

State of the Judiciary
Chief Justice Marla J. Luckert, Kansas Supreme Court
Delivered Virtually
2020

Governor Kelly, Chairman Wilborn, and Chairman Patton:

I issue my first report on the State of the Kansas Judiciary at a time when Kansas, along with the rest of the world, remains challenged by the most severe pandemic in 100 years and has experienced a related economic downturn. These two crises affect every corner of our state, every Kansas town and city, and every Kansan—including everyone working for or using Kansas courts. As Kansas implemented measures to slow the spread of COVID-19, the pandemic disrupted day-to-day processing of cases in Kansas courts and life, in general, for all court users. In many ways that disruption was profound and will forever alter the way Kansas courts function.

Kansas judicial branch employees, judges, attorneys, and other legal professionals within the Kansas judicial system responded quickly with efforts to preserve access to justice while Kansas took exceptional measures to stay ahead of the novel coronavirus. The Kansas judicial branch was armed with information from a May 2019 pandemic preparedness summit in Omaha that addressed issues specific to state courts. The timing of that summit, which was attended by representatives from each of the three branches of Kansas government, was fortuitous given current events. I thank the Kansas team for attending and returning with meaningful strategies to aid our courts.

When the pandemic hit, we quickly realized that reality varies from hypothetical planning. Fortunately, those in the Kansas judicial branch displayed a spirit of innovation and resilience. The Kansas Legislature helped us move forward by enacting 2020 House Substitute for Senate Bill 102, which the Governor quickly signed. I thank you for that and for all your indispensable work on behalf of Kansans during these difficult times. I also thank you for the opportunity to provide you with the 2020 Annual Report on the State of the Judiciary. I gratefully accepted the invitation to present this report to the Legislature early in the session. When circumstances required cancelling that presentation, hope remained another opportunity would arise. The coronavirus dashed that, along with many other hopes. Your understanding of the situation is appreciated.

The Kansas judicial branch's pandemic response is memorialized, in part, through a series of administrative orders that provide a roadmap for continuing court functions during the COVID-19 crisis. These orders address essential operations, workplace protocols, emergency preparedness, and restrictions to mitigate the spread of COVID-19. The orders protect the health and safety of Kansans, including our judicial branch employees and judges. All Supreme Court orders related to COVID-19 can be found on the Kansas judicial branch website at www.kscourts.org/Rules-Orders/Orders.

The Kansas judicial branch embraces forward movement and adaptation to changing times. That spirit aids us as our days fill with efforts to keep the judicial system safe while providing Kansans with access to their courts. While today the Kansas judicial system remains focused on

balancing safety and access through the pandemic, this report will reflect on more routine times by examining progress made by the Kansas judicial branch during fiscal and calendar year 2019. After reviewing some key statistics for fiscal year 2019 and changes in membership of the appellate courts, the report will address developments related to four goals embraced by the Kansas judicial branch: (1) maximizing access to and promoting justice, (2) encouraging innovation and harnessing technology, (3) attracting and retaining an excellent workforce, and (4) stewarding public resources.

Kansas Court Statistics for Fiscal Year 2019

More than 403,000 cases were filed in Kansas district courts in fiscal year 2019.

Those cases included the following:

- 2,342 adoptions;
- 5,230 real property disputes;
- 7,230 child in need of care cases;
- 9,705 probate cases;
- 11,530 divorce cases;
- 13,545 cases seeking a protection from abuse, stalking, sexual assault, or human trafficking order;
- 14,398 misdemeanor cases;
- 22,672 felony cases; and
- 108,360 contract disputes.

Across Kansas, there were 134 convictions for killing-related crimes in fiscal year 2019.

Complete statistics for fiscal year 2019 and prior years are available at www.kscourts.org/Cases-Opinions/Case-Statistics.

Appellate Court Changes

The Kansas appellate courts have had several notable changes in membership since the last state of the judiciary. Chief Justice Lawton Nuss retired in December 2019 after 17 years of service with the Supreme Court. Following his retirement, I took the oath as chief justice, becoming the second woman to serve in that role. 2019 also marked the first time in the 159-year history of the Kansas judicial branch that women have simultaneously served in the roles of chief justice of the Supreme Court and chief judge of the Court of Appeals. Judge Karen Arnold-Burger has served as chief judge of the Kansas Court of Appeals since 2017.

Justice Lee Johnson retired in September 2019 after serving a combined 18 years with the Supreme Court and Court of Appeals. On January 24, 2020, Justice Evelyn Wilson took her oath of office and joined the Supreme Court to fill the vacancy created by his retirement. Justice

Wilson comes to the Court after serving 16 years as a district court judge with the 3rd Judicial District, located in Topeka. She served as that district's chief judge since 2014.

On March 11, 2020, Governor Laura Kelly appointed attorney Kenyen J. Wall to fill the vacancy on the Supreme Court created by the retirement of Chief Justice Lawton Nuss. Mr. Wall, whose investiture ceremony has been delayed because of the COVID-19 pandemic, will join the Court from private practice.

You will also find change on the Court of Appeals. On August 8, 2019, Judge Sarah Warner replaced retiring Judge Patrick McAnany. Judge Joseph Pierron retired on April 3, 2020, and Judge Steve Leben will leave his chambers on June 26, 2020, to teach at the University of Missouri-Kansas City Law School.

Maximizing Access To and Promoting Justice

Assisting Self-Represented Litigants

Kansas courtrooms increasingly serve individuals who represent themselves in court. Their lack of procedural knowledge can slow the resolution of their cases, as well as other cases pending before Kansas courts. To increase access to justice for all Kansas litigants, self-help centers had been established in five counties by the end of 2019: Ellis, Johnson, Miami, Sedgwick, and Wyandotte. These centers provide resources self-represented litigants can use to navigate the court system. Resources may include computer terminals, simplified forms, and volunteer attorneys who give brief advice. Other Kansas courts use many resources to assist self-represented litigants within parameters established by the Supreme Court. In July 2019, the Court adopted Rule 1402, which guides court staff in providing the best possible service and information to the public—including self-represented litigants—without giving legal advice.

The Supreme Court's Access to Justice Committee continues to explore how to best help our district courts by (1) evaluating which self-help models will work best for Kansas based on each county's needs and resources; (2) creating methods for clerk offices across the state to share resources to help self-represented litigants; and (3) standardizing forms and processes to promote consistency in assistance given self-represented litigants. In 2019, this committee worked with consultants from the National Center for State Courts to survey clerks and judges about which resources are now being used—and what additional resources are most needed—to assist self-represented litigants and to expand access to courts statewide.

Resources for self-represented litigants are available at www.kscourts.org/Public.

Expanding Opportunities for Pro Bono Legal Services

The Supreme Court also increased access to justice for Kansans in 2019 by making it easier for lawyers to provide free and reduced cost legal services. In October, the Court adopted Rule 712B. This rule establishes a framework for retired, inactive, and single-employer attorneys to provide pro bono or low-cost legal services. The Court expanded opportunities for such legal services by allowing any eligible law school clinic or legal services provider to aid litigants, if a Kansas-licensed attorney supervises the work. The Court also relaxed certain reporting requirements for attorneys who provide legal services under the rule, eliminating redundant precautionary measures that may have deterred attorney participation.

In December 2019, the Kansas Supreme Court approved the Kansas Bar Association's "Ask-A-Lawyer Service" and "Call-A-Lawyer" programs to provide pro bono and low-cost legal services under Supreme Court Rule 712B.

You can learn more about low cost legal services and Rule 712B at www.kscourts.org/Attorneys/Pro-Bono-or-Low-Cost-Legal-Services.

Amendments to Dispute Resolution Rules

Not every legal dispute is resolved within the walls of the courtroom. Providing alternative means to address disputes can help our judicial system operate more efficiently and less expensively for all. Kansas statutes authorize the Chief Justice to appoint an Advisory Council on Dispute Resolution. The council implements and oversees many elements of the state's Dispute Resolution Act. In 2019, the Court approved an overhaul of rules relating to dispute resolution after extensive work by the council and opportunities for public comment. These revised rules restructure, clarify, and conform dispute resolution provisions and requirements. They also streamline training and continuing dispute resolution education requirements, expand applicable ethical rules, and describe the process through which the council receives and investigates complaints. This new structure provides clarity and consistency in the dispute resolution process, making it a more accessible option for Kansas litigants.

You will find more information about the Court's dispute resolution program at www.kscourts.org/About-the-Courts/Programs/Dispute-Resolution.

Amendments to Child Support Guidelines

The Kansas Supreme Court adopted new child support guidelines in 2019 that became effective on January 1, 2020. Kansas child support guidelines are rules judges and hearing officers follow to decide how much child support each parent is to pay toward raising their children. At the most basic level, they guide parents to create a fair and balanced distribution of resources essential to raising children: time and money.

Federal law requires states to review their child support guidelines every four years. In Kansas, an advisory committee reviews Kansas' guidelines to ensure that the roughly \$35 million paid in support each month is equitable for the parents and appropriate for the day-to-day essential needs of the children they support. The current committee spent nearly a year reviewing the guidelines and making proposed updates. The committee sought public comment on proposed updates in the summer of 2019, and the Supreme Court considered those comments before adopting the current guidelines.

More information about the child support guidelines is available at www.kscourts.org/About-the-Courts/Programs/Child-Support-Guidelines.

Specialty Courts

The development of specialty courts across Kansas remains one of the Kansas judicial branch's greatest sources of pride. To date, 19 specialty courts exist in 15 judicial districts. Specialty courts are often called problem solving courts because they focus on addressing the reasons for criminogenic behavior while seeking to avoid incarceration. These specialized court dockets include adult and juvenile drug courts, behavioral and mental health courts, juvenile truancy courts, and veterans' treatment courts, among others.

Specialty courts operate alongside more traditional court dockets. Their success stems from judges and court employees who choose to work on these labor-intensive problem solving court dockets, and from the efforts of social workers, mental health professionals, prosecutors, and defense attorneys who work as a team to oversee each defendant's case. The Supreme Court commends all who are involved with advancing specialty court initiatives in our communities. Rules governing specialty courts in Kansas can be found at www.kscourts.org/Rules-Orders/Rules/Specialty-Court and www.kscourts.org/Rules-Orders/Rules/Specialty-Court-Standards.

Ad Hoc Pretrial Justice Task Force

In November 2018, the Supreme Court created the Ad Hoc Pretrial Justice Task Force to examine current pretrial detention practices for criminal defendants in Kansas district courts. Task force members include judges, defense attorneys, prosecutors, and representatives from court services and community corrections, and is chaired by Chief Judge Karen Arnold-Burger. Stakeholders from across the criminal justice system have provided input to the task force on various topics.

The task force met several times since the last State of the Judiciary report. In recent months the task force has focused on recommendations to present to the Supreme Court. Throughout the process, Chief Judge Arnold-Burger has requested input from system stakeholders, including members of the executive and legislative branches. Stakeholders have been invited to several task force meetings and have addressed task force members in person and in writing. Chief Judge Arnold-Burger and other task force members have also met individually or with groups of stakeholders to hear their ideas, suggestions, and concerns.

Five objectives have guided the task force's work. It seeks to:

1. balance the presumption of innocence versus the risk of flight and public safety;
2. explore all sides of an issue, examine the issue, and confront the pros and cons with an open mind;
3. encourage input from stakeholders;
4. address measurable problems with measurable solutions; and
5. stay on task and avoid placing blame for problems.

The task force is currently developing recommendations on topics for future judicial trainings; pretrial "best practices" guides; possible legislative changes; successful practices and procedures used in other jurisdictions that should be considered in Kansas; and practices that may avoid unnecessary or unconstitutional pretrial detention that need further study.

While the task force originally worked toward submitting its final report to the Supreme Court by May 6, 2020, the COVID-19 pandemic hindered its ability to complete the report by that date. The Court extended the deadline to November 6, 2020.

More information about the task force is available at www.kscourts.org/About-the-Courts/Court-Administration/Court-Initiatives/Pretrial-Justice-Task-Force.

Ad Hoc Committee on Bonding Practices, Fines, and Fees in Municipal Courts

In 2017, the Supreme Court established the Ad Hoc Committee on Bonding Practices, Fines, and Fees in Municipal Courts to study and examine pretrial bonding practices, fines, and fees at the municipal level. The Supreme Court also charged the committee with prioritizing related training topics for municipal court judges.

At the Municipal Judges Conference in April 2019, a "Bonding Practices, Fines, and Fees in Municipal Courts" training covered:

- current Kansas municipal court pretrial bonding practices;
- fines levied against defendants for violating municipal ordinances;
- fees charged to defendants;
- practices identified as disproportionately jailing economically disadvantaged persons;
- best methods for reducing the issuance of bench warrants and jailing of persons for nonpayment of fines and fees;
- best practices for pretrial bonding; and
- lessons learned about unnecessary detention and the consequences of that practice

The Supreme Court will continue its commitment to train municipal court judges, including on those issues and recommendations provided by the ad hoc committee.

More information about the committee is on the Kansas judicial branch website at www.kscourts.org/About-the-Courts/Court-Administration/Court-Initiatives/Ad-Hoc-Committee-on-Bonding-Practices.

Supreme Court on the Road

Courts are integral to every Kansas community. Providing access to justice also means making court proceedings available and understandable to all Kansans.

For many years, the Supreme Court has prioritized efforts to bring appellate court proceedings directly to the people. The Supreme Court typically holds an evening docket in a Kansas community twice per year. This allows those who work during the day to attend and see how the Supreme Court operates. Not only does the travel docket give Kansans the chance to watch court proceedings live, it also allows the Supreme Court to connect with the community and visit area schools. Justices meet with students of all ages, answering questions about the legal process and discussing the role of Kansas courts in our society.

In 2019 the Supreme Court held travel dockets in Lawrence and El Dorado. The Lawrence session drew a record attendance of about 800 people. El Dorado was also a success—justices visited with students from seven area schools and brought together many community leaders for a breakfast at El Dorado Community College.

Details about past Supreme Court travel dockets are available at www.kscourts.org/About-the-Courts/Supreme-Court/Supreme-Court-Travel-Docket.

Commission on Judicial Conduct

A Code of Judicial Conduct adopted by the Kansas Supreme Court defines the standard of ethical behavior for all judges in Kansas. This includes municipal judges, pro tem judges, retired judges, senior judges, judges of the district courts, and appellate judges and justices. Rules adopted by the Kansas Supreme Court task a commission with reviewing all complaints made against a judge and specify procedures to determine if a judge has violated the Code of Judicial Conduct. The commission's work is essential to maintaining a high standard of integrity for the judicial system in Kansas, a critical aspect of assuring justice.

Until 2019, the commission that performed these tasks was known as the Commission on Judicial Qualifications. Amendments to the rules resulted in a name change, and the commission is now known as the Commission on Judicial Conduct. The 2019 rule changes culminated four years of study with multiple public comment periods. The rule committee members and the members of the commission are commended for their hard work that resulted in extensive revisions in the rules governing the commission's procedures.

Information about the work of the commission and its procedures can be found at www.kscourts.org/Judges/Commission-on-Judicial-Conduct.

Encouraging Innovation and Harnessing Technology

Implementation of eCourt Centralized Case Management System

The modernization of our courts includes the continued implementation of a new statewide electronic case management system called Odyssey. The Odyssey system will replace the FullCourt system used by most district courts, as well as the appellate case management system currently in use. In August 2019 the Kansas judicial branch successfully launched the first of seven rollout tracks. This initial track includes two judicial districts that cover six counties in central Kansas: Clay, Dickinson, Geary, Marion, Morris, and Riley. The employees and judges working in these six counties deserve special recognition for being the first in our branch to meet the challenges associated with this transition and for developing solutions that will benefit other courts across the state.

Work on additional rollouts continues. Ultimately, once fully launched, the new case management system will provide a universal platform for court case and document management and allow for comprehensive workshare, case processing, and management of court payments. It will bring greater uniformity and efficiency to the entire court system.

Odyssey provides better remote access to court records than ever before and promises to enable data sharing between various governmental entities based on information security requirements, contribution to the effective administration of justice, and need. In 2019, the Court adopted new rules governing electronic filing, remote access to electronic district court case records, and procedures to protect personally identifiable information in those records.

The new case management system will also enable court employees in one county to assist courts in other parts of the state with case processing and related work. This will allow more effective and efficient management of the state's entire court system. Since the first track went live in 2019, employees in those two judicial districts have already started using workshare to assist one another.

More information about the centralized case management system project can be found at www.kscourts.org/ECourt/Centralized-Case-Management-System.

Online Attorney Registration

In 2019, the Clerk of the Appellate Courts oversaw the attorney registration process in Kansas under which attorneys must renew their licenses to practice law each year. This renewal has traditionally occurred through a time-intensive paper process. In 2019, we began transitioning to an online attorney registration system and an upgraded attorney registration database—both systems built entirely in-house. This system allows attorneys to log on and submit changes to their registration information and will soon permit them to complete all registration requirements online. The change establishes a more accessible registration process for attorneys, while also gaining efficiency.

More information about the new online attorney registration portal is available at <https://registration-kard.kscourts.org/Resources>.

Attracting and Retaining an Excellent Workforce

Market-Level Salaries for Employees and Judicial Officers

The Supreme Court depends on judges and employees to meet its constitutional mandate to provide a unified court system to the people of Kansas. A well-qualified, experienced workforce is a crucial component of the court system's success.

In 2016 the Kansas judicial branch, through grant funding, contracted with experts at the National Center for State Courts to conduct an employee classification and compensation study. Data from that study was updated in 2017 and 2018 and adjusted again to reflect the increase in the consumer price index for fiscal year 2019. This newly updated information shows pay for court employees is anywhere from 1.7% to 17.9% below market, depending on job category. This is true even after a 2.5% increase for Kansas judicial branch employees in FY 2020. As a result, the Supreme Court requested a budget increase of \$9.9 million for fiscal year 2021 to raise employee salaries to market rate.

The salaries of Kansas judges are similarly uncompetitive in the marketplace. After receiving a 2.5% pay increase for fiscal year 2020, Kansas district court judge actual pay ranked 49th out of the 50 states according to a July 2019 National Center for State Courts Salary Study. If Kansas want to continue attracting well-qualified attorneys to the bench, the state must offer salaries that align with the high level of responsibility the positions require. So the Supreme Court requested a budget increase of \$7.1 million for fiscal year 2021 to raise district court judge pay to the average adjusted salary of our four neighboring states. That amount would also increase district magistrate judge and appellate jurist pay by the same percentage increase as for district court judges.

In the coming years, the Supreme Court will continue to work with its colleagues in the legislative and executive branches to achieve the important goal of a fully funded judiciary. We recognize the state may face profound fiscal challenges given the pandemic's economic impact. In the long term, bringing the salaries of judges and Kansas judicial branch employees to market rate will remain one of the Supreme Court's top priorities.

More information about the Kansas judicial branch's Classification and Compensation Study is available at www.kscourts.org/About-the-Courts/Court-Administration/Budget/Judicial-Branch-Classification-Compensation-Stud.

Stewarding Public Resources

Accounting Standards and Controls

District courts process millions of dollars each year. That money is distributed to various funds of state and local governments, as well as to litigants and other private parties. In fiscal year 2019, district and appellate courts collected more than \$55 million for the benefit of state government.

At the close of 2018, the Kansas judicial branch provided an updated accounting manual to all district court staff. The judicial branch regularly updates this manual and provides guidance on internal controls, financial recordkeeping, banking policies, and a wide variety of other accounting procedures relevant to the district courts.

The accounting team within the Office of Judicial Administration is conducting in-person district court accounting reviews and delivering assistance as needed. The team has been reviewing financial records and accounting processes and procedures and providing training on proper accounting procedures and internal controls.

Centralized Payment Processing

Consistent with our effort to standardize processes, and in tandem with the centralized case management system rollout, the Supreme Court created a centralized payment center within the Office of Judicial Administration in 2019. This center can accept, account for, and distribute most district court payments.

This centralized payment program is already in place for the first six counties using the new case management system. The program will rollout centralized payments for other counties alongside the future tracks of the centralized case management system rollout. The centralized payment center oversees many financial processes, some of which are:

- monthly reconciliations;
- writing and delivering checks;
- submitting funds to unclaimed property;
- managing chargebacks, overages, and small refunds; and
- credit card payment processing and reconciliation.

Centralized payment staff complete these functions under the supervision of accountants.

The centralized payment center allows for greater efficiencies in time and cost, as well as stronger financial controls, centralized bank account management, and standardized accounting processes and procedures.

You can find more information about the payment of fees and fines in the court system at www.kscourts.org/Ecourt/Pay-a-Fine-or-Fee.

Weighted Caseload and Workload Studies

Personnel costs comprised about 91% of the Kansas judicial branch budget in fiscal year 2019. The judicial branch strongly commits to ensuring a workforce structure that appropriately addresses needs throughout the state. The Kansas judicial branch does this through weighted caseload and workload studies, which examine the volume and type of case filings in each county and the activities performed by certain classes of employees throughout the state. These studies provide helpful information about how to shift resources, share work, and, when needed, request new positions.

Each year the Kansas judicial branch uses new case filing data to update a 2011 weighted caseload study for judges. The latest update reaffirms prior results that confirm we need additional judges in some parts of the state. The Supreme Court's budget request for fiscal year 2021 included about \$1.2 million to create seven new judgeships and accompanying staff positions.

Beginning in fiscal year 2018, the National Center for State Courts designed and conducted a weighted workload study for the more than 300 judicial branch court services officers (CSOs – also known as probation officers). And in fiscal year 2019 the National Center for State Courts conducted a weighted caseload study for district court clerks' staff. Both studies collected three types of data: (1) actual work-time data recorded by CSOs and clerks' staff statewide; (2) a survey of all CSOs and clerks' staff requesting their assessment of whether they have adequate time to perform their duties in a timely and high-quality manner; and (3) qualitative feedback from focus group sessions in four locations across the state. The National Center translated the work-time data to workload measures based on case type or supervision level. The method used to weight cases also accounts for their varying complexity and need for supervisory attention. The National Center then presented its final report of the data from the CSO workload study to the Supreme Court during the first half of fiscal year 2019. Because CSOs provide a wide range of services across the state, after the study the Court formed the Court Services Officer Workload Study Workgroup to examine each CSO task thoroughly to determine its authority and purpose.

In October 2019, the Supreme Court's CSO Weighted Workload Study Workgroup issued its report on the duties, functions, and tasks CSOs perform across Kansas, including supervising those convicted of crimes. The workgroup's threshold conclusion is that the judicial branch needs more CSOs to adequately perform all statutorily mandated tasks. The judicial branch requires additional CSOs to continue to adequately provide the level of service and supervision of offenders that Kansans deserve and expect.

The final report for the district court clerk staff study is still pending. The National Center for State Courts is currently conducting weighted caseload studies for all judges of the district court, administrative assistants, and court reporters. The data from these studies will complement data from other studies and provide a firm foundation for informed decisions about court staffing.

Reorganization and Consolidation of Resources

The Supreme Court recently reorganized the administrative structure of the Continuing Legal Education Commission. Previously, the commission operated independently with oversight from the Court. Following the reorganization, it operates under the direction of the Office of Judicial Administration. This move allows the Court to streamline administrative support resources and

work toward operational efficiencies. Along with the reorganization, the Court amended Kansas Supreme Court Rules 800-811 by:

- changing the Continuing Legal Education Commission to the Kansas Continuing Legal Education Board;
- charging the Board with the responsibility of assisting the Supreme Court and the Office of Judicial Administration in administering and regulating continuing legal education; and
- updating continuing legal education delivery methods.

More information about Continuing Legal Education is available at: <https://www.kscle.org/>.

* * *

I hope this report provides useful insight into the progress made by the judicial branch during 2019. I return to a point I made earlier. Chief Justice Lawton Nuss led the Kansas judicial branch during 2019 and did so since 2010. Within months of becoming the leader of the Kansas judicial branch, Chief Justice Nuss formed a Blue-Ribbon Commission that conducted a top to bottom review of the Kansas judicial branch and made 70 recommendations, which provided a blueprint for the modernization of the branch that occurred under his leadership. All the topics covered in this report demonstrate the progress on important initiatives he instituted. Chief Justice Nuss led the branch during difficult financial times. He leaves a remarkable and historic legacy that will guide the Kansas judicial branch for years to come.

If you have other questions about the topics in this report, please get in touch. Those working within the Kansas judicial system strive to serve the state with dedication and distinction, even in difficult times. We know the coming year will bring many unique challenges. Still, we intend to move ahead with an eye toward attaining the overarching goals outlined in this document: maximizing access to and promoting justice, encouraging innovation and harnessing technology, attracting and retaining an excellent workforce, and stewarding public resources. We look forward to deepening our partnerships with the legislative and executive branches as we pursue this mission.

On behalf of the Kansas Supreme Court, I extend heartfelt wishes for health, fortitude, and success in the coming year.