

Committee: JUD  
LA: MJR  
LR # and item number: 0061(02)  
New Title?: YES  
Add Emergency?: YES  
Date: 7/22/20

NOTE: Need to discuss report date  
Fiscal

File Name: G:\COMMITTEES\JUD\BILL WORKING FILES\129th\MCILS\LD 1067 Committee Amendment.docx  
(7/22/2020 01:44:00 PM)

**COMMITTEE AMENDMENT “.” To LD 1067, An Act To Promote Fairness and Efficiency in the Delivery of Indigent Legal Services**

Amend the bill by striking out the title and inserting in its place the following:

**Resolve, Establishing the Working Group on the Right to Counsel**

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

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

**Whereas,** this resolve establishes the Working Group on the Right to Counsel to propose statutory reforms to ensure that each person facing a potential loss of liberty in a criminal or juvenile proceeding is provided with effective legal representation at every critical stage of the proceeding, as is the state’s constitutional obligation, while meeting the state statutory requirement to provide right-to-counsel services to indigent parents in child protection proceedings and to individuals in hearings for involuntary commitment;

**Whereas,** Maine is the only state in the nation that does not employ any state government public defender attorneys or staff nor contract with any nonprofit public defense agencies;

**Whereas,** the working group must begin its work before the 90-day period expires in order that its review may be completed and a report submitted in time for submission to the next legislative session; 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

**Sec. 1. Working group established. Resolved:** That the Working Group on the Right to Counsel, referred to in this resolve as "the working group," is established to design and propose a plan for Maine to adopt a public defender system.

**Sec. 2. Working group membership. Resolved:** That the working group consists of 13 members as follows:

1. Two members of the Senate appointed by the President of the Senate, including a member from each of the 2 parties holding the largest number of seats in the Legislature;

2. Five members of the House of Representatives appointed by the Speaker of the House, including at least 2 members from each of the 2 parties holding the largest number of seats in the Legislature; and

3. The chairs of the working group shall invite the participation on the working group of 3 representatives from the Judicial Department appointed by the Chief Justice, and 3 representatives from the Executive Branch, appointed by the Governor. One of the Executive Branch representatives may be a member of the Maine Commission on Indigent Legal Services.

A member of the working group may not be a person who stands to benefit financially from the decisions of the working group, including current indigent defense providers and staff of the Maine Commission on Indigent Legal Services.

**Sec. 3. Chairs. Resolved:** That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the working group.

**Sec. 4. Appointments; convening of working group. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the working group. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the working group to meet and conduct its business.

**Sec. 5. Duties. Resolved:** That the working group shall review the State's indigent legal services system and design and propose a plan for the State to adopt a public defender system, including statutory reforms, to ensure that every person facing a potential loss of liberty in a criminal or juvenile proceeding is provided with effective legal representation at every critical stage of the proceeding. As part of its proposal, the working group shall address:

1. The difficulties of providing effective representation in rural Maine, including the shortage of lawyers in Maine's rural counties;

2. The relative merits of employing state employed public defenders and staff, contracting with non-profit public defender agencies and employing a combination of public defenders and private attorneys;

3. The appropriate costs required to provide constitutionally required effective representation, including necessary training and supervision of indigent legal services, including the costs of infrastructure, support staff and technical assistance; and

4. The establishment of a statewide appellate defender office.

Notwithstanding any other provision of law, the working group may access data maintained by the Maine Commission on Indigent Legal Services and shall maintain the confidentiality of any confidential information provided to the working group. The working group may invite the participation and input of additional interested parties and request information necessary to carry out its duties. Based on the information collected pursuant to this section, the working group shall propose a public defender plan, including an appellate division, for the State.

**Sec. 6. Assistance; contract for services. Resolved:** That the Legislative Council shall provide necessary staffing services to the working group, except that Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the working group may contract with experts to provide technical assistance on the development indigent representation systems including public defenders.

**Sec. 7. Report. Resolved:** That, no later than November 4, 2020, the working group shall submit a report that includes its proposed public defender plan for the State under section 5, including suggested legislation, for presentation to the Joint Standing Committee on Judiciary and the Joint Standing Committee on Appropriations and Financial Affairs.

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

## SUMMARY

This amendment replaces the bill, a concept draft, with a resolve to establish the Working Group on the Right to Counsel. The working group is required to propose a plan including statutory reforms to ensure that each person facing a potential loss of liberty in a criminal or juvenile proceeding is provided with effective legal representation at every critical stage of the proceeding, as is the state's constitutional obligation, while meeting the state statutory requirement to provide right to counsel services to indigent parents in child protection proceedings and to individuals in hearings for involuntary commitment. The working group will propose legislation to establish some form of a public defender office, including a statewide appellate defender office.

The working group consists of 7 legislators, and the Chief Justice and the Governor are be invited to appoint 3 members each, for a total of 13 members. This resolve authorizes the working group to contract with experts to provide technical assistance on the development of a public defender system.

The working group will report its recommendations to the Joint Standing Committees on Judiciary and Appropriations and Financial Affairs by November 4, 2020.

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Required funding

\*Assuming a report would be made in FY21 (i.e., by June 30, 2021)

Study costs for 4 meetings that include 7 legislators	= \$ 3,750
Additional technical support in public defender plan	= \$15,000

TOTAL	\$18,750
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From the Study Table budget?