

INDIGENT DEFENSE STANDARDS: HOW MONTANA MEASURES UP

The American Bar Association recently issued *The Ten Principles of a Public Defense System*, which incorporates national indigent defense standards developed by the ABA and other organizations, including the National Legal Aid and Defender Association. According to the ABA, these principles reflect “the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”

Montana meets none of these criteria:

- 1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.** Montana’s indigent defense counsel depend on subjective hiring and unpredictable state budgets.
- 2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.** Montana’s indigent defense counsel work in understaffed offices and lack the organization to tap the resources of experienced criminal defense lawyers in the state.
- 3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.** Montana’s indigent defense counsel lack the time and resources to attend to new clients during the critical hours after arrest, and days or weeks may pass before they first contact their clients.
- 4. Defense counsel is provided sufficient time and a confidential space with which to meet with the client.** Montana’s indigent defense counsel cannot spend enough time with their clients to develop an effective defense and often meet their clients only a few minutes before important court hearings.
- 5. Defense counsel’s workload is controlled to permit the rendering of quality representation.** Montana does not control, or even monitor, indigent defense counsel workloads.
- 6. Defense counsel’s ability, training, and experience match the complexity of the case.** Montana’s indigent defense counsel receive cases without regard to counsel’s ability, training, or experience.
- 7. The same attorney continuously represents the client until completion of the case.** Montana’s indigent defense counsel almost always reach plea agreements with the prosecution even before the completion of factual investigation, and almost never reach trial.
- 8. There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.**

Montana created a special office to provide training, legal, and technical assistance to prosecutors, but offers no assistance for indigent defense counsel.

9. Defense counsel is provided with and required to attend continuing legal education. Montana does not require indigent defense counsel attend continuing legal education programs related to criminal law and criminal defense practice.

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. Montana has no system of supervising indigent defense counsel and has adopted no standards by which to measure the quality and efficiency of indigent defense counsel.