

Testimony in favor of LD2059, addressed to the Judiciary Committee

January 20, 2026.

Senator Carney, Representative Kuhn, and distinguished members of the Committee,

My name is Francis Zarro. I am a resident of Biddeford, Maine and Principal of Society Impact, a public benefit company that works with state and local governments and community organizations to design more just, effective, and fiscally responsible criminal justice systems. Our office is located in downtown Portland. Since early 2024, Society Impact has been working with a community-based organization in Bangor on incarceration alternatives, and we have jointly submitted a proposal to the Maine Judicial Branch to design and implement a nine-track criminal case diversion pilot program in Penobscot County. We also work with the Maine Prison Action Coalition on legislative initiatives and public education.

I am here today in support of LD 2059. Maine is currently the only state in the nation without a formal, statewide public defense system. As a result, low and middle income individuals are routinely incarcerated in Maine, presumed innocent, without timely access to legal counsel. For decades, criminal defendants in this state have been arrested, tried, convicted, and imprisoned without the benefit of constitutionally mandated, effective, conflict free legal representation. The gravity of this situation cannot be overstated.

Approximately eighty percent of people facing involvement in the criminal legal system cannot afford a private attorney,¹ meaning the vast majority of Mainers must rely on what is now a perfunctory, inadequate, and ineffective system of legal representation. Criminal legal system involvement can happen to anyone, stemming from a mistake, alcohol use, a mental health crisis, homelessness, a child's involvement with drugs, or other unfortunate circumstances that could befall anyone. Any family can be forced to confront this system at any time.

Without adequate public defense, the consequences are predictable and costly. People remain jailed unnecessarily. Cases stagnate. Guilty pleas are entered not because they are just, but because defendants lack the ability to defend themselves. These failures increase jail populations, worsen court backlogs, expose the state to ongoing constitutional liability, cost taxpayers money, and ultimately weaken public safety.

The Sixth Amendment does not require the state to make a good faith effort to provide legal representation to people who cannot afford a lawyer. It requires the state to provide effective, conflict free legal representation. Anything less undermines the legitimacy of the courts and public confidence in the justice system.

¹ Harlow, C.W. "[Defense Counsel in Criminal Cases](#)." Bureau of Justice Statistics, U.S. Department of Justice, Nov. 2000.

I do not make this point in the abstract. I previously served with the New York State Defenders Association during the *Hurrell-Harring v. State of New York* litigation,² an ACLU-led case in which courts made clear that systemic delay, underfunding, and lack of access to counsel constitute constitutional violations. That litigation is analogous to the crisis Maine faces today. The key difference is that in New York, the challenge involved a supplemental assigned counsel program that supported an existing statewide public defense infrastructure.³ In Maine, the current litigation concerns the state's sole mechanism for providing legal services to indigent defendants.

LD 2059 is a necessary step toward meeting Maine's constitutional obligations. It would stabilize the indigent defense fund and begin the process of establishing a public defender office in Cumberland County, where the need is greatest and the impact would be immediate.

Maine has an opportunity not only to address an immediate funding crisis, but to begin building a truly independent, robust statewide public defense system that could serve as a national model. Expanding services to Cumberland County is a sound place to start. The fiscal benefits of ensuring access to legal representation, regardless of ability to pay, can be substantial. Investing in public defense is not only a constitutional imperative, it is also a cost saving measure. If absolutely necessary, initial funding can be supported through accredited social impact financing mechanisms that prioritize public benefit outcomes and rigorously track social and fiscal returns.

I respectfully urge the committee to support the prompt passage of LD 2059

² Zarro, Francis. "[Creating an Independent Public Defense Authority in New York State](#)." Society Impact, 2 Dec. 2015.

³ [Hurrell-Harring v State of New York](#), 2008.

Relevant data:

As of December 2025, it was reported that there are still about 300 people being held pre-trial in Maine jails that have not yet been assigned counsel, with some waiting months. This number could also be an underestimate, as there have been instances of defendants entitled to a lawyer who were omitted from the list due to clerical errors.⁴

A 2002 study found that defendants with attorneys were released two and a half times as much from pretrial custody as those without,⁵ and a 2018 study found that defendants with public defenders were about 6% less likely to be convicted and 22% less likely to receive a prison sentence than similar defendants represented by court-appointed private attorneys; they also received shorter prison terms on average.⁶ This means Maine's utilization of assigned counsel causes the state to spend more on incarceration than it would otherwise, especially since Maine already spends more on incarceration per-person than most other states in the country.

Despite having almost the same population size, New Hampshire spends about half as much as Maine does on indigent defense services, while still providing their indigent defendants with competent, state-employed attorneys.⁷

Maine's reliance on a shrinking pool of private attorneys has led to shortages of lawyers, backlogs, and lengthy delays. Staff offices with dedicated attorneys, investigators, and support teams can better caseloads and provide timely representation. They are also better able to provide consistent oversight, training, and case preparation, which correlates with better procedural quality.⁸

Recommended further reading:

[*Jonathan Gradess on Justice for the Powerless*](#)

⁴ Pendharkar, Eesha. "[As List of Unrepresented Indigent Defendants Grows Shorter, Concerns Arise about Its Accuracy.](#)" *Maine Morning Star*, 20 Dec. 2025.

⁵ Colbert et al. "[Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail.](#)" University of Maryland School of Law, 2002, pg. 1719 - 1720.

⁶ Shem-Tov, Yotam. "[Are Public Defenders Better at Indigent Defense than Court-Appointed Attorneys?](#)." California Policy Lab, 2018.

⁷ May, Natalie. "[Confronting Maine's Indigent Defense Crisis: Lessons to be Learned From The Green Mountain State.](#)" *Vermont Law Review*, January 2, 2022, pg. 144

⁸ Breeman, Marea and Claire Beutow. "[Gideon at 60: a snapshot of state public defense systems and paths to system reform.](#)" National Institute of Justice, Nov. 2023.