

JOURNAL OF THE SENATE

NINETY-NINTH SESSION

SECOND DAY

STATE OF SOUTH DAKOTA
Senate Chamber, Pierre
Wednesday, January 10, 2024

The Senate convened at 10:30 a.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Rev. Craig Wexler, followed by the Pledge of Allegiance led by Senate page Ayden Calvert.

Roll Call: All members present except Sen. Kolbeck (Jack) who was excused.

APPROVAL OF THE JOURNAL

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the 1st day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,
Lee A. Schoenbeck, Chair

Which motion prevailed.

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REPORTS OF JOINT-SELECT COMMITTEES

MR. PRESIDENT:

Your Joint-Select Committee appointed to make arrangements for a Memorial Service for deceased former members of the South Dakota House of Representatives and Senate respectfully reports that they recommend that the House of Representatives and Senate recess and convene in the House Chamber at 3:00 p.m. on January 18, 2024, and that a Joint Memorial Resolution be introduced in their memory by their colleagues in the House of Representatives and Senate.

A short program will follow the introduction of the Memorial Resolution. At the conclusion of the Memorial Service, the Joint Session will be dissolved.

The Memorial Resolution shall be printed in the House and Senate Journals.

Respectfully submitted,	Respectfully submitted,
Mike Stevens (Chair)	Lee Schoenbeck (Chair)
Jon Hansen	Jim Bolin
Brandei Schaeffbauer	Casey Crabtree
Lynn Schneider	Jean Hunhoff
Oren Lesmeister	David Johnson
House Committee	Red Dawn Foster
	Senate Committee

MESSAGES FROM THE HOUSE

MR. PRESIDENT:

I have the honor to inform your honorable body that the House has appointed Reps. Stevens (Chair), Hansen, Schneider, Schaeffbauer, and Lesmeister as a committee of five on the part of the House to meet with a committee of six on the part of the Senate for the purpose of arranging for a memorial recognition of deceased former members of the House and Senate.

Also, MR. PRESIDENT:

I have the honor to inform your honorable body that the House has approved the adoption of the permanent joint rules of the Ninety-eighth Legislative Session with recommended changes to those joint rules for the Ninety-ninth Legislative Session as adopted in March, 2023, as the temporary joint rules for the Ninety-ninth Legislative Session.

Respectfully,
Patricia Miller, Chief Clerk

FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS

SB 74: FOR AN ACT ENTITLED, An Act to establish reentry initiatives and programs in the Department of Corrections.

Introduced by: **Senator** Hoffman

1 **SB 77:** FOR AN ACT ENTITLED, An Act to revise and repeal provisions related to threatening
2 law enforcement officers and elected officials and to provide a penalty therefor.

3 Introduced by: **Senator** Reed

4 Were read the first time and referred to the Committee on Judiciary.

5 **SB 75:** FOR AN ACT ENTITLED, An Act to modify provisions pertaining to the designation of a
6 legal newspaper.

7 Introduced by: **Senator** Wheeler

8 Was read the first time and referred to the Committee on Local Government.

9 **SB 73:** FOR AN ACT ENTITLED, An Act to provide that the presiding officer of the Senate is
10 required to sign each enrolled bill.

11 Introduced by: **Senator** Schoenbeck

12 **SB 76:** FOR AN ACT ENTITLED, An Act to modify provisions pertaining to the appointment of
13 vacant positions on a board or commission.

14 Introduced by: **Senator** Wheeler

15 Were read the first time and referred to the Committee on State Affairs.

16 **SB 72:** FOR AN ACT ENTITLED, An Act to increase the annual limit of tax credits that an
17 insurance company may claim through the partners in education tax credit program.

18 Introduced by: **Senator** Stalzer

19 Was read the first time and referred to the Committee on Taxation.

20 Sen. Klumb moved that the Senate do now adjourn, which motion prevailed and at 10:50 a.m.
21 the Senate adjourned.

22 Peggy Laurenz, Secretary

23 **JOINT SESSION**

24 The Senate convened with the House of Representatives in the House Chamber for the purpose
25 of receiving a message from the Chief Justice of the Supreme Court, Steven R. Jensen. The President
26 of the Senate, Larry Rhoden, presided.

27 The following prayer was delivered by Rev. Craig Wexler, Pierre/Ft. Pierre Ministerial
28 Association, Pierre, South Dakota:

1 Almighty God...You took Moses atop Mt. Sinai and you gave him a gift. You gave him the gift of the
 2 Law—Your—Law—a gift in order to prevent "us" from harming others, and to keep "us" from harming
 3 ourselves. You saw it necessary to save the Israelites who were held captive and knew nothing but
 4 the cracks of whips and the shouts of "Faster...More...work harder!" Sun—up to Sun—down, day-
 5 in...and day-out. You heard their cries for freedom and peace—you honored their pleas—you upheld
 6 your covenant with Abraham and Your chosen people. But You also knew that they needed Laws
 7 and boundaries.

8 And at the same time, Lordwe were down at the base of the mountain, already impatient and
 9 doubting Your presence, and we began building our golden calves! Already we were breaking the
 10 first commandment—already we were letting the devil whisper in our ears—already we began
 11 worshipping false gods, creating false identities, producing selfish agendas---and why? Because You
 12 were giving us a gift, and we were failing to listen!

13 **And now Lord—You have given us people to help navigate the situations we find ourselves**
 14 **in today:**

15 We pray for our Law Enforcement—the ones who you call into service to protect & serve—the
 16 ones tasked to enforce the laws that we, in this room, create. We pray for their wisdom and
 17 discernment—we pray for their protection and an ever-growing need for their emotional
 18 intelligence while they see your people, often times at their worst.

19 I pray for the law makers—the legislative body before me today—that they might listen to each
 20 other, listen to their people (Not in order to please each one of them, assuming any of us could
 21 actually do such a thing), but listen in order to hear the concerns and pains that need to be
 22 compromised upon. I pray that this body can know the differences between Your Laws, O God,
 23 and the ones we feel need to be added. I pray that we understand that we ought not depart from
 24 Your created intentions for us as Your prized creatures—give this legislation Your guidance and
 25 clear command.

26 We pray for our Judges at all levels. May you protect them from political bias—may you protect
 27 them from the temptations of the evil one to be slighted and misled—may you help them interpret
 28 the law to the absolute best of their abilities so that justice might continue with integrity and
 29 honesty. Protect this system in all Your Will and capacity, O Lord.

30 We pray for our system of Corrections. Our staff in the prisons and jails are exhausted and spread
 31 thin. We pray for their courage and sustenance—we pray that they might have the wisdom and
 32 ability to extol dignity to those behind bars. May our corrections staff at all levels care for, protect,
 33 redirect, and provide the necessary boundaries for those who are in a complex and very
 34 emotionally charged community. Give them Your faculties to serve well.

35 And finally, most Gracious God-----As our judges are tasked to declare 'Innocent' or 'Guilty', let us
 36 all remember that Your most loving act of death and resurrection assures us new life when we turn
 37 and believe—when we hear Your Gospel message proclaimed. Give courage to all the 'preachers'
 38 in uniform or without, to help the broken know that You have come to give second chances and
 39 forgiven, New Life. Through Your mercy, In Your Holy Name, we pray, Amen.

40 The Secretary of the Senate, Peggy Laurenz, called the roll of the Senate and the following
 41 members were present:

42 Beal; Bolin; Bordeaux; Breitling; Crabtree; Davis; Deibert; Diedrich; Duhamel; Foster; Frye-
 43 Mueller; Hoffman; Hunhoff; Johnson; Klumb; Kolbeck (Steve); Larson; Maher; Mehlhaff; Nesiba;
 44 Novstrup; Otten (Herman); Pischke; Reed; Rohl; Schoenbeck; Schoenfish; Stalzer; Tobin; Wheeler;
 45 Wiik; Wink; Zikmund

46 The Chief Clerk of the House of Representatives, Patricia Miller, called the roll of the House and
 47 the following members were present:

48 Arlint; Auch; Aylward; Bahmuller; Blare; Callies; Cammack; Chaffee; Chase; DeGroot; Derby;
 49 Deutsch; Donnell; Drury; Duba; Duffy; Emery; Fitzgerald; Gross; Hansen; Healy; Heermann;

1 Jamison; Jensen (Kevin); Jensen (Phil); Karr; Kassin; Koth; Krohmer; Krull; Kull; Ladner; Lems;
2 Lesmeister; Massie; May; Mills; Moore; Mortenson; Mulally; Mulder; Nelson; Odenbach; Otten
3 (Ernie); Overweg; Perry; Peterson (Drew); Peterson (Sue); Pinnow; Randolph; Rehfeldt; Reimer;
4 Reisch; Sauder; Schaeffbauer; Schneider; Shorma; Sjaarda; Soye; St. John; Stevens; Teunissen;
5 Tordsen; Venhuizen; Wangsness; Weisgram; Wittman; Speaker Bartels.

6 Sen. Crabtree moved that a committee of ten on the part of the Senate and a committee of
7 nine on the part of the House be appointed to escort Chief Justice Steven R. Jensen to the rostrum.

8 Which motion prevailed and the President announced as such committee Sens. Schoenbeck,
9 Crabtree, Nesiba, Diedrich, Duhamel, Hoffman, Mehlhaff, Rohl, Stalzer, and Wheeler on the part of
10 the Senate and Reps. Stevens, Mortenson, Rehfeldt, Lesmeister, Healy, Chase, Jensen (Kevin), Karr,
11 and Mills on the part of the House.

12 The Lieutenant Governor, Larry Rhoden, introduced the Honorable Steven R. Jensen, to deliver
13 the State of the Judiciary Address.

14 The Sergeant at Arms announced the arrival of Chief Justice Steven R. Jensen who was escorted
15 to the rostrum.

16 **2024 STATE OF THE JUDICIARY**

17 **Introduction**

18 Governor Noem, Lieutenant Governor Rhoden, members of the Legislature, constitutional
19 officers, my fellow justices, judges, Unified Judicial System (UJS) employees, and all South
20 Dakotans, I am honored to join you here today to deliver my 2024 State of the Judiciary message.

21 Each one of us has a story. So does the court system in South Dakota—a history that explains
22 how we got where we are today. Granted the power and responsibility in 1889 to resolve disputes,
23 determine guilt and innocence, protect the rights of all, and interpret the law and Constitution,
24 something significant was “planted.” These core functions of the South Dakota court system have
25 provided stability, security, and protection for its citizens for nearly a century and a half. Warren
26 Buffett once said, “Someone’s sitting in the shade today because someone planted a tree a long
27 time ago.” Buffett’s statement is as true in leadership, life, and government as it is in the investment
28 world. As we look today at the current projects and initiatives of the judiciary that will continue to
29 provide shade, we must do so with an eye for the future as well as an appreciation for the foresight
30 of those who served before us.

31 It has been another busy year for the South Dakota court system. During the last fiscal year,
32 the courts heard thousands of disputed cases, held more than 2,600 jury and court trials, and
33 collected more than \$27 million in fines, victim restitution, and other court-related fees. South
34 Dakota judges traveled more than 166,000 miles to decide cases in every corner of our state. In
35 addition to the thousands of civil cases filed during the past fiscal year, more than 12,000 felony
36 criminal cases and 100,000 misdemeanor cases were filed in state courts in South Dakota.

37 The court system is better able to execute its core functions and resolve the volume of cases
38 that arise in the courts because of the electronic case filing and management system we have in
39 place today. South Dakota acted quickly and boldly, more than a decade ago, to move our court
40 system from paper to digital copy, thanks to the leadership of then Chief Justice David Gilbertson
41 and retired Justice Glen Severson, who spearheaded the implementation of these critical
42 technological innovations. I must recognize, too, former Chief Justice Robert Miller, who had the
43 foresight years ago to see the coming technological revolution. During his term, he set up a separate
44 IT department for the court system to manage its future technology needs. The court system’s
45 ability to innovate, even as we speak, can be directly attributed to Chief Justice Miller’s foresight.

1 Today's technological innovations also allow us to provide individuals with better access to the
2 courts. Many of these cases filed in South Dakota courts directly impact individuals and families,
3 such as divorce cases, custody and child support disputes; juvenile delinquency and abuse cases;
4 protection orders; and mental illness cases, as well as criminal cases.

5 Unfortunately, these cases affecting South Dakota families increasingly implicate, directly or
6 indirectly, many of the larger societal problems that exist today. Issues such as addiction, drug and
7 alcohol abuse, mental illness, domestic abuse, and adverse social and childhood experiences are
8 thrust upon the courts through the cases filed daily across the state. The courts provide a forum for
9 the fair resolution of these cases, and our process for consistently resolving them through the even-
10 handed application of the rule of law can never vary. But many times, the larger complexities that
11 arise in these cases are not addressed by simply deciding the case.

12 For some cases, the courts are uniquely positioned and empowered to intervene in these
13 issues, that impact families and communities. Judges routinely do more than just decide a child
14 custody arrangement following a divorce. They often include directives addressing drug and alcohol
15 abuse and mental health issues in their custody orders. We have also implemented mandatory
16 parental education for parents involved in custody disputes. Parenting coordinator programs
17 improve communication and reduce the disputes that often arise after a custody order is in place.
18 Additionally, we have developed more robust mediation opportunities to lower tensions and provide
19 greater parental involvement in the resolution of their cases. We continue to explore ways to address
20 the issues that inevitably develop as courts resolve the myriad of cases that come before them.

21 The societal problems are also laid bare in the criminal cases that come before the courts.
22 Through UJS probation services and problem-solving courts, the judiciary is often on the frontlines
23 of helping individuals address these all too familiar issues. South Dakota law requires UJS to provide
24 probation supervision to juveniles and adult felony offenders who are not remanded to the custody
25 or supervision of the Department of Corrections. The 120 UJS court services officers, or CSOs,
26 provide supervision and case monitoring services at an average daily cost of about \$5 per
27 probationer. We are all well aware that this is a significant savings as compared to the cost of
28 incarceration in the penitentiary system or local county jails. CSOs are dedicated to working with
29 probationers toward the goal of successful rehabilitation to reduce recidivism and keep our
30 communities safe. While drug and alcohol abuse and mental health are often addressed in the
31 context of standard probation, there are some probationers who need a higher level of supervision
32 and longer-term treatment through our state problem-solving courts.

33 I want to spend to some time talking about some of the steps we are taking to strengthen and
34 improve outcomes in these cases. I want to start by addressing indigent defense.

35 **Indigent Legal Defense**

36 When we refer to indigent defense, we are talking about the constitutional right of every person
37 charged with a crime, who is facing the possibility of incarceration and is unable to afford an
38 attorney, to be appointed counsel at the expense of the state. Our predecessors long ago recognized
39 the priority of indigent defense when the Dakota Territory Legislature in 1868 passed a law providing
40 that "[i]f it appears to the court before which such arraignment is had, that the defendant is unable
41 to procure counsel to conduct his defense, it shall be the duty of the court to assign to said defendant
42 any member of the Bar in said cause." The law went on to provide that the county where the charge
43 originated was responsible for payment of counsel. Since statehood, South Dakota leaders have
44 continued to uphold the importance of indigent defense through a county-funded system. The
45 county-run system worked well in South Dakota for the first century. More recently, however, the
46 unavailability of counsel in locations throughout the state, as well as a lack of uniformity in case
47 assignment, handling, billing, training, and other inefficiencies, have created a significant need for
48 change in our indigent defense system.

1 We began looking at the issue of indigent defense two years ago. Last session, the Legislature
2 passed HB 1064, creating a task force to study indigent legal defense in South Dakota and to
3 consider improvements to the current system. The task force consisted of 13 members that included
4 legislators, circuit judges, county commissioners, prosecutors, public defenders, and attorneys in
5 private practice. I want to thank the task force members for their time and expertise offered to this
6 project. Judge Mike Day from Belle Fourche and Dean Neil Fulton from the University of South
7 Dakota Knudson School of Law co-chaired the task force, and their leadership was invaluable.
8 Additionally, I want to thank Senator Jim Mehlhaff and Representative Will Mortenson who served
9 on the task force and offered their insights on legislation and fiscal considerations.

10 The task force began their work by gathering data and considering models from other states.
11 The task force also held 10 listening sessions across the state and conducted surveys of judges,
12 lawyers, county officials, and citizens related to indigent defense. Their work was focused primarily
13 on building an efficient and effective system in South Dakota and less on the source of funding.
14 Their work is the focus of my discussion today.

15 The report issued by the task force in October recommends the creation of a statewide indigent
16 defense commission and a state public defender office. The indigent defense commission will oversee
17 the strategic work of ensuring effective statewide criminal defense representation for those unable
18 to afford an attorney. The commission will also be responsible for future development of an
19 enhanced and coordinated indigent defense model across South Dakota. This new commission will
20 be independent from the three branches of government and consist of nine members appointed by
21 various appointing authorities, including the executive, legislative, and judicial branches of state
22 government.

23 The initial caseload of the state public defender office will include criminal appeals, juvenile
24 abuse and neglect cases, and post-conviction habeas appeals from counties statewide. The report
25 recommends expanding the work of the state public defender office to include felony trial level work
26 through a combination of staff attorneys and contract lawyers. The public defender office, as
27 overseen by the commission, will also be responsible for training, supporting, and mentoring court-
28 appointed counsel who are interested in, or currently providing, indigent legal defense services.

29 We will be offering legislation this session that is designed to implement the recommendations
30 of the task force. The projected cost for initial creation of the state public defender office is \$1.4
31 million. This includes seven FTEs to be used to hire an executive director/chief public defender, three
32 attorneys for criminal case direct appeal and habeas representation, one attorney for abuse and
33 neglect representation, and two FTEs for support staff, as well as operating expenses to staff the
34 new office.

35 Counties are currently funding nearly 100% of the cost of indigent defense in South Dakota.
36 Significantly, this initial expenditure by the state is estimated to reduce the financial burden on
37 counties by \$2.1 million and save approximately \$600,000 in overall indigent defense costs across
38 the state. As the state office develops further, it will be necessary to consider funding responsibilities
39 between the state and the counties to ensure an adequately-funded indigent defense system into
40 the future. This first step is a big one, but the next step in the process will bring about the most
41 broad-based improvements to a system that lacks much needed oversight. I would like to thank
42 Governor Noem for supporting this first step in the process and including these dollars in her budget.

43 As we move toward a statewide indigent defense system in the trial courts, the UJS began
44 working this past fall with a consultant to conduct a thorough review of one representative county
45 in each judicial circuit. They will assess existing statutes and rules governing indigent defense in
46 South Dakota, identify key cost drivers, study county data collection and analysis, and review
47 defense contracts from the seven representative counties. This work will be completed later this
48 year and will be an important guide in developing a well-organized and cost-effective system for
49 indigent defense at the trial court level.

1 So other than perhaps saving money, why does it matter whether we improve our indigent
2 defense system in South Dakota? Let me talk first about the practical reasons. Judges in South
3 Dakota continue to have difficulty finding attorneys able to provide indigent representation,
4 particularly in rural areas. Some counties struggle to pay indigent defense contracts and lack
5 experienced attorneys who can handle serious felony cases. There are six counties in South Dakota
6 that have no attorneys and 23 counties that have three or fewer lawyers. The lack of structure,
7 oversight, and inefficiencies in our current indigent defense system has created legal deserts across
8 the state. Minnehaha, Pennington, and Lawrence counties have public defender offices that may
9 serve as indigent defense models, but there is much work to do to create an indigent defense system
10 statewide. Prior to this year, South Dakota was one of only two states in the nation that relied solely
11 upon counties to provide indigent defense at all levels. This past fall, the other state, Pennsylvania,
12 authorized state funding and oversight for indigent defense for the first time.

13 While the practical need for change is evident, I cannot conclude my discussion of indigent
14 defense without talking about the most important reason we must provide for the adequate
15 representation of everyone regardless of their resources. Ensuring the right to counsel for every
16 person accused of a crime is fundamental to upholding the right of due process—that is the right to
17 be heard and present a defense to a charge by the government. Just as we have come to expect
18 that the government has experienced and effective counsel to present its case to the courts, the
19 Constitution provides the right of every accused to counsel in order to ensure a fair trial. Before
20 Chief Justice John Roberts joined the United States Supreme Court, he left the Department of Justice
21 to pursue a career in private practice. After entering private practice, he discussed how he came to
22 “fully [appreciate] the importance of the Supreme Court in our constitutional system. Here was the
23 United States, the most powerful entity in the world, aligned against my clients, and yet all I had to
24 do was convince the Court that I was right on the law, and the government was wrong, and all that
25 power and might would recede in deference to the rule of law.” This is just as true in every courtroom
26 in South Dakota.

27 The importance of our adversarial system of justice to ensure due process and fairly apply the
28 law in every case cannot be overstated. Without the benefit of counsel for the accused, the rights
29 that separate us from almost every other government in the world are meaningless. As Governor
30 Noem so aptly said in discussing indigent defense in her recent budget address, “A strong criminal
31 justice system supports our American way of life. It upholds the rights of our people.” If we fail in
32 providing indigent defense, we risk so much more than not having an attorney available in the
33 courtroom to represent a person accused of a crime.

34 **UJS Budget**

35 In addition to the indigent defense budget request, the UJS is also seeking funding in FY 2025
36 for an additional circuit court judge and a deputy clerk of court in Minnehaha and Lincoln counties,
37 the counties which comprise the Second Circuit.

38 Over the past several years, Lincoln and Minnehaha counties have experienced remarkable
39 population growth. This growth has significantly increased the workload for judges and clerks in the
40 Second Circuit. For example, over a 10-year period from FY 2013 to FY 2023, the number of felony
41 case filings nearly doubled from 2,267 to 4,441. The number of felony filings is expected to increase
42 an additional 25% by FY 2026. The Second Circuit has also seen increases in the number of civil
43 filings during this time. Despite the doubling of caseloads in the Second Circuit over the past 10
44 years, the number of circuit judges has only increased from 10 to 12 judges.

45 Second Circuit judges have also seen other demands on the amount of time they must spend
46 on cases. This is due to a rise in violent and other serious crimes, an increasing number of
47 participants in specialty courts, and increasing caseloads involving non-English speaking litigants
48 and unrepresented litigants.

1 Our request for an additional deputy court clerk in Minnehaha County is also to address current
2 and expected demands in the circuit. Along with serving a growing caseload, the time demands
3 upon deputy court clerks in handling cases involving unrepresented litigants continues to increase.
4 Court clerks are also on the frontline for scheduling and communicating with attorneys, law
5 enforcement, judges, and the public.

6 Our judicial resources in the Second Circuit have simply not kept up with the increasing
7 demands created by population growth and other changes in the circuit. These two additional FTEs
8 are necessary to ensure that the courts continue to perform their core functions for Sioux Falls and
9 the surrounding communities. I appreciate Governor Noem including these requests in her budget,
10 and I look forward to working with the Appropriations Committee on our budget priorities this
11 session.

12 **Barriers for Emerging Adults**

13 Last year, this Legislature passed HB 1063, which created an emerging adult task force to
14 begin examining barriers to services for adults age 18 to 25 involved in the justice system. The
15 purpose of the task force was to explore opportunities to improve services and reduce recidivism.
16 The task force brought together legislators, prosecutors, defense lawyers, judges, and service
17 providers who met several times during the year. In April, the task force sponsored a first-ever
18 summit in South Dakota, focused on young adults in the justice system. Attendees gave very
19 positive feedback, and there is a strong desire for similar future trainings. The task force concluded
20 the year by submitting a report of its efforts, making two big-picture recommendations: 1) enhance
21 supervision practices, and 2) establish policies for diversion programs tailored to individuals aged
22 18 to 25.

23 For non-violent, youthful offenders, our goal is to develop targeted policies and services that
24 will help them reach critical milestones, improving individual outcomes and public safety. This
25 includes offering diversion opportunities, individualized responsive case planning, and building
26 support networks. The task force also considered the need for additional services such as mentoring,
27 housing, education and employment assistance, and cognitive behavior treatment.

28 The First Circuit court is piloting an emerging adult probation caseload project in Mitchell, with
29 plans to expand to Yankton. Basic life skills classes are not typically offered to adults on standard
30 probation but will be through this pilot program. The First Circuit is also exploring providing emerging
31 adults with a life coach/mentor to provide a stable influence in their daily life.

32 One example of a successful diversion program is the Pennington County Diversion Program,
33 which has experienced positive outcomes over the last five years. Of the more than 1,000 young
34 adults the program has served, 51% have satisfied the current requirements for expungement,
35 meaning completion of their diversion agreement with no new charges for 18 months. Every
36 Pennington County case is reviewed and is eligible for diversion programming offered by the state's
37 attorney if the person pleads guilty to the charges and the victim consents.

38 The diversion program in Pennington County serves as a model for other counties, but many
39 counties lack the necessary funding and staff to implement such services. Currently, the UJS does
40 not have legal authority to provide pretrial supervision or diversion services for young adults before
41 they have been sentenced. There are research-based community supervision practices that can
42 support emerging adults' needs, ensure community safety, hold young people more accountable,
43 and reduce recidivism. Implementing effective supervision practices across probation, which can be
44 enforced with policies and standards, can impact more young people who are not eligible for
45 diversion programs. I believe there are some tremendous opportunities down the road to improve
46 our efforts at rehabilitating young adult offenders. We will continue to develop strategies to
47 accomplish these goals. In doing so, we contribute to a society that values the potential for growth
48 and redemption for individuals who truly wish to change.

Problem-Solving Courts

Another way in which the court system is addressing serious societal issues is through our problem-solving courts. For offenders struggling with substance use and mental health disorders, our state's problem-solving courts provide an intervention that can help lead people out of the criminal justice system and into lives of recovery and stability. We have some other great non-governmental programs in this state, such as Teen Challenge, but today I want to highlight the work of South Dakota's problem-solving courts.

Problem-solving courts include drug court, DUI court, veterans court, and mental health court. South Dakota's problem-solving courts began as a drug court pilot program in 2007 and expanded over the next 10 years thanks to the vision and leadership of former Chief Justice Gilbertson. Since inception, South Dakota's problem-solving courts have served a total of 2,489 people, with 1,120 people successfully completing the program. There are currently 17 problem-solving courts operating in South Dakota.

The target population of problem-solving courts are high-risk, high-need individuals facing the likelihood of prison because there are inadequate supervisory services in the community. The "high-risk" designation implies a greater likelihood of relapse into problematic behaviors or criminal activities. Meanwhile, "high-need" underscores the complex set of hurdles these individuals face, spanning from addiction and mental health issues to a lack of housing, employment, and social support. Problem-solving courts provide an opportunity for long-term treatment for those struggling with a substance abuse and mental and behavioral health issues. Without these specialty courts, most of these individuals would end up in the penitentiary at a much higher economic cost and with little chance of rehabilitation.

In problem-solving courts, treatment providers ensure that each person receives an individualized, evidence-based treatment plan, while probation officers ensure close community supervision. Working as a team, law enforcement, defense, prosecution, and the judge hold participants accountable and provide ongoing services and support. South Dakota problem-solving courts save lives, reunite families, make communities safer, and save money.

To give you a vivid picture of the good work of problem-solving courts, I want to tell the stories of a few of the graduates. The first story is about Kaitlin, who at age 20 was struggling with significant substance use, homelessness, and family issues when she pled guilty to felony possession of controlled substances. She was sentenced to drug court on July 16, 2014. Kaitlin had a long history of family, social, and emotional issues. She began smoking, drinking alcohol, and using marijuana at age 12. Kaitlin completed her education at an alternative school, but lacking structure and accountability, she soon spiraled downward. Opiate use led to methamphetamine use and stealing to support her drug use. She was in and out of jail and put on probation. When Kaitlin was sentenced to drug court, she faced the potential of several years in prison.

Despite her struggles, Kaitlin successfully completed drug court on March 17, 2016. She has frequently shared with others that the real test was not making it through drug court; it began the day she graduated. Today, Kaitlin is assistant general manager of hospitality at a large event center. She is married and has two children. She and her husband are first-time homeowners. Kaitlyn is a recovery support mentor and meets with new clients of drug court, talking to them about the program and telling them about her journey. She openly speaks about her addiction, was part of a documentary about drug use, and participates on a housing grant steering committee in her community.

Another drug court graduate is John, who was born with significant health issues, was abandoned by his mother, and suffered other severe traumas as a child. Things spiraled out of control, and at the age of 12 John was sent to a therapeutic working ranch. At 13, he began using marijuana and drinking until he blacked out. He had multiple run-ins with the law, but continued with drinking and drug use, including methamphetamine, which completely took over his life. He committed multiple felonies and was sentenced to prison in North Dakota for 10 years. When released, he moved to South Dakota where he continued to be arrested for drug and alcohol-related

1 offenses. He was sent to prison in South Dakota for five years. After serving his sentence, John
2 returned to substance abuse and was on a multi-day binge using meth when he was once again
3 pulled over by law enforcement. Facing yet another felony drug charge and more time in prison,
4 John was sentenced to drug court.

5 John began drug court on Oct. 13, 2020. While the program was not easy, he put his all into
6 it and did what was asked of him. He was honest with himself and was honest with his drug court
7 team. He asked for help when he needed it. John graduated from drug court on May 26, 2022, and
8 today has more than three years of sobriety. John has a full-time job, a home, and his family back
9 in his life. He started his own sobriety AA meeting that helps other drug court participants get
10 connected in the recovery community.

11 My last story is about Shane, a participant in one of our veterans courts. Shane served in the
12 U.S. Army from 1997 to 2005. Shane entered the Army during a volatile time when the United
13 States was deep in the Iraq War. He was deployed multiple times to Iraq and Kuwait, where he
14 earned numerous decorations, medals, and ribbons.

15 Following his service to our country, however, Shane turned to alcohol and eventually pled
16 guilty to two felony DUIs. He was facing 17 years in prison when he was accepted into veterans
17 court. Despite serious health issues, Shane excelled through veterans court, going above and
18 beyond to help other participants while also focusing on his own sobriety. Since graduating from the
19 program this past October, Shane continues to be actively involved in veterans court as a volunteer.
20 He is now nearing two years in recovery.

21 There are over a thousand stories of other individuals who have graduated from problem-
22 solving courts in South Dakota. Many have continued on the path of sobriety. Problem-solving courts
23 play a pivotal role in reshaping the narrative around the intersection of criminal justice and
24 treatment by providing intensive, long-term supervision and treatment. These courts have the
25 immediate impact of reducing the cost of incarceration and increasing the likelihood of rehabilitation,
26 but their broader impact lies in the profound transformation of individuals and the positive influence
27 on their families, their employers, their communities, and the burden on taxpayers. Recognizing the
28 importance of recovery in problem-solving courts is essential for fostering a justice system that
29 holds individuals accountable for their actions but also supports them on their journey toward lasting
30 change.

31 **Bar Admissions Study**

32 As I discussed last year, the Supreme Court appointed a steering committee to study the bar
33 admissions process in South Dakota after considering existing challenges and increasing interest
34 and discussion about bar admission. That group engaged in a collaborative process over the last
35 year with active participation from the judiciary, State Bar, Board of Bar Examiners, and the
36 University of South Dakota Knudson School of Law.

37 Last month, the steering committee issued its report and recommendations to the Supreme
38 Court. Those recommendations include the formation of a public interest pathway to bar admission
39 that would create an initial pilot program to allow for a cohort of students interested in public service
40 an opportunity for admission to the Bar without examination. This recommended public interest
41 pathway would include an experiential-based law school curriculum and a separate showing of
42 minimum professional competence as determined by the Board of Bar Examiners through
43 established criteria. Students in the program would be required to practice in a public service
44 position, or in an underserved rural area for two years. This pathway creates the potential to
45 incentivize new lawyers to begin practicing in public service employment and ensure professional
46 competence.

47 The Supreme Court will receive public comment on these recommendations before considering
48 potential rules changes later this year.

1 Courthouse and Judicial Security

2 I have talked the past couple of years about our efforts to enhance security at courthouses
3 across South Dakota. The grant funding appropriated by the Legislature in 2021 has been a crucial
4 part of this effort. This past year, more than \$1 million in courthouse security improvements were
5 approved for courthouses in Brookings, Hughes, Butte, Clay, Custer, and Roberts counties. The
6 improvements included security camera systems, panic alarms, security doors, and the construction
7 of security screening areas, secured entrances, and workspaces for judges, court staff, and jurors.
8 I would like to thank my colleagues, Justice Janine Kern and Justice Patty DeVaney, for their
9 continued leadership of the statewide security committee and grant review board.

10 We have also begun focusing on security risks to judicial staff outside the doors of the
11 courthouse. Judges play a pivotal role as impartial arbiters of justice. Their decisions shape the
12 course of law, our communities, and society as a whole, making their role indispensable to the
13 functioning of a fair and just system. However, the very nature of their duties often exposes them
14 to a higher risk of threats than the community at large.

15 This past October, Maryland State Circuit Court Judge Andrew F. Wilkinson was shot and killed
16 outside his home by a litigant whose child custody dispute the judge heard earlier in the day. In
17 2022, retired Wisconsin Circuit Court Judge John Roemer was killed in his home by a defendant he
18 had sentenced to prison. Within the last two months, a man was arrested in Nevada and charged
19 with solicitation to murder two state court judges. In the last several years, there have been near-
20 fatal attacks on judges in Texas and Ohio, along with more recent attacks on or threats against
21 state court judges in several other states. Much closer to home, in the past year 40 threats or
22 incidents were reported by our UJS judges and employees. In particular, credible threats were made
23 upon the lives of two South Dakota judges. In one of these incidents, the assailant was in possession
24 of a cache of weapons. In the other event, the assailant knew where the judge lived and places the
25 judge frequented.

26 In 2022, the South Dakota Legislature passed a measure that prohibits any personally-
27 identifiable information of a circuit court judge or Supreme Court justice filed with the South Dakota
28 Secretary of State's Office from being open to public inspection. Despite these efforts, judges'
29 addresses and personal information are still sometimes found on the Internet. UJS Court Security
30 Coordinator Scott Sheldon has been working with the South Dakota judiciary and staff on issues of
31 personal safety, including digital security and safeguarding their personal information on the
32 Internet. Such services are available for an annual fee. Other potential measures to improve security
33 include home security assessments, as well as home security and camera systems.

34 As a court system, we are developing plans to provide greater levels of security for our judiciary
35 and court staff at work and at home. We will keep the Legislature updated on these efforts, including
36 any needs for future funding for such efforts. Protecting our judges and court staff is not just about
37 safeguarding individuals; it's also about upholding the integrity of the legal system.

38 Conclusion

39 These past three years as Chief Justice have literally flown by. Together, we have
40 accomplished many good things, but our work is not done. I am grateful for my colleagues on the
41 Court—Justices Janine Kern, Mark Salter, Patty DeVaney, and Scott Myren. In my humble opinion,
42 we could not have a more hard-working, dedicated, and collegial group of people on the South
43 Dakota Supreme Court. We do not always agree, but our respect for each other runs deep. Every
44 member of the Court is devoted to ensuring justice, applying the rule of law, and leading a court
45 system that effectively serves the people of South Dakota. As we go about our work, we are indebted
46 to the 48 justices that came before us on the South Dakota Supreme Court, who applied and
47 developed the rules of law that we rely upon so heavily today. As Sir Isaac Newton said so well, "if
48 [we] have seen further than others, it is by standing on the shoulders of giants."

1 Many days, I have the privilege of driving into the parking lot of the State Capitol and seeing
2 the historic building that has stood proudly for its citizens for more than 100 years. It is a beautiful,
3 ornate building inside and out. Who could ever get tired of walking through the Rotunda to the
4 Governor's office, into the chambers of the Legislature, or inside the Supreme Court courtroom?

5 In the end, as magnificent as this Capitol and its rooms are, they are just symbols and
6 reminders of the work that our predecessors did to establish the ideals, freedoms, and rights that
7 we now enjoy. We can look back to see their accomplishments and their mistakes. But most
8 importantly, they provide a reminder that each of us as leaders of this great state will leave a legacy
9 for the future. As we approach this beautiful building each day, we must cultivate the plantings of
10 our predecessors and take heed of Warren Buffett's advice to plant the trees that will provide shade
11 for future generations.

12 Thank you.

13 Steven R. Jensen
14 Chief Justice

15 Sen. Crabtree moved that the Joint Session do now recess until 1:00 p.m.

16 Which motion prevailed, and at 11:50 a.m. the Joint Session recessed.

17 **RECESS**

18 The Joint Session reconvened at 1:00 p.m., the President presiding.

19 The Senate reconvened with the House of Representatives in the House Chamber for the
20 purpose of receiving a message on the State of the Tribes from the Honorable Cynthia J. Allen-
21 Weddell, Vice President, Flandreau Santee Sioux Tribe. The President of the Senate, Larry Rhoden,
22 presided.

23 Sen. Crabtree moved that a committee of nine on the part of the Senate and a committee of
24 eleven on the part of the House be appointed to escort Vice President Allen-Weddell to the rostrum.

25 Which motion prevailed and the President announced as such committee Sens. Schoenbeck,
26 Crabtree, Nesiba, Bordeaux, Foster, Maher, Pischke, Rohl, and Tobin on the part of the Senate and
27 Reps. Mortenson, Rehfeldt, Lesmeister, Healy, Donnell, Duba, Emery, Peterson (Sue), Pourier,
28 St. John, and Tordsen on the part of the House.

29 The Lieutenant Governor, Larry Rhoden, introduced the Honorable Cynthia J. Allen-Weddell,
30 who delivered the State of the Tribes Address.

31 **STATE OF THE TRIBES ADDRESS**

32 Chairmen and Councilmen of the Great Sioux Nation, Governor Noem, Lieutenant Governor
33 Rhoden, Mr. Speaker, members of the House and Senate, Chief Justice Jensen, Supreme Court
34 justices, constitutional officers, and fellow South Dakotans:

35 Anpetu Waste! My name is Cynthia Allen-Weddell, and I am the Vice President of the Flandreau
36 Santee Sioux Tribe. Although the Tribe's economic base is on its Reservation in Moody County,
37 South Dakota, it has looked a multiple international business opportunities. President Anthony

1 Reider intended to provide the 2024 “State of the Tribes Address” but was unable to attend due to
2 travel difficulties related to these economic opportunities for the Tribe.

3 Although this address is titled “The State of the Tribes,” I want to be clear that I am only
4 speaking about my Tribe. The Flandreau Santee Sioux Tribe is one of nine Tribes in South Dakota,
5 and is a member of the Oceti Sakowin which translates to “Seven Council Fires” the traditional body
6 of our Tribes. Each of the Tribes in our state are distinct SOVEREIGN governments, with our own
7 issues, customs, and attributes. I want to acknowledge the work of this summer of the State Tribal
8 Relations Committee who made an active effort to visit the Tribes, and to learn independently about
9 our concerns. We welcome more opportunities to collaborate with the committee and state, so
10 please do not hesitate to reach out!

11 The future of our Tribe depends on the Tribe’s ability to be self-sufficient, and to continue to
12 grow the Tribe’s economy through collaboration with tribal, local, state, and federal governments.
13 I have served as Vice President since 2020, but am no novice to government service as I have
14 worked for the Tribe for decades. As a lifelong resident of the Wakpa Ipsaksan Reservation, I have
15 witnessed the Tribe expand from a small tribal government with limited economic opportunity and
16 resources, to the strong economic engine that is the largest employer in Moody County. The
17 economic prosperity of the Tribe started with development of gaming on the Reservation, but has
18 branched into multiple forms of business activity.

19 Far before the establishment of the State of South Dakota in 1889, Tribes established trade
20 routes for the exchange of goods. Tribes from the East Coast traded with Tribes in the Great Plains,
21 and goods eventually made it to the west coast and Alaska. With the establishment of Reservations,
22 much of the trade between Tribes ceased, to nearly non-existent levels. It is time to reestablish
23 trade amongst Tribe, and to share expertise developed amongst the 574 federally recognized Tribes.

24 The Tribe has made efforts to develop trade amongst Tribe, including Tribes within the State,
25 and throughout the United States. As the audience is aware, the Tribe operates a robust cannabis
26 cultivation, manufacturing, and dispensing company on its Reservation called Native Nations
27 Cannabis. Through this company, the Tribe has assisted other Tribes in the development of their
28 cannabis industries, including Tribes and tribal partners. The Tribe is also working with the Tulalip
29 Tribe of Washington to exchange agricultural products through an intertribal trade agreement.

30 The main economic driver beyond gaming has been medical cannabis. The development of
31 Cannabis is an act of sovereignty, but based on necessity. Without the ability to fund tribal
32 programs, provide housing for tribal members, and to make sure people have food on the table, the
33 Tribe cannot be an independent, self-determined government. Cannabis has helped my Tribe fund
34 the gap between barebones federal programs and robust tribal programs, and will continue to
35 provide a solid economic base for the Tribe. Currently, Native Nations Cannabis has more than
36 20,000 square feet of cultivation space, a commercial kitchen, state-of-the-art extraction lab, and
37 dispensary. All facilities are currently operated under the authority of the Tribe’s Cannabis Control
38 Ordinance and its Cannabis Control Commission, and the Company currently employs over 70
39 individuals, most of whom are Native American. Native Nations Cannabis has helped tens of
40 thousands of patients care for their medical needs since it has opened.

41 There have been many opportunities in which the Tribe and the South Dakota Legislature have
42 worked well together. One of which was the development of skilled nursing home on the Tribe’s
43 Reservation, by and through, the passage of Senate Bill 160 in 2020. The bill authorized State of
44 South Dakota to reimburse the Tribe for Medicaid eligible patients. The Tribe upheld its promises,
45 and built a state-of-the-art facility with 42 beds, 14 of which are for memory care. The facility was
46 built during the pandemic, and was completed in October 2022, on time, and under budget. The
47 facility provides a comfortable place for Tribal Members on our Reservation, close to their families.
48 It also has created an opportunity for new jobs on the Reservation.

49 Another opportunity exists in this legislative session for the development of state statutes to
50 protect the welfare of Native American Children. On June 15, 2023, the Supreme Court of the United
51 States issued a decision in *Haaland v. Brackeen* that, among other findings, upheld the
52 constitutionality of the Indian Child Welfare Act of 1978. The Tribe, in addition to other Tribes in
53 South Dakota, supports efforts to have the legislature properly incorporate ICWA into statute.
54 Having statutory guidance will provide important stakeholders the appropriate mandates to simplify

1 the processes for carrying out ICWA. Many states have already begun this process, and the Tribe
2 looks forward to working with the Legislature on a bill or bills that work for South Dakota, the Tribes,
3 and tribal children. Today, there are children with substantial differences in backgrounds and
4 cultures in South Dakota, and the Tribe thinks that all children should be placed in safe, culturally
5 appropriate homes.

6 The Tribe is working on substantial energy projects off its Reservation, mainly in the State of
7 West Virginia. With its development partners, the Tribe intends to utilize state-issued permits to
8 convert natural gas and coal mine methane into ammonia. This ammonia can then be cracked to
9 generate energy, and contribute to the hydrogen economy, or be further processed into urea for
10 crop fertilizer. The Tribe has met with Governor Jim Justice of West Virginia on the project, and
11 Senator Joe Manchin, both of whom have voiced their support. It is a relatively large project, and
12 will cost more than 3 Billion Dollars to develop. The Tribe intends to use funding in the private
13 sector, as well as federal sources within the Department of Energy, Treasury, and other sources to
14 develop the project.

15 The Tribe's economic development has also prompted it to purchase and develop real estate
16 opportunities off the Reservation. It further will be finishing up the construction of a housing factory
17 on the North East side of Sioux Falls that can complete a house, start to finish, in weeks versus
18 months from traditional construction. It plans on building around 800 homes on a 320 acre site of
19 land it purchased for sale to the public, thereby contributing to the bustling Sioux Falls economy.

20 Agriculture in general continues to be a large part of the Tribe's economy, and the Tribe echoes
21 Governor Noem's statements regarding the right to farm and ranch without governmental
22 interference. Although the Tribe supports best farming practices, and sustaining natural resources
23 for wildlife, preservation of the Tribe's land is a priority of its leadership. Preservation does not end
24 with the land itself, but goes further in regards to protecting the water and air quality that we all
25 depend on. As sovereigns, Tribes have extensive land and water rights, and through cooperation
26 and consultation, the State and Tribes can develop lasting solutions that benefit everyone.

27 One impediment to growth across South Dakota continues to be the increase in crime, and
28 alcohol and drug addiction. Currently, there is not a county, city, state or tribal detention facility in
29 Moody County. The Moody County Sheriff's Office, Flandreau Police Department, and Flandreau
30 Santee Sioux Tribe Police Department are forced to arrest individuals, and drive them to neighboring
31 counties or further, to detain arrestees. This creates a public safety concern, and has resulted in
32 the County, City, and Tribe utilizing joint powers agreements to meet law enforcement needs.

33 The Tribe has a multijurisdictional solution to this however, and has been working to develop
34 a Justice Facility in Moody County on its Reservation. Although the plans have not been finalized
35 yet, the Tribe is anticipating a facility that is between 85,000 and 122,000 square feet, with an
36 anticipated price tag of between \$38 Million and \$65 Million dollars. The Tribe anticipates this to
37 meet its needs, and the needs of the county, city, and potentially federal government for detention.
38 There is no doubt that many of the individuals who break the law are repeat offenders, which has
39 prompted the Tribe to develop a restorative justice program with recovery in mind. If you have \$10
40 or \$20 Million remaining after appropriations, please let us know, we are happy to help you spend
41 it!

42 Housing Development further plays a massive role in development of new programs, projects,
43 and services that the Tribe offers. Over the past few years, the Tribe has added nearly 50 new
44 housing opportunities for its community. The Tribe has welcomed individuals from around the United
45 States to live in, and around the Reservation Community, to work for the Tribe, and has benefit
46 from their experience and diversity. Recruiting talented individuals into our area is another task we
47 believe we can partner with the State on, and looking forward to seeing new state developments.

48 As a Mother and Grandmother, I am proud of the community that the Tribe has developed,
49 and the opportunities that have been presented to our Tribal youth. I feel personally proud to have
50 been able to contribute to the Tribes progress, and look forward to seeing us continue to succeed.
51 As a Dakota leader, we make decisions that look seven generations forward based on the wisdom
52 gained from seven generation in the past. We are all elected to serve the Oyate. We owe each and
53 everyone one of our constituents the duty to represent their interests, regardless of our own, and
54 to make principled decisions.

1 The Tribe urges the State to collaborate with it, and the other Tribes in South Dakota, to create
2 a better South Dakota. I would again like to thank the State for the opportunity to provide the State
3 of the Tribes Address, and I wish you all a very productive legislative session!

4 Pilamaye.

5 Sen. Crabtree moved that the Joint Session do now dissolve.

6 Which motion prevailed.