

JUSTICE COURT
STUDY COMMITTEE

INTERIM REPORT

DECEMBER 3, 1997

JUSTICE COURT STUDY COMMITTEE

Judge Anthony Schofield, Chair	Fourth District Court
Mayor V. Allen Adams	City of Kanab
Camille Anthony	Executive Director Commission on Criminal and Juvenile Justice
Judge Parley Baldwin	Second District Court
Representative Greg Curtis	Utah House of Representatives
Commissioner Gary Herbert	Utah County Commission
Senator Joseph Hull	Utah State Senate
Judge Jerald Jensen	Davis County Justice Court
Judge William Keetch	Lindon City Justice Court
Paul Morris	West Valley City Attorney
Commissioner Royal Norman	Box Elder County Commission
Judge Gregory Orme	Utah Court of Appeals
Mayor LaVelle Prince	City of Taylorsville
Richard Schwermer	Assistant State Court Administrator
Kevin Sundwall	Legal Defenders Association
Melvin Wilson	Davis County Attorney

FOR ADDITIONAL INFORMATION:

Peggy Gentles
Staff Attorney
Administrative Office of the Courts
230 South 500 East, Suite 300
Salt Lake City, UT 84102
(801) 578-3800

TABLE OF CONTENTS

INTRODUCTION	1
Charge from the Legislature.	1
Committee process.	2
Introduction to justice courts.	3
SUMMARY OF COMMITTEE’S RECOMMENDATIONS	3
COMMITTEE’S RECOMMENDATIONS	4
Jurisdiction of justice courts in criminal matters.	4
Formation of justice courts.	8
Judicial independence.	10
Appeals/trial de novo and “court not of record.”	11
ISSUES STILL TO BE ADDRESSED	12
Revenue share/surcharges.	12
Record keeping, information sharing, and technology.	12
Judicial Conduct Commission suspension ability.	12
Civil Jurisdiction.	12
APPENDIX A	
PROPOSED JURISDICTION LEGISLATION	A-1
APPENDIX B	
SECONDARY OPINION ON JURISDICTION	B-1

I. INTRODUCTION

In the Spring of 1997, the Utah Judicial Council formed the Justice Court Study Committee at the request of the Legislature. The Committee has met a number of times and prepared this Interim Report to inform interested parties of the Committee's work. The Committee will continue to meet to consider outstanding issues and reactions to this Report.

A. Charge from the Legislature.

In the 1997 Legislative Session, intent language was passed in House Bill 1.

It is the intent of the Legislature that the Judicial Council coordinate a study of justice court issues and propose necessary legislation for the 1998 General Session. The study group should include representatives of counties and municipalities as well as judges and other interested parties. The group should consider the future role of justice courts in the judicial system, and propose any legislative changes necessary to promote stability in planning and revenue, equitable revenue distribution, judicial independence and exclusive jurisdiction.

The Utah Judicial Council, policy making body for the judicial branch, formed the Justice Court Study Committee ("Committee") by identifying the interested groups and requesting appointment of members. The following groups were included (requested appointments in parentheses):

Board of Justice Court Judges (one county justice court judge; one municipal justice court judge);

Defense Section of Utah State Bar (one attorney who represents defendants in justice courts);

Governor's Office (one member);

Judicial Council (two district court judges; justice court administrator);

Legislature (one member of the House of Representatives; one member of the Senate);

Presiding Judge of the Court of Appeals (one appellate court judge);

Statewide Association of Public Attorneys (one city attorney; one county attorney);

Utah League of Cities and Towns (one mayor from rural area; one mayor from urban area); and

Utah Association of Counties (one county commissioner from rural area; one county commissioner from urban area).

B. Committee process.

The Committee has met on the following dates:

May 23, 1997	September 8, 1997
June 13, 1997	October 1, 1997
June 24, 1997	October 28, 1997
July 11, 1997	November 4, 1997
July 29, 1997	

Minutes prepared for each meeting are available upon request from the Administrative Office of the Courts.

The Committee began its deliberations by requesting from various interest groups input on the issues identified by the Legislature's intent language. A number of representatives graciously appeared before the Committee and presented the positions of their organizations. These representatives were

Paul Boyden, Criminal Co-Director, Statewide Association of Public Attorneys
David Church, General Counsel, Utah League of Cities and Towns
Judge Lynn Davis, Chair, Board of District Court Judges
Brent Gardner, Executive Director, Utah Association of Counties
Colonel Richard Greenwood, Superintendent, Utah Highway Patrol
Ben Hamilton, Member of Defense Bar
Judge John Sandberg, Board of Justice Court Judges
Chief Justice Michael Zimmerman, Chair, Utah Judicial Council.

After the presentations, the Committee established the following priority for issues to be studied:

1. Exclusive/concurrent jurisdiction;
2. Formation of justice courts and oversight by Judicial Council;
3. Record keeping, information sharing, and technology;
4. Revenue share/surcharges;
5. Issues of judicial independence in the reappointment/retention election process;
6. Appeals/trial de novo and justice court as a "court not of record";

7. Judicial Conduct Commission suspension ability.

This report contains recommendations for Issues 1, 2, 5, and 6. The Issue 1 proposal only addresses jurisdiction in criminal cases. The Committee has deferred consideration of justice courts' civil jurisdiction until later in its deliberations.

C. Introduction to justice courts.

Justice courts are authorized by statute pursuant to a Utah constitutional provision that allows the creation of a "court not of record" by statute. Utah Const. art. VIII, sec. 1; Utah Code § 78-5-101. The individual courts are created at the option of municipalities or counties. Currently, one hundred and thirty-two justice courts are in operation. Of these, ninety-six are municipal courts; thirty-six are county courts. One hundred and eighteen judges sit in Utah's justice courts (some judges sit in more than one court).

The Judicial Council is statutorily required to establish operational standards for justice courts. Utah Code § 78-5-139. The operational standards govern areas such as hours of operation, facilities, legal resources, and clerical resources. Because the localities served by the justice courts vary greatly in population and citations generated, justice courts are classified based upon monthly filings. The operational standards vary for each class of court. The classification is as follows:

Class I	501 or more citations or cases filed per month;
Class II	201-500 citations or cases filed per month;
Class III	61-200 citations or cases filed per month;
Class IV	60 or fewer citations or cases filed per month.

In fiscal year 1997, approximately 345,000 cases were filed in justice courts. The overwhelming majority of these cases were criminal filings. This caseload was comprised of the following case types:

Traffic misdemeanors and infractions:	85.5%
Non-traffic misdemeanors and infractions:	13.0%
Felony preliminary hearings:	0.1%
Small claims:	1.4%.

II. SUMMARY OF COMMITTEE'S RECOMMENDATIONS

The Committee has made recommendations concerning the future role of justice courts in the state court system. One of the Committee's objectives was to more clearly delineate the jurisdiction of the court. The Committee reached a consensus on the elimination of concurrent jurisdiction between justice and district courts without giving certain offenses to justice courts exclusively. The Committee was divided on any further recommendation concerning jurisdiction. A majority favored no additional changes. The minority advocated moving all

class B misdemeanors, class C misdemeanors, infractions and violations of ordinances exclusively to justice courts. To inform discussion, both positions are presented in this Interim Report.

The Committee proposes that the requirements for formation of a justice court be based upon the size of the court to be formed. Any local government should be allowed to form a Class I or II justice court without demonstrating any particular need for the court. Because formation of justice courts affects other entities supporting courts, two years notice should be required. To form a smaller Class III or IV court (except certain cities currently exempt from the needs test), the local government should demonstrate the need for the court and give a one year notice of intent to form the court. The Committee also recommends that provisions governing dissolution of justice courts be adopted.

Municipal justice court judges are currently reappointed by executive officers. Concerns about judicial independence in this scheme prompted the Committee to recommend a “good cause” standard for the non-reappointment of a justice court judge. Unless the judge agreed with the non-reappointment, the city executive officer would be required to make the showing of “good cause” to the municipal legislative body. The legislative body’s decision would be final.

The Committee has considered issues surrounding the appeal mechanism from justice courts. Because justice courts are not courts of record, a de novo review appears to be mandated. Many, although not all, of the objections to de novo review lie in the potential for two jury trials. Any recommendations for changes to the jury system would be beyond the Committee’s scope. Therefore, the Committee defers to other groups to address these issues.

III. COMMITTEE’S RECOMMENDATIONS

A. Jurisdiction of justice courts in criminal matters.

All concurrent territorial jurisdiction between district court and justice court should be eliminated.

Currently, justice courts have jurisdiction over class B and C misdemeanors, infractions, and violations of ordinances committed within their territorial jurisdiction. Utah Code § 78-5-104(1).¹ The district court has jurisdiction over class B and C misdemeanors, violations of ordinances, and infractions in the following circumstances:

1. no justice court has territorial jurisdiction;
2. the case was filed in the circuit court before July 1, 1996;

¹ Justice court jurisdiction is limited when the defendant is under 18 years of age. Utah Code § 78-5-105. The Committee makes no recommendation concerning the jurisdictions of the justice and juvenile courts over misdemeanors and infractions committed by persons under 18 years of age.

3. the offense occurred within a municipality in which a district courthouse is located and the municipality has not formed a justice court; or
4. the charges are included in an indictment or information covering a single criminal episode alleging the commission of a felony or a class A misdemeanor.

Utah Code § 78-3-4(8). Of the four circumstances, numbers 1, 2, and 4 identify cases in which the district court has exclusive jurisdiction over B and C misdemeanors, infractions, and ordinance violation cases. However, number 3 (district courthouse in municipality that has not formed a justice court) results in concurrent jurisdiction between a county justice court and the district court located in municipalities without justice courts.² The language addressing the jurisdiction of the district court in misdemeanor, infraction, and violation of ordinances was added to Section 78-3-4 in the 1997 Legislative Session. It was added in response to the consolidation of the circuit and district courts which was completed as of July 1, 1996.³

The Committee considered the following three issues related to the jurisdiction of justice courts in criminal matters:

1. Should any concurrent territorial jurisdiction exist between the justice court and the district court?
2. Should any concurrent subject matter jurisdiction exist between the justice court and the district court?
3. If subject matter jurisdiction is to be exclusive, where should the jurisdictional line be drawn?

Many presenters who appeared before the Committee stated that all concurrent jurisdiction should be eliminated. Two reasons were given. Most prominently mentioned was forum shopping. Since the overwhelming majority of cases filed in justice courts are criminal, the presenters concerned about forum shopping were worried that prosecutors and law enforcement officers could choose in which court to file. Such a system may be unfair to a defendant who may receive disparate treatment as a result of the choice of court. A second concern, mentioned by the Judicial Council representative, was difficulty in planning for the state court system. The Judicial Council requests resources for the district court from the Legislature based on case load projections. Concurrent jurisdiction holds the potential for large caseload shifts between the district and justice courts. Neither the Judicial Council nor the county government can predict such a case shift and therefore is unable to account for it in planning.

² The exception to this concurrent jurisdiction is in Cache County, which is the only of Utah's twenty-nine counties that has not formed a justice court.

³ Section 78-3-4(8) expires on July 1, 1998. It was added to preserve the status quo while the Committee was formed to study the issues surrounding the justice courts.

Some presenters and some Committee members were concerned about eliminating concurrent jurisdiction entirely. Concurrent jurisdiction gives prosecutors flexibility that may be appropriate especially in more serious class B misdemeanors such as driving under the influence and domestic violence. For example, filing in district court and avoiding the possibility of a trial de novo which would require a victim to testify twice may be a legitimate decision for a prosecutor.

The Committee's jurisdiction discussions were ultimately guided by three principles. First, forum shopping is the primary evil to be addressed. Second, as presently constituted and with proper training, justice court judges are fully competent to hear the types of cases within their current jurisdiction (class B and C misdemeanors, infractions, and ordinance violations). Ordinarily, the justice court is the court level that should hear those cases. Third, nothing inherent in the district court makes it an inappropriate forum for class B misdemeanors, class C misdemeanors, infractions, and ordinance violations in the limited circumstances in which it is hearing them currently.

Following deliberation, the Committee unanimously recommends that any concurrent territorial jurisdiction be eliminated. To effectuate the recommendation, it drafted the suggested legislation attached as Appendix A. The proposal keeps the existing district court jurisdictional statute except removal of the language limiting the provision from July 1, 1997 to July 1, 1998.⁴ The proposal also amends the justice court jurisdictional statute to remove those offenses occurring within the boundaries of a municipality in which a district courthouse is located and the municipality has not formed a justice court or assumed local responsibility for the justice court. Essentially, concurrent jurisdiction is removed by excepting those cases in district court jurisdiction under Section 78-3-4 from justice court jurisdiction under Section 78-5-104. The Committee understands that removing concurrent jurisdiction using the language in Appendix A may move some cases currently in a county justice court to a district court. The Committee has not yet identified the magnitude of that case shift.

To ameliorate a case shift under the language of Appendix A, the Committee will consider a mechanism of allowing a city to choose which court to put cases arising within its municipal boundaries short of forming a court or executing an interlocal agreement. One proposal is to require each municipality in which the district court has jurisdiction to file an election every even-numbered year by July 1. Similar to the formation of a justice court by a municipality, the election would bind all agencies filing cases based upon offenses occurring within the municipality.

Under the proposed language in Appendix A, subject matter jurisdiction over class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances continues to be divided between district and justice courts depending upon location of the offense. The

⁴ A non-substantive change recognizes that certain municipalities can "assume local responsibility for the jurisdiction of the justice court" without necessarily forming a municipal justice court.

proposed language deprives the prosecution of any opportunity to pick from more than one forum. Wherever in Utah such an offense occurs, that charge may be filed in one -- and only one -- court. The Committee split on the issue of making further recommendations on jurisdiction. Because all members of the Committee recognize the merits of each position, the two views are presented in the body of this report. The majority of the Committee supports what follows as the “Primary Opinion.” A minority of the Committee supports the designated “Secondary Opinion.”

Primary Opinion

A majority of the Committee recommends no further change to justice court jurisdiction. The historical development of the district court and the justice court have led to substantial resource commitments by the state and local governments. In addition, the municipalities that currently litigate all criminal matters in the district court have consciously elected to not form a municipal justice court. These municipalities have relied upon the continued availability of the district court in their planning decisions. A majority of the Committee felt that requiring those municipalities to form a justice court or prosecute in a county justice court by removing the district court jurisdiction over class B misdemeanors and lower was inappropriate.

Secondary Opinion.

A minority of the Committee felt that filing in a different level of court based upon only the location of the offense does not promote a coherent justice system. The Committee has heard neither philosophical nor policy reasons that justify treating identically charged defendants differently depending solely upon the location of the offense. A defendant in district court is afforded a trial and appellate review on the record. A defendant in justice court is afforded two trials but no appellate review unless a statute or ordinance is found unconstitutional. While the minority does not think one of these avenues of appeal is better than the other, the procedure available to the defendants is markedly different. Therefore, the minority would recommend that certain cases be heard only by justice courts. Because justice courts are currently hearing class B and C misdemeanors, infractions, and ordinance violations, drawing the line for exclusive jurisdiction at class B misdemeanors and lower seemed most appropriate. The minority’s proposal included a study of the impacts of such a change of jurisdiction and a comprehensive plan for the transition. The details are set out in Appendix B of this Interim Report.

B. Formation of justice courts.

Any local government that wants to create a Class I or II justice court should be able to do so upon two years notice. Formation of a Class III or IV court should require one year notice and continued demonstration of need for the court.

Under the statutory scheme for formation of justice courts, local governments are

divided into two groups. Certain cities⁵ can establish a justice court⁶ at the city's option. These cities must give notice of their intent to form a court to the Judicial Council by July 1 of an odd-numbered year with the election effective the next even numbered year. Utah Code § 10-3-923. All local governments not enumerated in Section 10-3-923 are not subject to a time limit on notice. However, they must meet minimum standards set by the Judicial Council for the creation of justice courts. Pursuant to statute, these standards are established considering "factors of population, case filings, public convenience, availability of law enforcement agencies and court support services, proximity to other courts, and special circumstances which establish a need for the court." Utah Code § 78-5-139.

The Committee recommends that requirements for formation of a court be based upon the size of the court to be created. Generally, a local government should have the autonomy to form a justice court when the governing body feels its citizens would be best served by doing so. However, because of lower case filings, smaller courts raise a concern about the ability to support the efficacious administration of justice.

The Committee recommends removal of the needs test in Section 78-5-139 for local governments proposing to form a Class I or II justice court. However, the formation of a justice court may have a significant impact upon other courts. The larger the number of cases in the prospective court, the larger decrease in caseload for other courts. Any shift of cases has an impact on the resources of many governmental entities. Planning is particularly difficult if many cases can be shifted with relatively short notice. To balance local government's desire to be responsive to its community's needs with the recognition that a large case shift can impact other governmental entities, the Committee recommends requiring two years of notice. This requirement should apply to cities listed in Section 10-3-923. Because under the current statutory scheme, those cities can only give notice in odd-numbered years, they are not substantially affected by the change.

Except Section 10-3-923 cities, a local government that proposes to form a Class III or IV court should be required to give one year of notice and meet the needs test in Section 78-5-139. The cities listed in Section 10-3-923 who propose to form a Class III or IV court would continue to be exempt from the needs test. However, the notice provision would change to allow the Section 10-3-923 cities forming a Class III or IV court to give notice any year rather than only in odd-numbered years.

The notice required under the Committee's recommendation should be given by July 1

⁵ Brigham City, Logan, Ogden, Roy, Clearfield, Layton, Bountiful, Kaysville, Salt Lake City, Murray, Sandy, West Valley City, Tooele, Park City, Orem, Provo, Spanish Fork, American Fork, Elk Ridge, Salem, Cedar City, St. George, Richfield, Price, Moab, Taylorsville, Vernal, and Roosevelt.

⁶ The statute refers to "assum[ing] local responsibility for those matters within the exclusive jurisdiction of the justice courts." A city may form a justice court, establish a justice court through interlocal agreement, or adjudicate matters in the county justice court.

of the year. The local government should always give notice to the Judicial Council. The local government should also give notice to any entity that is hearing the cases that would be within the jurisdiction of the new court. The Judicial Council should be given the ability to shorten any required notice period if all the affected governments agree.

The Committee recommends continuing the requirement that the Judicial Council certify all new courts. Currently for certification of a new court, the Judicial Council requires the governing body of the local government entity to request an opinion from an attorney advising the entity of all requirements for the creation and operation of a justice court. The entity must pass a resolution requesting certification that affirms that the entity is willing to meet all requirements for the creation and operation of a court. This information is presented to the Justice Court Standards Committee.⁷

With the exception of the cities listed in Section 10-3-923, dissolution of justice courts is not addressed by Utah statute.⁸ Because of the potential impact on other governmental entities of a dissolution of a court, the Committee recommends that legislation expressly address the issue. Any municipal justice court in a county with a justice court should be required to give the county notice of its intent to dissolve its municipal justice court. Notice of dissolution of any justice court should also be given to the Judicial Council. The time for notice should be the same as the notice for intent to create (two years for Class I and II courts; one year for Class III and IV courts). The notice would be required by July 1. Because the caseload would fall to the local district court, the dissolution of a county justice court or a municipal justice court in a county without a county justice court should be approved by the Legislature. The requirement for legislative approval for the revocation of assumption of justice court jurisdiction by Section 10-3-923 cites should remain. For dissolutions of justice courts that do not need legislative approval, the Judicial Council should be able to waive the time for notice. The Committee recommends two different schemes for dissolution because of the different impacts of dissolution. The Legislature should be given approval authority over any dissolution which will result in a shift of cases, by default, to the state district court.

C. **Judicial independence.**

⁷ Comprised of one municipal justice court judge from a rural area, one municipal justice court judge from an urban area, one county justice court judge from a rural area, and one county justice court judge from an urban area, all appointed by the Board of Justice Court Judges; one mayor from either Utah, Davis, Weber or Salt Lake Counties, and one mayor from the remaining counties, both appointed by the Utah League of Cities and Towns; one county commissioner from either Utah, Davis, Weber or Salt Lake Counties, and one county commissioner from the remaining counties, both appointed by the Utah Association of Counties; a member of the Bar from Utah, Davis, Weber or Salt Lake Counties, and a member of the Bar from the remaining counties, both appointed by the Bar Commission; and a judge of a court of record appointed by the Presiding Officer of the Council. Code of Judicial Admin. Rule 1-205.

⁸ Once the Section 10-3-923 cities (*see* footnote 5) elect to assume jurisdiction for justice court matters, the Legislature must approve the revocation of the election. Utah Code § 10-3-923(6).

Municipal justice court judges should be reappointed absent a showing of “good cause” by the appointing authority.

Justice court judges serve four year terms. The manner of initial appointment is identical for county and municipal judges. However, upon the expiration of the term, county judges are subject to an unopposed retention election while municipal judges are reappointed by the chief executive officer of the city. Utah Code § 78-5-134.

In their presentations to the Committee, both the Judicial Council and the Board of Justice Court Judges expressed concern with the reappointment of municipal judges. The Council and the Board see the reappointment process as a potential infringement upon judicial independence. The city (through the city attorney) is often a party to the criminal cases that a municipal justice court hears. In addition, the city is the recipient of at least fifty percent of most of the fines collected by the court. Even if no overt pressure is placed on a municipal court judge, the fact that the judge is subject to reappointment by the executive branch may be an implicit threat to independent judicial decision making.

The Board of Justice Court Judges favors retention elections for municipal justice court judges. The League of Cities and Towns stated that retention elections would subject city judges to undue political pressure. While retention elections are appropriate in the relatively populous counties and judicial districts, the small population in many municipalities would mean that a judge could be removed by a small number of voters. This reality of a small electorate has the potential of dissuading a judge from making a politically unpopular but legally correct decision, especially near the election date.

The Committee agrees that reappointment of municipal justice court judges is problematic. The potential for an undesirable injection of executive branch concerns into the judicial process is significant. Additionally, if the citizens have the perception that financial concerns of the local government drive the court’s decisions, the integrity of the judiciary is undermined. However, the League’s concern about retention elections in small electorates was perceived as equally legitimate. The Committee recommends adoption of a “good cause” standard for the denial of a municipal justice court judge’s reappointment. Under the present statutory scheme, the municipal executive is required to consider whether the judge has been certified by the Judicial Council as meeting the performance evaluation criteria and “any other factors considered relevant by the appointing authority.” Utah Code § 78-5-134. Using a “good cause” standard for the failure to reappoint is designed to protect the judge’s ability to independently exercise the judge’s authority while allowing local governments an effective mechanism to ensure accountability.

At the end of a municipal justice court judge’s term, the appointing authority would be required to articulate the basis for “good cause” to deny reappointment. At the judge’s request, the appointing authority would have to present its “good cause” for non-reappointment to the municipal legislative body in a formal hearing. The legislative body would be the final arbiter

of the question. Neither the justice court judge nor the appointing authority would have an avenue of appeal from the legislative body's decision. The Committee viewed the requirement that the appointing authority articulate the reasons for not reappointing as insulating the judge from some political pressures without removing local control. However, the Committee did not want to create a cause of action for a justice court judge who was not reappointed.

D. Appeals/trial de novo and "court not of record."

If a litigant is not satisfied with the decision of a justice court, the litigant is entitled to a "trial de novo" in the district court. This "de novo" review varies from traditional appellate review of trial court rulings. The entire case is presented again in the district court. Unless the court rules on the constitutionality of an ordinance or statute, no additional review is available from a justice court judgment. Utah Code § 78-5-120. For fiscal year 1997, the Administrative Office of the Courts received reports of 501 trial de novo requests (compared with more than 300,000 cases in justice courts).

During presentations to the Committee, three major disadvantages with the trial de novo process were identified. One disadvantage is, at least in certain types of proceedings, a de novo review may be burdensome on witnesses. For instance, testifying twice may be emotionally difficult for victims. A second disadvantage is that providing two trials may be resource intensive particularly if a jury is impaneled twice. A third disadvantage is that, absent a question about the constitutionality of a statute, no opportunity for multi-judge review of questions of law, as is typical of traditional appeals, exists. However, the Committee feels that recommendations related to jury trial would be beyond its scope. Therefore, it defers to the groups to address the issue.

IV. ISSUES STILL TO BE ADDRESSED

A. Revenue share/surcharges.

Misdemeanor and infraction fines are subject to a split between the entity prosecuting and the entity supporting the court. In addition, a surcharge earmarked for certain funds is paid on many fines. The Committee will consider whether changes to these allocations should be recommended.

B. Record keeping, information sharing, and technology.

The criminal information infrastructure relies on all participants to facilitate the transfer of accurate information. Justice courts hear a majority of the class B misdemeanor and lower cases filed. Their ability to interact with the state's information systems appropriately is crucial. The Committee will consider issues related to record keeping, information sharing, and technology.

C. Judicial Conduct Commission suspension ability.

Justice courts have been established by many local governments, many of which cannot easily afford to pay more than one judge. However, the possibility exists that a government may be forced to employ a second judge because of alleged misconduct by the sitting justice court judge. Only the Judicial Conduct Commission has the power to suspend a judge during the judge's term. Without the suspension, a government is required to pay the judge. The Committee has not yet addressed this issue.

D. Civil Jurisdiction.

Small claims cases involve disputes for \$5,000 or less which are conducted under a simplified process. Both district and justice courts have subject matter jurisdiction over small claims matters. In district courts, the cases are often heard by judges pro tem, attorneys who volunteer to hear the cases. In judicial districts without a judge pro tem program, small claims cases filed in district court may be transferred to the appropriate justice court. The Committee has not yet addressed proposed changes to the civil jurisdiction of justice courts.

APPENDIX A

PROPOSED JURISDICTION LEGISLATION

1 78-3-4. Jurisdiction -- Appeals. 2

3 (1) The district court has original jurisdiction in all matters civil and criminal, not
4 excepted in the Utah Constitution and not prohibited by law.

5 (2) The district court judges may issue all extraordinary writs and other writs necessary
6 to carry into effect their orders, judgments, and decrees.

7 (3) The district court has jurisdiction over matters of lawyer discipline consistent with
8 the rules of the Supreme Court.

9 (4) The district court has jurisdiction over all matters properly filed in the circuit court
10 prior to July 1, 1996.

11 (5) The district court has appellate jurisdiction to adjudicate trials de novo of the
12 judgments of the justice court and of the small claims department of the district court.

13 (6) Appeals from the final orders, judgments, and decrees of the district court are under
14 Sections 78-2-2 and 78-2a-3.

15 (7) The district court has jurisdiction to review agency adjudicative proceedings as set
16 forth in Title 63, Chapter 46b, Administrative Procedures Act, and shall comply with the
17 requirements of that chapter, in its review of agency adjudicative proceedings.

18 (8) Notwithstanding Subsection (1), [~~between July 1, 1997, and July 1, 1998,~~]the
19 district court has subject matter jurisdiction in class B misdemeanors, class C misdemeanors,
20 infractions, and violations of ordinances only if:

21 (a) there is no justice court with territorial jurisdiction;

22 (b) the matter was properly filed in the circuit court prior to July 1, 1996;

23 (c) the offense occurred within the boundaries of the municipality in which the district
24 courthouse is located and that municipality has not formed a justice court or assumed local
25 responsibility for the jurisdiction of the justice court under 10-3-923; or

26 (d) they are included in an indictment or information covering a single criminal episode
27 alleging the commission of a felony or a class A misdemeanor.
28

29 78-5-103. Territorial jurisdiction -- Voting. 30

31 (1) [~~Except as provided in Section 10-3-923, the~~] The territorial jurisdiction of county
32 justice courts extends to the limits of the precinct for which the justice court is created and
33 includes all [~~cities or towns~~] municipalities within the precinct, except

34 (a) [~~cities~~] municipalities where a municipal justice court exists[-] or

35 (b) municipalities which have assumed local responsibility for the jurisdiction of the
36 justice court under Section 10-3-923(7)(a)(ii).

37 (2) The territorial jurisdiction of municipal justice courts extends to the corporate limits
38 of the municipality in which the justice court is created.

39 (3) The territorial jurisdiction of county and municipal justice courts functioning as
40 magistrates extends beyond the boundaries in Subsections (1) and (2):

- 1 (a) as set forth in Section 78-7-17.5; and
2 (b) to the extent necessary to carry out magisterial functions under Subsection 77-7-23
3 (2) regarding jailed persons.
4 (4) For election of county justice court judges, all registered voters in the county justice
5 court precinct may vote at the judge's retention election.

6
7 78-5-104. Jurisdiction.

- 8
9 (1) Justice courts have jurisdiction over class B and C misdemeanors, violation of
10 ordinances, and infractions committed within their territorial jurisdiction, except
11 (a) [~~those~~] offenses over which the juvenile court has exclusive jurisdiction[.]; and
12 (b) offenses occurring within the boundaries of the municipality
13 (i) in which a district courthouse is located and
14 (ii) that municipality has not formed a justice court or assumed local responsibility for
15 the jurisdiction of the justice court under 10-3-923.
16 (2) Justice courts have jurisdiction of small claims cases under Title 78, Chapter 6,
17 Small Claims Courts, if the defendant resides in or the debt arose within the territorial
18 jurisdiction of the justice court.

APPENDIX B

SECONDARY OPINION ON JURISDICTION

The Secondary Opinion on jurisdiction recommends all class B misdemeanors and lower be heard only by justice courts. When the Committee considered this proposal, it researched the potential impact of a shift in jurisdiction. This information, along with a transition plan, is included in this Appendix.

The minority recognized that in some areas of the state a justice court may not exist with territorial jurisdiction. If a county does not have a justice court (*see* footnote 2 in the body of the report), those areas not within the jurisdiction of a municipal justice court would not be within the jurisdiction of any justice court. The minority would recommend that the territorial jurisdiction of the county seat's municipal justice court in any county without a justice court be expanded to include the entire county. Therefore, the system's coherence would be preserved.

Some Committee members expressed concern about particular offenses being exclusively within the jurisdiction of justice courts. At various times during the discussions, reviewing all A and B misdemeanors was proposed. While the Committee has declined to undertake this process, it has recognized the validity of the recommendation. The minority feels that any necessary reclassification of offenses would occur as part of the normal legislative process. In many localities, justice courts are currently hearing all class B and C misdemeanors. If justice court is not the best forum for particular cases, any impetus to reclassify the offenses exists regardless of whether the minority's recommendation of exclusive jurisdiction was adopted.

In its discussions, the Committee investigated the impact of changing to an exclusive jurisdiction scheme. The most significant impact would be a one-time shift of cases out of the district court system and into justice courts. Fine revenue from most misdemeanors and infractions is split between the entity supporting the court (50%) and the government which prosecutes the offense (50%). Utah Code § 78-3-14.5 (district courts); Utah Code § 78-5-116 (justice courts). In addition to fines, a surcharge is imposed in many criminal cases. The surcharge is assessed as a percentage of fines as follows:

85% in felonies; class A misdemeanors; driving while intoxicated and reckless driving; and class B misdemeanors not established in Title 41 (Motor Vehicles).

35% on other offenses except nonmoving traffic violations, orders for community service, and penalties assessed as part of a nonjudicial adjustment in a juvenile court case.

Utah Code § 63-63a-1.

The Administrative Office of the Courts provided information to the Committee about

fiscal year 1997 caseloads^a and fine revenue in the district court.

	CHARGES	CASES
B misdemeanor	77,397	63,276
C misdemeanor	126,053	102,565

The state's fiscal year 1997 revenue from misdemeanor and infraction fines subject to the 50/50 split was approximately \$4.4 million.^b This figure includes fine revenue associated with class A misdemeanors. The Committee staff attempted to identify how much of this amount is associated with cases that would remain in the district court under the minority's proposal (all class A misdemeanors and all misdemeanors and infractions filed with a class A misdemeanor). Unfortunately, data tying fine revenue to specific charges are not available. For fiscal year 1997, class A misdemeanors were five percent of the misdemeanor and infraction charges filed in district court. While fines would not necessarily correspond with charges filed as a percentage (because class A misdemeanors would be expected to have larger fines), this proportion gives an estimate of the portion of the \$4.4 million associated with class A charges.

In addition to the fines subject to a 50/50 split, the general fund receives fifteen percent of fines from wildlife and state parks violations filed in district court. Utah Code § 78-3-14.5. If those cases are filed in a justice court, the fifteen percent is paid to entity sponsoring the court. Utah Code § 78-5-116.^c For fiscal year 1997, the general fund's portion of these fines was approximately \$9,000. For citations for overweight vehicles under Utah Code Sections 27-12-151 and 27-12-154, the fines minus a fee established by the Judicial Council are paid to the B and C road account. The fees are paid to the state's general fund if the case is in district court and to the entity supporting the court if the case is in justice court. Utah Code § 78-3-14.5 (district court); Utah Code § 78-5-116 (justice court). In fiscal year 1997, the fees assessed for overweight vehicle cases in district court were approximately \$6,500.

The rate of increase in surcharge revenue may be expected to decrease slightly under the minority's proposal. All surcharge revenue would continue to flow to the funds designated by state statute. However, the different payment formula for justice courts would affect the rate of payment of the surcharge. District courts attribute money to the surcharge first. Utah Code § 63-63a-2(1). Therefore, if a defendant does not pay all the money owed, the deficiency will all be attributed to the fine (unless the defendant does not pay enough to cover the surcharge).

^a The caseload information is provided by charge and case. "Charges" include all offenses filed; "cases" reflect number of cases in which a relevant misdemeanor was filed.

^b This figure is for revenue collected not fines imposed.

^c The balance of the fine is paid to Division of Wildlife Resources or Division of Parks and Recreation regardless of the court in which the citation is filed.

Amounts collected by the justice courts are attributed to surcharge and fine in a ratio designed to pay each off at the same rate. Utah Code § 63-63a-2(2). Therefore, unless the defendant pays the entire amount owing, some portion of the surcharge assessed by a justice court would remain unpaid.

In addition to a decrease in fine revenue to the state general fund, moving B misdemeanors, C misdemeanors, and infractions to justice courts would have an impact on the State Courts Complex Account. Seven dollars for each violation of Title 41 (Motor Vehicles) in a court of record is paid to the Division of Facilities Construction and Management Capital Projects Fund. Utah Code § 21-1-5(2)(d)(i). This fund is designated for repaying costs associated with the construction of the court complex and for operating and maintaining the court complex. Utah Code § 21-1-5(3)(b). In fiscal year 1997, approximately \$611,000 was generated from the Title 41 violations. As with the fine revenue, part of this amount would be associated with class A misdemeanors or lesser charges filed with a class A or felony which, under the minority's proposal, would remain in district court.

Shifting the caseload from district court to justice court would have a significant one-time resource impact for the affected governmental entities. The district court has judges and associated personnel that currently hear some class B and C misdemeanors, infractions, and ordinance violations. These judges and personnel would no longer service those cases. The Judicial Council, as the planning body for the state court system, requests additional judgeships and court personnel based upon caseload projections. The one-time caseload shift probably would mitigate the need for additional district court judgeships in the short term.

While, under the minority's proposal, the state system would see a short-term decrease in caseload, the justice court system would see a commensurate one-time jump in caseload. The increase in cases would not be uniform throughout the state. Four of the largest municipalities in the state (Ogden, Provo, Salt Lake City, and West Valley City) currently file many class B and C misdemeanor, infraction, and ordinance cases in district court. These cases would have to be heard by either new or existing justice courts. In either situation, the local government entity would need the capability to hear these cases.

An additional concern is facilities planning. A number of district court sites are city-owned. The district court uses the buildings under long-term leases with the cities. Issues related to these facilities should the municipalities wish to use some or all of the space for a municipal justice court would need to be addressed. Because each arrangement between the state and a municipality is different, the minority is unable to make recommendations for treatment of such facilities. However, it has attempted to identify issues related to its proposal to prompt discussion by the interested groups. The minority would expect that all the parties would be treated fairly in the transition process.

Given the impact upon the affected entities, the minority felt that a significant lead time should be built into its proposal to allow adjustments in resource allocation. Therefore, the minority would recommend that legislation be put in place in the 1998 Legislative Session to

effectuate the change to exclusive jurisdiction in the justice court in 2002. The year 2002 was chosen as a compromise recognizing that the state and local governments may have conflicting interests in the date. For the state court system, the longer the time period the more difficult case management would become because an increasing caseload may not be relieved by additional judgeships in anticipation of the loss of the misdemeanors and infractions. For the local governments, the infusion of additional cases would require a lead time to plan facilities and personnel (if the locality decides to handle the cases itself) or to negotiate intergovernmental agreements with other localities.