



Michigan Trial Court Funding Commission

Final Report Review

September, 2019

Trial Court Funding Commission (TCFC) Creation

TCFC created under Act 65 of 2017:

- Cunningham case ruling: Courts can impose costs in criminal cases only if authorized by statute
- Legislative response: Authorized trial courts to levy costs, but this statute includes a sunset provision that ends this authority on October 17, 2020 (Act 64 of 2017).
- TCFC created: Under Act 65 of 2017, the TCFC is created to review and make recommendations to resolve issues regarding funding for Michigan's trial courts.
- Cameron case: Pending in the Michigan Supreme Court in 2018 challenged the constitutionality of the legislative response to Cunningham; court imposition of costs on criminally convicted.

TCFC Creation

TCFC charged with the following objectives:

- Review and recommend changes to the trial court funding system
- Review and recommend changes to the methods by which the courts impose and allocate fees and costs
- Suggest statutory changes necessary to achieve recommended changes
- Complete a final report that includes lesson learned and recommendations by September 28, 2019
- Interim Report Issued March 28, 2019

TCFC Actions

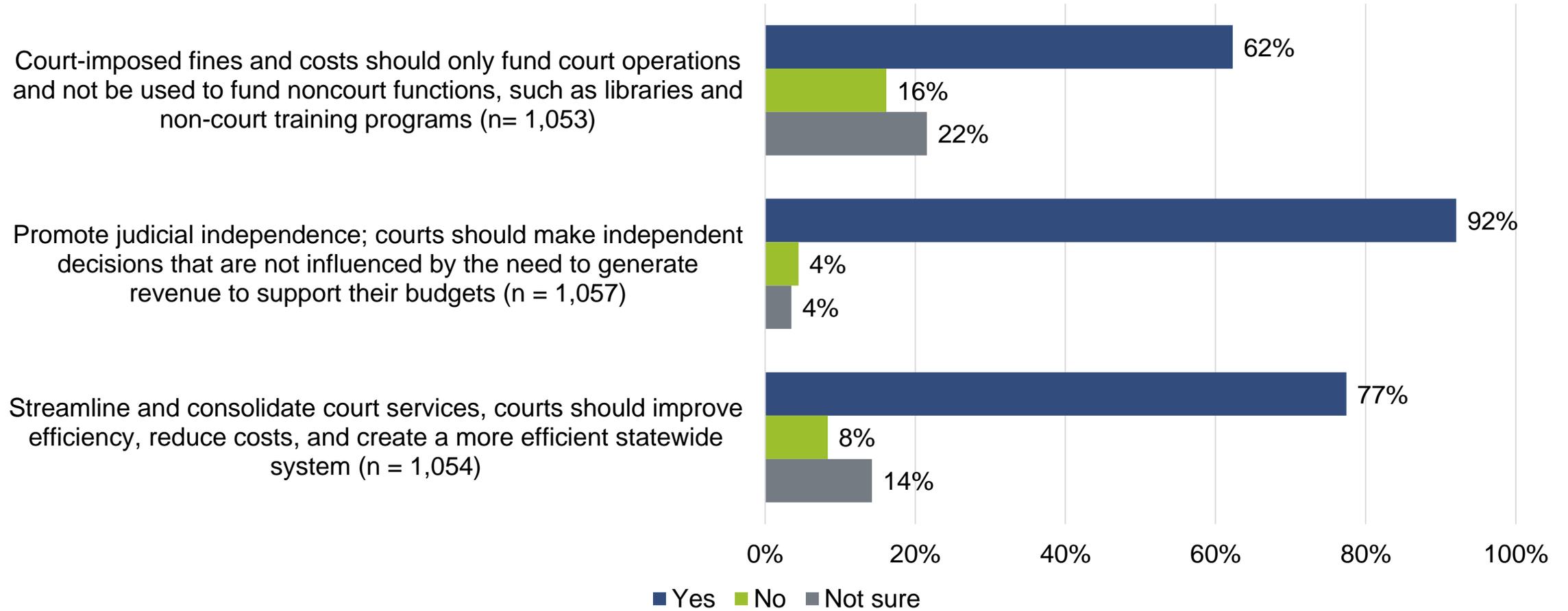
Timeline

- Established in December 2017
- Set to end in September 2019

Completed Activities

- Analysis of problem
- Research of state models
- Stakeholder information and financial data gathering
- Principles and values
- Report with recommendations

TCFC Stakeholder Input



TCFC Guiding Principles

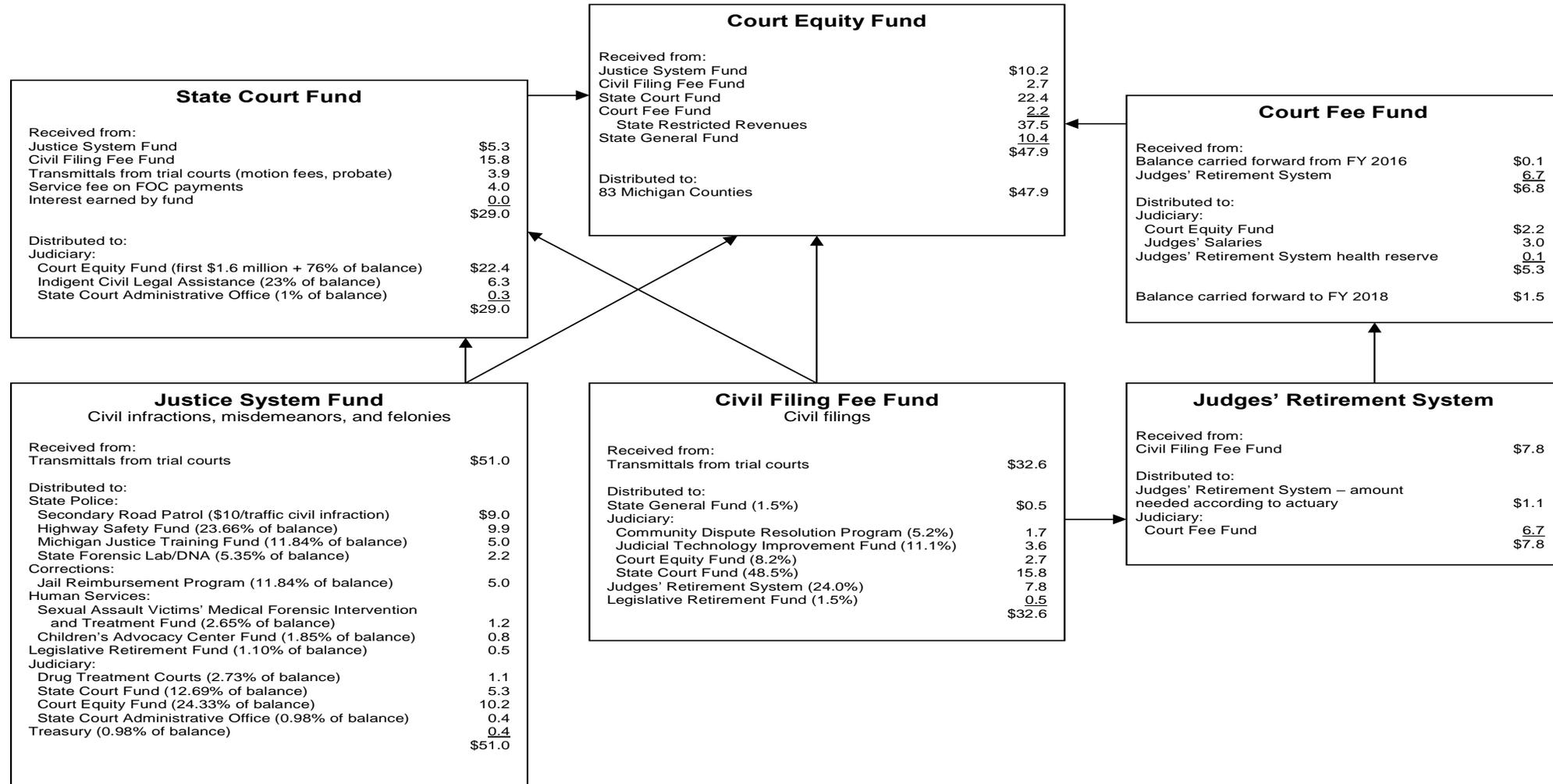
TCFC Guiding Principles	NCSC Principles	National Task Force on Fines, Fees, and Bail
Reasonable, necessary, uniform, and sustainable funding: A standardized system of fees and costs that generates a revenue stream resulting in stable and consistent court funding	6, 11, 16, 19, 23, 20	1.5, 1.6, 2.3, 3.3, 6.1, 6.2
Streamlined operations: The use of centralization, technology, and consolidation to improve efficiency	5, 6, 11, 23	1.3, 1.10, 2.1, 2.3, 3.2, 3.5, 6.3, 6.7, 6.8
Rational court organization: A process driven by best practices, data, outcomes, and accountability	1, 4, 15, 16, 17, 20	2.1, 3.3, 3.4, 4.3
Judicial independence: A separation of courtroom decisions from operating budgets	10, 13, 19, 25	1.5, 1.6, 1.8, 6.1, 6.2, 6.3, 6.8
Equity and inclusion: Principles that ensure the courts are impartial and fair to all community members	14, 25, 12	1.1, 1.4, 1.6, 3.3, 3.5, 4.1, 4.3, 5.1, 5.2, 5.3, 6.5, 6.6
Court professionalism: Education and training to continuously improve the performance of court staff and judicial officers	7	1.8, 6.4, 6.7, 7.1
Preservation of procedural due process: Importance of promoting procedural fairness, access to justice, and court safety	8, 12, 13, 14, 22	3.3

Defining the Problem

The commission identified the following key barriers to an effective trial court funding system:

- A real or perceived conflict of interest between a judge's impartiality and the obligation to use the courts to generate operating revenue;
- Inadequate funding from all sources due to excessive dependence on local government funding; and
- Unequal access to justice, harming those who are most vulnerable and have the least access to financial resources.

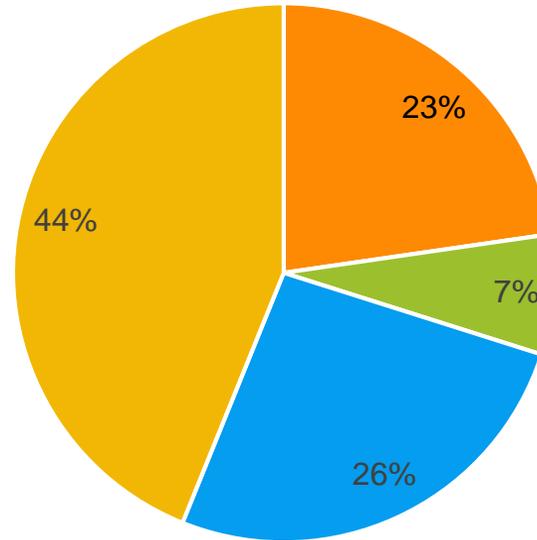
Michigan's Current Funding Structure



Financial Information—Michigan Courts

Line Item	Projection (Range Mean)	Range with 95 Percent Confidence
Total court expenditures	\$1,288,993,696	\$1,141,847,711 to \$1,436,139,681
Total court assessments (retained by the local unit)	\$255,121,674	\$218,814,209 to \$291,429,139
Total state remittances	\$134,549,943	\$132,662,336 to \$136,437,549

Financial Information—Michigan Courts

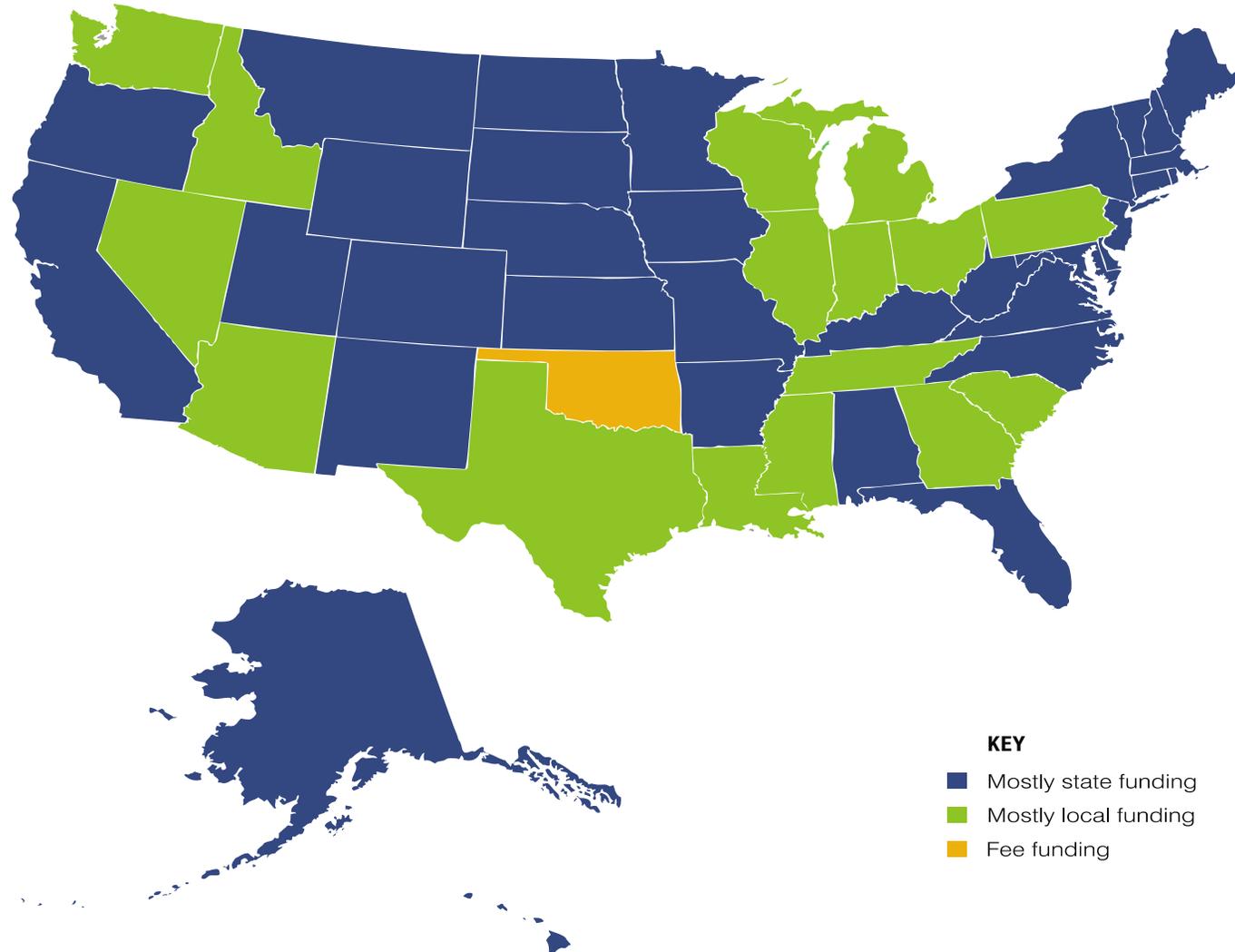


- State funding (includes both general fund and assessments returned to local units)
- Federal funding
- Court-generated revenue (retained locally)
- Local funding

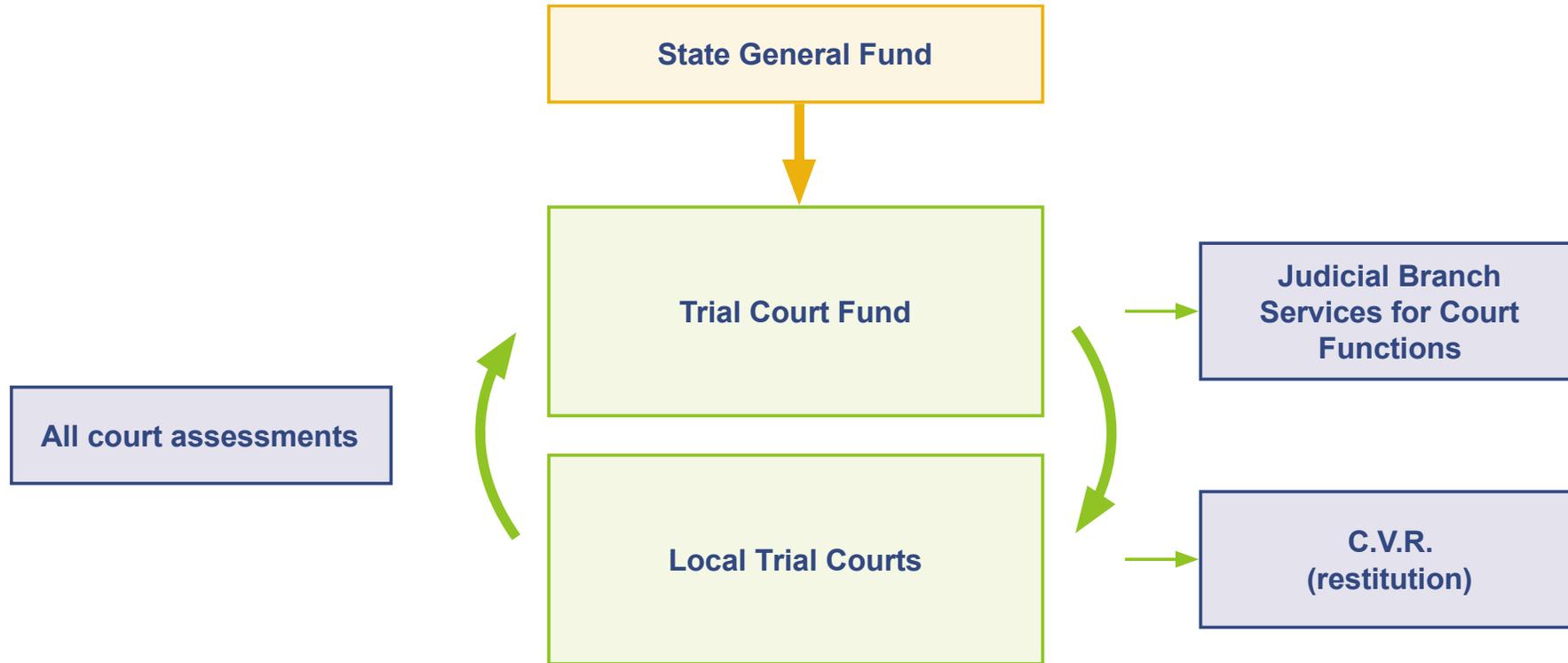
Financial Information—Michigan Courts

State grants/payments sent to local funding units:	\$96,647,493
Court equity fund payments:	\$48,697,247
Total	\$145,344,740
Remittances from local units paid to the state:	\$127,754,717
Difference (amount of state general fund contribution to local units):	\$17,590,023
Percentage of local court operations expenses covered by state general fund:	2.24%

Court Funding By State



A New Funding Model for Michigan Courts



Recommendation One

Establish a Stable Court Funding System

The TCFC recommends establishing a stable court funding model to invest in improved justice and performance outcomes, building on existing resources. Rebalancing funding between state and local government is essential to ensure ongoing and sustainable funding. Establishing a funding model that is consistent, and predictable, with proportional resources across courts is essential in providing due process and judicial independence. This new funding model will ensure the integrity of the courts and just outcomes for all the people of Michigan.

Recommendation Two

The State Shall Offer to Provide All Court Technology Needs

To create a uniform system and alleviate burden on court funding units, the State of Michigan must fund, through the SCAO, all court technology needs, including case and document management services, and must also supply and manage technology products and services, including hardware, software, infrastructure, training, and ongoing technology support.

Recommendation Three

Establish Uniform Assessments and Centralized Collections

The TCFC recommends that a system of uniform assessments and centralized collections be implemented for all courts as a function of the SCAO. This system will maintain judicial discretion for ordering fines within the limits set by law and determining indigence (ability to pay). This new system will help ensure that the administration of justice is separate from the business function of the court.

Recommendation Four

Move Toward a Uniform Employment System

Michigan lacks a uniform system of justice due in large part to disparate and unequal local funding. All court employees, beginning with trial court judges, then Quasi-Judicial Officers (magistrates and referees), should be transitioned to state employment, which would provide for uniform compensation, wages, and benefits as well as standardized qualifications for nonjudicial personnel, training, and conduct requirements. This is a long-term goal that should incrementally progress after other recommendations are enacted.

Recommendation Five

Establish a Transition Plan for the New Court Funding Model

In order to implement a new court funding model, there must be a plan for the systematic transition of finances and the promotion of funding sustainability. Success will depend on thoughtful planning of a phased implementation that recognizes it will take time to fully achieve the goals laid out in these recommendations. The SCAO must lead the drafting of this transition plan, which must include technical assistance and funding to local units of government to cover the residual burdens of local support for the courts throughout the implementation.

People v Cameron

The Supreme Court reconsidered and DENIED Leave to Appeal on July 10, 2019. In concurring, Chief Justice McCormack noted:

- Specific challenges raised by this Defendant failed;
- it's unclear that the statute does not prevent the judicial branch from “accomplishing its constitutionally assigned functions”; and
- The report of the TCFC shows a potential way forward that promises to address these (and other) concerns. I urge the Legislature to take seriously the recommendations of the TCFC, before the pressure placed on local courts causes the system to boil over.

Time to Act!

\$291,000,000 in current trial court funding comes from assessments on criminal defendants. This funding is at risk in two ways.

Cameron's invitation

ACLU and others are looking for a case to put the conflict of interest question before the Michigan Supreme Court.

Deadline Approaches

The existing authority to fund the trial courts, in part, with assessment on criminal defendants expires on October 17, 2020.

TCFC Report

The full report can be found at:

<https://t.e2ma.net/click/gvbgeb/84xd8ib/cor4kh>

Resources

- Bains, Chiraag. April 26, 2018. “Ferguson Report Summary.” Presentation. Lansing, MI.
- Boyd, Tom. August 23, 2018. “Overview of Kansas.” Presentation. Lansing, MI.
- Dillon, Michael. February 22, 2018. “District Court Funding/Cash Flow.” Presentation. Lansing, MI.
<https://pscinc.box.com/s/exuehxkuoo6fqrzxq4h3j2mjke8vey8x>
- Dunnings, Shauna. October 25, 2018. “Where Does Court Revenue Go?” Presentation. Lansing, MI.
- Hall, Daniel. April 26, 2018. “Court Funding: A National Perspective.” Presentation. Lansing, MI.
<https://pscinc.box.com/s/62v7b66ctaks9g5h7ftrbc8balk4ii6k>
- Haskamp, Mary. February 22, 2018. “Kalamazoo County Probate Court.” Presentation. Lansing, MI.
<https://pscinc.box.com/s/02le7wjzejw3ewxz20bines9dg7m0yne>
- Hogg, David A. February 2011. “District Court Tax Farming.” Michigan Bar Journal. Accessed April 1, 2019.
<http://house.michigan.gov/sessiondocs/2013-2014/testimony/Committee219-5-8-2013.pdf>
- Hutzel, Laura. August 23, 2018. “Trial Court Performance Measures.” Presentation. Lansing, MI.
- Mack, Milton. December 18, 2017. “History of Funding Reform Efforts at SCAO.” Presentation. Lansing, MI.
- Mack, Milton. February 28, 2019. “A Unified Court System: A Summary of Raftery.” Presentation. Lansing, MI.
- McCormack, Bridget. “Michigan Senate Appropriations Subcommittee on the Judiciary, Thursday March 14, 2019. Presentation. Lansing MI. <https://pscinc.app.box.com/file/428952072787>

Resources

- National Center for State Courts. July 2012. Principles for Judicial Administration. Accessed March 20, 2019. <https://www.ncsc.org/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Judicial%20Administration%20Report%209-20-12.ashx>
- National Task Force on Fines, Fees, and Bail Practices. August 2018. Principles on Fines, Fees, and Bail Practices. Accessed March 18, 2019. <https://www.ncsc.org/~media/Files/PDF/Topics/Fines%20and%20Fees/Principles%201%2017%2019.ashx>
- Norton, Julia. February 22, 2018. “Court Collections.” Presentation. Lansing, MI. <https://pscinc.box.com/s/8mtl6gn73uep2ihsg6vda2fsv01i3si>
- Oeffner, Kevin. February 22, 2018. “Circuit Court Funding/Cash Flow.” Presentation. Lansing, MI. <https://pscinc.box.com/s/ixnru5nyyglvnyhwwqqw6ice1wqwqvny>
- Ostrom, Brian. August 23, 2018. “Measuring Court Performance.” Presentation. Lansing, MI.
- Parks, Jessica. October 25, 2018. “Treatment Courts.” Presentation. Lansing, MI.
- Quasarano, Thomas. December. 2018. “Why Are We Being Sued Under the Open Meetings Act?” State Bar of Michigan Administrative Law Journal 30: 1-4. <https://pscinc.box.com/s/sl61mhjn6u0q69qjmxr7b5pevkn8h10c>

Resources

- Raftery, William. May 2016. Judicial Unification and its Impact on Efficiency. Accessed March 18, 2019. <https://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2016/Judicial%20Unification%20and%20Its%20Impacts%20on%20Efficiency.ashx>
- Reinkensmeyer, Marcus. July 28, 2018. “Arizona Trial Courts Funding Strategies: Briefing for the Michigan Trial Court Funding Commission.” Presentation. Lansing, MI. <https://pscinc.box.com/s/k05nx2gxicylzcdrvqwb6k6e6l8pn5kd>
- Risko, Robin. January 2018. “Budget Briefing: Judiciary.” Accessed February 25, 2019. https://www.house.mi.gov/hfa/PDF/Briefings/Judiciary_BudgetBriefing_fy17-18.pdf
- Rombach, Thomas. February 28, 2019. “21st Century Practice Task Force: Background and Summary.” Presentation. Lansing, MI.
- SBM 21st Century Practice Task Force. July 18, 2016. Envisioning a New Future Today. Accessed March 25, 2018. https://www.michbar.org/file/future/21c_WorkProduct.pdf
- SBM Judicial Crossroads Task Force. March 2011. Delivering Justice in the Face of Diminishing Resources. Accessed March 18, 2019. <https://www.michbar.org/file/judicialcrossroads/JudicialCrossroadsReport.pdf>
- Shorba, Jeff. June 28, 2018. “Minnesota Judicial Branch Transition and Transformation.” Presentation. Lansing, MI. <https://pscinc.box.com/s/huqlhrco9xbusamhnawfgjahtoct2f7>

Resources

- Speaker, Liisa. July 19, 2018. Amicus Curiae Brief of the Michigan District Judges Association for People v. Cameron. Accessed March 18, 2019.
https://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Documents/2018-2019/155849/155849_74_01_AC_MDJA_Brf.pdf
- United States Department of Justice. March 4, 2015. Investigation of the Ferguson Police Department. Accessed March 20, 2019. https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf
- VanNorman, John. June 28, 2018. “Judicial System Structure of Ohio.” Presentation. Lansing, MI.
- Welch, Janet. December 18, 2017. “Trial Courts.” Presentation. Lansing, MI.
<https://pscinc.box.com/s/mevwxmj0pn9oputkcmx57cc2fwgzclxw>
- Welch, Janet. December 18, 2017. “Michigan Courts: An Historical Perspective.” Presentation. Lansing, MI.
<https://pscinc.box.com/s/6tz3c4pl9hzj5ualc7u71f4euanu4qtq>

Comments or Questions?



Thank You