

State of the Judiciary 2012
Chief Justice Michael G. Heavican, Nebraska Supreme Court
Message to the Legislature
2012

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 Kenneth Stephan of Lincoln. And to Justice Stephan's left is Justice Lindsey Miller-Lerman of Omaha.

To my immediate right is Justice John Wright of Scottsbluff. Next to Justice Wright is Justice John Gerrard of Norfolk. To the right of Justice Gerrard is Justice Michael McCormack of Omaha. Justice William Connolly of Hastings is unable to be with us this morning.

Today I will speak to you about the elderly and children in our courts, technology and the future of our courts, and the Court's budget, emphasizing our commitments to cooperation, accessibility, affordability, and accountability.

1. The Elderly in the Courts

I will first speak to you about the elderly in our courts. Last year this Legislature responded to a report from a committee which studied the status of adult guardianships and conservatorships in the Nebraska court system. The Committee's recommendations were incorporated into LB 157, sponsored by Senator Colby Coash, which was passed unanimously as the Guardianship Reform Act of 2011. Your actions were both timely and far-sighted.

While the total population of the State is expected to grow 11 percent by 2030, the number of Nebraskans between the ages of 70 and 79 is expected to grow by more than 80 percent during that same time. We expect the number of guardianships and conservatorships to likewise grow dramatically in the next two decades.

The statutory changes in LB 157 went into effect on January 1 of this year. Among other provisions the new law requires background checks for guardians and conservators, and mandates bonds for conservators when the assets of a ward are greater than \$10,000.

The courts have finalized the changes called for by the statute. All of the necessary forms, as well as informational guides and links to statutes and court rules, have been made available on the judicial branch website at www.supremecourt.ne.gov.

In addition, training is being offered for court staff, judges, financial institutions, guardians, and conservators. We are aided in this process by the Nebraska State Bar Association and individual lawyers and volunteers throughout the State.

These efforts have resulted in Nebraska's recognition as a national leader in this area. Other states have contacted us to review our reforms. The National Center for State Courts has established a link on its elder law website for information about the changes in the guardianship and conservatorship procedures here in Nebraska.

None of us is naïve enough to believe that elderly persons will no longer be subject to abuse. But the statutory changes made by this Legislature, which are being implemented by the judicial branch, will provide for better checks and balances. We appreciate the willingness of this body to provide increased protection to the vulnerable elderly of our State.

The Nebraska Supreme Court will continue to make every effort to ensure that these legislatively mandated changes to guardianships and conservatorships will be effectively administered.

2. Children in the Courts

Likewise, the courts have a number of innovative projects concerning children in the courts. Although time does not allow me to speak about all of these projects, I will address several of them.

LR 37 Report

I first note that the Court read with interest the LR 37 report issued by your Health and Human Services Committee, under the leadership of Senator Kathy Campbell. We are humbled by the report's vote of confidence in the courts. We acknowledge with gratitude the Committee's charge to the courts and will use all available resources to continue to explore and implement innovative programs for Nebraska's children.

Inter-branch Agreement

Consistent with LR 37, the courts have participated in inter-branch cooperation on several levels. On a statewide level, with the help of the Casey Family Programs Foundation, a working group has been convened comprised of representatives from all three branches of state government. The purpose of this group is to identify solutions to the ongoing issues relating to children in the state foster care system.

Nebraska Court of Appeals Chief Judge Everett Inbody, State Court Administrator Janice Walker, and I are regularly joined by Senators Kathy Campbell and Brad Ashford in meetings with Department of Education Commissioner Roger Breed and others, including Department of Health and Human Services Chief Executive Officer Kerry Winterer. This group continues to search for practical ways to improve service delivery in child welfare cases in our juvenile and county courts.

On the local level, we work to improve the court system for abused and neglected children across the State. This is being accomplished by utilizing the Court's "Through the Eyes of the Child Initiative."

Every judicial district has teams headed by local county or juvenile court judges, which work to find better, speedier ways to deal with families and children in our juvenile courts. Our Through the Eyes of the Child teams are available as local forums to the Department of Health and Human Services for discussion as the Department strives to meet its obligations to children in foster care across the State.

I want to cite in particular several local teams. First, I would like to recognize the Dawson County Through the Eyes of the Child team, led by Judge Carlton Clark. The Dawson County team has conscientiously worked to move its child welfare cases forward, continually outperforming the rest of the State.

Today I also acknowledge the efforts and leadership of the Douglas County Separate Juvenile Court Judges who are working with the Douglas County Attorney, the Douglas County Public Defender, the Department of Health and Human Services, guardians-ad-litem, court appointed special advocates, and others to expedite permanence for children in that court.

I challenge all involved in that difficult process to find answers to the question: "How can we best serve the families and children in Omaha, Nebraska?"

Truancy

No timely discussion of children in the courts would be complete without addressing truancy. Last year I stated that "truancy is a major contributing factor to underperformance and underachievement of our State's young people." With the passage of Senator Ashford's LB 800 during last year's legislative session, truancy was brought to the forefront and much progress has been made in addressing the issue.

I would like to thank Nebraska's county attorneys, school administrators, and others who instituted changes on a local level by addressing truancy issues prior to formal court involvement. By focusing our efforts on prevention and on diversion of truants before they enter the court system, all parties benefit. The courts' resources should be reserved for the most difficult truancy cases. Programs in Douglas, Hall, Saunders, Lancaster, and other counties have been effective in doing just that.

Juvenile Service Delivery Project

I have also previously spoken to you about a project developed and operated by the Court's Office of Probation Administration, led by Probation Administrator Ellen Brokofsky. The Nebraska Juvenile Service Delivery Project is run in conjunction with the Department of Health and Human Services. This project allows children, found to have violated the law, to receive necessary rehabilitative services without those children being made wards of the State.

The pilot project, currently operating in Douglas County, has shown great promise. While under probation supervision, 635 juveniles were able to access rehabilitative services without becoming State wards. And 83 percent of the juveniles participating in the project were served while remaining in their own homes.

We think this program is both efficient and effective. We hope the program will be fully funded and expanded to at least one county in rural Nebraska. In particular, we thank Senator Bob Krist for his ongoing support in seeking full funding for this program.

3. Community-Based Services/Probation

The Court's probation officers not only provide programs for children, they also provide Nebraska's only comprehensive system of community-based corrections for adults.

The Community Corrections Council was statutorily abolished during the last legislative session. However, the commitment to continue to provide meaningful sentencing alternatives through community supervision initiatives remains strong under the Court's Office of Probation Administration.

Significant strides have been made over the past six years to offer specialized probation programs and to offer participation in problem-solving courts as viable alternatives to imprisonment. These community-based programs are both effective and far less costly than incarceration.

As an example, Probation's nationally recognized Specialized Substance Abuse Supervision Program is intended for individuals charged with a drug offense and assessed to be at high risk to reoffend. Each participant has a story to tell about the personal impact of the program. It is not unusual for successful participants to say this program has saved their families and saved their lives.

Likewise, Nebraska's 25 problem-solving courts perform a similar service. They have just undergone an extensive evaluation by the University of Nebraska Public Policy Center. Preliminary results indicate that these courts can also make dramatic changes in the lives of drug-addicted non-violent offenders by providing challenging rehabilitative programs rather than costly incarceration.

4. Technology in the Courts

I turn now to technology in the courts. As I spoke to you last year, the court system was looking forward to integrating both the Douglas County District Court and the Douglas County Separate Juvenile Court into the Court's statewide case management computer system. That mission has been accomplished.

We are now one of only a few court systems in the nation that have a statewide comprehensive case management system. This system allows for electronic filing of cases, electronic payment of

fines, and electronic viewing of court records 24 hours a day, as well as improved collection of statistical data.

We are making great progress in the area of electronic filing of cases. An example of the efficiency and cost savings that eFiling brings to the Court system is shown by last December's new county court civil filings: In December 2011, 63 percent of the total civil filings in the State's county courts were done electronically, saving several thousand hours of staff time.

Our ever-increasing use of technology in the courts has also helped to improve overall productivity in the area of payment collections. In 2011, our electronic payment system for traffic fines collected over \$6.3 million -- an increase of over 25 percent from the previous year.

Through our partnership with Nebraska.gov, our courts also allow online payments of other court fines and costs, including civil judgments, criminal fees and fines, restitution, and probation fees. All combined, collections through the Court's ePayment systems totaled nearly \$9.5 million in 2011.

5. The Future of the Courts

The Judicial Branch continues to look to the future and plan for greater efficiencies. I am pleased to report to you that the Nebraska Supreme Court's Re-engineering Committee has now established an ongoing relationship with the National Center for State Courts.

The National Center will assist our Judicial Branch with the establishment of pilot projects pertaining to centralized fine collection, remote review of guardianship/conservatorship accountings, technology enhancement, and the sharing of court services across county lines. These projects, designed to enhance efficiency and better utilize staff resources statewide, will begin in 2012.

For example, court employees in Colfax County will be able to process electronic filings for court employees in Douglas County, or a court employee in Knox County will be able to review a guardian's annual accounting filed in Adams County. Our probation staff in one county can transcribe pre-sentence investigation reports for our staff in another county.

Additionally, Judge Anne Paine of McCook will conduct a pilot project in the 17 counties that comprise the 11th judicial district. One employee will oversee collection of fines and costs for all county courts in the district.

It is hoped that these projects can serve as models for rural courts and allow us to preserve jobs in communities with fewer needs, while easing the burden of courts which have greater demands on staff time.

I also wish to note that the Nebraska Association of County Officials has included working with the Court's Re-engineering Committee in its recommendations for county government in the future. I am pleased by NACO's recommendation that its 2020 Committee cooperate with the Court's Re-engineering Committee to develop procedures and technology that are efficient and

economical. We are indebted to county governments across the state who partner with us in all 93 counties and provide facilities and operating expenses for the trial courts and probation.

6. The Court's Budget

The Court's personnel expenses, however, are paid from the State's budget. I appreciate the Legislature's recognition of the unique role of the judicial branch and the assistance we received during the last two budget cycles.

Although our budget was reduced several times, through cost-saving measures and the efforts of our court and probation staff, we have been able to maintain access to justice for all Nebraskans. With your help, we have not had to close courts or jeopardize court and probation services -- actions which many other state courts were forced to take in order to survive budget reductions.

I am very proud of the sacrifices our court and probation employees have made by stepping up to the challenge of doing more with less. These employees are continually learning new skills and adapting to new methods to meet our constitutional responsibilities.

7. Anniversaries

As the judicial branch looks ahead to its role in providing services to Nebraska's citizens, we also wish to look back at two important anniversaries that took place in 2011.

First, we celebrated the 20th anniversary of the Nebraska Court of Appeals, which has greatly improved the delivery of justice in Nebraska. Prior to the establishment of the Court of Appeals, some cases languished for years before being decided. The appellate docket is now current and the Court of Appeals, as well as the Supreme Court, continues to innovate and find ways to expeditiously handle our appellate cases.

Last year also marked the 20th anniversary of the Dispute Resolution Act, which formally established the use of mediation in Nebraska courts. The Office of Dispute Resolution of the Nebraska Supreme Court partners with Nebraska's nonprofit mediation centers in Fremont, Kearney, Scottsbluff, Beatrice, Lincoln, and Omaha to provide mediation and dispute resolution to Nebraska's courts and citizens. Mediation is a major component in the Parenting Act passed by this Legislature in 2007.

Neither of these anniversaries would have been possible without the foresight of former Supreme Court Chief Justice William C. Hastings, who passed away in 2010. Chief Justice Hastings was the driving force behind the creation of these two entities, and the Supreme Court honored him in a memorial service held this past December.

Conclusion

I would like to end by noting, as I have in the past, that our courts perform the constitutionally mandated role of providing access to justice for all Nebraska citizens. And I want to reiterate that the judicial branch is committed to efficiently fulfilling that critical role.

We continue to be committed to cooperation, to making the judicial branch and its services accessible and affordable, and to being held accountable.

Thank you for this opportunity to speak with you today. And thank you for the good work you do for the courts and for the citizens of Nebraska.