

# BRIEFS

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## Common themes emerge in 2023 'State of the State Judiciary' addresses

In 48 states, the chief justice of the state supreme court is the “administrative head” of or holds “administrative power” over the state’s judicial branch.<sup>1</sup> As such, many chiefs deliver annual “state of the judiciary” addresses, similar to speeches delivered by governors. Unlike gubernatorial speeches, which are almost always delivered to joint sessions of the state’s legislature, a chief justice’s address may be delivered at a state bar meeting, in a legislative hearing, or even in a courtroom before select mem-

bers of the bench, the bar, and the other two branches of government.<sup>2</sup>

Regardless of the methods and means of delivery, state of the judiciary speeches have a common purpose: They report the chief justice’s assessment of the current condition of the state’s judiciary, propose a vision for the future, and, more often than not, ask for assistance from colleagues in the legislative and executive branches and beyond.

Our review of the 22 speeches delivered as of August 1, 2023,<sup>3</sup> found several recurring themes across the states:

**Mental Health:** Sixteen chief justices mentioned or focused portions of their speech

ABOVE: THE INDIANA STATEHOUSE IS HOME TO THE GOVERNOR’S OFFICE, THE STATE ASSEMBLY, AND THE STATE SUPREME COURT. (ISTOCK.COM/GETTY)

on the impact of mental health illnesses in the courts. Many chiefs noted that mental health services in their states are inadequate and decried the large numbers of people suffering from untreated mental illnesses. For example, Indiana saw 19,000 cases involving mental health illnesses, a record for that state.<sup>4</sup> Several chief justices also noted the relationship between mental health and co-occurring substance use disorders.

Some chiefs proposed solutions, such as the creation or expansion of treatment courts and collaboration with agencies like law enforcement, prosecutors' offices, and social welfare services to better address the mental health crisis in jails. Several chief justices also highlighted judiciary-based commissions that were created in the past several years to address these issues, such as the New Mexico Commission on Mental Health and Competency<sup>5</sup> and the Texas Judicial Commission on Mental Health.<sup>6</sup> Both commissions were created by their respective states' courts of last resort.

**Access to Justice:** Sixteen chief justices also discussed the need to expand access to justice, particularly by providing resources to help self-represented litigants adequately navigate the judicial system themselves. Some justices discussed possible alternative approaches, such as court navigators and the creation of nonlawyer legal service providers.

Another common theme was the need to boost the number of lawyers to broaden access to representation. Georgia's Chief Justice Michael P. Boggs noted that, in his state, 67 out of 159

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counties have ten or fewer licensed practicing attorneys. Seven counties have no licensed attorneys at all.<sup>7</sup> Similarly, the chief justices of six other states (Kansas,<sup>8</sup> Maine,<sup>9</sup> Minnesota,<sup>10</sup> New Mexico,<sup>11</sup> New York,<sup>12</sup> and South Dakota<sup>13</sup>) specifically noted or discussed in their addresses the lack of access to attorneys in rural areas.

Some chiefs see an opportunity to improve access to justice by expanding remote access. California Chief Justice Patricia Guerrero said, in her state, improved access means "remote access to services; remote access to case information; and remote access to hearings and proceedings."<sup>14</sup> Idaho Chief Justice G. Richard Bevan noted that, in the past, access to justice

meant "ADA accommodations, language services, and onsite assistance for people representing themselves in court. Technology now offers more ways to make court access easier and less disruptive — and the people of Idaho expect us to use it."<sup>15</sup>

**Salaries/compensation:** Fourteen chief justices asked their legislatures to consider increases in pay for judges, judicial staff, or personnel-related resources. A common theme here was that courts are struggling to retain judges and staff as they leave for the private sector or even other government branches or agencies.

Another concern was recruitment: Several chief justices noted significant numbers of open positions for nonjudicial staff and a decline in the number of names being submitted for consideration by judicial nominating commissions. In Nebraska, up to 12 percent of court employee positions were vacant in 2022.<sup>16</sup> The average number of applicants for district court judicial positions in Idaho is just five.<sup>17</sup>

In Utah, the number of people applying for vacant judicial positions is half what it used to be. Utah Chief Justice Matthew Durrant noted, "[W]e're only going to get people who are willing to make a sacrifice, but there's a limit to that willingness, and it's just a simple matter of economics that the more we can pay, the more applicants we can attract and the more judges we can retain."<sup>18</sup>

Several chief justices enumerated other negative effects of salary and compensation concerns. As New York's Acting Chief Judge Anthony Cannataro noted, "Staffing shortages slow down

our dockets and burden our already-strained workforce.”<sup>19</sup>

**Backlogs and delays:** Finally, ten chief justices discussed continued COVID-related backlogs and reported mixed progress. Several states, such as Alaska, are working to reduce the backlog but at a “much slower” pace than the courts would like.<sup>20</sup> Staffing is a primary challenge, both within and outside the judicial branch, especially in criminal cases. Other states were able to report successful efforts to reduce case backlogs, but it will take

time, potentially years, to return to a pre-COVID pace for case processing.<sup>21</sup>

With a few state chief justices due to deliver state of the judiciary addresses later in 2023,<sup>22</sup> several of these themes seem likely to be further examined.

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## Tips for addressing court staff shortages

Multiple state chief justices noted challenges around staff recruitment and retention in state of the judiciary addresses this year. Fellows of the National Center for State Courts Institute for Court Management studied these challenges and offered several recommendations for best practices for hiring and retaining employees.

Shortages are exacerbated in part by baby boomers retiring from decades of service in court administration, by high turnover in entry-level positions, and by fewer applicants in the hiring pool. As courts address shortages, the institute recommends developing succession plans to encourage and promote current employees looking for career advancement. Implementing regular employee evaluations to gauge career interests and solicit feedback on career growth can help with succession planning. The judiciary of Guam uses a talent management program to outline separate leadership tracks that employees can take. Other organizations use a nine-box talent grid template, which measures employee performance against career advancement potential.

The institute fellows also suggested ways courts can better recruit younger employees:

- Offer options for remote work
- Create educational growth opportunities through skills courses or training
- Create a unified professional purpose and mission that employees relate to
- Incentivize workers with opportunities for increased pay based on performance
- Use social media, school career fairs, third-party websites, and online advertisements to share career opportunities with broader audiences

Learn more: [www.ncsc.org/information-and-resources/trending-topics](http://www.ncsc.org/information-and-resources/trending-topics)

<sup>1</sup> William Raftery, *Chief Justices as Leaders: Roles & Challenges*, in 49 *THE BOOK OF THE STATES* 253, 253–57 (The Council of State Gov’ts ed. 2017), <https://issuu.com/csg.publications/docs/bos2017>.

<sup>2</sup> For a review of the role and importance of these speeches and their locations, see Teena Wilhelm, Richard L. Vining, Ethan Boldt & Allison Trocheset, *Examining State of the Judiciary Addresses: A Research Note*, 40 *JUST. SYS. J.* 158–69 (2019), <https://perma.cc/LAR8-ASTXU5>.

<sup>3</sup> Twenty-one state supreme court chief justices delivered state of the judiciary addresses by May 1, 2023. Alyssa Nekritz, 2023: *Hot Topics in State of Judiciary Addresses*, *NAT’L CTR. FOR STATE CTS.* (May 10, 2023) <https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/2023-hot-topics-in-state-of-judiciary-addresses>. Since then, Chief Justice Lorie Gildea of Minnesota’s supreme court also delivered an address, raising the total number of addresses delivered to 22. Chief Justice Lorie Gildea, 2023 State of the Judiciary Address, Address to the 2023 Minnesota State Bar Association Annual Conference (June 21, 2023), <https://perma.cc/6JB3-82F3>.

<sup>4</sup> Chief Justice Loretta H. Rush, State of the Judiciary, Address Before the Indiana Legislature (Jan. 11, 2023), <https://perma.cc/TJ3N-4C9J>.

<sup>5</sup> Chief Justice C. Shannon Bacon, State of the Judiciary, Address Before the New Mexico Legislature (Jan. 24, 2023), <https://perma.cc/VQC4-BA9N>.

<sup>6</sup> Chief Justice Nathan L. Hecht, The State of the Texas Judiciary: An Address to the People of Texas, Address in the Courtroom of the Supreme Court of Texas (Apr. 5, 2023), <https://perma.cc/V8JK-GVK3>.

<sup>7</sup> Chief Justice Michael P. Boggs, State of the Judiciary, Address Before the Georgia General Assembly (Mar. 8, 2023), <https://perma.cc/72ME-UB5C>.

<sup>8</sup> Chief Justice Marla Luckert, State of the Judiciary, Address Before the Kansas Legislature (Jan. 11, 2023), <https://perma.cc/FZT7-KPPY>.

<sup>9</sup> Chief Justice Valerie Stanfill, The State of the Judiciary, A Report to the Joint Convention of the First Regular Session of the 131st Maine Legislature (Mar. 23, 2023), <https://perma.cc/ZGE2-YSGJ>.

<sup>10</sup> Gildea, *supra* note 3.

<sup>11</sup> Bacon, *supra* note 5.

<sup>12</sup> Acting Chief Judge Anthony Cannataro, State of Our Judiciary, Address in the New York Court of Appeals Hall (Feb. 28, 2023), <https://perma.cc/NH4R-CGJ8>.

<sup>13</sup> Chief Justice Steven R. Jensen, State of the Judiciary Message, Address to the South Dakota Legislature (Jan. 11, 2023), <https://perma.cc/KYP3-4CVG>.

<sup>14</sup> Chief Justice Patricia Guerrero, Address to the California Legislature (Mar. 27, 2023), <https://perma.cc/696P-LNM2>.

<sup>15</sup> Chief Justice G. Richard Bevan, State of the Judiciary, Address to the Idaho Legislature (Jan. 18, 2023), <https://perma.cc/X25B-5S27>.

<sup>16</sup> Chief Justice Michael G. Heavican, State of the Judiciary, Address to the Nebraska Legislature (Feb. 21, 2023), <https://perma.cc/WT4D-PBNP>.

<sup>17</sup> Bevan, *supra* note 15.

<sup>18</sup> Chief Justice Matthew B. Durrant, State of the Judiciary, Address to the Utah Legislature (Jan. 17, 2023), <https://perma.cc/8EZF-2LB7>.

<sup>19</sup> Cannataro, *supra* note 12.

<sup>20</sup> Chief Justice Daniel E. Winfree, State of the Judiciary, Report to the First Regular Session of the 33rd Alaska Legislature (Feb. 1, 2023), <https://perma.cc/8PDV-VZMM>.

<sup>21</sup> See Boggs, *supra* note 7 (“As my predecessors, former Chief Justices Harold Melton and David Nahmias, have told this body before, the backlog could take years to resolve.”); Bevan, *supra* note 15 (“I advised when I last spoke to you that it could take a couple of years to fully address the effects of the pandemic.”); Cannataro, *supra* note 12 (“At every single level, New York’s courts have demonstrated a remarkable dedication to overcoming challenges and delays attributable to the pandemic. With that said, we acknowledge that backlogs persist and that there is more progress to be made.”).

<sup>22</sup> See Wilhelm, Vining, Boldt & Trocheset, *supra* note 2, at 162–63 (listing the frequency of addresses and reports from state supreme court chief justices). Note these speeches will be delivered to state judicial conferences and state bar association meetings which tend to occur outside of spring state legislative sessions.