

Too many cases. Too few lawyers. Maine courts stretch to find available defense attorneys

BY SAMANTHA HOGAN OCTOBER 30, 2022 THE MAINE MONITOR

The crisis in Maine's legal defense system for the poor is worsening, with jailed defendants waiting as long as six weeks to be assigned an attorney and some parents of children who have been removed from home lacking a lawyer days before scheduled hearings. Court clerks in nearly half of Maine's counties couldn't find an available defense lawyer who was qualified to work on cases for 34 people this month. Maine's chief trial court judge said situations in which courts are unable to find a lawyer are occurring with "disturbing frequency." "If you don't have a body to appoint, then that's a big problem," Justice Robert Mullen, chief judge of Maine's superior courts, said " And at some point does that become denial of counsel? Does at some point it become grounds for dismissing a case? That certainly can be argued and it probably will be argued if we continue to have delays in finding people to appoint."

Maine is the only US state without Public Defenders. Instead the Maine Commission on Indigent Legal Services, or MCILS, contracts with private lawyers to represent adults and children charged with crimes, or parents under investigation for alleged abuse who cannot afford their own attorneys. The system is voluntary. The number of defense lawyers accepting new indigent case assignments is at a record low. Maine is required under the U.S. and state constitutions to provide a lawyer for anyone who cannot afford one. The lawyer is supposed to be assigned early in the case.[...]

There is another reason for the overloaded system: Prosecutors are simply bringing too many cases to court. MCILS has no control over cases prosecutors choose to file. Prosecutors have chosen to charge more cases than the system can defend at this time and the cases are persisting in the system. But Danna Hayes, a spokeswoman with the Office of the Maine Attorney General, said charging decisions by state prosecutors are based on laws passed by the Legislature and evidence. "While the challenges facing the court-appointed attorney system are real and impactful ... our obligations to enforce the law do not change as a result of challenges to the judicial system at large," Hayes wrote .

"The current system, as it exists in Maine, is not working," Carol Garvan legal director of the ACLU of Maine, said. "The system, which has always relied entirely on private lawyers in Maine, is in crisis. A delay in the appointment of counsel can be equal to not having a lawyer at all."

The lawyer shortage has also had a dire effect in cases involving parents who have had a child removed from their home by the state for alleged child abuse or neglect. Child protection cases move through the courts rapidly "When a child is removed from a home, the parent is entitled to a hearing within 7 to 14 days maximum", said Meegan Burbank, who is a lawyer contracted with MCILS to do child protection cases . "The idea is, a hearing should be scheduled as soon as possible so that the parent can be heard," But this month several parents whose children have been removed from the home didn't yet have a court-appointed lawyer assigned to them on the week of their first scheduled court appearance. MCILS had not found attorneys for three parents involved in two protective custody cases .

The criminal courts partially shut down during the coronavirus pandemic and are not back to business as usual. The backlog of unresolved cases is worse than anticipated. The courts need to find a way to speed up cases, especially for people in jail, but COVID infections continue to delay trials for weeks at a time..[...]

MCILS has put an immediate price tag of \$13.3 million on its proposed fix. The money would increase court-appointed attorney's wages from \$80 to \$150 an hour, a level that is expected to attract some lawyers back to the work. The Legislature also approved a pilot program this spring to hire five Public Defenders, in the first step toward a Public Defender system. But they have yet to be hired. [...]