

**Status of SJR 40 Study
County Attorney Services**

prepared for the
Local Government Subcommittee
by Sheri Heffelfinger, Research Analyst

October 6, 2005

- ◆ During session, SJR 40 was supported by Attorney General, MACo, and the Montana County Attorney's Association. Testimony indicated the issue boiled down to state funding and statewide standards and that one option to consider would be a district attorney model for delivering prosecution services.
- ◆ The legislature ranked the SJR 40 study 20th out of 22 study requests.
- ◆ The Legislative Council assigned SJR 40 to the Law and Justice Interim Committee (LJIC) with the recommendation that the study be assigned to staff rather than conducted as a full committee study.
- ◆ First LJIC meeting was July 26, 2005: an organizational meeting to set priorities.
-- Attorney General and MACo testified in support of a thorough SJR 40 study
- ◆ The study plan adopted by the LJIC set the following study priorities:

Study/ Activity	Description	Percentage allocation of total resources
SJR 6	Study of legal services for moderate and low-income Montanans	35%
SJR 40	Study of county attorney services (<i>less than a full study, but more than a staff white paper report</i>)	25%
HJR 15	Study of sentencing equity (<i>limited staff white paper</i>)	15%
Follow-up	SB 146 - Public Defender Act	10%
Statutory	Agency monitoring	10%
SJR 37	Coordination with CFHHS on child protective services (<i>requested by Legislative Council</i>)	5%

Local Government Subcommittee
October 6, 2005

Exhibit #8

◆ Second meeting of LJIC, September 21-22, 2005. One entire day devoted to the SJR 40 study.

-- Staff Background Report (available upon request)

-- Attorney General

- County Attorneys have a huge responsibility and, in larger counties, a huge workload
- No statewide training standards or professional requirements for county attorneys
- Disjointed system where some counties have part-time county attorneys, no deputies
- Wide disparities in caseload and salary
- Difficult to gather data
- Need to match resources with needs
- Consider separating criminal prosecution from civil matters
- Criminal = state responsibility, civil = county responsibility, with certain exceptions
- County attorneys should still be elected officials, if district attorney, then elected in district similar to district judges

-- MACo (Harold Blattie)

- Wide differences county to county, workload and issues handled vary greatly
- Offered MACo's assistance in surveying counties for county attorney data

-- Montana County Attorney Association (Fred VanValkenberg)

- Caseloads are substantial and growing, state and local resources are falling short
- Best government is local and accountable to local voters
- Current system is not archaic, is working but could be improved
- Incentives to encourage careers in prosecution services
- Additional resources for such things as expert witnesses and transcripts
- Mandatory training requirements
- Enhanced funding for AG's Prosecution Services Bureau and the state crime lab
- Statutory appropriation for state's portion of county attorney salaries

-- LJIC work session to identify further research needs, directions to staff

- Essentially modified work plan to make SJR 40 as high a priority as SJR 6
- Requested additional data on workload and breakdown between civil and criminal
- Requested additional info. on county attorney budgets
- Requested a glossary of terms
- Requested a laundry list of options
- More info. on what a district attorney system is, pros and cons

◆ LJIC's remaining meeting schedule

November 17, 2005 -- info. gathering

January 19, 2006 -- info. gathering

March 23, 2006 -- options and analysis of options

May 11-12, 2006 -- options and analysis of options

June 29-30, 2006 -- preliminary recommendations

August 31, 2006 -- final recommendations

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**SENATE JOINT RESOLUTION NO. 40
INTRODUCED BY SCHMIDT**

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DESIGNATE AN APPROPRIATE INTERIM COMMITTEE OR DIRECT STAFF RESOURCES TO STUDY THE DELIVERY OF PROSECUTION SERVICES AND COUNTY CIVIL LEGAL SERVICES BY COUNTY ATTORNEYS IN MONTANA.

WHEREAS, the delivery of competent, qualified, and professional prosecution services is vital to a productive and responsive criminal justice system; and

WHEREAS, prosecution services on the Justice's and District Court level and county civil legal services are now being provided by elected or appointed County Attorneys in every county in the state; and

WHEREAS, the degree of experience and training among Montana's County Attorneys varies greatly throughout the state, as do the salaries of elected County Attorneys and Deputy County Attorneys; and

WHEREAS, the State of Montana has the responsibility pursuant to section 17-7-112, MCA, to pay 50% of a County Attorney's salary, but the amount of that salary is determined by the County Compensation Board; and

WHEREAS, county government has the responsibility to fund 100% of the salary of all Deputy County Attorneys and all operational and maintenance costs of a County Attorney office; and

WHEREAS, the Attorney General's office now maintains a Prosecution Services Bureau that provides prosecution assistance on a limited basis to County Attorneys in primarily small jurisdictions; and

WHEREAS, a comprehensive legal needs study has recently been completed by the Law and Justice Interim Committee, resulting in the introduction of Senate Bill No. 146, the Montana Public Defender Act, creating a statewide public defender system to improve the delivery of indigent defense services on a statewide basis; and

WHEREAS, it is in the best interests of the people of the State of Montana to encourage and develop career County Attorneys who can provide consistent levels of prosecution services and county civil legal services

throughout the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to review the delivery of prosecution services and county civil legal services by County Attorneys throughout Montana on the county level and to determine whether any changes may be appropriate. The study must include:

- (1) a review of the various means by which prosecution services and county civil legal services are being provided by County Attorneys in Montana counties;
- (2) a review of the costs associated with the provision of prosecution services and county civil legal services by County Attorneys in Montana counties;
- (3) changes in state law that may be necessary to facilitate the provision of prosecution services and county civil legal services by County Attorneys throughout the state;
- (4) a review of funding sources currently available to address the provision of prosecution needs and county civil legal services needs;
- (5) a determination of the level of public funding required to provide consistent, uniform, and professional prosecution services to the criminal justice system and civil legal advice to elected county officials; and
- (6) any other aspect of the administration of prosecution services and county civil legal services by County Attorneys for Montanans that is determined to be appropriate.

BE IT FURTHER RESOLVED, that the study committee or staff be directed to request information and staff assistance from the Legislative Fiscal Division.

BE IT FURTHER RESOLVED, that the study committee or staff be directed to develop a specific list of options, including an option of no action, to be considered for recommendation to the 60th Legislature.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2006.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 60th Legislature.

- END -

Office of Research and Policy Analysis

**SJR 40:
Background Report on
County Attorney Services in Montana**

A REPORT TO THE LAW AND JUSTICE INTERIM COMMITTEE

Prepared by Sheri S. Heffelfinger, Research Analyst

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Services
Division*

**SJR 40 Study:
Background Report on
County Attorney Services in Montana**

Prepared for the Law and Justice Interim Committee

by Sheri S. Heffelfinger
Research Analyst, Montana Legislative Services Division

September 2005

Background

Issues: The key issues in the Senate Joint Resolution No. 40 study request are county attorney salary, workload, performance, and how the state and counties share costs. Introduced by Sen. Trudi Schmidt (D-Great Falls), SJR 40 received strong support from Attorney General Mike McGrath, the Montana Association of Counties (MACo), and the Montana County Attorneys Association. No one testified in opposition to the bill.

Questions and discussion during session hearings boiled the issues down to one broader policy question: Should Montana establish a district attorney prosecution system. One option for a district county prosecution system discussed in testimony was to have district county attorneys elected by judicial district with 100% of the costs paid by the state.

Previous study: The legislature last studied county prosecution services in 1982. The committee report include a short discussion about the strengths and weaknesses of a district attorney structure and comments from various county attorneys, which revealed both support and opposition to the district attorney approach.¹ No committee bill resulted from the study.

Purpose of this report: This report provides the LJIC with a basic background of county attorney services and identifies research questions on major policy issues. At the end of the LJIC meeting on September 22, 2005, the LJIC will be asked to direct staff on which of the research questions and policy issues to address in a staff white paper report to the LJIC to be presented in March 2006.

¹ Lois Menzies, "Prosecution Services in Montana: A Report to the Subcommittee on Judiciary," Montana Legislative Council, July 1982.

Attorney General's Office

The Attorney General is provided for by Article VI, Section 1, of Montana's Constitution. Elected on a statewide partisan ballot, the Attorney General is, by statute, also head of the Department of Justice.

The Attorney General's duties specifically include supervision of county attorneys in "all matters" pertaining to their duties. Statutory law empowers the Attorney General to "order an direct" all county business.²

Two bureaus within the Attorney General's Legal Services Division provide state support to county attorneys: the Appellate Services Bureau and the Prosecution Services Bureau.

Appellate Services Bureau: The Appellate Services Bureau handles appeals in criminal cases.³ The bureau consists of 11 state attorneys. In fiscal year (FY) 2005, the bureau handled more than 200 cases in both state and federal courts. Currently, the bureau has 4 active death penalty cases. The bureau's caseload related to post-conviction relief has been growing due to more prisoners exercising their rights to challenge their convictions and errors being made during sentencing.⁴

Prosecution Services Bureau: If requested by a county attorney, the Prosecution Services Bureau (PSB) helps county attorneys prosecute criminal cases and certain civil cases, e.g., cases involving child abuse and neglect, juvenile delinquency, and involuntary civil commitment. Usually, county attorneys request assistance because the complexity or type of case exceeds the county attorney's experience. On some occasions, the PSB assists because the county attorney has a conflict of interest. State assistance can include a state attorney handling the entire case or simply providing research or advise.

Other duties include investigating any complaints made about a county attorney providing two optional training conferences annually.

² See Section 2-15-501, Montana Code Annotated (MCA).

³ A county attorney may insist on handling the appeal, but this rarely happens.

⁴ Interview (by e-mail) with Ms. Jennifer Anders, chief, Appellate Services Bureau.

The bureau is staffed by 5 full-time attorneys and one half-time attorney. A snap-shot of the bureau's caseload in September 2003 showed 168 pending cases from 29 counties. More current data has not been compiled. Most of the bureau's workload comes from the smaller counties. Counties with larger populations and caseloads have larger staffs and more expertise. However, the state assists in nearly all death penalty cases.⁵

Child Protection Unit: Under the PSB, a Child Protection Unit consisting of 4 full-time attorneys handle some of the child abuse and neglect cases for county attorneys. Caseload information was not immediately available for this report. The Child Protection Unit was created by the 1999 Legislature to assist with county attorney workload primarily related to resolving the legal status of children in foster care for more than 15 months.⁶

RESEARCH QUESTION #1: Should state services for county attorneys be examined more closely by the SJR 40 study? The SJR 40 study resolution "WHEREAS" clauses note that the state provides only "limited" assistance to county attorneys through the Prosecution Services Bureau and only to smaller jurisdictions, which implies some concern that the scope of state support is not adequate. The resolution also notes that the degree of training and experience among county attorneys varies greatly. Some county attorneys rely heavily on state attorneys for assistance. Further examination of state services through the AG's office may identify which counties consistently request state attorney services and why. The examination could also encompass research about how other states provide state prosecution service support to their county attorneys.

County government

Historical perspective: Historically, the origin of county government can be traced to 9th century English shires where shire officials were extensions of the

⁵ Interview with Mr. John Connor, Chief Legal Counsel, Prosecution Services Bureau.

⁶ State of Montana Website, Department of Justice, Prosecution Services Bureau, at www.discoveringmontana.com.

crown and needed to enforce the king's laws and collect the king's taxes. The carryover from this political tradition is that counties developed as arms of state government. County-level officials being elected locally was a means of making state policy more responsive to local needs and provided a sense of local accountability. This is not to imply that counties do not have self-governing powers.⁷

Optional forms of county government

Montana's constitution requires the legislature to allow local governments to choose their own forms of government. The Montana constitution further requires that one of the options provide for elected county attorneys.⁸

Significantly, the Montana Constitution also provides that a local government may choose to claim self-governing powers. To claim self-governing powers, a local government must enact a charter, which, similar to a constitution, sets forth the county government's executive, legislative, and judicial powers. Under a charter, a local government may exercise any power not expressly prohibited by the federal or state constitution, by state law, or by the charter.⁹

Of Montana's 56 counties, 52 have adopted a straight commission form of government. Fergus County is the only county which also has a charter. Petroleum County adopted a commission - manager form of government rather than a straight commission form; and two cities and counties have chosen to consolidate their county and city governments: Butte-Silver Bow and Anaconda-Deer Lodge. Each of these consolidated governments has also adopted a charter.¹⁰

⁷ Weaver, Kenneth L., *Governing Montana at the Grow Roots: Local Government Structure, Process and Politics*, Local Government Center, Montana State University - Bozeman, 2002.

⁸ See Article XI, Section 3, Montana Constitution.

⁹ See Article XI, Sections 5 and 6, Montana Constitution.

¹⁰ Local Government Center, Montana State University - Bozeman.

County attorneys

Full-time or part-time, partisan or non-partisan offices: A county may decide whether the county attorney is appointed or elected. Currently, with a few unique exceptions discussed below, county attorneys in Montana are elected officials, and serve 4-year terms with no term limits. However, a county may contract for services with another county's county attorney or with a private attorney.¹¹

In 46 counties, the county attorney is elected on a partisan ballot, while in 10 counties, county attorneys are elected on a non-partisan ballot.¹²

By state statute, in a county with more than 30,000 people, the county attorney must be full-time. In a county with less than 30,000 people, the county attorney may be either full-time or part-time.

Currently, 32 Montana counties have full-time county attorneys (although only 8 of these counties are required to), and 24 counties have part-time county attorneys. Petroleum County hires a part-time county attorney who lives outside the county. Meagher and Wheatland Counties share a county attorney; and Golden Valley and Musselshell Counties share a county attorney.

Figures 1 and 2 show which counties have full-time or part-time county attorneys.

Eligibility criteria: By statute, to hold the office of county attorney, an individual must be a United States Citizen and have been a Montana resident for at least 2 years. A county attorney must have:

- at least 5 years of experience if the office is in a county with at least 30,000 people;
- at least 3 years, if the office is full-time and in a county with less than 30,000 people, or

¹¹ See sections 7-4-2707 and 7-4-2708.

¹² Ibid.

- be admitted to the bar before taking office if the office is a part-time position.

There are no other special training requirements for county attorneys.¹³

In a county with a population in excess of 30,000, a county attorney is prohibited from engaging in a private practice.¹⁴ Thus, part-time county attorneys may continue to maintain a private practice and carry a private caseload.

Duties: County attorneys essentially have three jobs:

- prosecutor for the state and county;
- defense attorney if an action is brought within the county against either the state or the county; and
- legal advisor to the county and districts within the county.

County attorneys prosecute criminal and civil cases (such as abuse and neglect, involuntary civil commitments, and juvenile delinquency). They "attend" in both county courts of limited jurisdiction (Justice of the Peace Courts) and state District Courts.

With regard to the county attorney's duties for the state, section 7-4-2716, MCA, originally enacted in 1895, makes it clear that the county attorney is to act on behalf of the state. That statute reads as follows:

7-4-2716. Duties related to state matters. The county attorney must:

- (1) attend the district court and conduct, on behalf of the state, all prosecutions for public offenses and represent the state in all matters and proceedings to which it is a party or in which it may be beneficially

¹³ See sections 7-4-2707 and 7-4-2708.

¹⁴ The language in Sections 7-4-2704(2) and 7-4-2706(1), MCA, is not clear with respect to whether this limitation on private practice applies to a full-time county attorney in a county with a population of less than 30,000. This may be an area where a "housekeeping" bill could clean-up the language to clearly reflect legislative intent.

interested, at all times and in all places within the limits of his county;

(2) when ordered or directed by the attorney general to do so, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding;

(3) defend all suits brought against the state.

Figure 3 provides county attorney caseload data collected nationally by the Bureau of Justice Statistics (BJS) for a 2001 report. The accuracy of this data has not been tested. If it is accurate, there are some large disparities between counties. For example, some full-time county attorney offices are carrying a smaller caseload than some part-time county attorney offices. Certainly, part of the explanation is that, especially in smaller counties, caseload varies widely year to year. Additionally, there are staffing differences. **Figure 4** provides BJS data on deputies and assistants.

☞ **RESEARCH QUESTION #2: Should disparities among the counties with respect to county attorney services be examined more closely?**

The staff white paper could examine county variables such as population, caseload, the availability of attorneys within each county, and county fiscal resources and analyze how they relate (or do not relate) to variations in county attorney services. The data could also be examined in context with judicial district boundaries and the larger question of whether Montana should further consider a district attorney structure. However, analysis of this data may not reveal much more information than what is already generally known, i.e., that disparities exist for various and inconsistent reasons and that there are also disparities and inconsistencies among judicial districts.

Figure 1:
County Attorney Positions by
Judicial District, County, Population, Salary: FY 2005

<i>Judicial District</i>	<i>County</i>	<i>County Pop</i>	<i>District Pop</i>	<i>County Attorney</i>
1	BROADWATER	4,385		PT
1	*LEWIS AND CLARK	55,716	60,101	*Full-time
2	*SILVER BOW	34,606	34,606	*Full-time
3	DEER LODGE	9,417		Full-time
3	GRANITE	2,830		PT
3	POWELL	7,180	19,427	Full-time
4	MINERAL	3,884		Full-time
4	*MISSOULA	95,802	99,686	*Full-time
5	BEAVERHEAD	9,202		Full-time
5	JEFFERSON	10,049		Full-time
5	MADISON	6,851	26,102	Full-time
6	PARK	15,694		Full-time
6	SWEET GRASS	3,609	19,303	Full-time
7	DAWSON	9,059		PT
7	MCCONE	1,977		PT
7	PRAIRIE	1,199		PT
7	RICHLAND	9,667		Full-time
7	WIBAUX	1,068	22,970	PT
8	*CASCADE	80,357	80,357	*Full-time
9	GLACIER	13,247		PT
9	PONDERA	6,424		PT
9	TETON	6,445		Full-time
9	TOOLE	5,267	31,383	Full-time
10	FERGUS	11,893		Full-time
10	JUDITH BASIN	2,329		PT
10	PETROLEUM	493	14,715	PT
11	*FLATHEAD	74,471	74,471	*Full-time
12	CHOUTEAU	5,970		PT
12	HILL	16,673		Full-time
12	LIBERTY	2,158	24,801	PT
13	*YELLOWSTONE	129,352	129,352	*Full-time
14	GOLDEN VALLEY	1,042		PT
14	MEAGHER	1,932		PT
14	MUSSELSHELL	4,497		PT
14	WHEATLAND	2,259	9,730	PT
15	DANIELS	2,017		PT
15	ROOSEVELT	10,620		Full-time
15	SHERIDAN	4,105	16,742	PT
16	CARTER	1,360		PT
16	CUSTER	11,696		Full-time
16	FALLON	2,837		PT
16	GARFIELD	1,279		PT
16	POWDER RIVER	1,858		PT
16	ROSEBUD	9,383		Full-time
16	TREASURE	861	29,274	PT
17	BLAINE	7,009		Full-time
17	PHILLIPS	4,601		PT
17	VALLEY	7,675	19,285	Full-time
18	*GALLATIN	67,831	67,831	*Full-time
19	LINCOLN	18,837	18,837	Full-time
20	LAKE	26,507		Full-time
20	SANDERS	10,227	36,734	Full-time
21	*RAVALLI	36,070	36,070	*Full-time
22	BIG HORN	12,671		Full-time
22	CARBON	9,552		Full-time
22	STILLWATER	8,195	30,418	Full-time

* denotes county population of greater than 30,000, requiring a full-time county attorney

Sources: Montana Supreme Court Office's of Court Administrator, 2000 Census, and the Montana Department of Justice

Figure 2

County Attorneys Full-time vs. Part-time

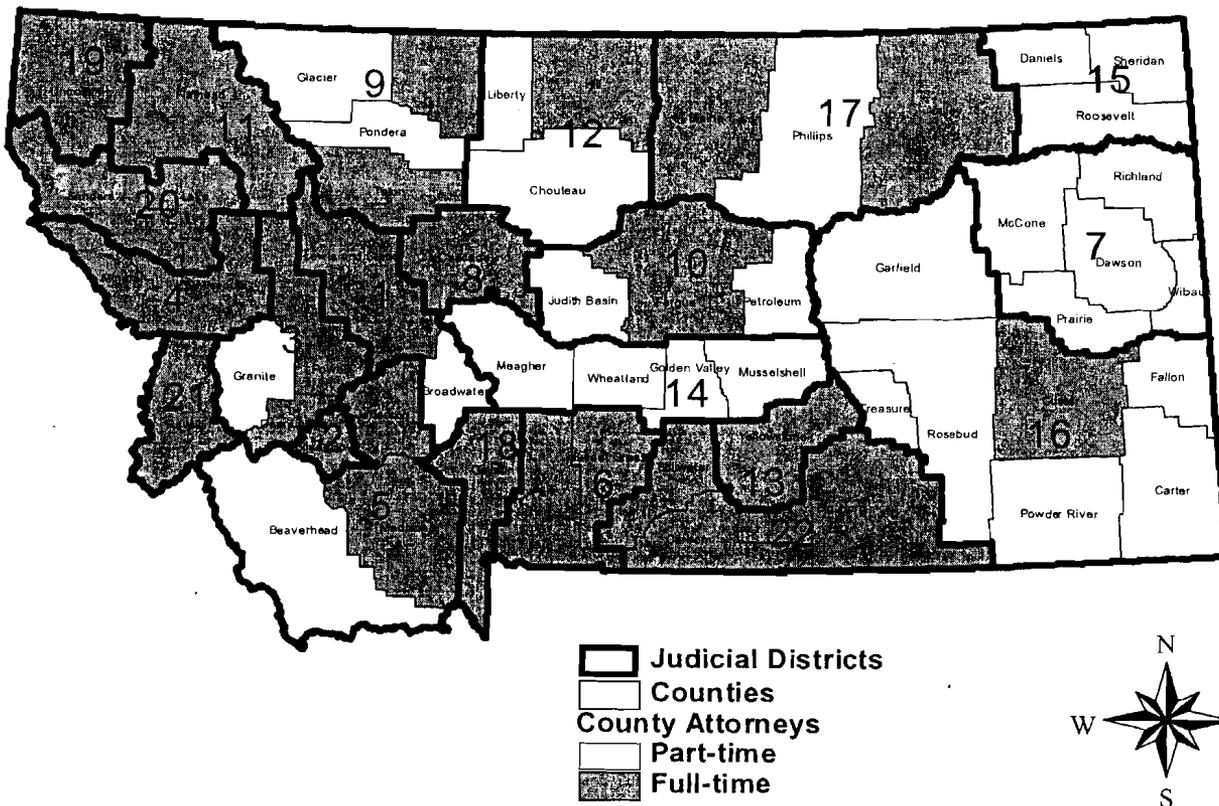


Figure 3

COUNTY ATTORNEY CASELOAD

Source: Bureau of Justice Statistics Survey for 2001 Report

County	Chief Prosecutor	Felonies			Misdemeanors	
		Jury verdicts	Cases closed	Cases convicted	Cases closed	Cases convicted
Beaverhead	PT	2	50	45	450	430
Big Horn	Full-time	10	60	55	250	200
Blaine	Full-time	3	30	26	40	40
Broadwater	PT	2	35	34	250	240
Carbon	Full-time	0	40	38	300	300
Carter	PT	0	1	1	3	2
Cascade	Full-time	18	300	550	2,500	3,500
Chouteau	PT	1	14	12	70	50
Custer	Full-time	1	107	85	117	100
Daniels	PT	0	4	4	10	10
Dawson	PT	2	35	28	185	153
Deer Lodge	Full-time	3	65	63	300	270
Fallon	PT	0	5	4	30	28
Fergus	Full-time	4	60	65	500	450
Flathead	Full-time	9	350	300	520	450
Gallatin	Full-time	10	230	220	700	650
Garfield	PT	0	0	0	80	78
Glacier	PT	3	85	83		
Granite	Full-time	0	10	10	100	100
Hill	Full-time	6	95		275	
Jefferson	Full-time	5	55	51	120	110
Judith Basin	PT	0	7	7		
Lake	Full-time	6	130	118	1,000	950
Lewis and Clark	Full-time	12	275	10	1,000	900
Liberty	Full-time	0	3	3	5	4
Lincoln	Full-time	4	60	50	200	180
Madison	Full-time	1	16	16	150	140
McCone	PT	0	3	3	40	40
Meagher	PT	0	3	3	30	1
Mineral	Full-time	2	40	39	150	145
Missoula	Full-time	20	450	430	1,000	900
Musselshell/Gol	Full-time	2	18	5	153	78
Park	Full-time	15	120	110	400	350
Petroleum	PT	0	8	8	20	19
Phillips	PT	1	15	15	50	50
Pondera	Full-time	1	16	14	205	200
Powder River	PT	0	2	2	70	60
Powell	Full-time	4	86	74	213	187
Prairie	PT	0	1	1	20	18
Ravalli	Full-time	7	185	160	500	400
Richland	PT	1	40	39	250	240
Roosevelt	PT	0	15	7	1,721	50
Rosebud	Full-time	0	50	48	200	175
Sanders	Full-time	2	40	42	75	75
Sheridan	PT	0	15	15	75	70
Silver Bow	Full-time	10	350	347	1,200	1,164
Stillwater	Full-time	5	48	45	263	261
Sweet Grass	PT	0	5	5	25	23
Teton	Full-time	4	25	20	100	90
Toole	Full-time	0	60	54	240	205
Treasure	PT	0	6	6	50	46
Valley	Full-time	1	8	7	31	26
Wheatland	PT	0	9	5	52	48
Wibaux	PT	0	2	2	12	10
Yellowstone	Full-time	5	627	572		
TOTALS		182	4,369	3,956	16,300	14,266

Figure 4

Deputies and Assistants

Source: Bureau of Justice Statistics, 2001

County	Office	Deputies	Assistants	Total
Beaverhead	PT	1	0	1
Big Horn	Full-time	1	0	1
Blaine	Full-time	1	0	1
Broadwater	PT	0	0	0
Carbon	Full-time	1	0	1
Carter	PT	0	0	0
Cascade	Full-time	8	0	8
Chouteau	PT	0	0	0
Custer	Full-time	1	0	1
Daniels	PT	0	0	0
Dawson	PT	2	0	2
Deer Lodge	Full-time	1	0	1
Fallon	PT	0	0	0
Fergus	Full-time	1	0	1
Flathead	Full-time	3	0	3
Gallatin	Full-time	4	0	4
Garfield	PT	0	0	0
Glacier	PT	2	0	2
Granite	Full-time	0	1	1
Hill	Full-time	1	0	1
Jefferson	Full-time	1	0	1
Judith Basin	PT	0	0	0
Lake	Full-time	2	0	2
Lewis and Clark	Full-time	4	0	4
Liberty	Full-time	0	0	0
Lincoln	Full-time	1	1	2
Madison	Full-time	0	0	0
McCone	PT	0	0	0
Meagher	PT	0	0	0
Mineral	Full-time	0	0	0
Missoula	Full-time	7	0	7
Musselshell/Golden	PT shared	0	0	0
Park	Full-time	1	0	1
Petroleum	PT	0	0	0
Phillips	PT	1	0	1
Pondera	Full-time	0	0	0
Powder River	PT	0	0	0
Powell	Full-time	0	0	0
Prairie	PT	0	0	0
Ravalli	Full-time	2	0	2
Richland	PT	1	0	1
Roosevelt	PT	0	0	0
Rosebud	Full-time	0	0	0
Sanders	Full-time	1	0	1
Sheridan	PT	0	0	0
Silver Bow	Full-time	5	0	5
Stillwater	Full-time	0	0	0
Sweet Grass	PT	0	0	0
Teton	Full-time	0	0	0
Toole	Full-time	0	0	0
Treasure	PT	0	0	0
Valley	Full-time	0	0	0
Wheatland	PT	0	0	0
Wibaux	PT	0	0	0
Yellowstone	Full-time	12	2	14

RESEARCH QUESTION #3: Should the staff white paper examine and sort through what "state" functions and "county" functions are performed by county attorneys? This question assumes that county attorney services can be broken out into "state" and "county" functions and be clearly defined. Sorting through this was the expectation expressed by Mr. Gordon Morris, executive director of MACo, during the SJR 40 session hearings. The policy issue is whether the county attorney model is, in fact, archaic as a method to "enforce the kings laws" and whether there is substantial justification for carving out the state-related duties and handing them to state officials, i.e., to district attorneys, rather than keeping them as part of a county attorney's duties where prosecution policy is more responsive to the local community. However, funding was the driving concern raised by MACo. Mr. Morris' testimony made it clear that MACo believes that the state should pay 100% of the costs for prosecution. However, good public policy should drive fiscal policy, not the other way around. Research in this area may further illuminate the policy implications as well as the fiscal implications for both the state and the counties.

Salary: By state statute, if a county attorney position is full-time, the salary must start at \$50,000. The base salary of a part-time county attorney position is statutorily set at whatever the salary was in FY 2001. This base salary for either a full-time or part-time county attorney is subject to adjustment by the county compensation board. The county compensation board consists of all 3 county commissioners, the county attorney, 3 other elected or appointed county officials, and between 2 and 4 resident taxpayers appointed by the commissioners. This board sets the county attorney's salary schedule after considering the following:

- county population;
- assessed valuation of property in the county;
- motor vehicle registrations;
- building permits; and
- any other factor that seems relevant to the board members.

The salary schedule must be adopted by a majority vote of the county compensation board members and that the majority must include at least two of the three county commissioners on the board.¹⁵ State statute does not specify a standard formula about how considerations should be weighed or how the salary schedule should be calculated.

State share: By statute, the Department of Justice is obligated to pay 50% of each county attorney's salary.¹⁶ However, a separate statute provides that this obligation is subject to the Department's appropriated budget.¹⁷ The state's obligation and the county compensation board's power to adopt a salary schedule independent of state appropriations continues to be a source of consternation for both the state and the counties. A county may increase the county attorney's salary, but, the legislature may not fund the full amount required to cover 50% of the total increase. Thus, state salary payments are often less than 50% of the county attorney's salary. This not only stresses state-county relations, but it can also become a fiscal and administrative tangle. Statutes concerning this current process are not clear and should be clarified with better coordinating language.

External pay equity among county attorney salaries is also a concern because county attorney salaries vary greatly county to county. **Figure 5** provides a spreadsheet showing county attorney salary information. Equity with state attorney salaries is another issue. Although state Prosecution Services Bureau attorneys provide essential assistance to county attorneys, in many instances, state attorney salaries lag significantly behind county attorney salaries.

¹⁵ See section 7-4-2503, MCA..

¹⁶ See section 7-4-2502(2)(a), MCA.

¹⁷ See section 17-7-112(2)(b), MCA.

Figure 5

County Attorney Gross Salaries for FY 2005					
County	Chief Prosecutor	State-pay	County-pay	Total Salary	State Share as % of Total
Beaverhead	PT	\$20,069	\$34,594	\$54,662	36.7%
Big Horn	Full-time	\$32,687	\$40,874	\$73,561	44.4%
Blaine	Full-time	\$32,353	\$34,116	\$66,470	48.7%
Broadwater	PT	\$18,368	\$19,628	\$37,996	48.3%
Carbon	Full-time	\$35,000	\$35,000	\$70,000	50.0%
Carter	PT	\$17,980	\$18,476	\$36,456	49.3%
Cascade	Full-time	\$36,543	\$37,374	\$73,917	49.4%
Chouteau	PT	\$20,664	\$22,508	\$43,173	47.9%
Custer	Full-time	\$34,218	\$36,566	\$70,784	48.3%
Daniels	PT	\$19,257	\$22,098	\$41,355	46.6%
Dawson	PT	\$20,176	\$22,618	\$42,795	47.1%
Deer Lodge	Full-time	\$31,479	\$33,906	\$65,385	48.1%
Fallon	PT	\$22,172	\$30,503	\$52,675	42.1%
Fergus	Full-time	\$34,360	\$35,762	\$70,123	49.0%
Flathead	Full-time	\$37,461	\$45,094	\$82,555	45.4%
Gallatin	Full-time	\$38,595	\$42,407	\$81,002	47.6%
Garfield	PT	\$16,465	\$18,798	\$35,264	46.7%
Glacier	PT	\$19,359	\$19,905	\$39,264	49.3%
Golden Valley	PT	\$17,291	\$17,291	\$34,581	50.0%
Granite	Full-time	\$17,507	\$18,491	\$35,998	48.6%
Hill	Full-time	\$33,219	\$37,113	\$70,332	47.2%
Jefferson	Full-time	\$29,777	\$33,153	\$62,931	47.3%
Judith Basin	PT	\$16,272	\$16,941	\$33,213	49.0%
Lake	Full-time	\$35,562	\$37,817	\$73,378	48.5%
Lewis & Clark	Full-time	\$37,169	\$47,854	\$85,023	43.7%
Liberty	Full-time	\$15,852	\$17,552	\$33,404	47.5%
Lincoln	Full-time	\$33,153	\$34,133	\$67,286	49.3%
Madison	Full-time	\$33,614	\$37,409	\$71,023	47.3%
McCone	PT	\$18,028	\$21,613	\$39,641	45.5%
Meagher	PT	\$16,864	\$17,538	\$34,403	49.0%
Mineral	Full-time	\$35,931	\$40,251	\$76,182	47.2%
Missoula	Full-time	\$42,484	\$47,434	\$89,918	47.2%
Musselshell	PT	\$17,765	\$19,031	\$36,796	48.3%
Park	Full-time	\$39,789	\$43,870	\$83,659	47.6%
Petroleum	PT	\$6,266	\$6,536	\$12,801	48.9%
Phillips	PT	\$20,211	\$21,697	\$41,908	48.2%
Pondera	Full-time	\$18,896	\$21,105	\$40,001	47.2%
Powder River	PT	\$19,348	\$19,348	\$38,695	50.0%
Powell	Full-time	\$34,639	\$35,248	\$69,887	49.6%
Prairie	PT	\$17,517	\$18,589	\$36,105	48.5%
Ravalli	Full-time	\$35,513	\$39,471	\$74,984	47.4%
Richland	PT	\$20,696	\$37,966	\$58,662	35.3%
Roosevelt	PT	\$22,206	\$46,894	\$69,100	32.1%
Rosebud	Full-time	\$33,711	\$34,406	\$68,118	49.5%
Sanders	Full-time	\$34,676	\$36,273	\$70,948	48.9%
Sheridan	PT	\$19,654	\$20,843	\$40,496	48.5%
SilverBow	Full-time	\$39,023	\$43,247	\$82,270	47.4%
Stillwater	Full-time	\$33,629	\$43,789	\$77,419	43.4%
Sweet Grass	PT	\$33,486	\$34,178	\$67,665	49.5%
Teton	Full-time	\$29,292	\$31,972	\$61,264	47.8%
Toole	Full-time	\$34,737	\$39,192	\$73,929	47.0%
Treasure	PT	\$17,176	\$18,026	\$35,202	48.8%
Valley	Full-time	\$32,498	\$34,691	\$67,189	48.4%
Wheatland	PT	\$22,016	\$27,517	\$49,533	44.4%
Wibaux	PT	\$17,987	\$19,133	\$37,120	48.5%
Yellowstone	Full-time	\$39,625	\$43,805	\$83,430	47.5%
Totals		\$1,510,287	\$1,711,647	\$3,221,934	46.9%

Source: Montana Department of Justice

☞ **RESEARCH QUESTION #4: Should county attorney salaries be examined in the white paper?** Salary and pay equity is a "hot button" issue and one of the primary issues raised to justify study of a district attorney structure. A district attorney structure provide that 100% of the prosecutor's salary would be paid by the state and the salary would be set subject to the state classification and pay plan. However, there are also disadvantages for county attorneys who may make more as a county attorney than they would as a state attorney. Further research in this area would likely reveal very strong opinions and would need to be conducted by placing this hot topic in context with the larger policy questions about whether the county attorney structure is indeed archaic and whether a district attorney structure would be an more effective way of providing prosecution services in Montana.

Deputy county attorneys

Statute provides that in a 1st or 2nd Class County (i.e., a county with a taxable value of greater than \$30 million), the county may have one chief deputy and one deputy county attorney without county commission approval. A county with a taxable value of less than \$30 million is authorized one chief deputy and one deputy county attorney with county commission approval. The county commissioners set the salary for deputy county attorneys. By statute, deputies are entitled to an annual longevity increase of \$1,000 after 4 years of service, \$1,500 after 5 years of service, and \$500 for each year of service after 5 years, up through 11 years of service.¹⁸ A separate statute provides that the salary of a deputy county attorney may not exceed the salary (plus longevity) of the county attorney. Thus, it seems that a longevity increase may be denied to a deputy attorney if the increase would cause the deputy's salary to exceed the county attorney's salary, even though the county attorney's salary is determined and set in a completely different manner.

¹⁸ See Sections 7-4-2503(3)(d) and 7-4-2505, MCA .

RESEARCH QUESTION #5: **Should deputy county attorney positions and salary be reviewed further?** Testimony during the SJR 40 hearings indicated significant internal conflicts within some county attorney offices over the salaries of deputies. These internal equity issues no doubt affect recruitment and retention and services to both the state and the counties. The white paper could examine options for making pay policy more consistent internally and externally. The option forwarded by proponents of SJR 40 was, of course, to establish a district attorney structure with respect to prosecution services.

Conclusion

This report has presented preliminary background information relevant to the SJR 40 study and has outlined five key questions about what should be further researched. The next step is for the LJIC to consider these issues in context with the information provided on September 22. At the conclusion of the September 22 meeting, the LJIC will be asked to direct staff concerning which of the policy questions should be addressed in the white paper report to the LJIC in March 2005.

**Status of SJR 40 Study
County Attorney Services**

prepared for the
Local Government Subcommittee
by Sheri Heffelfinger, Research Analyst

October 6, 2005

- ◆ During session, SJR 40 was supported by Attorney General, MACo, and the Montana County Attorney's Association. Testimony indicated the issue boiled down to state funding and statewide standards and that one option to consider would be a district attorney model for delivering prosecution services.
- ◆ The legislature ranked the SJR 40 study 20th out of 22 study requests.
- ◆ The Legislative Council assigned SJR 40 to the Law and Justice Interim Committee (LJIC) with the recommendation that the study be assigned to staff rather than conducted as a full committee study.
- ◆ First LJIC meeting was July 26, 2005: an organizational meeting to set priorities.
-- Attorney General and MACo testified in support of a thorough SJR 40 study
- ◆ The study plan adopted by the LJIC set the following study priorities:

Study/ Activity	Description	Percentage allocation of total resources
SJR 6	Study of legal services for moderate and low-income Montanans	35%
SJR 40	Study of county attorney services <i>(less than a full study, but more than a staff white paper report)</i>	25%
HJR 15	Study of sentencing equity <i>(limited staff white paper)</i>	15%
Follow-up	SB 146 - Public Defender Act	10%
Statutory	Agency monitoring	10%
SJR 37	Coordination with CFHHS on child protective services <i>(requested by Legislative Council)</i>	5%

◆ Second meeting of LJIC, September 21-22, 2005. One entire day devoted to the SJR 40 study.

-- Staff Background Report (available upon request)

-- Attorney General

- County Attorneys have a huge responsibility and, in larger counties, a huge workload
- No statewide training standards or professional requirements for county attorneys
- Disjointed system where some counties have part-time county attorneys, no deputies
- Wide disparities in caseload and salary
- Difficult to gather data
- Need to match resources with needs
- Consider separating criminal prosecution from civil matters
- Criminal = state responsibility, civil = county responsibility, with certain exceptions
- County attorneys should still be elected officials, if district attorney, then elected in district similar to district judges

-- MACo (Harold Blattie)

- Wide differences county to county, workload and issues handled vary greatly
- Offered MACo's assistance in surveying counties for county attorney data

-- Montana County Attorney Association (Fred VanValkenberg)

- Caseloads are substantial and growing, state and local resources are falling short
- Best government is local and accountable to local voters
- Current system is not archaic, is working but could be improved
- Incentives to encourage careers in prosecution services
- Additional resources for such things as expert witnesses and transcripts
- Mandatory training requirements
- Enhanced funding for AG's Prosecution Services Bureau and the state crime lab
- Statutory appropriation for state's portion of county attorney salaries

-- LJIC work session to identify further research needs, directions to staff

- Essentially modified work plan to make SJR 40 as high a priority as SJR 6
- Requested additional data on workload and breakdown between civil and criminal
- Requested additional info. on county attorney budgets
- Requested a glossary of terms
- Requested a laundry list of options
- More info. on what a district attorney system is, pros and cons

◆ LJIC's remaining meeting schedule

November 17, 2005 -- info. gathering

January 19, 2006 -- info. gathering

March 23, 2006 -- options and analysis of options

May 11-12, 2006 -- options and analysis of options

June 29-30, 2006 -- preliminary recommendations

August 31, 2006 -- final recommendations