

MAINE STATE LEGISLATURE

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L.D. 2219

Date: 4/9/24

(Filing No. S(674))

MAJORITY

JUDICIARY

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STATE OF MAINE

SENATE

131ST LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 949, L.D. 2219, "An Act to Implement the Recommendations of the Maine Commission on Indigent Legal Services"

Amend the bill by striking out the title and substituting the following:

'An Act to Implement the Recommendations Regarding the Maine Commission on Public Defense Services'

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 4 MRSA §1801, as amended by PL 2023, c. 558, §3, is further amended to read:

§1801. Maine Commission on Public Defense Services; established

The Maine Commission on Public Defense Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide efficient, high-quality, effective and efficient representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, and promote due process for persons who receive indigent legal services in parity with the resources of the State and consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

Sec. 2. 4 MRSA §1802, sub-§3-A is enacted to read:

3-A. Employed counsel. "Employed counsel" means an attorney employed by the commission to provide legal services directly to persons who are eligible to receive indigent legal services in civil proceedings.

Sec. 3. 4 MRSA §1802, sub-§5 is enacted to read:

COMMITTEE AMENDMENT

1 **5. Public defender.** "Public defender" means an attorney employed by the
 2 commission to provide legal services directly to persons who are eligible to receive indigent
 3 legal services in criminal and juvenile proceedings.

4 **Sec. 4. 4 MRSA §1802-A** is enacted to read:
 5 **§1802-A. Employed counsel and public defender**

6 An attorney may be employed by the commission both as "employed counsel" and as
 7 a "public defender."

8 **Sec. 5. 4 MRSA §1804, sub-§1**, as enacted by PL 2009, c. 419, §2, is amended to
 9 read:

10 **1. Executive director.** The commission shall hire an executive director. The executive
 11 director must be an attorney licensed to practice law in this State; be a member in good
 12 standing of the bar of the State; and have experience in the legal field, including, but not
 13 limited to, the provision of indigent legal services.

14 **Sec. 6. 4 MRSA §1804, sub-§2**, as amended by PL 2023, c. 344, §1, is further
 15 amended to read:

16 **2. Rulemaking.** The commission shall adopt rules governing the delivery of indigent
 17 legal services by assigned counsel, contract counsel, employed counsel and public
 18 defenders. The rules adopted by the commission must include:

19 A. Standards governing eligibility for indigent legal services. The eligibility standards
 20 must take into account the possibility of a defendant's or civil party's ability to make
 21 periodic installment payments toward counsel fees and the cost of private legal services
 22 in the relevant geographic area;

23 B. Standards prescribing minimum experience, training and other ~~qualifications for~~
 24 ~~contract~~ eligibility requirements for attorneys to be eligible to serve as assigned
 25 counsel, assigned contract counsel and, employed counsel and public defenders;

26 C. Standards for assigned counsel, contract counsel, employed counsel and public
 27 defender ~~ease loads~~ caseloads;

28 D. Standards for the evaluation of assigned counsel, contract counsel, employed
 29 counsel and public defenders. The commission shall review the standards developed
 30 pursuant to this paragraph at least every 5 years, or earlier upon the recommendation
 31 of the executive director;

32 E. Standards for independent, high-quality, effective and efficient representation of
 33 clients whose cases present conflicts of interest;

34 F. Standards for the reimbursement of expenses incurred by assigned counsel, contract
 35 counsel, employed counsel and public defenders, including attendance at training
 36 events provided by the commission; and

37 G. Other standards considered necessary and appropriate to ensure the delivery of
 38 adequate high-quality, effective and efficient indigent legal services.

39 **Sec. 7. 4 MRSA §1804, sub-§3, ¶A**, as amended by PL 2023, c. 344, §2, is further
 40 amended to read:

1 A. Develop and maintain a system that employs employed counsel and public
2 defenders, uses appointed private attorneys and contracts with individual attorneys or
3 groups of attorneys. The commission shall consider other programs necessary to
4 provide quality high-quality, effective and efficient indigent legal services;

5 **Sec. 8. 4 MRSA §1804, sub-§3, ¶C**, as amended by PL 2011, c. 420, Pt. C, §1, is
6 further amended to read:

7 C. Establish processes and procedures consistent with commission standards to ensure
8 that office and contract personnel use information technology and ~~ease-load~~ caseload
9 management systems so that detailed expenditure and ~~ease-load~~ indigent legal services
10 caseload data are accurately collected, recorded and reported;

11 **Sec. 9. 4 MRSA §1804, sub-§3, ¶D**, as enacted by PL 2009, c. 419, §2, is repealed
12 and the following enacted in its place:

13 D. To ensure an adequate pool of qualified attorneys, develop training and evaluation
14 programs for attorneys throughout the State to provide representation in criminal,
15 juvenile, child protective, involuntary commitment and all other types of proceedings
16 for which parties may be eligible to receive indigent legal services;

17 **Sec. 10. 4 MRSA §1804, sub-§3, ¶E**, as enacted by PL 2009, c. 419, §2, is
18 amended to read:

19 E. Establish minimum ~~qualifications~~ eligibility standards to ensure that attorneys who
20 provide indigent legal services are ~~qualified and~~ capable of providing quality high-
21 quality, effective and efficient representation in the case types to which they are
22 assigned, recognizing that ~~quality high-quality, effective and efficient~~ representation in
23 each of these types of cases requires counsel with experience and specialized training
24 in that field;

25 **Sec. 11. 4 MRSA §1804, sub-§3, ¶G**, as amended by PL 2023, c. 344, §4, is further
26 amended to read:

27 G. Establish a method for accurately tracking, monitoring and enforcing ~~ease-load~~
28 caseload standards for assigned counsel, contract counsel, employed counsel and
29 public defenders;

30 **Sec. 12. 4 MRSA §1804, sub-§3, ¶H**, as amended by PL 2023, c. 344, §5, is further
31 amended by amending subparagraph (1) to read:

32 (1) An evaluation of: contracts; services provided by contract counsel, assigned
33 counsel, employed counsel and public defenders; any contracted professional
34 services; and cost containment measures; and

35 **Sec. 13. 4 MRSA §1804, sub-§4, ¶D**, as amended by PL 2021, c. 398, Pt. FFF, §1
36 and c. 481, §5, is further amended to read:

37 D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this
38 paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A,
39 except that rules adopted to establish rates of compensation for assigned counsel and
40 contract counsel under subsection 3, paragraph F are major substantive rules as defined
41 in Title 5, chapter 375, subchapter 2-A; ~~and~~

1 **Sec. 14. 4 MRSA §1804, sub-§4, ¶E**, as enacted by PL 2009, c. 419, §2, is
 2 amended to read:

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

5 **Sec. 15. 4 MRSA §1804, sub-§4, ¶F** is enacted to read:

6 F. Notwithstanding Title 5, chapter 155, through employed counsel and public
 7 defenders, retain investigative and expert services that are reasonably necessary for
 8 case-specific purposes. For purposes of this paragraph, investigative and expert
 9 services are for case-specific purposes if the services relate to a specific case and not
 10 to the ongoing activities of the commission, or its employees, that do not relate to a
 11 specific case. Nothing in this paragraph affects the applicability of Title 5, chapter 155
 12 to the purchase of services, supplies, materials and equipment by the commission or its
 13 employees for purposes that are not case-specific purposes.

14 **Sec. 16. 4 MRSA §1805, sub-§7, ¶B-1**, as amended by PL 2017, c. 475, Pt. A, §2,
 15 is further amended to read:

16 B-1. A monthly report on the number of cases opened, the number of vouchers
 17 submitted, the amount of vouchers paid, the amount of payments to contract counsel,
 18 the number of requests for professional services, the amount of payments for
 19 professional services and information on any complaints made against assigned ~~or~~
 20 counsel, contract counsel, employed counsel or public defenders; and

21 **Sec. 17. 4 MRSA §1806**, as amended by PL 2023, c. 344, §6, is further amended to
 22 read:

23 **§1806. Information not public record**

24 Disclosure of information and records in the possession of the commission is governed
 25 by this section.

26 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
 27 following terms have the following meanings.

28 A. "Individual client information" means name; date of birth; social security number;
 29 gender; ethnicity; home, ~~work, school or other~~ address; home telephone number;
 30 ~~home facsimile; fax~~ number; ~~home; e-mail address; personal;~~ cellular telephone
 31 number; ~~personal;~~ pager number; and any information protected under the Maine Rules
 32 of Evidence, Rules 501 to 509 or the Maine Rules of Professional Conduct, Rule 1.6
 33 or otherwise protected by the attorney-client relationship.

34 B. "Personal contact information" means home address, home telephone number,
 35 home ~~facsimile~~ fax number, home e-mail address, personal cellular telephone number,
 36 personal pager number, date of birth and social security number.

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

- 1 D. "Case information" means:
- 2 (1) The court in which a case is brought;
- 3 (2) Any criminal charges or juvenile crime charges and the type, but not the
- 4 contents, of any petition giving rise to a case;
- 5 (3) The docket number;
- 6 (4) The identity of assigned counsel and the date of assignment;
- 7 (5) The withdrawal of assigned counsel and the date of withdrawal; and
- 8 (6) Any order for reimbursement of assigned counsel fees.
- 9 2. **Confidential information.** The following information and records in the
- 10 possession of the commission are not open to public inspection and do not constitute public
- 11 records as defined in Title 1, section 402, subsection 3.
- 12 A. Individual client information ~~that is submitted by a commission-rostered attorney~~
- 13 ~~or a court~~ is confidential, except that the names of criminal defendants and the names
- 14 of juvenile defendants charged with offenses that if committed by an adult would
- 15 constitute murder or a Class A, Class B or Class C crime are not confidential.
- 16 B. ~~Information subject to the lawyer-client privilege set forth in the Maine Rules of~~
- 17 ~~Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of~~
- 18 ~~Professional Conduct, Rule 1.6 is confidential.~~
- 19 C. Personal contact information of a commission-rostered attorney is confidential.
- 20 D. Personal contact information of a member of the commission or a commission staff
- 21 member employee, including employed counsel and public defenders, is confidential.
- 22 E. A request for funds for expert or investigative assistance ~~that is submitted by an~~
- 23 ~~indigent party or by an attorney on behalf of an indigent client~~ is confidential. The
- 24 decision of the executive director of the commission hired pursuant to section 1804,
- 25 subsection 1, or the executive director's designee, to grant or deny such a request is not
- 26 confidential after a case has been completed. A case is completed when the judgment
- 27 is affirmed on appeal or the period for appeal has expired.
- 28 F. Any information obtained or gathered by the commission through a formal or
- 29 informal complaint or when performing an evaluation or investigation of an attorney
- 30 ~~is confidential, except that it may be disclosed to the attorney being evaluated or~~
- 31 ~~investigated.:~~
- 32 (1) The commission may disclose the information to the attorney who is the subject
- 33 of the formal or informal complaint, evaluation or investigation;
- 34 (2) The executive director of the commission hired pursuant to section 1804,
- 35 subsection 1, or the executive director's designee, may disclose the information to
- 36 the Maine Assistance Program for Lawyers described in Title 14, section 164-A;
- 37 (3) If the attorney who is subject to an evaluation or investigation appeals a
- 38 decision of the executive director or the executive director's designee, in
- 39 accordance with the process established under section 1804, subsection 3,
- 40 paragraph J, the information may be disclosed at a public hearing conducted by the
- 41 commission on the appeal, except that information that is protected by the attorney-

1 client privilege or that is confidential under any provision of law, the Maine Rules
 2 of Evidence or the Maine Rules of Professional Conduct remains confidential; and
 3 (4) As provided in subsection 4.

4 **3. Confidential information disclosed by the Judicial Department.** The Judicial
 5 Department may disclose to the commission confidential information necessary for the
 6 commission to carry out its functions, including, but not limited to, the collection of
 7 amounts owed to reimburse the State for the cost of assigned counsel, as follows:

8 A. Case information and individual client information with respect to court
 9 proceedings that are confidential by statute or court rule in which one or more parties
 10 are represented by assigned counsel; and

11 B. The name, address, date of birth and social security number of any person ordered
 12 by the court to reimburse the State for some or all of the cost of assigned counsel.

13 ~~This information~~ Information received by the commission from the Judicial Department
 14 under this subsection remains confidential in the possession of the commission and is not
 15 open to public inspection, except that the names of criminal defendants and the names of
 16 juvenile defendants charged with offenses that, if committed by an adult would constitute
 17 murder or a Class A, Class B or Class C crime, are not confidential.

18 **4. Rules of professional conduct.** Nothing in this section prohibits the executive
 19 director of the commission hired pursuant to section 1804, subsection 1, or the executive
 20 director's designee, from reporting potential professional misconduct under the Maine
 21 Rules of Professional Conduct to the Board of Overseers of the Bar or from disclosing
 22 information and records related to potential professional misconduct to the board.

23 **5. Confidential information possessed by employed counsel and public defenders.**
 24 Records, information and materials created, received, obtained, maintained or stored by or
 25 on behalf of employed counsel and public defenders that are protected under the Maine
 26 Rules of Evidence, Rules 501 to 509 or the Maine Rules of Professional Conduct, Rule 1.6
 27 or otherwise protected by the attorney-client relationship are confidential.

28 **Sec. 18. 15 MRSA §3010, sub-§4, ¶B,** as enacted by PL 2021, c. 365, §9 and
 29 affected by §37, is amended to read:

30 B. Any person for any purpose when expressly authorized by a statute, court rule, court
 31 decision or court order containing language specifically referring to confidential
 32 juvenile history record information or one or more of the types of confidential juvenile
 33 history record information; or

34 **Sec. 19. 15 MRSA §3010, sub-§4, ¶C,** as enacted by PL 2021, c. 365, §9 and
 35 affected by §37, is amended to read:

36 C. A public entity for purposes of international travel, such as issuing visas and
 37 granting of citizenship; or

38 **Sec. 20. 15 MRSA §3010, sub-§4, ¶D** is enacted to read:

39 D. The Maine Commission on Public Defense Services established by Title 5, section
 40 12004-G, subsection 25-A for the purposes of assigning, evaluating or supervising
 41 counsel.

1 **Sec. 21. 15 MRSA §3306, sub-§1, ¶B**, as amended by PL 2019, c. 525, §15, is
 2 further amended to read:

3 B. ~~If the juvenile requests an attorney and if the juvenile and the juvenile's parent or~~
 4 ~~parents, guardian or legal custodian are found to be without sufficient financial means,~~
 5 the juvenile must be considered indigent and counsel must be appointed by the court.
 6 If, after counsel has been appointed, private counsel retained by the juvenile enters an
 7 appearance, appointed counsel must file a motion to withdraw.

8 **Sec. 22. 15 MRSA §3308-C, sub-§4, ¶H** is enacted to read:

9 H. Juvenile case records must be open to inspection by and, upon request, be
 10 disseminated to the Maine Commission on Public Defense Services established by
 11 Title 5, section 12004-G, subsection 25-A for the purposes of assigning, evaluating or
 12 supervising counsel.

13 **Sec. 23. 22 MRSA §4005, sub-§2**, as amended by PL 1983, c. 783, §2, is further
 14 amended to read:

15 **2. Parents.** Parents and custodians are entitled to legal counsel in child protection
 16 proceedings, except a request for a preliminary protection order under section 4034 or a
 17 petition for a medical treatment order under section 4071, but including hearings on those
 18 orders. ~~They~~ The parent or custodian may request the court to appoint legal counsel for
 19 ~~them~~ the parent or custodian. The court, if it finds ~~them~~ the parent or custodian indigent,
 20 shall appoint ~~and pay the reasonable costs and expenses of their~~ legal counsel.

21 **Sec. 24. 22 MRSA §4005-D, sub-§3-A** is enacted to read:

22 **3-A. Maine Commission on Public Defense Services; access to proceedings.** The
 23 executive director of the Maine Commission on Public Defense Services established by
 24 Title 5, section 12004-G, subsection 25-A, or the executive director's designee, is
 25 authorized to attend and observe all court proceedings under this chapter for any purpose
 26 related to assigning, evaluating or supervising counsel, unless the court makes written
 27 findings that specific factors unique to the particular proceeding make it inappropriate for
 28 the executive director or the executive director's designee to attend all or a part of the
 29 proceeding. If the court denies the executive director or the executive director's designee
 30 access to the proceeding as provided in this subsection, the court shall order that a copy of
 31 a recording of the proceeding or of a transcript of the proceeding be provided to the
 32 executive director of the commission at no charge. The court may not grant the
 33 commission, the executive director or the executive director's designee intervenor status or
 34 the right to be heard solely on the basis of attendance by the executive director or the
 35 executive director's designee at a court proceeding under the authority granted in this
 36 subsection.

37 **Sec. 25. 22 MRSA §4006, first ¶**, as repealed and replaced by PL 1997, c. 715, Pt.
 38 A, §3, is amended to read:

39 A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071
 40 may appeal directly to the Supreme Judicial Court sitting as the Law Court, and such
 41 appeals are governed by the Maine Rules of Civil Appellate Procedure, ~~chapter 9~~.

42 **Sec. 26. 22 MRSA §4007, sub-§1-A, ¶E** is enacted to read:

1 E. The court shall disclose records that are confidential under this subsection to the
2 Maine Commission on Public Defense Services established by Title 5, section
3 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising
4 counsel.

5 **Sec. 27. 22 MRSA §4008, sub-§2, ¶L**, as amended by PL 2023, c. 39, §1, is further
6 amended by amending subparagraph (2) to read:

7 (2) Activities or employment relating to adults with intellectual disabilities,
8 autism, related conditions as set out in 42 Code of Federal Regulations, Section
9 435.1010 or acquired brain injury; and

10 **Sec. 28. 22 MRSA §4008, sub-§2, ¶M**, as enacted by PL 2015, c. 494, Pt. A, §23,
11 is amended to read:

12 M. The personal representative of the estate of a child named in a record who is
13 reported to be abused or neglected; and

14 **Sec. 29. 22 MRSA §4008, sub-§2, ¶N** is enacted to read:

15 N. The Maine Commission on Public Defense Services established by Title 5, section
16 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising
17 counsel, with protection for identity of reporters and other persons when appropriate.'

18 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
19 number to read consecutively.

20 **SUMMARY**

21 This amendment, which is the majority report of the committee, replaces the bill and
22 changes the title. The amendment makes the following changes to the bill.

23 1. It changes all references to the Maine Commission on Indigent Legal Services in the
24 bill to the Maine Commission on Public Defense Services to reflect the enactment of Public
25 Law 2023, chapter 558.

26 2. It clarifies that the commission's purpose is to provide high-quality, effective and
27 efficient representation and to promote due process for persons who receive indigent legal
28 services in parity with the resources of the State and consistent with federal and state
29 constitutional and statutory obligations.

30 3. It amends the definition of "employed counsel" to mean an attorney employed by
31 the commission to provide legal services directly to persons who are eligible to receive
32 indigent legal services in civil proceedings and defines "public defender" to mean an
33 attorney employed by the commission to provide legal services directly to persons who are
34 eligible to receive indigent legal services in criminal and juvenile proceedings. An attorney
35 employed by the commission may serve in both capacities.

36 4. It removes the provision of the bill that proposed to make the 2 members of the
37 commission who are attorneys that provide indigent legal services voting members of the
38 commission.

39 5. It clarifies that, to ensure an adequate pool of qualified attorneys, the commission
40 has a duty to develop training and evaluation programs for attorneys throughout the State
41 to provide representation in criminal, juvenile, child protective, involuntary commitment

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and all other types of proceedings for which parties may be entitled to receive indigent legal services.

6. It removes the provisions of the bill that would have established immunity for the commission and its employees under the Maine Tort Claims Act for claims based on performing or failing to perform any indigent legal services.

7. It removes the provisions of the bill directing the court to automatically appoint new counsel for an indigent parent who appeals from an order in a child protection proceeding terminating that parent's parental rights.

8. It provides that the executive director of the commission or the executive director's designee is authorized to attend and observe child protection proceedings for purposes related to assigning, evaluating or supervising counsel unless the court finds that the executive director's or designee's attendance at all or a part of a proceeding is inappropriate under the particular circumstances of that proceeding.

9. It provides that the Department of Health and Human Services has discretion whether to disclose child protective records to the commission for the purposes of assigning, evaluating and supervising counsel.

10. It removes the provisions of the bill that amended the laws governing mandatory reports of suspected child abuse or neglect.

FISCAL NOTE REQUIRED
(See attached)



Approved: 04/02/24 *MAC*

131st MAINE LEGISLATURE

LD 2219

LR 3049(02)

An Act to Implement the Recommendations of the Maine Commission on Indigent Legal Services

Fiscal Note for Bill as Amended by Committee Amendment "A'(S-674)"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Maine Commission on Public Defense Services to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.