

## BRIDGING THE JUSTICE GAP IN MAINE

# Get the Facts on LD 1326: An Act to Increase Funding for Civil Legal Services

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

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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 1326, which will invest in critical civil legal aid services.

### **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 in those situations. 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 the few who can afford it.

### **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.

### **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 must do so alone, without even basic assistance.

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

Ū 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:

Ū 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.

Ū 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.

Ū 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.

Ū 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 under the law as a result of a class action lawsuit.

Ū 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.

Ū 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

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

Lives are changed for the better through these efforts and 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

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cost savings to our state; it puts real money back into our local economy and it changes real people's lives for the better.

Civil legal aid is an investment with a good return for taxpayers, businesses and communities. For example, businesses and investors save money from the restoration of home values resulting from foreclosure prevention. Health care providers also save money when civil legal aid helps eligible families obtain insurance coverage or Medicaid 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.

## **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.

## **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), remains 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 need

<sup>1</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>

## **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% of the litigants in the civil justice system are not represented by counsel. The 1990 Maine Commission

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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 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>3</sup>

## **How has the pandemic impacted demand for civil legal aid?**

The COVID-19 pandemic has created on-going and severe economic hardship for Mainers and has increased the demand for civil legal aid services. These economic hardships have generated increasingly complex cases that, when considered alongside covid-conscious courthouse procedures, result in a proportionate increase in the amount of time required to address each case. Thus, as demand for civil legal aid services has increased, the capacity to respond to this demand has decreased.

Maine’s civil legal aid providers have responded to pandemic-driven demand by

continuing to provide in-person representation and leveraging technology to support education and outreach efforts. Unfortunately, due to both increased demand and case complexity, hundreds of viable requests for aid continue to go unmet each month.

<sup>2</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).<sup>3</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.

### **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 nation-wide standards of 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).

### **What would support of LD 1326 mean for civil legal aid in Maine?**

Maine’s civil legal aid providers offer a range of legal assistance, from services that help individuals and families meet basic needs and assert other legal rights, to undertaking large- scale advocacy efforts to advance and protect the legal interests of low-income people.

Additional public funds are needed to adequately meet the legal needs of Mainers with low incomes. When those who cannot afford lawyers encounter a life-changing legal issue without representation, the already profound impacts of poverty can become insurmountable.

With the additional public support that LD 1326 would provide, Maine’s civil legal aid providers could take significant steps to meet unmet legal needs in Maine. Passage of LD 1326 would mean that legal aid providers could take on at least 9,500 more legal cases per year and assist tens of thousands more through additional systemic advocacy, outreach, and education.

With additional public support, Maine would come far closer to fulfilling the promise of equal justice for ALL according to the National Justice Index. The national standard sets the goal of ten legal aid attorneys for every 10,000 low-income people. Currently

in Maine, we fall far short of that goal with less than two legal aid attorneys per 10,000 people with low incomes. Passage of LD 1326 would reduce the justice gap in Maine.

The pandemic has increased the number of persons in poverty, while taxing legal services budgets in a way that threatens the ability to sustain even the current 1.86:10,000 ratio, let alone progressing toward the 10:10,000 Justice Index standard.

Patching the hole in civil legal aid budgets would only sustain current resources, so the ratio would drop further due to rising poverty. To maintain current levels and begin to improve them, LD 1326 would work to “patch” holes in provider budgets AND add a fifth of the ten-year goal for annual increased spending of \$35.3 million. This would amount to an allocation of \$8.3 million in 2021 (the 1.3 million shortfall plus \$7 million).

This investment will allow providers to (1) maintain current staffing and (2) continue pandemic responsive efforts while adding staff to move Maine closer to meeting the unmet legal needs of Mainers with low incomes.