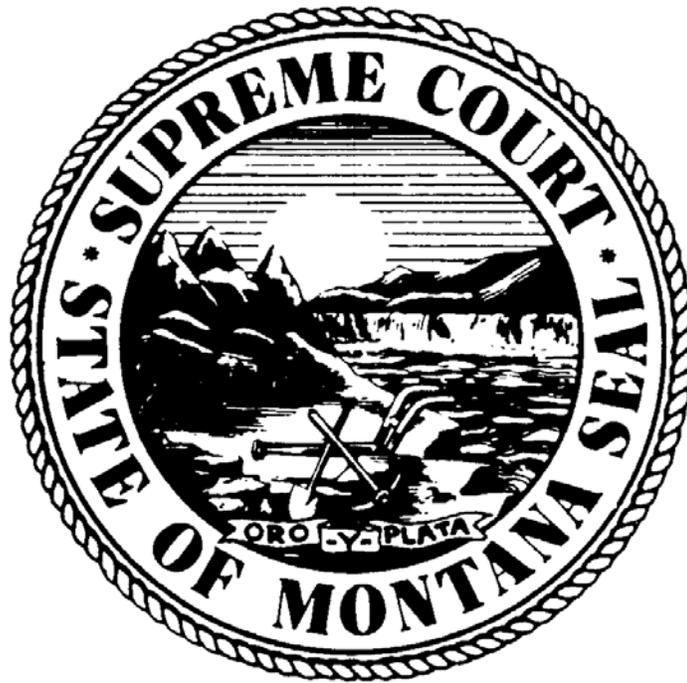


State of the Judiciary

Chief Justice Mike McGrath
Montana Supreme Court
January 11, 2017



NO COURTS

NO JUSTICE

NO FREEDOM

In Montana, our courts process about 1,000 cases each day—350,000 per year. It adds up to one case for every three Montana residents. At 1,000 cases per day, our courts are busy and the workload for court employees is very heavy. The District Courts, which are the courts of general jurisdiction that handle the most serious cases, have, for the last few years, exceeded 55,000 new cases.

Many people come to court because their lives are in crisis. They include victims of crime and people charged with crimes, children suffering from child abuse, ranchers who can't irrigate because of a water dispute, businesses being wrongfully sued by disgruntled employees, workers injured on the job, neighbors fighting over disputed property boundaries or roads, entrepreneurs challenging the government's interpretation of legislation or regulations, and mothers seeking child support to buy diapers.

In recent years, in many places throughout the world, governments are in major transition. Citizens have risen up—not only in protest—but in insurrection and civil war. Why? They want what we have. They want a right to be heard by their government. They want a place at the table when major decisions affecting their lives are being made by the government. And they want to be governed by the rule of law—where disputes can be resolved by an independent and impartial system of dispute resolution.

Our founders developed a system that has become the blueprint for political and economic success for the modern world.

In the words of historian Joseph Ellis, American success is “about the triumph of representative government bottomed on the principle of popular sovereignty, a market economy fueled by the energies of our citizens, a secular state unaffiliated with any official religion, and the rule of law that presumes the equality of all.”

The founders knew that the republic they had created had to be based upon the rule of law. That rule of law requires an independent and impartial manner of resolving disputes—be they commercial matters, family crises, criminal charges or removal of public officers. The rule of law means that disputes are resolved without regard to the social status, political beliefs, or religious preference of the individuals involved in the dispute, and each party has the opportunity to explain his or her position to an impartial

magistrate. All of us have the right to equal protection under the law, and everyone has a right to due process. The rule of law means disputes get resolved through a process where everyone has the opportunity to be heard, to have their positions conveyed, and where an independent judge decides based on the law and facts—the merits of each case.

In fact, our economy depends on this independent system. Investors and other businesses have the right to rely on an orderly and prompt dispute resolution process. They have the freedom to enter into contracts and the ability to have those contracts enforced.

The Judiciary in Montana understands that we have a tremendous responsibility and strive daily to ensure that we uphold these traditions.

Those 1,000 people per day that end up in our courts know that our justice system is based on the rule of law and not individual whim. They know that even in the most remote courthouse in Montana, they will get a fair hearing and hopefully a timely decision.

Individual citizens have the rights enunciated in our Constitution and the ability to enforce those rights whether they are in Superior or Sidney, Billings or Butte.

And all of us have the right to expect the courts to make those decisions based on the merits of each individual case—by judges independent of bias, prejudice or political influence.

The creation of these independent government branches to provide a system of checks and balances was an ingenious idea. Each branch is independent, yet reliant on the other two. Members of all three Branches take the same oath of office “to support, protect and defend the Constitution of the United States and the Constitution of the state of Montana.” As Chief Justice Roberts has noted: “By ensuring that no one in government has too much power, the Constitution helps protect ordinary Americans every day against abuse of power by those in authority.”

As an independent third branch of government, our responsibilities are great but our needs are small. Our budget is less than two percent of the total state budget. Yet we

recognize that with judicial independence comes the corresponding responsibility to be accountable:

- accountable to the people who elect us, and;
- accountable to the Legislature, especially as to how we spend public funds.

In an effort to be more accountable, the Judicial Branch has undertaken a series of performance measures. Specifically, at the Supreme Court, these measures have been implemented, and our case load continues to be current. We have no cases over six months old and our average time to resolve a case is less than 100 days.

The Supreme Court takes every case that is appealed. We don't go out and find disputes to resolve. We hear everything from multiple homicides to dog-at-large cases, from small claims disputes to multi-million dollar jury verdicts. We interpret laws passed by the Legislature and we have the responsibility to determine if laws pass constitutional muster. And, contrary to what some have said, we give great deference to legislative enactments. In the eight years that I have been Chief Justice, 91 cases have come to us seeking to overthrow measures passed by the Legislature as unconstitutional. We have declined to do so in 80 of those cases. In the past two years we've had 18 cases challenging the constitutionality of state laws; the Court found three unconstitutional, including a partial holding in the medical marijuana case.

We have taken steps to make our decisions more available to the public and the processes more transparent and also more efficient.

District Court performance standards have now been implemented. We can accurately measure caseloads and case timeliness of each judge.

In the last few sessions we have experienced very lean budgets. Our branch consists of 54 independently-elected officials, 46 of whom are elected from their local community. As the vast majority of our budget consists of personnel costs, it has been hard to find areas to cut.

Last session the Legislature created an interim committee to study the efficiency of revising the boundaries of judicial districts. The committee worked hard, compared

numbers, and recommended no change. Thanks to Senator Fitzpatrick for sponsoring the bill and to Representative McConnell and Senator Hansen for serving on the committee.

We have done a good job of managing our resources; we have found the waste. We cut \$100,000 each year for library and computer research; \$90,000 each year for dues to national organizations; and \$400,000 for attorneys and guardian ad litem in child custody cases.

Our District Courts, the trial courts that handle the most difficult and complicated cases, have seen a dramatic rise in caseloads **statewide** during the last eight years. Numbers tell the story best:

- Felony criminal filings rose from 7,755 in 2009 to 11,774 last year
- Child abuse and neglect filings rose from 1006 in 2009 to 2,433 last year

Courts must assign these cases top priority. Criminal defendants have constitutional speedy trial rights. Beaten and sexually abused children have constitutional, statutory, and moral rights to get on with their lives. Let me give you just a few local statistics—numbers that I find staggering.

Yellowstone County, our Thirteenth Judicial District, has roughly 20% of the state-wide caseload, yet has just six district judges. Last year new case filings exceeded 10,000 cases—that is 1,666 new cases per judge. If a judge were to work the standard 2080 hours per year, they could give only one and one half hour to each new case—of course, that doesn't leave time for their current cases.

The abuse and neglect cases in the Thirteenth Judicial District have increased 437%—from 143 in 2010 to 626 last year. That is 120 new child abuse cases for each judge.

In our Fourth Judicial District (Missoula and Mineral Counties), felony filings went from 963 in 2009 to 1200 last year. The child abuse cases increased 350%—from 60 to 218.

As I mentioned, these cases must be given top priority. So, what happens to commercial litigation or disputes over land acquisition, contractor cases or insurance cases (not to mention divorces). They wait. As the *Billings Gazette* recently noted,

“Everything else waits longer when courts are understaffed as they now are.” It takes approximately two years at a minimum for a civil case to get to trial in Billings.

Our most recent judicial workload study indicates we need 22 additional District Court judges—six in the Thirteenth Judicial District alone. Obviously we can’t ask the Legislature for all 22. We are, however, requesting five more judges—two in Yellowstone, and one each in Missoula, Flathead and Cascade Counties. We are grateful to Representative Essmann for sponsoring HB 44, a bill that will soon be heard in House Judiciary. It is a bill that provides much needed relief to our District Courts. It is the only substantive bill the Judicial Branch is requesting this session.

We know that backlogged courts are bad for business. It is the commercial litigation that suffers most from court delay. Not only criminal and child abuse cases, but custody cases, mental commitments and Youth Court cases by law must be given priority. As a result, the building contractor trying to resolve a contract dispute or the small business trying to collect a bad debt gets pushed back. A two-year wait to get a civil case to trial creates a hardship for all parties involved.

However, we also have good news to report. Consider this—almost two-thirds of the domestic relations cases—mostly divorces and parenting plans—appear in court with at least one party not represented by a lawyer. Family cases are more than 20% of the case load in District Court. To put this into real numbers, about 6,500 family law cases each year come to court with no attorney. So other cases must wait while the judge and court staff work with a party that does not understand court procedure; does not know the correct forms or papers that must be filed; does not know the appropriate questions to ask a witness or what information the judge needs to decide that case.

With a staggering number of cases each year, we must recognize this situation as one reason, if not the biggest cause, for delay in our system.

Our court help program is designed to assist individual Montana citizens with court service areas, places where you can get proper forms and assistance with the court process without unnecessary expense. The Judicial Branch’s website receives 5,000 hits a month on the posted legal forms. Not all legal matters need attorneys. There are many

ways we can simplify the process and provide people with helpful solutions. In a recent survey, an overwhelming majority of the users of the service indicated that they now understand their legal rights and were more prepared to handle their legal situation.

Our Judges agree this program does significantly increase judicial efficiency and it does reduce court backlog.

Incidentally, the Court Self Help staff does not offer legal advice.

The way our citizens approach the court system is changing dramatically; clearly our courts must adapt to these changing times.

Next to overcrowding, providing access to courts is our greatest challenge.

Drug Courts and Treatment Courts have proven to be very successful in reuniting families in crises because of drug use. Drug courts can and do save taxpayer dollars. Fortunately, during the last three sessions, Legislators had the foresight to fund a small portion of these courts.

Not long ago 50% of the children in foster care were there because of their parents' use of drugs—methamphetamine in particular. I suspect the number is higher now.

An incredibly high percentage—up to 90%—of prison inmates (both male and female) are incarcerated with chemical dependency problems—as many as half for meth. And, of course, many of our prisoners have severe mental illness issues.

All of these social problems cause a tremendous drain on state and local government budgets. This is why governors across the country are proposing increased funding for drug courts—as a cost-saving measure.

Treatment Courts divert some of these people to less expensive and more effective alternatives.

- They can keep kids out of Pine Hills or even more expensive out-of-state placements.
- They divert new commitments from our prisons to less expensive alternatives in the community.

- They help our veterans repair their shattered lives and return to their families and communities.
- Drug courts reunite broken families and turn participants into productive members of society.

We have studies that demonstrate the success of Montana’s Drug Courts. Some of the highlights from the 2015 report include:

- Recidivism rates are lower—most Drug Court graduates do not commit new offenses.
- Unemployment among Drug Court participants fell by 90%.
- In the months that the Branch has been collecting data,
 - 61 babies were born while the mother was in Drug Court, and 57 of them were born drug free—a tremendous decrease in human suffering, and an immense saving of taxpayer dollars.
 - As of September 30th, 2014, there were 12 pregnant women in Drug Court—women who are receiving treatment and are subject to routine drug testing to remain drug free.

We have 28 active Drug Court dockets in Montana. Three of those are dedicated to our returning veterans that are having problems with readjustment to civilian life.

These programs are very difficult to complete. Drug Courts don’t take easy clients—these people are chemically addicted and have likely never functioned as a productive member of society. Treatment Courts are a strain on judges’ time and energy. However, they are very rewarding as well. They do see good things happen in a courtroom—not a common occurrence in our courts.

Nationally, it has been proven that Treatment Courts are by far the most effective thing we can do to address drug abuse and the social and crime-related problems that go with it.

I want to talk a bit about youth court and juvenile probation. As I mentioned, criminal justice systems are in chaos right now in large part because of drug use and

untreated mental illness. The most functional part of the justice system is youth probation. It's successful not by chance but by intentional acts on the part of the judicial, executive and legislative branches. Twenty years ago legislators were wrestling with requests for more funding for Youth Court placements and a burgeoning population at Pine Hills and the girls' correctional facility. Judges were placing kids in expensive out-of-state facilities without regard to cost or success. Youth Court probation officers had zero funding to manage kids and families in the community. It was, quite frankly, out of control and no one was accountable for spending.

Instead of continuing on that path, though, officials in all three branches came together and said what can we do differently? From those discussions, the Juvenile Delinquency Intervention Program was developed. Through your efforts, the law was changed to allow Youth Court probation officers to spend money on community-based services if they reduced expensive placements. Probation, in partnership with corrections, schools, communities and others, focused on three fundamental items—protecting communities through offender accountability, addressing both the juvenile and families' mental health and chemical dependency issues, and education and job-training. Decisions about individual juveniles are based on a validated risk assessment with a focus on community-based services. Programs we fund are required to have hard and fast success measures, which are reviewed yearly. Our primary partners are mental health systems, schools and community-based programs.

What has happened is nothing short of extraordinary.

- In the 2001 biennium, the Legislature appropriated \$16.3 million dollars for juvenile placements; in the 2017 biennium it appropriated \$9.4 million dollars, with the flexibility to support not only placements but services and programming to reduce delinquency and help youth and families. **Nowhere else had funding decreased by 43% with an accompanying increase in outcomes.**
- In 1997, the State expanded the Pine Hills Youth Correctional Facility, with the vision that the facility would have 120 beds. Today there are fewer

than 45 boys at the facility. The girl's facility, Riverside, no longer houses juvenile offenders. Instead those four or five girls that need a correctional placement are housed in a contracted facility.

- A juvenile detention facility in southwest Montana and northwest Montana closed for lack of business this past year. Judges and Youth Courts understand detention is not the best place for a juvenile. The community, with appropriate supports funded by JDIP dollars, is the ideal location for a juvenile.
- The number of formal Youth Court cases has decreased by more than 25% in the past decade, which means probation is successfully handling cases informally without burdening the courts or the public defense system.
- Unlike other states, Montana does not have a school to prison pipeline. Instead Montana has Youth Court and school partnerships designed to keep high-risk kids focused on graduation and job skill development. Make no mistake; the Youth Court's ability to fund partnerships with schools has contributed significantly to the increased high school graduation rate.
- Finally, and most importantly, we are focused on mental health and because of that we have had less than a handful of youth on supervision commit suicide in the past five years. That alone is a tragedy but these are high-risk youth often with significant mental health issues and may be dealing with suicidal thoughts or actions. Without the services and support we provide this number would be tragically higher.

I am extraordinarily proud of the Youth Court's work and urge the Legislature not to make any cuts in that area. Cuts reduce our ability to manage youth and to continue the excellent work that has reduced costs statewide and helped kids.

The success in Youth Court demonstrates that when all three branches work together on a problem, there is a greater likelihood of a creative solution. All three branches are seeing the chaos caused by drug use, untreated mental illness and the increase in criminal behavior. The child abuse system, the corrections' system, county

detention facilities, and the public defender system are under significant stress. I encourage both the Legislative and Executive Branches to look for creative ways to address these problems in the community and within the families that are being decimated. The Judicial Branch will cooperate. Montana can no longer do business as usual. Instead, we need to look at increased drug treatment, a healthy mental health treatment system, the continuing use of drug treatment courts and solid prevention to stem this tide. We know, based on our success with youth that creative solutions supported by all three branches can work.

Judges in Montana are committed to addressing the problems in their communities—problems they see every day.

The Judicial Branch has only 459 employees. We are a group that is dedicated and committed to our mission; most are even passionate about the purposes and role of the rule law in our society. They understand that the hallmark of a flourishing democracy is an adequately funded judiciary that can settle people's disputes in an orderly fashion. Only in that way can the economy move forward and our citizens prosper.

Our proposals will help to ensure that the small business owner, the woman injured through no fault of her own, the rancher seeking legal rights to his water, the defendant wrongly accused, and the child crying in their crib get the opportunity to resolve their crises.

An independent, adequately funded judiciary is the key to constitutional democracy.

As I have said before, **WITHOUT COURTS, THERE IS NO JUSTICE. WITHOUT JUSTICE, THERE IS NO FREEDOM.**