

SJR 40 Study:  
Background Report on  
County Attorney Services

Prepared for the  
*Law and Justice Interim Committee*  
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Beginning at the bottom line

- Policy Question:
  - ◆ Should Montana be considering a District Attorney model for prosecution services?
  
- Issues:
  - ◆ Salaries
  - ◆ Funding
  - ◆ Workload
  - ◆ Performance





## Legal Services Division, Department of Justice

- In Legal Services Division, two relevant bureaus
- Appellate Services Bureau
- Prosecution Services Bureau
  - ◆ Child Protection Unit

## Appellate Services Bureau

- 10 attorneys, plus the chief (attorney)
- Handles nearly all criminal appeals and death penalty cases
- In FY 2005, 200 active cases in (state & federal)
  - ◆ More cases involve post-conviction relief (sentencing most vulnerable to error)
- Four active death penalty cases

## Prosecution Services Bureau (PSB)

- When requested, assists counties in prosecution
- Handles “conflict” cases
- Investigates complaints against county attorneys
- Coordinates training (civil as well as criminal)

## More on PSB

- 5.5 attorneys (includes bureau chief)
  - ◆ 3.5 general prosecution attorneys
  - ◆ 2 specialized prosecution attorneys
    - ◆ workers’ comp & Medicaid
- 71 pending cases (snap shot from July ’05)
- Workload is mostly from small and medium-sized counties
  - ◆ For part-time county attorneys, smaller staff

## Child Protection Unit, PSB

- Approved by Legislature in 1999
- Prosecutes (on behalf of State) some of the child abuse and neglect cases
  - ◆ Focus is resolving status of children in foster care
- 4 full-time state attorneys

## Part 1: Attorney General's Office Review

- Attorney General's duties to supervise & direct
- Appellate Services Bureau handles appeals
- Prosecution Services Bureau assists when asked
- Child Protection Unit handles some child abuse and neglect, mostly foster care



## County Government Historically

- Origins: 9<sup>th</sup> Century English Shires
  - ◆ Enforce the “kings laws” and collect the “kings taxes”
- Purposes:
  - ◆ An arm of state government
  - ◆ Locally-elected government
- Political subdivision of state
  - ◆ Not a self-governing unit, like state is to federal government

## Montana Constitution, 1972

### *Art. XI, Sec. 3*

- Legislature to provide alternative forms of local government - adopted by local vote
- Elected county attorney must be an option
- Board of County Commissioners may:
  - ◆ Combine offices within a county
  - ◆ Share office with another county

## Self-Government

- Montana Constitution, Art XI, Secs. 5 and 6
  - ◆ Self-government charters
  - ◆ Grants to counties any power not prohibited

## County Government Choices

- Commission form in 52 Counties
  - ◆ Fergus has self-government Charter
- Commission-Manager form in 1 County
  - ◆ Petroleum
- City-County Consolidated form in 2 Counties
  - ◆ Butte-Silver Bow, Charter
  - ◆ Anaconda-Deer Lodge, Charter









## Compensation Board Members

- All 3 County Commissioners
- County Attorney
- 3 other county officials
  - ◆ appointed by Commissioners
- Between 2 and 4 resident taxpayers

## Factors Considered by Board

- Population
- Assessed valuation
- Motor vehicle registrations
- Building permits
- Other

## State Share of Salary

- State pays 50% of county attorney salary
  - ◆ Not:
    - ◆ benefits
    - ◆ salaries or benefits for deputies or assistants
    - ◆ office expenses
- County must provide fiscal info. to DOJ
  - ◆ If not provided in time for budget planning, state pays last FY amount

## Staffing: Deputies Limited

*(Sec. 7-4-2703, MCA)*

- 1<sup>st</sup> and 2<sup>nd</sup> Class Counties (Tax. Val. > \$30m)
  - ◆ 1 chief deputy, 1 deputy
- All the rest
  - ◆ Same (1 chief deputy, 1 deputy), with county approval
- Special counsel may be employed
  - ◆ Except in 1<sup>st</sup> Class Counties (Tax. Val. > \$50m)





## Bottom-line Question

- Should Montana consider a District Attorney system?
  - ◆ District Attorney as state prosecutor in each judicial district
  - ◆ County Attorney as county prosecutor and provider of civil legal services

## Issues previously noted

- Funding
- Salaries
- Workload
- Performance

## Funding

- Can issues be addressed by increasing state share and counties fixing salary equity issues?
- Is systemic change required?
- What will the costs be, who will fund them and how?

## Salaries

- Does cost-sharing work? Why or why not?
- What about internal salary equity: county attorney with deputies and assistants?
- What about external equity – differences county to county?



