

State of the Judiciary
Chief Justice Marla J. Luckert, Kansas Supreme Court
Message to the Legislature
January 11, 2022

Mr. Speaker; Mr. President; Governor Kelly; other elected officials; Legislators; honored guests, including my wonderfully supportive and very patient spouse—Ken Morse, my daughter and her husband, all of whom are in the East gallery; my judicial branch colleagues; and my fellow Kansans—Good afternoon.

Thank you, Speaker Ryckman for generously offering me this chance to update this special joint session of the Legislature on the State of the Kansas judiciary. And thank you President Masterson for agreeing to the scheduling.

On behalf of my colleagues on the Supreme Court and throughout the judicial branch, I am honored to highlight a few of the judiciary's accomplishments during 2021. It was another unprecedented year marked by disruption of processes and tremendous uncertainty brought on by a worldwide pandemic.

During my video report to you last year, I noted the spirit of perseverance shown by judicial employees and judges. 2021 required these same individuals to be incredibly resilient.

In 2021, the vaccine rollout, coupled with declining new COVID case numbers, contributed to the feeling that we were about to cross the pandemic finish line. But new variants and the waxing and waning nature of the virus required the judicial branch to repeatedly adapt to the continually changing conditions.

Sadly, as in 2020, the judicial branch suffered losses, through death and disability, of co-workers and loved ones to COVID. I want to offer a special tribute to the employees we lost, their loved ones, and those who felt the pain of losing a co-worker. Despite the heavy toll, a resilient spirit came through.

Kansans have long shown resiliency when faced with hardship. The dust storms we experienced across the State about a month ago reminded us of the Dust Bowl of the 1930s, another period that tested Kansans' collective resilient spirit.

As a fourth generation Western Kansan, I grew up hearing stories of the dust storms that disrupted everyday life as dirt covered everything, making drifts as deep as would the snow of a different season. One-room schools dotted the Kansas landscape, and my parents spent many nights in their schools as they took shelter from the howling wind and blinding dust. They told stories of neighbors coming together to improve the shelter of the schoolhouses and of families who contributed food to the school, even though those families struggled to put food on their own tables.

The rains finally came, and Kansas farmers adopted new agricultural practices to temper the effects of the extreme storms. With time, these practices evolved into precision agriculture that relies heavily on technology.

Much as the Dust Bowl was a turning point for Kansas farmers, the pandemic became a turning point for Kansas courts. Over the past two years, the employees and judges of the Kansas judicial branch dug deep and found that same spirit of perseverance, resiliency, innovation, and adaptability. And, just as in the '30s, when neighbors came together to help each other and their schools, Kansas judicial branch employees forged ahead and improved the shelter courts provide.

I am very proud and grateful for the extraordinary work and heavy lifting done by our judges, staff, and justice partners this last year. Today, I want to highlight a few ways we transformed our processes and innovated.

Before doing so, I want to thank you for your efforts last session on behalf of the judicial branch. When I reported to you that the Kansas Supreme Court had been forced to impose a crippling hiring freeze because of a pandemic-related drop in revenue, you responded by filling that gap.

You also recognized we would need to fill our open positions with qualified individuals able to handle the courts' sensitive and technical duties. Because the work of courts affects public safety and the lives of Kansans, we partnered with you to overcome a long-term problem. For more than a decade, stagnant and under-market pay had plagued the judicial branch by hindering our ability to attract and retain employees. You responded to the need by committing to bring the pay of every employee position to last year's market rate by July 1, 2022.

To say the enhancement had a profound impact is an understatement. Your commitment made employees feel valued. And, in turn, morale improved, and resiliency grew. More tangible evidence of improvement exists as well. Since the start of fiscal year 2022, court administrators across the state have reported seeing improved qualifications in the candidates for many staff positions. They attribute that improvement to our market-competitive salaries.

We are also grateful for your commitment to increase judicial pay by five percent in both fiscal years 2022 and 2023. This increase softened the blow of cost-of-living increases.

And we thank you for the new court service officers you funded after we presented data showing we lacked sufficient staff to perform even fundamental, statutory duties you had imposed.

With these appropriations, you helped spark transformative change. The need for change may have never been greater given what we faced last year. The pandemic propelled public expectations that we would provide online services.

The Kansas judicial branch responded to court user needs and expectations by increasing online access to services and court hearings. We aggressively pursued grant opportunities and leveraged those funds to develop the technology necessary to modernize our court operations.

As one example of our newly developed technology, we are piloting an app that asks questions about a traffic citation and generates a "traffic pass" that instructs how to resolve the citation based on the answers provided. Given the success of our pilot, we hope to soon expand use of this app in other parts of the state.

Another innovation in on-line access is a web portal that allows Kansans to apply for protection from abuse orders. Within six months of statewide use, half of all protection orders are being filed through the portal. These applicants usually lack help from an attorney. And, because of their circumstances, they often find it difficult—or even unsafe—to come to the courthouse. The portal eases those burdens.

A popular, third web-based innovation allows couples to apply online for marriage licenses.

Kansas is a frontrunner in launching these technologies and is now presenting and sharing our experiences nationally as we help other states develop similar apps and portals.

We also used grant funding to acquire hardware and software for increased use of remote conferencing technology. Our clerks, court service officers, self-represented help centers, and interpreters have widely used remote conferencing technologies to help Kansans. Having found demand and success, they will continue to do so in the future.

And remote hearings became a valuable tool in every court's toolbox. District courts conducted all types of hearings remotely, unless constrained from doing so by constitutional protections. And our appellate courts quickly pivoted to conducting arguments remotely.

Many litigants and attorneys now ask for a remote hearing. Online hearings have allowed many Kansans to attend court without needing to take a day off work. This, in turn, benefits our business community. And we have found that judicious use of this technology can ease access and lower costs, which often improves due process and procedural fairness.

But remote hearings do not fit well for some proceedings and some circumstances. So Kansas courts also developed methods to protect the health of court users during in-person court proceedings.

Jury trials presented our biggest obstacle because they require bringing large groups of people together—people often reluctant to be in a large crowd. During the summer of 2020 we allowed jury trials when necessary to protect constitutional speedy trial rights. But we paused all others until a task force developed guidelines and courts worked with local health agencies to adapt those to their courthouses. Jury trials resumed in the late summer of 2020, meaning they were an available tool for courts during most of fiscal year 2021.

In sum, courts worked hard to keep cases moving forward. For example, statewide, courts resolved more than 31,000 criminal cases in fiscal year 2021.

Kansas courts, even though challenged with the need to remake our procedures, also did not lose sight of our goal to continually improve our justice system. I will not orally report on all the many powerful and transformative initiatives we have undertaken. I am electronically distributing to each of you a written report that will provide more information and detail about the state of the judiciary. But I will highlight a few of our initiatives.

The legislative and executive branches agreed to collaborate with us to plan a mental health summit that we previewed in a webinar last fall. The Summit itself will be April 13 and 14 of this year. Speaker Ryckman, President Masterson, Governor Kelly, and I will jointly welcome all attendees. Community leaders, behavioral health professionals, law enforcement, first responders, faith-based leaders, and others will attend and discuss how our courts, communities, and state can improve our response to individuals with behavioral health issues who become involved with the judicial system. I want to express gratitude and applaud the efforts of two of your colleagues: Representative Brenda Landwehr and Senator Pat Pettey have been instrumental in planning the summit.

In another interbranch collaborative project, we worked with the Kansas Department for Children and Families and the Kansas Strong for Children and Families grant project to develop a tracking tool designed to reduce time to adoption.

These are but two examples of the ways the court system has and will continue to join with the legislative and the executive branches on efforts to protect our most vulnerable Kansans.

On another front, to address the large problem of housing instability confronting our communities, we recently formed a committee that is working to improve processing of landlord-tenant disputes and to develop self-help resources for landlords and tenants. The committee's work will aid Kansas entrepreneurs, our neighbors, and our communities.

We also worked to support specialty courts. For those who may not be familiar with those courts, they focus on addressing the reasons for criminal behavior—such as behavioral health or substance abuse issues. Successfully completing specialty court is hard work, much harder than regular probation. A defendant must undertake sets of rigorous sessions designed to break hard-wired behavior. These courts' success rates in reducing recidivism are impressive. And they save Kansas money, costing a small fraction compared to incarceration.

To assist our efforts, we formed a committee to spearhead initiatives to support existing specialty courts and to help start new ones.

Also, early in 2021 the judicial branch completed a four-part webinar series on how to establish and operate specialty courts that provide supervision, mentoring, and treatment for veterans, usually with the support of the Veterans Administration.

We join you in supporting your criminal justice reform commission's specialty courts bill.

Outside the criminal arena, we have worked diligently to increase access to justice by developing more forms, with accompanying information, to help unrepresented litigants navigate legal filings. We have also increased support for self-help centers in our courthouses where individuals can access these forms and other information and can often find limited assistance from a volunteer attorney or Kansas Legal Services. And we made rule changes designed to increase access to assistance from an attorney at no- or low-costs.

During 2021, we have also sought to improve administrative efficiency and our stewardship of taxpayer resources. A key component of this effort is the continued rollout of our new case management system.

This rollout slowed during the pandemic. But we worked with our vendor to improve the system and the rollout process as we remained focused on ensuring smooth transitions to the new system. To date, 26 counties are using the new case management system, and more are scheduled to go live on June 6.

As courts join the system, they also move to a centralized payment system to process their district's portion of the millions of dollars Kansas courts collect for the benefit of state government.

Recently, we added a court service officer module to the case management system. This module will allow for enhanced client supervision and data collection.

We are proud of the progress we made on these efforts to improve the judicial system and better serve our communities despite the challenges presented in 2021.

As we look to 2022 and beyond, we ask for your budget help in three ways. First, we propose eliminating the judicial branch's dependence on volatile and unpredictable fee funding. Because most of our state budget funds our workforce, any budget shortfall falls on the shoulders of Kansans as we are unable to staff critical positions across the state. We request that the fees that now fund the judicial branch be redirected to the state general fund and that the judicial branch receive an amount equal in return. By redirecting certain fees from the judicial branch to the state general fund, the overall state budget would in most years achieve a net neutral exchange or even a positive gain for the state general fund, assuming past trends continue. Granted, in some years—like fiscal years 2020 and 2021—fee fund receipts may fall below projections. This occasional downward trend can be better absorbed in a fund the size of the state general fund than in the much smaller judicial branch budget, which constitutes less than one percent of the all-funds budget.

Second, we request funding for 13 new district judge positions, along with support staff, and 10 new district magistrate judge positions. A recently conducted weighted caseload study showed the need for these positions and more. New judge positions have not been added since 2008. Currently, workloads in some parts of the state far exceed judicial capacity and the need for more judges and staff is great.

Third, we ask that you continue your commitment to maintaining judicial branch employees at market wages by implementing the second year of the pay increases and by including the judicial branch in any cost of living increases you adopt.

While our budget requests this year do not ask for other salary increases, I want to alert you to challenges we continue to face at the two ends of our salary spectrum. On one end, we have had trouble filling our lowest paid trial court clerk positions. We must compete with rapidly increasing salaries that businesses across the economy are offering these entry level workers.

At the other end of our pay spectrum, we've also had trouble attracting judicial candidates. One recent magistrate judge opening in Dickinson County attracted no applicants, and another farther west had only one applicant by the initial deadline.

Statewide, the number of applicants for all judicial openings has plunged and included few, if any, attorneys from the private sector. What this translates to is a pool of judicial applicants with little or no experience in complex civil litigation that, for example, our businesses often use to protect their interests and enforce their contracts.

We deeply appreciate your commitment to provide two years of salary increases for judges. But compensation for these highly responsible positions lags far behind the legal market. As of July 1, 2021, with the first 5 percent increase you approved last session in effect, our neighboring states paid their trial judges, on average, over \$30,000 more per year than Kansas. And within Kansas, the pay for our judge positions still does not compete with what many attorneys command in the private or public sectors, especially the experienced attorneys Kansans hope to attract to the bench.

I look forward to continued collaboration to increase the pay of our entry level clerks and to increase judicial pay so it aligns with the high level of responsibility the position requires.

I will end where I began by expressing gratitude for the support received last year for our resilient staff. Those in the judicial branch are thankful to have legislative leaders and a governor who understand what happens in our courts and who understand that courts protect and strengthen Kansans, their businesses, and their communities. We are grateful that you share our vision and commitment to solving the problems that bring people to court. And we appreciate your working with us in the spirit of mutual respect. As leaders dedicated to upholding our constitution you recognized the importance of having courts with the resources to fairly and impartially resolve the over 300,000 cases a year that impact the lives of your constituents.

The Kansas court system still faces many challenges. But with the resiliency demonstrated by our families in the 1930s, and, more recently, by the employees and judges of the Kansas judicial system, we will continue to respond with creative solutions to ensure our courts operate at the level Kansans have come to expect. Just as Kansas farmers adopted new practices in reaction to the Dust Bowl and emerged stronger and better, the pandemic pushed the Kansas judicial branch to use new practices and technology that make it stronger and better.

We look forward to continuing to partner with our colleagues in the executive and legislative branches as we enter a new year in which we will work toward our joint goal of improving access to justice.

May all of you and our great state continue to be blessed. Thank you.