

COURTS AND DISTRICT ATTORNEY

The courts and district attorney are discussed in tandem in this section because both functions share the distinction of already having been partially transferred to state government.

COURT SERVICES

Milwaukee County's Combined Court Related Operations department houses the Milwaukee County Circuit Court system, which consists of 47 circuit court judges and 22 court commissioners. The circuit courts were created to serve as a single, unified trial court under the Court Reorganization Act of 1978, adopted after voters passed several amendments to Article VII of the Wisconsin Constitution in 1977. Prior to the reorganization, "county courts" handled probate, juvenile, and traffic matters, and the circuit courts handled civil and criminal jury trials.

The circuit courts in Wisconsin are funded with a combination of state and county dollars. Beginning in 1980, circuit court judges and official court reporters became state employees. Today, state funds are used to pay the salaries of the judges, official court reporters, and reserve judges, as well as travel and training for the judges. By law, counties are responsible for all other operating costs (including court commissioners and other support staff and costs associated with housing the courts), with a few exceptions that are enumerated by statute. The state, for example, pays for costs associated with the circuit courts automation program (CCAP), reimburses counties for a portion of court interpreter expenses, and provides circuit court support and guardian ad litem grants to counties to help offset a portion of their costs.

In terms of administration, the state is divided into 10 judicial districts. Because of its size, Milwaukee County is its own judicial district. The Wisconsin Supreme Court appoints a chief judge in each of the districts to supervise and direct administration of the circuit courts. The Wisconsin Constitution stipulates that each county organized for judicial purposes also have a clerk of circuit court, who is elected on a county-wide basis every two years to work in close cooperation with the chief judge and district court administrator to administer the courts. The clerk of circuit court is statutorily charged with several administrative duties, including jury management, custodian of court records, and court finances.

Milwaukee County's court operations department includes the chief judge and three divisions: Family Court Commissioner, Register in Probate and County-Funded State Court Services. The department's total budget in 2009 was \$51 million. The budget does not reflect the full cost of operating the courts, but only those costs for which the county is responsible. Of the \$51 million total, \$9.5 million was allocated to the sheriff for bailiff services, and \$5.5 million to the Facilities Management Division for Courthouse space rental. The budget also included \$3 million for alternatives to incarceration programming.

The courts' budgeted property tax levy in 2009 was \$40 million, ranking it third among all county departments. Other key revenue sources are grant funding from the state (including \$3.5 million in circuit court support funds) and revenue from fines and forfeitures (which are shared in varying degrees between the state and county). The courts are one of the county's largest organizational units in terms of staff, with 277 county-funded FTEs in the 2009 budget.

DISTRICT ATTORNEY

Like the circuit courts, the Milwaukee County district attorney's office is supported by county government despite the fact that the district attorney and other prosecutorial staff are employees of state government. Under Wisconsin Act 31, which was adopted by the state in 1989, the state assumed responsibility for funding the salaries of the district attorney (who is still elected countywide), deputy district attorneys and assistant district attorneys, while responsibility for funding support staff and services was left with counties.

The Milwaukee County district attorney's office includes five deputy district attorneys and approximately 125 assistant district attorneys. Their primary function is to represent the State of Wisconsin in Milwaukee County Circuit Court, generally in connection with criminal cases. The office includes a number of specialized units for various offenses, including units for homicides, drug violations, sexual assaults, white collar crimes, domestic violence, and consumer fraud. There also are units that prosecute felonies, misdemeanors, and offenses involving juveniles.

The county's total budget for the district attorney's office totaled \$21 million in 2009, including about \$12 million in property tax levy. The budget includes about \$2.9 million in federal grants and \$3.2 million in state grants, which are mainly associated with specific criminal justice initiatives, including domestic violence, sexual assaults and drug crimes. The 2009 budget included 149 county-funded FTEs in the district attorney's office.

BUDGET BREAKDOWN

Tables 15 and 16 break down the courts and district attorney's actual expenditures and revenue in 2008, showing both total costs and costs when legacy obligations are subtracted. This analysis shows that the courts spent \$7.6 million on central service charges from other county departments, \$25.1 million on its own personnel, and \$18.7 million on non-personnel expenditures, including bailiff services and rental charges. The district attorney, meanwhile, spent \$2.2 million on central service charges from other county departments, \$13.5 million on its own personnel, and \$3.4 million on non-personnel expenditures.

The analysis also shows that \$742,000 of the courts' central service charges and \$4.7 million of its personnel expenditures were not directly connected to the cost of administering and supporting court services, but instead were county legacy costs distributed to the department by the central budget office. For the district attorney, \$215,000 of its central service charges and \$2.6 million of its personnel expenditures were tied to legacy costs. **This tells us that if the state had provided the same services, secured administrative overhead at the same price, and paid the same wages and benefits to its employees in 2008, it potentially could have administered the courts and district attorney's office for a combined \$8.3 million less if it was not responsible for the courts' and district attorney's share of the county's legacy costs.**

In addition, the analysis shows that if legacy costs had been distributed to the courts and district attorney on the basis of their actual number of retirees, as opposed to their share of the existing county workforce, those costs would have totaled \$5.6 million. This \$5.6 million figure

represents a more accurate depiction of the approximate annual county legacy obligation held by the courts and district attorney's office. Under a change in governance these legacy costs either could be assumed by the state, or they could remain the responsibility of county government or county taxpayers (if county government no longer existed).

Finally, in terms of the overall share of the county's outstanding liabilities held by the two functions, their combined share of the county's pension fund liability (consisting of both POB debt and the unfunded liability) is \$28.1 million, and their share of the county's OPEB liability is \$89.3 million.

Table 15: Breakdown of Courts 2008 Actual Expenditures and Revenues and Legacy Costs

Courts	Cost to operate as county department (current practice)	Cost to operate minus legacy costs	Legacy costs	
			Using 2008 fringe allocation method*	Based on retiree history**
Administrative	\$886,653	\$800,107	\$86,546	\$83,955
Information technology	\$537,469	\$485,007	\$52,462	\$50,892
Legal counsel	\$0	\$0	\$0	\$0
Facility management	\$6,180,188	\$5,576,938	\$603,250	\$585,189
Fleet management	\$176	\$159	\$17	\$17
Central charges/overhead	\$7,604,486	\$6,862,210	\$742,276	\$720,052
Salary and wages	\$13,905,509	\$13,905,509	\$0	\$0
Social security	\$1,007,629	\$1,007,629	\$0	\$0
Employee healthcare	\$4,000,322	\$4,000,322	\$0	\$0
Employee pension	\$1,499,219	\$1,499,219	\$0	\$0
Retiree healthcare	\$4,000,322	\$0	\$4,000,322	\$2,925,158
Retiree pension	\$749,609	\$0	\$749,609	\$596,998
Other	(\$44,046)	(\$44,046)	\$0	\$0
Personnel costs	\$25,118,564	\$20,368,633	\$4,749,931	\$3,522,156
Non-personnel expenditures	\$18,676,152	\$18,676,152	\$0	\$0
TOTAL EXPENDITURES	\$51,399,202	\$45,906,995	\$5,492,207	\$4,242,208
State revenue	\$6,021,195	\$6,021,195	\$0	\$0
Federal revenue	\$76,467	\$76,467	\$0	\$0
Other revenue	\$4,741,112	\$4,741,112	\$0	\$0
TOTAL REVENUES	\$10,838,774	\$10,838,774	\$0	\$0
TOTAL LEVY	\$40,560,428	\$35,068,221	\$5,492,207	\$4,242,208
Unfunded OPEB liability ***	\$67,507,074	\$67,507,074	\$67,507,074	\$67,507,074
Unfunded pension liability***	\$21,243,829	\$21,243,829	\$21,243,829	\$21,243,829
Outstanding debt/ interest****	\$0	\$0	\$0	\$0
TOTAL LONG-TERM DEBT	\$88,750,903	\$88,750,903	\$88,750,903	\$88,750,903

* In 2008, the county distributed legacy costs evenly to all departments based on number of active employees and salary levels.

** This method distributes legacy costs according to a department's retiree history.

*** Estimated liability allocated to department is based on the department's retiree history.

****Data limitations prevented an accurate calculation of courthouse debt attributed to the courts, as opposed to other courthouse inhabitants.

Table 16: Breakdown of District Attorney’s 2008 Actual Expenditures and Revenues and Legacy Costs

District Attorney	Cost to operate as county department (current practice)	Cost to operate minus legacy costs	Legacy costs	
			Using 2008 fringe allocation method*	Based on retiree history**
Administrative	\$351,664	\$317,338	\$34,326	\$33,298
Information technology	\$421,337	\$380,210	\$41,127	\$39,895
Legal counsel	\$0	\$0	\$0	\$0
Facility management	\$1,350,707	\$1,218,864	\$131,843	\$127,896
Fleet management	\$76,695	\$69,209	\$7,486	\$7,262
Central charges/overhead	\$2,200,403	\$1,985,621	\$214,782	\$208,351
Salary and wages	\$7,383,970	\$7,383,970	\$0	\$0
Social security	\$544,372	\$544,372	\$0	\$0
Employee healthcare	\$2,166,697	\$2,166,697	\$0	\$0
Employee pension	\$798,699	\$798,699	\$0	\$0
Retiree healthcare	\$2,166,697	\$0	\$2,166,697	\$946,375
Retiree pension	\$399,349	\$0	\$399,349	\$193,147
Other	\$9,681	\$9,681	\$0	\$0
Personnel costs	\$13,469,464	\$10,903,418	\$2,566,046	\$1,139,521
Non-personnel expenditures	\$3,440,063	\$3,440,063	\$0	\$0
TOTAL EXPENDITURES	\$19,109,930	\$16,329,102	\$2,780,828	\$1,347,872
State revenue	\$5,824,132	\$5,824,132	\$0	\$0
Federal revenue	\$2,558,227	\$2,558,227	\$0	\$0
Other revenue	\$80,361	\$80,361	\$0	\$0
TOTAL REVENUES	\$8,462,720	\$8,462,720	\$0	\$0
TOTAL LEVY	\$10,647,210	\$7,866,382	\$2,780,828	\$1,347,872
Unfunded OPEB liability ***	\$21,840,524	\$21,840,524	\$21,840,524	\$21,840,524
Unfunded pension liability***	\$6,873,003	\$6,873,003	\$6,873,003	\$6,873,003
Outstanding debt/ interest****	\$0	\$0	\$0	\$0
TOTAL LONG-TERM DEBT	\$28,713,527	\$28,713,527	\$28,713,527	\$28,713,527

* In 2008, the county distributed legacy costs evenly to all departments based on number of active employees and salary levels.

** This method distributes legacy costs according to a department's retiree history.

*** Estimated liability allocated to department is based on the department's retiree history.

****Data limitations prevented an accurate calculation of courthouse debt attributed to the DA, as opposed to other courthouse inhabitants.

POTENTIAL ALTERNATIVE GOVERNANCE STRUCTURE

The obvious alternative governance structure for the courts and district attorney’s office in Milwaukee County is to transfer responsibility for the support functions currently provided by the county to state government, which already pays the salaries and related costs for judges and prosecutors. The section below provides a brief analysis of that option.

Discussion

Counties have long complained that inadequate state funding for circuit court support services is one of the most egregious examples of an under-funded state mandate. They argue that circuit courts are part of the state's judicial system and, therefore, should be fully supported by the state without the use of county property tax levy.

Counties also have argued that the state made a commitment to move toward full funding of court support services when it created the circuit court support and guardian ad litem grant programs in the mid 1990s, but that it has failed to live up to that commitment. The Wisconsin Counties Association (WCA), for example, notes that the two programs have been funded at the same level for more than a decade and only fund a fraction of the costs they were intended to offset. In fact, according to WCA, counties reported spending more than \$150 million to support the circuit courts in 2007, but received only about \$19 million in circuit court support grants. WCA also points out that the state retains \$26 million in court fees collected annually from litigants to fund other portions of its budget.¹⁴

State officials, meanwhile, have argued that counties have a long tradition of providing funding for the trial courts, which is both understandable and justifiable given that courthouses are the traditional home of county government and that courts are headed by county elected officials. They argue further that while court-related grants only cover a fraction of the costs incurred by counties for court support services, shared revenue payments are provided to supplement those grants, and it is up to county leaders to determine the best use of those revenues to support mandated services.

The issue of who should fund the state's circuit courts has been addressed by several committees and commissions during the past two decades. One of the most recent – the Governor's Blue-Ribbon Commission on State and Local Partnerships in the 21st Century (also known as the Kettle Commission) – recommended in 2001 that “state government ought to move, as soon as practical, to full funding of the justice system.”

In 2002, the Wisconsin Supreme Court's Planning and Policy Advisory Committee created a Subcommittee on Court Financing to conduct an in-depth examination of the issue. The subcommittee, which included a Supreme Court justice, circuit court chief judges and judges, clerks of circuit court, and county officials, met periodically for more than a year and produced a comprehensive report in February 2004.¹⁵ The following were some of its key findings:

- After reviewing prior court financing studies and the current Wisconsin circuit court funding model, and examining court financing models in other states, the subcommittee concluded that there is no “right” way to finance the circuit courts. It found strengths and weaknesses in both the current model and models in which states fully fund court operations, and concluded that “the ideal of providing a stable, sufficient court financing mechanism impervious to the political and fiscal forces that affect the other branches of government is not realistic.”

¹⁴ Wisconsin Counties Association 2009-10 Legislative Agenda, p. 5.

¹⁵ <http://www.wicourts.gov/about/committees/docs/ppaccourtfinancerpt.pdf>

- Upon concluding that there was no “magic bullet” that would guarantee stable and sufficient funding for the courts, the subcommittee suggested that an effort be made to refine the distinction between county-funded and state-funded court operations by re-establishing the definition of “court services.” It stated that “the trial court system in Wisconsin should continue to remain a partnership between counties and the State, with the long-term goal of the State increasing its responsibility for funding certain core court services.”
- The subcommittee identified certain core court services currently funded in part or in whole by counties that could be transitioned to state funding and laid out a “blueprint” for doing so. The blueprint described the current funding arrangement along with its strengths or weaknesses, followed by the potential strengths or problems with a transfer to state funding.
- The report emphasized that personnel-related court services presented the “most difficult” challenges, explaining that “the first decision is whether these court staff positions should remain county employees or become state employees. Transfer to state employment may offer the most opportunities for uniformity and equity and improved services, but also present the greatest administrative challenges and would be more expensive.”
- The subcommittee reported that “the national trend of trial court funding has been a shift to state financing.” It noted, however, that the services funded by different states vary widely, and that many states “have excluded certain items, such as clerks of court offices and, most commonly, security and facility costs. Full state responsibility for trial court facilities is generally the last and most difficult cost to assume, since it involves great cost and a variety of legal, political and architectural complexities.”
- In reviewing the experience of other states that had moved to full funding of circuit court services, the subcommittee found that several also converted county court employees to the state payroll. In doing so, many experienced unanticipated logistical hurdles and took on additional costs, including higher health care premiums due to more generous state health care plans.

The Subcommittee on Court Financing report contains several important insights regarding a possible statewide transfer of courts funding and, potentially, courts personnel to state government. Those insights also are extremely relevant to the discussion of pursuing this strategy solely in Milwaukee County, and in doing so for the district attorney’s office as well.

One of the report’s fundamental conclusions is that if a transfer of court services is to occur, it ought to occur over several years in a phased approach. If policymakers sought the elimination of county government, of course, then a phased approach may not be possible, and an approach under which the state fully funded court and district attorney services without assuming county personnel certainly would not be possible.

County funding of support services for district attorney’s offices has not been as contentious, though WCA has included some district attorney’s functions in its definition of “court services”

that should be fully funded by the state.¹⁶ A key area of contentiousness, however, has been state funding of its own district attorney positions, with district attorneys complaining that salaries are not sufficient to recruit and retain assistant district attorneys and that not enough prosecutor positions are funded across the state.

The following discussion of pros, cons and logistical issues speaks only to the potential transfer of Milwaukee County courts and district attorney support services to the State of Wisconsin, as opposed to a statewide transfer.

Key pros

- Having the State of Wisconsin directly responsible for the administration of court and district attorney support services in Milwaukee County would improve accountability by linking the entity responsible for mandating and funding the services with service outcomes.
- State funding and administration of Milwaukee County's courts and district attorney's office could provide the chief judge and district attorney – who are state employees – with a better opportunity to make the case with state leaders for the operational support that is necessary for them to efficiently carry out their state-mandated functions. It also could produce better coordination with other elements of the state criminal justice system and allow the chief judge and district attorney to have greater input into legislative decisions that impact their operations.
- Moving court and district attorney support services outside of county government could better shield those services from the county's overall budget difficulties, legacy costs, competition with other county priorities and personnel rules (which some argue prevent the two offices from filling positions on a timely basis), thus improving the quality and cost effectiveness of those services.

Key cons

- It could be argued that court and district attorney's services in Milwaukee County have evolved over the years to be responsive to the county's unique needs, and that placing those services under state control could result in a more standardized and less responsive approach that would sacrifice local prerogatives.
- While the chief judge and district attorney are state employees, some might argue that their input on fiscal and policy issues carry more weight at the county level, and that such input would be diluted in a state government that is more attuned to broader, statewide interests. Furthermore, the State of Wisconsin has its own serious budget woes, and those woes could produce funding challenges that are at least equal to those currently faced by the courts and district attorney under the existing governance structure.

¹⁶ Subcommittee on Court Financing Final Report, February 2004, p. ii.

- It could be argued that a local funding component that is overseen by local elected officials who must go before the voters on a regular basis produces greater fiscal accountability than a scenario under which those officials simply need to justify budgetary needs and expenditure patterns to state government officials.

Key logistical questions/obstacles

- In 2008, Milwaukee County spent about \$43 million of local property tax levy to support non-legacy court and district attorney services. State officials would need to decide whether the state would be willing to spend at that level, whether it would intercept an equivalent amount of shared revenue from the county if county government was not eliminated, or whether it would seek to assess county taxpayers if county government was eliminated.
- The courts and district attorney have an annual combined liability of nearly \$5 million for the cost of health care and pensions for their retirees, and an undetermined amount of outstanding debt on courthouse facilities linked to the courts. The state would need to determine whether those costs would be left with the county (or its taxpayers in the case of elimination), or whether it would assume them.
- The state's 71 other counties also have bitterly complained about underfunding of mandated court services. A consideration for the state would be whether, to the extent it was willing to assume financial and programmatic responsibility for this underfunded mandate in Milwaukee County, it could justify not doing so in other counties.
- When the state transferred district attorney, deputy district attorney and assistant district attorney positions to the state payroll in 1990, litigation arose over the issue of how and whether individuals in those positions in Milwaukee County should be provided the option to retain their county pension and retiree health care benefits. The result was a complicated arrangement (which is described in greater detail in **Section I**) in which some prosecutors remained part of the county pension system and continued to receive other county fringe benefits, while others shifted to the state. Similar complexities could arise under an attempt to transfer support staff in the district attorney's office and courts to state employment.
- Because the clerk of circuit court is a constitutionally established position in Milwaukee County, legal issues could arise under a transfer of this position to state government. It is possible that if the position continued to be elected on a countywide basis, despite having its salary and the positions associated with it being placed in state government, then a constitutional change would not be necessary. That question, however, likely would have to be decided by state attorneys.