

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 22, 1993, at
10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Crippen, Sen. Harp

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Kathy Collins, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 157
HB 278
HB 525
Executive Action: HB 506
HJR 22
HB 633

HEARING ON HB 157

Opening Statement by Sponsor:

Representative Randy Vogel, House District 86, stated HB 157 would allow for the seizure of an owner's vehicle upon the owner's third DUI offense. Representative Vogel said this is not a radical approach; ten states now have similar legislation, and two of those states take the vehicle after the first offense. Representative Vogel stated there were approximately 2500 alcohol related accidents in Montana in 1992, resulting in over 2200

injuries and 97 fatalities. Representative Vogel stated between 500 and 600 DUI convictions were third time convictions. Representative Vogel handed out copies of a newspaper article pertaining to this issue (Exhibit #1). Representative Vogel said the intent of HB 157 is to keep multiple DUI offenders off Montana's streets and highways.

Proponents' Testimony:

Albert Goke, Administrator, Highway & Traffic Safety Division, Department of Justice, stated he has been involved in the DUI issue for many years, and he came forth today to add his support of HB 157. Mr. Goke stated at times the most important thing legislation can accomplish is to create a deterrent for those who have not yet been convinced by the laws already in place. Mr. Goke stated HB 157 could serve as an effective deterrent for driving under the influence.

Dr. Rick Lamb, emergency medicine physician, Deaconess Hospital, Billings, stated he supported HB 157. Dr. Lamb said he has seen too many cases of accident victims as a result of multiple DUI offenders in the emergency room, and there is overwhelming support for HB 157 in the medical profession in Montana.

Tom Harrison, representing the Montana Sheriffs and Peace Officers Association, stated the Association supported HB 157.

Bill Leary, representing the Montana Bankers Association, stated he supported HB 157.

Senator Tom Towe said he would like the record to show he supported HB 157.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Doherty asked Representative Vogel if the third offense had to be within a certain time frame. Representative Vogel stated presently it would be three offenses at any time. Senator Doherty stated three offenses in a lifetime might not indicate a propensity for that kind of activity, and he asked Representative Vogel how he would react to three offenses in a specified time period. Representative Vogel said, "no bill is perfect, and all are subject to change."

Senator Franklin asked Representative Vogel what the counties or cities would do with the seized vehicles. Representative Vogel stated they would be handled through a sheriff's sale, as all seized property is handled.

Senator Towe asked Representative Vogel what changes HB 157 had undergone. Representative Vogel stated the subcommittee felt they would be better off with the statutes, rather than dealing with an entirely new bill. Representative Vogel said the escape clause for an innocent victim was added to HB 157.

Senator Towe asked Representative Vogel about the parts of Sections 1 and 2 that deal with defenses. Representative Vogel stated those defenses refer back to the statute, which states the violator must be the registered owner of the vehicle to be seized.

Senator Doherty asked Representative Vogel what happens when a couple jointly owns a vehicle and one partner is subject to his or her vehicle being seized. Representative Vogel said the subcommittee addressed this issue and decided that most vehicles are owned by two parties, but in most cases, a couple owns two vehicles.

Senator Towe asked Representative Vogel if there had been any discussion as to what an innocent party's defense might include. Representative Vogel stated in some cases a young adult might have joint ownership of a vehicle with one of his or her parents, and with the defenses for the innocent party, the young adult would be allowed to keep said vehicle if one of the parents were to be subject to vehicle seizure.

Closing by Sponsor:

Representative Vogel distributed copies of two other newspaper articles (Exhibit #2) and stated there is frustration both on the part of the peace officers and the courts in regard to DUI offenders. Representative Vogel stated HB 157's intent is to serve as a deterrent to multiple DUI offenses in the hopes of saving lives.

HEARING ON HB 525Opening Statement by Sponsor:

Senator Bob Brown, Senate District 2, opened on HB 525 for Representative Jim Rice, who was unable to be present. Senator Brown stated HB 525 was drafted at the request of a committee of the State Bar Association which was chaired by Great Falls attorney, John Stephenson. Senator Brown turned the hearing over to proponents.

Proponents' Testimony:

John Stephenson, Chairman, State Bar District Court Funding Committee, submitted copies of his Committee's report (Exhibit #3). Mr. Stephenson stated the Funding Committee was formed in 1990 because of the concern over lack of funding for state district courts in some districts. Cascade County came to light first, and when the State Bar looked into the situation further, the problem was discovered to be state-wide. Mr. Stephenson stated the Finding Committee's members include not only members of the State Bar Association, but legislators, county attorneys, district judges, county commissioners, and clerks of court as well. Early in the study, the Funding Committee came to a consensus that the responsibility for funding district courts should be with the state. Mr. Stephenson stated the Funding Committee found that 36 of the 56 counties in Montana had funding shortfalls, which means they could not generate the money for the court operation from the statutory resources the Legislature had set up. Mr. Stephenson said the state-wide shortfall was approximately \$3 million, with the total cost of running the district courts approximately \$15 million. Mr. Stephenson said HB 312 gave the counties the option to impose a .5% light-vehicle tax, which is split between the counties, cities, towns and outlying areas. Mr. Stephenson stated those entities can use those funds for such purposes as they choose. Mr. Stephenson stated HB 312 was scheduled to sunset this year, but another bill, HB 363, would extend HB 312 for another two years. Mr. Stephenson stated he would like to see the court system studied in more depth, especially in the area of court unification. Mr. Stephenson said HB 525 asks the Legislature to approve the establishment of the Commission to study the judiciary, including possible unification, methods of funding, selection of judges, etc. Mr. Stephenson said the main focus of the Funding Committee is unification and the funding because the Committee believes through unification, the funding problem can be resolved. Mr. Stephenson said the funding is dependent largely upon local property tax levies, and these levies vary greatly from county to county. Some counties have no trouble funding their courts, while others are experiencing problems in this area. Mr. Stephenson stated a unified system does not have to be any one way, but can be set up in any manner to meet the needs of the state. Generally a unified system means going to a centralized court system that has a central administration which stems from

the state to the central administrator. There is a court budget for all the courts in the state. Mr. Stephenson said one of the problems experienced in the past was asking for more money from the state, that money going to the county commissioners to divide up, and the state asking where was the accountability. Mr. Stephenson stated with a unified system, there would be accountability for the third branch of government where it should be. Mr. Stephenson stated another aspect would be to consolidate all the trial courts into a single trial court, in this case, probably the district courts. Instead of district courts, Justice of the Peace courts, municipal courts, city courts, etc., there could be a consolidation of these courts into a district in which there are a number of district judges and a number of magistrates who are assigned to the district court. These judges and magistrates would then divide up the judicial business in that district in the most efficient manner. Mr. Stephenson stated Utah has gone to a unified system and has only had to hire four additional judges, as opposed to the eighteen additional judges which would have been needed had they not gone to a unified system, thereby saving that state money. Mr. Stephenson stated HB 525 is a good approach to studying the problems and coming up with a system which is more efficient and responsive to the public.

Pat Chenovick, Administrator, Supreme Court, stated the Supreme Court supports the funding of the study in light of district court financial troubles in 36 counties. Mr. Chenovick said Judge Greg Moore, President of the Magistrates Association, asked him to say that he (Judge Moore) also supported HB 525.

Gordon Morris, Director, Association of Counties, stated the Association supported HB 525.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Bartlett, referring to the fiscal note for HB 525, asked Mr. Chenovick to explain the funding structure for the Commission. Mr. Chenovick stated the changes made in the House subcommittee reduce the amount of money which was going to be taken out of the district court penal reimbursement funds, which is the 7% of the 2% of the motor vehicles. It also increased from \$25,000 to \$40,000 the amount of donations to be applied to the funding. Mr. Chenovick stated the State Bar has already committed \$5000, and the State Justice Institute is willing to put in \$15,000 to assist the study. Mr. Chenovick said the remaining donations would have to come from individuals

interested in the study.

Senator Bartlett asked Mr. Chenovick if the total impact was reduced from \$58,000 to \$50,000. Mr. Chenovick stated that was correct. Mr. Chenovick said with conversations with the Legislative Council it was determined the \$8,000 decrease could be accommodated.

Senator Bartlett, referring to the language in HB 525 regarding the reimbursement to the Commission from funds available after paying expenses specified in 3-5-901, asked Mr. Chenovick if those were the district court reimbursement expenses as that program is currently established. Mr. Chenovick stated the way the amendment was put together was meant to insure that the request for reimbursement by the counties had enough funds to fund those requests for reimbursements before the \$10,000 was given out for the study. Senator Bartlett asked if the amount remained and that fund is less than \$10,000, what provisions in HB 525 would address that issue. Mr. Gordon Morris stated the language Senator Bartlett referred to, page 5, subsection C, is a direct reference to a situation which will be addressed in Representative Bardanoue's bill. Mr. Morris said if the reimbursement program is fully funded, there will be a reserve out of which the \$10,000 would be allocated.

Senator Towe asked Gordon Morris if the previous sentence, referring to 3-5-901 is regarding the same money. Mr. Morris stated that citation is the section which sets forth the eligible costs for reimbursement under the district court reimbursement section. Senator Towe asked Mr. Morris if this fund is the same one talked about in 61-3-509. Mr. Morris said 61-3-509 sets up the revenue collection mechanism, and his comment to Senator Bartlett's question was in regard to the appropriation made by the Legislature, which never fully matches the revenue anticipated. Mr. Morris stated both sections refer to the same fund.

Senator Towe asked John Stephenson how much money can be expected to be donated for the study. Mr. Stephenson deferred Senator Towe's question to George Bousliman, Executive Director of the State Bar of Montana. Mr. Bousliman stated the only earned money he can speak to, that which has already been committed, totals approximately \$5000. Mr. Bousliman said Mr. Chenovich referred to a grant which they hope to get from the State Justice Institute for \$15,000. Mr. Bousliman stated if the \$10,000 is added to those two figures, there would be \$30,000. Mr. Bousliman stated he would like to see some of the money taken from the district court fund restored. Senator Towe asked Mr. Bousliman how much he anticipated would be needed to do a valid study. Mr. Bousliman said he anticipated the amount to be \$58,000, the amount in HB 525 as it was originally introduced.

Senator Towe asked Mr. Bousliman what was shorted with the complicated mechanism on pages 4 and 5, where the 901 funds

cannot be taken until the allocation goes to the other expenses first. Mr. Bousliman deferred the question to Gordon Morris. Mr. Morris stated the money coming in is appropriated by the Legislature after the reimbursement requests are fully funded out of what was appropriated by the Legislature in 3-5-901. Any money left over is, under current law, distributed back to the counties in which the money was raised, with \$10,000 being withheld from that distribution. Senator Towe asked Mr. Morris if the money was court reimbursement monies which the state pays to these county districts. Mr. Morris said that was correct. Senator Towe asked Mr. Morris if the counties would then be losing out on the \$10,000. Mr. Morris stated that was correct, and the Association of Counties recognizes this issue but chooses to support HB 525. Mr. Morris stated the Association is prepared to donate \$2000 towards this project.

Senator Blaylock asked Chief Justice Turnage if the district judges would be supportive of what comes out of the study if HB 525 should pass. Chief Justice Turnage stated he could not say whether the district judges would be supportive or not supportive until the study has been completed.

Closing by Sponsor:

Senator Yellowtail stated since neither the sponsor nor Senator Brown were present, he would close on HB 525.

HEARING ON HB 278

Opening Statement by Sponsor:

Senator Steve Doherty, Senate District 20, opened for Representative Francis Bardanouve, who was unable to be present at the opening of HB 278. Senator Doherty stated HB 278 generally revises the district court criminal reimbursement program which provides funds to local district courts.

Proponents' Testimony:

J.A. Turnage, Chief Justice, Montana Supreme Court, spoke from prepared testimony in support of HB 278 (Exhibit #4).

Jim Oppedahl, Administrator, Department of Justice, Data Processing Division, stated HB 278 does three things. First, it cleans up several administrative problems and a Legislative oversight in the operation of the district court criminal reimbursement program. HB 278 moves the date for applying for district court grants from July 20 to August 20 of each year. Mr. Oppedahl stated this was so state officials and county officials do not do a lot of paperwork in applying for the district court grant program before the court administrator's office actually knows whether there is money available. HB 278

also reinstates language which was inadvertently dropped from the district court criminal reimbursement program in a bill introduced in 1991. Second, HB 278 establishes a statutory appropriation for the reimbursement program, which is a necessary improvement to the program because it will eliminate the guessing games and unnecessary paperwork, ensuring that the entire debts will be paid out of one revenue source, with the district court criminal reimbursement program available only for court purposes. Third, HB 278 provides for a one-time funding for the continuation of district and limited jurisdiction court automation. Mr. Oppedahl stated that funding is available primarily because in 1992 the Legislative appropriation was under the actual revenues. Mr. Oppedahl said there is an enormous need for automation in the court system and urged the Committee's support of HB 278.

Gordon Morris, Director, Association of Counties, stated he supported HB 278.

Tom Harrison, representing the Sheriffs and Peace Officers Association, stated the Association supported HB 278.

George Bousliman, Executive Director, State Bar of Montana, stated he supported HB 278.

Cort Harrington, representing the Montana Association of Clerks of Court, stated he supported HB 278.

Clara Gilreath, representing the Montana Association of Clerks of Court, stated she supported HB 278. Ms. Gilreath stated she would like to see the courts in Montana be uniform in their technology. Ms. Gilreath said automation has been a tremendous help in making the court system more efficient, and she urged the Committee's support of HB 278.

Pat Chenovick, Administrator, Montana Supreme Court, read a letter from Craig Hoppy, representing the Montana Magistrates Association, in support of HB 278 (Exhibit #5).

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Towe, referring to the fiscal note, asked Gordon Morris if the difference between the appropriation for the district court reimbursement program and the total amount applied to the general fund is now going to be used for this special one-time funding. Mr. Morris stated that is what HB 278 proposes to do.

Senator Towe asked Jim Oppedahl why an applicability date was not needed on HB 278. Mr. Oppedahl stated the program return of the money that was above the appropriation for the last ten years has happened twice; once for about \$30,000 and once for about \$60,000. That excess has always come at the end of the fiscal year for which the Legislature has appropriated the money. Mr. Oppedahl said when the Department of Commerce had the program (until last year) they would send the money back as a revenue refund like income taxes. Mr. Oppedahl stated this money does not need a retroactive provision in order to reappropriate it by the Legislature; Section 4 statutorily reappropriates the money for court automation.

Senator Towe asked Mr. Oppedahl why we are going through the statutory appropriation law to do this instead of simply appropriating funds for this one-time appropriation. Mr. Oppedahl stated in the past, legislatures have had some difficulty estimating this particular revenue source. In fiscal year 1992, there was more than \$2.6 million coming in, leaving more money lying on the table which has to go back to the counties for anything they want to use it for, not necessarily for court purposes. Senator Towe asked why, if this is a one-time appropriation, the appropriation is not based on what is available. Mr. Oppedahl stated that could certainly be done with the fiscal 1992 money, but the system would be better to do a statutory appropriation year after year to eliminate the guesswork with regards to revenue coming in.

Senator Bartlett asked Mr. Oppedahl to identify how the money for HB 278 relates to that of HB 525. Mr. Oppedahl stated if HB 278 passes, HB 525 would need to be coordinated with HB 278.

Senator Doherty asked Mr. Chenovick how HB 278 would be coordinated with SB 271, which dealt with the citizen review board. Mr. Chenovick stated the money in SB 271 comes out of 1994-1995 court criminal reimbursement funds. Senator Doherty asked if the only thing left to coordinate with HB 278 is HB 525. Mr. Chenovick stated there was also a public defender project which is also funded by the district court reimbursement fund.

Senator Yellowtail asked Mr. Chenovick how far this money is going to go for further automation for the remaining 23 counties and what the cost is per county. Mr. Chenovick stated he does not have a sense of what the cost would be per county, as the size of the counties needing automation vary. Senator Yellowtail asked how Mr. Chenovick anticipates distributing these funds. Mr. Chenovick stated previously, the courts that wanted to automate were asked to send in an application, and the money available was distributed according to what was needed to get the job done for those counties. Mr. Chenovick stated the procedure would probably work the same as before. Senator Yellowtail asked Mr. Chenovick how the distribution would be prioritized if there were a flood of applications. Mr. Chenovick said previously, the counties were asked to match any money available to assist in the

automation process. Mr. Chenovick stated they would also look at the number of cases within a district to determine a priority list.

Senator Doherty asked Mr. Chenovick if he would be the one to decide who gets the money. Mr. Chenovick stated when the automation process first started, the Court set up a commission on court technology to provide input on applications for requests for funds.

Closing by Sponsor:

Representative Bardanouve stated HB 278 has had the best support of any bill he has ever seen, and he urged the Committee's support of HB 278.

EXECUTIVE ACTION ON HB 633

Motion/Vote:

Senator Blaylock moved HB 633 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HJR 22

Motion:

Senator Towe moved HJR 22 BE CONCURRED IN.

Discussion:

Senator Grosfield asked Senator Towe if he was satisfied with the terms of the will. Senator Towe stated he was not completely satisfied and stated he would like to ask Chief Justice Turnage to comment on that. Senator Towe stated there is an old carry-over where people would will things to the Supreme Court, and the Court had to administer the things willed. Senator Towe asked Chief Justice Turnage if he saw any problem with changing the impact of the will to allow someone else to administer the will. Chief Justice Turnage stated the Court is not in the administrative position to act as a trustee of the will, so he would suggest the Court designate a successor trustee as administrator. Senator Towe stated the problem he had was the will apparently provides for the funding to go toward an orphanage, and Montana does not have orphanages. Chief Justice Turnage stated Montana would have to find an equal and adequate charitable purpose, and the Court will make every attempt to follow the intent of the will.

Vote:

The Be Concurred In motion for HJR 22 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 506

Motion/Vote:

Senator Towe moved HB 506 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 12:00 p.m.

Wm Yellowtail

SENATOR BILL YELLOWTAIL, Chair

Kathy Collins

KATHY COLLINS, Secretary

BY/kc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-22-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	✓		
Senator Doherty	✓		
Senator Brown	✓		
Senator Crippen			✓
Senator Grosfield			
Senator Halligan	✓		
Senator Harp			✓
Senator Towe	✓		
Senator Bartlett	✓		
Senator Franklin	✓		
Senator Blaylock	✓		
Senator Rye	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Joint Resolution No. 22 (first reading copy -- white), respectfully report that House Joint Resolution No. 22 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

15 Amd. Coord.
Sec. of Senate

Lynch
Senator Carrying Bill

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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 506 (first reading copy -- blue), respectfully report that House Bill No. 506 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

AW
JB Amd. Coord.
Sec. of Senate

Swysgood
Senator Carrying Bill

641208SC.San

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 22, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 633 (first reading copy -- blue), respectfully report that House Bill No. 633 be concurred in.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

AK
45 Amd. Coord.
Sec. of Senate

Halligan
Senator Carrying Bill

641211SC.San

buildings and reversing the process in the summer to provide cooling.

While the geothermal system will cost about a million dollars more to install than simply replacing the school's existing gas-fired system, the college will get that money back immediately, in the form of a \$1.1 million rebate from Atlantic Electric Co.

The utility offers rebates to all customers who install energy-efficient systems. "It means utilities have less dramatic swings in the demand for power," says Susan Coan, an Atlantic Electric spokeswoman. "We can add new customers without adding new plants."

Other sources of funding for the new system include \$1.4 million from a state bond issue and a \$2.3 million grant from the state Department of Environmental Protection and Energy.

Stockton State is hardly the first public facility to go geothermal. In addition to commercial buildings and about 125,000 homes that use the technology, five elementary schools in Austin, Texas, and the Oklahoma State Capitol building use geothermal heating, according to Conn Abnee, construction engineering manager for the East Kentucky Power Cooperative.

—Laura Locke

For more information, contact Charles Tantillo, Senior Vice President, Stockton State College, Pomona, NJ 08240-9988; phone 609-652-4381.

ANTHONY HOOPER: WOUNDED AT FREDERICKSBURG

Anyone who thinks being a city manager is all administration and no politics hasn't looked at the job lately. As the high rate of turnover attests, any prudent manager has to spend a fair amount of time just navigating the political currents among his or her bosses.

Just ask Anthony Hooper, who until last fall was the city manager of Fredericksburg, Virginia, a historic and very pretty town of about 20,000 halfway between Richmond and Washington, D.C. In September, on a 4-3 vote by the city council, Hooper lost his post after six years on the job. And the town has been in chaos ever since.

Hooper's firing came as something of a shock to many of the residents. He had been given high marks for moving Fredericksburg forward on several important capital projects—wastewater treatment, library renovation, a new middle school. He got the axe without any warning, in a late-night, closed-door meeting.

To understand what happened, you have to know a little about Fredericksburg politics. For some time, the city council has been divided between two loosely defined factions. One, led by Mayor Lawrence Davies, is grouped around the Democratic Party, the black community and an assortment of preservationists and professionals. The other, led by Vice Mayor Gordon Shelton, includes Republicans, some business people and a variety of blue-collar and

middle-class residents. Until last May, Davies' group had a one-vote majority on the council. That changed in an election that saw Davies' leading ally lose his seat to one of the mayor's more outspoken critics.

The new council majority had different ideas from the old one about the role of a city manager—they wanted to shorten the manager's rein. Just as important, Shelton's faction had complained that Hooper seemed to pay more attention to Davies and his allies than to them.

Hooper denies any favoritism of that sort. But he does allow that he may have paid too much attention to analyzing issues, recommending policies and administering the government—all the things a city manager is ostensibly hired to do. "I didn't spend a lot of time courting individual council members," he says. "Maybe in the future I need to pay more attention to those relationships."

After a rally to protest the firing, a full-page ad in the newspaper signed by 800 citizens and the launching of a recall petition, one of Shelton's council allies resigned, leaving the council evenly split. It is in that atmosphere of mutual hostility that the new manager will have to be chosen. But whoever Hooper's replacement turns out to be, dealing with a factionalized city—and staying politically well positioned—seem certain to be high on the agenda.

—Rob Gurwitt



The Car-Seizure Idea: It's Catching

Police in Portland, Oregon, have sent a clear message to more than 1,200 people caught driving drunk or soliciting prostitutes: Take a hike.

Portland raised some eyebrows three years ago with a city ordinance allowing police to seize the cars of motorists who either solicit prostitutes or who are repeat drunk drivers (see GOVERNING,

November 1991, page 18.) Some civil liberties groups expressed concern about the car seizures, but neighborhood groups welcomed the law.

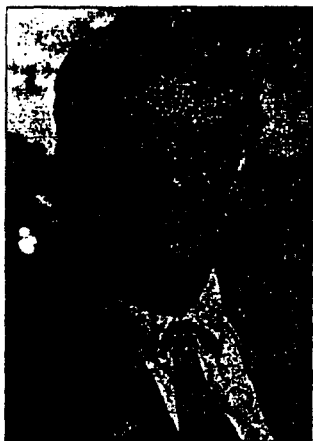
Since its enactment, the ordinance has had a significant impact, according to a recent report filed by the city's police department and the Office of Public Works. Fatal accidents involving alcohol

have decreased by 38 percent since 1990, according to the report, and neighborhood leaders and police officers report a dramatic reduction in the number of prostitutes seen in areas where customers' cars have been seized.

Portland's program has spawned similar efforts across the country. Four communities—Washing-

MIKE LOWRY: THE SATISFACTION OF AN ANGRY MAN

Over more than 20 years in government, in a career that stretches back to his days as a staffer in the Washington state legislature, neither friends nor foes have ever been quite sure what to make of Mike Lowry. He was either the most genial malcontent in politics or else the world's nicest angry man. He could work himself into a liberal lather, pound the table, curse the Chamber of Commerce—and still come off to those he denounced as a guy they wouldn't mind having a beer with once it was all over.



For years, people said that a man that friendly could go a long way in politics, but a man that dogmatic couldn't win statewide. And Lowry, despite five solid victories in a Seattle congressional district, seemed to prove the conventional wisdom right by losing twice for the U.S. Senate, in 1983 and 1988. This past November, though, he proved the same wisdom wrong. This month, at age 53, he will take office as governor of Washington.

And he did it his way. In

the Democratic primary, when his opponent denounced his penchant for costly social programs and refusal to make an anti-income-tax pledge, and in the general election, when the Republican chairman called him "the captive of left-wing interest groups," Lowry stuck by his promise not to do any negative campaigning. In fact, he suggested that one of the Republican gubernatorial candidates had been treated unfairly in the GOP primary, and that he would love to have him as a member of his cabinet. By the end of the campaign, he was drawing support from Republicans who just a couple of years before had seemed to view him as the devil incarnate.

The most interesting question, though, is not whether Lowry is too liberal to be governor. It is whether "Mad as Hell" Mike can transform himself into the calm, statesmanlike leader he may have to be to succeed in his new office. He seems to understand he can't govern the state as a gadfly. "I've grown up," he insists. "I'm ready for real work."

But he is the same Mike Lowry in one way: He is always willing to poke fun at himself, even at the most sensitive aspects of his reputation, such as the lingering belief that he is a little flaky to sit in a governor's chair. Last year, he confided to one audience that his own mother had questioned his decision to run. "Why in the world would anyone want to be governor?" Lowry quoted her as saying. "You'd have to be crazy." Right then, Lowry said, "I realized I was qualified." —Alan Ehrenhalt

ton, D.C.; Milwaukee; Long Beach, California; and Deschutes County, Oregon—have enacted automobile forfeiture programs, and some 60 communities have contacted Portland for information about the program over the past year and a half.

"We don't consider it to be a punishment. It's removing a nuisance," says Sergeant Roger Hediger, whose seizure and forfeiture unit typically impounds between 16 and 18 cars a night. Hediger says the rate of repeat offenses is running under 2 percent.

One budgetary advantage of the seizure program is that offenders must cover the cost of enforcement, towing and storage. After tallying the

costs of the operation, the police department estimates that it comes close to breaking even.

But the rewards appear to be much more than financial. "If you can stop one of those drivers," says Hediger, "you have the potential for saving at

least one life."

—Jeanne Ponessa

For more information, contact Sergeant Roger Hediger, Portland Police Bureau, 1111 S.W. 2nd Ave., Portland, Oregon 97204; phone 503-796-3023.

Will Good Times Follow A Record Bond Market?

The hyperactivity of the 1992 municipal bond market—a record \$270 billion was issued—sends out an upbeat message for 1993: Some form of economic recovery is on its way, and state and local governments are among the first to feel it.

Ironically, the best news comes from a level-

ing-off in the short-term side of the market. It suggests, among other things, that state and local governments have decreased their reliance on emergency borrowings to cope with unexpected revenue shortfalls.

Short-term borrowing cooled off for another reason. Short-term interest

rates, which had been significantly lower than long-term rates in 1991, inched closer to long-term marks in 1992. This made it more economical for state and local governments to go straight to the long-term market to borrow money for infrastructure projects. When short-term rates are significantly lower, issuers often borrow in that market for the beginning stages of a project.

Long-term borrowings were the mirror image of the short-term market. They exploded upward in 1992, reaching an all-time high of \$230 billion. This does not necessarily reflect a rush to finance new infrastructure projects. Rather, at a rate of two to one, the long-term

3-22-93
HB 157

SHELBY - The school board will accept applications through April 7 in the

the old "Re... eliminates two sharp... that led to the old bridge.

Great Falls Tribune *March 18, 1993*
Driver sentenced for double DUIs

A Great Falls driver has been sentenced to jail in both Lewis and Clark and Cascade counties for driving under the influence of intoxicants.

Rick Dean Logan, 30, of 517 6th Ave. N., began serving a six-month sentence for one DUI in the Lewis and Clark County Jail in Helena on Feb. 16.

Last week, Great Falls City Judge Nancy Luth sentenced Logan to begin serving time for his sixth DUI along with the Lewis and Clark sentence.

Logan will be returned to Great Falls in August to serve 30 days in the Cascade County Jail before entering a 98-day chemical treatment program through the Salvation Army, officials said.

Logan was arrested last June 22

after a personal injury accident at 3rd Street and the Northwest Bypass, Great Falls authorities said Thursday.

He pleaded guilty in Great Falls' city court on Feb. 5 to three charges: DUI, being an habitual offender and not having proof of liability insurance.

Besides his sentence for DUI, Logan was ordered to pay \$1,000 in restitution as part of his penalty for driving as an habitual offender.

The fine for failure to show proof of insurance on the car which was registered to someone else was suspended.

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Habitual DUIs to go before district judges

Butte Standard
27 March 93

By Tina Vander Veer
Standard Staff Writer

Chronic drunk drivers in Butte will probably find themselves facing a district judge instead of a police judge from now on, Butte-Silver Bow prosecutors say.

When dealing with fourth-time DUI offenders and up, prosecutors have decided to file most DUI charges in Butte District Court rather than in police court, Chief Deputy County Attorney Brad Newman said Friday.

Newman said the change comes at the request of Police Judge Joe Russell, who has expressed frustration with repeat offenders.

"He doesn't feel the police court sanctions are scaring them off," Newman said.

That's true, Russell said. "After a third offense, there has to be something wrong if it's not getting

through to them," he said.

At the third-offense level, even police court sanctions for DUI are harsh: A typical sentence includes a fine of between \$750 and \$1,000, at least 10 days in jail, and a round of mandatory alcohol treatment.

Many repeat offenders also have suspended or revoked licenses and no insurance, adding another layer of fines to the DUI sentence. Together, the fines from a third-offense DUI case can easily top \$2,000.

Still, Russell has seen a sharp increase in the numbers of second and third-offense DUI cases recently, proving that hefty fines and a few days in jail don't discourage everyone.

Since typical fines don't work, Russell thinks fourth-time offenders should have to explain themselves to the district judge.

"When a person gets up to a
Please see DRUNK Page 10

Drunk

Continued from Page 1

fourth-offense DUI, I think it's a very serious crime," he said.

Whether in police court or in district court, driving under the influence of an intoxicant is always a misdemeanor. Moving DUI cases to district court won't turn them into felonies or change sentencing guidelines.

District judges, however, do have more options for punishment than a police judge, prosecutor Newman said. For example, district judges can commit offenders to Galen for alcohol treatment, something police judges can't do.

And because a cadre of adult probation officials are enforcing the judges' orders, a "no-drinking" mandate from a district judge

carries more punch than that of a police judge, Newman said. Probation offers "some guarantee that (offenders) are going to be watched and followed up on," he said.

Essentially, "you can actually interfere with somebody's life a little bit longer" in district court, Newman said.

Psychology can also play to the court's advantage. District court's big, echoing courtrooms and high benches might intimidate repeat offenders more than the tiny, almost cozy police court does, Russell said.

Sending DUI cases to district court isn't the only way to get tough on repeat offenders. For example, Russell could sentence fourth-time offenders to a full year in jail, rather

than imposing the minimum jail sentence as is his habit.

But doing so, he said, is expensive for the county and doesn't get to the heart of the problem: That chronic drunk drivers are, first and foremost, chronic drunks.

"They'll sit in that jail and rot" rather than admit their alcoholism, Russell said. "They don't feel they've got a problem, and they feel they're being picked on."

Treatment is the way to go, Russell said, and district judges have more power to impose and enforce treatment.

"Our whole goal is still, whether they're fourth, fifth or sixth offenders, to get them help," he said.

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SENATE JUDICIARY

EXHIBIT NO. 3

DATE 3-22-93

BILL NO. HB 525

REPORT OF THE
DISTRICT COURT FUNDING COMMITTEE
A Proposal to Study Court Unification

STATE BAR OF MONTANA

December, 1992

12/2/92

A PROPOSAL TO STUDY COURT UNIFICATION

I. THE NEED TO IMPROVE AND STRENGTHEN THE JUDICIARY
BRANCH OF GOVERNMENT IN MONTANA

The District Court Funding Committee of the State Bar of Montana was organized in 1990 to study and recommend solutions to a funding crisis which had developed in the district courts of the State of Montana. The membership of the committee is as follows:

John D. Stephenson, Jr. - Chairman - Attorney, Great Falls
*The Honorable Dale Cox - District Judge - Glendive
M. David Hoffman - Attorney - State Representative
Ted O. Lympus - County Attorney - Flathead County
(Now District Judge)
Joseph Mazurek - Attorney - State Senator
Stephen Doherty - Attorney - State Senator
The Honorable Tom Olson - District Judge - Bozeman
Joy Bruck - Past President - Montana League of Women Voters
James H. Goetz - Attorney - Bozeman
Janet Kelly - Commissioner - Custer County
Lori Maloney - Clerk of Court - Butte-Silver Bow
Harry Mitchell - Commissioner - Cascade County
**Damon L. Gannett - President - State Bar of Montana
- Attorney
Jim Rice - State Representative - Helena
Nels Swandal - County Attorney - Park County

*Replaced by The Honorable Joel G. Roth - District Judge - Great Falls
**Succeeded by James Johnson and Sherry Matteucci

The Committee conducted an extensive study on the funding of district courts in the State of Montana and concluded that the district courts face significant long term funding problems which will continue to worsen until such time as the Legislature overhauls the funding mechanisms for the district courts.

The Committee found that 36 counties in Montana were having serious financial problems in operating their courts. These 36 counties experienced financial shortfalls wherein their annual

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district court expenditures exceeded the annual revenues which could be raised from state reimbursement, grant-in-aid programs, the county district court mill levy and miscellaneous revenues designated by statute for the district courts. In other words, 36 counties had to dip into other funds, borrow money, register warrants or resort to other such measures to fund their district courts. In a legal opinion given to the committee by member James Goetz, it was concluded that the present district court funding system suffers from the same types of inequities which led the school foundation funding program to be declared unconstitutional by the Montana Supreme Court.

The Committee drafted a bill, known as House Bill 312, which was introduced to the 1991 Legislature. As proposed, this bill would have required the State to assume a greater share of the funding for the district courts. Specifically, it would have required the State to be ultimately responsible for funding the district courts if applicable funding sources from the counties became inadequate. It also would have required the State to assume responsibility for juvenile probation expenses as part of the state reimbursement funding which presently reimburses counties for criminal trial expenses. House Bill 312 did not pass in its proposed version, but the Legislature did pass an amended version which allowed counties the option to impose an additional 0.5% vehicle tax. Fifty percent of the proceeds is allocated to the county. The remaining fifty percent is allocated among the cities, towns and outlying areas within the county upon the basis of

population. The county's share of these proceeds can be used for such purposes as the county designates, including, but not limited to, district courts. Many counties saw this tax as a rare opportunity to gain additional revenue for other governmental operations, and their district courts did not receive assistance.

In fiscal year 1992, 32 counties opted to assess additional vehicle taxes under House Bill 312. Seven counties used these funds exclusively to offset court costs, seven counties used the funds for both district court and county purposes, and 18 counties used these funds exclusively for county expenses other than district court costs. Figures for fiscal year 1993 indicate increasing reliance upon HB312 for district court purposes. Thirty seven counties will impose the local option vehicle tax in fiscal year 1993. Thirteen intend to use these funds exclusively for district court purposes, six intend to use these funds for both district court and other purposes while 18 intend to use these funds for purposes other than the district courts. Several counties relied extensively upon this new revenue source to supplement district court funds in fiscal year 1992; Cascade County assessed \$450,000; Lake County \$78,000; Lewis and Clark County \$402,000; Lincoln County \$130,000; Missoula County \$480,000; and Ravalli County \$137,000. Statewide a total of \$2,110,646 in optional light vehicle tax funds assessed in fiscal year 1992 was spent on the district courts. This amount is approximately 12½% of total district court expenditures for that year which totalled \$16,710,497. Despite improvement in revenues thirty-five counties

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in Montana report district court budget shortfalls in fiscal year 1992, compared to thirty-six as reported in the 1990 study. The total amount of the shortfall dropped to \$1,467,666, compared to \$3,410,927 in 1990.

In a survey conducted in October 1991 the State Bar asked district court judges, clerks of court and county commissioners throughout Montana, several questions pertaining to district court funding and House Bill 312. The committee received 72 responses: 38 responded that present district court funding in their judicial districts or county was adequate whereas 34 replied no; 50 favored making House Bill 312 permanent whereas 18 responded no; 49 stated that district court financial support is primarily a state responsibility whereas 21 responded no.

Although House Bill 312 has helped many counties fund district court operations, this law is scheduled to expire on July 30, 1993 (61-3-537 M.C.A.). Members of the Legislature expressed a desire that the Committee engage in a more comprehensive study of the funding of the court system and to provide a long term solution to court funding problems.

Accordingly, the Committee has been reconstituted in 1992 and is presently studying potential long range solutions to the court funding problem. Throughout, it has been the unanimous opinion of all members of the Committee that the primary responsibility for funding the district courts rests with the State of Montana rather than the localities where the courts are located. It is also the belief of the Committee that the long range solution

to the problem may lie in a unified court system. The Committee plans to ask the 1993 Legislature to enact a bill creating a commission to study and recommend legislation establishing a unified judicial system. The Committee will also ask the Legislature to extend House Bill 312 until a unified system can be approved.

II. FEATURES OF A UNIFIED COURT SYSTEM

At the present time many states have what are characterized as "unified judicial systems." There is no single meaning to this term and unified court systems are set up in different manners in different states. However, characteristics of unified court systems generally are as follows:

- (a) There is a centralized administration of all state courts administered by a central authority. This could be the chief justice, or a judicial council, working together with the office of the court administrator.
- (b) There is a single level of trial courts. Courts of limited jurisdiction may be abolished. Matters formerly heard by courts of limited jurisdiction are heard either by district court judges or by lawyer or non-lawyer magistrates who are officials of the district court.
- (c) The majority of all court operations are funded by the state.

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- (d) The Clerk and district court employees would be accountable to the central administration, even though the office of Clerk of Court would continue to be an elected position.¹

The advantages which would flow from a unified court system would be several.

- (a) The judiciary would be acting as a unified whole, instead of as localized autonomous entities.
- (b) The judiciary budget would be approved by the Legislature for the operation of all of the court functions in the state. District courts and courts of limited jurisdiction would no longer negotiate with county or city commissioners for their budgets.
- (c) There would be centralized and uniform accounting of court budgets and functions.
- (d) There would be more flexibility in assigning judges and magistrates where the work is needed. In addition to hearing minor cases, lawyer magistrates could hear discovery motions and hold settlement conferences, much like the federal magistrates do today.

¹ In South Dakota the clerk's office has changed from an elected position to an appointed position. A June 1992 survey conducted by the Montana Association of Clerks of Court revealed that 46 clerks favor election while 10 favor appointments. As to the issue of court unification 27 clerks supported the concept, 17 were opposed, and 12 were undecided.

- (e) The judicial branch would become much more visible as a third branch of government. This would help the judicial branch obtain more public recognition and respect.

Proposals to unify the court system in Montana have been made on previous occasions. The subject was debated in the 1972 constitutional convention and during the 1983 legislative session a bill was introduced in the Senate to unify the Montana courts. The bill was tabled and a committee was appointed to further study the matter. The committee concluded that there was little support for court unification at that time but did recommend legislation which ultimately established the present state reimbursement program for criminal trial expenses.

III. THE EXISTING COURT SYSTEM IN MONTANA

1. The Montana Supreme Court

The Montana Supreme Court consists of a chief justice and six associate justices. The Supreme Court hears appeals from district courts and has original jurisdiction to issue certain types of writs. The Montana Constitution gives the Supreme Court "general supervisory control over all other courts" but as noted below, this power is issued through the issuance of writs on a case-by-case basis, and does not involve integral, continuance administrative control or supervision by the Supreme Court of lower state courts. In addition, the Supreme Court has authority to make rules governing rules of trial and appellate procedure and to

regulate the admission to the Bar and the conduct of attorneys. Supreme Court operations are funded entirely by the state.

2. The State District Courts

There are district courts located in each county of the state. The district courts are organized into 21 judicial districts staffed by 37 district judges. District courts have general jurisdiction to hear all civil cases, all felony cases, all misdemeanor cases, all probate matters, all divorce cases, and many other matters. In addition, the district courts hear appeals from the courts of limited jurisdiction. District courts receive funding from a variety of sources, but the major portion of their funding is derived from county mill levies. In fiscal year 1992 district court budgets statewide total approximately \$16.2 million. These budgets pay for the expenses of the clerk of court, jury and witness fees, judicial support staff salaries, indigents defense costs and juvenile probation expenses. Judges salaries are paid directly by the state and are not included within the district court budgets. Of the \$16.2 million, approximately \$2.3 million is provided by the state reimbursement program for certain criminal court expenses. More than 50% of district court funding is provided through the district court county mill levy pursuant to §7-6-2511 M.C.A. The "Grant-In-Aid" program administered by the state provided only \$25,000 to the courts in 1991, and is budgeted to provide only \$55,000 in 1992. Other district court funds were generated by revenues received from licenses, permits, filing fees. As noted in the Committee's 1990 report and herein, these funding

sources are not sufficient in many counties to fund all of the expenses of the district court system and in 36 counties which experienced district court funding shortfalls, it was necessary to make up the shortfall from other sources, such as other county budgets, supplemental funds, borrowing or registering warrants. In fiscal year 1990, fees paid to the clerks of court were approximately \$1.7 million. Of this amount, approximately 51% was retained by the county; the remaining 49% was remitted to the state treasury.

3. Justice of the Peace Courts

The Montana Constitution requires that there be at least one justice of the peace court in each county. Presently, there are 77 justices of the peace in Montana, but 32 of these also act as city judges. Justice of the peace courts have jurisdiction over civil disputes involving amounts not exceeding \$5,000 and misdemeanors with fines not to exceed \$500 (\$1,000 in cases of fish and game violations) and imprisonment not exceeding six months. In fiscal year 1990 justice of the peace court budgets were approximately \$4.0 million and revenues raised by these courts were approximately \$5.2 million. Fifty percent of the revenues are retained by the county; the remaining 50% are forwarded to the state treasurer and are used for the state general fund, the Department of Fish, Wildlife and Parks, the State Highway Traffic Education Program, the Department of Livestock, the Crime Victims Compensation Fund, and the Department of Family Services.

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4. City and Municipal Courts

Presently there are 96 city courts and one municipal court in Montana. City courts have concurrent jurisdiction with the justice courts of most civil matters involving not more than \$5,000 and misdemeanors involving imprisonment of six months or less and fines not exceeding \$500. In addition, city courts have exclusive jurisdiction over disputes involving city ordinances and matters involving the collection of city taxes, or other monies owing to the city not exceeding \$5,000. Montana statutes also allow for the creation of municipal courts in cities that have a population of 10,000 or more. In cities where a municipal court is established the office of city judge is abolished. A municipal court judge must have the same qualifications as a district court judge, but has the same jurisdiction as a justice of the peace. At this time only the city of Missoula operates a municipal court. Revenues raised by city and municipal courts in fiscal year 1990 were approximately \$3.8 million.

5. Water Courts

The Montana Water Court was created by the 1991 legislative session to expedite and facilitate the adjudication of existing water rights pursuant to the water adjudication program set up under the 1973 Water Use Act. The state has been divided into four water divisions and the statute provides for one water judge to adjudicate each division. There is also a chief water judge. In addition, five water masters and four clerks are employed by the water court. Funding for the water court is

derived from various revenue sources which include coal tax money, resource indemnity trust money and various other sources of bond and income revenues.

6. Workers' Compensation Court

The Workers' Compensation Court was created by statute on July 1, 1975, to adjudicate disputes arising out of the workers' compensation program. The workers' compensation court has exclusive jurisdiction over disputes arising under the workers' compensation laws. The workers' compensation court is also provided with a staff which includes one or more hearing examiners.

7. Clerks of the District Court

Every county in Montana has a clerk of the district court, which is an elected position in each county except Anaconda-Deer Lodge where the clerk is appointed. Clerks maintain complete records of cases filed and proceedings conducted in the district court within their respective counties. In addition, district court clerks issue marriage licenses and have administrative responsibilities for jury selection, citizenship and naturalization records.

8. Clerk of the Supreme Court

The clerk of the Montana Supreme Court is an elected position. The clerk maintains the files and records of the Montana Supreme Court, collects the annual attorney license tax, and maintains the role of Montana attorneys.

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9. Office of the Court Administrator

The office of the court administrator was created in the 1977 legislative session. The court administrator is appointed by the Supreme Court and holds the position at the pleasure of the court. The court administrator assists the Supreme Court in preparing judicial budget proposals, monitoring and managing the judicial budget, coordinating judicial educational services, providing central staff services to various boards and commission, and providing long range planning and research for statewide judicial needs.

IV. A COMPARISON WITH OUR NEIGHBORING STATES

South Dakota and Idaho have unified court systems in place. Utah has accomplished major changes in its judicial system and is headed toward a unified system. The State of North Dakota is currently in the process of unifying and consolidating its trial courts.

South Dakota has a population comparable to Montana and like Montana is predominately rural with large open spaces. It has 67 counties and at one time had 67 county judges together with numerous justice of the peace courts and city courts. A commission to study court unification was established in 1960 and 10 years later an acceptable court unification procedure was presented for approval. This was approved by constitutional amendment in November of 1972 and implemented in 1975. The changes in the judicial system were enacted over a three year period. The

district courts and limited jurisdiction courts in South Dakota were abolished and eight judicial circuits were created. There are presently 36 circuit court judges, seven law magistrates and eight part-time law magistrates. Each circuit has a presiding circuit judge who, in addition to judicial duties, helps administer affairs in that circuit. The circuit court judges, who are comparable to our district court judges, have jurisdiction to hear all trial matters including traffic tickets, municipal ordinance violations and other matters that are traditionally handled by limited jurisdiction courts. In practice, however, magistrates decide these matters. In addition, the clerks of court in each county act as lay magistrates and generally handle non-contested matters formerly handled by justice courts and city courts. At first, counties paid about fifty percent of the cost of the unified system, but gradually the state assumed more and more of the funding responsibility and at the present time the state assumes all of the responsibility for court funding except that counties pay for courthouse facilities, jurors fees and costs of indigent defense.

Idaho has 44 counties divided into seven judicial districts. In 1969 Idaho abolished probate courts, police courts and justice of the peace courts and implemented a one level unified trial court in each county. Instead of 300 limited jurisdiction judges, many of whom were part-time and untrained, there are now 60 full-time lawyer judges and trained non-lawyer judges who serve as magistrates of the district courts. In addition, there are 33

district judges. In each district, there is a supervising judge who handles administrative tasks within that district. The Idaho Supreme Court has ultimate authority for supervising and administering the Idaho court system.

Utah has estimated that if it had not adopted a reorganization plan, it would have been necessary to add 22 additional trial court judges plus support staff and additional facilities in order to keep pace with existing case loads. The projected cost would have been in excess of \$18 million. By adopting a reorganization plan, the number of additional judges was reduced to four and the actual costs incurred during the same time period were slightly in excess of \$3 million, representing a savings of \$15 million to the taxpayers.

North Dakota has district courts of general jurisdiction and county courts of limited jurisdiction similar to Montana's justice of the peace courts except that county courts hear probate matters. Under legislation now in effect the North Dakota county courts will be abolished and their functions will be assumed by the district courts. There are presently 53 district court and county court judges. After the completion of a transition period which ends on January 2, 2001, there will be 42 district court judges and county courts and county judges will cease to exist. North Dakota has seven judicial districts. District court operations in North Dakota are funded by the state from the general fund. The district court budget includes all juvenile court and probation expenses

including the salaries of referees who act as juvenile court judges.

V. A LOOK AT MONTANA

Montana has 21 judicial districts and 37 district judges, once a new judge takes office in Ravalli County on January 1, 1993. The 19th, 20th and 21st districts have been added in recent years, the most recent addition being the 21st district in Ravalli County in 1991. There are 153 limited jurisdictions in Montana staffed by 121 limited jurisdiction judges, of which 36 are full-time. Some of these limited jurisdiction judges cover more than one jurisdiction.

Montana has adopted some elements of a unified system. The district courts are courts of general jurisdiction and most of the judicial districts encompass several counties. The office of court administrator was established in 1975, and this office provides administrative direction for the Supreme Court and a number of lower court functions. As of 1991 the court administrator's office reviews and approves the state reimbursement program for criminal court costs incurred by district courts. The office of the court administrator also coordinates the meetings of the various study commissions established by the Supreme Court. One of these is the Commission of Courts of Limited Jurisdiction which assists in setting general policies for limited jurisdiction courts. Limited jurisdiction judges are required to receive over 50 hours a year of training as of 1990 and are required to take a

written certification test. The office of the court administrator has also worked in implementing uniform data retrieval systems for use by both the district courts and limited jurisdiction courts. The Clerks of Court, through their association, have worked together to improve the uniformity and efficiency of their offices throughout Montana.

However, for the most part Montana trial courts operate autonomously. District court judges and clerks of court negotiate with their respective county commissioners to set district court budgets each year. Justices of the peace negotiate their budgets with county commissioners and city judges with their respective city councils or commissions.

Although the Montana Constitution provides that the Montana Supreme Court has "general supervisory control over all other courts" this power is exercised principally through the writ of supervisory control. That is, the power is invoked by individual litigants who request the Supreme Court to address particular problems in cases pending before the district court. It is used where no route of appeal exists, and is often used as a substitute for interlocutory appeals. Occasionally the writ has been used to apportion case loads among district judges in multi-judge districts and to compel district judges to perform their judicial duties. The power has never been used as a basis for integral, continuous administrative control or supervision by the Supreme Court of lower state courts. Although efforts were made in the 1972 constitu-

tional convention to broaden this power to include a "judicial administrative provision" this was not adopted.

In fact, present statutory provisions give the governor power to intervene in the courts in certain situations. M.C.A. §35-5-111 provides that the governor has the right to compel a district court judge to take assignments in another district; M.C.A. §3-5-112 provides that the governor has the right to compel any district court judge to hold court in any county wherein the elected presiding judge fails to hold court for any reason.

As seen above, there is overlapping jurisdiction among the district court and courts of limited jurisdiction for certain types of cases. A civil case involving \$5,000 or less which arises within a particular city could be filed in that city's court, or in the justice of the peace court, or in district court. The same is true with misdemeanor violations involving not more than six months imprisonment or a \$500 fine.

Furthermore, the courts in Montana are "compartmentalized" each operating autonomously in handling matters within its particular jurisdiction. A district judge in a single judge district must handle all of the matters filed in that district court. Many judges in Montana do not have law clerks because of insufficient funding. Justices of the peace or municipal judges within the same county handle their own workloads, without assistance from the district courts, nor can these judges lend assistance to the district judge, or to each other.

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Montana's approach to expanding workloads for district judges has been to create new judicial districts and to create new judge positions. Each judicial district must be created or reshaped by an act of the Legislature rendering the system more inflexible. In 1984 there were 19 judicial districts staffed by 32 district judges. As of January 1, 1993, there will be 21 judicial districts staffed by 37 district judges.

In states with unified systems, where all of the judicial officials work together, judges can be assigned where they are most needed within their districts, and magistrates, can work together with the district judges to best handle the judicial business within their particular jurisdictions.

VI. WILL A UNIFIED JUDICIAL SYSTEM SOLVE COURT FUNDING PROBLEMS?

This Committee is not prepared to say that a unified judicial system will in itself solve court funding problems. However, the committee notes that the court system, when viewed as a whole, generates a significant amount of revenue.

Justice of the peace courts in Montana generate \$5.2 million annually in revenue; city courts \$3.8 million, and district courts \$1.7 million from filing fees collected pursuant to Section 25-1-201 alone. The total approaches \$12 million annually. All of these courts taken together cost a total of approximately \$20 million per year to operate. Thus, Montana trial courts, viewed as a whole, generate revenue which approximates sixty percent of their

operating expenses, although much of the money raised is used for purposes other than court operations.

In addition, the district courts collect and disburse substantial sums for child support payments and monies held in trust for various purposes. In fiscal year 1991 child support payments handled by the district courts totalled \$14,897,544 while trust fund accounts totalled \$5,222,919. None of this money is used for court operations or other public purposes, but the collection and disbursement of these funds is an important public service.

The unified court system in South Dakota, a state with a population similar to that of Montana, raised over \$30 million in revenue in 1990, when child support payments were included. In Idaho, total trial court costs approximated \$23 million in 1987, and the court system generated nearly \$16 million in revenues. Like Montana, the money generated by the court systems in South Dakota and Idaho is widely disbursed, and most of it is used for purposes other than court operations. In fact, serious conflicts of interest would arise if courts were required to fund their activities from revenues generated by fines, filing fees and other court activities. However, when the courts are viewed as a unified whole which produce revenue equal to a major part of their expenses, the Legislature and the public can then appreciate that the courts raise a significant amount of money for a variety of important public purposes.

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The Committee further believes that a unified system may be able to operate more efficiently than our present fragmented system. Montana's approach to handling expanded workloads has been to create new district judge positions and create new judicial districts. This simply leads to further fragmentation of the judicial system. Montana judges, at present, are the lowest paid in the United States. However, even at their present pay scales, the creation of an additional judge post is very expensive. In addition to an annual salary, each new judge must have an office, a law library, a secretary, a word processor, and hopefully a law clerk in order to perform his or her duties effectively. The unified system would provide more flexibility in staffing. Magistrates, working as part of the district court, could hear not only traffic violations, but could also act much as federal magistrates presently act in hearing motions, conducting settlement conferences in other matters. Many routine probate and divorce matters do not require the services of a highly trained district judge, and could easily be handled by a magistrate. However, at the present time only the district judge can hear these matters.

With a more efficient centralized system, it would not be necessary to keep adding new district judges. With centralized state funding for the court system, the judicial system would be financially accountable to the Legislature. State, county and city governments could be relieved of the burden of court expenses, and some of the revenue now channeled for such court expenses, could be directed to the state treasury to help offset court costs.

VII. CONCLUSION

In summary, it is the Committee's position that the funding of the court system should rest primarily with the state. The unified judicial system, with a central budget presented to the Legislature, would be financially accountable to the Legislature. Judicial resources could be used efficiently to provide better service to the people of Montana at a reasonable cost. A unified system would achieve efficiencies in services and costs which cannot be achieved under the present fragmented court system.

The Committee recognizes that a unified court system would involve major legal changes and the Committee believes that these changes can best be implemented if all segments of the judicial system which will be affected as well as the public can be involved in studying and implementing these changes. The Committee does not have the time or resources to study this problem in detail and believes that a comprehensive study can only be done through a legislatively authorized and funded study committee.

Accordingly, the Committee recommends that the Legislature pass the draft bill establishing and funding a study committee to determine the feasibility of a unified court system in Montana (attachment A). Attachment B is a budget for the proposed commission. During the interim, in order to alleviate district court funding shortfalls, the Committee recommends that the Legislature extend H.B. 312, passed by the 1991 Legislature (attachment C).

REFERENCES

Article VII, Constitution of Montana.

Title 3, Montana Code Annotated.

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Annual Report of the Montana Judicial System - calendar year 1990 - J. A. Turnage, Chief Justice.

The Judicial Article: What Went Wrong? - Gene M. Bowman, Montana Law Review, Vol. 51, No. 2, Summer 1990.

Court Unification in Montana; A Report to the 49th Legislature Joint Interim Subcommittee No. 3 - December 1984 - Montana Legislative Council.

South Dakota Courts - The State of the Judiciary and 1990 Annual Report of the South Dakota Unified Judicial System - Chief Justice Robert A. Miller - January 1991.

Utah State Courts - Annual Report - 1992.

Guide to the Idaho Courts - June 1989.

Report of William G. Bohn, North Dakota Court Administrator, April 26, 1991.

Montana Association of Counties - Statistics of District Court revenues and expenditures, and use of HB312 funds.

In addition, the Committee received considerable statistical material from Jim Oppedahl, Court Administrator's office, from Gordon Morris and Sandra Oitzinger of the Montana Association of Counties and from George Bousliman of the State Bar. The Committee also received valuable telephone input from the court administrators of North Dakota, South Dakota, and Utah concerning their respective judicial systems.

DRAFT

AN ACT GENERALLY RELATING TO JUDICIAL ORGANIZATION AND FINANCING; ESTABLISHING A JUDICIAL UNIFICATION AND FINANCE COMMISSION TO CONDUCT A STUDY OF THE JUDICIARY; PROVIDING FOR THE SELECTION OF 13 MEMBERS TO SERVE ON THE COMMISSION; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Judicial unification and finance commission.** (1) There is a 13 member judicial unification and finance commission consisting of three public members appointed by the governor; two members appointed by the chief justice of the supreme court; one member appointed by the speaker of the house of representatives, who shall be a member of the house of representatives; one member appointed by the president of the senate, who shall be a member of the senate; and one member each who shall be appointed by the following organizations: the Montana judges association, the Montana magistrates association; the Montana association of clerks of court; the State Bar of Montana; the league of cities and towns; and the Montana association of counties.

(2) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121.

(3) Any vacancy occurring on the commission must be filled in the same manner as the original appointment.

(4) The members shall select a chairman from among themselves.

Section 2. **Meetings.** (1) The chairman shall schedule meetings of the commission as considered necessary. The chairman shall give notice of the time and place of the meetings to members of the commission. The director shall report progress on the study to date at each meeting.

(2) The commission may adopt any necessary rules of procedure for the conduct of its meetings.

Section 3. **Reimbursement of expenses.** Members of the commission must be reimbursed in accordance with 2-18-501 for actual and necessary expenses incurred in attending meetings or conducting business.

Section 4. **Staff and facilities.** (1) The commission shall appoint and fix the compensation for a director who, subject to approval of the commission, may hire necessary staff and enter into contracts for services if necessary.

(2) The department of administration shall provide necessary meeting facilities in the capitol for the commission and office space, equipment, and supplies for its staff.

Section 5. **Powers and duties -recommendations- report.** (1) The commission shall make a detailed and thorough study of the judiciary and of the possible unification and future funding thereof. For this purpose the commission is authorized to secure directly from any agency, board, or commission or from any independent organization any information, suggestions, estimates, and statistics, and each such agency, board, commission, or organization shall furnish such information upon request made by the chairman of the commission.

(2) The commission shall submit a written report to the legislature no later than December 1, 1994, which shall include recommendations for any necessary implementing legislation.

EXHIBIT 3
DATE 3-22-93
HB 525

Section 6. Funding -- appropriation. (1) The commission may receive gifts, grants, or donations. The money received must be used for fulfilling the duties of the commission, for reimbursing the expenses of commission members, or for providing staff for the commission. The money received must be deposited in a special revenue fund to the credit of the commission. There is appropriated to the commission from the special revenue fund an amount not to exceed \$50,000.

(2) There is appropriated \$159,650 from the general fund to the commission created by this act for the biennium ending June 30, 1995, to be used only as needed to supplement the funding available under subsection (1).

Section 7. Effective date. (1) This act is effective on passage and approval.

**DRAFT BUDGET
COURT UNIFICATION/FINANCE STUDY COMMISSION**

	FY 1993-94	FY 1994-95
Income:		
Contributions	\$2,275	\$2,275
Appropriation	76,925	82,725
Expenses:		
Contracted Services	60,000	63,000
Travel (4 Committee meetings a year)	7,200	7,500
Printing	2,500	3,500
Supplies	1,500	1,600
Copying	1,500	1,600
Telephone	2,300	2,400
Postage	1,000	2,000
Equipment Rental	1,200	1,300
Office Rental	2,000	2,100
TOTALS	\$79,200	\$85,000

EXHIBIT 3
DATE 3-22-93
HB 525

DRAFT

AN ACT RELATING TO FUNDING DISTRICT COURTS; EXTENDING THE DATE FOR
TERMINATION OF THE PROVISIONS OF CHAPTER 749, LAWS OF 1991.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4 of Chapter 749, laws of 1991, is amended to read:

Section 4. Termination. This act terminates June 30, 1995.

EXHIBIT 3
DATE 3-22-93
HB 525

THE SUPREME COURT OF MONTANA

J. A. TURNAGE
CHIEF JUSTICE



JUSTICE BUILDING
215 NORTH SANDERS
HELENA, MONTANA 59620-3001
TELEPHONE (406) 444-2621

March 22, 1993

Seantor Bill Yellowtail, Chairman
Senate Judicairy Committee
State Capitol Building
Helena, Montana 59620

SENATE JUDICIARY

FILE NO. 4
DATE 3-22-93
BILL NO. HB 278

Dear Senator Yellowtail, members of the committee:

The Supreme Court has had the administrative duties for the District Court Criminal Reimbursement Program for the past year. From this experience we have found that the program would work better if the changes proposed in HB 278 were enacted. The change to a statutory appropriation will allow all of the funds to be used for court reimbursement and reduce the number of steps in the reimbursement process. HB 278 will simplify the management of the program.

The funding provided in HB 278 for court automation will allow the court to continue to meet the challenge to improve the administration and operations of our courts. As you know, Montana courts are desperately in need of modern tools to keep up with increasing caseloads and the complexity of current litigation. We can no longer do that with carbon paper and big red ledger books!

The Supreme Court has taken a leadership role in this area by promoting automation in the Judiciary while at the same time trying to ensure that automation is planned, cost effective, and uniform.

While the court can encourage and provide leadership, we can only accomplish our goals with the support and aid of the Legislature.

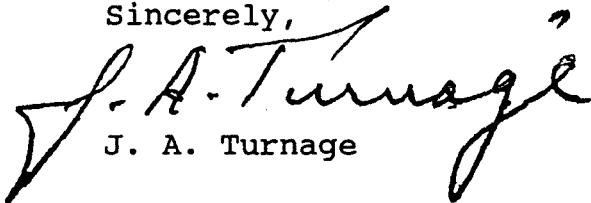
I believe that we are at a critical turning point. The Judiciary has a good start on improving the administration of justice through the use of modern tools. In the state of the Judiciary address I pointed out that we have assisted judges and clerks of court in 33 counties in automation. If continued funding is not provided our efforts so far will be lost. Without the continuation of a central uniform effort, that we have established, courts will be left to automate in a helter skelter manner that will be more expensive to

each individual county.

We need your help. Without it I believe that the Judicial system will be left to drift and that we will all pay a larger cost later to set our house in order.

Again, we very much appreciate your support and trust that this Legislature can find a way to support our court improvement efforts with the one-time funding available under HB 278.

Sincerely,

A handwritten signature in cursive script, reading "J. A. Turnage". The signature is written in dark ink and is positioned to the left of the printed name.

J. A. Turnage

MONTANA MAGISTRATES ASSOCIATION

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 3-22-93
BILL NO. HB 278

March 22, 1993

Senator Bill Yellowtail, Chairman, and Respected Committee Members:

My name is Craig L. Hoppe and I represent the Montana Magistrates Association. I am also the city judge in St. Ignatius. The Montana Magistrates Association represents all the Courts of Limited Jurisdiction in the State of Montana. This includes all of the justice, city, and municipal courts. We support House Bill 278 and recommend a "Do Pass" when this bill is considered in executive session.

The courts of Limited Jurisdiction are the busiest courts in Montana. We handle approximately 90 percent of all cases which go to court. In the last years, the Legislatures have expanded the jurisdiction of the Courts of Limited Jurisdiction, and this session will again add to the responsibilities of our courts.

The Montana Supreme Court has been aware of the increased case load and four years ago established guidelines to help automate our courts. Through the efforts of the Supreme Court, approximately 30 courts of limited jurisdiction have been automated. This has allowed the courts to more effectively manage their case loads in both criminal and civil areas. This too has helped prevent some of those cases which used to fall through the cracks, thereby allowing justice to be served and assuring that every victim has their day in court.

In summation, because of the ever increasing case load, the expanded jurisdiction, and the desire to serve the people of the State of Montana, the Association appreciates the efforts of the Montana Supreme Court in automation of our courts and we totally support House Bill 278.

Thank you for your time and consideration today.

DATE 3-22-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: H.B. 157 (Hyp) H.B. 278 (Bardanov)
H.B. 525 (Rice)

Name	Representing	Bill No.	Check One Support Oppose	
Bill LEARY	MT. BANKERS ASSN	HB 157	✓	
Jim Oppenahl	Dept of Justice SPAW	HB 278	✓	
GEORGE BRULMAN	STATE BAR	HB 525	✓	
John Stephenson	State Bar	HB 525	✓	
Gordon Morris	MILCO	HB 278 HB 525	✓	
Alan Gilkath	MACDC	HB 278	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY