



State of the J U D I C I A R Y

2017
State of Nebraska
Chief Justice Michael G. Heavican
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Nebraska Supreme Court

Michael G. Heavican, Chief
John F. Wright
Lindsey Miller-Lerman
William B. Cassel

Stephanie F. Stacy
Max J. Kelch
Jeffrey J. Funke

State Court Administrator

Corey R. Steel

State Probation Administrator

Ellen Fabian Brokofsky



State of the Judiciary 2017

Introduction

Mr. President, Mr. Speaker, Members of the Legislature, fellow Justices of the Nebraska Supreme Court, and fellow Nebraskans. I would like to thank the members of this legislative body, especially Speaker Scheer, for inviting me to address you this morning.

It is an honor for me to report on the accomplishments of the judicial branch this past year, and to discuss the future of the courts and Probation.

First, I will introduce my fellow Justices.

To my immediate right is Justice John Wright of Scottsbluff; to his right is Justice William Cassel of O'Neill; and to Justice Cassel's right is Justice Max Kelch of Papillion.

To my immediate left is Justice Lindsey Miller-Lerman of Omaha; and to her left is our newest member of the Court, Justice Jeff Funke of Nebraska City. Justice Stephanie Stacy of Lincoln was unable to be with us today.

Every year I use this occasion to report to you the Legislature, and to the citizens of Nebraska, the accomplishments of the Judiciary and the challenges that the third branch of government faces in the future. My State of the Judiciary addresses have been overwhelmingly positive. This is my 10th presentation to this body, and Nebraska's Judicial Branch has taken on many challenges over those 10 years. By and large, those challenges have been met or are being met.

This year, however, my presentation to you necessarily has both good news and bad news. I think it is best to start with the good news.

Since this is the 10th State of the Judiciary address I have given, it is an appropriate time to briefly review some of the challenges and accomplishments of the last 10 years.

Not surprisingly, the number of cases being filed in our court system has not changed dramatically during the last 10 years because Nebraska's population has not changed dramatically over the last 10 years. Caseloads generally have increased in our urban areas and have remained flat or have declined in our rural districts.

Access.

There are two factors, however, that have increasingly burdened our courts in those last 10 years. First, ever-increasing numbers of Nebraskans, like citizens in the rest of the country, are

attempting to represent and defend themselves in court without legal assistance. This Court, the Nebraska State Bar Association, hundreds of volunteer lawyers, and both the Creighton University School of Law and the University of Nebraska College of Law, have worked diligently to lessen the problems that unrepresented parties pose to our court system.

Our reorganized Access to Justice Committee will work to staff self-help centers in our courthouses in Omaha, Lincoln, Grand Island, Kearney, Scottsbluff, and Norfolk. The Committee will try to tackle special problems of access to justice for Nebraska's minority communities and seek ways to fund Legal Aid and lawyer volunteer services. They are charged with aiding the Nebraska State Bar Association in attracting young lawyers to our rural areas, which would otherwise be faced with a critical void of legal professionals.

No lawyers means no judges. It is increasingly difficult for us to fill judicial vacancies in the Third Congressional District. Kudos to this Legislature for the debt-forgiveness plan for rural legal services you passed in 2014. Kudos also to the Bar Association and the UNL College of Law for their new rural law opportunities program which reserves law school slots for selected students from Chadron and Wayne State Colleges and from the University of Nebraska at Kearney.

Interpreters.

The Access to Justice Committee also monitors and helps build a system of support to tackle the second problem that has consistently and persistently increased the workload burden in our courts. That problem is the need for interpreters so that litigants, as well as judges, juries, lawyers, and other consumers of court services, can understand what is being said and what is happening in our courtrooms.

In fiscal year 2015, we had a need for 133 interpreters in 43 different languages. Over the last 10 years, we have set up a sophisticated system to certify interpreters and share interpreters with other states and institutions. We adopted an Interpreter Code of Ethics and we monitor the process to assure a quality work product.

This system utilizes technology to provide scarce and unique resources for all of our courthouses, however remote or isolated, with needed interpreter services. Spanish, Arabic, Karen, and Somali are our most used interpreter languages, but we also find interpreters for such languages as K'ich'e, Dinka, and Q'anjob'al. The certified interpreter program is one of our brightest accomplishments of the last 10 years.

Technology.

What other special accomplishments have the courts achieved in the last 10 years? The courts are far more accessible to the public through technology and telecommunications.

The Supreme Court and Court of Appeals have webcast our oral arguments for the last 5 years. Many of our trial courts now have teleconferencing capabilities, making access simpler and more affordable for our lawyers and litigants. I am proud to say that on March 1, all of our trial courts will allow expanded television, radio, and electronic coverage of court proceedings. This effort was spear-headed by a committee of trial court judges dedicated to 21st Century access.

Speaking of technology, Nebraska is one of the few states in the United States that has a united and uniform computerized case management system. This system is used by all of our trial courts, the Court of Appeals, and the Supreme Court.

As many of you know from earlier State of the Judiciary presentations, Nebraskans can view court documents 24 hours a day electronically, from their offices or homes. They can pay fines and fees utilizing their personal computers. Last year alone, we collected over \$20,900,000 electronically.

Lawyers and litigants can, and are, electronically filing most court documents that only a few years ago were done with paper, by hand, or by regular mail. In 2016, 650,000 documents were electronically filed in our courts. Last year our major accomplishment in this area was to make electronic filing available to the Court of Appeals and Supreme Court, just as it has been available in our trial courts.

Public Guardian.

What else have the courts taken on in the last 10 years? Most recently, this body – to its credit – voted to set up a public guardianship program for the State of Nebraska. Nebraska was apparently the last state in the United States to implement such a program.

The program is designed to provide court-appointed guardians and conservators for Nebraska's elderly or mentally or physically disabled persons if there are no relatives, friends, volunteers, or other appointment options for our judges. In almost all states in the United States, the public guardian program is housed somewhere in the Executive Branch. But in Nebraska, you chose to put the public guardianship program in the court system. We take that as a vote of confidence in our ability to competently implement and develop such a program. We have done that.

I want to especially acknowledge the work of Michelle Chaffee, Nebraska's head public guardian. Michelle has done the mighty job of putting that program together from scratch, hiring assistant public guardians and taking on remarkably challenging cases from all around the state. Michelle has also set up a cadre of volunteers to serve as court visitors and replacement guardians. She has taken over the mandatory education of every family member, friend, or volunteer who serves as a guardian or conservator in the State of Nebraska.

Juvenile Justice.

What else have the courts taken on in the last 10 years? What other challenges have our judges, support staff, and probation officers taken on at your behest?

Of course you will remember that our office of Probation Administration, led by Ellen Fabian Brokofsky, took over the supervision of all of our young people in Nebraska's juvenile justice system. This was a function formerly performed by the Department of Health and Human Services. Like the Office of Public Guardian, this body chose to have the courts, specifically the office of Probation Administration, perform needed supervisory services for young people who have committed law violations or are truant or otherwise ungovernable by their parents or custodians.

Like the Office of Public Guardian, we started the juvenile justice program from scratch and put together a state-wide program with scant assistance from the Department of Health and Human Services about the historical costs of juvenile justice supervision. By and large, this too has been a huge success. Preliminary budget problems were vigorously attacked, and the initial deficit of \$7 million that was projected to continue into this biennium has been completely erased.

At the same time, our juvenile justice program has emphasized not removing children from their homes and families. Instead, the program provides, where ever and whenever possible, services in those homes and to those families, and minimizes costly and traumatizing incarceration, institutionalization, and foster care. We continue to make progress on that front.

In the next few months, we will be able to report to this body on adult recidivism statistics. Juvenile Justice recidivism data will follow shortly thereafter. Most of our judges are happy with what we have been able to do with juvenile justice, and they continue to urge us to provide even more service alternatives.

Justice Reinvestment.

What else have the courts and Probation taken on in the last 10 years? In the last year-and-a-half, following recommendations from the Platte Institute and from the Council for State Governments, this body chose to embark on a program we all call Justice Reinvestment, introduced as LB 605.

Justice Reinvestment is the code word for “we-can’t-afford-to-build-a-new-prison-so-we-need-to-find-some-way-to-handle-the-persistently-growing-population-of-convicted-criminals-in-our-prison- system.”

Studies show that a significant number of our incarcerated adults are sentenced to relatively short prison terms. They come back to our local communities and immediately return to using and selling methamphetamine, crack cocaine, and heroin. They physically assault their spouses and abuse their children. They burglarize our neighbors’ homes, shoplift from our local merchants, rob our convenience stores, and resort to escalating violence in our largest cities.

Where did this body and the Executive Branch turn when it wanted to come up with an effective community corrections program to stall the rising rate of imprisonment and turn around the almost guaranteed recidivism for those short-term incarcerated criminal defendants? You turned to the court system and the court’s office of Probation Administration.

As per LB 605, all low grade felonies are touched by Probation. The Courts and Probation are both the front door to the Department of Corrections system and the back door to the Department of Corrections.

Justice Reinvestment was billed as a joint effort by all three branches. All three branches worked to get buy-in for Justice Reinvestment. We set up committees with police officers, prosecutors, public defenders, and concerned Nebraska citizens. We all committed to making Justice Reinvestment a success.

But there were skeptics. There were those who said that Justice Reinvestment would never be adequately funded. You’re looking at one of those skeptics.

Many of you heard me say that we can do this – the courts can do this, the office of Probation Administration can do this – but it has to be adequately funded. I was assured that it would be adequately funded.

I began this presentation with the good news. Now here’s the bad news. There has been an economic downturn and we have to cut the State’s budget. Some programs have been spared, others not. Justice Reinvestment was not spared. The commitment that all three branches of government made was apparently for the convenience of the moment.

We understand that all budgets, or at least most budgets, in state government have to be cut. We began preparing for that eventuality just as soon as the bad budget news started last August.

We saved over \$4.5 million by delaying hiring throughout the Judicial Branch. We can save more money by doing that again in the next 6 months. By not replacing employees for up to 6 months, including probation officers, we can save approximately another \$1 million. However, by cutting back on probation officers, we necessarily have to cut back on the number of people that can be supervised in Probation.

To meet the \$8.2 million budget reduction goal suggested by the Governor's projections, we would also have to cancel all vouchers to pay for short-term residential drug treatment utilized by our drug courts, by our intensive drug treatment program, and by various other probation options now available to our judges.

We have chosen to make only minimal cuts to Juvenile Justice services because our Juvenile Court Judges have no other options available to them to handle their caseloads. Our judges handling adult criminal cases do have another option available to them.

Our judges are not stupid. If they cannot be assured that Probation is able to adequately supervise and rehabilitate adult offenders -- that Probation can't protect the abused spouses, the abused children, and Nebraska's homeowners and merchants -- they will choose their other sentencing option, the sentencing option they have always had, the sentencing option they have traditionally used. They will incarcerate.

It costs \$35,000 per year to warehouse a Nebraska prisoner. It costs \$8,000 to \$10,000 to supervise an adult, high-risk probationer. It costs \$3,000 to \$4,000 to supervise a medium- or low-risk probationer. You do the math.

We set up a massive judicial re-education effort to make sure all of our judges understood LB 605 and the new responsibilities and options available to them. We set up new probation options for reentry and opened 5 new day and evening Reporting Centers.

In past State of the Judiciary addresses, I have been reluctant to discuss our budget or even mention the word "money." Each of my presentations to you has largely been a celebration of the courts' and Probation's accomplishments. Like the first part of this presentation, each State of the Judiciary speech was a call to our judges, support staff, probation officers, and the state's legal community to do a better job and to find a better way.

In that spirit, we bought into Justice Reinvestment – hook, line, and sinker. And now, unless you live up to your end of the Justice Reinvestment bargain, we are left holding the bag.

That does not have to be. We can wisely use the money allotted to us. We can make evidence-based decisions about risk and where to best spend supervision and service dollars. We can partner with other parts of this State's government to share resources to provide job services and mental health services. But it will be all for naught with the recommended cuts for this biennium and the next biennium. Next year we will gut reentry supervision and begin to close day and evening Reporting Centers. We will try to push Drug Court costs onto the counties and begin to surgically triage juvenile justice.

We will not do things poorly. We will do the very best job with whatever resources we are given. But if those resources are inadequate, we will cut back on some to preserve others, based on the needs of our judges and the communities they serve.

Let me close by inviting each of you to a drug court graduation or a visit to your local probation office. Talk to the probationers and watch their interaction with their probation officers, their families, and their peers. Listen to their comments. Chances are you will hear this: "Probation saved my life." "You saved my family." "I have a job." "I'm a positive part of my community."

Good community corrections programs work. They save lives and they save money. Keep the good community corrections programs you already have.

My apologies for the bad news, but my thanks for your attention and this opportunity to speak with you and for your continued support of the courts.



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