



Policy Brief

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

The Right to Criminal Legal Defense in Maine

The Maine Advisory Committee identified the right to criminal legal services for indigent defendants as a critical issue to study to ensure that the civil rights of all Maine citizens are protected. Based on testimony received from impacted individuals, academics, and advocates at public hearings in 2022, the Committee prepared a [report](#) detailing its findings and recommendations.¹ Highlights from this report are in the following policy brief.

Maine is the only state that relies mostly on private contracted attorneys to provide indigent public defense instead of a public defender's office established by the state.

The state hires private attorneys appointed by the court to provide legal counsel to indigent defendants through the Maine Commission on Indigent Legal Services (MCILS). The Sixth Amendment in the U.S. Constitution guarantees the constitutional right to the assistance of counsel and representation for the accused facing incarceration. Maine's own Constitution guarantees that all indigent persons will be provided with effective criminal defense by the state.

Federally protected classes are more likely to be disproportionately impacted by the lack of capacity and quality of legal services provided by the state.

Maine's public defense system is underfunded and unable to meet the State's current legal representation demands for indigent clients.

A lack of sufficient funding, structure, and administrative support negatively impacts individuals in need of public defense in Maine. The current demand for indigent legal services far outweighs the capacity of available attorneys, leading to long delays in assigning attorneys to cases, and raising questions about appropriate training for attorneys who provide public defense services. Without a legal system that can adapt to the changing needs of its population, the state is often excluding those with lower incomes from receiving quality legal representation. A lack of political will to address necessary changes results in a criminal justice system that relies on far too few attorneys to provide constitutionally mandated services.

People of color, individuals with disabilities, and non-English speakers are disproportionately impacted by Maine's current system for providing indigent legal defense.

Individuals in federally protected classes are most likely to be disproportionately impacted by the lack of quality and capacity of indigent legal services in Maine. Alongside the disproportionate representation and delayed access to attorneys that federally protected classes may face, the state of Maine also neglects to collect up-to-date data on how legal services for indigent clients within the criminal justice system affect marginalized populations.

Attorneys assigned as public defenders need the same resources as prosecutors to effectively and meaningfully represent their indigent criminal defendants.

There is a lack of parity between the resources available for public defense and resources available for prosecution. Public defense attorneys are not provided with training, technical knowledge, or financial resources in the same manner as prosecutors, putting their clients at risk of sub-par representation. Inadequate representation particularly impacts people of color, individuals with disabilities, and non-English speakers.

¹ Complete citations can be found in the report: <https://www.usccr.gov/reports/2023/right-criminal-legal-defense-maine>.

Recommendations (*selected*)

Federal Recommendations

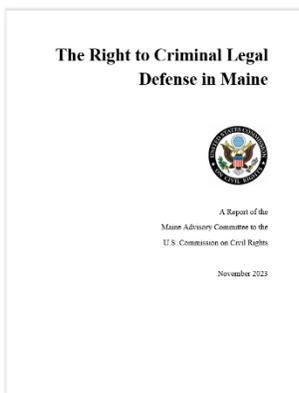
The U.S. Department of Justice should:

- Investigate whether Maine is providing effective and meaningful representation to indigent clients facing actual incarceration.

State-Level Recommendations

The Maine Legislature, Governor Mills, the Chief Justice of the Maine Supreme Judicial Court, and the Maine Commission on Indigent Legal Services should:

- Provide adequate funding to indigent legal services for criminal defendants at the minimum recommended by MCILS, which would promote parity between defense counsel and prosecutors. **Until the Maine legislature adequately funds Maine's indigent legal defense system, this issue will not be solved.**
- Research appropriate ratios to balance the number of defense cases to the number of cases per prosecutor by looking at other state examples and structures.
- Develop a robust and well-structured hybrid public defender system, one that includes public defenders as well as private attorneys, and one that incentivizes attorneys to provide quality public defense services and is fully funded and well-staffed with well-trained counsel which could ensure more effective representation for clients.
- Increase the number of criminal defense attorneys in order to reduce pressure on defendants who may feel pressure to take plea deals when they have genuine defenses and want to be heard in court. Workload and caseload standards should be updated accordingly.
- Appoint a task force of relevant stakeholders to meet and create a system of public defense that has the capacity to provide effective and meaningful defense to indigent clients that includes a process for ensuring and monitoring that members of federally protected classes are not receiving delayed, sub-par, or inadequate legal services. Ensure the taskforce includes at least one member who is designated to represent public defense perspectives.
- Allow individuals providing public defense services to qualify for student loan forgiveness.
- Fund and monitor a hybrid system in every prosecutorial district to ensure clients are assigned an attorney in a timely manner and that the attorney provides effective and meaningful counsel.



Policy Brief

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. This product is part of the Maine Advisory Committee's study, The Right to Criminal Legal Defense in Maine. This policy-oriented summary of the published report is intended to aid stakeholders seeking solutions to this complex issue. You can find the full report here: <https://www.usccr.gov/reports/2023/right-criminal-legal-defense-maine>