

State of the Judiciary

Chief Justice Steven R. Jensen, South Dakota Supreme Court

Message to the Legislature

January 14, 2026

Introduction

Governor Rhoden, Lieutenant Governor Venhuizen, members of the Legislature, Constitutional Officers, my fellow Justices, Judges, Unified Judicial System (UJS) employees, and all South Dakotans: I am honored to deliver my 2026 State of the Judiciary message to you.

This year marks the 250th anniversary of our nation. As we celebrate this milestone, we naturally reflect on the freedoms and the rights that have made this nation great—the right to speak, worship, and associate consistent with our beliefs. The premise undergirding these rights, first espoused in the Declaration of Independence, is that every person is made by their Creator with certain inalienable rights, such as life, liberty, and the pursuit of happiness. It was these fundamental beliefs that motivated our founding fathers to establish this nation on July 4, 1776.

This year, as we celebrate our nation’s founding, we will retell the stories of the vision and courage of the early American leaders who drafted the Declaration of Independence, fought in the Revolutionary War, and set the nation on a course toward a representative democracy.

In that spirit, I want to take a few minutes to talk about the history of the state courts and their significance in preserving the liberties we have enjoyed for more than 250 years.

Years before our nation was established, before the Declaration of Independence, the United States Constitution, or the federal courts existed, the American Colonial courts, the forerunners of our contemporary state courts, were formed to maintain order and resolve disputes in the growing communities throughout the Colonies. The courts were the primary guardians of the rule of law during this time. For those living in what would become America in the 17th and 18th century, justice was not something that happened in distant capitals—it happened in local courthouses.

These early courts were influenced by English common law, reinforcing the importance of legal precedent and the development of legal codes and statutes, so that rules would be applied fairly and consistently in every case. As many Colonies began to distance themselves from the king and British rule, tensions developed in the courts. Would the courts be loyal to and subject to the influence of the crown, or would the judiciary remain independent and decide cases based upon the rule of law?

Trial by jury was one of the primary means by which Colonial courts began to develop independence from the British crown. Jury trials allowed citizens drawn randomly from within the community to make the decisions in cases based upon the rules and facts presented during the trial.

One of these first major tests of this independent court system took place in Massachusetts following the Boston Massacre. On March 5, 1770, British soldiers fired into a crowd of several hundred Colonists protesting the increasing presence of the soldiers sent by Great Britain to quell the growing rebellion in the American Colonies.

Five Colonists were killed. The outrage of Colonists and the local newspapers was swift and immediate. The soldiers were widely presumed guilty of murdering innocent civilians. The public demanded justice. The captain and eight British soldiers were charged with murder and scheduled to be tried by a jury of local citizens in a Massachusetts court.

As one might expect, the British soldiers had a difficult time finding an attorney to represent them in Boston, as defending them carried enormous political and personal risk. Then an unlikely lawyer stepped forward to represent the British soldiers—John Adams, the man who would become our second U.S. president and one of the Committee of Five selected by the Continental Congress a few years later to draft the Declaration of Independence. Adams was fully aware of the difficulties these men faced in obtaining a fair trial.

The British captain was tried first. He was acquitted by an independent jury based upon testimony of several eyewitnesses who stated that the captain had not fired his weapon and had not ordered the troops to fire into the crowd. The other eight British soldiers were later tried on murder charges and were also represented by Adams. Following six days of testimony from dozens of witnesses, a jury found two of the soldiers guilty of manslaughter after hearing testimony that they fired their weapons after they were pelted by rocks and snowballs. The jury acquitted the other six British soldiers based upon the absence of evidence that any of them had fired their weapons at the crowd.

In his closing argument to the jury in the second trial, Adams argued, “Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence: nor is the law less stable than the fact[.]” Adams’ words are just as true today as they were in 1770. The courts must remain committed to deciding cases, not on the dictates of the powerful or upon the often-fleeting impulse of public opinion but based upon the stubborn facts and the equal application of the law.

The lesson from John Adams and the Boston Massacre is clear: the strength of our society is measured not by how it treats the favored, but by how faithfully its courts administer justice to every person, regardless of external pressure. State courts matter because they are where this commitment was established and where it is protected for all Americans each day.

The story of the Boston Massacre demonstrates the early work of the courts to ensure the liberties that have kept our nation great for 250 years. These rights, now enshrined in our U.S. and South Dakota Constitutions, include the right to counsel, the right to trial by jury, the right to call witnesses and cross-examine witnesses against them, and the right to due process of law. Today, state courts continue this legacy. They handle nearly all criminal cases, family law matters, property disputes, and contract enforcement. Ninety-seven percent of cases tried in the United States are tried in state courts. This is where constitutional guarantees are most frequently

tested and applied. When state courts function with integrity and independence, they affirm that justice is not reserved for the powerful or popular but is grounded upon the rule of law and truth.

Strategic Plan

Our state court system resolves thousands of cases each year in South Dakota. To maintain our focus on serving the people of South Dakota with fairness, integrity, and excellence, it is important that we regularly step back to consider our ongoing mission to serve the public. With this purpose in mind, we brought together judges, court staff, and administrators from across the court system to develop updated mission and vision statements and to create a strategic plan to guide our courts, judges, and staff over the next few years.

Our stated mission is this: The Unified Judicial System (UJS) is dedicated to providing a fair, impartial, and accessible court system that upholds the rule of law and is worthy of the public's trust and confidence.

Our vision—Justice for All—speaks to the very heart of our work. It is a reminder that the courts exist for everyone. Our efforts must meet the needs of the people we serve, no matter their background or circumstance. To fulfill our mission and vision, we identified six strategic pillars that will shape our priorities in the years ahead, addressing the evolving challenges and opportunities within the justice system.

Our six strategic pillars are:

1. Enhancing Access to Justice for Court Users
2. Building Public Trust and Confidence
3. Effective Court Operations and Services
4. Improving Courthouse Security, Emergency Preparedness, and Personal Safety
5. Embracing and Enhancing Technology
6. Fostering a Strong Workforce

These six pillars are both a promise and a call to action. They represent a promise that we, as stewards of the justice system, will continue striving to meet the highest standards of service and integrity. It is a call to action for every member of the UJS to work together to bring this vision to life. With this plan as our guide, I am confident that we will meet the challenges ahead and build an even stronger judicial system for the people of South Dakota. This morning, I want to discuss a few of these pillars and our efforts to implement them.

Indigent Legal Defense

As we think about the strategic pillar of enhancing access to the courts, I want to update you on the ongoing work of improving our indigent defense system in South Dakota. A system that is efficient and effective, while also accessible in both rural and urban counties, is essential to ensure the rights the courts must uphold.

I referenced John Adams earlier and his willingness to represent eight “Redcoats” accused of murdering five of his fellow Colonists. He did not represent these British soldiers because he believed in their cause or liked them. He represented the accused soldiers because he believed in the importance of the rule of law, an adversarial system designed to find the truth, and a fair and impartial justice system for every person regardless of public sentiment. In his autobiography, Adams recounted that when asked to represent the soldiers, he “had no hesitation in answering [as having counsel] ought to be the very last thing an accused person should [worry about] in a free country.” Adams understood that without having counsel available to represent the accused, the American experiment would fail.

With that same commitment, we must continue to move forward with our efforts to provide for indigent defense in South Dakota so that all persons will have access to professional legal defense when accused of a crime, regardless of their resources. We have made tremendous strides over the past two years, thanks to the Legislature’s authorization and funding for the Commission on Indigent Legal Services and the Office of Indigent Legal Services. Since that time, we have moved forward to create the statewide Commission made up of appointees from our three government branches and the counties. The Commission is responsible for and working on creating rules that provide for effective and efficient representation by counsel across the state.

The State Office of Indigent Legal Services is also up and running. In July, the office began handling appeals in every South Dakota county. This office currently handles appeals to the Supreme Court in criminal cases ranging from misdemeanor offenses to murder, as well as child abuse and neglect cases. By coordinating appeals from across the state in one office, we have created efficiencies our system has not had in the past. This work is also an important first step toward relieving counties of some of the financial responsibility for indigent defense.

Much work remains to be done, however, to build a strong indigent defense system. One consistent theme I hear from South Dakota judges is the need for experienced attorneys to represent indigent criminal defendants in trial court proceedings, especially in serious felony cases. I hear these comments from judges presiding in locations from Sioux Falls to Buffalo. Important issues are identified and resolved in a timely manner, with fewer errors and unnecessary costs when defendants have effective representation.

The Commission and the State Office of Indigent Legal Services will help remedy the shortage of adequate defense representation in our trial courts in at least three ways.

1. Expanding the Office will create regional positions for experienced trial counsel to handle higher-level felonies.
2. The State Office will be able to provide training, mentoring, and assistance to younger or less experienced trial lawyers so that they develop the skills and expertise necessary to handle more serious felonies. Attorney General Marty Jackley’s office uses a similar model as they assist state’s attorneys in the prosecution of serious felony cases. Both the state and the defense must have robust advocacy to maintain the integrity of court decisions.
3. The Commission can ensure that attorneys are adequately compensated for this important work so we can continue to attract skilled and experienced lawyers to provide indigent defense.

Finally, the efforts of both the Commission and the Office will contribute to greater efficiency by monitoring caseloads and potentially lowering costs by regionalizing services. Providing state indigent legal services in the trial courts will also have the added benefit of reducing the financial burden on counties.

Our efforts in strengthening indigent legal services will not create new services but will ensure that the services being provided are effective and efficient. I am not asking the Legislature to take any action this year relating to indigent defense. It is important to allow the Commission and the State Office to continue to establish its work and solidify the plans for future expansion for another year.

We will work with the executive and legislative branches, as well as the counties, over the next year and in the years ahead to begin moving forward with state indigent legal services in the trial courts. This will not happen overnight, but we have our eye on the goal and are excited to be making consistent progress.

Probation and Treatment Courts

As I move into our strategic pillars of public trust and confidence and effective court operations, I want to talk about our work in probation services and the treatment courts. First, probation services.

During fiscal year 2025, UJS court services officers (CSOs) supervised 9,380 adults and 1,943 juveniles sentenced by the courts to terms of probation. CSOs promote public safety and rehabilitation by monitoring probationers' compliance with court-ordered sentencing conditions and by facilitating services for individuals placed on probation. In FY 2025, we had 1,853 adults and 1,023 juveniles successfully complete probation.

The recidivism rate for adults is 31.5% and 38.6% for juveniles. Recidivism rates matter, and I will be the first one to tell you that they serve as stark reminders of the societal challenges that exist in today's world, particularly for juvenile probation. There is no magic formula to fix this problem overnight. It is important, however, that we have a good understanding of the challenges so we can better address our responsibility to the next generation while also promoting safety in our communities.

Juvenile Probation

We have seen an increasing number of young people dealing with significant mental health and substance abuse issues over the past several years. Additionally, the lack of a healthy family structure creates challenges for our efforts to promote rehabilitation for these young people. Along with substance use and mental health issues, courts have seen an increase in the number of cases involving juveniles possessing guns and engaging in gun violence. The combination of firearms and impulsive and immature juvenile behavior creates acute public safety concerns within our communities.

Services and resources are essential if we are going to improve our efforts at rehabilitation. Substance abuse and mental health treatment services are at the top of the list of needs for juveniles on probation.

Mentors for juveniles and young adults on probation is another need. While the court system does not have the internal expertise or resources to provide mentoring, we are interested in partnering with existing community mentoring programs that could be expanded to include probation. We have had discussions with Sioux Falls Mayor Paul TenHaken, Police Chief Jon Thum, and an existing mentoring program in Sioux Falls about the potential to expand these services to juveniles and young adults on probation.

We must be mindful that governmental services alone are inadequate to address the human condition. This does not diminish our obligation, however, to make our best efforts to help young people address criminal thinking, as well as mental health and addiction issues. We will continue to do so as a court system.

I extend a formal invitation to legislators, school officials, service providers, churches, and other nonprofits to reach out to discuss how we can work together for better outcomes in juvenile probation.

Adult Probation

When I addressed adult probation last year, I spoke about the benefits of providing pretrial services programs, which can be a valuable resource in the early stages of the criminal justice process.

Currently, we have no services or legislative authority to provide services for individuals prior to conviction. This means individuals facing charges either remain in jail, where there is limited bed space, or are released without supervision. Pretrial programs can be used to gather information about pretrial release and assist in deciding appropriate conditions for their release. Pretrial services can also provide supervision to monitor individuals' compliance with release conditions, help ensure they appear for scheduled court events, and connect them with rehabilitation services prior to conviction.

We plan to begin a pretrial services pilot program in Pennington County in July. An advisory committee, including stakeholders from the sheriff's office, state's attorney's office, defense attorneys, and community partners, have been studying similar programs in other states to begin building Pennington County's pretrial pilot program. This session, I will be bringing legislation to authorize that pilot program. We are not asking for an additional appropriation to implement the pilot in Pennington County as we have some short-term grant funding available to supplement our existing resources. We will report to the Governor's Office and the Legislature on our progress and hope to expand these services statewide in the future.

Last session's Senate Bill 83 shifted ingestion of a controlled substance from a felony to a misdemeanor for first and second offenses. A third or subsequent ingestion violation within 10

years is a Class 6 felony. The legislation mandates that individuals undergo a chemical dependency evaluation and requires they be placed on supervised probation.

This legislation changed how cases are diverted, how supervised probation options may be designed, and how the courts may engage these individuals. As a result, the UJS has expanded its probation programming to accommodate misdemeanor supervision statewide within existing resources. The goal is to connect individuals with substance use concerns to treatment and supervision to help prevent deeper involvement in the criminal justice system.

Consistent with Senate Bill 83, the UJS is also in the process of expanding HOPE probation to misdemeanor cases. HOPE probation is an alternative to traditional probation that targets adult “drug-involved” probationers that are at a high risk of violating their probation. This drug monitoring and probation program works to respond with immediate, swift, and certain jail sanctions for continued drug use. HOPE is a great program for monitoring drug use, but to be successful in rehabilitation, the program must be combined with other services. HOPE probation has the most potential in rural counties, where monitoring services such as 24/7 and specialty courts are scarce. HOPE is already operating in several counties for felony-level cases. We are working toward the potential future expansion of HOPE to other counties. This expansion will require statewide oversight within the UJS, as well as the buy-in of state’s attorneys and sheriffs in each participating county.

Addressing rehabilitation barriers for young adults aged 18 to 25 who are involved in the justice system continues to be an important focus in adult probation. Research shows that brain development continues through the early- to mid-20s, meaning young adults often think, learn, and respond more impulsively than older adults. Recognizing this, the UJS is taking a proactive, evidence-based approach to supervision—one that meets these individuals where they are in their development.

In addition to seeking the potential for mentoring services, the UJS is launching two innovative pilot programs in Rapid City and Mitchell to better serve young adults. Court services officers at the pilot sites are receiving specialized training on topics such as brain development, trauma-informed care, and specialized case management approaches. Armed with these tools, court services officers will be better prepared to implement tailored supervision techniques to improve outcomes for emerging adults.

The goal is simple yet powerful: to increase accountability, reduce probation failures, strengthen community connections, and help young adults successfully transition into stable, law-abiding citizens with fulfilling lives.

Treatment Courts

I want to wrap up my discussion of probation services by discussing South Dakota’s 17 treatment courts. Our drug, DUI, veterans, and mental health courts work by combining rigorous accountability with proven treatment strategies. Since their inception in 2008, South Dakota’s treatment courts have served 2,970 individuals.

We track every person who has participated in a treatment court for a period of five years from the time they entered. The good news is that 73% of all participants have not committed another felony offense during that five-year period. Given the significant addiction, mental health issues, and numerous needs of individuals entering a treatment court, these numbers are truly remarkable. Treatment court is often the last chance for these individuals short of being sentenced to prison. In fact, many of these individuals already have multiple felony convictions and have been previously incarcerated before entering a treatment court.

The statistics are a clear indication that these courts are breaking the cycle of addiction and crime. Treatment courts also deliver significant cost savings as a year of treatment court costs roughly \$8,000 per participant, compared to an average annual prison cost of \$33,656. Based upon the recidivism numbers since 2008, it is safe to say that treatment courts have saved South Dakota taxpayers millions of dollars in incarceration costs.

In fiscal year 2025, treatment courts served 759 clients, held 779 court sessions, and administered more than 91,000 drug tests. These efforts reflect the courts' commitment to intensive support paired with meaningful accountability. The long-term impact is seen not only in reduced recidivism numbers, but in the lives of people we no longer encounter in the justice system—graduates who are employed, paying taxes, reunited with families, and contributing positively to their communities.

On January 28, we will hold two treatment court sessions in the Supreme Court Courtroom here at the Capitol. Every legislator is invited to attend either session. This will provide you with a firsthand opportunity to observe a treatment court session and hear from members of the drug court team. I hope you will all attend.

Judicial Security

Security, emergency preparedness, and personal safety is another of the six pillars in our strategic plan.

The Statewide Security Committee and the Courthouse Security Grant Program have been effective mechanisms for improving courthouse security measures across the state, not only for judges and court staff, but also the public. The Courthouse Security Grant Program was made possible by the \$5 million investment made by the Legislature in 2022 to enhance physical security in courthouses. The Security Grant Committee continues to provide 75% funding to counties. To date, 74 grants have been awarded to 39 courthouse locations for security upgrades such as cameras, servers, duress alarms, secure doors, proximity and key code locks, ballistic glass, improved fencing and lighting, and renovation of areas within courthouses to provide a more secure environment for judges, staff, and the public.

The UJS has also established safety committees in 57 of the 63 counties where courthouses are located. These committees meet regularly to establish and prioritize security projects, as well as provide security and preparedness training in each courthouse. Additionally, since July 1, 2023, 60 courthouse site assessments have been completed.

Since the program began three and one-half years ago, the UJS has awarded \$3,401,527 for court security projects. More requests are anticipated in 2026. I want to thank Governor Rhoden for including our request for an additional \$1.5 million in one-time funding so we can continue to transform the security landscape at courthouses across South Dakota.

Personal security is also necessary for judges and court staff to perform their important functions without fear of reprisal or threats. Unfortunately, we continue to see an increase in the number of reported threats or incidents involving judges and court staff both in South Dakota and nationwide. The UJS this past year conducted security surveys of our judges, court services officers, clerks and deputy clerks, and administrative staff. We will be using the feedback from these surveys to shape future safety and security initiatives.

A Strong Workforce

Finally, I want to touch on the strategic pillar of fostering a strong workforce. I wish I had time to tell you about every one of the 600 plus judges and court employees that work for the courts across South Dakota. They are dedicated, hard-working, and competent in their service.

Training, accountability, and maintaining standards of excellence are non-negotiables for a strong workforce. Salaries are critical as well. If we are going to remain competitive in attracting and retaining excellent judges and court staff, their compensation must keep pace with that of other public and private employers. This is particularly true in an economic climate where the cost of housing, food, and other necessities continue to increase. I respectfully ask you to consider employee wages a priority as you set the fiscal year 2027 budget.

On the topic of fostering a strong workforce, I want to recognize the work of two stalwarts who have contributed much to the court system and the citizens of South Dakota. The first person is Justice Janine M. Kern, who after more than 40 years of public service, retired from the Supreme Court on December 8, 2025.

Justice Kern was appointed to the South Dakota Supreme Court in 2014 by Gov. Dennis Daugaard. She had previously served as a circuit court judge in the Seventh Judicial Circuit for 18 years. Before serving as a judge, she worked in the Attorney General's office from 1985 to 1996 in a variety of capacities including the drug prosecution unit and as director of the litigation division.

Justice Kern has had an unwavering commitment to justice and the integrity of the courts. Her passion for law and compassion for people has impacted all of us and made the state's court system better. I have had the privilege of working with Justice Kern for the past eight years on this Court. I can tell you that she is one of the hardest working individuals I have encountered in my legal career. She worked days, nights, and weekends reading briefs, considering the arguments of the parties, researching the law, and drafting opinions. Justice Kern has also been instrumental in numerous initiatives that have positively impacted our justice system. As a circuit court judge, she helped advance parenting education programming and juvenile justice initiatives and co-chaired a 2004 Indian Child Welfare Act Commission that led to legislation which

improved services to children and families. For the past several years, Justice Kern chaired the Court Security Committee, which has led to court security improvements across the state.

On behalf of the members of the Court, I want to express my appreciation to Justice Kern for her work on the Supreme Court over the past 11 years and for her service to the people of South Dakota for 40 years. We will miss Justice Kern as she has been a wonderful friend and colleague to each of us. We wish her all the best as she moves on to her life's next chapter.

It is also my privilege today to welcome our newest member of the Supreme Court—Justice Robert Gusinsky. He was officially sworn in as the 54th Justice of the South Dakota Supreme Court last month. Justice Gusinsky is sitting with the Supreme Court during our January term of Court this week.

Justice Gusinsky was born in Latvia. After emigrating with his parents through Israel and Germany, he settled in California and became a U.S. citizen. Justice Gusinsky received his undergraduate degree in aeronautical engineering in 1990 from Embry Riddle Aeronautical University. While working as a commercial airline pilot and flight instructor, Justice Gusinsky moved to Rapid City before changing course to pursue law. Justice Gusinsky received his juris doctor from the University of South Dakota School of Law in 1996.

Following graduation, Justice Gusinsky was in private practice in Rapid City until 2007 when he was hired by the United States Attorney's Office as an assistant U.S. Attorney. In 2013, Gov. Dennis Daugaard appointed him as a circuit court judge for the Seventh Judicial Circuit. He became presiding judge of that circuit in 2024.

Justice Gusinsky is known across the state for his hard work, intellect, demeanor, humility, fairness, and character. If you ask around the courthouses of the Seventh Circuit, you will consistently hear that everyone likes Justice Gusinsky because he is respectful, really cares about people, and is friendly toward everyone. Justice Gusinsky will be a tremendous asset, and we are thrilled to have him join the Supreme Court.

Conclusion

As we approach the 250-year anniversary of our nation on July 4, I am proud of the heritage of the state courts in providing the forum where everyday disputes are resolved, rights are enforced, and the rule of law is made tangible.

The state courts remind us that our freedoms are not self-executing. They depend on judges who are committed to the rule of law, court staff who ensure access and fairness, and public officials and citizens who respect the court's decisions. State courts are a bridge between constitutional ideals and civic responsibility, reinforcing the notion that justice is both a right and a shared obligation. State courts are adaptable, close to the communities they serve, and responsive to local needs while remaining anchored in constitutional principles. This combination of stability and adaptability has helped the United States endure for 250 years.

As we celebrate this milestone, honoring the role of state courts is not just about looking backward—it is about recommitting ourselves to the values they represent. If our nation is to continue to thrive, state courts must play a vital role in protecting rights, resolving conflicts, and ensuring that justice remains accessible to all.

Each day, in courtrooms across South Dakota, we continue a tradition older than the nation itself: the steady, principled administration of justice under law. It is with that weighty responsibility in mind that myself, every judge, and every court employee performs our work each day.

Thank you.