

State of the Judiciary
Chief Justice Michael G. Heavican, Nebraska Supreme Court
Message to the Legislature
February 22, 2023

Mr. President, Mr. Speaker, and Members of the Legislature. Thanks to all of you, particularly Speaker Arch, 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 pandemic and other challenges, we have had many successes and accomplishments in 2022, and we look forward to 2023. Today I will highlight some of our accomplishments, including 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.

Judicial Branch Workforce

I will first speak to you about our outstanding Judicial Branch workforce. We have staff and judges working in all 93 of Nebraska's counties, including county court clerks, probation officers, court reporters, and associate public guardians.

Our staff are hardworking and loyal. However, similar to other State employees in this post-pandemic era, many have retired and some have moved on, lured by better-paying jobs in county or city governments or the private sector.

We are grateful to this Legislature for funding salary upgrades for approximately 1/3 of our workforce last year based on a comprehensive salary survey conducted in 2021. But, of course, we need to complete the further recommendations of that survey for the remaining 2/3 of our workers, including our probation officers and support staff.

In July of last year, up to 12% of our 1,600 judicial branch employee positions statewide were vacant. To fulfill our mission of providing access to justice for all, and protecting the public safety of Nebraska citizens through the work of our probation officers, we have implemented extraordinary measures.

Along with the new and partially-implemented comprehensive salary study, we began giving hiring and referral bonuses as well as retention benefits. We also upgraded our Judicial Branch Education opportunities to improve skills and encourage advancement to leadership positions. And we continue to improve our court system's efficiency by upgrading technology.

Probation

I call special attention to our probation officers and probation administrators. Nebraska's probation system has always been part of the judiciary -- trial court judges initiated probation in Nebraska over 100 years ago. We often speak of probation as "the right hand of our judges."

Originally, all the expenses of our trial courts, including local probation officers, were paid out of local property tax dollars. As part of property tax reform efforts, probation officer salaries were shifted to the Supreme Court's budget in 1985. However, counties still pay for office space and supplies for local probation offices.

Under the supervision of the Supreme Court, probation has been transformed in the last 25 years into the dynamic, forward-looking, proactive organization it is today. It is guided by evidence-based practices and the long-standing credo that probation "works for the judges." More than a decade ago, probation ceased being a place where probationers simply "checked in." Instead, probation became an organization that actively case manages its clients. It is also an organization providing job training, substance abuse treatment, mental health treatment, and behavioral modification.

Innovative programs in recent years have included the Specialized Substance Abuse Supervision (SSAS) Program, the navigator programs used in post-release supervision, and day and evening reporting centers. We currently have 17 Reporting Center locations in Nebraska including:

- o Bellevue (Sarpy)
- o Nebraska City (Otoe)
- o Lincoln (Lancaster; 2 locations)
- o Omaha (Douglas; 2 locations)
- o South Sioux City (Dakota)
- o Kearney (Buffalo)
- o Lexington (Dawson)
- o Gering (Scotts Bluff)
- o Columbus (Platte)
- o Norfolk (Madison)
- o Grand Island (Hall)
- o Beatrice (Gage)
- o Hastings (Adams)
- o North Platte (Lincoln)
- o Fremont (Dodge)

Nebraska's probation system, under Supreme Court supervision, has received national acclaim. It has an enviable, community-friendly recidivism rate for both adults and juveniles.

It was because of the above that this Legislature chose to remove the Department of Health and Human Services from its role in juvenile justice supervision in 2013 and vest that role with probation; and why this body placed post-release supervision with probation rather than the Executive Branch in 2015; and why this Court has probation do the bulk of problem-solving court supervision.

We are especially proud of the innovations probation used to supervise probationers during the pandemic. Like police officers, medical personnel, and other essential services, including the courts themselves, probation had to remain 'open' and supervision had to continue. Largely by utilizing technology such as ZOOM and modified electronic monitoring, probation succeeded in its supervisory and public safety roles.

We are also proud to point out that because of the efficient and economical management of both adult and juvenile probation, the Nebraska Supreme Court has returned over \$35 million to the State general fund in the last two bienniums. Please contrast that to returns received from any part of the Executive Branch.

I reiterate what I have said in earlier State of the Judiciary speeches. On any given day in Nebraska, there are approximately 14,000 adults and approximately 2,500 juveniles on probation. The average annual cost of supervision of an adult probationer is \$5,500 per year. Compare that to the cost of incarceration in the Nebraska prison system, which is approximately \$42,000 per year. If even a fraction of the 14,000 adult probationers were instead incarcerated, this body would need to build more than one new prison.

Technology

I have also spoken to you in past years about technology in the courts. I have stated that the future of our courts is technology. The pandemic accelerated our reliance on technology, and the future became the present. The mandate in our Constitution that the courts must be open would have been an empty charade without ZOOM and Webex hearings, efilings in our clerks' offices, and enhanced use of our electronic case management system.

A year ago, efilings became mandatory for lawyers in this State. While that rollout was not without some glitches, thanks to the cooperation of our clerks, judges, and Nebraska's lawyers, the system is working well and the efficiencies and conveniences are many.

A court working group consisting of clerks, court reporters, judges, and technology staff is now refining the implementation of a uniform system of filing electronic trial exhibits. Thanks to all involved for their work on that complex but promising project.

Also as part of the court's technology initiative, we have begun to install modern, standardized courtroom audio-visual technology in all of our trial courts across the State. The project goals are that all courts will have the ability to hold quality remote and hybrid hearings and be better equipped to handle the aforementioned electronic exhibits. The courts will also have the ability to capture higher-quality digital recordings of proceedings.

Standardizing courtroom technology throughout the State makes it easier for judges, court staff, and attorneys to do their jobs. Heeding this body's quest to reduce property taxes, these upgrades are being accomplished without using county property tax dollars.

Cameras in the Trial Court Courtrooms 5th Anniversary

In keeping with the theme of technology and transparency in the court system, I direct your attention to the annual report in your packet. There you will find that we celebrated the 5th anniversary of cameras in trial courts this year.

In 2008, Nebraska Public Media installed permanent cameras in the Supreme Court and Court of Appeals courtrooms in the State Capitol Building, from which we Livestream our argument sessions to the public. Five years ago our trial courts followed suit and began allowing the media fuller audio and visual access to court proceedings. One of our judges even broadcasts all of his proceedings on a You-Tube channel. In other words, access to the courts in the 21st Century means more than the courtroom door is unlocked.

Access to Justice Commission

I now report to you on our other access initiatives and the Access to Justice Commission. The Access to Justice Commission is in the second phase of a three-phase initiative focused on equal access to the courts. This initiative is designed to engage the public in an ongoing discussion of equal access by learning, directly from Nebraska court users, what we might do better.

Phase I was a statewide Court User Survey that measured current perceptions of access and fairness among those using our State courts. Phase II is underway and will convene focus groups with community leaders across the State to learn about local and regional concerns impacting equity in Nebraska's court and probation systems. Phase III will consist of public engagement sessions that facilitate a statewide discussion of the various concerns developed in Phases I and II.

The Nebraska Judicial Branch's primary strategic goal is to "provide access to swift, fair justice." To achieve this goal, we continuously examine our court processes and outcomes and ask whether there is a way to do it better. We appreciate the efforts of the Access to Justice Commission and its standing committees as we work to improve access to justice for all Nebraska court users.

Last summer, as part of our annual tour of courthouses in greater Nebraska, this Court and our Access to Justice Commission completed a series of focus group hearings with Native Americans and their interaction with our courts. Those hearings took place in Scottsbluff and Rushville.

The hearings complemented Native American focused hearings we had in 2019 -- prior to the pandemic -- in Omaha, Macy, Winnebago, and Santee. These hearings are all part of our larger

consortium begun in 2018 of State, Tribal, and Federal courts working specifically on access issues of Native Americans.

Language Access Program

I also speak to you annually of language access in the courts. The Language Access Program recruits, trains, and certifies court interpreters. It also coordinates the appointment of qualified professional interpreters across the State to help limited English proficient court and probation users understand their court proceedings, regardless of what language they speak or the type of case involved. This service is mandated by the Legislature to be cost-free to all court users.

Forty-six different languages were interpreted in Nebraska's courts last year. Spanish continues to be the most commonly interpreted language, but the courts and probation offices across the State interpreted a broad range of spoken languages including Kunama, Indonesian, Pohnpeian, Turkish, and Uzbek. The Language Access Program also coordinated American Sign Language interpreters, certified deaf interpreters, and assistive listening devices for the deaf and hard of hearing community members who appeared in court either as a party or witness, or to serve on a jury.

Although most court-appointed interpreters were from Nebraska, our interpreter program leveraged resources from across the country to meet our language access needs. Interpreters from an additional 14 states supplemented our Nebraska interpreters. Our contract interpreters are hopeful this body will fund an increase in their daily rates this year.

Office of Public Guardian

I speak to you now about the Office of Public Guardian (OPG). In 2022, the OPG began its eighth year of service. This Legislature created the OPG in response to the discovery of widespread financial malfeasance and neglect by a professional guardian who had over 200 court-appointed wards across Nebraska.

The Nebraska OPG provides guardianships and conservatorships for individuals that have been deemed by a county court to be incapacitated and have no other individual who can serve as guardian. Individuals who are under guardianship can suffer from mental illness, dementia, chronic debilitating physical ailments, have developmental disabilities, or struggle with substance abuse and addictions. A review of the individuals served by the OPG during the last eight years reveals that OPG wards have, on average, at least three of these conditions.

The wards the OPG serves have complex, chronic, pervasive issues made worse by poverty, homelessness, exploitation, abuse, isolation, and neglect. The Office of Public Guardian completes a comprehensive annual report each year, and the 2021 Report has been provided to you. The activities of the past year can be summarized as "Challenge and Commitment."

The challenge was exacerbated by COVID. The population the OPG serves that suffered the most during the pandemic: the elderly, those in congregate care, the chronically ill, and the mentally and physically fragile. The COVID crisis continued to impact the OPG in 2022 with

additional challenges: staff shortages, an expanding wait list for OPG guardianships, nursing home closures, and increased demands for ward services.

In addition, private and family guardian support and education for certification of new private/family guardians has increased. The most difficult challenge, however, for the OPG has been the continuing shortage of appropriate mental health services.

Despite the reality of the challenges, what stood out even more was the amazing commitment of individuals working at the OPG to ensure the most vulnerable adults received the care and services they deserved.

Notwithstanding the vacancies of five Associate Public Guardians throughout most of 2022, the 15 Associate Public Guardians working for the OPG committed to additional demanding workloads to safeguard, and care for, wards. They spent hours seeking, advocating, and demanding that facilities, providers, and agencies respond to the critical needs of their clients.

Thanks to this Legislature for supporting the commitment of OPG's dedicated staff. The OPG will continue to work to improve the care and empowerment of Nebraska's most vulnerable citizens.

Court Improvement Project

I turn next to Nebraska's Court Improvement Project. It is largely federally-funded and focuses on the needs of children, youth, and families involved in the juvenile court system. The Program provides high-quality education to judges, attorneys, probation officers, caseworkers, and other court participants, and searches for ways to make our juvenile courts work better.

In 2022, the Court Improvement Project hosted a Children's Summit wherein over 500 professionals learned from national experts how to better engage children, youth, and families to support positive behavioral change and family reunification. At the conference, special recognition was given to a Douglas County project which focuses on court responses to victims of domestic violence and their children. Recognition was also given to the local Through the Eyes of the Child teams in Saline, Jefferson, Gage, and Fillmore Counties, which provided gift bags containing essential items to children who were removed from their homes because of abuse or neglect.

At the behest of the Court Improvement Project, our Commission on Children in the Courts, and our Probation staff, this past year the Supreme Court adopted best practice guidelines for practice in our juvenile courts.

Further Juvenile Justice System Improvement

Last year we had the juvenile probation programs in Lancaster County evaluated by national experts. The experts made recommendations to enhance juvenile justice best practices and will continue to provide technical assistance to prioritize and implement these recommendations

statewide. The recommendations include better screening and assessment practices, better court order implementation, and enhanced mental health and substance abuse treatment.

The Court and the Court Improvement Project also continue to encourage and work with the University of Nebraska College of Law in several programs to improve lawyer skills and services in our juvenile courts. These programs are recognized nationally.

One program began as a clinical project with soon-to-graduate law students representing clients as guardians ad litem in Lancaster County Juvenile Court. This program continues to raise the standard for guardian-ad-litem practices in our juvenile courts.

The University of Nebraska has also implemented a fellowship program for practicing attorneys to provide extensive training, expert case consultation, and best practice enhancements to transform legal representation for vulnerable children across the State.

Behavioral Health

In this presentation I have made several references to the difficulty of obtaining behavioral health resources for various court users and wards of our courts. In criminal cases, our judges are frequently confronted with defendants who have mental health issues. Our judges turn to their probation officers, both adult and juvenile, to find services for such individuals.

Probation has attacked the problem systematically. In September 2022, Probation and the Supreme Court sponsored a Behavioral Health Conference in La Vista. The conference was attended by over 900 participants, including Nebraska State, County, and municipal employees, providers from around the State, and other providers and government employees from surrounding states.

Nebraska Probation highlighted various accomplishments, including our first Mental Health Court in Sarpy County and our cooperation with other State agencies, most especially the Department of Health and Human Services. In that regard, we meet regularly with DHHS to improve mental health and substance abuse provider services, particularly in Greater Nebraska.

Thanks again to this Legislature for increasing provider reimbursements – a very helpful step. We will continue to seek the help of psychiatrists, psychologists, behavioral health technicians, and other medical staff to expand the availability of provider services, particularly 24-hour care facilities for the mentally ill. Unfortunately, county jails are the default 24-hour facility if such services are lacking.

I would also call your attention to the ongoing and long-standing problem of mental health competency determinations for criminal defendants to stand trial. The Lincoln Regional Center currently has a 6-month backlog to perform such evaluations. This problem has festered for years and needs a resource supplement.

Problem-Solving Courts

Every year I also give you an update on problem-solving courts. In the past year, both the Mental Health Court in Sarpy County and the DUI Court in Lancaster County had their first graduations. Our budget request this year includes adding a Veterans Treatment Court in Sarpy County and a Drug Court in Platte County. I would invite you all to visit your local problem-solving courts or attend a problem-solving court graduation in person.

Conclusion

In closing, you are also invited to visit our local probation offices, especially those day and evening reporting centers where our probation officers carry out the orders of our judges. And, of course, please view our Supreme Court oral arguments either live or by webcast.

Again, thank you so much for inviting me to speak to you today. Please be assured that Nebraska's judicial branch is always striving to find ways to do it better.