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Joint Meeting of the House and Senate Judiciary Committees

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Chairwoman Warren and Chairwoman Humphries, thank you for the opportunity to speak to this joint judiciary committee meeting. As you heard in my State of the Judiciary last week, the Kansas judicial system has faced significant challenges these past months, but the judicial branch also achieved some major wins in our efforts to constantly improve and maximize access to a fair and impartial court system.

I appreciate the opportunity to provide written and oral testimony today that will cover some other updates about the judicial branch and respond to some questions that were sent with the invitation to testify. I will begin with a brief report on access to justice issues and then provide a general overview of case filings and dispositions, with a focus on criminal cases. In response to questions I was asked, I will discuss time standards, use of remote technology for hearings, the judicial branch budget request, and our restoration efforts following the cybersecurity incident.

Access to Justice

A key goal of the judicial branch is to ensure that the legal system is available to all Kansans, including self-represented litigants, and to reduce potential barriers to equal access to justice.

Eviction Resolution Program

The Sedgwick County District Court received a national grant in 2022 to develop an eviction resolution program. The eviction resolution program assists landlords and tenants by providing information about the eviction court process and connects individuals to services in the community, including mediation. Sedgwick County District Court has one of the largest eviction dockets in the state and the grant provides initial funding for a program manager. In 2023, the district court began coordinating eviction mediation sessions, via the program. With assistance from the National Center on State Courts, a video about the eviction mediation process was created. A total of 17 mediations, with 14 of those reaching agreement, were conducted in 2023.

The program served about 150 landlords and 1,375 tenants. An evictions fundamentals class was also developed and taught by a volunteer attorney in the community. Three of these classes were held in 2023.

Court Self-Help Centers

Self-help centers provide a space for individuals without an attorney to come to the courthouse to seek assistance with their legal needs by accessing standardized forms of common case types, computers, printers, and non-legal assistance in navigating the court system. Through a contract with Kansas Legal Services, some self-help centers are supplemented by a volunteer attorney who consults with self-help users.

Four new self-help centers were open in 2023 in Chase, Douglas, Lyon, and Sumner counties. Cheyenne, Cowley, Finney, Logan, Reno, Riley, Rollins, Shawnee, Sherman, and Wallace counties are all in the process of developing self-help centers.

AmeriCorps Court Navigator program

The Americorps Court Navigator Program is a new program that will assist self-help centers as well as programs such as the eviction resolution program. In collaboration with AmeriCorps and Wichita State University, the AmeriCorps Court Navigator will build capacity at a district court's local law library self-help center and connect people with legal information about the court process. In addition, a court navigator for Sedgwick County District Court will assist self-represented litigants and provide non-legal advice and information to help individuals navigate the court system.

Self-Represented eFiling

The branch received a grant from the State Justice Institute to partner with the Georgetown Judicial Innovation Fellowship Program by hosting a judicial innovation fellow. This fellow will study the eFiling needs of self-represented litigants and design an eFiling prototype to meet those needs.

There are many other projects we will report on in our full written report.

Fiscal Year Case Filings

Case statistics provide a snapshot of the work of our courts. While these statistics explain the number of cases filed in district courts, it is also important to consider the work involved in disposing of these cases and their effect. For example, adoption cases are small in number compared to other case types, but they ensure permanency for children and involve many people working together—foster parents, case workers, social workers, judges, parents' attorneys, and guardians ad litem. And the number of misdemeanor and felony cases cannot convey the countless hours of work by law enforcement, county and district attorneys, court services officers, social workers, drug and alcohol counselors, clerks, and judges.

During fiscal year 2023, case filings totaled 333,958. This is an increase of almost 12,300 cases over fiscal year 2022. But consistent with case filings around the country, this total remains below case filings before the COVID pandemic. Likewise, appellate court filings remain below pre-COVID numbers.

The total number breaks down into many case types. Traffic and limited actions are usually the highest volume categories. The fiscal year 2023 totals in some other categories include:

- Adoption: 1,880
- Real property disputes: 3,624
- Child in need of care cases: 5,204
- Probate: 11,056
- Divorce: 9,394
- Cases seeking protection from abuse, stalking, sexual assault, or human trafficking order: 15,812
- Misdemeanor: 12,498
- Felony: 21,550
- Contract Disputes: 82,599

*These preliminary numbers could change slightly once filing statistics for fiscal year 2023 are finalized. When the transition to the Kansas eCourt case management system is complete, timely gathering and reporting annual case management statistical data will resume.

Other case types included in the total but not listed in the common case categories include fish and game, juvenile offender, traffic, small claims, and care and treatment cases.

Time Standards

The Kansas Supreme Court led the nation in the early establishment of time standards for the disposition of cases. These standards are published as part of the Kansas Supreme Court rules and define expectations for timely disposition of cases while recognizing that the "ultimate judicial goal should be justice, not speed, in the disposition of cases. Cases should be determined on an individual basis, not on an assembly line. Litigants and counsel should be afforded a reasonable time to prepare and present their cases."

The standards differ by case type. As examples, under the standards, each judge is expected to dispose of Chapter 61 cases in a median time from filing to disposition of 60 days, 180 days in Chapter 60, non-domestic cases; and 120 days in domestic relations cases.

In addition, Supreme Court Rule 166 imposes standards for the timeliness of a district judge's rulings. Judges are to rule on motions for summary judgment within 60 days of submission and on other motions within 30 days. Rulings on civil matters other than a motion—such as a trial to the court—are to be made in 90 days.

The appellate courts also have adopted time standards.

Judges also have an ethical duty to process cases with diligence. Just last week, the Judicial Conduct Commission issued cease and desist orders arising out of complaints about a judge's lack of diligence and failure to timely resolve matters.

Case Buildups Due to COVID-19 and Paper Backlog due the Security Incident

I was asked to address case buildups due to COVID-19 and the paper backlog due to the security incident.

During the COVID-19 pandemic, the Legislature assisted with the case processing slow-down by suspending statutory speedy trial. In HB 2121, passed last year, this extended the suspension of statutory speedy trial time limitations until March 1, 2024. As the Office of Judicial Administration reported to you as required by 2021 HB 2078, in fiscal years 2021 and 2022, Kansas District Courts resolved about 18,000 more criminal cases than were filed in those two years. In other words, statewide our courts made great strides in reducing the cases that backed up due to the safety protocols put in place in the early days of the COVID pandemic. We are currently unable to generate similar reports because of the cybersecurity incident. So I reached out to Chief Judges from districts of different sizes and geography to get their input on the questions you asked.

In general, the responses track information relayed to you by the judiciary, prosecutors, and others in past sessions. Statewide, almost all districts report no backup of cases and no concerns about moving forward with the planned reinstatement of statutory speedy trial deadlines. But, as in past years, there are a few exceptions—mostly in the more populated counties or those with prisons or other circumstances that lead to larger numbers of criminal cases.

The security incident also disrupted some case processing, but our court system found some workarounds. By working directly with attorneys to obtain copies of pleadings, judges were mostly able to keep cases moving. Additionally, after cybersecurity experts had gathered forensic information, decontaminated the servers and end point devices, and restored the data, the Office of Judicial Administration stood up a network in the judicial center while rebuilding connections to outside networks and hardening the security necessary for those outside connections. With the judicial center network in Topeka restored, we managed to set up district court and public help centers from which courts and members of the public could get information and documents. Judicial branch employees from all over the state came to the judicial center to help download documents for judges and court personnel in their district and other districts. Many judicial branch employees took this opportunity, and the judicial branch covered costs and lodging for those employees who traveled long distances. In addition, judicial center employees were reassigned from their typical duties to help.

The unavailability of efilings and our case management system forced courts and parties to revert to the old school method of filing paper. This meant that the security incident has created a buildup of paper filings we now need to process. Those working in the help centers started this process by inputting documents and information. When clerks had time, districts digitized the paper documents throughout the period we were in a paper world. But the inefficiencies of a paper environment meant time for this task was scarce and most districts developed sizeable buildups of documents that still need to be digitized. And all documents filed

after October 12 must be uploaded and processed into the case management system. Just to give an example, documents that were caught in the queue for action on October 12 alone totaled 6,359. We have communicated to attorneys and the public, particularly on the district court public access portal, that case information is not current for new case filings processed October 12 or after.

Districts with a lower volume of filings that are fully staffed will catch up faster than higher volume districts or those with vacant positions. Because of the uniform case management system, we can and will deploy workshare employees stationed in other districts to help other districts process and digitize files. We have also authorized temporary hours in some districts. Once e-filing is fully reinstated, clerks will be better able to determine how long this process will take. Employees are striving to process the paper backlog as quickly as possible.

Remote Proceedings

Remote proceedings became a tool for judges and litigants during the COVID-19 pandemic. Courts continue to use remote hearings as an important tool to conduct court proceedings, even now that the pandemic has passed. I utilized authority under statute (K.S.A. 20-172), to issue an order authorizing the use of remote technology to secure the health and safety of court users, staff, and judicial officers, and to expeditiously resolve pending cases. ([2021-PR-021](#)). That order remains in place.

Judges need not conduct hearings remotely, but they may. There are pros and cons to the use of remote hearings that judges weigh.

Generally, remote hearings reduce the cost of litigation, reduce delays, and enhance court efficiency. Many studies—and Kansas judges—report improved appearance rates with remote hearings. This is largely attributed to the ability of litigants to easily appear for a short hearing from wherever they are rather than taking time from work or other commitments, arranging childcare, or arranging transportation to the courthouse. Remote proceedings also enhance access to attorneys. For example, Kansas Legal Services does not have offices in many areas. But they can provide remote representation anywhere in the State. As for reduction in delays, in our rural districts, judges travel from county to county. An in person setting requires sufficient time on the calendars of judges and attorneys for both travel and the hearing. In contrast, a remote hearing can be set whenever there is time for the hearing.

On the other hand, while data suggests that most people have access to a smartphone, not all do. Or, if they do, they may have a limited data plan. And connectivity and other technical issues can create issues. Judges also recognize that remote proceedings lack the dignity of a courtroom. Finally, while judges have differing opinions, some express concerns about how remote hearings impact their ability to assess credibility.

Use of remote proceedings involves judicial discretion, meaning bright line statements are inappropriate. But general trends can be observed, and those trends differ depending on the type of proceeding. I will address four categories: non-evidentiary hearings; uncontested,

evidentiary hearings; large dockets with mostly self-represented parties; and evidentiary hearings.

Remote proceedings are mostly confined to non-evidentiary hearings, such as scheduling or status conferences. Parties and courts experience enormous benefits of using technology in these cases. These are often short hearings, and using remote technology saves parties expense, reduces delay, and enhances court efficiency.

The same advantages apply to uncontested, evidentiary hearings. These might include name changes, cases in which a defendant has not appeared, or other proceedings where the parties have reached an agreement, but the law requires judicial approval of that agreement.

The third category relates to large dockets with mostly unrepresented litigants—at least on one side. For example, a traffic docket, particularly for our large and mid-size counties, can include 20-30 or more cases. In many instances, these traffic cases only require an individual to be before a judge for a few minutes. Another example is child support enforcement dockets. In one situation, a western Kansas judge who previously drove to six counties over a week now hears all child support enforcement cases in one afternoon. Appearance rates have improved and appearing in court does not jeopardize the employment being used to pay child support because the individual can step away during a scheduled break and appear for the hearing and, a few minutes later, return to work.

The final category is contested, evidentiary hearings. There are several subcategories to consider. Jury trials in Kansas are in person. And most court trials and evidentiary hearings are in person. Where there are exceptions, the parties usually request or consent to that format. Sometimes, a hearing will be hybrid to accommodate an out-of-state witness or for a similar circumstance.

Having this flexibility allows the parties and the judges familiar with the circumstances of a particular case to adapt as necessary. As with most things, the judge overseeing the proceeding is in the best position to make the call, based on the parties and their availability, about whether a remote proceeding is an appropriate setting.

Judicial Branch Budget

The FY 2025 judicial branch budget includes a request for a five percent cost-of-living increase for non-judge employees. This is in-line with the Governor's FY 2025 recommendation for other state employees. We have made great strides in the past few years bringing our judicial branch employees' salaries closer to market rate. My goal is to not let inflation erode those gains. The FY 2025 budget reflects the passage of SB 229 from last year and includes a half year of judge pay increase which will begin January 1, 2025.

The second request involves new positions. We submitted our budget in September 2023 before our October 12 cyberattack. We are asking the legislature to prioritize some cybersecurity positions that were in the budget request. Other non-cybersecurity positions relate to positions

that assist district court level initiatives – like self-help centers and specialty courts. Requested positions also include financial support staff for audits and other controls.

Our process of recovering from the October 12 cyberattack is ongoing. We do not yet know the total amount this cyberattack will cost the judicial branch. We are requesting \$2.6 million in supplemental State General Fund moneys to put towards costs we have already incurred or costs we will incur and can estimate. These costs include the purchase of a new firewall, hardware, software, and consulting fees for vendors who assisted in our emergency response to the incident and in helping fortify our defenses. This amount also represents funding to allow the branch to begin the hiring process for three key cybersecurity positions for the final quarter of FY 2024. These positions were already included in our FY 2025 budget request, but we believe filling these positions sooner is critical.

This amount does not include several things: recovery costs we will incur but cannot yet estimate; notification costs that will be expended to notify individuals if their personal identifiable information has been compromised; and any services, like credit-monitoring, that the branch may decide to provide for the victims.

The branch has identified some grant funding to cover some costs. For the appellate case management system, we are applying existing grant funding to assist with the costs of upgrading that system. The parameters of this grant remain the same, but the timing of utilizing the grant was accelerated. We also are planning to redirect \$250,000 in American Rescue Plan Act (ARPA) funds from previously planned projects to the costs of the overall recovery effort.

Cybersecurity Incident

The October 12 cybersecurity incident disrupted the many electronic processes in the judicial system. Instantaneous access to filing and case documents was no longer available, and we asked attorneys, judges, and litigants to revert to a paper world.

As of today, the district court case management system is again operational statewide. The district court public access portal is also fully restored. The last major program at the district court level that is nearing completion is the eFiling system. Last week, courts in three of our largest counties—Sedgwick, Shawnee, and Wyandotte—were restored, bringing our total to 5 judicial districts fully back online with eFiling. We will continue this phased approach until all 31 judicial districts are fully able to efile. The last remaining project is the appellate court case management and eFiling system, which I hope to be operational in the near future.

Learning Center

I would like to close with news of progress on another project the Legislature has supported with funds and volunteer effort—an interactive learning center in the Kansas Judicial Center. In July 2023, a committee began planning the center that will provide information and educate visitors on civics concepts related to the three branches of government and how they function. The committee includes representatives from the Kansas Department of Administration, the Kansas State Historical Society, and the Kansas State Board of Education.