BE IT RESOLVED, That the American Bar Association supports federal, state, territorial and local legislation mandating the use of Justice System Impact Statements to be attached to all legislation or resolutions and executive branch orders or actions that have an identifiable and measurable impact on the operation of one or more elements of the criminal and civil justice system.

BE IT FURTHER RESOLVED, That the American Bar Association urges the establishment of appropriate mechanisms at the federal, state, territorial and local levels to ensure the preparation of the justice system impact statements that examine and analyze the funding, workload, and resource impact of proposed legislation and executive branch orders or actions for each and every element of the criminal and civil justice system, including, but not limited to, law enforcement, prosecution, public defense, probation, corrections, courts, civil legal services and dispute resolution.

REPORT

Across the nation, the civil and criminal justice system is on the verge of collapse. A study by the ABA Special Committee on Funding the Justice System to be released at the 1992 ABA Annual Meeting reports that the civil and criminal justice system in nearly one-half of the states experienced a direct cut in budget dollars during the past fiscal year.

The report also cites other symptoms of the crisis in our nation’s civil and criminal justice system. For example:

- In New York, after the state courts’ budget was cut by $51 million, Chief Judge Wachtler sued Governor Cuomo, contending that the Governor and the Legislature had failed in
their constitutional obligation to fund the courts.

- The Arizona Attorney General’s office lost more than $1 million in funding during 1991; 15 attorneys and 7 investigators were laid off.
- The budget for the Massachusetts Attorney General’s office is down by 26% compared to June of 1989, resulting in lay-offs for 30% of the staff.
- Illinois has completed construction of a new state prison and four new work camps. None of the new facilities, containing a total of 1,700 beds, will be opened because the state cannot afford the operating costs.
- In New Hampshire, a $7 million courthouse built in 1990 remains closed because the state cannot afford to furnish the building.
- The opening of several new prisons in Michigan—built at a cost of more than $50 million each—has been delayed because funding for their operation is not available.
- Nationwide, only 20% of low income people with civil legal problems have access to legal counsel.
- During 1991, civil trials were halted in all or part of eight states.

Reasons for the Crisis

Beyond the lack of adequate resources for civil and criminal justice system activities, other factors drive the crisis in our justice system. First, the civil and criminal justice system has seen an incredible growth in its workload. Substantial growth in population in many areas has not been accompanied by comparable growth in resources for the courts and other civil and criminal justice system entities.

Further, justice system funding has not kept pace with demographic changes known to produce higher workload, such as the increasing number of teenagers (which correlates with crime) and entry of massive numbers of "baby-boomers" into age groups likely to use family courts.

Another contributing factor is action taken by policy-makers that increase the workload of one or more elements of the justice system, without regard for the economic and workload impact of these actions on the other elements of the civil and criminal justice system. For example, recent efforts to battle the crime problem, measures such as increased law enforcement and mandatory sentences, neglected to account for the cost of housing and processing suspected criminals; did not provide funding for full trials to those who might have plea bargained in not facing a mandatory sentence; and, contained no resources to allow for the appeals of those given long, mandatory sentences. As the Chief Justice reported to the House of Delegates in February, 1992, appeals of federally-mandated sentences is severely crowding the dockets of appeals courts throughout the federal system.

Furthermore, the recent shut down of the civil justice system in several states because resources were transferred to meet the needs of the criminal justice system makes obvious—sometimes painfully obvious—that the "justice system" is indeed one system. Actions that affect any element of the system have
a direct impact on other elements. We cannot expect changes in one component to have the desired effect unless we understand, and make provision for, the impact of those changes on the rest of the justice system. These recent examples make clear that any effort to modify or reform one element of the justice system must be undertaken with an understanding of the effect on all the other areas.

Use of Justice System Impact Statements

Justice System Impact statements can be useful to show the relationship between action on one justice system elements and the subsequent reaction of the others. Bar leaders should insist on the creation of mechanisms to develop such statements. They can be an effective tool for legislative advocacy, pointing out clearly the costs involved in taking actions. It must be understood that the development of such statements are not intended to preclude the adoption of any policy, but will assist all citizens understand the impact of the adoption of the proposed policy or action.

Such statements also can be used to help policy-makers understand that funding for the civil and criminal justice system must be applied in a balanced fashion. For example, when applying money to deal with the crush of drug-related criminal cases, it is unwise to apply the overwhelming majority to law enforcement and prosecution, without taking into account the need for additional court time and public defense.

Existing Association Policy

At the Midyear Meeting in 1990, the House adopted policy calling for the preparation of a prison or jail impact statement prior to passage of legislation by state legislatures or Congress. One year ago, the House of Delegates adopted a resolution calling for the application of "judicial system impact statements." The language in this resolution is intended to explicitly indicate that the Association favors extending the use of these statements to consider the impact of policy changes on all elements of the criminal and civil justice system, not simply the courts. Adoption of this resolution will continue the ABA's historic commitment to addressing the national problems of justice system funding.

Respectfully submitted,

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