR 70.39(11) Staffing.

- (a) Each branch of circuit court should be staffed by one full-time judicial assistant.
 - (b) Each branch of circuit court should be staffed by one full-time law clerk.
 - (c) Each circuit judge should appoint a full-time court reporter to serve in the branch to which the judge was elected or appointed.
 - (d) Each branch of circuit court should be staffed by one full-time or part-time court room clerk.
 - (e) Each branch of circuit court should be staffed by one full-time or part-time jury bailiffs.
-

County Court Staffing in 2002. The county annual report of actual costs form was expanded in 2002 to obtain staffing as well as cost information, so for the first time since the 1992 report unaudited court support staffing information is available. Counties were instructed to report the following full-time equivalent positions: a) clerks of circuit court office staff; b) registers in probate office staff; c) juvenile clerks office staff; d) circuit court commissioners, their court reporters and other administrative support staff to the court commissioners; e) family court commissioners, their court reporters and other administrative support staff to the family court commissioners; f) family court counseling services office staff; g) law clerks; and h) support staff for circuit court judges not reported above. This information, along with the number of state-paid official court reporters by county, was used to calculate staff-to-judge ratios by size of circuit, shown in **Table 5**.

It is important to note that court commissioners (including family court commissioners) are included as staff in the staff-to-judge ratios. The subcommittee discussed whether court commissioners should be classified as support staff to judges or as “judicial officers” along with judges to create a staff-to-judicial officer ratio. Since court commissioners perform case functions that would otherwise be performed by judges, a staff-to-judicial officer ratio may have analytic merit, especially in considering the workload of the clerk of circuit court offices. However, the consensus of the subcommittee was to look at judges separately from other court staff, including court commissioners.

Table 5
Staff-to-Judge Ratio by Size of Circuit

Number of Judges in Circuit	Number of Circuits	Average Staff-to- Judge Ratio	Median Staff-to- Judge Ratio
1	30	8.3	8.0
2 – 3	22	7.7	7.5
4 – 7	12	7.9	7.8
8 and Over	5	8.1	8.5
Total	69	8.1	7.9

Note: Unaudited information self-reported by counties

As shown in **Table 5**, the average number of support staff per judge was 8.1. Perhaps surprisingly, the staff-to-judge ratio varied little by number of branches in a circuit. However, the staff-to-judge ratio varied significantly by county. These differences can in part be attributed to the absence or presence of court commissioners, judicial needs of circuits (circuits with a greater need for judges generally have more support staff), and the differing functions assigned the clerks of circuit court offices by their respective counties. Inconsistencies in reporting also are likely. For these reasons, county-specific information is not included in this report. Nevertheless, if court services levels are defined as staff available to support court functions, these data suggest that court services levels may vary widely throughout Wisconsin.

While the county staffing information indicates that service levels may not be uniform, it does not tell us what the minimum staffing levels should be. The literature suggests the most objective way to measure support staff need is through a weighted caseload methodology. *The subcommittee recommends prior to any state takeover of county staff costs, a weighted caseload study be conducted to determine minimum circuit court staffing levels.*

Even with minimum levels, inequities in services still will exist, because some counties have gone beyond the minimum requirements in funding court and court-related services. Other states that have moved county court support staff to state positions have worked at obtaining uniform levels of services over time by increasing state funding and positions for those underfunded courts. This approach has worked well when state fiscal conditions allowed for the infusion of new money into the system. Another approach,

generally in conjunction with the first, is to shift support positions from courts with above average staffing to those with below average staffing as vacancies occur.

Given other states' experiences, previous Wisconsin court studies and the current disparity among counties, it must be assumed that some additional funding, either through the State, counties or some combination, would be needed to properly and uniformly fund Wisconsin's trial court system. However, given the fiscal realities of today and the foreseeable future, the likelihood of this being the only approach for achieving uniform levels of services may be unrealistic. Other methods that would need to be considered include reallocating resources and increasing court efficiency.

Whether transferring funding responsibility for certain court services would result in greater efficiencies and cost effectiveness is a principle the subcommittee considered in its deliberations, but came to no specific conclusions. Some efficiencies can perhaps be achieved through centralization of certain functions, but this raises the issue of reduced local control and local involvement in the court system, which can create problems for the portions of the court system that remain county funded. This issue would need to be addressed further as transition plans are developed.

Court Performance Standards

Another way to look at minimum levels of services is to measure trial court performance against specified performance standards, which aim to measure efficient and effective court performance.

Efficiency Measures – Case Processing Benchmarks. A central concern in the management of trial courts is the timely disposition of caseload. Time standards for the processing of court cases have been adopted by a variety of organizations, including the Conference of Chief Judges, the Conference of State Court Administrators, and the American Bar Association, and by Wisconsin's chief judges and district court administrators. **Appendix IV** shows these case processing time standards.

Table 6 shows how the circuit courts have met the Wisconsin benchmarks in calendar years 2001 and 2002. Excluding probate cases, in 2001 and 2002 the median time to disposition for all case types were within the benchmarks. However, excluding probate cases, the percent of cases meeting the benchmark ranged from a low of 48 percent of 2002 criminal traffic cases to a high of 93 percent of 2002 other civil cases. (Probate cases are excluded from this analysis because a committee of district court administrators, registers in probate and judges is currently reviewing probate benchmark and procedures.)

The percentage of criminal cases meeting the benchmarks declined slightly from 2001 to 2002, while the percentage of civil and family cases meeting the benchmarks improved slightly or stayed the same. With increased court caseloads along with increased case processing times due to self-represented litigants on the civil side and statutory mandates on the criminal side, and no increases in the number of judgeships, improvements in meeting the benchmarks will be a challenge.

Case Type	Wisconsin Standard	CY 2001		CY 2002	
		Disposed Cases	% Meeting Standard	Disposed Cases	% Meeting Standard
Criminal Cases					
Felony	6 months	30,331	72%	29,863	71%
Misdemeanor	3 months	68,471	60%	69,865	58%
Criminal Traffic	3 months	40,028	50%	38,417	48%
Traffic (Contested)*	4 months	67,406	83%	66,914	81%
Forfeiture (Contested)*	4 months	14,887	82%	15,732	81%
Civil Cases					
Personal Injury/Property Damage	18 months	8,012	76%	7,768	78%
All Other Civil	12 months	39,711	92%	43,035	93%
Small Claims (contested)	3 months	13,448	60%	12,545	60%
Family Cases					
Divorce	12 months	22,341	78%	21,583	79%
All other family	6 months	29,471	79%	30,803	82%
Probate Cases					
Estates	12 months	2,202	35%	1,871	35%
Informal Proceedings	12 months	8,986	39%	8,601	39%

*Percent meeting standard estimated

Effectiveness Measures – NCSC Trial Court Performance Standards. A commission of judges, court managers and researchers established by the NCSC and the U.S. Department of Justice’s Bureau of Justice Assistance developed trial court performance standards, established in five performance areas: 1) access to justice; 2) expedition and timeliness; 3) equality, fairness, and integrity; 4) independence and accountability; and 5) public trust and confidence. Within these five areas, 22 standards were established as goals for effective court performance (see **Appendix V**). Several of

the standards directly relate to court financing (e.g. “Court facilities are safe, accessible and convenient to use”; and “The trial court responsibly seeks, uses and accounts for its public resources”) while many of the others are indirectly related to funding. However, these qualitative standards are not easily measurable; NCSC has developed a self-assessment measurement tool that requires significant investments of time and money that is beyond the scope of this subcommittee. Therefore, the subcommittee made no recommendations in regards to trial court performance standards.

ADMINISTRATIVE AND OPERATIONAL RESPONSIBILITIES

As the subcommittee discussed the issue of administrative responsibility for the core court services, it became apparent that “administrative responsibility” encompasses multifaceted issues. One area is operational responsibility: what entity of government is responsible for the day-to-day operations of the core service. Another area is administrative responsibility: what entity is responsible for policy development and fiscal and administrative oversight of the core service. *The subcommittee believes funding and operational responsibilities can, but need not, go hand-in-hand. Some court services could be state funded with counties maintaining operational responsibility, along with state policy and administrative oversight.*

Personnel Issues

The subcommittee did not recommend whether any or all of the county court staff positions should become state employees under a state takeover of personnel costs. It may be that all positions would transfer to state employment, some positions would transfer to state employment while others would remain county staff, or all positions remain with the counties. In making these determinations, the administrative complexities in transferring county employees to state employment must be acknowledged: the 72 counties have differing organizational structures, position classifications, pay ranges and union contracts. Experience with previous court-related personnel transitions has been limited. The transfer of trial court judges and their court reporters to state employment involved two classifications, while the transfer of prosecutors to state employment involved three classifications (district attorney and deputy and assistant district attorneys). These transfers were not without difficulties in establishing equitable pay ranges and transferring fringe benefits. Further, any transfer of personnel from county to state employment would likely involve some salary and fringe benefit increases as classifications are brought into the Supreme Court personnel system. Because of these inherent challenges, *the subcommittee recommends the State not take on county personnel in the short term.*

At minimum, *the subcommittee recommends that before any transfer of personnel to state employment a classification and compensation study be conducted to standardize position titles, classifications and functions of each affected position.* Collective bargaining issues also would need to be addressed since state-funded court employees are prohibited from participating in collective bargaining. The responsibilities and assignment of court commissioners is an area that could require specialized attention because of the differing practices among counties in court commissioner use and the employment status of court commissioners (full-time and part-time employees and independent contractors).

One concern with transferring personnel to state funding is how to control costs during the transition period. Other states that have transferred personnel funding have either addressed these concerns upfront or ended up with unanticipated costs to the state. *The subcommittee recommends any transition plan include provisions to control transitional costs, such as not allowing counties to create new positions, modify the salaries of existing positions or fill certain vacancies without approval of the Director of State Courts and the chief judge of the district during a certain period of time preceding transfer to state employment.* If court support staffs remain county positions, development of a state payment mechanism likely will have to address equity concerns created by different levels of county court support staff.

Court Administrative Structure

While the subcommittee's discussion of administrative responsibility largely focused on the State and counties, the court administrative structure is another entity to consider. Supreme Court Rule 70.19(1) reads in part, "The chief judge is the administrative chief of the judicial administrative district. The chief judge is responsible for the administration of judicial business in circuit courts within the district, including its personnel and fiscal management." SCR 70.19(3)(k) notes that the chief judge has the duty of "[s]upervision of court finances including financial planning, the preparation of budgets and fiscal reporting where necessary and required." As such, it could be considered that current rules vest ultimate administrative responsibility for financial accountability in the chief judge, even when much of the courts are county funded. The extent to which the chief judge takes such an active role at the present time varies considerably from district to district. With a continued state-county funding mechanism and the potential of a greater split between funding and operational responsibilities, care would need to be taken to control costs. As a result, *the subcommittee recognizes the oversight and administrative roles of the chief judges will increase.*

SCR 70.27 vests responsibility in the Director of State Courts for developing uniform budgetary policies and procedures for the expenditures of state funds for the judicial administrative districts. Under SCR 70.27, expenditure of state funds by a chief judge is subject to approval by the Director. Within the judicial administrative districts, numerous individuals currently have administrative responsibility for ensuring funds are properly managed and budgets are adhered to: clerks of circuit court, registers in probate, judges, district court administrators, as well as county administration officials.

If additional state funds were used to finance certain circuit court operations, the Director of State Courts would have much greater responsibility under SCR 70.27 and would require additional resources. Fiscal and budget responsibilities would certainly increase, along with human resources, depending on which entity would employ local court staff. These additional responsibilities also could include the development of administrative policies or recommendations for Supreme Court Rules to provide more uniformity and oversight in the funding of certain state-funded court services. *The subcommittee recommends any state funding initiative include sufficient funding and staffing resources for central administrative requirements.*

As a state-funded service, the Governor and Legislature may wish to include statutory requirements along with any funding provided. *The subcommittee recommends the other branches work closely with the judicial branch in developing any statutory requirements affecting the circuit courts.*

Differing State Funding Mechanisms

The subcommittee does not recommend specific administrative and operational structures with any move to state financing. The subcommittee did identify the inherent advantages and disadvantages with different state funding mechanisms, which are summarized in **Table 7**. *The subcommittee anticipates operational planning and policy development will result in specific recommendations if and when a transition period approaches.*

Table 7
Differing State Funding Mechanisms

Non-Personnel Costs (examples: juror, GAL, witness, expert witness, interpreter, and judicial research/resource costs)

-- *Director's Office administers non-personnel costs for counties*

Pros:

- ✓ Counties will be relieved of funding responsibility, so cost increases would not have to be borne by counties
- ✓ Uniform guidelines for payments could be developed, providing greater equity
- ✓ Director's Office could audit payments to assure guidelines are followed
- ✓ Allows for potential savings through state purchasing contracts
- ✓ Most direct move to state funding

Table 7
Differing State Funding Mechanisms

Cons:

- ✓ Differing practices among counties would need to be addressed and could create resentments. Some county payments would likely be reduced (e.g. juror payments), while other county payments will likely be increased
- ✓ Director's Office administrative costs and staff resources to process payments would increase significantly
- ✓ Accountability to hold the line on costs could be reduced; increased monitoring by Chief Judges, district court administrators and Director's Office staff would be required
- ✓ Possibility that total costs would be higher under a state system than a county system
- ✓ Cost increases would have to be funded by the Legislature, which may prove difficult. Judges likely would not have as much clout with the Legislature as many currently have with their county executives and boards

-- *Director's Office reimburses counties for non-personnel costs (example: current interpreter reimbursement program)*

Pros:

- ✓ Costs in state budget would be reflected as local assistance, not state operations
- ✓ Reduces Director's Office administrative costs somewhat from the direct payment model
- ✓ Would allow for the State to possibly provide for a certain level of minimum payments, while allowing counties to go beyond the minimum if they so choose based on local expectations

Cons:

- ✓ Differing practices among counties are more difficult to address; the State might have to cap payments at a certain amount, leaving some counties still covering some costs
- ✓ Cost increases might be borne by counties if state funding does not keep pace with increased costs
- ✓ Director's Office administrative costs and staff resources to process reimburses would increase
- ✓ Accountability to hold the line on costs might be reduced if counties anticipate state reimbursement, while the State's ability to control costs may be more limited
- ✓ Incentives for counties to control costs would need to be developed, such as performance-based payments
- ✓ Increased monitoring by Chief Judges, district court administrators and Director's Office staff would be required
- ✓ Counties' overhead costs including staff resources would increase to administer the details of the State's reimbursement program
- ✓ Difficult to prorate dollars equitably among counties if the State does not provide sufficient funds under a reimbursement program

-- *Formula-driven state payment programs to offset non-personnel costs (examples: current circuit court support and GAL payment programs)*

Pros:

- ✓ Least expensive for Director's Office to administer
- ✓ Mechanisms to increase funding could be built into statutory language
- ✓ Counties could maintain existing payment policies if they wish
- ✓ Accountability to control costs would remain at local level where there is likely the better ability to do so

Cons:

- ✓ Formulas may be controversial to develop and difficult to modify when conditions change because of winners and losers (e.g. youth aids and shared revenue formulas)
- ✓ State has a history of not fully funding programs as costs increase
- ✓ Equity in funding core court services least likely to be achieved
- ✓ May never have a true state-wide cost of courts because there would be no incentive for uniformity in

Table 7
Differing State Funding Mechanisms

accounting for court costs among counties

- ✓ Despite these state-funded financial assistance programs, the misconception may continue that the courts are an unfunded state mandate since counties will provide administrative support
- ✓ Easier for the Legislature to reduce funding or eliminate this type of financial assistance program

Personnel Costs (examples: judicial assistants, court commissioners and their county-funded court reporters, clerks of circuit court and their staff, registers in probate/juvenile clerks and their staff, family counseling service staff)

-- *Transfer county court positions to state employment*

Pros:

- ✓ Court system truly would become primarily a state-funded system
- ✓ Would provide a consolidated administrative structure
- ✓ Would provide uniformity across the court system in position classifications, pay structure and fringe benefits
- ✓ Likely to improve wages and fringe benefits for certain county employees
- ✓ Would allow, in the long run, shifting positions among counties to provide equity in service levels
- ✓ Potential to allow for economies of scale and less duplication
- ✓ Would give the Court greater control over personnel policies (e.g. hours)
- ✓ Would provide for a clearer understanding of resource requirements and would be easier to implement state-wide changes
- ✓ Would make clear that court staff are employees of the judicial branch

Cons:

- ✓ Significant administrative costs of merging 72 different court administrative and organizational structures into one state system
- ✓ Concern that the executive and legislative branches will not see the court system as a priority, resulting in inadequate staffing
- ✓ Loss of local control, reduced flexibility
- ✓ Would make the circuit courts more remote from the local community
- ✓ Concerns that unique local needs will not be properly addressed
- ✓ Potential increases in ongoing monitoring and administrative costs
- ✓ Concerns about overdependence on one source of funding
- ✓ Danger that as the circuit courts are seen as a state system, court officials would have a more difficult time getting counties to fund court-related services and programs

-- *State reimburses counties for county personnel costs*

Pros:

- ✓ Less costly for the Director's Office to administer
- ✓ Would avoid long-term personnel issues such as retirement status and benefits
- ✓ Would allow for circuits to maintain their unique organizational and administrative structures
- ✓ As county employees, court staff could more readily maintain local community ties for obtaining local court-related services

Cons:

- ✓ Funding formulas and mechanisms would need to address differing levels of court staffing
 - ✓ Inequities in core service levels throughout court system would likely remain
 - ✓ State has a history of not fully funding programs as costs increase
 - ✓ Director's Office administrative costs and staff resources to process reimburses would increase
-

State-County Partnership

The subcommittee's long-term vision for circuit court funding is predicated on the premise that trial court funding should continue to remain a partnership between counties and the State. As part of the state-county partnership, *the subcommittee recommends counties be encouraged to go beyond the core court services when funding the courts because innovation in court procedures and programs are best approached at the local level.* The State should, however, provide financial incentives to encourage local development of innovative programs. Research has shown investment in local court-related programs can help to reduce state correctional costs over time and make our communities safer.

While in the long term state funding would provide an opportunity to make levels of core court services more uniform, it must be remembered that the courts are just one piece of the justice system. *The subcommittee urges care be taken at the local level to ensure counties continue to fund the ancillary services on which the court relies, including mental health and alcohol and other drug abuse programs.*

As the Chief Justice of California stated in his 2003 State of the Judiciary address, "A fully functioning and accessible system of justice is essential not only for those who appear at the courthouse door, but for all of society." The circuit courts, on the front lines of the judicial system, work to provide the people of Wisconsin with independent, open, fair, and efficient resolution of disputes. Stable and adequate court financing is essential to enable the circuit courts to successfully fulfill their mission. This can occur only through the continued collaboration between the judicial branch and local and state elected officials in other branches of government who understand the role the courts play in our democratic form of government.

* * * *

APPENDIX I

Summary of Benefits and Problems of State Court Financing

Evidence on Asserted Benefits of State Financing:

More money for courts. Indicators suggest that state-financed court systems fare slightly better in aggregate appropriations than non-state financed systems.

Increased equity in funding across courts. Evidence supports that state funding generally decreases inequities. New money flowing into the system increases resources for those courts that are underfunded while making resource-rich courts poorer as existing resources are transferred.

Greater efficiencies and cost savings through economies of scale. Evidence is very mixed but generally unresponsive of this assertion.

Easier to temporarily shift resources/personnel on short notice. Evidence supports this especially if court employees become state employees.

Better and more uniform financial management practices. Evidence is mixed but practices in more poorly managed courts can be improved.

Relief from the vagaries of local government financial problems. Evidence supports this but it is unclear whether problems are merely transferred to the state level.

Relief of local governments. Local governments receive financial relief but problems may continue with state and local employees working together and tensions about physical space costs.

More and better quality control monitoring. Some evidence supports more monitoring to deal with serious and obvious problems but no evidence that monitoring is qualitatively oriented.

Improved personnel systems. Evidence is mixed.

Evidence on Asserted Problems of State Financing:

More recession-sensitive revenue sources. Some evidence supports this.

Less attention to local perceptions of needs and services. No evidence collected yet supports this.

Increased overall system costs. Anecdotal evidence supports this.

Input of trial courts in the budget planning process minimized. This is highly dependent on whether state assumption of costs is coupled with a highly centralized administrative system.

Increased bureaucratic control, monitoring and red tape. Evidence indicates greater state-level monitoring and reporting requirements except when using block grants for state financing; bureaucratic costs with regard to personnel actions appear to be the most bothersome.

Removal to a climate of greater competition for resources. Strong evidence suggests that trial courts are placed in direct competition with one another. Some evidence suggests that as the judicial branch budget becomes more visible due to its increased size, it is subject to greater scrutiny and predation.

Formula-driven, quantitative definitions of budget needs. Evidence supports this, especially in highly centralized systems.

Local judge's power to allocate funds diminishes. No evidence directly on this point is available yet.

Source: John K. Hudzik and Alan Carlson. *State Financing: Benefits and Problems (Preliminary Evidence)*. Unpublished course materials for Resources, Budget and Finance Workshop, 2002.

APPENDIX II

WCA Courts Funding Committee Court Costs

Personnel/Support Staff	District Attorneys
Clerks of Circuit Court Office	Supplies and Materials
Judges	District Attorney Investigators
District Attorneys	
Judicial Assistants	Corporation Counsel
Probate	
Juvenile	Juries – per diem, transportation, lodging, meals, etc.
County Court Reporters	Prisoner Transport
Deputy Clerks of Circuit Court	
Law Clerks	Training
Clerks of Circuit Court	Court Commissioners
Judges Salaries	Judges
State Official Court Reporters	
	Guardians ad Litem
Family Court Commissioners	Family Counseling Services
Judicial Court Commissioners	Mediation
	Psychological/Medical Exams
Director of State Courts Office	Advocate Counsel
Office of Judicial Education	Witness/Expert Witness Fees
Circuit Court Automation Program	Called by Court’s Own Motion
	Called by Guardian ad Litem
Security	Called by District Attorney
Court Security Officers	Called by State Public Defender/Indigent Counsel
Bailiffs	Called by Other County Office
Perimeter	Court Interpreters
Jury Bailiffs	Victim-Witness Services
	Court Appointed Special Advocates
Space (Rental)	Transcript Costs
Utilities	
Assets and Replacement of Assets	Law Libraries
Office Supplies and Materials	Court Reporter Equipment
Technical Support/Data Processing	
Human Resources	Videoconferencing Equipment
Maintenance	
Operating Costs	Jail Diversion Services
Telephones, Paper	Pre/Post Disposition
Postage	Juvenile Intake – Restitution
Equipment	
Furnishings	Travel
Insurance	Membership Dues
Capital/Construction Costs	
State Public Defender	Court Record Retention
Indigents	Records Management

ANNUAL REPORT OF ACTUAL COSTS
Under §758.19(5)(e), Wis. Stats.

Return this report no later than May 15, 2003 to:
Director of State Courts Office, Management Services
110 E. Main St., Room 430, Madison, WI 53703

<p style="text-align: center;">Use Microsoft Excel to complete this form on-line. All fields highlighted in yellow will automatically calculate if form is completed on-line.</p> <p>Report is due May 15, 2003</p> <p>For period covering January 1, 2002 through December 31, 2002 Failure to submit report by due date will result in penalty per §758.19(5)(D)&(6)(b), Wis. Stats.</p>	<p style="text-align: center; font-weight: bold;">Name of County:</p>
--	---

The following amounts were actual total costs incurred by this county in calendar year 2002

1. Salaries and Fringe Benefits for Judicial Assistants

<p>a. Report the number of full time equivalent positions during the past calendar year which were filled as judicial assistant and performed <u>only</u> the job duties described in the position description provided in Attachment A.</p> <p><i>Note: Positions reported in Part a cannot also be reported in Part b.</i></p>	<p>c. Total salaries of full time equivalent positions reported in Parts a and b</p>
<p>b. Report the number of full time equivalent positions during the past calendar year that performed judicial assistant duties for judges (as described in Attachment A), BUT also performed other duties (i.e. deputy clerk of court, court calendaring clerk, etc.). Complete the worksheet in the instructions to assist you in calculating the full time equivalent positions that need to be reported.</p>	<p>d. Total Fringe Benefits (Based on actual cost or budgeted percentage)</p>
<p>e. Total (c + d)</p>	<p>e. Total (c + d)</p>

NOTE: In Parts c-e report the salaries and fringe benefits paid during the past calendar year to the full time equivalent positions identified in Parts a-b

2. Juror Fees Under s. 59.77(8):

<p>a. Total per diem costs</p>	Daily Fee:	County's daily rate \$	per day (juror per diem).	
	Meals:			
	Lodging:			
b. Total mileage expenses			Based on mileage rate of \$	per mile
c. Other juror expenses (jury bailiff costs, mail costs, etc.)				
d. Total (a + b + c)				

3. Witness and Expert Witness Costs:

Who Subpoenaed?	(a) Witness Fees	(b) Expert Witness Fees	(c) Travel & Other Expenses	(d) Total a + b + c
Court				
District Attorney				
State Public Defender				
Other				
Total				

4. GAL Compensation

Statutory Chapter	Amount	Statutory Chapter	Amount
a. Chapters 48 & 938		a. Chapters 48 & 938	
b. Chapters 55 & 880		b. Chapters 55 & 880	
c. Chapter 767		c. Chapter 767	
d. Other		d. Other	
e. Total		e. Total	

5. Recoupment of GAL Fees

Total Calendar Year 2002 Expenditures From Court System Budgets

6. Detail of Court Costs: List calendar year expenditures for all the county's court budgets under the most appropriate budget heading. For example, if all court branches within the county maintain a separate budget, expenditures for all branches should be combined and reported under the Circuit Court column. Or, if the register in probate's budget is included in the clerk of court's budget, report all expenditures under the Clerk of Court column. See instructions for more detail. **DO NOT** include any non-court budget expenditures in this section.

a. Expenditure Type (report total calendar year expenditures for each court budget, if no expenditures, show \$0)	Circuit Court	Clerk of Court	Register in Probate/Juvenile Clerk	Family Court Commissioner	Family Court Counseling Services	Circuit Court Commissioner	Totals
Salaries							
Fringe benefits							
Attorney costs: indigent counsel							
Attorney costs: GAL costs (same as 4c)							
Attorney costs: other attorney fees							
Data processing charges							
Equipment & furnishings (purchase/lease)							
Insurance (excluding items reported in fringe benefits)							
Interpreter fees							
Juror expenses (same as amount in 2d)							
Law library, books, subscriptions, reference materials, electronic research							
Medical & other psychological exams							
Membership dues							
Office supplies							
Postage & mail service							
Printing & photocopying							
Repairs & maintenance - equipment							
Telephone/telecommunications							
Transcripts							
Travel and training for employees							
Witness & expert witness fees							
Rent							
Utilities							
Court security							
Court facility repairs & maintenance							
Capital outlays for rehabilitation and/or construction of courtroom facilities							
Department chargebacks (see Section 6c on page 3 to complete)							
Miscellaneous expenditures (see Section 6d on page 3 to complete)							
Total calendar year expenditures							
6b. If total calendar year expenditures is \$0, budget where costs are included*							

*If total calendar year expenditures is \$0 in one of the above columns, identify the column where these court costs are included. For example, if register in probate costs are included in the clerks of court budget, in item 6b in table above under Register in Probate column type in Clerk of Court (or COC). If a function does not exist at the county, type NA for Not Applicable.

8. Calendar Year 2002 Staffing Levels For County Court Budgets Under Section 8, provide the number of full-time equivalent (FTE) positions that are a part of each area/office within the County's circuit court. For example, if 40 hours in a week is equivalent to a FTE and a person is working 30 hours in a work week that would be .75 FTE). It is important to list each county-funded court position once in the table below. **Do not double-count positions.**

a. Indicate the number of hours in a county work week for determination of FTE calculations (i.e. 40 hours, 37.5 hours, etc.)	_____ hours
b. Number of FTE positions within the Clerks of Circuit Court Office (include the Clerk of Circuit Court but exclude register in probate, circuit court commissioner(s), family court commissioner(s), court reporter(s) or law clerk(s) and other positions counted in 8c, 8e, 8f, 8h, 8i, and 8j)	
c. Number of FTE positions within the Registers in Probate Office (include the Register in Probate)	
d. Number of FTE positions within the Juvenile Clerks Office if a separate office exists	
e. Number of FTE Circuit Court Commissioner positions	
f. Number of FTE county-paid court reporter positions supporting Circuit Court Commissioner(s)	
g. Number of FTE positions providing other administrative support to Circuit Court Commissioner(s) not reported above	
h. Number of FTE Family Circuit Court Commissioner positions	
i. Number of FTE county-paid court reporter positions supporting Family Circuit Court Commissioner(s)	
j. Number of FTE positions providing other administrative support to Family Circuit Court Commissioner(s) not reported above	
k. Number of FTE positions within Family Court Counseling Services Office not reported above	
l. Number of FTE Law Clerk positions	
m. Number of FTE positions providing support for Circuit Court Judge(s) not reported above	
Total Calendar Year 2002 Staffing Levels in County Court Budgets	

9. Court Security Please provide as much detail as possible below on what court security is provided by the county (i.e. number of court security officers provided per type of court proceeding, then number of jury bailiffs provided during jury trials, etc.) in addition to information on what county budget incurs the cost of court security.

a. Identify the county budget(s) that include the cost of court security and the dollars budgeted for court security during calendar year 2002 (i.e. clerk of court budget - \$50,000; sheriff's budget - \$75,000, etc.)			
b. Does court security at the county include courtroom security, courthouse security or both? Check boxes that apply.	<input type="checkbox"/> courtroom security	<input type="checkbox"/> courthouse security	
c. Is courtroom security provided: (check boxes that apply)	for certain types of cases		
<input type="checkbox"/> at all times in each courtroom and court	<input type="checkbox"/> on a case-by-case basis	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> commissioner hearing room	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> other arrangement; please explain: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. When provided, how many court security officers are in each courtroom and commissioner hearing room?			
e. Number of jury bailiffs usually provided by the county for a jury trial	0	f. Are jury bailiffs deputized?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Signature of Person Completing Report	Date (mm/dd/yy)	Name of County:
Name (Printed or Typed):		Phone (Area Code):
Job Title:		Fax (Area Code):

Instructions for Completing Form CC-47, Annual Report of Actual Costs

Questions? Contact Brian Lamprecht at (608)266-6865 or at fiscal.office@courts.state.wi.us

1. Salaries and Fringe Benefits for Judicial Assistants

- Report the number of full time equivalent positions during the past calendar year that were **titled** judicial assistant and performed **only** the job duties in the position description provided in **Attachment A**. The positions reported in **part a** cannot be reported in **part b**.
- Report the number of full time equivalent positions during the past calendar year that performed judicial assistant duties for judges (as described in **Attachment A**) BUT also performed other duties (i.e. deputy clerk of court, court calendaring, etc.). Complete the following worksheet to assist you in calculating the full time equivalent positions that need to be reported. The positions reported in **part a** cannot be reported also in **part b**.

In **Column (1)** list the position title of the person who provides judicial assistance duties to a circuit court judge (i.e. deputy clerk of court, register in probate, calendar clerk, etc.).

In **Column (2)** identify the full time equivalent (FTE) of the position listed (i.e. if this person works ¾ of a full-time position, then in **Column (2)** enter .75).

In **Column (3)** identify what portion of this position's FTE is dedicated to performing judicial assistance duties. For example, if the .75 FTE spends 10 percent of his/her time performing judicial assistance duties, then enter .075 in **Column (3)** (.75 x 10 percent).

Total the FTEs identified in **Column (3)** and report this total in **Part 1b** on form CC-47.

Column (1) Position Title	Column (2) Full-time Equivalent (FTE) Position	Column (3) Portion of FTE providing Judicial Assistance Duties to a Judge
Total Judicial Assistance FTE provided to Circuit Court Judges (FTE that must be reported in Part 1b on form CC-47)		

**DO NOT SUBMIT
THIS
WORKSHEET TO
THE DIRECTOR
OF STATE
COURTS'
OFFICE**

- Total salaries of full time equivalent positions reported in **parts a** and **b**. The amount entered in this field should be the total salaries paid in the past calendar year to the full time equivalent positions identified in **parts a** and **b**.
 - Total fringe benefits paid in the past calendar year to the full time equivalent positions reported in **parts a** and **b**.
 - Total of the salary amount entered in **c**. and the fringe benefit amount entered in **d**. This field should automatically calculate.
2. **Juror Fees Under s. 59.77(8)**
- Total per diem** costs paid to jurors during the past calendar year. These per diem costs should be broken down by the daily fee paid to jurors, the related meal costs paid to jurors in addition to the lodging costs paid on behalf of jurors. Each county also must identify the daily fee rate paid to jurors (i.e. \$25/day, \$16/day, etc. **Please do not report half-day rates**).
 - Total mileage expenses** paid to jurors during the past calendar year. Identify the mileage rate reimbursed to jurors. Please be aware that s. 756.25, Wis. Stats. requires jurors to be reimbursed at the same rate as the mileage rate set under s. 20.916(8), Wis. Stats. which is \$.325/mile.
 - Other juror expenses** paid by the county during the past calendar year. Other juror expenses include such items as jury bailiff costs, mail and telephone costs, motor coach transportation, magazine subscriptions, etc.
 - Total**. This field should automatically calculate and total the total juror fees paid. This amount also will be under section 6, Juror Fees.
3. **Witness and Expert Witness Costs**
- Court row:** identify the amount of fees paid by the county for witnesses or expert witnesses called on the court's own motion or by the GAL.
- District Attorney row:** identify the amount of the fees paid by the county which relate to requests for witnesses or expert witnesses made by the district attorney.
- State Public Defender row:** identify the amount of the fees paid by the county which relate to requests for witnesses or expert witnesses made by the state public defender.
- Other row:** identify the amount of fees paid by the county which relate to requests for witnesses or expert witnesses by other county offices such as the corporation counsel, coroner, medical examiner or other.
- Travel & Other Expenses column:** include in this column other costs incurred by the above categories (Court, District Attorney, State Public Defender, Other) such as travel and lodging related to witnesses and expert witnesses.
- Total column:** the amount in this field should automatically calculate and sum the amount paid by the county for witness and expert witness fees.
- GAL Compensation:** identify the amount paid during the past calendar year by the county for Guardian Ad Litem (GAL) services. As required by statute, these costs must be reported by statutory chapters (i.e GAL services provided under Chapters 48 and 938, GAL services provided under Chapters 55 and 880, GAL services provided under Chapter 767).
 - Recoupment of GAL Fees:** identify the amount the county recouped from third parties during the past calendar year for GAL services provided. Again, the amount recouped must be broken reported by statutory chapter (Chapters 48 and 938, Chapters 55 and 880, and Chapter 767).
 - Detail of Court Costs:** Expenditures must be identified by the county's established court budgets. For example, if a county has a budget for each court branch, all court branch budgets must be consolidated and listed under the Circuit Court column (i.e. expenditures for branch 1 and branch 2 should be combined and reported under Circuit Court). Likewise, if expenditures associated with the register in probate normally are included in the clerk of circuit court's budget rather than being in a separate budget then **do not** split out the register's expenditures; report these expenditures as part of the clerk of court's budget. **Non-court budget expenditures must not be reported in this section (i.e. exclude costs associated with the district attorney's office, corporation counsel, etc.)**. Also, do not report expenditures from other program-specific budgets such as expenditures related to crime victim witness programs, alternatives to incarceration programs. If you have questions, please contact Brian Lamprecht at (608)266-6865 or at fiscal.office@courts.state.wi.us.

- a. Counties must list calendar year expenditures charged against specific court budgets as applicable. Expenditures should be grouped by the expenditure types listed in the first column. It may be possible that no expenditures will be reported for a specific expenditure type or court budget. **Also, if expenditures incurred during the past year do not fit into one of the specific expenditure categories the amount should be reported under miscellaneous expenditures.** PLEASE NOTE, expenditures reported in previous sections of form CC-47 such as juror expenses, judicial assistant salaries and fringe benefits, witness and expert witness fees and GAL cost must be reported again in this section. Following are definitions for each listed expenditure category.
- **Salaries:** Salaries and other wages paid to county employees. This would include overtime, part-time pay, longevity pay, etc. paid to court employees. Exclude per diem payments made to non-employees.
 - **Fringe benefits:** Fringe benefits paid to county employees. This would include all fringe benefits paid to county-paid court employees such as social security, retirement, health and life insurances, unemployment, and workers' compensation.
 - **Attorney costs: indigent counsel:** fees paid to those attorneys that were appointed by the court for indigent defense.
 - **Attorney costs: GAL costs:** payments made to attorneys for GAL services provided. Same amount as reported under **section 4**.
 - **Attorney costs: other attorney fees (adversary counsel):** other attorney fees paid from court budgets except for those payments to attorneys previously reported as indigent counsel or guardian ad litem costs.
 - **Data processing charges:** charges related to data processing services usually provided by other county departments.
 - **Equipment and furnishings (purchase or lease):** capital outlays for the purchase and/or lease of office equipment and/or furnishings such as photocopiers, FAX machines, recording equipment, desks, chairs, videoconferencing equipment, microfilming equipment, etc.
 - **Insurance:** insurance/risk management premiums paid from court budgets for property, liability, and worker's compensation insurance.
 - **Interpreter fees:** payments made to interpreters for services performed.
 - **Juror expenses:** expenditures related to impaneling jurors including per diem and other reimbursements to jurors and jury bailiffs.
 - **Law library, books, subscriptions reference materials, and electronic research:** costs of maintaining the county's law library as well as costs for purchasing reference materials, subscriptions, and performing electronic research (Westlaw, LEXIS/NEXIS, etc.).
 - **Medical and other psychological exams:** payments made to physicians and other health care professionals for exams.
 - **Membership dues:** membership dues to professional organizations paid by the county on behalf of court staff and judges.
 - **Office supplies:** cost of purchasing supplies for the operation of the office.
 - **Postage and mail service:** payments for postage, express mail services, freight and handling charges.
 - **Printing and photocopying:** costs associated with printing and photocopying material such as notices, forms, newsletters, etc.
 - **Repairs and maintenance - equipment:** costs for repairing and/or maintaining office equipment such as photocopiers, computers, typewriters, FAX machines, recording equipment, and videoconferencing equipment.
 - **Telephone/telecommunications:** telephone/other telecommunication charges (i.e. cell phones, voice mail, faxes, paging service circuit lines).
 - **Transcripts:** transcript fees paid from a court budget for the generation of both original transcripts and copies of transcripts.
 - **Travel and training for employees:** employee business-related travel such as attendance at in-state or out-of-state conferences, training courses, committee meetings. This would include the cost of using county vehicles, if applicable.
 - **Witness and expert witness costs:** fees paid to witnesses and expert witnesses that were charged to court budgets. Incidental costs such as travel costs associated with witnesses and expert witnesses also should be included in this category.
 - **Rent:** expenditures charged against the court budget for rent of courtroom and related office space. If these expenditures are recorded in a different **non-court budget, then they should not be reported.**
 - **Utilities:** expenditures charged against the court budget for utilities such as light, water, sewer, and heat. If these expenditures are recorded in a different **non-court budget, then they should not be reported.**
 - **Court security:** expenditures charged against the court budget for providing court security (i.e. charges from the Sheriff's department). If these expenditures are recorded in a different **non-court budget, then they should not be reported.**
 - **Court facilities repairs and maintenance:** expenditures charged for performing routine repairs and maintenance services (i.e. janitorial services) for the functioning of the court. If these expenditures are recorded in a different **non-court budget, then they should not be reported.**
 - **Capital outlays for rehabilitation and/or construction of courtroom facilities:** capital outlays charged against the court budget for the rehabilitation and/or construction of courtroom facilities. These expenditures should only be reported if capital outlays are a part of a court's budget. If these expenditures are recorded in a different **non-court budget, then they should not be reported.**
 - **Department chargebacks:** This amount automatically fills once you complete Section 6b. **Please instructions for section 6b.**
 - **Miscellaneous expenditures:** This amount automatically fills once you complete Section 6c. **Please instructions for section 6c.**
 - **Total calendar year expenditures:** Total of the county's court budget expenditures. This field will automatically calculate.
- b. **If total calendar year expenditures is \$0, identify budget where costs are included:** If the total calendar year expenditures for any of the columns listed in **section 6a** is \$0, identify the functional budget where these costs are recorded by the county. If this function does not exist at the county and is not included in another budget, type "NA" in the column. For example, if the costs associated with the register in probate are included in the clerks of court budget, type **Clerk of Court** or **COC** in the Register in Probate column. If the county does not have a circuit court commissioner, type **NA** under Circuit Court Commissioner column.
- c. **Detail for Department Chargebacks:** Detail of those expenditures charged against court budgets from other county departments that were not reported under another expenditure category in **Section 6a**. For example, if other county departments charge court budgets for printing, risk management, or computer services list the good(s) or service(s) provided by the other county department and the amount expended by court budget. If form CC-47 does not provide enough room for all charges, please attach a sheet with supporting detail with total department chargebacks. **DO NOT** list rent, utilities, courtroom security and maintenance or capital outlays for rehabilitation and/or construction of courtroom facilities as a Department Chargeback – please report these amounts separately in **Section 6a**.
- d. **Detail for Miscellaneous Expenditures:** Detail of those expenditures charged against court budgets that do not fall into any of the expenditure categories listed under **Section 6a**. For example, if a court budget had charges for credit card services or microfilming, list the good(s) or service(s) and the amount expended by court budget. If not able to list all charges, attach a sheet with supporting detail of total misc. charges.
7. **Summary of Court Costs:** When completing this form on-line, this part will automatically complete as the form is filled in.
8. **Calendar Year 2002 Staffing Levels for County Court Budgets:** Provide detail on the number of full-time equivalent positions being paid from county court budgets. **DO NOT** double-count positions.
9. **Court Security Costs:** Answer detail questions on the type of court security provided by the county even if another county department's budget finances court security.

APPENDIX IV

Time Standards (Benchmarks) for Circuit Court Case Processing

Case Type	Wisconsin	COSCA* & CCJ**	American Bar Assn
Criminal Cases			
Felony	6 months	180 days	90% in 120 days 98% in 180 days 100% in 12 months
Misdemeanor	3 months	90 days	90% in 30 days 100% in 90 days
Criminal traffic	3 months	NA	NA
Traffic	4 months	NA	NA
Forfeiture	4 months	NA	NA
Civil Cases			
Personal injury/ Property damage	18 months	NA	NA
All other civil	12 months	NA	NA
Jury trials	NA	18 months	NA
No jury trials	NA	12 months	NA
General civil	NA	NA	90% in 12 months 98% in 18 months 100% in 24 months
Small claims/ landlord/tenant	3 months	NA	100% in 12 months
Family Cases			
Divorce	12 months	NA	NA
All other family	6 months	NA	NA
Domestic relations	NA		
Uncontested	NA	3 months	NA
Contested	NA	6 months	NA
All cases	NA	NA	90% in 3 months 98% in 6 months 100% in 12 months
Juvenile Cases			
Detention/shelter hearings	NA	24 hours	24 hours
Adjudicatory hearings	NA		
1. In detention	NA	15 days	15 days
2. Not in detention	NA	30 days	30 days
Disposition hearings	NA	15 days	15 days
Probate Cases			
Estates	12 months	NA	NA
Informal proceedings	12 months	NA	NA

*Conference of State Court Administrators

**Conference of Chief Justices

APPENDIX V

Trial Court Performance Standards	
Standard 1.1 Public Proceedings	The court conducts its proceedings and other public business openly.
Standard 1.2 Safety, Accessibility, and Convenience	Court facilities are safe, accessible, and convenient to use.
Standard 1.3 Effective Participation	All who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience.
Standard 1.4 Courtesy, Responsiveness, and Respect	Judges and other trial court personnel are courteous and responsive to the public and accord respect to all with whom they come into contact.
Standard 1.5 Affordable Costs of Access	The costs of access to the trial court's proceedings and records – whether measured in terms of money, time or the procedures that must be followed are reasonable, fair, and affordable.
Standard 2.1 Case Processing	The trial court establishes and complies with recognized guidelines for timely case processing while, at the same time, keeping current with its incoming caseload.
Standard 2.2 Compliance with Schedules	The trial court disburses funds promptly, provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use.
Standard 2.3 Prompt Implementation of Law and Procedure	The trial court promptly implements changes in law and procedure.
Standard 3.1 Fair and Reliable Judicial Process	Trial court procedures faithfully adhere to relevant laws, procedural rules, and established policies

Trial Court Performance Standards

Standard 3.2 Juries	Jury lists are representative of the jurisdiction from which they are drawn.
Standard 3.3 Court Decisions and Actions	Trial courts give individual attention to cases, deciding them without undue disparity among like cases and upon legally relevant factors.
Standard 3.4 Clarity	Decisions of the trial court unambiguously address the issues presented to it and make clear how compliance can be achieved.
Standard 3.5 Responsibility for Enforcement	The trial court takes appropriate responsibility for the enforcement of its orders.
Standards 3.6 Production and Preservation of Records	Records of all relevant court decisions and actions are accurate and properly preserved.
Standard 4.1 Independence and Comity	A trial court maintains its institutional integrity and observes the principle of comity in its governmental relations.
Standard 4.2 Accountability for Public Resources	The trial court responsibly seeks, uses, and accounts for its public resources.
Standard 4.3 Personnel Practices and Decisions	The trial court uses fair employment practices.
Standard 4.4 Public Education	The trial court informs the community of its programs.
Standard 4.5 Response to Change	The trial court anticipates new conditions or emergent events and adjusts its operations as necessary.
Standard 5.1 Accessibility	The trial court and the justice it delivers are perceived by the public as accessible.
Standard 5.2 Expeditious, Fair, and Reliable Court Functions	The public has trust and confidence that the basic trial court functions are conducted expeditiously and fairly and that its decisions have integrity.

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