

**DEFENDING**

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Maine should consider. Although they think Maine's current system is working well, they believe a public defender's office would provide better oversight, as well as a regular slate of experienced lawyers devoted to one goal: defending people who otherwise couldn't afford defense.

"For me, personally, being a solo practitioner, I would love it if there was a public defender's office because I would be able to work in one office, go to one court," said Amanda Doherty, a South Portland lawyer and chairwoman of the Criminal Law Section of the Maine State Bar Association. "I wouldn't have to lay that on top of all my other administrative duties; there would be a staff to do that. I could focus more on just my cases, which is what I love doing."

Others believe there would be logistical and financial problems in forming a public defender's office. They say Maine's current system works perfectly well — and changes in recent years have made it even better — except for one area: salary. The state must pay lawyers more before it starts losing them to more lucrative, less stressful forms of law, they say.

And that would hurt the very people the system was designed to help.

"It's like we're the only friends these people have," Howaniec said. "They're almost all coming from the utter depths of poverty. They have nothing. They're asked about \$600 bail and they might as well be asking about \$600 million bail. They don't have 6 cents to their names."

**Competing for money**

All states are required to provide legal representation to criminal defendants who otherwise couldn't afford it. Lawyers and other legal experts stress the importance of that.

"Even someone charged with the most serious crimes gets to be represented," Howaniec said. "You know, we take that for granted. It doesn't happen like that every place in the world. Without trying to sound too corny, it's a tremendous system. It's what the country's all about. You're presumed innocent."

To qualify for a free lawyer in Maine, a defendant generally must earn less than 110 percent of the federal poverty level — currently \$12,837 a year for one person — and must have \$4,000 or less in cash, depending on the severity of the criminal charge. A defendant can earn more money and still get help if there are extraordinary monthly expenses.

Defendants can be required to pay something toward their defense.

Most defendants who ask for help in Maine get it. In fiscal year 2014, about 12,000 people applied for a public defender. Seventy-one percent were found fully indigent, while 19 percent were found partially indigent and ordered to make payments. Ten percent were denied.

According to the Administrative Office of the Courts, Maine saw just over 60,000 criminal, juvenile, child protective and mental health commitment cases filed in fiscal year 2014. One person can be the defendant in multiple cases.

Maine has long hired private lawyers to do the work. Those lawyers can serve as Lawyers of the Day, representing newly arrested clients as they make their first appearances in court and ask for bail. They can represent parents fighting Maine Department of Health and Human Services for return of their children, people committed to mental health facilities or minors who want to be emancipated. They can be assigned to defend children or adults facing trial.

Although they get paid by the hour, their fees are capped in many cases. In a petition for emancipation, for example, lawyers get up to \$385.

For decades, public defense funding was included in Maine's judicial system budget, listed like a mis-

**Cleveland Cruthirds: elevated aggravated assault, attempted murder**

Dates of service	Lawyer	Hours	Fees	Hourly rate
Dec. 23, 2011 to July 12, 2012	James Howaniec	19	\$950	\$50
July 16, 2012 to Nov. 9, 2012	Donald Hornblower/ David Van Dyke	144.7	\$5,177	\$36
Oct. 30, 2012 to Feb. 7, 2013	John DeGrinney/ Peter Richard Jr.	566.65	\$29,715.15*	\$50
			<b>Total \$35,842</b>	

\* Includes \$733.86 in trial costs for photos, defendant's clothing and other expenses, plus mileage

**Authorizations approved by Maine Commission on Indigent Legal Services for expert, medical services**

Date	Request made by	Service	Cost	Rate
Jan. 7, 2012	Request made by James Howaniec	Private investigator	Up to \$500	Up to \$25 per hour
Nov. 2, 2012	Request made by John DeGrinney	Psychologist	Up to \$3,500	
Nov. 8, 2012	Request made by Donald Hornblower	Private investigator	Up to \$262.89	Up to \$25 per hour
Nov. 26, 2012	Request made by Peter Richard Jr.	Private investigator	Up to \$1,500	Up to \$25 per hour
Jan. 2, 2013	Request made by Peter Richard Jr.	Forensic medical expert	Up to \$3,500	
July 19, 2013	Request made by Peter Richard Jr.	Forensic medical expert	Up to \$2,000	
Aug. 3, 2013	Request made by Peter Richard Jr.	Private investigator	Up to \$500	Up to \$25 per hour
Aug. 20, 2013	Request made by Peter Richard Jr.	Private investigator	Up to \$1,484.72	Up to \$25 per hour
			<b>Total (up to) \$13,247.61</b>	

**Cruthirds defense cost, timeline**

On Dec. 11, 2011, Cleveland Cruthirds of Lewiston was arrested and charged with the elevated aggravated assault and attempted murder of his sometime-girlfriend, Naomi Swift. She had been stabbed more than two dozen times inside her Blake Street apartment.

Between Cruthirds' initial court appearance and trial, he was represented by five court-appointed attorneys. According to court records, the first three each requested to withdraw from the case after their respective relationships with Cruthirds became strained.

The Sun Journal requested, through a Freedom of Access Act request, records documenting the cost of Cruthirds' defense provided by Lewiston attorneys James Howaniec, Donald Hornblower, David Van Dyke, and Portland attorneys John Paul DeGrinney and Peter Richard Jr.

The total cost of court-appointed counsel — not including appeal to the Maine Supreme Judicial Court — was \$35,842, plus more than \$13,000 in services provided by private investigators, a psychologist and forensic medical



SUN JOURNAL FILE PHOTO  
**Cleveland Cruthirds, left, listens to his lawyer, John Paul DeGrinney, in Androscoggin County Superior Court, in July 2013.**

experts hired by four of the lawyers (see accompanying chart for details).

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During Cruthirds' initial appearance in Androscoggin County Superior Court, Howaniec was appointed to represent him. A trial was scheduled for July 2012, but that month Howaniec filed a motion to withdraw from the case "due to a breakdown in the attorney-client relationship," according to court records.

Howaniec later billed the Maine Commission on Indigent Legal Services \$950 for his work, for 19 hours at an hourly rate of \$50.

In his place, the court appointed Hornblower and

Van Dyke to represent Cruthirds and the trial was rescheduled for October.

On Oct. 22, 2012 — the first day of that trial — Hornblower and Van Dyke abruptly withdrew from the case. At the time, Assistant District Andrew Matulis objected to the delay, arguing that prosecutors were prepared to present their case and a jury had already been picked and was waiting to be seated.

The court approved the defense attorneys' shared request to withdraw, and DeGrinney and Richard were appointed to represent Cruthirds.

Hornblower and Van Dyke billed the commission \$5,177 for their services,

for 148 hours at \$36 per hour.

After a seven-day trial in August 2013, a jury convicted Cruthirds of felony elevated aggravated assault, burglary and violation of bail conditions. The most serious charge of attempted murder was dismissed.

He was sentenced to 28 years in prison on the assault charge, with six years suspended.

DeGrinney and Richard billed the commission \$29,715 for 567 hours of work at \$50 per hour, plus mileage reimbursement and \$30.42 to buy clothes from Goodwill for Cruthirds to wear during his trial.

In May 2014, DeGrinney and Richard appealed Cruthirds' conviction to the Maine Supreme Judicial Court, claiming multiple errors on the part of Active-Retired Justice Robert Clifford during trial and the mishandling of evidence by the Lewiston Police Department.

On June 26, 2014, the law court upheld the Androscoggin County Superior Court jury verdict, denying Cruthirds' appeal.

He is serving his sentence at the Maine State Prison in Warren. His earliest possible release date is July 4, 2029.

He is 28 years old.

cellaneous expense under "all other." Judges were responsible for assigning defense lawyers, approving expert fees and paying for defense.

It became a problem. "You were competing (for money) with every other thing that the judiciary did," said Daniel Wathen, who served as chief justice in the 1990s. "Security. At that time we had a provision in there for support of libraries, law libraries. Judicial training ... and on and on. Guardian ad litem. Anything you can think of."

At one point in the early 1990s, there was such a shortage of money that public defenders and other providers didn't get paid for six months. However, district attorneys, whose budgets were not tied to the judiciary, still did.

"It really put a lot of stress on the court-appointed counsel," Wathen said.

Financial problems persisted well into the next decade. In 2007, officials planned to drop the Lawyer of the Day program for six months to balance the judiciary's budget. Ultimately, part of the program was temporarily shut down.

There was also growing concern about conflicts of interest. Should a judge really be responsible for deciding who would represent a defendant, how much that lawyer would be paid and whether the defense team could hire experts? The American Bar Association's guidelines said pub-

lic defense systems should be wholly independent, and many in Maine agreed.

"We don't pick the DAs. We don't tell the DAs who they're going to put on a case or not put on a case. We shouldn't be doing that with defense cases," said Robert Ruffner, a Portland defense attorney who founded the Maine Indigent Defense Center after the Lawyer of the Day program was jeopardized in 2007.

In 2008, Chief Justice Leigh Saufley of the Maine Supreme Judicial Court established the Indigent Legal Services Commission to look at the way Maine handles public defense. Its 2009 report recommended that Maine create an independent group to oversee the system.

Later that year, the state created the Maine Commission on Indigent Legal Services to do just that. In 2010, that commission took over the indigent legal defense system from the judiciary.

Today, the commission handles a roster of more than 450 private lawyers. It's responsible for appointing and paying them, as well as for approving and paying for other defense expenses, from its \$14 million budget. Unlike the judiciary, it runs trainings and sets qualifications that lawyers must meet to handle certain cases.

A year out of law school and only experienced in bankruptcy law? The commission will not hand over a murder case.

"(The judiciary) didn't have any requirements other than you had to be alive and be a lawyer," Ruffner said.

Many lawyers like the commission. They say it's a welcome advocate for public defense attorneys and they applaud the training and standards the commission has implemented. They also like the fact that they no longer have to get a judge's OK to spend money on their client's defense. Unlike the judiciary's budget, almost all of the commission's budget is dedicated to defense lawyers and defense expenses.

"The Kristina Lowe case, I hired four or five experts," Howaniec said. "Toxicologists, (forensic chemist) Pat Demers, a doctor. I spent about \$20,000 in experts on the Lowe case between the trial and the suppression hearing. We would never have gotten anywhere near that (from a judge)."

But while lawyers and legal experts say Maine's system is working, and is certainly better than it was, some say it could improve more.

"I think that Maine is ripe to try something new," Ruffner said.

"I don't think ... we're blazing a trail"

According to a 2007 report by the U.S. Department of Justice, all other states and the District of Columbia had some form of a public defender's office. Twenty-two were state-based and 28 were county-based.

Legal experts say little has changed to alter those numbers.

Some states or counties pay for private lawyers, as well, particularly in rural areas where it's difficult to sustain a public defender's office or when there's a conflict of interest. But all have at their base a public defender's office.

New Hampshire, for example, created its statewide public defender system in the 1990s. Today, about 85 percent of cases are handled by 119 lawyers in its public defender's offices. About 14 percent are handled by private defense lawyers contracted to deal with a certain number of cases. Less than 1 percent are handled Maine's way, with private lawyers assigned cases and paid by the hour.

"It's really something having 119 lawyers working together in a firm who can be supervised and who can be mentored and trained," said Chris Keating, executive director of the New Hampshire Judicial Council.

"They are able to really raise the level of practice because they are communicating on a statewide basis regularly and training one another regularly and trying to push each other regularly," Keating said. "I think it does a lot to raise the professionalism of the people who do the work. And I think clients are the beneficiaries of that."

Some say Maine should consider a public defend-

er's office of its own.

"We are the only state in the country where there isn't a single full-time attorney doing just indigent defense work. And I don't think that's because we're blazing a trail," Ruffner said.

He and other proponents say a public defender's office would raise pay, provide support and better ensure that lawyers are doing a good job for their clients.

"There are great examples of attorneys doing fantastic jobs, that have organized themselves in ways that benefit their clients, but there's no requirement that attorneys do that," Ruffner said. "There's no requirement that attorneys have a secretary, an office, an answering service."

Proponents of a public defender's office say \$55 an hour may sound like a lot of money, but out of that lawyers have to pay overhead, insurance and support staff — all things that would be taken care of for them as part of a public defender's office.

And since attorneys can make four times that amount with private-pay clients, there are concerns that veteran lawyers will turn away from public defense, leaving poor clients with more inexperienced defenders.

It's a fear that's already been realized in some parts of the state. Last spring, Woody Hanstein and David Sanders, a pair of experienced lawyers in Franklin County, boycotted state-appointed sex-assault cases because the pay wasn't enough to cover their expenses.

"If I've got an office in Bangor and I walk out the door with my briefcase and I turn right and I go to the federal court and they give me a court-appointed case and I work all day on it, the federal government pays me \$125 bucks an hour," said Hanstein, who does little public defense work anymore. "The next day I turn left and I go to state court, they pay me \$55. To do the same work. Where the stakes are just as high or higher. I know it's two different governments, but I don't think the federal government is in the charity business. And it's not that it's a higher caliber of lawyer; it's the same people."

In some rural parts of the state, finding a lawyer at all can be a challenge.

The state has experimented with a way to fix that. In the 1990s, it began contracting with a group of lawyers in Somerset County to provide criminal defense. The contract guaranteed those lawyers would take public cases, which helped defendants. And because the lawyers bid on the contract, they got a payment they could live with.

Experts say the experiment has helped fill a need in that region, but it was never expanded. Some other rural communities struggle today.

In district court in Calais, for example, only six lawyers are on the roster to handle juvenile cases, and only three can deal with children charged with felonies. Only two can serve as Lawyer of the Day for children.

In comparison, Lewiston's district court has more than 50 lawyers who handle juvenile cases, 32 approved to deal with felonies. Twenty-nine can serve as Lawyer of the Day.

**Comes down to cost**

Others agree the system could be better, but they say the state can deal with its issues without implementing a whole new way of doing things. Some aren't sure Maine could even support a public defender's office in the most rural parts of the state.

"Clearly, in some rural, remote counties it really would be impossible, pretty difficult, to have a public defender's office," Hanstein said. "The nice thing about Maine's system is in Franklin County the state government does not need to rent an office building and pay for two secretaries and pay for all their medical insurance and pay them retirement. They don't need all the overhead to keep an office going."

Many say the current system works well, it just needs to be tweaked.