

TESTIMONY OF ZACHARY L. HEIDEN

Part Z112 of LD 210 Ought to Pass As Amended

An Act Making Unified Appropriations and Allocations from the General Fund and Other Funds for the Expenditures of State Government and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2025, June 30, 2026 and June 30, 2027

Submitted to the
JOINT STANDING COMMITTEE ON APPROPRIATIONS AND FINANCIAL AFFAIRS &
JOINT STANDING COMMITTEE ON JUDICIARY

February 11, 2025

Senator Rotundo, Representative Gattine, and members of the Joint Standing Committee on Appropriations and Financial Affairs, and Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on Judiciary, greetings. My name is Zachary Heiden, and I am Chief Counsel for the American Civil Liberties Union of Maine, a statewide organization committed to advancing and preserving civil liberties guaranteed by the Maine and U.S. Constitutions. Along with my colleagues, I currently represent a class of plaintiffs comprised of all individuals who are or will be eligible for the appointment of competent defense counsel because they have been indicted for a crime punishable by imprisonment and they lack sufficient means to retain counsel. Our case, *Robbins v. State of Maine*, was filed three years. In January, the trial court found that the agency charged by the State of Maine with providing counsel to people as required by the constitution was failing to do so.

On behalf of our members, I am here to testify in support of the proposed budget, which is necessary but not sufficient to address Maine's constitutional crisis. We urge the legislature provide more funding to for indigent defense so that the State of Maine can come into compliance with the state and federal constitutions.

When I testified before you last year, there were approximately 300 indigent defendants across the state who were entitled to counsel under the Sixth Amendment but who had not yet been

assigned counsel. Now, there are nearly a thousand people in Maine awaiting their constitutionally-required counsel. The median wait time for counsel to be provided is 66 days. That means half of the people without counsel have been waiting for *more than two months* for an attorney. And many of those people are sitting in jail while they wait.

Last year, you authorized the creation of public defender offices across the State of Maine. To say that Maine was a late adopter would be an understatement; in fact, Maine was the last state in the country to establish public defender offices as a part of its strategy for satisfying the constitutional requirement of appointing counsel to indigent defendants. And, though these offices are still getting up and running, they are showing remarkable promise for bringing Maine's egregiously outdated system into compliance. Some of the best defense lawyers in the State of Maine have signed on to lead those offices, and they are attracting a new generation of smart, committed lawyers to do this important work.

Public defender offices allow for quality control and support. The District Defenders who lead them can make sure that their lawyers have the training to handle all the various types of criminal cases that come their way; they can supervise and evaluate their performance to ensure improvement; and they can provide lawyers with the support they need so that they can focus on the important, constitutionally-required task at hand. And they can provide the mentorship and solidarity that encourages new lawyers to stay in Maine—or come to Maine—to do this difficult work.

Our criminal legal system exists to free the innocent and punish the guilty, but it cannot work without defense lawyers. Public defender offices are a more economical way of ensuring access to counsel. During those months when people are waiting for counsel to be appointed, nothing is happening with those criminal cases—the state is spending money on court time and jail time,¹ all while nothing is happening to move the case forward.

¹ In 2013, it cost Maine an average of \$40,639.10 per-year to house someone in a jail and \$43084.60 per-year to house them in a prison. *See* LD 626, An Act To Remove the Mandatory Minimum Jail

But in places like Kennebec County, where Maine's first public defender office is located, there are far fewer people waiting for counsel, and they are waiting for less time. The costs for these offices are largely fixed, so each year when legislative committees have to determine how much to spend on indigent defense, you won't have to worry about how much to pay hundreds of independent contractors, who may spend 10 or 50 hours on a case, and may handle 50 or 200 different cases.

Access to effective counsel is among the most important of the rights guaranteed to citizens by the Sixth Amendment to the United States Constitution.² Since time immemorial, Maine has nearly entirely relied on independent contractors to meet its critical Sixth Amendment obligation, but independent contractors have the ability to decide when and where they will take on new cases, as well as the ability to decide not to take new cases. Imagine trying to operate the legislature staffed entirely with independent contractors: all the analysts or clerks or editors or accountants might decide that they do not want to work in certain committees, or that they have too much work at the moment so cannot look at any more bills or schedule any more hearings. Imagine what would happen to the critical work of this committee, if the Chairs had to call through lists every day to see if you could find someone to come help with your work.

We have eight fully-staffed District Attorney's offices in this state, along with a well-staffed, well-funded Attorney General's office. We have only five public defender offices, and these offices are currently only staffed and funded to handle 30% of the criminal cases in the district. Establishing one public defender office for each prosecutorial district, and staffing those offices to be able to handle at least half the criminal cases in those districts, would be a good start.

Sentence in Certain Cases, Preliminary Fiscal Impact Statement for Original Bill, 126th Legislature, available at https://legislature.maine.gov/legis/bills/bills_126th/fiscalpdfs/FN062601.pdf

² See *Gideon v. Wainwright*, 372 U.S. 335 (1963).