

JUSTICE COURT REFORM TASK FORCE

**REPORT AND RECOMMENDATIONS TO THE
UTAH SUPREME COURT AND UTAH JUDICIAL COUNCIL**

AUGUST 2021

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I. INTRODUCTION

a. Background

In December 2019, the Utah Supreme Court and Utah Judicial Council created the Justice Court Reform Task Force. The Council took responsibility for the ongoing direction of the Task Force. The purpose of the Task Force was to complete a comprehensive evaluation of justice court structure and operations, and report back to the Council with recommendations to strengthen and improve the provision of court services at the misdemeanor and small claims level.

The Council invited stakeholders to provide representatives to serve as members of the Task Force. Membership includes representatives from the courts, the legislature, the governor's office, prosecution and defense organizations, members of the bar, the Utah League of Cities and Towns and the Utah Association of Counties. A list of members and the constituencies they represent is included as Attachment A.

b. Scope of Work

The Task Force began meeting monthly in May of 2020. To inform its recommendations, the Task Force received input from various stakeholders and involved parties, reviewed thousands of pages of reports and documents, and reviewed prior reforms in Utah. Additional detail is provided in Attachments B through D as follows:

- Attachment B: A list of individuals and organizations that made presentations to the Task Force
- Attachment C: A list of the documents and reports reviewed by the Task Force
- Attachment D: A summary of prior reforms implemented in Utah since the creation of justice courts in 1989

c. Why Reforms Are Necessary

Public trust and confidence in the judiciary is critical for courts to be effective and for the rule of law to prevail. Every effort should be made to improve public access to justice, to improve the quality of justice provided, and to improve the public perception of the courts. While the judiciary in the United States and in Utah can be, and has been, used as a model in other jurisdictions, there are areas where improvements can be made.

The Task Force believes that the reforms recommended below would increase public access to justice, improve the quality of justice provided and improve public perception of court services at the infraction, misdemeanor, and small claims level. These efforts are critical as this is the court level where most citizens come into contact with the judicial system. Following are some areas in which reforms could be implemented to strengthen the court system.

1. Transparency and Accountability:

Judicial decisions and behavior are monitored primarily in three different ways. These include (1) the Judicial Conduct Commission ("JCC") which investigates complaints regarding judicial behavior, (2) the appeal process through which a higher court reviews the decision of a lower court, and (3) the

Judicial Performance Evaluation Commission (“JPEC”) which conducts judicial evaluations to provide voters with background information prior to judicial retention elections. While the JCC functions the same at all court levels, appeals and the JPEC process function differently at the justice court level.

A party that believes a judicial decision was in error has the right to file an appeal in which a higher court can review that decision and correct any errors. Appeals from justice courts are currently heard de novo by the district court. There is no review of a justice court judge’s decision. The judge receives no feedback, positive or negative, and there is no public record available for review. Additionally, because there are very few appellate decisions arising from the justice courts there is an absence of case law on issues that often arise in these courts. The Task Force believes that providing for an on-the-record appeal in misdemeanor and small claims cases would improve public trust and confidence in the courts as well as the quality of justice provided.

JPEC is charged with evaluating judges of all court levels and making recommendations for retention. Those recommendations are provided to the public online and in voter information pamphlets prior to each election. A significant number of justice courts are part-time. Some hear only a handful of cases per month. These courts are also located throughout the state and not just in population centers or county seats like the district court. Many of the part-time rural courts are served by judges that do not have law degrees and work full time in other occupations. Because of the logistical difficulty, JPEC is unable (and not required) to provide a full evaluation for these courts. As a result, very little information, positive or negative, is made available to the public regarding the performance of the judges serving in these courts.

2. Indigent Defense Services:

The responsibility for providing indigent defense services in Utah is left to local government. As a result, the provision of those services fluctuates significantly throughout the state. Concerns arising from this system were documented by the Judicial Council and in The Sixth Amendment Center’s 2015 Report. The concerns were most dramatic in the justice courts, where some defendants were arraigned and sentenced (both critical stages) to jail time or suspended sentences without the opportunity to have a defense attorney present. While the creation of the Indigent Defense Commission has improved some aspects of indigent defense, the concerns are still present at the justice court level. Such concerns will likely always be present under the current structure where small, part-time courts exist, and the provision of indigent defense services is primarily the responsibility of local governments. For this reason, the Task Force recommends changing the way misdemeanor offenses are processed.

The appointment of counsel is the courts’ responsibility, and the courts can make many no-cost internal improvements with or without structural reforms. In this regard, if structural reforms are not implemented, the Task Force recommends that the AOC work with Utah’s justice court judges on training and internal reforms to increase the consistency and constitutionality of the courts’ procedures around the appointment of counsel to indigent individuals. This should include: adopting uniform forms for the procedures for the appointment of counsel which are consistent with the Utah Code, Court Rules, and case law; the adoption of appropriate policies if courts are going to recoup public defender fees so that any such recoupment is consistent with the requirements of United States Supreme Court precedent; and the Judicial Council should reconsider the certification process for justice courts and whether it is adequate to comply with the courts’ responsibilities for the provision of indigent defense services.

3. Judicial Education and Experience Requirements:

Currently, applicants for justice court positions in class I and II counties are required to have graduated from law school. They cannot be required to be members of the bar due to Article VIII, Sec. 11 of the Utah Constitution. Applicants for justice court positions in other counties are not required to have any educational background other than a high school diploma.

There has been a trend throughout the United States in recent decades to move away from judges who are not members of the bar. As of 2020, twenty-eight of the fifty states already require judges handling misdemeanor criminal offenses to be lawyers. Nearly all scholarly and professional studies and reports on this topic recommend requiring judges to be lawyers. As an example, the Conference of State Court Administrators recommended in their 2013-2014 Policy Paper that judges of limited jurisdiction courts should be lawyers. Prior unsuccessful legislative efforts in Utah would have required all judges to be members of the bar. Some jurisdictions have even found a system of non-lawyer judges to be unconstitutional. For example, in *Gordon v. Justice Court*, 12 Cal 3d 323 (Cal. 1974) the California Supreme Court ruled it was a violation of due process to allow non-lawyers to preside over cases which could result in incarceration of the defendant.

Even more important than these trends, moving away from non-lawyer judges is necessary to address the concerns surrounding, and potential elimination of, de novo appeals in misdemeanor cases. In *North v. Russell*, 427 U.S. 328 (1976) the U.S. Supreme Court ruled that allowing non-lawyer judges to preside over cases involving potential incarceration did not violate the constitution so long as a defendant had the right to a second trial before a lawyer judge. The elimination of the de novo process without also eliminating non-lawyer judges would be a violation of this holding. It is therefore recommended to move away from non-lawyer judges to advance the important goal of eliminating de novo appeals.

Despite these recommendations, the Task Force does recognize the valuable contribution non-lawyer judges have made to the citizens of Utah. These judges have received significant training and experience and have made career decisions and personal sacrifices to provide this public service. As a result, the Task Force recommends moving forward in a way that would make changes over time, primarily through attrition, that would require as little displacement to currently serving judges and court staff as possible.

4. Financial Concerns:

Fine and fee revenues generated by justice courts are currently split between various accounts pursuant to state statute. The local government entity sponsoring the court is one of the entities that receives money generated by the court. Naturally, when more cases are filed (particularly traffic offenses) more revenue is generated.

Consistent with the broader recommendations, and to create consistency across the courts and administration under the judicial branch of government, the Task Force recommends changes that would decouple the courts from concerns about revenue generation.

The connection between case filings and revenue generation for the local government entity has been criticized, sometimes unfairly, by the media and others. For example, the following articles from local media have been published over the years. "Justice courts rake in the cash," Elizabeth Neff, Salt

Lake Tribune, July 17, 2015. “Should the role of justice courts be curtailed?” Marissa Lang and Robert Gehrke, Salt Lake Tribune, September 2, 2013. “Justice courts rake in the money; critics say some courts just interested in collecting fines.” Lorry Prichard and Kelly Just, Deseret News, February 3, 2011. “Justice swift, profitable.” Brady Snyder, Deseret News, April 18, 2003. While some changes have been made to address this issue, there is still a public perception that local entities view justice courts as revenue generators. These recommended changes would address this perception.

5. Substance Abuse and Mental Health Treatment

Courts handling misdemeanor cases are an important avenue for individuals to get access to appropriate treatment. Substance use disorders and mental health disorders are chronic illnesses with periodic acute episodes. Recovery from these illnesses is a process and not a single event. Compliance with court-ordered treatment is a continuum. Whatever a court does to hold an individual accountable should acknowledge their condition. The best outcomes will be achieved when the court and the attorneys understand the illness, respond with the most appropriate treatment, and then hold the individual accountable through appropriate sanctions.

Best practices would:

- Recognize that addiction and mental health disorders are chronic diseases with periodic acute episodes and that the court’s response must be tailored to the individual to address that reality;
- Ensure judges and attorneys understand the processes, purposes and limitations of treatment and drug testing;
- Apply sanctions or sentences that address criminogenic factors and also support an individual's progress toward recovery;
- Provide justice court judges and parties connections with the treatment community to facilitate access to assessment and referral resources and help to educate the court, attorneys and parties on those resources; and
- Refer individuals only to treatment providers and treatment modalities that are proven through practice to be effective, and track the provider’s fidelity to that practice.

This sort of attention to recovery and collaboration—together with accountability—is integral to the success of both the courts and the individuals who come before the court. Court decisions that recognize the challenges of treating a disease and which respond with a problem-solving approach will achieve the best outcomes for the individual and the community.

It is difficult, especially for small courts and courts outside the Wasatch Front, to use a problem-solving model and access appropriate treatment providers. While many of these best practices can, and should, be encouraged in the current justice court system, the structural reforms presented here would provide a better opportunity to fully implement these practices. Drug, mental health, and veterans court models could be established for misdemeanors under the proposed structure whereas most justice courts do not currently have the resources necessary to implement these programs. Earlier and more effective intervention at the misdemeanor level should result in fewer individuals entering the District Court system and an overall reduction in crime.

d. Guiding Principles

Over the course of its work, the Task Force has identified several principles that are essential to deliver justice in misdemeanor and small claims cases. Implementation of these principles is necessary to protect judicial independence, ensure parties' constitutional rights, provide transparency and adequate oversight of judges and courts, and increase public trust and confidence.

The recommendations set forth by the Task Force attempt to implement these guiding principles to the greatest extent possible, while recognizing the practical considerations set forth in the next section. These guiding principles include:

1. Qualified Judge. A qualified judge is essential. Bar membership is also a necessary prerequisite to the elimination of de novo appeals in misdemeanor cases. The application, selection process and criteria should ensure the greatest number of qualified applicants. Full-time judicial positions are also preferable.
2. On-the-Record Appeal. Access to an on-the-record appellate process is important in creating public trust and confidence in the courts. Such an appellate process provides individuals an opportunity to have judicial decisions reviewed, creates a body of law to guide future decisions, gives feedback and correction to judges, and provides transparency into the decisions made by judges.
3. Right to Counsel. Absent a knowing and intelligent waiver, all individuals accused of crimes involving the potential for incarceration should have counsel present at all critical stages of their case, including at arraignment.
4. Article VIII Courts. Courts of all levels in Utah are authorized by Article VIII of the Utah Constitution. While all other court levels are operated at the state level, justice courts were created by statute to be funded and operated by local government entities. Such courts are still governed by the Utah Supreme Court and Utah Judicial Council. This structure can create confusion and tension. Separation of the functions of each branch of government is necessary to insulate courts from political and financial pressures.
5. Substance Abuse and Mental Health. Substance abuse and mental health are significant concerns in the criminal justice system, particularly in misdemeanor cases where services are not as readily accessible. Consolidation of criminal courts would allow individuals greater access to treatment, probation and other services.

e. Practical Considerations

The Task Force understands that there are practical considerations that could make some reforms difficult to implement. These include financial and political considerations and difficulties created by the current legal or organizational structure. The Task Force recommendations attempt to achieve the guiding principles set forth above to the greatest extent possible while taking into account the following practical considerations.

1. Constitutional Amendments. A constitutional amendment should be avoided if possible. The amendment process is lengthy, difficult and opens a window for the possibility of unwanted outcomes.
2. Revenue Neutrality. Reforms should be as revenue neutral as possible. Reforms that have a significant financial impact are less likely to be implemented. A preliminary review of justice court finances suggests that the justice court system, as a whole, may be financially neutral with expenses and revenue being approximately even. However, this is an estimate at this point and circumstances of individual courts and localities may vary with some courts generating revenue and others operating at a loss. If the Task Force's recommendations are adopted, it recommends creating a working group to further evaluate the financial implications of these reforms.
3. Urban/Rural. Reforms must consider the differences between, and the needs of, urban and rural communities throughout the state.

II. RECOMMENDATIONS

a. Structural Proposal:

The Task Force recommends the following changes to court structure:

1. There should be created, by statute, a Division within the District Court. The final name for this Division should be determined during the implementation phase and should consider the input of stakeholders. The Task Force has discussed, and presents here, the following names for consideration: Local Division, Community Division, Community Access Division, Misdemeanor and Small Claims Division, and Circuit Court. The Court will be referred to throughout the remainder of this proposal as the "Division." Judges would be referred to as Division Judges. The Division would have jurisdiction over all small claims cases and misdemeanors (including Class A misdemeanors) in the judicial district. The Division would also have jurisdiction over cases involving infractions when there is not a justice court with jurisdiction. The Division would be a court of record. Appeals from the Division would be to the Utah Court of Appeals and on the record. Division judges would also be assigned magisterial duties such as pretrial release decisions and search warrants. Division courts could be housed with the District Courts or in current justice court facilities through local agreements.
2. Justice courts would remain as presently constituted, and their jurisdiction would be limited to infractions. Sections 78A-7-105 and 106, and possibly others will need to be amended to accomplish this. Justice courts would remain courts "not of record" with de novo appeals filed in the District Court.

There is some concern that by limiting justice court jurisdiction to infractions (and by limiting revenue generating capabilities, which is discussed below) some localities may choose to close their justice court. This is a possibility. However, this proposal also creates the opportunity for the

decriminalization of many offenses as the state and localities shift some low-level offenses that are currently classified as misdemeanors to infractions. Such a change could have a positive impact on broader criminal justice reforms.

b. Necessary Reforms as a Result of the Proposal:

Based on current constitutional and statutory language, implementing the recommendations above would result in, or necessitate, the following changes:

3. Division Judges would be required to be members of the bar, as required of all judges of courts of record (See Art. VIII, Sec. 7, Utah Constitution).
4. Following a transition period, all Division Judges should be required to serve full time. Because Article VIII, Section 10, of the Utah Constitution prohibits judges in courts of record from practicing law, a small, part-time judicial position (where bar membership is required and the practice of law is not allowed) would likely not attract as many qualified candidates.
5. Article VIII, Section 8 of the Utah Constitution requires that “vacancies” on courts of record be filled by the Governor, pursuant to the process authorized by that section and related statutes. The Task Force proposes creating the Division Courts through a process of consolidation between the District and Justice courts whereby currently serving justice court judges with law degrees would become Division Court Judges upon creation. (This would include part-time judges. As part-time judges resign or retire, those part-time positions should be eliminated.) “Vacancies” to be filled by the Governor would occur if positions remain unfilled through the creation process and as judges retire or resign in the future. Statutes would need to be adopted providing for the nominating commission process for Division Court judges. Nominating commissions for selection of Division Court judges should allow for local representation by including local representatives similar to the current nominating commissions.
6. All justice court judges currently serving would be retained in office and continue to serve as justice court judges.
7. As would be required by Article VIII, Sec. 6 of the Utah Constitution, the number of Division judges would be established by statute.
8. Rules of procedure for the Division Courts will need to be created. These should consider access to justice issues and judicial efficiency. New rules of appellate procedure should also be enacted to expedite and simplify the appellate process on cases arising from the Division. The Task Force would recommend that the appropriate Supreme Court Rules Committees be tasked with proposing the appropriate appellate and procedural rules to implement these reforms. The Task Force would also recommend that Rules 7, 7A, 27A and 27B of the current Utah Rules of Criminal Procedure be considered and incorporated into the new rules due to their efficient processing of misdemeanor cases and appeals therefrom.

9. Statutes should be enacted requiring indigent defense counsel to be present for all misdemeanor cases. Providing indigent defense services in the Division would utilize the services currently being provided in the District. Provisions should be enacted to allow the appearance of indigent defense counsel by remote means, particularly for Divisions in remote locations where such services may not be readily available in person.
10. While the de novo appeal process has its shortcomings, it is an effective and efficient tool for defendants to correct errors in their case. Tools like this are especially important in cases involving misdemeanor offenses where collateral consequences may be high, but less time and resources may be devoted to the adjudication of the case. Also, because the consequences, both direct and collateral, may take effect immediately upon judgment, a lengthy appeal process may render some issues moot and irreparable harm done before appellate review is ever obtained. As a result, a process should be considered to replace this de novo appeal tool. A defendant's right to withdraw a guilty plea should be expanded, and a lesser burden required, for plea withdrawal in misdemeanor cases (see Utah Code § 77-13-6).
11. Additional Appellate Court judge positions as well as staff and staff attorney positions will need to be created. The Task Force believes that the increase in Appellate Court caseload should correspond to a similar reduction in District Court caseload and efficiencies created by having Division judges handle Class A misdemeanors and magisterial duties. However, this offset cannot be guaranteed and additions at the Appellate Court level cannot be contingent upon the anticipated reductions created elsewhere.

c. Additional Recommendations:

While not necessary to implement the recommended structural changes, the Task Force does recommend the following reforms to fully implement the Guiding Principles identified above:

12. Statutes should be enacted to clarify that justice courts are a part of the Judicial Branch of government (as established by Article VIII) and are under the direction of the Utah Supreme Court and Utah Judicial Council. Employees of such courts should take direction from these bodies and the judge, and from their locality secondarily to the extent such direction does not conflict with that from the Court or Council.
13. The salary for full-time Division Judges should be set at 90% of a District Court judge's salary. A part-time Division Judge's salary would be prorated by applying the weighted caseload percentage to the full-time amount. Justice court judges' salaries should also be standardized at a fixed amount. The salary for all other judges in the state is fixed at a set amount. The same should apply to these judges. Benefits for all full-time judges should also be the same for judges of all court levels.
14. Accounting model 2 (where local government employees accept court payments) should be eliminated. Only court employees should be allowed to accept court payments. A

system should be implemented that would allow Individuals to pay amounts due to any court online or at any court location in the state.

15. Geographic restrictions on applying for Division Court positions should mirror that for the District Court (may apply from anywhere but must reside in the District upon appointment). For justice court positions, Utah Code § 78A-7-201 should be amended. This section limits applicants to those who have been living for the previous six months in the county, or adjacent county, in which the court is located. Individuals should be allowed to apply without any geographic restriction but following appointment should be required to live in the county or an adjacent county.
16. The Administrative Office of the Courts should assume a greater role in administration of justice courts. Practices, procedures, and forms should be standardized throughout the judicial districts.

d. Recommendations Related to Small Claims Cases:

The Task Force makes the following recommendations regarding small claims cases.

17. All small claims cases should be heard on the record in the Division.
18. Small claims cases should be separated between private and commercial claims.
19. Commercial claims would include landlord tenant and debt collection cases, or other cases where one party is or owns a business that appears in court as a plaintiff more than four times during a year.
20. The current restriction on third-party debt collection cases proceeding under small claims procedures should be removed.
21. The filing fee for commercial claims should be increased. The funds from the increase should be used to pay for attorneys or Licensed Paralegal Practitioners who would be present at all commercial small claims proceedings to provide assistance and representation to otherwise unrepresented parties in landlord tenant and debt collection cases.
22. The Online Dispute Resolution program should be expanded to all small claims cases throughout the state. This will allow greater access to justice for parties and allow courts to process these cases with greater efficiency.
23. Amendments to small claims rules and/or the creation of new procedural rules will need to be enacted for civil cases in the Division Courts. These should take account of access to justice issues and judicial efficiency, and consider efficient and limited discovery in these cases in coordination with the ODR process. The Task Force would recommend

that the appropriate Supreme Court Rules committees be tasked with proposing the appropriate appellate and procedural rules to implement these reforms.

24. Pro tem judges currently serving in justice courts should be encouraged to serve as facilitators in the ODR program. The Courts could also partner with mediation programs at local universities to provide ODR facilitators. Trials of all small claims cases should be heard by Division Court judges, not pro tem judges.
25. Webex hearings should be made available in small claims cases not only for parties, but to allow volunteers and attorneys to be present remotely.

e. Simplified Process for Infractions:

26. A simplified process for resolving infractions should be explored. Hawaii has such a process in place and some aspects could be used as a model. Under this model, when a defendant wants to contest a charge they can request an informal hearing before the judge. The rules of evidence and procedure do not apply. The citing officer also appears, and a prosecutor is not present. If the defendant is unhappy with the resolution, they have the right to appeal and have a formal trial at the District Court. The Online Dispute Resolution program currently being implemented in small claims cases could be expanded and used for resolution of infractions.

The benefits of this type of a model include greater efficiency for the court and eliminating the need for prosecution resources that can then be focused on misdemeanor cases. Many defendants are also intimidated by the formal criminal process and just want to be heard. This process would also be more efficient for defendants, especially if an ODR program were implemented, or if remote hearings were allowed.

There are some concerns that need to be addressed if such a model is implemented. First, jail time is not available as a sentence for infractions. However, if a court is allowed to use its contempt power to impose jail on an individual who fails to pay a fine on an infraction, this could be used as an end-run around the procedural protections that are currently in place. As such, the court's contempt powers would need to be addressed. Second, eliminating some of the formality and oversight could exacerbate some of the revenue concerns that exist with the current justice court model. Protections should be put in place to ensure there is not an increased pressure, or incentives, to raise revenue. Third, defendants must be adequately informed of their right to request a hearing and a trial and there should not be any fee imposed for exercising their right to either.

Events of the last two years including protests, the George Floyd case, and others have highlighted the importance of even minor interactions with law enforcement. The majority of these interactions will be in relation to traffic cases which will be processed in the justice courts with these informal proceedings. It is beyond the scope of this Task Force to address policing or other policy issues. However, the Task Force does not want to suggest that just because infraction cases do not carry the potential for jail time and would be handled under a more informal process, that they are not important or deserve scrutiny.

III. OPTIONS THAT WERE RULED OUT

Based on the guiding principles and practical considerations discussed above, the following options were considered but not recommended by the Task Force at this time.

a. Dissolve Justice Courts

Justice courts could be dissolved, and all cases could be handled by a unified, state court system. This is the option California chose. As of 2001, all justice courts had been consolidated into the state court system. This option would address the concerns that have been raised with justice courts. Article VIII, Section 1 of the Utah State Constitution provides:

The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts designated by statute shall be courts of record. *Courts not of record shall also be established by statute* (emphasis added).

The Task Force has discussed two possible meanings of the language, “Courts not of record shall also be established by statute.” One possible meaning is that a structure providing for courts not of record is required. A second possible meaning is that if courts not of record are going to be established and operated by local governments, it must be done by statute. In other words, a local governmental entity would not have inherent authority to create and operate a court. Rather, it must be done by statute at the state level.

While it is clear that local governmental entities are not required to operate a justice court, it is not clear to the Task Force which interpretation of this constitutional language is correct. Under the first interpretation, a constitutional amendment would be required to eliminate justice courts. Eliminating justice courts under the assumption that the second interpretation is correct could result in constitutional challenges. To avoid a debate or constitutional challenges, the Task Force has proposed moving forward with an approach that does not require a determination of this question.

There are also approximately 84 justice court judges, hundreds of court staff, and many local government leaders that have an interest in the justice courts. Proposing to eliminate these courts could create significant political opposition and result in unnecessary upheaval. For these reasons, the Task Force has not recommended elimination of justice courts.

b. Convert Justice Courts to Courts of Record

Another approach that was not adopted was that justice courts could remain in place but would be designated courts of record with an appeal to the Utah Court of Appeals. While this would resolve the de novo appeal concerns, other issues raised about the current justice court structure would not be addressed. This option would also require a constitutional amendment to several sections in Article VIII.

c. Structure Justice Courts According to the Population of the County

Options were discussed that would structure courts differently based on the size of the county (similar to the current education requirements for judges). However, treating cases and defendants

differently based on the size of the county could result in constitutional challenges. Defendants charged with similar offenses need to be afforded the same rights and opportunities without regard to the size of the court or jurisdiction.

IV. TRANSITION PLAN

The Task Force views its work up to this point as a first step. The Task Force believes it has identified general principles and best practices that should be adopted to strengthen the judicial branch. Implementation of these principles and practices involves additional work. The Task Force recommends the following going forward:

a. Timing:

The Task Force recommends that any changes to the court system be implemented over time, through attrition, requiring as little displacement to currently serving judges and court staff, prosecution and defense counsel, and other stakeholders, as possible. The Task Force recommends that implementing legislation take into account these considerations and provide effective dates in the future to allow courts, local governments, and other affected parties sufficient time to prepare for the transition.

b. Financial Concerns:

On a macro level, justice courts appear to be financially neutral. Justice courts statewide generate approximately \$42 million annually in fines and fees. The cost of operating these courts is also approximately \$42 million. On a micro level, these proposed changes could have significant financial effects on some jurisdictions. Circumstances of individual courts may vary with some generating significant revenue for the local government entity while others are a significant financial burden. Typically, courts with a high percentage of traffic cases generate more revenue while courts with a higher percentage of criminal cases operate in the negative. The Task Force anticipates that, in addition to shifting the caseload of these courts, a corresponding shift of revenue would need to occur to fund the operation of the new courts. This could result in less revenue being received by some jurisdictions.

The Task Force also acknowledges the time and resources some communities have invested in their justice courts. In some cases that includes courthouses and courtrooms. Efforts to implement this proposal should take into account those resources and seek, through cooperation and local agreements, to utilize them to the benefit of all involved.

While financial concerns will necessarily be addressed, the Task Force encourages all stakeholders to consider issues of access to justice, fundamental fairness, avoidance of financial conflicts of interest, improving the public perception of local courts, and other necessary components of a constitutional and fair judicial system, regardless of individual financial considerations.

The financial impacts of this proposal will likely be a significant factor in its implementation. The Task Force recommends the creation of a working group to study in greater detail the financial impacts, both to the state and to local governments, associated with these recommendations. Such a working group could include court administrators, AOC and local government accountants and financial officers and others.

c. Court and Administrative Rules:

The Task Force recommends that the appropriate Supreme Court rules committees be tasked with drafting proposed rules of procedure simultaneously with the advancement of this proposal. The impacts of this proposal cannot fully be known without understanding the rules and processes that would be in place. The expertise of those serving on these various committees should be included in this project. Similarly, the Judicial Council's Policy and Planning Committee should be tasked with evaluating what administrative rules need to be amended or enacted to implement this proposal. Ultimately a package that includes this proposal, proposed rule changes, and proposed legislative changes should be presented as a unified and complete proposal. Again, the Task Force encourages these bodies to prioritize access to justice, trust and confidence in the courts, and other similar principles that are fundamental to, and would further strengthen, our judicial system.

d. Statutory Changes:

Implementation of this proposal will require significant legislative changes. Many details will need to be decided upon. Just one example would be proper venue of cases in the new courts. Such details could have a significant effect on the ultimate effectiveness of this proposal. The Task Force recommends that the Judicial Council, through its Legislative Liaison Committee, and working with such other stakeholders or parties as the Committee sees fit, begin working on proposed statutory language. The goal should be to implement the principles set forth in this proposal and to create a unified package for consideration by all affected parties and branches of government.

Attachment A – Membership

<u>Name</u>	<u>Position</u>	<u>Organization Represented</u>
Chair: Judge Paul C. Farr	Justice Court Judge (Alta, Herriman, Sandy)	Judicial Council
Anna Anderson	Prosecutor	Salt Lake District Attorney's Office
Judge Brian Brower	Justice Court Judge (Clearfield, Sunset and Morgan County)	Board of Justice Court Judges
Paul C. Burke	Attorney (Ray, Quinney & Nebeker) and Chair of the Utah Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure	Utah Supreme Court
Senator Kirk Cullimore	Attorney and State Senator	Utah State Senate
Judge Brent Dunlap	Justice Court Judge (Iron County)	Board of Justice Court Judges
Ron Gordon	State Court Administrator	Administrative Office of the Courts
Judge Roger Griffin	Fourth District Court Judge	Board of District Court Judges
Representative Craig Hall	Attorney and State Representative	Utah House of Representatives
Judge Ryan M. Harris	Appellate Court Judge	Utah Court of Appeals
Joanna Landau	Attorney, Executive Director Utah Indigent Defense Commission	Utah Indigent Defense Commission
Ryan Robinson	Prosecutor (West Valley), President of the Statewide Assoc. of Prosecutors	Utah Statewide Assoc. of Prosecutors
George Sutton	Attorney (Jones Waldo)	Representing <i>Pro se</i> Defendants in Small Claims
Ann Marie Taliaferro	Attorney (Brown, Bradshaw & Moffat)	Utah Assoc. of Criminal Defense Lawyers
Commissioner Jerry Taylor	Garfield County Commissioner	Utah Association of Counties
Roger Tew	General Counsel and Policy Advisor for Utah League of Cities and Towns	Utah League of Cities and Towns
Staff: Michael Drechsel	Assistant State Court Administrator	Administrative Office of the Courts
Staff: Cathy Dupont	Deputy State Court Administrator	Administrative Office of the Courts
Staff: James Peters	State Justice Court Administrator	Administrative Office of the Courts

Attachment B – Presenters

<u>Name</u>	<u>Position</u>	<u>Presentation:</u>
Judge Rick Romney	Justice Court Judge, Chair of Board of Justice Court Judges	Board of Justice Court Judges
Senator Kirk Cullimore	State Senator and attorney representing plaintiffs in small claims	Small claims plaintiffs
Ben Marsden and Heather Robison	Law Clerks / Interns	Background research
Michael Zimmerman	Former Utah Supreme Court Chief Justice	History of the Judiciary and specifically Circuit Courts
Joanna Landau	Executive Director, Indigent Defense Commission	Indigent Defense in Justice Courts
Dr. Jennifer Yim	Executive Director of the Judicial Performance Evaluation Commission	JPEC's perspective on Justice Courts
Justice Deno Himonas	Utah Supreme Court Justice	Online Dispute Resolution Program
Judge Jon Carpenter	Justice Court Judge	"
Judge Brendan McCullagh	Justice Court Judge	"
Kim Zimmerman	Justice Court Clerk and AOC staff	"
Brody Arishita	AOC Staff	"
Clayson Quigley	AOC Staff	"
Jeff Hastings	AOC Staff	"
Dr. Kim Free	Judicial Educator, Utah AOC	Clerk and Judicial Education perspective
Jim Peters	State Justice Court Administrator	Appeal and financial statistics
Judge Paul C. Farr	Task Force Chair and Justice Court Judge	Justice Court structure and statistics
Kim Cordova	Executive Director of the Commission on Criminal And Juvenile Justice	Substance abuse and mental health issues in justice court
Elizabeth Klc	Director of Utah Substance Abuse Advisory Council	"
Patrick Fleming	Chair of Utah Substance Abuse Advisory Council	"
Adam Trupp	Assistant Director, Utah Indigent Defense Comm.	"

Keisa Williams	General Counsel, AOC	Pretrial Release Practices
Karl Sweeney	Director of Finance, AOC	Financial practices and accounting
Wayne Kidd	Director of Audit, AOC	“
Diane Williams	Auditor	“
Professor Alexandra Natapoff	Harvard Law School, nationally recognized scholar on misdemeanor court system	Misdemeanor court practices
Dillan Passmore	Law Clerk / Intern	Informal Adjudication of Infractions

Attachment C – Materials Reviewed

- “Enhancing Caseflow Management to Ensure Effective Assistance of Counsel,” Justice Programs Office, School of Public Affairs at American University. January 2020.
- “Final Reflections Paper – Income Based Fines,” Thomas Kelley, University of Utah Law School. Spring 2018.
- “The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services,” Sixth Amendment Center, 2015.
- “October 26, 2015 Report.” Judicial Council Study Committee on the Representation of Indigent Criminal Defendants in Trial Courts.”
- “Justice Derailed: A case study of abusive and unconstitutional practices in Colorado city courts.” ACLU of Colorado, October 5, 2017.
- “Utah Indigent Defense Commission: Follow-Up Site Visit Report,” Bureau of Justice Assistances, Office of Justice Programs, December 2019.
- “Principles on Fines, Fees, and Bail Practices,” National Task Force on Fines, Fees, and Bail Practices,
https://www.ncsc.org/_data/assets/pdf_file/0021/61590/Principles-on-Fines-Fees-and-Bail-Practices-Rev.-Feb-2021.pdf
- “Fifty-Eight Years and Counting: The Elusive Quest to Reform Arizona’s Justice of the Peace Courts.” Anne E. Nelson, Arizona Law Review, Vol. 52:533 (2010).
- “Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century.” 2013-2014 Policy Paper, Conference of State Court Administrators.
- “Investigation of the Ferguson Police Department.” United States Department of Justice, Civil Rights Division. March 4, 2015.
- “Public Safety – Municipal Courts.” Better Together, The Missouri Council for a Better Economy. October 2014.
- “Civil Practice in Montana’s ‘People’s Courts:’ The Proposed Montana Justice and City Court Rules of Civil Procedure.” Cynthia Ford. The Scholarly Forum@Montana Law, The University of Montana School of Law. January 1, 1997.
- “Missouri Municipal Courts: Best Practice Recommendations. National Center for State Courts and State Justice Institute. November 2015.
- “Disorder in the People’s Courts: Rethinking the Role of Non-Lawyer Judges in Limited Jurisdiction Court Civil Cases.” Cathy Lesser Mansfield. New Mexico Law Review, Vol. 29, Winter 1999.
- “Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California.” Western Center on Law & Poverty, et al. 2015.
- “No Justice in Utah’s Justice Courts: Constitutional Issues, Systemic Problems, and the Failure to Protect Defendants in Utah’s Infamous Local Courts.” Samuel P. Newton, Teresa L. Welch and Neal G. Hamilton. Utah Onlaw: The Utah Law Review Online Supplement, Volume 2012.
- “When Your Judge Isn’t a Lawyer.” Matt Ford. Politics, February 5, 2017.
- “Preventing Whack-a-Mole Management of Consumer Debt Cases: A proposal for a Coherent and Comprehensive Approach for State Courts.” Paula Hannaford-Agor and Brittany Kauffman. Institute for the Advancement of the American Legal System, University of Denver, February 28, 2020.
- “The Evolution of Utah’s Justice Courts.” Judge Paul C. Farr, Utah Bar Journal, Vol. 29, No. 4, July/August 2016.

“The Face of the Judiciary: Utah’s Justice Courts.” Judge Paul C. Farr, Utah Bar Journal, Vol. 25, No. 1, Jan./Feb. 2012.

Utah Judicial Council meeting minutes from February 27, 2006 and November 26, 2007.

“Interim Report.” Justice Court Study Committee, December 3, 1997.

“A Guide to the Federal Magistrate Judge’s System.” Peter G. McCabe. Federal Bar Association White Paper, August 2014, updated October 2016.

Bernat v. Allphin, 106 P.3d 707 (Utah 2005)

City of White House v. Whitley, 979 S.W. 2d 262 (Tenn. 1998)

North v. Russell, 427 U.S. 328 (1976)

Taylorsville City v. Mitchell, 466 P.3d 148 (Utah 2020)

Attachment D – Summary of Prior Justice Court Reforms in Utah

1850	Organic Act organizing Utah Territory	Federal legislation creating a territorial court system that included justices of the peace.
1896	Utah Constitution	Article VIII of the Utah Constitution established the judiciary, including justices of the peace.
1978-1996	Circuit Courts	Circuit Courts handled misdemeanor offenses during this time-period.
1983	CCJJ Task Force	The legislature created the Utah Commission on Criminal and Juvenile Justice which established a task force to study changes to the justice of the peace system.
1984	Constitutional Amendment	Article VIII underwent significant amendment. Section 11 was added which prohibited requirements that justices of the peace be members of the bar.
1989	Justice Courts Created	Based on the task force's recommendations, justices of the peace were eliminated and justice courts were created.
1996	Justice Court Jurisdiction	With the dissolution of the Circuit Courts, jurisdiction over Class B and C misdemeanors and small claims case fell to justice courts.
2007	Nehring Commission	The Judicial Council established a committee to study justice court reform. It was chaired by judge (and subsequently justice) Ronald Nehring. Recommendations that were adopted included: The current judicial selection process was made applicable to justice courts. 6-year terms of office implemented followed by a retention election. Judge's pay set at 50-90% of a district court judge and cannot be diminished. Recommendations that were not adopted included: At least a 4-year degree for judges and eliminating part-time positions.
2011	H.B. 494	Required recording of all justice court proceedings.
2016	H.B. 160	Required judges in first and second class counties to have a law degree.
	S.B. 155	Creation of the Indigent Defense Commission.