

SENATE

ANNE M. CARNEY, DISTRICT 29, CHAIR
HEATHER B. SANBORN, DISTRICT 28
LISA M. KEIM, DISTRICT 18

MARGARET REINSCH, SENIOR LEGISLATIVE ANALYST
JANET STOCCO, LEGISLATIVE ANALYST
SUSAN PINETTE, COMMITTEE CLERK



HOUSE

THOM HARNETT, GARDINER, CHAIR
CHRISTOPHER W. BABIDGE, KENNEBUNK
LOIS GALGAY RECKITT, SOUTH PORTLAND
STEPHEN W. MORIARTY, CUMBERLAND
ERIN R. SHEEHAN, BIDDEFORD
DAVID G. HAGGAN, HAMPDEN
LAUREL D. LIBBY, AUBURN
JENNIFER L. POIRIER, SKOWHEGAN
JAMES E. THORNE, CARMEL
JEFFREY EVANGELOS, FRIENDSHIP
RENA D. NEWELL, PASSAMAQUODDY TRIBE

**STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON JUDICIARY**

April 5, 2022

TO: Senator Catherine E. Breen, Senate Chair
Representative Teresa S. Pierce, House Chair
Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Anne M. Carney, Senate Chair *AC*
Representative Thom Harnett, House Chair *TH*
Joint Standing Committee on Judiciary

Re: Judiciary Committee report on MCILS additional initiatives

As we mentioned in our March 4th report-back on the Supplemental Budget, the Judiciary Committee needed more time to develop initiatives for the Maine Commission on Indigent Legal Services, inconceivably left out of the Supplemental Budget proposals. We strongly support five unanimous funding initiatives that we believe will help advance indigent legal services in the right direction, but we recognize that these recommendations do not respond to all the concerns and we still strongly support additional steps moving forward. In addition to the five unanimous recommendations, the majority of the committee supports two other initiatives, discussed below.

We rely on MCILS to carry out many responsibilities, but have only statutorily focused on one: to roster and pay counsel to represent indigent litigants in situations in which the United States and Maine Constitutions and laws require the State to provide such counsel. We also recognize the role of MCILS as a unifying voice of advocacy for the indigent criminal defense in Maine, providing leadership commensurate with the State's highest prosecutor. We are grateful to Executive Director Andrus for embracing this role and championing not only increased funding, but also taking a stand on constitutional issues such as the illegal recording of defendants' calls with their attorneys.

Addressing the challenges in the provision of legal services has been a focus of the Judiciary Committee's work since we convened in January of 2021. Maine's Sixth Amendment obligation has been a unifying issue for committee members, and we unanimously support these five funding initiatives that we believe to be the bare minimum to allow MCILS to operate effectively. One goal of our work has been to reach parity for defenders as compared with prosecutors. We were unable to address the disparity in health insurance and loan forgiveness/repayment opportunities at this time.

The five unanimous recommendations are as follows:

1. Rural Public Defender Unit

Initiative. Establishes one District Defender position (Elected DA-equivalent Grade 90), 2 Assistant Defender I positions (ADA-equivalent Grade 38) and 2 Assistant Defender II positions (ADA-equivalent Grade 30), to be dispatched in the State where needed, and provides for their ancillary costs and meals and travel expenses.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

GENERAL FUND	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT		5
Personal Services		\$704,482
All Other		\$261,415
GENERAL FUND TOTAL		\$965,897

Judiciary Committee vote: 12-0 (2 absent)

2. Legal research resources (electronic access, some paper publications)

Initiative: Provides ongoing funds for MCILS to enter into contract for online legal research access that is then provided to MCILS rostered attorneys (up to 300), and annual reimbursement for written legal materials purchased by attorneys.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

GENERAL FUND	2021-22	2022-23
All Other		\$275,580
GENERAL FUND TOTAL		\$275,580

Judiciary Committee vote: 12-0 (2 absent)

3. Training

Initiative: Provides ongoing funds for MCILS to provide up to 4, 2-day in-person trainings per year, including the costs of facilities, necessary expenses and honoraria for expert trainings. Existing funds will cover the hourly expense for attendance by rostered attorneys.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

GENERAL FUND	2021-22	2022-23
All Other		\$300,000
GENERAL FUND TOTAL		\$300,000

Sec. 1. 4 MRSA §1804, sub-§2, ¶F is amended to read:

F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel, including attendance at training events provided by the commission; and

Judiciary Committee vote: 12-0 (2 absent)

4. Contracts to specialists

Initiative: Provides ongoing funds and authority for MCILS to contract with attorneys and other providers and subject matter experts to support indigent legal services by providing targeted support concerning diversion and mitigation, appellate assistance, mentoring of new attorneys and serving co-counsel or lead counsel with a new attorney. Contracts will cover diversion and mitigation, appellate assistance, mentoring of new lawyers and serving as co-counsel and leas counsel with new attorneys

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

GENERAL FUND	2021-22	2022-23
All Other		\$240,000
GENERAL FUND TOTAL		\$240,000

Judiciary Committee vote: 12-0 (2 absent)

5. Increase hourly rate to \$100

Initiative: Provides ongoing funding to raise the hourly rate for attorneys from \$80 to \$100 to continue to move toward resource parity between the defense and prosecution functions.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

GENERAL FUND	2021-22	2022-23
All Other		\$4,649,763
GENERAL FUND TOTAL	<hr/>	<hr/> \$4,649,763

Judiciary Committee vote: 12-0 (2 absent)

6. Kennebec and Somerset Counties Public Defender Office

A majority of the Judiciary Committee supports LD 1686 that has remained on the Special Appropriations Table since 2021, and we recommend slight modifications. We recommend that the geographically-limited public defender office encompass not only Kennebec County as originally envisioned, but all of that prosecutorial District (District 4), to include Somerset County. We recommend that the 17 positions necessary to make that public defender office provide high-quality constitutionally legal defense be funded to start on October 1, 2022.

This is based on the appropriations section from the committee amendment to LD 1686, currently on the Special Appropriations Table. The numbers have been updated to reflect a start date of October 1, 2022, and the two 3% state employee increases. Also note that the public defender office coverage is the entire Prosecutorial District 4.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Establishes and provides funding for 4 Public Service Manager III positions, 5 Public Service Manager II positions, 2 Public Service Coordinator I positions, 2 Clinical Social Worker positions, 3 Paralegal positions and one Office Specialist II position to establish a Public Defender Office in Kennebec County. These positions begin October 1, 2022.

GENERAL FUND	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT		17,000
Personal Services		\$1,559,211
All Other		\$115,719
GENERAL FUND TOTAL	<hr/>	<hr/> \$1,674,930

Judiciary Committee vote: 8-4 (2 absent)

7. Civil Legal Services Fund ongoing appropriation

A majority of the Judiciary Committee also recognizes the increasing need for civil legal services for those who cannot afford them but are not in situations in which the state is constitutionally required to provide representation.

JUDICIAL DEPARTMENT
Courts - Supreme, Superior and District 0063

Initiative: Provides ongoing funding for civil legal services for persons unable to afford a lawyer by providing additional funds available for distribution by the Civil Legal Services Fund Commission pursuant to the Maine Revised Statutes, Title 4, section 18-A, subsection 1.

GENERAL FUND	2022-23
All Other	\$4,000,000
GENERAL FUND TOTAL	<u>\$4,000,000</u>

Judiciary Committee vote: 8-5 (1 absent)