

EXHIBIT 5
DATE 1-18-05
SB 146

MONTANA
STATEWIDE DEFENDER
SYSTEMS DEVELOPMENT STUDY

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I. RECOMMENDATIONS

The National Center for Defense Management makes the following recommendations:

1. THE MONTANA LEGISLATURE SHOULD CREATE A PUBLIC CORPORATION ENTITLED "THE MONTANA DEFENDER CORPORATION". ITS MANDATE SHOULD BE TO RUN A STATE-WIDE DEFENDER SYSTEM OF HIGH QUALITY AND TO DETERMINE THE DUTIES OF THE OFFICE OF MONTANA PUBLIC DEFENDER.
2. THE MONTANA PUBLIC DEFENDER SHOULD CONTRACT WITH ONE OR MORE ATTORNEYS IN EACH OF THE JUDICIAL CIRCUITS IN THE STATE TO HANDLE INDIGENT CRIMINAL DEFENSE ON A FULLTIME BASIS.
3. THE MONTANA PUBLIC DEFENDER SHOULD MAINTAIN A CENTRAL OFFICE WITHIN THE STATE TO HANDLE INDIGENT CRIMINAL APPEALS AND TO PROVIDE RESEARCH ASSISTANCE TO DEFENDER ATTORNEYS IN CIRCUITS THROUGHOUT THE STATE.
4. THE MONTANA PUBLIC DEFENDER SHOULD MAINTAIN (BY CONTRACT OR EMPLOYMENT) ONE OR MORE TRIAL ATTORNEYS WHO WILL BE AVAILABLE TO DEFENDANTS THROUGHOUT THE STATE FOR PROTRACTED OR COMPLICATED CRIMINAL CASES.
5. THE MONTANA PUBLIC DEFENDER SHOULD MAINTAIN A LIST OF ASSIGNED COUNSEL THROUGHOUT THE STATE WHO ARE ABLE AND WILLING TO TAKE INDIGENT CASES ON AN HOURLY FEE BASIS IN THE CASE OF CO-DEFENDANTS OR IN THE EVENT OF AN OVER-LOAD WHICH CANNOT BE HANDLED BY THE CIRCUIT DEFENDER.
6. THE MONTANA PUBLIC DEFENDER FOR THE STATE AND THE CIRCUIT DEFENDERS FOR THEIR INDIVIDUAL CIRCUITS SHOULD BE RESPONSIBLE FOR MOBILIZING COMMUNITY INVOLVEMENT WITH AND ON BEHALF OF OFFENDERS.
7. THE MONTANA PUBLIC DEFENDER SHOULD INSURE THAT SUFFICIENT SUPPORT SERVICES -- INVESTIGATIVE, CLERICAL, RESEARCH -- ARE AVAILABLE TO ENABLE DEFENSE ATTORNEYS TO DISCHARGE THEIR RESPONSIBILITIES IN A THOROUGH AND PROFESSIONAL MANNER.
8. THE MONTANA PUBLIC DEFENDER SHOULD PROVIDE ORIENTATION, TRAINING AND CONTINUING LEGAL EDUCATION TO DEFENDER AND PANEL ATTORNEYS.

V. CONCLUSIONS

A. Funding

The economics of indigent defense primarily concerns two inextricably related issues--the amount and source of money. Any improvement in defense services in Montana will require a corresponding increase in cost. Any increase in cost virtually demands a shift of the funding burden from the counties to the state.

The NCDM consultant team concludes that whatever the form chosen by Montana for providing improved indigent defense services, the cost will increase approximately 100 to 150 percent. This increase is necessary to provide Montana a system of sufficient quality to meet minimum national criminal justice standards.

The movement of fiscal responsibility from county to state may violate the conventional wisdom regarding the funding and control of local services. But experience has shown that indigent defense services are often unpopular among the voting public, that constitutional rights are fragile assets in troubled times, and that local control generally produces an impoverished system. State funding could also avoid the potentially catastrophic consequences of a long and costly trial which might bankrupt a county standing on its own.

B. Independence

Is there a legitimate need for control at the county level?

Judges frequently cited the need to "move the docket" and to handle court business with dispatch. Judges are divided, however, over whether they should have some measure of control over the attorney delivering the service. Some see an inherent coercion in their involvement with public

defenders contracts and appointments. Others discount such coercion as de minimus and deny any abuse of control. County commissioners seek control of the attorney only as it affects ultimate costs.

The consulting team finds no legitimate need for control at the local level. The independence and integrity of defense counsel must not be compromised for the sake of speed or economy.

C. Support Services

There is no equal justice when clients "handicapped" by indigency must be represented by counsel handicapped by inadequate investigative assistance, insufficient clerical support and negligible research resources. NCDM concludes that Montana must recognize the value--and underwrite the cost--of these critical support services.

D. Early Representation

Effective representation requires early representation. NCDM concludes that, consistent with the letter of court decisions and the spirit of equal justice, Montana must provide representation to eligible persons at any stage of the proceedings, including lineups, custodial and noncustodial interrogations, and before, during and after arrest.

E. Availability of Competent, Experienced Attorneys

Too often, counsel for the indigent in Montana has little knowledge of the criminal law, little interest in a criminal case and little sensitivity to the needs of the accused. NCDM concludes that orientation, training and continuing legal education must be made available to defenders and panel attorneys.

F. Caseload and Systems Cost Reporting

NCDM concludes that the absence of a thorough and uniform caseload and cost-reporting system is an impediment to the cost-effective delivery of quality indigent defense services. This situation must be remedied.

The best way to report caseload is to derive the figure that most accurately reflects the time spent in actively processing a case. This might be referred to as Time Consuming Caseload. One method of determining this might be to add the cases pending at the beginning of a reporting period (e.g., the beginning of the calendar year) to the cases filed during that reporting period, and then to subtract the cases pending at the close of the reporting period (e.g., the close of the calendar year). An alternative method is merely to report the total caseload, beginning at the start of the reporting period and ending at the close of the reporting period, contained in the files of the clerk of court. The latter method was used in this report.

Displayed in Table 1 below¹⁴ are the data relating to the total juvenile and mental health caseload during the period 1973-1975, based on case documentation in the clerk of court office.

TABLE 1: YELLOWSTONE COUNTY. TOTAL JUVENILE AND MENTAL HEALTH CASELOAD, 1973-1975			
	1973	1974	1975
Juvenile	150	163	185
Mental Health	74	62	67

In analyzing court-appointed or defender systems, the next step in establishing an index of the productivity of a public service legal defense

¹⁴The juvenile and mental health data reported by the Yellowstone County defenders is used only for purposes of example.

office is to determine the indigent caseload (non-fee-paying criminal defendant cases). This entails discovering both the number of cases handled by appointed counsel or defenders and the percentage of the total caseload reported. It should be emphasized that indigent caseload is the prime index of court-appointed or defender productivity. Table 2 below displays the indigent juvenile and mental health caseload data for Yellowstone County.

	Total Caseload	Indigency Rate	Indigent Caseload
Juvenile	185	93%	173
Mental Health	67	99%	67

The objective of reporting case data is the identification to the revenue source of the dollar costs of the delivery of indigent legal defense services. This is accomplished either by adding the total court-appointed fees or, when operating on a contractual basis, by dividing the total salaries of the defenders by the indigent caseload previously derived. This should be presented in a format that will distinguish the major types of cases in which court-appointed or defender attorneys represent indigent defendants (e.g., adult felonies, adult misdemeanors, juvenile cases and mental health cases). Displayed below are the costs per case for the Yellowstone County jurisdiction.

	Indigent Caseload	Total Costs	Cost per case
Juvenile	173	\$14,400	\$83.24
Mental Health	67	9,600	\$143.23
TOTAL		\$24,000	\$226.47

The jurisdictions visited by NCDM share a serious deficiency in estimating caseload and systems costs in the categories of adult felonies and misdemeanors; these data were routinely lumped together, thereby precluding their use in formulating management conclusions. In one instance, the confusion was compounded by the inclusion of civil case data together with criminal case data.