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WISCONSIN LEGISLATIVE COUNCIL
REPORT NO. 6 TO THE 1991 LEGISLATURE

LEGISLATION ON TRIAL COURT SYSTEM FUNDING

- 1991 SENATE BILL 210, RELATING TO CIRCUIT COURTS, COURT PERSONNEL, LAW LIBRARIES, THE STATE PUBLIC DEFENDER AND PROVIDING FOR A STUDY
- 1991 SENATE BILL 211, RELATING TO PROVIDING JUDICIAL ASSISTANTS FOR CIRCUIT COURT JUDGES
- 1991 SENATE BILL 212, RELATING TO REIMBURSEMENT TO COUNTIES OF FEES FOR JURORS, PAYMENTS BY THE STATE OF FEES FOR GUARDIANS AD LITEM AND WITNESSES AND APPOINTMENT OF PSYCHOLOGISTS

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Legislative Council Staff
June 3, 1991

One East Main St., Suite 401
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(2) Originally appointed as a Senate member, appointed as Public Member of the Committee by a December 28, 1990 mail ballot.

WISCONSIN LEGISLATIVE COUNCIL
REPORT NO. 6 TO THE 1991 LEGISLATURE*
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PART I

KEY PROVISIONS OF LEGISLATION

A. 1991 SENATE BILL 210, RELATING TO CIRCUIT COURTS, COURT PERSONNEL, LAW LIBRARIES, THE STATE PUBLIC DEFENDER AND PROVIDING FOR A STUDY

1991 Senate Bill 210 provides that the state will assume certain operating costs of Wisconsin's trial court system which, if provided, are presently the funding responsibility of the counties. Specifically, the Bill requires the state to: (1) hire law clerks to assist circuit court judges; (2) pay for transcripts requested by the State Public Defender in criminal cases; and (3) reimburse counties for law libraries for two years and, thereafter, directly purchase legal publications for circuit court use.

B. 1991 SENATE BILL 211, RELATING TO PROVIDING JUDICIAL ASSISTANTS FOR CIRCUIT COURT JUDGES

Senate Bill 211 provides that every circuit court judge shall be afforded the services of a full-time judicial assistant. In counties that currently provide judicial assistants, such personnel have the option to remain as county employes, with the costs of salaries and fringe benefits reimbursed by the state. In other counties, the Director of State Courts shall appoint, in the unclassified state service, a judicial assistant for each circuit court judge.

C. 1991 SENATE BILL 212, RELATING TO REIMBURSEMENT TO COUNTIES OF FEES FOR JURORS, PAYMENTS BY THE STATE OF FEES FOR GUARDIANS AD LITEM AND WITNESSES AND APPOINTMENT OF PSYCHOLOGISTS

Senate Bill 212 amends present law to require the state to pay for certain costs of operating the circuit courts that are currently borne by the counties. Specifically, the Bill creates state appropriations to reimburse counties for the services of jurors and to pay directly the costs of witnesses and guardians ad litem. The Bill also authorizes the appointment of psychologists to examine a defendant in criminal cases where the mental condition of the defendant is at issue.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Legislative Council established the Special Committee on Trial Court System Funding and appointed its Chairperson by a May 24, 1990 mail ballot based on an April 11, 1990 letter from Representative David Prosser. The Special Committee was directed to:

...review the current method for funding of the trial court system, including personnel, facilities, supplies and services, to determine if current funding arrangements and related organizational structures should be revised to: (1) enhance the efficiency and effectiveness of the trial court; and (2) fairly apportion the responsibilities for funding the trial court system.

Members of the Special Committee, other than its Chairperson, were appointed by June 28 and August 2, 1990 mail ballots. The membership of the Special Committee consisted of three Senators, seven Representatives, 11 Public Members and one Nonvoting Advisory Member.

B. SUMMARY OF MEETINGS

The Special Committee held eight meetings on the following dates (except as otherwise indicated, all of the meetings were held at the State Capitol in Madison):

August 21, 1990	December 18, 1990
September 25, 1990 (Milwaukee)	January 15, 1991
October 25, 1990 (Wausau)	February 19, 1991
November 29, 1990	March 21, 1991

At the August 21, 1990 meeting, the Special Committee reviewed a staff paper which provided background on the structure and funding of Wisconsin's trial courts before and after 1978, the year that court reorganization went into effect. The paper also described recent legislative proposals attempting to increase the level of state funding for court operations and methods of trial court system funding in other states. The Committee heard a presentation by Robert W. Tobin of the National Center for State Courts on methods by which states provide funding for their trial courts and recent legislative activities in other states relating to trial court funding. David Boyd, Deputy State Court Administrator from Iowa, described the process and issues relating to the

conversion of Iowa's trial court system into a state-funded system. Kathleen Murphy, Deputy Director for Court Operations, Office of the Director of State Courts, described a survey being conducted by the Director's office on trial court expenditures and revenues in Wisconsin.

At the September 25, 1990 meeting in Milwaukee, the Committee received presentations by invited speakers and public appearances from persons interested in the work of the Committee. The Committee received a number of suggestions relating to issues that it should consider and to state funding of the trial court system.

At the October 25, 1990 meeting in Wausau, the Committee received public testimony regarding trial court funding, and reviewed staff papers relating to efforts of the Wisconsin Supreme Court to obtain additional state funding for circuit court operations and to suggestions made relating to trial court system funding at the September 25, 1990 hearing. The Committee also heard a presentation by J. Denis Moran, Director of State Courts, on recommendations made by the Judicial Conference in Stevens Point, at which the trial court judges had reached consensus on issues relating to trial court funding. The Committee also discussed issues that had been raised by public presentations relating to the issue of trial court funding.

At the November 29, 1990 meeting, the Committee heard a presentation by Marcia Koslov, State Law Librarian, on a proposal for state financing and structure of a state law library system. Kathleen Murphy, Deputy Director for Court Operations, discussed a draft summary of results of the trial court budget survey conducted by the Director's office. The Committee heard a presentation by Nathan S. Heffernan, Chief Justice of the Wisconsin Supreme Court, on his recommendations for state financing of the trial court system. The Committee reviewed staff papers relating to the suggestions made for trial court system funding at its previous public hearings, the provisions of the Wisconsin Supreme Court's and Wisconsin Circuit Courts' biennial budget requests for 1991-93 and issues for Committee consideration relating to state funding of the trial courts.

At the December 18, 1990 meeting, the Committee heard a presentation by J. Denis Moran, Director of State Courts, on the trial court revenue and expenditure survey. It also reviewed proposals from Public Members Judges Froehlich, Manian and Pekowsky, from Milwaukee County and from Public Member Richard Phelps, Dane County Executive, regarding plans for state funding of the trial court system. The Committee also reviewed a proposal from Marcia Koslov, State Law Librarian, regarding details of a state law library system and a staff paper relating to issues to be considered by the Committee. The Committee directed staff to prepare drafts relating to funding of law clerks for judges, state assumption of transcript fees for indigent criminal defendants and financing of law libraries for circuit courts. The Committee discussed issues relating to providing judicial assistants to circuit court judges.

At the January 15, 1991 meeting, the Committee reviewed the draft relating to law clerks, law libraries and transcripts and materials relating to employment of circuit court judicial assistants. The Committee voted to recommend introduction of the draft by the Legislative Council. The Committee also discussed issues relating to judicial assistants and directed staff to prepare a draft to provide judicial assistants to circuit judges. The Committee directed staff to prepare a draft to provide for state assumption of jury costs, guardian ad litem costs and witness fees effective July 1, 1993. The Committee also directed staff to prepare a draft relating to abolishing the constitutional requirements for an elected clerk of circuit court in each county.

At the February 19, 1991 meeting, the Special Committee reviewed the draft relating to reimbursement to counties of fees for jurors, guardians ad litem and witnesses. After amending the draft, the Committee voted to recommend introduction of the draft by the Legislative Council. The Committee also reviewed the draft proposal relating to providing judicial assistants for circuit court judges. After amending the draft, the Committee voted to recommend introduction of the draft by the Legislative Council. The Committee reviewed a draft of a joint resolution to remove from the Wisconsin Constitution the requirement that there be a clerk of circuit court in each county and a clerk of the Supreme Court. The Committee voted to recommend introduction of the draft by the Legislative Council.

At the March 21, 1991 meeting, the Committee reviewed further issues relating to reimbursement of counties for jury, witness and guardian ad litem fees and costs. After amending the draft, the Committee voted to recommend introduction of the draft by the Legislative Council. At the meeting, after discussion, the Committee adopted a motion that the Legislative Council be requested to create a study committee during the next interim study period to continue the work of the Committee with respect to creating a continuing process for further state assumption of the state trial court system's costs.

C. COMMITTEE AND COUNCIL VOTES

1. 1991 Senate Bill 210

At its January 15, 1991 meeting, the Special Committee on Trial Court System Funding recommended that the Legislative Council introduce WLCS: 319/2 (the draft which became LRB-2937/1 and later became 1991 Senate Bill 210) by a vote of Ayes, 18 (Sens. Barrett, Huelsman and Rude; Reps. Bock, Cullen, Deininger, Grobschmidt, Huber and Wimmer; and Public Members Baxter, Boehme, Froehlich, Manian, Marx, Pekowsky, Phelps, Rice and Toussaint); Noes, 0; and Absent, 3 (Public Members Flynn, Prude and Te Winkle).

At its May 9, 1991 meeting, the Legislative Council voted to introduce the draft by a vote of Ayes, 18 (Reps. Schneider, Clarenbach, Coggs, Gruszynski, Kunicki, Linton, Panzer, Prosser, Travis, Wimmer and Zien; and Sens. Risser, Lorman, Czarnezki, Helbach, Kreul, Leean and Moen); Noes, 0; and Absent, 3 (Sens. Adelman, Ellis and George).

2. 1991 Senate Bill 211

At its February 19, 1991 meeting, the Special Committee on Trial Court System Funding recommended that the Legislative Council introduce WLCS: 357/2 (the draft which became 1991 Senate Bill 211) by a vote of Ayes, 18 (Sens. Barrett, Huelsman and Rude; Reps. Bock, Cullen, Deininger, Grobschmidt, Huber and Wimmer; and Public Members Baxter, Boehme, Flynn, Froehlich, Manian, Marx, Pekowsky, Phelps and Te Winkle); Noes, 1 (Public Member Toussaint); and Absent, 2 (Public Members Prude and Rice).

At its May 9, 1991 meeting, the Legislative Council voted to introduce the draft by a vote of Ayes, 18 (Reps. Schneider, Clarenbach, Coggs, Gruszynski, Kunicki, Linton, Panzer, Prosser, Travis, Wimmer and Zien; and Sens. Risser, Lorman, Czarnezki, Helbach, Kreul, Leean and Moen); Noes, 0; and Absent, 3 (Sens. Adelman, Ellis and George).

3. 1991 Senate Bill 212

At its March 21, 1991 meeting, the Special Committee on Trial Court System Funding recommended that the Legislative Council introduce WLCS: 356/3 (the draft which became 1991 Senate Bill 212) by a vote of Ayes, 15 (Sens. Barrett, Huelsman and Rude; Reps. Deininger, Grobschmidt, Huber and Wimmer; and Public Members Baxter, Boehme, Flynn, Froehlich, Manian, Marx, Pekowsky and Phelps); Noes, 0; and Absent, 6 (Reps. Bock and Cullen; and Public Members Prude, Rice, Te Winkle and Toussaint).

At its May 9, 1991 meeting, the Legislative Council voted to introduce the draft by a vote of Ayes, 18 (Reps. Schneider, Clarenbach, Coggs, Gruszynski, Kunicki, Linton, Panzer, Prosser, Travis, Wimmer and Zien; and Sens. Risser, Lorman, Czarnezki, Helbach, Kreul, Leean and Moen); Noes, 0; and Absent, 3 (Sens. Adelman, Ellis and George).

4. Recommendation Not Introduced

At its February 19, 1991 meeting, the Special Committee on Trial Court System Funding recommended that the Legislative Council introduce WLCS: 344/1 (the draft which became LRB-3422/2) by a vote of Ayes, 11 (Sens. Barrett and Huelsman; Rep. Deininger; and Public Members Baxter, Boehme, Flynn, Froehlich, Manian, Pekowsky, Phelps and Toussaint); Noes, 7 (Reps. Bock, Cullen, Grobschmidt, Huber and Wimmer; and Public Members Marx and Te Winkle); and Absent, 3 (Sen. Rude; and Public Members Prude and Rice).

LRB-3422/2:

a. Deletes from the Constitution the requirement that there be an elected clerk of the circuit court in each county and the provisions relating to vacancies in that office. The draft also deletes from the Constitution the requirement that there be an appointed clerk of the Supreme Court.

b. Provides that any judicial officers whose election or appointment is not provided for by the Constitution will be elected or appointed, as the Legislature may direct. This change is made to ensure that, if the Constitution is amended to abolish the constitutional status of the clerk of circuit court, and the Legislature makes a subsequent decision that the clerk of circuit court (or the functional equivalent) is to be appointed, the Legislature may provide for an appointing authority other than a county board or other county authority.

At its May 9, 1991 meeting, the Legislative Council failed to approve the draft for introduction by a vote of Ayes, 5 (Reps. Clarenbach, Coggs, and Travis; and Sens. Risser and Lorman); Noes, 12 (Reps. Schneider, Gruszynski, Kunicki, Linton, Panzer, Prosser, Wimmer and Zien; and Sens. Helbach, Kreul, Leean and Moen); Absent, 4 (Sens. Adelman, Czarnecki, Ellis and George).

D. STAFF MATERIALS

The Appendix lists all materials received by the Special Committee. The following documents, prepared by Legislative Council Staff, may be of particular interest:

- Staff Brief 90-9, Trial Court Funding in Wisconsin (August 13, 1990).
- MEMO NO. 3, Summary of Suggestions Relating to Trial Court System Funding Made at the Special Committee's September 25 and October 25, 1990 Public Hearings (November 16, 1990).
- MEMO NO. 5, Issues for Special Committee Consideration Relating to State Funding of the Trial Courts (November 28, 1990).
- MEMO NO. 6, Information Relating to State Employment and Issues Affecting Proposed Circuit Court Judicial Assistants (January 14, 1991).

PART III

BACKGROUND ON WISCONSIN'S TRIAL COURT
STRUCTURE AND FUNDING

When Wisconsin became a state in 1848, its new Constitution provided for a five-member Supreme Court. At that time, the individual justices also served as trial judges in separate judicial circuits, periodically sitting en banc in order to hear appeals. The Constitution also required a separate "probate court" and authorized the Legislature "to establish inferior courts." As a result, by 1900, a myriad of specialized trial courts had been created at the county and municipal level.

Following several studies in the 1940's and 1950's by the Legislative Council and the Judicial Council, Ch. 495, Laws of 1961, restructured Wisconsin's court system, effective January 1, 1962, to consist of two distinct trial courts of record, circuit courts and county courts. Also, the discretion of local units of government to create municipal courts was continued with jurisdiction limited to cases involving municipal ordinance violations.

On April 5, 1977, the voters approved a number of amendments to the Judicial Article (art. VII) of the Wisconsin Constitution. Among other things, these amendments repealed the requirement of a probate court in each county separate from the circuit court. The Constitution now requires that any new trial court the Legislature creates shall be of "general uniform statewide jurisdiction" [art. VII, s. 2, Wis. Const.].

In its June 1978 Special Session, the Legislature enacted Ch. 449, Laws of 1977, the "Court Reorganization Act," which merged Wisconsin's two trial courts of record (circuit court and county court) into a "single level" trial court (the circuit court), effective August 1, 1978.

The existing 26 judicial circuits were expanded to a total of 69 circuits. Each county became a separate circuit, except that Pepin and Buffalo Counties comprised one circuit; Forest and Florence Counties comprised one circuit; and Menominee and Shawano Counties comprised one circuit. On August 1, 1978, each of the 53 existing circuit judges and 128 county judges became a circuit court judge for the county in which his or her chambers were located. The court reporters assigned to the county judges became reporters for the appropriate circuit court on that date. At that time, all of the matters pending in the county courts automatically transferred to the circuit court and the specialized functions of the county court (probate, Children's Code, mental health, small claims matters, etc.) were brought within the original jurisdiction of the circuit court. The Court Reorganization Act also phased out four existing judgeships and phased in 13 additional judgeships over a two-year period, thereby providing the state with a total of 190 circuit court judges by August 1, 1980. [As of August 1, 1990, there are 210 circuit

court judges. As of August 1, 1991, there will be 216 circuit court judges and as of August 1, 1992, there will be 218 circuit court judges.]

Since July 1, 1980, the state has assumed the cost of the entire compensation package for circuit court judges and circuit court reporters. The state pays the per diem salaries and travel expenses of reserve judges and the travel expenses of circuit judges when it becomes necessary to assign additional judges to handle excess workloads in specific areas of the state. The state also pays for those court reporters who are paid on a per diem basis. The state reimburses counties for court interpreter services provided to persons with language difficulties or hearing or speaking impairments. The state also finances the circuit court automation project and currently reimburses Milwaukee County for costs of its drug court.

For fiscal year 1990-91, state expenditures for circuit court-related costs are anticipated to be \$37,112,168; state revenues generated within the circuit court system are projected to be \$36,124,079, based on a survey conducted by the Office of the Director of State Courts.

The Wisconsin Constitution requires, in art. VII, s. 12, that there be an elected clerk of circuit court for each county. Other court officers are authorized or required by state statutes, such as court commissioners, registers in probate, probate registrars, jury commissioners and clerks of court for juvenile matters. Wisconsin statutes also require certain services to be provided by counties to the courts, such as juvenile intake services.

However, the salaries and fringe benefits, equipment and supplies of these court officials and persons appointed to perform the required services are paid by the counties. Under s. 753.19, Stats., the counties are responsible for all other operational costs of Wisconsin's trial court system other than judges, court reporters, interpreters and court automation. The counties pay the salaries of the clerks of circuit court and clerks' staffs, court commissioners, courtroom security, registers in probate and registers' staffs and pay for materials and office supplies. In addition, the counties pay all of the operational and maintenance costs for courtrooms, the offices of judges and other court personnel and county law libraries. Finally, the counties must pay other types of trial court-related expenses, such as jury, witness and guardian ad litem costs and fees and the costs of transcripts for indigent criminal defendants.

County budgeted expenditures for circuit court operations, based on data reported to the Office of the Director of State Courts, for calendar year 1990 were estimated to be \$70,107,779; county revenues generated within the circuit court system during 1990 were estimated to be approximately \$35,950,000.

Personnel costs accounted for approximately \$39,800,000 of county expenditures in 1990. Nearly 1,500 persons are employed by counties to

provide services to the circuit courts. Service costs for items such as jurors' and witnesses' fees and expenses, indigent defendants' transcripts and guardians ad litem's fees amounted to approximately \$17,300,000; operating costs for office supplies, data processing, travel, training and equipment were approximately \$8,500,000; and facility costs were approximately \$4,500,000.

PART IV

DESCRIPTION OF 1991 SENATE BILL 210

A. BACKGROUND

Currently, whether a judge will be assigned the services of a law clerk is at the discretion of each county. Only 13 counties have chosen to provide law clerks to judges; 29 persons occupy approximately 20 full-time equivalent (FTE) law clerk positions.

Also, although the state now pays for district attorneys and assistant district attorneys to prosecute criminal matters and for public defenders and private attorneys for indigent defendants, counties must pay the cost of trial transcripts and records for indigents, at an annual estimated cost in excess of \$1,400,000.

Although current law requires counties to pay only at least \$1,500 per year for law libraries for circuit courts, it is estimated that counties spend in excess of \$2,000,000 per year for law libraries.

B. MAJOR PROVISIONS

1991 Senate Bill 210 contains the following major provisions:

1. Law Clerks. The Bill provides every circuit court judge with the services of a law clerk on a 1/3rd-time basis. Beginning January 1, 1992, the Director of State Courts shall appoint, in the unclassified state service, one full-time law clerk for every three branches of circuit court or fraction thereof authorized by law (currently, 210 branches, 216 effective August 1, 1991 and 218 branches, effective August 1, 1992). On January 1, 1992, all existing qualified law clerks employed by the counties will be transferred to the unclassified state service.

The Director shall establish the job description, certification requirements and salary level of circuit court law clerks. However, these law clerks must receive the same leave and fringe benefits as the law clerks currently employed by the Court of Appeals. The Director will have administrative authority over the utilization of circuit court law clerks, but may delegate that authority to others, such as to the circuit judges or to the chief judge or the administrator of a judicial administrative district. Whenever necessary, law clerks may be temporarily assigned to assist trial court judges outside the circuit or administrative district.

2. Indigent Defendant Transcript Fees. Under present law, whenever the State Public Defender represents an indigent client in a criminal proceeding, the Public Defender may request court reporters and clerks to

prepare and send trial transcripts and records, the costs of which are paid by the county treasurer.

The Bill shifts the financial burden of these transcript fees and related costs, both for documents requested during the trial and for purposes of appeal, to the state. The expenses shall be paid directly from sum certain appropriations in the budget of the State Public Defender.

3. Law Libraries. Under current law, counties are required to pay up to \$1,500 per year, and may spend a larger amount when authorized by the county board, to maintain a circuit court law library. The Bill increases the authorized annual expenditure for each county to \$5,500 per circuit court branch.

Beginning July 1, 1991, the state shall reimburse each county for its annual law library expenditures in an amount equal to \$5,500 per circuit court branch per year or the actual amount that the county spent on legal publications during the year ending December 31, 1990, whichever is less. Beginning July 1, 1993, and thereafter, the Director shall directly purchase legal publications for circuit court use (up to \$5,500 per circuit court branch per county), but only if the ownership of all county law library publications has been transferred to the state.

The Bill also includes an appropriation to the Director to conduct an evaluation to determine the appropriate structure of the state's law library system. The evaluation, which shall be conducted with the assistance of the State Law Librarian, will also include an assessment of the legal research and law library needs of the state's judges and attorneys and the general public. The Director is authorized to hire a person as a project appointee to inventory the existing legal research materials, equipment and space in county law libraries throughout the state. The Director must submit written findings and recommendations to the Supreme Court and the Legislature by July 1, 1992.

PART V

DESCRIPTION OF 1991 SENATE BILL 211

A. BACKGROUND

Currently, whether a judge will be assigned the services of a secretary/judicial assistant is at the discretion of each county. Only 27 counties have chosen to provide secretaries/judicial assistants to judges; 63 persons occupy approximately 61 FTE secretary/judicial assistant positions.

As a result, typing, receiving telephone calls, office library maintenance, keeping court calendars, photocopying and case management are handled differently in each county. Court reporters, clerk of courts' staff, registers in probate staff, secretaries, bailiffs, law clerks and judges may perform one or more of these tasks in any county.

B. MAJOR PROVISIONS

1991 Senate Bill 211 contains the following major provisions:

1. Judicial Assistants. The Bill provides that every circuit judge shall be afforded the services of a full-time judicial assistant. Beginning January 1, 1992, the Director may appoint, in the unclassified state service, a sufficient number of persons to provide a full-time judicial assistant for every branch of circuit court authorized by law (a total of 218 branches, effective August 1, 1992). A person may not be appointed as a judicial assistant unless he or she meets the certification requirements for the position established by the Director.

2. Collective Bargaining. The Bill provides organizational and collective bargaining rights for judicial assistants in the unclassified state service under subch. V of ch. 111, Stats., the State Employment Labor Relations Act. A separate collective bargaining unit is authorized for circuit court judicial assistants employed by the state. Unless otherwise provided in a collective bargaining agreement, the Director shall establish the duties of and the compensation for judicial assistants. The Bill also provides that judicial assistants who have served for a continuous period of one year or more may be removed only for "just cause."

3. Existing Judicial Assistants' Rights. Prior to appointing any person as a judicial assistant in any county, the Bill requires the Director, with the help of the county personnel department, to determine whether any existing county employes are performing the same or similar duties for circuit court judges as those established by the Director for the position of judicial assistant. If the county currently employs one or more persons who perform these duties, they shall continue to be employed by the county as judicial assistants until they and the county

board of supervisors jointly exercise a statutory option to transfer all of the county's judicial assistant positions to the unclassified state service. Until such time, the state shall reimburse the county for the salaries and fringe benefits of these judicial assistants, except that the total annual reimbursement for any county employe shall not exceed the state's annual compensation costs for a judicial assistant in the unclassified state service.

4. Transfer to State Employment. The Bill provides that, at any time, a county that continues to employ circuit court judicial assistants may exercise its option to transfer all of its judicial assistants (but not more than one full-time employe for each branch of circuit court in the county) to the unclassified state service if the transfer is approved by a majority of the affected employes and a majority of the county board of supervisors. Such action would be subject to veto by the county executive, if any, but the veto may be overridden by a 2/3rds vote of the county board. The county may consider or reconsider exercising the option only once during any 12-month period. Also, any transfer of county employes to state service shall take effect only on July 1 of any year and not earlier than six months from the date the state receives notice that the county option has been exercised. After written notice of the transfer to state service has been sent to the Director, the county option may not be reconsidered or reversed.

Under the Bill, former county employes who transfer to the unclassified state service shall have the same seniority rights and fringe benefit options as district attorneys and assistant district attorneys who were transferred to state service by 1989 Wisconsin Act 31. Specifically, these employes shall have:

a. Their years of service with the county treated as state service for seniority purposes;

b. Their accumulated county annual leave and sick leave transferred and computed as it is for other state employes;

c. Continued coverage under the Wisconsin Retirement System (WRS), except that, in Milwaukee County, an option is provided to allow persons to continue their participation in the Milwaukee County Retirement System as an alternative to the WRS; and

d. Full coverage under all state employe insurance benefit plans. However, former county employes who were participating in county fringe benefit programs other than retirement, deferred compensation or an employe-funded reimbursement account plan, may elect to continue their participation in such programs after becoming a state employe. The state shall reimburse the county for the cost of providing such benefits, but only for the cost of comparable coverage, if any, under fringe benefit plans for state employes under ch. 40, Stats.

PART VI

DESCRIPTION OF 1991 SENATE BILL 212

A. BACKGROUND

Presently, jurors' fees and mileage are established by the county board and paid by the county. The statutory minimums are \$16 per day and 10 cents per mile. Currently, counties pay jurors from \$16 to \$45 per day; 54 counties pay 20 to 22 cents per mile; eight counties pay 24 cents per mile; and nine counties pay more than 24 cents per mile.

Witness and expert witness fees are set pursuant to statute and paid by the county, except for those expert witnesses paid by the Office of the State Public Defender.

Guardian ad litem fees are set by the circuit court pursuant to statute and Supreme Court Rule 81.02 (1) and paid by the county for certain proceedings affecting juveniles and indigents.

B. MAJOR PROVISIONS

1991 Senate Bill 212 contains the following major provisions:

1. Jurors' Fees. The Bill creates an appropriation to reimburse counties for their expenditures for jurors' fees commencing on July 1, 1993, the beginning of the 1993-94 state fiscal year. Authority is provided to prorate reimbursement to counties if funds in the appropriation are insufficient to pay all the claims by counties for reimbursement from that appropriation. Minimum jurors' fees are increased from \$16 to \$25 per day. Jurors must also be paid for mileage at a rate equal to the mileage rate for state officers and employees set under s. 20.916 (8) by the Secretary of Employment Relations with the approval of the Joint Committee on Employment Relations. [Currently, a county board can set the jurors' mileage rate at not less than 10 cents per mile.] The Bill does not affect the ability of county boards to establish compensation for jurors at a higher level than the statutory minimums. However, the state will reimburse the county only at the statutory minimums.

2. Witness Fees. The Bill creates three new appropriations, effective July 1, 1993, for the following purposes:

a. To the Department of Administration, to pay for witnesses called by district attorneys and assistant district attorneys.

b. To the Office of the State Public Defender, to pay for witnesses called by the Office of the State Public Defender or by private attorneys acting as counsel for indigent persons. Presently, funds for witnesses

are expended from the general program operations appropriation for the Office of the State Public Defender and from the appropriation to that office for services of private attorneys.

c. To the circuit courts, to pay for witnesses called by circuit judges.

3. Guardian Ad Litem Fees. The Bill creates an appropriation, also effective July 1, 1993, to the circuit courts to directly pay for guardians ad litem who are appointed by circuit judges to represent minors or incompetents. The state will pay for these services in those situations in which the county is currently obligated to pay for the services of a guardian ad litem. The Bill also amends statutory provisions relating to pay for guardians ad litem, to create a specific requirement that the pay will be at rates set by rule of the Supreme Court. [This codifies current practice.] The circuit courts will retain their current authority to determine the reasonableness of the total compensation to a guardian ad litem in relation to the duties performed.

4. Appointment of Psychologists. Under present s. 971.16 (1), a court may appoint from one to three physicians to examine, and to testify at the trial of, a defendant who has entered a plea of not guilty by reason of mental disease or defect or whose mental condition may become an issue in the case. Current practice includes appointment of psychologists for such examinations and testimony. The Bill amends the statute to specifically authorize appointment of psychologists.

PART VII

OTHER RECOMMENDATION

A. BACKGROUND

The Committee found that the trial court system is a state system that should be funded by the state. It also found that the varying ability and willingness of the counties to finance staff, space and supplies for courts affects the administration of the court system, resulting in an unequal level of services to the courts and members of the public throughout the state.

While realizing that the current condition of the state's finances precludes an immediate assumption of all court costs, the Committee found an immediate need to provide law clerks and judicial assistants to judges, and to remove from county responsibility the costs of transcripts for indigents and court libraries. It also found that the state should, in the 1993-95 biennium, assume the costs of guardians ad litem, jurors and witnesses.

Further, it determined that the process begun by the Committee should be continued during the next interim period. This would permit a review of the progress of legislation recommended by the Committee, the study of issues raised during the Committee study relating to court officers and duties and development of a schedule for state assumption of other costs of the state court system that are presently financed by the counties. The review would also include sources of court financing, such as court fees and costs.

B. RECOMMENDATION

The Special Committee recommended that the Legislative Council establish, in the next interim study period, a successor committee to the Special Committee on Trial Court System Funding. That committee should address the duties and employment status of, and state financing for, court commissioners, registers in probate and deputy registers in probate, clerks and deputy clerks of circuit court and clerks' staff. The committee should also review the amount, uses and distribution of court-generated revenues.

GAA:pk:jt:kjf:wu;wu;jt

COMMITTEE MATERIALS

Staff Materials

1. Staff Brief 90-9, Trial Court Funding in Wisconsin and Other States (August 13, 1990).
2. MEMO NO. 1, Efforts of the Wisconsin Supreme Court to Obtain Additional State Funding for Circuit Court Operations (October 18, 1990).
3. MEMO NO. 2, Summary of Suggestions Relating to Trial Court System Funding Made at the Special Committee's September 25, 1990 Public Hearing (October 18, 1990).
4. MEMO NO. 3, Summary of Suggestions Relating to Trial Court System Funding Made at the Special Committee's September 25 and October 25, 1990 Public Hearings (November 16, 1990).
5. MEMO NO. 4, Selected Provisions of the Wisconsin Supreme Court's and Wisconsin Circuit Courts' Biennial Budget Requests for 1991-93 (November 26, 1990).
6. MEMO NO. 5, Issues for Special Committee Consideration Relating to State Funding of the Trial Courts (November 28, 1990).
7. MEMO NO. 6, Information Relating to State Employment and Issues Affecting Proposed Circuit Court Judicial Assistants (January 14, 1991).
8. Memorandum, Description of a Proposal for Providing Judicial Assistants to Judges (January 14, 1991).
9. Memorandum, Description of a Proposal for Changing Clerks of Court from Elective to Appointed Officers (February 18, 1991).

Other Materials

1. Ten charts relating to trial court funding, distributed by Robert W. Tobin, Senior Staff Attorney, National Center for State Courts (undated).
2. Fines, Forfeitures, Assessments, Surcharges and Court Fees-Monthly Report, Office of the State Treasurer (September 1989).

3. Memorandum, Wisconsin Circuit Court Budget Survey by J. Denis Moran, Director of State Courts, Supreme Court of Wisconsin (August 20, 1990).
4. A letter from Chief Justice Nathan S. Heffernan, Wisconsin Supreme Court, relating to the work of the Special Committee (September 11, 1990).
5. Memorandum, Committee Deliberations and Court Reporters, by Ann Seeman, President, and Jerry Schneider, President-Elect, Wisconsin Court Reporters Association (September 20, 1990).
6. "Testimony of David F. Schulz, Milwaukee County Executive" (September 25, 1990).
7. Testimony and attached materials, by Kevin Van Campen, Family Court Commissioner, Racine County (undated).
8. Position description, for Milwaukee County Deputy Clerk of Circuit Courts, distributed by Gary Barczak, Clerk of Circuit Court, Milwaukee County (undated).
9. Testimony by Bonnie Bauer, President, Wisconsin Clerks of Circuit Court Association (September 25, 1990).
10. Legislative Position, Wisconsin State Trial Court Funding, State Bar of Wisconsin (undated).
11. "Information for Legislative Advisory Committee Council Special Committee on Trial Court System Funding," Wisconsin Register in Probate Association (September 25, 1990).
12. Letter from R. Lynne Bruley, President, Wisconsin Register in Probate Association, relating to a supplement to the September 25, 1990 report (October 19, 1990).
13. Wisconsin Lawyer (October 1990).
14. "Wisconsin's Judicial System," The Wisconsin Taxpayer (October 1990).
15. Memorandum to Representative Rick Grobschmidt, Comparison of WRS and Milwaukee County ERS, by Blair Testin, Retirement Research Committee Staff (October 3, 1990).
16. Memorandum, Proposal for a State Law Library System, by Marcia J. Koslov, State Law Librarian (undated).

17. Circuit Court Budget Survey Questionnaires, Office of Director of State Courts (August 27, 1990).

18. Letter from Gary L. Carlson, Chief Judge, Ninth Judicial Administrative District, on state funding of trial courts (October 24, 1990).

19. Testimony by Bonnie Bauer, President, Wisconsin Clerks of Circuit Court Association (October 25, 1990).

20. Materials relating to duties of court commissioners, by James S. Olds, Court Commissioner, Dane County (undated).

21. "Informational Report," Wisconsin Juvenile Court Clerks Association (undated).

22. Letter from James S. Olds, Court Commissioner, Dane County Circuit Court, relating to Mr. Old's presentation at the October 25, 1990 meeting (October 31, 1990).

23. Letter from Yvonne Bauer, President, Wisconsin Clerks of Circuit Court Association, relating to the position of the clerks of court on state funding for clerks of courts' offices (November 13, 1990).

24. Letter from Circuit Court Judge J. Michael Nolan, Lincoln County, relating to funding for clerks of court staff (November 19, 1990).

25. "Draft of County Circuit Court Revenues and Expenses," Office of Court Operations, Director of State Courts (November 28, 1990).

26. Remarks of Chief Justice Nathan S. Heffernan (November 29, 1990).

27. Letter and attachments, from Judge Harold V. Froehlich, relating to the need for judicial assistants and the job description and qualifications for judicial assistants in Outagamie County (December 6, 1990).

28. Letter from J. Denis Moran, Director of State Courts, relating to a plan for state assumption of circuit court costs developed by Judges Froehlich, Manian and Pekowsky (December 10, 1990).

29. Memorandum, Request for Additional Details for a State Law Library System, by Marcia J. Koslov, State Law Librarian (December 11, 1990).

30. Letter from Kevin Soucie, Assistant Director, Intergovernmental Relations, Office of the County Executive, Milwaukee County, relating to a

plan for state funding of the trial court system endorsed by the Legislative Committee of the Milwaukee County Board (December 12, 1990).

31. Letter from Richard J. Phelps, Dane County Executive, relating to a plan for state funding of the trial court system endorsed by the Wisconsin County Executives and Administrators Association (December 13, 1990).

32. Letter from Patrick T. Sheedy, Chief Judge, First Judicial District, relating to Milwaukee County Circuit Court revenues (December 11, 1990).

33. Letter from Kathryn Kuhn, Legislative Services Coordinator, Wisconsin Counties Association (WCA), relating to WCA's position on trial court funding (December 17, 1990).

34. "1989 Expenditures Reported for Specific Categories-State Totals," Office of Court Operations, Director of State Courts (December 17, 1990).

35. "State Fiscal Estimate for Judges Plan," Office of Court Operations, Director of State Courts (December 17, 1990).

36. "Dane County's 1990 Court-Related Property Tax Costs," Richard J. Phelps, Dane County Executive (undated).

37. Memorandum relating to a proposal for a state law library system from Senator Thomas M. Barrett, Chairperson, Special Committee on Trial Court System Funding (December 18, 1990).

38. Letter from Gary J. Barczak, Clerk of Circuit Court, Milwaukee County, relating to Milwaukee County circuit court revenues (January 3, 1991).

39. Letter from Kenneth P. Casey, Chief Appellate Division, State Public Defender, regarding an appropriation to the State Public Defender's Office for the costs of transcript fees for indigents (January 7, 1991).

40. Letter from Heidi M. Panoke, Assistant to the Brown County Executive, relating to job descriptions for support staff for Brown County Circuit Courts (January 22, 1991).

41. Letter from J. David Rice, relating to correspondence he had received about the Committee's work (February 14, 1991).