

State of the Judiciary Address

Chief Justice John D. Minton Jr., Kentucky Supreme Court

Message to Interim Joint Committee on Judiciary

December 9, 2011, at Capitol Annex, Room 171, Frankfort, Kentucky

Chairman Jensen, Chairman Tilley, Members of the Judiciary Committee and Guests,

It is a pleasure to be here today.

In many states, the Chief Justice annually delivers a state of the judiciary address to a joint session of the legislature. That is not our custom in the Commonwealth, but it is becoming a regular occurrence that I appear before the Interim Joint Committee on Judiciary to provide a state of the judiciary report.

I am pleased and honored by your invitation. I continue to believe that my being here is important for two reasons:

First, this is a practical way to highlight important issues that are of particular interest to the courts that administer justice across the Commonwealth each day. I hope to accomplish that task over the next few minutes.

More importantly, a formal report to you from the Chief Justice helps to make the point, however slightly, that our constitution has established the judiciary as a co-equal and independent branch of state government. Constitutional checks and balances require that I come to the Legislative Branch on behalf of the judiciary to make our case for the funding needed to administer justice statewide. And while I'm here, the Legislative Branch has the right to expect assurance that we do so efficiently and effectively. I expect we will discuss that this morning as well.

Before I begin, I'd like to recognize several guests who are with me today:

- From the Supreme Court, Deputy Chief Justice Mary Noble of Lexington
- From the Court of Appeals, Chief Judge Jeff Taylor from Owensboro
- From the Kentucky Circuit Judges Association, Franklin Circuit Judge Phillip Shepherd
- From the Kentucky District Judges Association, Nelson District Judge Bob Heaton, who is president of the District Judges Association, and Campbell District Judge Karen Thomas, the association's immediate past president
- From the Kentucky Association of Circuit Court Clerks, McLean Circuit Clerk Stephanie King-Logsdon, who is its president
- From the Administrative Office of the Courts, a number of people, including Director Laurie Dudgeon and Budget Director Carole Henderson
- I also want to welcome the members of the Kentucky Court of Justice Technology Governance Committee, who are in Frankfort today for their last meeting of the year

I have two priorities for our time together. First, I want to share some of the court system's achievements and challenges since we last met. And second, I'd like to give you a preview of the

Judicial Branch's most urgent budgetary needs in advance of budget discussions that begin in earnest in January.

## **STATE OF THE JUDICIARY**

### **House Bill 463**

I'll begin with our accomplishments, the most striking of which is a success we all share.

All three branches of government came together in a bipartisan effort to take the most comprehensive look at Kentucky's criminal justice system since the enactment of the state's penal code more than 30 years ago. After less than 12 months of intensive work, the end-product was the nearly unanimously passed House Bill 463 during the 2011 session.

This bill is in effect today, thanks in large part to the efforts of Sen. Jensen and Rep. Tilley, who co-chaired the Task Force on the Penal Code and Controlled Substances Act, and the support of Gov. Beshear and House and Senate leadership.

I have expressed my thanks many times for your including me as a member of the task force, which raised and discussed issues aimed at curbing Kentucky's escalating cost of incarceration without compromising public safety. The outcomes of many of those discussions eventually found their way into House Bill 463.

This legislation, while timely and progressive, has required fundamental culture changes in the courts. In addition to the courts, the law enforcement communities, social service agencies and the practicing bar all have been required to overhaul processes that have been in place for decades. That degree of change comes at a heavy price and I commend all involved for having the will to support this important shift in public policy.

Elected and non-elected court personnel spent thousands of hours preparing to implement House Bill 463 by the June 8, 2011, deadline. Implementation of House Bill 463 had historical magnitude. This is probably the most complex legislation the court system has had to interpret and implement in such a short period of time and it's no small feat that we were able to create legal forms, revise our accounting manual and change other internal processes in a matter of weeks.

We also provided education programs on the bill for all justices, judges and circuit court clerks. I especially appreciate Sen. Jensen and Rep. Tilley for speaking at a joint session of the elected officials in August and also speaking at the judicial colleges for circuit and district judges. The chairmen fearlessly and patiently faced sometimes hostile audiences and for that have earned the respect and admiration of the entire Judicial Branch and are held in great esteem by the Chief Justice.

The Administrative Office of the Courts worked with the Legislative and Executive branches, the Kentucky Association of Counties and other key partners to make sure we were all on the same page during the countdown to implementation. We realized about halfway through the transition that the court system had become something of a de facto repository of information about House Bill 463.

The good news is that it appears the state is getting a return on its investment. There are early indications that this bill is doing what it's supposed to. As of Nov. 8, 2011 – five months after

House Bill 463 went into effect – the court system noted increases in the pretrial release rate and public safety rate and a significant jump in the number of referrals to the Monitored Conditional Release Program compared to the same five-month period in 2010.

Since the passage of House Bill 463, our Pretrial Services data has shown a 15 percent decrease in the number of defendants arrested and a 4 percent increase in the overall release rate. While there has not been a significant increase in the overall release rate, the data shows a substantial increase in non-financial releases and release for low- and moderate-risk defendants. The non-financial release rate has increased from 50 percent to 67 percent, the low-risk release rate has increased from 76 percent to 84 percent and the moderate-risk release rate has increased from 59 percent to 66 percent. Furthermore, pretrial jail populations have decreased by 738 people, while appearance and public safety rates have remained consistent.

The public safety rate represents the percentage of defendants who did not commit a new crime while on pretrial release.

Pretrial Services has seen a significant increase in the number of defendants ordered to the Monitored Conditional Release Program for pretrial supervision. There were 1,285 more referrals to MCR from June 8, 2011, to December 1, 2011, than at the same time last year. This jump in the number of referrals has substantially increased the workload of pretrial officers. During the first five and a half months since the passage of HB 463, pretrial officers have seen an increase of 4,493 defendant call-in reports, 3,934 additional curfew checks, 2,642 additional drug tests and 6,737 additional defendant office visit reports.

You need to know that given the increase in workload over a mere five and a half months, pretrial officers are finding it difficult to meet statutory requirements with current staffing levels. Part of the reinvestment promised as a component of House Bill 463 must come in the form of increased funding to the Judicial Branch for more pretrial officers. I will ask for funding to allow me to hire 25 more positions statewide and the ability to pay all our pretrial officers at a rate that will stop the hemorrhage of pretrial officers leaving for higher-paying jobs with corrections.

The task force's work is not done. Our job now is to improve the original provisions of House Bill 463, taking into account the feedback we've received from judges, attorneys, corrections officials and others. I thank the task force and the representatives of LRC for listening and responding thoughtfully to the Judicial Branch's concerns.

### **Jefferson County District Court Reorganization**

Some of the most intriguing news this past year came out of Jefferson County. We're seeing how customer service can dramatically improve when the state's only truly urban court system makes systemic changes to decades-old processes.

For the first time since the creation of the unified Kentucky Court of Justice in the 1970s, Jefferson District Court changed its business model to alleviate court overcrowding, reduce wait times for court hearings, enhance judicial accountability, better balance the court's dockets, and provide greater continuity between judges and cases.

The reorganization was effective Aug. 1, 2011.

Led by Chief District Judge Sean Delahanty, the Jefferson District Court judges worked for two years with their partners in the justice system to develop the reorganization plan.

Jefferson County is unique in the volume and scope of the cases it handles, with the logistics of District Court proving especially challenging. According to Judge Delahanty, the district judges recognized those complex issues and developed a more sensible approach to delivering justice in the 400,000 cases they hear every year.

Judge Delahanty reports that he's pleased with how things have gone during the early months of the transition and that citizens of Jefferson County are benefiting from the changes. I'm greatly encouraged by what they've accomplished and believe that the Jefferson District Court reorganization may serve as a model for courts in other Kentucky counties.

### **New Uniform Family Law Rules**

While overhauling an urban District Court presented one set of challenges, overhauling long-standing practices in family law proved challenging on an entirely different level.

Yet in January 2011, the Supreme Court announced that it had approved the first uniform rules for family law cases that are consistent statewide. Simply put, this means we are significantly improving the way family law is practiced in Kentucky.

Previously there were no statewide rules specifically for family law cases. Judges followed the Supreme Court Civil Rules and created local family law rules for their jurisdiction. It wasn't unusual for attorneys serving several different counties to follow multiple sets of family rules.

The new Family Court Rules of Procedures and Practice are based on best practices in domestic and child welfare cases in Kentucky courts. All family law cases, including those pertaining to adoption and dependency, neglect and abuse, will be handled in a consistent manner in every Kentucky county. That's good news for families and children, who can depend on judges, attorneys and all parties involved to follow the same family law rules when working to ensure a child's safety, permanency and well-being.

Deputy Chief Justice Mary Noble headed the initiative to develop the uniform rules as chair of the Supreme Court Civil Rules Committee. She's currently assisting me by facilitating efforts to revise local rules in all 56 circuits to conform to the new family law rules.

The many citizens involved in family law proceedings, which are some of the most sensitive and difficult cases to come before our courts, will benefit from the dedication and vision of Justice Noble and all those who assisted with drafting these rules.

### **Best Practices/Model Court Initiative**

Another way we're striving to improve outcomes for children in out-of-home care is with the Best Practices/Model Court Initiative.

This initiative is overseen by the Department of Family and Juvenile Services of the Administrative Office of the Courts and calls for the courts to work with community partners to address issues that will improve the outcomes for abused and neglected children and their families. These courts are adopting the best practices proposed by the National Council for Juvenile and Family Court Judges Model Courts Project as an innovative way to improve court proceedings involving the mistreatment of children.

The seven counties with Best Practices/Model Court programs are Boyle/Mercer, Daviess, Hardin, Fayette, Jefferson and Jessamine.

## **eWarrants**

eWarrants continues to be another success for the state. Through a collaboration between the Attorney General's office and Administrative Office of the Courts, the Kentucky State Police, the Kentucky Office of Homeland Security and Open Portal Solutions Inc., eWarrants is operating in 113 counties and serving 90 percent of Kentucky's population. The goal is to have 120 counties on board by the end of 2011.

## **Jury Management Program**

One of the ways the court system is using resources more wisely is by automating and centralizing functions that must be performed in all 120 counties.

A good example is our Jury Management 2.1 system, which now operates in every county. Jury Management 2.1 is a uniform jury program that allows a county to request jury panels. Once the panel is requested, the program lets the local judges and circuit clerks manage the jury by assigning a status (such as excused, unable to locate, etc.) to each juror, tracking attendance and automating jury forms and the jury disbursement process.

Counties also have the option to use resources provided by the AOC to process and mail their juror summonses and qualification forms from Frankfort. Currently 105 counties also use the centralized mailing process, which saves processing time and money.

## **Day on the Bench**

In an effort to help legislators understand the impact courts have on the daily lives of citizens, we've started a program called Day on the Bench. The idea is for judges to invite their legislators on a "ride along" to observe court proceedings and meet with their local judges, circuit court clerks and court personnel. This experience highlights the need for legislative support of the court system.

So far we've had several counties participate in Day on the Bench with good results and I'm encouraging the other jurisdictions to take part in the program as well.

## **Redistricting of Supreme Court Districts**

Recognizing that our seven Supreme Court districts have not been redistricted in more than 20 years and that the 2010 census data showed significant population deviation in at least three of our seven districts, the Supreme Court accepted Speaker Stumbo's invitation to submit a plan to realign our districts.

In October 2011, I sent to the Senate President and the Speaker our redistricting plan, which is our attempt to conform to the state constitutional requirement that the seven districts be as nearly equal in population as possible and remain as compact as possible without dividing counties.

## **Senior Status Program**

As many of you are aware, entrance into the Senior Status Program for Special Judges sunset on January 31, 2009. The program has allowed a cadre of experienced judges to be deployed across the state to serve as backup when sitting judges are absent from the bench and to provide a tool for the Chief Justice to use to address overcrowded dockets.

The program is now winding to a close. Currently, there are 39 judges remaining in the program. Of those, approximately half will complete their service obligation by the end of 2012. It is anticipated that all judges will complete their service obligation by the end of 2014. While I acknowledge legitimate concerns about the cost of the enhanced benefits to the retirement system, the Senior Status Program has undoubtedly provided a valuable resource. We will be returning to a system of using active and retired judges to cover dockets when the regular judge is not available.

### **Kentucky Symposium on Court Funding**

I'll wrap up my status report by noting that Kentucky was the stage for a two-day national discussion on state court funding in September 2011.

The University of Kentucky College of Law hosted a symposium on court funding in Lexington. Bar leaders, state chief justices, policymakers, national organization leaders and scholars discussed how severe reductions in funding are affecting the ability of the state courts to meet their constitutional function and provide access to justice.

The event was held in honor of the Kentucky Law Journal's 100th anniversary, and its distinguished alumnus, the current American Bar Association President Wm. T. (Bill) Robinson III.

### **BUDGET PREVIEW FOR FY 2012-2014**

And now I'd like to turn our attention to the Judicial Branch's biennial budget request.

Before you accuse me of being naïve or uninformed for making a fairly substantial capital budget request in times that continue to be very lean, please know that I read the newspapers and anxiously await financial forecasts from the Consensus Forecasting Group just like everyone else.

I'm keenly aware that legislators have tough decisions to make in 2012 about the next state budget.

But the Judicial Branch can no longer postpone submitting several critical budget requests. During the 2010 budget session, we were mindful of the state's serious financial situation. In spite of many ongoing needs, we suspended requests for additional funding. That has left us with several large gaps to fill.

Time and again in the last few years, the Judicial Branch has demonstrated its willingness to take on hard issues to balance its budget. In the face of millions in budget cuts since 2008, the court system implemented a hiring freeze, made deep operational cuts and eliminated 282 positions – 8 percent of our non-elected workforce. We've proven our ability to operate a leaner, more efficient court system. And we've shown that we can be trusted to be good stewards of taxpayer dollars.

But my responsibilities extend beyond balancing today's budget. I must also ensure that our court system is healthy enough to carry out its constitutional duties tomorrow. We cannot let neglect impede the operation of our courts. That's why I seek your support in making timely, strategic investments in our people and our technology.

### **Compensation Plan**

Two of my priorities as chief justice are to invest in the dedicated people who operate the court system and to invest in the technology that will increase our ability to operate efficiently in all 120 counties. Both are critical to a viable future.

The Kentucky Court of Justice is able to provide exceptional service because of the dedication and hard work of our judges, circuit court clerks and court personnel. Yet our ability to attract and retain top talent has become compromised as the Judicial Branch falls further and further behind the entry-level salaries for the Executive and Legislative branches. My goal is to pay our workforce on a scale that is competitive with the rest of state government.

To that end, I put together a Compensation Commission to review the Judicial Branch's salary structure and provide recommendations on how to make it more fair and competitive. This group is made up of judges, circuit court clerks and court personnel and has been meeting since the fall of 2010.

In the upcoming session, I will ask for an appropriation that will allow us to implement the careful plan of the Compensation Commission to bring Judicial Branch salaries in line with the other two branches.

### **Case Management System**

If equitable compensation for court personnel has reached a critical point, so too has our need for new technology.

The centerpiece of our next budget is a request for an entirely new court case management system. This is the first time the Judicial Branch has requested funding for an IT project of this magnitude.

Our current case management system is based on technology that is nearly 25 years old and is running on programming that is more than 10 years old. The tools used to maintain the system became unsupported in 2008. The system still works and we still maintain it, but no one knows how much longer this Band-Aid approach will work.

The Commonwealth Office of Technology and the National Center for State Courts have both looked at our system and termed it on life-support. The system is well beyond its life expectancy and is functionally and technically obsolete. They also recognize the consequences of a catastrophic system failure and have called for a system replacement to be a high priority.

Simply put, we are at serious risk.

Currently, each county maintains a separate database and cannot access case information from other counties. That means we maintain 120 databases for our current case management system at the trial court level. We also maintain separate systems and databases for the appellate courts.

Due to the legacy of this system and the tools used to create and maintain it, it takes longer and costs more when we have to modify it to comply with legislative mandates. We can't easily adapt the system to support electronic filing or electronic records, which means that Kentucky is quickly falling behind the mainstream of court technology.

We must replace our old system as quickly as possible.

The new system, as we envision it, will transform the way Kentucky courts do business. In addition to securing our current and historical court data, we'll be able to quickly and accurately answer questions from the Executive and Legislative branches and other state agencies.

We'll also be better able to provide information that our justice system partners – including the Justice Cabinet, Department of Corrections, Kentucky State Police, Department of Public Advocacy, legal aid societies, local law enforcement, private attorneys and others – rely on to carry out their daily business.

We'll be able to consolidate our internal databases and give statewide systems the ability to interact with each other, something that is impossible now. We'll also be able to reduce errors, eliminate manual and redundant processes, and gain the ability to track one person through the court system.

This new system will be implemented in three phases and we're requesting authorization to issue bonds for Phase I. That request amounts to only \$2.2 million in debt service per year. We're prepared to begin work on Phase I immediately.

Nearly 1.1 million court cases flow through Kentucky's courtrooms each year. The work of the Judicial Branch affects nearly every Kentuckian and I can't think of any other capital technology project that will have such a positive impact on so many people statewide. The Capital Planning Advisory Board has given its approval for this project and I hope that we can count on your support as well.

### **Pretrial Officers**

As I noted earlier, House Bill 463 is having the intended effect of saving money by shifting state resources. Instead of incarcerating defendants in county jails, we are realizing significant cost savings by placing low- and moderate-risk individuals in our Monitored Conditional Release Program.

This has caused a sharp spike in the workload for our pretrial officers, who supervise the individuals in diversion programs. In order to adequately monitor the growing number taking part in diversion, our budget includes a conservative request for 25 pretrial officers.

### **Judicial Form Retirement System**

Many of you may not realize that funding for the Judicial Form Retirement System comes from the Judicial Branch budget. Historically, the judicial retirement system has operated with a solid financial record. However, the budget passed in the 2010 session was the first time the Judicial Form Retirement System was not fully funded.

I realize that all state pension systems are dealing with the ramifications of underfunding. However, I believe it is my obligation to keep the judicial retirement program solvent. For that reason we are requesting \$10.8 million in each year of this budget to fully fund the retirement system for judges.

### **Family Court Judgeships**

Our budget request also includes three new Family Court judgeships. The Supreme Court has identified the statewide implementation of Family Court as one of the needs facing the court system, but we recognize that some jurisdictions don't have the caseload to justify another



judgeship. We're working through this issue to make sure there's an equitable distribution of judicial resources across the state. For now, three circuits have the greatest need for a new Family Court.

Of the three judgeships we're requesting, the top priority is for the legislature to create and fund a new Family Court in Knott and Magoffin counties. We've been running a 10-year "pilot project" that allows the Family Court judge elected in Floyd County, which is the 31st Judicial Circuit, to also serve as the Family Court judge in the 36th Judicial Circuit, consisting of Knott and Magoffin counties. This arrangement is untenable for many reasons.

We also have requested a second Family Court judge for Pulaski, Rockcastle and Lincoln counties – the 28th Judicial Circuit – to help bear some of the load carried by Judge Walt Maguire, who currently has the highest caseload of any family judge in the state.

And finally, we've asked to convert a District Court judgeship into a Family Court judgeship in Daviess County to relieve the Circuit Court caseload. Daviess is the most populous county in the state without a Family Court. Currently two domestic relations commissioners hear all of the family law matters there and converting the district seat into a family seat will help domestic matters move more quickly and effectively in that jurisdiction.

### **Judicial Centers**

Finally, our budget request includes authorization for new judicial centers for Henry and Nicholas counties. The Judicial Branch last requested one judicial center project in 2008.

Since then, the AOC has assessed 48 judicial centers that have gone without major repairs or renovations since 1996. Henry and Nicholas are the counties most urgently in need of new buildings.

That concludes my prepared remarks and now I will be happy to take your questions.