

State of the Judiciary
Chief Justice James W. Hardesty, Nevada Supreme Court
Message to the Legislature
March 25, 2021

Governor Sisolak, Speaker Frierson, Majority Leader Cannizzaro, Minority Leader Titus, Senator Settelmeyer, distinguished members of the Senate and Assembly, honorable Constitutional Officers, thank you for the opportunity to speak to the 81st Session of the Nevada Legislature on behalf of our State's Judicial System.

My purpose this evening is to update you on certain matters affecting the Judicial Branch of Nevada's government. But before I do, on behalf of Nevada's legal system, we offer our heartfelt condolences to all those who lost loved ones or suffered other hardships during the pandemic. We sincerely thank all of the healthcare workers and frontline responders who have worked tirelessly to keep us safe. We would also like to take this opportunity to thank Governor Sisolak and his staff for their work in early January to add the Judiciary, court staff, and members of Nevada's legal system to the front line priority lane for vaccinations against this terrible disease. By January 11th, we successfully developed a priority plan for the judicial system and transmitted to the State Health Department the names and contact information for 2,274 State and Federal Judges, Seniors, Magistrates, Masters, DA's, Public Defenders, US attorneys, and staff seeking vaccination. And by January 22, 2021, we conveyed to the State a priority plan and names for the vaccination of 6,544 non-government attorneys and their staff. Many thanks go out to Supreme Court HR Director McKenna McCormick and staff member Vicki Elefante for the time they spent compiling the judiciary list and to Kim Farmer, Executive Director of the Nevada State Bar, for coordinating the outreach and compilation of the list of their membership and employees. In a recent survey of the Nevada Appellate Courts employees, 74% of those seeking vaccination will be fully vaccinated by May 1st. The success of the vaccine effort for the courts and the legal system will make a big difference in our decision to open the courts.

Since 1981, our country has commemorated Women's History. In this, we take time to reflect on the advances women have made over the past decade or two. I thought it would be interesting to recall that two remarkable women were born on this day in history – Gloria Steinem in 1934 and Aretha Franklin in 1942. And, I submit, it is notable that Ruth Bader Ginsburg was born on March 15, 1933. Without a doubt, all three women were leaders in the cause of equal rights for women. Nevada has a lot to celebrate as we recognize the advancement of women in critical positions of public service in our state. As examples, women hold a majority of the seats in our Legislature and serve in both of Nevada's seats in the United States Senate.

I would like to add to the list of historical achievements by women in Nevada the ongoing transformation of the make-up of Nevada's judiciary. Since Miriam Shearing became the first woman elected to the District Court in Nevada in 1982, the Legislature has increased the number of District Court Judges to 90. Following the elections in November, 56 of Nevada's District Court Judges are women. In 1992, Justice Shearing was elected as the first female Justice to serve on the Nevada Supreme Court. In 2019, Nevada made further history when, as a result of the November 2018 elections, a majority of the Justices on the Nevada Supreme Court are women. I submit the advancement of women in a traditionally male dominated part of the legal profession deserves recognition, especially during Women's History Month.

I'd like to introduce my friends and colleagues on the Nevada Supreme Court - Associate Chief Justice Ron Parraguirre, Justice Lidia Stiglich, Justice Elissa Cadish, Justice Abbi Silver, Justice Kristina Pickering, and the most recently elected Justice - Douglas Herndon. I would also like to recognize our colleagues on the Nevada Court of Appeals - Chief Judge Michael Gibbons, Judge Jerome Tao, and Judge Bonnie Bulla. It is my privilege to serve with all of these distinguished jurists, and I thank them for their support during my service as Chief Justice. All of us offer a special thank you to the Clerk of the Supreme Court, Elizabeth Brown; the Assistant Clerk for the Court of Appeals, Kurt Jensen; Chief Legal Counsel, Phaedra Kalicki; Reporter of Decisions, Kim Edwards; the recently appointed State Court Administrator, Katherine Stocks; and the dedicated, hardworking staff of the Nevada Appellate Courts and the Administrative Office of the Courts. As many of you may know, Robin Sweet recently retired as Director of the AOC. We would like to thank and recognize Robin for her dedication and service to the Supreme Court and the people of this state.

Tonight it is my privilege to speak on behalf of the Justices, 3 Court of Appeals Judges, 90 District Court Judges, 67 Justices of the Peace, 30 Municipal Court Judges, and over 2,000 court employees throughout the state.

Nevada's judicial officers and court employees are committed to the administration of fair and impartial justice according to the rule of law in criminal, civil, family, and juvenile matters. In fulfilling our constitutional and statutory duties, we are mindful of the importance of providing timely access to the court system and resolving cases as efficiently as budgets and caseloads permit. As Chief Justice, I offer my profound thanks to all of them and their staff for their dedicated service to all Nevadans.

On their behalf, I am proud to report to you tonight on several matters of interest to the Judicial Branch of State Government.

In November 2014, the voters amended the Nevada Constitution adding a Court of Appeals to our state's appellate system. Since its inception in January 2015 through December 2020, parties have filed 15,119 cases with the Supreme Court, and the Nevada Appellate Courts have collectively resolved 16,202 cases, significantly reducing our backlog while also publishing 570 opinions on Nevada law. Throughout this six-year period, the budget supporting the Court of Appeals has remained substantially as predicted in 2014. And we are proud of the public-private partnership that brought a beautiful, nationally recognized courthouse to downtown Las Vegas while saving the taxpayers thousands of dollars in annual rent.

The pandemic has forced all of us to face challenges that we could never have imagined a year ago. While the pandemic brought our society to a halt, the disputes resolved by the court system did not go on lockdown. Indeed, some cases - such as domestic violence, sexual exploitation, families in crisis, or substance abuse - have likely intensified.

Courts, as you know, are, traditionally, places where many people, sometimes hundreds, come together in person. In-person visits to the courthouses around the state to participate in jury service, pay parking tickets, seek restraining orders, resolve landlord/tenant disputes, etc., became dangerous due to the potential exposure to the virus. Obviously, that could not continue. As the realities of the pandemic became clear, the Judiciary shifted, where it could, to technology

to hold court hearings remotely. I'd like to thank and recognize Chief Justice Pickering and Chief Judges Linda Bell, Scott Freeman, Susan Baucum, Melissa Saragosa, Sam Bateman and many more judges around the state for their tireless leadership on so many issues that kept the courts operating this past year. And a very special thank you goes out to the incredible court administrators and IT staff for their innovations and creativity pivoting the court systems to a virtual format.

Shifting many in-court proceedings onto remote platforms may ultimately be one of the few bright spots to come out of the pandemic. Many lawyers and users of the public judicial system welcome the convenience of appearing remotely, rather than taking the time needed to come to a brick and mortar courthouse. At Incline Justice Court, Judge Alan Tiras implemented a virtual traffic calendar. With the exception of a few demands for in-person trials, the Court is completely current despite a record year in case filings. And in the Eighth Judicial District, the Court IT staff moved quickly to develop custom software entitled "Order in the Court," which enables attorneys and the public to submit proposed orders remotely and receive signed orders electronically. Since the software application was implemented court-wide in September, 105,930 orders have been processed. The District has also developed electronic search warrants for both judges and law enforcement officers. The process has saved law enforcement at least two hours per warrant and the Court has processed 5,850 electronic warrants since April 2020.

In my judgment, remote hearings also promote transparency as court proceedings are accessible to greater numbers of the public via video conferencing platforms. And it saves money. By way of example, the AOC Judicial Education and Specialty Courts worked together to host the first ever statewide Specialty Courts Conference. Over 200 attended each day at a savings of \$87,000.

However, this transformative shift to the use of remote platforms has highlighted several problems for the Judiciary and the citizens we serve.

Not everyone has access to broadband services or sufficient bandwidth or technology to connect to remote hearings. And, sometimes participants in a remote court proceeding forget or disregard the decorum required for a court hearing. Just as an aside, it really isn't a good idea to call into a court hearing on your traffic violation while you are driving or, in one case in southern California, while you are conducting surgery on a patient. Moreover, while e-filing is a preferable way to file documents with the court and reduce the number of people coming to the courthouses, not all courts in Nevada have that capacity and many that do have systems that are far more cumbersome than originally imagined. I urge the Legislature's support for the Supreme Court's one-shot request to begin implementation of the statewide plan for e-filing in every court in Nevada.

All that said, some of the courts' work simply cannot be done remotely - most notably, jury trials in criminal and civil cases. Jury trials were suspended at the beginning of the pandemic because they required the presence of too many people – jurors, parties, witnesses, attorneys, the judge, and staff. Limited spacing, close courtroom configurations, jury boxes and aging courthouses have prevented most of the courts in our state from conducting jury trials. After the shutdown through February 1st of this year, only 5 criminal trials and just 1 civil jury trial have been conducted in Clark County and just 3 criminal jury trials in Washoe County. As a consequence,

large backlogs of criminal and civil jury trials have developed around the state. For example, in Clark County, as of March 11, there were 252 capital cases, 1,386 felony cases, and 4,448 civil jury trials scheduled for trial in 2021. Particularly troubling currently are the 182 defendants in criminal cases in the Clark County District Court who have invoked their constitutional right to a speedy trial. In Washoe, 92 criminal cases and 186 civil cases are set for jury trials in 2021. In short, the two largest judicial districts in the state lack the capacity to conduct jury trials in a timely fashion. And the dockets continue to grow.

What many may not appreciate is the limitation on spacing in the courtrooms in our state sufficient to provide appropriate safety for all the participants in the trials. Currently, Clark County District Courts have two courtrooms retrofitted to accommodate criminal jury trials and one courtroom in the convention center to conduct a civil jury trial. But these venues are not near enough for the pending backlog. And in Washoe County, while they retrofitted two courtrooms on the upper floors of the courthouse, repairs to two elevators over the next 8 months that service an aging courthouse will place severe limitations to conduct criminal jury trials. In Elko, 6 jury trials have been conducted since September 2020 – 3 in the convention center until it was no longer available to the court, one in the Stockman's Casino, one in the largest courtroom in the courthouse, and one in the County Commission chambers. At this rate, I expect to learn that the next trial will be conducted in a barn outside the City. And in Ely, a murder trial has been delayed over a year because there are insufficient funds to rent that City's convention center. In Winnemucca, Judge Montero personally took a saw to his jury box to create spacing to conduct a long overdue civil jury trial. And the delays are not limited to the District Courts. As an example, Sparks Justice Court is not able to conduct jury trials in 15 pending domestic violence cases because of the lack of proper spacing in their courtroom and jury box. And Henderson Justice Court is in need of a jury box in courtroom 4 and advanced air quality systems in all of their courtrooms.

It is safe to say that the highest priority for the judicial system is to restart jury trials and begin to clear the growing backlog. I have asked every Judicial District in the state to submit a plan to create more venues, retrofit courtrooms, and provide safe facilities to conduct jury trials. In the coming days, I will present a statewide plan to the Governor and the Legislature to restart jury trials and reduce backlogs. We respectfully request the opportunity to present these plans to the Legislature, and we urge you to consider allocating funds from the American Rescue Plan to pay the costs that will be necessary to restore justice in our state. Improvements to existing venues, financial support to access larger venues, and increased deployment of senior judges to every district will help create an environment to settle or try the pending cases. The right to a jury trial is fundamental to our democracy. Regrettably, the pandemic has delayed access to that fundamental right, and we need to fix this now!

Over the years, the responsibilities of the Judicial Branch have grown. Whether we like it or not, the state courts of this country are in the eye of the storm; we have become the emergency room for society's worst ailments - substance abuse, family violence, mental illness, residential evictions, and so much more. This reality has forced the courts to approach cases with innovation and collaboration with all involved.

In 2015, for example, the State faced an embarrassing number of cases of guardianship abuse. Following extensive study by the Supreme Court's Guardianship Reform Commission, the 79th

Legislative Session approved numerous reforms to the adult and minor guardianship statutes. These measures included a protected person bill of rights, the requirement for preliminary care plans and budgets in each case, and the appointment of legal counsel for proposed protected persons. In addition, A.B. 130 created the State Guardianship Compliance Office to assist District Courts during administration and oversight of guardianship proceedings. Since then, the District Courts have made substantial improvements to their data collection and case supervision processes. And the Compliance Office has audited estates worth a total of \$95,892,800 and found approximately \$9,107,773 worth of guardianship estate funds that were at risk of loss. Since March 2018, the Office has conducted 151 audits, 157 quality of care investigations, 72 pre-guardianship investigations, and located 272 persons subject to guardianships. Further, the Supreme Court adopted statewide rules and standardized forms governing guardianship proceedings. I submit that these measures, collectively, have resulted in the termination of guardianships that should not have been ordered in the first place, the avoidance of guardianships where least restrictive, alternative means for protection were available, and a system for investigations and accountability in guardianship cases.

Nevada's drug courts and other specialty courts continue the incredible journey that began in 1992 when Nevada launched the nation's fifth drug court. It is a journey that saves lives, families, and the futures of unborn babies. It is also a journey that reduces recidivism, playing a key role in the many reforms proscribed in A.B. 236 adopted in the 2019 Legislature. The diversion of those suffering from substance use and mental health challenges will reduce the need for more jails and prisons. Nevada's Statewide Specialty Court Funding Committee launched two initiatives this year – a study of recidivism and a Peer Review of sister courts. With the assistance of the Nevada Department of Health and Human Services Biostatistician Department, an assessment of successful specialty court participants for 2017 showed the average recidivism rate to be 25%. In other words, consistent with national averages, 75% of successful graduates have not had a conviction since participation in their specialty court. We thank the Legislature for your ongoing support for these courts.

In addition, some Judicial Districts have initiated programs in partnership with local law enforcement to divert individuals away from the justice system to community-based services for treatment and life-skills training. One such program is the new Law Enforcement Intervention for Mental Health and Addiction (LIMA) in Clark County. LIMA is a 9 to 12 month pre-booking diversion program in which Las Vegas Metro redirects those with low-level drug related charges into community-based services. From February 27, 2020, to March 5, 2021, LIMA has assisted 142 participants with transitional housing and other services ranging from employment to medical treatment.

In 2019, the Supreme Court commissioned the National Center for Juvenile Justice, the research division of the National Council of Juvenile and Family Court Judges, to assess the Family Court operation model adopted by the Legislature in 1993. The goal of the assessment was to determine whether the family courts are meeting expectations of families and legislators, following state and local court rules, and resolving legal disputes timely and effectively. After more than 10 months of interviews, detailed surveys, and on-site visits, the NCJJ released a 68-page report that can be found on the Supreme Court website concluding that the state should continue to sustain and support the coordinated family division model as originally conceived in the legislation 25 years earlier. It also made 7 recommendations. I'd like to highlight 3. First, and

critically, both Clark and Washoe counties have outgrown the footprint of their facilities and the urgency of the situation will continue to increase as the population and workloads increase. Outdated facilities in both jurisdictions are the most prominent threat to achieving the goals of the coordinated family divisions. Second, both jurisdictions are operating with fewer judicial officer resources than all of the jurisdictions the researchers used to compare Clark and Washoe Counties with even after the addition of judicial officer positions in 2021. Clark County would require over 7 additional positions and Washoe County would require at least 4 to even begin approaching parity with comparable jurisdictions at the low end of the judicial resource spectrum. And third, establish an Office of Family Division Services within the AOC to improve Family Operating Division goals, support judicial specialization, coordinate data and develop state of the art training solutions to one-family-one-judge case assignments. The pandemic has intercepted our progress on all of the recommendations, but I anticipate meaningful steps this year planning for the implementation of the remaining recommendations concerning workload studies and the use of masters in family court.

When I addressed the Legislature in 2015, I listed a number of items on the agenda for Nevada's Judiciary. One included the subject of judicial education. At the time, we did not have an organized system for mandatory judicial education. I am pleased to report that Judicial Education Committees, with the support of the AOC, have developed mandatory education on numerous core legal and judicial subjects to be taken by judges on a recurring basis. In addition, we support and agree with the need and inclusion of courses focusing on racial equality and implicit bias. Indeed, the District Judges have already added an extensive program entitled the Red Door Project to their course list this May.

Last November, Nevadans amended the Nevada Constitution to reform the Pardons Board, increasing the number of required meetings to 4 per year. This measure was presented to the voters because of the incredible backlog of pending cases and the limited staff to investigate and present reports on applicants. Indeed, the Board has but one staff member and over 240 cases in the queue to be investigated and presented. Regrettably, many of the agencies that support the work of the Board had already submitted their budgets before the election thus excluding from their budgets the staffing necessary to support the reconfigured Board. This week, the Pardons Board received presentations from the Nevada Department of Corrections, the Division of Parole and Probation and the Parole Board concerning the budget requirements to support this new constitutional mandate. The Board urges the Legislature to include these enhancements in the agency budgets to help the Board reduce these backlogs as promised.

The subject of residential evictions has been, and continues to be, a frustrating and vexing subject for all involved. The good news – more than 25,000 households received assistance from the initial CARES Act Coronavirus Relief Fund. The second round of federal funding through the Emergency Rental Assistance Program created by Congress in December 2020 will add \$161 million in funds in Clark County alone and is projected to assist another 40,000 households. Millions more are projected from the American Rescue Plan. One would think that with millions of dollars available for rent relief, the eviction issue wouldn't be so difficult. But it is far more complex than appears on the surface, driven in large part by the time it takes to qualify tenants under the federal guidelines and connect them and their landlords to this resource. As recently reported, there are over 20,000 applications for rent relief pending in Clark County and 4,585 pending eviction cases in the Las Vegas Justice Court awaiting an eviction hearing. The number

of applicants and cases threatens to overwhelm the system and the courts. As you know, Home Means Nevada has operated an alternative dispute resolution program pursuant to rules adopted by the Supreme Court last fall. I sincerely thank Shannon Chambers, her team and the many mediators who, on very short notice, stepped in to help the parties resolve disputes concerning unpaid rent. With the status of eviction moratoriums unclear, it will be critical for all the branches of state government to work closely together to find effective solutions for landlords and tenants over the coming weeks and months. The Judiciary stands ready to work with all parties to implement case management plans that are consistent with statutory provisions.

As some of you may know, the Supreme Court recently entered an order creating a Commission to Study the Adjudication of Water Law Cases. The petition seeking this Commission received broad support from throughout the state and provides an opportunity to thoroughly examine the adjudication of this vital public resource. I appointed the Commission membership this week and our work will begin immediately. The Commission's findings and recommendations are due April 1, 2022.

I am excited about the future of Nevada's judicial system. Our judges and court employees are enthusiastic, innovative and engaged, working every day to bring "equal justice to all." But, as Justice Breyer noted in his book *Making Our Democracy Work*, we cannot take the public's confidence in the Courts for granted. I agree and believe that Nevada's courts will continue to earn the public's trust and confidence if we adhere to the rule of law, are proactive in the management of our cases, provide access to our courts, treat each person who appears before us with respect and dignity, are accountable for our behavior and decisions, are fiscally responsible, and are transparent in the administration of justice.

Thank you for the honor of appearing before you this evening.