

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 899

6
7 S.P. 336

In Senate, March 1, 1985

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

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Carpenter of Aroostook.

11 Cosponsored by Representative Kane of So. Portland, Senator Chalmers
of Knox and Senator Sewall of Lincoln.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Establish Pilot Indigency Screening
18 Units for Court Appointed Counsel.
19

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

22 Sec. 1. 34-A MRSa §5405 is enacted to read:

23 §5405. Indigency screening units for court appointed
24 counsel; pilot program

25 The director with the approval of the commission-
26 er shall establish a pilot program for screening of
27 defendants requesting court appointed counsel. The
28 program shall include 2 indigency screening units lo-
29 cated in the probation and parole district offices of
30 2 counties. Each unit shall have one indigency in-
31 vestigator appointed by the director who shall be su-
32 pervised by the district supervisor.

33 1. Duties of the indigency investigator. The
34 indigency investigator for each unit shall not be re-

1 quired to perform other responsibilities of probation
2 and parole officers during the duration of the pilot
3 program except as follows and related to the purposes
4 of the program:

5 A. Assist defendant in completion of financial
6 disclosure affidavit;

7 B. Determine degree of investigation required
8 and conduct same;

9 C. Recommend that defendant be declared indi-
10 gent, partially indigent or nonindigent, based
11 upon guidelines adopted by the Supreme Judicial
12 Court;

13 D. Submit recommendation, accompanied by sup-
14 porting material, to justice or judge;

15 E. Notify defendants and counsel when defendant
16 is determined to be partially indigent or
17 nonindigent after counsel has already been ap-
18 pointed;

19 F. Establish and monitor payment arrangements
20 for partially indigent defendants, and for de-
21 fendants determined to be nonindigent after hav-
22 ing received the services of court appointed
23 counsel; or

24 G. Maintain detailed records and compile statis-
25 tical reports as required.

26 2. Establishment of indigency guidelines.
27 Guidelines or rules shall be promulgated by the Su-
28 preme Judicial Court to provide the investigator with
29 standards against which the defendant's financial
30 claims may be measured.

31 3. Establishment of advisory committee. An ad-
32 visory committee shall be appointed by the Supreme
33 Judicial Court to serve as a project planning commit-
34 tee during the early stages of the project, and to
35 provide oversight and guidance to the screening units
36 throughout the duration of the project. The commit-
37 tee shall also determine the location of the 2 pilot
38 screening units. Prior to the end of the 2-year

1 project, the committee shall provide a report with
2 recommendations to the Legislature concerning the ef-
3 fectiveness of the program and the desirability of
4 the program expansion. The committee shall be com-
5 posed of members of the judiciary, court administra-
6 tive staff, Division of Probation and Parole and oth-
7 er appropriate participants, in such numbers and com-
8 position as determined by the Supreme Judicial Court.

9 **Sec. 2. Appropriation.** The following funds are
10 appropriated from the General Fund to carry out the
11 purposes of this Act.

12		<u>1985-86</u>	<u>1986-87</u>
13	<u>CORRECTIONS, DEPARTMENT OF</u>		
14	Division of Probation and		
15	Parole		
16	Positions	(2)	(2)
17	Personal Services	\$49,903	\$49,655
18	All Other	3,800	3,750
19	Capital Expenditure	<u>4,018</u>	<u> </u>
20	TOTAL	\$53,721	\$53,405

21 STATEMENT OF FACT

22 The current system used to determine a defend-
23 ant's eligibility for the appointment of legal coun-
24 sel at state expense is inadequate and in need of
25 refinement. At the present time, a defendant claim-
26 ing indigency completes a financial disclosure affi-
27 davit in the courtroom, sometimes under oath, and
28 submits the form directly to the judge. In many in-
29 stances, the judge is required to quickly peruse the
30 form, asks the defendant a few questions and appoints
31 counsel, all within a matter of minutes. In some in-
32 stances the defendant does not complete a written af-
33 fidavit and is merely questioned by the judge, with
34 or without the benefit of an oath. The judge is ex-
35 pected to determine indigency in a nonadversarial
36 setting and is compelled to rely exclusively on the
37 defendant's verbal or written statement of financial
38 resources. Sometimes the defendant's statement is

1 not made under oath and in any event there are no
2 available means of verifying the information given by
3 the defendant seeking court appointed counsel. Coun-
4 sel for the State do not as a rule present informa-
5 tion to the court concerning a defendant's indigency,
6 nor do they participate in the examination of the de-
7 fendant.

8 Because the current system provides no means of
9 verification, it is impossible to determine whether
10 investigative efforts would result in slowing the in-
11 crease in the amount of expenditures for court ap-
12 pointed counsel. Nonetheless, it should be noted
13 that when Colorado instituted a similar investigative
14 system, it did experience a significant reduction in
15 court appointed counsel costs. With expenditures in
16 Maine now approaching a \$1,500,000 per year, compared
17 to less than a \$1,000,000 merely 4 years ago, it is
18 imperative that we undertake some means of verifica-
19 tion to at least justify these expenditures and pro-
20 vide some measure of system integrity. If the Judi-
21 cial Department is to administer and safeguard the
22 payment of court appointed counsel, the judiciary
23 must be provided with adequate information with which
24 to do so. The expenditure of such substantial public
25 funds require no less.

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