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## **An Act To Establish the Maine Commission on Indigent Legal Services**

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** under the United States Constitution and the Constitution of Maine, an indigent person charged with a crime, facing loss of parental rights, or the risk of institutional commitment is entitled to counsel, and

**Whereas,** the State is obligated to ensure that such representation is provided and currently spends in excess of \$10,000,000 per year; and

**Whereas,** the demand for such services has increased because the number of child protective hearings requiring counsel has doubled, the number of cases with mandatory jail time has increased and an increasing number of criminal defendants are indigent and entitled to such services; and

**Whereas,** a central agency to coordinate such services has never been established, despite the increase in services; and

**Whereas,** such representation is currently funded by an appropriation to the judicial branch; and

**Whereas,** such representation is managed by approximately 60 judges located in 40 court locations throughout the State, who approve vouchers to private attorneys acting as indigent legal counsel and who are located throughout the State; and

**Whereas,** the current method of paying for indigent legal services creates the appearance of a conflict of interest by placing judges in the position of ruling on compensation and reasonable effort and expenses for only one side in criminal, protective custody and involuntary commitment matters; and

**Whereas,** there is at least the appearance of further conflict because judges are authorizing payment of indigent legal fees out of appropriations intended to fund judicial branch operations; and

**Whereas,** the current system lacks a central authority to provide coordinated planning, oversight and management in order to ensure the delivery of quality legal representation in the most cost-effective manner; and

**Whereas,** it is necessary to provide independent oversight for the delivery of indigent counsel services, improve the quality of representation, ensure the independence of counsel, establish uniform policies and procedures for the delivery of such services and develop the statistics necessary to evaluate the quality and the cost-effectiveness of such services; and

**Whereas,** the current method of funding indigent legal services through the judicial branch budget creates the appearance of a conflict of interest and is contrary to accepted practices; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 4 MRSA c. 37** is enacted to read:

## **CHAPTER 37**

### **MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, 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.

#### **§ 1802. Definitions**

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

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

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

**3. Contract counsel.** "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services.

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

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

C. Juvenile defendants.

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

### **§ 1803. Commission structure**

**1. Members; appointment; chair.** The commission consists of 5 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. One of the members must be appointed from a list of qualified potential appointees provided by the President of the Senate. One of the members must be appointed from a list of qualified appointees provided by the Speaker of the House of Representatives. One of the members must be appointed from a list of qualified potential appointees provided by the Chief Justice of the Supreme Judicial Court.

**2. Qualifications.** Individuals appointed to the commission must have demonstrated a commitment to high-quality representation for persons who are indigent. No more than 3 members may be attorneys engaged in the active practice of law.

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

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

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

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

### **§ 1804. Commission responsibilities**

**1. Executive director.** The commission shall hire an executive director. The executive director must be an attorney licensed in the State with experience in the provision of indigent legal services.

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

A. Standards governing eligibility for indigent legal services;

B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;

- C. Standards for assigned counsel and contract counsel case loads;
- D. Standards for the evaluation of assigned counsel and contract counsel;
- E. Standards for independent, competent and efficient representation of clients whose cases present conflicts of interest;
- F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and
- G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

**3. Duties.** The commission shall:

- A. Develop and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys and any other program necessary to provide high-quality and efficient indigent legal services;
- B. Develop and maintain an assigned counsel voucher review and payment authorization system;
- C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data is accurately collected, recorded and reported;
- D. Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys;
- E. Establish minimum qualifications to ensure that attorneys are qualified and capable of providing adequate representation in the case types to which they are assigned;
- F. Establish rates of compensation for assigned counsel;
- G. Establish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel;
- H. Submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system; and
- I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary.

**4. Powers.** The commission may:

- A. Establish and maintain a principal office and other offices within the State as it considers necessary;

- B. Meet and conduct business at any place within the State;
- C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;
- 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; and
- E. Appear in court and before other administrative bodies represented by its own attorneys.

### **§ 1805. Executive director**

The executive director of the commission hired pursuant to section 1804, subsection 1 shall:

- 1. Compliance with standards.** Ensure that the provision of indigent legal services complies with all constitutional, statutory and ethical standards;
- 2. Development of standards.** Assist the commission in developing standards for the delivery of adequate indigent legal services;
- 3. Delivery and supervision.** Administer and coordinate delivery of indigent legal services and supervise compliance with commission standards;
- 4. Most effective method of delivery.** Recommend to the commission the most effective method of the delivery of indigent legal services in furtherance of the commission's purposes;
- 5. Training for counsel.** Conduct regular training programs for counsel providing indigent legal services;
- 6. Personnel.** Subject to policies and procedures established by the commission, hire professional, technical and support personnel, including attorneys, considered reasonably necessary for the efficient delivery of indigent legal services;
- 7. Submissions to commission.** Prepare and submit to the commission:
  - A. A proposed biennial budget for the provision of indigent legal services, including supplemental budget requests as necessary;
  - B. An annual report containing pertinent data on the operation, needs and costs of the indigent legal services system; and
  - C. Any other information as the commission may require;
- 8. Develop and implement.** Coordinate the development and implementation of rules, policies, procedures, regulations and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards;

**9. Records.** Maintain proper records of all financial transactions related to the operation of the commission;

**10. Other funds.** Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit or private grants, gifts or bequests;

**11. Meetings of commission.** Attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the executive director; and

**12. Other assigned duties.** Perform other duties as the commission may assign.

**Sec. 2. 5 MRSA §12004-G, sub-§25-A** is enacted to read:

**25-A.**

Legal Services

Expenses Only

4 MRSA §1801

Maine Commission  
on Indigent Legal  
Services

**Sec. 3. Transfer of personnel and funds.** Funds necessary to staff the Maine Commission on Indigent Legal Services and carry this Act must be transferred from the judicial branch's General Fund Personal Services and All Other accounts to the Maine Commission on Indigent and Legal Services. Positions necessary to carry out the provisions of this Act must be transferred from the judicial branch to the Maine Commission on Indigent Legal Services.

**Sec. 4. Transition.** The Maine Commission on Indigent Legal Services and the judicial branch shall develop a process to provide for the transition from the existing voucher payment system to the payment system developed by the commission.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

## SUMMARY

This bill establishes the Maine Commission on Indigent Legal Services, an independent and permanent statutory entity, to provide efficient high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. The commission will not oversee the provision of guardian ad litem services.

The commission consists of 5 members appointed by the Governor and confirmed by the Legislature. One must be appointed from suggestions made by the President of the Senate, one must be appointed from suggestions made by the Speaker of the House and one must be appointed from suggestions made by the Chief Justice of the Supreme Judicial Court. The Governor shall select the chair. After the initial

staggered terms, members serve for 3-year terms. Individuals appointed to the commission must have a strong commitment to high-quality representation of persons who are indigent. Compensation is limited to the legislative per diem and expenses.

The commission will develop standards for the delivery of indigent legal services and will establish and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys and any other program necessary to provide high-quality and efficient indigent legal services. The commission shall appoint an executive director to carry out the day-to-day activities of the commission. All attorneys providing indigent legal services will be paid through the commission.

This bill also authorizes a one-time transfer of all necessary funds and positions from the judicial branch to the Maine Commission on Indigent Legal Services in order to create the commission at no additional cost to the General Fund.