



## Supreme Court of Kentucky

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### 2017 State of the Judiciary Address: Positioning Judicial Branch to Meet Demands on Today's Court System

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Chief Justice John D. Minton Jr.  
Testimony before the Interim Joint Committee on Judiciary  
Friday, October 20, 2017, 10 a.m. EDT  
Capitol Annex, Room 154, Frankfort, Kentucky

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

Thank you for once again asking me to come before this committee to discuss the state of the Judicial Branch. I always appreciate the opportunity to provide this annual address.

I also want to thank the justices, judges, circuit court clerks and court personnel who have joined us for these remarks.

As I've noted before, the strength of our democracy depends on a system of three independent branches of government. Each year I come before you as a co-equal partner in our work on behalf of this great commonwealth. Our common goal is to serve the people of Kentucky to the best of our abilities by making sound decisions and taking appropriate actions.

As we meet today, the challenges before us are many. We're grappling to keep up with rapid technological and social developments. The opioid epidemic has expanded court caseloads and altered Drug Court treatment in ways we couldn't have imagined even a few years ago. And like many other state courts, juvenile justice reform and pretrial justice reform are among our top priorities. These forces have led us to put aside business practices that no longer work and adopt new practices that meet today's needs.

With that in mind, I want to spend our time together looking at several of the issues facing the court system and the initiatives we're employing to address them.

#### **Pretrial Justice Reform & Changes to Pretrial Services Risk Assessment**

Kentucky Pretrial Services continues to lead the way as a wave of pretrial justice reform propels changes to bail systems across the country. There's a growing call for reform against financial bail, which can penalize the poor. Increased litigation challenging money bail, and the Pretrial Integrity and Safety Act co-sponsored by U.S. Senators Kamala Harris and Rand Paul speak to this national, bipartisan movement.

Kentucky's roots in pretrial justice reform run deep. In 1976, Kentucky was one of the first states in the country to abolish bail bonding for profit and our leadership continues today as AOC managers share their expertise with pretrial programs in dozens of states each year.

The goals of pretrial release are to ensure public safety by determining which people should be released and which people should stay in jail, and to help ensure that those released come back to court. To meet these goals, pretrial officers apply a validated risk assessment to the defendant's criminal history. The risk of the defendant to fail to appear or to be arrested again is then reported to the court.

Properly assessing and determining pretrial release is central to the pretrial services function. We continue to refine that process and I'm pleased to make two important announcements about our program. The first is that the Department of Pretrial Services at the AOC has recently undergone its most extensive reorganization in several years.

Pretrial officers must apply the risk assessment tool consistently statewide so that all judges can be confident they're receiving reliable, accurate information. To improve our risk assessment accuracy, the AOC restructured the Department of Pretrial Services this summer to include a dedicated team of risk assessment specialists and coordinators.

The second announcement is that we're improving how pretrial officers report risk assessment information. We have recently revised the scoring process and we believe this change will significantly increase the accuracy of the scoring. To help judges and attorneys understand these changes, Pretrial Services is offering the Updates to Risk Assessment Scoring seminar for judges, prosecutors and public defenders in eight locations across the state in October.

We believe these changes will strengthen our risk assessment tool and mean greater efficiencies for our Pretrial Services staff.

### **Financial Incentive Fund**

Kentucky has reached an important milestone in realizing the full intent of juvenile justice reform under Senate Bill 200. The AOC is working closely with the Kentucky Justice & Public Safety Cabinet and the Department of Juvenile Justice to launch the financial incentive fund.

Senate Bill 200 requires the savings realized from juvenile justice reform to be reinvested into an incentive fund for programs that supervise low-risk youth. The money we would have spent to detain youth will instead be used to provide resources and treatment services to young people in communities across the state.

The AOC will support the incentive fund by acting as the fiscal agent, providing technical assistance for grant applications, and collecting and reporting the data required from judicial districts. The AOC Department of Family and Juvenile Services and the Department of Juvenile Justice began this support by hosting community partner meetings in each of the 66 judicial districts in August and September to educate those jurisdictions about how the fund will work.

We look forward to seeing positive results when the incentive fund is fully implemented.

**Judiciary Helping Improve Adoption Process**

In response to Governor Bevin's call to improve Kentucky's adoption process, I created a Dependency, Neglect and Abuse Judicial Workgroup to identify policies that would reduce the adoption timeline, and address inefficient policies and redundant paperwork. The workgroup will focus specifically on policies and processes that directly impact the permanency, safety and well-being of children.

The DNA Judicial Workgroup is collaborating with the Cabinet for Health and Family Services, the Justice & Public Safety Cabinet, the Finance & Administration Cabinet and the Department of Education to resolve local court-community barriers, enhance support for various initiatives, and determine how to better serve our children and families.

We'll provide recommendations from the DNA Judicial Workgroup to the bipartisan legislative Adoption Task Force.

**Tremendous Gains in Court Technology**

When I became chief justice in 2008, Kentucky was operating as a paper court system and was years away from joining the federal courts and other state courts in offering electronic filing. Investing in court technology became one of my main goals.

I realized that the biggest challenge facing the Judicial Branch – in terms of sheer scope – was harnessing the rapid changes in technology for use by the courts. Technology is the key to a more cost-effective, efficient court system and basically everything we do is either facilitated by the technology that we have or hindered by the technology that we need.

In 2013, the Administrative Office of the Courts kicked off KYeCourts, a sweeping, multi-year initiative to update our court technology and transform how our judicial, legal and law enforcement communities do business.

Four years later, we're upgrading our hardware and network infrastructure, replacing our trial and appellate case management systems, and providing a document management system that will electronically store and index court documents. KYeCourts has called for collaboration at all four levels of the court system, and I'm proud of the AOC staff and justices, judges and circuit court clerks who have put in thousands of hours to bring this vision to life.

eFiling. At the heart of KYeCourts is the move to a paperless court system. eFiling is now available in all 120 Kentucky counties for civil and criminal cases in Circuit and District courts and attorneys across the state have embraced eFiling in their daily practices. Our next steps include expanding eFiling to juvenile, forcible detainer, probate and appeals cases, and offering eFiling to self-represented litigants.

While we're making great strides with eFiling, the paper file is still the official court record in Kentucky. We have some difficult decisions to make about when to move to an electronic court record. Today eFiling is not mandatory and there are no fees to file electronically. Transitioning to an electronic court record would make eFiling mandatory in most case types. We've started a pilot project in Trimble County that will be the basis for a new, statewide case management system and an electronic court record. That represents a huge shift in culture as we continue to move away from paper records.

In addition, we anticipate rolling out a new appellate case management system and an eFiling system for the Supreme Court and Court of Appeals in 2018. We also continue to expand the group of users who have access to CourtNet 2.0, which provides near real-time, online access to Kentucky civil and criminal cases. And we're excited about issuing an RFP for a text notification system that would provide reminders of court dates and payments.

Nearly 900,000 court cases are filed in Kentucky state courts each year. The work of the Judicial Branch affects nearly every Kentuckian in some way. As the AOC introduces new tools, applications and programs, I'm excited to see how this sophisticated technology is revolutionizing the practice of law.

### **New Jury Management Procedures**

Trial by a jury of one's peers is a sacred right of every American and a cornerstone of our judicial system. It's critical to maintain a modern jury selection system and I'm pleased that Kentucky will benefit from new policies that will save money while improving juror reporting and making jury management more uniform statewide.

The Supreme Court recently adopted amendments to the Rules of Administrative Procedures for Jury Selection and Management. The changes took effect Oct. 1. The new rules call for centralized mailing of juror summonses, which means that instead of individual courts handling this service across the state, we'll save time and money by processing all juror summonses through centralized mailing at the AOC.

Also, each county will now use the AOC's electronic Jury Management Program to administer jury management practices and procedures. The Jury Management Program will record disqualifications, excuses and permanent exemptions of summoned jurors.

Another important change clarifies how the AOC compiles the master list of prospective jurors from the statutorily required source lists. In an effort to reduce the number of undeliverable summonses, the AOC worked with the source list providers to ensure the availability of the most accurate information about people who are eligible for service.

We're also trying to reduce the number of people who fail to appear for jury service. When prospective jurors fail to report, it can negatively affect the quality of the jury pool. Although jury administrators should take steps whenever possible to ensure the appearance of all those who have been summoned, limited time and resources often hinder the court's ability to notify potential jurors of their delinquent status.

To help remedy that, we've developed a postcard to notify prospective jurors of their delinquent status with directions to contact the court. The AOC is also working to secure a vendor to provide text and email notifications to jurors about reporting for service.

### **Open Records Policy**

In an important move this summer, the seven Supreme Court justices voted unanimously to approve an Open Records Policy that guides how the public accesses the administrative records of the state court system. The policy took effect Aug. 15.

This is the first Open Records Policy for the Administrative Office of the Courts, the operations arm of the court system. The policy is in the form of an Administrative Procedure of the Court of Justice, which carries the weight of law under the Kentucky Constitution.

Transparency and accountability are bedrock principles in maintaining trust in state government. While the Judicial Branch has long complied with the spirit of the Open Records Act, I'm proud that we have formalized our commitment into written policy.

### **Opioid Epidemic Affecting Court Operations**

As the opioid epidemic ravages lives across the state, the court system has become ground zero for the resulting criminal and civil cases. While criminal cases related to substance abuse are to be expected, it's incredibly disheartening to see the explosion in family law cases as well. Dependency, neglect and abuse cases fill our dockets as daily reminders of the grim toll the epidemic is taking on Kentucky families and children.

State Efforts. To help our judges handle drug-related cases, we hosted the first statewide Opioid Summit in January 2017. We wanted to give judges a better understanding of addiction and treatment so they can make informed decisions from the bench. They learned about the science of treating addiction; case law, statutes and regulations regarding medication-assisted treatment; and the role of the government in the opioid epidemic.

And in August 2017, we held a statewide conference for the Department of Specialty Courts. We invited judges, court staff, probation and parole officials, prosecutors, public defenders, treatment providers and others who are part of Specialty Court teams. The sessions covered the latest trends in treatment for participants in Drug Court, Veterans Treatment Court, DUI Court and Mental Health Court.

Regional Efforts. On the regional level, I was part of a team from Kentucky that participated in the first Regional Judicial Opioid Initiative – or RJOI – in August 2016. The Supreme Court of Ohio hosted judicial and multidisciplinary teams from Kentucky, Ohio, Illinois, Indiana, Michigan, Pennsylvania, Tennessee, Virginia and West Virginia along with critical public and private partners. The goal of the summit was to create a framework that would coordinate the state and federal policymakers who are confronting this problem in our region.

Since then, several Supreme Court justices and court administrators from our region have committed to serving on the RJOI Leadership Committee, which will guide ongoing initiatives. The Supreme Court of Ohio, on behalf of the RJOI, has been awarded a three-year, \$1 million grant from the Bureau of Justice Assistance to improve prescription drug monitoring exchanges across state lines, establish regional best practices, and standardize procedures to provide a more unified regional response to the opioid epidemic.

National Efforts. I'm also pleased that the Conference of Chief Justices and the Conference of State Court Administrators have formed a joint Opioid Task Force with funding from the State Justice Institute. The task force will encourage state and federal representatives to share strategies and identify unmet needs, create partnerships to address the impact of opioids on children and families, and develop principles for state courts to use when collaborating with treatment providers, criminal justice systems and child welfare agencies.

The Judicial Branch stands ready and able to help in any way we can to address this crisis crippling our communities.

### **Changes to Guardian ad Litem Program**

More than 11,300 Kentucky children are in state custody because they have been removed from their homes due to dependency, neglect and abuse. Guardians ad litem are the attorneys who provide crucial legal representation to the children who must navigate the court system on their way to timely and appropriate placements.

Guardians ad litem do important work, but payment practices for these attorneys have been all over the board, leading to concerns about the propriety of some invoices that make their way to the Finance & Administration Cabinet for processing.

To resolve this problem, the Judicial Branch is working with the Executive and Legislative branches to establish more consistent payment practices statewide. The Supreme Court and the Finance Cabinet are finding ways to clarify practices and jointly create rules and forms that will increase accountability for the state dollars that pay for these vital services.

### **KBA Commission on the Future of the Legal Profession**

Another area facing remarkable change is the legal profession and we want to be proactive in helping Kentucky attorneys adapt to new trends in the practice of law.

Following the lead of the American Bar Association and several state bar associations, the Kentucky Bar Association has created a Commission on the Future of the Legal Profession. The commission has a diverse membership of lawyers from across the commonwealth.

The commission is designed to identify and explore all areas relevant to the practice of law and the delivery of legal services, including the threats, challenges and opportunities facing attorneys, judges and the judicial system in Kentucky.

To accomplish this, we've created four subcommittees to address the issues of access to justice, transitions within the practice of law, sustainability of the legal profession, and technology. The work of the commission will culminate in recommendations consistent with the highest professional standards and in the best interests of the profession and the public.

### **Judicial Redistricting**

As mandated by the legislature in the Judicial Branch budget bill in 2014, I brought to the General Assembly last session a comprehensive, statewide judicial redistricting plan. This plan was the culmination of years of study by a group of judges and court professionals in consultation with a team from the National Center for State Courts. As I noted during my testimony before the Senate Judiciary Committee in February 2017, our research shows the last statewide redistricting took place in 1893. To put that into context, we have not addressed judicial redistricting on a statewide basis since well before women were given the right to vote.

Over the century and a quarter since we last undertook major redistricting of our trial courts, the commonwealth has clearly undergone extensive changes. Those changes have redistributed populations all across the state and altered the workload demands on the courts expected to serve the needs of local communities.

Unfortunately, our inability to shift judicial resources from areas of low need to areas of greater need hampers the ability of the court system to serve all Kentuckians as well as we should. Our statewide plan is an effort to respond to access to justice needs across the commonwealth.

While the legislature did not take up judicial redistricting during the 2017 session, I want to stress that the need for statewide redistricting is still there and we cannot ignore it. I do recognize that legislators have many pressing issues on their plates and judicial redistricting may not be a priority. But there are critical areas across the state where judges are so overburdened that citizens are not getting equal access to justice. The jurisdictions in urgent need of redistricting in this session include Lincoln, Pulaski and Rockcastle; Boone and Gallatin; Kenton; Floyd; Knott and Magoffin; Bourbon, Scott and Woodford; and Daviess.

The plan certified by the Supreme Court is still valid, but we're open to modifying that plan based on recommendations from the legislature because there are some locations in the commonwealth where delayed justice is denying justice to our citizens.

I've suggested bringing together a small group of judges and legislators to discuss how to proceed with judicial redistricting and I hope we can continue making progress to meet this important need.

### **Improving Judicial Branch Salaries**

Despite the state's difficult financial situation, the need to improve Judicial Branch salaries has not changed. For many years I've been vocal about one of my primary concerns, which is to provide long overdue salary increases for Kentucky judges. And despite some recent improvements in compensation for our elected circuit clerks and non-elected employees, those salaries still fall behind those in the Executive and Legislative branches. Once again, we have a growing number of non-elected employees whose compensation falls below the federal poverty guidelines.

Also, it has been 10 years – a full decade – since Kentucky judges have received any real boost in compensation. Since 2007, our judges have received only two years of 1 percent raises and two years of \$400 raises. The January 2017 Survey of Judicial Salaries by the National Center for State Courts shows that Kentucky has again fallen in national rankings, with our Circuit Court salaries ranked 48 out of 50 states.

As you can imagine, the lack of progress on this issue has left our judges feeling discouraged and undervalued. It also provides little incentive for the best and brightest attorneys to leave lucrative law practices. The longer we postpone action, the more difficult it will be to catch up on lost wages and avoid diminishing the quality of the Kentucky judiciary.

I'll be including a request to increase compensation for judges, circuit clerks and non-elected employees in our biennial budget and I look forward to discussing that further in the coming months.

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As I wrap up today, there's one message I want to make sure you leave with and that is my unqualified support for the dedicated men and women who are the Judicial Branch in Kentucky. Time and again, I'm impressed by the hard work, commitment and expertise they bring to all levels of the court system. Every single day, you can count on our justices, judges, circuit clerks and court personnel to carry out the business of the courts, to maintain the rule of law and to provide equal justice to all.

It's the collective work of these nearly 3,800 individuals that makes the state of our judiciary strong and capable of responding to the many challenges that come our way.

That brings us to the end of my remarks. I want to thank you again for your time today and answer any questions you may have.

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