



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

2018
State of Nebraska
Chief Justice Michael G. Heavican
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Nebraska Supreme Court

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State of the Judiciary 2018

Mr. President, Mr. Speaker, Members of the Legislature, fellow Justices of the Nebraska Supreme Court, and fellow Nebraskans. Thanks to you, the members of this legislative body and especially Speaker Scheer, for inviting me to address you this morning. As always, it is an honor for me to report on Judicial Branch accomplishments and to discuss the future of the courts and probation.

First, I will introduce my fellow Justices. To my immediate right is Justice Lindsey Miller-Lerman of Omaha, and to Justice Miller-Lerman's right is Justice Jeff Funke of Nebraska City.

To my immediate left is Justice William Cassel of O'Neill; and to his right is Justice Stephanie Stacy of Lincoln. Justice John Wright of Scottsbluff and Justice Max Kelch of Papillion are unable to be with us today.

Introduction

This is my 11th State of the Judiciary address. Over the past 11 years Nebraska's judges, court clerks, probation officers, and support staff have greatly expanded the services we provide to Nebraska's communities. In doing so, we have recommitted ourselves to providing equality before the law. That recommitment emphasizes compassion, sacrifice, and creativity. We are constantly asking ourselves: Is there a way to do this better? And indeed, this body has asked us to find ways to do it better.

The answer is yes -- there are always ways to do it better. That is why we now have problem-solving courts, specialized probation programs, probation-led juvenile justice supervision, the Office of Public Guardian, electronic case management, efilings and epayments, our new Access to Justice Initiatives, and our increased community outreach.

I will speak to you today about each of these programs, beginning with problem-solving courts.

Problem-Solving Courts

Problem-solving courts in Nebraska were initiated by our trial court judges. In problem-solving courts, judges personally supervise, with the aid of probation officers, convicted felons who are at high risk to reoffend and would otherwise be sent to prison. There are a variety of

problem-solving courts in Nebraska. I first call your attention to Nebraska's two new Veterans Treatment Courts, which I will refer to as Veterans Courts.

Veterans Treatment Courts

Veterans courts are designed to give men and women, who have served in our armed forces and have fallen on hard times, a second chance to reclaim their rightful places as positive, contributing members of our society. Many have substance abuse or mental health issues. Veterans Courts treat these and other issues contributing to criminal behavior by utilizing intensive judicial and probation supervision and trained veteran mentors.

Veterans courts are unique in the utilization of those mentors. The mentors in these courts are fellow veterans who, similar to our judges, volunteer to support and encourage success for veterans court participants. These volunteer mentors work with veterans on a one-on-one basis and follow their motto: "Leave no veteran behind."

With us here today are members of our inaugural Douglas and Lancaster County Veterans Treatment Courts. Among those seated in the center balcony are judges, prosecutors, defense attorneys, veteran mentors, and other supporters of these two courts. Special recognition goes to Judge John Colborn from here in Lancaster County, and Judge Mark Ashford from Douglas County, who volunteered as Veterans Treatment Court judges in their two jurisdictions.

Judges, mentors, lawyers, team members, and supporters please stand. Let's give them a round of applause.

Also, special thanks to Senators McCollister and Williams for sponsoring legislation to fund these courts.

Drug Courts

Our other problem-solving courts are primarily drug courts. Drug court and other problem-solving court judges also volunteer for duties over and above their traditional responsibilities because of their commitments to serve their communities and to serve the individual offenders who are working to rehabilitate their lives.

This past summer, as part of the Supreme Court's annual summer tour of courthouses around the state, members of this Court attended Hamilton County's first drug court graduation ceremony. Led by Judges Rachel Daugherty and Linda Senff, the Hamilton County Drug Court is an example of the extra effort our judges, probation officers, and support staff make to keep our communities safe and strong.

The Hamilton County Drug Court also highlighted the difficult commitments drug court participants must make in order to graduate. The participants must overcome addictions and past bad decision-making; they must affirmatively commit to rehabilitating themselves, to finding jobs, and creating productive futures. Every problem-solving court participant saved is one less incarcerated felon and one less burden for Nebraska's taxpayers.

We invite all of you to visit your local problem-solving courts and probation offices. You will see firsthand the commitment and hard work of judges and probation officers for Nebraska's citizens and communities.

Reentry Courts

In that spirit, we are beginning implementation of reentry courts in response to this Legislature's Justice Reinvestment Initiative. Nebraska's reentry courts will provide additional supervision to individuals returning to society from incarceration or post-release supervision. Special thanks to Judges Jim Doyle of Dawson County, Paul Vaughan of Dakota County, and Tim Burns of Douglas County for developing the plans for our reentry courts. I also thank Judge Teresa Luther of Hall County and Judge Stefanie Martinez of Sarpy County for their leadership in developing reentry courts in their districts.

LB 605

Our new judge-led reentry courts are designed to complement this Legislature's desire for supervision of Class III and Class IV felons upon release from state or county correctional facilities. Supervision of these individuals is accomplished by our Administrative Office of Courts and Probation and is designed to increase the likelihood of a successful return to Nebraska communities.

Virtually all of these probationers return to the communities where they initially broke the law, and past experience indicates that most of these individuals will reoffend unless prior failings are addressed. Chief among the needs to be addressed are substance abuse, mental health issues, and housing concerns.

The courts and probation staff have embraced the responsibility this body has given to them to supervise probationer reentry. To that end, probation has created a number of programs, including the concept of reentry navigators, to anticipate the release of prisoners and smooth the transition process to life after incarceration. Reentry navigators emphasize housing, job placement, counseling for addiction, and services for mental health issues.

Probation administration also tracks all returning felons as to risk of reoffending. Each supervised reentry participant is given individual programming designed to help that person succeed. Probation provides traditional housing alternatives, GPS monitoring, and a special program for offenders who have substance abuse and mental health problems. There are approximately 820 individuals currently enrolled in reentry supervision.

Adult Probation

Overall, there are nearly 18,000 individuals in our adult probation program. That is an increase of nearly 1,400 individuals since 2016. Those numbers indicate that both judges and probation officers are doing their part to implement the directives and presumptions embodied in LB 605 and related legislation.

The University of Nebraska-Lincoln has evaluated recidivism of Nebraska's probation system participants by measuring convictions for criminal behavior after three years from successful release. Using those calculations, the recidivism rate for all adult probationers in Nebraska is approximately 15%. Let me repeat that figure: the recidivism rate for all Nebraska adult probationers is approximately 15%. Fifteen percent is an extraordinarily good number based on adult probation national standards. Your investment in probation is paying off in both tax dollars and public safety.

Testimony at legislative committee hearings and input from our local probation officers suggest there is a large demand for increased probation services and specialty courts, particularly to address mental health issues. Expansion of those programs is not possible, however, without increasing both judge and probation resources. Indeed, currently anticipated budget cuts will diminish both probation services and capacity.

Juvenile Justice

I now call your attention to our juvenile justice program. Based on a successful Douglas County initiative, in 2013 this Legislature decided to place the responsibility for supervision of juvenile justice cases – that is juveniles who break the law or have status offense issues – with the Office of Probation Administration rather than with the Department of Health and Human Services.

The previous model for juvenile justice supervision was to designate juveniles as wards of the state. This effectively removed or diminished the responsibility and participation of parents and guardians in the treatment and rehabilitation of juvenile offenders. The model now utilized by

Probation Administration emphasizes, rather than diminishes, the responsibilities of parents, families, and guardians to provide assistance and support of youth rehabilitation and reform.

Juvenile probation programs stress in-home services and strive to minimize out-of-home placements whenever possible. Reducing out-of-home placements has required a fundamental restructuring of the state's juvenile justice system. We have made great strides in moving toward this new way of thinking about and treating our juveniles.

Reduction in out-of-home placements, however, requires treatment alternatives. Thanks to grant funding, the Office of Probation Administration has implemented such programs as multi-systemic therapy. Multi-systemic therapy is designed to provide around-the-clock in-home intervention and counseling. The Office of Probation Administration and our local judges, by way of our Through the Eyes of the Child Initiative teams, are working on further alternatives to out-of-home placement for juvenile offenders.

Recidivism

Just as we measure success in our adult probation programs by tracking recidivism, we also measure recidivism in our juvenile justice programs. Using a 1-year repeat of delinquent or criminal behavior threshold, the University of Nebraska-Lincoln found the juvenile justice recidivism rate to be approximately 25%. This number, too, shows a decrease in recidivism and indicates a high rate of success in our juvenile justice system.

The courts and probation appreciate the need for accountability and the implementation of effective safeguards and best practices in our juvenile justice system. We continually reevaluate our programs and the needs of our judges along with the need for objective and independent measurement of those processes.

Nebraska is one of just three states in the United States currently participating in a comprehensive juvenile probation system review by the Robert F. Kennedy Institute. This review measures both the strengths and weaknesses of Nebraska's juvenile justice system and will serve as a foundation for further improvements in that system.

Restorative Justice

One new program of particular note in our juvenile justice system is the restorative justice program implemented by this Court's Office of Dispute Resolution. Thus far, this grant-financed program has served over 200 youth, their parents, and victims of their delinquent behavior, in pilot sites in Scotts Bluff, Douglas, and Lancaster Counties.

Participants in the program must admit their misbehavior, agree to rehabilitative processes and, most especially, meet with the victims of their wrongdoing. Most of the young people involved in the program make reparations to those victims. Nearly all program participants, including victims, youth, and their parents, have expressed satisfaction with the program.

The restorative justice program is being expanded to include Buffalo, Adams, Dodge, Saunders, and Gage Counties. The Office of Dispute Resolution and the Office of Probation Administration have also reached out to the Youth Rehabilitation and Treatment Center in Kearney to assist with the feasibility of implementing a restorative justice program at that facility. We look forward to expansion of this restorative justice program around the state.

Office of Public Guardian

I now call your attention to the Office of Public Guardian. The Office of Public Guardian was legislatively established and placed under the administrative authority of the Nebraska Supreme Court. It is designed to provide our county court judges with last resort appointment options for vulnerable adults and developmentally challenged individuals who have no family or friends available for such responsibilities.

In early January, you received a copy of the annual report of the Office of Public Guardian. If you have not yet read the report, I would recommend that you do so. But be prepared: it is a somber read.

Within the 115 pages of that report, Michelle Chaffee, our very capable director of the Office of Public Guardian, outlines various statistics. The report indicates that the Office of Public Guardian handled over 237 cases in the last year, and that their 264 wards had multiple complex and challenging issues. These issues included cognitive impairment, mental health diagnoses, developmental disabilities, substance abuse, terminal medical conditions, histories of criminal behavior, and histories of Mental Health Board commitments. Our assistant public guardians have full to overflowing caseloads, and at the suggestion of the Public Guardian, a waiting list procedure has been set up by the Nebraska Supreme Court.

But numbers do not tell the full story. Each number in the report represents a vulnerable individual, forgotten by time and circumstances, each with a unique and often tragic story, with no one available to help, and for whom a judge had no other viable option but to appoint a guardian. Included in the report are the stories of eight individuals the public guardian has served over the past year. Because of the resources provided by the Office of Public Guardian, these wards were able to get the assistance they needed.

The workload of the Office of Public Guardian also includes finding volunteer court visitors and replacement guardians to take on the increasing demand for guardians driven by the aging of Nebraska's Baby Boomer population. The office is also responsible for educating every new guardian appointed in the State of Nebraska. There were 1,240 new private guardians appointed in the past year.

Thanks to all our county court judges who work with the Office of Public Guardian, especially Judges Todd Hutton of Sarpy County and Holly Parsley of Lancaster County, for providing leadership on guardianship issues.

As with probation and problem-solving courts, we look forward to working with this body to provide adequate resources for these increasing demands.

Technology

I have reported to you in the past about progress with the Court's statewide electronic filing system. Attorneys can now electronically file documents in all of our courts using the same on-line portal. During the past year, the appellate courts became the most recent addition to that portal. Nearly 750,000 documents were filed electronically last year.

The courts also recently rolled out an updated electronic payment system. This new online application makes recurring payments easier for businesses who are paying on garnishments, or for individuals who have a payment obligation to the courts for such things as probation fees, court fines, or civil judgments. Email messages and text messages are sent out once a month to remind parties of payments due. These improvements encourage people to take advantage of the convenience of online payments and save court staff time as well.

In fiscal year 2017, over \$150 million was disbursed through the judicial branch. Of that amount, last year nearly \$7 million was distributed to local city and county governments, half of which was then further distributed to our school systems. Other court filing fees were distributed to funds for indigent defense, dispute resolution, and support for victims of crime. And approximately \$8 million was deposited into the state's general fund. Every case that is filed electronically saves dollars for both Nebraska's county and state governments.

Most of the Court's technology is financed by court fees. The Court's Technology Committee has a carefully prioritized strategic plan which will be particularly beneficial in saving property tax dollars for Nebraska's counties.

LB 504

Probation has also moved forward with technological advances. Electronic delivery of presentence investigation reports, provided for by LB 504, is in the process of being implemented across the state. All 12 judicial districts currently have the ability to utilize this process.

Probation is also constantly expanding its teleservices network. Approximately 5,214 hours of teleservicing, equaling more than 130 weeks of work, was utilized in 2016. That number increased in 2017. Teleservices make treatment and rehabilitative programs available in sparsely populated areas where such programs are otherwise not available. They also save travel time and costs for users and taxpayers.

Access to Justice

Technology, of course, is ultimately about access to justice. Users of the technology I just outlined have more access to our clerks' offices than at any time in the history of our judiciary. Filings can be made and accessed 24 hours a day. Payments, too, can be made 24 hours a day.

Access to justice, however, involves not just technology, but issues of human welfare. During the last year, the Court implemented a new Access to Justice Commission. The purpose of this Commission is to bring together and coordinate various initiatives of the courts, the Nebraska State Bar Association, legal service organizations, legal education providers, and public libraries in order to leverage limited resources and increase the impact of work being done to ensure access to swift, fair justice.

The Access to Justice Commission incorporates our existing Committee on Self-Represented Litigation, which was established more than a decade ago to address problems arising from increasing numbers of litigants not represented by lawyers in our court system. The Committee on Self-Represented Litigation continues its good work in assisting those who find themselves without the benefit of attorney services. It supports Legal Aid and encourages more lawyers to volunteer their time to help the underrepresented. That Committee also supplies dozens of forms, which can be found on this Court's website, to be utilized in various court proceedings.

Access to justice also means language access. Without interpreters, our litigants, judges, jurors, lawyers, and other court system participants would be unable to understand what is happening in our courts. Nebraska judges work daily to provide access in our courts and probation programs to speakers with limited English proficiency. During the past year, the Judicial Branch relied on interpreters for 53 different languages.

Appellate Court Outreach

As part of access to justice, the courts continue to sponsor outreach programs for both adults and young people. Judges work with the Nebraska State Bar Foundation on the implementation of such programs as High School Mock Trial, Constitution Day, Teen Parents and the Law, and Law Day Job Shadowing.

Both the Supreme Court and Court of Appeals webcast oral arguments live and maintain an archive of past oral arguments. All Nebraskans -- not just lawyers -- can watch Nebraska's appellate courts at work by going to this Court's website or to the Nebraska Public Television website. Special thanks to NET for making these webcasts possible.

For over 30 years, the Supreme Court has traveled to both of Nebraska's law schools each year for the purpose of making the Court's business accessible to law students on their campuses. The Court saw value in providing similar educational programming for students in Nebraska's high schools and colleges. As a result, over the last two years the Nebraska Supreme Court has held oral arguments at Norfolk, Beatrice, Omaha Central, and Omaha South high schools. Likewise, the Court of Appeals has held its oral arguments at Chadron State College, Hastings College, University of Nebraska at Kearney, Peru State College, Doane University in Crete, Nebraska Wesleyan University in Lincoln, Midland University in Fremont, and Concordia University in Seward.

Cameras in the Trial Courts

During the last year, the Supreme Court developed uniform rules for cameras and other electronic devices in our trial courts. After experimenting in various trial courts over the past 5 years, these uniform rules were implemented beginning March 1, 2017. Now, Nebraskans can see and hear trial court proceedings on their televisions and computers, and listen to court sound bites on Nebraska's radio stations. This process was complemented by the Nebraska State Bar Foundation's Bench Media Committee, which brings together judges, lawyers and news reporters, to raise the level of understanding and appreciation for a fair and impartial court system.

Conclusion

In conclusion, I repeat a line from earlier in this presentation: courts are committed to providing equality before the law.

Mindful of the budget constraints of the last year, and the likely budget constraints of the near future, the courts continue their dynamic pursuit of ways to do our job better. Hence, the

implementation of our new Access to Justice Commission; the implementation of cameras in our trial courts; the implementation of increasingly sophisticated efilings and other technological advances; and the good work of the Office of Public Guardian, the Office of Dispute Resolution; and the increase of adult probation services, problem-solving courts, and juvenile justice supervision programs.

The commitment of this, the Judicial Branch, to you, the Legislative Branch, to the Executive Branch, and to all of Nebraska's citizens, is that our courts will be open and fair and that we will continue to search for ways to do this better. We thank you for your past and future support in these endeavors.

And thank you again for allowing me to speak to you today.

What are Veterans Court Mentors?

The cornerstone of Nebraska's Veterans Treatment Court is the Mentor Program. In the program, a trained Veteran Mentor is paired with a veteran participant to provide support as he or she navigates through the court system and treatment. This support pairing is referred to as having a "Battle Buddy."

In Veterans Treatment Courts, the Battle Buddy (Mentor) offers care and encouragement for veterans in the court system by spending one-on-one time with the participant on a regular basis. The mentorship program focuses on finding the right Mentor for the right participant looking at backgrounds, experiences or commonalities to become an ally, friend and sounding board. Mentors are tasked with finding resources, helping overcome hurdles, and providing opportunities for the veteran to find success and restore their honor.

Nebraska's first group of Veterans Court Mentors come from varying backgrounds and responsibilities. There are retired and prior service members from Army, Air Force, Marines and Navy.

Some Mentors have had previous experience in the judicial system and are now in a position to serve as a vital resource to today's Veterans Court participants. Several Mentors have voiced that they wish they had had resources back when they needed them. Mentors also provide other volunteer services within the community working with current incarcerated populations and providing peer support training. All are experienced military servicemen and women.

Battle Buddy - *In the Veterans Treatment Court, as in the military, a battle buddy is a partner assigned to help their fellow military member both in and out of combat. A battle buddy is not only intended for company, but also for the reduction of suicide; since each watches his partner's actions, a battle buddy can save their fellow soldier's life by noticing negative thoughts and feelings and intervening to provide help.*

Got Your Six - *With the Veterans Court Mentor program, someone has always 'got your six' in court – which means "I've got your back." The phrase comes from the old pilot system in which directions correspond to hours on the clock, where 12 O'clock is forward and 6 O'clock is behind. Thus anyone behind you, watching your back is "at your six."*



Photo Left: Lancaster County Mentors receive medals from Judge John Colborn during opening ceremony. Photo: Judge Mark Ashford administers Mentor oath during Douglas County opening ceremony.



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