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

Reference to the Committee on Judiciary suggested and ordered printed.

Presented by Senator BURNS of Washington. (GOVERNOR'S BILL)
Cosponsored by Representative HOBINS of Saco and
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 2 MRSA §6, sub-§12, as enacted by PL 2009, c. 419, §1, is repealed.

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

§1801. Maine Commission on Indigent Legal Services; established

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide oversight of the Office of the Public Defender, ensuring efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure oversee 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 while working with the Chief Public Defender to provide adequate funding for 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. 3. 4 MRSA §1802, as amended by PL 2013, c. 159, §10, is further amended to read:

§1802. Definitions

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

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

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

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


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

3. Contract counsel. "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services Office of the Public Defender to provide indigent legal services.
3-A. Contracted professional services. "Contracted professional services" means nonattorney services under contract with the Office of the Public Defender that are necessary for an adequate defense.

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

   A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation;
   B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; and
   C. Juvenile defendants.

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

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

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

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

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

§1803. Maine Commission on Indigent Legal Services structure

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

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Supreme Judicial Court shall consider input from persons and organizations with an interest in the delivery of indigent legal services.
The Chief Public Defender, or the Chief Public Defender's designee, is an ex officio, nonvoting member of the commission and may participate in all meetings of the commission.

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

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

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

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

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

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

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

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

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

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

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

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

B. Standards prescribing minimum experience, training and other qualifications for attorneys providing public defender services, which must include standards to ensure
that attorneys are capable of providing competent representation in the case types to
which they are assigned, recognizing that competent representation in each type of
case requires experience and specialized training in that field;

C. Standards for weighted caseloads based on recommendations from the Chief
Public Defender and reviewed every 5 years or upon the recommendation of the
Chief Public Defender;

D. Standards for the evaluation of contract counsel to be reviewed every 5 years or
upon the recommendation of the Chief Public Defender;

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

F. Standards for the reimbursement of expenses incurred by retained counsel;

G. Standards regarding the determination of payments to the Office of the Public
Defender that may be required of a defendant or civil party under section 1808. In
developing the payment standards under this paragraph, the commission shall
consider among other things the rates of private counsel and the type of case; and

H. Standards considered necessary and appropriate to ensure the delivery of adequate
indigent legal services.

2. Maine Commission on Indigent Legal Services duties. The commission shall:

A. Oversee the Office of the Public Defender to ensure competent and efficient
indigent legal services are provided;

B. Establish processes and procedures to ensure the Office of the Public Defender
uses information technology and case management systems to accurately collect,
record and report detailed expenditure and case load data;

C. Establish rates of compensation for retained counsel;

D. Establish contract guidelines as well as processes and procedures to review
contracts entered into between the Office of the Public Defender and contract counsel
using best practices for contracts providing indigent legal services. Both the contract
guidelines and contract review process must be evaluated every 3 years or at the
discretion of the commission;

E. Establish an application fee of no less than $5, which may be graduated as
provided under section 1808, subsection 4 based on a defendant's or civil party's
ability to pay and which is administered by the Office of the Public Defender;

F. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the
Governor an annual report on the operation, needs and costs of the indigent legal
services system, including an evaluation of contracts, services provided by contract
counsel, retained counsel, any contracted professional services and cost containment
measures;

G. Monitor and at the commission's discretion testify on legislative proposals that
effect the quality and cost of the indigent legal services system. The commission
may name a designee to perform this duty;
H. Prepare at the end of each legislative session a report on the relevant law changes to the indigent legal services system and the effect on the quality and cost of those changes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 7. **4 MRSA §1805**, as enacted by PL 2009, c. 419, §2, is repealed.
Sec. 8. 4 MRSA §1806, sub-§2, ¶E, as enacted by PL 2011, c. 260, §1, is amended to read:

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

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

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

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

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

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

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

C. The salary of the Chief Public Defender is consistent with the salary of district attorneys within salary range 90 with the step within that salary range determined by
the Maine Commission on Indigent Legal Services subject to the approval of the Governor.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Chief Public Defender duties and responsibilities. The Chief Public Defender shall:

A. Provide legal representation to eligible persons consistent with federal and state constitutional and statutory obligations;
B. To the maximum extent possible use contracts in providing indigent legal services as required in this section;

C. Supervise the operation, activities, policies and procedures of the Office of the Public Defender and may expend such sums for expenses as may be necessary in the performance of the Chief Public Defender's duties, to be paid out of money appropriated by the Legislature for those purposes;

D. Be the chief legal officer of the Office of the Public Defender with the ultimate authority regarding the disposition of cases handled by the office;

E. In accordance with standards established under section 1804-A, subsection 1, paragraph A, verify or reassess indigency of a defendant or civil party the court has determined to be indigent. If the Chief Public Defender determines the defendant or civil party is not indigent in full or in part, the Chief Public Defender shall petition the court for whole or partial payment or repayment of all legal services under section 1808, subsection 2;

F. Determine when and where it is necessary to establish district offices for the Office of the Public Defender consistent with the policies and procedures of the Department of Administrative and Financial Services;

G. Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;

H. Establish a trial and appellate case management system. The system must require the attorneys to record time spent on each case and to classify or describe the type of work done;

I. Work jointly with other departments and agencies, including the Department of Health and Human Services, that hold data pertinent to determining indigency and establish information sharing agreements as necessary;

J. Work jointly with other departments and agencies, including the Department of Health and Human Services, to identify opportunities to improve eligibility screening across State Government, including the use of private firms that use established, effective income and asset verification systems;

K. Prepare and submit to the commission:

   (1) A proposed biennial budget for the provision of indigent legal services, including supplemental budget requests as necessary;

   (2) An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system and the status of information sharing as required under paragraph I, including issues preventing the agreements from being implemented;

   (3) A monthly report on case loads and the gross monthly total of bills approved for payment, including payments to contract counsel and retained counsel, and for contracted professional services, a summary of professional service requests denied and granted by the office, in accordance with section 1806, subsection 2.
paragraph E and information on complaints made against counsel providing
indigent legal services; and

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Delegate the legal representation of any person to any member of the Maine State
Bar Association eligible under section 1804-A in accordance with standards
established and maintained by the commission;
D. Contract for and supervise personnel necessary to perform a function of the Office of the Public Defender and to implement the provisions of this chapter;

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

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

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

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

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

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

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

§1808. Indigency determinations; redeterminations; verification; collection

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

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

B. Reassess indigency during the course of representation;

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

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

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

If the court does not order full payment for representation by the Office of the Public Defender, the Chief Public Defender shall investigate to determine the defendant's or civil
party's financial condition and ability to make repayment and petition the court for a new repayment order at any time within 7 years of the original order.

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

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

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

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

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

4. Application fee. An applicant seeking indigent legal services shall pay an application fee as set forth by the commission in section 1804-A, subsection 2, paragraph E. In a case involving a juvenile the application fee is the responsibility of the parent or legal guardian except that, when a juvenile is accused of a crime against the juvenile's parent or legal guardian or when legal guardianship rests with the State, the fee is waived. The application fee may be waived by the court. A defendant or civil party may pay the fee in a lump sum or in installments. Full payment must be made to the court prior to the conclusion of the proceedings, unless otherwise ordered by the court.

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

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

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

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

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

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

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

Sec. 14. 36 MRSA §191, sub-§2, ¶ZZ is enacted to read:
The disclosure by employees of the bureau to an authorized representative of the Office of the Public Defender for the administration of Title 4, section 1804-A, subsection 1, paragraph A for determining eligibility for indigent legal services under Title 4, chapter 37.

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

SUMMARY

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

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

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

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

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

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

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