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

Thank you for inviting me to join you today. I always appreciate your time and the opportunity to provide you with an update on the state of the Kentucky judiciary.

Allowing me to meet with your committee on a regular basis is beneficial to both branches of government. The court system benefits when legislators understand and support our role in administering justice. The legislature benefits when the court system operates smoothly and has adequate resources to efficiently administer justice.

We respect the constitutional role of the General Assembly to set policies and enact laws that govern the lives of Kentuckians. And we hope you respect the role of the judiciary as your partner in state government. We exist to apply and interpret statutes and case law and precedent, but more importantly to serve as the institution of state government whose central purpose is to preserve the sacred principle of equal justice for all.

I appreciate the judges, circuit court clerks and court staff who are with me today. I may be calling on some of them to assist me in responding to any questions you may have.

Before I begin my comments today, I would like to take a moment to recognize Justice Wil Schroder, my dear friend and longtime colleague who served with me on the Supreme Court and the Court of Appeals. After nearly 30 years of judicial service, Justice Schroder announced his retirement earlier this month to address health issues.

Wil is a man of integrity who brought to the bench an unwavering commitment to the law and to the people of his district. The other justices and I will certainly miss his presence on the Supreme Court.
STATE OF THE JUDICIAL BRANCH BUDGET

I would like to begin today with an update on the Judicial Branch budget before focusing on our recent successes and the challenges we face in the coming year.

The 4.3 million people in Kentucky generate nearly 1 million court cases each year. To meet that demand, the Judicial Branch needs only about 3 percent of the state budget. Yet since 2008, our court system has experienced a cumulative budget reduction of 48 percent.

We are now more than halfway through Fiscal Year 13, which began on a grim note as we faced an additional budget cut of $25.2 million.

As aggressive as we have been in addressing prior reductions, this latest cut hit us especially hard. For one thing, 86 percent of our budget is tied to personnel, which leaves us little room to trim costs outside of our workforce.

Instead, we decided to make deeper cuts to programs and operating expenses where we could, impose even tighter restrictions on filling personnel vacancies and place a cap on the number of participants accepted into Drug Court.

But that still wasn’t enough to balance this year’s budget. After a great deal of deliberation, we decided to take the drastic measure of closing courthouse doors. This was the first time in the court system’s modern history that we had to shut down because of a funding shortfall.

For three days in August, September and October 2012, the Judicial Branch furloughed all non-elected employees for a total savings of nearly $1.2 million.

This meant that services at all four levels of the court system were unavailable to the citizens who needed them. I can tell you with all candor that this was one of the most disheartening actions I have had to take while serving as chief justice.

My concern over closing courthouse doors goes far beyond three days of inconvenience to our customers. Growing caseloads and declining budgets hinder the ability of the courts to swiftly and efficiently render justice. Whether it is the state attempting to bring a criminal to justice, or a private citizen renewing a driver’s license or seeking the judgment of a court in a child custody case or a business dispute, the courts are there to protect a person’s fundamental rights under the law.

You will continue to hear me raise the issue of the need for adequate court funding as we head into Fiscal Year 2014, which presents an additional shortfall of $28.7 million. While we have realized sufficient savings to avoid other furloughs through June 30, 2013, we are looking at measures to fill the funding gap for the next fiscal year.

New Court Case Management System

I also want to update you on the status of our technology program. The last time we were together, I explained that one of my primary concerns was the status of the court system’s obsolete case management system, which is at risk for failure.
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.

I mentioned during my last address to you in December 2011 that our system still works and we still maintain it, but no one knows how much longer this Band-Aid approach will work.

Now, 13 months later, we are still in a dire situation. We continue to operate with an inefficient system that requires us to maintain a separate database in each county. 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. None of these systems are able to communicate with one another, meaning that we cannot share case information among counties or levels of the court system.

I said it in December 2011 and I will say it even more emphatically today: We must replace our old system as quickly as possible before there is a catastrophic failure.

With nearly 1 million new case filings each year, a system failure is simply not an option. That is why I included language in my last budget recommendation for authority to bond the first phase of a project to create a sophisticated new case management system that will be the foundation for Kentucky to adopt e-filing.

I remain hopeful that our bonding authority can be revived this session so that the Judicial Branch can begin to meet this critical need. We believe with your support and approval, this project can be authorized this session without any additional general fund appropriation to pay the costs of the bond.

STATE OF THE JUDICIARY

Despite our financial challenges, we have not stopped short in our tracks. I find it heartening that our judges, circuit court clerks and court employees can still find new ways to do business and improve the experience of our customers.

Jefferson County Veterans Treatment Court

As this committee learned during the November meeting at Fort Campbell, we recently announced the opening of the Jefferson County Veterans Treatment Court, the first court of its kind in Kentucky.

This is a unique resource for veterans in Jefferson County, who now have access to a court that provides treatment and support services to help veterans stabilize their mental health and recover from addiction. The team includes judges, prosecutors, defense attorneys, treatment providers, veterans’ justice outreach specialists and others dedicated to providing important services to veterans.

The project is funded by a three-year, $350,000 grant from the Bureau of Justice Assistance of the U.S. Department of Justice. We anticipate serving 25 to 30 veterans a year.
I am happy to report that we have received grant funding for a Hardin County Veterans Treatment Court team to attend Veterans Treatment Court training. This is the first step toward applying for an implementation grant. We are also applying for training grants for Veterans Treatment Courts in Fayette and Christian counties.

These four counties are home to the majority of Kentucky veterans and the addition of a Veterans Treatment Court will provide much-needed assistance to those veterans who are impacted by the justice system.

**Drug Court Cap Lifted**

I mentioned earlier that we had imposed a cap on the number of Drug Court participants as part of recent budget reductions. The caps, which took effect in May 2012, set the number of participants at 2,200. The current number of participants has dropped to 2,015, which is well below the cap.

The lower numbers are partly the result of the caps and House Bill 463, which created additional alternatives, such as deferred prosecution and presumptive probation, for low-risk defendants who have had limited contact with the court system. These new sentencing alternatives have significantly reduced the number of participants entering Drug Court.

In response to Drug Court judges who expressed concern about the negative effect of declining numbers on the Drug Court program, I lifted the Drug Court cap in November 2012.

Drug Court waiting lists have been suspended and judges are admitting eligible Drug Court participants through the normal admission procedures. We hope this can be more than a temporary measure. However, Drug Court must still generate a savings of 16 percent, which was the reason for implementing the cap.

We have also had discussions with Drug Court judges about what type of participant benefits most from Drug Court’s intensive supervision. While Drug Court has traditionally served a lower-risk population, research has shown that the program is more effective in meeting the needs of high-risk/high-need defendants, who may be referred from probation violation hearings or shock probation motions.

Based on research and on Kentucky Drug Court’s proven track record for saving costs and saving lives, I am encouraging Drug Court judges to give special consideration to accepting high-risk/high-need individuals into the program. This will help ensure that Drug Court resources are targeted to those most likely to benefit from the program.

**Pretrial 24-Hour Rule**

In October 2012, the Supreme Court took steps to stem high employee turnover in Pretrial Services by suspending the 12-hour presentation rule required in RCr 4.20 and amending it to reflect a 24-hour presentation rule.

The Supreme Court took this action to ease the effects of crippling caseloads and other pressures on Pretrial Services staff statewide. This is a significant change for Kentucky pretrial officers, who have operated under a 12-hour rule since 1976.
Kentucky has the only statewide pretrial release program in the country with a rule requiring a specific time frame after arrest in which to complete an investigation and make recommendations to the court. Other states do not require specific time frames. Federal pretrial programs comply with the 48-hour probable cause requirement of *County of Riverside v. McLaughlin*.

By way of background, the role of a pretrial officer is to interview a defendant and make a recommendation regarding release within 24 hours after incarceration. The recommendation to the judge is based on an assessment of the defendant’s flight risk and anticipated criminal behavior.

If the judge determines that a defendant can be released pending trial, the judge can apply a broad range of release alternatives. These include release on a defendant’s own recognizance, an unsecured bond, a cash bond combined with home incarceration, supervision through Pretrial Services’ Monitored Conditional Release Program or drug testing.

Since House Bill 463 was enacted in 2011 to reduce incarceration costs, Pretrial Services has seen a significant jump in its supervisory caseload. From June 2011 to October 2012, pretrial officers supervised an additional 1,100 defendants and had an additional 36,733 defendant contacts as part of the Monitored Conditional Release and diversion programs. Other legislative mandates and local rules have also contributed to the complexity of their work.

As a result, the turnover rate for pretrial officers was very high. For a time Pretrial Services was operating with only 63 percent of the necessary workforce.

We’re reversing those statistics after only three months of using a 24-hour rule. Pretrial Services currently has only 17 vacancies, the lowest rate in years. Pretrial officers have more time to conduct interviews and supervise high- and moderate-risk defendants. They also have more consistent work schedules. In 29 rural counties, we have reduced the number of trips to the jail and eliminated split shifts, which required staff to work half of their hours in the morning and the other half in the evening.

It’s also important to note that although the 24-hour rule is in effect statewide, most counties continue to provide pretrial services in less than 24 hours in order to handle the caseload. This is particularly true in urban areas, which have the highest volume of arrests. The 24-hour rule has been more widely implemented in rural areas, especially those with an average of less than five arrests in a 24-hour period.

The other good news is that the 24-hour rule has had minimal impact on the jails. Ninety-two percent of defendants are still presented within 12 hours.
Conclusion
In closing, I can say that the state of the judiciary is strong but showing strain. I am enormously proud of the people who work in the court system in Kentucky – the non-elected employees as well as the elected justices, judges and circuit court clerks who work in every county across the state. I thank each and every one of them for their dedication. Many of them have assumed extra duties when the jobs of co-workers have been eliminated by layoffs or attrition. Their efforts are critical to ensure that the courts fulfill our constitutional obligation in the face of undeniable and unprecedented fiscal challenges.

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

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