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Date: (Filing No. S-)

JUDICIARY

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**STATE OF MAINE
SENATE
132ND LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 698, L.D. 1796, “An Act to Implement the Recommendations of the Maine Commission on Public Defense Services to Clarify the Types of Cases for Which the Commission Is Responsible for Providing Counsel”

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

‘Sec. 1. 4 MRSA §1802, sub-§4, as amended by PL 2021, c. 676, Pt. A, §3, is further amended to read:

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

- A. ~~An~~ Legal representation provided to 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~~ Legal representation provided to an indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law, except any provision of Title 18-C, requires that the State provide representation;
- C. ~~Juvenile~~ Legal representation provided to juvenile defendants; ~~and~~
- D. ~~An~~ Legal representation provided to an indigent defendant or party or a juvenile for the purpose of filing, on behalf of that indigent defendant or party or juvenile, a petition for certiorari to the Supreme Court of the United States from an adverse decision of the Law Court on a case for which services were previously provided to that defendant or party or juvenile pursuant to paragraph A, B or C-; and
- E. Services performed by an attorney at the direction of the commission that aid the commission in fulfilling the commission's purpose under section 1801.

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to any provision of Title 18-C or pursuant to Title 19-A, section 1658, subsection 2-A or Title 22, section 4005, subsection 1.

COMMITTEE AMENDMENT

1 **Sec. 2. 4 MRSA §1802-A**, as enacted by PL 2023, c. 638, §4, is repealed and the
2 following enacted in its place:

3 **§1802-A. Employed counsel and public defender; direct assignment prohibited**

4 **1. Duties.** An attorney may be employed by the commission both as employed counsel
5 and as a public defender.

6 **2. Direct assignment by court prohibited.** A court may not directly assign or appoint
7 a public defender or employed counsel to represent a party entitled to indigent legal
8 services.

9 **Sec. 3. 18-C MRSA §5-119, sub-§1**, as amended by PL 2019, c. 417, Pt. A, §14,
10 is further amended to read:

11 **1. Attorney for respondent.** Unless the court has made a finding that the respondent
12 is indigent and has appointed an attorney for the respondent on that basis, an attorney for a
13 respondent in a proceeding under this Act is entitled to reasonable compensation and
14 reimbursement of reasonable expenses from the property of the respondent. If the court
15 has made a finding that the respondent is indigent and has appointed an attorney for the
16 respondent on that basis, the court shall provide reasonable compensation to and reimburse
17 the reasonable expenses of the attorney.

18 **Sec. 4. 18-C MRSA §5-205, sub-§4**, as enacted by PL 2017, c. 402, Pt. A, §2 and
19 affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

20 **4. Appointment of counsel.** A nonconsenting parent whose parental rights have not
21 been terminated is entitled to court-appointed legal counsel if indigent. In a contested
22 action, the court may also appoint counsel for any indigent guardian or petitioner when a
23 parent or legal custodian has counsel. The court shall provide reasonable compensation to
24 and reimburse the reasonable expenses of an attorney appointed under this subsection.

25 **Sec. 5. 18-C MRSA §5-205, sub-§5**, as enacted by PL 2017, c. 402, Pt. A, §2 and
26 affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

27 **5. Attorney for a minor; notice to minor.** If the court determines at any stage of the
28 proceeding, before or after appointment, that the interests of the minor are or may be
29 inadequately represented, the court may appoint an attorney to represent the minor, giving
30 consideration to the choice of the minor if the minor has attained 14 years of age. The court
31 shall provide reasonable compensation to and reimburse the reasonable expenses of an
32 attorney appointed for the minor under this subsection. A minor may appear with or
33 through counsel, but the court is not restricted from requiring the minor to be present for
34 some or all of a hearing or other proceeding. A minor 14 years of age or older must receive
35 notice of any proceeding subsequent to the appointment of a guardian through the same
36 means as required for any other party, and the minor may consent, object or otherwise
37 participate in the proceeding.

38 **Sec. 6. 18-C MRSA §5-210, sub-§1**, as amended by PL 2019, c. 417, Pt. A, §19,
39 is further amended to read:

40 **1. Modification of guardianship order.** A guardian of a minor, a parent of a minor,
41 a person interested in the welfare of a minor or the minor, if 14 years of age or older, may
42 file a motion asking the court to modify the terms of an order appointing a guardian or to
43 take other action in the best interest of the minor as circumstances require. The motion

1 must be filed with the court and served on all parties entitled to notice. In a contested
2 action, the court may appoint counsel for the minor or for any indigent guardian or parent.
3 If the court appoints counsel for a minor or an indigent guardian or parent under this
4 subsection, the court shall provide reasonable compensation to and reimburse the
5 reasonable expenses of the attorney. Unless the motion specifies that it is filed with the
6 consent of all parties entitled to notice, the matter must be set for hearing to determine
7 whether there has been a substantial change in circumstances necessitating modification of
8 the order and how the court should modify the order in furtherance of the best interest of
9 the minor and the parent's rights. The court may identify certain requirements that must be
10 met before specific provisions of the order are modified. A court may modify a term of a
11 guardianship order as needed to grant relief to a party to address contempt or other failure
12 to follow the order.

13 **Sec. 7. 18-C MRSA §5-210, sub-§7**, as amended by PL 2019, c. 417, Pt. A, §20,
14 is further amended to read:

15 **7. Parent's petition to terminate guardianship; burden of proof.** A parent may
16 bring a petition to terminate the guardianship of a minor. A parent's notification to the
17 court of the revocation of prior consent for a guardianship must be considered a petition to
18 terminate the guardianship. Before the court may apply the termination requirements in
19 subsection 6, a party opposing a parent's petition to terminate a guardianship bears the
20 burden of proving by clear and convincing evidence that the parent seeking to terminate
21 the guardianship is currently unfit to regain custody of the minor, in accordance with the
22 standard set forth in section 5-204, subsection 2, paragraph C. If the party opposing
23 termination of the guardianship fails to meet its burden of proof on the question of the
24 parent's fitness to regain custody, the court shall terminate the guardianship and make any
25 further order that may be appropriate. In a contested action, the court may appoint counsel
26 for the minor or for any indigent guardian or parent. If the court appoints counsel for a
27 minor or an indigent guardian or parent under this subsection, the court shall provide
28 reasonable compensation to and reimburse the reasonable expenses of the attorney. In
29 ruling on a petition to terminate a guardianship, the court may modify the terms of the
30 guardianship or order transitional arrangements pursuant to section 5-211.

31 **Sec. 8. 18-C MRSA §5-406, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2 and
32 affected by PL 2019, c. 417, Pt. B, §14, is amended by enacting at the end a new first
33 blocked paragraph to read:

34 Section 5-119, subsection 1 governs payment of an attorney appointed by the court to
35 represent a respondent under this subsection.

36 **Sec. 9. 18-C MRSA §5-406, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2 and
37 affected by PL 2019, c. 417, Pt. B, §14, is amended by enacting at the end a new first
38 blocked paragraph to read:

39 If the court appoints counsel for a parent under this subsection and makes a finding that the
40 parent is indigent, the court shall provide reasonable compensation to and reimburse the
41 reasonable expenses of the attorney.

42 **Sec. 10. 18-C MRSA §5-507, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
43 and affected by PL 2019, c. 417, Pt. B, §14, is amended by enacting at the end a new first
44 blocked paragraph to read:

1 Section 5-119, subsection 1 governs payment of an attorney appointed by the court to
2 represent a respondent under this subsection.

3 **Sec. 11. 18-C MRSA §5-507, sub-§3**, as enacted by PL 2017, c. 402, Pt. A, §2
4 and affected by PL 2019, c. 417, Pt. B, §14, is amended by enacting at the end a new first
5 blocked paragraph to read:

6 If the court appoints counsel for a parent under this subsection and makes a finding that the
7 parent is indigent, the court shall provide reasonable compensation to and reimburse the
8 reasonable expenses of the attorney.

9 **Sec. 12. 18-C MRSA §9-106, sub-§1**, as enacted by PL 2017, c. 402, Pt. A, §2
10 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

11 **1. Attorney for parents.** The parents are entitled to an attorney for any hearing held
12 pursuant to this Article. If a parent or putative parent wants an attorney but is unable to
13 afford one, the parent or the putative parent may request the court to appoint an attorney.
14 If the court finds the requesting party indigent, the court shall appoint and ~~pay the~~
15 reasonable costs and provide reasonable compensation to and reimburse the reasonable
16 expenses of the attorney of the indigent party. The attorney may not be the attorney for the
17 adoptive parents.

18 **Sec. 13. 18-C MRSA §9-106, sub-§2**, as enacted by PL 2017, c. 402, Pt. A, §2
19 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

20 **2. Attorney for minor indigent parent.** When the adoptee is unrelated to the
21 petitioner, the court shall appoint an attorney who is not the attorney for the adoptive
22 parents to represent a minor indigent parent at every stage of the proceedings unless the
23 minor indigent parent refuses representation or the court determines that representation is
24 unnecessary. If the court appoints counsel for a minor indigent parent under this
25 subsection, the court shall provide reasonable compensation to and reimburse the
26 reasonable expenses of the attorney.

27 **Sec. 14. 18-C MRSA §9-315, sub-§1, ¶A**, as enacted by PL 2017, c. 402, Pt. A,
28 §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended by amending the first blocked
29 paragraph to read:

30 The court may allocate the costs of the guardian ad litem to one or more of the parties
31 and may appoint counsel for a minor adoptee or a party to the annulment proceedings.
32 If the court appoints counsel for a minor or an indigent party under this paragraph, the
33 court shall provide reasonable compensation to and reimburse the reasonable expenses
34 of the attorney. A minor adoptee may appear and be represented by counsel.

35 **Sec. 15. 19-A MRSA §1658, sub-§2-A, ¶A**, as enacted by PL 2021, c. 340, §2, is
36 amended to read:

37 A. The court shall appoint an attorney for a parent who is the subject of a petition to
38 terminate parental rights and responsibilities under this section and who is indigent. ~~In~~
39 ~~a contested action, the court may also appoint counsel for any indigent petitioner who~~
40 ~~files a petition under this section when the parent who is the subject of the petition is~~
41 ~~represented by counsel.~~

42 **Sec. 16. 19-A MRSA §1658, sub-§2-A, ¶A-1** is enacted to read:

1 A-1. In a contested action, the court may appoint counsel for any indigent petitioner
 2 who files a petition under this section when the parent who is the subject of the petition
 3 is represented by counsel. The court shall provide reasonable compensation to and
 4 reimburse the reasonable expenses of an attorney appointed under this paragraph.

5 **Sec. 17. 34-B MRSA §3864, sub-§10**, as amended by PL 2007, c. 319, §10, is
 6 further amended to read:

7 **10. Expenses.** With the exception of expenses incurred by the applicant pursuant to
 8 subsection 5, paragraph F, the District Court is responsible for any expenses incurred under
 9 this section, including ~~fees of appointed counsel~~, witness and notice fees and expenses of
 10 transportation for the person but not fees of appointed counsel.

11 **Sec. 18. Appropriations and allocations.** The following appropriations and
 12 allocations are made.

13 **JUDICIAL DEPARTMENT**

14 **Courts - Supreme, Superior and District 0063**

15 Initiative: Provides ongoing funding for courts to appoint attorneys to represent parties in
 16 proceedings under the Maine Uniform Probate Code.

17 GENERAL FUND	2025-26	2026-27
18 All Other	\$159,826	\$159,826
19		
20 GENERAL FUND TOTAL	<u>\$159,826</u>	<u>\$159,826</u>

21

22 **JUDICIAL DEPARTMENT**

23 **DEPARTMENT TOTALS**

24	2025-26	2026-27
25 GENERAL FUND	\$159,826	\$159,826
26		
27 DEPARTMENT TOTAL - ALL FUNDS	<u>\$159,826</u>	<u>\$159,826</u>

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

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

30 Initiative: Provides deappropriations to the Maine Commission on Public Defense Services
 31 for attorney's fees for certain court proceedings where the courts will appoint and
 32 compensate counsel for indigent parties.

33 GENERAL FUND	2025-26	2026-27
34 All Other	(\$100,000)	(\$100,000)
35		
36 GENERAL FUND TOTAL	<u>(\$100,000)</u>	<u>(\$100,000)</u>

37

38 **PUBLIC DEFENSE SERVICES, MAINE**
 39 **COMMISSION ON**

40 **DEPARTMENT TOTALS**

41	2025-26	2026-27
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1	GENERAL FUND	(\$100,000)	(\$100,000)
2			
3	DEPARTMENT TOTAL - ALL FUNDS	(\$100,000)	(\$100,000)
4			
5	SECTION TOTALS	2025-26	2026-27
6			
7	GENERAL FUND	\$59,826	\$59,826
8			
9	SECTION TOTAL - ALL FUNDS	\$59,826	\$59,826

10

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

13

SUMMARY

14 This amendment, which is the majority report of the committee, replaces the bill. The
 15 amendment makes the following changes to the laws governing court-appointed counsel.

16 1. It amends the definition of "indigent legal services" to include services that an
 17 attorney performs at the direction of the Maine Commission on Public Defense Services
 18 that aid the commission in its duty to provide indigent legal services.

19 2. It provides that the commission is not responsible for compensating counsel
 20 appointed by a District Court or a county probate court to represent a party in a proceeding
 21 under the Maine Uniform Probate Code. It further clarifies that if a court appoints an
 22 attorney to represent a party who has a right to counsel at public expense under the Maine
 23 Uniform Probate Code, the court is responsible for paying reasonable compensation to and
 24 reimbursing the reasonable expenses of the attorney. The court is also responsible for
 25 paying reasonable compensation to and reimbursing the reasonable expenses of an attorney
 26 appointed at the court’s discretion to represent a minor or an indigent party in a proceeding
 27 under the Maine Uniform Probate Code.

28 3. It provides that the commission is not responsible for compensating a guardian ad
 29 litem appointed by a District Court or a county probate court in a termination of parental
 30 rights proceeding or in any proceeding under the Maine Uniform Probate Code.

31 4. It provides that if a termination of parental rights proceeding is brought under the
 32 Maine Revised Statutes, Title 19-A, the court is responsible for compensating any counsel
 33 the court may, in its discretion, appoint to represent the petitioner in the termination
 34 proceeding. By contrast, the commission is responsible for compensating counsel
 35 appointed to represent the parent whose rights may be terminated.

36 5. It clarifies that the commission, not the court, is responsible for compensating an
 37 attorney appointed to represent a person subject to an involuntary commitment proceeding.

38 6. It prohibits a court from directly assigning public defenders or employed counsel,
 39 who are employees of the commission, to represent parties in particular proceedings.

40

FISCAL NOTE REQUIRED

41

(See attached)

COMMITTEE AMENDMENT