

State of the Judiciary
Chief Justice Michael G. Heavican, Nebraska Supreme Court
Message to the Legislature
January 25, 2024

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. It is always an honor for me to report on the annual accomplishments of our Judicial Branch and discuss our upcoming plans with you.

With me in the Chamber today are my fellow Justices:

Justice Lindsey Miller-Lerman of Omaha
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

Today, I will speak to you about our excellent judicial branch judges and support staff, problem-solving courts, probation, language interpreter services, the Office of Public Guardian, and our much-needed technology upgrades.

Judicial Branch Workforce

I opened this address last year by discussing staffing shortages we were experiencing across our Judicial Branch. I am happy to report that while we still have more than 100 vacancies statewide out of over 1,600 employees, we now exceed pre-pandemic staffing levels. Our turnover rate has dropped to just over 5%, and our vacancy rate branch-wide is less than 8%. These are significant improvements. I highlight this because these improvements have not occurred by accident.

First and foremost, I sincerely thank this body for supporting our efforts directed at making Nebraska's Judicial Branch a competitive employer in the job market. Those efforts over the past three years included a pair of classification and compensation studies. The purpose of these studies was to find how Judicial Branch employee salaries compared to both the public and private sectors. Your approval of salary increases based on these studies means we are now competitive in most job markets. I remind you, however, that the increases you approved have not yet been included in our base budget.

In addition to salary increases, we have expanded our recruiting efforts by participating in career fairs at colleges, high schools, and even junior high schools across the State. Because of information gathered during community listening sessions, we've also increased recruitment by cooperation with entities like the Urban League of Omaha. And we have targeted expansion of our internship programs as well as job shadowing opportunities. We have also expanded utilization of social media as a recruiting tool to highlight the great work being done in the Branch.

National Awards

I now especially call your attention to some exemplary national achievements in 2023 by judges and probation staff.

This past November, now-retired District Court Judge Jim Doyle of Lexington was given the William Rehnquist Award for Judicial Excellence. There is no greater recognition a trial court judge in America can receive. Chief Justice John Roberts of the United States Supreme Court presented the award to Judge Doyle in front of 200 honored guests and dignitaries in Washington, DC.

At that presentation I was pleased to highlight Judge Doyle's contributions to the citizens of Nebraska, especially those in rural communities. During his more than two decades of judicial service, Judge Doyle went to great lengths to improve interpreter services, establish problem-solving courts, and increase public and media access to court proceedings.

Judge Doyle established Nebraska's first predominantly rural drug court in 2006 and served as chair of the Nebraska Supreme Court's Committee on Problem-Solving Courts until his retirement. Under his guidance, problem-solving courts were established in every judicial district in Nebraska. During the pandemic, Judge Doyle also began Nebraska's only judicial YouTube channel, broadcasting his court proceedings to the public.

We all owe a debt of gratitude to Judge Doyle and his dedication to public service.

I also congratulate Court of Appeals Judge Frankie Moore of North Platte who has been elected by her fellow Appeals Court Judges across America as the current Vice President and President-elect of the Council of Chief Judges of the State Courts of Appeal. Judge Moore has served on the Nebraska Court of Appeals since January 2000, and was the chief judge from 2014 to 2020. She is also a member of the Nebraska Access to Justice Commission and serves as chair of the Self-Represented Litigation Committee. In 2015, Judge Moore received the "Distinguished Judge for Service to Community" award from the Nebraska Supreme Court.

Congratulations also to Kari Rumbaugh, Deputy Administrator of the Juvenile Probation Services Division. Ms. Rumbaugh was selected as the only probation representative nationally to testify as an expert on juvenile probation on a panel of youth justice professionals before the Federal Coordinating Council for Juvenile Justice and Delinquency Prevention in Washington, DC. Deputy Rumbaugh's testimony focused on how the Council can enhance coordination regarding the prevention of youth recidivism.

I'm also happy to report that Nebraska Probation was selected by the Columbia University Emerging Adult Justice Project as one of three innovation sites in the United States. The intent of the 2½ year pilot project is to improve case management strategies and outcomes for young adult offenders, ages 18 to 25.

Probation

I now more generally report on probation. Adult Probation provides community supervision for over 16,000 individuals in all 93 Nebraska counties. Probation officers assist, direct, and motivate individuals to avoid incarceration and live productive lives. Probation includes restitution, community service, drug testing, and mental health treatments. Probation also administers swift and certain sanctions for violation of court orders. Probation officers are highly trained to assess the needs of individuals to better address their rehabilitation.

Statewide, Nebraska Probation currently works with over 1,500 individual service providers and over 500 service provider agencies. Our behavioral health partners provide an essential component required for the successful rehabilitation of probationers. However, there is still a significant shortage of new providers and reimbursement rates have not kept pace with the cost of these services.

Nebraska Probation recently established a partnership with the Nebraska Department of Labor to provide employment programming in our 17 community reporting centers. This important cooperation will assist probation with obtaining and maintaining employment to be successful citizens.

Likewise, in January 2022, this Legislature funded the expansion of the Young Adult Problem-Solving Court in Douglas County to include the creation of a new employment coordinator position. This innovative approach was designed to better equip young adults with the job skills, resources, and employment connections needed to secure meaningful employment within the Omaha community. This includes the recruitment of over 180 employers who are willing to hire Young Adult Problem-Solving Court participants. Success is demonstrated by a 13% decrease in unemployment for individuals in the Young Adult Problem Solving Court.

In a written testimonial, a Young Adult Court graduate noted, “[I]t’s absolutely amazing that you have a system that gives young people like myself the chance to do something better.”

Nebraska Probation continues to be cost effective for taxpayers. The average cost of incarceration in Nebraska is \$41,000 per person per year, compared to the average cost of probation, which is \$3,500 per person per year. Probation is the taxpayers’ friend.

Problem-Solving Courts

I will now discuss in more detail problem-solving courts. Nebraska problem-solving courts have also proven to be a cost-effective alternative for diverting individuals from our jails and prisons through judicial interaction, intensive community supervision, and rehabilitation. Nearly 1,600 individuals participated in 33 problem-solving courts during the last fiscal year.

Thanks to your support, more individuals in Nebraska have been provided access to problem-solving courts. Through the creation of new courts and added capacity to existing problem-solving courts, there has been a 27% increase in problem-solving court participation since 2020.

At your request, recent problem-solving court expansion efforts include Nebraska’s fourth Veterans Treatment Court serving Sarpy and Cass Counties, and a new Adult Drug Court in the

5th Judicial District serving Platte County. Also, the drug court in Saunders County has been doubled in size.

However, a newly completed needs assessment determined that only 5% of individuals eligible for problem-solving courts in Nebraska are being served. With the correct infrastructure in place, problem-solving courts are positioned to be an ongoing and viable alternative to prison. The Judicial Branch is committed to working with you to continue further problem-solving court expansion. I remind you that the annual average cost of participants involved in a problem-solving court is approximately \$4,400. Like probation, each problem-solving court is the taxpayers' friend.

Juvenile Probation

Next, I will discuss juvenile probation. Please note the following accomplishments and concerns.

First, the Juvenile Justice System Enhancement Initiative continued this year with the completion of a statewide system assessment and receipt of a final report. The report emphasized that Nebraska's juvenile probation is positioned as a positive leader in juvenile justice system practices. The Nebraska Supreme Court provided an opportunity for Nebraskans to submit public comments regarding the findings.

Second, reflecting a post-pandemic increase in delinquency filings, there has been a 25% increase in youth placed on probation in fiscal year 2023 as compared to the previous year. Over the same period, there was also an increase of more than 300 predisposition investigations completed by probation officers, providing comprehensive reports and recommendations to courts across the state. Even with this increase, juvenile probation has been able to maintain a low 19% recidivism rate over the past two years.

Third, increasing access to essential services for youth continued as a focus, especially in rural areas of the state. Although service availability continues to be a challenge, we successfully supported the opening of a new emergency shelter in Maxwell, the recruitment of new foster homes in Scottsbluff, and the expansion of a judge-led mentoring project in Saline and Jefferson Counties.

Fourth, there remains, however, a major lack of detention facilities for delinquent juveniles in Nebraska. There are currently only four such detention facilities in the state. They are located in Sarpy, Douglas, Lancaster, and Madison Counties. There are no juvenile detention facilities west of this building, and counties have no incentive to fund them. We are forced to pay Iowa, Kansas, and Wyoming in order to handle our juvenile detention needs.

Office of Public Guardian

I now turn to the Office of Public Guardian. This Legislature created the Office of Public Guardian and placed it in the Judicial Branch in 2015 because of the lack of guardians in Nebraska to serve vulnerable, incapacitated adults. These are mostly elderly, mentally ill, and medically fragile individuals who lack cognitive capacity and are susceptible to financial

exploitation and neglect. Approximately 86% of the wards of the Office of Public Guardian need mental health services.

The Office of Public Guardian was created to serve as guardian of last resort for individuals when no one else is available. The demand for assistant public guardians, however, far exceeds our current capacity to respond. The Office of Public Guardian has had a waiting list since 2018.

Fortunately, there has been a core group of assistant guardians who have persevered, serving these citizens with commitment, sacrifice, and compassion through the pandemic and chronic staff shortages. Largely because of the aforementioned salary increases, staff shortages have been reversed, but the demand for expanding the number of assistant public guardians continues.

Language Access (Trial Court Services)

I now turn to our Language Access Program, which recruits, trains, and certifies language interpreters. And which, of course, coordinates the appointment of qualified interpreters to help limited English proficient, deaf, and hard of hearing individuals understand their court proceedings and probation services, regardless of what language they speak. Conversely, interpreters help judges, lawyers, witnesses, juries, and court staff understand non-English speaking participants who appear in Nebraska courtrooms and probation offices on a daily basis.

Fifty years ago, this Legislature commanded by statute that we provide language access to everyone who appears in our courts. Last summer we celebrated the passage of that 1973 legislation in Colfax County, where we frequently utilize language interpreters.

On a statewide basis, we used interpreters in 69 different languages in 2023, including three indigenous languages we had never used before. Those are:

- Tzotzil (zot-zil) -- a Mayan language from Chiapas, Mexico, which is spoken by only 50,000 people;
- Zapotec (za-po-tec) -- a language of which there are approximately 450,000 speakers, most of whom live in the Mexican states of Oaxaca and Veracruz; and
- Chuj (chew) – a language which is spoken by approximately only 43,000 people – 40,000 in Guatemala and 3,000 in Mexico.

There are only a handful of interpreters in the United States that speak these rare indigenous languages. But by using language line and cooperating with other states, we were able to provide the necessary interpreters when needed.

It's not just an increase in rare indigenous languages that we're experiencing, but an overall growth in language diversity. As an example, in February 2023, the Lancaster County Truancy Diversion Court served 12 families with a total of 6 different languages in a single hearing (2 Arabic, 1 Dinka, 1 Farsi, 3 Kurdish, 1 Nuer, and 4 Spanish). We expect the number of limited English proficient, deaf, and hard of hearing court and probation users to steadily increase in the coming years. We are asking for increased funding for our language access initiatives.

Technology

Finally, I will discuss technology. I have regularly reported on the growing importance technology plays for the courts and its programs. Today more than ever our reliance on technology in providing access to justice is tantamount to our success. We could not have kept our courts functioning during the pandemic without electronic filing, Zoom hearings, and other technological advancements.

First of all, like this legislative branch did years ago, we are establishing a branch-specific information technology system for the courts. We have moved away from the Information Technology services previously provided by the Executive Branch Office of Chief Information Officer into our own, self-maintained domain at NEJudicial.gov. We also continue to relieve more counties of the financial burden of overseeing court IT functions. A self-contained IT infrastructure is more amenable to needed ongoing changes and will allow us to more closely monitor and address security threats.

Secondly, in the coming months we will complete technological upgrades, normally paid for by counties, in every courtroom across the State. We are outfitting each courtroom with state-of-the-art equipment which will increase access and improve user experiences. This includes a system for enhancing the ability for hearing-impaired individuals to understand court proceedings.

Next, we continue to refine our e-filing efforts. We have enhanced the software used to accomplish this, including software for the tracking of continuing legal education and Bar Exam enrollment systems, and we are completing development of a cloud-based exhibits repository.

For our providers serving probation, we have also implemented an improved service provider information management system which streamlined fee-for-service voucher processing. And we are in the process of moving our court and probation case management systems into the cloud and away from very outdated server-based data-storage systems.

Most importantly, however, I call your attention to the need to upgrade our current case management system for both efficiency and the ability to provide you and others with requested data information, and especially for cyber security purposes. Our current system was built inhouse. No consultants, no outside vendors, and with only marginal use of tax dollars. It was rolled out in 1993 using COBAL programming code and an AS400 operating system. The system is held together with baling wire and bubble gum. A 30-plus-year-old case management system is not adequate to meet current and future court demands.

The Judicial Branch has experienced significant programmatic growth in the last decade. As noted, the number of problem-solving courts has grown exponentially. Juvenile justice reform, justice reinvestment, post-release supervision, and the additions of the Offices of Dispute Resolution and Public Guardian have all had a dramatic impact on the Judicial Branch. These services operate from separate information management systems or within our outdated systems.

This legislative body, along with many court users, regularly requests data reports we are simply unable to produce. The current system does not collect such information, it does not store such information, and we cannot provide such information.

Again, it is vital to our success that our unified case management system be upgraded to meet our future needs as well as your data requests. We look forward to partnership and collaboration as we move our courts into the 21st Century. While costly, this is a necessary investment for our future, your future, and our state's future.

Kansas Cyber Attack

I especially emphasize, however, our need to upgrade protection for online records. The Court maintains a great deal of personal information within our case management system. Much like banks, retail outlets, and health care providers, we handle a large amount of confidential information online – including bank account numbers, social security numbers, credit card information, and other financial details. Additionally, we store information on paternity and child custody, as well as criminal case data on sexual assaults of both adults and children.

This past October, the Kansas court system suffered a foreign cyberattack that forced officials to completely shut down their electronic system. The attackers had access to all of the confidential information I just summarized. Public access to documents and online filing for lawyers had to be suspended for months after the attack. Lawyers reverted to using the old paper system to file their cases, and anyone seeking public records had to visit their local courthouses or the State Capitol. A ransom was demanded to restart the system. The ransom was not paid, but the attack nevertheless cost Kansans millions of tax dollars and user fee expenses.

Kansas serves as a warning for the rest of us. If the Kansas Supreme Court fell victim to a sophisticated foreign cyberattack, without needed upgrades we must consider ourselves equally vulnerable.

Conclusion

On that cautionary note, I thank you for this opportunity to speak with you today. I look forward to our continuing cooperation with you and our executive branch friends in serving all Nebraska citizens.