Montana

Primary Indigent Defense Delivery System: Public Defender/Assigned Counsel/Contract*
Population in 2002: 909,453**

Percentage of State Plus County Expenditures in FY 2002 Attributable to State vs. Counties:
51% from State; 49% from Counties** [NOTE: Effective July 1, 2003, the state of Montana assumed 100% of
the costs of indigent defense. Counties pay for public defender offices and receive 100% reimbursement from the
state, whereas the state directly pays compensation for contract or assigned counsel.]

*Source: “Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice,” by the ABA Standing Committee on Legal Aid and

**Source: “State and County Expenditures for Indigent Defense Services in Fiscal Year 2002,” by The Spangenberg Group (on behalf of
the ABA Standing Committee on Legal Aid and Indigent Defendants), at 4 and Table (September 2003), available at

During the 40th anniversary year of the U.S. Supreme Court’s decision in Gideon v. Wainwright, the
American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID)
in 2003 held a series of public hearings to examine the implementation of the right to counsel in
state court proceedings for poor persons accused of crimes. In January 2005, ABA SCLAID
published its final report based on the testimony provided at the hearings, entitled “Gideon’s Broken
Promise: America’s Continuing Quest for Equal Justice.” This information sheet contains a short
summary of the “Problems in Indigent Defense” in Montana that were reported by hearing witnesses,
as well as “Recent Reform Efforts” that have occurred within the state. For the complete information
regarding each of the statements listed below (including references to hearing transcripts, reports,
and other supporting materials), please see “Gideon’s Broken Promise: America’s Continuing Quest

Problems in Indigent Defense

The following problems were reported by hearing witnesses:

- Although prosecutors receive full-time salaries in Montana, indigent defense representation
  is often provided by private attorneys who work part-time pursuant to a flat-fee contract with
  the county while retaining private practices on the side.

- National standards have long recognized that indigent defense counsel must be provided
  with necessary resources such as office equipment, technology, legal research, support staff,
  paralegals, investigators, forensic services, and experts. Notwithstanding this guidance, a
  contract defender in a Montana county described her situation as follows: “The contract has
  been considered to be part-time since its inception and, coupled with no allocation for office
  expenses, has significantly impacted the amount of time and office resources that I have
  been able to devote to my criminal clients. It’s rare that I’m able to accept collect calls from
  the jail, since I’m not reimbursed for the calls.”
• In contradiction to the recommendations contained in national standards, there is no provision for formal, systematic training of indigent defense attorneys or support staff at either the state or local levels in Montana.

• Young attorneys with little or no experience are just as likely as others to receive court assignments, sometimes even for homicide cases.

• A witness from Montana explained that clients are often detained pretrial for unnecessarily long periods of time because defense lawyers fail to argue adequately against detention. Another Montana witness told of a lawyer with an indigent defense contract since 1980, who once bragged to the chief prosecutor in his county that “he got out of the 1990s without a trial.”

• Attorneys providing contract services frequently represent multiple defendants in the same criminal case, in violation of court decisions and rules of professional conduct relating to conflicts of interest. According to one witness, “lawyers in smaller, more rural counties in Montana are neither inclined nor trained to take cases when there are co-defendants or there is a conflict with the contract public defender. One contract defender advised me that the rural nature of his practice seems to encourage conflicts.”

• National standards recommend that the defense function be independent from undue political and judicial influence to ensure the delivery of quality legal representation. Nevertheless, a witness from one Montana county testified that each time modifications of the current flat-fee indigent defense contract have been requested, county officials have threatened to terminate the contract and award a new contract based solely on the lowest bid. The witness also told of a prosecutor who had asked another county to solicit new bids because the current contractor was requesting too many psychological evaluations in his cases.

• Although national standards specify that counsel should be provided as soon as feasible after custody begins, indigent clients all across Montana remain in pretrial detention for up to five or six months without a single contact from an attorney.

• The universal failure of counties to collect uniform indigent defense caseload and expenditure data in Montana makes it impossible to determine whether services are being provided in a cost-effective way. In addition, counties have no way of determining annual indigent defense caseloads or identifying the lawyers who provide services, thus precluding workload limits to ensure adequate representation.

Recent Reform Efforts

• The American Civil Liberties Union filed a class action in 2002 on behalf of indigent defendants against the state of Montana and seven counties, seeking to force the state to assume greater responsibility for the delivery of indigent defense services.