

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FOUR

—
S.P. 949 - L.D. 2219

**An Act to Implement the Recommendations Regarding the Maine
Commission on Public Defense Services**

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

Sec. 1. 4 MRSA §1801, as amended by PL 2023, c. 558, §3, is further amended to read:

§1801. Maine Commission on Public Defense Services; established

The Maine Commission on Public Defense Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide efficient, high-quality, effective and efficient representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, and promote due process for persons who receive indigent legal services in parity with the resources of the State and consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest.

Sec. 2. 4 MRSA §1802, sub-§3-A is enacted to read:

3-A. Employed counsel. "Employed counsel" means an attorney employed by the commission to provide legal services directly to persons who are eligible to receive indigent legal services in civil proceedings.

Sec. 3. 4 MRSA §1802, sub-§5 is enacted to read:

5. Public defender. "Public defender" means an attorney employed by the commission to provide legal services directly to persons who are eligible to receive indigent legal services in criminal and juvenile proceedings.

Sec. 4. 4 MRSA §1802-A is enacted to read:

§1802-A. Employed counsel and public defender

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

Sec. 5. 4 MRSA §1804, sub-§1, as enacted by PL 2009, c. 419, §2, is amended to read:

1. Executive director. The commission shall hire an executive director. The executive director must be an attorney licensed to practice law in this State; be a member in good standing of the bar of the State; and have experience in the legal field, including, but not limited to, the provision of indigent legal services.

Sec. 6. 4 MRSA §1804, sub-§2, as amended by PL 2023, c. 344, §1, is further amended to read:

2. Rulemaking. The commission shall adopt rules governing the delivery of indigent legal services by assigned counsel, contract counsel, employed counsel and public defenders. The rules adopted by the commission must include:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees and the cost of private legal services in the relevant geographic area;

B. Standards prescribing minimum experience, training and other ~~qualifications for contract eligibility requirements for attorneys to be eligible to serve as assigned counsel, assigned contract counsel and, employed counsel and~~ public defenders;

C. Standards for assigned counsel, contract counsel, employed counsel and public defender ~~ease loads caseloads~~;

D. Standards for the evaluation of assigned counsel, contract counsel, employed counsel and public defenders. The commission shall review the standards developed pursuant to this paragraph at least every 5 years, or earlier upon the recommendation of the executive director;

E. Standards for independent, high-quality, effective and efficient representation of clients whose cases present conflicts of interest;

F. Standards for the reimbursement of expenses incurred by assigned counsel, contract counsel, employed counsel and public defenders, including attendance at training events provided by the commission; and

G. Other standards considered necessary and appropriate to ensure the delivery of adequate high-quality, effective and efficient indigent legal services.

Sec. 7. 4 MRSA §1804, sub-§3, ¶A, as amended by PL 2023, c. 344, §2, is further amended to read:

A. Develop and maintain a system that employs employed counsel and public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys. The commission shall consider other programs necessary to provide ~~quality~~ high-quality, effective and efficient indigent legal services;

Sec. 8. 4 MRSA §1804, sub-§3, ¶C, as amended by PL 2011, c. 420, Pt. C, §1, is further amended to read:

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and ~~ease-load caseload~~ caseload management systems so that detailed expenditure and ~~ease-load~~ indigent legal services caseload data are accurately collected, recorded and reported;

Sec. 9. 4 MRSA §1804, sub-§3, ¶D, as enacted by PL 2009, c. 419, §2, is repealed and the following enacted in its place:

D. To ensure an adequate pool of qualified attorneys, develop training and evaluation programs for attorneys throughout the State to provide representation in criminal, juvenile, child protective, involuntary commitment and all other types of proceedings for which parties may be eligible to receive indigent legal services;

Sec. 10. 4 MRSA §1804, sub-§3, ¶E, as enacted by PL 2009, c. 419, §2, is amended to read:

E. Establish minimum ~~qualifications~~ eligibility standards to ensure that attorneys who provide indigent legal services are ~~qualified and~~ capable of providing quality high-quality, effective and efficient representation in the case types to which they are assigned, recognizing that quality high-quality, effective and efficient representation in each of these types of cases requires counsel with experience and specialized training in that field;

Sec. 11. 4 MRSA §1804, sub-§3, ¶G, as amended by PL 2023, c. 344, §4, is further amended to read:

G. Establish a method for accurately tracking, monitoring and enforcing ~~ease-load caseload~~ caseload standards for assigned counsel, contract counsel, employed counsel and public defenders;

Sec. 12. 4 MRSA §1804, sub-§3, ¶H, as amended by PL 2023, c. 344, §5, is further amended by amending subparagraph (1) to read:

(1) An evaluation of: ~~contracts; services provided by contract counsel, assigned counsel, employed counsel~~ and public defenders; any contracted professional services; and cost containment measures; and

Sec. 13. 4 MRSA §1804, sub-§4, ¶D, as amended by PL 2021, c. 398, Pt. FFF, §1 and c. 481, §5, is further amended to read:

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish rates of compensation for assigned counsel and contract counsel under subsection 3, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; ~~and~~

Sec. 14. 4 MRSA §1804, sub-§4, ¶E, as enacted by PL 2009, c. 419, §2, is amended to read:

E. Appear in court and before other administrative bodies represented by its own attorneys; ~~and~~

Sec. 15. 4 MRSA §1804, sub-§4, ¶F is enacted to read:

F. Notwithstanding Title 5, chapter 155, through employed counsel and public defenders, retain investigative and expert services that are reasonably necessary for case-specific purposes. For purposes of this paragraph, investigative and expert services are for case-specific purposes if the services relate to a specific case and not to the ongoing activities of the commission, or its employees, that do not relate to a specific case. Nothing in this paragraph affects the applicability of Title 5, chapter 155 to the purchase of services, supplies, materials and equipment by the commission or its employees for purposes that are not case-specific purposes.

Sec. 16. 4 MRSA §1805, sub-§7, ¶B-1, as amended by PL 2017, c. 475, Pt. A, §2, is further amended to read:

B-1. A monthly report on the number of cases opened, the number of vouchers submitted, the amount of vouchers paid, the amount of payments to contract counsel, the number of requests for professional services, the amount of payments for professional services and information on any complaints made against assigned ~~or counsel~~, contract counsel, employed counsel or public defenders; and

Sec. 17. 4 MRSA §1806, as amended by PL 2023, c. 344, §6, is further amended to read:

§1806. Information not public record

Disclosure of information and records in the possession of the commission is governed by this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Individual client information" means name; date of birth; social security number; gender; ethnicity; home, work, school or other address; home telephone number; ~~home facsimile; fax~~ number; ~~home; e-mail address; personal;~~ cellular telephone number; ~~personal;~~ pager number; and any information protected under the Maine Rules of Evidence, Rules 501 to 509 or the Maine Rules of Professional Conduct, Rule 1.6 or otherwise protected by the attorney-client relationship.

B. "Personal contact information" means home address, home telephone number, home ~~faesimile~~ fax number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number.

C. "Request for funds for expert or investigative assistance" means a request submitted to the commission ~~by an indigent party or by an attorney or~~ on behalf of ~~an indigent client~~ a person eligible for indigent legal services seeking authorization to expend funds for expert or investigative assistance, which includes, but is not limited to, the assistance of a private investigator, interpreter or translator, psychiatrist, psychologist or other mental health expert, medical expert and scientific expert.

D. "Case information" means:

- (1) The court in which a case is brought;
- (2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;
- (3) The docket number;

- (4) The identity of assigned counsel and the date of assignment;
- (5) The withdrawal of assigned counsel and the date of withdrawal; and
- (6) Any order for reimbursement of assigned counsel fees.

2. Confidential information. The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.

A. Individual client information ~~that is submitted by a commission-rostered attorney or a court~~ is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.

~~B. Information subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6 is confidential.~~

C. Personal contact information of a commission-rostered attorney is confidential.

D. Personal contact information of a member of the commission or a commission staff member employee, including employed counsel and public defenders, is confidential.

E. A request for funds for expert or investigative assistance ~~that is submitted by an indigent party or by an attorney on behalf of an indigent client~~ is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired.

F. Any information obtained or gathered by the commission through a formal or informal complaint or when performing an evaluation or investigation of an attorney is confidential, ~~except that it may be disclosed to the attorney being evaluated or investigated.:~~

(1) The commission may disclose the information to the attorney who is the subject of the formal or informal complaint, evaluation or investigation;

(2) The executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, may disclose the information to the Maine Assistance Program for Lawyers described in Title 14, section 164-A;

(3) If the attorney who is subject to an evaluation or investigation appeals a decision of the executive director or the executive director's designee, in accordance with the process established under section 1804, subsection 3, paragraph J, the information may be disclosed at a public hearing conducted by the commission on the appeal, except that information that is protected by the attorney-client privilege or that is confidential under any provision of law, the Maine Rules of Evidence or the Maine Rules of Professional Conduct remains confidential; and

(4) As provided in subsection 4.

3. Confidential information disclosed by the Judicial Department. The Judicial Department may disclose to the commission confidential information necessary for the

commission to carry out its functions, including, but not limited to, the collection of amounts owed to reimburse the State for the cost of assigned counsel, as follows:

A. Case information and individual client information with respect to court proceedings that are confidential by statute or court rule in which one or more parties are represented by assigned counsel; and

B. The name, address, date of birth and social security number of any person ordered by the court to reimburse the State for some or all of the cost of assigned counsel.

~~This information~~ Information received by the commission from the Judicial Department under this subsection remains confidential in the possession of the commission and is not open to public inspection, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that, if committed by an adult would constitute murder or a Class A, Class B or Class C crime, are not confidential.

4. Rules of professional conduct. Nothing in this section prohibits the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, from reporting potential professional misconduct under the Maine Rules of Professional Conduct to the Board of Overseers of the Bar or from disclosing information and records related to potential professional misconduct to the board.

5. Confidential information possessed by employed counsel and public defenders. Records, information and materials created, received, obtained, maintained or stored by or on behalf of employed counsel and public defenders that are protected under the Maine Rules of Evidence, Rules 501 to 509 or the Maine Rules of Professional Conduct, Rule 1.6 or otherwise protected by the attorney-client relationship are confidential.

Sec. 18. 15 MRSA §3010, sub-§4, ¶B, as enacted by PL 2021, c. 365, §9 and affected by §37, is amended to read:

B. Any person for any purpose when expressly authorized by a statute, court rule, court decision or court order containing language specifically referring to confidential juvenile history record information or one or more of the types of confidential juvenile history record information; ~~or~~

Sec. 19. 15 MRSA §3010, sub-§4, ¶C, as enacted by PL 2021, c. 365, §9 and affected by §37, is amended to read:

C. A public entity for purposes of international travel, such as issuing visas and granting of citizenship; ~~or~~

Sec. 20. 15 MRSA §3010, sub-§4, ¶D is enacted to read:

D. The Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A for the purposes of assigning, evaluating or supervising counsel.

Sec. 21. 15 MRSA §3306, sub-§1, ¶B, as amended by PL 2019, c. 525, §15, is further amended to read:

B. If the juvenile requests an attorney ~~and if the juvenile and the juvenile's parent or parents, guardian or legal custodian are found to be without sufficient financial means,~~ the juvenile must be considered indigent and counsel must be appointed by the court.

If, after counsel has been appointed, private counsel retained by the juvenile enters an appearance, appointed counsel must file a motion to withdraw.

Sec. 22. 15 MRSA §3308-C, sub-§4, ¶H is enacted to read:

H. Juvenile case records must be open to inspection by and, upon request, be disseminated to the Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A for the purposes of assigning, evaluating or supervising counsel.

Sec. 23. 22 MRSA §4005, sub-§2, as amended by PL 1983, c. 783, §2, is further amended to read:

2. Parents. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. ~~They~~ The parent or custodian may request the court to appoint legal counsel for ~~them~~ the parent or custodian. The court, if it finds ~~them~~ the parent or custodian indigent, shall appoint ~~and pay the reasonable costs and expenses of their~~ legal counsel.

Sec. 24. 22 MRSA §4005-D, sub-§3-A is enacted to read:

3-A. Maine Commission on Public Defense Services; access to proceedings. The executive director of the Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A, or the executive director's designee, is authorized to attend and observe all court proceedings under this chapter for any purpose related to assigning, evaluating or supervising counsel, unless the court makes written findings that specific factors unique to the particular proceeding make it inappropriate for the executive director or the executive director's designee to attend all or a part of the proceeding. If the court denies the executive director or the executive director's designee access to the proceeding as provided in this subsection, the court shall order that a copy of a recording of the proceeding or of a transcript of the proceeding be provided to the executive director of the commission at no charge. The court may not grant the commission, the executive director or the executive director's designee intervenor status or the right to be heard solely on the basis of attendance by the executive director or the executive director's designee at a court proceeding under the authority granted in this subsection.

Sec. 25. 22 MRSA §4006, first ¶, as repealed and replaced by PL 1997, c. 715, Pt. A, §3, is amended to read:

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court, and such appeals are governed by the Maine Rules of ~~Civil~~ Appellate Procedure, ~~chapter 9~~.

Sec. 26. 22 MRSA §4007, sub-§1-A, ¶E is enacted to read:

E. The court shall disclose records that are confidential under this subsection to the Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising counsel.

Sec. 27. 22 MRSA §4008, sub-§2, ¶L, as amended by PL 2023, c. 39, §1, is further amended by amending subparagraph (2) to read:

(2) Activities or employment relating to adults with intellectual disabilities, autism, related conditions as set out in 42 Code of Federal Regulations, Section 435.1010 or acquired brain injury; ~~and~~

Sec. 28. 22 MRSA §4008, sub-§2, ¶M, as enacted by PL 2015, c. 494, Pt. A, §23, is amended to read:

M. The personal representative of the estate of a child named in a record who is reported to be abused or neglected; ~~and~~

Sec. 29. 22 MRSA §4008, sub-§2, ¶N is enacted to read:

N. The Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising counsel, with protection for identity of reporters and other persons when appropriate.