## SJR 40 Study: Background Report on County Attorney Services

Prepared for the

Law and Justice Interim Committee

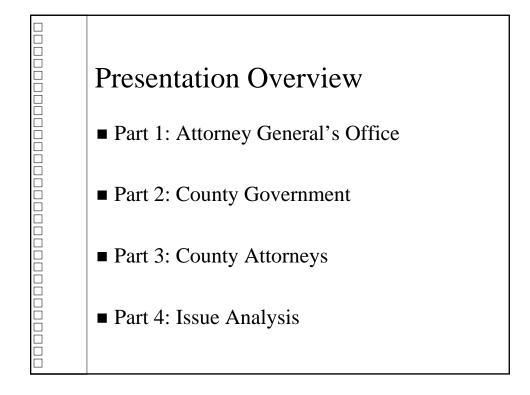
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## Beginning at the bottom line

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



# Part 1 Attorney General's Office

## Attorney General Constitutional Officer Elected Statewide Head of Department of Justice Supervisor of County Attorneys

# Duties of Attorney General (Section 2-15-501, MCA) Supervise county attorneys in "all matters" pertaining to their duties Require regular reports on all "business" conducted by county attorneys "Order and direct" count attorneys in "all matters" pertaining to the duties of their offices

## 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

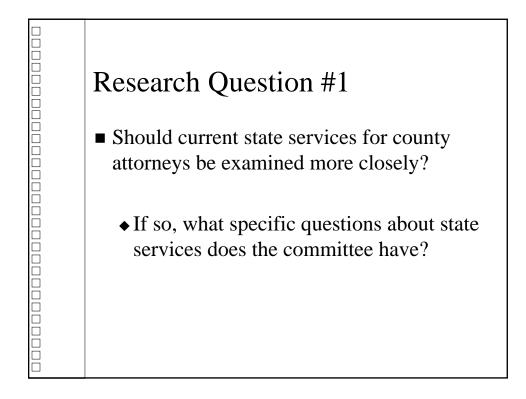
- 5.5 attorneys (includes bureau chief)
  - 3.5 general prosecution attorneys
  - 2 specialized prosecution attorneys
    - workers' comp & Medicaid
- 71 pending cases (snap shot from July '05)
- Workload is mostly from small and medium-sized counties
  - For part-time county attorneys, smaller staff

## 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



# Part 2 County Government

## County Government Historically Origins: 9th Century English Shires Enforce the "kings laws" and collect the "kings taxes" Purposes: An arm of state government Locally-elected government

• Not a self-governing unit, like state is to federal

■ Political subdivision of state

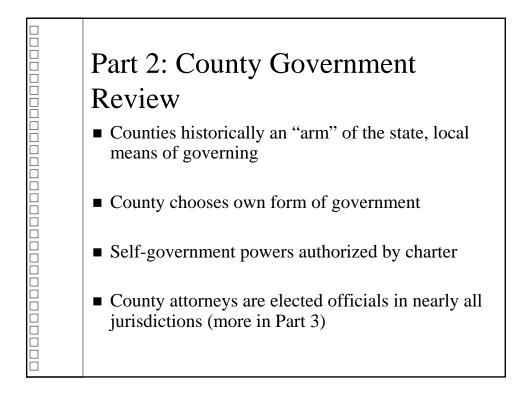
government

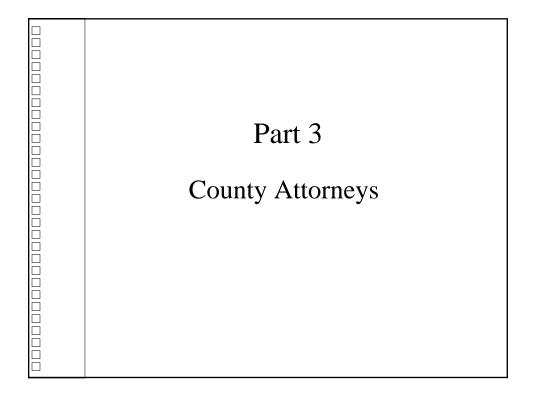
Montana Constitution, 1972  Art. XI, Sec. 3
■ Legislature to provide alternative forms of local government - adopted by local vote
■ Elected county attorney must be an option
<ul> <li>■ Board of County Commissioners may:</li> <li>◆ Combine offices within a county</li> <li>◆ Share office with another county</li> </ul>

## 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





## Elected or Appointed? Partisan or Non-partisan?

- Elected officials in 55 counties
  - Musselshell and Golden Valley share (elected in both)
  - ◆ Meagher and Wheatland share (elected in both)
  - Petroleum appoints part-time attorney (lives outside county)
- 4 year terms, no term limits
- Elected on non-partisan ballot in 10 jurisdictions

## Statutory provisions

- Full-time County Attorney in:
  - ◆ Counties with 30,000 or more people
- May be either FT or PT County Attorney in:
  - ◆ Counties with less than 30,000
- Counties may contract for services:
  - ♦ With another County Attorney
  - ♦ With a private attorney

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	■ Full-time in 32 Counties
	■ Part-time in 23 Counties

	Eligibility  Sec. 7-4-2701, MCA  ■ U.S. Citizen  ■ Resident of state for 2 years  ■ FT with > 30,000 people, <u>5 years</u> of experience
00000000000	<ul> <li>■ FT with &gt; 30,000 people, <u>3 years</u> of experience</li> <li>■ FT with &lt; 30,000 people, <u>3 years</u> of experience</li> <li>■ Part-time, admitted to practice before taking office</li> </ul>

# Duties Prosecutor Justices' Courts District Courts Represent/defend state or county in any legal proceeding within county Legal advisor to county and local districts

# Salary: County Attorney Full-time \$50,000 base Adjusted by county compensation board Part-time: FY 01 salary is base Adjusted by county compensation board

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

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)

## Deputy Salaries Sec. 7-4-2503(3)(d), 7-4-2505, MCA Set by County Commissioners Longevity increases \$1,000 after 4th year \$1,500 after 5th year

### Salary plus longevity may not exceed County Attorney's salary

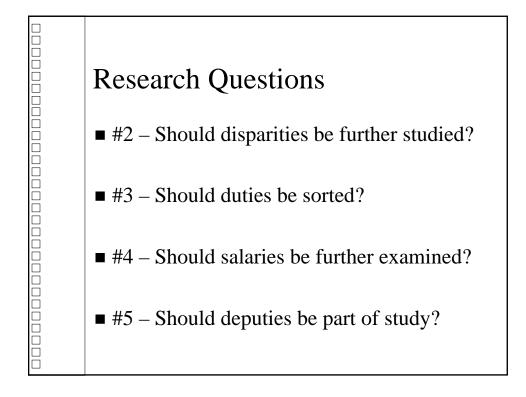
• \$500 each year after, up to 11th year

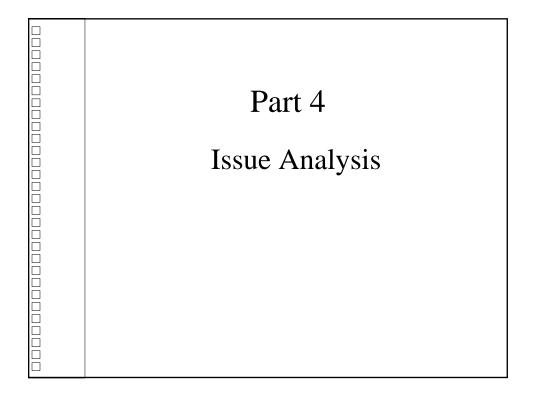
## Part 3: County Attorney Review ■ Elected Officials: 4 counties share, 1 appoints ■ 32 Full-Time and 23 Part-Time ■ Duties • Prosecutor for state and county • Advisor to county and local districts

• Set by county compensation board

■ Salaries

◆ Shared by state





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?

Workload
<ul> <li>Should a line be drawn between:</li> <li>Work for state vs. work for county and local districts?</li> <li>Criminal vs. civil?</li> </ul>
■ What is state vs. county role and responsibility?
■ Should line be drawn between  • civil and criminal or  • district and justices' courts?

## Performance ■ Is AG's duty to supervise county elected officials systemically problematic? ■ Can issues be address through eligibility criteria and training? ■ Should performance standards be established more formally statewide? If so, who should set them, how? What about enforcement?

	Staff White Paper
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