

## **STATE OF THE JUDICIARY**

**CHIEF JUSTICE G. RICHARD BEVAN**  
**January 26, 2022**

**\* Madam President, Mr. President pro tem, and distinguished members of the Idaho Senate, my colleagues on the Supreme Court and Court of Appeals, and fellow Idahoans.**

**\*Mr. Speaker and distinguished members of the Idaho House of Representatives, my colleagues on the Supreme Court and Court of Appeals, and fellow Idahoans.**

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I thank you, on behalf of Idaho's third branch of government, for allowing me to address you today. This speech offers me a chance to reflect and report on the past year, while providing you with a road map of the courts' needs going forward.

I come here on behalf of not only my fellow justices and Court of Appeals judges, who are with me in the gallery, but also the hundreds of judges, local court clerks, administrative staff and other state and county personnel who help our system run. I thank them for their dedicated service and willingness to continue laboring under less-than-ideal conditions this past year. As I'm sure you recognize, we have faced challenges in 2020 and 2021 unlike anything we have seen for a century. But through it all, because of the dedication of so many devoted people, the rule of law remains alive and well in Idaho.

And that is what we continue to bring to this constitutional partnership with you. While in some parts of this country it's not uncommon to find the branches of government at odds with each other, in Idaho, we have long remained unwavering in our commitment that as co-equal branches, we strive together to support and enable the freedom, happiness and security of our people.

Our recent experiences are not altogether new in Idaho's history. In fact, our state courts have evolved with the times, and our friends in the Legislature have been a part of making this happen. We can go back almost a century to the 1920s, when legislation created small claims courts and expanded the number of justices on Idaho's Supreme Court.

In 1949, the Legislature created the position of coordinator of the courts, an extra role assigned to a sitting justice to help manage administrative needs across our judicial districts. That position was a first step in what led to the court reforms of the 1960s: our unified court system, the magistrate division, the Idaho Judicial Council and the Administrative Office of the Courts.

In the 1970s, Idaho was among the first states in the nation to have automated tracking of trial and appellate cases. In the eighties you funded what became our first electronic case management system, ISTARS. And in the nineties, with your help, we first piloted the treatment courts that have grown to include drug courts, mental health courts, DUI courts, and veteran's treatment courts. Idaho's treatment courts are among the nation's finest – providing our most valuable tools to prevent recidivism.

This year marks the 55th anniversary of our Administrative Office, which provides invaluable assistance supporting the Court's constitutional role to administer our statewide court system. The employees of our Administrative Office focus first and foremost on supporting our local courts. Especially in my current role, I am extremely grateful for their work.

Throughout these decades, even going to “court” has had a flexible meaning at times. As one example, Idaho newspapers record multiple instances of court being held on trains passing between cities more than a century ago. We find ourselves today again innovating to meet the needs of society, holding court online or using space at local fairgrounds to enable jury selection in a safe and prudent manner.

History also records examples of Idaho courts having to postpone or adjust their work during the influenza pandemic of 1918 to 1920. I am grateful in this modern age to have help from technology — also funded by you over the past five years — which has helped us maintain our courts and keep them open to the public.

I offer these examples to show that the past two years' challenges, while unique, are not entirely novel to our state government. The judiciary has always worked to build traditions that support the rule of law while adapting as society, times, and technology grow. Our continued ability to blend established process with the needs of modern Idaho have ensured that throughout the past two years, the courts remained open to all who wished to file or respond to a claim. I am thus extremely proud of how our courts have responded to the crisis.

Many people who interact with Idaho's courts do not do so by choice. Defendants, jurors and witnesses are examples of people who are ordered to participate in a court proceeding. Judges, clerks and other staff keep the whole system moving. In order to balance the interests of those required to be in such places without a choice, with those who choose to come to a courthouse, the Idaho Supreme Court developed its COVID-19 emergency orders. These orders act both to keep courts open and accessible, while also protecting the health and safety of those who have no choice about whether they must appear.

These steps took different forms throughout 2021. During the worst waves of the virus, my fellow justices and I ordered uniform precautions statewide, including moving most court proceedings online and adjusting various rules about how hearings are conducted. For much of the year, we were pleased to be able to give judicial districts more flexibility to manage local conditions — and this is how courts in your areas are operating today.

Importantly, these orders changed the ways that hearings were conducted — but they did not halt court business.

In 2019, before the pandemic, judges in Idaho's state courts presided over more than 300,000 court hearings of all types. In 2021, they conducted nearly as many, and conducted them safely.

The only activities that were completely paused during parts of the year were jury trials and grand jury proceedings. These gatherings represent our highest-risk activities for COVID-19, with large groups of people gathered for days or weeks at a time in small spaces. As a result, such proceedings merited special caution. That said, it's important to realize that hundreds of trials still took place across this state in 2021 at times when the health guidance allowed them.

Much focus has been put on orders delaying trials, and understandably so. But even before the pandemic, very few cases in Idaho courts actually resulted in a trial. On average, 2% or less of Idaho criminal cases went to trial in 2018 and 2019, a percentage that aligns with patterns in other states. Cases resolve through many ways other than trial: the parties choose to settle, they receive a final decision based on the law, or the party who filed the case chooses to dismiss it.

Some case types don't include a trial at all, like adoptions: Idaho's judges handled 820 of those this past year. Courts also managed thousands of open guardianship and conservatorship cases — more than 9,500 were open at the time we assembled our annual report to you.

None of this has been simple. We expect it will take at least a couple of years to fully address the effects of the pandemic. Idaho's courts still face a dramatically higher number of unresolved cases compared to before COVID-19 reached this state. As of December 2021, that included more than 41,000 pending criminal cases, an increase of 29% from December 2019. On the flipside, pending civil caseloads have declined almost 6% over that same period.

We have gotten frequent questions about this backlog since I discussed it at this time last year. It is important to understand that there are many reasons a court case doesn't move forward. With the unique circumstances that affect each case, it is hard to say what the primary reasons are. We know that overall, the number of pending cases has increased during the pandemic; that it grew more in the pandemic's first year than in its second; and that the growth has not been uniform throughout Idaho's 44 counties. Regardless, we are committed to tackling this challenge even as the pandemic continues.

Technology continues to offer us solutions. Over the past year, we've expanded and refined our investment in videoconferencing and related hardware, allowing courts to hear cases remotely and to include participants both within and without courtrooms. Our livestreaming directory can enable access to public hearings when the public cannot attend in person. Judges, clerks and administrative staff have found it necessary to work from any location and respond to the ebb and flow of the pandemic; we have invested in technology to give them as much flexibility as possible while ensuring reliable, secure courts.

In Ada County we tested an alternate solution to resolve eviction cases outside of court called online dispute resolution. While Idaho's short statutory timeline for evictions posed a challenge to this tool's effective use, we continue to examine better ways to use technology to enable parties to resolve their disputes.

The Guide & File program allows people to complete and file many court forms themselves over the internet, including for a civil protection order, divorce without children, minor guardianship, or small claims. As you may imagine, this tool has become markedly more important during the pandemic; in fiscal year 2021, more than 7,500 people used it to open an Idaho court case.

Our guardianship and conservatorship monitoring coordinators have found that with the use of remote hearings, they actually have less need to travel and find themselves in greater demand by the courts because of their increased availability over videoconference. Similarly, group and individual counseling services for our treatment courts became available online within weeks of COVID-19 arriving in Idaho and have continued to offer increased flexibility for participants of those courts.

Investments in technology have made it possible to keep courts operating over the past two years, but our foresight will benefit the people of Idaho long after this pandemic has passed. We fully expect that the benefits of technology and the time savings it provides will continue as one silver lining to the otherwise dark cloud of the pandemic. But the realities of financing such an undertaking require that we bring you a request to support investments in technology in dedicated ways as we continue to meet our constitutional duties.

The Idaho Supreme Court's technology system is mainly supported through the Court Technology Fund. The money in that fund mainly comes from legislatively established fees imposed in criminal and civil cases. The cost of providing technology to support Idaho's courts has significantly increased over the last five years, far outpacing the collected fees designed to support these needs. Simply put, revenues in the dedicated fund are not keeping pace with the cost of supporting court technology operations across the state — especially when those operations will be in heavy demand to address the pending cases I described earlier.

The Court is examining various solutions to this issue. One involves revisiting certain costs related to our electronic filing system. This year the Court requests a one-time General Fund appropriation to pay the cost of electronic envelope fees within that filing system. This short-term appropriation will provide the Court time to research and present a longer-term solution, likely transitioning some or all of those costs to parties who use the system.

Technology supporting remote work and proceedings is not a temporary need, but an essential component to Idaho's courts becoming more efficient and flexible. Because some form of virtual court proceedings will need to continue well into the future, there is no expectation that associated costs will subside. Indeed, in 2021, Idaho's courts held hundreds of thousands of hearings via Zoom, a platform that was not planned or budgeted for when it was implemented. At the same time, greater use of technology and changes in the threat landscape have led to greater cybersecurity concerns for state courts throughout the nation — Idaho included.

To address these concerns, the Court requests a one-time appropriation from the Coronavirus State and Local Fiscal Recovery Fund of the American Rescue Plan Act (ARPA) of 2021 with carryover spending authority over the next three years. This funding would support

continued development of our court technology infrastructure and cybersecurity, while preserving the Court Technology Fund to support ongoing costs.

Idaho's courts offer many services that benefit both case parties and the state of Idaho, supplying additional support that can dramatically improve outcomes for all involved. These include our family courts, treatment courts and other programs.

Evaluations of Idaho's felony drug courts, DUI courts, and mental health courts have shown results on par with national averages, reducing recidivism between 10 and 15%. Some of Idaho's treatment courts serve as national learning centers and are viewed as national leaders for how to properly engage with court participants. Programs focused on domestic violence cases also decrease those incidents, and services for children and parents involved in divorce or custody cases reduce conflict within Idaho families.

For fiscal year 2023 the Court seeks increased spending authority to expand and improve these services. Each year, family court service offices spend their full allocated amount but report that there are still many families who go unserved. We propose to increase this amount of direct service funding by 20% over the next two years. We also propose establishing domestic violence courts in the two judicial districts that do not currently have them, and we seek to put more state resources into treatment court coordination, allowing the courts more options in determining the number of treatment courts and participant caps throughout the state. These actions would be funded by increased spending authority for existing revenues in the drug court, mental health court and family court services fund.

Idaho's courts provide funding for treatment services for treatment court participants that are unable to be funded through either private insurance or Medicaid. Over the last year, other state agencies have increased reimbursement rates for some treatment services beyond the levels used to estimate the courts' planned costs. Parity in these rates is vital to ensuring court clients can access the treatment they need. The Court requests increased spending authority in the Substance Abuse Treatment dedicated fund to ensure this parity.

The Court also seeks spending authority from this fund to support newly adopted Best Practice Standards for Treatment Courts. Research shows these actions improve outcomes for treatment court participants. Investing in them will reduce future substance abuse and recidivism among those participants. The fund holds sufficient revenue for both these requests without more demands on taxpayers.

Some services are necessary to help people access the courts. The courts have an obligation to provide access for people for whom English is not their customary language. In this next fiscal year, the Court requests General Fund support for language access services in the Third, Fourth and Sixth Judicial Districts, all of which have identified a need for funding based on local demand — a need we expect to grow as we work through more of our pending caseload. In Ada County alone, an average of 3,600 requests for interpreter services in 42 different languages have been made over the past two years.

The demand trends I describe here also affect the basic administration of the courts.

The trial court administrators, or TCAs, in our judicial districts perform vital work helping the Supreme Court with our constitutional oversight of our unified and integrated judicial system. Under the direction of their administrative district judges, the TCAs work with judges, elected county officials, attorneys and others to maintain efficient court operations. In most judicial districts they cover multiple counties and vast geography. They are tasked to act as the courts' liaisons in each county throughout the district, managing judicial disqualifications in the magistrate court, appropriate staffing of court reporters, networks of treatment providers for the treatment courts, and many other necessities.

Their work is thus both legally complex and time-intensive — and it has become clear that a single person can no longer accomplish all the necessary tasks to function adequately. As such, our administrative judges recently identified funding a deputy TCA in each district as their top budget priority for fiscal year 2023. The Court requests General Fund support to create these positions.

Along with new deputy TCAs, we again ask for additional judicial resources. Last year, you funded additional judges for the Third Judicial District. Now we ask your help for the Fourth District to add one district judge and court reporter to be chambered in Elmore County, and two magistrate judges to be chambered in Ada County.

In fiscal year 2021, the Fourth District had 1,628 cases per magistrate judge — a volume of work that requires magistrate judges elected in Boise and Valley counties to spend two days a week presiding over Ada County cases. The level of administrative work in the Fourth District also means its administrative district judge cannot carry a full traditional caseload. The Fourth District would like to expand its treatment courts in response to need but cannot do so without additional judicial support.

Meanwhile, we still face challenges in judicial recruitment. My predecessors have told you for some years now about the retirement and recruitment trends that challenge Idaho's judiciary. Recruitment for district judges remains a particular challenge. We are preparing to survey members of the State Bar about their interests in, and concerns about, becoming a judge. Past surveys have repeatedly identified as a primary issue that judicial salaries are not competitive enough with attorneys in the workforce. Judicial salaries sufficient to attract the best and the brightest must be addressed if we are to recruit such individuals to the bench.

Idaho Code requires separate legislation for any change in judicial compensation. The Court for fiscal year 2023 asks that you consider at least the same percentage of change in compensation for judges as you do other state employees, especially in consideration of the role compensation plays in the recruitment difficulties for district judge positions in the state.

While recognizing our need for additional human capital to function at our best, we also acknowledge that collaboration across our branches is increasingly important to our duties for the people of Idaho. Previously, our Court joined you in establishing the Idaho Behavioral Health Council to find better solutions for those in this state who live with mental illness and addiction. I was proud to see the release of the Council's strategic plan this past year, and I can report the courts have been active in starting to implement our areas of the Council's top priorities.

The Council this session endorses legislation to improve Idaho's civil commitment laws. This bill reduces ambiguity and creates more consistent processes across the state. It also addresses funding questions stemming from legislation passed last year. It is just a start; next year, we look forward to bringing you a proposal, now in development, on earlier engagement with individuals who end up in the justice system.

Judges this spring will help to lead service mapping projects in three counties, gathering community stakeholders to identify gaps in behavioral health care for people involved in the criminal justice system and in intercepting those who need that care. This work should give those communities the information they need to respond more effectively to such cases and address them earlier. Assuming these initial projects succeed, a court-sponsored facilitator training will enable them to be repeated in the other regions across the state.

This topic is a meaningful one for the judiciary. Judges have spontaneously reached out to provide feedback on Idaho's current system, and have volunteered their time to work on projects related to the Council. Our annual fall judicial education conference focused heavily on creating behavioral health expertise within the judiciary, reinforced by a series of webinars with nationally recognized speakers on this topic. I hope you have seen the same interest in the Legislature. I can pledge the Court's continued support for our partnership.

Other important work to improve our courts continues, regardless of the pandemic. We continue to invest in our electronic case management system; we performed a key upgrade last year providing greater efficiencies and resolving various software concerns. Just this month we relaunched our public court data website to provide a more comprehensive view of information spanning court activities and finances. The website gives independent access to court financial and filing data and is part of our commitment to operating transparent, accessible courts.

We are working to better tell our story and help Idahoans understand the role of the Judicial Branch. Indeed, the founders of this country recognized that an educated populace is necessary to maintain our system of government. Public education on topics such as the courts helps our citizens understand the third branch of government and their role in sustaining it. As James Madison said, "The advancement and diffusion of knowledge is the only guardian of true liberty."

The Court helps support several civic education efforts including those focused on teaching students, as our leaders for tomorrow, about our government. Often this is through helping to judge contests like last year's Attorneys for Civic Education Civics Contest, which in its first year received an exceptional number of essays by middle school students about constitutional rights and their related responsibilities.

For the Idaho Law Foundation's Law Day Podcast Contest, high school students submitted 5- to 10-minute podcasts on topics such as the relationship between law and morality, and on the application of American civil liberties throughout U.S. history. We partner regularly on educational institutes benefitting teachers and journalists, and we are working this year to build additional civic education programs within the courts.

It benefits us all when Idahoans learn more about their government: how it works, how to engage. Which brings me back to this annual gathering here. Together, each January we find ways to better serve the people and maintain a court system that uniquely reflects Idaho. We appreciate the opportunity once again to share our vision with you.

We are living through an extraordinary time. But together, we have seen Idaho and its people through such times before. Abraham Lincoln is quoted as saying, “You cannot escape the responsibility of tomorrow by evading it today.” I have faith and confidence that we will continue to meet the demands of our tomorrows as we accept the challenges before us today — just like those who have come before.

Thank you for joining us to make it happen.