

THE STATE OF THE DELAWARE JUDICIARY
FIRST SESSION OF THE 142nd GENERAL ASSEMBLY

MAY 13, 2003

"Toward A Cost-Effective Justice System"

TO: Members of the General Assembly, Governor Minner and the Citizens of the State of Delaware

The Theme of Cost-Effectiveness

It is a high honor for me to appear in this Chamber to speak briefly with the members of the General Assembly about the State of the Judiciary. I appreciate very much the fact that the Lt. Governor is here to represent the Governor who had an unavoidable conflict. I also appreciate the attendance of a number of guests, many of whom I have asked especially to attend.

I start with the same recognition of the State's projected \$300 million deficit that was the beginning point of our presentations to the Joint Finance Committee and the Joint Bond Bill Committee. Today, I would like to emphasize cost-effectiveness as it applies to the entire system of the administration of justice.

As I believe everyone in this Chamber knows, the centerpiece of my presentation to you is the absolute necessity that we provide this year the first part of funds necessary

to establish the new comprehensive criminal and civil case management system with a financial component. This system has been in development for more than two years with the assistance and participation of the Department of Technology and Information, the Office of the Controller General, the Budget Office and other justice agencies. We have called this system COTS which stands for commercial-off-the-shelf software. But we also like to think of it as "Courts Organized to Serve."

But it is not only a court project. It is a widely-supported, broad-based system that cuts across the entire gamut of the administration of justice. First, in the criminal justice system it will tie the police, courts and corrections together into one efficient technological continuum. But its value to the State of Delaware goes well beyond these public safety necessities of the criminal justice system. COTS will produce the businesslike efficiencies we need going forward in our civil justice system to keep our courts at the top of the nationally-respected corporate and commercial venues. Simply put, we need COTS to maintain the competitive edge of the State's valuable business franchise.

My message today goes beyond COTS as its centerpiece. The broader view, as I see it, is an overall focus on cost-effectiveness. COTS will be cost-effective and your investment now in the \$2.57 million initial bond bill request will reap future dividends of efficiencies that will flow through State operations. The other aspects of cost-effectiveness that I will touch on today include aggressive steps, with your support, in the Judicial Branch to cut costs, generate revenue and improve operations through businesslike practices. Beyond those business steps of the Judicial Branch, I ask you to continue your responsible focus on the costs of the criminal justice system. I want to join with you in an effort to build on your innovative steps to examine systematic, permanent methods to reduce the demands and stress on all the components of that system. Analyzing from top to bottom these costs of, and demands on, the administration of justice will help all three branches of government to come up with cost-effective solutions.

Budget Restraints

I have read a number of State of the Judiciary Messages delivered by my fellow chief justices to joint sessions of their legislatures this year. There are two themes that are relevant in Delaware, but in different ways.

First, nearly every state is in a severe financial crisis—some more severe than others—and all these crises are impacting state judiciaries—some more severely than others. Second, I see in some states the evidence of an adversarial relationship between the judicial branch on the one hand and the legislative and executive branches on the other hand. No doubt you are all familiar with these sad tales of other states' financial crises and the adversarial relationships among the three branches. There are so many examples of those problems in other states that there is no point in singling out some of the illustrations.

Delaware is like many other states that are experiencing a serious financial shortfall. But Delaware is unlike other states in the way the judicial branch is treated by the other two branches. The citizens of Delaware have benefitted from a harmonious—as distinct from a confrontational—relationship among the three branches when it comes to respect for the role of the judiciary in its handling of citizen rights and business law. We have every reason to believe that this harmony will continue.

The tradition in Delaware of the three branches working together is vital not only because of public safety and fairness concerns in civil and criminal cases in all our courts but also because expert service to our corporate citizens is vital to the economic survival of our State.

I want to thank the General Assembly and the Governor for what you have done and are doing to help the Judicial Branch do its work for the citizens of Delaware. And I will mention only a few of the many ways you help us.

Our courthouses in all counties are now, or are in the process of, becoming state-of-the-art facilities to litigate cases. The largest, of course, is the new New Castle County Courthouse. This massive building is still undergoing its "shake down cruise" into reality and it has some bugs yet to be worked out. But what we have been able to do in this magnificent Courthouse is to move cases along faster and in a more user-friendly way for our citizens.

The new New Castle County Courthouse was designed specifically to facilitate public access. Following on that theme, I directed court personnel to implement a program that our court service provided the public with "No wrong answers and no

wrong doors!" From all accounts, that plan has been quite successful and has aided in creating a more favorable and less intimidating perception of the courts. The citizens of New Castle County are very fortunate for the courage and foresight not only of the General Assembly and Governor, but also that of citizen groups. Ned Carpenter and Chuck Welch who are here today spearheaded the committee that got the job done. I am honored that they are here so that I can thank them again and recognize them publicly.

In Kent County, since the acquisition of the Courthouse from the County and the remodeling financed by the General Assembly, we have developed a state-of-the-art, high-tech and user-friendly courtroom and other improved facilities. Further acquisition and renovation will round out these much needed court improvements in Kent County.

In Sussex County, we now have a truly magnificent courthouse. This new courthouse is long overdue and has ended years of "exile" endured by the Chancellor, Justice Holland and others. But it was worth the wait, because we now have in Sussex County a courthouse worthy of Delaware's preeminence and service to the citizens of Sussex County and our corporate citizens.

I want to thank you not only for providing us with these fine work places, but also for the fact that you have continually given us many of the tools we needed to do our work. With those tools we have been able to serve the citizens not only with quality judging but also with increasingly innovative methods. To complement our state-of-the-art courthouses, we have been able to employ—with your help—state-of-the-art judicial and administrative techniques. Let me name just a few:

- Drug courts
- Reentry courts
- Truancy Courts
- Collections of fines, costs and restitution
- New Ethics Rules for Lawyers
- New Evidence Rules for Court Proceedings
- New Court Rules
- Several Grants sought.

We do, however, need to ask for a modest amount of additional tools this year. I also want to thank the Governor and the Senate for acting diligently to fill judicial vacancies with outstanding people. We need additional judgeships, but we are not asking for them in this economic crisis. But we are confident that the Governor and the Senate will fill existing vacancies promptly so that we can continue to do our work in the Delaware tradition of excellence.

The State of the Judiciary

The good news is that the State of the Delaware Judiciary is excellent. The bad news is that we are at a crossroad this year where we desperately need your help. Proxy statements of corporations reincorporating in Delaware tell their stockholders in plain English that we have a stable business environment, made so not only because of the outstanding judicial service and expertise of the Court of Chancery and Supreme Court, but also because we have a responsible and forward-looking Legislative Branch and an Executive Branch that provides the best and most modern legislation and service to Delaware's corporations and other business entities that now number over half a million.

As you know from a recent Harris poll commissioned by the United States Chamber of Commerce, the Delaware Courts were ranked number one for the second year in a row in several business litigation categories. This poll of over 800 corporate general counsels of very large companies rated Delaware Courts the best in the nation for perceived fairness or reasonableness in litigation. These categories, for which the Superior Court deserves great credit, focused on predictability, timeliness and impartiality, and included ten major categories of major litigation:

- Judges' Competence
- Judges' Impartiality
- Punitive Damages
- Scientific and Technical Evidence
- Timeliness of Summary Judgment/Dismissal
- Discovery
- Overall Treatment of Tort and Contract Litigation
- Treatment of Class Actions

Juries' Predictability
Juries' Fairness.

The President and CEO of the United States Chamber of Commerce in commenting on these findings said:

The Harris Interactive survey of corporate counsels is an important barometer that helps companies gauge a state's legal environment. Delaware's first place rating is just one more reason why business from around the world will want to incorporate or locate operations there.

So Delaware is unique among the states in many ways. Let me name just three ways. First, the effective functioning of our courts is a hallmark of our national preeminence and is essential to our economy. Second, the harmonious interdependence of the three branches of government that exists in Delaware is not replicated in any other state. Third, the excellence and national prominence of the Delaware Judiciary is not confined to the Court of Chancery and the Superior Court. It extends to the Supreme Court, the Family Court, the Court of Common Pleas and the Justice of the Peace Courts.

All of this provides us with a competitive edge which we can never take for granted. Today there are threats lapping at our shores from the federal government and from other states that seek to "out-Delaware Delaware" in the attraction of business entities.

A Plea for Help

We must not rest on our laurels. Together, we have work to do! We need to continue to improve every day. We need to continue our strong work ethic and prompt processing of cases. We need to apply innovations and state-of-the-art techniques and technology to our work to maintain this high quality. And for this we need your help.

The Judicial Branch and every Executive Department have been operating, and will continue to operate, under severe budget restraints. I cannot speak for any of the departments in the Executive Branch, but I can tell you that in the Judicial Branch our effectiveness has been, and will continue to be, significantly impaired by lack of

resources. The statistics are staggering in the growth of the cases while some of our resources are shrinking and others that need to grow are static.

In the Judicial Branch this phenomenon of increased caseload growth and shrinking or static resources impacts or threatens to impact adversely three important areas: our ability to process criminal cases swiftly and safely; the right of civil litigants to get their claims heard; and our competitive edge in continuing to serve promptly our corporate-business law litigants.

Our operating budget requests and our bond bill requests are well below what is needed to deal with these adverse impacts. The only reason we have held back in asking you to fund all the resources (including new judgeships) that we need is because of the State's economic shortfall. There would be little point in my identifying these needed resources. But I mention this fact only to put in perspective that what we are requesting is so clearly essential that we must request it now.

I am most proud of the Judicial Branch from top to bottom for its management of our court business during our judicial hiring freeze and reduced resources resulting in severe fiscal restraint that is required by these lean budget times. I am very proud of the judges, commissioners, court staff and other employees who work long hours while we make our way through our obligations with limited resources. Our staff willingly works hard and effectively while deserving pay increases and rational job reclassifications that are long overdue and need to be addressed.

I am proud of the record of our trial courts on several fronts: improved timeliness of processing cases—particularly criminal cases and the low reversal rate in the Supreme Court of both criminal convictions and civil cases from all our courts.

But we need more than to continue to work our people to the limits. We need to do more than stitch our systems together with chewing gum and bailing wire. I respectfully ask that you look at what we have done in the way of self help, consider our top priority, which is COTS, and consider together with the Judicial Branch a program of cost-effectiveness in judicial administration.

COTS

Managing the caseload of the courts is a complex process that increasingly requires the use of state-of-the-art technology to ensure effective administration, efficient case processing, public safety, and quality service. Unfortunately, the courts are currently forced to rely on a mix of automated systems with limited inter-court integration, developed and supported by several different entities. These systems are built on outdated infrastructure; they provide little or no public or Internet access; they limit the courts' ability to manage their caseloads; they are supplemented extensively with labor-intensive manual processes; and there are significant gaps in the systems that potentially threaten public safety.

Protecting the public is of paramount importance at a time when so much concern exists about ensuring the safety of the lives of Americans. A case management system that fully integrates and expedites swift disposition of criminal cases in coordination with all of the criminal justice agencies and with other State entities that interact with the courts will go a long way toward closing gaps that may threaten public safety.

In addition to public safety concerns, Delaware's reputation as the premier state in which to incorporate and to do business results, to a great extent, from the outstanding reputation of the Delaware Courts. If criminal and civil cases can both be expedited, we can keep our position as the number one court system in the nation.

In the eleven years that I have had the high honor to serve the State as Chief Justice, we have seen many important initiatives of the Judiciary. They are, of course, too numerous to list here. None of these initiatives—including the new New Castle County Courthouse for which we are continually grateful to the other two branches—is more important to this State than the immediate need to begin funding this long-term case management system.

COTS is an initiative of the Delaware Judiciary, developed through a painstaking and effective process, aimed at acquiring a new case management system for all Courts. COTS is designed to ensure that the judiciary has the tools it needs to manage its ever-growing and increasingly complex caseload, serve the needs of the public, and protect the citizens of Delaware. COTS combines a criminal and civil case management system with a financial component that has been in development for more than two years. In that process we have had the assistance and participation of the Department of

Technology and Information (DTI), the Office of the Controller General, the Budget Office, and other justice agencies. This is a long-term project that is, we believe, appropriately considered as a capital project. This project continues to be the highest priority of the Judiciary.

A vendor has been selected, and we would like to execute a contract with the vendor to begin implementation. Funding of \$2.57 million from the Bond Bill will enable COTS to proceed for two important reasons. First, we can execute the entire contract for \$9,716,705, contingent on future funding and complete performance at each stage before the next step is taken. Second, it will result in the release of money by the Budget Office from previous fiscal years in a total amount of \$854,400. These funds have been set aside for the "proof of concept" stage. Third, we will have effective protections built into the project that will give us an "exit strategy" if there are future problems.

Modernization of the Judicial Branch has been a work in progress for many years. The items I mention today are just the latest phase of these ongoing efforts. COTS is an example. I refer not only to the extensive study process that led us to where we are today—on the threshold of a real breakthrough—but also our previous "trial and error" steps as we were finding ourselves. That process taught us that, while our judicial officers are a talented and independent group, we must be uniform in our processes in order to be cost-effective. When funded, I am persuaded that COTS will work because we will make it work. One way we will make it work is that all judicial officers and staff will work as a team and the processes we will use will be uniform. That implementation step will happen because it will be part of a further administrative directive, under the constitutional authority of the Chief Justice in Article IV, Section 13, requiring uniform processes.

COTS fits nicely with a number of current events. Two examples come to mind.

First, Senate Bill 50, the probation reform legislation that has recently been signed into law, contains many elements that COTS will have to address but no present system can do. Judge Richard Gebelein informed the Bond Bill Committee that the implementation of Senate Bill 50 makes it "even more important that the courts acquire a modern data system." He added that the consolidating judge must "have access immediately to all sentences on the individual;" [and that we must] be able to

communicate to each affected court, Department of Correction, both institutional and probation, Court Collections and Court Clerks."

Second, Senate Bill 58, the pending legislation that provides for efficient adjudication of technology disputes and mediation proceedings for business disputes, will be facilitated by COTS. Once in place this initiative will continue to enhance the national perception—and it is a correct perception—that the Court of Chancery and our other courts are at the cutting edge in being able to process technology and business disputes efficiently. Senate Bill 58 is a prime example of three-branch cooperation. Governor Minner and I both addressed the concept in our recent Messages to the General Assembly. Justice Carolyn Berger of the Supreme Court worked with the Chancellor and Governor Minner's team to bring Senate Bill 58 to near reality.

Cost Effectiveness

The beauty of the three-branch harmony and interdependence that is the hallmark of Delaware's government culture is that we are able to work together, particularly in these lean economic times, toward the goal of cost-effectiveness. To me, that term means not only that we must limit spending to vital needs and judiciously raise revenues, but also that our overall fiscal policies in the justice system are realistic and that they are considered value-enhancing opportunities.

As I have tried to emphasize, COTS is a value-enhancing opportunity that must not be lost by failure to secure the minimum funds needed now. Beyond the COTS opportunity, we need to take stock of what we—that is, all three branches—have done and what steps can be taken in the immediate future to enhance cost-effectiveness.

First, let me list some of the things we have done and are doing in the Judicial Branch to work with you toward this goal.

1. We have cooperated with the Governor and the Budget Director to trim our Fiscal Year 2003 positions to the bare bones minimum to help meet the immediate shortfall.

2. We have similarly cut back our Fiscal Year 2004 operating budget requests to rock bottom, asking minimal additional funding only where we have absolutely no

choice—such as the \$727,300 we need to address the ever-growing, constitutionally mandated costs of indigent defense services.

3. We have judiciously raised court fees and costs wherever we have the power to do so, so that we will have raised for the General Fund over \$2 million of new money on an annual basis going forward into Fiscal Year 2004. This amount alone would be nearly enough to fund the first phase of COTS.

4. The joint, innovative initiatives of all three branches, such as Senate Bill 58, establishing a technology court and a business mediation center in the Court of Chancery in major cases will raise additional revenue in many ways, not the least of which will be high filing fees that are fully justified and will augment the \$2 million already implemented.

5. We are in the process of implementing the recommendations of the Court Resources Task Force headed by Jim Gilliam, Jr. Among other cost-effective initiatives of that Task Force are:

- Streamlining and centralizing in the Administrative Office of the Courts (AOC) certain administrative functions scattered among the courts in the Judicial Branch.
- Designating a Supreme Court Justice to act as liaison to the AOC to bring the benefits and efficiencies of a proven business model to judicial branch operations. Under Administrative Directive No. 144, Justice Randy Holland has been fulfilling those vital responsibilities.
- Designating each presiding judge of the trial courts as a point person to see that other recommendations of the Gilliam Task Force are carried out. For example, in March I made specific assignments, all of which are to be worked in tandem with Justice Holland and State Court Administrator Dennis Jones to each presiding judge to implement the recommendations of the Task Force in the areas of grant procurement, electronic filing, human

resources, central collections and partnering with educational institutions to provide pro bono interns.

There is much more to the report of the Court Resources Task Force that will continue to be a substantially implemented blueprint, much like the Courts 2000 model that the General Assembly and the Governor ten years ago joined with me to create and implement as a lasting contribution to court reform. I will not take your time today to go into further detail about the Court Resources Task Force except to note that I have taken the very first step to implement the recommendation of the Task Force that an Equal Justice Fund be established within the Delaware Community Foundation (DCF). That first step is my own personal contribution to DCF to help start that fund on its way to supplement public funds in providing pro bono services to indigents, education outreach, access to interpreters and the like. It is the responsibility of the State government to provide funds for the core functions of the judiciary, including funds for those purposes. Nevertheless, it is ethical and good policy to provide for these kinds of enhancements through a properly structured fund such as this one.

I would also like to implement the Task Force's recommendation that a pro bono advisory committee of private sector experts be appointed to succeed this Court Resources Task Force as there is also no ethical prohibition on the creation of an entity to assist the Judiciary in addressing administrative and business concerns.

Cost effectiveness in the administration of justice requires more than internal modernization of the judicial branch. It requires that all the pieces of the justice system operate at peak efficiency. It is an important tenet of the separation of powers that the judicial branch avoids interference with, or usurpation of the powers of, the other two branches, save only judicial review of the constitutionality of legislative enactments. That exception was established—interestingly enough—exactly 200 years ago by Chief Justice John Marshall and the United States Supreme Court in the well known case of *Marbury v. Madison*.

We start with the reality that many pieces of legislation in the criminal justice area have some impact—a cost impact—on the judicial branch. For example, the death penalty itself has a cost—a very large cost—simply in financing the elaborate apparatus that must be employed to bring a capital case to trial and on appeal. Society must take the best steps available to try to be certain that reversible error is not committed in the

course of the trial and that the proceedings, including the appeals, are fair, swift and certain. My point does not question the wisdom or the legislative decision to have a death penalty. That is none of my business. That is your business. My only point is that we must continue to go forward with our eyes wide open to the indisputable fact that capital cases are expensive. And now we have lots of capital cases to process. My colleague, Justice Joseph Walsh, said in his Law Day Speech on May 1st:

When I joined the Superior Court in 1972 the Court had on its docket 5 to 6 murder cases each year in New Castle County and not more than a total of 10 statewide. That pattern continued for most of the seventies. Today the Superior Court in New Castle County alone has 25 capital murder cases on its docket. One of these cases requires weeks of jury selection, trial and penalty determination. The number of judges has increased from 11 to 19—not quite double—while the number of serious felony prosecutions has increased five fold.

The criminal justice apparatus must staff those cases with prosecutors, defense lawyers (which often means Public Defenders or contract attorneys for indigents), judges, judicial clerks, bailiffs, capitol police, court clerks, court reports and other staff, sometimes including interpreters. Then we have the inevitable costs of appeals. Those costs are the price we must pay. This is just a fact of life.

Let me pause and pay tribute here to Supreme Court Justice Joseph T. Walsh who just retired from the Bench two weeks ago after thirty-plus years of service on all three Constitutional Courts. I am very happy that he is here today with his wife, Maddie. There have been deservedly superlative words "spread on the record" about Justice Walsh in virtually every corner of our society. He asked me on more than one occasion to tone down my tendency to be effusive when I describe his public service. I want now, on behalf of the Judicial Branch, publicly to thank him again for that exemplary service. Although he will continue to assist us, he will be greatly missed as an active Justice of our Court.

Among his many contributions is his work on enhancing our efforts to achieve speedy trials. He chaired two committees that we established by Administrative Directive to work on solutions to this problem. The current speedy trial committee, known as the Delivery of Criminal Justice Policy Committee, made great contributions.

But its work must continue and will continue under the leadership of Supreme Court Justice Myron T. Steele, who has also served as the Supreme Court Liaison Justice to SENTAC, to the Superior Court and Court of Common Pleas, and to our efforts to staff and fund indigent services primarily in the criminal justice arena.

That brings me to another group of large costs to the State in the criminal justice system. First is the cost of incarceration—building prisons and housing prisoners. Commissioner Stan Taylor, in his report to the Joint Finance Committee this year, noted that the Department of Correction admits and releases over 20,000 offenders each year and experiences a net growth each year of 225 to 250 incarcerated offenders. Each offender costs the taxpayers over \$24,000 per year to house. Commissioner Taylor noted that if this growth rate continues, his Department will have to start planning a 1000-bed facility next year at a construction cost of approximately \$85 million and with annual operating costs between \$20 to \$35 million added annually to the base operating budget.

In noting that Delaware currently ranks among the top ten states in both the rate of incarceration and the rate of probation, he concluded:

I would respectfully submit to you that this may be a pivotal time to review the sentencing policies and practices of the state in order to mitigate the costs associated with the currently anticipated growth in the incarcerated offender population.

We all know that there are many components of the prison population. There are violent and repeat offenders who deserve to be incarcerated for substantial periods of time to protect society. But recent and ongoing studies by SENTAC headed by Justice Gebelein and the Judiciary's Delivery of Criminal Justice Policy (Speedy Trial) Committee, headed by Justice Walsh, have carefully studied the composition of the prison population and have focused on the large number of probation violators and detainees awaiting trial.

Moreover, there are nonviolent offenders serving mandatory minimum sentences in our prisons. I applaud the General Assembly, particularly the Joint Finance Committee, as well as the Department of Correction, the Speedy Trial Committee of

the Judiciary and SENTAC for stepping up to the plate and bringing focus and some action to the problem.

Now we have Senate Bill 50 that has passed both Houses and was signed by Governor Minner on May 1, 2003. We also have several bills pending in the General Assembly relating to mandatory minimums. Senate Bill 50, which makes four major changes in how probations are handled, is aimed at substantial reform of the probation system so that incarceration for violation of probation will be more limited and rational, is being studied for its implementation and evaluation.

Meanwhile SENTAC and others are studying and negotiating the wisdom and impact of various pending bills relating to mandatory minimum sentences. These bills include House Bill 35 and House Bill 52, and possible compromises and permutations of those provisions. Whether or not some form of mandatory minimum reform will happen is speculation at this point, but I think that these steps are very positive. One thing is clear to me, particularly in these days of fiscal crisis. And that is that the State of Delaware needs some cost-benefit analysis of certain aspects of our criminal justice system.

Even this week we have seen some national concerns about the problems created by federal legislation that imposes many inflexible sentencing terms under the United States Sentencing Guidelines. The sentence part of the legislation was tacked on to the new Amber Alert law. There is a cost to this kind of inflexibility because we often see, in many areas, that "one size fits all" legislation may not work well and may give rise to unintended consequences.

I would not propose a study for the sake of a study. Nor would I want a study to delay reforms that might happen in this session of the General Assembly. But I cannot quantify the current costs, and I cannot evaluate potential savings from Senate Bill 50 or any of the mandatory minimum reforms that are on the table. Nor do I intend to express an opinion on how these competing proposals on mandatory minimum sentencing reform should be resolved. I do know however, that this concern is not confined to Delaware. According to recent news reports at least eight states have revised their mandatory minimum sentence structure to save substantial costs.

Moreover, last year the American Bar Association House of Delegates adopted a "Blueprint for Cost-Effective Pretrial, Detention, Sentencing and Corrections Systems." This resolution (107) is a comprehensive one, supported by many people nationally and in Delaware. It calls for a number of steps, so for your later study I have attached to the text a copy of the written version of this message. This proposal has promise, and I have some reason to believe that we can obtain some grant funding for at least part of this analysis. Here are the sections of the Blueprint Analysis that I think are particularly promising, and I would urge the General Assembly to support such a study by resolution or legislation.

BLUEPRINT FOR COST-EFFECTIVE PRETRIAL DETENTION,
SENTENCING, AND CORRECTIONS SYSTEMS
(August 2002)

Fiscal Accountability

1. Each state and the federal government should require the preparation of correctional/fiscal impact statements and their consideration by legislators and the governor or President before legislation is enacted that would increase the number of persons subject to a particular criminal sanction, or increase the potential sentence length for any criminal offense.

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Sentencing and Community Corrections

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4. Community corrections systems should be structured to avoid unnecessary supervision and incarceration, in part through the expanded use of means-based fines.

5. Each state and the federal government should review their sentencing laws, and sentencing or parole guidelines, to accomplish the following objectives: (a) to provide that a community-based sanction is the presumptively appropriate penalty for persons who do not present a substantial danger to the community; and (b) to ensure that the populations subject to the jurisdiction's prison, jail, or community-sanctioning systems do not exceed each system's rated capacity.

6. Each state and the federal government should review the length of sentences prescribed by law, and sentencing and parole guidelines, to ensure that they accurately reflect current funding priorities, as well as research findings that question the utility of long sentences, whether incarcerative or community-based, for certain kinds of crimes.

7. Each state and the federal government should repeal mandatory sentencing laws that unduly limit a judge's discretion to individualize sentences, so that the sentence in each case fairly reflects the gravity of the offense and the degree of culpability of the offender.

8. Each state and federal government should review and revise sentencing laws and court procedures to provide for appropriate community-based responses to drug offenses, including treatment, in lieu of incarceration.

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Sentence Modifications

10. Each state and the federal government should structure its sentencing system to permit a graduated response, when appropriate, to violations of the conditions of parole or other community release. The sentencing system should provide that a community-based sanction is the presumptively appropriate penalty for persons who do not present a substantial danger to the community.

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Reentry and the Reduction of Recidivism

15. Local governments, working in partnership with the state government, should adopt, expand, and refine pretrial services programs to reduce unnecessary detention, to save jail space for persons who need to be incarcerated.

Correctional Operations and Facilities

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17. Local, state, and federal governments should utilize information, management, and evaluation systems that regularly identify and rectify inefficiencies in judicial case management systems and correctional processes that unduly prolong incarceration in correctional facilities, that result in the inappropriate designation of offenders to high-security institutions, or otherwise increase costs.

Given Commissioner Taylor's gloomy prediction that if we stay on our current course, we will need an additional 1,000 prison bed facility, many in Delaware, including our Superior Court Judge Richard Gebelein, point out that:

Now is the time to abolish "mandatory minimum" sentences. For one thing, they are a throwback to pre "truth in sentencing" times when the various statutes were enacted to require a specific sentence and to require

it be served. Now all offenders serve 80-90% of any level V sentence. Second, there is no evidence that in the drug area they have had any deterrent effect. Third, when first enacted in the title 16 drug offenses, the initial request was for 18 months, not 3 years (i.e. by the police). Fourth, they provide for no reentry planning or flowdown. Continued study of the entire sentencing structure must continue. As Sentac has begun to study this complex system it has become clear that policy decisions in one area of the system impact greatly on all other elements of the system.

Conclusion

We have two kinds of demands on our system. One is a healthy demand and one is a toxic demand. The healthy demand include business and civil litigation that service our injured citizens, families in need and our business enterprises. The toxic demand is the demand placed on our criminal justice system. Crime is toxic. We must bring accused criminals to justice for a fair and swift trial and we must incarcerate violent and repeat offenders. It is the criminal justice system that places incredible stress on our resources and the people who work in the system. While we have made substantial progress toward reducing backlogs and getting criminal cases to trial faster, the need for staff help is painfully obvious. That need for additional staff help includes judges, court staff, prosecutors, the Public Defender, contract attorneys, interpreters, other indigent services and other forensic services.

We cannot expect our judges, our underpaid employees and the pro bono volunteers from the Bar to continue this pace and expect speedier trials and time to process more civil cases with the same speed and quality. At the same time we cannot ask you for everything we need to serve our citizens. That would be unrealistic. We have to ask you for the minimum \$727,300 in constitutionally mandated indigent services, and we desperately need now the minimal \$2.57 million funding we have asked the Bond Bill Committee to provide for COTS. We do need these funds this year, and in this we cannot afford to fail.

We need to find ways to reduce the toxic aspects of the demand. First we need the cost-benefit study of mandatory minimums, probation and the like. Second, we need to study the costs of indigent services and the availability of support from the Bar

and the private sector. Third, we need to see if it is feasible to apply some of our civil alternative dispute resolution methods, such as mediation, to the criminal sector. Finally, a top-to-bottom analysis along the lines of the ABA "Blueprint," should be considered and perhaps undertaken, completed and implemented in a timely manner is definitely a promising initiative.

It is a high honor to serve as Chief Justice in this great State of my birth. My wife, Suzy (who is here today) and I look back on these challenging eleven years of public service and we look forward to another year to work with you in accomplishing these goals.

Thank you very much for the privilege of presenting this Message to you today.