



Supreme Court of Kentucky

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State of the Judiciary Address: 2015 a Seminal Year for Kentucky Courts

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Testimony before the Interim Joint Committee on Judiciary
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Chairman Westerfield, Chairman Tilley, Members of the Judiciary Committee and Guests,

Thank you for inviting me here today. It's a pleasure to address this esteemed committee and it's a special honor to do so on the campus of Northern Kentucky University. I want to thank NKU President Geoffrey S. Mearns and Dean Jeffrey A. Standen of the Chase College of Law for giving the Judicial and Legislative branches such a warm welcome today.

I also want to welcome the guests who have joined us and I appreciate the justices, judges, circuit court clerks and court personnel who are here today as well.

STATE OF THE JUDICIARY

Our last meeting was in September 2014, when we gathered at the AOC's facilities in Frankfort. Much has transpired in just 14 months and I look forward to updating you on the events, accomplishments and turning points that have made 2015 a seminal year for the state court system.

New Technology Transforming Court, Legal Systems

Last year I talked about how the courts are pursuing better service through new technology and I'm pleased that we continue to make significant progress toward that goal. We're pressing forward aggressively and drawing on expertise from all areas of the court system to carry out a sweeping, multiyear eCourts initiative.

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

Investing in court technology has been one of my top priorities and it's gratifying to see how eCourts is transforming the business processes of our judicial, legal and law enforcement communities.

eFiling Now Available Statewide. Kentucky reached an important milestone last month when we met our goal of offering eFiling in all 120 counties before the end of 2015. With the launch of eFiling in Jefferson County on October 21, electronic filing became available statewide. This means that attorneys can file documents electronically for civil and criminal cases in Circuit Court and District Court throughout the commonwealth.

That's an enormous achievement and one that puts Kentucky in the company of the federal courts and only a few other state courts that offer electronic filing on a statewide basis.

Our next steps include offering eFiling for confidential matters and cases involving small claims, evictions and probate. We will also be making eFiling available to self-represented litigants.

To prepare users to transition to eFiling, the AOC has provided training to judges and circuit court clerks. Staff have also traveled throughout the state to offer on-site training to more than 6,200 attorneys and staff members. We will soon provide an online training option as well.

We're already seeing the benefits of eFiling, with attorneys across the state embracing it in their daily practices. As of the end of October 2015, there were nearly 42,000 eFiling submissions. The counties with the largest number of filings are Boone, Campbell, Fayette, Franklin and Kenton. With 340 eFiling submissions in its first week, we expect Jefferson will soon join this list.

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 transition to an electronic court record, thus requiring eFiling in most case types. The court system will not fully realize the savings and benefits from eFiling until that transition is made.

Appellate Case Management System. We have also started planning a new electronic case management system for the appellate courts. We looked for a company with the latest technology to meet our unique needs and we believe we've found the right fit with Thomson Reuters' C-Track Court Case Management System.

The C-Track System will greatly improve the ability of the Supreme Court and Court of Appeals to capture, track, process and report on cases from filing through disposition. This upgrade will benefit the courts, the legal community and the public we serve.

We anticipate it will take about 18 months to implement the appellate case management system. When completed, Kentucky will have a case management system that allows the seamless exchange of data between the trial and appellate courts.

CourtNet 2.0. CourtNet 2.0 is the first major upgrade to CourtNet in the last decade and it provides nearly 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 version of the program.

In March 2013, the AOC began a staggered statewide rollout to ensure the application could accommodate a large number of users. Today CourtNet 2.0 has more than 6,000 subscribers and is available to members of the Kentucky Bar Association; justices, judges, circuit court

clerks and court personnel in the Judicial Branch; and in all agencies in the Executive and Legislative branches.

The AOC is in the final stages of offering CourtNet 2.0 to law enforcement agencies through a partnership with the Kentucky State Police.

Accounts Receivable Project. As of November 2, 2015, our new automated Accounts Receivable system is now live in 113 counties. Jefferson County is scheduled to go live in May 2016, at which point all counties will be using the AR system.

Once the statewide rollout of AR is complete, we will begin testing the reporting functions of the system.

We also continue to develop and test a Restitution Module, which will be piloted by Mercer County in December 2015. The Restitution Module will calculate interest owed on court-ordered restitution. Once the Restitution Module is ready for release, it will operate as part of the AR system.

New Legislation and the Courts

During the past several legislative sessions, the General Assembly has passed important laws that have benefited the criminal justice system, juveniles and victims of domestic violence. While these omnibus reforms made positive changes to Kentucky laws, they also required extensive revisions to court procedures and forms.

I'm extremely proud of the work that our judges, circuit court clerks and court employees have undertaken to fully implement these laws. I want to update you on some of those efforts and the positive outcomes we're beginning to see.

SB 200 – Juvenile Justice Reform. The AOC has been working diligently to restructure the Court Designated Worker Program and the juvenile court process as mandated by Senate Bill 200. Although it is early in the process, current outcomes indicate that juvenile justice reform is achieving its intended effect of providing youth with enhanced services while reducing detention.

For example, prior to fully implementing SB 200, the CDW Program handled 10,202 new diversions, which was an 11 percent increase from Fiscal Year 14 to FY 15. The statewide diversion success rate was 87 percent for both FY 14 and FY 15.

The CDW Program anticipates a huge increase in the number of juveniles in diversion in FY 16 because SB 200 requires mandatory diversion for first-time misdemeanor offenders with no prior diversions or adjudications. The legislation also gives young people the opportunity to participate in up to four diversions rather than two and offers the enhanced case management process through referrals to FAIR Teams.

We are already realizing the benefits of SB 200 in the districts with active FAIR – Family Accountability, Intervention and Response – Teams. In the counties where juveniles and families have access to more treatment options and the enhanced case management process, there's been a notable reduction in juvenile caseloads in District Court and status offense caseloads in Family Court.

FAIR Teams are currently hearing cases in 34 judicial districts, have scheduled their first meeting to review cases in 12 additional districts and are in the orientation stage in the remaining 14 districts.

With the fast pace of FAIR Team expansion, a growing number of young people have access to the enhanced case management process. As of September 30, 2015, FAIR Teams have reviewed a total of 552 cases. Of the cases reviewed, 21 percent have been resolved outside of court and 26 percent have been referred to court for formal processing. The remaining cases continue to progress through FAIR Team reviews and the diversion program.

Statewide Juvenile Court Rules. Kentucky's juvenile justice reform triggered the need for consistent rules to govern juvenile status and public offense cases in the court system. The Supreme Court Standing Committee on Juvenile Court Rules of Procedure and Practice released a pilot version of the rules on July 1, 2015. The committee will accept recommendations for changes to the rules through February 1, 2016, to identify needed amendments before a final version is adopted by the Supreme Court in the fall of 2016.

Juvenile Forms. The Juvenile Court Rules Advisory Committee and the Juvenile Forms Subcommittee revised the existing Juvenile Court forms and developed new ones so that appropriate court processes are implemented and court orders contain the correct terms. The new Juvenile Court forms were made available July 1, 2015.

It's gratifying to look back over the last year and see just how far juvenile justice reform has come in Kentucky. Our progress is impressive and I hope that other states will see Kentucky as an example of what can be accomplished when concerned leaders and professionals at all levels – state, county and local – work together to improve how the court system treats our young people.

House Bill 8 – Dating Violence Protection Bill. As we reported during the October Interim Joint Judiciary Committee meeting in Hopkinsville, the AOC is on target to carry out its responsibilities under House Bill 8, which extends civil protection to victims of dating violence, sexual assault and stalking.

We are currently revising the 18 legal forms in our domestic violence series to reflect the changes in the statute. We're working with Kentucky State Police to make sure the changes can be integrated with their LINK system. We've also been talking with judges, circuit court clerks and advocates about what needs to be on the forms to ensure there are multiple levels of review.

The four core protective order forms have been revised and sent to the vendor for the e-EPO program in Boone, Christian, Fayette, Gallatin, Jefferson and Kenton counties. We're printing all of the core series now and will be sending a supply of those forms to the Offices of Circuit Court Clerk, sheriffs' offices and other stakeholders along with an explanation about the changes required by HB 8.

We're also preparing a brochure that explains the protective order process to the public. The brochure will be available at circuit clerk offices and on the Kentucky Court of Justice website.

Judges and circuit clerks have already been trained on these changes and we'll be providing supplemental education for the deputy clerks who will be on the front lines of processing the protective orders.

All of the jurisdictions have been asked to submit a new protocol for protective order review that indicates which court – Family or District – will handle their cases. They have until November 15, 2015, to provide a preliminary protocol and until November 30, 2015, to submit a final protocol.

Changing Trends in Drug Court and Specialty Courts

Kentucky Poised to Meet Need for Specialty Courts. Like many state courts, Kentucky is experiencing a growing demand for courts that specialize in certain types of cases. We need look no further than our Drug Court program, now in its 19th year, to see how specialty courts can meet the unique needs of certain defendants. The Drug Court model – returning people to productive lives while reducing incarceration – is being used effectively with other types of courts.

For example, implementing a Veterans Treatment Court program in Kentucky has been possible, in part, because we're building on our strong Drug Court foundation. We have VTCs operating in Northern Kentucky and Christian, Fayette, Hardin and Jefferson counties. The case management principles that are integral to Drug Court are also serving as the basis for Kentucky's emerging Mental Health Courts.

As Kentucky continues its thoughtful expansion of specialty courts, the AOC decided in August to dedicate a department solely to their oversight. The new Department of Specialty Courts – which oversees Drug Court, Veterans Treatment Court and Mental Health Court programs – will help us respond to changing needs, use our resources appropriately and continue to enhance our evidence-based practices.

Addressing Kentucky's Escalating Drug Abuse. The Judicial Branch shares the statewide concern over Kentucky's soaring heroin problem. A 2013 report by Trust for America's Health found that Kentucky has the third highest drug overdose mortality rate in the country. It's important for the court system to take steps to help combat this epidemic and we are focusing on a couple of key areas.

Rocket Docket Program. One tool at our disposal is a statewide expansion of "rocket dockets," thanks to Senate Bill 192. Rocket dockets allow prosecutors and defense attorneys to work with the courts to expedite drug-related cases so that defendants can get into treatment more quickly.

Medically Assisted Treatment. Another option is medically assisted treatment, or MAT. Nearly a year ago, the AOC began working with judges to pilot a program that uses Vivitrol as part of MAT for eligible Drug Court participants.

Vivitrol is promising because it is given as a monthly injection in a physician's office, which means it is not divertible and cannot be abused. As an opioid antagonist, Vivitrol does not interfere with required drug tests as do suboxone, buprenorphine and methadone. However, the cost of Vivitrol is about \$1,200 a month, which can be prohibitive. Any medical treatment,

including medications, is paid by the Drug Court participant's insurance, which may include Medicaid.

In May 2015, I formed the Judicial Medically Assisted Treatment Panel to examine the use of MAT in Kentucky's specialty courts. The panel is comprised of a diverse group of Drug Court judges from across the state along with representatives from the AOC. When we met in October for our third meeting, we sought other points of view by inviting representatives from the Department for Behavioral Health, Developmental and Intellectual Disabilities, the Kentucky Office of Drug Control Policy, the Department of Public Advocacy and the Commonwealth's Attorney's Association.

I created the panel in response to announcements in early 2015 that the Office of National Drug Control Policy, the Bureau of Justice Assistance and the Substance Abuse and Mental Health Association were changing their grant policies to provide federal funding only to Drug Court programs that allow all forms of MAT.

Although Drug Court programs in Kentucky are state funded, the AOC receives some BJA and SAMSHA federal grants for enhanced treatment in 20 counties. Five of those grants fall under the new MAT requirements. Those are the Veterans Treatment Courts in Christian and Campbell counties and Drug Courts offering enhanced treatment in Floyd, Letcher and Johnson/Lawrence/Martin counties.

Drug Court judges across the state are divided over the use of medically assisted treatment. This is an issue we're having conversations about as part of the Judicial Medically Assisted Treatment Panel and in other settings. I've learned over the past few months that we're not alone in this struggle. I've spoken with my counterparts in Ohio and West Virginia who are facing the same situation with the rising heroin epidemic and we've discussed the possibility of hosting a collaborative conference on the use of MAT.

Today we have 15 Drug Court programs using Vivitrol and 14 others contemplating its use. The Supreme Court also changed Drug Court's administrative procedures in response to our federal grantors' requirement by removing language that limited MAT to six months while in Drug Court. It's premature to speculate on the success of Vivitrol so early in the pilot project, but I hope to provide you with a positive update soon.

Pretrial Services Program a National Model. Our Pretrial Services program operates in all 120 Kentucky counties and pretrial officers are required by court rule to interview and investigate all individuals within 24 hours of arrest. The program is based on the premise – supported by federal and state law – that defendants are presumed innocent until proven guilty and are entitled to reasonable bail.

Pretrial Services continues to contribute to reduced crime, an improved public safety rate and smaller jail populations in Kentucky. With the passage of House Bill 463 in 2011, penal code reform greatly increased the workload of our pretrial officers who now supervise a growing number of defendants ordered into monitored conditional release, diversion and deferred prosecution programs.

In Fiscal Year 2015, Kentucky pretrial officers interviewed 157,740 defendants and supervised 17,126 through Monitored Conditional Release. Seventy-five percent of defendants obtained pretrial release, which is a significant cost savings for county jails.

Kentucky a National Model for Pretrial Reform. Kentucky became a pioneer in pretrial reform in 1976, when it was the second of four states to outlaw commercial bail bonding. In addition, Kentucky was among the first states to adopt evidence-based practices as a result of penal code reform in 2011. And in 2014, Kentucky judges adopted a Public Safety Assessment-Court tool to help them better predict when defendants can safely be released pending trial.

Over the course of 40 years, Kentucky has become a national model for its approach to pretrial release. Kentucky's process continues to gain favor as pretrial policy experts sound the alarm about the fundamental unfairness of bail bonding. These experts argue that a bail system based solely on a defendant's ability to pay is a system that penalizes the poor and violates their civil rights.

This story is one in which the media, the public, and state and federal courts are now taking interest. We're beginning to see federal courts across the country hold that money bail violates the equal protection clause of the 14th amendment. In response, local municipalities are being required to set aside bail schedules.

Kentucky's success in this arena is contributing to the momentum. Today multiple states and media outlets are turning to Kentucky Pretrial Services to learn how our evidence-based risk assessment tool has fundamentally improved the pretrial decision-making process.

In the last 12 months, the AOC has assisted nearly 30 states that want to learn more about Kentucky's pretrial model. We're also working with the National Center for State Courts to write a journal article on how technology can move jurisdictions from bail bonds to an evidence-based pretrial release program.

Judicial Center Construction

We currently have no judicial centers under construction in Kentucky. The 2014 General Assembly authorized new judicial centers for Henry and Nicholas counties along with funding for those projects. Both projects have selected financial advisors and are in the process of procuring architectural services to conduct a feasibility study. The feasibility study evaluates whether to construct a new judicial center or renovate the existing courthouse.

Retired Judges Program

Entrance into the Senior Status Program for Special Judges sunset at the end of January 2009. With only one senior judge left to complete her service days, the court system has lost a pool of experienced retired judges who could be assigned to fill vacancies in a timely manner.

To fill the gap left by the Senior Judges Program, the Supreme Court has created the new Temporary Assignment of Retired Judges Program, effective July 15, 2015.

Although the Kentucky Constitution grants the chief justice the authority to temporarily assign any retired or active justice or judge to sit in any court other than the Supreme Court if needed for the prompt disposition of cases, the program provides a pool of retired judges who

are willing to commit up to 120 days per year. These judges will cover for sitting judges when there are unavoidable vacancies due to circumstances such as retirement, illness, death, recusal and congested dockets.

The program will initially be limited to 21 judges who represent diversity in judicial experience and geography. Retired judges must satisfy certain eligibility requirements, including a minimum of eight years of judicial service, before they can apply to participate in the program. Applicants are also vetted by a Program Selection Committee consisting of judges from all levels of the court system.

Program judges are paid a per diem based on KRS 21A.110 and Supreme Court Rule 1.070. They are not eligible for benefits and cannot accrue any additional service credits toward retirement. There are currently seven retired judges in the program, several of whom are already hard at work. I am hopeful that this program will allow us to provide better and more consistent coverage in those jurisdictions where a vacancy would otherwise impact service to litigants.

Judicial Workload Assessment Study

In 2014, the Judicial Branch budget bill included language that requires the Administrative Office of the Courts to conduct a statewide judicial workload study. The purpose of the study is to measure caseloads across the state to address any workload imbalances resulting from our decades-old configuration of judicial circuits and districts.

The Judicial Workload Assessment is the first of its kind in the history of Kentucky's modern court system.

As part of this evaluation, all circuit and district judges were asked to take part in a Judicial Time Study this spring. For a four-week period, judges logged their hours through an Intranet site to provide a profile of the time they spend handling cases and attending to judicial duties. Their input is the foundation for a comprehensive workload assessment that I will present to the legislature in January 2016.

To ensure that we produce a reliable, high-quality study, we engaged the National Center for State Courts, which has conducted similar studies in other states and is an expert in this area. The NCSC will compile a report that includes case weights and measured workloads for each phase of a case and its jurisdiction.

I also created a Kentucky Judicial Workload Assessment Committee – JWAC – to work closely with the NCSC on this project. The committee is comprised of judges from each level of the court system as well as circuit court clerks and prosecutors.

In addition to the Judicial Workload Study, the NCSC staff held on-site focus groups this summer with circuit, family and district judges in several jurisdictions. They provided input on the challenges they face in handling different types of cases, policies, strategies that have proven efficient in processing cases and any variations in the nature of trial court work across the state.

During the second half of September, all trial judges statewide were asked to complete an online Sufficiency of Time Survey, which is different from the Judicial Time Study

completed in May. The survey assessed whether judges have sufficient time to fulfill all of their judicial responsibilities with reasonable quality given the current level of resources. The survey let judges express their views on various aspects of case processing.

In October, we hosted three Delphi group meetings, one each for Circuit Court, Family Court, and District Court. The Delphi groups were comprised of about 10 judges from each court level who reviewed the preliminary case weights and recommended adjustments based on any recent statutory changes, best practices in case management and real-world experience.

The JWAC members met in September and will meet again in November to examine and reconcile results from all phases of the assessment, including the Judicial Time Study, the Sufficiency of Time Survey, the site visits and the Delphi sessions. The goal of this meeting is to finalize the Kentucky Judicial Workload Assessment model and results.

After that, the NCSC will provide a preliminary report for review by the JWAC in December. The draft report will include the project methodology, results of the weighted caseload study and an executive summary. The Supreme Court will present the final version of the report to the legislature in January 2016.

As you can imagine, the process of defining and measuring how judges spend their time has been complex and instructive. I want to make clear that our work at this point is to produce a comprehensive workload assessment. We are not yet proposing a boundary realignment plan for the judicial circuits and districts, although the findings of the Judicial Workload Assessment will inform our decision about boundary realignments in the future.

Because district judges are not up for election until 2018 and circuit judges are not on the ballot until 2022, we have ample time to work on a boundary realignment plan in close conversation with the Legislative Branch prior to the next election cycle.

Kentucky Judicial Compensation Commission

As you know, I've been vocal about the urgent need to address the salaries of Kentucky judges, who earn less than their counterparts almost everywhere in the country. A 2015 study of judicial compensation from the National Center for State Courts shows just how far Kentucky has fallen behind other states. Our Supreme Court justices rank 45th out of 50 states, our Court of Appeals judges rank 37th out of 40 intermediate appellate courts and our Circuit Court judges rank 42nd out of 50 states. We rank last among the states surrounding Kentucky.

Equally troubling is that low salaries have been compounded by recent reductions in pension benefits for the new judges coming on board. This decline, if unchecked, could have a long-term effect on Kentucky's ability to attract exceptional lawyers to judicial office. Judges make far-reaching decisions every day and everyone who comes before the courts must have confidence in the abilities of those sitting on the bench.

This past summer, I convened an independent Judicial Compensation Commission consisting of community leaders from across the state to study the issue of compensation for judges. The commission reviewed data relating to the salaries of Kentucky judges and seemed most compelled by the fact that since FY 2009, judges have received only two salary increases of 1 percent each. Those were preceded by two years – FY 2007 and 2008 – when judges

received only \$400 increases. This means that it has been a decade since Kentucky's justices and judges have received a measurable increase in compensation.

The Judicial Compensation Commission is currently finalizing its report, which will be presented before the Interim Joint A & R Committee on November 16. Based on the commission's recommendations, we will include funding for a judicial salary increase in the Judicial Branch budget request for the 2016 budget session.

The increase we're requesting will be modest, but essential. While we cannot immediately close the pay gap for judges that developed over many years, we must begin making up for lost time. We're mindful of the difficult funding decisions you'll face during the upcoming budget session and I would appreciate your support for this important request.

In closing, I want to acknowledge the outstanding efforts of our justices, judges, circuit court clerks and court personnel during what I consider to be an extraordinary year for the Judicial Branch. 2015 has been remarkable not only for the number of major initiatives we've been involved in, but also for our ability to respond decisively to a rapidly changing environment and exacting demands.

We gained new ground on our most ambitious technology push ever – KYeCourts – as we made eFiling available statewide, expanded CourtNet 2.0 to additional subscriber groups and began planning in earnest for a new case management system that integrates the trial and appellate courts.

At the same time, we've been a willing and able partner with the Legislative and Executive branches in implementing important new legislation. We moved quickly to carry out the comprehensive changes required by juvenile justice reform and the dating violence protection bill.

We also began adapting to changing national trends in Drug Court treatment, counseled nearly 30 states that want to follow the Kentucky model for pretrial release and tackled the complex process of measuring how trial court judges spend their time as part of our first judicial workload assessment. And we created a commission that, based on careful research and the expertise of its members, will make recommendations on how to improve the lagging salaries of Kentucky judges.

I want to express my deep appreciation to the Legislative Branch, which has become our valued partner in positioning the court system for a bright and viable future. We've worked hard to foster honest, open communication with our legislators and build a relationship of mutual trust. We respect your role in writing the laws and take seriously our responsibility to be the boots on the ground, so to speak, by putting those laws into practice.

Together, we're making a difference in the well-being of the commonwealth and that's something we can all be proud of.

With that, I thank you for your time today and for the hospitality being extended by Northern Kentucky University. This concludes my prepared remarks and I'll be happy to take your questions.

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