

**Options Chart:**  
**Montana Public Defender Study**

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for the  
*Law and Justice Interim Committee*

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	<p align="center"><b>OPTION A -</b> CURRENT SYSTEM WITH A FEW SELECT CHANGES</p>	<p align="center"><b>OPTION B -</b> HYBRID APPROACH - STATEWIDE COORDINATION BUT NOT A CHIEF PUBLIC DEFENDER</p>	<p align="center"><b>OPTION C -</b> STATE PUBLIC DEFENDER OFFICE</p>
<p><b>BASIC FEATURES</b></p>	<p><b>Retain state-funded, county-administered system</b></p> <p>Counties may establish an office or contract for public defender (PD) services</p> <p>Absent county action and in extenuating circumstances, such as conflicts, the judge directly appoints a PD on a case-by-case basis.</p> <p>The Office of Court Administrator pays allowable costs pursuant to section 3-5-901, MCA. These payments are made directly to contracted and court-appointed PDs, while county PD offices are reimbursed.</p> <p>The District Court Council is responsible for adopting policies and procedures to govern state payment of District Court costs and, subject to review by the Supreme Court, provides cost controls through adopted policies, some of which are included in a handbook defining allowable versus non-allowable PD costs.</p> <p>The Appellate Defender Commission is responsible for establishing performance standards for public defenders.</p> <p><b>Needed statutory clarifications</b></p> <p>Clarify section 3-5-901, MCA, to simplify fiscal administration.</p> <p>Clarify statutory language on the roles of the District Court Council and the Appellate Defender Commission with respect to the public defender program.</p>	<p><b>Hybrid approach, state assumes contracting, counties keep PD offices, judges no longer appoint case-by-case</b></p> <p>Statewide contracting through the Office of Court Administrator (OCA) would replace county contracts and judicial appointments of PDs on a case-by-case basis.</p> <p>County PD offices would continue to be county-administered with the state reimbursing the county for PD costs related to district court cases. County offices would have to adhere to certain policies and have to develop an "approved" plan .</p> <p>The program standards could be overseen by either the District Court Council (DCC) or Appellate Defender Commission (ADC) but changes to current duties would be needed</p> <p>In counties without a county PD office, the judge would refer the case to the Office of Court Administrator, which would assign the case to a contracted public defender.</p> <p>The DCC and/or ADC would adopt policies, standards and cost controls encompassing:</p> <ul style="list-style-type: none"> <li>-- how courts determine and define indigence</li> <li>-- minimum experience and training requirements for PDs</li> <li>-- caseload maximums for PDs</li> <li>-- defining allowable expenses</li> <li>-- how courts manage and report caseload</li> <li>-- contracting and contract monitoring</li> <li>-- uniform reporting requirements on caseloads and expenditures</li> </ul>	<p><b>State Public Defender Office</b></p> <p>*Note: There are a range of models to look at and examine for how to organize a state public defender office and how to handle appointment of the Chief Public Defender. These models would be further examined and analyzed and the Committee would again consider and vote on options.</p> <p>General Concept: State assumes all administrative and funding responsibilities for county PD offices and contracted services</p> <p>Full-time state staff of PDs and support staff</p> <p>State contracting where FTE not justified</p> <p>Statewide training program, continuing education requirements set by state office</p> <p>One way to organize would be to make the Appellate Defender program part of the State Public Defender Office, with Appellate Defender Commission being converted to the Public Defender Commission, which would appoint a chief public defender</p>

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<p><b>PROS</b></p>	<ul style="list-style-type: none"> <li>- Will allow more time for the collection of expenditure data and for further analysis of the entire District Court program and budget with respect to indigent defense so that more information would be available for the next interim. (The expenditure information we have is based on less than 6 months experience.)</li> <li>- Allows time for seeing how the ACLU lawsuit turns out</li> <li>- If this model is retained, the District Court Council would remain responsible for oversight and for adopting standards and cost controls.</li> <li>- Counties retain flexibility to decide how best to deliver services</li> <li>- County administration is more responsive to local needs, perceptions</li> <li>- Cost controls and budget concerns are separated (buffered) from decision-making on how best to provide services to ensure effective counsel</li> </ul>	<ul style="list-style-type: none"> <li>- May capture the best of both local and state administration by engaging state standards and cost control while still allowing for local administration and supervision without a new state bureaucracy</li> <li>- State-level contracting would allow for centralized coordination, uniformity, and state-wide standards, relieve counties of the administrative burden of contracting</li> <li>- Contracted services would replace judicial appointments on a case-by-case basis and remove judges from supervising and approving funding for PD services</li> <li>- The OCA or ADC would have an enhanced capability for collecting statewide statistics and data and for administering and monitoring contract compliance</li> <li>- A simplified formula could be set for splitting county PD office costs between the county and state, such as an 80% state to 20% county cost split, which would streamline administration and allow counties to retain control over how best to configure local PD services</li> <li>- County control of the PD offices balances the decision-making on what is needed to provide effective defense against the state fiscal pressures to spend the least amount possible</li> </ul>	<ul style="list-style-type: none"> <li>- All the advantages of Option B, except...</li> <li>-County PD offices would become state offices, giving the state the advantage of administrative and supervisory responsibility to monitor performance, manage caseloads, and control costs in those offices</li> <li>- An independent office could be attached to either the Judiciary or the Executive</li> <li>- A statewide strategic plan could be developed to assess needs and hire staff or contract out accordingly</li> <li>- Adding more salaried PDs to handle caseloads outside the counties with county public defender offices could result in efficiencies and stabilize fluctuating hourly costs under contracted services and case-by-case appointments.</li> <li>- Fiscal and management accountability at the top</li> </ul>

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<p><b>CONS</b></p>	<ul style="list-style-type: none"> <li>- Variations in county approaches may cause lack of fairness on a statewide basis</li> <li>- State is paying costs but has limited ability to engage cost controls, require accountability or justification for expenditures.</li> <li>- The District Court Council has limited power to bind judicial decisions, so standards and controls may not be effective.</li> <li>- No centralized data or case-management system, so even with more time, essential data may not become available</li> <li>- Counties carry the administrative burden, which MACo argues should be a state responsibility</li> </ul>	<ul style="list-style-type: none"> <li>- County PD offices would remain a local administrative burden with little incentive at county level to control costs, monitor performance, or manage caseloads, unless there is strong enforcement of meaningful standards and practices</li> <li>-The county would still have a potential conflict of interest between providing for a county attorney and for a public defender</li> <li>- The state would be paying large portion (e.g. 80%) of the costs of the PD offices without the ability to control costs or have administrative control over number of FTE hired by a county and the salaries paid</li> <li>- No mechanism for the state to hire new salaried FTE in regions of the state that could be served by salaried PDs. Without salaried FTE, costs can fluctuate dramatically depending on caseload and hours spent/billed in any given month.</li> <li>- Limited ability to provide monitor and enforce performance standards.</li> <li>- Substantial changes may be required to the statutory duties, staffing, and funding provided for the operation of the DCC and/or the ADC.</li> </ul>	<ul style="list-style-type: none"> <li>- Becomes a top-down system with limited local control or flexibility</li> <li>- Significant new costs to the state for a central office and for total assumption of county PD offices. More work needs to be done to ensure an accurate picture of what new costs are involved.</li> <li>- Need to address how counties will provide and pay for PD services in Justice Courts when county offices become state offices</li> <li>- Those responsible for controlling spending will be same as those responsible for deciding how best to provide PD services, which could result in fiscal pressures that conflict with the goal of ensuring effective counsel for indigent defendants</li> <li>- If new FTE are added, new fixed costs are built in. More FTE than justified means loss of efficiency and more cost than necessary. Too few FTE means workloads can become unmanageable and/or too much reliance on contracting with outside attorneys, which defeats the purpose of trying to stabilize hourly costs.</li> <li>- State FTE will take business away from private practice attorneys, creates a new bureaucratic layer for attorneys to work under.</li> <li>- State salaries are usually less attractive to experienced attorneys, so state PDs likely to be less experienced. High turn over could create costs as entry-level attorneys gain experience and leave.</li> </ul>