



Supreme Court of Kentucky

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2019 State of the Judiciary Address: Complex Court Challenges Call for Sophisticated Solutions

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

Thank you for once again inviting me to give an update on the state of the judiciary in Kentucky. I appreciate your time today.

With each passing year, the issues and challenges facing the court system become more intricate and complex, thanks to rapid changes in technology, social norms and business practices. Sophisticated times call for sophisticated measures and today I want to describe how we're combining new approaches with tried and true methods to address these challenges. From civil justice reform to judicial redistricting to opening child protection cases to addressing court delays and the opioid epidemic, we're dealing with sensitive, thorny issues that require all of the expertise, intelligence and imagination we can muster.

I'm pleased to report that by putting our collective heads together and drawing on a vast array of abilities, our justices, judges, circuit court clerks and court personnel are coming up with innovative ways to improve how we provide court services.

I'll begin my remarks today with a look at what we're doing about civil justice reform.

Improving Access to Justice Through Civil Justice Reform and Business Courts

In last year's State of the Judiciary Address, I introduced you to the civil justice reform initiative the Supreme Court had launched to address concerns about the cost, delay and complexity of civil litigation.

In May 2018, we sent a group of justices, judges, legislators and attorneys to the Southern Civil Justice Summit in Arkansas. Upon their return, the Supreme Court authorized the creation of a formal Civil Justice Reform Commission to be chaired by Deputy Chief Justice Lisabeth Hughes. The commission consists of judges from all four levels of the court system, legislators from the House and Senate, attorneys from the plaintiff's and defense bars, a circuit clerk and support staff from the Administrative Office of the Courts.

As a result of its first meeting in August 2018, the commission recommended that the Supreme Court develop a Business Court pilot project in one or more jurisdictions. At least 25 states have adopted Business Courts to improve access to justice for all litigants. By unclogging regular dockets, Business Courts give complex commercial cases the attention they need, improve court efficiency and create a more attractive forum for doing business.

The Supreme Court adopted the commission's recommendation and Justice Hughes quickly began evaluating data and conducting meetings to determine the best location for a Business Court. Two major conclusions came out of her review. First, we concluded that Jefferson County was the ideal jurisdiction for a pilot project based on the number of business case filings and interest among the circuit judges.

Second, we concluded that the current caseload in Jefferson County does not justify a separate court dedicated solely to business disputes. Instead, we have opted to create a "Business Court Docket" within two divisions of Jefferson Circuit Court. Circuit Judges Angela McCormick Bisig and Charles Cunningham have volunteered to serve as the initial judges for the Business Court Docket and we're grateful they're willing to be pioneers in this area.

Taking a cue from other states with Business Courts, we created a Business Court Docket Advisory Committee, comprised primarily of business litigators. The committee has been hard at work developing eligibility criteria for the Business Court Docket and drafting a set of rules to guide everything from assignment and transfer of cases to case management.

We're cautiously optimistic that the Business Court Docket will be up and running in Jefferson County on January 1, 2020. We know from speaking with business litigators that they – and especially their clients – are excited about the Business Court Docket and appreciate our efforts to address the unique needs of business litigants. I look forward to keeping you updated on our progress on this project.

The Civil Justice Reform Commission's other focus has been on case triage and case management.

Case triage refers to the early categorization of civil cases and use of case management tools tailored to the complexities of each case. The goal is to move less complex cases through the court system quickly, which reduces docket loads and frees up resources for cases requiring more judicial involvement.

Case management is a broader concept that emphasizes the judge's role in moving cases forward. Our system is built on the tradition – and the expectation – that attorneys and parties are responsible for driving cases.

Under this approach, the judge is viewed as merely assisting with disposition of the dispute. However, we're learning that relying on attorneys and parties to ensure disputes are progressing leads to an increase in costs, delays and general inefficiency.

That's why there's a growing movement among state and federal courts to put the responsibility on judges and courts to manage cases by requiring early intervention and a strict case management plan that forces a case to progress rather than remain stagnant.

Realizing that this will require a huge transformation in the practice of law for most attorneys and judges, the commission recommended a limited pilot project that would focus on a case triage and case management system within the civil justice system and provide for:

- Mandatory use of a uniform civil case cover sheet to allow for early identification of case types.
- Use of a streamlined case management approach for simple contract disputes such as collection actions and mortgage foreclosures.
- Use of separate docket calls for streamlined cases.
- Use of telephonic scheduling and status conferences.

If the Supreme Court approves this recommendation, Circuit Judge James Schrand in Boone and Gallatin counties and Circuit Judge Gregory Lay in Knox and Laurel counties will serve as judges for the project's pilot jurisdictions.

Court Efficiency Committee Focused on Reducing Delays

Our efforts on civil justice reform dovetail with our overall goal to improve court efficiency. The Court Efficiency Committee has been meeting since early 2018 to identify and address issues that lead to delays within the court system. Retired Circuit Judge Dodie George chairs this committee, which is taking a critical look at our internal and external processes to evaluate where we can streamline operations.

The committee had a productive meeting with Laura Sudkamp, director of the Kentucky State Police Forensic Laboratory System, to discuss judges' concerns about delays in processing toxicology and forensic lab reports.

The committee has also reviewed internal procedures for notifying judges of their pending cases relevant to the 90-day submission rule, the Court of Appeals and Supreme Court pending case reports and time frames for disposition, and the 48-hour presentation rule in criminal cases.

I appreciate the efforts of Judge George and the entire Court Efficiency Committee, which includes judges and circuit and appellate clerks. I look forward to their final report and recommendations.

Judicial Redistricting Continues With New Caseload Study

Work continues on judicial redistricting as we prepare for the second weighted caseload study, which will be conducted in 2020.

The 2018 General Assembly passed House Bill 348, which provides that the Supreme Court "may direct the Administrative Office of the Courts to perform a weighted caseload analysis to determine the need to reduce, increase, or rearrange the Commonwealth's judicial circuits and districts, to reallocate the assignment of judges, or to modify the number of judges relative to their respective populations or caseloads."

The weighted caseload study is to be conducted in 2020 and every eight years thereafter. Regular caseload studies ensure that we base any proposals for judicial redistricting or reallocation on current data.

In preparation for the 2020 weighted caseload study, the Supreme Court reconstituted the Judicial Workload Assessment Committee and held a meeting at the AOC in January 2019. The committee consists of judges, circuit clerks, county and commonwealth's attorneys, the public advocate and legislators from both parties in each chamber.

From that first meeting came the committee's request that we hold "Delphi" meetings with groups of circuit, family and district judges. Delphi meetings provide a qualitative assessment of the results of the judicial time study by considering recent changes in legislation and established court practices, policies and procedures.

We've re-engaged the National Center for State Courts to facilitate the Delphi meetings in October 2019. What we learn will determine if a new judicial time study is needed or if we can simply build from the time study we conducted in 2015. This schedule will give us sufficient time to review our current practices in preparation for conducting a weighted caseload study in 2020 and making judicial redistricting and reallocation recommendations to the General Assembly before the 2021 legislative session.

Community Engagement Listening Sessions in Jefferson County

In January 2018, I approached Chief Judge Denise Clayton of the Kentucky Court of Appeals about organizing a community engagement listening session in Jefferson County. We borrowed this idea from the National Center for State Courts, which had conducted a series of town hall discussions between judges and members of their communities to address issues that impact trust in the courts.

The National Center based its efforts on the 2015 State of State Courts survey, which measures public perception of the court system. The survey results indicated that minorities have less confidence and trust in the court system, with only 32% of African Americans responding that they believe courts provide equal justice to all. Respondents also generally believed that African Americans and the poor receive worse treatment by the courts.

As some of you may know, then-Chief Justice Joseph Lambert established the Jefferson County Racial Fairness Commission in 2001 to address complaints of unfairness from the African American community in matters of jury selection, setting bail, sentencing and probation.

Supreme Court Justice William McAnulty initially chaired the commission and it has been led by Judge Clayton since 2005. Since its inception, the commission has issued four reports: Sentencing, Bail, Jury Selection and Courtroom Environment.

The commission's surveys and focus groups indicate that the perception of the judicial system in Jefferson County is generally favorable. However, much as on the national level, African Americans in Jefferson County have a less favorable impression. Focus group remarks specifically highlight that African Americans believe both race and financial status affect how parties are treated.

After the release of the Courtroom Environment report, we implemented some of the commission's recommendations, including providing implicit bias and cultural competency trainings for judges, circuit clerks and court personnel across the state. That was a good start, but we realized we must do more to address the concerns of the community and make the courts more accessible to everyone.

Following the lead of the National Center – and building upon the important community conversations started by the Racial Fairness Commission – we decided to organize a public listening session in Jefferson County. The purpose was twofold. First, we wanted to educate the public about the different roles and responsibilities of participants in the court system. And second, we wanted to listen to citizens’ concerns and answer questions about their experiences with and perceptions of the courts in Jefferson County.

The first Court Talks listening session took place May 16, 2019, at Spalding University and featured a panel of speakers from the larger justice community.

Before the listening session, we conducted a community survey to gauge perceptions of the court system. After the listening session, graduate students from the University of Louisville Department of Sociology held a series of focus groups in Louisville on bail and incarceration, evictions, Family Court, Drug Court and expungements.

We’ll announce the results of the survey and focus groups when we receive them from U of L. The results will guide how we address concerns raised during the community engagement program.

I’m grateful to Chief Judge Clayton for the tremendous effort she and the planning committee put into this project.

Strong Progress on Move to Electronic Court Records

Our major focus over the last few years has been KYeCourts, a massive effort to improve and streamline court operations through updated technology. A critical part of this initiative is a new case management system called KY3. We launched KY3 this year in eight pilot counties – Fayette, Kenton, Henry, Oldham, Trimble, Carroll, Grant and Owen.

KY3 lets circuit clerks scan documents from select case types, moving us closer to our goal of maintaining an all-electronic case record. By storing digital images and court case data electronically, we can eliminate the need for paper files.

We believe that electronic filing and scanning will benefit all of our justice partners, offering them the ability to electronically submit, store and share information systemically in secure environments.

As is often true with technology, new advances bring new challenges. Our focus over the coming year will be to hone the requirements for all-electronic court records and take steps to ensure these records are available and accessible while sufficiently protecting the privacy of the personal information contained within them.

To address these issues, we created an Electronic Court Record Committee comprised of judges, circuit clerks, prosecutors and public advocates. We’re producing new rules to govern the creation and availability of electronic court records. I look forward to presenting an electronic records policy to interested groups to ensure we’re putting forth rules that will help us transition into the next generation of court recordkeeping.

Early Results From Open Courts Pilot Project

For the first time in Kentucky, some child protection cases are being opened to the public under a four-year pilot project taking place from 2018-2021. While child protection cases are normally closed due to confidentiality, the 2016 Kentucky General Assembly passed legislation requiring the Supreme Court to look at whether it's beneficial to open cases involving child dependency, neglect and abuse, and termination of parental rights.

The Supreme Court issued an order authorizing the Open Family Court Pilot Project and the first phase took place from March to May 2018 in Hopkins and Jefferson counties and the four-county circuit of Harrison, Nicholas, Pendleton and Robertson. Judges in those counties volunteered to open their Family Courts to the public and the media for a two-month period of observation and evaluation.

The AOC Department of Family & Juvenile Services is administering the pilot project. Court staff attended proceedings in the first six counties to observe and conduct focus groups with family members and professionals involved in the cases and provide surveys to participants and reporters.

The AOC is required to give the legislature an annual report for each year of the pilot project and we released the first one in September 2018. In brief, the notable outcomes were:

- Professionals (judges, attorneys, court staff, social services workers and others) who participated in pilot cases generally reported that opening courts had a negative or neutral effect on court proceedings and outcomes.

A strong majority reported, however, that opening courts **did not** affect the efficiency of the proceedings, respect shown to parties, hearing quality, content of reports, services offered to families or the level of preparation by the professionals involved. A similar majority reported that opening courts had a negative or neutral impact on the children and parties (such as parents and custodians).

- Family members who participated in and attended the pilot DNA and TPR cases reported similar neutral or negative effects of open courts. A majority reported that they felt open courts had either a negative or neutral impact on the children involved in the proceeding, attorney preparation, social services worker engagement and services offered.

A majority also either disagreed or were neutral when asked whether open courts were helpful to them. When asked whether open courts would benefit children and families in pilot cases, the results were mixed.

The second phase of the pilot project will start this fall in Fayette Family Court. I appreciate the judges in the pilot counties, who are as invested as I am in determining how to balance the public's need to know with the child's need for privacy.

Court System Helping Mitigate Kentucky's Drug Epidemic

The opioid epidemic has placed a severe strain on the courts and substance use disorders have impacted individuals and families throughout the commonwealth.

The court system is taking advantage of its unique role to help mitigate the drug epidemic in Kentucky. One way we're doing that is through the three-year Regional Judicial Opioid Initiative.

The issues related to substance use disorder transcend state borders and Kentucky has joined Illinois, Indiana, Michigan, North Carolina, Ohio, Tennessee and West Virginia to form a Regional Judicial Opioid Initiative. RJOI addresses the need for education, resources and services. The initiative has been organized with the aid of the National Center for State Courts and a federal grant.

The RJOI has focused on best practices, child welfare, prescription drug monitoring, treatment capacity and research. The states collected statewide opioid data during the first year of the grant and created committees to address areas of concern and develop databases and information libraries in the second year.

Resources produced during year two included a regional bench card for medication-assisted treatment based on Kentucky's template, resources for placing children across state lines, a publication to aid judges in assessing the quality of treatment providers and an interactive data map for each state's statistics to help identify the areas of greatest concern, especially at the borders.

We will be implementing teleservices and other online resources for judges in the third year.

We also launched an important project in April 2019 to give our judges, circuit clerks and court staff the training and resources they need to effectively handle opioid-related cases. RESTORE is a new initiative that provides evidence-based information on best court practices to support the treatment of opioid use disorders for court-involved individuals and their families.

RESTORE stands for Responsive Education to Support Treatment in Opioid Recovery Efforts and is funded by a federal grant awarded to the Kentucky Cabinet for Health and Family Services.

Through RESTORE, the Administrative Office of the Courts is hosting two one-day summits, one in the summer and one in the fall, in seven locations throughout the state. The summits are helping court officials understand the nuances of opioid and substance use disorders by covering the science and stigma of addiction, the relationship between trauma and these disorders, evidenced-based practices in treating these disorders, family preservation in the context of a substance use disorder and the role of the courts in supporting recovery.

Future of Specialty/Drug Courts

For several budget cycles, the Judicial Branch has prioritized its budget requests on our areas of greatest need – new court technology and improved compensation for our judges, circuit clerks and court personnel. However, the drug epidemic is taking an extraordinary toll on Kentucky citizens and we can no longer postpone the request for funding to address this crisis.

We began the Drug Court experiment in 1996 and today this established program is considered a highly effective way to combine treatment with the legal weight of the criminal justice system to help participants rehabilitate their lives for much less than the cost of incarceration.

Yet 23 years later, the stark truth is that our current Drug Court model has become insufficient to address the burgeoning needs of Kentuckians with substance use disorders. Our current program serves only high-risk, high-need individuals who have been convicted of a non-violent felony and enter Drug Court through a plea agreement or referral.

We currently serve participants in Adult Drug Court, Veterans Treatment Court, Mental Health Court and DUI Court. In all of these Specialty Court programs, we're serving fewer than 2,500 participants during the worst drug epidemic in the history of the commonwealth.

Our current model is not designed to support the huge influx of people who are coming into the courts with lesser charges, such as misdemeanors. These court-involved individuals, their families and their communities would benefit tremendously from access to case management resources and treatment providers at every level of the court system.

We're working on a budget request that would begin to address these needs.

Addressing Jail Overcrowding and Bail Reform

A recent in-depth series in the Lexington Herald-Leader by John Cheves brought heightened public awareness to the issue of jail overcrowding, a topic that many of us in state and local government have been grappling with for years. Yesterday's testimony before the Interim Joint Committee on Local Government further highlighted the escalating issues faced by our county jails.

During yesterday's hearing, several legislators mentioned the need for the court system to be at the table to address solutions to this problem. I want to make it clear that I couldn't agree more. Our pretrial officers and our judges make critical decisions every day that impact inmates and jail populations. We need to be a part of this critical conversation.

I have publicly stated my support for sensible pretrial justice reform before legislative committees and through my commitment to the 3DaysCount initiative. But I want to emphasize that pretrial reform alone will not solve jail overcrowding. It is simply one tool in our toolbox for tackling this issue.

Kentucky Still Lags in Judicial Salaries

I must continue to address a topic that should be of concern to everyone in this room. I've mentioned this many times in years past, but Kentucky's judicial salaries continue to be woefully lacking at all levels of the court system.

I appreciate the legislature approving 5% salary increases for judges over the past two fiscal years, but unfortunately Kentucky's judicial salaries still lag far behind most states and territories.

According to the most recent Judicial Salary Tracker published by the National Center for State Courts, our circuit judges make \$30,000 less than the national average. The salary of Kentucky's general jurisdiction circuit judges ranks 51st out of 55 states and territories. The only states and territories that pay their general jurisdiction judges less are Kansas, West Virginia, the Northern Mariana Islands and Puerto Rico. Even when those salaries are adjusted for cost of living, Kentucky ranks 39th among the 50 states and the District of Columbia.

Similarly, the salary of Kentucky's associate Supreme Court justices ranks 50th out of 55 states and territories, with only Maine, South Dakota, West Virginia, the Northern Mariana Islands and Puerto Rico paying its justices less. Kentucky's justices make \$36,000 below the national average.

The quality and viability of Kentucky's judiciary depends on attracting and retaining a well-qualified bench and I believe it's important to continue bringing judicial salaries to your attention.

AOC Changes Organizational Structure Based on Audit Recommendations

And finally, I'm pleased to announce that the Administrative Office of the Courts has implemented a new organizational structure in response to recommendations from the recent audit by the Kentucky Auditor of Public Accounts and from Deloitte, a consulting company the AOC engaged to advise on how best to implement the audit recommendations.

The new structure went into effect in May 2019 and will bring the AOC's administrative and financial operations up to industry standards after years of doing business much the same way. The AOC has successfully implemented programs, technology and legislation over the years, but we haven't invested in the level of expertise needed to shore up our internal controls.

As part of the new AOC structure, we have:

- Created an Office of Audits and hired a director to oversee its responsibilities.
- Created an Office of Finance & Administration to include the existing functions of budget, facilities, accounting and procurement, and hired a director to oversee this area.
- Hired a deputy budget director, a procurement manager and a real property manager.

We're also creating an Audit Oversight Committee, with internal and external members, to review internal audits and authorize annual internal audit plans.

These changes to our administrative operations are some of the most extensive – and necessary – made in recent memory. And while this new structure will require a considerable investment of time and money, the improvements we're making today will ensure a stronger court system tomorrow.

Closing Remarks

I believe you'll agree that this is a pretty impressive list of initiatives and accomplishments in the face of some daunting challenges. I'm so proud of our elected officials and court staff for their hard work and dedication to the people we serve. It's a privilege to lead the Judicial Branch during this exciting time.

I appreciate your attention today and now I'll be happy to answer your questions.

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