

ANNUAL REPORT  
OF THE  
COMMISSION ON COURTS



Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204

October, 2011

# INDIANA LEGISLATIVE COUNCIL

## 2011

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# COMMISSION ON COURTS

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Thomas Felts  
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Christa Coffey  
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Chief Justice Randall Shepard  
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Michael J. Kruk  
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Commissioner Therese Brown  
Fort Wayne

### Staff

Timothy Tyler  
Attorney for the Committee

Mark Goodpaster  
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY DIRECTIVE**

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:
  - a. Court fees.
  - b. Court personnel, except constables that have jurisdiction in a county that contains a consolidated city.
  - c. Salaries of court officers and personnel, except constables that have jurisdiction in a county that contains a consolidated city.
  - d. Jury selection.
  - e. 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. 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.
  - b. If the Commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:
    - i. A draft of legislation implementing the changes.
    - ii. A fiscal analysis of the cost to the state and local governments of implementing recommended changes.
    - iii. Summaries of any research supporting the recommended changes.
    - iv. Summaries of public hearings held concerning the recommended changes.

## **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 two times during the 2011 interim to study court-related issues.

At the first meeting on August 24, 2011, the Commission heard testimony on or discussed the following topics:

- \*Judicial Technology and Automation Committee projects.
- \*Request for a new Allen Circuit Court magistrate to replace an Allen Circuit Court hearing officer.
- \*Request for a new Hendricks County magistrate.
- \*Request for a new Owen County judge.

At the second meeting on September 15, 2011, the Commission heard testimony on or discussed the following topics:

- \*A presentation by the Strategic Planning Committee of the Judicial Conference of Indiana.
- \*Request for a new Bartholomew Superior Court judge.
- \*Request for a new Hamilton County magistrate.
- \*Request for a new Johnson Superior Court judge.
- \*Request for a new Marion Circuit Court magistrate.
- \*Probation officer salaries and probation department funding.

## **IV. SUMMARY OF TESTIMONY**

The Commission heard testimony from the following witnesses concerning the following topics:

### **Judicial Technology and Automation Committee (JTAC) Projects**

Justice Frank Sullivan, Jr. of the Indiana Supreme Court discussed the following JTAC projects:

- \*The Odyssey case management system.

- \*The Bureau of Motor Vehicles SR 16 (Abstract of Court Record) form.
- \*The Protection Order Registry.
- \*Mental health adjudication applications.
- \*The Electronic Citation and Warning System.
- \*Tax warrant applications.
- \*Marriage license applications.

Justice Sullivan also stated the following:

- \*Concerning legislation enacted by the General Assembly that decreased the amount of revenue JTAC receives from the Automated Record Keeping Fee, JTAC will have to reduce the size of its staff, including the number of private sector consultants working for JTAC, and the rate of installation of the Odyssey case management system will slow down.
- \*Concerning "data mining" of information collected by JTAC projects, there are "almost limitless" opportunities to analyze the data for use in forming public policy and assisting the General Assembly in its work.
- \*Concerning the effect on counties caused by a delay in installing the Odyssey case management system, counties would have to continue to pay for their own case management systems until Odyssey was installed, counties would not be able to take advantage of the technology as quickly, and statewide public access at no cost to court records would be delayed.

### **Request for New Allen Circuit Court Magistrate to Replace an Allen Circuit Court Hearing Officer**

Sen. Dennis Kruse stated he had made this same request for several years and there was still a need to convert an Allen Circuit Court Title IV-D child support hearing officer position to a state paid magistrate position.

Judge Thomas Felts of the Allen Circuit Court stated the following:

- \*This is not a request for a new judicial officer but only to convert a county paid Title IV-D hearing officer to a state paid magistrate.
- \*Because this magistrate would continue to handle Title IV-D child support cases, the federal government would continue to pay 66 2/3 % of the magistrate's salary.
- \*In accordance with the Indiana Supreme Court's strategic plan, all judicial officers should be compensated by the state.
- \*This hearing officer performs the same duties as a magistrate and should be treated the same as a magistrate.
- \*Converting this hearing officer position to a magistrate position would allow the retention of a "good employee."

## **Request for a New Hendricks County Magistrate**

Judge Robert Freese of the Hendricks Superior Court #1 stated the following:

- \*The average weighted caseload calculation for the entire state is 1.23 while it is 1.54 in Hendricks County and increasing every year.
- \*Adding another judge in Hendricks County would only decrease its current weighted caseload average from 1.54 to 1.32.
- \*Nine other counties with magistrates have a weighted caseload of less than 1.32.
- \*Of the counties without magistrates, the Hendricks County weighted caseload ranks seventh in the state based on court filings and the number of judicial officers.
- \*Hendricks County ranks second in the state in the number of judicial officers per county resident with one judicial officer for each 24,241 residents while the average for the entire state is one judicial officer for every 16,089 residents.
- \*Adding two new magistrates in Hendricks County will not cause an increase in space needed or additional support staff needed.
- \*The five superior court judges and one circuit court judge in Hendricks County would jointly appoint the magistrates and share in their services on a rotating basis.

Judge Freese's testimony was supported by the following documents:

- \*A letter from the judges of the Hendricks Superior Courts requesting up to two new magistrate positions for Hendricks County.
- \*A letter from the Hendricks County Council president requesting one or more new magistrates for Hendricks County.
- \*A letter from the Hendricks County Board of Commissioners requesting one or more new magistrates for Hendricks County.

Judge Stephenie LeMay-Luken of the Hendricks Superior Court #5 stated the following:

- \*There was more to being a judge than just sitting in a court room, including performing numerous administrative duties.
- \*The Hendricks County judicial system needed two new magistrate positions.
- \*Adding new magistrate positions would not require any additional space.

## **Request for a New Owen County Judge**

Rep. Bob Heaton came before the Commission to request the addition of a second judge for Owen County.

Judge Frank Nardi of the Owen Circuit Court stated the following:

- \*He had no preference as to whether the second judge was added as a new

superior court judge or a second circuit court judge in a unified circuit.

\*This new position would only equal about half a judge since Owen County had a state paid referee whose salary is equal to about half of the salary paid to a circuit court judge.

\*The caseload in Owen County had increased greatly over the last 29 years and continues to increase.

\*With a one judge court, there were numerous postponements because he had to set priorities based on legal deadlines.

\*He had tried to increase the number of hours the referee could work, but ultimately the referee could only act as a fact finder.

\*Another option for Owen County would be to allow the appointment of a full time magistrate by the circuit court judge.

### **The Strategic Planning Committee of the Indiana Judicial Conference**

Judge Terry Shewmaker of the Elkhart Circuit Court and Judge Mark Stoner of the Marion Superior Court testified on the Judicial Conference of Indiana (Conference) report entitled "The Next Step To A New Way Forward: The Strategic Plan For Indiana's Judicial Branch. Judge Shewmaker and Judge Stoner stated the following:

\*The Strategic Plan (Plan) was developed by the Conference, which is made up of judges from across the State.

\*The mission statement of the Plan is to "improve our system of justice by assisting with the resolution of disputes under the rule of law while protecting individual rights and liberties in a fair, impartial, equally accessible, prompt, professional, and efficient manner."

\*The long term goals of the Plan are to provide equitable funding of trial courts and establish a more uniform system to select trial court judges.

\*The three main priorities for the Plan are to improve education for judges and court staff, simplify the structure of trial courts, and improve the record keeping system for trial courts.

\*To improve education for court staff, the judiciary should adopt more stringent education requirements and formalize staff training and orientation. Also, all judges of city and town courts should be required to be attorneys.

\*To simplify trial court structure, the judiciary should pursue uniformity and clarity of organization and encourage county, district, and regional cooperation. To this end, HEA 1266 enacted in 2011 provided for uniform jurisdiction between all circuit and superior courts and will allow maximum flexibility in allocating case loads.

\*To improve record keeping, the courts should be solely responsible for their records and manage the preparation of documents related to appeals while the clerks continue to focus on supervising elections, issuing marriage licenses, and collecting money. Records should reflect how judges feel and not how clerks feel.



### **Request for a New Bartholomew Superior Court Judge**

Judge Chris Monroe from the Bartholomew Superior Court #1 testified Bartholomew County still needed this additional judicial officer that was endorsed by the Commission in 2010 but not enacted into law in 2011.

### **Request for a New Hamilton County Magistrate**

Orval Schierholz, Administrator of Courts for Hamilton County, submitted a packet of written material that indicated Hamilton County still needed this additional judicial officer that was endorsed by the Commission in 2010 but not enacted into law in 2011.

### **Request for a New Johnson Superior Court Judge**

Judge K. Mark Lloyd of the Johnson Circuit Court submitted a packet of written material that indicated Johnson County still needed this additional judicial officer that was endorsed by the Commission in 2010 but not enacted into law in 2011.

### **Request for a New Marion Circuit Court Magistrate**

Mark Renner, Commissioner of the Marion Circuit Court, testified concerning a request to give the Marion Circuit Court Judge the authority to appoint a magistrate. Mr. Renner stated the following:

\*The Marion Circuit Court is the busiest circuit court in the State.

\*A new Marion Circuit Court magistrate would replace one of four Circuit Court commissioners paid by the county and would supervise the Paternity Division.

\*The Marion Circuit Court judge may not appoint any magistrates while other circuit courts serving urban areas in the State may appoint magistrates. The Allen Circuit Court judge may appoint one magistrate, the Lake Circuit Court judge may appoint three, the St. Joseph Circuit Court judge may appoint three, and the Vanderburgh Circuit Court judge may appoint one. The Marion Superior Court judges may jointly appoint eight magistrates.

\*While the Marion Circuit Court and Marion Superior Court share cases, they do not share personnel.

### **Probation Officer Salaries and Probation Department Funding**

Larry Hesson, President of the Hendricks County Council, and Andrew Berger, Director of Government Affairs and General Counsel for the Association of Indiana Counties, testified concerning probation officer salaries and probation department funding. Mr. Hesson and Mr. Berger stated the following:

\*Probation officer salaries are paid by counties and other local units even though they are basically determined by a panel of judges. This system means some local units are in a better position to pay probation officer salaries than other local units. It also creates an inequity among local unit employees.

\*The following is a proposed new system to fund probation services:

\*Local units who pay to operate probation departments would set a base year amount as determined by the amount of funding a local unit pays to operate its probation department. The base year could be determined by taking the total budgeted amount in a single year or by using an average amount over a period of years.

\*A local unit would transfer this base year amount to the State each year in two installments in the Spring and Fall after property tax collections.

\*The State would be responsible for all funding increases for probation services expended by a local unit in a year that exceed the local unit's base year.

\*A schedule would be set up for the State to reduce (by percentages) the probation funding a local unit sends to the State until all funding for the operation of probation departments comes from the State.

Judge Marianne Vorhees of the Delaware Circuit Court #1 stated she supported this proposal.

Donald Travis, President of the Probation Officers Professional Association of Indiana, stated the proposal was "intriguing" and was interested in working with Mr. Hesson and Mr. Berger on this idea.

## **V. COMMISSION RECOMMENDATIONS**

The Commission made the following recommendations:

1. The Commission recommended that legislation be enacted to add a new judge to the Bartholomew Superior Court beginning January 1, 2015. (Approved 11 to 0 by voice vote.)
2. The Commission recommended that legislation be enacted to allow the Hamilton Superior Court judges to jointly appoint a new magistrate. (Approved 11 to 0 by voice vote.)
3. The Commission recommended that legislation be enacted to add a new judge to the Johnson Superior Court beginning January 1, 2015. (Approved 11 to 0 by voice vote.)
4. The Commission recommended that legislation be enacted to allow the Allen Circuit Court judge to appoint a magistrate to replace an Allen Circuit Court hearing officer. (Approved 11 to 0 by voice vote.)
5. The Commission recommended that legislation be enacted to allow the Hendricks

Circuit Court judge and Hendricks Superior Court judges to jointly appoint two new magistrates. (Approved 11 to 0 by voice vote.)

6. The Commission recommended that legislation be enacted to add a new judge in Owen County as part of a unified circuit court with two judges beginning January 1, 2015. (Approved 11 to 0 by voice vote.)

7. The Commission recommended that legislation be enacted to allow the Marion Circuit Court judge to appoint a new magistrate. (Approved 10 to 1 by voice vote.)

## WITNESS LIST

### August 24, 2011, Meeting

Judge Thomas Felts, Allen Circuit Court  
Judge Robert Freese, Hendricks Superior Court #1  
Rep. Bob Heaton, Terre Haute, Indiana  
Sen. Dennis Kruse, Auburn, Indiana  
Judge Stephenie LeMay-Luken, Hendricks Superior Court #5  
Judge Frank Nardi, Owen Circuit Court  
Justice Frank Sullivan, Jr., Indiana Supreme Court

### September 15, 2011, Meeting

Andrew Berger, Director of Government Affairs and General Counsel for the  
Association of Indiana Counties  
Larry Hesson, President of the Hendricks County Council  
Judge Chris Monroe, Bartholomew Superior Court #1  
Commissioner Mark Renner, Marion Circuit Court  
Judge Terry Shewmaker, Elkhart Circuit Court  
Judge Mark Stoner, Marion Superior Court  
Donald Travis, President of the Probation Officers Professional Association of Indiana  
Judge Marianne Vorhees, Delaware Circuit Court #1