



Maine Advisory Committee to the U.S. Commission on Civil Rights
Report Addendum:
The Right to Criminal Legal Defense in Maine

We, the members of the Maine Advisory Committee to the U.S. Commission on Civil Rights, released a [report on November 1, 2023](#) detailing the impact of Maine’s system of criminal defense on the civil rights of indigent criminal defendants. Since the report’s release, the environment surrounding indigent legal services in Maine continues to receive much public attention, yet a system of public defense has not yet been fully funded.

Within this context, our Committee sought to understand the current barriers to fully funding a system for indigent public defense in Maine. The Committee heard testimony on December 14, 2023¹ from State Senator and Chair of the legislature’s Judiciary Committee Anne Carney and Maine Commission on Indigent Legal Services (MCILS)² Executive Director Jim Billings on what barriers they thought existed to fully funding a system for public defense in Maine, a system that would include full-time state-run offices and attorneys as well as private contracted attorneys. Committee members were encouraged by their testimony, which indicated that support for expanding full-time dedicated offices and attorneys for public defense in Maine is growing. Barriers to fully funding such a system remain, but the testimony highlights promising proposals and opportunities that have the potential to overcome the existing barriers.

A key barrier to fully funding a public defense system has been a lack of consensus as to how to address issues in the current defense system.³

¹ Materials related to this briefing, including the transcript, are available here:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L01FL0luZGlnZW50IFNlcnZpY2Vz

² At the time of the Committee’s study, this office was called the Maine Commission on Indigent Legal Services, but will be known as the Maine Commission on Public Defense Services following implementation of LD 653.

³ Carney Testimony, p. 4 lines 13-16; Billings Testimony, p. 5 lines 22-27

Executive Director Billings argued that a lack of agreement within the Legislature regarding what government funding allocations are required versus optional poses a barrier to fully funding a system of public defense.⁴ Despite the constitutional mandate for right to counsel,⁵ indigent legal services in Maine are often funded by leftover or supplemental budget allocations, which creates barriers to fully funding an effective system of public defense.⁶ Senator Carney added that the Legislature must simultaneously uphold its constitutional mandate to provide right to counsel while also maintaining a balanced budget; she contended that increased legislative support for a system of public defense may lead to more permanent funding allocations for indigent legal services.⁷

Recent legislative attention to the defense system has altered indigent legal services, yet sustainable funding and capacity building are still needed to overcome barriers to implementing a system of public defense.⁸

Senator Carney described a number of legislative initiatives enacted in the past three years, including measures that strengthened the contracted attorney system such as increased hourly reimbursement rates for contracted attorneys, additional support and training for contracted attorneys, and increased authority for MCILS to supervise contracted attorneys.⁹ She also discussed initiatives that encouraged a transition towards state-run public defense in Maine, such as the establishment of the Rural Defender Unit and the funding of a Deputy Director of Public Defense Development position.¹⁰ She stated that these changes allowed the Legislature to better understand how the current system needed to change, which has fostered more political support for transitioning towards a public defense system.¹¹ Despite increased support for a state-run system of public defense, on par with the state's prosecutors' offices, barriers may still arise in building out and sustaining funding for a new public defense system.

⁴ Billings Testimony, p. 5 lines 25-29

⁵ The state cannot incarcerate a defendant for any period of time, without providing counsel: a defendant's right to an attorney is found in the Sixth Amendment of the U.S. Constitution (*Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963)), which guarantees the assistance of counsel for the accused facing actual incarceration. This means that a defendant facing incarceration has a constitutional right to be represented by an attorney, and if they cannot afford one, the state government must appoint legal counsel, at no cost to the defendant. The Supreme Court has held that the right to legal counsel guaranteed by the Sixth Amendment requires that the legal counsel is "effective" and must include "meaningful adversarial testing" of the prosecutor's case (*U.S. v. Cronin*, 466 U.S. 648, 659-60 (1984)). Maine's own Constitution guarantees indigent persons the right to counsel when imprisonment will actually be imposed under *State v. Cook* (*State v. Cook*, 706 A.2d 603, 605, 1998 ME 40, ¶ 6 (Me., 1998)).

⁶ Billings Testimony, p. 5 lines 31-44

⁷ Carney Testimony, p. 4 lines 21-30; Carney Testimony, p. 10 lines 8-21

⁸ Carney Testimony, p. 4 line 16 – p. 5 line 7; Billings Testimony, p. 9 line 29 – p. 10 line 6

⁹ Carney Testimony p. 3 lines 10-21; Carney Testimony, p. 3 lines 30-40

¹⁰ Carney Testimony, p. 3 lines 18-26; Carney Testimony, p. 3 line 41 – p. 4 line 8

¹¹ Carney Testimony p. 4 lines 9-20

Executive Director Billings explained that moving to a new public defense system will require sustained funding and time to build the capacity of the new public defense offices, and that the long-run benefits will outweigh high initial costs.¹² Both Senator Carney and Executive Director Billings expressed optimism about MCILS goals that include creating public defense offices and gradually scaling them up with staff and resources as a realistic starting point for building up the capacity of public defense offices to serve public defense needs throughout the state.¹³

Additional barriers to fully funding Maine's public defense system include the failure to recognize how the current system disincentivizes public defense attorneys from pursuing employment opportunities within the State.¹⁴

Executive Director Billings highlighted how transitioning to a public defense system could expand job opportunities within the state by attracting new and passionate attorneys to Maine, whereas the current contracted attorney system fails to provide an incentive to criminal defense attorneys to move to and provide indigent legal services in Maine.¹⁵ Both Senator Carney and Executive Director Billings expressed interest and enthusiasm about attracting a labor pool of public defenders to Maine through student loan forgiveness programs, mentorship opportunities within public defenses offices, and partnerships with law schools in Maine and elsewhere.¹⁶

Recommendations

As an Advisory Committee to the U.S. Commission on Civil Rights, we request that the Commission forward the report and its recommendations, along with this statement, to the Maine Legislature's leadership, the Governor's Office, and the Judiciary:¹⁷

We recommend that Maine's Legislature allocate sustainable, long-term funding to building a system for public defense in Maine in line with the proposed plan by MCILS. We urge the Governor to support funding allocations by the Legislature that are in alignment with this recommendation.

¹² Billings Testimony, p. 9 line 21 – p. 10 line 6

¹³ Carney Testimony, p. 4, lines 16-20; Billings Testimony, p. 7 lines 6-18.

¹⁴ Billings Testimony p. 6 lines 13-25

¹⁵ Billings Testimony, p. 6 lines 13-37

¹⁶ Carney Testimony, p. 11 lines 15-22, p. 13 lines 18-26; Billings Testimony, p. 6 line 38 – p. 7 line 5, p. 12 lines 16-23, p. 12 line 41 – p. 13 line 16

¹⁷ As of March 14, 2024, the case of *Robbins v. MCILS* is moving towards trial because the Court has not agreed to the parties' proposed settlements. See *Robbins v. MCILS*, No. KENSC-CV-22-54 (Me. Super. Jun. 2, 2022). The lawsuit alleges that Maine's "systemic failures deprive indigent defendants facing criminal proceedings in Maine of their Sixth Amendment right to the effective assistance of counsel." (Aclumaine.org)

We also recommend that, while building a system for public defense in Maine, the Legislature and involved parties, which includes the Governor’s Office, Chief Justice and members of the Judiciary, and MCILS, prioritize creating a system that embodies parity between prosecution and public defense in equality of representation and the resources allocated to support representation.

Finally, our Committee recommends the Legislature, Governor’s Office, and MCILS pursue initiatives that will attract and support new attorneys that are interested in practicing public defense in Maine through student loan forgiveness programs, mentorship within new public defense offices, and partnerships with law schools.

With these changes, we believe there can be significant and sustainable progress towards ensuring Maine meets its Constitutional obligations. This addendum was adopted by a vote of 5 to 0 at a Committee meeting held March 14, 2024.

**Maine Advisory Committee to the
U.S. Commission on Civil Rights**

April 15, 2020 – April 14, 2024

Samantha Le, Chair, *Maine Advisory Committee*, Bangor

Diane A. Khiel, *Vice Chair*, Orono

Mufalo Chitham, Old Orchard Beach

Gia Drew, Portland

Judith D. Jones, Camden

Eric M. Mehnert, Lincoln

Nicole Rancourt, Minot

**Maine Advisory Committee to the
United States Commission on Civil Rights**



U.S. Commission on Civil Rights Contact

USCCR Contact	Regional Programs Unit U.S. Commission on Civil Rights 230 S. Dearborn, Suite 2120 Chicago IL, 60604 (312) 353-8311
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