

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

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**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation is designed to address an existing crisis in the courts arising from the limited availability of counsel qualified by the Maine Commission on Public Defense Services to represent indigent parties in criminal and child protection proceedings affecting their fundamental rights; and

Whereas, when a court appoints counsel to represent an indigent party, compensation must be made available to counsel, whether the commission or the court determined that counsel is qualified to provide the representation; and

Whereas, a Maine Superior Court order issued in *Robbins v. Billings, et al.*, No. CV-22-054 (Me. Super. Ct., Ken. Cty., March 7, 2025) (Order After Phase One Trial) establishes a conditional remedy to address claims for habeas corpus relief for violations of the United States Constitution, Amendment VI and the Constitution of Maine, Article I, Section 6 right to continuous representation; and

Whereas, the resources necessary to implement the conditional remedy are currently under consideration by the Legislature and requested by the Maine Commission on Public Defense Services; and

Whereas, the conditional remedy poses a concern about the public's interest in the administration of criminal justice and the potential to jeopardize public safety if a criminal defendant commits a dangerous act after dismissal and release granted in response to a claim for habeas corpus relief; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 4 MRSA §1805-A, sub-§1, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is amended to read:

1. Duties. The executive director shall administer and improve reimbursement of expenses incurred by assigned counsel ~~and~~, contract counsel and, until February 1, 2026, a private attorney appointed under section 1807 by:

- A. Establishing procedures to ensure that the eligibility of defendants and civil parties is verified and reviewed randomly and when circumstances have changed, information has changed, additional information is provided or as otherwise needed;
- B. Petitioning the court to reassess the indigency of a defendant or civil party if the executive director determines that indigency should be reassessed;
- C. Providing to the commission recommendations to improve reimbursement of expenses;
- D. Requiring that the amount of time spent on each case by assigned counsel or contract counsel is recorded separately for each case; and
- E. Receiving from the courts collections for the costs of representation from defendants or civil parties who are found to be partially indigent or who have otherwise been determined to be able to reimburse the commission for expenses incurred by assigned counsel ~~or~~, contract counsel or, until February 1, 2026, a private attorney appointed under section 1807.

Sec. 2. 4 MRSA §1805-A, sub-§3, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is amended to read:

3. Partial indigency and reimbursement. This subsection applies to partial indigency and reimbursement of expenses incurred by assigned counsel ~~or~~, contract counsel or, until February 1, 2026, a private attorney appointed under section 1807.

- A. If the court determines that a defendant or civil party is unable to pay to obtain private counsel but is able to contribute to payment of assigned counsel ~~or~~, contract counsel or, until February 1, 2026, a private attorney appointed under section 1807, the court shall order the defendant or civil party to make installment payments up to the full cost of representation or to pay a fixed contribution. The court shall remit payments received to the commission.
- B. A defendant or civil party may not be required to pay for legal services in an amount greater than the expenses actually incurred.
- C. Upon petition of a defendant or civil party who is incarcerated, the court may suspend an order for reimbursement issued pursuant to this subsection until the time of the defendant's or civil party's release.
- D. The executive director may enter into contracts to secure the reimbursement of fees and expenses paid by the commission as provided for in this section.

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;

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

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

2. Private attorney appointment; Supreme Judicial 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 before the Supreme Judicial 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;

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

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

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

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

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

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

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

1. An update on the status of the *Robbins v. Billings, et al.*, No. CV-22-054 (Me. Superior Court) litigation, including information on the number of defendants granted

habeas corpus relief by the court, the type of habeas corpus relief granted to these defendants and the efforts the commission made to provide counsel to those defendants before habeas corpus relief was granted;

2. Statistics on the number of clients for whom the new Assistant Defender I positions 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.

GENERAL FUND	2024-25	2025-26	2026-27
POSITIONS - LEGISLATIVE COUNT	8,000	8,000	8,000
Personal Services	\$200,522	\$1,203,134	\$1,216,315
All Other	\$6,000	\$40,660	\$40,660
GENERAL FUND TOTAL	\$206,522	\$1,243,794	\$1,256,975

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.

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

PUBLIC DEFENSE SERVICES, MAINE COMMISSION ON DEPARTMENT TOTALS

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

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.