

State of the Judiciary

2023 Regular Session

Tuesday, January 24, 2023

Noon

House Chamber

Remarks by Chief Justice C. Shannon Bacon

Welcome and Introductions:

Lieutenant Governor Morales, Speaker of the House Martinez and President Stewart, Majority and Minority leaders of the House and Senate, distinguished members of the Legislature, my colleagues on the New Mexico Supreme Court and throughout the Judiciary, family and friends, good afternoon. It has been four years since a State of the Judiciary Address has been presented to the State of New Mexico and it is tremendous honor to be here to share both the achievements and challenges of the Judiciary as we begin 2023.

Today, I represent the members of our Judiciary, many of whom are here. I deeply appreciate the presence of so many judges and staff. I especially want to take this opportunity to recognize the distinguished members of my own Court for all they have given to government service. They are visiting from our historic Supreme Court Building, which just

celebrated its 85th anniversary last year. Senior Justice Michael Vigil, Justice David Thomson, who was appointed to the Court the same day as I was four years ago this week, Justice Julie Vargas and Justice Briana Zamora. I want to thank my colleagues for entrusting me with the leadership of the Judiciary, for their support, collaboration, and friendship. Please join me in giving them a round of applause.

Please welcome my family who are joining me today. My wife, Twila Firmature, as well as my brother and sister-in-law, Josh and Ana Bacon, my nephews RJ and Tristan Bacon (who some of you know as the Baconbitz), my Uncle Bill Snead, and my cousins David Snead and Charles Butler. I would also like to recognize my father and step-mother, Frank and Cindy Bacon, who could not be with us today. I thank you for all of your support and encouragement. All of my successes are possible because of my family.

Today I am tasked with reporting on the state of the Judiciary and outlining our needs. So, when I think to myself, "What is the state of the Judiciary?", I easily come to the following: The Judiciary is battered and bruised, strong, resilient, creative, committed, and caring. I hope through my words today, this will be evident.

Today, I will focus on four topics:

First, the Judiciary's efforts over the past four years to provide equal justice under law, with a special focus on accomplishments during and because of the pandemic. Second, I will highlight programs that I am especially proud of that demonstrate the commitment of the courts to the community. Third, I will discuss the important but complicated topic of crime and criminal justice reform. Finally, I will end with a discussion of the Judiciary's fiscal and legislative requests.

COVID-19 and Statistics:

I would like to begin by recognizing the impact of COVID-19 on the Judiciary and express my awe and gratitude for every single member of the Judiciary who ensured: we never closed our courts, never had COVID spread to those who entered our courts to serve as jurors, and developed innovative processes, services, and procedures that will continue to serve us all in the future. Covid became the fuel for something new, and just as the Phoenix rises from the ashes, the Judiciary has risen rededicated to the administration of equal justice under the law.

Remote and hybrid hearings, depositions, mediations, and even bench trials not only kept participants safe, but saved time and costs, and improved access for those New Mexicans who have a difficult time traveling

to court. We are working to expand the use of technology in courtrooms. This month, we are beginning a pilot program to select remotely jurors for trial to study whether it is a viable option that will be of service to New Mexicans called for jury duty. In addition, we are exploring placing what we call “justice stations” in the community so that litigants can appear remotely even if they do not have broadband.

Adapting, quickly, to remote proceedings made it possible for our courts to stay open - in fact, the Judiciary never closed its doors during the pandemic. Over the past four years, the Judiciary held over two million hearings and bench trials, including nearly a half million each in calendar years 2020 and 2021¹, and over 4,000 jury trials.

In 2022, the Judiciary stayed on track, conducting 453,349 hearings and bench trials, and 1,204 jury trials.² Courts cleared more cases than were filed in the 2022 fiscal year. The disposition rate (the percentage of adjudicated cases compared to the number of new and reopened cases during the fiscal year) was 103% for district courts statewide, 105% for all magistrate courts and 108% for the Metropolitan Court.

¹ # of proceedings, which include hearings and bench trials: CY 2019 - 538,797; CY 2020 - 438,523; CY 2021 - 452,727; CY 2022 - 453,349

² # of trials (includes all trial courts - district/magistrate/metro): CY19 - 1,573; CY20 - 640; FY21 - 606; FY 2022 - 1,204

Eviction Prevention and Diversion Program:

Another product of the pandemic was the court-based Eviction Prevention and Diversion Program, which assisted New Mexicans facing eviction during the pandemic and provided property owners with an alternative to evicting tenants unable to pay their rent. This statewide program was a partnership between the Judiciary and the department of finance designed to effectively distribute ARPA funding to New Mexicans. The program connected tenants and property owners with court navigators and mediators to facilitate distributing rent payments and thereby keeping New Mexicans housed. As the program sunsets – because we have distributed all of the federal funding -- we can report that as of January 12, 2023, the program resulted in awards of **\$217,080,183.63** in rent and utility payments as well as emergency hotel stays and moving costs. This funding assisted **60,429** households and made **98,175** individual awards. I am very proud that the White House identified New Mexico's eviction and prevention program as the gold standard in the country. Think what we could accomplish if this funding were to continue.

Equity and Justice:

In 2020, in the wake of social unrest, the Supreme Court created the Commission on Equity and Justice. This commission has been hard at work studying issues related to race and bias in our justice system and is working to promote diversity among judges and judicial employees. The Commission's goal is to give New Mexicans equitable access to the state's justice system through training and education of judges and staff, conducting a review of case outcome data, creating a diverse pipeline to the Judiciary, reviewing and reforming all policies, procedures, and jury instructions, and focusing on the courthouse experience for litigants.

Mental Health:

The New Mexico Commission on Mental Health and Competency was most recently created by the Supreme Court to develop a roadmap for New Mexico to better meet the behavioral health needs of adults and juveniles who encounter our state judicial system. The commission has a broad range of responsibilities, including reviewing policies and procedures concerning a person's competency to stand trial and considering how to better identify people in need of mental health treatment before they enter the justice system. Additionally, the commission will explore ways of expanding the

behavioral health resources available in communities and courts statewide, particularly in underserved communities and rural areas.

Court Visits:

Treatment Courts

As the Chief Justice of the Supreme Court of New Mexico, it has been my honor to visit courts all across our state last year. I met with judges and court staff, asking them to describe the successes and challenges in their districts. Overwhelmingly, courts are most proud of how they worked together during the pandemic - cross training, supporting each other, and developing true collegiality and court families. Courts are also extremely proud of their specialty courts. For example, the Ninth Judicial District Court in Clovis, New Mexico has developed an impressive Treatment Court program based on the three pillars of unity, service, and recovery. As participants progress through the program, they receive Treatment Court Dollars to use to purchase items in the Treatment Court Store. These items range from shampoo, to children's backpacks, to the much in demand "crock pot" – basic everyday items needed to raise families. The Ninth Judicial District is proud of their clients' achievements and work hard to ensure they move through and out of the judicial system with the tools needed for recovery. In that courthouse, not only did the director of the program share

this success of the program – so did security officers, bailiffs, staff, and judges. The whole court supported the store, and was proud to have carried the program through the pandemic - because they believe that recovery is possible.

Over the past four years - including the pandemic years - 3,280 people have participated in treatment courts and 1,800³ people have successfully graduated from the programs statewide. Graduating from a treatment court significantly improves success in life and departure from the criminal justice system.

Self-Help:

Courts are also rightfully proud of their self-help programs, which assist individuals without a lawyer to navigate the court system. In the state's largest district court, which serves Bernalillo County, an average of 14,500 individuals received assistance from the self-help center during each of the past three fiscal years. That is 7% more than were helped in the last pre-pandemic fiscal year. The Metropolitan Court center assisted an additional 27,657 people during the past three fiscal years. The Eighth judicial district,

³ # of Graduates of Treatment Courts *includes mental health treatment numbers: FY22 Active - 785; FY22 Graduates - 354; FY21 Active = 733; FY21 Graduates = 471; FY20 Active = 879; FY20 Graduates = 510; FY19 Active = 883; FY19 Graduates = 465.

in Taos, served nearly 5,000 people and the Twelfth, in Otero and Lincoln counties, which has an especially robust self-help program, served over **22,000** people the last four years.

When people have access to legal resources such as plain language forms, legal advice, self-help centers, or a pro-bono attorney, they are empowered with knowledge about their full rights and the legal process, giving them access to the justice they deserve.

This deserved access to justice is also the focus of a Supreme Court-convened task force examining and addressing the lawyer shortage in rural New Mexico, as well as assessing the effects of the pandemic and the economic downturn. New Mexico has large “legal deserts,” where there are few to no options for legal representation in civil matters. For instance, Harding and DeBaca counties do not have a single practicing lawyer and Guadalupe County has a single lawyer for more than 3000 square miles. 21 percent of our counties have 5 or fewer lawyers and 33 percent have ten or fewer lawyers.

This scarcity is a critical backdrop for the development of innovative programs and of partnerships with service providers to ensure access to justice. The lack of lawyers in rural New Mexico bolsters the need to make sure people are aware and knowledgeable about available legal services.

One such innovation is the Modest Means Helpline, which began operations in October 2022, through collaboration between the Representative Pameyla Herndon, the State Bar, and the Supreme Court's Access to Justice Commission. With only two staff attorneys and one intake person this statewide, legal helpline and volunteer attorney referral service provides legal help to modest-means New Mexicans who are ineligible for New Mexico Legal Aid. People of modest-means, below 500% of the Federal Poverty guidelines, make up roughly **75%** of New Mexicans and have very limited options for accessing legal services, particularly in Family Law, which deals with issues such as child custody, divorce, and domestic violence. The Modest Means Helpline often completely resolves the caller's questions *or* provides referrals to volunteer attorneys for representation in appropriate cases. Since its recent inception, the Modest Means Helpline has already served 245 callers (ultimately helping 680 people) in 24 of the 33 counties in New Mexico. Unfortunately, due to high call volume and limited funding, the Modest Means Helpline must restrict case intake to 20 hours a week. To address fully the need, the Modest Means Helpline is requesting funding for two additional staff attorneys and another intake person.

Crime:

On the topic of criminal justice reform, let us recall where we were prior to the elimination of money bail. Under the bail bond system, when someone was accused with a crime, including those we as a society label as the most dangerous, the accused was permitted to post a money bond. This resulted in most criminal defendants being free until trial. Not only was this system unconstitutional, but also was more dangerous because it did not include any analysis of danger to the public. With the elimination of money bail, judges now have the ability to assess dangerousness. Something they could not do before. In Bernalillo County, this has resulted in the detention of over 3,000 defendants pending trial. Something that could not happen before with the bail bond system.

As we discuss changes to the criminal justice system, we need to remember our shared values that emanate from the Constitution of the United States and the Constitution of the State of New Mexico – that everyone accused of a crime is presumed innocent until proven guilty. That we value liberty and freedom. These fundamental principles that are bedrock in our democracy are designed to curb tyranny and support a civilized society.

Holding fast to these principles is what makes the discussion of criminal justice reform so difficult. Balancing the rights of the accused, but

not convicted and the safety and security of the public is hard—and it should be hard.

So, as the legislature considers these hard issues, I have few requests of each of you:

First, make your policy decisions based on what the Constitution mandates, and on verified data and facts.

Second, that you fully consider and understand the impact of your decisions. What the costs are – both fiscal and human.

The fiscal impact: Criminal justice reform, no matter what path you choose, is very expensive – it cannot be based on what we, for years, have called adequate funding. The funding needs to be robust. The funding must provide for the Judiciary, the public defenders, district attorneys, law enforcement, corrections, county jails, and behavioral health – all of which struggle to meet the demands of our system today.

The human impact: We all feel deep sorrow and fear when we read about a senseless death and other tragedies from crimes. Yet, we must remember why our Constitution protects the rights of every person, including those accused of crime. They are just that – accused, and presumed innocent in the eyes of the law.

Consider the tragedy of a 17-year-old Albuquerque high school student who was charged in 2019 with murder, armed robbery and other felonies. She spent a week in jail and was strip searched several times. However, the arrest stemmed from a mistaken identification. The state filed a pretrial detention motion to hold her in jail until trial. The judge, based on the evidence presented by the state, denied the motion. Later, the prosecutor dismissed the case. If a judge did not have the ability to assess the facts, this young woman would have been detained even longer. This young woman told the Albuquerque Journal that the experience “destroyed me, my parents, my family’s life, by just misidentifying me.” This is an example of the human impact on the wrongfully accused.

Now, I do not raise these important considerations to suggest that change is impossible or that all change is unconstitutional. But recall, what your own legislative counsel reported to you last year, the best deterrent of crime is swift justice. To that end, over the past year, the Supreme Court has focused on procedures to expedite criminal cases and to limit the number of times victims, witnesses, and law enforcement must appear in court. We can all agree that law enforcement is stretched thin and that measures to keep them on the streets rather than waiting for court proceedings are important.

The largest district court in the state –the Second Judicial District Court in Albuquerque – is successfully using retired judges to hold settlement conferences to facilitate plea discussions in criminal cases. About 43% of the 524 cases referred to the program last year were resolved through pleas by the defendants or case dismissals by prosecutors. The settlements eliminated the need for a trial, allowing prosecutors, defense counsel, courts and law enforcement to focus on other cases.

A pilot project in the Bernalillo County Metropolitan Court and the Santa Fe Magistrate Court reduced by half the number of preliminary hearings set in felony cases, which resulted in fewer court appearances by victims, witnesses, and law enforcement officers. A preliminary hearing is often characterized as a mini-trial because evidence is presented and witnesses face cross-examination. It is where a judge determines whether a felony case will proceed to trial in district court.

Under a Supreme Court order, a status conference is now required early in criminal proceedings in Metropolitan Court and the Santa Fe Magistrate Court. These conferences occur before an officer or victim must appear in court, and allow the prosecutor and the defendant's lawyer to discuss a possible resolution. A defendant must decide at the status conference whether to waive appearing at a preliminary hearing. A

defendant can no longer wait until the day of the preliminary hearing to waive the proceeding. This new procedure helps prevent law enforcement, victims and other witnesses from appearing in court only to learn a proceeding is not going to happen — something that often happened in the past at preliminary hearings.

As a result of this program, the average number of preliminary hearings set in Metropolitan Court dropped by 49%.

Additionally, there was a 71 percent decline in defendants failing to appear at preliminary hearings. In the past, officers and witnesses might be present for a hearing, but the defendant failed to appear.

Other Supreme Court-approved initiatives to streamline criminal procedures include:

- Traffic violation cases in magistrate courts statewide and Metropolitan Court are conducted remotely — making it more convenient for the defendant, witnesses and law enforcement to attend hearings without spending time traveling to a courthouse. This program keeps law enforcement in our communities on the streets, rather than sitting in a court waiting for a hearing to begin.
- We have suspended pretrial interviews with law enforcement in misdemeanor cases under a pilot program in Metropolitan Court and

the Santa Fe County Magistrate Court. Again, this assists with keeping law enforcement on the streets.

- We have expanded the availability of grand juries in the Second Judicial District of Bernalillo County and in the First Judicial District of Santa Fe, Rio Arriba and Los Alamos counties. The district attorneys had asked for more grand juries to initiate criminal prosecutions, and they have received them.
- Lastly, the Supreme Court, just last month, agreed to collapse pre-trial detention hearings and preliminary hearings into one proceeding. This will save time and resources and reduce the number of times law enforcement officers must appear in court pre-trial. All of New Mexico benefits from a justice system that resolves criminal cases in a timely and fair manner.

Legislative Priorities:

Last, I will turn to our legislative priorities, which are designed to improve the Judiciary and to continue our pursuit of equal justice. I will highlight just a few of our key requests.

This Legislative Session, we are again asking you to tie the salary of the Supreme Court Justices (the highest court in the state) to the salary of federal magistrate court judges (the lowest court in the federal system). This

will increase the salaries for judges from the Court of Appeals through the Metropolitan court. This initiative was passed by the legislature last year, but was not signed by the governor. It is consistently reported that low salaries interfere with competitive recruitment of judges from private practice. Passing this legislation will improve the Judiciary's ability to recruit and retain high quality judges with diverse practice backgrounds.

The Judicial Branch is also requesting a salary increase for judicial staff to match the salaries of those in the executive branch performing comparable work. It is important that comparable work be paid the same across the board. As co-equal branches of government, this increase is essential for recruitment and retention of judicial branch employees.

We are asking the legislature to create an Education Services Division in the Administrative Office of the Courts for judicial officers and employees. Currently, the University of New Mexico provides judicial education, but moving critical judicial education services to the AOC will ensure quality and accessible education necessary for our courts to provide judicial services to all New Mexicans.

We are also advocating for the elimination of post-adjudication fees (not fines) as a means for funding the Judiciary and other state programs. If these programs are important to you and to New Mexicans, they should be

paid for with revenue from the general fund and overseen by the Legislature. The elimination of fee funding is a national best practice, which promotes budget transparency and eliminates the unjust practice of paying for government functions on the backs of those who can least afford it.

Finally, we absolutely encourage and support funding for our justice partners - including Civil Legal Service Providers (like Legal Aid), District Attorneys, Public Defenders, mental health and treatment service providers, law enforcement, corrections, and county jails. We support this, because we cannot do this work without these partners.

Conclusion:

The Judiciary has many achievements to be proud of and looks forward to great things in 2023. The pandemic has taught us lessons and inspired incredible changes that would not have otherwise happened or taken many years to develop. At the end of the day, however, we must remember that no democracy, or society for that matter, can survive without a fully functioning Judiciary. The Judiciary is dependent on you, this Legislature, to ensure that we have sufficient resources to enforce laws and provide equal access to justice. With your help, the Judiciary is prepared to evolve, adapt, and continue to be the cornerstone of our democracy.

Last, and probably most importantly, I want to thank our front line court clerks and employees. They are the ones who have enabled our courts to safely remain open for business. We all owe them our thanks and gratitude for pivoting and making these changes in the midst of the pandemic.

The Judiciary looks forward to working with you this session. We know that working together, we can ensure equal justice under the law and provide the citizens of New Mexico the very best services and outcomes when they are in need - inside and outside of the courtroom. Thank you for your warm welcome, time, and consideration.