

## Montana Indigent Defense Fact Sheet

Montana's indigent defense system is fundamentally unfair. For more than 25 years, the State has failed to provide that system with the resources critical to constitutionally adequate legal representation. Without these resources, even the most diligent lawyers cannot engage in the adversarial representation required by the United States and Montana Constitutions.

The Sixth and Fourteenth Amendments to the United States Constitution and section 24 of the Montana Constitution require the State to provide counsel, free of cost, to indigent persons charged with felony wrongdoing. Montana, by statute, has delegated this obligation to each of its 56 counties. However, the State does nothing to ensure that the county programs provide competent legal representation.

The indigent defense programs in the seven counties included in the suit filed today, Butte-Silver Bow, Flathead, Missoula, Ravalli, Lake, Glacier and Teton, illustrate the deficiencies impeding the delivery of indigent defense services throughout the State.

### **Montana's Inadequate Funding of Indigent Defense**

Although the State has agreed to pay certain costs associated with the provision of indigent defense services, it refuses to guarantee the full payment of those expenses. The counties are responsible for any shortfall.

To avoid assuming unanticipated expenses, the counties budget to minimize potential financial liability rather than to ensure adequate defense representation. They keep costs low by refusing to budget for necessary attorney staff; to compensate indigent defense counsel adequately; and to provide adequate funds for necessary support services such as investigators, expert witnesses, paralegals, and secretarial assistance.

While the State tracks how much it spends on indigent defense, it does not track county expenditures. As a result, it is impossible to determine whether indigent defense services are being provided in the most cost-effective manner or whether the taxpayers are financing constitutionally adequate legal representation.

### **Montana's Inadequate Supervision of Indigent Defense**

Montana has failed to set standards for and supervise the provision of indigent defense services. Although the State has job descriptions, salary scales, training programs and programs of technical assistance for county prosecutors, it does not have any similar provisions or programs for indigent defense counsel. Although state law requires the State's Appellate Defender Commission to develop practice standards for indigent defense providers and to compile a roster of attorneys qualified to represent indigent defendants, it has done neither.

Lacking appropriate guidance, counties have not devised their own procedures. Lawyers represent their clients virtually unguided, with no oversight to ensure that they represent clients in a conscientious manner.

### **Lack of Hiring Standards and Adequate Job Qualifications**

- Neither the State nor the counties have adequate job descriptions or hiring standards. Without these standards, the counties often hire attorneys who do not have the experience, resources or inclination to provide adequate legal representation.

### **Lack of Training**

- Neither the State nor the counties provide any type of formal training. Newly hired attorneys have no opportunity to acquire and maintain the skills and legal knowledge necessary to put the prosecution's case to the crucible of adversarial testing. More experienced attorneys have no formal opportunity to hone their skills and remain knowledgeable of significant changes in the law.

### **Lack of Practice Standards**

- Neither the State nor the counties have issued practice standards against which to gauge a lawyer's performance. There are no written guidelines with respect to the timing of indigent defense appointments, responsibilities prior to a client's appearance in district court, factual and legal pre-trial investigation, the use of discovery or expert evidence, client consultation, trial and hearing preparation, motion practice or appeals.

### **Lack of Caseload Limits**

- Neither the State nor the counties have any workload limits. Many lawyers in these counties have high or demanding workloads, yet none of the counties has any means of determining the size of an attorney's or evaluating whether the workload affects the lawyer's ability to represent his or her clients.

### **Harmful Impact on Clients**

Because of the lack of sufficient funding and oversight, attorneys in the indigent defense programs are often poorly trained, inexperienced, have excessive caseloads, and have little or no support personnel. They are unable to perform even the most basic of tasks necessary for adequate representation.

- Clients cannot prepare an adequate defense or make informed decisions because their lawyers do not meet and confer with them in a meaningful manner before critical stages in the legal proceedings.

- Clients are detained unnecessarily or for prolonged periods before trial because their lawyers fail to adequately argue against detention or they seek repeated continuances.
- Clients cannot effectively challenge the evidence against them because lawyers do not adequately investigate cases, interview witnesses, visit crime scenes or review other evidence.
- Clients are left with no option but to plead guilty because lawyers rarely have the experience or the time to take cases to trial.
- Lawyers who try cases do not prepare adequately; they rarely use expert witnesses or obtain independent verification of forensic work done by the state crime laboratory.
- Innocent people and people with meritorious defenses are compelled to plead guilty or waive other rights without a sufficient understanding of the rights they are giving up.

### **Montana Background**

Over the years, Montana has been aware of serious deficiencies in the manner in which defense services have been provided. It has largely ignored, however, the numerous expert and legislative reports detailing the problems.

In 1976, the National Center for Defense Management, a project of the National Legal Aid and Defender Association, identified the following problems with the Montana indigent defense program:

- Counties, severely squeezed on funding, attempted to hold down spending in such a way that adversely affects the quality of indigent representation.<sup>1</sup>
- The independence of the defense function was jeopardized because judges and county commissioners controlled defense attorneys' compensation.<sup>2</sup>
- The right to counsel was hampered by a lack of support services, including investigators and adequate law libraries;<sup>3</sup>

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<sup>1</sup> National Center for Defense Management, a project of the National Legal Aid & Defender Association. *Montana Statewide Defender Systems Development Study*, 1976, p. 15.

<sup>2</sup> *Id.*, at 17.

<sup>3</sup> *Id.*, at 18-19.

- Neither the State nor counties offered formal orientation or training for inexperienced attorneys; and
- The State neglected to collect uniform indigent defense caseload and expenditure data, making it impossible to determine whether adequate indigent defense services were being provided in the most cost-effective way.

Twenty-five years later, these deficiencies still exist.

In April 1981, the Montana Legislature, in a joint resolution, found that “the constitutional requirement of the effective assistance of counsel for persons accused of crimes had not been achieved consistently on a statewide basis.” In December 1982, the Joint Subcommittee on Judiciary recommended the creation of a “Public Defense Coordinator” to train, provide technical and research assistance to, and collect caseload data of indigent defense counsel. Twenty years later, the State has failed to implement any of these reforms.

In March 2001, the American Bar Association invited various Montana organizations, including many of the defendants in this lawsuit (the Commissioners in Flathead, Missoula and Butte-Silver Bow, and the Supreme Court Administrator), to apply for a catalyst grant to foster systemic improvements in the provision of indigent defense services. The grants ranged from \$50,000 to \$100,000. None of the invitees submitted an application to receive a grant.

### **National Overview**

In the last few years, advocates in some states, including Connecticut, Pennsylvania, New York, Georgia and Mississippi, have filed suit to remedy deficiencies such as those outlined above. While some of these suits are still ongoing, as least two (Connecticut and Pennsylvania) have resulted in successful settlements which have increased the funding available for indigent defense and improved the administration of indigent defense programs.