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GOVERNOR

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OFFICE OF THE GOVERNOR  
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AUGUSTA, MAINE  
04333-0001

March 19, 2025

Hon. Anne Carney, Chair  
Hon. Amy Kuhn, Chair  
Joint Standing Committee on Judiciary  
Room 438, State House  
Augusta, Maine 04330

**Re: LD 1101, *An Act to Address the Limited Available Counsel in Courts to Represent Indigent Parties in Matters Affecting Their Fundamental Rights***

Dear Sen. Carney and Rep. Kuhn:

Please accept these comments and recommended amendments to LD 1101, *An Act to Address the Limited Available Counsel in Courts to Represent Indigent Parties in Matters Affecting Their Fundamental Rights*.

As a former Attorney General, District Attorney, and defense attorney who served as the President of the Maine Association of Criminal Defense Lawyers, Governor Mills cares deeply about ensuring that indigent defendants receive quality legal services. She has supported substantial increases in funding for public defense services in the last four years, and yet Maine Commission on Public Defense Services (MCPDS) has continued to struggle to meet the need. The Governor has also repeatedly urged MCPDS to make changes to its caseload standards to enable defense attorneys representing indigent clients to work to their full potential. As she said in her State of the Budget address in January:

That means getting rid of arbitrary case load limits, restrictions, rules and rostering requirements, none of which are constitutionally required. It means accepting help from the Judiciary in finding capable lawyers to take cases, rather than resisting that help. And it means allowing the newly created public defender offices – which have shown some promise in Kennebec County – to handle the volume and type of cases required.

LD 1101, as drafted, addresses only one of these concerns, by ensuring that non-rostered private attorneys appointed by the Judicial Branch to represent indigent defendants will be paid by MCPDS.



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We have attached to this testimony a proposed amendment that would address two other important reforms to the system. First, this bill should direct MCPDS to adopt caseload standards that reflect Maine data and experience, rather than aspirational limits developed by advocacy groups that are not grounded in Maine practice. Second, as part of the on-going effort to establish a system in which prosecutors and public defense attorneys are treated equitably, this bill should make clear that the attorneys employed by the Commission serve at the pleasure of the Executive Director, just as Assistant Attorneys General serve at the pleasure of the Attorney General, and Assistant District Attorneys serve at the pleasure of their District Attorney. This change will ensure that the Executive Director is well-positioned to deploy resources however may be necessary to address this crisis. Similarly, the bill should stipulate that any new attorneys added to MCPDS staff are hired at a salary that is in parity with Assistant Attorneys General and Assistant District Attorneys.

These measures will help to ensure that the resources the Legislature has appropriated to address public defense services are used to their full potential. With these changes, the Governor's office is pleased to support this legislation.

Thank you for the opportunity to submit these comments. I would be happy to appear at the work session to answer questions.

Sincerely,



Gerald Reid  
Chief Legal Counsel  
Office of the Governor

Enc.



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Governor's Office Proposed Amendment to LD 1101

Sec. \_\_

4 MRS § 1802-A is amended to read:

An attorney may be employed by the commission both as “employed counsel” and as a “public defender.” Those employed counsel or public defenders serve at the pleasure of the Executive Director or until their successors are duly appointed and qualified. The compensation of employed counsel or public defenders must be fixed by the Executive Director with the approval of the Governor, but such compensations may not in the aggregate exceed the amount appropriated for those positions and may not result in an increased request to future Legislatures.

Sec. \_\_\_\_

30-A MRSA §272, sub-§3, as repealed and replaced by PL 1989, c. 501, 3 Pt. O, §20, is amended to read:

3. Compensation. The compensation of deputy and assistant district attorneys ~~shall~~ must be fixed by the district attorney, subject to the approval of the Attorney General and the Governor. For purposes of compensation and benefits, deputy and assistant district attorneys ~~shall~~ must be treated comparably to assistant attorneys general, employed counsel, and public defenders. For purposes of this subsection, “public defender” has the same meaning as in Title 4, section 1802, subsection 5. For purposes of this subsection “employed counsel” has the same meaning as in Title 4, section 1802, subsection 3-A.

Sec. \_\_

5 MRS §959 is amended to read:

§959. Maine Commission on Public Defense Services

1. Major policy-influencing positions. The following positions are major policy-influencing positions within the Maine Commission on Public Defense Services. Notwithstanding any provision of law to the contrary, these positions and their successor positions are subject to this chapter:

A. Executive director. [PL 2009, c. 419, §3 (NEW).]

B. Employed counsel. For purposes of this subsection “employed counsel” has the same meaning as in Title 4, section 1802, subsection 3-A.

C. Public defenders. For purposes of this subsection “public defender” has the same meaning as in Title 4, section 1802, subsection 5.

**5 MRS §1804. Commission responsibilities**

**2. Rulemaking.** The commission shall adopt rules governing the delivery of efficient, high-quality indigent legal services by assigned counsel, contract 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 eligibility requirements for attorneys to be eligible to serve as assigned counsel, contract counsel, employed counsel and public defenders; **The qualification standards must recognize and be consistent with Maine based experience and practice that assure competent, ethical representation, while inviting recently admitted attorneys and experienced attorneys to join or rejoin the commission's mission to provide efficient, high-quality representation.**

C. Standards for assigned counsel, contract counsel and public defender case loads; **The case load standards shall be based on Maine specific data for average hours spent per case in identified case categories and Maine practice experience for relative numbers of cases (i) resolved by early dismissal, diversion, or disposition, (ii) resolved in the course of proceedings without a contested evidentiary hearing, or (iii) resolved only after a contested evidentiary hearing or trial.**

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 **engaged participation by the diverse attorneys admitted to Maine practice in** the delivery of high-quality, effective and efficient indigent legal services.