

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

November/December 2004



### **Use of the Child Care Fund for Placement Services** **Constance A. Cole, Fiscal Analyst**

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The Child Care Fund (CCF), appropriated in the Family Independence Agency (FIA) budget, has increasingly become the major fund source for the out-of-home placement of children in the State. The use of other related fund sources, such as Federal Title IV-E and State Ward Board and Care (SWBC), has decreased or stabilized since fiscal year (FY) 1999-2000. Over the past five years, counties in Michigan have used the CCF for juvenile justice and child abuse and neglect services, contracting with private child placing agencies for services. This article provides CCF program background information, including expenditure and caseload trends.

#### **Program Background**

The State juvenile justice and child abuse and neglect programs are a large and complex network of State and county service delivery and funding systems. The systems must comply with State laws and administrative rules, and Federal fund source requirements. The services for youth adjudicated as court wards and placed under county responsibility are provided in a number of ways, including the placement of children in community settings as opposed to institutional facilities.

The court ward cases under county supervision may be funded with the Child Care Fund, a combination of State General Fund/General Purpose and Federal Temporary Assistance for Needy Families funds, and under certain conditions are eligible for Federal Title IV-E funds, unless the court order specifies a particular placement. The CCF, governed by MCL 400.117a(2) and (4) and 400.117c, was established for the purpose of the State's sharing with counties the cost of court-ordered services for court wards. With the CCF, the State reimburses 50% of eligible county funds spent for services when the county bills the State.

Court wards under State supervision are funded by Federal Title IV-E funds. The State spends funds for services and submits charges to the U.S. Department of Health and Human Services for reimbursement of a percentage of the funds. The FIA also supervises State wards committed under Public Act 150 of 1974, the Youth Rehabilitation Services Act, funded with Title IV-E, SWBC, and Office of Juvenile Justice (OJJ) Federal and State-awarded grants. The SWBC-funded services are paid for by State funds and the counties are billed a per diem rate of 50% of the service costs. The OJJ funds are awarded to the State for services, such as boot camp or community-based services, and require the expenditure of some State funds.

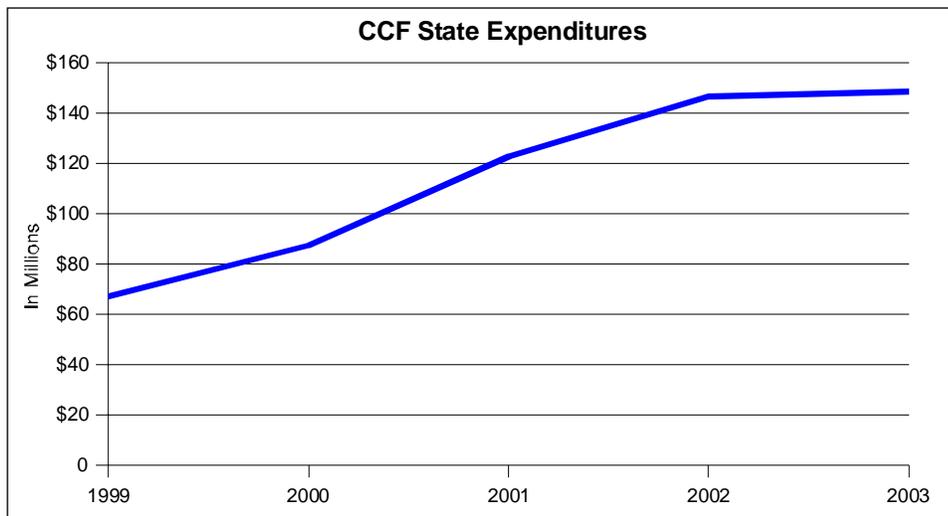
Wayne County entered into a special arrangement with the State for contract supervision to give the State responsibility for Wayne County child abuse and neglect contracts and to give Wayne County responsibility for county juvenile justice services contracts. The arrangement was instituted after a July 1997 Michigan Supreme Court judgement regarding the CCF reimbursement eliminated the cap on expenditure reimbursement.



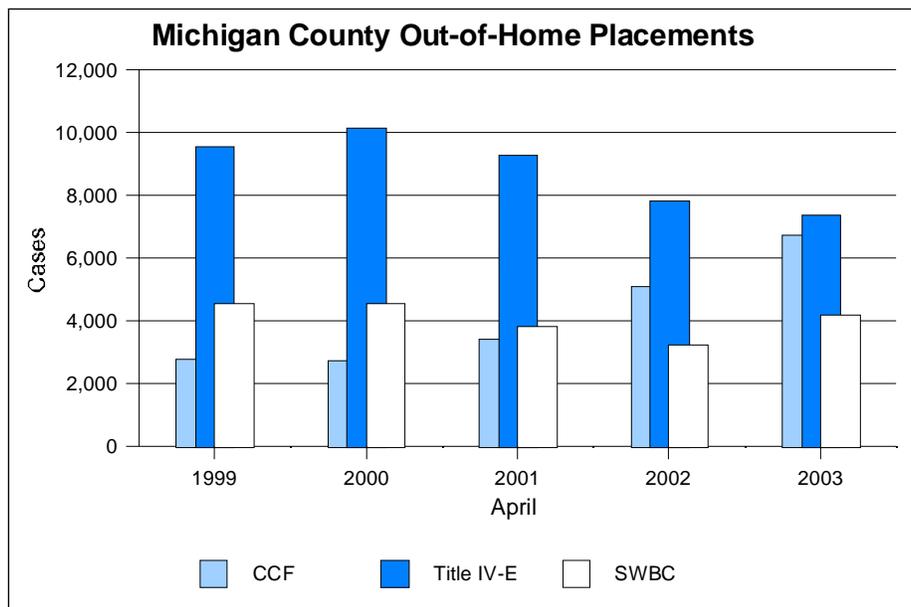
**CCF Funding History**

The CCF caseload and expenditures have increased as the use of other fund sources has declined. The caseload has increased by 144%; in April 1999 it was 2,752 and it increased to 6,728 cases by April 2004. The CCF annual expenditures, which represent State payments, increased by 122% from \$67 million in FY 1998-99 to \$148.5 million in FY 2002-03 (Figure 1). Figure 2 illustrates that the Title IV-E and the SWBC caseloads declined during the same time period by 2,184 and 342 cases, respectively. The data suggest that all counties have increased their use of the CCF as the major funding source for out-of-home placements.

**Figure 1**



**Figure 2**



**State Notes**  
TOPICS OF LEGISLATIVE INTEREST  
November/December 2004



The Wayne County CCF expenditures represent approximately 50% of all State matchable expenditures. The county billed the State \$153.4 million in FY 2001-02, \$148.8 million in FY 2002-03, and \$176.7 million in FY 2003-04. The expenditures of all counties except Wayne for the same period are \$140.7 million, \$147.3 million, and \$156.2 million.

**Summary**

The reported spending of the CCF has grown by approximately 98% over the past five years. With no legal cap on spending, and as counties continue to make placement decisions about children's services that move services from State to county supervision, and with increasing Federal restrictions on funding eligibility for out-of-home placements, the State will face mounting demands on its funding capacity.

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

November/December 2004



### **Declining Enrollment and its Effect on School District Revenue** **By Joe Carrasco, Jr., Fiscal Analyst**

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Since the implementation of Proposal A in fiscal year 1994-95, the main source of funding for school districts in Michigan has been the foundation allowance payment. Foundation allowance payments are unrestricted revenue paid to each school district on a per-pupil basis. Foundation allowances for FY 2004-05 range from a minimum of \$6,700 per pupil to a high of just under \$12,000 per pupil for a non-island school district. A foundation allowance is based primarily on the amount of State funding a district received before the implementation of Proposal A and is unique to each district. As can be surmised, Michigan school districts have become very reliant on their foundation allowance payments and, as a result, pupil counts have come to play a vital role in determining a school district's level of funding.

Overall pupil enrollment in Michigan school districts since FY 1993-94 (the last year before the implementation of Proposal A) has increased by nearly 8% according to the most recent data for FY 2004-05. Table 1 below shows the growth in pupil enrollment for both local school districts and public school academies (PSAs) from FY 1993-94 to FY 2004-05.

**Table 1**

<b>Michigan Public School Pupil Enrollment: FY 1993-94 and FY 2004-05</b>				
	<b>FY 1993-94</b>	<b>FY 2004-05 (estimated)</b>	<b>Growth</b>	<b>% Change</b>
Local School District Pupils	1,583,400	1,627,350	43,950	2.8%
Public School Academy Pupils	0	82,350	82,350	N/A
<b>Total Pupils</b>	<b>1,583,400</b>	<b>1,709,700</b>	<b>126,300</b>	<b>8.0</b>

As indicated in Table 1, total pupil enrollment from FY 1993-94 to FY 2004-05 has grown by 126,300 pupils or 8% in an 11-year span. Currently, there are 553 local school districts and 208 PSAs. Public school academies began operation in Michigan in the spring of 1995 and have continually grown to the 208 currently in operation. Although PSAs account for only 5% of Michigan's total pupil enrollment, some districts like Detroit and Flint have lost a significant portion of their pupils to PSAs that have opened in or near those school districts. Other school districts, mainly small, rural districts, have lost pupils due simply to the economy and migration. The remainder of this article looks at pupil decline and its effect on the revenue of districts that have experienced pupil decline.

### **Membership Blend**

A district's pupil count is determined by the membership blend. Before Proposal A, the State determined a district's pupil count by averaging the current and prior school years' pupil counts. Those counts were typically taken on the fourth Friday of September. After the implementation of Proposal A, schools began to count pupils twice a year: once in September and again in February. From those counts, a district's membership blend is determined. For the first three years, FY 1994-95 to FY 1996-97, the blend was based on



50% of the current-year September pupil count and 50% of the prior-year February count. The blend was changed to a 60/40 ratio for FY 1997-98 and FY 1998-99, when the blend was based on 60% of the current-year September pupil count and 40% of the prior-year February count. The blend was changed to a 75/25 ratio for FY 1999-2000 and to an 80/20 blend for FYs 2000-01 to 2003-04. For the current year, FY 2004-05, the blend has been changed back to a 75/25 ratio.

There are many reasons for the changes to these blends over the years. In general, placing a higher weight on the current-year September count tends to benefit a district that is gaining pupils, as 80% of its count will be based on a higher September count since most new pupils tend to show up in their new districts for the start of the new school year. Conversely, a blend that is closer to the 50/50 blend benefits a district that is experiencing a decline in its pupil counts as a heavier weight is placed on the prior-year February count before the pupils moved out of the district. There will always be districts that benefit one way or another depending on how the blend is set for a particular school year.

### **Declining Enrollment and its Effect on Revenue**

As stated earlier, there are currently 553 local school districts and 208 PSAs in Michigan. For the purposes of this article, public school academies are excluded from this study. Current law in Michigan allows 64 small, rural districts that meet strict criteria to determine their pupil membership by using the greater of a three-year average of membership blends or the actual pupil count for the current fiscal year. Since these 64 school districts are currently receiving a benefit, they too have been excluded from this study.

Of the remaining 489 local school districts, 214 districts have experienced a decline in their pupil membership from FY 1993-94 to the current year, FY 2004-05. The remaining 275 local school districts have experienced an increase in their pupil membership counts in the same time frame. Including the 64 districts currently receiving an enhanced benefit, just over 50% of Michigan's local school districts have experienced a net decrease in their pupil membership counts since the implementation of Proposal A.

Table 2 is a sampling of 10 school districts that have experienced a net decrease in pupil counts since FY 1993-94. Five school districts are examples of smaller, rural school districts that have fewer than 1,000 total pupils in membership in FY 2004-05. The other five school districts are examples of larger, more urban school districts with more than 1,000 total pupils in membership in FY 2004-05

As shown in Table 2, the decrease in pupil membership over the years has had a negative effect on the amount of foundation allowance revenue that these districts could otherwise be receiving. The lost revenue is based on the number of pupils lost multiplied by the district's FY 2004-05 foundation allowance. On average, a district's foundation allowance revenue accounts for nearly 90% of the district's total revenue from the State. As can be seen from the table, even for a small, rural district, the lost foundation allowance revenue can be quite significant. The impact on foundation allowance revenue for larger, more urban districts is even greater, at least in total.



**Table 2**

<b>Examples of Revenue Losses Realized by Districts with Pupil Decreases FY 1993-94 to FY 2004-05 (estimated)</b>						
<b>School District</b>	<b>FY 1994 Pupils</b>	<b>FY 2005 Pupils (est.)</b>	<b>Loss in pupils FY 1993-94 to FY 2004-05</b>	<b>Percentage Loss</b>	<b>FY 2004-05 Foundation Allowance</b>	<b>FY 2004-05 FA Revenue Loss Due To Pupil Loss</b>
<b>Districts &lt; 1,000 Total Pupils</b>						
Ionia Township	70	12	(58)	(82.9%)	\$6,700	(\$388,660)
Autrain-Onata	126	36	(90)	(71.4)	7,081	(637,300)
North Ottawa	223	136	(87)	(39.0)	6,700	(582,900)
White Pigeon	1,225	926	(299)	(24.4)	6,700	(2,003,300)
Harbor Beach	911	772	(139)	(15.3)	6,700	(931,300)
<b>Districts &gt; 1,000 Total Pupils</b>						
Gwinn Area	2,896	1,454	(1,442)	(49.8)	\$6,700	(\$9,661,400)
Marquette	4,874	3,570	(1,304)	(26.8)	6,700	(8,736,800)
Flint	25,569	19,145	(6,424)	(25.1)	7,432	(47,743,200)
Royal Oak	7,588	6,185	(1,403)	(18.5)	8,851	(12,418,000)
Detroit	166,932	141,660	(25,272)	(15.1)	7,180	(181,453,000)

One could argue that when a district loses pupils, one of the first cost-cutting measures it could undertake is to reduce the number of teaching positions in direct relation to the number of pupils lost. Using the White Pigeon school district from Table 2 as an example of a small district, its loss of 299 pupils in the 11-year span since Proposal A would equate to the elimination of 12 teachers (using 25 pupils as an average class size). Using an average teacher salary and fringe benefits of \$55,000 would equate to an estimated \$660,000 in cost savings, making up nearly 33% of the lost foundation allowance revenue. Using the Flint school district as an example of a larger district, its loss of nearly 6,500 pupils would equate to a reduction of 257 teaching positions and cost savings of an estimated \$14.1 million. This would make up only 29.6% of the district's lost foundation allowance revenue.

Regardless of whether a school district is small and rural or large and urban, a loss in pupil membership counts results in lost revenue and places an extra financial burden on the district. Not only has the school district had to deal with rising costs and no increases in its per pupil foundation allowance like all the other school districts in the State, it also must contend with a decrease in revenue due to the loss in pupils. Conversely, a district similar to White Pigeon that gained 300 pupils would have a net increase in revenue of nearly \$1.4 million even after having to hire 12 new teachers (assuming the same averages as used above). Although these are just random examples used in this analysis, it clearly shows the financial hardship placed on a district that has experienced a loss in pupil membership over the years.

### **Revenue Enhancements**

Current law allows districts within an intermediate school district (ISD) to levy up to three mills in what is known as a "regional enhancement property tax". To date, only one ISD in Michigan (the Monroe ISD) has been successful in gaining voter approval to levy this type of property tax (millage). In Michigan, one mill is equal to \$1 of property tax per \$1,000 of assessed property value.

**State Notes**  
TOPICS OF LEGISLATIVE INTEREST  
 November/December 2004



According to Section 705 of Michigan's Revised School Code (MCL 380.705), if a majority of the ISD electors vote to approve a regional enhancement property tax, the tax is levied in each of the ISD's constituent local school districts and the revenue is shared among the local school districts on an equal per pupil basis. Table 3 below shows the effect of the revenue that could be gained by four of the sample districts used above if they were to levy a 3-mill regional enhancement property tax.

**Table 3**

<b>Effect of a 3-Mill Regional Enhancement Property Tax on Sample Declining Enrollment Districts (excluding PSAs)</b>						
<b>District</b>	<b>FY 2004-05 Total ISD Taxable Value</b>	<b>FY 2004-05 Total 3-Mill Enhancement Revenue</b>	<b>FY 2004-05 Total ISD Pupils</b>	<b>3-Mill Revenue Per Pupil</b>	<b>FY 2004-05 Local District Pupils</b>	<b>FY 2004-05 Total Local District 3- Mill Revenue (est.)</b>
Ionia Township	\$1,334,209,795	\$4,002,629	11,854	\$338	12	\$4,056
White Pigeon	1,655,284,479	4,965,853	11,690	425	926	393,550
Flint	10,604,238,035	31,812,714	78,840	404	19,145	7,734,580
Detroit	45,918,730,113	137,756,190	322,926	427	141,660	60,488,820

As indicated in Table 3, the sample districts could levy a 3-mill regional enhancement property tax and receive additional revenue of between \$338 and \$427 per pupil. Coupled with the aforementioned reduction in teaching staff as an example, a district like Flint could recoup nearly 45% of its lost foundation allowance revenue with a combination of teaching staff cuts and a regional enhancement property tax levy. Detroit, as seen in Table 3, would recoup 33% of its lost foundation allowance revenue from simply levying a regional enhancement property tax. While this additional revenue clearly would not make up for all of the foundation allowance revenue lost due to the decline in pupil memberships, it would provide some additional funding to cushion the financial burden that these districts face.

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

November/December 2004



### **Assigned Appellate Counsel for Plea-Based Convictions** **Patrick Affholter, Legislative Analyst**

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A recent 6-3 opinion of the United States Supreme Court reinstated a Michigan law barring the appointment of an attorney to assist in preparing an appeal for a defendant who pleads guilty, nolo contendere (no contest), or guilty but mentally ill (*Kowalski v Tesmer*, Docket No. 03-407, 12-13-04). The Court's ruling, however, did not address the question of the prohibition's constitutionality.

The case involved Public Act 200 of 1999, which amended the Code of Criminal Procedure to prohibit, with certain exceptions, the appointment of appellate counsel to indigent defendants who plead guilty, no contest, or guilty but mentally ill (GBMI). The case also involved the practice of some Michigan courts to deny appointed appellate counsel, even before Public Act 200 was approved. (Some courts began denying such appointments after the adoption of Proposal B of 1994, which amended the Michigan Constitution to provide that a defendant who pleads guilty or no contest is not entitled to an appeal as of right.)

The U.S. Supreme Court did not reach the issue of the statute's constitutionality because the Court ruled that the attorneys who brought the action lacked standing to challenge the law on behalf of indigent criminal defendants. In so ruling, the Supreme Court reversed the U.S. Court of Appeals for the Sixth Circuit. Although a three-judge panel of the appellate court had upheld the law, the full Sixth Circuit Court heard the case and ruled, 8-4, that Michigan's prohibition against appointed appellate counsel was unconstitutional.

### **Proposal B of 1994**

Senate Joint Resolution D of Michigan's 1993-94 legislative session was approved by a two-thirds majority of both the Senate and the House of Representatives, and was placed on the statewide ballot for the November 1994 general election as Proposal B. The State's voters approved the ballot proposal, which became part of the State Constitution of 1963.

Proposal B amended Article I, Section 20, which enumerates the rights of the accused in a criminal prosecution, to specify that, except as provided by law, an appeal by an accused who pleads guilty or no contest is by leave of the court. Previously, all criminal defendants, including those who pleaded guilty or no contest, had a right to an appeal. Proposal B's proponents argued that defendants admitting their guilt or choosing not to contest the criminal charges against them should not automatically be entitled to an appeal and that such appeals crowded the Court of Appeals' docket and imposed unnecessary financial burdens on that Court.

Public Acts 374 and 375 of 1994 served as implementing legislation for the constitutional amendment. Public Act 374 amended the Code of Criminal Procedure to provide that all appeals from final orders and judgments based upon pleas of guilty or no contest are by application for leave to appeal. Public Act 375 amended the Revised Judicature Act to specify that the Court of Appeals has jurisdiction of an appeal from a final order or judgment from the circuit court or the former Detroit Recorder's Court that is based upon a plea of guilty or no contest.



## **Denial of Appointed Counsel**

**Judicial Practice.** Under Article I, Section 20, an accused has the right “to have such reasonable assistance as may be necessary to perfect and prosecute an appeal”. That right applies, however, “as provided by law, when the trial court so orders”. Neither the Constitution nor State law, however, specifically provided whether a defendant had a right to court-appointed counsel in applying for leave to appeal a plea-based conviction.

Although Proposal B did not change this provision, judges in some circuits began denying appointed appellate counsel to indigents who pleaded guilty or no contest after Proposal B was adopted. Subsequently, the Michigan Supreme Court amended the court rule regarding the appointment of lawyers, on an interim basis, to require that courts “liberally grant” timely requests for appointed appellate counsel in cases involving a conviction following a guilty or no contest plea. Evidently, however, Michigan trial courts inconsistently handled requests for court-appointed attorneys for indigent defendants seeking leave to appeal a plea-based conviction. The interim rule was amended in 2000 to reflect the provisions of Public Act 200 of 1999. Also in 2002, the Michigan Supreme Court ruled in *People v Bulger* that it lacked the authority to adopt the interim rule (462 Mich 495). (More information about the case appears at the end of this article.)

**Public Act 200.** In 1999, the Legislature passed and Governor Engler signed into law Public Act 200 of 1999. Under that Act, except as explicitly required or allowed, a defendant who pleads guilty, guilty but mentally ill, or no contest may not have appellate counsel appointed for review of the defendant’s conviction or sentence. The Act requires the trial court to appoint appellate counsel for an indigent defendant who pleads guilty, GBMI, or no contest if any of the following apply:

- The prosecuting attorney seeks leave to appeal.
- The defendant’s sentence exceeds the upper limit of the recommended minimum sentence range of the applicable sentencing guidelines.
- The Court of Appeals or the Supreme Court grants the defendant’s application for leave to appeal.
- The defendant seeks leave to appeal a “conditional” plea under Michigan Court Rules.

(Michigan Court Rule 6.301(C)(2) provides that a defendant, with the consent of the court and the prosecutor, may enter a conditional plea of guilty, no contest, guilty but mentally ill, or not guilty by reason of insanity, which preserves for appeal a specified pretrial ruling or rulings and entitles the defendant to withdraw the plea if the ruling is overturned on appeal.)

Public Act 200 also allows a trial court to appoint appellate counsel for an indigent defendant who pleads guilty, GBMI, or no contest if all of the following apply:

- The defendant seeks leave to appeal a sentence based on an alleged improper sentencing guidelines scoring of an offense variable or a prior record variable.
- The defendant objected to the scoring or otherwise preserved the matter for appeal.



- The sentence imposed by the court constituted an upward departure from the sentencing guidelines upper limit of the minimum sentence range that the defendant alleges should have been scored.

In addition, the Act requires the court to advise a defendant who pleads guilty, GBMI, or no contest that, if the plea is accepted, the defendant waives the right to have an attorney appointed at public expense to assist in filing an application for leave to appeal or to assist with other postconviction remedies, except as described above. Upon sentencing, the court must give the defendant a nontechnical and easily understood form that the defendant may complete and file as an application for leave to appeal.

***Kowalski v Tesmer***

Three indigents who were denied appellate counsel after pleading guilty and two attorneys who served as court-appointed appellate counsel filed an action in the U.S. District Court for the Eastern District of Michigan, challenging Michigan courts' denial of appointed counsel after plea-based convictions. In 2000, one day before Public Act 200 was to take effect, the District Court ruled that both this practice and Public Act 200 were unconstitutional because they denied indigents their rights to due process and equal protection. The Court issued an injunction prohibiting Michigan judges from denying appellate counsel to any indigent who pleaded guilty.

In 2002, a panel of the U.S. Court of Appeals for the Sixth Circuit reversed the District Court's ruling. The panel barred the suit by the indigents who were denied appellate counsel, because they had not pursued the matter in Michigan courts where the denial occurred, but held that the attorneys had third-party standing to assert the rights of indigents who would be denied appointed appellate counsel in the future. The appellate panel also held that Public Act 200 did not violate the U.S. Constitution. The full Sixth Circuit granted a rehearing, and upheld the panel's ruling regarding standing, but overturned its holding that Public Act 200 was constitutional.

When the case reached the U.S. Supreme Court, the only parties challenging the law were the two attorneys. In reviewing the case, the U.S. Supreme Court addressed the question of whether the attorneys had third-party standing to assert the rights of indigents who would be denied appointed appellate counsel following a guilty or no contest plea. The Court applied a three-part test, established through a body of case law, requiring that a third-party demonstrate an "injury in fact", that the party asserting the right have a "close relationship" with the person who possesses the right, and that the matter being challenged pose a "hindrance" to the possessor's ability to protect his or her own interests.

The attorneys claimed an "injury in fact" flowing from their reduced number of cases resulting from the Michigan system of denying appointed appellate counsel. In the majority opinion, Chief Justice Rehnquist wrote that this was assumed sufficient to meet the first part of the third-party standing test.

The attorneys cited the attorney-client relationship as meeting the "close relationship" part of the test of third-party standing, specifically future relationships with clients who will request



and be denied appointed appellate counsel. While the Court has recognized the attorney-client relationship as sufficient for third-party standing in some cases, it pointed out that an “*existing* attorney-client relationship is...quite distinct from the *hypothetical* attorney-client relationship” claimed by the attorneys in this case (emphasis in original). The Court held that the attorneys did “not have a ‘close relationship’ with their alleged ‘clients’; indeed, they have no relationship at all”.

As for the “hindrance” part of the third-party standing test, the attorneys claimed that, without appointed appellate counsel, the usual avenues of appealing denial of counsel are effectively out of the reach of indigent defendants. The Court, however, cited cases in which indigent defendants have challenged the denial of counsel in Michigan’s Court of Appeals and Supreme Court and petitioned the U.S. Supreme Court for writ of certiorari (review of the case). While the U.S. Supreme Court agreed that an attorney would be valuable in appealing the denial of appointed counsel, it held that lack of legal representation is not “the type of hindrance necessary to allow another to assert the indigent defendants’ rights”.

The Court held that the attorneys did “not have third-party standing to assert the rights of Michigan indigent defendants denied appellate counsel”, and reversed the ruling of the Sixth Circuit Court of Appeals.

### **The Question of Constitutionality**

Since the U.S. Supreme Court in *Kowalski* held that the attorneys did not have standing, the Court found it unnecessary to rule on the constitutionality of the prohibition against appointed counsel for defendants who plead guilty or no contest. The Michigan Supreme Court, however, ruled in *People v Bulger* that the denial of appointed appellate counsel is constitutional, though it did not rule specifically on the constitutionality of Public Act 200. (The case involved a court’s denial of appointed counsel before Public Act 200 took effect.)

In *Bulger*, the Michigan Supreme Court held “that neither the state nor the federal constitution requires the appointment of counsel” in a plea-based conviction. The case involved a defendant who pleaded guilty to possession with intent to deliver of less than 50 grams of cocaine and possession of marijuana, and subsequently requested the trial court to appoint an attorney to prepare his application for leave to appeal.

Since Article I, Section 20 of the State Constitution includes the phrase “as provided by law” regarding appointment of appellate counsel, the Court ruled that the Constitution “does not afford defendant the right to appointed counsel”. The Court also ruled that, while “due process requires that the state provide the accused counsel” at trial, “the federal constitution does not require the appointment of appellate counsel on discretionary review”.

Since the Michigan Supreme Court’s ruling in *Bulger*, the Court has denied leave to appeal in similar cases. One of those, *Halbert v Michigan*, has been accepted for review by the U.S. Supreme Court, which therefore will have another opportunity to rule on the constitutionality of Michigan’s law.

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

November/December 2004



### **Civil Service Collective Bargaining Agreements and the FY 2005-06 Coordinated Compensation Plan**

**By Bill Bowerman, Chief Analyst**

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#### **Background**

Article XI, Section 5 of the Michigan Constitution authorizes the Civil Service Commission to regulate all conditions of employment in the State classified service. Increases in the rates of compensation authorized by the Civil Service Commission require prior notice to the Governor, who then transmits the increases to the Legislature as part of the budget. Within 60 calendar days following transmission in the Governor's budget, the Legislature, by a two-thirds vote of the members elected to and serving in each house, may reject or reduce increases in rates of compensation authorized by the Civil Service Commission. Reductions made by the Legislature must apply uniformly to all classes of employees and may not adjust pay differentials already established by the Commission. Rates of compensation may not be reduced below those in effect at the time the increases are transmitted to the Legislature.

In the early 1980s, the Civil Service Commission, by rule, implemented a collective bargaining system for over 70% of State classified civil service employees. The remaining State classified employees who occupy supervisory, managerial, and confidential positions are not eligible for exclusive representation by unions. These nonexclusively represented employees (NEREs) have their terms and conditions of employment determined through a process administered by the Civil Service Employee Relations Board. The Employee Relations Board serves as a Coordinated Compensation Panel. The Panel recommends a Coordinated Compensation Plan for NEREs to the Civil Service Commission. The Coordinated Compensation Plan and the collective bargaining agreements are subject to review, modification, and approval by the Civil Service Commission. State Police troopers and sergeants were given the right to bargain collectively with their employer concerning conditions of employment, and the right to submit unresolved disputes to binding arbitration, through a 1978 initiated amendment to Article XI, Section 5 of the Michigan Constitution approved by the voters on November 7, 1978.

The following provides an overview of recently approved collective bargaining agreements and the Coordinated Compensation Plan. It does not include the Michigan State Police Troopers Association (MSPTA) because bargaining for the next three-year contract fiscal year (FY) 2005-06 through FY 2007-08) will not begin until the spring of 2005.

#### **Collective Bargaining Agreements**

On December 15, 2004, the Civil Service Commission approved three-year (FY 2005-06, FY 2006-07, and FY 2007-08) collective bargaining agreements for employees who are exclusively represented by the American Federation of State, County, and Municipal Employees (AFSCME), the Michigan State Employees Association (MSEA), the Michigan Corrections Organization (MCO), the United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), and the State Employees International Union (SEIU) Local 517M. The agreements include pay increases to be implemented at six-month intervals as follows:

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

November/December 2004



October 2005	1.0%
April 2006	1.0%
October 2006	2.0%
April 2007	2.0%
October 2007	2.0%
April 2008	2.0%

The phased-in pay increases will result in a cumulative 10.4% increase to salaries over the three-year period. Special pay adjustments and optional signing or retention bonuses are included for certain licensed practical nurse, registered nurse, and pharmacist classifications. Other major provisions contained in the collective bargaining agreements include new entry-level pay classifications which will result in indeterminate ongoing savings, adjustments to group insurance plans, limits to benefits for certain long-term disability claims, restoration of professional development funds, a 40-hour increase in the accumulation cap for annual leave, and a new holiday for Election Day in even-numbered years. (Michigan Corrections Organization-represented and AFSCME-represented employees will receive four hours of additional annual leave in lieu of the new biennial election day holiday.) Banked leave time is continued in FY 2004-05 at 84 hours, which equates to 4% of salary. The banked leave time concession includes a no-layoff guarantee on the part of the State for the duration of the concessions. The agreements also include various adjustments to annual leave and sick leave policies, overtime, rules related to unions, grievances, vacancies, leaves of absence, and other policies.

Collective bargaining agreements are available on the Office of the State Employer's website: <http://www.michigan.gov/ose>. Noneconomic portions of the collective bargaining agreements became effective January 1, 2005. Pursuant to the Michigan Constitution, increases in the rates of compensation authorized by the Civil Service Commission become effective at the start of the fiscal year (October 1, 2005).

### **Coordinated Compensation Plan (CCP)**

The Civil Service Commission also adopted a Coordinated Compensation Plan (CCP) for NEREs which includes 1% pay increases for October 2005 and April 2006. Special wage adjustments are included for certain registered nurse classifications, practical nurse supervisors, pharmacist managers, and dentists. Treasury investment analysts are converted to a higher pay schedule. A new sales incentive program for Bureau of the Lottery sales and marketing staff, limited to \$2,500 per year, is included in the CCP. The CCP also contains other adjustments consistent with the collective bargaining agreements, including: new entry-level pay classifications which will result in indeterminate ongoing savings, adjustments to group insurance plans, limits to benefits for certain long-term disability claims, restoration of professional development funds, a 40-hour increase in the accumulation cap for annual leave, leave policy adjustments, a new holiday for Election Day in even numbered years, and renewal of professional development funds.

**State Notes**  
TOPICS OF LEGISLATIVE INTEREST  
November/December 2004



The CCP includes the continuation in FY 2004-05 of banked leave time (84 hours) which amounts to 4.0% of salary. Employees may use the banked leave time as annual leave, or they may choose to have the hours credited to their 401k account when they separate from State service (at the rate of pay they are receiving when they leave State service). A copy of the FY 2005-06 Coordinated Plan is available on the following Internet site: [http://www.michigan.gov/documents/CCP-FY05\\_103815\\_7.pdf](http://www.michigan.gov/documents/CCP-FY05_103815_7.pdf).

**Conclusion**

The CCP for NEREs includes increases for FY 2005-06 while the collective bargaining agreements for exclusively represented employees cover a three-year period; however, increases in rates of compensation authorized by the Civil Service Commission are transmitted annually in the Governor's budget pursuant to Article XI, Section 5 of the Michigan Constitution. The Legislature will have 60 days from the February 10, 2005, transmission of the Governor's budget to reject, modify, or reduce increases in the rates of compensation for FY 2005-06. The second-year and third-year compensation increases contained in the collective bargaining agreements will be included with the respective budget transmittals for FY 2006-07 and FY 2007-08. The FY 2005-06 cost of compensation increases included in the collective bargaining agreements and CCP is estimated at \$52.3 million Gross/\$26.3 million GF/GP. Due to the phased-in (October/April) increases, the estimated full-year cost is \$70.6 million Gross/\$36.0 million GF/GP. Changes to group insurance plans will result in a net savings of \$1.8 million.

Continuation of banked leave time in FY 2004-05 will cover \$109.9 million of the \$147.9 million in employee-related savings included in the FY 2004-05 budget.<sup>1)</sup>

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<sup>1)</sup> A portion of the 84 hours of banked leave time will occur in FY 2005-06.