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SECOND REGULAR SESSION-2024

Legislative Document

No. 2219

S.P. 949

In Senate, February 21, 2024

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

Reported by Senator CARNEY of Cumberland for the Joint Standing Committee on
Judiciary pursuant to the Maine Revised Statutes, Title 4, section 1804, subsection 3.

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

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

DAREK M. GRANT
Secretary of the Senate

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

2 **Sec. 1. 4 MRSA §1801**, as enacted by PL 2009, c. 419, §2, is amended to read:

3 **§1801. Maine Commission on Indigent Legal Services; established**

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

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

16 **3-A. Employed counsel.** "Employed counsel" means an attorney employed by the
17 commission to provide indigent legal services directly to persons who receive indigent
18 legal services, including an attorney who is a district defender, deputy district defender or
19 assistant district defender. "Employed counsel" does not include an attorney employed by
20 the commission who does not provide indigent legal services directly to persons who
21 receive indigent legal services.

22 **Sec. 3. 4 MRSA §1803**, as amended by PL 2017, c. 430, §§1 and 2, is further
23 amended to read:

24 **§1803. Commission structure**

25 **1. Members; appointment; chair.** The commission consists of 9 members appointed
26 by the Governor and subject to review by the joint standing committee of the Legislature
27 having jurisdiction over judiciary matters and confirmation by the Legislature. The
28 Governor shall designate one member to serve as chair of the commission. The
29 membership consists of the following:

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

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

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

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

37 E. One member with experience providing representation in child protection
38 proceedings;

39 F. One member from a list of qualified potential appointees who are attorneys engaged
40 in the active practice of law and provide indigent legal services, provided by the

1 president of the Maine State Bar Association. ~~This member is a nonvoting member of~~
2 ~~the commission;~~ and

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

8 In determining the appointments and recommendations under this subsection, the
9 Governor, the President of the Senate, the Speaker of the House of Representatives, the
10 Chief Justice of the Supreme Judicial Court, the president of the Maine State Bar
11 Association and the president of the statewide organization that represents criminal defense
12 attorneys shall consider input from individuals and organizations with an interest in the
13 delivery of indigent legal services. Recommendations provided by the president of the
14 Maine State Bar Association and the president of the statewide organization representing
15 criminal defense attorneys must consist of attorneys providing indigent legal services as a
16 majority of their law practices.

17 **2. Qualifications.** Individuals appointed to the commission must have demonstrated
18 a commitment to quality representation for persons who are indigent and have the
19 knowledge required to ensure that quality of representation is provided in each area of law.
20 No more than 7 members may be attorneys engaged in the active practice of law. A person
21 who is a sitting judge, prosecutor or law enforcement official, or an employee of such a
22 person, may not be appointed to the commission. ~~A voting member and the immediate~~
23 ~~family members living in the same household as the member may not receive compensation~~
24 ~~from the commission, other than that authorized in Title 5, section 12004-G, subsection~~
25 ~~25-A, while the member is serving on the commission.~~

26 ~~The limitations on members receiving compensation from the commission do not apply to~~
27 ~~any member serving on the commission as of April 1, 2018 for the duration of the member's~~
28 ~~term.~~

29 **3. Terms.** Members of the commission are appointed for terms of 3 years each, except
30 that of those first appointed the Governor shall designate 2 whose terms are only one year,
31 2 whose terms are only 2 years and one whose term is 3 years. A member may not serve
32 more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

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

35 **4. Quorum.** A quorum is a majority of the current ~~voting~~ members of the commission.
36 A vacancy in the commission does not impair the power of the remaining members to
37 exercise all the powers of the commission.

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

40 **5-A. Compensation.** A member of the commission and an immediate family member
41 living in the same household as the member of the commission may not receive
42 compensation from the commission, other than that authorized in Title 5, section 12004-G,
43 subsection 25-A, while the member is serving on the commission, except that the members
44 appointed under subsection 1, paragraphs F and G and their immediate family members

1 may be compensated by the commission for providing indigent legal services as assigned
2 counsel at the same compensation rate established by the commission's rules for all
3 assigned counsel.

4 **Sec. 4. 4 MRSA §1804**, as amended by PL 2023, c. 344, §§1 to 5 and c. 394, Pt. A,
5 §§1 to 3, is further amended to read:

6 **§1804. Commission responsibilities**

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

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

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

18 B. Standards prescribing minimum experience, training and other ~~qualifications for~~
19 ~~contract~~ eligibility requirements for an attorney to be eligible to serve as assigned
20 counsel, assigned contract counsel and public defenders or employed counsel;

21 C. Standards for assigned counsel, contract counsel and ~~public defender case loads~~
22 employed counsel caseloads;

23 ~~D. Standards for the evaluation of assigned counsel, contract counsel and public~~
24 ~~defenders. The commission shall review the standards developed pursuant to this~~
25 ~~paragraph at least every 5 years, or earlier upon the recommendation of the executive~~
26 ~~director;~~

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

29 F. Standards for the reimbursement of expenses incurred by assigned counsel, contract
30 counsel and ~~public defenders~~ employed counsel, including attendance at training
31 events provided by the commission; and

32 G. Other standards considered necessary and appropriate to ensure the delivery of
33 adequate high-quality and effective indigent legal services.

34 **3. Duties.** The commission shall:

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

39 B. Develop and maintain an assigned counsel voucher review and payment
40 authorization system that includes disposition information;

41 C. Establish processes and procedures consistent with commission standards to ensure
42 that office and contract personnel use information technology and ~~ease-load~~ caseload

1 management systems so that detailed expenditure and ~~ease-load~~ indigent legal services
2 caseload data are accurately collected, recorded and reported;

3 ~~D. — Develop criminal defense, child protective and involuntary commitment~~
4 ~~representation training and evaluation programs for attorneys throughout the State to~~
5 ~~ensure an adequate pool of qualified attorneys;~~

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

11 F. Establish rates of compensation for assigned counsel and contract counsel;

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

15 H. By January 15th of each year, submit to the Legislature, the Chief Justice of the
16 Supreme Judicial Court and the Governor an annual report on the operation, needs and
17 costs of the indigent legal services system. The report must include:

18 (1) An evaluation of: ~~contracts; services provided by contract counsel, assigned~~
19 ~~counsel and public defenders~~ employed counsel; any contracted professional
20 services; and cost containment measures; and

21 (2) An explanation of the relevant law changes to the indigent legal services
22 covered by the commission and the effect of the changes on the quality of
23 representation and costs.

24 The joint standing committee of the Legislature having jurisdiction over judiciary
25 matters may report out legislation on matters related to the report;

26 I. Approve and submit a biennial budget request to the Department of Administrative
27 and Financial Services, Bureau of the Budget, including supplemental budget requests
28 as necessary;

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

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

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

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

40 All decisions of the commission, including decisions on appeals under subparagraphs
41 (1), (2) and (3), constitute final agency action. All decisions of the executive director,

- 1 or the executive director's designee, other than decisions appealable under
2 subparagraphs (1), (2) and (3), constitute final agency action;
- 3 K. Pay appellate counsel;
- 4 L. Establish processes and procedures to acquire investigative and expert services that
5 may be necessary for a case, including contracting for such services;
- 6 M. Establish procedures for handling complaints about the performance of counsel
7 providing indigent legal services;
- 8 N. Develop a procedure for approving requests by counsel for authorization to file a
9 petition as described in section 1802, subsection 4, paragraph D;
- 10 O. Establish a system to audit financial requests and payments that includes the
11 authority to recoup payments when necessary. The commission may summon persons
12 and subpoena witnesses and compel their attendance, require production of evidence,
13 administer oaths and examine any person under oath as part of an audit. Any summons
14 or subpoena may be served by registered mail with return receipt. Subpoenas issued
15 under this paragraph may be enforced by the Superior Court; ~~and~~
- 16 P. Develop and maintain a registry of names, telephone numbers and other contact
17 information for attorneys who provide legal services to persons who are incarcerated.
18 The commission shall on a weekly basis provide these names, telephone numbers and
19 other contact information to all sheriffs' offices and to the Department of Corrections.
20 On the Monday following transmission of the information, the sheriffs' offices and the
21 Department of Corrections have constructive notice that communications to and from
22 these attorneys by residents of jails and correctional facilities are subject to the
23 attorney-client privilege. The attorneys' names, telephone numbers and other contact
24 information are confidential; and
- 25 Q. Develop training and evaluation programs for attorneys throughout the State who
26 provide indigent legal services.
- 27 **4. Powers.** The commission may:
- 28 A. Establish and maintain a principal office and other offices within the State as it
29 considers necessary;
- 30 B. Meet and conduct business at any place within the State;
- 31 C. Use voluntary and uncompensated services of private individuals and organizations
32 as may from time to time be offered and needed;
- 33 D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this
34 paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A,
35 except that rules adopted to establish rates of compensation for assigned counsel and
36 contract counsel under subsection 3, paragraph F are major substantive rules as defined
37 in Title 5, chapter 375, subchapter 2-A; ~~and~~
- 38 E. Appear in court and before other administrative bodies represented by its own
39 attorneys; and
- 40 F. Notwithstanding Title 5, chapter 155, through employed counsel, retain
41 investigative and expert services that are reasonably necessary for case-specific
42 purposes. For purposes of this paragraph, investigative and expert services are for case-

1 specific purposes if the services relate to a specific case and not to the ongoing activities
2 of the commission or its employees that do not relate to a specific case. Nothing in this
3 paragraph affects the applicability of Title 5, chapter 155 to the purchase of services,
4 supplies, materials and equipment by the commission or its employees for purposes
5 that are not case-specific purposes.

6 **Sec. 5. 4 MRSA §1806**, as amended by PL 2023, c. 344, §6, is further amended to
7 read:

8 **§1806. Information not public record**

9 Disclosure of information and records in the possession of the commission is governed
10 by this section.

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

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

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

22 C. "Request for ~~funds for expert or investigative assistance~~ noncounsel funds" means
23 a request submitted to the commission ~~by an indigent party or by an attorney or~~ on
24 behalf of ~~an indigent client~~ a person eligible for indigent legal services seeking
25 authorization to expend funds for ~~expert or investigative~~ noncounsel assistance, which
26 includes, but is not limited to, the assistance of a private investigator, interpreter or
27 translator, psychiatrist, psychologist or other mental health expert, medical expert and
28 scientific expert.

29 D. "Case information" means:

- 30 (1) The court in which a case is brought;
31 (2) Any criminal charges or juvenile crime charges and the type, but not the
32 contents, of any petition giving rise to a case;
33 (3) The docket number;
34 (4) The identity of assigned counsel and the date of assignment;
35 (5) The withdrawal of assigned counsel and the date of withdrawal; and
36 (6) Any order for reimbursement of assigned counsel fees.

37 **2. Confidential information.** The following information and records in the
38 possession of the commission are not open to public inspection and do not constitute public
39 records as defined in Title 1, section 402, subsection 3.

40 A. Individual client information ~~that is submitted by a commission-rostered attorney~~
41 ~~or a court~~ is confidential, except that the names of criminal defendants and the names

1 of juvenile defendants charged with offenses that if committed by an adult would
2 constitute murder or a Class A, Class B or Class C crime are not confidential.

3 ~~B. Information subject to the lawyer-client privilege set forth in the Maine Rules of
4 Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of
5 Professional Conduct, Rule 1.6 is confidential.~~

6 C. Personal contact information of a ~~commission-rostered attorney~~ assigned counsel
7 and contract counsel is confidential.

8 D. Personal contact information of a member of the commission or a commission staff
9 member employee, including employed counsel, is confidential.

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

16 F. Any information obtained or gathered by the commission through a formal or
17 informal complaint or when performing an evaluation or investigation of an attorney
18 is confidential, except that it may be disclosed to the attorney being evaluated or
19 investigated.:

20 (1) The commission may disclose the information to the attorney who is the subject
21 of the formal or informal complaint, evaluation or investigation;

22 (2) The executive director of the commission hired pursuant to section 1804,
23 subsection 1, or the executive director's designee, may disclose the information to
24 the Maine Assistance Program for Lawyers described in Title 14, section 164-A;

25 (3) If the attorney who is subject to an evaluation or investigation appeals from a
26 decision of the executive director or the executive director's designee, in
27 accordance with the process established under section 1804, subsection 3,
28 paragraph J, the information may be disclosed at a public hearing conducted by the
29 commission on the appeal, except that information that is protected by the attorney-
30 client privilege or that is confidential under any provision of law, the Maine Rules
31 of Evidence or the Maine Rules of Professional Conduct remains confidential; and

32 (4) As provided in subsection 4.

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

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

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

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

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

11 **5. Confidential information possessed by employed counsel.** Records, information
12 and materials created, received, obtained, maintained or stored by or on behalf of employed
13 counsel that are protected under the Maine Rules of Evidence, Rules 501 to 509 or the
14 Maine Rules of Professional Conduct, Rule 1.6 or otherwise protected by the attorney-
15 client relationship are confidential.

16 **Sec. 6. 14 MRSA §8104-B, sub-§4-A** is enacted to read:

17 **4-A. Performing public defense function.** An employee's performing or failing to
18 perform any indigent legal services in the scope of that employee's employment with the
19 Maine Commission on Indigent Legal Services established by Title 5, section 12004-G,
20 subsection 25-A. For purposes of this subsection, "indigent legal services" has the same
21 meaning as in Title 4, section 1802, subsection 4;

22 **Sec. 7. 14 MRSA §8111, sub-§1, ¶E,** as amended by PL 2001, c. 662, §8, is further
23 amended to read:

24 E. Any intentional act or omission within the course and scope of employment;
25 provided that such immunity does not exist in any case in which an employee's actions
26 are found to have been in bad faith; or

27 **Sec. 8. 14 MRSA §8111, sub-§1, ¶F,** as enacted by PL 2001, c. 662, §9, is
28 amended to read:

29 F. Any act by a member of the Maine National Guard within the course and scope of
30 employment; except that immunity does not exist when an employee's actions are in
31 bad faith or in violation of military orders while the employee is performing active state
32 service pursuant to Title 37-B; or

33 **Sec. 9. 14 MRSA §8111, sub-§1, ¶G** is enacted to read:

34 G. Performing or failing to perform any indigent legal services as an employee of the
35 Maine Commission on Indigent Legal Services established in Title 5, section 12004-
36 G, subsection 25-A. For purposes of this subsection, "indigent legal services" has the
37 same meaning as in Title 4, section 1802, subsection 4.

38 **Sec. 10. 15 MRSA §3010, sub-§4, ¶B,** as enacted by PL 2021, c. 365, §9 and
39 affected by §37, is amended to read:

40 B. Any person for any purpose when expressly authorized by a statute, court rule, court
41 decision or court order containing language specifically referring to confidential

1 juvenile history record information or one or more of the types of confidential juvenile
2 history record information; ~~or~~

3 **Sec. 11. 15 MRSA §3010, sub-§4, ¶C**, as enacted by PL 2021, c. 365, §9 and
4 affected by §37, is amended to read:

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

7 **Sec. 12. 15 MRSA §3010, sub-§4, ¶D** is enacted to read:

8 D. The Maine Commission on Indigent Legal Services established by Title 5, section
9 12004-G, subsection 25-A for the purposes of assigning, evaluating or supervising
10 counsel.

11 **Sec. 13. 15 MRSA §3306, sub-§1, ¶B**, as amended by PL 2019, c. 525, §15, is
12 further amended to read:

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

18 **Sec. 14. 15 MRSA §3308-C, sub-§4, ¶H** is enacted to read:

19 H. Juvenile case records must be open to inspection by and, upon request, be
20 disseminated to the Maine Commission on Indigent Legal Services established by Title
21 5, section 12004-G, subsection 25-A for the purposes of assigning, evaluating or
22 supervising counsel.

23 **Sec. 15. 22 MRSA §4005, sub-§2**, as amended by PL 1983, c. 783, §2, is further
24 amended to read:

25 **2. Parents.** Parents and custodians are entitled to legal counsel in child protection
26 proceedings, except a request for a preliminary protection order under section 4034 or a
27 petition for a medical treatment order under section 4071, but including hearings on those
28 orders. ~~They~~ The parent or custodian may request the court to appoint legal counsel for
29 ~~them~~ the parent or custodian. The court, if it finds ~~them~~ the parent or custodian indigent,
30 shall appoint ~~and pay the reasonable costs and expenses of their~~ legal counsel. To ensure
31 the proper evaluation of ineffective assistance claims, the court shall, upon the filing of a
32 notice of appeal, appoint new counsel for an indigent parent or custodian who appeals from
33 an order in a child protection proceeding terminating that parent's parental rights.

34 **Sec. 16. 22 MRSA §4005-D, sub-§3-A** is enacted to read:

35 **3-A. Maine Commission on Indigent Legal Services; access to proceedings.** The
36 executive director of the Maine Commission on Indigent Legal Services established by
37 Title 5, section 12004-G, subsection 25-A, or the executive director's designee, may attend
38 and observe all court proceedings under this chapter for any purpose related to assigning,
39 evaluating or supervising counsel. The court may not grant the commission, the executive
40 director, or the executive director's designee, intervenor status or the right to be heard solely
41 on the basis of attendance by the executive director or the executive director's designee at
42 a court proceeding under the authority granted in this subsection.

1 **Sec. 17. 22 MRSA §4006**, as repealed and replaced by PL 1997, c. 715, Pt. A, §3,
2 is amended to read:

3 **§4006. Appeals**

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

7 Appeals from any order under section 4035, 4054 or 4071 must be expedited. Any
8 attorney appointed to represent a party in a District Court proceeding under this chapter
9 shall continue to represent that client ~~in any appeal unless otherwise ordered by the court~~
10 on appeal until new counsel is appointed for the appeal in accordance with section 4005,
11 subsection 2.

12 Orders entered under this chapter under sections other than section 4035, 4054 or 4071
13 are interlocutory and are not appealable.

14 **Sec. 18. 22 MRSA §4007, sub-§1-A, ¶E** is enacted to read:

15 E. The court shall disclose records that are confidential under this subsection to the
16 Maine Commission on Indigent Legal Services established by Title 5, section 12004-G,
17 subsection 25-A for the purpose of assigning, evaluating or supervising counsel.

18 **Sec. 19. 22 MRSA §4008, sub-§3, ¶M**, as amended by PL 2023, c. 151, §8, is
19 further amended to read:

20 M. Law enforcement authorities for entry into the National Crime Information Center
21 database of the Federal Bureau of Investigation and to a national information
22 clearinghouse for missing and exploited children operated pursuant to 42 United States
23 Code, Section 5773(b). Information disclosed pursuant to this paragraph is limited to
24 information on missing or abducted children or youth that is required to be disclosed
25 pursuant to 42 United States Code, Section 671(a)(35)(B); ~~and~~

26 **Sec. 20. 22 MRSA §4008, sub-§3, ¶N**, as enacted by PL 2023, c. 151, §9, is
27 amended to read:

28 N. A party to a child protection proceeding and the attorney representing the party in
29 the proceeding, with protection for identity of reporters and other persons when
30 appropriate; ~~and~~

31 **Sec. 21. 22 MRSA §4008, sub-§3, ¶O** is enacted to read:

32 O. The Maine Commission on Indigent Legal Services established by Title 5, section
33 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising
34 counsel, with protection for identity of reporters and other persons when appropriate.

35 **Sec. 22. 22 MRSA §4011-A, sub-§1**, as amended by PL 2015, c. 117, §1, is further
36 amended by amending the 3rd blocked paragraph to read:

37 An employer may not take any action to prevent or discourage an employee from making
38 a report ~~except that an adult person listed in paragraph A is not obligated to and may not~~
39 make a report to the department under this subsection if the report is based on information
40 that qualifies as a confidence or secret of a covered client of an attorney under the Maine
41 Rules of Professional Conduct, Rule 1.6 and the adult person obtained access to the

1 information while working for or at the request of the attorney for the covered client, unless
2 the attorney would have the authority to disclose the information under the Maine Rules of
3 Professional Conduct, Rule 1.6(b)(1). For purposes of this subsection, "covered client"
4 means a parent or custodian who is a party to a proceeding under this chapter or an adult
5 or minor charged with a crime or a juvenile crime.

6 **Sec. 23. 22 MRSA §4014, sub-§1**, as amended by PL 2023, c. 146, §2, is further
7 amended to read:

8 **1. Reporting and proceedings.** A Except as provided in subsection 1-A, a person,
9 including an agent of the department, participating in good faith in reporting under this
10 subchapter or participating in a related child protection investigation or proceeding,
11 including, but not limited to, a multidisciplinary team, out-of-home abuse investigating
12 team or other investigating or treatment team, or a related law enforcement investigation
13 or criminal justice proceeding is immune from any criminal or civil liability for the act of
14 reporting or participating in the investigation or proceeding. Good faith does not include
15 instances when a false report is made and the person knows the report is false. This section
16 may not be construed to bar criminal or civil action regarding perjury or regarding the abuse
17 or neglect that led to a report, investigation or proceeding.

18 **Sec. 24. 22 MRSA §4014, sub-§1-A** is enacted to read:

19 **1-A. Attorney-client privilege.** The attorney-client privilege is not abrogated by this
20 subchapter. Statements or information that qualifies as a confidence or secret of a covered
21 client of an attorney under the Maine Rules of Professional Conduct, Rule 1.6 is subject to
22 the privilege and, unless the attorney would have the authority to disclose the information
23 under the Maine Rules of Professional Conduct, Rule 1.6(b)(1), may not form the basis of
24 a report under this subchapter by any person who obtained access to the information while
25 working for or at the request of the attorney, including, but not limited to, a person
26 described in section 4011-A, subsection 1, paragraph A. For purposes of this subsection,
27 "covered client" means a parent or custodian who is a party to a proceeding under this
28 chapter or an adult or minor charged with a crime or a juvenile crime.

29 SUMMARY

30 This bill implements the recommendations of the Maine Commission on Indigent
31 Legal Services to make the following changes to laws governing the commission and
32 related provisions of law.

33 1. In the laws governing the commission, it defines the term "employed counsel" to
34 refer to a person employed by the commission to provide direct legal services to persons
35 who receive indigent legal services, formerly referred to in those laws as "public
36 defenders."

37 2. It provides that the 2 members of the commission who are attorneys engaged in the
38 active practice of law and who provide indigent legal services are voting members of the
39 commission.

40 3. It requires that the executive director of the commission be an attorney licensed to
41 practice law and a member in good standing of the bar of the State.

1 4. It specifies that when the commission through employed counsel retains
2 investigative and expert services that are reasonably necessary for case-specific purposes,
3 those services are not required to be made through the state procurement process.

4 5. It clarifies that any information subject to a privilege under the Maine Rules of
5 Evidence or the Maine Rules of Professional Conduct or otherwise protected by the
6 attorney-client privilege remains confidential when it is in the possession or control of the
7 commission or when it is received, obtained, maintained or stored by or on behalf of
8 employed counsel.

9 6. It clarifies that, although information obtained or gathered by the commission
10 through a formal or informal complaint or when performing an evaluation or investigation
11 of an attorney is generally confidential, if the attorney appeals from a decision finding the
12 attorney ineligible to receive case assignments, the information may be disclosed at a public
13 hearing conducted by the commission on the appeal unless the information is protected by
14 the attorney-client privilege or by any other provision of law, the Maine Rules of Evidence
15 or the Maine Rules of Professional Conduct.

16 7. It establishes immunity from suit under the Maine Tort Claims Act for the
17 commission and its employees for claims based on performing or failing to perform any
18 indigent legal services. The immunity provided by the bill mirrors the immunity from suit
19 granted under the Maine Tort Claims Act to governmental entities and their employees for
20 performing or failing to perform any prosecutorial function involving civil, criminal or
21 administrative enforcement.

22 8. It requires that a Juvenile Court consider any juvenile who requests counsel to be
23 indigent for the purposes of appointing counsel; authorizes Maine criminal justice agencies
24 to disseminate confidential juvenile history record information to the commission for the
25 purposes of assigning, evaluating or supervising counsel; and requires the Juvenile Court,
26 on request, to disseminate juvenile case records to the commission for the purposes of
27 assigning, evaluating or supervising counsel.

28 9. It directs the court to appoint new counsel for an indigent parent who appeals from
29 an order in a child protection proceeding terminating that parent's parental rights;
30 authorizes the executive director of the commission, or the executive director's designee,
31 to attend and observe child protection proceedings for purposes related to assigning,
32 evaluating or supervising counsel; and requires the court and the Department of Health and
33 Human Services to disclose child protective records to the commission for the purposes of
34 assigning, evaluating or supervising counsel.

35 10. It prohibits a professional who otherwise qualifies as a mandated reporter of
36 suspected child abuse or neglect from making a report to the Department of Health and
37 Human Services if the information that forms the basis of the report would qualify as a
38 confidence or secret of a covered client of an attorney under the Maine Rules of
39 Professional Conduct, Rule 1.6 and the professional obtained the information while
40 working for or at the request of the attorney for the covered client, unless the attorney for
41 the covered client would have the authority to disclose the information under the Maine
42 Rules of Professional Conduct, Rule 1.6(b)(1) because the disclosure is reasonably believed
43 necessary to prevent reasonably certain substantial bodily harm or death. The bill defines
44 a "covered client" to mean a parent who is a party to a child protection proceeding or an
45 adult or minor charged with a crime or a juvenile crime.