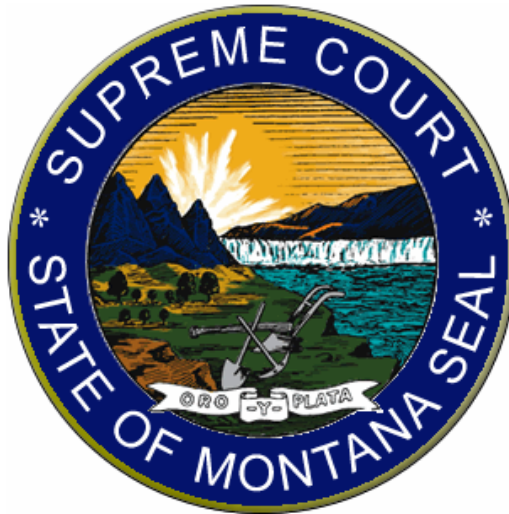

2007
State of the Judiciary
Address



Chief Justice Karla M. Gray
Montana Supreme Court
January 18, 2007

Speaker Sales, President Cooney, Members of the Sixtieth Montana Legislature, honored guests and fellow Montanans:

I'm most honored to report to this joint session of the Montana Legislature—and the people we all serve—on the Judicial Branch's accomplishments since our two Branches were last officially together in 2005, and on the challenges that remain. This is the fourth time I've formally reported to you as Chief Justice of the Montana Supreme Court, and it's certainly been an interesting "ride," thanks in large part to this body's decision in 2001 to have the state assume financial responsibility for the District Courts spread across the entirety of this place we all so gratefully call home. I report with great satisfaction that the promise of state assumption is being realized, and that the Judicial Branch has entered a new era of accountability, modernization and increased responsiveness to Montana's citizens. We still need your help to meet our constituents' needs for—and constitutional guarantees to—quality and reasonably timely justice, but more on that a bit later.

Let me start by recognizing, and thanking you for, the hugely important action you took last session—under the leadership of Senator McGee and others—in creating the first-ever Montana public defender system. That system is rightly being looked to as a model by other states, and by removing responsibility for indigent defense from the Judicial Branch to the Branch where it properly belongs, you also left us—thankfully—able to focus on Judicial Branch planning and activities.

This has been a biennium of enormous accomplishments and improvements in the Judicial Branch which, as you know, has approximately 400 employees across Montana, but makes up only 2.5% of the overall state general fund budget.

I started preparing for today with a very lengthy list of our successes during the past biennium. I soon realized it was just too much to cover without risking my vocal cords and, much more importantly, without presuming on your time constraints. So, I've narrowed down to a few major areas. I invite you to contact either myself or our excellent administrative staff if you want to learn more or if we can assist you in your work in any appropriate way. Government works best when it works together to meet the needs of our citizens.

The Judicial Branch has focused heavily on Montana's kids these past two years, first with our emphasis on more efficient and effective management of child abuse and neglect cases. At the urging of the Judicial Branch, the Departments of Public Health and Human Services and Justice, as well as the new Office of the Public Defender, joined with us to hold the first-ever Montana summit on the protection of children this past August; its theme was "Children Can't Wait." The event brought together almost 200 people—prosecutors, defenders, social workers, volunteer CASAs (court-appointed special advocates for kids) and trial judges—to focus on improving processes for Montana children and their families involved in abuse and neglect cases. Senators Williams and Esp joined us, and we appreciated it.

The summit was a huge, action-oriented success. Real, tangible improvements on the state and local level began there, and continue through local action teams made up of all the "players" in child abuse and neglect cases, because children really can't wait. Our second children's summit—with the theme "Dear Kids, We're Getting There!"—will be held on August 22 and 23 this year, and I invite all of you to join us in this important collaborative effort. I'm glad to see from the number of bill draft requests on this subject that the Judicial Branch and the Legislature are on the same page about the importance of improving abuse and

neglect proceedings. It's an area that needs the efforts of all of us—for Montana's kids.

I mentioned our wonderful CASAs as important participants in last year's summit, and I want all of you to know about the extraordinary help they provide to kids and trial courts in abuse and neglect proceedings. We need more volunteer CASAs and more CASA programs throughout the state. To that end, you have before you a modest budget proposal to expand existing programs and create new ones where they don't yet exist. Montana's kids will benefit greatly by your favorable consideration.

Another major emphasis and accomplishment relating to children has been our improvements in the Youth Courts. We have fully implemented an automated and shared case management system in all Youth Courts, resulting in availability of statistics and data about youths in the Youth Court system. We produced the first-ever "Youth Court Report Card," designed to provide information and accountability to the people of Montana. The District Court Council reallocated some existing Youth Court resources to provide more help to Youth Courts with the greatest need. We still need, however, the very minimal staffing increases for Youth Courts which are contained in our budget proposals. Again, we hope you will give these staffing increases favorable consideration.

Our last major effort involving youths and Youth Courts was to work with the Department of Corrections to modify provisions of the incredibly successful Juvenile Delinquency Intervention Program (called JDIP), in ways agreeable to both the Department and the Judicial Branch. This carefully negotiated legislation is now before you in Senator Shockley's SB 146, and we urge its passage.

The overall vision of state assumption was to allocate state resources to Montana's trial courts on a reliable and systematic basis relying on sound data. Thus, a major, two-part focus within the Judicial Branch over the last two years

has been to collect actual data, on an “apples-to-apples” basis, on trial court filings and workload. The first part was the adoption of Uniform Case Filings Standards by the Supreme Court, effective January 1, 2006, after long and careful study and work by the District Court Council. For the first time ever, we will soon share with you the numbers of filings for each District Court on an equal and case-specific basis. The second major component of the data soon available to you is the result of a District Court Workload Assessment Study which explains—in real terms—how much judicial time is spent on each type of case. This careful and process-oriented study grew out of the District Court Council, and was ably led by District Court Judges McKeon, McKittrick, McLean, Curtis, Watters and Tucker, with expertise obtained from the National Center for State Courts. The detailed workload assessment study, together with the results of the uniform case filing standards, will provide an appropriate basis for your serious consideration—in the 2009 Session--of the very real need for more judges in Montana.

In the meantime, we are requesting small additions in FTEs for staffing the District Courts. These modest proposals, for which we respectfully ask your support, will enable Montana trial courts to provide better service to the people of Montana.

Judges, of course, rely heavily on highly competent and motivated employees in addressing their growing caseloads and other judicial obligations, and I can assure you that the District Courts and Youth Courts are chock full of some of the finest public employees in Montana. But we have been dogged since state assumption with large inequities in employee pay which resulted from state assumption. This problem is significant because it affects not only employee morale, but our ability to continue to hire and retain quality people to staff our courts. We have repeatedly requested your help on this issue, and we seek it again this session. It is totally unfair to subject our employees—all within one Branch of

government—to an inequitable pay system; it is even more unfair when, on top of intra-Branch inequities, Judicial Branch employees whose work is very similar to certain Executive Branch employees, also are paid less than those employees. I urge you to support our budget proposal to finally equalize Judicial Branch employee pay, so the Judicial Branch you effectively created via state assumption can treat its employees like others in state government service.

On another matter closely related to District Court workload and staffing, one thing that became clear during the children’s summit was the difficulty trial judges have in meeting the tight statutory timelines required for child abuse and neglect cases, given their heavy caseloads. The same is true with a large number of other statutes that require District Courts to give certain cases priority and meet strict timelines. I know you understand that judges need adequate time to hear, consider and decide cases. So, I respectfully request you to be mindful—as you consider changes to the child abuse and neglect, and other, statutes—that imposing stricter, and shorter, and additional, timelines may result in expectations and requirements of District Courts that simply cannot humanly be met.

Another major Judicial Branch emphasis continues to be information technology and modernization, an area in which we have made great strides. When I became Chief Justice in 2001, Montana courts were operating with what might accurately be characterized as late 1950s technology. You helped us move forward with critically needed funding in 2003 and 2005. That funding, in combination with federal dollars—which I didn’t like asking for, but which were so desperately needed by our Branch—allowed us to move parts of our courts to early twenty-first century technology standards. All but the tiniest Courts of Limited Jurisdiction are now served by a modern case management system called FullCourt. The Youth Courts have a shared case management system. The Clerk of the Supreme Court finally has a modern case management system which no

longer relies on Word Perfect 5.1. And, importantly, both the Courts of Limited Jurisdiction and the District Courts share a central repository for court data, with catastrophic data back-up, which also allows the courts to share information with other entities such as the Department of Justice.

In addition, with the assistance of Clerks of the District Court in Missoula and Mineral Counties, we have piloted a case management system that will modernize data collection at the District Court level. We must be able to install and implement that system in the other twenty-one Judicial Districts, so that—finally—all of our courts will be on the same twenty-first century technology page at the same time. On a related matter, the Montana Supreme Court has developed and soon will roll out detailed rules addressing public access to court records. Technology truly will lead to greater public access to court records and, consequently, to more transparency and accountability in our Branch.

I'm very proud of what the Judicial Branch has accomplished with regard to information technology and automation in so few years and with limited resources. Our efforts in this arena have been successful because we function as a Branch of government, rather than separate county-based District Courts; and we have been good and careful stewards of public dollars.

For these reasons, I'm comfortable asking for your assistance in finalizing our remaining and necessary technology projects: completing the modernization of District Court case management systems; supporting video conferencing in the District Courts across Montana, with its significant time and cost savings to courts, citizens, local law enforcement and others; and obtaining additional technology-related equipment for our courtrooms. To meet these needs, I respectfully request your strong support for our one-time-only technology proposals in HB 14.

Mentioning courtroom technology needs leads me directly to District Court safety and security. Courthouses and courtrooms are where Montanans come to resolve their legal disputes, and surely Montanans have a right to safe and relatively secure courts. During this past interim, thanks to a partnership with MACO, the Sheriff' and Peace Officers' Association and the Department of Justice, we identified many instances where Montana's courthouses and courtrooms are not providing the level of security and safety needed for citizens, staff and judges. Please assist all of our citizens, the courts and the counties in addressing this problem by supporting our modest request for one-time-only safety and security funds.

I have spoken with some pride about our recent accomplishments in improving court systems and services for the people of Montana in the trial courts. I want to recognize and thank each and every one of our District Court Judges and Judges of the Courts of Limited Jurisdiction for their dedicated and high-quality service to the people of Montana. I also simply must recognize and thank our outstanding Judicial Branch employees for their commitment to public service and to Montana's citizens.

Last, but certainly not least, I respectfully call your attention to the Montana Supreme Court and its substantial need for additional resources. For those of you who remember, we were on the brink of an intermediate appellate court in Montana at the time you passed state assumption in 2001. That also was the last year in which direct staff for the Supreme Court was added—three law clerks. Since that time, I have given priority to the resource needs of the District Courts, their staffing, and other state assumption matters which were not adequately funded at the outset of state assumption. It was the right thing to do; but the Supreme Court has resource needs as well.

We are one of the most productive high courts in the nation, and it's a good thing. From 1991 through 1995, our caseload increased 2%; from 1996 through 2000, an increase of 20%; from 2001 through 2005, an 11.2% increase. Last year we resolved 736 cases, 352 of them by written opinion. In contrast, the U.S. Supreme Court issues in the neighborhood of 80 to 85 opinions a year.

Your Supreme Court also has spent many hundreds of hours in revising various court rules--including the critically important water court claim examination and adjudication rules needed to "ramp up" the adjudication of water rights after the 2005 Session. Other Supreme Court administrative-related duties also have increased since state assumption. I am proud of our Supreme Court and its commitment to both quality and timely justice for Montanans, at a time of more complex cases, higher caseloads and increased administrative obligations. I believe you and all Montanans rightfully can be proud, too.

On behalf of the people of Montana whose cases too often wait too long for the "end of the legal road," however, I simply must urge you to provide much-needed additional staff for the Supreme Court. We are requesting 2.5 additional FTE for direct Court staff. 1.5 of those FTE are for a new, in-house appellate mediation program that could resolve a significant portion of our caseload. The other FTE is for a pro se law clerk to significantly decrease the amount of time Justices currently must spend on inmate petitions and other matters involving persons not represented by counsel. Please help us do a better and more timely job for the people of Montana by approving these proposals.

Coming around to complete the circle, I've outlined for you just some of our most significant accomplishments in improving the Judicial Branch in the last two years. Our justices, judges and staff inspire me every day with their dedication and willingness to go the extra miles for our citizens. Together, and with your help, we

have made significant improvements. Together, and with your help, we can and will do more.

I recall with pleasure a statement on the floor of this chamber during the last session. A Representative said, “You can’t put a price on justice” with regard to adding a judge, staff and operating costs in his county. I ask you all to remember that while—in the real world—it is necessary to put a “cost” on justice, justice is best served through a carefully managed statewide Judicial Branch that has at least minimally adequate resources to meet the needs of all the people of Montana.

Our overall Judicial Branch goals are to ensure that every Montanan can access our courts, so some day we will achieve truly equal justice, and to ensure that the administration of justice is fair, impartial and accountable to the people of Montana we serve. We strive to meet these goals every day.

I’d like to close my formal remarks to this Legislature the same way I did two years ago. I know that—like our Branch—all of you aspire to goals on behalf of your constituents. As elected state level officials, we are all committed to serving our constituents with dignity and giving them the best that is in us. Let’s remember together that we are part of the best system of government the world has ever seen—three separate branches with built-in checks and balances, a system that is the envy of people around the world. Let’s remember together the sacrifices made to protect our form of government and individual freedoms. If we keep these basic ideas close to our minds and hearts, these will be our proudest moments—and we will have faithfully discharged our duties to the people we all serve.

Please know that the Judicial Branch recognizes your critical role in government and the sacrifices you make in being here; we applaud the work you do. We look forward to working with you in the future and, on behalf on Montana’s Justices, Judges and staff, I wish you a productive and successful Sixtieth Legislative Session. Thank you.