

## **SJR 6: Briefing Paper Defining the Needs and What Comes Next**

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This paper summarizes for the Law and Justice Interim Committee: (1) U.S. Census data and definitions; (2) poverty thresholds and guidelines published by the U.S. Census and the U.S. Department of Health; (3) the major findings of the State Bar of Montana legal needs study; and (4) what is next in the LJIC study process.

### **U.S. Census Bureau Definitions**

<b><i>Family</i></b>	A group of two or more people who reside together and are related by birth, marriage, or adoption.
<b><i>Household</i></b>	All people occupying a housing unit as their usual place of place of residence.
<b><i>Income</i></b>	"Total income" is the sum of the amounts reported separately for wages, salary, commissions, bonuses, or tips; self-employment income from own nonfarm or farm businesses, including proprietorships and partnerships; interest, dividends, net rental income, royalty income, or income from estates and trusts; Social Security or Railroad Retirement income; Supplemental Security Income (SSI); and public assistance or welfare payments from the state or local welfare office; retirement, survivor, or disability pensions; and any other sources of income received regularly, such as Veterans' (VA) payments, unemployment compensation, child support, or alimony.
<b><i>Population</i></b>	All people, male and female, child and adult, living in a given geographic area.
<b><i>Poverty</i></b>	Following the Office of Management and Budget's (OMB) Directive 14, the Census Bureau uses a set of money income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or the unrelated individual is classified as being "below the poverty level". <sup>1</sup>

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<sup>1</sup> U.S. Census Bureau, American Fact Finder Home Page, Glossary.  
[http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en)

## Two Measures of Poverty: Thresholds and Guidelines

There are two slightly different versions of the federal poverty measures, *thresholds* and *guidelines*.

- The poverty *thresholds* are updated annually by the U.S. Census Bureau. These thresholds are used by the U.S. Census Bureau to assist in its statistical analysis estimating the number of American in poverty. The most current thresholds were issued for 2004. **(See Attachment #1.)**
- The poverty *guidelines* are issued each year by the U. S. Department of Health and Human Services (HHS). The guidelines are a simplification of the U.S. Census Bureau poverty thresholds and are used for administrative purposes only, such as for determining a person or family's eligibility for a federal or state public assistance program. The most current guidelines are for 2005. **(See Attachment #2.)**
- Each program that uses the HHS poverty guidelines develops its own definition of "income". The Legal Services Corporation (LSC) uses 125% of the HHS poverty guidelines as its standard for determining eligibility for the civil legal services program it funds and it applies the guideline to an individual's gross income.<sup>2</sup>

### How many Montanan's are "low income"?

The State Bar's legal needs study reports 174,900 low income people in Montana.<sup>3</sup>

Staff Note: This number reflects the total population in Montana found by the U.S. Census using sample data (i.e., not a full data set) to have an income of less than 124% of poverty threshold. **(See Attachment #3.)**

### How many low income Montanans need civil legal services?

The State Bar's legal needs study found that each low and moderate income household in Montana that was surveyed experienced an average number of 3.47 legal problems per year. Based on the study's methodology, a "legal problem" is a problem defined by an attorney who reviewed an incident described to a volunteer survey worker and that the attorney determined would normally require attorney assistance.<sup>4</sup>

Using the methodology of the State Bar's legal needs study to translate the number of low income people in Montana to the number of low income households in Montana, 174,900 people (see above) divided by 2.45, the average household size in Montana as

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<sup>2</sup> The determination of eligibility for services funded by the Legal Services Corporation is governed by 45 CFR 1611. This federal regulation provides the detail of what income and factors can be considered in determining whether a person is eligible for LSC-funded services.

<sup>3</sup> Dale, D. Michael, *Legal Needs of Low Income Households in Montana (Legal Needs)*, Montana State Bar Association, 2005, (DRAFT report provided to the Law and Justice Interim Committee for its September 21, 2005 meeting) page 48.

<sup>4</sup> Ibid., pg 1, and subsequent oral clarification offered by Ann Gilkey, Equal Justice Coordinator, State Bar of Montana, during the Law and Justice Interim Committee meeting on September 21, 2005.

determined by the U.S. Census<sup>5</sup> means that there are about 71,388 low income households in Montana.

Again using the legal needs study methodology, 71,388 low income households multiplied by 3.47 legal problems per year (as found in the study) means that, there are about 247,716 civil legal service needs (needs that would normally require attorney assistance) per year among low income Montanans.<sup>6</sup>

### **How many low income Montanans are NOT getting the civil legal services they need?**

The legal needs study found that only 16.4% of the 247,716 legal needs were met by assistance from either a private attorney (7.1%) or an attorney provided by a civil legal services organization (9.3%). This would leave 83.6% (207,051) of the needs unmet, according to the study.<sup>7</sup>

Applying the study's methodology for translating household data into individual data, this would indicate that 146,189 low-income Montanans are not being adequately served by civil legal service programs currently available in Montana.<sup>8</sup>

### **What are the greatest needs?**

The State Bar's legal needs study found that the greatest legal needs were in the following areas:

- employment;
- housing; and
- family law.

Family law was the most important legal problem identified.<sup>9</sup>

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<sup>5</sup> U.S. Census Bureau, Table DB-1, Profile of General Demographic Characteristics for Montana: 2000.

<sup>6</sup> Dale, *Legal Needs*, pg. 48.

<sup>7</sup> *Ibid.*, pp. 15 and 48.

<sup>8</sup> This was arrived at by dividing 207,051 needs by 3.47 legal needs per household to get 59,668 households, multiplied by 2.45 average household size to get 146,189.

<sup>9</sup> Dale, *Legal Needs*, Figure 5, pg. 7.

Based on the study's findings, the following demographic populations have the highest number of legal needs:

- incarcerated adults;
- domestic abuse survivors;
- Native Americans (on and off the reservation); and
- physically disabled persons.<sup>10</sup>

### **What are the challenges to meeting the needs?**

The following outline of the challenges facing those who provide civil legal services to low income Montanans is based on a staff analysis of the testimony and information provided to the LJIC during its September 21, 2005, meeting.<sup>11</sup>

- Caseload is too high for civil legal services staff attorneys: According to the legal needs study, only 9.3% of the need is being met by attorneys employed by an entity that provides civil legal services to the poor.
- Pro bono work by private attorneys cannot keep up with the need: According to the legal needs study, pro bono work by private attorneys now meets only about 2.8% percent of the need is being met.
- More assistance and advise for pro se litigants needed: In the absence of attorney assistance, most low-income Montanans must represent themselves (pro se). However, to provide even minimal access to justice, personal legal advice and assistance is an integral part of making a self-help program successful.

### **Next: Set public policy goals and objectives**

At stake in the SJR 6 study is what public policy the Montana legislature should adopt for the state of Montana with respect to access to justice for low income Montanans with civil legal service needs.

This staff paper has summarized some of the data so far available to the LJIC about the scope and nature of the civil legal service needs among low income Montanans.

The next step in the LJIC's study process is to further analyze these needs, develop public policy goals, and begin to translate the committee's policy goals into objectives.

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<sup>10</sup> Ibid., Figure 49, pg. 37.

<sup>11</sup> Heffelfinger, Sheri S., "SJR 6: Civil Legal Services to Low Income Montanans - Consolidated List of Ideas/Options Mentioned So Far - Meeting Notes, September 21, 2005," Law and Justice Interim Committee.