



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

*2021*  
*State of Nebraska*  
*Chief Justice Michael G. Heavican*  
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**Nebraska Supreme Court**

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Michael G. Heavican, Chief  
Lindsey Miller-Lerman  
William B. Cassel  
Stephanie F. Stacy

Jeffrey J. Funke  
Jonathan J. Papik  
John F. Freudenberg

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**State Court Administrator**

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Corey R. Steel

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**State Probation Administrator**

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Deborah A. Minardi



# State of the Judiciary 2021

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## I. INTRODUCTION

Mr. President, Mr. Speaker, and Members of the Legislature. Thanks to all of you, particularly Speaker Hilgers, for inviting me to address you this morning. As always, it is an honor for me to report on the accomplishments of our Judicial Branch and to discuss our upcoming plans with you.

Although not with me in the Chamber today, my fellow justices are watching on livestream: Justice Lindsey Miller-Lerman of Omaha; Justice William Cassel of O’Neill; Justice Stephanie Stacy of Lincoln; Justice Jeff Funke of Nebraska City; Justice Jonathan Papik, also of Omaha; and Justice John Freudenberg of Rushville.

Today I will highlight the activities of Nebraska’s Judicial Branch this past year, including our pandemic response, our access to justice initiatives, what’s new with probation and problem-solving courts, and the Office of Public Guardian. Notwithstanding the current pandemic and other challenges, we have had many successes and accomplishments in 2020 and look forward to 2021.

## II. THE CONSTITUTION

Article I, § 13 of our Constitution states that “[a]ll courts shall be open, and every person, for any injury done him or her . . . shall have a remedy by due course of law and justice administered without denial or delay.”

This means that our courts must remain open, even when much of the rest of society is not. There is no exception—for a pandemic or otherwise—to the Nebraska Constitution’s requirement of open courts. After all, crime does not stop during a pandemic, nor does child abuse, spouse abuse, fraud, or the myriad of other social issues that depend on our courts for resolution. Open courts are essential to the daily workings of our communities and our State, and we have strived to keep them safely open throughout the pandemic.

## III. THE PANDEMIC

Over the past year, the COVID-19 pandemic has challenged all levels of our State’s government, including the judiciary. For example, over half of our judicial branch family--more than 700 judges, clerks, and staff--were quarantined for at least 2 weeks. Because of our Constitution’s dictate, and because of our courts’ vital role in society, we have taken the measures necessary to remain open safely, providing uninterrupted access to justice. From

Harrison to Falls City, and from Benkelman to Blair, justice is being administered without denial.

Emergency-preparedness planning began in 2019, when we hosted a national pandemic-planning session with the University of Nebraska Medical Center in Omaha. Having that opportunity to discuss with experts the potential for a pandemic allowed us to transition quickly when COVID-19 struck.

Soon after the federal government declared COVID-19 to be a public-health emergency, our Administrative Office of the Courts and Probation sprang into action. Each court and probation office in Nebraska created or updated an Emergency Preparedness Plan. The Administrative Office worked to refine policies and educate our workforce. Our human resources office conducted branch-wide webinars about telecommuting and COVID-19 leave policies.

So that we could continue court business, we acquired and distributed personal protective equipment and IT equipment for our personnel throughout the State. We worked collaboratively with counties to acquire Zoom accounts for our trial courts, allowing us to keep courts open, even if courthouses were closed.

Technological collaboration continues across the State. One example of such collaborative innovation is taking place in Dawson County. Commissioners and court staff there worked with Judge Jim Doyle to implement a pilot program of broadcasting court hearings on YouTube. Interested observers, including the news media, can watch these proceedings from the safety of their homes and offices without being exposed to the virus. Such technological innovation, which will be further touched on later in this speech, and such dedication is recognized and encouraged by the Nebraska Supreme Court.

Thank you to all of our judges and staff for their leadership and accomplishments in 2020. A list of our court family members who have been recognized for extraordinary efforts is included in the packet each of you received this morning.

Also, a special thank you to all of those institutions in this great State that have opened their doors to us to facilitate appropriately socially-distanced jury trials and other hearings. Many of our courthouses and courtrooms are too small to ensure adequate social distancing for jury selection and witness presentations. Schools and organizations such as the University of Nebraska-Kearney, Grand Island Central Community College, Tekamah-Herman High School, Niobrara Public Schools, and the Lincoln Masonic Lodge all stepped up by letting us use their large public spaces to safely resume jury trials.

And another special thank you to all Nebraskans who reported for jury duty and served on juries over the last year. Jury trials are a cornerstone of our democracy, and the right to a jury trial is enshrined in our Constitution. But jury service includes sacrifice, even when there is not a pandemic. We could not effectively protect the right to a jury trial without the service of Nebraskans when called. In Nebraska, almost no one refused to serve. Farmers and factory workers, doctors and ditch-diggers, baby boomers and millennials all showed up, proud and anxious to perform this duty.

Also deserving our thanks is Nebraska Educational Television. Many court proceedings were broadcast this past year by our partners at NET. We genuinely appreciate the NET management and staff who extended their services whenever requested and were willing to assist us to reach Nebraska citizens to fulfill our constitutional obligations. The work of NET was supplemented by our recently-adopted “cameras in the courtroom” initiatives, which allow commercial television and other news media to record and broadcast trial court proceedings on news programs across the State.

I sum up my comments on the courts’ response to the pandemic by quoting an editorial recently published in *The Daily Record* by retired Creighton law professor Richard Shugrue. Professor Shugrue observed that “Nebraska court leaders have been on top of this crisis since the earliest days of the calamity.” He noted that our judges balanced the requirements of the State and federal constitutions to remain open, assuring the right of the press to cover court matters, the right of defendants in criminal cases to confront witnesses against them, and the right of defendants to a speedy trial.

Professor Shugrue concluded his editorial by saying, “Our courts have led the way in coming to grips with COVID-19. They deserve everyone’s gratitude.” I concur. Our judges and staff have shown remarkable leadership throughout the pandemic and will continue their outstanding efforts in 2021.

#### **IV. INFORMATION TECHNOLOGY**

As noted, technology has been key to our pandemic efforts over the past year and will continue to drive improvements this year. To ensure that our staff and the public are able to access the current status of court operations, we expanded our use of Facebook and Twitter. Additionally, we developed a podcast series entitled “Your Nebraska Judicial Branch,” designed to share information about Judicial Branch projects. I invite each of you to listen to our podcasts on any of the major national hosts, including Apple and Google, or you can link to them through

our website. Our Judicial Branch website remains the primary source for lawyers and the general public to find judicial branch information, including court orders and recent court news.

We would not have had the ability to rapidly respond to the pandemic if the courts had not built a strong technological foundation over the past decade. As we entered 2020, we were well-positioned to transition to distance operations because we had already begun to implement new courtroom technology and programming. Our online court payment system has enabled individuals to pay traffic tickets and other court fines without leaving their homes. Our online education system has allowed guardians, judges, lawyers, and court employees to continue updating their skills virtually.

Our eFiling system has allowed quarantined attorneys and judges to continue to work from their homes and offices. In 2020, attorneys eFiled a larger number of pleadings than in any previous year – over 1 million. Our eFiling system captured nearly \$5 million in court fees last year. Additionally, we collected approximately \$7.9 million in online citation payments, and \$11.6 million in online payments of judgments.

Last year, we also eliminated the use of paper checks to transfer money from our 186 different courts to the State Treasurer and State Child Support Disbursement Unit, saving the time and resources once required for check processing.

## **V. COURT SERVICES**

In sum, again, technology has allowed us to continue operations throughout the year. The Supreme Court and Court of Appeals held online oral arguments. As noted, trial courts held hearings virtually. Our new attorneys were sworn in with the online support of family and friends, new probation officers took their oaths of office across the State by Zoom and WebEx, and committee and commission meetings continued apace virtually.

## **VI. ACCESS TO JUSTICE**

I now turn to various initiatives that we have pioneered to promote access to justice, civic education, and public outreach. I begin with our outreach efforts to Nebraska's four recognized Native American Tribes.

In 2018, the Judicial Branch hosted a roundtable discussion in South Sioux City. Participants included representatives from the four Nebraska-based Tribes, our federal courts, the U.S. Attorney's Office, both Federal and State Departments of Health and Human Services, the Nebraska Department of Education, the Nebraska Commission on Indian Affairs, and other interested parties.

That meeting ultimately resulted in the formation of the Consortium of Tribal, State, and Federal Courts, currently co-chaired by District Court Judge Andrea Miller of Scotts Bluff County and Chief Judge Patrick Runge of the Winnebago Tribal Court. The Consortium is part of the Nebraska Supreme Court's Access to Justice Commission, designed to fulfill our State's motto to assure "equality before the law."

In early June of 2020, many Chief Justices across the nation addressed the civil unrest stemming from incidents of racial injustice. My message, directed to the public and to our court community, is available in the Supreme Court's Annual Report provided to each of you in the packet you received today.

No institution in this State plays a more pivotal role in ensuring equal access to justice than Nebraska's courts. There is no place in our court system for racial discrimination or inequality.

We have recently begun a Racial Equity Initiative through our Access to Justice Commission. This three-phase process is designed to engage court users and the public in determining equal access deficiencies in our courts.

In phase one, we surveyed court users in November and, based on those survey results, we are reviewing the barriers the marginalized populations in our State have said that they face in our courts. Phase two will involve focus-group sessions with community leaders across the State, and in phase three, we will host larger public-listening sessions, giving Nebraskans another opportunity to reflect on access and fairness within the justice system. The timing for phase two and phase three is dependent on the pandemic and our ability to hold sessions safely without jeopardizing the health of participants.

## **VII. LANGUAGE ACCESS**

Another of our efforts to improve access to justice in Nebraska's courts is our language access program. While COVID-19 did not change our commitment to language access, it often affected the method by which interpreters could appear in court or probation settings.

The Language Access Program was quick to implement remote interpreting services by telephone and by using a variety of video platforms. Our interpreter coordinators offered guidance and test runs to assure seamless interpretation for Nebraska's court users with limited English proficiency, as well as judges, attorneys, and jurors requiring interpreter services. As a percentage of population, the two counties with the greatest interpreter demand in 2020 were Colfax and Dawson Counties. Spanish remains the most frequently interpreted language in the Judicial Branch.

But during the last fiscal year, 47 different languages were interpreted in Nebraska's courts and probation offices. Those languages included:

- Albanian – spoken in southern Europe;
- Gujarati – a language spoken in India; and
- Yoruba - a language spoken in West Africa.

It has sometimes taken extraordinary efforts through our language access program to ensure interpreter availability for any court user needing services. For example, this year that effort included collaborating with the Mexican Consulate Office in Omaha and the School for the Deaf in Puebla, Mexico, to secure an interpreter for a deaf, non-verbal defendant. Through invaluable outreach efforts like this, we continue to make justice in Nebraska available to all.

### **VIII. PROBATION**

Every annual address I have given to you necessarily includes a report on probation. Probation officers serve every county in Nebraska and now number approximately 460.

No Judicial Branch program is more important to Nebraska taxpayers than our adult and juvenile probation services. Adult probation provides community corrections through assessment, supervision, case management, and behavioral-health services. In spite of the pandemic, last year probation supervised over 20,000 adults, including many on post-release supervision. Successful probationers and drug court graduates are gainfully employed so that they can rejoin their communities, support their families, and pay restitution and taxes.

Probation supervision costs nearly \$2,000 per person per year. Intense supervision by our Specialized Substance Abuse Supervision, which we call the SSAS program, served approximately 1,200 adults last year, costing approximately \$3,500 per person per year. Problem-solving courts cost approximately \$4,000 per person per year. The cost of incarceration is approximately \$41,000 per person per year.

Do the math. Probation is the taxpayers' friend.

During the pandemic, our probation programs successfully continued to supervise individuals within their communities. Operations were modified to provide for the health and well-being of probationers while still holding them accountable. A few examples of these modifications include holding meetings outdoors and shifting from group meetings at our reporting centers to hosting virtual meetings with clients. In addition, in 2020 probation replaced most traditional breath and urine tests with oral swabs and sweat patches. Please note that adult probation administers over 300,000 drug tests per year.



Other probation highlights from 2020 include opening our 17<sup>th</sup> reporting center in Fremont. The locations of our reporting centers is shown on a map in the appendix of the packet you received today, along with a map of the locations of our problem-solving courts.

Any listing of probation highlights must include recognition of decreasing recidivism rates. Our probation services, problem-solving courts, and post-release supervision emphasize addressing mental-health problems and substance addictions. This emphasis results in recidivism reduction. In Nebraska, the adult recidivism rate is currently an impressive 17%, down significantly from 2010.

### **IX. JUVENILE JUSTICE**

Earlier I suggested that adult probation was the taxpayers' friend. Likewise, juvenile justice has been a cost-saving success. In 2012, this Legislature entrusted juvenile justice supervision to Nebraska's probation services. Since Fiscal Year 2017-2018, \$22 million has been saved and returned to Nebraska's general fund as a result of juvenile probation's work.

The number of detained youth has been reduced by 18% this past year, and the use of congregate non-treatment placements, such as group homes, decreased by 10% from Fiscal Year 2019 to 2020. And importantly, recidivism rates for juvenile probation have also improved over the years, from a high of 29% in 2010 to 24% in 2018, to its current rate of 19% in 2020.

### **X. PROBLEM-SOLVING COURTS**

I have suggested twice in this message the close relationship of probation and our problem-solving courts. Earlier this month, an editorial appeared in the *Omaha World Herald* offering support for the development of our problem-solving courts, calling our efforts "one of the smartest steps Nebraska has taken over the past two decades." As the article notes, "The courts provide a unique combination of benefits to Nebraska by being humane, practical and cost-effective." In the court system, we wholeheartedly agree. However, as the editorial also notes, judicial resources are at capacity and more judges will be needed to aid these successful problem-solving courts.

Currently, there are 32 operating problem-solving courts in Nebraska under the authority of 46 judges. Problem-solving courts include Adult Drug and DUI Courts, Juvenile Drug Courts, Veterans Treatment Courts, Family Treatment Courts, Reentry Courts, Young Adult Courts, and the recently-approved Mental Health Court in Sarpy County.

### **XI. OFFICE OF PUBLIC GUARDIAN**

Before I conclude, I will briefly discuss the Office of Public Guardian (OPG). In 2015 you, the Nebraska Legislature, entrusted the judicial branch with oversight of that office. OPG provides court-supervised guardianship and conservatorship services to vulnerable adults who

have no one else to assist them. Demand for the services of public guardians continues to increase as our State's population ages. The current public guardians cannot keep up with the demand. There is a statewide waiting list of cases for public guardian services.

The pandemic has been a great challenge for our public guardians during the past year. Our guardians have collaborated with state administrators, nursing home facilities, service providers, and health care staff to protect the lives of their wards. The OPG has over 100 wards in 40 different assisted living centers, nursing homes, and group homes across Nebraska. At the end of 2020, we had 58 wards with COVID-19 diagnoses. Three wards died of COVID-19 last year, all of whom were nursing home residents.

Given these concerning numbers, staff at the OPG met, sometimes virtually, with every ward to discuss end-of-life wishes and create individualized pandemic medical treatment plans. The OPG continues to advocate for the expansion of testing and vaccinations and improved services for all of its wards, and improved standards for all institutional facilities for the aged and other vulnerable individuals.

## **XII. CONCLUSION**

When I stood before this legislative branch a year ago, none of us could have imagined the challenges 2020 would bring. Nebraska's constitutional requirement that "courts shall be open" has been the judiciary's guiding principle this past year. And our commitment to providing equal access to justice has not faltered. In communities throughout the State, courts have taken measures necessary to remain safely open and functioning. Innovative judges and court staff have led our way forward.

I am immensely proud of the judiciary's everyday heroes in our trial and appellate courts, in our probation offices, the Office of Public Guardian, and more. Our court family is essential in every sense of the word. Our courts are safely open, providing uninterrupted access to justice for all Nebraskans.

Again, thank you.

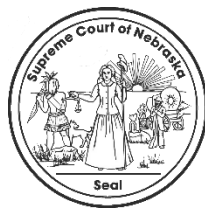
Front cover photo: Students lineup to ask questions during Nebraska Supreme Court Argument session at Northwest High School in Omaha, March 5, 2020.



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