

State of the Judiciary 2020
Chief Justice Michael G. Heavican, Nebraska Supreme Court
Message to the Legislature
2020

Mr. President, Mr. Speaker, Members of the Legislature, fellow Justices of the Nebraska Supreme Court, and fellow Nebraskans.

Thank you to the members of this legislative body, particularly Speaker Scheer, for inviting me to address you this morning. It is once again an honor for me to report on the accomplishments of our Judicial Branch and to discuss our upcoming plans with you.

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 Jonathan Papik, also 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. Justice Stephanie Stacy of Lincoln is unable to be with us this morning.

INTRODUCTION

Today, I will highlight the commitment of Nebraska's Judicial Branch, including juvenile and adult probation, access, outreach, and efficiency.

ACCESS TO JUSTICE

A primary goal of the judiciary is access to justice for all Nebraska citizens. To realize that goal, the Nebraska Supreme Court has created an Access to Justice Commission. The purpose of the Commission is to provide equal access to expeditious and fair justice for all Nebraskans, regardless of income, race, ethnicity, gender, disability, age, or language.

Language Access Program

First, I will address language access. In Fiscal Year 2019, the Supreme Court's Language Access Program provided interpreters in 65 of Nebraska's 93 counties. Collectively, those interpreters communicated in 49 different languages, including the following:

- Russian;
- Dinka, spoken in South Sudan;
- Ewe, spoken in Togo and Ghana;
- Hindi, spoken in India;
- Krio, spoken in Sierra Leone; and
- Tigrinya, spoken in Eritrea and Ethiopia.

Spanish, of course, remains the most frequently interpreted language in Nebraska's courts. But in addition to Spanish interpreters, last year each Judicial District needed interpreters for at least two other languages.

One of the challenges we are currently facing is the shortage of certified court interpreters, both in Nebraska and nationally. To address the shortage, this year our Court's Language Access Program collaborated with Northeast Community College in Norfolk to provide a no - cost adult education course for aspiring court interpreters.

This program is the first of its kind in the nation and is proving to be very successful. Our Language Access partnership story was broadcast both locally and nationally when it was featured on Nebraska Public Radio. We hope to expand this initiative in the near future.

Access – Public Engagement Sessions

Also through our Access to Justice Commission, the courts began significant outreach programming with tribal, state, and federal courts. This past fall, grant-funded engagement sessions, directed by Tribal Court Judge Patrick Runge of the Winnebago and Ponca Tribes, and State District Court Judge Andrea Miller of Scottsbluff, were held in Omaha, Niobrara, Macy, and Winnebago.

These sessions fostered conversations with Nebraska's Native American communities regarding court relationships, jurisdictional issues, and the Indian Child Welfare Act. By organizing and hosting these sessions, we hope to strengthen Native American communities' confidence in our court system. A second public engagement session is planned for later this year in northwestern Nebraska.

Details regarding the Access to Justice Commission are available in the Judicial Branch Annual Report provided to you today. The report is also available on the Court's website.

Access – Nebraska Strong

Our courts remained accessible in all 93 of Nebraska's counties, despite the heavy snows of last winter and the catastrophic flooding we experienced this past spring. I am pleased to report that with very few exceptions, where travel was impossible, we were able to maintain full court services during these devastating weather events.

I am proud to say that our courts, court staff, probation, public guardians, mediators, and interpreters remained 'Nebraska Strong' throughout 2019. Again, we commend these essential staff members for their commitment.

Access – Children in the Courts

The welfare of Nebraska's children and the elderly continues to be a priority for the judiciary. As part of our commitment to these populations, our Court Improvement Project has been involved in a number of outreach programs across Nebraska.

Our Through the Eyes of the Child teams continue to work throughout the state to improve the court system's response to abused and neglected children. There are 25 teams across Nebraska, each led by a trial court judge, working locally to improve our juvenile court system.

To enhance those efforts, we also began hosting Children's Summits in 2006 to better the lives of children and their families in our courts. This year, the Court Improvement Project hosted a Children's Summit in Kearney. The Summit was attended by nearly 600 participants from the legal community, social services, probation, tribal members, foster parents, and the therapeutic community.

Also, in Dawson, Lancaster, and Madison Counties, our Court Improvement Project took the lead in a joint pilot program with the Nebraska Department of Health and Human Services. The goal of this program is to increase the number of foster children reunified with their parents. The design was prompted by the actions of Judge Jeff Wightman of Lexington, and has been implemented by Judge Linda Porter of Lincoln and Judge Ross Stoffer of Norfolk.

Access – Public Guardian

Annually, I also report on the Office of Public Guardian. The role of the office is two-fold: to provide guardianship services for individuals when no private alternative is available, and to develop required education for court-appointed individuals serving as guardians or conservators.

Many of Nebraska's court-appointed guardians are family members, caring for loved ones who have minimal assets and support. Since its inception in late 2015, the Office of Public Guardian has provided education to nearly 5,000 recently court-appointed private guardians in, and our associate public guardians have helped over 600 vulnerable individuals. This year, to manage the volume of necessary trainings, the office of Public Guardian added an online class to educate Nebraska's private guardians in a quicker, more cost-efficient manner.

In August of 2019, an editorial appeared in the Omaha World Herald, crediting our Office of Public Guardian with uncovering fraudulent Medicaid billings and financial abuse of an elderly client. The article commended our public guardians for their work in helping vulnerable, elderly Nebraskans, and pointed out that from 2010 to 2030, the number of Nebraskans aged 65 and above is projected to increase by 160,000 people, from 240,000 to 400,000.

The editorial called on the State to address current shortcomings in medical, behavioral health, and nursing home services, along with calling for additional public guardians to meet the current need. Unfortunately, our Office of Public Guardian has reached its service capacity in most areas of the State. As a result, nearly 100 cases were necessarily referred to a waiting list.

Access – Guardians and Conservators

To complement the Office of Public Guardian, in 2015 the Supreme Court established the Commission on Guardianships and Conservatorships. The Commission is led by Judge Todd Hutton of Papillion, Judge Holly Parsley of Lincoln, and Judge Sheryl Lohaus of Omaha, and is

responsible for the continued analysis and study of statutes, court rules and procedures, and the ways laws and procedures often challenge the system of legal guardians.

The Supreme Court recently approved rules to support the Commission's recommended changes, simplifying over 150 guardian ship and conservatorship forms. These rule changes result in lessening the burden on family members and others serving as volunteer guardians.

Courts in Your Communities

In addition to maintaining our regular caseloads, the judiciary is consistently involved in local and regional educational events throughout the year. In 2019, this Supreme Court held oral argument sessions at both of Nebraska's law schools, as well as Boys Town, Scottsbluff High School, and South Sioux City High School.

Last year, the Court of Appeals held its Constitution Day arguments at Concordia University in Seward. And for the convenience of our citizens, the Court of Appeals regularly travels to various locations around the State to hold oral arguments. We are grateful for the Court of Appeals' continuing efforts to reach out to Nebraska's many communities.

Our trial court judges are also engaged in law - related educational programs. Judges often turn their courtrooms into classrooms when contacted by educators within their jurisdictions, and when participating in activities such as County Government Day, 5th Grade Law - Day Job Shadowing, and High School Mock Trial competitions.

Pandemic Preparedness

Another recent Judicial Branch initiative involved preparing courts for pandemics. According to national experts, a pandemic is not just possible – it is highly probable.

In May of 2019, Nebraska's Judicial Branch hosted an innovative National State Court Summit on Pandemic Preparedness at the University of Nebraska Medical Center in Omaha. UNMC is home to the country's largest biocontainment unit and has treated Ebola patients on at least three occasions.

The Summit brought together court leaders, public health officials, legislators, and executive branch officials to discuss the need to plan and prepare for a pandemic. The session included teams from 25 states and three territories.

Prior to the Summit, and with the assistance of UNMC Chancellor Dr. Jeffrey Gold and his management team, a committee chaired by Judge Leigh Ann Retelsdorf of Omaha developed a Bench Book for Nebraska Courts to assist judges facing pandemic-related issues. Nebraska judges are now better prepared for the need to respond quickly and efficiently to pandemic quarantines and related legal issues.

It was an honor to serve as host for this group. I would like to take this opportunity to thank Governor Pete Ricketts for his welcoming address at the Summit, and Chancellor Gold and the

UNMC staff for their great work and dedication to this project. Several photos of our session can be seen in the Judicial Branch Annual Report.

COURT EFFICIENCY

I will now speak to you about efforts we have made to improve the efficiency of our courts and adult and juvenile probation. Most recently, we have worked with four counties to provide court clerk services for both district and county courts. Because district court clerks have traditionally been funded by county property taxes, this option has resulted in cost savings for those counties. By utilizing this option, duties within the court system are streamlined, and court clerk positions are no longer funded by those local property tax dollars. This is real property tax relief, with the potential for expansion with further legislative support.

Problem-Solving Courts

Likewise, in 2019, problem-solving courts continued to be an important and cost-effective judicial resource. These courts operate within the district, county, or juvenile courts in all 12 of Nebraska's Judicial Districts. Currently, 32 problem-solving courts are operating in Nebraska under the authority of 46 different judges. Nebraska problem-solving court models include Drug and DUI Courts, Veterans Treatment Courts, Reentry Courts, and Young Adult Courts. All of these courts adhere to Best Practice Standards approved by the Nebraska Supreme Court. In the coming months, the Supreme Court will also review Best Practice Standards for proposed Mental Health Treatment Courts.

As a result of LB919 introduced in 2016, as well as recent appropriations last year, the Judicial Branch added six new problem-solving courts and expanded the capacity of three of its existing problem-solving courts. Between 2015 and 2019, the number of problem-solving court participants has increased by 31%.

These courts effectively reduce recidivism and increase community safety, while being very cost-effective. The average cost to supervise a problem-solving court participant is approximately \$2,865 taxpayer dollars per year. In comparison, the average cost to incarcerate a prisoner can reach as high as \$38,000 taxpayer dollars per year.

Judicial Workload Study

However, operating problem-solving courts increases judicial workloads. The Judicial Branch has recently undertaken a judicial workload study, which will allow us to better compare judicial caseloads throughout our State. The results of this study will assist us, and you, in allocating our judicial resources.

Adult Probation

Since the passage of LB605 in 2015, adult probation continues to experience significant growth in the number of the individuals it serves, in both felony probation and post-release supervision. In 2019, the felony probation population expanded to over 4,800 individuals.

Adult probation provides community corrections through supervision, case management, support services, and rehabilitative services, including access to behavioral health. We have probation officers in all 93 counties and 16 regional day and evening reporting centers, serving populations that are at a high risk to reoffend.

In 2017, we developed our transitional living assistance program to provide recently - released prisoners with short-term, stable, and structured housing in an environment conducive to behavioral change. As the lead agency of a Department of Justice grant known as Project Integrate, Nebraska Probation has been able to maximize transitional living services while reducing costs. Project Integrate is a partnership between probation, parole, the Nebraska Department of Correctional Services, and Douglas County.

This initiative places individuals in a supportive and sober environment, enabling them to concentrate on treatment, employment, and reintegration into the community. Participants needing transitional living assistance ultimately learn to become self-sufficient and are then able to reimburse the program for their living expenses.

JUVENILE JUSTICE

Juvenile justice continues to be an important priority for the Judicial Branch. Juvenile probation has made great strides toward best practice approaches for investigating and supervising youth found to be responsible for delinquencies and/or status offenses. We have emphasized fiscal responsibility while increasing juvenile justice services.

A September 2019 Legislative Performance Audit confirms that juvenile probation has increased its use of in-home and community-based alternatives, including intensive case management and transition planning for youth in out-of-home placements, while also reducing costs. These cost savings have made service expansion efforts possible.

Office of Dispute Resolution

One example of such community - based alternatives is Victim Youth Conferencing. With the passage of LB595 in 2019, the Restorative Justice bill, our Office of Dispute Resolution continues to partner with a network of six regional community mediation centers to offer Victim Youth Conferencing throughout the State.

This restorative process is significant to youth, their families, victims, communities, and the court system. This past year, 300 youth took responsibility for their actions and participated in face-to-face dialogues with their victims.

CONCLUSION

In conclusion, while facing many challenges, the Judicial Branch continued to expand its services and programming over the past year. The Nebraska Judicial Branch remains committed to the delivery of justice in a fair and timely manner. We will carry out this mission efficiently,

while continuing to provide equal access for all Nebraska citizens. Thank you for this opportunity to speak with you today, and thank you for your support of the Judicial Branch.