

# INTERIM JOINT COMMITTEE ON JUDICIARY

## Minutes of the 6th Meeting of the 2018 Interim

November 2, 2018

### Call to Order and Roll Call

The 6th meeting of the Interim Joint Committee on Judiciary was held on Friday, November 2, 2018, at 10:00 AM in Louisville, Kentucky at the University of Louisville's Brandeis School of Law. Representative Joseph M. Fischer, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Joseph M. Fischer, Co-Chair; Senator Whitney Westerfield, Co-Chair; Senators Joe Bowen, Danny Carroll, Perry B. Clark, John Schickel, Wil Schroder, Dan "Malano" Seum, Representatives John Blanton, McKenzie Cantrell, Joni L. Jenkins, Chad McCoy, C. Wesley Morgan, Jason Nemes, Jason Petrie, and Brandon Reed.

Guests: Chief Justice John D. Minton, Jr., Chris Cohron, Rob Sanders, Steve Gold, Stacy Tapke, Mike O'Connell, Representative George Brown, Jr., Representative Jim Wayne, Tony Reed, Luther Brown, Representative Jason Nemes, Representative Jerry Miller, and Mayor Bill Dieruf.

LRC Staff: Katie Comstock, Alice Lyon, Chandani Kemper, Dale Hardy, Matt Trebelhorn, Breanna Miller, and Yvonne Beghtol.

### Approval of Minutes from October 5, 2018

Due to not having a quorum, the minutes for the October 5, 2018 meeting were not presented for approval.

### State of the Judiciary

John D. Minton, Jr., Chief Justice of the Kentucky Supreme Court, presented the 2018 State of the Judiciary Address. An independent judiciary has been maintained while creating valuable partnerships with legislators and other key stakeholders. He stated the ability to work with local, state, and national organizations has contributed to the court system's success. Chief Justice Minton is grateful to work together in tackling issues so that the people of the Commonwealth can reap the benefits of this collaboration. The spirit of cooperation serves Kentuckians well as the expertise of others helps the courts adapt to the changing legal and societal landscape.

Chief Justice Minton stated that courts are facing a crisis as the cost, delay, and complexity of litigation is undermining public confidence in our civil justice system. Courts have made great strides in technology, but have failed to become more user-friendly in other ways. In Kentucky and across the nation, there is a decline in the civil caseload, and near extinction of the civil jury trial.

Chief Justice Minton asked a group of lawyers, judges, and legislators to attend the Southern Region Civil Justice Reform Summit in May. They returned energized and full of ideas to improve civil justice in Kentucky. The group created a Civil Justice Reform Commission, chaired by Deputy Chief Justice Lisabeth T. Hughes, which recommended changes to the civil justice system. One of the recommended changes was for the Supreme Court to develop a business courts pilot project. Business courts are designated dockets or divisions of Circuit Court that hear complex commercial cases and business disputes. Business courts have been adopted in 24 states, and pilot programs are under way in five other states. The business courts' goal is to improve access to justice 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.

The Supreme Court formed a Court Efficiency Committee earlier in 2018 to identify issues that lead to delay. The committee is chaired by Retired Circuit Judge Dodie George and comprised of judges and circuit clerks from all four levels of the court system. The committee is to look at the current process and evaluate areas that can be streamlined.

Chief Justice Minton highlighted the passage of HB 348, adding three Family Courts in jurisdictions with the heaviest workloads, easing the burden on Family Court judges in Lincoln, Pulaski, Rockcastle, Boone, Gallatin, and Bullitt counties. The elimination of two District Court judgeships and one Circuit Court judgeship allowed for the creation of these new positions. HB 348 also stated that the Supreme Court may direct the Administrative Office of the Courts (AOC) to engage in a weighted caseload study beginning in 2020, and every eight years thereafter. The Judicial Workload Assessment Committee will begin evaluating the caseload to determine if any tweaks are needed before 2020.

In regards to Pretrial Justice Reform, the Kentucky Court of Justice is 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 initiative 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. Chief Justice Minton stated that common sense solutions can lead to better outcomes, enhanced public safety, and more effective use of public resources. Kentucky's participation in the program came from the Pretrial Bail Practices Committee, a group of 14 circuit and district judges who evaluate the current risk assessment tool and recommend ways to improve pretrial practices and court rules. Although the Kentucky Court of Justice

participates in the program, it does not make policy or take an official position on matters of policy. Having disagreements among judges as to the best approach for bail reform, judges do not speak on behalf of the court system or their respective associations. The role of the judges is to provide guidance on how changes in the law will impact the court system and AOC's Pretrial Services program from an administrative standpoint.

Chief Justice Minton stated that the Department of Pretrial Services launched a pilot program in Jefferson County in October to bring a case management, service-oriented approach to the Monitored Conditional Release Program for defendants in Circuit Court. The Pretrial Assisted Re-Entry & Treatment Services Program (PARTS) reduces jail population by allowing certain defendants to be released pending trial. The program will serve up to 25 people with non-violent, non-sexual felony cases who would otherwise remain incarcerated pending trial. PARTS targets a defendant's specific needs, such as substance use disorder, obtaining employment, housing, and health insurance, in order to give them the tools to become successful, productive members of society while ensuring they avoid future criminal activity. PARTS partners with Circuit Judges, Commonwealth's Attorneys, Public Defenders, Louisville Metro Department of Corrections, and local treatment providers.

The first report on the Open Family Court Pilot Project was sent to the legislature in October. Some child protection cases will be open to the public under a four-year pilot from 2018-2021. In 2016, the Kentucky General Assembly passed legislation asking the Supreme Court to look at whether or not it is beneficial to open cases involving child dependency, neglect and abuse, and termination of parental rights. While the benefits from the first phase of opening Family Courts to the public in Hopkins, Jefferson, Harrison, Nicholas, Pendleton, and Robertson counties are inconclusive, information will continue to be collected and reported annually for the remaining three years.

Chief Justice Minton noted that SB 200 passed in 2014, which created Family Accountability, Intervention, and Response (FAIR) Teams. FAIR teams work with court designated workers to keep young people out of the formal court system by providing access to treatment and diversion programs. While FAIR teams are effective among young whites, the results are not as promising for minorities. The Department of Family and Juvenile Services has developed an agency model to reduce implicit bias that may unintentionally contribute to the disproportionate minority contact. The model will guide how AOC trains staff, collects data, and revises policies and practices that may indirectly reinforce disproportionate minority contact. AOC has shared this model with the Juvenile Justice Oversight Council and other agency partners.

Chief Justice Minton noted the passage of 2018 HJR 33, requesting that the AOC and the Cabinet for Health and Family Services establish a Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) Program, to examine how adult guardianship is working for the fast-growing aging population. WINGS is comprised of

judges, the public and private bar, aging and disability networks, mental health agencies, advocacy groups, service providers, and family members affected by guardianships. It has met three times to discuss how to respect and encourage the autonomy of vulnerable adults while keeping them safe from exploitation and abuse. WINGS' focus is to educate the public on how to navigate the system of services and laws that help aging parents and disabled children turning 18 years of age. WINGS will present its first report to the Judiciary Committee in January 2019.

KYeCourts, a comprehensive court technology overhaul, continues to make strides in changing courts over from paper-based to a paperless system. The changes include a new appellate case management system, CourtNet 2.0, increased electronic filing by making more case types available, a new notification system to remind defendants of their court dates, and a new accounts receivable and restitution program.

After the July audit of the AOC, Chief Justice Minton stated that Deloitte was hired to help carry out the auditor's recommendations. Deloitte will have a team at the AOC for 12 weeks to develop an internal auditing function; documenting existing workflows related to travel reimbursements, inventory, county facility reimbursements and budget processes; and to make recommendations about additional internal controls and technology relating to the documented workflows. This is an important step in making changes to strengthen the AOC's financial and administrative operations as well as providing more transparency to the public.

Chief Justice Minton provided an update on the Judicial Branch's capital projects. The final stages of design for an addition and renovation to the Henry County Courthouse and a new judicial center in Nicholas County are underway. A roofing renovation has begun in Simpson County and a roof replacement in Mason County was completed. The Oldham County Project Development Board has been advised to oversee construction on the existing courthouse. A Project Development Board is being put together for a new judicial center in Bath County. The Jefferson County Hall of Justice's lobby will be renovated in association with Louisville Metro Government.

In response to Chairman Fischer, Chief Justice Minton stated the Civil Justice Reform Commission will include all areas of concern that need to be addressed, being both substantive and procedural, to assist people in using the court system more easily.

In response to Senator Clark, Chief Justice Minton state that the court system needs to be part of conversations with legislators to find the solution in reducing bench warrants and parole violations.

### **Prosecutorial Issues and Concerns – Commonwealth's Attorneys**

Chris Cohron, Commonwealth's Attorney for the 8<sup>th</sup> Judicial Circuit, stated that case filings have increased from 33,201 in FY16 to 37,448 in FY17, which is the highest

annual increase in the past seven years. Case closings were at nearly 34,000 for FY17, which is an increase of more than 1,000 over the previous year. For FY17, an estimated average of 200 cases were filed per prosecutor. There are currently over 81 Commonwealth attorney vacancies across all classifications. There are 206 filled assistant positions, with 121 being fulltime, 63 part-time, and 22 quarter-time. On January 7<sup>th</sup>, ten offices will change hands, and eight more may change pending election results.

Rob Sanders, Commonwealth's Attorney for the 16<sup>th</sup> Judicial Circuit, stated that Kenton County is up 30 percent from the previous year, and will surpass the number of indictments from 2017 by the end of next week.

Mr. Cohron assured the committee that without the Rocket Docket Program, the criminal justice system would be in dire straits. In 2015, through SB 192, the mechanism was created for a Rocket Docket Program throughout Kentucky. The Prosecutors Advisory Council (PAC) voted to fund 30 existing programs for FY17, and additional funding for seven new programs in FY18. A total of 37 of the 57 judicial circuits will have a Rocket Docket Program. The program has saved approximately \$51.3 million in local jail costs from July 2015 through May 2018, based on a \$5.9 million investment. Since 2015, 12,652 cases have been completed, and approximately 2,226 more are pending as of May 2018. In addition, approximately 8,000 defendants have been referred to drug treatment through the Rocket Docket System. PAC is looking forward to having this program in every county in Kentucky.

Mr. Sanders stated that PAC is very conservative in recommending new felony offenses. A felony strangulation bill, coming from the Fayette County Commonwealth Attorney's Office, is the only new felony request this session. The bill is to combat domestic violence cases when an expert has to be paid by the Commonwealth to testify about a woman who was choked to the point of unconsciousness or losing control of her bowels, when that should be self-evident.

Mr. Cohron addressed the CJPAC report. Commonwealth Attorneys want to continue working on Penal Code Reform, and to work together to highlight the practical effects of the laws being considered and implemented.

In response to Chairman Fischer, Mr. Cohron stated that bail reform is needed. His personal opinion is that money bail is not appropriate. The discretion of the courts when considering the nature of the offense, the criminal record, and the facts of each case needs to be considered when determining whether or not to detain someone. Mr. Cohron would like to use the federal system as a guide, to ensure the courts still have discretion in pretrial release decisions. Mr. Sanders added that using an algorithm and not giving judges any discretion is not a good system. Mr. Cohron commented that you should be able to explain why every person is being detained, and it should never be because of money.

In response to Senator Carroll, Mr. Sanders explained that the felony strangulation bill being proposed will not be for someone who just puts his or her hands on someone else's neck, but for when strangulation is to the point of cutting off oxygen to the brain. The bill is a combination of bills from other states. Senator Carroll offered his assistance.

In response to Senator Schickel, Mr. Cohron clarified that he believes that cash bond should be abolished, and the judge should be responsible for making a decision to detain or not. If a judge chooses not to detain, the judge should have the flexibility to impose pretrial release conditions. Mr. Sanders commented that he does not completely agree with Mr. Cohron. These differences of opinion are why the Commonwealth's Attorney Association has not come out with a position on the issue. Mr. Sanders does agree that posting a \$500 bond does not make the community any safer, but having family members who will not post a \$250 bond can be very telling as to whether or not the person should be released. He believes that having a significant (\$10,000) cash bond posted might discourage them from jumping bail or committing new offenses. In regards to the constitutionality of taking away judicial discretion, Mr. Sanders explained that, while Commonwealth attorneys may disagree on whether to completely do away with cash bonds, they agree that making the decision through an algorithm is not effective.

### **Prosecutorial Issues and Concerns – County Attorneys**

Steve Gold, Henderson County Attorney, gave an overview of the duties of a County Attorney. Duties include criminal prosecution, delinquent tax collection, child support collection, and legal counsel to local government. Criminal Prosecution duties include domestic violence, DUIs, felonies through preliminary hearings, Juvenile Court and FAIR teams, child dependency cases, mental health/disability cases, Casey's Law cases, review of criminal complaints, and work with law enforcement to secure search warrants and arrests warrants. County Attorneys caseloads for FY17 was approximately 114,000 misdemeanors, which was down from the previous year. Approximately 255,000 traffic cases were filed, which is down from 287,000 the previous year. Many County Attorneys run traffic safety programs, so the drop in traffic cases could be due to the public attending these programs. Juvenile Court cases increased by nearly 1,500 in FY17, and Family Court cases increased to 45,000 cases. Combined, there were 493,000 cases filed in FY17, which equates to almost 2,000 cases per year per County Attorney.

Stacy Tapke, Kenton County Attorney, reviewed the decline in delinquent tax collections. Delinquent taxes become Certificates of Delinquency, which are sold every summer to third-party purchasers. A portion of these purchases fund the County Attorneys operating expenses. Third-party purchasing has declined from \$31,780,074 in 2009 to 13,293,306 in 2015. The portion delegated for County Attorneys has dropped from \$4,368,075 in 2009 to \$1,794,034 in 2015. This downward trend makes it difficult to cover operating expenses.

In addition, child support collection is an individual contract between County Attorneys and the Child Support Enforcement (CSE) Division of Department of Income Support (DIS), which allows the County Attorneys to collect on behalf of all of the children in their communities. Child support collections for FY18 is at \$374,434,986.04. Child support collection is a critical part of what County Attorneys do. Fifteen counties currently have 152,742 open active child support case files. The challenge of collections can be directly attributed to trends on the criminal side. With the rise of heroin addiction, people are losing custody of their children and becoming wards of the state, making it more difficult to collect support.

Mr. Gold reviewed how County Attorney's offices are funded. The PAC just pays for criminal prosecution, County Attorney salaries, and \$3,000 per year per office for operating expenses. There are 505 employees and 120 elected officials. There are 280 Assistant County Attorneys; fulltime, part-time, and quarter-time. Some are shared between counties. Including the elected County Attorney, there is an average of 2.4 prosecutors and two clerical positions per county. County Attorneys do not directly benefit from fines, fees, or court costs. The County Attorney's office receives \$50 for each bad check collected. With fewer checks being written, this total is sharply declining. Traffic Safety Diversion programs provide \$25 per case to Circuit Clerks and \$30 to the Finance and Administration Cabinet in lieu of court costs. The Department of Revenue provides a portion from delinquent tax collections for operating expenses only. Local governments are not required to contribute, however some do provide fiscal supplements, courthouse office space, or some other type of benefit.

Mike O'Connell, Jefferson County Attorney, stated that Jefferson County District Court handled 80,101 of the 483,901 criminal cases in District Court statewide, which equates to Jefferson County handling 17 percent of the entire caseload in Kentucky. That does not include matters not charted such as warrants screened, expungements reviewed, police officers trained, outreach to the schools and community, the opioid crisis, or drivers safety. Jefferson County Attorney's Office Civil Division handles everything from municipal bonding to vacant and abandoned property, to defending the largest police force in the state. The Child Support Division handles nearly 57,000 open cases, representing 20 percent of the total caseload in the state, and collects more than \$61,000,000 for children in need. The state contributes to Jefferson County only \$2,800,000. That is 1/8 of the Jefferson County Attorney's Office budget. The \$3,000 allotted barely pays the office's average monthly postage. The other 7/8 of the budget needs to be covered by federal contracts and grants, local community contributions, and staff working to fund themselves. This level of funding from the state has an adverse effect on the ability to pay prosecutors a fair wage. Jefferson County pays \$40,000, the state of Ohio pays \$52,968, Indiana pays \$56,763, Tennessee pays \$65,750, and large urban areas nationwide average \$61,103. The national average for Prosecuting Attorneys with 10-20 years of experience is \$93,065. Jefferson County averages a pay of \$56,064. This salary makes hiring new attorneys difficult.

Mr. O'Connell also commented that Jefferson County has joined in the multi-district litigation against distributors and manufacturers in the fight against the opioid crisis. The top three drug distributors of opioid are in the Forbes top 15 companies.

Mr. Gold outlined some additional issues. The DUI ignition interlock law is being worked on to make it more practical. The medical marijuana legislation must be detail oriented and should address DUI. The anticipated passing of Marsy's Law will require each County Attorney's office to have a dedicated victim's advocate, which is a grant funded position. Some of the smaller counties may need to share an advocate. The Child Support Guidelines Review Commission will be offering recommendations to extend the income cutoff that is currently based on numbers from the 1970s. The commission will also be presenting a shared custody proposal to provide some uniformity to shared custody guidelines across the state. County Attorneys would like an amendment to KRS 69.360 that would allow all county detectives to serve process statewide and make arrests, not just consolidated local governments.

### **Discussion of Firearm Storage**

Representative Brown announced that legislation will be presented during the upcoming session. Representative Wayne explained that the proposed legislation is in the context of 40 child firearm tragedies. This legislation is not intended as gun control, but for child safety.

Tony Reed spoke on behalf of his three-year-old nephew who was accidentally killed by his father's unsecured firearm. The child's father refused to properly secure his pistol. There are other children still living in the home. There are currently no consequences for leaving a firearm unattended. Mr. Reed would like to see stiffer penalties in the future.

Luther Brown spoke on behalf of his eight-year-old grandson who was accidentally killed by an unsecured firearm. In his eight years of having a radio broadcast, he would always start by saying, "Lock the guns up. Keep the children safe." His grandson was at a babysitter's house, when the sitter dropped the gun, causing it to fire, which ultimately killed his grandson. Guns are not going away. Mr. Brown stated that children gaining access to a loaded gun is not right. In 80 percent of every school shooting, the child took the gun from the home. Safe gun storage can prevent 97 percent of child firearm accidents. This gun safety bill is very important. Mr. Brown encouraged everyone to go online to view the NRA's video about his gun safety organization: [www.nratv.com/videos/cam-and-company-2017-little-hands-little-feet](http://www.nratv.com/videos/cam-and-company-2017-little-hands-little-feet).

Mr. O'Connell, citing a John Hopkins study, stated that 8,300 children and teens are admitted to hospitals each year with gunshot wounds. More than 3,200 injuries to children under the age of 18 years of age; nearly nine per day. This legislation benefits gun owners



by clearly outlining what safe gun storage entails. It is a common sense approach to gun safety.

### **Discussion of Kentucky's Hate Crime Law**

Representative Nemes, commented that, while we, as a nation, strive for justice, we are not yet there. Last week a man tried to enter an African-American church in Jefferson County, but all of the doors were locked, so he went to a local grocery store. He saw a man and little boy, and shot the man over and over, as his 12-year-old grandson watched. The shooter then left and shot another woman. Approaching two other citizens, one white and one African-American, he said, "Don't shoot me. White people don't kill white people." His victims were shot because of their color, not because of anything they had done. This proposed legislation would allow the Parole Board or sentencing judge to consider that the murder was a hate crime when deciding whether to release the perpetrator on parole.

There being no further business, the meeting adjourned at 12:12 pm.