



**House
Legislative
Analysis
Section**

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**CHANGE COURT FUNDING, ABOLISH
DETROIT RECORDER'S COURT**

**House Bill 5158 as enrolled
Public Act 374 of 1996
Second Analysis (7-29-96)**

**Sponsor: Rep. Michael Nye
House Committee: Judiciary and Civil
Rights
Senate Committee: Judiciary**

THE APPARENT PROBLEM:

Ever since legislation in 1980 that provided special funding to three Wayne County-Detroit area trial courts that was not made available to courts elsewhere in the state, there has been growing sentiment in the so-called "outstate" (non-Wayne County) areas that state funding of the courts has been unfair. In addition, some people have advocated abolition of Detroit Recorder's Court for a number of reasons.

In 1980, the legislature passed a package of legislation (Public Acts 438 through 443) that not only reorganized the Wayne County-Detroit area courts, but also provided substantial state funding for three of these courts -- primarily through the formation and funding of the State Judicial Council (SJC), which became the (state) employer of court employees in the Third (Wayne County) Circuit Court, Detroit Recorder's Court, and the 36th (Detroit) District Court. The 1980 legislation also promised phased-in state funding of trial court operations in the state's other 82 outstate counties, and contained a provision that required termination of state funding to the Wayne County court operations if the state did not follow through with the promised state funding of outstate trial court operations.

However, the phased-in state funding of outstate trial courts that was to have begun in 1983 never occurred, at least in part because of the economic recession of the early 1980s. Instead, in 1983 the state senator who had sponsored one of the two main pieces of legislation in the court reorganization package asked the attorney general "whether the jurisdiction of the Detroit and Wayne County Courts would be jeopardized if the Legislature should fail to appropriate sufficient funds to partially finance the court system" in accordance with the provisions of the 1980 legislation. On February 10, 1983, the attorney general issued Opinion No. 6125, which held both that "[t]he amount of state appropriations for the reorganization of the courts must be determined by each Legislature," and that "[f]ailure of the

Legislature to appropriate sufficient funds for reorganization of the courts does not compel the termination of the funding for other courts." The attorney general also said, in part, that sections of the Revised Judicature Act in question (notably, Section 9947) "at most, merely express an intention of the Legislature with regard to appropriations which will be made in future years. . . . One legislature is without authority to limit or restrict the power of its successor to make such appropriations as the exigencies of the time may warrant. . . . Each legislature must determine the purposes for which funds will be appropriated."

Despite the attorney general's opinion, as succeeding legislatures did not follow through with the phased-in state funding of outstate trial courts, outstate dissatisfaction increased over the perceived unfairness of the state's selective funding of state trial court operations. In 1988, the year that had been targeted for the state to fund one hundred percent of all court operational expenses, a group of local governments (initially eight counties, but eventually 76 of the state's 83 counties, 44 cities, 11 townships, and one village) sued the state (in Grand Traverse County et al. v the State of Michigan et al.) in an attempt to force the state to fully fund all state court operational expenses. In 1992 the court of claims found that the state did have a statutory -- but not constitutional -- obligation to fund all state trial courts. In January 1994 the court of appeals agreed with the lower court's ruling. The case then went to the state supreme court, which in August 1995 reversed the lower courts and ruled that the state does not have to pay for state trial court operations.

As the Grand Traverse case was proceeding through the courts, the state legislature enacted Public Act 189 of 1993. The act eliminated the controversial section of the Revised Judicature Act (MCL 600.9947, as added by Public Act 438 of 1980) that promised full state funding of all state trial courts, replacing it instead with a new

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court funding scheme committing the state to funding at least 31.5 percent of all trial court operational expenses, subject to certain "offsets." Public Act 189 of 1993 also raised court fees, and set up a state court fund to receive and distribute the additional revenues. However, because of the act's offset provisions (which included the portion of judges' salaries paid by the state), only a relatively small number of outstate local governments received additional state funds under the new provisions. (See BACKGROUND INFORMATION.)

In the last two years there also have been (unsuccessful) legislative attempts to fund outstate trial courts through the appropriations process. Thus, although the House-passed version of the judiciary budget for fiscal year 1994-95, which was contained in the general government appropriations act for that year, included full funding for all state trial courts, the enacted bill (Public Act 288 of 1994) did not. Also, the enrolled version of the judiciary appropriations for fiscal year 1995-96 included an additional \$25 million for outstate trial courts (reduced from a House-passed amount of \$180 million), but the governor vetoed the \$25 million, saying that "expanded state funding of Michigan state trial courts [ould] only go forward on a rational basis" after major structural changes such as court reorganization and a review of "the appropriate number, location and jurisdiction of trial judges." The 1994 judiciary appropriations act (Public Act 288 of 1994) also included a provision establishing a joint legislative study committee, which was to report by March 17, 1995, "to enable the legislature to evaluate the most effective use of state appropriations for trial court operations." That committee's main finding in March 1995 echoed the governor's veto of the \$25 million for outstate trial courts in the 1995-96 judiciary budget, saying that any discussion of court funding must include a discussion of court organization.

In addition to the perceived inequity of the state funding of trial courts, some people have advocated abolishing Detroit Recorder's Court. Reasons given for why recorder's court should be abolished usually refer either to an issue of "voter equity" or the perceived "leniency" or "harshness" of the court's judges and/or its juries in certain high-profile cases. Some people also have suggested that the court be abolished in the interests of standardizing the state court system.

The issue of "voter equity," which was rendered moot by a supreme court order in October 1995, arose over a situation in Wayne County in which for nine years the criminal dockets of the Third Circuit Court and Detroit Recorder's Court were consolidated. Detroit Recorder's Court is the only criminal felony court in the state, which means that although it is treated as a circuit-level court it handles only felony crimes that occur in Detroit; unlike circuit courts, it does not handle civil cases or divorce

and custody suits. Only Detroit voters elect the 29 recorder's court judges, and recorder's court trials draw on a jury pool that includes only residents of Detroit. In 1986, the supreme court consolidated the criminal dockets of the Wayne County circuit court and recorder's court, reportedly in order to free Third Circuit judges to catch up on a backlog of civil cases. Under the consolidated criminal docket, Wayne County circuit judges spent most of their time on civil cases, but did spend three out of every 18 months helping on criminal cases in recorder's court. Recorder's court judges spent all of their time on criminal cases, both from the city and from out-county. However, defendants in out-county criminal cases could demand to be tried by a circuit court judge and an out-county jury, while defendants in Detroit criminal cases could demand a recorder's judge and Detroit jury. Some out-county residents objected to this arrangement, arguing that the consolidated criminal dockets deprived out-county residents of the right to vote for judges having criminal jurisdiction over them and that recorder's judges were not "responsive" or accountable to crime victims from the suburban communities who did not elect recorder's judges. Legislation (House Bill 4952) was introduced in June 1995 to abolish Detroit Recorder's Court. In October 1995, the supreme court rescinded the administrative orders and local court rules concerning Wayne County's consolidated criminal docket, but some people still believe that recorder's court should be abolished.

Some people also have argued that recorder's court should be eliminated, at least in part, because of the perception that recorder's judges and juries have been too "lenient" or too "harsh" in their treatment of defendants in certain high profile cases. One form of this perceived "leniency" has been the charge that recorder's judges -- or, particular recorder's judges -- are too reluctant to sentence as adults juvenile offenders tried as adults. For example, the Detroit News reported (January 3, 1995) that of 89 juvenile defendants who were tried and convicted as adults for felonies punishable by up to life in prison (offenses such as murder, assault with intent to murder, rape, armed robbery, and drug trafficking) in recorder's court during a 22-month period from January 1, 1983, through September 20, 1994, only 25 received adult prison terms; the rest, including seven murderers, were sentenced as juveniles, which means that they were placed in the custody of the then-Department of Social Services (now the Family Independence Agency), where they were eligible to be released when they turned 19 or 21. The article was particularly critical of one recorder's judge for sentencing as juveniles young felons who had been tried as adults. The article said that this one judge, who handled 42 of the 89 cases, gave juvenile sentences to 38 of the 42 young convicted felons. One particularly high-profile case often mentioned in connection with the charge that recorder's judges are too "lenient" on juvenile

felons is the February 8, 1990, murder of 53-year-old white Grosse Pointe businessman Benjamin Gravel by black Detroit teenagers during a failed carjacking as Gravel was leaving the Bayview Yacht Club in east side Detroit. In this case, Kermit Haynes (who was 16 at the time, and who did the shooting) and Cortez Miller (who was 15 at the time, and who provided the .38-caliber pistol used in the murder) pled guilty to first-degree murder, assault with intent to commit armed robbery, and possession of a firearm during the commission of a felony. (Of the four other teenagers charged in the case, two were acquitted by a jury in 1991 and two pled guilty to second-degree murder and were sentenced as juveniles.) Recorder's court then-Chief Judge Dalton Roberson sentenced Haynes and Miller as juveniles, but in 1993 the court of appeals ordered them to be resentenced as adults, which meant mandatory life sentences without parole. Judge Roberson then scheduled a December 1994 hearing to allow Haynes and Miller to withdraw their guilty pleas and go to trial, but in December 1994, the state supreme court ordered the judge to carry out the adult life sentences "forthwith."

A second case that often is cited in the charge of "leniency" -- though this time with regard to recorder's court juries -- is the January 15, 1994, shooting death in Detroit of a white teenager from Sterling Heights, 17-year-old Rebecca Gordon, by 19-year-old black Detroiters Brian Marable. Marable was tried for first-degree murder, three counts of assault with intent to murder, and one count of using a firearm. The recorder's court jury, which consisted of eleven black jurors and one white juror, convicted him instead of four weapons charges, the most serious of which carried a sentence of up to four years in prison, and deadlocked on a fifth gun charge.

A third high-profile murder case also is often mentioned by critics of recorder's court, who charge that the case illustrates the "harshness" of recorder's court juries when a crime victim is black and the accused are white. On November 5, 1992, black Detroiters Malice Green was beaten to death by white Detroit police officers. In the Green case, police officers Larry Nevers and Walter Budzyn were convicted by separate, predominantly black juries of second-degree murder, and sentenced to 12 to 25 years and 8 to 18 years in prison respectively. A third officer, Robert Lessnau, was acquitted in a bench trial of assault with intent to do great bodily harm. The court of appeals rejected appeals both of the convictions and arguments of juror bias, but in May 1996, the supreme court agreed to hear the Budzyn and Nevers appeals.

These issues, among others, have resulted in new impetus to change the state court funding formula and to abolish Detroit Recorder's Court.

THE CONTENT OF THE BILL:

In general, the bill would amend the Revised Judicature Act (MCL 600.151 et al.) to do the following:

** Distribute state money to all 83 counties for state trial court operations from a new "court equity fund" that would consist of (a) the fixed \$1.6 million from the state court fund currently earmarked annually for the operational expenses of outstate trial courts; (b) the 76 percent of the balance of the state court fund that would be designated for all state trial courts; (c) the proceeds of the \$4.25 portion of the \$9 minimum district court costs that currently goes to the state general fund; and (d) state general fund money that by fiscal year 2001-2002 would amount to \$44 million annually. Distributions to each county from the court equity fund under a single formula that would be based on each county's relative circuit and probate court caseload and the relative number of trial court (circuit, district, probate) judges in that county;

** create a five-year, decreasing "hold harmless" fund in the state treasury, beginning with \$20 million from the state general fund in fiscal year 1996-97, that would decrease by \$4 million each year until the fund terminated on September 30, 2001. Money from the fund would be used to make up shortfalls in funding to counties and cities (including Wayne County and the City of Detroit) that would receive a smaller amount under the proposed formula than they received in fiscal year 1995-96 under the current state court fund distribution formula;

** abolish Detroit Recorder's Court, merging it with the Third (Wayne County) Circuit Court on October 1, 1997;

** abolish the State Judicial Council (SJC), which serves as the state employer of court employees in the Third (Wayne County) Circuit Court, Detroit Recorder's Court, and the 36th (Detroit) District Court; allow Wayne County and Detroit to establish the Wayne County Judicial Council and the Detroit City Judicial Council, respectively, to serve as the employer of former SJC employees in the Third (Wayne County) Circuit Court, Detroit Recorder's Court, and the 36th (Detroit) District Court; and keep former SJC employees in the State Employees' Retirement System (SERS), and exempt them from any local residency requirements;

** make local funding units (county boards of commissioners and district funding units) the employers of locally-funded court employees and specify the respective roles of local employers and judges in overseeing court employees;

** require the state to fully fund all judges' salaries and set the salaries as a percentage of the salary of a supreme

court justice (appeals court judges, 92 percent; circuit judges, 85 percent; and district and probate judges, 83 percent);

** allow counties to create "local court management councils" under Public Act 8 of the Extra Session of 1967 (which provides for intergovernmental transfers of functions and responsibilities) that could be given the responsibility for coordinating the delivery of court services;

** statutorily authorize the supreme court to appoint chief judges in single county judicial circuits;

** create a "trial court assessment commission" in the legislative council (appointed primarily by the governor) to study and classify civil and criminal court caseloads, develop criteria for determining the relative complexity of cases filed, and use those criteria to recommend to the legislature a funding formula — based on total caseload and relative complexity of the cases — for the state money appropriated annually for court operations; in addition, every two years the commission would recommend any needed changes in the number of judges, and report on needed revisions to the courts or court system (including the issue of part-time probate judges) and analyze any revisions implemented;

** require the supreme court to appoint a "judicial performance commission" to develop standards for evaluating the performance of all judges in the state, with judicial evaluations being made publicly available each year, beginning June 1, 1999;

** require the legislature to appropriate the judiciary budget in line-item form, rather than lump sum budgets, and allow local funding units to use either method of appropriation (though if appropriation were done by lump-sum, the bill would require chief judges in single county judicial circuits to submit line-item budget requests);

** allow counties to create judicial election districts in a county for countywide judicial office if so allowed by the 1963 state constitution or so required by a nonreviewable (i.e., U.S. Supreme Court) ruling on the federal Voting Rights Act; and

** abolish current state funding for and revenue collection obligations by the 36th District Court on September 30, 1996; and make other provisions that would prohibit judges from hiring close relatives, require competitive bid procedures for courts, govern assignment of judges, allow evening and weekend circuit and probate court sessions, continue assessment of late penalties, and provide for district court jurisdiction and appeals.

TRIAL COURT FUNDING

The bill would change the current formula for the distribution of money from the state court fund, consolidating the current separate allocations to Wayne County and outstate counties, and shifting four of the five percent of the fund balance currently allocated to the State Court Administrative Office (for oversight, data collection, and court management assistance) to the combined trial court allocation. The bill would create a new "court equity fund" from which all counties would receive distributions for their trial court operations, and specify sources of revenue for the fund and a complex formula under which distributions to counties would be made. The bill also would create a "hold harmless" fund for five years that would be used to make payments to any of the 35 counties (including Wayne County) or cities (specifically, Detroit, Pontiac, Flint, and Grand Rapids) that would receive less from the court equity fund than they had received from the state court fund in fiscal year 1995-96.

The state court fund. (Section 151a) The 1980 legislation (Public Acts 438 through 443) that reorganized the Wayne County-Detroit area courts also provided state funding for a substantial portion of the operating costs of the Third (Wayne County) Circuit Court, the 36th (Detroit) District Court, and Detroit Recorder's Court. Public Act 189 of 1993 created a new state court fund that provided for partial funding of trial court operations in the other 82 ("outstate") counties in the state, as well as funding for the three Wayne County courts. The 1989 amendment to the Revised Judicature Act (RJA) said that beginning with fiscal year 1993-94, the legislature was to appropriate enough money to fund at least 31.5 percent of all trial court operational expenses, subject to certain offset provisions that reflected certain court revenues. Judges' salaries, which traditionally had been considered separately from the issue of court operational expenses, were included in the offset provisions. Public Act 189 also specified how, and to whom, money from the state court fund is to be distributed for each of the first five fiscal years of the fund's existence because of some phase-in provisions. After a flat \$1.6 million is taken from the fund each year for outstate trial court operations, the balance of the fund is divided by percentages of the fund that go to one of four or five categories: The state-funded Wayne County trial courts (which don't include Wayne County probate courts), the outstate trial courts, indigent civil legal assistance (and, for the first four years of the fund, the court of appeals to relieve its case backlog), and the State Court Administrative Office (SCAO) for oversight, data collection, and court management assistance. The SCAO gets a fixed 5 percent each year; indigent civil legal assistance gets a fixed 23 percent each year, except that for the first four years of the fund, \$2 million of that 23

percent goes to the appeals court to relieve its caseload backlog. The remaining 72 percent of the balance of the fund goes to the two categories of trial courts, Wayne County and outstate, in an inversely changing percentage for the first five years of the fund. The Wayne County allocation goes from 28 percent in the first year of the fund to 23 percent in the fifth year of the fund, while outstate trial courts go from 44 percent to 49 percent over the same period of time.

The bill, which would begin to take effect during the fourth year of the fund (fiscal year 1996-97), would keep the current fiscal year allocation of 23 percent to indigent civil legal assistance, with \$2 million of that percentage going (for the fourth, and final, year) to the court of appeals backlog. The following year (fiscal year 1997-98), all 23 percent would go, as currently required, to indigent civil legal assistance. However, the bill would combine allocations for Wayne County and outstate trial court operations, so that beginning with fiscal year 1996-97 the annual flat \$1.6 million would be allocated to state (not just outstate) trial court operations, with 76 percent of the balance going to trial court operations (72 percent would come from the combined current allocations for Wayne County and outstate trial court operations; the remaining 4 percent would be taken from the 5 percent allocated to the SCAO allocation, which would be reduced to an annual allocation of 1 percent of the fund balance for oversight, data collection, and court management assistance).

The court equity fund. (Sections 151b, 8381) Beginning in fiscal year 1996-97, the current 31.5 percent funding, and offset, provisions would be discontinued. Instead, the bill would create a new court equity fund from which each county in the state would receive funds under a complicated formula that would involve both the relative circuit and probate caseload of each county as well as the total number of judges (including district court judges) for each county.

The court equity fund would consist of (a) the state court fund allocation (which would include both the flat \$1.6 million and the 76 percent of the fund balance) for trial court operations; (b) the proceeds from the \$4.25 portion of the \$9 minimum district court fee that currently goes to the state general fund; and ^o money from the state general fund, beginning with \$24 million in fiscal year 1996-97, and increasing by \$4 million a year for five years until it reached \$44 million a year. (Note on district court revenue: The RJA currently requires that at least \$9 be assessed as "costs" when fines and costs are assessed by a magistrate, a traffic bureau, or district court judge, and for each guilty plea, conviction, or civil infraction admission or determination, except for parking violations. Of each \$9 so collected, \$4.25 is dedicated to the state general fund; 75 cents goes to judicial and

legislative retirement funds; and the balance goes to the state court fund.)

The State Court Administrative Office would be responsible for calculating the amount that each county would receive from the court equity fund each year. It would do this by calculating the factors to be used in the complex distribution formula, and then using these factors in the formula to come up with each county's annual allocation. More specifically, the SCAO would calculate for each county (a) its relative caseload, (b) the number of judges for that county, and ^o the ratio of each county's judges to the total number of judges statewide. A county's relative caseload (which wouldn't include district court or any municipal court caseloads) would be a percentage derived by dividing (a) the sum of the portion of the circuit and probate caseloads attributable to that county for a "qualifying period" (eventually, the last three calendar years for which "reasonably complete" trial court records were available) by (b) the sum of the statewide circuit (including recorder's court) and probate caseloads. (Wayne County's circuit caseload would include the Detroit Recorder's Court caseload.) The percentage representing a county's relative caseload would then be multiplied by the total amount available for distribution from the court equity fund for that year. The amount of money represented by that figure would then be multiplied by a number equal to the sum of the ratio of judges for that county plus one. The resulting amount of money would then be divided by the total amount of money so calculated for all 83 counties, and, finally, multiplied by the total amount of money available for distribution from the court equity fund for that year. This final number would represent the amount of money that the county would get from the court equity fund that year.

The "hold harmless" fund. (Section 151b) A five-year, annually decreasing "hold harmless" fund would be created in the state treasury, funded from state general fund money, that would be used to make up for any decreases in state funding to counties or cities resulting from the distribution formula proposed by the bill. If a county or city would receive a smaller amount from the court equity fund under the bill than it received from the state court fund for fiscal year 1995-96 (35 counties and four cities are projected to receive state court fund money this year), the county or city would receive the amount of the shortfall from the hold harmless fund. If there weren't enough money in the fund to cover all shortfalls that year, each "short" county or city would receive a pro-rated amount. Conversely, if there were money left in the fund in any fiscal year once required payments had been made, the balance would be kept in a "work project account" to be added to the next year's hold harmless fund.

For fiscal year 1996-97, the hold harmless fund would get \$20 million from the state general fund. Each year, the amount of state general fund money would decrease by \$4 million (as the general fund money to the court equity fund would increase by the same amount), until the fund terminated on September 30, 2001.

The bill has specific provisions for Wayne County and the City of Detroit with regard to the hold harmless fund. Under the bill, Wayne County would receive the difference between \$22,820,300 and its allocation from the court equity fund (The bill says that the \$22,820,300 figure is the amount of general fund/general purpose money and state court fund money allocated by the supreme court to the Third Circuit Court, recorder's court, and Wayne County clerk services for fiscal year 1995-96.)

The City of Detroit would receive from the hold harmless fund the difference between (a) the \$28,887,300 allocated by the supreme court as expenses for the 36th District Court for fiscal year 1995-96, and (b) the total of the following six amounts listed in the bill:

- ** federal drug funds allocated by the supreme court for the state fiscal year 1995-96 to offset 36th District Court operational expenses;
- ** \$7,150,000 payable by the City of Detroit under current law;
- ** 71.615 percent of the state court fund money appropriated to Wayne County courts for fiscal year 1995-96;
- ** the revenue due to the state, under current law, from the Detroit Parking Violation Bureau for fiscal year 1995-96 as determined by the audit of the auditor general;
- ** all court revenues received by the 36th District Court for fiscal year 1995-96 payable to the state under current law; and
- ** any funds from private sources.

Court appropriations. (Sections 241, 591, 837, 8271) The bill would require the state legislature to annually appropriate funds for the operation of the judicial branch by line-item and not lump-sum budget. Local units of government (counties and district funding units) could choose to appropriate funds for their courts by line-item or by lump-sum budget. However, before the funding unit (whether county board of commissioners for the circuit or probate court or the governing body of a district funding unit for the district court in that district) could appropriate a lump-sum budget, the chief judge of the court in question would be required to submit a budget

request in line-item form ("with appropriate detail"). A court that received a line item budget would be prohibited from exceeding a line-item appropriation or from transferring funds between line items without the prior approval of the appropriating authority. A court that received a lump-sum budget would be prohibited from exceeding that budget without the prior approval of the funding authority.

JUDGES' SALARIES

(Sections 304, 555, 821, 822, 8202, 9932)

Currently, the salaries of supreme court justices and of court of appeals judges are fully funded by the state, while trial court judges' salaries are funded about 90 percent by the state, either directly or indirectly. The salaries of circuit, district, and probate court judges consist of a "base" salary paid directly by the state and a "supplemental" salary paid by the local funding unit. The state then reimburses local funding units for most of the difference between the base and total salary (this reimbursement is known as the "standardization payment"). As a result, the state in fact pays about 90 percent of trial court judges' salaries, with the remainder being the true cost to the local funding unit.

Supreme court justices' salaries are set by the State Officers Compensation Commission (SOCC), but raises for lower court judges, which by statute are tied to those of supreme court justices (the so-called "judicial tie-bar"), need legislative approval. The judicial tie-bar of lower court judges' salaries was part of the 1980 legislation that reorganized the Wayne County-Detroit area courts. Appeals court judges' salaries were set at 96 percent of a supreme court justice's salary, circuit (including Detroit Recorder's) court judges' salaries at 92 percent, and district and probate judges' salaries at 88 percent of a supreme court justice's salary. For the past 15 years the legislature has approved salary increases for lower court judges when the salaries of the supreme court justices were increased by the SOCC. However, in 1995 the legislature did not approve raises for lower court judges, though the SOCC had raised the salaries of the supreme court justices. The supreme court -- which had received its budget in "lump sum" appropriations rather than in a line-item budget for 1995 -- decided to pay retroactive pay raises to all lower court judges without legislative approval, taking the money for the raises from elsewhere in its budget. The legislature then reduced the judicial budget, though the judges kept their raises because the state constitution prohibits cutting salaries during a judge's term of office. The legislature also broke the judicial tie-bar (in Public Acts 259 and 260 of 1995) as of December 31, 1996, and specified that, beginning January 1, 1997, lower court judges' salaries could not be increased "unless the legislature, by statute, expressly sets a higher salary." Public Acts 259 and 260 also set

the state-paid portion of judges' salaries at specific dollar amounts and placed specific limits on the amount of local supplements.

Judicial salaries for calendar year 1996 are as follows: supreme court justices, \$118,758; appeals court judges, \$114,007; circuit court and recorder's court judges, \$109,257; district court judges, \$104,507; (full-time) probate judges, \$104,507 (part-time probate judges may receive a maximum salary of \$53,000).

Under the bill, beginning January 1, 1997, the state would fully fund all judges' salaries (both directly and through reimbursement to local funding units) and would restore the judicial tie-bar, though at lower percentages than before. Appeals court judges would receive 92 (rather than 96) percent of a supreme court justice's salary, circuit judges would receive 85 (rather than 92) percent, and district and probate judges would receive 83 (rather than 88) percent of a supreme justice's salary. An increase in judges' salaries caused by an increase in the supreme court justice's salaries could not take effect until February 1 of the year in which the justices' salary increase became effective, but would be retroactive to January 1 of that year.

Judges temporarily assigned to courts other than their own would no longer receive \$25 a day for each day served in the assigned court, but would continue to receive the (1/250) salary differential.

Appeals court judges. Currently, through December 31, 1996, court of appeals judges receive an annual salary equal to 96 percent of the salary of a supreme court justice. Beginning on January 1, 1997, appeals court judges are to receive an annual salary of \$114,007, which cannot be increased except by the legislature.

The bill would say that beginning January 1, 1997, appeals court judges would receive an annual salary equal to either 92 percent of the annual salary of a supreme court justice or \$114,007, whichever were greater.

Circuit court judges. Currently, for calendar year 1996 and each subsequent calendar year, the portion of a circuit judge's annual salary payable by the state is \$65,314; the state must reimburse counties for 90 percent of any additional salary paid by the county, unless the supplement caused the judge's total annual salary to exceed \$109,257.

Under the bill, circuit court judges would receive annual salaries equal to 85 percent of a supreme court justice's salary, expressed in amounts payable by the state and by the county. If the county didn't pay an additional salary exactly as specified in the bill, the state wouldn't reimburse the county. Specifically:

** Until the salary of a supreme court justice exceeded \$128,538, each circuit judge would receive an annual salary payable directly by the state of \$65,314 and an additional salary from the county of \$43,943.

** If the salary of a supreme court justice exceeded \$128,538 but was less than \$130,633, each circuit judge would receive an annual salary payable directly by the state of \$65,314 and an additional salary, payable by the county, equal to the difference between \$65,314 and 85 percent of the salary of a supreme court justice.

** If the salary of a supreme court justice exceeded \$130,633, each circuit judge would receive \$45,724 from the county and the difference between \$45,724 and a supreme court justice's salary from the state.

Recorder's court judges. Currently, recorder's court judges receive salaries equal to circuit court judges. More specifically, a recorder's court judge receives an annual salary from Wayne County in the same amount as the state pays to circuit court judges, which the state then reimburses to the county. Through December 31, 1996, the City of Detroit must pay each judge an additional salary, also reimbursed by the state, an amount equal to the difference between the county salary and 92 percent of the annual salary of a supreme court justice. For each calendar year beginning with 1997, the city must pay each judge a specific amount, \$43,943, which the state then must reimburse. Wayne County and Detroit are prohibited from paying cash compensation (including cost-of-living allowances) other than the authorized salaries.

The bill would make the same provisions for the salaries of recorder's court judges as those specified for circuit court judges (above).

District and probate judges. Currently, until December 31, 1996, the maximum annual salaries of district court and probate court judges is set at 88 percent of the salary of a supreme court justice, with their minimum salary set at 90 percent of the salary of a circuit court judge. Counties must pay \$6,000 of a probate judge's minimum salary, with the balance being paid by the state. For calendar year 1996 and each subsequent calendar year, the portion of a district court judge's salary payable by the state is \$58,783; the state-paid portion of a probate judge's salary is \$52,783. The state also must reimburse to a local funding unit paying an additional salary to a district or probate judge \$41,152 of that additional salary.

Under the bill, district and (full-time) probate court judges would receive salaries that were equivalent to 83 percent of the salary of a supreme court justice. The bill specifically says the following:

** Until the salary of a supreme court justice reached \$125,912, the salary of a district or full-time probate court judge would be \$104,507. The state would directly pay \$58,783; the local funding unit would pay \$45,724.

** If a supreme court justice's salary exceeded \$125,912, district and full-time probate judges would receive salaries equal to 83 percent of the supreme court justice salary. The local funding unit would pay \$45,724, the state would pay the difference between this amount and 83 percent of the supreme court salary.

Part-time probate judges. Probate judges in counties with very small populations (fewer than 15,000 people) are, in effect, part-time judges because the caseloads in those small counties don't warrant full-time positions. In order to ensure the professionalism of Michigan's judicial system, since the ratification of the 1963 state constitution part-time judicial positions have gradually been eliminated. Nevertheless, the issue of part-time judges, and what to do about them, has been ongoing. Beginning January 1, 1995, under Public Act 343 of 1990, probate judges in counties with fewer than 15,000 people (and that weren't part of a probate court district) were to receive the minimum annual salary for full-time probate judges (namely, 90 percent of the salary paid by the state to a circuit judge); the act also repealed the section of the RJA (MCL 600.822) that provides for the annual salaries of part-time probate judges. Public Act 138 of 1994 extended the effective date of these provisions to January 1, 1997, a date that was reaffirmed in Public Act 369 of 1994, which was enacted to correct a technical error in Public Act 138 but which also authorized higher locally-funded salaries for part-time probate judges.

For counties with populations under 10,000 (and that aren't part of a probate district), a probate judge's salary is \$9,000, with half payable by the state and half by the county. In counties with populations of between 10,000 and 15,000, a probate judge's salary is \$10,000, again, half payable by the state and half by the county. In addition, county boards of commissioners in these counties may pay their probate judges an additional salary of up to \$43,000; from funds appointed to the judiciary, the state must pay a standardization payment of \$5,750 to counties for each probate judge.

The bill would retain the section of the RJA (MCL 600.822) that provides for the annual salaries of part-time probate judges (by repealing the repeal of that section in Public Act 369 of 1994), and would repeal the provision in the section of the RJA (MCL 600.821) that would have given part-time probate judges the same minimum annual salary as full-time probate judges. Instead, the bill would raise the base annual salary of part-time probate judges in counties with fewer than 15,000 people to \$20,000. The county would be required to pay \$6,000 of that \$20,000 --

for which the state then would be required to reimburse the county -- and the state would pay the remainder. The bill would continue to allow an additional salary for part-time probate judges of up to \$43,000, and would set a maximum total annual salary of \$63,000.

DETROIT RECORDER'S COURT

Recorder's court of the city of Detroit is a special court having elements of both a municipal court and a circuit court. While it traces its origins to the early nineteenth-century Detroit Mayor's court, it also is the state's only criminal felony court; that is, it tries only crimes that are felonies, whereas circuit courts try felonies, civil suits for amounts of \$10,000 or more, and divorce and custody cases. Historically, recorder's court can be traced back to the creation of the Detroit Mayor's Court of 1824 (which became the only state municipal court of record in 1827), when Michigan was still a territory of the United States. In 1857, the Charter of the City of Detroit consolidated the Mayor's Court, the Police Court of 1850, and the criminal jurisdiction of the Wayne County Circuit Court into Recorder's Court of the City of Detroit. In 1919, recorder's court was given exclusive jurisdiction of all criminal cases arising within the corporate limits of the City of Detroit. It is considered to be a circuit-level court and its 29 judges are paid the same salaries as circuit court judges. However, unlike circuit courts, recorder's court doesn't handle any civil cases or divorce suits. Under the legislative reorganization of the Wayne County-Detroit area courts in 1981, the Third (Wayne County) Circuit and recorder's court were administratively merged, and an executive chief judge and joint executive committee were created. From 1986 until October 1995, the supreme court consolidated the criminal dockets of recorder's court and the Third Circuit Court so that all felony cases in Wayne County were tried in recorder's court facilities, though five of the 35 Wayne County circuit judges were assigned on a three-month rotating basis to hear felony cases in recorder's court.

The bill would abolish Detroit Recorder's Court, and merge it with the Third Circuit Court, effective October 1, 1997 (at which time the bill also would repeal the Detroit Recorder's Court act, Local Act 326 of 1893). The bill also would give the county board of commissioners the authority to create judicial election districts if the state constitution permitted the creation of election districts in a county for countywide judicial office, or if the U.S. Supreme Court determined that the federal Voting Rights Act required election districts rather than at-large election for countywide judicial office.

Judges who were recorder's court judges on September 30, 1997, would become Third Circuit Court judges on

October 1, 1997, and would serve as circuit judges until January 1 of the year in which their terms as recorder's court judges would otherwise have expired. Effective October 1, 1997, recorder's court judges who had been appointed by the governor after the filing deadline for the August primary preceding the 1996 general election also would become Third Circuit Court judges. These appointed recorder's court judges would serve as circuit judges until the January 1 after the first general election held after the occurrence of the vacancy to which they had been appointed, at which time a successor would be elected for the remainder of the unexpired term which the former incumbent would have served had he or she stayed in office until his or her term normally would have expired.

In running for a seat on the Third Circuit Court after October 1, 1997, a recorder's court judge who became a Third Circuit Court judge under the bill could file an affidavit of candidacy as other Third Circuit Court incumbents, and would be entitled to being designated on the ballot as a judge of the Third Circuit Court.

On October 1, 1997, all of recorder's court files, records, and pending cases would be transferred to the Third Circuit Court in accordance with supreme court rules. The circuit court then would exercise all powers over the files, records, and cases as provided by supreme court rules. The Third Circuit Court would have jurisdiction to hear and determine all cases transferred to it from recorder's court under the bill, and would exercise all authority with regard to those transferred cases as though they had commenced in the Third Circuit Court. All orders and judgments of the recorder's court would be appealable in the same way and to the same courts as before.

The bill would apply the same funding provisions for Wayne County and recorder's court that apply elsewhere in the bill. Wayne County would be required to appropriate funds for operating and maintaining recorder's court for the period from October 1, 1996, to September 1, 1997, and could do so by either line-item or by lump-sum budget. But before the county could appropriate a lump-sum budget, the chief judge of the recorder's court would be required to submit to the county a budget request in line-item form ("with appropriate detail"). As with other courts under the bill, if recorder's court received a line-item budget, it would be prohibited from exceeding a line-item appropriation or transfer of funds between line items without prior approval from the county. If the court received a lump-sum budget, it could not exceed that budget without prior approval from the Wayne County Board of Commissioners.

Similarly, and except as otherwise provided by law, the chief judge of recorder's court would appoint, supervise, discipline, or dismiss recorder's court employees in accordance with applicable personnel policies and procedures and any applicable collective bargaining agreement. Recorder's court employees' compensation would be paid by Wayne County (instead of the state).

All of the personal property, including equipment and furniture, that recorder's court owned on the bill's effective date, as well as all personal property subsequently bought by or furnished to recorder's court by that date, would stay with recorder's court until October 1, 1997, at which time it would become Wayne County property. The state would be required to reimburse Wayne County for any property it had furnished to the court but had taken from the court between June 27, 1996, and October 1, 1997.

COURT EMPLOYERS, JUDGES, AND EMPLOYEES (Sections 591, 837, 8271)

State judicial council employees. Currently, the employees of the Third Circuit Court, Detroit Recorder's Court, and the 36th District Court are employees of the State Judicial Council (SJC) and are paid by the state. Effective October 1, 1996, the bill would abolish the SJC (sections 9101 to 9107) and make the former SJC employees of these three courts employees of either Wayne County (in the case of Third Circuit or Detroit Recorder's Court employees) or the City of Detroit (in the case of 36th District Court employees). Alternatively, the bill would allow Wayne County and Detroit to create the Wayne County Judicial Council (WCJC) and/or the Detroit Judicial Council (DJC), respectively, in which case, former SJC employees would become WCJC or DJC employees. (Note: The bill contains a typographical error, referring to the "Wayne County Judicial Council" instead of the "Detroit Judicial Council" in the section of the bill [Section 8273] which deals with the employees of the 36th District Court.)

The governing bodies of Wayne County and the City of Detroit (the county board of commissioners and the city council, respectively) would have until September 30, 1996, to create, by resolution, their own judicial councils. If either judicial council were created, its composition, powers, and duties would be prescribed by the resolution creating it. Each judicial council would begin exercising its powers and duties on October 1, 1996, and would be the successor agency to the State Judicial Council. The Wayne County Judicial Council would be the employer of former SJC employees assigned to serve in the Third Circuit Court and recorder's court; the Detroit Judicial Council would be the employer of former SJC employees assigned to serve in the 36th

District Court. Otherwise, Wayne County and the City of Detroit would become the employers of the former SJC employees.

All of the bill's provisions regarding court employers, court employees, and chief judges would apply to the Wayne County Judicial Council or the Detroit Judicial Council – or, if either or both councils weren't created, Wayne County and/or the City of Detroit -- their employees, and the relevant chief judges. In addition, transferred employees could have accumulated annual leave of up to 160 hours transferred with them; for annual leave above 160 hours, the legislature would, by law, allow employees the option to receive either a cash payment for the value of the excess annual leave (to be paid over a period of time not to exceed two years) or a payment of that amount in the form of deferred compensation.

The bill would specify that former SJC employees would remain members of the State Employees Retirement System (SERS), and would require their new employers to pay quarterly to the SERS an amount based on the contribution rates determined under the State Employees Retirement Act in the manner prescribed by the SERS.

The bill would explicitly prohibit the State Judicial Council from granting any pay raises or making changes in benefit plans for any of its employees during the period between the bill's effective date and the time former SJC employees were transferred to the appropriate employer.

Court employers, judges, and court employees. Local units of government (counties or district funding units) would be the employers of locally-paid court employees. (The bill would exclude judges from the definition of locally paid court employees, and specifically include people employed in the court who received "any compensation as the direct result of an annual budget appropriation" approved by the local funding source, whether county board of commissioners or governing body of the district funding unit). In single-county circuits, the county would be the employer of the county-paid circuit court employees in that county, as it would be of the county-paid employees of probate courts that weren't part of a probate district. Similarly, the district funding unit (the bill would change the current "district control unit" to "district funding unit") would be the employer of district court employees, except in multicounty districts or districts of the third class consisting of two or more municipalities. (The bill also would specify how the employer would be determined in multicounty judicial circuits or districts, probate districts, and districts of the third class consisting of two or more municipalities.) Compensation of local court employees would be paid by the county or counties composing the

judicial circuit or probate court, and by each district funding unit, as applicable.

Generally, the employer of locally-funded court employees would handle economic issues with regard to employees, while chief judges would handle non-economic personnel issues. Currently, the RJA authorizes chief judges to appoint circuit court and district court employees and fix their compensation within the appropriations provided to them. Under the bill, employers – "in concurrence" with the appropriate chief judge – would have the authority to both:

**** establish personnel policies and procedures** (including, but not limited to, those related to compensation, fringe benefits, pensions, holidays, leave, work schedules, discipline, grievances, personnel records, probation, and hiring and termination practices); and

**** make and enter into collective bargaining agreements** with representatives of the locally-paid employees of the local court.

Except as otherwise provided by law, the chief judge of each court would appoint, supervise, discipline, or dismiss court employees, in accordance with the personnel policies and procedures developed by the county or district and any collective bargaining agreements. The bill would further specify that the role of the chief judge would be that of the principal administrator of court officers and personnel and not that of a representative of a source of funding.

If the employer and chief judge disagreed over a matter involving personnel policies and procedures, the final decision generally would depend on whether the issue in question was economic or not: the employer would decide matters relating to compensation, fringe benefits, pensions, holidays, and leave; the chief judge would decide matters relating to work schedules, discipline, grievances, personnel records, probation, hiring and termination practices, and other personnel matters.

Both employers and chief judges could appoint agents for collective bargaining, though a chief judge could elect not to participate in the collective bargaining process for locally-funded court employees.

If implementation of the bill required a transfer of court employees or a change of employers, all employees of the former court employer would be transferred to – and appointed as employees of – the appropriate employer subject to all rights and benefits they enjoyed with the former court employer. Transferred employees would not, by reason of their transfer, be placed in any worse position with regard to any terms and conditions of

employment (including worker's compensation, pension, seniority, wages, sick leave, vacation, and health and welfare insurance) they enjoyed under their former employer (though these protected rights and benefits could be altered by future collective bargaining agreements). The local funding units would assume and be bound by any existing collective bargaining agreements held by former court employers, and would keep employees covered by those agreements except where the agreement allowed otherwise. A transfer of court employees could not adversely affect any existing rights and obligations contained in existing collective bargaining agreements.

The bill also would specify that the state would not be a party to the employment contract. And except as provided by law, the state wouldn't be the employer of court officers or personnel and wouldn't be liable for claims arising out of the employment relationship, or conduct, of court officers or personnel.

COURT ADMINISTRATION

Local court management councils. A county or group of counties would be allowed to create, by resolution, a "local court management council" under Public Act 8 of the Extra Session of 1967, which provides for intergovernmental transfers of functions and responsibilities. A local court management council could be given the responsibility for coordinating the delivery of court services.

Appointment of chief judges. The supreme court would appoint chief judges for each single county judicial circuit. The chief judge then would appoint chief judges of the circuit, probate, and district courts in that county. The chief judge of the county would be required to adopt procedures for the assignment and reassignment of cases, and procedures for the assignment of judges between courts, trial divisions, and districts in that county, subject to the bill's provisions that all assignments and reassignments of cases filed in any court in a county be made among the judges of that county unless no trial judge was qualified and able to take the case. A judge of one county couldn't be assigned to serve as a judge in another county unless no other judge in the county needing help was able to serve.

Competitive bids. Courts would be prohibited, except for contracts for indigent legal services, from entering into contracts for \$10,000 or more for goods or services without first following the competitive bid procedures in the Management and Budget Act.

Nepotism. The bill would prohibit judges or justices from hiring or employing members of their immediate families (someone related by blood or marriage to the

third degree) as a court employee, a process server, or in any judicial support-related capacity. The prohibition wouldn't apply to employees hired before the bill's effective date.

Evening and weekend hours. (Sections 815, 4803) Currently, district courts may hold evening and weekend hours. The bill would say that circuit courts and probate courts also could hold evening and weekend hours.

Judicial performance commission. (Section 238) Under the bill, the supreme court would create a judicial performance commission that would develop standards for evaluating the performance of all judges in the state. The results of judges' evaluations according to the standards set by the commission would be made available to the public June 1, 1999. If the commission standards had not been developed and implemented within six months of the deadline (i.e. by January 1, 2000), the supreme court would implement the trial court performance standards published by the National Center for State Courts, with each judge making public an annual report on how he or she had complied with each standard.

Trial court assessment commission. (Section 222) The bill would create a 23-member trial court assessment commission in the legislative council to come up with a funding formula for the state money appropriated annually for court operations and to report to the legislature about changes in judgeships and revisions to the courts or court system.

The commission would be given a July 15, 1997, deadline to recommend a funding formula for the money appropriated annually by the state for the operation of state trial courts. For each county and district funding unit, the funding formula would have to take into account both the total caseload and the relative complexity of the cases composing that caseload. More specifically, the commission would be required to do the following:

- (1) study and classify the civil and criminal cases filed in the state trial courts (the district, circuit, probate, and Detroit Recorder's Court);
- (2) develop a set of criteria for determining the relative complexity of the various types of cases filed; and,
- (3) recommend to the legislature, by July 15, 1997, a funding formula for the money appropriated annually by the state for the operation of the trial courts.

In addition, by October 1 of each odd-numbered year, the commission also would be required to report to the legislature the following recommendations, reports, and analyses:

(1) A detailed recommendation of the number of circuit, probate, and district judges necessary to dispose of the trial court caseload in the state;

(2) A report concerning the need for revisions to the courts and court system of the state (including, but not limited to, the issue of part-time probate judges), and proposals for implementing any recommendations; and

(3) An analysis of the implementation of any revisions in the courts or court system, based on monitoring and review of the implementation.

The commission would consist of six judges, one local court administrator, five representatives of local governments, two state bar representatives, two state senators, two state representatives, the director of the Department of Management and Budget (DMB), and four public members. Except for the director of DMB and the four legislative members, commission members would be appointed by the governor as follows:

** six judges from lists of candidates recommended by the chief justice of the supreme court;

** one local court administrator, from a list of candidates recommended by the state court administrator;

** five members representing the interests of local governments, two each from lists of candidates recommended by the Michigan Association of Counties and the Michigan Municipal League and one from a list of candidates recommended by the Michigan Townships Association;

** two members from a list of candidates submitted by the State Bar of Michigan; and

** four public members, one from each of the four appeals court districts, at least one of whom was a certified public accountant. The governor would appoint one of the public members as commission chairperson.

The Senate Majority and Minority Leaders each would appoint one senator; the Speaker of the House and the House Minority Leader each would appoint one state representative.

Trial court commission members would serve two-year terms without compensation, except for expenses. The initial members would have to be appointed within 30 days after the act took effect. Vacancies would be filled in the same way as the original appointment. The first meeting of the commission would occur within 90 days after the bill took effect. A majority of the commission members would constitute a quorum for transacting business at commission meetings, and a majority of the

members serving and voting would be required for official commission action. Commission meetings would be subject to the Open Meetings Act, and commission writings would be subject to the Freedom of Information Act.

OTHER PROVISIONS

State funding. The bill would delete requirements that the costs of various specific employees and functions of the currently state-funded trial courts be paid by the state. These would include the Third Circuit Court and 36th District Court reporter or recorder; the Wayne County jury board; and the 36th District Court's judicial assistant, probation department, and magistrate.

District court. The RJA says that the district court doesn't have jurisdiction in actions for injunctions, divorce, or actions that are historically equitable in nature, except as otherwise provided by law. The bill would specify, however, that the district court would have the jurisdiction and power to make any order proper to effectuate fully its jurisdiction and judgments. The bill would keep the provision requiring that appeals from the district court go to the circuit court, but would delete the provision that appeals from the 36th District Court go to Detroit Recorder's Court.

Detroit revenue collection and state payments. Currently, in each fiscal year Detroit is required to pay the state (a) one-half of the revenue generated by the Detroit parking violation bureau in excess of the cost of operating the bureau and (b) certain amounts of money determined by a formula based on the expenses of, and revenue collected by, the 36th District Court. Detroit and the state also have certain funding obligations for the operation and maintenance of the 36th District Court, as determined by biennial audits by the state auditor general. Under the bill, these provisions would not apply after September 30, 1996.

"District funding unit." The bill would change current terminology in the RJA that refers to "district control units," substituting instead "district funding unit."

Late payment sunset. The bill would delete the January 1, 1998, sunset on the assessment of a 20 percent late penalty on overdue payments for penalties, fees, or costs.

EFFECTIVE DATES AND REPEALERS

Effective dates. Different sections of the bill would take effect on different dates.

(1) The following sections of the bill would take effect when the bill was enacted:

Section 222 -- Creation of the trial court assessment commission;

Section 225 -- Case assignments and reassignments

Section 235 -- Appointment of chief judges by the supreme court

Section 238 -- Creation of the judicial performance commission

Section 241 -- Judiciary line-item appropriation by legislature

Section 815 -- Probate court authorization to hold evening and weekend hours

Section 1486 -- Prohibition against judicial nepotism

Section 1487 -- Require competitive bid contracts

Section 1501 -- Circuit court authorization to hold evening and weekend hours

Section 8104 -- Definition of "district funding unit"

Section 9108 -- No pay raises or benefit increases by the SJC

(2) The following sections of the bill would take effect on October 1, 1996:

Section 151a -- Change in state court fund distributions

Section 151b -- Creation of court equity fund and hold harmless fund

Section 151c -- Authorization for creation of local management councils

Section 591 -- Circuit court appropriation, status of court employees

Section 593 -- 3rd Circuit Court employees

Section 593a -- Allow creation of the Wayne County Judicial Council

Section 594 -- 3rd Circuit Court employees stay in SERS

Section 595 -- 3rd Circuit Court property goes to county

Section 837 -- Probate court appropriations, status of court employees

Section 1114 -- Payer of circuit court reporters or recorders

Section 1168 -- Circuit court reporters' supplemental salaries

Section 1302 -- Jury boards

Section 1303 -- Jury board assistants

Section 1481 -- Judicial assistants

Section 4803 -- Eliminate sunset of late payment penalty

Section 8271 -- District court appropriations, status of court employees

Section 8273 -- 36th District Court employees

Section 8274 -- Allow creation of the Detroit Judicial Council

Section 8275 -- 36th District Court employees stay in SERS

Section 8314 -- District court probation departments

Section 8315 -- District court jurisdiction and judgements

Section 8381 -- \$4.25 to court equity fund

Section 8521 -- 36th District Court magistrates

Section 8621 -- 36th District Court reporters

Section 9931 -- Abolition of Detroit Recorder's Court

Section 9945 -- 36th District Court funding

Section 9947 -- Expiration of 31.5 percent funding of state trial courts

(3) Provisions regarding judges' salaries (Sections 304, 555, 821, 8202, and 9932) would take effect on January 1, 1997.

(4) The provisions allowing judicial election districts (section 9948) and district court appeals to circuit court (section 8342) would take effect on October 1, 1997.

Repealers. The bill also would repeal certain sections of the RJA, the municipal courts of record act, and the Recorder's Court of Detroit Act on different dates.

(1) The bill would repeal the following provisions of the Revised Judicature Act effective October 1, 1996:

** The establishment, operation, and responsibilities of the State Judicial Council (sections 9101 through 9107);

** the establishment and responsibilities of the executive committee and executive chief judge of the Third Circuit and Detroit Recorder's Court (sections 563, 564, 567, and 592);

** the requirement that the probate court furnish a letter of authority of guardianship to a fiduciary or guardian free of charge (section 872);

** the salary of the Third Circuit Court's reporter or recorder (section 1123);

** Wayne County's payment to Detroit for courtroom security in recorder's court (section 1147); and

** the 36th District Court's chief judge's authority to appoint the SJC employees serving in that court (section 8272) and the designation of the 36th District Court judicial assistant as an employee of the SJC (section 9944).

In addition, on October 1, 1996, the bill would reinstate the provision in the RJA (section 822) governing part-time probate court judges' salaries. Section 822 currently is due to be repealed on January 1, 1997; the bill would repeal that repealer (enacting section 2 of Public Act 369 of 1994).

(2) The bill would repeal the municipal courts of record act (Public Act 369 of 1919) in three steps over the period of time from October 1, 1996, to October 1, 1997. On October 1, 1996, the bill would repeal the provisions of the act regarding the joint executive committee and executive chief judge of the Third Circuit Court and Detroit Recorder's Court and the employees of the state judicial council serving in recorder's court; on January 1, 1997, the bill would repeal the act's provisions regarding recorder's court judges' salaries; and on October 1, 1997, the bill would repeal the remaining sections of the act.

(3) On October 1, 1997, the bill would repeal the Detroit Recorder's Court Act, Local Act 326 of 1893.

BACKGROUND INFORMATION:

P.A. 189 state court fund distributions. During the first year of the state court fund (fiscal year 1993-94) established by Public Act 189 of 1993, disbursements to 24 outstate counties and one city (Pontiac) totaled \$8,217,068, in amounts ranging from a high of \$2,358,135.25 for Macomb County (the only county that year to receive more than a million dollars from the state court fund) to a low of \$1,269.44 for Baraga County. In fiscal year 1994-95, 32 counties and three cities (Pontiac, Flint, and Grand Rapids) received a total of \$10,424,064 from the state court fund. Distributions ranged from the

more than one million dollars received by Kent, Macomb, and Oakland counties (\$1,187,649.03, \$2,609,835.33, and \$1,356,052.12, respectively) to the \$1,772.44 received by Iron County. In fiscal year 1995-96, the State Court Administrative Office (SCAO) projects that 34 counties and the same three cities will receive a total of \$11,893,00 from the fund, with a projected range from a high of \$2,937,374 for Macomb County to a low of \$1,995 for Iron County.

Minority judges. One issue that has been raised in discussions about the abolition of Detroit Recorder's Court has been the racial composition of state courts. As of July 1996, there were a total of 617 judges statewide, 81 of whom are listed as being members of a minority group. (Though the State Court Administrative Office has codes for five minorities -- Hispanic, black, American Indian, Alaskan native, and Asian -- currently blacks and Hispanics are the only minorities represented on the bench.) Of the 617 judges statewide, 79 are listed as being black, and two are listed as being Hispanic. The breakdown, by court, is as follows:

** Of the seven supreme court justices, one black judge and one Hispanic judge;

** of the 28 appeals court judges, three black judges;

** of the 181 circuit court judges, nine black judges, with six of the nine being in the Third (Wayne County) Circuit Court;

** of the 259 district court judges, 39 black judges, with 26 of the 39 being in the 36th (Detroit) District Court;

** of the 107 probate judges, five black judges, with three of the five being in Wayne County; and

** of the 29 recorder's court judges, 22 black judges and one Hispanic judge.

In Wayne County, where African-Americans reportedly constitute 40 percent of the residents, six of the 35 Third Circuit Court judges are black, with four of the six minority judges having been initially appointed by the governor. In Detroit, 26 of the 31 district court judges are black. Thus, the three state-funded Wayne County courts -- Third Circuit, Recorder's, and 36th District -- have 54 of the state's 75 black judges.

With regard to the state's higher, appellate courts, only six African-Americans have served on either the state supreme court or the court of appeals, and all initially were gubernatorial appointments. Three African-Americans have served on the state supreme court: Otis Smith (1961-1967), Dennis Archer (1985-1990), and Conrad Mallett (1990-present). In 1961, Governor John

Swainson appointed Otis Smith, who in 1960 had been elected auditor-general under the former state constitution, to the supreme court. After his appointment, Justice Smith ran and was elected to fill the remainder of the unexpired term to which he had been appointed. However, when that term expired, and he ran as an incumbent for a full term, he was defeated. The two other African-Americans appointed to the state supreme court, Dennis Archer (appointed by Governor James Blanchard in November 1985 and elected to eight-year term November 1986) and Conrad Mallett, Jr. (appointed by Governor Blanchard in December 1990, and elected to a two-year term in 1992 and an eight-year term in 1994), have been reelected. Since Justice Mallett was appointed after Justice Archer resigned (to successfully run for mayor of Detroit), currently there is only one African-American on the state supreme court. Only three African-Americans have served on the state court of appeals, which was established under the state constitution of 1963. All three were initially gubernatorial appointments (Judge Harold Hood and Judge Myron H. Wahls in 1982, and Judge Robert P. Young in 1996), and all three currently are serving on the court.

Court employees. Since the state's first constitution, county clerks have provided services both to the county and to the court. The 1835 constitution established the county clerk as the "Clerk to all the Courts of record to be held in each county," language which remained unchanged in the 1850 state constitution. The 1963 constitution also makes the county clerk ("or other officer performing duties of such office as provided in a county charter") the clerk of that county's circuit court. This arrangement made eminent sense when judges traveled a circuit and couldn't easily carry out the administrative and record keeping functions of the circuit court. As a 1981 Michigan Bar Journal article noted, "Since the county clerk was maintaining county records and files, it was natural to delegate the judicial ministerial functions to the county clerk's office. Circuit court documents could then be filed and maintained daily at a fixed location in each county, instead of at those select times the circuit judge was in the county." However, over the years this once apparently clear relationship of the county clerk to the courts has become considerably less clear, and questions have arisen over the dual status of the county clerk. This situation has one elected official in one branch of government (the county clerk) working in some sense under another elected official of another branch of government.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency analysis dated 7-19-96, since the judiciary budget (Public Act 375 of

1996) is tie-barred to House Bill 5158 (Public Act 374), the bill will result in increased costs to the state in fiscal year 1996-97 of \$12.9 million in state general fund dollars, or \$3 million over the appropriation targets established by legislative leadership and the governor in May 1996.

Under the proposed new funding formula all funding units -- including counties that currently don't receive money from the state court fund -- would receive money from the new court equity fund, which in fiscal year 1996-97 would total \$50,004,000. With the \$20 million in the new "hold harmless" fund, the total amount of money available for the state trial courts would come to \$70,004,000. All counties but Wayne also would realize savings from the state's full assumption of judges' salaries. Wayne County and Detroit would incur the additional costs for the salaries of the former SJC employees, but for the first two years after the bill took effect Wayne County should receive the same amount of state funds as it did in fiscal year 1995-96.

More specifically, the net additional state general fund money for fiscal year 1996-97 would be as follows:

- (1) about \$3 million for full assumption by the state of trial judges' salaries;
- (2) about \$22 million (instead of the \$24 million specified in the bill) from the state general fund to the new court equity fund;
- (3) \$20 million from the state general fund to the new "hold harmless" fund.

(Note: Revenue from district court costs, which now goes to the state general fund, would be redirected to the new court equity fund and so would be restricted state funds, not general fund money.)

These new state costs would be offset by the nearly \$29 million in general fund money that currently goes to the three state-funded courts in Wayne County, plus nearly \$3 million in juror reimbursement fees (which, though not part of the bill, reportedly will be used as an offset to the general fund portion of funding for the trial courts). The SFA notes that although the state no longer will pay the salaries for former State Judicial Council (SJC) employees (that is, court employees in the three state-funded Wayne County courts), the state won't realize savings from abolition of the SJC because the general fund dollars now going to SJC employee salaries will be redirected to provide funding to all of the state trial courts.

The \$50,004,000 in the new court equity fund would come from the following sources:

** \$19,004,000 in state court funds for the outstate and Wayne County state-funded trial courts combined;

** \$9,203,600 in restricted funds; and

** \$21,796,400 (instead of the bill's \$24 million) of general fund money.

ARGUMENTS:

For:

The bill would correct a long-standing inequity in the state funding of courts that has existed ever since the state started providing special funding to the three Wayne County trial courts (the Third Circuit Court, Detroit Recorder's Court, and the 36th District Court) under 1980 legislation, while failing to provide similar funding promised to the rest of the state's courts in the same legislation. The current unique funding for the Wayne County courts, including the State Judicial Council, would be eliminated, and all state trial courts would be funded under a single formula based on caseload and population. If the state is not going to fully fund all courts, then state funding should be based on the amount and complexity of the work that a court does and not on historical accident or geographical location. All courts should be funded equitably and all counties should be treated in the same way with regard to state funding.

Similarly, trial court judges' salaries should be based on the work they do rather than on their status. As then-Chief Justice G. Mennon Williams argued in 1985, full state funding of judges' salaries is necessary for "fair and equal administration of justice," which "requires equal pay for equal work." The bill would require the state to fully fund all judges' salaries, not just those of the supreme court justices and appeals court judges. And although the bill wouldn't eliminate entirely the disparity in salaries between circuit judges and the "lower" trial court (district and probate) judges, it would reduce the current disparity in salaries of the two levels of trial court judges. Prior to 1995 legislation that eliminated the judicial tie-bar, circuit court judges' salaries were set at 92 percent of the salary of a supreme court justice, while district and probate judges' salaries were set at 88 percent. This four percent salary difference would be reduced to two percent under the bill: circuit court judges' salaries would be set at 85 percent of the salary of a supreme court judge, while district and probate judges' salaries would be set at 83 percent.

The bill also would clarify in statute for the first time the relationship between court employees, judges, and the local units of government that pay court employees' salaries. Historically, there has been controversy over the status of court employees: Court employees are hired

("appointed") by judges, but paid by local units of government, even though judges are statutorily authorized to set court employees' compensation (see **BACKGROUND INFORMATION**). This anomalous situation would be changed by the bill, which would specify that county boards of commissioners and district funding units would be the employers of county-paid trial court employees. The local funding unit employers would exercise decision-making over personnel issues involving financial matters, including compensation, while judges would continue to exercise decision-making over other, non-financial personnel issues.

The bill also would address another ongoing perceived problem with the current judicial system by having the supreme court create a "judicial performance commission" to develop standards for evaluating the performance of all judges in the state. The results of these evaluations would be made public, providing a way for ordinary people to evaluate the judges they elected, and would provide another tool, in addition to the Judicial Tenure Commission, for addressing problem judges and for increasing judicial accountability. The bill also conceivably could resolve the long-standing debate over what to do about part-time probate judges, an issue apparently still unresolved despite the flurry of legislation in recent years. One of the charges of proposed trial court assessment commission (which is to come up with a funding formula for annual appropriations for court operations, presumably eventually to replace the funding formula given in the bill) would be to report on the need for any revisions to the courts or court system; the only specific issue mentioned in the bill is that of part-time probate judges.

Response:

As the chief justice of the Michigan supreme court pointed out, in a set of recommended "building blocks" for "a sound, streamlined, responsive court system," the formula presented in the bill for the funding of trial courts is only one of several presented during the ongoing discussions of court reform. The supreme court recommends "[a]n equitable funding system based on a universally accepted definition of the term 'equitable'." However, the bill virtually ignores the issue of finding a definition of 'equitable' that would satisfy all participants in the court reorganization debate. The supreme court did offer its own proposed three-part funding formula, for example, which would have distributed uniform "foundation grants" to each of the state's 83 counties; "management grants" to each county based on the county's population, district caseload, probate caseload, and circuit caseload; and "development grants," in the form of discretionary developmental funds to counties for pilot projects. As a June 1996 commentary in the Ann Arbor News points out, under the bill, "[t]he state could end up with a judicial system in which fairness is not

measured by the quality of justice but by the dollars local court systems receive from Lansing." Another newspaper article (the July 4, 1996, Macomb Daily) says, more bluntly, that "[t]he funding package mostly redistributes money from Wayne County to outstate counties, particularly Kent County."

In addition, although proponents of the bill characterize it as a move to increase the uniformity and efficiency of the court system, opponents argue that abolition of the State Judicial Council -- which eventually was to be the (state) employer of all court employees, not just those in the three Wayne County courts -- is an expensive step back from an important aspect of uniformity in the court system. The bill would move current SJC employees, who are state employees, back under local units of government. The initial transfer of these employees, in the 1980 legislation, was enormously complicated and expensive, and returning them back to their original local governmental employers will be a costly and time-consuming process that almost certainly will not be able to be accomplished in the extremely short time lines proposed in the bill.

Reply:

In addition to the funding formula given in the bill for distributing funds to the counties from the state court equity fund, the bill would create a state trial court assessment commission in the legislative council to come up with a formula for the state money appropriated annually for court operations. Though the bill does not specify that any formula proposed by the commission would replace that in the bill, presumably the commission's deliberations over this issue would provide a further forum for discussing this controversial issue.

Against:

The bill raises a serious constitutional issue of the separation of powers of constitutionally separate and co-equal branches of government. It would legislatively impose substantive structural changes on the judiciary from the outside, while apparently ignoring the supreme court's own plan for court reorganization. In a written statement issued just before the legislature met in early July to vote on the bill, Chief Justice James Brickley identified five "building blocks of a sound, streamlined, responsive court system," only one of which -- the establishment of local court management councils for the efficient, locally based administration of trial courts -- the bill proposes. The bill explicitly rejects two of the court's recommendations (exclusive judicial authority over court employees and retention of Detroit Recorder's Court), does not address the recommended complete merger of circuit and probate courts, and ignores the recommendation that a equitable funding system be based on a universally accepted definition of the term "equitable."

The bill's provisions regarding the status of court employees are particularly problematic. Having the legislative branch of government provide employees for the judicial branch appears to violate the separation of powers established by the constitution. The legislative branch of state government doesn't provide the executive branch with its employees, nor does the executive branch provide the legislature with its employees. Why should this be so with the judiciary? Judicial accountability requires that the judiciary have control over its employees. Chief Justice Brickley suggests that the judiciary would be made more accountable to the public "through exclusive judicial authority over court employees. The public must know who to hold responsible for poor performance in the judiciary. Clear lines of authority through a single chain of responsibility would leave no doubt. The chain would run from the Michigan Supreme Court to the trial courts and back. Standards for quality in the delivery of justice would be developed to ensure consistency statewide."

In addition, the proposed trial court assessment commission is to be housed in the legislative council -- not the supreme court -- and its members are to be appointed by the governor -- not the chief justice. Surely the executive and legislative branches of government would question housing important legislative or executive assessment commissions in the judiciary, and rightly so. In general, any major court reorganizing proposals should appropriately follow the lead of the judiciary. Recent years have seen the extensive restructuring of the executive branch of government by the governor without direction from the legislature. Shouldn't the supreme court, as the head of the judicial branch of government, have the same decision-making power over the reorganization of the judiciary that the governor has over the restructuring of the executive branch? The legislature does have the power of taxation and the responsibility for appropriating funds for the other two branches of government, and thus a clear interest in judicial funding issues. But much of the bill, not to mention pending court reorganization legislation, goes well beyond funding issues, which raises questions of separation of powers.

Response:

The bill does in fact incorporate a number of features that are responsive to judiciary concerns and proposals. The proposed judicial performance commission, which would be charged with the crucial task of developing standards for evaluating the performances of all judges in the state, would be appointed by the supreme court. The bill also would statutorily authorize the supreme court to appoint chief judges, which would strengthen the court's existing superintending control over the state's court system. Finally, the bill would allow counties to create "local court management councils," a proposal made by the supreme court in its own court reorganization plan. As

the supreme court argues, "Local court management councils would give local elected officials responsibility for ensuring the efficient use of judicial resources in their communities." (Although the bill doesn't prescribe the composition of the councils, the supreme court envisions that the councils would be composed of the chief judges of the local circuit, probate and district courts, the chairs of the participating county boards of commissioners, representatives of the legislative bodies of the district court funding units, the appropriate regional court administrators, and members of the public.)

Against:

A major reason for the present bill is the failure of the legislature to follow through with a provision in the 1980 legislation that promised future -- eventually full -- state funding of all trial courts in the state, starting immediately with the three Wayne County courts. But when it came time for the state to begin funding "outstate" trial courts, a 1983 attorney general opinion said that one legislature can't tell future legislatures how to appropriate money. Yet that is precisely what this bill would do, both by requiring specific amounts of state general fund money for the proposed new state court equity fund and by creating a five-year "hold harmless" fund also to be funded from the state general fund. How can the present legislature bind future legislatures' appropriations in this way? Given the history of the 1980 legislation, why should anyone believe that future legislatures will appropriate the additional millions of dollars of state general fund money called for in the bill? Without the proposed state general fund money, the proposed changes in the state funding of the courts could result in serious financial burdens on local units of government -- particularly Wayne County and Detroit -- should future legislatures choose not to appropriate state general fund money as proposed in the bill. Already, in fact, the \$24 million in state general funds called for by the bill apparently has been reduced to less than \$22 million, which suggests that the figures for state general fund dollars in the bill may well not be appropriated. But even if future legislatures follow through with the "hold harmless" fund, some people have suggested that the bill's provisions may violate the Headlee amendment to the state constitution (which prohibits the state from ordering local governments to provide a service if the state fails to provide funding for it), placing additional financial burdens on Wayne County and Detroit without fully funding them. This, some people suggest, will result in Headlee challenges to the bill.

Response:

As a July 1996 Detroit News editorial points out, courts are not a "new" function. And while the bill would change the funding formula for court operations, it would not eliminate them. In fact, the bill would even provide extra money for Wayne County over a five-year transition

period. The extra funding that the three Wayne County courts received from the state over the past 15 years was "bailout" money, and the Headlee amendment to the state constitution was not designed to ensure that every bailout remain in place forever.

Against:

Some people argue that the bill would unfairly punish Detroit and Wayne County for the state legislature's own failure to follow through on its 1980 legislative promise to fund the outstate courts. Rather than bring the outstate counties up to the level of funding currently provided to Wayne County, the bill would reduce funding to Wayne County while increasing funding to the other counties.

Response:

As some people have pointed out, the proposed changes in state funding would change the status quo, which many people in outstate Michigan consider to be unfair in the first place. One of the stated goals of the current legislative court reorganization effort is that of fair and equitable funding for all courts and counties in the state, and not special funding for just a few courts in Wayne County.

For:

By abolishing Detroit Recorder's Court, Michigan's only felony criminal court and municipal court of record, the bill would advance the desirable goal of further standardizing the state court system. Outside of Wayne County, the state has a system of circuit courts that handles both felony cases and civil and divorce cases. Only Wayne County has a court configuration that, until last fall, effectively had two circuit courts that divided these criminal and civil functions, with recorder's court handling most of the county's criminal felony cases and the Third Circuit Court functioning as a kind of truncated circuit court that handled mostly the county's civil and divorce cases. The bill would eliminate this anomalous configuration, merging recorder's court with the Third Circuit Court and thereby reuniting Wayne County's felony criminal and civil cases within a single circuit court. Abolishing recorder's court also would expand the current jury pool for recorder's court so that jurors would be drawn from the whole county, and not just the City of Detroit; this would ensure that all judges trying criminal felony cases would be electorally responsive and accountable to all of the voters of the county (unless judicial electoral districts were established under a state constitutional amendment). Elimination of recorder's court also would eliminate the possibility, as some people have claimed, of "unequal justice" being provided by recorder's court. Instead, these critics of recorder's court say, abolition of the court will ensure that all victims and defendants would have "an equal opportunity for justice in Wayne County."

Against:

The bill would abolish the Detroit Recorder's Court, a unique historic court that traces its existence back to the creation of the Detroit Mayor's Court of 1824, apparently simply on the grounds of "standardization." Proponents of the court's abolition don't even appear to claim that this "standardization" would result in greater efficiency and cost savings, nor do they appear to be arguing that the court currently is not efficient. Quite to the contrary, several proponents of retaining recorder's court point to its efficiency. Thus, for example, the chief justice of the Michigan supreme court has written that "[f]or over 150 years, this uniquely valuable court has provided efficient and responsive justice in the state's largest metropolitan area," and that "the combined efforts of the judges of the Recorder's Court and of the Wayne County Circuit Court have served this state well when backlog problems have arisen in one of the courts." Meanwhile, some people question even the "standardization" argument, pointing out that the bill would eliminate only one "special court" -- the predominantly African American recorder's court -- and would leave in place the existing suburban -- and overwhelmingly white -- municipal courts in Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Shores, Grosse Pointe Woods, and Eastpointe. These suburban municipal courts, the only municipal courts remaining in the state, do not fit into the existing categories of circuit, probate, and district courts any more than recorder's court does. So if recorder's court is to be eliminated in the interests of "standardization," why doesn't the bill propose these municipal courts' elimination as well? Some people believe that the difference in the bill's treatment of these courts is racially based: they point out that the majority of recorder's court judges are African American (currently, 22 of the 29 judges), as is the jury pool for the court drawn from the City of Detroit, while none of the suburban municipal judges is African American and their jury pools are overwhelmingly white. In addition, some people point out that recorder's court has operated as a unique and separate court for over 150 years, and that no one proposed eliminating the court when its racial makeup was predominantly white and served a predominantly white population. Thus, some people conclude that the desire to abolish recorder's court is primarily a desire to eliminate a predominantly African American court with its predominantly African American juries. In particular, as a May 1996 Detroit Free Press article suggests, the move to abolish Detroit Recorder's court "appears to partake of an element of payback for the conviction in Recorder's Court of [white] former Detroit police officers Walter Budzyn and Larry Nevers for the murder of [black Detroit] Malice Green."

Whether or not the intention behind the move to abolish recorder's court is to reduce (or eliminate) the number of

African American judges in the county -- and in the state as a whole (see BACKGROUND INFORMATION) -- many opponents of the court's abolition believe that the bill in fact will have that very result. Despite claims to the contrary by some white proponents of abolishing recorder's court, historical evidence suggests that eliminating the court -- with its 80 percent African American electoral base -- and making its judges run for reelection on a county-wide basis -- which has a 40 percent African American electorate -- almost certainly will make it harder for African Americans to win judgeships in Wayne County. Reportedly, in fact, a number of groups are prepared to argue that abolition of the court may constitute a violation of the federal Voting Rights Act. The 29 judges on recorder's court are elected only by voters in the City of Detroit, 80 percent of whom reportedly are African American. Of the 29 judges, 22 are African American, one is Hispanic, and six are white. In contrast, only six of the 35 Third Circuit Court judges are African American; Third Circuit judges are elected on a county-wide basis, where reportedly 40 percent of the voters are African American. If recorder's court were abolished and merged with the Third Circuit Court, its 64 judges would have to run for election county-wide. While some former recorder's court judges might be re-elected as circuit judges, the current composition of the Third Circuit Court alone suggests that the county -- and thus the state -- would lose a significant number of its African American judges, even if Wayne County were allowed to keep 64 circuit court judgeships (reportedly, the county with the next largest number of circuit judges has only 17 circuit judges). Because the federal Voting Rights Act requires only discriminatory effect, and not intent, and because the effect of the abolition of recorder's court almost certainly would result in a significant decrease in the number of African American judges, abolition of the court may well violate the federal act. In an ideal world, perhaps it would be true that capable judges of any race could win support from any population. Unfortunately, however, the present world is far from ideal, and, as shown by existing statistics on the racial composition of the state courts, race is very much a part of the existing electoral system.

Finally, even if some of the impetus for abolishing recorder's court does rest with the perception that the court or its juries have been too "lenient" or too "harsh" in certain high-profile mixed-race criminal cases, even critics of the court have acknowledged that perhaps the problem rests elsewhere with the judicial system. For example, recorder's court judges criticized for being too "lenient" in their sentencing of juveniles who were tried as adults for serious crimes generally followed the recommendations of the then-Department of Social

Services (now the Family Independence Agency). The DSS reportedly tends to argue strongly for placement of juvenile defendants in their custody rather than sending them into the adult prison system. Thus, for example, the November 1994 Detroit News article reported that in 79.1 percent of the 89 juvenile felony cases mentioned in the article, the DSS sought juvenile sentences; the court agreed with the recommendation 84 percent of the time. So although many times the judges are blamed for the juvenile sentencing of juveniles tried as adults, the perceived problem may well lie elsewhere in the system. (And, in fact, the recent changes to the so-called juvenile justice system may well go further in addressing concerns of some recorder's court critics than the proposed abolition of the court.) With regard to the controversial Budzyn and Nevers case, an October 1995 Detroit News editorial commented, "Let us grant that much of the complaining about courts and the jury system is a question of whose racial ox is being gored." The article goes on to suggest that a close look be given to jury selection procedures, which is a considerably different proposal than abolishing recorder's court in order to "broaden the jury pool beyond mostly black Detroit."

Response:

With regard to the comparison of the treatment of Detroit Recorder's Court and the suburban municipal courts, it can be pointed out that there are differences between the courts beyond those of the racial makeup of the judges and the jury pools. Recorder's court is the only municipal court of record and handles only criminal felony cases; in these respects, it is much more like a circuit court than a municipal court (which is reflected, for example, in the fact that by law recorder's court judges are paid the same salaries as circuit court judges). The other existing municipal courts are not courts of record and do not handle felony criminal cases; instead, like the district courts that gradually have replaced most municipal courts, the existing municipal courts handle traffic and ordinance violations. Most important, for purposes of this debate perhaps, however, is the fact that unlike recorder's court, the municipal courts are not state funded. So although the intent, and the effect, of the district court act of 1968 was to gradually phase out municipal courts, if municipalities with existing courts wanted to keep and fund their courts locally, they were allowed to do so. Some people have suggested that if Detroit wanted to fund recorder's court, it, too, should be allowed to keep and maintain this historic court. (Though this provision was contained in the House-passed version of the bill, it is not in the enrolled version.)

It also can be pointed out that recent U.S. Supreme Court rulings on the federal Voting Rights Act raise some questions as to whether or not litigation based on possible violations of that federal act would be successful. A recent U.S. Supreme Court decision regarding the

composition of voting districts in North Carolina and Texas seems to suggest that the court is backing away from some of its earlier rulings which concluded that legislation having the effect of diluting black political power constituted violations of the Voting Rights Act. So whether or not such litigation would be successful seems unclear at best. However, it should be pointed out that the bill also would provide for the possibility of special judicial election districts (though this would require an amendment to the state constitution), so the issue of whether or not abolition of recorder's court would reduce the number of African American judges may well be addressed through this provision.

Against:

A number of people have pointed out that the process for considering the proposed changes has been so rapid -- and the issues so complex -- that those with significant interest and involvement in changes in the court system haven't had time to understand what is being proposed, much less understand its implications and articulate legitimate concerns. These people argue that the process should be slowed down, so that everyone involved can have an opportunity to understand and respond to the current proposals.

In addition, since one of the problems with deciding on how to restructure the current system is the lack of uniform, public data upon which to base such proposals, it would seem to make sense to proceed with gathering and evaluating such information -- as the supreme court currently is doing, for example, with its Courts in the 21st Century pilot projects -- before proceeding with major changes in the current system. In particular, it would seem to make sense to wait until information was available from these legislatively funded court pilot projects, which are being administered through the State Court Administrative Office. The data from these projects, which are implementing on a trial basis various court reorganization plans, surely would prove invaluable in guiding the debate on the best, and most workable, ways to reorganize the existing court system. Wouldn't it make sense for the legislature, which has funded these projects, to wait until the projects are concluded, and for the data they generated, before making significant court restructuring decisions?

Finally, it should be pointed out that the bill actually is not a court reorganization bill but rather a court funding bill. Although court reorganization and court funding have been treated together in the recent debates over court restructuring, they actually are two distinct issues. Thus, contrary to certain claims, the bill will not necessarily advance certain stated goals of court reorganization such as making the courts more "user friendly" and more "cost effective" (though some would

argue that the abolition of recorder's court could result in cost efficiencies, others would argue the opposite).

Response:

In attempting to resolve an issue as complex as that of state funding of courts and of court reorganization in general, it is highly unlikely that consensus can ever be gained on all aspects of the debate. Inevitably, there will be some interest group or another that will object to some specific provision or another. The bill is the result of intensive discussion and public hearings. Although it could always be argued that more time is needed before coming to a decision, the fact remains that unless decisive action is taken, no concrete changes in the system will result. The bill is a first, and important, step in a larger court reorganization plan; but the plan is far from complete in this one bill. Reportedly, other court reorganization legislation will be taken up in the fall, which, among other things, will address the issues of user-friendliness and cost-effectiveness.

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