

**FINAL REPORT
OF THE
COMMISSION ON COURTS**



**Indiana Legislative Services Agency
200 W. Washington St., Suite 301
Indianapolis, Indiana 46204-2789**

November 2010

**INDIANA LEGISLATIVE COUNCIL
2010**

**Senator David Long
Vice-Chairperson
Fort Wayne**

**Speaker B. Patrick Bauer
Chairperson
South Bend**

**Senator Vi Simpson
Bloomington**

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**Senator Timothy Lanane
Anderson**

**Representative Kathy
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Noblesville**

**John M. Ross
Executive Director
Legislative Services Agency**

Commission on Courts

Membership Roster

Senators

**Richard Bray, Chair
Martinsville**

**Randall Head
Logansport**

**Timothy Lanane
Anderson**

**Lonnie Randolph
East Chicago**

Representatives

**Eric Koch
Bedford**

**Linda Lawson
Hammond**

**Matthew Pierce
Bloomington**

**Kathy Richardson
Noblesville**

Lay Members

**Thomas Felts
Fort Wayne**

**Michael J. Kruk
South Bend**

**Jill Jackson
Franklin**

**David Whicker
Danville**

**Chief Justice Randall Shepard
Indianapolis**

Legislative Services Agency Staff

**Mark Goodpaster, Fiscal Analyst
Timothy Tyler, Staff Attorney**

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FINAL REPORT

Commission on Courts

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

The Indiana General Assembly enacted IC 33-23-10 creating the Commission on Courts. IC 33-23-10-7 charges the Commission with the following:

1. Review and report on all requests for new courts or changes in jurisdiction of existing courts.
2. Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. The research may include conducting surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.
3. Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The Commission shall hold at least one public hearing on each request presented to the Commission.
4. Review, report on, and make recommendations concerning any other matters relating to court administration that the Commission determines appropriate, including the following:
 - Court fees.
 - Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
 - Jury selection.
 - Any other issues relating to the operation of the courts.
5. Submit a report in an electronic format under IC 5-14-6 before November 1 of each year to the General Assembly. The report must include the following:
 - A recommendation on all requests considered by the Commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.
 - If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
 - A draft of legislation implementing the changes.
 - A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
 - Summaries of any research supporting the recommended changes.
 - Summaries of public hearings held concerning the recommended changes.

The Legislative Council assigned the following additional responsibilities to the Commission:

- A. Use of mechanic's liens in the state as contemplated in HB 1179 – 2010 (Representative Bartlett); and
- B. Renter safety SR 71 – 2010 (Senators Zakas and Taylor).

II. INTRODUCTION AND REASONS FOR STUDY

The legislative branch and the judicial branch are separate and co-equal branches of state government. The Commission on Courts was established to give the Indiana General Assembly adequate time to study legislative proposals that will affect the judicial branch.

III. SUMMARY OF WORK PROGRAM

The Commission met four times during the course of the interim.

At the first meeting held on July 29, 2010, the Commission heard testimony on the highlights of a strategic plan for the Indiana Judiciary and reorganizing the local trial court structures at the county level.

At the second meeting on August 26, 2010, the Commission heard testimony on or discussed the following topics: an update on the Judicial Technology and Automation Project and the requests for new judicial officers in Johnson, Bartholomew, Hamilton, and Allen Counties.

At the third meeting on September 30, 2010, the Commission heard testimony about a request for a new magistrate in Warrick County, the need for changes in laws concerning judges' use of firearms, the safety of renters, and the regulation of synthetic marijuana.

At the fourth and final meeting on October 15, 2010, the Commission heard testimony from representatives of the Indiana Judicial Conference on two measures to improve the trial court structure and judiciary and about the Automated Record-keeping Fee. The Commission reviewed and recommended a series of preliminary drafts to be introduced during the 2011 General Assembly and approved the final report of the Commission for the interim.

IV. SUMMARY OF TESTIMONY

The Commission heard testimony concerning the following topics:

Unification of Trial Courts at the Circuit Level – The Commission examined the advantages of changing all circuit and superior courts in each county into unified circuit courts with the same jurisdictions so that any court could hear any type of case filed in the courts in the county. The courts would be able to develop rules on how court cases would be able to be distributed among the local judges and not depend on statutes, which are difficult to amend.

Currently, Delaware and Monroe Counties have unified courts in their counties. Judge Marianne Vorhees, Delaware Circuit Court #1 and Judges Ken Todd and Marc Kellams,

Monroe County, described their experience on the bench in unified courts.

During this interim, judges in Clark, Henry, and Madison Counties proposed converting their trial courts into unified court systems similar in structure to the courts in Monroe and Madison Counties. Vicki Carmichael, Clark Superior Court Judge, Mary Willis, Henry Circuit Court Judge, and Thomas Newman, Madison Superior Court #3, all testified before the Commission about the desire of the courts in their counties to restructure their courts in the same way as Delaware and Monroe Counties.

Initiatives of the Indiana Judicial Conference – The Indiana Judicial Conference is composed of the justices of the Supreme Court, the judges of the Indiana Courts of Appeal, the Tax Court and all trial court judges. One of the statutory charges of the conference is to “promote an exchange of experience and suggestions regarding the operation of Indiana’s judicial system”. (IC 33-38-9-6)

Judge Terry Shewmaker, Elkhart Circuit Court and member of the Strategic Planning Committee of the Indiana Judicial Conference, presented to the Commission members the highlights of a strategic plan for the Indiana judiciary.

Judge Shewmaker indicated that the Judicial Conference proposed to improve the judiciary in three ways:

1. Improving the professionalism of the judiciary.
2. Simplifying the structure of the trial courts and providing more centralized funding.
3. Improving the impartiality of the judiciary by changing the judicial selection methods.

Status of the Indiana Judicial Technology and Automation Project – Justice Frank Sullivan presented an update of JTAC describing the number of counties that use the Odyssey system and how applications of the Odyssey system are used to increase efficiency of the state’s executive branches and local units of government.

Proposed New Court Officers – The following persons made requests to the Commission on Courts for new court officers.

Mark Loyd, Judge of the Johnson Circuit Court, requested new courts in both 2014 and 2018. He told Commission members that the Division of State Court Administration ranked Johnson County’s severity of need for new court officers as fifth highest in the state.

Judge Stephen Heimann, Bartholomew Circuit Court, requested converting a Title IV-D commissioner who currently handles child support to a new full-time court that would handle domestic relations cases.

Ollie Schierholtz, Hamilton County Court Administrator, described the need for an additional magistrate for Hamilton County.

Judge Thomas Felts, Allen Circuit Court, requested that a Title IV-D hearing officer be converted to a magistrate.

Judge David Kelley, Warrick Circuit Court, requested a new magistrate that would be appointed jointly by all three trial court judges in Warrick County.

Renter Safety – SR 71–2010 urged the Legislative Council to assign this issue to an interim study committee to study issues pertaining to the safety of renters who are victims of burglaries, residential entries, or criminal trespass. Ms. Deborah Kissa described the experience of her daughter, Sheena, who was murdered in her own apartment. Sheena was in the process of moving out after her apartment had been burglarized. At issue was whether tenants should have the ability to terminate their leases when they are the victims of certain crimes.

Authorization of Judicial Officers to Carry Firearms – Judge Bruce Markel and Judge Gary Smith requested the Commission members to consider changing the laws to allow judges to legally carry firearms in counties where ordinances prohibit them to be carried in public facilities.

Regulation of Synthetic Marijuana (also known as “Spice”) – Dr. James Mowry, Indiana Poison Center, Fred Huttshell, Indiana State Police, Steve Johnson, Indiana Prosecuting Attorneys Council, Reagan Ford, member of the Kendallville City Council, and Donna Roskowski, Indiana State Police, discussed the problem of regulating synthetic marijuana.

Standardizing Jurisdiction Of All Trial Courts in Indiana – Judges Cale Bradford, Mark Stoner, and Peggy Lohorn represented the Indiana Judicial Conference and proposed simplifying the structure of the state trial court organization by making all courts of record have the same jurisdiction to hear any type of case.

Requiring All Judicial Officers in Indiana to Be Attorneys – Judges Cale Bradford, Mark Stoner, and Peggy Lohorn represented the Indiana Judicial Conference and advocated that city and town court judges be required to be attorneys.

Automated Record-keeping Fee – Justice Frank Sullivan requested the Commission to increase the current court fee to allow the Judicial Technology and Automation Project to continue expanding JTAC operations into counties not yet served.

V. COMMISSION FINDINGS

The Commission made the following findings and did not recommend any changes to Indiana code to address these issues.

(1) Mechanics Liens – Concerning the study of the use of mechanic's liens in the state as contemplated in HB 1179-2010, Sen. Bray stated the mechanic's lien law had been studied at great length by other committees during previous interims, which had

resulted in a lack of consensus among interested parties concerning changes to that law. He said he felt the Commission on Courts lacked the time and resources to sufficiently address this topic during the 2010 interim.

(2) Renter Safety – The Commission considered the language in HB 1073–2010, which was reprinted on January 26, 2010. As written, this bill would permit renters to terminate their rental leases after a court hearing. The members disagreed on whether a contract could be broken without a court considering the merits. The Commission tabled the issue because of too many unresolved issues.

(3) Possession of Handguns by Judicial Officers – The Commission members concluded that no statute specifies all the places a law enforcement officer may carry a firearm and no statute specifies a judge may carry a firearm in the same places a law enforcement officer may carry one. There is a provision in the handgun licensing law that allows law enforcement officers and judges to carry handguns in public without first obtaining a license to do so. But while the statute that prohibits firearms on school property or school buses exempts law enforcement officers from the prohibition, it does not exempt judges because judges are not considered law enforcement officers for purposes of that statute. A motion to recommend PD 3438 to the 2011 General Assembly was defeated by a 3-to-5 vote.

(4) Regulation of Synthetic Marijuana (also known as “Spice) – The Commission members agreed to continue monitoring the manufacturing and distribution of synthetic marijuana in Indiana. Because the active ingredients in synthetic marijuana are constantly changing, it would be difficult to specify the active ingredients in Indiana statute. Commission members noted that the U.S. Congress is currently examining how to regulate its manufacturing and distribution in the United States and will wait to see the federal response.

V. COMMISSION RECOMMENDATIONS

The Commission made the following recommendations.

(1) PD 3058: Unified Circuit Courts in Clark, Henry, and Madison Counties – The Commission voted 8 to 0 to recommend PD 3058 to the 2011 General Assembly.

(2) PD 3318: New Court Officers in Allen, Bartholomew, Hamilton, Johnson, and Warrick Counties – The Commission members voted 8 to 0 to recommend PD 3318 be introduced during the 2011 General Assembly. The Commission members prioritized the need for new court officers by the 2009 weighted caseload study. The priorities are in the following order in case funds are not sufficient to fund all five court officers:

- (a) New Johnson County Superior Court
- (b) Allen County conversion of Title IV-D hearing officers to magistrate
- (c) New Hamilton County magistrate
- (d) New Warrick County magistrate
- (e) New Bartholomew County Superior Court

(3) PD 3227: Extending the Commission on Courts – The Commission voted to extend the life of the Commission on Courts to June 30, 2015, by a show of hands, 7 to 1.

(4) PD 3437: Require City and Town Court Judges Be Attorneys – The Commission recommended that this bill be introduced to the General Assembly by a 7 to 1 vote.

(5) PD 3436: Automated Record-keeping Fee – The Commission members, by a 7-to-1 vote, recommended increasing the Automated Record-keeping Fee from the current \$7 to \$10, beginning July 1, 2011, and lowering again to \$7, effective June 30, 2015.

(6) Standardized Jurisdiction (No PD) – The Commission members endorsed the concept of creating a uniform jurisdiction for all trial courts, but no specific legislative language, by an 8-to-0 vote.

WITNESS LIST

July 29, 2010

Judge Terry Shewmaker, Elkhart Circuit Court
Judge Marianne Vorhees, Delaware Circuit Court #1,
Judges Ken Todd and Marc Kellams, Monroe County
Judge Vicki Carmichael Clark Superior Court
Judge Mary Willis Henry Circuit Court
Judge Thomas Newman, Madison Superior Court #3,

August 26, 2010

Justice Frank Sullivan
Sgt. Jerry Goodin, Indiana State Police (ISP),
Judge Brian Poindexter, Carmel City Court,
Linda Mueller, Clerk of Floyd Circuit Court
Ollie Schierholtz, Administrator for the Hamilton County Trial Courts
Neil Moore, Executive Director of the Criminal Justice Institute,
John Eckart, Commissioner of the Indiana Department of State Revenue
Mark Loyd, Judge of the Johnson Circuit Court
Judge Stephen Heimann, Bartholomew Circuit Court
Ollie Schierholtz, Hamilton County Court Administrator,
Judge Thomas Felts, Allen Circuit Court

September 30, 2010

Warren Mathias Attorney At Law
Judge David Kelley, Warrick Circuit Court
Senator Joe Zakas
Deborah Kissa
Lynne Sullivan, Executive Director, Indiana Apartment Association
Judge Bruce Markel, Jackson Superior Court #1
Judge Gary Smith, Jennings Superior Court #1
Dr. James Mowry, Director, Indiana Poison Center
Major Ed Littlejohn, Indiana State Police
Fred Huttzell, Forensic Science Supervisor, Indiana State Police
Steve Johnson, Executive Director, Indiana Prosecuting Attorneys Council
Andrew Cullen, Legislative Liaison, Public Defender Council
Reagan Ford, Kendallville City Council
Donna Roskowski, Forensic Scientist, Indiana State Police

October 15, 2010

Judge Cale Bradford, Indiana Court of Appeals
Diane Mains, Staff Attorney, Indiana Judicial Center
Judge Vicki Carmichael Clark Superior Court
Judge Mark Stoner, Marion Superior Court Criminal Division 6
Judge Peggy Lohorn, Montgomery Superior Court #2
Rhonda Cook, Indiana Association of Cities and Towns
Judge Susan Lieb, Mooresville City Court
Judge Mark Peden, Martinsville City Court
Judge Kenneth Pierce, Jeffersonville City Court
Justice Frank Sullivan, Indiana Supreme Court