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## JUDICIARY

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### STATE OF MAINE

### SENATE

### 132ND LEGISLATURE

### FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “ ” to S.P. 462, L.D. 1101, “An Act to Address the Limited Availability of Counsel in Courts to Represent Indigent Parties in Matters Affecting Their Fundamental Rights”

Amend the bill in the emergency preamble in the 2nd indented paragraph in the 3rd line (page 1, line 5 in L.D.) by striking out the following: "matters" and inserting the following: 'criminal and child protection proceedings'

Amend the bill in section 1 in subsection 1 in the 2nd line (page 1, line 30 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill in section 1 in subsection 1 in paragraph E in the 4th line (page 2, line 4 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill in section 2 in subsection 3 in the 3rd line (page 2, line 10 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill in section 2 in subsection 3 in paragraph A in the 3rd line (page 2, line 13 in L.D.) by striking out the following: "July 1, 2027" and inserting the following: 'February 1, 2026'

Amend the bill by striking out all of sections 3 and 4 and inserting the following:

**'Sec. 3. 4 MRSA §1807** is enacted to read:

#### **§1807. Court appointment of private attorney**

**1. Appointment of private attorneys by District Court and Superior Court.**  
Notwithstanding any provision of this chapter to the contrary, a court may appoint a private attorney to represent a person who is eligible to receive indigent legal services in a matter pending before the District Court or Superior Court if the court finds the following:

A. A public defender, assigned counsel, contract counsel or employed counsel is not available to represent the person;

1        B. The private attorney is qualified to represent the person in the matter pending before  
2        the court, has not been disqualified by the commission and has at least 3 years of legal  
3        experience relevant to the pending matter; and

4        C. The private attorney is willing to undertake the representation, which may be  
5        limited representation defined by the court in its appointment order.

6        **2. Private attorney appointment; Supreme Judicial Court.** Notwithstanding any  
7        provision of this chapter to the contrary, a court may appoint a private attorney to represent  
8        a person who is eligible to receive indigent legal services in a matter before the Supreme  
9        Judicial Court if the court finds the following:

10       A. A public defender, assigned counsel, contract counsel or employed counsel is not  
11       available to represent the person;

12       B. The private attorney is qualified to represent the person in the matter pending before  
13       the court, has not been disqualified by the commission and either has at least 3 years  
14       of legal experience relevant to the pending matter or has previously served as a law  
15       clerk analyzing cases relevant to the pending matter; and

16       C. The private attorney is willing to undertake the representation, which may be  
17       limited representation defined by the court in its appointment order.

18       **3. Compensation.** The commission shall provide compensation and reimbursement  
19       to a private attorney appointed by the court under subsection 1 or 2. The compensation and  
20       reimbursement must be equivalent to the reimbursement provided to assigned counsel  
21       under the rulemaking directed by section 1804, subsection 3, paragraph F. The process for  
22       compensation of private attorneys appointed pursuant to subsection 1 or 2 must be in  
23       accordance with the requirements established by the commission under section 1804,  
24       subsection 3, paragraph B for voucher review and payment authorization.

25       **4. Supervision.** The commission's supervision of a private attorney appointed pursuant  
26       to subsection 1 or 2 is limited to addressing complaints made by the client whom the private  
27       attorney was appointed to represent under subsection 1 or 2.

28       **5. Confidentiality.** The provisions of section 1806, subsections 2 and 3 apply, to the  
29       same extent that those provisions apply to commission-rostered attorneys who serve as  
30       assigned counsel, to private attorneys appointed by the court to provide indigent legal  
31       services pursuant to subsections 1 and 2.

32       **6. Repeal.** This section is repealed February 1, 2026.

33       **Sec. 4. Report; Maine Commission on Public Defense Services.** By January  
34       1, 2026, the Maine Commission on Public Defense Services shall submit a report to the  
35       Joint Standing Committee on Judiciary that includes, at a minimum, the following  
36       information:

37       1. An update on the status of the *Robbins v. Billings, et al.*, No. CV-22-054 (Me.  
38       Superior Court) litigation, including information on the number of defendants granted  
39       habeas corpus relief by the court, the type of habeas corpus relief granted to these  
40       defendants and the efforts the commission made to provide counsel to those defendants  
41       before habeas corpus relief was granted;

42       2. Statistics on the number of clients for whom the new Assistant Defender I positions  
43       established by this Act have provided indigent legal services, with detail on the number of

clients who were criminal defendants, including the number who were incarcerated and who were not incarcerated when the representation began; the number of clients who were parents in child protection proceedings; and the number of clients who were entitled to other indigent legal services and the type of cases in which representation was provided to these clients. The report must also include a description of the commission’s plans for using the services of these Assistant Defender I positions in the future; and

3. Information on implementation of the commission's duty to compensate private attorneys appointed by a court pursuant to the Maine Revised Statutes, Title 4, section 1807, subsections 1 and 2, including detail on the amount of compensation paid to these private attorneys; information on the number of commission-rostered attorneys who have left the roster and are currently accepting appointments under Title 4, section 1807; information on the number of private attorneys appointed by a court pursuant to Title 4, section 1807 who subsequently applied to be on a commission roster; and any related recommendations for improving or repealing Title 4, section 1807.

The Joint Standing Committee on Judiciary may report out legislation related to the report to the Second Regular Session of the 132nd Legislature.

**Sec. 5. Report; Judicial Department.** By January 1, 2026, the Judicial Department shall submit a report to the Joint Standing Committee on Judiciary that includes, at a minimum, the following information:

1. Statistics on the number of cases in which courts have appointed private attorneys to provide indigent legal services pursuant to the Maine Revised Statutes, Title 4, section 1807, subsections 1 and 2, with detail on the number of cases involving criminal defendants, including the number of those defendants who were incarcerated and the number who were not incarcerated when the appointments were made; the number of child protection proceedings in which private attorneys were appointed; and the number of cases involving other indigent legal services in which appointments were made; and

2. Information on implementation of the commission's duty to compensate private attorneys appointed by a court pursuant to the Maine Revised Statutes, Title 4, section 1807, subsections 1 and 2, including any recommendations for improving or repealing Title 4, section 1807.

The Joint Standing Committee on Judiciary may report out legislation related to the report to the Second Regular Session of the 132nd Legislature.

**Sec. 6. Appropriations and allocations.** The following appropriations and allocations are made.

#### **PUBLIC DEFENSE SERVICES, MAINE COMMISSION ON**

##### **Maine Commission on Public Defense Services Z112**

Initiative: Provides ongoing funding to establish 5 Assistant Defender I positions, 2 Paralegal positions and one Legal Administrator position. These positions are primarily responsible for providing indigent legal services to criminal defendants and parties in child protective proceedings for whom another public defender, assigned counsel, contract counsel or employed counsel is not available to represent the defendant or party and, to the extent there is additional capacity, these positions may also represent other individuals who

are eligible for indigent legal services but for whom another public defender, assigned counsel, contract counsel or employed counsel is not available to represent the person.

<b>GENERAL FUND</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>
POSITIONS - LEGISLATIVE	8.000	8.000	8.000
COUNT			
Personal Services	\$200,522	\$1,203,134	\$1,216,315
All Other	\$6,000	\$40,660	\$40,660
<b>GENERAL FUND TOTAL</b>	<b>\$206,522</b>	<b>\$1,243,794</b>	<b>\$1,256,975</b>

#### **Maine Commission on Public Defense Services Z112**

Initiative: Provides ongoing funding to compensate assigned counsel that the Legislature authorized the courts to appoint at the current billing rate for assigned legal counsel of \$150 per hour.

<b>GENERAL FUND</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>
All Other	\$62,500	\$375,000	\$375,000
<b>GENERAL FUND TOTAL</b>	<b>\$62,500</b>	<b>\$375,000</b>	<b>\$375,000</b>

#### **PUBLIC DEFENSE SERVICES, MAINE COMMISSION ON DEPARTMENT TOTALS**

	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>
<b>GENERAL FUND</b>	<b>\$269,022</b>	<b>\$1,618,794</b>	<b>\$1,631,975</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$269,022</b>	<b>\$1,618,794</b>	<b>\$1,631,975</b>

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

#### **SUMMARY**

This amendment amends the provisions of the bill requiring the Maine Commission on Public Defense Services to compensate a private attorney appointed by the court to represent a person who is eligible to receive indigent legal services if the court finds that no public defender, assigned counsel, contract counsel or employed counsel is available to represent the person. The amendment:

1. Changes from July 1, 2027 to February 1, 2026 the date that this requirement expires;

2. Requires that a private attorney appointed by a trial court have at least 3 years of relevant legal experience and that a private attorney appointed by the Supreme Judicial Court either have 3 years of relevant legal experience or have previously served as a law clerk analyzing cases relevant to the pending matter;

**(See attached)**