



ACLU Hails Montana's Public Defense Bill As Leading National Trend

FOR IMMEDIATE RELEASE

June 8, 2005

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HELENA, MT - The American Civil Liberties Union today applauded the Montana Legislature's passage of groundbreaking public defender legislation that creates a new statewide office and guarantees constitutional rights to all Montanans, not just those who can afford to pay lawyers.

"A national movement is underway to protect the legal rights of poor people, and Montana is leading the charge," said Vincent Warren, a senior staff attorney with the ACLU who worked with the local ACLU to promote the law's passage. "A year ago, poor people accused of crimes in Montana regularly had the doors to justice slammed in their faces. Thankfully, for them today is a new day."

Passed in the wake of a class action lawsuit filed by the ACLU, the Montana bill is the first in the nation crafted with the intent of addressing the "Ten Principles of a Public Defense Delivery System" adopted by the American Bar Association in 2002. The Ten Principles were created in response to the growing national crisis in the delivery of indigent defense services. They provide for, among other things, the assignment of counsel as soon as possible after arrest, reasonable attorney caseloads, and the supervision and systematic review of public defenders' skills and performance.

Similar efforts to reform access to the court system are underway in Michigan, Louisiana and Virginia. In May, North Dakota passed a law creating a public defender commission to oversee indigent defense, which the ACLU says was due to the comprehensive reform effort in the neighboring state of Montana.

"America is finally realizing that there is no clause in the Constitution that says you only have access to the Bill of Rights if you can pay," said Robin Dahlberg, a senior staff attorney with the National ACLU and an expert on public defender issues. "Yet this has been the reality for the more than 35.9 million Americans counted by the U.S. Census who live under the federal poverty line."

The new law, entitled The Montana Public Defender Act, was sponsored by Senators Dan McGee and Mike Wheat and signed into law by Governor Brian Schweitzer. It creates for the first time a statewide public defender system to service the state's poor. At the time they filed their legal challenge, the ACLU said that the state's county-based indigent defense programs were so poorly funded and administered that the lawyers employed by those programs could not provide constitutionally adequate representation to their clients.

By passing the new law, Montana has taken a significant step toward providing lawyers who represent the poor with the same resources it provides to lawyers who prosecute the poor. The law creates an 11-member public defender commission that will hire Montana's first Chief Public Defender, establish uniform standards for the provision of indigent legal services, oversee a program of training and technical assistance and provide funding for the use of investigators and experts.

"The creation of the new public defender system in Montana was a bipartisan effort that grew out of a deep concern about the lack of adequate services in the old system," said Scott Crichton, Executive Director of the ACLU of Montana. "This bill received extremely wide support from state government to county and city government, from judges and prosecutors to members of the defense community and advocates for the mentally ill. Everyone worked together to make this happen."

But the ACLU cautioned that the passage of the legislation is only a first step. Montana must adequately fund the new system. The legislation calls for an audit of indigent legal services in the larger counties which the ACLU expects will reveal the steps that the state must take to maintain proper funding for the new system. "As it stands now, we believe that the current funding for the new law may be inadequate," said Warren. "Based on our experience nationally, adequate funding and good administrators are the two keys to success."

"To this day, no one knows how much money was spent on indigent defense, only that it was not spent in a way that delivered necessary services," said Crichton. "Montana is taking its responsibilities seriously and has now raised the bar for how America's poorer states uphold the right to counsel for those who need it most."