

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 414

S. P. 184

In Senate, February 8, 1979

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

Presented by Senator Silverman of Washington.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

AN ACT to Establish an Office of Public Defender.

Be it enacted by the People of the State of Maine, as follows:

**Sec. 1.** 4 MRSA § 173, sub-§ 5, as repealed and replaced by PL 1977, c. 114, § 9, is repealed.

**Sec. 2.** 5 MRSA, c. 8. is enacted to read:

CHAPTER 8

PUBLIC DEFENDER

SUBCHAPTER I

OFFICE OF PUBLIC DEFENDER

§ 171. Findings and purpose

Recognizing that the United States Constitution and the Constitution of the State of Maine require that counsel be provided for indigent defendants in criminal proceedings, the Legislature finds that these services may be most efficiently and effectively supplied by a centralized public defender system. Thus, the purpose of this chapter is to provide a centralized system that will provide these services with a full-time professional staff of attorneys throughout the State.

**§ 172. Appointments, duties and compensation of the Public Defender**

1. **Appointment.** The Public Defender shall be appointed by the Governor and shall be subject to review by the Joint Standing Committee on Judiciary and to confirmation by the Legislature. He shall be an attorney, licensed to practice in this State. His term shall be coterminous with the Governor, but shall continue until his successor is appointed and confirmed.

2. **Duty.** The Public Defender's duty shall be to represent and act as attorney for indigent persons accused of crime in the courts of the State, either personally or by his assistants. He shall also be the executive head of the Department of Public Defender. He shall devote full time to the performance of his duty and shall not engage in the private practice of law, nor shall he be a partner or associate of any person in the practice of law.

3. **Compensation.** The Public Defender shall receive an annual salary of \$30,000 in full for all his services. He shall also receive his actual expenses incurred in the performance of his official duties.

**§ 173. Deputies and assistants; appointment and duties**

1. **Appointment.** The Public Defender may appoint one or more Deputy Public Defenders and Assistant Public Defenders, who shall be attorneys licensed to practice in this State and who shall serve during the pleasure of the Public Defender. Deputy and Assistant Public Defenders shall devote full time to the performance of their duties, and shall not engage in the private practice of law or be a partner or associate of any person in the practice of law. The compensation of these deputies and assistants shall be fixed by the Public Defender.

2. **Duties.** The Deputy Public Defenders and Assistant Public Defenders shall assist the Public Defender in carrying out his duty and shall perform any other duties the Public Defender may delegate to them.

**§ 174. Investigative and clerical personnel**

The Public Defender may hire, subject to the Personnel Law, the clerical and investigative personnel necessary to carry out this chapter.

**§ 175. Employment of private counsel**

The Public Defender may employ, in cases in which he in his discretion deems it expedient, private counsel to represent and act as attorney for indigent persons accused of crime in the courts of this State.

Private counsel shall in each case be paid a fair and reasonable fee for the services rendered, which shall be determined and approved by the Public Defender.

The Public Defender may also employ or assign qualified law students without compensation in cases in which he in his discretion deems it expedient.

**§ 176. Appropriations; federal funds**

1. **Appropriations.** Whatever sum may be appropriated for the purposes of this chapter may be expended under the direction of the Public Defender.

2. **Federal funds.** The Public Defender may seek, receive and expend federal funds or donations from any person or corporation to carry out his duty.

**§ 177. Biennial reports**

The Public Defender shall, biennially, on the first day of December, make a report to the Governor and Legislature of the amount and kind of official business done by him during the preceding 2 years, including the number of persons represented, the crimes involved, the outcome of each case and the expenditures of his office by kind. He may also include, as his experience indicates, any recommendations for changes in statutes or court rules as may be appropriate to the improvement of the criminal justice system, the control of crime, the rehabilitation of offenders or related objectives.

**§ 178. Office space**

1. **Public Defender's office.** The Public Defender's office shall be the seat of government.

2. **Branch offices.** The Public Defender may establish the branch offices necessary to carry out his duties.

3. **County courthouses.** Each county shall provide office space for the Public Defender that is equivalent to the space provided for District Attorneys.

**SUBCHAPTER II****REPRESENTATION OF INDIGENTS****§ 181. Definitions**

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Needy person.** "Needy person" means a person who at the time his need is determined is unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expenses of representation.

2. **Serious crime.** "Serious crime" includes:

A. A felony;

B. A misdemeanor or offense, any penalty for which includes the possibility of confinement or a fine of \$500 or more; and

C. A juvenile offense.

**§ 182. Right to representation, services and facilities**

**1. Rights.** A needy person who is being detained by a law enforcement officer, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is entitled:

**A.** To be represented by an attorney to the extent required by statute, judicial decision or rule of court; and

**B.** To be provided with the necessary services and facilities of representation, including investigation and other preparation, as authorized or later approved by the court. The attorney, services and facilities, and court costs, shall be provided at public expense, to the extent that the person, at the time the court determines need, is unable to provide for their payment without undue hardship.

**2. —additional.** A needy person who is entitled to be represented by an attorney under subsection 1 is entitled:

**A.** To be counseled and defended at all stages of the matter, beginning with the earliest time when a person providing his own counsel would be entitled to be represented by an attorney and including revocation of probation or parole; and

**B.** To be represented in any appeal;

In cases where there is a question in the mind of the Public Defender as to the merit of prosecuting an appeal, a panel consisting of the chief Public Defender and 2 Assistant Public Defenders shall determine whether or not the Public Defender should prosecute the appeal and shall instruct him to withdraw from representation where the appeal is clearly frivolous or without merit.

**3. —application.** A needy person's right to a benefit under subsection 1 or 2 is not affected by his having provided a similar benefit at his own expense, or by his having waived it, at an earlier stage.

**§ 183. Notice and provision of representation**

**1. Law enforcement officer.** If a person who is being detained by a law enforcement officer without charge or judicial process, or who is charged with having committed a serious crime or is being detained under a conviction of serious crime, is not represented by an attorney under conditions in which representation is required by statute, judicial decision or rule of court, the law enforcement officer concerned, upon commencement of detention, shall:

**A.** Clearly inform him of the right of a needy person to be represented by an attorney at public expense; and

**B.** If the person detained or charged does not have an attorney, notify the appropriate Public Defender that he is not so represented.

As used in this subsection, the term "commencement of detention" includes the taking into custody of a probationer or parolee.

2. **Judge.** Upon commencement of any later judicial proceedings relating to the same matter, the presiding judge shall clearly inform the person, so detained or charged, of the right of a needy person to be represented by an attorney at public expense.

3. **Notice.** If a law enforcement officer or a court determines that the person is entitled to be represented by an attorney at public expense, the officer or the court, as the case may be, shall promptly notify the Public Defender.

4. **Representation.** Upon notification under this section or upon request by the person concerned, the Public Defender shall represent the person with respect to whom the notification is made. If the Public Defender is unable or unwilling to represent the person, the court may assign an attorney to represent him. The court may appoint co-counsel or associate counsel in appropriate circumstances.

#### § 184. Determination of financial need

1. **Determination.** The determination of whether a person covered by section 182 is a needy person shall be deferred until his first appearance in court or in a suit for payment under section 186, whichever occurs earlier. Thereafter, the court concerned shall determine, with respect to each proceeding, whether he is a needy person.

2. —considerations. In determining whether a person is a needy person and in determining the extent of his inability to pay, the court concerned may consider such factors as income, property owned, outstanding obligations and the number and ages of his dependents. Release on bail does not necessarily prevent him from being a needy person. In each case, the person, subject to the penalties for perjury, shall certify in writing or by other record such material factors relating to his ability to pay as the court prescribes.

3. —payments. To the extent that a person covered by section 182 is able to provide for an attorney, the other necessary services and facilities of representation and court costs, the court may order him to provide for their payment.

#### § 185. Replacement attorney

At any stage, including appeal, the court concerned or the Public Defender may for good cause assign a replacement attorney. The replacement attorney has the same functions with respect to the needy person as the attorney or Public Defender whom he replaces. If the replacement attorney is not a Public Defender, the Public Defender shall prescribe reasonable compensation for him and approve the expenses necessarily incurred by him in the defense of the needy person.

#### § 186. Waiver

A person who has been appropriately informed under section 182 may waive in writing, or by other record, any right provided by this chapter, if the court concerned, at the time of or after the waiver, finds of record that he has acted

with full awareness of his rights and of the consequences of a waiver and if the waiver is otherwise according to law. The court shall consider such factors as the person's age, education and familiarity with English, and the complexity of the crime involved.

**§ 187. Recovery from defendant**

**1. Defendant.** The Public Defender, on behalf of the State, may recover payment from each person who has received legal assistance or other benefit under this chapter:

**A. To which he was not entitled; or**

**B. With respect to which he was not a needy person when he received it;**

and for which he refused to pay or reimburse. Suit shall be brought within 6 years after the date on which the aid was received.

**2. Other.** The Public Defender, on behalf of the State, may recover payment from each person, other than a person covered by a subsection 1, who has received legal assistance under this chapter and who, on the date suit was brought, is financially able to pay the State for it according to the standards of ability to pay applicable under section 181, subsection 1, section 182, subsection 1, or section 184, subsection 2, but refuses to do so. Suit shall be brought within 3 years after the date on which the benefit was received.

**3. General Fund.** Amounts recovered under this section shall be paid into the General Fund.

**§ 188. Use of state facilities**

An attorney representing a person under this chapter is entitled to use any state, county or municipal technical services and facilities for the development and evaluation of evidence that are available to the prosecutor.

**§ 189. Expenses**

Any expense, including the cost of a transcript, that is directly and necessarily incurred in representing a needy person under this chapter shall be a charge against the State.

**§ 190. Fees**

A person who represents a needy person under this chapter may not receive any fee for his services in addition to that provided under this chapter.

**Sec. 3. 15 MRSA § 810, 3rd, 4th and 5th sentences,** as amended, are repealed.

**Sec. 4. Appropriation.** The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

	<b>1979-80</b>	<b>1980-81</b>
<b>PUBLIC DEFENDER, DEPARTMENT OF</b>		
Personal Services (35)	\$ 500,000	\$ 550,000
Contractual Services	500,000	550,000
All Other		
	<hr/>	<hr/>
	\$1,000,000	\$1,000,000

**STATEMENT OF FACT**

The purpose of this bill is to create the Department of Public Defender to represent indigent persons in criminal proceedings. This public defense of indigents is required by both the Constitution of the United States and the Constitution of Maine, and is presently provided by private counsel assigned and paid by the courts. The bill also establishes standards for representation by Public Defenders. This bill will result in increased efficiency and effectiveness in the representation of indigents, while also improving the delivery of justice.

Despite the appropriations attached to this bill, it should not increase the overall expenditures of government. It may reduce them significantly.

During the last year, the courts spent \$784,165 on providing assigned counsel to indigent offenders. This breaks down as follows:

	<b>Fiscal Year 1977</b>	<b>Fiscal Year 1978</b>
Supreme Court	\$ 24,222.95	\$ 39,989.67
Superior Court	323,436.28	410,518.56
District Court	185,570.69	333,657.52
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	\$533,229.92	\$784,165.75

The Court Administrator estimates that the fiscal year 1979 will see these costs exceed \$1,000,000.