



TAXATION AND BUDGET REFORM COMMISSION

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Governmental Services Committee Report State of Florida Courts System

SUMMARY

The mission of Florida's Judicial Branch is to protect rights and liberties, uphold and interpret the law, and provide for the peaceful resolution of disputes.¹

The Judicial Branch will face many challenges in the future, as there is no single, certain forecast for the courts. Events and trends in areas such as the demographics of court users; the growing size and complexity of our society; the increased polarization of people based on age, financial status, political views, culture, and values; the likelihood of hurricane activity and pandemic influenza; the outstanding transition issues resulting from the shift in local and state responsibilities; and the increasing challenges of working effectively and creatively will affect the outlook of the state's court system over the coming decades. The appropriate response may be doing what has always been done, only better; or it may involve important shifts in organizational focus and action.²

Florida's Court structure consists of the following entities: two appellate level courts (the Supreme Court and five

district courts of appeal) and two trial level courts (20 circuit courts and 67 county courts). The Chief Justice presides as the chief administrative officer of the judicial branch.

Judicial leaders have long recognized the benefits of strategic planning. With a long-range plan guiding its actions, a court system has a methodical, efficient mechanism in place for addressing the concerns and challenges it confronts, such as the inevitability of rapid growth and complex social, political, economic, and technological changes; waning public trust and confidence in government generally; and heightened public criticism of the judicial branch.³

Another asset of long-range planning is that it serves as a powerful performance management tool. Court systems clearly identify the issues they currently are, or expect to be, facing and—with that done, their goals and strategies for dealing with those issues—tend to create regular opportunities to evaluate and improve themselves, thereby enhancing court performance and providing more competent and cost-effective court services.⁴

¹ Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007.

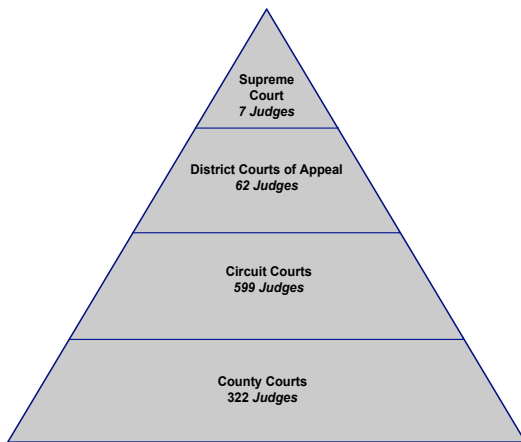
² The Supreme Court of Florida, Long Range Program Plan – Fiscal Years 2008-2009 through 2012-2013.

³ The Supreme Court of Florida, Annual Report 2006-2007.

⁴ Ibid.

BACKGROUND

The Florida State Courts System serves all of Florida's residents and visitors. As the population and the number of visitors to Florida increase and become more diverse, and as the business and governmental sectors become larger and more sophisticated, the corresponding task environment of the courts becomes more complex. A number of external and internal trends contribute to the scope and complexity of the challenges facing the courts.



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The demographic trends of the State of Florida and its courts system are in a constant state of change. Florida's population trends are growing at a rate which may rise faster than the State of Florida's services can effectively keep pace. The court system will have to prepare for these demographic shifts.⁶

⁵ PowerPoint Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007.

⁶ Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007.

Supreme Court of Florida

The highest court in this state is the Supreme Court, which is composed of seven justices appointed by the Governor. One of the justices is chosen chief justice by a majority of the other justices. A quorum consists of five justices, and four must be in agreement in order to render a decision. The Supreme Court must hear appeals in death penalty cases. Supreme Court justices must stand for retention every six years.⁷

District Courts of Appeals

The majority of trial court decisions which are appealed are examined by the District Court of Appeals (DCA). There are five district courts, headquartered in Tallahassee, Lakeland, Miami, West Palm Beach, and Daytona Beach.

There are between twelve and fifteen judges on each DCA.⁸ There are 62 judges statewide and a DCA usually consists of a three judge panel which requires the concurrence of two for a decision. In some rare instances, all eligible judges of the District can participate "en banc" or full bench. Like the Supreme Court justices, District Court of Appeals judges are appointed by the Governor and stand for retention every six years.⁹

⁷ The Florida Handbook, 2005 – 2006, compiled by Allen Morris and Joan Perry Morris, pp. 217 – 218.

⁸ Information found at www.flcourts.org/courts/dca - District 1 has 15 judges, District 2 has 14 judges, District 3 has 12 judges, District 4 has 12 judges, and District 5 has 13 judges.

⁹ http://www.judicialselection.us/judicial_selection/.

Circuit Courts

The courts with the widest jurisdiction in Florida are the circuit courts. There are 20 judicial circuits across the state with a total of 599 circuit judges serving the state. Each circuit judge is elected to a six-year term. Circuit courts have exclusive jurisdiction in all actions of law not cognizable by the county courts.¹⁰

County Courts

Each of Florida's 67 counties has at least one county court judge. The number of judges in each county court varies with the population and caseload of the county. The total number of county judges in Florida is 322. County court judges are elected for a four-year term and may hear simplified dissolution of marriage cases. County courts are of limited jurisdiction, as established by statute; only have jurisdiction in civil cases involving less than \$15,000; hear nearly all of the misdemeanor and traffic cases; and are responsible for overseeing the small claims court (under \$500).¹¹

State Court System Administration

The Chief Justice of the Supreme Court is responsible for the administration of all state courts in Florida. The Office of State Court Administration (OSCA) serves under the direction of the Chief Justice of the Supreme Court and the other six justices, and oversees the operation of numerous court programs, initiatives, and administrative functions.

OSCA serves as the liaison between the court system and the legislative and executive branches of government. The office oversees budget preparations and legislative initiatives for the entire state court system. OSCA was originally created in 1972 to assist the state courts with developing a uniform case system that provides information to assist in preparing budget requests and to project the need for additional judges and special court divisions.¹²

Each of the five District Courts of Appeal and 20 Court Circuits has its own local administrative structure. Each of these individual units is overseen by the Chief Judge for the District or Circuit.¹³

Judicial Nominating Commissions

There are 26 judicial nominating commissions that screen applicants for vacancies on Florida courts and recommend qualified candidates to the governor: the statewide nominating commission for the Supreme Court, a commission for each of the five district courts of appeal, and a commission for each of the twenty judicial circuits.¹⁴ For all vacancies on the Supreme Court and district courts of appeal, and for mid-term vacancies on the circuit and county courts, the appropriate nominating commission submits a list of three to six nominees. The governor must appoint one of the commission's nominees.¹⁵

¹⁰http://jud11.flcourts.org/about_the_court/judicial_circuit_overview.htm.

¹¹ The Florida Handbook, 2005 – 2006, compiled by Allen Morris and Joan Perry Morris, p 205-208.

¹² www.flcourts.org/courts/crtadmin.

¹³ www.flcourts.org/courts/crtadmin/localadmin.shtml.

¹⁴ The Florida Handbook, 2005 – 2006, compiled by Allen Morris and Joan Perry Morris, p. 208.

¹⁵ Ibid.

Each nominating commission consists of nine members appointed by the governor. Four members are lawyers appointed from lists of nominees submitted by The Florida Bar. Of the remaining five members, at least two must be lawyers. Members must be residents of the jurisdiction the commission serves. In making the appointments, the governor is to ensure that, to the extent possible, the membership of each commission reflects the racial, ethnic, and gender diversity and geographic distribution of the relevant jurisdiction. Members serve four-year terms.¹⁶

In 1991, the Florida Legislature altered the composition of the state's judicial nominating commissions to provide that one third of all members be women or members of a racial or ethnic minority group. A white male who applied for a commission vacancy was rejected because the position was reserved for a woman or minority, and he filed a suit challenging the constitutionality of the diversity provision. The federal district court found that the provision violated the equal protection clause of the Fourteenth Amendment.¹⁷ The decision was affirmed by the court of appeals without reported opinion in 1997.¹⁸

State Attorneys

State Attorneys prosecute and defend on behalf of the state, all suits, applications, or motions, criminal or civil, in which the state is a party (except as provided in

Chs. 39, 984, 985, *Florida Statutes*) in the circuit or county courts within his or her judicial circuit.¹⁹ The state attorney also prosecutes violations of special laws and county or municipal ordinances punishable by incarceration if the prosecution is ancillary to a state prosecution or if the state attorney has contracted with the county or municipality for reimbursement for services rendered in accordance with Section 27.34(1), *Florida Statutes*. State attorneys are elected to a four-year term under provisions of the *Florida Constitution*.²⁰

For Fiscal Year 2007-2008, the number of authorized full-time employees for State Attorneys is 6,276.²¹ This number does not include support staff for the attorneys.

In Fiscal Year 2005-2006, state attorneys were referred 446,824 felony cases, 1,140,144 misdemeanor cases, and 175,923 juvenile cases. That same year, the average number of referrals per attorney for felony cases was 410, for misdemeanor cases 2,401, and for juvenile cases 1,068. Other performance measures and standards for the department may be found in its Long Range Program Plan.²²

Public Defenders

For each judicial circuit, there is a Public Defender who is, and has been for the preceding five years, a member in good standing of The Florida Bar. Public

¹⁶ Section 43.291, *Florida Statutes*.

¹⁷ *Mallory v. Harkness*, 895 F.Supp. 1556 (S.D. Fla. 1995).

¹⁸ http://www.judicialselection.us/judicial_selecti on/methods/judicial_nominating_commissions.cf m.

¹⁹ Section 27.02, *Florida Statutes*.

²⁰ OPPAGA Florida Government Accountability Report, Public Defenders – 9-25-07.

²¹ Information provided by the Florida Justice Administration Commission, December 3, 2007.

²² OPPAGA Florida Government Accountability Report, State Attorneys – 9-25-07

Defenders are elected at the general election for a term of four years by the qualified electors of the judicial circuit. Each Public Defender must be an elector of the state and reside within the territorial jurisdiction of the judicial circuit in which he or she serves.²³

Pursuant to Section 27.51, Florida Statutes, Public Defenders and their legal staffs provide legal representation for indigent persons charged with crimes or violations of certain special laws or local ordinances ancillary to a state charge; persons alleged to be delinquent children; persons being involuntarily placed as mentally ill or involuntarily admitted to residential services for developmental disabilities; persons designated as sexually violent predators; persons convicted and sentenced to death for purposes of Supreme Court appeals; or appeals of any case from the list above.²⁴ Public Defenders assist each other across jurisdictional lines, as requested.

For Fiscal Year 2007-2008, the authorized number of full-time employees for Public Defenders is 3,144.²⁵ In addition to the authorized attorneys, public defenders' offices are authorized to hire support staff. According to the Florida Public Defender Association, the ratio of all support staff (including legal secretaries, investigators, information technology staff, administrative personnel, case workers, etc.) to attorneys is .8364 staff to 1 assistant public defender.²⁶

Clerks of the Court

The State of Florida's Constitution mandates that each county shall elect a court clerk, "There shall be in each county a Clerk of the Circuit Court who shall be selected pursuant to the provisions of Article VIII, Section I." ²⁷ "The Clerk of the Circuit Court shall be Ex-officio Clerk of the Board of County Commissioners, Auditor, Recorder and Custodian of all County funds."²⁸

Provisions of the Florida Constitution of 1838, established the Clerk of the Circuit Court as an elected public trustee and set in place at the county level a system of "checks and balances" which has been proven to serve the public for over 150 years.²⁹ The Office of the Clerk is a complex organization that performs a wide range of record keeping, information management, and financial management in the judicial system and county government. In a study conducted by the Joint Select Committee on Judicial Personnel of the Legislature, it was calculated that the Clerk's office performs 926 different constitutional and statutory functions or duties.³⁰

The Clerk is governed by statutory authority in carrying out the duties and functions of the office. As auditor and custodian of all county funds, the clerk is subject to State Auditor General rules and regulations, and is subject to annual audits by an independent audit firm. Accountability is further derived by the Clerks' duties and actions being

²³ Section 27.50, Florida Statutes.

²⁴ Section 27.51, Florida Statutes.

²⁵ Information provided by the Florida Justice Administration Commission, December 3, 2007.

²⁶ Ibid.

²⁷ Article V, Section 16 of the Florida Constitution.

²⁸ Article VIII, Section I (d) of the Florida Constitution.

²⁹ <http://www.flclerks.com/goal.html>.

³⁰ Ibid.

constantly subjected to public evaluation and scrutiny through the election process every four years.³¹

The Clerk of the Circuit Court serves dual roles for the circuit and for local county governments. The Clerk is responsible for ensuring that the Court's orders, judgments, or directives are carried out within the parameters allowed by law; maintaining the Court's records; collecting and disbursing the Court's fines, fees, and assessments; and collecting and disbursing court ordered child support and alimony payments.³²

In addition, the Clerk serves as accountant and auditor for the Board of County Commissioners; collector and distributor of statutory assessments; and guardian of the public records, public funds, and public property. The Clerk collects and disburses documentary stamps and intangible taxes for the Department of Revenue; collects and disburses numerous fees and assessments for the benefit of state trust funds; and provides informational, financial, and statistical data to the Legislature, Supreme Court, Department of Law Enforcement, Auditor General, Department of Health and Rehabilitative Services, and other state agencies.³³

As custodian of county funds, the Clerk ensures that the taxpayer's money is managed according to law. The Clerk provides internal audits of county government; provides access to public records; audits reports of guardians in guardianship cases; provides assistance to citizens in accessing the courts; and maintains court documents to ensure that

litigant's cases are handled in a timely manner.³⁴

Florida Ranks High on Accessibility and Openness

A 2006 study of state constitutions by the University of Florida College of Journalism and Communications analyzed eight areas of interest concerning public access. A Sunshine Index assigned states to categories ranging from “complete sunshine and complete citizen access to records” to “mostly dark or closed.” Florida received the nation’s highest rating for being mostly open and mostly in the sunshine.³⁵ The next highest rated states were California and Louisiana, followed by Montana and Rhode Island. Seventy five percent of states scored in or near the “mostly dark or closed” category.

A February 28, 2006 letter to the Florida Supreme Court from the Electronic Privacy Information Center in San Francisco commended the Court and its Committee on Privacy and Court Records for tackling difficult policy issues concerning access to public records. The letter commended the Committee’s report, including recommendations for constituting one of the most progressive and comprehensive approaches in the nation to addressing privacy risks of public records.³⁶ The Association of Electronic Journalists’ state-by-state guide to laws regarding cameras and microphones in the courtroom ranked Florida among 19 states that allow the most coverage.³⁷

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Florida TaxWatch Report, “Food for Thought” – September 2007.

³⁶ Ibid.

³⁷ Ibid.

Mass communication of public information is critical to the health of our democracy. Florida government agencies inform their customers and clients through websites and publications. News outlets rely on unrestricted access to public records and meetings to provide fast and reliable information to citizens.

Government employees who are knowledgeable about public records facilitate communication, saving their's and others' time. Governor Charlie Crist has created a state Office of Open Government to train public employees on open records and meeting requirements, and ensure compliance with applicable laws.³⁸

The need for this training was suggested by a 2004 audit conducted by the Reporters' Committee for Freedom of the Press which determined 43 percent of public records requests statewide showed violations, largely because of ignorance of the state's open records law.³⁹ The audit occurred two years after the Florida Society of Newspaper Editors launched Sunshine Sunday as a response to efforts by some legislators to create additional exemptions to the public records law.

Mental Health in the Courts

Information provided in this section was provided by Judge Stephen Leifman, Special Advisor on Criminal Justice and Mental Health for the Supreme Court of Florida and Associate Administrative Judge Eleventh Judicial Circuit of Florida.

³⁸ Ibid.

³⁹ Ibid.

During the early part of the 19th century, Floridians with serious mental illnesses requiring hospitalization were sent to Georgia State Hospital in Milledgeville and South Carolina State Hospital in Columbia, and the State of Florida was charged \$250 per person annually for care.

In 1876, Florida State Hospital was opened in a former civil war arsenal in Chattahoochee, two years after the state first enacted statutes governing the care of people with mental illnesses. With little effective treatment available, the institution functioned primarily to provide a custodial environment where patients would not injure themselves, staff, or other residents, and to ensure public safety.

In 1947, two years after the end of World War II, Florida's second state institution, G. Pierce Wood Hospital was opened in Arcadia on the site of a former military training grounds and air field. Because of tremendous population growth in the state following the war, overcrowding quickly became a significant problem at both facilities. By the late 1950s two additional hospitals were opened in Pembroke Pines and MacClenny.

By the mid-1900's, more than a half million people were housed in state psychiatric hospitals across the United States. The system was stretched beyond its limits and states desperately needed some alternative to addressing this costly and ever-expanding crisis. Around this same time, the first effective medications for treating symptoms of psychosis were being developed, lending further support to the emerging belief that people with serious mental illnesses

could be treated more effectively and humanely in the community. This period marked the beginning of the community mental health movement.

In 1963, Congress passed the Community Mental Health Centers Act which was intended to create a network of community-based mental health providers that would replace failing and costly state hospitals, and integrate people with mental illnesses back into their home communities with comprehensive treatment and services. In what would be his last public bill signing, President Kennedy signed a \$3 billion authorization to support this movement from institutional to community-based treatment. However, following President Kennedy's assassination and the escalation of the Vietnam War, not one penny of this authorization was ever appropriated.

As more light was shed on the horrific treatment people received in state psychiatric hospitals, along with the hope offered by the availability of new and effective medications, a flurry of federal lawsuits were filed against states which resulted in what became known as the "deinstitutionalization" of public mental health care. Unfortunately, there was no organized or adequate network of community mental health centers to receive and absorb these newly displaced individuals.⁴⁰

⁴⁰ Statement of Judge Stephen Leifman to the Governmental Services Committee on January 25, 2008

METHODOLOGY

Public meetings held by the Governmental Services Committee of the Taxation and Budget Reform Commission were principal sources of data collection used to prepare this report. Meetings related to these topics of the Governmental Services Committee were held on August 21, 2007 at the Orlando International Airport and on September 27, 2007 at the Supreme Court in Tallahassee.

On September 27, 2007, the committee heard presentations from three individuals on three different areas related to the courts.

1. Chief Justice of the Florida Supreme Court, the Honorable R. Fred Lewis discussed the role of the Judiciary, the changes it has undergone, and what types of changes could be expected in the future.

2. Representing the Florida Prosecuting Attorney's Association, 6th Judicial Circuit State Attorney Bernie McCabe discussed funding issues and the high turnover rate in the State Attorney Offices across the State of Florida.

3. President of the Florida Public Defender Association and 8th Judicial Circuit Public Defender, C. Richard Parker discussed his desire to dedicate a fixed revenue source and a trust fund for several upgrades to the Judiciary.

During the August 20, 2007 meeting, representatives from the Sheriff's Association and Police Chief's Association were in attendance. Also, Assistant Commissioner of the Florida Department of Law Enforcement, Mark

Zadra and Secretary of the Department of Corrections, James McDonough delivered presentations germane to the State Courts System.

Judge Stephen Leifman delivered a presentation to the Committee on Mental Health in the State Courts System on January 25, 2008.

Meeting minutes, audio recordings, presentations, and documents presented to the committee are available on the web at www.floridatbrc.org.

Other sources of information used in the project were: The Florida Office of Program Policy Analysis and Government Accountability (OPPAGA) Reports; Florida Government Accountability Reports (FGAR); 2007 Administrative Responsibilities of the Florida Supreme Court; Judicial Branch of Government – August 2007; Office of the State Court Administrator – Abstracts of Legislation 2007; Opening the Courthouse Doors – Florida Supreme Court Visitor’s Guide; Florida State Courts, Annual Report – 2007; Florida’s Judicial Branch: Trends for the Future, a presentation by Chief Justice Fred Lewis; and The Florida Handbook, 2005 – 2006.

FINDINGS

State Courts System

On September 27, 2007, the Governmental Services Committee held a meeting in the Supreme Court. The Honorable R. Fred Lewis, Chief Justice of the Florida Supreme Court delivered a presentation on the past, present, and future of the state courts system.

In his opening remarks, Chief Justice Lewis noted the importance of the state court system:

“Mr. Chair, members of the commission, it is an honor and privilege to be able to come before you as the representative of the Judicial Branch. However, that is not the only capacity in which I address you today.

My background is from the trenches that we are going to be talking about. I have represented plaintiffs and defendants. I have represented the powerful and the powerless. I have represented the wealthy and those stricken with poverty. I have represented the young and the old. I have represented government and individuals. I have spent my life, and dedicated my professional life, to what I am going to discuss with you this morning.

At times, my wife would tell you that I have spent birthdays and anniversaries writing briefs preparing to come in to the system. If I did not believe to the bottom of my soul in this system and its protections and its independence, then I would not have given myself in that fashion. So, I come to you not just as someone who has been at the public trough for 35 or 40 years. I come to you as an officer, truly as an officer, of this great branch.

Today, what we anticipated (and this may be a little bit redundant for the lawyers) was to explain who we are and what we do. It is very important for us all to come together to understand what it is we do, who we are, and where we have been if we are to engage in any

meaningful discussion of where we are going to go.”⁴¹

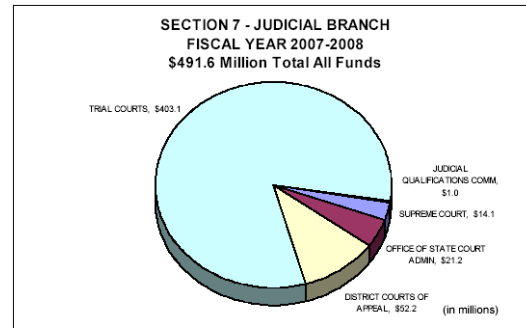
Chief Justice Lewis identified the vision of the courts system, “Justice in Florida will be accessible, fair, effective, responsive, and accountable.” The mission of the Judicial Branch is to protect rights and liberties, uphold and interpret the law, and provide for the peaceful resolution of disputes.⁴²

Chief Justice Lewis summarized the evolution of Florida’s Court System to the committee. The State of Florida has undergone incredible changes in the courts system to make up the system we live under today. In 1950, there was no State Courts System. Today, 57 years later, Florida’s Courts are the aspiration of many other court systems across America.⁴³

The current funding structure of the Judicial Branch is appropriated 0.7 percent of Florida’s total budget in Fiscal Year 2007-2008. While the State Courts received only \$491,234,853 for FY 2007-2008, the Justice System as a whole received \$1.29 billion in total appropriations.⁴⁴

The Justice System is comprised of the State Courts System, the Justice Administration Commission, the Statewide Guardian ad Litem Program, State Attorneys, Public Defenders for the Circuit, Public Defenders for the Appellate, the Capital Collateral

Representative Council, and Conflict Regional counsels.⁴⁵



Source: Actual Appropriations for Fiscal Year 2007-2008 Adjusted for Supplementals and Vetoes

The demographic trends of the State of Florida and its court systems are in a constant state of fluctuation. The population trends, as the Governmental Services Committee has heard in other meetings,⁴⁶ are growing at a rate which may rise faster than the State of Florida’s services can effectively keep pace. The courts will have to prepare for these demographic shifts.

One of the fastest growing segments of Florida’s population is the Non-English speaking inhabitants. Courts have been compelled to hire judges and staff who are fluent in languages other than English in order to service this segment of the population.⁴⁷

Chief Justice Lewis indicated that technology in the courts is a critical area to streamline and increase productivity. Technology is changing how the courts do business. The courthouse of the

⁴¹ Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007.

⁴² Ibid

⁴³ Ibid.

⁴⁴ General Appropriations Act, SB 2800, FY 2007-2008.

⁴⁵ Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007.

⁴⁶ EDR Presentation by Amy Baker on Population and Economic Trends of the State of Florida, May 18, 2007.

⁴⁷ Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007.

future will focus on instant communications and instant case processing. Video linkages, data processing, and personal computer technologies will enhance and speed up case resolution.

The budget drivers for the future of the State of Florida's Courts System are functions of projected case filings and a projected need for new judges in Florida. Extrapolating the data from the demographic trends indicates that, all things remaining constant, there may be some budget shortages in the future.⁴⁸

Preparing for the Court's future and making accurate projections is often quite a difficult task. There are many variables which must be considered when preparing goals and strategies for the future. The Judicial Management Council's Steering Committee on Long-Range/Strategic Planning released a report, "Taking Bearings, Setting Course" which seeks to prepare the Judicial Branch for future challenges. The long-range strategic plan for the Florida Judicial Branch was produced by the Steering Committee on Long-Range/Strategic Planning – Judicial Management Council. It identifies the goals and strategies necessary to achieve the vision and fulfill the mission of the judicial branch.

The goals and strategies in "Taking Bearings, Setting Course" are organized around long-range issues, which are high priority strategic areas that must be addressed over the long term in order to achieve the vision and fulfill the mission. Goals refer to desired end

states; strategies refer to methods of achieving these goals or end states.⁴⁹

Listed below are the long-range issues and associated goals from the report:

Long-Range Issue #1: Clarifying the Role of the Judicial Branch

Florida's courts are being called on to provide an increasingly broad range of services in response to the needs of citizens and the inability of other societal institutions to meet these needs. Many of these expanded services go beyond the historic roles and responsibilities of courts. A consensus over the roles and responsibilities the courts should fulfill would give the judicial branch a clear mandate around which to organize its energies and resources, and would reinforce the principle of an independent judiciary.

Goal 1.1: The role and responsibilities of Florida's judicial branch will be clearly defined.

Strategies:

1.1(a) Build consensus on the appropriate roles and responsibilities of the judicial branch and of court officials.

1.1(b) Create a strategic management structure that effectuates the mission and vision of the judicial branch based on a clear understanding of the roles and responsibilities of the courts.

1.1(c) Clearly define the mission of each major area of litigation or division of the

⁴⁸ Ibid.

⁴⁹ The Long-Range Strategic Plan for the Florida Judicial Branch, "Taking Bearings, Setting Course," Judicial Management Council.

courts, the core processes and court functions of each area or division, and the outcomes or results each area or division is striving to achieve.

Goal 1.2: The roles and responsibilities of the courts will be widely understood.

Strategies:

1.2(a) Communicate and educate those who work in the courts, including judges, staff, and attorneys, about the roles and responsibilities of the courts and of court officials.

Goal 1.3 Essential court-related services that are not within the roles or responsibilities of the courts will be provided by organizations outside of the judicial branch.

Strategies:

1.3(a) Identify court-related services currently provided by the courts that would be more appropriately located outside the judicial branch, and shift responsibility for these services to appropriate private, non-profit, or governmental agencies.

1.3(b) Ensure that the needs of court users are understood and addressed by delivery organizations that provide court-related services.

Long Range Issue #2: Improving the Administration of Justice

The effective administration of justice requires deliberate attention to the core processes of the judicial branch. Increasing workloads which arise from greater demand for adjudication,

alternative dispute resolution, other core processes, and core court functions which support court processes will continue to put pressure on the Florida courts system's ability to fulfill its responsibilities effectively and efficiently.

Goal 2.1: The judicial branch will provide a full range of core court processes and dispute resolution options statewide.

Strategies:

2.1(a) Ensure that all jurisdictions are prepared to provide a range of core processes and dispute resolution options.

2.1(b) Ensure that every court is able to guide users to appropriate core court processes and dispute resolution forums.

Goal 2.2: The judicial branch will fairly and timely resolve issues brought before it.

Strategies:

2.2(a) Enable all courts to develop and implement a case management system that assists courts to resolve cases efficiently and timely consistent with equal protection and due process rights.

2.2(b) Ensure that accurate, timely, and complete information needed to make decisions is available to judges, court staff, attorneys, and other parties.

2.2(c) Enhance the ability of courts to effectively enforce compliance with court orders, including collection of fines, fees, and forfeitures.

2.2(d) Courts will have sufficient time to fully consider and explain decisions.

Goal 2.3: Adequate provision will be made for the needs of the court system and funds will be expended prudently.

Strategies:

2.3(a) Develop mechanisms to anticipate and assess future resource needs.

2.3(b) Produce budget requests sufficient to carry out the judicial branch and that are reflective of the priorities and strategies of the judicial branch long-range and operational plans.

2.3(c) Secure appropriate funding from each funding entity, including state, local, and federal sources.

2.3(d) Determine appropriate judicial branch outcomes and establish performance standards and indicators that measure the performance of the branch.⁵⁰

Florida TaxWatch prepared a research project which proposed cost savings and increased accountability for the courts. The Chief Justice included an excerpt of the report in his presentation:

The State Courts System's Performance and Accountability Commission, over the next two years, is charged by the Supreme Court to make recommendations on effective and efficient management of due process services, including: court-appointed counsel, digital recording technology, and court reporting services; monitoring

⁵⁰ The Long-Range Strategic Plan for the Florida Judicial Branch, "Taking Bearings, Setting Course," Judicial Management Council.

the management of dependency and termination of parental rights and post-conviction motions and appeals; and, as time and resources permit, developing recommendations to implement a performance and accountability system, beginning with circuit criminal cases.⁵¹

Governmental Services Committee Chair Roberto Martinez pointed out that the judicial branch is very powerful, but is also the weakest branch of government. He inquired about how the judicial branch handled communications with the other branches and levels of government. Chief Justice Lewis answered that the Office of State Court Administrator (OSCA) is often relied upon to play the role of lobbyist for the courts.⁵²

Chief Justice Lewis also responded to a question from the chair regarding compensation for judges and justices. Florida operates on what is known as the tiered system. Until recently, judges in the State Courts System would go through a conference to request a pay increase from the Legislature.

After the completion of a two-year study commissioned by the courts, a unified benchmark system was found to be an easier approach. For example, the Supreme Court Justices receive a set benchmark salary (\$161,000), the DCA Judges receive a percentage less than the benchmark (five percent less), Circuit Judges receive a greater percentage less than the benchmark (ten percent less),

⁵¹ *Florida Government Has Unprecedented Opportunities to Increase Accountability and Achieve Cost Savings*, Florida TaxWatch Research Report, September 20, 2007.

⁵² Remarks by Chief Justice Lewis, Governmental Services Committee meeting, September 27, 2007.

and the County Judges make less than all of the other State of Florida judges (fifteen percent less than the benchmark).⁵³

Chair Martinez declared that judges usually do not like to talk about themselves and especially about their salaries. The Chair opined that the State of Florida's judges have been underpaid for years, and that judge's salaries should be reevaluated. Chief Justice Lewis responded that the Supreme Court justices have not even received a cost of living increase in over 10 years, much less a substantial pay increase.⁵⁴

Commissioner Robert McKee asked, as a matter of reference, how much a Federal District Judge earns yearly. Chief Justice Lewis answered that he believed they earn \$170,000-\$175,000 annually. The average workday for a Supreme Court Justice is usually about 10-12 hours long. It is not uncommon to show up for work in the dark and to leave to go home in the dark.⁵⁵

Chief Justice Lewis offered to have staff present members with more detailed information on the Courts System in writing. (See Appendix)

State Attorneys

The committee heard a presentation by Bernie McCabe, 6th Judicial Circuit State Attorney from Pinellas County. Mr. McCabe offered a comparison of criminal justice statistics from 1986, 1996, and 2006. Felony filings in the State of Florida have experienced a significant spike over the last twenty

years. In 1986, there were 141,391 felonies filed; in 1996, there were 177,687 felonies filed; and in 2006, there were 224,026 felonies filed in the State of Florida.

Prison populations are another area for concern for the State. In 1986, the prison population in Florida was 29,712; in 1996, the prison population had more than doubled with 64,333; and in 2006, 88,576 inmates were held in Florida prisons.⁵⁶

Mr. McCabe described the evolution of the courts system from 1986 to present day. The numbers of arrests, filings, and convictions have all increased since the year 1986. However, in that same period the percentage of convicts going to prison remains stable. According to Mr. McCabe, factors such as the revolving door of recidivism, the 85 percent statute, sentencing guidelines, and the criminal punishment code all contributed to the increase of the numbers between 1986 and 2006.

Other federal and state programs designed to be "tough on crime" had an effect on the court's numbers, as well. The "Three Strikes" law is another program which impacted the numbers of defendants in court as well as behind bars.⁵⁷

⁵⁶ Presentation by Bernie McCabe, 6th Judicial Circuit's State Attorney, Governmental Services Committee, September 27, 2007.

⁵⁷ The "Three Strikes and You're Out" rule is a sentencing enhancement created in 1994 under the Violent Crime Control and Law Enforcement Act to provide a mandatory life sentence to repeat offenders for their third conviction. The sentence is given to those that have met enhancement criteria and was created to curb growing violent crime rates.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

“Felonization” is a term coined by Mr. McCabe. In this context, “felonization” is the enhancement of misdemeanor crimes to felonies when the offender is convicted of the same misdemeanor numerous times. For example, driving under the influence may be charged as a felony when the offender is charged with a fourth DUI.⁵⁸

Trends in the State Courts System have been established by the introduction and implementation of various policies. One of the most prevalent trends is the increase in “One Year + One Day” sentences. County judges are much more likely to sentence convicted inmates to over one year in order to send the inmate to a state or federal facility. This increase in “One Year + One Day” sentences is a direct result of overcrowding of local jails which allows judges to send inmates to state or federal prisons. Federal and state prison facilities are often larger, higher quality, and more well-funded than local jails.⁵⁹

Mr. McCabe discussed more diversion and treatment options, such as: Pre-Trial Intervention, Domestic Violence Intervention, and various local juvenile diversion programs. The Florida Department of Corrections operates what is called the Pre-trial Intervention Program. This program, primarily for first-time offenders, offers an alternative to formal prosecution. The program is selective and cannot accept applicants without the approval of the victim, arresting officer, prosecutor, and judge. If an offender has no significant prior record, and is not charged with a violent

crime, the offender may be eligible for entry into the pre-trial intervention program.⁶⁰

The Domestic Violence Intervention Program (DVIP) is dedicated to teaching new skills that replace abusive, violent, conflict resolution. The program promotes “zero tolerance” of violent behavior and it is designed for those who have been abusive to their partners. The program’s goal is to provide participants with information and practical tools to change those values, beliefs, and behaviors which have provided the foundation for their use of violence and other methods of abuse.⁶¹

There are several juvenile diversion programs offered through the State of Florida and local governments. The Multi-Agency Assessment Program (MAAP) is a grant program administered by the State Attorney's Office for juvenile offenders exhibiting multiple factors indicating they are at risk of re-offending. Participants are diverted out of court and are intensely monitored at home and at school by a State Attorney case manager. Appropriate counseling is made available when needed.⁶²

Public Defenders

C. Richard Parker, President of the Florida Public Defender Association and 8th Judicial Circuit Public Defender, spoke before the Governmental Services Committee. Mr. Parker notified the

⁵⁸ Presentation by Bernie McCabe, 6th Judicial Circuit’s State Attorney, Governmental Services Committee, September 27, 2007.

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ <http://www.floridasafety.org/coursetext.asp?class=33>.

⁶² Presentation by Bernie McCabe, 6th Judicial Circuit’s State Attorney, Governmental Services Committee, September 27, 2007.

committee that, like State Attorney's Offices, one of the biggest problems for public defenders is the inadequacy of funds and an overload of cases. In some instances, public defenders must take on more than 600 cases per lawyer. According to Mr. Parker, despite these large caseloads, public defenders usually offer an excellent quality of legal work.⁶³

Public defenders are often lured away from public service in order to secure a higher salary with a private firm or a higher-paying agency. Turnover is frequently high in Public Defender's offices. Taxpayers are paying to train new attorneys constantly because of the turnover.

On the average, law school graduate's from a public college or university run a debt of approximately \$60,000. Private schools are even higher, with graduates owing, on average, over \$100,000.⁶⁴

Mr. Parker described the situation where law school graduates often choose more lucrative positions in public or private practice in order to pay off their student loans more rapidly. Lack of general revenue dollars is oftentimes to blame for the failure to retain higher-quality law graduates.

Commissioner Randy Miller asked if the Public Defender's Office can adjust the salary of a highly qualified and talented public defender. Mr. Parker answered that there is some room for upward adjustment, but only around \$1,000 per year difference. Mr. Parker noted that if

the State Courts had a trust fund with a dedicated funding source, higher quality and better motivated young lawyers would stay in the Florida Courts System longer.⁶⁵

According to the Legislative's long-term projection for state attorneys and public defenders, the expected rate of budget growth over the next three years (2008-2011) is approximately 4.6 percent.⁶⁶ The Florida Public Defender Association concurred with this estimate, with the caveat that the growth would be in new General Revenue funding, exclusive of continuation, increases in matching costs (health insurance, etc.), and cost of living adjustments.⁶⁷

Judicial Compensation Commissions

The issue of compensation for state judiciaries is a sensitive subject not only for the State of Florida, but for many other states in the U.S. as well. One of the most frequently used methods for establishing compensation rates for judges, justices, and staff of the state courts is the creation and appointment of state judicial compensation commissions.

Currently, there are 21 states which have permanent compensation commissions authorized by statute or constitution to

⁶³ Presentation by Richard Parker, 8th Judicial Circuit's Public Defender, Governmental Services Committee, September 27, 2007.

⁶⁴ Ibid.

⁶⁵ Presentation by Richard Parker, 8th Judicial Circuit's Public Defender, Governmental Services Committee, September 27, 2007.

⁶⁶ Staff conversation with Claude Hendon, Staff Director, Senate Civil and Criminal Justice Appropriations Committee, November 27, 2007.

⁶⁷ Information provided by the Florida Justice Administration Commission, November 28, 2007.

evaluate and recommend salaries for state judges.⁶⁸

The American Bar Association (ABA) has long supported adequate compensation for state and federal judges for the purposes of attracting and retaining the best-qualified people to serve on the bench and enhancing the institutional and decisional independence of American judges. The most recent ABA policy statement on state judicial compensation, the 1990 Standards for Judicial Compensation, addresses the need for compensation levels that are high enough to attract and retain highly qualified persons.

The 1990 Standards also call for regular, independent review of judicial compensation. The recommendation accompanying this report is intended to augment the 1990 ABA Standards for Judicial Compensation by providing more specific guidelines for independent commissions to set state judicial salaries.⁶⁹

The National Center for State Courts (NCSC) recommends that states establish and maintain processes for determining judicial compensation that meet the objectives of equity, regularity, objectivity, and separation from politics. These four objectives emerged from the most comprehensive study conducted of state judicial compensation practices, undertaken by NCSC with funding from a private foundation. They represent the practices, distilled from long national experience, best calculated to promote judicial independence and maintain the

proper balance of powers among the three branches of government.⁷⁰

In addition to the compensation of judges and justices, state court employee salaries are also considered by some to be in a state of stagnation. In his September 27, 2007 presentation to the Governmental Services Committee of the TBRC, Chief Justice Lewis indicated that fair and equitable pay increases for state court's staff is as important (if not more so) than raises for judges.⁷¹

Equity: Careers in public service demand sacrifice and those who join the bench must be ready to forego the more lucrative compensation available in the private sector. Nonetheless, judicial salaries should be broadly comparable to the remuneration received by attorneys taking similar career paths and by other public servants having comparable responsibility, training, and experience.⁷²

Regularity: The real value of judicial compensation should be maintained through adjustments that respond to inflation so that the salary a judge accepts upon joining the bench is not eroded to the detriment of his or her family. Equity is rarely possible in the absence of regular reviews that respond to cost-of-living increases.⁷³

Objectivity: Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria that can be easily evaluated by the

⁶⁸<http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=JudCom>

⁶⁹<http://www.abanet.org/leadership/2003/journal/105a.pdf>

⁷⁰<http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=JudCom>

⁷¹ Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007.

⁷²<http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=JudCom>

⁷³ Ibid.

public. The process also should be transparent to the public.⁷⁴

Separation from Politics: Decisions on judicial compensation should not be a basis for expressing Legislative or Executive Branch dissatisfaction with specific court decisions. Nor should judicial pay be adversely affected because of disagreement between the Legislative and Executive Branches over policy issues unrelated to the compensation of public officers. Failure to raise judicial compensation or provide cost-of-living adjustments is an inappropriate method for holding judiciaries accountable.⁷⁵

Judicial salary issues should be insulated from the political process. Judicial pay levels should be set regularly and justified based on accepted, easy to measure, objective benchmarks that render the process more transparent and less political.⁷⁶

According to the NCSC, permanent bipartisan or nonpartisan compensation commissions, such as the one proposed by the New York State Judiciary,⁷⁷ are the best vehicles for achieving credible review of judicial salaries.

Mental Health in the Courts

At the Governmental Services Committee Meeting on January 25, 2008, Judge Stephen Leifman reported that between 1995 and 2007 the percentage of inmates in Florida prisons

receiving ongoing mental health services increased from 10.6 percent to 18.1 percent. Over the past 9 years, the daily population of inmates with mental illnesses in Florida prisons has increased from roughly 8,000 to nearly 17,000 individuals.

Based on these trends, Florida can expect the number of prison inmates with mental illnesses to nearly double in the next 9 years to over 32,000 individuals, with an average annual increase of roughly 1,700 inmates per year. A population this size would be enough to fill more than 20 of the state's largest existing correctional institutions, with the equivalent of one new prison the size of the states third largest institution added every year.

Combined with recent trends in the growth of the general prison population, the Department of Corrections is currently looking at spending almost \$2 billion over the next 5 years to build 19 new prisons - almost half just for people with mental illnesses.

While expenditures in the area of forensic mental health services place Florida near the top of the list nationally, the level of per capita spending expenditures on front-end community-based services intended to promote recovery, resiliency, and adaptive life in the community place the state near dead last at 48th nationally.

Last year alone, more than half of all adults with serious mental illnesses, and about a third of all children with severe emotional disturbances in need of treatment in Florida's public mental health system, had no access to care. Furthermore, where services do exist

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ <http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=JudCom>

⁷⁷ http://www.ncsconline.org/WC/Publications/KIS_JudComNYNatlPerspective.pdf

they are difficult to navigate and inefficient points of entry result in barriers to accessing preventative and routine care; and despite recent research which has lead to the identification and development of increasingly effective, evidence-based interventions for serious mental illnesses, such treatments have yet to be adequately implemented by many service providers in the public mental health system.

Judge Leifman allowed that the justice system was never intended to serve as the safety net for the public mental health system and is ill-equipped to do so. Florida's jails and prisons have been forced to house an increasing number of individuals who are unable to access critically needed and competent care in the community.

In many cases, necessary linkages between the justice system and the community for individuals coming out of jails and prisons simply don't exist. As a result, individuals who may have been identified and received care while incarcerated are routinely released to the community with no reasonable plan or practical means for accessing follow-up services. In other situations, such as those involving individuals charged with misdemeanor offenses and found to be incompetent to stand trial, the system has no choice but to release the individual back to the community, often with no treatment at all.⁷⁸

RECOMMENDATIONS

The Governmental Services Committee, based on information received in public meetings, sponsored three proposals regarding Florida's Criminal Justice System.

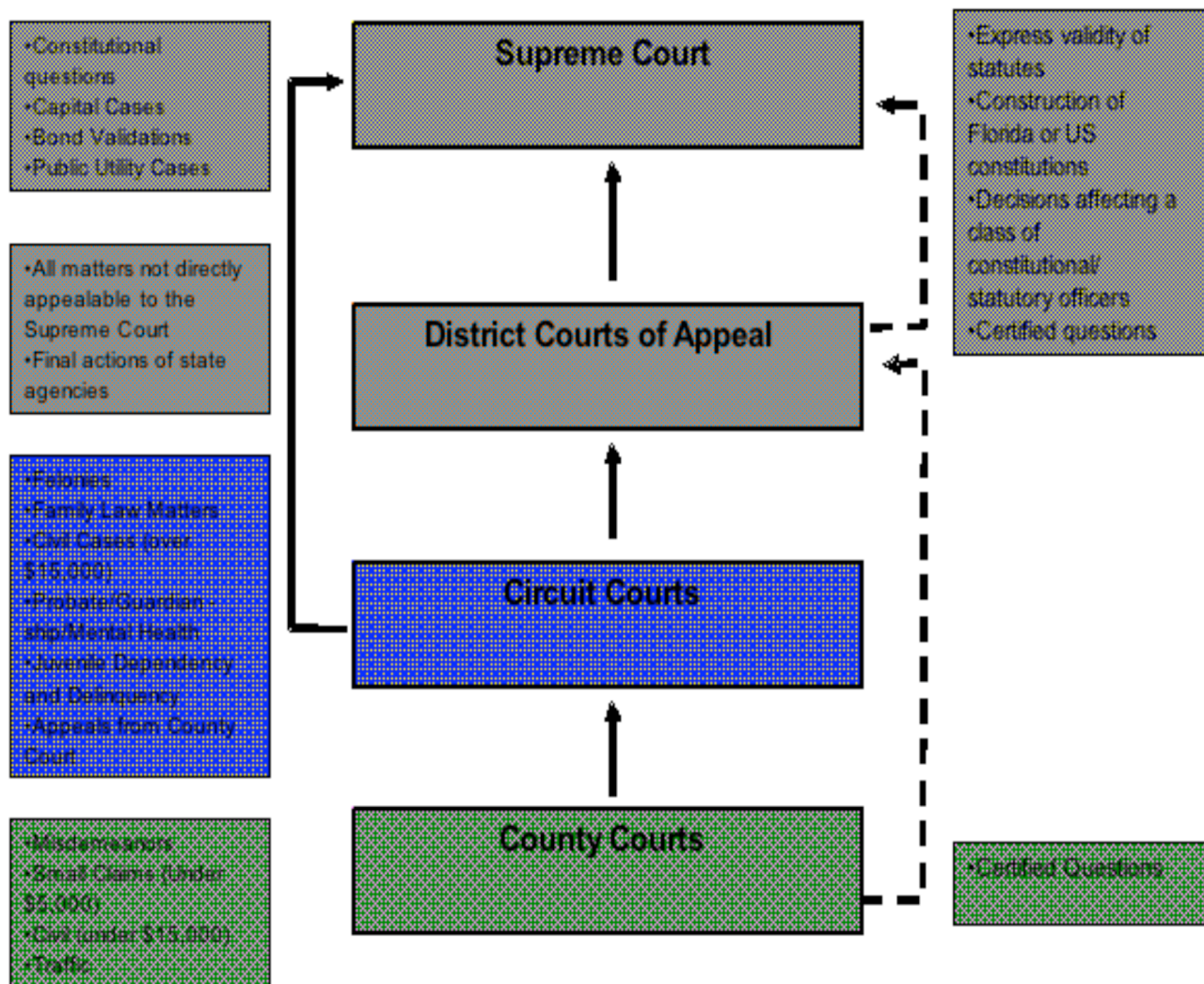
SR0037 – Statutory Recommendation related to Supervised Re-Entry Programs (Tabled by the Governmental Services Committee).

SR0038 – Statutory Recommendation related to Alternative Corrections Programs for Offenders serving less than 1 Year with the Florida Department of Corrections (Tabled by the Planning & Budgetary Processes Committee).

SR0039 – Statutory Recommendation related to Inmate Gain Time (Tabled by the Governmental Services Committee).

⁷⁸ Statement of Judge Stephen Leifman to the Governmental Services Committee on January 25, 2008

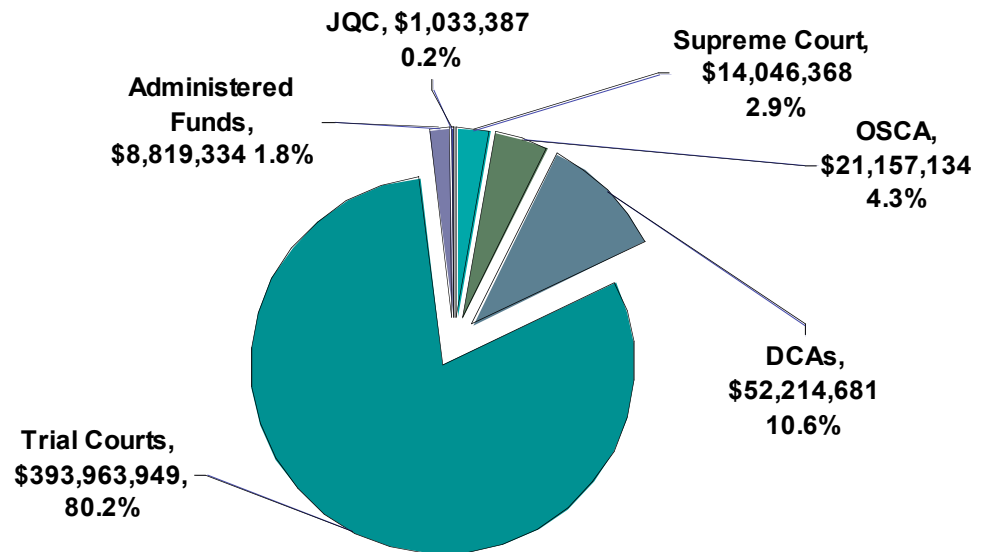
Florida State Court System Structure



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⁷⁹ PowerPoint Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007

State Courts System Appropriations: FY 2007 -08



Total Budget: \$491,234,853

Source: General Appropriations Act – SB 2800

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⁸⁰ PowerPoint Presentation by Fred Lewis, Florida Supreme Court Chief Justice, Governmental Services Committee, September 27, 2007