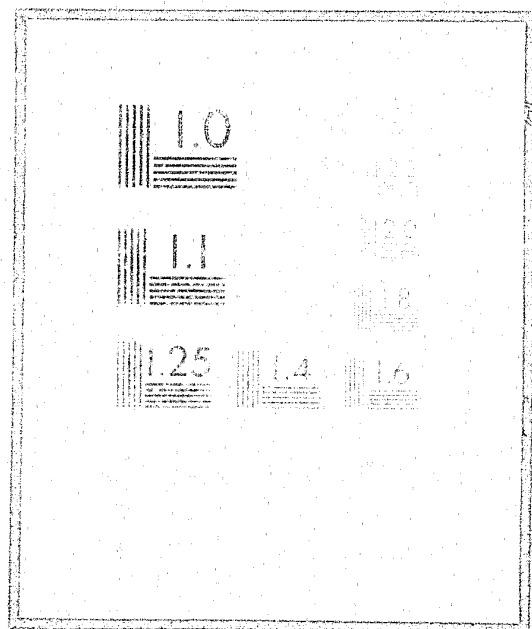


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ASSESSMENT OF OWENSBORO  
VOLUNTARY ACTION CENTER  
REFERRAL OPERATIONS



**THE AMERICAN UNIVERSITY**

Criminal Courts Technical Assistance Project  
Institute for Studies in Justice and Social Behavior  
The American University Law School  
Washington, D.C.



ASSESSMENT OF OWENSBORO  
VOLUNTARY ACTION CENTER  
REFERRAL OPERATIONS

NCJRS

November 1975

MAR 8 1977

ACQUISITIONS

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## I. INTRODUCTION

The City of Owensboro, the seat of Daviess County in Western Kentucky, is situated on the banks of the Ohio River on Kentucky's northern border with Indiana. Owensboro, with its slightly more than 50,000 population, is Kentucky's fourth largest city and a major tobacco and industrial center. It is also the home of Kentucky's Wesleyan and Brescia colleges, which, as will be discussed later in this report, provide a ready resource for a pool of bright young criminal justice system volunteers.

The city's United Way agency has been effective in launching a number of community efforts which have been most successful -- perhaps because of an unusually deep commitment, both financial and nonfinancial, of its citizens and industries. One of these efforts, the Voluntary Action Center (VAC) has been particularly successful in utilizing an innovative approach to traditional imprisonment. Building on the successful results of some early experiments, placing a few juveniles in carefully structured programs, the center was able to persuade county and federal authorities to enlarge the scope of its operation into a formal program, which began operations October 1, 1975.

In its application for Federal assistance, VAC announced its intention to provide an alternative to incarceration or traditional probation after conviction primarily for adult misdemeanants and felons. A major component of the program outlined in the application is the placement of client in volunteer community service situations. The program clearly has the support of the Board of Directors of VAC, the Mayor, the local arm of the State Planning Agency (Green River Regional Crime Council), the State Plan-

ning Agency (Kentucky Department of Justice), the Commonwealth Attorney for the County, the Department of Corrections (Probation), the County Juvenile Judge and the two Circuit Court Judges, as evidenced by the letters attached to its application.

The Court Referral Project (CRP) proposal clearly intended to provide the citizens of Owensboro and the criminal justice system with a non-traditional method of "punishment" after conviction which would serve as a true non-punitive rehabilitative end that would benefit both the convicted and the community. At the same time the proposal contained some artificial restrictions which prompted readers of the proposal to question some of the limitations.

As a result of a cursory analysis of CRP, questions were raised as to whether:

- The program could be expanded to include clients and courts not specifically mentioned without changing the focus of the program;
- The legal issues inherent in any program of this nature, including constitutional and statutory provisions, had been anticipated and resolutions proposed; and
- The program and those charged with supervision of it had given enough attention to development of an evaluation of its effectiveness, both in economic (cost benefit) and human (rehabilitational) terms.

To address these questions a team composed of two persons with extensive experience both nationally and in their own locales with the precise issues involved was formed.

Team leader Bruce D. Beaudin is Director of the District of Columbia Bail Agency and President of the National Association of Pretrial Service Agencies. J. Gordon Zaloom is the Chief of Pretrial Services for Administrative Office of the Courts for the State of New Jersey. New Jersey has a

statewide program for pretrial intervention, sanctioned by court rule and administered by the Administrative Office of the Courts.

The team conducted a two-day site visit to familiarize itself with the personnel, agencies, and principal actors for whom the CRP was designed and to place in proper perspective local statutes, court rules and climate, as each might affect the program. (A list of the persons interviewed during the visit is attached as Appendix A.) The views of those interviewed were subsequently melded with an analysis of applicable rules and statutes and became the basis for the recommendations contained in this report.

## II. ANALYSIS OF EXISTING SITUATION

In order to understand the potential for change implicit in the Voluntary Action Center's (VAC) proposal, it is essential to look at the particular milieu in which it will operate.

The Court system in Kentucky is a perplexing one, yet it is not altogether different from other places. A juvenile court, whose judges need not be lawyers, decides juvenile issues. A police court, whose judges need not be lawyers, handles trials for local ordinance infractions and state misdemeanors, as well as preliminary examinations in state felony cases. A county judge, who need not be a member of the bar -- and often is not -- has jurisdiction over both misdemeanor and felony cases. This judge also has administrative and budget control over the entire lower court system as well as the Circuit Courts. The Circuit Court judges are usually lawyers. They handle felony cases prosecuted by the Commonwealth Attorney. All judges are elected, save the "Trial Commissioners," who are appointed by the County Judge to assist with the trials of cases. This entire system is under review and the voters will decide on November 5, 1975 whether to amend the system.\* (See Appendix B for a summary of the changes.) Whether the system is amended or not, the principles discussed herein will be equally applicable.

The Commonwealth Attorney, an elected official who will soon complete his sixteenth year in office and who has served as a juvenile court judge,

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\* Subsequent to the writing of this report, a new Judicial Article of the Kentucky Constitution was adopted by the voters in the general election of November 5.

readily subscribes to the CRP. In discussions with the team it was he who raised the issues of whether the CRP could be expanded to pre-con- viction as well as post-conviction cases, and whether it could offer an alternative to prosecution. He referred to three cases of "deferred prosecution." In these cases, after an indictment had been returned, he sought and obtained the cooperation of a probation officer to "supervise" a program very loosely defined as an alternative to prosecution. Thus, it was the prosecutor who first sought to extend the VAC proposal to include pre as well as post-conviction defendants.

The Department of Corrections has three probation officers stationed in Daviess County. These three officers are responsible for providing presentence reports for felony cases, supervision of adult probationers and parolees, and whatever additional assistance they can offer. Only last year did they receive a substantial number of misdemeanants. At present they must supervise some 40 parolees, 80 felon probationers, and 20 misdemeanor probationers. With this caseload it is almost impossible for them to supervise work release or deferred prosecution cases, yet it was to these men that the Commonwealth Attorney looked for assistance with his deferred prosecution attempts.

At a joint discussion with the Commonwealth Attorney, a representative from probation, representatives of the CRP and the Director of the Green River Regional Crime Council, a consensus seemed to develop that there was a need not only for alternatives to incarceration for convicted offenders but also for indicted defendants during the pre-trial period and even arrested but unindicted defendants. It seemed clear that the actors most concerned would use the services of a program if the program were available



and credible.

Admittedly brief interviews with the actors in the system (listed in Appendix A) revealed a strong suspicion of a tendency of "the system" to punish offenders. This suspicion appeared to be supported by observations, which included a trial proceeding in which two young women without prior records were convicted of shoplifting, fined \$250 each and sentenced to serve 90 days. It was also the position of one of the Trial Commissioners that a proper sentence for conviction of possession of one "roach" or "joint" of marijuana would be a \$250 fine with a 90 day sentence, suspended if rehabilitative treatment were agreed to and available. The team later learned that the courts are financed in part by the fines collected, and that the jailer's compensation is based on the number of people in jail and the amount of time they spend there.

In spite of this tendency, however, the Judges appear -- as they do in many jurisdictions -- to listen carefully to the prosecutor and the probation officer. Since both seem to be convinced of the merit of deferred prosecution or "diversion" as it is often called, it appears that this alternative to prosecution, as well as the alternative to incarceration proposed in the initial application of VAC, ought to be considered.

It was also interesting to note, as is so often the case throughout the country, that the one thriving business across the street from the police court was the bail bondsman's office. Observations indicated that many of the defendants at liberty awaiting trial were at liberty by virtue of having secured release through a friendly and available bondsman.

The Bail Statute itself provides for none of the alternatives to traditional surety release enacted in most other states since the Federal

Bail Reform Act of 1966. In fact, the Kentucky Rules of Criminal Procedure in section III 3.02 provide: "If the offense is non-bailable, or if the person arrested is unable to give bail, the magistrate shall commit him to jail...". Even the section that outlines the alternate bail considerations (Section IV) provides only that a defendant may post security for the amount of bail in lieu of securing release through an approved surety. It would seem appropriate to consider the use of alternatives to surety release.

Finally, a session with one of the Public Defender lawyers confirmed that deferred prosecution would be desirable in many cases. He indicated that counsel was available almost from the point of arrest, and that both lawyer and defendant could insure that any case deferred would in fact be one that could be successfully prosecuted. He also indicated his support for the program and his willingness to help in an advisory capacity.

Such traditional arguments for the institution of pretrial intervention programs as court backlogs, understaffed prosecutor's offices, and citizen pressure to dispose of serious felonies, seem ridiculous in the face of a situation where only about 220 indictments a year are returned, and where the backlog of cases to be tried is virtually non-existent. On the other hand, the human cost of prosecuting cases which might otherwise be successfully diverted is high. People are stigmatized by having criminal records. Families must put resources into bail, attorneys' fees and fines. The system must treat as criminals some who may be guilty of little more than indiscretion, poor judgment, or even

lack of common sense. It is, perhaps, a combination of the above reasons which moved the people in Owensboro to suggest to the team that the CRP program be expanded.

What follows represents only a few of the alternatives which could accomplish suggested goals. The recommendations should be read with an understanding that they have been tried elsewhere and have worked. They may need further modification to be successful in Owensboro -- or, for that matter, Louisville. They are, however, capable of implementation without doing violence to the original proposal and without spending huge sums of money.

### III. SUMMARY OF RECOMMENDATIONS

- A. The Voluntary Action Center Should Provide Presentence Background Reports And Conditional Discharge Services For Convicted Misdemeanants.
- B. The Voluntary Action Center Should Provide Pretrial Intervention (Deferred Prosecution) Services.
- C. The Voluntary Action Center Should Consider Screening Arrestees To Determine Those Who Might Be Eligible For Release On Personal Recognizance.
- D. A Carefully Planned Evaluation Design, To Affirm The Basis For Any Voluntary Action Center Programs And To Provide An Accurate Cost-Benefit Analysis, Must Be Established.
- E. The Voluntary Action Center Should Set Specific Standards To Address Legal Issues Involved In Post Conviction Conditional Discharge and Pretrial Intervention.



#### IV. RECOMMENDATIONS AND COMMENTARY

##### A. The Voluntary Action Center Should Provide Presentence Background Reports And "Conditional Discharge" Services For Convicted Misdemeanants.

Pursuant to K.R.S. 533.030(3) (1974), conditional discharge (unsupervised probation, or probation without supervision of the Department of Corrections and Parole [work release]) is permitted. VAC should provide all courts (Police, County, and Circuit) with the option of conditional discharge.

As the system exists today, very little information is available at the time of sentencing in misdemeanor cases. By providing presentence investigations to the court, the prosecutor and the defense counsel on request VAC could, in effect, develop specific plans prior to the imposition of sentence. Rather than operating strictly after the sentence has been determined, VAC would be in a position to recommend alternative sentencing plans prior to sentencing and accept those cases referred by the court.

It is essential that VAC be able to analyze its capabilities and tailor them to the needs of particular defendants. As a corollary, it is vital to VAC's ability to match programs to defendants to know the background and circumstances that have coalesced to put the defendant where he is. While this activity will result in much work being invested in examining the backgrounds of those persons whom VAC is ultimately unable to assist, such efforts are not "wasted" if the information is made available to sentencing judges for possible consideration of alternative sentences.

In order to implement this strategy, and give maximum legitimacy to VAC's efforts, it is necessary that the Probation Officers play a formal and advisory role. It would also be advisable to create an Advisory Board to help oversee the CRP. While the Board of Directors of VAC ultimately control all of VAC's activities, an adjunct Advisory Board to the CRP composed of representatives from the Courts, the Prosecutors, the Defense Bar, the Department of Corrections and Parole, the Police and VAC would provide VAC with a cross-section of input that would be invaluable.

B. The Voluntary Action Center Should Provide Pretrial Intervention ("Deferred Prosecution") Services.

As described above, the principal prosecutor has indicated willingness to defer prosecution in some cases, provided that some supervision and feedback are available. He has also indicated willingness to "dismiss" cases if and when the supervisory period is ended. Although he stated a preference for a two-year period of case suspension, in light of potential speedy trial problems and successful experiments with six-month to one-year periods in other jurisdictions, a six-month time period with one six-month extension possible on showing of cause, is suggested.

We recognize that providing this type of service was outside the written scope of the original application, but we feel strongly that the services to be provided under that application are identical to those needed here.

One of the crucial questions facing criminal justice planners all over the country is how to deal with delivery of services to convicted and accused persons. The needs are usually identical, but the manner of

delivery must be tailored to fit the different legal postures of the individual served. For example, an addict needs help whether he's merely accused or already convicted. If he is convicted, he is legally guilty of whatever crime was charged, and the manner of service delivery presumes that he owes a great debt. On the other hand, if he is not yet convicted by trial or plea, he is presumed innocent of the crime charged. Although his need for services is the same, those services must be delivered in a manner consistent with recognition of presumptive innocence.

Probation offices, where such services are usually coordinated, traditionally deliver those services to guilty people. It is perhaps best for the delivery of services to pretrial defendants that they be administered by someone "outside" the formal justice system. Both the Department of Justice of the United States and the United States Congress have recognized this difference in ordering a test to be made of service delivery under the Speedy Trial Act of 1974. Out of the ten agencies to be set up to deliver pretrial services on an experimental basis, five are to be governed by the Federal Division of Probation and five by independent Boards of Trustees.

The mechanism for insuring that adequate attention is given to those in the experimental programs contemplated here is already in place. As an agency "outside" the court, yet subject to control through court overview, VAC is ideally situated. With ultimate control in the prosecutor's office (in the last analysis the Commonwealth Attorney will decide whether or not a defendant is to be prosecuted) there is little potential for abuse.

C. The Voluntary Action Center Should Consider Screening Arrestees to Determine Those Who Might Be Eligible For Release On Personal Recognizance.

In the event that VAC agrees to provide pretrial as well as post conviction services, it is but a simple extension to expand its screening procedures to include bail investigations. At present, aside from whatever information the prosecutor puts on a warrant, it seems that little, if any, information about the defendant's "community ties" is available. Experiments across the Country have proved that such information can be made available without much cost and with the use of volunteers. Owensboro, with its two college sites, is a natural resource for volunteers who could produce this type of information with proper coordination.

Again, VAC is ideally situated to coordinate this type of effort. Screening arrestees to determine fitness for their programs demands that most defendants be seen. Very little additional work would be necessary to prepare simple reports, for bail-setting magistrates, containing information on community ties. In addition, VAC's "outsider" identification permits an unbiased gathering of information which would be available to court, prosecutor and defense counsel, alike.

D. A Carefully Planned Evaluation Design To Affirm The Basis For Any VAC Programs And To Provide An Accurate Cost-Benefit Analysis Must Be Established.

In order to be able to evaluate the effectiveness of any program, a data base and a carefully designed evaluation plan must be established. While the evaluation design to be utilized by the CRP program should be the product of detailed planning between program staff officials and evaluation specialists, work could begin immediately on establishing the data base against which program impact can be measured and to which program



participants can be compared. Based on the team's brief orientation to the value and characteristics of criminal case processing in Owensboro, the following data would probably be adequate for initial baseline establishment:

Fifty to seventy-five cases resulting in convictions -- including felonies and misdemeanors -- should be randomly selected for study. Ideally, they should have reached disposition during 1974, to allow for the amendments to the Probation statutes. Data to be collected should include:

- Disposition: Fine (by amount); Conditional Discharge or Probation (by term); and Incarceration (by term).
- Type of offense
- Prior record (both conviction and arrest, but recorded separately)
- Demography: Age; sex; race; employment history; residence, and the like.

In addition, and for comparison purposes, similar data should be collected in cooperation with the Commonwealth Attorney on a randomly selected group of cases which reach non-conviction dispositions (i.e., dismissal at preliminary examination, "no-bills," dismissal after indictment, acquittals, and initial prosecutor declinations). These data will provide a base against which rudimentary measurements of effectiveness may be made.

Cost-benefit considerations are always vital to new programs. Particularly with respect to pretrial intervention programs, costs of traditional prosecution and adjudication should be determined. Obviously, to the extent offenders are diverted, costs of trials, prosecution, representation, jail, etc. are avoided. Again, a data base must be established. (For a discussion of the specifics of such an evaluation see Appendix C pp. 129-

149.) It must be remembered, however, that to the extent placement in volunteer work or other programs replaces fines traditionally levied, increased costs must be anticipated.

E. The Voluntary Action Center Should Set Specific Standards To Address Legal Issues Involved In Post Conviction Conditional Discharge And Pretrial Intervention.

1. Pretrial Intervention - As noted, conditions are ideal for implementation of a formalized pretrial intervention strategy. The Commonwealth Attorney has already utilized deferred prosecution in three instances. The type of plan outlined in the initial proposal is as appropriate for pre-conviction treatment as it is for post-conviction. With that in mind, the team for has recommended (Recommendations A,B,C) that VAC expand its concept.

A detailed pretrial intervention procedure must be hammered out between VAC and other criminal justice participants. A typical plan, which is excerpted and treated below, is attached to this report as Appendix C. This plan follows the VAC proposal, in that court referral places the court in the controlling role. In many places, the prosecutor, insistent on his right to exercise prosecutorial discretion without court sanction, controls pretrial intervention. Should that become true in Owensboro, it is suggested that the United States Department of Justice plan and the Flint, Michigan plan be examined.

The team recognizes that the need for an intervention program in Daviess County is for one which will be acceptable to its citizens and local criminal justice officials. The New Jersey plan in Appendix C is intended only as a model. It is offered as an "idea book," not a "cookbook." Considerable re-

designing, beyond the scope of this report, would be necessary. At a minimum, should VAC decide to attempt some form of pretrial intervention, the following officials should participate in discussions and approve the plan: County, Circuit, and Police Court Judges, the Commonwealth Attorney; the Public Defender; the Police; and of course representatives of VAC.

It is recommended that the objectives, goals, and guidelines contained in Appendix C be considered. In New Jersey, the philosophy of statewide pretrial intervention is contained in Court Rules (see pp. 59, 60, 64-70.) While Daviess County may not choose to formalize the procedures in court rules, the plan referred to above would nevertheless serve as an ideal basis for a formal agreement.

Eligibility criteria and guidelines suggested at pp. 70-75 of Appendix C should be adapted to local needs. For example, completely objective selection criteria and absolute exclusions should be decided upon. It is vital, to insure an adequate client population and adequate control over that population, that very specific criteria be developed.

2. Volunteer Work as a Condition of Pretrial Release or Probation - A "middle ground" between conviction alternatives and full-blown pretrial intervention might be the imposition of volunteer work as a condition of pretrial intervention in some few instances. This regimen has a great deal of surface appeal, but care must be taken to protect against issues of Constitutional dimensions, inherent in programs which urge or direct clients to do volunteer work as a condition of program eligibility or participation. Since this is a relatively new area of the law, little has been written. It is our intention to raise some issues and suggest alternative solutions.

The VAC proposal, as originally submitted, assumed that imposition of

volunteer service as a condition of probation was legal. Unlike pretrial intervention, probation involves convicted defendants. Since the Thirteenth Amendment prohibition against "involuntary servitude" contains an exception for those convicted of a crime, and since KRS 533.020 (3) (c) and (d) specifically authorize restitution and maintenance of employment as conditions of probation, this conclusion appears warranted. It should be noted, however, that KRS 533.030 (1) makes it clear that conditions of probation are to be imposed not as a substitute for "convict labor", but because they are "reasonably necessary to insure that the defendant will lead a law-abiding life..." during and after the time he is released into the community on probation. The obvious implication of this is that assignments should contribute first to the defendant's rehabilitation, and only then to manpower shortages in volunteer and community programs.

But pretrial release clients have not been convicted, and must be presumed innocent. Participation in community activities or projects must be strictly voluntary on the part of the pretrial release client, or else the service could be viewed as the type of "involuntary servitude" prohibited by the Thirteenth Amendment. The important question then, is whether community service is "voluntary".

Pretrial intervention is considered by many to be inherently coercive in that the "voluntary choice" between prosecution and a pretrial intervention supervision program is suspect. Since VAC is in the business of "recruiting" volunteers for its many other programs, their program might be suspected of using the criminal justice system to help it "recruit" for other projects. Thus those who are deemed unfit for volunteer



work will be discriminated against.

It is suggested, therefore, that the Court Referral Program (CRP) handle only a well-defined class of defendants and provide alternatives to the class handled. That is, CRP should use as volunteers those who would appear qualified, and refer others in the class to needed services and/or treatment. Thus discrimination charges centering on unequal treatment grounds would be avoided.

Care must be taken to insure that acceptance by a defendant of a volunteer assignment in lieu of prosecution be truly voluntary. (See Bell v. Wolff, 496 F. 2d 1252 CA 8, 1974.) Suggested procedures to insure voluntariness include:

- o Consultation with counsel, prior to agreement, to accept a volunteer assignment;
- o Participation of a defendant in the selection of or the creation of his individual program; and
- o Profer of alternatives to volunteer assignment i.e. submission to supervision, treatment alternatives without sanctions for failure to select the volunteer alternative.

Notwithstanding the voluntariness issue, any XIIIth Amendment issues might be avoided if:

- o the volunteer work is directly related to the offense, e.g. a person charged with littering in a public park might be required to clean up the park. This type of service can be equated to a form of public restitution or the equivalent of a fine. The length of time required or amount of work might raise problems, if either exceeds either the potential maximum fine or the market value of effort required to do the work at commercial rates.

- The work has rehabilitative aspects directly associated with the offense. A person charged with drug sale might be assigned to perform volunteer work at a drug abuse center. The educational/rehabilitative benefit should outweigh the labor value.
- The volunteer work provides rehabilitative benefits not associated with the offense but needed by the defendant (as diagnosed and suggested by VAC staff.) Unemployable defendants without skills or training will benefit from some volunteer work by gaining supervised work experience.

Finally, the team wishes to caution that volunteer programs as criminal sanctions are being increasingly viewed with circumspection, and recommends Restitutive Justice: A General Survey and Analysis, NILE CJ/LEAA 1975, a paper written by Batelle Human Affairs Research Centers, as worthwhile reading in this area.

## V. CONCLUSION

It is a relatively simple matter to stand outside a situation, observe the interactions of a group that strives to meet ideals with which you are familiar, and be critical of the manner of striving -- often because of less-than-perfect knowledge of the specifics of the interaction. Alexander Pope may have expressed it best when he said "A little learning is a dangerous thing; Drink deep or taste not the Pierian Spring." We nevertheless, believe that circumstances exist that would be conducive to giant strides forward in Owensboro. The suggestions we have made are based upon limited observations but long experience in experimentation with the options presented.

We recognize that we have suggested that the Voluntary Action Center become involved much more intently than that group had originally intended. Our analysis leads us to inescapable conclusion that to do what they proposed correctly and effectively it would require little, other than additional personnel, to accomplish much much more. With the spirit of cooperation that seems to be there already, with the resources of two colleges immediately available, with the commitment of those who are usually antagonistic to innovative programs and with the superior interest and dedication of the present VAC staff, we think the programs suggested herein are not beyond reach.

APPENDIX A

Persons Interviewed During On-Site Visit 10/7 & 10/8

1. Charmaine Baird - Trial Commissioner (appointed by County Judge Judge to try misdemeanor and felony cases)
2. Board of Directors of Voluntary Action Center
3. John Bouvier - Executive Director Green River Regional Crime Council (local arm of Kentucky LEAA Planning Agency)
4. Sandra Clements - Executive Director - Voluntary Action Center (Grantee)
5. Shirley Coppick - Court Work Coordinator - Voluntary Action Center (Grantee)
6. Mike Donnelly - Supervisor - Courts Section, Department of Justice (Kentucky LEAA Planning Agency)
7. William Gant - Commonwealth Attorney (In charge of all felony prosecutions)
8. William B. Herndon - Courts Specialist (LEAA Regional Office Region IV Atlanta, Georgia)
9. Robert M. Kirtley - Public Defender
10. Ms. Pat Sims - Evaluation Specialist - Department of Justice
11. W. Clay Taylor - Probation Officer
12. Marilou Blanford - Probation and Parole Secretary



## JUDICIAL REFORM: A MODERN JUDICIAL SYSTEM FOR KENTUCKY?

It's Up To You!

The 1974 General Assembly has provided the means for the voters of Kentucky to substantially reorganize and modernize the court system in Kentucky.

The citizens of this Commonwealth will be voting November 4, 1975, in a referendum on the proposed Amendment to the State Constitution. This Amendment will create a unified court system, keeping judges from partisan political elections, and speeding up court actions throughout the state.

### LAW AND ORDER

For many years the issues of law-and-order and the entire judicial system have been the constant subject of much criticism and debate. The subject has aroused public interest to the highest point in Kentucky and American History.

Still, it is evident that the general public is greatly uninformed as to the processes of the courts and as to how judges are selected and duties they perform.

An informed public is vital to the law and order process across the State.

Kentucky voters must be fully aware and have an understanding of the choices available to them concerning the Constitutional Amendment to the Judicial Article which is discussed here.

### CONSTITUTIONAL AMENDMENTS

Kentucky's Constitution may be amended to keep pace with the times by a referendum vote on a duly passed bill by the General Assembly. The 1974 General Assembly provided this bill and the avenue to Judicial reform.

During the 1891 Constitutional Convention, which gave us our present Constitution, a Delegate, A. J. Auxier, argued that the people can alter, modify or change, and adapt the Constitution to the wants of the people when the emergency arises. He said at that time:

*"I predict that, before another Constitutional Convention shall be assembled in this hall, men will be navigating the air, instead of travelling in railroad coaches; that instead of going thirty or forty miles an hour, they will go two hundred miles an hour, and hundreds and thousands of unthought of things will be brought into existence; and new fields of operation and new systems of government, or modifications, at least will be required in those days yet to come . . . We want to make some changes in our Constitution to adjust it to the present wants of the people. Why not give future generations the right to do the same?"*

This Amendment will establish a modern four-tiered, coordinated judicial system divided into a Supreme Court, Court of Appeals, Circuit Courts and District Courts, in that order top to bottom.

### SUPREME COURT

The Supreme Court would, in effect, be the "Court of Last Resort," consisting of seven judges elected for eight year terms, one each from the present Court of Appeals Districts. The elected members would select the Chief Justice to serve for a four year term. The Chief Justice would be the "head man" in the entire administrative side of the system, with every court in the Commonwealth his administrative responsibility. The Supreme Court, however, would have strictly appellate jurisdiction.

The Chief Justice could assign any judge to any court in the State. This action would equalize the judicial case load throughout the State.

### COURT OF APPEALS

The Court of Appeals would be an intermediate court established to share the overwhelming burden of the present Court of Appeals. The case load in today's Court of Appeals, our only present appellate court, has increased 100 percent in just ten years, and on June 30, 1973, had a backlog of more than 1,000 cases . . . meaning at least a three year wait for many final decisions.

The Court of Appeals would have fourteen members, two being elected from each appellate district for terms of eight years. It too, would have appellate jurisdiction and it could be empowered to review, directly, decisions of state regulatory agencies.

The members of the Court of Appeals would also select a Chief Justice to administer the affairs of the Court. The fourteen members could divide into panels of not less than three, to decide cases appealed to it, and the Chief Justice would examine the decisions of the panels to avoid inconsistency. (Such an intermediate court was in existence before the Constitutional Revision of 1891, and abolished due to apparent lack of need at the time.)

### CIRCUIT COURTS

The Circuit Court districts would remain Judicial Districts, containing the same counties as they do now. The number of judges elected for eight year terms would also remain the same as on the effective date of the Amendment; January 1, 1976.

Circuit Courts would be the courts of original jurisdiction, where many legal questions are argued for the first time.

### DISTRICT COURTS

The District Courts would be the first level of the Court system, and in essence, the most important — the courts of "first impression" where 90% of the cases would begin and end. District Courts would take over the duties of the presently existing numerous and overlapping lower level courts. There would be one in each county.

The District Courts will have at least one District Judge in each judicial circuit. In any county where a District Judge does not live, the Chief Judge of the District is charged with appointing one or more Trial Commissioners in order that each county would have its own Trial Commissioner. A Commissioner would have to be a resident of the county and also an attorney, "if one is qualified and available."

The most far-reaching effect of the Judicial Article will be with the creation of the District Court system. Designed for economic reasons as well as for more efficient and equitable administration of justice, the District Court will replace the present Quarterly, Police, and Magistrate's courts. The jurisdiction of this court will be set by law, conforming to the lower court jurisdictions presently in effect.

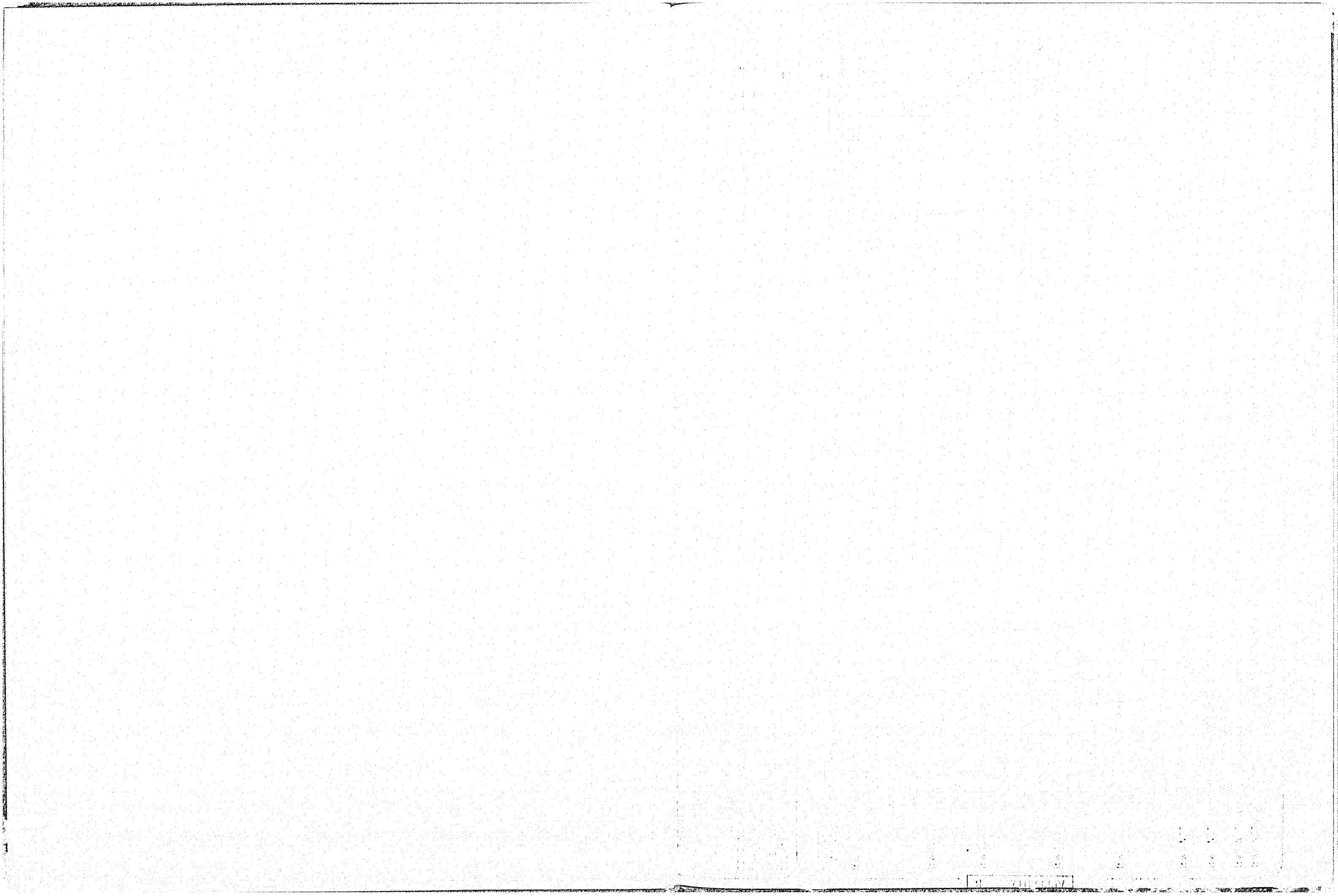
County Judges and Magistrates would continue to be elected and better be able to serve as administrators of their county governments, because they would be relieved of their judicial burdens.

### FILLING VACANCIES AND REMOVAL

The amendment makes major constructive changes in the judicial structure, yet preserves the right of the people to elect their judges. It also includes the prime elements of selection and retention based on merit. Election would be on a non-partisan basis and the filling of vacancies would be from a list of three names submitted to the Governor by a Judicial Nominating Commission. The Commission is made up of seven members; one is the Chief Justice of the Supreme Court; two are to be lawyers; and four citizens named by the Governor. The citizens group must contain at least two members of the two political parties for whom the most votes were cast in the State. (Should the Governor fail to act within 60 days, the Chief Justice would make the selection from the submitted list.) Another Commission will be set up with the power to remove a Judge, retire him, or suspend him without pay "for good cause."

Terms of the District Judges would begin in January, 1978, after their elections in November, 1977 . . . the present courts would continue until that time.

The Clerk of the Court of Appeals, elected at the same time the Amendment is passed, would serve as the first Clerk of the Supreme Court.



APPENDIX C

Appendix C has been sent to the client jurisdiction under separate cover. It is not reproduced here because of its length.

The document is State of New Jersey, Administrative Office of the Courts, Division of Criminal Practice, Pretrial Services, Proposal for State Wide Implementation of a Uniform Program of Pretrial Intervention under New Jersey Court Rule 3:28 (April, 1975, 149 pp. text and 85 pp. appendix). It is available from the New Jersey State Court Administrator's Office, Pretrial Services, 447 Bellevue Avenue, Trenton, New Jersey 08618.

**END**