



Supreme Court of Kentucky

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2018 State of the Judiciary Address: Shaping Judicial Branch to Meet Needs of Today's Society

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Testimony before the Interim Joint Committee on Judiciary
Friday, November 2, 2018, 10 a.m. EDT
University of Louisville Brandeis School of Law, Louisville

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

Thank you for once again inviting me to give an update on the state of the judiciary.

I especially appreciate Dean Colin Crawford for hosting this year's event. A law school campus is a fitting venue for a discussion about the courts.

The commonwealth's three law schools – the Brandeis School of Law, the University of Kentucky College of Law and Chase College of Law – have the solemn responsibility of preparing generations of attorneys to practice law. Many of these attorneys go on to practice law in Kentucky and elsewhere, hold positions in local government and across all three branches of state and federal government, and lead business and industry. I commend the law school deans, faculty and staff for carrying out this important work.

As I prepared for our meeting today, I realized that it's been more than 10 years since I testified for the first time as Kentucky's newest chief justice.

It was 2008 and Chief Justice Lambert was set to retire on June 27, the day of my official investiture. Twenty-four hours before being formally sworn into office, I was asked to speak before the Joint A&R Committee about some pressing matters related to the courts. In the early days of my administration, my hair was a little darker and a little thicker, and I was quite a bit greener as I got a handle on my new job.

While at that point I couldn't foresee the sheer scope of the decisions that lay ahead or the countless miles I would log across the state, I understood that one of my greatest challenges would be to balance the crucial separation of powers while cultivating close relationships with the Legislative and Executive branches.

Looking back a decade later, I believe it's fair to say that we've maintained an independent judiciary while creating valuable partnerships with legislators and other key stakeholders. Our ability to work with local, state and national organizations has contributed in large part to the court system's success.

I'm grateful when the legislature invites us to the table to tackle issues such as penal code and juvenile justice reform, enlists our help as it enacts new legislation, and provides adequate funding for court programs. We're stronger when we work together and the people of the commonwealth reap the benefits of our collaboration.

That spirit of cooperation serves us well as we tap into the expertise of others to help us adapt to the changing legal and societal landscape. Today I want to share how we continue to improve the way we do business and make the courts more accessible to those we serve.

Civil Justice Reform Initiative

In a recent report drafted for the Conference of Chief Justices, the Civil Justice Improvements Committee accurately noted that, "[c]ivil justice touches every aspect of our lives and society, from public safety to fair housing to the smooth transaction of businesses."

Today, state courts across the country are facing a crisis as the cost, delay and complexity of litigation is undermining public confidence in our civil justice system. While we have made great strides in court technology, we have failed to make courts more user-friendly in other ways. Here in Kentucky and across the nation, we're seeing a significant decline in our civil caseload and the near extinction of the civil jury trial. If we fail to change the way we operate, we run the risk of becoming obsolete – a risk that the legal profession must work to avoid.

In an effort to address these concerns, I asked a group of lawyers, judges and legislators – one of whom, Rep. Chad McCoy, is on this committee – to attend the Southern Region Civil Justice Reform Summit in Little Rock, Ark., in May. The group came back energized and with a toolbox of ideas to improve civil justice in Kentucky.

We decided to create a Civil Justice Reform Commission, chaired by Deputy Chief Justice Lisabeth T. Hughes, to continue the momentum from the summit and recommend changes to the civil justice system. We expanded the membership from the original group to ensure representation from all sectors of the bench and bar.

At its initial meeting in August, the commission recommended that the Supreme Court develop a business courts pilot project in one or more jurisdictions. Business courts are designated sections, dockets or divisions of Circuit Court designed to hear complex commercial cases and business disputes. These are not professional negligence or personal injury cases filed by an individual against a corporation or commercial entity. Rather, business courts focus solely on business versus business disputes.

Business courts have been adopted in 24 states and pilot programs are under way in five others. Their goals are to improve access to justice for all litigants by unclogging regular dockets and giving complex commercial cases the attention they need, improving court efficiency, and creating a more attractive forum for doing business.

We're currently evaluating data from eFiling and other areas to identify the best jurisdictions for a business court and I look forward to updating you on our progress.

Court Efficiency Committee

Our efforts on civil justice reform go hand in hand with our work to improve court efficiency. The Supreme Court formed a Court Efficiency Committee earlier this year to identify issues that lead to delay.

Retired Circuit Judge Dodie George chairs the committee comprised of judges and circuit clerks from all four levels of the court system. I've asked them to take a thorough look at our internal and external processes to evaluate areas where we can streamline operations.

Judicial Redistricting

As the members of this committee will remember, the General Assembly passed a judicial redistricting bill this year that impacted a handful of judicial circuits and districts. House Bill 348 added three Family Courts in jurisdictions with the heaviest workloads, easing the burden on the existing Family Court judges in Lincoln, Pulaski and Rockcastle; Boone and Gallatin; and Bullitt counties. To allow the creation of these new positions, the bill eliminated two District Court judgeships and one Circuit Court judgeship.

HB 348 also included language stating that the Supreme Court may direct the AOC to engage in a weighted caseload study beginning in 2020 and every eight years thereafter. The Supreme Court is required to submit a certification of necessity if the study shows a need for change.

We're reworking our Judicial Workload Assessment Committee to begin evaluating the current weighted caseload analysis to determine if any tweaks are needed before 2020. I look forward to updating this committee and the entire legislative body regarding our findings.

Pretrial Justice Reform

There's a great deal of public debate regarding bail reform, both in Kentucky and around the country, as jail and prison populations continue to soar. The Kentucky Court of Justice is answering the growing call for reform by joining other states taking part in the Pretrial Justice Institute's 3DaysCount campaign.

3DaysCount is a national initiative to make pretrial justice safer, fairer and more effective by reducing the number of people in jail without sacrificing public safety. The program is based on the premise that even three days in jail can leave many people less likely to appear in court and more likely to commit new crimes because of the stress incarceration places on jobs, housing and family connections. Commonsense solutions can lead to better outcomes, enhanced public safety and more effective use of public resources.

Kentucky's participation in 3DaysCount came about from our Pretrial Bail Practices Committee, a group of 14 circuit and district judges who are evaluating the current risk assessment tool and recommending ways to improve pretrial practices and court rules. While we're grateful to have been chosen to participate in the 3DaysCount initiative, I want to emphasize that the Kentucky Court of Justice does not make policy and does not take official positions on matters of policy. Those decisions are solely within the province of the legislature.

I also want to stress that although there is disagreement among our judges on the best approach to bail reform, individual judges cannot and do not speak on behalf of the court system or their respective associations. Despite our personal opinions on this issue, our role in this process is to provide guidance on how changes in the law will impact the court system and our Pretrial Services program from an administrative standpoint.

Pretrial Assisted Re-Entry & Treatment Services Program

The Department of Pretrial Services launched a pilot program in Jefferson County in October that will bring a case management, service-oriented approach to our Monitored Conditional Release Program for defendants in Circuit Court.

The Pretrial Assisted Re-Entry & Treatment Services Program – called PARTS – reduces the burgeoning jail population by allowing certain defendants to be released pending trial. The pilot program will serve up to 25 people with non-violent, non-sexual felony cases in Circuit Court who would otherwise remain incarcerated pending trial.

Whereas the traditional MCR Program supervises court-ordered conditions of release, the PARTS Program provides more intensive supervision that targets a defendant's specific needs. Once released from custody, defendants typically need help with substance use disorder and obtaining employment, housing and health insurance. Our goal is to give defendants the tools to become successful, productive members of society while ensuring they return to court and avoid future criminal activity.

To meet those needs, we're partnering with the circuit judges, commonwealth's attorney, public defender, Louisville Metro Department of Corrections and local treatment providers. We appreciate their involvement in this important program and look forward to seeing if we can expand the Jefferson County model to help defendants in other counties.

Open Family Court Pilot Project

Last month, we sent the legislature our first report on the Open Family Court Pilot Project. For the first time in Kentucky, some child protection cases will be open to the public under a four-year pilot taking place from 2018-2021.

While child protection cases are normally closed due to confidentiality, the 2016 Kentucky General Assembly passed legislation asking the Supreme Court to look at whether it's beneficial to open cases involving child dependency, neglect and abuse, and termination of parental rights.

For two months this spring, judges in three jurisdictions – Hopkins; Jefferson; and Harrison, Nicholas, Pendleton and Robertson – opened their Family Courts to the public and the media for observation and evaluation. The results from the first phase are inconclusive regarding the benefits of opening Family Court proceedings, but we will continue to collect information and report back annually for the remaining three years of the project.

Juvenile Justice Reform

We're four years into the implementation of juvenile justice reform, which passed as Senate Bill 200 in 2014. The Family Accountability, Intervention, and Response Teams are working with our court designated workers in all 60 judicial districts to keep young people out of the formal court system by providing greater access to treatment and diversion programs.

While FAIR Teams continue to be effective in increasing the number of white young people on diversion, the results are not as promising for minorities.

In response to the disproportionate and disparate outcomes for minority youth served by the juvenile justice system, the Department of Family & Juvenile Services has developed an agency model to reduce implicit bias and cultural collisions that may unintentionally contribute to disproportionate minority contact.

The model was created in conjunction with Pastor Edward L. Palmer Sr., chair of the Subcommittee for Equity and Justice for All Youth. It brings together data analysis, strategic planning and an annual Racial Equity Assessment to guide how we train staff, collect data, and revise policies and practices that may indirectly reinforce DMC. The AOC has shared this model with the Juvenile Justice Oversight Council and other agency partners.

WINGS Program for Adult Guardianship

In 2018, the legislature passed House Joint Resolution 33, requesting that the AOC and the Cabinet for Health and Family Services establish a WINGS Program. WINGS stands for Working Interdisciplinary Networks of Guardianship Stakeholders and is tasked with examining how adult guardianship is working for this fast-growing segment of the aging population.

This group brings together judges, the public and private bar, aging and disability networks, mental health agencies, advocacy groups, service providers and family members affected by guardianships. They've already met three times to discuss how to respect and encourage the autonomy of vulnerable adults while keeping them safe from exploitation and abuse.

The group's focus is on educating the public on how to navigate the complex system of services and laws that help aging parents and disabled children who will soon turn 18. As requested, the WINGS committee is preparing to submit its first report to this committee in January 2019 and we look forward to working with this body to improve adult guardianship.

Court Technology

We continue to make great strides in transforming the courts from a paper-based system to a paperless system under KYeCourts, a comprehensive court technology overhaul that is changing how our judicial, legal and law enforcement communities do business.

Appellate Case Management System. While we have encountered some delays, we anticipate rolling out a new appellate case management system and an eFiling system for the Supreme Court and Court of Appeals in 2019.

CourtNet 2.0. We have also completed transitioning all remaining user groups from our outdated CourtNet program to CourtNet 2.0, which provides near real-time, online access to Kentucky civil and criminal cases.

eFiling. We've increased the use of electronic filing by making more case types available. In the last year, we've opened eFiling to juvenile, probate and forcible detainer cases. In July, we had our first \$1 million month in eFiling. We processed more than \$1 million in fines and fees, along with more than 42,000 court filings, completely electronically.

We're also making eFiling accessible to those who come to court without an attorney. In September, the AOC began offering eFiling for self-represented litigants in small claims cases in Fayette, Hardin and Kenton counties, with plans to take the program statewide later this year.

This is the first time our eFiling program has been open to the public since we began offering eFiling to attorneys statewide in 2015. Because most people represent themselves in small claims cases instead of using an attorney, opening up eFiling in these cases is the logical first step in expanding the use of eFiling to all case types for the public.

Although eFiling has become entrenched in our legal culture, the paper file is still the official court record in Kentucky. We have some difficult decisions to make about when to move to an all-electronic court record and make eFiling mandatory.

Text Notification System. Another way we're using technology to improve customer service is the text notification system we started in May. Pretrial Services sends about 30,000 text messages each month to remind defendants to show up for their court dates. We want to expand this service to citizens selected for jury duty and juveniles working with court designated workers.

Online Payment Plans. We're offering another level of convenience for individuals who need extra time to pay court fees in prepayable Jefferson County traffic cases. Instead of having to go to the Hall of Justice to arrange payment plans in person, they can now set up installment payments online and be notified by text or email when payments are due. This one-year pilot project launched in May in Jefferson County.

Accounts Receivable & Restitution Program. The Accounts Receivable Program has been live in all 120 counties since October 2016. The program provides a bridge between our electronic case management system – KYCourts II – and the financial data housed in the bookkeeping/receipts system. We also completed the statewide rollout of the electronic restitution module in October 2018 when Jackson County became the final county to go live, two years after the program's launch in Jefferson County.

Circuit clerks can now access financial information at the click of a button instead of having to pull individual files. The AR Program lets us track the amount due in all cases starting from the county's go-live date. We can also track on a statewide basis the total money collected by county, year and fee code, along with a summary of the amount due statewide by case number.

In addition, we can now view and report restitution data statewide. From connecting orders and victims through restitution IDs to automatically calculating the 5 percent fee when taking payments, the restitution module provides instant access to information while simplifying the joint-and-several restitution process.

As we continue to move toward an electronic record, online access to financial data is a milestone that allows us to provide current information to parties and the legislature upon request.

Audit of Administrative Office of the Courts

When the AOC responded to the Kentucky Auditor of Public Accounts regarding the audit's findings in July, we knew that we wanted to hire outside expertise to help shore up our internal controls in several areas and carry out the audit's recommendations.

To facilitate the procurement process, the AOC chose to consider companies already under contract with the Executive Branch to perform Deliverables-Based Information and Technology Services. The AOC issued a Request for Project Services to all five of those companies and selected Deloitte after evaluating the proposals we received.

Deloitte is one of the largest companies in the world, with expertise in auditing, enterprise risk, taxes, finance, strategy and operations, human capital and technology services. Deloitte has consulted on projects for the Kentucky Executive Branch and we're excited to partner with them on this project.

A team from Deloitte will be at the AOC for 12 weeks to develop an internal auditing function; document existing workflows related to travel reimbursements, inventory, county facility reimbursements and budget processes; and make recommendations about additional internal controls and technology related to the documented workflows.

We believe this is an important next step as we use the audit as a catalyst for change by strengthening the AOC's financial and administrative operations and providing more transparency to the public.

Court Facility Projects

I also have an update on capital projects. We're in the final stages of design for an addition and renovation to the Henry County Courthouse and a new judicial center in Nicholas County. We anticipate construction will begin in early 2019. We've also started construction on a roofing renovation in Simpson County and completed a roof replacement in Mason County.

We've formed the Oldham County Project Development Board to oversee construction on the existing courthouse and we're in the process of putting together the Project Development Board for a new judicial center in Bath County. We'll also be renovating the lobby of the Jefferson County Hall of Justice in association with Louisville Metro Government.

At the risk of calling too much attention to my hair, I'll close by saying that these hectic years as chief justice have contributed to my graying strands, but it's been worth the sacrifice. When I started this job 10 years ago, I could hardly have imagined the challenges we would face. I'm grateful for the 404 justices, judges and circuit clerks and 3,800 court employees who have jumped on board when we have repeatedly called for change.

Together we're shaping the way the Judicial Branch meets the needs of today's society and there is no more worthy goal.

Thank you for attention today and now I'll be happy to answer any questions you may have.

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