

# *Justice in Jeopardy:*

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“Injustice anywhere  
is a threat to  
justice everywhere.”

– Martin Luther King, Jr.  
April 16, 1963

## THE COURT FUNDING CRISIS IN WASHINGTON STATE

BOARD FOR JUDICIAL ADMINISTRATION  
COURT FUNDING TASK FORCE  
DECEMBER 2004



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# PREFACE

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*“Injustice anywhere is a threat to justice everywhere.”*

*Martin Luther King, Jr., April 16, 1963*

No phrase represents the impact of the funding crisis facing our trial courts better than these words of the Reverend Martin Luther King, Jr.

Chronic under-funding of our trial courts has led to a crisis in court operations and indigent defense funding. Currently, a patchwork system of justice from one county to the next has created a serious disparity in the way laws are being enforced and the trial courts are being operated throughout Washington State.

When trials courts lack adequate long-term funding, there is initially a reduction of services available through the courts, staff is laid off, court hours are cut back, and in extreme cases sitting judges are reduced. Justice through out the state is not equal as jurisdictions with more money are “more equal.” Hearings are delayed and cost to the parties is increased. Over time, the rule of law and access to justice are in jeopardy. Eventually the independence of the judiciary is threatened and people’s trust and confidence in the courts is undermined.

**This lack of funding has already produced tragic results:**

- *According to a statewide fatality review panel in 2000, the death of 3-year-old Zy’Nyia Nobles could have been prevented, in part, if a courtroom had been available to hear her parental termination proceeding in Pierce County Superior Court.*
- *In 2001, crowded court calendars in the same county delayed the trial of a violent felon two days beyond speedy trial deadlines. Released from prison, he broke into the home of a young mother and raped her, and while fleeing from police, crashed his vehicle into a motorist, killing the innocent bystander instantly.*
- *In Okanogan County, the local government could not afford the huge expense of prosecuting and defending a death penalty case. The prosecutor could not seek the death penalty simply for financial reasons.*
- *The public defense crisis in Grant County has led to numerous defendants receiving ineffective and incompetent legal representation.*

Washington’s trial courts, consisting of more than 400 judges, adjudicate more than 2.3 million cases each year. Millions of lives are affected by trial court rulings on criminal, civil and family law cases. For a branch of government that directly impacts the lives of citizens everyday, funding of our equal but separate branch of government is shockingly low.

Consider that Washington State ranks 50<sup>th</sup> in the nation providing funding for our trial courts, prosecution and indigent defense. With less than three-tenths of one percent of the State’s

budget going towards funding our judicial branch of government, the lack of funding for Washington's trial courts critically impacts the judicial system's ability to provide equal justice for all in a timely way.

There is a serious imbalance between state and local funding for the trial courts and indigent defense, the state's contribution covering only 10.8% of the annual cost. The state, through the legislature, determines much of the work load of the courts. The state determines the number of judges, the salary of judges, and is a frequent party in court. The state needs to invest in our trial courts and to pay its fair share.

While local governments across the state are being crushed by the impacts of public safety costs for jails, police, prosecution and the courts—nearly 70% in some localities—the portion of local funding devoted to the courts seldom reaches six percent total. State trial courts are short each year at least \$53.8 million for court operations and \$132 million for indigent defense.

Unless an additional and stable source of funding for trial courts is found soon, Washingtonians can expect continued degradation of our courts as county governments struggle to provide basic services. The services courts provide are too important to our society as a whole—and to citizens individually—to permit their continued competition for scarce county dollars.

Equal justice is not simply a goal to strive for; rather it is the basic foundation of a just democratic society. Lack of adequate, stable and long-term funding places our system of justice in jeopardy and undermines the public's trust and confidence in the courts. And each year that we fail to act only exacerbates the situation and produces an unjust and unfair court system.

The citizens of Washington State want and deserve more.

This has been a two-year effort by more than 100 people working through one task force, five work groups and many subcommittees. Their efforts through literally hundreds of meetings involving thousands of hours have produced the recommendations of this report.

I cannot begin to thank so many for doing so much. Thank you to the members of the Task Force and Work Groups for your dedication to the cause of trial court funding and the administration of justice. Special thanks to Judge Deborah Fleck for her vision, inspiration, and leadership, the Work Group Co-chairs for their commitment and strong leadership, to Janet McLane and Jeff Hall and the rest of the AOC staff for work above and beyond, and finally to Washington Supreme Court Chief Justice Gerry Alexander for his constant support and encouraging words.

In many ways, our work is just beginning. We need now to implement the many recommendations of the Task Force. All of us understand that this part of the effort will take years.



*M. Wayne Blair*  
*Chair, Court Funding Task Force*

## **TASK FORCE AND WORK GROUP MEMBERS**

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The Task Force and Work Group Membership lists which follow consist of the official members at the conclusion of the Task Force effort. As with all substantial and lengthy task forces, there were mid-stream changes in membership. Where a change in membership occurred, the representative serving at the conclusion of the Task Force is listed first and the initial appointee is denoted with an asterisk. Additionally, there were several individuals who were actively engaged and participated in the deliberations of the Task Force and Work Groups of their own volition and interest. These individuals are listed as “Interested Parties” at the end of each group listing.

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*The recommendations of the Task Force and of Work Groups do not necessarily represent the individual views of each Task Force or Work Group member or the views of the organization that appointed them.*

<sup>1</sup>Judge Dwyer was initially appointed to the Task Force in his then capacity as President of the District and Municipal Court Judges' Association. Judge Dwyer was subsequently appointed to the Snohomish County Superior Court bench by Governor Locke.

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# EXECUTIVE SUMMARY

## “JUSTICE IN JEOPARDY”

Justice is in Jeopardy in Washington State today. Trial courts are not adequately funded resulting in unequal justice and excessive delay. There are an insufficient number of judges and staff, offenders in some instances are not being held accountable and children are placed at risk. Indigent criminal defendants, juvenile offenders, and parents involved in dependency actions are denied their constitutional rights. Funding of civil legal services to indigent persons has been severely reduced resulting in thousands of poor persons being denied equal access to the judicial system or even access to legal information.

On all fronts, our system of justice in the trial courts is suffering a long and slow strangulation from lack of resources to the point where judges, attorneys, litigants, and the public no longer appreciate how an adequately funded system should operate. Justice in jeopardy is eroding trust and confidence in the courts.

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.

The Court Funding Task Force was established to focus exclusively on the issue of trial court funding, both the amount necessary to adequately fund the trial courts and the structure of funding necessary to ensure long-term funding stability so the trial courts can reliably provide equal justice across the state in a timely manner.

The Board for Judicial Administration enlisted the efforts of a broad-based group of stakeholders to serve on the Task Force, including state legislators, county commissioners and council members, the public, business, labor, county clerks, court administrators, the bar and the judiciary. Over the past two years, these representatives contributed their time, talent and experience to

### TASK FORCE MISSION

DEVELOP AND IMPLEMENT A PLAN TO ACHIEVE ADEQUATE, STABLE AND LONG-TERM FUNDING OF WASHINGTON’S TRIAL COURTS TO PROVIDE EQUAL JUSTICE THROUGHOUT THE STATE.

### SELECTED PRINCIPLES FOR TRIAL COURT FUNDING

- Trial courts are critical to maintaining the rule of law in a free society; they are essential to the protection of the rights and enforcement of obligations for all.
- Trial courts must have adequate, stable, and long-term funding to meet their legal obligations.
- Trial court funding must be adequate to provide for the administration of justice equally across the state.
- Legislative bodies, whether municipal, county, or state, have the responsibility to fund adequately the trial courts.
- The State has an interest in the effective operation of trial courts and the adequacy of trial court funding, and should contribute equitably to achieve a better balance of funding between local and state government.
- Trial courts are not self-funding. 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.

an exhaustive study of trial court funding needs and the development of recommended solutions to address those needs.

This Task Force's work was conducted through five Work Groups to define the problem, study funding alternatives, examine the structure and function of the courts of limited jurisdiction, promote public education about trial court funding, and implement the recommendations of the task force.

To guide discussions, deliberations, and outcomes the Task Force adopted a set of guiding principles which can be found in the report beginning at page 23.

|                                    |
|------------------------------------|
| <b><i>Defining the Problem</i></b> |
|------------------------------------|

The Task Force recognized three funding problems:

1. Inadequate funding for trial court operations and indigent defense representation.
2. Inequity in state and local responsibility for trial court funding.
3. Convoluted revenue stream and accounting practices in determining revenue and costs.

Applying the adopted principles to these problems and projecting the needs for adequate funding started with documenting current expenditures.

**THE NEED**

In FY 2000<sup>2</sup>, the total cost of operating the trial courts was \$341.7 million and an additional \$78.7 million was spent on indigent defense services in criminal and dependency cases.

| <b>Table A FY 2000* Trial Court Expenditures</b>  |                     |                      |                      |
|---|---------------------|----------------------|----------------------|
| <b>Court</b>  | <b>State</b>        | <b>Local</b>         | <b>Total</b>         |
| Superior Court  | \$16,600,000        | \$63,728,525         | \$80,328,525         |
| Juvenile Court  | \$28,910,713        | \$87,274,206         | \$116,184,919        |
| County Clerk  | \$0                 | \$37,659,943         | \$37,659,943         |
| District Court  | \$0                 | \$65,016,427         | \$65,016,427         |
| Municipal Court   | \$0                 | \$42,506,824         | \$42,506,824         |
| <b>Total</b>  | <b>\$45,510,713</b> | <b>\$296,185,925</b> | <b>\$341,696,638</b> |
| Indigent Defense  | \$0                 | <b>\$78,733,803</b>  | <b>\$78,733,803</b>  |
| <small>*Juvenile Court data is FY 2001. Data imputed for non-reporting jurisdictions, see Appendix E.</small> |                     |                      |                      |

The unmet needs, documented by applying agreed standards and measures of workloads and discussed in more detail in the report are:

|                        |                        |
|------------------------|------------------------|
| Trial Court Operations | \$53.8 million         |
| Indigent Defense       | <u>\$131.9 million</u> |
| <b>Total</b>           | <b>\$185.7 million</b> |

<sup>2</sup>FY 2000 expenditure data is used throughout this report and is referred to as "current" expenditures. As more fully explained in Appendix E developing current statewide court expenditure data is problematic due to the variety of court budgeting structures among counties and cities.

In addition to these needs, a separate task force, appointed by the Washington Supreme Court, entitled Task Force on Civil Equal Justice Funding was asked to quantify the unmet civil legal needs of low and moderate income households in Washington and to recommend a means to secure adequate funding. That Task Force concluded that civil legal services<sup>3</sup> need an additional \$18.3 million annually. Adding this need to the figures above shows that the total amount required to assure justice in Washington is \$204 million annually.

### **EQUITABLE SHARING OF TRIAL COURT COSTS**

Currently, local government bears nearly 90 percent of this burden of funding the trial courts and indigent defense services for criminal and dependency cases. According to a 1998 Bureau of Justice Assistance report, no other state in the nation contributes less to support the trial courts and indigent defense than does the state of Washington with the midpoint of state support at approximately 50 percent. Current state expenditures to support the judicial branch consist almost entirely of the budgets for the Supreme Court, Court of Appeals, Administrative Office of the Courts, Office of Public Defense<sup>4</sup>, and Law Library. Still, this number totals less than 3/10ths of one percent of the state operating budget.

The Task Force recognized that state interests, criminal statutes, and state agencies, including the State Patrol, drive a significant portion of the work of the trial courts. State requirements have driven the cost of the trial courts beyond the funding mechanisms available to local government. The factors demonstrating the State's interest include:

- Quality justice should be equally available and accessible to every citizen in the state, regardless of their county or city of residence.
- State agencies and actors directly drive local costs from the Office of the Attorney General filing dependency cases in superior courts to the State Patrol filing driving under the influence of alcohol (DUI) and other major and minor traffic infractions in district courts.
- State interests and policies such as the setting of the blood alcohol limit, three-strikes-your-out laws, and driving while license suspended violations directly impact the caseload and trial rates in courts.
- The state determines the number of superior court and district court judges.
- Superior and district court judges' salaries are set by the Citizens' Commission on Salaries for Elected Officials and are codified in state statutes.
- Many actions in superior court are either filed by or are filed against the state.

The Task Force concluded that the state has a strong interest in the operations of the trial courts and should be a partner with local government in their funding. The Task Force developed a model to assess the state's participation based on those areas where a strong connection or "nexus" is most clear between state actions or state mandates and the costs of court operations and concluded that these areas should be funded by the state. The items identified included judges' salaries at superior, district and municipal courts, the verbatim records of proceedings, mandatory arbitration, juvenile dependency representation, guardians ad litem in dependency cases, interpreters, criminal defense, juror fees and mileage and witness costs.

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<sup>3</sup>The total unmet funding need for civil legal services is \$28.1 million, of which \$18.3 million has been identified as attributable to legal needs for which assistance is authorized using state funds.

<sup>4</sup>The Washington State Office of Public Defense manages contracts for indigent criminal appeals only. Trial court level indigent defense services are all provided locally.

If the unmet funding needs for court operations and indigent defense were met and the state assumed funding responsibility for 100 percent of the nexus items, the trial court funding would be more balanced, with the state responsible for 51 percent of the costs and local government responsible for 49 percent, as the table below depicts.

| <b>Table B Result of Reallocation of Total Funding<br/>(FY 2000 and Estimated Need) (millions)</b> |                 |                 |                 |
|--|-----------------|-----------------|-----------------|
|  | <b>State</b>    | <b>Local</b>    | <b>Total</b>    |
| Court Operations   | \$ 98.6         | \$ 296.5        | \$ 395.1        |
| Indigent Defense   | \$ 210.6        | \$ 0.0          | \$ 210.6        |
| <b>Total</b>   | <b>\$ 309.2</b> | <b>\$ 296.5</b> | <b>\$ 605.7</b> |

## ***Funding Solutions***

### **EFFICIENCIES**

Spurring the judiciary to create this Task Force dedicated solely to the issue of trial court funding was the fact that virtually every major commission, panel, and task force in the last 30 or more years which studied Washington State courts has concluded that the trial courts are not adequately funded and the responsibility for funding should be shared jointly between state and local government. The judicial branch has implemented almost all of the many reforms recommended by these prior efforts to improve efficiency but efficiencies alone cannot address the jeopardy created by inadequate and unstable trial court funding.

### **USER FEES**

The Task Force considered the role of “user fees” (filing fees being the primary example) in directly supporting trial court operations. The Task Force concluded that given the scope of the unmet need, user fees simply did not constitute a significant revenue source. Acknowledging that there is an appropriate balance between the private good that accrues to individuals and entities in accessing the courts and the public good that accrues to everyone when disputes are resolved consistently and peaceably, the Task Force nevertheless recognized the very real financial barriers that user fees present in accessing justice. The Task Force, therefore, did not

**THE TASK FORCE RECOMMENDS THAT THE BOARD FOR JUDICIAL ADMINISTRATION** seek legislation creating:

- A fee for filing cross, counter and third party claims in Superior and District Courts (excluding unlawful detainer cases) equal to the original filing fee in civil actions, and
- A fee of \$55 to be assessed, at the discretion of the trial judge, against defendants in courts of limited jurisdiction upon a plea of guilty or conviction for misdemeanors and gross misdemeanors.

**THE TASK FORCE RECOMMENDS THAT THE BOARD FOR JUDICIAL ADMINISTRATION** seek legislation:

- Increasing the filing fee in superior court to \$200 and the district court filing fee to \$55; and,
- Implementing the proposed increases to existing court fees as contained in Appendix I.

recommend a substantial number of new user fees. It recommends the creation of only two new fees, and an increase in civil filing fees, and the adjustment of a number of ministerial fees.

Concomitant with the recommendation that fees be increased was a strong conviction that the fee proposal should only be adopted by the legislature as part of a legislative package that supports both increased funding for trial courts and the state's assumption of a greater share of trial court expenses. If adopted, the fee proposal would provide an estimated increase of \$14.8 million to the state Public Safety and Education Account (PSEA) account, \$19.0 million to county general funds, and \$2.2 million to city general funds each biennium. While a direct dedication of the revenue that would accrue to the state PSEA account is not recommended, the revenue is intended to be used to fund the cost of shifting funding responsibility for some trial court functions to the state. In light of the Task Force's principle that fines and penalties should not be used to directly support the trial courts, the Task Force does not recommend that any of the local share of new and increased user fees be dedicated to the courts. Rather, this additional revenue at the local level should benefit the general fund of the counties.

However, it is critical to creating stable and adequate funding for the trial courts that a portion of the local savings from the state's assumption of certain trial court costs be used to meet court improvement needs.

The Task Force also concluded that the fee "schedule" should be reviewed and updated on a consistent schedule based on inflation and other relevant factors rather than relying on larger, infrequent increases.

### **TAXES**

Task Force members widely believed that additional sources of revenue beyond user fees must be presented to the legislature to address the under-funding of the courts as well as to address the shift of funding responsibility. The Task Force recognized that the legislature is vested with the right and the responsibility to determine whether to tax and the use of tax revenue. However, because the legislature may well determine that current general fund revenues are not sufficient to create stable, adequate and long-term funding for the trial courts, it directed the Funding Alternatives Work Group to analyze other sources of revenue. The Task Force thoroughly reviewed these tax options for consideration by the legislature, recognizing that any proposal to increase taxes would meet with considerable skepticism. The Task Force approved a package of tax options which the judiciary would commit to support if the legislature determined that additional revenues were needed.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** seek legislation requiring the Administrative Office of the Courts to report annually, in consultation with County Clerks and DMCMA, to the Supreme Court and Board for Judicial Administration recommending any adjustment to fees.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** accept the proposed "tax package" with the understanding that the package represents one of the possible options which the judiciary would support to provide funding for trial courts and functions essential to the operation of trial courts.

The Task Force recommended the following “tax package” to the Board for Judicial Administration:

A ¼ of 1% increase to the Business & Occupation tax (B&O) for businesses whose services are not currently subject to the retail sales tax (increasing it from 1.5% to 1.75%; estimated annual revenue \$150 M).

*OR*

A 1% increase to the B&O tax on legal services (increasing it from 1.5% to 2.5%; estimated revenue \$30 M).

*Plus Either*

An across-the-board surcharge on the general B&O tax rates (estimated revenue depends on percentage increase).

*Or*

A statewide, “rate-based” property tax of 10 cents per \$1,000 of assessed value, to fund the courts (estimated revenue \$60M).

*Plus*

One or more of the new taxes suggested by the Gates Tax Structure Commission.

- Extending the state sales tax to consumer services (beauty shops, recreation, cable TV, etc.); and/or
- Extending the watercraft excise tax to motor homes and travel trailers.

### **COURTS OF LIMITED JURISDICTION**

A separate work group was created within the Court Funding Task Force to address the courts of limited jurisdiction with the charge to:

Study structural and court funding issues in courts of limited jurisdiction, district and municipal courts that result from multiple delivery systems in the same geographic area and recommend efficient and effective methods of delivering judicial services and whether changes such as consolidation of district and municipal courts should be made to the current system.

This work group developed a separate written report which is available on-line at [www.courts.wa.gov](http://www.courts.wa.gov).

In the long-term, the work group recommends that courts of limited jurisdiction should be reorganized into regional courts funded by the state. These regional courts of limited

jurisdiction would have jurisdiction over all applicable state laws and county and city ordinances, and causes of action as authorized by the legislature. Regional courts would be located in convenient locations serving both the public and other court users including law enforcement agencies, lawyers, and court personnel. Regional courts would operate full-time, have elected judges, and offer predictable recognized levels of service, including probation. A regional structure for courts of limited jurisdiction will decrease the proliferation of small limited operation part-time courts. Ideally, regional courts would offer convenience, consolidated services, staff and administration, and would achieve economies of scale savings for all participating jurisdictions.

Regionalization would allow jurisdictions to reduce the duplication of administrative costs among individual courts and improve the quality of services to the public.

In the short-term, the Work Group recommends the following changes to Title 3 RCW in support of a more regionalized court structure.

- Clarify the statutory court options and encourage regionalization of courts of limited jurisdiction. All courts of limited jurisdiction court models should be contained in Title 3 RCW.
- Update current provisions in Title 3 authorizing municipalities and counties to provide joint court services by interlocal agreement.
- Create a new section in Title 3 authorizing cities to contract with other cities to form regional municipal courts with elected judges.
- Elect judges at all levels of court to promote accountability and the independence of the judiciary.
- Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges.
- Amend Title 3 to emphasize a collaborative regional approach to the provision of court services by expanding the role and membership of the districting committee.
- Require each court of limited jurisdiction to provide court services to the public on a regularly scheduled basis at established hours posted with the Administrative Office of the Courts.
- Authorize municipal courts to hear anti-harassment protection petitions.
- Require courts of limited jurisdiction to timely hear domestic violence protection orders or have clear, concise procedures to refer victims to courts where the service is available.
- Increase the civil jurisdiction amount in dispute that can be filed in district court to \$75,000.
- Require district courts to implement dedicated civil calendars and case scheduling.

## ***Trial Court Funding Phase-in***

Task Force members recognized that implementation of major funding reforms is a long-term effort. The Funding proposal presented to the legislature for its consideration anticipates a flexible, phase-in. To maintain a continuity of effort and ensure that the judiciary “speaks with one voice” in presenting the proposals to the legislature, the Board for Judicial Administration established two standing BJA committees, Implementation Planning and Public Education, dedicated to achieving long-term, adequate, and stable funding of the trial courts.

Greater state participation will bring about more equitable funding among jurisdictions and long-term stability. Increased state participation alone, however, is not a solution. In order to ensure adequate and stable trial court funding, the shift from local to state responsibility for some trial court functions must be coupled with a commitment at the local level to preserve a portion of the savings to be used for the benefit of the courts. The BJA Court Funding Implementation Committee will work with the legislature and local county and city officials to identify the mechanisms to achieve these results.

**THE TASK FORCE RECOMMENDS TO THE BOARD FOR JUDICIAL ADMINISTRATION** the reestablishment of the Public Education Work Group as a committee of the BJA with its current membership and its current charge.

**THE TASK FORCE RECOMMENDS THAT THE BOARD FOR JUDICIAL ADMINISTRATION** establish a Trial Court Funding Implementation Committee consisting of the BJA executive committee and a select group of Court Funding Task Force members with authority to make decisions regarding proposed legislation resulting from the work of the Task Force.

### **Court and Legal Service Funding Proposals Moving Ahead Together**

The Task Force approved two seemingly inconsistent resolutions in recommending to the Board for Judicial Administration that it seek legislative action to implement both the recommendations of this Task Force and those of the Task Force on Civil Equal Justice Funding. The intent of this joint action recommendation to the Board for Judicial Administration was to acknowledge the partnership with all stakeholders working to reduce the justice in jeopardy for all components of the justice system.

**THE TASK FORCE RECOMMENDS THAT THE BOARD FOR JUDICIAL ADMINISTRATION** seek legislative action to implement the recommendations of the Court Funding Task Force report.

**THE TASK FORCE RECOMMENDS THAT THE BOARD FOR JUDICIAL ADMINISTRATION** seek legislative action to implement the recommendations in the report of the Supreme Court Task Force on Civil Equal Justice Funding.

## **ADMINISTRATIVE RECOMMENDATIONS**

### **Revenue Stream and Accounting**

Statewide expenditure information reported by the State Auditor’s Office prior to FY 2003 combined court operations and indigent defense expenditures in many different accounting lines making the effort necessary to describe and understand the current level of funding for trial courts and indigent defense services was complex and time-consuming.

Current and future efforts to improve funding will rely on accurate, timely data specific to functional areas within court operations and indigent defense and developing a system to provide more detailed expenditure information faces major challenges.

In spite of these problems, a cost-benefit analysis should be undertaken to determine if, what, and how some level of detailed statewide budget information could be obtained and maintained.

### **Public Safety and Education Account**

At the outset, the Task Force carefully reviewed the Public Safety and Education Account (PSEA). There was a strong sense that the PSEA was, in some way, “broken.” The original intent in establishing the account in 1984 – streamlining revenue collection and using that revenue to support the functions of the “contributing agencies” – had eroded over time. Relying on the principle that courts should not be the direct beneficiary of fines and penalty revenue, the Task Force concluded that addressing the current distribution and use of PSEA funds was not within its purview. However, the Task Force did consider the administrative burden that current statutes create in accounting for traffic infraction penalties and that the issue warranted further review by the Board for Judicial Administration.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** accept the following suggestions related to the Public Safety and Education Account for further review:

- Repeal RCW 46.63.110 (3) which prescribes that the Supreme Court establishes the traffic infraction penalty schedule and eliminate all legislative assessments on traffic penalties. Develop a penalty classification schedule similar to civil infractions under Title 7 RCW.
- Adjust the state/local “PSEA division” on a “no-harm” basis to account for the elimination of the several legislative assessments and to establish a simple, single, uniform division of funds between state and local government.
- Recreate the JIS account fee not as a portion of the traffic infraction penalty but as a user fee on all court transactions – filings fees, traffic infractions, conviction of misdemeanor or felony. The fee would then fund both maintenance and new development and would remove JIS from the PSEA account entirely.

# Introduction

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In March, 1999, state child welfare officials chose to permanently remove a 3-year-old girl from her mother, who had drug and abuse problems, so the child could be adopted. Crowded court calendars in Pierce County forced the trial to be postponed. Several weeks later, new social workers assigned to the case chose to reunite the girl with her mother rather than go to trial. Within a year, 3-year-old Zy'Nyia Nobles had been kicked to death by her mother, who was sentenced to 30 years in prison.

“No courtroom. It just angers me.” —Raymond Howell, social worker who served on the Zy'Nyia Nobles case for a short time.

—Seattle Times news reports and DSHS fatality review report

## **Task Force Beginnings and Structure**

In March of 2002, the Superior Court Judges' Association (SCJA) held its annual Long-range Planning Retreat at La Conner, Washington. Under the leadership of SCJA President-elect Judge Deborah Fleck, the meeting focused on the longstanding problem and growing crisis of trial court funding. Attendance was expanded to include bar association leaders and representatives from all levels of court, including Chief Justice Gerry Alexander.

These leaders reviewed the current funding of the trial courts and the difficulties the courts were experiencing because of the lack of adequate and stable funding. The group also reviewed prior efforts at improving the administration of justice and increasing the funding for the trial courts, the structure of trial court funding in five other states, state and local government revenues and expenditures, and the long-term consequences of not fully funding the trial courts. Unanimously, these leaders concluded that a broad-based task force should be convened to study and recommend the best approach to achieve adequate and stable funding of the trial courts in Washington. Acting immediately on this recommendation at its April 19, 2002 meeting, the Board for Judicial Administration authorized the formation of the Court Funding Task Force. Its mission was to:

*Develop and implement a plan to achieve adequate, stable and long-term funding of Washington's trial courts to provide equal justice throughout the state.*

Over 100 meetings have been held over the past year and a half by the Task Force, its Steering Committee, the Work Groups and subcommittees of the Work Groups. Over 100 people representing all sectors of the judicial and legal communities, government,

business, labor and public interests have selflessly contributed thousands of hours to this effort by participating in the five Work Groups – Problem Definition, Funding Alternatives, Public Education, Courts of Limited Jurisdiction and Implementation Strategies. The Task Force adopted the following charges for the Work Groups:

#### **PROBLEM DEFINITION WORK GROUP**

1. Confirm the core mission of the trial courts and what trial court functions should be included within the scope of the Task Force effort.
2. Describe how long-term, inadequate funding adversely impacts the core mission of the courts.
3. Describe the constraints that are placed on the trial court system as a result of inadequate funding.
4. Describe the consequences to citizens of the state and to users of the trial courts that result from such long-term inadequate funding.
5. Quantify the current level of funding of the trial courts and the extent to which annual funding is inadequate.
6. Determine how much additional funding is needed for the trial courts to have adequate funding to perform their core mission.
7. The Work Group is to address these issues and recommend to the Task Force how much money the trial court system needs annually to carry out its core mission in accordance with approved performance standards to ensure “justice for all.”

#### **FUNDING ALTERNATIVES WORK GROUP**

1. Study the current system for distributing court revenue between state and local governments.
2. Examine whether the current system for distributing court revenue between state and local governments should be reallocated and, if so, recommend ways that revenue should be reallocated.
3. If the work group recommends that revenue should be reallocated, propose a budgeting and appropriation mechanism to affect a greater shared responsibility between state and local governments for funding of the trial courts.
4. Based on the findings and recommendations of the Problem Definition Work Group as ultimately approved by the Task Force, what sources of revenue should be used to fund the trial courts?
5. To the extent existing resources are inadequate, recommend to the Task Force new sources of revenue, whether state or local, that can be used to fund the gap between current funding and adequate funding.

## **COURTS OF LIMITED JURISDICTION STRUCTURE WORK GROUP<sup>5</sup>**

1. Study court funding issues in courts of limited jurisdiction (district and municipal courts) that result from multiple delivery systems in the same geographical area and recommend whether structural changes (such as consolidation of district and municipal courts) should be made to the current system.
2. Are contracts between two or more cities or between cities and counties an efficient and effective method of delivering judicial services?

## **PUBLIC EDUCATION WORK GROUP**

1. Create a plan with strategies for informing the public, legislators, other elected officials and decision-makers including members of the judiciary and other stakeholders about the adequacy of trial court funding today and the long-term consequences to the citizens of the state of Washington that result from long-term inadequate funding.
2. As the other work groups develop recommendations, undertake an extensive effort in accordance with the plan to educate those identified above in order to secure full financial support for the trial courts.

## **IMPLEMENTATION STRATEGIES WORK GROUP**

1. Working with the other Work Groups, determine the available alternatives and develop the necessary strategies for changing the funding responsibility for the trial courts (constitutional amendment, referendum, initiative, statutory changes, rule changes, etc.) and the legal and practical implications of each.
2. Devise a suggested time frame and approach to the most viable alternatives.
3. Undertake the necessary effort, as authorized by the Board for Judicial Administration, to implement fully the recommendations of the Task Force as they relate to changing the funding responsibility for the trial courts.

Over a period of nearly two years the Task Force considered the recommendations of the Work Groups, finalizing its recommendations and reporting to the Board for Judicial Administration in July and August of 2004.

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<sup>5</sup>While not originally contemplated as an issue to be addressed by the Task Force, events in King County surrounding the County Executive's decision in the fall of 2002 to terminate the county's contracts with 16 cities to provide judicial services through the county district court led the Board of Trustees of the District and Municipal Court Judges' Association to request that this Work Group be created under the auspices of the Task Force. For a more complete discussion, see page 64.

In 2002, a man convicted of attempted rape in Pierce County walked out of prison years before his sentence was finished, because crowded court calendars had delayed his trial past the speedy trial deadlines. Frederick Snow had served less than four years of a 10-year sentence when his conviction was overturned; with no courtrooms available, his 1998 trial had been delayed a week past the deadline established by law. Pierce County courts were jammed with about 6,000 felonies a year in addition to civil cases, and judges were hearing about 70 cases per day.

—News reports on speedy trial violations

## **Principles of Trial Court Funding**

Early in the process, the Task Force and its Work Groups developed a series of principles to guide their discussions and deliberations. The principles listed below represent their collective work.

- The judicial branch must maintain its constitutional role as a separate, equal, and independent branch of government.
- Trial courts are critical to maintaining the rule of law in a free society; they are essential to the protection of the rights and enforcement of obligations for all.
- The primary mission of the trial courts is to fairly, expeditiously, and efficiently resolve cases and serve the community, not to generate revenue for local or state government. Trial courts should be structured and function in a way that best facilitates their primary mission.
- To ensure the independence of the judiciary, all judges, including part-time judges, should be elected.
- Trial courts must operate in compliance with court rules and statutes.
- Trial courts must have adequate, stable, and long-term funding to meet their legal obligations.
- Legislative bodies, whether municipal, county, or state, have the responsibility to fund adequately the trial courts.
- Trial courts are not self-funding. 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.

- Trial court funding must be adequate to provide for the administration of justice equally across the state.
- The state has an interest in the effective operation of trial courts and the adequacy of trial court funding, and should contribute equitably to achieve a better balance of funding between local and state government.
- Courts will be accessible to the communities they serve and provide services that enable the public to navigate through the court process with a minimum of confusion.
- Trial courts are accountable and responsible for the funds appropriated for court operations.
- Courts will be administered with sound management practices that foster fairness and the efficient use of public resources, and enhance the effective delivery of court services.

# Court Reform: Effectiveness and Efficiencies

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Throughout the work of the Task Force and Work Groups and in presentations to constituencies, one question was often repeated: “Are there efficiencies the courts can implement to save money and why is the Task Force not addressing this issue?”

The creation of this Task Force dedicated solely to the issue of trial court funding was spurred by the fact that virtually every major commission, panel, and task force in the last 30 or more years which studied Washington State courts has concluded that the trial courts are not adequately funded and responsibility for funding should be shared jointly between state and local government. The judicial branch over that time has implemented many reforms recommended by these prior efforts but no reform has been more consistently recommended, and *not* implemented, than restructuring the funding of the trial courts and ensuring that the funding is adequate. Unlike internal reforms the courts can implement independently, funding reform requires that the courts and the legislature work cooperatively to ensure adequate and stable court funding, in recognition that the third branch of government is critical to maintaining the rule of law in a free society.

As discussed below, the courts have worked extensively on reforms to make the courts more effective and efficient and will continue to do so. An overview of these prior and continuing efforts, at both the state and local levels, is presented in the following pages.

## ***State Reform Efforts and Results***

Most reform efforts at the state level have been accomplished using Task Forces and Commissions. A summary of efforts to improve the administration of justice dating back to the 1960’s is catalogued below.

- Beginning in 1966 with the first Citizens’ Conference on Washington Courts, the judicial branch, the legislature and the public engaged in a series of Citizens’ Conferences<sup>6</sup> and reform efforts which continued through the late 1970’s. These efforts met with early success, with the creation of the Court of Appeals in 1969. Subsequent efforts focused on a total restructure of the court system, including finances, through a major overhaul of Article IV of the State Constitution.<sup>7</sup> In May of 1975, the constitutional reforms finally made it through the legislature (SJR 101), but failed at the November election on a crowded ballot that included an income tax proposal. SJR 101 attempted to do too many things at one time and while all interested parties found something to support, they also found more to oppose.

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<sup>6</sup>A second Citizens’ Conference on Washington Courts was held on June 15, 1972 and a third was held on February 6, 1975. Following the first Conference in 1966 the Citizen’s Committee on Washington Courts was incorporated and remained active in court reform efforts throughout the 1970’s.

<sup>7</sup>See SJR 113, 1973 legislative session; SJR 101, 1975 legislative session; SJR 104, 1977 legislative session; SJR 113, 1977 legislative session (approved by the voters raising the jurisdiction of District Courts to \$3,000 or an amount set by the legislature), and; SJR 116, 1979 legislative session (discipline and removal of judicial officers only).

- At the behest of the Washington State Bar Association and the judiciary, the 1979 legislature passed SHB 425 authorizing the use of mandatory arbitration in civil cases for “small claims,” with damage actions initially set at \$10,000 or less. Following adoption of enabling court rules by the Supreme Court in 1980, implementation began county by county, starting with King County in October 1980. To date, twenty-three superior courts have implemented mandatory arbitration providing an efficient, cost effective and fair forum for the resolution of civil actions involving claims now of \$35,000 or less.
- Pursuant to the 1984 Court Improvement Act, Chief Justice Dolliver convened the Judicial Administration Commission in 1985. The Commission recommendations included eliminating concurrent jurisdiction between superior and district courts, defining and strengthening the role of presiding judges in local courts, instituting a local government fiscal note process, providing partial state funding of indigent criminal defense and full state funding of superior and district court judges’, commissioners’ and court administrators’ salaries.<sup>8</sup>
- In 1987, the King County Superior Court and the King County Bar Association created the Delay Reduction Task Force to address a serious backlog of cases. The result was Washington’s first case management system for the trial courts based on the concept of judicial control of the pace of litigation through the use of case schedules. This effort has been emulated, in various forms, by almost every trial court in the state.
- In 1988, the legislature established the Indigent Defense Task Force (Chapter 156, Laws of 1988) which resulted in the introduction and passage of SSB 5960 in the 1989 session creating RCW Chapter 10.101 Indigent Defense Services. The legislation included a uniform set of eligibility standards for determining indigency and required local jurisdictions to adopt caseload standards. Notably, the sections of the original bill which provided for state participation in funding indigent defense services, as recommended in the Task Force Report, were excised in the substitute bill.

SSB 5960 reinstated the Indigent Defense Task Force and two subsequent reports<sup>9</sup> issued in 1990 and 1991 again recommended that the state participate in financing criminal indigent defense services, among other reforms.

- The 1990 Commission on Washington Trial Courts chaired by William Gates Sr. and commonly referred to as the “Gates Commission” recommended a host of procedural and administrative changes to improve the quality of justice, many of which were subsequently implemented. These include expanding the jury source

<sup>8</sup>Judicial Administration Commission Final Report, October 1, 1985, pp. 3-4.

<sup>9</sup>See *Indigent Defense in Washington State, 1990 Report of the Indigent Defense Task Force*, June 1990, Administrative Office of the Courts, and *Washington State Advisory Group on Indigent Defense, Final Report*, November 1991, The Spangenberg Group.

list to include licensed drivers, increasing the jurisdictional limit of district courts to \$25,000, publishing local court rules in a statewide volume, and preempting local penalty schedules except where specifically authorized in statute. The Commission also concluded 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>10</sup>

- In 1992 Washington Courts 2000 was formed, again Chaired by William Gates Sr. and commonly referred to as “Gates II.” Washington Courts 2000 addressed administrative oversight of the court system and resulted in major revisions to the rules governing the Board for Judicial Administration, taking the Board a step closer to being the judicial policy-making body that it is today.
- In 1999, the Commission on Justice, Efficiency and Accountability (JEA) resulted in further changes to the Board for Judicial Administration including the elimination of the unanimity requirement in setting judicial branch policy and the establishment of the Best Practices Committee to identify and disseminate best practices. The Best Practices Committee has embarked on establishing guidelines for performance audits. The Court Reform Act of 1999 was a product of JEA and included state funding for indigent defense, juries and witness fees, among its many provisions. The Act failed to pass in the legislature.
- In 2000, Project 2001 engaged over 140 individuals in an intensive review of court structure and further court innovations and efficiencies. Project 2001 made three critical recommendations, all of which have been implemented:
  - Creating Trial Court Coordinating Councils<sup>11</sup> to formalize cooperation and coordination of services among courts including different levels of trial courts in jurisdictions across the state;
  - Redefining the role of Presiding Judges by squarely placing the authority and responsibility for the effective management of the trial courts in their hands; and,
  - Authorizing the use of elected judges to serve at different levels of court in a jurisdiction without the consent of the parties or their lawyers who are appearing before that judge (referred to as “portability” of judges).

An in-depth study of unification of the general jurisdiction and the limited jurisdiction trial courts was also conducted as part of Project 2001. That effort concluded that the “functional equivalent” of unification could be achieved through implementing the three reforms mentioned above, while avoiding the increased costs and inefficiencies of actually merging or combining (unifying) superior and limited jurisdiction courts.

<sup>10</sup>Commission on Washington Trial Courts: Final Report, December 10, 1990, Administrative Office of the Courts, page 44.

<sup>11</sup>See Appendix B for a listing of local reforms resulting from the work of local Trial Court Coordinating Councils.

Unification is more fully discussed beginning at page 29. The issue of unification of the limited jurisdiction courts was too complex given the limited time to study the issue, with strongly held opposing positions, for the Task Force to reach a recommendation at that time.

The Court Funding Task Force initiated in 2002 is in many respects the natural progression from these previous efforts aimed at statewide reform. Virtually every aspect of the administration of justice has been studied and has been the beneficiary of true reform, resulting in efficiencies and improved effectiveness. Court funding, however, while frequently a sub-topic within previous efforts, has never been fully explored as a separate issue until now.

### ***Local Reform Efforts***

Over the years, the courts have demonstrated their commitment, in good economic times and bad, to continuously improving the way courts serve the public and administer justice. At the local level, individual courts have implemented such innovations as:

- Case management systems for civil, domestic and dependency cases.
- Unified Family Courts.
- Therapeutic courts in the form of adult, juvenile and family drug courts, driving under the influence (DUI) courts, and mental health courts.
- Volunteer Guardian Ad Litem programs for dependency and family law cases (Court Appointed Special Advocate or CASA programs).
- Re-licensing programs.
- Volunteer probate monitoring programs.

The most recent structural reforms adopted by the judiciary — Trial Court Coordinating Councils, revitalization of the BJA, the use of judges between levels of court (referred to as “portability” of judges), and the creation of BJA’s Best Practices Committee — will result in the next several years in both continuous improvements to the way courts administer justice and to fiscal savings.

The Trial Court Coordinating Councils, in particular, have focused the efforts of all courts within a region to collectively solve local problems. Improvements include:

- Opening access to databases across jurisdictions and streamlining information exchange among King County Superior Court, Seattle Municipal Court, and King County District Court in support of the substance abuse and mental illness courts.
- Consolidating the administration and operation of Yakima superior and district courts with one court administrator. Functions and tasks previously duplicated in various court units have been grouped together with standardized policies and procedures. The goal is to expand the model to include municipal courts, the juvenile court, and district and municipal court probation services.

- Remodeling the former Okanogan County Sheriff's records office into an in-custody courtroom as a solution to the insecure transport of defendants through the Okanogan County Courthouse. The new courtroom will also be used to conduct hearings over the Internet, enabling judges, defendants, and court personnel to interact from remote locations.
- Providing the means to scan complete domestic violence orders issued by all levels of courts in Kitsap County onto an existing website, thereby allowing parties to review the orders in their entirety 24 hours-a-day, seven days a week. The Kitsap County District Court website will provide a secure location accessible by password to law enforcement, the prosecutor's office, the courts, and victims' advocacy agencies.
- Improving customer services provided by the three King County area courts to provide customers standardized, consistent, useful, easy-to-understand information at all points of initial customer contact. Standard information will give the courts a consistent capacity to redirect customers to the correct court.

A more extensive list of local efforts can be found in Appendix A.

### ***Unification and Consolidation of the Trial Courts***

The question of unifying or consolidating the trial courts in Washington State is addressed separately here because it was the most frequently cited reform when individuals have questioned why this Task Force is focused on funding rather than creating efficiencies.

This question received an in-depth and considered analysis as part of Project 2001. The analysis presented in that report succinctly describes the issue and is reprinted here<sup>12</sup>:

#### ***Unification (Merger) of the trial courts***

In Washington, unification of all courts in the system under the Supreme Court was considered, and rejected, in 1966 and again in 1973. In the past decade though, other states *have* restructured their trial court systems, typically by reducing multiple levels of court. So, as a fundamental step in its review of court reform, Project 2001 began with an analysis of the experience in other states and the national research describing the effects of unification of the trial courts, sometimes referred to as merger or consolidation of the trial courts. While the term unification covers a diverse set of court reforms, the single core element of court unification is the consolidation and simplification of trial court structure, resulting in a single trial court bench and administration. (Larry Berkson and Susan Carbon, *Court Unification: History, Politics and Implementation*, National

<sup>12</sup>Project 2001, *Coordinating Judicial Resources for the New Millennium, Final Recommendations as Reported to the Legislature*, January 2001, Board for Judicial Administration, pp vii – viii.

Institute of Law Enforcement and Criminal Justice, 1978.) In Washington, complete unification of the trial courts would mean that the courts of limited jurisdiction (municipal and district courts) would merge or consolidate with the superior court in a given judicial district. Throughout this report, the terms unification, merger, or consolidation of the trial courts are used synonymously.

Advocates of court unification believe it results in a simpler court system for citizens to understand, and a more efficient organization for judges and administrators to manage. Unification offers the opportunity for more flexibility in the assignment of judges to various dockets, which helps meet fluctuating caseload demands. A unified system is thought to be more efficient administratively by combining routine functions performed by multiple courts in a jurisdiction, and allowing better communication due to “delaying” the trial courts.

Others, while conceding certain operational efficiencies and some increased effectiveness, view unification as a costly endeavor, the benefits of which do not outweigh the expenses. Many believe there are insufficient judicial resources for significant cross assignment of judges, and therefore the extra productivity associated with a unified trial bench is for the most part unachievable without more trial judges. A unified system is considered by some to lead to an overly centralized authority that is at odds with the philosophy that courts operate best when they are locally managed. Others believe that the benefits gained from unification can be obtained by a system that formalizes cooperation among the trial courts without restructuring them.

#### ***Court performance of unified trial courts***

Project 2001 reviewed the court unification approach taken in Maine, Michigan, Oregon, Minnesota, and California, and most importantly relied upon research conducted in 1996 by the National Center for State Courts and published in the book *Trial Court Structure and Performance, A Contemporary Reprisal*. The thrust of the National Center’s effort was to determine the extent to which the unification of trial courts results in improved levels of trial court performance. The report’s general conclusion is that while unification of the courts remains a tool for court reform, “*its potential contribution appears to be less than what can be gained from changing other aspects of how trial courts organize their work.*” (David Rottman and Bill Hewitt, *Trial Court Structure and Performance*, National Center for State Courts, 1996, p. 81.) Features such as the leadership structure and methods for flexible assignment of judges appear to contribute more to high performance than does unification. Experience in some of the states analyzed also suggests that a one-tier trial court system sometimes informally recreates a limited jurisdiction court by establishing an unofficial “lower level of judges and staff who process routine, high volume cases.”

#### ***Centralized control***

Many local government leaders strongly believe that oversight of the operation, management, and sometimes even judicial decision-making should remain strictly within the domain of each local jurisdiction. Washington’s populist tradition has long supported the notion that judges should remain primarily accountable to the local electorate and has reinforced the position that courts are

but one part of a legal and social culture that is unique in each jurisdiction. Court reform that suggests a “one-size fits all” approach is soundly rejected by many.

Against this populist backdrop, unifying the courts, with its potential of greater uniformity in practices, and more centralized control over the functions and operation of trial courts, is viewed with skepticism. Throughout the Project 2001 effort, the commitment to local vs. state control of the courts was expressed by many county and city officials, including judges. For many local leaders, not even the possibility of greater state funding for trial court costs, as desirable as that may be when viewed within Washington’s current economic constraints, outweighs the strongly held belief that the management and operation of trial courts should be controlled “at home.”

### ***Funding of trial courts***

The Project found that in all states that have initiated trial court unification efforts, a crucial component of the effort has been a transition to increased state funding of the trial courts. While the mechanics of moving to greater state funding differ among states, the reality is that unification, even when it is viewed as efficient and desirable, comes at a significant cost. Reassignment of staff, reconfiguration of facilities and organizational procedures, cross-training of personnel, merger of retirement systems, and negotiation of union contracts are examples of the transition work required in a unification effort. Without a significant commitment of funds from the state on an ongoing basis, local governments are not positioned, nor do they have the incentive, to assume the cost associated with such a change.

As mentioned previously, Project 2001 resulted in the creation of Trial Court Coordinating Councils which have produced outstanding examples of consolidation or coordination of discrete functions within jurisdictions among the various court levels. Project 2001 also highlighted a number of then-current examples of local court consolidation or coordination efforts. Project 2001 examples can be found in Appendix C.

The Courts of Limited Jurisdiction Work Group of this Task Force did address consolidation of the limited jurisdiction courts in Washington State and concluded that the long-term vision for courts of limited jurisdiction is to eventually merge into a system of regional courts of limited jurisdiction. A full discussion of this vision can be found in the limited jurisdiction section of this report beginning at page 64.

## Problem Definition

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From 1992 to 2004, the national Innocence Project has helped exonerate 144 wrongfully convicted prisoners through testing of DNA evidence alone. The Innocence Project Northwest has helped free 11 innocent prisoners since 1997, most of them in Washington state. The National Institute of Justice estimates that 10 percent of inmates are factually innocent of the crimes for which they are convicted. Lack of resources for effective public defense and investigation are among the reasons that innocent people are sent to prison.

—The Innocence Project and the Innocence Project Northwest

The Task Force assigned the responsibility for defining the problems that currently exist with trial court funding in Washington State to the Problem Definition Work Group. There were five components involved:

- Identify the problems and consequences of long-term inadequate funding on the operations of the trial courts and the quality of justice provided to the citizens of the state;
- Identify what general trial court functions are within the scope of the Task Force and should receive adequate funding;
- Identify problems associated with the current funding structure (primarily local funding) of the trial courts and identify other mechanisms for long-term funding;
- Identify the total current level of spending for all of the trial courts in Washington; and
- Identify the amount of additional funding needed for the trial courts and indigent defense programs to achieve adequate funding.

### ***The Problems and Consequences of Inadequate Funding***

In the extreme, a failure to adequately fund the trial courts threatens the very foundation of our system of government and the rule of law. There is no better example of the importance of the rule of law and degree to which it is ingrained in the American psyche than the controversy following the 2000 presidential elections. The country faced a constitutional crisis of unprecedented proportion: who would be the next president? In many nations, this crisis would lead to civil unrest, riots, and possibly civil war. In the United States with our abiding respect for the rule of law, the Supreme Court quickly decided this dispute and a president was sworn-in. Although the country and citizens were divided over their choice of the next president and the United States Supreme Court's decision that ultimately determined the next president, the people's acceptance of the court's decision, founded on respect for the rule of law, resulted in a civil resolution of the dispute and a peaceful transition to the newly-elected president.

What if there had been inadequate judicial resources to hear the case in a timely way? We know that would never happen because of the importance of the case. However, to many citizens who have important business with the court, not having their case heard in a timely way is as important to them as this case was to the public. Every day in every city and county in this state the trial courts are making real decisions about real people that affect their lives in fundamental ways. Too many of those decisions are delayed because of a lack of resources, or, even worse, judges who make those decisions are not always fully informed because they lack time and resources to give the individual cases before them the attention they need and deserve.

### ***Families and Children Are Affected***

A 15-year-old boy was removed from his home by police for allegedly assaulting his mother, brother and sister. He was placed in custody and then foster care. Due to lack of resources for juveniles, he languished in foster care while his parents fought an intense battle over his custody and his handling. The case was continued several times because of lack of courtrooms, and took almost two years to be tried. It was finally tried in November of 2003, two months before the boy's 18<sup>th</sup> birthday. He is now estranged from his mother and siblings. Lack of resources for the civil justice system halted this family's chances at a resolution while the boy was still maturing.

—Pierce County Superior Court judge

More than 115,000<sup>13</sup> cases filed in the superior courts in 2003, representing over 38 percent of the total cases filed, directly impacted the personal lives of individuals, families, and children in Washington State. An additional 12,065<sup>14</sup> domestic violence/anti-harassment cases were filed in the district and municipal courts. If each of these cases were to touch only three lives, that would equate to more than five percent of the state's population.<sup>15</sup> Projecting these statistics, every 10 years the superior courts directly impact the lives of over half of the state's citizens in some way.

When Courts do not have adequate resources, what happens?

- The lives of adults and children continue on an emotional roller-coaster as they await an opportunity for final resolution of the family dispute, with domestic violence sometimes the result.

<sup>13</sup>Superior Court 2003 Annual Caseload Report, Administrative Office of the Courts, sum of cases filed in the domestic, probate/guardianship, adoption/paternity, mental illness/alcohol, and juvenile dependency case types and civil harassment and domestic violence cases within the civil case type.

<sup>14</sup>Courts of Limited Jurisdiction 2003 Annual Caseload Report, Administrative Office of the Courts, total cases filed domestic violence/anti-harassment case type.

<sup>15</sup>April 1 Population of Cities, Towns, and Counties Used for Allocation of Selected State Revenues State of Washington, 2004, Office of Financial Management (2003 state population estimate of 6,098,300).

- A husband and wife who seek to dissolve their marriage and are not able to come to a quick agreement must sometimes wait a year or more for their day in court to resolve their parenting plan and property division disputes so they can secure a dissolution of that marriage and move forward with their lives.
- Absent final resolution, parties often fall into a litigation cycle, returning to court a number of times to clarify or modify temporary orders at significant cost to the parties and resulting in further crowding of court dockets.
- Motion dockets are so crowded that judges frequently do not have an opportunity to adequately review files in advance and then must make quick decisions from the bench, with little or no time to explain their decision to the parties.
- Parties pay attorneys and experts to prepare for trial multiple times, as civil cases are delayed in order to comply with constitutional speedy trial requirements of criminal cases.
- Judges are often required to make decisions either to preserve or curtail parent and child relationships without the benefit of independent analyses.
- The accountings in guardianships of the affairs of elderly and disabled persons are not subject to systematic review, opening the door to misuse of funds.
- Domestic violence victims who finally get up the courage to file for protection orders are not able to secure them because judges are not available to review petitions. The victims often do not return for a second attempt.
- Dependent children are left in limbo while their cases are delayed, leaving them in foster care for extended periods of time.
- Families in the process of marital dissolution do not have the security and stability that a final decision would bring on significant issues involving where the children will live, the amount of financial support, and the distribution of property and debt.

### **Public Safety**

In 2002, convicted drug offender Robert Leon was set free when a judge determined his King County trial took place about a month after the speedy trial deadline. His 2000 trial had been postponed several times because no prosecutor was available. The judge who dismissed the charges noted that drug court prosecutors routinely were assigned more than 30 cases each month for trial, and “if only one fourth of those cases went to trial, it would be virtually impossible for two deputy prosecutors to try them before their expiration dates.”

—Seattle Times report on speedy trial violations

In 2003, a total of 74,534 felony and juvenile offender cases were filed in the superior courts.<sup>16</sup> A total 309,645 cases of DUI/physical control, other traffic misdemeanors and non-traffic misdemeanor were filed in district and municipal courts.<sup>17</sup>

<sup>16</sup>Superior Court 2003 Annual Caseload Report, Administrative Office of the Courts

<sup>17</sup>Courts of Limited Jurisdiction 2003 Annual Caseload Report, Administrative Office of the Courts

When Courts do not have adequate resources, what happens?

- Trials are not heard within the time required and defendants are set free, or cases are “plea bargained” at reduced charges to avoid dismissal.
- Victims and their families are forced to repeatedly prepare themselves emotionally for trial.
- Victims and witnesses become unavailable or reluctant to testify resulting in the dismissal of charges.
- Law enforcement officers must repeatedly return to court, taking officers off the street or compounding over-time costs for cities and counties.

Municipal court is like triage. Budget cuts and lack of staffing mean court hours are cut, and when there are too many cases and too few court hours, the city must accept undesirable plea bargains or dismiss cases. “Whole categories of criminal behavior, especially driving offenses, are simply ignored at sentence review... The impact of an ever increasing workload on the morale of staff and judicial officers is crushing.”

—Municipal Court in Western Washington

When there are too few attorneys to represent indigent defendants, what happens?

- Defendants plead guilty to misdemeanor offenses without the opportunity to consult with an attorney as required by the Constitution.
- Incarceration costs escalate for cities and counties when bail decisions are based only on the prosecutor’s recommendations or when felony defendants are held in local jails before trial.
- The number of cases on criminal dockets skyrockets as they fill up with cases which are repeatedly continued because the defense attorneys are in trial on other cases, or are not prepared because of caseloads far beyond recommended standards.
- Attorneys do not have time to meet with their clients or contact witnesses, leaving them unprepared for trial.

John W. “Cabbie” Jackson spent five years in prison on a drug charge from Grant County, despite the fact that the primary witness against him was mentally ill, and the only other witness testified to a view of the crime that was physically impossible. Though his conviction was reversed years later, Jackson had already served the entire sentence and died in 2002, one year after leaving prison. His representation by a poorly-funded and overloaded indigent defense system cost him those years of freedom.

—Seattle Times report on indigent defense

## ***Business and Commerce***

“I recently was involved in a civil case that was postponed over two years because the criminal case load had priority. During that period of time, the defendant corporation ceased doing business and became insolvent; all assets were distributed to others and the judgment which was obtained became worthless.”

—Attorney in Eastern Washington

In 2003, more than 59,000 tort, commercial and property rights cases were filed in the state’s 39 superior courts.<sup>18</sup> More than 103,000 civil cases and 24,000 small claims cases were filed in the state’s 44 district courts.<sup>19</sup>

When courts do not have adequate resources, what happens?

- Businesses trying to collect from a “deadbeat” debtor must wait their turn for trial, sometimes for years, and pay for attorneys and expert witnesses multiple times to prepare for trial as trials are continued because of lack of courtrooms.
- Liens, pending trial, are sometimes placed against property of businesses, affecting their ability to get credit while a case is pending.
- Property owners, developers and governmental agencies face rising construction costs as they await litigation over land-use and environmental decisions.
- Injured persons with legitimate claims for damages must wait sometimes years for their time in court and in some cases must file for bankruptcy as medical bills mount before a case is resolved by trial.
- Property rights disputes between neighbors are delayed as congested court dockets result in delays to trial, which cases have less priority than criminal cases.
- In extreme cases, businesses may opt not to locate or do business in Washington State.<sup>20</sup>
- Construction projects can grind to a halt as litigation between or among the general contractor, the owner, the subcontractors, the suppliers, the architect and/or the lender is delayed.

### ***Determining the Scope of “Trial Court Funding”***

The original Steering Committee that defined the mission of the Court Funding Task Force considered and rejected funding for corrections, prosecution, and law enforcement as being within the purview of this Task Force. The Problem Definition Work Group then further refined the scope of the work to be addressed. If the purpose

<sup>18</sup>Superior Court 2003 Annual Caseload Report, Administrative Office of the Courts.

<sup>19</sup>Courts of Limited Jurisdiction 2003 Annual Caseload Report, Administrative Office of the Courts.

<sup>20</sup>“...an overwhelming 80% [of senior litigators surveyed] report that the litigation environment in a state could affect important business decisions at their company, such as where to locate or do business.” State Liability Systems Ranking Study, Final Report, March 2004, page 1.

of the Task Force is to improve funding for the trial courts, what services or functions now provided by the trial courts should be included within this funding effort? To assist in addressing this question, the Work Group developed a chart entitled “Context of State Trial Court Functions for Funding Discussion” (Context Chart) shown on page 38. This chart was designed to put the many components of our system of justice in context with each other.

The Work Group recommended that the functions in the first box on the Context Chart, State Trial Court Functions, be included within the scope of the Task Force’s funding efforts.<sup>21</sup>

The Work Group recommended that the Task Force consider whether the following three items be included in the scope of the Task Force’s effort:

- Courtroom facilities;
- Indigent criminal defense, juvenile offender, juvenile dependency, and mental commitment representation; and
- Civil Indigent Legal Services (pro bono legal aid for the indigent).

The first two items above were placed in the second box entitled “Essential to State Trial Court Operations but Not Administered by Them.” The Task Force concluded that facilities issues were too broad to be included in this effort and likely warranted a separate study in the future. However, the Task Force reached a different conclusion with respect to the topics of indigent defense.

### ***Indigent Criminal Defense Services Funding***

The Task Force concluded that indigent criminal defense, juvenile offender, juvenile dependency and mental commitment representation were so critical to the administration of justice and to the operation of the trial courts that these executive branch functions should be included within the scope of the Task Force’s effort. Coinciding with the Task Force’s work, several other efforts and circumstances served to highlight not only the critical nature of indigent defense representation but also the critical state of its under-funding:

- *The Unfulfilled Promise of Gideon: Washington’s Flawed System of Defense for the Poor*, the American Civil Liberties Union, March 2004, report documents the failure of local governments to comply fully with Chapter 10.101 RCW by failing to adopt indigent defense caseload and monitoring standards resulting in a lack of effective assistance of counsel.

<sup>21</sup>Note that all juvenile court functions (detention, probation, assessments, and other services) are included within the definition of “trial court operations.”

# Context of State Trial Court Functions for Funding Discussion

## Private Sector Services and Initiatives

- Private dispute resolution
- DV shelters
- Neighborhood Dispute Resolution Centers
- ADA/STA/TASC treatment alternatives

## State Justice System Supports but Does Not Administer

- Civil indigent legal services

## State Justice System

- Prosecution
- Jails/jail transport
- Public safety/Law enf.
- Building security
- Warrant enforcement
- Crime labs
- Administrative law
- Criminal-justice training
- Tribal courts

## State Judicial Branch

- Supreme Court/Court of Appeals
- Administrative Office of the Courts
- Regulation of the practice of law
- Indigent appellate representation
- State and local law libraries
- Judicial Information System

## Essential to State Trial Court Operations but Not Administered by Them

- Criminal indigent defense
- Juvenile and dependency representation
- Mental-health commitment representation
- Courtroom facilities

## State Trial Court Functions

### Legal Decision Making

- Judicial and judicial staff positions
- Adjudicate cases
- Criminal proceedings, judgments and sentences
- Due process/protection of rights
- Warrant issuance
- Civil proceedings, judgments
- Court orders (DV, anti-harassment)

### Court Management/Administration

- Non-courtroom administrative staff
- Budgeting and purchasing
- Research/workload forecasting
- Public relations and public information
- Courtroom security
- Policy and procedure development,
- Judicial and staff training
- Traffic (criminal and infraction)
- Juror and witness management
- Court-annexed ADR and settlement
- Courthouse facilitators/family court services

### Financial Management/Accounting

- Trust accounting
- Cash handling
- Collection and distribution

### Juvenile Court

- Juvenile probation and programs
- Juvenile detention

### Case Management

- Timely disposition of cases
- Accessibility to public – counter, telephone including assistance to *pro se* litigants
- Interpreter availability and use
- Timely notices and reporting, e.g., hearings, FTA, summons
- Calendar management: special calendars such as DV dockets, mental health, license reinstatement
- Required reporting to other justice agencies (e.g. DOL, WSP)
- Parking enforcement
- Specialty courts

### Enforcement of Judgment

- Collection of legal financial obligations (fines, fees, restitution, time payment program, etc.)
- Compliance monitoring – e.g. bench, probation clerk, probation department

### Records Management/Record Keeping

- Evidence
- Electronic records
- Physical files
- Court reporting/electronic recording
- Data dissemination – public access to records
- Archiving, records retention, storage, and destruction

- The Washington State Bar Association, May 2004, *Report of the WSBA Blue Ribbon Panel On Indigent Defense* echoes the ACLU's report findings through a survey of jurisdictions finding, among other things, that it is not uncommon for defendants to plead guilty to misdemeanors in courts of limited jurisdiction without the advise of counsel.
- A series of articles published in the Seattle Times entitled *The Empty Promise of an Equal Defense* documents the startling failings of the public defense system in Grant County, Washington.
- The American Civil Liberties Union and Columbia Legal Services have filed a class action suit in Grant County alleging the County has “breached its constitutional duties by operating a public defense system that regularly and systematically deprives indigent persons of the effective assistance of counsel.”<sup>22</sup>

The Court Funding Task Force found that the indigent defense services crisis was pertinent to the work of the Task Force for three primary reasons:

- It is the responsibility of judges to ensure that each individual defendant is afforded adequate representation. Although not directly administering the overall system of providing public defense, the court is ultimately responsible to ensure this constitutional right is satisfied at all stages of criminal proceedings.
- Effective management of a court's criminal caseload is highly dependent on an adequate public defense system. In order for court dockets to proceed in an orderly fashion and for trials to be heard in a timely manner, the defense attorney must be present and prepared for each case. When the public defense system becomes overburdened, the number of continuances rises and case congestion follows.
- The creation of the State Office of Public Defense as an independent office within the judicial branch is a clear policy statement of judicial responsibility to ensure adequate and effective indigent defense services.

### ***Civil Equal Justice Funding***

Also coinciding with the work of the Court Funding Task Force was the work of the Washington State Supreme Court's Task Force on Civil Equal Justice Funding. That Task Force issued its report entitled “The Washington State Civil Legal Needs Study” in September of 2003 documenting the overwhelming need for increased civil legal services to low and moderate income households. Among the key findings of the Study were:

<sup>22</sup>Complaint for Injunctive and Declaratory Relief, Jeffrey Best, Daniel Campos, and Gary Dale Hutt, on behalf of themselves and all others similarly situated; and Greg Hansen, Plaintiffs, v. Grant County, a Washington county, Defendant.

- Approximately 87 percent of all low-income households in Washington State experience at least one civil (not criminal) legal problem each year.
- Low-income people face more than 88 percent of their legal problems without an attorney.
- Legal problems experienced by low-income people are more likely to relate to family safety (including domestic violence), economic security, housing and other basic needs than those experienced by people with higher incomes.
- Women and children have more legal problems than the general population, especially on matters relating to family law and domestic violence.
- Only about 10 percent of the individuals eligible for civil legal services receive any legal assistance due to lack of funding resources.

These and other findings highlight the critical need for civil legal services for low-income people. As with criminal indigent defense, the importance of the availability of civil legal services to those who cannot afford help is basic to providing justice in this state and is another component of “Justice in Jeopardy.” Persons without representation who do find their way to court often contribute to delays in the system, slowing not only their own case, but also the cases of others around them. And, persons with representation often are able to resolve their legal problems without having to use court resources, resulting in a better and less expensive solution for all involved.

The Task Force therefore determined that in order to preserve justice in Washington State, the Board for Judicial Administration should seek adequate, stable and long term funding not only for trial court operations and indigent defense in criminal cases but also for indigent civil legal services.

***Tribal Courts***

Funding for Tribal Courts was not considered as part of the Task Force effort. However, Tribal Courts play an

integral role in Washington’s judicial system. There are 29 sovereign Indian nations in Washington, each with the right to establish and operate under their own constitution, laws and ways and to delegate authority to their own courts to enforce such laws. In some areas of the law, tribal courts share jurisdiction with state courts and their orders are given full faith and credit under the Revised Code of Washington and Washington Civil Rules. In other areas of the law, Washington’s tribal courts can assert jurisdiction over non-tribal members residing on or visiting their lands. Tribal courts are wholly supported by their respective tribal governments. However, Indian nations in Washington have no taxing authority and must depend on economic development to

**BASED ON THE FOREGOING DISCUSSION, THE TASK FORCE ADOPTED THE FOLLOWING TWO RECOMMENDATIONS IN A UNIFIED MOTION:**

- That the Board for Judicial Administration seek legislative action to implement the recommendations of the Court Funding Task Force report.
- That the Board for Judicial Administration seek legislative action to implement the recommendations in the report of the Supreme Court Task Force on Civil Equal Justice Funding.

fund law and justice responsibilities while also providing health care, education and social services to their members. In the end, there are simply not enough tribal economic resources to properly fund tribal courts leading to further inequities in funding Washington courts.

### ***Current Funding Structures and Mechanisms***

“Because of cuts in probation services, useful probation reports on defendants’ activities are rare, despite the fact that judges must make serious sentencing choices based on that information. I know that most of the people I sentence will not be supervised, due to budget cuts. So a defendant ordered to get treatment may or may not comply. The court may never know.”

—King County Superior Court judge

No state in the nation places a greater share of the burden for funding the trial courts, public defense, and prosecution on local government than does the state of Washington.<sup>23</sup> Washington’s traditions of populism and localism form the historical roots for today’s reliance on local government funding for 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.

The Task Force recognized this premise early in the process and adopted the principle that:

“The State has an interest in the effective operation of trial courts and the adequacy of trial court funding, and should contribute equitably to achieve a better balance of funding between local and state government.”

This conclusion echoes the conclusion of nearly every previous court reform effort undertaken in the last 30 years. The clarity of the conviction is heightened by a growing belief that local government can no longer afford to pay nearly 90 percent of the cost. But it is also based on sound reasoning and is well grounded factually:

- Quality justice should be equally available and accessible to every citizen in the state, regardless of their county or city of residence.
- State agencies and actors directly drive local costs from the Office of the Attorney General filing dependency cases in superior courts to the State Patrol filing driving under the influence of alcohol (DUI) and other major and minor traffic infractions in district courts.

<sup>23</sup>State & Local Government Burden of Total Direct Expenditure on Judicial & Legal Services, Fiscal Year 1999, Bureau of Justice Statistics, U.S. Department of Justice. (Figures include the cost of indigent defense and prosecution.)

- State interests and policies such as the setting of the blood alcohol limit, three-strikes-and-you're-out laws, and driving while license suspended violations directly impact the caseload and trial rates in courts.
- The state determines the number of superior court and district court judges.
- Superior and district court judge salaries are set by the Citizens' Commission on Salaries for Elected Officials and are codified in statute.
- Many actions in superior court are either filed by or are filed against the state.

Currently, the state of Washington contributes 10.8% of the operating expenditures for the trial courts and indigent defense. The state's contribution to the trial courts primarily consists of paying for one-half of superior court judges' salaries (required by the State Constitution) and 100 percent of their benefits and about 35 percent of the cost of running juvenile courts. The juvenile court funding is largely in the areas of offender services (probation, deferred disposition), detention, and truancy actions (now commonly referred to as BECCA cases<sup>24</sup>) and consists of "pass-through" funds distributed to the juvenile courts through the Juvenile Rehabilitation Administration and the Administrative Office of the Courts.

In a very practical sense, this means that when the legislature passes laws that impact the operations of the courts, the fiscal impact is borne almost exclusively by local government. By placing a greater share of the costs with the state, the legislature is more likely to scrutinize and prioritize changes for which the state will be partially responsible.

The result of increasing state participation in the funding of the trial courts would be three-fold:

- Ensure equal justice across the state;
- Improve the adequacy of funding; and

| <b>YAKIMA COUNTY<br/>2003 Budget In Brief</b> |  |
|---|--|
| <b>Budget Deficit</b>                         | - Balancing the 2003 General Fund Budget deficit of \$2.2 million required a combination of program reductions, revenue enhancements, and use of reserves.   |
| <b>Program Reductions</b>                     | - Expenditure budgets were reduced by over \$1.5 million dollars to balance the 2003 General Fund Budget.  |
| <b>Capital Facilities</b>                     | - Capital funding for Courthouse updates was also reduced by over \$700,000. The current Courthouse is the combination of two buildings, one built in 1941 and the other in 1962. The 60 year old building and the 40 year old building have not been updated since their original construction.   |
| <b>Other Department Reductions</b>            | - Law and Justice and Public Safety departments reduced over \$400,000 to balance the 2003 Budget. These departments make up over 81% of the total General Fund expenditures. General Government departments reduced a total of \$183,000. Although no services were eliminated, it will take longer to receive services from these departments due to reductions in staffing.   |
| <b>Reserves</b>                               | - Yakima County anticipates the use of \$467,715 in reserves to balance the 2003 General Fund budget. Yakima County's reserve target is to have 5 -7 % of the current General Fund expenditure budget in available fund balance at all times to maintain desired cash flow for payment of vendors and maintenance of the County's bond rating. Current available reserves are budgeted to be approximately 2%, well below target, and could require mid-year budget adjustments if revenue projections do not meet expectations.   |
| <b>Revenues</b>                               | - The impact of initiatives, legislative action by the State, and the economy of the country, has reduced the growth of revenues in Yakima County. Voters approved Initiative 747 in 2001, which capped property tax growth at 1% per year. The loss of Motor Vehicle Excise Tax, and the corresponding State backfill funding for 2003, has also had a devastating affect on the County. Additionally, with low interest rates, investment returns are at a 10 year low. Finally, sales tax has not increased as hoped due to the poor economy and annexation of property by cities within the County.<br><a href="http://www.co.yakima.wa.us/Auditor/03Budget/BudgetinBrief.htm">http://www.co.yakima.wa.us/Auditor/03Budget/BudgetinBrief.htm</a> |

<sup>24</sup>1995 legislation amending RCW 28A.225.030, known as the "Becca Bill" which made filing truancy actions mandatory: "...not later than the seventh unexcused absence by a child within any month during the current school year, or not later than the tenth unexcused absence during the current school year, the school district shall file a petition and supporting affidavit for a civil action with the juvenile court..."

- Increase the long-term stability of funding.

The financial straits of local government are well documented on a statewide basis (see King County and Yakima County insets). The variations of financial health among local jurisdictions causes variations in the level of justice that jurisdictions can afford to provide. A prime example is the unavailability of probation services in many district and municipal courts. This disparity has existed for more than a decade. The 1990 Commission on Washington Trial Courts addressed this issue in recommending that “...the Supreme Court require, and state and local legislative bodies to fund, community supervision and probation services in courts of limited jurisdiction, so that such services will be available in all courts for all defendants who need them.”<sup>25</sup>

Increasing state participation in trial court funding will improve both the adequacy and stability of trial court funding. If the state assumes fixed costs directly tied to constitutional and statutory requirements, it will retain a very real interest in trial court funding, and is more likely, when legislation creates new, or expands existing, responsibilities for the trial courts, to fund or partially fund these new responsibilities. However, to have a true impact on trial court budgets, it is critical that any transfer of costs currently paid by local government — such as half of district court and elected municipal court judges’ salaries, jury fees, interpreter costs, and indigent defense — must be linked with mechanisms that ensure that a portion of the savings at the local level are utilized to meet the needs of the trial courts.

“King County is an exceptionally prosperous community, but King County’s \$500 million general fund faces a long-term structural revenue gap. County expenditures are growing faster than revenues. *At current growth rates, costs for law and justice services threaten to consume all general fund revenues by the year 2009 (jail, court, prosecution, defense services, that make up over 70% of general fund costs).* King County’s possible responses are likely to be unacceptable to King County residents: preserve all existing programs at the current growth rate (25% increase in taxes); preserve the law and justice system eliminating all other services; protect all programs except law and justice (meaning a 35% cut in law and justice agencies); or impose 15% across-the-board reductions.”

*(emphasis added)*

King County Commission on Governance, Report and Recommendations, March, 2004, Page 1.

Finally, with the state as an active funding partner, trial court funding should become more stable. Because the revenue bases for state and local governments differ and therefore react to economic swings in different ways, greater state participation in funding the trial courts will lessen the impact of economic swings

In short, the state has a greater interest in and should be contributing more than 10.8 percent of the cost to its trial courts.

<sup>25</sup>Commission on Washington Trial Courts: Final Report, Administrative Office of the Courts, December 10, 1990, Recommendation 4.8 at page 58.

An attorney recently prosecuted a case in an Eastern Washington municipal court that, because of poor recording equipment, caused a family added suffering. After days of wrenching testimony in court, a man was convicted of assaulting his 11-year-old son in front of a younger brother. He appealed, but because the court's recording equipment had failed, the appeal forced a re-trial. The expense would be enormous and the children and mother could not face another trial, so the prosecutor was forced to strike a weak plea agreement.

—Former prosecutor, Yakima County

### **Current Funding of Trial Court Operations**

To begin assessing the adequacy of current funding, the Problem Definition Work Group first embarked on documenting “current” county, city and state expenditures supporting trial court operations. The cost of operating the superior, district, and municipal courts are documented in a separate report entitled “*Report on FY 2000 Trial Court Expenditures*” prepared by the Problem Definition Work Group.

In FY 2000, state and local government spent an estimated \$341,696,638 to operate the trial courts. This figure excludes both “intergovernmental charge-backs” and capital expenditures (both capital equipment purchases and capital facility expenditures).

| <b>Court</b>     | <b>State</b>        | <b>Local</b>         | <b>Total</b>         |
|------------------|---------------------|----------------------|----------------------|
| Superior Court   | \$16,600,000        | \$63,728,525         | \$80,328,525         |
| Juvenile Court   | \$28,910,713        | \$87,274,206         | \$116,184,919        |
| County Clerk     | \$0                 | \$37,659,943         | \$37,659,943         |
| District Court   | \$0                 | \$65,016,427         | \$65,016,427         |
| Municipal Court  | \$0                 | \$42,506,824         | \$42,506,824         |
| <b>Total</b>     | <b>\$45,510,713</b> | <b>\$296,185,925</b> | <b>\$341,696,638</b> |
| Indigent Defense | \$0                 | <b>\$78,733,803</b>  | <b>\$78,733,803</b>  |

\*Juvenile Court data is FY 2001. Data imputed for non-reporting jurisdictions, see Appendix E.

The final cost estimates for FY 2000 likely under-report total expenditures because of the inherent difficulty in reconciling budget reports from 39 counties, the imputation of data for non-reporting jurisdictions, and the need to estimate most municipal court expenditures. This figure, however, is estimated to be within five percent of total actual expenditures.

The state costs reported are only direct expenditures consisting primarily of superior court judges' salaries and benefits and a wide variety of juvenile court services in the form of Department of Social and Health Services funding for juvenile courts. The direct state costs represent 13.3 percent of the total expenditures. When the cost of indigent defense is added to these numbers, the direct state costs are reduced to 10.8 percent.

The report does not attempt to account for state expenditures that indirectly support the trial courts, which consist primarily of funding of the Administrative Office of the Courts (AOC). The AOC provides the Judicial Information System used by a vast majority of courts, provides education for judicial officers, certifies language interpreters, and provides other services that support the courts in their daily operations.

The estimate of FY 2000 expenses does not capture other funding that may support trial courts such as federal reimbursements and grants and other private grants.

While the effort to document "current" expenditures proved invaluable to the work of the Task Force, the effort also illustrated one of the primary problems: the inability to consistently and reliably quantify the extent of those expenditures. This problem was first documented in 1980,<sup>26</sup> the last time an attempt was made to document statewide local government expenditures for trial courts.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** make a formal request to the Local Government Financial Reporting System Work Group, through the State Auditor, to require that expenditures for indigent defense services be reported as a separate functional group within the Local Government Financial Reporting System.<sup>27</sup>

Because Washington's trial courts are primarily locally funded, developing an accurate picture of what is currently spent to support the operation of the trial courts has been a difficult task. Initially, the Task Force expected that the State Auditor's Office Local Government Financial Reporting System (LGFRS) would offer sufficient data to provide both a current and historical view of expenditures. However, prior to FY 2003 the LGFRS data intermingled court expenditures and indigent defense expenditures rendering the data unusable in determining expenses solely connected to the operation of the trial courts.<sup>28</sup>

<sup>26</sup>1980 Washington State Court Finance Study, Administrative Office of the Courts, December 1980 (KF 8732.5 P3 c.1).

<sup>27</sup>As previously noted, effective FY 2003 indigent defense costs were moved from the court accounting code to the legal services accounting code. This allows for a separate accounting of court expenditures but does not allow a separate reporting of indigent defense expenditures.

<sup>28</sup>For FY 2003 indigent defense expenditure data was reported under legal services, intermingled with prosecution expenditures. FY 2003 LGFRS data was available in August 2004.

In developing the FY 2000 Trial Court Expenditures Report, the Problem Definition Work Group relied on county budget data, a sample of city budget data and FY 2001 budget data on juvenile court expenditures developed by the Washington Institute for Public Policy. Reconciling the budget reports at any level of detail among the reporting jurisdictions also proved difficult. The FY 2000 data is already out-of-date. Any continuing effort to document the adequacy of trial court funding is heavily dependent on providing reliable and accurate expenditure data over time. The courts must develop a system of budgetary reporting, internal to the courts, at an appropriate level of detail to support this effort.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** convene a separate work group comprised of judges, court administrators, and local government finance officers to:

- Assess if and how all indigent defense services costs contained in court budgets can be removed from court budgets and established in a separate budget within the county or municipality.
- Review other cost areas within court budgets to determine the desirability and feasibility of establishing a limited chart of accounts for recommended use by all trial courts for specific cost areas (e.g., language interpreters, guardians' ad litem, probation services).
- Assess the desirability and feasibility of creating an annual fiscal reporting process and report on trial court funding in Washington State administered by the Administrative Office of the Courts.

### ***Determining the Amount Necessary for Adequate Funding***

After developing the current cost of operating the trial courts, the Problem Definition Work Group adopted a series of concepts to be used for calculating the gap between current funding and adequate funding. The following concepts and underlying assumptions<sup>29</sup> serve as the basis for calculating the gap in funding:

- Judicial position needs and costs should be based on the Objective Workload Analysis model developed by the Administrative Office of the Courts with all new judicial officer positions assumed to be judge positions and not court commissioner positions.
- Superior Court judicial support and administrative staff needs should be based on a set of staffing ratios of court administrative and support staff to judicial positions in the superior court to the number of judicial officers for each court.

<sup>29</sup>The underlying assumptions used to calculate the funding gap are documented in the "SimGap" estimation model, the most significant of which are staffing ratios and salary and benefit levels.

- Juvenile Court non-probation officer staff, including detention staff, should be based on a survey of juvenile court administrators providing a point-in-time assessment.
- Juvenile Court probation staff need should be based on a caseload standard.
- The needs for Juvenile Court intervention services should be based on data compiled regularly by the Washington State Institute of Public Policy under legislative direction.
- County Clerk staff need should be based on a staffing ratio of county clerk staff to judicial positions.
- District and Municipal Court staff need should be based on a set of case filing to staff ratios based on the size of the court grouped by the number of filings and based on FY 2000 staffing levels and filings.
- District and Municipal Court probation services staff need should be based on a caseload standard.<sup>30</sup>
- General overhead and other operating costs should be based on FY 2000 expenditures.
- Direct costs of specific functions documented in other studies such as jury costs.

Using these concepts, the Work Group created a model in Excel to simulate the gap (referred to as SimGap<sup>31</sup>) in funding. The model provides a reasonable view of the total cost of funding trial courts across the state, but, as a tool, it is not applicable to

| Court Level    | FY 2002<br>Estimated Expenditures* | FY 2002<br>Estimated Gap | Total          |
|----------------|------------------------------------|--------------------------|----------------|
| Superior Court | \$73.5                             | \$14.3                   | \$87.8         |
| Juvenile Court | \$105.3                            | \$16.2                   | \$121.5        |
| County Clerks  | \$38.3                             | \$9.2                    | \$47.5         |
| District Court | \$53.0                             | \$9.1                    | \$62.1         |
| Municipal      | \$46.7                             | \$1.7                    | \$48.4         |
| Jury Costs     | \$2.1                              | \$3.3                    | \$5.4          |
| <b>TOTAL</b>   | <b>\$318.9</b>                     | <b>\$53.8</b>            | <b>\$372.7</b> |

\* FY 2002 expenditure estimate is based on reported FY 2002 FTE and statewide average salary data with benefits calculated at 23.5 percent of salary. This data was not calculated on the same basis as the FY 2000 Trial Court Expenditure Data and is not useful for comparison purposes.

<sup>30</sup>A caseload standard for use in the model for District and Municipal Court probation staff has not been adopted as of the time of preparing this report. The current estimated funding gap does not, therefore, include the cost of full funding of probation services in the courts of limited jurisdiction.

<sup>31</sup>For a full description of the SimGap Model, refer to Appendix D.

The SimGap model was a very useful tool for the Task Force, providing a reasoned method to arrive at a funding gap. However, the credibility of the model hinges on acceptance of the staffing ratios which primarily drive the result. Because every state in the union has differing court structures, national standards are not available. Additionally, because staffing and program patterns vary considerably even within Washington State, it is difficult to develop a “one-size-fits-all” standard for staffing. Members of the Problem Definition Work Group developed the ratios used in the model based on staff expertise.

### ***Indigent Defense***

In 2002, Cowlitz County public defense attorney Lisa Tabbut was assigned 587 cases involving juvenile offenders and the disposition of children in troubled families. Her caseload was more than six times the maximum case limits recommended by the Washington State Bar Association. The numbers were insane and amounted to “legal malpractice,” said Tabbut, who dropped the contract because it placed no limits on the number of cases assigned to her. She is among many Washington public defense attorneys shouldering caseloads far above the recommended limits for efficient defense.

—Seattle Times report on indigent defense

The adequacy of current expenditures for indigent defense was addressed by a combined sub-committee of the Problem Definition Work Group and the Washington State Bar Association’s Blue Ribbon Panel on Indigent Defense. The cost estimate developed by this group is contained in Appendix F. The current cost of indigent defense is also captured in the “*Report on FY 2000 Trial Court Expenditures*” (see Appendix E).

Table 3 (next page) shows that the estimated FY 2000 expenditures by local government for indigent defense, both criminal and parental representation in dependency cases, are \$78,733,803. The Office of Public Defense estimates that \$6 million of the total indigent defense spending is allocated to parental representation in dependency cases.

| <b>Table 3 FY 2000 Expenditures for Indigent Defense Services</b>   |                     |               |
|---|---------------------|---------------|
|   | Amount              | Pct. of Total |
| Superior Court <sup>1</sup>   | \$5,150,210         | 6.5%          |
| Juvenile Court <sup>1</sup>   | \$1,470,602         | 1.9%          |
| County Clerk <sup>1</sup>   | \$27,935            | 0.0%          |
| District Court <sup>1</sup>   | \$1,663,004         | 2.1%          |
| Office of Public Defense <sup>2</sup>   | \$56,998,845        | 72.4%         |
| Municipal Court <sup>3</sup>  | \$13,423,207        | 17.0%         |
| <b>TOTAL</b>  | <b>\$78,733,803</b> | <b>100%</b>   |
| <sup>1</sup> Total amount of costs for indigent defense services identified in court/clerk budget.<br><sup>2</sup> Total amount identified for County Offices of Public Defense providing services in Superior, Juvenile and District Courts or for indigent defense services in other non-court county budgets.<br><sup>3</sup> Total amount identified for indigent defense services by municipalities without regard to how or where the amount was budgeted (e.g., Court budget, Office of Public Defense, other city department or non-departmental budget). |                     |               |

The estimate of adequate spending for criminal (*excluding parental representation in dependency cases*) public defense is \$190,833,868, as shown in Table 4. The Office of Public Defense estimates that full funding for parental representation in dependency cases would cost approximately \$19.8 million, increasing the total needed funding for indigent defense to \$210.6 million annually.

| <b>Table 4 Estimated Funding for Criminal Indigent Defense (excluding dependency)</b> |                      |
|---|----------------------|
| Defense Attorneys   | \$106,271,673        |
| Non-Attorney Staff  | \$48,062,488         |
| Expert Witness Costs  | \$10,890,387         |
| Operational Overhead  | \$25,609,320         |
| <b>Total</b>  | <b>\$190,833,868</b> |

By subtracting the current spending of \$78,733,803 from the total estimate of adequate spending of \$190,833,868, plus \$19,800,000 for parental representation, the funding gap for indigent defense is \$131,900,000.

## **Civil Legal Services**

In November of 2001, the Washington State Supreme Court established the Task Force on Civil Equal Justice Funding. The Task Force on Civil Equal Justice Funding was given the following charges:

- Undertake a comprehensive study of the civil legal needs of low income people.
- Develop an analysis of and rationale for long-term, sustained, and permanent state funding for essential legal services for poor and vulnerable people in Washington State.
- Establish an appropriate level of funding for state supported civil legal services needed to address identified unmet civil legal needs of poor and vulnerable people in Washington State.
- Identify and propose strategies to secure long-term, sustained, and permanent stable funding to meet this need.
- Develop recommendations for the proper administration and oversight of publicly funded civil equal justice services in Washington State.

The Task Force on Civil Equal Justice Funding determined that the current level of funding for civil legal services statewide<sup>32</sup> is approximately \$19.8 million, of which \$6.4 million is state general fund dollars.

|  |                       |
|--|-----------------------|
| Federal Legal Services Corporation Funding   | \$5.4 million         |
| Legal Foundation of Washington (IOLTA)       | \$4.8 million         |
| Private Contributions, grants, and contracts | \$3.2 million         |
| State General Fund                           | \$6.4 million         |
| <b>Total</b>                                 | <b>\$19.8 million</b> |

Based on the Civil Legal Needs Study, the Task Force on Civil Equal Justice Funding determined that the additional funding necessary to meet the need for legal services of poor and vulnerable people is \$28.1 million annually. Approximately 65 percent of the unmet civil legal needs identified in the study fell within substantive categories for which state funding may be used to provide legal aid and services. Therefore, of the

<sup>32</sup>Current level of funding is FY 2004. *Quantifying the Additional Revenue Needed to Address the Unmet Civil Legal Needs of Poor and Vulnerable People in Washington State, Executive Analysis*, Task Force on Civil Equal Justice Funding, May 2004, page 11.

<sup>33</sup>Ibid.

\$28.1 million needed in additional funding, \$18.25 million is attributable to state-authorized legal assistance.<sup>34</sup>

The areas identified for funding are as follows:

- \$3.5 million to expand the CLEAR<sup>35</sup> program.
- \$2.0 million to support increased volunteer lawyer services.
- \$22.6 million to expand direct representation of the poor and vulnerable.

A full description of the current funding sources and needs can be found in Appendix G.

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<sup>34</sup>Ibid, page 6.

<sup>35</sup>Coordinated Legal Education Advice and Referral service operated by the Northwest Justice Project.

# Funding Alternatives

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## *The Nexus Between State Action and Trial Court Operations*

"The Task Force assigned to the Funding Alternatives Work Group two broad tasks:

- To recommend 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; and
- If appropriate to consider and recommend new sources of revenue for the Board for Judicial Administration's and the legislature's consideration in order to correct the current under funding of the trial courts (the gap between current funding and adequate funding).

These two broad tasks are referred to as funding the "shift" to greater state funding and funding the "gap" between current funding and adequate funding of the trial courts."

Based on the imbalance between state and local government funding for the trial courts and the principle that the state "should contribute equitably to achieve a better balance of funding between local and state government," the Funding Alternatives Work Group undertook the task of identifying ways to address the imbalance.

The Funding Alternatives Work Group explored several different approaches to funding the shift:

- Set a goal for the state to assume a fixed percentage of the cost of funding the trial courts.
- Freeze local government expenditures for trial courts at current levels and place responsibility for all future growth and inflation with the state; and,
- Identify those areas of court operations that are most clearly associated with state mandates or state action and have the state assume full responsibility for only those areas (termed the "nexus approach" — drawing a nexus or connection between state action and state responsibility).

The first option, while attractive superficially because of its simplicity, posed several problems, including a basis to select a specific percentage for the state's share of trial court funding. The Work Group reviewed funding in other states and learned that funding falls into one of three categories: fully state funded, shared funding and primarily locally funded, with the 22 states with full funding skewing the average. Unfortunately, the Work Group was unable to identify any rationale for various percentages. The Work Group considered simply utilizing the national average for state contribution (45 percent), but dismissed that option as being arbitrary. Secondly, there was no consensus regarding a mechanism that would support such a simple division. Additionally, members of the Work Group were concerned that

courts would be pinched by one partner or the other's unwillingness to match an increase in their percentage resulting from the other's desire to increase funding.

The Work Group viewed freezing local governments' funding responsibility at a point in time as an attractive option. It would allow the State to more slowly assume responsibility and would provide long-term relief to local government. However, the Work Group concluded that this concept should be a potential *mechanism* to implement the selected approach, rather than the approach itself.

The Work Group ultimately viewed the "nexus approach" as the most pragmatic and reasoned one. The Group developed a non-exclusive list of judicial branch costs and placed them in the context of their connection to state action or state mandated functions. The Task Force adopted both the approach in general and, as a long-term goal, 100 percent state funding of the specific items shown in the left hand<sup>36</sup> column of the nexus continuum chart on page 54.

**THE TASK FORCE RECOMMENDS THAT THE BOARD FOR JUDICIAL ADMINISTRATION** adopt the nexus continuum approach, as embodied in the nexus continuum chart, as the method used to determine which costs are most appropriately shared by state government and that those items listed in the left hand column be initially recommended for court funding. This does not preclude the identification of additional items as appropriate for state funding participation based on the nexus approach in the future.

The specific items listed in the left hand column of the chart and the nexus to the state are:

- Superior Court Judges' Salaries and Benefits<sup>37</sup>

The number of superior court judges is set by statute and their salaries are established by the Washington Citizens' Commission on Salaries for Elected Officials authorized by the Washington Constitution. Much of the work of superior court judges is interpreting state statutes. The state is a party to many actions filed in Superior Courts, either as plaintiff or defendant.<sup>38</sup>

- Verbatim Record of Proceedings<sup>39</sup>

The requirement that Superior Courts are courts of record is embedded in the State Constitution and the particular requirements pertaining to how the record is captured and maintained is set in statute. Courts of Limited Jurisdiction are courts of record pursuant to statute with concomitant requirements for creating and maintaining the record established in statute and court rule.

<sup>36</sup>While the nexus continuum chart is divided into three columns for purposes of presentation, in reality, the items would be more widely dispersed along the continuum.

<sup>37</sup>State sets judges salaries (Wa. State Const. Art. 4 § 1) and State sets number of judgeships (RCW 2.08.061-.065).

<sup>38</sup>The State does provide some direct fiscal support to Thurston County to off-set the increased cost to Thurston County resulting from a significant portion of State litigation being filed in the jurisdiction in which the State capital is situated.

<sup>39</sup>Superior court is a court of record and legislature may provide that inferior courts are courts of record (Wa. State Const. Art. 4 § 11, Chapter 2.32 RCW, SPRC 3, RCW 3.02.030, RCW 3.02.040, and ARLJ 13).

## Nexus Continuum Profile

### The Nexus Between State Authority and Trial Court Costs

| Authority (shall)                               |   | Authority (may)                    |
|---|---|------------------------------------|
| <b>Superior Courts</b>                          | <b>Superior Courts</b>                        | <b>Superior Courts</b>             |
| Number of judges <sup>1</sup>                   | Court Commissioners                           | Commissioners <sup>15</sup>        |
| Judge salaries and benefits <sup>1</sup>        | Staffing positions and salaries               | ADR                                |
| Verbatim Record of Proceedings <sup>2</sup>     |   | Facilitators <sup>16</sup>         |
| Mandatory Arbitration <sup>3</sup>              |   | Mandatory Arbitration <sup>3</sup> |
| <b>District Courts</b>                          | <b>District Courts</b>                        | <b>District Courts</b>             |
| Number of judges <sup>1</sup>                   | Staffing positions and salaries <sup>10</sup> | Commissioners <sup>17</sup>        |
| Judges' salaries <sup>1</sup>                   |   | Probation                          |
|   |   | ADR                                |
|   |   | Re-licensing Programs              |
| <b>Juvenile Courts</b>                          | <b>Juvenile Courts</b> <sup>11</sup>          | <b>Juvenile Courts</b>             |
| Juvenile Dependency Representation <sup>4</sup> | Detention staff and services                  | Selective Aggressive Probation     |
| GAL In Dependency Cases <sup>5</sup>            | Probation staff and services                  | Work Crews                         |
| <b>Municipal Courts</b>                         | <b>Municipal Courts</b> <sup>12</sup>         | <b>Municipal Courts</b>            |
| Number of judges <sup>6</sup>                   | Staffing positions and salaries <sup>13</sup> | Commissioners <sup>18</sup>        |
|   | Number of judges                              | Probation                          |
|   | Judges' salaries and benefits                 | Re-licensing Programs              |
| <b>Other</b>                                    | <b>County Clerks</b> <sup>14</sup>            |                                    |
| Language Interpreter Costs <sup>7</sup>         | Staffing positions and salaries               |                                    |
| (all court levels)                              |   |                                    |
| Juror Costs <sup>8</sup> (all court levels)     |   |                                    |
| Witness Fees <sup>9</sup> (all court levels)    |   |                                    |
| Criminal Indigent Defense <sup>10</sup>         |   |                                    |
| (all court levels)                              |   |                                    |

<sup>1</sup> State sets judges salaries (Wa. State Const. Art. 4 § 1) and State sets number of judgeships (RCW 2.08.061-.065 and RCW 3.34.010).

<sup>2</sup> Superior court is a court of record and legislature may provide that inferior courts are courts of record (Wa. State Const. Art. 4 § 11, Chapter 2.32. RCW, SPRC 3, RCW 3.02.030, RCW 3.02.040, and ARLJ 13).

<sup>3</sup> Mandatory Arbitration is required in counties of more than 150,000 and optional in counties of less than 150,000 (RCW 7.06.010). Arbitrator pay is set by statute as equal to that of a judge pro-tempore (RCW 7.06.040).

<sup>4</sup> Juvenile Dependency cases are filed by State Attorney General and prosecuted in the name of the State and the provision of counsel for indigent parties is the responsibility of local government (RCW 13.34.090).

<sup>5</sup> The court shall appoint a guardian ad litem for a child who is the subject of a dependency action (RCW 13.34.100).

<sup>6</sup> Cities with a population over 400,000 must establish a municipal court consisting of a minimum of three departments (RCW 35.20.010 and 35.20.100).

<sup>7</sup> Interpreter requirements are established by statute (RCW 2.43.040 and RCW 13.04.043).

<sup>8</sup> Right to a jury trial established in Constitution (Wa. State Const. Art. 1 § 21). The size of the jury and jury compensation are set in statute (RCW 2.36.150, RCW 4.44.120, RCW 4.44.310, RCW 10.01.040, and RCW 10.04.050).

<sup>9</sup> Witness cost fees and mileage are set in statute (RCW 2.40.010).

<sup>10</sup> The right to representation is established in the State Constitution and statute ((Wa. State Const. Art. 1 § 3, Wa. State Const. Art. 1 § 22, RCW 10.101.005, RCW 39.34.180).

<sup>11</sup> Compensation for District Court staff is set by the local legislative authority (RCW 3.54)

<sup>12</sup> Juvenile Court detention and probation are to be supervised by Superior Court (RCW 13.04.035 and 13.05.040).

<sup>13</sup> Cities are responsible for the adjudication of misdemeanor and gross misdemeanor offenses committed in their jurisdiction (RCW 39.34.180).

<sup>14</sup> Cities that establish an independent municipal court are responsible for setting the salaries and compensating municipal court judges and staff (RCW 3.50.080).

<sup>15</sup> County Clerks are constitutional officers whose duties are prescribed in state law. Clerk Office staff and operating costs are funded locally.

<sup>16</sup> Article 4 § 23 confers upon the superior court the discretion to appoint three commissioners with authority to perform "like duties as a judge of the superior court."

<sup>17</sup> Counties may create a facilitators program (RCW 26.12.240).

<sup>18</sup> When authorized, a district court may appoint commissioners (RCW 3.42.010).

<sup>19</sup> A Municipal court judge may appoint commissioners (RCW 3.50.075).

- Mandatory Arbitration<sup>40</sup>  
Mandatory arbitration in Superior Courts in a judicial district with a population of more than 150,000 is required by statute. Arbitrator pay is set by statute.
- District Court Judges' Salaries and Benefits<sup>41</sup>  
The number of district court judges is set by statute and their salaries are established by the Washington Citizens' Commission on Salaries for Elected Officials. District Court judges adjudicate cases filed under state law both civil and criminal. In civil matters, district courts have concurrent jurisdiction with the superior court up to \$50,000 in damages. The State Patrol, as the state policing agency, files 80 percent of non-city criminal cases and infractions in county-funded District Courts.
- Juvenile Dependency Representation<sup>42</sup>  
Juvenile Dependency cases are initiated by the Office of the Attorney General on behalf of the state. Local government is required by statute to provide representation to indigent parents.
- Guardians Ad Litem in Juvenile Dependency Cases<sup>43</sup>  
The court is required by statute to appoint a guardian ad litem to represent each child that is the subject of a dependency action. The state currently contributes \$750,000 annually to the cost of operating Court Appointed Special Advocate programs.
- Municipal Court Judges in Cities over 400,000<sup>44</sup>  
Municipalities with a population exceeding 400,000 must have a municipal court with a minimum of three departments.
- Language Interpreters<sup>45</sup>  
The provision of a language interpreter for non-English speaking persons in cases initiated by the state at local government expense is required by statute.

Also non-English speaking juvenile offenders are entitled to interpreters – see RCW 13.04.043.

"The administrator of juvenile court shall obtain interpreters as needed consistent with the intent and practice of chapter 2.43 RCW, to enable non-English speaking youth and their families to participate in detention, probation, or court ordered proceedings and programs."

<sup>40</sup>Mandatory Arbitration is required in counties of more than 150,000 and optional in counties of less than 150,000 (RCW 7.06.010). Arbitrator pay is set by statute as equal to that of a judge pro-tempore (RCW 7.06.040).

<sup>41</sup>State sets judges salaries (Wa. State Const. Art. 4 § 1) and State sets number of judgeships (RCW 3.34.010).

<sup>42</sup>Juvenile Dependency cases are filed by the State Attorney General and prosecuted in the name of the State and the provision of counsel for indigent parties is the responsibility of local government (RCW 13.34.090).

<sup>43</sup>The Court shall appoint a guardian ad litem for a child who is the subject of a dependency action (RCW 13.34.100).

<sup>44</sup>Cities with a population over 400,000 must establish a municipal court consisting of a minimum of three departments (RCW 35.20.010 and 35.20.100).

<sup>45</sup>Interpreter requirements are established by statute (RCW 2.43.040 and RCW 13.04.043).

- Juror Costs<sup>46</sup>  
The right to a jury trial is established in the Washington Constitution. The amount of the fee payable to jurors for their service is established by statute.
- Witness Fees<sup>47</sup>  
The amount of the fee payable to witnesses for their services is established by statute.
- Criminal Indigent Defense<sup>48</sup>  
The right to counsel at public expense for indigent persons charged with the commission of a crime is required by the Washington State Constitution and statute (and by the United States Constitution) as interpreted by the United States Supreme Court and the Washington Supreme Court.

The above list, while by no means all-inclusive, represents those areas where the Task Force determined that a clear and direct nexus between state action and state expense should exist. Therefore, the Task Force determined that in these areas the state should most appropriately share in the burden of operating the state's trial courts.

### ***Public Safety and Education Account***

The Funding Alternatives Work Group spent a considerable amount of time discussing the Public Safety and Education Account (PSEA). The initial presentations to the Work Group and to the Task Force portrayed the PSEA as, in some way, "broken." That is, the original intent in establishing the account in 1984 – streamlining revenue collection for fees, fines, penalties, and forfeitures for the superior court and courts of limited jurisdiction and using that revenue to support the functions of the "contributing agencies" most of which originally related to the courts or to public safety – had eroded over time. The number of participating agencies had grown from eight or nine to 31 (most of which do not relate to the courts).

Ultimately based on the principle that "courts are not self-funding entities" and questions about the appearance of fairness — that is, trial courts benefiting directly from fine revenue — the Work Group concluded that "fixing" the PSEA such that it would be a reliable source of trial court funding was not appropriate. The Task Force drew a distinction between (i) "user fees" such as filing fees and (ii) fines, penalties and forfeitures.

<sup>46</sup>Right to a jury trial established in Constitution (Wa. State Const. Art. 1 § 21). The size of the jury and jury compensation is set in statute (RCW 2.36.150, RCW 4.44.120, RCW 4.44.310, RCW 10.01.040, and RCW 10.04.050).

<sup>47</sup>Witness costs fees and mileage are set in statute (RCW 2.40.010).

<sup>48</sup>The right to representation is established in the State Constitution and statute (Wa. State Const. Art. 1 § 3, Wa. State Const. Art. 1 § 22, RCW 10.101.005, RCW 39.34.180).

Despite the decision not to include PSEA as a source of direct trial court funding, the Group concluded that there were several administrative improvements to the PSEA that were worth further consideration by the Board for Judicial Administration.

Currently for traffic infractions, the legislature sets assessments which are added to the base penalty set by the Supreme Court. The assessments are not uniformly applied to all beneficiary agencies. Some assessments apply to some agencies and other assessments in different amounts apply to other agencies. The result is a convoluted calculation of the total cost imposed on defendants, creating significant accounting problems. The Group concluded that the accounting process would be simplified by placing the responsibility for setting the base penalty back with the legislature, eliminating the assessments and enabling the legislature to set a single percentage distribution between state and local government.

Having the legislature set the base penalty simplifies and clarifies the punishment for infractions and would eliminate many time-consuming questions regarding the total cost of the ticket versus the “base penalty” set by court rule.

The Work Group also concluded that extending the Judicial Information System (JIS) fee to all case types would more appropriately place the burden of paying for the JIS on all users of the system. The Work Group also thought it beneficial to remove JIS funding from the PSEA account, and stop the process of shifting the JIS funding between the PSEA and JIS account from time-to-time.

The Task Force recognizes that these ideas need further study and recommended to the Board for Judicial Administration that this area warranted further study.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** accept the following suggestions related to the Public Safety and Education Account for further review:

- Repeal RCW 46.63.110 (3) which proscribes that the Supreme Court establishes the traffic infraction penalty schedule and eliminate all legislative assessments on traffic penalties. Develop a penalty classification schedule similar to civil infractions under Title 7 RCW.
- Adjust the state/local “PSEA division” on a “no-harm” basis to account for the elimination of the several legislative assessments and to establish a simple, single, uniform division of funds between state and local government.
- Recreate the JIS account fee not as a portion of the traffic infraction penalty but as a user fee on all court transactions – filings fees, traffic infractions, conviction of misdemeanor or felony. The fee would then fund both maintenance and new development and would remove JIS from the PSEA account entirely.

## ***Fines, Penalties, and Fees***

The Funding Alternatives Work Group fully considered the issue of fines, penalties, and fees as a potential source of revenue to support the operation of the trial courts and reached several conclusions:

- It is not appropriate for the courts to rely on revenue from fines, fees, and penalties to operate the trial courts because courts are a branch of government that should be funded largely from general tax revenues.
- Even if it were appropriate, the amount of revenue to be derived from fines, fees, and penalties would not significantly contribute to trial court funding.
- Fines and penalties should be set on the basis of the appropriateness of the punishment, not the revenue potential.
- Judges are placed in an inherent conflict of interest in determining the appropriate punishment for the offense on one hand and raising revenue for the courts on the other.
- Increasing fees will negatively impact access to the courts.
- However, periodic increases in fees are appropriate to partially offset the cost of doing business.

The Work Group considered a host of potential new fees<sup>49</sup> and rejected all but two, relying primarily on the principles of access to justice and limited revenue potential in making its recommendations. The Work Group recommended extending the superior court filing fee to cross, counter, and third party claims. It also recommended authorizing courts of limited jurisdiction to assess a \$55 cost in criminal cases on conviction.

The Work Group also recommended increasing existing fees including an increase to the superior court filing fee from \$110 to \$200, an increase in the district court filing fee from \$31 to \$55 and an increase in various ministerial fees currently charged by court clerks.

If adopted the fee proposal would accrue an estimated \$14.8 million to the state PSEA account, \$19.0 million to county general funds, and \$2.2 million to city general funds each biennium. While a direct dedication of the revenue that would accrue to the state PSEA account is not recommended, the revenue would certainly cover the cost of shifting funding responsibility for some trial court functions to the state. In light of the Task Force principle that fines, fees, and penalties should not be used to directly support the trial courts, the Task Force does not recommend that any of the local share be dedicated to the courts. Rather, this additional revenue at the local level should benefit the general fund of the counties.

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<sup>49</sup>Additional fees considered and rejected included answer fees, motion fees, daily non-jury, and jury trial fees, etc. See Appendix H for a complete list of the fees considered.

Further, it is critical to creating stable and adequate funding for the trial courts that a portion of the local savings from the state's assumption of certain trial court costs be used to meet court improvement needs.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** seek legislation increasing the superior court civil filing fee from \$110 to \$200, increasing the district court civil filing fee from \$31 to \$55, and increasing a number of other miscellaneous court fees as detailed Appendix I.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** seek legislation creating:

- A fee for filing cross, counter and third party claims in Superior and District Courts (excluding unlawful detainer cases) equal to the original filing fee in civil actions, and
- A fee of \$55 to be assessed, at the discretion of the trial judge, against defendants in courts of limited jurisdiction on a plea of guilty or conviction for misdemeanors and gross misdemeanors.

The Work Group also concluded that a regular mechanism for reviewing and recommending increases to various fees be implemented.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** require the Administrative Office of the Courts, in consultation with the County Clerk’s Association and District and Municipal Court Management Association, to report annually to the Supreme Court and Board for Judicial Administration recommending any adjustment to fees.

***Tax Revenue Alternatives***

At the initial Funding Alternatives Work Group meetings, two views on revenue emerged: (i) it is the duty and the prerogative of state and local legislative bodies to find the funds necessary to adequately support the courts and (ii) the Task Force as part of its recommendations must “bring money to the table.” These two views were tempered by the amount of new funding estimated to be necessary to adequately fund trial court operations and indigent defense.

More specifically, when the total recommended amount for additional trial court operation and indigent defense funding is considered together with the recommended rebalancing of state and local responsibility, the increased cost to the state was substantial.

The current spending by the state, consisting primarily of half the salaries and all of the benefits for superior court judges and approximately 25 percent of the cost of operating juvenile courts, is \$45.5 million (FY 2000).

| <b>Table 6 FY 2000 State and Local Expenditures (millions)</b> |                |                 |                 |
|--|----------------|-----------------|-----------------|
|  | <b>State</b>   | <b>Local</b>    | <b>Total</b>    |
| Court Operations   | \$ 45.5        | \$ 295.8        | \$ 341.3        |
| Indigent Defense   | \$ 0.0         | \$ 78.7         | \$ 78.7         |
| <b>Total</b>   | <b>\$ 45.5</b> | <b>\$ 374.5</b> | <b>\$ 420.0</b> |

| <b>Table 7 Estimated Additional Funding Needs (millions)</b> |               |                 |                   |
|--|---------------|-----------------|-------------------|
|  | <b>State</b>  | <b>Local</b>    | <b>Total</b>      |
| Court Operations   | \$ 8.2        | \$ 45.6         | \$ 53.8           |
| Indigent Defense   | \$ 0.0        | \$ 31.9         | \$ 131.9          |
| <b>Total</b>   | <b>\$ 8.2</b> | <b>\$ 176.5</b> | <b>\$ 184.7.0</b> |

When the additional amount necessary to adequately fund trial court operations (\$53.8 million) is added to the additional cost necessary to adequately fund indigent defense (\$131.9 million), the total amount of additional funds needed is \$184.7 million.

| <b>Table 8 Total of FY 2000 Expenditures and Estimated Additional Need (millions)</b> |                |                 |                 |
|---|----------------|-----------------|-----------------|
|   | <b>State</b>   | <b>Local</b>    | <b>Total</b>    |
| Court Operations  | \$ 53.7        | \$ 341.4        | \$ 395.1        |
| Indigent Defense  | \$ 0.0         | \$ 210.6        | \$ 210.6        |
| <b>Total</b>  | <b>\$ 53.7</b> | <b>\$ 551.0</b> | <b>\$ 605.7</b> |

| <b>Table 9 Nexus Items Proposed for 100% State Funding</b> |                                      |
|--|--------------------------------------|
| • Superior Court Judge Salaries                            | • Jury Fees and Mileage              |
| • District Court Judge Salaries                            | • Statutory Witness Fees             |
| • Municipal Court Judge Salaries                           | • Interpreter Costs                  |
| • Verbatim Record of Proceedings                           | • Indigent Criminal Defense          |
| • Mandatory Arbitration                                    | • Indigent Dependency Representation |
|  | • Guardians Ad Litem in Dependencies |

When the total cost of the additional funding is then reallocated based on the nexus chart — that the state assume 100 percent of the costs listed on the left hand side of the nexus chart — the state’s share of the total funding responsibility increases by over \$250 million, from the original \$45.5 million to nearly \$310 million.

| <b>Table 10 Result of Reallocation of Total Funding (FY 2000 and Estimated Need) (millions)</b> |                 |                 |                 |
|---|-----------------|-----------------|-----------------|
|   | <b>State</b>    | <b>Local</b>    | <b>Total</b>    |
| Court Operations  | \$ 98.6         | \$ 296.5        | \$ 395.1        |
| Indigent Defense  | \$ 210.6        | \$ 0.0          | \$ 210.6        |
| <b>Total</b>  | <b>\$ 309.2</b> | <b>\$ 296.5</b> | <b>\$ 605.7</b> |

The magnitude of the increased responsibility to the state led the Work Group to conclude that the state, if it were to assume that responsibility, would need additional revenue.

The Work Group therefore developed suggestions for increased revenue to support the additional funding needed.

The Work Group first established as an operating principle that courts are a fundamental function of government and should be funded from general revenues.

The Work Group then turned to the three major taxes available in Washington State:

- Sales Tax
- Property Tax
- Business and Occupation Tax

Targeting the state sales tax was immediately discarded as an option. The League of Education Voters was in the process of gathering signatures for an initiative that would increase the sales tax by one percent with the estimated additional revenue of \$1 billion placed in a dedicated fund for education. The Work Group considered that either the initiative would pass, allocating an increase in the sales tax to education, or it would fail, politically eliminating any attempt by the legislature to consider a sales tax increase as a potential source of increased revenue.

The Work Group also carefully considered the state’s share of the property tax. There was a sense that the public might support an increase in the state’s share of the property tax if the public was informed of the need for additional funding of the trial courts and assured that those funds would directly support the trial courts. The Work Group concluded that it might be politically possible to interest the legislature in placing a measure on the ballot by referendum. The proposal discussed was a 10 cent per thousand dollar of value rate-based state property tax increase to support the trial

courts (“Dime for Justice”). The tax would be rate-based and exempt from the general fund lid, thus allowing the revenue to grow over time with property values. This concept was premised on the idea that the judiciary would be responsible for educating the public on the need for increased funding of the trial courts.

The Work Group considered three approaches for the business and occupation tax:

- A  $\frac{1}{4}$  of one percent increase to the B&O tax for all service businesses whose services are currently not subject to the state sales tax. This option was viewed as the most attractive option because it spread the tax burden across a large section of the economy and generated an amount of revenue sufficient to substantially address the funding needs identified by the Task Force. This option was considered by the Work Group at the very end of the deliberative process and was added to the “tax package” by the Task Force at the final Task Force meeting after having previously considered and accepted the other options described below.
- A one percent increase to the B&O for legal services, from 1.5 percent to 2.5 percent. Members believed that an increase to the B&O tax for legal services might receive support in the legislature because a clear connection exists between legal services and the trial courts.
- A surcharge on the general business and occupation tax rate. The Work Group proposed a *surcharge*, recognizing that the B&O tax *rate* among business categories varies according to their relative gross and net incomes. Therefore a surcharge on the various rates would apply more evenly across business categories.

Increasing the B&O tax on legal services is an opportunity for the Bar to demonstrate its leadership and commitment to adequate funding of the trial courts. However, Bar leaders on the Task Force cautioned that it is imperative to have any increase in the tax firmly tied to either the rate-based state property tax or the B&O surcharge so that the B&O tax on legal services would not end up being the only approved tax.

The Work Group did consider several other tax options not included in the final package of options. One proposal would impose a tax on court judgments, to be equally applied to the plaintiff and the defendant. The Work Group rejected this proposal based on two factors: foreseen difficulty in assessing and collecting the tax, and impinging on access to justice. The Work Group also considered several of the taxes proposed by the Governor’s Tax Structure Commission. The Group recommended that these areas — extending the watercraft excise tax to motor homes and travel trailers and extending the state sales tax to services not otherwise subject to the sales tax — be included in the revenue options outlined for the legislature’s consideration.

The Task Force recommended the following “tax package” to the Board for Judicial Administration:

A ¼ of 1% increase to the Business & Occupation tax (B&O) for businesses whose services are not currently subject to the retail sales tax (increasing it from 1.5% to 1.75%; estimated annual revenue \$150 M).

*OR*

A 1% increase to the B&O tax on legal services (increasing it from 1.5% to 2.5%; estimated revenue \$30 M).

*Plus Either*

An across-the-board surcharge on the general B&O tax rates (estimated revenue depends on percentage increase).

*Or*

A statewide, “rate-based” property tax of 10 cents per \$1,000 of assessed value, to fund the courts (estimated revenue \$60M).

*Plus*

One or more of the new taxes suggested by the Gates Tax Structure Commission.

- Extending the state sales tax to consumer services (beauty shops, recreation, cable TV, etc.); and/or
- Extending the watercraft excise tax to motor homes and travel trailers.

In considering the tax package received from the Funding Alternatives Work Group, the Task Force recognized that the legislature is the branch of government with the right and the responsibility to determine the sources of adequate, stable and long term funding for the trial courts, which may include new revenue or reallocation of existing revenues. The Task Force was very cognizant of the fact that any tax increase would be viewed unfavorably. Therefore the list of potential revenue sources is intended to provide flexibility to the BJA as it presents recommendations to the legislature for improved trial court funding.

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** accept the proposed “tax package” with the understanding that the package represents one of the possible options which the judiciary would support to provide funding for trial courts and functions essential to the operation of trial courts.

## Courts of Limited Jurisdiction

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One municipal court in Western Washington averages 85 hearings a day, which works out to less than five minutes per hearing. Another city tries to avoid sending people to jail because the city can't afford the jail costs.

"This means that people who deserve jail time don't get it and some people who have mandatory sentences do more jail time than some worse offenders. Someone driving with a suspended license may spend months in jail, while an offender who assaults someone may be out in a few days."

—Municipal Court judge

Washington's courts of limited jurisdiction are some of the busiest courts in our state. In 2003, the Administrative Office of the Courts reported that over two million cases were filed in courts of limited jurisdiction. Infractions make up roughly 57 percent of those cases; parking offenses account for 20 percent of the caseload; criminal acts account for approximately 15 percent; civil, including small claims are four percent of the total caseload; domestic violence and anti-harassment protection make up an additional .05 percent.

For most Washington citizens, contact with the court system is with a court of limited jurisdiction either as a party, a witness or a juror. Courts of limited jurisdiction and their judicial officers play a critical role in ensuring confidence and respect for the judicial system. The impressions individuals receive from this experience shape their opinion of the entire judicial system, our laws and law enforcement.

The overlapping character of municipal and district court jurisdiction and local decisions about jurisdiction can be confusing. For some citizens, confusion may prevent them from accessing and using courts and obtaining protection. Washington's parallel delivery system for courts of limited jurisdiction has led to concerns about the efficient use of public resources and also about providing effective services.

Article IV of the Washington Constitution provides that the judicial power of the state shall be vested in a supreme court, superior courts, and such inferior courts as the legislature may provide. The legislature has authorized courts of limited jurisdiction for both counties (district courts) and cities (municipal courts).

District courts have authority to hear misdemeanors and gross misdemeanor offenses in violation of state laws or county or city ordinances; jurisdiction in all matters involving traffic, non-traffic, and parking infractions; orders for protection from domestic violence; civil anti-harassment matters; civil impoundment matters; concurrent jurisdiction with superior courts over civil actions involving \$50,000 or less; small claims up to \$4,000;

and preliminary hearings of felonies. Municipal courts have authority to hear misdemeanors and gross misdemeanor offenses, traffic infractions in violation of the city's ordinances occurring within their jurisdictions, civil impoundments, and domestic violence protection orders.

The Court Improvement Act of 1984 provided cities and counties with options for different court structures to adjudicate offenses within their jurisdictions. These structures are exclusive in nature. District courts are county-wide, independent, stand-alone courts with elected judges. Cities currently have three authorized options for providing municipal court services by: (i) forming an independent stand-alone full-time or part-time municipal court, (ii) entering into a contract with the county and filing all city cases with the local district court, or (iii) creating a municipal department within the district court.

RCW 3.50.055 provides that a municipal court judge becomes full-time, and must therefore be elected, when the judge is compensated for 35 hours per week, regardless of the actual number of hours worked to manage the caseload. Additional judges in that court over half-full-time equivalent must also be elected.

Currently, there are 426 judges from all levels of court in the state of Washington, 340 of whom are elected. All superior and district court judges are elected, regardless of hours worked. There are 19 full-time elected municipal court judges. Part-time municipal court judges (of which there are 86) are the only trial court judges in Washington who are not elected; they are appointed and serve at the pleasure of the appointing city official.

Previously commissioned court studies have identified a number of issues and concerns with the operation of the courts of limited jurisdiction including judicial independence and accountability; parallel and overlapping jurisdictions between district and municipal courts; citizen access and confidence; and the efficient use of public resources.

Some municipal courts have chosen not to exercise jurisdiction authorized by statute. The jurisdiction some cities choose to exercise and the insistence by some cities that courts generate revenues to meet the cost of operation has lead to criticism that municipal courts exist only to generate revenue. As illustrated by information provided to the Courts of Limited Jurisdiction Work Group (CLJWG) by the Association of Washington Cities (AWC) and by the Administrative Office of the Courts (AOC), there are many small municipalities operating their own independent municipal courts that do not provide a full panoply of service to the public. Some of these courts are in operation for as little as four hours per month or restrict their caseload exclusively to traffic infractions. They do not offer public services such as the availability of domestic violence protection orders or court security. Instead, the public is referred to the district court or told to come back on designated days or times.

Because of the recent significant decrease in revenues for local jurisdictions and the continuing increase in costs related to courts, county and city governments are

exploring other options to provide mandatory court services to their citizens. As an example, in 2003 the King County Executive terminated contracts with 17 cities because of the high costs associated with providing district court services. After long and protracted negotiations, King County agreed to an interim extension of these contracts but only through 2006. In an effort to provide additional option for municipal courts, cities, with the support of the Association of Washington Cities (AWC), introduced legislation, Senate Bill 5500, during the 2003 legislative session to authorize cities to contract with one another to provide municipal court services. Senate Bill 5500, would have provided the benefits of a regional court system as an alternative to each city establishing its own stand-alone court. This legislation failed to pass.

The current financial constraints and demands on local governments and the courts are anticipated to last into the foreseeable future. These circumstances brought renewed attention to long standing state-wide issues in courts of limited jurisdiction, particularly in small part-time courts. Over time, the distinctions between municipal and district court jurisdiction and services have become minimal. Municipal courts are as competent as district courts to handle any case in any court of limited jurisdiction. This suggests a judicial resource that should be more fully utilized.

The Board for Judicial Administration charged the Courts of Limited Jurisdiction Work Group (CLJWG) to:

Study structural and court funding issues in courts of limited jurisdiction, district and municipal courts that result from multiple delivery systems in the same geographic area and recommend efficient and effective methods of delivering judicial services and whether changes such as consolidation of district and municipal courts should be made to the current system.

A critical aspect of the Courts of Limited Jurisdiction Work Group's effort was to develop and adopt a set of principles and implementation concepts to provide the necessary analytical framework to propose legislative changes and to assess legislative proposals and concepts. The following principles and concepts were adopted by the Work Group and the Court Funding Task Force in October 2003. While the principles and concepts were adopted by both groups, there are specific recommendations contained in the Work Group's final report that continue to represent points of disagreement among the participants, specifically representatives of the cities disagree with some of the Work Group's and Task Force's recommendations.

A full discussion of the following principles, implementation concepts and recommendations can be found in the Courts of Limited Jurisdiction Work Group final report which is available on line at [www.courts.wa.gov](http://www.courts.wa.gov).

## **Principles for Courts of Limited Jurisdiction**

- I. Courts will maintain their constitutional role as a separate, equal, and independent branch of government.
- II. Courts will be structured and function in a way that best facilitates the expeditious, efficient, and fair resolution of cases.
- III. Courts will be accessible to the community they serve and provide services that enable the public to navigate through the court process with a minimum of confusion.
- IV. The primary mission of the courts of limited jurisdiction is to expeditiously, efficiently, and fairly resolve cases and serve the residents of the community, not to generate revenue.
- V. Courts will operate in compliance with court rules and statutes.
- VI. Courts will be administered with sound management practices, which foster the efficient use of public resources and enhance the effective delivery of court services.

## **Implementation Concepts**

1. To promote public accountability and independence, all judges in courts of limited jurisdiction should be elected, including part time judges. (*Principles I-VI*)
2. Title 3 should provide different court options for local governments to provide court services to their community. (*Principles V, IV*)
3. Provision should be made for expanded subject matter jurisdiction in district and municipal courts. (*Principles I - VI*)
4. A court of limited jurisdiction should be accessible to residents of the community it serves. Each court of limited jurisdiction should provide services on a regularly scheduled basis at established hours that are posted for the public. (*Principles III, IV, V, VI*)
5. Costs for court services provided by another government should be calculated based on the amount of resources used. (*Principles II, IV*)
6. All statutory provisions relating to the structure, governance and operation of the courts of limited jurisdiction should be contained in Title 3. (*Principle II*)

**THE TASK FORCE RECOMMENDS THE BOARD FOR JUDICIAL ADMINISTRATION** accept the following short-term strategies in support of a more regionalized court structure.

1. Clarify the statutory court options and encourage regionalization of courts of limited jurisdiction. All court structure options for courts of limited jurisdiction should be contained in Title 3 RCW.
2. Update current provisions in Title 3 authorizing municipalities and counties to provide joint court services by interlocal agreement.
3. Create a new section in Title 3 authorizing cities to contract with other cities to form regional municipal courts with elected judges.
4. Elect judges at all levels of court to promote accountability and the independence of the judiciary.
5. Limit district and municipal court commissioner authority to differentiate their responsibilities from those of elected judges.
6. Amend Title 3 to emphasize a collaborative regional approach to the provision of court services by expanding the role and membership of the districting committee.
7. Require each court of limited jurisdiction to provide court services to the public on a regularly scheduled basis at established hours posted with the Administrative Office of the Courts.
8. Authorize municipal courts to hear anti-harassment protection petitions.
9. Require courts of limited jurisdiction to timely hear domestic violence protection orders or have clear, concise procedures to refer victims to courts where the service is available.
10. Recommend increasing the civil jurisdiction amount in dispute that can be filed in district court to \$75,000.
11. Recommend that district courts implement dedicated civil calendars and case scheduling.

Long-term, the Courts of Limited Jurisdiction WG recommends that courts of limited jurisdiction should be reorganized into regional courts funded by the state. These regional courts of limited jurisdiction would have jurisdiction over all applicable state laws and county and city ordinances, and causes of action as authorized by the legislature. Regional courts would be located in convenient locations serving both the public and other court users including law enforcement agencies, lawyers, and court personnel. Regional courts would operate full-time, have elected judges, and offer predictable recognized levels of service, including probation. A regional structure for courts of limited jurisdiction will decrease the proliferation of small limited operation part-time courts. Ideally, regional courts would offer convenience, consolidated services, staff and administration, and would achieve economies of scale savings for all participating jurisdictions.

Regionalization would allow jurisdictions to reduce the duplication of administrative costs among individual courts and improve the quality of services to the public.

## Public Education

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The fundamental issue that the Task Force asked the Public Education Work Group to address is how to engage the public, elected officials, the legislature and other interested parties sufficiently to care about trial court funding.

In the midst of an economic downturn, court funding is not on the mind of the average voter. Jobs, taxes, education and health insurance have priority.

Failures of the recent Pierce County and Oregon initiatives to increase funding for law and justice services have proven that passing additional taxes will not be accepted by the public without a compelling argument to do so.

The Public Education Workgroup developed a public relations plan (See Appendix J) to increase awareness of the important issue of adequate trial court funding by putting a 'human face' on the crisis; positioning court funding as a vital need to preserve democracy, and fundamental to a strong community; and demonstrating that not all are receiving equal treatment under the law.

The Court Funding Task Force's public education plan must make the case that a court system that is not properly funded puts everyone's liberty and property at risk. The public also needs to be informed that some of the most important work done by superior court judges, such as dealing with families and children, is also at risk because of lack of resources. Connecting how the lack of court funding is hurting real people on a day-to-day basis is critical.

Making this case, however, is not enough. The public education plan must further articulate, in a meaningful way, that the judiciary is a vital independent branch of government. The Board for Judicial Administration and the judiciary must be clearly identified as leaders on these issues.

**THE TASK FORCE RECOMMENDS TO THE BOARD FOR JUDICIAL ADMINISTRATION**  
that it adopt the communications plan developed by the Public Education Work Group.

**THE TASK FORCE RECOMMENDS TO THE BOARD FOR JUDICIAL ADMINISTRATION**  
the reestablishment of the Public Education Work Group as a committee of the BJA with its current membership and its current charge.

## Implementation Strategies

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Benjamin Harris spent 12 years sentenced to death in Washington, and became the only prisoner ever exonerated and released from the state's death row in 1997. Accused of hiring a friend to kill a Tacoma mechanic in 1984, Harris was defended by a court-appointed attorney who met with him for less than two hours, spoke to two out of 32 witnesses, never challenged the death penalty decision, never challenged statements proven false by forensic evidence, and allowed a young partner six months out of law school to handle much of the case. A federal judge found that Harris' public defense was so flawed, his guilt was seriously in doubt. The prisoner was ordered released.

—Seattle Times and “Justice Denied” magazine

The Implementation Strategies Work Group was responsible for determining the most effective strategies to implement the recommendations of the other Work Groups.

Following a review of county and state funding as well as court funding reform, the Work Group concluded that in other states in which the funding crisis was more advanced, a number of problematical, stop-gap measures had been implemented such as increasing user fees, closing courts, reducing critical staff and the like. The Work Group's goal was to develop an approach, both for the short and the longer term, that avoided a crisis response.

The Work Group recognized that in other states as well as to some extent here in Washington, there has been a disturbing trend to switch the burden of court funding from government to court users and that low income individuals, persons of color and other disadvantaged groups are impacted most severely – those for whom legal access is already very precarious. Nevertheless, the Work Group supported the narrow proposal of the Funding Alternatives Work Group regarding user fees as one source of additional revenue at both the state and the local level.

Not surprisingly, the primary conclusion of the Implementation Strategies Work Group was that fundamental change is a long-term process. This conclusion was shaped by the sheer scope of the proposed changes, the amount needed to attain adequate funding, the state of the economy, and the current overall funding demands upon the state and the practical reality that the work of the legislature is an iterative process. Wide-ranging fundamental change is rarely made in a single session. Instead, it is a long-term process that may take a variety of forms. Such change may occur in the form of omnibus bills which are debated over several sessions before adoption or they are adopted piecemeal over the span of several sessions. Alternatively, consideration of a series of bills taking different approaches may build a consensus over the course of several sessions which eventually leads to comprehensive reform. Yet another form is

incremental, where smaller bills adopted over a number of sessions result in the long-run to comprehensive reform.

Secondarily, the Work Group recognized that timing is critical when seeking change through the legislative process. To the Work Group, this meant that the timing and sequencing of implementation of the Task Force's recommendations must be flexible and the judiciary must be agile in adapting strategies to achieve success.

Prior to considering the work of the other four Work Groups, the Implementation Strategies Work Group reviewed various factors affecting implementation and the several methods available. Two documents served as the primary sources relied on by the Work Group in framing their discussions:

- State Courts: A Blueprint for the Future,<sup>50</sup> and
- Funding the State Courts: Issues and Approaches<sup>51</sup>

From these documents and the ensuing discussions, several key strategic concepts emerged:

- Court reform efforts should be shaped within a broad-based study commission.
- Efforts should involve deeply committed state legislators.
- Endorsements from civic and other organizations should be secured.
- Securing the active interest and support of large audience media and a corps of informed reporters is critical to success.
- Recognize that reform takes time.
- Statutory change is the best suited technique (other tools include constitutional amendment, court rules, initiative or referendum, financial incentives, persuasion and education).
- The public is not particularly informed or interested in court reform.
- Reform will be sold on the merits of the case, not the specifics of the proposal.

Without regard to the “who, when, or how” of implementing the recommendations of this Task Force, several of the concepts above must be taken into account. These seemingly innocuous and, at times, obvious, ideas arose from two national conferences of interested parties from all three branches of government and were universally identified as key factors in the success or failure of court reform efforts.

The Work Group reviewed several approaches to address trial court funding problems, including:

- Identification and engagement of the “actors” to achieve positive change.

<sup>50</sup>State Courts: A Blueprint for the Future, Proceedings of the Second National Conference on the Judiciary held in Williamsburg, Virginia March 19-22, 1978, Edited by Theodore J. Fetter, © 1978 National Center For State Courts.

<sup>51</sup>Funding the State Courts: Issues and Approaches, Final Report on the National Interbranch Conference on Funding the State Courts – Serving the People Together, Robert W. Tobin, © 1996 National Center for State Courts.

- Development of an approach that brings the judiciary into steady cooperation with other branches and that opens it to continuous participation by the general citizenry.
- Litigation.

A note on litigation as an implementation strategy warrants inclusion here. The doctrine of inherent powers has been used by courts to address court funding issues. The use of litigation as a funding strategy has occurred most frequently and met with the most success at the local, individual trial court level where the funding question was narrowly focused on a specific line item. The use of litigation to address systemic funding problems has occurred less frequently, though as greater numbers of states transition to full state funding, it can be expected that case law will develop. The most recent example of the use of litigation on a statewide basis occurred in New York in 1991 (Wachtler v. Cuomo). Ultimately the case “settled” with no real financial benefit accruing to the judiciary. Further, “[t]he reality is that all sides apparently emerged as losers in the court of public opinion. . .”<sup>52</sup> The Work Group recognized that the constitutional balance of power between the branches of government is delicate and requires each branch to carefully exercise responsibility to maintain that balance through a healthy respect for the obligations of the other branches.

With respect to the other two preferred approaches, important actors and partners for change include government officials whose cases are heard in court; the media; a judiciary that must become actively engaged in the community, including maintaining ongoing personal contact with leaders in the other branches of government; members of the Bar who can draw on their personal contacts in all three branches of government and mobilize the active involvement of bar associations as well as other professional organizations and, generally, speak as representatives of a significant constituent group as well as the public whom the court serves, including public interest groups, labor, grass roots groups and the like.

The efforts of the Implementation Strategies Work Group followed that of the other four Work Groups. An unfortunate consequence of the sequencing was that the Work Group was left with very little time to fully explore and develop a plan of action. Notwithstanding, there was a strong consensus among the Work Group membership on several short term strategies:

- The effort for the upcoming legislative session must meet with some measure of success to maintain momentum and commitment;
- Individual issues should always be framed in the context of the larger funding adequacy and funding structure problems;
- Indigent defense funding and funding structure issues should be one of the priorities for the upcoming legislative session; and

<sup>52</sup>Road Maps: Funding the Justice System, Patricia A. Garcia, American Bar Association, 1998 page 9.

- The effort for the upcoming legislative session must be a collaborative effort with Counties and Cities.

Once the Task Force identified the size of the funding gap for court operations and for indigent defense, the Work Group did not have sufficient time to do more than conduct a broad discussion of short-term options. In addition, members ultimately concluded that the flexibility required to achieve the trial court funding goals would be significantly hampered with a tight proposal from the Work Group.

Recognizing that the road to full trial court funding reform will likely occur over several legislative sessions and that therefore it is critical to have a well-educated body to pursue adequate and stable funding, the Work Group recommended that the BJA establish a standing Court Funding Implementation Committee to finalize the short-term and the long-term plan.

**THE TASK FORCE RECOMMENDS THAT THE BOARD FOR JUDICIAL ADMINISTRATION** establish a Trial Court Funding Implementation Committee consisting of the BJA executive committee and a select group of Court Funding Task Force members with authority to make decisions regarding proposed legislation resulting from the work of the Task Force.<sup>53</sup>

Concurrently with the work of Washington's Trial Court Funding Task Force, the American Bar Association's Report and Black Letter Recommendations of the ABA Commission on State Court Funding were issued in August 2004, after the last meeting of the Work Group. These recommendations bear repeating<sup>54</sup>:

- A. *The American Bar Association urges states and territories to adopt judicial budgeting procedures that ensure efficient and effective use of public funds and enable the courts to fulfill their constitutionally prescribed role.* To that end the judicial budget should be governed by the following principles:
- 1) There should be a predictable general funding stream that is not tied to fee generation;
  - 2) There should be direct submission of the judicial branch budget to the funding authority; and
  - 3) There should be a reasonable degree of flexibility to expend funds across line items and fiscal years to encourage efficiency in the administration of justice.

<sup>53</sup>This recommendation was adopted by the Board for Judicial Administration at its July 16, 2004 meeting as follows: "It was moved and seconded to establish a Trial Court Funding Implementation Committee including the BJA executive committee and a select group of Court Funding Task Force members with authority to develop strategies and positions regarding proposed legislation relating to the work of the Task Force. The motion passed."

<sup>54</sup>A full copy of the ABA report can be found at: [http://www.abanet.org/id/court\\_funding/pdf/report\\_with\\_rec.pdf](http://www.abanet.org/id/court_funding/pdf/report_with_rec.pdf).

- B. *The American Bar Association urges courts to demonstrate their fiscal responsibility by providing clear and detailed documentation for budget requests, and by establishing measures by which their expenditure of public funds can be evaluated. Such documentation should include:*
- 1) Those costs beyond the control of the courts, but which must be incurred as a result of increased caseloads, new laws, unfunded mandates, and the effects of federal and state funding to other entities; and,
  - 2) The public benefits expected from new programs and services for which funding is requested.
- C. *The American Bar Association encourages courts to engage in regular communication with the other branches of government, as well as with the bar, the business and civic communities, and the public concerning the administration of justice and its costs.*
- D. *The American Bar Association encourages courts to establish broad-based advisory bodies comprised of laypersons, lawyers and representatives of all branches of government to help courts secure the funding necessary for the delivery of judicial services.*

## Conclusion

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The rule of law as the foundation of our system of government is secured by the judicial branch. “It is to the courts that we turn to ensure that conflicts are resolved peacefully and according to the rule of law, that rights are protected, and that government actors operate according to the limits of the law. The predictability provided by the impartial application of law sustains our social and economic relationships.”<sup>55</sup> The rule of law is ingrained in the social fabric of our nation, but in Washington State, justice is jeopardized because of the lack of adequate, stable and long-term funding of the trial courts. Inadequate funding directly affects the lives of individual citizens and the consequences, including delayed justice, limited access to the courts and unequal justice, will soon grow from a ripple across our state to crashing breakers if the course is not changed.

The courts in the state of Washington operate with very lean budgets. They have continued to function (albeit with reduced effectiveness) with limited but dedicated, hardworking staff. The courts have developed innovative new programs to better serve the public and the administration of justice. The courts have a proven track record of carefully conserving precious public resources. The legislature and the public can rely on the judicial branch to continue its efforts at continuous improvement – to consider efficiencies, to develop innovative methods of fulfilling its constitutional mandate, as well as to conservatively manage the resources devoted to the courts in the public trust. In 2004, there are very few, if any, internal expenditures that can be reduced without taking radical approaches such as closing courts, further delaying justice, or thwarting justice by the lack of tools and the time for judges to do their work.

Our constitutional structure at the national and state level establishes a delicate balance of power between the branches of government. When economic times are tough, the courts face a significant challenge because court budgets are dominated by fixed costs and courts have little control over their workload or demand for their services.

While the Task Force recognized that it is particularly important in difficult economic times for the third branch of government to work with the other branches of government to vigorously review court operations and seek creative and new methods of operation, it also recognized that only a very small portion of the state and local government revenue is utilized by the trial courts – the place where most individual citizens seek justice and the place that preserves our democracy.

Wisconsin undertook a similar effort<sup>56</sup> regarding trial court funding and concluded that:

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<sup>55</sup>Report of the Commission on State Court Funding to the House of Delegates, August 2004, American Bar Association.

<sup>56</sup>Subcommittee on Court Financing, Final Report to the Planning and Policy Advisory Committee of the Wisconsin Supreme Court, February 2004, Executive Summary, Page i.

“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.”

Yet, while appropriately subject to scrutiny for the careful and wise use of its resources, the courts also cannot be subject to the “financial exigencies of the moment.”<sup>57</sup>

The trend across the country in the relatively recent past is for courts to move from near total local funding to near total state funding – in an effort to avoid both the appearance of local control over judicial decision-making and the pressure at the local level to raise funds in the face of declining local revenues, as well as to equalize justice and improve efficiency. Such trend has had little impact overall on the adequacy and stability of trial court funding.<sup>58</sup>

The Task Force concludes that state and local government should share equitably in the cost of trial courts, with some participation (but limited participation) by court users. Given Washington’s experience with near total funding by local government, while Oregon and other states have also suffered serious funding problems with a shift to total state funding, a sharing of costs is the prudent approach.

The Task Force has concluded that a root cause of inadequate funding in Washington is our state’s nearly total reliance on local government to fund the trial courts as well as indigent criminal defense and parental representation in dependency actions. The state has a compelling interest in how justice is delivered across the state and must partner with local government in that endeavor. The Task Force has identified areas where state participation in funding is most appropriate based on a clear connection between state action and state funding responsibility. Greater state participation will create more equitable funding among jurisdictions and long term stability.

Increased state participation alone, however, is not a solution. First, the level of funding for the trial courts must be increased overall to afford all citizens the opportunity to have their disputes peaceably, appropriately, and timely resolved. Second, the partial shift from local to state responsibility for some functions must be coupled with a commitment at the local level to preserve a portion of the savings for the courts.

At the outset of the journey, Task Force members widely believed that a funding mechanism could be found to guarantee adequate, stable and long-term funding. As

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<sup>57</sup>JUSTICE IN JEOPARDY: REPORT OF THE COMMISSION OF THE 21<sup>ST</sup> CENTURY JUDICIARY, American Bar Association, note 2 at 82 (2003).

<sup>58</sup>Id at p. 7.

the Task Force discovered, not only are the basic funding questions complex, the answers are as well. Understanding that fundamental changes are usually achieved over time, the Task Force has recommended that the Board for Judicial Administration continue to lead the judicial branch toward achieving improved court funding.

A vital part of the Task Force's recommendation is the creation of a Court Funding Implementation Committee, as a standing committee of the Board for Judicial Administration, which should undertake that task, year-by-year, until the goal is achieved. As this report is being finalized, the Board for Judicial Administration has already approved and acted on that recommendation. That Committee has met and developed an approach for the 2005 legislative session. The next phase of the work to achieve adequate, stable and long term funding of Washington's trial courts has begun.