Katrina Heinrich
September 12, 2023

Acknowledgment

The voice of testimony is cumulative. Experiences, research, and at times repetitive voices on this particular subject as well as any and all related topics have contributed to seeking a solution to justice.

It would be remiss to not acknowledge the countless negative experiences that have led to the dedicated efforts of legislators and citizens striving to help children and families while contributing positively to state government. Regardless of role or length of involvement in this effort, thank you for all you do.

INTRODUCTION

The issues voiced by family court victims, speak repetitiously of the failures of due process – emphasizing that they are not living free – rights being circumvented. The patterns suggest problems exist from within the various roles and silos of service and service providers associated with the processes, procedures, and resources – while the harms are a result.

UNDERSTANDING THE PROBLEM, SEEKING SOLUTIONS

Research and experience suggest the issue design is complex by way of outside source contributors. The problem appears to be external influences and economics on the executive branch from the Title IV-D money prospects. (Appendix 1-4)

The use of systems that analyze family case details has potential options that evolve into complex, difficult, and contentious motivations. The split direction in case management roadmaps that must be considered is either to serve New Hampshire families or provide service to institutional stakeholders. (Reference 5)

RESEARCH
TITLE IV-D REQUIREMENTS

Accounting Requirements

Accounting requirements for federal funding are governed by 2 CFR 225, "Cost Principles for State, Local, and Indian Tribal Governments, Accounting requirements for federal funding are governed by 2 CFR 225, "Cost Principles for State, Local, and Indian Tribal Governments," (formerly OMB Circular A-87) which establishes principles for allowable costs for state, local, and tribal governments. It provides exhaustive information on allowable costs and accounting requirements. 2 CFR 225 permits the reimbursement of direct costs and indirect costs. Typical direct 24 costs chargeable to Federal awards are:

> A. Compensation of employees for the time devoted and identified specifically to the performance of those awards; B. Cost of materials acquired, consumed, or expended specifically for those awards; C. Equipment and other approved capital expenditures; and D. Travel expenses incurred specifically to carry out the award." (Morhar, Zorza, Danser, 2017.)

Expedited Process Requirement

Title 45, Section 303.101

(c) Safeguards. Under expedited processes:

(d) Functions. The functions performed by presiding officers under expedited processes must include at minimum: (1) Taking testimony and establishing a record; (2) Evaluating evidence and making recommendations or decisions to establish paternity and to establish and enforce orders. (Reference 4)

In family court a repetitive objection that fails to pass a reasonable justification is NH Rule 2.2, which suspends the rule of evidence and by default is a litigant's loss of the guaranteed ability to present evidence as defined in Fourteenth Amendment Section 1.

NH RULE 2.2 – APPLICATION OF THE NEW HAMPSHIRE RULES OF EVIDENCE

The New Hampshire Rules of Evidence do not apply to the actions listed above. However, the Court in its discretion may utilize the New Hampshire Rules of Evidence to enhance the predictable, orderly, fair, and reliable presentation of evidence. (Reference 9, 14)

- Suspend the rule of evidence and by default the loss of the guaranteed ability to present evidence.

A common family court complaint is anchored in the acceptance of unsubstantiated narratives (artificially manufactured narratives, gaslighting, perjury, fraud) in motions and oral presentations. These artificial narratives are extremely harmful to families and children - with real lifelong consequences.

As recent as May 5th, 2023, relevant references to family court issues occurred in the Governor's Commission on Domestic Violence, Sexual Assault, and Stalking Committee discussion highlighting issues that surround court process, procedures, and problems. Exploring topics of family court, weaponizing court processes, abuse of processes, expunging errors, lying, and referencing gaps in the process. (Reference 6)

It appears that unsubstantiated claims anchor and protract into false narratives in order.

The following existing laws, codes, and rules consistently appear as not working in NH family court in case after case. In a case like mine, or countless others these seem to apply.

NH RSA 461-A	Denys parental rights. Should cite, facts, findings, and conclusions of law in orders.
NH RSA 461-A-6	Subjective application best of interest of the child – child(ren) is a pawn in protraction over best interest
NH RSA 169-C	Child Protection Act. Weaponized to gain advantages
Criminal Code 173 B	Domestic Violence
Criminal Code 633-4	Interference with Custody – Criminal court needs to address parents obstructing contact with children
NH RSA 490-D	Establishment of Family Court. Afford equal access to justice, one family one judge for dispute resolution to reduce the adversarial nature of proceedings involving families. Avoid case protraction.
NH RSA 490-D-3	Jurisdiction. Facts framed
NH RSA 491-A	Judicial Salary. Part-time incentive, lack of oversight
NH RSA 458	Divorce.
NH Rule 2.2	Rules of Evidence is a rule that is unconstitutional under Article 1, Section 8 of the United States Constitution.
NH Criminal Code	641 Perjury, 638 Fraud
United States Constitution	14th Amendment, Section 1. Equal Protection and Due Process Clause

SOLUTION

It appears historical and current operations are crushing a vast number of NH families year after year, including extensive harm to children. The failures of due process appear not to meet family needs or Title IV-D requirements. Current operations appear to and do establish winners and losers - all to facilitate the state benefits to the maximum extent possible, grants of Title IV-D.

The solution is – close family court. Utilize mediation – anything unresolved is assigned to the appropriate criminal or civil court, applying the rules of evidence and citation.

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APPENDIX

CHART: TITLE IV-D Financial Benefits

Obstacles to Yearly Title IV-D Grant

TITLE IV-D Financial Benefits

- Designed for appropriate use to assist Single Parent Households (As opposed to Co-Parenting Homes where one is designated Primary Parent Amicable)
- State to Recoup Expenses - Not projecting yearly state income source
- State General Fund
- State Courts
- State Other

Obstacles - Higher Income

- Largest Arrearage Amounts $$$$$$ Low Quantity Accountable 15%-or less
- Easy Access to the Legal System
- Easy Attorney Access
- Easy Access to Delay
- More Work Freedoms (Time off)
- More Access to Resources (Financial, Human, Networks)
- Does not require program assistance
- Case Protraction Challenges
- IF Amicable CSS not Engaged.
- Create Single Parent Household
- Conflict Coaching/Creation

w/o Obstacles - Lower Income

- Smallest Arrearage Amounts $$$ High Quantity Accountable
- Limited to Zero Access to the Legal System
- Limited to Zero Attorney Access
- Powerless to Delay
- Less Work Freedoms (Time off)
- Limited to Zero Access to Resources (Financial, Human, Networks)
- May resquire program assistance
- Easy Case Protraction
- IF Amicable CSS not Engaged.
- Create Single Parent Household
- Conflict Coaching/Creation

APPENDIX II

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Bell Curve and/or Power Law Curves

Excerpts: Trends in State Courts 2021, Improving Court Statistics by Exploring the Shape of Data (pg. 53 – 60)

"most of the unpaid restitution in a jurisdiction traces back to a small percentage of offenders who owe large sums of money. Most offenders, who typically owe far less restitution, pay victims in full." (Cohen, Nakamoto; pg. 53, para. 1)

Instead of a bell curve, restitution and many other data sets follow a "power law." With power-law curves, large values are less common than small ones but frequent enough and large enough relative to the rest of the data that they account for a disproportionate share of the total. (Cohen, Nakamoto; pg. 53, para. 2)

"Even though 80 percent or more of restitution might go uncollected in a jurisdiction, we now know this will be driven by a small number of individuals owing huge sums of restitution" (Cohen, Nakamoto; pg. 55, para. 4)

"if everyone in the bottom 80 percent paid their restitution in full, and the top 20 percent paid nothing, monetary collection rates typically will only reach 15 percent, and often lower than that, even though the case completion rate is 80 percent. How much money is collected offers an incomplete and potentially misleading picture of victim restoration, offender rehabilitation, and the collection efforts of court staff. Other variables like the case-completion rate serve as a corrective lens, revealing a more complete picture of restitution." (Cohen, Nakamoto; pg. 55, para. 5)

"These options are not an excuse to present only part of the data. As misleading as it is to focus on only the low monetary-collection rates, it is equally misleading to focus on only the higher monetary-collection rates of a subgroup or only the higher case-completion rates. Power laws justify partitioning the data but also require presenting each as part of the whole. They justify looking at multiple variables but not selectively ignoring any." (Cohen, Nakamoto; pg. 56, para. 2)

APPENDIX III

"If courts are focused on improving monetary collection for restitution, knowing the data are power-law distributed suggests putting resources toward collecting from the infrequent big-dollar cases, focusing on the 85 percent or more of restitution owed by the top 20 percent. If courts are interested in restoring as many victims as possible, then courts could put more resources toward collecting from the more common small-dollar cases, focusing on the bottom 80 percent who owe 15 percent or less of the total restitution." (Cohen, Nakamoto; pg. 56, para. 6)

Reference: The Future of the Unified Family Court: A Review of Perspectives from New Jersey

Cassidy, Harry T. "The Future of the Unified Family Court: A Review of Perspectives from New Jersey.", *ContentDM,* National Center for State Courts, 2008, ncsc.contentdm.oclc.org/digital/collection/famct/id/207/

Title IV-D Incentives in New Hampshire and Across the U.S.A.

Excerpts The Future of the Unified Court: A Review of Perspectives from New Jersey Pg. 1-4

"Perhaps the most significant external influence affecting the family division in New Jersey is the state's executive-branch, Title IV-D child-support agency. The influence resides in the purse, with the Title IV-D program providing about $120 million to the state judiciary and funding about 500 full-time-equivalent family-division staff statewide. New Jersey is a "judicial state" that requires considerable administrative processes for child-support cases (see Lewin Group, 2002, for a review of administrative and judicial typologies for the administration of child support). New Jersey's Title IV-D agency takes the position that the issues of paternity, support, and medical coverage are the only Title IV-D reimbursable issues and are unrelated to the family issues of custody and parenting time (visitation). The assertions by federal and state executive-branch officials that "Title IV-D" family issues can be treated in isolation, and not as a whole, represent a fundamental conflict with the philosophy of the unified family division." (Cassidy, pg. 1, para.4)

"The federal IV-D program's position focuses on support and paternity almost to the exclusion of custody and visitation. This limited focus results in the national child-support program's failure to develop fully a role for noncustodial parents in the life of a child. This view also creates a bright-line distinction between child support and parenting time where such a distinction may not be appropriate. " (Cassidy, pg. 1, para.4)

APPENDIX IV

"The key component to preserve the family-division philosophy is that all cases are screened through the integrated family court computer-information system for other pending issues and family history." (Cassidy, pg. 1, para.6, pg. 2, para. 1)

"has resulted in a complex, difficult, and often contentious development process" (Cassidy, pg. 2, para.1)

"A specific protocol to coordinate visitation orders and the no-contact provisions of bail between the alleged abuser and the child victim has been established, but the coordination of criminal- and civil-abuse/neglect allegations remains contentious, particularly in high-profile cases" (Cassidy, pgs. 1-2, para. 6 –para. 1)

"All courts are required to balance the right of the individual to due process with the need to protect other persons and property. The family court also must balance the needs of each family member with the rights of the other members and must maintain an efficient and cost-effective case-processing system. The court seems to be faced with the problem of providing a discrete legal track for each of the issues brought by our stakeholders in the system or addressing the dispute in the context of other pressing family problems in spite of the objections of stakeholders—in other words, serve families or provide service to our institutional stakeholders. (Cassidy, pg. 3, para.3)

Katrina Heinrich

THE FUTURE OF THE UNIFIED FAMILY COURT: A REVIEW OF PERSPECTIVES FROM NEW JERSEY

Harry T. Cassidy
Assistant Director, New Jersey Administrative Office of the Courts, Family Practice Division

A family-centered court is designed to address a wide range of family issues. This model appears to clash with the perceived needs of a range of institutional stakeholders that file cases in family court, and the New Jersey judiciary, with one of the nation's oldest unified family courts, is struggling with these conflicting interests.

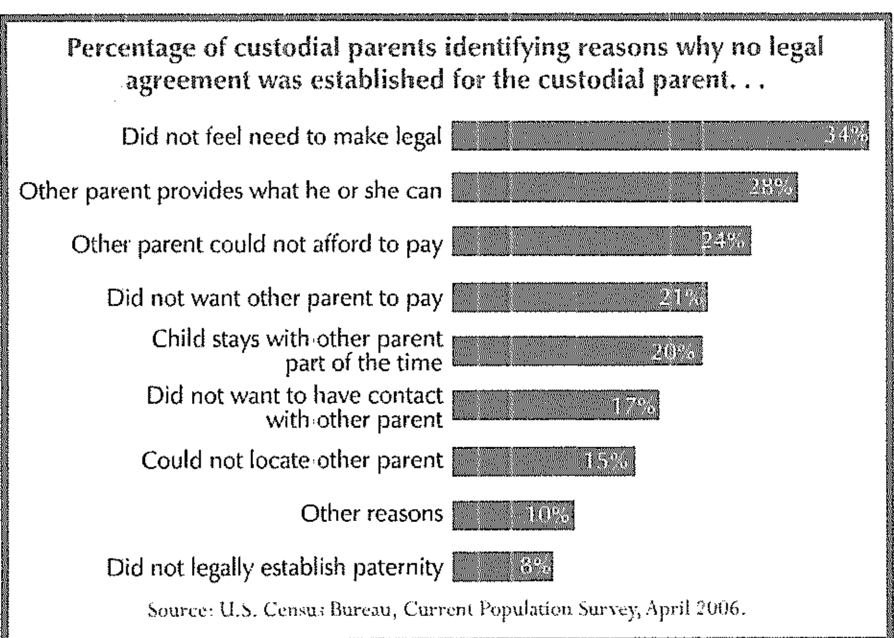
The leaders of the unified family division in New Jersey are reviewing the key questions that face the state system as the court completes its first quarter century. In New Jersey, the family division is responsible for all family cases from adoptions to divorce, child support to child welfare, and delinquency to family violence. A committee of family-division presiding judges and court managers has been formed to develop a "road map to recommend to state leaders a plan for the future of the court" (Cassidy, 2008: 1).

The key challenge for the committee is to articulate a pragmatic rationale that supports the perspective of a unified family court and the holistic treatment of families. Many of the court's stakeholders challenge this view daily because they believe that the court's intervention in any specific case should be limited. This restrictive view stems from the stakeholder's predisposition for its own priorities. This article will review the impact of these perspectives in the areas of child support, juvenile delinquency, child-welfare cases, divorce, and domestic violence.

Perhaps the most significant external influence affecting the family division in New Jersey is the state's executive-branch, Title IV-D child-support agency. The influence resides in the purse, with the Title IV-D program providing about $120 million to the state judiciary and funding about 500 full-time-equivalent family-division staff statewide. New Jersey is a "judicial state" that requires considerable administrative processes for child-support cases (see Lewin Group, 2002, for a review of administrative and judicial typologies for the administration of child support). New Jersey's Title IV-D agency takes the position that the issues of paternity, support, and medical coverage are the only Title IV-D reimbursable issues and are unrelated to the family issues of custody and parenting time (visitation). The assertions by federal and state executive-branch officials that "Title IV-D" family issues can be treated in isolation, and not as a whole, represent a fundamental conflict with the philosophy of the unified family division. The family division mitigates this conflict by proposing consent agreements for custody and parenting-time arrangements when a welfare agency seeks to establish paternity or support and by encouraging the non-welfare filers to have all issues addressed in the same case, often at the same proceeding. In the development of a statewide, automated child-support system, however, these opposing views have become the source of a conflict that has shifted tremendous costs to the judiciary to ensure that all of the information on a family is maintained in the system and that there are no artificial distinctions in processing family cases.

The federal IV-D program's position focuses on support and paternity almost to the exclusion of custody and visitation. This limited focus results in the national child-support program's failure to develop fully a role for noncustodial parents in the life of a child. This view also creates a bright-line distinction between child support and parenting time where such a distinction may not be appropriate. The annual Title IV-D child-support budget nationwide is almost $4 billion, while the access/visitation program, intended to promote the relationship of the noncustodial parent and child, totals only $10 million. This perspective has led the Title IV-D program nationwide to underuse techniques developed by courts to facilitate case resolution, such as alternative dispute resolution (ADR). New Jersey and many other courts have used these techniques for more than 20 years. As noted in the July 2006 Child Support Report, "Although ADR processes like mediation are almost universal in family law cases outside the IV-D program, few child support programs make use of ADR as a tool to resolve IV-D cases" (Bryant, 2006: 2).

The family division has adapted to the perspective of the IV-D agency by providing an "expedited process" using judiciary hearing officers to handle many support applications. Recently, the judiciary has permitted even more specialization on the less complex support matters. This is demonstrated in the statewide staffing model, which categorizes these cases as specialized matters. The key component to preserve the family-division philosophy is that all cases are screened through



Source: U.S. Census Bureau, Current Population Survey, April 2006.

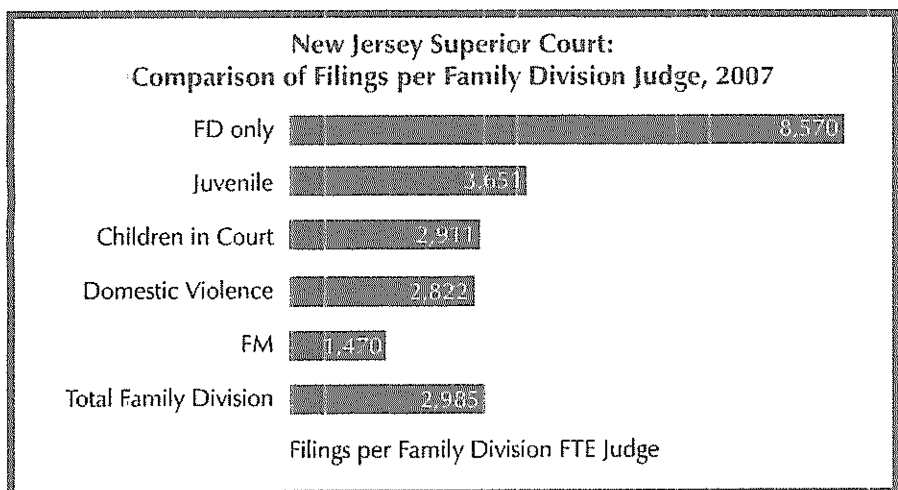
the integrated family court computer-information system for other pending issues and family history. The coordination of schedules is still possible for any matter when necessary. New Jersey's child-support agency is developing a new, statewide, automated child-support information system that the judiciary will use to establish and enforce support. This project has resulted in a complex, difficult, and often contentious development process to create an interface between the judiciary's information system and the automated child-support system to maintain complete family records without duplicate data entry.[1]

The juvenile-delinquency docket is, in itself, a complex system that includes law enforcement, prosecution, public defenders, public and private providers of evaluation and treatment services, county- and state-level "corrections" agencies, and child-welfare agencies. The tensions in this system include the historical concern for the rehabilitation of the juvenile offender and the need for public safety. Additionally, the requirements for due process may not facilitate either of these goals ideally. The application of the criminal justice template to juvenile cases, popular in the 1990s, has come under scrutiny by studies that challenge the effectiveness of treating juvenile offenders as adults and that highlight the differences between adolescent brain development and adult brain development. In this context, the screening and prosecution of delinquency cases can be treated in isolation from other family issues by each of the stakeholders in the system until the proposed implementation of a treatment or rehabilitation plan. At this point, the judge must take these "family issues" into consideration to develop a disposition with a likelihood of success. The challenge for the judiciary is to recognize these issues early in the process through screening at intake by family division or probation staff or by the prosecutor's office when deciding to file a petition.

In New Jersey, a key area of discussion has been those cases in which a delinquency action is accompanied by a child-welfare case, such as a youth charged with a delinquent act who has been placed out of home by the child-welfare agency or has a history of placement. In some cases, judges have brought all of the actors together to develop a plan for the family for these "crossover youth." At this point, New Jersey has yet to agree upon best-practice procedures and guidelines; however, our review will be informed by efforts in other states as described in the *NCJJ Special Project Bulletin*, June 2004, found at: http://ncjj.servehttp.com/NCJJWebsite/pdf/dualjurisdiction.pdf.

The child-welfare agency in New Jersey, the Division of Youth and Family Services (DYFS), engages the entire family as it responds to abuse, neglect, and threats to the well-being of children. The legal apparatus developed for the implementation of the federal Adoption and Safe Families Act (ASFA) in New Jersey includes the deputy attorney general representing DYFS, the law guardian appointed for the child, the attorneys representing the parents, a court-appointed special advocate, a citizen review board, DYFS case workers, court staff, and the judge. If criminal charges are filed, the county prosecutor's office and a criminal defense attorney, often a public defender, will perform their roles in the criminal justice system. With such a large cast, the coordination of the potential range of a family's legal issues is an enormous challenge. A specific protocol to coordinate visitation orders and the no-contact provisions of bail between the alleged abuser and the child victim has been established, but the coordination of criminal- and civil-abuse/neglect allegations remains contentious, particularly in high-profile cases in which the rules of court for criminal cases and the goal of family reunification clash.

From the perspective of the organized family bar, the primary goal of the family division is to litigate divorce cases. Other related cases, such as domestic violence and nonmarital issues of custody, support, and paternity, are considered important only to the extent that those issues relate to the divorce process. In fact, members of the bar are always surprised at the total percentage of judicial time allocated to divorce litigation compared to the number of divorce filings. Bar representatives consistently underestimate the time allocated to these cases compared to the number of total family cases filed. In 2007, 66,638 dissolution actions (divorce and associated post-judgment proceedings) were filed, compared to total family filings of 317,724. The amount of judicial time dedicated to the dissolution docket per case far exceeds that of all other case types in the division (see chart below). Child-welfare, delinquency, or family-crisis cases that may arise during or after divorce proceedings are not a primary concern of the bar. This perspective exerts considerable influence over the decisions of judges in the allocation of calendar time and the management of the court.



Domestic-violence advocates observe the need for all family cases to be treated in one case-management process, but insist that the perspective of domestic violence must be the guiding principle. That is, the presence of domestic violence governs the options available to the court, the assignment of the case, and presumptions of the court in terms of custody and parenting time. There is little recognition of the potential impact on the cases of children, such as delinquency and family crisis, although there is an ongoing dialogue between the child-welfare agency, victim advocates, and the judiciary to identify problems and best case practices with the co-occurrence of domestic violence and child abuse.

All courts are required to balance the right of the individual to due process with the need to protect other persons and property. The family court also must balance the needs of each family member with the rights of the other members and must maintain an efficient and cost-effective case-processing system. The court seems to be faced with the problem of providing a discrete legal track for each of the issues brought by our stakeholders in the system or addressing the dispute in the context of other pressing family problems in spite of the objections of stakeholders—in other words, serve families or provide service to our institutional stakeholders.

The New Jersey family division's response to the problem is to develop best practices that are supported by empirical evidence and that respond to our vision of a unified family approach and to the concerns of our partners. They will guide our judges and court staff and will be based upon these principles:

- All cases must be screened for history within the family court and any pending cases.
- One judge or case management team should handle a case throughout the life of the case to the maximum extent possible.
- A comparatively small, but significant percentage of cases filed will present multiple, complex family issues requiring special management at the same time.
- We must build and rely upon a network of accessible, community-based service providers to support the needs of these families.
- The "best interests" of the children and the protection of victims are of paramount concern.

The articulation of principles is the first step taken by the committee. The further challenge will be to develop practical techniques to implement these principles in light of the perspectives of our institutional partners and the pressures of daily practice.

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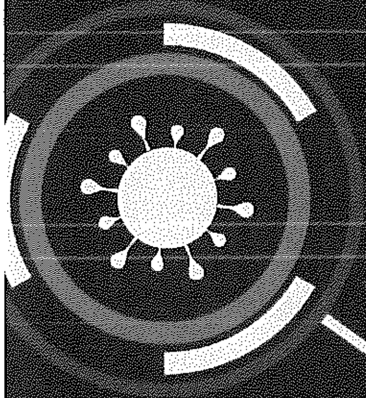
ENDNOTES

[1] The author is aware of the national data-transfer models to facilitate the transmission of data between courts and child-support systems. This methodology was proposed by judiciary leaders during system development and rejected by federal authorities as representing an "alternative system" that would subject the state to fiscal sanctions.

2021 NATIONAL CENTER FOR STATE COURTS

TRENDS IN STATE COURTS



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NCSC
TRENDS IN STATE COURTS

IMPROVING COURT STATISTICS BY EXPLORING THE SHAPE OF DATA

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Planning and Program Evaluation Division, Hawai'i State Judiciary

Wesley Nakamoto
Planning and Program Evaluation Division, Hawai'i State Judiciary

Each year, millions of dollars in restitution are owed to victims of crime. Reports suggest that about 80 percent of that money is uncollected (e.g., Colorado Judicial Branch, 2020; Minnesota Restitution Working Group, 2015; Rex and Boyce, 2011). Based on this data, it would appear that the majority of victims are not restored, offenders are derelict in their responsibilities to victims, and court staff are unsuccessful at collecting restitution. But most of the unpaid restitution in a jurisdiction traces back to a small percentage of offenders who owe large sums of money. Most offenders, who typically owe far less restitution, pay victims in full. A deeper understanding of the data offers a more accurate and complete picture and leads to a substantially different conclusion: the majority of victims are restored, most offenders fulfill their responsibility, and court staff are largely effective at collecting restitution.

Instead of a bell curve, restitution and many other data sets follow a "power law." With power-law curves, large values are less common than small ones but frequent enough and large enough relative to the rest of the data that they account for a disproportionate share of the total. Examples

Courts rely on data to make well-informed decisions, but the shape of that data can vary, dramatically changing their interpretation. Distinguishing bell-shaped curves from "power law" curves can improve statistics and assist judges and court administrators grappling with important questions in need of evidence-based answers.

across a range of fields abound: 20 percent of customers generate 70 percent of sales (McCarthy and Winer, 2019); 10 percent of Twitter users produce over 95 percent of all political tweets (Pew Research Center, 2019); and 10 percent of Americans own 80 percent of the wealth in the United States (Saez and Zucman, 2016).

Failing to distinguish between bell curves and power laws can have implications for interpreting court data. If undetected, power laws can mask patterns that are essential to the questions that judges, court administrators, and researchers want to answer. Overlooking power laws can lead to invalid data analyses, unsound interpretations of those analyses, and ultimately suboptimal decision making among court leadership. By identifying data that follow power laws, courts can detect patterns that may better inform decision making.

Here we explain how to leverage power laws to learn from court data. First, we explain differences between bell-shaped and power-law distributions. Next, we show how data can be analyzed and interpreted when it is power-law distributed so that important patterns are not missed. Finally, we show how these analyses can help evaluate programs and inform decisions about allocating limited resources in state courts.

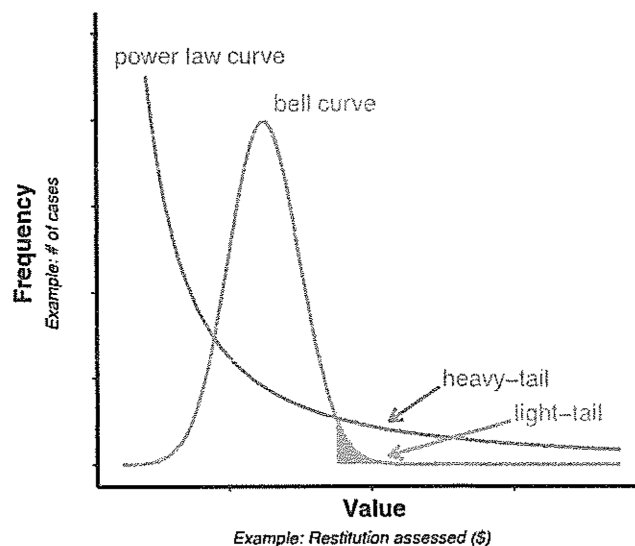
WHY IS IT IMPORTANT TO KNOW THE "SHAPE" OF COURT DATA?

The bell-curve shape of the normal distribution is the most familiar display of data on a graph (see Figure 1). Many variables measured both outside and inside the courtroom are bell shaped. Height, IQ, and the number of hearings in felony cases (Ostrom et al., 2020), for instance, are bell shaped. When data are bell shaped, the mean can be calculated to summarize the data, reducing it to a single number that is most representative of the entire data set. As one moves away from the mean at the peak of the bell curve and into the tails, the probability of extreme values rapidly approaches 0, creating thin or "light tails." Bell curves also tend to have a characteristic scale, spanning no more than a few orders of magnitude. For example, felony defendants have on average 6 hearings with most ranging between 1 to 12 hearings (Ostrom et al., 2020). This is just two orders of magnitude (10^0 to 10^1), and the probability of 100, 1,000, or 10,000 hearings is phenomenally low.

But sometimes data follow a power law, not a bell curve. Data obeying a power law contain many small values and fewer large ones (Figure 1). But these large values out in the tail are more common than in a bell curve, creating "heavy tails." These heavy tails can dominate summary statistics. For instance, many power-law distributions have a mean that goes to infinity, and even when finite, the mean is nowhere near most of the data. Unlike bell curves, power-law data is "scale free," spanning many orders of magnitude, often from 10^0 to 10^7 if not higher.

Besides restitution, examples inside the courtroom include case filings, in which a minority of districts account for most filings across time and case types (Bak, 2006); violent crime, in which a small number of people commit a disproportionate amount of crime (Cook et al., 2004; Falk et al., 2014); and even case citations, in which a small percentage of cases receive the majority of citations in court decisions at state and federal levels, including the Supreme Court (Fowler et al., 2007; Post and Eisen, 2000; Smith, 2007).

FIGURE 1. NORMAL BELL CURVE VS POWER LAW CURVE



NOTE: Normal "bell curve" distribution (orange) vs power-law distribution (blue) showing number of cases vs. restitution assessed. Restitution appears to follow a power law, not a bell-curve.

TABLE 1.
BELL CURVES VS POWER-LAW CURVES

	Normal Distributions ("Bell Curve")	Power-Law Distributions
Mean/ Median	Meaningful (finite and representative)	Not meaningful
Tails	Light tail (extreme values are rare)	Heavy tail (extreme values more frequent than in the bell-shaped normal distribution)
Scale	Few orders of magnitude Example: felony hearings range from 10^0 to 10^1	Many orders of magnitude Example: restitution ranges from 10^0 to 10^7, if not higher

When data are assumed to be bell shaped but in fact obey a power law, problems arise. The mean, which fails to represent the data, can mistakenly be used to summarize it, and even worse, entered into inferential statistics to test hypotheses. Although the median is an effective substitute for the mean when data are skewed, it is of little match for the heavy tail of power-law curves, where data live nowhere near the median, extending for many orders of magnitude beyond it. But awareness of power-law behavior can remind us to put means and medians aside and look to other statistics. Large values in the "heavy tails" are also problematic, skewing percentages, masking other informative patterns, and producing at best incomplete and at worst misleading answers to the questions we want addressed.

DETECTING COURT DATA THAT FOLLOW A POWER LAW

Since our goal here is to provide a nontechnical overview, we describe statistical approaches for detecting whether court data follow a power law in an Appendix. Judges and court administrators are encouraged to draw on the expertise of court researchers and statisticians at this step because detecting the shape of court data will ultimately help them to better understand the implications and limitations of their data.

ANALYZING AND INTERPRETING COURT DATA THAT FOLLOW A POWER LAW

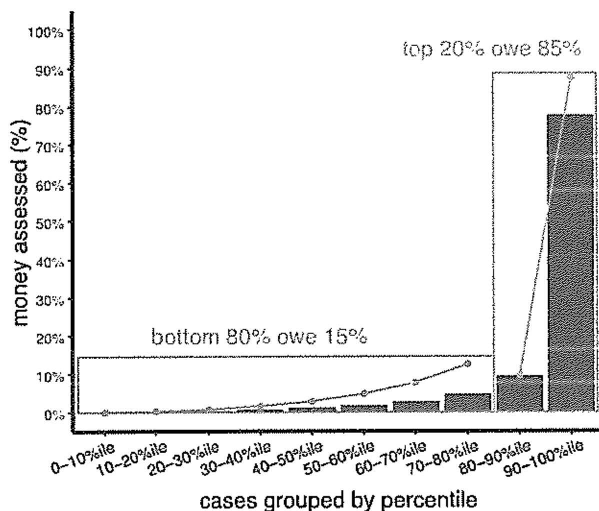
We have already seen the perils of analyzing restitution data while blind to its shape. But if data conform to a power law, how do we analyze it to best evaluate court performance? We can only offer general guidance because the specifics of an analysis will depend on the questions that need to be answered, but whatever form that analysis takes, it must respect the shape of the data. We propose two general approaches to analysis that may be useful for different data sets.

One option is to split data. Even though 80 percent or more of restitution might go uncollected in a jurisdiction, we now know this will be driven by a small number of individuals owing huge sums of restitution. How should the data be partitioned? There are more and less principled ways to do it. Sometimes, the data might have structure that suggests ways to divide it. In the case of restitution, we could consider offense severity, which is related to size of restitution. Felonies typically involve larger restitution amounts than misdemeanors and infractions, and this can be leveraged to disaggregate data. Simulated data disaggregated by severity suggest that even when only 20 percent of restitution money is collected overall, as much as 60 percent is collected from misdemeanants.

Another option is to look at multiple variables. For restitution, we can look at not just the percentage of money collected, which is distorted due to the heavy tails of the power law, but also the percentage of cases that are paid in full, or case-completion rate. The case-completion rate, which *CourTools* Measure 7b also recommends calculating (Schauffler and Ostrom, 2017), can range from 50 percent to 70 percent even when only 20 percent of restitution money has been collected (Colorado Judicial Branch, 2020; Minnesota Restitution Working Group, 2015). To put it another way, if *everyone* in the bottom 80 percent paid their restitution in full, and the top 20 percent paid nothing, monetary collection rates typically will only reach 15 percent, and often lower than that, even though the case completion rate is 80 percent. How much money is collected offers an incomplete and potentially misleading picture of victim restoration, offender rehabilitation, and the collection efforts of court staff. Other variables like the case-completion rate serve as a corrective lens, revealing a more complete picture of restitution.

A power-law analysis highlights the two sides of restitution data. For restitution, high case completion coexists with low monetary collection. This seems like a contradiction, but it is not. It is to be expected when you have "heavy-tailed" data that conform to a power law. The sooner we appreciate power laws and their presence in court data, the sooner an intuition will develop for this type of data.

FIGURE 2.
PERCENT OF RESTITUTION MONEY ASSESSED AMONG BOTTOM 80% AND TOP 20% OF CASES



NOTE: Graphs showing a theoretical sample of restitution assessed broken down by the bottom 80 percent (blue) and top 20 percent (orange). Bars represent amount owed within each decile. Lines represent cumulative amount owed within the bottom 80 percent and top 20 percent. Even if everyone in the bottom 80 percent—by definition, 80 percent of people owing restitution—paid in full, only 15 percent of restitution or less would be collected.

These options are not an excuse to present only part of the data. As misleading as it is to focus on only the low monetary-collection rates, it is equally misleading to focus on only the higher monetary-collection rates of a subgroup or only the higher case-completion rates. Power laws justify partitioning the data but also require presenting each as part of the whole. They justify looking at multiple variables but not selectively ignoring any. Also these analysis options do not indiscriminately lead to "better looking" court statistics; they lead to more accurate ones, whichever way the data fall. The overarching point is that knowing what kind of data you have—bell shaped vs. power law—improves data analysis, leading to more valid performance measures and the discovery of patterns that would otherwise be missed.

More broadly, how do analyses for power-law data fit into the larger toolbox of court statistics, especially *CourTools*, a set of court performance measures developed by the National Center for State Courts? They can be thought of as a complement to *CourTools*, extending the toolbox to an important class of data that traditional statistics are not designed to handle.

EMPLOYING POWER-LAW DATA IN PROGRAM EVALUATION AND DECISION MAKING

Accurately interpreting court data that behave according to a power law can help evaluate programs and inform decisions about allocating limited resources in state courts.

Responsive courts seek meaningful feedback from data on how well they are doing and then adapt based on this feedback (Ostrom and Hanson, 2010). All decisions that flow from this feedback depend on court statistics that are valid and comprehensive. To this end, distinguishing power-law data from bell-shaped and other distributions is critical, and several tools for helping with this determination have been provided (see Appendix). Once detected, state courts can leverage this knowledge to analyze and interpret data more carefully and in ways that allow researchers, judges, and court administrators to evaluate programs with a more accurate and complete set of performance measures.

Power laws can also reveal different courses of action available to courts. If courts are focused on improving monetary collection for restitution, knowing the data are power-law distributed suggests putting resources toward collecting from the infrequent big-dollar cases, focusing on the 85 percent or more of restitution owed by the top 20 percent. If courts are interested in restoring as many victims as possible, then courts could put more resources toward collecting from the more common small-dollar cases, focusing on the bottom 80 percent who owe 15 percent or less of the total restitution. Courts can then use this information alongside their goals and priorities to decide how best to allocate limited resources among these multiple courses of actions.

CONCLUSION

Courts increasingly rely on data to make decisions. We hope that by drawing attention to power laws, state courts can move closer to developing statistics that not only are valid but also provide deeper, more complete answers to questions of importance for decision making. State courts clearly stand to benefit, but so does the public. As the Conference of State Court Administrators observes, "State courts must be proactive in the measurement of their performance with empirical, credible tools. . . . State court leaders are in a position to provide empirical data on which the public can make judgments about the effectiveness of state court systems, rather than judgments based on inaccurate or anecdotal information" (COSCA, 2008).

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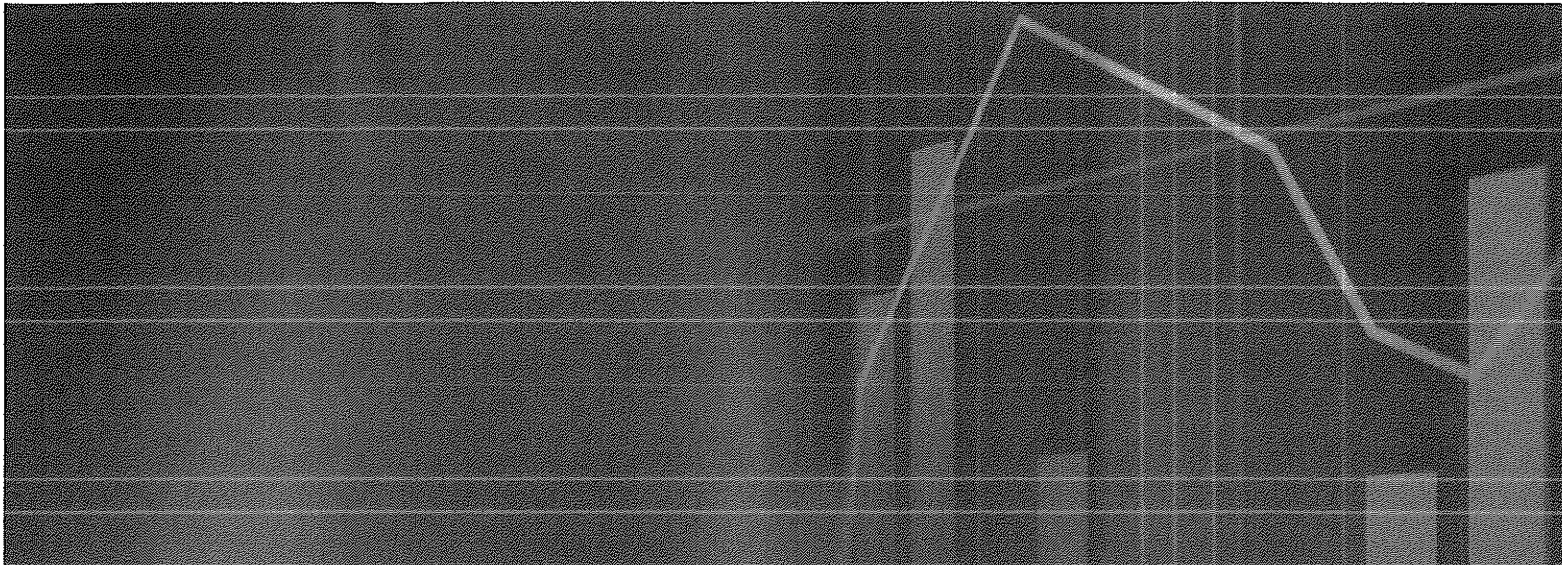


APPENDIX: DETECTING POWER-LAW DATA

DETECTING COURT DATA THAT FOLLOW A POWER LAW

This Appendix is a guide to detecting power-law curves in court data and is intended for court researchers, statisticians, and anyone else working directly with the data.

We describe two approaches to detecting power-law distributions: the visualization and the fit-test-compare approach. Which one to use depends on weighing a tradeoff. The visualization approach is simple but more error prone and susceptible to diagnosing a power law where none exists. The fit-test-compare approach is more complex but more rigorous, requiring stronger evidence to establish a power law.

The Visualization Approach

The visualization approach involves little more than replotting the data on a log-log plot. If the data fail to form a straight line, it does not follow a power law. Assuming we have already measured our variable of interest (e.g., restitution assessed) and graphed the frequency distribution, we take the logarithm of the values on the x and y axes to create a log-log plot. Why do this? A power law is described by,

$$p(x) \propto \frac{C}{x^{\alpha}}.$$

Letting y = p(x), taking the logarithm of each side, and using the power rule of logarithms, we get

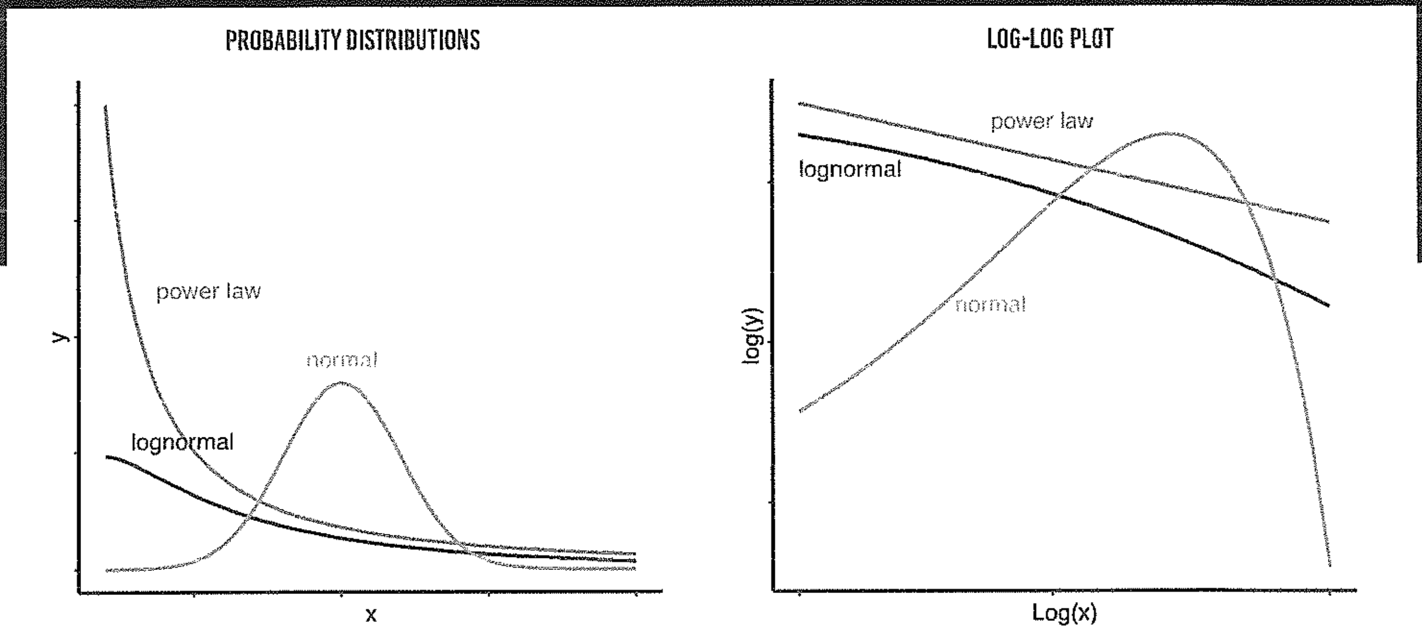
$$\log(y) = -\alpha \log(x) + \log C.$$

But notice that this has the same form as the equation of a line, y = mx + b, where m is the slope and b is the y-intercept:

$$\underbrace{\log(y)}_{y} = \underbrace{-\alpha}_{m} \underbrace{\log(x)}_{x} + \underbrace{\log C}_{b}$$

This tells us that if the data follows a power law, plotting log(y) on the y-axis against log(x) on the x-axis—a log-log plot—should yield a straight line with slope $-\alpha$. If the data do not obey a power law, then the data will not follow a straight line.

SUPPLEMENTAL FIGURE 1.



Probability distributions for the normal, lognormal, and power law (left panel). Log-log plots of the same distributions (right panel). The orange curve on the log-log plot is inconsistent with a power law. The blue and red lines are consistent with a power law, but only the blue line comes from an actual power-law distribution.

This approach is simple but not without drawbacks. First, it involves a subjective judgment about how well the data form a straight line. Some distributions suspected to follow a power law based on visualization do not in fact obey a power law when examined with quantitative, statistical tests (Broido and Clauset, 2019; Clauset, Shalizi, and Newman, 2009; Stumpf and Porter, 2012). Additionally, few empirical data sets follow a power law for all values of x, and a visualization provides no clear way of deciding where power-law behavior begins and ends in a data set. Not only that, one can easily be misled in their judgment about a straight line by confirmation bias, the tendency to see what one wants or expects to see.

Second, a straight line on a log-log plot does not uniquely identify power laws. Other models besides power laws generate straight lines in a log-log plot (see Supplemental Figure 1, right panel). A more objective approach is no help here: statistically analyzing the log-log plot (e.g., with least squares linear regression) would also fail to rule out other models that follow a straight line. A straight line is necessary but not sufficient for a power law. In other words, if the data do not fall on a straight line, we can assert with confidence that the data are not power-law abiding. However, if the data do fall on a straight line, we can only say the data are consistent with a power law, as well as with other distributions. The visualization approach allows us to reject but not confirm a power law.

Another visualization approach, the Pareto Q-Q plot, is not covered here but is a variation on the normal Q-Q plot. Software packages are available that help generate various Q-Q plots (e.g., Reynkens, 2020). The Q-Q plot can be used to visually compare power laws to different models, but, like the log-log plot, does not involve any formal quantitative tests.

The Fit-Test-Compare Approach

For those who dream about fitting power-law distributions to court data, testing the "goodness" of the fit, and comparing the fit of power laws to other probability distribution models, there is the fit-test-compare approach (Clauset, Shalizi, and Newman, 2009). The first step involves estimating parameters. For example, if we wanted to fit a straight line, $y = mx + b$, to a set of data, we would need to estimate the parameter values, m and b. In the same way, the power-law probability function is a general equation with its own parameters to be estimated. The first step asks the question, if the data followed a power law, what parameter values would produce the best fit to the data?

Although the power-law model is fit to the data in step one, it does not tell us whether the model provides a good fit. Step two asks, how plausible is the power-law model for the data? Statistical tests can answer how likely the data came from a power-law distribution compared to chance.

Even if the power law provides a plausible match for the data at step two, the power law might not be the only good match for the data. Step three asks, does the power-law model fit the data better than other models? The logic is that if the best-fit power-law model at step one is a plausible fit for the data at step two and if it also fits the data better than other models at step three, we would have strong quantitative evidence for a power law.

Although the fit-test-compare approach is more rigorous than the visualization approach, it is more complex. Fortunately, computer code (including packages for Matlab, Python, and R) for the fit-test-compare approach is available. To get started, see the following:

Matlab: https://aaronclauset.github.io/powerlaws/
(Perma link: https://perma.cc/Q3B9-PJ58)

Python: https://github.com/jeffalstott/powerlaw
(Perma link: https://perma.cc/35VL-YWEB)

R: https://github.com/csgillespie/poweRlaw
(Perma link: https://perma.cc/Z7Y5-YXZF)

Does It Matter Whether Court Data Follow a Power-Law Distribution vs. Other Heavy-Tailed Distributions?

For the practical purposes of the courts, often it will not matter whether data follow a power-law or other heavy-tailed distribution. After all, power laws are interesting to courts *because of their heavy-tails* and the alternative analyses they invite. Under these looser conditions, the log-log plot from the visualization approach may be sufficient for diagnosing "power law-like" behavior, even if it cannot guarantee the data obey a power law. In contrast, researchers working with formal theories and others needing more accurate diagnostics will likely benefit from the fit-test-compare approach, which can better distinguish between power laws and related distributions.

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Katrina Heinri

Self-Represented Litigation Network Resource Guide

Use of Title IV-D Child Support Program Resources For Court Based Self-Help Services

Original Authors: Lee D. Morhar & Richard Zorza

Revised December 2017 by: Lee D. Morhar, Karen Lash, Katherine Alteneder and Renee Danser

This report was developed under a grant (Grant Number SJI-12-P-086, Promoting Use of Child Support IV-D Resources to Provide Self-Help Assistance) from the State Justice Institute to the National Center for State Courts, which is the host of the Self-Represented Litigation Network. Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute, the National Center for State Courts, or participants in the SRLN.

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requirements for receiving funding, and must contain a provision that the entity receiving Title IV-D funding will comply with all federal laws and requirements as a condition for receiving the funding.

See Appendix 5 for Sample Cooperative Agreements.
See Appendix 8 for a Model Cooperative Agreement.

V. Accounting Requirements

This section provides an overview of federal accounting requirements. Courts should work closely with the IV-D agency when implementing accounting procedures to insure compliance with all state and federal requirements. In particular, courts that have staff who work both on reimbursable IV-D activities and on other non-reimbursable activities should work with the IV-D agency to secure approval from the HHS Regional Office for the methodology used to track the time of those employees.

For state courts that are not familiar with federal grant accounting, the federal accounting requirements can seem complicated and daunting. Implementing the accounting procedures is doable. Many smaller entities including nonprofit community service providers comply with similar accounting requirements. Several state court systems have successfully implemented accounting systems that comply with the federal requirements. The key is to work with the State IV-D agency when setting up the accounting systems to ensure that they comply with federal law. States that have accounting systems in place that comply with the federal requirements are also good resources.

Accounting requirements for federal funding are governed by 2 CFR 225, "Cost Principles for State, Local, and Indian Tribal Governments," (formerly OMB Circular A-87) which establishes principles for allowable costs for state, local, and tribal governments. It provides exhaustive information on allowable costs and accounting requirements.

2 CFR 225[24] permits the reimbursement of direct costs and indirect costs. Typical direct costs chargeable to federal awards are:

A. Compensation of employees for the time devoted and identified specifically to the performance of those awards;

B. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards;

C. Equipment and other approved capital expenditures; and

D. Travel expenses incurred specifically to carry out the award.

---

[24] See link to 2 CFR 225 in Appendix 6.

Employees who work part time on IV-D activities and part time on other non-reimbursable activities must keep timesheets documenting their time on each of the activities *unless the federal OCSE approves another method* for determining the cost allocation of the employee's time. Other methods may include case counting or time studies for specific periods of time on a monthly or quarterly basis.

Indirect costs are overhead costs incurred by the grantee agency (court) or the cost of services provided by one agency to another within a governmental unit. Some examples of indirect costs include information technology (IT) support, human resource services such as personnel recruiting and administration of employee benefits, janitorial services, and security costs.

To claim indirect costs, the courts are required to calculate an indirect cost rate based on a formula approved by the federal government. Indirect cost rates must be approved by the IV-D agency and OCSE. To avoid the complex indirect cost rate proposal process, courts may opt instead to charge up to ten percent (10%) of the direct costs incurred by the court.

2 CFR 225 contains detailed explanations of direct and indirect costs and the requirements for charging costs against Title IV-D funding. Courts that receive Title IV-D funding should work closely with their IV-D agency when setting up accounting systems and documentation requirements for Title IV-D funded costs.

California's AB 1058 Child Support Commissioner and Family Law Facilitator Program Invoice Reporting Instructions and Family Law Facilitator accounting forms are found in Appendix 7.

VI. Reporting and Record-Keeping Requirements

2 CFR 225 outlines federal accounting related record-keeping requirements for audit purposes. There may also be state record-keeping and reporting requirements. Depending on the services provided by the self-help services, the IV-D agency may need the court to keep statistics to comply with federal reporting requirements. The cooperative agreement between the courts and the IV-D agency should specify all record-keeping and reporting requirements.

OCSE is required to conduct periodic audits of the "adequacy of financial management of the state IV-D program, including assessment of whether the funds to carry out the state program are being adequately expended, and are properly and fully accounted for...." [25] The audits will generally include a review of court based programs and expenditures funded with Title IV-D money through a cooperative agreement. To avoid audit

[25] 45 C.F.R. 305.60 and 42 U.S.C. 652(a)(4)(C)(ii)

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[25] 45 C.F.R. 305.60 and 42 U.S.C. 652(a)(4)(C)(ii)

Self-Represented Litigation Network Resource Guide

Use of Title IV-D Child Support Program Resources For Court Based Self-Help Services

Original Authors: Lee D. Morhar & Richard Zorza

Revised December 2017 by: Lee D. Morhar, Karen Lash, Katherine Alteneder and Renee Danser

This report was developed under a grant (Grant Number SJI-12-P-086, Promoting Use of Child Support IV-D Resources to Provide Self-Help Assistance) from the State Justice Institute to the National Center for State Courts, which is the host of the Self-Represented Litigation Network. Points of view expressed herein are those of the authors and do not necessarily represent the official position or policies of the State Justice Institute, the National Center for State Courts, or participants in the SRLN.

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See Appendix 5 for Sample Cooperative Agreements.
See Appendix 8 for a Model Cooperative Agreement.

V. Accounting Requirements

This section provides an overview of federal accounting requirements. Courts should work closely with the IV-D agency when implementing accounting procedures to insure compliance with all state and federal requirements. In particular, courts that have staff who work both on reimbursable IV-D activities and on other non-reimbursable activities should work with the IV-D agency to secure approval from the HHS Regional Office for the methodology used to track the time of those employees.

For state courts that are not familiar with federal grant accounting, the federal accounting requirements can seem complicated and daunting. Implementing the accounting procedures is doable. Many smaller entities including nonprofit community service providers comply with similar accounting requirements. Several state court systems have successfully implemented accounting systems that comply with the federal requirements. The key is to work with the State IV-D agency when setting up the accounting systems to ensure that they comply with federal law. States that have accounting systems in place that comply with the federal requirements are also good resources.

Accounting requirements for federal funding are governed by 2 CFR 225, "Cost Principles for State, Local, and Indian Tribal Governments," (formerly OMB Circular A-87) which establishes principles for allowable costs for state, local, and tribal governments. It provides exhaustive information on allowable costs and accounting requirements.

2 CFR 225[24] permits the reimbursement of direct costs and indirect costs. Typical direct costs chargeable to federal awards are:

A. Compensation of employees for the time devoted and identified specifically to the performance of those awards;

B. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards;

C. Equipment and other approved capital expenditures; and

D. Travel expenses incurred specifically to carry out the award.

---

[24] See link to 2 CFR 225 in Appendix 6.

Employees who work part time on IV-D activities and part time on other non-reimbursable activities must keep timesheets documenting their time on each of the activities *unless the federal OCSE approves another method* for determining the cost allocation of the employee's time. Other methods may include case counting or time studies for specific periods of time on a monthly or quarterly basis.

Indirect costs are overhead costs incurred by the grantee agency (court) or the cost of services provided by one agency to another within a governmental unit. Some examples of indirect costs include information technology (IT) support, human resource services such as personnel recruiting and administration of employee benefits, janitorial services, and security costs.

To claim indirect costs, the courts are required to calculate an indirect cost rate based on a formula approved by the federal government. Indirect cost rates must be approved by the IV-D agency and OCSE. To avoid the complex indirect cost rate proposal process, courts may opt instead to charge up to ten percent (10%) of the direct costs incurred by the court.

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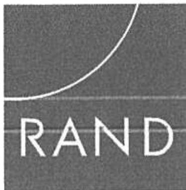
Katrina Heinrich



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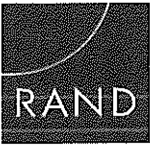

Institute for Civil Justice

Who Pays for Justice?

Perspectives on State Court System Financing and Governance

Geoffrey McGovern, Michael D. Greenberg

The research described in this report was supported by pooled contributions to the RAND Institute for Civil Justice, a program of RAND Justice, Infrastructure, and Environment.

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Preface

In 2011, the RAND Institute for Civil Justice conducted a broad review of the impact of the financial crisis on the civil justice system. One major area of inquiry involved funding for state courts. Widespread anecdotal accounts suggest that state court funding has significantly dropped from precrisis levels in many parts of the country. Moreover, given broader fiscal problems and trends toward government austerity, it now appears unlikely that lost resources will be restored in the near future. What funding cuts will eventually mean for the function of the state courts, and for litigants who depend on access to those courts, remains to be seen.

Subsequently, RAND launched a new study to help understand the variation that exists in the finance and administrative governance of state court systems across the country. Our aim is to investigate and describe state court systems' funding mechanisms, corresponding elements in the systems' budgetary accounting, and the systems' management structure as it relates to generating and spending resources. Such information could be key to understanding what publicly reported budget numbers actually mean for the state courts. In turn, that understanding will be vital to tracking the financial health of state court systems in the future, and to future studies seeking to gauge the impact of judicial branch funding levels on the work that state courts actually carry out.

This work should be of interest to policymakers, court administrators, and other stakeholders concerned about ensuring high levels of access to justice through the state courts and the long-term stability of the courts as an institution of government. Previous RAND research in this area yielded the report *An Early Assessment of the Civil Justice System After the Financial Crisis: Something Wicked This Way Comes?* (Greenberg and McGovern, 2012).

RAND Institute for Civil Justice

The RAND Institute for Civil Justice (ICJ) is dedicated to improving the civil justice system by supplying policymakers and the public with rigorous and nonpartisan research. Its studies identify trends in litigation and inform policy choices concerning liability, compensation, regulation, risk management, and insurance. The institute builds on a long tradition of RAND Corporation research characterized by an interdisciplinary, empirical approach to public policy issues and rigorous standards of quality, objectivity, and independence.

ICJ research is supported by pooled grants from a range of sources, including corporations, trade and professional associations, individuals, government agencies, and private foundations. All its reports are subject to peer review and disseminated widely to policymakers, practitioners in law and business, other researchers, and the public.

The ICJ is part of RAND Justice, Infrastructure, and Environment, a division of the RAND Corporation dedicated to improving policy and decisionmaking in a wide range of policy domains, including civil and criminal justice, infrastructure protection and homeland security, transportation and energy policy, and environmental and natural resources policy.

Questions or comments about this report should be sent to the project leader, Geoffrey McGovern (Geoffrey_McGovern@rand.org). For more information on the Institute for Civil Justice, see http://www.rand.org/icj or contact the director (icjdirector@rand.org).

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Summary

In the aftermath of the financial crisis of 2008, state resources, such as tax revenue from real estate transactions, business deals, sales taxes, and similar economic activities, fell. As part of a study whose report was released in 2012 (Greenberg and McGovern, 2012), we sought to understand the extent of the financial crisis' effects on the civil justice system, including cuts to state court annual operating budgets. What we found, however, was that court annual reports documenting the effect of the crisis seemed to be somewhat incomplete. At times, the narratives they told about court resources did not always match the accounting figures provided. Moreover, the material contained in the annual reports suggested that a more complicated story is at work concerning how the courts operate, where they get their operating budgets, and how they track those resources.

RAND researchers subsequently sought to gain a better understanding of the way state courts are funded. In part, our goal in undertaking this effort was simply to explore how a handful of illustrative states have funded their judiciaries, the corresponding challenges that they have faced, and the administrative and budgetary solutions officials have adopted in those states to manage the tough times. Also, part of our goal was to identify a set of basic questions that any outside observer of state courts would need to ask in order to understand the meaning of financial disclosures from a particular state and the basic anatomy of its funding mechanism.

This report describes five very different state court systems (California, Florida, Massachusetts, Ohio, and Utah) and offers a template of questions for those wishing to further investigate state court system financing. Such a template can help articulate basic dimensions of variance that any outside observer would need to recognize and describe in order to really understand the mechanics of funding in any particular state. To generate this template, we conducted cross-state research through annual reports and other documentation when available. In addition, we held in-depth interviews with court administrators, focusing on the mechanics of finance and governance in specific court systems. We also interviewed several judges who provided valuable long-term perspectives on changes in court financing and administration in their states over time. This work should be of interest to policymakers, court administrators, and other stakeholders concerned about ensuring high levels of access to justice through the state courts and the long-term stability of the courts as an institution of government.

Key Findings

Not surprisingly, our examination suggests that today's state court systems deploy a wide range of funding, accounting, and governance strategies, which we describe in this section.

State and County Revenue Streams Vary Widely

Perhaps the most basic dimension of variance in state court system financing involves the degree to which the trial courts are funded at the county level versus at the state level. A state within which the trial court system is entirely financed and operated at the state level, with little or no involvement by counties, could operate as a centralized mechanism for collecting and distributing resources and for allocating those resources in a manner not dictated by the income constraints of individual counties. A state within which the trial courts are primarily financed and organized at the county level, with only limited involvement from state government, has the potential advantage of offering greater local control (or *home rule*) over resources. In such states, the counties have more authority to determine the level of funding for their own courts and (perhaps) to set local priorities for how that funding will be used. On the other hand, a county-based financing model also has the potential drawback of contributing to inequality across counties in what resources will be available for use by the courts. As summarized in Table S.1, most of the states examined fell somewhere between the extremes of state- and county-level funding for trial court systems.

Table S.1. State- and County-Level Funding of Trial Court System, by State

State	Financing for Trial Courts	Note
Calif.	Mixed state and county funding	California shifted emphasis from county to state funding in the 1990s.
Fla.	Mixed state and county funding	Florida shifted emphasis from county to state funding by state constitutional amendment in 1998.
Mass.	State funding	Massachusetts trial courts are purely state funded.
Ohio	Emphasis on county funding	Interviews suggested that county-level funding is not centrally tracked and that state officials cannot account for it.
Utah	Emphasis on state funding	The state provides all funding for district-level trial courts. A separate county and municipal justice court system (covering low-level misdemeanors and small claims) is county funded.

Funded Services Vary Between State Courts

Deciding the defining boundaries for what constitutes the state court system in terms of services offered and expenses covered is vital, both for operating purposes and for budgeting purposes. Some basic elements, such as the operation of the trial courts and the salaries and benefits of judges, are fairly prototypical and are probably understood to be aspects of the court system (and of related costs) in every state. Some other elements may be less prototypical, such as court clerks, translators, social workers, and courtroom security personnel. These elements involve people and work processes that are closely connected to the justice system but nevertheless regarded in some states as distinct groups of personnel and operating activities with separate associated revenue streams and budgeting oversight. There are also some elements that

are usually associated with court system functioning but that tend not to be regarded as a part of the court system for budgetary purposes in many states. Examples include the offices of the public defender, legal aid, various state and local prosecutors, and law enforcement authorities.

Table S.2 summarizes several elements across the states. Even trying to put labels on what is included in the state court system within a given state can become ambiguous and complicated in such states as Utah (where the operation of some trial courts, but not others, are locally funded) or Ohio (where some security personnel, but not others, are directly employed by the courts).

Table S.2. Categories of Activity Included in the State Court System, by State

State	Trial Court Security	Trial Courthouse Maintenance	Trial Courthouse Construction	Judicial Retirement
Calif.	Included	Included	Separate	Included
Fla.	Included	Excluded	Excluded	Included
Mass.	Included	Included	Excluded	Excluded
Ohio	Mixed	Mixed	Mixed (but often funded at county level)	Unclear
Utah	Mixed	Mixed	Mixed	Mixed

How State Courts Spend Fee Revenue Varies Significantly

Courts in most states collect a range of fines and fees in the course of their operations, and the structure and magnitude of revenue generated varies significantly from state to state. So, too, does what happens to fee and fine revenue once generated. In some states, a substantial proportion of such revenue remains within the state court system, either captured in accounts dedicated to paying for specific categories of expenditure within the court system or funneled into some kind of broader account or fund for the court system as a whole. In other states, most court system fee revenue has to be remitted to the state's general fund (or sometimes to other state government funds or accounts), where the legislature can then use it for purposes wholly unrelated to the court system. In such instances, the court system then depends on subsequent legislative appropriations for its funding, which may be unrelated to any revenue remitted out of the court system based on collected fees and fines. Regardless of the details, a significant financing distinction separates states that permit their court systems to retain control over some portion of court-generated fee revenue from states that do not. Table S.3 summarizes findings in this area.

Table S.3. What Happens to Court System Fee Revenue in Selected States?

State	How Much Fee Revenue Is Raised?	Where Does the Fee Revenue go?
Calif.	Unclear	A mix of purpose-restricted court system accounts and funds; the state general fund
Fla.	Approximately $1 billion estimated in FY 2010	Divided among the SCRTF, other restricted-use funds (some unrelated to the court system), and the state government's general fund
Mass.	~$110 million in 2011	50%+ to the state government, with the remainder retained by the court system
Ohio	Unclear	Mostly to Ohio counties
Utah	Estimated at $40 million based on 2013 court system operating budget	Approximately half to the state government, with the remainder allocated to restricted accounts on behalf of the court system

NOTE: FY = fiscal year. SCRTF = State Courts Revenue Trust Fund.

State Court Systems Vary in Their Flexibility to Carry Forward Resources or Revenue

Another state court system financing issue involves the timing of revenue recognition by the state court systems and the degree of flexibility in their being able to draw on funds (or to bank unused funds) over time. The representatives who spoke with us raised this set of finance and timing issues in several different ways. For Massachusetts, it was mentioned that timing and cash-flow issues associated with retained fee revenue play a meaningful part in the operational management of the courts and sometimes present a challenge in ensuring that available funds are sufficient to meet operating expenses and payroll on a month-to-month basis. In Utah, one of the strengths of the state court system involves having financial carry-forward authority, which allows the system some autonomy to carry funds that are allocated but not spent in a given fiscal year forward into the following year. Florida, by contrast, created the SCRTF in 2009 to try to ensure that a dedicated pool of funding for the courts, drawing on fee and fine revenue, would be available to insulate them from volatility in the state's general revenue base. Unfortunately, dependence by the SCRTF on foreclosure-related revenue led to shortfalls in available court system funds beginning in late 2010 and early 2011. As a result, the system had to seek out millions of dollars in emergency funding and cash transfers from the state legislature, beginning in 2011. For California, several interviewees described a more serious retained revenue and timing issue. In recent years, the California court system reportedly used its operating reserves (as well as the ability to draw on and transfer assets from other restricted funds, particularly for courthouse construction) in order to soften some of the impact from cuts in state appropriations. In 2012, however, the governor reportedly instituted a new policy forcing the trial courts to spend down most or all of the existing reserves and limiting the size of future reserves to 1 percent the annual budget allocation. Interviewees told us that the effect would be to eliminate much of the flexibility of the court system in responding to annual volatility in its revenue, while creating new challenges for the courts in meeting their operating cash-flow targets, in the event of unforeseen budget shortfalls in the future.

revenue once generated. In some states, a substantial proportion of such revenue remains within the state court system, either being captured in accounts dedicated to paying for specific categories of expenditure within the court system or funneled into some kind of broader account or fund for the court system as a whole. By contrast and in other states, most court system fee revenue has to be remitted to the state's general fund (or sometimes to other state government funds or accounts), from which the legislature can then use it for purposes wholly unrelated to the court system. In such instances, the court system then depends on subsequent legislative appropriations for its funding, which may be unrelated to any revenue remitted out of the court system based on collected fees and fines. Regardless of the details, a significant financing distinction separates states that permit their court systems to retain control over some portion of court-generated fee revenue from states that do not.[13] From all of the foregoing, several basic descriptive questions arise concerning how particular states deal with fee and fine revenue generated by their court systems. In particular, may the courts to retain (or bank) any of the revenue to cover their own expenses? And what fraction of court system expenditures does this actually cover? Table 2.3 provides a summary of the answers for the five pilot states.

Among the states we investigated for this pilot, Massachusetts and Ohio represent two ends of the spectrum with regard to their disposition of court system fee revenue. For Massachusetts, interviewees told us that, in FY 2011, the state trial court system generated about $110 million in fees, compared with operating costs of about $545 million. Interviewees further told us that less than 10 percent of funding for the trial courts (and none of the funding for the appellate and supreme courts) derives from court system fee revenues.[14] On further discussion, we learned that the Massachusetts courts may retain a significant portion of the general fee revenue that they collect, subject first to meeting a "floor" of fee revenue (set by the legislature; the courts then remit the floor amount to the state's general fund). In context, interviewees observed that dependence by the Massachusetts trial courts on retained fee revenue has a serious downside, in that it makes the court system vulnerable to financial shortfall when the system fails to meet expectations for the amount of fees that it collects.[15] As a result, we were told, there is an advantage to the system in receiving most of its funding through legislative appropriations (based on planned expenditures) and, in turn, remitting the majority of the court system's fee revenues back to the state.

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[13] Among the potential implications is the timing of recognition of court system revenue, which, in some states, can occur on an ongoing basis in which the courts retain fee revenue but that is likely to be more restricted and episodic in court systems that depend exclusively on appropriated funds from the state legislature.

[14] These numbers are loosely consistent with fiscal information provided in the annual court system reports from Massachusetts for FYs 2010 and 2011, which indicate approximately $45 million of retained fee revenue on roughly $578 million of total revenue during FY 2011. See Supreme Judicial Court of Massachusetts, 2011, 2012.

[15] A problem that interviewees told us actually manifested in Massachusetts when anticipated court system revenue from foreclosure filing fees dried up, during 2010–2011.

By contrast with the practice in Massachusetts, we discovered that basic information on Ohio's court system fee revenue and where it goes is difficult to obtain.[16] Interviewees told us that "the vast majority of filing fees go back to [the] counties" and that there is an unfulfilled need in Ohio to "discover how much of a revenue generator the courts really are." Although interviewees suggested that some Ohio counties might use a portion of the fee revenue to support the operation of their local courthouses, they also observed that there is no consistent, state-level tracking of whether or how much of the fee revenue is being used for this purpose.

The court system fee revenue picture in Utah is clearer. There, according to our interviews, the fee revenue collected by the courts represents approximately 30 percent of the annual state court system's operating budget. The majority of that revenue is then remitted back to state government and to the state's general fund. Some of the fee revenue, however, is segregated in restricted accounts and later appropriated or allocated back to the court system, sometimes to cover specific categories of related cost. In total, we were told that fee revenues that are retained in purpose-restricted accounts and appropriated back to the Utah court system add up to approximately 15 percent of the state court system's annual budget.

In Florida, the state court system generates considerably more fee and fine revenue than the system in Utah does. The Florida courts generated approximately $1 billion in such revenue according to the most recent annual estimate—an amount in excess of the annual recorded expenditures for both the Florida state court system and the closely affiliated clerks-of-court system. This said, the revenue that is generated by the Florida courts is remitted into a series of accounts and split among trust funds dedicated to the state court system, to the clerks-of-court system, and to state general revenue and other agency trust funds. In recent years, this has meant that several hundred million dollars of court-generated fee revenue in Florida has not been dedicated to covering costs of the court system, while appropriations from the state's general fund has instead covered a significant fraction of the actual cost of the state court system. In striking contrast to the funding concern we heard expressed about Massachusetts (about volatility in fee revenues as a potential risk factor for court system funding), we heard the opposite concern expressed about Florida—namely, that volatility in state general revenue (as during an economic downturn) represents a potential risk factor to court system funding in the state. Interviewees noted that the relative risk of depending on fee-based revenue stream, as opposed to a tax-based revenue stream, depends partly on how much the courts collect annually in fees and how that amount compares with annual court system expenditure levels.

Finally, interviewees told us that California's court system's fine and fee revenue had increased in the past decade, although we were unable to pin down the specific amount of annual

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[16] The annual court system reports for Ohio notably do not include information on the collection of fee revenues by the courts. See, for example, Supreme Court of Ohio, 2011.

court system revenue collection in recent years.[17] The revenue collected by the California courts is reportedly remitted to a mixture of purpose-dedicated accounts (some of which are tied to the state court system), the state's general fund, and a "spider web of distributions," with some of the revenue being shared out at the city and county levels.[18] However, the California court system reportedly still depends on legislative appropriations in order to access money from many of the purpose-dedicated funds. We were told that increases in fee and fine revenue in the past decade, together with corresponding increases in dedicated accounts tied to financing the state court system, had resulted in a dramatic reduction in the proportion of the court system's budget that was funded by a draw from the state's general fund, down from a historical apex greater than 50 percent of the annual total budget, to a more recent level of approximately 20 percent.[19] Interviewees observed that this drawdown reflects a pivot away from state taxpayer funding for the court system and toward a greater reliance on financing the system through user fees.

Table 2.3. What Happens to Court System Fee Revenue in Selected States?

State	How Much Fee Revenue Is Raised?	Where Does the Fee Revenue Go?
Calif.	Unclear	A mix of purpose-restricted court system accounts and funds, the state's general fund, and a "spider web of distributions"
Fla.	Approximately $1 billion estimated in FY 2010	Divided among SCRTF, other restricted-use funds (some unrelated to the court system), and the state government's general fund
Mass.	~$110 million in 2011	50%+ to state government, with remainder retained by the court system
Ohio	Unclear	Mostly to the counties
Utah	Estimated at $40 million based on 2013 court system operating budget	Approximately half to state government, with remainder allocated to restricted accounts on behalf of the court system

NOTE: SCRTF = State Courts Revenue Trust Fund.

How Much Flexibility Do State Court Systems Have to Carry Forward Resources or Revenue from One Time Period to Another?

Another state court system financing issue that interviewees raised about several of the states involves the timing of revenue recognition by the state court systems and the degree of flexibility in their being able to draw on funds (or to bank unused funds) over time. It is easy to imagine a hypothetical state court system that depends on an annual legislative appropriation for its operating funds. In an idealized scenario, such a system might receive one lump-sum payment

[17] Our interview respondents were unable to tell us with specificity how much fee revenue the courts collect. Moreover, as far as we can determine, California does not publish descriptive statistics on court fee and fine revenue either.

[18] For more detail, see Overholt, 2012. See also Overholt et al., 2006.

[19] We were unable to reconcile this statement with an official FY 2011 summary of California court system funding sources, which did not specifically identify a state general fund as one of the enumerated sources (Overholt, 2012).

per year, which is then spent down over the course of time. Such a system might likely be "cash rich" during the early part of its fiscal year and "cash poor" during the latter part of the year. Depending on the accuracy of its expenditure projections, such a system might also need either to seek additional appropriations or to curtail its costs toward the end of the fiscal year. Put another way, income to state courts that derives entirely from an annual appropriations process and the state's general revenue fund might be naturally "lumpy" and might or might not correspond well to the ordinary cadence of court system spending, with the result of creating cash shortfalls for the court system at some points during the year. By contrast, when a state court system relies on dedicated trust accounts, with more of the funding flowing from court-collected fee and fine income and with greater court system authority and autonomy in determining when and how to draw money from the dedicated accounts, then, in principle, the likelihood of running into calendar-based cash shortfall problems should be reduced.[20]

Interviewees raised this set of finance and timing issues in several different ways. For Massachusetts, it was mentioned that timing and cash-flow issues associated with retained fee revenue play a meaningful part in the operational management of the courts and sometimes present a challenge in ensuring that available funds are sufficient to meet operating expenses and payroll on a month-to-month basis. For Utah, interviewees told us that one of the strengths of the state court system involves having "financial carry-forward authority," which allows the system some autonomy to carry funds that are allocated but not spent in a given fiscal year into the following year. In a different vein, for Florida, interviewees noted that the state had created a new SCRTF in 2009 to try to ensure that a dedicated pool of funding for the courts, drawing on fee and fine revenue, would be available to insulate them from volatility in the state's general revenue base.[21] According to official materials published on the Florida court system's website, the SCRTF is funded primarily from several different streams of fee and fine revenue generated by the courts. Unfortunately, dependence by the SCRTF on foreclosure-related revenue led to shortfalls in available court system funds beginning in late 2010 and early 2011. As a result, the system had to seek out millions of dollars in emergency funding and cash transfers from the state legislature, beginning in 2011. In commenting on the shortfall in SCRTF funding, the chief justice of the Florida Supreme Court notably observed that "recurrent cash flow problems hinder court efficiency and can potentially disrupt day-to-day court operation" and that, in consequence,

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[20] An analogy to household finance readily illustrates the logic of why a dedicated trust account with reserve funding can help to prevent short-term cash-flow problems. Imagine two households. The first lives from paycheck to paycheck, and it pays for all of its expenses with cash. The second household has a checking account with two months of reserve salary on deposit. When the first household runs short of cash to meet expenses, it either has to stop spending until the next paycheck arrives or has to find some other funding source from which to borrow money (very quickly). By contrast, the second household can draw money from its reserve account when needed and then pay back the reserve with its next paycheck. The second household clearly has more flexibility to meet short-run expenses than the first, even assuming that both households receive the same paycheck and that they generate similar expenses.

[21] See also Florida Courts (undated [b]) on this point.

"a more diversified and resilient funding stream formula is necessary" in supporting both the SCRTF and the funding of the court system in Florida.

For California, several of our interviewees described a more serious retained revenue and timing issue. We were particularly told that the trial court system in California had been given authority in 1997 to hold unspent fund balances in reserve from year to year, a practice that strengthened the financial independence of the courts and their ability to weather the impact of occasional budget shortfalls and appropriations cuts. In recent years, the California court system reportedly used its operating reserves (as well as the ability to draw on and transfer assets from other restricted funds, particularly for courthouse construction) to soften some of the impact from cuts in state appropriations. In 2012, however, the governor reportedly instituted a new policy forcing the trial courts to spend down most or all of the existing reserves and limiting the size of future reserves to 1 percent of the state allocation that the trial courts received.[22] Interviewees told us that the effect would be to eliminate much of the court system's flexibility in responding to annual volatility in its revenue, while creating new challenges for the courts in meeting their operating cash-flow targets in the event of unforeseen budget shortfalls in the future.

How Many Line Items Are in the Budget for the General Fund–Financed Court Systems?

One of the basic accounting observations that can be made concerning any state court system involves the extent to which state appropriations and funding are given to that system in a flexible form, as opposed to being purpose-dedicated across several (or many) specific accounts. In particular, we were told in interviews that some state legislatures provide for many more court system funding line items than others do—a state practice that can thereby reduce a court system's flexibility and autonomy in determining how to allocate appropriated funds on an operating basis. For Massachusetts in particular, interviewees observed that recent consolidation in the state budgeting process had reduced the state court system budget down from 153 line items to 17 line items, thereby making it easier for the system to deal with potential funding shortfalls going forward. For Ohio, interviewees told us that "the number of state budget line items will convey a lot about the flexibility of the state court system in managing its own funds." According to the most recent iteration of the Ohio executive budget, there appear to be ten budget line items connected with the judiciary or supreme court, together with several additional budget line items dedicated to the Ohio Judicial Conference and the Court of Claims of Ohio (see Ohio Office of Budget and Management, 2011). For Utah, we were told that one of the major financial strengths of the state-run court system involves the fact that the Utah state budget involves only three corresponding line items, dedicated to court system personnel and operating

[22] The governor adopted the new policy in the context of sweeping state efforts to address an acute fiscal crisis in 2012. Reduced funding autonomy to the courts was only a minor aspect of broader fiscal reforms adopted by California during 2012 and 2013.

costs; court system building contracts and leases; and jury, witness, and interpretive fees, respectively. Because the lion's share of state funding for the court system in Utah is concentrated in a single budgetary line item, interviewees told us, the court system there has a lot of flexibility and control over allocating how those dollars are actually spent.

Who Records State Court System Accounting Information, and What Information Is Being Reported?

Finally, another basic observation with regard to state court system accounting is that there is often more than one source of accounting information corresponding to various aspects of appropriations, revenue, and expenditures for a particular state court system. In their annual comprehensive budgetary reports, states typically record enacted legislative appropriations, in particular, including the appropriations made to their court systems. The official state budgets may or may not encompass other sources of nonstate funding to the courts, particularly in those states that have structured their court systems to depend heavily on county-level funding. In the latter, county government entities and administrators may instead track county-level funds and appropriations, and that information may or may not be aggregated, tracked, and disclosed at the state level. Meanwhile, more-detailed tracking of actual expenditures undertaken within a state court system and of revenues generated by that court system are typically undertaken by the administrative and supervisory offices of the courts and summarized in an annual report published either by the state supreme court or the administrative authority for the state court system (with some variation in the responsible reporting entity from state to state). The details of what accounting information the annual report formally discloses and how this corresponds to the more-detailed accounting that the operational management of the court system undertakes varies from state to state.

One implication of all of the foregoing is that any simple summary of court system budget information for a given state is likely to omit some important complexities with regard to who is compiling that information and what is being included. Among the states whose representatives spoke with us, several referred us to the official, published state budget as the best source of information on appropriations to the courts. However, in several of the same states, we also learned that (1) the state budgets do not account for county-level funding, which is nevertheless reportedly significant; and (2) the published state budgets themselves reflect a snapshot of the legislative appropriations process at a particular point in time and may not accurately reflect the ultimate amount of funding that the courts actually receive in a given year. Some of the basic variations in court system governance and architecture almost inevitably influence the more-detailed accounting that the state court systems undertake. Court system accounting is going to look different in states that rely more or less heavily on county-level funding; that are either more or less centralized in the administrative oversight and budgeting of the trial courts; that either do or do not outsource related court functions (e.g., security, clerk support) to other

government instrumentalities; and that do or do not have direct responsibility for funding capital infrastructure cost as a part of their operating budgets. These all represent basic questions about what is being accounted for that need to be understood in order for the details of summary balance sheets and income statements to have meaning. In a related vein, it is also noteworthy that state court systems also vary in the degree to which they track and publish details about the fee revenues that they generate, regardless of whether those fee revenues are actually retained by the courts or play much of a role in helping to fund them. Among the states whose representatives spoke with us, Florida is noteworthy for tracking and publishing detailed fee-revenue accounting disclosures on an annual basis, whereas several of the other states do not disclose this kind of accounting information, and Ohio apparently does not even track court-generated fee revenues in a systematic way across the state.

Discussion

One of the reasons that led us to decide to investigate state court system financing and accounting issues involved an earlier RAND study that looked broadly at the impact of the 2008 financial crisis on the U.S. civil justice system (reported in Greenberg and McGovern, 2012). As a part of that earlier study, we reviewed some of the basic annual court system accounting disclosures that several of the states had published. What we realized, more than anything else, was that, without having some deeper context for the information presented, it could be difficult for outsiders to fully understand what those accounting statements and disclosures actually mean. In part, the accounting statements raised questions for us about what was actually being paid for under the heading of "state court system" and whether the definition for this bucket tends to be consistent across the states. In part, the accounting statements raised questions about how money actually flows into and out of the state courts. We also questioned the implications of the financing mechanisms for subsequently tracking the money. The statements also raised some questions about the mechanics and conventions of the accounting disclosures themselves. Ultimately, answers to these sorts of questions are important for making sense out of state court system accounting disclosures and for using the disclosures to gauge changes in the resourcing level of the courts between states and over time. Particularly at a time when many state court systems across the country are facing austerity budgets and operational and staffing cuts, the ability to understand and measure their financial challenges depends on the foundation of their financing mechanisms and the clarity of their accounting disclosures.

One of our aims in this pilot was to develop a basic taxonomy of state court system financing, sufficient to ground a broad understanding of what the accounting statements and financial positions of the different court systems mean. By *taxonomy*, we are referring to a set of primary funding and organizational dimensions along which court systems vary and that, together, can be used to sort the systems into different categories or types, based on how their financing actually works. Much of our conversation with state court administrators and judges

was geared to exploring basic dimensions of variation in how the state systems are funded and which, among those dimensions, were consistently viewed as important by our interlocutors. In essence, what we were seeking to identify is a set of fundamental questions that anybody would need to ask to understand the basics for how courts are organized within a given state and how money passes into them and is spent by them because of this organization. According to our research, at least five descriptive dimensions emerged as being important:

- the breadth of what is defined as the state court system in terms of the court structure and the services included
- the degree to which the system depends on county-level funding
- the degree of emphasis on fee revenue and retention of that revenue by the courts
- the legislative constraint on court system funding imposed by the number of budgetary line items
- the court system's ability to carry forward reserves and to flexibly obtain access to funds to meet operating expenses over time.

Table 2.4 summarizes these financing dimensions and provides state examples and accounting implications that tie back to each dimension.

Table 2.4. Some Proposed Taxonomic Elements in State Court System Financing

Financing Dimension	Explanation	Example	Accounting Implication
Is *state court system* defined narrowly?	Some states include such elements as courthouse buildings, security, and clerks of court under this heading, while others do not.	Massachusetts treats courthouse construction and judicial retirement benefits discretely from the court system budget.	The things paid for as a part of the court system vary from state to state.
Is there an emphasis on county-level funding?	Counties play a major role in funding the courts in some states but not others.	The Ohio system relies on a heavy funding role for counties.	State-level accounting disclosures often omit county funding, an omission that results in an incomplete financial picture in some states.
Is there an emphasis on retained fee revenue?	Courts in some states, but not others, are funded largely out of fee revenue.	Florida raises more than $1 billion in court system fees annually.	Some states are more transparent in disclosing court system fee revenues and retained revenues than others.
Are there many legislative budget line items or few?	Some legislatures are more directive than others in establishing purposed-dedicated pots of funding for the courts.	Utah has only three legislative line items.	The number of line items imposes more or fewer basic constraints on court system budgeting and accounting.
Can the court system carry forward reserves or retained revenue?	Some states allow their court systems more cash-flow flexibility in holding onto resources in trust funds and carrying forward unspent resources from one accounting period to another.	California allowed its court system considerable carry-forward flexibility, until reforms in 2012.	Are reserve carry-forwards clearly documented in accounting disclosures?[a]

[a] For a yearly summary of California court fund balances (reserves) delineated for each county's trial court, see Overholt, 2012.

Our discussion so far has focused primarily on court system financing and accounting. However, it is impossible to examine the way in which courts are funded without also tangentially considering how they are organized and managed. Any investigation of the flow of money into the courts also invites basic questions about how the courts exercise control over their own funding and what the governance and administrative management structure of the courts is. These are important attributes of state court systems in their own right, but they are also closely tied to understanding the financing of the courts and the interplay of authority between the different branches of government (judicial, legislative, and executive) and across different levels of government (state and county) in the operation of the courts. In the next chapter, we delve in more detail into the governance of state court systems and complementary dimensions of variation in the ways in which these systems are organized and operated.

3. State Court Governance: Autonomy and Flexibility Can Mitigate the Effects of Fiscal Crises

Introduction

Governance—the structural arrangement that determines how institutions function, assign responsibilities, distribute power, and establish how decisions are made—is as important a component to an understanding of variation across state court systems as the funding and accounting dimension described in the previous chapter. More formally defined, governance is "the means by which an activity or ensemble of activities is controlled or directed, such that it delivers an acceptable range of outcomes according to some established social standard" (Hirst, 2000, p. 24). For state judicial systems, this suggests that we should be keen to understand the arrangement and mechanisms for direction and control of state court activities. Some activities that are relevant to a broad inquiry about state court financial resources involve the direction and control of budget preparation and expenditures, allocation of resources across the many departments of the judicial branch, the ability (or lack thereof) to self-direct initiatives, and the loci of power both between the legislature, the executive, and the courts and within the court system itself.

Although all state court systems provide venues for criminal and civil justice, the approach to statewide judicial administration and governance can be quite different from state to state. For example, courts might be organized by counties, which retain local control as well as financing. Alternatively, a unified court system might provide for statewide management of judges, budgets, and relations with the legislature, executive, and the public. Another dimension of governance would concern whether the executive branch develops a budget for the court system or whether the judiciary itself has a budget-preparation function. Just as the methods of state court system financing and accounting differ in important ways (discussed in Chapter Two), the fact that there are differences in governance models used in the state court systems adds another important dimension to understanding the state-level administration of justice.

Therefore, we are interested in the variance across our pilot states' governing structures and, secondarily, whether the governance arrangements may have exacerbated or mitigated the financial crisis' effect on the state courts. Although we know that a majority of courts experienced funding reductions for years after the crisis, the responses to the shortfalls differed between states. Some states were able to divert money to needy departments, while others seemed hamstrung by earmarks and line items. It seems likely that the variation in response is not purely attributable to the severity of cuts on a percentage basis alone. Hence, we think that the system of governance used in the state judiciary could explain part of the actions taken by the courts.

In this chapter, we describe some examples of governance structures in our pilot states. As in the previous chapter, in this chapter, we draw both on interviews with court administrators and judges and on published information about the court systems in our pilot states. We do not focus on every governance difference in their systems, but rather highlight some of the most-relevant dimensions that are particularly important when trying to understand the way money is managed for the state court systems.

Theoretical Approaches to Court System Governance

At a basic level, court system governance might initially be thought of as the arrangement of the judicial hierarchy: the trial, appellate, and courts of last resort, as well as the specialized courts for traffic offenses, domestic disputes, juvenile issues, and the like. Hence we have, such as in Utah, a judicial system organized into separate Justice Courts (municipal and county courts with authority over "class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial jurisdiction"), juvenile courts, district courts, courts of appeals, and the Utah Supreme Court (see Utah Courts, 2014b). Yet, court governance has more-important theoretical and practical implications beyond the hierarchy of justice and the separation of appellate and trial jurisdictions.

Judicial independence is implicated in the concept of governance. In other words, an independent system of court governance would be based on the principle of self-administration: "The administrative rules for a state's courts, would be set not by the legislature, but by the governing authority of the judiciary, consistent with the principle of the judiciary as an independent branch of state government" (Durham and Becker, undated, p. 1). This sense of self-governance—the determination of the administrative rules for the day-to-day operations of courts spread throughout the state—concerns a core internal management function. Whereas other bureaucratic entities (such as administrative agencies) are part of the management system under the governor or the state legislature, the courts are not exercising a delegated executive or legislative authority. The courts stand on their own, theoretically, in the separation of governmental powers. Management of the court's own internal functions, it seems, would be the exclusive prerogative of court personnel in a truly independent system.

Independence of courts from legislatures regarding administrative rules is only one dimension of independence, however. As the previous chapter described, the independence of the judiciary is also linked with the sources of funding that support the court system's operations. A judicial system with a closed (i.e., retained) revenue-generation model might be independent of the legislature from a fiscal viewpoint, but the trade-off is the link between access to justice and the ability to bear the costs and fees levied on litigants. Alternatively, a court might be less financially independent if state general fund revenues fund the court's budget; yet, it could be in a better position to provide more-open access to the public. Here we see where funding and governance overlap. The right to self-administration means little if the courts must always appeal

to the legislature. And even when the legislature provides resources, earmarks and line items can frustrate court systems' ability to manage those operational funds in an efficient and proper fashion.

Interest in state court system self-governance is of relatively new vintage, but the acceptance of some variety of increasing self-governance has been nearly universal:

> The state court systems of today emerged in the 1970s and 1980s as the long-standing vision of court reformers began to be realized at a rapid pace. Reformers had decried the degree to which trial courts were enmeshed in local politics, subject to overlapping jurisdiction, and governed by widely divergent court rules and administrative procedures within a state. To varying degrees in recent decades, all states have changed the organization of their courts to address these concerns. (Durham and Becker, undated, p. 1)

How then to organize and govern a state judicial system? There is no central model for organizing court governance. The result of this reform movement has been a patchwork of different approaches to administering the state court systems. This laboratory of management approaches provides ample variation for governance scholars and policy researchers interested in institutional structure. But the variation presents a difficulty when searching for aggregate statements about how state courts across the nation operate. Moreover, the variation makes it difficult to untangle the effects of the financial crisis on judicial systems when the systems manage their financial resources in very different ways.

We begin our discussion of governance with three aspects of a state court system's governance anatomy. The first concerns the administration of the court system and whether there is a centralized judicial council (as well as the powers that may inhere in such a body). The second deals with the degree of legislative micromanagement (such as earmarks or line items). The third looks at the locus of power in the state judicial system, highlighting the state-versus-county dimension that remains prevalent in many states.

Governance Anatomy 1: Deciding Who Decides

Within state court systems, there is wide variety in how the policymaking authority and the policy-implementation authority are organized. Clearly, any administrative tasks for the state court systems are going to involve a mix of activity and oversight by some number of judges and usually the chief justice, along with a professional staff of public administrators who carry out the bureaucratic necessities of the judicial branch. "All states have an administrative office of the courts," the bureaucratic organization that provides the day-to-day services related to court personnel management, public information, information technology, purchasing and contracting, resource planning, and general staffing needs (Durham and Becker, undated, p. 2).

Just what authorities and portfolio of work the administrative office has differs from state to state. In Florida, for example, the state court administrator plays a crucial role in the operations

and planning tasks of the court, which include legislative and executive relations and budgetary functions. Established in 1972, the position of state court administrator

> was created with initial emphasis on the development of a uniform case reporting system to provide information on activity in the judiciary in the preparation of its operating budget and in projecting the need for judges and specialized court divisions. (Florida Courts, undated [a])

The administrator, who serves under the chief justice and the six associate justices of the Florida Supreme Court, oversees the Office of Resource Planning and Support Services, which manages "resource funding methodologies for allocations/requests/reductions; revenue forecasting/monitoring, with assistance provided to the Article V Revenue Estimating Conference; and, liaison support for clerks of the circuit court budget and other related issues" (Florida Courts, undated [c]). To complicate matters, however, Florida has separate trial and district court budget commissions that prepare recommendations for budget policies to the state supreme court. The administrator manages these recommendations in the process of making the annual budget request.

The Florida state court administrator has a large portfolio. Much of this authority and the system's reliance on the administrator's professional staff result from some significant restructurings in the Florida courts over several decades (for a history of the Judicial Council, see Judicial Branch Governance Study Group, 2011). As it stands today, there is a Judicial Management Council in Florida. This advisory body to the Florida Supreme Court was a re-creation of former judicial advisory groups, disbanded for lack of resources. The reconstitution of a judicial council suggests increasing attention to issues of governance in the Florida courts. Whether this new body will help refine and reformulate the administrative tasks of the Office of the State Courts Administrators remains to be seen. Regardless, from our perspective, it is a positive development that the Judicial Management Council will take a more active role in exploring court governance issues.

Florida, then, has a judicial governance structure that currently favors a strong administrative-office role and a weaker judicial-council role (although the state supreme court has the final authorities of the rules of court administration and procedure). Budget requests are funneled from various commissions through the administrator's office. Utah, on the other hand, has both a strong administrator and a centralized Judicial Council that actively manages the judicial branch resources and strategic planning. The Utah Judicial Council is a 14-member committee made up of the chief justice, a second state supreme court justice, a state bar association representative, and 11 judges of the lower courts (Utah Courts, 2014a). A constitutionally required body, the Judicial Council "is responsible for adopting uniform rules for the administration of all courts in the state, setting standards for judicial performance, and overseeing court facilities, support services, and judicial and nonjudicial personnel" (Utah Courts, 2013). Our interviews with Utah judicial and administrative personnel revealed that the Utah Judicial Council is remarkably hands-on when managing the state courts. Meeting monthly,

the council works with the state court administrator to jointly address strategic planning needs, develop the annual budget, and communicate with the executive, legislature, and the public.

According to our interviews, this controlled, unified system of governance allows for short response times and streamline budgeting. In the face of the financial crisis, the permanency of the Judicial Council, the regularity with which it meets, and the depths to which it is involved in budgetary and management activities helped the Utah courts know what areas of court administration could be restructured and where cuts could be made.

California also has a constitutionally mandated Judicial Council that serves as the governing body for the state court system. The Judicial Council of California establishes strategic and operational goals for the state judiciary (Judicial Council of California, 2006). It has authority to establish administrative procedures and rules of practice, as well as to approve the California judicial budget (see Judicial Council of California, 2008). The chief justice, who chairs the Judicial Council, and the administrative director of the courts are empowered to make technical changes to the proposed judicial budget and negotiate with the legislature and executive branch. They also allocate the appropriated annual funding.

The Judicial Council of California and the California Administrative Office of the Courts have, at times, been at odds with some trial court judges of the California superior courts over governance issues. The root cause of these tensions appears to be the history of court unification in California. California's was once a system of county-funded trial courts; the process of unification was completed in 2001. Since then, the growth of authority in the Judicial Council and the Administrative Office of the Courts has caused numerous occasions for disagreements within the judiciary (Jacobs-May et al., 2011). One of the long-standing disagreements has concerned the allocation of funding to the trial courts. Traditionally, funding allocations have been based on historical levels; presently, the court is considering tying financing to workload and case-filing metrics. The sheer size and diversity of the California state court system makes management and governance a challenge. Trying to sort out governance issues during the financial crisis further amplifies the challenge. Furthermore, the size of the California court system additionally complicates management and governance. Superior Court of California for the County of Orange alone has 116 judges and 15 commissioners, larger than the number of district and juvenile court judges in Utah. With more than 2,000 judges, managing California's courts is a different governance challenge—at least in terms of magnitude—than is faced in the other states.

On the other end of the spectrum, Massachusetts has decentralized court management, opting not for a central office across the judicial hierarchy but rather establishing the Executive Office of the Trial Courts, headed by a chief justice for administration and management. The office has budgetary, accounting, and procurement responsibilities for the trial courts in the state, essentially bifurcating the administrative duties for the trial and appellate divisions (Massachusetts Court System, undated).

Ohio's system of state court governance also bears brief mention here. The Supreme Court of Ohio, not a judicial council, has the constitutional responsibilities of managing the state court system. That court system, however, is of more limited scope than what exists in other states: The state-funded component of the judicial system in Ohio includes only the state supreme court, the courts of appeals, and the court of claims. The state court system does not include the county-funded courts of common pleas, of which there are 88, or the various municipal and county courts. The Administrative Division of the Supreme Court, through an administrative director, exercises the administrative and bureaucratic functions. The Ohio Judicial Conference is a body consisting of all judges in the state. Its role is to study and promote the fair administration of justice; however, it has no direct budgetary or policymaking role akin to that of the Utah or California judicial councils.

Governance Anatomy 2: Legislative Influence

In Chapter Two, we described the importance of knowing where the funding from courts came from and the methods used to tabulate and record it. A closely related concept that emerged in our interviews was the degree to which the courts could direct the money to needy activities or, alternatively, the extent to which the allocations were earmarked for specific purposes. The nexus between source of funding and the governance connection should be clear: Money with strings attached implies a diminished degree of autonomy and self-governance for the courts. This, in turn, further constrains judiciaries if funding cannot be reallocated in a timely fashion.

To explore the degree to which the courts had autonomy over the money, we discussed whether the sources of funding were attached to special line items or special projects. From a financial point of view, line items are revealing something important about how restrictively the money is being allocated and how much is going to specific categories of expense. From a governance point of view, the focal point of interest is less about the money itself and more about the lack of judicial branch control. In a state where pencils and paper are separate legislative line items, the judiciary is not even going to be able to make purchase decisions about how to allocate money for writing materials. Line items, then, may be a partial proxy for independence and strength of judicial administration, apart from also being an easy way to track the allocation of money by the legislature.

We discuss legislative line items in Chapter Two as a financing and accounting matter, but, purely from a governance point of view, line items are a way for the legislature to manage the operations of the court. Along this governance dimension, the degree of variation in the states is striking. On one end of the spectrum, the Utah court system is the most autonomous. During its appropriation process, the Utah legislature provides the judicial branch funding in three pieces: The largest component is for personnel and operating costs; the second is a line item for contracts and leases on buildings and facilities; and the third is for jury and interpreters' fees. By

getting their allocation in one large lump sum free of encumbrances, the Judicial Council and the court administrator can manage an efficient bureaucracy. It is no accident that, in Utah, the powerful and skillful Judicial Council has been as successful in managing court resources as it has been in resisting legislative desires to impose more control over the way the judicial budget is spent.

Massachusetts, historically, had been on the other end of the spectrum. The Supreme Judicial Court of Massachusetts, the Appeals Court of Massachusetts, and the Massachusetts trial courts are state funded and have been so since 1978 (with some retained revenue for the trial courts, as discussed in Chapter Two). With state funding, however, has come state legislative input into how the money is to be allocated. Until recently, the appropriation from the legislature (called the General Court of the Commonwealth of Massachusetts) came in the form of 153 line items. This has since been consolidated to 17 line items, and there is great desire by some administrators of the judicial system to consolidate even further. The desire comes from both a management perspective (a desire to be able to move money to where it is most needed in a timely fashion) and an independence perspective (the appropriations process can be viewed as an attempt by the legislature to treat the judiciary as merely an executive agency, rather than a constitutional equal).

Another dimension of legislative influence concerns whether the court system or subsystems within the state judiciary have carry-forward budget authority. Here, too, we see the intersection of financing and governance. Chapter Two discusses the budgetary authorities in terms of financial sources of money flowing to the courts. But, from a governance perspective, it is an administrative tool that some courts can use to manage resources while others cannot. Whether courts have such authority is, of course, legislatively determined. Year to year, the courts may not need all of the funding they are appropriated. In California, for example, significant county reserve funds had been built up. These funds were essential in managing the budget cuts suffered post–financial crisis. New legislative rules, however, have limited reserve fund levels, thereby removing yet another tool that local administrators had used to manage reduced budgets. This has put the courts in an even more dependent position relative to the legislature.

We highlight the Massachusetts and Utah examples to demonstrate that the critical task is not just adequately funding the judiciary, but adequately funding the judiciary in the right way. A state judicial system that is hamstrung by legislative pet projects and micromanagement may find it much more difficult to fulfill its constitutional duties according to the principles of good public management. Moreover, a judiciary that, like California's, a legislature tells that it cannot carry over its budget or retain reserves over a specified threshold is further subjugated to the funding priorities and capabilities of the legislative branch.

Governance Anatomy 3: State System Versus County Dynamics

It bears noting, more explicitly than we have in Chapter Two's discussion of funding sources, that governance is implicated in a state's decision to choose county- versus state-level funding of its trial courts. In Chapter Two, we cast the degree to which courts receive funding from the counties or the states as a major line of demarcation across state court system financing. But the choice of state versus county is much more a question of governance than it is of financing; county financing is a derivative feature of local-level control of the courts.

Local control has always been a policy preference that has appealed to American voters. Indeed, with local control, there is a closer nexus between decisionmaking and priority setting and the people. However, in the administration and governance of a state judicial function (not to mention the funding of the trial court system), there is a less clear justification for a preference for localization. When local laws require interpretation (as might be the case with local zoning ordinances, for example), municipal courts might be the appropriate venue. But, for statewide laws, which ought to apply and be administered equally to the populace regardless of local funding availability or local governance mechanisms, the argument for local control is more tenuous at best. The results would likely be a patchwork of courts, some with ample resources and some with less, with the resultant disparities in the time to case disposition, levels of support, and specialized programming. On top of this, oversight and investigation into the local courts would be obstructed in the absence of statewide reporting requirements.

Ohio's approach to the state judiciary presents the strongest example of this local-control dimension. Eighty-eight independent counties, with independent funding streams and independent governance models, form the foundation of the trial courts. On top of this layer, a thin veneer of state-controlled appellate courts operates with little oversight of the trial courts—indeed, with little information about the operations of the lower courts. Although the Ohio Supreme Court manages the state-funded component, that slice was a mere $134 million in 2012. Compared with billion-dollar budgets in Florida, it is evident that just a tiny fraction of the judicial function in Ohio falls under state control.[23] This decentralized approach is not necessarily a bad thing, however. County-funded courts are freed from the statewide politics of funding allocations and statewide financial circumstances. Yet the decentralization of governance in the Ohio courts has arguably created a black-hole effect on their finances: At present, there is no transparency or light regarding the funding of the county courts.

Florida provides another complex example of the split between local- and state-level control of some state court functions. In Florida, an important distinction concerns the role played by county-level clerks of the courts. These elected officials epitomize local control (because of the

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[23] To clarify, Florida's population is approximately 19 million people, while Ohio's population is 11 million people; thus, Florida's population is a bit less than twice that of Ohio. Notwithstanding, Florida's state budget for the courts is roughly an order of magnitude greater than the analogous budget in Ohio—an effect that the relative sizes of the two states alone cannot explain.

direct electoral connection), yet they are administering a state-level bureaucratic function within the state court system. These clerks are more than court staff; they have constitutionally given authority as comptrollers and auditors for the counties (Florida Court Clerks and Comptroller, undated). In fact, the clerks and comptrollers have "responsibility for nearly 1,000 different constitutional and statutory functions or duties" (Florida Association of Court Clerks and Comptrollers, undated). Furthermore, the clerks of court are financed at the state level as an annual appropriation that is separate and distinct from that for the state courts. The clerks work through the legislatively created Clerks of Court Operations Corporation to help prepare their annual budget and manage relations with the legislature and the executive (Florida Clerks of Court Operations Corporation, undated). Historically, there have been tensions between the clerks and the state courts over revenue and administration. It is possible that part of this tension is institutional: The rules of financing and administration have established a county–state and clerk–court competition for resources and autonomy.

Discussion

Governance entered our analysis because of some judges and court administrators who provided a narration about the difficulties of the financial crisis. Across the board, the stories we heard reiterated that the experience of the financial crisis was painful and troubling. But those state court systems that recovered the quickest seemed, anecdotally at least, to be those that were managed by leaders with the will, skill, and governance authorities to make hard choices, cut budgets where possible, and reallocate funding to meet changed priorities and resource constraints. What we realized was that identifying the sources of funding and the aggregate funding levels, without accounting for the manner in which the budgets are prepared, the ways in which the money can be managed, and the structures of organizing the court administration, would be of limited use in policy discussions about whether state court systems are appropriately resourced.

Looking more closely at governance led us to discover that there is as much variety in the governance models used by state court systems as there is in the approaches to funding and accounting. The states, as laboratories of policies and procedures, again demonstrated ingenuity in structuring court administrative functions. For policy analysts, court administrators, and public affairs specialists who want to really understand the state of the state courts following the financial crisis, it is crucial to gain at least a passing familiarity with the states' governance models and how they can affect the securing and subsequent management of resources.

Although the potential number of important variations in state court system governance is quite large, we believe that several core components should be on any court watcher's radar. Table 3.1 summarizes these governance dimensions and provides examples and explanations of their implications for state governance.

With this additional governance dimension as a backdrop, our review of state court financing mechanisms takes on a more complete and sophisticated dimension. The basic questions about how courts exercise control over their own funding are inextricably linked to the sources of those funds and the dependencies that are created. To get the full picture, we think it appropriate for court watchers to ask these questions: (1) How does the court get its funding? (2) How does the court account for, track, and report on the resources it uses? and 3) Who governs the allocation of those resources for each level of the state court system? Only when these three questions are answered do we get a clear picture of the condition of the state judiciaries.

Table 3.1. Elements in State Court System Governance

Governance Dimension	Explanation	Example	Governance Implication
Is the state court system centrally managed?	Some states use a system in which a judicial council implements the administrative authority for such activities as budget preparation and allocation of resources.	The Utah Judicial Council has the skill and authority to act with one voice in all manners of court administration (although the Justice Court system is locally managed).	The court system's administrative structure can define roles and responsibilities, or it can dilute power, obscuring leadership.
Does the legislature micromanage postappropriation?	Line items and earmarks for special legislative priorities can frustrate attempts at efficient management of resources and slow the reaction time when funding shortages appear.	Massachusetts once funded the state judiciary through 153 separate line items, with no judicial authority to reallocate. Utah state courts, however, get a lump sum for its state-run component.	Judicial authority, which should include the power of self-governance and direction of the budget, is potentially subjected to the political priorities of the legislature.
Does the locus of power reside in the state or the counties?	Courts in some states are centralized at the state level, while others rely on the counties for the trial court function.	Ohio uses a system of 88 independently run and financed county courts below a thin layer of state-run appellate courts.	Both governance and funding are decentralized; local control exerts a strong force over policy; discrepancies arise across counties, but there is little oversight or information available from state offices.

4. Conclusions and Going Forward

In 2012, we published a report that investigated broad categories of the civil justice system that plausibly might have experienced detrimental effects from the financial crisis that began in 2008 (Greenberg and McGovern, 2012). One of our conclusions from the 2012 study was that the financing of state court systems was a topic worthy of further research. In particular, we suggested that the effects of funding austerity on the state judiciaries was a particularly high-priority topic because of widespread anecdotal accounts of court closures, furloughs, vacancies, and reductions in the type of services offered by many state courthouses. These sorts of coping strategies could potentially have lingering ramifications on the provision of both civil and criminal justice at the state level. At the time our first report was published, we suggested that "[b]etter data on resourcing, and a better taxonomy for state court system financing mechanisms, could offer a much clearer picture of operating 'strain' on the civil justice system going forward." We also articulated the hope that better financing information

> could be combined with various judicial branch administrative performance measures [in the future], in a new generation of studies exploring how court systems respond to austerity, and what the ultimate impact of austerity on litigation volume and outcomes appears to be. (pp. 75–76)

Our research presented in this report follows up on the same lines of inquiry. With the aid of the RAND Institute for Justice Board of Overseers, we launched a new project that would not only echo the many concerns about state funding for judiciaries heard in the legal and policy communities but also inform the policy discussion about the ways in which the courts get their funding. In conducting an investigation of court system funding mechanisms and governance in five states, we discovered that, although these systems provide essentially similar services for their citizens, they nevertheless differ in some stark ways. From sources of funding, to corresponding accounting practices, to the structures of governance and administration, the states are deploying very different strategies for operating the third branch of government.

The main elements that emerge from our review of a small sample of state court systems concern the sources of funding for court operations, the means for tracking and accounting for those resources, and the core governance structures that arrange the rights and powers of various judicial officials. Those main elements—financing, accounting, and governance—are clearly linked, rather than distinct concepts, and there is significant overlap in how these three pieces play out in various court systems. Governance, as we see it, underlies the entire process of funding and accounting for resources. No government action takes place entirely free of some layer of governance, so we have placed the financing and accounting activities within the field of governance. From here, one can easily understand the intersection of governance and financing: The issues concerning official rules about where the court gets its money (retained revenue, for

example, or state- versus county-level funds) are determined by governance choices made at the state level.

The intersection of governance and accounting, on the other hand, would come into play when, for example, a legislature hamstrings a court system through line-item appropriations that severely restrict the activities that may be funded by general revenue money. Here, too, we would place the role with the court annual reports that are meant to provide a window into court operations and budgets (but, as we have mentioned elsewhere, these reports are not always as useful as one would like). Overlaps between accounting and financing are more straightforward; the money that goes into a court system needs to be tracked in terms of both revenue and expenses.

Recommendations for Further Inquiry

Previous attempts to draw attention to the challenges that state courts face have focused almost exclusively on the aggregate level of financing for state court systems. Essentially, this approach only looks at one component of the financing piece. Of course, this measurement can create headline-making news when state court system budgets are reduced. However, annually published court system summary budget statistics are often difficult to understand and interpret in a vacuum. What is actually being paid for? Where is the money coming from? What restrictions are there on the money, and who has control over it? The answers vary widely from to state to state, and the most consistent observation that can be drawn from annual state court system reports is that only rarely do they provide clear answers to any of these sorts of institutional questions. Consequently, we believe that looking at the aggregate level of funding for state court systems (whether in the abstract or in reference to a previous year's budget) is an important piece of the resourcing story but only part of the disclosure that is needed to clarify what the funding status of the courts really is. It does even less to make a compelling argument about funding shortfalls or a funding crisis. A better approach, we believe, needs to view the bigger picture of how court system resources are being used and who has decision rights over the allocation of funds.

In the introduction to this report, we talked about generating a template of state court system financing to help articulate basic dimensions of variance that any outside observer would need to recognize and describe in order to really understand the mechanics of funding in any particular state. That template also offers a potential blueprint for supplemental disclosure that state courts could easily adopt to make their funding schemes much more transparent and their annual accounting disclosures more consistently meaningful and comparable than they now are.

Informed by our review, we believe that the key questions for a state court system finance template are these:

- Is the court system in state X funded primarily at the state level, at the county level, or through a mix of the two?

- If funding responsibility is divided, then in what proportion is it divided and for what restricted purposes (if any)?[24]
- Do the accounting disclosures in the annual state court system report include or exclude any funding that is obtained from the counties?

- Is state-level funding for the court system in state X obtained primarily through tax revenues or through fees and fines collected by the courts?
  - If the funding is divided, then in what proportion is it divided and for what purposes?
  - If funding comes primarily through tax revenues, is this typically appropriated from the state general fund or through some other set of state sources?
  - If fee and fine revenue is being collected by the court system but does not fund it, then where is that money going?
  - Is the court system publishing annual aggregate data describing fee and fine revenue and where that revenue is going?
- What categories of government activity are formally defined as part of the state court system or state judicial branch in state X for budgetary purposes?
  - Does this category include funding for capital infrastructure and maintenance?
  - Does this category include funding for retirement benefits?
  - Does this category include funding for courthouse security, clerks of court, and other major elements of administrative support and service?
- Does the state court system in state X have the authority to carry forward unspent resources from one fiscal year to the next?
  - If yes, how many dollars can be carried forward in this way each fiscal year?
  - How many dollars were actually carried forward in the most recent fiscal year?
- How many legislative line items are there in the state X budget pertaining to the state court system?
  - Are there other mechanisms for purpose-restricting the funds that the legislature allocates to the court system in your state (e.g., through dedicated trust funds)?
  - What are the major categories of purpose-restricted funding, and how much of the total annual funding for the state court system falls into these categories?
- How does the state X's state court system allocate and manage the funding that it receives each year?
  - Does an administrative office for the courts have control over this at the state level? The state supreme court? An appointed judicial council?
  - What kind of input do state court system officials have in the legislative appropriations process for the courts?
  - How much budgeting autonomy is granted to individual trial courts, as opposed to state-level court system officials, in determining how money will be spent locally?

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[24] By asking "for what purposes," we mean to inquire whether county-level funding is dedicated to specific categories of expense (e.g., building and maintaining trial courthouses) while state-level funding is dedicated to other categories of expense (e.g., paying judicial salaries).

If an outside observer knows the answers to all of these template questions with regard to a given state, then he or she would know quite a bit about the basic architecture for how that state finances and manages its court system. Moreover, if state court systems themselves were to generate and disclose the kind of information requested in this template and to update it on a regular basis to reflect any changes in their financing and governance practice, then their annual accounting disclosures would become more transparent and meaningful as a result. Among other things, this might make it easier for policymakers and the public to understand the financial status of the courts over time and the impact of government austerity on their bottom lines.[25] It could also have the effect of making comparisons of accounting disclosures from court systems across states easier by reducing the problem of apples-to-oranges comparisons.

But what does the proposed template for court system financing mean for future research and policy choices confronting the judiciary? To begin, we think that there are general disclosures that state courts could include in their annual reports that would clarify these financing, governance, and accounting differences, or at least would introduce their states' unique features to the general public. We had to contact judicial officials to gain our relatively sophisticated understanding of how our five pilot states operate. Some states have more information available on their websites or in public documents than others, but no state included a very useful overview of the governance, accounting, and financing dimensions of its system in its annual report or on its website. In particular, annual reports are universally silent on the budget-preparation process: how the budget is prepared, how closely the budget request matches the ultimate appropriation for the year, and how the judiciary reallocated the appropriated funds across its many components. Although this information will have a limited natural audience, it would enhance the usefulness of the annual reports and highlight the interbranch dynamics that are at play.

Next, if judicial budgets remain far below their historical levels because of the lingering austerity measures (and we believe that they will), this research suggests, courts' ability to withstand the pressures of fiscal austerity is closely aligned with the governance authorities and structures used by the judicial branch. Here, we are concerned about the judiciaries. As part of a co-equal and independent branch of government, the courts are tasked with exercising a highly specialized and important function. Though its influence may be narrow and its ability to affect policy limited, the judicial branch stands out as a hallmark of democracy under the rule of law. What we have witnessed in the past few years has been a willingness by the state legislatures to view the court budgets as another area of possible savings and cuts. We heard in our interviews that, in some states, the cuts have disproportionately targeted the judiciary.

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[25] Although we identified answers to many of these template questions concerning California, Florida, Massachusetts, Ohio, and Utah in the course of our current study, we were not able (and did not attempt) to answer all of the questions for all 50 states. Rather, the primary aim for our interview study was to identify a set of useful questions for the template, not to seek out the answers for every state. We learned during our investigation that some of the template questions are currently not answerable for some states, given available data.

Our hope is that the overview contained in this report will help equip readers to understand the complexities of judicial finances and inspire new lines of research into the possibilities of securing stable funding for the third branch. Several major unanswered questions still exist; we list a sampling of them here in hopes that they spark sustained interest in state judicial research in the future:

- How has the historical trend toward state financing (as opposed to county-level financing) fared as a policy experiment, generally, and specifically in light of the lessons learned during the financial crisis?
- What are the implications of judicial remittances to the general fund? As part of an independent branch of government, should courts be allowed to retain the revenue that is generated to fund further court operations and services?
- Despite the challenges faced by state court systems in the wake of the financial crisis, are there comparative advantages inherent in the different governance models used by different states?
- What impact do budget cuts have on court system processes and outcomes? Or, put another way, how much extra justice are we buying for every marginal dollar spent? (The template that we have offered could make it easier to look at these sorts of questions across states and to recognize apples to oranges–type comparisons.)
- Are there constitutional concerns raised when legislatures treat judicial branches as revenue sources? Or as budgetary units that can be squeezed in times of fiscal austerity? Dependent judiciaries raise separation-of-powers concerns that we have only begun to explore.
- How dire is the financial difficulty facing the state court systems?

Clearly, these are just a prelude to a host of interesting and important policy questions that state judiciaries face. What is clear is that the financial crisis has laid bare the weaknesses and vulnerabilities of state court systems to financing shortfalls. Such a threat to the stable and reliable administration of justice suggests the need for a reevaluation of financing and governance models for the court. States' ability to adopt different structures and policies represents an opportunity for comparative research on what approaches work and when. To conduct that research, researchers will need to be aware of the core dimensions of difference we have outlined here. It is our hope that this contribution will inspire continued research into these and related questions.

Appendix: Interview Protocol

Discussion Topics

Financing Revenue

- What are the main sources of revenue for [your] state court system?
  - Any federal government support for specific operations? Grant money received? Bar association support?
  - How dependent is the court system budget on appropriations by the state legislature?
  - Is the court system primarily funded by revenue drawn at the state level, or by revenue drawn at county or municipal levels? Has this changed in the past 20 years?
- How much fee revenue is generated by the justice system?
  - On what basis are fees levied?
  - Where does the fee money go?
- What are the three most important background facts to understand about how [your state's] revenue model for the court system is set up?
- Has your state's revenue model for the court system *changed* in a major way in the past two decades? If so, what was the change, and why did this occur?

Financing Expenditures

- What functions and agencies are financed as a part of [your] state court system?
  - What are the major categories of expenditures included in your budget?
  - Are courthouse buildings and facilities operations and maintenance included in your budget?
  - What about facility construction?
  - Personnel costs for [bailiffs], security personnel, administrative staff?
  - Indigent defense?
  - Retirement personnel costs?
- Are there important "silos" of dedicated court system funding within your state? If so, what are those silos, and how do they work?
- Who controls and administers the expenditure of funds on the court system? How much influence does the state judiciary have over this?
- Are all levels of the court system financed in the same manner? Are there significant differences in how the state pays for trial [versus] appellate courts? Family courts? Juvenile courts?

Accounting Practice and Data

- Is it possible to break out basic revenue/income statement/balance sheet information for [your] state court system, based on data already collected and/or made publicly available?
- Who is responsible [in your state] for capturing the numbers on state court budgeting and revenue?
- [If relevant] at what point in the state appropriations process can/should financial information on the state court system by captured? What does the official budget information [in your state] actually mean, in light of where [those] financial data [are] captured in the financing process?
  - Governor's budget?
  - Legislative appropriation?
  - Fulfillment?
- Can you provide us, or refer us to, best available snapshot data on overall state court financing levels for the most recent available [five- or ten-year] interval for your state?

Finance and Accounting Strengths and Targets for Improvement

- What are the strongest elements of court system financing in your state that other states might want to emulate?
- What are the best features of formal budgetary accounting and disclosure for the state court system in your state? What should other states be modeling in their accounting practice and data collection, based on your example?
- What [three] improvements would you most like to see in order to improve court financing mechanisms and/or accounting in your state?
- What would you most want to improve on, in order to improve the consistency and transparency and comprehensiveness of budget [numbers] for all state court systems?

General Questions About State Court System Financing

- What do you think the [three] key categories or dimensions of difference are for classifying states into different types of funding mechanisms with regard to their court systems?
- What principles should be generally adopted by other states, in compiling and disclosing budget information about judicial branch and state court systems?
- What are the best practices in gathering, compiling, and reporting on state court budgetary information? How can states do better, and how might better data make a stronger case for improved support to state and local legislative authorities?

Other Background Questions

- Is there anybody else in your state whom you think we should specifically talk to about any of these general financing and accounting topics?
- Is there any one question broadly related to this subject matter that we *haven't* asked you about, but that you think we should be asking? If so, what is that?

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Lori A. Shibinette
Commissioner

Christine L. Santaniello
Director

STATE OF NEW HAMPSHIRE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF ECONOMIC & HOUSING STABILITY

129 PLEASANT STREET, CONCORD, NH 03301
603-271-9474 1-800-852-3345 Ext. 9474
Fax: 603-271-4230 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

May 26, 2020

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Health and Human Services, Division of Economic and Housing Stability, to enter into a **Sole Source** agreement with the Supreme Court of the State of New Hampshire, through the Administrative Office of the Courts (VC#177872), Concord, New Hampshire in the amount of $3,328,688 for an Expedited Process Program, effective upon Governor and Council approval for the period July 1, 2020 through June 30, 2024. 100% Federal Funds.

Funds are available in the following account for State Fiscal Year 2021, and are anticipated to be available in State Fiscal Years 2022, 2023 and 2024, upon the availability and continued appropriation of funds in the future operating budget, with the authority to adjust budget line items within the price limitation and encumbrances between state fiscal years through the Budget Office, if needed and justified.

05-95-42-4270-427010-79340000 HEALTH AND SOCIAL SERVICES, DEPT OF HEALTH AND HUMAN SVS, HHS: CHILD SUPPORT SERVICES, EXPEDITED IV-D SERVICES

State Fiscal Year	Class / Account	Class Title	Job Number	Total Amount
2021	085-588510	Transfer to Other State Agency	42700028	$832,172
2022	085-588510	Transfer to Other State Agency	42700028	$832,172
2023	085-588510	Transfer to Other State Agency	42700028	$832,172
2024	085-588510	Transfer to Other State Agency	42700028	$832,172
			Total	**$3,328,688**

EXPLANATION

This request is **Sole Source** because the vendor is the only vendor able to provide the necessary services for the Expedited Process Program (formerly known as the Marital Master's Program).

The purpose of this request is to enable the Bureau of Child Support Services (BCSS) to enter into a sole source agreement with the Administrative Office of the Courts for the continuation of the Expedited Process Program, formerly the Martial Master Program. The Program enables the Bureau of Child Support Services to meet the expedited process as mandated by the federal Administration for Children & Families for the establishment and enforcement of child support orders. Competitive bids were not sought because the Circuit Court is the only public or private body authorized by law to perform the services outlined in the Cooperative Agreement.

The Bureau of Child Support Services provides services to both parents of approximately 37,000 families each year. Individuals will be served from July 1, 2020 to June 30, 2024.

This agreement enables BCSS to establish and enforce legal orders for support for those families who need either or both of those services, efficiently and effectively. BCSS is responsible for administering a statewide child support establishment and enforcement program under Title IV-D of the Social Security Act. Federal authority, 45 CFR § 303.101, requires that state IV-D child support agencies have in effect and use expedited processes to establish and enforce child support orders. The New Hampshire Constitution Part 2, Article 73-A, places responsibility for administration of all the courts on the Supreme Court.

Under the current Agreement, IV-D child support cases are scheduled before marital masters and child support referees in Circuit Courts in all ten (10) counties of New Hampshire.

Pursuant to NH RSA 490-D, and RSA 490-F, marital masters and child support referees are authorized to hear marital matters, paternity and support cases, and Uniform Interstate Family Support Act actions. The Expedited Process Program is administered in the Circuit Court by the Administrative Judge of the Circuit Court.

The Bureau of Child Support Services has had an agreement with the Administrative Office of the Courts since 1987, which authorizes federal reimbursement through the Bureau of Child Support Services for the approved costs associated with the Expedited Process Program. This agreement continues this administrative arrangement. The Administrative Office of the Courts will be reimbursed for a portion of the direct expenses of staff involved in IV-D activities, including marital masters and child support referees, and a portion of the indirect expenses associated with these positions, as well as the services and commodities which support the IV-D program. Failure to obtain this reimbursement would result in the need to use General Funds to cover these expenses.

The funds in this request represent one hundred (100%) percent of the Federal Financial Participation funds that the Administrative Office of the Courts is reimbursed for IV-D services. The Bureau of Child Support Services receives these funds from the federal Administration for Children & Families and disburses them to the Administrative Office of the

Courts. There are no State funds disbursed by the Department to the Administrative Office of the Courts under this Agreement.

The State share required for the receipt of the federal funds is contained within the Administrative Office of the Courts' appropriated budget. If these Federal Funds are not accepted by the State, they will be allocated to other states by the federal government.

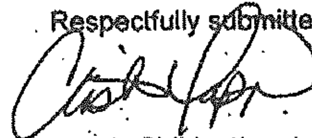
Competitive bids were not sought because the Circuit Court is the only public or private body authorized by law to perform the services outlined in the Cooperative Agreement.

Should the Governor and Council not authorize this request the Administrative Office of the Courts may not receive federal funds for all IV-D related expenses attributed to the Expedited Process Program, requiring the use of general funds for these services.

Area served: Statewide

Source of Funds: 100% Federal Funds, CFDA #93.563, FAIN #190xNHCSES.

Respectfully submitted,



Lori A. Shibinette
Commissioner

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
BUREAU OF CHILD SUPPORT SERVICES
COOPERATIVE AGREEMENT

WHEREAS, the New Hampshire Department of Health and Human Services/Bureau of Child Support Services (hereinafter "BCSS") is required by federal mandate to expedite the processing of child support actions that are initiated through a voluntary application process for IV-D services; and

WHEREAS, the New Hampshire Supreme Court (hereinafter "Supreme Court") has instituted an Expedited Process for the purposes of handling domestic and marital IV-D cases; and

WHEREAS, the Supreme Court on July 1, 1996 instituted a Family Division pilot program in Grafton and Rockingham Counties for the purposes of handling domestic, marital, and other family actions; and the New Hampshire Legislature subsequently passed House Bill 2, (Laws of 2005, Chapter 177:14) authorizing the statewide expansion of the Family Division of the New Hampshire Superior Court as the Court of general jurisdiction over marital and domestic relation cases, with the implementation of the statewide expansion of the Judicial Branch Family Division to be performed in accordance with RSA 490-D:5; and

WHEREAS, the New Hampshire Legislature passed House Bill 609 in 2011 (Laws of 2011, Chapter 88) to organize, constitute, and establish the New Hampshire Circuit Court; established to consist of three (3) divisions: a probate division, a district division and a family division; with the Circuit Court having the jurisdiction, powers, and duties conferred upon the former probate and district courts and upon the former judicial branch family division by RSA 547, RSA 502-A and RSA 490-D; and

WHEREAS, BCSS and the Supreme Court, through the Administrative Office of the Courts (hereinafter "AOC"), and on behalf of its subcomponent, the Circuit Court Family Division (hereinafter "CCFD"), agree that cooperation shall benefit the public at large through the timely filing, hearing, and resolution of child support matters, and they hereby covenant and agree as follows:

I. ORGANIZATIONAL RELATIONSHIP

The Supreme Court has general superintendence over the New Hampshire Court System (RSA 490:4). The New Hampshire Constitution pt. 2, Art. 73-a places responsibility for administration of all the courts on the Supreme Court. In August 1983, the Supreme Court created AOC to assist in its administrative, financial, and non-judicial personnel management responsibilities. These obligations were further defined by order of the Supreme Court dated January 21, 2005. Under the direction of the Supreme Court, AOC is responsible for the preparation and the administration of the Circuit Court's budget, the establishment of standardized budgeting and accounting procedures in the State's courts, and the collection and maintenance of statistics. The AOC falls under the direct supervision of the Chief Justice of the Supreme Court.

The CCFD has marital master positions to assist in handling marital and child support matters. The masters are authorized to hear all marital matters, paternity cases, and Uniform Interstate Family Support Act

(UIFSA) actions, as well as show cause hearings and violations of existing child support orders. The Marital Master Program is administered in the CCFD by the Administrative Judge of the Circuit Court.

The Circuit Court was established through Chapter 88, of the Laws of 2011. The CCFD is a trial court, with jurisdiction of domestic, marital, and other family actions (Laws 2005, Chapter 177:14). CCFD judges and masters are assigned to one or more circuits or locations at the discretion of the Administrative Judge of the Circuit Court after considering population, judicial time and efficiency, available judicial resources, and the needs of the public.

Pursuant to RSA 490-F:15, the Circuit Court with the consent of the parties shall, and without the consent of the parties may, commit to one or more referees any cause at law or in equity, or the determination of any question of fact pending in the court wherein parties are not entitled to a trial by jury. The child support referees are authorized to hear, analyze, and make recommendations on IV-D paternity establishment cases, child and medical support establishment and modifications cases, and child support cases brought under UIFSA.

BCSS is responsible for administering a statewide child support establishment and enforcement program under Title IV-D of the Social Security Act. The Bureau must have in effect and use, in interstate and intrastate cases, administrative and/or judicial expedited processes to establish paternity and to establish, modify, and enforce support orders.

II. DUTIES AND RESPONSIBILITIES

BCSS, and the Supreme Court, by and through AOC, on behalf of its subcomponent, the CCFD, hereby agree to comply with Title IV-D of the Social Security Act, and agree to implement all federal regulations and requirements.

A. BCSS shall:

1. Identify and keep monthly logs by case name of each IV-D case that is heard by the CCFD. IV-D cases include:

   a. Establishment of paternity;
   b. Establishment of new orders for child and medical support;
   c. Establishment of temporary orders for child and medical support;
   d. Establishment and enforcement of interstate reciprocal cases under UIFSA or any other laws governing interstate child support cases;
   e. Enforcement of existing orders of support;
   f. Modifications of divorce decrees and other orders with respect to child and medical support; and
   g. Hearings on support violations and show cause hearings.

2. Monitor time frames for all IV-D cases to determine they are being disposed of within federally mandated time frames established in 45 CFR §303.101(b)(2);

3. Provide the CCFD with written requests to schedule hearings;

4. Notify the Administrative Judge of the Circuit Court or designee, when any CCFD Court clerk fails on two or more separate occasions to schedule a hearing in a timely manner, in accordance with paragraph II, section B.3;

5. Seek reimbursement from the federal Office of Child Support Enforcement (OCSE) for a portion of the direct expenses of the marital masters, child support referees, and in accordance with 45 CFR 304.21, for positions involved with the administration of IV-D activities (which includes the salaries and benefits for the positions) and a portion of the indirect expenses associated with these positions (which includes the salaries and benefits of clerical/support staff who do not work exclusively for the marital masters or child support referees) as well as the services and commodities which support the program as follows:

   a. The amount of reimbursement for all direct expenses shall be calculated by multiplying the current Federal Financial Participation (hereinafter "FFP") rate by the percentage of time marital masters, child support referees, and administrators spend on IV-D activities, as reported on a monthly basis, by the total amount of direct expenses as referred to in Exhibit A, attached hereto.

   b. The amount of reimbursement for the indirect expenses of clerical/support staff salaries and benefits shall be calculated by multiplying the current FFP rate by the percentage of time spent by court personnel on IV-D activities cases by the total indirect expenses as referred to in Exhibit A, attached hereto. The percentage of time spent on IV-D activities will be derived from time study projects (see Section II, D.5) conducted in several courts for the purposes of this Agreement. See Exhibit B attached hereto.

   c. The amount of reimbursement for all indirect expenses of services and commodities shall be calculated by multiplying the total cost pool as referred to in Exhibit A, attached hereto, by the ratio of marital masters and referees to the total number of judicial officers, by the percentage of the master and referee time spent on IV-D cases, and by the current FFP rate, as referred to in Exhibit A; and

6. Shall remit on a monthly basis the reimbursement due as calculated in accordance with this section.

B. The CCFD as authorized by the Supreme Court shall:

1. Schedule, where applicable, the marital masters and/or child support referees to hear, IV-D cases in CCFD Courts with jurisdiction over IV-D cases. The marital masters and/or child support referees shall exercise independent judicial discretion in ruling on IV-D cases;

2. Employ its best efforts, in conjunction with BCSS, to coordinate regularly scheduled Court days, by use of block scheduling, for the resolution of establishment, modification, and enforcement cases in order to achieve mutual efficiencies in the administration of IV-D cases;

3. Require that all CCFD Court Clerks mail to all parties a notice of hearing within twenty-one (21) days of the receipt of a request by BCSS; the date of said hearing shall be

within ninety (90) days of receipt of the request unless the docket will not permit such scheduling; but in any event shall ensure compliance pursuant to paragraph II, section B.9;

4. After notice is given pursuant to paragraph II, section A.4 above, the Court shall have fourteen (14) days in which to take corrective action or to notify the Department why corrective action is inappropriate. Corrective action, in this instance, shall mean the mailing of a notice of hearing within fourteen (14) days;.

5. Require marital masters, child support referees, and administrators to report the percentage of their time each day that was dedicated to IV-D activities. A daily reporting log (hereinafter log) will be completed by each master, child support referee, and administrator; copies are attached hereto as Exhibit C. The log will be used for monitoring and managing the processing of IV-D cases and activities;

6. Require that the marital masters, child support referees, and administrators sign and submit the completed logs at the end of each month to the Administrative Judge of the Circuit Court or designee;

7. Require that the marital masters, and child support referees, identify the case name and case number of each IV-D case heard daily and submit these case lists together with the logs monthly to the Administrative Judge of the Circuit Court or designee;

8. Require that the Administrative Judge of the Circuit Court or designee review the logs and case list for accuracy and forward them to the AOC within one (1) week of receipt thereof;

9. Take reasonable measures to ensure that the CCFD shall meet the federal time frames for expedited processes mandated by 45 CFR §303.101;

10. Require, for all cases referred to BCSS or cases in which an application for services is received by BCSS in which the obligation for support and the amount of the obligation have been established and BCSS has requested a copy of the Order, that all CCFD Court Clerks mail copies of the requested orders within fourteen (14) days of receipt of the request by BCSS, or other IV-D Agency, in order to ensure compliance with the federal time frames mandated by 45 CFR 303.6; and

11. Require that all record keeping documents identified under this Agreement shall be safeguarded and retained for a period of seven (7) years from the date the Agreement terminates and shall be made available to BCSS within a reasonable time upon request.

C. The AOC, the CCFD, and BCSS agree to the following efforts:

1. Liaison Meetings

The parties recognize the benefits and business efficiencies achieved by having staff from each entity meet and work together at developing best practices and achieving a mutual understanding of each other's business needs. As such, the parties agree to the following liaison meetings:

a. Local Liaison

BCSS field staff from each local District Office (hereinafter DO) shall meet with court staff from the CCFD facility that provides services to that DO, on a bi-annual schedule, or as may be otherwise necessary, to address issues that arise from the court resolution of IV-D cases, such as, case scheduling, case procedural issues, or any other identified activities or actions that will improve efficiencies for the resolution of IV-D cases.

The court staff shall include the CCFD Court Clerk and other appropriate CCFD personnel, along with the Circuit Court Administrative Judge or designee. BCSS staff shall include the BCSS DO supervisor and appropriate DO staff along with at least one representative from BCSS Administration and Child Support Legal.

b. Administrative Liaison

The Circuit Court Administrative Judge or designee, The Circuit Court Administrator(s), and an appropriate representative from AOC shall meet on an annual basis for liaison meetings with appropriate BCSS representatives to review and discuss administrative issues that have arisen within the IV-D Process.

2. IV-D Training

BCSS agrees to provide, as necessary, training and/or educational workgroups on IV-D issues and activities covered by this Agreement. BCSS shall provide qualified staff to develop, present, and facilitate the educational trainings with a goal of the development and maintenance of IV-D program knowledge. The trainings shall be available to the Circuit Court Administrative Judge or designee, the Circuit Court Administrator(s), the CCFD Judges who hear IV-D cases, marital masters, child support referee(s), and all other appropriate court staff.

3. The IV-D Program Development Workgroup

The parties shall participate on the IV-D Program Development Workgroup, which was established under a prior Cooperative Agreement for the purpose of jointly fulfilling the goals of the AOC/BCSS Agreement, while ensuring IV-D program compliance. The workgroup shall, at a minimum, be composed of the following: the Circuit Court Administrative Judge designee; the Director of AOC designee; the Director of BCSS administrative designee; and the Director of BCSS Child Support Legal designee.

For the term of this Cooperative Agreement, the Workgroup shall meet as needed to identify and address areas within which efficiencies may be achieved, with the overall goal being the creation of a more efficient expedited process for the judicial resolution of IV-D cases. Specifically, the Workgroup shall seek to implement a more centralized system for the scheduling, hearing and processing of IV-D cases, including both establishment and enforcement. The use of video hearings and DCSS use of administrative processes shall be explored.

This Workgroup shall also seek to develop a method to identify and calculate eligible AOC expenditures within the CCFD Call Center (hereinafter CCFD CC). The CCFD CC performs IV-D activities and the goal is to develop a method that identifies and accounts for these specific costs incurred on behalf of cases receiving IV-D services

under the State Plan. Such activities would be eligible for reimbursement in accordance with 45 CFR 304.21.The parties recognize and acknowledge the need to form an effective partnership to achieve overall IV-D program compliance. As such, the parties agree to the meaningful participation of appropriate staff in order to accomplish the tasks of this workgroup.

D. The AOC, as authorized by the Supreme Court, shall:

1. Review and track for accuracy all of the logs received from the CCFD;

2. Submit to BCSS a monthly summary report showing the total reimbursement due for each marital master, child support referee, and administrator together with copies of logs for use in authorizing reimbursement payments;

3. Submit to BCSS monthly statements reflecting actual costs for salaries and benefits of clerical/support staff and costs for services and commodities;

4. Make available to BCSS upon request the case names and case numbers of all IV-D cases heard by marital masters and child support referees in order to assist BCSS in tracking and monitoring cases; and

5. In each of the four (4) state fiscal years of this Agreement administer two-week time studies in three different locations, measuring and reporting the percentage of time clerical/support staff spends on IV-D activities. The two (2) weeks shall be selected to best reflect average workload. The percentage of time reported by clerical/support staff as spent on IV-D activities shall be adjusted annually based on the results of any time studies conducted in that year.

III. ESTIMATED REIMBURSEMENT

DIRECT EXPENSE:

The estimated reimbursement for the direct expense of the marital masters shall be $0 for SFY 2021, $0 for SFY 2022, $0 for SFY 2023 and $0 for SFY 2024. These figures are based upon the actual current salaries and benefits. Salary and benefits shall be multiplied by an estimated one percent (1%) of IV-D time, and by the current FFP rate of sixty-six percent (66%).

The estimated reimbursement for the direct expense of the referees shall be $67,079 for SFY 2021, $67,079 for SFY 2022, $67,079 for SFY 2023 and $67,079 for SFY 2024. These figures are based upon the actual current salaries and benefits. Salary and benefits shall be multiplied by an estimated thirty-five percent (35%) IV-D time, and by the current FFP rate of sixty-six percent (66%).

The estimated reimbursement for the direct expense of the administrators shall be $2,579 for SFY 2021, $2,579 for SFY 2022, $2,579 for SFY 2023 and $2,579 for SFY 2024. These figures are based upon the actual current salaries and benefits. Salary and benefits shall be multiplied by an estimated IV-D time of four percent (4%), and by the current FFP rate of sixty-six percent (66%).

INDIRECT EXPENSE:

The estimated reimbursement for the indirect expenses of clerical/support staff salaries and benefits shall be $663,959 for SFY 2021, $663,959 for SFY 2022, $663,959 for SFY 2023 and $663,959 for SFY 2024. These figures are based upon the annualized salaries and benefits expense from December, 2019. The result is multiplied by fifty-three point thirty-one percent (53.31%), the percentage of domestic case time and twenty point seven percent (20.07%), the time spent on IV-D activities, and by sixty-six percent (66%), the current FFP rate. Estimates used are based on the most current (June, 2019) time studies.

SERVICES AND COMMODITIES:

The estimated reimbursement for the indirect expenses of services and commodities shall be $98,554 for SFY 2021, $98,554 for SFY 2022; $98,554 for SFY 2023 and $98,554 for SFY 2024. These figures are derived by multiplying the total cost pool of indirect expenses of services and commodities by the ratio of marital masters and referees to the total number of judicial officers, currently ten point one percent (10.1%), then multiplying by nineteen point eight percent (19.8%), the estimated judicial time on IV-D cases, multiplied by sixty-six percent (66%) FFP rate.

The State's indirect costs, pursuant to RSA 124:11, are not recoverable.

The actual expenses shall be reviewed semi-annually by the AOC and DCSS to monitor that such expenses are within the amount budgeted herein.

The Agreement shall be amended to reflect the adjustment to the estimated reimbursements in the event that any additional marital masters, child support referees or case managers are hired during the term of the contract.

DCSS has the right to refuse reimbursement for any costs, which are, or may become, prohibited by federal or state law.

IV. FISCAL RESPONSIBILITY

The AOC hereby agrees to reimburse BCSS for any payments withheld from BCSS, adjustments made in funds otherwise due BCSS, or fines imposed by the U.S. Department of Health and Human Services (hereinafter HHS), due to any expenditures claimed by the AOC and paid pursuant to this Agreement that are later determined to be improper. The reimbursement shall only be required in situations where AOC failed to comply with the terms of this Agreement. Such reimbursement shall not be required for payments withheld or adjustments made, or fines imposed due to the failure of BCSS to comply with the terms of this Agreement. AOC agrees to reimburse BCSS for any expenditures under this Agreement which are determined as a result of an audit by BCSS, HHS or any authorized entity to be attributed to: (1) Services to ineligible individuals; (2) ineligible services; (3) ineligible indirect costs, the AOC may be liable for any disallowance or charges; or (4) any other claims which are inconsistent with the provisions of this Agreement.

If BCSS and/or AOC determine that any withholding, adjustment, or fine imposed by HHS due to AOC noncompliance, is erroneous or improper for any reason, BCSS and AOC shall evaluate the merits of an appeal and may pursue an appeal through appropriate avenues. BCSS and AOC shall jointly decide whether to file, pursue, and/or continue any such appeal. Should there be disagreement on this issue the Office of the Attorney General shall be consulted and its determination shall be final and binding and shall not be subject to judicial review or administrative procedures. AOC shall be responsible for all litigation costs incurred. AOC shall return funds required to be returned under this section no later than thirty (30) days following BCSS' request for its

return. However, if an appeal is requested within that thirty (30) day period, the AOC will not be responsible for returning funds until thirty (30) days after such appeal has been completed and denied, or not until a fiscal sanction has been imposed by HHS, whichever occurs first.

V. CONFIDENTIALITY

This agreement does not authorize access to any records or documents by court personnel or authorized BCSS employees other than what is already authorized by current job responsibilities, nor does it provide access to such records or documents by any other person(s). All information, records and documents received relating to IV-D cases shall be safeguarded in accordance with relevant federal and state statutes and regulations, including 42 USC §654 (26); RSA 161-B: 7, III, except as otherwise permissible under Chapter 91-A or court order.

Only authorized representative(s) of the United States Government, the State Office of Legislative Budget Assistant Audit Division, and authorized representatives of BCSS and court personnel shall have the right to inspect and examine records or documents pursuant to this Agreement to the extent authorized by law and/or federal and state regulations. Any such authorized person(s) must provide reasonable notice and presentation of proper credentials or identification.

VI. EFFECTIVE DATES

This Agreement shall be effective upon approval by Governor and Executive Council and shall terminate on June 30, 2024. Services under this Agreement shall begin on July 1, 2020.

Documented services provided during any Federal Fiscal Quarter in which this Agreement is effective shall be reimbursable pursuant to 45 CFR §304.21 (d).

This Agreement may be amended at any time during its term by written agreement of both parties.

VII. TERMINATIONS

Should the AOC or the CCFD breach or fail to meet any terms and/or conditions of this contract, including:

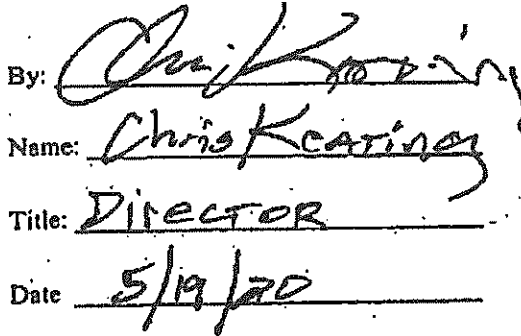
1. Failure to meet time frames in expedited process program standards; or
2. Failure to take corrective action as defined in paragraph II, section B.4 above; or
3. Failure to maintain and/or provide required records and documentation; or
4. Failure to participate in local liaison or administrative liaison meetings pursuant to paragraph II, section C.1 above; or
5. Failure to meaningfully participate in the IV-D Training, or IV-D Program Development Workgroup pursuant to paragraph II, sections C.2, and C.3 above;

then BCSS may, at its option, refuse reimbursement for the month in which the breach occurred, refuse reimbursement for the month in which corrective action was to take place, or terminate the contract.

This Agreement may be terminated at any time during its term by written agreement of both parties.

IN WITNESS WHEREOF, by signature below, the Supreme Court by its duly authorized agent and BCSS, by its duly authorized agent have executed this Agreement:

State Of New Hampshire
Administrative Office of the Courts



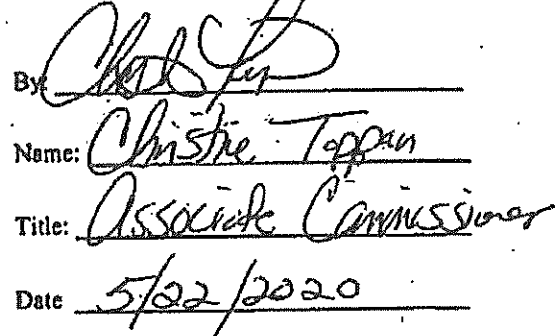
By: ______________________

Name: Chris Keating

Title: Director

Date 5/19/20

State Of New Hampshire
Bureau Of Child Support Services

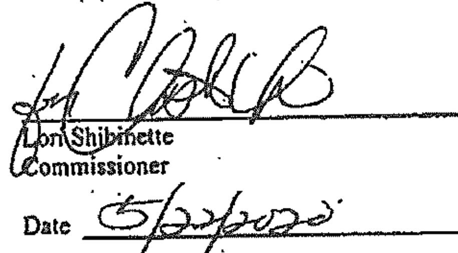


By: ______________________

Name: Christie Tappan

Title: Associate Commissioner

Date 5/22/2020



Lori Shibinette
Commissioner

Date 5/22/2020

The preceding, having been reviewed by this office, is approved as to form, substance, and execution.

OFFICE OF THE ATTORNEY GENERAL

June 2, 2020
Date

J. Christopher Marshall
Name:
Title:

I hereby certify that the foregoing Amendment was approved by the Governor and Executive Council of the State of New Hampshire at the Meeting on:
______________ (date of meeting)

OFFICE OF THE SECRETARY OF STATE

Date

Name:
Title:

Exhibit A

IV-D Projected Budget for FY2021, FY2022, FY2023 and FY2024

Direct Expenses	Per Year Expenditures for FY21-24	Estimated IV-D %	FFP	Estimated Reimbursement per year
Marital Master	-	1.0%	0.66	-
Referees	290,386	35.0%	0.66	67,079
Administrators	97,700	4.0%	0.66	2,579
Direct Total	388,086			69,658
Indirect Expenses				
Clerical Staff	9,402,458	10.7%	0.66	663,959
Services & Commodities				
Facilities	3,284,702			43,358
Postage, Printing & Supplies	458,587			6,053
Equipment Rental	174,894			2,309
Maintenance Contracts	150,853			1,991
Equipment Purchases	307,652			4,061
Telephone	404,004			5,333
Library	140,772			1,858
Travel	258,308			3,410
Sheriff Reimbursement	1,692,224			22,337
Interpreters	594,203			7,843
Services & Commodities Total	7,466,199	2.0%	0.66	98,554
Indirect Total	16,868,657			762,513
Total Actual Expenditures	17,256,742			832,172

* Note Marital Masters will be phased out and Call Center is not included

Exhibit B

SUMMARY OF TIME STUDY

The methods and procedures governing time study reporting of the child support activity are outlined below:

Personnel Required to Report

The identification of personnel required to participate in the time study process and the tasks subject to time study examination reflect the full involvement of clerical support staff for masters and referees who process IV-D related cases. This includes clerical staff, case managers, and their direct supervisors who work on cases as well as supervise subordinates. Law clerks, and the senior law clerk that has the ultimate responsibility for management of the office, were not included in the study, as it would have been prohibitive in terms of the time and effort required to capture useful data.

Reporting Period

These time studies that provided a baseline determining the amount of time spent in processing IV-D cases were done over a two-week period in several courts for purposes of figuring cost allocation. These same studies should be reviewed again so that procedures that were noted "unknown" relative to IV-D status may be researched and a value assigned to these cases. This will enable the Department to project the expected number of cases that will become IV-D even if they entered the system as "unknown". In addition, a certain number of "non-IV-D" cases would be expected to convert to IV-D. Again, these cases would have to be pulled and studied to determine any change in IV-D status.

Preparation of Time Study Reports

A Time Log was developed to be used in gathering data for time study reporting. The form was designed to identify the amount of time each reporting staff member spends in the performance of a variety of functions during the course of a normal business day. The activities are then allocated to one of the three (3) categories of IV-D status, "yes", "no", or "unknown" for the purpose of determining costs of the IV-D related portion of the operation.

A listing of the tasks to be itemized on the time study report form and instructions for the preparation of the form follow:

A = Enter Case
B = Order of Notice
C = Hearing Notices
D = Notice of Decision
E = Scheduling
F = Phone
G = Counter
H = Docketing and Correspondence
I = Closing
L = General Office/Staff Support
M = Pulling Mail/Dockets/Filing

General Instructions

1. The Time Log must be completed daily by those staff members designated as time study personnel. The reports are to be reviewed by the unit supervisor for the completeness and accuracy and collected daily. They should be forwarded to the Administrative Office of the Courts weekly.

2. A Time Log should be filed when the staff members designated as time study personnel are absent from work part or all of the day due to sick time, vacation leave, personal leave or other authorized leave.
3. The daily Time Log must be reviewed for completeness and accuracy and signed by each reporting staff member each day and submitted to the unit supervisor.
4. The Time Log should accurately represent the activity of the reporting staff member during the specific review period. No attempt should be made to structure the data to portray an individual's perception of the proper allocation of work time activity.

Instructions for Completion of Reporting Form

1. Reporting requires that daily activity is to be reduced to five (5) minute reporting periods. No period of time less than five (5) minutes will be used for the purposes of this report. It is acceptable to lump several cases under one five (5) minute time block when tasks take only a few seconds to complete.

2. The reporting form does not require that daily activities be reported in the time sequence in which they were performed during the day. However, it is strongly recommended, given the number of cases processed daily that staff complete logs, including the docket number of each case worked on, as the task is completed.

3. The activities or work tasks have been listed for staff to categorize their activity. In addition, they are asked to judge whether the work is IV-D related, is not (and is not likely to be) IV-D related, or whether it is unknown that the work is IV-D related. Also, they are asked to report the status of each case on which they are working. That is, is it a new entry, a new case process, or an old case that has been brought forward? Workers should write the proper task code in one of these columns.

4. The time study report assumes a seven and one-half (7.5) hour work day, but work activities performed during overtime hours should be reported as well. Authorized non-productive activities, such as lunch period or administrative time that cannot be categorized, should be entered at the bottom of the log sheet.

Exhibit B

IV-D Time Study Log

Court: ______________

Name: ______________________________ Date: ______________

DOCKET#	IV-D STATUS			NEW ENTRY	IN PROCESS	BROUGHT FORWARD	TIME IN 5 MIN. INTERVALS
	YES	NO	UNKNOWN				

Total Minutes

450 Total minutes should be accounted for - 7.5 hours is 450 minutes

Lunch/Breaks ______________

Total

Exhibit C

New Hampshire Judicial Branch
IV-D Reporting Log - Name ____________
Month/Year: ____________

Date	County	Case Name	Docket #	NECSES #	Time (In Minutes)	Rate / Minute	FFP	Reimbursement Amount (Min x Rate x FFP)
						$ 1.01	0.66	$ -
						1.01	0.66	-
						1.01	0.66	-
						1.01	0.66	-
						1.01	0.66	-
						1.01	0.66	-
						1.01	0.66	-
						1.01	0.66	-
						1.01	0.66	-
				MONTHLY TOTALS	0			$ -

Signature ______________________

Date ____________

Fill in *ONLY* if *SPEAKING* on Bill

Bill # HR 14 Date 9.12.23

Committee SPECIAL FAMILY COURT

I support the bill ____

I oppose the bill ____

I have written testimony ✓

(Number of copies) 12

Time needed to speak: 5

Name KATRINA HEINRICH

Address EXETER, NH

Phone ____

Representing ____

Fill in *ONLY* if *SPEAKING* on Bill

Bill # HR Date ____

Committee Family Court

I support the bill ____

I oppose the bill ____

I have written testimony ____

(Number of copies) ____

Time needed to speak: <5M

Name Daniel Ifse

Address 165 Loeward St
Manchester

Phone 603 702 0381

Representing Self

Fill in *ONLY* if *SPEAKING* on Bill

Bill # ____ Date 9 12 2023

Committee FAMILY DIV. CIR. COURT

I support the bill ____

I oppose the bill ____

I have written testimony ____

(Number of copies) ____

Time needed to speak: 5 m

Name DREW CULLEN

Address 63 EMERALD ST KEENE
4 PLEASANT MARLBOROUGH NH.

Phone ____

Representing SELF

Fill in *ONLY* if *SPEAKING* on Bill

Bill # HR 14 Date 9/12/23

Committee Special Family Court

I support the bill ✓

I oppose the bill ____

I have written testimony ____

(Number of copies) ____

Time needed to speak: 5

Name Hon Betty Gay

Address 10 Woodmeadow Dr.
Salem NH 03079

C
Phone 603-818-1614

Representing Self + former constituents

Fill in *ONLY* if *SPEAKING* on Bill

Bill # ______ Date 9/12/23

Committee Special

I support the bill ___ NA

I oppose the bill ___

I have written testimony ___

(Number of copies) ___

Time needed to speak: 5 minute

Name Lindsay Smith

Address 145 Island Path
Hampton

Phone 781-910-3973

Representing NA

Fill in *ONLY* if *SPEAKING* on Bill

Bill # ______ Date 9-12-23

Committee Special committee

I support the bill ___

I oppose the bill ___

I have written testimony ___

(Number of copies) ___

Time needed to speak: 3 min

Name Destinie Berard

Address 46 Pond St
Georgetown Ma

Phone 978 518 0765

Representing ______

Fill in *ONLY* if *SPEAKING* on Bill

Bill # ______ Date 9/12/23

Committee Special

I support the bill ___ NA

I oppose the bill ___

I have written testimony ___

(Number of copies) ___

Time needed to speak: 5 minute

Name Cynthia Smith

Address 20 Calder St
Gloucester, MA

Phone 781 632-8933

Representing ______