

State of the Judiciary Address: Kentucky Courts Getting Back on Solid Ground  
Chief Justice John D. Minton Jr., Kentucky Supreme Court  
Message to the Interim Joint Committee on Judiciary  
September 5, 2014, at Administrative Office of the Courts, Frankfort, Kentucky

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

Another year has passed and I welcome the opportunity to once again provide an update on the state of the Kentucky judiciary. It's always a pleasure to meet with you, but today is especially notable as we are gathering in the new facilities of the Administrative Office of the Courts.

Just last November, the AOC moved from its Millcreek Campus in Frankfort to this professional, highly functional building, which formerly housed The Home Depot and was renovated to meet the needs of the AOC. The move allowed the AOC to own its building – and forgo lease payments – for the first time in its history.

Since 1987, the AOC had spent \$16.7 million in rent and renovations on the Millcreek facilities without gaining any equity in the property. In January 2012, the AOC signed a lease-to-purchase contract to buy the vacant 14-acre Home Depot property with its existing building for \$5.9 million, a steep reduction from the \$11 million Home Depot paid for the unimproved land 10 years ago. The AOC earmarked one-time savings from its facilities budget and criminal record report revenue to cover the \$7.2 million cost of renovation. With the purchase of the building in October 2013, the AOC saved \$800,000 off the original purchase price. The court system is also saving approximately \$1 million a year in lease payments.

The financial gains of the move are significant and the practical benefits became immediately apparent. Today, AOC staff work together under one roof instead of scattered throughout five buildings. The 400-seat conference room and smaller meeting rooms allow us to host meetings and educational programs for court personnel and the 403 elected justices, judges and circuit court clerks.

The building also houses our warehouse, print shop and technology center, which contains the computer server and equipment that support eFiling and our statewide case management system.

The benefits of this building extend beyond the court system. With its purchase, the state owns attractive property in a desirable location. And the capital-city community saw the conversion of a vacant, deteriorating commercial structure into a vibrant office complex.

We're also filling a need for local meeting space. Since opening our facility to state agencies and other organizations, our rooms have been continually booked. In 2014, the AOC has hosted 43 meetings for agencies such as the Cabinet for Health and Family Services, the Finance Cabinet, Kentucky Retirement Systems, the Commonwealth Office of Technology, the Department of Public Advocacy and the United Way of Kentucky.

With that said, I hope you will enjoy your time here and I encourage you to take part in the tour we'll be offering after we adjourn.

I want to thank our guests for taking the time to join us today. I appreciate AOC Director Laurie Dudgeon, AOC Budget Director Carole Henderson and Katie Shepherd, my chief of staff, for being here today as well.

## **STATE OF THE JUDICIARY**

When we met in Hopkinsville last October, I talked about the changing face of Kentucky courts and how shifts in technology, demographics, the economy and court business practices are shaping how we do business.

And last year, as was the case every year since the economy collapsed in 2008, the focus of my remarks was to appeal for adequate funding for the Judicial Branch. This year, however, I'm happy to announce that I'm taking my remarks in a new direction. This time I'm bringing good news about how our court system is making great strides on many fronts.

After years of balancing impossibly tight budgets, streamlining our organizational structure and cutting costs at every turn, the Judicial Branch is starting to regain its footing. Our hard work and sacrifice are paying off. While we still have many challenges ahead, we're climbing back to solid ground and are poised to improve services across all levels of the court system.

Here's a look at how we're doing that.

### **Better Service Through Court Technology**

As I have stressed for many years, the key to the long-term viability of the courts is better technology. Improving court technology has been one of my top priorities as we strive to become a more efficient, cost-effective court system. The Judicial Branch's comprehensive, multiyear eCourt program will update our technology to meet the demands on the courts and help us to stay within the mainstream of law and commerce.

The eCourt program will upgrade our technology infrastructure (hardware and software), replace our case management systems for the trial and appellate courts, and provide a document management system that will electronically store and index court documents.

The eCourt initiative will transform the delivery of justice in Kentucky. And that initiative requires a tremendous amount of preparation. Our efforts to overhaul our technology have largely played out behind the scenes as the AOC director, managers and Technology Services staff put in hundreds of hours of planning and programming.

It wasn't until recently that we were ready to pull back the curtain, so to speak, and begin introducing our new tools and apps and programs to the legal community. Now that our efforts are coming to fruition, it's exciting to see how these sophisticated new resources are going to revolutionize the practice of law in Kentucky.

I owe you and your colleagues a sincere thank you for the financial jump-start we needed to pursue the eCourt program in earnest. When the Judicial Branch obtained legislative approval to issue bonds to fund a new case management system in March 2013, that set the eFiling process in motion and made it possible to begin proof-of-concept testing in Franklin County by December of that year.

**eFiling Statewide by End of 2015.** I would have to describe electronic filing as the cornerstone of our strategic technology plan. Moving from a paper-based environment to one that is

primarily electronic will change the way Kentucky courts do business. The cost savings to the court system and to practitioners will be substantial and the state's entire legal system will become more efficient when we process court cases electronically.

Since the first case was filed electronically at our test site in Franklin Circuit Court in December 2013, the AOC has been on a fast track to work out the kinks in the program, set up pilot projects in 17 counties and prepare to make eFiling available in every county by the end of 2015.

This means that Kentucky will soon catch up with the federal courts and the other state courts that have been providing this valuable service for years.

eFiling is currently available only for civil cases in Circuit Court and District Court, but it will be extended to criminal cases in the fall of 2014.

**CourtNet 2.0.** Another significant development is the overhaul of our decade-old CourtNet program. Since its launch in March 2013, approximately 4,000 users statewide have subscribed to the new CourtNet 2.0, which provides real-time, online access to Kentucky civil and criminal cases. The application's sophisticated search functions and security features are significantly improved over the old CourtNet.

CourtNet 2.0 is currently available to members of the Kentucky Bar Association; justices, judges and circuit court clerks; certain court personnel; state government; the Department of Public Advocacy; and county and commonwealth's attorneys and their staffs. We will begin rolling out CourtNet 2.0 to law enforcement, the media and the public in late 2014 and 2015.

**Accounts Receivable Project.** In other good news, 56 counties have now gone live with our new, automated Accounts Receivable system, which allows the KyCourts case management system to speak electronically to our bookkeeping system.

The Judicial Branch is required to report monies owed to the state general fund and the new AR program will make it possible to report this information electronically. Previously, this information was available only through a time-consuming manual process.

Our goal is to have the AR system implemented in every Kentucky county by the end of 2015. We're also developing a Restitution Module that will, among other things, calculate interest owed on court-ordered restitution. Once the Restitution Module has been developed and fully tested, we will roll it into the AR product.

### **Pretrial Services Help Cut Costs, Maintain Public Safety**

In addition to the progress we're making in technology, we're also refining business practices in the criminal justice arena in an effort to improve our services.

An example is Kentucky's Pretrial Services program, which continues to be a model for other states. In fact, joining us today is a delegation from all three branches of Maryland state government. They're visiting Kentucky to learn how we handle the pretrial process. I understand they will be meeting with some of you at the conclusion of this event.

We're seeing measurable results from changes to our Pretrial Services program. Kentucky courts are being recognized nationally for reducing crime by nearly 15 percent among defendants on pretrial release while also increasing the number of defendants released before trial.

This impressive outcome reflects the first six months that judges in all 120 counties used the Public Safety Assessment-Court tool to predict more accurately when defendants can safely be released pending trial.

That information comes from an Arnold Foundation study released in July 2014, which states that Kentucky judges using the PSA-Court tool have “reduced crime, reduced jail populations, and led to a smarter, more effective use of criminal justice resources.”

Using new tools to improve public safety and save money is good government, and I commend our judges for their willingness to learn new processes and embrace smart business practices.

### **Judicial Branch Compensation Plan**

My primary goals for this last budget session were to increase our general fund appropriation and secure funding to implement the Judicial Branch Compensation Plan. I’m pleased that both of these goals were met with the passage of House Bill 238.

This biennial Judicial Branch budget stabilized funding for our operations and allowed us to overhaul the court system’s broken salary structure for the first time in decades. As of July 1, 2014, all non-elected employees received a salary adjustment based on the newly enacted Judicial Branch Compensation Plan. As you can imagine, the salary adjustments were well received and we are already seeing benefits in terms of improved employee retention and morale.

In addition, non-elected court personnel, along with all state employees, will receive an annual salary increase for both years of the budget cycle. Employees will receive a tiered increase based on their salary for the first year and an additional 1 percent increase for the second year.

The budget also allocated funding to begin bringing the elected circuit court clerks into pay parity with elected county officials.

I appreciate Gov. Beshear and the members of the House and Senate who listened to our needs and took action on our most pressing financial concerns.

I will continue to work to bring the salaries of Judicial Branch employees into line with those of the Executive and Legislative branches. And one of my priorities going forward is to address the lagging salaries of our judges, who last received a 1 percent raise in 2008 and 2009. Kentucky judges earn 17.5 percent less than the national average and their salaries rank seventh among those of comparable judges in the eight surrounding states.

Inadequate salaries, coupled with reduced pension benefits for incoming judges, raise valid concerns about our ability to attract high-quality lawyers to the bench. I’m concerned that inadequate judicial compensation – if left uncorrected – could become a slippery slope that diminishes the caliber of our judges for years to come.

When you think about the decisions judges make every day – whether presiding over a child custody case or a major civil trial – you realize the impact they can have on something as intimate as a family unit or as far-reaching as a corporation. Everyone who comes before the courts, regardless of the scope of their needs, must have confidence in the system.

I hope we can work together to provide a level of judicial compensation that will ensure the excellence the public has a right to expect of those sitting on the bench.

## **Juvenile Justice Reform**

Senate Bill 200 is a victory for the youth and families of Kentucky, and we all share credit for the progress the state is making on juvenile justice reform. I'm pleased that once again all three branches of government worked together to bring about positive change. In 2011, we collaborated on House Bill 463, which overhauled Kentucky's penal code to reduce incarceration rates and improve public safety. And now we've come together to make long overdue improvements to our juvenile justice system.

The AOC has an integral role to play in juvenile justice reform and our efforts to carry out this legislation are well under way.

SB 200 calls for the AOC to offer enhanced services through its Court Designated Worker Program, collaborate with juvenile justice agencies on data collection and sharing, provide more case management services, and develop training for staff and community partners.

The AOC is also charged with adopting a validated risk- and needs-assessment tool, coordinating research and policy work with the Department of Juvenile Justice on graduated responses and sanctions, and leading the establishment of family accountability, intervention and response teams – FAIR teams – with regional and local resources. We are also to address barriers to sharing education records to meet federal confidentiality requirements.

The AOC has made progress in all of these areas.

## **Circuit Court Clerk Conduct Commission**

Kentucky now has a means to investigate and review complaints against circuit court clerks. The Circuit Court Clerk Conduct Commission was established by Supreme Court order in January 2013. This year, the Supreme Court also authorized the first ever Circuit Court Clerk Code of Conduct, which sets ethical standards for elected circuit court clerks.

When warranted, the commission will investigate and conduct hearings on alleged misconduct, with possible sanctions ranging from confidential reprimand to recommendation of removal from office.

I want to thank all of the circuit court clerks for their support of this important project. And I especially want to recognize the circuit clerks, judges, lawyers and lay people who are serving as members of the conduct commission. Their contributions have ensured a fair, objective process for all concerned.

## **Judicial Center Construction**

I'd also like to update you on where we are with our judicial center construction program. Since October 2013, we have completed the last six buildings that were under construction and new judicial centers have been occupied in Bracken, Campbell, Franklin, Lawrence, Morgan and Pike counties. Currently, there are no new facilities under construction.

The 2014 General Assembly authorized new judicial centers for Henry and Nicholas counties, with funding for those projects deferred to the next budget cycle.

## **2014 Election Will Bring New Judges**

Once again we are in a year of mass judicial elections, a cycle that rolls around every eight years. In 2014, every judge and justice in the state is on the ballot except for Supreme Court Districts 3, 5 and 7, which are on a staggered schedule. Those who win the election will take office in January.

The AOC is preparing for the influx of new judges by hosting a comprehensive New Judges Orientation in December. The orientation is designed to prepare judges to take the bench and will include sessions on judicial ethics and conduct; pretrial and bail; civil proceedings; criminal issues; jury management; case management; holding court; discovery, pretrial issues and summary judgment; probate; and family law matters such as divorce, adoption and termination of parental rights.

Similar trainings in the past have successfully prepared our judges for their new lives on the bench and we're confident this orientation will provide meaningful and beneficial education for our newest judicial officials.

### **Kentucky Drug Court**

Kentucky Drug Court continues to be one of the state's great success stories, but the program is facing some growing pains. As you may know, participants take part in an intensive treatment program under court supervision in lieu of incarceration. The average time to complete the program is 23 months.

In October 2010, Kentucky Drug Court was serving nearly 3,000 participants. Due to budget constraints, we placed restrictions on hiring staff, limited the number of participants and modified the schedule for drug testing. As a result, Drug Court numbers fell dramatically. By the time we lifted the cap in November 2012, Drug Court was serving only 1,911 defendants. We steadily grew to 2,366 participants as of July 1, 2014.

The success of penal code reform has also contributed to the decline in Drug Court numbers as many defendants are choosing the less-restrictive sentencing options available under House Bill 463.

As we study how to meet the changing needs of this important program, we have identified three areas to address:

**High Risk/High Need.** National research has shown that Drug Court is most effective for defendants who are high risk/high need. This population has greater needs than other groups and requires more treatment, drug testing and supervision. Drug Court will need additional funding to provide this higher level of service.

**Evidence-Based Practices.** House Bill 463 requires Drug Court teams to use evidence-based practices when supervising defendants. This will require Drug Court judges and staff to receive ongoing training to ensure their ability to carry out this requirement.

**Increasing Participant Numbers.** Drug Court has proven effective in treating adults with substance-abuse problems and returning them to productive lives. However, the length and demands of the program can result in defendants opting for less-intensive sentencing alternatives.

A well-structured expungement process for Drug Court graduates would give defendants an incentive to choose Drug Court in lieu of other sentencing options. Drug Court produces significant savings for the court system, the state prison system and the county jails. Graduates are less likely to be convicted of new offenses, particularly new felony offenses. Encouraging more defendants to choose Drug Court would result in greater savings and fewer convictions.

As a final update on this topic, I want to mention the Drug Court Conference that the AOC hosted in August. This was the first time the AOC had secured funding to host a statewide Drug Court Conference since 2009 and this year's event was made possible by a federal grant. The conference brought together 380 Drug Court judges, staff, prosecutors, defense attorneys, law enforcement officials, treatment providers and community representatives for a two-and-a-half day program in Louisville.

It's important for Kentucky to remain current on the changes affecting the Drug Court field. In just the last five years, we've seen significant developments in drug-testing technology, important new research, changes in the drugs of choice and an escalating heroin epidemic. This conference provided the latest research on drug testing and brain chemistry along with information on ethics, Kentucky's outcome evaluation results, and evidence-based practices and standards from the National Association of Drug Court Professionals.

### **Judicial Workload Study**

As you will recall, the General Assembly included language in the Judicial Branch budget bill requiring the Supreme Court to conduct a statewide judicial workload study.

The purpose of the study is to evaluate caseloads across the state using a process that can quantify caseloads while considering jurisdictional idiosyncrasies. Our goal is to generate data that will help us address the perceived workload imbalance resulting from our generations-old configuration of judicial circuits and districts.

We have contracted with the National Center for State Courts, which has successfully conducted similar studies in several other states and is an expert in this area. The NCSC will begin the Kentucky study this October.

I have also appointed a Judicial Workload Assessment Committee, which is comprised of judges from each level of the court system, circuit court clerks, and prosecutors, whose jurisdictional lines mirror the judicial circuits. In addition, every circuit and district judge will be asked to participate in the study to ensure a comprehensive, statewide overview of our judicial caseloads and needs.

The language in our budget bill requires the judicial workload study to be submitted to the House and Senate Judiciary committees by January 15, 2016. I look forward to updating you throughout the study and to reporting on our findings when the study is complete.

### **Conclusion**

As I close today, I want to thank the members of this committee and the many other legislators who have supported the Judicial Branch during a pivotal time. Over the last six years, you have had a front-row seat to the court system's trying season.

Drastic budget cuts, the near-crisis with our aging court technology and a national movement to modernize state courts converged in such a way that our short-term tailspins could easily have become long-term disruptions.

Fortunately for the millions of Kentuckians we serve, that did not happen.

Your support has come at critical junctures. I'm particularly grateful for the authorization to issue bonds for our case management system in 2013 and for the additional funding for court operations and comprehensive salary adjustments that came during the budget session in 2014.

I am mindful that we do not fight our battles alone and reinforcements at just the right time can make all the difference in the outcome. There is much still to do and I hope we will continue to reinforce each other as we work together for the good of the Commonwealth.

That concludes my remarks and now I will be happy to answer any questions.