

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 1433

S.P. 540

In Senate, May 26, 2015

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**An Act To Create the Office of the Public Defender and Amend the  
Duties of the Commission on Indigent Legal Services**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator BURNS of Washington. (GOVERNOR'S BILL)  
Cosponsored by Representative HOBBS of Saco and  
Senators: HILL of York, KATZ of Kennebec, Representatives: DION of Portland, FREDETTE  
of Newport, GUERIN of Glenburn, WINSOR of Norway.

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

2 **Sec. 1. 2 MRSA §6, sub-§12**, as enacted by PL 2009, c. 419, §1, is repealed.

3 **Sec. 2. 4 MRSA §1801**, as enacted by PL 2009, c. 419, §2, is amended to read:

4 **§1801. Maine Commission on Indigent Legal Services; established**

5 The Maine Commission on Indigent Legal Services, established by Title 5, section  
6 12004-G, subsection 25-A, is an independent commission whose purpose is to provide  
7 oversight of the Office of the Public Defender, ensuring efficient, high-quality  
8 representation to indigent criminal defendants, juvenile defendants and children and  
9 parents in child protective cases, consistent with federal and state constitutional and  
10 statutory obligations. The commission shall ~~work to ensure~~ oversee the delivery of  
11 indigent legal services by qualified and competent counsel in a manner that is fair and  
12 consistent throughout the State ~~and to ensure~~ while working with the Chief Public  
13 Defender to provide adequate funding ~~of for~~ a statewide system of indigent legal services,  
14 which must be provided and managed in a fiscally responsible manner, free from undue  
15 political interference and conflicts of interest.

16 **Sec. 3. 4 MRSA §1802**, as amended by PL 2013, c. 159, §10, is further amended  
17 to read:

18 **§1802. Definitions**

19 As used in this chapter, unless the context otherwise indicates, the following terms  
20 have the following meanings.

21 ~~**1. Assigned counsel.** "Assigned counsel" means a private attorney designated by the~~  
22 ~~commission to provide indigent legal services at public expense.~~

23 ~~**1-A. Appellate counsel.** "Appellate counsel" means an attorney who is entitled to~~  
24 ~~payment under Title 15, section 2115-A, subsection 8 or 9.~~

25 ~~**1-B. Civil party.** "Civil party" means a party to a civil case described in subsection~~  
26 ~~4, paragraph B.~~

27 **2. Commission.** "Commission" means the Maine Commission on Indigent Legal  
28 Services under section 1801.

29 ~~**2-A. Conflict case.** "Conflict case" means a case in which counsel in the Office of~~  
30 ~~the Public Defender or contract counsel has a conflict of interest under rules adopted by~~  
31 ~~the Supreme Judicial Court.~~

32 **3. Contract counsel.** "Contract counsel" means a private attorney under contract  
33 with the ~~commission to provide indigent legal services~~ Office of the Public Defender to  
34 provide indigent legal services.

1           **3-A. Contracted professional services.** "Contracted professional services" means  
2 nonattorney services under contract with the Office of the Public Defender that are  
3 necessary for an adequate defense.

4           **4. Indigent legal services.** "Indigent legal services" means legal representation  
5 provided to:

6           A. An indigent defendant in a criminal case in which the United States Constitution  
7 or the Constitution of Maine or federal or state law requires that the State provide  
8 representation;

9           B. An indigent party in a civil case in which the United States Constitution or the  
10 Constitution of Maine or federal or state law requires that the State provide  
11 representation; and

12           C. Juvenile defendants.

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

15           **5. Office of the Public Defender.** "Office of the Public Defender" means the office  
16 established under section 1807, which is responsible for administering indigent legal  
17 services.

18           **6. Retained counsel.** "Retained counsel" means a private attorney under contract  
19 with the Office of the Public Defender to handle conflict cases and cases that are outside  
20 the scope of contract counsel.

21           **7. Staff counsel.** "Staff counsel" means an attorney in the Office of the Public  
22 Defender who provides indigent legal services under this chapter and is an employee of  
23 the State.

24           **Sec. 4. 4 MRSA §1803**, as enacted by PL 2009, c. 419, §2, is amended to read:

25           **§1803. Maine Commission on Indigent Legal Services structure**

26           **1. Members; appointment; chair.** The commission consists of 5 members  
27 appointed by the Governor and subject to review by the joint standing committee of the  
28 Legislature having jurisdiction over judiciary matters and confirmation by the  
29 Legislature. The Governor shall designate one member to serve as chair of the  
30 commission. One of the members must be appointed from a list of qualified potential  
31 appointees provided by the President of the Senate. One of the members must be  
32 appointed from a list of qualified appointees provided by the Speaker of the House of  
33 Representatives. One of the members must be appointed from a list of qualified potential  
34 appointees provided by the Chief Justice of the Supreme Judicial Court.

35 In determining the appointments and recommendations under this subsection, the  
36 Governor, the President of the Senate, the Speaker of the House of Representatives and  
37 the Chief Justice of the Supreme Judicial Court shall consider input from persons and  
38 organizations with an interest in the delivery of indigent legal services.

1 The Chief Public Defender, or the Chief Public Defender's designee, is an ex officio,  
2 nonvoting member of the commission and may participate in all meetings of the  
3 commission.

4 **2. Qualifications.** ~~Individuals~~ Of the individuals appointed to the commission who  
5 are not attorneys, one must have a background in accounting or finance. All other  
6 individuals appointed who are not attorneys must have demonstrated a commitment to  
7 quality competent representation for persons who are indigent and must have the skills  
8 and knowledge required to ensure that quality of competent representation is provided in  
9 each area of relevant law. ~~No more than 3 members may be attorneys engaged in the~~  
10 ~~active practice of law.~~

11 An attorney appointed to the commission must have expertise in providing legal defense  
12 and the skills and knowledge required to ensure that competent representation is provided  
13 in each area of relevant law. ~~No more than 3 members may be attorneys engaged in the~~  
14 ~~active practice of law.~~

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

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

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

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

26 **6. Assistance.** The Chief Public Defender or the Chief Public Defender's designee  
27 shall provide staff assistance to the commission in carrying out its functions.

28 **Sec. 5. 4 MRSA §1804,** as amended by PL 2013, c. 159, §§11 to 13 and c. 368, Pt.  
29 RRR, §1 and affected by §4, is repealed.

30 **Sec. 6. 4 MRSA §1804-A** is enacted to read:

31 **§1804-A. Maine Commission on Indigent Legal Services duties and responsibilities**

32 **1. Maine Commission on Indigent Legal Services standards.** The commission  
33 shall develop standards governing the delivery of indigent legal services, including:

34 A. Standards governing eligibility for indigent legal services. The eligibility  
35 standards must take into account the possibility of a defendant's or civil party's  
36 paying counsel in periodic installments;

37 B. Standards prescribing minimum experience, training and other qualifications for  
38 attorneys providing public defender services, which must include standards to ensure

- 1 that attorneys are capable of providing competent representation in the case types to  
2 which they are assigned, recognizing that competent representation in each type of  
3 case requires experience and specialized training in that field;
- 4 C. Standards for weighted caseloads based on recommendations from the Chief  
5 Public Defender and reviewed every 5 years or upon the recommendation of the  
6 Chief Public Defender;
- 7 D. Standards for the evaluation of contract counsel to be reviewed every 5 years or  
8 upon the recommendation of the Chief Public Defender;
- 9 E. Standards for independent, competent and efficient representation of clients  
10 whose cases present conflicts of interest;
- 11 F. Standards for the reimbursement of expenses incurred by retained counsel;
- 12 G. Standards regarding the determination of payments to the Office of the Public  
13 Defender that may be required of a defendant or civil party under section 1808. In  
14 developing the payment standards under this paragraph, the commission shall  
15 consider among other things the rates of private counsel and the type of case; and
- 16 H. Standards considered necessary and appropriate to ensure the delivery of adequate  
17 indigent legal services.
- 18 **2. Maine Commission on Indigent Legal Services duties.** The commission shall:
- 19 A. Oversee the Office of the Public Defender to ensure competent and efficient  
20 indigent legal services are provided;
- 21 B. Establish processes and procedures to ensure the Office of the Public Defender  
22 uses information technology and case management systems to accurately collect,  
23 record and report detailed expenditure and case load data;
- 24 C. Establish rates of compensation for retained counsel;
- 25 D. Establish contract guidelines as well as processes and procedures to review  
26 contracts entered into between the Office of the Public Defender and contract counsel  
27 using best practices for contracts providing indigent legal services. Both the contract  
28 guidelines and contract review process must be evaluated every 3 years or at the  
29 discretion of the commission;
- 30 E. Establish an application fee of no less than \$5, which may be graduated as  
31 provided under section 1808, subsection 4 based on a defendant's or civil party's  
32 ability to pay and which is administered by the Office of the Public Defender;
- 33 F. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the  
34 Governor an annual report on the operation, needs and costs of the indigent legal  
35 services system, including an evaluation of contracts, services provided by contract  
36 counsel, retained counsel, any contracted professional services and cost containment  
37 measures;
- 38 G. Monitor and at the commission's discretion testify on legislative proposals that  
39 affect the quality and cost of the indigent legal services system. The commission  
40 may name a designee to perform this duty;

1 H. Prepare at the end of each legislative session a report on the relevant law changes  
2 to the indigent legal services system and the effect on the quality and cost of those  
3 changes;

4 I. Review the biennial budget request and any supplemental budget requests of the  
5 Chief Public Defender prior to their submission to the Department of Administrative  
6 and Financial Services, Bureau of the Budget;

7 J. Establish the minimum amount of malpractice insurance contract counsel and  
8 retained counsel must hold to be eligible to handle indigent defense cases;

9 K. Develop a program, with the assistance of the Chief Public Defender, to allow  
10 law students opportunities within the indigent legal services system consistent with  
11 those available within the District Attorney's Offices;

12 L. Designate a member of the commission as a liaison to the Chief Public Defender's  
13 cost containment unit under section 1807, subsection 3, paragraph P;

14 M. Establish a process for a vote of no confidence in the Chief Public Defender;

15 N. Compile a list of grievances against the Chief Public Defender, to be provided to  
16 the Governor, if the commission takes a vote of no confidence in the Chief Public  
17 Defender under paragraph M; and

18 O. Perform all duties necessary and incidental to the performance of any duty set out  
19 in this chapter.

20 **3. Maine Commission on Indigent Legal Services powers.** The commission may:

21 A. Meet and conduct business at any place within the State;

22 B. Use voluntary and uncompensated services of private individuals and  
23 organizations as may from time to time be offered and needed;

24 C. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to  
25 this paragraph are routine technical rules as defined in Title 5, chapter 375,  
26 subchapter 2-A, except that rules adopted to establish standards under subsection 1,  
27 paragraph B and rates of compensation for retained counsel under subsection 2,  
28 paragraph C are major substantive rules as defined in Title 5, chapter 375, subchapter  
29 2-A;

30 D. Appear in court and before other administrative bodies represented by the  
31 commission's own attorneys; and

32 E. Take a vote of no confidence in the Chief Public Defender and provide a list of  
33 grievances to the Governor. A vote of no confidence under this paragraph is cause  
34 for dismissal of the Chief Public Defender by the Governor in accordance with  
35 section 1807, subsection 2, paragraph A.

36 **4. Maine Commission on Indigent Legal Services restrictions.** The commission  
37 may not make decisions regarding the handling of a case.

38 **Sec. 7. 4 MRSA §1805**, as enacted by PL 2009, c. 419, §2, is repealed.

1           **Sec. 8. 4 MRSA §1806, sub-§2, ¶E**, as enacted by PL 2011, c. 260, §1, is  
2 amended to read:

3           E. A request for funds for expert or investigative assistance that is submitted by an  
4 indigent party or by an attorney on behalf of an indigent client is confidential. The  
5 decision of the ~~executive director of the commission hired pursuant to section 1804,~~  
6 ~~subsection 1, or the executive director's~~ Chief Public Defender or the Chief Public  
7 Defender's designee, to grant or deny such a request is not confidential after a case  
8 has been completed. A case is completed when the judgment is affirmed on appeal or  
9 the period for appeal has expired.

10           **Sec. 9. 4 MRSA §§1807 and 1808** are enacted to read:

11           **§1807. Office of the Public Defender established; appointment and duties**

12           **1. Establishment.** The Office of the Public Defender is established. The office  
13 consists of the Chief Public Defender, who is the head of the office, 2 Deputy Public  
14 Defenders, appointed in accordance with subsection 2, and counsel selected by the Chief  
15 Public Defender in accordance with the eligibility standards set forth under section  
16 1804-A, subsection 1, paragraph B. The responsibilities of the Office of the Public  
17 Defender are exclusively concerned with the rights of persons described in section 1802,  
18 subsection 4.

19           **2. Chief Public Defender.** The provisions of this subsection apply to the Chief  
20 Public Defender.

21           A. The Chief Public Defender is appointed by the Governor, subject to review by the  
22 joint standing committee of the Legislature having jurisdiction over judiciary matters  
23 and confirmation by the Legislature. The Chief Public Defender may be removed  
24 from office for cause by the Governor, and Title 5, section 931, subsection 2 does not  
25 apply. The Chief Public Defender must be an attorney or judge who has spent at least  
26 5 years in the practice of criminal law or presiding over the adjudication of criminal  
27 cases. The term of office for the Chief Public Defender is 5 years. If a vacancy  
28 occurs during the term, the replacement is appointed to fill out the remaining part of  
29 the term.

30           B. The Chief Public Defender, with the approval of the Governor, shall appoint 2  
31 Deputy Public Defenders. The Deputy Public Defenders report to the Chief Public  
32 Defender and serve at the pleasure of the Chief Public Defender. One Deputy Public  
33 Defender must be an attorney or judge who has spent a substantial part of the last 5  
34 years in the practice of criminal law or presiding over the adjudication of criminal  
35 cases. If a vacancy occurs in the Chief Public Defender position or if the Chief  
36 Public Defender is temporarily unavailable to perform the duties of the office, this  
37 Deputy Public Defender shall assume the duties of the Chief Public Defender until  
38 the vacancy is filled or the Chief Public Defender returns to work. The 2nd Deputy  
39 Public Defender must be an attorney or judge who has spent a substantial part of the  
40 last 5 years in the practice of civil law or presiding over civil cases.

41           C. The salary of the Chief Public Defender is consistent with the salary of district  
42 attorneys within salary range 90 with the step within that salary range determined by

1 the Maine Commission on Indigent Legal Services subject to the approval of the  
2 Governor.

3 The salary of the Deputy Public Defenders is within salary range 36.

4 D. The Chief Public Defender shall contract for or hire staff, including counsel who  
5 serve at the pleasure of the Chief Public Defender, necessary to perform the functions  
6 of the Office of the Public Defender and to implement the provisions of this chapter.

7 (1) The compensation of staff of the Office of the Public Defender is fixed by the  
8 Chief Public Defender with the approval of the Governor, but such compensation  
9 may not in the aggregate exceed the amount appropriated for those positions and  
10 may not result in an increased request to future Legislatures.

11 (2) Staff counsel is an employee of this State as defined in Title 5, section 20,  
12 subsection 1.

13 (3) Professional staff of the Chief Public Defender are not subject to the Civil  
14 Service Law.

15 E. The Office of the Public Defender may not represent more than one person when  
16 a conflict of interest exists under the code of professional conduct laid out by the  
17 Board of Overseers of the Bar.

18 F. The Chief Public Defender, Deputy Public Defenders and staff, contract counsel  
19 and retained counsel must be members in good standing of the bar of the State. A  
20 "member in good standing of the bar of the State":

21 (1) Is admitted to the practice of law in this State;

22 (2) Is presently registered with the Board of Overseers of the Bar as an active  
23 practitioner; and

24 (3) Has not been and is not currently disbarred or suspended from practice  
25 pursuant to chapter 17, subchapter 2 or Maine Bar Rule 7.2 or its successor.

26 G. The Chief Public Defender, the Deputy Public Defenders and staff counsel are  
27 designated as full-time officers of the State and may not:

28 (1) Appear as counsel in any civil or criminal case or controversy before the  
29 Supreme Judicial Court, Superior Courts or District Courts of the State or  
30 comparable courts in any other state or before the federal District Court or at any  
31 administrative hearing held by any state or federal agency other than in the  
32 capacity as a public defender attorney; or

33 (2) Engage in the private practice of law nor be a partner or associate of any  
34 person engaged in the private practice of law nor be a member or employee of a  
35 professional association engaged in the private practice of law.

36 **3. Chief Public Defender duties and responsibilities.** The Chief Public Defender  
37 shall:

38 A. Provide legal representation to eligible persons consistent with federal and state  
39 constitutional and statutory obligations;

- 1           B. To the maximum extent possible use contracts in providing indigent legal services  
2           as required in this section;
- 3           C. Supervise the operation, activities, policies and procedures of the Office of the  
4           Public Defender and may expend such sums for expenses as may be necessary in the  
5           performance of the Chief Public Defender's duties, to be paid out of money  
6           appropriated by the Legislature for those purposes;
- 7           D. Be the chief legal officer of the Office of the Public Defender with the ultimate  
8           authority regarding the disposition of cases handled by the office;
- 9           E. In accordance with standards established under section 1804-A, subsection 1,  
10           paragraph A, verify or reassess indigency of a defendant or civil party the court has  
11           determined to be indigent. If the Chief Public Defender determines the defendant or  
12           civil party is not indigent in full or in part, the Chief Public Defender shall petition  
13           the court for whole or partial payment or repayment of all legal services under section  
14           1808, subsection 2;
- 15           F. Determine when and where it is necessary to establish district offices for the  
16           Office of the Public Defender consistent with the policies and procedures of the  
17           Department of Administrative and Financial Services;
- 18           G. Coordinate the development and implementation of rules, policies, procedures,  
19           regulations and standards adopted by the commission to carry out the provisions of  
20           this chapter and comply with all applicable laws and standards;
- 21           H. Establish a trial and appellate case management system. The system must require  
22           the attorneys to record time spent on each case and to classify or describe the type of  
23           work done;
- 24           I. Work jointly with other departments and agencies, including the Department of  
25           Health and Human Services, that hold data pertinent to determining indigency and  
26           establish information sharing agreements as necessary;
- 27           J. Work jointly with other departments and agencies, including the Department of  
28           Health and Human Services, to identify opportunities to improve eligibility screening  
29           across State Government, including the use of private firms that use established,  
30           effective income and asset verification systems;
- 31           K. Prepare and submit to the commission:
- 32                   (1) A proposed biennial budget for the provision of indigent legal services,  
33                   including supplemental budget requests as necessary;
- 34                   (2) An annual report containing pertinent data on the operation, needs and costs  
35                   of the indigent legal services system and the status of information sharing as  
36                   required under paragraph I, including issues preventing the agreements from  
37                   being implemented;
- 38                   (3) A monthly report on case loads and the gross monthly total of bills approved  
39                   for payment, including payments to contract counsel and retained counsel, and  
40                   for contracted professional services, a summary of professional service requests  
41                   denied and granted by the office, in accordance with section 1806, subsection 2,

1 paragraph E and information on complaints made against counsel providing  
2 indigent legal services; and

3 (4) Any other information as the commission may require;

4 L. Develop and conduct regular training programs in compliance with the rules  
5 adopted by the commission as required by section 1804-A, subsection 1, paragraph  
6 B;

7 M. Assist the commission in developing standards for the delivery of adequate  
8 indigent legal services;

9 N. Maintain proper records of all financial transactions related to the operation of the  
10 commission and the notification of eligibility and assignment of counsel and  
11 subsequent related orders as submitted by the courts of this State;

12 O. Serve as an ex officio, nonvoting member of the commission and attend all  
13 commission meetings. The Chief Public Defender may delegate this responsibility;

14 P. Establish a cost containment unit within the Office of the Public Defender to  
15 include a member of the commission designated by the commission. The cost  
16 containment unit is responsible for monitoring efforts to recoup costs under section  
17 1808, subsection 3, identifying ways to improve cost recoupment and issuing a  
18 quarterly summary of the expenses recouped over the period and the year to date to  
19 be provided to the commission. This function may be contracted out;

20 Q. Establish policies and procedures for managing case loads to implement the  
21 standards established by the commission under section 1804-A, subsection 1,  
22 paragraph C, including a method for accurately tracking and monitoring case loads;

23 R. Establish procedures to handle complaints about the performance of counsel  
24 providing indigent legal services;

25 S. Establish a process to provide services for conflict cases first through existing  
26 contract counsel, and only at last through the use of retained counsel; and

27 T. Perform duties as the commission may assign or are necessary and incidental to  
28 the performance of any duty set out in this chapter.

29 **4. Chief Public Defender powers.** The Chief Public Defender may:

30 A. As the Chief Public Defender determines necessary, contract for the services of  
31 private attorneys in the delivery of indigent legal services, including establishment of  
32 a lawyer of the day, as provided in section 1804-A and in accordance with standards  
33 established by the commission and the contract policies established by the  
34 Department of Administrative and Financial Services. Any contract must require  
35 contract counsel and retained counsel to record time spent on each case and to  
36 classify or describe the type of work that was done;

37 B. Require contract counsel and retained counsel to have at least the minimum level  
38 of malpractice insurance as established in section 1804-A, subsection 2, paragraph J;

39 C. Delegate the legal representation of any person to any member of the Maine State  
40 Bar Association eligible under section 1804-A in accordance with standards  
41 established and maintained by the commission;

1 D. Contract for and supervise personnel necessary to perform a function of the  
2 Office of the Public Defender and to implement the provisions of this chapter;

3 E. Establish processes and procedures to acquire investigative or expert services that  
4 may be necessary for a case;

5 F. Enter into agreements with the Maine State Bar Association, local bar  
6 associations, law firms and private counsel for legal representation without  
7 compensation as a service to the State;

8 G. Apply for and accept on behalf of the Office of the Public Defender funds that  
9 may become available from any source, including government, nonprofit or private  
10 grants, gifts or bequests. These funds do not lapse at the end of any fiscal year but  
11 are carried forward to be used for the purpose originally intended; and

12 H. Sponsor training activities and charge tuition to recoup the cost of the activities.

13 **5. Legal counsel.** The Attorney General, at the request of the Chief Public  
14 Defender, shall furnish legal assistance, counsel or advice the Office of the Public  
15 Defender requires in the discharge of its duties.

16 A. The Attorney General may represent staff members of the Office of the Public  
17 Defender in litigation as appropriate.

18 B. In cases in which staff members of the Office of the Public Defender could be  
19 represented by either the Attorney General or counsel retained through malpractice  
20 insurance, the Attorney General shall determine who represents the staff members.

21 **§1808. Indigency determinations; redeterminations; verification; collection**

22 **1. Duties.** The Chief Public Defender shall establish a system to:

23 A. Verify the information used to determine indigency under the standards  
24 established by the commission pursuant to section 1804-A;

25 B. Reassess indigency during the course of representation;

26 C. Record the amount of time spent on each case by the attorney appointed to that  
27 case; and

28 D. Receive from the court collections for the costs of representation from defendants  
29 or civil parties who are partially indigent or who have been otherwise determined to  
30 be able to reimburse the Office of the Public Defender for the cost of providing  
31 counsel.

32 **2. Determination of a defendant's or civil party's eligibility.** The Chief Public  
33 Defender shall provide to the court having jurisdiction over a proceeding information  
34 used to determine indigency under the standards established by the commission pursuant  
35 to section 1804-A for guidance to the court in determining a defendant's or civil party's  
36 financial ability to obtain counsel.

37 If the court does not order full payment for representation by the Office of the Public  
38 Defender, the Chief Public Defender shall investigate to determine the defendant's or civil

1 party's financial condition and ability to make repayment and petition the court for a new  
2 repayment order at any time within 7 years of the original order.

3 **3. Partial indigency and repayment.** The provisions of this subsection apply to  
4 partial indigency and repayment.

5 A. If the court determines, in accordance with subsection 2, that a defendant or civil  
6 party is able to pay some, but not all, of the expenses of obtaining private counsel, the  
7 court shall order the defendant or civil party to pay a fixed contribution. The  
8 defendant's or civil party's full payment must be made to the court prior to the  
9 conclusion of the proceedings, unless otherwise ordered by the court. The clerk of  
10 court shall remit such payments to the Office of the Public Defender.

11 B. A defendant or civil party may not be required to repay for legal services an  
12 amount greater than the rate established pursuant to section 1804-A, subsection 2,  
13 paragraph C.

14 C. If a defendant is incarcerated in the State Prison, an order for repayment pursuant  
15 to this subsection may be suspended until the time of the defendant's release.

16 D. The Chief Public Defender may enter into contracts to secure the repayment of  
17 fees and expenses paid by the State as provided for in this section.

18 **4. Application fee.** An applicant seeking indigent legal services shall pay an  
19 application fee as set forth by the commission in section 1804-A, subsection 2, paragraph  
20 E. In a case involving a juvenile the application fee is the responsibility of the parent or  
21 legal guardian except that, when a juvenile is accused of a crime against the juvenile's  
22 parent or legal guardian or when legal guardianship rests with the State, the fee is waived.

23 The application fee may be waived by the court. A defendant or civil party may pay the  
24 fee in a lump sum or in installments. Full payment must be made to the court prior to the  
25 conclusion of the proceedings, unless otherwise ordered by the court.

26 **Sec. 10. 5 MRSA §931, sub-§1, ¶L-3,** as amended by PL 2003, c. 646, §1, is  
27 further amended to read:

28 L-3. The Executive Analyst of the Board of Environmental Protection; ~~and~~

29 **Sec. 11. 5 MRSA §931, sub-§1, ¶M,** as amended by PL 1987, c. 9, §2, is further  
30 amended to read:

31 M. Other positions in the Executive Branch made unclassified by law; ~~and~~

32 **Sec. 12. 5 MRSA §931, sub-§1, ¶N** is enacted to read:

33 N. The Deputy Public Defenders, staff counsel and other professional staff of the  
34 Office of the Public Defender.

35 **Sec. 13. 5 MRSA §959,** as enacted by PL 2009, c. 419, §3, is repealed.

36 **Sec. 14. 36 MRSA §191, sub-§2, ¶ZZ** is enacted to read:

1 ZZ. The disclosure by employees of the bureau to an authorized representative of the  
2 Office of the Public Defender for the administration of Title 4, section 1804-A,  
3 subsection 1, paragraph A for determining eligibility for indigent legal services under  
4 Title 4, chapter 37.

5 **Sec. 15. Maine Revised Statutes headnote amended; revision clause.** In  
6 the Maine Revised Statutes, Title 4, chapter 37, in the chapter headnote, the words  
7 "Maine commission on indigent legal services" are amended to read "office of the public  
8 defender and Maine commission on indigent legal services" and the Revisor of Statutes  
9 shall implement this revision when updating, publishing or republishing the statutes.

## 10 SUMMARY

11 This bill establishes a statewide public defender system. The purposes of this bill are  
12 to:

13 1. Provide effective assistance of counsel to indigent criminal defendants, juvenile  
14 defendants and children and parents in child protective cases in courts of this State;

15 2. Ensure that the system is free from undue political interference and conflicts of  
16 interest;

17 3. Provide for the delivery of public defender services by qualified and competent  
18 counsel in a manner that is fair and consistent throughout the State;

19 4. Establish a system that uses state employees, contracted services and other  
20 methods of providing services in a manner that is responsive to and respectful of regional  
21 and community needs and interests;

22 5. Ensure that adequate public funding of the statewide public defender system is  
23 provided and the system is managed in a fiscally responsible manner; and

24 6. Ensure that a person using the services of a statewide public defender system pay  
25 reasonable costs for services provided by the system based on the person's financial  
26 ability to pay.