

130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document	No. 1685
H.P. 1254	House of Representatives, May 6, 2021

An Act To Protect the Constitutional Rights of Indigent Defendants

Reported by Representative HARNETT of Gardiner for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 4, section 1804, subsection 3, paragraph H.

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

R(+ B. Hunt

ROBERT B. HUNT Clerk

1	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 4 MRSA §8-D is enacted to read:
3	§8-D. Rules; assessment of indigency and ability to pay
4 5 6	1. Rules. The Supreme Judicial Court may prescribe, repeal, add to, amend or modify rules or orders providing for a procedure in all courts through which an individual's financial capacity is assessed for the following purposes:
7 8 9	A. To determine eligibility for a court-appointed attorney. The eligibility standards must take into account the possibility of a party's ability to make periodic installment payments toward counsel fees;
10	B. To determine whether a party qualifies to proceed in forma pauperis; and
11 12	C. To determine, after a fine has been ordered in a criminal case, a party's ability to pay and the schedule for payments.
13 14 15	2. Partial indigency and reimbursement. This subsection applies to partial indigency and reimbursement of expenses incurred by assigned counsel or contract counsel.
16 17 18 19 20 21	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, the court shall order the defendant or civil party to make periodic installment payments up to the full cost of representation or to pay a fixed contribution. The court shall remit payments received to the Maine Commission on Indigent Legal Services under section 1801.
22 23	B. A defendant or civil party may not be required to pay for legal services in an amount greater than the expenses actually incurred.
24 25 26	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.
27 28	Sec. 2. 4 MRSA §1804, sub-§2, ¶ A , as amended by PL 2017, c. 284, Pt. UUUU, §1, is repealed.
29 30	Sec. 3. 4 MRSA §1805, sub-§10-A, as enacted by PL 2017, c. 284, Pt. UUUU, §13, is amended to read:
31 32	10-A. Reimbursement of expenses. Administer and improve reimbursement of expenses incurred by assigned counsel and contract counsel as described in section 1805-A;
33 34	Sec. 4. 4 MRSA §1805-A, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is repealed.
35	Sec. 5. 15 MRSA §815 is enacted to read:
36	§815. Communication between prosecutor and unrepresented defendant
37 38	To ensure that all waivers of the right to counsel are made knowingly, voluntarily and intelligently, a prosecutor may not communicate with an unrepresented defendant unless:
39 40	<u>1. Informed of right.</u> The defendant has been informed of the defendant's right to court-appointed counsel;

1	2. Statement by the court. The court has provided to the defendant a statement of:
2	A. The substance of the charges against the defendant;
3 4	<u>B.</u> The defendant's right to retain counsel, to request the assignment of counsel and to be allowed a reasonable time and opportunity to consult counsel before entering a plea;
5 6 7	C. The defendant's right to remain silent and that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant;
8 9	D. The maximum possible sentence and any applicable mandatory minimum sentence; and
10	E. The defendant's right to trial by jury; and
11 12	3. Written waiver. The defendant has executed a written waiver of the right to counsel in each prosecution.
13	SUMMARY
14 15 16 17 18 19 20	This bill transfers the financial screening function for eligibility for indigent legal services from the Maine Commission on Indigent Legal Services to the judicial branch and expands the screening to also provide information to determine whether a party qualifies to proceed in forma pauperis and is thereby entitled to a waiver of filing fees and other fees and to determine, after a fine has been ordered in a criminal case, a party's ability to pay and the schedule for payments. The bill transfers language concerning determinations of partial indigency and reimbursement of counsel expenses that currently is within the Maine
21	Commission on Indigent Legal Services provisions to provisions governing the Supreme

Commission on Indigent Legal Services provisions to provisions governing the Supreme
Judicial Court and repeals current provisions requiring Maine Commission on Indigent
Legal Services' involvement in indigency determinations and collection efforts, including
the authority to enter into contracts for collection.

The bill also prohibits prosecutors from communicating with an unrepresented defendant unless the defendant has been informed of the defendant's right to appointed counsel, the court has provided the required statement of rights as specified in Maine Rules of Criminal Procedure, Rule 5(b) and the defendant has executed a written waiver of the right to counsel in each prosecution. A defendant's waiver of the right to counsel must be knowing, voluntary and intelligent. The Sixth Amendment Center recommended this requirement based on <u>Faretta v. California</u>, 422 US 806 (1975).