

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1132

S.P. 423

In Senate, March 25, 2009

An Act To Establish the Maine Commission on Indigent Legal Services

(EMERGENCY)

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.

Cosponsored by Representative PRIEST of Brunswick and

Senators: ALFOND of Cumberland, BLISS of Cumberland, HASTINGS of Oxford, MARRACHÉ of Kennebec, President MITCHELL of Kennebec, Representatives: BEAULIEU of Auburn, BERRY of Bowdoinham, BRYANT of Windham, CAIN of Orono, CLEARLY of Houlton, CROCKETT of Bethel, DILL of Cape Elizabeth, HILL of York, KRUGER of Thomaston, MITCHELL of the Penobscot Nation, NASS of Acton, Speaker PINGREE of North Haven, PIOTTI of Unity, ROTUNDO of Lewiston, RUSSELL of Portland, STEVENS of Bangor.

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,** under the United States Constitution and the Constitution of Maine, an
4 indigent person charged with a crime, facing loss of parental rights, or the risk of
5 institutional commitment is entitled to counsel, and

6 **Whereas,** the State is obligated to ensure that such representation is provided and
7 currently spends in excess of \$10,000,000 per year; and

8 **Whereas,** the demand for such services has increased because the number of child
9 protective hearings requiring counsel has doubled, the number of cases with mandatory
10 jail time has increased and an increasing number of criminal defendants are indigent and
11 entitled to such services; and

12 **Whereas,** a central agency to coordinate such services has never been established,
13 despite the increase in services; and

14 **Whereas,** such representation is currently funded by an appropriation to the judicial
15 branch; and

16 **Whereas,** such representation is managed by approximately 60 judges located in 40
17 court locations throughout the State, who approve vouchers to private attorneys acting as
18 indigent legal counsel and who are located throughout the State; and

19 **Whereas,** the current method of paying for indigent legal services creates the
20 appearance of a conflict of interest by placing judges in the position of ruling on
21 compensation and reasonable effort and expenses for only one side in criminal, protective
22 custody and involuntary commitment matters; and

23 **Whereas,** there is at least the appearance of further conflict because judges are
24 authorizing payment of indigent legal fees out of appropriations intended to fund judicial
25 branch operations; and

26 **Whereas,** the current system lacks a central authority to provide coordinated
27 planning, oversight and management in order to ensure the delivery of quality legal
28 representation in the most cost-effective manner; and

29 **Whereas,** it is necessary to provide independent oversight for the delivery of
30 indigent counsel services, improve the quality of representation, ensure the independence
31 of counsel, establish uniform policies and procedures for the delivery of such services and
32 develop the statistics necessary to evaluate the quality and the cost-effectiveness of such
33 services; and

34 **Whereas,** the current method of funding indigent legal services through the judicial
35 branch budget creates the appearance of a conflict of interest and is contrary to accepted
36 practices; and

1 "Indigent legal services" does not include the services of a guardian ad litem appointed
2 pursuant to Title 22, section 4105, subsection 1.

3 **§1803. Commission structure**

4 **1. Members; appointment; chair.** The commission consists of 5 members
5 appointed by the Governor and subject to review by the joint standing committee of the
6 Legislature having jurisdiction over judiciary matters and confirmation by the
7 Legislature. The Governor shall designate one member to serve as chair of the
8 commission. One of the members must be appointed from a list of qualified potential
9 appointees provided by the President of the Senate. One of the members must be
10 appointed from a list of qualified appointees provided by the Speaker of the House of
11 Representatives. One of the members must be appointed from a list of qualified potential
12 appointees provided by the Chief Justice of the Supreme Judicial Court.

13 **2. Qualifications.** Individuals appointed to the commission must have demonstrated
14 a commitment to high-quality representation for persons who are indigent. No more than
15 3 members may be attorneys engaged in the active practice of law.

16 **3. Terms.** Members of the commission are appointed for terms of 3 years each,
17 except that of those first appointed the Governor shall designate 2 whose terms are only
18 one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may
19 not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

20 A member of the commission appointed to fill a vacancy occurring otherwise than by
21 expiration of term is appointed only for the unexpired term of the member succeeded.

22 **4. Quorum.** Three members of the commission constitutes a quorum. A vacancy in
23 the commission does not impair the power of the remaining members to exercise all the
24 powers of the commission.

25 **5. Compensation.** Each member of the commission is eligible to be compensated as
26 provided in Title 5, chapter 379.

27 **§1804. Commission responsibilities**

28 **1. Executive director.** The commission shall hire an executive director. The
29 executive director must be an attorney licensed in the State with experience in the
30 provision of indigent legal services.

31 **2. Standards.** The commission shall develop standards governing the delivery of
32 indigent legal services, including:

33 A. Standards governing eligibility for indigent legal services;

34 B. Standards prescribing minimum experience, training and other qualifications for
35 contract counsel and assigned counsel;

36 C. Standards for assigned counsel and contract counsel case loads;

37 D. Standards for the evaluation of assigned counsel and contract counsel;

1 E. Standards for independent, competent and efficient representation of clients
2 whose cases present conflicts of interest;

3 F. Standards for the reimbursement of expenses incurred by assigned counsel and
4 contract counsel; and

5 G. Other standards considered necessary and appropriate to ensure the delivery of
6 adequate indigent legal services.

7 **3. Duties.** The commission shall:

8 A. Develop and maintain a system that uses appointed private attorneys, contracts
9 with individual attorneys or groups of attorneys and any other program necessary to
10 provide high-quality and efficient indigent legal services;

11 B. Develop and maintain an assigned counsel voucher review and payment
12 authorization system;

13 C. Establish processes and procedures consistent with commission standards to
14 ensure that office and contract personnel use information technology and case load
15 management systems so that detailed expenditure and case load data is accurately
16 collected, recorded and reported;

17 D. Develop criminal defense, child protective and involuntary commitment
18 representation training and evaluation programs for attorneys throughout the State to
19 ensure an adequate pool of qualified attorneys;

20 E. Establish minimum qualifications to ensure that attorneys are qualified and
21 capable of providing adequate representation in the case types to which they are
22 assigned;

23 F. Establish rates of compensation for assigned counsel;

24 G. Establish a method for accurately tracking and monitoring case loads of assigned
25 counsel and contract counsel;

26 H. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the
27 Governor an annual report on the operation, needs and costs of the indigent legal
28 services system; and

29 I. Approve and submit a biennial budget request to the Department of Administrative
30 and Financial Services, Bureau of the Budget, including supplemental budget
31 requests as necessary.

32 **4. Powers.** The commission may:

33 A. Establish and maintain a principal office and other offices within the State as it
34 considers necessary;

35 B. Meet and conduct business at any place within the State;

36 C. Use voluntary and uncompensated services of private individuals and
37 organizations as may from time to time be offered and needed;

1 D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to
2 this paragraph are routine technical rules as defined in Title 5, chapter 375,
3 subchapter 2-A; and

4 E. Appear in court and before other administrative bodies represented by its own
5 attorneys.

6 **§1805. Executive director**

7 The executive director of the commission hired pursuant to section 1804, subsection
8 1 shall:

9 1. **Compliance with standards.** Ensure that the provision of indigent legal services
10 complies with all constitutional, statutory and ethical standards;

11 2. **Development of standards.** Assist the commission in developing standards for
12 the delivery of adequate indigent legal services;

13 3. **Delivery and supervision.** Administer and coordinate delivery of indigent legal
14 services and supervise compliance with commission standards;

15 4. **Most effective method of delivery.** Recommend to the commission the most
16 effective method of the delivery of indigent legal services in furtherance of the
17 commission's purposes;

18 5. **Training for counsel.** Conduct regular training programs for counsel providing
19 indigent legal services;

20 6. **Personnel.** Subject to policies and procedures established by the commission,
21 hire professional, technical and support personnel, including attorneys, considered
22 reasonably necessary for the efficient delivery of indigent legal services;

23 7. **Submissions to commission.** Prepare and submit to the commission:

24 A. A proposed biennial budget for the provision of indigent legal services, including
25 supplemental budget requests as necessary;

26 B. An annual report containing pertinent data on the operation, needs and costs of the
27 indigent legal services system; and

28 C. Any other information as the commission may require;

29 8. **Develop and implement.** Coordinate the development and implementation of
30 rules, policies, procedures, regulations and standards adopted by the commission to carry
31 out the provisions of this chapter and comply with all applicable laws and standards;

32 9. **Records.** Maintain proper records of all financial transactions related to the
33 operation of the commission;

34 10. **Other funds.** Apply for and accept on behalf of the commission funds that may
35 become available from any source, including government, nonprofit or private grants,
36 gifts or bequests;

1 provide high-quality and efficient indigent legal services. The commission shall appoint
2 an executive director to carry out the day-to-day activities of the commission. All
3 attorneys providing indigent legal services will be paid through the commission.

4 This bill also authorizes a one-time transfer of all necessary funds and positions from
5 the judicial branch to the Maine Commission on Indigent Legal Services in order to
6 create the commission at no additional cost to the General Fund.