

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on April 12, 2005 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SJ 40, 4/11/2005
Executive Action: SJ 40

HEARING ON SJ 40**Opening Statement by Sponsor:**

SEN. TRUDI SCHMIDT, SD 11, GREAT FALLS, opened the hearing on **SJ 40**, Study delivery of prosecution services. **SEN. SCHMIDT** stated this resolution was introduced as a result of a request that the criminal justice system needed to be looked at. She went on to talk about the first five topics the study would address. Those topics are a review of the various means by which prosecution services are being provided; a review of the costs associated with the provisions; changes in state law that may be necessary to facilitate the provision; a review of funding sources available to address the provisions; and determine the level of public funding required.

Proponents' Testimony:

Gordon Morris, Executive Director, Montana Association of Counties (MACO), stated he wanted to go on record in support of SJ 40. He went on to say he felt it was long overdue and that MACO had looked at the issue of providing prosecutorial services and civil services across the state. He further stated that SJ 40 was a good idea and asked for the Committee's favorable consideration.

CHAIRMAN WHEAT asked **Mr. Morris** if they would have the same problem with the county attorney situation, with regard to funding, that they had with SB 146. **Mr. Morris** replied that he did not think so. He went on to say that they should have firm numbers provided to them, so it should not be a problem.

Mike McGrath, Attorney General of Montana, expressed his support for SJ 40. He went on to say that the last couple of sessions had been involved in the issue one way or another. He continued stating that this was the logical next step in what should be studied. **Attorney General McGrath** stated there are some significant problems in the current operation, for example, under the current system the State pays one-half of the salary of the County Attorney, however, the salary is set at the county level by the County Compensation Committee. He went on to say that this creates quite a significant problem for the Finance and Claims Committee and the Appropriations Committee in terms of determining how to set that budget amount. He added that in addition it was up to the local jurisdictions whether or not the person is a full-time or part-time county attorney, therefore, the salary is impacted by how that decision is made. He then addressed the problem of the State compensation only covering half of the county attorney's salary but not covering any of the

deputy county attorney's salary nor are there any guidelines or discussion from the state level as to how many deputies there should be or what their duties should be. He then addressed the possibility of the county attorneys going on strike in Cascade County. He concluded saying that they truly needed to look at the funding and organization of how prosecution services are provided.

Marty Lambert, Gallatin County Attorney, President, Montana County Attorney's Association, expressed support for SJ 40. He then distributed a handout to the Committee which is attached as [EXHIBIT\(jus78a01\)](#). **Mr. Lambert** explained the handout and the information contained therein. **Mr. Lambert** stated that the resolution needed an amendment which would address the civil aspects of the county attorney's job. He went on to provide some examples which clarified the need for the amendment to the resolution. He further stated the resolution was not just about the salary paid to the county attorneys, it was also about the services provided by the deputy county attorneys. He continued saying that what was needed was retention of good deputy county attorneys and that entailed being able to pay them a reasonable salary also.

SEN. SAM KITZENBERG, SD 18, GLASGOW, stated that he felt one of the problems they were trying to address with the resolution was what happens when a county attorney resigns, retires or is removed from office. He then gave some examples of the problems created by these vacancies. He further talked about the fact there were several county attorneys that are not keeping up with their continuing education so that they are current regarding the matters at hand. He continued saying that he felt the study would perhaps reveal some of the problems that need to be addressed and had his full support.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Mr. Lambert** to explain the second page of the handout, "Projected State Share of County Attorney Salary FY-06 and FY-07". He further asked if it was under existing law and existing figures. **Mr. Lambert** responded that he was not familiar with the chart, that it had been prepared as part of their work with MACO to deal with their salary issue. He referred **SEN. CROMLEY** to the FY-05 and stated that was what the salaries are, what the State is paying and what the counties are paying. He went on to say that the reason the State is paying a higher

percentage at this time is that they have fallen behind because they had not been paying their 50%. **Mr. Lambert** then explained that the figures for FY-06 and FY-07 were projections that had been put together for their negotiations with MACO.

SEN. CROMLEY asked **Mr. Lambert** if some cases were full- time county attorneys and some part-time county attorneys. **Mr. Lambert** replied that was correct. He went on to say also there were a couple of consolidated situations, such as, Musselshell County and Golden Valley County; and Wheatland County and Meagher County are consolidated.

SEN. CROMLEY asked **Mr. Lambert** if he knew whether or not there were figures available showing the total amounts spent by counties for county attorneys, including both the criminal and civil practices. **Mr. Lambert** responded he was certain they could be compiled. He went on to say his office was a little under \$1,000,000 and approximately 85% of that is criminal. He concluded saying he did not have specific figures, however, MACO and or the county attorneys could work to provide that information.

SEN. CROMLEY asked **Mr. Lambert** if the county attorney's office had ever considered the question of whether or not the county attorney should continue to be an elected official. **Mr. Lambert** answered, "No". He went on to say that he felt an elected position was the best.

SEN. CROMLEY asked **Mr. Lambert**, if there was only one attorney living in a county, if the county attorney was an appointed official instead of elected. **Mr. Lambert** stated he did not know.

SEN. CROMLEY asked **Attorney General McGrath** if there was only one attorney practicing in a county, if under State law, that attorney would have to be appointed county attorney. **Attorney General McGrath** replied that was no longer the case. He went on to say, as a practical matter, if the person who was a resident was the only attorney that was a resident of the county, and, filed for the office, they would become elected by default.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 30.2}

SEN. MCGEE asked **SEN. KITZENBERG** if what he was talking about was an attorney that had retired, moved to a small community, ran for election and became county attorney by default, but really did not want to do anything. **SEN. KITZENBERG** replied that was part of it. He went on to say that it could be someone who had been in office for quite some time, had literally given up, and is not willing to prosecute anyone.

SEN. MCGEE asked **SEN. SCHMIDT** if she felt **SEN. KITZENBERG'S** concerns could be addressed by the language in Subsection 3 and Subsection 6. **SEN. SCHMIDT** responded that she felt they could be addressed under the resolution as written.

CHAIRMAN WHEAT asked **Mr. Lambert** if he would agree that the bill was intended to study the prosecution services delivered in Montana, therefore, wouldn't they be looking at all aspects of the county attorney's job. **Mr. Lambert** replied it might be implied, however, he felt the civil responsibilities needed to be added to the language to make sure.

Closing by Sponsor:

SEN. SCHMIDT stated that it was clear there were issues that needed to be addressed and asked for a do pass on SJ 40.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 5.6}

CHAIRMAN WHEAT asked **Ms. Lane** if she had understood the language that was needed for the amendment to SJ 40. **Ms. Lane** stated that she believed she had and read the proposed conceptual amendment.

SEN. CROMLEY said he felt that the needed to include the proposed language on Lines 2, 5, 7, 8, 10 and 12 also.

SEN. MCGEE expressed his concern that just adding the words "civil legal services" might not reflect back to the county attorney, therefore, he suggested using the language "civil legal services by county attorneys".

{Tape: 1; Side: B; Approx. Time Counter: 5.6 - 9}

EXECUTIVE ACTION ON SJ 40

Motion: **SEN. CROMLEY** moved that SJ 40 DO PASS.

Motion/Vote: **SEN. WHEAT** moved that THE CONCEPTUAL AMENDMENT TO SJ 40 BE ADOPTED. Motion carried 11-0 by voice vote.

Motion: **SEN. CROMLEY** moved that SJ 40 DO PASS AS AMENDED.

Discussion:

SEN. MCGEE stated he would not be supporting a Statewide Prosecutorial Service for the State of Montana.

SEN. SHOCKLEY referred to the last two sessions and the work done on the District Courts and the Public Defenders and stated that now it was time to fix the prosecutors.

SEN. O'NEIL expressed his concern that they might be jeopardizing the public defender system by going to work on the prosecutors this soon. He concluded saying that he would be voting against the resolution.

Motion/Vote: SEN. LASLOVICH CALLED THE QUESTION ON SJ 40. Motion carried 10-1 by voice vote with SEN. O'NEIL voting no.

{Tape: 1; Side: B; Approx. Time Counter: 9 - 11.5}

ADJOURNMENT

Adjournment: 9:45 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus78aad0.PDF](#))