



February 11, 2025

Sen. Margaret Rotundo, Chair
Rep. Drew Gattine, Chair
Sen. Carney, Chair
Rep. Kuhn, Chair
Joint Standing Committee on Appropriations & Financial Affairs
Joint Standing Committee on the Judiciary
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: *LD 210 Biennial Budget for FY26-27 -- Funding for Maine Commission on Indigent Legal Defense (Page A-572)*

Dear Chair Rotundo, Chair Gattine, Chair Carney, Chair Kuhn, and Members of the Appropriations and Financial Affairs Committee and Judiciary Committee:

On behalf of the Board of Governors of the Maine State Bar Association, we write to encourage the Legislature to fully fund the Maine Commission on Public Defense Services (Commission) in the next biennium in accordance with the Commission's budget projections.

About MSBA. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 2,600 attorneys in the State in both public service and private practice. A key element of our mission is to support the public interest in a fair and effective system of justice. A fair and effective system of justice requires access to competent representation for indigent criminal defendants.

Access to Justice is a Core Mission of the MSBA. One of the most important values of the MSBA and its members is ensuring that every Mainer has the ability to access justice. This includes access to critical civil legal services, and access to criminal legal defense services. For this reason, the MSBA has closely followed the experiences of Maine's indigent legal defense system, including its growing challenges over the past decade. When the State of Maine decided to modify the current system and the organization of what is now the Maine Commission on Public Defense Services, MSBA asked to part of the governance of the Commission, and current Maine law actually provides that one of the members of the governing board of the Commission derives from a list of names provided by the MSBA. Our Association continues to have a strong interest in the workings of the Commission and the ability of Mainers to access adequate legal defense services.

Current Crisis in Maine's Indigent Legal Defense System. As this Committee is aware, Maine faces an ongoing crisis with respect to indigent legal defense services. As noted in the Commission's most recent Annual Report, at the end of 2024, there were nearly 1000 indigent adult criminal defendants with pending cases lacking legal representation. Meanwhile, the number of pending criminal matters awaiting trial has ballooned since 2020, partly as a result of the COVID-19 pandemic. To put a fine point on the indigent legal defense problems facing the State, a recent Superior Court decision in *Robbins v. State of Maine* concluded that the inability of the Commission to provide continuous representation for the named

indigent defendants violates the Sixth Amendment. While the court has not yet issued an order regarding remedies, the finding that Maine had violated the Sixth Amendment rights of the plaintiffs could result in a range of remedies, including a directive that courts may release defendants who are in custody and/or order the dismissal of charges for indigent defendants who are not provided counsel within a reasonable time period.

Solving the current crisis requires effort from multiple stakeholders and sectors. There are a number of causes associated with the current crisis in providing adequate legal defense services for indigent Mainers, and Maine reached this current crisis over the course of multiple years. Getting out of this crisis will undoubtedly take multiple years and require effort from multiple sectors within Maine's criminal defense system. As noted above, there are nearly 1000 Mainers awaiting trial who are without counsel. One obvious solution is to increase the number of lawyers able to take on these cases, which will require financial support from the State and further examination of the process by which attorneys are trained, supervised, and compensated for providing defense services. These issues can be addressed as part of the Commission's biennial budget in LD 210. These issues can also be addressed by other stakeholders in Maine's criminal justice system, including:

- The Maine Legislature, which determines what offenses are criminalized requiring arrest, detention, arraignment, and trial. For offenses where criminal penalties are not needed, changing the law could help relieve some of the crisis.
- Maine's prosecutors, who decide whether to bring charges, the nature of the charges, and whether to plea out certain charges. The more charges brought, and the less willing a prosecutor is to plead out a case, the more individuals will need criminal defense services and for longer periods of time.
- Maine's court system plays an important role to the extent courts must hold hearings and issue rulings related to criminal defendants. To the extent there is not sufficient judicial resources to hold hearings frequently enough to allow for the resolution of certain matters associated with a criminal defendant, the more likely a defendant will be in need of legal defense services for longer periods of time.
- The Maine Bar also plays a role insofar as there is a steady decline in the number of attorneys living and working in Maine, a decline in the number of attorneys in certain parts of the state, and a decline in the number of lawyers whose area of expertise includes criminal defense services.
- The Commission plays a role with regard to how it manages the indigent legal defense system, including its ability to hire and retain qualified counsel.

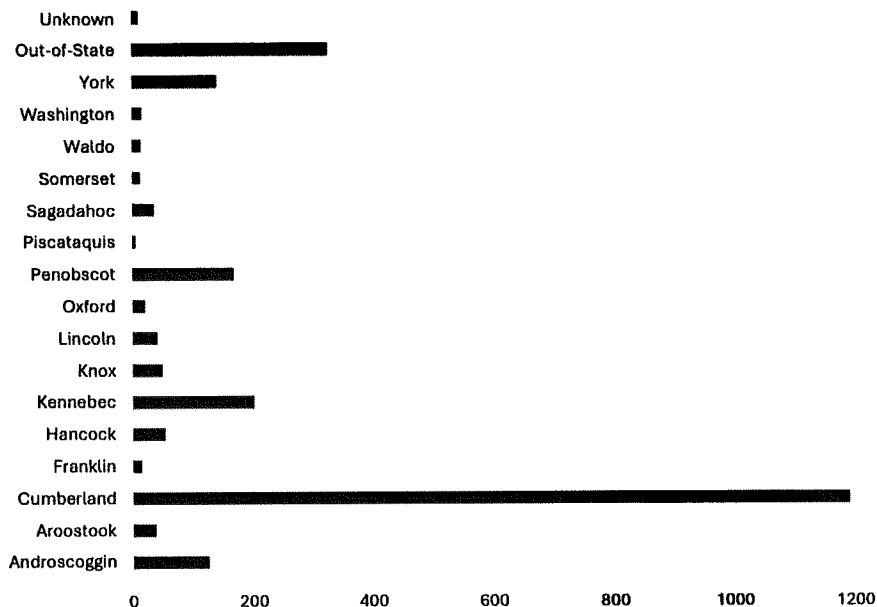
Notwithstanding the broad scope of responsibility associated with our current crisis, the immediate issue before this State and the Maine Legislature is the portion of the biennial budget associated with the Commission and its ability to hire and retain qualified counsel. With regard to this particular area, our Association strongly encourages the Maine Legislature to ensure that sufficient resources are provided to allow the Commission to meet this responsibility.

"Hybrid" Legal Defense Model is Needed to Address the Crisis, varying on a County-by-County basis. Regarding the Commission and provision of defense counsel, we believe the State must continue to pursue the current "hybrid" model whereby part of the indigent defense caseload is handled by public defenders and part is handled by private attorneys. How these resources are allocated will of course differ from region to region as there are some regions where there is an adequate number of private attorneys and a limited backlog, and there are other regions of the state where there are not enough participating private attorneys such that public defenders are more critical to relieving the backlog in indigent legal

defense. With respect to the geographic distribution of attorneys in the State, the following chart demonstrates how comparatively few attorneys practice in certain rural counties:¹



MSBA MEMBERS BY COUNTY



Issues:

- Rural legal desert
- Access to Justice

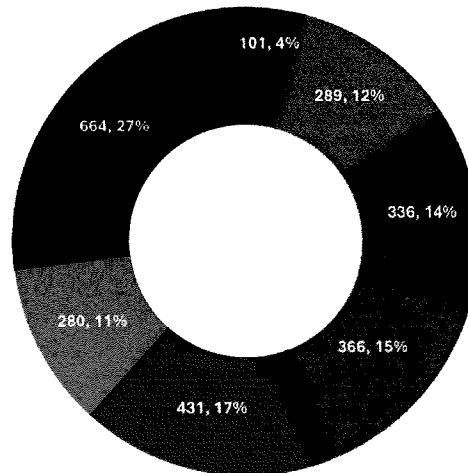
As the foregoing chart shows, there simply are not enough private attorneys in many areas of the State to meet indigent defense needs. At the same time, it is important to recognize that there are fewer practicing lawyers in Maine now than several years ago, and we anticipate that many practicing lawyers are likely to retire in the near future. The following age data regarding Maine attorneys illustrates this observation:

¹ Note that the available data is derived from membership information for the Maine State Bar Association. Current information from the Maine Board of Bar Overseers is not publicly available, but the experience of the Maine State Bar Association is that its membership data historically aligns with the demographic data of the Board of Bar Overseers. Approximately 62% of Maine lawyers are members of the Maine State Bar Association, so the numbers provided in these charts would be proportionally higher if all lawyers in the state were included in the data.



MSBA MEMBERS BY AGE

■ 20-29 years ■ 30-39 years ■ 40-49 years ■ 50-59 years ■ 60-69 years ■ 70-79 years ■ Unknown



Issues:

- Graying of the bar
 - 28% of members are over 60
 - 43% of members are over 50
- Access to Justice

In light of the anticipated drop in the number of private attorneys in Maine, and the reality that only some private attorneys are either interested in or qualified to practice criminal defense, we expect a steady need to increase the relative percentage of public defenders needed in the system to address indigent legal defense needs.

Disparity Between the Governor’s Proposed Budget and MCPDS’s Projected Costs. The following table depicts the Governor’s proposed budget for MCPDS and MCPDS’s projected costs for FY 26 and FY 27 as included in its most recent annual report.

	FY 26	FY 27
Governor’s Proposed Budget	\$51,353,936	\$51,699,565
MCPDS Budget Projections²	\$71,437,917	\$65,717,480
Shortfall	\$20,083,981	\$14,017,915

According to the 2024 Annual Report of the Commission, the Commission needs approximately \$34 million more over the biennium than what is proposed in the Governor’s Budget to meet its projected needs. Those needs include funds to pay for the hiring and retention of a sufficient number of public defenders and private attorneys to meet the needs of indigent legal defense services in Maine. Given the challenges the Commission is currently confronting to hire and retain qualified attorneys, we believe that funding the amounts requested by the Commission is essential.

² MCPDS provided separate budget projections for different reimbursement rates should the State increase the hourly reimbursement rate private court-appointed counsel. The figures included in this chart are the budget projections based on the current rate of reimbursement, \$150 per hour.

Risk of More Private Attorneys Leaving the System, and Insufficient Funding Could Accelerate their Departure. It has been well-documented that fewer private attorneys are participating in the indigent legal defense system in recent years, for a variety of reasons. For some, it is the current backlog of cases and their experience that even partial participation will result in the assignment of more cases than an attorney can handle. For others, the challenge is that they have busy practices, particularly as the number of private attorneys in Maine has shrunk in recent years. This leaves them with less capacity to take on Commission cases, representing Mainers during some of the most difficult challenges of their lives. Given this backdrop, Maine's criminal defense system simply cannot handle any further exodus of private attorneys. If the money runs out before the biennium concludes, as the Commission has forecast, private attorneys will be put in the position of taking on cases right now that they are unlikely to be paid for when the case concludes, if at all. Because of this funding uncertainty, many participating attorneys have let us know that they are seriously considering scaling back or discontinuing their participation with assigned indigent work, which will deepen what is already a crisis. So much progress has been made in the past five years, but without further financial support, more private attorneys will leave the system and this new hybrid system could very well break.

Maine's Current System of Indigent Defense Is Relatively New; Further Stresses on the System will be Counterproductive. Maine's current "hybrid" system for indigent defense is relatively speaking, in its infancy. Until recently, Maine had no public defenders. And until recently, Maine did not have a massive backlog in criminal cases. Now that we have a system with public defenders, new attorneys are being hired, and procedures being developed, the system is a work in progress. There are growing pains, which is to be expected in a new system. However, as time goes on, the Commission is getting the right people in place, attorneys are gaining experience, and the right balance of oversight and case limits is being developed. We would therefore caution against depriving needed funding for the Commission based on static observations that the system is not working as smoothly as it could, perhaps under the belief that there are built-in inefficiencies that could avoid the need for hiring more attorneys. Such thinking is likely to be misguided given the demographic realities of the Maine Bar – there are not enough lawyers in Maine to do the work, and for those who will remain in practice over the biennium and beyond, fewer will be willing to engage in criminal defense work at any level of compensation. Creating more financial pressures on these lawyers will exacerbate the problem. Hence, we urge the Legislature to fully fund the Commission at the levels requested.

Of course, in asking for full funding, we do not mean to imply that changes to the system cannot or should not be made. We do think it is important that the Commission continue to evaluate the rules governing training and oversight of attorneys, and rules that discourage private attorneys from participating should be closely examined and perhaps modified. Similarly, caseload limits should be carefully examined to ensure they are set at levels that ensure the clients receive high-quality effective representation and not merely representation.

Conclusion. The Maine State Bar Association is deeply aware of Maine's current crisis with regard to indigent legal services, and we believe that fully funding the Maine Commission on Public Defense Services is an important part of addressing this crisis. In this regard, we urge the Legislature to appropriate the needed funds to meet these needs.

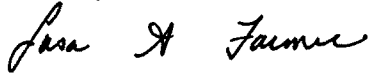
MSBA Letter re Biennial Budget, A-572

February 11, 2025

Page 6

Thank you again for the opportunity to provide comments regarding this important issue. If you have questions or need any additional information, please do not hesitate to let us know

Sincerely,

A handwritten signature in cursive script that reads "Susan A. Faunce".

Susan Faunce

President, Board of Governors

cc: Angela Armstrong, Executive Director
Rachel Okun, Chair, MSBA Legislative Committee
James I. Cohen, Verrill Dana, LLP