

The Supreme Court of Ohio

Budget Testimony on behalf of the Judiciary/Supreme Court

before the

Ohio Senate Subcommittee on Higher Education

Tuesday, May 9, 2017

Chairman Gardner, Vice-Chair Williams, 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 Stephanie Hess, the Court's Deputy Administrative Director, Ronda Carver, the Director of Fiscal Resources, and Andy Bowsher, Judicial and Legislative Affairs

Counsel. In the interests of time, my testimony before you will be shorter than the written testimony submitted.

I. Background

As we all know, a budget is the allocation of resources to address current or emerging policy challenges. And we fully recognize that the General Assembly is facing the challenge of doing so in circumstances that are less than optimal. I would, therefore, like to begin my testimony by outlining some of the activities, projects, and undertakings the Supreme Court of Ohio and judges across the state have made in current biennium to address some of the most challenging issues facing our state, all which are being implemented and will continue to be implemented with a largely flat budget request.

When people think of courts, they often think of judges deciding cases in courtrooms and not much more. Indeed, in a recent conversation with a professor at the Ohio State University with regards to the judiciary's efforts to combat the opioid poisoning problem I was told, "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 do much more. Courts are now required to oversee and provide a range of programs and services to the public that 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 by a court.

Today, courts in this state find themselves on the front lines 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 effect peoples' lives *with finality*. That term "finality" is important in understanding what courts do in rendering justice. Frequently, the role of a court often does not end with one decision. For example, when a judge enters an order giving custody of 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. It can also entail years of judicial oversight and involvement in that single case; that is, in that child's life.

Thus, this General Assembly has the tremendous responsibility to adopt the laws that guide all of us and the broad standards for what should happen when people do not follow these laws. But unlike any time in the past, judges today are called upon to not just decide cases but also to work at addressing the underlying issues that often produce cases. We have come to expect judges to wear multiple hats in

addition to wearing the traditional hat of deciding cases. Today, resolving controversies entails so much more.

In the last three decades in particular, we have witnessed an explosion of problems that the state judiciary is expected to help address. Corresponding to that explosion, we have also witnessed a wave of new programs and innovative approaches to handling cases designed to confront those problems. Drug courts, for example, began not through legislative mandate, but because judges in this state and elsewhere were seeing increasing numbers of people for whom the combination of judicial oversight, treatment, and threat of potential incarceration proved more effective in changing long-term behavior than merely jailing someone and moving on to the next case. As a result, many lives have been saved.

Drug courts are not the only specialized approach the Ohio judiciary employs to reach more just and lasting outcomes. The following table gives you greater insight into 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

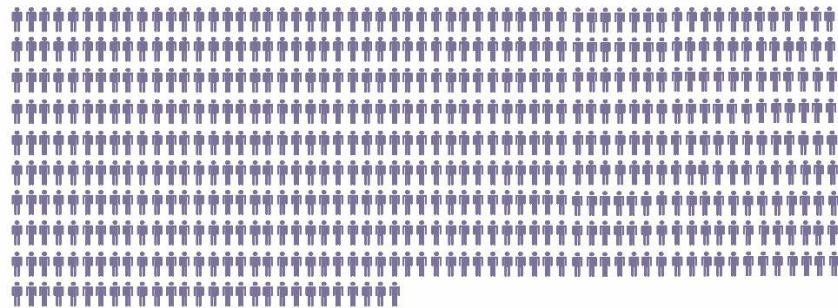
These specialized dockets evidence the changing nature of the judicial process and the resources needed to meet the public's need.

Moreover, 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. Justice in America 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. The following chart 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

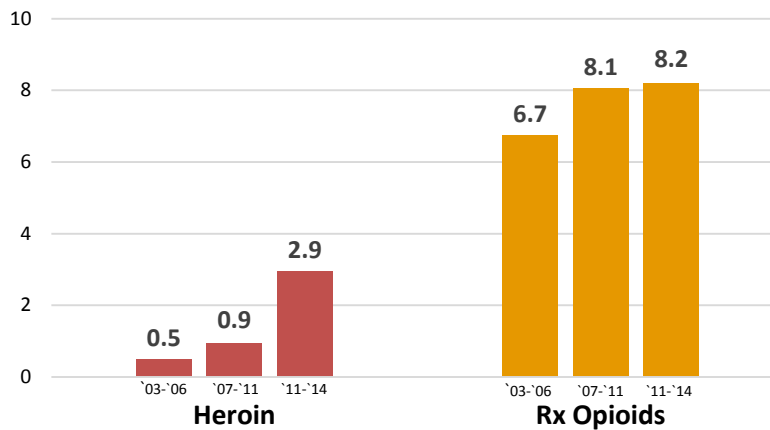
But this chart does not get to the issue of the impact of emerging issues on judicial resources, a matter I will address in a few minutes. What this chart does demonstrate are the significant demands on the system. And we cannot meet the demand for high quality justice without exceptionally qualified judges and court personnel, and 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

Perhaps the most critical issue facing the state and Ohio's courts involves the opioid poisoning epidemic. As the following chart demonstrates, the state has made considerable progress in addressing prescription opioid abuse, but now faces the challenge of shifting supply towards more illicit opioid use or other types of drugs.

Heroin and Prescription Opioids Abuse and Dependence in Ohio

Rate per 1,000 population, 2003 to 2014

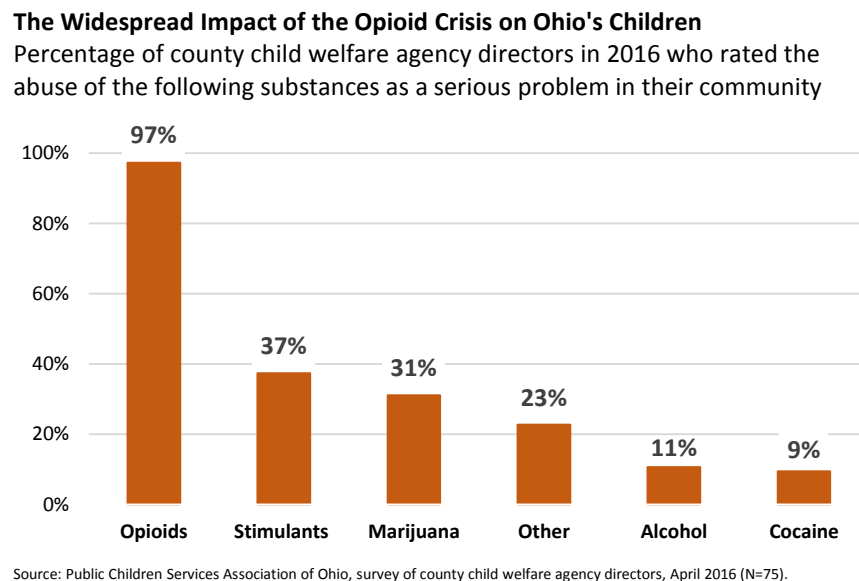


Source: SAMSHA, Center for Behavioral Health Statistics and Quality, National Survey on Drug Use and Health, 2003-2005, 2006-2008 (revised 3/12), 2009-2010 (revised 3/12), 2011-2014.

We are seeing the impact of this shift in our courts as illicit opioids displace prescription opioids. In response, the Supreme Court, working both 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. Approximately 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

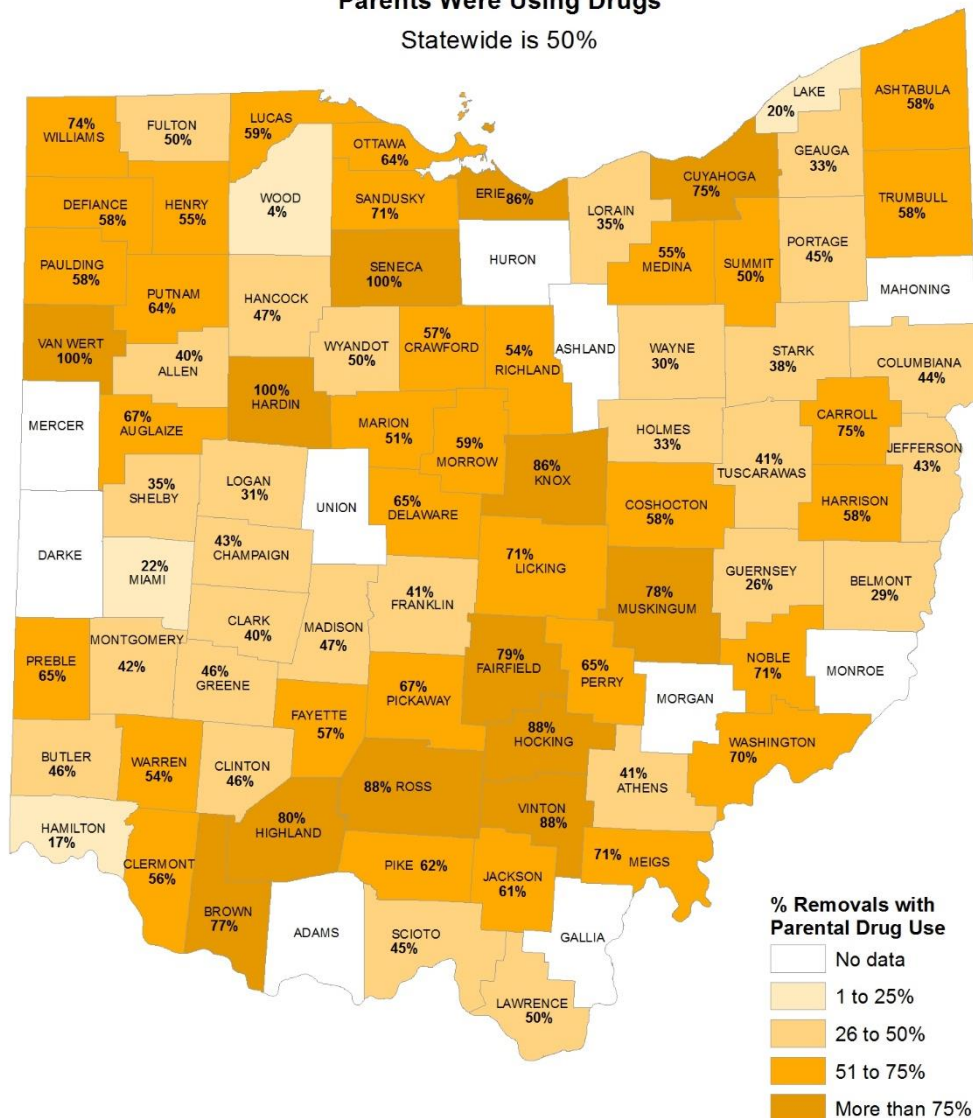
addiction. And to be clear, just because a court does not call itself a drug court does not mean that it is not confronting the problem and working to solve it.

The opioid poisoning epidemic is not limited to addicts. As the following chart demonstrates, the opioid poisoning epidemic hits families hard, particularly children. The Supreme Court partnered in a multi-agency study that concluded that 97% of Ohio's county welfare directors reported opioid abuse a serious problem in their communities.



And as this map indicates, substance abuse is a major cause for children being removed from their homes and placed into custody.

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 note the second highest line on the previous chart, which is 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. The widespread availability of prescription stimulants and the need some opioid abusers have to counter-act the depressive side effects of constant opioid use is an emerging problem.

This, of course, is not a problem isolated to Ohio, but is rather trans-border in scope. Recognizing this, in August of 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 of young children 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, 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 long. 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 circumstances 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 practices. This issue has risen 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' 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 the nation's first judicial bench card to help judges comply with constitutional

requirements. It remains a leader today with Chief Justice O'Connor chairing a national task force looking into fine, fee, and bail practices.

Although Ohio has avoided this problem, we are not immune from it. Judges report that with increasing regularity they face pressure from local government officials to increase revenue or find ways to self-fund their court operations. This pressure has two unintended consequences. First, at the heart of the American justice system is the principle that everyone must have access to independent and neutral judges. When judges face pressure to generate revenue from court cases to fund government, the public's right to impartial justice can be displaced by governments' interests in generating more revenue to fund operations and programs. This is precisely what happened in Ferguson, Missouri. The purpose of courts is not to be a revenue center; it is to be the peoples' justice center.

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 on the understanding that access to justice is 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 increasing 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 contortion of the system, 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 over 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 Municipal

Court Judges' Association, the Court is updating training, bench cards, and guidance to judges and courts. Chief Justice O'Connor is co-chair of a national task force seeking to promote practices that align with constitutional principles. 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 implemented are the following:

- Created a civil justice fund to provide innovation grants to civil legal aid providers and others. Revenue for the fund comes 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 appear in Ohio's courts.

- Adopted 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 to provide pro bono services.
- Revised Ohio's bar admissions to enable attorney 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 Families and Children Section is engaged in a range of matters affecting domestic relations, juvenile, and probate courts. Among the programs currently being 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.
- Through the Court's Dispute Resolution Center, the Court promotes the use of mediation to resolve parts or all of a case. We acknowledge that mediation does not always work. However, we also are aware that when mediation is successful, the parties to a dispute are often more satisfied with the outcomes and, therefore, compliant with the final decision. 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 Identification and 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 budget. Of the Court's total biennium budget, \$204,018,492, approximately 56%, is allocated for statutorily mandated salaries. The remainder of the Court's budget covers the salaries of Court employees, the employees of the courts of appeals, and the operational expenses of the Court. Of the total biennium budget,

\$74,460,985, approximately 20%, covers the expenses of the Supreme Court, and this includes help to local courts such as the support we provide through the Court Automation Fund.

In the upcoming biennium, the Court has submitted a budget that is largely flat with the exception of increases mandated by statute or required by the Department of Administrative Services (DAS). We have requested no money for new programs. The Court's core budget remains largely the same as in the last biennium.

VI. Conclusion

In summary, throughout the system we are working very hard to confront some of our state's most intractable problems. But, as with most endeavors, we cannot do this without your past, present, and future support. Thank you for the opportunity to testify on the Supreme Court's budget request.