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Information Brief

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Lack of Uniform Definitions Complicates Funding Article V Based on the Number of Cases Worked

at a glance

One option for funding state attorneys and public defenders under Article V would be to allocate funds based on the number of cases in which they participate. However, the number of cases reported by the clerks of court, state attorneys, and public defenders differs substantially. This occurs because the entities are involved in different aspects of the legal process, so their definition of "case" varies.

While the court has established general rules for defining cases, state attorneys have some discretion in how these rules are applied.

The Legislature has used case data in a limited way in allocating funds to state attorneys and public defenders. Establishing a more extensive case-based funding formula or a case-weighting system is theoretically feasible, but may not be practical at this time due to time and budget constraints.

Scope -----

Pursuant to s. 11.511, *Florida Statutes*, the Director of OPPAGA initiated this project in response to a legislative request to provide information on how clerks of court, state attorneys, and public defenders define and count cases.

Background -----

In 1998, voters passed Revision 7 to Article V of the Florida Constitution directing the state to pay for some elements of the courts system, state attorneys, and public defenders beginning in 2004. Counties currently pay for some of these functions. The Legislature is studying how to implement this requirement.

One option for funding state attorneys and public defenders would be to allocate resources based on the number of cases in which they participate. However, legislators are concerned by the variation in case information that is provided to them. To help the Legislature contend with the case definition and counting problem, we addressed the questions below.

1. Why does the number of cases reported by the clerks, state attorneys, and public defenders differ?
2. Is there variation among judicial circuits in how state attorneys and public defenders define cases?
3. Could case counts be used in the legislative budget process?

Questions -----

1. Why does the number of cases reported by the clerks of court, state attorneys, and public defenders differ?

Clerks, state attorneys, and public defenders all report case data. The three entities use separate systems to record differing information because they are involved in different aspects of the legal process, and they record and define cases differently.

Using their own information systems, state attorneys report the number of case referrals and filings, and public defenders report the number of appointed cases. The Legislature requires this information for performance-based program budgeting.

While state attorneys and public defenders report only the cases in which they are involved, the clerks of the court record all civil and criminal cases filed with the state courts system. The clerks summarize their data and submit it to the Office of State Courts Administrator as part of the summary reporting system (SRS). This system was developed to track judicial workload and the flow of all cases through the courts system.

The clerks' SRS reports cannot be reconciled with state attorney or public defender reports for several reasons. These include differences in the types of cases reported by the three entities and important variations in how the three count cases.

Clerks of court record as "filings" all civil and criminal cases that are filed with the courts. The state attorneys or the public defenders do not count the majority of civil filings recorded by the clerks because they are involved in very few civil cases.¹

¹ State attorneys and public defenders are involved in civil cases regarding persons who are subject to a petition for involuntary commitment as mentally ill or developmentally disabled and a danger to himself or others, or as a sexual predator. State attorneys are also involved in additional civil matters, such as forfeitures.

Clerks, state attorneys, and public defenders also differ in how they report criminal cases. These variations reflect the differing roles of the three entities in the criminal courts system.

Criminal cases originate in two primary ways: through law enforcement actions or citizen complaints.² When law enforcement takes an action on a misdemeanor, such as issuing a criminal traffic citation, the clerk is notified and assigns the case a number. Clerks track these defendants as criminal case filings. In contrast, for law enforcement actions on felony cases (such as arrest for murder) or citizen complaints (such as election law complaints) that are presented to the state attorney for action, the clerk does not count a filing for SRS purposes until the state attorney files charges.

State attorneys report both criminal case referrals and filings. State attorneys record as "referrals" the potential cases that come to them for review. They review referrals for legal and evidentiary sufficiency. Some referrals do not meet these standards and are not prosecuted.³ State attorneys record as "filings" those cases that they do prosecute.

Clerk filings are not comparable to state attorney case referrals. State attorney referrals include all complaints that come to them for review. Clerk filings include fewer felonies, as clerks count only felony matters that the state attorney decides to prosecute. Also, some clerk misdemeanor filings, such as violations of municipal ordinances, may not become state attorney referrals if they are outside the jurisdiction of the state attorney.

Clerk filings also are not comparable to state attorney filings due to differences in how they process cases. For example, after an arrest, the clerk records a filing. In some cases, at first appearance the judge will close the case for time

² State attorney criminal cases may be generated in six ways: arrest of an offender; non-arrest cases submitted by law enforcement; non-arrest complaints submitted by citizens; state-attorney initiated investigations; assignment from the Governor to assist another circuit; and grand jury investigations.

³ Although many referrals are not prosecuted, state attorneys are required to report them to the Legislature because the associated research and investigation require significant staff time and resources. Also, determining which cases warrant prosecution is an important part of the state attorney's job, both to seek justice and to make the best use of public resources.

served.⁴ In this situation the state attorney may not record these as filings because the case has been disposed.

Also, due to the timing of state attorney actions, the number of misdemeanor filings recorded by clerks may differ from the number of filings recorded by state attorneys. For example, a state attorney who files three separate cases against one defendant records three filings. If all three were filed on March 1, the clerk would create one filing. If they were filed on March 1, 2, and 3, the clerk would record three filings.

As illustrated by these examples, the number of SRS clerk filings cannot currently be reconciled with the number of state attorney case referrals or filings.

Public defender counts of appointments also differ from clerk and state attorney records. Because public defenders only represent indigent defendants, they are appointed only in a subset of the criminal cases filed by state attorneys. In addition, public defenders count some cases as “appointments” that are not reported by either the clerks or the state attorneys as filings. Most notably, in violation of probation cases, if a defendant in a case has been sentenced to probation and violates the conditions the judge has set, the state attorney and clerk do not report a new filing. However, the public defenders count violations of probation as a new appointment due to the level of work required.

The maintenance of three separate, non-comparable caseload reporting systems is problematic and inefficient. Both OPPAGA and the Auditor General have recommended that the Legislature work with the parties to develop a statewide system that would be used by clerks, state attorneys, and public defenders.^{5,6} If the Legislature and the courts move to a more integrated information system, it should be possible to develop a uniform definition of “case”

⁴ Florida Rule of the Court 3.130 provides that except when previously released, every arrested person shall be taken before a judicial officer within 24 hours of arrest to advise the defendant of his rights. This is known as first appearance.

⁵ *Many Article V Trial Courts Funding Issues Need to Be Resolved*, [OPPAGA Report No. 01-54](#), November 2001.

⁶ *The Uniform Caseload Reporting System Used by the Florida Supreme Court, State Attorneys, and Public Defenders and Other Management Practices For the Period July 1, 2000, Through December 31, 2001*, [Auditor General Report No. 03-114](#).

and a system for collecting and analyzing comparable case information.

2. Is there variation from circuit to circuit in how state attorneys and public defenders count cases?

Yes, there is variation among circuits in how cases are defined.

Florida Rule of Criminal Procedure 3.150 provides parameters for when cases can be joined and severed. This rule allows the state to file related cases together but also protects individuals from having multiple cases joined in a way that might prejudice the outcome. This rule allows state attorneys some discretion. For example, a state attorney might file one case or five on a series of five worthless check offenses committed by one person.

Diversion programs are also a source of variation. Some state attorneys provide an option of diversion programs (such as worthless check programs) to some non-violent offenders. State attorneys without diversion programs have two options. They may either keep the referral and file a criminal case, or may not accept the referral and instead suggest that the complainant file a civil action. State attorney decisions and the availability of diversion programs affect the number of referrals and filings in a given circuit.

Also, state attorney jurisdiction varies among circuits. All law enforcement actions stemming from violations of municipal or county ordinances are sent to the clerks, who record them as filings. However, state attorney participation in these local ordinances varies from county to county; some counties hire the state attorney and others use their county attorney for these cases. So, some state attorneys record them as filings and some do not.

Decisions by state attorneys that affect the number of filed cases in each circuit also affect the appointments of public defenders, and therefore result in variation among circuits in public defender workload.

3. How could case counts be used in the legislative budgeting process?

Historically, the Legislature has used case counts in a limited way in the budget process to fund state attorneys and public defenders. As alternatives to the current funding process, the Legislature could develop a funding formula or a case-weighting system, but these options may not be practical at this time.

The current funding base for state attorneys and public defenders has been established over time and is not directly tied to case counts. However, when funding above the base allocation has been provided, the Legislature has requested recommendations from the state attorney and public defender associations on how to distribute the funds among the 20 circuits. Each association develops its recommendation using a formula, and both report that they use case counts as part of their formulas. The state attorneys are currently revising their formula. The public defender formula includes the number of SRS criminal filings, circuit population, the price level index, and the proportion of public defender funding compared to their corresponding state attorney's funding.

The Legislature could use factors such as these to develop a funding formula for distributing the entire state attorney and public defender allocation. Such a formula might be similar to the one used to allocate resources to schools by the Florida Education Funding Program. A formula also could include factors such as state attorney investigations for case referrals that do not result in filed cases. Excluding such workload could create an incentive for state attorneys to file more cases so as to receive more funding.

However, there could be problems implementing a funding formula. As described above, the Legislature would have to contend with variations in how cases are defined and counted from circuit to circuit. Also, in the past, legislative staff developed a formula using population, at-risk population, crime rate, and number of cases filed and disposed. This approach was tested but never implemented, as results differed significantly from the base funding allocations and would have required difficult and contentious funding adjustments. If the Legislature wishes to implement a formula, one option would be to use it for future increases in funding, thereby making any reallocations more gradual.

Another option for funding state attorneys and public defenders would be to use case-weighting systems to adjust for variations in the amount of work required by different kinds of cases. The process would be similar to that used to develop a case-weighting system for the trial courts, but the results would differ, as state attorney and public defender responsibilities for cases are not the same as those of judges.⁷ While a case-weighting system would provide useful information, it would likely be costly and take at least a year to complete.⁸

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NOTE: Representatives of the Florida Prosecuting Attorneys Association, the Florida Public Defender Association, the Florida Association of Court Clerks and Comptroller, and the Office of State Courts Administrator reviewed this information brief for factual accuracy. Official responses were not requested due to time constraints.

⁷ *Courts Improve Caseload System; Need to Address Supplemental Resources*, [OPPAGA Report No. 99-38](#), March 2000.

⁸ The estimated contractor cost to develop case weights for the trial courts was \$253,000, not including judge or staff time. ([OPPAGA Report No. 98-46](#), *Information Brief on the State Courts System's Development of a Delphi-Based Weighted Caseload System*.)

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