

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1685

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H.P. 1254

House of Representatives, May 6, 2021

### **An Act To Protect the Constitutional Rights of Indigent Defendants**

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Reported by Representative HARNETT of Gardiner for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 4, section 1804, subsection 3, paragraph H.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT  
Clerk

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

2 **Sec. 1. 4 MRSA §8-D** is enacted to read:

3 **§8-D. Rules; assessment of indigency and ability to pay**

4 **1. Rules.** The Supreme Judicial Court may prescribe, repeal, add to, amend or modify  
5 rules or orders providing for a procedure in all courts through which an individual's  
6 financial capacity is assessed for the following purposes:

7 A. To determine eligibility for a court-appointed attorney. The eligibility standards  
8 must take into account the possibility of a party's ability to make periodic installment  
9 payments toward counsel fees;

10 B. To determine whether a party qualifies to proceed in forma pauperis; and

11 C. To determine, after a fine has been ordered in a criminal case, a party's ability to  
12 pay and the schedule for payments.

13 **2. Partial indigency and reimbursement.** This subsection applies to partial  
14 indigency and reimbursement of expenses incurred by assigned counsel or contract  
15 counsel.

16 A. If the court determines that a defendant or civil party is unable to pay to obtain  
17 private counsel but is able to contribute to payment of assigned counsel or contract  
18 counsel, the court shall order the defendant or civil party to make periodic installment  
19 payments up to the full cost of representation or to pay a fixed contribution. The court  
20 shall remit payments received to the Maine Commission on Indigent Legal Services  
21 under section 1801.

22 B. A defendant or civil party may not be required to pay for legal services in an amount  
23 greater than the expenses actually incurred.

24 C. Upon petition of a defendant or civil party who is incarcerated, the court may  
25 suspend an order for reimbursement issued pursuant to this subsection until the time of  
26 the defendant's or civil party's release.

27 **Sec. 2. 4 MRSA §1804, sub-§2, ¶A**, as amended by PL 2017, c. 284, Pt. UUUU,  
28 §1, is repealed.

29 **Sec. 3. 4 MRSA §1805, sub-§10-A**, as enacted by PL 2017, c. 284, Pt. UUUU,  
30 §13, is amended to read:

31 **10-A. Reimbursement of expenses.** Administer and improve reimbursement of  
32 expenses incurred by assigned counsel and contract counsel ~~as described in section 1805-A;~~

33 **Sec. 4. 4 MRSA §1805-A**, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is  
34 repealed.

35 **Sec. 5. 15 MRSA §815** is enacted to read:

36 **§815. Communication between prosecutor and unrepresented defendant**

37 To ensure that all waivers of the right to counsel are made knowingly, voluntarily and  
38 intelligently, a prosecutor may not communicate with an unrepresented defendant unless:

39 **1. Informed of right.** The defendant has been informed of the defendant's right to  
40 court-appointed counsel;

