

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

There being a quorum present the fifty-third meeting of the Judiciary Committee was called to order by Chairman Jean Turnage on Thursday, March 31 in Room 325 of the State Capitol at 10:05 a.m.

ROLL CALL: There were 7 members present. Senators Brown, Galt and Mazurek were excused.

CONSIDERATION OF SENATE JOINT RESOLUTION NO. 25: Senator Marbut, sponsor of the resolution, stated that the source of the resolution was Senate Bill 440 which he sponsored. The resolution would request an interim study of the creation of a unified court system and the financing of such a system. He stated that the new fiscal note was a little different in that the original fiscal note was for \$15 million and the new one had been increased to \$16.5 million. He had several exhibits which he briefly explained and they are attached. (Exhibit 1).

PROPONENTS: Margaret Davis of the League of Women Voter's of Montana spoke in support of the bill because it supports a uniform financing system for district courts that is more accountable than the present system. (Exhibit 2)

There being no opponents to the resolution, questions from the committee were called for. There was brief discussion on the origination of the resolution and Senator Marbut stated that he sponsored Senate Bill 440 which was heard in the Judiciary Committee.

Senator Daniels made a motion that Senate Joint Resolution No. 25 DO PASS.

Senator Berg then asked if there was a mechanism in the bill that would provide for the selection of the committee for the study. There was a discussion on whether they would be appointed by the Committee on Committees, the leadership of the House and Senate or by some other method. Senator Marbut said that it should be a bi-partisan committee with equal representation between the House and Senate. David Niss, Staff Attorney, said the selection of the study committee was taken care of in the statutes.

Senator Turnage read the statute and it was decided that except for funding the statutes would take care of setting up the committee.

The motion that Senate Joint Resolution No. 25 DO PASS was carried unanimously.

RECONSIDERATION OF SENATE BILL 443: Senator Berg made a motion that the Committee motion requesting a resolution calling for a study of property exempt from civil judgements be reconsidered and that no study be requested. The motion was carried unanimously.

JUDICIARY COMMITTEE
March 21, 1983
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There being no further business before the Committee the meeting adjourned at 10:26 a.m.

JEAN TURNAGE, Chairman

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3/31/83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	X		
Brown, Bob (R)			X
Crippen, Bruce D. (R)	X		
Daniels, M. K. (D)	X		
Galt, Jack E. (R)			X
Halligan, Mike (D)	X		
Hazelbaker, Frank W. (R)	X		
Mazurek, Joseph P. (D)			X
Shaw, James N. (R)	X		
Turnage, Jean A. (R)	X		

Each day attach to minutes

SJR 25

Ref: ① Barker v Wingo

407 US 514

② St v Galt

642 - P. 2nd 1079

Cont II
Sept Annotations: Page 136 - 167

Cont III
Sept 1889 - Judicial Power upheld
in decision of *St v. Patton-Belle*
Min Co 1914
1972 - Separation of Powers upheld
Power of courts in decision
of *Wilder v Smith* 1981

nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT 6

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT 7

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9

The enumeration, in this constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.

AMENDMENT 11

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

AMENDMENT 12

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state

(over)

with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president, and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed, to the seat of the government of the United States, directed to the president of the senate; the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

AMENDMENT 13

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in Congress, the executive and judicial officers of a state, or the members of the

Montana Constitution

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DECLARATION OF RIGHTS

Art. II, § 30

Section 23. Detention. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

Section 24. Rights of the accused. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Section 25. Self-incrimination and double jeopardy. No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

Section 26. Trial by jury. The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

Section 27. Imprisonment for debt. No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Section 28. Rights of the convicted. Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

Section 29. Eminent domain. Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

Section 30. Treason and descent of estates. Treason against the state shall consist only in levying war against it, or in adhering to its

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4. District court jurisdiction.
 5. Justices of the peace.
 6. Judicial districts.
 7. Terms and pay.
 8. Selection.
 9. Qualifications.
 10. Forfeiture of judicial position.
 11. Removal and discipline.
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Section 1. Judicial power. The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

Section 2. Supreme court jurisdiction. (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

Section 3. Supreme court organization. (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

Section 4. District court jurisdiction. (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

Section 5. Justices of the peace. (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

shall consist of seven persons, of whom five must concur to find an indictment.

A grand jury shall only be drawn and summoned when the district judge shall, in his discretion, consider it necessary, and shall so order.

Sec. 9. Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislative assembly; no conviction shall work corruption of blood or forfeiture of estate; the estates of persons who may destroy their own lives shall descend or vest as in cases of natural death.

Sec. 10. No law shall be passed impairing the freedom of speech; every person shall be free to speak, write, or publish whatever he will on any subject, being responsible for all abuse of that liberty; and that in all suits and prosecutions for libel, the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

Sec. 11. No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly.

Sec. 12. No person shall be imprisoned for debt except in the manner prescribed by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

Sec. 13. The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

Sec. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into court for the owner.

Sec. 15. The use of all water now appropriated, or that may hereafter be appropriated for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others, for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use. Private roads may be opened in the manner to be prescribed by law, but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited.

Sec. 16. In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

Sec. 17. No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of

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associate justice to hold his office until the general election in the year one thousand eight hundred ninety-six (1896), and each shall hold until his successor is elected and qualified. The terms of office of said justices, and which one shall be chief justice, shall at the first and all subsequent elections be designated by ballot. After said first election one chief justice or one associate justice shall be elected at the general election every two years, commencing in the year one thousand eight hundred ninety-two (1892), and if the legislative assembly shall increase the number of justices to five, the first terms of office of such additional justices shall be fixed by law in such manner that at least one of the five justices shall be elected every two years. The chief justice shall preside at all sessions of the supreme court, and in case of his absence, the associate justice having the shortest term to serve shall preside in his stead.

Sec. 9. There shall be a clerk of the supreme court, who shall hold his office for the term of six years, except that the clerk first elected shall hold his office only until the general election in the year one thousand eight hundred ninety-two (1892), and until his successor is elected and qualified. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law, and his duties prescribed by law, and by the rules of the supreme court.

Sec. 10. No person shall be eligible to the office of justice of the supreme court, unless he shall have been admitted to practice law in the supreme court of the territory or state of Montana, be at least thirty years of age, and a citizen of the United States, nor unless he shall have resided in said territory or state at least two years next preceding his election.

DISTRICT COURTS

Sec. 11. The district courts shall have original jurisdiction in all cases at law and in equity, including all cases which involve the title or right of possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all cases in which the debt, damage, claim or demand, exclusive of interest, or the value of the property in controversy exceeds fifty dollars; and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for; of actions of forcible entry and unlawful detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate; of actions of divorce and for annulment of marriage, and for all such special actions and proceedings as are not otherwise provided for. And said courts shall have the power of naturalization, and to issue papers therefor, in all cases where they are authorized so to do by the laws of the United States. They shall have appellate jurisdiction in such cases arising in justices and other inferior courts in their respective districts as may be prescribed by law and consistent with this constitution. Their process shall extend to all parts of the state, provided that all actions for the recovery of, the possession of, quieting the title to, or for the enforcement of liens upon real property, shall be commenced in the county in which the real property, or any part thereof, affected by such action or actions, is situated. Said courts and the judges thereof shall have power also to issue, hear and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction and other original and remedial writs, and also all writs of habeas corpus on petition by, or on behalf of, any person held in actual custody in their respective districts. Injunctions, writs of prohibition and habeas corpus, may be issued and served on legal holidays and non-judicial days.

Sec. 12. The state shall be divided into judicial districts, in each of which

there shall be elected by the electors thereof one judge of the district court, whose term of office shall be four years, except that the district judges first elected shall hold their offices only until the general election in the year one thousand eight hundred and ninety-two (1892), and until their successors are elected and qualified. Any judge of the district court may hold court for any other district judge, and shall do so when required by law.

Sec. 13. Until otherwise provided by law judicial districts of the state shall be constituted as follows: First district, Lewis and Clark county; second district, Silver Bow county; third district, Deer Lodge county; fourth district, Missoula county; fifth district, Beaverhead, Jefferson and Madison counties; sixth district, Gallatin, Park and Meagher counties; seventh district, Yellowstone, Custer and Dawson counties; eighth district, Choteau, Cascade and Fergus counties.

Sec. 14. The legislative assembly may increase or decrease the number of judges in any judicial district; provided, that there shall be at least one judge in any district established by law; and may divide the state, or any part thereof, into new districts; provided, that each be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of districts shall work a removal of any judge from office during the term for which he has been elected or appointed.

Sec. 15. Writs of error and appeals shall be allowed from the decisions of said district courts to the supreme court under such regulations as may be prescribed by law.

Sec. 16. No person shall be eligible to the office of judge of the district court unless he be at least twenty-five years of age and a citizen of the United States, and shall have been admitted to practice law in the supreme court of the territory or state of Montana, nor unless he shall have resided in this state or territory at least one year next preceding his election. He need not be a resident of the district for which he is elected at the time of his election, but after his election he shall reside in the district for which he is elected during his term of office.

Sec. 17. The district court in each county which is a judicial district by itself shall be always open for the transaction of business, except on legal holidays and non-judicial days. In each district where two or more counties are united, until otherwise provided by law, the judges of such district shall fix the term of court, provided that there shall be at least four terms a year held in each county.

Sec. 18. There shall be a clerk of the district court in each county, who shall be elected by the electors of his county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be as provided by law.

COUNTY ATTORNEYS

Sec. 19. There shall be elected at the general election in each county of the state one county attorney, whose qualifications shall be the same as are required for a judge of the district court, except that he must be over twenty-one years of age, but need not be twenty-five years of age, and whose term of office shall be four years, and until their successors are elected and qualified. He shall have a salary to be fixed by law, one-half of which shall be paid by the state, and the other half by the county for which he is elected, and he shall perform such duties as may be required by law.

- 3-1-1007. Commission to make rules — confidentiality of proceedings.
- 3-1-1008. Quorum.
- 3-1-1009. Investigation by commission — application for consideration.
- 3-1-1010. List submitted to governor — report on proceedings.
- 3-1-1011. Governor to appoint from list.
- 3-1-1012. When governor fails to appoint.
- 3-1-1013. Senate confirmation — appointment in the interim.
- 3-1-1014. Duration of appointment — election for remainder of term.

Part 11 — Judicial Standards Commission

- 3-1-1101. Creation and composition of commission.
- 3-1-1102. Staggered terms of members.
- 3-1-1103. Terminated membership — vacancies.
- 3-1-1104. No compensation — travel expenses.
- 3-1-1105. Confidential proceedings — rules for commission.
- 3-1-1106. Investigation of judicial officers — hearing — recommendations.
- 3-1-1107. Action by supreme court.
- 3-1-1108. Nonparticipation of interested judicial officer.
- 3-1-1109. Interim disqualification of judicial officer.
- 3-1-1110. Procedure when convicted of crime.
- 3-1-1111. Orders for retirement or removal.
- 3-1-1112. Sections 3-1-1112 through 3-1-1120 reserved.
- 3-1-1121. Public disclosure required.
- 3-1-1122. Judge's waiver of confidentiality — hearing made public.
- 3-1-1123. Public statements by commission.
- 3-1-1124. Disclosure for judicial selection — appointment or assignment.
- 3-1-1125. Efficiency and effectiveness — audit authorized.
- 3-1-1126. Commission report to legislature.

Part 1

Courts — Definitions and General Powers

3-1-101. The several courts of this state. The following are courts of justice of this state:

- (1) the court of impeachment, which is the senate;
- (2) the supreme court;
- (3) the district courts;
- (4) the municipal courts;
- (5) the justices' courts;
- (6) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town.

History: En. Secs. 2, 6, C. Civ. Proc. 1895; re-en. Secs. 6238, 6240, Rev. C. 1907; re-en. Secs. 8784, 8786, R.C.M. 1921; Cal. C. Civ. Proc. Secs. 33, 36; re-en. Secs. 8784, 8786, R.C.M. 1935; R.C.M. 1947, 93-101, 93-103(part); amd. Sec. 1, Ch. 21, L. 1979; amd. Sec. 5, Ch. 466, L. 1979.

3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts are courts of record.

History: En. Sec. 3, C. Civ. Proc. 1895; re-en. Sec. 6239, Rev. C. 1907; re-en. Sec. 8785, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 34; re-en. Sec. 8785, R.C.M. 1935; amd. Sec. 11, Ch. 429, L. 1977; R.C.M. 1947, 93-102.

3-1-103 through 3-1-110 reserved.

district court has granted leave to file an information, an indictment has been returned, or the case is triable in justice's court.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

CHAPTER 8

RIGHT TO COUNSEL

Part 1 — Extent of Right — Indigency Repayment of Costs

Section

- 46-8-101. Right to counsel.
- 46-8-102. Waiver of counsel.
- 46-8-103. Duration of appointment.
- 46-8-104. Appointment after trial.
Sections 46-8-105 through 46-8-110 reserved.
- 46-8-111. Eligibility for court-appointed counsel.
- 46-8-112. Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel.
- 46-8-113. Payment of costs of court-appointed counsel by defendant — condition of sentence.
- 46-8-114. Time and method of payment of costs.
- 46-8-115. Effect of nonpayment of costs.

Part 2 — Compensation of Assigned Counsel

- 46-8-201. Remuneration of appointed counsel.
- 46-8-202. Public defender's office.

Chapter Compiler's Comments

Interim Study of Justice System: SJR 2 (1981) requested an interim study of the Montana criminal justice system, including alternative ways and effects of redistricting Montana's district court system, establishing a statewide district attorney system for criminal prose-

cutions, and providing for a statewide system of representation for indigents accused of crimes and required a report of the findings of the study to the legislature. The Legislative Council designated the Joint Subcommittee on Judiciary to conduct the study.

Part 1

Extent of Right — Indigency Repayment of Costs

46-8-101. Right to counsel. (1) Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of 46-8-111. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court must assign counsel to defend him.

If the offer of counsel and is unable to assign counsel. History: En. 95-1003.

Compiler's Comments: Amendment: D. in the second section.

46-8-102. Waiver of counsel. Waiver of counsel, except that the defendant shall be allowed to proceed following a hearing. History: En. 95-1002.

46-8-103. Duration of appointment. Duration of appointment; such assignment shall be for a proceeding upon a writ. History: En. 95-1003.

46-8-104. Appointment of counsel. Appointment of counsel to defend a defendant convicted of a crime shall be able to employ counsel. History: En. 95-1004.

46-8-105 through 46-8-110. Reserved.

46-8-111. Eligibility for court-appointed counsel. Any person who desires counsel and is unable to the court a statement showing he is unable to employ counsel. Appointed counsel shall be friends or relatives of the defendant or is capable of assisting him without substantial expense. History: En. Sec. 2, Ch. 196.

Compiler's Comments: Codification Instruction: provided: "Section 46-8-111 shall be codified as 46-8-111."

46-8-112. Informing defendant regarding false swearing. Informing defendant on financial statement shall inform the defendant if he makes a false statement regarding his ability to obtain counsel or his ability to swear; History: En. 95-1003.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel shall be set forth in the judgment and may not exceed 1 day for each \$25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment or the unpaid portion thereof in whole or in part.

(5) A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

History: En. Sec. 6, Ch. 415, L. 1981.

Part 2

Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable to the county in which the proceeding arose, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice, the expense must be borne by the state agency causing the arrest.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974; amd. Sec. 9, Ch. 184, L. 1977; R.C.M. 1947, 95-1005; amd. Sec. 2, Ch. 218, L. 1979.

46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at county expense.

History: En. 95-1006 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1006.

between the entry of defendant's plea and his motion for continuance, and because he failed to show any prejudice, the motion was properly denied. *St. v. Kirkland*, ___ M ___, 602 P2d 586 (1979).

Chapter Law Review Articles

The Right to Effective Trial Counsel: *State v. McElveen*, Ostby, 37 Mont. L. Rev. 387 (1976).

Argersinger v. Hamlin: A Demand for Change in Administration of Criminal Justice: Discussion of indigent's right to counsel. Fetscher, 35 Mont. L. Rev. 151 (1974).

Right to Counsel During Police Interrogation: An Intrinsic Right? (*St. v. White*, 146 M 226, 405 P2d 761 (1965)), Gordon, 27 Mont. L. Rev. 84 (1965).

Assigned Counsel in Montana: The Law and the Practice, Elison, 26 Mont. L. Rev. 1 (1964).

Preliminary Hearing Is a Critical Stage of the Proceeding at Which the Indigent Defendant Is Required to Have the Assistance of Counsel, Haddon, 25 Mont. L. Rev. 174 (1963).

Part 1

Extent of Right to Counsel

Part Commission Comments

Source: New.

It is the commission's intention that [parts 1 and 2] be sufficiently broad to include the right of an individual county to establish a public defender system. Such a system would not be practical in any but a few of the more populous counties of the state, where the need is to provide orderly and adequate legal counsel for indigent persons. It must be emphasized, however, that it was not the intention of the commission to institute a public defender system, but only to provide a general framework for its implementation if a particular county should desire such a procedure. Further, such a procedure would have no application in civil cases.

Part Case Notes

Duty of Defense Counsel on Appeal: When the court-appointed counsel failed to advise the clerk's office as to what would be required for the record on appeal from a conviction of burglary and there was no record before the Supreme Court, the defendant had been denied his right to effective representation by counsel on his appeal and the cause was remanded to the District Court with directions to revoke appointment of the present counsel and appoint a competent and effective counsel to properly prosecute the appeal. *St. v. Bubnash*, 139 M 517, 366 P2d 155 (1961).

46-8-101. Right to counsel.

Commission Comments

Source: New.

The right to counsel is provided for in the U.S. Constitution (14 Amend., Due Process Clause), the Montana Constitution [1889] (Art. III, sec. 16 [now Art. II, sec. 24, 1972 Mont. Const.]) and in current Montana statutes (See R.C.M. 1947, sections 94-4806(1), 94-6101 and 94-6512 [repealed]). This section provides for the right to counsel by requiring that the defendant, when brought before a court of record, be informed of his right to counsel and asked if he desires counsel. If he is indigent and charged with a felony he must be advised that counsel will be provided at state expense. See also [46-7-102(1)(c)].

The court must determine whether the defendant is indigent, i.e., unable to employ counsel, and therefore entitled to assigned counsel. In making this

(ucl)

determination the court may wish to consider such factors as income, property owned, savings, investments, pensions, unemployment compensation, social security, resources of spouse, parents, or relatives, and the number and age of dependents. The defendant's ability to post bail may be another consideration. A recent survey of Montana judges and county attorneys indicated that the determination of indigency is lenient, but adequate.

The question of appointed counsel where a misdemeanor is involved has not yet been fully resolved. As a result the commission left the situation open by using the words, "in the interest of justice." A number of writers have concluded that the right to counsel will be extended not only to include capital and felony cases, but misdemeanors as well, where considerable loss of liberty is at stake.

Cross-References

- Rights of the accused, Art. II, sec. 24, Mont. Const.
- Duty of court to advise at initial appearance, 46-7-102.
- Right to counsel — sentencing hearing, 46-18-223.
- Right to counsel — parole hearing, 46-23-204.
- Court to advise defendant of rights — extradition proceedings, 46-30-217.

Case Notes

When Right Attaches	p. 57
Request	57
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WHEN RIGHT ATTACHES

Initiation of Adverse Judicial Proceedings: A person's sixth and fourteenth amendment rights to counsel attach only at or after the time that adversary judicial proceedings have been initiated against him. *St. v. Lara*, ___ M ___, 587 P2d 930 (1978).

Motion to File Information: A motion for leave to file an information is not a "critical stage" entitling the defendant to the right to assistance of counsel. *State ex rel. Brackman v. District Court*, 172 M 24, 560 P2d 523 (1977).

REQUEST

Suppression of Confession — Voluntariness — Waiver of Right to Counsel After Making Request: To determine whether a confession should have been suppressed, it had to be determined whether the confession was voluntary and whether there was an unconstitutional denial of the right to counsel. In so doing, the following questions had to be answered: What was the totality of the circumstances? Was there effective assertion of the right to counsel, and if so, was there an effective waiver later? Since the evidence answered a large number of the requisite questions about the circumstances, the decision of the trial court was held not to have clearly contravened the weight of the evidence and its holding of voluntariness was upheld. Since any indication by a defendant *in any manner* that he wishes to consult with an attorney suffices, and evidence showed the defendant had met this requirement, the trial court erred in concluding that there was ineffective assertion of the right to counsel. After adopting the rule that a defendant can validly waive the right to counsel after making a request for counsel, the Supreme Court found the trial court properly found that the State had carried its "heavy burden" of showing waiver of counsel. *St. v. Blakney*, ___ M ___, 605 P2d 1093 (1979).

Remarks About Request for Counsel: The testimony of the police officer that the defendant did not want to talk to the police but asked to call his

SENATE BILL 440

Senator A. Reed Marbut

FUNDING PROPOSAL

July 1, 1983 to July 1, 1985

- 1) Anticipated costs + \$750,000.00
- 2) Expected cases 48000 (based on increase from 32000 cases last year)
- 3) Therefore 48000 x \$15.62 increased filing fee = \$750,000.00 revenue.

July 1, 1985

	<u>F.Y. 84</u>	<u>F.Y. 85</u>
Systems costs:	\$10,895,782	\$11,567,526
Public Defender	1,400,000	1,498,000
Admins (projected)	(fees)	<u>750,000</u>
		\$13,815,526.00

Revenue:

Income Tax 0.05% increase would raise \$15.3 million.

County - owned
and/or operated
hospitals and/or
nursing homes

Ch 1 3-31-83

1982-83

Form 4236 Counties

(1981-82)

State Publishing Co. Helena, Montana		mill value	med. fee. in poor fund	mill outside poor fund	hospital district mills	DISTRICT COURT
class						
✓	Beaverhead	4	15,345		3.00	
✓	Big Horn	1	123,926	1.15	2.99	
	Blaine	2	33,607			
✓	Broadwater	6	7,131	4.17		
✓	Carbon	3	27,321			
✓	Carter	6	6,518	1.10		
✓	Cascade	1	89,479	(2.75 7482-83)		
✓	Chouteau	3	28,683		12.39*	6.00 526,974 ⁰⁰
✓	Custer	4	18,321			
✓	Daniels	6	8,035		9.00	
✓	Dawson	2	30,045	1.84		
	Deer Lodge	5	13,208			
✓	Fallon	1	118,325			
	Fergus	3	22,220			
✓	Flathead	1	80,101	1.06		6.00 480,606 ⁰⁰
✓	Gallatin	1	56,944	1.90		6.00 341,664 ⁰⁰
✓	Garfield	6	6,521	13.50		
✓	Glacier	2	44,961	4.32		
	Golden Valley	7	4,245	1.00		
✓	Granite	6	5,308	6.00		
	Hill	2	44,742			
	Jefferson	5	10,877			
	Judith Basin	6	9,768			
	Lake	3	26,272			5.00 121,260 ⁰⁰
✓	Lewis and Clark	1	54,722			6.00 328,332 ⁰⁰
✓	Liberty	3	21,520	9.00		
	Lincoln	2	32,594			
✓	Madison	5	14,209		6.00*	
✓	McCone	5	11,516	1.38		
✓	Meagher	6	5,732		3.00	
✓	Mineral	7	4,643		3.00	
	Missoula	1	124,355			7.00 6.00 746,130 ⁰⁰
✓	Musselshell	3	29,304		2.04	
	Park	4	17,827			
	Petroleum	7	2,882			
	Phillips	2	32,896			
✓	Pondera	3	23,698	1.65		
✓	Powder River	1	73,083	3.80	5.10	
✓	Powell	5	11,475	1.25		
✓	Prairie	6	6,228	9.30	9.00	
✓	Ravalli	3	21,801	2.57		5.00 109,005 ⁰⁰
	Richland	1	144,666			
✓	Roosevelt	1	67,518		11.46*	
✓	Rosebud	1	163,639			
✓	Sanders	4	19,357		3.00	
✓	Sheridan	1	92,393			
	Silver Bow	2	47,571			10.24 487,127 ⁰⁰
✓	Stillwater	5	13,967		.68	
✓	Sweet Grass	6	7,308			
✓	Teton	4	17,886			
✓	Toole	2	45,258	785 (10.66 7482-83)	3.00	
	Treasure	7	4,402			
	Valley	3	29,389	.0001528		
✓	Wheatland	6	5,692	2.10		
✓	Wibaux	3	28,964			5.71 158,921 ⁴⁵
✓	Yellowstone	1	196,095	.15		

* Chouteau: sinking fund 1.10
Chouteau Co. Hosp. 8.50
Big Sandy Hosp. 2.79

* Madison: Madison Valley Hosp. 3
Ruby Valley Hosp. 3
* Roosevelt: Culbertson Hosp. 5.46
Poplar Hosp. 6.00

Property Tax Mill Levies For Fiscal 1982-83 County Operations

- Mills or Taxes Per \$1,000 Taxable Valuation -

GENERAL FUND	ROAD	BRIDGE	POOR	DISTRICT COURT	EXT. AGENT	FAIR	LIBRARY	AIRPORT	WEED	CEMETERY	DEBT LEVY	SENIOR CITIZENS	OTHER	TOTAL 1982-83	TOTAL 1977-78	% CHANGE 5 YEARS	VALUE OF MILL, 1982-83	
BEAVERHEAD	21.00	13.00	8.00		1.75	1.50		1.00	1.80	2.50		0.50	11.20	67.25	46.95	43.24%	\$ 15,345	
BIGHORN	14.80	12.13	3.22			1.00			1.74			1.00	2.99	34.00	18.98	79.14	123,927	
BLAINE	22.75	15.00	6.00	2.20	1.67	1.00	2.11	1.61	1.74			1.00	1.25	62.33	58.06	7.35	33,607	
BROADWATER	27.00	18.00	5.56	8.00	3.80	1.24	1.75	2.00	2.00			1.06	6.29	77.60	43.49	78.43	7,131	
CARBON	17.95	12.25	3.90	2.41	1.66	0.44		0.27	2.00					43.04	53.51	-19.57	27,321	
CARTER	16.00	18.00	10.00	4.00	2.50	1.50	1.20	2.00	2.00		1.00	1.00	2.00	65.20	58.50	11.45	6,518	
CASCADE	25.00	15.00	13.50	6.00	1.62	1.50	3.00	2.00	2.00			0.79	16.17	90.58	64.17	41.16	89,479	
CHOUTEAU	20.20	15.00	2.35	2.90	0.98	1.50	3.00	1.14	2.00			1.00	9.75	63.82	45.31	40.85	28,683	
CUSTER	25.00	18.00	8.42	5.00		1.50	0.40		0.51	2.89	2.15	1.00	0.50	68.86	50.69	35.85	18,321	
DANIELS	27.00	18.00	3.22	4.00	2.94	1.50	3.00	2.00	1.87		5.73	1.00	9.26	83.16	64.74	28.45	8,035	
DANSON	22.36	15.00	7.60	5.00		1.50	1.56	2.00	1.87		2.95	1.00	0.57	65.41	59.30	10.30	30,045	
DEER LODGE	132.05													132.05 (1)	66.75	97.83	13,208	
FALLON	7.22	1.80	1.96	1.22			0.40	0.51	0.62	0.04	0.16		0.36	25.75	36.29	55.04	118,325	
FERGUS	25.00	4.58	7.87	5.00	2.96	1.50			0.20				5.80	67.91	46.67	45.51	22,220	
FLATHEAD	20.52	3.49	8.02	6.00	1.00	1.50	3.00	2.00	1.25		0.36	1.00	20.02	80.16	58.67	36.63	80,101	
GALLATIN	23.38	3.82	6.36	6.00	1.83	1.41	1.41	0.05	1.03			0.92	11.83	72.07	45.41	58.71	56,944	
GARFIELD	25.00	18.00	13.50	4.00	3.50	1.00	1.00	1.00	1.00					72.00	60.40	19.21	6,521	
GLACIER	12.51	4.00	10.63	3.98			2.40	1.82	1.60		1.51	0.89	3.12	57.46	38.07	50.93	44,961	
GOLDEN VALLEY	14.00	3.00	1.28	4.00	2.90	0.40			2.00			1.00	0.60	46.28	46.83	-1.17	4,245	
GRANITE	27.00	18.00	13.50	4.00	4.47	1.36	1.75	2.00	2.00		0.43	1.00	24.15	100.52	53.95	86.32	5,308	
HILL	7.12	4.00	7.84	4.00		0.24	3.00	0.39	1.39			0.50	6.80	51.55	53.32	-3.32	44,742	
JEFFERSON	21.78	3.20	6.80	4.00	1.26				2.00			0.94	14.07	57.78	56.82	1.69	10,877	
JUDITH BASIN	27.00	4.00	3.06	4.00	2.00	0.91	2.85	2.88	2.00			1.00	2.66	75.92	49.69	52.79	9,768	
LAKE	16.67	4.00	5.02	5.00	1.69	1.50	0.60	2.00	1.13		17.93	1.00	7.96	57.74	55.91	3.27	26,272	
LEWIS & CLARK	25.00	4.09	13.50	6.00			3.00	2.00	2.00			1.00	1.25	99.42	66.75	48.94	54,722	
LIBERTY	25.00	4.00	13.50	2.05			1.60					1.00	2.12	55.00	57.75	-4.76	21,520	
LINCOLN	12.35	4.00	13.50	6.00	1.25	1.50	3.00	0.33	0.23	1.25		1.00	2.00	28.93	41.62	-30.49	32,594	
MADISON	13.78	3.68	12.02	3.40	2.24	0.60	0.76	2.00	2.00		2.20		2.00	50.09	27.73	80.63	14,208	
MCADAMS	27.00	5.00	2.30				1.50	2.00	1.00				8.58	61.84	65.00	-4.86	11,516	
MCNEIL	18.00	3.97	8.07	4.00	4.63	1.45	1.01	1.00	2.00		7.71	1.00	15.99	72.63	50.31	44.36	5,732	
MEAGER	26.00	0.61	11.23	4.00			2.82	1.50	2.67		1.43	0.65	12.03	75.68	65.87	14.89	4,643	
MINERAL	23.57	2.49	10.75	6.00	0.87	1.24	3.00	0.24	0.37				2.68	80.48	58.77	36.94	124,355	
MISSOULA	25.00	14.82	8.29			1.50		0.48	2.00		3.30	0.50	0.43	26.48	22.13	19.66	29,304	
MUSSELSHELL	12.76	1.22	0.92				1.50		2.00				0.50	65.75	53.27	23.43	17,827	
PARK	24.89	4.00	8.65	5.00									0.50	27.50	25.90	6.18	2,882	
PETROLEUM	9.00	4.00	3.00	2.50		1.30	1.50	2.00	0.50		0.50	0.50	0.82	39.62	59.86	-33.81	32,896	
PHILLIPS	8.00	6.00	5.11	5.00		0.03	1.83		2.00		2.40	1.00		53.58	55.24	-3.01	23,689	
PONDERA	17.21	4.00	5.11										5.10	24.16	34.25	-29.46	73,083	
POWDER RIVER	8.70	1.03	0.90	4.00	2.60	1.50			2.00	0.23		1.00	1.55	61.65	46.80	31.73	11,475	
POWELL	27.00	3.00	13.00				3.00	0.42	2.00			1.00	9.00	82.19	73.47	11.87	6,228	
PRAIRIE	26.37	3.87	13.50	3.98	3.99	1.50			2.00	2.10		1.00	4.01	68.30	41.90	63.01	21,801	
RAVALLI	16.39	6.00	13.50	5.00	2.62	1.50	0.10	1.25	1.48	1.95		0.85	1.20	26.39	31.88	-17.22	144,666	
RICHLAND	2.35	1.85	1.45		0.40	1.50	0.10	0.08	0.53	0.60		0.27	0.13	32.33	44.15	-26.77	67,518	
ROOSEVELT	6.50	3.00	1.53	6.00	0.79	0.13	1.22	0.08	0.46			0.18	0.24	17.76	16.47	7.83	163,639	
ROSEBUD	11.04	1.69	2.27			0.53	0.39	0.13	1.87	0.23	0.73	1.00	1.03	47.03	37.65	24.91	19,357	
SANDERS	4.50	5.00	3.50			0.25	0.50	0.10	0.70		6.50	0.60	1.03	32.10	36.50	-12.05	92,393	
SHERIDAN	10.20	3.00	2.00	0.90		0.80	0.60	0.10	0.65			1.33	40.84	153.79 (1)	103.61	48.43	47,571	
SILVER BOW	65.47	3.80	10.75	10.24	1.00		0.79	3.34	2.00			1.00	2.79	63.48	52.50	20.91	13,967	
STILLWATER	24.00	6.00	4.21	4.00	3.58	1.79	1.58		1.85	2.10	3.45	1.00	4.25	78.51	67.36	16.55	7,308	
SWEETGRASS	31.18	3.22	6.25	2.82	3.50		1.83	0.28	2.00	1.00		0.95	3.20	71.54	75.04	-4.66	17,886	
TETON	20.00	5.00	4.50	5.00			3.00		2.00	1.00	4.94		6.31	64.32	65.27	-1.46	45,258	
TOOLE	13.22	4.00	13.50	2.94	3.50	1.50	0.82		1.14				1.00	49.80	44.70	11.41	4,402	
TREASURE	22.00	4.00	0.80	4.00				0.89	1.30		0.55		9.93	41.85	41.95	-0.24	79,389	
VALLEY	3.40	4.00	6.50	3.87		1.50	3.00		1.54	2.61			9.93	74.99	64.24	16.73	5,892	
WHEATLAND	27.00	3.94	4.00	4.00	0.84	0.29	0.51		0.39	0.23	3.54	0.24	0.34	34.96	54.09	-35.98	28,964	
WIBAUX	12.68	15.00	0.62		0.80	0.37			0.59		1.12		3.11	45.91	44.20	1.87%	\$196,095	
YELLOWSTONE	7.51	2.67	10.01	5.91			2.92											

(1) City-County Consolidated Government
Totals may not add due to rounding

(This sheet to be used by those testifying on a bill.)

NAME: Mrs Davis DATE: 31 Mar 83

ADDRESS: 917 Harrison

PHONE: 443-3487

REPRESENTING WHOM? LNV of MT

APPEARING ON WHICH PROPOSAL: SJR 25

DO YOU: SUPPORT? X AMEND? L OPPOSE?

COMMENT: LNV of MT Supports a uniform
financing System for district courts
that is more accountable than the
present and proposed grant programs.
We also see this proposal for an in-
terim ^{committee} as the most practical method
for developing legislation for a unified
or partially unified dist. court system.
The topic is a large and complex one, and it
deserves study in depth.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

STANDING COMMITTEE REPORT

March 31

19 83

MR. **PRESIDENT**

JUDICIARY

We, your committee on

having had under consideration **SENATE JOINT RESOLUTION** ~~SEN~~ No. **25**

Respectfully report as follows: That **SENATE JOINT RESOLUTION** ~~SEN~~ No. **25**

DO PASS

N.C.