

State of the Judiciary 2022  
Chief Justice Michael G. Heavican, Nebraska Supreme Court  
Message to the Legislature  
January 21, 2022

## I. INTRODUCTION

Mr. President, Mr. Speaker, and Members of the Legislature. Thanks to all of you, particularly Speaker Hilgers, for inviting me to address you this morning. As always, it is an honor for me to report on the annual accomplishments of our Judicial Branch and to discuss our upcoming plans with you.

With me in the Chamber today are my fellow Justices: Justice William Cassel of O'Neill; Justice Stephanie Stacy of Lincoln; Justice Jeff Funke of Nebraska City; Justice Jonathan Papik of Omaha; and Justice John Freudenberg of Rushville. Justice Lindsey Miller-Lerman of Omaha could not be with us today.

Notwithstanding the ongoing pandemic and other challenges, we have had many successes and accomplishments in 2021, and we look forward to 2022.

Today I will highlight some of our accomplishments, including our continuing pandemic response, our response to ongoing staff shortages, our access to justice initiatives, and what's new with probation, problem-solving courts, and the Office of Public Guardian.

Last year I began my presentation to you by quoting from Article I, § 13 of the Nebraska Constitution, which states that “[a]ll courts shall be open, and every person, for any injury done him or her . . . shall have a remedy by due course of law and justice administered without denial or delay.”

As I stated then, this means that our courts must remain open, even when much of the rest of society is not. There are no exceptions--even for a pandemic--to Nebraska's Constitutional requirement of open courts.

Last year I also emphasized how important it is for the daily workings of our communities and our State that the courts are open and functioning as normally as possible. I am reminding you again of that importance. Crime does not stop, nor does child abuse, spouse abuse, fraud, divorce, and many of the other social and commercial issues that are only resolved in the courts.

This year I report to you that our courts have not only remained open, but have adapted to the realities of the pandemic. Our judges indicate that case back-logs are minimal. That assertion is supported by case management statistics. Few states have achieved such success.

## II. COURTS OPEN AND OPERATIONAL

Keeping the courts open and accessible is an ongoing challenge, but when the going gets tough, the tough get going.

Among the information contained in the materials you received this morning is a list of “Everyday Heroes.” These heroes are individuals within our court and probation offices who were recognized by the Supreme Court during the past year for having gone the extra mile to make sure Nebraskans have access to justice.

As you can see, our everyday court and probation staff heroes got tough and got going.

### III. TECHNOLOGY

We owe the success of our courts to the good old-fashioned work ethic of judges, staff, and practicing attorneys. We also owe our positive accomplishments to the increased use of technology and the accompanying innovative initiatives of our court family.

We are still learning from the lessons of the pandemic. Hearings, specifically Zoom and WebEx hearings, were held countless times in the past year. As I speak, there are trial court judges holding virtual hearings from their homes or offices because they tested positive for pandemic-related illnesses or were exposed to someone who tested positive. Without this technology, our courts would be crippled with delays.

Surveys, both in Nebraska and nationally, have found that the majority of respondents believe courts should continue to offer hearings by video when possible, even after the pandemic wanes. Such proceedings allow the courts to hear more cases and resolve them more quickly. Proceedings conducted electronically can be more efficient for attorneys and their clients, and video hearings eliminate the need to take time off work and/or locate childcare to travel to the courthouse.

Hence, we have challenged the presiding judges in each of our judicial districts to use remote technology when possible and to update court rules in an effort to bring more uniformity and clarity to modified court operations.

### IV. E-FILING

Technology in the courts includes enhanced E-filing. As of January 1, 2022, the Supreme Court fully instituted an E-filing process for use by attorneys in all case types and at all court levels. This accomplishment was the result of a larger project undertaken to modernize our Supreme Court rules to reflect and reinforce the use of technology as a foundation for efficient and transparent court processes.

With some exceptions for self-represented litigants and external third parties, our integrated E-filing system allows all documents to be delivered to the courts in electronic form--something that less than 5 years ago would have involved the printing, filing, copying, and mailing of court documents. Thanks to technology, those acts are now redundant and obsolete.

## V. COURTROOM TECHNOLOGY

Another way we are ensuring access to justice through technology is by helping counties across the State upgrade their courtrooms. By law, counties are required to maintain Nebraska's courthouses, many of them historic, which traditionally included the installation of audio-visual systems in courtrooms.

As noted, the pandemic has fast-tracked the adoption of remote hearings. It has shown us that both the judiciary and the public can benefit in cost and time savings. The Supreme Court wants to sustain this momentum and give our judges the ability to leverage high-quality video in their courtrooms in whatever fashion they deem appropriate. These upgrades will enable courts to conduct high-tech proceedings without putting an additional cost burden on the counties.

On-site visits by technology experts began in the fall of 2021. These county-by-county visits allow experts to talk with judges and county officials to assess their courtroom needs. We then create individualized plans to meet the Supreme Court's best practice standards by replacing or enhancing technology already installed in courtrooms.

Likewise, the Judicial Branch wholeheartedly supports the expansion of high-speed internet broadband. Without a strong broadband infrastructure, our rural court users are unable to access the resources we are working so hard provide.

## VI. STAFF SHORTAGES

One of the effects of the pandemic is ongoing Judicial Branch staffing shortages across the State. Similar to the Executive Branch, we have had to implement hiring and retention bonuses for all of our court and probation offices.

At the end of December 2021, out of 614 available staff positions in our county courts, there were 57 job openings. Out of 944 available staff positions in probation, there were 99 job openings. The majority of these vacancies come from Lancaster and Douglas Counties. Of these shortages, there are currently 21 job openings for probation officers in Douglas County alone.

However, even the one or two employee vacancies we have in Lexington, Wilber, Dakota City, Gering, or Madison, make a big difference when it comes to supervising a caseload or maintaining accessibility to the courts.

Retaining highly skilled and competent employees remains a priority for the Judicial Branch, as does fair and comparable pay. We have engaged with the National Center for State Courts on a workload and salary assessment study for the courts, which will be followed by a comprehensive salary study for probation.

Our county and district court judges have repeatedly pleaded for staff salary increases in order to retain long-time, trusted employees and maintain normalcy in their courts. Accordingly, we will be asking this body for an upward adjustment to our personnel spending limit.

I remind you again of the good work our court family is doing to keep the courts open statewide, to mitigate a speedy trial crisis, to defuse an eviction crisis, and to make sure access to justice is available to all Nebraskans.

## VII. ACCESS TO JUSTICE COMMISSION

With those goals in mind, I report on our Access to Justice Commission.

The Access to Justice Commission is in the final phase of developing a comprehensive 5-year strategic plan. This plan centers around core principles, with particular emphasis on court users who do not have legal representation. The principles provide that all court users:

- Should have access to understandable legal information;
- Should have access to legal representation and advice;
- Should have equal access to court services and full participation in the judicial process, regardless of income, race, ethnicity, gender, age, ability, language, religion, or geography; and
- Should have their cases resolved fairly and efficiently.

## LANGUAGE ACCESS PROGRAM

Access to justice also includes language access. In Fiscal Year 2021, interpreters for 25 different languages were employed across the State to provide language access in each of Nebraska's 12 Judicial Districts. Interpreters are involved in everything from problem-solving court participation to adoptions and proceedings in serious felony cases.

Again this year, the most commonly interpreted language is Spanish. We also used interpreters for such unique languages as Ewe, Kunama, and Nepali. In another first for Nebraska's courts, an interpreter for the Afrikaans language was required for a criminal case in North Platte.

## VIII. OFFICE OF PUBLIC GUARDIAN

I turn now to our Office of Public Guardian. As you can see in its annual report for 2021, the Office of Public Guardian has two main missions: serving as court-appointed guardians and/or conservators of last resort, and providing mandatory education, and certification of that education, for all of Nebraska's private and family guardians.

## GUARDIAN SERVICES

Our public guardians are available for pandemic-related decisions every day--24 hours a day seven days a week. This past year, 137 wards tested positive for COVID, necessitating intensive oversight and medical decision-making to ensure the health of our wards and protect their lives. Since the pandemic's beginning, 25 of these wards have required hospitalization. Sadly, nine individuals served by the Office have died of COVID.

The annual report contains a few select stories about clients. In one story, reported in the Omaha World Herald, our guardian relentlessly advocated for medical care for a client whose caregivers refused to enter his home after he tested positive for COVID.

Please read this story, as well as other stories in the Public Guardian's report, to better understand the necessity of our guardianship services.

The Office of Public Guardian has a waiting list for vulnerable adults in need of its services. However, due to budget constraints, for the third year in a row it was able to accept fewer than 25 new appointments out of the hundreds of incapacitated individuals in need of guardian/conservator services.

## EDUCATION SERVICES

The Office of Public Guardian assists Nebraskans who are serving as private and family guardians. Last year, it pioneered an online option for the mandatory education and certification of guardians. As a result, approximately 2,500 individuals were able to utilize online education during the onset of the pandemic. In 2022, it will develop specialized online education for guardians of minors and children from the child welfare system, which comprise over 30% of individuals certified as guardians in Nebraska.

## IX. JUVENILE JUSTICE

Turning to juvenile probation and juvenile justice, I will emphasize four ongoing initiatives.

### SYSTEM REVIEW

First, Nebraska has been awarded a 3-year grant to conduct a statewide juvenile justice system review. The assessment begins by an examination of the system's strengths, as well a review of areas that need improvement. This focus helps prioritize recommendations for further development and implementation.

The four priority improvement areas include family engagement, positive youth development, simplification of probation court orders, and reduction in detention.

### NEBRASKA'S JUVENILE DETENTION ALTERNATIVES INITIATIVE

Second, this year marked the 10th Anniversary of Nebraska's Juvenile Detention Alternatives Initiative, which we call JDAI. JDAI is a collaborative process involving courts, prosecutors, public defenders, law enforcement officers, elected officials, community volunteers, and others. The goals of JDAI are to:

- Decrease the number of youth who are unnecessarily or inappropriately detained;
- Reduce the number of youth who fail to appear in court or who re-offend pending adjudication;

- Redirect public funds towards effective juvenile justice strategies;
- Reduce disproportionate minority confinement and contact with the juvenile justice system; and
- Improve the juvenile justice system overall.

Douglas County became the first Nebraska JDAI site in 2011. Since that time, JDAI has expanded its services to Sarpy, Otoe, and Lancaster Counties. Hall County became Nebraska's fifth site this past year. JDAI has reduced juvenile detention populations by over 50% statewide.

## JUVENILE PROBATION REENTRY UNIT

Third, juvenile probation also enhanced its reentry unit, which supports youth committed to rehabilitation and treatment centers. The reentry unit is comprised of a coordinator and four probation officers assigned to specific youth treatment and rehabilitation facilities across the State, including locations in Kearney, Hastings, and Lincoln.

The enhanced structure of the reentry unit aims to provide intensive case staffing, on-going support and engagement with institutionalized youth, and aid in the development of stronger community transition plans. Such programs help reduce our juvenile justice recidivism rate which, for the second year, remains at an all-time low of 19%.

## OFFICE OF DISPUTE RESOLUTION

Fourth, we have concluded an evaluation of our statewide restorative justice initiative, which requires juvenile law violators to meet with the victims of their crimes. The data analysis shows that the recidivism rate for youth who participated in this restorative justice process was only 11.3%, compared to the 19% rate noted above for those youth that did not participate.

With these positive results, the Office of Dispute Resolution is working with mediation centers across the State to expand the number of restorative justice programs available to youth. That office is also partnering with the University of Nebraska-Omaha and the University of Nebraska-Lincoln for further program evaluation and research to understand the perspectives of interested parties related to restorative justice. This work will be completed with the support of a 3-year \$1 million Office of Juvenile Justice and Delinquency Prevention System Reform Grant. Nebraska was one of only seven states selected as a grant recipient.

## X. ADULT PROBATION

### BEHAVIORAL HEALTH SERVICES

I turn now to adult probation, which of course is part of Nebraska's judicial branch. Adult probation is our State's main alternative to incarceration. On average, over 80% of individuals involved in the criminal justice system have substance abuse or mental health issues--or both. Hence, this past year we have emphasized improving our mental health and substance abuse treatment services by upgrading our training and technical assistance for probation field officers in all 93 of Nebraska's counties.

## QUALITY ASSURANCE

Quality assurance of behavioral health services is also an ongoing priority. Probation has been assessing the quality of substance abuse evaluations completed by service providers registered with the Judicial Branch.

Through our quality assurance program, behavioral health services will become more effective and further contribute to the reduction of recidivism. Our recidivism rate currently sits at an impressive 18% for adults under supervision.

Adult probation supervision costs taxpayers just over \$2,000 per person per year, which includes the cost of treatment. Intensive supervision of high-risk probationers costs taxpayers just over \$4,000 per person per year. Problem-solving courts, which provide even more supervision, cost about \$4,500 per person per year. These figures compare dramatically and favorably to the cost of incarceration, which is approximately \$41,000 per person per year.

## XI. PROBLEM-SOLVING COURTS

I take this opportunity to thank this body for its support of our problem-solving courts. Similar to probation, the goal of problem-solving courts is to divert criminal offenders from our prisons and jails by offering intense community supervision and rehabilitation. Judges are directly involved in this process. Please note the materials included in your packet memorializing the first drug court graduation in Nemaha County.

Our problem-solving courts are finding new and innovative ways to effectively supervise Nebraska's specialized court participants. Nebraska has seven problem-solving court models, which include drug courts, family drug courts, a young adult court, DUI courts, a mental health court, reentry courts, and veterans treatment courts. I will spotlight several of these problem-solving courts, beginning with the veteran's treatment courts.

## VETERANS TREATMENT COURTS

Nebraska's first Veterans Treatment Court started in Douglas County in 2016. Due to its success, similar courts are now operating in Lancaster, Hall, Buffalo, and Adams Counties. Recently, the Lancaster County Veterans Treatment Court and Adult Drug Court were both selected as model courts for other courts around the country to emulate. Several of Nebraska's problem-solving court coordinators have also been recruited and selected as trainers by the National Drug Court Institute.

## YOUNG ADULT COURT AND MENTAL HEALTH COURT

The Young Adult Court in Douglas County provides sentencing alternatives for those between the ages of 18 and 26 who have been charged with a felony offense. In 2021, this specialized court expanded its capacity to include even more young adults.

In Sarpy County, we established Nebraska's first mental health court. This problem-solving court emphasizes a structured alternative program for chronically mentally ill individuals charged with serious criminal offenses.

## XII. EVERYDAY HEROES

I began this presentation by saluting our everyday court heroes who got going when the going got tough. I close with one more example of the court family's good work.

While all of us have faced challenges posed by the pandemic, some members of our communities have faced more challenges than others. As you glance at the materials provided to you today, you may notice photos that appear to be out of place. They are not.

Often, the obstacles faced by individuals in our court system go beyond addiction, mental illness, or the ability to care for themselves. Sometimes the obstacles come in the form of the inability to obtain basic provisions such as food and shelter.

The extra photos in your material packets show the collective efforts of court and probation offices that have gone above and beyond their calls of duty to help our court users. Examples include food baskets delivered at Thanksgiving; a bassinet provided to a single mother; and a clothes closet available in a probation office so that individuals can be appropriately dressed for job interviews.

Thanks again to those everyday court heroes.

## XIII. CONCLUSION

And thanks again to the members of this Legislature for the support you have given to our Nebraska Court System. With that support, our everyday court heroes can fulfill our constitutional mandate that the Courts remain open, even in the face of a pandemic.

The support of this body, the Governor, and Nebraska's 2 million citizens reinvigorates Nebraska's court family to continue serving Nebraska by combining Midwest work ethic and innovative ways to provide access to justice for all Nebraskans.

Thank you.