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The Montana Supreme Court – The Statistics

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THE MONTANA SUPREME COURT – THE STATISTICS

Blake Koemans & Denise LaFontaine*

I. INTRODUCTION

The Montana Supreme Court serves as the sole appellate court for the state. Thus, despite Montana's small population, in recent years the Montana Supreme Court has issued more than twice the number of opinions as the United States Supreme Court.¹ Many of these opinions set binding precedent and thereby impact the legal landscape that practitioners, scholars, and the legal community must navigate. To present an overall view of the opinions issued by the Montana Supreme Court in 2021, the Authors have collected statistics on caseloads, voting patterns, and other information. This project—originally inspired by the *Harvard Law Review*'s statistics project²—continues the *Montana Law Review*'s yearly presentation of Montana Supreme Court Statistics.³ Ultimately, we hope that this information and the insights presented prove useful to litigants and practitioners across the state. Further, we encourage those interested to use this and our previously published data to perform additional statistical investigation into trends over time for our highest state court.

II. FINDINGS

The Montana Supreme Court's 2021 term resembles the 2018, 2019, and 2020 terms in several respects. The Court decided most cases unanimously and displayed substantial alignment in their voting patterns. Justice Gustafson authored the most Opinions of the Court while Justice McKinnon authored the greatest number of dissenting opinions. Additionally, as in previous years, the Court heard more civil appeals than criminal appeals.

Notwithstanding these similarities, several interesting trends have surfaced. Compared to prior years, the percentage of non-published opinions issued by the Court appears to be increasing. Additionally, though the Court

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1. *Compare The Supreme Court – The Statistics*, 135 HARV. L. REV. 491, 491 (2021) with Noah P. Hill & Shelby Towe, *The Montana Supreme Court – The Statistics*, 82 MONT. L. REV. 479 (2021).

2. Brent Mead & Dillon Kato, *The Montana Supreme Court – The Statistics*, 81 MONT. L. REV. 343, 343 (2020).

3. See *id.*; Hill & Towe, *supra* note 1.

is still hearing more civil appeals than criminal appeals, the proportion of criminal appeals is increasing. Other interesting trends that appeared in the data include the increased number of sexual intercourse without consent cases and the decreased number of non-majority opinions authored by the Court. Overall, this data shows the Montana Supreme Court is extremely active and engaged, deciding many diverse cases each year.

TABLE I: OPINIONS WRITTEN

Justice		Opinions of the Court ⁴	Concurrences ⁵	Dissents ⁶	Concur in part, Dissent in part ⁷	Total
McGrath	Published ⁸	14	1	1	2	18
	Non-Published ⁹	34	0	0	0	34
	Total	48	1	1	2	52
McKinnon	Published	27	1	7	3	38
	Non-Published	31	0	0	0	31
	Total	58	1	7	3	69
Shea	Published	11	0	1	2	14
	Non-Published	18	0	1	0	19
	Total	29	0	2	2	33
Baker	Published	27	1	4	1	33
	Non-Published	27	0	0	0	27
	Total	54	1	4	1	59
Gustafson	Published	30	2	2	3	37
	Non-Published	36	2	2	0	40
	Total	66	4	4	3	77
Rice	Published	16	3	4	3	26
	Non-Published	21	1	1	0	23
	Total	37	4	5	3	49
Sandefur	Published	14	3	2	3	22
	Non-Published	16	0	0	0	16
	Total	30	3	2	3	38
All Justices	Published	139	11	21	17	188
	Non-Published	183	3	4	0	190
	Total	322	14	25	17	378

4. Opinions of the Court includes all such opinions so designated by the Court, no matter how many justices joined the opinion.

5. A justice is considered to have concurred when the justice authored an opinion concurring in part, concurring in the judgment, or concurring in both. However, opinions where a justice both concurred in part and dissented in part are excluded from this category.

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Table I shows an interesting disparity in opinion authorship on the Court. Justices Gustafson, McGrath, McKinnon, and Baker appear to have carried a majority of the workload in authoring the Opinions of the Court. However, when looking at the number of published opinions, the workload appears to have been more balanced. Justice Gustafson authored the most opinions with 77. Of these, 66 were majority opinions, giving Justice Gustafson authorship of the most majority opinions as well. Justice McKinnon authored the most dissenting opinions with 7. Additionally, Justice McKinnon authored the most published opinions total with 38 followed closely by Justice Gustafson's 37 published opinions.

TABLE II: UNANIMITY

	Unanimous	With Concurrence ¹⁰	With Dissent ¹¹	Total
Published	103 (74%)	5 (4%)	31 (22%)	139
Non-Published	176 (96%)	3 (2%)	4 (2%)	183
Total	279 (87%)	8 (2%)	35 (11%)	322

Table II demonstrates that the Montana Supreme Court is largely unanimous in their decision making. In 74% of published cases and 96% of non-published cases, the Court ruled unanimously, resulting in a total unanimity rate of 87%. The Montana Supreme Court's unanimity rate in published opinions is much higher than that of the United States Supreme Court (33.9%).¹² However, this is not surprising considering that Montana litigants have an appeal as of right to the Montana Supreme Court, unlike litigants appealing to the United States Supreme Court.¹³ Cases that were published carried higher rates of dissent but similar rates of concurrence as

6. A justice is considered to have dissented whenever the justice's opinion would have disposed of the case in any manner different from the manner specified by the majority of the Court.

7. A justice is considered to have concurred in part and dissented in part when a justice's opinion both concurred with the majority of the Court on one or more issues and dissented from the majority of the Court on one or more issues.

8. Published cases are those cases decided by opinions that are citable and serve as precedent.

9. Non-published cases are those cases decided pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules. These cases are decided by memorandum opinion and shall not be cited as binding precedent. Montana Supreme Court Internal Operating Rules Section I, Paragraph 3(c)(ii).

10. This column includes only those cases where a justice authored a separate concurrence and no justice dissented from the Court's opinion.

11. This column includes all cases where a justice dissented from the opinion of the Court, even in cases where a separate justice issued a concurrence, or a justice dissented in part and concurred in part.

12. *The Supreme Court – The Statistics*, *supra* note 1, at 496.

13. Montana Judicial Branch, *About Judicial Branch*, <https://perma.cc/KK2V-T4X6>.

non-published cases. These statistics are nearly identical to those from last term.¹⁴

TABLE III: JUSTICE VOTING ALIGNMENT

		Baker	Gustafson	McGrath	McKinnon	Rice	Sandefur	Shea
Baker	MAJORITY ¹⁵	-	158	155	158	168	171	156
	M/C	-	1	0	0	0	0	0
	C	-	0	0	0	0	0	0
	D	-	0	1	0	5	2	1
	D/C	-	0	0	0	1	0	1
	AGREEMENT	-	159	156	158	174	173	158
	TOTAL CASES	-	182	173	182	185	192	170
	AGREEMENT (%)	-	87.36	90.17	86.81	94.05	90.10	92.94
Gustafson	MAJORITY	158	-	145	157	144	162	148
	M/C	1	-	0	0	0	1	0
	C	0	-	0	0	0	1	0
	D	0	-	0	4	0	3	3
	D/C	0	-	1	2	0	1	2
	AGREEMENT	159	-	146	163	144	168	153
	TOTAL CASES	182	-	167	177	175	184	167
	AGREEMENT (%)	87.36	-	87.43	92.09	82.29	91.30	91.62
McGrath	MAJORITY	155	145	-	148	153	153	152
	M/C	0	0	-	0	0	0	0
	C	0	0	-	0	0	2	0
	D	1	0	-	1	3	1	0
	D/C	0	1	-	1	1	1	1
	AGREEMENT	156	146	-	150	157	157	153
	TOTAL CASES	173	167	-	168	171	171	164
	AGREEMENT (%)	90.17	87.43	-	89.29	91.81	91.81	93.29
McKinnon	MAJORITY	158	157	148	-	145	164	150
	M/C	0	0	0	-	0	0	0
	C	0	0	0	-	0	1	0
	D	0	4	1	-	2	2	1
	D/C	0	2	1	-	1	2	1
	AGREEMENT	158	163	150	-	148	169	152
	TOTAL CASES	182	177	168	-	171	185	168
	AGREEMENT (%)	86.81	92.09	89.29	-	86.55	91.35	90.48
Rice	MAJORITY	168	144	153	145	-	157	145
	M/C	0	0	0	0	-	0	0
	C	0	0	0	0	-	0	0
	D	5	0	3	2	-	3	0
	D/C	1	0	1	1	-	1	1
	AGREEMENT	174	144	157	148	-	161	146
	TOTAL CASES	185	175	171	171	-	181	166
	AGREEMENT (%)	94.05	82.29	91.81	86.55	-	88.95	87.95

14. Hill & Towe, *supra* note 1, at 482 (the Montana Supreme Court was unanimous in 74% of published cases and 97% of non-published cases in the 2020 term).

15. For each case that a justice took part in, their position was recorded as one of the following: Majority (“M”) (either authored or joined the majority opinion); Majority/Concurrence (“M/C”) (joined

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		Baker	Gustafson	McGrath	McKinnon	Rice	Sandefur	Shea
Sandefur	MAJORITY	171	162	153	164	157	-	157
	M/C	0	1	0	0	0	-	0
	C	0	1	2	1	0	-	0
	D	2	3	1	2	3	-	0
	D/C	0	1	1	2	1	-	0
	AGREEMENT	173	168	157	169	161	-	157
	TOTAL CASES	192	184	171	185	181	-	176
	AGREEMENT (%)	90.10	91.30	91.81	91.35	88.95	-	89.20
Shea	MAJORITY	156	148	152	150	145	157	-
	M/C	0	0	0	0	0	0	-
	C	0	0	0	0	0	0	-
	D	1	3	0	1	0	0	-
	D/C	1	2	1	1	1	0	-
	AGREEMENT	158	153	153	152	146	157	-
	TOTAL CASES	170	167	164	168	166	176	-
	AGREEMENT (%)	92.94	91.62	93.29	90.48	87.95	89.20	-

Table III illustrates that although the seven Montana Supreme Court justices display alignment in their overall voting patterns, some justices agree with each other much more often than others. Justices Baker and Rice displayed the strongest voting alignment, signing onto the same outcome 94% of the time. Despite serving on the least number of cases together of any justice pairing, Justice Shea and Chief Justice McGrath displayed the second strongest voting alignment, agreeing in 93% of the 164 cases that they served on together. The weakest voting alignment observed was 82% between Justices Rice and Gustafson. Justices Baker and Sandefur served on the greatest number of cases together out of any justice pairing with 192 cases. Overall, Justices Rice and Gustafson appeared to align the least with their fellow justices while Justice Shea displayed the greatest alignment with his fellow justices. On average, Justice Shea agreed with his fellow justices in 91% of cases while Justices Rice and Gustafson agreed with their fellow justices in only 88% of cases. Despite these differences, the statistics again reinforce the overall alignment and unanimity of the Montana Supreme Court.

the majority opinion and authored or joined a concurring opinion); Concurrence (“C”) (authored or joined a concurring opinion but did not join the majority opinion); Dissent (“D”) (authored or joined a dissenting opinion); or Dissent/Concurrence (“D/C”) (authored or joined a concurring in part, dissenting in part opinion). Note that because many cases are decided with only five justices, not all justices appear on the same number of cases.

TABLE IV: VOTING PATTERNS IN NON-UNANIMOUS CASES

	Total Cases	Joining Opinion of Court ¹⁶		Change from 2020 Term (%)	Agreeing in Disposition ¹⁷		Change from 2020 Term (%)
		Number	Percentage (%)		Number	Percentage (%)	
Baker	27	21	77.78	13.68	21	77.78	8.55
Gustafson	32	21	65.63	10.37	22	68.75	0.33
McGrath	29	23	79.31	-4.90	25	86.21	-3.26
McKinnon	29	18	62.07	39.57	18	62.07	22.07
Rice	29	16	55.17	1.32	17	58.62	-2.92
Sandefur	30	22	73.33	7.48	24	80.00	4.39
Shea	26	23	88.46	10.08	25	96.15	6.96

Even in the subset of the Court's opinions that are non-unanimous, the justices continue to agree most of the time.¹⁸ In fact, the Court's 2021 term saw an uptick in the justice's overall rate of agreement in non-unanimous cases with every justice either joining the opinion of the Court or agreeing in the disposition of the case in more than 50% of the cases they participated in. Among the individual justices, the most notable shift, year-to-year, is that of Justice McKinnon. In the Court's 2020 term, Justice McKinnon joined the opinion of the Court in just 9 of the 40 cases she took part in.¹⁹ This term, Justice McKinnon doubled that number, agreeing in 18 of the 29 cases for which she sat.

As noted, the high levels of agreement between the justices, even when the Court is not unanimous, is most likely an artifact of the Court's role as Montana's only appellate level court. That fact makes any ideological or jurisprudential differences among the justices hard, if not impossible, to discern from voting patterns alone. However, in the last two terms, Justices Rice and McGrath tend to stick out as being consistently on the low and high ends of agreement compared to the median justice, respectively.²⁰

Table IV shows a Court in greater agreement than the prior year. With the exception of the Chief Justice, every justice joined the opinion of the

16. The number of justices signing an opinion varied from four to seven. Since the Montana Supreme Court rotates which justices sit for a specific case, each justice hears a different number of non-unanimous cases.

17. This column includes both cases in which a justice joined the opinion of the Court and those cases in which a justice authored a separate concurrence agreeing in the outcome. Those cases in which a justice concurred in part and dissented in part are excluded.

18. Hill & Towe, *supra* note 1, at 485.

19. *Id.*

20. *Id.*

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court at a greater rate in 2021 than in 2020. As highlighted in the previous installment of this project, the 2020 term showed a notable decline in the rate of agreement among the justices.²¹ Table IV may suggest a return to the level of agreement seen in the 2018 and 2019 terms.²²

21. *Id.* at 485–86.

22. Mead & Kato, *supra* note 2, at 348.

TABLE V: DISPOSITION BY COURT OF ORIGIN

Court Of Origin ²³	Disposition ²⁴			Total	Affirm (%)	Reverse (%)	Split (%)
	Affirm	Reverse	Split				
DISTRICT COURTS							
First Judicial District	31	6	4	41	75.61	14.63	9.76
Second Judicial District	9	2	2	13	69.23	15.38	15.38
Third Judicial District	9	2	1	12	75.00	16.67	8.33
Fourth Judicial District	21	4	5	31	67.74	12.90	16.13
Fifth Judicial District	10	0	0	10	100.00	0.00	0.00
Sixth Judicial District	11	0	0	11	100.00	0.00	0.00
Seventh Judicial District	4	0	1	5	80.00	0.00	20.00
Eighth Judicial District	25	5	5	36	69.44	13.89	13.89
Ninth Judicial District	5	1	1	7	71.43	14.29	14.29
Tenth Judicial District	3	1	0	4	75.00	25.00	0.00
Eleventh Judicial District	26	6	2	34	76.47	17.65	5.88
Twelfth Judicial District	0	2	2	4	0.00	50.00	50.00
Thirteenth Judicial District	28	3	3	35	80.00	8.57	8.57
Fourteenth Judicial District	5	1	0	6	83.33	16.67	0.00
Fifteenth Judicial District	0	0	0	0	-	-	-
Sixteenth Judicial District	5	2	0	7	71.43	28.57	0.00
Seventeenth Judicial District	2	0	0	2	100.00	0.00	0.00
Eighteenth Judicial District	17	2	2	21	80.95	9.52	9.52
Nineteenth Judicial District	5	2	3	10	50.00	20.00	30.00
Twentieth Judicial District	7	1	0	10	70.00	10.00	0.00
Twenty-First Judicial District	6	3	1	10	60.00	30.00	10.00
Twenty-Second Judicial District	3	0	0	3	100.00	0.00	0.00
OTHER COURTS							
Montana Workers' Compensation Court	2	0	0	2	100.00	0.00	0.00
Montana Water Court	2	0	1	3	66.67	0.00	33.33
Judicial Standards Commission of the Supreme Court of the State of Montana	0	0	0	0	-	-	-
Federal Appeals Court (Ninth Circuit)	-	-	-	2	-	-	-
Original Proceedings	-	-	-	3	-	-	-
Total	236	43	33	322	73.29	13.35	10.25

23. Montana's district court system is split into twenty-two judicial districts, and each of those districts as well as the Montana Workers' Compensation Court and the Montana Water Court are appealed to the Montana Supreme Court.

24. Dispositions of all cases were categorized as one of the following: Affirm, Reverse, or Split (decisions where the Court affirmed in part and reversed in part the lower court's decision).

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Table V shows the number of cases originating from each of the twenty-two district courts in the State of Montana as well as the other special courts located across the state. The largest number of cases originated from the First Judicial District.²⁵ The 41 cases originating from this district constituted 12.7% of the Montana Supreme Court's decisions for the 2021 term. This was followed by the Eighth,²⁶ Thirteenth,²⁷ and Eleventh²⁸ Judicial Districts which had 36, 35, and 34 cases decided, respectively. The Fifteenth Judicial District²⁹ was the only district court without any appeals decided by the Supreme Court for the 2021 term, though the Seventeenth³⁰ and Twenty-Second³¹ Judicial Districts had only 2 and 3 cases decided, respectively. Courts other than district courts did not produce many cases decided by the Montana Supreme Court in the 2021 term. The Montana Water Court, the Montana Workers' Compensation Court, and the Ninth Circuit contributed a total of only 7 cases to the Montana Supreme Court's caseload. Additionally, of the 322 cases decided by the Montana Supreme Court, only 3 were original proceedings.

Examining the disposition of cases based on their Court of origin, Table V illustrates that affirmation rates are 50% or higher for all but one district court. The Montana Supreme Court overturned or came to a split decision in all 4 cases heard from the Twelfth Judicial District,³² leaving that district with an unusually low 0% affirmation rate. Several district courts had a 100% affirmation rate. Of these, the perfect affirmation rates of the Fifth³³ and Sixth³⁴ Judicial Districts stand out, as these districts had 10 and 11 cases decided. The next highest affirmation rate observed was 83.3% in the Fourteenth Judicial District.³⁵ The Twelfth Judicial District carried the highest rate of reversals with 50%, followed by the Sixteenth Judicial District³⁶ with 28.6%. The Twelfth Judicial District also carried the highest percentage of split decision outcomes with 50% followed by the Nineteenth Judicial District³⁷ with a 30% split decision rate. Overall, the Montana Supreme Court affirmed 73.3% of the cases that it decided in the 2021 term. It reversed 13.3% and decided 10.2% of the cases by split deci-

25. Lewis and Clark County and Broadwater County.

26. Cascade County.

27. Yellowstone County.

28. Flathead County.

29. Daniels, Sheridan, and Roosevelt Counties.

30. Blaine, Phillips, and Valley Counties.

31. Stillwater, Carbon, and Big Horn Counties.

32. Chouteau, Hill, and Liberty Counties.

33. Beaverhead and Madison Counties.

34. Park and Sweet Grass Counties.

35. Meagher, Wheatland, Golden Valley, and Musselshell Counties.

36. Garfield, Rosebud, Treasure, Custer, Powder River, Fallon, and Carter Counties.

37. Lincoln County.

sion. These numbers show a slight decrease from the 76.8% affirmation rate and the 14.4% reversal rate observed last term.

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TABLE VI: PUBLISHED AND NON-PUBLISHED CASES BY SUBJECT MATTER

	Total	Published	Non-Published
CIVIL ³⁸	169	68	101
Amount Due	2	0	2
Breach of Contract	5	2	3
Commitment – Mental Illness	7	3	4
Condemnation	2	2	0
Damages	4	4	0
Debt	1	1	0
Declaratory Judgment	8	7	1
Defamation	1	1	0
Dependant Neglect	24	5	19
Discrimination	2	1	1
Domestic Relations	23	4	19
Easement	1	1	0
Elections	1	0	1
Environmental Issues	1	1	0
Foreclosure	1	1	0
Fraud	2	0	2
Guardian/Conservator	2	1	1
Injunction	4	3	1
Judicial Review	12	5	7
Justice Court Appeal	1	0	1
Negligence	8	7	1
Other	14	9	5
Postconviction	22	1	21
Probate	3	1	2
Quiet Title	3	0	3
Real Property	2	0	2
Tort	2	0	2
Unfair Trade Practices	1	1	0
Water Rights Adjudication	3	3	0
Workers' Compensation	2	0	2
Wrongful Death	1	1	0
Wrongful Discharge	4	3	1

38. Subcategories were provided by the Clerk of the Montana Supreme Court pursuant to the Court's internal filing system.

	Total	Published	Non-Published
CRIMINAL	143	50	65
Aggravated Kidnapping	0	0	0
Arson	1	0	1
Assault	6	0	6
Assault on a Peace Officer	5	3	2
Assault – Partner/Family Member	8	3	5
Bail Jumping	1	1	0
Burglary	1	1	0
Burglary/Theft	1	0	1
City Court Appeal	1	0	1
Cruelty to Animals	0	0	0
Dangerous Drugs	19	8	11
DUI	1	0	1
DUI – Felony	11	7	4
Endangerment – Criminal	5	3	2
Escape	0	0	0
Exploitation of an Elder Person	0	0	0
Failure to Register as a Sex Offender	1	1	0
Failure to Register as a Violent Offender	0	0	0
Forgery	0	0	0
Homicide – Attempted	1	1	0
Homicide Deliberate	7	3	4
Homicide – Negligent	2	1	1
Incest	4	2	2
Indecent Exposure	1	1	0
Insurance Fraud	0	0	0
Intimidation	1	0	1
Justice Court Appeal	10	4	6
Juvenile	4	3	1
Kidnapping	1	0	1
Mischief – Criminal	1	0	1
Municipal Court Appeal	11	3	8
Other	3	1	2
Revocation	3	0	3
Robbery	1	0	1
Sentencing – Probate Revocation	1	1	0
Sexual Abuse of Children	4	3	1
Sexual Assault	4	1	3
Sexual Intercourse Without Consent	12	8	4

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Stalking	1	0	1
Tampering with Evidence	0	0	0
Theft	5	2	3
Transferring Illegal Articles / Unauthorized Communications	1	0	1
Vehicular Homicide Under Influence	1	0	1
Violation of Protective Order	3	0	3
	Total	Published	Non-Published
ORIGINAL PROCEEDING	10	10	0
Federal Appeals Court	2	2	0
Habeas Corpus	3	3	0
Other	2	2	0
Supervisory Control	3	3	0

Table VI details the opinions issued by the Court, separated by subject matter. Table VI's most notable topline finding is that the Court's docket is increasingly being filled by appeals in criminal cases. The Court issued 143 opinions in criminal cases in 2021, constituting 45% of the total opinions issued. In the 2018 and 2019 terms, only 35% of opinions were in criminal cases, and in 2020, 45% of opinions came from criminal cases.

Of the opinions issued in criminal cases, most come from the dangerous drugs subcategory. This finding is consistent with prior terms, in which the dangerous drugs subcategory consistently accounts for the largest share of opinions.³⁹ Additionally worth noting, there appears to be an upward trend in the number of opinions issued in the sexual intercourse without consent (SIWC) subcategory. In the 2021 term, the Court issued 12 opinions in the SIWC subcategory. In the 2020 term, the Court issued only 8 opinions in the SIWC subcategory, and in the 2018 and 2019 terms the Court averaged 7.5.⁴⁰

While opinions in criminal cases continue to rise, civil opinions still constitute the majority of the Court's work. In the 2021 term, the Court issued 169 opinions in civil cases making up roughly 54% of the total. As in prior years, most of the Court's civil opinions fall in the dependent neglect and domestic relations subcategories.⁴¹

39. See Mead & Kato, *supra* note 2, at 352–53 (in the 2018 and 2019 terms, the dangerous drugs subcategory averaged 13.5 cases per term); Hill & Towe, *supra* note 1, at 490–91 (in the 2020 term the Court issued 16 opinions in the dangerous drugs subcategory).

40. See Hill & Towe, *supra* note 1, at 491; Mead & Kato, *supra* note 2, at 352.

41. See Mead & Kato, *supra* note 2, at 351 (in the 2018 and 2019 terms the Court averaged 30 opinions in the dependent neglect subcategory and 32 opinions in the domestic relations subcategory);

Table VI also distinguishes between published and non-published cases. Of note, opinions in the civil subcategories of dependent neglect, domestic relations, and postconviction all have an extremely high rate of non-publication. This finding closely mirrors the data from prior Court terms.⁴² No similar datapoints are immediately apparent among the criminal opinions; however, all 6 of the opinions in the assault subcategory were issued as non-published in the 2021 term.

Hill & Towe, *supra* note 1, at 489 (in the 2020 term, the Court issued 20 opinions in the dependent neglect subcategory and 30 opinions in the domestic relations subcategory).

42. Hill & Towe, *supra* note 1, at 491.

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TABLE VII: PUBLISHED AND NON-PUBLISHED CASES BY COURT OF ORIGIN

Court Of Origin	Published	Non-Published	Total	Published (%)	Non-Published (%)
DISTRICT COURTS					
First Judicial District	22	19	41	53.66	46.34
Second Judicial District	5	8	13	38.46	61.54
Third Judicial District	5	7	12	41.67	58.33
Fourth Judicial District	14	17	31	45.16	54.84
Fifth Judicial District	4	6	10	40.00	60.00
Sixth Judicial District	2	9	11	18.18	81.82
Seventh Judicial District	3	2	5	60.00	40.00
Eighth Judicial District	15	21	36	41.67	58.33
Ninth Judicial District	0	7	7	0.00	100.00
Tenth Judicial District	3	1	4	75.00	25.00
Eleventh Judicial District	18	16	34	52.94	47.06
Twelfth Judicial District	1	3	4	25.00	75.00
Thirteenth Judicial District	10	25	35	28.57	71.43
Fourteenth Judicial District	1	5	6	16.67	83.33
Fifteenth Judicial District	0	0	0	-	-
Sixteenth Judicial District	6	1	7	85.71	14.29
Seventeenth Judicial District	0	2	2	0.00	100.00
Eighteenth Judicial District	8	13	21	38.10	61.90
Nineteenth Judicial District	4	6	10	40.00	60.00
Twentieth Judicial District	5	5	10	50.00	50.00
Twenty-First Judicial District	4	6	10	40.00	60.00
Twenty-Second Judicial District	1	2	3	33.33	66.67
OTHER COURTS					
Montana Workers' Compensation Court	0	2	2	0.00	100.00
Montana Water Court	3	0	3	100.00	0.00
Judicial Standards Commission of the Supreme Court of the State of Montana	0	0	0	-	-
Federal Appeals Court (Ninth Circuit)	2	0	2	100.00	0.00
Original Proceedings	3	0	3	100.00	0.00
Total	139	183	322	43.17	56.83

Table VII demonstrates that over half of the Court's opinions are not published. While 43.2% of the cases decided are published and thus set binding precedent, 56.8% are decided by memorandum opinion and are not citable as binding precedent. The statistics show only a minimal change

from the 2020 term in which 45.3% of cases were published and 54.7% were non-published.

Of the 139 published opinions, approximately half originated in just four districts—the First, Fourth,⁴³ Eighth, and Eleventh Judicial Districts. The First Judicial District had the greatest number published decisions with 22. This was followed closely by the Eleventh Judicial District's 18 published opinions. Several districts produced no published Montana Supreme Court decisions including the Ninth District⁴⁴ and the Seventeenth District. Districts with 5 or more total cases had at least one published opinion, with the exception of the Ninth Judicial District. 7 of the Montana Supreme Court's decisions stemmed from that district, and none were published. The highest rate of publication observed in the district courts was 85.7% from the Seventeenth District. District Courts that had more than 30 cases reviewed by the Court varied greatly in their publication rates. The First and Eleventh Judicial Districts had more published cases than non-published cases with 53.6% and 52.9% publication rates, respectively. However, the Thirteenth Judicial District displayed a relatively low publication rate with only 28.6% of its 35 decisions being published.

Looking at the non-district courts across the state, publication rates varied from 100% to 0%. While both cases originating in the Montana Workers' Compensation Court resulted in non-published opinions, all 3 of the cases that originated in the Montana Water Court resulted in published opinions. Similarly, both decisions stemming from a certified question from the Ninth Circuit were published and all 3 decisions made in original proceedings were published.

III. CONCLUSION

As noted in previous installments of this ongoing research, the Montana Supreme Court continues to speak with a unanimous voice in its written opinions. Across both published and non-published opinions, in both the civil and criminal context, the Court is unanimous more than 80% of the time. The 2021 term of the Court presents multiple notable data points for practitioners and researchers. First, the Court's criminal docket continues to expand at roughly 5% year-over-year. Second, beginning in 2020 and expanding in the 2021 term, a majority of the opinions issued by the Court are non-cite unpublished opinions. The *Montana Law Review* plans to continue to expand on the preceding data set in the years to come.

43. Missoula and Mineral Counties.

44. Glacier, Toole, Pondera, and Teton Counties.