



American Civil Liberties Union
of Montana

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EXHIBIT 4
DATE 3/10/09
SB 341

3/10/2009

SB 341

On behalf of the American Civil Liberties Union of Montana, I am Scott Crichton, Executive Director, standing in opposition to SB 341. I ask you to consider the following:

In Section 2, to clarify existing law,

25-10-201. Costs generally allowable. A party to whom costs are awarded in an action is entitled to include in his bill of costs his necessary disbursements, as follows:

- (1) the legal fees of witnesses, including mileage, or referees and other officers;
- (2) the expenses of taking depositions;
- (3) the legal fees for publication when publication is directed;
- (4) the legal fees paid for filing and recording papers and certified copies thereof necessarily used in the action or on the trial;
- (5) the legal fees paid stenographers for per diem or for copies;
- (6) the reasonable expenses of printing papers for a hearing when required by a rule of court;
- (7) the reasonable expenses of making transcript for the supreme court;
- (8) the reasonable expenses for making a map or maps if required and necessary to be used on trial or hearing; and
- (9) such other reasonable and necessary expenses as are taxable according to the course and practice of the court or by express provision of law.

History: En. Sec. 1866, C. Civ. Proc. 1895; re-en. Sec. 7169, Rev. C. 1907; re-en. Sec. 9802, R.C.M. 1921; re-en. Sec. 9802, R.C.M. 1935; R.C.M. 1947, 93-8618.

Missoula County Justice Court calendar year 2008

1. Missoula County Justice Court had 24 jury trials during 2008
2. OPD did 50% of the jury trials, 12.
3. OPD acquittal rate in Justice Court is approximately 60%,

Missoula District Court Trials calendar year 2008

1. 39 cases reached jury trial last year

2. Of the 36 criminal jury trials, 24 were PD office cases, 3 were PD conflict cases, and 9 were private counsel.
3. Almost 20% of the cases that went to trial in district court in Missoula resulted in acquittal (3 outright, 1 of the most serious charge) or dismissal (1 case). If you include the dismissal it is over 20%.
4. Of the 24 cases tried by Missoula Office attorneys, 5 resulted in dismissal or acquittal of all or the most serious charges (there were 3 outright not-guilty, 1 dismissal, 1 acquitted of the most serious charge).

25-10-711. Award of costs against governmental entity when suit or defense is frivolous or pursued in bad faith. (1) In any civil action brought by or against the state, a political subdivision, or an agency of the state or a political subdivision, the opposing party, whether plaintiff or defendant, is entitled to the costs enumerated in 25-10-201 and reasonable attorney's fees as determined by the court if:

- (a) he prevails against the state, political subdivision, or agency; and
- (b) the court finds that the claim or defense of the state, political subdivision, or agency that brought or defended the action was frivolous or pursued in bad faith.

(2) Costs may be granted pursuant to subsection (1) notwithstanding any other provision of the law to the contrary.

History: En. Sec. 1, Ch. 402, L. 1979.

Perhaps, at the very least, we should consider requiring prosecutors to reimburse defendants \$100 per felony and \$50 per misdemeanor, when the person is acquitted or charges dismissed?