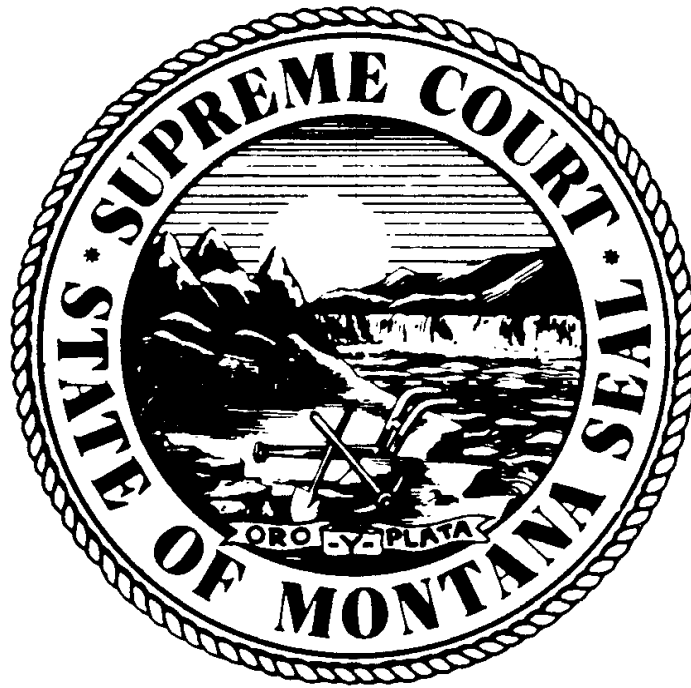


# State of the Judiciary

Chief Justice Mike McGrath  
Montana Supreme Court  
January 24, 2019



**NO COURTS**

**NO JUSTICE**

**NO FREEDOM**

Mr. Speaker.

Members of the Court.

Honored Guests.

Members of this Assembly.

Thank you for giving me this opportunity. It is indeed an honor to be here speaking on behalf of Montana's Judiciary. It is very gracious of you to schedule the time to hear from the Executive and Judicial Branches of Montana's government.

The State of the Judiciary is stressed.

In Montana, our courts process about 1,000 cases each day—360,000 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, had 58,000 new cases filed last year. At that time, we had 46 District Court Judges. Soon we will have 49. Thank you for funding 3 more last session.

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.

To resolve those disputes, they go to our courts.

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

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.

All of us have the right to equal protection under the law, and everyone has a right to due process. In other words, 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 assurance those contracts will be 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.

Montana’s court decisions are based on the Montana Constitution and Montana law as passed by the Montana Legislature.

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, 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 120 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 ten years that I have been Chief Justice, 122 cases have come to us seeking to overthrow measures passed by the Legislature as unconstitutional. We generally decline to do so. In the past two years, we have had twenty-one cases challenging the constitutionality of state laws; only once was a statute declared unconstitutional.

In the last few sessions we have experienced very lean budgets. Our branch consists of 57 independently-elected officials, 49 of whom are elected from their local community. And, of course, Judges in Courts of Limited Jurisdiction are elected and funded within their community. As the vast majority of our budget consists of personnel costs, it has been hard to find areas to cut.

Our District Courts, the trial courts that handle the most difficult and complicated cases, have seen a dramatic rise in caseloads **statewide**, a 28% increase over the last ten years.

- Felony criminal filings rose from 7,755 in 2009 to 12,850 last year
- Child abuse and neglect filings rose from 1006 in 2009 to 2,519 last year—up 150%

This tragic problem is coming close to overwhelming the Judiciary along with the capacity of the State's social service programs—with 2,200 kids in foster care.

Here's a brief description of how it works.

Often police, in the course of their duties, will come across children who are victims of abuse or neglect. Sometimes cases are reported by school personnel, or neighbors or relatives call social services. When these facts present an obvious

emergency, the children are taken from the home, placed in foster or alternative care, and legal petitions are then filed in the district courts.

At that point, it is the responsibility of state government to make every possible effort to reunite those kids with their parents. That often requires months or years to accomplish, with social services, prosecutors, defense attorneys, and the courts involved every step of the way.

In the most serious of cases, where the department has exhausted all efforts to rehabilitate the parents, the department can ask the court to terminate parental rights. Again, this process requires extensive court involvement. And often these most serious of cases—termination of parental rights—are appealed to the Montana Supreme Court.

Ten years ago, my first year on the court, we had 9 termination cases; the next year 16; the next year 31. The pattern continued, and in recent years it is not unusual for us to get 100 termination cases. Last year it was 79.

Now, the Court considers 7 to 10 new cases each week. On average, we consider and decide about two termination of parental rights cases each week. People are actually losing their children because they can't keep them safe.

Think about that!

Think about the stress on these children, and the stress put on our social services, schools, communities, and ultimately our criminal justice system.

So, why is this happening? What are the reasons?

The answer is basically the same—drug and alcohol abuse, principally meth! Our drug courts see some opioid cases, but child abuse is almost exclusively alcohol and methamphetamine use. An addiction that is very hard to treat and for some impossible to beat—even if they do lose their kids.

To me, it is these cases that put the spotlight on most of the serious problems facing our state.

Another area that has arisen and presents a significant challenge in the district courts is related to asbestos—specifically, the number of legal claims from individuals

that contracted asbestos-related illnesses in northwest Montana over the past several decades.

Many years ago, as alarming numbers of these claims were filed in state courts, the Legislature created and funded a special Asbestos Court to address the workload. However, all the litigation was put on hold by the federal courts because of the bankruptcy of W.R. Grace—the primary defendant in these cases. So, nothing happened for several years. Now—today—the bankruptcy proceedings have concluded and the state court claims have been revived. And, of course, the funding for the Asbestos Court has long since passed.

Today we have 2,229 claimants, and the parties anticipate filing an additional 200 cases each year for the next several years. For us, that is 2, 229 new cases.

For the present, we are absorbing the work load. We have appointed District Court Judge Amy Eddy from Flathead County to serve as the Asbestos Court along with her other duties.

She has organized the claims into those that are active and those that have been diagnosed but the disease has not yet manifested, set up joint discovery practices, entered pre-trial orders, and has scheduled some cases for trial statewide.

To date we are absorbing these cases with current judicial resources; however, I cannot guarantee we won't be back next session with a request for help.

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. We are continuously striving to create efficiencies within the Judicial Branch. This session, as in the past, you will see some proposed legislation to make the courts more responsive.

Drug Courts and Treatment Courts have proven to be very successful in reuniting families in crisis because of drug use. Drug courts can and do save taxpayer dollars. Fortunately, during the last four sessions, Legislators had the foresight to fund a small portion of these courts. We have 28 active Drug Court dockets in state courts. Three of

those are dedicated to our returning veterans that are having problems with readjustment to civilian life. Unfortunately, these court dockets are very labor intensive and take a lot of judicial time.

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 people to less expensive and more effective alternatives.

- They can keep kids out of Pine Hills.
- They divert new commitments from our prisons.
- They help our veterans repair their shattered lives.
- 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 2019 report include:

- Recidivism rates are lower.
- In the 48 months that the Branch has been collecting data, there has been a 94.9% increase in employment from admission to graduation

Incidentally, the drug of choice for drug court participants is alcohol, followed by meth and marijuana. As to oxycontin, 16% of family drug court participants use opiates.

Currently the State spends only \$1.3 million on drug courts. We are asking for an additional \$135,000 to bring two existing courts on to State funding.

By the way, we have had great achievements in Youth Courts the past few years. The excellent work of our staff that has reduced costs statewide and helped kids reach the goal of productive lives. And we are willing to assume the supervision responsibilities of those kids under 18 when they are released from Pine Hills.

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 continued use of drug treatment courts and solid prevention measures 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; we 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 her 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.