

Montana Indigent Defense Fact Sheet

Montana's indigent defense system is fundamentally unfair. For more than 25

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.

- 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.¹
- The independence of the defense function was jeopardized because judges and county commissioners controlled defense attorneys' compensation.²
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- 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