

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

---

---

# ONE HUNDRED AND SIXTH LEGISLATURE

---

---

**Legislative Document**

**No. 1861**

---

---

H. P. 1380

House of Representatives, April 3, 1973

Referred to the Committee on State Government. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Stillings of Berwick.

---

---

## STATE OF MAINE

---

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

---

### **AN ACT Providing Full-time Prosecuting Attorneys and Public Defenders.**

---

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

**Sec. 1. R. S., T. 5, § 199, repealed.** Section 199 of Title 5 of the Revised Statutes, as amended by section 2 of chapter 53 of the public laws of 1969, is repealed.

**Sec. 2. R. S., T. 5, § 200-A, amended.** The last paragraph of section 200-A of Title 5 of the Revised Statutes, as enacted by section 1 of chapter 58 of the public laws of 1967, is amended to read as follows:

The Attorney General shall have full responsibility for the direction and control of all investigation and prosecution of homicides and ~~such other major crimes as the Attorney General may deem necessary for the peace and good order of the State of Maine~~ in addition shall be responsible for the prosecution of all crimes and offenses against the State of Maine.

**Sec. 3. R. S., T. 5, §§ 200-C - 200-F, additional.** Title 5 of the Revised Statutes is amended by adding 4 new sections, 200-C to 200-F, to read as follows:

**§ 200-C. Assistant attorneys general; duties**

The Attorney General shall appoint 13 full-time assistant attorneys general whose primary responsibility shall be to prosecute crimes and offenses. Said assistant attorneys general shall have state-wide jurisdiction, but shall be assigned with primary responsibility to the various counties and to the judicial divisions and districts created under Title 4, sections 153 and 154, as the Attorney General deems necessary.

The duties of said assistant attorneys general shall include all the duties involving both civil and criminal proceedings on behalf of the State that were imposed upon the county attorney at the effective date of this Act.

Said assistant attorneys general shall be or shall become and shall remain residents of the counties or judicial divisions or districts of their primary responsibility.

#### § 200-D. Proceedings on defaulted bail

Said assistant attorneys general shall institute proceedings against sureties on any recognizance upon which the principal and sureties have been defaulted, before the term next succeeding that at which such default was entered upon the docket of the court, unless by order in open court the presiding justice shall grant a delay in proceedings against such sureties.

#### § 200-E. Additional assistant attorneys general

The Attorney General shall appoint such other assistant attorneys general as he deems necessary to carry out section 200-A. Such other assistant attorneys general may be employed on a part-time basis, at the discretion of the Attorney General.

#### § 200-F. Office space for prosecutors

The various counties shall provide office space to the Attorney General for carrying out the purposes of this chapter. Such office space may include, but shall not be limited to, the office space currently being provided by the counties to the county attorneys.

Sec. 4. R. S., T. 5, Part 13, additional. Title 5 of the Revised Statutes is amended by adding a new Part 13 to read as follows:

PART 13  
PUBLIC DEFENDERS  
CHAPTER 341  
FULL-TIME PUBLIC DEFENDERS

#### § 4651. Title

This chapter may be known and cited as the Public Defender Act.

#### § 4652. Definitions

As used in this Part, unless the context indicates otherwise, the following words shall have the following meanings.

1. Detain. "Detain" means to have in custody or otherwise deprive of freedom of action.

2. Expenses. "Expenses" when used with references to representation under this Part, includes the expense of investigation, other preparation and trial.

3. **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.

4. **Public defender.** "Public defender" refers to either the chief public defender created by this Part or to any assistants appointed by him.

5. **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;

C. A juvenile offense.

#### § 4653. Office of the Public Defender

There is established the Office of Public Defender to carry out the purpose of this Part. The Office of the Public Defender shall have an office at the seat of government.

#### § 4654. Chief Public Defender

The Office of the Public Defender shall be headed by the Chief Public Defender, who shall be appointed by the Governor. The Chief Public Defender shall be an attorney, licensed to practice law in this State. He shall devote full time to the performance of his duties and shall not engage in the private practice of law. He shall receive an annual compensation, an amount which is equal to that of a District Court Judge. He shall be reimbursed for all reasonable expenses incurred in the performance of his duties under this Part.

#### § 4655. Powers and duties of the Chief Public Defender

The Chief Public Defender has the primary responsibility of providing needy persons with representation in criminal proceedings under this Part. No other official or agency of the State may supervise the Chief Public Defender or assign him duties in addition to those established in this Part.

The Chief Public Defender shall have the powers and duties:

1. To adopt, amend and rescind rules and regulations to effectuate this Part;

2. To administer and coordinate the operation of the Office of the Public Defender and to be responsible for the supervision and direction of all personnel, facilities and activities of the Office;

3. To hire not more than 10 assistant public defenders. An assistant defender must be an attorney licensed to practice law in this State and competent to represent a person charged with a crime. He shall devote full time to the duties of his office and shall not engage in the private practice of law. The annual compensation of an assistant public defender shall be determined by the Chief Public Defender with the approval of the Governor and Council;

4. To hire, subject to the Personnel Law, such clerical and investigative personnel as necessary to effectuate the purposes of this Part;
5. To establish such branch offices as necessary to effectuate the purposes of this Part. Where possible, sufficient space shall be provided for such branch offices in the appropriate county courthouse or District Court building;
6. From time to time, but not less than once a year, to report to the Legislature and the Governor on the number of persons represented under this Part, the crimes involved, the outcome of each case, the expenditures totalled by kind, and to the extent experience may indicate, such recommendations for statutory changes 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;
7. To seek and expend federal funds for the purposes of this Part and to seek and expend donations from any person or corporation for the purposes of this Part;
8. Wherever appropriate, to appear, himself or by an assistant public defender, in legislative or administration proceedings for the purpose of assuring adequate representation to the persons covered by this Part;
9. To use, where available and under proper supervision, the services of law students who are otherwise authorized to appear on behalf of needy persons in criminal proceedings, in accordance with existing laws and rules governing the appearances of law students.

#### § 4656. 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;

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.

§ 4657. 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 proceeding 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.

§ 4658. Determination of financial need

1. Determination. The determination of whether a person covered by section 4656 is a needy person shall be deferred until his first appearance in court or in a suit for payment under section 4660, 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 4656 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.

#### § 4659. Replacement attorney

At any stage, including appeal, the court concerned, or the Chief 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 court shall prescribe reasonable compensation for him and approve the expenses necessarily incurred by him in the defense of the needy person.

#### § 4660. Waiver

A person who has been appropriately informed under section 4656 may waive in writing, or by other record, any right provided by this Part, 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.

#### § 4661. Recovery from defendant

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

- A. To which he was not entitled;
- B. With respect to which he was not a needy person when he received it;  
or
- C. With respect to which he has failed to make the certification required by section 4657, subsection 2;

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

2. Other. The Chief Public Defender, on behalf of the State, may recover payment from each person, other than a person covered by subsection 1, who has received legal assistance under this Part 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 4652, subsection 3, section 4656, subsection 1 or section 4658, subsection 2 but refuses to do so. Suit must 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.

§ 4662. Use of state 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 and evaluation of evidence that are available to the prosecutor.

§ 4663. Expenses

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

§ 4664. Fees

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

§ 4665. Reports

An attorney who is assigned by a court to represent a needy person under section 4657, subsection 4 or section 4659 shall report to the Chief Public Defender on his representation of the needy person, as prescribed by the regulations of the Chief Public Defender.

Sec. 5. R. S., T. 30, §§ 451-453, repealed. Sections 451 to 453 of Title 30 of the Revised Statutes are repealed.

Sec. 6. R. S., T. 30, § 501, repealed and replaced. Section 501 of Title 30 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 501. Civil proceedings

The county commissioners may employ counsel to appear for the county, under their direction, in all actions and other civil proceedings in which the county is a party or interested or in which the official acts and doings of said county commissioners are called in question in all courts of the State and before any other tribunal.

Sec. 7. R. S., T. 30 §§ 502-506, repealed. Sections 502, 503, as amended, and 504 to 506, are repealed.

Sec. 8. R. S., T. 30, §§ 551-557, repealed. Sections 551 and 552, 553 to 556, as amended, and section 557 are repealed.

Sec. 9. R. S., T. 30, § 558, repealed. Section 558 of Title 30 of the Revised Statutes, as repealed and replaced by section 14 of chapter 573 of the public laws of 1969, is repealed.



**Sec. 10. R. S., T. 30, §§ 559 and 560, repealed.** Sections 559 and 560 of Title 30 of the Revised Statutes, as enacted by section 2 of chapter 530 of the public laws of 1967, are repealed.

**Sec. 11. R. S., T. 30, §§ 561 and 562, repealed.** Sections 561 and 562 of Title 30 of the Revised Statutes, as enacted by sections 3 and 4 of chapter 484 of the public laws of 1969, are repealed.

**Sec. 12. Transitional provisions.** The present terms of office of all county attorneys and assistant county attorneys shall continue and shall not expire until successors have been appointed and qualified. In any event, the terms of county attorneys and assistant county attorneys shall expire on December 31, 1975. No assistant attorney general shall be assigned pursuant to this Act before June 30, 1975, unless the office of county attorney in a particular county shall become vacant for any reason, at which time an assistant attorney general shall be assigned with primary responsibility for that county.

During the period that they continue in office, said county attorneys and assistant county attorneys shall have the same powers, duties and obligations as they previously had. They shall be subject to the direction and control of the Attorney General. Whenever a county attorney or assistant county attorney has been replaced by an assistant attorney general assigned pursuant to this Act, his term shall terminate.

Upon termination of an office of county attorney or assistant county attorney, or upon the office otherwise becoming vacant after such establishment and appointment, all cases pending before the county attorney, together with his records, shall be transferred to the Attorney General.

**Sec. 13. Appropriation.** Such funds as are presently allocated to the Attorney General for the county attorneys' salaries shall be applied to carry out the purpose of this Act. There is also appropriated from the General Fund to the Department of the Attorney General the sum of \$210,000 to carry out the purposes of this Act. The breakdown shall be as follows:

ATTORNEY GENERAL, DEPARTMENT OF		1974-75
Personal Services		\$150,000
All Other		50,000
Capital Expenditures		10,000
		<hr/>
		\$210,000

There is appropriated from the General Fund to the Office of the Public Defender the sum of \$652,641 to carry out the purposes of this Act. The breakdown shall be as follows:

PUBLIC DEFENDER, OFFICE OF		1973-74	1974-75
Personal Services	(23)	\$256,620	(23) \$268,821
All Other		49,200	43,000
Capital Expenditures		30,000	5,000
		<hr/>	<hr/>
		\$335,820	\$316,821

## STATEMENT OF FACT

The bill abolishes the present system of elected part-time county attorneys and empowers the Attorney General to appoint full-time assistant attorneys general to perform this function.

The bill establishes an Office of the Public Defender empowered to represent needy persons in criminal proceedings and establishes standards for such representation. The public defender system established by this bill will replace the present inadequate system of representation by assigned counsel, but allows assigned counsel to be employed in appropriate circumstances.