

# MONTANA

## An Assessment of the Right to Counsel and Quality of Representation in Delinquency Proceedings

### Risk Factors

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- Every 3 hours, a child is abused or neglected in Montana
- 23% of children in Montana under age 5 live in poverty
- Montana's child and teen death rates are both the fourth highest in the country

### Statutory Right to Counsel

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- Juveniles charged with offenses in youth court have a statutory right to counsel from the time a petition is filed in youth court (MCA 41-5-1413)

### Structure of Juvenile Indigent Defense System

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- Each of Montana's 22 judicial districts must have at least one judge for the youth court
- Funding for representation of Montana's indigent youth is the responsibility of local county governments, which fund public defenders offices and/or hire private contract attorneys

### Key Findings

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#### *Access to Counsel*

- Juveniles do not have the right to an attorney before a petition is filed, so probation officers make decisions about cases at hearings during which juveniles have no representation
- Juvenile defenders often first meet with their clients 5-10 minutes before their appearance in court, and these consultations generally take place in public areas
- Detention facilities tend to be located hundreds of miles away from defenders, so lawyers rarely or never visit their clients in detention

#### *Levels of Advocacy*

- Very few juvenile cases in Montana go to trial
- Juveniles reported that lawyers and judges failed to inform them about their options for disputing charges and requesting alternative punishments
- Though practices vary by county, in some areas of the state defenders do not regularly file motions, advocate for alternative dispositions, or provide post-dispositional representation
- Many defenders do not advocate on behalf of their clients but rather assume their guilt and accept the punishments recommended by probation officers
- In some counties, judges and prosecutors do not believe it is acceptable for defenders to argue to "get kids off"

#### *Lack of Community-Based Options and Services for Youth*

- The ineffectiveness of treatment programs in the state leads to high recidivism rates among juvenile defendants
- Non-secure placements, prevention and intervention programs, and treatment facilities are not adequately funded or reviewed by state authorities
- There are not enough programs for youth with mental health issues; Montana's counties and the state Department of Corrections have reduced funding for mental health services for juveniles in correctional institutions
- Placement options for female juvenile offenders are limited and sometimes non-existent in Montana

#### *Lack of Resources*

- Defenders rarely have assistance from investigators, often because they must rely on courts to appoint such experts and judges are usually unwilling to do so
- Juvenile defenders have little supervision, no required training, and no practice standards

#### *Disproportionate Minority Representation*

- Currently, 12 of the 19 girls in Montana's juvenile detention facility for female offenders and 28% of juveniles in the facility for boys are ethnic minorities, although Native Americans and other minorities make up only 12% of the youth population in the state

#### *Over-Reliance on Probation Officers*

- Montana's juvenile justice system relies heavily upon the judgment and action of the probation and assessment officers in the youth court system
- Probation officers have significant control of the outcome of juvenile cases, even when defenders are appointed, in large part because defenders often defer to their recommendations for treatment and punishment