

State of the Judiciary 2011
Chief Justice Michael G. Heavican, Nebraska Supreme Court
Message to the Legislature
2011

Mr. President, Mr. Speaker, Members of the Legislature and fellow Justices of the Nebraska Supreme Court. I would like to thank the members of this body, and specifically thank the Speaker for inviting me to address you again this year.

It is always a great honor for me to report on the Court's past year and discuss the Court's future. But first I will introduce my fellow Justices of the Supreme Court.

To my immediate left is Justice William Connolly of Hastings. To Justice Connolly's left is Justice Kenneth Stephan of Lincoln. And to Justice Stephan's left is Justice Lindsey Miller-Lerman of Omaha.

To my immediate right is Justice John Gerrard of Norfolk. To the right of Justice Gerrard is Justice Mike McCormack of Omaha.

Justice John Wright of Scottsbluff is not able to be with us today.

This morning I will talk to you about how the courts serve both the elderly and the young. I will also talk about our technology initiatives, long-range strategic planning, and the Court's resources and budget.

The Courts have a constitutional mandate to provide access to justice for all of Nebraska's citizens. Of special concern are the needs of the elderly and the young who become wards of our county courts when they cannot protect themselves. For example, the elderly may become wards of the county courts when they cannot make basic decisions about health or finances. Typically a county court judge appoints a guardian or conservator in such situations.

We have a duty to those who need such protection to not let the very court processes designed to protect them become an opportunity for embezzlement or further abuse. Unfortunate examples of such abuse surfaced this past year.

The courts, the legal community, and the Legislature have responded. In conjunction with the Nebraska State Bar Association and this body's Judiciary Committee, led by its Chair Senator Ashford, I asked Senators Wightman, Nelson, Council, and Coash to serve on a Joint Review Committee on the Status of Adult Guardianships and Conservatorships in the Nebraska Court System. The Committee also included attorneys, court staff, law enforcement, an accountant, and judges.

This hardworking Committee issued its final recommendations on October 1, 2010. The suggested legislative and procedural changes for the court system to increase protection for court wards are embodied in Legislative Bill 157, introduced by Senator Coash.

The Committee was especially mindful of the current condition of the State's budget. Most of its recommendations will improve the guardianship/conservatorship system at very little or no cost. Those recommendations include:

- mandating background checks for guardians and conservators;
- mandating bonds for conservators when wards' assets are greater than \$10,000;
- allowing interested third parties and concerned individuals to request more oversight when physical or mental health is in jeopardy; and
- requiring the State Court Administrator to create and maintain a central database of guardians and conservators.

I look forward to working with this body, the Nebraska State Bar Association, and other interested parties to make Nebraska's guardianship/conservatorship system work better for Nebraska's elderly citizens. I see no reason why Nebraska's system should not be a model for other states to follow.

Children in the Courts

Probation

I also look forward to working with many of the same partners on three projects affecting children in the courts. Like the elderly, many abused, neglected, and delinquent children often find themselves involved in the court system under circumstances in which they cannot protect themselves.

The Court's Office of Probation Administration continues to develop and build on innovative programs protecting Nebraska's youth while enhancing public safety. I spoke to you last year about one of these programs, the Nebraska Juvenile Service Delivery Project, which began as a pilot in Omaha in January 2009. The project is a collaborative effort with the Department of Health and Human Services and is designed to safely supervise court-adjudicated delinquent children in their homes rather than in in-patient treatment facilities.

As I said to you last year:

The goal is for children to receive rehabilitative services without being made wards of the State. Prior to this project, in order to access such services it had been a common practice for these children to be made State wards, supervised by the Department of Health and Human Services, while simultaneously being supervised by Probation staff. This was a costly, confusing, and redundant practice.

Last year approximately 450 young people were placed in this project. As a result, we have been able to reduce by 70% the number of juveniles being simultaneously supervised by both the Department of Health and Human Services and Probation. The project is being evaluated, but we believe it is saving money and producing better results.

I want to thank the Department of Health and Human Services for its continuing support and invite the Department to prudently expand the program to other areas of our State.

Truancy

The Court's Office of Probation Administration is also focusing on truancy intervention programs in order to reduce the number of children entering the juvenile justice system due to habitual truancy. Keeping truant children out of the court system and in schools is a vital goal in the collaboration between probation, the courts, schools, and communities.

Likewise, our juvenile and county court judges have been leaders in their communities in efforts to reduce truancy. Judges around the State have been catalysts for initiating and implementing new and innovative truancy reduction programs. Judges are visible in the schools where they serve as mentors and facilitators in model programs. Although the burden on juvenile courts has been felt most keenly in Douglas County, it will likely be felt proportionately by all of our juvenile courts and county courts as truancy projects are reexamined throughout the State.

Without an increase in judicial resources, judges in the Douglas County Juvenile Court responded promptly and effectively to a large increase in truancy filings made last year. In this year and in future years it is possible that thousands of new truancy cases will be filed in the Douglas County Juvenile Court.

I commend the juvenile court judges, in particular Judge Crnkovich, for their work on truancy issues. I also commend all of the parties in Douglas County who are working on truancy issues, including members of this Legislature. But I caution all involved that the current juvenile court system in Douglas County cannot handle thousands of new cases.

Truancy is a major contributing factor to underperformance and underachievement of our State's young people. As the Governor said in his State of the State address, "students can't learn if they are not in school."

The best way to handle truanies, however, is by aggressive intervention in our schools and innovative diversion of individual cases before they are filed in our juvenile and county courts. The courts are inherently the most expensive and least flexible way to deal with truancy cases. Courts should be used as a last resort for only the most difficult and unresponsive truant.

Abuse and Neglect

We also continue to work to improve the court system with respect to abused and neglected children through partnerships with the Department of Health and Human Services and the Department of Education. I have spoken in past State of the Judiciary addresses about our Through the Eyes of the Child Initiative.

Most of you are aware that the Through the Eyes of the Child Initiative features local teams or committees operating in every corner of Nebraska. Those teams, under the leadership of local

judges, include Health and Human Services workers, county attorneys, public defenders, defense attorneys, foster care review board employees, CASA volunteers, and other interested parties. The teams have focused on developing practices and procedures to move abuse and neglect cases through our juvenile courts and county courts as quickly as possible so that children in foster care can be placed in permanent, safe homes in a more timely manner.

Significantly, over the past year, a year that has included multiple changes in the way cases are handled by the Department of Health and Human Services, there has been a 22% reduction in the average amount of time a child removed from his or her home spends in foster care in Nebraska. That reduction is likely due to multiple factors, but the Through the Eyes of the Child teams have been a major contributing factor to that reduction.

Also over the past year, the Through the Eyes of the Child Initiative has emphasized the inclusion of educators on the local teams. The State Department of Education, led by Commissioner of Education Roger Breed, has embraced the inclusion of schools and educators in the Initiative.

The Department of Education is now an equal partner with the courts and Health and Human Services in joint efforts in information sharing pertinent to foster care children. Just as foster care children should not be bounced from one placement to the next, foster care children should also not be bounced from one school to the next.

The courts, the Department of Education, and the Department of Health and Human Services are working to both minimize multiple school placements and maximize appropriate information sharing so that school and court records follow foster children in a more timely fashion. Just as students can't learn if they are not in school, students can't learn if they are placed in many different school systems over short periods of time, and if full and complete records do not follow the students.

We have received a grant from the Casey Family Programs Foundation to fund further development of these information sharing projects. We face many challenges, but the Supreme Court continues to be committed to partnering with Health and Human Services, the Department of Education, and local schools in order to improve the lives of foster care children in Nebraska.

Technology Advances

In past years I have spoken to you about increasing the use of technology in the courts to improve productivity. I am pleased to report that our electronic payment system collected over \$5 million in traffic fines in 2010, as well as over \$2 million in other costs and fines. In addition, electronic filing is gaining momentum as lawyers become more acclimated to the use of technology.

At this time over 50% of our new civil filings in county court systems statewide are made electronically. Certain county courts have done exemplary work in the percentage of cases filed electronically. For example, in Hall and Adams Counties over 70% of new civil filings in 2010 were made electronically.

The electronic payment system and electronic filing system have demonstrably improved the efficiency of our county court clerks' offices around the State. Through the use of technology, many court clerks' offices are able to handle their workload without requesting additional employees.

I am also proud to report that Douglas County District Court, the only remaining district court which is not part of the Court's unified computer system, will be converted in a matter of weeks. The Douglas County Juvenile Court conversion will happen within a matter of months. With the completion of those conversions, electronic filing and electronic payment will be available in all of the State's courts, which will in turn increase productivity for the State's entire judiciary.

Interpreters

In the past I have also spoken to you about the growing demand for interpreters in our courts and the consequential need for budget increases to compensate for those interpreter demands. Without going into detail, by using technology to provide long-distance interpreter services, where appropriate our courts have limited the need for ever-larger budget increases for interpreters.

Legal Aid Partnership

Technological advances are also allowing us to improve access to the courts for those who may not be able to afford legal services. For example, this year the Supreme Court Implementation Committee on Pro Se Litigation will partner with Legal Aid of Nebraska on a federally funded grant to develop on-line interactive court forms.

As I have noted in past years, one of the major challenges that our courts and judges face as we proceed into the 21st Century is the rapid increase of self-represented parties. The partnership between Legal Aid and the Pro Se Litigation Committee will assist our judges in processing cases with self-represented litigants.

Library Commission Partnership

We have also begun a cooperative effort with the Nebraska Library Commission. Our Administrative Office was asked to serve as a key project partner with the Library Commission in a multi-million dollar grant project with the Bill and Melinda Gates Foundation. Through this program we hope to increase our services to individuals who represent themselves in court.

We have arranged a preview of the project in the Rotunda, which will be available today and tomorrow morning. Please take a minute to visit our virtual display. You will find court staff and members of the Nebraska Library Commission waiting to answer your questions and demonstrate the Court's e-government on-line services.

Long-Range Planning

I frequently tell people that technology is the future of the courts. That, however, is an oversimplification. Technology is the future of the courts, but it must be coupled with long-range planning in anticipation of the court system's future need for resources.

"Resources" means judges and employees. Where those judges and employees are located, and the work they do where they are located, are essential parts of long-range planning. To that end, last summer a group of trial court judges and lawyers worked on long-range planning for Nebraska's courts. Our court system was one of only five state court systems chosen by the National Center for State Courts to participate, at no cost, in an intensive planning process to reshape courts for the 21st Century. The planning group produced a report in September identifying general concepts ripe for more discussion.

The Court's Budget

Having updated this body with respect to the Court's use of technology to improve efficiency, as well as the Court's use of long-range planning, I have reached an appropriate point in this presentation to discuss funding for the courts. The courts are not just another agency line-item in the State's budget. Our courts are a constitutional branch of government, co-equal with the Legislative Branch and the Executive Branch.

Issues that I have mentioned in this address, for example the continuing increase of self-represented parties in the courts, the increased use of interpreters in the courts, and most immediately the potential for huge increases in truancy cases in Douglas County, beg the question of adequate funding for the court system.

I have outlined and stressed for you the expanded use of technology in the court system because that is the only significant way to increase efficiency in our courts. Although the technology we use in the court system is paid by user fees, the Court's general fund expenditures are primarily used for salaries and benefits for Court employees.

Over 95% of the Court's general fund budget is allocated for those employee expenses. Any cut in the Court's budget, whether it is 10% or 5% or 1%, means operating with fewer employees. Only a tiny fraction of the Supreme Court's over 1,000 employees and 144 judges can be found in this building. Judges, county court clerks' office employees, and probation officers are found in the courtrooms, county court clerks' offices, and our county probation offices in all of Nebraska's 93 counties. While some employees are only part-time, they are in every courthouse, in every county, and in every legislative district in this State.

Our employees and our judges are mindful of the difficult budget situation that our State is in. They are also mindful of the sacrifices that all Nebraskans are making to support State government.

I believe strongly that if we ask for the State's tax money we should spend it wisely -- both now and in the future. Hence the push to modernize through the use of technology, and hence the Court's efforts, in the face of some opposition, to implement a long-range planning process. That

planning process will continue into the future and is reflected in some statutory changes you will be asked to make this legislative session.

In the meantime, in order to meet our budget obligations, the Court's employees received smaller cost of living increases last year than the increases received by most Executive branch employees. We have scrutinized all employee and judicial vacancies. We have delayed hiring throughout the State and have declined to fill positions whenever possible. Although our judges received salary increases last year, those salary increases were offset by postponing the filling of judgeships as vacancies have occurred.

No judges or court employees will receive a cost of living increase next year. We will continue to not fill or delay filling vacancies. Depending on the extent of cuts in our budget, furloughs are likely.

That is why strategic planning and the work of the long-range planning advisory group are particularly important. Lurching from budget year to budget year, sustaining the court system by furloughing employees, is not a plan. It is an admission of the failure to plan.

In summation, as I noted at the beginning of this presentation, our courts perform the constitutionally mandated role of providing access to justice for all Nebraska citizens. It is a critical role – critical to, among others, our State's elderly and our State's abused and neglected children. No branch of this government is working harder to become more efficient. No branch of this government is working harder to implement technology, and no branch of this government is being more innovative in planning for the future.

This branch of government looks forward to working with you on our budget. And we look forward to your support when difficult decisions have to be made about how our court system will operate in the future.

Thank you for this opportunity to speak with you. Thank you also for the good work you do for the courts and all the citizens of Nebraska.