

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 653

S.P. 270

In Senate, February 14, 2023

**An Act to Support Constitutionally Required Public Defense by
Creating the Maine Office of Public Defense Services**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator KEIM of Oxford.
Cosponsored by Representative MOONEN of Portland and
Senator: LYFORD of Penobscot, Representatives: ANDREWS of Paris, HAGGAN of
Hampden, HENDERSON of Rumford, LEE of Auburn, POIRIER of Skowhegan, RECKITT
of South Portland.

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

2 **PART A**

3 **Sec. A-1. 4 MRSA c. 37, headnote** is amended to read:

4 **CHAPTER 37**

5 **MAINE COMMISSION ON INDIGENT LEGAL SERVICES OFFICE OF**
6 **PUBLIC DEFENSE SERVICES**

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

8 **§1801. ~~Maine Commission on Indigent Legal Services~~ Office of Public Defense**
9 **Services; established**

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

21 **Sec. A-3. 4 MRSA §1802, sub-§1**, as enacted by PL 2009, c. 419, §2, is amended
22 to read:

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

25 **Sec. A-4. 4 MRSA §1802, sub-§2**, as enacted by PL 2009, c. 419, §2, is amended
26 to read:

27 **2. Commission.** "Commission" means the Maine Commission on Indigent Legal
28 Services ~~under described in section 1801~~ 1803.

29 **Sec. A-5. 4 MRSA §1802, sub-§3**, as enacted by PL 2009, c. 419, §2, is amended
30 to read:

31 **3. Contract counsel.** "Contract counsel" means a private attorney under contract with
32 the ~~commission~~ office to provide indigent legal services.

33 **Sec. A-6. 4 MRSA §1802, sub-§5** is enacted to read:

34 **5. Office.** "Office" means the Maine Office of Public Defense Services under section
35 1801.

36 **Sec. A-7. 4 MRSA §1803, sub-§1**, as repealed and replaced by PL 2017, c. 430,
37 §1, is amended to read:

1 **1. Members; appointment; chair.** The commission, established by Title 5, section
2 12004-G, subsection 25-A, consists of 9 members appointed by the Governor and subject
3 to review by the joint standing committee of the Legislature having jurisdiction over
4 judiciary matters and confirmation by the Legislature. The Governor shall designate one
5 member to serve as chair of the commission. The membership consists of the following:

6 A. One member from a list of qualified potential appointees, provided by the President
7 of the Senate;

8 B. One member from a list of qualified potential appointees, provided by the Speaker
9 of the House of Representatives;

10 C. Three members from a list of qualified potential appointees, provided by the Chief
11 Justice of the Supreme Judicial Court;

12 D. One member with experience in administration and finance;

13 E. One member with experience providing representation in child protection
14 proceedings;

15 F. One member from a list of qualified potential appointees who are attorneys engaged
16 in the active practice of law and provide indigent legal services, provided by the
17 president of the Maine State Bar Association. This member is a nonvoting member of
18 the commission; and

19 G. One member from a list of qualified potential appointees who are attorneys engaged
20 in the active practice of law and provide indigent legal services, provided by the
21 president of a statewide organization, other than the Maine State Bar Association, that
22 represents criminal defense attorneys. This member is a nonvoting member of the
23 commission.

24 In determining the appointments and recommendations under this subsection, the
25 Governor, the President of the Senate, the Speaker of the House of Representatives, the
26 Chief Justice of the Supreme Judicial Court, the president of the Maine State Bar
27 Association and the president of the statewide organization that represents criminal defense
28 attorneys shall consider input from individuals and organizations with an interest in the
29 delivery of indigent legal services. Recommendations provided by the president of the
30 Maine State Bar Association and the president of the statewide organization representing
31 criminal defense attorneys must consist of attorneys providing indigent legal services as a
32 majority of their law practices.

33 **Sec. A-8. 4 MRSA §1804, sub-§1**, as enacted by PL 2009, c. 419, §2, is amended
34 to read:

35 **1. ~~Executive director~~ Director.** The commission shall hire ~~an executive~~ a director of
36 the office. The ~~executive~~ director must have experience in the legal field, including, but not
37 limited to, the provision of indigent legal services.

38 **Sec. A-9. 4 MRSA §1804, sub-§2, ¶D**, as amended by PL 2017, c. 284, Pt. UUUU,
39 §2, is further amended to read:

40 D. Standards for the evaluation of assigned counsel and contract counsel. The
41 commission shall review the standards developed pursuant to this paragraph every 5
42 years or upon the earlier recommendation of the ~~executive~~ director;

1 **Sec. A-10. 4 MRSA §1804, sub-§3, ¶J**, as amended by PL 2017, c. 284, Pt.
2 UUUU, §5, is further amended to read:

3 J. Develop an administrative review and appeal process for attorneys who are
4 aggrieved by a decision of the ~~executive~~ director, or the ~~executive~~ director's designee,
5 determining:

6 (1) Whether an attorney meets the minimum eligibility requirements to receive
7 assignments or to receive assignments in specialized case types pursuant to any
8 commission rule setting forth eligibility requirements;

9 (2) Whether an attorney previously found eligible is no longer eligible to receive
10 assignments or to receive assignments in specialized case types pursuant to any
11 commission rule setting forth eligibility requirements; and

12 (3) Whether to grant or withhold a waiver of the eligibility requirements set forth
13 in any commission rule.

14 All decisions of the commission, including decisions on appeals under subparagraphs
15 (1), (2) and (3), constitute final agency action. All decisions of the ~~executive~~ director,
16 or the ~~executive~~ director's designee, other than decisions appealable under
17 subparagraphs (1), (2) and (3), constitute final agency action;

18 **Sec. A-11. 4 MRSA §1805**, as amended by PL 2021, c. 481, §6, is further amended
19 by amending the section headnote to read:

20 **§1805. ~~Executive director~~ Director**

21 **Sec. A-12. 4 MRSA §1805, first ¶**, as enacted by PL 2009, c. 419, §2, is amended
22 to read:

23 The ~~executive~~ director of the ~~commission~~ office hired pursuant to section 1804,
24 subsection 1 shall:

25 **Sec. A-13. 4 MRSA §1805, sub-§9-A**, as enacted by PL 2021, c. 481, §6, is
26 amended to read:

27 **9-A. Audits; recoupment.** Conduct audits of financial requests and payments and
28 recoup payments when necessary. The ~~executive~~ director may exercise the subpoena
29 power of the commission granted under section 1804, subsection 3, paragraph O;

30 **Sec. A-14. 4 MRSA §1805, sub-§11**, as enacted by PL 2009, c. 419, §2, is amended
31 to read:

32 **11. Meetings of commission.** Attend all commission meetings, except those meetings
33 or portions of the meetings that address the question of appointment or removal of the
34 ~~executive~~ director; and

35 **Sec. A-15. 4 MRSA §1805-A**, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is
36 amended to read:

37 **§1805-A. Indigency determinations; redeterminations; verifications; collections**

38 **1. Duties.** The ~~executive~~ director shall administer and improve reimbursement of
39 expenses incurred by assigned counsel and contract counsel by:

- 1 A. Establishing procedures to ensure that the eligibility of defendants and civil parties
2 is verified and reviewed randomly and when circumstances have changed, information
3 has changed, additional information is provided or as otherwise needed;
- 4 B. Petitioning the court to reassess the indigency of a defendant or civil party if the
5 ~~executive~~ director determines that indigency should be reassessed;
- 6 C. Providing to the commission recommendations to improve reimbursement of
7 expenses;
- 8 D. Requiring that the amount of time spent on each case by assigned counsel or
9 contract counsel is recorded separately for each case; and
- 10 E. Receiving from the courts collections for the costs of representation from
11 defendants or civil parties who are found to be partially indigent or who have otherwise
12 been determined to be able to reimburse the commission for expenses incurred by
13 assigned counsel or contract counsel.

14 **2. Determination of defendant’s or civil party’s eligibility.** The ~~executive~~ director
15 shall provide the court having jurisdiction over a proceeding information used to determine
16 indigency for guidance to the court in determining a defendant’s or civil party’s financial
17 ability to obtain private counsel.

18 **3. Partial indigency and reimbursement.** This subsection applies to partial
19 indigency and reimbursement of expenses incurred by assigned counsel or contract
20 counsel.

- 21 A. If the court determines that a defendant or civil party is unable to pay to obtain
22 private counsel but is able to contribute to payment of assigned counsel or contract
23 counsel, the court shall order the defendant or civil party to make installment payments
24 up to the full cost of representation or to pay a fixed contribution. The court shall remit
25 payments received to the commission.
- 26 B. A defendant or civil party may not be required to pay for legal services in an amount
27 greater than the expenses actually incurred.
- 28 C. Upon petition of a defendant or civil party who is incarcerated, the court may
29 suspend an order for reimbursement issued pursuant to this subsection until the time of
30 the defendant’s or civil party’s release.
- 31 D. The ~~executive~~ director may enter into contracts to secure the reimbursement of fees
32 and expenses paid by the commission as provided for in this section.

33 **Sec. A-16. 4 MRSA §1806, sub-§1, ¶C,** as enacted by PL 2011, c. 260, §1, is
34 amended to read:

35 C. "Request for funds for expert or investigative assistance" means a request submitted
36 to the ~~commission~~ office by an indigent party or by an attorney on behalf of an indigent
37 client seeking authorization to expend funds for expert or investigative assistance,
38 which includes, but is not limited to, the assistance of a private investigator, interpreter
39 or translator, psychiatrist, psychologist or other mental health expert, medical expert
40 and scientific expert.

41 **Sec. A-17. 4 MRSA §1806, sub-§2,** as amended by PL 2015, c. 290, §1, is further
42 amended to read:

1 **13. Range 37.** The salary of the ~~executive~~ director of the Maine ~~Commission on~~
2 ~~Indigent Legal~~ Office of Public Defense Services is within salary range 37.

3 **Sec. B-2. 5 MRSA §959**, as enacted by PL 2009, c. 419, §3, is amended to read:

4 **§959. Maine ~~Commission on Indigent Legal~~ Office of Public Defense Services**

5 **1. Major policy-influencing positions.** The following positions are major policy-
6 influencing positions within the Maine ~~Commission on Indigent Legal~~ Office of Public
7 Defense Services. Notwithstanding any ~~other~~ provision of law to the contrary, these
8 positions and their successor positions are subject to this chapter:

9 A. ~~Executive director~~ Director.

10 **Sec. B-3. 5 MRSA §1591, sub-§6**, as enacted by PL 2021, c. 398, Pt. EEE, §1, is
11 amended to read:

12 **6. Maine ~~Commission on Indigent Legal~~ Office of Public Defense Services.** Any
13 All Other balance remaining in the Maine ~~Commission on Indigent Legal~~ Office of Public
14 Defense Services program, General Fund account at the end of any fiscal year must be
15 carried forward for use by the ~~commission~~ office in the next fiscal year.

16 **Sec. B-4. 5 MRSA §12004-G, sub-§25-A**, as enacted by PL 2009, c. 419, §4, is
17 amended to read:

18 **25-A.**

19	Legal Services	Maine Commission on Indigent Legal	Legislative Per	4 MRSA
20		Services	Diem Plus	§1801 <u>§1803</u>
21			Expenses	

22 **Sec. B-5. 15 MRSA §2115-A, sub-§8**, as amended by PL 2013, c. 159, §14, is
23 further amended to read:

24 **8. Fees and costs.** The Law Court shall allow counsel fees and costs for the defense
25 of appeals under this section, to be paid by the Maine ~~Commission on Indigent Legal~~ Office
26 of Public Defense Services under Title 4, section 1801. The compensation paid by the
27 ~~commission~~ office may not exceed the rates established by the commission for the payment
28 of counsel providing indigent legal services.

29 **Sec. B-6. 15 MRSA §2115-A, sub-§9**, as amended by PL 2013, c. 159, §15, is
30 further amended to read:

31 **9. Appeals to Federal Court; fees and costs.** The Law Court shall allow attorney's
32 fees for court appointed counsel when the State appeals a judgment to any Federal Court
33 or to the United States Supreme Court on certiorari. Any fees allowed pursuant to this
34 subsection must be paid out of the accounts of the Maine ~~Commission on Indigent Legal~~ Office
35 of Public Defense Services under Title 4, section 1801. The compensation paid by
36 the ~~commission~~ office may not exceed the rates established by the commission for the
37 payment of counsel providing indigent legal services.

38 **Sec. B-7. 34-A MRSA §3049, sub-§3, ¶D**, as enacted by PL 2013, c. 434, §4, is
39 amended to read:

1 D. If the person is indigent, costs of counsel and all other costs, including all costs on
2 appeal, must be provided by the Maine ~~Commission on Indigent Legal~~ Office of Public
3 Defense Services as in other civil cases.

4 **Sec. B-8. 36 MRSA §191, sub-§2, ¶EEE**, as enacted by PL 2017, c. 284, Pt.
5 UUUU, §16 and reallocated by c. 375, Pt. D, §1, is amended to read:

6 EEE. The disclosure by employees of the bureau to an authorized representative of the
7 Maine ~~Commission on Indigent Legal~~ Office of Public Defense Services for
8 determining the eligibility for indigent legal services and the ability to reimburse
9 expenses incurred for assigned counsel and contract counsel under Title 4, chapter 37.

10 **Sec. B-9. 36 MRSA §5219-ZZ, sub-§1, ¶B**, as enacted by PL 2021, c. 473, §2
11 and reallocated by RR 2021, c. 1, Pt. A, §48, is amended by amending subparagraph (2) to
12 read:

13 (2) Is rostered by the Maine ~~Commission on Indigent Legal~~ Office of Public
14 Defense Services to accept court appointments to represent clients in an
15 underserved area;

16 **SUMMARY**

17 This bill creates under the supervision of the Maine Commission on Indigent Legal
18 Services the Maine Office of Public Defense Services, transfers the duties relating to the
19 provision of legal services from the commission to the office and changes references to the
20 executive director of the commission to the director of the office.