

STATE OF MAINE

JUDICIAL BRANCH

Judicial Branch Report for 2025 Public Law Chapter 40, “An Act to Address the Limited Availability of Counsel in Courts to Represent Indigent Parties in Matters Affecting Their Fundamental Rights”



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Dated: January 15, 2026

Introduction

This report is submitted to the Joint Standing Committee on Judiciary pursuant to An Act to Address the Limited Availability of Counsel in Courts to Represent Indigent Parties in Matters Affecting Their Fundamental Rights. P.L. 2025, ch. 40 (codified at 4 M.R.S. § 1807).

This report provides “[s]tatistics on the number of cases in which courts have appointed private attorneys to provide indigent legal services” pursuant to the Act, and includes “detail on the number of cases involving criminal defendants, including the number of those defendants who were incarcerated and the number who were not incarcerated when the appointments were made.” P.L. 2024, ch. 40, § 5. Additionally, the report provides “the number of child protection proceedings in which private attorneys were appointed; and the number of cases involving other indigent legal services in which appointments were made.” *Id.*

This report also provides “[i]nformation on implementation of the Commission’s duty to compensate private attorneys appointed by a court pursuant to the [Act], including any recommendations for improving or repealing Title 4, section 1807.” *Id.*

A. Statistics on the Number of Cases in Which Courts Have Appointed Private Attorneys pursuant to 4 M.R.S. § 1807

Table 1, below, details the number and type of cases in which the court appointed a private attorney. These statistics were reported on a case-by-case basis each time the court ordered appointment of a private attorney.¹ The court ordered appointment of a private attorney in thirty-two cases.

Table 1

Number	Date of Order	Court	Docket No.	Case Type	Incarcerated Person?
1	4/25/2025	Trial Court	BIDDC-PC-2025-40	Protective Custody	No
2	5/8/2025	Trial Court	WASCD-CR-2025-20007	Criminal	Yes
3	5/6/2025	Trial Court	KENCD-CR-23-2098	Criminal	Yes
4	5/6/2025	Trial Court	KENCD-CR-24-1570	Criminal	Yes
5	5/6/2025	Trial Court	KENCD-CR-24-1559	Criminal	Yes
6	5/6/2025	Trial Court	KENCD-CR-24-964	Criminal	Yes
7	5/6/2025	Trial Court	KENCD-CR-23-533	Criminal	Yes
8	5/8/2025	Trial Court	WASCD-CR-2025-2007	Criminal	Yes
9	5/15/2025	Law Court	Som-24-516	Protective Custody	No

¹ Self-reporting statistics at the time a clerk sent the order appointing private counsel to the Commission was the most effective method of gathering the required data, as the case management systems do not provide a way to count or collect this data.

10	5/16/2025	Law Court	Aro-24-509	Protective Custody	No
11	5/16/2025	Law Court	Han-24-498	Protective Custody	No
12	5/19/2025	Law Court	Ken-25-80	Protective Custody	No
13	5/20/2025	Trial Court	BIDDC-PC-2025-43	Protective Custody	No
14	5/22/2025	Law Court	And-24-471	Protective Custody	No
15	6/6/2025	Trial Court	WASCD-CR-2025-212	Criminal	Yes
16	6/6/2025	Trial Court	WASCD-CR-2025-231	Criminal	Yes
17	6/10/2025	Trial Court	PORDC-JV-2024-164	Juvenile	Yes
18	6/10/2025	Trial Court	PORDC-JV-2025-15	Juvenile	Yes
19	6/10/2025	Trial Court	PORDC-JV-2025-35	Juvenile	Yes
20	6/6/2025	Trial Court	WASCD-CR-2025-233	Criminal	Yes
21	6/6/2025	Trial Court	WASCD-CR-2025-232	Criminal	Yes
22	6/20/2025	Trial Court	WASCD-CR-25-254	Criminal	Yes
23	6/13/2025	Trial Court	CALDC-MH-2025-0001	MH	No
24	7/1/2025	Trial Court	WALCD-CR-2024-787	Criminal	No
25	7/8/2025	Trial Court	WASCD-CR-2025-20170	Criminal	Yes
26	7/17/2025	Trial Court	WASCD-CR-2025-20217	Criminal	Yes
27	7/23/2025	Trial Court	CALDC-MH-2025-0002	MH	No
28	8/4/2025	Trial Court	BIDDC-PC-2025-65	Protective Custody	Yes
29	8/4/2025	Trial Court	WASCD-CR-2025-20009	Criminal	Yes
30	8/20/2025	Trial Court	PENCD-CR-2025-2270	Criminal	Yes
31	8/20/2025	Trial Court	PENCD-CR-2025-2362	Criminal	Yes
32	10/20/2025	Trial Court	BIDDC-PC-2025-83	Protective Custody	No

Although the number of appointments may seem small, each case is significant. Each case represents a person with a constitutional right to representation of counsel who in fact received representation, when no other attorney was available to represent the person.

Notably, the Act's emergency effective date of April 23, 2025, with a repeal date of February 1, 2026, constitutes a period of about nine months. The Judicial Branch did not actively recruit counsel to fulfill the role of appointed private attorneys during this short time. The small number of appointments is likely not reflective of attorney availability and interest in fulfilling this role, as the window of time within which to implement this statute did not allow for an organized effort to increase the number of participating attorneys. In previous conversations with the Maine Trial Lawyers Association and local bar associations, attorneys expressed interest in serving as court-appointed private counsel. Indeed, for the thirty-two cases in which private attorneys were appointed, the appointed counsel included twenty individual attorneys who were not designated as eligible by the Commission for assignment but were willing to represent a person. More private attorneys

may be willing to provide counsel if more time is given to provide resources on how non-rostered attorneys may accept court appointments.

Private attorneys were appointed in a variety of case types: eighteen criminal cases, nine protective custody cases, of which five were appeals of protective custody cases, two mental health cases, and three juvenile cases. In seventeen of the eighteen private attorney appointments for criminal cases, the defendant was incarcerated when the court appointed private counsel to represent them.

B. Information on Implementation and Recommendations for Improving Title 4, section 1807

The Judicial Branch has no “[i]nformation on implementation of the Commission’s duty to compensate private attorneys appointed by a court” as the Judicial Branch is not involved in the Commission’s payment of a private attorney once the attorney has been appointed. The Commission received the orders of appointment and to the best of the Judicial Branch’s knowledge, upheld their duty to compensate the appointed private attorneys.

There are many reasons why qualified and competent attorneys may not be on the rosters maintained by the Commission. In fact, the attorneys appointed “off roster” are frequently some of the best attorneys available. The Judicial Branch’s “recommendations for improving or repealing Title 4, section 1807” include the recommendation that the statute not be repealed until February 2028. The statute should remain in effect to provide an additional avenue for defendants to receive the representation of an attorney when no public defender or rostered attorney is available. Keeping the legislation in effect for the foreseeable future would also allow education and recruitment of the private bar, including some of the most experienced lawyers in the state, to agree to take some cases. The list of cases in which no attorney is available through appointment of private counsel, although lower than it has been, continues to be significant. Each case that we can remove from that list by appointment of other competent counsel matters. We should continue to do all that we can to obtain competent counsel for those who may otherwise go without counsel for significant periods.