

## BRIDGING THE JUSTICE GAP IN MAINE

# Get the Facts on LD 564: An Act to Increase Funding for Civil Legal Services

Produced by the **Justice Action Group Legislative Committee**

For more information please contact Charlie Dingman at [cdingman@preti.com](mailto:cdingman@preti.com)

The principle of equal access to justice is a central tenet of our democracy. Civil legal aid helps ensure access to justice regardless of how much money one has. Yet despite the dedicated efforts of Maine's legal aid providers and the private bar, access to justice remains out of reach for many who can't afford it. When legal needs go unmet and people are forced to navigate the legal system on their own, equal justice under our laws and basic fairness become unfulfilled promises. This year, we can take steps toward ensuring equal access to justice in Maine with passage of LD 564, which will invest in critical civil legal aid services.

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## **I. What is civil legal aid?**

Civil legal aid is a combination of services and resources that helps Mainers of all backgrounds – including those who face the toughest legal challenges: children, veterans, seniors, ill or disabled people, and victims of domestic and sexual violence – to effectively navigate the justice system.

Civil legal aid provides access to legal help for people to protect their livelihoods, their health, and their families. Being your own lawyer in a case involving one of life's most important decisions—whether it's the custody of a child, the foreclosure of a home, veterans' rights, protecting an elderly person from financial fraud, assisting a person seeking asylum, or seeking protection from domestic violence is like acting as your own doctor in the hospital— results in misunderstandings, mistakes, and delay. People without legal training are easily overwhelmed by the complexity of the process. Civil legal aid makes it easier to access information — through easy-to-understand forms, including online forms, and tools for legal self-help — so people can know their rights and act on them. In more complex and crucial cases, professional legal advice or representation is essential, and civil legal aid protects and advocates for fair results for persons without sufficient income to afford to hire a lawyer, in as many of those situations as available resources permit. By doing so, civil legal aid also helps streamline the court system and cuts down on court costs, both by moving cases that must be in court more quickly and even-handedly, and by resolving many matters outside of courts or other formal hearing processes.

When we say the Pledge of Allegiance we close with "justice for all." We need civil legal aid to ensure that the very principle our founding fathers envisioned remains alive: justice for all, not for the few who can afford it.

## **II. Who provides civil legal aid in Maine?**

In Maine, Cumberland Legal Aid Clinic of the University of Maine School of Law, Immigrant Legal Advocacy Project, Legal Services for the Elderly, Maine Equal Justice, Disability Rights Maine, Maine Volunteer Lawyers Project, and Pine Tree Legal Assistance provide core legal services. The organizations collaborate, cooperate, and share resources toward their common goal of providing access to justice for tens of thousands of Maine people in need of legal help.

## **III. Isn't everyone who can't afford a lawyer entitled to have one appointed?**

While most people facing criminal charges have a constitutional right to an attorney, there is no right to counsel in civil cases. In a domestic violence case, for example, the abuser charged with a crime is entitled to legal assistance, but the victim seeking a restraining order or other protection through the civil justice system is not. In fact, most people with low incomes facing pressing legal problems that threaten their

livelihoods, their health, or their families outside of the criminal justice system must do so alone, without even basic assistance.

#### **IV. What kinds of issues are typically involved in civil legal aid?**

Civil legal aid provides access to legal help for people to protect their livelihoods, health, housing and families. Civil legal aid can make all the difference in people's lives:

- For the elderly woman who was at risk of losing her mobile home because of her deceased sister's debt, civil legal aid meant that she was able to keep her home.
- For the homeless veteran who served in the US Army for nine years, civil legal aid meant he could access his VA pension to afford stable housing.
- For the unaccompanied child fleeing violence, civil legal aid meant she could gain permanent legal status and avoid being deported to a country where she would have been abused, neglected, or abandoned.
- For 750 low-income Mainers with hearing impairment, civil legal aid meant they could all get the hearing aid they needed and were eligible for, as a result of a class action lawsuit.
- For the mother who left a violent, abusive relationship because she knew her children's lives were in jeopardy, civil legal aid meant they were protected by court order and could sleep at night.
- For the grandmother whose adult child was struggling with a substance use disorder, civil legal aid meant she was able to become legal guardian of her grandchild to provide him with stability and consistent love and care.
- For the child exhibiting disability-related behaviors in school, civil legal aid meant they could prevent an improper disciplinary removal and receive the services they need to access their education.

#### **V. What is systemic legal aid?**

Systemic legal aid is legal service provided on behalf of a group of people with low income, with the intention of advancing or protecting the rights of all those similarly situated. Systemic legal aid is a key component of Maine's legal aid network. It is the most cost-effective and far-reaching way to advance or protect legal rights when a group of people with low income encounter essentially the same legal problem.

The American Bar Association's Standard for the Provision of Civil Legal Aid provides that "Given the immense impact of legislation and regulation on the lives of the poor, administrative and legislative lobbying is a core legal service activity."<sup>1</sup> Notably, the funding proposed in LD 564 would not support legislative lobbying, which is explicitly excluded from government funding through the Maine Civil Legal Services Fund (MCLSF), but LD 564 would

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<sup>1</sup> ABA Standards for the Provision of Civil Legal Aid (2006), Standard 3.2 (On Legislative and Administrative Advocacy).

substantially improve access to other forms of systemic advocacy, like impact litigation in the courts and advocacy before administrative agencies regarding rules and practices affecting groups of low income clients. The ABA's standards go on to provide:

Legislative and administrative processes are an essential part of the legal system that affect the low-income population. Many administrative agencies adopt rules, regulations, policies and orders of general application that have lasting impact on low income persons. Some recurring problems affecting clients can only be resolved by legislative action or through a rule change by an administrative agency.

Legal aid providers, because of their knowledge of the legal problems of low income persons, can have a significant impact on legal interpretations, regulations, rules, policies, and the ways that these are carried out by government agencies, with direct effects on the lives of low income Mainers..

In 2022, administrative advocacy and impact litigation had 345,924 positive impacts on Mainers across all counties. For example, legal aid providers participated in the rulemaking process and collaborated with the Maine Department of Health and Human Services to align Maine's estate recovery process with the minimum federal requirements in order to remove a barrier to health coverage for people 55 and older. This advocacy resulted in change to the program that will impact over 50,000 older Mainers, who will no longer have an incentive to deny themselves coverage for essential health care for fear of losing their homes as a result of obtaining that coverage.

## **VI. What is the value of civil legal aid?**

Lives are changed for the better by civil legal aid, as the examples above show.

Meeting civil legal needs of low- income individuals also results in an influx of millions of dollars into Maine's economy. Providing legal services to those who cannot afford them brings tangible cost savings to our state; it puts real money back into our local economy and improves the lives of many.<sup>2</sup>

Civil legal aid is an investment with a good return for taxpayers, businesses and communities. For example, businesses and investors save money when home values are restored as a result of foreclosure prevention. Health care providers also save money when civil legal aid helps eligible families obtain insurance coverage or Medicaid coverage to pay for their services.

Civil legal aid also helps reduce costs to taxpayers. Taxpayers save money from legal aid's success in reducing homelessness for children, veterans, seniors, people with disabilities, and others, and the incidence of domestic violence. Civil legal aid also cuts down court costs as described below.

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<sup>2</sup> Economic Impact of Civil Legal Services in Maine, 2016, located at: <https://www.justicemaine.org/wp-content/uploads/Gabe Report-Submitted-November-14-2016.pdf>

## **VII. How does civil legal aid help the court system?**

Civil legal aid helps streamline the court system, reducing the number of unnecessary lawsuits and cutting down on court costs and staff overtime. Legal representation helps improve the efficiency of civil legal proceedings in the courts, while self-help resources and online legal forms can help parties navigate the system more effectively.

## **VIII. How is civil legal aid funded?**

Civil legal aid is funded by a variety of sources. Three decades ago, Maine dedicated some state funding to unmet legal needs via a surcharge on civil infractions and court filings through the Maine Civil Legal Services Fund, but revenue from those sources has declined since 2010. There are very few other government sources of support for civil legal aid, and the largest single federal funding source, through the Legal Services Corporation (LSC), is repeatedly under attack in Washington. Notably, only one of Maine's legal aid providers receives LSC funds. Maine lawyers also give both time and money to support civil legal aid, in amounts that rival any state in the country. Yet Maine's private bar alone cannot meet Maine's civil legal needs.

In 2022, the State of Maine included a general fund appropriation of \$1.3 million to support civil legal aid in Maine. While these funds help civil legal aid providers maintain operations and fill detrimental funding gaps, the allocation is not sufficient to meet the current and growing needs of Maine's residents and court system. Civil legal aid providers require additional funding to expand capacity to meet these needs.

## **IX. Does Maine currently provide equal access to justice under our laws?**

Not yet. The goal of civil legal aid is to provide professional legal help to everyone who needs it but is unable to afford it. Unfortunately, the legal needs of many Mainers in civil matters are going unmet, and in recent years civil legal aid providers have been challenged to do more with less. While the civil legal aid providers can do a lot with limited resources, much of the need for legal aid continues to go unmet.

Studies in Maine and nationally consistently show that roughly 75 percent of the litigants in the civil justice system are not represented by counsel.<sup>3</sup> The 1990 Maine Commission on Legal Needs Report found that Maine would need an additional 232 staff attorneys to handle the legal needs of low-income Mainers at that moment in time, at a projected cost of \$5.8 million (assuming starting salaries of only \$25,000). Almost thirty years later, we are still far short of that goal. Given the typical annual volume of cases handled relative to studies that show a need for help with at least one civil legal problem per year for each low-income household in Maine, Maine is

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<sup>3</sup> Justice for All: A Report of the Justice Action Group, 2007, located at: [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/ls\\_Strategic\\_ME\\_2007.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_Strategic_ME_2007.authcheckdam.pdf).

only meeting 20 to 35 percent of requests for service with our current collective funding levels. In 2016 the “Justice for Some” assessment on unmet legal service requests found that Maine was only able to meet 34% of the requests received by Maine civil legal aid providers.

Notably, this does not even capture people with legal needs who did not reach out and request help because the civil legal aid providers were not able to reach them due to limited capacity. Other studies in Maine have also demonstrated significant unmet need for legal aid.<sup>4</sup>

## **X. What is the Justice Index and how is Maine rated?**

The National Justice Index (Justice Index), put forward by the National Center for Access to Justice, offers nationwide standards for state-level policies to support the pursuit of justice for all. States are compared and given a rating (out of 100) based on their adherence to 128 policies (or, “benchmarks”) that relate to attorney access, self-representation, language access, disability access, and fines and fees.

Maine is currently rated 28.77 out of 100 on the Justice Index, and is ranked 37th in the nation overall. Maine’s attorney access benchmarks are the lowest rated among northeastern states.

The Justice Index has set a national standard of ten civil legal aid attorneys for every 10,000 low-income people. Maine currently falls more than 80% shy of this benchmark, having less than two civil legal aid attorneys for every 10,000 low-income people (only 1.86 attorneys for every 10,000 people with low income).

## **XI. What would support of LD 564 mean for civil legal aid in Maine?**

This investment would support access to legal help for people to protect their livelihoods, health, housing, and families. With this additional public support, Maine’s civil legal aid providers could take significant steps to meet unmet legal needs in Maine.

### **This investment would:**

- Preserve existing legal aid capacity (that would otherwise be lost due to an anticipated loss in ARPA funds at the end of 2023);
- Increase education and outreach efforts to low-income people with legal needs;
- Increase intake capacity to listen to low-income Mainers and handle legal cases; and

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<sup>4</sup> The Essence of Liberty Report by the Justice Action Group, 2014, located at: [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReports/ME\\_2014\\_Report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ME_2014_Report.pdf); Justice for All: A Report of the Justice Action Group, 2007.

- Provide free legal help to more people.

With an investment of \$3.9M in the first budget year, the legal aid providers could serve at least **6,405 more people** throughout the state.

Increasing the public investment to 7.8M in the second budget year would allow the providers to serve at least **10,638 more people** and benefit at least **another 20,000 people** through impact litigation and administrative advocacy efforts. Notably, the providers could also expand client-facing technology tools and improve self-help materials, do more outreach, and take other steps that would increase our impact beyond the numbers shared here.

With this investment over a two-year period, **at least 37,043 people across the state would get legal help they need and otherwise could not obtain, often with life-changing consequences.** This would represent over 10% of the people eligible for free legal services in Maine, most of whom face at least one civil legal issue each year.