



TESTIMONY OF ZACHARY HEIDEN
LD 2059

OUGHT TO PASS

**An Act to Provide Required Funding for the Reimbursement of
Assigned Counsel and to Develop the Public Defender Office for
Cumberland County**

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Joint Standing Committee on Judiciary

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Senator Carney, Representative Kuhn, and distinguished 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.

Funding of Public Defense

On behalf of our members, I am here to testify in support of the proposed funding for additional MCPDS offices and staff, which is necessary to address Maine's constitutional crisis. The legislature should provide more funding for indigent defense so that the State of Maine can come into compliance with the state and federal constitutions.

Over the past two years, the legislature has authorized the creation of public defender offices across much of the State of Maine. The lawyers and staff in those offices have done a remarkable job at ensuring that people accused of crimes have lawyers who are properly vetted, trained, and supported. 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. 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. Their work has enhanced the entire Maine criminal legal system. This committee should be very proud of what these offices have already accomplished.

But, there is still much to do in order to bring Maine into compliance with the Sixth Amendment.



Our criminal legal system exists to free the innocent and punish the guilty, but it cannot work without effective defense lawyers. Public defender offices are the most efficient and effective tool anyone has been able to develop for 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, all while nothing is happening to move the case forward.

And, despite your work and ours, there are still far too many people across this State who are denied their right to counsel. Sometimes that denial takes the form of the appointment of a “lawyer in name only”—someone who is either not willing or not able to provide meaningful assistance.¹ And sometimes—too often—the denial takes the form of no lawyer at all.

Access to effective counsel is among the most important of the rights guaranteed to citizens by the Sixth Amendment to the United States Constitution. And, unlike many rights in the Constitution, it carries with it an affirmative obligation on the State.²

The best way to satisfy that obligation is to make sure that there is at least one public defender office for each prosecutorial district, and staffing those offices to be able to handle a large percentage of the criminal cases in those districts. Otherwise, courts are going to have no choice but to release people from jail and dismiss the charges against them until counsel can be found.

There are many tools at the state’s disposal to address the current constitutional crisis, but there are no shortcuts. This committee has led the way in solving this constitutional crisis, and you can continue that important work by voting Ought to Pass on LD 2059.

¹ Being a lawyer in good standing is clearly not sufficient. Nearly a century ago, the U.S. Supreme Court held in *Powell v. Alabama* that appointing an attorney who is inexperienced in criminal law, or unprepared to handle a particular case, is the same as appointing no lawyer at all. *See Powell v. State of Ala.*, 287 U.S. 45, 53-57 (1932). There is, to put it bluntly, a right to the effective assistance of counsel—not a right to counsel in name only.

² “For those who cannot afford counsel, the constitutional right imposes an affirmative obligation on the State to provide court-appointed counsel if the defendant faces incarceration whether because of a plea of guilty or no contest, or after trial.” *Maine v. Watson*, 2006 ME 80, ¶ 14, 900 A.2d 702; *see also Scott v. Illinois*, 440 U.S. 367, 374 (1979) (recognizing that an indigent defendant cannot “be sentenced to a term of imprisonment unless the State has afforded him the right to assistance of appointed counsel in his defense”).