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Court Unification in Montana

A Report to the 49th Legislature
Joint Interim Subcommittee No. 3

December 1984



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MONTANA LEGISLATIVE COUNCIL
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ACQUISITIONS

SUMMARY OF RECOMMENDATIONS

Joint Interim Subcommittee No. 3 recommends that the 49th Montana Legislature consider enacting:

- 1) A bill requiring the Supreme Court Administrator to conduct orientation courses and training sessions for district court clerks, their deputies, and persons who perform duties similar to those of the district court clerks for the justices', municipal, and city courts; and

- 2) A bill requiring the state to assume funding for certain district court expenses and requiring the Legislature to provide full funding for the district court grant program.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE CREATION OF A UNIFIED COURT SYSTEM AND THE FINANCING OF SUCH A SYSTEM; REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 49TH LEGISLATURE.

WHEREAS, Article VII, section 1, of the Montana Constitution vests judicial power of the State in the court system of the State; and

WHEREAS, Title 3 of the Montana Code Annotated prescribes the court system of the State of Montana; and

WHEREAS, neither the Montana Constitution nor state statutes establish a central administrative office for the court system of the State; and

WHEREAS, the lack of a central administrative office for the state court system results in a lack of formal coordination among the various district courts in such matters as the substitution of one judge for another who has been disqualified from acting; and

WHEREAS, differing standards of employment and compensation for court employees exist among the various district courts, leading to inequities between the work of the district courts; and

WHEREAS, it is recognized that the district courts act as an arm of the state government in the adjudication of civil and criminal cases; and

WHEREAS, approximately 85% of the costs of the operation of the state district court system is financed through the payment of local property taxes, notwithstanding the state nature of the work of those courts; and

WHEREAS, financing of the court system by local property taxes creates a disproportionate per capita tax burden for judicial services in the various counties of the State and may result in differing levels of judicial services in those counties; and

WHEREAS, the judicial system would benefit from unified budgeting in that such budgeting would eliminate the inequities of financing the system by local property taxes, offer a more uniform level of judicial services to the residents of each county, and relieve judges of the duties of fiscal management; and

WHEREAS, a unified court system would facilitate administrative coordination of personnel management, case scheduling, supply procurement, and the gathering and correlation of statistical information; and

WHEREAS, the United States Constitution guarantees all citizens the equal protection of the laws without reference to county residence; and

WHEREAS, 22 states now either totally or substantially finance trial court operations, and extensive material and experience exist in those states from which Montana could well benefit.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the creation of a unified court system under an appropriate judicial office, such as the Montana Supreme Court, to centralize, administer, and coordinate the functions of the district courts and such other courts as the committee considers necessary or advisable;

(2) the powers, duties, and responsibilities of such a unified court system, including the powers, duties, and responsibilities of such existing entities as the Montana Supreme Court, the Montana Supreme Court Law Library, the Office of the Supreme Court Administrator, and the clerks of the various district courts; and

(3) the alternative methods of financing a state unified court system.

BE IT FURTHER RESOLVED, that the committee report the findings of the study to the 49th Legislature and, if necessary, draft legislation to implement its recommendations.

INTRODUCTION

Origin of the Study

During the 1983 legislative session, a bill was introduced, Senate Bill No. 440 (SB 440), to establish a unified court system in Montana. SB 440, sponsored by Senator A. Reed Marbut, designated the Chief Justice of the Montana Supreme Court as the administrative head of the unified judicial system, established the Office of Courts Administration under the direction of the Supreme Court Administrator, and directed the Supreme Court Administrator to establish a personnel classification plan for court employees. Furthermore, SB 440 required the state to assume funding for the district courts (excluding the clerks of district court and their staffs) effective July 1, 1985, at an estimated cost of about \$13 million. The purpose of SB 440, according to Senator Marbut's testimony before the Senate Judiciary Committee, was to make the Montana court system "a better managed institution"¹ by combining the responsibilities for funding and for administering the courts under a single entity.

The Senate Judiciary Committee tabled SB 440. Members felt it was premature to commit a substantial amount of state money toward a comprehensive reorganization of the judicial system without further study. However, because they felt that the unification concept had merit, the Judiciary Committee agreed to sponsor Senate Joint Resolution No. 25 (SJR 25) requesting an interim study on the creation of a unified court system in Montana. The Legislature adopted SJR 25 on third reading votes of 35 - 15 in the Senate and 80 - 13 in the House. In June 1983, the study was assigned to

Joint Interim Subcommittee No. 3, an eight-member, bipartisan legislative panel.

An Overview of Court Unification

In January 1984, Subcommittee No. 3 invited Dr. Carl Baar, a professor of politics at Brock University in St. Catharines, Ontario and a noted scholar on court unification, to address the Subcommittee on the topic of court unification. In his presentation before the Subcommittee, Dr. Baar defined court unification as follows:

Court unification is a particular type of court reform in which an organization is created where none existed before. Our courts are primarily defined historically either as an individual judge or as an individual organization based in each county. When a court system is unified, it is a merger of individual courts into one entity. The courts and judges will continue to function in much the same way as they did before the system was unified, but unification should result in more efficient operation and should give the individual courts a sense that what they do has meaning beyond their locality and is helping to implement some important values for the state as a whole.²

Dr. Baar identified the three major components of court unification as consolidating or merging of a state's trial courts, centralizing management of the judicial system at the state level, and providing state financing for trial court operations.

Dr. Baar listed several advantages that could result from unifying the courts. He noted that unification often produces uniformity among jurisdictions, enabling

citizens to receive equal judicial treatment. In addition, it may increase the independence of the judiciary as an institution while increasing accountability and responsibility among judges. Unification also may lead to the development of an effective system for scheduling cases and for managing judicial workload. Moreover, it may redistribute the tax burden for operating the courts.

However, Dr. Baar cautioned the Subcommittee that undesirable results may develop if unification is carried too far. A balance must be maintained between the local and state activities of the courts. He noted that studies have shown that no matter how much a court system is unified, justice is inherently administered at the local level. Therefore, a court management system should allow some autonomy in the local courts while assisting these courts to function more effectively by providing statewide standards.

In his assessment of the Montana judicial system, Dr. Baar suggested that the courts could be strengthened through unification. His recommendations to the Subcommittee included:

- providing state funding for all district court expenses, including salaries for court clerks, indigent defense counsel, probation officers, and court reporters, but permitting the counties to supplement this funding for special programs to meet local needs;
- expanding the role of the Office of the Supreme Court Administrator to provide technical assistance to locally elected district court

clerks and to develop statewide standards for court management; and

- requiring submission of the judiciary's budget request to the executive branch for informational purposes only and requiring that it be transmitted to the Legislature without alteration.

In his closing comments, Dr. Baar told the Subcommittee that the Legislature can play an important role in advancing the quality of justice in Montana by providing mechanisms for developing the courts and by continuing to permit them to function and grow effectively within the state.

Contents of this Report

During its 15-month study on court unification, Subcommittee No. 3 met five times, considered nine bills, and recommended two for consideration by the 1985 Legislature. The remainder of this report reviews the work of the Subcommittee. It is divided into three sections according to the major components of court unification: lower court consolidation, centralized administration, and state financing. Each section provides background information on a component of unification and summarizes the Subcommittee's deliberations relating to that component.

Additional information on the work of the Subcommittee, including copies of meeting minutes, staff reports, and bills considered by the Subcommittee but not adopted, is available through the Montana Legislative Council, Research Division, State Capitol, Helena, Montana 59620. A list of staff reports is contained in Appendix A.

Acknowledgments

Numerous agencies, groups, and individuals provided the Subcommittee with information and resources to conduct its study on court unification. In particular, the Subcommittee thanks the following for their assistance:

- Dr. Carl Baar, Brock University, St. Catharines, Ontario
- The State Bar of Montana
- The Montana Clerks of District Court Association
- The Office of the Supreme Court Administrator

I. LOWER COURT CONSOLIDATION

Background Information

Lower court consolidation as a component of court unification proposes simplifying a state's court structure by reducing the number of trial courts. A single-tier trial court structure may be created by abolishing all courts of limited and special jurisdiction and transferring the jurisdiction of these courts to the courts of general jurisdiction. In conjunction with this transfer, specialized divisions may be created within the courts of general jurisdiction to hear those cases formerly assigned to the limited jurisdiction courts (e.g., traffic offenses, probate actions). Judges assigned to these divisions would become specialized within a particular field but would be available to hear cases outside their divisions as the need arises. The object of consolidation is to eliminate conflicting and overlapping jurisdictional boundaries, thereby making the judicial system more efficient and less cumbersome.

Idaho is an example of one state that consolidated its court structure. Idaho's efforts at simplifying its lower court structure began in 1962 with passage of a constitutional amendment abolishing the constitutional status of justice of the peace and probate courts. This amendment was followed with enactment of legislation in 1967 reducing the number of judicial districts in the state from 13 to 7. In 1969, the Legislature authorized further consolidation by creating a single-tier trial court of general jurisdiction (the district courts). Probate, justice of the peace, and municipal courts were eliminated, and

their jurisdiction was transferred to a magistrate division within the district court.

In Idaho, proceedings before the magistrate division are recorded, and appeals from the division to the district court are usually heard on the record. A small claims department may be established within each magistrate division. There must be at least one magistrate assigned to the district court in each county. A magistrates' commission in each judicial district determines the number of magistrates needed within the district, appoints qualified individuals to fill these positions, and sets their salaries subject to the approval of a majority of the district judges within the district. Magistrates need not be lawyers; however, a magistrate must attend a training institute conducted by the Idaho Supreme Court before taking office.

To a limited degree, Montana's court structure is consolidated in that the state has only one trial court of general jurisdiction (the district courts). However, there exist three courts of limited jurisdiction: justices', municipal, and city courts. The district and justices' courts are constitutionally created; the municipal and city courts are created by statute. As illustrated by the chart in Appendix B, the jurisdictional boundaries of these lower courts overlap occasionally. For instance, a party involved in a civil action in which recovery will not exceed \$3,500 excluding court costs may bring suit in municipal, justice's, or district court. Similarly, certain misdemeanors may be prosecuted in city, municipal, justice's, or district court.

Subcommittee Deliberations

The Subcommittee considered six bills during its deliberations on lower court consolidation. Although the Subcommittee spent much time discussing the merits of altering the court structure and redefining jurisdictional boundaries, none of the bills were adopted.

Early in its discussions on lower court consolidation, the Subcommittee considered two companion bills aimed at creating a single-tier trial court structure in Montana. LC 28 permitted local governments to abolish their city, municipal, and justices' courts and to transfer the jurisdiction of these courts to the district courts. It further provided for the establishment, operation, and funding of a magistrate division within a district court located in a judicial district in which a city, municipal, or justice's court had been abolished. A related bill, LC 27, proposed an amendment to the Montana Constitution to allow the Legislature by statute to permit counties to abolish their justices' court and to transfer the jurisdiction of these courts to the district courts. A constitutional amendment was necessary because, as noted earlier, justices' courts are constitutionally created.

Public reaction to the bills was negative. Lower court judges testifying before the Subcommittee in September 1984 told the legislators that the justices', municipal, and city courts were operating efficiently and were in no need of reform. Members of a three-member Montana State Bar committee appointed to monitor and assist the Subcommittee during its study on court

unification testified that it was impractical at this time to propose a constitutional amendment to reorganize the courts; they felt that Subcommittee sponsorship of such an amendment would detract attention from and possibly jeopardize passage of other statutory reforms proposed by the Subcommittee. Sensing little support for LC 27 and LC 28, the Subcommittee by unanimous vote tabled the legislation.

As an alternative to LC 27 and LC 28, the state bar committee suggested that the Subcommittee consider improving the delivery of judicial services by statutorily revising the existing court structure. The bar committee's proposal was embodied in LC 104. This bill required cities with populations of 10,000 or more to abolish their city courts and to replace them with municipal courts. (State law now provides that a city of 10,000 or more may establish a municipal court.) The bill then expanded the jurisdiction of the municipal courts and required cities to remit to the state a portion of the fines, forfeitures, and fees collected in the municipal courts to cover the courts' operational expenses. The intent of LC 104, according to the bar committee's testimony on November 15, 1984, was to relieve the district courts of routine, administrative cases by requiring them to be filed in municipal court; to provide an alternative to adjudicating cases in justices' courts without abolishing these courts; and to permit smaller towns to use the services of the municipal courts when prosecuting complex cases.

The bill, however, ran into opposition from the cities who feared that LC 104 would cost them money. They doubted whether revenue collected by the municipal

courts would be sufficient to cover expenses given the expanded duties of these courts, the increased salary for municipal court judges, and the requirement that the courts become courts of record. Despite the Subcommittee's efforts to revise LC 104 to insure no negative financial impact on the cities, the cities remained opposed to the legislation. A committee motion to recommend LC 104 to the 1985 Legislature failed on a 3-4 vote.

LC 29 and LC 30, proposed by District Judge Michael Keedy in April 1984, offered two more approaches for streamlining the administration of justice by reducing the workload of the district courts. Both bills expanded the jurisdiction of the justices' courts. LC 29 required that the following cases be filed and disposed of in justice's court rather than district court: approval of issuance of a marriage license and certificate for minors, concealed weapon permits, name changes, marriage conciliation conferences, and uncontested divorces and adoptions. LC 30 permitted a district court judge to specify by court rule that certain cases which are currently required to be filed in district court be filed in justice's court. These cases must be determined by the judge to be routine and administrative in nature and not requiring creation of a record.

Among those testifying at the Subcommittee's November 1984 meeting, the counties expressed the strongest objections to LC 29 and LC 30. They were concerned that the legislation would increase the costs to the counties for operating the justices' courts, particularly if additional judges were needed. The Subcommittee, reluctant to place a financial burden on county taxpayers, tabled both bills by unanimous vote.

A final bill, LC 102, proposed another method for assisting the district courts without abolishing existing courts or altering their jurisdictional boundaries. This bill permitted appointment of magistrates to assist district judges with disposing of cases. Under LC 102, the magistrates' salaries, benefits, and travel would be state funded.

Little enthusiasm for LC 102 surfaced at the November meeting. The state's Supreme Court Administrator said that he discovered through conversations with district judges that most would prefer to call in retired district judges to handle cases because of their experience and expertise in judicial matters. The Subcommittee by unanimous vote tabled the bill for lack of support.

In concluding their discussions on LCs 104, 29, 30, and 102, Subcommittee members noted that the workload of the district courts will continue to grow, particularly in the more populated counties. Although the burden on these courts was lessened somewhat by creation of four new judgeships in the 1983 session, future Legislatures will be pressured to create additional positions. The Subcommittee agreed that LCs 104, 29, 30, and 102 offered a less costly alternative to judgeship creation and recommended that the mechanisms embodied in these bills be considered in the future.

II. CENTRALIZED ADMINISTRATION

Background Information

Another component of court unification is centralized administration. It entails vesting responsibility for the efficient operation of the unified court system in a single individual or group and creating the necessary administrative structure to assist the ultimate authority in meeting this responsibility. It often accompanies state financing of a court system to ensure accountability for court expenditures. In most states in which court administration is centralized, the state supreme court or the chief justice of the supreme court is designated administrative head of the judicial system. Typically the administrative head appoints a court administrator to assist with court management. One of the duties frequently assigned to a court administrator is the creation and operation of a centralized personnel plan for court employees. Goals of centralization include improved efficiency of court operations and equality in the delivery of judicial services throughout the state.

Alabama provides an example of a state with a centrally administered court system. Alabama's constitution designates the chief justice of the state supreme court as the chief administrator of the unified court system. In this capacity, the chief justice is empowered to appoint an administrative director of courts and other personnel to assist him with his administrative tasks; to assign judges and retired judges for temporary service in any court; and to collect statistics, financial data, and other information pertaining to the courts. Any administrative decision made by the chief

justice or the administrative director of the courts may be countermanded, overruled, modified, or amended by the concurrence of a majority of the supreme court justices.

In assisting the chief justice with his duties as administrative head of the judicial system, the administrative director of the courts:

- collects and compiles statistical data and other information on the judicial and financial operation of the courts;
- makes recommendations concerning the number of judges and other personnel needed for efficient administration of justice;
- prescribes uniform administrative and business methods, systems, forms, and records to be used by clerks of court;
- prepares and submits budget recommendations for state appropriations necessary for maintaining and operating the unified judicial system;
- procures, distributes, exchanges, transfers, and assigns equipment, books, forms, and supplies as are acquired for the judicial system;
- makes recommendations for improvement of the operations of the judicial system;
- prepares and submits to the chief justice an annual report on the work of the judicial system;

- assists the chief justice in transferring and assigning justices and judges for temporary duty;
- promotes and assists in continuing education programs for justices, judges, and other court personnel; and
- serves as a liaison with the executive and legislative branches of state government.

In addition to the above duties, the administrative director is responsible for establishing job descriptions, regulations, rates of compensation, and administrative procedures applicable to court personnel. Under the 1975 implementing legislation, about 800 county employees serving the circuit and district courts, including the clerks of circuit court, became state-compensated employees effective October 1, 1977.

There is little centralized administration of the courts in Montana; for the most part, the lower courts operate autonomously. However, the Montana judicial system does have some features of a centrally administered court system. For example, Article VII, section 2 of the Montana Constitution gives the supreme court general supervisory control over the lower courts and authorizes the supreme court to make rules governing practice and procedure for these courts. In addition, Title 3, chapter 1, part 7 of the Montana Code Annotated provides for establishment of the Office of Court Administrator and authorizes the supreme court to appoint a court administrator. The statutory duties of the administrator include: (1) preparing and presenting judicial budget requests to the Legislature;

(2) collecting, compiling, and reporting statistical and other data relating to the business transacted by the courts and providing this information to the Legislature upon request; (3) recommending to the supreme court improvements in the judiciary; and (4) performing other tasks assigned by the court. State law also requires all court officers, including district court clerks, to assist the court administrator in collecting statistical and financial data concerning business conducted by the courts.

Subcommittee Deliberations

The Subcommittee initially addressed the subject of centralized administration in April 1984. At this meeting, members solicited public comment on a checklist of options concerning centralized administration and other topics. (A copy of the checklist is contained in Appendix C.) Although some support was expressed for centralizing administration of the courts in Montana, opponents of the concept far outnumbered proponents. The consensus among district court clerks, probation officers, and others was that there was no need to create an expensive state bureaucracy to oversee district court operations; furthermore, they felt that centralization could stifle the district courts' ability to effectively respond to a diversity of local needs.

The Subcommittee found that there was no pressing need at this time for centralizing management of the judicial system. However, members agreed that increased uniformity, efficiency, and professionalism in court administration at the local level could be achieved by providing continuing education programs for lower court

clerks. The district court clerks said that they would support such a proposal.

In November 1984, the Subcommittee by unanimous vote recommended LC 31 for consideration by the 1985 Legislature. Under the provisions of LC 31, the supreme court administrator must conduct annual orientation courses and training sessions for district court clerks, their deputies, and persons who perform duties similar to those of the district court clerk for the justices', municipal, and city courts. These orientation courses and training sessions are optional for justice's, municipal, and city court personnel; if they choose to attend, their expenses must be paid by their city or county.

However, a district court clerk or deputy initially elected or appointed to office on or after October 1, 1984, must complete the orientation course within one year after his election or appointment to office unless excused from attending by the district judge under whose direction the clerk or deputy performs his duties. In addition, all clerks and deputies must attend the annual training sessions unless excused. A clerk or deputy who fails to attend the orientation course or an annual training session without proper excuse is disqualified from office.

LC 31 requires the supreme court to pay each clerk's and deputy's travel expenses for attending the orientation course and each annual training session plus the costs of registration, books, and other materials. According to the fiscal note prepared on the bill, the estimated cost for implementing LC 31 is \$81,940 for fiscal years 1986 and 1987 combined. A copy of LC 31 and its fiscal note are contained in Appendix D.

III. STATE FINANCING

Background Information

State financing accompanies lower court consolidation and centralized administration as a third component of court unification. In addition to giving tax relief to the local taxpayer, state assumption of trial court expenses often eliminates variations in court funding levels among counties, resulting in a more uniform system of justice throughout the state. Moreover, it may relieve trial judges of fiscal management chores, allowing them more time for their duties on the bench. A 1979 study on court funding notes that 22 states totally or substantially finance their trial court operations.⁵

North Dakota provides an example of one state that recently assumed funding of most district court expenses.⁶ In 1981, legislation was enacted requiring state financing of salaries and benefits for district court personnel, excluding personnel costs attributable to the clerks of district court, their deputies, and employees whose expenses remain county-funded. Other costs assumed by the state included transcript expenses, jury and witness fees, and indigent defense. Counties were required to provide the district courts with adequate chambers, courtrooms, and law library quarters plus lights and fuel.

In Montana, district court costs are shared by state and local governments. Judges' salaries, travel expenses, and benefits (insurance, unemployment compensation, social security, retirement, etc.) are funded by the state through a general fund

appropriation. The remaining district court costs are financed by the counties. These expenses include salaries and benefits for court clerks and reporters, youth probation officers, and other nonjudicial court employees; office supplies and printing; jury and witness expenses; indigent defense costs; law library costs; and psychiatric evaluations for defendants.

To finance district court operations, a county may appropriate money from its general fund or tap other sources such as revenue sharing funds. Most counties, however, rely on the district court mill levy, an annual tax imposed on property within a county's boundaries. This tax, first authorized in 1979, may not exceed six mills in first- and second-class counties, five mills in third- and fourth-class counties, and four mills in fifth-, sixth-, and seventh-class counties. Appendix E lists the number of mills levied by each county for fiscal year 1983. Among the 43 counties imposing a district court mill levy, 27 levied the maximum mills allowed by law; two counties (Broadwater and Silver Bow) exceeded the statutory mill levy limits to meet extraordinary court costs.

To offset a portion of the district court costs, a county may apply to the state Department of Commerce for a grant. Money for the grant program is appropriated biennially from the general fund by the Legislature. For fiscal year 1983-1984, the Legislature appropriated \$1,375,000 to the program. The department must award a grant to a county if the county's district court expenditures for the previous fiscal year exceeded the sum of: (1) the product of the maximum mill levy authorized by law for district

court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and (2) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year. If grant requests exceed the amount appropriated to the program, each grant must be reduced an equal percentage so that the appropriation will not be exceeded. Appendix F lists the amount of grants requested and awarded in 1984. The program fell short of meeting the total amount of assistance requested by the counties by \$326,213.

According to a financial survey conducted by the Subcommittee in January 1984, total statewide district court costs amounted to \$11,974,520 in fiscal year 1982-1983. Of this total, the state contributed \$2,130,401 or 18%. The counties financed the remaining 82% (\$9,844,119). Funding for two offices, the clerk of district court and probation, accounted for over 56% of total county expenditures. The cost attributable to the clerks' offices was \$3,297,645 or 33.5% of total county expenditures, while the probation officers' expenses were \$2,228,702 or 22.6%. Two other major items were funding for the district courts generally (\$1,706,179 or 17.3% of total county expenditures) and for indigent defense services, including public defender's offices (\$1,507,874 or 15.3%). (For the purpose of the survey, the category "district court" was defined as salary and benefits for secretaries, law clerks, bailiffs, court reporters, and judges' other personal staff plus operation and maintenance costs and capital outlay associated with the work of these employees and judges.) In addition, jury and witness fees represented 5% (\$490,895) of total county expenditures, law libraries, 2.4% (\$239,592), and

psychiatric and other evaluations, 1.6% (\$160,247). Moreover, 16 counties reported miscellaneous expenses totaling \$212,985. Items listed under this category included interest on registered warrants and youth care costs, such as placement in foster homes and guidance and counseling services. Appendix G summarizes district court expenditures for fiscal year 1982-1983.

County district court expenditures ranged from \$1,211,814 in Yellowstone County to \$11,499 in Petroleum. Seven counties (Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, Silver Bow, and Yellowstone) accounted for nearly 52% of total expenditures. In contrast, 16 counties spent less than \$50,000 on court operations. The average county expenditure was \$175,788. Fourteen counties exceeded this average. Wibaux County had the highest expenditure per capita at \$32.26; this was more than four times the amount paid by Sanders County residents, who had the lowest per capita at \$7.65. The statewide average per capita was \$12.52. Appendix H lists district court expenditures by county.

Subcommittee Deliberations

County commissioners, district court clerks, state bar members, district judges, and probation officers appearing before the Subcommittee in April and September 1984 were united in the plea for more state funding for district court operations. The testimony of the Cascade County commissioners at the April meeting typifies the concerns of these parties. The commissioners told the Subcommittee that the revenue generated from the maximum permissible district court mill levy and money available from the district court

grant program are often insufficient to cover court expenses. Thus counties must issue registered warrants to fund court expenses and then pay interest on these warrants. They warned that a single major criminal trial can bleed a county financially. Moreover, they reasoned that the district courts are actually state courts, not county courts, because they enforce state criminal and civil law; therefore, responsibility for funding these courts should rest with the state, not the county taxpayer.

The Subcommittee on a vote of 6-1 agreed to petition the 1985 Legislature for financial relief for the counties in the form of LC 32. (A copy of LC 32 and its fiscal note are contained in Appendix I.) The bill incorporates a proposal made by the district court clerks for increasing state funding for district courts without requiring total state assumption of court costs. LC 32 provides that, effective July 1, 1985, the state must fund through a general fund appropriation to the supreme court the following district court expenses in criminal cases only: court reporters' salaries, transcripts, witness and juror fees, indigent defense, and psychiatric examinations. Except for witness and juror fees, the supreme court administrator is responsible for direct payment of these expenses. Under the provisions of LC 32, district court clerks will continue to pay witness and juror fees from their county general funds; the supreme court administrator then will reimburse the counties for these payments.

To ensure accountability in district court expenditures, the bill requires the supreme court administrator to develop a uniform accounting system

for use by the counties in reporting court expenses at a detailed level for budgeting and auditing purposes. In addition, the administrator must provide for annual audits for district court expenditures to assure normal operations and consistency in reporting expenditures.

LC 32 further requires the Legislature to provide full funding for the district court grant program. If in the first fiscal year of a biennium grant requests exceed the first fiscal year appropriation for the grant program, the Department of Commerce must make expenditures from the second fiscal year appropriation to fund the grant requests. If in the second fiscal year of a biennium grant requests exceed the second fiscal year appropriation, the Department must request a supplemental appropriation at the next legislative session.

According to the fiscal note prepared on LC 32, the cost to the state for assuming court expenses in criminal cases and for fully funding the grant program would amount to \$3,326,564 for fiscal years 1986 and 1987 combined. In an effort to generate money for the state general fund to cover these expenses, the Subcommittee considered LC 103 at its November meeting.

LC 103 revised the taxing method applied to certain centrally assessed property such as railroads, utilities, airlines, power and transmission lines, pipelines, and canals that run through more than one county or state. Currently, centrally assessed property is taxed in the same manner as is other taxable property; that is, it is subject to the local mill levies of taxing jurisdictions such as cities, counties, school districts, and other political

subdivisions of the state. These local levies vary from locality to locality depending on such factors as the total taxable value of property within the taxing jurisdiction and the operating costs of the taxing jurisdiction. The intent of LC 103 was to eliminate the disparity in the tax rate levied on centrally assessed property by imposing a uniform state mill levy on all centrally assessed property regardless of its location, thereby generating additional general fund revenue. The bill also provided for the return to local governments of the amount of money that would have been generated by these entities through imposition of a local mill levy on centrally assessed property. All remaining revenue generated by the state mill levy would be deposited into the state general fund and could be used for district court funding.

Concerns about the impact of the bill surfaced during lengthy testimony from public utilities, the Montana Association of Counties, and the Department of Revenue. Subcommittee members disagreed on whether LC 103 would boost utility bills for Montana consumers. Questions were raised about the effect of the legislation on counties and other taxing jurisdictions. There was also some uncertainty as to whether the bill conflicted with federal legislation concerning taxation of railroads and airlines. Lacking definitive answers to these concerns, the Subcommittee by unanimous vote tabled LC 103.

END NOTES

¹Montana Senate, Judiciary Committee, Minutes, February 18, 1983.

²Montana Legislature, Joint Interim Subcommittee No. 3, Minutes, January 13, 1984, :24.

³See: Administrative Office of the Courts, The Idaho Courts 1981 Annual Report (Boise, Idaho: Administrative Office of the Courts); and Clay V. Spear, "Court Reorganization in Idaho," Idaho Law Review, 7 (Spring 1979) :17 - 24.

⁴See: Charles Y. Cameron, "Administration of the Unified Judicial System," The Alabama Lawyer, 39 (July 1977) :296 - 301; Howell T. Heflin, "The Judicial Article Implementation Act," Alabama Law Review, 28 (Spring 1977) :215 - 241; and Robert Martin, "Alabama's Courts: Six Years of Change," The Alabama Lawyer, 38 (January 1977) :8.

⁵Harry O. Lawson, Joan Cady, Philip B. Winberry, et al., State Funding of Court Systems: An Initial Examination, (Washington, D.C.: American University Law Institute, 1979) :iv. (States totally or substantially financing their trial courts are: Alaska, Alabama, Colorado, Connecticut, Delaware, Hawaii, Kansas, Kentucky, Maine, Maryland, Massachusetts, Missouri, Nebraska, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, South Dakota, Vermont, Virginia, and West Virginia.)

⁶See: North Dakota Judicial Council, Annual Report 1982 (Bismarck, North Dakota: Office of the State Court Administrator, 1982); North Dakota Supreme Court Administrative Rules 1 - 1978, 2 - 1981, and 20; and Vernon R. Pederson and Lawrence D. Spears, "Judicial Planning in North Dakota: Systematized Anticipation for Balanced Progress," North Dakota Law Review, 54 (1977) :47 - 59.

APPENDIX A

Staff Reports on Court Unification

1. "Constitutionality of Legislation Providing for Unified Court Administration," by David S. Niss, staff attorney, legal memorandum to Joint Interim Subcommittee No. 3, November 21, 1983.
2. "An Overview of Montana's Court System," by Lois Menzies, staff researcher, report to Joint Interim Subcommittee No. 3, December 1983.
3. "Supreme Court and District Court Costs and Funding," by Lois Menzies, staff researcher, report to Joint Interim Subcommittee No. 3, January 1984.
4. "Supreme Court and District Court Personnel," by Lois Menzies, staff researcher, report to Joint Interim Subcommittee No. 3, January 1984.
5. "District Court Finances," by Lois Menzies, staff researcher, report to Joint Interim Subcommittee No. 3, April 1984.
6. "Unification Activities in Four Selected States," by Lois Menzies, staff researcher, report to Joint Interim Subcommittee No. 3, April 1984.

APPENDIX B: SUMMARY OF JURISDICTION EXERCISED BY MONTANA COURTS

◦ CONSTITUTIONAL WRITS

Supervisory Control
Other Necessary Writs

Mandamus
Certiorari
Prohibition
Injunction
Quo Warranto
Habeas Corpus

◦ CIVIL ACTIONS

Equitable Remedies

Claims Exceeding \$3,500

Claims Less Than \$3,500

Divorce
Annulment
Probate

Forcible Entry and Unlawful Detainer

◦ CRIMINAL PROSECUTIONS

Felonies

Misdemeanors

Misdemeanors—
Fine less than \$501;
imprisonment not exceeding 6 months

◦ MUNICIPAL ORDINANCES

Licenses
Traffic Violations
Municipal Taxes

SUPREME COURT
Chief Justice & Six Associate Justices

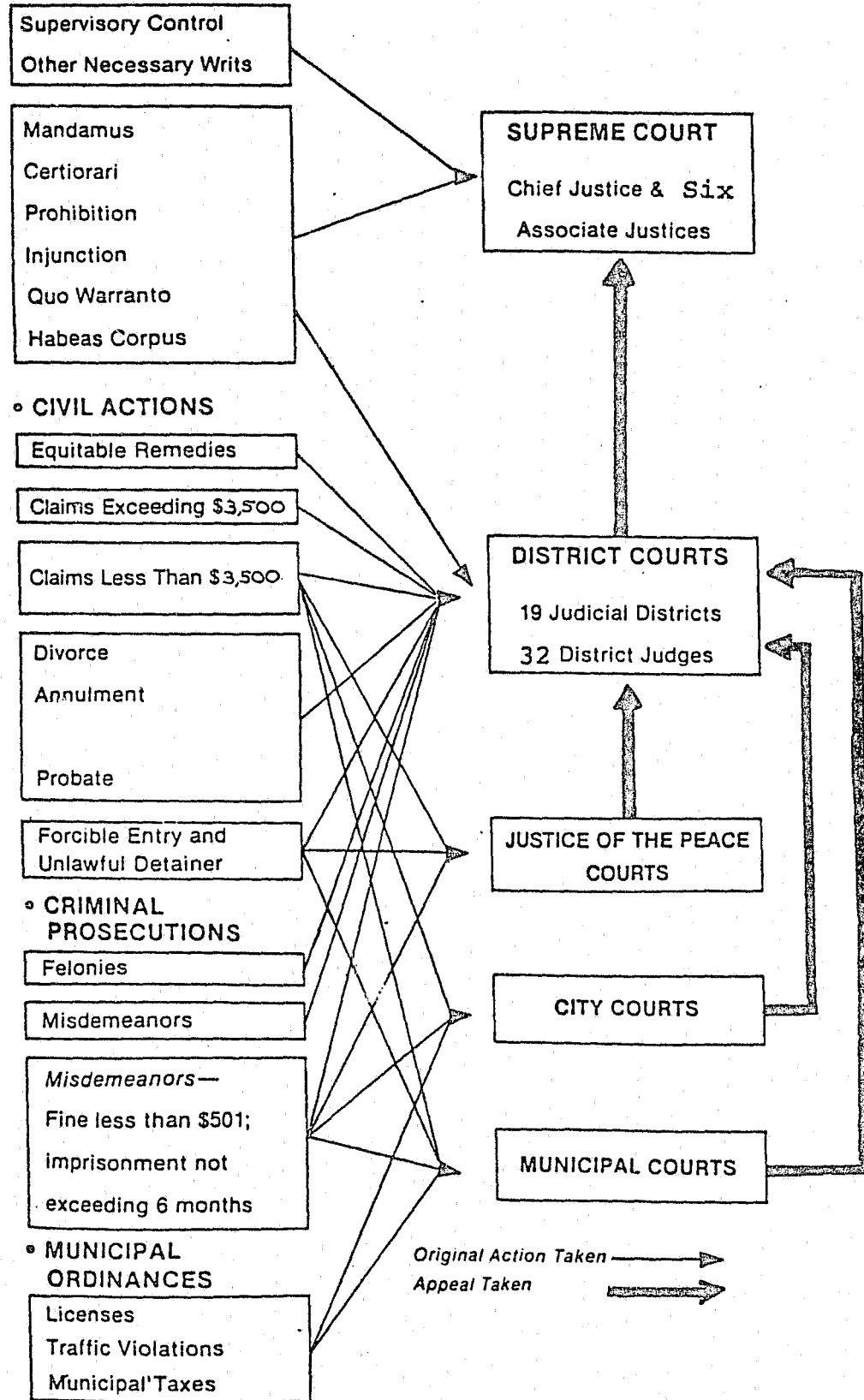
DISTRICT COURTS
19 Judicial Districts
32 District Judges

JUSTICE OF THE PEACE COURTS

CITY COURTS

MUNICIPAL COURTS

Original Action Taken →
Appeal Taken →



Source: Montana Supreme Court, 1978 Annual Report, p. 11. (Updated by Montana Session Laws).

APPENDIX C

OPTIONS CHECKLIST ON COURT UNIFICATION

Prepared for Subcommittee No. 3
By Lois Menzies, Researcher, Legislative Council
March 1984

The purpose of this checklist is to assist subcommittee members in sorting through possible options concerning court unification. These options are arranged under three general categories: lower court consolidation, centralized administration, and state funding. Options selected by the subcommittee as appropriate reforms for the Montana judicial system can be incorporated into a bill draft for further discussion and refinement.

I. LOWER COURT CONSOLIDATION

- A. Consolidate justices', municipal, and city courts into single trial court of limited jurisdiction _____
- B. Transfer jurisdiction of justices', municipal, and city courts to district courts
 - 1. Create specialized divisions within district court _____
 - 2. Create new class of judges within district court _____
- C. Other _____

II. CENTRALIZED ADMINISTRATION

- A. Administrative Head of Judicial System
 - 1. Chief Justice of Supreme Court _____
 - 2. Supreme Court collectively _____
 - 3. Judicial Council _____
 - 4. Other _____

- B. Powers/Duties of Administrative Head
 - 1. Appointment of Courts Administrator _____

- 2. Appointment of Administrative Judges _____
- 3. Assignment of judges within system _____
- 4. Caseflow management _____
- 5. Promulgation of rules _____
- 6. Management of law libraries _____
- 7. Other _____

C. Duties of Courts Administrator

- 1. Appointment of Deputy Courts Administrators _____
- 2. Budget preparation _____
- 3. Fiscal management _____
- 4. Creation and administration of centralized personnel plan _____
- 5. Assignment of cases _____
- 6. Collection and dissemination of court information _____
- 7. Long-range court planning _____
- 8. Court personnel training and education _____
- 9. Management of ancillary judicial services _____
- 10. Other _____

D. Scope of Centralized Personnel Plan

- 1. Personnel covered
 - a. Clerk of District Court and deputies _____
 - b. Judges' personal secretaries _____
 - c. Court reporters _____
 - d. Law clerks _____

- e. Bailiffs _____
- f. Probation officers _____
- g. Public defenders _____
- h. Other _____

2. Areas addressed by plan

- a. Salaries _____
- b. Fringe benefits _____
- c. Qualifications _____
- d. Recruitment _____
- e. Promotion, transfer _____
- f. Discipline, dismissal _____
- g. Grievance procedures _____
- h. Evaluation _____
- i. Training, continuing education _____
- j. Other _____

III. STATE FUNDING AND BUDGETING

A. Scope of Funding

1. Court level

- a. District courts _____
- b. Justices' courts _____
- c. Municipal courts _____
- d. City courts _____
- e. Other _____

2. Personnel (Salary & Benefits)

- a. Clerk of district court and deputies _____
- b. Judges' personal secretaries _____
- c. Court reporters _____

- d. Law clerks _____
- e. Bailiffs _____
- f. Probation officers _____
- g. Public defenders _____
- h. Other _____

3. Services

- a. Youth probation _____
- b. Indigent defense _____
- c. Jury and witness costs _____
- d. Psychiatric or other evaluations _____
- e. Law library _____
- f. Other _____

4. Facilities (office & courtroom space) _____

5. Furniture, Supplies, Equipment _____

6. Other _____

B. Source of Funding

- 1. General fund appropriation _____
- 2. Surcharge on court fees _____
- 3. Personal income tax _____
- 4. Statewide 6-mill property tax levy _____
- 5. Motor vehicle fees _____
- 6. Other _____

C. Phasing of Funding

- 1. One-time assumption _____

- 2. Percentage _____
- 3. Geographic _____
- 4. Functional _____
- 5. Other _____

D. Executive Branch Involvement in Budget Process

- 1. No submission of court budget to budget director required _____
- 2. Submission of budget required for informational purposes only _____
- 3. Submission of budget required with authority to revise _____

LOIS2/ee/Options Checklist

APPENDIX D

LC 31

REQUIRING THE SUPREME COURT ADMINISTRATOR TO CONDUCT ORIENTATION COURSES AND TRAINING SESSIONS FOR CLERKS OF DISTRICT COURT, DEPUTY CLERKS OF DISTRICT COURT, AND PERSONS WHO PERFORM DUTIES SIMILAR TO THOSE OF THE CLERK OF DISTRICT COURT FOR JUSTICES', MUNICIPAL, AND CITY COURTS.

STATE OF MONTANA

REQUEST NO. _____

FISCAL NOTE

Form BD-15

In compliance with a written request received _____, 19 _____, there is hereby submitted a Fiscal Note for LC 0031/01 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

LC 0031/01 is an act requiring the Supreme Court Administrator to conduct orientation courses and training sessions for Clerks of District Court, Deputy Clerks of District Court, and persons who perform duties similar to those of the Clerk of District Court for Justices', Municipal, and City Courts.

ASSUMPTIONS:

- 1) Between the two annual training sessions 130 clerks and or duputies would attend the sessions.
- 2) The statewide average cost per clerk to travel to a session is approximately \$190.00.
- 3) Persons who perform duties similar to those of the Clerk of District Court for Justices', Municipal and City Courts and attend the sessions will claim their expenses from the county.

FISCAL IMPACT:

	<u>FY 86</u>	<u>FY 87</u>
General Fund Cost	\$40,970	\$40,970

LOCAL IMPACT:

Any county or city that sends a lower court clerk to one of these sessions will have an additional cost of approximatly \$190.00 per person.

 BUDGET DIRECTOR
 Office of Budget and Program Planning
 Date: _____

APPENDIX E

DISTRICT COURT MILL LEVY: FY 82-83

<u>County</u>	<u>Mills Allowed</u>	<u>Mills Levied</u>	<u>Revenue Generated</u>
Beaverhead	5	.00	\$ 0
Big Horn	6	.00	0
Blaine	6	2.20	73,938
Broadwater	4	8.00	56,848
<hr/>			
Carbon	5	2.41	65,844
Carter	4	4.00	25,476
Cascade	6	6.00	536,838
Chouteau	5	2.90	83,227
<hr/>			
Custer	5	5.00	91,500
Daniels	4	4.00	32,140
Dawson	5	5.00	150,220
Deer Lodge	5	.00	0
<hr/>			
Fallon	6	.00	0
Fergus	5	5.00	111,100
Flathead	6	6.00	481,410
Gallatin	6	6.00	341,610
<hr/>			
Garfield	4	4.00	26,088
Glacier	6	3.98	178,945
Golden Valley	4	4.00	17,140
Granite	4	4.00	21,272
<hr/>			
Hill	6	4.47	198,204
Jefferson	4	4.00	43,548
Judith Basin	4	4.00	39,096
Lake	5	5.00	129,105
<hr/>			
Lewis and Clark	6	6.00	328,332
Liberty	5	2.05	44,134
Lincoln	6	6.00	195,528
Madison	4	3.40	48,304

<u>County</u>	<u>Mills Allowed</u>	<u>Mills Levied</u>	<u>Revenue Generated</u>
McCone	4	.00	0
Meagher	4	.00	0
Mineral	4	4.00	18,660
Missoula	6	6.00	738,978
<hr/>			
Musselshell	5	.00	0
Park	5	5.00	89,185
Petroleum	4	.00	0
Phillips	5	2.50	82,240
<hr/>			
Pondera	5	5.00	118,490
Powder River	6	.00	0
Powell	4	4.00	46,000
Prairie	4	3.98	24,787
<hr/>			
Ravalli	5	5.00	109,015
Richland	6	.00	0
Roosevelt	6	6.00	404,718
Rosebud	6	.00	0
<hr/>			
Sanders	5	.00	0
Sheridan	6	.90	83,077
Silver Bow	6	10.24	454,871
Stillwater	4	4.00	55,664
<hr/>			
Sweet Grass	4	2.82	20,609
Teton	5	5.00	89,455
Toole	6	2.94	133,029
Treasure	4	4.00	17,608
<hr/>			
Valley	5	3.87	133,743
Wheatland	4	4.00	22,860
Wibaux	4	.00	0
Yellowstone	6	5.91	1,104,703

Source: Montana Property Tax Mill Levies, 1982 -
1983, Montana Tax Foundation

APPENDIX F

DISTRICT COURT GRANTS REQUESTED

AND AWARDED: 1984

<u>County</u>	<u>Amount Requested</u>	<u>Amount Awarded</u>
Anaconda-Deer Lodge	\$ 55,444.00	\$ 44,812.00
Beaverhead	38,673.00	31,257.00
Butte-Silver Bow	220,110.00	177,903.00
Carter	12,624.00	10,203.00
Cascade	378,982.00	306,312.00
Custer	30,485.00	24,639.00
Daniels	2,572.00	2,079.00
Granite	24,527.00	19,824.00
Jefferson	77,124.00	62,335.00
Judith Basin	15,690.00	12,681.00
Lake	60,675.00	49,040.00
Lewis & Clark	187,236.00	151,333.00
Lincoln	32,950.00	26,632.00
McCone	8,163.00	6,598.00
Meagher	6,030.00	4,874.00
Mineral	17,843.00	14,422.00
Missoula	213,462.00	172,531.00
Park	65,286.00	52,767.00
Powell	19,904.00	16,087.00
Ravalli	199,244.00	161,038.00
Sweet Grass	17,902.00	14,469.00
Wheatland	16,287.00	13,164.00
Total	\$ <u>1,701,213.00</u>	\$ <u>1,375,000.00</u>

APPENDIX G

SUMMARY OF FY 82-83 DISTRICT COURT EXPENDITURES

* Clerk of District Court's Office:		
	Personnel	\$ 2,895,254.34
	Operation/Maintenance	341,068.93
	Capital Outlay	61,321.77
		<hr/>
	TOTAL	\$ 3,297,645.04
* District Court:		
	Personnel	\$ 1,354,300.37
	Operation/Maintenance	317,101.43
	Capital Outlay	34,777.22
		<hr/>
	TOTAL	\$ 1,706,179.02
* Probation Office:		
	Personnel	\$ 1,916,581.76
	Operation/Maintenance	289,911.95
	Capital Outlay	22,207.91
		<hr/>
	TOTAL	\$ 2,228,701.62
* Ancillary Costs:		
	Indigent Defense	\$ 1,507,873.67
	Jury/Witness Fees	490,895.03
	Psychiatric & Other Evaluations	160,247.49
	Law Library Costs	239,592.18
		<hr/>
	TOTAL	\$ 2,398,608.37
* Miscellaneous Costs		\$ 212,984.88
** District Judges' Costs:		
	Salary/Benefits	\$ 2,031,992.44
	Travel/Training	98,408.81
		<hr/>
	TOTAL	\$ 2,130,401.25
	GRAND TOTAL	\$11,974,520.18

* County Funded

** State Funded

APPENDIX G

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	Travel/Training	98,408.81
		<hr/>
	TOTAL	\$ 2,130,401.25
	GRAND TOTAL	\$11,974,520.18
* County Funded		
** State Funded		

APPENDIX H

FY 82-83 DISTRICT COURT EXPENDITURES BY COUNTY

COUNTY -----	TOTAL -----	PER CAP -----
BEAVERHEAD	\$118,326.64	\$14.45
BIG HORN	\$127,104.70	\$11.46
BLAINE	\$79,821.43	\$11.40
BROADWATER	\$45,974.00	\$14.07
CARBON	\$91,553.00	\$11.30
CARTER	\$42,462.86	\$23.60
CASCADE	\$914,958.00	\$11.34
CHOUTEAU	\$75,022.39	\$12.31
CUSTER	\$130,147.77	\$9.93
DANIELS	\$37,607.00	\$13.27
DAWSON	\$157,734.96	\$13.36
DEER LODGE	\$154,516.54	\$12.34
FALLON	\$68,317.00	\$18.15
FERGUS	\$149,068.07	\$11.40
FLATHEAD	\$489,254.34	\$9.41
GALLATIN	\$486,700.78	\$11.35
GARFIELD	\$30,099.09	\$18.18
GLACIER	\$161,539.59	\$15.20
GOLDEN VALLEY	\$19,671.57	\$19.17
GRANITE	\$43,255.42	\$16.02
HILL	\$222,062.00	\$12.35
JEFFERSON	\$113,524.18	\$16.15
JUDITH BASIN	\$51,668.01	\$19.53
LAKE	\$202,154.53	\$10.61
LEWIS AND CLARK	\$505,980.00	\$11.76
LIBERTY	\$43,116.56	\$18.51
LINCOLN	\$277,724.00	\$15.64
MADISON	\$66,181.82	\$12.15
MCCONE	\$49,240.14	\$18.22
MEAGHER	\$32,752.57	\$15.21
MINERAL	\$39,152.86	\$10.65
MISSOULA	\$951,982.00	\$12.52
MUSSELSHELL	\$66,426.34	\$15.00
PARK	\$141,087.30	\$11.14
PETROLEUM	\$11,499.37	\$17.56
PHILLIPS	\$75,231.00	\$14.02

APPENDIX H (Continued)

PONDERA	\$128,702.40	\$19.12
POWDER RIVER	\$61,925.79	\$24.57
POWELL	\$77,464.61	\$11.13
PRAIRIE	\$24,116.17	\$13.14
RAVALLI	\$384,055.56	\$17.07
RICHLAND	\$156,414.00	\$12.78
ROOSEVELT	\$99,569.21	\$9.51
ROSEBUD	\$175,387.00	\$17.72
SANDERS	\$66,336.29	\$7.65
SHERIDAN	\$88,858.96	\$16.41
SILVER BOW	\$558,783.74	\$14.67
STILLWATER	\$69,150.07	\$12.35
SWEET GRASS	\$45,943.66	\$14.29
TETON	\$95,020.00	\$14.64
TOOLE	\$119,427.07	\$21.48
TREASURE	\$16,371.36	\$16.69
VALLEY	\$111,096.51	\$10.84
WHEATLAND	\$33,151.27	\$14.05
WIBAUX	\$47,613.67	\$32.26
YELLOWSTONE	\$1,211,813.76	\$11.22
STATE	\$9,844,118.93	\$12.52

APPENDIX I

LC 32 REQUIRING THE STATE TO ASSUME FUNDING FOR
CERTAIN DISTRICT COURT EXPENSES AND REQUIRING
THE LEGISLATURE TO PROVIDE FULL FUNDING FOR
THE DISTRICT COURT GRANT PROGRAM.

1 of per diem and mileage paid to each by the county. Upon
 2 receipt and verification of the statement, the administrator
 3 shall promptly reimburse the general fund of the designated
 4 county for the cost of witness and juror fees.

5 Section 4. Section 3-5-602, MCA, is amended to read:
 6 "3-5-602. Salary and expenses -- apportionment. (1)
 7 Each reporter is entitled to receive a base annual salary of
 8 not less than \$16,000 or more than \$23,000 and no other
 9 compensation except as provided in 3-5-604. The salary shall
 10 be set by the judge for whom the reporter works. The salary
 11 is payable in monthly installments out of the general funds
 12 of the counties comprising the district for which the
 13 reporter is appointed and out of an appropriation made to
 14 the supreme court as provided in subsection (2).

15 (2) The supreme court administrator shall determine
 16 the total number of civil and criminal actions commenced in
 17 the preceding year in the district court or courts in the
 18 judicial district for which a reporter is appointed. The
 19 state shall pay its portion of the reporter's salary based
 20 on the proportion of the total number of criminal actions
 21 commenced in the district court or courts in the district.
 22 Each county shall pay its portion of the salary based on its
 23 proportion of the total number of civil ~~and-criminal~~ actions
 24 commenced in the district courts in the district ~~in--the~~
 25 ~~preceding--year~~. The judge or judges of the district shall,

1 on January 1 of each year or as soon thereafter as possible,
 2 apportion the amount of the salary to be paid by each county
 3 in his or their district on the basis prescribed in this
 4 subsection. The portion of the salary payable by a county
 5 is a district court expense within the meaning of 7-6-2351,
 6 7-6-2352, and 7-6-2511.

7 ~~(2)~~(3) In judicial districts comprising more than one
 8 county, the reporter is allowed, in addition to the salary
 9 and fees provided for in subsection (1), his actual and
 10 necessary travel expenses, as defined and provided in
 11 2-18-501 through 2-18-503, when he goes on official business
 12 to a county of his judicial district other than the county
 13 in which he resides, from the time he leaves his place of
 14 residence until he returns thereto. The expenses shall be
 15 apportioned and payable in the same way as the salary."

16 Section 5. Section 3-5-604, MCA, is amended to read:
 17 "3-5-604. Transcript of proceedings. (1) Each reporter
 18 must furnish, upon request, with all reasonable diligence,
 19 to a party or his attorney in a case in which he has
 20 attended the trial or hearing a transcript from his
 21 stenographic notes of the testimony and proceedings of the
 22 trial or hearing or a part thereof, upon payment by the
 23 person requiring the same of \$2 per page for the original
 24 transcript, 50 cents per page for the first copy, 25 cents
 25 per page for each additional copy.

1 (2) If the county attorney, attorney general, or judge
 2 requires a transcript in a criminal case, the reporter is
 3 entitled to his fees therefor, but he must furnish it. Upon
 4 furnishing it, he shall receive a certificate of for the sum
 5 to which he is so entitled, ~~which is a county charge and~~
 6 ~~must be paid by the county treasurer upon the certificate~~
 7 ~~like other county charges.~~ The reporter shall submit the
 8 certificate to the supreme court administrator who is
 9 responsible for the prompt payment of the amount due the
 10 reporter.

11 (3) If the judge requires a copy in a civil case to
 12 assist him in rendering a decision, the reporter must
 13 furnish the same without charge therefor. In civil cases,
 14 all transcripts required by the county shall be furnished,
 15 and only the reporter's actual costs of preparation may be
 16 paid by the county.

17 (4) If it appears to the judge that a defendant in a
 18 criminal case is unable to pay for a transcript, it shall be
 19 furnished to him and paid for by the county state in the
 20 manner provided in subsection (2)."

21 Section 6. Section 7-6-2352, MCA, is amended to read:

22 "7-6-2352. State grants to district courts -- rules.

23 (1) The department of commerce shall make grants to the
 24 governing body of a county for the district courts for
 25 assistance, as provided in this section. The grants are to

1 be made from funds appropriated to the department for that
 2 purpose as provided in subsection (2). ~~If the department~~
 3 ~~approves grants in excess of the amount appropriated, each~~
 4 ~~grant shall be reduced an equal percentage so the~~
 5 ~~appropriation will not be exceeded.~~

6 (2) The legislature shall appropriate from the state
 7 general fund to the department of commerce sufficient money
 8 to fully fund eligible grant requests submitted by the
 9 governing bodies of the counties. If in the first fiscal
 10 year of the biennium for which an appropriation is made
 11 eligible grant requests exceed the first fiscal year
 12 appropriation, the department shall make expenditures from
 13 the second fiscal year appropriation to fund the grant
 14 requests. If in the second fiscal year of the biennium for
 15 which an appropriation is made, eligible grant requests
 16 exceed the second fiscal year appropriation, as it may be
 17 reduced by expenditures for eligible first fiscal year grant
 18 requests, the department shall request a supplemental
 19 appropriation at the next legislative session.

20 ~~(2)~~(3) The governing body of a county may apply to the
 21 department of commerce for a grant by filing a written
 22 request on forms provided by the department by July 20 for
 23 the previous fiscal year unless the department grants a time
 24 extension upon request of the county. In its request for a
 25 grant, a county must certify that:

1 (a) all expenditures from the district court fund have
2 been lawfully made;

3 (b) no transfers from the district court fund have
4 been or will be made to any other fund; and

5 (c) no expenditures have been made from the district
6 court fund that are not specifically authorized by 7-6-2511
7 and 7-6-2351.

8 ~~(3)~~(4) The department of commerce shall award a grant
9 if the county's district court expenditures for the previous
10 fiscal year exceeded the sum of:

11 (a) the product of the maximum mill levy authorized by
12 law for district court purposes, whether or not assessed,
13 multiplied by the previous year's taxable valuation of the
14 county; and

15 (b) all revenues, except district court grants,
16 required by law to be deposited in the district court fund
17 for the previous fiscal year.

18 ~~(4)~~(5) Eligible court expenditures for grant purposes
19 include all costs of the county associated with the
20 operation and maintenance of the district court, from
21 whatever fund paid, except costs for building and capital
22 items and library maintenance, replacement, and acquisition.

23 ~~(5)~~(6) The department of commerce shall notify each
24 eligible county as soon as possible of its intention to
25 award a grant to that county and the amount of the award.

1 ~~(6)~~(7) The grant received by the county shall be
2 placed in the district court fund.

3 ~~(7)~~(8) After all grants are awarded, the department of
4 commerce shall audit each approved grant request. The
5 department shall charge each county receiving a grant an
6 audit fee in the same amount as the costs incurred in
7 conducting the audit.

8 ~~(8)~~(9) If the audit of a grant recipient discloses
9 that the recipient received a grant in excess of the amount
10 for which it was eligible, the recipient shall repay the
11 excess to the department of commerce. The department shall
12 redistribute any repaid excess amounts to the other counties
13 that received grants from the appropriation from which the
14 overpayment was made, on the same basis as the original
15 awards. No county is eligible for a district court grant if
16 it owes the department a refund of a prior year's
17 overpayment.

18 ~~(9)~~(10) The department of commerce shall prescribe
19 rules and forms necessary to effectively administer this
20 section. The department may require a county to provide any
21 information considered necessary for the administration of
22 the program."

23 Section 7. Section 7-6-2426, MCA, is amended to read:
24 "7-6-2426. Enumeration of county charges. The
25 following are county charges:

1 (1) charges incurred against the county by virtue of
2 any provision of this title;

3 (2) one-half of the salary of the county attorney and
4 all expenses necessarily incurred by him in criminal cases
5 arising within the county;

6 (3) the salary and actual expenses for traveling, when
7 on official duty, allowed by law to sheriffs and the
8 compensation allowed by law to constables for executing
9 process on persons charged with criminal offenses;

10 (4) the board of prisoners confined in jail;

11 ~~{5}--the--sums--required--by--law--to--be--paid--to--grand--and--~~
12 ~~trial--jurors--and--witnesses--in--criminal--cases;~~

13 ~~{6}~~(5) the accounts of the coroner of the county for
14 such services as are provided by law;

15 ~~{7}~~(6) all charges and accounts for services rendered
16 by any justice of the peace for services in the examination
17 or trial of persons charged with crime as provided for by
18 law;

19 ~~{8}~~(7) the necessary expenses incurred in the support
20 of county hospitals and poorfarms and in the support of the
21 indigent sick and the otherwise dependent poor whose support
22 is chargeable to the county;

23 ~~{9}~~(8) the contingent expenses necessarily incurred
24 for the use and benefit of the county;

25 ~~{10}~~(9) every other sum directed by law to be raised

1 for any county purpose under the direction of the board of
2 county commissioners or declared to be a county charge."

3 Section 8. Section 46-8-114, MCA, is amended to read:

4 "46-8-114. Time and method of payment of costs. When a
5 defendant is sentenced to pay the costs of court-appointed
6 counsel, the court may order payment to be made within a
7 specified period of time or in specified installments. Such
8 payments shall be made to the clerk of the district court.
9 The clerk of the district court shall disburse the payments
10 to the county city or town or state agency responsible for
11 the expenses of court-appointed counsel as provided for in
12 46-8-201."

13 Section 9. Section 46-8-201, MCA, is amended to read:

14 "46-8-201. Remuneration of appointed counsel. (1)
15 Whenever in a criminal proceeding an attorney represents or
16 defends any person by order of the court on the ground that
17 the person is financially unable to employ counsel, the
18 attorney shall be paid for his services such sum as a
19 district court or justice of the state supreme court
20 certifies to be a reasonable compensation therefor and shall
21 be reimbursed for reasonable costs incurred in the criminal
22 proceeding.

23 (2) The expense of implementing subsection (1) is
24 chargeable to the county--in--which--the--proceeding--arose
25 office of supreme court administrator, except that:

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

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

9 Section 10. Section 46-8-202, MCA, is amended to read:

10 "46-8-202. Public defender's office. Any county
11 through its board of county commissioners may provide for
12 the creation of a public defender's office and the
13 appointment of a salaried public defender and such assistant
14 public defenders as may be necessary to satisfy the legal
15 requirements in providing counsel for defendants unable to
16 employ counsel. The costs of such office shall be at county
17 state expense payable according to procedures established
18 under [section 2(1)]."

19 Section 11. Section 46-11-319, MCA, is amended to
20 read:

21 "46-11-319. Expenses of grand jury. (1) All expenses
22 of the grand jury, including special counsel and
23 investigators, if any, shall be paid by the treasurer of the
24 county out of the general fund of the county upon warrants
25 drawn by the county auditor or the clerk of the district

1 court upon the written order of the judge of the district
2 court of the county.

3 (2) The state shall reimburse the county general fund
4 for juror and witness fees as provided in [section 3] and
5 for witness expenses as provided in 46-15-104."

6 Section 12. Section 46-14-202, MCA, is amended to
7 read:

8 "46-14-202. Psychiatric examination of defendant. (1)
9 If the defendant or his counsel files a written notice of
10 his intent to rely on a mental disease or defect under
11 46-14-201 or raises the issue of his fitness to proceed, the
12 court shall appoint at least one qualified psychiatrist or
13 shall request the superintendent of the Montana state
14 hospital to designate at least one qualified psychiatrist,
15 which designation may be or include himself, to examine and
16 report upon the mental condition of the defendant.

17 (2) The court may order the defendant to be committed
18 to a hospital or other suitable facility for the purpose of
19 the examination for a period of not exceeding 60 days or
20 such longer period as the court determines to be necessary
21 for the purpose and may direct that a qualified psychiatrist
22 retained by the defendant be permitted to witness and
23 participate in the examination.

24 (3) In the examination any method may be employed
25 which is accepted by the medical profession for the

1 examination of those alleged to be suffering from mental
2 disease or defect.

3 (4) The cost of the examination must be paid by the
4 state according to procedures established under [section
5 2(1)]."

6 Section 13. Section 46-15-104, MCA, is amended to
7 read:

8 "46-15-104. Expenses of witness. (1) When a person
9 attends before a magistrate, grand jury, or court as a
10 witness in a criminal case upon a subpoena or in pursuance
11 of an undertaking, the judge, at his discretion, by a
12 written order may direct the clerk of the court to draw his
13 warrant upon the county treasurer in favor of such witness
14 for a reasonable sum, to be specified in the order, for the
15 necessary expenses of the witness.

16 (2) According to procedures established by the supreme
17 court administrator under [section 2(1)], the clerk of
18 administrator a detailed statement containing a list of
19 witnesses and the amount of expenses paid to each by the
20 county. Upon receipt and verification of the statement, the
21 administrator shall promptly reimburse the general fund of
22 the designated county for the cost of witness expenses."

23
24 Section 14. Section 46-18-235, MCA, is amended to
25 read:

1 "46-18-235. Disposition of money collected as fines
2 and costs. The money collected by a court as a result of the
3 imposition of fines or assessment of costs under the
4 provisions of 46-18-231 and 46-18-232 shall be paid to the
5 county general fund of the county in which the court is
6 held, except that:

7 (1) if the costs assessed include any district court
8 expense listed in [section 1], the money collected from
9 assessment of these costs must be paid to the supreme court
10 administrator for deposit into the state general fund; and

11 (2) if the fine was imposed for a violation of Title
12 45, chapter 9, the court may order the money paid into the
13 drug forfeiture fund maintained under 44-12-206 for the law
14 enforcement agency which made the arrest from which the
15 conviction and fine arose."

16 NEW SECTION. Section 15. Codification instruction.
17 Sections 1 through 3 are intended to be codified as an
18 integral part of Title 3, chapter 5, and the provisions of
19 Title 3, chapter 5, apply to sections 1 through 3.

20 NEW SECTION. Section 16. Effective date. This act is
21 effective July 1, 1985.

-End-

STATE OF MONTANA

REQUEST NO.

FISCAL NOTE

Form BD 15

In compliance with a written request received _____, 19 _____, there is hereby submitted a Fiscal Note for LC 0032/01 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

LC 0032/01 is an act requiring the state to assume funding for certain District Court expenses and requiring the Legislature to provide full funding for the District Court grant program: Amending Sections 3-5-510, 3-5-511, 3-5-602, 3-5-604, 3-15-204, 7-6-2352, 7-6-2426, 46-8-114, 46-8-201, 46-8-202, 46-11-319, 46-14-202, 46-15-104 and 46-18-235, MCA; Repealing section 3-5-512, MCA; and providing an effective date.

ASSUMPTIONS:

- 1) Each district court judge will continue to employ one court reporter at an annual salary of \$23,000 with benefits at 16%.
- 2) Approximately 65% of the court reporters' workload concern criminal actions.
- 3) All costs associated with categories b,c,d,e and f are incurred because of criminal actions.
- 4) Each county pay the expenses for juror and witness fees direct and submit one monthly voucher to the court administrator's office for reimbursement.
- 5) All other expenses will be paid directly by the Court Administrator's office.
- 6) District Court emergency grant costs will decrease by approximately 80%.

FISCAL IMPACT:

See separate table.

NOTES:

- 1) A 4% inflation factor was applied to FY84 base.
- 2) FY85 salary figures were used for District Judges only.

BUDGET DIRECTOR
Office of Budget and Program Planning
Date: _____

LC 0032/01
FISCAL NOTE

FISCAL IMPACT:

State Impact:	<u>FY1986</u>			<u>FY1987</u>		
	Amount Under Current Law	Amount Under Proposed Law	Increase (Decrease)	Amount Under Current Law	Amount Under Proposed Law	Increase (Decrease)
Expenditures:						
Personal Services	2,005,255	2,713,310	708,055	2,005,255	2,713,310	708,055
Operation Expenses	150,636	2,457,954	2,307,318	150,636	2,457,954	2,307,318
Capital Outlay	-0-	17,760	17,760	-0-	-0-	-0-
Grants to Counties	1,701,213	340,242	(1,360,971)	1,701,213	340,242	(1,360,971)
Net Effect (State General Fund)	3,857,104	5,529,266	1,672,162	3,857,104	5,511,506	1,654,402

Local Impact:

County expenses statewide will decrease by approximately \$1,672,162 in FY86 and \$1,654,402 in FY87.



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