



Indigent Legal Services for Criminal Defendants in Maine

March 2023

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

The Maine Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) is examining whether Maine’s lack of a robust public criminal defender system impacts the civil rights of indigent criminal defendants. The Committee received testimony¹ on three occasions in 2022, from impacted individuals, advocates, academics, and government officials familiar with Maine’s system for providing public defense. The Committee is drafting its findings and recommendations based on these testimonies for the Commission’s attention.

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,² 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.³ Maine’s own Constitution guarantees indigent persons the right to counsel when imprisonment will actually be imposed under *State v. Cook*.⁴

Recent articles⁵ highlight that the Maine Legislature is currently receiving proposals to fund Maine’s system of indigent legal service provision at levels far below what the Committee heard⁶ would be necessary for Maine to provide effective legal counsel and

¹https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L01FL0luZGlnZW50IFNlcnZpY2Vz.

² *Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963).

³ *U.S. v. Cronin*, 466 U.S. 648, 659-60 (1984).

⁴ *State v. Cook*, 706 A.2d 603, 605, 1998 ME 40, ¶ 6 (Me., 1998).

⁵ <https://www.pressherald.com/2023/01/17/new-funding-for-maines-legal-defense-system-for-the-poor-not-enough-to-solve-problem-commission-says/>, also found at <https://news.yahoo.com/funding-maines-legal-defense-system-045900395.html>; <https://www.themainemonitor.org/new-public-defenders-help-but-dont-fully-alleviate-courts-troubles-finding-enough-defense-lawyers/>.

⁶ Justin Andrus, Testimony, November 15, 2022, Briefing before the Maine Advisory Committee, pp. 16-18; Maloney Testimony, November 15, 2022, Briefing, p. 9; Tina Nadeau, October 20, 2022 Briefing before the Maine Advisory Committee, p. 6; Allen Testimony, October 20, 2022 Briefing, p. 9; Anderson Testimony, October 20,

meaningful defense against prosecution. Based on the evidence we received,⁷ we initially conclude that Governor Mills' 2023 budget proposal is far below the funding levels necessary for effective legal counsel and meaningful defense.⁸

Due to the time sensitive nature of addressing this concern while the Maine Legislature is considering funding proposals, the Committee wishes to issue a preliminary recommendation to the U.S. Commission on Civil Rights to forward this memo to the Maine Legislature's leadership, the Committee on Judiciary, the Committee on Appropriations and Financial Affairs, and the Legislative Budget Subcommittee; to Governor Mills; to the Chief Justice of the Maine Supreme Judicial Court; and to the Maine Commission on Indigent Legal Services. Our preliminary recommendation is as follows:

Provide funding at the minimum level recommended by the Maine Commission on Indigent Legal Services to ensure enough provision for effective legal services.

After the completion of the Committee's deliberations on this topic, the Committee's goal is to produce a comprehensive report identifying issues raised in the testimonies it heard and recommendations for addressing these issues.

This memo was adopted by a vote of 6 to 0 at a Committee meeting held February 9, 2023.

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

April 2020 to April 2024

Samantha Le, Chair, Bangor

Judith D. Jones, Camden

Diane A. Khiel, Vice Chair, Orono

Eric M. Mehnert, Lincoln

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Nicole Rancourt, Minot

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2022 Briefing, p. 17; Lisa Keim, December 15, 2022 Briefing before the Maine Advisory Committee, p. 4; Branch Testimony, December 15, 2022 Briefing, p. 6.

⁷ Ibid.

⁸ <https://www.maine.gov/governor/mills/news/governor-mills-unveils-biennial-budget-proposal-2023-01-11>.

United States Commission on Civil Rights



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