

**The author(s) shown below used Federal funds provided by the U.S. Department of Justice and prepared the following final report:**

**Document Title:** Adequate, Stable, Equitable, and Responsible Trial Court Funding: Reframing the State vs. Local Debate

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**Document No.:** 223973

**Date Received:** September 2008

**Award Number:** 2003-IJ-CX-1026

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# **ADEQUATE, STABLE, EQUITABLE, AND RESPONSIBLE TRIAL COURT FUNDING: REFRAMING THE STATE vs. LOCAL DEBATE**

*A project conducted by the Justice Management Institute  
funded by the National Institute of Justice*

## **PROJECT ABSTRACT**

A state's approach to funding its trial courts could have significant impacts on court operations. Different states used different mixes of state and local funding. Over the last two decades several states shifted primary funding of trial courts from the local to the state level. A case study approach was used to examine how three states funded their trial courts and how this impacted four key dimensions of funding: the adequacy and stability of funding, the equity of funding across trial courts in a state, and accountability for the fiscal management of trial courts. The examination suggested that there was no clear overall advantage to either primary state funding or primary local funding when considering all four dimensions. However, on some of the individual dimensions some approaches appeared to be more beneficial. Even in these situations, some methods of implementation appeared to mitigate the apparent advantage.

There was no strong evidence that trial courts were more adequately funded either with primary state funding or primary local funding. All three states developed formulas to estimate funding need in a more quantitative and comprehensive basis. In the two states that shifted to primary state funding, the trial courts consistently got less funding than the formulas projected was adequate. Moreover, funding levels were at a midpoint; not as high as the better funded courts, nor as low as the less well funded courts. In both states, the trial courts did get a boost in total funding in the first year of transition, but the increase appears to have been a one time phenomenon.

Because of the ability to allocate funds from a statewide perspective, the two states that shifted to primary state funding were able to achieved greater equity of funding levels across trial courts. The state level perspective also led to adoption of, but did not guarantee compliance with, more uniform and "best" business practices. There was a significant effort to collect workload, performance, and outcome data in a consistent manner across the state when primary funding shifted, which allowed comparison across courts on performance and accountability.

The experiences of the two states also demonstrated that judiciaries with primary state funding developed more of a statewide perspective of the judiciary and its total cost. However, unique local needs appeared to be discounted or ignored. Tensions arose between the three branches of government about what the priorities and goals were for trial courts, which branch set them, and how much would be spent on various activities.

The difficulty in measuring equity of justice from the litigant's perspective resulted in the use of proxies for achieving funding equity—providing exactly the same programs and services, equal staffing levels, and equal salaries—on the premise that this would achieve equal justice.

Neither state nor local governments provided more stable or predictable funding for trial courts. Unfortunately, inflexible allocation formulas appeared to suppress innovation and risk-taking in trial courts regarding new programs, service delivery models, or business practices.

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## **PROJECT ABSTRACT**

The report provides case studies of how three states fund their trial courts and how this impacts funding on four key dimensions: the adequacy and stability of funding, the equity of funding across trial courts in a state, and accountability for the fiscal management of trial courts. Two of the states had recently shifted to primary state funding and the trial courts in the third state were primarily locally funded. Overall, there was no clear overall advantage to either primary state funding or primary local funding when considering together the four dimensions of adequacy, stability, equity, and accountability. However, on some dimensions there did appear to be an advantage to one level of funding or the other. Locally funded courts often complained about insufficient funding, indeed, this was often a factor in shifting to greater state funding. However, greater state funding did not appear to produce significantly more funding. Primary state funding did provide an opportunity to equalize funding across trial courts in the two states that shifted. The experiences of the two states suggested that judiciaries with primary state funding develop more of a statewide perspective of the operation of the judiciary and the services it provided. Primary state funding also heightened the visibility of spending on the judiciary and encouraged greater accountability. Neither state nor local revenue sources appeared to provide more stable or predictable funding for courts. More complete information about actual expenditures did not necessarily mean that spending was more cost effective, was used for the most critical needs, or provided a higher quality of justice. Neither source of primary funding appeared to necessarily engender better management.

# **ADEQUATE, STABLE, EQUITABLE, AND RESPONSIBLE TRIAL COURT FUNDING: REFRAMING THE STATE VS. LOCAL DEBATE**

## ***PROJECT REPORT***

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April 2008



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The research described in this report was supported by grant # 2003-IJ-CX-1026 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. The points of view expressed in this document are those of the authors and do not necessarily represent the official position or policy of the U.S. Department of Justice, the National Institute of Justice, or the state judiciaries who are the subject of the study upon which this report is based.

Legal research services for this project were provided by Lexis-Nexis, Inc.

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## **ACKNOWLEDGEMENTS**

This is the final report prepared by a team led by The Justice Management Institute (JMI) with the support of grant 2003 IJ-CX-1026 from the National Institute of Justice. JMI acknowledges the support of NIJ and would like to express its appreciation to Janice T. Munsterman, who served as the initial project monitor for this grant, for her support and assistance. We also appreciate the patience and support provided by Linda Truitt, who succeeded Janice, in completing the project.

First and foremost, JMI would like to thank all of the individuals in the three states, New Jersey, Florida, and Washington, who generously gave their time, recounted their experiences, confided their concerns, and extolled the successes and challenges of trial court funding in their state. Their experiences and insights significantly contributed to the quality of this report. Their candor and patience will contribute to greater shared knowledge about how to fund trial courts.

JMI would also like to thank two groups at whose meetings information about the project was discussed. The first was the mid-year meeting of the Conference of State Court Administrators (COSCA) held in December of 2003. This group included the state court administrator and senior staff from about half of the states, and represented a cross-section of funding approaches. They provided comment and feedback on the initial list of essential elements and the goals of an effective trial court funding approach. The second group was the National Conference of Metropolitan Courts (NCMC). Preliminary findings of the project were discussed at two annual meetings, one held in September 2004 and the other in September 2006. This group engaged in a lively discussion of the preliminary findings and provided useful insights regarding the observations. These two groups of practitioners helped ground the study in reality and helped it focus on what was important to policy makers in the field.

# **ADEQUATE, STABLE, EQUITABLE, AND RESPONSIBLE TRIAL COURT FUNDING**

## **EXECUTIVE SUMMARY**

The method of providing funding for trial courts in a state can have significant impacts on the operations of courts. The role of the judiciary is to maintain the rule of law by resolving disputes in a just, fair, equitable, and timely manner. These goals cannot be accomplished if the judiciary is not funded at an appropriate level or is not operated in a fiscally responsible manner. Different states use different approaches to fund trial courts. Over the last two decades a number of states have shifted primary funding of trial courts from the local level to the state. There is considerable debate about which approach is better. This report further develops the body of knowledge about how the manner of funding of trial courts affects their operations by examining the recent experiences of three states. The findings improve our understanding of how to fund trial courts to establish a strong, viable, and effective judiciary.

The findings are based on the experiences of three states with different approaches to trial court funding. The three states represent a spectrum of experience regarding trial court funding, from long time primary state funding (New Jersey), to a recent shift to primary state funding (Florida), to trial courts that were primarily, but not exclusively, locally funded (Washington). Each state's approach is examined as to how it impacts four key dimensions of trial court funding: the adequacy and stability of funding, the equity of funding across trial courts in a state, and accountability for the fiscal management of trial courts.

The study's findings suggest that there is no clear overall advantage to either primary state funding or primary local funding when considering together the four dimensions of adequacy, stability, equity, and accountability. However, on some of the individual dimensions there does appear to be an advantage to one level of funding or the other. Even in these situations, some methods of implementation appear to mitigate the apparent advantage.

In order for trial courts to fulfill their role, they must have adequate funding. In the states examined here, there was no strong evidence that trial courts were more adequately funded overall either with primary state funding or primary local funding. In the two states examined that had primary state funding (New Jersey and Florida), judicial branch leaders acknowledged that the trial courts consistently got less funding from the state than formulas or standards developed by the judiciary projected was adequate. Moreover, in these two states, funding levels appeared to be at a funding midpoint; not as high as the funding level of the better funded courts before the shift, nor as low as the courts that had the lowest funding levels. In the third state (Washington), the consensus was that, overall, the judiciary was under-funded. Some trial courts considered themselves adequately funded from local sources, others did not. This same variance reportedly existed in New Jersey and Florida, prior to the shift to primary state funding. In both New Jersey and Florida, the trial courts did get a boost in total funding in the first year of transition for costs paid by the state, but the increase appears to have been a one time phenomenon. Moreover, the increase did not meet what the judiciary calculated as

an adequate level of funding. It is worth noting that all three states were moving towards the use of more quantitatively based formulas and projections to measure need in a more comprehensive and less historically based manner.

Although trial courts are generally established in a state's Constitution, they are often administered locally. There has been a growing concern that there were disparities in the quality of justice available from trial courts across a state, in large part due to uneven funding. Because of the ability to allocate funds from a statewide perspective, the two states that shifted to primary state funding achieved greater equity of funding levels across trial courts in the state. In both states this was an explicit policy decision on the part of the judiciary. However, the definition of equity proved problematic. Because of the complexity in measuring equity of justice from the litigant's perspective, the operationalization of equity used proxies—for example, providing exactly the same programs and services, equal staffing levels, and equal salaries—on the premise that these would result in equal justice. Obtaining equality was further complicated by wide variance in caseloads, case mix, programs, services, cost of living, and salaries across trial courts. Developing transparent and intuitive, yet adequately comprehensive, funding formulas to produce equity of justice proved somewhat elusive. In addition, there was some evidence that formula based allocations enforced too rigidly could stifle innovation, particularly regarding the development of new programs or service delivery models.

In order to manage trial courts responsibly, its leaders must have funding streams they can rely on from year-to-year and which do not fluctuate significantly or unpredictably. The three case studies here suggested that neither state nor local governments provided more stable or predictable funding for trial courts. With either approach, the judiciary's budget was exposed to the fluctuations associated with the revenue sources supporting that level of government. For example, at the local level, the amount of revenue was bound by property tax caps, whereas at the state level, income or sales tax revenues varied depending on the condition of the state's economy or consumer spending. Neither revenue source was driven by, or proportional to, trial court workloads. Moreover, the judiciary competed for funding with different types of agencies at each level of government, and the judiciary was not obviously more effective politically at either level.

The public expects that funds provided to operate trial courts will be spent in a fiscally responsible manner. If adequate funds are provided, but are misspent, the quality of justice may suffer. How funds are spent and whether expected outcomes are achieved is therefore as important as adequacy and equity of funding. The experiences of two states (New Jersey and Florida) suggested that judiciaries with primary state funding developed more of a statewide perspective of the operation of the judiciary and the services it provided. There was better information on a statewide basis of the total cost of the judiciary, both on how much money was spent and for what activities. Primary state funding made it more likely that statewide strategic objectives and program outcomes were achieved. However, unique local needs generally were discounted or sometimes just ignored.

With primary state funding the judiciary was also subjected to greater state scrutiny, legislative and executive. This is especially true when the level of state spending for the judiciary increased from tens of millions to hundreds of millions of

dollars a year. Tensions between the three branches of government arose about what the priorities and goals were for trial courts, which branch set them, and how much would be spent on various activities. Greater state visibility had both benefits and risks and it changed the relationships between the branches of government.

More complete information about actual expenditures did not necessarily mean that spending was more cost effective, was used for the most critical needs, or provided a higher quality of justice. Based on these case studies, neither source of primary funding appeared to engender better management. The state level perspective could lead to adoption of, but did not guarantee compliance with, more uniform and “best” business practices. Whether the practices were implemented locally depended on effective accountability and enforcement mechanisms, which appeared to still be under development. There was some indication that the shift to primary state funding at a funding midpoint encouraged some trial courts to find lower cost approaches to delivering services, especially where a court’s funding level was reduced as a result of the shift.

There was also a greater effort to gather workload, performance, and outcome data in a consistent manner across the state when primary funding shifts. This allows comparison across courts on performance and accountability. Courts that are primarily locally funded focus on local issues, and accountability is assessed regarding these local needs and requirements. Variations in the priorities and level of sophistication of local government meant that there is variance across the state regarding accountability and enforcement mechanisms applied to trial courts in locally funded systems.

Often fiscal accountability in primarily state funded systems is measured by strict adherence to funding allocation categories, at least in the early years of state funding. Some locally funded trial courts are also subject to similar locally-imposed strictures. This form of oversight means the monitoring focused on what was spent, not necessarily on the desired outcome of equal justice for all litigants. Spending limited to fixed categories reduces local spending flexibility, which appears to lead to more homogenous management styles. The inflexibility of allocation formulas also appears to suppress innovation and risk-taking in trial courts regarding new programs, service delivery models, or business practices.

The funding of trial courts does not lend itself to simple formulas or easy accountability. Measuring the quality of justice is difficult, rendering the allocation of funding to achieve just outcomes similarly complicated. While primary state funding does lead to greater equity of funding, it appears to hamper innovation in programs and operations. Neither local nor state funding obviously results in greater stability of funding or more adequate funding. At either level of government, the impact of revenue source stability and budget politics continues to be significant. At either level of funding, the degree of accountability depends on what is measured and how spending is monitored by those who allocated funds.

# Chapter 1. INTRODUCTION

The judiciary is an essential component of our state governments. Courts are a basic institution established by our founders as one of the three co-equal and independent branches of government. Historically, each state created an assortment of trial courts with significant variation in how each type of trial court was funded. Over time there have been significant changes in the concepts of how best to organize and fund trial courts. Public attitudes about the fiscal management of public institutions and their performance have also shifted. Scrutiny has increased as trial courts have grown in size and complexity. This report examines four aspects of common trial court funding structures in light of these shifting expectations, based on the actual experiences of three states. The ultimate objectives are to identify the pertinent policy issues and questions and provide guidance on how best to fund effective trial courts.

Some states' trial courts are primarily funded at the local level, by cities or counties. These locally funded courts generally receive some funding from the state, usually for judges' salaries, specific programs (for example, drug courts), or for statewide services, such as a case management system. Other states' trial courts are funded primarily by the state. Many state funded courts continue to rely on local support for some costs, typically court facilities and court security. Over the years several states have shifted to primary state funding. No states have shifted to primary local funding. The common driving forces for a shift to primary state funding include fiscal relief for local government, a perceived inadequacy or unpredictability of revenue at local levels, or a sense of unequal justice across the state.

During the last 30 years, there have been significant shifts in public thinking about how public institutions should be funded. The mix of preferred revenues sources has changed, with a de-emphasis on general tax revenues and greater emphasis on other revenue sources. At the same time legislative and voter initiatives, often arising from "taxpayer revolts", have limited increases in, or use of, some types of revenues. Furthermore, the available revenue sources are impacted in different ways by economic trends and business cycles. All of these factors are relevant to the policy question of which level of government, what funding sources, and what funding structures are optimal for funding trial courts in a state. They affect what revenues are available to fund trial courts at each level of government and the adequacy and stability of the funding.

Concurrent with shifts in public expectations about revenue sources there have been significant shifts in public expectations about the operations and performance of government entities. The public expects government officials to exercise greater fiscal responsibility in spending public funds. There is also an increased interest in transparency and openness regarding public expenditures. Accountability, measured by outcomes instead of inputs, against court performance standards, or through performance audits, is becoming more commonplace. In response to these shifts, judiciaries are exhibiting greater interest in more effective business practices, and adopting alternative dispute resolution approaches and problem-solving courts as an alternative to traditional adversarial adjudication. These trends place different demands on how trial courts allocate the resources appropriated to them and how they operate fiscally.

A proposal to shift to greater state funding generally results in a debate about whether state or local funding is better. Trial court judges and administrators often express a wariness and anxiety about anticipated negative impacts of a shift—loss of local control and lack of responsiveness to local needs—but recognize the potential for greater, or more uniform, funding. The state level judiciary sees an opportunity to achieve higher levels of trial court funding, greater equity of funding and services across the state’s trial courts, and greater uniformity of practice.

The changes in the public’s thinking about revenue sources, fiscal responsibility, and the role and performance of the judiciary suggests taking a fresh look at how best to fund trial courts. Rather than focusing on whether state or local funding is better, this study refocuses the examination to whether, and how, three states provided adequate, stable, equitable, and responsible funding for trial courts in these new times. In so doing, the study begins to identify those funding elements that permit trial courts to appropriately respond to shifting public expectations and requirements. It also provides a new context for the analysis of the impacts of a shift to greater state funding or a change in the revenue sources from which trial courts were funded.

The state-local debate often has an “apples and oranges” quality. Proponents of either form of primary funding have tended to emphasize different factors. Another objective of this study, therefore, is to start sorting out these factors and examining them independently to assess their impact. This was done by shifting the examination from a focus on which level of government is the most appropriate to fund trial courts, to one that focuses on what factors promote adequate, stable, equitable, and responsible trial court funding—to focus on the outcome, not the mechanics. The expectation is that understanding how funding is implemented is more important to achieving these four goals than focusing on which level of government provides the majority of funding. The intent of the study is to provide an increased understanding of the goals of trial court funding and the impact of different funding approaches on these goals. The ultimate objective is to better inform discussions about the pros and cons and ancillary impacts of various approaches to funding trial courts.

## Chapter 2. GENERAL FINDINGS

Trial courts are complex organizations. Their internal structure and organization, programs, service delivery models, and staffing can be examined from many different perspectives as part of a trial court funding study. This study focuses on four aspects: adequacy, equity, stability, and accountability. The discussion is organized around these four aspects. Each discussion begins with an overview of the topic. A working definition is proposed for purposes of examining the trial court funding structures in each of the three states examined. This is followed by a discussion of lessons learned from the experiences of the three states studied about the impacts of the funding structure or approaches on each of the four topics. Often changes in funding levels or approaches impact more than one topic simultaneously. For example, when funding is added to some courts to bring them up to a minimum level, both adequacy and equity are increased. This increase in funding for some courts means at least these courts are now more adequately funded. Conversely, an increase in total funding available to trial courts means that it is easier to achieve funding equity, if the less well-funded courts are allocated proportionally more of the new funding. Similarly, any discussion of revenue sources and levels affects both adequacy and stability of funding.

### **A. PRIOR STUDIES RELATED TO TRIAL COURT FUNDING**

Prior studies of state funding tended to focus on one state, or were done for one state considering a shift to greater state funding.<sup>1</sup> It has been 10 years since trial court funding issues were addressed at the national level.<sup>2</sup> Since then, several states have made major changes in how their trial courts are funded.<sup>3</sup> In other states, a commission or advisory committee has examined how their judiciary is being funded and considered alternative funding approaches.<sup>4</sup>

Previous studies of trial court funding have not provided much guidance regarding adequacy, stability, or equity of funding. There have been no generally accepted measures by which to compare courts within a state or across states on these dimensions. Prior reports on court funding have focused more on the mechanisms of increased state funding than on the impacts of the changes on court operations and outcomes.<sup>5</sup> There is now more variety and experience with funding shifts, allowing broader comparisons of the impacts and effectiveness of various structures, which can be used to better focus and inform discussions and decisions in states.

Significant shifts in thinking about the role of the judiciary in society have occurred since the subject of trial court funding was last studied nationally. These shifts have had significant impacts on trial court funding, generally changing or increasing the types and level of services trial courts are expected to provide to litigants, thus increasing costs. For example, the emergence of problem-solving courts incorporating therapeutic and restorative justice concepts<sup>6</sup> and concerns regarding equal access to justice, especially for unrepresented litigants,<sup>7</sup> have changed the way trial courts do business and what programs and services they provide. Expectations have also shifted in favor of greater collaboration between trial courts and other agencies in the justice system so that the system operates more efficiently and at less public cost.<sup>8</sup> There has also been considerable interest in trial courts implementing the trial court performance standards<sup>9</sup> and developing performance measures<sup>10</sup> on the assumption that this would, among other

things, result in more responsive and accountable operations. Finally, there has been greater concern about the public's trust and confidence in courts<sup>11</sup> and an emphasis on increased community involvement in court planning efforts,<sup>12</sup> both of which affect the judiciary's ability to get and maintain adequate funding levels.

One of the major, recurring issues regarding trial court funding is the adequacy and predictability of trial court funding and the responsible use of public funds by trial courts. Fluctuations in the economy during the last 10 years have exacerbated the concern. Courts continue to respond in a variety of ways to perceived inadequate and unpredictable funding, regardless of the level of government providing the funds.<sup>13</sup> Courts, the Bar, and litigants are also more concerned about the equity of funding across trial courts within a state. Systemic changes in thinking about public financing and business cycles require the judiciary, like other government agencies, to rethink funding approaches.

There has not been a cross-state analysis of how to determine what an adequate level of funding is for trial courts. Significant efforts have been invested in developing models to assess the need for judgeship and, more recently, court support staff.<sup>14</sup> These models generally use case filings as the primary drivers and the formulas are usually based on measures reflecting existing practices. The most common models are referred to as "weighted caseload" models. Some states have introduced best practices and performance standards into the formulas.<sup>15</sup> Several of the states that have shifted to greater state funding have developed models to project funding needs, but there have been no published comparisons of these models, their components, or their effectiveness.

One objective of this study is to re-organize and supplement existing knowledge about how the funding of trial courts affects the delivery of justice, in light of changing expectations about services, efficiencies and outcomes.

## **B. ADEQUACY OF FUNDING**

Trial courts can not be expected to provide equal access and fair and prompt justice if they are not adequately funded. But what constitutes adequate funding? At the time of this study there were no generally accepted standards and little quantitative information from which to calculate adequate funding levels. Historically, adequacy was based on perceptions, often near-term in nature, and was rarely quantitatively grounded. Funding was perceived to be adequate if courts were successful with their budget requests, received funding for new programs or technology, and obtained new judgeships and staff that kept up with caseload growth. If there were no budget increases or the increases were insufficient to even keep up with normal, expected increases in expenditures, funding was perceived to be inadequate. This was true whether funding was primarily state or primarily local.

There were also structural factors that contributed to a sense of inadequate funding. Restrictions on revenue streams passed by the voters or legislature could reduce available revenues. All three of the states examined here had revenue restrictions of this nature. While not specific to the judiciary, the restrictions reduced the total revenue available at a particular level of government. Economic downturns often further reduced revenue projection and funding levels, notwithstanding the lack of any relationship



between judiciary caseloads and economic conditions. The sense of adequacy was thus affected by the predictability and stability of funding sources. These experiences were heightened at the local government level, contributing to a perception that there was more revenue at the state level—that ‘the grass was greener’—because of the wider range of revenue sources and larger population subject to a tax at the state level. This sentiment was often exacerbated by a belief at the local level that the state was telling them what to do, through state mandates, but not providing the funds with which to do it.

Trial courts, particularly where judges were locally elected, tended to have a local perspective when assessing the adequacy of funding. They focused on the growth of their court’s caseload and the perceived need for new or expanded programs or services to meet the needs of their cases. Trial courts often assessed budget success by examining budget changes from one year to the next – how much more, or less, did the court get this fiscal year, compared to last fiscal year. This was reinforced by the incremental nature of most budget review processes, where the focus during budget review was on new requests or proposed cuts, and not the underlying base budget. Sometimes there was a comparison to another court, usually a similarly sized court elsewhere in the state, with more generous funding, or one that had a program or service the court making the comparison did not have. Finally, trial courts also compared their success at budget hearings to other entities funded at the same level, particularly other justice sector entities.

In general, the determination of adequacy was local, anecdotal, incremental, near-term, or historical in nature. The factors comprising adequacy were not well articulated. Seldom were there standards or formulas based on quantitative information and analysis on which to base budget allocations.

### ***Determining Adequate Funding Levels***

One approach to assessing adequacy is to define adequate trial court funding as that level of funding which allows all cases to be heard and adjudicated in a just, legal, timely, and cost-effective manner. This approach requires the development of quantitative workload and performance measures and formulas that result in a funding level that allows trial courts to achieve the stated goals. Such an approach involves a multi-stage and iterative process reflecting the combinations of programs, service delivery models, personnel, and performance levels needed to address projected filing levels and expected outcomes. After reaching decisions regarding all the alternatives as applied to the projected workload, a calculation can be made of what is an adequate level of funding.

Generally, state judiciaries and trial courts have not engaged in this type of bottom-up, zero-based budget building exercise each year. In most states, budgeting at the state and local levels is incremental in nature, based on an underlying assumption that historical spending patterns are a good first approximation of future need for services and programs. Budgets are based on historical funding levels, with additions or reductions linked to changes in workload, programs, service levels, and revenue availability.

Another approach to assessing the adequacy of funding is to invert the question to one of identifying the indicators of inadequacy. For example, funding is inadequate if:

- the court can not meet legal or constitutional requirements or discharge clear mandates due to insufficient funds to obtain the necessary personnel, support services, information systems, etc.;
- there is a general public consensus that the court is not providing the services expected and the problem can be attributed to inadequate funding; or
- external, neutral, and objective assessments of the level of funding for trial courts find it insufficient.

While simpler to apply, this approach can not readily provide a quantitative estimate of the overall level of adequacy.

The three states studied here offer several lessons about approaches to determining adequate funding levels. All three states developed quantitative formulas used to calculate adequate funding levels, with mixed results. All experienced problems in obtaining reliable and comparable data for use in the formulas. There were also ‘lessons learned’ about uncontrollable costs, bad economic times, and the impacts of revenue availability, which can affect obtaining adequate funding.

### *Use of Funding Formulas*

Invariably, when the question is raised of what is an adequate funding level for trial courts, there is a demand for more quantitative measures or formulas. Formulas have a rational appeal—they appear to be straight forward, uniform, and objective. They offer an attractive alternative to anecdotes, selective comparisons, and raw political power. However, in order for formulas to be effective they must be credible to all stakeholders.

For a funding request to have credibility, the funder needs to have confidence that the formulas: 1) take into account relevant factors and conditions, 2) do not include elements that are unrelated to real funding needs, 3) do not incorporate inefficient practices, and 4) do not appear too generous. The trial courts receiving funding want the formulas to take into account all factors they consider relevant, sometimes including quite unique local factors and circumstances.

Trial courts are also concerned that funding levels not be so low as to require them to adopt business practices that judges feel reduce the judicial process to ‘McJustice’ levels. Trial judges are also concerned that funding not be based on how they decide cases or how much they assess in fines, and that funding levels not be so low as to infringe on their ability to fairly and justly decide cases. Effective funding formulas therefore have to balance a large number and wide variety of factors. Unfortunately, such formulas quickly become complex, making it more difficult to assess their credibility. All three states experienced frustrations in reaching a balance.

### *Characteristics of Statewide Formulas*

All three states developed quantitative formulas for determining adequate funding levels on a statewide basis. The funding formulas were used in two ways—to estimate total need and to allocate funding provided among courts.

One use of the formulas was to determine the overall size of the pie—the total amount of funding needed for all of the trial courts in the state. The result was one number estimating the total statewide need. Florida used the formulas they developed for this purpose. The number calculated formed the basis for budget requests at the state level. New Jersey used the numbers when arguing to reduce the size of proposed cuts and occasionally for new programs. Washington developed formulas for use in estimating the level of under-funding across the state, “the gap”, but the state budget request submitted for the 2005-2007 Biennium was only for certain activities, not the total amount. Significantly, none of the three states ever received the amount of state funding their formula projected was needed.

The second use of formulas was for dividing up the pie—determining the amount of the total appropriation to be allocated to each of the trial court units<sup>16</sup> in the state. Both New Jersey and Florida used their formulas to allocate the funding appropriated by the state each year to each trial court unit. Allocation formulas worked differently in each state. New Jersey’s formula calculated the allocation by division: civil, criminal, family, etc. Florida distributed its allocations to each court on a functional basis, using its ‘essential element’ categories: judges, case management, court reporting, ADR, court administration, etc. Washington, not having shifted to primary state funding, did not use its formula for this type of allocation.

After comparing preliminary formula results to historical budget patterns, all three states included a factor for trial court unit size in some funding formulas. All three states found that there were economies of scale, and diseconomies of scale, moving from smaller to larger courts. The cost of some programs or services seemed to get cheaper as courts became larger. For example, the cost of a support service, such as human resources, diminished because it is spread across a larger number of employees. However, as courts reached larger sizes, the trend sometimes reversed. For example, a larger court might have a branch location, and another senior manager was required to oversee operations in the branch court. All three states used different values in some formulas for small, medium, and large courts, and a separate value for the largest trial court in the state.

### ***Data for Funding Formulas***

Credible funding formulas require significant amounts of reliable, comparable, and consistent data. The types of data required include information about workload, outcomes and performance, fiscal data, and other measurable factors relevant to estimating funding needs. All of the data of the type and quality required to use formulas was not available when first needed in any of the states examined. The funding formulas instead used existing data collected for other purposes. Where needed data was not readily available, sometimes the courts were asked to collect data. Alternatively, a first approximation generally used information about what the trial courts had actually spent in prior years. Often even this information was not available on a consistent and comparable basis. The lack of data needed to develop and use formulas presented an immediate and ongoing challenge for all three states.

One unanticipated aspect of the use of formulas was the significance of the first year estimate. In all three states, the development of formulas was a multi-year multi-

stage effort involving extensive deliberations on factors and formulas and collection of large amounts of data. In the process of developing the formula, there were points at which a decision had to be made about whether to exclude a factor from the formula, or use a surrogate measure, either because reliable and comparative data was just not readily available or there just was not enough time to fully understand the relationship between available data and funding needs. In some instances, the judiciary left the matter to be resolved in a subsequent budget cycle. For example, Florida postponed until the second year the determination of the appropriate formula for court reporter services because there was not enough time to sort out why the cost figures varied so much across the circuits. For the first year, a simple statewide average was calculated for use in the formula. Unfortunately, during the first year the judiciary realized that the average used was too low, which resulted in under-funding for some trial courts.

The unanticipated consequence was that the state legislature was not receptive to new or revised formulas in the second or later years after transition. This was particularly true if the change resulted in a higher funding request. It appears that the judiciary may only get ‘one bite at the apple’ in estimating what an adequate funding level is at the point of transition to greater state funding.

Another lesson, also an unanticipated consequence, was that Florida trial courts that were under-funded the first year for court reporting services sought alternative ways to provide the service. Many switched to extensive use of electronic recording because it was found to be less costly. The inadequate funding became an incentive to look for new, less expensive ways to deliver a service.

### ***Uncontrollable or Unpredictable Costs***

One area of perennial conflict between funding bodies and the judiciary had to do with so-called uncontrollable costs. Although the costs were generally referred to as ‘uncontrollable’, the problem was that these costs just did not lend themselves to normal budget processes, because the specific amounts incurred in any budget year were unpredictable. One unpredictable aspect had to do with the costs arising from events that were infrequent, yet costly, the classic example being a high visibility murder case. Another aspect was that the costs could arise at any point during a budget year and stretch over more than one budget year. Determining adequacy and allocating funds across multiple fiscal years was challenging.

The most often cited example of an uncontrollable cost was the cost of indigent criminal defense, in particular involving the appointment of conflict counsel with expenses for attorney and investigator fees, experts, and forensic tests. The defense counsel appointed was responsible for determining what expenses needed to be made on behalf of their indigent client. Although the expenses were subject to court review, it was generally not possible, particularly in the early stages of a case, to predict what the total cost might be or to put a cap on the total amount. There were few, if any, benchmarks or formulas as to what was reasonable regarding the costs in any particular case. The number of such cases in any given year tended to be low and difficult to predict. Problems arose when there were an unusually large number of such cases, or a case with extensive or expensive investigation costs. Typically indigent defense costs, like other costs, were set at an amount reflecting an historical average, and did not anticipate an

usually expensive case or a large number of such cases in any one budget year. If a big case did arise, it was almost certain there would be an inadequate amount of funds available. All of these factors understandably frustrated both funding bodies and trial court judges and managers.

The impact of uncontrollable costs on adequacy of funding depended upon how such costs were handled in trial court budgets. If indigent defense costs were one line in the trial court's budget, and they were unexpectedly greater than the amount budgeted, the trial court either had to reallocate funds appropriated for other purposes or seek additional funding through a supplemental appropriation. If the court was expected to absorb the cost within its existing budget, then its funding had necessarily been reduced to a less adequate level as to non-indigent defense costs. If indigent funds were budgeted separately, then the primary adequacy risk was just to the funding for indigent defense.

There were two approaches to addressing these types of costs in the three states examined. One approach was to fund indigent defense, including conflict defense, separately from trial courts. This was the approach in both New Jersey and Florida. In New Jersey, criminal defense costs had already shifted to primary state funding and were not an issue in the shift of trial court funding. In Florida, the funding was split at the time of transition and had to be rearranged. Attorney expenses for Florida's Public Defender office were already a state responsibility, but the costs for defense experts and investigations and the cost of conflict counsel were still a county cost. Considerable energy was needed to sort out these costs, estimate their total, and allocate the funding to the agency newly responsible for paying these costs.

Another approach to addressing unpredictable costs was to pool the funds at the state level. Pooling funds at the state level effectively addressed variances across courts, particularly smaller courts, in a way that smoothed year-to-year and court-to-court fluctuations. Florida adopted this approach for certain essential elements costs, for example, expert witnesses and interpreters, in the first year. However, in subsequent years, the funding was allocated to the trial courts.

### ***Bad Economic Times***

Downturns in the economy, at a national, state, or local level, can have different impacts on adequate and equitable trial court funding across a state. In a state where trial courts are primarily state funded, an economic downturn that affected state revenue streams can have an impact on all courts statewide. The lack of adequate revenue at the state level can cause the judiciary to be inadequately funded across the state. Since local governments often have different funding streams than state governments, an economic downturn might not affect all local governments to the same degree. If the trial courts are primarily locally funded, some trial courts may not be cut back as much, or at all. Funding across the state might be unequal, but at least some trial courts may be more adequately funded. The converse is true as well. If an economic downturn is localized, from the impact of a localized disaster or the impact of a local industry or company experiencing cutbacks, a primarily locally funded trial court may be inadequately funded; whereas if it is primarily state funded, it may remain more adequately funded. Neither level of government appears to guarantee a more adequate level of funding in bad times.

There were several examples of this type of differential impact. In 2006, the state of New Jersey closed for several days because there was no a state budget. Because the judiciary in New Jersey was primarily state funded, the judiciary was also closed for several days, except for certain emergency functions. The counties continued to operate and the locally funded Municipal Courts remained open. A similar circumstance arose in Oregon in 2003. A revenue shortfall at the state level resulted in the general jurisdiction trial courts, which were primarily state funded, suspending hearings in certain types of cases for much of the last quarter of the fiscal year. Although the court resumed hearing these types of cases in the new fiscal year, every litigant in the state having one of these cases could not receive basic justice for a period of time.

### ***Revenue Sources and Wealth Differences***

The “good government” consensus holds that the quality of justice and judiciary funding levels should not fluctuate with revenues. Available revenue, sources or amounts, is not a factor in defining adequacy in the analysis here. On an ongoing basis, the main revenue sources and amounts for the level of government that provide primary funding for the trial courts is certainly a factor in how much funding trial courts received.

However, in reality it was difficult to separate funding levels and revenue sources in the states examined. If a county or the state was experiencing a drop in revenues, there was likely going to be a drop in funding, regardless of what a funding formula estimated to be needed by the trial courts. The three states examined provided examples of several revenue/adequacy conflicts. The state level judiciary in New Jersey noted that they did not request new positions for new programs when the state’s fiscal condition was poor. New Jersey experienced cuts in some years, and never achieved 100% of their staffing need estimate, which was attributed in part to the lack of revenue at the state level. In 2008, the Florida courts are experiencing similar problems. State revenues are well below projections,<sup>17</sup> and all state agencies, including the courts, are being asked to reduce their budgets.<sup>18</sup>

The nature of the revenue sources available to fund trial courts also affects adequacy considerations. Revenue levels generally are unrelated to trial court funding needs. The workload of a court and the funds needed to provide appropriate levels of justice do not fluctuate with property values or retail sales. Consequently, for locally funded trial courts, a county government whose primary revenue source is property taxes may have to assess a trial court request based on increased workload against declining property values and property tax receipts. Similarly, in a state with primary state funding of trial courts, a request for more funding based on increased workload might be balanced against reduced sales or income tax revenues. Adequacy is assessed in light of available revenue as well as projected need.

One approach to this conflict is to establish revenue streams dedicated to funding the judiciary, or at least specific functions or activities. This occurred in both Florida and Washington. Florida adopted fees and charges dedicated to funding clerk of court operations (discussed further below) and certain aspects of information technology (IT) operations. Almost immediately, there were disputes about what costs could be funded from the dedicated IT revenue and who controlled the funds. This was exacerbated by the general consensus that the amount of revenue projected was inadequate to fund the

need. In addition, the fees were imposed on documents recorded by County Clerks, an activity that was completely unrelated to the judiciary or the information technology projects being funded. Washington experienced a similar problem with its Public Safety and Education Account (PSEA). Although originally intended to fund 4 programs, within a few years, 13 programs were being funded from the account. Part of the work of Washington's Funding Task Force was to propose re-structuring of this funding mechanism. In addition, new fees were assessed to fund IT development that had previously been funded from the PSEA account.

Florida provided a unique and somewhat extreme example of the impact of revenue on adequacy. The constitutional change shifting primary trial court funding to the state required the clerk of court function to be funded solely from fees and service charges. Previously, the clerk's costs were funded from the county general fund, for which court fees and service charges were but one revenue stream. When the cost projections and revenue estimates were made for the first year of transition, the state was required to substantially raise existing fees and service charges and to add a significant number of new fees and service charges. In the year before the transition, revenues from fees and charges were estimated to total \$90 million, as against estimated expenditures of \$354 million. Revenue from fees and charges had to be almost tripled the first year to cover the projected expenditures. Moreover, the revenue from fees and service charges in each county did not always equal the costs in that county. Consequently, mechanisms had to be established to sweep excess fee revenue from some counties and reallocate it to other counties to cover their costs. In addition, if an increase in costs for the clerks was approved in a new fiscal year, there needed to be an upward adjustment of fees and service charges to fund the cost increase. Although there was a more direct link between workload (for example, case filings or service requests) and revenue, the approach added a new level of complexity and new set of accounting and allocation mechanisms to the clerk of court function.

In most states, some counties are wealthier than others, based on higher property values or higher levels of economic activity. In a state with locally funded courts, this could result in unequal funding across trial courts in the state, with some trial courts inadequately funded, at least comparatively if not absolutely. However, there was no guarantee that wealthier counties would have better funded courts. At the time of transition to primary state funding, the inequality of funding across New Jersey trial courts was reportedly not related to county wealth. There were wealthy counties with comparatively poorly funded trial courts, and less wealthy counties with comparatively well funded trial courts. The same pattern was found by the Funding Task Force in Washington.

Another aspect was that larger, and generally wealthier, counties often had more programs and services available to litigants and defendants. This ranged from various types of alternative dispute resolution programs (for example, mediation, arbitration, etc.) made available to civil and family law litigants and problem-solving courts (drug courts, mental health courts, etc.) and more sentencing alternatives available to defendants in criminal cases. This raised both adequacy and equity of funding issues. If these programs improved the quality of justice, then trial courts not offering them could be considered inadequately and unequally funded. Florida explicitly dealt with this pattern.

During the transition process there were discussions about whether certain programs more common in the larger courts really were part of the judiciary, or belonged in executive branch agencies. In particular, drug courts ended up being funded separately by the state, not as part of the state trial court funding appropriation.

### ***C. EQUITY OF FUNDING***

One of the basic tenants of courts is equality under the law. The quality of justice a litigant receives in a case should not vary depending upon which court in the state hears the case. Although laws and judicial procedures apply uniformly across a state, most states organize and administer their trial courts on a local basis, with significant local discretion about organization and management. In order to provide equal justice to all litigants, trial courts must be funded in a manner that gives them equivalent capacity and ability to do so. How does a state attain this equivalence when the caseloads and case mix of courts varies, and the availability and cost of programs, services, and competent staff are uneven across jurisdictions? The challenge is to develop a funding approach that is responsive to those differences across trial courts that are most relevant to dispensing equal justice.

Several aspects of equity were examined in the three states studied. The analysis begins with the question of how each state chose to define equity. One aspect of defining equity was whether, and how, to address unique local factors that might affect funding needs. Having defined equity, the next question was what mechanisms were chosen by each state to achieve equity. There are also lessons from the two states that had shifted to primary state funding about the approach used to achieve equity of funding across trial courts.

#### ***Definition of Equity***

Each state took a slightly different approach in translating equity of justice and outcomes into budgetary formulas and processes. All three states used formulas to measure the need for funding. The differences across the three states were in what factors were incorporated into the formulas and how the formula expressed the need for funding.

Whether a level of funding established by a formula actually resulted in equal justice depended on what factors were incorporated into the funding formula. For example, if the funding formula was based in part on case filings using broad categories (such as civil or felony), the resulting funding would be equal only if the mix of cases within each category was very similar across courts with respect to judge and staff resources needed to resolve that type of case. If the case mixes were different, there would not be actual equity, even if the formula made it appear so. Measuring equity of funding was further complicated by an often imperfect understanding of the detailed relationships between resources and quality of justice and the lack of reliable and comparable data by which equity, of funding or justice, could be assessed. Consequently, substitutes for measuring equality of outcomes were sought.

New Jersey began with the premise that equity would be achieved by establishing exactly the same programs, services, management structure, and staffing levels in each vicinage. Staffing models were then developed whose dual outputs were the number of



staff needed for a particular court division to complete its work and the total funding required for that level of staff. The factors used in the staffing models principally included workload measures (for example, case filings, judges in court, or number of transactions), with adjustments for staff needed for supervision and management functions or to address other factors such as multi-county courts.

Florida also began with the premise that all trial courts would have those programs and services identified by the essential elements analysis. Formulas were developed for each essential element. Historical resource levels in the trial courts were examined for each element and a formula agreed to about the resource needs for that element. Being based initially on past funding levels, the formulas tended to preserve existing staffing levels, but they were adjusted to what the judiciary thought were most appropriate, not the level of the trial court with the most resources for that element. The adjustment process gave rise to the comment that each trial court got “a Ford, not a Chevy.” Florida also included adjustments for size of court and other factors such as number of facilities. The outputs of the model were both staffing levels and dollar totals.

In both New Jersey and Florida, the fundamental premise was that each vicinage/circuit should have the same programs, services, and staffing levels. When the funding was allocated so that each vicinage/circuit had equivalent resources, equity of outcomes was assumed to have been achieved. Equity was measured by comparable fiscal resources, not using measures of equal access or equal justice from the litigant’s perspective. Since generally accepted measures of equal justice from the litigant’s perspective do not exist, it is not a criticism that these states were not measuring this. Rather, the efforts of these states to establish equity of resources can be seen as the first step towards achieving equal justice in a measurable way.

Washington’s approach also relied on workload and staffing factors. Generally, the model started by using filings to project judgeship needs. Staff needs were then projected based on the number of judgeships, primarily by using staff to judge ratios. Finally, the total funding amount was estimated by applying typical compensation patterns to the staff levels projected to be needed. However, Washington judiciary did not seek state funding for the full amount of the estimated gap. Additional funding was obtained for indigent defense and, notably, the allocation was based on statewide staffing standards developed by the state bar that were accepted as credible and reliable. Moreover, the statute authorizing the distribution of funding required compliance with the standards, with oversight provided by the state Office of Public Defense.

The search for equitable funding highlighted two subtle, but profound shifts, in the perspective of the analysis of equity. The first shift concerned from whose perspective equity was being assessed. All three states accepted the basic premise that equal funding meant that the quality of justice a litigant received in his or her case would not vary depending upon which court hears the case. In New Jersey and Florida, there was a shift to measuring equity in terms of whether each court received equivalent fiscal resources. The perspective shifted from that of the litigant to that of the trial court. The assumption was that equal resources would mean equal justice. It remains to be seen whether this assumption is valid, and what efforts are needed to achieve and maintain a consistency of service and practice across trial courts in a state.

The second shift has to do with the ‘unit of analysis.’ In the past, the unit of analysis was assumed to be the litigant—would litigants experience the same justice in any court in a state. With state funding, there was now a new unit of analysis—the trial court. The formulas were directed at achieving equity of resources across all trial courts. The notion of comparing trial courts across the state was now much more explicit, in fact central. Previously, such comparisons occurred less often, and less rigorously. Note that a similar shift has occurred in many other sectors of government, for example, education and health care.

### ***Unique Jurisdictional Factors***

Another confounding factor regarding how equity was defined was how each state addressed local needs, priorities, and unusual circumstances or events in individual trial courts. For example, if funding for criminal cases was allocated based on total filings, two courts with the same number of filings would have equivalent resources only if their case mixes were roughly the same. If one had more cases that were likely to be tried, for example homicides, it would need more resources to try them in a just and timely manner than a court with fewer homicides in their case mix but the same number of total filings. If the funding formulas contained factors that accounted for these differences, there would be equity of funding. If the formulas did not, equity of funding would be less likely.

A more complicated example has to do with programs serving litigants. If a court has a large number of quality of life crimes committed by a set of defendants who are arrested repeatedly, it might consider a problem solving court model that addressed defendant’s social problems that lead to criminal behavior. Such a program would require a different type of court staff (for example, assessment staff and case managers), more court hearings (status conferences), and closer relationships with treatment and social services agencies. A funding formula based solely on filings might not provide the resources needed to establish such a program. To aggravate the problem, the program might reduce recidivism, thus reducing funding to the court based on fewer filings. Funding formulas that do not take these sorts of options into account probably will not achieve equity in outcomes, even if they achieve equity in funding. Some of the special programs in New Jersey for which state funding was not continued provide examples of this type of equity problem.

### ***The Transition to Achieve Equity***

New Jersey and Florida provided valuable lessons regarding the transition mechanisms for achieving equity of funding across trial courts. In both states, the goal of funding equity was considered a key component of the transition process. Both states used their funding formulas to identify where there was inequity and to guide the allocation or reallocation of funding. In both states, the impact was softened by the addition of “new” money to the total; in neither state was equity accomplished solely by shifting funding from “have” to “have not” courts.

New Jersey chose to make the transition incrementally and in a manner that minimized the disruption. Once the statewide staffing levels for each vicinage were calculated and compared to existing staffing levels, it was apparent which courts had more staff than projected and which fewer. The approach adopted was to reallocate staff

from the three vicinages with the highest staffing ratio to the three vicinages with the lowest ratio. This process was repeated each year until all vicinages were at the same staffing ratio. In addition, the reduction in staff in the highest ratio courts was accomplished by attrition, not layoffs or transfers. The process reportedly proceeded smoothly.

Florida's process was 'one time' in nature. The approach was to establish equity of resources in the transition year, all at once. Since the transition year was four years after the constitutional amendment passed, circuits had time to anticipate and prepare for the change. As the essential elements were defined and formulas developed, the circuits began to see what was likely going to happen at the point of transition. In response, the circuits engaged in a number of ad hoc efforts, including transfers, holding positions open, and identifying alternative funding sources for programs and their staff, in order to minimize the disruption at the point of transition. Most circuits were able to avoid layoffs, but there were reportedly some, and many circuit staff were now performing different tasks from those they had been doing before the constitutional amendment.

Because of the ability to allocate funds from a statewide perspective, greater equity of funding across trial courts was possible where there was primary state funding. In the two states that shifted to primary state funding, there were significant, and successful, efforts to achieve equal funding levels across the trial courts in the state. Notably, the equity point reached in both states was at a mid-point, neither as high as the better funded trial courts had experienced, nor at the full amount determined from funding formulas.

#### ***D. STABILITY OF FUNDING***

In order for trial courts to effectively and consistently fulfill their role over time, they must have stable and predictable funding levels. This is especially critical for expenditures that extend over more than one fiscal year, for example funding of new information technology projects. A stable and predictable funding approach is one that allows a trial court to:

- provide consistent and adequate service levels throughout each fiscal year and across fiscal years;
- maintain coherent expenditure patterns during the year and avoid postponing or accelerating expenditures at the beginning or end of a fiscal year;
- 'smooth out' fluctuations within and across fiscal years of 'uncontrollable' or 'unpredictable' costs;
- develop and implement meaningful long range plans and multi-year projects; and
- address unanticipated expenses that arise during the year without having to 'reserve' funds or reallocate funds from normal business operations.

Two additional characteristics would be:

- the absence of large scale, unplanned shifts from year to year; and
- a predictable and manageable range of change from year to year and over the long run.

All three of the states examined in this study provided examples of the unpredictability of funding, each of a different nature. Acknowledging the limited sample size and time frame, it does not appear that either level of government provides more stable funding for trial courts than the other.

New Jersey experienced instabilities during the period studied. The transition to greater state funding occurred at a time when state revenues were stagnant or declining. As a result the judiciary experienced a 7% reduction in funding in one fiscal year, and an 8% reduction in staffing the next. Reductions were experienced by all state agencies, not just the judiciary. In addition, when the state government was closed by a budget stalemate in the Legislature, the courts were closed. Finally, the judiciary has not yet received the full amount of funding calculated according to the judiciary's funding formulas.

Florida's transition began more positively, with some new revenue from the state during the first two years. However, Florida had not yet received the full amount of funding estimated to be needed, and are scheduled to receive cuts in 2008. The County Clerks shifted from funding from the county's general fund to fee-based funding. This required a massive increase in fees and service charges. While fees and charges bear some relation to costs, it remains to be seen whether reliance on this funding stream will work when there are changes or additions to services, business practices, or workloads.

In Washington, the primary impetus for the examination of trial court funding was the pressure felt by counties and cities regarding their revenue streams. The perceived instability of local government funding drove the judiciary to ask the state to fund a larger share of trial court expenses. One of the conclusions of the Funding Task Force was that mixed funding was preferable to funding solely from one level of government or the other.

In all three states, there were limitations or caps on revenue streams at both the state and local levels. There were percentage limitations on property taxes and caps on the growth of revenue, usually a fixed percentage, with an adjustment based on certain demographic factors. The adjustment factors did not include growth in case filings, or an allowance for new programs or services. Consequently, there was a built-in structural deficit looming, affecting predictability of funding.

The three states examined suggest that neither level of government provided more stable total funding for trial courts than the other. At either level of government, the judiciary's budget was exposed to the fluctuations and limitations associated with the revenue streams supporting that level of government.

As part of their shift to primary state funding, both New Jersey and Florida established funding allocation structures and expenditure policies that provided considerable stability at the trial court level. Shortly after the state funding level was set, the trial courts knew what level of funding to expect for the fiscal year. Although the rules regarding transfers of funds between accounts tended to be rigid, at least they were known and uniformly applied across trial courts. Finally, the lump sum aspect of the allocation to vicinages in New Jersey gave them authority and flexibility to address small scale unexpected expenditures, and to make best use of the funds allocated relative to local needs and unique circumstances in their vicinage.

## **E. ACCOUNTABILITY**

Over the past 30 years, public expectations regarding the accountability of government institutions have become ever more focused. Government agencies are expected not only to operate efficiently and in a cost effective manner, but to produce measurable outcomes. There are many aspects to accountability: what should be done, is it being done, is it being done efficiently, who is accountable for doing it, to whom are they accountable, and how are they held accountable. The judiciary is not immune from these expectations. The experiences of the three states studied provide lessons regarding some of the questions listed above as to accountability of trial court spending under different funding approaches.

One of the significant benefits observed from a shift to primary state funding was a significant increase in fiscal self-knowledge on the part of the judiciary. Washington also experienced this benefit as a result of their Task Force's comprehensive examination of trial court funding. In all three states, it became necessary to determine how much was actually being spent to operate the trial courts and what programs and services were provided by the courts. The state level judiciary in the three states previously had no comparable and reliable information about how much their trial courts spent or what they did. The main purpose for compiling the information was so that the state judiciary could assess the adequacy of trial court funding, and determine how much more was needed to increase the adequacy and equity of funding across courts.

The collection of statewide information also improved the ability of the three states to make more informed strategic choices, on a statewide basis, about what programs and services trial courts should provide. The experiences of New Jersey and Florida suggested that judiciaries with primary state funding developed a stronger statewide sense of their operations. The exercise of developing the list of essential elements in Florida and the development of formulas in New Jersey and Florida helped each state judiciary clarify what the courts were expected to be doing and what programs and services were needed to accomplish their goals. These states were better able to monitor whether statewide strategic objectives were being implemented and the adopted goals were accomplished.

Another consequence of a shift to primary state funding was that the judiciary and trial courts were now subjected to greater state scrutiny, from all three branches of government. This is understandable when the level of state spending for the judiciary suddenly and dramatically increases. For example, in New Jersey the state appropriation for the judiciary more than tripled, rising from \$104M before trial court funding to \$358M for the first full year of state trial court funding. The scrutiny took two forms. First, there was much closer scrutiny of trial court spending, at least in the first few years after the transition. State level judiciary staff in both New Jersey and Florida reported paying close attention to trial court spending relative to legislative appropriations in an effort to enhance the credibility of the judiciary regarding the use of funds appropriated for trial courts operations.

Greater visibility and scrutiny at the state level also exposed tensions about who sets priorities and goals for trial courts—the judiciary alone, or in conjunction with the legislative or executive branch. Washington provided the best example of this. The

judiciary presented a set of requests to the Legislature for increasing the state's share of trial court funding. There was extensive and open debate about which proposals would be funded and, in the end, the Legislature had the last word about what was funded. Another, more subtle, example occurred in Florida, where the definition of the essential elements developed by the judiciary was fixed in statute by the Legislature. If the judiciary wanted to change or expand the scope of state funded activities, it would have to obtain the concurrence of the Legislature to change the statutory definition of the corresponding essential element. Greater visibility and participation of the other branches in priority setting is not necessarily bad or improper, but it does change the relationships between the branches of government.

An additional consequence of statewide priority setting and strategic planning was a reduced sensitivity to unique local problems and priorities. When problems were viewed from a state perspective, those that were only occurring in one or a few jurisdictions, or were assigned a lower state priority, tended to be ignored or discounted. While there might be greater accountability at the state level for the judiciary as a whole, there was less accountability to local needs and priorities. In a state with a large and diverse population, there will inevitably be differences in the social problems facing communities where the trial courts can be part of the solution. If the structure of the judiciary and funding cannot accommodate unique problems, the local trial court will not be seen as responsive or accountable. Some example of this arose in both of the states that shifted to primary state funding. The funding approach adopted in Florida explicitly recognized the existence of local differences and priorities. The constitutional amendment stated that counties were responsible for funding "local requirements." However, the early experience in Florida suggested the counties were not actively or extensively embracing this concept. In New Jersey, the very high standard for developing and maintaining special programs in a vicinage resulted in some local programs no longer being funded from state trial court funds. Further study needs to be made of whether, and how, to accommodate local problems and priorities.

Knowing what was spent to operate trial courts does not necessarily mean that spending is cost effective, addresses the most critical needs, or provides a more equal or higher quality of justice. While primary state funding provides an opportunity for implementation of more uniform business practices, it cannot guarantee that they would be implemented, or that they are 'best practices'. Both New Jersey and Florida recognized the potential for more uniform operations and outcomes in their trial courts. Early in the transition process, Florida established a Commission of Trial Court Performance and Accountability, one of whose responsibilities was to make recommendations "on a comprehensive performance measurement, improvement, and accountability system for trial courts."<sup>19</sup> The Commission's initial work was incorporated into the budget process by the Trial Court Budget Commission and continues to evolve. New Jersey took advantage of its existing statewide, division-based Administrative Conferences to develop both staffing models and standards and best practices for each court division. A program was also initiated involving site visits to vicinages to evaluate operations and performance against statewide standards. Trial courts reported these visits were useful and helped improve operations. While a mechanism of this type could also be established in a state with primary local funding,

the same incentives would not exist since the state was not providing funding for the operations being evaluated.

There is an old saying that ‘what you count, counts’. This applies equally to fiscal accountability mechanisms. The question is whether the accountability mechanisms ‘count’ compliance in a manner that creates the appropriate incentives for courts to operate in a fiscally responsible manner. The experiences in the three states studied suggest there can be unintended consequences if what is counted is too narrow in focus.

The primary mechanism for assessing fiscal accountability in New Jersey was the monitoring of expenditure and position totals. The same mechanisms were used at the state level (across the three branches) and within the judiciary (across trial courts). Monitoring occurred primarily through the review of quarterly spending plans and expenditure reports. Vicinages were given two lump sums to spend, one for salaries and one for operating expenses. Spending was monitored against allocations and staffing targets. Florida also created processes to closely monitor spending, but in greater detail. Allocations in Florida were based on the essential element categories, so fiscal monitoring was on this basis. In both states, the focus was on spending, not outcomes. This was not unique to primary state funding states; most locally funded trial courts were probably also subject to expenditure monitoring on the basis of budget appropriation categories. Under this form of oversight, monitoring focuses on expenditures rather than desired outcomes. The risk is that local trial court management is more concerned with spending according to budget or allocation categories than spending to achieve system outcomes. The focus on spending categories reduces flexibility and responsiveness. The fear of violating budget or allocation categories also appears to suppress innovation, especially regarding new programs, services, or business practices, discussed further below.

An unintended consequence of a shift to primary state funding is that it appears to discourage innovation. This is attributable to four factors: 1) the shift of priority setting to the state level and away from local courts, 2) fiscal, as opposed to programmatic, accountability mechanisms (discussed above), 3) restrictions imposed on moving funds between budget allocation categories, and 4) the development of formal criteria, including prior approval, for proposals to establish new programs or services. Most innovations begin when someone in a trial court becomes so frustrated with the lack of effectiveness of existing procedures and programs that they are highly motivated to try something new. Drug courts are a classic example of this; one judge’s frustration and sense of “revolving door” justice led to the creation of the first drug court. Innovation in general tends to occur spontaneously and unpredictably. This type of behavior is not encouraged where there is a formal process that sets funding priorities on a statewide basis and requires formal approval before a new program can begin. Both New Jersey and Florida established state level priority setting processes and adopted policies that required prior approval to start new programs. New Jersey’s standard for approving a new program required that it be “under consideration for statewide implementation” and that there be a reasonable basis for expecting the program to be effective. Florida adopted a similar standard. Representatives of the trial courts in both states reported that

as a consequence of these policies and process, they expected very little innovation to occur, at least in the early years after transition.

Policies and practices that prevent transfer of funds between budget or allocation categories can have a similar effect. New programs or new ways of doing business often involve realignments of funding. For example, adoption of new business practices that leverage information technology to complete certain tasks increases costs for equipment (a non-personnel expense), but reduces staff costs (a personnel expense). If expenditures for these two categories are monitored separately, and permission is required to transfer funds between these categories (as was the case in New Jersey), it can create an impediment to improving operations.

The complexities of establishing effective accountability mechanisms have always existed, regardless of funding approaches. The challenge, with either a state funded or a locally funded approach, is to design accountability systems that count what is important and create incentives that encourage efficient and cost-effective practices that produce the desired outcomes and encourage innovation.



## Chapter 3. FURTHER RESEARCH

In completing these three case studies, many questions arose concerning the effectiveness of trial court funding structures in states. Some questions related to the four concepts on which this study focused: adequacy, equity, stability, and accountability. Other questions involved other aspects trial court funding. For many of these questions, some information was gathered as part of the case studies that was relevant to answering these questions, but not enough information to draw firm conclusions. The following discussion briefly notes some of the more interesting questions and relevant observations.

### *Definition of What a ‘Court’ is for Funding Purposes*

The three states studied took very different approaches to defining what constituted ‘the trial courts’ and what was to be funded from “state funding for trial courts.” Other states have adopted approaches very different from those reported here. The approach used has implications for determining adequacy and accountability. It would be valuable to know what other approaches there are and what advantages and disadvantages they exhibit in designing and implementing effective trial court funding structures. Is an approach based on programs and services any better than an expenditure-focused definition? It would also be useful to know what the impacts are of including, or excluding, certain programs and services from the definition of what the trial courts are, for example, indigent defense and probation.

Identifying what will be funded by the state, and what will remain a county obligation, changes the organizational boundaries between trial courts and state and local governments. What is the impact of changing these boundaries? What incentives and disincentives are created that affect the need for, and level of, cooperation and collaboration between courts and government agencies. What are the best approaches for resolving issues when the units of government must work together, but are funded from different sources, with different priority setting processes? Good examples of these types of issues are the development and maintenance of automated case management systems and facilities. What can be done when one entity adds services or programs, or changes practices that create costs or work for other entities? For example, the Legislature adding a judge for whom the local government must provide a courtroom, ancillary facilities, or support staff. Information about the effectiveness of various approaches would be useful in addressing these questions. The issue also has implications for funding and revenue streams—what can be learned about which revenue sources are most appropriate for which types of expenditures.

### *Formulas for Determining Adequate Funding Levels*

Each of the three states studied developed formulas for estimating needed funding levels and, in two states, allocating funding among the trial courts. All three states struggled with what factors were most relevant for estimating need. The approaches used by the states varied, both in terms of what basic measures were used (for example, filings or judicial positions) and the way in which funding need was expressed (for example, in dollars or staffing levels). For some expense categories, there was not enough time during the transition phase to identify the relevant factors, or insufficient data was available to reliably determine need. Lacking measures or data, historical spending

patterns were often used and the development of a better formula was postponed. These experiences suggest a need for a more in-depth examination of what factors should be included in formulas and what measures to use to determine adequate funding levels. The objective of such a study would be to identify those factors most relevant to assessing funding need, without being too numerous, too complicated, or which lacked an intuitive connection to need. Another aspect of further research would be an exploration of the existence of economies or diseconomies of scale in the operations of trial courts that would be relevant to the determination of need for, and adequacy of, funding.

Funding formula results are only as good as the data they use. The three states studied all struggled with how to obtain reliable and consistent data for their funding formulas. At the time of transition to primary state funding, there was no comprehensive information about how much trial courts were spending, or how many staff they employed. Workload data for cases filings was generally available, but often not for other aspects of a court's workload (for example, numbers of hearings in cases or the number of clients served by programs such as alternative dispute resolution or problem-solving courts), or for the work of clerk of court functions (for example, the average number of documents filed in each type of case). Systems had to be established to collect needed data. Given that all states have similar problems, it would be worthwhile to study the methods used to collect the type of data most useful to funding formulas to see if there are some best practices or more efficient ways of gathering reliable and consistent data.

### ***Equity of Funding for Rural and Small Courts***

Rural and small courts present special challenges to establishing equity of funding. Small or geographically isolated communities generally do not have the infrastructure, community of professionals, or business volume needed to be able to provide, at reasonable cost, many of the services and programs that are common in large or urban communities. Examples include substance abuse treatment programs, mental health treatment programs, even alternative disputes resolution services such as mediation. Research is needed on what approaches exist in states, and what new approaches might be developed that would allow a state, to provide equivalent judicial support services in all courts.

### ***Transition Issues***

A limited amount of information was gathered and reported here about the transition phase of a shift to greater state funding of trial courts. Assuming more states will move to greater state funding, it would be useful to assess the various methods used to identify those which were more successful and less disruptive in effecting a transition in a timely manner. Study questions would include: what information was needed, what pitfalls were there, and what states and courts might do to be better prepared for the shift.

### ***Revenue Sources***

All three states studied raised questions about the revenue streams from which trial courts could be funded. The impact of relying upon different revenue sources to fund trial courts, as to adequacy, equity, and predictability, was examined in limited

ways. Much more research is needed about the impact of various revenue sources on adequacy, equity, and predictability of funding.

***Adequacy and Stability of Trial Court Funding Over Time***

The extensive efforts to determine the adequate funding level for trial courts raises a question of how well the judiciary does at budget time, relative to the other branches of government. Some information was gathered about appropriations over time, but information should be collected for a longer time period to see the long term impact. The suggestion is that the judiciary does at least as well as other justice system entities over time, but further work is needed to sort out the underlying events and factors to help explain the results observed.

# ADEQUATE, STABLE, EQUITABLE, AND RESPONSIBLE TRIAL COURT FUNDING

## Chapter 4. THE NEW JERSEY EXPERIENCE

### A. INTRODUCTION

New Jersey was selected to be part of this study because it has had primary state funding of its trial courts for over 10 years. As such, it provided an example of a state where trial court funding had reached a certain stasis regarding the funding levels and operations. The shift to primary state funding of the trial courts in New Jersey became effective on January 1, 1995. The shift continued a trend toward centralization and unification in the New Jersey judiciary that had begun years earlier. Some trial court costs were already paid by the state and the trial courts were using case management systems provided and supported by the state level judiciary. Indigent defense costs were already paid from state funds through the executive branch. The transition process made use of existing state-level governance structures and advisory committees. The shift established greater equity of staff resources and salaries and benefits across the trial courts. It also led to greater uniformity of programs and business practices and a sense of one judiciary in the state.

This case study begins with the history of court reform in New Jersey relevant to the trial court organization, operations, and funding. It notes the repeated efforts and key events associated with trial court funding that informed many policy choices made during implementation. This is followed by an explanation of the transition process and activities associated with the transition. The impacts of the shift on adequacy, equity, predictability, and stability of trial court funding are then explored. Finally, some of the outstanding issues that remain regarding the funding of the trial courts are noted.

#### *History of Trial Court Reform and Funding*

Court reform efforts that focused on court consolidation, centralization of authority, and uniformity have a long history in New Jersey. As early as 1947, Chief Justice Vanderbilt, who advocated for court reform as head of the American Bar Association, promoted constitutional changes to simplify and strengthen the judiciary in New Jersey. Over time, constitutional amendments reduced the number of distinct types of trial courts in the state from 21 to 4. Subsequent reforms also centralized control over the state's courts and clarified authority and responsibility for operations of the courts. In parallel with these structural changes, there were some changes as to which level of government, state or county, paid for various court related costs, although the majority of trial court costs remained county funded. In 1986, the county share of trial court costs was estimated to be 82% of total trial court costs, and over 90% of employees working for the trial court were county employees.<sup>22</sup>

Early reforms fell into two broad categories: consolidation of trial courts and increased oversight of the management and operation of the state's courts by the state-level judiciary. Consolidation reduced the number and types of trial courts. In 1978, a constitutional amendment abolished the County Courts and transferred county court judges to the Superior Court.<sup>23</sup> County District Court and County Juvenile and Domestic

Relations Court were abolished and their judges and operations transferred to the Superior Court by a 1983 constitutional amendment.<sup>24</sup> This resulted in the state having only four trial level courts: 1) a general jurisdiction Superior Court, 2) limited jurisdiction Municipal Courts,<sup>25</sup> 3) a Surrogate,<sup>26</sup> and 4) a Tax Court.<sup>27</sup> The smaller number of trial level courts simplified the shift to primary state funding that subsequently took place.

Reforms involving oversight of the trial courts had several aspects. The 1947 Constitution gave strong rule making authority to the Supreme Court over all the courts in the state<sup>28</sup> and designated the Chief Justice as the “administrative head” of the state’s courts.<sup>29</sup> It also created a position of Administrative Director of the Courts, appointed by the Chief Justice.<sup>30</sup> Centralized control of trial courts expanded in the 1950s with the Chief Justice’s designating the Assignment Judge<sup>31</sup> in each vicinage and each division Presiding Judge.<sup>32</sup> Other rule changes in the 1960s provided that Trial Court Administrators (TCA’s)<sup>33</sup> and Division Managers<sup>34</sup> be appointed by the Administrative Director of the Courts, after consultation with the Assignment Judge and subject to the approval of the Chief Justice. The Chief Justice also assigned all judges to sit in a particular division in a vicinage<sup>35</sup> through an annual General Assignment Order, after consultation with each vicinage’s Assignment Judge. In 1983, court rules established an executive team in each vicinage comprised of the Assignment Judge<sup>36</sup> and the TCA<sup>37</sup> and management teams for each court division (civil, criminal, family, etc.) made up of a Presiding Judge<sup>38</sup> and a Division Manager.<sup>39</sup> Thus, over time, the oversight of the trial courts became more centrally and uniformly exercised.

State level judiciary authority was also extended over those who directly supported the judges. Throughout the 1980s, rules were revised to authorize Assignment Judges to appoint, with the approval of the Administrative Director of the Courts, an increasing number of non-civil service management, direct support, confidential, and technical or specialized positions. Clerk of court functions for the Superior Court were previously provided by elected county clerks in each county. As a result, a court in a multi-county vicinage was served by several county clerks. Recognizing the integral role county clerk staff play in trial court operations, the Supreme Court changed the court rules to provide for a form of matrix management over those county clerk employees serving the court.<sup>40</sup> These staffs continued to be hired, fired, and disciplined by county clerks, but were now under the day-to-day supervision of Superior Court case managers.

Adult and juvenile probation services were historically considered part of the judiciary, but had been organized and managed at the county level with Civil Service appointments. In 1983, a significant reorganization transferred pre-disposition probation activities (for example, investigations, pretrial release, establishing restitution, and custody of children) to the direct supervision of the Presiding Judges and Division Managers of the Criminal and Family Divisions. Post-disposition probation activities (for example, supervision of offenders, payment of fines, and collection of child support) remained under the supervision of a vicinage Chief Probation Officer who reported to the Assignment Judge and Trial Court Administrator.

In the 1998-99 legislative session, the previously autonomous Jury Commission in each county was abolished and the responsibility for overseeing juror qualification and selection was transferred to each vicinage’s Assignment Judge. Other legislation that year transferred non-security staff of the Sheriff’s Office to the Superior Court. At this

point, each vicinage was exercising authority over virtually all the essential components of the local judiciary, again making a transition to greater state funding more straightforward.

The state judiciary also promulgated reforms aimed at consolidating the responsibility for the judiciary's budget at the county level. A 1983 directive from the Chief Justice stated that each Superior Court's Assignment Judge was solely responsible for budget negotiations with the county for all courts in the county, including the Juvenile, Domestic Relations, and County District Courts, and Probation.<sup>41</sup> Assignment Judges were also given the authority to move funding between the courts in a county as long as expenditures stayed within the total approved county budget amount. The responsibility for economic as well as operational activities of the Superior Court was now concentrated in the Assignment Judge in each vicinage.

Inevitably, there were conflicts between the judiciary, when exercising its inherent power to secure adequate funding, and the county, with its revenue constraints, regarding judiciary budget requests. In an effort to provide a reasonable mechanism to reconcile such disputes, yet ensure adequate funding for the trial courts, the Supreme Court added a rule in 1981 establishing a formal budget impasse procedure.<sup>42</sup> The objective was to provide a less confrontational mechanism for resolving budget disputes between counties and Assignment Judges. The impasse process provided for a three person panel appointed by the Chief Justice to make recommendations concerning a budget impasse. The panel generally included representatives of the judiciary and the executive branch. The recommendations could be appealed to the Supreme Court by either the court or county. The decision of the Supreme Court was binding on all parties. Although this procedure was reportedly invoked less than a dozen times before primary state funding of trial courts was enacted, it influenced budget requests and negotiations in counties that did not reach impasse.

The standard applied by the panel and Supreme Court in reviewing a budget request focused on adequacy of funding—whether the request was “reasonably necessary” for the court to operate in an effective and efficient manner.<sup>43</sup> Through a series of cases<sup>44</sup> the Supreme Court established what factors could be taken into consideration in determining what was “reasonably necessary,” including:

- quantitative analysis, as opposed to anecdotal or unsubstantiated estimates, regarding the need for funding and the impact of a denial or reduction in funding;
- the impact of the county's proposed budget on the court's ability to perform its judicial functions in an effective manner, for example, the impact the court's backlog;
- comparisons of staffing and funding levels of courts in other counties;
- whether proposed salary increases for court employees were appropriate and necessary to recruit and retain qualified employees;
- whether equipment and staffing requests by the court could be filled for less cost or in a less costly manner than requested;

- whether the county's proposed reduction in the court's budget was disproportionate to overall county reductions and cuts in county services and programs; and
- the fiscal situation of the county, particularly regarding the constitutional property tax growth cap and loss of federal funding, although the Supreme Court made it clear this would not trump a request needed for the court to properly fulfill its role.

Neither counties nor the courts were reportedly satisfied with the impasse process. This came to a head in Essex County (Newark) where the process resulted in the county being obligated to provide approximately \$2.1 million of additional operating funds, an increase of over 11%, above the sum the county had originally approved.<sup>45</sup> Counties, already frustrated with their lack of operational control over the courts, bristled at the perceived interference with their funding discretion implicit in the impasse procedure. On this basis alone the counties were strongly motivated to seek full state funding of the trial courts.

### ***Efforts to Increase State Funding of Trial Courts***

Efforts to provide greater state funding of trial courts proceeded in tandem with the structural, management, and budget reforms described above. Pressure for greater state funding of the courts increased as counties faced additional revenue restrictions, particularly a 1976 cap that limited county property tax increases to 5% over the previous year's tax level.<sup>46</sup>

In 1980, the Chief Justice appointed a Supreme Court Committee on Efficiency in the Operations of the Courts of New Jersey which issued a report<sup>47</sup> recommending, among other things, that the trial court system be financed entirely at the state level. A constitutional amendment adopted in 1983 provided, among other things, for state funding of the salaries of judges, trial court administrators, official court reporters, and a statewide clerks' office.<sup>48</sup> In 1984, the legislature passed legislation providing that New Jersey Superior Courts be state funded, with the exception of certain facility costs, and providing that Superior Court staff become state employees. The County Clerk and other locally elected officials remained county funded. The leadership of the state level judiciary believed state funding to be a good idea, but did not actively support it at the time. Superior Courts were opposed, or at best indifferent, to the legislation, reportedly because there was not a perception that local funding for the courts was inadequate. The legislation was vetoed by the Governor, who cited a need for further study of the overall relationship of local and state tax and revenue systems.

In 1987, a report on judicial unification was issued by the State of New Jersey County and Municipal Government Study Commission.<sup>49</sup> The Commission composed of representatives of both houses of the state legislature, counties, municipalities, and several public members, issues reports on subjects involving state and local agencies. The report found large inequities in funding of the courts by counties, including:<sup>50</sup>

- wide variances in per capita costs for trial court funding across counties, ranging from a low of \$11.50 per year per capita to a high of \$32.87 per year per capita in 1986;

- no correlation between overall per capita income in a county and per capita spending on trial courts, with the county ranking first in per capita income ranked last in per capita expenditures for trial courts;
- large differences in tax rates between counties, ranging from a high of \$1.097 per \$100 valuation to a low of \$0.373; and
- vastly disparate salaries and caseloads. For example, the average caseload for adult probation supervision ranged from 56 cases per probation officer to 339 per officer.

The Commission also emphasized that while counties paid the majority of trial court costs from county revenue sources, they received only 57% of the revenues generated through the courts, with the balance of the revenue flowing to the state.

The 1987 Study Commission identified courts as a proper function of state, rather than local, government. Their report identified five benefits of state funding of trial courts:<sup>51</sup>

- Significant property tax relief to taxpayers;
- Unified administration of the trial courts and the trial court support staff;
- Improved quality of judicial services “because there would not be different levels of funding which results in staffing and caseload variations and disparities”;
- Relief for county governments from the combined pressure of State mandated costs and legal limitations on property tax rates; and
- An overall reduction in court system costs over time.

The 1987 Study Commission strongly recommended that the courts, pre- and post-disposition probation functions,<sup>52</sup> and the non-security personnel of the Sheriff’s Office<sup>53</sup> be transferred to the Assignment Judge. At the time, these functions involved 5,076 staff at a total estimated cost of \$136.3 million. Although no constitutional amendment or statute was immediately adopted in response to this report, the effort was an important reference in subsequent discussions about state funding of trial courts.

While recommending state funding of trial courts, the 1987 Study Commission recommended that county clerks would remain county funded until the judiciary and county clerks came to an agreement to do otherwise.<sup>54</sup> The judiciary indicated that, because of the need to control the flow of cases through the courts, it would oppose state funding of trial courts unless clerk operations were made a judicial branch function. A Judiciary/County Clerk Liaison Committee, comprised of representatives of the Supreme Court, Superior Courts, AOC, and County Clerks, reached an agreement that clerk of court function were to be transferred from the elected County Clerk to the court upon implementation of state funding of trial courts. The agreement permitted the incumbent elected clerk to choose to become a deputy clerk of the Superior Court and resign as county clerk<sup>55</sup> or to remain an elected county official without clerk of court duties. Included in the agreement was the understanding that courtroom clerks who had remained county clerk employees in some, but not all, vicinages would be transferred to the court regardless of whether state funding was enacted. A subsequent 1988 report by



the Study Commission<sup>56</sup> endorsed this approach and in 1989 a statute<sup>57</sup> authorizing this was enacted. This removed the opposition to state funding of trial courts that was based on the separation of clerk of court duties from judicial oversight.

Funding of trial court activities was mixed at this point. The state was paying the salaries and benefits of: 1) all superior court judges, 2) trial court administrator positions, 3) and court reporters. For the Chancery Division of the Superior Court (other than the Family Part of the Chancery Division) the state was also paying salaries and benefits of secretarial and legal staff employees and administrative personnel, and the costs of courtrooms, chambers, equipment and supplies. The balance of court costs were paid by counties. In vicinages encompassing more than one county, there were separate court budgets in each county often resulting in different levels of staffing and funding within a vicinage.

In 1992, Senator William L. Gormley, then Chairman of the Senate Judiciary Committee, suggested ending the deadlock over state funding of trial courts by proposing a constitutional amendment mandating state funding of trial courts. With the urging of the New Jersey Association of Counties, he drafted amendments to the state Constitution that required the state to assume responsibility for funding the Superior Courts by July 1, 1997.

There was reportedly no significant opposition to the proposed constitutional amendment. The state-level judiciary reported that they saw their role as being “positively educative.” The State Bar supported the amendment citing equalization of funding for the programs and services provided by the courts. Probation Association members expressed opposition to state funding of trial courts because of the potential impact on the salaries, benefits, and law enforcement status of their members; 90% of union locals formally opposed the measure. Prosecutors and Public Defenders were not strong voices in the trial court funding debate.

The constitutional amendment was approved by the voters in November 1992. The new section of the Constitution provided that:

“On or before July 1, 1997:

- (1) The State shall be required to pay for certain judicial and probation costs;
- (2) All judicial employees and probation employees shall be employees of the State . . . .”<sup>58</sup>

The language went on to define judicial costs as those costs:

“incurred by the county for funding the judicial system, including but not limited to the following costs: salaries, health benefits and pension payments of all judicial employees, juror fees and library material costs, except that judicial costs shall not include costs incurred by employees of the surrogate's office or judicial facility costs . . . .”<sup>59</sup>

Thus, the vast majority of court related costs were to be paid by the State of New Jersey by July 1, 1997. Since the state was now going to pay for trial court operational costs, the amendment also provided that all revenues collected through the court were to be transferred to the state.<sup>60</sup>

The Legislature clarified the purpose and goals of the shift to greater state funding in the enabling legislation, finding that:

- “a. The current method of financing the State’s judicial system has created undue hardship for both the counties and the courts.
- b. The counties have had to balance the financial needs of the judicial system with the need to provide essential county services and have been denied any oversight over court operations.
- c. . . . the courts have varying levels of resources available in order to fulfill their responsibilities.
- d. Those . . . varying levels of available resources have significantly hindered the development and implementation of a unified administrative system for the courts.
- e. If the State were to assume the administrative costs of the judicial system, resources would be provided on a more equitable basis and a central management system could be established . . . .
- f. . . . significant property tax relief would be afforded to the citizens of this State . . . .”<sup>61</sup>

Embedded in the language of the legislation were several premises regarding trial court funding. The definition of judicial costs included some “line item” descriptions (salaries and payments for health benefits and pensions) and exclusions (facilities) and some program references (surrogate’s office). In some respects the definition was circular-“judicial costs” included costs for “judicial employees”, which had the effect of freezing the existing definition of what was “judicial”. The use of these terms essentially adopted the results of the 1987 Study Commission report and subsequent consolidations and transfers of functions summarized above.

The major exceptions to full state funding were for facilities for the court and probation and courtroom security. The 1987 Study Commission had recommended that the cost of capital and maintenance be funded by the state beginning in the sixth year after transition.<sup>62</sup> This obligation was not included in the Constitutional amendment, which specifically excluded facility costs that were defined as:

“any costs borne by the counties prior to July 1, 1993 with regard to the operation and maintenance of facilities used by the courts or judicial employees . . . .”<sup>63</sup>

After the adoption there was a serious dispute about whether this language, by specifically listing “operation” and “maintenance” and not listing capital costs, implied that the state, not each county, was responsible for building replacement or new court facilities. The dispute focused on construction of court facilities for judgeships created after 1992 and for maintenance of ancillary facilities, such as jury parking lots. The dispute was litigated and the Supreme Court, after reviewing the history of the constitutional amendment, ruled that counties remained responsible for capital costs, as well as operation and maintenance costs of facilities used by courts, both existing and new.<sup>64</sup> Thus, court facility costs, both for construction and maintenance, remained a county cost.

### ***Prosecutor and Indigent Defense Funding***

County Prosecutors were appointed by the Governor and confirmed by the Senate, but they and their offices were, and remained, locally funded. Indigent defense, whether provided by the state Public Defender office or court-appointed counsel, and attorneys in child protective cases were already paid by the state.

### ***Transition to State Funding of Trial Courts***

After the constitutional amendment passed in November 1992, leaders and key staff from the judiciary, state executive and legislative branches, and county government met to plan the transition process. One objective was to provide for an orderly and gradual transition to a more uniform trial court, rather than an immediate, one step shift. Another objective was to achieve uniformity, so that, as a result of the shift to primary state funding, a litigant would be treated the same, with the same level of service and the same options for programs, as any other litigant in a similar case, no matter where in the state the case arose.

The transition to primary state funding involved two stages. The first stage was determining what was to be transferred—both defining what would become a state responsibility and estimating the amount previously paid by counties for these activities. The second stage was the actual transitioning of personnel, equipment, and support services from the counties to the state. Each of these elements is discussed below.

### ***Defining and Estimating Trial Court Costs***

Initial legislation implementing the constitutional amendment was adopted in December 1993.<sup>65</sup> Issues addressed in the implementing legislation included: accurate identification of court and county costs, what costs were to be paid by the state, county maintenance of effort requirements, and facility responsibilities. Although personnel issues were originally to be addressed in the initial implementing legislation, they were instead addressed in subsequent legislation in 1994.<sup>66</sup>

In order to manage the implementation issues expected to arise, the 1993 legislation established a state-level inter-branch Judicial Unification Transition Committee in the state Department of Treasury.<sup>67</sup> The Committee consisted of nine members, with designated leadership representatives of each branch of state government, or members selected by the designated members, and a representative of the counties.<sup>68</sup> The committee was charged, among other things, with reviewing the transition to state funding, including development of a unified, central management system for the courts and its performance in providing “equitable and stable levels of resources to the courts of all areas of the State.”<sup>69</sup> The Committee was also to assess the impact of the State’s assumption of the cost of the judicial system on “affording significant property tax relief to the citizens . . . .”<sup>70</sup> The Committee was to report to the Governor, Legislature and judiciary by July 1, 1995.<sup>71</sup>

The Transition Committee concerned itself with:

- conceiving and establishing a unified administrative system for the courts;
- standardizing the 1993 base year cost reporting from the counties;

- identifying furniture, fixtures, and equipment that would become state judiciary property;
- determining funding responsibility for items not enumerated in the legislation (for example, the criminal grand jury);
- clarifying personnel issues, including standardized benefit packages and work hours; determinations of seniority; and transfer of accumulated vacation, overtime, administrative leave, and compensatory time off for court employees who became state employees;
- ensuring that cost shifts did not occur during the implementation period, such as counties granting cost of living increases or incurring expenses that would then become part of base state costs; and
- defining facility costs to be paid by the counties.

No specific cost estimate was included in the initial implementing legislation. Instead, 1993 was set as the base year for determining judicial and probation costs and revenues.<sup>72</sup> A process was established in the 1993 legislation for counties to certify, and the AOC to accept, base year expenditure and revenue figures, with appeal to the state Director of the Division of Local Government Services.<sup>73</sup> Many of the base year disputes dealt with indirect costs formerly incurred by counties, which were to be assumed by the state and fringe benefit costs budgeted centrally instead of in the courts' county-provided budgets. Representatives from the Association of Counties recalled that it required about a year and a half to complete this effort.

### ***Transfer of Superior Court Personnel***

The transfer of trial court employees to state employment required a significant and sustained effort by the judiciary, the state executive branch, and the unions representing court employees. When the Constitutional amendment passed, there was a need to change the legal status of trial court employees in a number of respects. Fundamentally the trial court employees needed to become state employees. A statewide personnel system was needed for judiciary employees, including consistent job classifications, salary ranges, benefits, working hours, terms and conditions of employment (including just cause for dismissal for non-management employees), discipline, hiring and promotional practices, employee rights and privileges, and union representation.

Prior to the constitutional amendment, court staff were almost entirely county employees, subject to county salary and benefit setting, working hours and conditions, and county negotiated union contracts. Most county employees were already in the state's pension system, and, significantly, 20 of the 21 counties already utilized the State's merit personnel system, which covered civil service positions. However, for non-civil service appointments, Superior Courts employed staff in over 700 job titles for which there were no uniform statewide judiciary classifications. Hiring practices varied greatly and there were significant pay disparities for similar jobs across vicinages. For example, there was a \$25,000 spread in pay for probation officers with the same number of years of service. Thus, there was a need to develop uniform, statewide employment terms and conditions and practices.

The transfer of court employees involved legislation and agreements with labor representatives. Legislation in 1994<sup>74</sup> and a subsequent Letter of Agreement (LOA) between labor organizations and the judiciary provided the broad framework for the transition of judicial branch personnel to the state. The primary tenets of the legislation and LOA were uniformity, a “hold harmless” provision, a “no windfall” provision regarding individual employee pay and benefits, and recognition of existing contracts with employee bargaining units while moving toward statewide consistency in compensation, classification, and personnel management. The legislation directed the judiciary and the state Department of Personnel to establish a compensation plan for all judicial employees by June 30, 1998<sup>75</sup> and contemplated that salaries become equivalent using statewide job classifications over time.

A host of details regarding union representation were resolved during the implementation period. The 1994 legislation and the LOA addressed the scope of collective bargaining. Another task was to define statewide bargaining units and address the union representation question. Separate statewide bargaining units were established for court case-related and for non-case related professionals, for professional supervisors, and for official court reporters. The several unions representing clerical staff and their supervisors formed a Judiciary Council of Affiliated Unions for three additional bargaining units, covering Support Staff, Support Supervisory, and Investigator/Court Clerk employees. Statewide elections were held to establish majority representatives for the new collective negotiations units. As a result, the number of bargaining units was reduced from about 70 to 7.

Uniform job classifications for judiciary employees were also needed. Although both the 1982 Supreme Court Committee on Efficiency in the Operations in the Courts of New Jersey and the 1987 Study Commission had recommended establishing a separate judicial branch personnel system, the decision was made to absorb court staff into the state’s existing personnel system rather than creating a separate judicial branch system. A statewide staffing classification and compensation study was completed in 1998. It reduced the number of classifications from over 700 to approximately 75 in 10 salary bands and created a uniform statewide salary schedule.

Consistent with the premise that employees be “held harmless”, no staff lost any compensation (salary or the value of county health benefits) as a result of the transition. Pay adjustments were made to compensate for changes in hours of work. Differences in leave provisions were either “grandfathered” or converted to statewide policies. While the AOC had recommended considering regional pay adjustments, there was no general support for that position from TCAs or Assignment Judges and determining the relative differences was considered overly complex.

Greater equity in judiciary employee’s compensation was accomplished by adjusting salaries based on an employee’s job classification and years of service. As a result, about 40% of the employees received an upward adjustment of their salary. A person’s salary adjustment could not exceed \$2,000 in any one year, so some received adjustments over several years, with the last adjustments provided in January, 2005. Statewide approximately 200 employees in the clerical bargaining unit were above the salary level for their classification and were precluded from receiving future pay increases until the salaries of their classification exceeded their salary level.

After the transition was complete, the judicial branch became largely autonomous regarding day-to-day human resource activities. Authority regarding human resource actions was now delegated to the Assignment Judge and TCA, subject to state judicial branch rules and procedures. Hiring for positions was conducted at the vicinage level, with the hiring of Trial Court Administrators and other vicinage management positions approved at the state level. Vicinages were encouraged to fill all positions up to the target staffing level and not leave positions vacant too long. Performance evaluation and discipline were also managed at the vicinage level, although the AOC Counsel's office hears appeals of disciplinary actions to ensure consistency across vicinages.

Labor contracts were now negotiated on a statewide basis by an oversight committee composed of TCAs, division managers, and Human Resources staff from the AOC. Proposed new or revised labor agreement provisions were reviewed first by the Human Resources Conference, composed of each vicinage's Human Resources Director Division Manager and AOC Human Resources' staff, and then approved by the Administrative Council via its Human Resources Committee and by the Labor Relations and Personnel Committee of the Judicial Council. The compensation terms of the judiciary labor agreements were patterned after those in the Executive Branch. This was accomplished by deliberately timing judiciary labor contract terms to lag executive branch contracts by one year.

Although it exercised day-to-day self-management of its human resources, the judiciary used state personnel system testing and selection of civil service positions. This had some unintended and frustrating consequences, in particular regarding testing and lists for entry level clerical positions. The State's clerical assessment program tests for general skill levels but not for skills specifically needed by the judiciary. Candidates might have indicated interest in dozens of classifications, including those used by the judicial branch, but were not interested in positions in the judiciary when called for an interview. As a result, vicinages reported being unable to fill clerical vacancies in a timely manner. Neither vicinages nor the AOC reported any difficulty with recruitment attributable to the decoupling of salaries from county compensation structures and local labor markets.

### ***Transfer of Court Furniture and Equipment***

Although not explicitly stated in the Constitutional amendment, it was assumed that the state would pay for furniture and equipment used by the trial courts, and would assume ownership of existing furniture and equipment used by the trial courts. The implementing legislation required the development of lists by September 1, 1994 of the furnishings and office equipment then currently used by the trial courts.<sup>76</sup> These became the property of the state at the transition on January 1, 1995. No one reported serious problems with this transition.

### ***Transfer of County Support Services***

The 1993 implementing legislation also called for the AOC and each county to enter into service agreements for: 1) services the AOC deemed necessary that the county continue to provide for the operation of the courts, 2) the portion of the base year amount comprising debt service or lease payments for furnishings and office equipment that would be transferred to the state, and 3) any other services or costs jointly agreed upon by

the parties to be necessary for the smooth transition or continued operations of the courts.<sup>77</sup> Pursuant to these provisions counties continued to provide services such as mail processing, communications, records storage, and printing at agreed upon costs. The AOC absorbed most of the significant administrative functions, including purchasing and personnel functions, in particular, payroll processing.

The Association of Counties reported there were outstanding issues concerning the cost and level of the services provided, but not about providing the services themselves. For example, one county reported that the court had expanded its use of the county records storage facilities and questioned whether issues not raised in the original service agreement could be negotiated later. Generally, the issue of services provided by counties to courts was not a major transition issue.

### ***Transfer of Revenues***

The Constitutional amendment requiring state funding of trial courts also swept judicial and probation fees to the state.<sup>78</sup> The initial implementing legislation contained a notable compromise that allowed bail forfeitures to be split equally between the state and the counties.<sup>79</sup> At the time of transition to state funding approximately \$57.6 million in revenue was collected annually through the Superior Courts.<sup>80</sup> Notably, there were no new or increased fees, fines, or user fees, or service charges associated with the shift to primary state funding.

In addition to the shift in revenue collected through the courts to the state, the initial implementing legislation contemplated the counties continuing to pay for trial courts for a limited time period. The original legislation provided for a phased reduction of county payments over a three year period.<sup>81</sup> The counties were to pay 87.5% of accepted base costs in 1995, 62.5% in 1996, and 50% in 1997. Intervening fiscal problems at the state stretched this period to four years, with the counties paying 25% in 1997 and 1998.

Finally, the transition to primary state funding resulted in significant changes in the compensation and status of trial court personnel. After the transition, job classifications were consistent, salaries were based on uniform ranges, benefits were uniform, and terms and conditions of employment were the same state wide. Labor contracts are negotiated with statewide unions, covering all trial courts, without geographic differences. The result was a more uniform statewide personnel structure and system.

## ***B. FUNDING THE TRIAL COURTS: HOW IT WORKS***

The funding of trial courts each year was a two step process in New Jersey. The first step was preparation of the budget request at the state level. The second step was the allocation of funds finally appropriated to the individual vicinages. Each step involved a different process and required different information from and about the trial courts.

### ***Budget Preparation***

The Judiciary's budget is prepared and enacted as a statewide budget. One fundamental premise in budget preparation was that the courts were uniform and that any unique characteristics of one vicinage were quite limited and distinct compared to the

overall commonality among vicinages. Consequently, the budget request was not developed on a vicinage basis; rather, it was based on budget programs such as the Supreme Court, Appellate Division, Civil Division, Criminal Division, Family Division, etc.

The judiciary's internal trial court budget preparation began in July of the prior fiscal year. Changes in routine operational funding needs were addressed by the allocation process described below, so vicinages were not asked to submit requests regarding these expenses. At the start vicinages were surveyed by the AOC regarding requests for new initiatives and capital needs. In the years prior to the study, vicinage requests were typically for equipment (for example, video/audio technology or new telephone systems), not new program initiatives. The requests were then reviewed at the AOC. Some requests were funded from available carry-forward funds. If requests were approved, but could not be funded from existing sources, they were consolidated with other state level judiciary requests as part of the operating expenses package of the judiciary's state budget request.

During the study period the judiciary was allowed to carry forward funds across fiscal years. Most of the carry-forward was from unspent personnel funds from unfilled vacancies. At the time of the study a carry-forward of up to \$3 million in general fund appropriations was permitted across fiscal years at the state level. No carry-forward was permitted at the vicinage level. The judiciary could also carry-forward all funds remaining in special funds such as the Information Technology Improvement Fund and Automated Traffic System Fund at the end of each fiscal year. These carry-forward funds were used to fund key projects and were allocated by the Judicial Council's Budget and Planning Committee.

The judiciary's budget package was prepared on a statewide basis. The 12 judiciary budget programs were the Supreme Court, the Appellate Division, Civil Division, Criminal Division, Family Division, Municipal Courts, Probation Services, Court Reporting, Public Affairs and Education, Information Services, Trial Court Services, and Management and Administration. Within each program the funds were appropriated in four categories: Personnel Services,<sup>82</sup> Materials and Supplies, Services Other than Personnel, and Maintenance and Fixed Charges. The package was not prepared on a vicinage basis, nor was there any indication in the state budget request of the amount proposed for each of the vicinages. The executive and legislative branches assumed that they would work with the AOC on a statewide basis, and there was virtually no concern, for example, by a key legislator, supporting greater funding for a particular vicinage.

The judiciary began budget negotiations each year with the Treasury Department in the Executive Branch. This was done because the Governor in New Jersey had extraordinary power over the budget, including line item veto authority not only to delete an appropriation but to alter the amount.<sup>83</sup> The Governor could therefore change the judiciary's budget even after legislative approval. The judicial branch budget package was submitted between August and October. The package contained several parts: a continuation budget package, a new priorities package, and a capital request package. Significantly, no budget justification was required for the continuation budget package.



Each year, funding for salary increases, and increased costs of fringe benefits and other costs for all state employees, including judiciary employees, was appropriated in a lump sum to the Treasury Department. After negotiating with the judiciary, the Treasury Department allocated a portion of the lump sum to the judiciary for its personnel. The judiciary, in turn, allocated the lump sum it received to the vicinages and state level offices according to staffing levels and need.

Although the total number of staff positions was fixed in the state budget appropriation, the judiciary had discretion regarding the mix of classifications within the total number. This discretion existed at the vicinage level as well, allowing Assignment Judges and TCA's to use classifications best suited to local needs, subject to the cap on the number of positions and total salary dollars allocated to the vicinage.

### ***Allocating Funding to Vicinages***

Once the total state appropriation was known, the second phase of the budget process was to allocate funds to the vicinages. There were two aspects to this phase. The first was the determination of how much would be allocated to each vicinage. The second aspect was the process for distributing funds during the fiscal year.

### ***Determining the Amount – Use of Staffing Models***

At the beginning of the shift to primary state funding of the trial courts, the AOC received and evaluated individual funding justifications from each vicinage. Beginning in 1997 the allocation of funding to the individual vicinages was, instead, based on the results from staffing model formulas and a formula for operating expenses.

Staffing models were developed for each division of the court. The use of divisions corresponded to the internal administrative structure that had evolved for the Superior Court prior to state trial court funding. By Constitution,<sup>84</sup> the Superior Court in every vicinage was divided into an Appellate Division,<sup>85</sup> a Law Division, and a Chancery Division. Court rules further subdivided the Law Division into Civil and Criminal divisions and the Chancery Division into General Equity and Family divisions.<sup>86</sup> Several administrative divisions were added to these case-related divisions. The result was nine divisions in each vicinage: 1) civil, 2) criminal, 3) family (including juvenile), 4) municipal court, 5) probation, 6) finance, 7) human resources, 8) information technology, and 9) operations.<sup>87</sup>

The staffing models evolved through a number of iterations. Some of the early models merely reflected the number of staff historically performing a function. Two of five divisions used complex weighted caseload and time study methodologies in their models. Some of the models included a backlog reduction factor, and some prescribed supervisor to clerical position ratios. Over time concerns were raised about the factors used, their relevance to need and equity, and the quality of data used in calculations.

In response to these concerns, a study of the staffing models was initiated. An Ad Hoc Working Group of the Administrative Council was formed in 2001 consisting of senior AOC managers and trial court administrators. The Working Group worked from the premise that equal justice across vicinages would be enhanced if staffing levels were equal. The report stated that staffing models “provide a mechanism for the allocation of

staff resources to each vicinage according to its needs and workload”.<sup>88</sup> The purposes guiding development of new staffing models were described as follows:<sup>89</sup>

- Equitable allocation of staff positions between the vicinages;
- Comparison of model results to actual personnel usage to highlight differences across vicinages for the same division in order to identify potential efficiencies, training needs, or the need for technology or other support services which could lead to more effective use of available personnel;
- Specification of certain position requirements, for example the number of managers needed for a division; and
- Documentation for justification of the judiciary’s budgetary needs to the other branches of government.

In 2002, the Administrative Council and Judicial Council adopted the Working Group’s report on revised staffing models.<sup>90</sup>

In reviewing the existing staffing models, the report explicitly rejected some of the assumptions and approaches that the divisions had made in early staffing models because it believed that: 1) too much variation harmed the credibility of the models, 2) marginal changes did not make a significant difference, and 3) the judiciary was unlikely to receive 100% of the funding needed to fulfill the models in any event. Regarding use of a weighted caseload approach, the report commented: “Data collection is burdensome; weights were difficult to keep current; and case weights tend to enshrine inefficiency.”<sup>91</sup> The Council asked divisions to emphasize those factors that had the largest impact on workload distribution. The report clarified the premises of the models by specifying that the models should: 1) reflect the judgment of informed managers about the staffing levels they believe were necessary to meet the Division’s goals, assuming fully competent staff, and 2) be based on inputs or drivers readily available from existing data sources.

New staffing models were developed by each Division Conference<sup>92</sup> and were approved by the Administrative Council, the Judiciary Management and Operations Committee, and the Judicial Council.<sup>93</sup> The factors, referred to as drivers, used in the staffing models for each division differed somewhat, based on differences in the nature of the work. Factors used in one or more of the staffing models included:

- direct judge staffing needs (for example, one law clerk per judge);
- case filings or number of judges (for example additional criminal staff for every four judges);
- the number of clients served by a programs (for example, number of people on probation or needing supervised visitation); and
- the number of transactions (for example, one interpreter for 1,400 interpreted events).

Other drivers were more incremental in nature:

- a minimum staffing level for each vicinage, even if the number of filings or transactions would not normally provide for the minimum (for example, a minimum of three jury staff per vicinage); and
- a set number of administrative staff that varied with vicinage size (for example, additional management, professional and clerical staff for multi-county vicinages).

Additional staff were added for special programs unique to one or a few vicinages. For example, a large increase in mass torts in the Civil Division in some vicinages resulted in Judicial Council Budget and Planning committee approval of additional positions to these vicinages. The number of added staff for special programs were determined each year rather than as part of the quadrennial staffing model revisions. The special programs were approved by the Judicial Council each year.<sup>94</sup> Special programs are discussed further below in the section on Equity.

Several other assumptions were incorporated into the new models and their application. For example, the number of authorized judgeships was to be used on the assumption that all judicial positions were filled. One of the key drivers of the model was filings. If filings increased, the model would recommend more staffing. The staffing models used a moving average to smooth out the impact of short term fluctuations in filings. The moving average was based on the most recent two years of filing and other input data. Although using the moving average adjusted for fluctuations, it also had the effect of delaying changes to steady growth or reduction of workload. Backlog that might be attributed to the lag of adding staff after filings had grown, was not a factor in staffing models. Instead, it was assumed backlog would be eliminated through changes in business practices and internal reallocation of resources within the vicinage. The success in reducing backlog over the last several years supported this approach.

The models themselves were to be revised only every four years.<sup>95</sup> Interim adjustments were to be made only if legislation or judicial decisions required significantly different staff configurations that impacted vicinages differently depending on size, locale, etc. However, there were no such circumstances between 2003 and the 2007 revisions.

The development of the staffing models gave the judiciary a means of allocating funding in a consistent and uniform manner across vicinages. The models were created by groups representing all sectors and geographic regions of the judiciary. They were also based on factors identified by judges and managers as the most important and relevant to the staffing needs of the judiciary.

### ***Distributing the Allocations***

The staffing models were used to calculate a total number of positions appropriate for each division in each vicinage. The numbers were cumulated at the vicinage level and then at the state level to generate a total for all vicinages. If the total calculated from the staffing models was more than the state appropriation, each vicinage received the same proportionate share of total state funding appropriated. For example, if the state appropriation for salaries was for 90% of the total allocation projection, each vicinage

would receive only 90% of what the staffing models projected as the allocation for each vicinage. The pro rata allocation was referred to as the target staffing level for each vicinage. At the time of the study, the state appropriation had always been less than the staffing model total, so vicinages had always received only a portion of the allocation generated by the staffing models.

In the first several years after the transition, there had not been large fluctuations in total statewide staffing levels. However, increases and decreases in criminal filings had shifted positions among vicinages. After doing the calculations, AOC staff compared the number of positions in each vicinage with currently filled positions to ensure that a vicinage was not impacted too greatly. Vicinages were asked to explain any large shifts before the figures were submitted to the Budget and Planning Committee for approval. If the number of positions was reduced, the practice had been to accomplish this through attrition. If a vicinage was to receive new positions, they were expected to fill them gradually throughout the year. Thus, any increase or decrease in salary funding and positions occurred gradually.

Once the target staffing level for each vicinage was determined, the vicinages were informed of their allocation for the year. Vicinages received the allocations in two lump-sum amounts: one for salaries and one for operating expenses. Funds for operating expenses were determined based on a dollar per position formula. Operating expenses included the categories of supplies, services other than personnel, maintenance, and capital expenses. Vicinages were required to prepare quarterly spending plans for salaries and each of the four operating expense categories indicating how they planned to spend the funds that had been allocated to them. The quarterly spending plans were aggregated at the state level by the AOC and submitted to the executive branch Office of Management and Budget.

The staffing models were only intended to provide a total figure for allocation to each vicinage. Although calculated on a division basis, the staffing model results did not bind the vicinages to distribute staff and operating funds to divisions according to the models. Once the total vicinage allocation was determined, the Assignment Judge and Trial Court Administrator had complete discretion to allocate staff among their divisions to meet their operational needs, although, in the first year of a newly funded program, vicinages were expected to use calculated positions in that program. Staffing allocations to divisions within a vicinage were not monitored by the AOC or Judicial Council. While the number of managers was fixed, the total number of supervisory, professional and clerical staff in each vicinage was not fixed by the models. In addition, certain job classifications could only be used by certain divisions (for example, the Finance Division could not employ a Probation Officer). Only the total number of filled positions for the vicinage was monitored during the year to ensure that vicinages remained within their target staffing level.

Vicinages had some discretion to transfer funds between budget categories. Transfers could not be made between salaries and operating expenses or in or out of special funds (for example, Title IV-D child support), unless permission to transfer funds was obtained from the AOC. The AOC fiscal staff described itself as “an office of management and budget for the judicial branch” in reviewing the transfer requests and believed that requiring vicinages to get approval for transfers provided an early alert of

possible spending issues and added credibility in their relations with the Executive Branch.

The allocation of funding to individual vicinages in New Jersey and expenditure of these funds was a multi-stage process, with each stage involving different budgeting and expenditure discretion. The staffing formulas were used primarily to allocate the funds received from the state. However, once funds were allocated, the staffing formulas were not binding on the vicinages as to the internal allocation of staff and funds. Essentially, the vicinages ended up with lump sum budgets in two categories, salaries and operating expenses. This approach gave the vicinages flexibility on a day-to-day basis, while the total amount they received had a rational basis when viewed from a state perspective.

### ***C. ADEQUACY, EQUITY, STABILITY, AND ACCOUNTABILITY OF TRIAL COURT FUNDING***

The shift to primary state funding provided the judiciary in New Jersey to establish equity across vicinages as measured by the categories of staffing and operating expenses. As part of the implementation, the judiciary achieved considerable uniformity of operations and management across the state. The process further strengthened the sense of a single, statewide judiciary. The judiciary adopted performance measures and a process for reviewing business practices across vicinages to establish greater operational accountability. Unfortunately, the shift came at a time when the state's fiscal condition was weak, resulting in essentially no growth in trial court funding, and some reductions immediately after the shift. Fiscal accountability was exercised through lump sum allocations by salaries and operating expenses, the requirement of quarterly spending plans, and monitoring of actual expenditures. Although vicinages were given discretion within the staffing and operational expense lump sum allocations, the rigid division structure, staffing formula factors, and expenditure monitoring practices appeared to have inhibited the development of new or alternative programs or service delivery models involving new or different organizational structures, positions, and equipment, especially information technology. The budget structure also made it problematic to address problems unique to a particular vicinage.

#### ***Adequacy of Funding***

There were two key observations regarding the adequacy of trial court funding in New Jersey related to the shift to primary state funding. The first was the unfortunate timing of the transition relative to the fiscal condition of the state. The transition occurred in the midst of limited revenue growth and fiscal austerity at the state level, resulting in reductions to trial court funding. Second, the level of actual state funding provided never reached the level projected from judiciary staffing models that were intended to establish what constituted an adequate level of funding. Funding for new programs was also seldom provided. Consequently, it could not be said that the shift to primary state funding increased the adequacy of trial court funding in New Jersey, when measured in actual funding provided to the trial courts. Notwithstanding these events, judiciary representatives, at the state and local level, generally reported that they had received sufficient funding for existing programs.

***Fiscal Condition at the State***

The period of transition to primary state funding occurred at a time of reductions in state funding generally. The state of New Jersey operated under a “continuation budget” for several years during the 1990’s, with no new funding even for inflation adjustments or some legislatively-approved special initiatives. The reductions in funding and slow growth were significant. Table 1 provides information on total state appropriations to vicinages and total staffing levels from all funding sources prior to and after primary state trial court funding began. In FY 1997, there was a decline of almost \$19 million in total state funding for the vicinages, a reduction of more than 7%. In addition, the state did not provide new funds for negotiated salary increases. The trial courts lost almost 700 positions in FY 1998, about 8% of total positions, in order to manage within the reduced budget total and to fund negotiated raises. These reductions were achieved by eliminating existing vacant positions and through attrition.

**Table 1**

**TOTAL STATE TRIAL COURT FUNDING AND STAFFING LEVELS<sup>a</sup>**

<b>FISCAL YEAR</b>	<b>TOTAL DIRECT STATE SERVICES FUNDING LEVEL<sup>b</sup> (millions of dollars)</b>	<b>TOTAL STAFFING AT VICINAGE LEVEL<sup>c</sup> (number of positions)</b>
FY 1986	\$207.8 <sup>d</sup>	6,841 <sup>d</sup>
FY 1993 (base year)	\$296.3 <sup>e</sup>	
FY 1995	\$129.8 (half year)	8,275
FY 1996	\$254.5	8,271
FY 1997	\$235.7	8,279
FY 1998	\$246.3	7,593
FY 1999	\$267.2	7,637
FY 2000	\$281.5	7,829
FY 2001	\$302.5	7,785
FY 2002	\$312.9	8,012
FY 2003	\$323.9	7,726
FY 2004	\$339.8	7,753
FY 2005		7,468

Table Notes:

<sup>a</sup> Figures provided by AOC staff, unless otherwise indicated.

<sup>b</sup> Funding includes from direct state services and local sources (not including Capitol and Maintenance costs), but not federal or grant funding sources. Figures are not adjusted for inflation.

<sup>c</sup> Includes staff funded from all sources—state, federal (for example, and Title IV-D), and grant sources; but does not include judges or central judiciary staff.

<sup>d</sup> From 1987 STUDY COMMISSION REPORT.

<sup>e</sup> From REPORT OF THE JUDICIAL UNIFICATION TRANSITION COMMITTEE dated August 20, 1996, p. V-1.

In FY 1999, funding and staffing did increase. However, as late as FY 2004 the vicinages had not returned to their peak FY 1997 staffing levels. When asked about this, judiciary representatives at both the state and local levels acknowledged fewer staff. However, they responded that they were operating more efficiently, so that having fewer staff was not as big a problem as it would appear to be. While it may be that practices had changed so that fewer staff were needed, the response may also just reflect political realities regarding available state funding. Because of the shift, it was not possible to say what funding levels the trial courts would have experienced had they remained primarily county funded. However, the shift to state funding clearly did not increase funding levels for trial courts, that is, they were not more adequately funded.

Although state funding of the judiciary was cut in some years, it did not suffer disproportionate reductions during this period. Rather, it appeared to have been cut less than other state funded entities. State appropriations for the trial courts in FY 2004 were 1.7% of total state appropriations, compared with only 1.2% in 1998. Legislative staff indicated that the judiciary was one of only two entities to avoid reductions in FY 2005. Moreover, in FY 2005, the judiciary received funding to expand drug courts to all 15 vicinages, including funding for new drug court judgeships. However, these additions did not result in an adequate level of funding, according to the judiciary's own measures.

### ***Inadequacy Relative to Staffing Model Results***

The efforts of the New Jersey judiciary to develop formulas to establish staffing levels provided another measure of the adequacy of funding actually received. Significant judiciary energy was invested during the transition to develop quantitative formulas to determine adequate trial court staffing needs. The effort extended over several years, involved judges and staff from all divisions of the judiciary, and the results were reviewed and adopted by the judiciary's governing bodies. The investment was in a set of staffing models that calculated staff need in a stable, predictable, consistent, and reliable manner for each division across all vicinages. By definition 100% funding of the staffing model results constituted adequate funding. In the end, however, the level of staffing estimated by the models was never achieved. Moreover, it was reported that the staffing models were seldom used as a justification for adding staff, although the model results were effective in preventing further reductions in staffing. In part, the models were not used to request staff because of the fiscal condition of the state—the judiciary did not ask for more staff when the state was reducing appropriations generally.

Significantly, the judiciary did not receive the amount of funding that the staffing models projected was needed statewide. Table 2 indicates what percentage of the staffing model projection the judiciary actually received each fiscal year since the inception of primary state funding. The highest percentage was 89% in FY 2001 and the percentage dropped in subsequent fiscal years. There were at least two possible interpretations of this information. Either the staffing models overestimated need or the judiciary had not received adequate funding. Perhaps the actual funding was enough to provide basic levels of justice, whereas the staffing models contemplated a higher quality of justice. Although it was never expressed this way in New Jersey, perhaps this is the same discussion that came up in Florida: actual appropriations were a 'Ford' and the staffing model sought a 'Chevy.' The 2002 report updating the staffing models recognized this dilemma, stating: "The courts, like most other parts of government, were always going to

need more staff than the budget allows.”<sup>96</sup> The basic question was how one defined adequacy, what the staffing models projected as needed, or what was enough to provide basic justice. Although backlogs had been reported in some vicinages for some case types, there was no general indication the trial courts were unable to provide basic justice. Perhaps the courts found ways of completing their work more efficiently using fewer resources, or perhaps there was a lower quality of justice than was implicit in the staffing models.

**Table 2**  
**STATE APPROPRIATIONS AS PERCENTAGE OF STAFFING MODEL PROJECTIONS\***

FISCAL YEAR	PERCENTAGE OF STAFFING MODEL RESULTS RECEIVED STATEWIDE
1998	86%
1999	88%
2000	89%
2001	89%
2002	87%
2003	87%
2004	84%
2005	83%

\* Data in table provided by AOC staff.

### ***Equity of Funding***

One of the explicit objectives of New Jersey’s shift to primary state funding of trial courts was to achieve equity of funding. The findings and declarations in the enabling legislation expressly stated: “If the State were to assume the administrative costs of the judicial system, resources would be provided on a more equitable basis . . . .”<sup>97</sup> The judiciary fully supported this goal. Upon adoption of state funding legislation, Chief Justice Wilentz commented that, “For the first time, we will have equal justice in this state, the same quality of justice everywhere. It was unthinkable that with the State paying the bill, the quality of justice should differ from county to county.”<sup>98</sup> Thus, the shift to primary state funding of trial courts provided an opportunity to achieve the same quality of justice across vicinages.

New Jersey’s approach to allocating state funding so as to achieve equity across vicinages was to define equity as having the same programs and organizational structure and equivalent staffing and operating expense levels in all vicinages. This was achieved by establishing in each vicinage: 1) the same programs, 2) identical divisions and management structures, 3) one statewide set of job classifications and salary scales, and 4) allocating funds for staff and operating expenses based on formulas that took into account the number of judges and the workload in each vicinage.

The theory of this approach was that if all vicinages had equivalent resources, taking into account their judges, caseload, and other workload, the quality of justice



would be equal. This was based on several assumptions: 1) that the factors incorporated in the model adequately reflected resource needs across vicinages, notwithstanding differing case mix within caseloads, 2) that differences in staff needs for cases and workload within a vicinage, relative to the staffing model prediction, would balance out across all case types in the vicinage, 3) a uniformity of management capability, and 4) availability of equally competent staff at the same wage levels across vicinages despite differences in cost of living. Aware of concerns about these assumptions, the judiciary took several steps to mitigate factors that might have brought into question the validity of these assumptions.

Management capacity is more a competence issue than a number of positions issue. A less well managed vicinage will not provide the same quality of justice as a better managed vicinage, even if both start with the same number and type of positions. The combination of equivalent resources, sound practices, and good management will more likely result in equity of justice. Recognizing this, the judiciary made significant efforts to standardize management and business practices and provide training, in particular leadership development, to vicinage staff.

The availability of equally competent staff, given the uniform statewide salary scales, depended on the available labor pool and how the cost of living varied across vicinages. If the salary for a classification was so low in one vicinage that it was harder to attract the same level of skills and experience than it was in another vicinage, the staff competence would not be equivalent and providing an equivalent quality of justice would be more problematic. Although those interviewed did provide anecdotes substantiating the existence of this problem, the small geographic size and narrow variance of cost of living across vicinages probably minimized the impact of this problem.

### ***Factors Included in Staffing Models.***

As discussed above, considerable effort was made to identify those factors that were considered most relevant to staffing needs for inclusion in the staffing models. The staffing models evolved from simple models, some based on historic staffing levels, to more complicated and sophisticated models, even using weighted caseload factors. The most recent revisions, based on the 2002 study, recommended fewer factors that were more consistent in nature across models and based on more readily available data. This reflected a compromise. The newer models were easier to apply and more transparent, but used less precise data and were less sensitive to local differences. Concerns were expressed by several of those interviewed about the generality and more cursory nature of the models and the insensitivity to unique local characteristics. However, the AOC reported that complaints from vicinages about inequity of funding declined over time.

Local variations in staffing needs were assumed to only marginally affect staffing model results. The expectation was that the “lump sum” allocation of positions to a vicinage (representing the aggregate of staffing model results calculated for each division), and the local discretion to allocate staff to divisions within the vicinage (regardless of the staffing model calculation for each division), allowed the vicinage to adjust staffing to address workload differences and unique local needs. The Report on Use of Staffing Models listed several local characteristics that might affect the manner in which positions were distributed within a vicinage, including “the strengths and

weaknesses of the existing workforce, the particular case mix or any sudden change in the pattern of cases that were filed, the appointment or retirement of judges, the existence of particular problems or special projects and even the nature of the labor market in a particular county.”<sup>99</sup> Equity could be achieved if there were offsetting local characteristics justifying the transfer of staff from a division whose actual workload was less than the staffing model predicted to one where the actual workload was greater than the staffing model predicted. There were no reports of major imbalances or shortages from the vicinages visited, suggesting the aggregation may provide adequate flexibility to address unique local factors.

Special programs presented a particular challenge to achieving equity using staffing models. When the shift to primary state funding occurred, some vicinages had programs that were unique to their vicinage, or existed in only a few vicinages. The existence of a program in only one or a few vicinages contradicted the goals of equity and uniformity. Over time these programs were reviewed and some were ended, at least in terms of judiciary funding. Others were considered for expansion to all vicinages.

Some special programs were recognized in the revision of the staffing models in 2002.<sup>100</sup> But the report recommended that special programs be incorporated into the models “only if 1) they were under consideration for statewide implementation, or 2) the program was so important that it calls for staffing over and above the otherwise equitable allocation to all vicinages.”<sup>101</sup> The premise was that the disputes brought before trial courts were very similar in all vicinages, so special programs unique to a vicinage were not needed. The criteria adopted for special programs set a very high standard for creating a special program to address unique types of problems. If a vicinage had a serious crime rate, driven by unemployment, lack of educational and work opportunities, and high substance abuse rates, it might consider a program to serve defendants with this combination of problems, for example, a problem-solving court. If all other vicinages did not have these conditions, a special program addressing them in one vicinage would never meet the first criteria.<sup>102</sup> The second criteria also set a very high standard, one that was particularly hard to ‘prove’ when planning a new approach that had not been tried before and might not work. The existence and expansion of special programs may continue to be a point of contention in maintaining funding equity across vicinages.

### ***Achieving Equity of Resources across Vicinages***

When the funding formulas were first applied, staffing in vicinages ranged from 77% to 102% of the amount calculated by the staffing models. In planning the transition to equity of staffing, a decision was made to move incrementally, rather than all at once, and to do so in a manner that created the least impact locally. Incremental change was achieved by starting with those courts at the high and low end of the spread. In the first year in which the staffing models were used, the funding for the three vicinages experiencing the lowest percentage of the projected staffing level was increased to the same percentage as the fourth lowest vicinage. The three vicinages with the highest percentage had their staffing level reduced to the fourth highest percentage vicinage. Reductions in the more generously funded vicinages were achieved through staff attrition, minimizing the impact of the reduction. The same process was repeated each fiscal year, and by FY 2003, all vicinages were funded at the same percentage of staffing as calculated by the staffing models.

### *Identical Management Structures*

Another aspect of equity was the establishment of identical management structures in each vicinage. The management structure for each division was specified in the staffing models.<sup>103</sup> There was one TCA in each vicinage. Every vicinage had the same division structure and there was a division manager for each of the nine divisions. Division Managers reported to the TCA and, in the case of the four divisions involving a specific type of case, to the Presiding Judge of the respective division.<sup>104</sup> All division managers were paid within the same salary range. There was some variance in the number of Assistant Trial Court Administrator's<sup>105</sup> based on the geography of the vicinage. For example, in multi-county vicinages, there was an additional Assistant Trial Court Administrator to coordinate the work in each outlying county of the vicinage.<sup>106</sup> The largest vicinage, Essex, was permitted to have an additional Assistant Trial Court Administrator not associated with a separate county.<sup>107</sup>

While this singular management structure could have been overly rigid when applied statewide, it was reasonable given the similarity of vicinage sizes. Two-thirds of the 15 vicinages had between 19 and 26 judges each. The largest vicinage had 51 judges, while the two smallest vicinages had 17 judges each. Significantly, there were no vicinages with only one judge, as was common in most states. While Assignment Judges may request changes to the management structure in their vicinage, it was the policy of the judiciary that changes to the Superior Courts' management structure should be made statewide, except in extraordinary circumstances.<sup>108</sup> Consequently, there were essentially no differences across vicinages.

Having a common management structure assumed all managers had more or less equivalent skills and abilities. This issue was addressed during the transition process and continued to be addressed through training. As the vicinage management structure evolved, vicinages were required to submit a plan for transition of all management staff to the uniform structure.<sup>109</sup> There was a particular impact on Assistant Trial Court Administrators, who were previously often generalists or more specialized. Generalists were transitioned to General Operations Manager positions, while specialists were placed in relevant classes (for example, Finance Manager, Human Resource Manager, etc.). In addition, at the onset of state funding all division managers were evaluated regarding their qualifications. Some received additional training to complete their skills, and a few were not retained in their positions. An effort was therefore made to achieve equity of management services as well as numbers.

One of the express goals of the shift to primary state funding in New Jersey was equity of funding. Resource equity was achieved through the standardization of organizational and personnel structures and the use of staffing formulas. The staffing formulas accounted for the major relevant differences in caseload and workloads. Achieving equity was aided by the relative uniformity of vicinage size and historical trend towards centralization and uniformity of practice. These approaches, while straightforward, produced a rigid structure that assumed unique local characteristics only marginally affected resource needs or could be accommodated within total staffing and operating expenses allocations. There is some indication, however, that it also unintentionally restrained, if not stifled, development of special programs addressing unique local needs and the testing of new service delivery models and business practices.

## ***Stability of Funding***

State funding of the trial courts in New Jersey was not stable across fiscal years, having suffered significant reductions in the late 1990's. The changes in funding levels within the judiciary were managed in a predictable way, one that avoided sudden or unexpected increases or decreases. Thus, there was considerable stability within each fiscal year.

The statewide budget process was a form of base year/incremental budgeting. No budget justification was required for that part of the budget package involving existing funding—referred to as “the base”. This seemingly ensured stability of base funding from year to year. However, as noted above, when the state had less revenue and all state budgets were reduced, so was the judiciary's. In FY 1997, the judiciary experienced a 7% reduction in direct state funding. There was an 8% reduction in total staffing the following fiscal year. Historical data about funding at the county level, either at the same time or for other periods, was not available to compare stability. However, the experience in the late 1990's suggested state funding of trial courts was not sufficient to promise stability of funding levels from year to year.

The state budget process did provide predictability and stability at the vicinage level. The consistent application of the staffing models each year produced predictable results at the vicinage level. Changes in filings were addressed in the model, with the impact ‘softened’ or delayed by the use of a two year moving average of data. In addition, the practice of responding to reductions through attrition avoided harsh transitions. All of these contributed to stability at the vicinage level.

In response to a shift to primary state funding, New Jersey instituted practices that provided stability and predictability of funding at the vicinage level within each fiscal year. However, the shift did not prevent fluctuations of total funding at the state level due to factors unrelated to, and beyond the control of, the judiciary.

## ***Accountability***

One primary mechanism for assessing accountability in New Jersey was fiscal—the monitoring of expenditure and position totals. This was true both inter-branch at the state level, and within the judiciary. Fiscal monitoring occurred primarily through the submission of quarterly spending plans and the review of actual expenditures. The judiciary operated more or less independently from the legislative and executive branches regarding how it went about its work, as long as it remained within fiscal boundaries. Another mechanism was performance related—through monitoring of the status of caseloads, backlog, and adherence to rules and accepted best practices. Finally, the shift to primary state funding resulted in changes in the membership and operations of existing judiciary governance structures that increased the involvement of vicinage judges and staff in policy development and oversight.

### ***Accountability Relative to Executive and Legislative Branches***

Both the AOC and legislative staff reported that the Executive branch and Legislature assessed accountability of the judicial branch based primarily on expenditures. The monitoring was at a high level, focusing on expenditures from a lump sum perspective. The AOC was required to submit quarterly spending plans to the state,

but there did not appear to be any close monitoring of detailed spending relative to the plans. There was also no monitoring of vicinage allocations or spending; this level of detail was neither requested nor provided to the other branches. Legislative staff indicated a strong feeling that practice and procedure were judicial branch issues and expressed little concern about best practices in the operation of judicial branch.

At the same time, legislative staff reported that the judiciary was very responsive to information requests, and that the early consolidation of programs and judiciary efforts to realize efficiencies solidified the credibility of the branch. In 2004, the judiciary successfully obtained authority to transfer funds across appropriation categories without prior approval by the executive or legislative branch. Legislative staff reported that very few of the judiciary's transfer requests were denied in the past and this provision was not controversial.

### ***Accountability within the Judiciary***

Fiscal accountability within the judiciary also focused on total expenditures and positions. Each vicinage was required to submit quarterly spending plans to the AOC, which were used both to produce the statewide quarterly spending plans and as an early warning to potential problems within a vicinage. The shared goal was to meet the targeted staffing level by keeping positions filled, yet stay within the expenditure allocation total. The AOC did not monitor the distribution of positions within the vicinage, and vicinages were not required to get approval to transfer positions or funds between divisions. Thus, the oversight was at a high level and did not appear to involve micromanagement of spending at the vicinage level.

### ***Self-Governance of the Judiciary***

Another goal of the transition was to strengthen the ability of the judicial branch to manage its own affairs and staff. In testimony to the Senate Judiciary Committee concerning the constitutional amendment, Chief Justice Wilentz said: "As far as I am concerned the greatest benefit of this constitutional amendment is its promise of giving us a truly well managed judiciary for the benefit of our citizens. . . . The judiciary will become fully accountable." In 1999, Chief Justice Poritz commented that: "For years, we had been more a collection of county-based trial courts . . . . We in the Judiciary view unification as an unprecedented opportunity to create a court system for New Jersey that is modern, efficient, effective, and fair."<sup>10</sup>

In New Jersey, the judiciary already included strong centralized rule making authority and centralized management of the judiciary. The members of the management team in each vicinage, judges and administrators, were designated or appointed by the Chief Justice or Administrative Director of the Courts. There was also a state level governance structure consisting of a number of advisory committees and a Judicial Council made up of trial court judges and administrators with management responsibilities. During the transition to primary state funding, a greater emphasis was placed on collaboration between the vicinages, committees, the AOC, and the Judicial Council in developing judicial branch policies. Conferences representing each division were responsible for initial development of staffing models, evaluating requests from vicinages, and reviewing best practices. Approval of statewide committees was required as part of the budget process. For example, the Budget and Planning committee of the

Judicial Council reviewed budget requests from the vicinages and AOC, and approved the budget request submitted to the Legislature and Executive branch. The process resulted in a wide spread sense of a single statewide judiciary, replacing a sense of being a collection of county-based trial courts.

### ***Uniform and Best Practices***

Another aspect of the effort to establish equity and accountability was the development of standards and best practices for each division, a form of performance accountability. The link between state funding, equity, and accountability was succinctly stated in the judiciary's strategic plan:

“Unification requires consistency in programs, operations, and the quality of services offered throughout the State. . . . Of course, statewide operational consistency allows for more accurate comparisons of performance and results, thereby improving overall local accountability.”<sup>111</sup>

The standards and practice activities were organized through the Administrative Conferences for the divisions, thus involving judges and administrators from the vicinages as well as the AOC staff. The Chief Justice also appointed a Management and Operations subcommittee of the Judicial Council to oversee this effort. Standards and best practices were also integrally related to staffing models, as the credibility of the models derived in part from a premise that staff will be used efficiently. Implementing these concepts involved two activities: 1) developing standards, and 2) engaging in periodic site visits to review operations in vicinages and identify and encourage use of best practices.

The strategic plan recommended statewide consistency in case management systems for civil, criminal, family, and probation divisions<sup>112</sup> and establishment of case processing time standards<sup>113</sup> and performance standards.<sup>114</sup> There was also a recommendation to implement “best practices” statewide.<sup>115</sup> The conferences for each division were given the responsibility to develop these standards and practices and many were incorporated into the staffing models adopted for each division. A significant example of the impact of adopting standards and best practices involved case backlogs. The judiciary developed performance standards and best practices focused on backlog reduction. Courts rated lowest on backlog reduction measures had to submit a backlog reduction improvement plan to the Supreme Court. As a result of this focus, a significant decline in backlogs was reported for all case types between 1999 and 2004.<sup>116</sup>

Having operational and performance standards did not, by themselves, ensure compliance with them. The strategic plan therefore recommended that an approach be implemented that promoted accountability regarding the standards.<sup>117</sup> The approach taken was to initiate site visits to each vicinage to evaluate operations and performance using a checklist reflecting the standards. The site visits were organized on a division basis and the visitation teams included one to two presiding judges and a division manager of the same division from other vicinages and a staff member from the corresponding AOC division. One of the team's tasks was to investigate apparent staffing inequities and to make recommendations regarding staffing configurations in a vicinage to be consistent with that in other vicinages. The frequency of these visits was not fixed; however, the AOC began a second cycle of visits after finishing the first cycle

for each of the primary case management divisions (i.e., civil, criminal, and family). Vicinage representatives reported that the visits were effective in identifying problems in operations and in highlighting more effective business practices.

#### **D. THE ONGOING CHALLENGES**

A few key issues remained unresolved after the transition to primary state funding. Some relate to the responsibilities that remained with the counties, in particular, court facilities. Another challenge had to do with the lack of encouragement and funding for innovations and new business practices. Each of these is discussed below.

##### ***Local Flexibility and Innovation***

The record regarding special programs and innovations, whether new programs or new business practices, was mixed under state funding. This was attributable in part to the rigidity of the management structure and staffing models and the manner in which funds were allocated and expenditures monitored. Another factor was the lack of additional state resources, given the state's weak fiscal condition.

During the transition process, the focus was on building a uniform judiciary. There was little consideration of characteristics or circumstances that were unique to a vicinage, particularly regarding resource needs. There were several special programs unique to one, or a few, vicinages when primary state funding took effect. Some special programs were maintained during the revision of the staffing models in 2002.<sup>118</sup> Some of these continued and were included in the subsequent staffing model.<sup>119</sup> For example, an Ombudsperson program that existed in only a couple of vicinages was approved as a statewide program. For others, judiciary funding was stopped, or was scheduled to end, because the program was not considered to be consistent with the role of the judiciary or applicable statewide. Examples of existing special programs for which state funding was not continued were juvenile evaluation and treatment services in Morris County and a juvenile residential facility using court staff in Camden. While considered highly desirable programs, the Budget and Planning Committee felt they would not be extended statewide so they were eliminated over a multi-year period and the vicinage urged to work with the county to find alternative ways to fund the program. One message was that uniformity had a higher priority than unique local differences or approaches to handling cases.

New special programs could be initiated either centrally or by a vicinage. Approval of the Judicial Council's Budget and Planning Committee is required if additional state funding was requested. The challenge was to meet the very high standard that a special program would "be eligible for inclusion in the [staffing] models only if: 1) they were under consideration for statewide implementation, or 2) the program was so important that it called for staffing over and above the otherwise equitable allocation to all vicinages."<sup>120</sup> This was a very difficult standard to meet when a program was first being conceived and planned. Few new programs could clearly demonstrate their value and impact locally, let alone statewide, before they had even been implemented.

A related problem was how to fund a new idea, whether a special program or new business practice. Funds were allocated based on staffing models and operating expense ratios. Neither contemplated new programs. Each was based on existing programs and

practices. While vicinages had local discretion in spending salary and operating cost dollars, the expectation was that funds would be spent on approved programs and practices. There was also a zero-sum game aspect—providing funds for a new special program in one vicinage from the fixed total state appropriation would reduce the proportionate share of allocations to other vicinages. Vicinages were encouraged to seek funding from other sources, such as the counties and grants, but such requests were to be vetted with the AOC and, if there were policy implications, considered by the appropriate conference or committee. While the intent was to promote programs consistent with the judiciary’s goals and objectives and which appeared to be well conceived, the effect was to constrain all but the most adventurous judges and managers from attempting anything new.

In addition, if a new program involved more automation and less staff, it could be thwarted by the separate lump sum allocations for salary and operating expenses, and the constraints on transferring funds between these categories.

At some point, the judiciary will have to consider additional mechanisms that encourage innovation and experimentation, or consign itself to a future of adopting new programs and service delivery models developed and tested in other states.

### ***Ownership, Construction and Maintenance of Court Facilities***

The constitutional amendment that required the shift to primary state funding left court facility costs as a county expense. As described earlier, there was litigation about the meaning of the language, ending with a Supreme Court decision that clarified that facilities, new and existing, were, indeed, still a county responsibility. This created two areas of ongoing tensions between counties, vicinages, and the state. One had to do with ongoing concerns about funding facilities and the other had to do with the quality of facilities.

Many counties continued to view facilities as the unmet promise of state funding of trial courts. Legislation was proposed to fund facilities in four urban counties using the state’s bonding authority. The judiciary did not take a position on the proposal. Legislative staff reported that requests for general obligation bonds to upgrade court facilities were not likely to succeed in light of the greater concern on the part of the Legislature with funding for higher education facilities. The facility funding issue was, therefore, at a stalemate. There was also the complication of courthouses generally being mixed-use facilities, housing non-court functions as well as court functions.

The adequacy of court facilities was also reported as a source of tension. Court facilities were used by the courts, but built and maintained by the counties. The statutory standard specified for Superior Court facilities was “suitable”<sup>121</sup> and the Administrative Director of the Court had authority to direct a court to cease using facilities that were found to be inadequate.<sup>122</sup> After primary funding was shifted to the state, and in an effort to address possible conflicts over facilities, the Supreme Court modified the budget impasse procedure rule to apply to facility disputes.<sup>123</sup> The procedure applied to any dispute about “the location, size, or other physical characteristics of courtrooms, chambers, office space or related facilities . . . .” The procedure could be invoked by either the Assignment Judge or the county and involved a three person arbitration panel. It remains to be seen whether this process is effective, or generates the same problems



described above regarding the budget impasse procedure when courts were primarily county funded.

## **E. CONCLUSION**

New Jersey's shift to primary state funding of its trial courts provided a number of lessons about how to effectively fund trial courts. The judiciary achieved equity of resources across trial courts by developing models that predicted staffing needs, implementing uniform position classifications and management structures, and establishing uniformity of programs and business practices. While successful in equitably allocating staff, the models were seldom used to obtain a particular level of funding, let alone additional state funding. All trial court employees became state employees under a uniform personnel system. These changes were possible, in part, because of the relatively uniform size of vicinages, the compact geographical nature of the state, and lack of wide regional differences in salaries and cost of living. In addition, standards were developed and best practices encouraged. This not only ensured that resources allocated to vicinages were used efficiently and effectively, but also provided enhanced accountability, especially between the vicinages and the state level judiciary. Finally, the judiciary used existing governance structures during the transition process, with some modifications to expand representation and collaboration between state and vicinage judges and staff. Vicinage leaders and managers—Assignment Judges, division Presiding Judges, TCAs, and division managers—were strongly involved in resource allocation decisions, development of statewide policy and practice, and the setting of statewide priorities and programs.

The approach taken in New Jersey did exhibit some weaknesses. Even though they improved accountability, the limitations of staffing model factors and expectations about spending patterns appeared to have inhibited flexibility and innovation, particularly that associated with relatively unique local caseload and litigant characteristics, or approaches to handling cases.

A major source of frustration and conflict was continuing county fiscal responsibility for court facilities. Counties must provide facilities for operations and programs over which they have no control. Although this approach is common in states providing a majority of funding for trial court operations, it is not without challenges.

Overall, New Jersey implemented the shift to primary state funding of its trial courts in a manner consistent with its goal to create a uniform and centralized statewide judiciary. It did so without major disruptions of staff or programs and despite reductions in total state funding unrelated to court workload or accountability. The result is a uniformly staffed and operated trial court system that the judiciary feels provides an acceptable quality of justice to those it serves.

# ADEQUATE, STABLE, EQUITABLE, AND RESPONSIBLE TRIAL COURT FUNDING

## Chapter 5. THE FLORIDA EXPERIENCE

### A. INTRODUCTION

In 2004, Florida became one of the most recent states to move to primary state funding of its trial courts. The shift occurred as a result of a Constitutional amendment adopted by the voters in 1998. The transition involved a major shift in funding for the trial courts, County Clerks, and to a lesser extent, state attorneys and public defenders. Most trial court operation costs previously funded by the counties were shifted to state funding. Clerk of court functions provided by the County Clerk were shifted from county funding to fee-based funding. Prosecution and public defender staffing costs were already state funded, but costs for ancillary services, such as expert witnesses, interpreters, and court reporters were shifted from the counties to the state. All conflict counsel costs were also now to be paid by the state. The shift to primary state funding had major impacts on the trial courts regarding funding, governance, and intergovernmental relations.

This case study begins by providing the context in which the shift to state funding occurred, including a description of the structure and funding of the judiciary prior to the shift, as well as some of the driving forces behind the shift. This is followed by an explanation of the elements and requirements of the constitutional revision and the response of the judiciary and other entities to the change. The impact of the change on trial court funding regarding adequacy, equity, stability, and accountability are then analyzed. Finally, some of the outstanding issues that remained after the transition are noted.

### *History of Florida State Court Reform*

In 1972, Florida enacted significant amendments to the judicial article of its Constitution. The amendments created a more unified court structure by shifting from eight enumerated types of trial courts to two.<sup>124</sup> The amendments also provided for Supreme Court certification of judgeship needs,<sup>125</sup> judges' salaries to be set only by the state without local augmentation,<sup>126</sup> and a modification of the Supreme Court's plenary rule-making authority to allow legislative repeal of a court rule by a two-thirds vote.<sup>127</sup>

The amendments did not change the level of government at which the courts, state attorneys, public defenders, and clerks of court were organized and operated. The Constitution already provided that Circuit Courts, prosecutors, and public defenders were organized on a circuit level,<sup>128</sup> with circuits set by the Legislature,<sup>129</sup> which often included several counties. The one remaining limited jurisdiction court, the County Court, was organized at a county level.<sup>130</sup> The clerk of court function remained county based and continued to be performed by the County Clerk, an elected official whose basic duties were listed in the Constitution.<sup>131</sup>

The 1972 amendments did not explicitly establish a new funding structure or provide for any particular level of state funding for the trial court system.<sup>132</sup> However, it was reportedly the understanding of the counties that the state was to accept major

responsibility for trial court funding in the implementation of the 1972 amendment. According to a 1998 report by Florida TaxWatch, a non-profit non-partisan government watchdog and taxpayer research institute, “Floridians were promised and voted for a uniform, state-run court system that would shift the burden of funding the judiciary from local property taxes to the state.”<sup>133</sup> The Florida TaxWatch report went on to point out that:

“By the 1977-78 FY, the state had assumed 60 per cent of the funding responsibility for the trial courts, contributing \$92.8 million of the \$165 million total. In contrast, counties were still expending \$72.1 million, roughly 40 percent. As it turns out, the state's commitment to the judicial system would begin a steady decline. Within six years the state's contribution fell below that of the counties and has remained so ever since.”<sup>134</sup>

For the next 20 years, trial courts continued to operate under this split funding structure, with counties in multi-county circuits providing different levels of funding for judicial services and programs in each county within the circuit. State funding paid the salaries of active and retired judges<sup>135</sup> and paid for hearing officers, law clerks, judicial secretaries, juror fees, and special projects. The state was also the primary source of funding for some trial court administrative personnel. However, a significant majority of trial court staff were county employees, with county-set salaries, benefits, and personnel rules. County government supported most of the costs of masters, arbitrators and mediators, court reporting, information technology, interpreters, alternate dispute resolution programs in civil and family cases, witness fees, problem-solving courts other than drug court, payments of conflict attorneys for indigent defendants, court security, and facilities. County government also paid the cost of clerk of court functions provided by County Clerks. Revenue from most fees and service charges related to court activities, and many fines, was deposited in county funds.

### ***The 1998 Constitutional Amendment – Revision 7***

Florida’s constitution provides for a Constitutional Review Commission every 20 years to identify and propose constitutional amendments.<sup>136</sup> In 1998, the Florida Association of Counties sought fiscal relief through this process by proposing revisions to the State Constitution to explicitly shift the cost of funding for the justice system to the state. After discussion and amendments, the Review Commission eventually adopted a modified version of the proposal, which became Revision 7.

The primary motivation for the counties to seek relief was increased demands and restrictions on county revenues, growing and diversifying populations, demands on resources of other county programs, unfunded mandates, and the volatility of indigent defense conflict costs. County sources of revenue varied but were heavily dependent on property taxes (one-half to two thirds of General Fund revenues in large counties).<sup>137</sup> A number of tax cutting initiatives and legislation had effectively constrained revenues,<sup>138</sup> and some counties had reached their property tax millage caps.<sup>139</sup> The state had experienced substantial population growth, 24% from 1990 to 2000,<sup>140</sup> as well as racial and ethnic diversification. These factors placed significant pressure on governments at all levels, particularly county governments, for increased services. The state General

Fund revenues sources, in contrast to the county sources, consisted primarily of sales tax receipts (approximately 59% of general fund tax revenues in FY 2004-05) and receipts from other taxes such as corporate income tax and miscellaneous consumption based taxes.<sup>141</sup>

The Office of the State Courts Administrator (OSCA), trial court, state legislative, and county representatives all independently reported that there was little organized opposition to the proposed Constitutional revision. Nonetheless, there were reportedly some pockets of concern in the trial courts, particularly in large and medium sized circuits where the counties supported their courts more generously. These courts saw little benefit from a transition to state funding, because most felt they were adequately funded by their counties and able to provide a wider array of services to litigants than was typical statewide. Concerns were also expressed, again mainly in private, by some judges and court administrators, about the potential for intensified politicization of the funding process. The concern arose from a view that inter-branch relations at the state level had been strained by court decisions unpopular with the legislative branch and a general perception that the judicial branch was unresponsive to more efficient and effective management of the courts.

Revision 7 proposed state funding for the state courts, court-appointed counsel, and ancillary costs for state attorneys' and public defenders' offices.<sup>142</sup> County Clerk activities associated with their clerk of court duties were to be completely fee funded, with no contribution from the state or the county for operational costs. Counties were to continue to be responsible for the costs of communication services, multi-agency integrated justice systems, and court facilities and security.

The proposal also provided that other costs, described as "local requirements," would remain county funded.<sup>143</sup> A Statement of Intent regarding the proposal written by two Constitutional Revision Commission members stated that:

"A local requirement exists where there are special circumstances in a given circuit or county . . . [supporting] implementation of specialized programs or the commitment of resources which would not generally be required in other circuits . . . . Examples may include, but are not limited to, specialized support personnel, staffing and resources for video arraignments, pretrial release programs or misdemeanor probation. . . . Further . . . any function or requirement of the state courts system which is mandated by general law of statewide application cannot be a local requirement. It is [also] the intent of the proposers that . . . reduced or inadequate allocations by the state for the state courts system . . . do not create local requirements."<sup>144</sup>

Thus, local government was to remain responsible for two categories of costs: 1) specific exceptions to the state's obligations listed in the amendment, and 2) costs that were deemed local requirements that the county chose to fund.

Revision 7 provided simply that the state should pay for certain justice-related costs. The description of costs used quite general terms and categories. It also did not dictate how, or from what revenue sources, the costs were to be funded. Beyond providing that the clerk of court function would be fee funded, the amendment was silent as to the specific revenue sources for the state or clerk of court funding, did not address

the distribution of existing revenue streams (including those collected through courts), and did not address whether court employees would be state or county employees. All of these issues would eventually be resolved as the implementation process proceeded.

## ***B. IMPLEMENTATION OF REVISION 7***

Revision 7 was adopted by the voters in the Fall of 1998. It contained a provision that full implementation was to occur on or before July 1, 2004. Phased implementation was contemplated by implementing legislation in 2000.<sup>145</sup> This proved difficult due to intervening events, political and economic, and the complexity involved in reaching consensus regarding implementation issues. Although the judiciary began planning for the transition immediately after passage, the Legislature did not become fully engaged until 2002 when it hired an independent consultant to conduct research and provide analytical support regarding the implementation of Revision 7.<sup>146</sup> The first major piece of implementing legislation was adopted in 2003,<sup>147</sup> followed by further legislation in 2004.<sup>148</sup>

### ***Determining Costs to be Funded by the State***

One of the threshold questions was what costs were to be paid by the state. There were three categories of costs to be shifted to state funding: 1) the trial courts, 2) the clerk of court, and 3) costs incurred by or on behalf of the prosecutors and defense counsel. The estimation of costs proceeded along separate paths because of the different entities responsible and the differences in revenue sources. The approaches used for each set of costs are discussed separately below.

#### ***Circuit and County Courts***

The intent of Revision 7 regarding trial courts was to provide state funding for those elements common to all courts and necessary to “ensure the rights of the people to have access to a functioning and efficient judicial system.”<sup>149</sup> The judiciary read this language very broadly and took the position that the goals of the Constitutional revision were to: “provide for a truly unified trial court system, equity in funding for essential trial court functions and services, a common revenue base and for state assumption of costs for essential services.”<sup>150</sup> In order to achieve these goals, the judicial branch conceived the implementation planning and analysis process as having to resolve the following three sets of issues:

**Organizational:** Agree on the essential trial court functions and services and how they are defined; and identify the respective roles and responsibilities of the trial courts, County Clerks, OSCA, counties, prosecutors, and defense counsel.

**Funding:** Determine both the aggregate trial court system funding needs, the allocations to individual trial courts, and historical trial court costs.

**Governance:** Establish budget planning, monitoring, and decision-making structures both to guide the transition to state funding and post-transition for the trial courts; clarify leadership of the trial courts and their relationship to the Supreme Court and OSCA in matters relating to trial court funding requests and allocations.

Initial efforts by the judiciary sought to define and resolve two key issues fundamental to the transition. These were: (1) what constitutes the “state courts system” now required by the Constitution to be funded by the state, and (2) how much funding would the state need to provide adequate and equal funding for these functions statewide. Several committees were formed within the judiciary, each addressing separate aspects of the key issues. It was significant that the judiciary engaged in the task of identifying the fundamental functions and activities constituting the courts, and did not leave it to the counties, the executive branch, or the Legislature to do so.

### ***Defining the Essential Elements***

The first question addressed was defining the basic functions and activities that constituted the state’s court system that were to be funded by the state. These came to be called the *essential elements* of the judiciary. In 2000, the existing Judicial Management Council’s Trial Court Performance and Accountability Committee (TCPAC) began developing a framework for the trial court’s missions and defining essential elements (early on referred to as “core functions”<sup>151</sup>) based on the Long-Range Strategic Plan for the Florida Judicial Branch issued in 1997.<sup>152</sup> Membership of the TCPAC consisted of Circuit Court and County Court judges, Circuit Court administrators, attorneys, County Clerks, a public defender, a prosecutor, and a public member, with representation of all sizes of trial courts from all parts of the state. Staff support was provided by OSCA. The principal approach taken by the committee for identifying essential elements was to identify the legal requirements for judicial processing of cases and for ensuring due process in all cases. The focus was “judge-centric” and assumed that the traditional adversarial process was the fundamental task of the court.

Scores of meetings were held to define the essential elements. There were several controversial aspects. There was a difference of opinion within the judiciary of the need for what became known as the “Court Administration” element. Both the Legislature and some judges needed to be convinced of the need for, and benefit from, court administration activities. Early meetings also revealed that some trial courts believed many of the programs provided by larger trial courts were “frills,” while the larger trial courts viewed these programs as essential to an effective and efficient administration of justice in their jurisdictions. The debate became framed in terms of what should be considered essential elements versus programs that “meet local requirements”, which were to be funded by the counties.<sup>153</sup> Court representatives were surprised at the degree to which they struggled in defining the essential elements over a two year period and reported that they were “put through painful exercises.”

The essential elements identified were those activities deemed reasonably necessary to effectuate the mission of the trial court in protecting rights and liberties, upholding and interpreting the law, and providing for the peaceful resolution of disputes.<sup>154</sup> By the 2003 legislative session, the judiciary had developed a consensus on the “essential elements” which the state would be obligated to fund under Revision 7. They included adjudication activities, functions directly associated with due process, and court administration, as follows:

**Judges and Judicial Assistants** – exercise the judicial powers of the state; required by Article V of the Florida constitution.

**Legal Support** – improve the efficiency of the judicial process by providing staff attorneys to judges in order to expedite cases.

**Masters and Hearing Officers** – support and supplement judicial efforts by performing functions that are ministerial, computational, or managerial in nature.

**Case Management** – conserve judicial time and facilitate quality, timely, and efficient case processing by performing intake, screening, evaluation, monitoring, tracking, coordinating, scheduling, and referral activities leading to the disposition of a case.

**Court Interpreting** – ensure due process and constitutional rights of access to courts and equal protection by eliminating communication barriers based on disability or limited ability to understand English.

**Court Reporting** – ensure due process by creating a verbatim record of words spoken in court, allowing for the preservation of those words and, when necessary, their timely and accurate transcription for appellate review.

**Court Appointed Expert Witnesses** – support adjudication and due process by providing independent expert opinions concerning scientific or technical matters in dispute, or the physical, psychological or mental condition of persons subject to the court in matters involving fundamental rights.

**Alternative Dispute Resolution/Mediation** – provide efficient and cost effective options to adversarial litigation. Mediation optimizes litigant participation in the resolution of disputes, resulting in more effective use of judicial resources.

**Court Administration** – allow judges to efficiently carry out their constitutional responsibilities to adjudicate disputes presented to them and their constitutional and statutory responsibilities for governance of the judicial branch by providing executive direction, judicial operations management and general administration support services.

These “essential elements” were incorporated into statute in the 2003 legislative session.<sup>155</sup>

It should be noted that the definition of state funded essential elements did not include all programs that had previously been state funded. Early statutory implementation language confirmed this distinction by providing that:

Although a program or function currently may be funded by the state or prescribed or established in general law, this does not designate the program or function as an essential element of the state courts system, state attorneys’ offices, public defenders’ offices, or the offices of the circuit and county court clerks.<sup>156</sup>

As a result, some previously state funded programs now fell into the category of “local requirements”, to be funded by the county at its discretion. Similarly, some previously county funded programs now became state funded. Examples of programs not included within the essential elements were services in therapeutic courts and litigant assistance programs (this is discussed more below under *Integrated Elements*). This “switching” of funding sources, some to the state and some back to the county, may not have been fully understood in discussions leading up to the passage of Revision 7, and hence was

reportedly a source of surprise and concern in some trial courts and counties as implementation progressed.

Having identified the essential elements, the next task was to examine the activities involved in the essential elements and identify performance standards and preferred business practices to determine the appropriate level of funding. In 2002, the TCPAC was merged with the Court Statistics and Workload Committee to become the Commission on Trial Court Performance and Accountability (CTCPA).<sup>157</sup> The membership consisted of eleven Circuit Court judges, one County Court judge, one District Court of Appeal judge, and two trial court administrators. Staff support was provided by OSCA. CTCPA's responsibilities included the development of a comprehensive performance measurement, improvement, and accountability system for the trial courts and making recommendations regarding trial court resources, activities, and services, including uniform data reporting procedures.

### ***Determining the Level of State Funding for Essential Elements***

The next step was to calculate the level of funding to be provided by the state. The essential elements defined by the TCPAC provided the organizing categories for assembling cost data and projecting funding needs. In early 1999, the Chief Justice appointed an Article V Steering Committee<sup>158</sup> with an initial task of determining actual trial court costs, as no reliable statewide data then existed. The cost inventory was completed in 2000, providing the first preliminary numbers for assessing the cost of implementing Revision 7.

In July 2000, the Supreme Court created the Trial Court Budget Commission (TCBC).<sup>159</sup> Its membership consisted of 14 trial court judges and 7 trial court administrators from all parts of the state and all sizes of courts appointed by the Chief Justice. The role of the TCBC was to oversee the preparation of the trial court component of the judicial branch's budget request to the state and make recommendations regarding budgeting and funding policies and procedures for trial court budgets.<sup>160</sup> To address its responsibilities, the TCBC created several subcommittees. One was the funding methodology subcommittee, which played a crucial role in operationalizing the essential element definitions and the cost-drivers for these elements.

### **The General Analytical Approach**

The TCBC set the following goals and objectives to guide its funding strategy and cost estimating efforts:<sup>161</sup>

#### **Goals:**

- define the resources needed for each of the essential elements,
- define an equitable funding level for all trial courts; and
- determine the presumptive need for total public funding.

#### **Objectives:**

Using the consensus definition of the essential elements:

- review the justifications for a state funding requirement for each element;



- identify the current level of the state, county, and grant funding for each element;
- identify the range of resources available in each trial court;
- compare the current resources to the level of support required to meet due process requirements or mandates of court rules and statute or, in the absence of these requirements, develop a norm for all trial courts;
- develop a formula based on existing resource levels, using available state data sources rather than collecting additional data;
- hold harmless, from a fiscal perspective, those trial courts whose resources were equal to the legal requirements or the norm;
- bring all other trial courts up to a minimum or average level of support; and
- address the “outliers,” and try to determine the reason for the greater level of resources.

The TCBC began by looking at trial courts as a whole, recognizing that this approach deemphasized the specifics and unique features of individual trial courts. There appears to have been a significant effort to preserve existing funding and staffing levels while simultaneously setting upper funding limits (for example, using staffing per case ratios) and reducing some of the variance across trial courts. The reduction in variance was to be accomplished initially by bringing staff and funding levels in the smaller trial courts up to a minimum threshold established for each of the essential elements. The formulas were generally based on filings. For some elements, such as Circuit Court administration and expert witnesses, the funding formulas took into account the size of the circuit, with categories for small, medium, large, and the Miami/Dade circuit.

For key activities, variances in practices from court to court were examined to determine how much of the variance was attributable to differences in the way resources were used across trial courts. For example, the tasks of case managers in one trial court might be vastly different from those in another. An understanding of these variances provided background for subsequent statewide determinations of essential element definitions and funding needs.

For some elements, such as court reporting, the amount requested was based solely on current practices because there was not enough time to sort out, nor sufficient data to explain, the large variance in practices and costs across the state. The TCBC planned to further evaluate best practices and cost containment strategies before submitting future budget requests.

For certain elements, such as expert witnesses and interpreters, the unpredictability of costs in smaller trial courts was addressed by pooling funds for these costs at the state level and allocating to courts as needed.

## Desired Outcomes

The TCBC, coordinating its effort with the CTCPA, adopted the approach that the funding of elements should be tied to performance standards. While performance standards did not exist for most essential elements and were still under development, linking funding and performance was an explicit recognition that this was critical to establishing judicial branch accountability regarding spending. For several categories of costs the TCBC did describe desired outcomes.<sup>162</sup> Among these were:

**Due Process Resources** (Court Interpreting, Court Reporting, and Expert Witnesses) – provide adequate resources for demonstrated due process needs.

**Case Processing Resources (Case Management and Mediation) and Adjudication Resources (Masters and Hearing Officers)** - ensure equity of resources across trial courts at a reasonable level to support the effective and efficient disposition of cases, recognizing adequate resources will diminish the need for additional judges.

**Governance Resources (Court Administration)** - accommodate necessary traditional administrative processes, including those previously performed by the counties, within an administrative framework that was centralized where necessary and efficient and decentralized to achieve local control and flexibility.

## Sources of Data

Formulas to estimate funding needs required quantitative data from the trial courts about their caseload/workload, and resource levels. OSCA provided staff support to TCBC committees in gathering and analyzing quantitative data. The collection and analysis of quantitative data to support funding level formulas reflected a desire for a higher level of objectivity regarding estimates of funding needs. When it came time to develop a detailed state funding request, this data formed the basis of the estimates.

Data about case filings and dispositions were routinely gathered and reported through the state's Summary Reporting System (SRS). This data had been used by the earlier expenditure study conducted on behalf of the Article V Funding Steering Committee.<sup>163</sup> Additional information was collected from trial court administrators about the assignment of personnel as part of the study completed by the Legislature's consultant.<sup>164</sup> Even though there had not been much previous effort to measure workload, resulting in significant problems in drawing meaningful comparisons across trial courts, a decision was made to use available data (despite concerns about its precision and comparability) rather than engage in extensive new data collection efforts. The data that was available did help to refine understandings and identify information gaps that needed to be filled.

This early commitment to collection and analysis of quantitative data by the TCBC appears to have established a rebuttable presumption as to the appropriate funding level. For example, the Legislature's consultant reportedly relied heavily on financial data already compiled by OSCA for the TCBC as part of its analysis. Later, OSCA also worked closely with legislative staff to supply further data and analysis when requested.

Increasingly sophisticated formulas were later developed by the judiciary in areas not addressed by standards in legislation or court rules in order to support funding requests and allocations. One example was in the provision of law clerks to the trial courts for which the judiciary had, after two years of unsuccessfully arguing for a ratio of law clerks to judges, turned to a standard based on the number of post-dispositional issues presented in each trial court.

After the initial formulas were developed, there was no formal plan to periodically examine essential element formulas. Instead, priorities for updates were developed each year. The priorities for performance standards and best practices for the second year of state trial court funding were in court reporting and mediation. OSCA evaluated how services were provided across the trial courts, calculated more accurately the number of proceedings in which these costs were incurred, and measured cost effectiveness of alternative models or approaches. The goal was to make recommendations about preferred options, but to leave some flexibility in the trial courts to choose the model that would work best in the local environment.

The lack of more detailed information about many aspects of the judiciary's operations and practices prompted the judiciary to request funding for a new data collection system to capture the needed information. The system, referred to as the Resource Management System, was intended to collect and allow analysis of information from trial courts to support the refinement of allocation formulas and measure efficiency and performance of state funded elements. Unfortunately, as discussed below, the judiciary was not successful in obtaining funding for the Resource Management System, forcing it to collect less data and to do so in a more ad hoc and 'as needed' basis regarding specific questions.

In its deliberations, the TCBC was also mindful of the state's fiscal limitations. This concern introduced an additional factor when considering element definitions and determining adequate essential element funding levels. It was difficult to determine the degree to which state fiscal constraints shaped TCBC decisions, but it was fairly clear that such constraints were a part of the deliberations, along with a desire that the judicial branch appear responsive to fiscal realities.

### ***Integrated Elements – Other Court Related Services and Programs***

The Legislature and local communities had historically supported numerous programs and activities beyond what fit within the definitions of essential elements. These activities were eventually identified by the TCBC as "integrated elements" and were defined as "trial court activities reasonably necessary to effectuate public policy or respond to legitimate public expectations." Examples of programs designated as integrated elements included child custody evaluation, guardians *ad litem*, child advocacy centers, supervised child visitation programs, adult guardianship monitoring, drug treatment/testing, and delinquency diversion. The TCBC noted that the integrated elements could be funded from state, local, or private sources.

One of the major concerns regarding integrated elements related to problem-solving or therapeutic court approaches. The Legislature reportedly distrusted the notion of "therapeutic" courts, perceiving them not to be a judicial function, and indicated that these programs would be considered local requirements, with the exception of treatment

based drug courts.<sup>165</sup> Responding to this concern, the judiciary separated out the case management tasks (considered an essential element) associated with therapeutic courts from the other activities (to be locally funded). Some counties continued to fund the non-case management activities of these programs.

That integrated elements and their associated activities were not designated as essential elements was not meant to convey that they were unimportant or did not result in socially valuable outcomes. The judiciary identified these programs as integrated elements because they provided significant benefits to litigants and should be continued with county funding.

### ***Operating Principles and Procedures***

In addition to identifying the essential elements and estimating their costs, the judiciary addressed the issue of accountability for the use of state funds. As judicial branch transition planning evolved during 2003 and 2004, a growing area of focus of the TCBC and OSCA was the development of operating principles, policies, and procedures to govern the transition to greater state funding. Some of those most directly impacting the trial courts included:<sup>166</sup>

- When developing organizational and funding models for functions and services, the following factors would guide decisions: uniformity, equity, flexibility, and accountability.
- Accountability based on “sound workload measures” and expectations for improved “effectiveness and efficiency.”
- An overall budget strategy was to be developed by the TCBC. Chief Judges of each Circuit could provide testimony to the TCBC during its deliberations, but the TCBC will make the final budget determinations.
- If individual trial courts or individual judges obtained state funding of a project or program outside the budget approved by the TCBC by directly applying to the legislature for funding, the trial court’s state budget allocation would be reduced dollar for dollar by the TCBC. This principle was established early on by TCBC.

An important aspect of the standards of accountability and efficiency was that funding in some trial courts, especially in due process elements, exceeded formula projections and may not have reflected efficient practices. The first year’s budget was intended to fund current levels of expenditures in these due process categories, with the understanding that greater efficiencies would be achieved later through identification and implementation of improved business practices.

### ***The First Year of State Funding***

Revision 7 provided that state funding was to be effective on July 1, 2004. During the preliminary state budget preparations for the FY 2004-2005, the judiciary was asked to provide a placeholder figure for total new trial court needs to be funded by the state. An initial figure of \$190 million above current state spending levels for the essential elements was derived during a four-day retreat of the TCBC’s funding

methodology subcommittee. Over the next year, the figure was reduced to \$171 million as closer scrutiny was given to what should be funded and at what level.

The TCBC built the FY 2004-05 Legislative Budget Request (LBR) around the essential elements for state funding. The request included the following:

- Estimate of total need based on the definition of each essential element;
- Additional funds for existing state funded positions to accommodate the fact that the legislature had traditionally under-funded the judiciary for non-salary expenses compared with the executive and legislative branches;
- Calculation of non-salary expense dollars on a “per position” basis using the current state formula; and
- Transfer of funding and positions from the state Family Courts Trust Fund, which was to sunset, to the state General Revenue fund.

The request did not include funds for any pay increases granted to court employees just before transition, funds to hold court employees harmless for fringe benefit losses resulting from the transition to state employment, or funds for individual court projects, especially if they could be considered “local requirements.”

Much of the analysis of what should be included in the formulas was necessarily a discovery and analysis of “what is” rather than detailed task analysis to assess the efficiency and effectiveness of existing staffing levels and practices across the trial courts to identify “what should be.” This was understandable given the complexity of court activities and the lack of detailed data required for a more thorough analysis.

As the count down progressed toward the July 1, 2004 transition date, the TCBC recognized that more judicial branch input and coordination was needed to refine funding requests, enhance their acceptability to the trial courts, and, ultimately, to present a united front when making recommendations to the other branches. Numerous joint meetings of governance and planning groups, the TCBC, its funding methodology subcommittee, the CTCPA, chief judges, and trial court administrators, were held to achieve consensus and support for the judiciary’s positions. In addition to improving the judicial branch budget submission, these meetings built consensus, provided for rumor control, and avoided end runs to the state legislature by individual trial courts.

All requests were presented to the Legislature as statewide totals for each essential element and not as totals for each individual trial court. The Legislature did not delve into details of each trial court’s budgets; it worked with the statewide totals for each element. The importance of the judicial branch’s strategy probably cannot be underestimated in keeping the Legislature focused on function instead of geography and constituency. Principal players, both legislative and judicial, were not aware of the likely allocations to individual trial courts. This may have also been the key to the judiciary’s success in avoiding individual trial courts making appeals directly to the Legislature to provide additional funding to their trial court.

Because of earlier agreements with the Legislature about the elements to be funded by the state, disputes were largely over the amount of funding for the first year of state funding. Under the pressure of having to complete the transition by July 1, 2004,

the Legislature largely accepted the concepts underlying the funding formulas developed by the TCBC. OSCA staff ascribed such ready acceptance to judicial branch responsiveness and openness in anticipating and supplying credible cost information when requested as part of the budget review process.

The judiciary received \$114 million of its \$171 million request for additional funding to implement Revision 7 beyond the amounts appropriated in the prior fiscal year for essential element costs by the counties. The additional amount funded all requested positions for court administration, court reporting, court interpreting, and case management and all but six requested master and hearing officer positions.

However, the judiciary did not receive funding for the following requested new positions or increased funding:

- 353 law clerks (the judiciary had requested 1 per judicial officer, compared with current ratio of 1 per 3 judicial officers).
- 30 positions and \$4.9 million for mediation, although the judiciary did receive more than prior spending at the county level.
- 17 positions and \$5.7 million for technology.
- \$1.5 million to develop a statewide data management system (referred to as the Resource Management System) to gather and analyze information from trial courts about expenses to support the refinement of allocation formulas and measure efficiency and performance of state funded elements.
- \$8.55 million of requested contingency funds. The Legislature did provide 50 FTE and \$3.4 million in contingency funds for the trial courts and \$1.6 million for OSCA to implement Revision 7. An understanding was also reached that the judiciary could return and request additional funds that would be paid from the state's existing working capital fund. However, this option was never pursued.

The request for non-salary operating expenses, based on the state's formula, was also not fully funded. Instead, the formula was recalculated to eliminate funding for trial court costs that were not the state's responsibility, in particular, facilities costs.

How trial courts responded to the fiscal impacts of the funding formulas varied. For some elements, some trial courts were able to reach the determined level of staffing by converting positions to state funding that were previously county funded. Other trial courts used new funding provided by the state to add positions to meet the minimum staffing thresholds. For still other elements, there were trial courts whose prior county funding was in excess of the state funding formula amounts. For positions in excess of the formula these trial courts either had to transfer these people to positions in other state funded elements, lay them off, or request county funding for the positions. Many courts reported anticipating the reductions and shifting staff before the transition took place. None reported seeking additional funding from counties for existing positions above the state formula for elements that were now state funded.

### *After the First Year*

Many of the judiciary's requests for trial court funding for the second fiscal year (FY 2005-06) repeated the themes of the first year. The primary requests on behalf of the trial courts in the second year were for funds for:

- The trial court salary shortfall associated with the judiciary's historical lower employee turnover rate, salary step increases granted in the year prior to transition, and lump sum payments for employees participating in the state's early retirement program;
- Additional law clerks;
- Implementing the Resource Management System;
- A system to allow judges and court staff to query state level criminal justice information systems;
- Mediation;
- 110 new judgeships; and
- Court reporting staffing and a non-recurring reporting technology requests.

The judiciary sought an additional \$59 million and 477 new positions for the trial courts, representing a 16% increase in dollars and a 14% increase in staffing.

The state legislature scaled this request back significantly, providing the trial courts with only \$6.5 million in new funds and 232 new staff positions, or 2% and 7% increases, respectively. The state also funded only one half of the requested judgeships. Some funding and positions were provided for court reporting, but no funds were provided for requested court reporting technology. No funding was provided for the requested mediation, law clerks, the Resource Management System, or to address the salary shortfall.

For the third fiscal year request (FY 2006-07), the judiciary created some new funding formulas to support some requests. In a few instances, trial courts that had not requested new resources were scheduled to receive them anyway based on the formulas, while other trial courts' requests were not brought forward because they exceeded what the formulas estimated to be needed.

The TCBC also considered specific requests from individual trial courts. Several requests from trial courts, and the TCBC's response to them, illustrate the statewide approach being pursued by the judiciary:

- Requests to fund Deputy Court Administrators in six trial courts and for lump sum salary adjustments for staff from four trial courts. These requests were deferred pending the judiciary's statewide classification and compensation study.
- Sixteen court administration positions requested by seven trial courts. Analysis indicated that using new formula ratios derived from adding these positions would lead to the addition of over 100 positions statewide and, in the case of technology user support positions, would result in the state funding a county obligation. The existing formula based on size of court was instead applied and no new positions were recommended for inclusion in the statewide budget request.

- A total of 45 positions for case processing and case management were requested. After applying the existing funding formula to the updated number of forecasted filings for 2006-07, the judiciary requested 11 positions, including positions for two trial courts that had not requested them. The TCBC recommended that OSCA study and further refine the formula as applied to certain divisions of the court to reflect statutory changes or other changes in accepted practices, such as implementation of a unified family court.

Other trial court funding requests representing branch-wide priorities were included in the third year request, as follows:

- Funding for the Resource Management System was again requested, but at a vastly reduced level (\$240,000 compared with the \$1.5 million requested in FY 2004-05);
- Funding for 41 new law clerks was requested based on likely increases in clerk workload represented by increases in prison admissions, county filings, and the prison population;
- Funding for the state courts' IT network expansion and other infrastructure technology needs; and
- 27 positions for the management of court appointed counsel using a formula of 1 FTE for small and medium circuits and 2 for each large circuit.

The results of this request were not known at the time this report was prepared.

In responding to the passage of Revision 7, the judiciary methodically worked through the major questions – what constituted the judiciary, how much does it cost, and what was needed to establish accountability. The judiciary engaged in these efforts on its own initiative and in a timely manner, without the instigation or intervention of the executive or legislative branches. The result was a set of definitions and formulas that were essentially adopted by the other branches as the basis for moving forward with the transition to greater state funding.

While the state judiciary did receive more funding for essential element activities than the counties had supplied in previous years, the judiciary did not receive all that it had requested. Since the requests were based on the judiciary's estimate of what was needed, an argument could be made that the appropriation did not meet what the judiciary had determined to be adequate funding. However, the judiciary expressed satisfaction with the results. There was no readily available information about how much less, or more, the trial courts received from counties for "local requirements" or integrated elements. Thus, it was not possible to definitively state whether the trial courts were better funded during the first few years of state funding, all programs and services considered, than they had been before the transition.



## *County Clerks*

Revision 7 impacted the source of funding, budget process, and accountability of County Clerks. The major issues addressed during the transition were: 1) what the clerk of court-related functions of the County Clerk were, 2) how much these functions cost, 3) the specific sources of revenue for clerk of court activities, 4) the budgeting process for County Clerks, and 5) how the performance of the clerks of court would be measured. The effort to address these issues was led by the County Clerks' association – the Florida Association of Court Clerks (FACC) – with oversight by the Legislature and Auditor General.

Clerk of court services for Florida's circuit and county courts were provided by elected County Clerks.<sup>167</sup> In the majority of counties, the County Clerk served not only as clerk of court but also as the auditor, custodian of all county funds, recorder, and the clerk of the Board of County Commissioners.<sup>168</sup> The County Clerks provided a wide array of services related to the courts. In addition to maintaining Circuit Court case files and handling court orders, County Clerks provided services in two other areas that were equally intertwined with the operations of the Circuit Court—the processing of jurors<sup>169</sup> (under the supervision of the Chief Judge of the Circuit) and providing “ministerial” assistance to pro se litigants.<sup>170</sup> The County Clerks were also responsible for fee and fine collections,<sup>171</sup> child support collection,<sup>172</sup> and the determination of indigency of criminal defendants.<sup>173</sup>

Legislation adopted in early 2000 implementing Revision 7 required that the County Clerks provide the following information to the Joint Legislative Committee on Article V and to the Article V Fiscal Accountability and Efficiency Workgroup by September 2000.<sup>174</sup>

- A detailed description of the services County Clerks provided to the state courts system, state attorneys' offices, and public defenders' offices;
- Detailed information on the cost of each of the services provided;
- Detailed information on the current source of funding for each service;
- A complete listing of all fees, costs, service charges, fines, forfeitures, or other court-related charges;
- The total amount collected by the County Clerk in each trial court for each fee, cost reimbursement, service charge, fine, forfeiture, or other charge for FY 1998-1999; and
- The distribution of each fee, cost reimbursement, service charge, fine, forfeiture, or other court-related charge collected by the County Clerks for FY 1998-1999.

Based on this analysis, the County Clerks were to recommend to the Legislature which services provided to trial court and county courts should be continued and the levels of fees and service charges that would need to be assessed to fully fund the proposed court-related functions.

### ***Identifying the Clerk of Court Functions of the County Clerk***

In order to estimate the revenues needed to fund clerk of court functions, it was first necessary to specify what the duties of the clerk of court were regarding the Circuit and County Courts. FACC and OSCA formed a joint workgroup to clarify “the roles, responsibilities and tasks of court administrators, Chief Judges and clerks as they relate to case management and court administration.”<sup>175</sup> As a result of the discussions, a distinction was drawn between ministerial functions to be performed by the clerk of court, referred to as *case maintenance* functions, and *case management* functions performed by the Circuit Court staff. Before the transition occurred significant effort was devoted by this workgroup to distinguishing case maintenance activities from case management activities to promote clarity in responsibilities and avoid overlap. Those court-related functions for which the clerks of court were responsible were subsequently enumerated in statute.<sup>176</sup>

### ***Cost of Clerk of Court Functions***

Having identified what the clerk of court functions were, County Clerks were next required to estimate the costs of these functions, separating expenses for clerk of court functions from those for other County Clerk functions. The Statement of Intent Regarding Article V was explicit regarding how the amount of County Clerk expenses was to be determined:

It is the intent of the proposers that . . . the determination by the legislature as to the appropriate level of [clerk of court] spending should not entail an acceptance of the current level of spending by the clerks’ offices . . . . Rather, it is the intent of this proposal that the clerks be held accountable and responsible to a cost standard which is independently established by the legislature.<sup>177</sup>

FACC approached this task by forming its own Article V Task Force, which conducted extensive surveys and analysis of clerk of court costs and revenues and issued a report in October 2000.<sup>178</sup> The analysis estimated that in FY 1998-99 the clerks spent \$305 million for required court-related programs and services in four mandated areas (civil, probate, criminal and traffic) and for the five statutorily required services (case processing, financial processing, information and reporting, jury and witness processing, and child support depository). FACC estimated that approximately 7,800 County Clerk employees were employed statewide providing these services.

Florida statutes authorized counties to establish various court-related educational programs, litigant assistance services, and mediation and diversion programs, including teen court, guardian ad litem, foster care review, family pro se, family mediation, victim witness, and child support enforcement in private cases. For purposes of the cost analysis, FACC considered these programs to be optional<sup>179</sup> and estimated that statewide, clerks spent approximately \$1.6 million to provide these services annually. The cost of these services was not included in the \$305 million estimate.

Questions about the data and methodology used in the report were raised by the Auditor General in the areas of calculating overhead costs, expenditure estimates, and the calculation of operational deficits.<sup>180</sup> In response, a follow-up report was prepared by FACC in 2002.<sup>181</sup> Estimates of total costs, court-related revenue collected, and the

operational deficit were larger in the second report, with court related expenditures estimated at \$354 million. The expenditure figure was higher, in part, because FACC now included an estimate of the costs of administrative services provided by the counties to the County Clerks for court-related services. Examples of these costs included risk management, legal services provided by the county attorney, information technology services, purchasing, and human resources. Some costs were excluded in the second report because the county remained obligated to provide the service. However, the second report included the cost of information technology support to the clerks from the counties, estimated at \$12 million. Because Article V stipulated that technology costs would continue to be provided by the counties, by including this figure the estimate overstated the clerk of court costs that needed to be covered by fees.

### *Sources of Revenue for Costs Associated with Clerks of Court Functions*

Before the funding transition in July, 2004, County Clerks were county funded for all of their operations. Fees, service charges, and court costs collected through the clerk of court were primarily county revenues. Funding from the counties for the County Clerks and the trial courts were provided substantially from the same county revenue sources. Revision 7 provided that clerk of court functions were now to be funded entirely from fees and service charges for clerk of court operations<sup>182</sup> with neither the county nor state obligated to provide additional funding to the Clerks, except for fees, service charges, or court costs waived for litigants.<sup>183</sup> The requirement to be fee-funded was reportedly sought by the FACC.<sup>184</sup>

The FACC analysis initially identified \$78 million in revenue from fees and service charges that was not already pledged by statute or other provision as revenue for non-court related services or programs. By offsetting \$78 million in identified court-related revenues against the \$305 million estimated cost for mandated clerk of court services, the first FACC report projected a statewide revenue gap for clerk of court functions of approximately \$227 million for FY 1998-1999. The analysis revealed that many court activities did not have an associated fee or service charge. Moreover, nearly two-thirds of the fees and service charges had not been updated since the early 1980s. In addition, FACC estimated fee waivers had been authorized in 17% of civil cases, which reduced the potential fee revenue. FACC then recommended increases in fees and service charges to make up this deficit and establish the County Clerks as fee funded as required by Revision 7. In the second report provided by FACC in 2002, revenues from existing fees and charges were estimated to be \$90 million. This resulted in an anticipated revenue gap of \$264 million. The second report then proposed amendments to the fee schedule proposed in the first report to account for the newly identified financial shortfall.

The result of this analysis was a substantial increase in the number and amount of filing fees, service charges, and court costs in order to provide additional revenue to fund the clerk of court expenses. A more detailed discussion of which fees, etc., were raised or added is provided in the section entitled **Court-Related Revenues** below.

### ***Clerk of Court Accounting and Budget Processes***

The implementation of Revision 7 included a number of accounting requirements for the County Clerks related to clerk of court activities. The Clerks were to establish and maintain a system of accounts receivable for clerk of court fees, charges, and costs.<sup>185</sup> The clerks were also required to report the amount of court of court fees, service charges, and costs collected, and their distribution, to the Legislature<sup>186</sup> and the Florida Clerks of Court Operations Corporation (FCCOC), an entity established by legislation to monitor clerk of court funding and expenditures.<sup>187</sup>

The budget preparation and submission process was also revised to reflect the fee based nature of the funding. County Clerks now submitted their budget requests to the FCCOC, not to the county or state.<sup>188</sup> The FCCOC reviewed the portion of County Clerk budgets paid by fees and any fee surpluses were to be redistributed through FCCOC to another County Clerk with a shortfall. The FCCOC was required to attest to the State Department of Revenue that the shortfall resulted from inadequate revenues to cover the cost of legitimate clerk of court functions and not because a County Clerk was performing duties outside of the standard list of court-related functions prescribed in statute.<sup>189</sup>

Legislation adopted in 2003<sup>190</sup> set a cap on growth on County Clerk budgets for FY 2004-05 of between 3% and 5%<sup>191</sup> from FY 2003-04 estimated expenditures. The cap applied regardless of the amount of revenue collected or any increase in workload. Thus, in the first year, clerks would be fee-funded for their clerk of court functions, but individual clerks would not be permitted to use increases in revenues to increase their operations. Clerk of Court budgets in subsequent years were to be adjusted based on prior year revenue collections.

To manage potential deficits experienced by individual County Clerks, FACC also recommended that the Legislature consider either establishing a trust fund from which clerks with shortfalls could draw or permit local reserve funds to be established, analogous to that permitted for Boards of County Commissioners (BOCC). This latter suggestion was considered particularly helpful in dealing with cash flow issues, previously managed by advances to the clerks from their local BOCC. However, neither of these proposals was adopted by the Legislature.

### ***Clerk of Court Performance Evaluation***

The question of whether clerks effectively performed their duties was also to be addressed pursuant to Revision 7. The Statement of Intent<sup>192</sup> stated an expectation that FACC would develop workload standards and performance measures. In their initial 2000 report, FACC committed to incorporating performance measures and workload standards in the determination of costs and preparation of clerk of court budget requests. Subsequent legislation required the FCCOC to develop and certify a uniform system of performance measures for clerk of court functions.<sup>193</sup> The FCCOC adopted performance measures in 2004 that were focused on fiscal management, collections, and filing of required reports. In an audit of the FCCOC, the state's Auditor General found that "these measures did not provide a basis for the assessment of performance accountability on the part of the clerks . . ." <sup>194</sup> Consequently, the determination by FCCOC as to whether the clerks who reported deficits to FCCOC were meeting their performance standards was

not done.<sup>195</sup> However, by April 2005 FACC had created more discrete performance measures<sup>196</sup> that included:

- Projected number of defendants for each criminal court division;
- Projected number of cases filed for each civil court division;
- Percentage of new cases opened within a specified number of business days after receipt of initial documents;
- Percentage of docket entries made within a specified number of business days; and
- Collection rate percentage.

### ***Summary***

In responding to the passage of Revision 7, the County Clerks did work through the key implementation questions. However, in contrast to the judiciary, there was no explicit effort to equalize expenditures across counties. The County Clerks' focus during transition was determining prior costs and revenues and matching future fee revenues to projected costs. Unlike the judiciary, prosecutors, and defense counsel, the County Clerk budgets were not subject to legislative review and there were no position controls. However, there were growth limits, requirements regarding expenditure shortfalls and revenues surpluses, and fiscal reporting requirements. While the judiciary did receive more state funding for the essential elements than the counties had supplied in previous years, it does not appear the County Clerks received any increased funding for clerk of court activities.

### ***State Attorneys, Public Defenders, and Court Appointed Attorneys***

The impact of Revision 7 on state attorneys and public defenders was substantially less than the impact on the trial courts or the County Clerks. All salaries and direct staff support costs for these entities were state funded prior to the passage of Revision 7. Funding for technology support to the offices came partially from the state and partially from counties. The cost of certain services used by State Attorneys and Public Defenders relating to a defendant's due process rights (court reporting, interpreting services, expert witnesses, and mental health evaluations) were county funded. In addition, counties funded the cost of attorneys appointed by the court when the Public Defender's office could not represent a client due to a conflict. Prior to Revision 7 funds for the costs of these services were generally appropriated in the court's budget in each county in a Circuit.

Revision 7 called for all of these expenses to be state funded.<sup>197</sup> The Legislature accordingly amended state statutes to specify the costs to be paid by the state.<sup>198</sup> Three non-court entities, the State Attorneys, Public Defender, and, on behalf of court appointed counsel, the Justice Administrative Commission (JAC), became responsible for budgeting for what became known as "due process costs." Due process services that continued to be provided by Circuit Court staff after the transition, for example, interpreters or court reporters, were to be paid for by a transfer of funds from the Public Defender, State Attorney, or JAC budgets to the Circuit Court's budget to cover the costs.

Identifying the discrete amounts for due process costs spent by each entity in each circuit required a significant effort during the transition phase. State Attorneys reported that extensive data collection and analysis of State Attorneys due process costs was conducted by their state association.

There were disputes about whether the due process costs were to be paid by the court, if ordered by the court, even if the services directly benefited only the requesting entity. Eventually a court case held that the existence of a court order was not dispositive; rather, the cost was to be paid by the entity requesting and using the service. This interpretation was incorporated in the applicable statutes.<sup>199</sup>

In planning for the transition, the State Attorneys and Public Defenders (unlike the judiciary), did not seek to establish equity across circuits in their funding requests, nor did they submit an integrated budget. State Attorneys reported that they did not believe that equity was a goal of state funding. Instead, these entities merely identified the actual county expenses incurred in each circuit in the prior year and requested funding on a circuit-by-circuit basis based on these expenditures. State funding for the State Attorneys and Public Defenders due process costs were also appropriated by circuit, not as one statewide amount.

At the time of transition the Justice Administrative Commission, a state entity already charged with paying the bills for State Attorneys and Public Defenders, was assigned the additional responsibility to pay for the due process costs previously paid by the counties and to pay for all court appointed counsel fees and costs.<sup>200</sup> New legislation set the maximum compensation for court appointed attorneys but allowed for local variation up to the statutory amounts.<sup>201</sup> The legislation further established an Indigent Services Committee in each Circuit,<sup>202</sup> chaired by the Chief Judge or his or her designee, to: a) establish operational procedures, b) manage the court appointed counsel registry of available attorneys, c) manage due process services, d) manage the appointment of court appointed counsel in individual cases, e) establish levels of compensation, f) create contracts, and g) manage the court appointed counsel budget. No explicit effort was made during the transition process to establish equity across counties for these expenses. In 2007, legislation shifted the management of appointed counsel to regional offices supported by the JAC, but whose managers were appointed by the Governor.<sup>203</sup>

### ***Summary***

Changes in budgeting and funding practices of the prosecution and defense programs were much less dramatic. The major task was estimating the amount to be funded by the state. There was no effort to establish greater equity, or to re-examine what constituted an adequate level of funding; historical levels of funding were assumed to be the appropriate amount. There were more significant changes in the conflict counsel budgeting and payment systems, although, again, no effort was devoted to adequacy or equity.

## ***Court-Related Revenues***

Revision 7 explicitly stated that funding of the state courts was to come from state revenues.<sup>204</sup> It also provided that revenue to pay the costs could come from filing fees, service charges, or cost reimbursement for court related functions.<sup>205</sup> As discussed, Revision 7 required that revenue to fund the County Clerk activities related to courts was to come solely from filing fees and charges.<sup>206</sup> Nothing in the amendment required or prevented filing fees, service charges, and court costs from being increased or new ones added. The amendment also did not prevent the Legislature from shifting the distribution of revenues collected through the courts from counties and municipalities to the state.

In implementing Revision 7, the Legislature took advantage of all of these options. A significant number of new fees was added and a significant number of existing fees was increased. A few fees and charges were reduced or eliminated. The net result was that the increased revenue from new and transferred fees more than covered the costs transferred to the state and additional money provided by the state in implementing Revision 7.

### ***Increased Filing Fees, Service Charges, and Court Costs***

There were significant increases in filing fees, not just for the Circuit Courts whose funding was being transferred to the state, but for county and appellate courts as well. The basic filing fee for civil cases filed in Circuit Court was increased from \$40 to \$254,<sup>207</sup> more than a five-fold increase. The filing fee for an appeal, either to or from the Circuit Court, was increased from \$75 to \$300<sup>208</sup> and the filing fee for District Court of Appeal was increased from \$250 to \$300.<sup>209</sup> The fee for filing a case in the Supreme Court was increased from \$250 to \$300, with the added \$50 to be deposited into the state court's Grants and Donations Trust Fund to fund court improvement projects.<sup>210</sup> Finally, the filing fee for civil cases filed in county courts was increased by \$40 to \$210, depending on the case type, with portions remitted to the state General Revenue Fund and Clerks of the Court Trust Fund.<sup>211</sup>

In addition to increases in the basic filing fees, there were increases in a number of other fees and charges paid by litigants. Miscellaneous fees that were increased included the filing fee for a party seeking a severance in Circuit Court (from \$10 to \$15),<sup>212</sup> the filing fee for garnishment, attachment, replevin or distress in Circuit Court (from \$35 to \$75),<sup>213</sup> the surcharge for filing a dissolution case (from \$18 to \$55),<sup>214</sup> the fee to obtain an extension to file a medical negligence case (from \$25 to \$37.50),<sup>215</sup> two fees related to making and serving certificates related to liens,<sup>216</sup> and fees related to cases involving guardians.<sup>217</sup> Surcharges were increased in probate cases for opening a case<sup>218</sup> and for filing petitions.<sup>219</sup>

Charges assessed by the clerks for "services rendered by the office in recording documents" were also increased.<sup>220</sup> These charges were retained by the County Clerk exclusively for equipment purchases and maintenance, personnel training, and technical assistance in modernizing the public records system.<sup>221</sup> There were also increases for the charge to record a foreign judgment for enforcement (from \$25 to \$37.50),<sup>222</sup> the charge to record final judgment of dissolution of marriage to the state Department of Health

(from \$7 to \$10.50),<sup>223</sup> and charges related to motions regarding enforcement and modification of support (from \$5 to \$7.50).<sup>224</sup>

Finally, fees charged and reimbursement of court costs in non-criminal traffic and infraction matters were also increased. The “court costs” for non-moving traffic infractions were increased from \$6 to \$16 and for moving traffic infractions from \$10 to \$30.<sup>225</sup> The delinquency fee in driver’s license suspension cases was increased from \$10 to \$15.<sup>226</sup> Other court costs or fees associated with particular types of infractions were also increased.<sup>227</sup>

### ***New Filing Fees, Service Charges and Court Costs Added***

New fees and charges were added in civil, criminal, and traffic cases in all courts, not just Circuit Court. Moreover, new fees and charges were added for activities that were peripheral or unrelated to court activities. Generally, these can be explained by the shift to fee-based funding for the clerk of court (who serves as clerk of court in the county courts as well as Circuit Court).

There was a new \$50 filing fee for re-opening (for post-judgment activities) a civil case, including dissolution cases, in both Circuit Court<sup>228</sup> and county court.<sup>229</sup> A filing fee of \$10 was added for a county or municipality filing a code violation case in Circuit Court<sup>230</sup> or county court.<sup>231</sup> Further, if the code violation case was contested, a \$40 fee was assessed against the non-prevailing party.<sup>232</sup> There was also a \$1 fee added for paying the cost of publication of new filings,<sup>233</sup> and a fee of \$40 or \$80 per session added for mediation in family law cases in Circuit Court and \$40 per session in County Court.<sup>234</sup>

A filing fee surcharge of \$1 was added on all proceedings in all Circuit and County courts to fund mediation and arbitration services.<sup>235</sup> The surcharge was deposited in the state Mediation and Arbitration Trust Fund. Previously, counties were authorized to impose a surcharge for such programs, but this authority was eliminated in favor of the statewide surcharge.

There were several new charges or fees in criminal and traffic cases, with most dedicated to a specific purpose. Court costs of \$101 were added upon conviction of certain offenses against minors to fund children’s advocacy centers.<sup>236</sup> A charge of \$5 was added for collecting partial payments<sup>237</sup> and a charge of \$25 for setting up a payment plan.<sup>238</sup> Authority for a \$65 dollar fine was added for conviction of a criminal or traffic offense that can be ordered by the judge and reserved for the counties to fund legal aid as well as court innovation.<sup>239</sup> Counties were obligated to maintain legal aid services at the level of funding provided on December 1, 2003 and retain 25% of this revenue source to meet their legal aid obligations. For their part, County Clerks argued that they should be allowed to use part of the 25% share for court innovation to meet other mandatory court costs. Whether these funds were spent for clerk of court operations differed in each county. The remaining proportions were to fund teen courts (25%) and law libraries (25%).



A number of fees were added that were only peripherally related to court actions. A charge was added for court reporters for their certification.<sup>240</sup> A \$100 fee was added for an attorney appearing *pro hac vice* in Circuit Court,<sup>241</sup> in County Court,<sup>242</sup> or in the District Court of Appeal.<sup>243</sup>

Finally, some fees were added that were unrelated to court activities, but were within the scope of work of the County Clerk. A recording fee of \$4 per page was added, which the county was to use for clerk of court, court, state attorney, and public defender technology costs. Two dollars of the amount was provided for clerk of court technology costs, with the remaining \$2 to be shared between the courts, state attorneys, and public defenders.<sup>244</sup> During the first year, another \$4 per page charge for certain instruments recorded with the County Clerk was added, effective for one month, to address County Clerk cash-flow problems.<sup>245</sup>

As counties remained responsible for court facilities, a new surcharge of \$15 was authorized that a county can add to any non-criminal traffic infraction or violation to fund facilities for state courts.<sup>246</sup>

### ***Shifts of Revenue to the County Clerk or the State***

Since the costs of operating the courts, prosecutors, and indigent defense were shifted from the counties to the state, many of the revenues derived from cases and collected through the trial courts were shifted from the counties to the state. Fines, forfeitures and assessments in criminal and traffic cases were shifted from the county to the County Clerk or state, as follows:

- All fines and forfeitures for violations of misdemeanors or county ordinances tried in county courts.<sup>247</sup> One third of all fines, fees, service charges, and costs collected by the clerks of the court in Circuit Court was now to be remitted to the state;<sup>248</sup>
- Fines and forfeitures collected in criminal cases formerly used by the county to pay for expenses for criminal prosecutions;<sup>249</sup>
- Court costs assessed on convictions;<sup>250</sup>
- A portion of civil penalties received by county courts for traffic violations occurring in unincorporated areas of a county;<sup>251</sup>
- A portion of certain civil penalties received by county courts for other traffic violations;<sup>252</sup>
- Monies received from defendants who received the assistance of the public defender or appointed counsel;<sup>253</sup>
- 10% of fines paid to a municipality for special law or ordinance violations were retained by County Clerks for performance of court-related functions related to these cases;<sup>254</sup>
- A portion of court costs in non-criminal traffic infractions involving proof of compliance previously retained by the county;<sup>255</sup>
- Fines for parking infraction in unincorporated parts of counties;<sup>256</sup> and
- Court costs assessed in county courts.<sup>257</sup>

In addition, penalties and court costs in traffic infraction cases could no longer be used by the counties to fund local criminal justice access and assessment centers.<sup>258</sup>

### ***Fees, Services Charges or Costs Eliminated***

Several charges previously collected by the clerk of the circuit court were eliminated, including those related to the clerk attending court (was \$75 per day);<sup>259</sup> producing clerk's minutes (was \$5 per page);<sup>260</sup> and making and reporting juror payrolls to the state (was \$5 per page per copy).<sup>261</sup> Other charges eliminated included service charges set by the county to provide and maintain facilities, including law libraries,<sup>262</sup> court costs assessed by a county to fund a teen court,<sup>263</sup> and service charges and fees imposed by counties pursuant to state statute.<sup>264</sup>

### ***Summary***

The fees and costs increased, added, or shifted during the implementation of Revision 7 were quite substantial, both in terms of number and amount. The amount of additional funding generated from these fee and cost changes (approximately \$264 million in the first year) far exceeded the new money added to state funding from other general fund sources (approximately \$114 million in the first year). In many respects, the shift in Florida was from county funding to greater user funding, not greater state funding.

## ***C. ADEQUACY, EQUITY, STABILITY, AND ACCOUNTABILITY OF TRIAL COURT FUNDING***

The experiences of Florida provide several lessons regarding the issues of adequacy, equity, stability, and accountability of trial court funding. Most of these issues were specifically addressed by the judiciary during the implementation of Revision 7. The four principles adopted by the judiciary to guide the development of financial policies and appropriate funding levels were: uniformity, equity, accountability, and flexibility. Implicit in the work of the judiciary was a fifth goal of adequate funding for the trial courts. A secondary outcome was the creation of a new governance structure for the judiciary, which, among other benefits, established greater accountability.

### ***Adequacy of Funding***

Overall, circuits reported that state and county funding after implementation of Revision 7 was generally adequate to provide needed services during the first two years after transition. The bases for this conclusion were: 1) about half of the circuits received slightly more for the essential elements than they had under county funding, and 2) the judicial branch request was not reduced as much as the judiciary had thought it would be. While there were several indications of more funding after Revision 7, there were also indications of funding losses experienced by the trial courts in other ways. Therefore, it was difficult to determine what the actual overall net impact on adequacy of funding was statewide.

As noted above, the trial courts did receive approximately \$114 million more for essential elements in the first year than they had received in the prior year. In the view of many in the judiciary, they received more than they could have reasonably expected

based on predictions only months earlier. TCBC members reiterated that the situation evolved from one in which the judiciary thought it would experience major reductions under state funding to one of greater funding. This perception existed notwithstanding the fact that the Legislature did not grant all of the judiciary's requests, which the judiciary felt represented "minimal" funding levels. Additional essential elements funding was also received in the second year, although again, less than was requested.

Many factors likely contributed to the judiciary initially receiving additional funding for essential elements: (1) a state legislature facing an impending deadline to implement the constitutional amendment; (2) the judiciary's thorough work in defining the core judicial functions that constituted the essential elements; 3) proactive data collection and analysis by the judicial branch; and (4) a united judicial front when presenting budget requests and negotiating with the Legislature.

The impact of the funding shift varied across circuits, but was generally favorable. An informal survey of circuit court executives found that about half of the circuits received increased funding at the beginning of state trial court funding, about one-quarter received an equivalent amount of funding, and one-quarter received less total funding than in prior years. The first year budget did allow some circuits to add staff and services on July 1, 2004. Representatives from small circuits agreed that funding was more than adequate for most essential functions. Because of the suddenness and unexpected nature of the additions one small circuit executive commented that "the county doesn't have a place to put all of the extra resources."

Circuits of all sizes reported that they had existing positions or programs that were not funded by the state. The positions that were not funded either did not fall within the essential element definitions, involved a personnel classification that was not supported under state funding, or exceeded staffing levels from funding formulas. Examples of positions not included in the essential functions were information technology specialists, mental health review coordinators, and staff psychologists/psychiatrists. Programs not funded included truancy intervention projects and self help coordination. Losses of positions were most evident in the court administration, case management, expert witness, and mediation elements, as demonstrated in the following table summarizing the results of a phone survey of circuits.

**Table 3**

**POSITIONS LOST AS A RESULT OF TRANSITION**

<b>Element</b>	<b>Number of Positions Not w/in Essential Element Definition</b>	<b>Number of Circuits Affected</b>	<b>Number of Positions Beyond Formula Total</b>	<b>Number of Circuits Affected</b>
Court Administration	85	4	34	7
Case Management	70	9	30	9
Expert Witnesses	59	4	3	3
Mediation	Not Available	Not Available	20	2

These results may underestimate positions lost. Some circuits, in particular large circuits, reported that they had pared down their operations and staffing over the two to three years preceding state funding by transferring programs and staff to county agencies and retaining vacancies in anticipation of reduction of state funding in some elements. For example, one circuit did not ask the county to fill anticipated service level shortfalls, but did ask counties to fill local requirements. The circuit reported losing 20 positions, of which 8 represented layoffs. Another circuit lost positions but avoided layoffs by careful management of vacancies and transfers. In general, it appeared that after the first year many circuits were brought up to a higher level of funding, at least for essential elements, but a few circuits experienced reduced funding overall.

Another indicator suggesting funding may not have been adequate was the budget appropriation for judiciary employee salaries. The budget adopted by the Legislature provided the judiciary with a total lump sum amount of salary funding and a total number of positions. However, the amount appropriated was insufficient to cover all expected salary needs for the approved number of positions, creating a statewide judiciary salary shortfall. The shortfall was attributed to several factors:

- Mandated salary savings were increased to 2%, which was not reflective of the very low staff turnover experience of the judiciary. The low turnover rate made it difficult for the judiciary to meet the expected salary savings amount solely from vacancies;
- Funding to pay for salary step increases granted in the year prior to transition was not provided; and
- Funding for lump sum payments to employees who participated in the state's early retirement program was not provided.

This salary shortfall was addressed by holding positions vacant for a longer time and limiting starting salaries for new employees. The net effect was that trial courts were required to operate without the approved number of staff. While the same salary underfunding could, and did, occur at the county level, a shift to greater state funding did not avoid this type of shortfall.

Another indicator regarding adequacy was the judiciary's choice during the first year to prioritize staffing needs over new judgeship. This choice was made based on the assessment that if the judicial branch did not receive adequate staffing in the first budget after the shift, they would be unlikely to "catch up" in the future. At the same time, forgoing new judgeships meant that at some point, there would not be enough judges to hear all of the cases in a just and timely manner.

The question of adequacy was as relevant to "local requirements" funded by counties as to the funding of essential elements by the state. No funding formulas or service level standards had been developed for these costs during the transition process. Absent such standards, it was unclear what expectations and support there was for 'adequate' county funding levels. Moreover, at the time of passage of the first state funding budget, trial courts were unsure about whether county funding for local requirements would be adequate, since the county fiscal year did not begin until October, three months after the start of the state's fiscal year. A strategy emerged to not define local requirements too specifically so as to avoid the definitions becoming the ceiling for county funding. Nonetheless, some trial courts questioned how they could rely on the "reasonable, necessary" language of the Constitution<sup>265</sup> to enforce local funding requirements without explicit standards. This was particularly a concern regarding facilities, security, and technology. The Chief Justice provided trial courts with materials for use during negotiations with the counties that delineated the intent behind Revision 7 that counties would continue to have substantial responsibility for funding some court functions.<sup>266</sup> There was no centrally available data about how successful trial courts were in obtaining county funding for "local requirements" costs from which adequacy of funding could be assessed.

The transition to primarily state funding significantly changed the county funding dynamic. Counties, having proposed Revision 7, were no longer required to fund court operations beyond those categories enumerated in the Constitution as county obligations. One circuit executive noted, "Having the county step up to the plate was a struggle because it thought it was finished with having to fund the courts." As one small court representative put it, "the transition is only half complete; lobbying to ensure county budgets must continue." A large Circuit Court administrator commented that counties began asking for much more justification of funding requests. While expecting justification of funding requests was certainly appropriate, the increased scrutiny may result in lower levels of funding than might have been approved by counties in the past.

TCBC members and OSCA staff believe that the timely preparedness of the judicial branch contributed to the increased funding received for essential elements. "We could have taken the position that we didn't have to respond but instead we engaged the system." The lesson was reiterated by comments from large Circuit Courts: "do not wait for the Legislature to define court operations." In contrast, given the absence of a comparably reliable analysis from the Public Defenders, the Legislature relied on figures from the State Chief Financial Officer for those entities. The Public Defenders received only about 50% of the amounts they requested.

In addition to being prepared with definitions of what the court did and data on costs, the judiciary noted that support from the public and the business community was important to their success. The judiciary had requested that third parties fund an analysis

by TaxWatch<sup>267</sup> and worked hard on public opinion through frequent editorials, public information videos and other means. The catch phrase became “good courts are good for business”.

Educating the Legislature was also key. Members of the TCBC emphasized that it was critical that an “A-Team” of people with expertise in the political process and well-versed in both policy and operational issues was identified to participate in the legislative process. An example relates to the issue of masters, which the Legislature did not initially support because it believed disputes should be heard by a judge not by a subordinate judicial officer. Succeeding on this issue required that the Legislature be educated about the function of masters and how they freed judges to hear matters only judges could hear. As a result of the effort to educate the legislature, the judiciary received 190 of the 196 requested master positions.

Strong and stable leadership of the TCBC appears to have also been a critical factor in obtaining additional funding. The approach of the TCBC created a consensus within the branch and lessened the impact of potential dissenters. There were comments that the group dynamic and strongly focused leadership led some circuits to believe they had been pressured into going along even if they felt the result was not as beneficial to their circuit. Nonetheless, even with the budget reductions they experienced, the TCBC representatives from the largest circuit indicated that they did not feel compelled to go to the Legislature because the reductions did not cut into the core of their operations and they supported the minimum levels achieved for suburban and rural courts.

### ***Equity of Funding***

Revision 7 required that the state pay for a court system guaranteeing access to justice and due process to all citizens in the state regardless of where they lived.<sup>268</sup> Through the efforts of the judiciary, in collaboration with the legislative and executive branches, funding equity was achieved for the essential elements. The equity was achieved across circuits, across counties within circuits, and for certain business practices.

The formulas and underlying methodologies developed by the judiciary sought to establish equal funding for all essential elements across all trial courts. The funding formulas developed for many of the elements were quite straight forward, relying on averages or median amounts across trial courts. The result was a guarantee of a minimum standard of funding; a result that commonly came to be described as ‘everyone gets a Ford, not a Lincoln.’ The trial courts did report an equalization of funding for essential elements at the minimal level. According to the Chair of the TCBC, “A basic court system statewide under one system of justice had been established. We no longer have any ‘have nots’.”

At the trial court level, equity was defined as equal funding and staffing levels. The outputs from the formulas developed were staffing levels and dollar amounts for each essential element on a statewide basis. When these formulas were applied to allocate the total funds appropriated to individual trial courts, the result was staffing levels and dollar amounts for each trial court. Whether these produced “real” equity, as opposed to formula equity, depended on how sensitive the formulas were to relevant

differences across trial courts. If the data used as ‘inputs’ to the formulas did not adequately account for differences across trial courts that would affect need, funding or staffing, the equality of allocations would not produce equality of outcome. For example, if one trial court had more civil cases that involved long trials (such as construction defect cases) than another trial court, yet each had the same number of civil filings, a formula based on filings would not produce equity. While none of the circuits reported any problems caused by this method of allocating funds across circuits, this type of problem might not yet have been immediately apparent. Further analysis was needed to determine if there was only partial equity, or whether adjustments to the formulas might be appropriate to reduce inequities of outcomes.

Equity of funding was also achieved within multi-county circuits. These circuits could now use state-funded circuit staff in any county in the circuit, thus providing the same services, and level of services at each court location. One multi-county circuit reported that of its six counties, two were experiencing significant population and revenue growth while four were facing funding restrictions. In the past, the service levels varied with the level of county funding within the circuit. With state funding the court was now able to spread state funded resources out more evenly across the circuit.

In other areas, neither the judiciary nor the Legislature dictated a particular service delivery model and practices initially remained different across circuits. An example was in the court reporting element, where estimated costs ranged from \$4 per eligible case to \$40. Comparing practices and costs across circuits had resulted in changes in practices to reduce costs. An increasing number of circuits moved to digital recording in lieu of court reporters and OSCA developed approaches for remote management of digital recording in small circuits. In FY 2005-06, the budget request was based on an average cost per case of \$17, and an additional request for \$2 million in recurring expenditures was included, which was provided. A \$4 million request for one-time costs of digital recording equipment was not provided. This was one example of an activity where the shift to greater state funding resulted in wide spread adoption of the same, and a less expensive, business practice.

During the transition planning it became clear that additional funds were needed to achieve equity for the essential elements. Either additional funds would have to be provided by the state or there would have to be a reallocation of existing trial court funding between courts to raise all courts to at least a minimal (adequate) funding level. Additional funding was obtained for many elements, and the TCBC reported that it “did not rob big circuits for small circuits.” But where trial courts previously had more resources than the formulas provided for essential elements, the judiciary did not ask the Legislature for additional funds for the resource levels above the formula amounts. These trial courts either had to cut back, or seek “local requirement” funding from the counties.

Although the funding provided by the state was equalized as to essential elements, there were still inequities in funding for other functions and activities across trial courts. There were two potential sources of inequity. The first was with those costs that remained county obligations. This included very significant items, for example, facilities, court security, and information technology, which would undoubtedly result in variances, sometimes substantial, in the overall funding and resources available to trial court across circuits.

Secondly, the TCBC expressed the view that “local requirements” were not the state judiciary’s concern. The TCBC was committed to allocating state dollars without regard to what additional funds individual courts obtained from counties. “The State’s obligation is to pay for a Ford in each circuit. If the county wants to buy you a Lincoln, then fine.” The floor had been raised, but neither the Revision 7 nor its implementation set a ceiling. However, while the funding structure appeared to allow individual courts to obtain additional funding for court operations based on “local requirements,” it was not clear to what extent this had happened. There was also no guarantee that prior funding levels of local requirements would be sustained, in particular for costs in the state-funded essential elements. While large circuits expected not to be significantly better off under state funding, they did not originally understand that they might suffer actual losses from existing funding levels. The largest circuit reported that a total of \$4.5 million funding was not brought over to the state because it involved local requirements. As a result 35 staff were laid off and 65 staff transferred, along with their duties, to other entities. Unequal funding for local requirements continued to exist, as it did before Revision 7.

Revision 7 did not explicitly lead to equity across counties regarding clerk of court services provided by the County Clerks. The statutory requirement that the first year’s funding available to County Clerks not exceed 105% of the funds expended in FY 2003-04, regardless of the level of revenues collected or any change in workload,<sup>269</sup> effectively precluded County Clerks from equalizing funds across counties. There was also no reported effort on the part of the County Clerks to equalize funding across counties in the manner in which the judiciary sought to equalize funding for the essential elements.

### ***Stability of Funding***

Although there was no historical data from which to determine how stable the levels of funding of the trial courts had been, the initial years of state funding were promising. As noted, the judiciary did receive additional funds for essential elements during the first two fiscal years after the transition. While the judiciary received less than requested in both years, they did receive additional funds. Although there were additional funds provided, full funding for projected salary needs was not provided. Salary shortfalls were not uncommon, at the county or state level. The test of stability will occur when Florida experiences a recession that reduces total state funding, and the Legislature needs to decide whether and how much to reduce judicial appropriations relative to reductions for the other branches of government.

Another significant aspect of stability relates to funding of “unpredictable” costs such as for court appointed counsel, interpreters, and other due process costs. The Statement of Intent Regarding Article V, Section 14 explicitly recognized this issue by stating:

“It is further the intent of the proposers that . . . costs that must be incurred to ensure the rights of people . . . are protected from the across-the-board reductions which have been the traditional response to revenue shortfalls. . . . [C]osts necessary to ensure due process rights . . . can vary unpredictably from year to year. Given this reality, it is the intent of the proposers that the legislature adopt a



procedure to provide adequate supplemental funding for the state courts system, state attorneys, and public defenders in the event that appropriations in a given year, notwithstanding diligent efforts to achieve efficiencies, are insufficient.”<sup>270</sup>

In response to this concern, the judiciary pooled funds for these expenses for small circuits at the state level during the first year. This balanced higher costs in one circuit against lower costs in another circuit. When aggregated at the state level, the costs appeared less “unpredictable,” notwithstanding fluctuations in individual circuits. However, in the second year the state allocated all funds to all courts and did not maintain a pool for smaller circuits.

While the judiciary had not suffered budget reductions since the implementation of Revision 7, it was not clear that Florida state revenues were more stable than county revenues. They may, in fact, be more restricted and therefore less stable. State revenues were primarily composed of sales taxes and fees. Revenue growth was limited to last year’s revenue total plus an adjustment based on the average annual rate of growth of personal income, and any additional amount approved by a two-thirds vote of the Legislature. These revenue growth restrictions do not take into account growth in workload, unless the Legislature recognizes this through the two-thirds vote mechanism. Also the state was perceived as being less generous financially than county government. How the judiciary will be treated in future budget years remains to be seen.

## **Accountability**

Greater accountability and enhanced judicial branch self-knowledge and management were significant outcomes of the transition to greater state funding in Florida, even though probably not contemplated by the drafters. The identification of, and budgeting by, essential elements created accountability on the basis of essential elements, rather than more traditional line item accountability. The structures established to plan and implement the transition provided leadership and focus to the process. Their continued use after the transition enhanced judicial branch leadership and established a link between the state and local trial court judiciary institutions, forming part of a new governance structure for judiciary fiscal and programmatic responsibilities. The processes also created a sense of “one judiciary” across circuits, which were formerly quite independent. Further work remains to be done regarding data collection to verify that expenditures and performance coincide with expectations.

Traditional budgeting practice in the public sector categorizes expenditures by line items such as salaries, fringe benefits, professional services, postage, printing, communications, technology, furniture, etc. These categories relate to types of expenditures, not programs or services, let alone desired outcomes. More modern budget practices organize expenditures by programs or services, providing a link to program goals and outcomes. The approach of the judiciary in identifying its core judicial functions, the essential elements, was much more a form of program budgeting than line item budgeting. The advantage to this type of budgeting was that it was easier to assess compliance of expenditures against program goals and outcomes. The message was that expenditure monitoring would be linked to compliance and performance would be measured against priorities embedded in the essential element definitions and

appropriation categories. While the rigidity of the essential elements definitions (discussed further below) might become a problem, at least initially, the change in nature of the judicial branch appropriation categories increased accountability for judiciary programs and outcomes.

The creation of the TCBC, supported by the CTCPA, and its proactive role in defining the essential elements and developing budget requests based on formulas and quantitative data established a new, and effective, fiscal governance structure. The creation and use of this structure established a higher level of accountability in the judicial branch. Funding priorities and funding decisions were focused in one body that was representative of the judiciary and the expectation was that trial courts would be held accountable for performance relative to these decisions.

The large circuits reported that the activities of the TCBC caused a clear shift on the part of members from looking at issues from their circuit's perspective to operating with a statewide perspective. Trial courts also came to trust the budget process. There was consensus among the circuit executives interviewed that the TCBC tried to be as inclusive as possible and that cohesiveness in the governance group was seen as essential. One participant reported that "the court system is a lot closer to thinking of itself as an entity instead of independent circuits. There is more appreciation for the size and diversity of each other's circuits and the individual problems the circuits face." The structures established to implement the transition not only improved accountability, they also created a sense of 'one judiciary.'

Another significant aspect was the composition of the TCBC and its authority to oversee trial court funding within the judiciary. The TCBC membership included representatives from all types and sizes of courts, and all parts of the state. The TCBC oversaw the trial court budgets, from preparation to allocation, not OSCA or the Supreme Court. Moreover, the Supreme Court deferred to the TCBC, and did not micro-manage or overrule it. As a result the trial courts were themselves responsible for their fiscal affairs through the TCBC.

One risk of requesting and allocating money at the state level was that it could diminish the accountability of individual trial courts. When the budget request was assembled and promoted at the state level, the trial courts did not have the same commitment and stake in the result. The creation and use of the TCBC and CTCPA, whose membership included representatives of all types and sizes of trial courts, to establish priorities and develop funding mechanisms established an ongoing link with the trial courts. It gave the trial courts a voice in the budgetary process. Preparing and managing the budget was not seen as an OSCA task and responsibility. The TCBC was not only directly involved in the budget preparation process, its Budget Management Committee closely monitored trial court expenditures. This had the effect of lessening the "us versus them" dynamic of the past between the circuits and OSCA and strengthened the accountability of individual trial courts.

Another aspect of accountability was being able to demonstrate the effective use of the funding provided. This required information to be collected and reported at the trial court level as well as cumulatively at the state level. Expenditure reporting requirements for the trial courts reportedly did not increase substantially at the beginning.

Before Revision 7, each circuit was required to report to the Governor and legislative houses each year their expenditures for the prior fiscal year.<sup>271</sup> These reports are now forwarded to the TCBC and OSCA instead. Quarterly expenditure reports concerning due process, mediation, and child support hearing officer costs from each circuit were the only additional reporting requirements in the first year of greater state funding. In subsequent years, the TCBC noted a concern about the workload implications of new data collection requirements.<sup>272</sup> Establishing accountability required collection of more information, but sometimes the information was not readily available and not easily acquired.

The quality of data also impacted accountability. The credibility of a budget request depended in large part on the credibility of the data on which the request was built. OSCA noted that the data collected during the budget process was not ‘auditable’ in the sense of consistency of definition and collection across courts. OSCA began a process to further refine and confirm information used in budget estimates through surveys of the trial courts. Examples of this effort were collecting information about the use of law clerks and about workload and staffing needs for management of the court appointed counsel function. Obtaining higher quality of data, consistently collected by the trial courts was one of the objectives of the Resource Management System that the judiciary requested each of the first few years and which the Legislature declined to fund.

While not explicitly stated in Revision 7, one approach to the implementation of state funding was to develop quantitatively based funding need and allocation formulas. Developing such formulas inevitably required establishing, implicitly or explicitly, generally accepted practices and performance standards. In Florida, much of this was done explicitly. As described earlier, the judiciary formed a Commission (the CTCPA) to develop performance measures and accountability mechanisms. From these, the TCBC built formulas to determine needed funding levels. TCBC members reported that it would not have been successful in the long run without the CTCPA provided measures and data for each essential element. General performance standards for the judiciary were included in its budget submissions, for example, clearance rates and case processing time standards. Specific performance measures were identified for those essential elements for which generally accepted measures already existed. In many other areas, however, there were no generally accepted measures or no data available for use in measuring performance against standards or goals. This problem was not unique to Florida; judiciaries across the country were struggling to develop meaningful performance measures and data collection systems to support them. Where they were developed in Florida, they provided a sound basis for holding the trial courts accountable for their performance.

There was an open question as to whether judicial branch independence had been strengthened or weakened by the budget process adopted. The legislative appropriation did not allocate funds by Circuit, which gave the judiciary discretion to allocate funds among courts. However, it did appropriate funds in budget line item categories (personnel, services and supplies) that the judiciary was expected to adhere to. There was no “lump sum” authority allowing the judiciary to move funding between budget categories.

Another potential limitation on independence arose from having the definitions of essential elements fixed in statute. The precedent had been set for the involvement of the Legislature in adding to, subtracting from, or otherwise changing the scope of the essential elements. By placing the definitions in statute there was less flexibility to make changes as to what the state would fund as the law, case management practices, and courts evolve. The funding methodology that drove actual budget requests was also closely linked to the elements and their definitions. This increased the likelihood of legislative involvement in setting minimum (threshold) levels of funding of the statutorily defined elements. Some circuit representatives believed the codification of essential elements occurred because the Legislature initially lacked confidence in the accountability of the judiciary. It remains to be seen if, and how, this attention to detail will change. The issue will continue to surface as more performance and accountability standards are defined by the branch and funding requests based on them are brought to the Legislature. The question becomes to what extent the Legislature is willing to accept judicial branch definitions and resulting determinations of funding needs.

### ***Flexibility***

Another goal articulated by the judiciary for the transition was local flexibility in the use of resources. Since the appropriation to the judiciary in the state budget was by budget categories, budget flexibility at the trial court level was limited. The TCBC constrained use of funds allocated to trial courts to the specific budget category for which the funds were allocated. Trial courts were not able to move funding between categories. Most circuits reported they had greater flexibility to move funds when they were funded by the counties. Less flexibility also resulted from the funding formulas being defined very narrowly. For example, there were separate categories for masters, mediators, and case managers, rather than one category for case processing support. An explanation provided for this constraint was that it enabled the judiciary to demonstrate to the Legislature that the funding priorities contained in the budget adopted by the Legislature would be followed at the trial court level. The TCBC had discussed methods of creating more discretion in the management of available funds. However, court managers perceived a reluctance on the part of TCBC and OSCA to allow more flexibility, in particular with respect to salary funds. While these practices did improve accountability for state priorities, it reduced the ability of trial courts to respond to changes in their caseload, workload, or to emergencies or unanticipated expenditures.

Circuit executives also reported that judges and circuit staff had come to rely on the local flexibility enjoyed prior to Revision 7 to reallocate or request additional funding during the fiscal year. After the transition circuits reported that, because counties were more closely examining what they were asked to fund as a local requirement, county funding now also had more strictures on its use than in the past.

The trial courts also reported having lost the flexibility to deal with contingencies. When trial courts were county funded, they could approach counties fairly promptly for additional funds, although there was no guarantee the request would be granted. At the state level, the judiciary successfully argued for a contingency fund in both the first (FY 2004-05) and second (FY 2005-06) budget years,<sup>273</sup> but the amount was relatively small compared to the total budget. In addition, a portion of appropriated funding was set aside as an internal reserve. It can take several months to effectuate a budget transfer at the

state level under existing state procedures for moving funds between appropriation categories. Had there had been an urgent need for more state funds, there would have been a much longer delay in requesting, and obtaining, additional funding from the Legislature.

With the initial shift to greater state funding came a significant new constraint regarding staff positions. The judiciary could not keep positions vacant for too long in order to make up a budget deficit, even in salaries. If a trial court left a position vacant more than 180 days, there was a risk that both the position and the dollars associated with it would be cut by the Legislature and the salary deficit would not have been reduced by the savings. Because of this state procedure, and the overall judiciary salary shortfall noted above, the TCBC was managing the personnel budget at a statewide level and trial courts had to get TCBC permission to fill positions at a salary above the minimum step, or to reclassify a position. When they were county funded, most trial courts did not have these types of constraints. Consequently, as a result of the shift to greater state funding, trial courts initially lost hiring flexibility to determine when and at what level staff will be hired.

The TCBC had also decided not to allow trial courts to transfer non-personnel funding across elements in order to be able to demonstrate to the Legislature that they were accountable for the funds appropriated. This reflected a strong inclination among members of the TCBC and OSCA staff to keep close control over the planning, allocation, and expenditures of funds, at least until a track record of accountability could be established. It was unclear whether these policies will be loosened by the TCBC over time. In the meantime, the combination of transfer restrictions and the inability to use vacant positions to deal with salary shortfalls had significantly reduced the flexibility of the trial courts to manage funding for their operations.

### ***Summary***

The experiences of Florida represent a mix of outcomes regarding the issues of adequacy, equity, and stability of, and accountability for, trial court funding. The trial courts generally reported adequate funding for essential elements. Many trial courts received more funding than they had in the past for these elements. However, statewide, the judiciary did not receive all that they requested, based on their formulas for minimal funding, nor did they receive adequate salary funding for all of the positions approved. Clearly there was greater equity, across the state and within circuits, at least as to the essential elements. But it was not clear that there was equity for those activities still funded by the counties, nor any mechanisms to achieve it. State funding was stable, at least for the first few years. Whether it was more or less stable, over the long run, than county funding remains to be seen. More stability regarding “unpredictable” costs for small circuits was created by pooling funds for these expenses at the state level. Finally, the structures created during the transition process and the approaches taken to define the essential elements and develop performance measures established a robust level of accountability within the judiciary and relative to the Legislature. One cost, however, of the new accountability mechanisms was a loss of flexibility at the trial court level to manage the funds allocated to them. Overall, the Florida judiciary was in a better position to ensure equal justice across the state and argue for funds to maintain this status.

## **D. THE ONGOING CHALLENGES**

A number of issues remained unresolved after the transition to greater state funding. Some related to the new organizational and responsibility boundaries between the trial courts, the County Clerk, and the counties, and the role of the Legislature. Among the principal challenges were changes in the responsibilities of clerks of court, the method of funding clerk of court functions, the future of county funding of technology and facilities, and innovation. Each is discussed below. The judiciary, the counties, County Clerks, and the Legislature actively sought resolution of many of these issues through changes in statutes, rules, policies, and business practices. Notwithstanding these efforts, many of these may be sources of ongoing tension between the judiciary, the Legislature, counties, County Clerks, and other justice system agencies.

### ***Clerk of Court Functions and Funding***

There are two potential sources of tension regarding clerk of court functions. One has to do with the separation of duties as between the court and clerk of court related to keeping track of cases and judicial records. The second has to do with the differences in how the courts and clerks of court are funded.

The primary source of tension is the potential of a change in the responsibilities of County Clerks in providing clerk of court services for the courts. This is not a new source of tension. County Clerks had asserted that Circuit Court Chief Judges did not have authority to direct the activities of the clerk of court in a county in the circuit. However, the Constitution provides the Supreme Court with authority over clerk of court operations,<sup>274</sup> and in a 1995 decision, the Supreme Court stated:

“the clerks of the Circuit Courts, when acting under the authority of their article V powers concerning judicial records and other matters relating to the administrative operation of the courts, are an arm of the judicial branch and are subject to the oversight and control of the Supreme Court of Florida, rather than the legislative branch.”<sup>275</sup>

There was some disagreement about what authority this gave Circuit Courts over the activities of the clerk of court. In response, statutory language was added to clarify the setting of priorities for services provided by the clerk of court.<sup>276</sup> While this provided a mechanism for resolving disagreements, it did not eliminate them.

As noted, at the time of transition, the distribution of duties and responsibilities between the clerk of court and court were articulated in an agreement reached by the joint OSCA/FACC workgroup and codified in statute. Notwithstanding this, problems subsequently arose regarding specific tasks and costs. A few County Clerks challenged responsibilities assigned to them in the areas of collections, services to self-represented litigants, determination of indigency, or the handling of court orders. Still others did not acknowledge fiscal responsibility for some ancillary costs, for example, costs of interpreters for case intake activities. Some County Clerks also began to request reimbursement from courts for operating courtroom recording equipment, particularly in the county courts. After the transition, some County Clerks reportedly ceased providing some services to the Circuit Court that they had provided prior to Revision 7. In response, legislation was passed in 2005<sup>277</sup> that provided that the clerk of court could not

discontinue or substantially modify a Circuit Court related function provided on July 1, 2004 without written consent of the Chief Judge or one year written notice by the County Clerk.

The question of who is responsible for duties will reemerge whenever there are new programs or requirements regarding court records. Some County Clerks expressed concerns that new or changed duties might cause them to exceed their fee supported budgets. The changes could occur as a result of new laws passed by the Legislature, as well as court decisions interpreting laws.

The second source of tension is the requirement that the clerk of court be funded solely from fees and charges set by statute. There are two aspects to this: 1) budget growth restrictions on clerk of court budgets were unrelated to workload, and 2) the lack of any link between court funding and clerk of court funding. In the first few years after transition, the fee-based approach had already proven to be too restrictive and inflexible regarding workload changes. For example, there was no a provision for funding expansion of clerk of court services in response to expansion of judicial services, such as adding new judicial officers or adopting new court procedures. These concerns were partly addressed in the 2005-06 legislative session by an exception to the County Clerk's clerk of court budget limit.<sup>278</sup> The state's Legislative Budget Commission could increase clerk of court budgets above the cap if there were workload increases caused by new requirements in law, a court rule that clerks perform new or additional functions, or if additional judges or magistrates were authorized by the Legislature.<sup>279</sup> As part of a request to increase a clerk of court's budget, the FCCOC must provide the Legislative Budget Commission with evidence that the requesting clerk of court was meeting or exceeding the established performance standards for fiscal management, operational efficiency, and effective collection of fines, fees, service charges, and court costs.<sup>280</sup> However, the total amount of increases approved by the Legislative Budget Commission was limited to two percent of the maximum annual budgets approved for all clerks, in the aggregate, for the fiscal year.

One further complicating factor between clerks of court and circuits arises from the fact that clerks continue to be organized on the county level and many circuits include several counties. Courts in multi-county circuits must continue to work with several individual County Clerks to implement circuit wide procedures and practices.

### ***County Obligations and Relations with Counties***

There were three points of potential tension between the counties and the state funded trial courts inherent in the new funding structure. One had to do with the costs that remained obligations of the counties. The second related to local requirements: what they were and what the counties were willing to fund. The third focused on future changes in laws, judiciary programs, and expected service levels. Each of these is discussed below.

As the initial transition planning occurred, it was not entirely clear that the counties had benefited financially from state assumption of trial court costs. Revenues collected through the courts were now either retained by County Clerks for their operations or were transferred to the state. Counties also lost revenues when the state

revenue sharing formula was adjusted downward. In addition, during the FY 2004-05 budget negotiations, funding of juvenile detention centers was shifted from the state to counties. Moreover, while counties knew they were required to continue funding significant costs (facilities, technology, and security), they apparently had not contemplated that they might also be asked to fund programs not included within the definitions of essential elements, or to fund service levels that exceeded the levels funded by the state. Notwithstanding these factors, interviews with county association and court representatives and anecdotal information suggested that, on the whole, the counties did benefit financially from the shift to greater state funding. It is worth noting that our research located no one who had done a detailed county-by-county analysis of the net impact to the counties, and that there was little interest in performing such an analysis once the transition had occurred.

Counties and courts must still determine how much funding will be provided for what continues to be county obligations: facilities, security, and technology for courts. All three of these categories involve activities and services that cannot be easily separated from basic trial court activities that are state funded. Several issues have already arisen regarding facilities and technology.

### ***Facilities***

The responsibility for providing trial court facilities rests entirely with each county.<sup>281</sup> However, the authority for determining facility locations for the circuit and county courts rests with the Chief Judge of each Circuit Court.<sup>282</sup> The Legislature defined “facilities” broadly to include not only new facilities and remodeling of existing facilities, but also maintaining facilities, providing heat, light, and air, cleaning facilities, and providing furniture in public areas of facilities.<sup>283</sup> Although the county is responsible for facilities, the Legislature can act in ways that increase facility costs. For example, if the Legislature adds a judge in response to increased caseloads, the county must provide a courtroom and facilities for the judge and support staff. If the Legislature adds a program to trial court activities, for example, a mental health court, the counties would be obligated to provide space for the program staff and clients.

Moreover, challenges as to who funds which facility-related costs can occur at a very basic level. For example, courts unsuccessfully argued for legislation that would have classified judges’ chambers as “public” spaces (because of case conferences that regularly occur in chambers) so that providing chamber furniture would become a county responsibility. The judiciary had not sought statewide court facility standards, fearing that the standards would become a ceiling for county obligations. Instead, circuits negotiated the provision of facilities, maintenance, and furniture with each county in the circuit. In the future, there may likely be disputes and inequities in facilities since court activities often change faster than new facilities or equipment can be acquired.

### ***Information Technology***

Technology and communication services involve an even more tangled relationship. Revision 7 required counties to continue to pay for communication services and multi-agency criminal justice information systems.<sup>284</sup> The implementing statutes defined these terms quite broadly, with “communications services” defined to include telephone equipment (voice and data), line usage, all types of computers and information



technology (hardware, peripherals, software, networks, wiring, etc.), and associated supplies.<sup>285</sup> It was hard to imagine equipment and activities more integral and fundamental to court and clerk of court operations than information technology. Virtually any productivity enhancements or cost reduction methodology the state, courts, or clerks of court might propose involves the use of information technology, which would have to be provided at county cost.

There was a rational basis for retaining communication and information technology responsibilities at the county level. Many counties, trial courts, and clerks of court were already linked by integrated computer systems and networks developed by individual counties. During transition the judiciary did not oppose technology remaining a county function in part to avoid funding competition between staff and other operational costs and technology, and partly because of historical reliance on the county information technology services and backbone.

Nonetheless, the judiciary did support a mechanism for funding future technology development. A \$2 fee on each document recorded with the County Clerk had been added and allocated to several funds established to support clerk of court technology needs.<sup>286</sup> During the 2005 legislative session, an additional \$2 per page recording fee was proposed to be sent to the state for technology development for courts, state attorneys, and public defenders, with the judiciary understanding that \$1 of this amount was specifically to be set aside for use by the courts. This would have generated \$104 million for the judiciary statewide, compared with reported court technology expenditures of \$110 million in FY 2002. However, when the state transferred funding responsibility for juvenile detention facilities to the counties, there was an agreement that counties would retain the entire \$2 recording fee. This resulted in disagreements over the use of the \$2, with some counties claiming these funds could be used to offset existing technology costs and was not intended to be used solely for new costs. Counties remained obligated under the Constitution to fund court technology even if it exceeds the amount collected from the \$2, a sticking point with some counties. As a result, some counties indicated they would more closely scrutinize all judicial branch information technology budget requests.

Having technology funded at the county, rather than circuit level, complicated data collection and technology planning in multi-county circuits. For example, there were 67 different county systems generating data for use in formula driven funding decisions. Trial court filing data had been standardized somewhat,<sup>287</sup> but there was no consistent, reliable data on other workload factors, for example, dispositions, pending caseloads, or numbers of proceedings in which interpreters, mediation staff, court reporters, or indigent defenders were required. This was the basis for the judiciary's request for funding for the Resource Management System. However, initially, the new system would not be integrated with existing county case management systems, requiring data to be reentered, rather than exchanged electronically.

Some aspects of technology that supported court activities were considered a state responsibility, for example, connectivity and access to existing state databases such as the Motor Vehicles department and the Department of Corrections. Funding for this connectivity was sought and provided in FY 2004-05, and FY 2005-06, which allowed the judiciary access to 15 state databases and to install county connections to provide

access to state information at offenders' first appearance hearings. The FY 2006-07 request focused on funding network charges for county connections to the state court's network and server infrastructure to support an on-line sentencing system. Other technology applications may be considered sufficiently linked to an essential element to be funded by the state under that element. For example, electronic recording equipment was defined as a subcomponent of the Court Reporting element and therefore became state funded.

One response to the technology issues was the creation by the Legislature of an Article V Technology Board in 2004. The Board was chaired by the Chief Justice's designee and included representatives from affected agencies from all three branches of government and from the private sector. The Board was directed to consider technology issues, including overall state courts system data needs and standards.<sup>288</sup> The mandate given the Board was quite detailed and extensive.<sup>289</sup> Stated briefly, the Board was asked to make recommendations on policy, functional, and operational changes needed to allow each of the state court system components to conduct operations, and to permit the Legislature to maintain policy oversight. The Board delivered its first report in January, 2005.<sup>290</sup> The report acknowledged the complicated nature of the legislative expectations and that existing and planned computer systems were not designed to share data in the manner anticipated by the Legislature. The Legislature did not take action on the recommendations and allowed the Board's existence to sunset.

### ***New Laws***

The third source of friction between counties and trial courts was the inevitable changes in laws, programs, or service levels. As had always been the case, the Legislature could add or change statutes affecting trial court operations, thereby changing what the state had to fund. On the other hand, if legislative changes imposed further costs on the counties for county obligations, counties could argue that they were unconstitutional "unfunded mandates." How the state and counties respond regarding the cost of legislative, legal, and programmatic changes in what the judiciary is expected to provide, and how the courts go about doing it, remains to be seen. What is clear is that the trial courts find themselves in the middle of a tug-of-war about who is required to pay for activities the courts feel they are legally obligated to provide.

### ***Innovation***

One of the unintended consequences of Revision 7 appears to be a suppression of innovation, particularly of new programs. This was the result of four policy decisions: 1) setting of court funding priorities on a statewide basis, 2) restrictions imposed on moving funds between essential element categories, 3) strict approval criteria for any such proposals, and 4) a requirement that trial courts seeking federal or other grants obtain prior approval from the TCBC. In the past, many innovations begin when someone in a trial court became so frustrated with the lack of effectiveness of existing procedures and programs that they were motivated to try something new. Drug courts are a classic example of this. A process that sets funding priorities on a statewide basis does not support these types of innovations. Policies that prevent funds in a budget category from being used to fund a new program thwart innovation. OSCA program and financial

managers acknowledged that the judiciary was facing three to four years of no innovation. No pilots or special initiatives from the trial courts were likely to be approved in the near future. The long term plan is that the TCBC would consider requests for funds for pilot projects that it believes could be replicated statewide. The requirement of statewide applicability significantly reduces the ability of the trial courts to respond to local needs.<sup>291</sup> Adjustments will have to be made in the budget process and expenditure allocation authority to promote, rather than thwart, innovation in programs and business practices.

## **E. CONCLUSION**

Florida's transition to greater state funding of its trial courts provides a number of insights into how to effectively fund trial courts. The judiciary began by defining the core functions of the trial courts—the essential elements. Formulas were constructed for each element that were used to calculate the minimally adequate level of funding needed statewide. The judiciary was moderately successful in acquiring additional funding for the state funded essential elements. The definitions and formulas were also used to allocate funding so as to provide equal access to justice for all litigants across the state. Pooling of funding for “unpredictable” costs in smaller courts resulted in greater stability of funding in these courts. The approach focused on programs, services, and outcomes, as opposed to staffing levels and traditional line item budget categories. As performance measures continued to be developed, the approach should allow the judiciary, the Legislature, and the public to assess whether they have sufficient funding and whether they use the funding allocated in an efficient and effective manner.

The judiciary also established new governance structures, in particular the TCBC, during the transition process. The structures included representatives of all sizes of courts from across the state and operated in an inclusive and collaborative manner. The new structures were used to develop coherent and responsive statewide priorities and standards that underpinned the judiciary's budget requests and funding allocations. It also enabled the judiciary to monitor its activities and spending, thereby demonstrating accountability to the Legislature and the public for judiciary spending and results.

There were also lessons about what may not work as well. Overly rigid practices associated with the allocation of funds by essential element, with restrictions against transfer of funds across elements, appeared to have inhibited innovation, particularly that associated with relatively unique local caseload and litigant characteristics, even though they enhanced accountability.

The decision that the clerk of court function be entirely fee-funded presents problems. A massive increase in the amount and number of fees was required to provide needed funding. Assuming there are regular changes in operations and caseload, there will be a need to revisit the fee structure regularly. Finally, new accounting structures had to be created to monitor the collection and allocation of clerk of court revenue and the efficacy of clerk of court expenditures.

The separation of responsibility and funding for clerk of court functions will create dysfunctional processes and the separation for facilities and technology perpetuates historical inequities. It also creates new areas of friction between the courts, County

Clerks, counties, and the state government about who sets priorities, who changes programs and practices, and who pays.

Overall, the Florida judiciary seized the opportunity provided by the constitutional amendment shifting funding to the state to develop a better funded, more equally funded, and more robust trial court system in the state.

# ADEQUATE, STABLE, EQUITABLE, AND RESPONSIBLE TRIAL COURT FUNDING

## Chapter 6. THE WASHINGTON EXPERIENCE

### **A. INTRODUCTION**

The state of Washington was representative of those states that had a long history of primary local funding and limited state funding of trial court expenditures. It also was typical of states with a single general jurisdiction trial court, and a few limited jurisdiction courts. Over the years, Washington repeatedly acknowledged that its trial courts were inadequately funded, and expressed concern about uneven availability of judicial programs and services and inconsistent operations and practices across its trial courts. It struggled with how to address these concerns, yet retain strong local autonomy and accountability for the trial courts. There was a general consensus regarding the need for greater funding overall and more uniform programs, services and practices across trial courts, but it was difficult to get a consensus on whether, and to what extent, greater state funding would address the problem.

This case study begins with a description of the current structure, organization, and operations of the trial courts. A brief history of trial court reform efforts, particularly as they relate to trial court funding, is then given to provide the context for the pressures that had built up regarding adequacy and equity of trial court funding. In response to these pressures, a Washington Court Funding Task Force was established in 2002. The work of the Task Force is reviewed, along with a discussion of subsequent efforts to implement its findings. Finally, the implications of the current funding structure and proposals on adequacy, equity, predictability, and stability of trial court funding are analyzed.

### **B. ORGANIZATION, STRUCTURE, AND FUNDING OF WASHINGTON'S TRIAL COURTS**

Washington had two levels of trial courts, a general jurisdiction Superior Court,<sup>292</sup> and two types of limited jurisdiction courts.<sup>293</sup> This organizational structure had existed since statehood. Reform efforts therefore focused on jurisdictional boundaries, court operations, and court funding, not the merger of multiple types and levels of courts as was the case in many other states.

#### ***Superior Courts and County Clerks***

The Superior Court was the general jurisdiction trial court and its broad jurisdiction included civil, criminal, family, juvenile, probate, mental health, and equity cases. Judges of the Superior Court heard all types of cases; there were no specialized judges or courts (although courts sometimes organized themselves into divisions by case types). The judges of the Superior Courts had constitutional authority to establish uniform rules governing the operations of the Superior Courts generally.<sup>294</sup>

Each Superior Court was responsible for its own administration. Superior Court administrators were selected by the judges of the court they served and reported to the

Presiding Judge.<sup>295</sup> In the majority of counties, juvenile probation, and detention were also supervised by the Superior Court, but were treated as a separate agency from the court. Generally, the juvenile programs were headed by a Juvenile Court Administrator,<sup>296</sup> although in three counties the Superior Court Administrator also served as the Juvenile Court Administrator. Because of this split administrative authority and different funding sources (discussed below), there were occasional struggles regarding the allocation of resources between the Superior and Juvenile Courts in a county.

Clerk of court functions for the Superior Court were provided by the County Clerk.<sup>297</sup> The majority of County Clerks were elected. The clerk was appointed in four counties that operated under a charter form of government. The County Clerks strongly identified themselves with other locally elected officials. As such, they were advocates for local control and autonomy and, in order to preserve this, local funding of trial courts.

County Clerks operated largely autonomously from the court, although the statute listing the duties of the County Clerk provided that the clerk shall “in the performance of his duties . . . conform to the direction of the court.”<sup>298</sup> The County Clerks took the position that they served as the custodian of court records. Because of their independent status, County Clerks generally objected to attempts to change the distribution of filing fees associated with the filing and maintenance of court records. They also took the position that their office was the appropriate locus of programs assisting self-represented litigants and enhancing public access to courts, including self-help programs and guardianship monitoring programs.

### ***Limited Jurisdiction Courts***

There were two types of limited jurisdiction courts in Washington: District Courts and Municipal Courts. District Courts were organized at the county level<sup>299</sup> and were funded by the counties.<sup>300</sup> Municipal Courts were organized at the city level and were funded by the City.<sup>301</sup> Municipal court services could be provided in any one of three ways: 1) by establishing a stand alone municipal court, 2) pursuant to a contract with the county District Court or another municipal court for judicial services, or 3) as a municipal department of the District Court. Each District and Municipal Court was responsible for its own administration and clerk of court function. District Court administrators and clerks were selected by the judges of the court they served. Municipal Court administrators were generally selected by the judges of the court they served, although in some municipalities, the administrator was selected and supervised by the City’s executive branch.

The structure and jurisdiction of the limited jurisdiction courts had been the subject of numerous studies, and several modifications over the previous 40 years. The attention arose from concerns about inadequate staffing and facilities, inconsistent operational and accounting practices and procedures, and concerns about judicial independence. In 1966, a Citizens’ Conference on the Washington Courts examined several issues regarding limited jurisdiction courts, but no changes were made in their structure or jurisdiction. A second Citizens’ Conference was convened in 1972, which advocated unification of the trial courts, central administration, and state funding. Although constitutional amendments were proposed, none were adopted. A survey of limited jurisdiction courts was conducted in 1974.<sup>302</sup> It found problems with inconsistent

practices and procedures and unequal application of the law. The report recommended unified administration of the courts and adoption of minimum operating standards. The recommendations were not implemented.

A Judicial Administration Commission was convened in response to the Court Improvement Act of 1984,<sup>303</sup> which, among other things, examined the structure and jurisdiction of limited jurisdiction courts. It recommended changes in the jurisdiction of District courts, but these were not implemented. In 1988, the Judicial Council, in response to a legislative request, created a Task Force on Courts of Limited Jurisdiction to explore the merger of District and Municipal Courts. Its report found uneven availability of services across courts and a lack of procedural uniformity.<sup>304</sup> It recommended adoption of minimum standards regarding staffing, support services, facilities and equipment, and other operational standards for all limited jurisdiction courts. These recommendations were not immediately implemented. The Commission on Washington Trial Courts made several recommendations in 1990 regarding limited jurisdiction courts. It too recommended adoption of standards for limited jurisdiction courts and it recommended an evaluation of staffing levels and the use of a weighted caseload for projecting staffing needs. Only the recommendations to change the civil jurisdiction of Superior and District Courts were implemented.

In 1995, a comprehensive survey of the district and municipal courts was commissioned by the Chief Justice. The objective of the survey was to examine the operations, procedures, and facilities of limited jurisdiction courts to determine what steps could be taken to strengthen and improve these courts.<sup>305</sup> The resulting report, known as the Wilson Report, made a number of recommendations about the operation, business practices, and facilities of the limited jurisdiction courts.<sup>306</sup> Many of the recommendations sought uniformity and consistency of practice and procedures across courts. The development of performance and facility standards in several areas were also recommended. Some recommendations specifically called for the collaboration and joint action of the District and Municipal Court Judges' Association, the District and Municipal Court Managers' Association, and the Administrator Office of the Courts (AOC). It also recommended that the District Courts be fully funded by the state, and the Municipal Courts fully funded by the cities. The report found that many of the problems that had been identified as far back as the 1974 survey were still present. The report concluded that the problems could be traced to a lack of effective central leadership, insufficient funding, a lack of equivalent services, inconsistent operational and accounting practices, and a preference for local control that could infringe judicial independence.

Over a number of years various commissions and task forces consistently found that the limited jurisdiction courts were not adequately funded and did not follow consistent procedures and practices, resulting in unequal application of the law and uneven access to justice. The recommendations made by these groups emphasized the need for consistent practices and procedures, to provide equal access and equal justice, and for adequate funding, for staff, operations, and facilities. While there was no explicit statement that this could not be accomplished with local management and funding, the lack of improvement often led to recommendations for centralized administration and greater state funding.

## ***Trial Court Personnel***

Authority regarding trial court employees was shared between the trial courts and local governments. Hiring and firing of court employees, the supervision of their activities, and their working conditions were within the sole purview of the trial courts.<sup>307</sup> However, statutes<sup>308</sup> and case law<sup>309</sup> had established that trial court personnel were considered county or city employees for the purposes of salary and benefit determination.

The number and classification of staff in each trial court were also largely determined locally. State statutes dictated very little of the judiciary's staffing. Statutes did provide that each superior court shall have as many bailiffs<sup>310</sup> and family court staff<sup>311</sup> as the court deemed necessary. Since the county paid for these positions, these statutory provisions proved impractical to enforce. There was a statutory requirement that each superior court judge have a court reporter, but it was amended to relieve the requirement for judgeships created after 1987.<sup>312</sup> Although the state Legislature had exclusive authority to create new judicial positions, because funding for support staff for new judgeships was provided by the county, a number of judicial positions authorized by the Legislature remained unfilled because the county had not yet provided funding for support positions.

As is common in states with locally funded trial courts, the number, classification, and compensation of trial court employees was set by the local legislative branch. What constituted an adequate staffing level thus varied from locality to locality and resulted in unequal funding levels across localities.

## ***Judicial Branch Governance***

### ***State Level Governing Bodies***

In 1981, the Supreme Court created a central governance body for the judiciary, the Board of Judicial Administration (BJA), by court rule.<sup>313</sup> Originally, the membership represented the various judicial stakeholder groups: the Supreme Court, Appellate Court, Superior Court Judges' Association, and the District and Municipal Court Judges' Association. Finding that this membership pattern "resulted in . . . diffused allegiance and reluctance to attack controversial issues"<sup>314</sup> the Commission on Judicial Efficiency and Accountability (JEA) recommended in 1999 that BJA's membership be broadened and that the selection process and voting be changed in an effort to make the body "pursue the best interests of the judiciary at large."<sup>315</sup> The BJA was now comprised of five members each from the appellate courts, the Superior Courts, and the courts of limited jurisdiction, two members of the Washington State Bar Association, and the Administrator of the Courts.<sup>316</sup> The BJA was co-chaired by the Chief Justice and a member selected by the Board.<sup>317</sup> Decisions were made by majority vote, but there needed to be at least one affirmative vote from each level of court.<sup>318</sup> Staff for the BJA was provided by the AOC.<sup>319</sup> Recommendations of the BJA constituted non-binding advice to the Supreme Court.



The BJA was established “to provide effective leadership to the state courts, and to develop policy to enhance the administration of the court system in Washington State.”<sup>320</sup> The duties<sup>321</sup> of the Board were to:

- establish a long-range plan for the judiciary;
- continually review the core missions and best practices of the courts;
- develop a funding strategy for the judiciary consistent with the long-range plan and state mandate funding requirements;
- assess the adequacy of resources necessary for the operation of an independent judiciary;
- speak on behalf of the judicial branch of government and develop statewide policies to enhance the operation of the state court system; and
- conduct research or studies for the purpose of improving the courts.

As such, the BJA had explicit authority and direction to address concerns about the adequacy of resources for the courts and about the need for more consistency of programs, services, and practice across the courts.

Although strategic planning was specifically enumerated as a responsibility of the BJA, the BJA was not considered the exclusive entity able to develop a branch-wide strategic plan. Several other state level judiciary commissions and committees offered advice on the governance of the branch and were developing plans independently of each other. These committees included: the Court Management Council,<sup>322</sup> the Board for Court Education, the Justice Information System Committee, the Gender and Justice Commission, the Minority and Justice Commission, and the Interpreter Committee. In an effort to develop a more coherent branch-wide strategic planning, a retreat was held involving representatives of all of these commissions and committees. At the retreat, all of the programs in the judiciary were identified and categorized using the framework of the Trial Court Performance Standards. The results of this effort were very helpful to the deliberations of the Court Funding Task Force described below.

### ***Court Administration at the State Level***

At the state level, an Administrative Office of the Courts (AOC) was created in 1957.<sup>323</sup> The role of the AOC was to gather information and make recommendations intended to improve the operations of the courts and to provide services (for example, case management systems) to the judiciary, both at the state level, and to trial courts.<sup>324</sup> There was no authority regarding the day-to-day operation of the trial courts. The clearly expressed preference in Washington, particularly from local judicial branch representatives, was to maintain decentralized management of the trial courts to the maximum extent possible.

One potentially controversial aspect of the relationship between AOC and trial courts was the mechanism by which any increased state funding for trial court activities would flow to the trial courts and the amount of state or AOC control that would be associated with the increased state funding. As the Chief Justice expressed it “The role of the AOC is to set standards and provide assistance.” Again, because state funding had historically been limited, and related to very specific costs, the AOC and BJA had not examined this issue in depth.

## ***Judges' Associations***

There were two statewide judges' associations in Washington: the Superior Court Judges' Association and the District and Municipal Court Judges' Association. The original BJA membership specifically included representatives of each of the associations. The associations were instrumental in the review and adoption of court rules and in proposing and influencing legislation affecting the judiciary. The two associations actively participated in groups studying and proposing changes to the jurisdiction, operations, or funding of the trial courts. Their participation provided valuable guidance to the efforts of these study groups, but they often opposed the implementation of the recommendations of the groups, as noted below.

The state level organization and governance structure of the Washington trial courts involved distributed, as opposed to centralized, authority, discretion, and accountability. The state judiciary, the trial courts, counties, and cities each had somewhat exclusive domains over the various elements of the trial court organization, operations, practices, staffing, and funding. The judges' associations also exercised significant influence. This distributed power presented several challenges to achieving adequate, equitable, stable, and accountable funding for trial courts.

## ***Status of Trial Court Funding Prior to 2004***

### ***History of Trial Court Reform and Funding***

During the latter part of the 20<sup>th</sup> century, there were a number of efforts directed at reforming the Washington judicial system. Citizen groups, state commissions, judiciary groups, trial court judge associations, the Legislature, and the cities and counties met in various combinations and proposed changes to the structure of the trial courts, their funding, and their accountability. Their reports regularly expressed concerns both about inadequate trial court funding and the lack of equivalent operations, programs, and services across trial courts. Many of the recommendations of these groups were not implemented at the time they were suggested due to opposition from one group or another. This section briefly summarizes these efforts, particularly as they relate to trial court funding, up to the formation of the Trial Court Funding Task Force in 2002.

In 1972, the Second Citizens' Conference on Washington Courts recommended that the trial courts should be funded entirely by the state.<sup>325</sup> In 1973, a constitutional amendment was introduced that, among other things, proposed a unified court system with unified statewide administration managed by the Supreme Court and, eventually, a single level trial court. At the legislative hearings, a number of stakeholder groups expressed both support and opposition, generally with respect to one or a few elements of the proposal. Several groups wanted the trial courts to remain in control of their operations and to remain locally funded. Others wanted a single trial court that was state funded. The range of opposition prevented any further action on the proposal.

Other proposals were introduced in subsequent years, and in 1975 a comprehensive constitutional amendment was proposed. There was disagreement as to whether the changes would weaken or strengthen the judicial system, whether they would improve or impair the fiscal and administrative stability of the courts, and whether the court system would be better funded. There was opposition from the Superior Court

Judges' Association, the Washington State Bar Association, and the media in Eastern Washington. The measure was narrowly defeated by the voters.

Because the margin of defeat was narrow, a Judicial Article Task Force was formed during the next year that sought to develop a comprehensive judicial reform package. The resulting constitutional amendment proposed, among many changes, that there be only two trial courts, Superior and District, and that the Supreme Court be responsible for administration of all courts through adoption of rules of procedure and guidelines governing administration of the trial courts. The proposed amendment was silent regarding trial court funding. Superior Court judges expressed concerns about loss of trial courts' ability to respond to local needs and conditions and the ambiguity of funding. By the end of the legislative process, most of the suggested reforms had been removed. The only reform adopted was a change in the amount of the civil jurisdiction of the District Court.<sup>326</sup>

During the next several years, a series of commissions, task forces, and working groups made recommendations for state assumption of specific trial court costs. In 1985, the Judicial Administration Commission identified specific areas for which the state should assume fiscal responsibility.<sup>327</sup> The Commission recommended that the state assume 100% funding of the salaries and benefits of all judges, Superior Court commissioners, Superior Court administrators, and of the costs of pro tems for mandatory arbitration. It also recommended organizational changes, such as eliminating concurrent jurisdiction between superior and district courts and defining and strengthening the role of presiding judges in local courts. Again, these recommendations were not implemented.

The Commission also recommended partial state funding of indigent criminal defense services. In response, state funding was provided for appellate criminal defense and for a pilot project in juvenile dependency cases. Two subsequent reports, issued in 1990 and 1991,<sup>328</sup> recommended that the state fund a greater share of criminal indigent defense services, among other reforms. These funding recommendations were not implemented.

The 1990 Commission on Washington Trial Courts more directly addressed the issue of the adequacy, as opposed to the source, of funding for the Superior Courts, by concluding that:

“[t]he Superior Courts should have adequate personnel, and should be able to offer an adequate level of services to the public, including to pro se litigants. The Commission believes most courts are under-funded, understaffed, and lack adequate support services. Some have an inadequate number of judges. Additional resources should be provided to meet these needs.”<sup>329</sup>

Although some recommendations of the Commission were implemented, those related to adequacy of funding were not.

In 1996, the two trial court judges' associations (the Superior Court Judges' Association and the District and Municipal Court Judges' Association) examined trial court funding issues as part of each associations' long-range planning activities. As part of this effort, they studied what other states had done to improve the fiscal condition of

their trial courts. In the fall of 1996, representatives of these associations reached a consensus that “the courts are seriously under-funded,” creating a situation which “raises serious issues respecting the fundamental right of access [by citizens] to the courts.” They recommended “an integrated strategy for increased funding for the courts because of [a] burgeoning number of litigants . . . and the inability of the current system to accommodate them.” The judges’ associations were acknowledging the negative consequences for litigants and the public attributable to inadequate funding and supporting changes to the funding structure to increase funding.

In late 1997, the BJA asked a panel of court system representatives, legislators, and local officials to study court funding problems. Their task was to find ways to preserve the local integrity of courts while funding them at levels that assured their ability to dispense justice fairly and efficiently. In 1999, the Commission on Judicial Efficiency and Accountability<sup>330</sup> called for the BJA to develop an overall funding strategy for the judiciary and, more specifically, to evaluate the desirability of the state assuming greater responsibility for funding mandated judicial services, including for indigent defense, juries, and witness fees. Although no action was taken immediately, these studies had an impact on subsequent efforts.

In a parallel effort, the Washington judiciary had endeavored to establish structures allowing more flexible and efficient use of trial court resources across jurisdictions, and increasing accountability as an alternative to the consolidation of limited and general jurisdiction trial courts. The Project 2001 study concluded that “the functional equivalent of unification could be achieved through implementing other reforms, while avoiding the increased costs and inefficiencies of actually merging or combining superior and limited jurisdiction courts.”<sup>331</sup> The Project 2001 proposed reforms in three areas:

- Flexibility in use of judicial officers across trial courts within a county and across counties. A constitutional amendment allowing implementation of this recommendation was adopted in 2001.
- A court rule strengthening the selection and duties of the presiding judge in a court. The rule was adopted in 2002.<sup>332</sup>
- Creation, also in 2002, of Trial Court Coordinating Councils in each county to work towards achieving the benefits of coordination. Using this mechanism some courts merged administrations, developed shared interpreter systems, and combined jury calls, among other efforts.

A clear relationship between the coordination efforts and the push for greater state funding was reported in interviews for this study. A summary of the efficiencies achieved by trial courts through coordination became a critical appendix to the final report of the Court Funding Task Force discussed below. The efficiencies resulting from these efforts were cited in subsequent discussions with the Legislature regarding increased state funding. In addition, trial courts were encouraged to pursue coordination efforts because of the perception that it supported efforts to obtain additional state funding.

Washington has explored many aspects of judicial reform, often recommending unification of the trial courts, greater state funding, more uniform and consistent operations, and performance standards. The commissions and task forces generally reported that the existing levels of trial court funding were inadequate. Their recommendations appeared to implicitly assume that a greater proportion of trial court funding coming from the state would result in overall increases in trial court funding. The reforms proposed by these groups were seldom implemented, or were only partially implemented. Opposition came from many different sources (judges' associations, the bar, organized labor, and the business community) and was often expressed only as to selected elements of the proposals, not the proposals as a whole. Trial court officials were worried about loss of control and autonomy, and about the impact of centralized state control on their ability to respond to local circumstances and accountability. District and Municipal Court judges sometimes supported the creation of a single trial court, but Superior Court judges and local governments often did not. Some Superior Court judges expressed the belief that trial courts' strong relationships at the local level would protect them from egregious budget reductions. Relatively well funded trial courts were concerned that some of their programs would not be maintained under a predominantly state funded system. Legislative opposition arose from concerns about the potential cost to the state of greater trial court funding. Local government opposed state funding if it resulted in a loss of fines, fees, and other revenues collected through the courts that they received. The collective impact of these specific concerns was that attempts at funding reform were generally stymied.

## ***Funding Approach as of the 2003-2005 Biennium***

### ***Existing Funding Arrangement***

Historically, Washington State provided only limited state funding to its trial courts. According to Bureau of Justice Statistics data, as of 1999 Washington state provided the lowest share of state versus local criminal justice funding support (consisting of judicial, indigent defense, and prosecutor expenses) of any state in the U.S. (14.7%).<sup>333</sup> The Washington judiciary estimated that the state's share of funding just for the trial courts and indigent defense was 10.1%, compared with a national mean of 45%.<sup>334</sup>

The state funding for trial courts that was provided related to a finite set of expenditures. It covered 50% of Superior Court judges' salaries and 100% of their benefits. Approximately 37% of juvenile court and probation costs were also paid by the state. Additional, limited state funds were allocated to the trial courts through the AOC for truancy programs (\$16 million in the 2003-05 Biennium), Superior Court collections programs (\$1.8 million), mandatory arbitration (\$1.5-\$2 million), Court Appointed Special Advocates (CASA \$1.5 million), 50% of pro tem judge salaries, and mandatory witness fees (\$3.3 million).

Significantly, the AOC provided the automated case management systems used by almost all of the trial courts (referred to as the Justice Information System, JIS, discussed further below). The cost of JIS was over \$40 million per biennium and the funds were appropriated to the AOC. The state also funded another aspect of technology used in trial courts. A fixed configuration and dollar amount for a personal computer had

been established by the AOC for judges and court staff. Trial courts could either: 1) accept the funds and purchase computers and provide maintenance, or 2) have the AOC purchase and maintain the equipment for the court. Counties and cities were free to provide additional equipment at their cost and were responsible for installation and maintenance of the network infrastructure to connect the computers.

As noted above, in most counties there was a split in the administration and funding of the juvenile court probation and the other functions of the Superior Court. This added another level of complexity to funding the trial courts. In the 2003-05 Biennium, the total dollars for juvenile probation and detention functions represented 37% of the \$282 million in total state funding for the Superior Court.<sup>335</sup> The funding did not pass through the state judiciary budget; rather it was through the Juvenile Rehabilitation Administration program, a part of the state Department of Social and Health Services. Juvenile court operation funding also presented a challenge to acquiring and maintaining stable and ongoing funding. Increasingly, juvenile programs were funded through grants from the state and the federal government, which were funneled through a variety of state agencies. Much of the time of Juvenile Court Administrators was reportedly spent seeking funding from this patchwork of sources.

### ***Existing Allocation Formulas***

Several funding formulas were in use by the AOC to allocate what state funding there was. For example, funding for salaries of pro tem judges for District Courts was allocated based on a set number of days of pro tem support for each sitting judge. Truancy funding was provided according to a formula that included annual adjustments. Funding for collection programs were allocated by a formula developed by the County Clerks. Arbitration funding was based on reimbursement of actual costs, not a formula. The AOC required quarterly financial reporting for the juvenile funds that it distributed but not for the other categories of state trial court funding, since much of it was either automatic (judges' salaries and benefits) or a reimbursement of costs (arbitration and statutorily required witness fees).

### ***Discretion Regarding Expenditures***

The state level judicial branch had broad spending discretion regarding funds appropriated by the state Legislature. The state judiciary also had independent signatory authority to enter into contracts, albeit within state contracting guidelines. Incentives for effective use of funds had recently been introduced with the Savings Incentive Account, under which the state judiciary could retain 50% of year-end general fund savings in most accounts (it does not apply to judges' salaries and benefits). In addition, in its biennial budget submittal, the AOC asked and the executive and legislative branches granted authority to carry forward unspent JIS funds, which would otherwise have reverted to the general fund.

The fiscal discretion of trial courts varied across the state depending upon the general budget discretion granted 'departments' within the local governmental entity that provided funding. Some jurisdictions operated with a lump sum budget; others had no authority to reallocate funds between specific line items absent approval from the local legislative authority. Trial courts did not normally have signatory authority to execute contracts.

### ***Budget Preparation and Submission***

The state judicial branch budget was submitted to the Governor in September or October of each year. The Governor was required to include the judiciary budget unchanged in the budget submitted to the legislature by mid-December. In the general law counties, the budget was submitted through the Auditor, who compiled the budgets for presentation to elected County Commissioners. In the four charter counties with an elected executive, the executive branch reviewed and could reduce the budget proposed by the trial court. City budgets funding Municipal Courts were prepared according to one of three alternative statutory schemes, with differing provisions for deadlines and submission processes.

### ***PSEA Account***

Washington had developed a somewhat unique approach to appropriation of the state's share of fee, fine, forfeiture, penalty, reimbursement and assessment revenue collected through the Superior, District and Municipal Courts. A Public Safety and Education Account (PSEA) was established in the state treasury in 1984.<sup>336</sup> The PSEA was not subject to state spending limitations and was widely viewed as a more flexible, mini general fund. Of the total of \$187 million appropriated from the fund for the 2003-05 Biennium, \$44 million (23%), was appropriated to the AOC, although \$18 million involved direct pass-throughs to the trial courts, primarily for juvenile court truancy prevention programs.

The original 1984 legislation creating the PSEA limited appropriations from the account to four purposes: judicial education, criminal justice training, crime victims' compensation, and traffic safety training. Since then, the number of entities that could draw on the PSEA expanded greatly, and by the 2003-05 Biennium it included 13 recipients, including the JIS, legal services for indigent persons, drug court operations, and computer projects for the Washington State Patrol. Authority to appropriate funds for other purposes had also been added, including court related programs such as justice information network telecommunication planning, operations of the AOC, criminal justice data collection, unified family courts, local court backlog assistance, extraordinary costs incurred in the adjudication of criminal cases, and reimbursement of local governments for costs associated with implementing criminal and civil justice legislation. A number of other non-court and even non-justice related programs could also be funded from the account.

The PSEA provided an interesting approach to funding judiciary programs and activities. The revenue stream was from a dedicated source (fines, fees, penalties, etc.) and not subject to limitations applicable to the state general fund. However, it proved difficult to limit the use of the funds to justice related expenditures.

### ***Technology Management and Funding***

In response to the rapid growth in case filings, a concern about efficiency in case processing, and the lack of management information about caseloads and case processing, statewide automated case management systems were developed for trial court use beginning in the late 1970s. They were collectively referred to as the Judicial Information System (JIS).<sup>337</sup> Three systems were developed: SCOMIS for non-juvenile

Superior Court cases, JUVIS for juvenile court cases, and DISCIS for District and Municipal Court cases. Oversight of the JIS was provided by the Judicial Information System Committee (JISC)<sup>338</sup> chaired by the Chief Justice and comprised of representatives of the appellate and trial courts, the bar, law enforcement, and prosecution. JISC set policies and approved new projects for development. In addition to providing more, and more consistent, information about caseloads, the systems resulted in more uniform case management practices across trial courts.

Funds for JIS system maintenance were first appropriated from the PSEA. A project to replace the JIS systems was begun in the late 1990's with an estimated statewide cost of \$40-\$42 million. In response to the magnitude of this funding need, several penalties, assessments, and fees were raised to fund the development of the new systems.<sup>339</sup> The funds were to be deposited in a new Justice Information System Account.<sup>340</sup> Of the \$25 million collected biennially in the Account, approximately \$15 million was expected to be appropriated for each of the next two biennia for the new system development. In the 2003-05 Biennium, the Legislature had also appropriated funds from the Account for JIS system maintenance to avoid paying for maintenance from the PSEA.

### ***Facilities***

Funding for constructions, renovation, and maintenance of trial court facilities rested entirely with local government.<sup>341</sup> There were no statewide facility standards guiding trial court design or construction. Authority for determining facility locations for the Superior Court was shared between the county legislative and executive branches. Although a statute established a court committee with the responsibility to determine the locations of the District Court within its geographic district,<sup>342</sup> the county legislative body could override the committee's plan. Thus, the location, size, quality, and funding of trial court facilities were entirely a local government responsibility.

### ***Pressures Regarding Trial Court Funding***

While the Superior, District, and Municipal Courts, and County Clerks had expressed a preference for local control and local funding, there were a number of pressures building against this funding approach. As described earlier, numerous studies had commented on the inadequacy of funding levels and the need for more stable and predictable funding streams. There were also pressures building on the county and city budgets that were unrelated to court funding. Restrictions on revenue sources created by taxpayer initiatives and a general public expectation of a reduction in taxes limited available revenue to fund local government services, including trial courts. There were also categories of expenditures that presented particular problems, either from their unpredictability or from pressures to increase funding levels. Specifically, there was close attention being paid to costs of indigent criminal defense and the need for more funds to provide representation for certain types of civil litigants. All of these created pressure for a reexamination of trial court funding sources and structures.



### ***Revenue Restrictions and Funding Reductions***

The issue of trial court funding took on more urgency during the beginning of the decade as a result of legislative action and economic conditions. By initiative, voters had limited growth of property tax revenue (a major county revenue source) to 1%.<sup>343</sup> They also eliminated the Motor Vehicle Excise Tax, a state revenue source.<sup>344</sup> Specific portions of the excise tax had been dedicated to prosecutors and County Clerks, with a small portion going to courts. State relief, in the form of back fill for the lost excise tax, was available in the first years after passage of these measures, but had since ended. The recession in the early part of the 21<sup>st</sup> century aggravated the impact of this legislation by reducing local sales tax and investment revenues. Another factor was the issue of unfunded state mandates at the county level.

Trial courts experienced actual cutbacks of county funding and feared more extensive reductions, in part due to the growth in justice system funding needs. For example, King County had predicted that the justice system (sheriff, prosecution, indigent defense, courts, probation, sheriff, and detention) would consume 100% of the county's discretionary revenue by the end of the decade and that the county would become bankrupt shortly after that.<sup>345</sup> The impact of budget reductions on programs provided by the trial courts in King County was notable. In 2003, the King County Superior Court discontinued funding for the Court Appointed Special Advocates (CASA) program.<sup>346</sup> From 2002 to 2004, non-mandatory juvenile probation services were reduced significantly and a number of case management positions were eliminated. Altogether, between 2002 and 2005, the court's budget was reduced by \$1.1 million, representing approximately 3% of its \$36 million budget, and 21 full-time equivalent (FTE) positions. In addition, two branches of the District Court in King County were closed. On the municipal level, the Seattle Municipal Court suffered large cumulative budget reductions, \$3.1 million and 36 FTE between 2003 and 2005, representing approximately 14% of its base budget.

### ***Indigent Defense***

In many counties, the primary driving force for greater state trial court funding was indigent defense costs. There was a frustration about the inability to predict or control these costs and their steady growth, notwithstanding use of a variety of indigent defense delivery systems. The budget impact and specific concern varied depending on how defense costs were budgeted. If defense costs were budgeted in a court's budgets, overruns in indigent defense costs could reduce funding available for court staff and programs, causing these courts to be less adequately funded. In other counties, notably King County, where these costs were budgeted separately from the courts' budgets, it was the county that was looking for additional funding. Because indigent defense costs were not reported separately from other court costs in the state's expenditure reporting system until 2005, it was difficult to assess the magnitude of the problem.

### ***Civil Attorney Needs***

At the same time as these pressures were building, the judiciary began to examine the level of funding for legal representation for indigent civil litigants. In November 2001, the Supreme Court established a Task Force on Civil Equal Justice Funding. This task force found that current funding fell \$28 million short of needed funding. It also

noted that the PSEA, from which funds had been provided for civil legal needs, was projected to go into deficit by the end of the 2005-07 Biennium. However, support for state funding of civil legal needs was not universal. County Clerks generally did not support the establishment of a separate judicial branch office providing civil legal services. County Clerks also expressed opposition to linking civil legal representation funds to trial court funding. Notwithstanding this opposition, the Court Funding Task Force supported seeking legislative action supporting additional funding, consistent with the recommendations of the Supreme Court Task Force on Civil Equal Justice. The legislation passed, creating a new Office of Civil Legal Aid in the state judiciary.<sup>347</sup>

### ***Inadequate and Unpredictable Funding***

In November 2001, the President Elect and President of the Superior Court Judges' Association, the Chief Justice, the State Court Administrator and the AOC Management Services Director gathered to discuss the impact on the trial courts of the looming county fiscal crisis. In March 2002, a broader coalition of justice sector representatives was formed, including other court and bar leaders, and engaged in a long range planning retreat that dealt directly with the perceived funding crisis. In contrast to earlier opposition, in the face of likely sizeable budget reductions, Superior Court judges' opposition to greater state funding of the trial courts softened. The balance between protection of local prerogatives and concerns over funding limitations began to shift to permit support for some, albeit limited, additional state funding of the trial courts. In a survey administered at a 2003 Judicial Conference attended by judges from all levels of courts, 98% of attendees indicated support for greater state funding. It appeared the time was ripe to revisit issues regarding the sources and levels of trial court funding.

## **C. THE WASHINGTON TRIAL COURT FUNDING TASK FORCE**

The fiscal concerns of the judiciary, the Bar, and the counties coalesced in April 2002 when the Board of Judicial Administration created the Court Funding Task Force (Task Force). It was established as a coalition of the key stakeholders concerned with court funding issues. The Task Force was comprised of representatives of all levels of Washington courts, County Clerks, county and city government, the state Legislature, bar associations and other attorney groups, the state labor council, academia, and the League of Women Voters. The Task Force was constituted as an arm of the BJA because it dealt specifically with the trial courts and because the leadership of the judiciary wanted to ensure that trial court policy setting did not emanate solely from the Supreme Court.

### ***Task Force Goals: Explicit and Implied***

The stated mission of the Task Force was to “[d]evelop and implement a plan to achieve adequate, stable, long-term funding for Washington’s trial courts to provide equal justice throughout the state.”<sup>348</sup> The Task Force organized itself into five work groups: 1) problem definition, 2) funding alternatives, 3) implementation strategies, 4) public education, and 5) structure and funding of courts of limited jurisdiction. The Task Force assigned to the Funding Alternatives Work Group the task of recommending “the appropriate balance between state and local funding of the trial courts, with full authority to consider moving from nearly total local funding to total state funding as well as any

point in between.”<sup>349</sup> Greater state funding, in and of itself, was not a goal of the Task Force, but it was an option to be considered.

While county fiscal pressures provided the backdrop for the examination of trial court funding in Washington, the Task Force adopted early in its deliberations a broad set of guiding principles regarding trial court funding.<sup>350</sup> Briefly, the principles articulated:

- the role, mission, and independence of the judiciary;
- the need for adequate, stable, and long-term funding;
- the need for equal administration of justice across the state;
- a legislative responsibility to appropriately fund the courts;
- a recognition that courts were not to be self-funded;
- a more equitable balance between local and state funding; and
- that trial courts should use sound management practices and be accountable for funds appropriated for court operations.

These principles guided the development of recommendations by the Task Force.

The history of local court control, locally elected judges, locally elected County Clerks, limited fiscal control of the courts by the state, and the very low level of state funding led the BJA and the Task Force to conclude that mixed state and local funding for the courts was the preferred alternative. As stated in the Task Force report:

“Washington’s traditions of populism and localism form the historical roots for today’s reliance on local government funding of the courts. While this heritage continues to suggest that local government should retain a share of the burden, it is clear that the state has a compelling interest in adequately funded courts and should contribute significantly to their operations.”<sup>351</sup>

The Task Force also considered the experience of other states, such as Oregon, where there was primary state funding and concluded that a single source of funding for the trial courts would not be prudent. Consequently, the Task Force emphasized that the state should contribute equitably so as to achieve a better balance of funding between local and state government.

The Task Force members varied in their support for a more diversified set of funding sources versus more funding from existing sources. Some members specifically sought to increase the state’s contribution to trial court funding, while other members simply sought more funding in general, regardless of the source. The underlying policy question was whether there was a benefit to greater state funding beyond possibly obtaining more funding. If there was not sufficient benefit, the group felt that the effort should, instead, focus on getting more funding from local sources. In the end, the judiciary decided to seek additional funding from the state for a finite set of functions and activities.

### ***Understanding Current Expenditure Levels***

The Task Force identified the determination of how much was now being spent by the trial courts as one of its first mandates. Gathering comparable trial court expenditure information proved difficult. The Washington State Auditor regularly collected local government fiscal data through its Local Government Fiscal Reporting

System (LGFRS). However, this data was not as useful as it might have been in determining total trial court costs because, until FY 2005, trial court expenditures in LGFRS reports included indigent defense expenditures, even if they were not included in the trial court's budget. The fiscal reports from cities and counties were also inconsistent to the extent that each used a different chart of accounts and provided different levels of detail in their reports. Similarly, county and city reports of indirect costs were not comparable to the extent that each used different accounting practices to record these costs. Cost data was also often missing for grant funded operations. Estimating total trial court expenditures therefore required interpolation from several fiscal reporting systems.

In order to refine the LGFRS information, the AOC compared LGFRS data with FY 2000 year-end expenditure reports provided by County Auditor or Finance Offices, and with juvenile court expenditure data from the Washington State Institute of Public Policy.<sup>352</sup> Because of data difficulties, county charges for administrative services and capital expenditures were excluded altogether from the analysis. AOC staff later attempted to identify county charge-backs related to those functions for which state funding would be requested, most notably indigent defense. Using these data sources the Task Force issued a report estimating that trial court expenditures for FY 2000 totaled \$342 million in FY 2000, with the state's share reported as \$45.5 million.<sup>353</sup> An additional \$79 million was expended on indigent defense, all funded from local sources. In reporting these estimates, the Task Force cautioned this was an estimate, and that more reliable and comparable trial court expenditure data was just not available. If the judiciary was to go forward with requests for greater trial court funding, the Task Force concluded it would be necessary to change existing fiscal reporting mechanisms too generate more reliable and consistent trial court expenditure data.

### ***Determining What Functions the State Should Fund: the Nexus Approach***

The premise that mixed funding was preferable to primary funding from one level of government changed the nature of the question about what constituted the court for purposes of funding. If funding was to come from multiple sources, the question changed from what activities and functions the primary source should fund, to which source should pay for which activities and functions. In 1999, the Commission on Judicial Efficiency and Accountability had recommended that the BJA Core Mission/Best Practices Subcommittee conduct a comprehensive study of the "core and noncore function of the courts."<sup>354</sup> Soon after its formation, the Task Force chose not to follow this approach of further defining the concept of core judicial functions, because distinguishing core and noncore functions was considered inconsistent with the concept of shared funding. A concern was also expressed that identifying and defining core operations might inadvertently result in too narrow a definition or in a service level standard that was too minimal.

Instead of sorting out core and noncore functions, the Task Force identified the full range of functions and activities associated with achieving the judiciary's mission. The functions and activities were then organized according to how essential they were to trial court operations and whether they were administered by the trial courts. The activities and functions identified were displayed in a chart referred to as the *Context of*

*State Trial Court Function for Funding Discussion* chart (included at Appendix C).<sup>355</sup> The chart sorted activities and functions into six layers reflecting whether the activities and functions were:

- 1) directly related to trial court operations and administered at the trial court level (for example, judicial decision making, case management, clerk of court functions, court administration, and enforcement of judgments);
- 2) essential to trial court operations, but not administered by the trial courts (for example, indigent defense, juvenile dependency representation, and facilities);
- 3) part of the state judicial branch (for example, the appellate courts, AOC, and JIS);
- 4) part of the overall system of justice (for example, prosecution, law enforcement, and jails);
- 5) programs supporting the justice system, but not administered by it (for example, civil indigent legal services); or
- 6) private sector services and initiatives (for example, private dispute resolution processes and domestic violence shelters).

One main value of the chart was that it presented all activities and functions associated with the justice system in a manner that provided a context for the assignment of funding sources to activities, making the assignment decision more transparent.

In order to decide whether the state or local government should fund a particular activity or function, the Task Force adopted an approach which placed activities and functions on a continuum depending on the specificity of requirements for conducting the activity or function imposed by state law. The activities and functions with the greatest connection or nexus to state requirements were deemed most appropriate for state funding. This approach became known as the “nexus” approach.” The Task Force prepared a table showing the nexus between activities and functions and state requirements, referred to as the “Nexus Continuum Profile” (Table 4 below). Examples of functions identified as having the strongest state nexus were the number and salaries of judges, indigent criminal and juvenile dependency representation, and interpreter, jury, and statutory witness fees. At the other end of the spectrum, examples of activities with the weakest state nexus were locally established non-mandatory ADR programs and District and Municipal Court probation services.

**Table 4**  
**NEXUS CONTINUUM PROFILE<sup>356</sup>**  
**THE NEXUS BETWEEN STATE AUTHORITY AND TRIAL COURT COSTS**

<b>Authority (shall)</b>		<b>Authority (may)</b>
<b>Superior Courts</b> Number of judges Judge salaries and benefits Verbatim Record of Proceedings Mandatory Arbitration	<b>Superior Courts</b> Court Commissioners Staffing positions and salaries	<b>Superior Courts</b> Commissioners ADR Facilitators Mandatory Arbitration
<b>District Courts</b> Number of judges Judges' salaries	<b>District Courts</b> Staffing positions and salaries	<b>District Courts</b> Commissioners Probation ADR Re-licensing Programs
<b>Juvenile Courts</b> Juvenile Dependency Representation GAL In Dependency Cases	<b>Juvenile Courts</b> Detention staff and services Probation staff and services	<b>Juvenile Courts</b> Selective Aggressive Probation Work Crews
<b>Municipal Courts</b> Number of judges	<b>Municipal Courts</b> Staffing positions and salaries Number of judges Judges' salaries and benefits	<b>Municipal Courts</b> Commissioners Probation Re-licensing Programs
<b>Other</b> Language Interpreter Costs (all court levels) Juror Costs (all court levels) Witness Fees (all court levels) Criminal Indigent Defense (all court levels)	<b>County Clerks</b> Staffing positions and salaries	

Note: Footnotes in original table deleted.

### ***Estimating the Need – SimGap***

When the Task Force began its work there were no existing formulas or standards which could be used to estimate total trial court funding needs,<sup>357</sup> as opposed to actual expenditures. The Task Force's Problem Definition Working Group embarked on a significant effort to estimate the funding gap by estimating the funding need of the trial courts and comparing it to existing funding levels. The Task Force believed strongly that without this analysis, requests for increased state funding would not be seriously considered.

The approach developed used workload and staffing standards to estimate the funding gap.<sup>358</sup> Stated simply, the estimating process was as follows. Case filings were used to determine the number of judges needed. Staffing ratios based on caseload and judgeships were then used to estimate the staffing levels needed. Judge and staffing needs were then converted to funding needs using current salary and benefit rates. The spreadsheet containing the formulas implementing this approach became known as the SimGap model.

The model used different types of ratios to estimate staffing needs for each type of court. The three most common ratios used in the model were: 1) staff per judge or

judicial officer, 2) staff per court, and 3) case filings per staff. In the District and Municipal Courts, the model used average case filing per staff ratios, controlling for size of court. The ratios were calculated from data on actual court experiences. Consequently, the “gap” estimate for the limited jurisdiction courts was based on existing practices, not on best practices or performance standards.

For the Superior Courts the model formulas were more complicated. For some estimates the staffing standard was based on an average of what was currently provided (for example, for administrative staff). For others it represented an ‘ideal’ level of staffing set after surveying judges and trial court administrators (for example, for court reporters, bailiffs, and law clerks). Filings per staff ratios were not as clearly correlated to court size in Superior Court as they were in District Courts. This was attributed to a number of factors: differences in the allocation of responsibilities between the court staff and County Clerk staff across counties, different service delivery models (for example, use of electronic recording versus a court reporter), different staffing patterns (for example, use of court versus county security staff), the small number of courts in the largest court size groups, and questions about how to incorporate specialty staff in the model (for example, family law mediators).

For County Clerk activities, representatives of the County Clerks’ Association provided a preliminary estimate of a staffing ratio of 4 FTE<sup>359</sup> staff per judicial officer, based on actual experience.

For juvenile courts, the juvenile probation officers reached a consensus on a staffing standard for probation services. However, they did not agree on a standard for detention services, court support staff, or medical and mental health services. For juvenile intervention services, a study completed by the Washington Institute of Public Policy provided a ratio.<sup>360</sup> For the remaining services, the model used a combination of need estimates identified by each juvenile court. The difficulties in establishing juvenile staffing standards was attributed to a variety of factors: differences in the structure of detention services; use of contract personnel instead of in-house staff; heavy reliance on grants for juvenile probation and detention; and variations in the degree to which Superior Court Administrators provided calendaring or other functions for the Juvenile Court.

Much of the SimGap estimate was based on existing practices and staffing, without any adjustment to incorporate performance standards, best practices, or efficient service delivery models. Many of the staffing standards were developed by surveying court administrators or county clerks, a Delphi type approach, or using simple ratios reflecting existing practices. After the initial SimGap model was developed, AOC staff met with the trial court administrators and the County Clerks’ association to refine the staffing formulas. District and Municipal Court representatives indicated that they did not believe state staffing standards could be created using filing-to-staff ratios since practices and services varied too widely across courts. County Clerks also could not agree on staffing ratios, or even on the concept of a staffing standard.

Because of the methodological issues noted and the lack of consensus on the underlying formulas, the SimGap model had limited application. It was initially intended to be used to estimate the funding gap statewide. The model was not considered useful

for estimating the needs of an individual court since it did not account for the many variations in case mix, case management procedures and practices, staffing patterns, specialized courts and calendars, and cooperative programs serving more than one court. The BJA also declined to use the model formulas to set staffing or workload standards applicable to the trial courts. Moreover, AOC staff expressed concern that funding of trial courts by formula would be difficult in the state because of the perception that large, urban counties provided services not available in smaller, more rural courts. Applying a single staffing formula to all courts under these circumstances would likely create winners and losers among the trial courts. Thus, the judiciary viewed the SimGap model as estimating total judicial branch need, but not useful as a model to allocate to individual courts any additional trial court funding that might be received.

In contrast, the analysis of funding needs for indigent defense in criminal and juvenile dependency cases relied on statewide caseload standards developed by the Washington State Bar Association Blue Ribbon Panel on Indigent Defense and the Office of Public Defense. These estimates were relied upon in preparing the FY 2005-07 budget request. These figures were considered more reliable than those used in the SimGap model for general court operations because they had been subjected to a third party analysis. Nonetheless, as discussed further below, additional state funds for indigent defense fell far short of the “gap” number estimated.

### ***Estimating the Expenditure Gap and Determining the Priorities***

The Task Force used the Nexus approach and SimGap model in conjunction to determine the amount of additional funds to be sought to achieve greater overall funding, with a larger proportion of funding coming from the state.<sup>361</sup> The analysis indicated that if the trial court functions with the strongest nexus were shifted to state funding (the left most column in Table 4) and the “gap” in needed funding filled, the state share of court operations would grow by \$54 million. For indigent defense in criminal and dependency cases, total state obligations would grow to \$211 million, \$79 million of which would represent costs shifted from local to state responsibility and \$132 million would be for fully funding the program at the level estimated by the gap. The Task Force estimated that if all unmet funding needs for trial courts and indigent defense were met and the state funded the identified nexus items, state funding would have to increase from \$46 million to \$309 million. The state’s share would then represent about 51% of the total projected need for trial courts and indigent defense, compared to the ratio of 11% of estimated FY 2000 total actual costs.

### ***Continuation of Local Funding***

The question of whether the state should fund trial court costs, and, if so, what percentage could not be examined in a vacuum. If the state’s share of funding was increased, would it increase the overall funding for trial courts, or just supplant local funding, with no overall increase? If it just supplanted local funding, it would benefit local government, but not the trial courts. The Task Force considered several possible approaches to ensure that trial courts benefited from any increase in state funding. One option considered was legislation requiring a set percentage of total court funding to be provided by the state. The Task Force concluded that it would be difficult to identify and justify any particular percentage of funding to be provided by the state. Another option



was to forge an agreement that a certain percentage of savings, for example, 50%, realized by local government from increased state funding must continue to be provided to the trial courts. As discussed further below, this became one of the principles upon which the judiciary's request for the 2005-07 Biennium was based.

### ***Revenue Alternatives Explored***

The Task Force was cognizant of the need to demonstrate to the Legislature, executive branch, and the public that it understood the state's fiscal situation. Having identified a funding gap of \$186 million for trial courts and indigent defense, and accepting the civil legal services gap of \$ 28 million, the Task Force explored possible sources of revenue to fill this gap. Although the Task Force avoided identifying specific revenue sources that were to be earmarked to support increased justice system funding, it did consider a number of potential revenue sources, from user fee increases to expansion or imposition of taxes unrelated to justice system expenditures.

Through its Funding Alternatives Work Group, the Task Force considered increasing or adding court fees, fines, and penalties as a potential source of revenue to fund trial court costs. A civil filing fee increase, a small number of new filing fees, and small increases in miscellaneous fees were recommended by the Task Force.<sup>362</sup> The new fees were estimated to raise \$18 million annually, of which \$7.4 million would be distributed to the state, \$9.5 million to county government and \$1.1 million to cities. Changes to the fees supporting the JIS were also recommended.<sup>363</sup> The Task Force cited the following reasons for not relying on filing fees, fines, and court costs to fund any significant portion of justice system costs.<sup>364</sup>

- Courts are a branch of government that should be funded from the general fund, and not self-funded from revenues from fines, fees, and penalties.
- The amount of revenue that could reasonably be derived from fines, fees, and penalties would not significantly contribute to trial court funding unless the increases were very large.
- Fines and penalties should be set on the basis of the appropriateness of the punishment, not the amount of revenue needed to fund the courts.
- Relying on fines or penalties as a significant source of court funding creates an inherent conflict of interest for judges who must determine the appropriate punishment for an offense where one alternative is imposing a fine or penalty.
- Significantly increasing fees negatively impacts potential litigants' access to the courts.

As part of recommending some minor fee increases, the Task Force recommended establishing a process for annual review and adjustment of fees.

Several other potential revenue sources were considered by the Task Force.<sup>365</sup> None were directly related to trial court or justice system functions or activities. Revenue options considered, but not recommended, included a proposal to shift indigent defense costs or civil legal costs to the state and sweep the county portion of PSEA to the state to fund them, and a proposal to sweep all fees to the state to fund the courts. These options were eliminated based on serious objections from the County Clerks. Options were also

explored for each of the three major sources of state revenues—sales tax, property tax, and business and occupation tax. The Task Force recommended that increases involving all three types of taxes in various combinations be given consideration by the legislature.<sup>366</sup> The options included: 1) expanding the business and occupation tax to include legal services, 2) increasing the business and occupation tax rate generally, 3) adding a small statewide, property tax increment, 4) extending the state sales tax to consumer services, and 4) extending the watercraft excise tax to motor homes and travel trailers.

The Task Force also addressed the distribution of revenues collected through the courts. In Washington, these revenues were distributed to various state and local funds based on complex formulas. For example, traffic infraction fines were distributed four ways: to the PSEA, the JIS Account, local government, and a state trauma care account. Criminal fines were distributed 68% to local government and 32% to the PSEA. Civil filing fees were also split between local government and the PSEA, with percentages varying depending on the level of court. While the Task Force decided that revision of the distribution percentages was not within its purview,<sup>367</sup> it did recommend some “clean-up” legislation regarding the PSEA.<sup>368</sup>

Having identified a substantial gap in trial court and justice system funding needs, the Task Force explored possible revenue sources to fund the gap. The study and subsequent recommendations demonstrated that the judiciary was aware that additional funding would require additional revenues. Because of its special knowledge regarding the impact of fee increases on access to the courts, the Task Force made specific recommendations regarding court related fees. Proposing several possible revenue sources, instead of one, demonstrated an awareness that tax increases were a Legislative prerogative.

### ***Limited Jurisdiction Courts***

A separate work group was created within the Task Force to examine structural and court funding issues of the District and Municipal Courts. The study of limited jurisdiction courts was not originally contemplated to be part of the Task Force’s charge. However, several on-going concerns about the organization and operations of these courts resulted in the review being added to the Task Force’s purview. Concerns expressed included: 1) the existence of multiple courts serving the same geographic area, creating confusion among the public and possible overlap of services, 2) long-standing reports that the courts were not operated efficiently and not taking advantage of more effective methods for delivering services, including consolidation of services, 3) problems between some counties and municipalities regarding the costs of Municipal Courts being operated by the county, 4) potential loss of judicial independence and inadequate separation of powers when municipal court judges were selected by municipal government, and 5) a perceived excessive focus on recovery of fines and forfeitures on the part of municipalities. In addition, some municipalities chose to use only a portion of a Municipal Court’s authorized jurisdiction, typically favoring revenue-producing case types such as parking and traffic infractions, leaving District Courts to handle the bulk of the non-revenue generating matters, such as civil and small claims.

Although many of these issues were not directly related to trial court funding, the Task Force did consider the funding needs of certain aspects of these courts. Interpreters, court appointed counsel, juries, and judicial officer salaries of District and Municipal courts were included in the nexus analysis. Indigent criminal defense costs and judicial officer salaries and benefits were also a part of the funding received by the judiciary in the 2005-07 Biennium.

### ***The 2005-2007 Biennium Budget Request***

The Task Force's report and recommendations were issued at the beginning of the 2005-07 Biennium budget cycle. The judiciary wrestled with which of two approaches to use in requesting greater state funding for trial courts and for indigent representation expenses (criminal, juvenile, and civil). One approach was to present the total amount needed to fund trial courts, including the gap identified. The second approach was to propose increases in funding for only a few key functions or activities, or for only one, such as indigent criminal defense. In choosing an approach, the judiciary sought to satisfy several goals. One goal was the need for the first year's efforts to have some success, in order to build and sustain momentum and commitment to the effort to increase the state's share of funding. Another goal was that indigent defense funding and related structural issues should be one of the priorities for the legislative session. A third goal was that the effort for the 2005 legislative session must be a collaborative effort between the judiciary, the cities and counties, and other key stakeholders (the Office of Public Defense (OPD), County Clerks, the state bar, and Civil Legal Services).

The original request was for an additional \$79.1 million of state funding. The request included:

- \$18 million to pay 50% of District and Municipal Court judges salaries, providing counties and cities with an equivalent net savings;
- direction that of this net savings, approximately \$6 million was to be placed in dedicated trial court improvement accounts at the local level;
- \$11.3 million to increase jury fees from \$10 to \$40 per day;
- \$25 million for criminal indigent defense;
- \$14.8 million for juvenile dependency representation and training of dependency counsel (requested by OPD); and
- \$10 million for civil legal services.

These costs would be offset by \$17.1 million in new or increased filing fees. The result would be a net \$62 million in new funding from the state general fund for trial courts and legal representation costs. The legislative proposal did not include any of the general tax proposals or proposals for fee simplification recommended by the Task Force.

Many of the requests survived the legislative process, although in a different form or amount. The requested increase in jury fees was withdrawn early in the session due to lack of support. The balance of the proposal had strong support in the Senate; but the House was not interested in funding a fixed portion of judicial salaries for the limited jurisdiction courts. Instead, the House proposed providing \$1 million to the AOC to

distribute to the trial courts for improvement projects. After what was described as “an incredibly fluid process,” the final compromise called for \$21.2 million in revenue from increased fees and appropriations of new funding as follows:<sup>369</sup>

- \$2.3 million for criminal indigent defense;
- \$5.0 million for dependency representation (some of this funding supplanted county funding, creating a further benefit for county government);
- \$3.0 million for civil legal services; and
- \$2.4 million in limited jurisdiction judges’ salary contributions.

The only added money from the general fund was an additional \$3.5 million for dependency representation, the balance of the above appropriations were funded from new revenues generated from court filing fee increases.

Despite the limited increase in state funding support, there were three aspects of the legislation that set the stage for greater state participation in trial court funding in the future. First, the Legislature explicitly acknowledged the state’s funding responsibility regarding trial courts and defense costs:

“The legislature recognizes the state’s obligation to provide adequate representation to criminal indigent defendants and to parents in dependency and termination cases. The legislature also recognizes that trial courts are critical to maintaining the rule of law in a free society and that they are essential to the protection of the rights and enforcement of obligations for all. Therefore, the legislature intends to create a dedicated revenue source for the purposes of meeting the state’s commitment to improving trial courts in the state, providing adequate representation to criminal indigent defendants, providing for civil legal services for indigent persons, and ensuring equal justice for all citizens of the state.”<sup>370</sup>

Although the language is couched in terms of intent, several specific proposals were adopted in the legislation.

Second, the proposal to create “trial court improvement accounts” at the county and city level to improve services, staffing, programs, and facilities in district and municipal courts was adopted.<sup>371</sup> Savings to the counties and cities from the state’s contribution to judges’ salaries were deposited in these funds. While the funds were dedicated to the courts, the city or county legislative body had sole authority to appropriate the funds in the account.

Finally, the state provided partial funding for indigent criminal defense and dependency representation. A statute was also adopted requiring counties accepting indigent criminal defense funding from the state to demonstrate progress towards compliance with “standards for the provision of indigent defense services endorsed by the Washington state bar association.”<sup>372</sup> The state Office of Public Defense was responsible for overseeing compliance with the standards. The state not only provided additional funding for indigent defense, but also required compliance with standards designed to improve the quality of indigent defense services.

## **D. ADEQUACY, EQUITY, STABILITY, AND ACCOUNTABILITY OF TRIAL COURT FUNDING**

Washington provided a good example of the impacts of primarily local funding on trial court expenditures and operations. A variety of studies over the past 30 years had commented about the inadequacy of trial court funding and the wide variance in available services and programs. Access to justice varied across the state. Concerns were also expressed about the impacts of economic conditions and tax limitation initiatives on available revenues, at both the state and local levels. Finally, there was recognition that there needed to be common business practices and performance standards for trial courts and related programs and services.

### ***Adequacy of Funding***

The inadequacy of trial court funding in Washington was demonstrated in several ways. While generally anecdotal in nature, virtually every report about the operation and funding of the trial courts over the last 30 years stated that funding levels were inadequate. For example, the Wilson Report in the mid-1990s found that the limited jurisdiction courts were not sufficiently funded to competently complete their work and insufficient staffing and inadequately trained staff were unable to complete tasks and maintain required records.<sup>373</sup> The 2004 study by the Court Funding Task Force was initiated in response to a sense of “chronic under funding” of the trial courts that had led to “a crisis in court operations.”<sup>374</sup> Its report included specific examples of the impact of inadequate funding on individual cases, from the death of a child in a juvenile dependency case not heard in a timely manner to ineffective assistance of counsel for criminal defendants by overloaded attorneys. The shared sense in the state was that the trial courts were not adequately funded.

The strongest quantitative indication of inadequate funding came from the work of the Task Force in estimating the funding gap. A quantitative model, the SimGap model, was developed to estimate total statewide funding need. The estimated gap for trial court operations was almost \$54 million statewide, representing almost 16% of the total amount then spent statewide on trial court operations. Even acknowledging that the funding gap model was rudimentary in nature, and often relied on measures reflecting existing practices, rather than more refined statewide standards, this was a significant shortfall.

At a local level, inadequacy of funding was also demonstrated by unfilled judgeships. A more sophisticated and rigorous model had been used for some time to estimate judgeship needs based on case filings. However, some judgeships justified by this approach remained vacant when the county did not fund the support staff or facilities necessary to support the judge. The caseload justified additional judges, but the lack of local funding prevented them from being filled.

Although the judiciary experienced success during the 2005-2007 Biennium when the amount of state funding was increased, the additional funding did not fill the gap estimated by the SimGap model. Only \$2.3 million in additional funding was appropriated for trial court operations, as compared to an estimated gap of \$54 million. Indigent representation for all types of cases received a bigger boost, in absolute terms

and proportionally, approximately \$ 10.3 million as compared to a need of \$132 million. While significant conceptual progress had been made to improve the adequacy of funding, actual progress was much smaller in dollar terms.

### ***Equity of Funding***

As with adequacy, most of the studies of trial courts conducted in the recent past had also commented on the lack of equity of funding. This was expressed both in terms of services and programs being available to litigants in some courts, but not others, and an uneven level and quality of services across trial courts. The Task Force report contained several references of this type of inequality of funding across trial courts. Although there were no anecdotes of inequity of the type recited regarding adequacy, the Preface noted that local funding and management had “created a serious disparity in the way laws are being enforced and the [way] trial courts are being operated throughout Washington State.”<sup>375</sup> The concept was also noted when the report recounted the nature of the state’s interest in the operation of trial courts, stating: “Quality justice should be equally available and accessible to every citizen in the state, regardless of their county or city of residence.”<sup>376</sup> Finally, one of the principles of trial court funding developed by the Task Force explicitly called for equity: “Trial court funding must be adequate to provide for the administration of justice equally across the state.”<sup>377</sup> The Task Force recognized the need for equity, although it did not delve too deeply into specifics of what equity meant or how it could be achieved.

Task Force work group materials revealed additional internal discussions about equity of funding across the state’s courts. Some members spoke about equity in terms of bringing less well funded courts up to a minimum level. This concept of equity assumed maintaining at least the existing level of funding in courts, rather than equalizing the existing level of funding or services to litigants. An initial attempt was made to analyze the degree of equity under the existing primarily locally funded system by comparing county revenue per capita with judicial expenditures per capita. The preliminary analysis concluded that there was little relationship between county spending capacity (measured by revenue available per capita) and actual funding support for the trial courts. Wealthier counties did not necessarily fund their trial courts more generously.

Another problem with assessing equity was the lack of reliable and comparable data about funding across the trial courts. Without detailed and comparable data, the Task Force was unable to compare staffing and service levels. This lack of data also hampered the development of staffing models for use in estimating the funding gap. Among the comments made in interviews were the following: “We don’t know what all really has gone into the numbers because so much of it is self-reporting,” and “The data is somewhat skewed when you look at the amount of staff you need for judges in County X versus County Y because they were doing different things.” In order to improve the models, and the gap estimate, it would be necessary to gather more information at a finer level regarding the spending patterns and management practices of each of the discrete programs in the trial courts. This would allow the development of standards and identification of best practices that would support more robust estimating models.

## ***Stability of Funding***

In many respects, the effort of the Task Force to ‘rebalance’ trial court funding as between the state, counties, and cities, was addressing the problem of the stability of existing trial court funding. The Task Force was aware of the projections by counties that justice system costs were consuming an ever larger portion of county discretionary funds and, at some point, might exceed the amount of discretionary funds available. Either the revenue from existing sources had to be increased, or new revenue sources would have to be found. Looking to the state to increase its share was a form of new revenue. The Task Force also identified possible new revenue streams. Most involved increases in, or extensions of, existing taxes, for example increasing the property tax rate or extending the business and occupation tax to legal services. Recognizing that taxation was a legislative power, not a judiciary power, the Task Force made recommendations regarding revenues, but did not include them in their 2005-2007 Biennium budget request.

Another revenue source examined by the Task Force was court filing fees, user service charges, fines, and penalties. The Task Force considered, briefly, raising filing fees to provide additional funding. Although there was a recommendation to raise some fees, the fact that there was a related recommendation to create a mechanism to periodically review the level of fees suggested the raises recommended were more in the nature of cost-of-living adjustments. Another basis for declining to significantly increase fees and fines was a principle developed by the Task Force that trial courts should not be self-funded. “The imposition of fines, penalties, forfeitures and assessments by trial courts are for the purpose of punishment and deterrence, and must not be linked to the funding of trial courts.”<sup>378</sup> The fact that the Legislature did not significantly raise fees or fines suggested that it agreed with this principle.

Although the Task Force posited that more sources of funding created greater stability of funding, it was not apparent that the Task Force fully analyzed whether state funding would, in fact, be any more stable than county funding. While property tax revenues comprise only 10% of state revenues, compared with more than 50% for counties, total state spending was capped and data on trends in income tax and other state revenue sources apparently was not analyzed. Instead, the Task Force appeared to rely on the concept that more sources of funding were inherently more stable than fewer.

## ***Accountability***

Historically, the authority to manage and operate trial courts in Washington resided with the trial courts. There were few mechanisms by which accountability could be measured from a statewide perspective. Trial courts reported certain statistical information to the AOC, but it related to caseloads and case management, not fiscal affairs.<sup>379</sup> The use of case management systems provided by the AOC by almost all courts made caseload and case management data more readily available and more comparable across the state. However, when the Task Force wanted to determine the current cost of operating the trial courts, it had to gather and interpolate the data from executive branch sources. The collection of fiscal information was complicated by the variety of fiscal and accounting systems used in the counties and cities. Each trial court

conducted their fiscal affairs and maintained financial records according to their county or city's budgetary, expenditure, and purchasing rules, which varied across the state. The chart of accounts, level of budget and expenditure detail, and manner of allocating overhead or indirect costs also varied. The variety of systems and approaches not only made the monitoring of fiscal aspects of the trial courts more difficult, it also hampered the ability to assess the efficiency and performance of trial court programs or services on a statewide basis.

One approach to establishing accountability with such decentralized authority and management was to adopt statewide standards for operations, practices, and performance. The adoption of statewide standards would not only improve accountability, it could result in programs and services being more uniformly available and improve equal access across courts. Few standards of this type existed at the time of this study. Several prior studies recommended that standards be developed, in particular for the District and Municipal courts, and recommended that compliance be checked through audits conducted by the AOC. However, no such standards were adopted. Developing them in the current context faced major hurdles. First, there would be organizational culture barriers raised by courts that were used to operating independently, but would now be expected to conform to a statewide standard. Second, if new statewide standards required counties or cities to spend money to achieve compliance, the state might be required by "state mandate" laws to reimburse the costs of compliance. The 2005 legislation implementing some of the Task Force's recommendations provided an example of how the introduction of standards might occur. In order for counties to obtain new state funding appropriated for indigent defense costs, the counties must agree to comply with existing state standards regarding the operation of indigent defense services, with oversight provided by the state office of public defense.

Another approach to achieving some level of accountability was to conduct performance audits. Executive branch agencies were required by statute to implement a "quality management, accountability, and performance system to improve the public services it provides."<sup>380</sup> In 2004, a court rule was adopted authorizing the AOC to conduct performance audits of courts to ensure that they meet minimum service levels for the administration of justice.<sup>381</sup> The audits were to be conducted in conformity with criteria and methods developed by the BJA.

Another aspect of accountability in Washington was the past emphasis on "achieving efficiencies" in operations. While recognizing the need to continue to seek efficiencies, the Task Force noted in its final report:

"Countless judicial efforts over the past 30 years at the state and local levels have resulted in real improvements in the effectiveness and efficiencies of the trial courts. Each of these efforts has also stressed the need for additional funding and yet, court funding reform, while continually discussed, has never been secured."<sup>382</sup>

Examples of efficiency measures implemented in the past included the coordination of administrative infrastructure and programs between trial courts, the use of electronic recording and other technologies, calendar efficiencies, and efficiencies realized through internal reorganization. In support of this need for continuous improvement, the Task



Force endorsed the efforts of Project 2001<sup>383</sup> and referenced past court coordination accomplishments in Appendix C of its final report.<sup>384</sup> The Task Force acknowledged that it was easier to request additional state funding when you could demonstrate efficient use of existing funding.

## ***E. CONCLUSION***

While the Washington judiciary was not engaged in a transition to greater state funding at the time of this study, they were engaged in an equally intense examination of how their trial courts were funded and what the balance between state and local funding should be. The impetus to examine funding was similar to that in New Jersey and Florida—limitations on local government revenues and a sense that funding was inadequate and that equal justice was not available across the state. Their examination began with the premise that mixed state and local funding was preferable to funding solely from the state or local government. As part of the funding study, the Washington judiciary also attempted to develop quantitative formulas to estimate the funding gap, and experienced the same problems as did New Jersey and Florida with the lack of reliable and comparable expenditure data. The study also considered possible new revenue sources to fund an increased share of state funding, rejecting the notion that a significant portion of trial court funding should come from filing fees, fines, and penalties. The result of the study was a legislative effort to increase the state's share of funding for trial courts and indigent defense. The effort was successful; state appropriations for trial courts and indigent defense were increased. Although the amount of new state funding was far less than was requested, there was now a greater recognition and acceptance that the state has an obligation to fund some level of trial court costs and representation of indigent litigants.

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# **APPENDICES**

**Appendix A: Research Design and Methodology**

**Appendix B. Demographic Characteristics of New Jersey, Florida and Washington**

**Appendix C: Washington: Context of State Trial Court Functions for Funding Discussion Chart**

## Appendix A: Research Design and Methodology

The approach of the project was to develop case studies of the trial court funding context and experiences in each of three states. Before beginning the case studies, existing literature and prior research were reviewed to better define the approach of the case studies in terms of research questions, data to be collected, and method of analysis. The case studies were based on information gathered through site visits, interviews, focus groups, and review of laws and reports. Information was gathered from representatives of the legislative, executive, and judicial branches at the state and local levels in each state.

Regardless of which level of government funded trial courts, there were common elements of any trial court funding structure. The project began by identifying the key elements that should be examined in a study of trial court funding. Two sources were used to identify the key elements: 1) a review of previous studies, and 2) focus groups of current practitioners. First, prior studies of trial court funding and state funding transitions were reviewed to identify key issues raised, whether in connection with an actual transition to greater state funding, in contemplation of such a shift, or as part of a more academic or non-state-specific review.

The second source was focus groups consisting of trial court and state judicial branch managers and judges. The groups were selected to include both state and local judiciary officials, and to include representatives both from states where the primary source of trial court funding was local and where the primary source was the state. The goal of these meetings was to identify what the participants considered to be the most important issues regarding an effective trial court funding structure. Focus group meetings were held with two groups. The first was at the mid-year meeting of the Conference of State Court Administrators (COSCA) held in December, 2003. This group consisted of the state court administrator or senior staff from about half of the states, and represented a cross-section of trial court funding approaches. They provided comment and feedback on the initial list of essential elements and the goals of an effective trial court funding approach. The second meeting was a session at the annual meeting of the National Conference of Metropolitan Courts (NCMC) held in September, 2004. This group consisted of the presiding or chief judges and court administrators from about 20 of the largest trial courts from across the country. This meeting occurred after the first set of site visits to each of the three states, thus providing an opportunity to review preliminary findings and “fine tune” the additional information to be sought in the second round of site visits.

The results of this review and discussion were a preliminary understanding of what constitutes adequate, stable, equitable and accountable trial court funding and a checklist of what trial court funding could encompass. Finally, a list of relevant questions and interview protocols for site visits, interviews, and information gathering were developed and refined.

The second phase of the project was to prepare case studies of the three states examined. The methods used to gather information in the three states included:

- Multiple site visits to each state for the purpose of interviewing individuals, conducting focus groups, or observing proceedings and meetings.
- One-on-one interviews of judges, court administrators, clerks of court, AOC staff, prosecutors, public defenders, county representatives, legislators, and legislative staff about trial court funding approaches and practices in each state.
- Focus group discussions with judges, court administrators, AOC staff, clerks of court, prosecutors, or legislative staff about trial court funding approaches and practices in each state.
- Attendance at meetings of boards, commissions, committees, or groups involved with trial court funding in each of the states.
- Phone interviews with individual trial court administrators and clerks of court.
- A review of Constitutions and statutes about trial court funding, both historical and current.
- A review of policies, regulations, operating manuals, standards, etc., governing trial court funding (both contemporary and historical documents); and
- A review of reports and studies regarding court reform and trial court funding in each of the three states.

These methods generated a considerable amount of information reflecting the experiences in the three states. Project staff sifted through this large body of information to produce three case studies containing the information thought to be most relevant to the issues of the impact of funding structures and practices on adequate, stable, equitable, and responsible trial court funding in each state. Each case study draft was sent back to the respective state as a check on the accuracy of the review and for comments. The drafts were then revised based on the responses and comments. Finally, an overview chapter was prepared synthesizing the observations from the three states.

The three states chosen for examination were selected to reflect the range of funding approaches, from primarily locally funded to primarily state funded, and to provide the maximum applicability to other states. The states selected represented each of three points on the local-state funding spectrum: 1) a mix of local and state funding, but primarily local, 2) a state which recently shifted to greater state funding, and 3) a state with long time primary state funding. Additional selection criteria included population and geography, with a preference for states with a mix of urban and rural courts. The three states studied were: New Jersey—a state that has had primary state funding since 1995, is of moderate size, and has a mix of urban and suburban trial courts; Florida—a state that began a shift to primary state funding in 2004, and has large, medium, and rural trial courts; and Washington—a state in which the trial courts were primarily locally funded, with minimal state funding, with several larger urban courts as well as a significant number of smaller and rural courts, and which was studying possible increases in state funding. A comparison of the demographics of the three states is provided in Appendix B.

## Appendix B: Demographic Characteristics of Florida, New Jersey, and Washington

DEMOGRAPHIC CHARACTERISTIC	FLORIDA	NEW JERSEY	WASHINGTON
Population (US Census April 1, 2000)	15,982,378	8,414,350	5,894,121
Population of largest judicial circuit/county (percent of state total)	2,253,362 (14.1%)	793,633 (9.4%)	1,737,034 (29.5%)
Number of Counties	67	21	39
Number of Judicial Circuits, Vicinages, or Districts	20 Circuits	15 Vicinages	30 Districts
Number of Multi-County Judicial Circuits, Vicinages, or Districts	15 (average 4.1 counties per multi-county Circuit)	3 (average 2.67 counties per multi-county Vicinage)	6 (average 2.33 counties per multi-county District)
Number of Circuits, Vicinages, Districts with a population of less than 30,000	None	None	6
Average population per Judicial Circuit, Vicinage, or District	799,119	560,957	190,133
Range of population of Judicial Circuits, Vicinages, or Districts	79,689 to 2,253,363	350,761 to 884,118	10,184 to 1,737,034

# Appendix C: Washington: Context of State Trial Court Functions for Funding Discussion Chart





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## GENERAL FINDINGS ENDNOTES

<sup>1</sup> For example, Hudzik, 1993; Tobin, 1990; Minnesota Supreme Court Task Force on Financing of the Trial Courts, 1989.

<sup>2</sup> Tobin, 1996. Prior studies include Tobin, R. W. and Hudzik, J. K. 1993 and Hudzik, J. K. 1985. For a more recent review of the issues, see Hudzik, J. K. and Carlson, A. 2004.

<sup>3</sup> For example, California, Minnesota, and Florida.

<sup>4</sup> For example, Arizona, Nevada, and Wisconsin.

<sup>5</sup> American Bar Association, Judicial Administration Division, 1990 and 1992.

<sup>6</sup> Conference of Chief Justices and Conference of State Court Administrators, 2004.

<sup>7</sup> For example, Judicial Council of California/Administrative Office of the Courts, 2005 and Washington State Supreme Court, Task Force on Civil Equal Justice Funding, 2003.

<sup>8</sup> For example, Reinkensmeyer, 2004 and Van Dyke, 2004.

<sup>9</sup> Commission on Trial Court Performance Standards 1990.

<sup>10</sup> For example National Council for Performance Excellence 2002 and National Center for State Courts CourTools.

<sup>11</sup> See National Conference on Public Trust and Confidence in the Justice System, 1999.

<sup>12</sup> For example, American Bar Association Committee on State Justice Initiatives, 2000.

<sup>13</sup> Hall, D. J., Tobin, R. W., and Pankey, Jr., K. P. 2004. As an example, in the late Spring of 2003 Oregon temporarily closed all trial courts on Friday and stopped appointing counsel for some indigent defendants in some types of cases for the balance of the fiscal year.

<sup>14</sup> Flango and Ostrom 1996.

<sup>15</sup> For example, Carlson, Somerlot, and Baehler, 2003 (judges) and Ostrom, 2004 (court support staff).

<sup>16</sup> There were differences across the three states as to how trial courts were grouped for budget purposes. In Florida the trial courts were organized into Circuits, some single county, but others multi-county. In New Jersey the counties were grouped into Vicinages, again some single county, others multi-county. Washington trial courts districts could also be multi-county. See Appendix B for a summary of county demographics in each state.

<sup>17</sup> See “Florida tax revenue drop persists, for the fourth time in a year, state economists lower their estimates, this time by \$1B”, by Steve Bousquet, *St. Petersburg Times*, published March 12, 2008.

<sup>18</sup> “Cuts could halt courts, judges warn”, by Mary Ellen Klas, *Miami Herald*, posted on Wed, Feb. 20, 2008.

<sup>19</sup> Florida Supreme Court, Administrative Order AOSC 02-27.

## NEW JERSEY ENDNOTES

<sup>22</sup> STATE OF NEW JERSEY COUNTY AND MUNICIPAL GOVERNMENT STUDY COMMISSION REPORT ON JUDICIAL UNIFICATION, July, 1987, page xiv. Referred to below as 1987 STUDY COMMISSION REPORT.

<sup>23</sup> See 1987 STUDY COMMISSION REPORT, p. 11.

<sup>24</sup> *Ibid.*

<sup>25</sup> Each municipality is required by statute to establish a municipal court (N.J.S. § 2B:12-1.a), funded by the municipality (N.J.S. § 2B:12-12-15). All of New Jersey is located within a municipality; there were no unincorporated areas.

<sup>26</sup> The Surrogate had jurisdiction over uncontested probate matters, including wills and estates and conservatorships and guardianships. The state judiciary did assert some authority over the surrogates; a 1983 rule of court clarified that the Assignment Judge’s responsibilities include supervising the surrogate. Once a surrogate matter becomes contested, it is transferred to the Superior Court.

<sup>27</sup> The Tax Court reviews tax actions and regulations at the state, county, and municipal level. N.J.S., §§ 2B:12-25 and 2B:13-2.

<sup>28</sup> NJ Constitution, Article VI, § II, ¶ 3.

<sup>29</sup> NJ Constitution, Article VI, § VII, ¶ 1.

<sup>30</sup> NJ Constitution, Article VI, § VII, ¶ 1; NJ Court Rules, Rule 1:33-1.

<sup>31</sup> NJ Constitution, Article VI, § VII, ¶ 2; NJ Court Rules, Rule 1:33-2(b).

<sup>32</sup> NJ Court Rules, Rule 1:33-2(d) (1).

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- <sup>33</sup> NJ Court Rules, Rule 1:33-5(a).
- <sup>34</sup> NJ Court Rules, Rule 1:33-7.
- <sup>35</sup> NJ Constitution, Article VI, § VII, ¶ 2.
- <sup>36</sup> NJ Court Rules, Rule 1:33-4.
- <sup>37</sup> NJ Court Rules, Rule 1:33-5(a).
- <sup>38</sup> NJ Court Rules, Rule 1:33-6.
- <sup>39</sup> NJ Court Rules, Rule 1:33-7.
- <sup>40</sup> NJ Court Rules, Rule. 1:34-2.
- <sup>41</sup> NJ Court Rules, Rule. 1:33-4(b) and NJ Administrative Directive dated June 28, 1983.
- <sup>42</sup> NJ Court Rules, originally Rule 1.33-5, redesignated as Rule 1:33-9 in 1983. After state assumption of trial court costs, this rule was revised to apply to budget impasses in the area of facilities, which remains a county responsibility.
- <sup>43</sup> Former NJ Court Rules, Rule 1:33-9(e).
- <sup>44</sup> See *In the Matter of the 1987 Essex County Judicial Budget Impasse* (1987) 109 N.J. 89; *In the Matter of the Camden County 1987 Judicial Budget Impasse* (1987) 109 N.J. 24; *In the Matter of the 1982 County of Hudson Judicial Budget Impasse* (1982) 91 N.J. 412; and *In the Matter of the 1981 County of Union Judicial Budget Impasse* (1981) 87 N.J. 1.
- <sup>45</sup> See *In the Matter of the 1987 Essex County Judicial Budget Impasse* (1987) 109 N.J. 89. It should be noted that the amount approved by the Supreme Court, although substantial, was still significantly less than what was originally requested by the court.
- <sup>46</sup> See N.J.S. § 40A:4-45.4.
- <sup>47</sup> Supreme Court of New Jersey, FINAL REPORT OF THE SUPREME COURT COMMITTEE ON EFFICIENCY IN THE OPERATION OF THE COURTS OF NEW JERSEY, Trenton, 1982.
- <sup>48</sup> NJ Constitution, Article VI, § VIII, ¶ 1.
- <sup>49</sup> 1987 STUDY COMMISSION REPORT.
- <sup>50</sup> 1987 STUDY COMMISSION REPORT, pp. 60-63.
- <sup>51</sup> 1987 STUDY COMMISSION REPORT, p. 65.
- <sup>52</sup> 1987 STUDY COMMISSION REPORT, recommendations II-3 and II-4.
- <sup>53</sup> 1987 STUDY COMMISSION REPORT, recommendation II-8.
- <sup>54</sup> 1987 STUDY COMMISSION REPORT, recommendation II-5.
- <sup>55</sup> Two clerks did chose to become Superior Court employees when state funding began in 1995.
- <sup>56</sup> STATE OF NEW JERSEY COUNTY AND GOVERNMENT STUDY COMMISSION REPORT ON THE COUNTY CLERK AND COURT CONSOLIDATION, AN ADDENDUM TO THE REPORT ENTITLED JUDICIAL UNIFICATION, September 1988.
- <sup>57</sup> NJ Public Laws 1989, chap. 296, sec. 3; codified at N.J.S. § 2A:5A-3.
- <sup>58</sup> NJ Constitution, Article VI, § VIII (a).
- <sup>59</sup> NJ Constitution, Article VI, § VIII, ¶ 1.b (3).
- <sup>60</sup> NJ Constitution, Article VI, § VIII, ¶ 1.a (3).
- <sup>61</sup> NJ Public Laws 1993, chap. 275, sec. 2; codified at N.J.S. § 2B:10-2.
- <sup>62</sup> 1987 STUDY COMMISSION, Recommendation III-2, page xv.
- <sup>63</sup> NJ Constitution, Article VI, § VIII, ¶ 1.b (1).
- <sup>64</sup> *Board of Chosen Freeholders of the County of Morris v. State of New Jersey* (1999) 159 N.J. 565.
- <sup>65</sup> State Judicial Unification Act, NJ Public Laws 1993, chap. 275.
- <sup>66</sup> The Judicial Employees Unification Act, NJ Public Laws 1994, chap. 162.
- <sup>67</sup> NJ Public Laws 1993, chap. 275, § 24.
- <sup>68</sup> NJ Public Laws 1993, chap. 275, § 24.a. The members included the Chief Justice (two members), the Commissioner of the Department of Personnel, the Commissioner of the Department of the Treasury, the President of the Senate, the Senate Minority Leader, the Speaker of the General Assembly, the Assembly Minority Leader, and the President of the New Jersey Association of Counties.
- <sup>69</sup> NJ Public Laws 1993, chap. 275, § 24.b(2).
- <sup>70</sup> NJ Public Laws 1993, chap. 275, §. 24.b(3).
- <sup>71</sup> NJ Public Laws 1993, chap. 275, §. 24.d.
- <sup>72</sup> N.J.S. § 2B:10-3.a.
- <sup>73</sup> NJ Public Laws 1993 chap. 275, § 5; codified at N.J.S. § 2B:10-5.
- <sup>74</sup> The Judicial Employees Unification Act, NJ Public Laws 1994, chap. 162.

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- <sup>75</sup> NJ Public Laws 1994, chap. 162, § 5.e.
- <sup>76</sup> NJ Public Law 1993, chap. 275, § 7.a; codified at N.J.S. § 2:B10-7.a.
- <sup>77</sup> NJ Public Law 1993, chap. 275, § 7.b; codified at N.J.S. § 2B:10-7.b.
- <sup>78</sup> NJ Constitution, Article VI, § VIII (a) (3).
- <sup>79</sup> NJ Public Laws 1993, chap. 275, § 22.
- <sup>80</sup> Revenue total is based on the base year amount reports from counties reported in the JUDICIAL UNIFICATION TRANSITION COMMITTEE REPORT dated August 20, 1996, p. v-1.
- <sup>81</sup> N.J.S. § 2B:10-6.
- <sup>82</sup> In the budget documents a further distinction is made between Judges and salaries and benefits for judiciary employees.
- <sup>83</sup> NJ Constitution, Article. V, § I, subsection 15, subject to override by two-thirds vote of Legislature.
- <sup>84</sup> NJ Constitution, Article VI, § III, ¶ 3.
- <sup>85</sup> The Appellate Division is the statewide intermediate court of appeals.
- <sup>86</sup> NJ Court Rules, Rule 1:33-2(c).
- <sup>87</sup> NJ Administrative Directive #9-90, as amended by NJ Administrative Directive #7-97 and NJ Administrative Directive #2-00.
- <sup>88</sup> REPORT ON USE OF STAFFING MODELS, p. 7.
- <sup>89</sup> REPORT ON USE OF STAFFING MODELS, pp. 2-3.
- <sup>90</sup> THE USE OF STAFFING MODELS IN THE NEW JERSEY TRIAL COURTS, Report of the Administrative Council Ad Hoc Working Group on Staffing Ratios, July 2002, adopted by the Administrative Council on July 18, 2002; referred to as the REPORT ON USE OF STAFFING MODELS.
- <sup>91</sup> REPORT ON USE OF STAFFING MODELS, p. 11.
- <sup>92</sup> At the state level the Division Managers were organized into conferences (for example, the Conference of Civil Managers), each of which works with a corresponding AOC division to develop statewide policies and procedures relating to the operation of the division.
- <sup>93</sup> See NJ Administrative Directive No. 2-03 Court Administration – Staffing Models, and Attachments, issued June 10, 2003.
- <sup>94</sup> NJ Administrative Directive #8-06.
- <sup>95</sup> REPORT ON USE OF STAFFING MODELS, p.3. The staffing models were revised in 2006 for use in allocating FY 2007 appropriations. NJ Administrative Directive #8-06 issued May 26, 2006.
- <sup>96</sup> REPORT ON USE OF STAFFING MODELS, p. 3.
- <sup>97</sup> N.J.S. § 2B:10-2.
- <sup>98</sup> REPORT ON USE OF STAFFING MODELS, p. 7.
- <sup>99</sup> REPORT ON USE OF STAFFING MODELS, pp. 12-13.
- <sup>100</sup> REPORT ON USE OF STAFFING MODELS, p. 19.
- <sup>101</sup> REPORT ON USE OF STAFFING MODELS, p. 4.
- <sup>102</sup> New Jersey did adopt drug courts on a statewide basis in FY 2004, but they were included in the Special Programs budget and are not part of the regular staffing models because the funding is appropriated by the Legislature as a special program.
- <sup>103</sup> See NJ Administrative Directive No. 2-03 Court Administration – Staffing Models, and Attachments, issued June 10, 2003.
- <sup>104</sup> NJ Administrative Directive # 2-00.
- <sup>105</sup> Assistant Trial Court Administrators were also appointed by the Administrative Director of the Courts, after consulting with the Assignment Judge. NJ Court Rules, Rule 1:33-5(b).
- <sup>106</sup> NJ Administrative Directive # 9-90 C.1.
- <sup>107</sup> NJ Administrative Directive # 7-97.
- <sup>108</sup> NJ Administrative Directive # 9-90 D.
- <sup>109</sup> NJ Administrative Directive # 7-97.
- <sup>110</sup> REPORT ON USE OF STAFFING MODELS, p. 7.
- <sup>111</sup> REPORT OF THE NEW JERSEY JUDICIARY STRATEGIC PLANNING COMMITTEE, 1998, Executive Summary, section I, third paragraph, at <http://www.judiciary.state.nj.us/strategic/stratsum.htm#I>.
- <sup>112</sup> REPORT OF THE NEW JERSEY JUDICIARY STRATEGIC PLANNING COMMITTEE, Strategic Initiative 3A.
- <sup>113</sup> REPORT OF THE NEW JERSEY JUDICIARY STRATEGIC PLANNING COMMITTEE, Strategic Initiative 3B.
- <sup>114</sup> REPORT OF THE NEW JERSEY JUDICIARY STRATEGIC PLANNING COMMITTEE, Strategic Initiative 3C.
- <sup>115</sup> REPORT OF THE NEW JERSEY JUDICIARY STRATEGIC PLANNING COMMITTEE, Strategic Initiative 7A.

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<sup>116</sup> “New Jersey Courts Continue Dynamic Backlog Reduction; Down 54 Percent Since 1999”, New Jersey judiciary press release at: <http://www.judiciary.state.nj.us/pressrel/pr040727a.htm>.

<sup>117</sup> REPORT OF THE NEW JERSEY JUDICIARY STRATEGIC PLANNING COMMITTEE, Strategic Initiative 3D.

<sup>118</sup> REPORT ON USE OF STAFFING MODELS, p. 19.

<sup>119</sup> See NJ Administrative Directive #8-06.

<sup>120</sup> REPORT ON USE OF STAFFING MODELS, p. 4.

<sup>121</sup> N.J.S. § 2B:6-1b.

<sup>122</sup> NJ Court Rules, Rule 1:31-2.

<sup>123</sup> NJ Court Rules, Rule 1.33-9, amended effective September 1, 1996.

## FLORIDA ENDNOTES

<sup>124</sup> Florida Constitution, Art. V, § 1. The types of trial courts authorized in the Constitution were Circuit Courts and county courts. The jurisdictions of the Circuit Courts was plenary, everything except what was given to county court (Florida Constitution, Art. V, § 5(b)). The jurisdiction of the county courts was set by the Legislature (Florida Constitution, Art. V, § 6(b)) and was provided for in Florida Statutes Title V, Chapter 34 and extends to civil disputes involving up to \$15,000 and traffic and misdemeanor offenses. County courts were comprised of at least one judge.

<sup>125</sup> Florida Constitution, Art. V, new § 9.

<sup>126</sup> Florida Constitution, Art. V, new § 14, replacing old § 19.

<sup>127</sup> Florida Constitution, Art. V, new § 2(a), replacing old § 3.

<sup>128</sup> Florida Constitution, Art. V, § 5 (Circuit Courts), § 17 (State Attorneys), and § 18 (Public Defenders).

<sup>129</sup> Florida Constitution, Art. V, § 1.

<sup>130</sup> Florida Constitution, Art. V, § 6.

<sup>131</sup> Florida Constitution, Art. V, § 16

<sup>132</sup> Although the terms “state funding” and “unified funding or budgeting” are sometimes used as near synonyms, they actually have different meanings and implications. “State funding” means as the term implies that the state funds, in whole or in part, courts and judicial functions or costs. Unified funding or budgeting refers to the rules, strings or other features tied to state assumption. For example, it may imply achieving equity at a minimum threshold level of funding across trial courts; statewide standardization of criteria and formulae for determining allocations of funds to trial courts; a more highly centralized form of budget planning and management, directed either from the state capital or regionally within the state; or standardization of budget planning and standardization and assessment of budget performance expectations across the state. Associated with this last meaning was also standardization of budget submission formats, required information and reporting, and so forth. It was possible for all three meanings of “unified funding or budgeting” to apply in a given state in association with state financing. It was also possible that none would apply. That was, one can have state financing without unified funding or budgeting, for example through the use of block grants carrying very few strings.

<sup>133</sup> Smith, John, *Revision #7: Closing the Loophole!*, Florida Association of Counties, Florida TaxWatch, October 1998, p. 2.

<sup>134</sup> *Ibid.*

<sup>135</sup> Florida Constitution, Art. V, former § 14, now § 14(a).

<sup>136</sup> Florida Constitution, Art. XI, § 2(a).

<sup>137</sup> Florida Department of Financial Services, Report on County Revenue Detail for FY 2004.

<sup>138</sup> Revenue growth was capped on a percentage basis. The cap limits the increase in the annual assessment of homestead properties in Florida to 3% or to the Consumer Price Index, whichever was less. Florida residents approved the Constitutional Amendment in 1992 and it went into effect in 1995.

<sup>139</sup> Florida Constitution, Art. VII, § 9(b).

<sup>140</sup> Census 2000 PHC-T-4, Ranking Tables for Counties: 1990 and 2000, Table 2: Counties Ranked by Population: 2000, from U.S. Census Bureau, Census 2000 Redistricting Data (P.L. 94-171) Summary File and 1990 Census, Internet Release date: April 2, 2001.

<sup>141</sup> State of Florida, Basic financial statements, Fiscal year ended June 30, 2004, pp. 24-25.

<sup>142</sup> What subsequently became Florida Constitution, Art. V, § 14(c) proposed: “No county or municipality, except as provided in this sub§ , shall be required to provide any funding for the state courts system, state

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attorneys' offices, public defenders' offices, court-appointed counsel or the offices of the clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions.”

<sup>143</sup> Florida Constitution, Art. V, § 14 (c) provides that “Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”

<sup>144</sup> Statement of Intent Article V, § 14, by Constitution Revision Commission members Alan C. Sundberg and Jon L. Mills, Florida’s 1998 Constitution Revision Commission, at pp. 5 and 6.

<sup>145</sup> Laws of Florida, Chapter 2000-237, § 3.

<sup>146</sup> The Legislature contracted with MGT of America Inc. for the study. The Phase I report was delivered on January 22, 2003, and a Phase 2 report was delivered on March 1, 2003.

<sup>147</sup> Laws of Florida, Chapter 2003-402.

<sup>148</sup> Laws of Florida, Chapter 2004-265.

<sup>149</sup> Statement of Intent by Constitution Revision Commission members.

<sup>150</sup> Florida Office of State Court Administrator, *Revision 7 Overview: Setting the Framework for the Budget*.

<sup>151</sup> *Ibid.* The Statement of Intent conflated core functions and essential elements when it provided that: “Core functions and requirements of the state courts system and other court-related functions and requirements which are statewide in nature cannot be local requirements.”

<sup>152</sup> Florida Judicial Management Council, *Taking Bearings, Setting Course, The Long-Range Strategic Plan for the Florida Judicial Branch*, 1999.

<sup>153</sup> Florida Constitution, Art. V, § 14(c).

<sup>154</sup> Florida Office of the State Court Administrator, *What Are the Essential Elements*.

<sup>155</sup> Laws of Florida, Chapter 2003-402, § 40; codified at Florida Statutes, § 29.004. There were subsequent amendments to the definitions in Laws of Florida, Chapter 2004-11, § 3; and Chapter 2005-236, § 14.

<sup>156</sup> Laws of Florida, Chapter 2000-237, § 1(4).

<sup>157</sup> Supreme Court of Florida, Administrative Order No. SC02-17.

<sup>158</sup> Supreme Court of Florida, Administrative Order No. SC99-3.

<sup>159</sup> Supreme Court of Florida, Administrative Order No. SC00-429.

<sup>160</sup> Florida Rules of Court Administration, Rule 2.053.

<sup>161</sup> Florida Office of State Court Administrator, *The Revision 7 Budget Request: Defining the Elements and Their Related Costs*.

<sup>162</sup> *Ibid.*

<sup>163</sup> Article V Steering Committee 2000 Article V Cost Inventory.

<sup>164</sup> MGT of America, *Implementation of Revision 7 to Article V of the Florida Constitution, Phase Two Report*, March 11, 2003.

<sup>165</sup> Florida Statutes, §§ 29.004(10)(d) and 397.334.

<sup>166</sup> Florida Office of State Court Administrator, *Revision 7 Overview: Setting the Framework for the Budget*.

<sup>167</sup> Florida Constitution, Art. V, § 16.

<sup>168</sup> Florida Constitution, Art. VIII, § 1(d) lists the duties of the County Clerk. Florida Constitution, Art. V, § 16 permits the duties of clerk of court to be separated from the other clerk duties. In three counties, the County Clerk serves only as the clerk of court.

<sup>169</sup> Florida Statutes, §§ 40.001 and 40.02. Unless otherwise designated, the County Clerk was authorized by statute to provide jury services. Statutes also allow the Chief Judge in a Circuit to designate the court administrator to perform jury duties in counties having an approved computerized jury selection system. The Office of State Courts Administrator (OSCA) manages the juror selection process in Miami-Dade, Broward, Palm Beach, Orange, and Osceola counties.

<sup>170</sup> Florida Statutes, § 28.215, added by Laws of Florida, Chapter 2003-402, § 27.

<sup>171</sup> Florida Constitution, Art. V, § 20(c)(8) requires the clerk of court to collect fines and disburse them to the appropriate jurisdiction.

<sup>172</sup> Florida Statutes, § 61.181.

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- <sup>173</sup> Florida Statutes, § 27.52 (1).
- <sup>174</sup> Uncodified, stated at Laws of Florida, Chapter 2000-237, § 12.
- <sup>175</sup> *Report on the Findings and Agreements of the Joint Trial Court/Office of the State Courts Administrator/ Florida's Clerks of Court Joint Workgroup on Functions and Duties*, not dated.
- <sup>176</sup> The lists of permissible and non-permissible activities were specified in Florida Statutes § 28.35(4)(a).
- <sup>177</sup> Statement of Intent by Constitution Revision Commission members.
- <sup>178</sup> RECOMMENDED FEE SCHEDULE TO FUND COURT RELATED SERVICES OF THE CLERKS OF CIRCUIT COURT AND OTHER INFORMATION TO IMPLEMENT REVISION 7 OF ARTICLE V OF THE FLORIDA CONSTITUTION, Florida Association of Court Clerks, October, 2000.
- <sup>179</sup> See Appendix C of the FACC 2000 Report for a list of optional clerk of court programs.
- <sup>180</sup> Florida Auditor General, FLORIDA ASSOCIATION OF COURT CLERKS SURVEY OF 1998-99 COURT-RELATED REVENUES AND EXPENDITURES OF THE CLERKS OF THE CIRCUIT COURTS FOR IMPLEMENTATION OF REVISION 7 OF ARTICLE V OF THE STATE CONSTITUTION, Report Number 01-139, April 2001.
- <sup>181</sup> Florida Association of Court Clerks, REVIEW OF THE CLERKS OF COURT COURT RELATED EXPENDITURES AND REVENUES FOR THE YEAR ENDING SEPTEMBER 30, 2000, May, 2002.
- <sup>182</sup> Florida Constitution, Art. V, § 14 (b) provides: "All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this sub§ and sub§ (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law."
- <sup>183</sup> Florida Constitution, Art. V, § 14(b), which provides: "Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law."
- <sup>184</sup> Many of the activities of the County Clerks were facilitated by FACC, much as OSCA does for the judiciary. FACC was a statewide organization of the County Clerks. In addition to serving as a professional association of the clerks, it handles child support (IV-D) funding and traffic receipts for all clerks and receives a share of these revenues to support its operations. FACC had also assumed the responsibility for selling access to public records in the custody of the County Clerks.
- <sup>185</sup> Florida Statutes, § 28.246(2).
- <sup>186</sup> Florida Statutes, § 28.246(1).
- <sup>187</sup> Florida Statutes, § 28.35, added by Laws of Florida, Chapter 2003-402, § 36. It was initially called the Clerk of Court Operations Conference, but was renamed the Florida Clerk of Court Operations Corporation by Laws of Florida, Chapter 2004-265, § 23.
- <sup>188</sup> Florida Statutes, § 28.36.
- <sup>189</sup> Florida Statutes, §§ 28.35(2)(f) and 28.36(4).
- <sup>190</sup> Florida Statutes, § 28.36.
- <sup>191</sup> The percentage relied on population and case filing trends.
- <sup>192</sup> Statement of Intent by Constitution Revision Commission members.
- <sup>193</sup> Florida Statutes, § 28.35(2)(e).
- <sup>194</sup> Florida Auditor General, CLERK OF COURT OPERATIONS CONFERENCE OPERATIONAL AUDIT, Report No: 2005 -121, February, 2005.
- <sup>195</sup> *Ibid.*, page 2.
- <sup>196</sup> See Florida Clerks of Court Operations Corporation, FISCAL YEAR 2005-2006 CERTIFIED ARTICLE V BUDGETS, revised November 9, 2005, p. v and Appendix A..
- <sup>197</sup> Florida Constitution, Art. V, § 14(a).
- <sup>198</sup> Florida Statutes, § 29.005 for state attorneys' offices, Florida Statutes, § 29.006 for public defenders an indigent defense costs, and Florida Statutes, § 29.007 for court appointed counsel.
- <sup>199</sup> Florida Laws, chapter 2004-265, §§ 26 and 27.
- <sup>200</sup> Florida Statutes, § 27.5304. This arrangement was subsequently changed, see Florida Laws, chapter 2007-62.

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- <sup>201</sup> Florida Statutes, § 27.5304.
- <sup>202</sup> Florida Statutes, § 27.42.
- <sup>203</sup> Laws of Florida, chapter 2007-62, § 4, creating Florida Statutes § 27.511.
- <sup>204</sup> Florida Constitution, Art. V, § 14(a).
- <sup>205</sup> Florida Constitution, Art. V, § 14(b).
- <sup>206</sup> Florida Constitution, Art. V, § 14(b). This provision was reportedly included in Revision 7 at the request of the FACC.
- <sup>207</sup> Florida Statutes, § 28.241(1)(a). The fee was allocated to several funds, including the state General Revenue Fund, Florida Clerk of Court Operations Corporation, Court Education Trust Fund, and Administrative Trust Fund.
- <sup>208</sup> Florida Statutes, § 28.241(2) with a portion of the increase going into the state General Revenue Fund, a portion to the Clerks of the Court Trust Fund. Florida Statutes, § 28.241(2) and \$50 to the state court's Grants and Donations Trust Fund Florida Statutes, § 35.22(6).
- <sup>209</sup> Florida Statutes, § 35.22.
- <sup>210</sup> Florida Statutes, § 25.241.
- <sup>211</sup> Florida Statutes, § 34.041.
- <sup>212</sup> Florida Statutes, § 28.241(1)(a) payable to the Clerk of Court.
- <sup>213</sup> Florida Statutes, § 28.241(1)(a) payable to the Clerk of Court.
- <sup>214</sup> Florida Statutes, § 28.101 to be deposited in the Domestic Violence Trust Fund.
- <sup>215</sup> Florida Statutes, § 766.104(2).
- <sup>216</sup> Florida Statutes, § 713.24(1)(b).
- <sup>217</sup> Florida Statutes, § 744.3135 and Florida Statutes, § 744.365, Florida Statutes, § 744.368.
- <sup>218</sup> Florida Statutes, § 28.2401.
- <sup>219</sup> Florida Statutes, § 28.2401(3) with amounts shared between the Court Education Trust Fund for educating court staff and the Administrative Trust Fund for education of clerks' staff .
- <sup>220</sup> There were 33 such charges that can be assessed.
- <sup>221</sup> Florida Statutes, § 28.24.
- <sup>222</sup> Florida Statutes, § 55.505.
- <sup>223</sup> Florida Statutes, §§ 28.101(2) and 382.023.
- <sup>224</sup> Florida Statutes, § 61.14(6) (d).
- <sup>225</sup> Florida Statutes, § 318.18(3) deposited in the fine and forfeiture fund.
- <sup>226</sup> Florida Statutes, § 22.245.
- <sup>227</sup> Florida Statutes, § 327.73(9)(a).
- <sup>228</sup> Florida Statutes, § 24.241(1)(b).
- <sup>229</sup> Florida Statutes, § 34.041(2).
- <sup>230</sup> Florida Statutes, § 28.2402.
- <sup>231</sup> Florida Statutes, §§ 34.041(4) and (6).
- <sup>232</sup> Florida Statutes, § 34.045(1)(b).
- <sup>233</sup> Florida Statutes, § 50.0711.
- <sup>234</sup> Florida Statutes, § 44.108.
- <sup>235</sup> Florida Statutes, § 44.108.
- <sup>236</sup> Florida Statutes, § 938.10(1).
- <sup>237</sup> Florida Statutes, § 28.24(26)(b).
- <sup>238</sup> Florida Statutes, § 28.24(26)(c).
- <sup>239</sup> Florida Statutes, § 939.185, added by Florida Laws, chapter 2004-265, § 88.
- <sup>240</sup> Florida Statutes, § 25.383.
- <sup>241</sup> Florida Statutes, § 28.241(6).
- <sup>242</sup> Florida Statutes, § 34.041(8).
- <sup>243</sup> Florida Statutes, § 35.22(6).
- <sup>244</sup> Florida Statutes, § 28.24(12)(e).
- <sup>245</sup> Uncodified, added by Laws of Florida, Chapter 2004-265, § 15.
- <sup>246</sup> Florida Statutes, § 318.18(13).
- <sup>247</sup> Florida Statutes, § 34.191 and Florida Statutes, § 142.03 2003.
- <sup>248</sup> Florida Statutes, § 28.37(2).
- <sup>249</sup> Florida Statutes, § 142.01.

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- <sup>250</sup> Florida Statutes, § 938.05.
- <sup>251</sup> Florida Statutes, § 318.21(2)(g).
- <sup>252</sup> Florida Statutes, § 318.21(h).
- <sup>253</sup> Florida Statutes, § 938.29.
- <sup>254</sup> Florida Statutes, § 28.2402(2) (in Circuit Courts) and Florida Statutes, § 34.045(2) (in county courts).
- <sup>255</sup> Florida Statutes, § 318.14(10)(b).
- <sup>256</sup> Florida Statutes, § 318.325.
- <sup>257</sup> Formerly Florida Statutes, § 34.191(2).
- <sup>258</sup> Florida Statutes, § 318.18(11), Laws of Florida, Chapter 2003-402, § 99.
- <sup>259</sup> Previously Florida Statutes, § 28.24(1) deleted by Laws of Florida, Chapter 2003-402, § 28.
- <sup>260</sup> Previously Florida Statutes, § 28.24(2) deleted by Laws of Florida, Chapter 2003-402, § 28.
- <sup>261</sup> Previously Florida Statutes, § 28.24(7) deleted by Laws of Florida, Chapter 2003-402, § 28.
- <sup>262</sup> Previously Florida Statutes, § 28.2401(3) deleted by Laws of Florida, Chapter 2003-402, § 29.
- <sup>263</sup> Deleted from Florida Statutes, § 938.19 by Laws of Florida, Chapter 2003-402, § 126.
- <sup>264</sup> Authority to impose the fees was repealed by § 149 of Laws of Florida, Chapter 2003-402.
- <sup>265</sup> Florida Constitution, Article V, § 14(c); repeated in the initial implementation legislation, Florida Laws, chapter 2000-237, § 8(2).
- <sup>266</sup> *County Funding of Local Requirements*, Chief Justice Anstead, May 17, 2004.
- <sup>267</sup> Florida Tax Watch, *Proper Funding of the State Courts System Is Crucial to Rule of Law, Taxpayer Confidence, and Healthy Economy*, A Florida TaxWatch Special Report, February, 2004.
- <sup>268</sup> See Statement of Intent by Constitution Revision Commission members.
- <sup>269</sup> Florida Statutes, § 28.36(5).
- <sup>270</sup> See Statement of Intent by Constitution Revision Commission members.
- <sup>271</sup> Florida Statutes, § 29.0095(1).
- <sup>272</sup> TCBC minutes of August 24, 2005.
- <sup>273</sup> Unused monies in the fund may not be carried forward from one fiscal year to the next, so the contingency funds must be requested each year.
- <sup>274</sup> Florida Constitution, Art. V, § 2(a) gives the Supreme Court rule making authority over “the practice and procedure in all courts including the time for seeking appellate review, [and] the administrative supervision of all courts . . . .”
- <sup>275</sup> *Times Publishing Company v. Ake*, 660 So.2d 255, 257 (1995).
- <sup>276</sup> Florida Statutes, § 43.26, which provided: “The chief judge of each circuit, after consultation with the clerk of court, shall determine the priority of services provided by the clerk of court to the trial court. The clerk of court shall manage the performance of such services in a method or manner that is consistent with statute, rule, or administrative order.” This section was added by Florida Laws, Chapter 2005-236, § 30.
- <sup>277</sup> Florida Statutes, § 28.44, added by Florida Laws, Chapter 2005-236, § 16.
- <sup>278</sup> Florida Statutes, § 28.36(6).
- <sup>279</sup> Florida Statutes, § 216.181. This body was charged with reviewing any requested increases in approved operating budgets for state agencies, as requested through the Executive Office of the Governor.
- <sup>280</sup> Florida Statutes, § 28.35(2).
- <sup>281</sup> Florida Constitution, Art. V, § 14 (c) provides in part: “Counties shall be required to fund . . . the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, . . . and the offices of the clerks of the circuit and county courts performing court-related functions.”
- <sup>282</sup> Florida Constitution, Art. V, § 7.
- <sup>283</sup> Florida Statutes, § 29.008(1)(a).
- <sup>284</sup> Florida Constitution, Article V, § 14(c) provides, in relevant part: “Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems . . . .”
- <sup>285</sup> Florida Statutes, § 29.008(f).
- <sup>286</sup> Florida Statutes, § 28.24(12)(e), added by Florida Laws, Chapter 2004-265, § 16.
- <sup>287</sup> There were statewide data standards for what constitutes a filing and OSCA does audit filing, but not dispositions figures.
- <sup>288</sup> Florida Statutes, § 29.0086.
- <sup>289</sup> Florida Statutes, § 29.0086(5)(b).
- <sup>290</sup> Article V Technology Board, INTERIM REPORT, dated January 10, 2005.



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<sup>291</sup> This does not preclude the county from being the fiscal agent for projects in a circuit.

## WASHINGTON ENDNOTES

<sup>292</sup> Washington Constitution, Article IV, section 5.

<sup>293</sup> See Washington Constitution, Article IV, section 6, which referred to a District Court. Washington Constitution, Article IV, section 12 authorized the Legislature to create, and provide for the jurisdiction, and powers of limited jurisdiction courts.

<sup>294</sup> Washington Constitution, Article IV, section 24.

<sup>295</sup> Washington State Court Rules, General Rule 29(f)(5)(c).

<sup>296</sup> Revised Code of Washington (RCW) section 13.04.035.

<sup>297</sup> Washington Constitution, Article IV, section 26.

<sup>298</sup> RCW § 2.32.050(9).

<sup>299</sup> RCW Chapter 3.30.

<sup>300</sup> Washington Laws of 1961, chap. 299.

<sup>301</sup> RCW Chapters 3.46, 3.50 and 35.20 (Seattle Municipal Court).

<sup>302</sup> Conducted for the AOC by John F. Boyd, Associates, Olympia, 1974.

<sup>303</sup> Washington Laws of 1984, chap. 258.

<sup>304</sup> Washington State Judicial Council, REPORT ON COURTS OF LIMITED JURISDICTION, January 1989.

<sup>305</sup> Wilson, Carol J., and W. Laurence Wilson, WASHINGTON STATE, COURTS OF LIMITED JURISDICTION ASSESSMENT SURVEY REPORT 1995-1997, Lacey, WA, 1997, p. 4; referred to here as the Wilson Report.

<sup>306</sup> Wilson Report., pp. 15-23.

<sup>307</sup> See Washington Court General Rules, GR 29 (f) (5) (a), (b) & (c).

<sup>308</sup> RCW § 13.04.040 for juvenile court probation employees; RCW § 3.54.010 for District Court employees; and RCW § 3.46.140 for Municipal Court employees.

<sup>309</sup> *Zylstra v. Piva* (1975) 85 Wn.2d 743, 539 P.2d 823.

<sup>310</sup> RCW § 2.32.330.

<sup>311</sup> RCW § 26.12.050.

<sup>312</sup> RCW § 2.32.180.

<sup>313</sup> Washington State Court Rules, Board of Judicial Administration Rules, referred to as BJAR.

<sup>314</sup> Report of the Washington State Commission on Justice, Efficiency and Accountability, August 1999, p. 48, referred to as the JEA Report.

<sup>315</sup> JEA Report, Recommendation 6, p. 51. The recommendations were incorporated into WA Court Rules BJAR 1.

<sup>316</sup> WA Court Rules BJAR 2.

<sup>317</sup> WA Court Rules BJAR 3(a).

<sup>318</sup> WA Court Rules BJAR 3(c).

<sup>319</sup> WA Court Rules BJAR 5.

<sup>320</sup> WA Court Rules BJAR 1.

<sup>321</sup> WA Court Rules BJAR 4.

<sup>322</sup> Representing the associations of court administrators from each level of court and the county clerks,

<sup>323</sup> Washington Laws of 1957, Chapter 259, as amended, codified at RCW chapter 2.56.

<sup>324</sup> RCW § 2.56.030

<sup>325</sup> C. M. Johnson, A HISTORY OF COURT REFORM IN WASHINGTON FROM STATEHOOD TO THE PRESENT, 1889-1995, prepared for the Walsh Commission on Judicial Selection, 1995.

<sup>326</sup> A concise summary of these reform efforts is provided in Phillip B. Winberry, "Washington State Court Reform", STATE COURT JOURNAL, p. 3, (Spring 1980).

<sup>327</sup> Judicial Administration Commission Final Report, October 1, 1985, pp. 3-4.

<sup>328</sup> Indigent Defense in Washington State, 1990 Report of the Indigent Defense Task Force, June 1990, and Washington State Advisory Group on Indigent Defense, Final Report, November 1991, The Spangenberg Group.

<sup>329</sup> COMMISSION ON WASHINGTON TRIAL COURTS: FINAL REPORT, referred to as the Gates Commission, December 10, 1990, Administrative Office of the Courts, page 44.

<sup>330</sup> JEA REPORT.

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- <sup>331</sup> Board of Judicial Administration, PROJECT 2001, COORDINATING JUDICIAL RESOURCES FOR THE NEW MILLENNIUM, FINAL RECOMMENDATIONS AS REPORTED TO THE LEGISLATURE, January 2001.
- <sup>332</sup> Washington Court General Rules, GR 29.
- <sup>333</sup> *State, and Local Government Burden of Total Direct Expenditure on Judicial, and Legal Services, Fiscal Year 1999*, Bureau of Justice Statistics, U.S. Department of Justice
- <sup>334</sup> *Update on Court Funding Task Force*, Presented to Task Force 4/17/03, and *Expenses, and Revenue in Washington Courts*, SCJA Conference, April, 2003. This figure excludes the \$40 million spent by the AOC for automated system support or other funds spent on behalf of the trial courts.
- <sup>335</sup> *Snapshot Overview of Trial Court Funding in the State of Washington, 2003*, Funding Alternatives Work Group, Curt Funding Task Force
- <sup>336</sup> RCW § 43.08.250.
- <sup>337</sup> RCW Chapter 2.68.
- <sup>338</sup> The JISC was established by court rule (WA Court Rules: Judicial Information System Committee Rules, Rule 1) in 1976 with authority specified in statute (RCW sec. 2.68.010).
- <sup>339</sup> RCW § 2.68.040.
- <sup>340</sup> RCW § 2.68.020.
- <sup>341</sup> RCW § 2.28.139 for Superior Courts, RCW § 3.58.050 for District Courts, and RCW § 3.46.130 for Municipal Courts.
- <sup>342</sup> RCW chapter 3.38.
- <sup>343</sup> Initiative 747 in 2001. Counties receive 50% or more of their revenue from locally imposed property taxes. Cities are less affected by the property tax restrictions as they are estimated to receive only about 10% to 12% of their budget from locally imposed property taxes collected by counties, exclusive of the cities right to tax for special purposes. ?? Cities are also impacted by reductions in county revenue restrictions.
- <sup>344</sup> Initiative 722 in 2000.
- <sup>345</sup> King County Commission on Governance, Report, and Recommendations, March, 2004, Page 1.
- <sup>346</sup> Because a volunteer based organization assumed management of the program, Family Law litigants were minimally impacted.
- <sup>347</sup> 2005 Laws of Washington, chapter 105, § 5.
- <sup>348</sup> Board of Judicial Administration Court Funding Task Force, JUSTICE IN JEOPARDY: THE COURT FUNDING CRISIS IN WASHINGTON STATE, December 2004, p. 20, hereinafter referred to as JUSTICE IN JEOPARDY.
- <sup>349</sup> JUSTICE IN JEOPARDY, p. 52.
- <sup>350</sup> JUSTICE IN JEOPARDY, pp. 23-24.
- <sup>351</sup> JUSTICE IN JEOPARDY, p. 41.
- <sup>352</sup> JUSTICE IN JEOPARDY, p. 46.
- <sup>353</sup> Washington State Court Funding Task Force, Problem Definition Work Group, REPORT ON FISCAL YEAR 2000 TRIAL COURT EXPENDITURES, October, 2003, available at [http://www.courts.wa.gov/programs\\_orgs/pos\\_bja/index.cfm?fa=pos\\_bja.display&fileid=cftf/AppendE](http://www.courts.wa.gov/programs_orgs/pos_bja/index.cfm?fa=pos_bja.display&fileid=cftf/AppendE).
- <sup>354</sup> Report of the Washington State Commission on Justice, Efficiency and Accountability, August 1999, Recommendation 9, p. 22.
- <sup>355</sup> JUSTICE IN JEOPARDY, p. 38.
- <sup>356</sup> JUSTICE IN JEOPARDY, p. 54.
- <sup>357</sup> A model for estimating judgeship needs was already in use.
- <sup>358</sup> JUSTICE IN JEOPARDY, pp. 46-47. An outline of the methodology is provided in *Concepts for the Calculation of the Trial Court Funding Gap*, revised April 2, 2004.
- <sup>359</sup> FTE means full time equivalent.
- <sup>360</sup> See Washington State Court Funding Task Force, Problem Definition Work Group, REPORT ON FISCAL YEAR 2000 TRIAL COURT EXPENDITURES, Appendix E, October, 2003.
- <sup>361</sup> JUSTICE IN JEOPARDY, pp. 44-51.
- <sup>362</sup> JUSTICE IN JEOPARDY, p. 59.
- <sup>363</sup> JUSTICE IN JEOPARDY, p. 19.
- <sup>364</sup> JUSTICE IN JEOPARDY, p. 58.
- <sup>365</sup> JUSTICE IN JEOPARDY, pp. 59-63.
- <sup>366</sup> JUSTICE IN JEOPARDY, p. 63

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<sup>367</sup> The newly formed subcommittee of the Implementation Committee of the BJA will continue to look at proposals to simplify fee collection.

<sup>368</sup> JUSTICE IN JEOPARDY, p. 19.

<sup>369</sup> Washington Laws 2005, Chapter 457, § 20.

<sup>370</sup> Washington Laws 2005, Chapter 457, § 1.

<sup>371</sup> Washington Laws 2005, Chapter 457, §§ 2, 3, 4, and 5.

<sup>372</sup> Washington Laws 2005, Chapter 157, § 4.

<sup>373</sup> Wilson Report.

<sup>374</sup> JUSTICE IN JEOPARDY, p. 4.

<sup>375</sup> JUSTICE IN JEOPARDY, p. 4.

<sup>376</sup> JUSTICE IN JEOPARDY, p. 13.

<sup>377</sup> JUSTICE IN JEOPARDY, p. 24.

<sup>378</sup> JUSTICE IN JEOPARDY, p. 23.

<sup>379</sup> RCW § 2.56.030(4).

<sup>380</sup> RCW Chapter 43.17

<sup>381</sup> Washington Court Rules, GR 32.

<sup>382</sup> JUSTICE IN JEOPARDY, p. 11.

<sup>383</sup> Board of Judicial Administration, PROJECT 2001, COORDINATING JUDICIAL RESOURCES FOR THE NEW MILLENNIUM, FINAL RECOMMENDATIONS AS REPORTED TO THE LEGISLATURE, January 2001.

<sup>384</sup> See

[http://www.courts.wa.gov/programs\\_orgs/pos\\_bja/index.cfm?fa=pos\\_bja.display&fileid=cftf/AppendC](http://www.courts.wa.gov/programs_orgs/pos_bja/index.cfm?fa=pos_bja.display&fileid=cftf/AppendC)