

HB 514 INTRODUCED BY PISTORIA, ET AL.  
PROVIDES FOR VIDEOTAPE RECORDING OF DISTRICT COURT  
PROCEEDINGS

1/28 INTRODUCED  
1/28 REFERRED TO JUDICIARY  
1/28 FISCAL NOTE REQUESTED  
2/04 FISCAL NOTE RECEIVED  
2/10 HEARING  
2/14 TABLED IN COMMITTEE

1 House BILL NO. 514  
 2 INTRODUCED BY Pistoria-Kleinick  
 3 O'Connell Mason Overman Israel Spalth Loy  
 4 Miller A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR  
 5 VIDEOTAPE RECORDING OF DISTRICT COURT PROCEEDINGS; TO GRANT  
 6 THE SUPREME COURT RULEMAKING AUTHORITY; TO REVISE FEES FOR  
 7 COPIES OF COURT TRANSCRIPTS; AND AMENDING SECTIONS 3-5-603,  
 8 3-5-604, AND 46-18-309, MCA, AND RULE 9, MONTANA RULES OF  
 9 APPELLATE PROCEDURE."

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

12 NEW SECTION. Section 1. Definition of videotape  
 13 recording. As used in [this act], the term "videotape  
 14 recording" means an electronic recording of the video and  
 15 audio portions of a district court proceeding in accordance  
 16 with procedures established by the supreme court.

17 NEW SECTION. Section 2. Recording of court  
 18 proceedings. For the purpose of establishing the official  
 19 court transcript, proceedings in district court may be  
 20 recorded by:

- 21 (1) stenographic means;
- 22 (2) phonographic means;
- 23 (3) use of audio electronic devices; or
- 24 (4) use of videotape recording systems with audio
- 25 capability.

1 NEW SECTION. Section 3. Videotape transcript --  
 2 filing. (1) The judge of a district court may order  
 3 videotape recording of all testimony and evidence in any  
 4 case before the court. When videotape recording is used to  
 5 record the proceedings in district court, the videotape  
 6 recording constitutes the transcript of proceedings and,  
 7 except as provided in 46-18-309 and Rule 9, Montana Rules of  
 8 Appellate Procedure, such transcript need not be transcribed  
 9 into written form.

10 (2) Videotape recordings of court proceedings must be  
 11 filed with the clerk of the district court upon conclusion  
 12 of the trial or hearing. The clerk of the district court  
 13 shall safely keep all videotape recordings in accordance  
 14 with such rules as may be prescribed by the supreme court.

15 NEW SECTION. Section 4. Expense of videotape  
 16 recordings. (1) A party requesting a copy of the videotape  
 17 recording of a court proceeding shall pay the expense for  
 18 such copy unless it appears to the judge of the district  
 19 court that a defendant in a criminal case is unable to pay  
 20 for a copy of the videotape recording.

21 (2) In lieu of requesting a copy of a videotape  
 22 recording of the proceeding, a party may view the videotape  
 23 recording that is on file with the clerk of the district  
 24 court. However, the expense of viewing the videotape must be  
 25 paid by the requesting party unless he is unable to pay.



1 (3) All expenses of videotape recording of proceedings  
2 other than those covered in subsections (1) and (2) must be  
3 included as costs in the action.

4 NEW SECTION. Section 5. Rules governing videotape  
5 recording of proceedings. The supreme court may adopt rules  
6 to govern videotape recording of district court proceedings.

7 Section 6. Section 3-5-603, MCA, is amended to read:

8 "3-5-603. Duties. (1) Each reporter must, under the  
9 direction of the judge, attend all sittings of the court and  
10 take full stenographic notes of the testimony and of all  
11 proceedings given or had thereat except when:

12 (a) the judge dispenses with the reporter's services  
13 in a particular cause or with respect to a portion of the  
14 proceedings therein; or

15 (b) videotape recording is used to record the official  
16 transcript of the proceedings.

17 (2) The reporter must file with the clerk forthwith  
18 the original stenographic notes taken upon a trial or  
19 hearing required to be taken by this under subsection (1).  
20 The county in which the proceedings are held shall provide a  
21 safe and secure place for the clerk to store all official  
22 notes of the proceedings. The official notes must be kept  
23 for a period of 10 years."

24 Section 7. Section 3-5-604, MCA, is amended to read:

25 "3-5-604. Transcript Written transcript of

1 proceedings. (1) Each reporter must furnish, upon request,  
2 with all reasonable diligence, to a party or his attorney in  
3 a case in which he has attended the trial or hearing a  
4 written transcript from his stenographic notes of the  
5 testimony and proceedings of the trial or hearing or a part  
6 thereof, upon payment by the person requiring the same of \$2  
7 \$1.50 per page for the original transcript, ~~50-cents-per~~  
8 ~~page-for-the-first-copy,~~ and 25 cents per page for each  
9 additional copy.

10 (2) If the county attorney, attorney general, or judge  
11 requires a written transcript in a criminal case, the  
12 reporter is entitled to his fees therefor, but he must  
13 furnish it. Upon furnishing it, he shall receive a  
14 certificate for the sum to which he is entitled. The  
15 reporter shall submit the certificate to the department of  
16 commerce which, in accordance with 3-5-902, is responsible  
17 for the prompt payment of all or a portion of the amount due  
18 the reporter. If the department, in accordance with  
19 3-5-902, pays none or only a portion of the amount due, the  
20 county shall pay the balance upon receipt of a statement  
21 from the reporter.

22 (3) If the judge requires a copy of the written  
23 transcript of the proceedings in a civil case to assist him  
24 in rendering a decision, the reporter must furnish the same  
25 without charge therefor. In civil cases, all written

1 transcripts required by the county shall be furnished, and  
2 only the reporter's actual costs of preparation may be paid  
3 by the county.

4 (4) If it appears to the judge that a defendant in a  
5 criminal case is unable to pay for a written transcript, it  
6 shall be furnished to him and paid for by the state in the  
7 manner provided in subsection (2) to the extent funds are  
8 available. The county shall pay the remainder as required in  
9 3-5-901."

10 Section 8. Section 46-18-309, MCA, is amended to read:

11 "46-18-309. Transmission of transcript and record of  
12 trial. The clerk of the trial court, within 10 days after  
13 receiving the transcript, shall transmit the entire record  
14 and transcript to the supreme court. When videotape is used  
15 to record the proceedings, the clerk of the trial court  
16 shall include a written transcript of the record as required  
17 under Rule 9, Montana Rules of Appellate Procedure."

18 Section 9. Rule 9, Montana Rules of Appellate  
19 Procedure is amended to read:

20 "Rule 9. The record on appeal.

21 (a) Composition of the record on appeal. The original  
22 papers and exhibits filed in the district court, the  
23 transcript of proceedings, if any, and a certified copy of  
24 the docket entries prepared by the clerk of the district  
25 court shall constitute the record on appeal in all cases.

1 A videotape recording of the proceedings constitutes  
2 the transcript of proceedings and, except as provided  
3 herein, such transcript need not be transcribed into written  
4 form for the purposes of appeal. When the transcript of  
5 proceedings is in the videotape medium, counsel shall type  
6 or print those portions of the transcript necessary for the  
7 court to determine the questions presented and shall append  
8 such portions of the transcript to the brief filed on  
9 appeal.

10 In all cases in which the court imposes the death  
11 sentence, the trial proceedings must include a written  
12 transcript of the record made during the trial whether such  
13 record is produced by stenographic or phonographic means or  
14 by use of audio electronic devices or videotape recording  
15 systems.

16 (b) The transcript of proceedings -- duty of appellant  
17 to order -- notice to respondent if partial transcript is  
18 ordered -- costs of producing. Within 10 days after filing  
19 the notice of appeal the appellant shall order from the  
20 reporter or from the clerk of the district court either  
21 the written or videotape transcript of such parts of the  
22 proceedings not already on file as he deems necessary for  
23 inclusion in the record.

24 In all cases where the appellant intends to urge  
25 insufficiency of the evidence to support the verdict, order

1 or judgment in the district court, it shall be the duty of  
 2 the appellant to order the entire transcript of the  
 3 evidence. If the proceedings were recorded in part by  
 4 videotape and in part by other media, the appellant shall  
 5 order the respective parts from the appropriate reporter or  
 6 clerk of the court, and the record is complete for the  
 7 purposes of appeal when the last such part is filed with the  
 8 clerk of the district court.

9 Wherever the sufficiency of the evidence to support a  
 10 special verdict or answer by a jury to an interrogatory, or  
 11 to support a specific finding of fact by the trial court, is  
 12 to be raised on the appeal by the appellant, he shall be  
 13 under a duty to include in the transcript all evidence  
 14 relevant to such verdict, answer or finding.

15 Unless the entire transcript is to be included, the  
 16 appellant shall, within the time above provided, file and  
 17 serve on the respondent a description of the parts of the  
 18 transcript which he intends to include in the record and a  
 19 statement of the issues which he intends to present on the  
 20 appeal. If the respondent deems a transcript of other parts  
 21 of the proceedings to be necessary he shall within 10 days  
 22 after such filing and service order such parts from the  
 23 reporter or procure an order from the district court  
 24 requiring the appellant to so do.

25 Except as provided in subsection (c) of this rule, the

1 cost of producing the transcript shall be paid by the  
 2 appellant, or he shall make satisfactory arrangements with  
 3 the reporter for the payment of such cost; but, if the  
 4 appellant considers that any part of the record designated  
 5 by the respondent for inclusion is unnecessary for the  
 6 determination of the issues presented, he shall advise the  
 7 respondent, and the district court may impose upon the  
 8 respondent the cost of producing any part which it deems  
 9 unnecessary for the determination of the issues.

10 The reporter shall certify the correctness of the  
 11 transcript if it is in written form. When the transcript  
 12 consists of a videotape recording of the proceedings, the  
 13 clerk of the district court shall certify the transcript as  
 14 correct and state whether it is a complete or partial  
 15 transcript, and if partial, indicate the parts of the  
 16 transcript included and the parts excluded.

17 (c) Transcript of proceedings in criminal  
 18 cases--defendants without financial means--petition in  
 19 supreme court.

20 (1) Upon imposition of any sentence in a criminal  
 21 case, a defendant may file in the trial court a petition  
 22 requesting that he be furnished with a transcript of the  
 23 proceedings at his trial. The petition shall be verified by  
 24 the petitioner and shall state facts showing that he is at  
 25 the time of filing the petition without financial means to

1 pay for the transcript. If the trial judge who imposed  
 2 sentence or in his absence any judge of the court finds that  
 3 the defendant is without financial means with which to  
 4 obtain the transcript of the proceedings at his trial, he  
 5 shall order ~~the official court reporter to transcribe an~~  
 6 ~~original and copy of his notes of the proceedings at the~~  
 7 ~~trial. The original of the report of proceedings shall be~~  
 8 ~~filed with the clerk of the trial court, and the copy shall~~  
 9 a copy of the transcript to be delivered to the defendant  
 10 without charge.

11 (2) If the petition provided for in subsection (1) is  
 12 denied by the trial court, a petition so to proceed may be  
 13 filed in the supreme court within 30 days after entry of the  
 14 denial. The petition shall be accompanied by a copy of the  
 15 verification filed in the trial court and a copy of the  
 16 statement of reasons for denial given by the trial court.

17 (d) Statement of the evidence or proceedings when no  
 18 report was made or when the transcript is unavailable. If  
 19 no report of the evidence or proceedings at a hearing or  
 20 trial was made, or if a transcript is unavailable, the  
 21 appellant may, within 10 days from the hearing or trial or  
 22 such time extended as the district court may for good cause  
 23 shown permit, prepare a statement of the evidence or  
 24 proceedings from the best available means, including his  
 25 recollection. The statement shall be served on the

1 respondent, who may serve objections or propose amendments  
 2 thereto within 10 days after service. Thereupon, the  
 3 statement and any objections or proposed amendments shall be  
 4 submitted for settlement and approval to the district judge  
 5 who handled the proceedings, and as settled and approved  
 6 shall be included by the clerk of the district court in the  
 7 record on appeal. A judge may settle and approve such record  
 8 after he ceases to be a judge. If such judge before the  
 9 statement is settled and approved dies, is removed from  
 10 office, becomes disqualified, is absent from the state, or  
 11 refuses to settle and approve the statement, it shall be  
 12 settled and approved in such manner as the supreme court may  
 13 direct.

14 (e) Agreed statement as the record on appeal. In lieu  
 15 of the record on appeal as defined in subdivision (a) of  
 16 this rule, the parties may prepare and sign a statement of  
 17 the case showing how the issues presented by the appeal  
 18 arose and were decided in the district court and setting  
 19 forth only so many of the facts averred and proved or sought  
 20 to be proved as are essential to a decision of the issues  
 21 presented. If the statement conforms to the truth, it,  
 22 together with such additions as the court may consider  
 23 necessary fully to present the issues raised by the appeal,  
 24 shall be approved by the district court and shall then be  
 25 certified to the supreme court as the record on appeal and

1 transmitted thereto by the clerk of the district court  
2 within the time provided by Rule 10. Copies of the agreed  
3 statement may be filed as the appendix required by Rule 25.

4 (f) Correction or modification of the record. If any  
5 difference arises as to whether the record truly discloses  
6 what occurred in the district court, the difference shall be  
7 submitted to and settled by that court and the record made  
8 to conform to the truth. If anything material to either  
9 party is omitted from the record by error or accident or is  
10 misstated therein, the parties by stipulation, or the  
11 district court, either before or after the record is  
12 transmitted to the supreme court, on proper suggestion or of  
13 its own initiative, may direct that the omission or  
14 misstatement be corrected, and if necessary that a  
15 supplemental record be certified and transmitted. All other  
16 questions as to the form and content of the record shall be  
17 presented to the supreme court."

18 NEW SECTION. Section 10. Codification instruction.  
19 Sections 1 through 5 are intended to be codified as an  
20 integral part of Title 3, chapter 5, and the provisions of  
21 Title 3, chapter 5, apply to sections 1 through 5.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB514, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to provide for videotape recording of District Court proceedings; to grant the Supreme Court rulemaking authority; to revise fees for copies of court transcripts; and amending sections 3-5-603, 3-5-604 and 46-18-309, MCA, and Rule 9, Montana Rules of Appellate Procedure.

ASSUMPTIONS:

1. Acquisition costs of videotape recording systems would be at the local government level.

FISCAL IMPACT:

It is difficult to project actual savings. If the videotape recording systems are used in place of court reporters, there could be some savings in district court reimbursements. There could also be savings in the costs of transcripts.

FY86 Actual General Fund Expenditures:

Court Reporter Salaries	\$133,000
Court Reporter Substitutes	3,000
Transcripts	<u>96,000</u>
	\$232,000

*David L. Hunter*

DATE

*2/4/87*

DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning

*Paul K. Pistoria*

DATE

*Feb. 5<sup>th</sup>, 1987*

PAUL PISTORIA, PRIMARY SPONSOR

Fiscal Note for HB514, as introduced.

*HB 514*