










2020 FORWARD

The Judicial Conference of Indiana's Strategic Plan for the Next Decade
CHARTING AN APPROACH FOR GREATER ACCOUNTABILITY AND ENHANCED ACCESS TO JUSTICE IN INDIANA

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EXECUTIVE SUMMARY

2020 Forward: Indiana Judicial Conference Strategic Plan for the Next Decade

The strategic plan for the next ten years, *2020 Forward*, re-dedicates those areas of achievement previously attained and sets new goals striving for greater accountability and access to justice. We invite readers to study the details of the plan contained in the body of this document, which are highlighted below.

Security

Safety and security in the courthouse must be dramatically improved. Litigants, witnesses, jurors, judicial officers, lawyers, and the public deserve to feel safe in the places where they work and seek justice. Every Indiana county must have a Court Security Plan that conforms to the Indiana Courthouse Security Minimum Security Standards.

Technology

The Odyssey Case Management System is the statewide system for maintaining cases. Court information is available online through the mycase.in.gov application. E-filing allows attorneys and unrepresented litigants to file documents without a trip to the courthouse. Courts are able to conduct hearings remotely, saving time and promoting safety. All courts should be consistently using the same technology programs and systems to allow for efficient access to needed information.

Clerk Functions

Clerks are elected officials partnering with the courts, and we will pursue improvements to clerk and court operations, including setting clear lines of responsibility. The courts are solely responsible for their own records and should perform all functions related to those records.

Court System Structure

Indiana has a complex judicial system and explaining the jurisdiction of each court is difficult, complicated, and confusing. We must simplify the current structure.

Judicial Selection

There are multiple ways a person becomes a judge in Indiana; adopting more uniform and less partisan methods will inspire greater confidence in the judicial system. Indiana should standardize its judicial selection processes for trial court judges across the state. Counties should be permitted to opt into nonpartisan methods for selecting trial court judges.

Centralized Funding

The current approach to fund the court system is inefficient and unfair. The State pays salaries and benefits for judges, magistrates, and prosecutors; however, their staff, public defenders, expert witness fees in pauper defense cases, probation officers, interpreters, psychological evaluations, and other related expenses are paid from local funds with local budgeting determined by county councils. We believe centralized funding will eliminate inequities and increase efficiency.

Access to Justice

To achieve the robust protection of Constitutional rights, Indiana must undertake a serious look at race and equity, resources, legal aid, imposition of fines, and jury selection. Our Constitutional promises of accessible, prompt, and fair justice, and a jury of our peers must extend to all regardless of their financial resources and situation. True access to justice requires the participation of all.



PREAMBLE

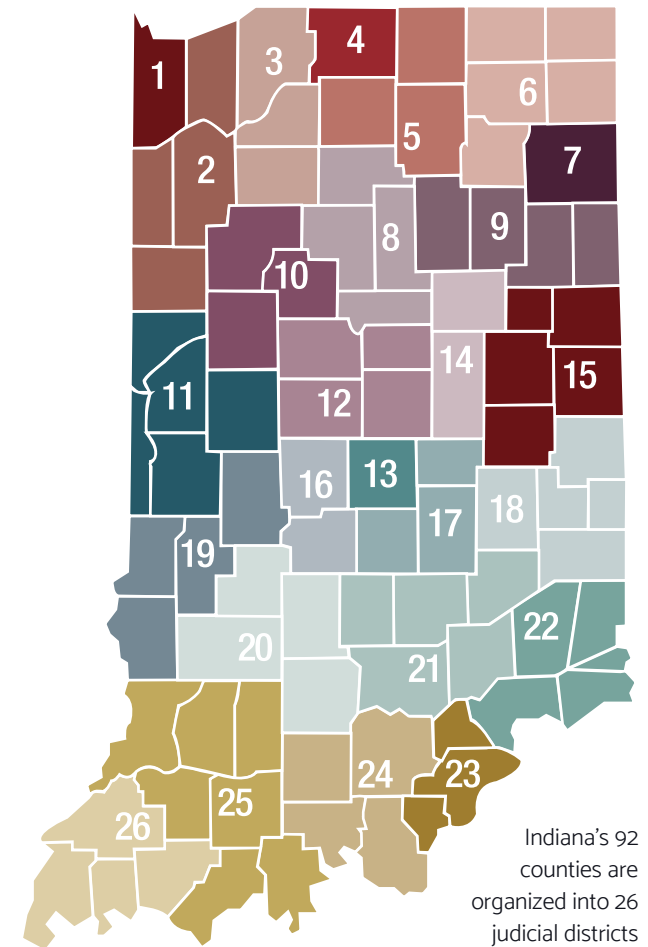
THE Judicial Conference of Indiana's Strategic Planning Committee has been charged with assessing the future needs of the judiciary from the trial court level since its inception in 2008. Its first white paper, *A New Way Forward*, conveyed a blueprint for excellence with a clear mission:

"To improve our system of justice under the rule of law while protecting individual rights and liberties in a fair, impartial, equally accessible, prompt, professional, and efficient manner."

The Committee is still committed to the topics included in the first white paper, which continues to influence conversations and guide improvements in the judiciary. Since the Committee's last published update in 2010, *The Next Step to a New Way Forward*, progress has been made and new projects undertaken to further the concepts outlined in the Judicial Branch's strategic plan, including the following:

- All eligible judicial officers have now graduated from the Indiana Judicial College within ten years of commencing judicial service;
- The continuing education requirement for judges was increased 50%;
- 26 smaller administrative districts with increased collaboration exist for better service to the public;
- Courts and clerks have clearer direction on court records under Trial Rule 77;
- 2015 legislation requires that all city and town court judges must be attorneys going forward;
- 2016 legislation provides all trial courts with the same jurisdiction;
- Merit selection was implemented in 2017 for the Marion Superior Court judges;
- The Court Personnel Committee has continued to provide court staff training opportunities; and
- The Judicial Administration Committee has undertaken a study on court staff workload and needs.

The achievements made over the past decade by judges and other stakeholders illustrate the value of having a blueprint for excellence.





2020 FORWARD

THE Committee respectfully submits this second white paper, *2020 Forward*, to re-emphasize previously identified areas of need and outline new focus areas aimed at achieving our overall mission. The plan concentrates on charting a forward-looking approach to matters of security, technology, clerk functions, court structure, judicial selection, centralized funding, and access to justice.



The process for developing this second paper began in June 2017, long before the global pandemic upended daily life. The Committee reviewed progress made on the original white paper and discussed several new concepts during meetings held on:

- | | |
|----------------------|------------------------|
| June 23, 2017 | January 11, 2019 |
| August 25, 2017 | February 7 and 8, 2019 |
| October 27, 2017 | March 8, 2019 |
| January 5, 2018 | June 28, 2019 |
| February 16, 2018 | August 16, 2019 |
| March 23, 2018 | October 18, 2019 |
| May 11, 2018 | November 22, 2019 |
| June 28 and 29, 2018 | January 15, 2020 |
| August 10, 2018 | February 28, 2020 |
| September 21, 2018 | May 15, 2020 and |
| November 2, 2018 | August 21, 2020 |
| December 7, 2018 | |

This process included a survey in September 2017 of the Judicial Conference of Indiana Board of Directors gauging interest in both existing and new planning topics, input from the entire judiciary via the Weekly Message on December 6, 2017, and presentations at the 2019 District Meetings. The Committee provided the Board of Directors with updates in September 2017, March 2018, September 2019, and September 2020. With the public health crisis underway, the committee reviewed the document remotely to ensure the approach was sound in light of the crisis and include newfound approaches to judicial operations.

In operating under the standing committee structure, our committee membership has evolved over time due to the expiration of committee members' terms and the appointment of successor committee members.

to outline important needs of the judiciary.



The following judges served as members of the committee at some point during this most recent process:

Hon. John G. Baker
Indiana Court of Appeals
FORMER MEMBER

Mag. Cristal C. Brisco
St. Joseph Circuit Court

Hon. Michael A. Christofeno
Elkhart Circuit Court

Hon. J. Terrence Cody
Floyd Circuit Court
FORMER MEMBER

Hon. Steven H. David, *Liaison*
Indiana Supreme Court

Hon. Darrin M. Dolehanty
Wayne Superior Court #3

Hon. John T. Evans
Harrison Circuit Court

Hon. William Fee
Steuben Superior Court

Hon. Thomas J. Felts
Allen Circuit Court
FORMER MEMBER

Hon. Kurtis Fouts
Carroll Superior Court
FORMER MEMBER

Hon. Fran Gull
Allen Superior Court

Hon. Steven L. Hostetler
St. Joseph Superior Court

Hon. Peggy Quint Lohorn
Montgomery Superior Court #2
FORMER MEMBER

Hon. Andrea K. McCord
Lawrence Circuit Court
FORMER MEMBER

Hon. James B. Osborn
Marion Superior Court

Hon. John R. Pera
Lake Superior Court, Civil #6
FORMER MEMBER

Hon. Timothy Spahr
Miami Circuit Court

Hon. Mark Spitzer
Grant Circuit Court

Hon. Richard R. Stalbrink
LaPorte Superior Court #2

Hon. Mark D. Stoner
Marion Superior Court
FORMER MEMBER

Hon. Marianne L. Vorhees
Delaware Circuit Court
FORMER MEMBER

In reviewing additional topics and preparing this document, committee members have talked to fellow judges, representatives of relevant Supreme Court agencies, and other members of the Board of Directors. One or more justices of the Indiana Supreme Court regularly attended the meetings. Jane Seigel, former Executive Director of the Indiana Office of Court Services and former Interim Chief Administrative Officer; Hon. Mary Willis, former Chief Administrative Officer; and Justin Forkner, former Executive Director of the Indiana Office of Court Services, and current Chief Administrative Officer, also participated. In addition, Michelle Goodman, Staff Attorney with the Indiana Office of Court Services, and Kathryn Dolan, Chief Public Information Officer, Indiana Supreme Court, provided valuable input in this planning process.

Of course, the future which this paper seeks to address has been dramatically impacted by the COVID-19 pandemic. For example, the proposals concerning technology have now taken on even greater urgency. Some of the specific steps that seemed optimistically, perhaps even wildly, aspirational just a few months ago are already being implemented throughout our state and may soon be considered routine. Similarly, the security proposals will from now on implicitly require that courthouse and judicial security take into account the health and wellness of those involved in our judicial system. Indeed, the pandemic has not made the proposals in this paper obsolete in any respect. If anything, the

pandemic has brought into even greater focus the need for our judiciary to constantly look and plan ahead. This White Paper is intended to be a significant step in that direction.

We reaffirm the Constitutional principles that Indiana courts stand for all. On June 5th, Chief Justice Loretta Rush issued a statement on the work facing our courts around race, equity, and inclusion.¹ In sup-

We reaffirm the Constitutional principles that Indiana courts stand for all.

port of the Chief Justice's statement, our justice system must create meaningful and lasting improvements, especially relating to race and equity.

The Committee intends this document to create discussion and to encourage feedback on ways to improve our judicial system with special focus on these issues in moving forward with specific proposals. The plan should be used as a guideline for the future of the judiciary and those it serves—the goals are worth pursuing because they chart an approach for greater accountability and enhanced access to justice in Indiana.





I. SECURITY

Safety and security for the public and the judiciary must be dramatically improved.

Where Are We Now?

The public deserves to feel safe in the places where they seek justice. Actual threats and attacks against litigants, witnesses, jurors, judicial officers, and lawyers in Indiana have been too frequent to be listed exhaustively. Consider the following examples:

On April 14, 1987, a criminal defendant **exploded a bomb** in the Howard County Courthouse, killing the bomber, and nearly killing the Howard County Sheriff. Fourteen others were injured in the blast, two of them seriously. Damage to the courthouse was extensive.

In October 1996, after a divorce hearing, a man **shot and killed** his ex-wife and himself on the steps of the Grant County Courthouse.

On August 2, 1998, a pickup truck loaded with **gasoline and explosives** was driven into the Tippecanoe County Courthouse. Fortunately, the resulting fire was extinguished before the explosives ignited.

In June 2007, an **attorney was attacked** on the fourth floor of the Tippecanoe County Courthouse by a litigant who was ordered to pay \$4,000 in attorney fees resulting from a traffic accident case.

On October 19, 2018, two LaPorte County Sheriff's deputies providing security at the courthouse entrance were assaulted when an unarmed man entered the courthouse and **attacked without warning**. Despite their injuries, the deputies were able to subdue the assailant with a taser, and he was charged with two counts of battery on law enforcement officers, Level 5 felonies.

Almost every judicial officer in the state could attest to at least one incident of violence or viable threat of violence directed toward that judicial officer or a close colleague.

The number of courthouses in Indiana without any meaningful security is concerning and emphasizes the need for a detailed review of current policies. Approximately one-third of the courthouses do not have minimal security. While a significant number of courthouses do not conduct searches when a person enters the courthouse, those that do find numerous prohibited items.² Administrative Rule 19 requires each county to have a Court Security Plan, and the plan should conform to the Indiana Courthouse Security Minimum Security Standards.

Why Should We Change?

Unfortunately, the examples above demonstrate that there are very real threats to the large number of people involved in and with our judicial system in Indiana. Along with the obvious need for security of judicial officers and court employees, it is unreasonable for the safety of Indiana residents to be jeopardized when they visit our county courthouses. Further, safety and security concerns detract from the important judicial and administrative work conducted in those facilities and could affect the administration of justice. Complacency is not an option, and we should settle for nothing less than continuous improvement of courthouse security.

Where Do We Want to Be?

Given the large number of people who visit our courthouses for various reasons, and how the current lack of security jeopardizes their safety, it is imperative that more stringent measures be implemented and enforced. We recommend the following:

1. The Office of Judicial Administration should have a full-time security specialist on staff devoted exclusively to security issues whose duties should include the facilitation of an overall review of the safety of trial courts in Indiana, including incident reporting statistics.
2. A database should be created and maintained within the judicial branch containing information concerning all criminal charges and convictions involving threats and acts of violence at Indiana courthouses.



3. The Judicial Conference Education Committee should provide education about security and safety at new judicial officer orientation and present more frequently at judicial and court staff conferences on implementing and improving personal and court security.
4. Indiana Code 36-2-13-5(a)(6) obligates each county sheriff to attend and preserve order in courtrooms. Sheriffs deserve to be fully resourced to fulfill this statutory responsibility. Legislation should be proposed and supported that would specifically give the Indiana State Police and Indiana Department of Homeland Security authority and responsibility to assist county sheriffs in providing for judicial and courthouse security.
5. Funding for courthouses to meet security standards should be sought from State and local fiscal bodies.
6. The health and wellness of everyone in our courthouses should remain a critical part of all court security considerations.

Every Indiana courthouse should be a peaceful, safe oasis from threats of violence so the administration of justice can be dispensed without impediment.



II. TECHNOLOGY

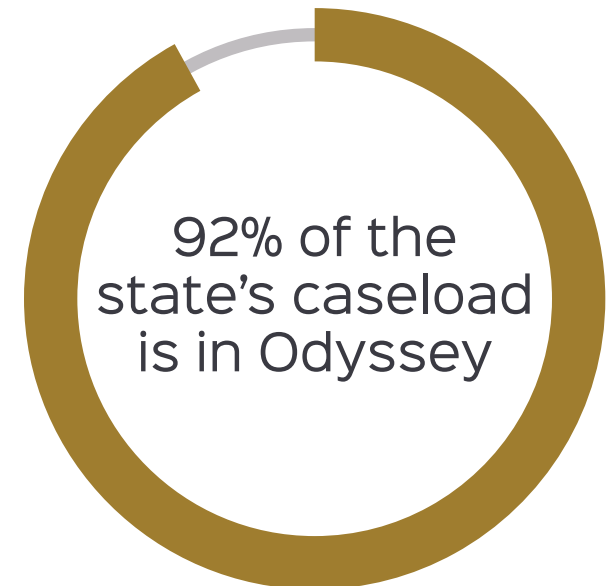
Courts across the state are embracing technology to better serve court users; expansions and enhancements are on the way.

Where Are We Now?

Currently, the Odyssey Case Management System (the statewide system for maintaining cases) is handling 92% of Indiana’s court caseload. Looking ahead, the capacity exists for all trial courts to be using Odyssey in the near future.

Odyssey benefits Indiana’s courts, other government agencies, and Indiana’s populace. Important case data is promptly and accurately delivered to the Indiana State Police Criminal History Records Information System (CHRIS) and the Bureau of Motor Vehicles (BMV). Odyssey’s connection to the Protection Order Registry means that crucial

protection orders can be issued around the clock. Appropriate court information, such as hearing date and time, is available to the public, online, 24 hours a day through the mycase.in.gov application. Judicial officers are alerted to active arrest warrants for individuals appearing in court, even if the warrant is from another county. Special judges and selected senior judges serving in Odyssey counties are able to remotely access case information critical to their service, allowing them to review pleadings and filings, send orders to the court reporter, and monitor the status of cases on which they serve, without having to call the court or drive to the county being served.




A recent Odyssey update provides automated text message reminders to litigants in criminal cases about upcoming court dates. This simple, yet promising development, was implemented to reduce the number of “no shows,” allowing courts to dispose



of cases in a more timely, efficient manner. Failures to appear in criminal cases waste already limited resources for courts, litigants, and law enforcement.

Another major technology upgrade includes the courts' recent implementation of e-filing. E-filing allows attorneys and unrepresented litigants to file documents faster, from remote locations, saving time and money. Courts can rule on motions in minutes rather than days or weeks, and without the need to print pleadings and orders.

Technology is rapidly expanding to allow courts to conduct hearings remotely. Private industry has used video conferencing for decades, and many cell phone users have video calling capability. During the pandemic, Indiana's courts began utilizing video conferencing much more than ever before. Unfortunately, in its current form, [Administrative Rule 14](#) , "Use of Telephone and Audiovisual Telecommunication," represents a significant barrier to the ability of the courts to use video conferencing as fully and effectively as they should in the post-pandemic world that will follow. This is because Administrative Rule 14 is unnecessarily complicated to navigate and restrictive in application.

For example, except in certain, specified proceedings, AR 14 requires the trial court to conduct a "balancing test" before permitting the use of telephones and audiovisual equipment during hearings, and to issue written findings and conclusions about that balancing test. As a result, many litigants and courts have traditionally foregone the opportunities and advantages of video conferencing or disregarded the requirements of the rule. Fortunately, a proposal to amend this rule is under development to respond to these concerns.

The ability to pay for the computers, scanners, Internet access (bandwidth), and other equipment necessary to run Odyssey, and to provide for e-filing, as well as the constantly changing technology needed for effective audio-visual telecommunication capability, varies widely around the state. While the Indiana Office of Court Technology³ furnishes the county with hardware when Odyssey is originally deployed, the county then bears the cost of scheduled replacements and upgrades of the necessary computers, scanners, and other equipment.

Having all counties on Odyssey will assist all judicial officers in all cases.

Finally, with the growing reliance on technology comes the responsibility to ensure that data and records of the courts remain secure. Any plans for the future require a consideration of how to implement cybersecurity into any plan for technological advancement.

Why Should We Change?

Odyssey establishes uniform, accurate records throughout the state. For criminal cases, Odyssey imports existing data to complete the required fields of the sentencing abstract. The abstract information is automatically transmitted to the Department of Correction (DOC) and is further

used by policymakers for purposes of criminal code reform, across all three branches of government. By comparison, non-Odyssey counties must manually enter all data into the abstract which creates duplicative efforts. Because Odyssey interfaces with the Indiana State Police's CHRIS database, the sentencing abstract information is imported electronically, no longer requiring manual input, and greatly improving the integrity and accuracy of the data. Incomplete and inaccurate criminal histories are contrary to public safety and the effective administration of criminal justice. Odyssey's connections with the DOC and CHRIS database will ensure that the courts, as well as all policymakers, have as complete, accurate, and reliable criminal history information as possible.

When judicial officers are presented with conflicts of interest, special judges and senior judges are critical for the fair administration of justice. Currently, a special judge or senior judge serving a non-Odyssey county has to keep a paper file of pleadings and orders and relies on fax machines and regular mail to send pleadings and orders back and forth. These cumbersome, time-consuming, and inefficient communication methods increase the risk of an inaccurate record. Once all counties are using Odyssey, those concerns will be abated.

Having all counties on Odyssey will assist all judicial officers in all cases. To illustrate:

1. Criminal defendants may have conviction history in other counties across the state. The judicial officer should be able to access those records, as well as information about pending charges and outstanding arrest warrants, when making essential decisions from pre-trial release through sentencing.



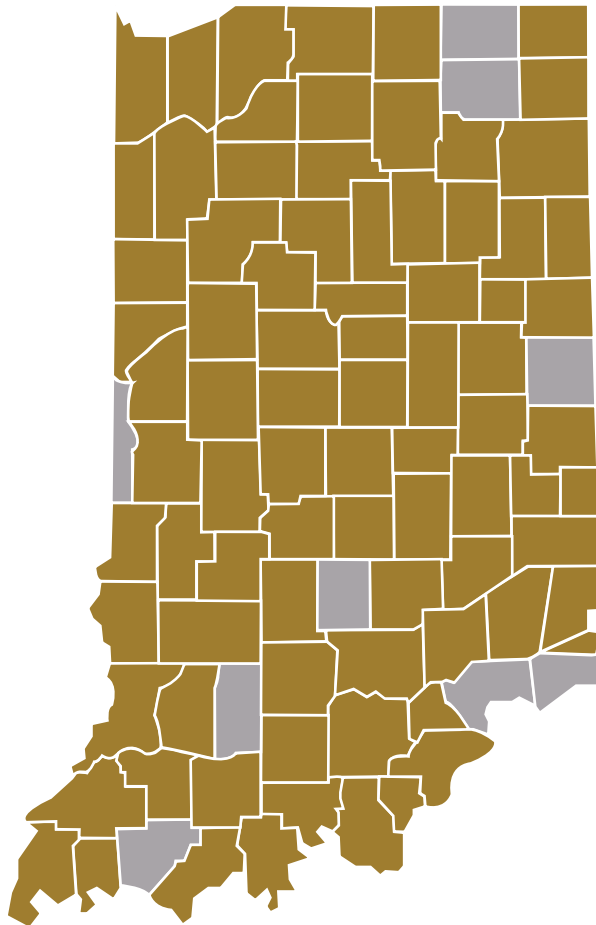
2. Similarly, cases involving children may cross county lines. The child may be the subject of a contested adoption proceeding in one county, while the parents' dissolution case and associated child support order, is in another. The judge presiding over the contested adoption proceeding should have access to know where the child support order is located, what orders have been issued regarding parenting time and custody, and other information that will be critical to a proper resolution of the adoption case.
3. The same concerns arise for guardianships involving children who are also the subjects of related paternity or dissolution cases. In the absence of Odyssey, the judicial officer may be oblivious to the other-county matters. With Odyssey, the court has immediate access to exactly that information.

Where Do We Want to Be?

The effective implementation and use of technology are essential to the trial courts' ability to continue providing efficient and timely service to those who use the court system. All courts should be consistently using the same technology programs and systems to allow for efficient access to needed information. The ability to leverage the advantages of technology should be uniform and consistent throughout the state. The following five examples are specific areas of improvement.

1. All counties must use Odyssey, the state case management system.

All counties, including city and town courts, should use the current state case management system, Odyssey. Judicial officers already using Odyssey should help non-Odyssey colleagues identify and overcome any existing or perceived barriers to Odyssey deployment. They should describe the benefits to all judicial officers when pleadings and filings are accessible across county lines throughout the entire state. They should emphasize the



fact that deploying Odyssey lessens the burden on court staff to send accurate information to the Criminal History Repository and how this makes the information in the repository more complete. They should be prepared to confirm the benefits of a uniform and statewide system. They should explain the public benefits achieved from the availability of Odyssey case information on “[mycase](#).”

2. Expand text messaging reminders.

The benefits achieved by implementing text messaging reminders should be available in all case types and courts. This program needs to be expanded to continue to aid in the timely processing of cases by avoiding unnecessary delays. Communication between litigants and attorneys will also be enhanced as cases continue toward adjudication.

Reminder: Hearing on 10/19/2020 at 9:00AM in Tippecanoe Superior Court 4. Please plan to attend to avoid a warrant. Visit mycase.in.gov 79D04-2008-CM-000001

Text STOP to unsubscribe from court hearing reminders. Other replies are not monitored - please contact the court. Msg & Data rates may apply.

Driven by the opportunities of the Pre-Trial Release Project, Odyssey's ability to notify litigants about their court hearings via text message should be expanded from criminal cases to all cases. It is com-



mon practice for people to receive text message reminders from their doctors, dentists, and other professionals. Expanding text reminders should reduce the number of litigants who fail to appear for court hearings and, as a result, should reduce the number of failure-to-appear warrants and body attachments. Fewer people will be jailed for having failed to appear, helping with the management of local jail populations. Court cases will resultingly proceed more efficiently.

3. Review Administrative Rule 14 on the use of technology in court proceedings.

Our response to the pandemic has demonstrated that we can conduct more court business using technology in a fair and efficient manner. AR 14 was temporarily simplified, with the goal of providing flexibility for trial courts to use technology, such as video conferencing, when appropriate. Judicial officers should have the continued ability to use audio-visual technology to conduct hearings in a way that is constitutionally permissible, does not violate litigants' rights, enhances public safety, and becomes more efficient for everyone. To achieve this goal, a permanent, more permissive version of AR 14 must be enacted to give trial courts greater

latitude in utilizing video conferencing while still preserving the constitutional rights of litigants. Expanded use of video conferencing will:

- Facilitate continuity of court operations;
- Enhance public health and social distancing;
- Reduce time off work for litigants and witnesses;
- Avoid security issues associated with transporting inmates from jails or the Department of Correction;
- Mitigate transportation costs; and
- Allow judicial officers to attend committee meetings remotely.

4. Implement a cost-sharing protocol for court technology needs.

Development and implementation of a funding plan between the Supreme Court and each Odyssey county is needed to address the ongoing challenges of replacing hardware, implementing updates in existing software, deploying new software, increasing storage capacity, and paying for related technology costs. This plan would allow courts to remain technologically current and reduce the local fiscal impact that often limits enhanced technology implementation.

While technology can greatly improve court operations, everyone must recognize its variability and evolutionary nature. New software and programs commonly and naturally emerge, requiring updates in computers and storage capacity. The associated expense often exceeds the modest means of counties with limited revenues. In order to assist counties in replacing computers, scanners, and other equipment necessary to operate Odyssey, e-filing, and other court technologies, the Supreme Court should pursue a State-funded program where counties would receive assistance in updating equipment.

5. Cybersecurity plans must continue to adapt with changing court technology needs.

The integrity of electronically stored court records must be thoroughly and continuously protected. Court representatives should regularly coordinate with their IT professionals to ensure cybersecurity needs are addressed.

Judicial officers should have the continued ability to use audio-visual technology to conduct hearings in a way that is constitutionally permissible, does not violate litigants' rights, enhances public safety, and becomes more efficient for everyone.





III. CLERK FUNCTIONS

Clerks deserve tremendous credit for the advancements courts have made as it relates to technology. Our partnership with these elected officials should include pursuing improvements to clerk and court operations.

Where We Are Now?

The Indiana Constitution provides for elected clerks of the circuit courts. Clerks customarily handle fees, costs, fines, and revenue; maintain judgment dockets; issue marriage licenses; supervise elections; maintain court records and digital information; and make entries in certain circumstances. Often a litigant's first contact is with the clerk's office and not the courts.

Litigants often ask the clerks questions, which may amount to legal questions requiring informed legal advice. Litigants, particularly those that are self-representing, believe they are talking with "the court" when in fact they are talking with a clerk who is not under the court's direction. Even with the implementation of Odyssey and e-filing, the duties and responsibilities of the clerks and court staff continue to vary by county and by court.

Why Should We Change?

Litigants deserve courts and clerks with clear lines of responsibility. The Committee's proposed changes empower the clerks to focus on those functions unique to their office. The courts are solely responsible for their own records and should perform all functions related to those records.

Accountability should be placed upon the court and not the clerk.

This change would improve efficiency and result in one set of policies relating to the court system rather than duplicating effort with the clerk's office and court staff. It would also eliminate ethical challenges relating to alleged legal advice provided to litigants by the clerk's office. The court should control its own records and information since the court ultimately assumes responsibility for the proper recordkeeping and information maintenance. Accountability should be placed upon the court and not the clerk.

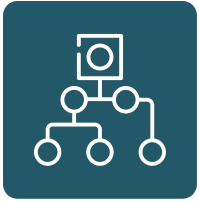
Where Do We Want to Be?

The courts would be responsible for recordkeeping, information and file maintenance, as well as contact with the public relating to case filings, entries, and preparing transcripts for appeals. This will eliminate confusion over who is and is not "the court" and streamline the litigation process.

This option would transfer only limited, specific functions to the court and would leave all remaining functions with the clerks. Clerks would continue to issue marriage licenses, supervise elections, and collect all fines, costs, and other assessments. The clerks would continue to handle all functions related to bookkeeping and collecting funds. Allowing clerks to continue to collect funds would provide an additional check and balance against the court records and would insulate the court from handling money.

The Strategic Planning Committee continues to review opportunities to advance this effort now that Odyssey and e-filing are so widely used. We are grateful for the work of the clerks and court staff to get us to this milestone and look forward to developing opportunities to further these efforts together.





IV. COURT SYSTEM STRUCTURE

Indiana has a complex judicial system which appears bewildering; simplifying the structure will improve the process and inspire confidence.

Where Are We Now?

The present court structure in Indiana has several levels. At the top is the Supreme Court with five justices. The Court of Appeals, with fifteen judges divided into five districts, hears intermediate appeals. Indiana also has a Tax Court with a single judge. At the trial level, Indiana has circuit courts, superior courts, probate courts, and small claim courts. The courts have various judicial officers with titles including judge, magistrate, commissioner, and referee. Indiana also has city and town courts.

The system still permits city and town courts with non-attorney judges to sentence someone convicted of a misdemeanor to jail. Explaining the jurisdiction of each court is difficult, complicated, and confusing. Often there is no actual difference. This complex judicial system appears quite bewildering. We must simplify the current structure.



Trial courts often use judges *pro tempore*, who are licensed attorneys appointed by the regular judges to perform judicial functions when regular judicial officers are not available. To the casual observer or litigant, this can create the impression that an attorney acting as a judge *pro tempore* has some special relationship with the regularly presiding judge. The outward appearance is problematic since the judges *pro tempore* may act as a judge one day and as a lawyer in the same court the next day. This is in contrast with senior judges, who are not permitted to practice law in courts over which they preside.

Caseloads vary from county to county within a judicial district. Certain cases require a great deal of specialized knowledge; other cases are very time consuming. These differences may impact the time litigants must wait to have their cases fully resolved. In addition, the programs and services available to defendants, especially certified problem-solving court programs, often vary from court to court. Defendants often have limited transportation or other resources that increase barriers to accessing these court resources even if they are just one county away. Some districts have already undertaken steps to share judicial workload and expand access to certified problem-solving courts, serving as models for other districts.

Why Should We Change?

The current Indiana court structure remains fragmented and without uniformity. That structure continues to create confusion to those participating in the court system. We remain concerned that non-attorney judges can sentence someone to time in jail, which creates the possibility of an unjust or unlawful outcome. Certified problem-solving courts are effective programs that aid in rehabilitation and should be widely available to aid in reducing recidivism.

The courts should continue to encourage county, district, and regional cooperation. Court rules have implemented judicial districts; yet, many meet infrequently and are not utilized to improve the administration of justice. Eliminating inefficient, duplicative, and multiple layers of court structure will result in economy and efficiency as well as increased public confidence.



Where Do We Want to Be?

The current trial court structure should continue the path of unification to create a more effective and efficient system guided by these four principles:

1. Two types of judicial officers: Judges and Magistrate Judges.

By eliminating all other terminology, the public will more easily understand our judicial system. Judges clearly would be answerable for decisions on appeal. Magistrate judges answer to judges.

2. Unified Court System for Adjudicative Purposes.

All trial courts would have the same jurisdiction and same designation. All city and town courts would be absorbed into the trial courts, with the acknowledgement that resources will need to be allocated in certain counties based upon caseload data. All magistrate judges would report to trial court judges. The use of judges *pro tempore* would be minimized. Senior judges and district administrative plans would be better utilized. The Supreme Court, Court of Appeals, and Tax Court would continue to operate as they do today. All eligible defendants should have the legal and therapeutic benefits provided by certified problem-solving courts regardless of where their case is filed. Education of stakeholders and the bar on the benefits and value of certified problem-solving courts should be a priority.

3. Unified Court System for Administrative Purposes.

The administrative districts shall continue to function with greater emphasis on sharing resources, assisting fellow judicial officers, and expecting cooperation in the field of certified problem-solv-

ing courts. The workload of the courts within a district should be adequately shared in a way that litigants can receive court time and decisions in a reasonable amount of time. Local rules should align within their district and document their cooperative efforts.

4. The Judicial Conference Board of Directors would serve as a resource for the Office of Judicial Administration and the Supreme Court on matters relating to trial court operations.

The Board, through its committees and meetings, would provide a collaborative forum to communicate and address the needs facing trial courts. Such topics would include:

- educational development for judges and court employees
- advancing programs within the judiciary
- technology and
- funding

The continued implementation of a unified court structure will enhance public confidence in the judiciary by better defining the role of each judicial officer. Simplicity will lead to greater comprehension of our court structure. A uniform, defined structure and plan for Indiana courts will provide direction for future efficiencies and savings. These proposed changes will create a streamlined, modern, and cohesive court structure for Indiana citizens.



V. JUDICIAL SELECTION

There are multiple ways a person becomes a judge in Indiana; adopting more uniform and less partisan methods will inspire greater confidence in the judicial system.

Where Are We Now?

The individuals serving as judges come to the bench by a variety of ways such as election, appointment, or retention. Indiana counties currently select trial court judges through one of six methods. Lake, Marion, and St. Joseph counties conduct merit judicial selection; each county has its own statute that governs its selection process. Allen County and Vanderburgh County select judges through nonpartisan elections. All other counties conduct partisan elections to select judges. This creates a confusing landscape for the public.



Why Should We Change?

Indiana should standardize its judicial selection processes for trial court judges across the state. We advocate for the counties to be permitted to opt into nonpartisan methods for selecting trial court judges. The judiciary should reflect the demographics of the population it serves. These nonpartisan selection processes better meet the judiciary's constitutional charge that courts remain independent, fair, and impartial.

Where Do We Want to Be?

We recommend merit selection systems be retained for judges in counties that already utilize the practice. Where appropriate, other counties should consider moving to a merit selection system as well.

We recommend counties without a merit selection system adopt nonpartisan judicial elections. In these elections, when there are more than two candidates, each candidate would be on all primary election ballots, regardless of the primary voter's political affiliation. Each voter would vote for one candidate. The top two candidates would then be on the general election ballot. In contrast, when there are only one or two candidates, no primary election would be held and the candidate(s) would instead be on the general election ballot, with each voter voting for one candidate.



VI. CENTRALIZED FUNDING

The current approach to fund the court system is inefficient and unfair.

Where We Are Now?

Under the present system, each trial court has a budget which is determined by local county councils or local governing agencies. The State pays salaries and benefits for judges, magistrates, and prosecutors; however, their staff, public defenders, expert witness fees in pauper defense cases, probation officers, interpreters, psychological evaluations, and other related expenses are paid from local funds with local budgeting determined by county councils. The sources of funds for the trial courts are as follows:

1. fines, costs, and fees paid by offenders;
2. local property tax; and
3. certain state funding.

State funding and support currently includes court alcohol and drug scholarships and grants, drug court scholarships and grants, translation services, pro-

fessional membership services, computer training, Odyssey and INcite applications, research through LexisNexis, jury pool lists, jury management system, jury orientation video, and many other supplemental educational and training functions provided by the Office of Judicial Administration. Unfortunately, with local funding, certain trial courts receive less funding than others, depending on the amount of resources available to individual county councils. Although the power to mandate exists, judges are reluctant to use that power because its use may create bad feelings with their county council and other agencies.

The current system provides numerous opportunities for inequities since resources are not uniformly distributed.

Why Should We Change?

Principles of fundamental fairness dictate that all litigants have access to similar programs and services. Current funding sources are inadequate to achieve these ends.

Where Do We Want to Be?

Resources will be distributed in a more equitable manner with centralized funding. The public will benefit, particularly in counties without a large tax base. The Strategic Planning Committee supports the aspirational goal that the State should pay all costs to operate the trial courts of Indiana.

The immediate goal would be for the State to allocate funds to the Office of Judicial Administration for distribution to individual courts, based upon financial need, for probation services, basic technology, and security. We believe centralized funding will eliminate inequities and increase efficiency.





VII. ACCESS TO JUSTICE

To achieve the robust protection of Constitutional rights, Indiana must undertake a serious look at race and equity, resources, legal aid, imposition of fines, and jury selection.

Access to justice for all is secured by the Indiana Constitution in Article 1, Section 12 of the Indiana Bill of Rights:

“All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase, completely, and without denial; speedily, and without delay.”

Sworn to uphold the Indiana Constitution, members of the judicial branch are the bulwark against infringement of these basic rights. A full and robust protection of those rights requires us to undertake a serious look at our resources; the legal aid we provide; how we impose fines, fees, and costs; and jury selection.

Where Are We Now?

The doors of our courtrooms are unlocked for all, but many find the doors hard to open.

1. Full access to our system remains elusive to persons of color in our State.

In her Statement on Race and Equity, Chief Justice Rush observed:

“Despite all we have worked to pursue, justice remains elusive to many persons of color in matters across the legal spectrum. There is a disconnect between what we aspire for in our justice system and what we have achieved.”⁴

2. Resources exist in Indiana to assist the indigent in our courts.

Each county has some provision for public defenders in felony criminal cases. A patchwork of civil legal aid organizations covers the state. Some entities represent indigent litigants on certain appellate issues. An expectation of *pro bono* service is a component of ethical rules for Indiana lawyers.

3. Our judicial system requires a complicated web of fines, fees, and costs.

The Office of Court Services each year publishes a lengthy manual to assist judicial officers in imposing a myriad of special costs and fees for different types of cases.⁵ The system (as well as state, county, and local government) depends upon collection of these fees to support various governmental functions. Fees go to such disparate coffers as the county, state, and local general funds, the Safe Schools Fund, the Fish and Wildlife Fund, the State Homeowner Protection Unit Account, the Marijuana Eradication Fund, and the Motor Vehicle Highway Account. Indigent parties bear a disproportionate share of costs to support the judicial system and other divisions of government. If they are unable to pay, they may be cited into court. If they fail to appear for a fines and costs hearing, they may face incarceration. Some choose incarceration in Indiana’s overcrowded county jails in lieu of fines and costs.⁶ While fines and costs can be waived,⁷ the indigent are not always familiar with the procedure.

4. Improvements are needed to jury selection.

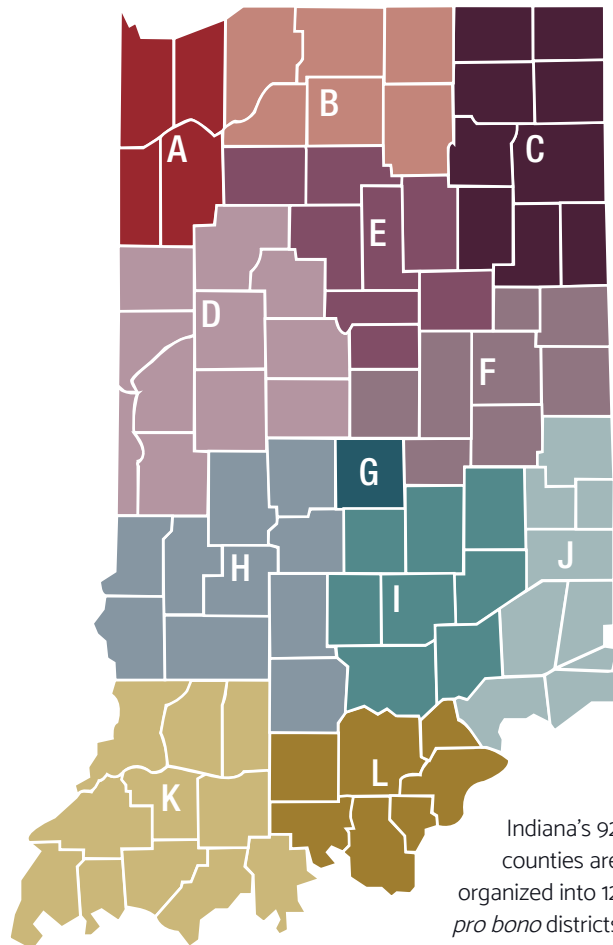
With the Supreme Court’s 2006 Jury Pool Project,⁸ and the later implementation of Indiana’s Jury Management System,⁹ our jury selection system took great steps forward in making jury pools more representative of county populations and implementing random selection of potential jurors. Barriers still exist that affect the overall appearance rates for potential jurors, which vary by county. A recent Marion County study showed that the areas with the highest failure to appear rates are the same areas experiencing poverty-related barriers (lack of transportation, overall lower education levels, unemployment) when compared to the rest of Marion County.¹⁰



Why Should We Change?

Constitutional guarantees of accessible, prompt, and fair justice, and a jury of their peers, must extend to all, regardless of race, ethnicity, resources, location, or circumstances. True access to justice requires the participation of all. We have implemented programs and policies embodying the best of intentions. Nonetheless, because there are barriers to access, and gaps in resources, many still fall through the cracks. Even more are unaware of how to best access the system and the resources which are available to them.

It remains true that the quality and availability of representation may depend on where the litigant resides. In criminal cases, some counties have a public defender's office with full-time attorneys staffed per state standards; others do not. While the state will reimburse up to 40% of the costs of indigent defense in felony cases, only 62 of Indiana's 92 counties seek such reimbursement.¹¹ As such, the funding of indigent defense is largely or entirely a county obligation. The Indiana Task Force on Public Defense Report found "[m]any Hoosiers who would qualify for the assistance of a defense attorney are either unable to access counsel or encouraged to represent themselves, even when facing jail time and/or serious collateral consequences."¹² Thus, availability and quality of representation vary widely according to county and court. In addition, Indiana has a Public Defender Council, a Public Defender Commission, the Public Defender of Indiana, and 92 separate county public defender boards, offices, or contractual arrangements. Such a system is confusing, inefficient, and compounds the inequities.



Resources for the indigent in civil cases are similarly spotty. The Indiana Code includes procedures for indigent civil litigants to request representation.¹³ These statutes leave the cost burden to the counties. Indiana is divided into 12 pro bono districts¹⁴ which are staffed by various organizations with differing resources. In addition, law school legal clinics, faith-based organizations, and individual attorneys¹⁵ donate time and funds to assist indigent people in

navigating civil cases. Yet, Indiana judges still report that indigent litigants struggle to find appropriate legal assistance in matters both simple and complex.

Insufficient income, race, cultural affiliations, lack of education, or other circumstances should not be barriers preventing full access to Indiana courts. Similarly, the right to a trial before a "jury of your peers" presupposes that a Hoosier jury panel will be constituted of a representative sample of the community from whence it is drawn.

Where Do We Want to Be?

The year 2018 was a watershed moment for Indiana's evaluation of the quality of the state's access to justice. Our Supreme Court led or partnered in several initiatives to study, evaluate, and improve Indiana's constitutional promise of accessible, efficient, and fair courts. Of note was the work of the Coalition for Court Access ("CCA")¹⁶ and the report and recommendations of the Indiana Task Force on Public Defense. Those efforts can provide a springboard for a comprehensive rethinking of our state infrastructure around access to justice. The Chief Justice has followed up the work on the CCA with her Statement on Race and Equity providing a roadmap towards fair and impartial access to our system for all.

1. Actions must be taken to embed equity review in all our efforts to improve access to our justice system.

The Statement on Race and Equity¹⁷ provides several places to start these key conversations, but we cannot stop there. Each proposal and plan to make improvements in our system must include diverse perspectives from all who encounter our system of justice.



2. To have significant impact, civil legal aid needs to be appropriately funded and simple to locate.

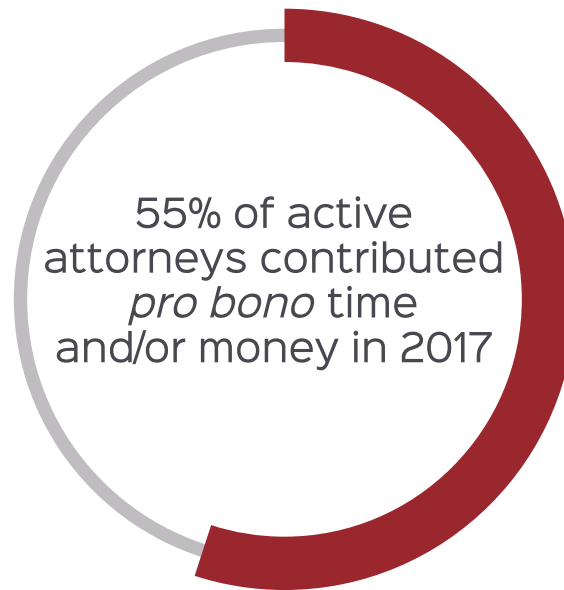
We believe that the following steps should be taken to achieve this end:

a. Civil Legal Aid Should be a Financial Priority for our State.

The Chief Justice's 2019 State of the Judiciary Address called for an increase in state appropriation for basic legal service in the amount of \$500,000, for a total of \$2 million. Any serious effort to improve access to justice in Indiana requires the State to make it a priority in its budget. The Supreme Court's call to attorneys to voluntarily provide services for indigent litigants has been a great success, and we should continue to leverage the generosity of the bar. Still, more is needed to close the representation gap. We can support those efforts through incentivizing attorney participation, organizing the distribution of the services to those in need, and building and enhancing systems that connect the bar to the needy. However, a system which primarily relies on independent funding in a regular budget, rather than the generosity of others and unpredictable economic factors, is more consistently stable to provide legal services.¹⁸

b. Aid Should be Easy to Find.

In 2018, the CCA launched a website, indianalegalhelp.org, dedicated to connecting indigent people seeking legal help to the resources that are available. It provides a listing of local civil legal aid resources, information about financial requirements/limitations for access to legal aid, tips on selecting an attorney if they do not qualify for no-cost assistance, and forms covering family law and general civil matters that are both fillable and printable. Additional forms will be added.



We support the CCA in making civil legal resources easier to find and access. We also support all litigants having access to legal counsel to ensure their individual cases are fully addressed. Further, aspirational goals of streamlining intake processes, sharing resources among diverse providers, and engaging partnerships with law schools, libraries, and local bar associations have great merit. The CCA is an innovative and collaborative resource moving Indiana closer to the goals of civil access to justice. At the state level, the judiciary should continue to advocate for sufficient financial resources in support of the CCA's goals. At the local level, courts should provide information to litigants on how to access the CCA website, provide kiosks in courthouses to allow easy access, provide prominent links to the CCA website on their own court websites, and engage local libraries in pointing people toward its resources.

3. Improve legal aid in criminal cases.

The availability of high-quality indigent representation in criminal cases should be consistent across the state. We support the following recommendations for system improvement:

- a. State funding for felony and misdemeanor indigent defense;
- b. A centralized appellate office for indigent appeals;
- c. Optional/voluntary regionalization of public defense by multi-county agreements, preferably through use of the existing judicial district structure;
- d. Representation at all critical stages of criminal proceedings;
- e. All counties complying with Public Defender Commission standards for quality; and
- f. Funding for development of training and standards for indigent defense in all cases, including juvenile cases.¹⁹

In addition, we also believe that a continued review of all public defender services is necessary to reorganize and simplify the process to achieve greater efficiency, productivity, and clarity.

4. Move away from a system built on fines and fees.

Like many states, Indiana has chosen to rely upon fines, fees, and costs in the courts system to help support not only the courts, but a dizzying array of other government functions such as education, motor vehicle licensing, and wildlife management. Courts are designed to resolve disputes through peaceful means, not serve as the collection agency



for non-judicial functions.²⁰ Because such fines, fees, and costs are disproportionately borne by the poor, they act as a regressive tax on parties least able to pay. The Indiana Code allows non-indigent individuals to serve time in jail at a rate of \$20 per day in lieu of costs and fines.²¹ Often many individuals owing fees and fines may not be indigent, but still living on the margin, and the use of these provisions could exacerbate their financial condition by impacting their ability to maintain employment or care for dependents. We have discovered that when they do not pay, the indigent could find themselves incarcerated—a practice which harkens back to debtor prisons of old.

Indiana should adequately fund the justice system (and all other units of government that rely on fines, fees, and costs from the courts). We support

a legislative effort to decrease the number and amount of fees tacked on to the court process and the simplification of court costs. If court costs are to fund any unit of government at all, it should only be the courts. Further, jail should not be used to enforce financial obligations, and these statutory provisions should be repealed.

5. Even with a comprehensive jury list and electronic management systems, there is still room for improvement in the jury selection process.

The indigent struggle to maintain reliable transportation, and some have no transportation outside of public transportation or their own two feet. Even if they receive a jury summons, unreliable transportation or financial difficulties may lead to a no-show on the first day of trial. Courts should be encour-

aged to experiment with transportation assistance for jurors through partnerships with public transportation providers or ride sharing services.

We know jurors are concerned with timely payment. Inexpensive technology exists to provide jurors with pay on the date their service ends. We support further investigation of this technology to pay jurors as timely as possible.

While frequent address changes for potential jurors do make lists unreliable, most potential jurors have a cell phone. Indiana's pre-trial pilot project has had great success implementing a text reminder system to increase attendance in criminal cases. Doctors and dentists have been using text reminder systems for years to improve patient appearance rates. Similar technology could be available and widely implemented to similar advantage for jurors.

CONCLUSION

The Strategic Planning Committee acknowledges the contributions of all its former committee members who have played a significant role in crafting our mission and vision for the judiciary while continuing to lend their support in the counties they serve. We are grateful to our current and new members who are willing to continue to move the justice system forward in better serving all Hoosiers.

As stated in our first white paper, *A New Way Forward*, we hope this vision for the future will encourage judges and other stakeholders across Indiana to discuss how we can improve the justice system. Improving security, enhancing technology, clarifying clerk and court staff duties, streamlining court structure, refining judicial selection procedures, securing proper funding, and providing access to

justice for all is a massive undertaking. This aspirational framework charts a course for judges and other stakeholders to improve the delivery of justice and inspire public confidence in the courts. We respectfully submit 2020 Forward as a vision for what the great people of Indiana deserve from their judicial branch.



ENDNOTES

- 1 <https://www.in.gov/judiciary/files/rush-statement-race-equity.pdf> (archived at <https://perma.cc/J8QH-8SGB>); See also: Statement by CCI/COSCA issued July 30, 2020 - https://ccj.ncsc.org/_data/assets/pdf_file/0029/42869/07302020-Racial-Equality-and-Justice-for-All.pdf (archived at <https://perma.cc/SB6L-BQJC>)
- 2 For example, in 2018, the Allen County Courthouse had over 400,000 visitors, and security searches during the same time period yielded 3,686 weapons.
- 3 Trial Court Technology and Appellate Court Technology were merged effective January 1, 2020 into the Indiana Office of Court Technology.
- 4 <https://www.in.gov/judiciary/files/rush-statement-race-equity.pdf> (archived at <https://perma.cc/J8QH-8SGB>); See also: Statement by CCI/COSCA issued July 30, 2020 - https://ccj.ncsc.org/_data/assets/pdf_file/0029/42869/07302020-Racial-Equality-and-Justice-for-All.pdf (archived at <https://perma.cc/SB6L-BQJC>)
- 5 <https://www.in.gov/judiciary/iocs/files/courtmgmt-pubs-trial-court-fee-manual.pdf> (archived at <https://perma.cc/SP9Q-8D5F>)
- 6 I.C. 35-38-1-18.
- 7 I.C. 35-38-1-18, 33-37-2-3.
- 8 <https://www.in.gov/judiciary/admin/2645.htm> (archived at <https://perma.cc/5MWL-J7MR>)
- 9 <https://www.in.gov/judiciary/admin/2647.htm> (archived at <https://perma.cc/3CD3-59SQ>)
- 10 <https://citybase-cms-prod.s3.amazonaws.com/3a17ef7206c7419b8a4b9d1bbb359266.pdf> (archived at <https://perma.cc/5H3X-VV4J>)
- 11 Indiana Task Force on Public Defense Final Report, August 22, 2018, <https://www.in.gov/publicdefender/files/Indiana%20Task%20Force%20Report.pdf>, page 38. (archived at <https://perma.cc/T8LN-MMMJ>)
- 12 Id. at 10.
- 13 Ind. Code 34-10-1-1 and 34-10-1-2.
- 14 <https://indianalegalhelp.org/wp-content/uploads/2018/03/Pro-bono-district-overlay-map-8.21.17.pdf> (archived at <https://perma.cc/8RH2-55UP>)
- 15 <https://www.in.gov/judiciary/iocs/images/cca-pro-bono-infographic.png> (archived at <https://perma.cc/9SAK-Y4X8>)
- 16 <https://indianalegalhelp.org/>
- 17 <https://www.in.gov/judiciary/files/rush-statement-race-equity.pdf> (archived at <https://perma.cc/J8QH-8SGB>); See also: Statement by CCI/COSCA issued July 30, 2020 - https://ccj.ncsc.org/_data/assets/pdf_file/0029/42869/07302020-Racial-Equality-and-Justice-for-All.pdf (archived at <https://perma.cc/SB6L-BQJC>)
- 18 Services would include GAL, Mediation, expert witness, parenting time coordinators, Child in Need of Services, Termination of Parental Rights, etc.
- 19 <https://www.in.gov/publicdefender/files/Indiana%20Task%20Force%20Report.pdf> (archived at <https://perma.cc/T8LN-MMMJ>)
- 20 Services would include GAL, Mediation, expert witness, parenting time coordinators, Child in Need of Services, Termination of Parental Rights, etc.
- 21 <https://www.in.gov/publicdefender/files/Indiana%20Task%20Force%20Report.pdf> (archived at <https://perma.cc/T8LN-MMMJ>)

