

The Supreme Court of Ohio

Budget Testimony on behalf of the Supreme Court of Ohio and Ohio's Judiciary

before the

Ohio House of Representatives Finance and Appropriations Committee Transportation Subcommittee

Tuesday, March 1, 2017

Chairman McColley, Ranking Member Reece, and Members of the Subcommittee:

On behalf of Chief Justice Maureen O'Connor, the justices of the Supreme Court of Ohio, and the judges of Ohio, I want to thank you for this opportunity to testify on the proposed 2018-2019 biennium budget for the Court. I am Michael Buenger, the Administrative Director of the Supreme Court. Also here with me today are Ronda Carver, the Director of Fiscal Resources; Craig R. Mayton, Chief Legal Counsel;

Andrew Bowsher, Judicial and Legislative Affairs Counsel; and Brian Farrington, who heads our statistics unit at the Court.

I. Background

As we all know, a budget is the allocation of limited resources to address current or emerging policy challenges facing the state. I would, therefore, like to begin my remarks by providing a recap of some of the activities of the Supreme Court of Ohio in the current biennium and what the Court and judges across the state have done in these last two years to confront some of the most challenging issues facing us. When people think of courts, they often think of judges deciding cases and not much more. Indeed, in a recent conversation with a professor at Ohio State University where I described the judiciary's efforts to combat the opioid poisoning epidemic he remarked, "I had no idea that judges were that involved. I thought all they did was decide cases." While deciding cases remains the principal and historical purpose of courts, judges – particularly state judges – are increasingly required to oversee a range of programs and provide a range of services to the public that greatly intertwine with deciding cases. What might appear in a statistic as a single felony case, or a single juvenile case, or a single divorce case can entail years of oversight, direction, and support.

Today courts in this state find themselves at the center of many of society's most pressing problems for a simple reason: it is to courts that we ultimately entrust the responsibility and power to render decisions that can affect peoples' lives with finality. For example, when a judge enters an order giving custody of a child to a children's protective service that order carries with it the weight of the state; it not only affects the child in question but can set a standard for how children in like circumstances should be handled in the future. This General Assembly has the responsibility to adopt the rules that guide us and the standards for what happens when people do not follow the rules. But it is in our courts that these rules come to life and it is in our courts that these rules receive clarity in real-time, everyday settings. Like no time in the past, we have come to expect the judiciary to wear multiple hats. Today resolving controversies entails much more than a decision.

In the last three decades in particular, we have witnessed an explosion of problems that the judiciary is expected to help address. Correspondingly, we have witnessed a wave of new programs and approaches to deciding cases – often initiated by the courts themselves. Drug courts began not through legislative mandate but because judges were seeing increasing numbers of people for whom the combination of judicial oversight, treatment and threat of potential incarceration proved more effective than merely jailing a substance abuser. As a result, many lives have been

saved. But drug courts are not the only specialized approach the Ohio judiciary employs to reach more just and lasting outcomes. This table gives you a greater sense of how our courts are addressing emerging issues and adapting techniques developed in other specialized contexts to confront new challenges:

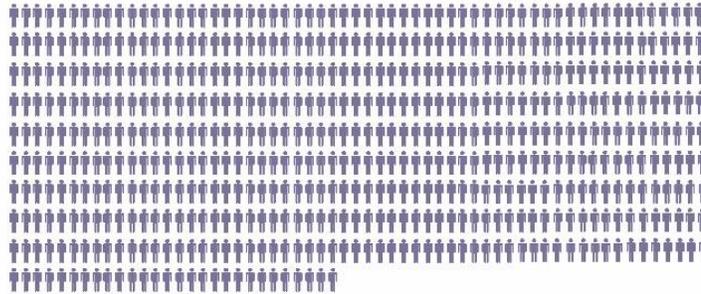
TREATMENT-RELATED PROGRAMS	
Adult Drug	96
Family Dependency	24
Veterans Treatment	21
Juvenile Drug	7
O.V.I.	7
Substance Abuse/Mental Illness	2
Total	157
OTHER PROGRAMS	
Mental Health	39
Reentry	12
Domestic Violence	6
Human Trafficking	4
Child Support Enforcement	2
Truancy	2
Education	1
Sex Offender	1
Total	67
ALL SPECIALIZED DOCKETS	224

In contrast to the federal courts, state judiciaries deal with almost every imaginable type of legal and human conflict from serious crimes, to large-scale business disputes, to the break-up of families, to children in trouble, to mental health and veteran issues, and everything in between. In America, justice for ordinary citizens plays out in state courts, almost 100,000,000 times a year nationally; almost 3,000,000 times a year in Ohio. In a typical day in Ohio, our courts hear over 11,000 cases across the spectrum of case types. The chart below gives you a visual picture

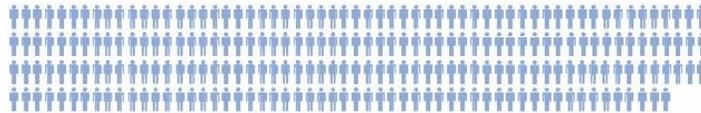
of what a typical day looks like in Ohio's common pleas, municipal, and county courts.

On a **typical day** in 2016, Ohio courts heard:

5,587 Traffic Cases



2,334 Criminal Cases



1,816 Civil Cases



806 Domestic Relations Cases



458 Juvenile Cases



337 Probate Cases

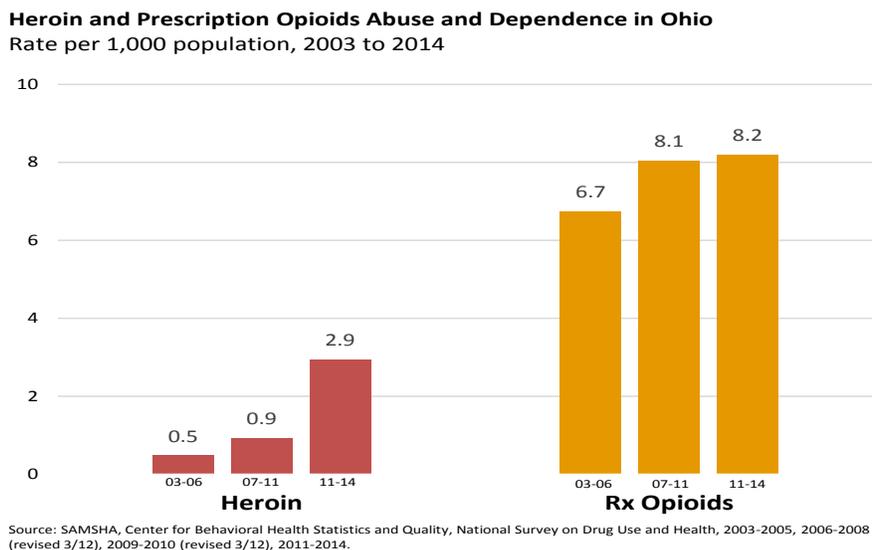


 = 10 cases

But this chart does not get to the issue of the impact of emerging issues on judicial resources. What this chart does demonstrate are the demands on the system from a quantitative perspective but not a qualitative perspective. We cannot meet the demand for high quality justice without exceptionally qualified judges and court personnel. Nor can we meet that demand without the support of the General Assembly, the Governor and other state and local officials. Respect for court decisions is the key to their effectiveness and enforceability.

II. Opioid Epidemic

One of the most critical issues facing the state and Ohio's courts involves the opioid poisoning epidemic. As the following chart demonstrates, the state has made some progress in addressing prescription opioid abuse by slowing down the rate of prescription opioid abuse, but now faces the challenge of shifting supply towards more illicit opioid use.



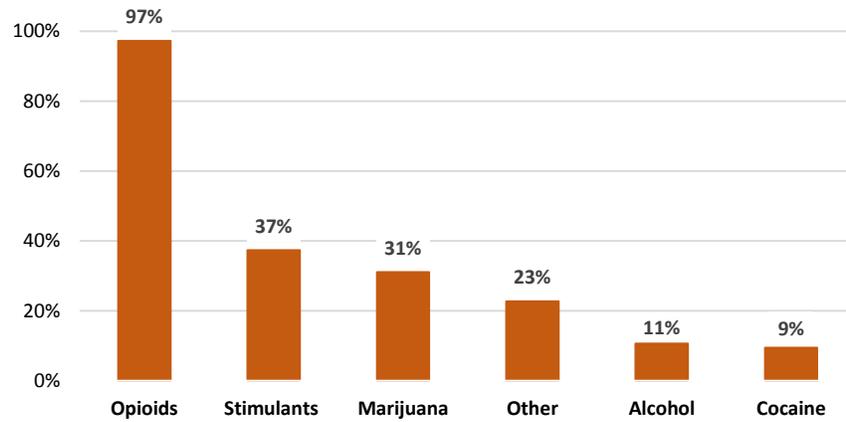
We are seeing the impact of this shift in our courts as illicit opioids displace prescription opioids at the root of the epidemic. In response, the Supreme Court, working directly with drug courts and through its Commission on Specialized Dockets, is piloting programs to address this problem. The Ohio judiciary has led the nation in developing Medication Assisted Treatment (MAT) protocols for use in drug courts. We are expanding drug courts and drug court programs throughout the state. Currently, the Ohio judiciary operates 224 specialized dockets with almost 30% of our judges involved in such programs. Over 150 of those programs are specifically targeted at substance abuse. We are piloting family dependency courts and fentanyl testing in drug court programs. And we are working with our partners throughout state government to ensure treatment options expand and are available. We know that long-term opioid abuse changes brain chemistry amplifying the need for both treatment and accountability systems that move people beyond addiction.

The effects of the opioid epidemic are not limited to addicts. As the following chart demonstrates, the opioid poisoning epidemic hits families hard, particularly children. The Supreme Court partnered last year with the Public Children Services Association of Ohio in a multi-agency study to assess this impact. That study

concluded that 97% of Ohio’s county child welfare directors reported opioid abuse a serious problem in their communities.

Widespread Impact of the Opioid Crisis on Ohio's Children

Percentage of county child welfare agency directors in 2016 who rated the abuse of the following substances as a serious problem in their community

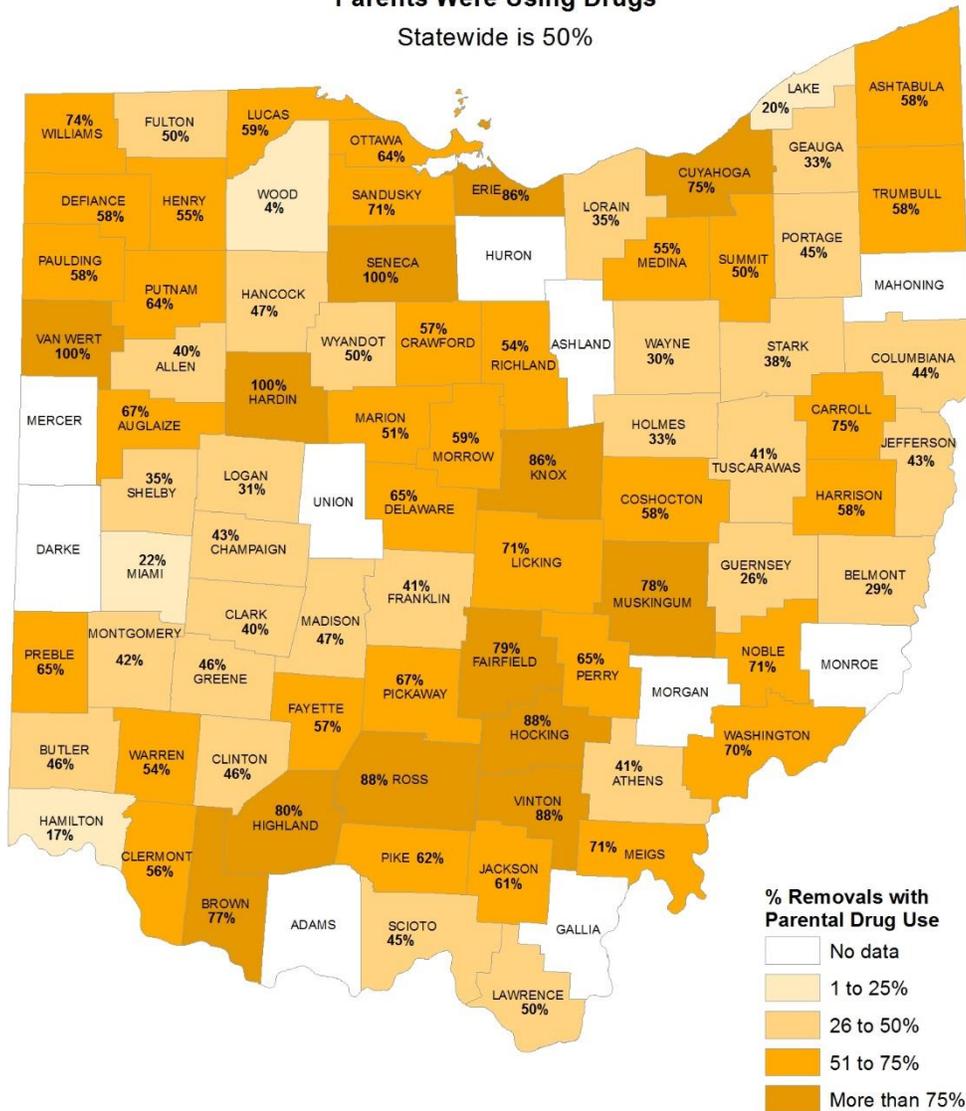


Source: Public Children Services Association of Ohio, survey of county child welfare agency directors, April 2016 (N=75).

And as this map indicates, substance abuse is either a major or the major cause for children being removed from their homes.

PCSAO Survey Regarding Opiate Epidemic Impacts
**Percent of Children Entering Custody in 2015 Whose
 Parents Were Using Drugs**

Statewide is 50%



SOURCE: Public Childrens Services Association of Ohio, survey of public childrens services agencies, April 2016

But lest we think that the opioid epidemic is the only pressing substance abuse issue, I would only note the second-highest bar on the above chart reflects serious concerns over stimulant abuse. The National Emerging Threat Initiative of the National High

Intensity Drug Trafficking Area (HIDTA) Assistance Center reports that seizures of stimulants is now on the rise in several states. Mr. John Eadie at the Center opines that some of this is the result of the widespread availability of prescription stimulants, some may be attributed to the counterfeiting of these drugs, and some may be attributed to the need opioid abusers have to counter-act the depressive side effects of constant opioid use.

This, of course, is not a problem isolated to Ohio but is rather trans-border in scope. Recognizing this, in August 2016, Chief Justice O'Connor hosted in Cincinnati a Regional Judicial Opioid Initiative (RJOI) summit, the first of its kind in the nation. Teams from a nine state region composed of various disciplines gathered to discuss and explore how courts, treatment providers, executive branch officials and others might work more effectively across state lines to coordinate our response to this epidemic. While the epidemic is particularly acute in our state, its regional and national roots cannot be underestimated. Among the RJOI recommendations were the following:

- Improve sharing of controlled substances prescription drug information on offenders participating in a drug court program. We want to prevent people from playing the borders to obtain opioid and other prescriptions to ensure that offenders are fully compliant with drug court program requirements.

- Study ways that we can improve the rapid but safe placement, if necessary, of young children with appropriate caregivers in other states when their parents are either arrested or hospitalized for opioid poisoning. Getting the children into safe and familiar environments, even if across state lines, minimizes trauma and could reduce costs in the foster care system. Currently there are county-to-county agreements under the existing Interstate Compact on the Placement of Children. We are exploring to see if there is a more holistic approach that is not dependent upon hit-and-miss agreements between border counties.
- Develop a set of regional best practices for courts, testing facilities, and treatment providers. These regional best practices could then be used to assure judges in other states that a testing or treatment facility’s practices meet with the highest standards and could constitute an appropriate placement for treatment or testing. I am pleased to announce that with the support of the Substance Abuse and Mental Health Services Administration (SAMHSA), representatives of RJOI will be convening as a “policy academy” in Cincinnati to work through these very challenging issues.
- Obviously, to accomplish these goals, resources are needed. The chief justices of the states involved in the RJOI have signed a joint letter to the U.S. Department of Justice urging support for this project moving forward.

Several federal officials see the RJOI as a blueprint for addressing substance abuse in other areas of the nation.

The battle against substance abuse in all its forms will be a long battle. But Ohio's courts and judges are not simply disposing of cases. The Ohio judiciary is transforming lives, adapting to emerging challenges, and seeking to ensure that justice is not simply a mechanized procedure but is rather tailored to the facts and circumstance of each person that appears in court.

II. Fine, Fee and Bail Reform

While confronting the opioid poisoning epidemic is a major focus, there are other areas of pressing concern as well. One area that has taken center stage nationally is the issue of fine, fee and bail reform. This issue has raised to national prominence in the light of an investigation by the U.S. Department of Justice into the municipal police and court in Ferguson, Missouri. In its investigation, the U.S. Department of Justice found that the Ferguson municipal court acted "not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue. The impact that revenue concerns have on court operations undermines the court's role as a fair and impartial judicial body." In short, officials' hyper-focus on generating revenue came at the expense of the public's trust and confidence in the fair administration of justice. Well before Ferguson, Ohio was a leader in this area

producing in 2014 the nation's first judicial bench card to help judges comply with constitutional requirements. It remains a leader today with Chief Justice O'Connor co-chairing a national task force looking into fine, fee and bail reform.

Although Ohio has avoided this problem to the dimensions experienced in Ferguson, we are not immune from it. Judges report that they face increasing pressure from local officials to raise more revenue in the form of fines and fees, including revenue for court operations. This pressure has three unintended consequences. First, at the heart of the American justice system is the principle that everyone must have access to independent and neutral judges. Judges must be free to rule on a case based on the law and the facts. Everyone has the right – not luxury – to be treated fairly, to have an impartial judge rule on their case, to have the law, not other considerations, drive judicial decisions. When judges face pressure to generate revenue from court cases to fund government, the public's right to impartial justice can be overridden by governments' interests in generating more revenue to fund operations. This is precisely what happened in Ferguson, Missouri. The purpose of the court there was coopted. Courts are not intended to be revenue centers; they are intended to be justice centers.

Second, pressure that courts become self-funding entities can create a system of justice that is premised on a “pay-as-you-go” model, not the principle that courts and the administration of justice are a fundamental and general obligation of government. If the existence of a court is dependent upon self-funding, then we run the danger of creating a system of built-in incentives for courts to use judicial power for self-preservation not the promotion of justice. Again, we have to avoid this tendency in Ohio. But as in Ferguson, the possibility of such a system is not purely theoretical. In that city’s municipal court, the “close-calls” were not so close because the very existence of the court was dependent upon how much revenue it could generate.

Finally, the reliance on court cases as revenue sources can distort the justice system by, in effect, creating two justice systems – one for those with means and the other for those without means. In Ferguson, for example, we saw the court rely on a combination for fee increases and warrants to coerce individuals to pay even the smallest fines. Often times those with means were able to pay and walk away. However, because of the coopting of the system towards revenue generation, those without means would often find themselves subject to an ever-escalating series of fees. A simple housing violation could quickly escalate into thousands of dollars in fees when an individual failed to pay a fine immediately. The court also used

incarceration as a tool resulting in a host of economic consequences such as job loss. Unequal justice is not the goal but it can be a result when the system places revenue generation ahead of the equal and equitable administration of justice.

To address this problem, the Court has undertaken a review of fine, fee and bail practices here at home. Working with municipal court judges and the Association of Municipal/County Court Judges of Ohio, the Court continues to update training, bench cards and guidance to judges and courts. The existence of the Task Force on Fines, Fees, and Bail that is co-chaired by Chief Justice O'Connor signifies the commitment of this nation's chief justices and court administrators to promote practices that align with constitutional principles. Again, the role of courts is not to be centers of revenue but centers of justice. We need your help in promoting that principle because in the end we all benefit from a capable and impartial justice system whose actions are driven by the law, not other considerations.

III. Access to Justice

In 2014, Chief Justice O'Connor appointed a task force to examine access to justice. The purpose of this task force was to address the challenges facing access to the civil justice system because, in the words of the charge, "open and accessible courts are a hallmark of a civilized society." The task force produced 11 recommendations to

improve access to civil justice. Among the most important recommendations that the Court has adopted are the following:

- Create a civil justice fund to provide innovation grants to civil legal aid providers and others. Revenue for the fund would come from two sources: (1) a voluntary \$50 registration check-off contribution from Ohio attorneys; and (2) an increase in the *pro hac vice* fee from \$150 to \$300, with \$150 being deposited in the Court's Civil Justice Fund. This is a fee that out-of-state attorneys pay to represent clients in Ohio's courts.
- Adopt a new attorney registration status to encourage members of the bar no longer engaged in the active practice of law to join with law schools and civil legal aid organizations and provide pro bono services.
- Revise Ohio's bar admissions to enable spouses of active duty military personnel to practice law in Ohio during the period of their spouse's military assignment.

IV. Working More Effectively Together

Under the constitution, the Supreme Court has general superintending authority over all courts in the state. This superintending power has two aspects to it. First, the Court is charged with developing and setting the basic operational rules for the courts. Second, writing rules is not enough. The Court is also keenly dedicated to supporting courts throughout the state as they administer justice. I mentioned one

example of this when I made reference to the Commission on Specialized Dockets.

In addition to that effort, the Supreme Court is also active in the following areas:

- Its Case Management Section works with courts to improve case management practices in order to reduce the time it takes for decisions to be made. The Court promulgates case processing timeline standards and supports those standards by working directly with courts around the state.
- The Court's Children and Families Section is engaged in a range of matters affecting domestic relations, juvenile and probate courts. Among the programs currently overseen by this section are efforts to promote family dependency drug courts, to improve guardianship practices, and to advance best practices in the foster care system.
- The Court's Judicial and Education Services Division works with judges around the state in addressing emerging issues, coordinates Court services to the judiciary including the assignment of visiting judges, and supports the Ohio Judicial College. Of particular note is the Supreme Court's direction that the Ohio Judicial College develop programs for both attorney and lay guardians to ensure that that guardians are fully aware of their legal obligations and the interests of their wards are fully protected. To date, we have trained more than 14,000 guardians, from June 2015 to December 2016.

- Through the Court's Dispute Resolution Section, the Court promotes the use of mediation to resolve parts or all of a case. We know that mediation does not always work. However, we also know that where it does work the parties to a dispute are often more satisfied with the outcomes and, therefore, compliant with the final decision. Success mediation efforts also save taxpayers by enabling those in dispute to avoid costly litigation. This section also offers a mediation service to local governments that may find themselves involved in disputes.
- The Supreme Court's information technology staff has been working on a pilot project that brings together Union and Hocking counties in a case management procurement process. By coordinating and leveraging multi-county procurement, we hope to replace or upgrade aging case management systems in a more cost-effective manner. We have several counties in this state that due to their financial circumstances are unable to procure case management systems in a cost-effective manner. Our hope is that by using a multi-county procurement model we can contain costs while providing counties with the latest software technology.
- In 2015, the Court adopted a new rule of superintendence that requires all courts in the state to join the Ohio Courts Network (OCN). This network is a clearing house for criminal justice information enabling courts and

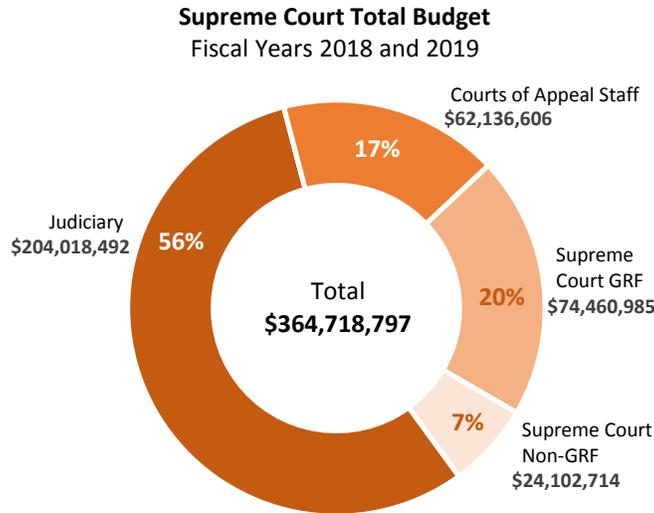
probation authorities to gain a greater understanding of an individual's history with the courts. And working with the Attorney General's Office, the OCN has become the principal gateway for reporting criminal history information to the Bureau of Criminal Investigation thereby making reporting more near-time, reducing inconsistent reporting, and eliminating paper.

V. The Budget

The Supreme Court's budget is relatively small in the grand scheme of the overall state spending, accounting for 0.253% of the state budget in the upcoming biennium. In the upcoming biennium period, the Court has submitted a total budget request of \$364,718,797. The 2018-2019 biennium budget breaks down as follows:

- 56% or \$204,018,492 is for statutorily mandated salaries;
- 17% or \$62,136,606 covers the salaries of employees of the courts of appeals;
and
- 27% or \$98,563,699 covers the costs of the Supreme Court divided between General Revenue Funds and other funds such as grants.

The following chart provides a picture of how the appropriations are allocated in the upcoming biennium.



The Court's 2018-2019 biennium budget represents a total increase of \$14,954,378 over the current operating biennium. Of this increase, \$12,438,436 is continuation for funding changes to O.R.C 141.04, as amended by the 131st General Assembly.

Another way of looking at the budget is to compare the personal service expenses with the operational expenses. Of the Court's total request, 89% or \$325,159,211 is to pay for personal services, the bulk of which is statutorily required. Included in the operational expenses are the costs of maintaining and running the Ohio Judicial Center, the costs of the OCN mentioned earlier, almost \$6,000,000 in technology grants to local courts, and federal and other grants, such as the federal Court Improvement Program (CIP), that we receive and largely pass through to support local court operations.

So in the upcoming biennium, the Court has submitted a budget that is largely flat with the exception of increases mandated by statute or as required to cover increased costs of employee benefits and other program charge-backs as required by the Department of Administrative Services or the Office of Budget and Management. Aware that the state is facing a challenging fiscal environment, the Chief Justice directed that we prepare a conservative budget asking for only those things that are mandated or absolutely necessary. The Court's core budget remains largely the same as in the last biennium.

VI. Conclusion

On behalf of Chief Justice O'Connor, the justices of the Supreme Court, and the judges of the state, thank you for the opportunity to present this budget. I am pleased to answer any questions you might have.