

# INTERIM JOINT COMMITTEE ON JUDICIARY

## Minutes of the 1st Meeting of the 2021 Interim

June 3, 2021

### Call to Order and Roll Call

The 1st meeting of the Interim Joint Committee on Judiciary was held on Thursday, June 3, 2021, at 11:00 AM, in Room 149 of the Capitol Annex. Representative C. Ed Massey, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Whitney Westerfield, Co-Chair; Representative C. Ed Massey, Co-Chair; Senators Karen Berg, Danny Carroll, Alice Forgy Kerr, Gerald A. Neal, John Schickel, Wil Schroder, Johnnie Turner, Stephen West, and Phillip Wheeler; Representatives Kim Banta, John Blanton, Kevin D. Bratcher, McKenzie Cantrell, Jennifer Decker, Daniel Elliott, Joseph M. Fischer, Samara Heavrin, Nima Kulkarni, Derek Lewis, Savannah Maddox, Chad McCoy, Patti Minter, Kimberly Poore Moser, Jason Nemes, Jason Petrie, Attica Scott, and Pamela Stevenson.

Guests: Chief Justice John D. Minton, Jr, Laurie Dudgeon, Justice Mary C. Noble, Robyn Bender, and Cyndi Heddleston.

LRC Staff: Roberta Kiser, Randall Roof, Michelle Spears, Matt Trebelhorn, Yvonne Beghtol, and Maria Macaluso.

### Judiciary Branch Funding

Chief Justice John D. Minton, Jr., Kentucky Supreme Court, reviewed the structure and authority of the Kentucky Court of Justice. Chief Justice Minton explained that the Administrative Office of the Courts (AOC) is an extension of the Office of Chief Justice, providing administrative support for 3,500 non-elected employees and 406 elected officials of the court system. The AOC also performs finance and administration functions for the court system, including providing language assistance across the commonwealth, managing statewide programs, and providing statewide information and technology services.

The Chief Justice is constitutionally obligated to submit the budget for the Court of Justice. The 2021 budget appropriated \$382,000,000 for the Court of Justice for three units: Court Operations, Local Facilities Fund, and Judicial Retirement. The Court Operations unit covers salaries and benefits of all elected and non-elected personnel along with operating costs. The Court Operations general fund budget for FY 2022 is \$260,330,000,

approximately 87 percent of the total court budget. The Local Facilities Fund pays the debt service on judicial centers or courthouses, and for operating costs, maintenance, and repair of those facilities, and this appropriation for FY 2022 is \$114,600,000. While the Court of Justice does not own any of these court facilities, AOC pays the Court of Justice's proportional share of the debt service, called the Local Facilities Use Allowance. If there is no debt on the building, the AOC pays the county two percent of the original capital construction cost. The appropriation for the Judicial Form Retirement System in FY 2022 is \$7,100,000. Any revenue generated by the AOC goes into a restricted fund, but the budget bill authorizes that approximately \$15,000,000 from civil filing fees be kept to fund the Compensation Plan and to offset the deficit that always occurs in the operation unit. The Circuit Court clerks collect state dollars which are submitted to the Finance Cabinet. In FY 2019 the Circuit clerks collected \$109,000,000 in state funds. The amount dropped to \$90,800,000 in FY 2020 due to a decrease in court filings attributable to the COVID-19 pandemic.

AOC is required, under HB 556, to report expenditures from FY 2021 and budgeted expenditures for FY 2022 to the Interim Joint Committee on Appropriations and Revenue. Because Kentucky has a unified court system with centralized administration, AOC cannot report all expenditures by county or by local level.

Court proceedings were unconventional during the COVID-19 pandemic but courts did remain open. Funding provided by the General Assembly for a statewide electronic filing program played a critical role during the past year. Remote Video Conferencing technology allowed for continuing court proceedings. The Supreme Court recently lifted all restrictions for in-person court operations, but will continue to retain some of the procedures used during the pandemic. A poll of 764 lawyers at the Kentucky Bar Association Conference regarding the continued use of remote proceedings indicated that the majority would like to continue remote proceedings for civil Motion Hours and civil Hearings, and the Supreme Court is encouraging judges to continue to use remote proceedings as they transition back to in-person proceedings.

Chief Justice Minton explained that \$14,700,000 appropriated for FY 2022 will be used to provide technology upgrades for virtual hearing equipment between county jails and courts, including video arraignment systems to all courtrooms; videoconferencing systems to permit a hybrid court model; a self-represented litigant portal; redaction system software; and self-service kiosks.

In regard to the backlog of court cases due to the COVID-19 pandemic, circuit civil filings are down, criminal case filings have had a huge rebound, and circuit criminal cases doubled from March 2021 to April 2021, reaching the highest number of criminal case filings ever recorded within a month. Family Court case filings have now reverted back to the same as in 2019. Juvenile, Dependency and Neglect, Paternity, and Delinquency and Status cases have gone down. District Court civil Disability and Mental Health filings have

remained the same as in 2019. Forcible Detainer and Small Claims actions have gone down. Probate filings show a 25 percent increase over 2019. District criminal filings remain close to the normal. An expansion of the Felony Mediation Program is in place to assist judges in addressing the increase of criminal cases. Currently 26 retired judges with specialized mediation training to conduct facilitated discussions with parties on referred felony cases are available to expedite the disposition of referred cases. The process is voluntary but is proven to be effective to reduce the high volume of criminal dockets and jury trial backlogs. Cases may be mediated remotely or in-person. Resolving cases through Felony Mediation allows judges more time to prepare for court, hearings, and trials, reduces clerk and administrative time, and provides defendants a speedier access to justice.

In response to Representative Blanton, Chief Justice Minton pointed out that it is a legislative choice as to what entities received distributed court fees. Laurie Dudgeon, Director of the Administrative Office of the Courts, agreed that the General Assembly should revisit the statute declaring what entities receive a portion of court fees, particularly considering the Kentucky State Police laboratories. Ms. Dudgeon advised that the Finance Cabinet may be able to provide the amount distributed annually to each entity.

In response to Senator Schickel, Chief Justice Minton agreed that the decline of trials by jury is a nationwide concern. The Civil Justice Reform Commission is working on how to improve the system to have more cases decided by juries. Ms. Dudgeon noted that the backlog of overall cases went from 405,000 on April 5, 2020 to 484,000 as of June 1, 2021.

In response to Representative Moser, Ms. Dudgeon commented that the cost savings due to the remote process may be more advantageous for counties and civil parties rather than courts. Chief Justice Minton added that not having to transport prisoners will also provide a cost savings. With regard to court fees that have not been collected, Ms. Dudgeon stated that there is a statewide Accounts Receivable Program to report any uncollected fees. Courts are obligated to ensure an individual has the ability to pay and they have to offer an alternative sanction if the individual is not able to pay.

In response to Representative Nemes, Ms. Dudgeon stated that AOC will review the cases to see if any of the prisoners the governor gave an early release to impacted the increase of criminal cases filed last month. In response to the request for a breakdown in court spending by county and by unit, Ms. Dudgeon confirmed that all expenditures required will be reported at the close of FY 2021.

Senator Turner commented on how the remote court system has been beneficial and jury trials are only necessary for some cases.

In response to Chairman Massey, Chief Justice Minton stated that the Judicial Conduct Commission is under AOC for the purpose of budget only and is otherwise a

separate operating entity. Ms. Dudgeon responded that while the court expanded the Administrative Release Program to include some Class D felonies, AOC continues to receive feedback from judges and stakeholders to take into consideration for changes.

### **Education Good Time Sentencing Program**

Secretary Mary C. Noble, Justice and Public Safety Cabinet (JPSC), discussed the 2012 class action lawsuit filed regarding inadequate tracking of inmate good time credits. The case was removed from state court to federal court and due to federal court orders, the JPSC contracted with KPMG Audit Services to track inmate good time credits.

Ms. Robyn Bender, General Counsel of the Justice and Public Safety Cabinet, advised of the rehabilitation goals during incarceration and cost savings associated with limiting an individual's incarceration time. Ms. Bender reviewed the legislative history of the program and stated continual changes in the program created confusion in tracking the credits due to increasing the number of approved course providers, county jails offering different courses than state prisons, and credits not always being reported or not reported accurately to DOC. In October of 2018, KPMG was appointed by the federal court as the independent auditor and the DOC was required to pay the cost of \$1,000,000 per month.

Ms. Bender advised that a revision of the good time course catalogue was approved and is being implemented to prohibit additional inmates from being added as plaintiffs. DOC applied credits found by the KPMG to inmates who were still incarcerated, and negotiated with plaintiffs to resolve which courses should receive credits. A motion for Summary Judgment was filed by the Commonwealth in May of 2021 and is pending.

The current audit and negotiations resulted in 2,400 additional credits being awarded, providing an estimated potential savings of \$28–\$70 million for the Commonwealth. The KPMG audit reviewed 14 years of records and anticipates completing the audit by the summer of 2021.

Cyndi Heddleston, Department of Corrections (DOC), shared the actions taken by the DOC to address issues identified through the Education Good Times (EGT) litigation. A workgroup was established to address EGT litigation issues, a Compliance Division is being created to assure quality performance, and all programs have been reviewed based on the set criteria. The DOC contracted with the University of Cincinnati to develop an evidence informed screening tool to review and score programs under consideration. In response to HB 284, Probation Program Credits, an application process was developed to award credit for probationers. The comprehensive course catalog issued in February 2021 is available on the DOC website, at commissary kiosks, and from staff at jails and probation and parole offices. The DOC also reviewed policies and procedures and the offender management systems to make sure credit was only given when appropriate.

In response to Chairman Massey, Secretary Noble stated that DOC has paid KPMG \$26,300,000 to-date and believes the contract will close this summer. The KPMG's projected cost savings of \$28-\$70 million is a result of implementing corrections to the system which lessens the inmate's time and saves on the cost of housing inmates. If the DOC does not prevail on the motion for Summary Judgment then there could be prospective damages.

There being no further business the meeting adjourned at 12:55 PM.