



**Montana Legislative Services Division**  
**Office of Research and Policy Analysis**  
**David D. Bohyer, Director**

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TO: Members of the Task Force on State Public Defender Operations  
FROM: Dave Bohyer, LSD Research Director  
RE: Options for professional administration and management of the functions of the Offices of Public Defender, Appellate Defender, and Conflict Coordinator

The Task Force on State Public Defender Operations has asked staff to identify options for the professional administration and management of the functions of the offices of public defender, appellate defender, and conflict coordinator. This memorandum responds to the request.

There are numerous options available to consider for the professional administration and management of the functions of the offices of the state public defender, appellate defender, and conflict coordinator. Some of the options include:

- by letter or Task Force recommendation, requesting the Public Defender Commission to professionalize the administration and management of the offices;
- through legislation, creating a new, statutory position and directing the Public Defender Commission to professionalize the administration and management of the offices; and
- through legislation, substantially revising the organizational structure of the entity designed to provide constitutionally required legal services to certain indigent individuals.

There are undoubtedly other options as well.

"Executive Direction"

Expanding on the option to professionalize the administration and management of the offices of public defender, appellate defender, and conflict coordinator, the Task Force could recommend legislation to establish a position of "Executive Director" position within a newly created office or within the office of state public defender. If the Task Force were to recommend such legislation, the following items and many others would need to be addressed:

- Who or what entity would be authorized or required to hire or appoint and evaluate the performance of the executive director?
- Would the legislation outline the duties, responsibilities, and authority of the executive director or would the Public Defender Commission or another entity do the outlining?
- What duties, responsibilities, and authority would the legislation provide for that are not provided for in current statute?
- Would the executive director's authority be limited or would it be expansive? Regardless, it would potentially need to be clearly articulated in statute or by the Commission so as to minimize the possibility for internal conflicts among the various offices' functions, authority, responsibilities, and staffs.
- Would the legislation direct the executive director to execute the prescribed duties

through the main office of the public defender in Butte, the office of the appellate defender in Helena, or some other location or would the location be left to the discretion of the Commission?

- Would the legislation include new funding for the position and its functions or would it presume reorganization within existing resources?
- What information might the legislature need to evaluate the efficacy of an executive director function, as opposed to the management and administration currently provided through the administrative manager within the office of state public defender?

The several bullet points above illustrate some of the decisions the Task Force would need to decide if it pursues the option to recommend statutorily creating an executive director position and the position's duties, responsibilities, and authority.

A mock draft bill, LC 6271, is attached to illustrate some of the issues to be addressed if the Task Force chooses a legislation option and to show some, but not certainly not all, of the Montana Code Annotated sections that could need to be amended. A different vision of how new or revised statutes could achieve the Task Force's goals could and likely would involve other Code sections, including additional "New" sections or repeal of existing sections. LC 6271 is merely a rough draft of a single option to professionalize the administration and management of the state's public defender and appellate defender functions

Respectfully submitted.

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