

oppaga Information Brief



November 2001

Report No. 01-54

Many Article V Trial Courts Funding Issues Still Need to Be Resolved

at a glance

Article V of the Florida Constitution establishes the judicial branch of state government and defines the elements of the state courts system, including trial and appeals courts.

In 1998, voters passed Revision 7 to Article V, which directs the state to pay for “essential elements” of the trial courts system; counties previously paid for some of these functions. The Legislature is to review the major components of the courts system to prepare the state to assume additional costs by 2004.

Several factors make it difficult to identify the costs of implementing Revision 7.

- ✓ The essential elements of the trial courts system have not yet been defined.
- ✓ There is no accurate, reliable expenditure data for the numerous components of the trial courts system.
- ✓ There is a lack of reliable and accurate data on the assessment, collection, and disbursement of court fine and fee revenues, which help fund the courts system.
- ✓ A statewide data system has not been developed to provide information within and between circuits.

Purpose

This report identifies issues for the Legislature to consider in identifying and allocating the costs of the state trial courts system among users and state and county governments.

Background

Article V of the Florida Constitution establishes the judicial branch of state government, including trial and appeals courts. The constitution also delineates the trial courts system’s key participants, including judges, state attorneys, public defenders, and clerks of the courts. These elected independent officials interact as part of a complex interdependent system.

Prior to 1972, Florida’s courts were a “hodge podge of municipal courts, county courts, justices of the peace and other court venues” with varying jurisdictions and funding sources.¹ In 1972, voters revised the constitution to reorganize the trial courts into a unified courts system funded by the counties, the state, and courts users. State and county governments disagreed on how much each should contribute; county governments believed that the state should assume a larger share of the costs than occurred.

¹ From *Article V/Revision 7* prepared by the Florida Association of Counties, Inc., January 2001.

In 1998, voters approved another revision to Article V, referred to as Revision 7, which allocates more costs to the state, effective July 1, 2004. To implement this revision, the Legislature adopted Ch. 2000-237, *Laws of Florida*. This law directs the state to pay for the “essential elements” of the state courts system and provides a phase-in schedule for the Legislature to review the major components of the system and determine their costs, as shown in Exhibit 1.

Exhibit 1

Article V Review Schedule Spans Four Years

Fiscal Year	Court Component
2000-01 and 2001-02	State Courts System
2001-02 and 2002-03	State Attorneys and Public Defenders
2002-03 and 2003-04	Clerks of the Courts

Source: Ch 2000-237, *Laws of Florida*.

To assist the Legislature, this report describes the major trial courts funding questions that will need to be addressed pertaining to the state, the counties, the state attorneys, the public defenders, and the clerks of the courts. The report also discusses three overarching concerns: technology, fines and fees, and funding, and provides recommendations for preparing to implement Revision 7.

The Joint Legislative Committee on Article V is preparing to issue a request for proposals for a consultant to address many of these questions, with a final report due in June 2003.

Article V Issues

State Issues

The Legislature and the judiciary will need to work together to develop a blueprint for the new trial courts system. Although the Chief Justice of the Florida Supreme Court is the chief administrative officer of the judicial system, the 20 judicial trial court circuits are independent in terms of how they obtain county funding, how they structure their courts, and what services they provide. The Legislature and the court will need to resolve the questions below.

- ✓ What are the essential elements of the trial courts system? Chapter 2000-237, *Laws of Florida*, broadly defines the essential elements of the state courts system. The Trial Courts Budget Commission, a committee created and assigned by the Supreme Court to study and make recommendations on Article V and other budget issues, has made an effort to provide further specificity by proposing the following nine essential elements of the trial court budget:

- court administration
- masters/hearing officers
- alternative dispute resolution
- case management
- court reporters
- court interpreters
- legal (law clerks, et al)
- judges and their staff
- auxiliary aids and services relating to communication and participation of individuals with disabilities.

The Legislature will need to decide whether to adopt this definition.

- ✓ What will become of the services and functions now in operation that are not classified as essential? Some court functions that are operating in every circuit have not been defined as “essential” by the Legislature or the Trial Courts Budget Commission. For example, Guardian Ad Litem, which represent the interests of children in dependency cases, have not been included. Will such functions cease to be provided, or will another entity fund them?

In addition, many other programs vary from circuit to circuit, such as Mental Health Court, Domestic Violence Intervention programs, and Teen Court. State, federal, and local governments fund these programs. In a recent examination, OPPAGA identified 197 such activities in which state attorneys and public defenders participate.² Most of these programs are intended to reduce court costs, either by diverting offenders from traditional

² OPPAGA’s soon to be released report, *Justification Review of the Justice Administrative Commission, State Attorneys, and Public Defenders*, November 2001.

courtrooms to less expensive programs or by reducing recidivism. Reliable data on the cost of these efforts is not available, and there has been little evaluation of their success. The Legislature will need to determine whether it should fund any of these alternative programs.

- ✓ Will minimum levels of service be established for providing the essential elements in the 20 judicial circuits? Determining standards for essential courts functions will be very difficult when the needs and operations of circuits are so varied. For example, the 11th Circuit (Dade County) has a high need for interpreters and currently has several on staff. In contrast, the 8th Circuit (Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties) does not routinely need interpreters and contracts for these services when required. The Legislature could adopt minimum levels of service for essential services and allow increases for additional demonstrated needs, or adopt each circuit's current level of service. Resource levels will need to be periodically revisited to determine whether they are still appropriate.
- ✓ Should essential services be privatized? Currently, government employees provide some of the proposed essential services and some are outsourced. For example, court reporter services are currently privatized in some circuits while courts employees perform this function in other circuits. Both cost and quality should be evaluated when deciding whether outsourcing is appropriate.
- ✓ What will the essential features of a trial courts system cost? Because court costs have been divided among the state and the 67 counties, there is no reliable, audited expenditure data for many components of the courts system. However, several efforts are underway to collect accurate cost information.
 - The Legislature established the *Uniform Chart of Accounts* so that counties could report expenditures in consistent categories. However, information

collected using this system still cannot provide accurate cost information because the counties interpret cost categories in different ways, creating inconsistent classification and reporting of expenditures.

- The Office of State Courts Administrator has surveyed the 20 circuits to identify all court administered programs and their costs. The office is now working with court administration staff to review the accuracy of the cost information on the proposed essential elements to assure consistency and accuracy. This data should be available by January 2002.
 - The Florida Association of Court Clerks has surveyed the 67 clerks to identify their court-related services and the costs of those services, develop a schedule for collecting fees for court services, and offer alternatives for supporting unfunded clerk services. The association is working to refine this cost information, which should be available early in calendar year 2002.
 - State attorneys report that they will have some cost data before the end of 2001; however, they are not using the *Uniform Chart of Accounts* format to collect the information, so it may not be congruent with the information being collected by the other entities. The public defenders are also in the process of identifying local funding for their operations.
 - Once all the entities involved in the state courts system provide data on costs for the 1999-2000 fiscal year, the Auditor General will analyze it for one selected county to assess its reliability. This assessment should be completed early in 2002.
- ✓ What revenue does the trial courts system generate? Currently, there is no reliable information on the revenue generated by court fines and fees, which are used to help fund the courts system. The Florida Association of Court Clerks is preparing information, which it hopes to complete in

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early 2002, on how funds relating to Article V issues are generated and disbursed.

- ✓ How will the state provide oversight of expenditures at the circuit level? For example, counties have been active in the oversight of private “conflict” attorneys appointed when public defenders are unable to represent a defendant due to ethical conflict or work overload. In 2004, counties will lose their vested interest in participating in the oversight of conflict attorneys when financial responsibility for these appointed lawyers shifts to the state. In 1998, the counties reported spending \$34.8 million on appointed attorneys.

County Issues

Effective July 1, 2004, Chapter 2000-237, *Laws of Florida*, shifts many current county funding obligations to the state, although the counties retain some financial responsibilities, as shown in Exhibit 2. According to the Florida Association of Counties, the counties’ financial contributions to the trial courts system have exceeded the state’s since 1985. The association projects that the counties spent almost \$700 million in the 1997-98 fiscal year, while the state spent approximately \$600 million for the trial courts system. In Fiscal Year 2000-01, the Legislature appropriated \$750 million to the entire state courts system; county appropriations figures are not available.

Exhibit 2

Counties Retain Some Financial Obligations Under Revision 7 to Article V

Court Function	Current Funding	Future Funding
State Attorney and Public Defender	State	State
Indigence Exams	State	State
Appointed counsel	County	State
Expert witnesses	County	State
Witness fees	County	State
Court reporters	County	State
Transportation	County	Not addressed
Library services	County	Not addressed
Travel for depositions	County	Not addressed
Office space, utilities	County	County
Communications	County	County

Source: Chapter 2000-237, *Laws of Florida*.

- ✓ What will the trial courts system cost the counties? Generally speaking, the counties are to continue to pay for communications services and facility costs, including construction, leases, maintenance, utilities and security. However, Ch. 2000-237, *Laws of Florida*, does not expressly address who will pay for transportation, library services, and travel for depositions. Because the state will assume responsibility for many county costs, local officials are hoping that the county portion of trial courts expenses will be reduced. However, if counties are required to contribute to the cost of integrated technologies, costs for some less-populated counties that are not currently automated could increase.
- ✓ How will county revenues be affected? Counties use trial courts fine and fee revenues to fund local courts activities. It has not been determined how fine and fee revenues will be reallocated following implementation of Revision 7. Reliable data on current county revenue generated by fines and fees is not available.

Clerk of the Court Issues

Voters in every county elect a clerk of the court. The clerk administers a variety of functions for the county, state, and courts system that may not be easy to separate. Clerks have many county duties including serving as guardian of public records and acting as the county fiscal officer. Clerks also perform state duties by collecting and disbursing documentary stamps and collecting fees and assessments for trust funds. For the courts, clerks maintain court records, collect and disburse court-ordered child support and alimony payments, and collect and disburse court fines and fees and assessments.

Some court circuits are composed of multiple counties, and therefore are served by multiple clerks. Revision 7 directs all court-related operations of the clerks to be funded by filing fees and service charges. However, court users have a constitutional guarantee that fees cannot be so high as to limit their access to the courts. If these considerations preclude the imposition of sufficient fees to cover clerk operations, the state

must provide adequate and appropriate supplemental funding.

- ✓ What do clerks' services for the state cost? Many clerks have not been able to separate the costs of providing state and local services. Particularly in some less-populated circuits, office staff performs many functions in a day, some for the state, some for the courts, and some for local government. The clerks' professional association is now in the process of helping clerks identify state costs. This data should be available in early 2002.
- ✓ Clerks' collection and reporting of revenue data is highly variable. Clerks are agents for the collection and disbursement of state trial courts funds. However, their methods for categorizing, collecting, and reporting data are not standardized. In addition, their level of technology varies from manual records to highly automated systems. As a result, the clerks are currently not able to provide reliable data on the total amount of state revenues generated or clerk fees withheld.
- ✓ Should the Legislature sever the clerks' state and courts duties and assign them to an alternative agent to increase accountability? The clerks are independent constitutional officers that are accountable to the voters in their counties. The state's ability to hold these officers accountable for providing standardized state services will be very limited. The severance approach would allow the clerks to continue to provide county services and be accountable to local voters, while a state agent or employee who would be accountable to the Legislature would provide essential state and courts services in a manner directed by the state.

Overarching Concerns—

Three overarching issues concern all the key participants in the trial courts system: technology; assessment, tracking, and collection of fines and fees; and funding. The Legislature can enhance the trial court system's accountability and efficiency by addressing these three concerns.

Technology

Integrated technology is important in the courts system because so many offices gather and use the same information. However, the use of technology by most judicial circuits is not as efficient as it could be; most computer systems operated by the numerous participants are not integrated to communicate with each other. When technology is not integrated, duplication of work occurs, costs increase, and there is more opportunity for data entry errors. Ideally, the state courts system would network data from

- local and state law enforcement (the Criminal Justice Information Tracking System which tracks arrests and criminal histories);
 - clerks (who first assign a number to a case);
 - state attorneys (who determine what will be filed as a case);
 - public defenders (who represent indigent defendants);
 - judges (who try the cases); and
 - the Department of Corrections and the Department of Juvenile Justice, which supervise probationers and provide victim services.
- ✓ How will the data sharing system be defined, funded, and maintained? No single entity has the authority, responsibility, or resources to define a trial courts data system. The Legislature will need to designate a coordinator to work with the entities to design, administer, and be accountable for the system. The Legislature will also need to clarify how the information system will be funded and develop an implementation schedule. Such a large-scale systems integration project will require assignment of clear lines of authority and responsibility.
 - ✓ Who will ensure the validity and reliability of the data, and how? Once there is the capability to network data, there needs to be a process to ensure data reliability and validity. To work as a system, all employees that enter data will need to use common

definitions and procedures for recording this uniform data. The information will also need to be periodically checked and audited to ensure its validity and reliability. The Florida Department of Law Enforcement has been working to ensure the data quality of the statewide Criminal Justice Information System and may be able to provide leadership in this area.

Fines and Fees

Florida law provides that persons filing documents relating to court cases should pay filing fees, and that courts can levy fines and fees in civil and criminal cases. The clerks collect these revenues, which can be a major funding source for the courts, and disburse them to numerous trust funds and multiple entities as specified by law. Clerks are also authorized to retain specified amounts from their collections to pay their office operating costs.

- ✓ What level of user fee is appropriate for the clerks to charge? Clerks levy fees that support civil court activities. Fines and fees do not fund criminal court activities because so many of the defendants are indigent or have no income while incarcerated. The Legislature will need to determine whether, and to what extent, civil user fees as opposed to state subsidies should offset any criminal courts funding deficit. Court users have a constitutional guarantee that fees cannot be so high as to impede access to the courts.
- ✓ Are applicable fines and fees being assessed? The courts do not have a system to track whether judges assess authorized fines and fees, the reason judges waive them if they elect to do so, how much is collected, and to whom the money is disbursed. This is a significant problem, as the Legislature will need to be able to project the amount of such revenues when making funding decisions.
- ✓ How should fines and fees be collected? Fines and fees that have been assessed are not always paid when due. Some circuits have established collection courts to increase collection rates, while others have employed

private collection agencies. The Legislature will need to assess the effectiveness and efficiency of these collection options.

- ✓ Where should collected revenues go? The allocation of collected civil and criminal courts revenues between the state and counties will need to be reconsidered as the state assumes greater responsibility for paying for the courts system. For example, counties currently pay for private attorneys for defendants that the public defender cannot represent due to ethical or work overload conflict. User fees associated with appointed counsel now go to the counties to help offset this cost. When the state takes over financial responsibility for appointed attorneys, it would appear to be appropriate for the state to receive these revenues instead. Section 938.29, *Florida Statutes*, should be revised to direct these funds to the state.

Funding the Trial Courts System

The Legislature will need to allocate resources among the 20 circuits to fund the trial courts system.

- ✓ How should the state allocate resources? Legislative committee staffs have identified three options.³
 1. Create additional state positions to perform the essential functions, possibly by converting positions currently funded by local government to state positions.
 2. Privatize all or a portion of essential functions performed by local governments.
 3. Fund a block grant to counties to fund provision of essential activities by local governments.

³ Options developed by the House Committee on Criminal Justice Appropriations and the Senate Committee on Appropriations, Subcommittee on Public Safety and Judiciary, which staff the Joint Legislative Committee on Article V and the Article V Financial Accountability and Efficiency Workgroup.

- ✓ Should the state adopt a formula to allocate funds among the various courts system entities? The Legislature will need to develop a system to allocate funds among the 20 judicial circuits, 20 state attorneys, 20 public defenders, and 67 clerks of court. This system should be based, in part, on the factors that affect funding needs, as well as the performance of each entity. Consideration could be given, for example, to population, at-risk population, crime rate, and number and types of cases filed and disposed. The system should also consider the performance and cost-efficiency of each entity to provide incentives for operating efficiently. Similar to the education-funding plan, a minimum local effort could be required.
- ✓ Should the state fund alternative, cost-saving programs? Many of the state and local alternative programs developed by the courts, state attorneys, public defenders, and others are intended to reduce costs. Although these programs fall outside the proposed essential elements of the trial courts system, it may be cost-effective to fund them. However, a system to monitor the effectiveness of these alternative programs would need to be developed to assure that the state funds only those that reduce system costs.
- ✓ What type of accountability system should be developed? It will be critical to develop strong accountability for the state courts system elements that will begin to receive state funding. This will be challenging, as many of the entities in the system, such as clerks of court, state attorneys, and public defenders, are independent elected officials. Potential options include establishing specific performance measures and standards for each entity, and/or creating a system in which an independent entity conducts “best practices” reviews to assess whether the many entities and programs are operating effectively and efficiently.

Conclusions and Recommendations

The Legislature and the counties can increase the state trial courts system’s accountability and cohesiveness through better integrated technology and standardized methods for collecting and disbursing revenues and appropriating funds.

The Legislature will require additional information to make Article V, Revision 7 funding decisions. We recommend that the Legislature take the actions that follow during the 2002 Legislative session so that the information is available for use in the 2003 session. This will allow the Legislature the time necessary to develop and implement plans for the July 1, 2004, implementation of Revision 7. The Joint Legislative Committee on Article V is preparing to issue a request for proposal for a consultant to address many of these questions, with a final report due in June 2003.

- Direct the Comptroller to define any revisions needed in the *Uniform Chart of Accounts* to make the system useful for reporting accurate county costs. For example, information that is not currently collected but could be includes the costs of expert witnesses called by state attorneys, public defenders, or the courts, as well as information on other shared expenses, such as communication services.
- Direct the counties, the court, the clerks, the state attorneys, and the public defenders to collect reliable data on all Article V state and county revenues and expenditures. The Auditor General or a qualified consultant should verify this data.
- As part of this effort, the court and clerks should report on all fines and fee revenues that could be assessed, whether they have been assessed, why they were not assessed if they were not, and whether they have been collected.
- Charge a specific entity to coordinate work with essential users to define the information required for a statewide court and criminal justice information system.

This task should include assessment of technological capabilities, user needs, required resources, and a strategy and schedule to implement and fund the system. The State Office of Technology or the Criminal and Juvenile Justice Information System Board may be able to assist with this effort.

- Administrators of special programs that are not essential courts functions but improve the efficiency or effectiveness of the courts system should collect information to present to the Legislature for funding consideration. Our report pertaining to court and other such programs in which state attorneys and public defenders participate, describes information that would be useful.⁴ This includes clear program goals, clearly articulated desired outcomes, specific performance standards against which the program's outcomes can be measured, cost and unit cost information, and data describing basic indicators of need and number of participants and completers.

⁴ OPPAGA's soon to be released report, *Justification Review of the Justice Administrative Commission, State Attorneys, and Public Defenders*, November 2001.

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