State of the Judiciary
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Written message
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Introduction

For the past several years, my predecessors and I have been invited to describe, before a joint session of the Legislature, the state of Washington's judiciary. Those addresses were always given at the beginning of each new, two-year legislative term, but during the second year we were generally silent on the progress of our work. With this report, I hope to inaugurate a tradition of having the Chief Justice present a written state of the judiciary report during the second year of a legislative term.

I want to focus on how we should address some of the significant problems facing the judiciary. Many of these problems are the by-product of recent legislation. In particular, legislative activity in the criminal justice area has increased the number of people entering the criminal justice system. This increase has strained the resources of law enforcement, the courts, and the jails. In the courts, the large number of cases in the criminal area has meant a corresponding decline in judicial resources available for civil cases. With court dockets full of criminal cases, civil litigants increasingly must wait too long to have their day in court. Since justice delayed is justice denied, both the Legislature and the judiciary need to work together to address this problem.

On its own, the judiciary is doing whatever it can to work on these problems, and part of this report will discuss the initiatives we have already undertaken. But there is a limit to what we can do by ourselves; we need help from the Legislature in two areas. The first is funding: the courts need more resources, and changes need to be made in the way in which the courts are funded. The second area is non-funding legislation which may help to reduce the criminal law workload.

Recent Legislative Initiatives and Their Impact on the Judiciary

Specific legislative initiatives have had an impact on the judicial system: the Sentencing Reform Act, the Omnibus Drug Act, the "Three Strikes" law, the new DUI laws, and new capital punishment procedures. These statutes and rules have increased the workload in our courts.

I'll start with the 1981 Sentencing Reform Act (SRA). As stated, the law's intent was to ensure standardized sentencing and to reduce state justice system costs. Has it met these goals? Well, yes and no.

A report prepared earlier this year by the staff of the state Senate Judiciary Committee notes that, because presumptive sentences for some felonies were set at less than a year, felony jail populations increased between 17% and 60% in some counties. Of the total number of sentences in 1998 (29,079), about 70% (18,073) were sent to jail/community service/probation. Shifting felony prisoners away from state prisons and into county jails may have reduced costs at the state

level, but it has laid an extra load on already over-burdened local criminal justice systems.

Prior to 1981, judges considered each matter before them on its merits, a cornerstone principle of our system of justice. But now, judges find themselves dispensing what some call "cookie cutter" justice--decisions they hand down today, end up looking very much like those they handed down yesterday.

Interestingly, the state Sentencing Guidelines Commission is now working to change their sentencing schema, changes that will expand judicial discretion in sentencing. In the meantime, we have a system that requires judges to look as hard at "grids" as they do facts, one that pushes "points" more than it does individual justice.

A recent report by the House Judiciary Committee found that criminal filings are up and civil trials are down. Statistics maintained by the Office of the Administrator for the Courts reveal that between 1994 and 1999 adult criminal filings increased by about 25%. In the five years preceding 1994 the number of adult criminal filings remained reasonably stable. The increase filings have occurred in spite of a decrease in some categories of crime during the same five-year period.

We currently have some 255,000 misdemeanant warrants that have been issued, but not served. Each warrant represents yet another court order that is being ignored. Respect for law and order, for courts, and for judges, has been diminished, not only by the alleged criminal but also by the officers charged with enforcement of the orders.

Nor can this lack of respect be described as belligerency. Some cities and counties simply do not have enough resources to execute their warrants. Today, few counties have enough jail space to house misdemeanor prisoners. Some suggest this situation is attributable to the increased number of felony prisoners sentenced to jail under SRA. Whatever the cause, one effect of SRA has been the growth of unserved misdemeanor warrants. Jailed SRA felony defendants occupy local jail space once used to incarcerate defendants arrested on outstanding misdemeanor warrants. An alternative the Legislature should explore is expanded jurisdiction for district courts to allow them to accept guilty pleas or payment of fines ordered by other district courts. The enforcing court could be granted a percentage of the fine in return for enforcing the judgment and local courts would not bear the astronomical costs of transporting prisoners detained by other counties.

In 1989, legislators passed the Omnibus Drug Act which increased penalties for various drug offences. About the same time, Congress began to provide law enforcement and other resources to local governments so they could join the fight in the "war on drugs." The "war" continues to rage on, inundating courts with drug offenders, many on first-time possession charges. Drug courts exemplify the number of first time drug offenders entering the justice system.

In 1993, the public approved, via the initiative process, a "three strikes" law. The law mandated life terms for anyone convicted a third time for certain felonies. Two years later, a "hard time for armed crime" initiative passed, mandating longer sentences for crimes committed while armed. In 1997, the Legislature passed its Juvenile Justice Reform Act that imposed increased sentences for minor juvenile offenders. It also mandated that certain violent juvenile offenders be tried as

adults. During the 1998 legislative session, 13 driving-under-the-influence laws were passed, including one that reduced the presumptive blood alcohol content from .10 to .08.

These "get tough" policies without corresponding resources have created uneven justice across our state. For example, some jurisdictions waive prosecution on DUI matters, because of the cost (real dollars, staff time, juries and other resources) to try these cases. Lack of resources to try cases encourages plea bargaining and creates the appearance that whether or not our DUI laws are enforced depends largely upon where you are arrested.

The Senate Judiciary Committee's research material also includes some startling data on jail populations. First, it tells us that the local correctional system is operating between 34% and 38% above capacity. Jail overcrowding severely limits a judge's criminal sentencing options. Sentencing decisions should be based upon criminal behavior and not upon availability of jail space.

Of the state's 40,807 superior court adult criminal filings in 1998, nearly a third were for substance abuse (12,312), with theft/burglary a fairly close second (9,133). During 1997-98, those same courts experienced an 11% increase in criminal jury trials. Among others, one reason criminal matters have become increasingly complex is because of the enhanced penalties. Matters once settled by a guilty plea are now argued in front of juries. And, because trial times have increased, jury service has become more and more difficult for more and more people.

Increased demands for jury trials come at a time when the pool of potential jurors is diminishing. According to a recently formed commission on jurors, more than 30% of the letters sent to prospective jurors--names are drawn from voter and driver's license lists--come back marked "Return to sender." I am told in some counties, only 20% of those who actually receive a summons respond to it. Though a few jurisdictions pay more, most counties pay jurors the lowest fee required by statute: $10 per day. Less than $1.50 per hour--a poor incentive for a citizen to leave home or work and come to the courthouse.

I am concerned that today's juries consist mainly of retired people, the unemployed, or those who work for large corporations that grant jury leave. Hourly employees, the self-employed, or those who are parents of young children cannot afford to serve on a jury. Few, if any, child care services are provided for jurors. A self-employed or hourly employee loses significant income while on jury duty. Is a jury of one's peers even attainable today? A jury commission, which I appointed, is now examining the issues and will report to the Supreme Court. You will be provided a copy of the report later this year.

New capital punishment procedures have greatly increased the cost of prosecuting capital cases. Anecdotal information suggests that it would be impossible for smaller counties to prosecute a capital case. The costs of such trials could exceed the entire budget for the county.

One very recent example is the 1999 slaying of a police officer in Okanogan County. The murder of a police officer is one of several mandatory capital murder offenses. The cost of prosecuting the accused would in, the Okanogan County case, have devastated the county's operating budget and eliminated all pay raises for county employees. Fortunately, the Legislature appropriated

$1.2 million of emergency relief. I intend to file a separate, more definitive report on capital punishment in January.

As criminal sanctions have become more severe along with passage of the "three strikes" law, more defendants are demanding jury trials and filing pretrial motions. Enhancements to sexual predator laws have also increased the complexity and length of trials and the demand for expert witnesses, a cost borne in indigent cases by the counties.

As demand for defense attorneys has increased, funding for such services has been reduced. On Whidbey Island, one defense attorney reportedly had 27 jury trials, all scheduled for the same day! Excessive caseloads and accompanying complexity raises questions about the quality of representation, by either defense or prosecution.

The Judiciary's Central Challenge:

How to Preserve a Person's Right to His or Her Day in Court in a Civil Trial

I have discussed recent developments in the criminal law of our state in order to give you an understanding of the origin of the greatest challenge currently facing the judiciary: how to prevent the substantial increase in the criminal caseload from overwhelming the courts' ability to dispense justice in civil litigation. The federal and state constitutions, through their requirements of a speedy criminal trial, mandate that criminal trials take precedence over civil ones. Nevertheless, the ability of a citizen to settle a dispute in court is also a basic right. When the criminal justice system consumes some 70% of county budgets, when parties must wait years for their cases to be decided and when citizens are frustrated because court dates are rescheduled because of the criminal caseload, the judicial system is not serving the public.

Without change, our public court system will no longer be a place to resolve civil matters. Currently, those who can afford to use the ever-growing private arbitration and mediation services to settle civil disputes. This "private judge" phenomenon would not be troubling if it were available to all, but it is not. Caselaw suffers because the reasons private judges base decisions upon are not available to the public nor followed by other courts. A system of elite justice is the result.

Steps Already Taken by the Judiciary

The judiciary has taken the initiative to operate more efficiently and to conserve resources. First, we have taken steps to improve our communication with you, the Legislature. Second, in order to improve efficiency, we have established specialized courts in certain areas of the law. Finally, we have initiated a formal research program to improve the basis of our decision-making.

Our message has been fragmented and inconsistent. Our ability to communicate with the legislative and executive branches has been limited because we are separately elected judges. But, the Third Branch must speak with a single voice on policy matters, a voice that speaks consistently to the other two branches of government.

First, we are creating a governance body that consists mainly of trial court judges supported by committees of lay persons, attorneys, legislators and court managers. This reconstituted Board for Judicial Administration (BJA) will adopt a long-range plan to improve our courts, initiate policy research, and set our legislative agenda. In so doing, BJA will establish standing committees, including ones to review court jurisdiction, long-range planning, business practices, and the very mission of the courts.

Another area I want to bring to your attention is research. Often we make decisions based upon limited information. We are changing. In October of this year the Board for Judicial Administration directed the Office of the Administrator for the Courts (OAC) to initiate a formal research program.

Using existing resources, we will initiate research projects to inform the Legislature and the Governor and recommend improvements. Most importantly, we will prepare and distribute pre- and post-assessments of our legislative proposals. Beginning this session, we will submit to you judicial impact statements on legislative proposals affecting the judiciary. These impact statements will not be limited to financial assessments as has traditionally been the case, but will also analyze the measure's effect on court operations.

The judiciary throughout Washington has been very active with programs that deal with specific societal problems. I want to report on some of the activities our courts have promulgated. Currently we have courthouse facilitator programs in 22 of the 39 counties and more are expected to be in place. The courthouse facilitator is key in providing assistance to the public, particularly in domestic matters. They save resources and they improve justice.

We have also implemented single-responsibility courts, which develop expertise, efficiency, and consistency of result. Drug courts have been implemented in several counties and more are being planned. A recent evaluation of the Spokane County Drug Court completed by the Urban Policy Research staff and Dr. Lunell Haught concluded the following: ". . . the program more than paid for itself. In fact the program saved more than $1 for every $1 expended." The evaluation report concluded the net first year savings for the county was $568,988.

In King County the District Court has implemented a first ever "Mental Health Court" under the supervision of Judge James Cayce and the Superior Court has implemented a special calendar under Judge Michael Spearman to expedite criminal matters.

Several courts have initiated "Family Courts" as a means of dealing with the multitude of problems associated with delinquency, custody, dissolution, placement, and parenting. As you may know, a wayward youth may be a symptom of a dysfunctional family unit that could involve abuse either or both physical and chemical, and other domestic issues. The Family Court can deal with each or all rather than have several judges involved for different reason with the same family. Again the value of the family court is found in the service provided to those in need. In Clark County the Superior and District Court judges have established a domestic violence court.

These are but a few of the examples of how the judiciary is responding on its own and improving justice.

Another area I want to bring to your attention is research. Often we make decisions with inadequate data. We are changing. In October of this year, the Board for Judicial Administration directed the Office of the Administrator for the Courts (OAC) to initiate a formal research program. Three initial research issues have been identified, they are:

- Investigate the impact of the lowered breathalyzer limit (.08) on the workload of the District and Municipal Courts.

- Investigate the driving while suspended offenses and determine what offenses lead to the suspension of driving licenses.

- Investigate the impact on the Superior and District Courts of increasing the civil jurisdiction from 35K to 50K in the District Courts.

Our preliminary conclusions indicate that:

- Because of the annual amendments to the DUI law, nearly every session for the past decade, sentencing hearings require additional time in order for the court to determine which statues and therefore penalties, apply to the defendant.

- The number of proceedings in DUI cases has steadily increased. In 1990, the courts averaged 3.5 hearings for every DUI case filed, compared to 5.2 hearings per case in 1999. Motion hearings, petitions for deferred prosecution, and other proceedings associated with complexities of DUI charges have significantly increased the courts' workload.

Driving While License Suspended

- One-third of outstanding misdemeanant warrants arise from DWLS citations.
- The majority of suspensions (75%) result from failure to pay a financial obligation for a traffic infraction or are imposed for failure to appear in court.
- Based upon preliminary data, vehicle impounds do not significantly discourage traffic offense recidivism.
- Additional inquiry will determine the number of repeat offenders including those jailed.

Increase in District Court Civil Jurisdiction

Based upon tort and commercial cases filed in 1998, 300 cases could be expected to shift from the superior courts to the district courts. This would result in savings of roughly one-half of a superior court judicial position statewide.

Changing Funding of the Courts

While judges are actively working to improve the way we do business, many of the solutions to improving our courts require legislative action.

In the 1999 legislative session I spoke to you about the funding needs of the judiciary and, in fact, introduced a legislative proposal addressing some of the funding issues. Ultimately, the bill was withdrawn at my request, but funding for the judiciary, specifically the trial courts, is still a critical issue. Court resources have simply not kept pace with the demands. Something will have to give! As I have indicated throughout this report, the courts are changing how they do business; we are improving our efficiency and services. But changing procedures will not totally compensate for resources needed to keep pace with the demands. Local governments are contributing in some cases up to 70% of their resources to criminal justice. Last year we turned to the state Legislature for help and were turned away. More recently, we began an initiative to seek federal dollars from congress. But limited, one-time federal grants will not be enough. The ultimate answer may well be that our trial courts will simply have to eliminate some of their statutorily mandated services. Certainly delay and congestion could lead to premature dismissals of cases including criminal matters, if speedy trial standards are not met. Also some regulatory activities of our courts may need to be eliminated, including truancy matters.

The second way in which the Legislature could help us with respect to funding is to change the manner in which funding is distributed. I need to comment in more detail about how we fund our courts. It is important to explain the convoluted and inconsistent methods of court funding in Washington.

First of all, we are unique among our neighboring states. We have five different levels of courts, municipal, district, superior, Court of Appeals, and Supreme Court. The appellate courts (Supreme and Court of Appeals) are fully funded by the state, but the trial courts are funded differently. Municipal courts are fully funded by cities--except municipal departments of county district courts. The counties fund district courts. Superior courts are funded in part by the counties, and in part by the state. Some get support from federal grant funds.

A state commission sets the salary for the judges of all courts, except the municipal courts. The state does not pay salaries or benefits for either municipal or district court judges. The state only pays half of the superior court judges' wages and benefits, but allocates nothing for staff services. The state funds all appellate court wages and benefits, including those of staff members.

A municipal court is often not considered by local government to be a separate branch of local government, but may be considered at best a department of the executive branch!

The convoluted funding schemes for our courts affect our efficiency and effectiveness. It is no wonder the public believes our court system is too expensive, takes too long, and is far too complicated. I am concerned about each of those perceptions, but my chief concern is equal justice.

Without stable, uniform funding, I believe it is impossible to achieve equal justice. Cities and counties with strong economies and large tax bases are able to provide more in-court services than those without a strong revenue base. A court that can guarantee a civil trial date within a

few months provides better justice than a court that makes litigants wait for years to settle their disputes. A city or county with adequate jail space allows courts to impose state-mandated sentences, but what about those jurisdictions lacking jail space? Is it likely that some crimes--like DUIs--are not prosecuted because local government cannot afford justice?

I am concerned that, in some circumstances, justice may be decided based more upon economics than upon evidence.

Any comment about court funding would be incomplete without mentioning truancy hearing requirements of the "Becca Bill." Before the "Becca Bill" was enacted, there were less than 100 truancy petitions filed each year. After the bill was enacted in 1996, 10,232 petitions were filed. In 1998 that number rose to 16,607. The impact upon judges and staff from "Becca" alone is profound.

Yes, the Legislature has attempted to mitigate the financial impact of expense of the "Becca Bill," but I question the sufficiency of a limited one-time appropriation.

Legislative Measures to Increase Judicial Efficiency

In addition to increasing funding and changing the manner in which dollars are distributed, we also need help from the Legislature to make the judicial system more efficient. We need to review criminal sanctions used to deal with antisocial behavior. Can we decriminalize some conduct? Is substance abuse criminal conduct or is it a medical problem? Is punishment the best form of criminal punishment? More precisely, is incarceration--especially long-term incarceration--necessary? Can we really afford to build more jails and prisons and imprison more and more people for longer and longer periods of time?

The historical need to obtain positive identification to justify pre-trial incarceration may be outdated. Technology has enabled us to rapidly identify and apprehend defendants. Therefore, automatic incarceration following arrest may not be necessary, especially for non-violent offenders.

Should judges deal with regulatory conduct such as traffic infractions, or should those matters be resolved through an administrative process? Is it necessary for a judge to rule on a routine probate matter, or could a specially trained commissioner deal with those cases, making a judicial referral if necessary?

I propose we offer the same expedited procedures through our public courts as provided by "private judge" programs. Why should that service only be available to those with the means to pay for it? Why don't we provide it for all? Would it be appropriate to promulgate mandatory arbitration or mediation procedures in certain criminal matters to avoid costly trials?

It is time to move our courts into the community to obviate the access problems some have because of transportation and parking difficulties and eliminate the burden of building costly courtroom. The bottom line: everyone should have access to a court in his or her community. And courts need not all be at a central courthouse.

We should also re-examine court jurisdiction and eliminate confusion and duplication. Courts should provide services that enable people to use them easily. Courthouse facilitators and legal support should be readily available.

The courts in Washington have not significantly changed their business practices since the early 1900s. We simply will not survive through the next century using systems and procedures established a hundred years ago. Society's use of the courts has changed, but our courts have not.

Conclusion

Our task is difficult but we can accomplish great feats if we work together. The judiciary is ready to "put its house in order" but we need the active support of our legislative and the executive partners in government. Few can deny that our trial courts are under-funded and have insufficient support staff and inadequate facilities.

We cannot solve these significant problems within the judiciary--you must be a part of the solution. We can and will work for simpler, more accessible, and more efficient court proceedings. Together, we can insure that our courts provide equal justice for all.

Summary of Issues

Here is a summary of issues I propose we consider:

- Adequately funded public courts must be available to all people, regardless of income, for civil as well as criminal matters.
- The delivery of justice needs to be community-based. Flexible facilities and hours of operation must be considered.
- Civil matters should be resolved within 12 months from the filing date. Intentional delay by a party should be met with heavy, court-imposed sanctions.
- Technology must be woven into court proceedings, including video testimony, electronic recording of the record, and electronic filing.
- Judicial authority of district courts must be statewide.
- Court proceedings must be simplified and consistent, and court jurisdiction must compliment, not duplicate or confuse judicial process.
- Individuals should be able to conclude simple matters within their own community. They should not be required to travel across the state to enter a plea, post bond, pay a fine or be arraigned on criminal matters.
- Individuals should serve on juries without personal sacrifice or financial loss. Jury voir dire should be conducted only by the court. To reduce inconvenience, pagers and cell phones should be available to prospective jurors, while they wait for duty. Childcare and transportation should also be provided to jurors.
- Judicial resources must be uniform and adequate throughout the state. Court budgets should not be revenue-based, and the executive branch should be responsible for collecting court-imposed fines, fees, and forfeitures.
- Evidence, not budgets, should dictate the filing of criminal charges.

- Presiding judges for the trial courts must have administrative control over all court operations within their jurisdiction.
- Rules of evidence should be re-examined for relevance and changed where appropriate.
- Competent legal assistance must be available without regard to income or ability to pay.
- Qualified, non-lawyers should be available to provide limited legal services, including representation in regulatory matters.
- Every court order--including warrants--should be enforced.
- Costs associated with accessing the courts must be based upon ability to pay.
- Courts should offer expedited trial dates and permit parties to waive evidentiary rules for judicial review.
- Mediation and arbitration services should be available to all citizens for criminal and civil matters.
- Legislation to improve the courts should be based upon research, not anecdotal.
- It must be recognized that long-term incarceration may not always be the best, or only, sanction for criminal behavior.

My message is not complicated this year: our courts need your help. We simply cannot continue to do business as usual.