

MAINE STATE LEGISLATURE

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132nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2025

Legislative Document

No. 1101

S.P. 462

In Senate, March 18, 2025

**An Act to Address the Limited Availability of Counsel in Courts to
Represent Indigent Parties in Matters Affecting Their Fundamental
Rights**

(EMERGENCY)

Received by the Secretary of the Senate on March 14, 2025. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator CARNEY of Cumberland.
Cosponsored by Representative KUHN of Falmouth.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** this legislation is designed to address an existing crisis in the courts arising
4 from the limited availability of counsel qualified by the Maine Commission on Public
5 Defense Services to represent indigent parties in matters affecting their fundamental rights;
6 and

7 **Whereas,** when a court appoints counsel to represent an indigent party, compensation
8 must be made available to counsel, whether the commission or the court determined that
9 counsel is qualified to provide the representation; and

10 **Whereas,** a Maine Superior Court order issued in *Robbins v. Billings, et al.*, No. CV-
11 22-054 (Me. Super. Ct., Ken. Cty., March 7, 2025) (Order After Phase One Trial)
12 establishes a conditional remedy to address claims for habeas corpus relief for violations
13 of the United States Constitution, Amendment VI and the Constitution of Maine, Article I,
14 Section 6 right to continuous representation; and

15 **Whereas,** the resources necessary to implement the conditional remedy are currently
16 under consideration by the Legislature and requested by the Maine Commission on Public
17 Defense Services; and

18 **Whereas,** the conditional remedy poses a concern about the public's interest in the
19 administration of criminal justice and the potential to jeopardize public safety if a criminal
20 defendant commits a dangerous act after dismissal and release granted in response to a
21 claim for habeas corpus relief; and

22 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
23 the meaning of the Constitution of Maine and require the following legislation as
24 immediately necessary for the preservation of the public peace, health and safety; now,
25 therefore,

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

27 **Sec. 1. 4 MRSA §1805-A, sub-§1,** as enacted by PL 2017, c. 284, Pt. UUUU, §14,
28 is amended to read:

29 **1. Duties.** The executive director shall administer and improve reimbursement of
30 expenses incurred by assigned counsel ~~and~~, contract counsel and, until July 1, 2027, a
31 private attorney appointed under section 1807 by:

32 A. Establishing procedures to ensure that the eligibility of defendants and civil parties
33 is verified and reviewed randomly and when circumstances have changed, information
34 has changed, additional information is provided or as otherwise needed;

35 B. Petitioning the court to reassess the indigency of a defendant or civil party if the
36 executive director determines that indigency should be reassessed;

37 C. Providing to the commission recommendations to improve reimbursement of
38 expenses;

39 D. Requiring that the amount of time spent on each case by assigned counsel or
40 contract counsel is recorded separately for each case; and

1 E. Receiving from the courts collections for the costs of representation from
2 defendants or civil parties who are found to be partially indigent or who have otherwise
3 been determined to be able to reimburse the commission for expenses incurred by
4 assigned counsel ~~or~~, contract counsel or, until July 1, 2027, a private attorney appointed
5 under section 1807.

6 **Sec. 2. 4 MRSA §1805-A, sub-§3**, as enacted by PL 2017, c. 284, Pt. UUUU, §14,
7 is amended to read:

8 **3. Partial indigency and reimbursement.** This subsection applies to partial
9 indigency and reimbursement of expenses incurred by assigned counsel ~~or~~, contract
10 counsel or, until July 1, 2027, a private attorney appointed under section 1807.

11 A. If the court determines that a defendant or civil party is unable to pay to obtain
12 private counsel but is able to contribute to payment of assigned counsel ~~or~~, contract
13 counsel or, until July 1, 2027, a private attorney appointed under section 1807, the court
14 shall order the defendant or civil party to make installment payments up to the full cost
15 of representation or to pay a fixed contribution. The court shall remit payments
16 received to the commission.

17 B. A defendant or civil party may not be required to pay for legal services in an amount
18 greater than the expenses actually incurred.

19 C. Upon petition of a defendant or civil party who is incarcerated, the court may
20 suspend an order for reimbursement issued pursuant to this subsection until the time of
21 the defendant's or civil party's release.

22 D. The executive director may enter into contracts to secure the reimbursement of fees
23 and expenses paid by the commission as provided for in this section.

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

25 **§1807. Court appointment of private attorney**

26 **1. Private attorney court appointment.** Notwithstanding any provision of this
27 chapter to the contrary, a court may appoint a private attorney to represent a person who is
28 eligible to receive indigent legal services in a matter pending before the District Court,
29 Superior Court or Supreme Judicial Court if the court finds the following:

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

32 B. The private attorney is qualified to represent the person in the matter pending before
33 the court and has not been disqualified by the commission; and

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

36 **2. Compensation.** The commission shall provide compensation and reimbursement
37 to a private attorney appointed by the court under subsection 1. The compensation and
38 reimbursement must be equivalent to the reimbursement provided to assigned counsel
39 under the rulemaking directed by section 1804, subsection 3, paragraph F.

40 **3. Court's inherent authority.** This chapter does not affect the inherent authority of
41 the court to appoint counsel.

1 **4. Repeal.** This section is repealed July 1, 2027.

2 **Sec. 4. Appropriations and allocations.** The following appropriations and
3 allocations are made.

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

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

6 Initiative: Provides ongoing funding to establish one Office Associate II position and
7 related costs to coordinate and facilitate the assignment of counsel to indigent clients across
8 the State who are currently on the list of unrepresented criminal defendants and parents in
9 child custody cases, especially defendants who are currently incarcerated.

| | | | | |
|----|-------------------------|----------------|----------------|----------------|
| 10 | GENERAL FUND | 2024-25 | 2025-26 | 2026-27 |
| 11 | POSITIONS - LEGISLATIVE | 1.000 | 1.000 | 1.000 |
| 12 | COUNT | | | |
| 13 | Personal Services | \$14,754 | \$88,525 | \$95,533 |
| 14 | All Other | \$1,723 | \$10,343 | \$10,343 |
| 15 | | | | |
| 16 | GENERAL FUND TOTAL | \$16,477 | \$98,868 | \$105,876 |

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

18 Initiative: Provides ongoing funding to establish 5 Public Service Manager III positions, 2
19 Paralegal positions and one Office Specialist Supervisor II position responsible for
20 representing defendants whose motion for counsel has been granted or appointment was
21 ordered by a court, but no counsel has been appointed; cases in which a defendant has
22 requested counsel, but a court has not yet ruled on the motion; and cases in which a
23 defendant previously had counsel, but that counsel withdrew and no new attorney has been
24 assigned.

| | | | | |
|----|-------------------------|----------------|----------------|----------------|
| 25 | GENERAL FUND | 2024-25 | 2025-26 | 2026-27 |
| 26 | POSITIONS - LEGISLATIVE | 8.000 | 8.000 | 8.000 |
| 27 | COUNT | | | |
| 28 | Personal Services | \$169,883 | \$1,019,300 | \$1,031,170 |
| 29 | All Other | \$6,000 | \$40,660 | \$40,660 |
| 30 | | | | |
| 31 | GENERAL FUND TOTAL | \$175,883 | \$1,059,960 | \$1,071,830 |

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

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

| | | | | |
|----|---------------------|----------------|----------------|----------------|
| 36 | GENERAL FUND | 2024-25 | 2025-26 | 2026-27 |
| 37 | All Other | \$62,500 | \$375,000 | \$375,000 |
| 38 | | | | |
| 39 | GENERAL FUND TOTAL | \$62,500 | \$375,000 | \$375,000 |

40
41 **PUBLIC DEFENSE SERVICES,**
42 **MAINE COMMISSION ON**

