

SUBCOMMITTEE ON COURT FINANCING

Executive Summary

Final Report to the Planning and Policy Advisory Committee

of the

Wisconsin Supreme Court

February 2004



EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

Core Court Services

- Circuit court automation program
 - Court facilities and utilities
 - Court interpreters
 - Courthouse security including court security officers and deputized bailiffs
 - Court-ordered medical and psychological exams, and court appointed witness and expert witness fees and transportation costs (including videotaping)
 - Court room videoconferencing equipment
 - Director of State Courts Office support to the circuit courts
 - Education and training:
 - For judges
 - For court commissioners
 - For other court employees
 - Family court counseling services/mediation
 - Guardians ad litem
 - Judicial/legal resources/legal research (not public law libraries)
 - Jury costs (excluding jury bailiffs)
 - Making the court record costs:
 - Equipment and supplies
 - Court-ordered transcripts
 - Office/facility services (e.g., janitorial services)
 - Personnel Costs:
 - Judges
 - Judicial assistants
 - Law clerks
 - Clerks of circuit court and staff
 - Registers in probate and staff (including juvenile clerks)
 - Court commissioners
 - Court reporters for judges and for court commissioners
 - Jury bailiffs (citizen bailiffs)
 - Personnel-related office supplies and equipment (including repairs and maintenance)
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The subcommittee then asked, “How much are counties and the state currently spending on the circuit courts?” In state fiscal year 2002-2003, the State provided \$89.5 million to directly support the operation of the circuit courts, including over \$24.1 million to offset county circuit court costs through the circuit court support payment, guardian ad litem payment, and interpreter services reimbursement programs.

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

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

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

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

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

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

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

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

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

The trial court system in Wisconsin should continue to remain a partnership between counties and the State, with the long-term goal of the State increasing its responsibility for funding certain core court services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Blueprint for Possible Transitioning of Core Court Services To State Funding

PHASE 1:

✓ COURT INTERPRETERS

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

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

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ **COURT INTERPRETERS** (continued)

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

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

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

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

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

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ GUARDIANS AD LITEM

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

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

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

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

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

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

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

Blueprint for Possible Transitioning of Core Court Services To State Funding

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

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

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

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

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

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

PHASE 2:

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

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

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

Blueprint for Possible Transitioning of Core Court Services To State Funding

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

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

✓ **PERSONNEL COSTS:**

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

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

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

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

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

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

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

✓ **EDUCATION AND TRAINING FOR COURT COMMISSIONERS**

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

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

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

PHASE 3:

✓ **PERSONNEL COSTS:**

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

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

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

Blueprint for Possible Transitioning of Core Court Services To State Funding

✓ PERSONNEL COSTS (continued)

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

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

✓ EDUCATION AND TRAINING FOR OTHER COURT EMPLOYEES

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

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

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

Blueprint for Possible Transitioning of Core Court Services To State Funding

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

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

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

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

✓ **TRANSCRIPT REVENUE**

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

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

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

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

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

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

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

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

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

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

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

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

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

General Principles of Court Financing

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

Court Revenues

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

Transition to State Funding

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

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

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

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

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

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

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