



## EXPEDITION AND TIMELINESS

*Our Law says well, 'To delay justice, is injustice.'*

--WILLIAM PENN

### **ISSUE 8: TIMELINESS OF CASE PROCESSING AND COURT PROCEDURES**

The West Virginia Constitution provides that “justice shall be administered without sale, denial or delay.” Similar admonitions are included in the RULES OF CIVIL PROCEDURE, the RULES OF CRIMINAL PROCEDURE, and even the CODE OF JUDICIAL CONDUCT which states: “A judge shall dispose of all judicial matters promptly, efficiently, and fairly.” The Supreme Court embraced these principles when it adopted the RULES ON TIME STANDARDS FOR CIRCUIT COURTS in 1992. Compliance with time standards is monitored through a statistical reporting system that shows the age of the pending and disposed cases in a court. Judges receive individual reports detailing compliance rates on each type of case, as well as rankings that compare performance across judges and circuits.

At the time of the implementation of the TIME STANDARDS, procedural rules in many areas of the law were reviewed and amended to streamline and standardize case processing. For example, the RULES OF CIVIL PROCEDURE were amended to require judges to hold case scheduling conferences and to issue time frame orders. Still, delay is one of

the most common complaints about the courts by litigants, attorneys, and the general public. The concern is not simply the time it takes from filing to final disposition in a case, but also the delay in obtaining rulings on motions, the promptness with which hearings and jury trials are conducted, and the delay inherent in certain scheduling practices.

When the American Bar Association adopted model time standards for case processing in 1984 it recognized that delay devalues judgments, creates anxiety in the litigants, and results in the loss or deterioration of the evidence upon which rights are determined. Accumulated delay produces backlogs that waste court resources, needlessly increase lawyer fees, and create confusion and conflict in allocating judicial time. For example, at the time of the filing of a personal injury case, the litigant may have already been in negotiation with the defendant or the insurer for almost two years. The fact that the court system may only delay the resolution of the matter further subjects the system to public criticism and the loss of the confidence.

In some types of cases, delay may be life-threatening such as child abuse or neglect, juvenile delinquency, family violence proceedings, elder abuse, and often-volatile

divorce proceedings. Delay cannot be tolerated in these cases because it may lead to continued violence, abuse, injury and death. Even in the absence of the threat of physical or emotional harm, family law related matters are in crucial need of a timely resolution so that the family can be reorganized and stability restored.

The timeliness of case processing and court procedures was a frequent concern of those testifying at the Commission's public hearings or submitting written materials. While delay was not always the main focus, it often appeared to be an aggravating or contributing factor to general dissatisfaction with the system or the outcome of a particular case. Similarly, almost a quarter of the attorneys who responded to the Commission's Bar Survey ranked timeliness as one of the five most significant issues the Commission should address. Additionally, the Commission's Focus Group ranked timeliness as the third most urgent of the ten most important and fixable issues facing the court system.

At the end of calendar year 1997, the time standard compliance rate for general civil cases in West Virginia was just short of the goal of 75%. At 72%, the compliance rate for felony cases was also short of the goal of 80% compliance in criminal cases. In addition, statewide data often masks considerable variation in the performance of individual courts. For example, while statewide compliance in general civil jury cases was 74% as of December 31, 1997, more than half of the circuit courts were not in compliance, and a quarter of the circuit courts were below 50%. Compliance with time standards in divorce and other family law cases, which constitute almost 30% of the total pending civil caseload, has made only modest improvement over time. At 57% compliance

for divorces and 64% compliance for other domestic cases, this area of the law continues to average well below the goal of 75% compliance.

To ensure the timeliness of case processing and court procedures, the Commission makes the following recommendations:

- 8.1 The **Supreme Court** should adopt uniform rules for filing and obtaining rulings on motions, including a time standard for dispositive motions and a requirement that judges enter an order explaining any delay in ruling on a dispositive motion. The Administrative Office should establish an exception reporting system for dispositive motions that are ripe for decision and have been pending for more than three months. The local court would be required to report such cases and explain the reason(s) for delay.
- 8.2 The **Administrative Office of the Courts** should employ three to four regional trial court administrators to provide training and technical assistance to local courts in the areas of court and case management.

*Commentary:* While the Administrative Office of the Courts monitors compliance rates and actively works with judges and other court personnel to improve case management procedures, the large number of judicial offices and the state's geography make it difficult to provide one-on-one technical assistance to courts experiencing problems.

## **ISSUE 9: UNIFICATION AND COORDINATION OF COURT SERVICES IN CASES INVOLVING FAMILIES**

Aside from traffic infractions, the average individual is most likely to interact with the court system in a domestic relations case. It is here that the court system touches the most households and where it has its most personal impact. National statistics show that almost 50% of current marriages will end in divorce. In West Virginia, divorces and other domestic relations case filings increased by 47% between 1990 and 1997, from 14,582 filings to more than 21,000. If juvenile delinquency, abuse and neglect, adoption, and domestic violence civil protective order cases are included, the total “family law” caseload would exceed 30,000 cases per year.

In the current court system, a family in crisis could encounter five different decision makers in the course of attempting to resolve its problems: a magistrate, to hold hearings on a domestic violence petition; a family law master, to hear evidence on a divorce; a circuit judge, to conduct an abuse and neglect proceeding; a different circuit judge to conduct a delinquency proceeding regarding the behavior of one of the children, and a panel of county commissioners to conduct a proceeding regarding a contested legal guardianship of a minor. This fragmented and duplicative system is clearly a strain on the resources of the court system of a small state. Moreover, when there is no coordination between different segments of the court system, it is possible that a judge hearing a child abuse and neglect case may not be aware of a pending divorce, a disputed non-testamentary legal guardianship, a juvenile delinquency proceeding, and/or a recent

domestic violence petition. This lack of integration and consolidation does not serve the best interest of the families, interferes with the ability of the system to provide a quality resolution, and does not make efficient use of judicial resources.

Since 1980, the American Bar Association has studied and endorsed a “unified” approach to family law cases. In its 1993 study of the unmet legal needs of children and their families, the ABA recommended the adoption of unified family court systems in all jurisdictions. At a 1998 National Summit Meeting on Unified Family Courts, the ABA reiterated its support for a unified family court system. To date, approximately twenty-five states have either established a unified family court or a model unified family court pilot project.

While there is no one definitive model of a unified family court, those developed thus far share several common characteristics: (1) comprehensive jurisdiction of all family law cases, including juvenile matters; (2) a “one judge/one family” case assignment system; (3) provision and coordination of comprehensive social services; (4) support staff, such as case managers, who assist the court in moving cases through the court system, provide coordination of services, avoid duplication of services, and assist the court in gathering vital evidence; and (5) specialized training of judicial officers and support personnel.

To ensure the unification and coordination of court services in cases involving families, the Commission makes the following recommendations:

- 9.1 The **Legislature** should eliminate the Family Law Master system and the

Juvenile Referees, effective 11:59 p.m. on December 31, 2000 and create a Unified Family Court, effective January 1, 2001.

*Commentary:* The Supreme Court can create a Unified Family Court as a division of the Circuit Court; however, the Legislature would have to add any additional judge positions necessitated by these changes, and would have to abolish the Family Law Master system.

Delay is inherent in the Family Law Master system due to the fact that masters are not circuit judges and, therefore, their final recommendations are appealable to circuit court. Masters are not permitted to hear contempt cases or enforce their orders. The addition of more family law master positions might allow some types of cases to be processed more rapidly, but this solution does not meet the need for an integrated approach to interrelated problems in the same family, ignores the inherent problems of fragmentation of court services to families in crisis; and does not address the delay caused by the constitutional restrictions on the masters' powers. Abolishing the family law master system and increasing the number of circuit judges so that they can hear family law cases is also not the solution. This change, without the creation of a "family court" or "family division," will not resolve issues relating to overlapping jurisdiction, conflicting court orders, and absence and/or duplication of services.

9.2 The **Legislature** should require that Unified Family Court judges gain office in the same manner, and have the same status, pay, and benefits as circuit judges.

*Commentary:* Other states with Unified Family Courts have determined that equal stature for Unified Family Court Judges and adequate additional support personnel are

absolutely essential to the success of this plan.

The status of family court judges affects the court's ability to command necessary resources as well as attract and retain qualified personnel. In addition, there are places in this state where, because of geographical and case load considerations, judicial efficiency requires one person to function as both a general jurisdiction circuit judge and as a family court judge.

9.3 The **Legislature** should require that each family court judge have the following personnel: (1) a secretary, with the same duties and pay as a secretary to a circuit judge; (2) a court reporter, with the same duties and pay as a court reporter to a circuit judge; (3) juvenile probation officers with the same duties and pay as currently exist. In addition, two other support functions should be provided to effectively improve use of judicial resources: (4) a case manager, who would perform case intake, make referrals to alternative dispute resolution programs and outside agencies, coordinate family services, monitor case processing, and perform home studies in custody and visitation cases, but not abuse cases; and (5) a facilitator, who would negotiate in accordance with federal guidelines temporary child support amounts, prepare orders where parties are in agreement, establish *pro se* information programs and actively assist *pro se* litigants to ready their cases for presentation, coordinate with community-based volunteer programs, and oversee parent-education programs.

*Commentary:* The job description of the facilitator would be written to satisfy the requirements for partial funding through the federal IV-D reimbursement for child support and paternity hearings. It should also be noted that both the case manager and facilitator functions could be filled in a variety of ways, either by the direct funding of these positions within the budget of the Court, by having the case manager function filled by a social worker from the DHHR staff who would be assigned solely to the Court, by having the facilitator function performed by staff hired through the use of the fund now providing law clerks for circuit judges, or through any other available funding method.

9.4 The **Legislature** should give the Unified Family Court exclusive jurisdiction over the following types of cases: civil child abuse and neglect; adoption; juvenile delinquency and status offender proceedings, except juveniles transferred to adult status; domestic violence final protective order hearings; emancipation; name change; paternity; divorce, property, and equitable distribution issues; custody; UIFSA (Uniform Interstate Family Support Act); elder abuse; all child support matters, including modifications; alimony; custody; visitation; contempt of any of these proceedings; legal guardianship of a minor, including non-testamentary guardianships; and foster care.

9.5 The Chief Justice of the **Supreme Court** should be granted the authority to appoint general jurisdiction circuit judges to specific unified family court cases, if an ethical conflict should arise, or if the family court judge is unavailable due to illness or absence from the area. The Chief Justice

should also be granted the right to temporarily reassign portions of the family court caseload to general jurisdiction judges if he or she deems it necessary to effectively manage the caseload of that circuit.

9.6 Prior to the 1999 Legislative Session, the **Supreme Court** should recommend to the Legislature the number of judicial positions needed for the Unified Family Court caseload for each circuit, and the number of total judicial positions for each circuit. This assignment should be reviewed every eight years when the overall alignment of judicial circuits is reviewed.

*Commentary:* For example, in a larger judicial circuit there may be two judges assigned to the family law caseload as well as two general jurisdiction circuit court judges. In a small circuit, on the other hand, only one judge would be assigned to the family court caseload, and that judge might also be responsible for a small part of the general jurisdiction docket.

9.7 The **Supreme Court** should provide family court judges specialized training in appropriate areas of the law, such as domestic violence, child support issues, use of mediation, child abuse and neglect, and the social-psychological dynamics of family problems and their resolution. This training would be in addition to the training normally provided to new circuit judges.

*Commentary:* Research and experience in other jurisdictions have shown mediation to be an effective tool in the resolution of family law cases, because, unlike the adversary process, it does not fuel hostility, often results in better compliance, and reduces

relitigation rates. Mediation has been made available to litigants in family law cases in West Virginia only in the last two years through a pilot project in the Eastern Panhandle. However, despite its many benefits, mediation programs are inappropriate for certain types of family law cases; namely, those involving issues of abuse and neglect, spousal abuse, or mental illness of a party, those cases where substance abuse might impair the ability of a party, and those cases where the child support formula is required to be applied.

In addition to the use of mediation, many of West Virginia circuit courts are utilizing parent education programs to lessen the number of contested custody cases in the court system by providing information to parents about how their children can be affected by their divorce and teaching methods of dealing with inevitable problems and questions. National studies have shown that when parent education is coupled with mediation the chances of successfully mediating a custody/visitation agreement are greatly improved.

- 9.8 The **Supreme Court** should make evaluation an integral part of the implementation and operations of the Unified Family Court system. That evaluation component should be designed to address the goals of all stakeholders in the system and measure both qualitative and quantitative outcomes.

*Comments on the Commission's Deliberations:* The Commission debated at length the recommendation that certain juvenile delinquency matters be heard by the Unified Family Court. All agreed that cases of juveniles transferred to adult status should not be heard by the Unified Family Court but

proposed amendments regarding the included: vesting juvenile delinquency jurisdiction with the Unified Family Court, but allowing family court judges the option of transferring felony cases to the circuit court; and conversely, keeping felony juvenile delinquency jurisdiction in the circuit court, but allowing circuit court judges to transfer appropriate cases to the family court. Both proposed amendments were defeated by a slight majority of those voting.

In light of its recommendation to create a Unified Family Court, the Commission voted to endorse the then-proposed Judicial Reform Amendment. That amendment was drafted to amend Article 8 of the West Virginia Constitution, which contains the blueprint for the State's judicial system. The amendment was defeated during the general election held November 3, 1998.

#### **ISSUE 10: PROVISION OF TREATMENT AND PLACEMENT OPTIONS IN JUVENILE DELINQUENCY AND ABUSE AND NEGLECT CASES**

Whether children have been abused and/or neglected or determined to be delinquent, the court may order that they be removed from their homes. Approximately 3,000 of West Virginia's children were in out-of-home placements in June of 1998. About 2,153 of these children were in the custody of the Department of Health and Human Resources. The remaining 847 were in the custody of the Division of Juvenile Services. In addition, the 70 beds available for juvenile detention were filled to capacity during most of 1997. Each year, thousands of other children are at-risk of entering out-of-home placements, as evidenced by the more than 8,000 juvenile cases which

were filed during 1997 alone. Many out-of-home placements might be avoided, or at the least shortened, if there was early provision of social services to families and children at the local level.

In 1997, the Legislature created the Child Placement Alternatives Corporation (CPAC), a public corporation, to address the needs of children in, or at-risk for, out-of-home placements. In October, 1997, after an extensive study of the situation, the CPAC Board of Directors concluded that over 48% of the children in out-of-state placement could be returned to their community if proper support services were available. In addition, they found that over 22% of the children studied could be returned to their community after only a short-term placement, three months or less, if adequate support services were available at the local level. In fact, only 7% of the children studied needed long-term placement in an out-of-state facility, typically the most expensive type of placement. As of June 30, 1998, 246 children remained in out-of-state facilities.

CPAC has not been the only group to review the placement of children in this State. Indeed, the issue of juvenile facilities and the provision of social services to children has been under almost constant study for the last five years. In 1994, the Supreme Court's Advisory Committee on Child Abuse and Neglect submitted a report. In 1995, then-Governor Gaston Caperton appointed a task force to review juvenile detention facilities, that made recommendations that have yet to be fully implemented. The Court Improvement Oversight Board, established in 1994, continues to study the court system's performance in child abuse and neglect cases and submitted its first report to the Supreme

Court in 1996. In 1997, the Legislature created the Division of Juvenile Services and charged it with the task of developing a three-year plan for providing juvenile services. This plan was completed in early 1998. Most recently, the 1998 Legislature authorized the Regional Jail and Correctional Facility Authority to review juvenile detention facilities and report by October 1, 1998.

The availability of a balanced system of care could help to resolve problems before children must be removed from home. Such a system would include community-based mental health services, counselors to work with both families and children, educational assistance and tutoring, respite care, substance abuse counseling, and a variety of other services. If such a system were in place, a continuum of appropriate placement options would be available, including therapeutic foster homes, assessment foster homes, emergency shelters, psychiatric hospitals for out-patient and in-patient treatment, family counselors, and other levels of residential care.

The Commission on the Future has made extensive findings and conclusions about placement options in juvenile cases. These findings and conclusions may be found in the companion volume to this report available from the Administrative Office of Courts.

To ensure the provision of adequate treatment and placement options in cases involving juveniles, the Commission makes the following recommendations:

- 10.1 Prior to placing a child in an out-of-home placement, the **Supreme Court** in conjunction with **other related agencies** should provide information to a circuit judge listing all of the available options for both

community services and for placement, and including the multi-disciplinary treatment team's recommendation.

- 10.2 The **Supreme Court** should continue to encourage other agencies and private organizations to establish a balanced system of care for provision of treatment to the State's children.

*Commentary:* Although these agencies and organizations are outside the direct control of the court system, it is important for the Supreme Court to continue to provide leadership in the identification of gaps in the system, and to foster development of plans to meet the needs of the children who are either in out-of-home placement or at-risk of such placement.

- 10.3 The **Supreme Court** should encourage the **Regional Jail and Correctional Facility Authority** to continue to review existing juvenile detention facilities, form a plan for creating new facilities, and give a high priority to the completion of these facilities to alleviate current overcrowding.

- 10.4 The **Legislature** should act to allow uninsured or underinsured families access to mental health services, including appropriate psychiatric residential placement, without the need to have the child placed in foster care to obtain such services. Such a provision would allow a low-cost alternative to high-end hospitalization or other costly out-of-home placement.

- 10.5 The **Legislature** and related agencies should establish additional in-state

substance abuse treatment programs.

*Commentary:* Substance abuse treatment is the cause of many out-of-state placements for children. While it appears that our state has made some progress in this area, more facilities are needed. While this issue is outside of the direct control of the court system, the Supreme Court should take a leadership role in working with agencies and organizations to develop a plan for these services.

- 10.6 The **Supreme Court** in conjunction with the **State Bar** should provide additional training and information on treatment and placement options to lawyers and judicial officers who deal with these issues.

- 10.7 The **Supreme Court** should promulgate uniform rules of practice and procedure in juvenile delinquency cases.

- 10.8 The **Supreme Court** should expand the jurisdiction of the Court Improvement Oversight Board to include review of juvenile delinquency cases and services.

## **ISSUE 11: EFFECTIVENESS AND EFFICIENCY OF THE CHILD NEGLECT AND ABUSE CASE PROCESS**

In 1994, the Supreme Court of Appeals began an extensive study of the court system's processing of child abuse and neglect cases. Concerned with problems of delay and lack of oversight identified in some abuse and neglect cases presented on appeal, the Court established an Abuse and Neglect Advisory Committee. This Committee was dissolved after completing its assigned tasks, including

the development of a set of procedural rules for abuse and neglect cases. A new entity, the Court Improvement Oversight Board, was created to continue the work of monitoring and improving court performance in the area of child abuse and neglect. Significant changes in the processing of abuse and neglect cases have occurred as the result of the Supreme Court's and Legislature's implementation of the recommendations of these two bodies.

In the Fall of 1998, the Court Improvement Board will launch a pilot project in the Twenty-Third Judicial Circuit (Berkeley, Jefferson, and Morgan Counties) to implement a model system for court performance in abuse and neglect cases. This program will include cross-disciplinary training for all participants in abuse and neglect cases; free continuing legal education training and a mentoring program to encourage lawyers to represent parents and children in these actions; rigorous caseload management procedures; enhanced information system development; and an emphasis on early intervention, assessment and effective planning. Successful features of this pilot project will be replicated in other circuits.

The number of child abuse and neglect cases reaching the courts in West Virginia has steadily increased in the last eight years. During that time, petitions filed in circuit court increased by 88 %, from 426 in 1990 to 801 in 1997. Despite the progress made in the last four years and the promising on-going efforts, the current structure of the court system is not well-designed to absorb the demands of this increased volume and ill-suited to bring about a timely and comprehensive resolution of these matters.

Regarding compliance with time standards, only a little over a third of the

pending juvenile delinquency cases are in compliance with time standards, as are only slightly more than half of the child neglect and abuse cases. While there has been great improvement in the processing of child abuse and neglect cases, in some circuits, these cases as well as juvenile delinquency cases rank near the bottom of all categories in time standard compliance. Moreover, there are significant differences between circuits, with some areas reporting near 100% compliance, while other circuits struggle with 30 to 40% compliance rates. Full compliance with time standards is particularly critical in abuse and neglect and juvenile cases as these have the highest risk of imminent danger and long term irrevocable damage to human life and welfare.

To ensure the effectiveness and efficiency of the child abuse and neglect case process, the Commission makes the following recommendations:

- 11.1 The **Supreme Court** should employ an Oversight Coordinator to identify systemic problems in the investigation, treatment, and resolution of cases involving child maltreatment or juvenile delinquency, recommend administrative or legislative changes necessary to address these problems, provide technical assistance to local or regional multidisciplinary treatment teams (MDTs) in coordination with Department of Health and Human Resources (DHHR) staff, refer specific cases to an attorney for an independent decision as to whether a special *guardian ad litem* should be appointed, perform random compliance audits on the use of MDTs and the filing of case plans, and work to ensure compliance with time standards, statutes and procedural

rules in child abuse and neglect and juvenile delinquency cases.

*Commentary:* MDTs are treatment planning and implementation teams that are specifically designated for each child. The team is composed of the child's parents and counsel as well as treatment professionals involved with the child such as school officials, counselors, social workers, and juvenile probation officers.

11.2 In coordination with the **State Office of Technology**, the **Supreme Court** and the **DHHR** should develop an integrated computer system to monitor the progress of child abuse and neglect cases in the system.

11.3 The **Supreme Court** and **related agencies** should develop procedures to ensure that all children in the State's custody, including juvenile delinquents, have written case plans; and that case plans are disseminated to all parties and filed with court.

*Commentary:* The latter mandate could be satisfied if a certificate of service listing all parties served and the date that the plan was filed with the court was required to be appended to all case plans.

11.4 The **Supreme Court** and the **State Bar** should continue extensive training of judges and lawyers in the area of child abuse/neglect. This training should specifically encourage acceptance and use of Court Appointed Special Advocate (CASA) volunteers.

*Commentary:* CASA volunteer programs are available in sixteen counties in this state. CASAs are trained community volunteers, appointed by circuit court order, who provide

the court with a full report on the child's circumstances and insure that the child is moved through the child welfare and court systems in a sensitive and expedient manner. The CASA volunteer gathers information relating to the child's welfare through interviews, document review and observation, and conducts an independent assessment of the facts. The CASA then prepares a written report with recommendations for the course of action that is in the best interest of the child and presents it to the judge and all parties in the case. The CASA also monitors the progress of the case and keeps the court informed as to compliance with court orders.

11.5 The **Legislature** and/or the **Supreme Court** should establish a fund to provide grants to assist CASA programs statewide.

*Commentary:* The expansion of the CASA program in the State has been slow and sporadic due to a lack of funding for training, supervision, and coordination of the volunteers. As a result, there is a serious disparity in the availability of this essential program. In part, this disparity is based upon economic factors which favor wealthier, urban circuits--it also results from the lack of funds to sustain programs which were successful in getting start-up funds. Funding for the CASA program would provide communities the opportunity to employ a coordinator to train volunteers, organize the appointment of volunteers to individual cases, supervise the volunteers, and provide technical assistance and expertise. Without funding assistance from the State, it is unlikely that CASA programs will be viable in many counties. This disparity in services to needy children is unjust and unfair. Community-based CASA programs would organize, develop a written plan for their delivery of services, and then apply to the Supreme Court for a grant to cover that portion of the expenses of their program that cannot be covered by local funds. The Court would administer the fund, develop guidelines for the application and funding

process, issue grants to the qualifying programs, and monitor effective and cost-efficient use of the funds.

- 11.6 The **West Virginia University College of Law and West Virginia Continuing Legal Education** should continue to make available courses in the area of family law; for example domestic violence, child abuse and neglect, or child support.

*Comments on the Commission's Deliberations:* The subcommittee that addressed this issue proposed that the State Bar amend its Continuing Legal Education (CLE) requirements to include that at least three credit hours per CLE reporting period must be earned in an area of family law; for example, domestic violence; child abuse and neglect, or child support. After full discussion of the matter, a majority of the Commission rejected this proposal, and in its place substituted recommendation 11.6.

## **ISSUE 12: PERCEPTION OF FRIVOLOUS LITIGATION AND EXCESSIVE DAMAGE AWARDS IN CIVIL CASES**

Tort cases represent a relatively small percentage of the total civil docket nationwide, but the tort liability system is the subject of much debate in Congress, state legislatures, and the media. Businesses and insurance companies are concerned that increased litigiousness, especially in the area of personal injury law, drives up the cost of products, services, and insurance. In response to the demand for change, many states implemented reforms in tort laws in the 1970s and 1980s.

The American Bar Association (ABA) reported in 1996 that tort cases comprise less than 2% of the total caseload and only 6% of the civil caseload in state courts. The ABA also noted that while other categories of civil litigation, such as family law cases, are expanding, the volume of tort litigation has been declining since the early 1990s. Statistics compiled by the National Center for State Courts (NCSC) also do not support the idea of a tort litigation “explosion.” Utilizing data from 16 state courts, the NCSC found that total tort filings rose 69%, or an average of 3% per year, between 1975 and 1996.

Statistics on the number of tort cases filed in West Virginia are not available because these cases are not distinguished from other general civil case filings in the caseload reporting system maintained by the Administrative Office of the Courts. However, the number of general civil cases, which includes tort actions as well as contract cases, debt collection suits, extraordinary writs, and other civil matters, decreased by 23% in the last five years, from almost 20,000 cases in 1993 to just over 15,000 in 1997.

Suits filed by prisoners are also included in the debate about frivolous litigation. The most common prisoner suits are habeas corpus petitions which are filed by incarcerated individuals seeking to overturn convictions or gain release from confinement. It is not uncommon for multiple habeas petitions to be filed by the same inmate. Since they are usually prepared without the assistance of legal counsel, the pleadings are often incomprehensible or incomplete and fail to state grounds for relief. Habeas corpus petitions are time consuming for court staff and the personnel involved in transporting prisoners from correctional facilities to the

courthouse.

The Commission reached no consensus on the need, or lack of need, for comprehensive tort reform in West Virginia. However, it did make extensive findings and conclusions about tort litigation in West Virginia and across the nation. These findings and conclusions may be found in the companion volume of this report available from the Administrative Office of Courts.

To assess the perception of frivolous litigation and excessive damage awards in civil cases, the Commission makes the following recommendations:

- 12.1 The **Supreme Court** should undertake a study of the tort liability system, including the collection of data on the size of jury verdicts in each category of civil case, the number of defense verdicts, the number and amount of punitive damage awards and post-trial outcomes. The results should be disseminated to the general public through news releases.
- 12.2 The **Administrative Office of the Courts** should institute a reporting system for habeas corpus petitions filed in the circuit courts.
- 12.3 The **Supreme Court** should continue to train circuit judges in the methods that are available to discourage indiscriminate filing of cases and defenses, such as sanctions, dismissals, and payment of another party's attorneys fees. Specific information should be provided on how to handle post-judgment motions for the review of damage awards.

12.4 The **Supreme Court** should continue to train judges on the benefits of using time frame and scheduling orders in civil cases, so that cases that are not being vigorously prosecuted or cases that have no basis in fact can be identified at the earliest possible date.

12.5 The **Supreme Court** should continue to train judges on the benefits of mediation and other alternative dispute resolution mechanisms in order to facilitate the efficient and cost-effective settlement of cases.

12.6 The **Supreme Court** should update its post-conviction habeas corpus form to include guidelines and instructions, and disseminate the form to inmates for use. Consideration should also be given to providing other forms and instructions for inmates use and developing systems to facilitate in-house review and assistance in habeas corpus proceedings.

### **ISSUE 13: INTEGRATION AND COORDINATION OF TECHNOLOGY IN THE COURT SYSTEM**

To meet the demands of the Twenty-first century, it is imperative that there be a comprehensive plan for the integration and coordination of technology within the court system. Presently, every judge and family law master office has computer capability. Judges have access to legal reference materials on-line and e-mail through the Internet.

At the magistrate court level, Supreme Court funding and oversight of the computerization process has ensured software uniformity. Forty-four magistrate courts are

currently computerized and use standard software. All magistrate courts are slated to be automated by the end of fiscal year 1999.

A different situation exists at the circuit court level where individual counties, not the Supreme Court, have budgetary control. Presently about 45 of the 55 circuit clerks' offices are automated. Twenty-five of those counties have uniform case management software provided at no charge by the Supreme Court. The other 20 counties use a variety of unrelated software systems.

At both levels of court, computer systems are generally not networked intra-county, much less inter-county, nor are they linked with the Administrative Office of Courts or other state agencies. There is little information transfer or communication capability. Moreover, some courts lack even fundamental communication technology, such as additional telephone lines, facsimile machines, and electronic library services.

The Supreme Court's technology plan requires that all court employees be provided with the most advanced personal computers and up-to-date software. All judicial offices in larger counties, including probation and clerk of court offices, will be linked via file servers. The model for this type of system is now being fine-tuned in Cabell County and will include state-of-the-art "citrix servers" which alleviate the need to continually update personal computers. The technology plan also calls for the use of standard software in all circuit clerk offices and computer terminals in all courtrooms. In addition, the court system will make the hardware and software changes necessary for the federally-mandated centralized reporting of criminal case dispositions, domestic violence protective

orders, and, in the future, child support orders.

At the same time, the State and the judicial system, in conjunction with Bell Atlantic-WV, are embarking on one of the most promising and progressive technology projects in the nation. A pilot project on the use of ATM (Asynchronous Transfer Mode) technology is currently underway in Kanawha and Cabell Counties. ATM technology provides video conferencing between multiple locations and is capable of supporting high speed video, voice and data applications simultaneously. The pilot project is initially using the technology for the initial appearances of criminal defendants, but the potential applications seem almost limitless and span a number of court system operations. ATM technology will eventually be implemented on a statewide basis; 25 counties are scheduled to be up and running by the end of 1999. When the installation process is complete, West Virginia will be the first state in the nation to have this technology available statewide.

To ensure the integration and coordination of technology in the court system, the Commission makes the following recommendations:

- 13.1 The **Supreme Court** should continue its full support and involvement in the testing and expansion of ATM technology.

*Commentary:* The ATM technology has tremendous potential for use in the court system. In addition to the "initial appearance" pilot project in Cabell and Kanawha Counties, it could be used to provide cost-efficient, divorce-related parent education programs to rural counties, hold emergency domestic violence hearings when the judicial officer must attend to a docket in

another county, allow domestic violence victims to file emergency petitions from a shelter, provide health care consultations to prisoners, allow a magistrate on night-call duty in one county to respond to emergencies in another county, allow the State Medical Examiner to provide testimony in county courts, and facilitate the testimony of child witnesses outside of the courtroom.

electronic filing, and consideration should be given to instituting a pilot project on electronic filing of mass litigation cases.

*Commentary:* Electronic filing of law suits and related pleadings is allowed in courts across the nation, however, West Virginia has neither the enabling rules nor the necessary technology and programming to permit electronic filing.

- 13.2 The **Supreme Court** should appoint a committee on “technology in the courts” composed of representatives from all segments of the judicial system. This committee should encourage and support the use of technology in the courts; set policies and establish rules on its use; disseminate information to the public; and insure that the implementation of technological advances within the court system is done in partnership with the Governor’s recently created **State Office of Technology**.
- 13.3 The **Supreme Court** should standardize and network computer systems in both circuit and magistrate court, across other judicial offices, and to related agencies and organizations. Software systems should have full case management functionality.
- 13.4 The **Supreme Court** should provide electronic mail, fax capabilities, and other communication technologies in every county courthouse for the use of judicial and court officers and all support staff.
- 13.5 The **Supreme Court** should pursue the rules and technology to allow for

