

JUDICIARY COMMITTEE
February 3, 1977

The regular meeting of the House Judiciary Committee was called to order by Vice-chairman Teague at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana, on Thursday. All members were present with the exception of the following representatives, Dussault, Holmes, Day and Chairman Scully, who was carrying a bill in another committee and came in later.

Scheduled for hearing were House Bills 382, 532, 559, 567, 589, and 590.

HOUSE BILL #590:

REPRESENTATIVE WILLIAMS, DISTRICT #70:

This bill will provide for damages in a civil action on a bad check and provide jurisdiction of such actions in justices, small claims and municipal courts. The damages increase as the price goes up. The purpose and intent is to add punitive damages. The judges are reluctant to apply the penalty at this time because of the severity of the present law.

Representative Williams read a letter from Russ Livergood, from the Montana Retail Association, in support of the bill. (attached)

TOM DOWLING:

I think it gives a hollow remedy. It might be a way to try to stop it but I don't think it does.

There were no questions, and the hearing closed on House Bill 590.

THE HEARING OPENED ON HOUSE BILL #589:

REPRESENTATIVE WILLIAMS, DISTRICT #70:

This bill would give concurrent jurisdiction with the youth court over all traffic and alcoholic beverage violations if a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care. They are now under the jurisdiction of the youth court and the district court, and this would give a handle on the problem. He gave several examples of cases where it would have helped solve a problem.

REPRESENTATIVE HOLMES:

Why couldn't the youth court take care of this now?

REPRESENTATIVE WILLIAMS:

If it can be handled immediately and it will take less time, then the local level might be better. The youth court would take time to handle and this would be faster, in the city court.

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ELIZABETH CLARK, PROBATION OFFICER, BOZEMAN:

The youth courts handle it as readily as the city court.

REPRESENTATIVE WILLIAMS:

Does this take jurisdiction away from the youth court? In answer to this question, Mr. Williams stated that it is concurrent, and that they still have jurisdiction.

The comment was made that the bill did not change the present law, it only added drinking to it.

The comment provoked some general discussion about drinking, the present law and the proposed change which this bill would bring about.

The hearing closed on House Bill #589.

THE HEARING OPENED ON HOUSE BILL #382:

REPRESENTATIVE BURNETT, DISTRICT #71:

This bill is to require the county attorney to give advice. This is to clarify and explain the duties of the county attorney. It would provide legal assistance to a political subdivision by the county attorney without fee, and it would include boards and authorities established by the county.

TOM DOWLING, COUNTY ATTORNEYS ASSOCIATION:

It is true that we don't respond to a private citizen, we aren't supposed to. He made this comment in answer to a question from the committee concerning the fact that county attorneys do not seem to be available for a private citizen to get advice.

REPRESENTATIVE BURNETT:

I do think that this bill does spell out the duties. It does not inconvenience the county attorney to give us an opinion.

After general discussion the hearing closed on House Bill 382.

THE HEARING OPENED ON HOUSE BILL #532:

REPRESENTATIVE DUSSAULT, DISTRICT #95:

This bill would provide for state funding for district courts and clerks of district courts, for salaries, court reporters, juvenile probation officers, and also provide budgeting control in the supreme court. It is my thinking that the law must be administered uniformly statewide. There is a gross inequity in property tax burdens for each county, for example, in Pondera county it is \$103,000 and in Big Horn the cost on one murder was \$93,000.

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The cost of court personnel is extremely high. The budget for district court would be handled by the supreme court. \$420,000, state funding would place this burden on the state, and would give some property tax relief. She gave out a copy of a handout of district court costs and also a proposed amendment to the bill.

LEE HYMAN:

We support this bill. These cases would be tried on behalf of the state and not county government. It is an impossible situation, and this bill would solve the problem. It would get the burden off the real property.

TOM DOWLING, COUNTY ATTORNEYS ASSOCIATION:

This bill would erase the burden from the counties.

DOROTHY ECK, LOCAL GOVERNMENT ADVISORY COUNCIL:

One of the most important considerations was the state assumption of the district courts. Primarily, the reason was that the local county government has no responsibility.

VIRGINIA GRIFFING, BOARD OF CRIME CONTROL:

We have done a number of studies. Every one of these studies points out at least one thing in common, and that is that the state courts are underfunded. We need a coherent kind of uniform policy.

TOM HONZEL, COUNTY ATTORNEYS ASSOCIATION:

We support this bill.

REPRESENTATIVE SOUTH, DISTRICT #51:

While on the State Commission on Local Government in the areas of district courts it appeared that this was a state function and therefore the state should pick up the tab. This bill will have a good sized fiscal impact on the state. The state should make a commitment. However, I don't think we can afford the fiscal impact all at once. I would hope that you would not let the fiscal impact keep you from considering this bill. We can work out the funding later.

DAN MIZNER, MLC&A:

The cities and towns are backing this jointly with the counties. We think it is something the state ought to do. We support the bill.

ELIZABETH CLARK, YOUTH PROBATION OFFICERS:

We support the bill.

GREG MORGAN, STATE BAR OF MONTANA:

The state bar supports the bill.

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OPPONENT, ROBERT LOHN, GOVERNORS OFFICE:

There is great merit, however I cannot endorse the expenditure. The power to budget is the power to set priorities. You have to make hard choices. You sometimes have to weigh whether you should give more money to Boulder or put it into water conservation or some other place. Frankly, we have to live with it after you folks go home. I think it prohibits us from making the fine-line choices we must to give you a balanced budget.

OPPONENT, FLORENCE MCGIVONEY, CLERK OF DISTRICT COURT:

Why can't the state pick up the tab on criminal trials and let the county take care of the civil trials. I think it would help both sides. Another item I want to mention, why not increase the steno fees to \$10.00 from \$3.00. Also, we would like to have the legislature set our salaries.

PAT MCKITTRICK:

The judges are in support of this bill. The cost is laid out in the handout. The judicial branch is separate. There are ways to amend this bill so that a cost phase-in can occur. I would hope that what Representative South said is taken seriously by this committee. It is our duty and responsibility to go step by step through this bill and see if we want to endorse the concept. The dollar amount is the responsibility of the legislature, 10 million.

MR. MIZNER explained the way the county is funded.

REPRESENTATIVE KEYSER:

What assurance do we have that the counties are going to drop this 10 million and take it off the tax at the local level.

DEAN ZINNECKER:

They do not raise the taxes unless they have to to pay for the mandated services. It should reduce the permissive mill levy.

REPRESENTATIVE HAND:

Will this include raising the judges salary.

MR. ZINNECKER:

The answer is no. It would save roughly 5 mills per county.

REPRESENTATIVE DAY:

What is the average mill levy in the state.

MR. ZINNECKER:

Roughly between 48 and 50 mills for county.

REPRESENTATIVE HAND:

How would we fund this if we don't have the money.

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REPRESENTATIVE DUSSAULT:

We wouldn't have to fund the governors rebate program. We could ask the appropriations committee to work out a phase-in kind of program. We can pass upon the bill without endorsing the immediate cost and let the appropriations committee work out the costs.

REPRESENTATIVE ROTH:

Would this remove the jurisdiction from the county to the state?

REPRESENTATIVE SCULLY:

They already operate as a state court and not a county court. It has always been a state activity but funded by the county but at a great discrepancy.

REPRESENTATIVE LORY:

How about a state-wide 5 mill levy.

REPRESENTATIVE DUSSAULT:

Yes, or either fund part of it and have a 2 or 3 mill levy.

A general discussion followed about mill levys and property taxes and how it might be possible to fund it on a state-wide level.

The hearing closed on House Bill #532.

HOUSE BILL #567:

REPRESENTATIVE HUENNEKENS, DISTRICT #68:

This will be an amendment to the constitution, to remove supreme court jurisdiction over admittance to the bar. It would take that function from the supreme court and place it in the legislature. I believe it is a conservative bill. The Montana bar has been traditionally an extremely tough hurdle. If they can pass the state bar exam they should be allowed to do so, it should not have to depend on whether they went to school in Montana. We all need a mechanism to go back to school once in a while. I have had people tell me they would like to go back but can't afford to go full-time so they could take correspondence courses, similar to the LaSalle Course. The supreme court was asked by resolution to review their position but have not done so.

GREG MORGAN, STATE BAR OF MONTANA:

I do oppose this bill. In talking about the problems with the bar exam, only two states do not require their members to pass the bar exam, Georgia and California, but they do require a formal education or graduation from a law school. One of the reasons has been to upgrade the profession. My feeling is that a formal education is part of becoming a lawyer.

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REPRESENTATIVE HUENNEKENS:

In closing, I did save a little ammunition. My father happens to be an attorney, in Wisconsin. My dad passed the bar. What this bill would allow to happen is it would allow the the person being admitted to have to take the bar exam even if from Montana. I have a bit of a question on the matter of ethics. I don't think this is taught in law school. I think maybe the brotherhood in the law in the state of Montana is too tight.

Discussion about who can and cannot take the bar exam, after a question was asked about this by REPRESENTATIVE KENNERLY.

REPRESENTATIVE RAMIREZ commented that upon coming into the state, you must have graduated from an accredited law school and be a resident for 6 months. He also mentioned that several states have reciprocity arrangements with Montana and that these persons do not have to take the bar exam.

REPRESENTATIVE COURTNEY asked how long the present system has been in.

REPRESENTATIVE HUENNEKENS:

The supreme court acted in 1971 and then there was a time lag, to January 1, 1972.

REPRESENTATIVE COURTNEY:

Are all of the members of the state bar graduates?

MR. MORGAN:

I am not sure. It hasn't been a requirement in the past. It was done to upgrade the profession.

REPRESENTATIVE HUENNEKENS went on to discuss why the requirement was instigated.

REPRESENTATIVE COURTNEY asked about accreditation, and a general discussion followed.

The hearing closed on House Bill #567.

THE HEARING OPENED ON HOUSE BILL #559.

REPRESENTATIVE TEAGUE, DISTRICT #69:

This bill is introduced to amend a drastic problem in our laws. The person at 18 years of age is not best able to fully assume adult rights. We are talking about a referendum, and if it goes to the voters it will become automatic legislation. We are not talking about the person who is 18 years old today, we are talking about the 18 year old who will become 18 in 1979. I am convinced in my mind that as a whole we are doing our 18 year olds an

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injustice. Primarily, the states that do allow 18 year olds to participate in adult rights are southern states and some of these states are getting a little teeter tottery.

OPPONENT, SENATOR BLAYLOCK, DISTRICT #35:

Representative Teague is part of my senate district, but I am opposed to this bill. I would like to point out a few things about 18 year olds, whether they can be adults. He went on to talk about famous teenagers, such as Alexander the Great, at 19, and Elizabeth at 19, taking over the reins of their country. I don't think 18 year olds are any more irresponsible than other age groups, but I do wish that more 18 year olds would register to vote than do. I would like to take some of the blame and I am not sure how good a job we are doing in our schools to teach democracy.

We never let them make a mistake, we should let them go ahead and get their fingers burned and they wouldn't do it again. I think that through all 3 years of high school we should be letting them make decisions.

OPPONENT, MAE NAN ELLINGSON, MONTANA STUDENT LOBBY:

We strongly oppose this bill. I guess the foremost and most fundamental flaw in this bill is that 18 year olds are not able to assume adulthood. Rights are completely different from privileges. I submit to you, that basically what this bill does, is take away some important rights. I submit that you are taking away those rights. It seems very short-sighted. I think this does stem from the drinking problem. I urge you do not pass House Bill 559. She continued at some length.

STEPHANIE CANNON, MONTANA YOUTH LOBBY:

Drinking is not our major priority. The constitutional convention voted 76 to 11 to establish the age of majority at 18. The Montana Youth Lobby is very opposed. It has not been established that 18 year olds are irresponsible. It is my feeling that arbitrarily taking away a right from any group of people sets a dangerous precedent. (copy)

BRETT SHAEFER, STUDENT LOBBY AND CIVIL LIBERTIES:

He gave examples of people who were 17 and responsible and also of lack of parental consent. I urge you "do not pass".

REPRESENTATIVE TEAGUE:

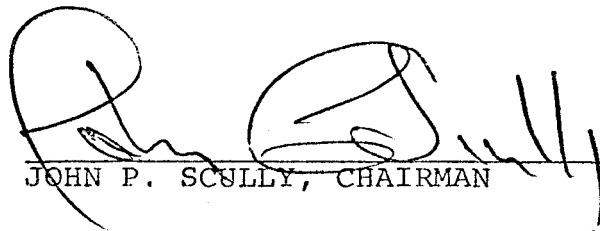
What are rights? At age 21 I had housing, I had a car. This bill is to sweep this thing across the board. I have taught 18 year olds for 13 years and I don't think they are adult enough to handle some areas of responsibility. He gave examples of being able to borrow. You can be adult the rest of your life, what's the hurry.

The hearing closed on House Bill 559 after some general discussion about privileges versus rights. Representative Teague showed a copy of research done by Dave Cogley explaining how an amendment to the constitution would work. (attached)

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REPRESENTATIVE LORY moved to table House Bill 117, (concerning an amendment to the constitution to add a section authorizing a legislative interim policy committee). The motion carried with the vote unanimous.

The meeting adjourned at 10:20 a.m.

A large, stylized handwritten signature in dark ink, appearing to read "John P. Scully".

JOHN P. SCULLY, CHAIRMAN

A handwritten signature in dark ink, appearing to read "Mary Ellen Connelly".

Mary Ellen Connelly, Secretary

PROPOSED AMENDMENTS TO HOUSE BILL NO. 589

REPRESENTATIVE WILLIAMS

February 2, 1977

1. Amend page 1, section 1, subsection (2), line 23.

Following: "eeneurrent"

Strike: "exclusive"

Insert: "concurrent"

2. Amend page 2, section 1, subsection (3), lines 10 through 13.

Following: line 9

Strike: lines 10 through 13 in their entirety

Amend title line 5

strike: "exclusive"

Insert: "concurrent"

JMW:1kl

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Montana Legislative Council

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DIRECTOR, LEGAL SERVICES;
CODE COMMISSIONER

ROBERT PERSON
DIRECTOR, RESEARCH

January 19, 1977

TO: Representative Wes Teague

FROM: Dave Cogley, Staff Attorney

RE: Raising age of majority to 19

This is a bill to submit to the electors of Montana the constitutional amendment necessary to raise the age of majority to 19. Although two sections of the constitution are amended, there is but one purpose, and hence both sections can be included in the one bill. The bill carries an effective date of January 1, 1979, should the amendment be ratified by the electors in the 1978 general election.

There are many sections of statutory law which would have to be changed if the amendment were ratified. A computer search of the codes for the word "eighteen" and the number "18" reveals 914 references. Not all refer to 18 year old persons, of course, but a substantial number do. A bill at this time to change those references to 19, where necessary, would be unconstitutional. One approach would be to submit these sections of law to the electors in the form of a referendum, as was done with the 19 year old drinking bill. However, because there are so many sections involved, the best and probably only feasible approach is to wait until the 1979 legislative session, amending the laws at that time if the constitutional amendment carries. If it doesn't, then a huge volume of paperwork and much effort will have been saved.

DC:hm

Equal Rights Group Formed

A new organization, "Montanans for Equal Rights," has been formed.

The organization, according to its chairman, Kevin Hunt, is being started "in response to the Montana House of Representatives' passage of a proposed constitutional amendment to deny 18-year-olds equal rights by making them criminals for possessing alcohol."

The statewide organization, he said, is being formed to fight the proposal now being considered by the Montana Senate.

In addition to committee testimony, the organization is encouraging Montanans to contact their senators immediately to tell them to vote against the proposed constitutional amendment, Hunt said.

Hunt, a University of Montana student, also denounced a suggestion by "a small number of conservative House members" to abolish 18-year-old adulthood entirely and replace it with a 19-year-old provision in the Montana Constitution. Hunt termed the suggestion "ridiculous" and pledged that the organization would "bitterly oppose such a move and would target for defeat in the next general election every single House member who would support such an absurd proposal."

Raising drinking age

MISSOULA (AP) — A spokesman for what he described as a youth coalition said Sunday he expected upwards of 40 teen-agers to testify before the Montana House Judiciary Committee against raising the legal drinking age to 19.

Dave Hull, a student at Missoula Hellgate High School, said he considered the intent of House Bill 29 to be an infringement on the adulthood rights of 18-year-olds. He said invitations had been sent to persons of his age from across the state to appear before the House committee on Tuesday.

The measure, sponsored by Reps. Esther G. Bangtson, D-Shepherd, and Audrey Roth, R-Big Sandy, is a proposed constitutional amendment making it unlawful for anyone under 19 years of age to possess and consume alcoholic beverages, and providing for a public vote during the November 1978 general election.

Proponents of such legislation say legal access to alcohol by high-school students in upper grades has led to discipline problems in some areas.

Hull said the coalition maintains that 18-year-olds are treated legally as adults in all other areas. He said if the amendment is approved, an 18-year-old caught using alcohol could be arrested for a crime based on a minority age, but would be tried as an adult.

He recommended instead an effort "to educate youth on the dangers and virtues of alcohol, if any."

IR 1-10-77

Youths to testify against raising the drinking age

MISSOULA — A coalition of youth is petitioning the legislature to block a proposed constitutional amendment which would raise the drinking age to 19.

Dave Hulm, a Missoula high school student and spokesman for the Montana Youth Lobby Group, said his organization will testify before the House Judiciary Committee at 8 a.m. Tuesday in opposition to House Bill 29, which would make it criminal for 18-year-olds to consume alcohol.

The state constitution currently grants 18-year-olds full adult rights and any amendment would require a vote of two-thirds of each legislative house and, if passed, would be placed on the November 1978 general ballot for approval by the people.

The group maintains that with all these other rights, 18-year-olds should not be made criminals for the possession of alcohol.

Approximately 40 Montana youth are scheduled to testify before the House committee Tuesday, Hulm said. The committee will meet in Room 436 in the state Capitol building.



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SERVING THE TOTAL INTERESTS OF MONTANA RETAILERS

AREA CODE 406
442-3388

HOUSE BILL NO. 590

TO PROVIDE FOR PUNITIVE DAMAGES IN A CIVIL
ACTION BASED ON A BAD CHECK OR OTHER ORDER, ETC.

Testimony before the House Judiciary Committee

Mr. Chairman and Members of this Most Respected Committee on Judiciary:

My name is Russ Livergood and I appear before this committee representing Montana's retail community as registered lobbyist for the Montana Retail Association. The retail association strongly supports this long over-due and badly needed bad check legislation.

I would like to submit for your consideration a thought that occurred to me while I was considering this proposed piece of legislation. Who pays for the losses of the merchant due to bad check losses? A good customer does. The customer that has never bounced a check is punished and actually subsidizes the customer that gives the merchant worthless paper for the goods and services that he receives. Bad check costs must be passed along to the consumer and in most cases cannot be absorbed by the retailer. Hence, our good customers, the ones we as retailers depend upon for our livelihood, and who are the last persons on whom we wish to place the further burden of added costs, are being chastised for not passing worthless paper.

The access to small claims courts for bad check recovery of up to \$1500 is of benefit to Montana's small retail businessman. When the retailer can submit his claim for judgement for the reduced cost that the small claims court affords, it reduces the retailer's cost of collection, hence, his cost of doing business, and hopefully will not result in an increased burden to an already overburdened consumer.

The retail community badly needs legislation that will reduce its costs of doing business. Bad checks have long been and will continue to be a thorn in the side of the retailer. This proposed legislation will not cure the problem but will help immensely to reduce it.

I thank this committee for its time and for the opportunity to submit to you the retail community's views.

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Bad Checks:

\$ amount for 3 Lewis an Clark County Banks.

1. \$65,000.00 per week in return checks.
2. \$140,000.00 per week return checks during weeks horse racing is in the county.
3. \$65,000.00 x 12 months = \$780,000.00 per year minimum.
4. \$780,000.00 x 56 county = \$43,680,000.00 return checks per year, in the state.

FEB 7 1977

HB 532 proposed amendment 02/07/77

COURT ADMINISTRATOR
MONTANA SUPREME COURT

INTRODUCED BY Dussault

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR STATE FUNDING OF OPERATIONAL EXPENSES FOR DISTRICT COURTS AND CLERKS OF DISTRICT COURTS; TO PROVIDE STATE FUNDING FOR SALARIES AND CONDITIONS OF EMPLOYMENT OF CLERKS OF THE DISTRICT COURTS AND STAFFS, COURT REPORTERS, JUVENILE PROBATION OFFICERS AND STAFFS, AND OTHER DISTRICT COURT PERSONNEL; TO PROVIDE BUDGETING CONTROL IN THE SUPREME COURT; TO CONTINUE COUNTIES' RESPONSIBILITY FOR PROVIDING COURTROOMS AND OFFICES; TO DEFINE JUDICIARY; TO AUTHORIZE THE SUPREME COURT TO PREPARE AND REPORT A PLAN FOR IMPLEMENTING STATE FUNDING, JULY 1, 1979; TO SUGGEST APPROPRIATE LEGISLATION; TO ESTABLISH A TEMPORARY, EMERGENCY DISTRICT COURT FUND; AND TO APPROPRIATE MONIES TO THE JUDICIAL PLANNING COUNCIL AND THE EMERGENCY DISTRICT COURT FUND."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Public policy to fund courts. (1) Beginning July 1, 1979, the operations, salaries, and other expenses of all district courts, including clerks and their employees, court reporters, youth probation officers and staffs, and other personnel of district courts shall be the financial responsibility of the state.

(2) On July 1, 1979, all supplies and equipment assigned or belonging to district courts and clerks of district courts shall be transferred to the judicial branch of state government.

(3) By December 1, 1978, the supreme court shall report to the legislature on the best means to effect smoothly and efficiently state assumption of all district court costs.

Section 2. Judicial Planning Council. (1) The supreme court may delegate study responsibilities to its judicial planning council.

(2) The judicial planning council should have representatives of all levels of judges, clerks, bar, prosecutors, defenders, probation officers, and other judicial personnel as well as representatives from the legislative and executive branches. It shall conduct previously-announced public hearings.

(3) The supreme court may provide staff for the council within appropriation limits; the chief justice may accept any federal funds that become available for courts planning. Adequate offices and meeting rooms will be provided by the Department of Administration in the Capitol complex.

Section 3. Study Scope and Product. (1) The report shall reflect consideration of the roles of youth and adult probation and parole, youth detention and incarceration, statewide defender and prosecutor systems and nonjudicial management services for the courts, local control and property tax relief as well as other issues the court would want considered.

(2) The report shall propose a complete personnel plan that would specify compensation for various classifications, and it should delineate lines of managerial responsibility for the non-judicial

court services.

(3) The report shall propose a system of fiscal management and accountability including (a) budget procedures and deadlines, (b) accounting procedures for revenues and disbursements and (c) economical purchasing procedures for judicial forms and equipment.

(4) The judicial branch budget request to implement the fiscal management and personnel plans on July 1, 1979, shall be presented by September 1, 1978, to the governor and legislative fiscal analyst for review prior to presentation to the 1979 legislature.

Section 4. Appropriation. There is appropriated \$100,000 from the general fund for the biennium ending June 30, 1979. All federal monies available for courts planning purposes are hereby appropriated.

Section 5. Facilities furnished by county. (1) Each county governing body shall provide and maintain adequate courtrooms, offices, and other court facilities, including janitorial services, for district courts and clerks of court and staffs.

(2) The supreme court may by interlocal agreement enter into agreements for administrative or other services and equipment use with local governments.

Section 6. There is a new R.C.M. section numbered 59-1405 that reads as follows:

59-1405. Judiciary defined. In this chapter "judiciary" means the chief justice of the supreme court, all associate justices of the supreme court, the clerk of the supreme court, and all district court judges.

Section 7. Emergency expenditure. The supreme court may authorize emergency state expenditures in support of any county's district court operations.

Section 8. Demonstrated need. Any county may certify to its sitting district judge(s) when its district court expenses have exceeded the average of the same expenses for the previous 3 years. Such certification shall include expenditures detailed for each of the four years involved and a sworn affidavit that the county lacks other reasonable and available resources to meet the need of the court.

Section 9. Judicial review. The sitting district judge(s) may approve or deny the certified expenses as justifying an application to the supreme court for an emergency state expenditure to support the county's district court.

Section 10. Supreme Court action. The supreme court shall establish such rules for uniform procedure as are consistent with generally-accepted accounting and management principles. It may approve reasonable emergency state expenditures and it may deny unreasonable. It shall report to the legislature any such requests it receives, its disposition of those requests and the reasons thereof.

Section 11. Maximum biennial expenditure. The supreme court is authorized to expend emergency funds from the state general fund not to exceed \$500,000 in any one biennium.

Section 12. Sunset clause. Sections 7-11, authorizing emergency district court expenditures, are revoked July 1, 1979, when state funding of district court costs is fully funded.

Section 13. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- End -