

December 31, 2025

Senator Anne Carney, Senate Chair of the Judiciary Committee
Representative Amy Kuhn, House Chair of the Judiciary Committee
Distinguished Members of the Joint Standing Committee on Judiciary

RE: L.D. 1101 Report

Senator Carney, Representative Kuhn, and Members of the Judiciary Committee:

The Maine Commission on Public Defense Services (PDS), by and through its Executive Director, Frayla Tarpinian, respectfully presents this report pursuant to L.D. 1101 which was enacted on April 23, 2025. The report was required to provide specific information related to operation and implementation including: an update on the matter of *Robbins, et al. v. State of Maine, et al.* No. CV-22-054 litigation, statistics related to the number of clients served by the Assistant Defender positions that were established by this law, and information about appointments made by courts directly to attorneys pursuant to this legislation.

Robbins, et al. v. State of Maine, et al. No. CV-22-054 (Me. Superior Court)

The current status of the case is that it is awaiting a decision from the Law Court. Because the appeal has stayed action in the trial court, no defendants have been granted habeas corpus relief from this action. PDS successfully provided counsel to each defendant implicated by the trial court's order prior to June 13, 2025. The Commission has undertaken efforts to ensure individuals entitled to court appointed counsel are promptly assigned an attorney including hiring employed defenders, recruiting rostered attorneys and redirecting staff to contact attorneys and request they take cases. As a result, the uncounseled list for criminal cases in the state has fallen from a high of 1,053 cases in December 2024 and as of December 30, 2025, is comprised of 223 individuals with a total of 262 cases.

The timeline of the litigation events since L.D. 1101 was considered and enacted are as follows¹:

- March 7, 2025 The trial court issued an Order After Phase I Trial
- March 27, 2025 PDS and the State of Maine filed notices of appeal
- May 15, 2025, the court ordered habeas corpus proceedings for individuals who were in custody and unrepresented as of June 9, 2025, in Androscoggin and Penobscot Counties

¹ All related court orders are available on the Judicial Branch Website found here:
<https://www.courts.maine.gov/news/robbins/index.html>.

- June 13, 2025 the court cancelled the habeas corpus proceedings because all individuals on the list had been assigned court appointed counsel and set a future hearing to determine the process for habeas protocol
- June 20, 2025 the Law Court issued an order staying trial court's action on the habeas corpus hearings and expediting consideration of the appeal
- October 7, 2025 Oral Argument was held

Statistics on the Assistant Defender I Positions Established in L.D. 1101

L.D. 1101 established five new Assistant Defender I positions specifically intended to address the uncounseled crisis. Hiring for the positions began in May 2025, by posting the positions for counties where the numbers of uncounseled remained high at the time. Individuals were interviewed and offers of employment were made to several out-of-state applicants. No in-state applicants who met the minimum qualification applied. Four individuals accepted the positions and relocated from Oregon, North Carolina, and Virginia. Attorneys started working in September and October. As they started, they applied for provisional licensure under Maine Bar Admission Rules 11C, which the Law Court amended to permit employed defenders to work under until they were able to obtain full licensure. This allows attorneys to take cases expeditiously. Unfortunately, two of the attorneys who relocated separated from the agency within weeks of starting, so there are currently only two L.D.1101 attorneys who have been taking cases since October in Cumberland County. Two additional attorneys have since been hired for Cumberland County, with one starting on January 5th and the other one beginning on January 12th. Both attorneys are licensed to practice in Maine, and we expect them to undertake cases immediately. The final position, which was allocated to Penobscot County, is in the hiring process with interviews having just been conducted in the final two weeks of December.

The following is responsive to the specific questions regarding the number of cases these attorneys have been assigned:

- 43 is the number of clients represented in criminal cases
- 54 is the number of criminal cases in which they entered appearances
- 9 is the number of clients in criminal cases who were incarcerated when representation began
- 34 is the number of clients in criminal cases who were not incarcerated when representation began
- 0 are the number of clients who were parents in child protection proceedings
- 0 are the number of clients who were entitled to other indigent legal services who were represented

The Commission's plans for using the services of these Assistant Defender I Positions in the future is to continue to support the Casco Bay office in Portland and the Highland Region office in Bangor, where there are currently individuals on the unrepresented list. In the future, if additional positions are funded in these offices, we would be able to deploy these positions to meet areas of critical need. While we remain committed to ensuring all those facing criminal charges are represented by counsel, simultaneously, we must ensure all parents who are involved in child protection proceedings also get prompt representation. Currently, we have a significant backlog of appeals in child protective cases awaiting counsel. We would like to devote two employed attorney positions to staffing those cases. Other areas where the Commission would like to develop dedicated units include a criminal appellate unit, a unit dedicated to post-conviction relief, and a unit dedicated to homicide practice. The Commission's goal is to establish a robust, statewide, hybrid public defense system so that we can efficiently and effectively staff all cases which involve counsel at state expense. To do this we require enough employed public defenders to stabilize the market for indigent legal services, while continuing to rely upon our independent, rostered attorneys to handle a significant proportion of cases.

Implementation of Compensation of Private Attorneys Appointed Directly By the Court

Pursuant to 4 MRS §1807 the court is enabled to directly appoint counsel to cases where an individual is entitled to counsel at State expense if the court finds that there is no public defender, assigned counsel, contract counsel or employed counsel available; the attorney is qualified to undertake representation, having three years of relevant legal experience and not disqualified by the commission; and the private attorney is willing to undertake the representation.

During the eight months the statute has been in effect, the courts have reported to PDS making use of this provision thirty-three times. Of those thirty-three assignments, twenty-two were made to attorneys who were already in the PDS program, could have been appointed through the regular process, and would be considered assigned or contract counsel under this section. The eleven remaining appointments consisted of:

- 1) six attorneys appointed to five protective custody appeals, one appeal was handled by two attorneys acting as co-counsel;
- 2) two protective custody cases, one of which the client did not qualify for indigent legal services; and
- 3) three adult criminal cases, in which one had the order of appointment rescinded and a PDS attorney was appointed.

Because these orders are not flagged for us, it is difficult for PDS to determine if there have been additional cases where this provision has been used. So far, we know:

- \$20,010.00 is the amount of compensation paid to the four attorneys who were appointed under this provision of §1807 who submitted invoices for payment, it is unknown if the remaining five attorneys intend to submit invoices for payment

- \$10,560 the amount paid to a single attorney for work on an appeal who later withdrew and had a rostered attorney within their firm succeed them in completing the case
- 0 is the number of commission rostered attorneys who have left the program between April 23, 2025 and December 31, 2025 and are now working cases having been appointed under §1807
- 0 is the number of court appointed private attorneys who were appointed under §1807 and then joined the ranks of commission rostered attorneys, in fact at least one attorney preferred to do the case pro bono rather than set up an account to submit a bill for payment when contacted by PDS staff to assist with creating such an account
- 37 is the total number of commission rostered attorneys who have left the program between April 23, 2025 and December 31, 2025
 - 24 attorneys retired or took new positions
 - 8 attorneys left to become employed public defenders in Maine
 - 5 attorneys were suspended by PDS
- 38 is the total number of commission rostered attorneys who have joined the program between April 23, 2025 and December 31, 2025; there have been 58 new attorneys who have joined the program in all of calendar year 2025, as well as an increase in the number of annual renewals filed in July

PDS' recommendations for improving or repealing Title 4, section 1807 are the following:

- (1) Allow Title 4, section 1807 to be repealed as enacted by the legislation on February 1, 2026. There has been insufficient progress in eliminating the unrepresented list through the use of Title 4, section 1807. The provision was mainly used to appoint attorneys who are eligible to be appointed through the regular process. Having alternative processes is confusing and unnecessary. The provisions in this section have been little used, have not grown the number of rostered attorneys and present an unnecessary administrative challenge to administer, with insufficient oversight of the attorneys who participated.
- (2) PDS recommends that legislation be enacted that prohibits direct court appointment of any specific attorney, employed or rostered, to a case.

Respectfully submitted,

Frayla Tarpinian

 Frayla Tarpinian, Esq.
 Executive Director