

**Michigan's Courts in the New Millennium:
Facing the Challenge, Fulfilling the Mission**

Delivered by Chief Justice Marilyn Kelly
to a Joint Session of the Michigan Legislature
Lansing, Michigan
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Thank you very much. Good afternoon. Lieutenant Governor Cherry, Secretary of State Land, Rev. Gallager, House Speaker Dillon, Senate Majority Leader Bishop, members of the House and Senate, my fellow justices of the Michigan Supreme Court, judges of the Michigan Court of Appeals, ladies and gentlemen.

First, let me express my appreciation to Majority Leader Bishop and Speaker Dillon for making this opportunity available to me. I thank them and indeed all the members of the Senate and House for extending this courtesy. I also thank Clerk of the House Rich Brown, Secretary of the Senate Carol Viveni, and their staff for their cooperation with Supreme Court staff for this address. And I would also like to thank our friends at Michigan Government Television for providing live coverage of this special session.

It is with pleasure that I recognize my fellow justices and ask them to stand to be recognized: Michael Cavanagh, Elizabeth Weaver, Maura Corrigan, Robert Young, Jr., Stephen Markman, and Diane Hathaway. Also here are Chief Judge William Murphy and his colleagues on the Michigan Court of Appeals.

We have with us representatives of our hard-working trial courts that do so much to make the ideal of equality under the law a reality. I would especially like to acknowledge the leadership of the judicial associations. In the South Gallery are Judge Kirk Tabbey, Chair of the State Bar Judicial Conference; Judge Susan Dobrich, President of the Michigan Probate Judges Association; Judge Kathleen McCann, President of the Michigan District Judges Association; and Judge James Alexander, President of the Michigan Judges Association.

The president of the State Bar of Michigan, Charles Toy, is here today, as is Janet Welch, the state bar's executive director. I would point out that the state bar has assembled a "Judicial Crossroads Task Force," on which I serve, to make recommendations regarding the future of Michigan's judicial branch. The task force's scope includes court structure and resources, technology, business impact, and access to justice. Its report is due in September and will, I expect, include bold and practical recommendations for our branch.

Linda Rexer is here, the executive director of the Michigan Bar Foundation, which so effectively supports civil legal aid programs through grants and the Access to

Justice Fund. Also present are the foundation's president, Margaret Nichols, attorney from Ann Arbor, and its vice president, Al Butzbaugh, chief judge of Berrien County Trial Court.

I would like to acknowledge Mike Murray, member of the Attorney Grievance Commission; Mark Armitage, deputy director of the Attorney Discipline Board; and Paul Fischer, executive director of the Judicial Tenure Commission. These three agencies are critical in helping the Court maintain the very highest ethical standards for Michigan's judges and lawyers. We in the legal community are very proud of the fact that we are a self-policing profession, and these agencies are essential to our doing that well.

And finally, members of my family have joined us and are seated on the floor: My mother, Evelyn Cogan. Evelyn is 103 years old, and she still keeps me on the straight and narrow. My husband, Dr. Donald Newman. My niece, Deborah Cannella; her husband, Dr. Vincent Cannella; and their daughter Andrea. My brother-in-law Dr. Steven Newman and his wife Katy. My brother-in-law Elmer Ligner. My cousin Mary Lou Rothgarber and her husband Edward, and my cousin Joyce Walter.

I am here today to talk to you and to the people of Michigan about one of the great untold stories of state government. My story is about the judicial branch and the many ways in which it has embraced innovations that have taken the courts to a new, higher level of public service. It is about the work we will do in the future to make the justice system more efficient, responsive, accessible, and cost effective. It is about the problems confronting our courts as resources dwindle and the need for services, including legal representation, mounts. And finally, I offer you my thoughts about how you can help us to meet these needs and make a positive difference in people's lives.

I will first discuss improvements in the judicial branch during the past decade, including the emerging role of therapeutic justice, our ongoing work with children and their families, and our increasing and effective use of technology. I will then discuss some of what I and many others see as our biggest problems and their possible solutions. I will address the impending access to justice crisis – the need for legal help for those who cannot afford to hire attorneys – and how we can attack that problem in a cost-effective way. And finally, I will turn to the problem of untreated mental illness as it relates to crime, and how we might address it.

The Past Decade

It is not often in Michigan that a chief justice addresses a joint session of the Legislature. The last State of the Judiciary address was in 2000, when my colleague Elizabeth Weaver was chief justice. Back then, she spoke enthusiastically of the 12 drug court programs we had in Michigan. She described an experiment in court management, a pilot project that involved 6 court pilot projects aimed at finding new ways to coordinate their administrative and judicial resources. She talked about the urgent need to formally establish family courts in the state, and about a statewide court information system that would lend itself to better public safety. And she mentioned a public learning center for

school children that would be part of a new building for the state judiciary, then just in the initial stages of construction.

Fast forward to today. We now have not 12, but 138 therapeutic courts in Michigan, 8 of them in the planning stages. And thanks to those 6 pilot project courts and their experiment in court management – and to you, the Legislature, for passing enabling legislation – we now have more than double the number of courts consolidating their operations with others in the same circuit. We have gone from 6 to 18 concurrent jurisdiction plans involving 25 counties. The result is money saved and improved efficiency.

Today, probate judges serve in the family division of circuit courts, an advancement made possible by legislation. The same judge can preside in all matters that affect a family in crisis, from divorce to juvenile matters. We have an electronic judicial network that allows courts throughout Michigan to report criminal violations to the Michigan State Police in real time. We have a statewide court data warehouse that courts, law enforcement, and others in government can access online.

And, we have the Hall of Justice, an architectural gem, which opened its doors in October 2002 and now houses the various judicial branch agencies – the Michigan Supreme Court, the Court of Appeals, the State Court Administrative Office, and others. Ten years ago, these agencies were scattered among 5 separate locations throughout Lansing. My colleague Mike Cavanagh devoted many hours and a great deal of patience to overseeing the construction. He deserves a vote of thanks for his work. Thanks goes also to the Legislature for funding this great building.

Not only does the judicial branch enjoy a more efficient operation by having these agencies under one roof, we will save an estimated \$204 million in private rent over 25 years.¹ And on the first floor of the Hall of Justice is our Michigan Supreme Court Learning Center, which attracts over 12,000 visitors annually.² As Justice Weaver envisioned, it has become a valuable resource for educators throughout the state, as well as a model for other state courts that aspire to have their own learning centers.

None of these accomplishments would have been possible without the cooperation of the Legislature. Whether it involved funding or implementation language, the Legislature has been a good partner. For our part, we in the judiciary have done our best to justify your faith in us and the investment of taxpayer dollars.

Therapeutic justice

You'll have to excuse me if I brag a little now about our trial courts, because I am so proud of their hard work and creativity.

¹ "Michigan's Hall of Justice; A Dream Deferred Comes True," Michigan Bar Journal, July 2002.

² Source: Michigan Supreme Court Learning Center.

Consider, for example, the many therapeutic courts we have in Michigan. Since the first drug courts began to operate in the late 1980's, we have seen an explosion of specialty courts. These courts, and the approach they take to offenders, are known as "therapeutic justice."

Now, what exactly is the approach taken by "therapeutic justice"? In general, it is a model that focuses on an offender's social, medical, and psychological problems. Its goal is to address underlying problems that, left untreated, will land that person in court again and again, in a revolving cycle of crime and probable incarceration. The offender receives services related to his or her particular problem – for example, mental health treatment or counseling – with oversight by the court, including frequent drug and alcohol testing. And always the court has a hammer, the threat of incarceration for offenders who violate the terms of the program.

Michigan specialty courts include drug courts for adults and juveniles, as well as sobriety courts, domestic violence courts, teen courts, and programs for parents whose substance abuse leads to child abuse and neglect. We also have three veterans' treatment courts, including one here in the Lansing area, which is a collaboration with the U.S. Department of Veterans Affairs. In 2008, we initiated a mental health court pilot project; there are now 12 such courts in Michigan.

These courts would not be possible without an investment of state and federal dollars. But are therapeutic justice courts worthy of the investment? The answer, according to recent studies, is an enthusiastic "Yes." We now have hard numbers to back up what therapeutic court judges know through experience: that these programs reduce recidivism and save taxpayers' money. A recent study of drug court programs in Barry and Kalamazoo counties showed that those counties realized combined savings of nearly \$1 million over two years. Also, they indicated significantly lower re-arrest rates for drug court participants compared to other offenders.³

Another recent study concludes that a mature drug court program saved an average of over \$3,600 per graduate in re-arrest and crime-victim costs. Each person who successfully completed the program was less likely to commit new crimes than if his or her case had been handled in the traditional manner.⁴ And a 2008 study found this: for 55,000 people in adult drug courts, about half a billion dollars was spent on supervision and treatment, but those programs reaped savings of over \$1 billion in reduced law enforcement, prison time and victim costs. Two dollars saved for every dollar spent. It seems likely that an expansion of those programs will yield similar benefits.⁵

³ "Barry County Adult Drug Court Outcome and Cost Evaluation," Northwest Professional Consortium, September 2006; "Kalamazoo County Adult Drug Court Outcome and Cost Evaluation," Northwest Professional Consortium, September 2006.

⁴ "Drug Courts: The Second Decade," National Institute of Justice, June 2006.

⁵ "To Treat or Not To Treat: Evidence on the Prospects of Expanding Treatment to Drug-Involved Offenders," Urban Institute Justice Policy Center, April 2008.

And then there is a benefit that is harder to quantify but even more important: the incalculable value of a human life. With us today, seated in the South Gallery, are Judge Harvey Hoffman, chief judge of the 56A District Court in Charlotte, and Ms. Crisiana Palacios-Ostrom, a graduate of Judge Hoffman's sobriety court program. Let me share with you a little of her story, as told to me by Judge Hoffman:

Ms. Palacios-Ostrom was only 15 when she moved out of her parents' home and left school to serve drinks in a bowling alley. By age 30, she was tough, street smart, and well known to the local police and defense lawyers. On June 24, 2000, she was arrested on her fourth drunk-driving charge after rear-ending a car at a stop light and crashing into a telephone pole. Fortunately, no one was seriously hurt. She was admitted to Judge Hoffman's felony sobriety court program – one of the nation's first. But her progress was far from smooth. She went to jail three times on bond violations before she was even sentenced.

When Judge Hoffman put Ms. Palacios-Ostrom in jail for her third violation, he told her that he did not think she was going to make it through the demanding sobriety court program. This struck a chord with Ms. Palacios-Ostrom; as Judge Hoffman tells it, "She made up her mind that no judge was going to tell her that she could not cut it." She never went to jail again. For nearly 10 years, she has been sober and, except for one traffic ticket, has not committed any offenses. She owns her own home, provides for her two children, and pays her taxes. She works as a nurse's assistant with hospice and has her own cleaning business. This lady represents the many people who have found their second chance through a therapeutic court program. And the judge represents the many fine men and women on the bench who have helped make that possible. I ask Crisiana Palacios-Ostrom to stand, along with Judge Hoffman, so that we can congratulate and thank them for coming here today.

As we learn more about how effective therapeutic justice programs can be, our courts are taking the therapeutic approach into other areas. There's "Project Fresh Start," a program of the 36th District Court that is aimed at helping women get out of a life of prostitution. This comprehensive program is headed by Judge Leonia Lloyd.

"Fresh Start" focuses on every aspect of the offender's life. It deals with her drug and alcohol abuse, her lack of job and parenting skills, her homelessness, sexually transmitted diseases, and mental health issues. When the offender successfully completes the program, her criminal case is dismissed. Out of the 279 women who have entered this program, 94 have graduated and, just as importantly, the babies these women have given birth to since have been drug free. Judge Lloyd is here in the South Gallery, and I ask her to please stand and be recognized.

Because of successes like this, I ask you to maintain therapeutic court funding and to help us create more of these programs. Please remember that the great majority of the therapeutic court participants are impoverished, and adequate funding for their treatment is essential for these courts to do their work.

Courts, children at risk, and families

Another area where our judicial branch has made and is making improvements is in the lives of Michigan children and our dealings with their families. A staggering number of divorce and child custody matters come before our family courts each year. In fact, family cases account for about two-thirds of all civil filings in our circuit courts annually.⁶

Our Friend of the Court offices oversee literally hundreds of thousands of cases involving the enforcement of custody orders, child support, and parenting time. I'm glad to say that, thanks to the Friends of the Court, Michigan consistently ranks high among the states in child support collections. The federal Office of Child Support Enforcement, which monitors all states' child support collections, ranked Michigan sixth in the country for child support distributions in FY 2008. That year, Michigan distributed over \$1.4 billion in child support collections to custodial parents, which represents a \$40 million increase over the previous year.

Moreover, Michigan ranks third in the country in the number of child support cases in which courts ordered medical support for children. Not only are families benefitting from the courts' work involving the children of broken families, the state is benefitting, since it receives federal "incentive" funding pegged to support collections.

Our courts are using the therapeutic court model also to tackle the problem of parents who have fallen behind in paying child support. Three new child support courts, located in Genesee County, Kent County, and the three-county area of Antrim, Leelanau, and Grand Traverse, focus on barriers to parents' ability to pay child support. In these programs, the judge acts as a facilitator, making available job training, education, counseling and other resources to help overcome the factors that prevent a parent from paying support.

And we have in the works a "prevention child support court" in Genesee County which may be the first of its kind in the country. Funded by a federal grant, this program will help parents who are at high risk of failing to pay support with services that help them stay current.

In addition, we are working hard to uphold our part in the collaboration between the courts and the Department of Human Services in the area of child welfare. We work for the benefit of the approximately 16,500 children who are court wards in Michigan. Our common goal is not only to remove children from situations where they suffer abuse and neglect, but to prevent those situations from arising.

Consider the "Baby Court" program in Flint, started by the late Judge Robert Weiss. "Baby Court" targets very young at-risk parents, many of them teenagers with children ranging from infants to three-year-olds. These young parents are learning how to love and care for their children, something they did not experience themselves while

⁶ Source: Annual Reports of the Michigan Supreme Court, 2002-2009.

growing up. The court supervises their cases, organizing wrap-around services, such as training, therapy, and counseling with an Infant Mental Health Specialist, so that the parents can work toward reunification with their child.

“Baby Court” was the subject of an Emmy Award-winning documentary by television station WJRT in Flint. It showed how this program succeeded in breaking the cycle of abuse and neglect, helping children get off to a better start in life than their parents did. A similar “baby court” program is in place in Midland, and another is in the works for Wayne County.

With regard to children who are already subjects of abuse and neglect, our courts have been working as never before on getting these children settled into permanent homes. The Child Welfare Services division of the State Court Administrative Office sponsors a series of “Adoption and Permanency Forums.” They have been spearheaded by my colleague Justice Maura Corrigan. She has worked with great success to help strip away court-related barriers to permanent placements for children. Thanks in large part to these forums, adoptions rose by 14 percent from 2008 to 2009.

Juvenile crime is another challenging problem. Statistics and common sense both tell us that young people who commit crimes are likely to do the same as adults and to end up incarcerated. In Midland County, the juvenile court commissioned a survey of court wards to determine these young people’s strengths and needs. The survey measured positive indicators, such as honesty, responsibility, and the availability of good adult role models, as well as negative indicators – physical abuse, antisocial behavior, and drinking. Armed with those results as a baseline, the court implemented evidence-based programs whose effectiveness could be objectively quantified and evaluated.

Just three years later, a second similar survey showed that the risk-taking behavior of court wards had declined, while positive indicators were on the upswing. Not only has the delinquency rate in Midland County declined, but the juvenile court finished FY 2009 under budget by more than \$700,000. Judge Dorene Allen, chief judge of the Midland Probate Court and the presiding judge of the juvenile division, is here today in the South Gallery. Judge Allen, would you stand and be recognized. Judge Allen credits the local treatment programs which, she tells us, not only save the expense of out-of-county placements, but allow families to participate in their children’s rehabilitation.⁷

One of our long-term goals is to make legal proceedings less contentious and more accessible for families, particularly for those who cannot afford an attorney. For example, the Kent County family division court is piloting a program aimed at making divorces involving children less adversarial. The program’s object is to encourage divorcing parents to establish a working relationship to ensure the best possible care of their children. Soon the Supreme Court will consider a pilot program to create a “low-conflict docket” for divorces involving few assets, where the process should be faster and more affordable than in complex divorces.

⁷ Source: 2009 Annual Report of the Midland Probate Court.

Another long-term goal of our courts is to continue to work with DHS to satisfy federal requirements on which our federal child welfare funding depends. These include the Child and Family Services Review and the Title IV-E eligibility audit. Thanks to the local courts, the State Court Administrative Office, the Foster Care Review Board Program, and the DHS, that federal money continues to flow into Michigan.

Technology

Now a word about the role of modern technology in the court system. Courts are famously creatures of tradition. Witness the trappings of earlier times still with us today, such as the judge's black robe and the bailiff's cry of "Hear ye, hear ye." And yet, our courts are moving into the 21st century.

It has not been an easy process. As late as 2003, several courts in the Upper Peninsula still lacked computer systems; they did their work, and kept their records, largely on paper. It was not until last year that 21st century technology was available in all Upper Peninsula courts. So, we've come a long way in a few short years.

Here are some more of the high points. Starting in 2003, the Judicial Information Systems division of the State Court Administrative Office began work on a new project with assistance from the Michigan State Police, the Michigan Department of Information Technology, and others. The goal of the project was to make it possible for Michigan trial courts to electronically enter the judgment in criminal cases onto a state law enforcement database.

To appreciate just how important this is, consider what the reporting process used to be like. Once a week, the court would mail in its paperwork to the Secretary of State showing, for example, drunken-driving convictions. Staff there would enter them into a database. In the time lapse between the conviction and the data entry, often a person who had been convicted of drunk driving would be pulled over again for the same offense. But law enforcement would not know about the conviction because that information had not been entered into the system.

That was then. Today, thanks to the completed Judicial Network, over 95 percent of all felony and misdemeanor dispositions are reported electronically on the same day and often in real time. The data goes from the courts to the Michigan State Police and the Secretary of State. This network is even now pursuing a major upgrade by using federal stimulus funds to reach the unserved and the under-served areas of Michigan.

A related project is the Judicial Data Warehouse, which currently contains about 36 million case records and has been implemented in 226 courts in 81 counties. This warehouse allows the judiciary and law enforcement to obtain information about pending and closed cases throughout Michigan. So, between the Judicial Network and the Data Warehouse, we have both a better way for courts to submit information and an improved inquiry capability. Law enforcement can query the system for individuals' criminal history or driving records. This helps take bad drivers off the road. And, there are other

important applications, such as tracking the welfare of children in abuse and neglect cases.

Now, consider the role of technology in the management of lawsuits. A statewide case management system is being developed by Judicial Information Systems in collaboration with Unisys, a technology consulting firm. Case management is one of a trial court's most critical functions. It enables us to keep lawsuits on track for speedy completion. In the past, each court selected a system that it could afford and that best met its needs. But this resulted in a patchwork quilt of many systems deployed on different decentralized servers.

In 2008, JIS began working with Unisys on a single new case management system that can be made available to all state trial courts. At present, the project is being developed with assistance from our pilot counties of Berrien and Washtenaw. It is funded in part by user fees from courts that use JIS applications. Funding is also provided through the Judicial Technology Improvement Fund and contributions by the pilot counties. The new case management system is slated to be completed and available to courts statewide by 2013.

Other recent technological innovations include a video conferencing project undertaken in conjunction with the Department of Corrections, the State Police, and state mental health facilities. Through this project, prisoners and mental health patients can participate in court hearings without the risks and costs involved in transporting them to and from court. Michigan State Police technicians can also use video conferencing to participate in arraignments, pretrial conferences, and other court hearings. This 15-court project is funded in part by a grant from the State Police Office of Highway Safety.

A number of courts, including the 36th District Court in Detroit, also offer the option of paying traffic tickets online. This is proving to be a very popular service and is being expanded. E-filing – the online filing of court documents – is being offered on a limited basis in the Michigan Court of Appeals and in Oakland and Midland Circuit Courts.

One object of all this is to increase courts' efficiency and free up other resources. For example, when courts can handle traffic tickets online, fewer staff members are needed to process payments. Videoconferencing makes it possible for a Michigan State Police technician to testify at several hearings without spending hours of precious time on the road.

The impending access crisis

As you can see, the courts have developed many innovative, effective solutions in response to the challenges of the last decade. Some challenges remain. Among our most persistent and entrenched problems are the high cost of using the courts.

For too many low- and middle-income people, the legal system is too expensive. This has been the case for decades. But now, in a cruel but logical irony, the state's current struggling economy has rendered more people in serious need of legal services and simultaneously made those services harder to afford.

As of late 2009, 10 percent of all mortgages in Michigan were either seriously delinquent – defined as 90 days or more past due – or in the process of foreclosure.⁸ That's not counting those mortgages on which foreclosure had already been completed.

Bankruptcies are up, many involving people of moderate means, who never dreamed of filing for bankruptcy before. About one in 62 Michigan households were in bankruptcy courts during the first 11 months of 2009, a 26 percent increase over the same period in 2008.⁹

The faltering economy has greatly increased the number of Michigan residents eligible for civil legal services. About one in three persons in Michigan qualifies for free legal aid; 3.1 million or 31.8 percent of Michigan's 10 million residents have an annual income below 200 percent of the federal poverty limit, which is \$29,140 for a family of two.¹⁰

Many of these people have limited education and poor English proficiency, making it even more difficult for them to navigate the court system on their own. They face foreclosures, job losses, homelessness, utility shut-offs, and unpaid medical bills. Some need help obtaining public benefits, defending against insurance fraud allegations, or finding services for their families, such as treatment for addiction or mental health issues.

Traditionally, help for them has been available through legal aid agencies or from Michigan lawyers who do pro bono work, donating their services for free. These agencies and these attorneys do a valiant job, but today they are being inundated. Michigan lawyers are to be congratulated for donating over 30,000 hours of pro bono services each year, but the need for their services far outstrips their capacities. And the approximately 180 full-time legal aid attorneys are a tiny fraction of the more than 32,545 active attorneys in Michigan.¹¹

Legal aid agencies must turn away about half of all eligible prospective clients each year due to inadequate resources. The half who get assistance does not necessarily receive the level of assistance needed; many get only brief advice and counsel. National and state studies have estimated that no more than 20 percent of the civil legal needs of the poor are being met.¹²

⁸ Source: Michigan Department of Energy, Labor, and Economic Growth.

⁹ Source: National Bankruptcy Research Center.

¹⁰ Center for Law and Social Policy calculations of American Community Survey data, Table B17002, <http://www.census.gov/acs/> (<http://www.census.gov/acs/>).

¹¹ Source: State Bar of Michigan.

¹² "Documenting the Justice Gap in American: The Current Unmet Civil Legal Needs of Low-Income Americans," Legal Services Corporation, September 2009; State Bar of Michigan Justice Gap study, 2005.

IOLTA funding has long been a stable source for civil legal aid. These are the monies derived from the interest paid on short term or nominal funds that attorneys hold in trust accounts for their clients. But due to historically low interest rates, IOLTA interest plummeted nationally from \$371 million in 2007 to about \$93 million in 2009.¹³ In Michigan it shot down from \$5 million to \$1.5 million during the same period.¹⁴ This is terrible news for legal aid programs and for the people they serve.

So, unfortunately, for far too many, access to justice is a nice idea, not a reality. Not only are legal services often unaffordable for even middle-income people, but the legal process can be baffling and lengthy, intimidating to nonlawyers, discouraging them from pursuing their rights. It was not for nothing that Shakespeare's Hamlet complained in his famous soliloquy about "the law's delay."

Better resources for the self-represented

So what can we do to improve access to civil legal services? As a first step in addressing this and other access to justice issues, in August 2009, I created a new office within the Michigan Supreme Court, the Office of Access and Fairness, directed by Lorraine Weber, who is here today. Attorney Weber is the former executive director of the Detroit Metropolitan Bar Association and a long-recognized advocate for those who lack access to the justice system. This office is being funded with IOLTA money. One of its goals is to offer better resources for the self-represented.

This is because, today, Michigan courts report increasingly high numbers of litigants without lawyers. The most recent numbers show many courts with over 40 percent pro se litigants and several with as many as 70 percent.¹⁵ Clearly the trend is toward more people trying to handle their own legal matters. The experience of our state's self-help centers is that most of these self-represented litigants are low- to middle-income people, with the vast majority lacking higher education. Their legal issues range widely, including employment, housing, family, consumer, and immigration matters.

Given this enormous need, how do we make it possible for those without attorneys to represent themselves? One way involves using the Internet. A recent national study has found that, of persons with annual household incomes under \$30,000, 42 percent have high-speed Internet access at home. Seventy-four percent of American adults use the Internet.¹⁶ But when we examine online resources for pro se litigants in Michigan, we find that, although there are certainly many websites, not all of them are helpful. Some, like the State Court Administrative Office's self-help page,¹⁷ have good content, including a wide variety of court forms, and are well maintained. But others have

¹³ "Need is up, but funding plummets for legal aid; programs rely on interest rate," The Washington Post, December 7, 2009.

¹⁴Source: Michigan State Bar Foundation.

¹⁵ Source: State Bar of Michigan.

¹⁶ Pew Internet & American Life Project study: www.pewinternet.org/Reports/2010.

¹⁷ Michigan Courts Self-Help Center, <http://courts.michigan.gov/scao/selfhelp/selfhelphome.htm>.

outdated material, broken links, and limited or duplicative content.

We can do better. One website model is Illinois Legal Aid Online,¹⁸ which features state-of-the-art multimedia training, interactive legal documents and forms, resources for Spanish speakers, and online collaboration tools. The site has video tutorials and live chat help. The material on it is written for users who have poor reading and writing skills, and it has easy-to-understand self-help instructions for common legal problems. Popular topics include uncontested divorces, estate planning for small estates, child support, guardianships, unemployment benefits, powers of attorney, prevention of wage assignments, and letters to creditors. The site also refers people to other services, as appropriate.

I would like to see Michigan emulate this successful online program and implement a comprehensive self-help strategy for Michigan residents. For that reason, I am announcing today the creation of the Solutions on Self-Help Task Force. The co-chairs are Lorraine Weber and Linda Rexer. I ask them to stand and be recognized. The SOS Task Force will be charged with developing a website and a self-help curriculum for judicial and court staff training. It will have assistance and grant funding from the Michigan State Bar Foundation and others. Part of the charge of this task force will be to pull together stakeholders who already have a commitment to the improvement of pro se services. They include the State Bar of Michigan, the courts, legal aid agencies, and local self-help centers.

Mental health and crime prevention

Another pressing goal is preventing crime, which not only has significant social costs for victims and communities, but also presents serious fiscal issues for the state, including the high cost of incarceration.

I should note that, apropos of the criminal justice system, I am very aware, as is the rest of the Court, of the recent study¹⁹ assessing the effectiveness of Michigan's provision of defense services for indigent defendants. Indeed, it was the Legislature that initiated that study by passing a concurrent resolution in 2006, asking the State Bar of Michigan and the National Legal Aid and Defender Association to assess the state of trial-level public defense in Michigan. Senator Cropsey, you were instrumental in that effort. I am not going to comment further on that report, because earlier today, my fellow justices and I heard oral argument in the case of *Duncan v State of Michigan*, in which a group of prisoners are claiming that the state's criminal indigent defense system is unconstitutional.

Incarceration, of course, is one of the traditional functions of the criminal justice system. Michigan has a very high rate of incarceration. As of the close of 2007, one in 27 Michigan adults was under some form of correctional control – prison, jail, probation, or

¹⁸ Illinois Legal Aid Online, <http://www.illinoislegalaidonline.org/>.

¹⁹ "A Race to the Bottom: Speed and Savings Over Due Process: A Constitutional Crisis," National Legal Aid and Defender Association, June 2008.

parole.²⁰ And, as you well know, incarceration is expensive. In 2008, the state spent 22 percent of general fund expenditures on corrections, compared to a national average of 7 percent.²¹ The projected corrections budget for FY 2011 is approximately \$2 billion, with \$1.3 billion for prison operations. Our 45,200 Michigan prisoners will be housed and maintained at an average annual cost of approximately \$33,000 each.²²

How do we address this problem of crime, and its attendant costs, from the front end?

The truth is that a great amount of crime has its origins in mental illness. According to a Harvard Medical School study, nationally, over 340,000 people incarcerated are mentally ill. Two-thirds of prisoners with mental illness were off their medications at the time of their offenses, and 25 percent of prisoners have a history of chronic mental illness.²³ A University of Michigan study released just last week found that, of a sampling of Michigan inmates, 20 percent of males and 25 percent of females had severe psychiatric symptoms. But 65 percent of those inmates were not receiving mental health treatment.²⁴ 10 percent of Michigan's prisoners suffer from severe mental illness. A 2009 draft report by the state of Michigan's Corrections Mental Health Work Group observed that "Jails have become a primary institution for people with mental illness."²⁵

Unfortunately, our current model for dealing with the mentally ill tends toward imposing treatment only after the person's behavior has reached a crisis point, when the person becomes violent. Whether that person gets treatment depends on his or her conduct, not on his or her capacity to understand the need for treatment and make informed decisions about it. To the extent that the law focuses on conduct and not capacity, it becomes more difficult for courts to order involuntary mental health treatment in order to prevent violent conduct. People tend not to be committed who do not act out.

A different approach has been proposed by the chief judge of the Wayne County Probate Court, Milton Mack, Jr., who is with us today in the South Gallery. Judge Mack calls for pre-crime diversion, which involves realignment of our mental health code to conform with current mental health practices. He proposes that the Legislature consider changing the statutory criteria for treatment.

Under Judge Mack's plan, courts would consider a person's condition and also have the authority to appoint a guardian who can consent to involuntary mental health

²⁰ "One in 31: The Long Reach of American Corrections," The Pew Center on the States, March 2009.

²¹ National Institute of Corrections website.

²² Source: Michigan Department of Corrections.

²³ "The Health and Health Care of U.S. Prisoners, Results of a Nationwide Survey," American Journal of Public Health, 2009. Harvard Medical School.

²⁴ "Independent Study of Mental Health and Substance Abuse, Final Report," Brant E. Fries, Ph.D., University of Michigan, February 16, 2010.

²⁵ Draft report, Corrections Mental Health Work Group, state of Michigan, February 24, 2009.

treatment on the person's behalf. The object is to keep the person from getting into the criminal justice system in the first place. Funding for substance abuse counseling and mental health treatment are frequent targets for severe budget cuts, but an investment in those services can yield greater dividends down the road. Judge Mack's proposal is worthy of legislative consideration, and I very much hope that you will give it serious thought. I thank Judge Mack, who like so many Michigan judges is a passionate and informed advocate for improvements to our justice system, and I ask him to stand and be recognized for his efforts.

Conclusion

In summary, despite limited resources, Michigan courts have met the challenges of the past decade with creativity and hard work. As the needs of our Michigan community have changed, we have adapted. We have used technology to become more efficient. We have become smarter and more creative about using the resources we do have. We are finding new ways to help carry out the Constitution's promise of equality under the law. We will continue our efforts to make justice both more timely and more truly available to everyone.

When citizens turn to the courts, they do it in the belief that they can trust the fairness, efficiency, and competency of the courts. From the time of the founding of this country, it has been recognized that public confidence in the courts is essential to good governance. As Alexander Hamilton observed, "The ordinary administration of criminal and civil justice ... contributes, more than any other circumstance, to impressing upon the minds of the people, affection, esteem, and reverence toward the government."

In recent years, state and local funding for the courts has suffered. We have been doing more with less and less. Like a sound investment, our courts have yielded a good return and value for the money taxpayers and you, the Legislature, have put into them. And we can do more. We can reduce delays in litigation by using technology. We can offer resources for those who lack the funds to hire an attorney through self-help programs. We can attack the problems of crime, mental illness, and surging incarceration costs from the front end.

Today, I hope I have given you some ideas about how both our branches might better serve the people of Michigan. And I also ask you to continue to invest in us. With your help, we will address the challenges of the coming decade – including making access to justice a reality for all.

Thank you.