



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: Option to add a prosecutor to the Public Defender Commission

The Task Force on State Public Defender Operations has asked staff to develop an option to add a prosecutor to the Public Defender Commission. This memorandum responds to the request.

I have attached a mock bill draft, LC 6273, that illustrates an option whereby a prosecutor is added to the membership of the Public Defender Commission. Adding a prosecutor as a new member is an option to replacing an existing member of the Commission so as to maintain the same number of commissioners. If the Task Force pursues an option to add a prosecutor to the PDC, the first decision will necessarily need to be whether the prosecutor will be added as a new member, increasing the membership from 11 to 12, or a replacement for an existing member. Other decisions the Task Force would need to address include:

- what qualifications, if any, in addition to being a prosecutor, must the nominee/appointee have, e.g.:
 - ✓ active prosecutor or former prosecutor?
 - ✓ municipal, county, or federal prosecutor?
 - ✓ years of experience as a prosecutor?
- will the prosecutor be any prosecutor who meets the qualifications or must the prosecutor be chosen from a list of prosecutors submitted by an individual or entity?
- if the prosecutor must be selected from a list of prosecutors, who or what entity has the authority or responsibility to nominate the prosecutor, i.e.:
 - ✓ the governor or chief justice?
 - ✓ the Montana County Attorneys' Association?
 - ✓ the Montana Judges Association?
 - ✓ the State Bar of Montana?
- regardless of whether the prosecutor must be selected from a list of prosecutors or at large, who or what entity has the authority or responsibility to appoint the prosecutor, i.e.
 - ✓ the governor or chief justice?
 - ✓ the Montana County Attorneys' Association?
 - ✓ the Montana Judges Association?
 - ✓ the State Bar of Montana?

LC 6273 does not amend, create, or repeal all of the MCA sections that would likely need to be addressed if the Task Force moves forward with a recommendation, including a bill draft, to add a prosecutor to the Public Defender Commission, but inserts a "place holder" into section 2-15-1028, MCA.

Respectfully submitted.