

State of the Judiciary
Chief Justice Michael P. Boggs, Georgia Supreme Court
Message to the Legislature
February 7, 2024

Lieutenant Gov. Jones; Speaker Burns and First Lady of the House Dayle Burns; President Pro Tem Kennedy; Speaker Pro Tem Jones; members of the General Assembly; Constitutional Officers; Presiding Justice Peterson and my fellow justices; Chief Judge Mercier, Vice-Chief Judge Brown, and the judges of the Court of Appeals; other judges here with us today; and my fellow Georgians.

Good morning! Thank you for the invitation to be back before you all today to update you on the ongoing work and commitment of our state courts to uphold the rule of law and serve the people of Georgia.

I'd like to begin by acknowledging all of the hard-working folks who keep our state courts operating despite enormous challenges. Please know that while Georgia's court system is one of the busiest and most efficient in the nation, our judicial system, and in particular our trial courts, do not operate in a vacuum. Efforts of our judges to improve the administration of justice and uphold the rule of law would be meaningless without all of our valuable judicial system partners – these include civil lawyers, prosecutors, defense attorneys, victims' advocates, court administrators, clerks, administrative assistants, court reporters, interpreters, bailiffs, deputies, IT technicians, and even our janitorial staff. Consider if you will that all of these professionals are spokes on the wheels of justice. If any one of them is missing in any case, the wheels simply won't turn. Without each of them, our courts would not be able to function, and our judges would be unable to meet their constitutional duties. They are truly the foundation of the Judicial Branch of government, and because many of these individuals largely work behind the scenes, they probably do not hear our thanks enough. So, to all of the people who make our judicial system work, thank you on behalf of all the judges of this state!

Last year, I stood before you all and told you that the state of Georgia's judiciary was strong. It was true then, and it's true now. But like other areas of government, Georgia's judiciary also faces significant challenges. I'd like to take the opportunity this morning to discuss the work of our courts and highlight some of these challenges.

I want to assure you that despite challenges, we remain steadfast in applying and interpreting—not making—the laws and constitution of our state. And, as always, I want to again express our appreciation for the trust and support that you all in our legislative branch have shown us as we seek your partnership in addressing a wide array of issues affecting our courts.

I begin by expressing the gratitude of the entire judiciary for the financial assistance that Gov. Brian Kemp granted our judicial system at the height of the COVID pandemic, when trial courts quickly had to pivot, adapt, and innovate to meet the unique obstacles created by unprecedented times. In some courts, we are still feeling the aftershocks of backlogged cases, but our judges are working hard, and we are making progress.

As a result of the American Rescue Plan Act funding allocated by the Governor's Office to the judicial branch, every circuit that requested help was awarded some amount of relief, many of them multiple rounds of awards. To date, that's 46 of Georgia's 50 judicial circuits—circuits represented by nearly every legislator in this room! These grants have allowed circuits to hire temporary personnel, update courtroom technology, rent larger venues, and procure additional resources to help them move their case backlogs. And a recent study objectively validates the use of these funds and demonstrates that the funds are indeed working.

We are proud to report that the number of pending serious violent felony cases continues to decrease, while overall jury trials have continued to increase. This progress has not been easy. In 2021, at the height of the pandemic, circuits reported an average increase of 24 percent in their pending serious violent felony cases—though some circuits reported more than a 100 percent increase. Fortunately, managing cases has been greatly assisted by the ARPA grants. Since the initial awards were made, judicial circuits across Georgia are now reporting an average 11 percent decrease in pending serious violent felony cases. This is significant progress—particularly given the growth of other ongoing and interwoven challenges affecting our judges' efforts to move dockets.

I'd like to offer you just two examples of how our courts are using the ARPA funds and moving cases. The Chattahoochee Judicial Circuit in Columbus made creative use of its grant money to come to a temporary solution, outfitting the Columbus Ice Rink and Columbus Civic Center as jury selection and trial venues. Also, during that time, then-Chief Judge Gil McBride said that more than a dozen new employees, including three assistant DAs, two superior court clerks, part-time and full-time investigators, three deputies, and one part-time and four full-time assistant magistrates were added to the circuit to handle specialized court objectives. As a result, within the first eight months of 2022, the circuit held more jury trials than its pre-pandemic capacity.

And speaking of Columbus, all of Georgia's judges join in expressing our condolences on the passing of Chairman Richard Smith, a great friend and a great Georgian.

In the Stone Mountain Judicial Circuit in DeKalb County, pending serious violent felony cases increased by 2,220 cases between 2019 and 2021. Since the implementation of its very first grant award, the circuit has significantly reduced this felony caseload. They too have increased trials, holding 77 in 2022. Chief Judge LaTisha Dear Jackson reports to the ARPA committee that her circuit effectively established a separate division within its Superior Court to handle the backlogged cases, with weekly trials and pleas clearing the most serious ones. However, she also reports that the circuit continues to struggle with attracting certified court reporters and interpreters to return to courthouse proceedings after becoming comfortable with working from home for months.

Despite the enormous progress that courts are making in moving cases with the assistance of ARPA grants, our judicial system simply cannot fulfill its obligation to deliver justice without a full array of judicial system professionals beyond those available through the resources offered by the ARPA grants.

Across our state, there are deficits in the numbers of court reporters, prosecutors and public defenders, court staff, and even sheriff's deputies. Just as it is critical to have enough doctors, nurses, and teachers to adequately deliver health care and education services to our citizens, so too must Georgia have enough law enforcement and public safety officers, lawyers, and court staff professionals to effectively and efficiently keep the wheels of justice turning.

You will recall that during his State of the State address last month, Gov. Kemp noted that workforce development challenges in state government are a serious issue in Georgia. I really appreciate the Governor's focus on this critical issue as these challenges also significantly affect the judicial branch. You will recall the Governor saying that "it's no secret that most state government jobs pay less than private sector opportunities in the same line of work. But many of our employees do it because they feel a sense of public service and they want our state to succeed."

This devotion to public service is certainly true with our state judiciary employees who are committed to the important work of the judicial branch. However, even within the Supreme Court, we have experienced a staff attorney turnover rate of over 57 percent since January 2019. We're seeing experienced staff attorneys leaving for more lucrative positions in private practice or moving to other government entities. What's more, this is occurring at a time when approximately half of our Court's staff attorneys are set to retire over the next five to 10 years. The Court of Appeals is likewise not immune and has seen similar attrition, with 10 law clerks and administrative assistants leaving for better pay or retirement over the last 18 months. Of course, we don't blame them.

Today's rate of pay is not as competitive as the salaries offered by the courts in the '80s and '90s, and this compensation landscape adds another layer of difficulty to our efforts to attract and retain top-tier talent. And we must reckon with the fact that this trend depletes our pool of seasoned legal professionals and necessitates time-consuming recruitment and training efforts for their replacements.

Others have long recognized our state's appellate courts as among the busiest in the nation, taking in thousands of appeals and other matters and issuing hundreds of opinions each year, all within our constitutionally mandated deadline of two terms of court—the equivalent of about six to eight months. For comparison, the U.S. Supreme Court issues only about 70 to 80 opinions per year. And I'm not aware of any other state's appellate courts that have this kind of deadline. So, filling staff vacancies on our courts is especially important to handling our workload and making sure we are performing at our highest caliber while meeting our constitutional mandates. And the challenges related to pay parity are not just limited to court clerks and staff attorneys.

It is also critical that the State compensate the state's judges sufficiently to attract good ones and keep them. A Judicial Council Committee led by Justice Charlie Bethel and Superior Court Judge Rusty Smith from Toccoa recently completed a comprehensive compensation study regarding state-paid judges, and the recommendations of that committee – supported unanimously by the Judicial Council – have been introduced for your consideration in House Bill 947 sponsored by Rep. Rob Leverett. We respectfully ask for your careful consideration and support of this initiative.

And even beyond challenges we have at the appellate courts to retain court clerks and staff attorneys, notable other workforce challenges persist. The Prosecuting Attorneys' Council of Georgia, which is tasked with training and supporting the hundreds of elected and appointed prosecutors across our state, reports that as of the start of this year, there are a total of 41 assistant district attorney vacancies statewide. Eight judicial circuits out of 50 have assistant district attorney vacancy rates of 25 percent or higher. You wouldn't be surprised that many of these circuits are in rural areas. And, you don't have to be a lawyer to know that judges alone can't move a criminal case docket without prosecutors.

Unfortunately, our trial courts' workforce challenges are not limited just to prosecutors. As I previously mentioned, many other judicial system professionals play important and necessary roles in trial court proceedings. Among them are court reporters. While the overall number of certified court reporters in Georgia seems to have gone up in recent years, that apparent growth lags far behind the ever-growing demand our state courts have for those legally necessary to take down every word in a court proceeding to preserve the record. In some circuits, courts are resorting to the issuance of emergency judicial permits allowing non-certified court reporters to temporarily stand in for a limited period of up to one year when no other certified reporters are available. Adding to the situation in Georgia, the average age of court reporters before the pandemic was 54 years old, with a full 70 percent of certified court reporters being over the age of 50. Today, many of them are quickly facing retirement if they haven't decided to retire already. Making matters more dire, fewer new reporters are going through the process to become licensed, meaning there won't be new ranks to replace the outgoing ones. And without enough court reporters to meet the demand, trials and other proceedings will slow once again.

Let me paint you a picture of what that actually means. Imagine a courtroom ready to try a serious violent felony. The judge is on the bench. Judicial staff is present. The bailiffs are there. The defendant has been brought from jail. Sheriff's deputies are providing security. An interpreter is present. Victims and victims' advocates are present. Witnesses have been subpoenaed, and jurors have taken time off from work and are present. But there is no court reporter ready to transcribe the proceedings. So, despite this seemingly full array of judicial resources, nothing can be done without the court reporter...indeed, one of the spokes on the wheels of justice.

And, because court records are also a vital component of appeals, a deficit of court reporters can also slow matters after trial from reaching finality in my Court and the Court of Appeals. These delays not only affect the party litigants, but in criminal cases also delay justice and closure for victims of crimes. We would all agree that justice delayed for anyone is justice denied. And to be sure, our state's judges alone have little means to manage these particular challenges, although we are exploring options and hope to have some potential solutions for you all to consider next year.

On another front of judiciary-related challenges, a recent report by the Georgia Sheriff's Association shows that there are over 1,000 unfilled full-time and part-time sheriff's deputy positions statewide. While the judiciary does not have oversight of our public safety and law enforcement personnel, this number affects us deeply because deputies play a critical role in the

judicial system, not least is keeping our courthouses and courtrooms secure. What's more, on top of the security they provide, many law enforcement officers are also called to be witnesses in criminal proceedings. Without their vital work, it is much harder to prosecute and move cases and our courtrooms are much less safe. In sum, all these interrelated judicial branch challenges affect the resolution of court cases.

I'd like to now turn your attention to an issue that no judge in any society ought to have to address – and that is the issue of the growing threats to judges. Over the last few years, there have been several alarming attacks on judges in the U.S. that have made national news. Lest you were unaware, in June 2022, retired Wisconsin Circuit Court Judge John Roemer was murdered in his home by a defendant he had sentenced to prison. In October 2023, Maryland Circuit Court Judge Andrew F. Wilkinson was murdered outside his home by a litigant involved in a child custody dispute. In December 2023, a man was arrested in Nevada and charged with solicitation to murder two state court judges, and just a month later a county district court judge in Nevada was tackled while on the bench by a defendant after she denied him probation. No doubt, these attacks and threats are meant to intimidate and influence courts away from serving as fair and impartial arbiters of justice. Georgia's judges will not be threatened or intimidated into abandoning their constitutional duties, but incidents like these are repugnant to the rule of law and, if left unchecked, they threaten the very independence of our judiciary.

These attacks prompted the Conference of Chief Justices and the Conference of State Court Administrators to write a letter calling on federal lawmakers to bolster judicial safety in which they acknowledge that, "For our legal system to function properly, judges must be able to administer justice free from threats and violence.

They need to know that court staff and family members are safe. The public needs to know that the people overseeing their cases do so professionally, objectively, unhindered by intimidation, and free from reprisal. In short, for the rule of law to mean anything—the very bedrock of our society—judges, court staff, their families, and the public must be protected."

On behalf of our state court judges and staff, I greatly appreciate your attention to this issue in Georgia. A little over a year ago, the Supreme Court created the Judicial Council of Georgia's Standing Committee on Judicial Security, which is led by my colleague, Justice Shawn Ellen LaGrua, and Court of Appeals Judge Brian Rickman, and I greatly appreciate their work. In addition to the judges serving on the committee, we have many vital law enforcement leaders serving in advisory capacities, including Richard Hyde, John Heinen, Chris Wiggington, and Stan Cooper. These leaders are monitoring judicial safety issues in Georgia and are actively working to identify steps to protect the safety and security of Georgia's judiciary.

Importantly, the security committee's work and recommendations hold promise for improvements, both for judges and for you! We know that y'all are dealing with similar challenges which have become all too real for too many of you in recent weeks. So, while some of our security measures are specific to the judiciary, many are more broadly applicable. This includes, for example, proposed legislation to require state and local governments to keep confidential the personal identifying information of judges – a proposal already passed or in the works in 31 other states and a protection that could easily be expanded to cover other elected

officials. The committee work also includes training that Director Chris Wigginton and his staff at the Georgia Public Safety Training Center have developed along with representatives from all classes of courts. Later this spring, they will present that training and will also make available this training to any member of the legislature who would like to attend. We all hope that you will find these recommendations reasonable and responsive to a growing threat.

Changing gears a bit, I'd like to reiterate my concern that our courts continue to experience significant challenges when it comes to civil cases. Although indigent criminal defendants receive publicly funded legal representation, low-income civil litigants are often on their own. Instead, where civil litigants can't afford a lawyer, the burden of representation falls to the litigant to represent themselves or rely on a far-too-small and under-resourced patchwork of volunteers or organizations who take cases for little or no fee.

The Georgia Legal Services Program, which arose in the late '60s to address the dearth of lawyers in rural areas where legal help was less available, is fortunately still going strong today. But even these services face challenges as this program currently has more than a dozen openings in Albany, Valdosta, Columbus, Dalton, Macon, Savannah, and in its Piedmont regional office. And while there are numerous attorneys in and surrounding Atlanta willing to step up, there is still a need for locally based lawyers in those farther outlying cities and towns. Without them, it is more difficult to provide civil legal services to survivors of domestic violence, those in desperate need of housing, and other law-abiding people with critical legal needs. I bring to your attention that both the amended fiscal year 24 and fiscal year 25 Judicial Council budget requests contain several proposals to help address this problem.

And while we have more than 34,000 active, licensed attorneys in the Peach State, please recognize the severe deficit of lawyers we have, especially outside of the Atlanta metro area. Many of us chuckle at the occasional lawyer joke. But when you really need a lawyer, not having one can be deadly serious. The ugly truth is that many people in Georgia simply do not have access to a lawyer at the most critical time in their lives, either because of where they live or because they cannot afford one. Last year, during my very first State of the Judiciary address, I told you all that there were seven counties—all rural—with no licensed attorneys. None. Zero. Sadly, that number remains the same today.

Georgia is not alone in wrestling with the problem of legal deserts as data from the American Bar Association for the year 2020 reveals that 1,300 counties in the U.S. have fewer than one attorney per 1,000 residents and many have no attorneys at all. And we know that a lack of legal advocacy can make it harder for folks to access other needs, such as housing, medical care, and child support.

Meeting this challenge in Georgia will not be easy. On the one hand, we still have a relatively steady stream of prospective attorneys seeking admission to the bar. Seven hundred and thirty-two new lawyers passed the July 2023 Georgia Bar Exam. But it is highly likely that most of them plan to practice in and around the Atlanta metro area where private sector jobs tend to pay higher salaries. Pay is also a compelling consideration for new lawyers facing sizeable student loans. Whatever the causes, there is much work to be done to recruit lawyers who can meet the

basic needs of those dealing with adoption or child custody matters, business disputes, evictions, contested wills and estates, and more in our currently underserved areas.

One way that the Supreme Court is addressing the lack of lawyers in rural areas is by removing unnecessary barriers to practicing law in our state. I'm proud to announce that last fall my colleagues and I voted to revise the rules governing provisional admission to the practice of law, which included for the first time a process for spouses of active-duty service members. This change was part of our ongoing review of the recommendations issued by the Georgia Lawyer Competency Task Force, and under the revised rules that went into effect on January 1 of this year, the lawyer spouse of an active-duty service member who is currently assigned to a post in Georgia may obtain a provisional license to practice law here in Georgia under certain conditions without having to sit for the bar exam. This new provisional admission will offer them greater certainty and save them considerable time and cost as they continue their legal careers. It also recognizes, I think, the significant sacrifice the spouse is making to serve our country – a sacrifice made all too real just this past week as three Georgians lost their lives and many others were wounded serving our country in Jordan.

Let me now turn briefly to some other emerging challenges facing the judiciary.

New advancements in generative AI present new opportunities and risks for Georgia courts. Our Judicial Council Standing Committee on Technology is studying the issue, and I am one of three state chief justices serving on the national Conference of Chief Justices and Conference of State Court Administrators AI Rapid Response Team, a team created to examine some of the immediate issues related to the use of generative AI in courts and the impact it could have on court proceedings and the integrity of the judicial process. You all are undoubtedly aware of the increasing challenges generative AI is causing across society, and the courts are not immune. Just like any tool, AI can be implemented in ways that enhance and improve the administration of justice and even access to justice. But it also can be used unethically to threaten the veracity and integrity of court proceedings. So, while we are not quite ready to make any sweeping rules changes, we are keeping an eye on this emerging technology and are preparing to ensure the operations of our courts are not adversely affected.

Another critical issue facing our trial courts relates to case management and case data. The value of having access to reliable and accurate judicial data is paramount to informing judicial decision-making and improving public safety. Just this past week, we've seen the Atlanta Judicial Circuit dealing with enormous challenges due to a hack of the county's IT systems including its judicial case management system, highlighting the need for information security as well. We assure you all that we continue to explore new ways to address this issue and improve judicial case management in Georgia.

I would like to end by saying what a privilege it is to be a judge.

And while I often like to remind lawyers, dedicated professional counselors are necessary to an independent judiciary, so too are judges. And an independent judiciary grounded in faithful adherence to the rule of law is critical to upholding our country's foundational principles of freedom and democracy. And adherence to these principles necessarily helps build public

confidence in our courts. Not as partisan weapons or super-legislatures, but rather as judicial officers who have taken an oath to administer justice without respect to person, to do equal rights to the poor and the rich, and to faithfully and impartially discharge and perform all the duties incumbent on us as judges of the courts of this state, according to the best of our ability and understanding, and agreeably to the laws and Constitution of this State and the Constitution of the United States. So help us God.

My good friend and former colleague, retired Justice Robert Benham, has said many wise and notable things in the decades he has served our state. But one that sticks out most in this moment is his belief that throughout history there have been three great professions: Medicine, because it preserves the body. Theology, because it preserves the spirit. And the law, because it preserves civilization. I concur.

Thank you for inviting me here once again to speak on behalf of Georgia's judicial branch. I continue to be optimistic about what is ahead, while I remain realistic about the challenges we are facing.

May God bless you and your families. And may God bless the great state of Georgia and these United States.