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Cover Page Footnote

The Authors would like to extend a special thank you to the Clerk of the Montana Supreme Court, Bowen Greenwood. Mr. Greenwood provided invaluable assistance in data collection and documentation that continues to make this Legal Short possible. The Authors would also like to extend their thanks to Brent Mead and Dillon Kato, whose vision inspired and developed this project.

THE MONTANA SUPREME COURT – THE STATISTICS

Monte Cole & Adam Taub*

I. INTRODUCTION

The Montana Supreme Court is Montana’s highest court. Unlike most state court systems, Montana does not have an intermediate appellate court.¹ The Montana Supreme Court hears direct appeals from all of the district courts across the state, as well as from the Workers’ Compensation Court and the Water Court.² In keeping with the trends of recent years, the Montana Supreme Court has continued to issue more than twice the number of opinions as the United States Supreme Court.³ Many of these opinions become binding precedent that Montana’s legal community must keep abreast of and incorporate into their practices and scholarship. The Authors have collected statistics on cases, voting patterns, and other information to present a comprehensive picture of the opinions issued by the 2022 Montana Supreme Court.⁴ This project—originally inspired by the *Harvard Law Review*’s statistics project⁵—continues the *Montana Law Review*’s yearly presentation of Montana Supreme Court Statistics.⁶ Our hope is that this information and the commentary provided within this Legal Short will be of use to litigants, practitioners, and scholars throughout Montana. We continue to encourage those interested to utilize this and our previously published data to perform additional statistical research into judicial trends over time.

* J.D. Candidates, Class of 2024, Alexander Blewett III School of Law at the University of Montana. The Authors would like to extend a special thank you to the Clerk of the Montana Supreme Court, Bowen Greenwood. Mr. Greenwood provided invaluable assistance in data collection and documentation that continues to make this Legal Short possible. The Authors would also like to extend their thanks to Brent Mead and Dillon Kato, whose vision inspired and developed this project.

1. *Montana Supreme Court Decisions*, JUSTIA US LAW, <https://perma.cc/Z3BE-VE8A> (last visited April 20, 2023).

2. *Id.*

3. *Compare The Supreme Court 2021 Term: The Statistics*, 136 HARV. L. REV. 500, 500 (2022) with Blake Koemans & Denise LaFontaine, *The Montana Supreme Court – The Statistics*, 83 MONT. L. REV. 399, 400 tbl. 1 (2022).

4. The current panel of justices has remained unchanged since 2018, when Justice Gustafson took her seat on the bench. *Montana Supreme Court*, BALLOTPEDIA, <https://perma.cc/3ELP-SD7K> (last visited April 20, 2023). Associate Justices McKinnon and Shea both won reelection bids in the November 2020 general election. *Montana Supreme Court Elections, 2020*, BALLOTPEDIA, <https://perma.cc/GUF2-UK34> (last visited April 20, 2023). Gustafson won her reelection bid in 2022. *Montana Supreme Court Elections, 2022*, BALLOTPEDIA, <https://perma.cc/LGG4-BW6M> (last visited April 20, 2023).

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

6. *See id.*; Noah P. Hill & Shelby Towe, *The Montana Supreme Court – The Statistics*, 82 MONT. L. REV. 479 (2021); Koemans & LaFontaine, *supra* note 3.

II. FINDINGS

The Montana Supreme Court's 2022 term reflects the Court's continued tendency to speak unanimously when issuing decisions. Concurring and dissenting opinions were vastly outweighed by the strong alignment of the total opinions issued by the Court. When members of the Court did break from the majority in cases before them, there was still minimal disagreement compared to the overall consonance. In 2022, Justice Baker authored the most opinions of the Court. Justice McKinnon authored the greatest number of dissenting opinions, as was also the case in 2021.⁷ Of note is the decline in opinions of the Court in 2022 with only 251, compared to the 322 in 2021, perhaps in response to the almost 200 original proceedings filed in the Court in 2022.⁸ Notably, the Court heard more civil and fewer criminal cases compared to the previous year.⁹

7. Koemans & LaFontaine, *supra* note 3, at 401.

8. This Legal Short does not address matters the Court resolved by order rather than written opinion. Many original proceedings (including various writs, attorney discipline matters, and certified questions) were resolved by order and therefore were left out of this analysis.

9. Koemans & LaFontaine, *supra* note 3, at 409.

TABLE I: OPINIONS WRITTEN

Justice		Opinions of the Court ¹⁰	Concur- rences ¹¹	Dissents ¹²	Concur in part, Dissent in part ¹³	Total
McGrath	Published ¹⁴	21	0	0	1	22
	Non-Published ¹⁵	20	0	0	0	20
	Total	41	0	0	1	42
McKinnon	Published	22	3	7	0	32
	Non-Published	24	0	1	0	25
	Total	46	3	8	0	57
Shea	Published	14	0	2	3	19
	Non-Published	17	0	0	0	17
	Total	31	0	2	3	36
Baker	Published	22	3	2	1	28
	Non-Published	25	0	0	0	25
	Total	47	3	2	1	53
Gustafson	Published	14	1	1	1	17
	Non-Published	22	0	0	0	22
	Total	36	1	1	1	39
Rice	Published	22	0	3	1	26
	Non-Published	12	0	0	0	12
	Total	34	0	3	1	38
Sandefur	Published	11	1	1	2	15
	Non-Published	5	0	0	0	5
	Total	16	1	1	2	20
All Justices	Published	126	8	17	9	160
	Non-Published	125	0	1	0	126
	Total	251	8	18	9	286

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

11. 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.

12. A justice is considered to have dissented when the justice's opinion would have disposed of the case in any manner different from the manner specified by the majority of the Court. However, opinions where a justice only dissented in part are excluded from this category.

13. 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.

14. Published cases are those cases decided by opinions that are precedential.

15. Non-published cases are those cases decided pursuant to Section 1, Paragraph 3(c), Montana Supreme Court Internal Operating Rules. These cases are decided by memorandum opinion and should not be cited as binding precedent. Montana Supreme Court Internal Operating Rules Section I, Paragraph 3(c)(ii).

Table I shows the relatively balanced opinion authorship carried out by the Court, both in regard to the number of opinions authored and their classification as published or non-published. Justices Baker, McKinnon, and McGrath authored the most opinions in 2022. Justice McKinnon authored the most opinions overall with 57. Of these, 46 were majority opinions, putting Justice McKinnon only slightly behind Justice Baker, who wrote 47 majority opinions. Justice McKinnon also authored the most dissenting opinions with 8. Justices Baker, McKinnon, and Rice were tied for authorship of the most published majority opinions at 22 each. Despite comprising a minority of the Court's members, the female justices were responsible for approximately 52% of the total opinions written and 51% of the majority opinions.

TABLE II: UNANIMITY

	Unanimous	With Concurrence ¹⁶	With Dissent ¹⁷	Total
Published	100 (80%)	3 (2%)	23 (18%)	126
Non-Published	124 (99%)	0 (0%)	1 (1%)	125
Total	224 (89%)	3 (1%)	24 (10%)	251

Table II illustrates the high rate at which the Montana Supreme Court speaks unanimously. In 80% of published cases and in 99% of non-published cases, the Court ruled unanimously, resulting in a total unanimity rate of 89%. Compared to the United States Supreme Court, which boasted a unanimity rate of only 25% in published 2021 decisions,¹⁸ the Montana Supreme Court appears significantly more aligned. Published cases carried higher rates of dissent than non-published cases. 2022 showed a slight increase—6%—in unanimity in published cases compared to the prior two years.¹⁹

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

17. 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.

18. *The Supreme Court 2021 Term: The Statistics*, *supra* note 3, at 505.

19. Koemans & LaFontaine, *supra* note 3, at 399; Hill & Towe, *supra* note 6, at 482.

TABLE III: JUSTICE VOTING ALIGNMENT

	Baker	Gustafson	McGrath	McKinnon	Rice	Sandefur	Shea	
Baker	MAJORITY	-	130	127	139	119	121	136
	M/C	-	0	0	0	0	0	0
	C	-	0	0	0	0	0	1
	D	-	0	0	1	3	0	0
	D/C	-	0	1	1	1	1	0
	AGREEMENT	-	130	128	141	123	122	137
	TOTAL CASES	-	148	139	156	141	136	148
	AGREEMENT (%)	-	87.84	92.09	90.38	87.23	89.71	92.57
Gustafson	MAJORITY	130	-	117	125	119	118	129
	M/C	0	-	0	1	0	1	0
	C	0	-	0	0	0	0	0
	D	0	-	0	3	0	3	2
	D/C	0	-	2	0	0	1	1
	AGREEMENT	130	-	119	129	119	123	132
	TOTAL CASES	148	-	130	143	136	130	140
	AGREEMENT (%)	87.84	-	91.54	90.21	87.50	94.62	94.29
McGrath	MAJORITY	127	117	-	120	117	106	128
	M/C	0	0	-	0	0	0	0
	C	0	0	-	0	0	0	0
	D	0	0	-	0	1	0	0
	D/C	1	2	-	0	1	2	2
	AGREEMENT	128	119	-	120	119	108	130
	TOTAL CASES	139	130	-	136	128	117	137
	AGREEMENT (%)	92.09	91.54	-	88.24	92.97	92.31	94.89
McKinnon	MAJORITY	139	125	120	-	127	119	127
	M/C	0	1	0	-	0	1	0
	C	0	0	0	-	0	0	0
	D	1	3	0	-	1	1	0
	D/C	1	0	0	-	1	0	0
	AGREEMENT	141	129	120	-	129	121	127
	TOTAL CASES	156	143	136	-	143	136	143
	AGREEMENT (%)	90.38	90.21	88.24	-	90.21	88.97	88.81
Rice	MAJORITY	119	119	117	127	-	111	122
	M/C	0	0	0	0	-	0	0
	C	0	0	0	0	-	0	0
	D	3	0	1	1	-	1	0
	D/C	1	0	1	1	-	0	1
	AGREEMENT	123	119	119	129	-	112	123
	TOTAL CASES	141	136	128	143	-	127	135
	AGREEMENT (%)	87.23	87.50	92.97	90.21	-	88.19	91.11
Sandefur	MAJORITY	121	118	106	119	111	-	118
	M/C	0	1	0	1	0	-	0
	C	0	0	0	0	0	-	0
	D	0	3	0	1	1	-	1
	D/C	1	1	2	0	0	-	0
	AGREEMENT	122	123	108	121	112	-	119
	TOTAL CASES	136	130	117	136	127	-	129
	AGREEMENT (%)	89.71	94.62	92.31	88.97	88.19	-	92.25
Shea	MAJORITY	136	129	128	128	122	118	-
	M/C	0	0	0	0	0	0	-
	C	1	0	0	0	0	0	-
	D	0	2	0	0	0	1	-
	D/C	0	1	2	0	1	0	-
	AGREEMENT	137	132	130	128	123	119	-
	TOTAL CASES	148	140	137	143	135	129	-
	AGREEMENT (%)	92.57	94.29	94.89	89.51	91.11	92.25	-

Table III illustrates the voting alignment between each Montana Supreme Court justice and their colleagues. Justice Shea and Chief Justice McGrath agreed in the case outcome 94.9% of the time, the most frequently of any justice pair. Justice Sandefur and Justice Shea agreed with Justice Gustafson nearly as frequently. In contrast to their strong voting alignment in 2021, Justices Baker and Rice agreed in the outcome the least often of any justice pair in 2022.²⁰ Justices Baker and McKinnon heard 156 cases together, more than any other two justices. As in 2021, Justice Shea showed the most alignment with his fellow justices, agreeing with his colleagues on average 92.4% of the time.²¹ Justice Rice and McKinnon agreed with their fellow justices in an average of 89.5% of cases, the least often on the bench. Justice Shea also agreed the most often—90.91% of the time—with his colleagues in the prior year.²² Justice Rice also agreed with his colleagues the least often—88.6% of the time—in 2021.²³ As in prior years, the Montana Supreme Court on the whole maintained its unanimity in 2022, although certain voting alignments among individual justices shifted from 2021.²⁴

TABLE IV: VOTING PATTERNS IN NON-UNANIMOUS CASES

	Total Cases ²⁵	Joining Opinion of Court ²⁶		Change from 2021 Term (%)	Agreeing in Disposition ²⁷		Change from 2021 Term (%)
		Number	Percentage (%)		Number	Percentage (%)	
Baker	23	15	65.22	-12.56	16	69.57	-8.21
Gustafson	23	14	60.87	-4.76	15	65.22	-3.53
McGrath	22	16	72.73	-6.58	16	72.73	-13.48
McKinnon	22	11	50.00	-12.07	12	54.55	-7.52
Rice	20	13	65.00	10.17	13	65.00	6.38
Sandefur	21	12	57.14	-16.19	14	66.67	-13.33
Shea	21	15	71.43	-17.03	16	76.19	-19.96

20. Koemans & LaFontaine, *supra* note 3, at 403.

21. *Id.*

22. *Id.*

23. *Id.*

24. *See id.* at 402–03; Hill & Towe, *supra* note 6, at 483–84; Mead & Kato, *supra* note 5, at 346–47. For example, Justices Baker and Rice shifted from most aligned (at 94.05% alignment) last year to least aligned (at 87.23% alignment) in 2022.

25. This table contemplates non-unanimous cases only.

26. 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.

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The Court's non-unanimous cases see agreement among the justices most of the time. However, compared to the 2021 term, 2022 saw a decrease in most justices' agreement with their colleagues in non-unanimous cases.²⁸ Among the justices, Justice Rice was the only one who had a higher agreement rate in non-unanimous cases than in the previous year. Despite this overall decrease in how often justices join the opinion of the Court or agree in the disposition in non-unanimous cases, every justice continues to agree with the majority at least 50% of the time in non-unanimous cases. Notably, although the justices joined the majority less frequently in non-unanimous cases than in 2021, the 2022 term contained fewer non-unanimous cases overall compared to the prior year.²⁹

Montanans can appeal cases as of right to the Montana Supreme Court. Thus, appellants may bring cases to the Court addressing previously settled Montana law. This may explain the strong alignment between the justices. Nevertheless, Justice Rice showed the least agreement with his fellow justices in non-unanimous cases in 2021, agreeing 55.17% of the time.³⁰ In 2022, Justice McKinnon agreed with her fellow justices 50% of the time in non-unanimous cases, the least frequently of the justices. In 2022, Justice Shea agreed the most frequently with the disposition of the Court in non-unanimous cases. Similarly, Justice McGrath joined the majority in non-unanimous cases the most often. Individually, Justice Shea also showed the greatest year-to-year shift, agreeing in the disposition of non-unanimous cases nearly 20% less often than in 2021.

Table IV shows a Court in less agreement than in the prior year. With the exception of Justice Rice, every justice joined the opinion of the Court at a lower rate in 2022 than in 2021. The previous installment of this project had showed a substantial increase in agreement among the justices in non-unanimous cases.³¹ Table IV indicates reversal in that trend in 2022.³²

27. 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.

28. See Table IV in Koemans & LaFontaine, *supra* note 3, at 404.

29. See Koemans & LaFontaine, *supra* note 3, at 401 (43 non-unanimous cases in 2021 compared to 27 non-unanimous cases this term).

30. *Id.* at 404.

31. *Id.*

32. Hill & Towe, *supra* note 6, at 485.

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TABLE V: DISPOSITION BY COURT OF ORIGIN

Court of Origin ³³	Disposition ³⁴			Total	Affirm (%)	Reverse (%)	Split (%)
	Affirm	Reverse	Split				
DISTRICT COURTS							
First Judicial District	33	1	7	41	80.48	2.43	17.07
Second Judicial District	8	1	0	9	89.99	11.11	0.00
Third Judicial District	8	1	1	10	80.00	10.00	10.00
Fourth Judicial District	17	5	0	22	77.27	22.73	0.00
Fifth Judicial District	8	0	0	8	100.00	0.00	0.00
Sixth Judicial District	11	1	1	13	84.61	7.70	7.70
Seventh Judicial District	4	2	0	6	66.66	33.33	0.00
Eighth Judicial District	20	3	1	24	83.30	12.50	4.20
Ninth Judicial District	6	0	0	6	100.00	0.00	0.00
Tenth Judicial District	2	1	0	3	66.66	33.33	0.00
Eleventh Judicial District	18	1	0	19	94.73	5.26	0.00
Twelfth Judicial District	2	1	0	3	66.66	33.33	0.00
Thirteenth Judicial District	19	4	1	24	79.17	16.70	4.20
Fourteenth Judicial District	2	0	0	2	100.00	0.00	0.00
Fifteenth Judicial District	1	1	1	3	33.33	33.33	33.33
Sixteenth Judicial District	4	0	0	4	100.00	0.00	0.00
Seventeenth Judicial District	0	1	1	2	0.00	50.00	50.00
Eighteenth Judicial District	20	5	0	25	80.00	20.00	0.00
Nineteenth Judicial District	7	2	0	9	77.80	22.20	0.00
Twentieth Judicial District	5	0	0	5	100.00	0.00	0.00
Twenty First Judicial District	4	0	0	4	100.00	0.00	0.00
Twenty Second Judicial District	5	0	0	5	100.00	0.00	0.00
OTHER COURTS							
Montana Workers' Compensation Court	0	1	0	1	0.00	100.00	0.00
Montana Water Court	3	0	0	3	100.00	0.00	0.00
Total	207	31	13	251	82.47	12.35	5.18

33. 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. *Montana District Courts*, BALLOTPEDIA, <https://perma.cc/6BPJ-8JSX> (last visited April 20, 2023) (providing a breakdown of the counties in each of the 22 districts); *Montana Supreme Court Decisions*, *supra* note 1.

34. 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 reflects the origin of the Court’s cases. Montana has twenty-two judicial district courts as well as several special courts. In keeping with data from 2021, the largest number of cases in 2022 originated from the First Judicial District.³⁵ The 41 cases originating from this district constituted 16.3% of the Montana Supreme Court decisions for the 2022 term. This was followed by the Eighteenth,³⁶ Thirteenth,³⁷ Eighth,³⁸ and Fourth³⁹ Judicial Districts, which had 25, 24, 24, and 22 cases decided on appeal, respectively. Every district had at least one appeal decided by the Supreme Court for the 2022 term. The Fourteenth⁴⁰ and Seventeenth⁴¹ Judicial District Courts had the fewest appeals. Montana’s special courts, meaning those other than the district courts, did not produce many appeals to the Montana Supreme Court in 2022. The Montana Water Court and the Montana Workers’ Compensation Court contributed a total of only 4 cases to the Montana Supreme Court’s caseload.

The highest affirmation rate for the 2022 term was 100%, demonstrated by seven lower courts: the Fifth,⁴² Ninth,⁴³ Fourteenth, Sixteenth,⁴⁴ Twentieth,⁴⁵ Twenty-First,⁴⁶ and Twenty-Second⁴⁷ Judicial Districts. The next highest rate of affirmation was 94.7%, from the Eleventh Judicial District Court.⁴⁸ The First Judicial District produced the most appeals, which the Court affirmed at a rate of 80.48%. Of the district courts which produced more than 20 appeals, the Fourth Judicial District had the lowest affirmation rate at 77.27%. The Second Judicial District⁴⁹ saw a 20% increase in the affirmation rate compared to the prior year.⁵⁰

Table V further illustrates that affirmation rates are 50% or higher for all but two district courts, the Fifteenth⁵¹ and the Seventeenth. Moreover, the Fifteenth and Seventeenth Judicial Districts each had only 3 and 2 cases before the Court, respectively. Therefore, a single case can easily sway the affirmation rate for both districts. For example, the Montana Supreme Court

35. Lewis and Clark County and Broadwater County.

36. Gallatin County.

37. Yellowstone County.

38. Cascade County.

39. Mineral County and Missoula County.

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

41. Blaine, Phillips, and Valley Counties.

42. Beaverhead, Jefferson, and Madison Counties.

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

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

45. Lake County and Sanders County.

46. Ravalli County.

47. Big Horn, Carbon, and Stillwater Counties.

48. Flathead County.

49. Silver Bow County.

50. Koemans & LaFontaine, *supra* note 3, at 406.

51. Daniels, Sheridan, and Roosevelt Counties.

overturned or came to a split decision in the two cases heard from the Seventeenth Judicial District. This resulted in an unusually low 0% affirmation rate. Relative to the number of appeals originating from the First Judicial District, the district carried the highest rate of split decision outcomes at 17.07%. Overall, the Montana Supreme Court affirmed 82.47% of the cases that it decided in the 2022 term. It reversed 12.35% and decided 5.18% of the cases by split decision. These numbers reflect an increase from the 73.29% affirmation rate of last term and a slight decrease from the previous 13.35% reversal rate.⁵²

52. Koemans & LaFontaine, *supra* note 3, at 406.

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

	Total	Published	Non-Published
CIVIL ⁵³	157	85	72
Amount Due	0	0	0
Breach of Contract	8	4	4
Commitment – Mental Illness	4	1	3
Condemnation	0	0	0
Constitutional Challenge	2	2	0
Damages	3	2	1
Debt	0	0	0
Declaratory Judgment	14	12	2
Defamation	0	0	0
Dependent Neglect	19	14	5
Discrimination	2	0	2
Domestic Relations	22	4	18
Easement	0	0	0
Elections	1	1	0
Environmental Issues	2	2	0
Foreclosure	2	2	0
Fraud	1	0	1
Guardian/Conservator	0	0	0
Injunction	3	2	1
Judicial Review	9	8	1
Justice Court Appeal	3	1	2
Lien	2	2	0
Negligence	8	6	2
Other	22	10	12
Postconviction	8	2	6
Probate	2	0	2
Quiet Title	5	4	1
Real Property	4	2	2
Tort	1	0	1
Unfair Trade Practices	0	0	0
Water Rights Adjudication	3	2	1
Workers' Compensation	1	1	0
Wrongful Death	0	0	0
Wrongful Discharge	6	1	5

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

	Total	Published	Non-Published
CRIMINAL	92	49	43
Aggravated Kidnapping	1	1	0
Arson	0	0	0
Assault	7	3	4
Assault on a Peace Officer	1	1	0
Assault – Parter/Family Member	3	1	2
Bail Jumping	0	0	0
Burglary	2	1	1
Burglary/Theft	1	1	0
City Court Appeal	0	0	0
Cruelty to Animals	0	0	0
Dangerous Drugs	8	5	3
DUI	3	1	2
DUI – Felony	5	2	3
Endangerment – Criminal	5	4	1
Escape	2	2	0
Exploitation of an Elder Person	1	0	1
Failure to Register as a Sex Offender	0	0	0
Failure to Register as a Violent Offender	0	0	0
Forgery	0	0	0
Homicide – Attempted	1	1	0
Homicide – Deliberate	5	4	1
Homicide – Negligent	0	0	0
Incest	5	3	2
Indecent Exposure	2	1	1
Insurance Fraud	0	0	0
Intimidation	1	0	1
Justice Court Appeal	5	2	3
Juvenile	2	2	0
Kidnapping	0	0	0
Mischief – Criminal	0	0	0
Municipal Court Appeal	3	1	2
Other	5	0	5
Revocation	4	4	0
Robbery	1	1	0
Sentencing – Probate Revocation	0	0	0
Sexual Abuse of Children	3	3	0
Sexual Assault	4	1	3
Sexual Intercourse Without Consent	8	4	4
Stalking	0	0	0
Tampering with Evidence	0	0	0
Theft	4	0	4
Transferring Illegal Articles/Unauthorized Communications	0	0	0
Vehicular Homicide Under Influence	0	0	0
Violation of Protective Order	0	0	0
	Total	Published	Non-Published
ORIGINAL PROCEEDING	4	4	0
Federal Appeals Court	2	2	0
Other	2	2	0

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Table VI categorizes the Court’s opinions by subject matter. This term, the Court issued substantially fewer opinions in criminal cases compared to last year. In 2022, the Court issued 92 opinions in criminal cases, which constituted 37% of the total opinions issued, compared to 143 opinions in criminal cases, or 45% of the total opinions issued, in 2021.⁵⁴ The proportion of opinions issued in criminal cases in 2022 was more in line with the 2018 and 2019 terms than the 2020 and 2021 terms.⁵⁵

The Court issued more opinions in three criminal subject matter areas—dangerous drugs, assault, and sexual intercourse without consent (SIWOC)—than other subcategories. SIWOC cases comprised a similar share (8.70%) of the Court’s criminal cases in 2022 as in 2021 (8.39%).⁵⁶ Dangerous drugs cases saw the opposite trend; 13.29% of the Court’s criminal cases in the 2021 session were in the dangerous drugs subcategory, whereas in 2022 only 8.70% of the Court’s criminal cases were in the same subcategory.⁵⁷

Civil opinions comprised a greater share of the Court’s work than in the prior year. In the 2021 term, the Court issued 54% of its opinions in civil matters, whereas in 2022, 63% of the Court’s opinions concerned civil matters.⁵⁸ Consistent with prior years, the most common subject area among the Court’s civil opinions (26.11%) were in the domestic relations and dependent neglect subcategories.⁵⁹

Table VI also presents the number of cases published and non-published in each subcategory. In contrast to prior terms, the Court published the majority of its dependent neglect opinions in 2022.⁶⁰ The Court’s criminal opinions did not show any apparent trends in terms of publication and non-publication across the subcategories. The Court published a similar proportion of its criminal (53.26%) and civil (54.14%) cases in 2022.

54. Koemans & LaFontaine, *supra* note 3, at 411.

55. *Id.*

56. *Id.* at 410.

57. *Id.*

58. *Id.* at 411.

59. *See id.* (citing Mead & Kato, *supra* note 5, at 351; Hill & Towe, *supra* note 6, at 489).

60. Koemans & LaFontaine, *supra* note 3, at 412 (citing Hill & Towe, *supra* note 6, 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	24	18	42	57.14	42.86
Second Judicial District	3	6	9	33.33	66.67
Third Judicial District	4	6	10	40.00	60.00
Fourth Judicial District	11	11	22	50.00	50.00
Fifth Judicial District	2	6	8	25.00	75.00
Sixth Judicial District	1	12	13	7.69	92.31
Seventh Judicial District	5	1	6	83.33	16.67
Eighth Judicial District	13	11	24	54.17	45.83
Ninth Judicial District	3	2	5	60.00	40.00
Tenth Judicial District	2	1	3	66.67	33.33
Eleventh Judicial District	8	12	20	40.00	60.00
Twelfth Judicial District	1	2	3	33.33	66.67
Thirteenth Judicial District	15	9	24	62.50	37.50
Fourteenth Judicial District	2	0	2	100.00	0.00
Fifteenth Judicial District	2	1	3	66.67	33.33
Sixteenth Judicial District	1	3	4	25.00	75.00
Seventeenth Judicial District	2	0	2	100.00	0.00
Eighteenth Judicial District	15	10	25	60.00	40.00
Nineteenth Judicial District	1	8	9	11.11	88.98
Twentieth Judicial District	5	0	5	100.00	0.00
Twenty First Judicial District	2	2	4	50.00	50.00
Twenty Second Judicial District	2	3	5	40.00	60.00
OTHER COURTS					
Montana Workers Compensation Court	1	0	1	100.00	0.00
Montana Water Court	2	1	3	66.67	33.33
Federal Appeals Court (9th Circuit)	2	0	2	100.00	0.00
Original Proceedings	4	0	4	100.00	0.00
Total	133	125	258	51.55	48.45

Table VII illustrates that the Court published over half of its opinions in 2022. 51.55% of the Court's opinions were published and therefore set binding precedent, whereas 48.45% were non-published and not citable as binding precedent. In the 2021 term, the Court issued more non-published

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(56.83%) than published opinions (43.17%).⁶¹ Thus, the 2022 term saw a reversal of the prior year’s distribution of published and non-published opinions.

Of the 133 published opinions, more than half originated in five districts—the First,⁶² Fourth,⁶³ Eighth,⁶⁴ Thirteenth,⁶⁵ and Eighteenth⁶⁶ Judicial Districts. As in the 2021 term, the First Judicial District had the most appeals resulting in published opinions with 24.⁶⁷ The Eighteenth and Thirteenth Judicial Districts had the second-most appeals resulting in published opinions with 15 originating in each district. Every district produced one or more published opinions, although the Sixth,⁶⁸ Twelfth,⁶⁹ Sixteenth,⁷⁰ and Nineteenth⁷¹ Judicial Districts each produced only a single published opinion. Cases from the Seventh Judicial District⁷² were most likely to be published with a publication rate of 83.33%. The Sixth Judicial District had the lowest publication rate, with only 7.69%, or one of its 13 cases resulting in a published opinion. Among the districts with 10 or more published cases, the rate of publication was similar in each district. The First, Fourth, Eighth, Thirteenth, and Eighteenth Judicial Districts each had a publication rate between 50% and 63%.

In cases arising from Montana’s non-district courts, the majority of opinions were published. A single case from the Montana Water Court represents the only non-published opinion where the case originated from one of Montana’s non-district courts. All 4 original proceedings before the Court were published, as well as both certified questions from the Ninth Circuit and a single case from the Montana Workers’ Compensation Court.

III. CONCLUSION

Unanimity continues to be the modus operandi of the Montana Supreme Court. The Court resolved 89% of its written opinions unanimously in 2022. Notably, the Court significantly reversed the trend of a gradually expanding criminal docket found in prior terms. For the first time since 2019, the Court also issued more published than non-published opinions.

61. Koemans & LaFontaine, *supra* note 3, at 413.

62. Broadwater County and Lewis and Clark County.

63. Mineral County and Missoula County.

64. Cascade County.

65. Yellowstone County.

66. Gallatin County.

67. Koemans & LaFontaine, *supra* note 3, at 414.

68. Park County and Sweet Grass County.

69. Chouteau, Hill, and Liberty Counties.

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

71. Lincoln County.

72. Dawson, McCone, Prairie, Richland, and Wibaux Counties.

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This is the fourth installment of the Montana Supreme Court Statistics Project and the *Montana Law Review* intends to contribute to this growing dataset in future years.