



AMERICAN CIVIL LIBERTIES UNION

Maine

TESTIMONY OF ZACHARY L. HEIDEN

Ought to Pass as Amended – LD 653

An Act to Support Constitutionally Required Public Defense by Creating the Maine Office of Public Defense Services

JOINT STANDING COMMITTEE ON JUDICIARY

April 4, 2023

Senator Carney, Representative Moonen, and distinguished members of the Joint Standing Committee on Judiciary, greetings. My name is Zachary Heiden, and I am the Chief Counsel at the ACLU of Maine, a statewide organization committed to advancing and preserving civil rights and civil liberties guaranteed by the Maine and U.S. Constitutions. On behalf of our members, we urge you to support LD 653, in an amended form that will ensure that Maine builds a constitutionally adequate public defense system.

The Maine and U.S. Constitutions obligate the State of Maine to ensure that people accused of crimes and facing the loss of liberty are provided with the assistance of counsel. There is widespread agreement that Maine’s unique current system of relying almost completely on private, appointed attorneys to provide indigent defense is inefficient and results in ineffective assistance of counsel. This system is unable to attract nearly enough private attorneys to do this work, and it does not provide attorneys with any meaningful training, supervision, or support. As our Chief Justice explained, “we are having a bit of a crisis of appointed counsel in this state . . . We don't have enough lawyers who are willing to take these cases or are available to take these cases. And we, at the same time, are experiencing a crisis in the court system with a backlog—particularly of criminal cases—that is just overwhelming at this point.”¹

In its current form, LD 653 takes a symbolic step: it creates a new “Maine Office of Public Defense Services” (under the supervision of the Maine Commission on Indigent Legal Services), and transfers

¹ <https://www.themainemonitor.org/chief-justice-says-maines-justice-system-is-failing/>.

oversight of the provision of legal services from the Commission to the new Office. This change in language is important, because it signals the Legislature's recognition that any solution to the current constitutional crisis must involve the creation of a working public defender system.

But this change in title is only the first step. The Legislature must start now on the process of making substantial structural reforms to build a public defense system. LD 653 should be amended to provide for the building of brick-and-mortar public defender offices in each of Maine's eight prosecutorial districts, each with a staff of employed public defenders, investigators, social workers, and administrative support. These public defender offices will attract new attorneys into a structured system with built-in supervision, training, and support. And building regional public defender offices is an efficient use of resources: in contrast to paying a private assigned counsel \$300,000 for a year of full-time work, the state would pay a full-time line defender around \$110,000—including both salary and health insurance.² Employed public defender attorneys (unlike private counsel) could also qualify for federal law student loan forgiveness without any investment of state dollars, which would be another inducement to more attorneys to represent indigent defendants. Prosecutors already have offices and staff--why shouldn't public defenders?

No other state in the country relies on an almost exclusively private appointed system to fulfill their constitutional duty to provide assistance of counsel. A hybrid indigent defense system, continuing to rely on private attorneys while at the same time building employed public defender offices in each prosecutorial district, will both be more efficient and provide more effective assistance of counsel. And a hybrid system will give the State maximum flexibility to quickly respond to this constitutional crisis. Because any solution to our current quagmire will require a significant investment in a public defender system, we urge the committee to amend this bill to create an actual public defender system, and to vote *Ought to Pass As Amended*.

² Cost estimates are all based on the figures compiled in MCILS's FY 22-23 Budget Initiatives.