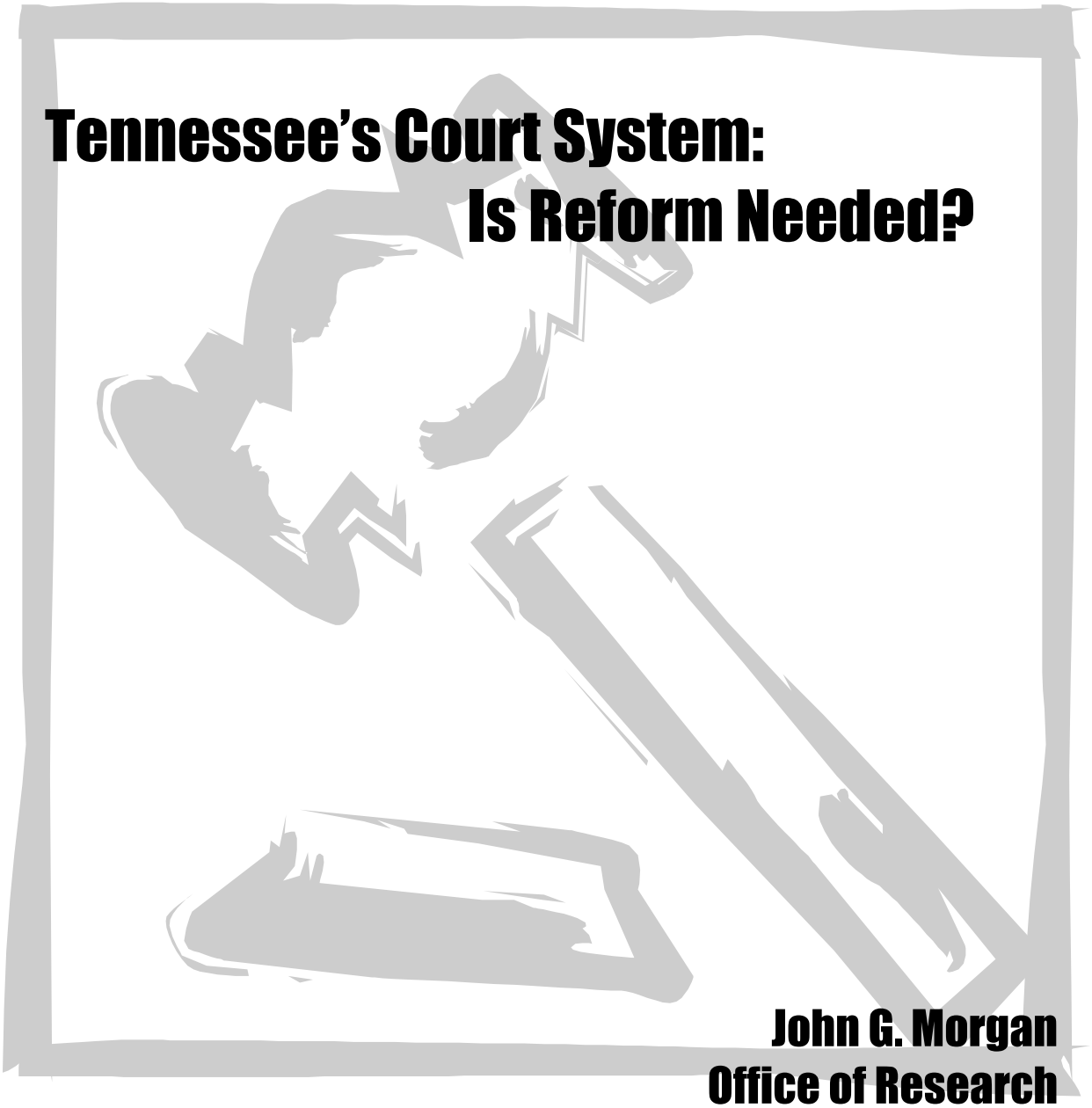
Tennessee's Court System: Is Reform Needed?



John G. Morgan
Office of Research
Comptroller of the Treasury

January 2004

STATE OF TENNESSEE

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January 30, 2004

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The Honorable Jimmy Naifeh
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The Honorable Curtis S. Person, Jr.
Chair, Senate Judiciary Committee
The Honorable Joe Fowlkes
Chair, House Judiciary Committee
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is a study by the Office of Research examining Tennessee's court system. The report examines several jurisdictional, structural, and operational issues. In addition, it provides recommendations for the legislative and judicial branches that may improve Tennessee's court system.

Sincerely,

John G. Morgan
Comptroller of the Treasury

Tennessee's Court System: Is Reform Needed?

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Executive Summary

For two decades, reports have documented the need for court reform in Tennessee because of its inefficiency, ineffectiveness, and inequities. Problems include:

- lack of compliance by local courts with Administrative Office of the Courts' (AOC's) administrative policies and Supreme Court Rules,
- lack of equity in general sessions and juvenile courts,
- variation in the way court costs are assessed and apportioned,
- misuse of state and local funds for local judicial initiatives,
- lack of a statewide court information system,
- difficulty auditing state and local courts, and
- conflicting data on court revenue between local governments and the Department of Revenue (DOR).

Many problems stem from a lack of structural, financial, and administrative consistency. In Tennessee, clerks, state attorneys, and private attorneys say it is difficult and time consuming to file and process cases when the forms, procedures, and judicial jurisdictions vary among the counties for the same types of cases. A survey by the Bench Bar Committee of the state Judicial Conference showed the lack of uniform procedures and forms in different courts for the same process is one of the biggest issues the Judicial Conference needs to address.

The Handbook of Criminal Justice Administration examined states with both unified and non-unified court systems and ranked them into five categories based on the percentage of state funding. States that are totally or mostly state funded usually have a unified trial court structure. As of 2003, this included 34 of 50 states. Tennessee is among 10 that are mostly locally funded.

Court funding in Tennessee is bifurcated rather than centralized. The state funds state court judges, and the counties fund general sessions and juvenile court judges and all clerks, whether state or local (many clerks serve as clerk for both state and local courts). The courts are funded with taxes, fees, fines, and commissions. If collections do not cover a court's operating costs, the county (or city, if municipal court has general sessions jurisdiction) supplements the budget with appropriations from the general fund. Any excess revenue is deposited in the county or municipal general fund.

Is There a Need for Reform?

Many judicial and legislative officials have expressed concern about the variation in judicial jurisdictional structure, administration, and funding. The Judicial Council has established study committees, and other committees have been formed by various conferences of the judicial branch to look at these problems over the last three years. Most recently, the General Assembly passed House Joint Resolution (HJR) 274 which creates "a special joint committee to study the present alignment and organization of trial court judicial districts; the allocation of judges, other judicial personnel, district attorneys general and district public defenders; and to determine if there exists a need to change the present system in order to make the trial court system more efficient and responsive to the public."[1] This study analyzes some of these issues and others, and provides recommendations for the legislative and judicial branches.

[1] House Joint Resolution 274 of 2003.

Analysis and Conclusions

The report makes conclusions in five general areas: court structure, effects on various courts, clerks of court, court procedures and specialty courts, and funding.

Court Structure

Tennessee's judicial jurisdictional structure is costly and inefficient. A report by the Commission on the Future of the Tennessee Judicial System found that "Tennessee has one of the more complex and confusing court structures in the nation." Court jurisdiction was different in each of the 10 counties sampled in this study. In one county, general sessions court has jurisdiction for misdemeanors and preliminary felonies, juvenile court, environmental court, domestic relations, probate, and mental health cases. In another county, general sessions has jurisdiction only for misdemeanor and preliminary felony cases. (See pages 7-8.)

Many statutes and private acts allow variation in judicial jurisdiction of courts. Almost all of the courts sampled had statutes, private acts, judicial rules, "traditions," and/or informal "agreements" between courts to establish their own judicial structures and jurisdictions. (See page 8.)

Many local judges and clerks do not feel compelled to comply with state policies because they are elected and paid locally. Locally elected and funded clerks and general sessions judges primarily control the administration of justice at the local level. These officials have considerable latitude to implement policies, procedures, and judicial forms. As a result they vary considerably from county to county, particularly for the establishment, assessment, and collection of court costs. (See pages 8-9.)

Effects on Various Courts

General sessions courts lack administrative oversight, accountability, and equitable judge salaries. The National Center for State Courts acknowledges that although most states have a high degree of centralized administrative authority "at least on paper…nevertheless, there are a few states in which the local judges and administrators retain a significant degree of independence." Tennessee is in this category along with Ohio, Texas, Louisiana, and Mississippi. (See page 10.)

Most juvenile courts have a fragmented structure, lack judge training, and lack adequate attorney representation. Many experts and two prominent reports note that a uniform court system would address the main problems -- lack of training by judges in handling juvenile cases, lack of resources, and the inferior status of juvenile courts. The Executive Director of the Council of Juvenile and Family Court Judges said juvenile courts are seen as the least important when they "are the most important courts." (See pages 10-11.)

Many officials believe it is inefficient and unnecessary to have separate chancery and circuit courts with duplicate clerks, offices and/or buildings, administrative staff, and information systems for each county when most of the courts hear the same types of cases. Tennessee is one of only three states that still have separate chancery courts. (See pages 11-12.)

Municipal courts with concurrent general sessions jurisdiction create further fragmentation in judicial jurisdiction, duplication of services, and inefficient use of state and county resources. (See pages 12-14.)

Clerks of Court

Electing and employing multiple clerks in each county is costly and inefficient. In most counties circuit and chancery courts have concurrent jurisdiction, raising questions over the need for separate clerks. Having several elected and appointed clerks for separate courts in each county causes additional costs including:

1. costs to the state and local governments for additional separate elections;
2. increased salaries for additional elected clerks, which are considerably higher than deputy clerks' salaries;
3. duplicate state reporting to the AOC and Department of Revenue for the same types of cases and revenue respectively;
4. increased costs for training each time a new clerk is elected;
5. duplication in services between circuit clerk and clerk and master positions; and
6. additional information systems that could be combined, because they store the same types of information.

(See pages 15-16.)

Tennessee has no standards or qualifications for clerks. People with no knowledge of the court system could be elected because there are no standards for elected clerk positions. Some clerks acknowledged that many newly elected clerks know little or nothing about the job or the court system. (See pages 16-17.)

Clerk jurisdiction does not coincide with judicial jurisdiction. Many judicial officials interviewed thought that the clerk of the court with judicial jurisdiction should keep records for juvenile court since the county court clerk often has no knowledge of, or jurisdiction for, juvenile court. They also felt it was inefficient to have separate administrative and financial systems to process juvenile court records from the judicial systems that process cases. (See page 17.)

Court Procedures and Specialty Courts

General sessions and circuit judges complained of inefficiencies in the current system. These include frivolous warrants, lack of drug courts and mental health courts, excessive *pro se* cases,[2] and requiring civil cases under $25,000 to be heard in circuit court. (See pages 17-24.)

Frivolous warrants: The main reasons for the high number of extraneous warrants appear to be:

- the ability of individuals to swear out warrants without officer or district attorney authorization, and
- lack of training by clerks who are required to determine probable cause.

Lack of drug courts and mental health courts: Nonviolent alcohol and drug cases account for the majority of criminal cases in Tennessee and cost law enforcement and judicial systems the greatest resources. Across the country more courts are implementing diversion programs for drug and alcohol offenders, often with grants from the Department of Justice. Early research shows that drug courts are economical and effective to deal with nonviolent drug and alcohol offenders.

The Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) reports that 20 percent of people in the criminal justice system have mental health disorders. More states

[2] "One who represents oneself in a court proceeding without the assistance of a lawyer," *Black's Law Dictionary, Seventh Edition*, 1999, p.1,237.

are implementing mental health courts, similar to drug courts, to reduce recidivism and costs associated with this population within the criminal justice system. Mental health courts are designed to assess whether persons charged are mentally ill and, if so, remove them from jail and place them in more appropriate facilities. Two of the 10 sample counties (Davidson and Shelby) had formal mental health courts.

Excessive pro se cases: Many judges interviewed complained that the number of *pro se* cases, or cases in which individuals represent themselves, is increasing and costing courts considerable time and resources.

Requiring civil cases under $25,000 to be heard in circuit court: Because of a statutory limit of $15,000, many minor civil cases that otherwise could be handled in general sessions courts are heard in circuit courts.

Funding

Court costs are not uniform across the state. Court costs for identical offenses and convictions result in various total costs depending on the county or court of disposition. Fees vary from court to court, even within the same county, depending on jurisdiction. Clerks and administrators cite these reasons for inconsistency of court costs throughout the state:

- lack of training for clerks;
- bifurcated funding;
- constant adding and/or changing of fees, fines, and taxes;
- vagueness of state law; and
- incongruence between various parts of the law.

Lack of uniform court costs increases state and local governments' expense through:

- inconsistent application of the law;
- waste of time and money in staff resources to reconcile and administer vague statutes;
- over and/or under collecting of court revenue; and
- costly reprogramming of court information systems each time the law changes.

(See pages 24-26.)

The National Center for State Courts, other national organizations, and others interviewed argue that separate funding for local courts makes it more difficult to administer court funds and contributes to the lack of uniformity. (See pages 26-27.)

Local governments expect general sessions and juvenile courts to be self-supporting. According to TCA §16-15-5006, local governments have the responsibility to fund general sessions and juvenile courts in their jurisdictions, but they often pass that responsibility to the courts. Many people interviewed expressed concern that general sessions courts are used to pay for government operating expenses unrelated to the administration of justice. Local governments sometimes add fees and taxes to increase court revenue, which contributes to inequitable costs across the state. Although this is the case in other states as well, the National Center for State Courts warns against using court revenue to fund courts and local government. (See pages 27-29.)

Local courts estimate that a small percentage of court costs are collected. Low collection rates decrease revenue and increase the pressure on local governments and court administrators because

litigation tax comprises the majority of court revenue. In addition to low collection rates, taxes collected after six months further reduce state revenue because by law, after six months, the county keeps 50 percent of the tax, compared to five percent (or 15 percent in Shelby County) before six months. Clerks must collect litigation tax before collecting other local fees and fines. (See pages 30-31.)

The seizure of property by investigative agencies contributes to unpaid court costs. Defendants are not allowed to benefit from their illegal activities even to pay court costs. Law enforcement agencies retain all proceeds from illegally acquired assets. Courts get none to help pay for unpaid indigent defendants' accounts. State and county governments must cover the costs of processing indigent cases. Additionally, fees that are increased over the years to compensate for uncollected fees unfairly burdens those who pay. (See page 31.)

Complicated laws dictating revenue apportionment make it difficult to track collections by county and monitor remittance compliance. Counties report litigation tax revenue to the Department of Revenue on monthly return forms. These forms list the various tax categories with corresponding county revenue and the state's post-commission share of collections. Litigation tax revenue is immediately diverted into five separate funds upon entering the state's system and is difficult to trace back to the county source. The Division of State Audit samples counties to monitor the accuracy of return forms, but does not track litigation tax revenue statewide or by county. (See pages 31-33.)

Varying court taxes, fees, fines, and commissions impede the auditing of state and local courts. The system gets more complex each year with the addition of new fees, fines, and taxes. During the course of this study, analysts found instances in the sample counties where clerks were not complying with statutes. The instances of noncomplicance often appeared attributable to the complexity of the code. (See pages 33-34.)

Department of Revenue data on state criminal litigation taxes do not match figures received from county court clerks' offices. Litigation tax revenue totals by county do not appear to be accurate. In eight counties sampled, none of the court clerks' figures matched the figures from the Department of Revenue for the same time period. Reporting appears to be complicated because of partial payments and outdated software. (See pages 34-35.)

See pages 35-42 for full text of both legislative alternatives and administrative recommendations, briefly stated here.

Legislative Alternatives

The General Assembly may wish to:

- convert all courts (except municipal courts) to state courts to improve the overall efficiency and effectiveness of the court system.
- amend various chapters in Title 16 to designate judicial jurisdiction for all cases to either limited jurisdiction or general jurisdiction courts (i.e., general sessions or circuit).
- consolidate all trial courts into one circuit court with divisions for different types of cases.
- make all courts state financed.
- make sure the number of district attorneys and public defenders is adequate to prosecute and represent all individuals as required by law, especially in juvenile court.

- incorporate the Council of Juvenile and Family Court Judges (CJFCJ) and its staff and services as a division within the AOC to better meet the needs of juvenile courts.
- amend state law to require any county that does not comply with state law, Supreme Court Rules, or other AOC policies, to reimburse the Department of Revenue the state litigation tax collected by the county during the period of noncompliance.
- amend the law to require only one elected clerk for limited jurisdiction courts and one clerk for general jurisdiction courts, and then appoint chief deputy clerks for the various types of courts.
- amend TCA §37-1-210 and §37-1-211 to require that court clerk duties handled by all county court clerks be transferred to the court that has jurisdiction for those cases.
- amend Title 40, Chapter 6, to require that all persons authorized to issue warrants receive legal training regarding probable cause.
- amend TCA §18-4-203 to relieve all clerks from the responsibility of determining probable cause and issuing warrants.
- amend Title 16 to establish small claims courts to reduce the number of *pro se* cases.
- amend TCA §16-15-501 to allow civil cases involving damages up to $25,000 to be heard in general sessions court.
- standardize court costs.
- consider amending TCA Titles 5, 8, 16, 39, 40, and 67 to simplify apportionment of litigation taxes and other court revenue.
- consider amending TCA Titles 5, 8, 16, 39, 40, and 67 to set court costs at a reasonable uniform level.
- consider amending TCA § 39-11-701, et seq., to allow a portion of the revenue generated from the sale of seized property to be shared by court clerks to cover court costs of defendants left unable to pay because of forfeiture of property to law enforcement agencies.

Administrative Recommendations

The Administrative Office of the Courts and Juvenile and Family Court Judges should:

- consider developing a plan to restructure the courts to institute a division of family courts at the circuit court level to hear all juvenile court and domestic cases.
- combine training portions of the conferences for general sessions and state judges, along with juvenile judges, so that all judges receive needed training to hear juvenile cases.

The Judicial Council should formally request an Attorney General's Opinion to determine the constitutionality of combining chancery and circuit courts, and combining clerk and master duties into circuit court clerk duties.

The Administrative Office of the Courts, Judicial Council, and Clerks Conference should establish standard statewide qualifications and training for clerks, judicial commissioners, and all other persons authorized to issue warrants.

The Administrative Office of the Courts, in conjunction with the judicial conferences, should seek ways to solve the problems caused by *pro se* cases. The AOC should keep statistics on the number of *pro se* cases and nonviolent drug and alcohol offense cases.

The Court Clerks Conference should develop a policies and procedures manual and increase training for court clerks.

The Court Clerks Conference and the Administrative Office of the Courts should:

- develop an aggressive statewide collection program to actively pursue monies owed.
- develop a mechanism for regular notification and interpretation of changes in the law along with training on properly administering those laws for court clerks.

The Department of Revenue should:

- require that all courts collecting state litigation tax keep a record of the amounts of taxes assessed, waived, paid, and collected, and report that information quarterly to the Department of Revenue.
- develop an information system to accurately track court revenue and verify that the state is receiving its share of litigation taxes from each county.

State and local courts should consider implementing more drug, alcohol, and mental health courts under the new Drug Court Treatment Act of 2003.

Drug and mental health courts should develop program evaluations to determine their effectiveness.

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Introduction

For two decades, reports have documented the need for court reform in Tennessee because of the inefficiency, ineffectiveness, and inequities of the current system. (See Appendix A.) Problems noted include:

- lack of compliance by local courts with Administrative Office of the Courts' (AOC's) administrative policies and Supreme Court Rules,
- lack of equity in general sessions and juvenile courts,
- variation in the way court costs are assessed and apportioned,
- misuse of state and local funds for local judicial initiatives,
- lack of a statewide court information system,
- difficulty auditing state and local courts, and
- conflicting data on court revenue between local government and the Department of Revenue (DOR).

Although the various branches of government have addressed some of these issues, problems remain. Many stem from a lack of structural, financial, and administrative uniformity. The Comptroller's Office of Research undertook a study of Tennessee's court system to describe and analyze some of these issues.

The National Center for State Courts (NCSC) reports a trend toward various forms of court "consolidation" or "unification"[1] to "increase administrative efficiency, reduce public confusion associated with courts' overlapping subject matter jurisdiction, discourage forum shopping, etc."[2] The American Bar Association (ABA) first addressed the need for court unification in 1909, and again in 1937 in an article titled "The Causes of Popular Dissatisfaction with the Administration of Justice."[3] Court reform waned until the 1980s, when states and the U.S. Department of Justice acknowledged the need to improve efficiency and accountability within the judicial branch at the state level.[4] A Department of Justice report also notes, "The traditional system camouflaged administrative responsibility. The overlapping jurisdictions of the numerous courts which were part of a traditional state system confused efforts to identify who was responsible for what activities."[5] Today 34 states have a unified, state-financed court system.

In Tennessee, clerks, state attorneys, and private attorneys alike say it is difficult and time consuming to file and process cases when the forms, procedures, and judicial jurisdiction differ among the counties for the same types of cases. A survey by the Bench Bar Committee of the state Judicial Conference showed the lack of uniform procedures and forms in different courts for the same process is one of the biggest issues to be addressed in the Judicial Conference. (See Appendix B.)

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[1] Kenneth G. Pankey, Jr., *Court Unification Executive Summary*, Knowledge & Information Services, National Center for State Courts, 2002, p.4, http://www.ncsconline.org/WC/Events/KIS_CtUnifExS.pdf.

[2] The National Center for State Courts, *Report on Trends in the State Courts 1999-2000 Edition*, 2000, p. 5.; Kenneth G. Pankey Jr., *Court Unification: Frequently Asked Questions,* Knowledge & Information Services, National Center for State Courts, 2003, p.1.

[3] Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," *American Bar Association Reports* (Vol. 29, 1906) 395; reprinted, *Journal of the American Judicature Society* (Vol. 20, Feb. 1937) 178, and *the Federal Rules Decisions* (Vol. 35, 1964) 273, at pp. 284-287.

[4] Thomas A. Henderson and Cornelius Kerwin, U.S. Department of Justice, National Institute of Justice, *Structuring Justice: The Implications of Court Unification Reforms, Policy Summary*, 1984, p.16.

[5] Ibid, p.15.

Methodology

The findings and recommendations of this report are based on:

- Research of the U.S. Constitution, the Tennessee Constitution, and Tennessee Code Annotated;
- A literature review of articles and research on court judicial structure, unification, administration, and funding;
- Research of the court structures in Tennessee and other states, and analysis of the strengths and weaknesses of various structures;
- Research of fee, fine, and litigation tax assessment and allocation practices by state and local courts to local government and the Department of Revenue;
- Interviews with officials from the Division of County Audit, Department of Revenue, Administrative Office of the Courts, District Attorney Generals Conference, Public Defenders Conference, and Clerks Conference;
- Interviews with representatives of the Judicial Council; House Judiciary Committee; a Supreme Court Judge; chancery, circuit, criminal, drug court, general sessions, juvenile, and municipal court judges, district attorneys, public defenders, magistrates, judicial commissioners, clerks, and court administrators;
- Analysis of the effects of court unification, structure, judicial jurisdiction, processes, and local versus state funding sources on judicial equity, efficiency, accountability, and uniformity;
- Analysis of judicial structures and jurisdictions in a sample of 10 counties. The sample included the four largest, next to largest, and smallest counties in each grand division, based on county population as of the 2002 Census. These are:
    - East: Knox, Hamilton, Sullivan, and Pickett;
    - Middle: Davidson, Montgomery, and Moore;
    - West: Shelby, Madison, and Lake;
- A review of the auditing, assessment, collection, and apportionment of court revenue; and
- Comparisons of court revenue collections to court operational costs for sample counties.

This report analyzes "unified courts" only in terms of centralized administration, structural judicial unification, and state financing of the courts. However, there are other types of court unification. As a report by NCSC emphasizes, court unification refers to many different types of consolidation, such as centralized administration, rule making, unitary budgeting, state funding, and trial court consolidation.[6] According to NCSC, no state is completely unified in all those respects, and probably should not be. But, "[u]nification – or selected features of unification – may be beneficial to any given court system."[7]

Background

U. S. and State Constitutional Law

A court decision regarding the U.S. Constitution states, "The state and federal courts being independent of each other, can neither impede or arrest any action the other may take within the limits of its jurisdiction."[8] Thus, each state can establish its own court structure and judicial jurisdiction.

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[6] Kenneth G. Pankey, Jr., *Court Unification Executive Summary*, Knowledge & Information Services, National Center for State Courts, 2002, p.1.

[7] Kenneth G. Pankey, Jr., *Court Unification: Frequently Asked Questions,* Knowledge & Information Services, National Center for State Courts, 2003, p.1.

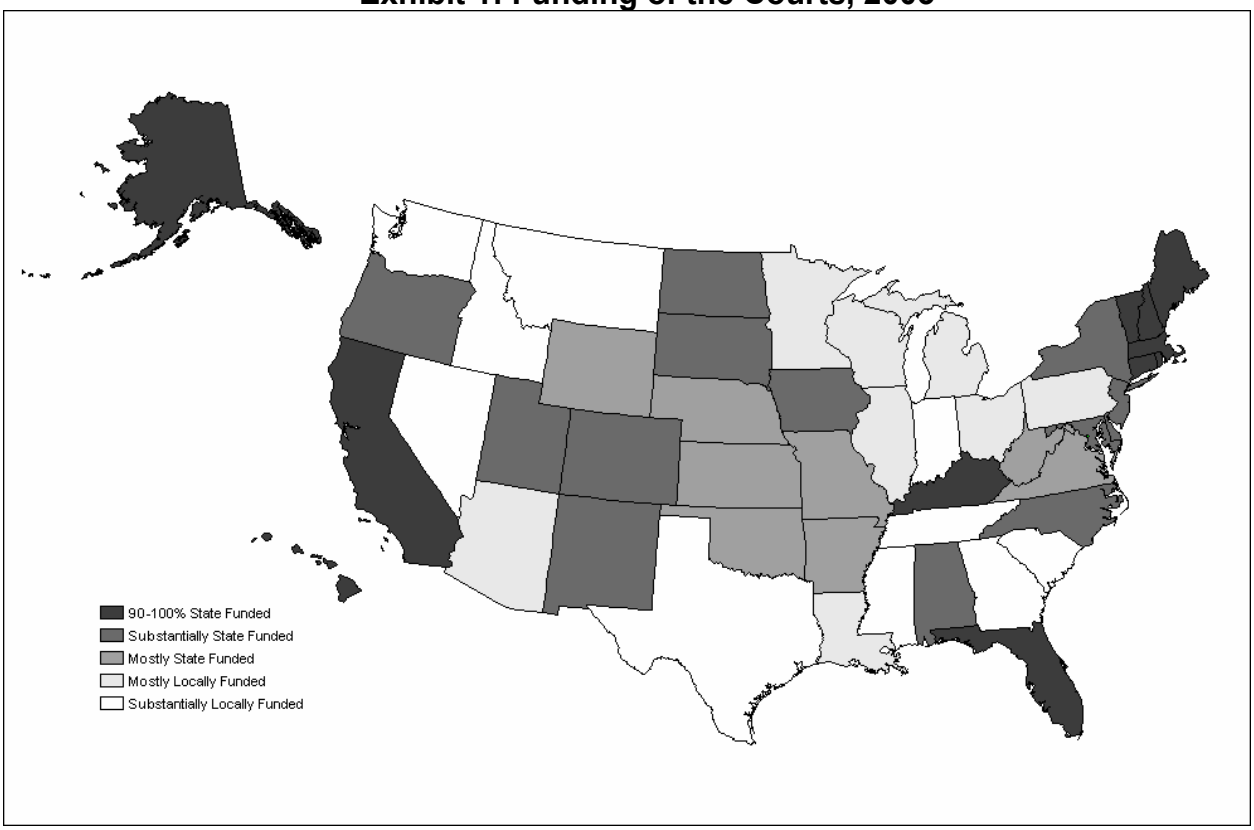
[8] *The Constitution of the United States,* Article III, Section 1 (8), Amy v. Supervisors, 78 U.S. 136, 20 L. Ed. 101 (1870).

Article VI, Section I of the *Tennessee Constitution* gives the General Assembly the authority to establish courts.[9] TCA §16-1-101 states "The judicial power of the state is vested in the judges of the courts of general sessions, recorders of certain towns and cities, circuit courts, criminal courts, common law and chancery courts, chancery courts, court of appeals, and the supreme court, and other courts created by law." Therefore, ultimately, the General Assembly establishes the statute governing how courts are structured, funded, and administered.

National Comparisons

The Handbook of Criminal Justice Administration examined states with unified court systems and non-unified court systems and ranked them into five categories based on the percent of state funding to the total court budget. States that are totally or mostly state funded usually have a unified trial court structure. As of 2003, this included 34 of 50 states. Tennessee is among 10 that are mostly locally funded.[10] (See Exhibit 1.)

Exhibit 1: Funding of the Courts, 2003



Source: The Handbook of Criminal Justice Administration, 2001, p. 229; Note: Through legislation, California and Florida are now 90-100 percent state funded. California *Chapter 850* (Trial Court Funding Act of 1997) became effective January 1, 1998; Florida *Chapter No. 2003-402* became effective on June, 25, 2003. Arkansas is in the process of implementing uniform courts under constitutional Amendment 80. As of January 2004, the Arkansas General Assembly was considering legislation (SB872) to transfer court funding from the counties to the state.

According to the U.S. Department of Justice, Bureau of Justice Statistics, 20 states and one territory have a unified administration and funding for judges and clerks (except two that do not fund clerks).

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[9] The Office of the Senate Clerk, *The Constitution of the State of Tennessee* (1870), Article VI, Section 1, pp.28-29.
[10] M. A. DuPont Morales, Michael K. Hooper, and Judy H. Schmidt, *The Handbook of Criminal Justice Administration*, 2001, p. 229.

Exhibit 2: States that Pay 100% of Judges' and Clerks' Salaries

Source: National Center for State Courts and Conference of State Court Administrators State Court Organization 1998, Table 18, June 2000.

Some of the states listed in Exhibit 1 are not included in Exhibit 2 because the state does not provide 100 percent of funding for judges' and court clerks' salaries. However, salaries and benefits of staff other than judges and elected clerks can make up a considerable portion of those expenditures and may comprise the majority of costs associated with courts even if the state does not fund 100 percent of judges' and clerks' salaries and benefits.[11]

For example, Florida, the most recent state to become unified, pays 100 percent of the salaries for all judges, DAs, PDs, and other judicial officials except clerks. State personnel salaries account for 70 to 90 percent of court funding in most states.[12] In FY 2003, Tennessee spent $42,338,900 (all state dollars) in operating expenses for state trial and appellate courts. Payroll for judges, secretaries, and law clerks was $39,769,900, or 94 percent of total expenditures.[13] In 90 Tennessee counties, salaries and benefits for limited jurisdiction courts made up 79 percent of total FY 2002 administration of justice expenditures.[14]

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[11] Telephone interview with David Rottman, Principal Court Research Consultant, National Center for State Courts, Feb. 10, 2003.
[12] Kenneth G. Pankey, Jr., *Funding State Courts: Executive Summary*, National Center for State Courts, Knowledge and Information Services, p. 1.
[13] Telephone interview with Pam Hancock, Accounting Manager, Administrative Office of the Courts, July 18, 2003.
[14] County Technical Assistance Service, *Administration of Justice-Salaries and Benefits FY02,* Email from Lynne Holliday, Aug. 14, 2003. (Davidson, Hamilton, Knox, McMinn, and Washington counties were not included because data was not available.)

Court Structure

Despite the variation in judicial jurisdictional structure of different states, all have the same general levels of judicial jurisdiction. The National Center for State Courts classifies these into four categories:

- Level IV - courts of last resort,
  - Level III - intermediate appellate courts,
    - Level II - courts of general jurisdiction, and
      - Level I - courts of limited jurisdiction. [15]

Exhibit three shows the general judicial jurisdictions within each level of Tennessee courts:[16]

Exhibit 3: Judicial Jurisdiction by Level of Court

Level of Court	Type of Court	Jurisdiction of the Court	Number of Judges
Level IV Court of Last Resort	Supreme Court	Appellate civil and criminal appeals; A special panel hears workers' compensation appeals	(5 judges; 4 retired Senior judges)
Level III Intermediate Appellate Court	Court of Appeals	Criminal, civil, administrative agency and juvenile appeals from circuit, probate, and chancery courts	(12 judges)
	Court of Criminal Appeals	Capital, criminal, and juvenile appeals	(12 judges)
Level II Courts of General Jurisdiction	Circuit Court	Criminal, civil, and domestic relations cases	(85 judges)
	Chancery Court	Civil Cases, Domestic Relations	(33 judges)
	Criminal Court	Felony Cases	(31 judges)
	Probate Court*	Estates (including wills), conservatorships, guardianships	(2 judges – Shelby Co. only)
Level I Courts of Limited Jurisdiction	General Sessions	Misdemeanors, preliminary felony hearings, civil, juvenile, domestic relations, mental health, and environmental cases	(154 judges)
	Juvenile Court	Dependent/Neglect, Juvenile Delinquency, Unruly, Paternity, Domestic, Child Support	(17 Judges)
	Municipal Court	Municipal violations of local ordinances, traffic, and general sessions court cases if court has general sessions jurisdiction	(170 judges)

Source: Administrative Office of the Courts Annual Report 2001 and National Center for State Courts, 1998.

*Established by private act in Shelby County and funded by the county.

Court Jurisdiction

Although Exhibit 3 shows the set levels of courts and the common jurisdictions for each level, limited jurisdiction courts (Level I) and courts of general jurisdiction (Level II) vary and overlap considerably among the 95 counties.[17]

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[15] National Center for State Courts, *1998 State Court Structure*, 1998, p. 317.

[16] The Tennessee Supreme Court, Administrative Office of the Courts, *Understanding Your Court System,* 2000, p.3.

[17] The Tennessee Supreme Court, Administrative Office of the Courts, *Understanding Your Court System: A Guide to the Judicial Branch*, 2002, p. 5.

Court Administration

Tennessee has central judicial administration, at least in statute. TCA §16-3-803 (g) requires the Administrative Office of the Courts to:

> "continuously survey and study the operation of the state court system, the volume and condition of the business in the courts of the state, *whether of record or not,* the procedures employed by those courts, and the quality and responsiveness of all the courts with regard to the needs of civil litigants and the needs of the criminal justice system throughout the state." [Emphasis added.]

Court Funding

Court funding, unlike court administration, is not centralized. Tennessee has a bifurcated funding system. The state funds state court judges and the counties fund general sessions and juvenile court judges and all clerks, whether state or local (many clerks serve as clerk for both state and local courts). The courts are funded with taxes, fees, fines, and commissions. If collections do not cover a court's operating costs, the county (or city, if municipal court has general sessions jurisdiction) supplements the budget with appropriations from the general fund. Any excess revenues are deposited in the county or municipal general fund.

Although neither the statute nor the Clerks Conference specifically defines these terms, in general they are applied as follows:

- Taxes - set amounts imposed per case or charge for misdemeanors and felonies;
- Fines - monetary penalties for violations of the law;
- Fees - moneys paid for services rendered by court or law enforcement personnel; and
- Commissions - moneys retained for collection and remittance of funds for others.

Taxes

TCA §67-4-602 authorizes local governments to impose state and local taxes to help cover court operating expenses. Most funding comes from privilege taxes on litigation for criminal charges and civil cases, and is appropriated according to a statutory formula. Revenue from other taxes imposed in this section of state law is earmarked for law enforcement reserve funds, electronic fingerprinting, and the state general fund. (See Appendix C for a summary of litigation tax laws.)

Fees

TCA §8-21-401 authorizes court clerks to "demand and receive" money or fees for services provided and delineates all fees associated with processing court cases. Each task, such as entering a warrant, requires the defendant to pay a clerk's fee. The clerk fee schedule sets flat fee amounts for case types to be assessed in lieu of itemizing fees. All but two counties (Knox and Williamson) use flat fees instead of itemizing. (See Appendix D for a summary of court clerk fees.)

Fines

TCA Titles 39, 40, and 55 define the monetary penalties or fines for code violations. Title 39, Chapter 17 sets the maximum fines for corporate convictions and minimum fines for offenses involving scheduled drugs. Revenue from drug related fines is designated for drug enforcement, treatment, and education at the county level. A portion of this revenue may also be used to fund programs and services for infants and children with HIV/AIDS.

Title 40 imposes maximum fines for all classes of misdemeanors and felonies. The county keeps all fines collected for convictions in limited jurisdiction courts and the state gets all revenue from state

court convictions. The code defines the maximum and minimum range of monetary penalties to give judges and juries flexibility. (See Appendix E for a summary of monetary penalties for criminal convictions.)

Commissions

TCA §8-21-401 authorizes court clerks to retain a commission for collecting payments, remitting fees, fines, taxes, and judgments to other parties, and submitting the state portion to the Department of Revenue according to the following provisions. (See Exhibit 4.)

Exhibit 4: Percent Court Commissions by Court

Court	Clerk Commission
General Sessions, Juvenile, and Probate Courts	• 5% for counties with populations < 700,000. • 10% for counties with populations > 700,000 (Shelby County only)
Circuit, Criminal, and Chancery Courts	15% of all litigation taxes
All courts (TCA §40-24-105)	50% after 6 months

Source: Tennessee Code Annotated § 8-21-401 and § 40-24-105.

Under TCA §40-24-105 (a) all payments are credited toward litigation taxes first, before payments are applied to additional court costs. The next moneys collected shall be credited toward payment of court costs, and only after taxes and costs have been paid shall payments go toward fines.

Is There a Need for Reform?

Many judicial and legislative officials at the state and local level have expressed concern about the variation in judicial jurisdictional structure, administration, and funding. The Judicial Council has established study committees, and other committees have been formed by various conferences of the judicial branch to look at these problems over the last three years. Most recently, the General Assembly passed House Joint Resolution (HJR) 274 which creates "a special joint committee to study the present alignment and organization of trial court judicial districts; the allocation of judges, other judicial personnel, district attorneys general and district public defenders; and to determine if there exists a need to change the present system in order to make the trial court system more efficient and responsive to the public."[18] This study analyzes some of these issues, and others, and provides recommendations for the legislative and judicial branches.

Analysis and Conclusions

Court Structure

Overlapping and Varying Judicial Jurisdiction

Tennessee's judicial jurisdictional structure is costly and inefficient. A report by the Commission on the Future of the Tennessee Judicial System found that "Tennessee has one of the more complex and confusing court structures in the nation."[19] The court jurisdiction was different in each of the 10 counties sampled in this study. For example, in one county, general sessions court has jurisdiction for misdemeanors and preliminary felonies, juvenile court, environmental court,

[18] House Joint Resolution 274 of 2003.

[19] The Commission on the Future of the Tennessee Judicial System, "*To Serve ALL People*," June 1996, p. 15.

domestic relations, probate, and mental health cases. In another county, general sessions has jurisdiction only for misdemeanor and preliminary felony cases.

Jurisdictional complexity exists in state courts as well. In one county, the circuit court has jurisdiction for all mental health, domestic relations, probate, and felony cases; in another county, the circuit court only has jurisdiction for civil and mental health cases, while other courts have jurisdiction for divorce, felony, and probate cases. Although county population is a factor, there is considerable variation among the four largest urban counties, as well as rural counties. The Commission on the Future of the Tennessee Judicial System report further stated that the current structure established in 1870 may have served a more efficient purpose in the past, but is now inefficient.[20]

Although many factors contribute to problems with Tennessee's court structure, the two main causes are:

1. private acts and statutes that allow local courts to structure judicial jurisdiction differently; and
2. bifurcation of funding between state and local courts.

Private Acts

Many statutes and private acts allow variation in judicial jurisdiction of courts. For example, TCA §16-15-501 allows general sessions courts concurrent jurisdiction with circuit court and chancery court in divorce, workers' compensation, and domestic relations cases. Other private acts allow municipal courts to have general sessions jurisdiction, including juvenile court jurisdiction and probate cases. Almost all of the courts sampled had statutes, private acts, judicial rules, "traditions," and/or informal "agreements" between courts to establish their own judicial structures and jurisdictions.

The report "*To Serve ALL People*" states that "the judicial system is too independent, for there is so little accountability." The report also states:

> The judicial system is not a system. It lacks the central financial and administrative control that could make it one. The system's structure follows boundaries that do not match efficient administration. There are duplications of efforts among people doing similar jobs, and resources could be redistributed to serve justice better.[21]

The quagmire of private and public acts allowing various types and combinations of judicial structure, administration, and jurisdiction within the courts cripples the effective and efficient functioning of all courts and the judicial branch. The funding section of this report addresses the effects on auditing and the Department of Revenue.

Bifurcated Funding and Lack of Compliance by Local Courts

Many local judges and clerks do not feel compelled to comply with state policies because they are elected and paid locally. TCA §16-3-803 (g) gives the AOC statutory responsibility for the administration of all courts, including general sessions. The funding structure makes it difficult for the AOC to fulfill its statutory mandate. The AOC provides some training to general sessions judges and clerks, but the statute provides the AOC little authority to enforce policies that affect local

[20]Ibid.
[21]Ibid, p. 12.

courts. A 1999 state audit report further states that bifurcated funding increases the risk of the same expense being submitted by both funding sources, whether intentionally or not.[22]

Locally elected and funded clerks and general sessions judges primarily control the administration of justice at the local level. These officials have considerable latitude to implement policies, procedures, and judicial forms. As a result they vary considerably from county to county, particularly for the establishment, assessment, and collection of court costs.

AOC staff indicate that many local courts do not comply with standard forms and data reporting policies. For example, despite the time and effort the AOC used to develop a standardized warrant to collect statewide caseload data, many clerks still use their own forms, making it more difficult to collect accurate caseload data from general sessions courts.

Conversely, most general sessions judges interviewed thought the AOC has little regard for their problems. The President of the General Sessions Judges Council said she did not think general sessions courts were a policy-making priority of the AOC and that most of the AOC's time is spent addressing circuit, appeals, and Supreme Court matters. She said she sometimes found it difficult to get information and support from the AOC.[23]

The Executive Director of the AOC believes that entity should play a more active role in providing administrative, training, and policy making support to general sessions and juvenile courts, but noted that lack of funding and resources limit the amount of involvement the AOC can have at the local court level. The AOC has made several efforts to improve services to these courts through coordinating training with the Council of Juvenile and Family Court Judges, and emailing or faxing weekly updates on legislative changes at the general sessions and juvenile court level.[24]

The issues committee and judges of the General Sessions Conference are exploring the pros and cons of becoming state-funded courts. The issues committee noted that general sessions courts hear the majority of all state cases, but are not treated with the same respect as state judges.

The issues committee and several judges interviewed also believe the pay structure is inequitable under the current system. TCA §16-15-5003 sets the base salaries and supplements for general sessions judges based on county population, but local government can change this. In all the urban areas the base salary of general sessions court judges is equivalent to the base salary of circuit court judges. In Hamilton County, with county benefits included, local judges earn more than the circuit court judges. They also noted that some part-time judges with supplements (who still practice law full-time) earn more than full-time judges. Many feel the present system does not address caseload or experience.

The Chairman of the General Sessions issues committee thinks the judicial system would benefit by converting general sessions courts to state courts, but notes that the General Judges Conference lacks consensus on this issue.[25]

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[22] Comptroller of the Treasury, Division of State Audit, *Court System for the Years Ended June 29, 2000 and June 30, 1999*, p. 21.
[23] Interview with General Sessions Judge Christy Little, May 30, 2002.
[24] Interview with Connie Clark, Executive Director of the Administrative Office of the Courts, Aug. 6, 2002.
[25] Judge Van Deacon, Issues Committee Meeting, General Sessions Judges Conference, Aug. 2002.

Effects on Various Courts

General Sessions Courts

General Sessions Courts lack administrative oversight, accountability, and equitable judge salaries. The National Center for State Courts acknowledges that although most states have a high degree of centralized administrative authority "at least on paper…nevertheless, there are a few states in which the local judges and administrators retain a significant degree of independence." Tennessee is one of five states in this category, along with Ohio, Texas, Louisiana, and Mississippi.[26]

The report *To Serve ALL People* states that "the judicial system has been a vast set of islands, laid out in a pattern that is bewildering to the public" and that "*on administrative matters* local sovereigns often reign in isolation."[27] [*Emphasis added*.] Many local courts prefer to operate autonomously, and many clerks (including clerks and masters) and some general sessions judges are resistant to a unified court system. This autonomy of local courts affects cases at the circuit level as well. Recently, the Bench Bar Committee of the state Judicial Conference began to develop uniform rules of procedure for general sessions courts because they had not followed basic due process laws, resulting in dismissal of cases in circuit and criminal courts.[28]

Statutes and private acts allow some general sessions judges to receive additional salary supplements for assuming jurisdiction for cases usually heard in other courts, such as child support, divorce, chancery, and juvenile cases. Judges get this supplement regardless of how many cases they hear a year, which may be very few. (Pickett County is the only exception, because its part-time judge is not an attorney, and by law is not allowed additional supplements.)

A 1999-2000 State Audit report recommended that the legislature consider changing county funding of and supplements for additional judicial jurisdictions to general sessions judges because of the resulting inequities.[29] The issues committee of the General Sessions Judges Council said this results in significant salaries for some judges and cited it as a reason some general sessions judges oppose general sessions courts becoming state courts.

Several judges and administrators gave examples of rural courts that do not have the resources to provide adequate services. They also cite examples of general sessions judges who make half of what others make but have similar experience, do the same job, and have just as heavy a caseload. In addition, some of these judges also continue to practice law full-time.

Juvenile Court

Most juvenile courts have a fragmented structure, lack judge training, and lack adequate attorney representation. The Davidson County Juvenile Court Judge, the Council on Juvenile and Family Court Judges (CJFCJ), the Tennessee Commission on Children and Youth (TCCY), Department of Children's Services (DCS) attorneys, district attorneys, and public defenders all agree that juvenile courts receive less status and fewer resources than any other court, especially in rural areas. The 1981 report, *Tennessee Juvenile Courts: A Mandate for Change*, outlined many continuing problems and recommended restructuring the system with divisions of family courts as

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[26] Kenneth G. Pankey, Jr., National Center for State Courts, *Court Unification Executive Summary*, 2002, p.3.
[27] Commission on the Future of the Tennessee Judicial System, "*To Serve ALL People*," pp. 15-16.
[28] Interview with Judicial District 20 Administrative Circuit Court Judge, Steve Dozier, Aug. 21, 2002.
[29] The Comptroller of the Treasury, Division of State Audit, *Court System for the Years Ended June 30, 2000, and June 30, 1999*, p. 20.

part of the solution.[30] That report and a report by the AOC[31] note the lack of training by judges in handling juvenile cases, lack of resources, and the inferior status of juvenile courts as the main problems, and the need to establish a uniform court system as a means to address these issues.[32] The Executive Director of the Council of Juvenile and Family Court Judges said juvenile courts are seen as the least important when they "are the most important courts."[33]

Juvenile courts are part of general sessions courts except for 17 that are separately established by private acts. Officials say that many judges are not trained to handle juvenile court cases and these cases are not given adequate time and attention. These officials also note that although juvenile courts are courts of record, they are funded by counties rather than the state, unlike other courts of record. One juvenile court judge said that "a unified court system (with regard to uniform state judicial jurisdiction and funding) is the only way to have equity in the courts."

Several officials, especially public defenders, said that they do not have the staff to cover all the courts, and that according to an attorney general's opinion they are required to serve state courts first. Thus, if there is a staff shortage, defendants in juvenile court do not always have an attorney represent them. The weighted caseload studies done in 1999[34] showed a statewide need for 126.6 additional assistant district attorneys, and 56 additional public defenders to handle the workload at that time. No additional positions have been funded since then, and some open positions have been left unfilled because of budget cuts.

Circuit and Chancery Courts

Many officials believe it is inefficient and unnecessary to have separate chancery and circuit courts with duplicate clerks, offices and/or buildings, administrative staff, and information systems for each county in the state, when most of the courts hear the same types of cases. Tennessee is one of only three states that still have separate Chancery Courts; the other two are Delaware and Mississippi.

Most states have dissolved or merged chancery and probate courts into a division of circuit court. Even in Tennessee, most chancery courts have concurrent jurisdiction with circuit court.[35] As the AOC notes, most of the judicial overlap in the court system occurs between circuit and chancery courts.[36] This structure is instituted from the largest to smallest counties in the state. For example, in Shelby County, circuit court and chancery court hear the same types of cases. Cases are not assigned by type of case, but rather in the order they are filed on a 3:1 ratio, the same ratio of judges in circuit to chancery (9:3). For example, three cases are filed to circuit court and then the next one to chancery court, and so on. In Moore County, the Chancellor and Circuit Court judge frequently interchange and preside over either court as needed for scheduling.[37]

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[30] Linda O'Neal and Ann Young, *Tennessee Juvenile Courts: A Mandate for Change*, March 1981.
[31] Cindy Wood-Maclean and Rebecca Shea, Administrative Office of the Courts, *The Tennessee Court Improvement Program for Juvenile Dependency Cases: An Assessment of Tennessee's Court Performance and Plans for Improvements, August 1997.*
[32] Linda O'Neal and Ann Young, pp. 14-15.
[33] Interview with Joan Archer, Executive Director of the Council of Juvenile and Family Court Judges, Aug. 26, 2002.
[34] American Prosecutors Research Institute, *Tennessee District Attorney General Weighted Caseload Study*, April, 1999, p.46; The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*, April, 1999, p.65.
[35] TCA 16-11-102.
[36] The Tennessee Supreme Court Administrative Office of the Courts, *Understanding Your Court System: A Guide to the Judicial Branch*, 2002, p. 5.
[37] Interview with William Charles Lee, Circuit Court Judge, 17th Judicial District, Aug. 23, 2002.

Although some judges believe that chancery courts remain necessary because of their unique role in making equity determinations, most judges and attorneys interviewed thought that circuit court judges are equally qualified to hear cases of equity.

Several officials also said that the cases should be heard in the county in which they originate, and not in Nashville, as the statute requires for several types of cases.[38] However, the Administrative Chancery Court Judge in Davidson County said that because of stipulations in the law that require certain cases to be heard in Nashville, Nashville warrants a separate chancery court. The Clerk and Master's Office did not have a complete list of these cases, but estimated it to be about 70 different types of cases.[39] These include cases against the state, judges, attorneys, and doctors.

Chancery Court Judge Irvine Kilcrease of Davidson County Chancery Court acknowledged it might be more feasible to combine the two courts in some areas, but said that ultimately the decision of whether to have a separate chancery court should be made by the individual courts, not the state.[40]

Municipal Courts

Municipal courts with concurrent general sessions jurisdiction create further overlap in judicial jurisdiction, duplication of services, and waste of state and county resources. In recent years, more municipal courts are gaining general sessions jurisdiction. Because of the problems caused by the increase in municipal courts with general sessions jurisdiction, the Judicial Council formed a study committee in 2003 to examine the issue and make recommendations. Also, in 2003, the 103rd General Assembly passed Public Chapter 113, which placed a moratorium on the creation of new courts until the committee could complete its report and make recommendations, after which the moratorium would be lifted. The statutory deadline for the report is February 1, 2004.[41]

As of 2003, 26 municipalities had general sessions jurisdiction. (See Exhibit 5A.)

One suburban judge claimed that having municipal courts with general sessions jurisdiction was more efficient because it lessens the burden on general sessions courts in the larger cities. Most officials interviewed said the primary incentive behind this trend is to generate more revenue through court taxes, fees, and fines, rather than to reduce caseloads in regular general sessions court or to improve court efficiency.

As Exhibit 5B shows, 19 of 26 cities (73 percent) have a population of less than 13,000, showing that the majority of these courts are in small towns. However, eight of 26 cities that have municipal courts with general sessions jurisdiction (approximately 31 percent) are in two of what are considered the "Big Four" counties – Hamilton and Shelby Counties. (See Exhibit 5B.)

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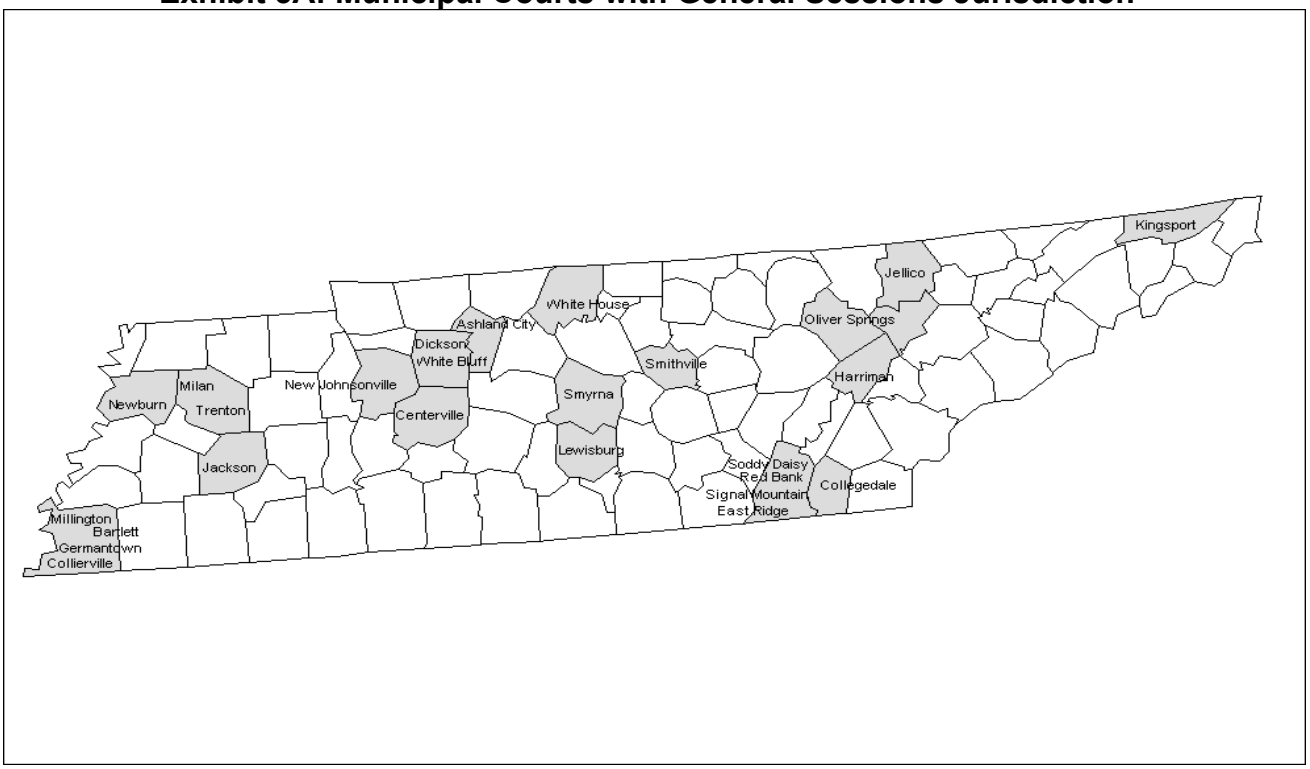
[38] Interview with General Wally Kirby, Executive Director of the District Attorney's Conference, Oct. 7, 2002.
[39] Telephone interview with Claudia Bonnyman, Clerk and Master, Chancery Court, 20th Judicial District, Feb. 18, 2003.
[40] Interview with Judge Irvin Kilcrease, Chancery Court Judge, 20th Judicial District, Sept. 6, 2002.
[41] Public Chapter 113, 2003.

Exhibit 5A: Municipal Courts with General Sessions Jurisdiction



Source: Rex Barton, Municipal Technical Assistance Service, 2003. Note that Oliver Springs has a city court with general sessions jurisdiction in Morgan, Anderson, and Roane counties.

Exhibit 5B: Cities with Municipal Courts with Concurrent General Sessions Jurisdiction Ranked by County Population, then by City Population

Rank	City	County	County Population	City Population
1	Bartlett	Shelby	897,472	40,543
2	Germantown	Shelby	897,472	40,203
3	Collierville	Shelby	897,472	37,044
4	Millington	Shelby	897,472	10,433
5	East Ridge	Hamilton	307,869	20,640
6	Red Bank	Hamilton	307,869	12,418
7	Soddy Daisy	Hamilton	307,869	11,530
8	Signal Mountain	Hamilton	307,869	7,725
9	Smyrna	Rutherford	182,023	25,569
10	Kingsport	Sullivan	153,048	44,905
11	White House	Sumner	130,449	7,220
12	Jackson	Madison	91,837	59,643

13	Collegedale	Bradley	87,965	6,519
14	Oliver Springs	Anderson	71,330	3,303
15	Harriman	Roan	51,910	6,744
16	Milan	Gibson	48,152	7,821
17	Trenton	Gibson	48,152	4,683
18	Dickson	Dickson	43,156	12,244
19	White Bluff	Dickson	43,156	2,353
20	Jellico	Campbell	39,854	2,448
21	Newbern	Dyer	37,279	2,988
22	Ashland City	Cheatham	35,912	3,641
23	Lewisburg	Marshall	26,767	10,413
24	Centerville	Hickman	22,295	3,793
25	New Johnsonville	Humphreys	17,929	1,905
26	Smithville	Dekalb	17,423	3,994

Source: Source: U.S. Census Bureau, Census 2000.

The Director of the AOC said that the administration of funding and judicial policy for municipal courts with general sessions jurisdiction is inefficient and requires collecting and processing caseload data from additional courts.[42] The structure also requires the Department of Revenue to process the collection of revenue from additional courts. The director and others note that such municipal clerks and judges often do not attend or receive training provided by the Clerks Conference and General Sessions Judges Conference.

These courts also place an additional strain on DA and PD resources. Many district attorneys and public defenders interviewed said these additional courts are difficult to cover, especially in more rural, multi-county judicial districts. The public defender from Dyer County said they cannot cover all the courts and further noted that it increases the burden on officers. As a result, cases are delayed, reset and, in some cases, (especially juvenile court) not represented at all because of a shortage of DAs and PDs.[43] This was affirmed by the fiscal note for House Bill 642 (2003) to create a city court with general sessions jurisdiction in Martin, Tennessee. The fiscal note determined state and local expenditures would increase in excess of $100,000, part of which included cost for indigent defense.

Based on research and interviews, allowing municipal courts to have general sessions jurisdiction seems to decrease the efficiency and increase complexity of the court system.

[42] Interview with Connie Clark, Executive Director of the Administrative Office of the Courts, Aug. 6, 2002.
[43] Interview with Jim Horner, Public Defender, District 29 (Lake and Dyer Counties), Sept. 19, 2002.

Clerks of Court

Numerous Elected Clerks of Court

Electing and employing multiple clerks in each county is costly and inefficient.

In October of 2001, the Judicial Council established a committee to determine if both a clerk and master for chancery court and a circuit court clerk for circuit court are necessary. Some clerks and judges claimed that the two could be combined to save money. One official claimed he could save $100,000 in one county by combining offices.[44] Another meeting was held in November and various officials testified on both sides of the issue, some disputing previous cost saving claims. The Council adjourned without making any decision.[45]

Several judges and some clerks thought it was unnecessary and costly to have separately elected clerks for general sessions, juvenile, circuit, criminal, and chancery courts that hear and administer the same types of cases. This is especially true for circuit and chancery courts. Local governments could save money if circuit court clerks kept records for juvenile, chancery, and/or probate cases. Other circuit court clerks and judicial officials interviewed in both large and small districts agreed. Private acts and statutes allow for special arrangements, additional positions, and local preferences.

Under current law, "The clerks of the circuit and criminal courts, and other special courts, are elected by the qualified voters of the respective circuits and districts over which the local jurisdiction of the courts, respectively, extends."[46] Chancellors appoint one clerk and master for Chancery Court.[47] Therefore, depending on the number of different types of courts a local jurisdiction may have several clerks (e.g., Shelby County has four separately elected clerks – one each for general sessions court, juvenile court, criminal court, circuit court, and an appointed clerk and master for chancery court).

Other jurisdictions may have two elected clerks and one appointed clerk and master. Knoxville, for example, has a criminal court clerk and circuit court clerk, and Clerk and Master to oversee four separate courts. By statute and private acts, the criminal court clerk in Knoxville presides over general sessions and criminal court, as well as the domestic division of circuit court. The circuit court clerk is responsible for the other civil divisions of circuit court and the private act juvenile court. The clerk and master serves Chancery Court.

Some state and local officials thought having separately elected clerks resulted more from politics than necessity. Having several elected and appointed clerks for separate courts in one county causes additional costs including:

1. costs to the state and local governments for additional separate elections;
2. increased salaries for additional elected clerks, which are considerably higher than deputy clerks' salaries;
3. duplicate state reporting to the AOC and Department of Revenue for the same types of cases and revenue respectively; and increased processing of case data and revenue for the AOC and DOR respectively;
4. increased costs for training each time a new clerk is elected;
5. duplication in services between circuit clerk and clerk and master positions; and

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[44] Judicial Council Clerk Study Sub-Committee, *Committee Minutes*, Administrative Office of the Courts, Nov. 27, 2001.

[45] Ibid.

[46] TCA 18-4-101.

[47] TCA 18-5-101.

6. additional information systems that could be combined, because they store the same types of information.

Duplication between Circuit Court Clerks and Clerks and Masters

In most counties circuit and chancery courts have concurrent jurisdiction, raising questions over the need for separate clerks. TCA §16-15-501 allows general sessions courts concurrent jurisdiction with circuit court and chancery court in divorce, workers' compensation, and domestic relations cases. This results in overlap of judicial jurisdiction and clerk administration among circuit, chancery, and probate courts.

In the 10 county sample for this report, chancery and circuit courts had concurrent jurisdiction in all but two districts - Judicial Districts 6 and 20 (Davidson and Knox Counties). In Shelby County, there are nine circuit court judges and three chancery court judges. All civil cases, *regardless of type*, are divided equally between circuit and chancery courts in the order that they are filed on a 3:1 ratio. Delinquent tax sales and cases involving equity relief are exceptions.

Many circuit court clerks interviewed thought the administration of the two courts could easily be combined. All clerks and masters opposed consolidating the offices, however, citing various judicial duties that distinguish them from circuit clerks. Whether a circuit court clerk has the same duties as the clerk and master depends on the chancery court judge and to what degree the judge delegates judicial duties to the clerk and master.

In the 10 county sample, only two of 10 clerks and masters perform judicial functions, and in some counties the county court clerk serves as the clerk for probate cases. Clerks and masters in Knox and Davidson County devote a significant amount of time to judicial functions. In Knox County the Clerk and Master serves as a "special master" and hears cases, making recommendations to a judge regarding the ruling—if the judge agrees the case is closed. Therefore, whether the two clerk duties could be combined depends on the extent of judicial functions performed by the clerk and master. In most counties the clerk and master has no judicial responsibilities.

Some also claim that Article VI, §13 of *The Constitution of the State of Tennessee* (1870) prohibits the combination of clerk and master duties with circuit court clerk duties. That section requires clerks and masters to be appointed by the Chancery Court Judge, rather than elected like other clerks. The Director of the AOC said the Judicial Council debated this issue, but made no decision. She cited two Attorney General's (AG) opinions[48] that some have argued indirectly support the proposition that duties of constitutional positions could be eliminated or changed without eliminating the position, but said no formal opinion was ever requested or rendered. [49]

Clerk Qualifications

Tennessee has no standards or qualifications for clerks. Because there are not standards for elected clerk positions, it is possible that persons with no knowledge of the court system could be elected. Some clerks interviewed by staff acknowledged that many newly elected clerks know little or nothing about the job or court system. The Deputy Director of the Administrative Office of the Courts (AOC) acknowledged that many clerks interpret and apply statutes and judicial

[48] Office of the Attorney General of Tennessee, *Opinion No. 81-74*, February 2, 1981 and *Opinion No. 96-039*, March 12, 1996.

[49] Connie Clark, Director of the Administrative Office of the Courts, "Re: Constitutional Question," E-mail to author, July 17, 2003.

administrative policies differently. The Bench Bar Committee established by the Tennessee Judicial Conference conducted a survey in 2002. The survey results identified the "ability and knowledge of the clerk who works in the courtroom" as one of the most important issues to be addressed by the Committee. (See Appendix B.)

Mr. James Challen, the Deputy District Attorney for Shelby County, among others, pointed out that clerks often lack training to perform their tasks and that there are no qualifications for clerks to run for office. Another official noted that clerks, unlike attorneys and judges, have no oversight entity.

County Clerks with Juvenile Clerk Jurisdiction

Clerk jurisdiction does not coincide with judicial jurisdiction. Many judicial officials interviewed thought that the clerk of the court with judicial jurisdiction should keep records for juvenile court, especially since the county court clerk has no knowledge of, or jurisdiction for, juvenile court. They also felt it was inefficient to have separate administrative and financial systems to process juvenile court records from the judicial systems that process cases. The 103rd General Assembly passed Public Chapter 226 of 2003, which transfers juvenile court clerk duties from the county clerk to the judicial clerk, by July 1, 2006. However, eight counties were exempt from this law, allowing those county clerks to continue to serve as juvenile court clerks.[50]

Court Procedures and Specialty Courts

General sessions and circuit judges complained of inefficiencies in the current system that need to be addressed. These include:

- ✓ frivolous warrants,
- ✓ lack of drug courts and mental health courts,
- ✓ excessive *pro se* cases,[51] and
- ✓ requiring civil cases under $25,000 to be heard in circuit court.

Warrants

The general sessions courts are encumbered with frivolous warrants. Officials interviewed noted that most frivolous warrants are sworn out by individuals where the clerk (not police officer or district attorney) must determine probable cause. Public Chapter 366 of 2003 amended the law to require issuance of a summons when individuals swear out warrants to alleviate some of the burden put on the judicial system. However, this still does not prohibit an individual from swearing out a warrant without a police officer or district attorney determining probable cause, or remove the clerk's duty to determine probable cause.

In six of the sample counties the clerk is responsible for determining probable cause and issuing warrants. However, Davidson, Hamilton, Knox, and Shelby Counties employ magistrates or judicial commissioners to determine probable cause. Because they are usually more knowledgeable in law, magistrates and judicial commissioners can filter out unnecessary warrant requests, eliminating pre-trial and trial costs for cases that are likely to be dismissed because of lack of probable cause.

The warrant screening program of the DA's office in Davidson County proves such programs can be effective. Since its implementation on June 1, 1998, the program has screened 17,548 warrants. The program is directed by an assistant DA who reviews all cases referred to the program. Of those,

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[50] These include Putnam, Union, Dyer, Cumberland, Grundy, Marion, Sequatchie, and Van Buren counties.

[51] "One who represents oneself in a court proceeding without the assistance of a lawyer," *Black's Law Dictionary, Seventh Edition*, 1999, p.1237.

13,712, (or 78.1 percent) were either filtered out for lack of probable cause or referred to mediation. Only 3,836 (21.9 percent) were determined to be legitimate cases.

Consultants who conducted a study for the Davidson County District Attorney's Office in 1998 found the cost of processing one case from jail docket to dismissal or circuit court ranged from a minimum cost of $256.89 to a maximum of $3,887.48 per case.[52] (See Appendix F.)

The cost to process each case under the warrant screening program is $65.46. (See Exhibit 6.) Thus, at a minimum, the warrant screening process saves $191.43 for each case that it screens out for lack of probable cause. The warrant screening program filtered out 2,810 of 3,364 warrants (83.5 percent) of all warrants in FY 2001.[53] (See Appendix G.)

Exhibit 6

Savings to State and Local Government with Warrant Screening Program in Davidson County for FY 2001			
Cost to Process Warrants	**Cost Per Warrant**	**Number of Warrants**	**Total Cost**
Minimum cost through court system	$256.89	2810	$721,860.90
Cost through screening program	$65.46	2810	$183,942.60
Net cost savings			**$537,918.30**
Cost to fund warrant screening program			- $176,950.60 [54]
Total savings for FY 2001	$191.43	2810	**$360,968.30**

Source: Davidson County District Attorneys Office, 2002

Initially, 75 percent of the program was funded by a federal grant and 25 percent by Davidson County. But when the grant funding ended in 2001, because of the significant cost savings, Davidson County took over funding the program.

Memphis and Chattanooga studies have also shown that judicial commissioners can issue warrants and orders of protection more efficiently. Officials interviewed in smaller counties were concerned the county would not pay for judicial commissioners because of smaller caseloads. However, all clerks interviewed, from large and small counties, agreed that someone other than the clerk should make the determination of probable cause. They suggested that the DA's office or judge make that determination if there is no judicial commissioner.

The main reasons for the high number of extraneous warrants appear to be:

- the ability of individuals to swear out warrants without officer or district attorney authorization, and
- lack of training by clerks who are required to determine probable cause.

[52] David M. Griffith & Associates, *Metropolitan Government of Nashville and Davidson County Warrant Costing*, 1998. See Appendix F for actual amounts associated with each part of the process of processing warrant.
[53] Mary Beth Sexton, Assistant Attorney General, District 20, Intake Team Leader of Warrant Screening Program, Warrant Screening Summary Report, 2001. See Appendix G for statistics for Fiscal Year 2001.
[54] Financial records from Davidson County District Attorneys Office, Oct. 30, 2001.

Clerks and DAs believe it is too easy for individuals to swear out warrants against other individuals without any law enforcement or DA involvement. In most courts, the clerks are responsible for filing the warrants. TCA §18-4-203 (a) states "the clerk of such court has concurrent authority with the judge to issue warrants and other process and writs, other than those which the law requires to be issued only by a judicial officer, and has the authority to set the amount of bond in the absence of the judge."

With a few exceptions, clerks are not lawyers and do not have the ability to make judgments about the correct TCA section regarding some charges. Also, clerks lack training to determine probable cause. One circuit court clerk who has been in office 18 years and goes to conferences regularly said that to her knowledge, the Clerks Conference has never offered training on determining probable cause.[55] Some judges thought that clerks did a good job, given the lack of training; others did not. Some clerks acknowledged that they were intimidated by officers to sign warrants even if they did not agree the charges had probable cause.

Drug Courts

In Tennessee, nonviolent alcohol and drug cases account for the majority of criminal cases and cost law enforcement and judicial systems the greatest resources. Nationally and locally, an estimated 70 percent of all criminal cases are nonviolent, drug-offense related.[56] Many judges and clerks interviewed estimated the percentage of cases to be the same for Tennessee. The AOC does not collect specific statistics on the percentage of crimes directly or indirectly related to alcohol and other drugs. However, the Tennessee Bureau of Investigation (TBI) began collecting statistics in 2001 that can be used to determine the number of alcohol and other drug related crimes in Tennessee.

TBI reports crimes in two groups: Group A and Group B. (See Exhibits 7 and 8 for crimes within each group).[57]

Group A contains:

- crimes against person,
- crimes against property, and
- crimes against society.

Statistics for FY 2001 show that in the category "Crimes Against Society" drug offenses make up 94.9 percent of all offenses. (See Exhibit 7.)

[55] Interview with Judy Barnhill, Circuit Court Clerk, Madison County, June 4, 2002.
[56] Tina L. Dorsey, *Drugs and Crime Facts*, U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, October 28, 2002; Interview with Judge Seth Norman, Davidson County Criminal Court Judge/Drug Court, April 29, 2003.
[57] Tennessee Bureau of Investigation, *Crime in Tennessee*, 2001, p.7.

Exhibit 7

Total Number and Percent of Group A Offenses Involving Drugs Offenses of Crimes Against Society:		
Total Violations	**Crimes Against Society**	**Percent of Total**
Drug/Narcotic Violations	30,007	69.90%
Drug/Narcotic Equipment Violations	12,292	25.00%
Sub-total	42,299	94.90%
Other Violations	6,937	5.10%
Total Crimes Against Society	**49,236**	**100%**

Source: Tennessee Bureau of Investigation, Crime in Tennessee 2001, pp. 12 and 17.

All data for the TBI report comes from local law enforcement agencies. Local law enforcement entities reported that 11.14 percent of all offenders were suspected of *using* alcohol or other drugs when committing crimes in Group A for FY 2001, which include crimes against persons, property, and society. For the category "Crimes Against Society,"[58] which involves all drug violations, the percentage of persons suspected of using alcohol or other drugs while committing the crime is 64.62 percent. TBI officials noted that the number of incidences involving alcohol and other drugs may be underreported. As the Director of TBI states, the "report can only be as accurate as the information that is submitted to TBI by the law enforcement agencies."[59]

In Group B, alcohol offenses make up 40.47 percent of all offenses, as shown in Exhibit 8..

Exhibit 8

Group B Offenses	Total Number	Alcohol Related Offenses as % of Total
Bad Checks	12,974	
Curfew/Vagrancy	109	
Disorderly Conduct	7,679	
DUI	26,670	19.99%
Drunkenness	22,742	17.05%
Family-Nonviolent	838	
Liquor Law Violation	4,583	3.44%
Peeping Tom	9	
Runaway	0	
Trespass	4,962	
All other Offences	52,853	
Totals	**133,419**	**40.47%**

Source: Tennessee Bureau of Investigation, Crime in Tennessee, pp. 24-25, July 17, 2001.

Alcohol and drug addiction usually have several causes – including genetic predisposition, environmental factors, and/or mental health problems. Many believe that incarceration is an ineffective and fiscally unsound way to solve the problem.

[58] Crimes Against Society include: Drug/Narcotic Violations, Drug/Narcotic Equipment Violations, Various forms of Gambling, Pornography/Obscene Materials, Prostitution, Prostitution – Assisting/Promoting, and Weapon Law Violations. Ibid.

[59] Larry Wallace, Director, Tennessee Bureau of Investigation, letter in *Crime in Tennessee 2001*, p. 2.

Currently, the state does not collect data on recidivism among drug and alcohol offenders. However, various judges, DAs, PDs, and other officials interviewed estimate it is 70-80 percent. One Michigan state representative summed it up in *Stateline* saying "for too long, our prisons and judicial system have been clogged with petty drug criminals while the system has not the time or resources to deal with much more serious crimes."[60] In addition, these cases make up the majority of local and state judicial expenditures, but result in the lowest payment rates of court costs.

Across the country more courts are implementing diversion programs for drug and alcohol offenders, often with grants from the Department of Justice. Early research shows that drug courts are economical and effective to deal with nonviolent drug and alcohol offenders. The cost savings of treatment over incarceration results in "reduced number of days in jail, reduced court cost, and transformance of drug-abusing criminal offenders into productive members of society."[61]

Nationally, as of September 8, 2003, there are 1,078 drug courts in operation and 418 in the planning stages.[62] Tennessee has at least 17 drug courts (12 drug courts in full operation, and five in the planning stages) funded with federal grants.[63]

Initial studies and evaluations of drug courts in Shelby and Davidson County showed a marked decrease in recidivism rates and costs to state and local government. A study by the University of Memphis showed that the recidivism rate for drug court participants was 24 percent compared to 80 percent for the comparison group.[64] An internal evaluation of the Nashville Drug Court showed the recidivism rate is 13 percent.[65] In both studies, they define recidivism as any graduate being re-incarcerated based on a new conviction or probation violation.

Judge Seth Norman, who founded the drug court, said the Davidson County Drug Court saves the state more money than it cost to house offenders in prison, while providing them with treatment, education, and work training.[66] Office of Research staff compared costs of housing offenders in state prison and drug court, which has the capacity for 100 individuals. Based on the figures provided, calculations by staff show the drug court cost $509,905 less than incarceration. (See Exhibit 9.)

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[60]Tim Anderson, *Lawmakers* "Judge Merits of Alternative Sentencing Proposals," *Stateline*, March 2003, p.4.
[61] Judge Jeffrey Tauber and Katheleen R. Snavely, *Drug Courts: A Research Agenda*, April 1999, p. 7.
[62] National Drug Court Institute, http://www.ndci.org/courtfacts.htm.
[63] Pat Dishman, Director of the Office Justice Programs, Tennessee Department of Finance and Administration, May 16, 2003.
[64] Richard Janikowski, *Impact Study of the Shelby County, TN Drug Court*, Center for Community Criminology & Research, the University of Memphis, 2002, p.8.
[65] Interview with Judge Seth Norman, Davidson County Drug Court founder and Judge, Aug. 21, 2002.
[66] Ibid.

Exhibit 9

Cost Savings: Jail vs. Treatment for Nonviolent Drug Felony Offenders in Davidson County				
	Cost/Person	**Number of Persons**	**Total Cost** (cost per day x 100 x 365 days)	**Total Cost to State**
Drug Court	$39.00	100	$1,423,500.00	0
State Prison	$52.97	100	$1,933,405.00	$1,933,405.00
Difference	-$13.97	100	-$509,905.00	-$1,933,405.00

Source: Calculations by Office of Research staff based on data from Jeri Bills, Drug Court Coordinator, Davidson County Drug Court, [67] *2002; and the Tennessee Department of Corrections Annual Report.*[68]

The program is funded totally by federal grants and donations.[69] Regardless of the source of funding, drug court treatment still cost $509,905 less per year than incarceration, not counting the indirect cost savings and various hours of community service performed by residents of the program, which was reported as being 34,000 for FY 2001.[70]

Consequently, the number of drug and mental health courts is growing across the country, as is the federal funding for such programs.[71] Recently, the General Assembly passed Public Chapter 335, the "Drug Court Treatment Act of 2003," which adds a $75 fine to alcohol and drug related offenses to help fund such courts. In the sponsor's testimony to the House Judiciary Committee, she emphasized the effectiveness of such programs across the state and the need to implement more of them.[72]

The General Accounting Office, however, cautions that not all drug courts sufficiently measure outcomes of drug court programs and states need to improve the collection of outcome data.[73] The report also recommends that drug court programs develop better outcomes, evaluation methods, and cost benefit studies.

Mental Health Courts

The Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) reports that 20 percent of the persons in the criminal justice system have mental health disorders.[74] The department also reports that "[t]here are twice as many individuals with serious mental illness housed in the county jails of Tennessee than are hospitalized in the state mental

[67] Jeri Bills, Drug Court Coordinator, *Drug Court Cost Report*, Sept. 12, 2002.
[68] Tennessee Department of Correction, *Annual Report Fiscal Year 2001-2002*, p.17.
[69] See http://www.nashville.gov/drug_court/index.htm.
[70] Interview with Judge Seth Norman, Davidson County Drug Court founder and Judge, Aug. 21, 2002.
[71] Donna Lyons, National Conference of State Legislators, *NCSL State Legislative Report, State Crime Legislation in 2002*, Jan. 2003, pp.4-5; Department of Justice, *Communities Nationwide to Receive federal Funds for Drug Courts*, p.1, http://www.ojp.usdoj.gov/dcpo/dc35millionpr.htm.; Monitor on Psychology*, $4 Million for Mental Health Courts*, Volume 33, No. 2, February 2002, http://www.apa.org/monitor/feb02/4million.html.
[72] Testimony by Representative Kim McMillian, House Judiciary Committee, May 7, 2003.
[73] United States General Accounting Office, *Drug Courts – Better DOJ Data Collection and Evaluation Efforts Needed to Measure Impact of Drug Court Programs*, April 2002, p.8.
[74] Marie Williams, Tennessee Department of Mental Health and Developmental Disabilities, *Creating Homes Initiative (CHI) Phase II 2005!*, p.1, March 27, 2003.

health institutes."[75] A Tennessee survey estimates that 17.8 percent of county jail inmates are diagnosed with a mental illness, and 55 percent are estimated to have serious substance abuse problems.[76] In addition to the lack of treatment for this population, the report by TDMHDD noted that this cost is a concern for jail administrators.[77]

The average cost per inmate differs from county to county. In Nashville, staff for the Mental Health Court estimated that inmates with mental health issues cost three times that of a routine inmate. This includes special staff, medication, special housing, and incidents. Mental Health Administrators in Davidson County estimate that 13.5 percent of inmates have a mental health diagnosis and are receiving treatment based on 2001-02 numbers.[78]

Similar to drug courts, more states are implementing mental health courts to reduce recidivism and cost associated with this population that come into the criminal justice system. Mental health courts are designed to assess whether persons charged are mentally ill and, if so, remove them from jail and place them in more appropriate facilities. In two of the 10 sample counties (Davidson and Shelby), the county had formal mental health courts.

Pro Se Cases

Many judges interviewed complained that the number of *pro se* cases, or cases in which individuals represent themselves, is increasing and costing courts considerable time and resources. TCA §23-1-109 allows a person to "conduct and manage the person's own case in any court of this state." A survey by the American Judicature Society at its 1999 conference found that 95 percent of all participating courts had seen an increase in *pro se* cases in the previous five years.[79]

Many judges attribute the increase in *pro se* cases to the influence of court television programs that give people the impression they have the knowledge to represent themselves without an attorney. The American Bar Association (ABA) states that the high cost for attorneys, the "anti-lawyer sentiment," and lack of trust in the justice system are also factors.[80] Another report, *Access to Justice: Meeting the Needs of Self-Represented Litigants* adds that the complexity of the system makes it difficult for the *pro se* litigants to navigate the process and represent themselves adequately in court.[81]

Judges interviewed believe that many *pro se* cases waste considerable time and money. They explained that many people who represent themselves have little or no knowledge of the law, court

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[75] Sita Diehl and Elizabeth Hiland, Tennessee Department of Mental Health and Developmental Disabilities, *A Survey of County Jails in Tennessee: Four Years Later*, A Descriptive Study of Services to People with Mental Illness and Substance Abuse Problems, submitted to the Mental Health Planning and Policy Council, p. 2, Feb. 2003.
[76] Ibid.
[77] Sita Diehl and Elizabeth Hiland, Tennessee Department of Mental Health and Developmental Disabilities, *A Survey of County Jails in Tennessee: Four Years Later, A Descriptive Study of Services to People with Mental Illness and Substance Abuse Problems*, submitted to the Mental Health Planning and Policy Council, Feb. 2003, p. 2.
[78] Laura Quinn-Marquardt, Davidson County Mental Health Co-Coordinator, "*FW: Statistics*" Electronic Mail, Aug. 5, 2002.
[79] Patricia A. Garcia, *Litigants Without Lawyers*, the American Bar Association, June 2002, p.7.
[80] Ibid, pp. 7-8.
[81] National Center for State Courts, Chicago-Kent College of Law, and the Technology's Institute of Design, *Access to Justice: Meeting the Needs of Self-Represented Litigants*, 2001, p.8.

rules, and court procedures. As a result, judges say it takes considerable time to inform them of the law, court rules, and procedures at each step of the way.

Judges claim these cases also make it difficult for them to balance the ethics of impartiality against advocacy for litigants. One judge said he had a case in which he knew the *pro se* litigant had a legitimate claim for damages, but lacked the legal knowledge to counteract the defense's arguments. The judge felt it would have been unethical for him to make the legal argument for the litigant. Thus the litigant lost the case, because he lacked the legal knowledge, even though the judge knew he had a valid case. The ABA also cites the ethical implications of these cases and notes it is difficult for judges to remain "impartial" while still providing necessary information to ensure the litigant's right to due process.[82]

The AOC tracks the number of felony *pro se* cases by year. However, Assistant Director Jean Stone noted that the majority of all *pro se* cases are civil cases heard in general sessions and state courts, so this represents a very small number of the total cases litigated. (See Exhibit 10.)

Exhibit 10: Felony *Pro Se* Cases by Year

Year	Number of Felony *Pro Se* Cases
1998	154
1999	132
2000	113
2001	161
2002	171

Source: Jean Stone, Assistant Director, AOC, 2003.

Civil Cases over $15,000

Because of a statutory limit of $15,000, many minor civil cases are heard in circuit courts that otherwise could be handled in general sessions courts. The limit of $15,000 has been in effect in part since 1993, and in full effect for all but two counties since 1997.[83] Shelby and Anderson County general sessions courts have a $25,000 limit.[84] Many judges and attorneys believe the limit should be $25,000 for all general sessions courts. Some judicial officials think increases in the limits should be comparable to the increase in inflation, costs of cars, and other damages in civil cases.

Funding

Cost Variation

Court costs are not uniform across the state. The court costs for identical offenses and convictions result in various total costs depending on the county or court of disposition. Fees vary from court to court, even within the same county, depending on jurisdiction. In some counties, having a case heard in a county general sessions court rather than in a municipal court with general sessions jurisdiction results in lower court costs.

According to a 1986 study conducted by the Conference of State Court Administrators (COSCA), "fees and miscellaneous charges should be consistent within a state…the amounts of fees and

[82] Patricia A. Garcia, *Litigants Without Lawyers*, the American Bar Association, June 2002, p. 9.
[83] Public Chapter 241, 1993, and Public Chapter 472, 1997.
[84] Public Chapter 472, 1997, and Public Chapter 764, 2000.

miscellaneous charges should be established on a rational basis throughout a state and should not be more or less costly for a litigant simply as a result of venue or jurisdiction."[85] The 1996 Futures Report also suggested that court costs should be consistent across the state.

Clerks and administrators (see Appendix L) state the main reasons for the inconsistency of court costs throughout the state are:

- lack of training for clerks,
- bifurcated funding,
- the constant adding on and/or changing of fees, fines, and taxes,
- vagueness of state law, and
- incongruence between different parts of the law.

Clerk training is complicated by the fact that the Attorney General's Office and clerks disagree about how to assess and collect revenue. Although some sporadic training is provided by professional organizations on assessment policies and procedures, not all courts can afford to send their clerks to the conferences when training is offered. Additionally, the state has not developed a manual on application of revenue laws for newly elected clerks.

The code authorizing the assessment and apportionment of court fees, fines, and taxes is complex and difficult to audit, interpret, and administer. (See Appendices B, C, and F.) According to the NCSC, "complex legislation on fines and fees makes administration difficult, even in the automated environment, and runs up the costs of administration. Moreover, it is difficult for defendants to understand the variety of add-ons and to associate them with their offense."[86]

Lack of uniform court costs increases state and local governments' expense through:

- inconsistent application of the law,
- waste of time and money in staff resources to reconcile and administer vague statutes,
- over and/or under collecting of court revenue, and
- costly reprogramming of court information systems each time there is a change in the law.

Clerks cited numerous examples of the inconsistent application of court revenue laws. One clerk surveyed the nine circuit court judges in her division to get their opinion on how to apply TCA §26-6-104 concerning authority to enforce foreign judgments. Only two responded, one saying "my opinion only." In another example, she called the other three largest counties to determine the proper way to apply TCA §20-12-101 regarding reimbursement directly to prevailing party through bill of cost and found that each court applied the law differently.[87] When she didn't get a clear answer, she then requested a county attorney's opinion about how to apply the law, which she applied.

As a result several attorneys challenged the interpretation of the law and requested a separate state Attorney General's Opinion. The Attorney General's Office rendered yet a different decision. Thus,

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[85] Committee to Examine Court Costs, *Standards Relating to Court Cost: Fees, Miscellaneous Charges and Surcharges and a National Survey of Practice*, Conference of State Court Administrators, 1986, p. 3.
[86] Robert W. Tobin, *Funding the State Courts: Issues and Approaches,* National Center for State Courts: State Justice Institute, 1996, p. 52.
[87] Interview with Deborah French, Deputy Clerk, Shelby County Circuit Court, July 6, 2002.

the judge did not get a final answer as to how to apply the statute until after consulting with nine judges, three other clerks, the county attorney, and the Attorney General's Office.

In some cases, incorrect processing causes the state and local governments to lose revenue. For example, the Shelby County Clerk cited TCA §8-21-401, which allows for a $75 clerk fee and $2 data fee for filing cases on summons, injunctions, and continuances. She had been unaware of that statute, and when the office implemented it, revenue increased by $95,000 per year.

The frequent changes in the statute also cost time and money to reprogram the management information systems that track assessments and collection of court costs. The Executive Director of the Administrative Office of the Courts sees this as one of the most expensive costs to the state and local governments.

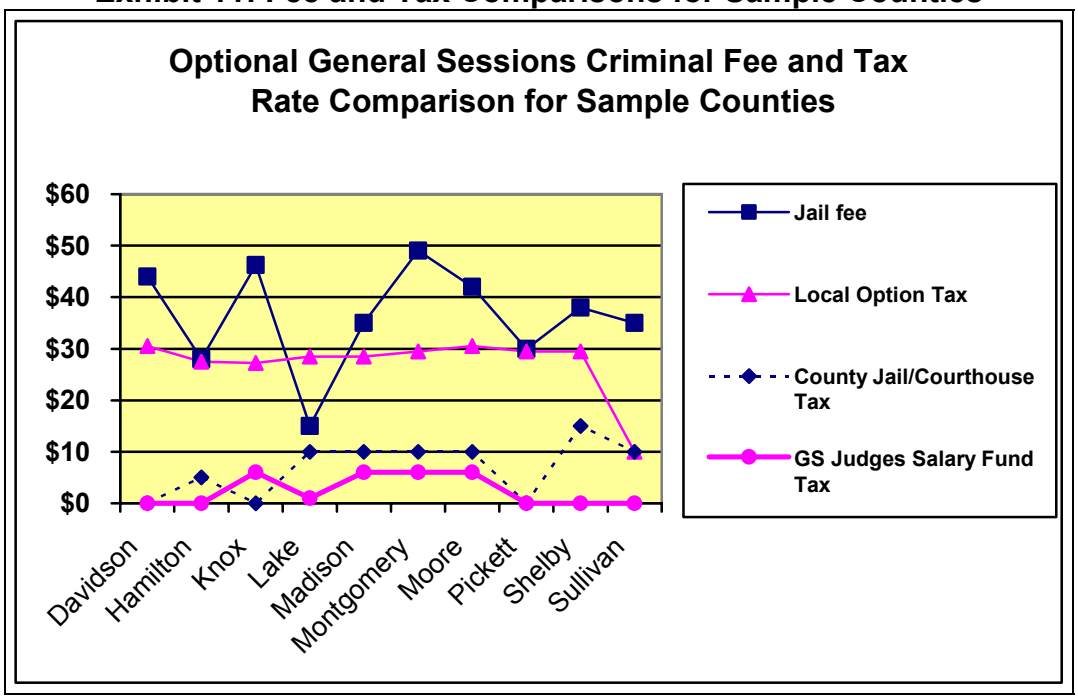
Additional Local Option Revenue

The National Center for State Courts, other national organizations, and some interviewed argue that separate funding for local courts makes it more difficult to administer court funds and contributes to the lack of uniformity. Local governments' ability to impose local option taxes also contributes to the lack of uniformity in court costs. In some cases (see Exhibit 11), state law allows counties to establish different fees, fines, and taxes, resulting in wide variations among counties.

A 1989 special report by the Division of County Audit and the Office of Local Government compared the bills of costs for a first offense DUI in four sample counties. The costs, in addition to a standard $250 fine, ranged from $123.50 to $145.75 (an 18 percent difference). Most of this difference was attributed to the variation in jail fees – even a minor difference in jail fee can translate to significant differences in cost when multiplied by number of days in jail.[88] Exhibit 11 illustrates the current wide range of charges for daily jail housing and local litigation taxes as of fall 2002. State law gives counties authorization to set a jailer's fee and does not place any restrictions on fee amounts.[89]

[88] Comptroller of the Treasury, *Special Report: Collections of Fines and Costs in General Sessions Court*, Division of County Audit and Division of Local Government, Oct. 1989, pp. 11 and 24.
[89] TCA § 8-26-105.

Exhibit 11: Fee and Tax Comparisons for Sample Counties



Source: Local Court cost schedules and interviews with clerks' office staff, fall 2002.

The Commission on the Future of the Tennessee Judicial System determined that it is inequitable to have different fees, fines, and taxes among various courts and counties for the same offense. The Commission's report stated "financing by local government leads to fragmented and disparate levels of financial support, with a resulting unevenness in judicial services. It makes uniform standards and procedures difficult to administer."[90] The Commission's report and the Comptroller's report both found that the penalties were unequal for the same offense from county to county.[91]

Self-supporting Court Expectations

Local governments expect general sessions and juvenile courts to be self-supporting. The report by the Commission on the Future of the Tennessee Judiciary indicates that "general sessions courts, for instance, often become primary revenue sources for the county government."[92] The County Technical Assistance Service (CTAS) also states "another popular source of revenue available to the county government is the local litigation tax."[93] Many judges and clerks reported that county administrators often pressure them to increase general fund revenues. According to TCA §16-15-5006, local governments have the responsibility to fund general sessions and juvenile courts in their jurisdictions, but often pass that responsibility to the courts. One clerk from a major metropolitan area stated that each year when her office presents its budget to City Council they are told to increase revenues. In interviews with clerks, most supported a uniform cost structure as long as it did not affect local revenue.

[90] The Commission on the Future on the Tennessee Judicial System, *To Serve ALL People*, 1996, p.30.
[91] Ibid, p. 12; Comptroller of the Treasury, Division of County Audit, Division of Local Government, *Special Report: Collections of Fines and Costs in General Sessions Courts*, October 9, 1989, p. 24.
[92] *To Serve ALL People*, 1996, p.12.
[93] The County Technical Assistance Service, *06. Litigation Tax in Tennessee Counties*, 2002.

Many interviewees expressed concern that general sessions courts are used to increase county general fund balances and pay for government operating expenses unrelated to the administration of justice. Local governments sometimes add fees and taxes to increase court revenue, which contributes to inequitable costs across the state. Although this is the case in other states as well, the National Center for State Courts warns against using court revenue to fund courts. According to a 1996 NCSC report, "the concept of the self-supporting court has ethical implications if the court in any way uses money it generates from judgments to pay its operational expenses. It is beyond dispute that this practice is not consistent with judicial ethics or the demands of due process and there are relatively few remaining situations of this type."[94] As one official emphasized, all of society benefits from the fair administration of justice, and as such, all of society has the responsibility to share in that cost.

Exhibit 12 shows the revenue and expenditures for each court in the sample. Three out of 10 collected revenue exceeding expenditures for all courts combined; however, in seven of the 10 courts, general sessions and/or criminal court collected more revenue than expenditures. Juvenile court is the only court that did not generate excess revenue in any of the sample counties. This demonstrates that some courts generate revenue more than others.

Exhibit 12

FY 2001 Court Revenues and Expenditures for Sample Counties				
County	**Court**	**Revenue**	**Expenditures**	**Excess (Deficit)**
Davidson	General Sessions	$1,563,869	$7,382,507	($5,818,638)
	Criminal Clerk	$4,647,452	$3,837,859	$809,593
	Circuit Clerk	$9,500,005	$6,255,934	$3,244,071
	Trial Courts	$157,619	$4,252,984	($4,095,365)
	Chancery	$1,287,707	$1,035,411	$252,296
	Juvenile	$421,245	$8,470,410	($8,049,165)
	County Total	$17,577,897	$31,235,105	($13,657,208)
Hamilton	Circuit	$1,507,718	$1,295,698	$212,020
	General Sessions	$185,502	$782,714	($597,212)
	Juvenile	$457,872	$4,708,571	($4,250,699)
	Criminal	$2,148,310	$1,798,021	$350,289
	County Total	$4,299,402	$8,585,004	($4,285,602)
Knox	Juvenile	$220,185	$3,289,888	($3,069,703)
	Criminal Clerk	$3,180,681	$2,518,832	$661,849
	Circuit Clerk	$1,472,922	$1,038,469	$434,453
	Clerk and Master	$1,129,891	$837,186	$292,705
	Additional Court Expenditures		$2,624,474	-
	County Total	$6,003,679	$10,308,849	($4,305,170)
Lake	General Sessions	$51,713	$61,739	($10,026)

[94] Robert W. Tobin, *Funding the State Courts: Issues and Approaches,* State Justice Institute, National Center for State Courts, 1996, p. 50.

	Circuit	$40,985	$87,826	($46,841)
	County Total	$92,698	$149,565	($56,867)
Madison	General Sessions	$747,415	$192,470	$554,945
	Circuit	$342,299	$499,260	($156,961)
	Juvenile	$80,670	$298,681	($218,011)
	Chancery	$321,483	$298,749	$22,734
	County Total	$1,491,867	$1,289,160	$202,707
Montgomery	Circuit	$454,715	$891,226	($436,511)
	General Sessions	$2,455,055	$1,092,729	$1,362,326
	Chancery	$312,984	$274,031	$38,953
	County Total	$3,222,754	$2,257,986	$964,768
Moore	Circuit	$23,739	$49,219	($25,480)
	General Sessions	$112,271	$42,323	$69,948
	Juvenile	$2,144	$10,499	($8,355)
	Chancery	$10,185	$41,286	($31,101)
	County Total	$148,339	$143,327	$5,012
Pickett	Circuit	$3,446	$65,822	($62,376)
	General Sessions	$31,427	$32,319	($892)
	Chancery	$3,004	$37,321	($34,317)
	Juvenile	$0	$9,950	($9,950)
	County Total	$37,877	$145,412	($107,535)
Shelby	General Sessions	$7,289,948	$8,360,031	($1,070,083)
	Criminal	$5,704,550	$3,924,134	$1,780,416
	Circuit	$1,980,390	$2,368,225	($387,835)
	Probate	$492,223	$817,475	($352,252)
	Chancery Court	$2,735,113	$955,261	$1,779,852
	Juvenile Court	$8,971,219	$20,032,282	($11,061,063)
	County Total	$27,173,443	$36,457,408	($9,283,965)
Sullivan	Circuit	$341,631	$726,596	($384,965)
	General Sessions/Juvenile	$725,634	$1,068,647	($343,013)
	Chancery	$976,916	$369,417	$607,499
	County Total	$2,044,181	$2,164,660	($120,479)

Source: Financial Audits and Office Budgets for FY 2001, received from county budget offices.

Low Collection Rates

The local courts estimate that a small percentage of court costs are collected. In Shelby County, for example, for FY 2001, only 33 percent ($7,580,080) of assessed criminal court costs ($23,269,527) were collected within the first year after disposition of the case.[95] In 1989, the Comptroller reported collection rates for miscellaneous general sessions cases in 12 counties ranging from 29 to 94 percent, with an average of 71 percent of assessments collected.[96] Evidence gathered during this study indicates that collection rates may have declined since 1989.

According to the National Court Collections Symposium, the first 60 days is the crucial period for successful collections. Nationally, 95 percent of private sector collections are made within the first 60 days. However, only 25 percent of all court costs collected are received within that same time frame.[97]

TCA §19-3-101 and §40-24-105 govern the courts' duties to collect costs. "Lack of compliance in paying court fines and fees denies a jurisdiction revenue and, more important, calls into question the authority and effectiveness of the court system."[98] Nationally, an estimated $5.4 billion (an average of $108 million per state), or 10.2 percent, of all court-related debt reported by the American Collectors Association went uncollected in 2001. This estimate is generated based on a 61 percent average collection rate reported by the nation's court administrators. In contrast, private sector debt collections average between 80 and 90 percent of balances owed.[99]

One criminal court clerk estimated that only 50 percent of his accounts were even potential payers with any chance of collection because of indigence and incarceration. Another clerk gave an example of a person arrested 56 times who had never paid court costs. Many judges and court administrators believe "that fines and fees are so high that they are, in a sense, responsible for the collection problem."[100]

Low collection rates decrease revenue and increase the pressure on local governments and court administrators because litigation tax comprises the majority of court revenue. In addition to low collection rates, taxes collected after six months further reduce state revenue because by law, after six months, the county keeps 50 percent of the tax, compared to five percent (or 15 percent in Shelby County) before six months. Clerks must collect litigation tax before collecting other local fees and fines.

The 1989 Comptroller's special report on the collection of court costs concluded that the suspension and revocation of an individual's driver's license is not an effective means to coerce payment of

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[95] Shelby County Criminal Court Development Center, *Disposed Cases 7/1/00 thru 6/30/01 Assessed, Due and Paid by Agency*, June 2002.

[96] Comptroller of the Treasury, *Special Report: Collections of Fines and Costs in General Sessions Court*, Division of County Audit and Division of Local Government, Oct. 1989, p. 14.

[97] National Court Collections Symposium, *Public and Private Sector Approaches,* National Center for State Courts, Slides 6 and 10.

[98] Jim Lehman, "Designing a Collections Plan," National Court Collection Symposium, 2002, Slide 2.

[99] Russ Duncan, Board of Directors, The Governmental Collectors Association of Texas, Event Announcement for National Court Collections Symposium and email, April 24, 2002. They arrived at this number by estimating that 10.2 percent of all debt reported by the American Collectors Association is court related fines, which was reported as $53.3 billion in the Aug. 2001 issue of "Collector."

[100] Robert W. Tobin, *Funding the State Courts: Issues and Approaches,* State Justice Institute, National Center for State Courts, 1996, p. 51.

delinquent court costs.[101] One judge believes the law prohibiting people from getting their driver's license until they pay all their court fees is cost prohibitive, because so many cannot afford to pay the cost and get rearrested for driving without a license. More than one judge said they had a high volume of such cases and that they contribute to jail overcrowding, and waste police, court, judge, and clerk time with no financial benefit.

Property Seizure

The seizure of property by investigative agencies contributes to unpaid court costs. TCA §39-11-701, et seq., allows law enforcement agencies to seize property obtained as a result of criminal activity. Investigative agencies may retain the profits from these seizures to aid in future investigations. Clerks contend, however, that this practice leaves the counties liable for the costs associated with handling cases when defendants are indigent.

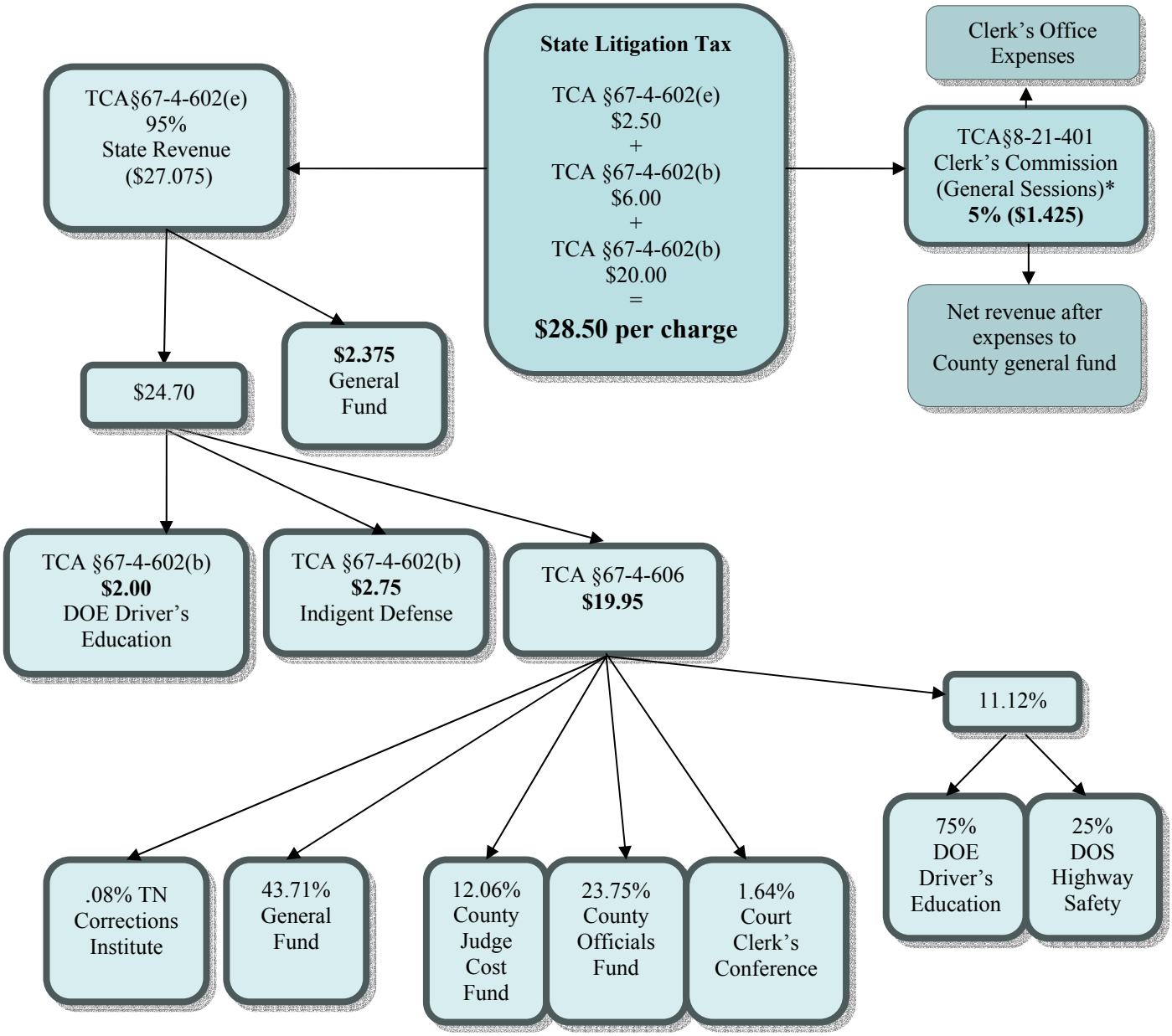
Defendants are not allowed to benefit from their illegal activities even to pay court costs. Law enforcement agencies retain all proceeds from illegally acquired assets. Courts get none to help pay for unpaid indigent defendants' accounts. This translates into lost revenue for the courts, and state and county governments, which must cover the costs of processing indigent cases. Additionally, fees that are increased over the years to make up what goes uncollected unfairly burden those who pay.

Overly Complex Statute

Complicated laws dictating revenue apportionment make it difficult to track collections by county and monitor remittance compliance. The Department of Revenue does not maintain litigation tax revenue records by county. Its database is a query-based system and while staff can compile this data, it is a complex and lengthy process with inconsistent and often inaccurate results. State privilege tax on litigation illustrates the complex court tax apportionment laws. Exhibit 13 maps the complexity of the collection and distribution of litigation tax revenue according to statute.

[101] Comptroller of the Treasury, *Special Report: Collections of Fines and Courts Costs in General Sessions*, p. 23.

Exhibit 13: Distribution of State Litigation Tax Collected in General Sessions Courts According to Statute



Source: Compiled by OREA staff from various TCA sections.

*Circuit, Criminal, Chancery Court Clerks retain a 15 percent commission on Litigation Tax Collections.

Exhibit 14 shows FY 2001 apportionment amounts for funds listed in Exhibit 13.

Exhibit 14

Designated State Litigation Tax Revenue Funds	
Fund	FY 2001 Revenue
State General	$6,786,731
County Officials Retirement	$2,565,191
Department of Education - Driver Education	$1,715,920
County Judge Cost	$1,303,126
Indigent Defense	$1,120,290
Department of Safety- Highway Safety	$300,389
State Court Clerks' Conference	$177,205
TN Corrections Institute	$8,644
Total Fund Apportionment	**$13,977,496**

Source: Department of Revenue, FY 2001 Privilege Tax Apportionment Table.

Other statutes authorizing privilege/litigation taxes include:

1. TCA §5-5-122 and §67-4-601 – permissive taxes to raise revenue for county building projects,
2. Title 16, Chapter 15 – a tax to fund general sessions judges' salaries and retirement funds,
3. Chapter 20 of Title 16 – a tax to raise revenue to fund victim-offender mediation centers, and
4. TCA §40-24-107 – a tax that funds the criminal injuries compensation fund.
   (See Appendix C for a summary of litigation tax laws.)

Counties report litigation tax revenue to the Department of Revenue on monthly return forms. These forms list all the different tax categories with corresponding county revenue and the state's post-commission share of collections. (See Appendix H.) Litigation tax revenue is immediately diverted into five separate funds upon entering the state's system and is difficult to trace back to the county source. The Division of State Audit samples counties to monitor the accuracy of return forms, but it does not track litigation tax revenue statewide or by county.

Auditing

Varying court taxes, fees, fines, and commissions impede the auditing of state and local courts. Under the current system, it is difficult for the Comptroller to audit local courts. It is also difficult for the Department of Revenue and the Administrative Office of the Courts to implement and administer polices and funding for state and local courts. Auditors state that they have difficulty remaining current on the correct procedures and costs for each court, adding time to perform audits. The system gets progressively more complex each year with the addition of new fees, fines, and taxes. During the course of this study, analysts found instances in the sample counties where clerks were not complying with statutes. The instances of noncomplicance often appeared attributable to the complexity of the code.

A 1995 NCSC report states that court audits "should provide a court manager with information on whether financial procedures conform to statutes, rules of court, and administrative regulations."[102] TCA §4-3-304(4) requires the department of audit to "make annually an audit of all records of the several counties of the state, including the offices of county trustees, circuit court clerks, criminal court clerks, county clerks and clerks and masters of chancery courts…and judges of the courts of general sessions."

TCA §4-3-304 (4)(A) allows for the use of a private accounting firm (CPA) in lieu of an audit prepared by the division of audit. Private accounting entities perform the annual audits for Davidson, Hamilton, Knox, Shelby, McMinn, Sumner, and Washington counties. According to the Division of County Audit assistant director, private accounting firms do not audit compliance with court revenue collection, assessment, and apportionment laws to the extent that the Comptroller's Office does.

Department of Revenue Reporting Discrepancies

Department of Revenue data on state criminal litigation taxes do not match figures received from county court clerk offices. Currently, litigation tax revenue totals by county do not appear to be accurate as illustrated by Exhibit 15. In eight counties sampled, none of the court clerks' figures matched the figures from the Department of Revenue for the same time period.

Exhibit 15

State Portion of State Criminal Litigation Tax Revenue for Calendar Year 1999			
County	**DOR Figure**	**Clerk's Office**	**Difference**
Clay	$16,331	$22,991	-$6,660
Davidson	$236,484	$307,357	-$70,873
Hamilton	$279,598	$414,505	-$134,907
Grainger	$875	$56,885	-$56,010
Knox	$341,452	$521,712	-$180,260
Marshall	$67,429	$97,605	-$30,176
Rutherford	$301,453	$229,155	-$72,298
Shelby	$457,111	$918,344	-$461,233
Total			**-$1,012,416**

Source: Department of Revenue and survey calls to general sessions accounting offices in each county, 1999.

The Department of Revenue cannot verify proper apportionment of partial payments as described in TCA §40-24-105. It is clerks' responsibility to report partial payments on the correct tax class line on the monthly return form. The department has no way to determine if the state is getting litigation tax shares correctly. In addition, the department's MIS software does not recognize the 50 percent commission that clerks are allowed under TCA §40-24-105(c) on all collections made on accounts in default for six months. Shelby County's attempt to alter the state's form to accurately reflect this commission (see Appendix I) was rejected by the Department of Revenue because it created confusion for the DOR data entry people.

[102] Robert W. Tobin, *Internal Control of Court-Collected Funds,* National Center for State Courts Publication R-165, 1995, p. 49.

Currently, the return form lumps any commissions retained under this part of the code with partial payments and other adjustments on one line. This practice leaves the clerks and the department with no way to accurately determine compliance with revenue collections, reporting, and remittance laws. Moreover, the Comptroller's Division of State Audit does not audit this process. The money that flows through these offices is significant to counties and the state, and the current lack of monitoring and accountability is problematic.

Department of Revenue officials indicate that they are not sufficiently involved in establishing policies related to collection and reporting of court revenue. The department is not involved in legislative, administrative, or policymaking processes regarding drafting and passing of laws that govern the assessment, collection, and apportionment of court revenue. No laws or policies require the department to approve new legislation.

Legislative Alternatives

The General Assembly may wish to convert all courts (except municipal courts) to state courts to improve the overall efficiency and effectiveness of the court system. Research and experience in other states shows that while transition to a unified court system may not produce automatic efficiencies, in the long run it can result in:

1. better use of judges;
2. better use of parajudicial officers;
3. tighter management structures, (i.e., allow the Administrative Office of the Courts to have stronger administrative and policy making governance of general sessions courts and juvenile courts and better enable them to fulfill their statutory and administrative responsibilities to the courts.);
4. improved case management and less duplication of services and delays;
5. staffing efficiencies;
6. improved record systems and automation; and
7. improved facilities management.[103]

This would move general sessions and juvenile courts to the current state court system, which could reduce some of the disparity in funding and resources among courts and improve the efficiency and effectiveness of the administration of all courts.

Many general sessions judges expressed concern about being included in the judges' weighted caseload study update if they were to become state judges. However, general sessions judges *cannot* be included in the annual judicial weighted caseload study because they were not included in the original time study, which included only state courts.

The General Assembly may wish to amend various chapters in Title 16 to designate judicial jurisdiction to either limited or general jurisdiction courts. (See Appendix J for sample structure.) This would greatly reduce the overlap, inefficiency, confusion, and forum shopping of the current system. General Torrey Johnson, District Attorney for District 20 and member of the Judicial Council, said that while there is concern about transferring to a more unified court system,

[103] Robert W. Tobin, *Funding the State Courts: Issues and Approaches*, National Center for State Courts, State Justice Institute, July 1996, pp. 16-18.

"logic dictates that unification and consolidation of the clerks' offices and courts is something that definitely needs to be examined from an effectiveness and efficiency perspective."[104]

Research on other states with various aspects of consolidated court systems, including judicial jurisdiction, has shown positive outcomes.[105] The Department of Justice (DOJ) recommends that court unification is a more efficient and effective way to structure courts, but cautioned that unification alone will not solve all the problems. According to DOJ, "without a consolidated court system it is unlikely that systematic management activities will be carried out, but it is also obvious that formal simplification of judicial structures is not enough."[106]

The General Assembly may wish to consolidate all trial courts into one circuit court with divisions for different types of cases. This would include combining Chancery and Circuit Courts. (See Appendix J for sample structure.) In states that have consolidated their trial courts, research shows that consolidation leads to a more effective and efficient administration of justice.[107] Some have questioned whether this is constitutional; however, the language in Article VI, Section 8 appears to authorize the legislature to change the law. It states "the jurisdiction of the Circuit, Chancery, and other inferior Courts, shall be as now established by law, until changed by the legislature."

Even states with unified court systems vary in their structure. In each state a committee has been appointed to design the consolidated systems. The General Assembly may wish to establish a committee with representatives from all branches of government including the judicial branch (the Administrative Office of the Courts, judges, DAs, PDs, and clerks), the legislative branch (including representatives from the Judiciary Committees and the Comptroller's Office), and the executive branch (including representatives from the Department of Revenue) to develop a plan for a consolidated trial court system specific to Tennessee.

Such a plan might include provisions for separate divisions within circuit court for criminal, chancery, and probate courts in urban areas where the docket is large enough to support its own division, rather than having separate clerks, administrative systems, and information systems for each type of court. For all types of cases, jurisdiction should be designated to either circuit or general sessions court to eliminate judicial jurisdictional overlapping and duplication.

The General Assembly may wish to make all courts state financed. Several other states have converted (or are converting) and have experienced cost savings and improved efficiency. Combined with a statewide uniform cost structure, consolidated funding could increase efficiency, equity, and effectiveness of the Tennessee judicial system. Based on principles of a state financed unified court system, "the state should finance the entire judicial system and the local court

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[104] Interview with General Torrey Johnson, District Attorney, Judicial District 20, Jan. 8, 2--3.
[105] David C Steelman, ESQ., Principal Court Management Consultant, *Trial Court Administration and Management in State Courts: Viewing Arkansas in a National Context*, National Center for State Courts, May 3, 2002, pp. 17-19; Mary Anne Lahey, Ph.D., Bruce A. Christenson, Ph.D., Robert J. Rossi, Ph.D., *Analysis of Trial Court Unification in California, Final Report*, Judicial Council of California Administrative Office of the Courts, Sept. 28, 2000.
[106] Thomas A. Henderson and Cornelius Kerwin, U.S. Department of Justice, National Institute of Justice, *Structuring Justice: The Implications of Court Unification Reforms, Policy Summary*, 1984, p.44.
[107] David C. Steelman, ESQ., Principal Court Management Consultant, *Trial Court Administration and Management in State Courts: Viewing Arkansas in a National Context*, National Center for State Courts, May 3, 2002, p.18.

assessments (fines and costs) should be paid directly to the state treasury."[108] Under this system all, or a portion, of court revenue would be sent to the Department of Revenue and the state would be responsible for financing the courts, except municipal courts. (See Appendix K for sample funding structure.)

Office of Research analysts interviewed many representatives in the judicial system. (See Appendix L.) Analysts also reviewed several reports from Tennessee and other states, and national research on unified courts and court administration. Most agreed that a state funded court system would be a more effective, efficient, and equitable system than the current system, though politically unpopular. Experience in recent states shows that prior to instituting a unified state financed system it is helpful to institute a unified state judicial jurisdiction court structure.

The General Assembly may wish to make sure the number of district attorneys and public defenders is adequate to prosecute and represent all individuals as required by law, especially in juvenile court. This will help ensure due process for all adults and juveniles who come before the court.

The General Assembly may wish to amend the law to prohibit municipal courts from having general sessions jurisdiction. This would reduce the already overly complex court system and workload of DAs and PDs. If additional courts are needed to handle general sessions caseloads, it would be more effective and efficient to establish another division or branch of general sessions, rather than pass private acts, and elect new judges and clerks, to establish municipal courts with general sessions jurisdiction. In any event, the General Assembly may wish to establish parameters for the creation of such courts.

The General Assembly may wish to incorporate the Council of Juvenile and Family Court Judges (CJFCJ) and its staff and services as a division within the AOC to better meet the needs of juvenile courts. The AOC's director and some juvenile judges thought the Council of Juvenile and Family Court Judges should be incorporated as a division within the AOC. Officials believe this would better serve the needs of the juvenile court system, help improve the status of juvenile courts within the judicial branch, and more efficiently coordinate the judicial and administrative needs of juvenile courts.

The General Assembly may wish to amend state law to require any county that does not comply with Supreme Court Rules, or other AOC policies, to reimburse the Department of Revenue the state litigation tax collected by the county during the period of noncompliance. Limited jurisdiction courts, and some state courts, do not always comply with Supreme Court Rules and policies such as reporting requirements and use of standard forms, but there is no consequence. The AOC should establish a limited probationary period for courts that do not comply with the state law or Supreme Court Rules. If courts refuse to comply, the AOC should report them to the Department of Revenue to enforce collection of a portion of local litigation tax.

The General Assembly may wish to amend the law to require only one elected clerk for limited jurisdiction courts and one clerk for general jurisdiction courts, and then appoint chief deputy clerks for the various types of courts. Rather than separately electing clerks for all

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[108] Kenneth G. Pankey, Jr., *Court Unification Executive Summary*, Knowledge & Information Services, National Center for State Courts, 2002, p.1.

courts, counties may wish to require that separate deputy clerks perform specific duties for juvenile, criminal, civil, and chancery cases. This could reduce local and state election and salary costs as well streamline the process for reporting revenue to the Department of Revenue. This should be considered especially among courts with concurrent jurisdiction. Davidson County has such a structure, with the exception of a separate juvenile court clerk.

The General Assembly may wish to amend TCA §37-1-210 and §37-1-211 to require that court clerk duties handled by all county court clerks be transferred to the court that has judicial jurisdiction for those cases. In some counties juvenile and probate court records are still kept by the county clerk, which results in two clerks handling the administrative duties for those cases.

The General Assembly may wish to amend Title 40, Chapter 6, to require that all persons authorized to issue warrants receive legal training regarding probable cause. All interviewed agreed that persons issuing warrants should be required to have a certain amount of legal training regarding probable cause. Larger counties require these persons to be attorneys. In Knox County, even though the judicial commissioner is an attorney, the DA still has to sign warrants for individuals who swear out warrants against others.

The General Assembly may wish to amend TCA §18-4-203 to relieve all clerks from the responsibility of determining probable cause and issuing warrants. Clerks do not have any legal training to enable them to make such determinations. This duty should be limited to magistrates and judicial commissioners as cited in TCA §40-6-202.

The General Assembly may wish to amend Title 16 to establish small claims courts to reduce the number of *pro se* cases. In small claims court complainants must pay court fees to file cases. This can reduce the cost in time, money, and ethical conflicts associated with the proliferation of *pro se* cases, and provide those who cannot afford an attorney better access to the courts.

The General Assembly may wish to amend TCA §16-15-501 to allow civil cases involving damages up to $25,000 to be heard in general sessions court.

The General Assembly may wish to standardize court costs. A subcommittee of the judicial council could be formed to examine how to standardize current fee structure, with representatives from all stakeholder groups, court clerks, district attorneys, public defenders, the Department of Revenue, the Comptroller's Office, judges, the Administrative Office of the Courts, and the General Assembly.

A Division of County Audit assistant director suggests using statewide averages of litigation tax rates, fines, and fees as the standard amount for all counties. This simplification would ease the burden on clerks, state revenue collection entities, and auditors, and would increase the efficiency of court administration and accountability procedures. Court administrators in sample counties expressed support for this approach, providing county revenue is protected and clerk representatives participate in the structure development and transition to any new system.

The General Assembly may wish to consider amending TCA Titles 5, 8, 16, 39, 40, and 67 to simplify apportionment of litigation taxes and other court revenue. Along with standardized

costs, simpler distribution would increase the state's ability to monitor court revenue and local court compliance.

The General Assembly may wish to consider amending TCA Titles 5, 8, 16, 39, 40, and 67 to set court costs at a reasonable uniform level. According to a 1995 NCSC publication on court revenue, "judges sometimes feel that their legislatures set the level of fines, fees, and costs so high that they become an alternate form of taxation."[109]

The General Assembly may wish to consider amending TCA § 39-11-701, et seq., to allow a portion of the revenue generated for investigative agencies from the sale of seized property to be shared by court clerks to cover court costs of defendants left unable to pay because of forfeiture of property to law enforcement agencies. Clerks indicate that counties and the state lose litigation tax and court cost revenue when a defendant's property is seized by law enforcement to fund investigative activities.

Administrative Recommendations

The Administrative Office of the Courts and Juvenile and Family Court Judges should consider developing a plan to restructure the courts to institute a division of family courts at the circuit court level to hear all juvenile court and domestic cases. Several officials interviewed suggested having a single division with jurisdiction for all juvenile and domestic matters to ensure juvenile cases get the representation they need and to more effectively and efficiently coordinate cases involving the same family. Many other states have instituted similar structures.

The Administrative Office of the Courts and Juvenile and Family Court Judges should combine training portions of the conferences for general sessions and state judges, along with juvenile judges, so that all judges receive needed training to hear juvenile cases. This will help improve the training for the general sessions judges who also serve as juvenile court judges and state judges who hear juvenile cases.

The Judicial Council should formally request an Attorney General's Opinion to determine the constitutionality of combining chancery and circuit courts, and combining clerk and master duties into circuit court clerk duties. The Council has debated this issue and heard testimony for various judicial officials, but made no decision on the issue, in part because of the question of the constitutionality of combining the courts and clerk duties has not been resolved.

The Administrative Office of the Courts, Judicial Council, and Clerks Conference should establish standard statewide qualifications and training for clerks, judicial commissioners, and all other persons authorized to issue warrants.

The Administrative Office of the Courts, in conjunction with the judicial conferences, should seek ways to solve the problems caused by *pro se* cases. This might include:

- a handbook for *pro se* litigants to better inform them of the court process,
- training for judges on how to handle *pro se* litigants,
- more mediation programs to resolve cases out of court, and
- more legal aid to those who cannot afford attorneys.

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[109] Robert W. Tobin, *Funding the State Courts: Issues and Approaches,* State Justice Institute, National Center for State Courts, 1996, p. 51.

The ABA in its document "Litigants Without Lawyers" outlines examples of programs in other states, which focus primarily on educating judges, attorneys, and the *pro se* litigants. A study by the NCSC in conjunction with other organizations offers additional solutions including: mediation;[110] pamphlets and/or offices that help explain the court system and process to litigants; and other programs offering legal advice.

The AOC should keep statistics on the number of *pro se* cases and nonviolent drug and alcohol offense cases. This information is needed to assess the degree to which such cases impact the court system so that programs can be developed to more effectively deal with those cases.

The Court Clerks Conference should develop a policies and procedures manual and increase training for court clerks. The manual should establish uniform policies for applying taxes, fees, fines, and commissions. The Conference should also hold sessions for newly elected clerks and have regional one-day workshops for the smaller counties that cannot afford to send clerks to state conferences.

The Court Clerks Conference and the Administrative Office of the Courts should develop an aggressive statewide collection program to actively pursue monies owed. Every court should have access to collection tactics such as interjurisdictional tracking, nationwide searching and asset information services, information sharing, the use of warrants to motivate payment, cross jurisdictional extradition agreements, and garnishment of jail accounts and paychecks. In addition, courts should offer alternatives to payment such as community service. [111]

The Court Clerks Conference and the Administrative Office of the Courts should develop a mechanism for regular notification and interpretation of changes in the law along with training on properly administering those laws for court clerks. This is needed because the law and clerks change frequently and education at the clerks' conferences is insufficient to provide the necessary training in this area, especially when not all clerks attend the conferences.

The Department of Revenue should require that all courts collecting state litigation tax keep a record of the amounts of taxes assessed, waived, paid, and collected, and report that information to the Department of Revenue quarterly.

Department of Revenue Response:
Complexity of tax apportionment: The apportionment is established by legislative action and not determined by DOR. Most additions to the litigation taxes were enacted to benefit a certain organization or cause. The DOR is only responsible for distribution of funds according to legislative mandates. The DOR has had numerous meetings with the court clerks and their representatives to try and simplify the litigation tax return, but have been unable to resolve the technical reporting issues.

The Department of Revenue should develop an information system to accurately track court revenue and verify that the state is receiving its share of litigation taxes from each county. A

[110] National Center for State Courts, Chicago-Kent College of Law, and the Technology's Institute of Design, *Access to Justice: Meeting the Needs of Self-Represented Litigants*, 2001, p.8.
[111] Jim Lehman and Russ Duncan, *Collecting Court Fines and Fees; It's Not Rocket Science*, National Court Collection Symposium, Oct. 2002.

program should be designed and put in place to track litigation tax revenue from the county of collection through the state's various funds and provide reports of this revenue in a usable form on a regular basis or in a timely manner upon request. The department's MIS software and Litigation Tax Return form should be modified to recognize the 50 percent commission allowed on collections made on an account after it is in default for six months.

Department of Revenue Response:
Inaccurate revenue collections by counties: The court clerks are responsible for reporting litigation tax collections to DOR. DOR cannot monitor every court action to ensure that proper fees are collected and reported for each litigation case. We are only able to accept the court clerks' remittances as reported on the tax return.

The litigation tax return has been changed on numerous occasions to accommodate additional fees enacted by the legislature and to include interest for collections from other state agencies. Tax returns and instructions have been revised and provided to the clerks to improve their reporting accuracy. The DOR has attempted to make the reporting of litigation tax as easy as possible based on the complexity of the law.

The DOR's Revenue Integrated Tax System (RITS), used to administer and collect all taxes, is programmed to allocate litigation tax collections based on reporting and allocation requirements of the law. Anytime a law change occurs affecting litigation taxes in Tennessee it requires hundreds of hours of programming resources to implement the change. In 1999, 2002 and 2003 litigation tax changes required the following resources, respectively: 265 hours and $9,991; 200 hours and $18,723; and, 420 hours and $23,938. The court clerks then must make revisions to their software systems.

Both of these recommendations place onus on the DOR for implementing certain issues that are normally legislated as policies by the General Assembly. Generally, such issues as these two recommendations are amended into law by the General Assembly. The DOR would willingly comply with any General Assembly mandates and policies that improved the litigation tax collection process—including developing a new information system or necessitating that courts accurately report their collections and maintain proper records allowing the Comptroller to audit local courts and track their collections by local jurisdiction.

State and local courts should consider implementing more drug, alcohol, and mental health courts under the new Drug Court Treatment Act of 2003. Drug courts have proven to be an effective and economic way to reduce drug and theft crimes and the costs associated with them, including costs for law enforcement, incarceration, jail overcrowding, judges, prosecution, and defense.[112] National research and conservative estimates show that for "every $1 invested in addiction treatment programs there is a $4-$7 savings in reduced drug-related crime, criminal justice cost, and theft alone. When savings related to health are included, total savings can exceed

[112] Elaine Stuart, *Rehab, Not Jail*, State Government News, Sept. 2001,:26; Blaine Corren, Study *Bolsters Drug Court Claims*, Court News (California) May-June 2002:1 as cited by Kenneth G. Panky, Jr., *Funding State Courts: Trends in 2002: Budget Woes and Resourceful Thinking*, National Center for State Courts, Nov., 2002, p.3; Elizabeth A. Peyton and Robert Gossweiler, Ph.D., The College of William and Mary, for National Treatment Accountability for Safer Communities, Drug Courts Program Office, Office of Justice Programs, and the Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment, *Treatment Services in Adult Drug Courts, Report on the 1999 National Drug Court Treatment Survey*, May 2001, p.3.

costs by a ratio of 12:1. Major savings to the individual and society also come from significant drops in interpersonal conflicts, improvements in workplace productivity, and reductions in drug-related accidents."[113]

Drug and mental health courts should develop program evaluations. The General Accounting Office (GAO) and Bureau of Justice Assistance note in recent reports that despite the positive outcomes of such courts more evaluation and accountability of such programs is needed.[114] Courts should also have management information systems to collect data on numbers of clients served and program outcomes.[115] This is even more important as the number of such courts increases, especially with the passage of the Drug Court Treatment Act of 2003. Courts need to develop a standard definition of recidivism so that statewide data on effectiveness of such courts will be comparable.

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[113] National Institute on Drug Abuse, National Institute of Health, *Principles of Drug Addiction Treatment A Researched-Based Guide*, Oct. 1999, p. 21.

[114] Government Accounting Office, GAO-02-434, *Drug Courts: Better DOJ Data Collection and Evaluation Efforts Needed to Measure Impact of Drug Court Programs*, April 2002, p. 19.

[115] SEARCH, National Consortium for Justice Information Statistics, under a grant from U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Supporting the Drug Court Process: What you Need to Know for Effective Decision-making and Program Evaluation*, Feb. 2003, p. 56.

Appendix A:
Tennessee Reports Regarding
Problems with Judicial Administration and the Courts

1. Linda O'Neal and Ann Young, *Tennessee Juvenile Court Crisis: A Mandate for Change*, Institute for Children's Resources, March, 1981, p.2.
2. State of Tennessee Office of the Comptroller, Division of County Audit, *Special Report: Collections of Fines and Cost in General Sessions Courts*, October 1989.
3. The Commission on the Future of the Tennessee Judicial System, *To Serve ALL People*, June 1996.
4. Cindy Wood-Maclean and Rebecca Shea, Administrative Office of the Courts, *The Tennessee Court Improvement Program for Juvenile Dependency Cases: An Assessment of Tennessee's Court Performance and Plans for Improvements,* August 1997, p.72.
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Appendix B
Judicial Trial Court Judges Conference - Bench Bar Committee
Questionnaire Summary – 2002

ISSUES:	CLERKS	BENCH	BAR
	Number indicating he or she considered the issue the most important of those listed on the questionnaire. (NA=not on that group's questionnaire.)		
Payment/collection of court costs. (Bar – Other post-judgment activities.)	15	NA	0
Differences in forms and procedures from clerk to clerk and county to county; obsolete forms.	6	5	1
Attorney knowledge of filing/docketing procedures.	7	NA	NA
Courtesy to clerks by attorneys/judges.	6	6	0
Handling telephone inquiries from attorneys and public.	5	3	2
After-hours/fax/electronic filing; websites/internet access to dockets and other information; other automation issues.	3	2	3
Courtesy of clerks to attorneys/judges.	-2	6	0
Submitting orders in a timely manner.	4	4	0
Different courts handling different kinds of cases from county to county.	2	4	1
Dealings with out-of-county attorneys.	2	NA	NA
Topic written in: Abuse of Order of Protection.	1	NA	NA
Requests for continuances.	0	1	0
Interaction between trial and appellate clerks' offices. (Bar – Interaction between attorneys and appellate clerks' offices.)	0	1	0
"Bench clerks" – Ability and knowledge of clerks who work in the courtroom.	NA	19	NA

Knowledge of procedures, adequacy of employees' training and knowledge of job.	NA	17	4
File maintenance.	NA	13	NA
Courtesy and knowledge of clerks' offices in other counties.	NA	NA	0

OTHER TOPICS, COMMENTS AND RECOMMENDATIONS GIVEN BY CLERKS

Attorneys who send clients to clerks' offices for forms and service they know or should know we don't provide.

Object to fax filing of pleadings and orders.

Would like to be on internet and would not object to providing access to dockets.

Dealing with pro se litigants, especially in domestic relations.

Some people pursue Order of Protection in order to obtain assistance from Legal Aid. There is a great need for legal assistance at a reduced rate for those who are not indigent, but have a meager income.

Case management standards.

Have privacy issues with after-hours filings, etc.

There should be uniformity in forms and costs across the state.

Difference in fees from county to county. Not including differences in county litigation tax rates.

I feel service to the public is most important.

Having to monitor Parenting Plans. If mandated by State, personnel to monitor should be funded by State.

Payment/collection of court costs: We have successfully used a private collection agency for delinquent costs.

Online with other offices would be nice.

State provided forms for pro se divorces.

Standard forms would be good.

Code Cite	Tax Amount	Tax Class	Revenue Purpose	Applicable Courts	Assessed Per	Applicable Counties	Levying Body	Fixed
5-5-122	any		county building	any	open	all	county	no
16-15-5006	up to $6.00	10711	GS judges salary	general sessions	case	pop. <450,000	county	no
16-15-5007	$1	10712	50% administrative director of the courts exp. 50% general sessions judges retirement fund.	general sessions	civil case	all	state	yes
16-20-106	$1		victim-offender mediation center	general sessions and juvenile	case	all	county or municipalit y	yes
40-24-107	$26.50	10706	criminal injuries compensation fund	circuit or any court of record	criminal conviction	all	state	yes
67-4-601	up to $10.00	n/a	jail or workhouse construction or renovation	all but city and municipal	case	all	county	no
67-4-602(a)	$5.25	10703	0.08% TN Corrections Inst. Operations fund; 11.12% DOE and DOS, driver education(75%), highway safety(25%); 43.71% general fund, criminal injuries compensation fund(72.5%), victim assistance fund(27.5%);12.06% county judge cost fund; 23.74% county officials fund; 1.64% state court clerks conference fund	all*	civil suit	all	state	yes
	$5.25	10703		city	criminal charge	all	state	yes
	$6.00	10703		all	civil suit	all	state	yes
	$6.00	10703		city	criminal charge	all	state	yes
67-4-602(b)	$20.00	10704		all but city and municipal	criminal charge	all	state	yes
	$6.00	10705/ 10708	$2.00 to state driver education, $2.75 to indigent defense fund	all but city and municipal	criminal charge	all	state	yes
67-4-602(c)	$3.00	10711	law enforcement reserve fund	general sessions	criminal charge	pop.319,625-319,725	state	yes
67-4-602(e)	$2.50	10725	state general fund	all	civil case,criminal charge	all	state	yes
67-4-602(f)	$10.00	10703	civil indigent defense	circuit and chancery	civil case	all	state	yes
	$3.00	10703	civil indigent defense	general sessions	civil case	all	state	yes
	$1	10710	civil indigent defense	any	motor vehicle violation	all	state	yes
67-4-602(g)	$1.00	10723	electronic fingerprint imaging	all	criminal charge	all	state	yes
* "all" does not include juvenile courts.								

Appendix D
Court Clerk Fee Schedule for Criminal Matters

Code site	Service Category	Specific Service	Fee	Per	Applicable Courts
8-21-401(a)(1)	Issuing process	issuing summons	$5	defendant	all*
		issuing injunction	$5	injunction	all
		issuing order of publication	$5	order	all
		issuing any writ	$5	writ	all
		issuing any notice required by law	$5	notice	all
		issuing ancillary attachments	$5	attachment	all
		issuing distress warrants	$5	warrant	all
		issuing criminal summons	$5	summons	all
		issuing subpoena	$2	subpoena	all
		issuing state' warrant w/affidavit	$4	warrant	all
		issuing forcible entry warrant	$3	warrant	all
		issuing detainer warrant	$3	warrant	all
		issuing civil warrant in General Sessions	$3	warrant	all
		issuing civil warrant in trial justice	$3	warrant	all
		additional names on state warrant	$1	name	all
		adding additional names on civil warrant	$1	name	all
		issuing summons in city or county tax suit	$3	defendant	all
		issuing summons to sheriff to summon jurors	$3	summons	all
		preparing and issuing of garnishment to officer	$2	garnishment	all
		copying of any above process required by law	$1.5	copy	all
		issuing a recognizance	$2	recognizance	all
		issuing a bond	$2	bond	all
		issuing a mittimus	$2	mittimus	all
8-21-401(a)(2)	Filing instruments	filing a bond	$2	bond	all
		filing a bill	$2	bill	all
		filing a complaint	$2	complaint	all
		filing a motion	$2	motion	all
		filing a pleading	$2	pleading	all
		filing a document	$2	document	all
		filing an exhibit	$2	exhibit	all
		filing an article	$2	article	all
		filing an affidavit	$2	affidavit	all
		filing a record	$2	record	all
		filing a paper	$2	paper	all
		filing a criminal warrant pending grand jury action	$2	warrant	all
		filing a presentment or indictment	$2	presentment or indictment	all
8-21-401(a)(3)	Acknowledgement on Legal	qualifying a surety bond	$2	surety	all
		taking an affidavit	$2	affidavit	all

Code site	Service Category	Specific Service	Fee	Per	Applicable Courts
	Instruments	affixing the seal on a legal instrument	$2	seal	all
		taking a disposition	$5	disposition	all
		empanelling a jury	$2	jury	all
		examining a party in interrogatories	$5	?	all
8-21-401(a)(4)	Entries on rule, trial or execution docket	entering an order	$2	order	all
		entering a bond	$2	bond	all
		entering a bill	$2	bill	all
		entering a complaint	$2	complaint	all
		entering a motion	$2	motion	all
		entering a pleading	$2	pleading	all
		entering a document	$2	document	all
		entering an exhibit or article	$2	exhibit or article	all
		entering an affidavit	$2	affidavit	all
		entering a record or paper	$2	record or paper	all
		entering a presentment or indictment	$2	presentment or indictment	all
		entering a criminal warrant	$2	criminal warrant	all
		entering a criminal summons	$2	criminal summons	all
		entering a pending grand jury action	$2	action	all
		entering a return of process	$2	return of process	all
	Rule entries	making and entering bill of costs on docket	$3	bill of costs	all
		entering probate of a witness	$1.5	probate	all
		furnishing a bill of costs	$2	bill	all
8-21-401(a)(5)	Minute entries	entering minutes	$1	100 words	all
		entering a transcript of record	$1	100 words	all
	Copies of legal instruments	copy of a pleading	$1	100 words	all
		copy of a paper	$1	100 words	all
		copy of proceedings in a cause	$1	100 words	all
		copy of an indictment or presentment	$2	copy	all
		certified copy of statement of sentence	$3.5	copy	all
		copy of transcript for comptroller or treasurer	$2.5	copy	all
		copy of bill of costs for comptroller or treasurer	$2.5	copy	all
		copy of certificate not a part of another service	$2	copy	all
		copy of commitment to judicial cost accountant	$2.5	copy	all
		copy of acquittal to judicial cost accountant	$2.5	copy	all
		copies for indigent defendants and their attorneys	$2	first page	all
		copies for indigent defendants and their attorneys	$1	each add. page up to $10.00	all

Code site	Service Category	Specific Service	Fee	Per	Applicable Courts
8-21-401(a)(7)(F)	Flat Fees	in lieu of itemizing court fees	$20	Worker's compensation settlement proceeding	all
8-21-401(a)(7)(I)		in lieu of itemizing court fees	$75	registration of citizenship case	all
		in lieu of itemizing court fees	$75	adoption, legitimating, name change case	all
8-21-401(a)(7)(J)		in lieu of itemizing court fees	$75	uncontested divorce proceeding	all
8-21-401(a)(7)(K)		in lieu of itemizing court fees	$40	dismissal of indictment, presentment or warrant as a result of a diversion program	Criminal Circuit, General Sessions
8-21-401(a)(7)(K)		in lieu of itemizing court fees	$40	expungment of public records proceeding	Criminal Circuit, General Sessions
8-21-401(a)(7)(L)		in lieu of itemizing court fees	$250	criminal case	all courts of record
		in lieu of itemizing court fees	$40	conviction in a criminal case	General Sessions
8-21-401(a)(7)(M)		in lieu of itemizing court fees	$35	contempt case	all
		in lieu of itemizing court fees	$35	child support case	all
		in lieu of itemizing court fees	$75	default judgement case	all
8-21-401(a)(7)(O)		in lieu of itemizing court fees	$75	petition for visitation	all
8-21-401(a)(7)(P)		in lieu of itemizing court fees	$75	petition for custody	all
8-21-401(a)(7)(Q)		in lieu of itemizing court fees	$75	petition to enter a foreign judgment	all
8-21-401(a)(7)(R)		in lieu of itemizing court fees	$75	other petition or order	all
8-21-401(a)(7)(S)		in lieu of itemizing court fees	$35	abandoned mineral interests case	all
8-21-401(e)	Data entry	data entry	$2	new case	all
8-21-401(f)		entering a continuance	$5	continuance	all
8-21	Misc.				
		drawing deed of conveyance under orders	$20	deed	all

Code site	Service Category	Specific Service	Fee	Per	Applicable Courts
401(a)(7)(A)		of court			
8-21-401(a)(7)(B)		deciding on exception to answers	$2	exception	all
8-21-401(a)(7)(C)		processing tax encumbrances	$3	encumbrance	all
8-21-401(a)(7)(D)		receiving and recording a bank's sworn statement	$2	statement	all
		executing trust	$2	trust	all
8-21-401(a)(7)(E)		making certificate as to tax bill to county trustee	$1	certificate	all
8-21-401(a)(7)(F)(ii)		producing copy of final judgment in worker's comp. case	$3	copy	all
8-21-401(a)(7)(G)		receiving and handling motor vehicle license	$2	license	all
		submitting abstracts on motor vehicle violation	$2	abstract	all
8-21-401(a)(7)(H)		preparing and mailing notice of setting of docket	$2	notice	all
* "all" Includes all courts hearing criminal matters except Courts of last resort.					
**In counties with a population of more than 700,000 according to the most recent census this commission is 10%.					

Appendix E
Monetary Penalties for Criminal Offenses

Code Cite	Offense	Payee	Range	Authority	Allocation
40-35-111(d)(1)	Class A misdemeanor	individual	up to $2,500	judge	county
40-35-111(d)(2)	Class B misdemeanor	individual	up to $500	judge	county
40-35-111(d)(3)	Class C misdemeanor	individual	up to $50	judge	county
40-35-111(c)(1)	Class A felony	individual	up to $50,000	jury	state
40-35-111(c)(2)	Class B felony	individual	up to $25,000	jury	state
40-35-111(c)(3)	Class C felony	individual	up to $10,000	jury	state
40-35-111(c)(4)	Class D felony	individual	up to $5,000	jury	state
40-35-111(c)(5)	Class E felony	individual	up to $3,000	jury	state
39-17-417(j)	Class A felony	corporation	up to $350,000	jury	state
39-17-417(b) &(i)	Class B felony	corporation	up to $200,000	jury	state
39-17-417(c)(2)	Class C felony	corporation	up to $100,000	jury	state
39-17-417(d)	Class D felony	corporation	up to $50,00	jury	state
39-17-417(f)	Class E felony	corporation	up to $5,000	jury	state
39-17-417(k)	habitual drug offender	individual	up to $200,000 additional	judge	50% to special revenue fund of the jurisdiction that initiated the arrest to be used for local programs for drug enforcement, education and treatment, and nonrecurring general law enforcement expenditures. 50% to the governing body of the law enforcement entity responsible for the arrest. A portion of the revenue may fund programs and services for infants and children with HIV or AIDS
39-17-428(b)	First mis.(schedule VI)	individual	$250 minimum	judge	
	Second mis.(schedule VI)	Individual	$500 minimum	judge	
	Third or sub. mis.(schedule VI)	individual	$1,000 minimum	judge	
	First mis.(other drug)	individual	$750 minimum	judge	
	Second mis.(other drug)	individual	$860 minimum	judge	
	Third or sub. mis.(other drug)	individual	$1,000 minimum	judge	
	First mis.(drug paraphernalia)	individual	$150 minimum	judge	
	Second or sub. mis.(paraphernalia)	individual	$250 minimum	judge	
	First felony (scheduled drug)	individual	$2,000 minimum	judge	
	Second felony (scheduled drug)	individual	$3,000 minimum	judge	
	Third or sub. felony (scheduled drug)	individual	$5,000 minimum	judge	
	First felony (other drugs)	individual	$1,000 minimum	judge	
	Second or sub. (other drugs)	individual	$1,500 minimum	judge	
55-10-301	Motor vehicle offense	individual	$50-175	judge	
55-10-403	First DUI	individual	$350-1,500	judge	
	Second DUI	individual	$600-3,500	judge	
	Third DUI	individual	$1,100-10,000	judge	
	Fourth or subsequent DUI	individual	$3,000-15,000	judge	
55-50-(a)(6)(B)	Use of commercial vehicle in trafficking of drugs	individual	$2,500 minimum	judge	
55-50-405(b)	Multiple driver's licenses	individual	$250-$1000	judge	driver's training course
55-50-405(c)	Failure to notify of suspension	individual	$250-$500	judge	portion to city or county jail to cover incarceration costs
55-50-405(d)	Allow unauthorized employee to drive	employer	Up to $500	judge	
55-50-405(e)	Driving commercial vehicle without proper license	individual	$250-$2,500	judge	
55-50-405(f)	Drive commercial vehicle with out proper license	individual	$10.00	judge	

Appendix F
Warrant Cost Study for Davidson County
1998

Warrant Costs by Department

Warrant Disposition	Department						
	General Sessions	Clerk of Criminal Court	Police	Sheriff	District Attorney	Public Defender	Total Cost
Settlement Docket	$32.28	$8.26	$136.07	$56.00	$3.57	$20.71	$256.89
Settlement Docket with Continuance	$36.92	$11.87	$136.07	$56.00	$6.74	$22.91	$270.51
Trial Docket	$50.48	$14.88	$136.07	$56.00	$16.21	$51.48	$325.12
Trial Docket with Continuance	$73.05	$25.15	$136.07	$56.00	$21.94	$58.74	$370.95
Through Bond Docket with Dismissal Just Prior to Grand Jury	$50.49	$14.88	$136.07	$56.00	$234.61	$172.40	$664.45
Jail Docket	$25.31	$6.71	$136.07	$280.00	$4.66	$9.59	$462.34
Jail Docket with Continuance	$33.86	$10.08	$136.07	$560.00	$8.56	$15.25	$763.48
Through Jail Docket with Dismissal Just Prior to Grand Jury	$25.32	$8.71	$136.07	$3,360.00	$227.15	$132.23	$3,887.48

© 1998, David M. Griffith & Associates, Ltd. Metropolitan Government of Nashville and Davidson County Warrant Costing

Appendix G
Davidson County District Attorneys Office
Warrant Screening Program Statistics
FY 2001

Warrant Screening Summary Report
(For period between 7/1/2000 through 8/30/01)

Statistics				
Approved	Felony		207	
	Misdemeanor		34	
	Police Department Walk Through		33	
		Total Approved	554	16.5%
Declined	Civil		156	
	Insufficient Evidence		1157	
	Mutual Responsibility		24	
	Never Returned		202	
	Not a crime		105	
	Other		315	
	Retaliatory		63	
		Total Declined	2022	60.1%
Referred	Neighborhood Justice Center		770	
	VORP		18	
		Total Referred	788	23.4%
		Grand Total	3364	100%

Compiled by: Victor S. Johnson III, District Attorney General, 20th Judicial District, and Rosemary D. Sexton, Assistant District Attorney, Intake Team Leader

Appendix H
Tennessee Department of Revenue Litigation Tax Return Form

TENNESSEE DEPARTMENT OF REVENUE
LITIGATION TAX RETURN

PRV 401

Filing Period	Account No.	Name of Court
Beginning:		
Ending:	Due Date	

		Column A Gross Tax	Column B Commission Rate	Column B Commission Amount Retained	Column C Net Tax (Gross Tax less commission)
1. Civil or city court cases	X $13.75		X	$	$
2. Cases filed prior to April 1, 1992	X $11.25		X	- $	$
3. Civil chancery or circuit court cases	X $10.00		X	- $	$
4. Adjustments or partial pays			X	- $	$
5. Total - Add lines 1, 2, 3, and 4 in Column C					$
5a. Vehicle operation or metered parking violations	X $1.00		X	- $	$
6. Criminal cases	X $28.50		X	- $	$
7. Fingerprinting	X $1.00		X	- $	$
8. Criminal cases filed prior to April 1, 1992	X $26.00		X	- $	$
9. Adjustments or partial pays			X	- $	$
10. Total - Add lines 6, 7, 8, and 9 in Column C					$
11. CIC offenses	X $26.50		X	per offense = $	$
12. CIC offenses	X $50.00		X	per offense = $	$
13. Child sexual abuse	X$500.00		X	per offense = $	$
14. Adjustments, partial pays, and old cases (includes juror reimbursements)			X	per offense = $	$
15. Total - Add lines 11, 12, 13, and 14 in Column C					$
16. Forfeited appearance bonds in felony cases			X	- $	$
17. Sex offender surcharge			X	- $	$
CASES IN GENERAL SESSIONS COURT OR HEARD BY GENERAL SESSIONS JUDGE					
18. Civil cases	X $1.00		X	- $	$
19. Civil cases	X $3.00		X	- $	$
20. Adjustments or partial pays			X	- $	$
21. Total - Add lines 18, 19, and 20 in Column C					$
22. Gross Tax on assaults: A. Domestic and aggravated assaults; B. Sexual assaults	Total of A & B X $200.00		X	- $	$
ALL CASES HEARD IN ALL COURTS					
23. Taxpayer penalties			X	- $	$
24. Refunds of costs, fines, or forfeitures			X	- $	$
25. Total - Add lines 23 and 24 in Column C					$
26. Order of protection penalties	X $50.00		X	= $	$
27. Attorney's administrative fee			X	- $	$
28. Drug violations as defined in PC 335 of 2003	X $5.00		X	- $	$
29. Alcohol and Drug Addiction Treatment Fee	X$100.00		X	- $	$
30. Adjustment and partial pays of driving while impaired under TCA 55-10-418. ($500 old cases, repealed 6/30/2003)			X	= $	$

31. Net Tax Due - Add lines 5, 5a, 10, 15, 16, 17, 21, 22, 25, 26, 27, 28, 29, and 30 in Column C ..... $
32. Credit - Enter outstanding credit from previous Department of Revenue notices ..... $
33. Penalty - If filed late, add 5% of the gross tax reported in Column A for each 30-day period, not to exceed 25%; minimum penalty is 15.00
34. Interest - If filed late, compute interest at % per annum on the gross tax reported in Column A from date due to date paid ..... $
35. Total remittance amount (Add lines 31, 33, and 34; subtract Line 32 if applicable) ..... $

I declare this is a true, complete, and accurate return to the best of my knowledge.

SIGN HERE ➤

Clerk's Signature Date

FOR OFFICE USE ONLY

RV-R0002301

INTERNET (9-03)

Returns must be postmarked by the due date to avoid the assessment of penalty and interest. Returns must be filed even if no tax is due.

Make your check payable to the Tennessee Department of Revenue for the amount shown on line 32 and mail to:

Tennessee Department of Revenue
Andrew Jackson State Office Bldg.
500 Deaderick Street
Nashville, TN 37242

For more information, call our statewide toll free number at 1-800-342-1003 or dial (615) 532-0600.

REMINDERS

1. Read instructions before preparing this return.
2. Complete all information on reverse side.
3. The Litigation Tax must be remitted from the first moneys collected on each case TCA 67-4-603(c).

IF AN AMENDED RETURN CHECK HERE ➤

INSTRUCTIONS

General: Please complete all sections. When calculating the amount of commission to be retained by the clerk use the rate allowed for your court unless a specific amount or rate is listed. Please retain accurate detailed records of all partial payments for audit purposes and list only a monthly total of collections on each appropriate line. A litigation tax return must be filed each month whether court was held or not.

Amended Return: If this is an amended return, please indicate "Filing Period" and check the appropriate box above.

INTERNET (9-03)

Appendix I
Shelby County's Proposed Litigation Tax Return Form

9757080980920

TENNESSEE DEPARTMENT OF REVENUE
LITIGATION TAX RETURN

PRV 401

Filing Period	Account No.	Name of Court
Beginning: 4/1/02	560005107	LT-CI-SHEL
Ending: 4/30/02	May-15-02	

				Column A Gross Tax		Column B Commission Rate		Amount Retaine	Column C Net Tax (Gross Tax less commission)
1.	Civil or city court cases	618	x $13.75	$8,497.50	x	15.00% =		$1,274.62	$7,222.88
	Delinquent Civil or City court Cases	20	x $13.75	$275.00	x	50.00% =		$137.60	$137.40
2.	Cases filed prior to April 1, 1992		x $11.25	$0.00	x	15.00% =		$0.00	$0.00
	Delinquent cases filed prior to April 1, 1992		x $11.25	$0.00	x	50.00% =		$0.00	$0.00
3.	Civil, chancery or circuit court cases	617	x $10.00	$6,170.00	x	15.00% =		$925.50	$5,244.50
	Delinquent civil, chancery or circuit court cases	16	x $10.00	$160.00	x	50.00% =		$80.00	$80.00
4.	Adjustments or partial pays			$12.50	x	15.00% =		$1.87	$10.63
	Delinquent Adjustment of partial pays			$22.53	x	50.00% =		$11.28	$11.25
5.	Total (Add lines 1,2,3, and 4 in Column C)								$12,706.66
6.	Criminal cases		x $28.50	$0.00	x	15.00%	=	$0.00	$0.00
7.	Fingerprinting		x $1.00	$0.00	x	15.00%	=	$0.00	$0.00
8.	Criminal cases filed prior to April 1, 1992		x $26.00	$0.00	x	15.00%	=	$0.00	$0.00
9.	Adjustments or partial pays				x	15.00% =		$0.00	$0.00
10.	Total - Add lines 6, 7, 8, and 9 in Column C								$0.00
11	CIC offens		x $26.50	$0.00	x	$1.00 per off =			$0.00
12.	CIC offens		x $50.00	$0.00	x	$1.00 per off =			$0.00
13.	Child Sexual abuse		x $500.00	$0.00	x	$1.00 per off =			$0.00
14.	Adjustments, partial pays, and old cases				x	$1.00 per off =			$0.00
15.	Total - Add lines 11,12,13 and 14 in Colum C								$0.00
16.	Forfeited appearance bonds in felony cases				x	10.00% =		$0.00	$0.00
17.	Sex offender surcharg				x	10.00% =		$0.00	$0.00
	CASES IN GENERAL SESSIONS COURT OR HEARD BY GENERAL SESSIONS JUDGE								
18.	Civil Cases		x $1.00	$0.00	x	15.00% =		$0.00	$0.00
19.	Civil Cases		x $3.00	$0.00	x	15.00% =		$0.00	$0.00
20.	Adjustments or partial pays				x	15.00% =		$0.00	$0.00
21.	Total - Add lines 18, 19, and 20 in Colum C								$0.00
22.	Civil cases from July 1, 1988 - Sept. 1, 1990		x $2.00	$0.00	x	15.00% =		$0.00	$0.00
	ALL CASES HEARD IN ALL COURTS								
23.	Taxpayer penalties			$271.25	x	15.00% =		$40.68	$230.57
	Delinquent Taxpayer Penalties			$285.00	x	50.00% =		$142.50	$142.50
24.	Refunds costs, fines, or forfeitures			$0.00	x	10.00% =		$0.00	$0.00
25.	Total - Add lines 23 and 24 in Colum C								$373.07
26.	Order of protection penalties		x $50.00	$0.00	x	10.00% =		$0.00	$0.00
27.	Attorney's administrative fee			$0.00	x	10.00% =		$0.00	$0.00
28.	Net Tax Due - Add lines 5, 10, 15, 16, 17, 21, 22, 25, 26, and 27 in Column C								$13,079.73
29.	Credit - Enter outstanding credit from previous Department of Revenue notices								$2,124.75
30.	Penalty - If filed late, add 5% of the gross tax reported in Column A for each 30 -day period, not to exceed 25%; minimum penalty is $15.00.								
31.	Interest - If filed late, compute interest at 12.50% per annum on the gross tax reported in Column A from date due to date paid								
32.	Total remittance amount (Add lines 28, 30, and 31; subtract Line 29, if applicable)								$10,954.98

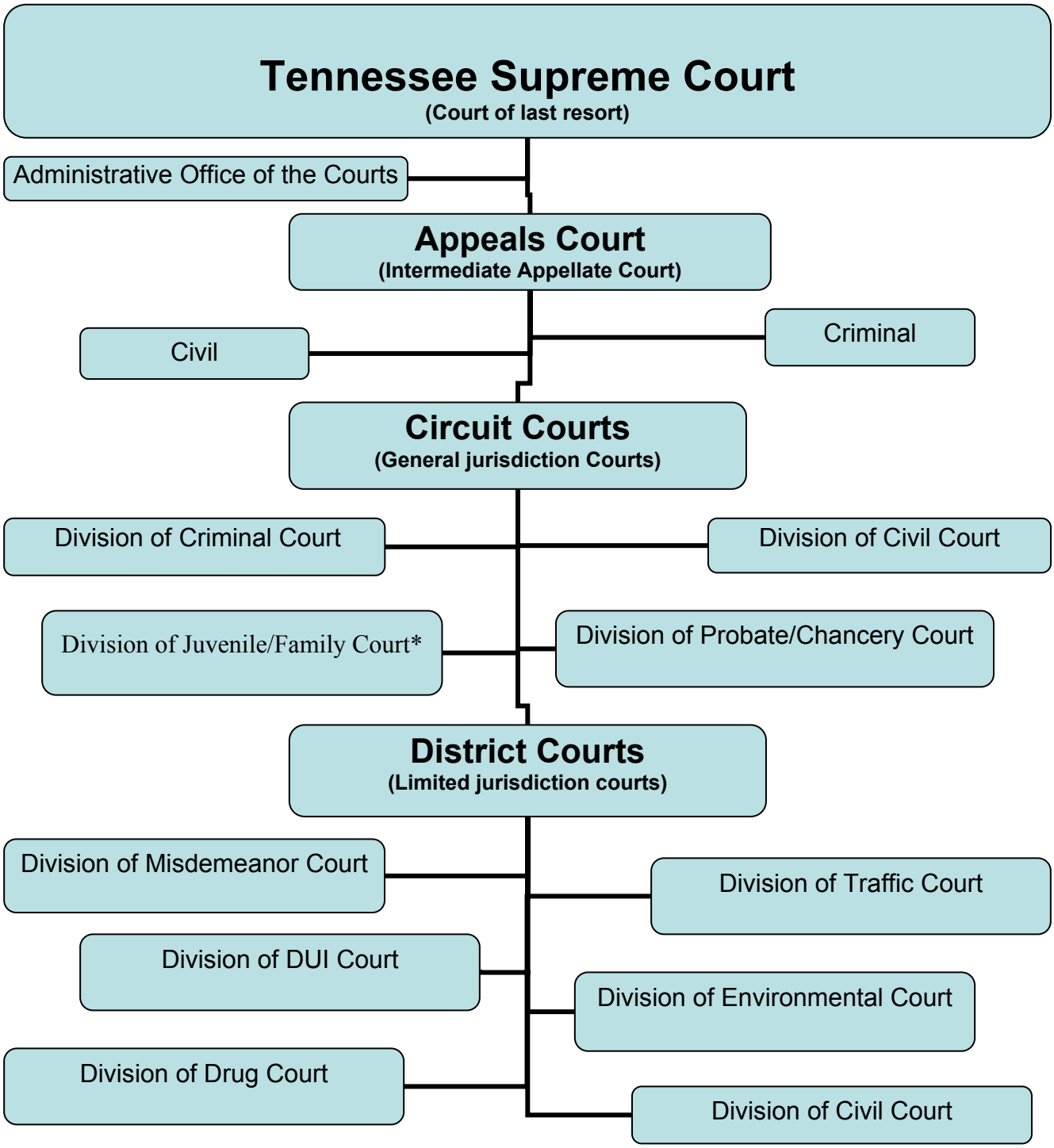
I declare this is a true, complete, and accurate return to the best of my knowledge.

SIGN HERE Clerk's Signature Date 5/13/02

FOR OFFICE USE ONLY

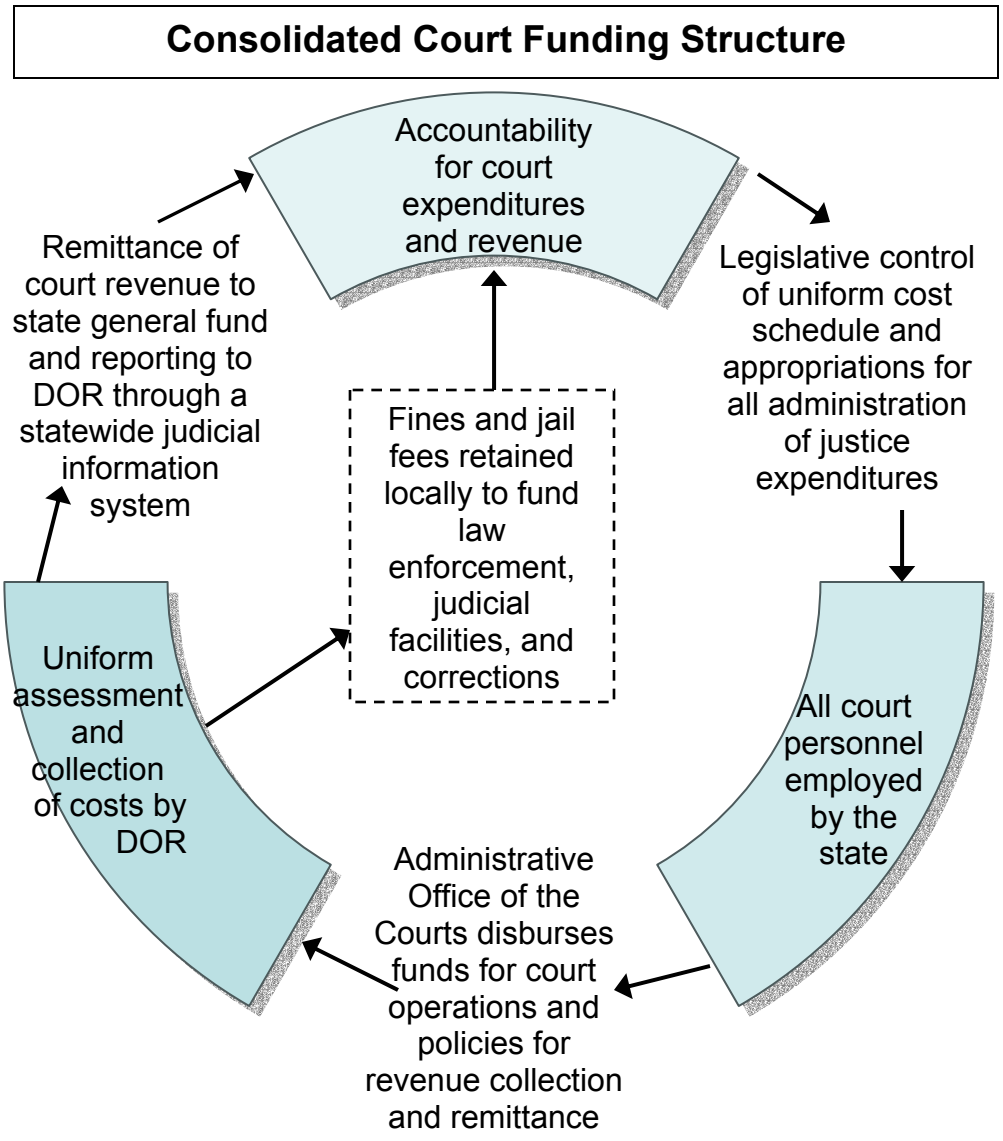
4015605600051071998090119980930000975708098092000000000000000000002

Appendix J
Sample Structure of Judicial Jurisdictional Court Unification



*Juvenile court jurisdiction is under general jurisdiction courts in 69 percent of all states, National Center for State Courts, *1998 State Court Structure*, 1998, Table 18, pp. 318-369.

Appendix K


Consolidated Court Funding Structure
Accountability for court expenditures and revenue
Legislative control of uniform cost schedule and appropriations for all administration of justice expenditures
All court personnel employed by the state
Administrative Office of the Courts disburses funds for court operations and policies for revenue collection and remittance
Uniform assessment and collection of costs by DOR
Remittance of court revenue to state general fund and reporting to DOR through a statewide judicial information system
Fines and jail fees retained locally to fund law enforcement, judicial facilities, and corrections

Appendix L
Interview List

Davidson County
Tim Agent, Court Administrator, Juvenile Court
Claudia Bonnyman, Clerk and Master
Michael Brooks, Administrative Officer, District Attorney Generals Office
Rick Curran, Director of the General Sessions Mental Health Court
Steven Dozier, Criminal Court Judge; Administrative Judge for 19th Judicial District
Walt Draper, Chief Administrative Officer, Criminal Court
James Gray, Metro Davidson County Budget Office
Betty Green, Juvenile Court Judge
Warner Hassell, General Sessions Court Administrator
General Victor S. Johnson, III, District Attorney
Seth Norman, Criminal Court Judge for Drug Court
Harvey Owens, Chief Financial Officer, Criminal Court
Richard Rooker, Circuit Court Clerk (includes Probate and General Sessions)
Rosemary Sexton, Assistant District Attorney, Coordinator of Warrant Screening Program
Larry Stephenson, Trial Court Administrator

Hamilton County
Shaun Johns, Criminal Court Financial Director
Judy Medearis, Circuit Court Clerk
Jim Pilkington, Accounting Officer, General Sessions Court
Jackie Schulten, Circuit Court Judge, Division I
Clarence E. Shattuck, Jr., General Sessions Judge
Gwen Tidwell, Criminal Court Clerk

Knox County
Sharon J. Bell, Chancery Court Judge
Laurence V. Gibney, Director of Court Services, Juvenile Court
John W. Gill, Jr., Special Counsel to District Attorney
Howard Hogan, Clerk and Master
Bobby Ray McGee, General Sessions Judge
Martha Phillips, Criminal Court Clerk
Wheeler A. Rosenbalm, Circuit Court Judge
Mark Stephens, Public Defender

Lake County
Deborah Beasley, Circuit Court Clerk
Phillip Bivens, District Attorney General

Danny Goodman, General Sessions Court Judge
Jim Horner, Public Defender
Russell Lee Moore, Jr., Circuit Court Judge

Madison County
Judy Barnhill, Circuit Court Clerk (including General Sessions)
Lacy Bond, Juvenile Court Clerk
George Googe, District Public Defender
Hugh Harvey, General Sessions Judge
Daryl Hubbard, City Court Clerk, Jackson, Tennessee – City Court with General Sessions Jurisdiction
Christy Little, General Sessions Judge; President of the General Sessions Judges Conference 2001-02
Jaye McBride, Deputy Clerk, Circuit Court
Roy B. Morgan, Jr., Circuit Court Judge
Bob Nichols, Accountant, Juvenile Court
Jerry Woodall, District Attorney General

Moore County
Trixie Harrison, Circuit Court Clerk
William Charles Lee, Circuit Court Judge

Montgomery County
Cheryl Castle, Circuit Court Clerk
Edward Davis, Clerk and Master
Michael Jones, Circuit Court Judge

Pickett County
David Brady, Public Defender, 13th District (includes Pickett County)
Larry Brown, Circuit Court Clerk
Vernon Neal, Chancery Court Judge
Sue Whitehead, Clerk and Master
Ronnie Zachary, General Sessions Judge

Shelby County
George H. Brown, Judge, Circuit Court
James Challenge III, Deputy District Attorney General, District Attorney General's Office
Frank Cooper, Court Administrator, General Sessions Court Clerks Office
Tim James Dawyer, Judge General Sessions Drug Court
Deborah French, Deputy Accounting Administrator, Circuit Court Clerks Office
Vicki Green, Millington City Court General Sessions Judge

Rhonda Harris, Judicial Commissioner, General Sessions Court
Donald Howell, Financial Manager, General Sessions Court Clerks Office
Bill Jamison, Accountant, General Sessions Court Clerks Office
Robert Jones, Deputy Public Defender
Bill Key, Criminal Court Clerk
Tim Killett, Administrator for Chancery Court
Diane Landsee, Millington City Court Clerk
Barry Mitchell, CPO, Juvenile Court
Betty Moore, Judge, General Sessions Court
Phyllis Quartin, Coordinator, Citizens Dispute/Domestic Violence Court
Bill Stewart, Deputy Financial Director, Criminal Court Clerks Office
Van Sturdivant, Chief Administrative Officer, Circuit Court Clerks Office
S.A. "Shep" Wilbun, Jr., Juvenile Court Clerk
A C Wharton, Public Defender
Warren Young, Director of Finance, Criminal Court Clerks Office

Sullivan County
Larry Bailey, Budget and Accounting office
R. Jerry Beck, Circuit Court Judge
Sara Housewrite, Clerk and Master
Richard E. Ladd, Judge, Chancery Court
Klyne Lauderback, General Sessions Judge
Duane Snodgrass, General Sessions Judge
Stephen M. Wallace, Public Defender
Greeley Wells, District Attorney General
Raymond Winters, Circuit Court Clerk

Other State Officials
Art Alexander, Assistant Director, Division of County Audit, Comptroller of the Treasury
Joan Archer, Executive Director of Juvenile and Family Court Judges
Frank Buck, State Representative, Chair, House Judiciary Committee
Billy Center, Director of Information Technology, Council of Juvenile and Family Court Judges
Barbara Clark, Director of Alcohol and Drug Rehabilitation, Tennessee Department of Correction
Connie Clark, Executive Director of the Administrative Office of the Courts
Pam Hancock, Accounting Manager, AOC
Andy Hardin, Executive Director of the Public Defenders Conference
Barbara W. Johnson, Assistant General Counsel, Department of Children's Services
Gary Jones, President, State Court Clerks Association
Wally Kirby, Executive Director, District Attorneys Conference
Reid Linn, Director of Research, Tennessee Department of Revenue
Kim McMillan, State Representative, Member House Judiciary Committee

Judge Thomas Moore, Chair, Judicial Council Subcommittee on Municipal Courts
Marie Murphy, Executive Director, County Officials Association of Tennessee
Linda O'Neal Executive Director, Tennessee Commission on Children and Youth
Susan H. Rushing, Assistant General Counsel, Department of Children's Services
Dianne Schneider, Tax Payer Services, Tennessee Department of Revenue
Gregory Smith, Municipal Court Judge, President of the Tennessee Municipal Judges Association
Carrell Van Deacon, Jr., Chair of the Issues Committee, General Sessions Judges Conference
Greg Worley, Audit Review Manager, Division of County Audit, Comptroller of the Treasury

Contacts in Other States

Anonymous, Research Analyst, Louisiana Supreme Court, Louisiana
Robert Boswell, Budget Director, Administrative Office of the Courts, North Carolina
Melissa Crawford, Deputy Director, Court Service Division, Administrative Office of the Courts, West Virginia
Pam Franco, Information Specialist, Office of Court Administration, Texas
Keisha Howell, Financial Services, North Carolina Administrative Office of the Courts
Jane Martin, Senior Research Associate, Administrative Office of the Courts, Georgia
Kelley Mashburn, Research Analyst, Administrative Office of the Courts, Arkansas
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Kenneth G. Pankey, Jr., National Center for State Courts, Denver, Colorado
Donna Tucker, Court Services Manager, Administrative Office of the Courts, Alabama

Appendix M
Agency Comments

ADMINISTRATIVE OFFICE OF THE COURTS

The Administrative Office of the Courts was given the opportunity to review this report and did not issue any comment.

DEPARTMENT OF REVENUE RESPONSE TO COMPTROLLER LITIGATION TAX RECOMMENDATIONS

RECOMMENDATION 1: The Department of Revenue should require that all courts collecting state litigation tax keep a record of the amount of tax assessed, amount waived, and amount paid, and report the amount and percent collected compared to the amount assessed to the Department of Revenue quarterly.

RESPONSE:
Complexity of tax apportionment: The apportionment is established by legislative action and not determined by DOR. Most additions to the litigation taxes were enacted to benefit a certain organization or cause. The DOR is only responsible for distribution of funds according to legislative mandates. The DOR has had numerous meetings with the court clerks and their representatives to try and simplify the litigation tax return, but have been unable to resolve the technical reporting issues.

RECOMMENDATION 2: The Department of Revenue should develop an information system to accurately track court revenue and verify that the state is receiving its share of litigation taxes from each county.

RESPONSE:
Inaccurate revenue collections by counties: The court clerks are responsible for reporting litigation tax collections to DOR. DOR cannot monitor every court action to ensure that proper fees are collected and reported for each litigation case. We are only able to accept the court clerks' remittances as reported on the tax return.

The litigation tax return has been changed on numerous occasions to accommodate additional fees enacted by the legislature and to include interest for collections from other state agencies. Tax returns and instructions have been revised and provided to the clerks to improve their reporting accuracy. The DOR has attempted to make the reporting of litigation tax as easy as possible based on the complexity of the law.

The DOR's Revenue Integrated Tax System (RITS), used to administer and collect all taxes, is programmed to allocate litigation tax collections based on reporting and allocation requirements of the law. Anytime a law change occurs affecting litigation taxes in TN it requires hundreds of hours of programming resources to implement the change. In 1999, 2002 and 2003 litigation tax changes required the following resources,

respectively: 265 hours and $9,991; 200 hours and $18,723; and, 420 hours and $23,938. The court clerks then must make revisions to their software systems.

GENERAL NOTES: Both of these recommendations place onus on the DOR for implementing certain issues that are normally legislated as policies by the General Assembly. Generally, such issues as these two recommendations are amended into law by the General Assembly. The DOR would willingly comply with any General Assembly mandates and policies that improved the litigation tax collection process—including developing a new information system or necessitating that courts accurately report their collections and maintain proper records allowing the Comptroller to audit local courts and track their collections by local jurisdiction.

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