



128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1854

H.P. 1292

House of Representatives, March 6, 2018

**An Act To Create the Office of the Public Defender and Amend the
Duties of the Maine Commission on Indigent Legal Services**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ESPLING of New Gloucester. (GOVERNOR'S BILL)

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

2 **Sec. 1. 2 MRSA §6, sub-§12**, as enacted by PL 2009, c. 419, §1, is repealed.

3 **Sec. 2. 4 MRSA §1801**, as enacted by PL 2009, c. 419, §2, is amended to read:

4 **§1801. Maine Commission on Indigent Legal Services; established**

5 The Maine Commission on Indigent Legal Services, established by Title 5, section
6 12004-G, subsection 25-A, is an independent commission whose purpose is to provide
7 oversight of the Office of the Public Defender, ensuring efficient, high-quality
8 representation to indigent criminal defendants, juvenile defendants and children and
9 parents in child protective cases, consistent with federal and state constitutional and
10 statutory obligations. The commission shall ~~work to ensure~~ oversee the delivery of
11 indigent legal services by qualified and competent counsel in a manner that is fair and
12 consistent throughout the State ~~and to ensure~~ while working with the Chief Public
13 Defender to provide adequate funding ~~of~~ for a statewide system of indigent legal services,
14 which must be provided and managed in a fiscally responsible manner, free from undue
15 political interference and conflicts of interest.

16 **Sec. 3. 4 MRSA §1802**, as amended by PL 2013, c. 159, §10, is further amended
17 to read:

18 **§1802. Definitions**

19 As used in this chapter, unless the context otherwise indicates, the following terms
20 have the following meanings.

21 ~~**1. Assigned counsel.** "Assigned counsel" means a private attorney designated by the~~
22 ~~commission to provide indigent legal services at public expense.~~

23 ~~**1-A. Appellate counsel.** "Appellate counsel" means an attorney who is entitled to~~
24 ~~payment under Title 15, section 2115-A, subsection 8 or 9.~~

25 ~~**1-B. Civil party.** "Civil party" means a party to a civil case described in subsection~~
26 ~~4, paragraph B.~~

27 **2. Commission.** "Commission" means the Maine Commission on Indigent Legal
28 Services under section 1801.

29 ~~**2-A. Conflict case.** "Conflict case" means a case in which counsel in the Office of~~
30 ~~the Public Defender or contract counsel has a conflict of interest under rules adopted by~~
31 ~~the Supreme Judicial Court.~~

32 **3. Contract counsel.** "Contract counsel" means a private attorney under contract
33 with the ~~commission~~ Office of the Public Defender to provide indigent legal services.

34 ~~**3-A. Contracted professional services.** "Contracted professional services" means~~
35 ~~nonattorney services under contract with the Office of the Public Defender that are~~
36 ~~necessary for a quality defense.~~

1 **4. Indigent legal services.** "Indigent legal services" means legal representation
2 provided to:

3 A. An indigent defendant in a criminal case in which the United States Constitution
4 or the Constitution of Maine or federal or state law requires that the State provide
5 representation;

6 B. An indigent party in a civil case in which the United States Constitution or the
7 Constitution of Maine or federal or state law requires that the State provide
8 representation; and

9 C. Juvenile defendants.

10 "Indigent legal services" does not include the services of a guardian ad litem appointed
11 pursuant to Title 22, section 4105, subsection 1.

12 **5. Office of the Public Defender.** "Office of the Public Defender" means the office
13 established under section 1807, which is responsible for administering indigent legal
14 services.

15 **6. Retained counsel.** "Retained counsel" means a private attorney under contract
16 with the Office of the Public Defender to handle conflict cases and cases that are outside
17 the scope of contract counsel.

18 **7. Staff counsel.** "Staff counsel" means an attorney in the Office of the Public
19 Defender who provides indigent legal services under this chapter and is an employee of
20 the State.

21 **Sec. 4. 4 MRSA §1803**, as enacted by PL 2009, c. 419, §2, is amended to read:

22 **§1803. Commission structure**

23 **1. Members; appointment; chair.** The commission consists of ~~5~~ 9 members
24 appointed by the Governor and subject to review by the joint standing committee of the
25 Legislature having jurisdiction over judiciary matters and confirmation by the
26 Legislature. The Governor shall designate one member to serve as chair of the
27 commission. One of the members must be appointed from a list of qualified potential
28 appointees provided by the President of the Senate. One of the members must be
29 appointed from a list of qualified potential appointees provided by the Speaker of the
30 House of Representatives. ~~One~~ Two of the members must be appointed from a list of
31 qualified potential appointees provided by the Chief Justice of the Supreme Judicial
32 Court. One of the members must be appointed from a list of qualified potential
33 appointees provided by the Board of Overseers of the Bar. One of the members must be
34 appointed from a list of qualified potential appointees provided by the Maine State Bar
35 Association or its successor or an association of criminal defense attorneys in the State.

36 In determining the appointments and recommendations under this subsection, the
37 Governor, the President of the Senate, the Speaker of the House of Representatives and
38 the Chief Justice of the Supreme Judicial Court shall consider input from persons and
39 organizations with an interest in the delivery of indigent legal services.

1 The Chief Public Defender, or the Chief Public Defender's designee, is an ex officio,
2 nonvoting member of the commission and may participate in all meetings of the
3 commission.

4 **2. Qualifications.** ~~Individuals~~ Of the individuals appointed to the commission who
5 are not attorneys, one must have a background in accounting or finance. All other
6 individuals appointed who are not attorneys must have demonstrated a commitment to
7 quality representation for persons who are indigent and must have the skills and
8 knowledge required to ensure that quality of representation is provided in each area of
9 relevant law. No more than 3 members may be attorneys engaged in the active practice
10 of law.

11 An attorney appointed to the commission must have expertise in providing legal defense
12 and the skills and knowledge required to ensure that quality representation is provided in
13 each area of relevant law. No more than 6 members may be attorneys engaged in the
14 active practice of law, and during an attorney's term on the commission the attorney may
15 not serve as contract counsel or retained counsel.

16 **3. Terms.** Members of the commission are appointed for terms of 3 years each,
17 except that of those first appointed the Governor shall designate 2 whose terms are only
18 one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may
19 not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

20 A member of the commission appointed to fill a vacancy occurring otherwise than by
21 expiration of term is appointed only for the unexpired term of the member succeeded.

22 **4. Quorum.** ~~Three~~ Five members of the commission constitutes a quorum. A
23 vacancy in the commission does not impair the power of the remaining members to
24 exercise all the powers of the commission.

25 **5. Compensation.** Each member of the commission is eligible to be compensated as
26 provided in Title 5, chapter 379.

27 **6. Assistance.** The Chief Public Defender, or the Chief Public Defender's designee,
28 shall provide staff assistance to the commission in carrying out its functions.

29 **Sec. 5. 4 MRSA §1804,** as amended by PL 2017, c. 284, Pt. UUUU, §§1 to 7, is
30 repealed.

31 **Sec. 6. 4 MRSA §1804-A** is enacted to read:

32 **§1804-A. Commission duties and responsibilities**

33 **1. Standards.** The commission shall develop standards governing the delivery of
34 indigent legal services, including:

35 A. Standards governing eligibility for indigent legal services. The eligibility
36 standards must take into account the possibility of a defendant's or civil party's
37 paying counsel in periodic installments;

- 1 B. Standards prescribing minimum experience, training and other qualifications for
2 attorneys providing indigent legal services, which must include standards to ensure
3 that attorneys are capable of providing quality representation in the types of cases to
4 which they are assigned, recognizing that quality representation in each type of case
5 requires experience and specialized training in that field;
- 6 C. Standards for weighted case loads for contract counsel, which must include the
7 private case load of the contract counsel. The standards must be based on
8 recommendations from the Chief Public Defender and reviewed every 5 years or
9 upon the recommendation of the Chief Public Defender;
- 10 D. Standards for the evaluation of contract counsel to be reviewed every 5 years or
11 upon the recommendation of the Chief Public Defender;
- 12 E. Standards for independent, quality and efficient representation of clients whose
13 cases present conflicts of interest;
- 14 F. Standards for the reimbursement of expenses incurred by retained counsel;
- 15 G. Standards regarding the determination of payments to the Office of the Public
16 Defender that may be required of a defendant or civil party under section 1808. In
17 developing the payment standards under this paragraph, the commission shall
18 consider among other things the rates of private counsel and the type of case; and
- 19 H. Standards considered necessary and appropriate to ensure the delivery of quality
20 indigent legal services.
- 21 **2. Duties.** The commission shall:
- 22 A. Oversee the Office of the Public Defender to ensure quality and efficient indigent
23 legal services are provided;
- 24 B. Establish processes and procedures to ensure the Office of the Public Defender
25 uses information technology and case management systems to accurately collect,
26 record and report detailed expenditure and case load data;
- 27 C. Establish rates of compensation for retained counsel;
- 28 D. Establish contract guidelines as well as processes and procedures to review
29 contracts entered into between the Office of the Public Defender and contract counsel
30 using best practices for contracts providing indigent legal services. Both the contract
31 guidelines and contract review process must be evaluated every 3 years or at the
32 discretion of the commission;
- 33 E. Establish an application fee of no less than \$5, which may be graduated, as
34 provided under section 1808, subsection 4 based on a defendant's or civil party's
35 ability to pay and which is administered by the Office of the Public Defender;
- 36 F. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the
37 Governor an annual report on the operation, needs and costs of the indigent legal
38 services system. The report must include an evaluation of contracts, services
39 provided by contract counsel and retained counsel, any contracted professional
40 services and cost containment measures;

- 1 G. Monitor and at the commission's discretion testify on legislative proposals that
2 affect the quality and cost of the indigent legal services system. The commission
3 may name a designee to perform this duty;
- 4 H. Prepare at the end of each legislative session a report on the relevant law changes
5 to the indigent legal services system and the effect of those changes on the quality
6 and cost of representation under the system;
- 7 I. Review the biennial budget request and any supplemental budget requests of the
8 Chief Public Defender prior to their submission to the Department of Administrative
9 and Financial Services, Bureau of the Budget;
- 10 J. Establish the minimum amount of malpractice insurance that contract counsel and
11 retained counsel must hold to be eligible to handle indigent defense cases;
- 12 K. Develop a program, with the assistance of the Chief Public Defender, to allow
13 law students opportunities within the indigent legal services system consistent with
14 those available within district attorneys' offices;
- 15 L. Designate a member of the commission as a liaison to the Chief Public Defender's
16 cost containment unit under section 1807, subsection 3, paragraph O;
- 17 M. Establish a process for a vote of no confidence in the Chief Public Defender;
- 18 N. Compile a list of grievances against the Chief Public Defender, to be provided to
19 the Governor, if the commission takes a vote of no confidence in the Chief Public
20 Defender under paragraph M; and
- 21 O. Perform all duties necessary and incidental to the performance of any duty set out
22 in this chapter.
- 23 **3. Powers.** The commission may:
- 24 A. Meet and conduct business at any place within the State;
- 25 B. Use voluntary and uncompensated services of private individuals and
26 organizations as may from time to time be offered and needed;
- 27 C. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to
28 this paragraph are routine technical rules as defined in Title 5, chapter 375,
29 subchapter 2-A, except that rules adopted to establish standards under subsection 1,
30 paragraph B and rates of compensation for retained counsel under subsection 2,
31 paragraph C are major substantive rules as defined in Title 5, chapter 375, subchapter
32 2-A;
- 33 D. Appear in court and before other administrative bodies represented by the
34 commission's own attorneys; and
- 35 E. Take a vote of no confidence in the Chief Public Defender and provide a list of
36 grievances to the Governor. A vote of no confidence under this paragraph is cause
37 for dismissal of the Chief Public Defender by the Governor in accordance with
38 section 1807, subsection 2, paragraph A.
- 39 **4. Restrictions.** The commission may not make decisions regarding the handling of
40 a case.

1 **Sec. 7. 4 MRSA §1805**, as amended by PL 2017, c. 284, Pt. UUUU, §§8 to 13, is
2 repealed.

3 **Sec. 8. 4 MRSA §1805-A**, as enacted by PL 2017, c. 284, Pt. UUUU, §14, is
4 repealed.

5 **Sec. 9. 4 MRSA §1806, sub-§1, ¶D**, as enacted by PL 2011, c. 547, §1, is
6 amended to read:

7 D. "Case information" means:

- 8 (1) The court in which a case is brought;
- 9 (2) Any criminal charges or juvenile crime charges and the type, but not the
10 contents, of any petition giving rise to a case;
- 11 (3) The docket number;
- 12 (4) The identity of ~~assigned~~ contract counsel and the date of assignment;
- 13 (5) The withdrawal of ~~assigned~~ contract counsel and the date of withdrawal; and
- 14 (6) Any order for reimbursement of ~~assigned~~ contract counsel fees.

15 **Sec. 10. 4 MRSA §1806, sub-§2, ¶E**, as enacted by PL 2011, c. 260, §1, is
16 amended to read:

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

24 **Sec. 11. 4 MRSA §1806, sub-§3**, as enacted by PL 2011, c. 547, §2, is amended
25 to read:

26 **3. Confidential information disclosed by the Judicial Department.** The Judicial
27 Department may disclose to the commission confidential information necessary for the
28 commission to carry out its functions, including the collection of amounts owed to
29 reimburse the State for the cost of ~~assigned~~ contract counsel, as follows:

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

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

36 This information remains confidential in the possession of the commission and is not
37 open to public inspection, except that the names of criminal defendants and the names of

1 juvenile defendants charged with offenses that if committed by an adult would constitute
2 murder or a Class A, Class B or Class C crime are not confidential.

3 **Sec. 12. 4 MRSA §§1807 and 1808** are enacted to read:

4 **§1807. Office of the Public Defender established; appointment and duties**

5 **1. Establishment.** The Office of the Public Defender is established. The office
6 consists of the Chief Public Defender, who is the head of the office, 2 Deputy Public
7 Defenders, appointed in accordance with subsection 2, and counsel selected by the Chief
8 Public Defender in accordance with the eligibility standards set forth under section
9 1804-A, subsection 1, paragraph B. The responsibilities of the Office of the Public
10 Defender are exclusively concerned with the rights of persons described in section 1802,
11 subsection 4.

12 **2. Chief Public Defender.** The provisions of this subsection apply to the Chief
13 Public Defender.

14 A. The Chief Public Defender is appointed by the Governor, subject to review by the
15 joint standing committee of the Legislature having jurisdiction over judiciary matters
16 and confirmation by the Legislature. The Chief Public Defender may be removed
17 from office for cause, and Title 5, section 931, subsection 2 does not apply. The
18 Chief Public Defender must be an attorney or judge who has spent at least 5 years in
19 the practice of criminal law or presiding over the adjudication of criminal cases. The
20 term of office for the Chief Public Defender is 5 years. If a vacancy occurs during
21 the term, the Governor shall appoint a replacement to serve the unexpired portion of
22 the term.

23 B. The Chief Public Defender shall appoint 2 Deputy Public Defenders. The Deputy
24 Public Defenders report to the Chief Public Defender and serve at the pleasure of the
25 Chief Public Defender. One Deputy Public Defender must be an attorney or judge
26 who has spent a substantial part of the last 5 years in the practice of criminal law or
27 presiding over the adjudication of criminal cases. If a vacancy occurs in the Chief
28 Public Defender position or if the Chief Public Defender is temporarily unavailable to
29 perform the duties of the office, this Deputy Public Defender shall assume the duties
30 of the Chief Public Defender until the vacancy is filled or the Chief Public Defender
31 returns to work. The 2nd Deputy Public Defender must be an attorney or judge who
32 has spent a substantial part of the last 5 years in the practice of civil law or presiding
33 over civil cases.

34 C. The salary of the Chief Public Defender is consistent with the salary of district
35 attorneys within salary range 90 with the step within that salary range determined by
36 the commission.

37 The salary of the Deputy Public Defenders is within salary range 36.

38 D. The Chief Public Defender shall contract for or hire staff, including counsel who
39 serve at the pleasure of the Chief Public Defender, necessary to perform the functions
40 of the Office of the Public Defender and to implement the provisions of this chapter.

1 (1) The compensation of staff of the Office of the Public Defender is fixed by the
2 Chief Public Defender but may not in the aggregate exceed the amount
3 appropriated for those positions and may not result in an increased request to
4 future Legislatures.

5 (2) Staff counsel are employees of this State as defined in Title 5, section 20,
6 subsection 1.

7 (3) Professional staff of the Chief Public Defender are not subject to the Civil
8 Service Law.

9 E. The Office of the Public Defender may not represent more than one person when
10 a conflict of interest exists under the code of professional conduct laid out by the
11 Board of Overseers of the Bar.

12 F. The Chief Public Defender, the Deputy Public Defenders and staff counsel,
13 contract counsel and retained counsel must be members in good standing of the bar of
14 the State. "Member in good standing of the bar of the State" means a person who:

15 (1) Is admitted to the practice of law in the State;

16 (2) Is registered with the Board of Overseers of the Bar as an active practitioner;
17 and

18 (3) Has not been and is not disbarred or suspended from practice pursuant to
19 chapter 17, subchapter 2 or Maine Bar Rule 13 or its successor.

20 G. The Chief Public Defender, the Deputy Public Defenders and staff counsel are
21 designated as full-time officers of the State and may not:

22 (1) Appear as counsel in any civil or criminal case or controversy before the
23 Supreme Judicial Court, Superior Courts or District Courts of the State or
24 comparable courts in any other state or before a United States District Court or at
25 any administrative hearing held by any state or federal agency other than in the
26 capacity of Chief Public Defender, Deputy Public Defender or staff counsel; or

27 (2) Engage in the private practice of law or be a partner or associate of any
28 person engaged in the private practice of law or be a member or employee of a
29 professional association engaged in the private practice of law.

30 **3. Chief Public Defender duties and responsibilities.** The Chief Public Defender
31 is the chief legal officer of the Office of the Public Defender with the ultimate authority
32 regarding the disposition of cases handled by the office and shall:

33 A. Provide legal representation to eligible persons consistent with federal and state
34 constitutional and statutory obligations;

35 B. Use contracts in providing indigent legal services as required in this section;

36 C. Supervise the operation, activities, policies and procedures of the Office of the
37 Public Defender and may expend such sums for expenses as may be necessary in the
38 performance of the Chief Public Defender's duties, to be paid out of money
39 appropriated by the Legislature for those purposes;

- 1 D. In accordance with standards established under section 1804-A, subsection 1,
2 paragraph A, verify or reassess indigency of a defendant or civil party the Chief
3 Public Defender has determined to be indigent. If the Chief Public Defender
4 determines the defendant or civil party is not indigent in full or in part, the Chief
5 Public Defender shall petition the court for whole or partial payment or repayment of
6 all legal services pursuant to section 1808, subsection 3;
- 7 E. Determine when and where it is necessary to establish district offices for the
8 Office of the Public Defender consistent with the policies and procedures of the
9 Department of Administrative and Financial Services;
- 10 F. Coordinate the development and implementation of rules, policies, procedures and
11 standards adopted by the commission to carry out the provisions of this chapter and
12 comply with all applicable laws and standards;
- 13 G. Establish a trial and appellate case management system. The system must require
14 the attorneys to record time spent on each case and to classify or describe the type of
15 work done;
- 16 H. Work jointly with other departments and agencies, including the Department of
17 Health and Human Services, that hold data pertinent to determining indigency and
18 establish information sharing agreements as necessary;
- 19 I. Work jointly with other departments and agencies, including the Department of
20 Health and Human Services, to identify opportunities to improve eligibility screening
21 across State Government, including the use of private firms that use established,
22 effective income and asset verification systems;
- 23 J. Prepare and submit to the commission:
- 24 (1) A proposed biennial budget for the provision of indigent legal services,
25 including supplemental budget requests as necessary;
- 26 (2) An annual report containing pertinent data on the operation, needs and costs
27 of the indigent legal services system and the status of information sharing as
28 required under paragraph H, including issues preventing the agreements from
29 being implemented;
- 30 (3) Each month a report on case loads and the gross monthly total of bills
31 approved for payment, including payments to contract counsel and retained
32 counsel and for contracted professional services; a summary of professional
33 service requests denied and granted by the office in accordance with section
34 1806, subsection 2, paragraph E; and information on complaints made against
35 counsel providing indigent legal services; and
- 36 (4) Any other information as the commission may require;
- 37 K. Develop and conduct regular training programs in compliance with the standards
38 adopted by the commission as required by section 1804-A, subsection 1, paragraph
39 B;
- 40 L. Assist the commission in developing standards for the delivery of quality indigent
41 legal services;

- 1 M. Maintain proper records of all financial transactions related to the operation of
2 the commission and of the notification of eligibility and assignment of counsel and
3 subsequent related orders as submitted by the courts of the State;
- 4 N. Serve as an ex officio, nonvoting member of the commission and attend all
5 commission meetings. The Chief Public Defender may delegate this responsibility;
- 6 O. Establish a cost containment unit within the Office of the Public Defender. The
7 cost containment unit must include a member of the commission designated by the
8 commission. The cost containment unit is responsible for monitoring efforts to
9 recoup costs under section 1808, subsection 3, identifying ways to improve cost
10 recoupment and issuing a quarterly summary of the expenses recouped over the
11 period and the year to date to be provided to the commission. These functions may
12 be contracted out;
- 13 P. Establish policies and procedures for managing case loads to implement the
14 standards established by the commission under section 1804-A, subsection 1,
15 paragraph C, including a method for accurately tracking and monitoring case loads;
- 16 Q. Establish procedures to handle complaints about the performance of counsel
17 providing indigent legal services;
- 18 R. Establish a process to provide services for conflict cases first through existing
19 contract counsel and only as a last resort through the use of retained counsel;
- 20 S. In accordance with standards established under section 1804-A, subsection 1,
21 paragraph A, determine a person's eligibility for indigent legal services;
- 22 T. Require contract counsel and retained counsel to have at least the minimum level
23 of malpractice insurance as established in section 1804-A, subsection 2, paragraph J;
24 and
- 25 U. Perform duties as the commission may assign or are necessary and incidental to
26 the performance of any duty set out in this chapter.
- 27 **4. Chief Public Defender powers.** The Chief Public Defender may:
- 28 A. As the Chief Public Defender determines necessary, contract for the services of
29 private attorneys in the delivery of indigent legal services, including establishment of
30 a lawyer of the day, as provided in section 1804-A and in accordance with standards
31 established by the commission under section 1804-A, subsection 1 and the contract
32 policies established by the Department of Administrative and Financial Services.
33 Any contract must require contract counsel and retained counsel to record time spent
34 on each case and to classify or describe the type of work that was done;
- 35 B. Delegate the legal representation of any person to any member of the bar of the
36 State eligible under section 1804-A in accordance with standards established and
37 maintained by the commission;
- 38 C. Contract for and supervise personnel necessary to perform a function of the Office
39 of the Public Defender and to implement the provisions of this chapter;
- 40 D. Establish processes and procedures to acquire investigative or expert services that
41 may be necessary for a case;

1 E. Enter into agreements with the Maine State Bar Association or its successor, local
2 bar associations, law firms and private counsel for legal representation without
3 compensation as a service to the State;

4 F. Apply for and accept on behalf of the Office of the Public Defender funds that
5 may become available from any source, including government, nonprofit or private
6 grants, gifts or bequests. These funds do not lapse at the end of any fiscal year but
7 are carried forward to be used for the purpose originally intended; and

8 G. Sponsor training activities and charge tuition to recoup the cost of the activities.

9 **5. Legal counsel.** The Attorney General, at the request of the Chief Public
10 Defender, shall furnish legal assistance, counsel or advice the Office of the Public
11 Defender requires in the discharge of its duties.

12 A. The Attorney General may represent staff members of the Office of the Public
13 Defender in litigation as appropriate.

14 B. In cases in which a staff member of the Office of the Public Defender could be
15 represented by either the Attorney General or counsel retained through malpractice
16 insurance, the Attorney General shall determine who represents the staff member.

17 **§1808. Indigency determinations; redeterminations; verifications; collections**

18 **1. Duties.** The Chief Public Defender shall establish a system to:

19 A. Verify the information necessary to determine indigency under the standards
20 established by the commission pursuant to section 1804-A, subsection 1;

21 B. Reassess indigency during the course of representation;

22 C. Record the amount of time spent on each case by the attorney appointed to that
23 case; and

24 D. Receive from the court collections for the costs of representation from defendants
25 and civil parties who are partially indigent or who have been otherwise determined to
26 be able to reimburse the Office of the Public Defender for the cost of providing
27 counsel.

28 **2. Determination of a defendant's or civil party's eligibility.** In accordance with
29 standards established pursuant to section 1804-A, subsection 1, paragraph A, the Chief
30 Public Defender shall determine a person's eligibility for indigent legal services. The
31 Chief Public Defender may accept referrals for the determination of indigency of persons
32 who claim or appear to be indigent from judges, courts and appropriate state agencies. If
33 a referral is accepted and the Chief Public Defender determines that the person is indigent
34 in full or in part, the Chief Public Defender shall appoint counsel in accordance with
35 contracts and policies of the commission and inform the referring judge, court or agency
36 of the appointment.

37 **3. Partial indigency, reassessment of indigency and repayment.** The provisions
38 of this subsection apply to partial indigency, reassessment of indigency and repayment.

1 A. If the Chief Public Defender determines that a defendant or civil party is able to
2 pay some or, after reassessing an indigency determination, all of the expenses of
3 obtaining private counsel, the Chief Public Defender shall petition the court to order
4 the defendant or civil party to pay a fixed contribution. The defendant's or civil
5 party's full payment must be made to the court prior to the conclusion of the
6 proceedings, unless otherwise ordered by the court. The clerk of court shall remit
7 such payments to the Office of the Public Defender.

8 B. A defendant or civil party may not be required to repay for legal services an
9 amount greater than the amount determined by the rate established pursuant to
10 section 1804-A, subsection 2, paragraph C.

11 C. If a defendant is incarcerated in the Maine State Prison, an order for repayment
12 pursuant to this subsection may be suspended until the time of the defendant's release.

13 D. The Chief Public Defender may enter into contracts to secure the repayment of
14 fees and expenses paid by the State as provided for in this section.

15 **4. Application fee.** A person seeking indigent legal services shall pay an application
16 fee as set forth by the commission in section 1804-A, subsection 2, paragraph E. In a
17 case involving a juvenile the application fee is the responsibility of the parent or legal
18 guardian, except that, when a juvenile is accused of a crime against the juvenile's parent
19 or legal guardian or when legal guardianship rests with the State, the fee is waived.

20 The application fee may be waived by the court. A defendant or civil party may pay the
21 fee in a lump sum or in installments. Full payment must be made to the court prior to the
22 conclusion of the proceedings, unless otherwise ordered by the court.

23 **Sec. 13. 5 MRSA §931, sub-§1, ¶L-3**, as amended by PL 2003, c. 646, §1, is
24 further amended to read:

25 L-3. The Executive Analyst of the Board of Environmental Protection; ~~and~~

26 **Sec. 14. 5 MRSA §931, sub-§1, ¶M**, as amended by PL 1987, c. 9, §2, is further
27 amended to read:

28 M. Other positions in the Executive Branch made unclassified by law; ~~and~~

29 **Sec. 15. 5 MRSA §931, sub-§1, ¶N** is enacted to read:

30 N. The Deputy Public Defenders, staff counsel and other professional staff of the
31 Office of the Public Defender established in Title 4, section 1807.

32 **Sec. 16. 5 MRSA §959**, as enacted by PL 2009, c. 419, §3, is repealed.

33 **Sec. 17. 36 MRSA §191, sub-§2, ¶DDD**, as enacted by PL 2017, c. 284, Pt.
34 UUUU, §16, is amended to read:

35 DDD. The disclosure by employees of the bureau to an authorized representative of
36 the ~~Maine Commission on Indigent Legal Services~~ Office of the Public Defender for
37 the administration of Title 4, section 1804-A, subsection 1, paragraph A for
38 determining the eligibility for indigent legal services and the ability to reimburse

1 ~~expenses incurred for assigned counsel and contract counsel~~ under Title 4, chapter
2 37.

3 **Sec. 18. Maine Revised Statutes headnote amended; revision clause.** In
4 the Maine Revised Statutes, Title 4, chapter 37, in the chapter headnote, the words
5 "Maine Commission on Indigent Legal Services" are amended to read "Office of the
6 Public Defender and Maine Commission on Indigent Legal Services" and the Revisor of
7 Statutes shall implement this revision when updating, publishing or republishing the
8 statutes.

9 **SUMMARY**

10 This bill establishes a statewide public defender system. The purposes of this bill are
11 to:

12 1. Provide effective assistance of counsel to indigent criminal defendants, juvenile
13 defendants and children and parents in child protective cases in courts of this State;

14 2. Ensure that the system is free from undue political interference and conflicts of
15 interest;

16 3. Provide for the delivery of public defender services by qualified and quality
17 counsel in a manner that is fair and consistent throughout the State;

18 4. Establish a system that uses state employees, contracted services and other
19 methods of providing services in a manner that is responsive to and respectful of regional
20 and community needs and interests;

21 5. Ensure that adequate public funding of the statewide public defender system is
22 provided and the system is managed in a fiscally responsible manner;

23 6. Ensure that a person using the services of a statewide public defender system pay
24 reasonable costs for services provided by the system based on the person's financial
25 ability to pay;

26 7. Increase the size of the Maine Commission on Indigent Legal Services from 5 to 9
27 members and change the responsibilities of the commission; and

28 8. Establish the Chief Public Defender as the person who makes indigency
29 determinations.