



THE RIGHT TO COUNSEL IN MAINE: A LEGISLATIVE ROADMAP

Presented by

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David Carroll is recognized throughout the United States as a foremost national expert on the standards and methods for the delivery of right to counsel services, with more than 25 years of providing technical assistance to policymakers at the federal, state and local levels. He has led numerous research and evaluation projects, authored several papers and reports, and has testified on right to counsel issues before many state legislatures and the U.S. Congress.



Presentation to the Maine Committee on the Judiciary

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Today's Goals:

- The importance of the right to counsel
- Brief history of the right to counsel in Maine
- Proposed road map moving forward



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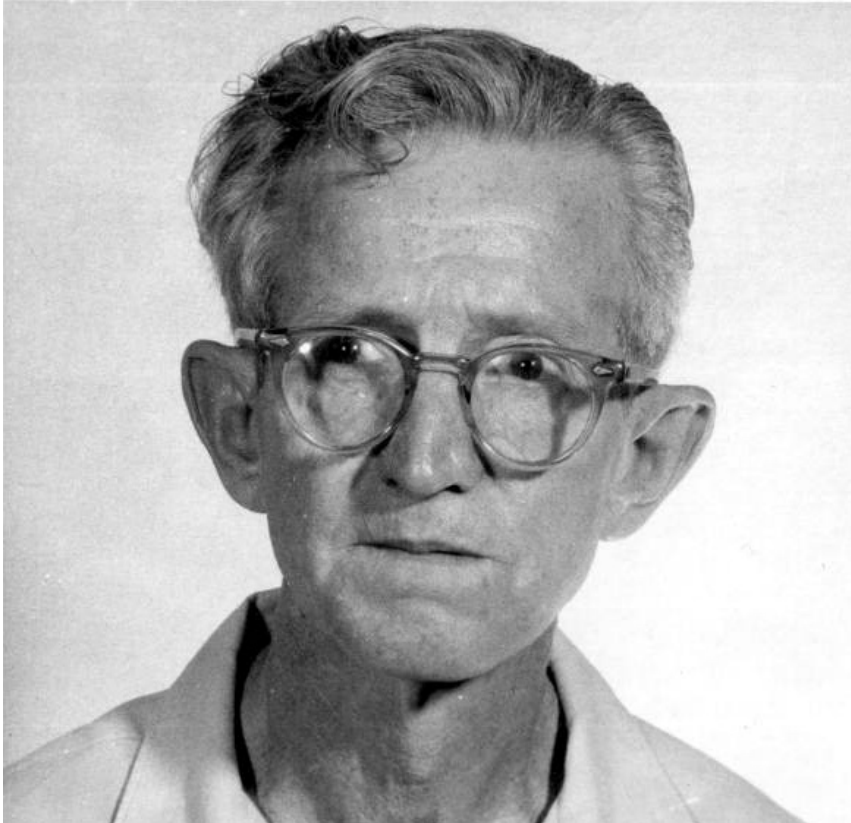
I: The importance of the right to counsel

“Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”

– U.S. Supreme Court’s decision in *United States v. Cronin*, 466 U.S. 648 (1984).



I: The importance of the right to counsel



“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

– U.S. Supreme Court’s decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963).

II: Brief history of the right to counsel in Maine

1965 - Maine Judicial Council

- “dissatisfaction” with the “functioning of the assigned counsel system”
- lack of uniformity between counties based on disparate funding levels

1971 - the Institute of Judicial Administration

- concludes there nothing to “justify much confidence that the assigned counsel system is working well”

1976 - Maine takes over 100% funding responsibility

- but leaves oversight of attorneys providing services as a court function
- judges hand-select lawyers on individual cases

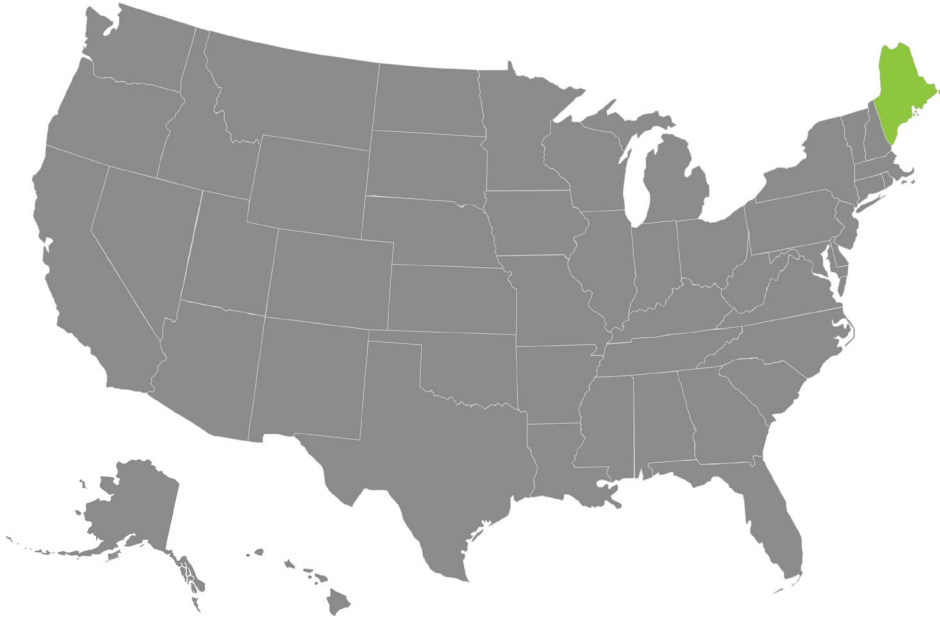
II: Brief history of the right to counsel in Maine

Because “independence of counsel” is “constitutionally protected,” the “[g]overnment violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense.”

– U.S. Supreme Court’s decision in *United States v. Cronin*, 466 U.S. 648 (1984).

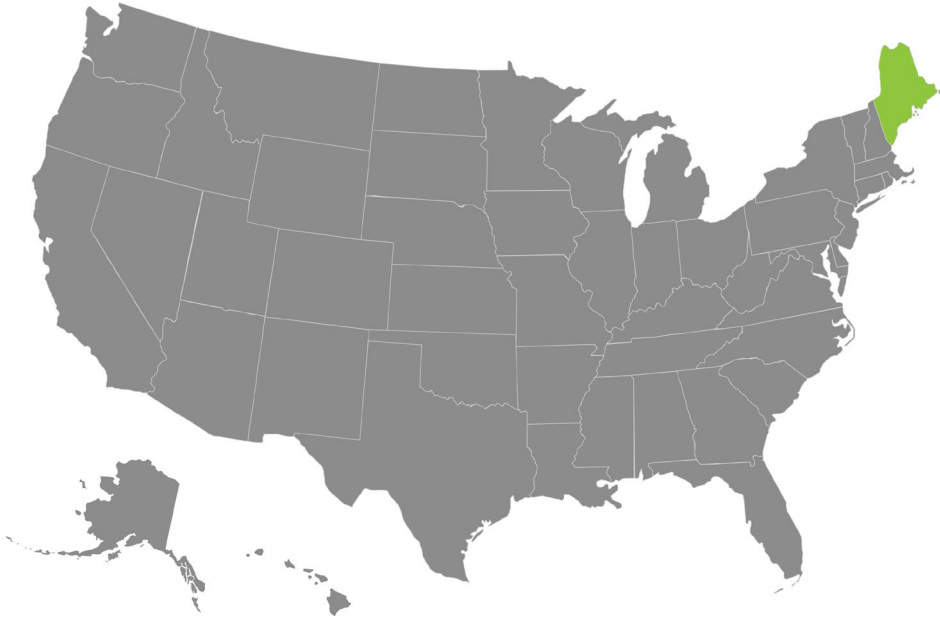


II: Brief history of the right to counsel in Maine



Maine is the **only** state in the country that provides all indigent defense services through private attorneys.

II: Brief history of the right to counsel in Maine



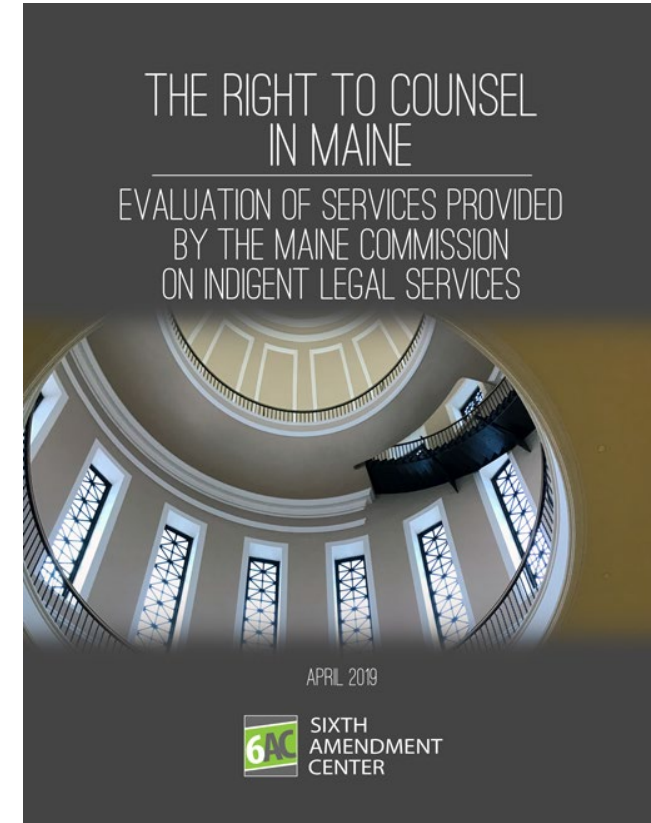
- 600 attorneys
- 30,000 cases
- 47 courthouses
- 90 justices, judges, and magistrates
- **3 MCILS staff**

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II: Brief history of the right to counsel in Maine

6AC's findings

- Too lenient attorney qualifications
- Limited training
- No supervision
- Uncounseled pleas

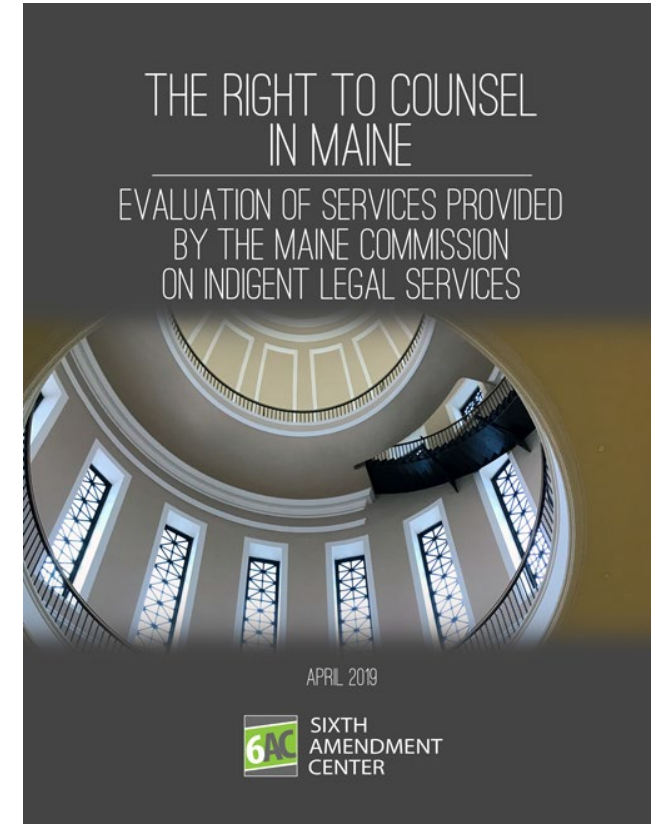


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II: Brief history of the right to counsel in Maine

6AC's findings

- The state has no structure to distinguish effective representation from poor representation

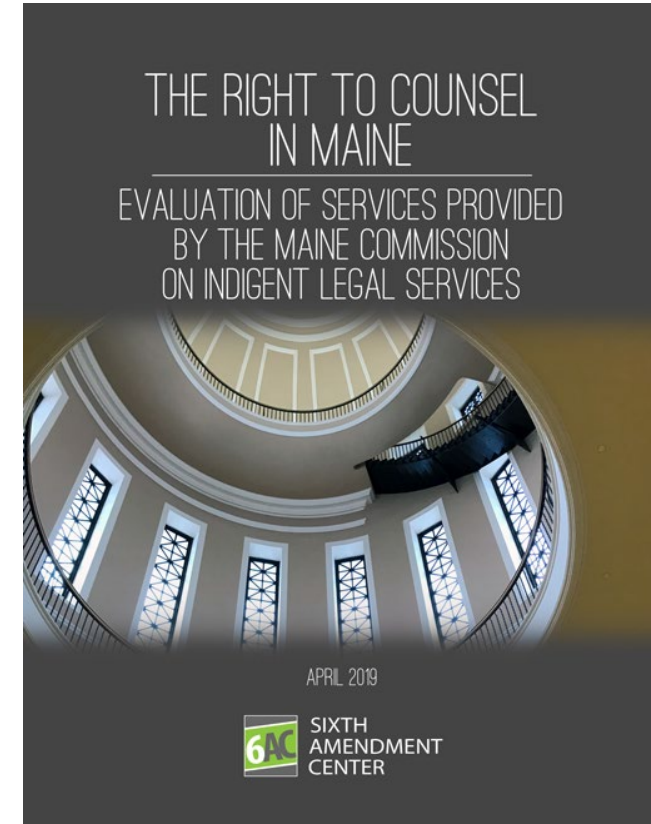


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II: Brief history of the right to counsel in Maine

6AC's findings

- The state has inadequate financial oversight



II: Brief history of the right to counsel in Maine

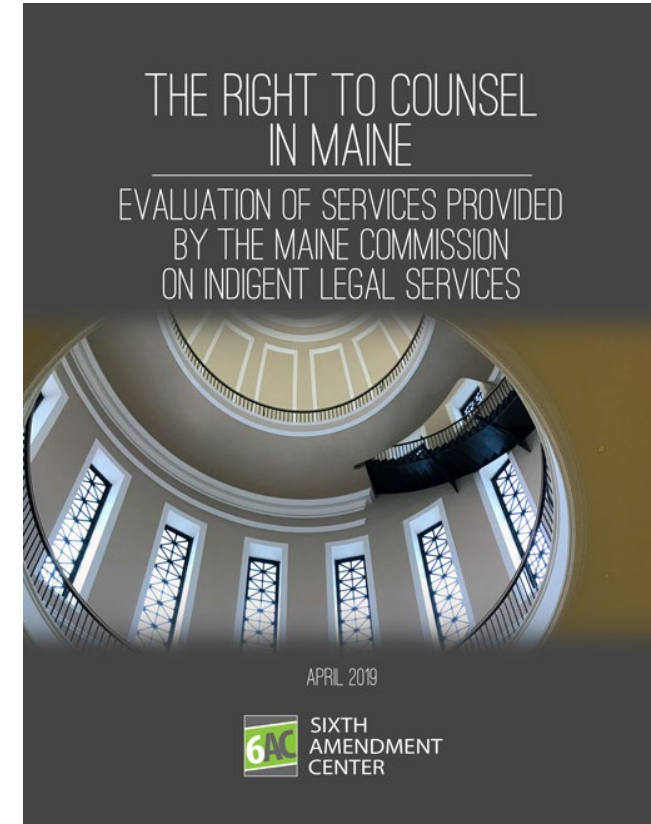
OPEGA's findings

- No established policies and procedures governing expenditures and payments
- Current monitoring efforts of attorney vouchers are inefficient and of limited effectiveness
- Auditor review procedures have not been established and current audit efforts are limited, inconsistent, of limited scope, depth and effectiveness
- MCILS is understaffed and receives insufficient support for necessary operations

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III: Proposed roadmap

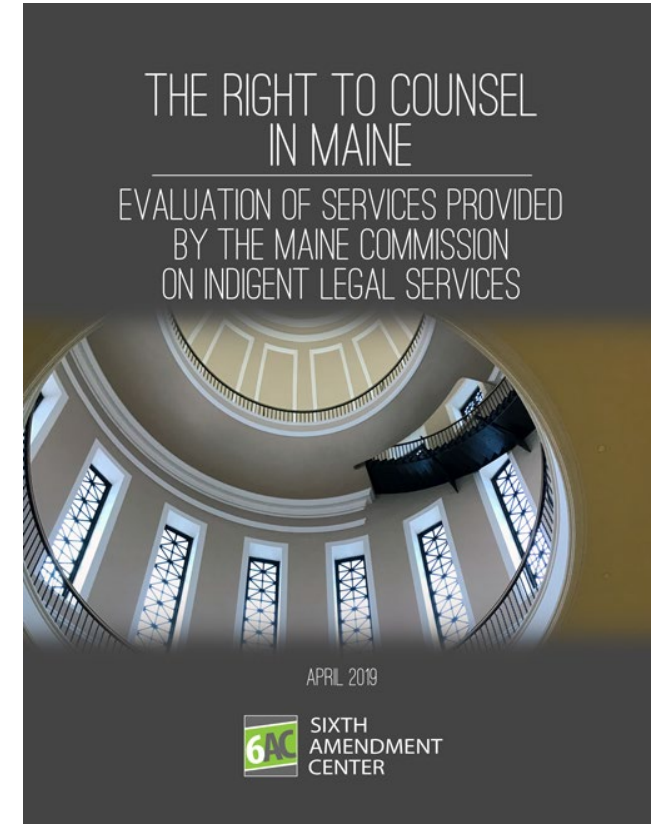
- The State of Maine should authorize and fund MCILS at an appropriate level to employ state government attorneys and support staff to operate a statewide appellate defender office and a Cumberland County trial level public defender office



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III: Proposed roadmap

- The State of Maine should fund MCILS at a level that allows private attorneys to be compensated for overhead expenses plus a reasonable fee (i.e., \$100 per hour). MCILS should be authorized to provide additional compensation of \$25 per hour for designated case types such as murder, sexual assaults, and postconviction review



III: Proposed roadmap

“Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”

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