

# MAINE STATE LEGISLATURE

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## JUDICIARY

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## STATE OF MAINE

## SENATE

## 132ND LEGISLATURE

## FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 462, L.D. 1101, "An Act to Address the Limited Availability of Counsel in Courts to Represent Indigent Parties in Matters Affecting Their Fundamental Rights"

Amend the bill in the emergency preamble in the 2nd indented paragraph in the 3rd line (page 1, line 5 in L.D.) by striking out the following: "matters" and inserting the following: 'criminal and child protection proceedings'

Amend the bill in section 1 in subsection 1 in the 2nd line (page 1, line 30 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill in section 1 in subsection 1 in paragraph E in the 4th line (page 2, line 4 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill in section 2 in subsection 3 in the 3rd line (page 2, line 10 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill in section 2 in subsection 3 in paragraph A in the 3rd line (page 2, line 13 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill by striking out all of sections 3 and 4 and inserting the following:

'Sec. 3. 4 MRSA §1807 is enacted to read:

**§1807. Court appointment of private attorney**

**1. Appointment of private attorneys by District Court and Superior Court.**  
**Notwithstanding any provision of this chapter to the contrary, a court may appoint a private attorney to represent a person who is eligible to receive indigent legal services in a matter pending before the District Court or Superior Court if the court finds the following:**

**A. A public defender, assigned counsel, contract counsel or employed counsel is not available to represent the person;**

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B. The private attorney is qualified to represent the person in the matter pending before the court, has not been disqualified by the commission and has at least 3 years of legal experience relevant to the pending matter; and

C. The private attorney is willing to undertake the representation, which may be limited representation defined by the court in its appointment order.

**2. Private attorney appointment; Supreme Judicial Court.** Notwithstanding any provision of this chapter to the contrary, a court may appoint a private attorney to represent a person who is eligible to receive indigent legal services in a matter before the Supreme Judicial Court if the court finds the following:

A. A public defender, assigned counsel, contract counsel or employed counsel is not available to represent the person;

B. The private attorney is qualified to represent the person in the matter pending before the court, has not been disqualified by the commission and either has at least 3 years of legal experience relevant to the pending matter or has previously served as a law clerk analyzing cases relevant to the pending matter; and

C. The private attorney is willing to undertake the representation, which may be limited representation defined by the court in its appointment order.

**3. Compensation.** The commission shall provide compensation and reimbursement to a private attorney appointed by the court under subsection 1 or 2. The compensation and reimbursement must be equivalent to the reimbursement provided to assigned counsel under the rulemaking directed by section 1804, subsection 3, paragraph F. The process for compensation of private attorneys appointed pursuant to subsection 1 or 2 must be in accordance with the requirements established by the commission under section 1804, subsection 3, paragraph B for voucher review and payment authorization.

**4. Supervision.** The commission's supervision of a private attorney appointed pursuant to subsection 1 or 2 is limited to addressing complaints made by the client whom the private attorney was appointed to represent under subsection 1 or 2.

**5. Confidentiality.** The provisions of section 1806, subsections 2 and 3 apply, to the same extent that those provisions apply to commission-rostered attorneys who serve as assigned counsel, to private attorneys appointed by the court to provide indigent legal services pursuant to subsections 1 and 2.

**6. Repeal.** This section is repealed February 1, 2026.

**Sec. 4. Report; Maine Commission on Public Defense Services.** By January 1, 2026, the Maine Commission on Public Defense Services shall submit a report to the Joint Standing Committee on Judiciary that includes, at a minimum, the following information:

1. An update on the status of the *Robbins v. Billings, et al.*, No. CV-22-054 (Me. Superior Court) litigation, including information on the number of defendants granted habeas corpus relief by the court, the type of habeas corpus relief granted to these defendants and the efforts the commission made to provide counsel to those defendants before habeas corpus relief was granted;

2. Statistics on the number of clients for whom the new Assistant Defender I positions established by this Act have provided indigent legal services, with detail on the number of

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1 clients who were criminal defendants, including the number who were incarcerated and  
2 who were not incarcerated when the representation began; the number of clients who were  
3 parents in child protection proceedings; and the number of clients who were entitled to  
4 other indigent legal services and the type of cases in which representation was provided to  
5 these clients. The report must also include a description of the commission's plans for  
6 using the services of these Assistant Defender I positions in the future; and

7 3. Information on implementation of the commission's duty to compensate private  
8 attorneys appointed by a court pursuant to the Maine Revised Statutes, Title 4, section  
9 1807, subsections 1 and 2, including detail on the amount of compensation paid to these  
10 private attorneys; information on the number of commission-rostered attorneys who have  
11 left the roster and are currently accepting appointments under Title 4, section 1807;  
12 information on the number of private attorneys appointed by a court pursuant to Title 4,  
13 section 1807 who subsequently applied to be on a commission roster; and any related  
14 recommendations for improving or repealing Title 4, section 1807.

15 The Joint Standing Committee on Judiciary may report out legislation related to the  
16 report to the Second Regular Session of the 132nd Legislature.

17 **Sec. 5. Report; Judicial Department.** By January 1, 2026, the Judicial  
18 Department shall submit a report to the Joint Standing Committee on Judiciary that  
19 includes, at a minimum, the following information:

20 1. Statistics on the number of cases in which courts have appointed private attorneys  
21 to provide indigent legal services pursuant to the Maine Revised Statutes, Title 4, section  
22 1807, subsections 1 and 2, with detail on the number of cases involving criminal  
23 defendants, including the number of those defendants who were incarcerated and the  
24 number who were not incarcerated when the appointments were made; the number of child  
25 protection proceedings in which private attorneys were appointed; and the number of cases  
26 involving other indigent legal services in which appointments were made; and

27 2. Information on implementation of the commission's duty to compensate private  
28 attorneys appointed by a court pursuant to the Maine Revised Statutes, Title 4, section  
29 1807, subsections 1 and 2, including any recommendations for improving or repealing Title  
30 4, section 1807.

31 The Joint Standing Committee on Judiciary may report out legislation related to the  
32 report to the Second Regular Session of the 132nd Legislature.

33 **Sec. 6. Appropriations and allocations.** The following appropriations and  
34 allocations are made.

35 **PUBLIC DEFENSE SERVICES, MAINE COMMISSION ON**

36 **Maine Commission on Public Defense Services Z112**

37 Initiative: Provides ongoing funding to establish 5 Assistant Defender I positions, 2  
38 Paralegal positions and one Legal Administrator position. These positions are primarily  
39 responsible for providing indigent legal services to criminal defendants and parties in child  
40 protective proceedings for whom another public defender, assigned counsel, contract  
41 counsel or employed counsel is not available to represent the defendant or party and, to the  
42 extent there is additional capacity, these positions may also represent other individuals who

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## COMMITTEE AMENDMENT "A" to S.P. 462, L.D. 1101 (S-11)

are eligible for indigent legal services but for whom another public defender, assigned counsel, contract counsel or employed counsel is not available to represent the person.

GENERAL FUND	2024-25	2025-26	2026-27
POSITIONS - LEGISLATIVE	8,000	8,000	8,000
COUNT			
Personal Services	\$200,522	\$1,203,134	\$1,216,315
All Other	\$6,000	\$40,660	\$40,660
GENERAL FUND TOTAL	\$206,522	\$1,243,794	\$1,256,975

**Maine Commission on Public Defense Services Z112**

Initiative: Provides ongoing funding to compensate assigned counsel that the Legislature authorized the courts to appoint at the current billing rate for assigned legal counsel of \$150 per hour.

GENERAL FUND	2024-25	2025-26	2026-27
All Other	\$62,500	\$375,000	\$375,000
GENERAL FUND TOTAL	\$62,500	\$375,000	\$375,000

**PUBLIC DEFENSE SERVICES,  
MAINE COMMISSION ON  
DEPARTMENT TOTALS**

	2024-25	2025-26	2026-27
GENERAL FUND	\$269,022	\$1,618,794	\$1,631,975
DEPARTMENT TOTAL - ALL FUNDS	\$269,022	\$1,618,794	\$1,631,975

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

This amendment amends the provisions of the bill requiring the Maine Commission on Public Defense Services to compensate a private attorney appointed by the court to represent a person who is eligible to receive indigent legal services if the court finds that no public defender, assigned counsel, contract counsel or employed counsel is available to represent the person. The amendment:

1. Changes from July 1, 2027 to February 1, 2026 the date that this requirement expires;

2. Requires that a private attorney appointed by a trial court have at least 3 years of relevant legal experience and that a private attorney appointed by the Supreme Judicial Court either have 3 years of relevant legal experience or have previously served as a law clerk analyzing cases relevant to the pending matter;

ROS 1 3. Requires that the private attorney use the voucher review and payment authorization  
2 systems established by the commission and be subject to limited supervision by the  
3 commission;

4 4. Provides that personal contact information of a private attorney appointed by a court  
5 is confidential to the same extent as personal contact information of a commission-rostered  
6 attorney and authorizes the judicial branch to share otherwise confidential information  
7 regarding cases in which private attorneys have been appointed by the court to the same  
8 extent that the judicial branch may share the same type of information regarding cases in  
9 which assigned counsel are providing indigent legal services; and

10 5. Eliminates any reference to any inherent authority of the court to appoint counsel.

11 The amendment also removes the appropriation in the bill that establishes an Office  
12 Associate II position to coordinate and facilitate the assignment of counsel to indigent  
13 clients across the State who are currently on the list of unrepresented criminal defendants  
14 and parents, especially defendants who are incarcerated. Instead, the amendment provides  
15 that the new Assistant Defender I positions established by this legislation will be supported  
16 by a Legal Administrator, rather than an Office Specialist Supervisor II, who can provide  
17 both administrative support to the Assistant Defender I positions and coordinate and  
18 facilitate the assignment of counsel to indigent clients across the State who are currently  
19 on the list of unrepresented criminal defendants and parents, especially defendants who are  
20 incarcerated.

21 The amendment further clarifies that the new Assistant Defender I and Paralegal  
22 positions established by this legislation are primarily responsible for providing indigent  
23 legal services to criminal defendants and parties in child protective proceedings for whom  
24 another public defender, assigned counsel, contract counsel or employed counsel is not  
25 available to represent the defendant or party and, to the extent there is additional capacity,  
26 these positions may also represent other individuals who are eligible for indigent legal  
27 services but for whom another public defender, assigned counsel, contract counsel or  
28 employed counsel is not available to represent the person.

29 Finally, the amendment requires the commission and the judicial branch to submit  
30 reports to the Joint Standing Committee on Judiciary by January 1, 2026, with an update  
31 on the status of the *Robbins v. Billings, et al.*, No. CV-22-054 litigation, including  
32 information on any defendants who have been granted habeas corpus relief by the court  
33 and with specific information about the implementation of the provisions of this legislation.  
34 The committee may report out legislation in response to these reports to the Second Regular  
35 Session of the 132nd Legislature.

36 **FISCAL NOTE REQUIRED**

37 (See attached)

**132nd MAINE LEGISLATURE****LD 1101****LR 1299(02)****An Act to Address the Limited Availability of Counsel in Courts to Represent Indigent Parties in Matters Affecting Their Fundamental Rights****Fiscal Note for Bill as Amended by Committee Amendment "A" (S-11)****Committee: Judiciary****Fiscal Note Required: Yes**

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**Fiscal Note**

	<b>FY 2024-25</b>	<b>FY 2025-26</b>	<b>FY 2026-27</b>	<b>Projections FY 2027-28</b>	<b>Projections FY 2028-29</b>
<b>Net Cost (Savings)</b>					
General Fund	\$269,022	\$1,618,794	\$1,631,975	\$1,675,762	\$1,721,126
<b>Appropriations/Allocations</b>					
General Fund	\$269,022	\$1,618,794	\$1,631,975	\$1,675,762	\$1,721,126

**Fiscal Detail and Notes**

The bill includes ongoing General Fund appropriations of \$269,022 in fiscal year 2024-25, \$1,618,794 in fiscal year 2025-26 and \$1,631,975 in fiscal year 2026-27 to address the limited availability of qualified counsel to provide counsel for indigent clients.