

State of the Judiciary 2019
Chief Justice Michael G. Heavican, Nebraska Supreme Court
Message to the Legislature
2019

Mr. President, Mr. Speaker, Members of the Legislature, fellow Justices of the Nebraska Supreme Court, and fellow Nebraskans. Thanks to you, the members of this legislative body, and especially Speaker Scheer, for inviting me to address you again this morning. As always, it is an honor for me to report on Judicial Branch accomplishments and to discuss the future of the courts and probation.

First, I will introduce my fellow Justices. To my immediate right is Justice Lindsey Miller-Lerman of Omaha; to Justice Miller-Lerman's right is Justice Stephanie Stacy of Lincoln; and to Justice Stacy's right is Justice Jonathan Papik of Omaha.

To my immediate left is Justice William Cassel of O'Neill; to his left is Justice Jeff Funke of Nebraska City; and to Justice Funke's left is Justice John Freudenberg of Rushville.

I would like to take this opportunity to welcome the newest members of our court: Jonathan Papik joined the Court this past March; John Freudenberg joined us in July.

Introduction

I will speak with you today about justice reinvestment, the pivotal role the courts play in that process, and the dynamic initiatives this Court has implemented to increase access to our courts and to justice.

I will begin with justice reinvestment. In 2015, this Legislature passed LB 605, launching Nebraska's justice reinvestment efforts. All three branches of government have been involved with this effort, which seeks generally to channel most low-grade felons to community corrections rather than incarceration in our medium or maximum detention facilities.

In Nebraska, community corrections means 'Probation.' And in Nebraska, Probation -- both adult and juvenile -- has always been part of the judiciary.

In Nebraska, therefore, Probation and the judiciary have an essential role in justice reinvestment. We are the front door to Nebraska's correctional institutions; and in our role with reentry supervision, we are also the back door of those correctional institutions.

Problem-Solving Courts

First, the front door.

I have spoken to you in the past about our judge-initiated problem-solving courts. Problem-solving courts are intensive, judge-supervised treatment courts for criminal defendants who would otherwise be incarcerated.

Most of Nebraska's problem-solving courts are drug courts. Drug courts include substance abuse treatment, drug testing, job training, support group meetings, and other appropriate rehabilitative efforts, coupled with frequent judicial oversight hearings.

In 2018, our problem-solving courts served 1,397 individuals. That represents a 247% increase in the number of participants served since 2008, a 200% growth in the total number of such courts, and a 156% growth in the number of judges participating in problem-solving courts. These courts now exist in all of Nebraska's 12 judicial districts.

Many, if not most, of the 1,397 individuals served in our problem-solving courts in 2018 would otherwise be in Nebraska's prison system. It costs approximately \$38,627 taxpayer dollars per year to warehouse a prisoner in our State's prison system. It costs \$2,865 taxpayer dollars per year to fund a defendant's participation in our problem-solving courts. Hence, problem-solving courts are a key part of justice reinvestment in Nebraska.

Thanks to all of our trial court judges who volunteer with no extra pay or, in some cases, no relief from their existing assigned caseload for such service.

Both our trial court judges and members of the Supreme Court work diligently to ensure that our problem-solving courts are of the highest quality, use appropriate and uniform standards, and are accountable for their performance. This Court's Problem-Solving Courts Committee plays a key role in ensuring the success of problem-solving courts, and has developed best practice standards for all existing courts.

Much thanks goes to District Court Judge Jim Doyle of Lexington for his leadership with the Supreme Court's Problem-Solving Courts Committee.

The Committee has developed best-practice standards for all our problem-solving courts and also works to confirm that our problem-solving court judges have proper training and access to the latest research available to ensure successful outcomes for problem-solving court participants. A new, upgraded training program will be implemented in 2019.

Last year in this address I spoke to you about our State's two newly-implemented Veterans Treatment Courts. I can report to you today that both of those courts are functioning efficiently and professionally in conjunction with veteran mentors, the assistance of the Veteran's Administration, and dozens of other supporters. Their goal is to give Nebraska's military veterans, who may have committed a nonviolent felony, a chance to participate in a problem-solving court and therefore a chance at rehabilitation rather than incarceration. The first Veterans Treatment Court graduation was held June 27, 2018; the next graduation will be held in Douglas County later this month.

Thanks especially to District Court Judge John Colborn, and the late District Court Judge Mark Ashford, for their pioneering work in this area.

In a moment I will speak to you about our efforts with re-entry courts. But first, a reality check in regard to problem-solving courts as part of justice reinvestment in Nebraska.

During this past budget year, we completely exhausted our allocated resources for problem-solving courts and had to move some Probation dollars to fund those initiatives. Testimony to this body's Judiciary Committee has indicated that Nebraska's jails are heavily impacted by incarcerated individuals who have mental illnesses that greatly influenced their criminal behavior.

Our local partners in county government are interested in establishing mental health courts to help alleviate that problem. We have stopped all efforts to expand problem-solving courts into the area of mental health courts, however, because we have no extra resources. Nor do we have the necessary number of judges available in Douglas County and our other urban counties for further problem-solving court expansion. That said, I wish to thank this body, particularly Senators McCollister, Geist, and Williams, for their past support of problem-solving courts.

Adult Probation

The second check on entry to Nebraska's prison system is, of course, adult probation. There are 15,649 adults on probation in Nebraska as I speak.

It is Probation that diverts most offenders otherwise bound for incarceration; it is Probation that most releases pressure on the correctional system; it is Probation that is the lynchpin to justice reinvestment in Nebraska; and it is Probation that fostered the necessary culture to implement LB 605.

Further, it is Probation that has consistently achieved all of the expansion needed to meet Nebraska's justice reinvestment goals; it is Probation that has devised innovative programs for offender rehabilitation; it is Probation that consistently measures offender recidivism rates so that quality programs can be replicated and less productive programs can be reformed; and it is Probation that has successfully reduced offender recidivism.

Adult probation has experienced significant changes since the passage of LB 605 in 2015. At the end of fiscal year 2018, the number of individuals placed on felony probation, including post-release supervision, was up by 39%. This is 12% above the Council of State Government's 2015 prediction of where Probation would be 3 years into justice reinvestment.

Post-Release Supervision

Earlier in this speech, I suggested that Probation was not only the front door to Nebraska's prison system, but also the back door.

We are the back door because adult probation implements post-release supervision, sometimes called re-entry supervision. Low-grade felons released from our prisons and jails are supervised by adult probation.

The average number of individuals released from prison and local jails under Probation supervision in fiscal year 2016 was 23 per month. That number reached 87 per month in fiscal year 2017, and grew to 139 per month during the 2018 fiscal year. In the 2019 fiscal year, the number of individuals released to Probation's supervision is projected to be 153 per month.

To handle that large increase in participants, Probation set up re-entry teams to work with incarcerated felons before release. Our adult probation system has expanded and sharpened the programs available for re-entering felons, including transitional housing and drug treatment programs.

We have utilized our day and evening reporting centers across the State in that process, and measure the recidivism rates of reentering felons using the University of Nebraska-Lincoln's Law and Psychology program.

In 2018, we established two re-entry courts in Nebraska. Those courts apply the same intensive supervision programs used in other problem-solving courts. The goal of re-entry courts is to assure that felons leaving the prison system have a successful transition to become productive members of their local communities.

Thanks to District Court Judge Stefanie Martinez of Sarpy County and Retired District Court Judge Teresa Luther of Hall County for being re-entry court leaders.

Juvenile Justice

I will now address juvenile justice.

A comprehensive justice reinvestment project must include a juvenile justice component, the philosophy, culture, and goals of which are compatible with -- and supportive of -- adult justice reinvestment. In Nebraska, every young person who has successfully completed juvenile justice supervision is potentially one less person incarcerated in our adult prison system.

Like adult supervision, Nebraska's juvenile justice supervision is tasked to the Administrative Office of Probation.

Juvenile justice in Nebraska shares the same philosophy, culture, and rehabilitative goals of adult justice reinvestment. Juvenile justice is also sharing in the positive trends and successes of adult justice reinvestment. And I remind you that we can track every dollar we spend on every young person in the juvenile justice system, resulting in significant budget savings in this most recent biennium.

This past year we launched a special effort to address the lack of juvenile justice options available in greater Nebraska. Three priorities were established: 1) more local foster care; 2) more in-home services; and 3) more alternatives to detention, including timely access to therapists and evaluations. We have expedited family or kinship placement assessments and payment to those family providers, we have established and recruited emergency foster care homes, and we have continued expansion efforts related to in-home services.

Probation is working with the Department of Health and Human Services, private providers, the Department of Education, and other interested community members to increase those service options. I would especially like to thank County Court Judge Randin Roland of Sidney for taking a leadership role in this effort.

We have also established a statewide juvenile detention alternatives working group. This working group is completing a detailed analysis of alternatives to detention for mentally ill juveniles. A special thanks goes to Senator Tony Vargas and State Court Administrator Corey Steel for co-chairing this important state-wide work.

This summer, other members of the Supreme Court and I hosted a Tristate Juvenile Justice Conference in South Sioux City. Since a number of juvenile justice cases in the South Sioux City area overlap state boundaries, we met with members of the Iowa and South Dakota Supreme Courts to discuss improving resources and the process utilized for youth involved in our juvenile justice systems.

As a result of this tri-state meeting, representatives from each state proposed an easier process for tracking and providing supervision for probationers that live across state lines. Important changes were made in the way all three states share information and transfer custody in such cases. Both processes have been expedited.

Juvenile Probation continually seeks to improve supervision and services for youth and families by embracing the strategies of national research, evidence-based practices, and adolescent development. This past year, the Robert F. Kennedy National Resource Center for Juvenile Justice completed a comprehensive review of the juvenile probation system's operations. The final report articulated the strong foundation Probation is working from and offered a set of recommendations centered on collaborative leadership opportunities to further strengthen that work.

I now call your attention to two other promising initiatives in the juvenile justice area.

First, this year the Administrative Office of Probation and the Department of Health and Human Services rolled out a cooperative policy related to serving youth who are involved in both child welfare and juvenile justice. Nearly 900 Health and Human Services and Probation employees were trained on how to better serve those young people.

Restorative Justice

Second, I also call your attention to our restorative justice efforts for juvenile offenders. These efforts are being offered in conjunction with the Judicial Branch's Office of Dispute Resolution and Nebraska's 6 regional mediation centers. This model is called Victim Youth Conferencing.

Victim Youth Conferencing involves the convening of a meeting, conducted by a trained professional, between low-risk delinquents and the victim(s) of their wrong-doing. During this

process, emphasis is placed on reparations for the victim(s), and appropriate rehabilitation for juvenile offenders.

Use of the Victim Youth Conferencing program considerably reduces the odds of recidivism of juveniles and the odds of future involvement in the adult criminal system. We received a grant of over \$1 million for a 3-year period to expand juvenile restorative justice services to interested counties statewide. Some of the early participating counties include Buffalo, Dodge, Douglas, Lancaster, Pawnee, Red Willow, Sarpy, and Scotts Bluff.

The Victim Youth Conferencing program has been evaluated by outside academics. These academics noted the successful rate of reparations to victims and the positive responses of both victims and juvenile participants.

New State Probation Administrator

Before I address other topics, this is an appropriate time in my presentation to introduce Deb Minardi. I am pleased to welcome Deb as Nebraska's newest Probation Administrator.

Deb Minardi has worked for Nebraska's Probation system for 39 years. She is a leader in the movement to transform Nebraska Probation into the era of pro-active programming and evidence-based practices. Deb now has supervisory responsibility for both adult and juvenile probation services.

Community Engagement Grant For Native American Population

I now turn to various access to justice, civic education, and outreach programs this Court actively promotes. I will begin with our new outreach efforts with Nebraska's four recognized Native American Tribes.

This past summer, the Judicial Branch hosted a roundtable discussion in South Sioux City. Participants included representatives from the four Nebraska-based Tribes, our federal courts, the U.S. Attorney's Office, both Federal and State Departments of Health and Human Services, the Nebraska Department of Education, the Nebraska Commission on Indian Affairs, and other interested parties, including Senators Joni Albrecht and Tom Brewer. The purpose of this roundtable was to discuss disparities for Native American populations in our courts and to improve the relationships of tribal, state, and federal courts.

In an effort to build on the discussions from this meeting, we were selected by the National Center for State Courts as one of 6 sites nationally to participate in a project involving Community Engagement in the State Courts. To effectuate this participation, the Consortium of Tribal, State, and Federal Courts was created and is co-chaired by District Court Judge Andrea Miller of Scotts Bluff County and Chief Judge Patrick Runge of the Winnebago Tribal Court and Ponca Tribal Court. The Consortium is housed within the Nebraska Supreme Court's Access to Justice Commission.

During this project, the Consortium will work with the National Center for State Courts using public engagement models to:

1. Improve Native Americans' public trust and confidence in the State and Federal courts;
2. Identify ways to address disparate treatment of Native Americans in the State court system;
3. Improve judicial awareness and training as to the special problems faced by Native American populations in Nebraska; and
4. Improve the state and federal courts' confidence in, and understanding of, the tribal court system.

Office of Public Guardian

I turn now to the work of the Office of Public Guardian and access to the courts for court protected wards.

Since its inception in 2015, the Office of Public Guardian, housed in the Judicial Branch, has served 574 incapacitated persons. As of November 1, 2018, that office had 259 open cases. These 259 individuals collectively have over 700 identified categories of need involving complex issues such as cognitive impairment, mental health diagnoses, developmental disabilities, substance and alcohol abuse, medical conditions, history of criminal justice involvement, and/or history of Mental Health Board commitments.

The Public Guardianship Act also requires the Office of Public Guardian to maintain training programs for private guardians, successor guardians, and interested parties to ensure the success of all guardians and conservators. Therefore, in January of 2016 the Office of Public Guardian began providing the education and certification required for newly-appointed private guardians and conservators.

Between December 1, 2017, and October 31, 2018, 102 guardian and conservator education classes were held at 25 sites throughout the State. These classes trained 1,294 new guardians and conservators.

I invite each of you to go over the recently released annual report of the Office of Public Guardian. The statistics cited and human-interest stories told make for a sobering read.

An editorial in the January 13, 2019, edition of the Omaha World Herald points out that the need for the Office of Public Guardian is likely to increase in the next 10 years as the population of Nebraska's citizens over the age of 65 increases by 250,000 people. I quote from that editorial:

The Office of Public Guardian is to be commended for the services it's providing to such Nebraskans – the need is great. This initiative deserves continued support, buttressed by a strengthening of Nebraska's medical and behavioral health communities.

Annually, I also report to you on our courts' access to justice language program. This year, the Judicial Branch utilized 117 independent interpreters, collectively speaking 30 different languages, to translate court proceedings. Some of the languages interpreted include Sudanese, Arabic, Somali, Hmong, Tagalog, Karen, Nepali, and Nuer. Spanish is, of course, the most frequently translated language in the courts. We have permanent Spanish language supervisors available throughout the State.

Technology

Each year I also speak to you about implementation of the Court's strategic plan for technology. Technology advancements continue to allow Nebraskans to access their courts from anywhere, at any time.

In 2018, 770,000 documents were filed electronically in county and district courts, while another 4,800 were filed electronically in the appellate courts. Online trial court records were searched nearly 7.5 million times, while online appellate records were searched approximately 10,000 times.

The judicial branch electronically collected over \$9 million in citation payments, \$9.5 million in payments for civil and criminal judgments, and \$4.7 million for eFiled pleadings. While many other state judiciaries have found it necessary to purchase new, multi-million dollar systems in order to offer the kinds of tools necessary for modern case management and service to the public, we built our case management system the Nebraska way: in-house, on budget, and on time.

Our technology remains focused on creating new and better online services to modernize access to the courts and meet the needs of today's judges, attorneys, and the public. Today, nearly one-half of all court transactions take place online.

Our new and better online services include increased interaction of probation case management with judicial case management. Probation case management is getting a new mobile interface that will allow probation officers to record interactions with probationers from any location. This will reduce time spent by officers performing data entry tasks and thus free up more time to engage with clients.

The Judicial Branch has also invested in a powerful set of reporting tools that facilitate the best allocation of probation resources and the best outcomes for clients. For example, dashboards help probation chiefs manage caseloads and provide administration with a clear window into probation population trends across the state. Technological innovations are essential tools, allowing us to clearly measure the impact of justice reinvestment in our adult and juvenile justice reform efforts.

The Judicial Branch is also a partner to other State government entities, including the Department of Motor Vehicles and the State Patrol, in bringing better broadband connectivity to local county courthouses and criminal justice centers around the State. A recent investment in this partnership will increase connectivity in over 30 different counties. These investments

ensure the ability of the trial courts to take advantage of modern technology, such as video-conferencing, to keep other costs down and bring faster service to the public.

Court Outreach

This Court believes that access to justice includes outreach to Nebraska's schools. The Supreme Court continues to hold oral arguments each spring at Nebraska's two law colleges. In addition to and in conjunction with its arguments at Creighton University School of Law, the Supreme Court also holds oral arguments at an Omaha area high school each year. In 2018, oral arguments were held at Millard North; in 2019, the Supreme Court is scheduled to hear oral arguments at Boys Town.

We also hold oral arguments at various Nebraska high schools in connection with Law Day, celebrated each year on May 1. In 2018, the Court held oral arguments at Grand Island Central High School, and in 2019, the Court has scheduled Law Day oral arguments at Scottsbluff High School. In November of 2018, the Supreme Court held oral arguments at Schuyler High School with special guest Judge John Gerrard, Chief Judge of the United States District Court for the District of Nebraska, offering commentary.

We also commend the Nebraska Court of Appeals for holding oral arguments at Nebraska college campuses in connection with Constitution Day, which is celebrated annually on September 17. In 2018, the Court of Appeals went to York College; in 2019, the Court of Appeals will hold oral arguments at Concordia University in Seward as part of that school's 125th anniversary celebration.

I would be remiss if I did not take this opportunity to thank the many trial court judges and Judicial Branch employees who regularly take time out of their schedules to provide law-related education programs to students within their communities. Many of our judges and clerks participate in County Government Day, High School Mock Trials, We the People Competitions, Law Day Job Shadow projects, and other local efforts. The Court is encouraged by these dedicated judges and employees who are active participants in their communities.

Pandemic Conference

The Judicial Branch believes not only in being responsive to current needs and wants, but also in being prepared for what we may encounter in the future.

Through the assistance of the State Justice Institute, in May of 2019 the Nebraska Judicial Branch will host a conference that will coincide with the opening of the University of Nebraska Medical Center's Federal Quarantine Center in Omaha. This conference will bring together health officials, judges, and members of the legislative and executive branches of government from around the country to discuss how government can effectively meet the needs of citizens during a time of public health crisis.

Through our partnering with the University of Nebraska Medical Center in this project, we are able to focus on how a public health crisis may impact Nebraska courts and draw on UNMC's unique knowledge base of pandemic threats.

Conclusion

In conclusion, as we have invited these various community, State, and national partners to engage with the courts, I invite each of you to visit your local trial courts, probation offices, and problem-solving courts.

Likewise, we welcome you to visit the Supreme Court's oral arguments or watch livestreaming of those arguments on the Court's website or on Nebraska Public Television's website.

You will find there are no better-spent tax dollars than the tax dollars you allocate to the Courts and Probation. Thank you for your past and continuing support for Nebraska's courts.