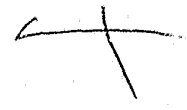


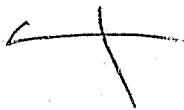
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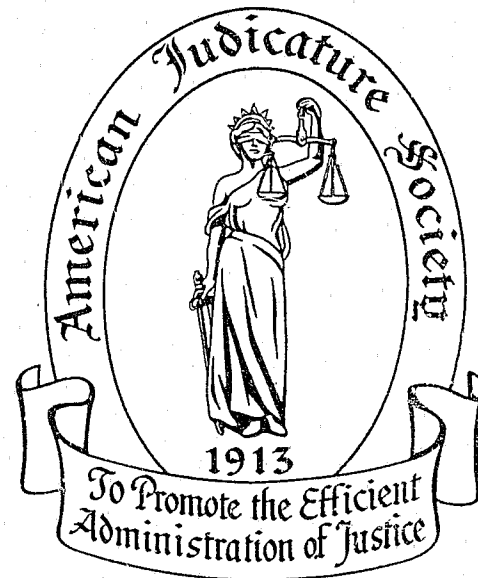
A Research Project of the American Judicature Society

in conjunction with

Massachusetts Bar Foundation, Inc.

and

The Association of Trial Lawyers of America
(Massachusetts Chapter)



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January 15, 1974

Frederick G. Fisher, Esquire
President
Massachusetts Bar Association
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Dear Mr. Fisher:

The attached report is the final report of the Society's study on Financing Massachusetts Courts. The recommendations and conclusions in this report are intended to provide a point of reference from which comprehensive reform in the areas of court financing, budgeting and administration can be initiated.

Our report recommends a more unified financing and budgeting format for the entire Massachusetts court system. We have attempted to articulate a practicable schedule for effecting a transition from the present system of financing and budgeting to the one recommended. We recognize, however, that there are many different approaches which could be taken to put the recommendations of the report into effect, and many specific problems which will have to be solved in order to do so. Which approach is chosen and how the problems are resolved will depend on many factors unrelated to the scope and purpose of this study. As a result, we have not attempted to draft specific proposed constitutional or legislative provisions for the implementation of our recommendations.

The recommendations we have made do not call for substantial changes in the commonwealth's present court structure. They do, however, envision such change and will hasten efforts toward that end. Thus, we offer these recommendations in the sincere belief that they present the best vehicle for setting into motion the forces of change that will lead to effective modernization and improved administration of Massachusetts courts.

Sincerely,

Allan Ashman
Director of Research

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The project staff acknowledges the cooperation of many individuals, including judges, lawyers, court administrators, clerks, lay organizations and committees, who in many different ways helped at essential points in the preparation of this report. Without the assistance of those who granted interviews during field visits, the information and conclusions in the report could not have been made available as early as it has been.

We particularly acknowledge the valuable input and assistance provided by the members of the project advisory committee, with special appreciation to John Burke of the Office of the Executive Secretary, whose suggestions and comments regarding early drafts have been beneficial in the compilation of this study.

Along these lines, we wish to point out the further indispensable aid given us by Chief Justices Franklin N. Flaschner of the District Court and Jacob Lewiton of the Boston Municipal Court, Chief Judge Alfred Podolski of the Probate Courts, and Chief Justice Walter H. McLaughlin and his staff of the Superior Court, who opened many doors that we otherwise could not have entered; offering, along the way, helpful criticism of our earlier drafts.

C O N T E N T S

Preface	i
Introduction.	1
Chapter 1 - <u>Recommendations and Conclusions</u>	7
Assumption of Court Costs.	7
Court Budgeting.	15
Implementation	22
Chapter 2 - <u>An Overview of the Courts</u>	32
The Supreme Judicial Court	32
The Appeals Court.	34
The Superior Court	36
Probate Courts	40
The Land Court	42
The District Courts and the Municipal Court of the City of Boston	44
The Juvenile Courts.	50
The Housing Court of the City of Boston	52
Chapter 3 - <u>Financing Massachusetts Courts.</u>	57
Sources of Court Funding	57
Supreme Judicial Court	57
Appeals Court.	59
Superior Court	59
Land Court	61
Probate Courts	63
The District Courts, Boston Municipal Court and Juvenile Courts.	64
Housing Court of the City of Boston.	66
Court Related Costs.	68
Summary.	70
Costs and Revenues	71
Revenue Sources.	83
State Assumption of Court Costs.	87
Grant Funding.	100
Chapter 4 - <u>The Budgetary Process</u>	108
Preparing Court Budgets.	108
Supreme Judicial Court	111
Appeals Court.	112
Land Court and Registries of Deeds.	113
Probate Courts	114

District Courts . . . . .	.117
Boston Municipal Court . . . . .	.121
Juvenile Court . . . . .	.122
Housing Court of Boston . . . . .	.122
Summary . . . . .	.122
State Budgeting and Appropriations Process . . . . .	.123
County Budgeting and Appropriations Process . . . . .	.126
Budgeting and Appropriations Process for Suffolk and Nantucket Counties . . . . .	.131
Concluding Observations . . . . .	.135
After O'Coin's . . . . .	.135
Assumption of Court Costs in Other States . . . . .	.136
Appendix A - Funding Sources . . . . .	.143
Appendix B - Budget Forms . . . . .	.158

PREFACE

In May, 1973, the American Judicature Society entered into an agreement with the Massachusetts Bar Association, the Massachusetts Chapter of the American Trial Lawyers Association and the Honorable Charles F. Flaherty, Jr., Chairman of the House of Representatives Committee on Counties, to conduct a study of the Massachusetts court system that would provide an overview of court funding and budgeting. The purpose of the Society's study was to suggest the best way for Massachusetts to allocate the burden of financing its courts, and to unify its court budgeting process.

The project staff gathered basic information on the existing jurisdiction and operation of the Massachusetts courts, concentrating on current funding and budgeting practices. Field visits were scheduled in Suffolk, Middlesex, Norfolk, Bristol and Hampden counties with judges, clerks of court, county commissioners, city, county, and state fiscal officers and analysts, probation officers, registers of probate and administrative personnel.

Based on our findings, the Society has developed comprehensive recommendations that will facilitate state-wide court planning, reduce inefficient allocation of judicial resources and materials, and permit the Massachusetts judiciary a degree of fiscal independence.

INTRODUCTION

The extent to which any state is capable of resolving major problems facing its courts is determined largely by the nature and extent of its court financing and the quality of its budgetary process. Excessive delay in both civil and criminal cases, inadequate court and court-related facilities, and the difficulties inherent in attracting and retaining qualified judicial and non-judicial personnel often can be traced directly, or indirectly, to inadequate court funding, usually in combination with improper and inefficient management of available resources. These twin evils are not easily resolved, particularly if established procedures for financing the operations of a court system and budgeting for the costs of running that system are so fragmented and disparate as to effectively preclude the efficient management and allocation of judicial resources.

Ideally, court financing and budgeting should operate in such a manner as to insure the independence of the judiciary as a branch of government co-equal with the executive and legislative branches. This independence cannot be achieved if the judiciary is dependent fiscally upon either the executive or the legislature. The legislature should have the ultimate power to determine the the total amount of money to be made available to the courts. However, once that determination is made, courts must be free to determine how that money is to be spent.

In addition to insuring judicial independence, court financing and budgeting should assure the uniform administration of justice throughout a state. For example, there is a greater likelihood that rich courts and poor courts will coexist in a single state court system if the responsibility for financing those courts is divided among a multiplicity of funding sources - i.e., among state, county, and local governmental appropriations and various court-generated revenues. In a system which depends upon a multiplicity of funding sources, and where courts compete to win favor with those sources, the extent to which any court will be supplied with the resources necessary to administer justice often turns upon factors such as the economy of the area in which the court is located and the priorities of local and county governments. Such a situation necessarily results in disparities among the courts that are magnified if there is no coordination among the counties or localities on a statewide basis.

The existence of a multiplicity of funding sources also inhibits improvements in the overall management of a state court system, because it virtually makes it impossible to determine precisely the total amount spent on all the courts within the state. As a result, rational and compre-

prehensive planning for the proper allocation of resources for all courts is impeded, if not nullified.

Ideally, all the courts within a state should be funded from a single source to assure the most effective and uniform management and administration of the entire system. Therefore, the modern trend is to opt for state funding of the entire court system. Such a system maximizes the likelihood that resources will be allocated to courts based upon actual court needs rather than upon unrelated political and economic considerations.

Additionally, state funding facilitates improved court management by making the preparation of a statewide judicial budget practicable. A budget, in its simplest terms, is a plan. Specifically, it is a plan for allocating resources to accomplish certain objectives. Therefore, the budgetary process is an important tool for planning the wisest allocation and management of available resources necessary to operate a court system and for guaranteeing a complete audit of the use of these resources. Unless a state court system is given the capability of preparing a statewide judicial budget, its budgetary process cannot be expected to achieve these important objectives.

A recommendation for state funding of a court system generally accompanies a recommendation for the adoption

of a system of "unitary budgeting." Unitary budgeting has been described generally as a comprehensive system in which all judicial costs are funded by the state through a single budget administered by the judicial branch. This unified budget encompasses all operating expenditures of the court systems including salaries, services, equipment, supplies and capital improvements.¹ While unitary budgeting by itself cannot make a state's judicial system function fairly or efficiently, it is, nevertheless, an important step forward toward attaining these objectives. Insofar as unitary budgeting places ultimate responsibility for the planning, allocating and auditing of all judicial resources within the state in a central administrative authority without external line item control, it represents a significant departure from traditional forms of fiscal management of state court systems.

Proposals to adopt state funding and unitary budgeting often are joined with proposals to unify state court organization and jurisdiction and to develop a strong central state court administration. However, state funding and unitary budgeting also would be effective tools to help strengthen court management in states where a court system is not unified and court administration is not centralized. State funding and unified budgeting might help to isolate

and identify the immediate and long-range needs of a court system, thereby facilitating justifiable increases in total judicial appropriations. Also, it could provide important additional mechanisms for insuring effective and efficient court management and planning.

Our sole objective in this study is to explore these concepts in the context of the Massachusetts court system and to advance recommendations that not only are practicable but that are capable of being implemented.

NOTES

1. Geoffrey C. Hazard, Martin B. McNamara, and Irwin F. Sentilles, "Court Finance and Unitary Budgeting," 81 Yale L. J. 1293 (1972).

Chapter 1

Recommendations and Conclusions

Assumption of Court Costs

1. The Commonwealth of Massachusetts should assume full responsibility for financing all of its courts and auxiliary court services.
2. Revenues from fees, fines, penalties and forfeitures levied by a court should be transferred to the commonwealth's general fund.
3. The commonwealth's assumption of all court costs should occur over a reasonable period of time, with specific time-frames established for the assumption of each court's costs.

There is no consistent pattern of state court financing in the United States. The burden is distributed among state, county and local government units in many different and complex ways. As indicated in the Concluding Observations herein, some states pay all operating expenses of every court in the state. Others pay expenses only of appellate courts, relying on county and local governments for all trial court expenses. Many states have assumed responsibility only for the salaries and retirement benefits of all its judges and sometimes for other financial requirements of the courts. Many intermediate variations can be found as well.

In Massachusetts, no less than 16 governmental units deal with the courts. They are the commonwealth, the

City of Boston, and 13 counties outside Boston, and the Suffolk County Court House Commission.¹ The commonwealth pays for approximately 20% of the total costs of operating all its courts, with the counties paying for the remaining 80%. There is great variation from one court to another with respect to whether the commonwealth or county pays for certain court costs, or related court services. For example, the commonwealth pays the salaries of all supreme judicial court (SJC) and superior court justices, but does not pay for all other superior court employees, office supplies, services and equipment. While the bulk of district court expenses are paid by the counties, the commonwealth is supposed to pay for district court judges' travelling expenses with the counties reimbursing the commonwealth for this expense. Actually, the counties rarely reimburse the commonwealth for these expenditures. The commonwealth pays for inter-county travel expenses of probate court judges, while the counties pay for intra-county travel expenses. Approximately 80% of the space in the Suffolk County courthouse is occupied by courts with statewide jurisdiction.² However, the commonwealth pays for only 30% of the costs for maintaining the facilities of all the courts located there, with Suffolk County paying 70% of this cost. By

statute, Boston pays all of the court costs for Suffolk County although the county also includes the cities of Chelsea and Revere and the town of Winthrop.

There also is great variation in Massachusetts from one county to another with respect to the amount of funds actually expended to support court operations. Increasing caseloads, new legislation, and expanded court activity all contribute to the need to find sufficient revenue to operate courts efficiently and effectively. Yet most counties, already strapped financially, can no longer realistically, be expected to meet the added financial burdens posed by the need for new and better facilities, more non-judicial personnel, increased costs of office supplies, services and equipment, or needed computer hardware and other data-processing equipment. Local needs commonly exceed local fiscal capacity.

During the course of our field visits it was apparent that while some counties had sufficient court personnel, supplies and equipment, others did not. For example, one court visited had the latest model photocopy equipment, typewriters and office furniture and no lack of office supplies. However, in a neighboring county the secretaries in one court proudly exclaimed how they saved money by cutting up outdated forms for scratch paper. Courts

less concerned with being frugal, or "making do" professed their ability to "get money for their courts" by using the "politics of the system" to their advantage. Discrepancies in court funding also exist on an intra-county basis. For example, within the same county some district courts are supported more generously than the superior court, while some district courts fare better than others. Clearly, if justice is to be administered uniformly throughout a state, politics has no place in the operation of that state's judicial system, and there should be no such thing as "rich" and "poor" courts.

As a major branch of government, the entire judicial system should be funded directly from the legislature. There are many reasons for this. Perhaps the most basic reason is that the operation of the court system is a fundamental obligation of state government, which has a responsibility to see that justice is administered fairly and effectively. Certainly legislators representing local communities are supported at the state level and a similar pattern seems appropriate for the judicial branch. Financing by local government often leads to fragmented and disparate levels of financial support, particularly for auxiliary court services, and to direct involvement of the judiciary in local politics.

Dispersion of financial responsibility and financial management also tends to disperse responsibility for administration and policy, so that the court system cannot be operated according to uniform procedures and standards even when this is attempted through administrative policy and supervision. State funding of the judiciary would have the effect of making the flow of money through the total judicial establishment visible and comprehensive and should lead immediately to better resource allocation.

Generally, the assumption by state government of the full cost of the courts means that the ultimate financial impact on state and local governments would depend not only on whether any of these costs were first paid by the state and then charged back to local government, but also on the extent to which existing state and local revenue patterns would be changed to compensate the state for assumption of additional costs. In Massachusetts, state financing would obviate whatever need there might be for local government to rely on revenues from fines, fees, penalties and forfeitures as a means of underwriting the cost for operating local courts. This should present no problem in Massachusetts where the generation of revenue properly is deemphasized and not considered to be a primary purpose of the courts. A very small percentage of county revenue in Massachusetts

actually comes from the courts and in no instance does any court with county-wide jurisdiction even generate sufficient revenue to meet its operating costs, in contradistinction to the situation in other states, where court revenues are used to support a variety of government services.³

Because court and court-related services in Massachusetts currently are supported primarily by local government, we believe that it would be impracticable for the commonwealth to assume full financial responsibility in a single step. However, we do not favor a piecemeal legislative approach to the assumption of court costs by the commonwealth. The only responsible way to accomplish state assumption is by means of a single "takeover" bill covering all the courts and containing in it a phasing schedule.

The transition from the commonwealth's present bifurcated system of court funding to total state assumption of court costs should occur over a reasonable period of time. Nevertheless, Massachusetts should undertake the following steps immediately: establish unified budget procedures; identify all local government obligations to fund court operations and court-related services; and plan a step-by-step program for its assumption of the burden of financing the court system, including exploration of all possible sources of revenue and potential tax bases to sup-

port state assumption. Accordingly, we suggest the following cumulative time-frames for the commonwealth's assumption of court costs

PHASE I - State assumption of all court costs for supreme judicial court, appeals court, land court, and superior court.....1st & 2nd Years

PHASE II - State assumption of all court costs for probate courts.....3rd Year (2nd year if practicable)

PHASE III - State assumption of all court costs for district, municipal, juvenile and housing courts.....4th & 5th Years (3rd year if practicable)

While we believe that Massachusetts should assume the total cost for operating and maintaining all of its courts over a three to five-year period, we think that in no event should it take longer than five years for the commonwealth to assume completely all court costs.⁴

It is important to avoid too long a transition period: Once change is anticipated, local governments probably will be reluctant to supply anything other than

minimal support. As state support would not yet be a reality the courts could be inconvenienced temporarily. Our field visits indicated wide judicial support for state court financing. Those judges who did not concur in this view believed that courts should be "close to the people," and that "a shift to state financing" might be still another step toward depersonalizing government. Some judges, particularly those in the more favored district courts, also were concerned that state assumption of court costs would reduce their courts to the "present fiscal plight of the superior court." However, our recommendations envision stronger administrative and fiscal controls throughout the entire court system, with the chief justices of the superior and district courts and the chief judge of the probate courts and their respective staffs in closer touch with the day-to-day operating problems of the courts.⁵

This arrangement should allow the benefits of centralization to be obtained while allowing appropriate local control within that framework. This should supply the benefits of both worlds.

In short, state financing is needed to facilitate planning, to insure adequate review of the costs and benefits of judicial services and to supply improved mechanisms for administration. Taken together with unitary budgetary pro-

cedures, it offers hope of significant improvements in the quality of support for Massachusetts courts.

Court Budgeting

4. Within the framework of the existing court system, budget and accounting responsibilities should be consolidated so that single unified budgets are prepared by and for the supreme judicial court, by and for the appeals court, by and for the superior court, by and for the probate courts, by and for the district courts, by and for the land court, by and for the juvenile courts and by and for the housing court.
5. Pursuant to Recommendation #4, the executive secretary of the supreme judicial court should consolidate each of the unified court budgets into one comprehensive state court budget for transmittal by the chief justice to the governor.
6. The governor should be empowered to make only lump-sum recommendations with respect to the state court budget and the legislature only lump-sum appropriations. In no case should line-item recommendations and appropriations be made.
7. All funds appropriated for the judiciary should be placed in a judicial account and be subject to prompt and regular independent audit at the end of each fiscal year.
8. The executive secretary of the supreme judicial court should retain a full-time fiscal officer whose primary responsibilities would be to disburse funds appropriated for the judiciary and in accordance with the separate budgets prepared by and for each court pursuant to Recommendation #4 and to implement recognized accounting practices to assure regularity, punctuality and honesty in the expenditure of funds placed in the judicial account.

As Chief Justice Tauro stated in his 1973 "State of the Judiciary" address, simply transferring the costs for court operations from local property taxes to state tax bases will, by itself, resolve nothing. The assumption by the commonwealth of fiscal responsibility for all courts must carry with it the establishment within the judicial system of the requisite statewide administrative capacity and control in such areas as budgetary and fiscal affairs. The dispersion of responsibility for appropriating court funds among state and counties in Massachusetts is paralleled within the courts by a proliferation of both judicial and non-judicial personnel who are accountable for preparing budgets and for negotiating with local or state funding bodies. Within individual counties, court services are funded through a bewildering multiplicity of non-judicial budgets as well as through the judicial budget. As pointed out in Chapter 4, literally hundreds of separate court budgets are prepared annually by budget officers, registers of probate, clerks of court, secretaries, probation officers, district attorneys and judges. Each budget is the product of a separate administrative process. The budgetary process, if it can indeed be termed "a process," can be characterized only as a "crazy-quilt hodge-podge."

There is no question but that the prevailing situation as characterized by Chief Justice Tauro imposes an

undue burden upon local property taxpayers, particularly Boston's taxpayers, frustrates the development of orderly fiscal and budgetary processes within the judicial system, and "encourages within the court system fragmentation, counter-productive manipulation and competition for the limited financial resources extracted from our citizens through a variety of taxes." A judicial budget should assist court systems in allocating their resources, monitoring the use of these resources, evaluating their system's effectiveness and planning for its future developments. The judiciary requires a total operating budget. Without one, it is extremely difficult to develop systematic action, measure progress, and insure efficient and economic use of resources. With such a budget, alternative programs can be evaluated on a cost effectiveness basis. Once costs and the various ways in which money is now allocated are known, realistic plans can be made and evaluated on an objective rather than intuitive basis.

A truly unified judicial budget is, in reality, a comprehensive system in which all judicial costs are funded by the state through a single budget administered by the judicial branch. It encompasses all operating expenditures of the court system and locates in one central authority the ultimate responsibility for planning, channeling, and auditing all judicial expenditures within a state. In Massachusetts,

the process of developing an overall, comprehensive budget for the courts should begin now and should parallel whatever time-frames ultimately are established for state assumption of court costs. At least once a year, every chief administrative judge should articulate priorities for his court and project its resource needs pursuant to an overall plan. In turn, each unit within each individual court in the commonwealth should project its own specific resource needs. Then, each forecast, from each court, should be reviewed by the chief administrative judge of that court consistent with his own set of goals and priorities and integrated into one judicial budget prepared under his auspices.

We submit that court budgets might be prepared as follows: the executive secretary of the SJC should prepare one unified SJC budget; the chief justice of the appeals court should prepare one appeals court budget; the chief justice of the superior court should prepare one unified superior court budget; the chief judge of the probate courts should prepare one unified budget for the probate courts; the chief justice of the district courts should prepare one unified budget for the district courts and municipal courts (including the Boston Municipal Court), one unified budget for the juvenile courts, and one unified housing court budget; and the judge of the land court should prepare one land court budget. Essentially this would mean that instead of four

separate SJC budgets, there would be only one; instead of thirty or more separate budgets for the probate courts, there would be only one; instead of almost three hundred separate budgets for the district courts, there would be only one; etc. In all, there would be only eight separate court budgets prepared for submission to the chief justice of the SJC.⁶

After the total judicial program has been developed in this manner, the executive secretary of the SJC should consolidate all the individual court budgets into one integrated judicial budget that would be transmitted by the chief justice to the governor for submission to the legislature. A single, consolidated and integrated court budget will provide a vehicle for internal control and for communication of goals to all officials in the judicial system. More important is the need of the judiciary to communicate clearly and forcefully to the governor and legislature its judicial resource needs and expenditures. The persuasive and political aspects of court budgeting involves developing a reasoned, detailed statement of a court system's financial needs and presenting that statement to budgetary and appropriations officials of the executive and legislative branches of government. Responsibility for making the necessary presentations in a state court system should be assumed by the chief justice of the SJC.⁷

The full weight of the judiciary's own affirmation of its financial requirements should be asserted by the chief justice of the SJC in the appropriation process. While it is the ultimate responsibility of the legislature and the executive to provide funds to operate the courts, it is the judiciary's responsibility to present its requirements distinctly, publicly, precisely and effectively. As the state's highest judicial officer, the chief justice of the SJC is best equipped to assume this responsibility.

A major consequence of divided responsibility in court financing and budgeting in Massachusetts is the resulting restriction on the ability of the court system to determine its own priorities and to plan the most effective use of available funds. As a co-equal branch of government, the judiciary should be free to manage its own affairs. Although the power to determine how much money the court system can spend is vested properly in the legislative branch, once that determination has been made, the courts themselves should be free to determine how the money should be spent. If insufficient money is available to pay for each item in a court system budget request, the judiciary, rather than the legislature, is the proper branch to determine which items may be deleted, consistent with needs and priorities within the court system. Any other method of fiscal decision-making is an interference with the independence of the judicial branch of government, since the allocation of available money among

various court system needs affects the ability of judges to carry out effectively their judicial decision-making function.

The courts themselves are in the best position to assess their own needs and assign their own priorities. Interference in this function by executive line-item budget recommendations and legislative line-item appropriations for the judiciary, as is the current practice in Massachusetts, is an unwarranted invasion of the co-equal status of the judicial branch of government. The only effective way to insure the fiscal independence of the judiciary is to provide for lump-sum gubernatorial recommendations and lump-sum legislative appropriations.

Another major support to the concept of judicial independence is the judiciary's ability to fund operations directly through the legislative appropriations process and to control its own expenditures without executive branch interference. A separate judicial account with an independent post-audit of judicial expenditures would seem to provide the greatest measure of judicial financial independence consistent with fiscal responsibility. Massachusetts is joined by only a few states that still place funds appropriated for the judiciary in a non-judicial, comptroller's account. Most states now place such funds in a special judicial account.⁸

Clearly, if the courts are to perform their judicial

responsibilities satisfactorily, they should be entrusted to regulate the expenditure of all funds made available for their operation. This responsibility should be exercised free of interference by agents of the executive branch of government, in the same manner that the executive and legislative branches administer those funds appropriated for their internal operation. Toward this end, we submit that the executive secretary of the SJC should be given the primary responsibility for dispersing and monitoring funds appropriated for the state's judicial system and the appropriate staff to carry out these tasks. Utilizing sound and accepted principles of fiscal management, the SJC should be able to regulate the details of court expenditures, subject to general controls imposed by law, but free of administrative direction by officials of the executive branch.

Implementation

9. An interim court finance committee should be established to facilitate and plan for the commonwealth's assumption of all court costs.

In order to insure that state assumption of court costs is accomplished in a rational, orderly manner, an

interim court finance committee should be established. The committee should be advisory in nature and should be given the responsibility of overseeing the process of state assumption. More specifically, it should recommend specific legislation and direct all studies that it perceives as necessary to insure that state assumption will have the intended positive effects. In this regard, the court finance committee should coordinate its efforts with those of other groups concerned with court modernization (particularly the northeast regional office of the National Center for State Courts). Legislation authorizing the creation of this committee should set a termination date which coincides with the date on which state assumption will be complete.

The committee should be chaired by a representative of the SJC and might include the following individuals or their designees: the executive secretary of the SJC, a representative of the legislature, the chief justice of the superior court and the chief justice of the district

courts. Although representatives of the appeals, probate, juvenile, housing and land courts and a representative of the BMC might also be included, the committee should be kept as small as possible to insure its effectiveness. The committee should retain a small staff, perhaps two or three persons who have expertise in the areas of finance and accounting and who are familiar with the judicial system.

Because it was beyond the scope of this study to give detailed consideration to certain important items relating to state assumption of court costs, we have attempted to identify these areas in certain portions of this report and to reflect these concerns in the following checklist. This list should not be considered as exhaustive or conclusive. Rather, it should be viewed as a reflection of our perception of some of the areas which we believe must be dealt with by the court finance committee if the transition to state assumption of all court costs is to prove effective.

1. Establish a detailed timetable for the transition to state assumption of all court costs.
2. Draft all items of legislation necessary to effectuate the recommendations contained in this report.
3. Direct the compilation of a comprehensive and unified body of fiscal data pertaining to court operations.
4. Analyze present filing fee and cost assessment levels to determine whether parties involved in litigation

are bearing a reasonable share of maintaining the court system.

5. Establish a uniform fee schedule at levels that are compatible with modern economic conditions.
6. Review present procedures for waiving all, or a portion of, the fees for persons who are unable to bear the cost of litigation.
7. Analyze how court-generated revenues presently are allocated between state and local government to determine whether any of these revenues (e.g., traffic and parking fees) should continue to be distributed to local governments after state assumption of court costs.
8. Determine how the judiciary should participate in the receipt of federal funds, including LEAA funding as well as other grants-in-aid programs.
9. Insure that appropriate mechanisms are established to guarantee participation by local courts in fiscal decisions affecting the Massachusetts court system.
10. Establish guidelines and procedures for personnel involved with the budgetary process of the court system to insure the effectiveness of the budgetary recommendations contained in this report.
11. Study the advisability of having the state assume all or a portion of the costs of operating and maintaining the court facilities presently operated and maintained

by the counties and determine whether outright transfer of ownership to the state, the establishment of leasing arrangements or some combination thereof, would be the most practicable arrangement.

12. Formulate the necessary financial arrangements that would allow the state to assume the bonded debt on all court facilities transferred to the state.

Most of the items contained in this checklist are discussed more fully in other portions of this report. However, certain of those items which have not been addressed adequately elsewhere are deserving of further mention here.

It is pointed out in the text that Massachusetts trial courts generate substantially smaller amounts of money from fees, fines, and forfeitures than a number of other court systems, e.g., California, North Carolina and New York. Although we do not view fines as a viable method of directly financing the courts, we do believe that the committee should collect and examine the fee schedules for all the courts to ensure that private parties involved in litigation are bearing a reasonable share of the costs of maintaining the court system. Similarly, amounts charged as court costs and jury costs might be reviewed, along with procedures for waiving certain costs and fees for needy parties. At the same time the committee could examine the

payment of witness fees and the rates charged for services supplied by the court and to the court. This examination could concern itself with the areas of reporters, diagnostic services, etc.

In most states there is no body charged with establishing policy in this area and commonly each individual court has its own schedules of fees. This committee should establish a uniform fee schedule which is compatible with modern economic conditions.

Undoubtedly, many of the monies generated by the Massachusetts courts are earmarked for use in special areas and are never involved in the regular budgeting process. This illustrates another rather substantial problem in the court financing field. Generally, the monies brought in by courts are earmarked for all sorts of specific expenditures. Although there oftentimes is some rationale for relating specific monies coming in to various expenditures, this petty earmarking has problems. First, it complicates the financial process immensely because of the host of different categories of funds, each with its own statutory or constitutional allocational formula. Second, it precludes reviewing these expenditures on a regular basis through the budgeting process.

The monies brought in by the court processes often are not forwarded immediately to other agencies. In the interim, this money could be earning interest. The committee should review present practices to determine the most effective procedures in this regard. This examination need not be restricted to sums which remain with a particular governmental entity. It should include the examination of monies which ultimately are to be returned to private parties and might even extend to the probate area.

Another important area which has not been treated in depth in this report concerns the question of whether the state should assume the costs of operating and maintaining all court facilities. The interim court finance committee should address this problem directly in an effort to determine the best approach to this problem. It may be that arrangements between the state and the counties could remain very flexible in this regard. For example, the state might lease existing county facilities at a rental that covers the bonded debt. The state might then either contract with the counties to provide for maintenance or provide for maintenance services by other means.⁹

Finally, the committee could review the whole question of judicial participation in grant programs. In

California, for instance, there is now an office of Judicial Criminal Justice Planning appointed by the Judicial Council, which reviews all proposals for court grant funding to LEAA. Presumably, this group also could promote actively programs which might enable the courts to benefit more substantially from available funding.

NOTES

1. See Statement of Representative Charles F. Flaherty, Jr. before the Joint Legislative Committee on the Judiciary on H3940 relative to the commonwealth assuming the administration and financing of the entire court system, February 28, 1972.
2. This estimation was made by Paul Rendini, Budget Analyst for the City of Boston during an interview on July 9, 1973. If one were to consider the workload, rather than the jurisdictions of the courts, the percentage might be smaller. The SJC and the appeals court are certainly statewide courts, but a substantial volume of the work of both courts originates in Suffolk County. The land court is also a statewide court much of whose caseload originates outside of Suffolk County. The superior court is a statewide court, but in Suffolk County it hears cases arising mainly in that county.
3. While we recommend that all fines collected by the courts should be paid to the commonwealth, we recognize that there might be strong policy reasons to support the exception of certain kinds of revenue such as the proceeds of designated traffic offenses. We think this problem merits further consideration and study. One alternative that might be considered is to utilize existent classifications of state and local offenses and to earmark fines to state and local government based upon the characterization of the offense.
4. While we recommend that the commonwealth assume the entire cost for operating and maintaining all of its courts, the commonwealth in its financial condition may not find it feasible to finance an immediate takeover. Gradual absorption of the costs over a five year period may be a preferred alternative for the commonwealth. See the Report of the Temporary Commission on the New York State System: Part I (January, 1973), recommending that absorption occur over a five to ten year period.
5. We have concluded that initially budget and accounting responsibilities should be consolidated within the administrative framework of the existing court system. See e.g. Recommendation #4. However, we believe that once this has been accomplished serious study and thought should be given toward unifying the courts and their administration on a vertical model under the overall direction of the chief justice of the SJC and a single state court administrator.

6. If there were to be exceptions to our proposed budget consolidation the first might be the continuation of the separate budgetary process of the Boston Municipal Court, subject to its ultimate inclusion in a single, unified court budget for the commonwealth. Such an exception could be justified in light of the court's independent status, the size and complexity of its operation, and the fact that it already has developed a reasonably satisfactory budget procedure (see p.121 infra) with the assistance of a professional fiscal officer. It has also been suggested that the Boston and Hampden County Housing Courts prepare their own separate budgets for submission directly to the SJC.
7. Mass. Gen. Laws Ann. ch. 211, § 3 confers on the SJC as a collegial body the duty of general superintendence of all the courts of inferior jurisdiction. Pursuant to this provision, the SJC has exercised broad powers over the superintendence of judicial proceedings and the superintendence of non-judicial functions of the inferior courts. Although the statute does not confer specific administrative powers on the chief justice of the SJC, the court, it appears, has recognized that practically administrative supervision is more efficient and effective if rendered by the chief justice as an individual rather than the SJC as a committee. For example, SJC Rule 3:23, which the court promulgated pursuant to its decision in O'Coins, Inc. v. Treasurer of the County of Worcester, 287 N.E. 2d 608 (1972) infra p.135, vests in the chief justice of the SJC ultimate supervisory authority over approval of fiscal expenditures outside of budgetary appropriations.
8. See State and Local Financing of the Courts, Institute of Judicial Administration (April, 1969), at 74.
9. These comments reflect certain suggestions made by representatives of Harbridge House, Inc. after reviewing a preliminary draft of this report.

Chapter 2

An Overview of the Courts

The Supreme Judicial Court

The only court created by the Massachusetts Constitution of 1780, the SJC's appellate jurisdiction extends to all criminal and civil cases at law and in equity and its original jurisdiction is comprised of actions brought at law and in equity, including extraordinary writs such as certiorari and mandamus.¹ Much of the court's equity jurisdiction is concurrent with the superior court and the probate courts. The court must render advisory opinions on important questions of law at the request of either the House of Representatives, the Senate, the governor or executive council. By the authority of Mass. Gen. Laws, Ann. C.211, §3, the SJC has the duty of general superintendence of all the courts of the commonwealth. The SJC also has inherent power over the admission of attorneys and their conduct as members of the bar, whether engaged in the practice of law or serving as judges.

Composed of a chief justice and six associate justices, the court sits en banc in its appellate capacity, with five justices usually sitting. A single justice considers original jurisdiction matters, known as "the county court" or more popularly as the single justice session, and can either refer such cases to other courts

with appropriate jurisdiction or report them to the full court without rendering a decision. Cases heard by a single justice may be reviewed by the full court.

The SJC's permanent quarters are in the Suffolk County Courthouse. The court's non-judicial staff includes full-time and part-time secretaries (16), law clerks (8), and a court stenographer.² A clerk of court for the commonwealth is appointed by the SJC for a five-year term to serve the court in its appellate capacity. Not to be confused with the commonwealth clerk is a clerk of the supreme judicial court for Suffolk County, elected for a six-year term to serve the court when it exercises its original jurisdiction.³

In addition to these non-judicial personnel, the court also employs an administrative assistant, court officers (5), and an executive secretary who has two assistants and two secretaries. The executive secretary is responsible for examining the administration, dockets, accommodations, equipment, supplies and general operation of all the courts in the commonwealth and for preparing reports on the business of all the courts. Also he collects data on the expenditure of public monies for the courts and investigates complaints. The executive secretary also serves by court rule as secretary of the committee on complaints, and of the judicial conference, and receives

reports of all action taken by judges in the exercise of their inherent powers and all accounts of earnings submitted by judges pursuant to SJC Rule 3:25. As a matter of practice, he also performs such other tasks as the supreme judicial court delegates to him in the exercise of the court's power of superintendence. Each year the executive secretary reports and makes recommendations to the SJC on the status of the judiciary.⁴ The court also appoints a reporter of decisions to make reports of all law sittings and prepare them for publication.⁵

A total of 418 cases were entered in the SJC for the year ending June 30, 1972. Four hundred and twenty-one opinions were handed down, including seven advisory opinions. For the year ending September 1, 1972, there were 2,104 entries in the single justice session of the SJC sitting for Suffolk County of which 1,583 were petitions for admission to the bar.⁶

The Appeals Court

Serving as the commonwealth's intermediate appellate court, the appeals court holds statewide appellate jurisdiction concurrently with the SJC for all appeals with the exception of appeals from convictions in first degree murder cases. In operation since August 19, 1972, the appeals court hears appeals within its concurrent

jurisdiction with the SJC unless: (1) two justices of the SJC issue an order for review because the questions raised are (a) novel, or of first impression, (b) concerned with the Massachusetts or United States Constitution, or (c) of public interest; (2) the appeals court, or a majority thereof, certifies the need for direct review by the SJC; or (3) three justices of the SJC recommend that the SJC review cases to insure an equitable distribution of the appellate caseload between the SJC and appeals court. These procedures provide for referral to the SJC without determination by the appeals court. Otherwise review of cases by the appeals court is final in all instances. Appeal of a determination of the appeals court may be had when approved by a majority of the appeals court or three SJC justices.

The appeals court has no exclusive, original jurisdiction or any original jurisdiction concurrent with the SJC. A single justice exercising the SJC's original jurisdiction may, however, remand cases to the appeals court. In order to expedite these cases, as well as to facilitate the handling of certain matters falling within its appellate jurisdiction, the appeals court has established a single justice session. Otherwise, a minimum of three justices must sit.

The court is composed of a chief justice and five associate justices and has its quarters in the Suffolk County Courthouse. The court employs two "attorneys," law clerks (7), court officers (4), a messenger, and approximately 13 clerical assistants.⁷ The clerk of the SJC for Suffolk County also serves as the clerk for the appeals court and acts as chief administrative officer of the appeals court.

During the period August 19, 1972 through December 31, 1972, a total of 176 cases were entered in the appeals court. The court actually began hearing cases in November, 1972.⁸

The Superior Court

The superior court is the commonwealth's trial court of general jurisdiction. With a chief justice and 45 associate justices it operates in each county on a circuit system. The court may hear all cases, criminal and civil, at law and in equity, jury and non-jury, except those of which another court has exclusive jurisdiction. To preserve a right to a jury trial, civil cases at law are filed in the superior court. Filing in the district court generally constitutes a waiver of jury trial by the plaintiff. Law cases filed in the superior court with probable recoveries

of less than \$2,000 may be remanded to the district courts for an initial non-jury trial with the retention of a right to "appeal" for a jury trial de novo. A defendant in a law case filed in a district court may move for the removal of the case to the superior court in order to preserve his right to a jury trial, except that in cases under \$2,000 there may be no removal until after a non-jury trial in the district court. The district court findings are admissible as prima facie evidence in any de novo jury trial.⁹ Criminal convictions in the district courts may be appealed to the superior court for a trial de novo.¹⁰

The 45 associate justices are assigned periodically and on a rotational basis by the chief justice of the superior court to sessions held in each of the 14 counties. These sessions are presided over by a single justice who exercises the full power of the court, except that three-judge courts are required in suits for injunctive relief arising out of labor disputes involving unfair labor practices. Usually 15 or more associate justices are assigned at any one time to Suffolk County in Boston. Thus, associate justices of the superior court, unlike judges in any other court in the commonwealth, are not assigned permanently to a specific court. To alleviate shortages of

superior court justices, the chief justice of the district courts, on request of the chief justice of the superior court, assigns judges of the district courts to hear certain cases in the superior court. Only judges of part-time courts are so assigned, because of the judicial manpower needs in the district courts. Justices of the Boston Municipal Court also are assigned to motor vehicle tort and misdemeanor sessions of the superior court.

An appellate division of the superior court, comprised of three associate justices appointed by the chief justice, is authorized to review the length of sentences in serious criminal cases. The decision of the appellate division is final. The superior court sat in its appellate capacity for 12 days during the year ending June 30, 1972. At the start of the year, 413 appeals were pending. Five hundred appeals were entered during the year and at the end of the year 653 appeals were pending.¹¹ Civil decisions in law and equity and criminal convictions by the superior court are reviewable by the appeals court or the SJC or both.

The chief justice of the superior court is aided in his administrative duties by an administrative assistant and a deputy administrative assistant. The chief justice also designates those cities and towns in which superior court clerks are to locate their offices. With the exception of Suffolk County every county in the commonwealth has an elected superior court clerk. In Suffolk County there are

two elected superior court clerks, one clerk for civil business and one for criminal business. Except for Suffolk County, superior court clerks also serve as clerk of the SJC for their county and clerk for the county commissioners. Assistant superior court clerks generally are appointed by the clerks of the superior court. However, in certain counties assistant clerks are appointed directly either by the superior court or the SJC. Presently, about 100 assistant superior court clerks are serving throughout the commonwealth.

Other non-judicial personnel employed by the superior court include approximately 500 permanent clerical assistants, messengers, court officers and other employees. This figure does not include over 100 members of the district attorneys' staff who for budgetary purposes are considered to be a superior court cost. Also serving in the superior court are 93 permanent probation officers, two of whom serve as supervisor and assistant supervisor of probation for the superior court.¹²

The superior court disposed of 71,470 cases for the fiscal year ending June 30, 1972, broken down as follows: 36,325 criminal cases; 30,070 civil jury and non-jury cases; and 5,075 cases in equity.¹³ But during this same period the superior court's case backlog also increased

to 112,270 cases.¹⁴

Probate Courts

The jurisdiction of the probate courts, some of which is exclusive, includes the probate of wills, administration of estates, appointment of guardians and conservators, divorce, annulment and affirmation of marriages, separate maintenance, adoption and change of name. The probate courts have general equity jurisdiction in addition to equity jurisdiction concurrent with the SJC and superior court over matters of equity cognizable under the general principles of equity jurisprudence (excluding labor disputes).¹⁵ Issues of fact that arise in certain cases before the probate courts may be framed for consideration by a superior court jury sitting in the same county. All proceedings in the probate courts are subject to review by the appeals court or the SJC, or both.

Each county has its own probate court, staffed by one to three judges. For example, three probate court judges sit in each of the probate courts in Suffolk, Middlesex and Norfolk Counties. Two judges sit in each of the courts in Essex, Worcester, Hampden, Bristol and Plymouth Counties. One probate court judge sits in each of the six remaining probate courts.¹⁶

The governor designates one of the 25 judges of the probate courts as chief judge with additional powers and duties. For example, the chief judge may assign judges to sit temporarily in counties other than those to which they originally were appointed. He may promulgate uniform rules, practices and procedures, require the probate courts to keep records, and call conferences of judges and officials.

Each county also elects a register of probate to serve a six-year term. The register reports annually on the work of his office to the chief judge of the probate courts and to the executive secretary of the SJC. The register cares for all documents and papers of the probate courts and keeps account of, and pays to the state treasurer, all fees and other monies which he collects. All but two counties employ assistant registers who are appointed by a probate court judge. As of November, 1972, forty assistant registers were employed in the probate courts throughout the commonwealth.¹⁷

Almost 350 non-judicial personnel are employed in permanent positions in the probate courts, including registers and assistant registers, messengers, court officers and clerical staff.¹⁸ Probation officers in the probate courts are appointed by the judges to investigate

and insure the payment of monies as ordered by the court and to see that proper care and education is provided for all dependent children. In Barnstable County, the judge of the probate court appoints one probation officer to serve in Barnstable, Nantucket and Dukes Counties. Hampshire and Franklin Counties also share a probation officer, appointed by the probate court judge in Hampshire County.¹⁹

The 1971 caseload figures are the most recent for the probate courts and show that 126,158 original entries were recorded throughout the state.²⁰

The Land Court

The land court is a commonwealth court of limited statutory jurisdiction. For example, it has exclusive original jurisdiction in areas such as petitions for confirmation of title with or without registration to land under the Torrens System; proceedings of foreclosure of and redemption from tax titles; writs of entry; actions to try title; determination with respect to the validity of encumbrances, etc. The court has concurrent equity jurisdiction with the SJC and superior court over all cases involving any right, title or interest in land, except suits for specific performance. Jury issues may be framed in the land court for trial in the superior court. Land court proceedings are subject to review by the appeals court or the SJC, or both.

Although the land court exercises statewide jurisdiction, it usually sits in the Suffolk County Courthouse.

The court is composed of a judge and two associate justices who may sit singly. Slightly more than 6,000 cases were entered in the land court for the year ending June 30, 1973.²¹

A recorder, appointed by the governor, serves as the court's clerk attending all court sessions, accounting for all papers filed in land court proceedings, keeping a docket of all causes, making memoranda affecting title and issuing certificates of title. The land court also employs a deputy recorder. The register of deeds in each county also serves as a deputy recorder of the land court in addition to his other statutory duties as register. Land court justices may also appoint title examiners, court officers and stenographers. Approximately 60 permanent personnel were employed by the land court on July 1, 1973.²²

In addition to those land court employees enumerated above, the land court has an engineering department which attends to all plans filed with the court, assists the court in interpreting, and the commonwealth in guaranteeing, these plans, and handles practically all subdivision cases without assistance from the court.

Massachusetts is divided into 21 registry districts: Three in Berkshire and Bristol Counties; two each in Essex, Middlesex and Worcester Counties; and one

in each of the remaining nine counties. In each registry district there is a register of deeds who serves as the assistant recorder for that district. Although the register of deeds has the same basic authority as the recorder of the land court, he serves under the direction of the recorder.²³ Throughout the state there are about 615 persons who are employed in registers' offices.²⁴

The District Courts and the Municipal Court of the City of Boston

The district courts are the commonwealth's courts of limited jurisdiction. There are 72 district courts and the Boston Municipal Court (BMC). As far as subject matter jurisdiction is concerned, the BMC is essentially a separate district court but it has its own chief justice and is not subject to the jurisdiction of the chief justice of the district courts.

The district courts have original concurrent jurisdiction with the superior court over cases in contract, tort, replevin and summary processes. Civil actions in the district courts involving more than \$2,000 are removable to the superior court before trial and actions involving less than \$2,000 are removable to the district courts from the superior courts. The latter are removable after trial back to the superior court. The district courts have

criminal jurisdiction over all misdemeanors except libel, all felonies punishable by imprisonment for no more than five years, and certain felonies punishable by imprisonment for no more than ten years. Criminal convictions may be appealed to the superior court for a trial de novo.

The district courts hold probable cause hearings to bind over to the superior court those criminal cases over which they choose not to exercise jurisdiction as well as those where they lack final jurisdiction. Their sole equity jurisdiction is over specific provisions of the state's Sanitary Code. In two district courts there is an optional provision for six-man jury trials in civil cases. Also, in more than one-half of the counties there is an optional provision for district court trials de novo by juries of six in appeals of district court convictions in criminal cases. Further review, limited to questions of law, runs directly to the appeals court or the SJC. In non-jury civil cases appeals on questions of law are taken to an appellate division of the district court where the right to a trial de novo has not been preserved and pursued. The appellate division is composed of panels of three district court judges appointed by the chief justice of the district courts with approval of the chief justice of the SJC. The same is true for the EMC.

There are district courts in all 14 counties ranging from 12 district courts in Middlesex County to only one district court each in Dukes and Nantucket Counties. The population served by a district court varies from under 4,000 to nearly 269,000.²⁵ Of the 72 district courts, seventeen of the courts operate on a part-time basis, that is, they are not manned by at least one full-time judge.

In 1972, the district courts employed 1,773 permanent employees.²⁶ This figure includes 65 regular full-time judges and 17 regular part-time judges. However, this figure does not include special justices who, like regular district court judges, are appointed by the governor for life, but who serve on a temporary basis at the discretion of the regular judge. Each district court is required to have an equal number of regular judges and special justices, although in three courts the number of special justices is by law fewer than the number of regular judges. The special justices are allowed to determine the maximum number of days they will be available to sit and are paid on a per diem basis. The chief justice of the district courts is authorized to assign special justices to sit in district courts other than the ones to which they were appointed originally.²⁷

In 1972 the district courts employed 146 court officers, 38 clerical persons for the judges, 72 court clerks appointed by the governor for life, 124 assistant clerks, 634 clerical persons for the clerk, 370 probation officers, and 295 clerical persons for the probation officers. Non-judicial personnel ranged from a total of 101 permanent employees in the Third District Court of East Middlesex to three in the Nantucket District Court. Courthouse maintenance personnel usually are employed directly by the county and not by the district courts.²⁸

The caseload figures for the district courts for the year ending June 30, 1972 have been compiled by the chief justice of the district courts. These figures for the most populous and least populous district courts are as follows:²⁹

DISTRICT COURTS	CIVIL WRITS ENTERED	CRIM. COMPLAINTS	PARKING COMPLAINTS & TICKETS
Cent. Dist. Ct. of Worcester	5,683	42,596	128,245
Nantucket Dist. Ct.	41	414	385
Average of all Dist. Cts.	1,282	7,344	31,493
All Dist. Cts.	92,331	528,389	2,304,927

Administrative responsibilities in each of the district courts are shared by the individual district court judge, clerk and chief probation officer. Among a district court judge's administrative duties are appointing court officers, probation officers and temporary clerks, approving the clerk's appointments of assistant and temporary assistant clerks, procuring, in conjunction with the clerk, necessary law books and, generally, doing all that is necessary to insure that his court functions smoothly. The clerk's administrative duties include appointing assistant and temporary assistant clerks, keeping records of court proceedings and receiving and disbursing fines, forfeitures and fees. District court probation officers, including a court's chief probation officer, are appointed by the district court judge. While a district court is authorized to appoint as many probation officers as it deems necessary, the appointment of additional probation officers actually is subject to approval by the commonwealth's commissioner of probation and by the legislature.

The governor appoints a full-time district court judge as chief justice of the district courts. The chief justice continues to carry out his normal judicial responsibilities as a district court judge in addition to the duties assigned to him as chief justice. The duties essentially involve his general administrative superintendence

over the district courts. The chief justice is authorized to visit the district courts, require uniform practices, forms and records, oversee recordkeeping by the clerks, and require records from each district court reflecting the nature and volume of, and the time required to complete, all work done by the court.³⁰

The chief justice also is empowered to promulgate rules of court, assign justices to sit in other district courts throughout the commonwealth and in the juvenile courts. He assigns special justices to sit in courts other than their assigned courts to hear civil cases. In addition, it is the duty of the chief justice to certify the traveling expenses of district court judges assigned to sit in other district courts.

The Boston Municipal Court is really a separate district court. Unlike most district courts, it does not have juvenile jurisdiction, but does have some statutory jurisdiction not shared by the district courts, e.g., review of Civil Service Commission decisions. Located in the Suffolk County Courthouse, its criminal jurisdiction covers ten wards in the central area of Boston and the civil jurisdiction covers substantially all of Suffolk County. During 1972, the BMC was served by nine judicial and 174 non-judicial employees.

The BMC has its own chief justice and eight associate justices and two clerks appointed for life by the governor, one clerk to handle criminal matters and one clerk for civil business. In 1972, the clerks' offices employed a total of 86 clerical personnel. The court also was served in 1972 by 2 probation officers, 18 clerical employees, a court physician and two deputies.³¹

Since the BMC is administered separately from the district courts, its statistics are compiled separately. Consequently, they vary from those statistics compiled by the chief justice of the district courts. For example, the BMC classifies its civil case statistics under the headings of "Contract," "Tort," and "All Others," while the district courts classify civil case statistics under the headings of "Summary Process," "Supplementary Process," and "Small Claims."³² The 1972 statistics indicated that 28,908 civil actions were entered and that there were 16,883 criminal complaints and 350,772 parking complaints.³³

The Juvenile Courts

Generally, throughout the commonwealth each district court serves as the juvenile court for its district. However, separate juvenile courts have been established in Boston,

Springfield, Worcester and in Bristol County. The territorial jurisdiction of the Boston Juvenile Court generally is limited to the inner city, with the exception that its juvenile jurisdiction extends to offenses committed within the ordinary jurisdiction of the Roxbury Municipal Court. The territorial jurisdiction of the Worcester and Springfield Juvenile Courts is the same as the criminal jurisdiction of Worcester's Central District Court and Springfield's District Court respectively. The jurisdiction of the Bristol County Juvenile Court is the same as the criminal jurisdiction of all of Bristol County's District Courts.³⁴ Within their territorial jurisdiction, the juvenile courts exercise exclusive subject matter jurisdiction over offenders who are under 17 years of age and over children who are denominated as "neglected," "wayward," or "delinquent."

Each juvenile court has at least one full-time judge and a clerk.³⁵ The Boston Juvenile Court employed eight court officers, three assistant clerks, 15 clerical personnel and 24 probation officers in 1972.³⁶ The Springfield Juvenile Court employed two court officers, one assistant clerk, eight clerical persons and eight probation officers. The Worcester Juvenile Court employed two court officers, one assistant clerk, seven clerical persons and ten probation officers. The initial staff of the Bristol County Juvenile Court, operational since 1972, was one assistant clerk, one clerical employee and five pro-

bation officers.³⁷ The Boston and Bristol Juvenile Courts utilize existing courthouse space, while the Worcester and Springfield courts rent facilities from private sources.

In 1972, the Boston Juvenile Court recorded 2,564 complaints; Springfield - 1,851; and Worcester - 1,846.³⁸ No statistics were available for a comparable period from the newly established Bristol County Juvenile Court.

Administratively, juvenile courts are organized along the same tripartite lines as the district courts and the BMC, with administrative authority shared by the juvenile court judge, clerk and chief probation officer. It can be interpreted from the general statutes that the chief justice of the district courts has administrative responsibility for the juvenile courts.³⁹ Some of the justices of the Boston Juvenile Court consider the chief justice of the SJC to have this responsibility⁴⁰, but in fact it appears that administrative authority over the juvenile courts has been asserted by no one in the judiciary.

The Housing Court of the City of Boston

The Housing Court of the City of Boston was created by the legislature in 1971. It has one full-time judge with civil (law and equity) and criminal jurisdiction over a large number of housing matters arising within the city. It sits in the Suffolk County Courthouse and generally conducts trials without a jury.

During its first year of operation, the housing court employed, in addition to one full-time justice, a court officer, a clerk, an assistant clerk, three housing specialists and five clerical personnel. The court does not have any probation staff. Annual caseload statistics for 1972 are not yet available since the court only began its operations in August of 1972. However, caseload figures for the seven-month period from September through March, 1973 show 3,600 criminal complaints, 300 equity cases and 500 summary process cases.⁴¹ The total of 4,400 cases actually entered for this period greatly exceeded the anticipated first year caseload of between 1,500 to 2,000.⁴²

The legislature established the Hampden County Housing Court in August, 1973, and it was scheduled to begin operations late that year. Modeled after the Boston Housing Court, it has comparable powers and jurisdiction.

NOTES

1. The SJC's jurisdiction over the extraordinary writs is largely concurrent with that of the appeals court and the superior court.
2. Data on the number of employees of the SJC was obtained from information presented in the 1974 SJC budget submitted to the commonwealth.
3. Mass. Gen. Laws Ann. ch. 221, §§ 1,2,3.
4. Mass. Gen. Laws Ann. ch. 211, § 3E.
5. Mass. Gen. Laws Ann. ch. 221, §§ 63,64.
6. Executive Secretary, Sixteenth Annual Report to the Justices of the Supreme Judicial Court as of June 30, 1972, at 75-79.
7. 1974 appeals court budget to the commonwealth.
8. Sixteenth Annual Report, supra, at 44,45.
9. Mass. Gen. Laws Ann. ch. 231, §102C.
10. Mass. Gen. Laws Ann. ch. 212, §6.
11. Sixteenth Annual Report, supra, at 84.
12. 1973-74 superior court budgets to the counties.
13. Sixteenth Annual Report, supra, at 81,82.
14. Hawkrige, Edwin, Needs of the Superior Court 1 (unpublished report of the Office of Executive Secretary).
15. Mass. Gen. Laws Ann. ch. 215, §6.
16. Mass. Gen. Laws Ann. ch. 217, §§ 1,2.
17. 1973 Massachusetts Lawyers Diary and Manual, at 21-54.
18. 1974 probate court budget to state and 1973-74 probate court budgets to counties.

19. Mass. Gen. Laws Ann. ch. 276, §83.
20. Sixteenth Annual Report, supra, at 89.
21. Caseload statistics were provided by the Recorder of the land court covering fiscal 1973.
22. 1974 land court budget to the state.
23. Because many of the register's duties in any given county, e.g., the recording of deeds, are not related to any proceedings in the land court, the register of deeds is not considered primarily a judicial officer and, for that reason, the general registry costs and revenues have not been considered as court costs or revenues.
24. 1973-74 Registries of Deeds budgets to the counties.
25. A recent report of the administrative office of the district courts reported the population of Nantucket County as 3,774 and the population served by Central District Court of Worcester as 268,930.
26. 1973-74 district court budgets to the counties.
27. Mass. Gen. Laws Ann. ch. 218, §6.
28. 1973-74 district court budgets to the counties.
29. Id.
30. Mass. Gen. Laws Ann. ch. 218, §43A.
31. 1973-74 Program Budget of the City of Boston and County of Suffolk, at 798-801.
32. Column 1 of the annually published statistics of the district courts is headed "Total Civil Writs Entered." This is comparable to the aggregate number of civil cases of the BMC under the headings of "Contract," "Tort", and "All Others."
33. Sixteenth Annual Report, supra, at 90-96.
34. Mass. Gen. Laws Ann. ch. 218, §57.

35. The two special justices of the Boston Juvenile Court will not be replaced when their offices become vacant.
36. 1973-74 Program Budget of the City of Boston and County of Suffolk, at 808.
37. 1973-74 juvenile court budgets to the counties.
38. Sixteenth Annual Report, supra, at 97-99.
39. Mass. Gen. Laws Ann. ch. 218, §58 provides that the juvenile courts claim the same powers, duties and procedures as possessed by the district courts and that the laws applicable to the district courts within the same county as the juvenile court shall apply to the juvenile court. If this statute were applied to the matter of administrative control, it would appear that the juvenile courts are administered in the same fashion as the district courts, i.e., by the chief justice of the district courts.
40. The general superintendence of the SJC over the inferior courts as authorized by Mass. Gen. Laws Ann. ch. 211, §3 would certainly apply to the juvenile courts. Whether this authority can be asserted by the chief justice or by the SJC as a collegial body is uncertain. See ch. 1, note 7.
41. Sixteenth Annual Report, supra, at 49-50.
42. Garrity, "History of the Housing Court of the City of Boston," November 1, 1972, unpublished.

Chapter 3

Financing Massachusetts Courts

Sources of Court Funding*

Supreme Judicial Court

The state pays for most of the costs for operating and maintaining the SJC, including salaries, expenses and clerical assistance for the justices, the salary of the executive secretary and some members of his staff, salaries of the clerks for the commonwealth and their clerical assistance, a portion of the salaries of all the clerks for the county, the salaries of the law clerks and part of the administrative assistant's salary, the salaries and expenses of the office of the reporter of decisions, and a portion of the court officers' salaries. All equipment, and a portion of the costs for facilities, are paid for by the state.¹ Some positions in the executive secretary's office are funded by the federal government. However, all other costs of the SJC are carried by Suffolk County, or for all practical purposes, by Boston. These costs include part of the salaries of the clerks for the county and all of their clerical assistance, part of the administrative assistant's salary, part of the salaries of the court officers, the compensation of masters and auditors, certain expenses

*See Appendix A for detailed breakdown of funding sources for each court.

involved in a criminal case, and 70% of the cost of maintaining the SJC's court facilities.²

Although the clerks for the county serve the SJC only when the court hears original jurisdiction cases from all over the state, their clerical costs are paid entirely by Suffolk County. It has been estimated by a city budget analyst that 80% of the space in the Suffolk County Courthouse is occupied by courts with statewide jurisdiction and that 70% of the civil cases tried in the city of Boston originate elsewhere in the state.³ These estimates assume significance when juxtaposed against the fact that Suffolk County pays for 70% of the facilities of all the courts located in the Suffolk County Courthouse with the state meeting the remaining 30%.⁴ The commonwealth contributed \$425,000 toward the maintenance of the Suffolk County Courthouse for the year ending June 30, 1972. However, gross expenditures by Suffolk County on the Suffolk County Courthouse for the calendar year 1971 amounted to \$1,590,705.74 with net expenditures amounting to \$1,164,024.68.⁵

Gross expenditures by the state for the salaries and operating expenses of the SJC for fiscal 1972 were \$776,638.38 and net expenditures only slightly less. These figures do not include the cost for operating and maintaining the Social Law Library or the Massachusetts Defenders

Committee. They are included with court-related costs which follow. Gross Expenditures by Suffolk County for the SJC during calendar 1971 were \$281,445.58 with net expenditures amounting to \$278,089.58.⁶

Appeals Court

All salaries and operational expenses of the appeals court are paid for by the state. As is the case for all state courts located in the Suffolk County Courthouse, court facilities are paid for by the state (30%) and Suffolk County (70%). In addition, the salaries of court officers are paid for by the state and Suffolk County. There is an inherent contradiction here between this above practice and the statutory mandate that the "commonwealth should provide adequate quarters and facilities for the Appeals Court."⁷ The appeals court began operating in August, 1972, operating on emergency funds during its first few months of existence. The total fiscal 1974 appropriation for salaries and operational expenses for the appeals court was \$582,619.⁸

Superior Court

The superior court is financed by a combination of state, county and federal funds. A federal grant pays for the salaries of four secretaries, two law clerks, a bail administrator, a translator and a fiscal officer. Superior

court facilities are provided by the counties, except in Suffolk County where the state pays 30% of the facilities cost.

All salaries and expenses of the office of the chief justice of the superior court, except that of the fiscal officer, are paid for by the state.⁹ The salaries and expenses of the 45 associate justices, and all but two law clerks also are paid by the state. In addition, the state pays the salaries and expenses of district court judges when they sit in the superior court. The state also reimburses counties for salaries paid to special justices who sit in the district court in the place of district court judges who are sitting in superior court.

In Suffolk County, clerks' salaries are shared by the state and county. In all other counties the county pays for this entire expense. Clerical assistance throughout the superior court is supported by state and county funds in a proportion established by the justices.

Suffolk County pays the salary of a court messenger who serves the superior court in a statewide capacity. The counties pay all or a portion of salaries of court officers, stenographers, messengers, masters, auditors and secretaries. The cost of office supplies, services and equipment and certain expenses of maintaining criminal cases also are borne by the counties.

The state expenditures for the superior court for the year ending June 30, 1972, totalled \$3,051,612.¹⁰ [See

Figure 1] In addition to the items already mentioned as being paid for by the state, this figure includes the compensation of probation officers (\$1,058,884) and the costs of the office of the supervisor of probation for the superior court (\$18,958.15). Gross expenditures for the calendar year 1971 by Suffolk County for the superior court were \$4,841,259.84, with net expenditures totalling \$4,727,972.20.¹¹ This figure includes items such as the costs of maintaining the district attorney's office and probation office, but does not include building maintenance costs.¹²

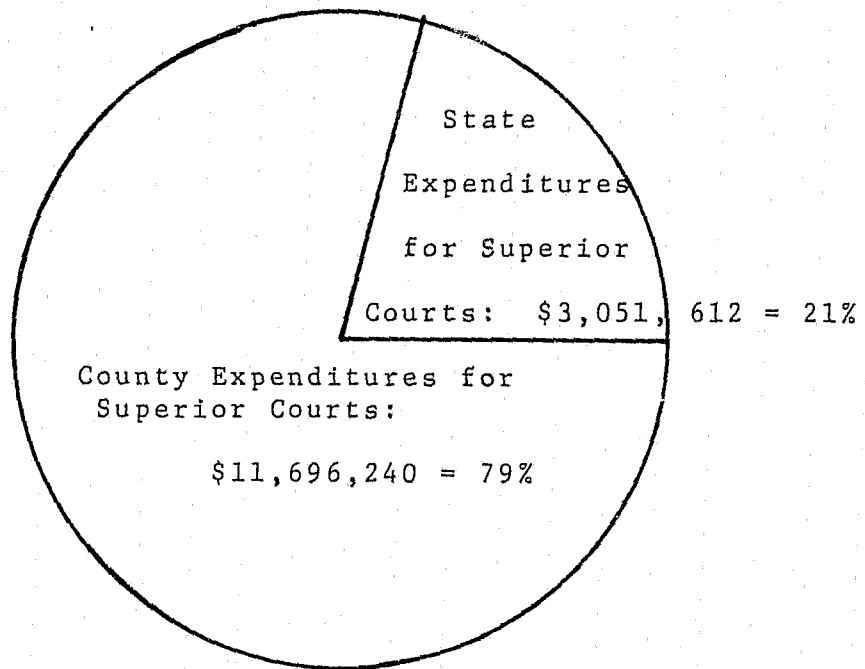
Gross expenditures by the 13 other counties for the superior court totalled approximately \$6,854,980. These county figures include costs for maintaining the probation department and the district attorneys' offices. They do not include building maintenance and operation costs.¹³

Land Court

With respect to the land court, the state pays the salaries and expenses of the judge and justices, the recorder, deputy recorders and other assistants, examiners of title, messengers and all clerical assistance in the court.¹⁴ Presently, the cost of facilities for the land court is shared by the state and by Suffolk County under the 30%-70% ratio. But when the land court sits outside Suffolk County,

FIGURE 1

DISTRIBUTION OF COURT EXPENDITURES BETWEEN
STATE AND COUNTIES



the counties must provide facilities.

Masters and auditors are compensated by the counties, or as otherwise directed by the court. Technical assistants are compensated by the counties, as are stenographers and court officers. The salaries, expenses and costs of facilities of the registries of deeds throughout the state are handled entirely by the counties.

State expenditures on the land court for the fiscal year ending June 30, 1972 were \$682,631.80.¹⁵ Expenditures by the counties on the 21 registries of deeds in the state for the calendar year 1971 totalled approximately \$5,193,732.¹⁶ This latter figure does not include building maintenance and operation costs, a completely separate item in the budgetary process.

Probate Courts

The state pays for the salaries of probate court judges, registers and assistant registers of probate and all salaries and expenses of the chief judge's office. Travel expenses of probate court judges are paid for by the state with the exception that the counties pay for any intra-county travelling expenses that are incurred.¹⁷ Except for Suffolk County, where the state pays 30% of the cost of maintaining the court's facilities, probate court facilities are a county cost. The state pays for all expenses, including

clerical assistance of the administrative committee of the probate courts. The counties pay for the travelling expenses of the registers of probate, and the salaries of guardians ad litem (when not paid directly by estates or trusts). The counties pay salaries of masters and auditors, messengers, court officers and stenographers. Office supplies, services and equipment, and uniforms are provided by the counties.

Total gross expenditures for the fiscal year ending June 30, 1972 were \$3,051,992.26. But net expenditures were \$1,724,544.14.¹⁸ Total probate court expenditures by the 14 counties for 1971 calendar year were approximately \$725,772.¹⁹ Again, this figure does not include the costs of maintenance and operation of probate court facilities.

The District Courts, Boston
Municipal Court and Juvenile
Courts

Most of the expenses of the district courts are charged against the counties with the major exception being the operation of the administrative office of the district courts, including that office's personnel, and the operation of the administrative committee. The chief justice of the district courts, as the chief administrative officer of the district courts, is compensated by the state, in addition to receiving his regular salary which is paid by the county where he sits as a district court judge.²⁰ Also, recent legislation provides that each appellate division judge will receive compensation, to be paid by the commonwealth, in

addition to his regular county-paid salary. The commonwealth also will assume the expenses of the appellate division formerly paid by the counties.²¹ Of the ten positions in the administrative office of the district courts, five are state-funded and five are federally-funded. In terms of salary dollars actually expended by the commonwealth and the federal government, federal funds now account for about 40% of the salary dollars.

The state pays for the travelling expenses of district court judges. The counties are supposed to reimburse the state for this expense.²² In practice, the administrative office receives vouchers from full-time and appellate division judges and pays this expense with state funds. However, the counties apparently do not reimburse the state for these expenditures. It should be noted that the statutes do not include special justices within the provisions authorizing reimbursement for travel expenses. Consequently, they receive no compensation for this expenditure. Part-time judges still are considered regular judges and hence receive compensation for their travel expenses. In the fiscal year ending June 30, 1972, the state expended \$50,000 for the administration of the district courts.²³ This figure increased considerably in fiscal 1973, to \$122,076, most of which went to pay administrative office staff who had been paid previously by LEAA.

The bulk of the district court expenses are borne by the counties. This includes the salaries of full-time,

part-time and special judges, the salaries of all non-judicial employees, and the expense of office supplies, services, equipment, uniforms, etc. The expenses of the Boston Municipal Court are paid for by Suffolk County. The juvenile courts are supported by the four counties where they are situated. Once again, the only exception is that the state pays for 30% of the total cost of maintaining the Suffolk County Courthouse, in which the Boston Municipal Court and the Boston Juvenile Court are located. For the 1971 gross county operating expenses of the district and juvenile courts, see Figure 2.²⁴

Housing Court of the City of Boston

The Housing Court of the City of Boston is financed entirely by Boston, with the exception that the state pays for 30% of the cost of the court's facilities. For calendar 1972, the city appropriated \$99,939 for the housing court. Appropriations for calendar 1973 increased substantially to \$233,330. For the first six months of 1974, the city appropriated \$130,004.²⁵

FIGURE 2

1971 County Expenses for Operating District and Juvenile Courts

BARNSTABLE	\$ 921,826
BERKSHIRE	698,173
BRISTOL	1,982,546
DUKES	83,019
ESSEX	3,080,254
FRANKLIN	342,720
HAMPDEN	2,704,092
HAMPSHIRE	522,495
MIDDLESEX	10,778,811
NANTUCKET	55,937
NORFOLK	3,175,558
PLYMOUTH	1,868,544
SUFFOLK	6,348,480
WORCESTER	3,835,978

TOTAL - \$36,398,433

Court Related Costs

Court related costs include the salaries and expenses of the bar examiners which are paid for by the state.²⁶ These expenditures for the year ending June 30, 1972 were \$100,285.²⁷ In addition, the salaries of district attorneys and assistant district attorneys are paid for by the state. Their travel expenses are shared by the state and county, depending on the reasons for the travel.²⁸ State expenditures in this area for the year ending June 30, 1972 were approximately \$973,793.²⁹

The counties pay the salaries of temporary assistant district attorneys, legal assistants, messengers and clerical assistance, and all operational costs of the offices of the district attorneys.³⁰ County expenditures during calendar 1971 for the offices of the district attorneys were approximately \$1,466,279.³¹

The state pays for the salaries and expenses of the Judicial Council.³² For the year ending June 30, 1972, these expenses amounted to \$20,575.³³ All law libraries are funded by the counties,³⁴ with the exception of the Social

Law Library in Boston which is a private corporation. Suffolk County contributed \$2,000 toward its costs during the 1971 calendar year, and the state contributed \$54,000 during the fiscal year ending June 30, 1972. The total amount contributed by the 13 counties, not including Suffolk County, to the cost of law libraries throughout the state for calendar 1971 was approximately \$406,245.³⁵

The Massachusetts Defenders Committee is funded by the state and federal government. The salaries for approximately 93 of 116 public defenders are paid for by the state with the remaining money coming from federal funds.³⁶ The 11 Defender Committee members serve without compensation, but their travelling expenses are paid for by the state. The salaries of three investigators are supported by federal funds, with state money supporting the other four. The salaries of four para-professionals are handled by federal funds and the law students employed in the offices are funded by state and federal monies. Federal funds granted the Massachusetts Defenders Committee for fiscal 1974 amount to about \$709,700. The state appropriation for this same

period is \$2,096,500. State funds expended for the year ending June 30, 1972 were \$1,161,318.57.³⁷

The state pays the salaries of probation officers in the superior and probate courts. The salaries of probation officers in the district courts, the BMC and the juvenile courts, as well as the expenses of all probation officers, are paid for by the counties. Counties pay the costs of clerical assistance to probation officers as well as office supplies, services and equipment. All salaries and expenses of the office of the superior court supervisor of probation and the state commissioner of probation are paid for by the state, as are the expenses of the committee on probation.³⁸ State probation expenditures for the fiscal year ending June 30, 1972 were approximately \$1,680,551.³⁹

Summary

The present system of allocating court costs between county and state once was grounded in logic. Politically, geographically and economically local financing of local judicial services was a rational approach. But the demands on our courts and the variety of related court services now required long have outstripped the reasonable economic capabilities of county government. Structuring courts along county or municipal boundaries may reaffirm our historic faith in local government, but it only impedes unified court funding, budgeting and administration.

In the superior and probate courts, which are located in each county, the state pays the salaries of all

the judges but the counties pay the salaries of many of the non-judicial court personnel as well as the costs of office supplies, services and equipment. The supreme judicial court is served by the clerk of Suffolk County when it exercises its original jurisdiction. The clerk is paid not by the state, but by Suffolk County, or, in effect, Boston. Where is the logic or sense in such a scheme? How does it promote the effective and efficient administration of justice?

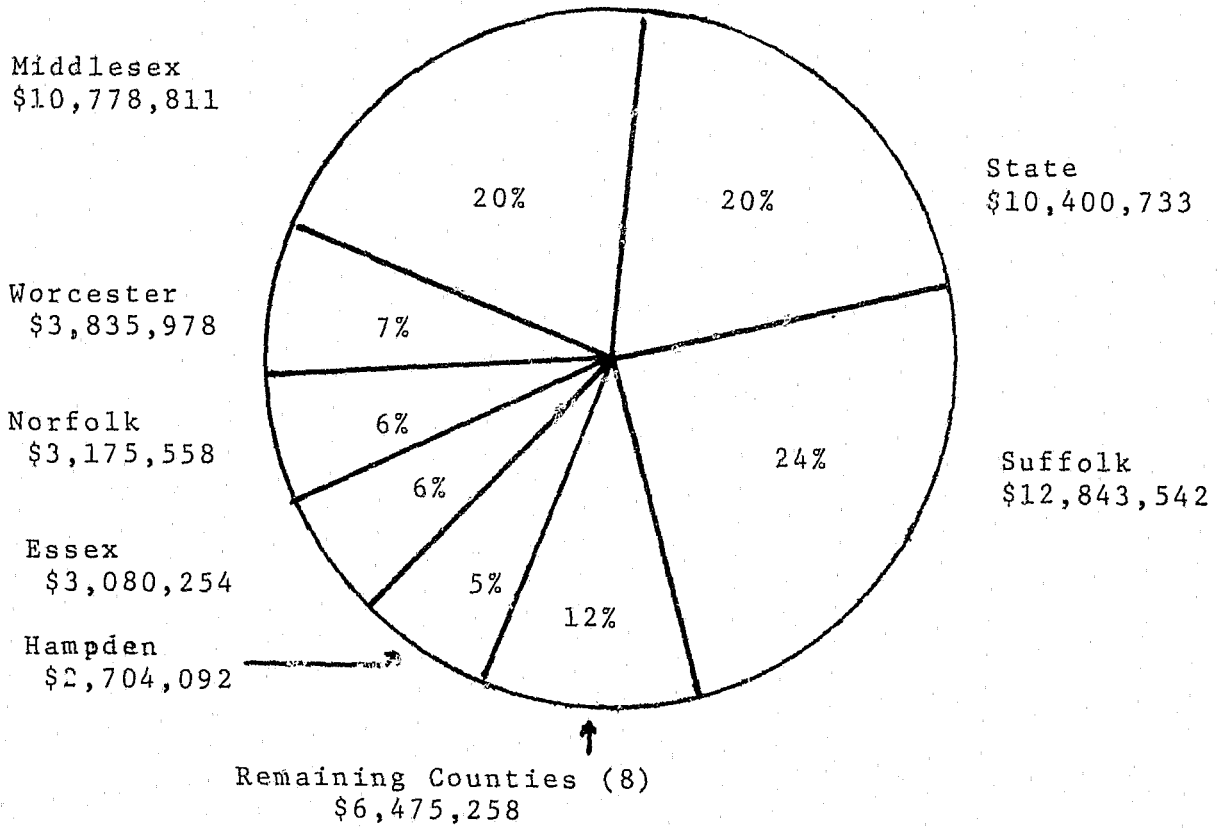
Costs and Revenues*

The cost of operating all Massachusetts courts for the twelve-month period most recently reported was \$53,294,266.⁴⁰ Of this total, 20% or \$10,400,733, was paid by the commonwealth with the remaining 80%, or \$42,893,493, paid by the counties. Suffolk County (Boston) paid 24% of the total costs, and 30% of the costs paid by the counties (See Figure 3). The 1972 reported cost showed a dramatic 150% increase over the 1962 total cost of \$21,343,021.⁴¹ The 1972 cost also represented a nine percent increase over

*It should be noted at the outset that until 1973, budgets for all courts financed by the counties were computed on a calendar year, but on a fiscal year for state financed courts. Thus, the statistics presented in this chapter represent calendar year 1971 for courts funded primarily by the counties and the fiscal year ending June 30, 1972, for courts funded principally by the state. The legislature has now required all government appropriations to be computed on the basis of a fiscal year. In order to implement this changeover, 18-month budgets covering the period from January 1, 1973 to June 30, 1974 have been submitted by all courts previously budgeted on the calendar year.

FIGURE 3

DISTRIBUTION OF THE COSTS OF THE
COURT SYSTEM BETWEEN THE
STATE & INDIVIDUAL COUNTIES



the \$48,837,291 spent in 1971.⁴² In 1962, the commonwealth paid 20% of the total cost of operating the courts and the counties paid 80%. Suffolk County paid 28% of the total court costs and 35% of the costs paid by the counties. These percentages indicate that while Suffolk County paid slightly smaller percentages of both the total costs and county costs in 1972 than in 1962, the overall ratio of state to county appropriations remained unchanged. However, it should be pointed out that the final Suffolk County share for 1972 may well rise to its 1962 ratios when the total operating cost of the newly created Boston Housing Court is reflected in the statistics. Also, the expenses of the appeals court, paid for by the state, are not presented in the 1972 figures.

The net costs of operating the courts, computed by deducting the revenue generated by the courts and paid to state and local government from the gross costs of operating the courts, indicate that the state received revenues totalling \$1,503,640 from the courts, or 15% of the total revenue generated by the courts, [See Figures 4 and 5] while the counties received \$8,224,523, or 85%. Suffolk County (Boston) received \$4,543,435 in revenues, representing 47% of the total revenues and 55% of all revenues collected by the counties.

In comparison, the net costs reported by the executive secretary in 1962 indicate that the state collected \$844,222 in revenues, or 24% of the total revenues collected. Counties collected \$2,728,502 or 76% of the total. Suffolk County collected \$1,278,450 or 36% of the total revenues and 47% of the revenues collected by the counties. Viewed from

FIGURE 4

DISTRIBUTION OF COURT REVENUES TO COUNTIES AND STATE

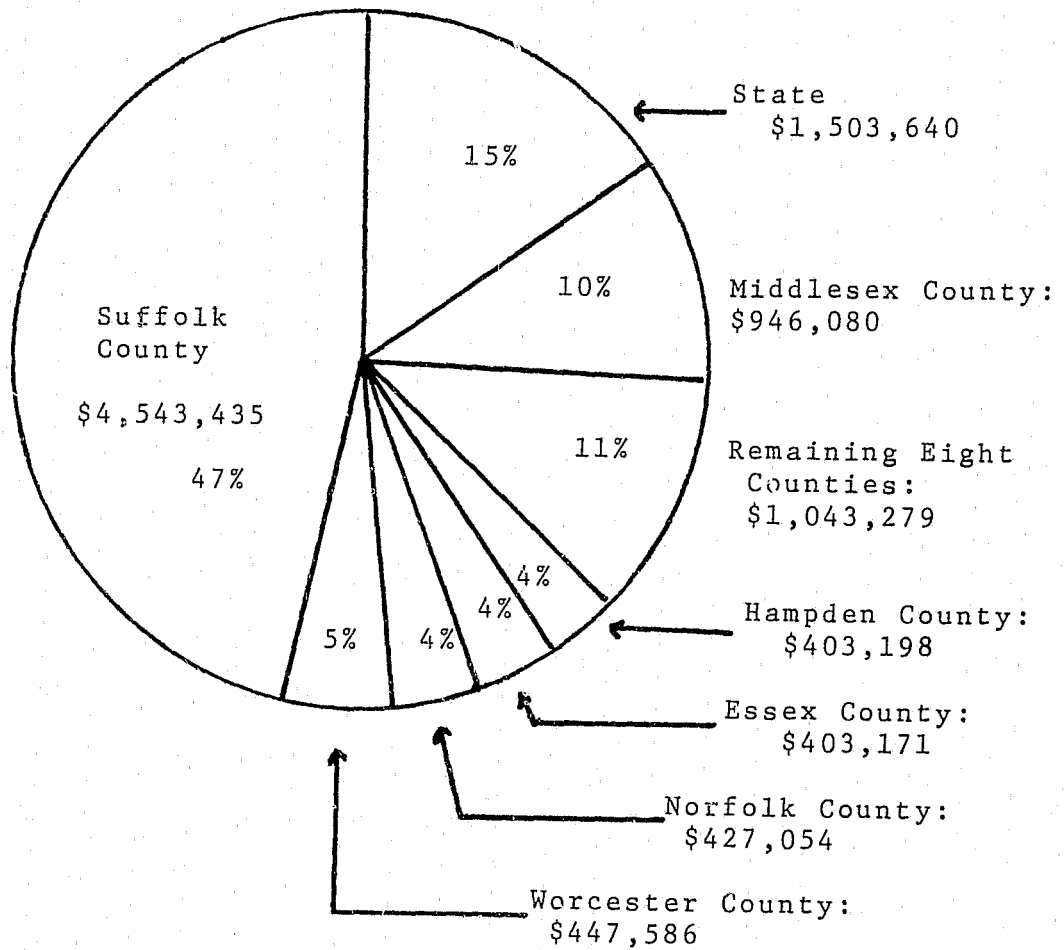
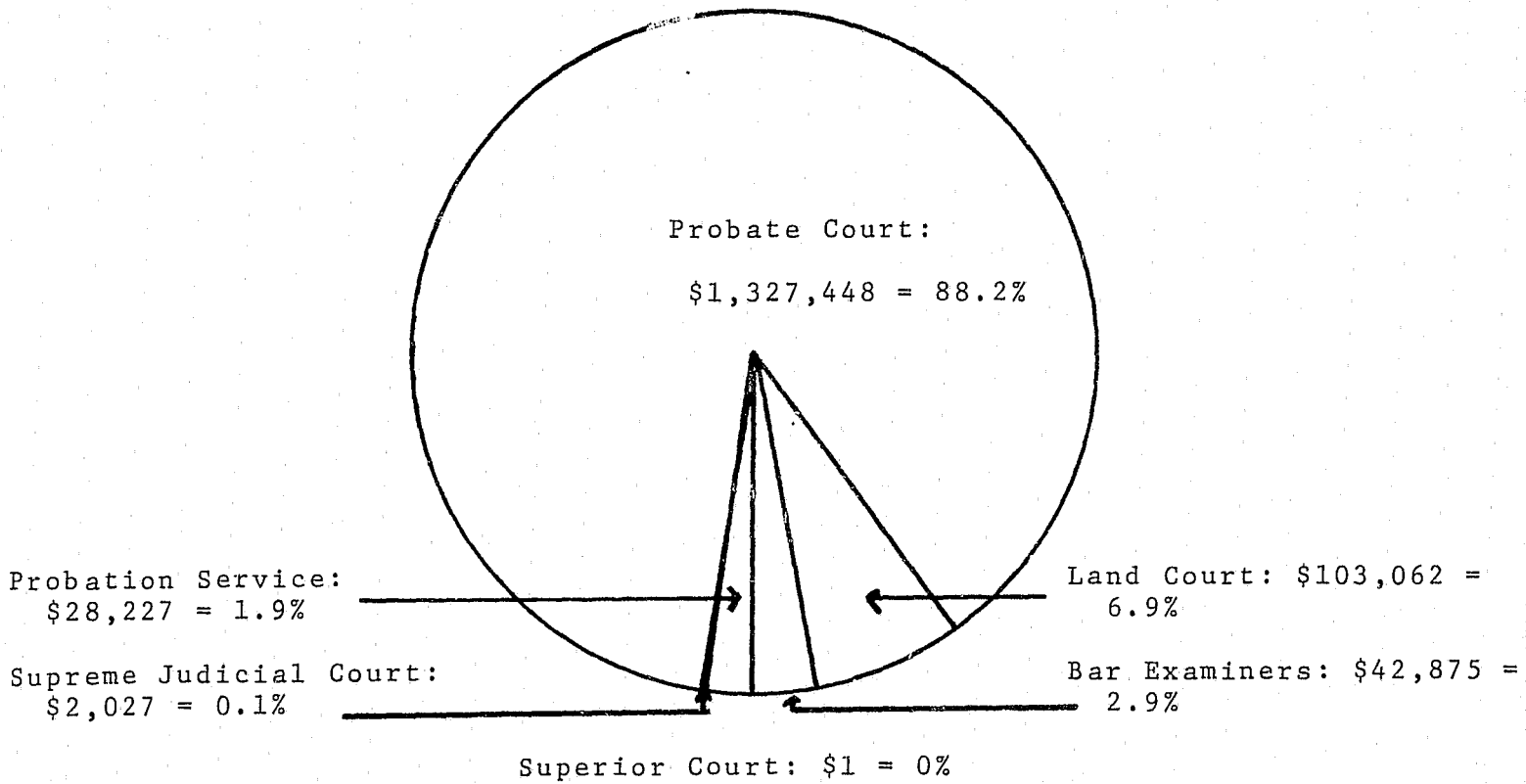


FIGURE 5

SOURCES OF COURT REVENUES RECEIVED BY THE STATE

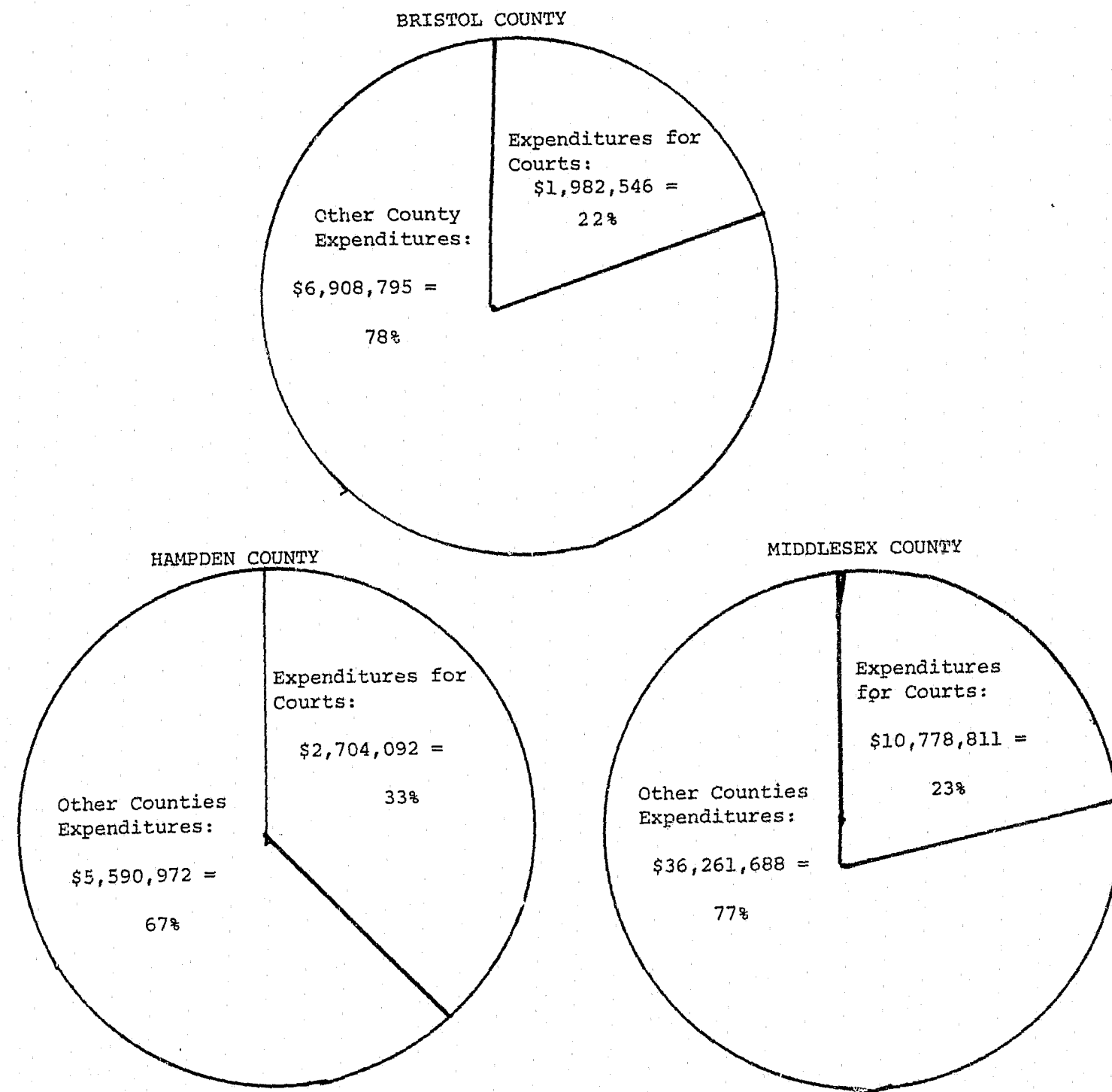


another perspective, the state in 1972 received revenues which represented approximately 14% of its total court expenditures while the counties received revenues representing approximately 19% of their court expenditures. Suffolk County's 1972 revenues represented approximately 35% of its total court expenditures. If Suffolk County's expenditures and revenues are excluded, the figures show that the other 13 counties in the commonwealth received revenues representing approximately 12% of their court expenditures, whereas the state in 1962 received 20% of its expenditures from revenues while all the counties received 16%. Suffolk County received 21%. [See also Figures 6 and 7]

The statistics indicate that the burden for operating the courts in Massachusetts falls heavily upon the counties with Suffolk County bearing a disproportionate burden. Suffolk County in fact pays a greater sum towards the support of the courts than that paid by the state. This situation has changed little over the past decade in spite of the rapidly increasing cost for operating the courts. Because county revenues come primarily from property taxes, the heaviest burden of financing the courts falls upon the property owner, particularly those who live in Boston.

To be sure, Suffolk County receives greater revenues from other funding sources in comparison to the amount it spends for the courts. But this does not diminish the inequitable burden which Suffolk County bears in providing facilities and personnel for courts which serve the entire state.

FIGURE 6



County Expenditures for the Courts
Compared to All Other County Expenditures
1971

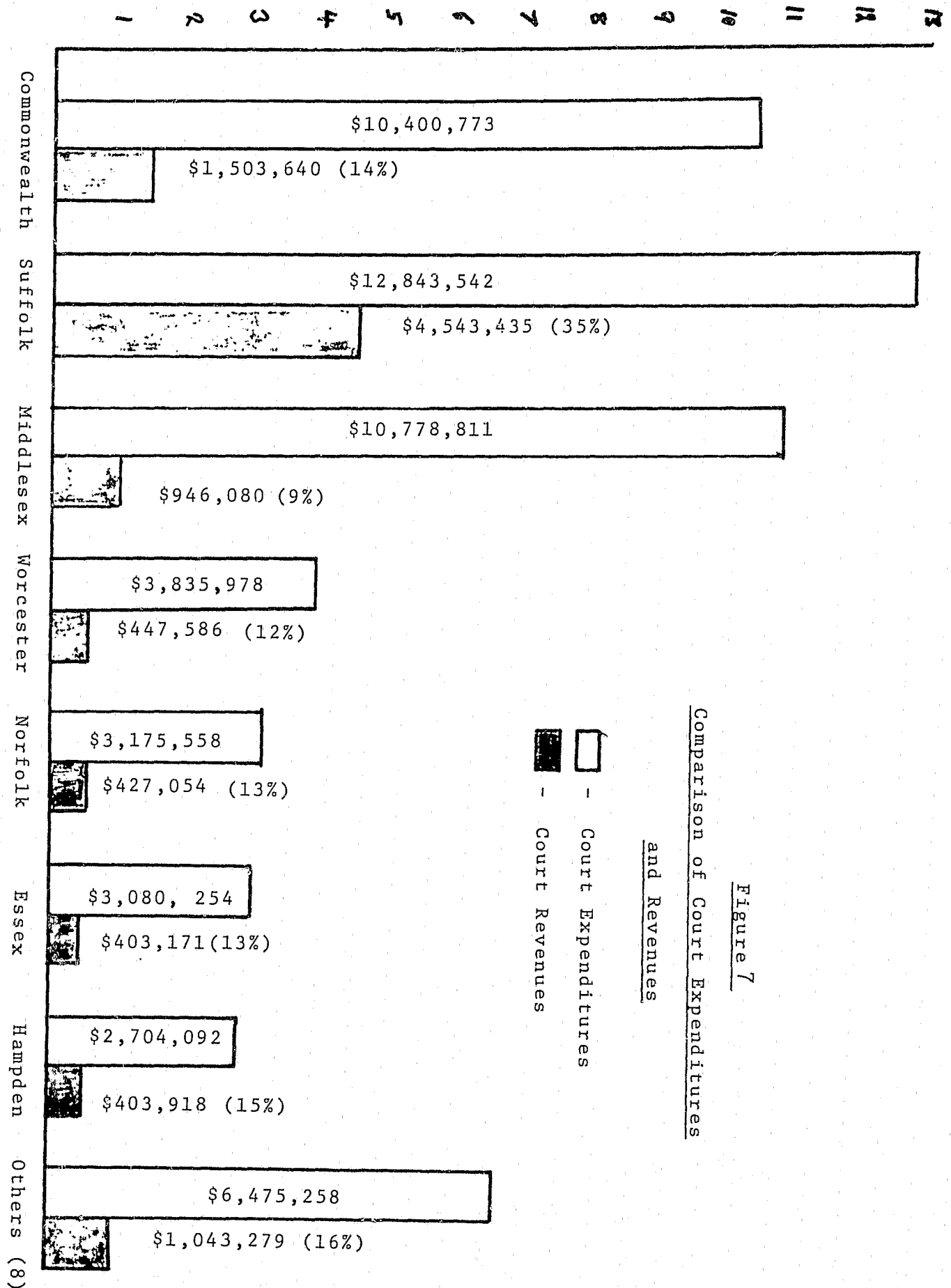


Figure 7
Comparison of Court Expenditures
and Revenues

CONTINUED

1 OF 2

In reviewing the amount of money generated by the court system, relative to the cost of operating the system, one is struck by the small amounts generated by Massachusetts courts. A number of other states generate monies from fees, fines and forfeitures equivalent to or greater than the total cost of the court system in that state, e.g., California and North Carolina.

It is important to reemphasize that courts should not be fundamentally viewed as revenue creating bodies. They are there to supply a forum for the resolution of disputes either public or private. One is not anxious to relate court support to the monies they generate. However, at least on the civil side, the resolution of a dispute is a mixed public-private benefit. Courts traditionally have asked that private parties share in the costs of maintaining a civil action by paying filing fees, jury fees, etc. Requiring these fees also serves to discourage the filing of some cases which perhaps should not be in court in the first place.

The level of filing fees is a significant policy question for courts. In some states filing fees were established decades ago and have not been revised since. In addition, the filing fees in many states vary significantly from court to court with no true rationale for the amounts asked. We believe that the Massachusetts courts should

review their filing fee schedules with a view toward establishing statewide fees at a level commensurate with a fair distribution of the costs between private litigants and the general public. It should be recognized that any fee creates an unjust hardship for some parties and in those instances provision for waiving fees should be made. [See pp.86-87 infra] For most civil disputes the filing fee is an insignificant amount compared with other costs and usually there is no hardship created by requiring payment.

Another good reason for reviewing filing fees is that keeping track of large numbers of different sums complicates administration and a simplification would benefit the effectiveness of court operations. The question of fines and forfeitures is entirely different. These monies should be treated as devices to assist in law enforcement.

It is, therefore, significant that the Massachusetts court system does not appear to be generating nearly as much money as courts elsewhere. This fact deserves closer examination. It may be that Massachusetts judges as a matter of policy have decided not to impose heavy fines on individuals (especially in traffic cases). It may be that the statutes in Massachusetts do not allow heavy penalties. It is possible that the court system is not deciding as many of these cases per year as other court systems or that the actual collection of the fines is not efficient. It is appropriate for the

courts in Massachusetts to review the facts, diagnose the reasons for the present situation and to then decide whether changes would be beneficial.

One interesting consequence of the present situation is that one of the common problems of changing to state financing is not present in Massachusetts. In many states courts of limited and special jurisdiction create large amounts of revenue, basically from traffic fines. These monies are utilized by local government not only to support the local court but also to support a variety of other services. This means that proposals for state financing have to address the problem of replacing revenues lost by local government. In Massachusetts there is no such problem and this should facilitate any move toward a more effective mode of financing. The move to state financing also would remove any feeling that the fines imposed are related, even tangentially, to the income needs of any local court or government.

In many states it is common to earmark various revenues created by the court for use in a variety of specific areas. Elaborate formulas often are used to distribute income to pay for judges' retirement, training of police officers, establishment of night courts, running of traffic schools, etc. To identify how all these monies are distributed is a time consuming and difficult task. Nevertheless, it would be valuable to establish how Massachusetts

presently distributes these monies.

One rationale for earmarking is that there is some direct correlation between the benefit received and the charge imposed. This may or may not be true. Another pragmatic reason for earmarking is that it allows the regular budgetary process to be circumvented. This may serve the needs of the recipient of the funds, but it prevents regular review of expenditures for those services.

Perhaps the most serious criticism of earmarking is that it needlessly complicates administration. Accordingly, any review of the funding mechanisms for courts would not be complete without an appraisal of present earmarking formulas to determine whether simplification can take place and indeed to determine whether the best interests of the commonwealth and the courts are served by existing arrangements.

A final area of concern is the effective management of the monies that are generated by the court system. In these days of high interest rates, substantial sums of money can be earned by investing in short term instruments. Interest earned in this way can contribute significantly to the total revenue created and should not be ignored. Procedures should be established to invest court generated funds effectively in whatever vehicles are permitted by law.

Revenue Sources

Assuming that the recommendations contained herein are not implemented and the present system of financing the courts is continued, it is estimated that the net cost to the commonwealth of financing the courts will be \$2.77 per capita and the net cost to the counties will be \$11.53 per capita during 1979. On the other hand, it will cost the commonwealth \$14.39 per capita to finance the court system in fiscal year 1979 if our recommendations are implemented. [See Chart I on p.94] The obvious reason for this increase in cost to the commonwealth is due to the fact that the \$2.77 figure reflects less than a 20% share of the court costs, whereas the \$14.39 figure reflects 100% state assumption of costs. Conversely, these figures also reflect the fact that the counties' per capita share of the costs will be reduced from a projected \$11.53 to zero in 1979.⁴³

This shifting of the burden of the cost of financing the court system away from the counties to the state contemplates placing a greater burden on certain revenue sources and alleviating the burden on others. Specifically, it contemplates using the state sales tax and the state income tax rather than the property tax as the major revenue sources for financing the court system.

Eliminating the property tax as the major revenue source for financing the commonwealth's courts should be viewed as a highly desirable development. Because the largest single category from which property tax revenue is derived is residential housing, a major portion of the burden of financing the commonwealth's court system presently rests on the housing consumers, whether they are owner-occupants or tenants. In 1960, it was estimated that property taxes in the northeastern part of the United States amounted to 24% of a family's expenditure for housing, as rents, or, if owner-occupied, as direct taxes.⁴⁴ Since housing expenditures comprise a large percentage of the budgets of poorer families, the property tax is a highly regressive tax. That is, this tax absorbs a much higher fraction of the incomes of the poor than of the rich (particularly since the poor tend to be concentrated in central cities where property tax rates are highest). Increased reliance on the property tax as a major source of revenue not only tends to increase the cost of housing, but discourages investment in new housing and the financing of improvements in existing housing.

The inequities of the present situation in Massachusetts were ably articulated by Representative Charles F. Flaherty, Jr.:

Not only is the present system of financing the court system unwieldy and capricious from an administrative viewpoint ... but it is in-

equitable as a matter of taxation. At present the expense of running our courts is divided between the state, the City of Boston, and the 13 counties outside Suffolk County. The shares, roughly, are the state one-sixth of the cost, Boston one-third, and the counties one half. This means that about five-sixths of the total court costs in the commonwealth, that is the costs borne by Boston and the counties, falls mainly on local real estate taxpayers. More absurd and fantastically unjust is that the real estate taxpayers of the City of Boston pay one-third of the costs of running the courts of Massachusetts and the state pays only one-sixth.⁴⁵

Because of these negative aspects of increased reliance on the property tax as a revenue source, experts have noted that if they were given the opportunity to design a tax system anew, it is unlikely that housing would be singled out for such high levels of taxation. In fact, some have argued that housing should be exempted entirely from taxation just as many states exempt food from the sales tax.

As an alternative to increased reliance on the property tax, state taxes, principally the sales and income taxes, would distribute the burden for financing the court system in a more equitable manner throughout the state. Even then, the overall effect which state assumption of court costs would have on increasing these tax burdens would be minimal. A \$14.39 per capita expenditure for the courts in 1979 is a rather modest amount when one considers that in

1979, commonwealth tax collections should amount to approximately \$400 per capita.⁴⁶

In addition, commonwealth tax burdens could be eased by increasing the amount of court-generated revenues through the establishment of a more comprehensive and meaningful statewide fee schedule for the courts. North Carolina's experience with such an innovation, in the context of that state's assumption of all court costs, has resulted in a situation whereby the court-generated revenues in that state now exceed the costs of operating North Carolina's courts. [See discussion at pp.138-140 infra] We are cognizant of the fact that attempts to increase filing fees and jury fees have encountered considerable opposition in Massachusetts, primarily on the grounds that courts should remain accessible to all citizens. While we believe that accessibility to courts is a cornerstone of our justice system, we do not think it necessarily incompatible with an effort to facilitate the collection of appropriate court fees and avoid, wherever it is proper, the unnecessary expenditure of state funds. A system could be established whereby adequate revenues could be generated while still insuring access to the courts for all those with legitimate disputes. For example, the Wisconsin Citizens Study Committee on Judicial Organization recently recommended the following for use in

Wisconsin:

"User Fees" should be reviewed on a regular basis under the supervision of the Supreme Court. Any increase in user fees should be subject to appropriate provision for waiver of these fees for indigent persons.

Comment: Most civil cases involve disputes between private parties. Although the state has assumed responsibility for providing the machinery for peacefully settling such disputes, it is appropriate that the parties involved contribute a portion of the cost of such machinery. User fees are not a significant cost item for the litigant when compared to attorney fees and the cost of expert witnesses. When multiplied by the number of cases filed, however, even a minor user fee increase will produce significantly greater revenue for the judicial system. The fee system should bear a rational relationship to the actual costs of processing the various types of cases, should be periodically re-evaluated, and should contain provisions for waiver of fees in appropriate cases.⁴⁷

State Assumption of Court Costs

Much of the fiscal data needed to make reasonably accurate projections with respect to implementing the recommendations contained in Chapter 1 is not readily available. Although the executive secretary of the supreme judicial court publishes an Annual Report which contains an

appendix devoted to "computations of the costs of operating the courts," a number of important cost and revenue categories are not included in these computations. For example, the cost totals do not contain the costs to the counties of operating and maintaining courthouse facilities for the superior, probate, and land courts. In addition, these cost totals do not include the interest paid by the counties on bonded debts connected with these facilities. With respect to revenues, the receipts figures for each county do not include fees collected by the assistant recorders of the land courts.⁴⁸

The lack of a comprehensive and unified body of fiscal data underscores the need for unifying the commonwealth's court financing and budgeting process. For example, the lack of a unified body of data concerning the costs of operating and maintaining court facilities throughout the state results, in large part, from the fact that the counties presently bear most of the burden of financing court operations in the commonwealth. Since certain wholly county-financed facilities housing superior, probate, or land courts also house registers of deeds and other county offices, the counties in which such facilities are located generally do not apportion the costs between the various courts and county offices. In addition, some of the counties report

interest paid on the bonded debt for all county facilities as a single sum rather than apportioning the interest among the various courts and county offices. It would appear that the counties also combine revenues generated by the registers of deeds with those of the land courts.

Before the state can assume the responsibility for financing all of the courts in the commonwealth, a more comprehensive and unified body of fiscal data pertaining to court operations must be obtained. For this reason, we have recommended the creation of a Court Finance Committee to facilitate and plan for such a transition and have built a certain amount of "lag time" into our recommendations to maximize its effectiveness. We have recommended, for example, that the fiscal personnel listed in Chart II on p. 95, be hired in advance of full state assumption of court costs. It is anticipated that the additional fiscal personnel will be used initially to gather an integrated and comprehensive body of fiscal data and to aid the Court Finance Committee in formulating necessary financial arrangements and revenue allocations between the state and county governments prior to making the transition to full state funding.

Because the Annual Report of the executive secretary is the best single source for fiscal data relating to the courts, figures from the Sixteenth Annual Report of

the Executive Secretary form the basis for the charts on pp. 94-99 which contain estimated cost and revenue projections pursuant to state assumption of court costs. However, an attempt was made to remedy certain of the aforementioned deficiencies in those figures by making estimates based on data from other sources.⁴⁹ For example, the cost of operating and maintaining courthouse facilities for the superior, probate, and land courts was estimated to be \$2,400,000 during 1971 and this amount is built into the figures in Charts I and III on pp. 94 and 96.

Since many of the figures contained in the charts on pp.94-99 are approximations, they can serve only as general estimates of the cost projections. In addition, throughout this study we have assumed that state assumption of court costs would include the state assumption of the costs of operating and maintaining the court facilities which are presently financed by the counties. As previously mentioned, we have included estimates of these facilities' costs in our projections.⁵⁰

Assuming for the moment that the recommendations contained herein are not implemented and the present system of financing the courts is continued, it is estimated that the gross court costs to the counties will be \$87,098,000 and the gross costs to the state will be \$20,033,000 during fiscal year 1979.⁵¹ The total gross court costs during that

year will be approximately \$107,131,000. This is to be compared with the \$107,657,000 which is the estimated gross cost to the commonwealth of financing the court system in fiscal 1979, assuming state assumption of all court costs by that time (see Chart I on p.94). Thus, the difference in gross cost between continuing the present system and implementing the recommendations set out herein should amount to no more than \$526,000 during fiscal year 1979. This difference reflects the cost of additional personnel (see Chart II on p. 95), which is the only additional identifiable cost in effecting state takeover of court financing. State takeover will, of course, have the positive effect of reducing the gross cost to the counties from a potential figure of approximately \$87,098,000 in 1979 (assuming non-implementation) to zero (assuming implementation), and ultimately should produce significant economies in the overall management and administration of the Massachusetts court system.

When reviewing the charts which follow, it should be kept in mind that the amount which the commonwealth spends on its courts is rather insignificant when viewed in the context of total state expenditures. The \$11,430,115 which the commonwealth spent on its courts in 1972, amounted to only 0.4% of total state expenditures. Assuming state assumption of all court costs, the projected gross expenditures of \$107,657,000 for the courts in 1979 should be no more than 1.9% of total state expenditures. Clearly, this must

be viewed as modest when one considers the following percentages of the state's budget which were devoted to other items in 1972: 43% for public welfare, 17% for education, 8% for public works, and 8% for mental health.

ESTIMATED COST AND REVENUE PROJECTIONS

	Page
Chart I: Overall Cost Projections	94
Chart II: Additional Personnel Required to Implement Recommendations.	95
Chart III: 1971 Costs to the Counties of Operating the Massachusetts Courts.	
Chart IV: Estimated Cost to the Counties in 1976	96
Chart V: Estimated County/State Cost Allocations - Cost of Operating and Maintaining the Suffolk County Courthouse for Fiscal 1976	97
Chart VI: Estimated Increase in State Revenues in 1976	98

NOTE: CHARTS III-VI ARE EXPLANATORY CHARTS, WHICH ARE INCLUDED MAINLY TO DESCRIBE THE METHODS WHICH WERE USED TO ARRIVE AT THE OVERALL COST PROJECTIONS CONTAINED IN CHART I.

CHART I: OVERALL COST PROJECTIONS (THOUSANDS)

Fiscal Year	Overall Costs of Operating Mass. Cts. ^a	Gross Cost to the Counties ^b	Court-Generated Revenues: Counties ^c	Net Cost to the Counties ^d	Gross Cost to the State ^e	Overall Costs (%) Borne by the State	Court-Generated Revenues: State ^c	Net Cost to the State ^d	Per Cap. Net Cost to the State ^f	Per Cap. Net Cost to the Counties ^f
1972 ¹	55,694	45,293	8,225	37,068	10,401	18.7	1,504	8,897	1.55	6.44
1973	61,041	49,626	9,039	40,587	11,415	18.7	1,653	9,762	1.68	6.98
1974 ²	67,742	55,075	9,934	45,141	12,667	18.7	1,816	10,851	1.85	7.68
1975 ³	74,610	60,361	10,917	49,444	14,249	19.1	1,996	12,253	2.07	8.34
1976 ⁴	81,773	38,902	10,354	28,548	42,871	52.4	3,837	39,034	6.51	4.77
1977 ⁵	89,623	41,888	11,379	30,509	47,735	53.3	4,217	43,518	7.19	5.04
1978	98,227	43,907	12,506	31,401	54,320	53.3	4,634	49,686	8.13	5.14
1979 ⁶	107,657	-----	-----	-----	107,657	100.0	18,837	88,820	14.39	----

FOOTNOTES - YEARS

FOOTNOTES - CATEGORIES

¹Figures for 1972 were calculated by adding the estimated cost of operating and maintaining superior, probate and land court facilities to figures contained in the Sixteenth Annual Report of the Executive Secretary

²Includes estimated costs for operating the appeals court and Boston Housing Court

³The figures for 1975 include the estimated cost for additional personnel necessary to implement the recommendations contained herein as reflected in Chart II

⁴State assumes total cost of operating the supreme judicial court, appeals court, land court, and superior court, including state assumption of costs of operating and maintaining courthouse facilities occupied by these courts and state assumption of 80% of cost of operating and maintaining the Suffolk County Courthouse (see Chart V)

⁵State assumes cost of operating probate courts

⁶State assumes all remaining court costs (district courts, municipal courts, juvenile courts, Boston Housing Court, and Hampden County Housing Court)

^aThe figure for each year generally represents a 9.6% increase over the previous year (average annual percent increase for fiscal years 1963-1972)

^bFigures for 1973-74 represent 81.3% of overall cost figure for each year. For method of calculating figures for 1976-79, see Charts III, IV, and V

^cFigures for 1973-75 and 1977-79 represent an annual increase of 9.9% (average annual percent increase of overall revenues for fiscal years 1963-1972). For method of calculating figure for 1976, see Chart VI

^dGross costs less court-generated revenues

^eFigures for 1973-74 represent 18.7% of overall costs. For method of calculating figures for 1976-79, see Charts III, IV, and V

^fBased on a 1.0% annual change in the population. See Statistical Abstract of the United States (1972), p. 14

-94-

CHART II

ADDITIONAL PERSONNEL

REQUIRED TO IMPLEMENT RECOMMENDATIONS (Fiscal 1975)

Office of the Executive Secretary*	Salaries, Fringe Benefits and Administrative Costs**
1 Chief Judicial Fiscal Officer	35,000.00
2 Assistant Fiscal Officers	35,000.00
3 Secretaries	30,000.00
	<u>100,000.00</u>
Superior Court	
1 Budget Officer	25,000.00
1 Assistant Budget Officer	15,000.00
2 Secretaries	20,000.00
	<u>60,000.00</u>
Probate Courts	
1 Budget Officer	25,000.00
1 Assistant Budget Officer	15,000.00
2 Secretaries	20,000.00
	<u>60,000.00</u>
District Courts***	
1 Budget Officer	30,000.00
3 Assistant Budget Officers	50,000.00
3 Secretaries	30,000.00
	<u>110,000.00</u>
Land Court	
1 Assistant Budget Officer	25,000.00
1 Secretary	10,000.00
	<u>35,000.00</u>
TOTAL	\$365,000.00

*It is advised that legislation be effected immediately to carry out this recommendation

**Administrative costs include overhead costs, travel expenses, and computer time

***Including Municipal Courts, Juvenile Courts, the Boston Housing Court, and the Hampden County Housing Court

1971 COSTS TO THE COUNTIES OF OPERATING THE MASSACHUSETTS COURTS*

Counties	Superior Ct., Cty. Clerks of Court, Law Lib- raries, SJC and Land Court**	Probate Courts**	District Courts
Barnstable	214,858	15,919	691,049
Berkshire	229,078	12,446	456,647
Bristol	758,383	25,434	1,198,729
Dukes	28,591	1,214	53,213
Essex	1,055,647	58,954	1,965,652
Franklin	159,905	3,537	179,278
Hampden	226,207	7,024	289,264
Middlesex	3,012,475	173,617	7,592,719
Nantucket	20,066	1,047	34,798
Norfolk	1,094,715	86,226	1,994,618
Plymouth	574,392	82,862	1,211,290
Suffolk***	5,517,130	169,986	6,348,480****
Worcester	1,265,620	32,541	2,537,817
TOTALS	15,110,786	725,771	26,248,963

*The figures contained herein are taken from the 16th Annual Report of the Executive Secretary which excludes the Springfield, Worcester and Bristol Juvenile Courts and the Hampden County Housing Court.

**Excluding costs of operating and maintaining courthouse facilities. This cost was estimated to be \$2,400,000.00 statewide during 1971 and is included in the totals below

***Does not include the cost of operating the Suffolk County Courthouse

****Includes the Municipal Cts., Boston Juvenile Ct. and Boston Housing Ct.

	Total Cost to the Counties	% of Overall Cost to Counties
Superior Ct., etc.	17,402,786	39% (These percentages were used to estimate the changes in costs to the counties and to the state as a result of phasing in state assumption of costs - see chart IV)
Probate Courts	833,711	2%
District Courts	26,248,963	59%

NOTE: CHARTS IV, V AND VI PROJECT CERTAIN ESTIMATED COSTS AND RECEIPTS IN FISCAL 1976 AS A RESULT OF STATE ASSUMPTION OF ALL COURT COSTS FOR THE SJC, APPEALS COURT, LAND COURT AND SUPERIOR COURT. THESE ESTIMATES ARE THE BASIS FOR CERTAIN OF THE COST AND REVENUE PROJECTIONS CONTAINED IN CHART I

CHART IV

ESTIMATED COST TO THE COUNTIES IN 1976

Note: In 1976, the counties would have to pay an estimated \$63,774,297 (excluding the cost of operating and maintaining the Suffolk County Courthouse) towards the operation of the Massachusetts courts if the past county/state allocation of costs were to continue. However, in 1976 this amount will be reduced by 39%, which is the percentage of the 1972 cost to the counties which was attributable to the SJC, superior courts, land court, clerks of court and libraries (see Chart III). Therefore, the estimated cost to the counties in 1976 can be calculated as follows:

$$\begin{aligned}
 &.39 \times 63,774,297 = 24,871,975 \\
 &63,774,297 - 24,871,975 = 38,902,322 \\
 &\underline{38,902,322} \\
 &+ \underline{585,958} \quad \text{20\% of the estimated cost of operating the} \\
 &\quad \quad \quad \text{Suffolk County Courthouse in 1976} \\
 &\underline{39,488,280} \quad \text{Estimated Cost to the Counties in 1976}
 \end{aligned}$$

The same procedure was followed to calculate the estimated cost to the counties in 1977 as a result of the state's assumption of the costs attributable to the probate courts.

CHART V

ESTIMATED COUNTY/STATE COST ALLOCATIONS -

COST OF OPERATING AND MAINTAINING

THE SUFFOLK COUNTY COURTHOUSE FOR FISCAL 1976

Cost of Operating and Maintaining the Suffolk County Courthouse in Fiscal 1972:

State Cost	425,000
County Cost	<u>1,165,000</u>
TOTAL	1,590,000

Projecting a 9.8% annual increase (average annual percent increase for fiscal years 1968-1972), the total costs for succeeding years are estimated as follows:

Fiscal 1973	1,745,820
1974	1,916,910
1975	2,104,767
1976	2,311,034

It is estimated that 80% of the Suffolk County Courthouse is occupied by courts which will be fully state funded in 1976. Therefore, the state should assume 80% of the cost of maintaining the Suffolk County Courthouse in 1976.

Estimated Cost Allocations for the Suffolk County Courthouse in Fiscal 1976:

State Cost	1,848,827
County Cost	<u>462,207</u>
TOTAL	2,311,034

CHART VI

ESTIMATED INCREASE IN STATE REVENUES IN 1976

Note: We have chosen Bristol, Hampden and Middlesex Counties as representative counties for purposes of arriving at an average percentage figure as shown below.

County	Total Court-Generated Revenues - 1971	Revenues Attributable to the SJC and Superior Court - 1971
Bristol	290,070	49,235
Hampden	403,918	38,465
Middlesex	946,079	137,970
TOTALS	1,640,067	225,670

Average Percent of Total Revenues Attributable to the SJC and Superior Court in Bristol, Hampden and Middlesex Counties:

$$225,670 \div 1,640,067 = .137$$

Assuming the .137 figure is representative statewide:

11,997,796	-	Estimated <u>total</u> county revenues for 1976, assuming no change
x .137		
<u>1,643,698</u>	-	Estimated Increase in State Revenues in 1976

Grant Funding*

Another potential source of important financial support for courts lies in the various grant programs established by the federal government. The most important of those for courts is that administered by the Law Enforcement Assistance Administration (LEAA) although other grant programs are also significant. At the present time only the LEAA program has the potential to allow modernization of the nation's court system.

A number of the courts reviewed were recipients of grant funds received from the Law Enforcement Assistance Administration (LEAA). In Massachusetts the LEAA program is administered by the Governors Committee on Law Enforcement and the Administration of Justice. But this format has not resulted in significant amounts of funds being allocated to courts. Although we were not able to obtain total amounts expended in 1972, it was reported that only 2% of the monies available were expended on courts in 1971, i.e., \$321,050 (Charts VII & VIII). Addition of defender and prosecutor programs raised the total to 5% of the state's LEAA funds. The director of the state planning agency has been quoted as saying that court programs would receive \$2.25 million in fiscal 1972, but we were not able to ascertain if that indeed took place.

*The principal Source of information contained in this section and in Charts VII and VIII was Law and Disorder III, prepared by Lawyers Committee for Civil Rights Under Law.

In any event, the courts do not presently have a coordinated plan to utilize these funds effectively. It would be helpful if this separate branch of government could organize itself to gain access to this important source of funds and to utilize them rationally. These activities could be expanded to utilize other grant funds, e.g., highway safety money. Other states have organized offices of judicial criminal justice planning to aid in those tasks.

CHART VII
 MASSACHUSETTS ACTION GRANTS, 1969-71

COMPETITIVE PROJECTS

Project Title	Description	Grantee	Federal Funds Allocated (1970-1971)	Previous Awards 1969
II. Courts, Prosecutions, Defense Projects				
Model bail program	To implement and evaluate the effectiveness of the money-bail system as an alternative to professional bondsmen in the district court	Superior Court	\$ 50,000	—
District court prosecutors	To support the employment of assistant DAs in the district courts	Middlesex, Suffolk, Worcester, Norfolk, Fitchburg, Hampshire, Lynn, Fall River, Acushnet, Franklin, Middlesex County DAs Assn.	\$ 330,000	\$ 21,500 (Middlesex County)

-102-

CHART VIII
 MASSACHUSETTS ACTION GRANTS, 1969-71

Project Description	Grantee	FY 1971 Funding	Funded FY 1970	Funded FY 1969
II. Courts, Prosecutions, Defense Projects				
Organized crime unit	Dept. of the Attorney General	\$ 105,000	\$ 80,000	\$ 14,850
Judicial and correctional seminars	Dept. of Corrections and Office of Chief Justice of District Courts	\$ 22,610	\$ 10,000	\$ 4,950
Assessment and Accrediation of probation offices	Dept. of Probation	\$ 35,000	\$ 35,000	—
Roxbury-Dorchester community defenders office	Mass. Defenders Committee	\$ 120,000	\$ 70,000	\$ 9,000
Increase in staff resources of Supreme Court	Chief Justice of Supreme Judicial Court	\$ 65,000	—	—
Establishment of an Office of Administration	Chief Justice of the District Courts	\$ 40,000	—	—
State information systems Planning	Depts. of Corrections and Parole and Office of Commission of Probation	Not funded	\$ 100,000	—
Juvenile law revision	Governor's Public Safety Committee	\$ 10,000	\$ 10,000	—

-103-

NOTES

1. Mass. Gen. Laws Ann. ch. 211, §§ 3A,3B,21-23; ch. 213, §3A; ch. 221, §§ 68,73,75,76,93,94.
2. Mass. Gen. Laws Ann. ch. 211, §§ 55,61; ch. 221, §§ 73, 76,94,102; ch. 280, §5.
3. Interview with Paul Rendini, Budget Analyst for the city of Boston, July 9, 1973.
4. Acts of 1935, ch. 474, § 6.
5. Executive Secretary, Sixteenth Annual Report to the Justices of the Supreme Judicial Court as of June 30, 1972, at 60.
6. Id.
7. Mass. Gen. Laws Ann. ch. 211A, § 4.
8. Acts of 1973, ch. 466.
9. Mass. Gen. Laws Ann. ch. 212, §§ 27,28.
10. Stacey, Massachusetts Financial Report for Fiscal 1972, at 50.
11. Sixteenth Annual Report, supra, at 61.
12. There is a question as to whether the costs of district attorneys should be attributed to the judicial or executive branch. State budgetary officials have chosen to include it with the judiciary. We have done the same.
13. Sixteenth Annual Report, supra, at 63-73.
14. Mass. Gen. Laws Ann. ch. 185, § 14.
15. Sixteenth Annual Report, supra, at 58.
16. 1973-74 Registry of Deeds budgets submitted to the counties.
17. Mass. Gen. Laws Ann. ch. 217, §§ 8,8A,34,35,42.
18. Sixteenth Annual Report, supra, at 58.
19. Id., at 61-73.

20. Mass. Gen. Laws Ann. ch. 218, §§ 6,43A,43C.
21. The same is now true with respect to the appellate division of the BMC.
22. Mass. Gen. Laws Ann. ch. 218, § 81.
23. Stacey, supra.
24. Sixteenth Annual Report, supra, at 60-73.
25. 1973-74 Boston Housing Court budget submitted to Boston.
26. Mass. Gen. Laws Ann. ch. 221, § 36.
27. Sixteenth Annual Report, supra, at 58.
28. Mass. Gen. Laws Ann. ch. 12, §§ 15,16,20,20A,20B.
29. Stacey, supra, at 51.
30. Mass. Gen. Laws Ann. ch. 12, §§ 18-20,22,24,25A. The district attorneys also receive a substantial amount of federal funds through the Law Enforcement Assistance Administration.
31. Sixteenth Annual Report, supra, at 63-73.
32. Mass. Gen. Laws Ann. ch. 221, § 34C.
33. Stacey, supra.
34. Mass. Gen. Laws Ann. ch. 78, § 4.
35. Sixteenth Annual Report, supra, at 58,63-73.
36. Letter from Executive Assistant, Massachusetts Defenders Committee, September 10, 1973.
37. Stacey, supra.
38. Mass. Gen. Laws Ann. ch. 276, §§ 83,88,94,95,98,99,99A, 99C,101A.
39. Stacey, supra, at 51.
40. Sixteenth Annual Report, supra, at 57.

41. Figures used in computing percentages involving 1962 expenditures were obtained from Executive Secretary, Sixth Annual Report to the Justices of the Supreme Judicial Court as of June 30, 1962, at 45.
42. Figures used in computing percentages involving 1971 expenditures were obtained from Executive Secretary, Fifteenth Annual Report to the Justices of the Supreme Judicial Court as of June 30, 1971, at 49.
43. These figures were computed on the basis of a 1.0% annual change in the population. See Statistical Abstract of the United States (1972), at 14.
44. Dick Netzer, "Impact of the Property Tax," supplied by the National Commission on Urban Problems to the Joint Economic Committee, 90th Congress, 2nd. Session, (1968), at 17.
45. See Statement of Representative Charles F. Flaherty, Jr. before the Joint Legislative Committee on the Judiciary on H3940 relative to the commonwealth assuming the administration and financing of the entire court system, February 28, 1972.
46. In 1970, commonwealth tax collections (excluding unemployment taxes) amounted to \$255 per capita. This represented an increase of approximately 12% over the 1969 per capita figure of \$227. See Facts and Figures on Government Finance, Tax Foundation, Inc. (New York, 1971). Based on a rather modest 5% average annual increase in tax collections, the commonwealth tax collections would amount to approximately \$397 per capita in 1979.
47. Citizens Study Committee on Judicial Organization - Wisconsin (January, 1973), at 32.
48. These omissions clearly do not reflect any shortcoming on the part of the office of the Executive Secretary. On the contrary, John Burke, of the Executive Secretary's office, was most helpful in aiding us in spotting certain deficiencies in available fiscal data and made numerous suggestions which greatly improved the quality of this study.

49. It should be noted that certain inaccuracies contained in the 1972 Annual Report were detected in the course of this study. For instance, it appears that the figure which represents the cost to the state of operating and maintaining the Suffolk County Courthouse was counted twice for purposes of arriving at the total cost of operating the courts in 1972. However, because it would have been impossible to make a more detailed analysis of these figures within the context of this particular study, we have accepted the figures included in the 1972 Annual Report for purposes of making the cost estimates and projections contained herein.
50. Although state assumption of facilities costs would appear to be desirable it should be noted that studies in other states have recommended state assumption of all costs except facilities costs. See, for example, Utah Courts Tomorrow, Report and Recommendations of the Unified Court Advisory Committee, Utah Legislative Council (September, 1972). Because it is beyond the scope of this study to deal with this issue in greater detail, we believe that this area warrants further study before a decision is ultimately made.
51. Assuming a 9.6% annual increase in costs, which is the average annual percent increase for fiscal years 1963-1972.

Chapter 4

The Budgetary Process

Preparing Court Budgets

The processes presently being utilized by Massachusetts courts to develop budgets for submission to county and/or state government vary greatly. While there are significant differences in budgeting from one court to another, e.g. between the SJC, appeals court, superior court, land court, etc., there are also notable differences within the same court, e.g. between the commonwealth's 72 district courts.

Before reviewing state and county budget preparations on a court by court basis, a brief explanation of the forms used in the process is warranted. Sample forms have been compiled in Appendix B. At the outset, two general observations are in order. First, the forms used do not necessarily achieve desired uniformity since there are so many different state, county, and municipal forms. For example, reproduced budget forms and directions for completing a state court budget are supplied by the office of the state budget director. The front page of the budget provides for identification of the court or office and an authorized signature. Then, in order, follows a summary of expenditures

for the most recently completed year, appropriations for the current year, requests for the ensuing year, and the amount of increase or decrease between the request and the appropriations for the current year. Space is provided for a general statement and for the citation of the statutes governing the court or office involved. Next are pages to be used for listing specific requests, organized as follows:

- 01 Salaries - Permanent Positions
- 02 Salaries - Other
- 03 Services - Non-employees
- 10 Travel and Automotive Expenses
- 11 Advertising and Printing
- 12 Maintenance - Repairs, Replacements and Alterations
- 14 Office and Administrative Expenses
- 15 Equipment - Summary
- 16 Rentals

However, these budget forms are not utilized in their entirety by all the courts. In fact, at least one court that we know of does not utilize them at all.

Three principal forms are utilized in preparing county budgets. On these forms are presented itemized requests which fall under one of seven categories: personal services; contractual services; supplies and materials; current charges and obligations; equipment; structures and improvements; and land and non-structural improvements to

land. One form presents employment information, which includes the title of each position held, the name of the individual holding it, the current rate of compensation and any proposed change in this rate. A second form calls for itemized presentation of requests in the remaining six categories or classes. A third form summarizes the requests on this budget by the seven categories.

For the City of Boston a budget instruction manual and the budget forms are received by the courts funded by Boston in the fall of each year. These forms are compiled by the Budget Division of the Administrative Services Department of the City of Boston. This budget entails the use of eight different forms, including a "Department Summary" and a "Program Elements Summary."

A second observation is that those budget forms which must be utilized by the courts require itemization of requests, comparison to previous expenditures and explanations of increases in each line-item. The usefulness of itemized budget forms for the purposes of fiscal and program planning and evaluation should not be underestimated. However, as we note later in this chapter, the use of these forms by both the executive and legislative branches of government to determine line-item recommendations and appropriations effectively limits the degree to which courts can control their own operations and plan effectively to meet future needs.

Supreme Judicial Court¹

The SJC submits four separate budgets to the commonwealth's budget director. The executive secretary and the reporter of decisions, each prepares and submits budget requests for court operating funds. In addition, the Suffolk County Courthouse Commission and the Massachusetts Defenders Committee submit separate budgets which ultimately are included in the SJC's final budget compiled by the commonwealth's budget director. However, because these budgets are submitted by agencies outside the SJC, they will be treated separately.

The state budget is prepared by the executive secretary following discussions with the clerk of the commonwealth and the justices as to their anticipated needs. Although the state budget is individualized to the extent that it does not make use of state-provided forms, there is little or no difference in the information actually provided by the court from that which is requested on the state's forms. For example, both the court's budget presentation and the state's requirements involve justification of increased requests.

The reporter of decisions prepares his own separate state budget for funds to support the operation of his office. The only budget submitted by the SJC to Suffolk County is the budget of the SJC's clerk for Suffolk

County, part of whose salary also is paid for by the state.

Thus, the SJC submits three separate budgets which are directly related to its judicial operations. Two of these budgets are submitted to the state and one to Suffolk County. The completion of these budgets requires the effort of three court employees, with input from several other persons in the office. The number of individuals engaged in the preparation of SJC budgets does not appear warranted, particularly in light of the fact that the court only employs approximately 50 persons and spends approximately \$1,000,000.

Appeals Court

The first budget submitted by the appeals court was for the period covering the 1974 fiscal year. Prior to the preparation of that budget, the court operated on funds drawn from a state reserve fund designated for unforeseen emergencies, although the funding of the court admittedly was not an unforeseen emergency. The chief justice of the appeals court submits essentially only one budget to the state. Incorporated into this budget are the requests of the clerk of the appeals court for the salaries and operating expenses of his office. The chief justice has sought assistance in drafting the court's budget from other justices on the court. Except for a few minor modifications that suit the particular needs of the appeals court, the court has adopted the format used by the SJC.

Land Court and Registries of Deeds

The land court submits one budget to the state's budget director. It is drawn up by the court's budget director, approved by the recorder and signed by the judge. The land court differs from most courts in the state in that it employs a staff member whose primary responsibilities include preparing the court's budget, auditing the court's books, and purchasing supplies. The presence of this individual appears to have relieved the judges and the recorder from most of the responsibility in preparing the land court's budget.

Each of the 21 registries of deeds submits one budget to the appropriate county officials. There is no apparent budgetary control or coordination exercised between the land court and the registries of deeds.

Probate Courts

The chief judge of the probate courts submits a budget to the state budget director for support of his administrative office and staff. Because each probate court is funded by the state and the county, it must submit budgets to both. The state budget usually is prepared by the register of probate, or by the register's administrative or clerical assistant under the register's direction. Input often is received from the judge(s) and probation officers with

respect to their specific needs and projections. The state budget includes the salaries of the probate court judges, registers, probation officers, and clerical assistants.

Procedures vary from one probate court to another with respect to the preparation and submission of the county budgets. For example, in Middlesex County the register's office prepares the county budget with input from the judges. This budget includes operational expenses of the registers' and judges' offices and the salaries of court officers. The judges submit a separate budget for the cost of guardians ad litem. The probation department submits still another budget, signed by a probate court judge, for its operational expenses. However, in Hampden County the register submits a budget to the county commissioners covering only his office's operational expenses. The probation department submits a separate budget for its operational expenses, while the judge submits a budget that includes his own operational expenses and salaries of court officers.

Superior Court

The chief justice of the superior court prepares a budget for submission to the state's budget director covering all state funded superior court expenses. This budget includes the salaries and expenses of every superior court judge, the

salaries of superior court probation officers, and all costs for maintaining the office of the chief justice. A budget administrator, recently retained by the chief justice's office, essentially bears the responsibility for preparing this budget and is available in an advisory capacity to assist other superior court employees throughout the state who must prepare separate county budgets.

Separate county budgets are submitted by the clerks of court, chief probation officers, and district attorneys. The clerk prepares two budgets, one entitled "Clerk of the Courts" and the other, "Superior Court." The first budget provides for salaries of the non-judicial employees and the costs of the supplies and services required for the clerk's office. The second budget provides for the salaries of court officers and stenographers and for the cost of maintaining criminal trials as well as for services and supplies. The development of several budgets appears to find its origin in the three-in-one nature of the clerk of court's office (clerk of the SJC for the particular county, clerk of the superior court for that county, and clerk of the county commissioners), but these classifications with respect to maintaining budgeting operations appears anomalous.

The clerk prepares his own budgets but often seeks the assistance of district attorneys and the sheriff to help determine anticipated costs. Included in the "Superior Court" budget are judges' office expenses. The fact that the

clerks of the superior court include this expense of the judges in their budget varies from other courts, particularly from the district courts where the judges are required to submit their own budget. The success of this assumption of budgetary responsibility by the clerks of the superior court might serve to allay the fears of those who oppose adopting the same procedure in other courts.

While the salaries of probation officers are paid for by the state and included in the chief justice's budget, related office expenses for services, supplies and equipment are paid for by the county. The chief probation officer submits a separate budget to the county to cover these costs. Separate budgets also are submitted to the county by the district attorney. Most of the superior court's probation and district attorneys' offices are organized on a county basis, but several are organized into a district which encompasses several counties. While the district system is being phased out for the district attorneys, several superior court probation offices still remain organized on a district basis. For example, the southern district includes Bristol, Barnstable, Dukes and Nantucket Counties. In the past, when only one probation office was maintained, the costs were divided and appropriate budgets submitted to each county. Currently, there are separate probation offices in Bristol and Barnstable Counties.

Currently, the chief probation officer of the district submits a separate budget for each office to the respective counties, Although Dukes and Nantucket Counties pay the expenses of probation officers travelling there from the Bristol and Barnstable offices, the chief probation officer submits no budget for this particular expense.

District Courts

The chief justice of the district courts submits a budget for his office in the form of a letter to the state's budget director. While the chief justice's budget request might contain some explanation of what is happening in the district court system, it does not mention the needs of individual district courts. Information on the nature and needs of the district courts is included only to put the budget request in a proper context. State budget forms are not utilized.

In each district court, the judge, clerk and chief probation officer submit separate budgets to the county commissioners. Although each submits a separate budget, there is some evidence of cooperation and collaboration between them with respect to the court's needs and future direction. Whether there is, in fact, discussion and the degree to which it is employed, varies from one district court to another. Typically, there is little internal budget communication between a district court judge and his clerk. According to the judges and clerks, this lack of communication can be

attributed to personal and political differences stemming from the fact that both judges and clerks essentially are appointed to their offices by the governor for life. Consequently, they view their official positions and departments as independent of each other. The district courts tripartite budget system only adds to the courts administrative and fiscal confusion. To be sure, there are several district courts where the judges and clerks work together in budgetary planning. But this seems to be the exception rather than the rule and the result of individual cooperative efforts rather than any inherent rationality in the budgetary process.

Probation officers and judges tend to cooperate more often in budgetary planning, perhaps because chief probation officers are appointed by the district court judge and therefore held to be accountable to the judge. However, even this varies among the district courts. District court judges may supervise probation budgets closely, approve them after they have been prepared, or simply approve requests for more probation officers. In some courts the probation departments consider themselves independent of the district court judge.

Frequently, the judge, clerk or probation officer receive assistance in drawing up budgets from secretaries, administrative assistants, assistant clerks, or probation officers. This assistance usually involves estimating costs

for inclusion in budget requests. Until recently, the assistant clerk of one district court completed each of the three budgets submitted by that court. When that court's probation department expanded so that this task became too burdensome and conflicted with the assistant clerk's other duties, the probation department assumed the job of completing its own budget. The assistant clerk still prepares the judge's and clerk's budgets. District court budgets generally are completed with little or no fiscal advice or assistance from outside the court.

In addition to these three budgets, the custodian of the courthouse will submit a budget requesting funds for maintaining the building, including the salaries of the custodial staff. Costs of repairs or renovations usually fall within this budget, but on occasion this expense will appear in the judge's budget. In one district court, remodeling and decorating expenses amounting to \$28,000 were included in the budget of the district court judge since this expense came from the general funds and was not a bonded debt.

Many district court judges recognize the excessive court time spent on preparing court budgets and some have recommended that the clerk's office complete the entire court budget. Some judges suggest the employment of a court administrator or administrative assistant who would assume

budgeting responsibilities in addition to other administrative duties. One district court judge made such a request in his budget but it was denied.

The district courts' budgeting system also has an adverse affect upon purchasing and employment practices. For example, judges, clerks and probation officers generally hire separate office support personnel, and must purchase separate office supplies and equipment. Centralized hiring and purchasing, thus, become impossible. Most courts have found it extremely difficult to share secretaries, file clerks, photocopy machines, typewriters or paper supplies. Some courts have three copy machines where only one is really necessary, while in other courts, judges must "borrow" the use of a photocopy machine from the clerk or probation officer. A unified district court budget would not only facilitate better court planning and save time currently expended by court personnel on budgeting, but would introduce the opportunity for economies in hiring and purchasing practices.

In addition to the Boston Municipal Court, eight district courts are located in Suffolk County. Only one budget, prepared by the clerk or an assistant clerk, is submitted from each district court. The clerk receives some input from the judge and probation officer with respect to their anticipated needs. Also, fiscal assistance often is

received from the budget analyst of the City of Boston. The submission of only one budget per court in these eight Suffolk County district courts is a marked improvement over the budgetary practices in other district courts throughout the state.

Boston Municipal Court

The chief justice of the Boston Municipal Court submits one budget for the entire court. It is prepared by the chief justice's office in the form of four separate sub-budgets: one for the judges; one for the clerk for civil business; one for the clerk for criminal business; and one for the probation office. The clerks and the chief probation officer submit their anticipated department needs to the judge's office in the form of budgets, or in some instances, in the form of memoranda which note only the changes from the previous year's budget. The budget analyst of Boston assists the clerks and probation officer as well as the individuals who ultimately consolidate these individual budgets or memoranda into one budget.

The budget of the BMC underscores the feasibility of combining the fiscal needs of a large diverse court into one budget, and the inherent inefficiency of requiring three budgets from each district court.

Juvenile Courts

The Springfield, Worcester and Bristol Counties juvenile courts follow the same budgeting practices as their district court counterparts. Three separate budgets are prepared by the judge, clerk and probation officer. The Boston juvenile court submits only one budget to the city. It is drawn up by the administrative secretary to the chief judge with input from the chief judge as to requests for additional personnel.

In some counties where there is no juvenile court, a juvenile probation officer is assigned to work with juvenile defendants in the district courts. In these instances, the chief probation officer submits a budget to the county commissioners.

Housing Court of Boston

Because the Boston Housing Court is funded by Boston, it follows the same budgeting procedure as described herein for the BMC. One budget is drawn up jointly by the judge and clerk and submitted to the city. Assistance is obtained from the city's budget analyst.

Summary

Viewing the budget preparation process as a whole, one can only conclude that the preparation of court budgets in Massachusetts is an elaborate and irrational maze. It entails the preparation of approximately 400 budgets by at

least five to six hundred court and government employees. Most of these persons who are responsible for budget preparation within their courts are not fiscal analysts, do not have proper or sufficient technical assistance, and are persons who are employed by the executive or legislative branches of government. Consequently, the absence in the budgeting process of court employees with specific budgetary skills results in a diminution of the quality of judicial input into the budgetary process.

State Budgeting and Appropriations Process

After the preparation and approval of a court's state budget, the budget is submitted to the state's budget bureau. Located within the fiscal affairs division of the Executive Office for Administration and Finance, the budget director and his staff analyze and review all the individual court budgets in an effort to prepare a budget for the governor.² The ultimate product of the budget bureau is the governor's executive budget recommendations contained in House Bill No. 1.

The governor's line-item budget recommendations encompassed in House Bill No. 1 are sent to the House Ways and Means Committee which may either reduce, increase, omit or add specific items and amounts in the budget. From the Ways and Means Committee, House Bill No. 1 goes first to the

House floor for debate and amendment, and then on to the Senate Ways and Means Committee and to the floor of the Senate for debate. If the Senate makes amendments, the bill returns to the House for final approval. This process ultimately produces the general appropriation bill.³

Clearly, the power to appropriate money can be exercised only by the legislature. However, the governor may veto in its entirety or reduce specific items or parts of items in any appropriation bill. No power is conferred upon the governor to change the terms of an appropriation, except by reducing its amount.⁴ Of particular significance to the courts then is the fact that appropriations must be itemized. However, the precise extent to which appropriations are to be itemized in an appropriation bill is not specified by the state's constitution. According to the SJC, it is clear that no matter how minutely appropriations are itemized, some scope is left for the exercise of judgment and discretion by executive or administrative officers or boards in the expenditure of money within the limits of the appropriation. The court believed that the legislature retained discretionary power in determining whether it would prescribe in detail the particular purposes for which appropriated money would be expended or, would permit executive or administrative offices or boards to exercise judgment and discretion within a wide field in the expenditure of money appropriated for a given object to accomplish the general purposes of the appropriation.⁵

The House and Senate Ways and Means Committees literally dominate the budgeting process. These committees not only determine appropriations but they authorize the number of employment positions for any agency, department or court. Informal closed hearings are held for the purpose of allowing agency and department heads to express their fiscal concerns.⁶ However, it appears that relatively few members of the judiciary participate in these hearings. What participation there is occurs on a court by court basis. No policies or procedures have been established by state funded courts to act in concert with respect to budget justifications. While the fragmented budgeting process does not facilitate a unified budget posture, many judges expressed the feeling that once their court budget was submitted to the budget bureau, its fate was beyond the control of the court.

In addition, the governor exerts extensive power over court finances through his line-item budget recommendations to the legislature and his authority to veto legislative appropriations either by item or in their entirety. Like the legislature, the governor's power controls court spending on a line-item basis. Thus, for all practical purposes, these two branches of government dictate court spending. Line-item recommendations, appropriations and vetoes give the legislature and executive firm control over nearly every aspect of a court's operation, leaving courts

helpless in most instances to plan or carry out effectively their judicial responsibilities.

County Budgeting and Appropriations Process

After a court's county budget is prepared, it is submitted to the county commissioners who may then increase or decrease items contained in the budget. The budget requests are then sent to the county treasurer and to the state's director of accounts for analysis and classification.⁷ The director of accounts reports these budget requests to the legislature. At the same time the county commissioners compile estimates of receipts and expenditures for the coming fiscal year, according to the requirements of the director of accounts. The director of accounts then forwards the budget requests and related data sent to him by the counties to the Joint Committee on Counties.⁸ [It should be noted that the budgeting procedures in Suffolk and Nantucket Counties will be treated separately, since they are not subject to the direct authority of the Committee on Counties.]

The Committee on Counties holds budget hearings for each county, giving the county commissioners and the court officials an opportunity to justify their requests. The Committee on Counties may increase or decrease, add or omit

items for each budget request. A separate appropriation bill for each county is prepared by the committee and submitted first to the House and then to the Senate. The result, upon passage by both Houses and approved by the governor, is a separate act for each county approving the expenditure of money and granting a county tax to meet this expenditure.

The source of funds to pay the county court costs is the property tax. The annual county bill in substance and effect, then, does not authorize any payment of state funds from the state treasury but rather is more in the nature of a legislative authorization for the counties to raise and spend a certain sum of money for the item listed therein. The director of accounts notifies the county commissioners and the county treasurer of the amount authorized for their county by the legislature. The amount to be raised by taxation equals the total authorized expenditures less certain estimated receipts and revenues from all sources. The county commissioners must then apportion and assess the tax burden among all the cities and towns in the county.

The governor's role in the county budgeting and appropriation process differs from his role in the state budgeting and appropriations process in that he has no line-item veto power over county appropriation bills. He can either veto the entire bill, or return it to the Senate or

House with recommended amendments.⁹ Also, the state's director of accounts has an ongoing responsibility with respect to county finances, which continues after the budgets are submitted and the appropriation process is complete.¹⁰ Essentially, the director serves as a fiscal watch-dog with respect to the expenditure of county funds.

Although counties pay for an overwhelming portion of maintaining and operating Massachusetts courts, the state makes the crucial determinations as to the amounts counties will spend on their courts and how these monies actually will be spent. Budget hearings are held before county commissioners and may be attended by the court employees for the purpose of "defending" their budget requests. The fact that "court" attendance usually is better at these hearings than at the budget hearings held by the Committee on Counties, is attributed not only to the inconvenience of travelling to Boston, particularly when court is in session, but to the lingering sense of frustration and futility carried by many county court officials with respect to their roles in the state legislative process. While one clerk of court thought it a complete waste of time to attend these hearings, he did note that on occasion one court employee would attend these hearings representing the entire court and all of its budget requests. One judge indicated that he would attend committee budget hearings only

if there was an item on his budget which he was particularly anxious to defend.

There seems to be little question but that politics plays an important role in the county budgeting process. Often the financial well-being of the court is mirrored by the political effectiveness of that court and the county's commissioners in dealing with the legislature. The representation of a particular county on important legislative committees or the legislative contacts maintained by the counties are recognized as important factors in the approval of county budgets. Various forms of patronage employment in the courts exist in many counties and court officials who decline to hire on this basis claim that they usually can expect to have their request for a new position denied. For example, the ambitious plans of one "uncooperative" district court judge for augmenting his probation department in order to provide better court services for resolving domestic disturbances were ended abruptly when the legislature denied his request for additional probation officers.

In spite of the inherent contradiction and frustration with the current funding and budgeting system, many county court officials would still prefer it to complete state assumption of all court costs. These individuals believe that state assumption would strip them of what little control they now exercise with respect to the expenditure

of court funds. They envision the extinction of their "legislative contacts" through their respective county commissioners, and their being forced to deal directly with the state legislature. As one judge noted, the county commissioners exhibited a better understanding of the "local situation" and a knowledge of the "actual needs of the courts" and provided "greater cooperation" and a "respectful hearing." Indeed, the legislature cannot be expected to understand fully the particular personnel or material needs of the courts without first-hand observation, or to even act rationally once those needs are ascertained. On one occasion, for example, the legislature approved a district court's requests for a new juvenile probation officer but denied funds for a desk and a chair to be used by that officer.

The fears of those who are opposed to state assumption of court costs might be allayed if, as part of such a plan, courts were entrusted with determining their own needs and allowed to budget and spend accordingly. Judicial employees could visit all courts on a regular basis to determine their actual needs, assist court officials in transferring these needs into budgetary requests and defend their requests before the legislature. Rather than lose their "respectful hearing," these courts would, in fact, gain

greater control over the determination of their own economic needs without having to resort to those counter-productive methods currently employed.

Budgeting and Appropriations Process for Suffolk and Nantucket Counties

Unlike the other twelve counties in Massachusetts, Nantucket and Suffolk Counties are not subject to the jurisdiction of the Joint Committee on Counties.¹¹ The town of Nantucket is, in fact, Nantucket County with the selectmen of the town exercising the powers and duties of county commissioners.¹² Consequently, all "county" budgets are submitted to the selectmen at an annual meeting and are subject solely to their approval.

In Suffolk County, Boston's mayor and city council, Chelsea's municipal council, Revere's city council and Winthrop's selectmen each exercise, in their respective cities and towns, the powers and duties of county commissioners.¹³ However, since all debts and expenses of the Suffolk County court system are assumed by Boston, the mayor and city council of Boston serve essentially as county commissioners for this purpose. After a court's budget has been prepared, it is sent to the budget division of the city's administrative services department. The city's supervisor of budgets, upon receiving budget requests, prepares an annual budget for Suffolk County

under the direction of the mayor and the director of administrative services. Shortly thereafter, the administrative services department holds hearings on the budget.

The mayor submits the annual county budget to the city council in the form of budget recommendations. The city council then holds departmental hearings on these budget recommendations. While the city council may reduce or reject any item in the budget, it cannot, except upon the recommendation of the mayor, increase any item in, or add any item to, the budget, or increase the total of the budget. The city council must either adopt in toto, reduce or reject the annual budget. If they fail to do so the items and the appropriation orders in the budget as recommended by the mayor become effective as if they were formally adopted by the city council and approved by the mayor.¹⁴

Court officials in Suffolk County often express their displeasure with their inability to counter effectively "executive" and "legislative" economic domination over their courts. These officials generally were dispirited because they were given no real opportunity either to defend their budget requests or to argue against budget cuts. Nor were they ever given justification by city officials for cuts that were made in their budgets. The courts funded by the city of Boston are in a position that is quite analogous to those courts funded by the state in that there is no

organized, concerted effort among these courts either to participate in budget hearings or to voice their budget justifications.

NOTES

1. The information presented in this section pertaining to the budgeting process of all the courts was derived primarily from interviews with court personnel who bear the responsibility for preparing budgets in Bristol, Hampden, Middlesex, Norfolk and Suffolk counties.
2. Mass. Gen. Laws Ann. ch. 7, § 4A; ch. 29, § 3.
3. League of Women Voters of Massachusetts, Financing the Judiciary in Massachusetts 1 (1972).
4. Mass. Const. art. 63, § 3.
5. In Re Opinion of the Justices, 19 N.E. 2d 807,815 (1939).
6. Massachusetts Taxpayers Foundation, Inc., Massachusetts Budget-Making Process, at 38,42.
7. Mass. Gen. Laws Ann. ch. 35, § 28.
8. Mass. Gen. Laws Ann. ch. 35, § 32.
9. Opinion of the Justices, 212 N.E. 2d 562 (1965).
10. Mass. Gen. Laws Ann. ch. 35, § 44.
11. Id.
12. Mass. Gen. Laws Ann. ch. 34, § 4.
13. Id.
14. 1909 Charter of the City of Boston ch. 486, § 3.

Concluding Observations

After O'Coin's

In O'Coin's, Inc. v. Treasurer of the County of Worcester, 287 N.E. 2d 608 (1972), the supreme judicial Court approved a writ of mandamus directing a county treasurer to pay for a tape recorder and tapes purchased by its superior court justice for use in criminal matters. The decision provided the basis for Supreme Court Rule 3:23 which was promulgated to provide the administrative processes by which payment of unappropriated court necessities would be made without resorting to the writ of mandamus.

While the immediate import of the O'Coin's decision has been emphasized in Rule 3:23, the decision itself carries far broader implications. In ordering the writ, the court declared that a judge has the inherent power to determine the basic needs of the court as to equipment, facilities and supporting personnel and to incur any expense reasonably necessary for the sitting of a court. The Massachusetts Constitution has imposed on the courts the duty of administering justice uniformly in accordance with certain fundamental standards. Clearly, the courts cannot be denied the reasonable means to carry out this responsibility.

O'Coin's contemplates an independent judiciary capable of setting its own needs and priorities and expending whatever funds are necessary to meet these needs. The

constitutional mandate of a separate judiciary necessitates greater participation by the judiciary in the determination of its budget than agencies located within the executive and legislative branches of government. The judiciary is the only branch of government with no express responsibility in the budgeting process. The governor is given responsibility to make budget recommendations and to veto appropriations while the legislature is responsible for appropriating money. But these two branches of government should not exercise arbitrary fiscal power that either restrains or prohibits the courts from carrying out its constitutional mandate.

Assumption of Court Costs in Other States

The funding recommendations contained in this study have been implemented in whole or in part in several states, including Alaska, Colorado, Connecticut, Delaware, Hawaii, North Carolina, Rhode Island and Vermont. In addition, funding recommendations have recently been proposed in Michigan and New York. Each of these states, however, presents a slightly different application of the principles that have been enunciated in this study. Each of the above states is different, both in terms of their political structure and in the organization of their judicial systems. Therefore, it is difficult to gauge from their experiences

what the actual fiscal charges will be to Massachusetts when and if it assumes the cost for all of its courts. None of the states that have assumed all court costs have conducted detailed analyses documenting the fiscal savings they have experienced or the costs they have incurred in connection with state financing. However, as a result of the experiences in these states, certain generalizations can be made concerning the "costs" of state funding.

First, state assumption of court costs obviously increases the total state expenditure in courts while it decreases the "local share." But basically this change only redistributes or reallocates court costs. Also, because of the inflationary spiral and increased wage scales in the past ten years, the total dollar cost to the state of operating courts have increased significantly. However, at the same time the proportion of the state budget devoted to courts and court-related expenditures has not changed significantly. Finally, state assumption of court costs has produced economies in some areas like centralized purchasing, while increasing costs in other areas, such as payroll and fringe benefits.

Connecticut assumed responsibility for financing all of its courts on October 1, 1960. For the fiscal year 1959-60, Connecticut spent 4.9 million dollars on its courts. For the fiscal year 1961-62, the first year of total state assumption of court costs, the total state appropriation for

courts was 9.1 million dollars. By 1970, the cost had risen to a figure in excess of \$20 million. During the same period, court revenues rose from \$1 million to \$7 million and, most importantly, the percentage of the state budget devoted to courts declined from 3% to 2.4%. In addition, the appropriation for the office of executive secretary grew from \$106,000 in 1961 (the first year of statewide court financing and budgeting) to \$546,000 in 1970. Working under a chief court administrator who is an associate justice of the state's highest court, this office is responsible for the entire administration and planning of the court system. The 1970 appropriation for the office of the executive secretary represents only 2.8% of the total 1971 state court budget.

In 1965, North Carolina adopted a plan to convert their court system to a unified court system completely financed by the state. This plan involved establishing a two-tiered trial court and the abolition of municipal courts and justices of the peace over a five-year period. As part of this plan, the state assumed most of the costs of operating the judicial system. In 1965, the combined expenditures of all governmental units in the judicial system in North Carolina was approximately \$20 million. At that time it was estimated that the new plan would not increase substantially the total cost of the judicial system. Experience has proved that that estimate was correct. The

1972-73 budget request was \$29.3 million representing only a 50% increase in 7 years. This figure does not include local expenditures for facilities, bailiffs and process servers. During this same time-frame the budget for the Administrative Office of the Courts grew from zero in 1965 to \$566,000 in 1972. The major portion of these funds has been spent on salaries and employee benefits. The 1972-73 estimated expenses were \$723,630, an increase attributed solely to increased salary expenses. This figure is expected to remain constant. This administrative expense is the largest which can be directly related to the state's assumption of court costs, and is only 2.6% of the total court budget.

To ameliorate the financial impact of the court reorganization scheme, the North Carolina legislature simultaneously adopted a revised fee schedule. For example, in the superior court, the civil fees are now \$25 while the criminal fees are \$40. In the 1971-72 fiscal year, when state appropriations were \$26 million dollars, receipts from court operations exceeded \$27.7 million. 32.5% went to the state general fund, and 56.7% went to the counties for facilities and education. 3% went to municipalities and 7.8% went to the law enforcement officers' benefit and retirement fund. Twelve million dollars of this represents fines and forfeitures

which are constitutionally mandated to go to county education. In 1971, only \$1.9 million was available from the facilities fee to finance the physical facilities of the courts which must be provided by the county government under the North Carolina scheme.

A recent study of New York's judicial system indicates that the total 1970-71 costs for operating that state's judicial system was \$255 million, of which the state paid \$40.6 million, or .6% of the state's entire budget. The estimated costs for 1973, not including local courts which would not be absorbed by the state, was \$300 million. This would be equal to 16% of all state tax revenues for 1972. The study noted that if the state were to assume immediately all costs proposed to be absorbed, the initial impact would be an increase of \$260 million in the state budget. The New York plan calls for a ten-year transition during which time the costs are expected to increase to nearly \$900 million. More significantly, the report estimates that the cost of shifting to state financing would cause an immediate increase of \$38.9 million. The principal factors in the increase were as follows: administration of a new unified budgeting system (\$1.7 million) and increased cost in establishing a system of circuit (regional) administration (\$3.1 million); shifting lower paid county employees to state pay scales and fringe benefits (\$12.3 million); establishing a new superior court and district court system

(\$17.3 million); and new pre-trial services (\$4.5 million). Interestingly, not more than \$14 million of the increase (\$12.3 million for employees and \$1.7 million for administration) can be attributed to the state's assumption of court costs. This latter figure represents less than 5% of the total cost of operating the entire court system.

Consolidation of courts is not required for a court system to develop substantial amounts of funds. An analysis of the funds generated by the California court system in 1968-1969 indicated that a greater amount of money was generated by the California courts than it costs to operate all the courts in the state. The lower courts in particular generate more money than their own costs.

Thus, in 1968-1969, the counties received \$39,012,738 from vehicle code fines and \$7,932,319 from non-vehicle code fines. Forfeitures and penalties produced \$3,231,550 and court fees and costs generated \$15,052,452. These totaled \$65,229,059. In addition, the cities received a total of \$55,789,760 from all fines, forfeitures and penalties which brought the total revenue up to \$121,018,814. This is to be contrasted to a total expenditure by the counties for trial courts of \$112,212,540.

From these illustrations, it becomes apparent there are many factors that Massachusetts must consider in calculating its cost for financing all courts within the commonwealth. In addition to the current costs of operating

the courts, the following factors must be evaluated and their impact determined: administrative and budgetary costs; maintenance and construction of facilities; debt service; distribution of revenues; salary differentials between state and local government; adjustment of fringe benefits and retirement program; equalization of juror and witness payments; and equalization of court services. However, it should be kept in mind that to some extent these increase factors will be offset by economies of scale, more efficient administration, elimination of duplication of personnel, and more efficient utilization of personnel, facilities, and services.

APPENDIX A
FUNDING SOURCES

SUPREME JUDICIAL COURT

	State	Suffolk County (Boston)	Federal Grant
<u>SALARIES:</u>			
Justices	X		
expenses	X		
clerical	X		
Executive Secretary	X		
staff	X		X
Clerks for Commonwealth	X		
clerical	X		
Clerks for County	X	X	
clerical		X	
Administrative Assistant	X	X	
Law Clerks	X		
Reporter of Decisions	X		
expenses	X		
Court Officers	X ¹	X	
Masters, Auditors, etc.		X	
<u>OPERATIONAL EXPENSES:</u>			
Facilities	X ²	X	
Office Supplies Services and Equipment	X		
Expenses of a Criminal Case		X	

¹ c.221, §73 provides that \$850 shall be paid by the Commonwealth and the remainder by Suffolk County.

² Under the Acts of 1935, c.474, §6, the Commonwealth pays 30% of the total cost of maintaining the Suffolk County Courthouse, where the Supreme Judicial Court is situated.

APPEALS COURT

	State	Suffolk County (Boston)
<u>SALARIES:</u>		
Justices	X	
expenses	X	
Clerks	X	
Law Clerks	X	
Court Officers for the Commonwealth	X	
Court Officers for Suffolk County	X ¹	X
Messenger	X	
Clerical Assistance	X	
<u>OPERATIONAL EXPENSES:</u>		
Facilities	X ²	X
Office Supplies, Services and Equipment	X	

¹The Acts of 1973, c.363 provides that the court officer's salary be paid by Suffolk County with reimbursement by the state of all but \$850.

²c.211A, §4 of the General Laws requires the state to provide facilities for the Appeals Court. However, because the Court is located in the Suffolk County Courthouse, Boston pays 70% of this expense.

SUPERIOR COURT

	State	County	Suffolk County (Boston)	Federal Grant
<u>SALARIES:</u>				
Chief Justice	X			
administrative assistant	X			
executive clerk	X			
fiscal officer				X
other staff	X			
compensation and expenses of district court judges sitting in the Superior Court	X ¹			
Associate Justices	X			
expenses	X			
Clerks	X ²	X	X	
Messenger			X	
Law Clerks	X			X
Court Officers		X	X	
Masters, Auditors, etc.		X	X	
Clerical Assistance	X ³	X ³	X ³	X
Stenographers		X	X	
Translator				X
Bail Administrator				X

¹c.212, §14E of the General Laws further provides that a special justice sitting for a district court judge while the latter sits in the superior court shall be compensated by the county and the county shall be reimbursed by the state.

²Under c.221, §94 of the General Laws, the state shares this expense only in Suffolk County. All other counties pay all of this expense.

³According to c.221, §89 of the General Laws, this expense is paid by the state, or the county, or both, in such proportion as determined by the justices.

SUPERIOR COURT (cont'd)

	State	County	Suffolk County (Boston)	Federal Grant
<u>OPERATIONAL EXPENSES:</u>				
Facilities	X ⁴	X	X ⁴	
Office Supplies, Services and Equipment		X	X	
Office Expenses of Chief Justice	X			
Expenses of a Criminal Case		X	X	

⁴The superior court facilities which are located in Boston (the office of the Chief Justice and the Suffolk County Superior Court) are provided by the state and Suffolk County under the Acts of 1935, c.474, §6.

LAND COURT

	State	County	Suffolk County (Boston)
<u>SALARIES:</u>			
Justice expenses	X		
Recorder	X		
Deputy Recorders	X		
Assistant Clerks	X		
Register/Assistant Recorder		X	X
Examiners of Title	X		
Messengers	X		
Masters, Auditors		X ¹	X ¹
Technical Assistants		X	X
Stenographers		X	X
Court Officers			X
Clerical Assistance for Land Court	X		
Clerical Assistance for Registry of Deeds		X	X
<u>OPERATIONAL EXPENSES:</u>			
Facilities for Land Court	X ²		X
Facilities for Registry of Deeds		X	X

¹Or the court may order payment from another source. c.185, §43

²c.185, §1 of the General Laws require that the counties provide facilities for sittings of the land court in the respective counties. The land court usually sits in the Suffolk County Courthouse; thus under the Acts of 1935, c.474, §6, the state pays 30% of this cost.

PROBATE COURTS

	State	County ¹
<u>SALARIES:</u>		
Justices	X	
travel expenses	X	X ²
Registers	X	
travel expenses		X
Assistant Registers	X	
Guardian ad Litem		X ³
Masters, Auditors, etc.		X
Court Officers/Messengers		X
Stenographers		X
Executive Clerk for Chief Justice	X	
Expenses of Administrative Committee	X	
clerical assistance	X	
<u>OPERATIONAL EXPENSES:</u>		
Facilities	X ⁴	X
Office Supplies, Services and Equipment		X
Uniforms		X
Office Expenses of Chief Justice	X	

¹ Suffolk County expenses are paid by the city of Boston.
² The county pays for intra-county travel expenses, which are infrequently incurred or claimed.
³ In many instances, guardians ad litem are paid from the trusts or estates involved.
⁴ In Boston, the state pays 30% of this cost, and Suffolk County pays 70%. In all other counties, the counties pay this cost.

	State	County ¹	Federal Grant
<u>SALARIES:</u>			
Chief Justice	X	X	
administrative personnel	X		X
clerical assistance	X		X
Justices		X	
travel expenses	X ²	X	
Special Justices		X	
Appellate Division Justices	X		
Justices' Expenses	X ²		
Administrative Committee Expenses	X		
Clerks		X	
Court Officers		X	
Clerical Assistance		X	
<u>OPERATIONAL EXPENSES:</u>			
Facilities		X	
Office Supplies, Services and Equipment of Chief Justice's Office	X		
Office Supplies, Services and Equipment of the District Courts		X	
Uniforms		X	
Expenses of a Criminal Case		X	

¹ Boston pays the expenses of district courts located in Suffolk County which are herein attributed to the county.
² c.218, §81 of the General Laws requires the counties to reimburse the Commonwealth annually for these expenses. However, it is not done in practice.

MUNICIPAL COURT OF THE CITY OF BOSTON

	State	Suffolk County (Boston)
<u>SALARIES:</u>		
Chief Justice		X
Administrative Assistance		X
Associate Justices		X
Special Justices		X
Clerks for Civil Business		X
Clerks for Criminal Business		X
Court Officers		X
Clerical Assistance		X
Medical Service		X
<u>OPERATIONAL EXPENSES:</u>		
Facilities	X ¹	X
Office Supplies, Services and Equipment		X

¹Under the Acts of 1935, c.474, §6, the Commonwealth pays 30% of this expense.

JUVENILE COURTS

	State	County ¹
<u>SALARIES:</u>		
Justices		X
Special Justice		X
Clerks		X
Court Officers		X
Clerical Assistance		X
<u>OPERATIONAL EXPENSES:</u>		
Facilities	X ²	X
Office Supplies, Services and Equipment		X

¹Expenses of the Boston Juvenile Court which are attributed herein to the county are paid by the city of Boston.

²Under the Acts of 1935, c.474, §6, the state pays 30% of the facilities maintenance expense of the Boston Juvenile Court which is located in the Suffolk County Courthouse.

HOUSING COURT OF THE CITY OF BOSTON

	State	Boston
<u>SALARIES:</u>		
Judge		
Clerks		X
Court Officer		X
Housing Specialist		X
Stenographer		X
Clerical Assistance		X
<u>OPERATIONAL EXPENSES:</u>		
Facilities	X ¹	
Office Supplies, Services and Equipment		X
Uniforms		X

¹c.185A, §4 of the General Laws provides that the Housing Court shall sit in the Suffolk County Courthouse. Under the Acts of 1935, c.474, §6 the state pays 30% of this cost.

COURT RELATED COSTS

	State	County ¹	Federal Grants
<u>BAR EXAMINERS</u>			
SALARIES	X		
OPERATIONAL EXPENSES	X		
<u>DISTRICT ATTORNEYS</u>			
SALARIES			
District Attorneys	X		
travel expenses	X	X	
Assistant District Attorneys	X		
travel expenses	X	X	
Temporary Assistant District Attorneys		X	
Legal Assistants		X	
Messengers		X	
Clerical Assistance		X	
<u>OPERATIONAL EXPENSES</u>			
Office, Supplies, Services, and Equipment		X	
Expenses of a Criminal Case		X	
<u>JUDICIAL COUNCIL</u>			
<u>SALARIES</u>			
Members' expenses	X		
Secretary	X		
Clerical Assistance	X		
<u>OPERATIONAL EXPENSES</u>			
	X		
<u>LAW LIBRARY</u>			
<u>SALARIES</u>			
		X	

¹Expenses of court related operations in Suffolk County which are attributed herein to the county are paid by the city of Boston.

COURT RELATED COSTS (cont'd)

	State	County ¹	Federal Grants
<u>LAW LIBRARY (cont'd)</u>			
OPERATIONAL EXPENSES	X ²	X	
<u>MASSACHUSETTS DEFENDERS</u>			
<u>SALARIES</u>			
Attorneys	X		X
Committee Members' Expenses	X		
Investigators	X		X
Paraprofessional Personnel			X
Social Services Personnel			X
Law Clerks	X		X
Administrative Assistance	X		X
Clerical Assistance	X		X
OPERATIONAL EXPENSES	X		X
<u>MEDICAL EXAMINERS</u>			
<u>SALARIES</u>			
Medical Examiners expenses		X X	
Associate Medical Examiners		X	
Investigation Officer		X	
OPERATIONAL EXPENSES			
Office Supplies, Services and Equipment		X	

²The Commonwealth and Boston pay some of the expenses of the Social Law Library in Boston, a private corporation.

COURT RELATED COSTS (cont'd)

	State	County ¹	Federal Grants
<u>PROBATION</u>			
<u>SALARIES</u>			
Superior Court Probation Officers	X		
expenses		X	
Probate Court Probation Officers	X		
expenses		X	
District Court Probation Officers		X	
expenses		X	
Boston Municipal Court Probation Officers		X	
expenses		X	
Juvenile Court Probation Officers		X	
expenses		X	
Superior Court Supervisor of Probation	X		
Commissioner of Probation	X		
expenses	X		
Administrative Assistance	X		
Clerical Assistance	X		
Supervisors of Court Probation Services	X		
Deputy Commissioners	X		

COURT RELATED COSTS (cont'd)

	State	County ¹	Federal Grants
PROBATION (cont'd)			
<u>SALARIES</u>			
Committee on Probation	X		
expenses	X		
Clerical Assistance for Probation Officers		X	
<u>OPERATIONAL EXPENSES</u>			
Office Supplies, Services and Equipment for Probation Officers		X	
Office Supplies, Services and Equipment for Commissioner	X		

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APPENDIX B
BUDGET FORMS

Account



The Commonwealth of Massachusetts

(Spending Agency)

TO THE BUDGET DIRECTOR
ROOM 511, STATE HOUSE, BOSTON

Dear Sir:

In compliance with the provisions of sections 3, and 4 of Chap
as amended, there are hereby submitted estimates and other supp
for your use in the preparation of the proposed budget for the
These estimates are for the appropriation number listed above, and
explanations are true and to the best of my/our knowledge.

Authorized Signatures

Four horizontal lines for authorized signatures, grouped by a large right-facing curly bracket on the left side.

.....
(Date Submitted)

(Use separate sheet for each account number)

The Commonwealth of Massachusetts
SUMMARY OF REQUESTS FOR APPROPRIATIONS

Form 102

DEPARTMENT DIVISION ACCOUNT NO.

(1) PURPOSE (2)	Expenditures 19__ (3)	Appropriated 19__ (4)	Requested 19__ (5)	Increase (+) or decrease (-) Col. (5) compared with Col. (4)	Leave Blank
1. ORDINARY MAINTENANCE					
2. OTHER PURPOSES (List separately)					
TOTALS					

GENERAL STATEMENT:

REGULATION OF STATUTES(S) GOVERNING AGENCY _____
 PLEASE FOLLOW BUDGET INSTRUCTIONS

The Commonwealth of Massachusetts
01 SALARIES, PERMANENT POSITIONS

DIVISION _____ DEPARTMENT _____
 APPROPRIATION TITLE _____ ACCOUNT NO. _____

15 REQUESTS	Analysis of Annual Salary Rates		REQUESTS		LEAVE BLANK	
	Fiscal year 19		Fiscal Year 19		Number	Amount
	Number	Amount	Number	Amount		
1. PERMANENT POSITIONS FILLED:						
2. PERMANENT POSITIONS VACANT:						
a. Filled by substitutes						
b. Leaves of absence without pay						
c. Other vacancies						
d. TOTAL						
3. TOTAL (Sum of 1 and 2nd)						
4. CHANGES INCREASING COST:						
a. In number of positions						
b. Step Rate Increases						
c. Reallocations						
d. Total						
5. TOTAL (Sum of 3 and 4)						
6. CHANGES DECREASING COST:						
a. In number of positions						
b. Other Changes						
c. Total Decreases						
7. TOTAL (5 minus 6c)						

GEN 1

The Commonwealth of Massachusetts

	PROPOSED INCREASE OR DECREASE IN NUMBER OF POSITIONS		
Department:	No. of Positions	Title	Salary Group
Division:			To Begin
Account No.			

COMMENTS BY APPOINTING AUTHORITY ON ABOVE REQUEST

(The following information is required under Gen. Laws Chap. 30, Sec. 45(5), as amended.)

This form may be reproduced

(PLEASE FOLLOW BUDGET INSTRUCTIONS)

100-7-57

The Commonwealth of Massachusetts
REQUEST FOR REALLOCATION OR CHANGE IN SALARY GROUP

Form 5000

DEPARTMENT _____

ACCOUNT NO. _____

DIVISION _____

Present Title & Salary Group No.	Proposed Title & Salary Group No.
.....
.....
.....

COMMENTS BY APPOINTING AUTHORITY ON ABOVE REQUEST

(The following information is required under Gen. Laws Chap. 30, Sec. 45(5), as amended.)

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(PLEASE FOLLOW BUDGET INSTRUCTIONS)

The Commonwealth of Massachusetts
The Commonwealth of Massachusetts

DEPARTMENT

DIVISION

ACCOUNT NO.

PROPOSED INCREASE OR DECREASE IN NUMBER OF POSITIONS
(List in separate groups)

Position Number	Job Group No.	No. of Positions	Title of Position <small>(If numbers have not been assigned place a (T) to designate present temporary positions requested as permanent)</small>	Actual Cost	To Begin

This form may be reproduced)

(PLEASE FOLLOW BUDGET INSTRUCTIONS)



The Commonwealth of Massachusetts

02 SALARIES, OTHER

DEPARTMENT

DIVISION

ACCOUNT NO.

Object Code	ITEM	ACTUAL AND ESTIMATED COSTS			EXPLANATION <small>(Use separate 8 1/2 x 11 sheets if needed)</small>
		Expenditures 19	Appropriated 19	Requested 19	
111	Temporary positions				
112	Holiday pay				
113	Overtime pay				
114	Emergency employees				
115	Nursing service differential				
811	Liabilities (Reversion)				
	TOTALS, 02 Subsidiary				

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(PLEASE FOLLOW BUDGET INSTRUCTIONS)

The Commonwealth of Massachusetts
The Commonwealth of Massachusetts

03 Services, Non Employees

DEPARTMENT DIVISION ACCOUNT NO.

OBJECT CODE	SERVICE — EXPENSE	UNIT FEE.	ACTUAL AND ESTIMATED COSTS				For Bureau
			19		Appropriated 19	Requested 19	
			Units	Cost			
TOTALS, 03 Subsidiary							

EXPLANATION BY AGENCY

(This form may be reproduced)

(PLEASE FOLLOW BUDGET INSTRUCTIONS)

The Commonwealth of Massachusetts

10 Travel and Automotive Expenses

DEPARTMENT DIVISION ACCOUNT NO.

Item No.	Object Code	ITEM	ACTUAL AND ESTIMATED COSTS			EXPLANATION
			Expenditures 19	Appropriated 19	Requested 19	
1.	451	Fares, Hotel, Meals, etc.				
2.	453	Transportation of Persons				
3.	454	Private Auto Mileage				
4.	501	Automotive Supplies and Expenses				
5.	505	Tractor and Truck Supplies, etc. (Farm)				
6.	811	Liabilities (Reversion)				
TOTALS, 10 Subsidiary						

(PLEASE FOLLOW BUDGET INSTRUCTIONS)

The Commonwealth of Massachusetts

II Advertising and Printing

DEPARTMENT DIVISION ACCOUNT NO.

Item No.	Object Code	ITEM	ACTUAL AND ESTIMATED COSTS			EXPLANATION	B:
			Expenditures 19	Appropriated 19	Requested 19		
1.	550	Advertising					
2.	553	Blueprints, photostats, etc.					
3.	559	Printing and Binding					
4.	811	Liabilities (Reversion)					
TOTALS, 11 Subsidiary							

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(PLEASE FOLLOW BUDGET INSTRUCTIONS)

67-1007

The Commonwealth of Massachusetts

12 Maintenance—Repairs, Replacements and Alterations

DEPARTMENT DIVISION ACCOUNT NO.

FORCE ACCOUNTS PROJECTS (List) - DESCRIPTION (See instructions)	Amount	EXPLANATION
ITEM	Expenditures 19 Amount	Appropriated 19 Amount
601 CONTRACT SERVICES		
AUTOMOTIVE REPAIRS	No. of Vehicles	No. of Vehicles
602 Other than Farm		
604 Farm Vehicles		
606 OTHER REPAIRS, REPL.		
REPAIR MATERIALS	No. in Maint. Force	No. in Maint. Force
607 Farm		
608 Other than Farm		
811 LIABILITIES (REVERSION)		
TOTALS, 1st Subsidiary		

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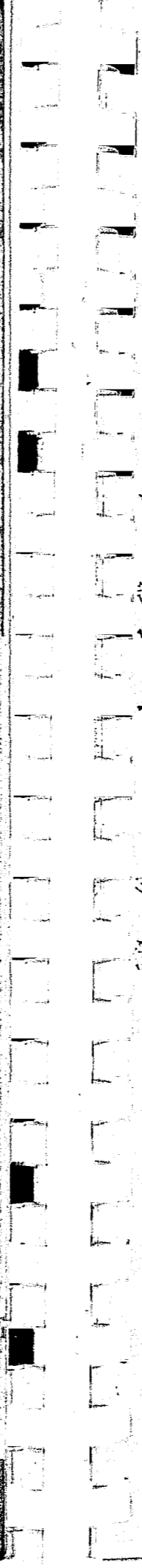
(PLEASE FOLLOW BUDGET INSTRUCTIONS)

DEPARTMENT DIVISION ACCOUNT NO.

Item No.	Object Code	ITEM	ACTUAL AND ESTIMATED COSTS			EXPLANATION	For Budget Bureau Use
			Expenditures 19__	Appropriated 19__	Requested 19__		
1.	681	Freight, Express, etc.					
2.	682	Membership Dues					
3.	683	Official Bond Premium & Insurance					
4.	684	Overtime Meals and Hotel					
5.	685	Postage					
6.	686	Stationery, Office Supplies, etc.					
7.	687	Telephone & Telegraph					
8.	689	Other Office & Admin. Expenses					
9.	311	Liabilities (Overhead)					
TOTALS. 11 Subtotal							

(PLEASE FOLLOW BUDGET INSTRUCTIONS)

2 OF 2
 CONTINUED



The Commonwealth of Massachusetts

15 Equipment Replacement

DEPARTMENT DIVISION ACCOUNT NO.

Priority No.	DESCRIPTION	AMOUNT	EXPLANATION

Total

(PLEASE FOLLOW BUDGET INSTRUCTIONS)

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Request for Authorization of Equipment and/or Services
(Pursuant to Rules of Commissioner of Administration Governing Data Processing and/or
Reproduction Units)

ACCOUNT NO.

DIVISION

DEPARTMENT

Item No.	Object Code	ITEM	ACTUAL AND ESTIMATED COSTS			EXPLANATION
			Expenditures 1965	Appropriated 1965	Requested 1965	
1.	731	Automotive & Vehicle				
2.	732	Automotive & Vehicle (Farm)				
3.	736	Office Equipment				
4.	742	Space Rentals				
5.	749	Other Rentals				
6.	811	Liabilities (Reversion)				
TOTALS, 16 Subsidiary						

Department _____ Date _____ Dept. Ref. No. _____
Unit thereof _____ Appropriation Item No. _____

TO THE COMMISSIONER OF ADMINISTRATION:

In compliance with the provisions of S. 1965, C.824, S.16A, the following information is furnished for evaluation of the equipment and/or services requested. It is hereby certified that funds for the requested purpose are available in the aforesaid appropriation item; also that, subject to your authorization, the Department intends to proceed in accordance with this request.

Authorized Signature for Department _____

(If space below is insufficient attach separate sheets)

- Type of Equipment and/or Service: _____
- Describe on reverse side of this form in what manner this method will effectuate an economy or efficiency improvement sufficient to justify authorization (include manufacturer's model no. and description of equipment requested.) See reverse side
- Budget Request Reference (i.e. fiscal year and form no.) _____
- New or Replacement _____
- If new, are any system or procedure modifications necessary? _____
Have they been made? _____ By whom? _____
- Estimated annual operating cost increase _____
decrease _____

Verification: Funds for Requested Purposes are Available _____ Insufficient _____
Other Comments: _____
Budgetary Compliance: _____

Date _____ Budget Director _____

Authorization: _____ Granted _____ Denied _____ Granted subject to the following conditions

Date _____ Commissioner of Administration _____

COUNTY OF _____

PERSONAL SERVICES FORM 1

BUDGET ESTIMATES 19 _____

BUDGET ITEM

CLASS CODE _____

ORGANIZATION UNIT

SIGNATURE OF AUTHORIZED OFFICIAL _____

NAME	RATE OF COMPENSATION DEC. 31, 19__	SALARY ADJUSTMENTS			DEPT. ESTIMATE AMOUNT	APPROVED BY COUNTY COMM. AMOUNT
		PROPOSED RATE OF COMPENSATION	EFFECTIVE DATE	NET AMOUNT OF ADJUSTMENT		
<small>LIST BELOW THE EMPLOYEES WHOSE SALARY IS MORE THAN ONE SALARY INCREASE FOR AN EMPLOYEE SHOW BOTH RATES AND BOTH DATES. IF THERE IS A VACANCY IN A PERMANENT POSITION LIST THE POSITION USING THE WORD "VACANCY" INSTEAD OF THE NAME OF A PERSON. IF A NEW POSITION IS PROPOSED LIST THE POSITION USING THE WORDS "NEW POSITION" INSTEAD OF THE NAME OF A PERSON. (NEW POSITIONS MUST BE EFFECTIVE PRIOR TO JULY 1.)</small>						

PERSONAL SERVICES

EXPENDITURES OF PREVIOUS YEARS

DEPARTMENT REQUEST

ALLOWED BY COUNTY COMMISSIONERS

PERSONAL SERVICES	EXPENDITURES OF PREVIOUS YEARS		DEPARTMENT REQUEST	ALLOWED BY COUNTY COMMISSIONERS
	19__	19__		

COUNTY OF _____
BUDGET ESTIMATES 19 _____

CLASS FORM 2

BUDGET ITEM

ORGANIZATION UNIT

SIGNATURE OF AUTHORIZED OFFICIAL _____

LIST BELOW MAIN GROUP TITLES, SUB-CLASS CODE NUMBERS, AND ACCOUNT NAMES, AND THE ESTIMATED AMOUNTS REQUIRED FOR ALL REQUESTS. GIVE A BRIEF BUT SPECIFIC EXPLANATION UNDER EACH SUB-CLASS.

MAIN GROUP TITLE NUMBER AND CODE NUMBER	EXPENDITURES OF PREVIOUS YEARS			DEPARTMENT REQUEST	APPROVED BY COUNTY COMM.
	19__	19__	19__		

CLASS FORM 1 SHOULD SHOW SUB-TOTALS FOR EACH GROUP OF TEN CODE NUMBERS AND GRAND TOTAL FOR EACH MAIN GROUP TITLES, I.E. 1. CONTRACTUAL SERVICES 1, SUPPLIES AND MATERIALS, ETC.

SUMMARY FORM 3

BUDGET ITEM _____

ORGANIZATION UNIT _____

SIGNATURE OF AUTHORIZED OFFICIAL _____

GRAND SUMMARY	EXPENDITURES OF PREVIOUS YEARS			DEPARTMENT REQUEST	APPROVED BY COUNTY COMM.
	17	18	19		
1. PERSONAL SERVICES _____					
2. CONTRACTUAL SERVICES _____					
3. SUPPLIES AND MATERIALS _____					
4. CURRENT CHARGES AND OBLIGATIONS _____					
5. EQUIPMENT _____					
6. STRUCTURES AND IMPROVEMENTS _____					
7. LAND AND NON-STRUCTURAL IMPROVEMENTS TO LAND _____					
GRAND TOTAL					

ESTIMATED INCOME FORM 4

CLASSIFICATION (BY SOURCE OF REVENUE)	19 ACTUAL INCOME	ACTUAL INCOME TO OCT. 31, 19	PROBABLE INCOME FROM OCT. 1 TO DEC. 31, 19	PROBABLE TOTAL INCOME 19	19 ESTIMATED INCOME	19 COUNTY COMMISSIONERS ESTIMATE

SUPPLEMENTAL BUDGET INFORMATION
 IN ACCORDANCE WITH CHAPTER 35, SECTIONS 28 AND 28A OF THE GENERAL LAWS

CITY OF BOSTON AND COUNTY OF SUFFOLK 1973 PROGRAM BUDGET		FORM NO. 1 DEPARTMENT SUMMARY				
DEPARTMENT		FUND		ACCOUNT NO.		
BUDGET COMMENTS						
COST SUMMARY BY PROGRAM ELEMENT						
PROGRAM ELEMENT	1971 EXPENDITURE	1972 APPROPRIATION	1973 BUDGET		INCREASE OR (DECREASE)	
			REQUESTED BY DEPARTMENT	RECOMMENDED BY MAYOR		
DEPARTMENT TOTAL						
COST SUMMARY BY CLASS						
DESCRIPTION	1970 EXPENDITURE	1971 EXPENDITURE	1972 APPROPRIATION	1973 BUDGET		INCREASE OR (DECREASE)
				REQUESTED BY DEPARTMENT	RECOMMENDED BY MAYOR	
Personal Services						
Contractual Services						
Supplies and Materials						
Current Charges and Obligations						
Equipment						
Structures and Improvements						
Land and Non-Structural Improvements						
Special Appropriation						
DEPARTMENT TOTAL						

CITY OF BOSTON AND COUNTY OF SUFFOLK 1973 PROGRAM BUDGET		FORM NO. 2 PROGRAM ELEMENT SUMMARY					
DEPARTMENT		PROGRAM ELEMENT		FUND		ACCOUNT NO.	
DESCRIPTION OF PROGRAM ELEMENT							
STATEMENT OF GOALS							
PROGRAM OUTPUT Explanation of Output		MEASUREMENT UNIT	1971	1972	1973		
COST SUMMARY BY CLASS							
DESCRIPTION	1970 EXPENDITURE	1971 EXPENDITURE	1972 APPROPRIATION	1973 BUDGET		INCREASE OR (DECREASE)	
				REQUESTED BY DEPARTMENT	RECOMMENDED BY MAYOR		
Personal Services							
Contractual Services							
Supplies and Materials							
Current Charges and Obligations							
Equipment							
Structures and Improvements							
Land and Non-Structural Improvements							
PROGRAM ELEMENT TOTAL							

SUMMARY OF PERSONAL SERVICES

(FORM NO. 3)

This form is intended to summarize your personal services budget request.

The amount requested by the department for 1973 for permanent positions should be the net amount carried forward from the bottom line of Form No. 4.

Any personal services items other than permanent positions, temporary positions, and overtime should be presented on the line designated "Other Expense" and explained at the bottom of the form.

Cost of the 1973 collective bargaining increase should be shown in the appropriate column. Columns for collective bargaining increases in prior years may be omitted.

The line for Numbers of Positions should show permanent position quotas for the years involved, positions actually filled as of September 1, 1972, and positions requested for 1973. These should be department or program element totals only for permanent positions.

The columns headed "Recommended by Mayor" and "Increase or (Decrease)" should be left blank so that the Mayor's recommendations can be filled in when the budget is prepared for the printer.

CITY OF BOSTON AND COUNTY OF SUFFOLK 1973 PROGRAM BUDGET				FORM NO. 3 SUMMARY OF PERSONAL SERVICES			
DEPARTMENT		PROGRAM ELEMENT		FUND	ACCOUNT NO.		
DESCRIPTION	1970 EXPENDITURE	1971 EXPENDITURE	1972 APPROPRIATION	1973 BUDGET		INCREASE OR (DECREASE)	
				REQUESTED BY DEPARTMENT	RECOMMENDED BY MAYOR		
PERMANENT POSITIONS							
TEMPORARY POSITIONS							
OVERTIME							
COLLECTIVE BARGAINING AGREEMENTS							
OTHER EXPENSE							
TOTAL PERSONAL SERVICES							
NUMBERS OF POSITIONS	1970 QUOTA	1971 QUOTA	1972		1973		INCREASE OR (DECREASE) OVER 1972
			QUOTA	FILLED 9/1/72	REQUEST	RECOMMENDED BY MAYOR	

LIST OF PERMANENT POSITIONS

(FORM NO. 4)

Column 1 -- The position titles shown on this form must be those titles shown in the official City position classification plan. All positions with the same title should be grouped on one line and the total amounts shown in the appropriate columns.

Column 2 -- Show the pay grade for the position title as it appears in the City pay plan.

Column 3 -- Show the approved quota for the position title as of September 1, 1972.

Column 4 -- Show the actual number of positions filled for the position title as of September 1, 1972.

Column 5 -- Show the total number of positions requested for 1973 for the position title.

Column 6 -- Show the increase or decrease in number of positions requested for 1973 in comparison to the position quota as of September 1, 1972 (column 5 minus column 3).

Column 7 -- Show the total annual salary as of January 1, 1973 for all positions in that position title. Any step rates which will occur between September 1, 1972 and January 1, 1973 for filled positions must be taken into account in determining this total annual salary. All positions vacant as of September 1, 1972 should be included at step 1 of the pay grade.

Column 8 -- Show total salary requirements for 1973 for the position title, which will be the total of columns 7 plus 8. At the bottom of column 9 subtract on the third line from the bottom the amount of savings for requested new positions which will not be established at the beginning of the year. On the second line from the bottom, subtract the estimated savings in salary from position turnover and vacant positions. The last line in column 9 will, therefore, be the net salary requirements for permanent positions for 1972 arrived at by subtracting delay in filling new positions and estimated salary savings from the gross salary requirements shown on the "Total" line.

Columns 10 and 11 should be left blank so that the Mayor's recommendations can be filled in when the budget is prepared for the printer.

PLEASE DO NOT SKIP ANY LINES WHEN COMPLETING THIS FORM

CITY OF BOSTON AND COUNTY OF SUFFOLK 1973 PROGRAM BUDGET							FORM NO. 4 LIST OF PERMANENT POSITIONS				
DEPARTMENT		PROGRAM ELEMENT					FUND		ACCOUNT NO.		
TITLE OF POSITION (1)	GR. (2)	POSITION QUOTA 9/1/72 (3)	POSITIONS FILLED 9/1/72 (4)	POSITIONS REQUESTED FOR 1973 (5)	INC. OR (DEC.) OVER 1972 (6)	Annual Salary JAN. 1, 1973 (7)	STEP RATES 1973 (8)	SALARY Requirements FOR 1973 (9)	MAYOR'S ALLOWANCE		
									QUOTA (10)	SALARY (11)	
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
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18											
19											
20											
21											
22											
23											
24											
25											
26											
27											
28											
29											
TOTAL											
							Minus Delay in Filling New Positions				
							Minus Salary Savings (Turnover and Vacant Positions)				
							1973 Budget Request for Permanent Positions				

SUMMARY OF CLASSES

(FORM NO. 5)

This form is designed to summarize the department's budget requests by item and class.

Report on the appropriate lines 1970 expenditures, 1971 expenditures, 1972 appropriations, and 1973 budget requests. For all other classes beyond those printed on this form, utilize the lines at the bottom of the form, designating the expenditure class involved.

Detailed information on any item appearing on this form must be supplied at the request of the Budget Analyst on Form No. 6 "Class Supporting Detail".

The column headed "Recommended by Mayor" and "Increases or (Decreases)" should be left blank so that the Mayor's recommendations can be filled in when the budget is prepared for printing.

CITY OF BOSTON AND COUNTY OF SUFFOLK 1973 PROGRAM BUDGET				FORM NO. 5 SUMMARY OF CLASSES		
DEPARTMENT	PROGRAM ELEMENT			FUND	ACCOUNT NO.	
GROUPS AND CLASSES	1970 EXPENDITURE	1971 EXPENDITURE	1972 APPROPRIATION	1973 BUDGET		INCREASE OR (DECREASE)
				REQUESTED BY DEPARTMENT	RECOMMENDED BY MAYOR	
PERSONAL SERVICES						
10 Permanent Employees						
11 Temporary Employees						
12 Overtime						
Total Personal Services						
CONTRACTUAL SERVICES						
21 Communications						
22 Light, Heat and Power						
25 Removal and Disposal of Garbage and Waste						
26 Repairs and Maintenance of Buildings and Structures						
27 Repairs and Servicing of Equipment						
28 Transportation of Persons						
29 Miscellaneous Contractual Services						
Total Contractual Services						
SUPPLIES AND MATERIALS						
30 Automotive Supplies and Materials						
32 Food Supplies						
33 Heating Supplies and Materials						
34 Household Supplies and Materials						
35 Medical, Dental, Etc.						
36 Office Supplies and Materials						
39 Miscellaneous Supplies and Materials						
Total Supplies and Materials						
CURRENT CHARGES AND OBLIGATIONS						
45 Aid to Veterans						
49 Other Current Charges and Obligations						
Total Current Charges and Obligations						
EQUIPMENT						
50 Automotive Equipment						
56 Office Furniture and Equipment						
59 Miscellaneous Equipment						
Total Equipment						
OTHER CLASSES						
GRAND TOTALS						

CLASS SUPPORTING DETAIL

(FORM NO. 6)

This form will be utilized for presentation of supporting detail
at the direction of the Budget Analyst.

CITY OF BOSTON AND COUNTY OF SUFFOLK 1973 PROGRAM BUDGET		FORM NO. 6 CLASS SUPPORTING DETAIL		
DEPARTMENT		PROGRAM ELEMENT	FUND	ACCOUNT NO.
CODE (1)	DESCRIPTION (2)	1973 BUDGET		
		REQUESTED BY DEPARTMENT (3)	RECOMMENDED BY MAYOR (4)	

EQUIPMENT DETAIL

(FORM NO.7)

Column 1 -- Show the code number of the type of equipment being requested.

Column 2 -- Present a brief description of the equipment item requested.

Column 3 -- Show the number of units of equipment being requested.

Column 4 -- Show the estimated cost per unit of equipment.

Column 5 -- Show the total cost of the item of equipment being requested (column 3 times column 4).

Column 6 -- Indicate N for new equipment being requested or R for replacement equipment being requested.

Column 7 -- Show the estimated value of any equipment which will be traded in for the replacement equipment.

Column 8 -- Show the net cost of the equipment being requested (column 5 minus column 7).

The column headed "Recommended by Mayor" should be left blank so that the Mayor's recommendations can be filled in when the budget is prepared for the printer.

CITY OF BOSTON AND COUNTY OF SUFFOLK 1973 PROGRAM BUDGET				FORM NO. 7 EQUIPMENT DETAIL				
DEPARTMENT		PROGRAM ELEMENT		FUND		ACCOUNT NO.		
CODE (1)	DESCRIPTION (2)	NO. OF UNITS (3)	EST. UNIT COST (4)	TOTAL COSTS (5)	N OR R (6)	VALUE OF TRADE-IN (7)	NET COSTS (8)	Recommended By Mayor (9)

ESTIMATED INCOME

(FORM NO. 8)

This form will be prepared at the departmental level only and will summarize your income.

Show actual income for 1970 and 1971 by major sources of revenue, show the probable income estimate for 1972 and your best estimate of income for 1973.

END