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# HANDBOOK

## Ohio County Commissioners

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## CHAPTER 98

# JUDICIAL SYSTEM

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### 98.01 INTRODUCTION

The judiciary, as the framers of the U. S. Constitution envisioned it, is a separate branch of government. Alexander Hamilton in Federalist Paper No. 78 described the judiciary as the least dangerous branch.

...The executive not only dispenses the honors but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither force nor will but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

Perhaps to compensate for this inherent weakness, a system of checks and balances demands a compensating inherent power. Federalist Paper No. 51 asserts:

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

The inherent powers of the court are generally considered to be those powers which the court possesses independent of any specific constitutional provision or legislative grant, simply by virtue of being a court. This principle is important to understand the contents of this Chapter of the *Handbook*. This Chapter attempts to give both an overview of the judicial system and specific insight on key issues of concern to county commissioners.

All judges in Ohio are elected to a six year term of office. Candidates run in a partisan primary and the successful candidate then runs without party affiliation on the general election ballot. If a judgeship becomes vacant prior to one year before the general election for the seat the judge appointed by the Governor must run for election for the unexpired term at the first general election occurring more than 40 days after the vacancy occurs, otherwise the judge completes the unexpired term of that office.

The Ohio Constitution authorizes the Governor to appoint judges to fill all vacancies occurring in the Ohio courts. Currently, the Governor has created a citizens panel process to help select judges for vacancies in Ohio courts. The Ohio Judicial Appointments Recommendations Panel evaluates the qualifications of applicants seeking to fill the judicial vacancies and makes non-binding recommendations to the Governor based on its findings. When there is a judicial vacancy, one of two 5 member statewide panels, or at-large panels, convenes with a 6 member local panel, forming an 11 member panel that reviews applications and interviews applicants before providing its top three recommendations to the governor. All at-large panel members are appointed by the Governor for renewable two-year terms while regional panel members are appointed by the governor to review a specific vacancy, although they may be re-appointed should future vacancies arise in their jurisdiction. While the governor is likely to appoint one of the applicants recommended by the panel, he may ask the panel to make additional recommendations or may appoint an individual not recommended by the panel. For more information about the selection process see: <http://ojarp.org/default.aspx>

A county is responsible for the operation of the common pleas court and its various divisions; may operate a municipal court with county-wide jurisdiction; and must provide and operate a county court for the territory within the county that is not subject to a municipal court's jurisdiction within that county, if any. All judgeships are full-time positions except for a few municipal court judgeships and all county court judgeships which are part-time positions. Judges who have been elected to a part-time judgeship have a limited ability to continue to engage in the practice of law while full-time judges are prohibited from practicing law.

The organization of common pleas courts by divisions, the creation of municipal courts, and the establishment of additional judgeships is the responsibility of the General Assembly. Local support for these actions is critical. A request made to the General Assembly should involve the court, bar association, community leaders and the commissioners. The county should request the Judicial and Court Services Division of the Supreme Court to conduct an analysis of the need which will include an objective review of caseload and population statistics. The Chief Justice will make a recommendation to the General Assembly based upon this report and input from the county involved in making the request.

This Chapter is divided into two major sections. The section on COURT STRUCTURE which will discuss the basic court structure in Ohio, including the Ohio Supreme Court, Courts of Appeals, the Court of Claims, the Court of Common Pleas and its various

divisions, Municipal Court, County Courts, and Mayor's Courts. Refer to Diagram 1 at the end of this chapter for a graphic that shows the structure of Ohio's Judicial System. The section on ISSUES OF INTEREST REGARDING COURT MANAGEMENT AND FUNDING will discuss the commissioners' responsibility for providing a court house; court security issues; the use of magistrates and specialized dockets to improve the efficiency of the court's administration of justice; the distinctions between court fines, fees, and costs; and the RECLAIM program which is unique to Ohio and provides state funding to the juvenile court system.

### **98.021 SUPREME COURT OF OHIO**

The Supreme Court of Ohio is established by Article IV, Section 1 of the Ohio Constitution. Article IV, Section 2 of the Ohio Constitution defines the court's membership and establishes the court's original and appellate jurisdictions.

The Court is comprised of seven justices – a chief justice and six associate justices. Justices are elected to six year terms with two associate judges elected in the even-numbered year. The Supreme Court has both original and appellate jurisdiction. Original jurisdiction means that the case is brought directly in the Supreme Court and is not heard first in the lower courts. Appellate jurisdiction means that the case has started in the lower courts and comes to the Supreme Court for review. In some instances appellate jurisdiction is a matter of right where the Court must accept the case. In other instances the Court has the discretion to hear a case when asked to do so by a party to that case. Most of the cases which come before the Court are upon appeal from the twelve courts of appeals.

The Supreme Court is required to accept appeals as a matter of right in the following instances:

1. Cases originating in a court of appeals.
2. Death penalty cases.
3. Cases interpreting either the U.S. or Ohio Constitution.
4. Conflicting Courts of Appeals decisions on a given issue.

The Supreme Court may take appellate jurisdiction by:

1. Granting leave to appeal a felony case from the courts of appeals.
2. Directing a court of appeals to certify its record in any civil or misdemeanor case that the Court finds to be "of public or great general interest".
3. To review the actions of certain administrative agencies including the Board of Tax Appeals and Public Utilities Commission.

The Supreme Court has original jurisdiction to issue extraordinary writs including:

1. Writ of Habeas Corpus - release of persons allegedly unlawfully imprisoned/committed.
2. Writ of Mandamus - ordering a public official to perform a required act.
3. Writs of Procedendo - ordering a lower court to proceed to judgment in a case.
4. Writs of Prohibition - ordering a judicial or quasi-judicial officer to cease an unlawful act.
5. Writs of Quo Warranto – issued against a person or corporation for usurpation, misuse, or abuse of public office, corporate office or franchise.

The Supreme Court has authority to prescribe rules governing practice and procedure in all courts of record in Ohio conferred by Article IV, Section 5(B) of the Ohio Constitution. These procedural rules are submitted to the General Assembly, and become effective unless the House and Senate adopt a concurrent resolution disapproving them. An example of a procedural rule includes an authorization for the use of magistrates in preliminary court activities.

The Supreme Court also has general superintendent authority over all state courts granted under Article IV, Section 5(A) of the Ohio Constitution. The Court sets the minimum standards for court administration through its adoption of Rules of Superintendence. Rules of Superintendence do not have to be submitted to the General Assembly to become effective. Examples of such rules include caseload standards and the development of standard forms for court use. The Supreme Court also monitors statistics, such as caseload figures, for every court of record. The Supreme Court consults with all courts regarding workload and other concerns those courts may have.

Finally, the Supreme Court has exclusive authority to regulate the admission to the practice of law, the discipline of attorneys admitted to practice, and all other matters relating to the practice of law pursuant to Article IV, Section 2 (B)(1)(g) of the Ohio Constitution. The Court has adopted Rules for the Government of the Bar of Ohio which address, among other things, admission to practice, attorney discipline, attorney registration, continuing legal education requirements and regulation of the unauthorized practice of law.

Funding for the Supreme Court and its operations is determined and provided by the General Assembly. The Court submits its budget request to the executive branch and that request is generally honored by the executive branch in its executive budget presented to the General Assembly. The Supreme Court has exercised restraint in budget requests and spending during the last several budget cycles and understands

the limitations upon the state's budget. In the past, when able, the Court has made reductions to its operations line item to reflect reductions in executive branch entities.

The Supreme Court is located in The Ohio Judicial Center at 65 South Front Street in Columbus. Its website address is: <http://www.supremecourt.ohio.gov>

### **98.03 COURTS OF APPEAL**

The courts of appeals are established by Article IV, Section 1 of the Ohio Constitution, and their jurisdiction is outlined in Article IV, Section 3 of the Ohio Constitution. As intermediate level appellate courts, their primary function is to hear appeals from the common pleas, municipal and county courts. In addition to their appellate jurisdiction, the courts of appeals have original jurisdiction, as does the Supreme Court, to hear applications for writs of habeas corpus, mandamus, procedendo, prohibition and quo warranto. The Tenth District Court of Appeals in Franklin County also hears appeals from the Ohio Court of Claims. Each case is heard and decided by a three-judge panel.

Article IV, Section 3 of the Ohio Constitution confers upon the General Assembly the obligation to establish compact appellate districts with a minimum of three judges on each court of appeals and allows for the addition of judges. Court of appeals judges are elected in even-numbered years. Currently the General Assembly has divided the state into twelve appellate districts pursuant to ORC Section 2501.01. Each district is served by a court of appeals that sits in each of the counties in that district. The number of judges in each district depends on a variety of factors including the court's caseload and the size of the district. Currently there are sixty-nine court of appeals judges with the number of judges in each district varying from 4 to 12 (ORC Sections 2501.011, 2501.012 and 2501.013). See Table 98-1 for further information on the courts of appeals. The current appeals court district map: <http://www.supremecourt.gov/JudSystem/districtCourts/default.asp>

Funding for courts of appeals is a mixture of state and county funds. The state pays 100 percent of the judges' salaries and the court appointees authorized by ORC Section 2501.16 which include official shorthand reporters, law clerks, secretaries and other necessary employees. The clerk of the court of common pleas in each county serves as the clerk for the court of appeals for that county and receives additional compensation totaling one-eighth of the salary received as clerk of the court of common pleas which is paid directly to the clerk by the state. (ORC 2303.03 and 2501.17)

The operating expenses of the court of appeals are apportioned among the counties within its district based upon their proportionate share of the population of the district and calculated pursuant to ORC Section 2501.181. These expenses are outlined in archaic terms in ORC Section 2501.18 and include the provision of a court room in each county. The court of appeals may, and each of the multi-county districts has selected, one of the counties in its district as its principal seat. The general practice of the courts of appeals is to choose one location for their offices and travel to each county to hear the cases appealed from that county.

## **98.04 COURT OF CLAIMS**

The Court of Claims was created in 1975 by the Court of Claims Act (ORC Chapter 2743) which permitted actions to be brought against the state which were previously barred by the doctrine of sovereign immunity. The state's limited waiver of sovereign immunity permits any liability of the state to be determined in accordance with the rules of law that apply to private parties. Any action brought in the Court must be based upon a claim for relief for which the state would have been liable except for sovereign immunity. The law provides civil immunity to officers and employees of the state, except if their actions: arose from the operation of a motor vehicle; occurred in cases where the state is a plaintiff; or, were undertaken with malicious purpose, in bad faith, or in a wanton or reckless manner or were manifestly outside the scope of their employment.

The Court of Claims has original jurisdiction to hear and determine all civil actions filed against the State of Ohio and its agencies. The Court also hears appeals from decisions made by the Attorney General on claims allowed under the Victims of Crime Act (ORC Sections 2743.51 to 2743.72).

The Court of Claims decides civil actions that typically involve contract disputes, property damage, personal injury, immunity of state officers and employees, discrimination, and wrongful imprisonment. To hear these cases the Chief Justice assigns judges who are either currently serving as justices of the Supreme Court, courts of appeals judges, common pleas court judges, retired justices or judges who meet the requirements of Article IV, Section 6 of the Ohio Constitution. Usually a single judge will hear a case; however, the Chief Justice may assign a panel of three judges to a civil action that presents novel or complex issues of law and fact.

Civil complaints filed for \$2,500 or less are decided by an "administrative determination" made by the clerk of the court or a deputy clerk. An appeal from the administrative determination may be taken to a judge of the court upon motion for court review. The court's judgment cannot be the subject of further appeal.

Victims of Crime Act appeals are heard and determined by a panel of three commissioners who are appointed by the Supreme Court for a six-year term. A further and final appeal from the panel's decisions may be taken to a judge of the Court of Claims and that judge's decision is final. Initially the claimant files a reparations application with the Attorney General. If a claimant disagrees with the final decision of the Attorney General they have the right to file a notice of appeal to the Court of Claims for a hearing before the panel of commissioners.

The Court of Claims is located in The Ohio Judicial Center at 65 South Front Street in Columbus. Its website address is: <http://www.cco.state.oh.us>

## 98.05 COURTS OF COMMON PLEAS

Each of Ohio's 88 counties has a court of common pleas, as established by Article IV, Section 1 of the Ohio Constitution. These courts have original jurisdiction in all civil cases in which the disputed amount exceeds \$500 and in all felony cases. Common pleas courts also have appellate jurisdiction over some state administrative agency decisions and decisions of boards of county commissioners. Territorial jurisdiction is the county in which the court is located. Although the Ohio Constitution allows the formation of common pleas court districts, none have been created up to this point. All common pleas judges are elected in even-numbered years.

The General Assembly determines the divisions of and the number of judges for courts of common pleas. The court of common pleas is generally divided into the following four divisions.

General Division – civil and criminal cases and appeals from most administrative agencies

Probate Division – decedents' estates, mental illness, adoptions, and marriage licenses

Domestic Relations Division – divorces and dissolutions and support and custody of children

Juvenile Division – offenses involving minors and most paternity actions

While there remain a few counties (Adams, Morgan, Morrow, Noble and Wyandotte) in which the judge is responsible for all of the divisions of the court most counties have combined in various ways the responsibilities of these divisions and assigned them to a specific judgeship. The most common combination is to have a judgeship with responsibility for both the juvenile and probate divisions. Lorain County has also obtained the General Assembly's approval to name its court responsible for the domestic relations and juvenile divisions the family court. Judges of a court may also chose to create a specialized docket to provide more direct hands-on involvement by a judge for specific categories of offenders, most frequently in the areas of substance abuse, mental health, domestic violence, reentry, DUI and sex offenders. (See Section 98.13 below regarding Specialized Dockets)

The divisions and current number of judges for each division of the court of common pleas in each county that have been created by the General Assembly can be found in ORC Sections 2301.02 and 2301.03 and are listed in the annual *Ohio Courts Summary* found at: <http://www.supremecourt.ohio.gov/Publications/default.asp>. In addition, refer to Table 98-2 and 98-3 at the end of this Chapter for additional jurisdiction information.

Judges' salaries are fixed by the General Assembly and payable by both the state and the county. Because judges receive compensation from both the state and the county the judge has the option of choosing whether they wish to be included in either the state

or county health insurance program. If they chose the county plan the county will be responsible for the premiums. Liability (errors and omissions coverage) is provided for all judges by the Supreme Court. Some judges receive additional compensation or supplements. For a detailed discussion of the compensation issue refer to Chapter 72 of this *Handbook* or see the annual *Pay Tables for County Officials* County Advisory Bulletin:

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200705.pdf&tabid=355&mid=974&language=en-US>

## 1. PROBATE DIVISION (ORC Chapter 2101)

All common pleas courts must have a separate probate division (usually called the probate court) pursuant to Article IV, Section 4 (C) of the Ohio Constitution, unless the General Assembly specifically provides otherwise. Ohio law does, however, allow for the combination of the probate and general divisions of the court.

The jurisdiction of the probate division is set out at ORC Section 2101.24. The probate division generally has jurisdiction over matters such as the administration of estates, wills, consent for medical treatment, living wills, mental competence, guardianships, and adoptions. Various other sections of the law confer special responsibilities such as making appointments to various boards and commissions (e.g. metropolitan parks board) and presiding over land appropriation or eminent domain cases where real property is being taken by the state, county, city or public utility by eminent domain.

Probate judges are elected to six year terms commencing on February 9 following their election (ORC 2101.02). In 15 counties there are stand alone probate divisions. The Revised Code designates common pleas court judges in Adams, Harrison, Henry, Morgan, Noble and Wyandot counties as judges for the Probate division as well. In Morrow County one of the two common pleas judges is designated as the probate judge and in Lorain County judges of the domestic relations division perform the duties of the probate division.

## 2. DOMESTIC RELATIONS DIVISION (ORC 2301.03)

Once established as independent courts by the Ohio Constitution, domestic relations courts now exist as divisions of courts of common pleas (1968 Modern Courts Amendment to Ohio Constitution). Domestic relations judges are elected in the same manner as judges of the general division of courts of common pleas and receive the same compensation.

Currently 19 counties have distinct domestic relations divisions; six counties have combined domestic relations and juvenile divisions; and three counties have combined domestic relations, juvenile and probate divisions. Judges in these divisions have the broad authority outlined in ORC Section 2301.03 to employ and supervise all division personnel. Included in this authority is designation of title, duties, compensation, expense allowances, hours, vacation and leave of all employees.



Specifically, these divisions are created by the General Assembly to hear cases of divorce, dissolution, legal separation and annulment as well as all cases outlined in ORC Chapter 3111. Examples of such cases include child support, custody and visitation issues. For more detailed information regarding child support and other domestic relations issues refer to Chapter 45 of this *Handbook*.

### 3. JUVENILE DIVISION (ORC Chapter 2151)

Ten counties have juvenile divisions. In most counties the juvenile division and probate division responsibilities are combined under a single judge. The juvenile division has jurisdiction over all cases involving juveniles (persons under age 18) and those juveniles categorized as delinquent, unruly, abused, neglected or dependent. It also has jurisdiction in adult cases concerning child abuse, non-support, paternity, failure to send children to school and contributing to the delinquency of a minor.

#### **98.051 COUNTY'S OBLIGATION TO FUND THE COURTS**

County commissioners as the funding authority for the court of appeals, the common pleas courts, the county-operated municipal courts, and the county courts have an obligation to provide funding to meet the reasonable and necessary expenses of these courts. Except for the court of appeals, where the costs of operation are apportioned to the counties within the appellate district based upon their respective populations, the compensation of employees of both the court and the clerk of courts along with operational expenses of both offices is paid by the county. Further, the obligation to furnish court rooms and offices, utilities, equipment and supplies for the courts extends to all divisions and their clerks. A similar responsibility falls upon municipalities that operate municipal courts.

Recognizing that the courts are an independent branch of government with inherent authority to effectuate an orderly and efficient administration of justice acknowledges that a healthy tension must exist between the court's authority and the commissioners' obligation. A court doesn't have unfettered discretion to act without reason in making its budget. The court's budget request must be "reasonable and necessary." Whether it is reasonable and necessary is a question of fact which is determined on a case by case basis.

Even in the best of circumstances, judges and commissioners occasionally encounter conflicts over the amount of funding which is "reasonable and necessary" for the courts to operate effectively. Unfortunately these conflicts are becoming a recurrent problem which unnecessarily impedes the administration of justice. In an effort to help address this issue the CCAO and Ohio Judicial Conference have developed a "Local Budget Process Resource Manual" as a tool to improve the understanding, cooperation and collaboration and partnership among judges and commissioners and clarify the various aspects of the budget process. The manual can be found at: <http://www.ohiojudges.org/cms/tools/act Download.cfm?FileID=2971&Manual%20on%20the%20Local%20Budget%20Process%20-%207.12.10.pdf>

The principles of law with respect to budget disputes between commissioners and judges can be summarized as follows:

First, common pleas courts and their divisions have inherent power to order funding that is reasonable and necessary to the courts' administration of their business. (*State ex rel. Morley v. Lordi* (1995), 72 Ohio St.3d 510, 511);

Second, the board of county commissioners is obligated to appropriate the requested funds, unless the board can establish that the court abused its discretion by requesting unreasonable and unnecessary funding. (*State ex rel. Wilke v. Hamilton Cty. Bd. of Commrs.* (2000), 90 Ohio St.3d 55, 60);

Third, a court's funding orders are presumed reasonable, and the board must rebut the presumption in order to justify its noncompliance with the funding orders. (*State ex rel. Weaver v. Lake Cty. Bd. of Commrs.* (1991), 62 Ohio St.3d 204, 205) This presumption of reasonableness emanates from the separation-of-powers doctrine because courts must be free from excessive control by other governmental branches to ensure their independence and autonomy. (*Wilke*, 90 Ohio St.3d at 60-61);

Fourth, absent an abuse of discretion on the part of the judge, the board of county commissioners is obligated to appropriate annually such sum of money as will meet all the administrative expenses of such court which the judge thereof deems necessary. (*State ex rel. Ray v. South* (1964), 176 Ohio St. 241, paragraph two of the syllabus);

Fifth, the reasonableness of a court's funding request must be determined only from a consideration of the request in relation to the factual needs of the court for the proper administration of its business. (*State ex rel. Milligan v. Freeman* (1972), 31 Ohio St.2d 13, 18, quoting *State ex rel. Moorehead v. Reed* (1964), 177 Ohio St. 4, 5); and,

Sixth, the board of county commissioners cannot simply substitute their judgment for that of the judge in these matters. (*Wilke*, 90 Ohio St.3d 55, 61, citing *State ex rel. Foster v. Wittenberg* (1968), 16 Ohio St.2d 89, paragraph three of the syllabus).

In general, appropriations can not be made "based on an arbitrary determination rather than any analysis of the needs and programs of the courts." (*Maloney*, 100 Ohio St.3d 77, 2003-Ohio-5058)

If it appears that there will be a controversy between the commissioners and the court based upon the commissioner's final action on the court's budget it is critically important for the commissioners to document in detail the basis of their decision. Should the court chose to enter an order establishing its own budget and the commissioners fail to concur leading the court to find the commissioners in contempt of its court order regarding the court's budget, the commissioners ought to produce extensive documentation to place on the record at the hearing held on the Court's contempt order.

It is strongly suggested that the commissioners obtain legal advice immediately upon discerning a tension between the board and the court relative to the consideration of that court's budget request.

Also, do not discount the value of seeking mediation as a way to resolve differences prior to engaging in a process of extensive litigation. Mediation is an attempt to decrease the conflict and to reach a compromise that will help both the commissioners and the court to protect their working relationship from serious or permanent damage. The Supreme Court values an amicable resolution to disputes that arise between the courts and their funding authorities and consequently offers through its Judicial and Court Services Division the opportunity to provide a professional mediator to help find common ground to resolve the issues and thereby avoid unnecessary public conflict between a court and the commissioners. The Ohio Commission on Dispute Resolution and Conflict Management is also has particular expertise in mediating a dispute of this nature.

In building their "record" in anticipation of a potential contempt hearing the Commissioners may want to consider applying the guidance provided regarding the budgeting process they ought to follow for the other county offices. Commissioners should include a true review of the budget submission of each county official with a view towards the mandatory duties of that office, and then establish a level of appropriation that allows each office holder to fulfill mandatory duties and meet any special contingency which might develop in a given year. Commissioners should also refrain from making their funding decisions based solely upon a comparison with the amount of funding given in prior years or attempting to try to treat each county office the same in regard when reducing budget requests or making budget cuts. (*Geauga Cty. Bd. of Commrs. v. Geauga Cty. Sheriff*, 2003-Ohio-7201)

One of the concerns often expressed by commissioners is that when a county is faced with severe financial conditions, the requirement to comply with a judge's funding order results in the imposition of an undue hardship on all the other county offices. Government hardship is insufficient by itself to establish an abuse of discretion in determining the required amount of court funding. (*State ex rel. Maloney v. Sherlock*, 100 Ohio St.3d 77, 2003-Ohio- 5058; *State ex rel. Britt v. Franklin Cty. Bd. of Commrs.* (1985), 18 Ohio St.3d 1, 3-4; and *State ex rel. Weaver v. Lake Cty. Bd. of Commrs.* (1991), 62 Ohio St.3d at 206-207). Furthermore, the commissioners' duty to appropriate the ordered amounts is not "vitiating by the fact that compliance with the court's requests would work an undue hardship on other offices and agencies." (*Maloney*, 100 Ohio St.3d 77, 2003-Ohio-5058; *Weaver*, 62 Ohio St.3d at 208; and, *Moorehead*, 177 Ohio St. at 6) Commissioners' evidence concerning declining annual carryover balances and the importance of these balances, while relevant, does not excuse them from complying with a judge's reasonable funding order. In *Weaver*, 62 Ohio St.3d at 206-207, the commissioners' evidence about the county's decreased personal-property-tax revenues, declining annual carryover balances, and insufficient resources to fund appropriation requests were held to be insufficient to establish abuse

of discretion in the juvenile court judge's determination of amount of required court funding.

The Supreme Court admonished commissioners in its concluding paragraph of its opinion in *State ex rel. Hague v. Ashtabula Cty. Bd. of Commrs.* (Slip Opinion No. 2009-Ohio-6140) that:

“[We] are cognizant of the budgetary pressures faced by local legislative bodies like the board of commissioners. But ‘[w]hile we appreciate the dilemma that the commissioners encounter in promulgating a budget during difficult economic times, we are compelled to remind the commissioners that the courts must not be held hostage to competing interests when the courts, in their discretionary power, submit budgetary requests that are reasonable and necessary.’ *State ex rel. Rudes v. Rofkar* (1984), 15 Ohio St.3d 69, 72, and *Weaver*, 62 Ohio St.3d at 207-208.”

## **98.052 STATUTORY BUDGETING PROCEDURE FOR COMMON PLEAS COURT**

Ohio law establishes a statutory procedure for the appropriation of monies to all the divisions of the common pleas court. These procedures were the result of the enactment of SB 63 in 1979. This legislation was prompted by the incarceration of county commissioners who failed to meet the budget request of a court. Although various provisions of this legislation were later found unconstitutional, (*State ex rel. Johnson v Taulbee* 66 OS 2nd 417 (1981)) it is generally agreed that the procedural requirements concerning the appropriation of funds serve the public interest. These procedures are set forth in ORC Sections 307.01 (B), 2101.11(B) and 2151.01. Note, however, that while courts should, when possible, voluntarily cooperate in the budget process established by statute; they have no constitutional duty to follow statutory procedures. (*State ex. rel. Arbaugh v. Richland Co. Bd of Comm'rs*, 470 N.E.2d 880 (Ohio 1984))

Following is a summary of the statutory court budget procedures:

1. Each court or division thereof is to annually submit a written request for appropriation to the commissioners setting forth the estimated administrative expenses that the court considers reasonably necessary for its operation.
2. The county commissioners are required to conduct a public hearing with respect to the written request submitted by the court.
3. Commissioners then appropriate the amount each year that they determine, after conducting the public hearing and considering the written request of the judge, is reasonable and necessary to meet all the administrative expenses of the court.

4. If the court considers the appropriation insufficient to meet all the administrative expenses of the court, the dissatisfied court may commence an action in mandamus in the court of appeals for a determination of the duty of the commissioners to appropriate the disputed amount (State ex rel. Edwards v Murray, 48 OS 2d, 303 (1976); Zangerle v Court of Common Pleas, 141 OS 70 (1943); State ex rel. Giuliani et al v Peck, 14 OS 2d 235). Remember, however, that the Supreme Court has original jurisdiction in mandamus actions so the court may choose to bypass the court of appeals and file its mandamus action directly in the Supreme Court.
5. In the mandamus action (which is to be a priority for the court of appeals), the county commissioners have the burden of proof to establish that the request of the court is "unreasonable and unnecessary" to meet its administrative expenses. This burden of proof on the commissioners has been established by substantial case law. It supersedes the portion of SB 63 that attempted to place the burden of proof on the court to show that their request was reasonable and necessary, which was later declared to be unconstitutional (State ex rel. Musser v Massillon (1984) 12 OS 3d 42; State ex rel. Rudes v Roflkar, 15 OS 3d 69). Even if a "governmental hardship" is cited as the reason for refusal to grant a court's budget request, its relevancy is limited and therefore cannot be the sole factor in determining the question of what is reasonable and necessary (State ex rel. Durkin v Youngstown City Council, (1984) 9 OS 3d 132, 135). (See Section 98.051 above)
6. If, before the filing of a mandamus action or during its pendency, the dissatisfied court exercises its contempt power, the court is prohibited from ordering the incarceration of any county commissioner.
7. County commissioners can still be incarcerated, but only if they fail to comply with an order of the court of appeals. Violation of an order of the court of appeals is contempt and is punishable by incarceration.

While the courts must "annually submit a written request for an appropriation," the law does not specify when that request must be submitted. Since the written request is for an appropriation, it appears that this procedure is separate from the tax budget hearing process in June and July, although many courts do submit a "draft" budget request that they can later revise if needed.

Because there are no specific guidelines concerning the timetable for submission of a written request, it is recommended that each county attempt to establish an internal procedure with the courts to alleviate any potential problems. While the law does not require notice be given of the public hearing of budget requests, it seems that notice of the hearing should be given. The public hearing on the court's request should be held during the annual appropriation process leading up to the adoption of the permanent appropriation. Again it is suggested that commissioners may wish to refer to the "Local Budget Process Resource Manual" developed by the Ohio Judicial Conference and the

CCAO which offers guidance on helping commissioners and judges to develop a collaborative budget process between the two branches of government and offers best practice suggestions for the budgeting process. The manual can be found at: <http://www.ohiojudges.org/cms/tools/act Download.cfm?FileID=2971&/Manual%20on%20the%20Local%20Budget%20Process%20-%207.12.10.pdf>

## **98.053 DUTIES AND COMPENSATION OF THE CLERK OF COURTS**

Every county has an elected clerk of common pleas court, who serves a four year term. A clerk has the authority to appoint one or more deputy clerks. Just as the county commissioners must provide the court with space and materials, so it must provide the clerk with "all things necessary for prompt discharge of his duty". This includes bankbooks, printed trial dockets, blanks, stationery, etc. (ORC 2303.06). (See Chapter 72 of this *Handbook* regarding clerk of courts compensation)

General duties of the clerk of common pleas court or any other clerk of a court of record are prescribed in ORC Section 2303.08. Broadly defined, these duties include the endorsement, filing and entering of all orders, decrees, judgments and proceedings of the courts of which he is clerk. The clerk collects all court costs, fees and fines. The distribution of fines is a complex topic. The clerk also assures that these monies are properly divided and distributed for their specified purpose. (See Section 98.15 et. seq. below regarding costs, fees and fines)

Clerks also issue auto titles pursuant to ORC Chapter 4505. County commissioners are obligated to appropriate sufficient funds to the clerk to promptly discharge this duty. (See Chapter 18, Section 18.17 of this *Handbook* for more details on budgetary issues relating to auto titles)

Some clerks also serve as clerks for municipal and/or county courts. Specific instances of this will be discussed in Sections 98.076 and 98.078 respectively.

## **98.054 APPOINTMENT/COMPENSATION OF GENERAL DIVISION EMPLOYEES**

### **1. COURT INTERPRETER – (ORC 2301.12(A))**

A court may appoint an interpreter to interpret writing and translate testimony who also must work for court of appeals and the probate division without extra compensation. The interpreter's compensation is set by the court, not to exceed \$1,200 per year or an amount the court deems "just" and is payable in monthly installments by the county.

### **2. CRIMINAL BAILIFF (ORC 2301.12(B))**

A court may appoint a criminal bailiff to be present at trials under the sheriff's direction, to act as the sheriff in common pleas and probate division. A criminal bailiff also transports inmates to and from the county jail for trial and transports

convicted offenders to a state penitentiary. Bailiffs are considered deputy sheriffs and as such must receive training and certification pursuant to ORC Section 109.77(A) (OAG 84-008).

The court fixes compensation for its one allotted bailiff (OAG 57-188) at a rate which cannot exceed the salary given to court constables working in the same court, payable monthly by the county. The law also allows the court to appoint a temporary bailiff on an "as needed" basis. Temporary bailiffs have the same powers and duties as a criminal bailiff but the appointment ends when an individual case is concluded (ORC 2301.17).

3. CHIEF COURT CONSTABLE (ORC 2301.12(C))

In a court with four or more judges, a chief court constable must be appointed in a joint session of the court. The chief court constable has the same supervisory duties as all other constables appointed by various common pleas court judges over jurors drawn for service, and also performs the same duties as the bailiff and other duties as the court directs. The judges fix compensation for this position which cannot exceed \$1,500 per year.

4. PSYCHIATRISTS, PSYCHOLOGISTS, OTHER EXAMINERS AND INVESTIGATORS (ORC 2301.12(D))

One or more of these positions may be appointed by the court in counties having a population of over 300,000 to work for a judge or probation department. The court can enter into agreements with a municipal court to share the services performed by these employees (ORC 2301.13). Compensation is fixed by the judges and may not exceed the "total amount appropriated by commissioners which compensation shall be in place of all fees."

5. ADMINISTRATIVE ASSISTANT (ORC 2301.12 (E))

An administrative assistant may be appointed by the court in a county with a population of over 300,000 to perform duties delegated by the judges. The compensation of the administrative assistant is determined by the court and is paid monthly by the county.

6. OFFICIAL SHORTHAND REPORTER (ORC 2301.22)

The court must appoint one stenographic reporter as the official shorthand reporter for a term not to exceed three years. Compensation is paid either annually as the court prescribes or in monthly installments. If the appointment is for less than one year, the court may authorize that the reporter be paid a per diem fee fixed by the court plus expenses for each day the reporter spends actively engaged in taking testimony. Assistant shorthand reporters may also be

appointed for a term not to exceed three years and compensated in the same manner as the official shorthand reporter pursuant to ORC Section 2301.19.

Shorthand reporters may also act as referees in the court relative to taking and reporting evidence in cases in any court in the state. Commissioners must provide a suitable room in the courthouse as well as "stationery, supplies and other equipment necessary" for the reporters to work and preserve their notes (ORC 2301.26).

When the court orders a report of testimony in any civil or criminal matter at the request of the prosecution or defense, an \$25 per diem fee is taxed as costs of the case which the clerk of courts collects and deposits in the county general fund (ORC 2301.21). The court also fixes the rate of compensation a stenographic reporter may charge for preparing transcripts of testimony. Transcripts requested by the prosecutor are paid for out of the county general fund as are transcripts requested by indigent defendants. (*State ex rel. Partee v McMahan*, 175 OS 243).

#### 7. ASSIGNMENT COMMISSIONER (ORC 2335.03)

If there are two or more common pleas court judges holding court at the same time then they may, in joint session, appoint assignment commissioners to assign cases and perform other duties as the court determines. The court sets compensation, payable by the county for assignment commissioners. If the court has only one judge, that judge may also appoint an assignment commissioner whose compensation cannot exceed \$3,000 per year. The clerk of courts may perform these duties and may collect the prescribed compensation (OAG 51-224).

#### 8. COMMISSIONERS OF JURORS (ORC 2313.01)

Common pleas court judges are required to appoint two non-attorneys of different political parties to serve as commissioners of jurors. They oversee jury selection and must be present at the drawing of a jury. Jury commissioners serve at the pleasure of the judge, and are compensated as the court prescribes. As sworn officers of the court, jury commissioners may be aided by deputy jury commissioners appointed by the court.

With the consent of the judges, a jury commissioner may appoint "such clerks and messengers as necessary" to help with jury selection and other duties assigned to the jury commissioners. Both deputy jury commissioners and any other clerks or messengers receive compensation as the court prescribes (ORC 2313.02). County commissioners must provide a "suitable" office for the jury commissioners and must supply materials necessary for performance of their duties. This includes magnetic tapes and other devices for use in automated information retrieval systems (ORC 2313.05).



## **98.055 COUNTY DEPARTMENT OF PROBATION**

A court of common pleas or a group of common pleas court judges from several counties has the authority to establish a county department of probation pursuant to ORC Section 2301.27. The costs of a multi-county probation department are prorated based upon the member counties' populations.

The probation department carries out supervision orders, writes presentence investigation reports to aid with sentencing and a range of other related activities. The law requires that the department consist of a chief probation officer and "employees, clerks and stenographers" as the court deems necessary. The court fixes salaries and supervises work. All probation department employees are classified civil service employees. Probation officers must meet certain training requirements as established by the Adult Parole Authority (APA), an agency of the Division of Parole and Community Services of the Ohio Department of Rehabilitation and Correction as specified in ORC 5149.02.

Probation departments are also often required to supervise county residents under supervision orders from any court in the state. At the court's request or, upon request of the Adult Parole Authority (APA), the probation department supervises parolees, furloughees and ex-offenders under "conditional" pardon from state penal institutions. Offenders who violate conditions of parole or other forms of control are subject to arrest. Violators can be held in a county jail until the proper state authority determines subsequent action. Commissioners should note that the APA is not obligated to reimburse the county for the cost of holding parolees, etc. in county jails.

Common Pleas courts may also execute an agreement with the Adult Parole Authority to provide probation services. In counties where there is a probation department the APA is authorized to provide supplemental investigation or supervisory services to the county. In counties where a probation department has not been established the APA may provide the county's probation functions and the county is obligated to pay the amount stipulated by the court in its agreement for these services (ORC 2301.32). In 42 of Ohio's 88 counties who do not have their own basic probation county staff, the APA provides full probation services to the court which includes writing Pre-sentence investigation and supervising probation/community control offenders. In an additional 10 counties who do have their own basic county probation staff, the APA provides supplemental or partial services to the court, including writing Pre-sentence investigations or providing supervision services for probation/community control offenders.

A third option is also provided. At the request of their common pleas court judges, the commissioners may contract with any non-profit public or private entity for probation services. This permissive option gives counties greater flexibility to obtain probation

services without adding permanent staff to an existing department or contracting with the state (ORC 2301.29(B)(1) and (2)).

## **98.06 PROBATE DIVISION OF COMMON PLEAS COURT**

Most counties have probate divisions that are separate from the general division of the common pleas court. The Revised Code also allows the electors of a county with a population of less than 60,000 to petition the common pleas court judge to order the sheriff to issue a proclamation that the question of combining the probate division and the common pleas court general division will be submitted to electors at the next general election (ORC 2101.43). If combined, the presiding common pleas court judge appoints all necessary deputies, clerks and assistants to perform the work of that division.

It is important to remember that although most counties have separate probate divisions, the terms "probate court" and "probate division" have the same meaning and are used interchangeably (ORC 2101.01) in the Revised Code and in this Chapter.

### **98.061 UNIQUE FUNDING FEATURES OF PROBATE DIVISION**

Fines and fees collected by the division net some returns to the county general fund.

One example of this is unclaimed estate proceeds (ORC 2113.64 and 2113.65). These sections give the probate court the authority to invest these unclaimed monies and, if at the end of a two year period, the funds have not been claimed, transfer the funds to the county general fund. Should the claimant come forward the county is obligated to release the funds but not liable for any interest which they may have earned.

The probate division also has permissive authority to impose local fees. (See Section 98.153 below) In addition, part of the charge for marriage licenses issued by probate divisions is used to fund shelters for victims of domestic violence (See Chapter 52 of this *Handbook*). Finally, the probate division has control of the following special funds:

#### **1. PROBATE CONDUCT OF BUSINESS FUND (ORC 2101.19)**

These are monies derived from sale of merchandise in connection with a license, order or document by the probate division. It is paid into the county treasury to the credit of this special fund. Lacking any reporting requirements, this fund may be used for the "conduct of the business of the probate court".

#### **2. COUNTY INDIGENT GUARDIANSHIP FUND (ORC 2111.51)**

A county must establish this special fund for the deposit of any appropriations the General Assembly may make to a county to defray the expense of guardians for "insolvent debtors" or any other guardian appointed by the probate division. Beyond state appropriations, this special fund receives \$30 of a \$35 fee

authorized under ORC Section 2101.16(A)(34) relating to trustees of insolvent debtors or other kinds of guardians appointed by the probate court. The law stipulates that these monies may only be expended for costs associated with establishing, maintaining or terminating guardianships for indigent wards. The probate court may declare a surplus in the indigent guardianship fund and expend the surplus funds for other guardianship expenses or for other court purposes.

## **98.062 APPOINTMENT/COMPENSATION OF PROBATE DIVISION EMPLOYEES**

The probate judge may appoint individuals to the job positions described below. Compensation for such appointments is subject to appropriation by the county commissioners and are payable in semi-monthly installments by the county. The probate judge fixes the compensation for these appointees who then serve at the judge's pleasure (ORC 2101.11(B)(1)(a)). Further, the law states that the total compensation paid to all appointees of the probate judge in any calendar year cannot exceed the total fees earned (collected) by the division during the preceding year unless the commissioners approve the changes (ORC 2101.11(B)(1)(b)).

### **1. MASTER COMMISSIONERS**

The probate judge, or a party to an action, may make a motion to appoint a special master commissioner (ORC 2101.06), or "referee" as this commissioner is more commonly known, to handle certain cases. Such a referee, who must be an attorney, makes decisions like a judge and, in a contested matter, makes a report that the judge can accept, modify, or reject and rehear the case. Fees for a referee requested by a motion of the plaintiff become costs the plaintiff is liable to pay (In re Raffenberg, 71 O App 201). The use of referees frees up court time and helps with case flow.

### **2. DEPUTY CLERKS**

The probate judge is authorized to act as clerk of the probate division and has the authority to swear in all appointed employees as deputy clerks (ORC 2101.11(A)(1)). Each clerk is authorized to act officially to accept filings and certify records of the division. Specific duties vary as widely as the over 200 tasks assigned to the probate division, and range from handling accounts to issuing marriage licenses.

### **3. INVESTIGATORS**

Probate judges appoint investigators to help decide whether to grant an adoption or guardianship, and to supervise guardianships (ORC 2101.11(A)(2)(a)). Specific education and training requirements outlined in ORC Section 2101(A)(2)(c)(d) and (e) must be met by investigators.

#### 4. STENOGRAPHERS, BAILIFFS AND OTHER "NECESSARY" EMPLOYEES

A probate judge may appoint a stenographic reporter and compensate that person in the same manner as stenographers in the general division of the common pleas court (ORC 2301.18 to 2301.26). Bailiffs and any other necessary employees may be appointed by the probate judge pursuant to ORC 2101.11(A)(1).

### **98.07 JUVENILE DIVISION OF COMMON PLEAS COURT**

The first juvenile court in Ohio, and one of the first in the country, was established in 1902 as the Cuyahoga County Juvenile Court. Juvenile courts spread statewide by 1906 and now exist as separate divisions in common pleas courts in ten counties (ORC 2153, 2151.07, 2301.03). Juvenile divisions can also exist in combination with domestic relations divisions or as courts of record within a division of domestic relations. The most prevalent arrangement is for the juvenile division and probate divisions in courts of common pleas to be combined (ORC 2151.07). Currently 62 counties have this arrangement.

Historically, juvenile justice in Ohio has undergone three significant changes. Before 1967, the court acted as a benevolent "parent" who provided guidance and care to children. Children were not considered criminals at this time, rather they were considered misguided and unskilled.

The first change began with a landmark U S Supreme Court decision of *In re. Gault* touched off a rash of reforms in the late 1970's which culminated in Ohio in 1981 with the enactment by the 114th General Assembly of HB 440. This legislation began mandatory sentences for delinquent children who committed felony offenses. These sentences are one year or six months for first and second degree felonies, respectively. By focusing on delinquent felons, the state then gave counties, through juvenile courts, responsibility for previously institutionalized unruly children and delinquent misdemeanants. Community based treatment for these children began with state subsidies and continues today at a much lesser level of state funding through the RECLAIM Ohio program and Youth Services grant administered by the Ohio Department of youth Services (See Section 98.17 below).

Further reforms in the mid to late 1980's included creation of case plans that strive to give both child and parents opportunities to solve family problems without removing the child from the home. As concern over abused, neglected and dependent children grew in 1981, the General Assembly created the second major change in juvenile justice policy with the enactment of SB 89. This law increased judicial review of cases and expanded procedural duties and dispositional options for the treatment of abused, neglected and dependent children and imposed upon county departments of job and family services maximum time limits that they are to allow children to remain in the "system" of public and private child care agencies.

Finally, in response to the concern over the occurrence of more serious criminal actions being committed by younger children a major reform of the juvenile disposition law was undertaken through SB 179 of the 123<sup>rd</sup> General Assembly. SB 179 divided the juvenile law into two chapters creating a new Chapter 2152 to govern delinquent children and juvenile traffic offenders and redefined the purpose of the juvenile law as it relates to these offences that involve criminal conduct if the individual were an adult. The most significant change was to adopt a new category of offender designated as "serious youthful offender" and authorize a juvenile court to impose a "dispositional sentence" that contains a juvenile portion (consisting of a traditional juvenile delinquency disposition) and an adult portion (consisting of a criminal sentence) which is to be stayed pending the satisfactory completion of the juvenile portion.

These changes in the treatment of juveniles form current juvenile court duties and dispositional powers, and Ohio Department of Youth Services' responsibilities and are found in ORC Chapters 2151 and 2152. The remainder of this Section will discuss pertinent parts of this system.

### **98.071 APPOINTMENT/COMPENSATION OF JUVENILE DIVISION EMPLOYEES**

All rights of common pleas court general division judges concerning compensation and employees extend to juvenile court judges. Specifically, ORC 2151.13 gives juvenile judges the power to appoint and fix the compensation of bailiffs, probation officers, and "other employees as are necessary" while ORC 2151.16 allows the appointment of referees.

Additionally, a juvenile judge may establish their own probation department (ORC 2151.14) or contract for probation services. A juvenile judge acts as their own clerk (ORC 2151.12). Similarly, counties must provide for the juvenile court in the same manner as the other divisions of the common pleas court.

### **98.072 JUVENILE COURT JURISDICTION**

Juvenile courts have exclusive original jurisdiction over juvenile offenders. This means that all complaints must be filed and processed in the juvenile court and that juvenile court jurisdiction must be assumed first before any other court may get involved in the child's case.

Furthermore, cases involving custody and support under a juvenile court's jurisdiction cannot automatically be transferred to a domestic relations division and any attempt to do so is considered void (*Hardesty v Hardesty* 16 O App 3d 474). To maintain jurisdiction, a juvenile court judge must issue orders about a child's custody. In the absence of such an order, a domestic relations division has authority to set custody parameters (*Huxley v Huxley*, No 19 OB 9th Ct. App Wayne, 5-23-84).

Finally, a probate court is also free to appoint a guardian for a child whose custody order has been terminated by a juvenile court (*In re Miller*, 33 O App 3d 224, 515).

## **98.073 CATEGORIES OF JUVENILE OFFENDERS**

### **1. DELINQUENT CHILD (ORC 2152.02(F)):**

Any child, except a juvenile traffic offender, who commits an act that, if committed by an adult, would be a crime (misdemeanor or felony), that violates a lawful juvenile court order (ORC 2151.02(B)); attempts to purchase a fire arm; or is habitually truant from school.

### **2. JUVENILE TRAFFIC OFFENDER (ORC 2152.02(N)):**

Any child who violates a traffic law or ordinance or regulation.

### **3. UNRULY CHILD (ORC 2151.022):**

Any child, who is generally disobedient, resists control of parents, is habitually truant from school, and behaves in a manner which endangers his own health or morals or the health and morals of others. An unruly child technically has not committed any crime, but has violated laws applicable only to children such as underage alcohol consumption or attempting to marry without parental consent. An unruly child who violates a juvenile court order may become a delinquent child. Unruly children are also called "status" offenders.

### **4. NEGLECTED CHILD (ORC 2151.03):**

Any child who has been abandoned and/or not provided with proper care for any physical or mental injury or deficiency by his parents, guardian or custodian.

### **5. ABUSED CHILD (ORC 2151.031):**

Any child who has been the subject of any physical or mental injury or death; is a victim of sexual abuse; is the subject of child endangerment as defined in ORC Section 2919.22; because of the acts of their parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child's health or welfare; or is the subject to out-of-home care child abuse.

### **6. DEPENDENT (ORC 2151.04):**

A dependent child is a child in one of two situations. Each situation has a different level of parental culpability. First is a child who is homeless/destitute and not well cared for or supported through no fault of the parents, due to a mental or physical condition of the parents. The second situation where a child may be considered dependent is where the child is living in a home where a family or household member has abused or neglected a sibling of the child, and the child may be vulnerable to abuse or neglect at the hands of that person.

## **98.074 JUVENILE COURT PROCEEDINGS**

Overall, juvenile court proceedings are more informal than in other courts of record. The public may be excluded from juvenile court proceedings in a particular case if the court holds a separate hearing to determine whether exclusion is appropriate. The court may admit individuals to a “closed” hearing who have a direct interest in the proceedings or demonstrate their need for access outweighs their exclusion from the proceeding (ORC 2151.35; Juvenile Rule 27).

Jury trials are required in juvenile court in two instances: where an adult has been charged with an offence under the juvenile chapters (ORC 2152.67); or for a juvenile when charged as a serious youthful offender (ORC 2152.13(D)).

Based upon the age of the child and the significant severity of the alleged conduct the child engaged in the child’s case is subject to being transferred to the court of common pleas for trial as an adult as provided in ORC Section 2152.12.

The law provides that juvenile proceedings be divided to include two distinct parts; adjudicatory hearings and dispositional hearings. An adjudicatory hearing is an evidentiary hearing to determine the “guilt” of the child. A dispositional hearing concentrates on the question of what is in the best interest of the child and what must happen to help and/or punish the child.

In the case of a delinquent, juvenile traffic offender or unruly child the time in which the adjudicatory hearing must be held after the complaint has been filed is governed by the Juvenile Rules and the applicable evidentiary standard is beyond a reasonable doubt which is the same evidentiary standard in criminal cases. The dispositional hearing is to begin immediately however it may be postponed without a definitive date for conclusion. For abused, neglected or dependent children the adjudicatory hearing is to be held within thirty days but not later than sixty days after a complaint is filed. The applicable evidentiary standard is that of clear and convincing evidence, which is a burden of proof lower than beyond a reasonable doubt but significantly greater than that of the preponderance of the evidence. Dispositional hearings in these cases must be held within 30 days after the adjudicatory hearing. (ORC 2151.28 and 2151.35)

The right to counsel and the right to appoint counsel at public expense apply in all juvenile court proceedings including delinquency cases and cases where permanent termination of parental rights is involved (ORC 2151.352 and Juvenile Rule 4(A)).

A guardian ad litem is appointed to represent the best interests of the child in a delinquent or unruly child case when the child has no parent, guardian or legal custodian or where there is a conflict of interest between the child and the parent, guardian, or legal custodian and in all abuse and neglect cases (ORC 2151.281).

The expenses for the appointment of counsel and/or guardians ad litem are payable by the county in the same fashion that indigent defense costs are paid in the adult system (see Chapter 103 of this *Handbook* regarding indigent defense).

### **98.075 DETENTION OF JUVENILES**

Juvenile courts have powers to take delinquents and unruly children into detention. The courts may also, through temporary orders (ORC 2151.33), take abused, neglected and dependent children into custody. If a child is removed from his home, an emergency hearing must be held within 72 hours of removal of the child from his home (ORC 2151.314(A)).

Upon taking a child into custody that child may be held in a jail for processing purposes for not longer than six hours if the offence would have been an adult felony nor longer than 3 hours if the offense would have been an adult misdemeanor or the child is alleged to be an unruly child or juvenile traffic offender. Strict statutory requirements, set out in ORC Section 2151.311 apply to the child's confinement. They may not be placed within the sight, sound or touch range of an adult offender, must be visually supervised at all times, and shall not be handcuffed or otherwise restrained. An alleged or adjudicated neglected, abused or dependent child may not be held in either a secure adult correctional facility or a juvenile detention center. An alleged or adjudicated unruly child may not be held in a secure adult correctional facility but may be held in a juvenile detention facility for not longer than 24 hours before being brought before the court.

Confinement of an alleged or adjudicated unruly child in a detention facility prior to the court's disposition can not occur unless it is necessary to protect the child, the child may abscond, the child has no parent/guardian, or the court has ordered the confinement. An alleged or adjudicated delinquent child may be held in a detention facility up to ninety days for the purpose of preparing a disposition recommendation for the court. (ORC 2151.31(C))

### **98.076 DISPOSITIONAL POWERS**

Dispositional powers of juvenile courts are exercised to determine what, in the best interests of the child, must happen to help and/or punish the child. The law provides both mandatory and discretionary dispositional powers based upon the adjudication.

#### **1. DELIQUENT CHILD:**

Dispositional options for the juvenile court in dealing with a delinquent child are impacted by the type of adjudication and are described in a "sentencing grid" found in ORC Section 2152.11. The alternatives are categorized into three classes of sanctions: Mandatory Serious Youthful Offender; Discretionary Serious Youthful Offender; and Traditional Juvenile Dispositions. Disposition options for Serious Youthful offenders are found in ORC Section 2152.13(E) and



require the court to include the adult criminal penalty (enforceable upon the child's reaching 21) and one or more of the Traditional Juvenile Dispositions that include commitment to the Department of Youth Services, any of the sanctions for an unruly child (see above), or of any of the financial sanctions provided in ORC Section 2152.20.

2. JUVENILE TRAFFIC OFFENDERS:

Any of the following may be ordered by a juvenile court as provided in ORC Section 2152.21: imposition of any of the financial sanctions provided in ORC Section 2152.20, suspension of the child's driving privileges for a definite period not to exceed two years, placement of the child into community control, require restitution for all damages caused by the child's traffic violation, and, if found to be guilty of OVI, commit the child for not more than five days to a facility operated for the care of juvenile traffic offenders.

3. UNRULY CHILD:

Disposition options are provided in ORC Section 2151.354 and include: Imposing any of the sanctions available abused, neglected or dependent children; placing the child on community control which may include basic or intensive probation supervision, day reporting, house arrest, curfew, community service, a requirement that they complete a high school education or equivalency or engage in drug and alcohol counseling; suspend or revoke the child's driving privileges; or commit the child to the temporary or permanent custody of the court.

4. ABUSED, NEGLECTED OR DEPENDENT CHILD:

A judge's disposition is governed by ORC Section 2151.353(A) and includes, but is not limited to, the following options: placing the child in protective supervision; granting temporary custody of child to public children services agency or private child placing agency, probation officer, parent or relative; awarding legal custody to parent, guardian, custodian; and placement in long-term foster care.

**98.077 COUNTY JUVENILE DETENTION FACILITIES**

**COUNTY REQUIRED TO PROVIDE A DETENTION FACILITY (ORC 2152.41)**

A board of commissioners, upon the recommendation of their juvenile judge, or boards of commissioners from several counties, upon the combined recommendation of their juvenile judges, is required to provide a county or district detention facility, respectively.

Detention facilities may be used for two different purposes. They may hold alleged delinquent children until final disposition for the purpose of evaluating the juvenile to

support a disposition recommendation. They may also be use to incarcerate a juvenile traffic offender as a part of the disposition order for that child.

Commissioners are authorized to apply to DYS for financial assistance to defray the cost of operating and maintaining the detention facility (ORC 2152.43(A)) or, where a district's population exceeds 100,000, the cost of acquisition or construction of the district's facilities (ORC 2152.43(B)). However, while the statutory guidelines for funding exist in ORC Sections 5139.281 and 5139.271, respectively, there has never been funding appropriated by the General Assembly to DYS for this purpose.

If a county does not have a detention facility, the juvenile court may enter into a contract, with the approval of the commissioners, with another juvenile court, another county's detention facility, or a district detention facility. In the alternative the court may arrange for the placement of juveniles to private homes, certified foster homes, any public children services agency, or private child placing agency and the county is obligated to fund out-of-home placements for children as the court directs (ORC 2152.41(C)).

#### COUNTY DETENTION FACILITY (ORC 2152.41 and 2152.42)

A county detention facility must be located within a convenient distance from the courthouse. The juvenile judge appoints a superintendent to operate the facility. The judge also appoints all necessary employees to fulfill statutory obligations concerning the education, recreation, medical and mental health needs of children held in the facility. The judge fixes compensation for all employees of the detention facility. Like any other court employees, their compensation is paid from the county general fund.

County commissioners may issue general obligation bonds pursuant to ORC 133.15 to finance the construction of a detention facility. A county detention facility tax levy may also be submitted to the electorate for approval to fund a detention facility pursuant to ORC 5705.01.

#### DISTRICT DETENTION FACILITY (ORC 2152.41 to 2152.44)

The joint board of commissioners of the member counties of a district detention facility must establish a board of trustees (minimum of five members) to manage the facility. The board of trustees has the power to hire a superintendent and other necessary employees and to fix their compensation. Appointment of these trustees is done by the joint board of commissioners upon the recommendation and approval of the juvenile judges. Each county is, however, guaranteed at least one trustee appointment. Commissioners in a district may remove any trustee for good cause.

The joint board of commissioners are responsible for the selection and acquisition of the site, buildings, and furnishings necessary for occupancy of the facility. They may delegate this responsibility to the board of trustees (ORC 2152.44(D)). When an established site and buildings are used for the facility the appraised value, purchase

price, or cost of improvements to the facility is paid by the counties in the district proportionate to taxable property of each county (ORC 2152.44(D)).

The joint board of commissioners may also establish a "trustee fund" to be expended by the board of trustees for contracts, purchases, or other necessary expenses of the facility. The board of trustees must make a quarterly report to the joint board of commissioners and the courts on expenditures from the trustees' fund.

Operating expenses are apportioned between or among the member counties by one or a combination of the following methods adopted by the joint board of commissioners:

1. Prorated to the member counties based upon the number of children each county places in the home each year.
2. By a real property tax levy submitted by joint board of commissioners pursuant to ORC 5705.19(A) and approved by electors in the district.
3. Prorated to the member counties based upon their proportionate share of taxable property as shown on each county's tax duplicate.

The board of commissioners of any county, upon recommendation of their juvenile court, may withdraw from a detention district. The county may dispose of its interest in the detention facility by selling or leasing its part to any county in the district for an agreed upon sum, to be credited to the county general fund. (ORC 2152.41(D)) If the county is part of a district that has levied a property tax, the tax levy must continue until its expiration or renewal.

#### OTHER JUVENILE FACILITIES (ORC 2151.65 to 2151.80)

Commissioners, at their option may, upon the recommendation of a judge or judges from two or more neighboring counties, provide a "school, forestry camp or other facility or facilities" for the training, treatment and rehabilitation of dependent, abused, neglected, unruly, juvenile traffic offenders, or delinquent children. These juvenile facilities are optional, and county commissioners cannot be compelled by their judges to construct or support the operation of these facilities. Single county and district juvenile facilities are created, governed, and managed in the same manner as their mandatory counterparts the detention facilities.

ORC Section 2151.651 authorizes commissioners, supported by an order of the juvenile court, to apply to DYS for financial assistance to defray the county's cost of acquisition or construction of these facilities, if they are to be used exclusively for delinquent or unruly children. However, while the statutory guidelines for funding exist in ORC Section 5139.27, there has never been funding appropriated by the General Assembly to DYS for this purpose.

## 98.08 MUNICIPAL COURTS

Municipal courts are courts of record created by the General Assembly in ORC Section 1901.01 and pursuant to Article IV Section 6 of the Ohio Constitution. Their territorial jurisdiction is established by law in ORC Section 1901.02. When the territorial jurisdiction of a municipal court or all of the municipal courts within a county together serves the entire area of the county there will be no county court provided for by statute (See Section 98.09 below)

In 2009 there were 128 municipal courts with 212 municipal court judges in Ohio. Generally speaking municipal court judgeships are full-time positions, however, there currently remain eighteen part-time municipal courts in Ohio as shown in Table 98-4. The municipal courts and their current number of judges that have been created by the General Assembly can be found in the annual *Ohio Courts Summary* found on the Supreme Court of Ohio's web site at:

<http://www.supremecourt.ohio.gov/Publications/default.asp>

Municipal courts have original jurisdiction in matters (ORC 1901.18), where the amount claimed is less than \$15,000 (ORC 1901.17), involving:

1. Civil actions which judges of the county courts have jurisdiction;
2. Recovery of money or personal property where the court of common pleas has jurisdiction;
3. Any action based on contract, the court may hear and determine all legal and equitable remedies necessary for a complete determination of parties rights;
4. Any action or proceeding involving the sale of personal property under chattel mortgage, lien, encumbrance or other charge, foreclosure and marshalling of liens and personal judgment on action;
5. Seeking to enforce the collection of its own judgments or those of other courts;
6. Any action in the nature of interpleader;
7. Replevin;
8. Forcible entry and detainer (eviction);
9. The issuance or enforcement of protective orders;
10. Code enforcement against buildings which have become a nuisance (ORC 3767.41(B)(1)); and,
11. The violation of "home rule" township resolutions.

The Municipal court's criminal jurisdiction (ORC 1901.20) includes:

1. Municipal ordinance violations;
2. Vehicle parking or standing resolutions or regulations adopted pursuant to ORC Chapter 4521, except where such violations are required to be handled by parking violations bureau; and,
3. Misdemeanor violations under the Ohio Revised Code.

The municipal court has jurisdiction in felony cases to conduct preliminary hearings and other necessary hearings prior to a felony defendant's indictment and determination of reasonable cause to compel the defendant's appearance before a court of common pleas. (ORC 1901.20(B)) The municipal court also has appellate jurisdiction over parking violations bureau actions. (ORC 1901.20(C))

Within every municipal court is a small claims division (ORC 1925.01) which has limited civil jurisdiction for recovery of taxes and money only. The small claims division's jurisdiction is also limited to amounts not exceeding \$3000 exclusive of interest and costs. The division does not have jurisdiction in cases of libel, slander, replevin, malicious prosecution, abuse of process actions, actions for punitive damages, and actions brought by an agent or assignee of the claimant. (ORC 1925.02)

The Cleveland and Toledo municipal courts have a housing division and the Franklin County municipal court has an environmental division. (ORC 1901.011 and 1901.331)

### **98.081 MUNICIPAL OR COUNTY OPERATED COURT**

ORC 1901.03 identifies those counties which have accepted responsibility for the operation of a county-wide municipal court within their county. Currently there are 21 county operated municipal courts in Ohio: Auglaize, Brown, Carroll, Clermont, Columbiana, Crawford, Darke, Erie, Hamilton, Hocking, Holmes, Jackson, Lawrence, Madison, Miami, Montgomery, Morrow, Ottawa, Portage, Putnam, and Wayne. All of the other municipal courts are operated by a municipal government regardless of their territorial jurisdiction. If the territorial jurisdiction exceeds the municipal boundaries the other political subdivisions within the court's jurisdiction help subsidize the municipality's operating costs. This distinction forms the basis of the responsibilities for municipal court funding.

Municipal court judges are elected in odd-numbered years. The number of judges is fixed by the General Assembly (ORC 1901.08). Municipal court judges are to be provided health care coverage, the cost of which is apportioned in the same manner as the judge and clerk's salaries (ORC 1901.11). The law further stipulates that the judge and clerk must be included in any existing municipal or county policy which covers other municipal court employees (see also Chapters 67 and 72 of this *Handbook*).

In the case of county-operated municipal courts, the county pays 100 percent of the judge and the clerk of the municipal court's salaries, as well as all other operational expenses of the court. In non-county-operated municipal courts, the county must pay 40 percent of these salaries, with the municipalities paying 60 percent of these salaries and all of the other operating expenses of the court. All operational costs are apportioned as provided for in ORC Section 1901.026 except in Hamilton, Wayne and Portage counties where the apportionment of cost is specified in ORC Sections 1901.11 and 1901.31.

## **98.082 APPOINTMENT/COMPENSATION OF MUNICIPAL COURT EMPLOYEES**

### **1. MUNICIPAL CLERK OF COURTS (ORC 1901.31)**

Clerks of municipal courts may either be elected or appointed. Generally a municipal court territory with a population of 100,000 or more has an elected clerk who stands for election at the same time as the municipal judge in that territory and also serves a six year term. In other municipal courts with a territory population of less than 100,000, the clerks of the respective common pleas courts also serve as the municipal court clerk with additional compensation set by the legislative authority or by statute. These clerks, which serve both the common pleas and municipal courts, have the authority to appoint assistant clerks. These assistant clerks receive compensation as the legislative authority prescribes (see Chapter 72 of this *Handbook*). Exceptions to this general rule are specifically established in ORC 1901.312 for certain courts.

A municipal court may also appoint and set the compensation of a chief deputy clerk of courts to serve a branch office of the clerk of municipal court [ORC 1901.311]. Municipal court clerks and deputy clerks of court are also entitled to health care coverage under ORC 1901.312(B). As with the judges' coverage, a county must pay 100 percent of the cost for the clerk and deputy clerks in a county operated municipal court; in a non-county operated court, the county pays 40 percent of the clerk's health care coverage and the municipality(s) pays 100 percent of the deputy clerks' health care coverage.

### **2. BAILIFFS (ORC 1901.32)**

The municipal court judge appoints a bailiff to attend upon the court and sets the compensation for the bailiff. In a county operated municipal court, the county pays 100 percent of the bailiff's salary. In a non-county operated municipal court, the county pays 40 percent of the bailiff's salary. Further, deputy bailiffs may be appointed by the court at a salary the court prescribes. Again, if the court is county operated, the county pays 100 percent of deputy bailiffs' compensation and if non-county operated, the municipality pays 100 percent of deputy bailiffs' compensation. The Hamilton County Municipal Court is the exception where the clerk of the court appoints the bailiff and deputy bailiffs.

### 3. COURT AIDES (ORC 1901.33)

Municipal court judges may appoint one or more interpreters, mental health professionals, or probation officers; an assignment commissioner; deputy assignment commissioners; and other court aides on a full-time, part-time, hourly or other basis. They may also appoint one or more typists, stenographers, statistical clerks and official court reporters. The legislative authority of the court sets the level of compensation for these employees, payable entirely from the municipal treasury. Specifically, a city sets the compensation and pays for these salaries in a non-county operated municipal court. Similarly, a county sets the compensation and pays the salaries of these employees in a county operated municipal court.

### **89.083 HOUSING OR ENVIRONMENTAL DIVISION EMPLOYEES**

In the case of a housing or an environmental division within a municipal court, judges are required to appoint a chief housing specialist and a chief environmental specialist, respectively (ORC 1901.331). Additionally, such judges may appoint one or more housing or environmental specialists, one or more housing or environmental division referees, and any other bailiffs or "court aides" specified in ORC Sections 1901.32 and 1901.33.

### **98.09 COUNTY COURTS**

County courts are created by the General Assembly pursuant to authority granted by Article IV, Sections 1 and 6 of the Ohio Constitution. County courts are courts of record that exist in counties where there are no municipal courts, or where the territorial jurisdiction of the existing municipal court or courts does not cover the entire county (ORC 1907.01). In 2009 there were 38 county courts with 44 judges. See Table 98-6 for a listing of Ohio's County Courts. All county court judges are part-time judges elected to six year terms. Compensation of county court judges is detailed in Chapter 72 of this *Handbook*. The county courts and their current number of judges that have been created by the General Assembly can be found in the annual *Ohio Courts Summary* found on the Supreme Court of Ohio's web cite at: <http://www.supremecourt.ohio.gov/publications>

If a county has more than one county court judge the presiding judge of the county court may divide the county district into areas of separate jurisdiction. In county court districts that have less than a population of 120,000, each area of separate jurisdiction must include one or more townships. For county court districts that exceed this population threshold, the presiding judge may assign more than one judge to each area of jurisdiction (ORC 1907.15).

Subject matter jurisdiction for county courts is similar to municipal courts. County courts have exclusive original jurisdiction in matters where the amount claimed is less than \$500 and original jurisdiction where the amount claimed is less than \$15,000 (ORC 1907.03), involving:

1. Civil actions;
2. Actions regarding title to real estate including trespass on real estate and collection for expenses of surveys in boundary line disputes (ORC 1907.05);
3. Replevin (ORC 1907.05);
4. Forcible entry and detainer (eviction) (ORC 1923.01); and,
5. Code enforcement against buildings determined to be a nuisance (ORC 3767.41(B)(1))

In criminal actions or proceedings, they have jurisdiction in misdemeanor cases (including non-criminal parking violations not handled by a parking violations bureau) and municipal ordinance cases.

County courts, like municipal courts, must establish a small claims division having jurisdiction in civil actions for the recovery of money only, in cases other than libel, slander, replevin, alienation of affections, malicious prosecution, abuse of process actions and actions for punitive damages. Actions in the small claims division cannot exceed \$3000, exclusive of interest and costs. (ORC 1925.01)

County commissioners are responsible for furnishing the county court with suitable court and office space and materials necessary for the conduct of court business (ORC 1907.19). The county also pays for all salaries of county court employees.

## **98.091 APPOINTMENT/COMPENSATION OF COUNTY COURT EMPLOYEES**

### **1. COUNTY COURT CLERK**

In counties where there is a county court covering an area of the country where there is no municipal court with jurisdiction the clerk of the court of common pleas also serves as the clerk for the county court and receives a supplement equal to of one fourth of their common pleas court clerk salary for performing this function. The county commissioners, may, however, with the concurrence of the county court judges, choose to appoint a clerk for each county court judge; these clerks serve at the pleasure of the county commissioners and are compensated as the commissioners direct. (ORC 1907.20 (A))

Besides the ability to set the appointed clerk's compensation, there are some other advantages for commissioners to appoint a separate county court clerk. If the clerk of common pleas court assumes the duties of the county court clerk, the clerk then has authority to both appoint and set the compensation of deputy clerks. If, on the other hand, the county commissioners have appointed the county court clerk, the commissioners have the additional authority to appoint and set the compensation of deputy clerks as they deem appropriate (ORC 1907.20(E)(1)).



Branch offices for the clerk of a county court may be established. Where there is an appointed clerk the county commissioners may order the establishment of one or more branches of the clerk's office and, with the concurrence of the county court judges, may appoint a "special deputy clerk", to head the branch office. If county commissioners choose this method, they are then entitled to establish both the duties and compensation for these special deputy clerks. The commissioners may also authorize the clerk of the county court to operate one or more branch offices and divide that clerk's time between the offices. Where the clerk of courts also acts as the county court clerk they may establish of one or more branches of the clerk's office and, with the concurrence of the county court judges, may appoint a "special deputy clerk", to head the branch office. In this case the clerk of courts has the authority to both appoint and fix compensation for branch office clerks (ORC 1907.20(F)).

## 2. OTHER EMPLOYEES

The judge or judges of a county court may appoint an interpreter, one or more mental health professionals, one or more probation officers, an assignment commissioner, a deputy assignment commissioner, one or more typists, stenographers, statistical clerks, bookkeepers, official court reporters, and other court aides on a full-time, part-time, per diem, hourly, or other basis, who shall serve at the pleasure of the appointing judge or judges and who shall receive compensation as prescribed by the board of county commissioners from the county treasury or other authorized funds. Probation officers, the assignment commissioner, and official court reporters are in the unclassified civil service (ORC 1907.201).

### **98.10 MAYOR'S COURTS**

Mayor's courts are courts created by law, but are not courts of record. In 2009 332 Mayor's Courts registered with the Ohio Supreme Court. Mayor's courts are governed by the Mayor's Court Education and Procedure Rules adopted by the Supreme Court of Ohio. The Ohio Constitution in Article IV, Section 1 gives the General Assembly authority to create and abolish mayor's courts.

ORC Section 1905.01, with limited exceptions, provides that mayors of municipalities with a population of more than one hundred that are not sites of municipal courts may hold mayor's court.

All docketing and filing in mayor's courts is governed by the laws pertaining to county courts. Mayors, who serve as the judge in a mayor's court, do so without any additional compensation. A mayor may appoint a magistrate to preside at mayor's court who is entitled to either an annual salary set by or annual contract entered into with the legislative authority of the municipality. (ORC 1905.05).

The mayor and/or a magistrate have statutory jurisdiction to hear and determine any prosecution for the following:

1. Municipal ordinance violations.
2. Vehicle, parking or standing ordinance violations, subject to limitations of ORC Chapter 4521.
3. Moving traffic violations on state highways located within the boundaries of the municipal corporation, subject to limitations of ORC Sections 2937.08 and 2938.04.

Mayors courts also have jurisdiction to hear and determine violations of municipal ordinances of operating a vehicle while under the influence of alcohol or drugs, or violations of ORC Section 4511.19 occurring on state highways within the boundaries of the municipality, but only if it is a first offense OMVI. The mayor's court is entitled to suspend and must suspend or revoke driver's licenses of persons convicted of or pleading guilty to an OMVI offense. (ORC 1905.201)

Mayors and magistrates are required to complete educational requirements in order to conduct mayor's court. In order to hear those matters granted by statutory jurisdiction they are required to complete six hours of initial general education prescribed by the Ohio Supreme Court and three hours of continuing general education in each subsequent year. In order to hear OMVI cases, a mayor must complete six hours of initial alcohol and drug related traffic offenses education prescribed by the Ohio Supreme Court. This training must be completed within 60 days of assuming office. In addition, three hours continuing education must be completed each subsequent year.

Mayors may not hear a case where the defendant is entitled to a jury trial or demands a jury trial (Ohio traffic rules 9 (B) and 9 (C)). In this instance the case is transferred to and disposed of in the municipal court or county court within whose jurisdiction the municipality is located.

In connection with their limited jurisdiction, mayor's courts are allowed to collect the same fees as are allowed in the municipal or county court within whose jurisdiction the municipality is located (ORC 1905.08). However, mayor's courts have no authority to establish an independently determined schedule of court costs.

### **98.101 MUNICIPAL ORDINANCE AUTHORITY**

Based upon the constitutional "municipal home rule powers," a village or city is allowed to adopt and enforce a series of ordinances that parallel the criminal offenses of the Ohio Revised Code. The criminal and traffic offenses adopted by the municipality must be substantially equivalent in both the definition of and the penalty for the offense that is provided for in the Ohio Revised Code. Law enforcement officers have the discretion to choose whether to cite an offender under either the ORC or the municipal ordinance. An unfortunate phenomenon that is all too common is for the police officer to cite an individual under the municipal ordinance if it appears the defendant, if convicted, would

have the means to be able to comply with the sanctions including the payment of the fine imposed by the municipal or mayor's court hearing the case. In other instances where it appears prosecuting the case in the municipal or mayor's court would be "unprofitable" the individual is cited under the similar ORC section and processed through the county justice system at the county's expense.

## **ISSUES OF INTEREST REGARDING COURT MANAGEMENT AND FUNDING**

### **98.11 CONTROL OF THE COURTHOUSE**

The primary and paramount purpose of a courthouse is to provide rooms and facilities essential for the proper and efficient performance of the functions of the court (Zangerle v Court of Common Pleas (1943), 141 Ohio St. 70). The law directs county commissioners to provide a suitable place to hold the courts of the county (ORC 305.22). The Supreme Court, through its Rules of Superintendence for the Courts of Ohio, has established court facility standards that it feels represent the minimum requirements to ensure the efficient and effective administration of justice which can be found in Appendix D to the Rules of Superintendence on the Supreme Court's website: <http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf>

Although county commissioners have full control over offices provided by them for other county officers, the judiciary assumes control over any building or part thereof assigned to it. Further, it is the duty of the commissioners to furnish, provide utilities to, and maintain the court facilities. The courts determine the sufficiency of quarters and facilities furnished for their use. Commissioners have little discretion to deprive a court of the use of any part of the building provided for the administration of justice. In practice, some courts have taken over all available courthouse space for their operations, and in so doing, have displaced other county offices. In seeking to obtain additional office space or facilities the court's action must be reasonable and necessary for the efficient operation of the court, as distinguished from mere desire. But, in a similar manner to the standards applied to a court budget request the commissioners have the burden of proving that the additional space is not reasonable and not necessary.

While ORC Section 311.07 provides that the sheriff is in charge of the courthouse (also see Chapter 100 of this *Handbook*), subject to the direction and control of the county commissioners, this has been interpreted to mean the security of the facility and does not empower the sheriff to decide how the building may be occupied.

### **98.12 COURTHOUSE SECURITY**

Rule 9 of The Rules of Superintendence for the Courts of Ohio requires courts to develop a court security plan that addresses the provisions of the Ohio Court Security Standards that are contained in Appendix C to The Rules of Superintendence. The standards were first adopted by the Supreme Court in 1994 and revised in 2008 and are

based upon recommendations of the Supreme Court Advisory Committee on Court Security & Emergency Preparedness. The standards, according to the Supreme Court, are designed to provide safe and secure court facilities for all who enter so that justice for all may be sought and not unjustly interrupted. Furthermore, a board of county commissioners is obligated to comply with an appropriation request from a court for implementation of a courthouse security plan, unless the board demonstrates that the request is either unreasonable or unnecessary for the proper administration of the court's business. (OAG Opinion 96-015)

Each court is to appoint a court security committee to meet on a periodic basis for the purpose of implementing the standards. The court security committee at a minimum should include representatives of first responders, emergency management agencies, the sheriff, and the commissioners.

The standards require the adoption of written policies and procedures manuals with respect to security, emergency preparedness and continuity of operations. The security policy is to include a physical security plan; routine security operations; an emergency action plan that addresses events such as a hostage situation, an escaped prisoner, violence in the courtroom, bomb threat, fire, and natural disasters; and a high risk trial plan. The emergency preparedness plan is to provide for the safety of all persons present within the court facility during an emergency. The continuity of operations plan is to address the continued operation of the court at an alternative site should its present site be rendered inoperable due to a natural disaster, act of terrorism, security breach within the building, or other unforeseen event. Another key area of concern is for the implementation of appropriate security controls to ensure protection of the court's information technology operations.

One of the most controversial issues is the building entry point security search. The standards suggest that the credibility of court security requires the public be subject to a security search when entering a court facility and any exemption of personnel from the security search process, including elected officials, court personnel, attorneys, law enforcement officers, or court security officers, should be decided and documented by the court security committee. Initially the Supreme Court provided grant funding to counties to subsidize the acquisition and installation of entry point security equipment, however this funding is no longer available and there currently is no funding support for providing courthouse security. It is recommended that at a minimum, each court facility should have at least one portable walk-through magnetometer and a hand-held magnetometer, with court security officers trained in the proper use of that equipment. Walk-through magnetometers at a single point of entry, with accompanying x-ray viewing of packages and handbags, is the optimal method of searching entrants to a court facility and should be utilized to provide the type of security needed to ensure a safe environment. A single point of entry for the public is also strongly recommended. Another key issue that generates significant controversy is whether law enforcement officers should be required to surrender their weapons at the court facility door. It is recommended that each individual court should review its needs and formulate policy based upon local needs and realities.

The standards also offer guidance on several facilities' logistics concerns. Prisoners should be transported into and within a court facility through areas that are not accessible to the public. To ensure safe and secure work areas and to protect against inappropriate interaction between judges and participants in the judicial process, the security of the office space housing judges and court personnel should be maintained. All courtrooms, hearing rooms, judges' chambers, clerks of courts' offices, and reception areas should be equipped with a duress alarm "panic button" system connected to a central security station. There are times when individuals may be able to circumvent standard court security measures so judges and court personnel should have a readily accessible signal system upon which to rely in emergency situations. Closed-circuit video surveillance is also recommended. Finally, when designing new or remodeling old court facilities, consideration should be given to circulation patterns that govern the movement of people to, from, and in the courtroom. Judges, juries, court personnel, and prisoners should have routes to and from the courtroom separate from public routes. Waiting areas should be available to allow separation of parties, victims, and witnesses.

### **98.13 SPECIALIZED DOCKETS**

A specialized docket is a therapeutically oriented judicial approach to provide court supervision and appropriate treatment to offenders. The specialized docket model coordinates and integrates the provision of treatment services with intensive monitoring and actively engaged participation by the judge in the individual offender's case. The success of a specialized docket program is generally directly proportional to the community involvement and collaborations which are established through the court to create a continuum of services to address offenders' needs. By providing wrap-around treatment services, intensive monitoring of offender progress, and applying immediate sanctions when offenders fail to follow terms of probation or treatment protocols, offenders not only successfully complete requirements of probation, but also have a lower rate of recidivism.

There are currently 130 specialized docket programs in Ohio, which is recognized as the national leader in this area. Programs operate at the common pleas, juvenile, municipal and county court levels for substance abuse, mental health, domestic violence, reentry, DUI and sex offenders.

The Supreme Court strongly promotes the creation of specialized dockets and provides technical assistance through its Specialized Dockets Section which will assist a court in analyzing the need for, planning of, and implementation of a specialized docket program and help the court to resolve legal issues and court procedural issues that arise in creating a specialized docket program.

### **98.14 USE OF MAGISTRATES BY THE COURTS**

The use of magistrates to aid a judge in the performance of judicial duties is authorized under Rules adopted by the Supreme Court. Any court, except a mayor's court, may

appoint a magistrate. Magistrates must be attorneys at law licensed to practice in Ohio. The Supreme Court has indicated that “a magistrate’s oversight of an issue or issues, or even an entire trial, is not a substitute for the judicial functions but only an aid to them.” (*Hartt v. Munobe* (1973) 67 Ohio St.3d)

A magistrate’s compensation is to be set by the court of employment and no part of a magistrate’s compensation shall be taxed as court costs. However, one of the stated purposes for the “special projects” local permissive filing fee which courts may adopt is to pay for magistrates and their training and education. (See County Advisory Bulletin 2002-05 [August 2002] *Local Permissive Filing Fees for Courts* and Section 98.15 below)

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200205.pdf&tabid=355&mid=974&language=en-US>.

A judge may refer a particular case or matter or a category of cases or matters to a magistrate by either a specific or general order of reference or by a local court rule. Within the scope of their authority as directed by the judge a magistrate’s responsibilities extend to conducting all of the proceedings in the case or matter as if by the court. The magistrate may issue subpoenas and put witnesses under oath and examine them; rule on the admissibility of evidence; hear and decide motions made by the parties; conduct civil trials; and conduct initial appearances, preliminary hearings, arraignments, bail hearings, receipt of pleas and misdemeanor trials in criminal matters. A magistrate may enter orders without judicial approval if necessary to regulate the proceedings, however, any party may file a motion with the court to set aside a magistrate’s order.

A magistrate’s decision is filed with the clerk of the court and served by the clerk on all of the parties not later than three days after the decision is filed. A magistrate’s decision is not effective unless adopted by the court. A party may file objections to the magistrate’s decision and the court must undertake an independent review of the objections to ascertain that the magistrate has properly determined the facts and appropriately applied the law. Whether or not objections are filed, the judge may adopt or reject a magistrate’s decision in whole or in part, with or without modification, or take additional evidence or return the matter to the magistrate for further proceedings. The final decision of the magistrate and any other aspects of a case are not complete until the court enters a judgment.

## **98.15 COURT COSTS, FEES AND FINES**

Court costs are revenue the court receives, collected through its clerk’s office, from the parties in a civil case or the defendant in a criminal case who has pled guilty to or been convicted of a criminal offense and are associated with the functions the court performs. Court costs received by the clerk of courts are deposited into the county general fund.

A fee is usually established by the General Assembly for a special purpose associated with the administration of justice. It can be charged against parties in a civil proceeding

or against a defendant who has pled guilty to or been convicted of a criminal offense. It is collected by the clerk and transferred to the state or deposited in the county treasury to the appropriate fund established to support the particular purpose.

The General Assembly has authorized virtually all courts to enact local court filing fees on a permissive basis. These fees are used by the court that establishes them for the specific purposes designated by the General Assembly.

A fine is the monetary sanction portion of the “sentence” imposed by the court against a defendant who has pled guilty to or been convicted of a criminal offense. Generally fine revenue generated from a violation of the Ohio Revised Code is paid to the county general fund in which the offense occurred; fine revenue generated from a violation of a municipal ordinance is paid into the treasury of that municipality; and fine revenue generated from the violation of a township resolution is paid into the treasury of that township. A redirection of part of this revenue occurs if the offense is a traffic offense or if the highway patrol issues the citation, and, up to certain threshold limits, to support the county law library resources fund. There are also a multitude of statutory exceptions to this rule where the statute directs the distribution of the fine revenue, the most notable of these being the drunk driving laws and drug enforcement laws.

Costs, fees and fines become an obligation of the individual and if they are not paid they can be collected by the clerk from that individual in the same manner as any other matter which has been reduced to a money judgment by a court. In civil cases collection is usually not an issue since the cost or fee is paid up front as part of the filing fee required before the case is docketed. In criminal cases, however, even though legal processes are available to collect this debt the reality is that in many instances the convicted defendant has limited financial resources to collect upon and an overwhelming majority of the costs, fees, and fines associated with criminal cases remain uncollectable

### **98.151 COURT COSTS**

Court costs are charged for the performance of specific administrative functions specified in statute or local court rule which are related to the case. When the specific task for which a cost is to be levied is performed the clerk will record, or “tax,” this charge and the appropriate amount in the clerk’s cost docket which is kept for each case before the court. At the conclusion of the case the clerk will total the costs and assess them to the plaintiff or defendant in a civil case based upon the court’s order or the convicted defendant in a criminal case.

The General Assembly has established a specific list of costs for the common pleas courts in ORC Section 2303.20 while it requires the municipal courts (ORC 1901.26(a)(1)) and county courts (ORC 1907.24(A)(1)) to establish by rule a schedule of fees and costs to be taxed in any civil or criminal action or proceeding. Mayor’s court costs are the same as those allowed in the municipal or county court within whose

jurisdiction the municipal corporation is located (ORC 1905.08). Mayor's courts do not have independent authority to adopt their own schedule of costs.

The General Assembly has also provided for a schedule of sheriff's fees (ORC 311.17) for specific services performed by the sheriff for the common pleas courts that are taxed as costs in a case. Police officers or court bailiffs are authorized to perform these same services for municipal courts (ORC 1901.26(A)(1)(b)) and county courts (ORC 1907.53(B) and (C)). Also taxed as costs in all courts are witness fees and mileage allowances (ORC 2335.05-.08).

### **98.152 COURT FEES**

As mentioned above, these court cost "fees" have been imposed by the General Assembly in order to provide funding for specified programs and are paid in addition to the costs taxed in court cases discussed in the section above.

From the commissioners' perspective, the most important of these fees, found in ORC Section 2949.091 is imposed against anyone who pleads guilty or is convicted of a criminal offense and is placed in the indigent defense support fund primarily to reimburse counties for indigent defense and also to support the State Public Defender's office. A second fee imposed against anyone who pleads guilty or is convicted of a criminal offense other than a non-moving traffic violation supports the crime victims reparations fund, commonly referred to as the victims of crime fund (ORC 2743.70). Collectively these two fees are known as the "statewide court cost."

Another fee established by ORC Section 2949.094 is imposed against anyone who is convicted of or pleads guilty to any moving violation and is allocated to three different purposes:

1. 50% is deposited in the indigent defense support fund;
2. 15% is deposited in the county or municipal indigent drivers alcohol treatment fund under the control of sentencing court created by ORC Section 4511.191(H); and
3. 35% supports drug task force units across the state with 97% of this amount being credited to the drug law enforcement fund created under ORC Section 5502.68 and the remaining 3% being credited to the justice program services fund created under ORC Section 5502.67. Grants are awarded from this fund to local government law enforcement agencies to defray the expenses that an organized drug task force incurs in performing its functions related to the enforcement of the state's drug laws and other state laws related to illegal drug activity.

Cuyahoga County has the ability to impose an additional court cost not exceeding five dollars for all traffic offenses except non-moving violations that occur in that county to



support its criminal justice regional information system. The board of county commissioners is required to establish the amount of the additional court cost by resolution. Parameters established by the General Assembly limits the application of ORC Section 2949.093 solely to Cuyahoga County.

In the probate domestic relations area there are two fees which support funding for victims of domestic violence shelters (See also Chapter 52, Domestic Violence Shelters). The first fee is imposed on the issuance of a marriage license (ORC 3113.34) and the second fee is imposed on the filing of in each new action or proceeding for annulment, divorce, or dissolution of marriage (ORC 2303.201(D)). Child abuse and child neglect prevention programs are supported with a fee imposed upon the filing of a divorce or dissolution of marriage action (ORC 3109.14(B)(2)).

Civil legal services are supported by a filing fee on a majority of the civil case filings in the general division of the common pleas court and certain specific actions filed in the probate division (ORC 2303.201(C)) and all new civil actions filed in municipal courts (1901.26(C)) and county courts (ORC 1907.24(C)). 96% of this fee is credited to the legal aid fund established under ORC Section 120.52 to be managed by the Ohio legal assistance foundation to support civil legal services and the remaining 4% is credited to the civil case filing fee fund established under ORC Section 120.07 to support the operation of the State Public Defender's Office.

### **98.153 LOCAL COURT PERMISSIVE FILING FEES**

The General Assembly has authorized virtually all courts to enact local court filing fees on a permissive basis. Commissioners need to be aware of whether any of the county's courts have elected to impose these fees and, if so, monitor the special revenue funds into which these fees are deposited and these funds' balances.

Local permissive filing fees have been authorized by state law for four different purposes:

1. Court computerization and computerized legal research [maximum of \$3.00]
2. Computerization of the clerk of court's office [maximum of \$10.00]
3. Dispute resolution programs [a reasonable fee]
4. "Special projects" of the court [no specified amount]

These fees may be imposed by a court of common pleas and its various divisions (probate, juvenile and domestic relations), a county court, and a municipal court. To impose the fee the court adopts a court order establishing the fee, setting the amount of the fee, and stating the purpose for which the fee is being collected.

The clerk's office computerization fee can be used to purchase and maintain computer systems for automation of the clerk of courts office. Allowable expenditures from this fund include computer maintenance contracts and staff compensation and benefits to operate computer systems. Any funds collected are subject to appropriation by the commissioners upon request of the court. The clerk of courts would enter into any contract, with the approval of the court. Further, counties have the authority to purchase computer systems using general obligation bonds and to use the revenue from the fee to retire the debt. This purchase is exempt from the statutory debt limit of the county pursuant to ORC Chapter 133, but is still subject to competitive bidding requirements. The courts may also choose to purchase computers with a portion of the court computerization and computerized legal research fee. Although the various divisions of the common pleas court have independent statutory authority to impose the two fees associated with computerization, if the common pleas court acts to impose these fees they are levied across all of its divisions and all of the judges of the common pleas court are responsible for making a determination as to any expenditure from those special funds (see OAG 2000-041).

The "special projects" fee that the court of appeals, court of common pleas, county court, or municipal court is authorized to impose is extremely flexible in its application and makes it an extremely beneficial component in each of those court's fee schedules. A "special project" fee can be imposed to acquire and pay for special projects of the court, including, but not limited to: additional facilities or rehabilitation of existing facilities; magistrates; training and education of judges, acting judges and magistrates; hiring and training of staff; equipment; community service programs; and, mediation or dispute resolution services. Revenue collected shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project and is disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific special projects fund is terminated because of the discontinuance of a program or service the court may order that moneys remaining in the fund be transferred to another special projects account.

Local permissive filing fees are paid to the court. In a civil case these fees are paid at the time of the filing of a case in court and are collected along with a deposit against which local court costs can be deducted as they are incurred. In a criminal case the fees are assessed at the time the defendant pleads guilty or is convicted of the criminal offense. In criminal actions the fees are included in the judgment entered against the defendant, however, the recovery of these fees in a "traffic" case is usually obtained from the defendant's waiver of the return of the posted bond. For more information on this subject see County Advisory Bulletin 2002-05 (August 2002) *Local Permissive Filing Fees for Courts*.

<http://www.ccao.org/LinkClick.aspx?link=CAB+MJ%2fCAB+200205.pdf&tabid=355&mid=974&language=en-US>.

## **98.154 COURT FINES AND THEIR DISTRIBUTION**

To suggest that the distribution of fine money is extremely complicated is an

understatement. There are several key sections of the Revised Code that provide the guidance to direct fine money that will be discussed here. A monetary fine can be imposed as part of the sentence of the court for a conviction arising from a violation of either the Ohio Revised Code, a municipal ordinance (which may be substantially equivalent to a section of the ORC – these are called parallel provisions), or a township resolution regulating adult entertainment establishments (ORC 503.52 or 503.53) or adopted by a limited home rule township pursuant to authority granted in ORC Chapter 504. Violations of township resolutions will be heard in the municipal or county court within whose jurisdiction the township lies. Ohio Revised Code and municipal ordinance violations are categorized as either felonies (serious offenses – with the possibility of being sentenced to a prison term of one year or greater) or misdemeanors (less serious offenses – with the possibility of being sentenced to jail for not more than one year). Felonies are heard exclusively by the common pleas court while misdemeanors are heard in Ohio’s misdemeanor courts (municipal and county courts) or mayors courts. A “traffic offense” is a violation of any of the provisions of ORC Chapter 4511 pertaining to the operation of motor vehicles or ORC Chapter 4513 pertaining to the safety and equipment of vehicles and road load limits. All law enforcement officers use the same form to “give you a traffic ticket” called the uniform traffic citation.

Mayors courts (ORC 733.40), county courts (ORC 1907.20 (C)), and municipal courts (ORC 1901.31) are all directed (by the indicated statutory reference), subject to all ORC sections that require a different distribution of fines, to pay fines received for violations of municipal ordinances into the treasury of the municipal corporation whose ordinance was violated, fines received for violations of township resolutions adopted pursuant to section 503.52 or 503.53 or Chapter 504 of the Revised Code into the treasury of the township whose resolution was violated, and fines collected for the violation of state laws into the county treasury.

A large majority of the cases brought before mayors, county, and municipal courts are traffic offenses as violations of the ORC or a parallel municipal ordinance. The distribution of fines from traffic offenses is an exception to the general rule and is governed by ORC Section 4513.35. All traffic fines are to be paid into the county treasury if an ORC violation or into the municipal treasury if a parallel municipal ordinance violation to the credit of the respective county’s or municipality’s “fund for the maintenance and repair of the highways” (auto registration distribution fund created under ORC 4501.03), except for the portion (which is 50%) distributed to the county law library resources fund (ORC 307.514). However, if a township law enforcement officer issues the traffic citation (which will be under the ORC) the township general fund is to receive 50% of the fine and the county receives the other 50%, unless the citation is issued for speeding which occurred on the interstate system then the county receives all of the fine, to be distributed to the auto registration distribution fund and county law library resources fund as described above. Also note that all fines collected for violations of the seatbelt law (ORC 4513.263(B)) are sent to the state for the purpose of promoting seat belt use education programs and trauma and emergency medical services.

The second major exception to the general rule of fine distribution is when the fine is the result of a violation for which a state highway patrol trooper “apprehended or arrested” the individual. In this case the distribution is affected by the court in which the case is filed (ORC 5503.04). In all instances 50% of the fine is paid to the state of which 45% is credited to the general revenue fund and 5% is credited to the trauma and emergency medical services grants fund (ORC 4513.263(E)). In a mayor’s court the remaining 50% goes to the treasury of the municipal corporation and is divided one-half to the general fund and one-half to the auto registration distribution fund. In a county court the remaining 50% goes to the county treasury and is divided one-half to the county general fund and one-half to the county auto registration distribution fund. If the prosecution is in a municipal court the remaining 50% is divided with 10% going to the county general fund and 40% going to the treasury to of the municipal corporation, except for the Auglaize, Clermont, Crawford, Hocking, Jackson, Lawrence, Madison, Miami, Ottawa, Portage and Wayne County Municipal Courts where all 50% goes to the county general fund.

At the common pleas level the fine distribution exceptions are in effect, however the money paid by the convicted defendant is assigned toward the satisfaction other obligations of the offender before it is allocated to satisfaction of the fine. Under ORC Section 2949.111 all of the court costs, state fines or costs, and restitution that the court ordered the offender to pay have to be satisfied before an offenders payment will be assigned toward the satisfaction of the fine until it has been entirely paid.

Payments to support the county law library resources fund receive a priority in the allocation of the fine money. County courts are to deposit 50% of all the fine money collected from ORC violations except liquor and traffic laws into the county law library resources fund (ORC 307.515 (B)). For municipal courts there is a maximum amount per county and/or per municipal court within that county based upon the county population that is to be paid from fines received by the municipal courts for municipal ordinance violations and ORC violations except liquor and traffic laws (ORC 307.515 (A)). The common pleas court’s general division and probate division must both transfer a maximum \$1,250 per year from fines received from ORC misdemeanor violations except traffic laws (ORC 307.515 (C)). All courts of the county are obligated to transfer 50% of the fines received for traffic offenses and the liquor law violations, limited to a maximum of \$1,200 per year for the liquor violations (ORC 307.515 (D)).

As indicated above there are a multitude of statutory exceptions to this rule where the statute directs the distribution of the fine revenue. Some of the major exceptions include fines for an OMVI conviction, fines for drug trafficking violations that go completely to the arresting law enforcement agency (ORC 2925.03 (J) and 2925.42 (B)(5)), fines from DNR violations that support the Wildlife and Waterways Safety funds, fines from liquor control law violations, and EPA regulatory fines. The Legislative Service Commission several years ago noted almost 150 distribution exceptions throughout the ORC.

Given the fine distribution requirements, very little of the fine revenue actually helps support the county's costs for the prosecution of Ohio Revised Code violations that include court operations, the prosecution and indigent defense of defendants, and maintaining the county jail.

### **98.16 JURY TRIALS – JUROR FEES**

When a jury trial is conducted in any court the jurors are compensated for their service based upon the rate set by resolution of the board of county commissioners (ORC Section 2313.34(B)).

In civil trials the fees of jurors are taxed as costs. The fees of jurors in any criminal case involving the violation of state law are paid from the county treasury. The fees of jurors in any criminal case involving a violation of a municipal ordinance are paid from of the treasury of the municipal corporation in which the violation occurred.

### **98.17 DEPARTMENT OF YOUTH SERVICES FUNDING FOR JUVENILE COURTS**

RECLAIM Ohio and the Youth Services Grant together make up the Department of Youth Services (DYS) Subsidy Grant to each of Ohio's 88 counties' juvenile courts. The funds received through RECLAIM and the Youth Services Grant can be used for a vast array of treatment, intervention, diversion and prevention programs for juveniles. Examples of such programs include day treatment, alternative schools, intensive probation, electronic monitoring and residential treatment. The primary limitation on the use of Subsidy Grant funds is that they cannot be used to supplant local funds. In addition, RECLAIM funds cannot be used for construction or renovation, while a limited amount of Youth Services Grant funding can be used for such expenditures. The legislative guidelines for these subsidy programs are found in ORC 5139.41, 5139.43 and 5139.44.

#### **RECLAIM OHIO**

RECLAIM Ohio (Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors) was created on July 1, 1993, in House Bill 152. RECLAIM is a funding initiative which encourages juvenile courts to develop or purchase a range of community-based options to meet the needs of each juvenile offender or youth at risk of offending. By diverting youth from Ohio Department of Youth Services (DYS) institutions, courts have the opportunity to increase the funds available locally through RECLAIM. RECLAIM was created in response to a growing need for local alternatives for juvenile courts and overcrowding in DHS institutions. In 1994 DHS launched the RECLAIM Ohio pilot program, with nine counties participating. During that year, the pilot counties had a 42.7% decrease in commitments to DHS compared to 1993. RECLAIM was implemented statewide in January 1995.

The juvenile court RECLAIM allocations are based on a four-year average of felony adjudications, with deductions for DHS and community corrections facility bed day

usage in the prior year. Under the formula, each court is given a number of “credits” based on the court’s four-year average of youth adjudicated for felony offenses. Those credits are reduced by one credit for each chargeable DYS bed day used during the previous year and 2/3 credit for each chargeable community corrections facility bed day used during the previous year. Each court’s percentage of the remaining credits statewide translates into that court’s percentage of the total RECLAIM funds allocated to the courts.

Chargeable bed days do not include a category of commitments called public safety beds. A court’s RECLAIM funding is not reduced as a result of youth in public safety beds, which are defined ORC 5139.01(A)(13). These include all Category One offenses and all Category Two offenses except for Aggravated Robbery and Aggravated Burglary. The category one public safety beds are: aggravated murder; attempted aggravated murder, murder; and, attempted murder. The category two public safety beds are: kidnapping; rape; voluntary manslaughter; felony one involuntary manslaughter; felonious sexual penetration; aggravated arson; aggravated robbery; and, aggravated burglary. Public safety beds also include the following: complicity to all of the category one and category two offenses except aggravated burglary and aggravated robbery; 3-year gun specification for all category one and category two offenses except aggravated burglary (in the case of a 3-year gun specification for aggravated robbery only the gun specification is a public safety bed and not the aggravated robbery offense itself); youth serving discipline time; youth serving more than 30 days on a parole revocation following supervised release from DYS (unless the underlying offense was a public safety bed); and, youth from counties which adjudicate less than one-tenth of one percent of the total number of youth adjudicated for felony offenses statewide.

The RECLAIM program has resulted in more youth today being served locally where families can participate more fully in their treatment. DYS Institutions are less crowded, and DYS focuses its treatment and rehabilitative efforts on the more serious, repetitive, felony-level youth.

#### YOUTH SERVICES GRANT

The Youth Services Grant funds have been in existence since 1981. Under this grant, each court is allocated a base amount of \$50,000. The remainder of the line item is then allocated to courts with a population of more than 25,000 on a per capita basis.

#### LOST SUBSIDY FUNDING FROM DYS

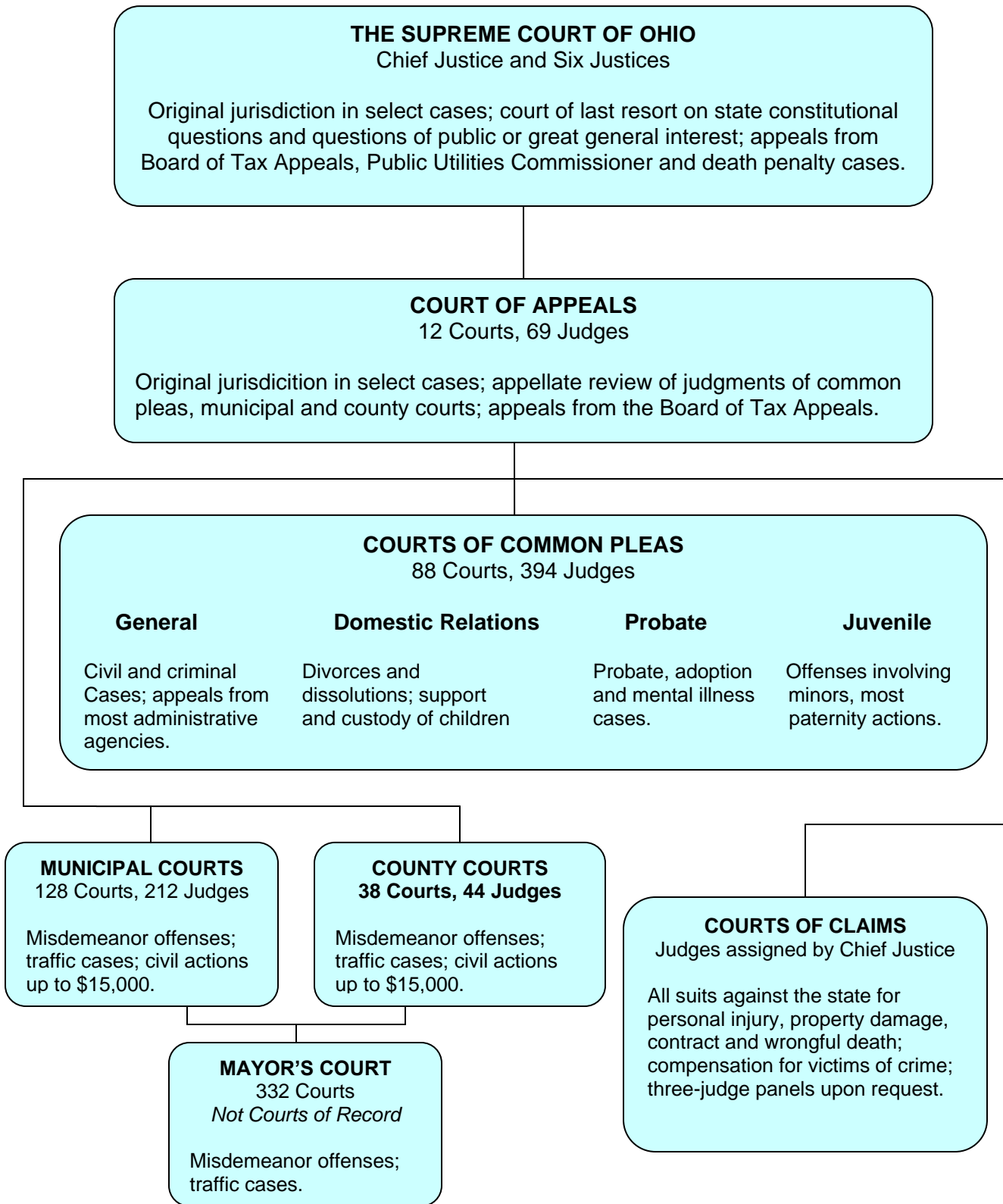
Two important other former DYS subsidies to counties remain unfunded and dormant since fiscal year 2004. The Juvenile Detention Facilities Operating Subsidy (502) was a direct DYS subsidy to counties that operate juvenile detention centers housing pre-dispositional youth. Equal dollar amounts were distributed to each center irregardless of number of beds. The Rehabilitation Centers Subsidy (501) was for county operated post-adjudication facilities for unruly and delinquent youth.

## RECLAIM ADVISORY COMMITTEE

The RECLAIM Advisory Committee is comprised of nine members: two juvenile court judges appointed by the Ohio association of juvenile and family court judges; the director of DYS or his designee; the director of Budget and Management or his designee; a member of a senate committee dealing with finance or criminal justice issues appointed by the president of the senate; a member of a committee of the house of representatives dealing with finance or criminal justice issues appointed by the speaker of the house of representatives; a county commissioner appointed by the County Commissioners' Association of Ohio; and, two juvenile court administrators appointed by the Ohio association of juvenile and family court judges.

The RECLAIM Advisory Committee is charged with evaluating the operation of the RECLAIM/Youth Services Grant program by DYS and the efficiency of the program formula when considering the public policy goal that state funds are to be expended to provide the most appropriate programs and services for felony delinquents and other youthful offenders. The committee is also to recommend to DYS, OBM and the General Assembly changes to the funding formula; funding level for the program; and funding distribution between the county allocations, community correctional facilities, and juvenile correctional facility budgets.

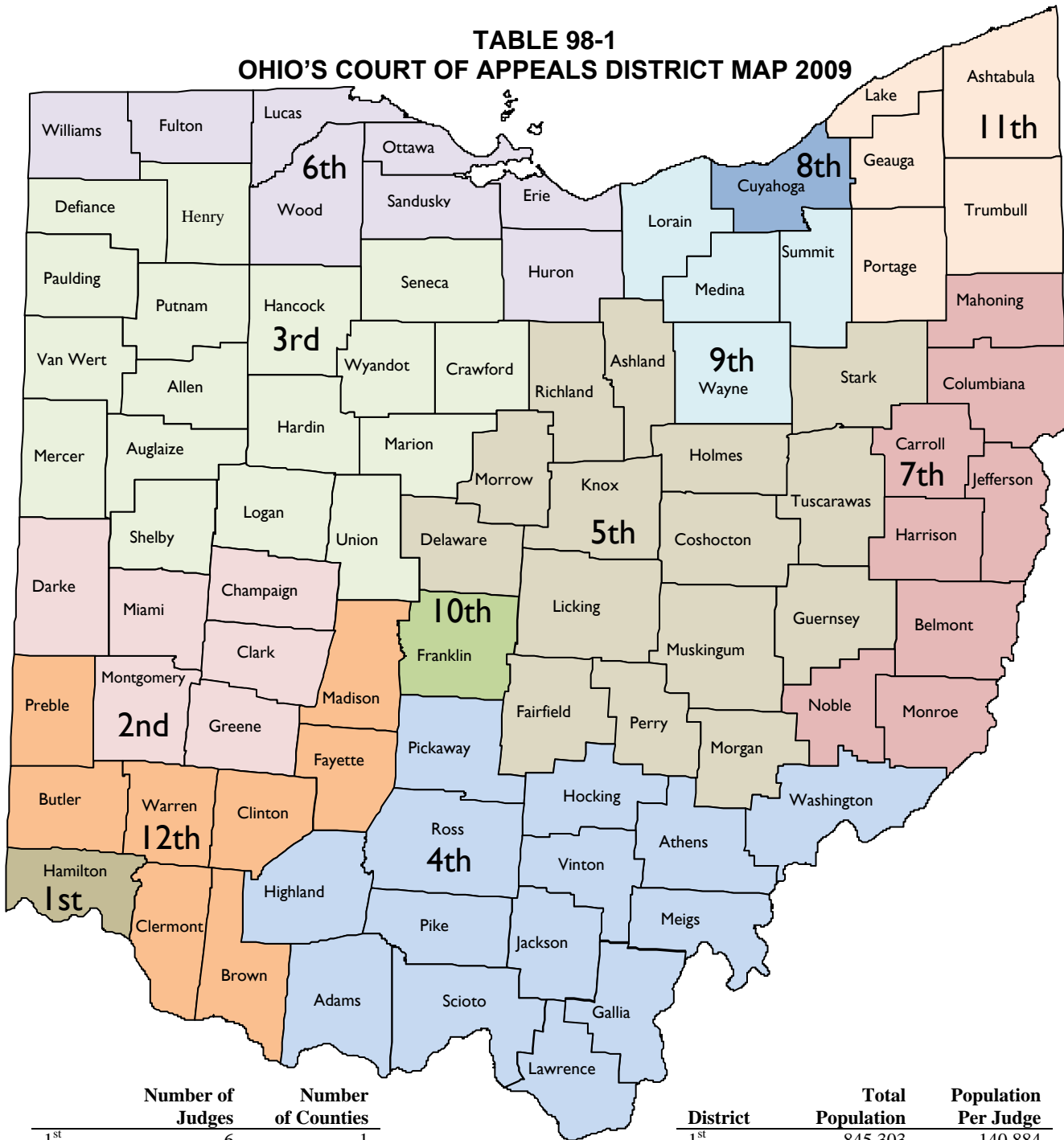
**DIAGRAM 1**



Source: Ohio Supreme Court "An Overview of the Statistical Reporting Progress"



**TABLE 98-1  
OHIO'S COURT OF APPEALS DISTRICT MAP 2009**



	<b>Number of Judges</b>	<b>Number of Counties</b>
1 <sup>st</sup>	6	1
2 <sup>nd</sup>	5	6
3 <sup>rd</sup>	4	17
4 <sup>th</sup>	4	14
5 <sup>th</sup>	6	15
6 <sup>th</sup>	5	8
7 <sup>th</sup>	4	8
8 <sup>th</sup>	12	1
9 <sup>th</sup>	5	4
10 <sup>th</sup>	8	1
11 <sup>th</sup>	5	5
12 <sup>th</sup>	5	8

<b>District</b>	<b>Total Population</b>	<b>Population Per Judge</b>
1 <sup>st</sup>	845,303	140,884
2 <sup>nd</sup>	1,042,757	208,551
3 <sup>rd</sup>	782,234	195,559
4 <sup>th</sup>	616,789	154,197
5 <sup>th</sup>	1,364,704	227,451
6 <sup>th</sup>	899,206	179,841
7 <sup>th</sup>	587,680	146,920
8 <sup>th</sup>	1,393,978	116,165
9 <sup>th</sup>	1,090,222	218,044
10 <sup>th</sup>	1,068,978	133,622
11 <sup>th</sup>	798,311	159,662
12 <sup>th</sup>	862,978	172,596

**TABLE 98-2**

**JURISDICTIONAL STRUCTURE OF COMMON PLEAS COURTS 2009**

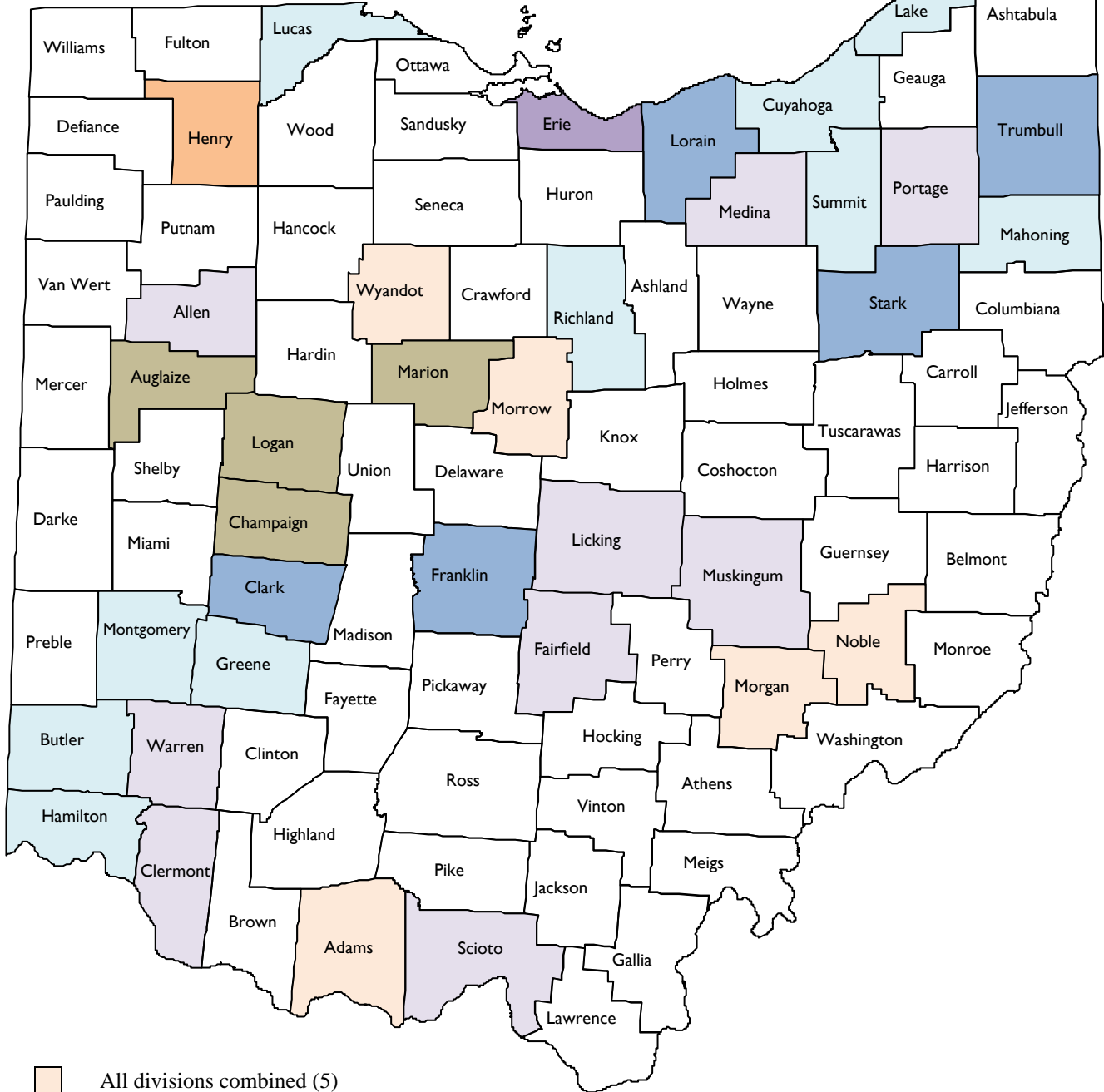
<b>Jurisdictional Structure</b>	<b>Number of Counties</b>	<b>Number of Judges</b>
Stand-alone General Division	28	162
Stand-alone Domestic Relations Division	19	30
Stand-alone Probate Division	15	16
Stand-alone Juvenile Division	11	20
Combined General and Domestic Relations Division	53	72
Combined Domestic Relations and Juvenile Division	6	15
Combined Domestic Relations, Probate and Juvenile Division	4	7
Combined Probate and Juvenile Division	62	62
Combined General, Domestic Relations and Probate Division	1	3
Combined General and Probate Division	1	1
Combined General, Domestic Relations, Probate and Juvenile Division	5	6

**TABLE 98-3**

**COUNTIES WITH STAND ALONE SPECIALIZED DIVISIONS OF COMMON PLEAS COURTS 2009**

<b>Division</b>	<b>Counties</b>
Domestic Relations (19)	Allen, Butler, Clermont, Cuyahoga, Fairfield, Greene, Hamilton, Lake, Licking, Lucas, Mahoning, Medina, Montgomery, Muskingum, Portage, Richland, Scioto, Summit, Warren
Probate (15)	Butler, Clark, Cuyahoga, Franklin, Greene, Hamilton, Lake, Lorain, Lucas, Mahoning, Montgomery, Richland, Stark, Summit, Trumbull
Juvenile (11)	Butler, Cuyahoga, Erie, Greene, Hamilton, Lake, Lucas, Mahoning, Montgomery, Richland, Summit
General (28)	

## COMMON PLEAS COURT JURISDICTIONAL ARRANGEMENT 2009



- All divisions combined (5)
- All divisions separate (10)
- Domestic relations and general combined; probate and juvenile combined (53)
- Probate and juvenile combined; domestic relations and general separate (9)
- Domestic relations and juvenile combined; general and probate separate (5)
- Domestic relations, probate and juvenile combined; general separate (4)
- Domestic relations and juvenile combined; general and probate combined (1)
- Domestic relations, general, and probate combined; and juvenile separate (1)

**TABLE 98-4****PART-TIME MUNICIPAL COURTS 2009**

<b>COUNTY</b>	<b>MUNICIPAL COURT</b>
Cuyahoga	Lyndhurst
Erie	Vermilion Huron Bellevue (Note: Bellevue is also located in Huron, Sandusky and Seneca counties.)
Geauga	Chardon
Hardin	Hardin County
Lawrence	Lawrence County
Lorain	Avon Lake
Mahoning	Campbell Struthers
Montgomery	Miamisburg Oakwood
Richland	Shelby
Warren	Franklin Mason Lebanon

**TABLE 98-5****COUNTY OPERATED MUNICIPAL COURTS 2009**

<b>COUNTY</b>	<b>MUNICIPAL/COUNTY COURTS</b>
Cuyahoga	Lyndhurst
Erie	Vermilion Huron
Geauga	Chardon
Hardin	Hardin County
Huron	Bellevue (Note: Bellevue is also located in Erie, Sandusky and Seneca counties.)
Lawrence	Lawrence County
Lorain	Avon Lake
Mahoning	Campbell Struthers
Montgomery	Miamisburg Oakwood
Richland	Shelby
Warren	Franklin Lebanon Mason

**TABLE 98-6**

**COUNTY COURTS IN OHIO  
Number of Judges and Population of Court & Per Judge**

<b>COURT</b>	<b>JUDGES</b>	<b>POPULATION TOTAL</b>	<b>POPULATION PER JUDGE</b>
Adams	1	27,330	27,330
Ashtabula, East	1	26,941	26,941
Ashtabula, West	1	27,931	27,931
Belmont, North	1	19,399	19,399
Belmont, East	1	18,908	18,908
Belmont, West	1	31,919	31,919
Butler #1	1	32,029	32,029
Butler #2	1	41,957	41,957
Butler #3	1	72,984	72,984
Fulton, East	1	20,717	20,717
Fulton, West	1	21,367	21,367
Harrison	1	15,856	15,856
Highland	1	8,938	8,938
Jefferson #1	1	19,665	19,665
Jefferson #2	1	21,419	21,419
Jefferson #3	1	13,795	13,795
Mahoning #2	1	42,518	42,518
Mahoning #3	1	21,094	21,094
Mahoning #4	1	44,275	44,275
Mahoning #5	1	21,090	21,090
Meigs	1	23,072	23,072
Monroe	1	15,180	15,180
Montgomery #1	3	55,377	18,459
Montgomery #2	2	65,235	32,618
Morgan	1	14,897	14,897
Muskingum	2	58,999	29,500
Noble	1	14,058	14,058
Paulding	1	20,293	20,293
Perry	1	34,078	24,078
Pike	1	27,695	27,695
Trumbull, East	1	16,969	16,969
Trumbull, Central	1	21,724	21,724
Tuscarawas	1	25,533	25,533
Vinton	1	12,806	12,806
Warren	2	53,479	26,740
<b>Statewide</b>	<b>40</b>	<b>1,009,527</b>	<b>23,348</b>