

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1260

S. P. 402

In Senate, March 7, 1973

Taken from table by President and referred to the Committee on Judiciary.
Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Creating Public Defender Services.

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

Sec. 1. R. S., T. 15, Part 6, additional. Title 15 of the Revised Statutes is amended by adding a new Part 6 to read as follows:

PART 6

CHAPTER 411

DEFENDER SERVICE

§ 2901. Defender Services Commission

1. Membership. There is hereby established a Defender Services Commission which shall consist of 9 members to be appointed by the Governor from nominations submitted by the following bodies and officials: The Maine Bar Association, the Maine Trial Lawyers Association, the Maine Civil Liberties Union, the Board of Directors of Pine Tree Legal Assistance, Inc., Judicial Council, the President of the Senate and the minority leader of the Senate, the Speaker of the House of Representatives and the minority leader of the House of Representatives. Each of the foregoing bodies, organizations or officials shall submit 2 nominations, one of which shall be selected to serve as a member of the commission.

2. Term. Members of the commission shall be appointed to serve a term of 4 years.

3. Vacancy. If any vacancy occurs on the commission, the body, organization or official from whose nomination the retiring member was selected

shall submit 2 more nominations from which the Chief Justice of the Supreme Judicial Court shall appoint a replacement.

4. Expenses. No member of the commission shall receive a salary, but each member shall be reimbursed for his expenses incurred while engaged in the duties of the commission. No member of the commission shall be employed as a defender or in any other full-time position pursuant to this Part.

5. Duties. The commission shall be responsible for carrying out the purposes of this Part and to effectuate such purposes it shall adopt regulations relating to the operations of the defender services.

§ 2902. Chief Public Defender

1. Appointment. The Defender Services Commission shall appoint a Chief Public Defender for a term of 3 years and until the appointment and qualification of his successor. Any vacancy in the office of Chief Public Defender shall be filled by the commission for the balance of the term of the person he succeeds.

2. Qualifications. The Chief Public Defender shall be a qualified attorney, licensed to practice law in this State. He shall not be removed or suspended from office during his term except by order of the commission for just cause after due notice and hearing.

3. Full time; compensation. The Chief Public Defender shall devote full time to the performance of his duties and shall not engage in the private practice of law. The compensation of the Chief Public Defender shall be fixed by the commission.

4. Report. The Chief Public Defender shall submit to the commission, between August 1st and September 1st of each year, a report which shall include all pertinent data on the operations of the defender services, the costs, projected needs, and, to the extent experience may indicate, such recommendations for statutory changes, including changes in the criminal law, and changes in court rules as may be appropriate to the improvement of the system of criminal justice, the control of crime, the rehabilitation of offenders and other related objectives. Following any modification the commission may deem necessary, but prior to October 1st of each year, the commission shall submit said report to the Governor, the Chief Justice of the Supreme Judicial Court and the Joint Standing Committee on Judiciary of the Legislature. Such reports shall be public records, shall be maintained in the office of the Chief Public Defender and shall be distributed as the commission shall direct.

5. Contracts. Whenever appropriate, the Chief Public Defender may contract with private or public legal aid or other nonprofit organizations that are equipped to provide the services to needy persons covered by this Part or to carry out any other function of the Chief Public Defender. Each contract must provide that the services performed shall meet the professional standards that this Part prescribes for services performed by the Chief Public Defender's office and that the services are subject to the supervision and control of the Chief Public Defender.

6. Duties. The Chief Public Defender shall:

A. Administer, coordinate and control the operation of the defender services and shall be responsible for the overall supervision and direction of all institutions, facilities and activities of the service;

B. Keep and maintain proper financial records with respect to particular cases for use in the calculating of direct and indirect costs of any or all aspects of the operation of the service;

C. Supervise the training of all public defenders and for this purpose he may establish a training course;

D. Consult and cooperate with professional bodies and groups concerning the causes of criminal conduct; the development of effective means for reducing the commission of crime; the rehabilitation and correction of persons convicted of crime; and the administration and conduct of the office of public defender;

E. Promulgate rules and instructions, consistent with this Part, defining the organization of his office and the responsibilities of public defenders and other personnel;

F. Apply for and accept on behalf of the defender services any funds which may be offered or which may become available from governmental grants, private gifts, donations or bequests, or any source;

G. Maintain one or more trial pools of lawyers who shall be available to serve on a case by case basis as needed;

H. Engage counsel from such trial pools on a case by case basis as may be necessary for the proper performance of the duties of the office and compensate them for their services at a reasonable rate based on the complexity of the issues, the time involved and other relevant considerations.

§ 2903. Offices

The Chief Public Defender may establish as many branch or local offices as necessary to carry out his responsibilities under this Part. Each branch or local office shall be headed by a district public defender and staffed by such assistant public defenders as are necessary.

§ 2904. Personnel

The Chief Public Defender may employ in the manner and at the compensation prescribed by the commission professional, clerical and investigative personnel as necessary to carry out his responsibilities under this Part. Persons employed under this section, other than civil service employees, serve at the pleasure of the Chief Public Defender.

A district public defender or assistant public defender must be licensed to practice law in the State and competent to represent a person charged with crime. The term of office of district public defenders and assistant public defenders shall be 2 years and until the appointment and qualification of their successors. Every district public defender and assistant public defender shall

devote his full time to the duties of his office and shall not engage in other practice of law.

All reasonable expenses, including personnel salaries, costs of office space, furniture, equipment, books, postage, supplies, mileage and other travel expenses, court costs and all other expenses necessary in carrying out this Part shall be paid by the State.

§ 2905. Needy person defined

As used in section 2906, "needy person" means a person who at the time his need is determined is financially unable without undue hardship to provide for the full payment of an attorney and all other necessary expenses of representation or who is otherwise unable to employ an attorney.

§ 2906. Representation

1. Attorney. A needy person who is being detained by a law enforcement officer without charge or judicial process or who is charged with having committed an offense punishable by loss of liberty or juvenile offense or who is being detained under a conviction of a crime or juvenile offense, is entitled:

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

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

2. Defended. 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 arrest and including revocation of probation or parole or entrustment;

B. To be represented in any appeal;

C. To be represented in post-conviction proceedings;

D. In cases where there is a question in the mind of the defender handling a case as to the arguable merit of prosecuting an appeal or post-conviction proceeding a panel consisting of the Chief Public Defender and 2 district defenders, selected by the Chief Public Defender, shall determine whether or not the defender should prosecute the appeal or post-conviction case. The panel shall instruct the defender handling the case to decline to represent the defendant where the appeal or post-conviction proceeding is clearly without merit and frivolous.

3. Application. A needy person's right to 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.

§ 2907. Duties

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 crime punishable by loss of liberty or juvenile offense or who is being detained under conviction of a crime or juvenile offense, is not represented by an attorney and qualifies for appointment of counsel under judicial decision, statute or court rule, the law enforcement officer or court concerned 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 district public defender that he is not so represented. This shall be done upon commencement of detention, formal charge or post-conviction proceeding, as the case may be. As used in this subsection, the term "commencement of detention" includes the taking into custody of a probationer or parolee.

2.—presiding officer. Upon commencement of any later judicial proceeding relating to the same matter, the presiding officer 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. —district public defender. Upon notification under this section or upon request by the person concerned, the district public defender shall contact the person concerned and determine whether he is a needy person eligible for representation at public expense. If the person concerned is eligible for representation at public expense, the district public defender may represent him or may assign the case to an attorney in the trial pool as provided by section 2902, subsection 5.

4. Appeal. Following an adverse determination of eligibility by a defender, the applicant may appeal such determination to the court in which the proceedings for which assistance is requested arose or is being heard, provided the judge hearing the appeal shall not be the same judge before whom the proceeding for which assistance is requested is being heard. Such appeal shall be in the form of a hearing de novo on the facts relating to the appellant's eligibility for defender services.

5. Information effective. Information given to a person under this section is effective only if:

A. It is in writing or otherwise recorded;

B. He records his acknowledgement of receipt and time of receipt, or, if he refuses to make this acknowledgement, the person giving the information records that he gave the information and that the person informed refused so to acknowledge it; and

C. The material so recorded under subsections 1 and 2 is filed with the court next concerned.

§ 2908. Determination

In determining whether a person is a needy person and the extent of his ability to pay, the defender may consider such factors as income, property owned, outstanding obligations and the number and ages of his dependents. Release on bail does not necessarily disqualify him from being a needy person.

To the extent that a person covered by section 2906 is able to provide for an attorney, the other necessary services and facilities of representation and court costs upon recommendation by the defender, the court may order him to provide for their payments.

§ 2909. Waiver

A person who has been appropriately informed under section 2903 may waive in writing, or by other record, any right provided by this Part, if the court, at the time of or after waiver, finds of record that he has acted with full awareness of his rights and of the consequence 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 the English language and the complexity of the crime involved.

§ 2910. Facilities

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

§ 2911. Reimbursement

The Chief Public Defender, on behalf of the State, may recover reimbursement from each person who has received legal assistance or other benefit under this Part to which he was not entitled or with respect to which he was not a needy person when he received it.

Sec. 2. Appropriation. There is appropriated from the General Fund to the Defender Services Commission the sum of \$705,000 to carry out the purposes of this Act. The breakdown shall be as follows:

	1973-74	1974-75
DEFENDER SERVICES COMMISSION		
Personal Services	(22) \$180,000	(22) \$240,000
All Other	100,000	150,000
Capital Expenditures	25,000	10,000
	<hr/>	<hr/>
	\$305,000	\$400,000

STATEMENT OF FACT

The purpose of this bill is to deal with a developing crisis in the provision of defender services by establishing a state financed Defender Services Com-

mission. Studies have shown that the most efficient and economical means of furnishing counsel to indigents is through some type of public defender. The Defender Services Commission would require an appropriation of state funds in order to commence operation. The state and counties now spend nearly \$400,000 in fees for lawyers who are assigned in criminal cases. A public defender system would have an initial cost of not appreciably greater than that figure and in the long run would save the state money.