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2016 State of the Judiciary Address: Judicial, Legislative & Executive Branches Working Together for Good of Kentucky

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

Thank you for once again inviting me to give a State of the Judiciary address. I'm always pleased to provide an update on the courts to this important committee.

I want to welcome the guests who have joined us today, including the justices, judges, circuit court clerks and court personnel who took time out of their schedules to be here.

In June, my fellow justices graciously elected me to serve a third term as Kentucky's chief justice. Leading our state court system is an incredible honor and one that I take very seriously. After eight years in this role, one of the lessons I've learned is that nothing great is accomplished in a vacuum. We rarely perform our best when operating in silos.

The real achievements come when we work together, an often messy process that forces us to find solutions in the midst of different experiences, perspectives and priorities. That struggle is rewarded when we can produce the best results for our fellow Kentuckians. With that in mind, I want to take a look at what happens when all three branches are partners in good government.

STATE OF THE JUDICIARY

Appreciation for Judicial Branch Budget

I want to start today by thanking you for passing a viable Judicial Branch budget for fiscal years 2017 and 2018. After a tense budget session that went down to the wire, we ended up with the court system's healthiest budget in the last 10 years and I am very grateful for your support. I also appreciate Governor Bevin, whose crucial veto of the funds transfer language in our budget provided much-needed relief to the court system.

Our final budget was a win-win for the commonwealth as the court system received sufficient funding to continue operations at nearly current levels and avoid the mass layoffs and program cuts that would have occurred under earlier versions of our budget bill.

I attribute this positive outcome to key interventions by members of the House and Senate and Governor Bevin. I appreciate your efforts to protect the important work of the courts from additional crippling budget cuts. You listened when we explained how court operations would suffer from further reductions and supported adequate funding when we needed it most.

After cumulative budget reductions of 49 percent since 2008, one more biennium of extreme underfunding would have altered the environment of the courts as we know it.

We continue to review our budget to find places where we can create efficiencies and operate even more effectively. And we are committed to our tradition of being good stewards of the state funds appropriated to us by the General Assembly.

I want to thank the Senate for inviting me to testify before the full A&R Committee during the last legislative session. It was beneficial for the members of that committee to hear directly from me to help clear up any confusion regarding the court system's budget and the impact the proposed cuts would have on our operations.

I also appreciate the hard work of the House Budget Review Subcommittee on Justice and the Judiciary. I remain hopeful that the House will give me the opportunity to testify before its full Appropriations & Revenue Committee during the next budget session as we work to keep the lines of communication open.

The Courts and New Legislation

The Judicial Branch is an essential partner with the Legislative and Executive branches when it comes to implementing important legislation. As I noted in my remarks last year, I appreciate our judges, circuit court clerks and court employees for their willingness to move quickly and decisively when new legislation changes our laws.

I also appreciate the many government, community and law enforcement agencies that collaborate with us to bring wide-ranging expertise and resources to this process. Our recent efforts include implementing felony expungement, juvenile justice reform, ignition interlock devices and civil protective orders. I want to look at the court system's role in enacting these new laws.

House Bill 40 – Felony Expungement. The AOC put in countless hours to implement House Bill 40 and was ready to offer resources to those applying for a felony expungement when the bill went into effect in July. HB 40 allows certain Class D felony convictions to be expunged and the new law generated a great deal of interest when it was passed in 2016.

The AOC worked with the Governor's Office, the Kentucky State Police, the Kentucky Justice & Public Safety Cabinet and other criminal justice partners to prepare for the transition. The AOC also provided guidance to judges and circuit court clerks about how to implement the new law.

As part of our preparations, we revised legal forms, updated our electronic case management system to communicate with other state agencies and changed our eFiling program so attorneys can file expungement cases electronically.

We also added a section to the Kentucky Court of Justice website that provides information on HB 40, legal forms and a list of offenses eligible for expungement. Visitors can find answers to frequently asked questions and a step-by-step guide that explains how to apply for an expungement certification.

The AOC has received requests for 8,400 criminal record reports for expungement since the law was effective on July 15. That number is about double the number of expungements requested at this time last year.

It's important to note that this number includes requests for misdemeanor expungements as well as felony expungements. We can't break out felony expungements with certainty at the first stage in the process, as individuals self-identify the conviction they are requesting to be certified eligible for expungement. However, we attribute the increase in requests to the passage of HB 40.

Our turnaround time is quick as the AOC Records Unit usually processes expungement requests in less than 48 hours.

Senate Bill 200 – Juvenile Justice Reform. I'm pleased to report that mounting evidence shows that juvenile justice reform is working as intended as more cases involving youth are being handled out of court through successful diversion or dismissal.

The Family Accountability, Intervention, and Response Teams are key to the success of juvenile justice reform. FAIR Teams work with court designated workers to identify service gaps, coordinate access to services for juveniles and families, and determine the appropriate terms for diversion.

As of August 31, 2016, FAIR Teams in the 60 judicial districts had reviewed 2,507 cases. Of the cases reviewed that are now closed, 46 percent were resolved outside of court and 54 percent were referred to court for formal processing. Twenty-nine percent of cases referred to the FAIR Teams continue to progress through FAIR Team reviews and the diversion program.

This time last year, the AOC was hard at work overhauling the Court Designated Worker Program and the juvenile court process as mandated by Senate Bill 200. We reached an important milestone in April 2016 when FAIR Teams began hearing juvenile cases in in the 60 judicial districts across the commonwealth.

As the AOC moves from initial implementation to more advanced stages of reform, we're making headway in other critical areas such as these:

- The AOC is making it a priority to address the needs of minorities, who are over-represented in the juvenile justice system.

- The CDW Program is using the GAIN-Q3 assessment tool to more quickly and accurately identify the needs of youth in diversion programs.

- In October, the Supreme Court will adopt the final version of the new Juvenile Court Rules of Procedure and Practice, which provide consistent statewide rules to govern juvenile justice cases.

We appreciate the vital work of the legislature in addressing the needs of the juvenile justice system and look forward to our continued partnership to ensure the success of these important reforms.

Senate Bill 133 – Ignition Interlock Devices. The Judicial Branch has also been instrumental in implementing Senate Bill 133. The bill was designed to reduce drunken driving by using ignition interlock devices to prevent a car from starting if the driver's breath alcohol tests over the limit. It went into effect in June 2015.

The AOC communicated with judges and circuit court clerks when the Kentucky Transportation Cabinet finalized regulations and selected vendors for ignition interlock devices. As required by the bill, the Supreme Court established a sliding scale of indigency to help judges determine the amount a defendant must pay for a device.

We continue to work with the Transportation Cabinet on ways to improve the ignition interlock process, which involves multiple contacts among Department of Transportation staff, judges and circuit court clerks.

The AOC also received a grant from the Kentucky Office of Highway Safety to provide education on SB 133 at the annual District Judges College, which took place earlier this week. The district judges devoted several sessions of the college to DUI cases and the ignition interlock devices.

Last year alone, our district judges handled 26,000 cases involving people driving under the influence of drugs and/or alcohol. That indicates the extent of the DUI problem in Kentucky and the potential for ignition interlock devices to contribute to public safety.

House Bill 8 – Dating Violence Protection. The AOC has also carried out its responsibilities under House Bill 8, which went into effect January 1, 2016, and extends civil protection to victims of dating violence, sexual assault and stalking.

We revised the legal forms and protective order forms in our domestic violence series and worked with the Kentucky State Police to integrate these changes into their LINK system. Judges, circuit court clerks and deputy clerks have been trained on these changes.

Each jurisdiction has adopted new protocols that outline accessibility to protective orders. And a brochure that explains the protective order process to the public is available at circuit clerk offices and on the Kentucky Court of Justice website.

We're seeing a modest but steady number of filings at roughly 70 cases statewide each month.

Path to Judicial Redistricting
We're making good progress in laying the groundwork for judicial redistricting and I want to talk about what we've accomplished the last two years.

In 2014, the Judicial Branch budget bill included language requiring the AOC to develop a weighted caseload system to measure judicial caseloads throughout the commonwealth for the purpose of recommending a plan to realign judicial boundaries. I requested that the legislature include this language in our budget bill to encourage support for an evidence-based approach to the task of redrawing circuit and district boundary lines.

We realized that developing a weighted caseload system would require a thorough, high-quality judicial workload analysis. As a result, we engaged the help of the National Center for State Courts, which has successfully conducted similar studies in several other states and is considered an expert in this area.

Judicial Time Study. We started the process by asking all circuit, family and district judges to take part in what was likely the first Judicial Time Study in Kentucky. For four weeks in the spring of 2015, judges used an online program to log how they spent their time handling cases and taking care of judicial duties outside of court. Despite the burdensome task of recording every minute of every workday for a month, I am pleased to report that we had 95 percent participation among our judges.

Using this data, the NCSC compiled a time study report that included case weights and measured workloads for each phase of a case and its jurisdiction.

I also created a Judicial Workload Assessment Committee to work closely with the NCSC on this project. The JWAC, as we call it, is comprised of judges from each level of the court system as well as circuit court clerks, prosecutors and legislators from throughout the state.

Site Visits. After the time study, the NCSC staff met with circuit, family and district judges in numerous jurisdictions to identify challenges they face in handling different types of cases, determine what policies and strategies help in processing cases, and discuss variations in the nature of trial court work across the state.

Sufficiency of Time Survey. After the NCSC staff assigned case weights, the judges completed a Sufficiency of Time Survey that assessed whether they have adequate time to fulfill all of their judicial responsibilities with reasonable quality given the current level of resources.

Delphi Groups. We then pulled together three Delphi groups, one each for Circuit Court, Family Court and District Court, to review the preliminary case weights and recommend adjustments based on recent statutory changes, best practices in case management and real-world experience.

Interim Report of the Kentucky Judicial Workload Assessment Committee. The JWAC members met in November 2015 to examine and reconcile results from all phases of the assessment. The NCSC then drafted a preliminary report that was extensively vetted through the Supreme Court and the JWAC before I presented the Interim Report of the Kentucky Judicial Workload Assessment Committee to the legislature in February 2016.

Comprehensive Judicial Redistricting Plan. That brings us to the second phase of the project, which is to present a comprehensive judicial redistricting plan to the General Assembly in 2017.

When the JWAC met in August 2016, the NCSC presented an aggressive redistricting plan to spur discussion among the committee members. This first plan was soundly rejected by the committee, but it did produce ideas the group is able to build on. I asked the full JWAC to form a smaller subcommittee of its members to focus on details of a redistricting plan. The subcommittee met in early September at the AOC to develop a proposal that:

- Addresses "hot spots" across the state that are obvious examples of disparate caseloads and require attention in the short term.

- Aligns judicial circuit and district boundary lines that are currently different.

- Provides a plan to phase in Family Court, which would fulfill the constitutional mandate of having Family Court statewide.

The subcommittee will present its recommendations at the next JWAC meeting. Once the JWAC has approved a plan, I'll begin meeting with judges and other stakeholders to explain what changes to expect in the short term and long term. I will also be meeting with legislators whose jurisdictions could lose an elected official through the realignment.

It's important to understand that comprehensive redistricting must be accomplished through a multistep, long-range plan. Because the terms of elected officials can't be reduced under Kentucky law, redistricting must be implemented over the course of several years. It will take until the 2030 election cycle for the terms of all justices, judges, commonwealth's attorneys and county attorneys to line up.

I also want to stress that we feel confident about our process, which has been exhaustive – some might say exhausting! – and based on sound research principles. We've gone to great lengths to apply best practices when compiling and analyzing the data. We realized early on that we couldn't base realignment decisions solely on population, which fails to take into account all of the factors that contribute to a judge's caseload.

No matter how painful this process and no matter what the end result turns out to be, I can assure you that the redistricting plan we ultimately propose will be solidly rooted in objective research and reflect the input of key stakeholders from throughout the commonwealth.

These examples show how the three branches have worked together to enact legislation and pass the court system's budget. Now I'd like to look at several other areas we're currently focused on, including court technology, judicial salaries and drug abuse.

Legal Community, Public Benefiting From New Court Technology
We're making impressive progress to adopt technology that will meet customer needs and improve the efficiency of the courts.

As of October 2015, Kentucky had made eFiling available in all 120 counties, which was an enormous step toward our goal of a paperless court system. eFiling gives Kentucky attorneys the option to file criminal and civil court documents online.

Our development team is currently focused on expanding eFiling to other case types, which include juvenile cases, forcible detainer, probate and appeals. We are also working to extend eFiling to non-attorney government filers, such as employees in the Cabinet for Health and Family Services and the Division of Probation and Parole, along with other justice partners who regularly file documents with the courts. Electronic filing will ultimately be opened to self-represented litigants so that all who seek access to the courts can use this technology.

eFiling is only one component of our larger KYeCourts initiative, which involves a comprehensive overhaul of Kentucky's court technology. In January 2017, we will begin piloting an electronic court records project in Trimble County. This represents a huge cultural shift as we continue our move away from paper records.

Our new case management system, KyCourts III, is being developed in close consultation with judges and circuit court clerks, who welcome the changes. KyCourts III will have a new user interface, integrate with multiple data sources and support electronic case records. Once KyCourts III goes statewide, it will have significant benefits for judges, attorneys, court personnel and others who conduct business with the courts.

It's important to remember that the legislature cleared the way for KYeCourts in March 2013, when we were given approval to issue bonds for a new case management system. With the funding issue resolved, we could focus on the policy changes, programming and hardware required for eFiling and an overhaul of our obsolete case management system. I continue to be grateful for your support, which came at a critical moment and allowed Kentucky to join other states at the forefront of court technology.

Facilities

I have a brief update on capital projects. The AOC is in the initial stage of construction projects for Henry and Nicholas counties and is working on limited-scope repair projects in Mason and Simpson counties.

The Court Facilities Standards Committee has approved preliminary designs for renovations to the Henry County Courthouse and we're working on a feasibility study for the Nicholas County Courthouse. Our plans are to preserve the beautiful, historic downtown courthouses in these two counties.

Where practical, we're looking at renovating and preserving court facilities instead of engaging in new construction. This is a significant departure from our current capital construction program as most facilities on our priority list are in smaller counties with limited population growth. With the General Assembly's support, our approach to Henry and Nicholas counties may be a preview of what our construction program will look like going forward.

Judicial Salaries
While I realize we won't be addressing budget requests again until 2018, we must keep in sight the need to improve salaries for Kentucky judges. In 2016, I requested a modest but critical salary increase as a first step in closing the pay gap for judges. The pay increase was based on recommendations from the independent Judicial Compensation Commission, which consists of community leaders statewide.

Unfortunately, the legislature did not authorize any salary adjustments for Kentucky's 284 justices and judges, who are among the lowest paid in the country and last among judges in the surrounding states. As a result, our judicial salaries will remain stagnant for two more years.

The fact remains that since 2007, Kentucky judges have received only two years of 1 percent raises and two years of $400 raises. It's been a decade since our judges have received any real boost in compensation and new judges coming on the bench are facing low salaries and recent reductions in pension benefits.

This lack of progress has left our current judges feeling discouraged and undervalued. It also provides little incentive for the best and brightest attorneys to leave lucrative law practices to mount expensive campaigns for judicial office. The longer we postpone action, the more difficult it will be to catch up on lost wages and avoid diminishing the quality of the Kentucky judiciary.

This is an issue we can address together and I look forward to discussing appropriate compensation for our justices and judges in the coming months.

Fighting Drug Abuse in Kentucky
And finally, I want to go on record with the court system's commitment to partner with the legislature, law enforcement, treatment providers and other agencies who are instrumental in combating the opioid-addiction epidemic and the alarming spread of heroin use across the commonwealth. The Judicial Branch stands ready and able to help in any way we can to address a crisis that I consider to be "code red."

I imagine all of you were as disturbed as I was at the recent rash of overdoses in Mount Sterling, Cincinnati and Huntington. Unfortunately, Kentucky, Ohio and West Virginia are among the top five states in the nation in per capita opioid overdose deaths.

In August, I spent three days at the first Regional Judicial Opioid Initiative. The Supreme Court of Ohio hosted judicial and multidisciplinary teams from Kentucky, Ohio, Illinois, Indiana, Michigan, Pennsylvania, Tennessee, Virginia and West Virginia along with critical public and private partners.

The goal of the Summit was to create a framework for a year-long process that will bring a coordinated approach to state and federal policymakers who are confronting this problem in our region. I look forward to providing updates on the work of this unprecedented regional partnership in the fight against drug abuse.

That brings us to the end of my remarks. I want to thank you again for your time today and answer any questions you may have. ###