

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

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**

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

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.

Sec. 2. 4 MRSA §1802-A, as enacted by PL 2023, c. 638, §4, is repealed and the following enacted in its place:

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

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

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

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

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

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

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

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

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

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

1. Modification of guardianship order. A guardian of a minor, a parent of a minor, a person interested in the welfare of a minor or the minor, if 14 years of age or older, may file a motion asking the court to modify the terms of an order appointing a guardian or to take other action in the best interest of the minor as circumstances require. The motion must be filed with the court and served on all parties entitled to notice. In a contested action, the court may appoint counsel for the minor or for any indigent guardian or parent. If the court appoints counsel for a minor or an indigent guardian or parent under this subsection, the court shall provide reasonable compensation to and reimburse the

reasonable expenses of the attorney. Unless the motion specifies that it is filed with the consent of all parties entitled to notice, the matter must be set for hearing to determine whether there has been a substantial change in circumstances necessitating modification of the order and how the court should modify the order in furtherance of the best interest of the minor and the parent's rights. The court may identify certain requirements that must be met before specific provisions of the order are modified. A court may modify a term of a guardianship order as needed to grant relief to a party to address contempt or other failure to follow the order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A-1. In a contested action, the court may appoint counsel for any indigent petitioner who files a petition under this section when the parent who is the subject of the petition

is represented by counsel. The court shall provide reasonable compensation to and reimburse the reasonable expenses of an attorney appointed under this paragraph.

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

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

Sec. 18. Appropriations and allocations. The following appropriations and allocations are made.

PUBLIC DEFENSE SERVICES, MAINE COMMISSION ON

Maine Commission on Public Defense Services Z112

Initiative: Reclassifies an Assistant Defender I position to a Deputy District Defender position.

GENERAL FUND	2025-26	2026-27
Personal Services	\$1,000	\$1,000
GENERAL FUND TOTAL	<u>\$1,000</u>	<u>\$1,000</u>