



# **Program Evaluation Report Office of the Attorney General**

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**PRESENTED TO THE JOINT STANDING COMMITTEE ON  
JUDICIARY 129<sup>th</sup> LEGISLATURE**

**SUBMITTED NOVEMBER 1, 2019**

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### **3 M.R.S. § 956(2)**

**2. Program evaluation report; contents.** Each report must include the following information in a concise but complete manner:

- A. Enabling or authorizing law or other relevant mandate, including any federal mandates;
- B. A description of each program administered by the agency or independent agency, including the following for each program:
  - (1) Established priorities, including the goals and objectives in meeting each priority;
  - (2) Performance criteria, timetables or other benchmarks used by the agency to measure its progress in achieving the goals and objectives; and
  - (3) An assessment by the agency indicating the extent to which it has met the goals and objectives, using the performance criteria. When an agency has not met its goals and objectives, the agency shall identify the reasons for not meeting them and the corrective measures the agency has taken to meet the goals and objectives;
- C. Organizational structure, including a position count, a job classification and an organizational flow chart indicating lines of responsibility;
- D. Repealed 2013
- E. Financial summary, including sources of funding by program and the amounts allocated or appropriated and expended over the past 10 years;
- F. Repealed 2013
- G. Identification of those areas where an agency has coordinated its efforts with other state and federal agencies in achieving program objectives and other areas in which an agency could establish cooperative arrangements, including, but not limited to, cooperative arrangements to coordinate services and eliminate redundant requirements;
- H. Identification of the constituencies served by the agency or program, noting any changes or projected changes;
- I. A summary of efforts by an agency or program regarding the use of alternative delivery systems, including privatization, in meeting its goals and objectives;
- J. Identification of emerging issues for the agency or program in the coming years;
- K. Any other information specifically requested by the committee of jurisdiction;
- L. A comparison of any related federal laws and regulations to the state laws governing the agency or program and the rules implemented by the agency or program;
- M. Agency policies for collecting, managing and using personal information over the Internet and nonelectronically, information on the agency's implementation of information technologies

and an evaluation of the agency's adherence to the fair information practice principles of notice, choice, access, integrity and enforcement;

N. A list of reports, applications and other similar paperwork required to be filed with the agency by the public. The list must include:

- (1) The statutory authority for each filing requirement;
- (2) The date each filing requirement was adopted or last amended by the agency;
- (3) The frequency that filing is required;
- (4) The number of filings received annually for the last 2 years and the number anticipated to be received annually for the next 2 years; and
- (5) A description of the actions taken or contemplated by the agency to reduce filing requirements and paperwork duplication;

O. A list of reports required by the Legislature to be prepared or submitted by the agency or independent agency;

P. A copy of the single-page list of organizational units and programs within each organizational unit required pursuant to section 955, subsection 1, placed at the front of the report; and

Q. Identification of provisions contained in the agency's or independent agency's enabling or authorizing statutes that may require legislative review to determine the necessity of amendment to align the statutes with federal law, other state law or decisions of the United States Supreme Court or the Supreme Judicial Court.

## **A. Enabling Law**

Article IX, Section 11 of the Maine Constitution provides: “The Attorney General shall be chosen biennially by joint ballot of the Senators and Representatives in convention.” Under 5 M.R.S. § 191-A, the Attorney General-elect then takes office after a transition period of not less than 30 days.

In 1905, the Legislature enacted what now appears as 5 M.R.S. § 191, *et seq.* Laws of Maine of 1905, ch. 162. These laws direct the Attorney General to discharge various responsibilities including: represent the State and its agencies in civil actions; prosecute claims to recover money for the State; investigate and prosecute homicides and other crimes; consult with and advise the district attorneys; enforce proper application of funds given to public charities in the State; and give written opinions upon questions of law submitted by the Governor, Legislature, or state agencies. The Attorney General may appoint deputy and assistant attorneys general, all of whom serve at his or her pleasure. In addition to these statutory powers, the Attorney General is vested with certain common law powers.

The leading case on the powers and duties of the Attorney General is *Superintendent of Insurance v. Attorney General*, 558 A.2d 1197 (Me. 1989), a copy of which is attached. The essential principle stated by the Court in this landmark decision is that the Attorney General possesses constitutional and common law authority independent of the agencies represented by the office that may be exercised by the Attorney General in the public interest. This principle was reaffirmed in *Opinion of the Justices*, 2015 ME 27, 123 A.3d 494. Other important cases discussing the powers and duties of the Attorney General include *Lund ex rel. Wilbur v. Pratt*, 308 A.2d 554 (Me. 1973) and *State v. Lane & Libby Fisheries Co.*, 120 Me. 121 (1921).

There are many other State laws that provide or mandate a role for the Attorney General. The Office also works with many Federal laws. The State and Federal laws of most concern to the role of the Office are set forth at Tab R.

558 A.2d 1197  
(Cite as: 558 A.2d 1197)



Supreme Judicial Court of Maine.  
SUPERINTENDENT OF INSURANCE  
v.  
ATTORNEY GENERAL.  
ATTORNEY GENERAL  
v.  
SUPERINTENDENT OF INSURANCE.  
Dee and Marie BROWN  
v.  
SUPERINTENDENT OF INSURANCE.

Argued March 15, 1989.  
Decided May 19, 1989.

Superintendent of Insurance rendered decision in rate proceeding for nonprofit hospital medical service organization, and nongroup subscribers appealed. The Attorney General also filed action seeking judicial review, and Superintendent filed application for relief in nature of mandamus requesting Attorney General to provide legal services. The three actions were heard together, and the Superior Court, Kennebec County, Chandler, J., granted the request for writ and barred the Attorney General from seeking review. Attorney General appealed. The Supreme Judicial Court, Wathen, J., held that: (1) Attorney General was not required to represent Superintendent; (2) Attorney General had standing to seek review; and (3) Attorney General was not barred from seeking review based on conflict of interest.

Vacated and remanded.

#### West Headnotes

#### [1] Attorney General 46 ⚡6

46 Attorney General  
46k5 Powers and Duties  
46k6 k. In General. Most Cited Cases  
Attorney General was not obligated to render representation to Superintendent of Insurance in ac-

tion seeking review of rate order where Attorney General had filed separate action seeking judicial review of denial of Superintendent's decision denying reopening.

#### [2] Insurance 217 ⚡1545(7)

217 Insurance  
217VIII Underwriting  
217k1540 Rates and Rate Setting  
217k1545 Actions and Proceedings  
217k1545(7) k. Review. Most Cited Cases  
(Formerly 217k11.7)

Statute allowing any party to rate proceedings for nonprofit hospital or medical service organization to appeal was not inconsistent with statute limiting judicial review of administrative proceedings to aggrieved persons; latter general statute contained no language precluding other statutory grants. 24 M.R.S.A. §§ 2301 et seq., 2326; 24-A M.R.S.A. § 236, subd. 3; 5 M.R.S.A. §§ 8003, 11001, subd. 1.

#### [3] Attorney General 46 ⚡7

46 Attorney General  
46k5 Powers and Duties  
46k7 k. Bringing and Prosecution of Actions. Most Cited Cases  
Attorney General was not precluded from bringing action for judicial review of rate decision of Superintendent of Insurance on basis of conflict of interest arising from staff members of Attorney General having assisted Superintendent in rendering his initial decision.

#### [4] Attorney General 46 ⚡6

46 Attorney General  
46k5 Powers and Duties  
46k6 k. In General. Most Cited Cases  
When Attorney General disagrees with state agency, he is not disqualified from participating in suit affecting public interest merely because mem-

bers of his staff had previously provided representation to agency at administrative stage of proceedings.

\*1198 James T. Kilbreth (orally), Chief Deputy Atty. Gen., Thomas D. Warren, Deputy Atty. Gen., Augusta, for appellants.

Hugh Calkins, Linda Christ, Pine Tree Legal Assistance, Inc., Ronald A. Kreisman, Natural Resources Council of Maine, Augusta, amici curiae.

Peter Murray (orally), Michael L. Parker, Murray, Plumb & Murray, Portland, for appellees.

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD and COLLINS, JJ.

WATHEN, Justice.

The initial question presented on this appeal is whether the Attorney General is obligated to represent and defend the Superintendent of Insurance in an action seeking review of a rate order issued by the Superintendent. Further questions are raised concerning the Attorney General's standing to seek judicial review of the rate order in his own right, and whether such an action is barred by the fact that his office advised and assisted the Superintendent during the administrative hearings. We conclude that the Superior Court (Kennebec County, *Chandler, J.*) erred in ordering the Attorney General to represent the Superintendent in court and erred in dismissing the Attorney General from the actions seeking judicial review.

The present controversy, involving three separate actions, arises from a public hearing held by the Superintendent pursuant to 24 M.R.S.A. § 2322 (Supp.1988-1989) on a proposal of Associated Hospital Services of Maine for an increase in Blue Cross and Blue Shield non-group rates. The Consumer and Antitrust Division of the Attorney General's Department moved to intervene in the proceedings and the Superintendent granted the re-

quest. As an intervenor, the Attorney General was represented by Deputy Attorney General Stephen L. Wessler. At the same time Assistant Attorneys General Linda Pistner and James Bowie, both from the General Government Division, counselled the Bureau of Insurance. Together, they advised the Superintendent throughout the course of the rate hearing and assisted him in drafting his decision.

The Superintendent rendered his decision and Deputy Wessler, on behalf of the Attorney General, moved to re-open the matter for the purpose of changing or modifying the order. The Superintendent denied the motion and the Attorney General filed an action seeking judicial review of that denial pursuant to M.R.Civ.P. 80C (*Attorney General v. Superintendent of Insurance*). Dee and Marie Brown, two non-group subscribers, also filed a Rule 80C petition for review of the Superintendent's order (*Brown v. Superintendent of Insurance*). \*1199 Assistant Attorney General James Bowie entered a limited appearance for the Superintendent but stated that he would withdraw as soon as the Superintendent had secured private counsel. On the same date, Deputy Wessler entered an appearance in the *Brown* action on behalf of the Attorney General as a party. After retaining private counsel with the approval of the Attorney General,<sup>FN1</sup> the Superintendent moved to dismiss the Attorney General's 80C action and moved to strike his appearance as a party in Browns' 80C action on the grounds that the Attorney General had "a clear and impermissible conflict of interest and ha[d] no standing to prosecute this appeal." In addition, the Superintendent filed an application for relief in the nature of mandamus (*Superintendent of Insurance v. Attorney General*), requesting that the Attorney General be ordered to provide legal services in *Brown v. Superintendent of Insurance*, to restore the services of Assistant Attorneys General Pistner and Bowie, and to reimburse the Superintendent for legal expenses incurred for private counsel.

FN1. In an effort to accommodate the Superintendent's desire for continued repres-



entation by Bowie and Pistner, the Attorney General attempted to negotiate a mutually satisfactory arrangement involving a "chinese wall." Ultimately, the negotiations were unsuccessful and private counsel was retained by the Superintendent.

Although the three actions were not formally consolidated, they were heard together. After hearing, the Superior Court granted the Superintendent's request for a writ of mandamus and ordered the Attorney General to furnish legal representation to the Superintendent in the *Brown* action. The Superior Court also ruled that the Attorney General is barred from seeking judicial review because his office had advised and assisted the Superintendent with regard to the administrative proceeding. The court held further that the Attorney General has no standing to seek review because he is not representing the interests of the entire public and because he has not suffered any particularized injury sufficient to demonstrate that he was aggrieved. Accordingly, the Superior Court dismissed the Attorney General's 80C action and struck the appearance of the Attorney General as a party in *Brown*. From these orders the Attorney General appeals.

#### I.

##### *The Attorney General's Obligation to Represent the Superintendent*

[1] The Superior Court ruled that 5 M.R.S.A. § 191 (1979) imposes a mandatory duty on the Attorney General to represent agencies and officers of the State of Maine in all civil actions involving their official acts. Under the Superior Court's ruling the Attorney General could decline representation only if he determined that the agency's or officer's decision was "legally, ethically or morally indefensible and not in the public interest." We reject such an interpretation of section 191. The common law duties of the Attorney General, even as modified by statute, involve a greater degree of discretion than is permitted under the ruling of the Superior Court.

We have previously described the office of the

Attorney General in general terms as follows:

The Attorney General, in this State, is a constitutional officer endowed with common law powers. See, Constitution of Maine, Article IX, Section 11. As the chief law officer of the State, he may, in the absence of some express legislative restriction to the contrary, exercise all such power and authority as public interests may, from time to time require, and may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order, and *the protection of public rights*.

*Lund ex rel. Wilbur v. Pratt*, 308 A.2d 554, 558 (Me.1973) (emphasis in the original). As the historical successor to the English Attorney General, the Attorney General in Maine, as well as in other states, is vested with considerable discretion and autonomy. In this respect, the position of \*1200 a state attorney general has been accurately summarized in the following terms:

As a result, the attorneys general of our states have enjoyed a significant degree of autonomy. Their duties and powers typically are not exhaustively defined by either constitution or statute but include all those exercised at common law. There is and has been no doubt that the legislature may deprive the attorney general of specific powers; but in the absence of such legislative action, he typically may exercise all such authority as the public interest requires. And the attorney general has wide discretion in making the determination as to the public interest.

*State of Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268-69 (5th Cir.), cert. denied, 429 U.S. 829, 97 S.Ct. 88, 50 L.Ed.2d 92 (1976).

It is undisputed that at common law the Attorney General did not represent every state official nor was he required to do so. In fact, in 1904 Attorney General George M. Seiders expressed concern over private representation of state agencies and urged that the legal matters of the state should be

attended to exclusively by his office. 1904 *Report of the Attorney General* 22. The following year, the Legislature responded by enacting the statute now codified as 5 M.R.S.A. § 191. We must determine what change, if any, results from the following language of the statute:

The Attorney General, a deputy, assistant, or staff attorney shall appear for the State, the head of any state department, the head of any state institution and agencies of the State in all civil actions and proceedings in which the State is a party or interested, or in which the official acts and doings of said officers are called in question, in all the courts of the State; and in such actions and proceedings before any other tribunal when requested by the Governor or by the Legislature or either branch thereof. All such actions and proceedings shall be prosecuted or defended by him or under his direction. Writs, summonses or other processes served upon such officers shall forthwith be transmitted by them to him. All legal services required by such officers, boards and commissions in matters relating to their official duties shall be rendered by the Attorney General or under his direction. Said officers or agencies of the State shall not act at the expense of the State as counsel, nor employ private counsel except upon prior written approval of the Attorney General....

5 M.R.S.A. § 191.

We are not persuaded that the use of the word "shall" removes all discretion and requires that the Attorney General represent all state agencies regardless of his view of the public interest. Both the history of the enactment of section 191 and its plain language support our conclusion that the Legislature directed the Attorney General to control state litigation and consolidated control in his office without mandating representation in all cases. A contrary conclusion would ignore the provisions of the statute authorizing the employment of private counsel with "written approval of the Attorney General." Our sister Court in Massachusetts has rendered a similar interpretation of a comparable

statute. In *Secretary of Admin. and Finance v. Attorney General*, 367 Mass. 154, 326 N.E.2d 334 (1975), the Court held that the Attorney General's control of the conduct of litigation "includes the power to make a policy determination not to prosecute the Secretary's appeal in this case." *Id.* at 159, 326 N.E. at 336-37. *Accord*, *Feeney v. Commonwealth*, 373 Mass. 359, 366 N.E.2d 1262 (1977). We need not decide whether approval could be withheld for the employment of private counsel because of a disagreement over the public interest. It is sufficient for our purposes to hold that the Attorney General is not obligated to render representation to the Superintendent in these circumstances. Accordingly, in *Superintendent of Insurance v. Attorney General*, the Superior Court erroneously granted relief in the nature of mandamus.

## II.

### *Standing*

[2] The Superior Court dismissed the Attorney General's 80C action and struck \*1201 his appearance in *Brown*, partly on the basis that the Attorney General is without standing to seek review. Although the applicable insurance law purports to confer standing on any party, the court reasoned that the Administrative Procedures Act (the "A.P.A.") imposes an additional requirement that a party be aggrieved. Finding no particularized injury on the part of the Attorney General, the court found no standing. The court erred in ruling that on appeal from the Superintendent's rate decision, a party is required to show particularized aggrievement in order to have standing. The controlling statute provides otherwise.

The statute regulating rate proceedings for a nonprofit hospital or medical service organization includes the following appeal provision:

Any person whose interests are substantially and directly affected and aggrieved by an order or decision of the superintendent or any party to a hearing held pursuant to section 2322 may appeal therefrom as provided in Title 24-A, section 236.

24 M.R.S.A. § 2326 (Supp.1988-1989) (emphasis added). The general provision in the Insurance Code referred to in the quoted statute, provides in relevant part as follows:

Any person who was a party to the hearing may appeal from an order of the superintendent within 30 days after receipt of notice. Any person not a party to the hearing whose interests are substantially and directly affected and who is aggrieved by an order of the superintendent may appeal within 40 days from the date the decision was rendered.

24-A M.R.S.A. § 236(3) (Supp.1988-1989). Despite these specific provisions applicable to insurance rate proceedings, the Superior Court ruled that the A.P.A. limits judicial review to a "person who is aggrieved by final agency action" and that it displaces all inconsistent provisions.

The A.P.A. contains the following general provisions concerning judicial review and inconsistent laws:

Except where a statute provides for direct review or review of a pro forma judicial decree by the Supreme Judicial Court or where judicial review is specifically precluded or the issues therein limited by statute, any person who is aggrieved by final agency action shall be entitled to judicial review thereof in the Superior Court in the manner provided by this subchapter.

5 M.R.S.A. § 11001(1) (Supp.1988-1989).

Except where expressly authorized by statute, any statutory provision now existing or hereafter adopted which is inconsistent with the express provisions of the Maine Administrative Procedure Act shall yield and the applicable provisions of this Act shall govern in its stead.

5 M.R.S.A. § 8003 (1979). Our comparison of the review provisions of the A.P.A. and the Insurance Code reveals no inconsistency. Section 11001 (1) states *only* the entitlement of an aggrieved party to judicial review. The statute contains no language

precluding other statutory grants. Accordingly, there is no conflict with the more expansive grant of standing conferred by 24 M.R.S.A. § 2326 and 24-A M.R.S.A. § 236. The standing claimed by the Attorney General under the Insurance Code as a party is not precluded by the A.P.A.<sup>FN2</sup>

FN2. We reject the Superintendent's argument that despite the fact that intervention was granted, the Attorney General is not a party because of our opinion in *Central Maine Power Co. v. Public Util. Comm'n.*, 382 A.2d 302 (Me.1978). In that case we held that the Attorney General "cannot have standing to assert the interests of only one segment of ratepayers, the residential-in particular when, as here, such representation might be to the detriment of other groups of ratepayers." *Id.* at 315. *Central Maine* involved rates for both residential and commercial customers and the Attorney General attempted to protect the interests of one group to the detriment of the other. The present case involves only non-group rates. Any advantage achieved in these proceedings, will not necessarily disadvantage any other segment of the public. *Central Maine* is therefore factually inapposite.

### III.

#### *Conflict of Interest*

[3] As an additional ground for dismissing the Attorney General's 80C action, the \*1202 Superior Court ruled that he cannot "attack the decision of a State bureau or agency which received the legal assistance of the Attorney General's office in reaching and drafting that decision." Relying upon a conflict of interest analysis, the court held that the prior representation of the Superintendent by members of the Attorney General's legal staff precluded his action for judicial review. The narrow issue before us may be stated as follows: If an agency is represented in court by independent private counsel, is it ethically permissible for the Attorney General to

seek judicial review of an administrative decision of that agency, even though the agency was counselled by members of his staff during the administrative proceeding?

Because of the multiple duties imposed on the office, the status of the Attorney General is unique. As a member of the bar, he is subject to the ethical standards of the bar, but he is also a constitutional officer charged with common law and statutory duties and powers. As an officer of government he is directed to control and manage the litigation of the State by providing counsel to state agencies and by approving the retention of private counsel. Of at least equal importance, however, is his role as the legal representative of the people of the State in pursuing the public interest. The Superior Court determined that an irreconcilable conflict existed between his duties as a member of the bar and the duties of his office to represent the public interest. The court resolved the conflict by ordering the abandonment of the duty to represent the public interest. The court erred.

The legal dilemma posed by this case has been cogently described in a similar case as follows:

It is glaringly apparent from the pronouncements of this Court, cited above with reference to the attorney general's common law duties and the statute which reaffirms those duties, that he will be confronted with many instances where he must, through his office, furnish legal counsel to two or more agencies with conflicting interest or views. It is also readily apparent that in performing their duties, the agencies will from time to time make decisions, enter orders, take action or adopt rules and regulations which are, in spite of good intentions, either illegal or contrary to the best interest of the general public.

Under our scheme of laws, the attorney general has the duty as a constitutional officer possessed with common law as well as statutory powers and duties to represent or furnish legal counsel to many interests-the State, its agencies, the public

interest and others designated by statute.

Paramount to all of his duties, of course, is his duty to protect the interest of the general public.

The question presented under these circumstances is whether the attorney general must abrogate his responsibility to one or the other.

*State ex rel. Allain v. Mississippi Pub. Service Comm'n.*, 418 So.2d 779, 782 (Miss.1982). A decision in this case requires us to recognize that we are not dealing with private lawyers. Rather, different ethical considerations are at stake here. We are required to balance ethical concerns with concerns for effective representation of both the public interest and public agencies.

In its ruling, the Superior Court failed to specify any particular ethical principle that had been violated. The Superintendent argues, however, that the bar rules forbidding employment that would conflict with the interest of a present or former client are implicated.<sup>FN3</sup> Initially, we note that \*1203 such provisions are principally designed to protect confidential communications between attorney and client. When dealing with public agencies and their lawyers, however, such considerations are of lesser importance. Under our rules of evidence, confidential communications between a public agency and its lawyer are the exception rather than the rule.<sup>FN4</sup> Moreover, the Attorney General and his staff are not the equivalent of a private law firm. In promulgating the Model Rules of Professional Conduct, the American Bar Association has expressly recognized that lawyers in an attorney general's office

FN3. Maine Bar Rule 3.4 provides in relevant part:

(b) Conflict of Interest. A lawyer shall not accept employment if the exercise of his independent professional judgment in behalf of a client will be, or is likely to be, adversely affected by the acceptance

of such employment, or if it would be likely to involve him in representing differing interests . . .

(c) Multiple Employment Forbidden. A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be, or is likely to be, adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests . . .

(e) Inrest of Former Client. A lawyer shall not accept employment adverse to a former client without that client's informed written consent if such new employment involves the subject matter of the former employment or may involve the use of confidential information obtained through such former employment.

FN4. M.R.Evid 502(d)(6) provides that there is no lawyer client privilege

[a]s to communications between a public officer or agency and its lawyers unless the communications concern a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the "public interest" in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

ABA Model Code of Professional Responsibility, Preamble, Scope and Terminology at p. 12

(1983). The Committee on Ethics and Professional Responsibility of the American Bar Association observed in Formal Opinion No. 342 (1975):

The relationships among lawyers within a governmental agency are different from those among partners and associates of a law firm. The salaried government employee does not have the financial interest in the success of departmental representation that is inherent in private practice.

The majority of courts confronting similar issues have recognized the unique status of the Attorney General. See *Conn. Comm'n. on Special Revenue v. Conn. Freedom of Information Comm'n.*, 174 Conn. 308, 319, 387 A.2d 533, 537 (1978) ("This special status of the attorney general-where the people of the state are his clients-cannot be disregarded in considering the application of the provisions of the code of professional responsibility to the conduct of his office."); *Feeney v. Comm.*, 373 Mass. at 365-66, 366 N.E.2d at 1266 (In exercising his "common law duty to represent the public interest" the Attorney General "is not constrained by the parameters of the traditional attorney-client relationship."); see also *E.P.A. v. Pollution Control Bd.*, 69 Ill.2d 394, 14 Ill.Dec. 245, 372 N.E.2d 50 (1977); *Commonwealth ex rel. Hancock v. Paxton*, 516 S.W.2d 865 (Ky.1974); *Humphrey ex rel. State v. McLaren*, 402 N.W.2d 535 (Minn.1987); *State ex rel. Allain v. Mississippi Pub. Service Comm'n.*, 418 So.2d 779 (Miss.1982). But see *People ex rel. Deukmejian v. Brown*, 29 Cal.3d 150, 624 P.2d 1206, 172 Cal.Rptr. 478 (1981); and *City of York v. Pennsylvania Pub. Util. Comm'n.*, 449 Pa. 136, 295 A.2d 825 (1972).

The Superior Court relied exclusively on *Deukmejian* in disqualifying the Attorney General from pursuing judicial review. The holding of the California Court is bluntly stated:

In short, the Attorney General cannot be compelled to represent state officers or agencies if he believes them to be acting contrary to law, and he

may withdraw from his statutorily imposed duty to act as their counsel, but he may not take a position adverse to those same clients.

624 P.2d at 1209, 172 Cal.Rptr. at 481. *Deukmejian* could be distinguished on the basis of the peculiar relationship between the attorney general and the governor under\*1204 California law. Indeed the California Supreme Court specifically relied upon their peculiar law in rejecting the authority recited above. *See id.* at 1209, 172 Cal.Rptr. at 481. More importantly, however, we find the California rationale unpersuasive because it equates the Attorney General with a private lawyer and fails to reflect adequately the unique status of the Maine constitutional office.

[4] In sum, we conclude that when the Attorney General disagrees with a state agency, he is not disqualified from participating in a suit affecting the public interest merely because members of his staff had previously provided representation to the agency at the administrative stage of the proceedings. Other less drastic means of insuring effective representation for state officers and agencies exist. The abandonment of the public interest, as was ordered in this case, is not necessary. We endorse the practical resolution enunciated by the Supreme Court of Mississippi:

The attorney general has a large staff which can be assigned in such manner as to afford independent legal counsel and representation to the various agencies. The unique position of the attorney general requires that when his views differ from or he finds himself at odds with an agency, then he must allow the assigned counsel or specially appointed counsel to represent the agency unfettered and uninfluenced by the attorney general's personal opinion. If the public interest is involved, he may intervene to protect it.

*Allain*, 418 So.2d at 784. Because the Superintendent is now represented by private counsel, there is no ethical impediment to the legal action brought by the Attorney General.

The entry is:

The judgment entered in *Superintendent of Insurance v. Attorney General* is vacated and remanded for entry of judgment in favor of defendant.

The order striking the appearance of the Attorney General in *Brown v. Superintendent of Insurance* is vacated and the case is remanded for further proceedings consistent with the opinion herein.

The order dismissing *Attorney General v. Superintendent of Insurance* is vacated and the case is remanded for further proceedings consistent with the opinion herein.

All concurring.

Me., 1989.  
Superintendent of Ins. v. Attorney General  
558 A.2d 1197

END OF DOCUMENT

## **B. Program Description**

# Programs of the Office of Attorney General

Attorney General Aaron M. Frey is the chief executive of the Office of the Attorney General (OAG). He is responsible for ensuring that high-quality and comprehensive legal services are provided to state agencies, including legal advice and representation before tribunals of the State and Federal Government. Furthermore, the Attorney General coordinates responses to request for legal advice received from the Governor and members of the Legislature.

The Attorney General is directly supported by a chief deputy attorney general, a legislative liaison, and an executive assistant. This staff support enables the Attorney General to manage the needs of the office, attend to requests from the Governor and members of the Legislature, respond to press inquiries, communicate with relevant constituent groups, and engage in other projects as needed.

In order to ensure a high level of legal services, the office is organized into different divisions that carry out the office's civil, criminal and investigative responsibilities. Each division is headed by a chief attorney or other professional. Set forth below are descriptions of the various divisions, which are organized by the nature of the services they provide, followed by discussions of specific programs of the OAG. The District Attorneys' work is also addressed.

## **Administration Division**

**Division Profile:** The Administration Division is comprised of 13 full-time positions including the Civil Right Project Team and the Victims' Compensation Program.

- Mark Toulouse, Chief
- 1 Human Resources Manager
- 1 Senior Staff Accountant
- 1 Staff Accountant
- 1 Accounting Associate
- 1 Receptionist
- 7 Research Assistants

**Division Highlights:** This Division is responsible for three primary functions: human resources management; budgeting, financial management and accounting; and information services management. This Division also houses the Civil Rights Project Team and the Victims Compensation program.

In the Human Resources area, the Human Resources Manager handles all payroll functions for the OAG and the eight regional District Attorney's Offices. The Manager is responsible for all personnel matters, including recruitment, retention and discipline.

In the Budgeting, Financial Management and Accounting area, the staff are responsible for biennial budget preparation, annual work program preparation and management, accounts



payable, accounts receivable, restitution payment management, special services contracts, out-of-state travel requests and grants management.

In the Information Services area, staff are responsible for the computer networks, servers and all hardware and software management and support.

In addition, the staff handles any miscellaneous needs of the office, such as access security, office space allocation, telephone work orders, insurance portfolios and many other issues required to run an office.

### **Maine Victims' Compensation Program**

The Maine Victims' Compensation Program assists innocent victims of violent crime by reimbursing them to a maximum of \$15,000 for the out-of-pocket costs or losses they incur when they suffer physical and emotional trauma as a result of criminal victimization. The aftermath of a violent crime may leave victims and their families physically and emotionally overwhelmed, but each personal loss carries a financial loss as well. In recognition of the financial hardship crime victims often suffer, the Maine Legislature in the spring of 1992 created the Victims' Compensation Fund and Victims' Compensation Board. The Board is an independent board comprised of three members drawn from Maine's legal, medical and victim services communities and decides claims to be paid from the Fund. The Board is supported by the Program staff, who are part of the Administrative Division.

In 2000, the Legislature made the Victims' Compensation Program responsible for developing and implementing the Forensic Payment Protocol, under which the Program now makes direct payments to health care facilities for performing sexual assault forensic examinations. This protocol has rapidly grown in cost and now severely strains the ability of the Victims' Compensation Fund to pay for it.

The Victims' Compensation Program works closely with district attorneys, victim witness advocates, the Department of Correction, advocates from domestic violence and sexual assault response agencies, hospital staff, and other professionals to reach and assist victims of violent crime. The Program provides training to allied professionals upon request. The Program is a member of the National Association of Crime Victim Compensation Boards.

**Funding:** Monies for victim awards, forensic payments, and program administration come from the Victims' Compensation Fund. Funds for the Victims' Compensation Fund come from statutorily required assessments levied against criminal offenders. No tax dollars fund either the administration of the Program or the payments of awards. Additionally, if a victim's award made from the Fund is duplicated by restitution or from recovery in a civil action or insurance settlement, the law requires reimbursement of the Fund. Staff members pursue restitution awards and recovery working with the courts, the district attorneys, and the Department of Corrections. Finally, the Program is eligible for and receives some federal matching monies, which come from federal criminal fines and penalties rather than tax dollars. The state receives an annual grant from the federal Office for Victims of Crime based on the amount paid in state funds in previous years.

Program payments: During State Fiscal Year 2019, the Program paid out \$630,356.70 on claims for victims who filed application claims and another \$172,584.35 for payments directly to hospitals for sexual assault forensic examinations, for a total of \$802,941.05 in payments for 512 violent crime victims and their families. The average payment on an application case was \$2531.55. The average forensic examination payment was \$656.21. Ninety percent of the Board's application decisions were favorable.

### **Civil Rights Team Project**

The Civil Rights Team Project (CRTP) works with students, staff, and administrators throughout Maine to promote tolerance for diversity and school communities where everyone feels safe, welcome, and respected for who they are. The Project currently has student civil rights teams in more than 175 schools throughout Maine. The CRTP provides resources and direct support for schools and civil rights teams so that they can engage their school communities in thinking and talking about civil rights issues. Resources include annual training for civil rights team advisors, school visits, civil rights team action plans and curriculum, and regular communications through a biweekly email and quarterly newsletter.

### **Child Protective Division**

**Division Profile:** The Child Protection Division is comprised of 40.5 positions with staff distributed among 4 offices: Augusta, Portland, Bangor and Caribou.

- Nora Sosnoff, Chief
- 22.5 full time equivalent Trial Court Litigators  
(3 Trial Court Litigators are shared with the Division of Child Support)
- 2 full-time equivalent Appellate Assistant Attorneys General (AAGs)  
(2 AAGs are shared between appeals and trial court litigation)
- 5 Paralegals  
(1 is a Paralegal/Secretary hybrid shared with the Child Support Division)
- 9 full time equivalent Secretaries  
(2 secretaries are shared with the Child Support Division)

The Child Protection Division represents the DHHS Office of Child and Family Services. The core work of the Child Protection Division is expedited trial court litigation in 27 District Courts and expedited direct appeals to the Law Court. The subject matter involves the removal of children from abusive and neglectful custodians, often emergently, and cases are active for an average of 18-22 months, with four or more court events per 12-month period. These cases follow families from separation through reunification, or alternative permanency planning when reunification is not possible. The work strives to balance the State's interest in the health and safety of Maine's children with the parents' liberty interest in family integrity. By locating Child Protection AAGs and support staff in Portland, Augusta, Bangor and Caribou, the OAG is able to provide frequent on-site legal counsel to the 8 DHHS District Offices and to attend frequent court appearances in 27 District Courts around the

State, as well as the Law Court.

**Division Highlights:** The Division has 2,250 open child protection cases, including 2,185 court cases for minors in State custody and 69 cases for youth between 18-21 years of age in “extended care.” On average, full time Child Protection AAGs carry caseloads of 100 or more children, and collectively appear in court about 5,000 times each year. The annual appeals caseload has averaged 70-80 appeals in recent years. The Child Protection AAGs also represent the Department in contested adoptions; litigate mental health commitment hearings; and handle annually more than 300 court orders in criminal and family cases requiring the production of confidential CPS records and CPS caseworker testimony. Child Protection AAGs provide legal trainings in numerous forums, including: pre-service and in-service to DHHS social workers, training for cadets at the State Police Academy, training for guardians ad litem, parents’ counsel, court personnel, school personnel, and social service agency staff around the state.

### **Child Support Division**

**Division Profile:** The Child Support Division is comprised of 17.5 positions with staff distributed among 4 offices: Augusta, Portland, Bangor and Caribou.

- Debby L. Willis, Chief
- 9.3 full time equivalent AAGs  
(3 AAGs are shared with the Division of Child Protection)
- 5 Paralegals  
(1 is a Paralegal/Secretary hybrid shared with the Child Protection Division)
- 4 full time equivalent Secretaries  
(2 secretaries are shared with the Child Protection Division)

**Division Highlights:** The Child Support Division provides legal counsel and representation to the Department of Health and Human Services Division of Support Enforcement and Recovery. Representation is provided in cases in which parents are in receipt of public assistance, as well as in cases in which parents are not in receipt of public assistance and receive non-welfare services from the Division of Support Enforcement and Recovery. Parents and legal guardians may seek assistance from the State in establishing and collecting child support obligations and in establishing paternity for their children. The Division also provides representation to the Division of Support Enforcement and Recovery for non-Maine residents under the Uniform Interstate Family Support Act. In 2018 alone, the Division received 2,962 referrals from the Division of Support Enforcement and Recovery. The average full-time attorney’s case load is 146 open cases.

The Division’s work is primarily civil in nature. Division attorneys appear daily in child support cases representing the Division of Support Enforcement and Recovery before the Family Division of the Maine District Court and in Probate Court proceedings. These include cases brought for the following:

1. To determine paternity and to establish and modify child support orders;
2. To enforce support obligations that are being ignored by an obligated parent, which can be either:
  - a. Action for civil contempt action where a parent's failure to pay is willful and they have the capacity to pay or to obtain employment so they can pay; parents are often ordered to seek work and report their efforts to the Division of Support Enforcement and Recovery on a weekly basis; or
  - b. Criminal nonsupport cases;
3. To review agency enforcement actions, such as license revocation, bank withholdings and seizure of property and other assets; and
4. To enforce employers' obligations to comply with judicial and administrative orders requiring them to deduct child support from an employee's earnings and for holders of obligated parents' property who fail to honor a child support lien.

In 2018 the Division sought and was awarded money judgments in court totaling \$1,145,958.20 to reimburse either the State for public assistance money expended, or custodial parents for past support owed. Additionally, the Division established child support orders totaling over \$51,689.28 per week.

The Division actively collaborated with the Family Law Advisory Commission and other stake holders in drafting the Maine Parentage Act (MPA) passed in 2015 and effective July 1, 2016. Children born after July 1, 2016 will have greater stability in relationships formed with parents. A challenge to parentage must be brought within the first 2 years of child's life, absent certain circumstances. Disestablishment for children born before July 1, 2016 remains within the discretion of the judge and is decided on a case by case basis.

### **Consumer Protection Division**

**Division Profile:** The Consumer Division is comprised of 16.5 positions including the Consumer Mediation Program, the Lemon Law Program, and the Tobacco Enforcement Program.

- Linda Conti, Chief
- 4 AAGs
- 2 Paralegals
- 1 Complaint Examiner
- 4 Assistant Complaint Examiners  
(3 full-time and one part-time)
- 1 Tobacco Compliance Assistant

- 1 Tobacco Compliance Research Assistant
- 2 Secretaries

The Consumer Protection Division focuses on four substantive areas: 1) consumer, including enforcement of the Unfair Trade Practices Act, which is modeled on the Federal Trade Commission Act, and the Consumer Information and Mediation Services; 2) antitrust enforcement of the Monopolies and Profiteering law, which is modeled on the federal Sherman Act, and of the State's merger statute; 3) oversight of public charities; and 4) tobacco enforcement.

### **Division Highlights:**

**Consumer Mediation:** The Attorney General's mediation program conducts voluntary mediation via phone and mail to resolve disputes between consumers and businesses. The assistant complaint examiners ("ACES") determine which consumer complaints are appropriate for mediation, and they help to train and supervise nearly 30 volunteers who mediate the complaints. These volunteers contributed 3,268 hours over the fiscal year 2018-2019. During that period, the mediation program received 5,456 phone calls, 318 letters, 98 in-person visits, 3,017 emails. The volunteers mediated 849 claims with a 57% resolution rate, resulting in the recovery of \$533,957.00 for consumers.

**Consumer Information:** The ACES also provide information on consumer issues, including identity theft, to the public over the phone and, on occasion, by making presentations on various topics to the public. The Division maintains a large portion of the Attorney General's website content, which includes the *Consumer Law Guide*, a comprehensive explanation of state and federal laws that affect Maine consumers. The ACES also keep a database of all consumer complaints that we receive which are automatically uploaded to the FTC's consumer complaint database.

**Lemon Law Program:** The Division administers the Lemon Law Arbitration Program, which allows consumers with a severely defective new car to have their cases heard by a state arbitrator, free of charge. In the past fiscal year, the Lemon Law Program sent out 61 applications for arbitration of which 20 were accepted into the program. Of these, 4 vehicles were declared a lemon and 12 cases were settled prior to the arbitration hearing.

**Consumer Enforcement:** Division attorneys investigated and settled matters in which restitution was obtained for Maine consumers, including Assurances of Discontinuance with Linnehan Acceptance, d/b/a Linnehan Homes, for issues related to its "American Dream Path to Home Ownership Plan" and with Fremont Law Group, APC et al. for issues related to their debt management services. In addition, Division attorneys shepherded several multistate cases through to settlement by consent judgments, including *State v. DePuy Orthopedics, Inc. et al*; *State v. Equifax Inc.*; *State v. Johnson & Johnson et al.*; *State v. Standard & Poor's*; and *State v. Volkswagen*.

Since our last report, the Division partnered with the Federal Trade Commission (FTC) to investigate a series of cases involving advertising and marketing of dietary supplements

resulting in consent orders in federal court in Maine and restitution to consumers, including *FTC and State of Maine v. Dill et al*; *FTC and State of Maine v. Marketing Architects, Inc.*; and *FTC and State of Maine v. XXL Impressions, LLC et al.*

The 2008 financial crisis and recession resulted in a significant increase in residential home foreclosures in Maine during the subsequent years, which raised issues with Maine's foreclosure process. In 2013, the Legislature's Joint Standing Committee on the Judiciary Committee was considering nine foreclosure bills and accepted the Attorney General's offer to review the foreclosure process and report back to the Committee. Division attorneys worked with the Attorney General to convene a working group, to meet with interested parties and the public, and to conduct research. In 2014, the Attorney General delivered a report and recommendations to the Committee, including proposed legislation, L.D. 1389, enacted that year as Public Law ch. 521.

The Division also collaborated with Attorneys General nationwide to negotiate and implement the National Mortgage Settlement, and subsequent similar settlements, to reform the mortgage servicing and foreclosure process nationwide, which reforms were ultimately codified in the regulations of the U.S. Consumer Financial Protection Bureau.

Currently, the Division is devoting significant and continuing resources to pursuing claims against Purdue Pharma and the Sackler family. That matter is now pending in bankruptcy court in the Southern District of New York. We are also working closely with other Attorneys General to negotiate a settlement of our potential claims against non-bankrupt opioid manufacturers and distributors. We are also currently working on the fallout from the abrupt closure of Castle Builders, Inc., a general contractor, and will be opposing its owners' request for a discharge in bankruptcy of amounts owed to consumers.

**Antitrust:** The Attorney General's antitrust oversight includes reviewing proposed mergers and acquisitions, most frequently in the healthcare and petroleum industries. The Attorney General also investigates anticompetitive conduct, such as price-fixing and illegal monopolization, often in conjunction with other state and/or federal antitrust enforcers, including the Federal Trade Commission and the U.S. Department of Justice. The Attorney General is participating in two large multistate federal lawsuits against drug manufacturers alleged to have engaged in anticompetitive conduct (*State of Wisconsin et al v. Indivior, Inc., et al. (Suboxone)* – alleged illegal monopolization; *In re Generic Pharmaceuticals Pricing Antitrust Litigation* – alleged price-fixing and market allocations). The Attorney General has also been actively investigating potentially anticompetitive conduct in technology in recent years.

**Charities Oversight:** The Attorney General is charged by law with ensuring that charitable assets, whether held in trust or by a nonprofit corporation, are preserved and applied to charitable purposes. As such the Attorney General is a party-in-interest in lawsuits Maine charities. As a recent example, after two years of litigation in *Attorney General, State of Maine v. John J. Sanford et al.*, Division attorneys successfully resolved by consent decree issues relating to the trustees' compensation from the Richard C. Paine, Jr. Automobile Collection Charitable Trust. In addition, two of the Division attorneys regularly provide

information to lawyers, and members and directors of nonprofit organizations on fiduciary duties, and other legal requirements imposed by such laws as the Uniform Trust Code and the Uniform Prudent Management of Institutional Funds Act and regularly review complaints or concerns about the management of nonprofit corporations and charitable trusts. A third attorney handles all calls from law enforcement regarding compliance with the Law Enforcement Solicitations Act.

**Tobacco Enforcement:** The Division undertakes tobacco enforcement activity for the OAG. This work includes monitoring compliance with the tobacco Master Settlement Agreement (MSA) and oversight of the Tobacco Enforcement Program. There is 1 attorney assigned to exclusively manage the tobacco enforcement activities. Additionally, there is a full-time Tobacco Enforcement Coordinator, Tobacco Enforcement Compliance Assistant and .5 of a paralegal assigned to this work. First, the Division administers and enforces the state's rights and responsibilities under the MSA. Along with an attorney from the litigation division, the attorney leads litigation to enforce the tobacco Master Settlement Agreement's public health provisions and to resolve disputes about the annual payments owed by the tobacco companies. In addition, the division handles the administration and enforcement of the Tobacco Manufacturers Act and the Tobacco Product Manufacturers Act, which require all tobacco product manufacturers to either join the MSA or to place funds into a qualified escrow account for cigarettes and roll-your-own tobacco, as well as file a certification to be listed on Maine's tobacco products directory. No cigarettes or roll-your-own tobacco may be legally sold in the State unless the manufacturer and distributors comply with the requirements of these two statutes.

Because the public health effects of tobacco use are so dire, the Consumer Protection Division also works with the Health and Human Services Division and the Maine State Fire Marshal to ensure that all entities selling tobacco products to Maine consumers comply with the stringent requirements of the Retail Tobacco Sales Act.

Second, the Tobacco Enforcement Program is responsible for oversight of enforcement of all tobacco related statutes in Title 22 representing the Department of Health and Human Services (DHHS). These include laws on retail tobacco sales, workplace smoking and public smoking. The Program coordinates with the Office of Substance Abuse, the Single State Agency (SSA) designated to report compliance under the Synar program to the US DHHS, Substance Abuse and Mental Health Services Administration (SAMSHA) Center for Substance Abuse Prevention (CSAP).

The Program is contracted by the U.S. Food and Drug Administration (FDA) to aid in the enforcement of provisions of the Tobacco Control Act as they apply to tobacco retailers. The Assistant Tobacco Enforcement Coordinator and .5 of the Tobacco Enforcement Coordinator is dedicated to administering the FDA contract. The Program advises the DHHS Health Inspection Program regarding retail tobacco sales licensing and supports DHHS and community initiatives to reduce the incidence of underage use of tobacco products in Maine.

**Collections:** A Paralegal is primarily responsible for investigations and collections in the division. He also takes collections cases from other state agencies including Department of Agriculture, Department of Administrative and Financial Services, Department of Labor,

Ethics Commission, Inland Fisheries and Wildlife, Maine Human Rights Commission, Professional and Financial Regulation, Public Utilities Commission, and the Workers Compensation Board. He currently manages, with help from the Consumer Legal Secretary, 200 open collections cases. Since 2016 he has collected \$1,108,032.05.

### **Criminal Division**

**Division Profile:** The Criminal Division is comprised of 43 full-time positions and one half-time position, which are broken down as follows:

- Lisa J. Marchese, Chief
- 1 Appellate Prosecutor;
- 4 Homicide Prosecutors;
- 8 Drug Prosecutors;
- 1 DPS/Maine State Police Prosecutor;
- 1 Financial Crimes and Civil Rights Prosecutor;
- 3 Healthcare Crime Prosecutors;
- 1 SORNA Prosecutor;
- 1 Securities Prosecutor;
- 2 Welfare Fraud Prosecutors;
- 1 Cold Case Homicide Prosecutor;
- 1 Computer Crimes Prosecutor;
- 1 Tax Prosecutor;
- 1 Elder Financial Exploitation/Major Crimes Prosecutor;
- 1 Domestic Violence Homicide Review Panel Coordinator;
- 3 Victim/Witness Advocates;
- 4 Healthcare Crimes Detectives
- 1 Secretary Specialist/Supervisor;
- 1 Auditor;
- 5 Research Assistants;
- 2 Secretaries

### **Division Highlights:**

**Homicides:** The Criminal Division is responsible for all homicide prosecutions in the State of Maine (with the exception of motor vehicular manslaughter cases). Generally speaking, 50% of all homicides in Maine are domestic violence related. Over the past several years, the Division has seen an increase in the number of drug-related homicides. In 2018, a total of sixteen homicide cases were resolved, either by trial or plea. On average, the length of time from indictment to trial is twelve months. Through October 2019, fifteen homicides cases for 2019 have been resolved. The Criminal Division has worked cooperatively with the Chief Justice of the Superior Court to move homicide cases expeditiously through the criminal justice process.

Each homicide case normally has two prosecutors assigned to it. With only four homicide prosecutors, other members of the division are needed to assist with homicide trials.



Some of the more notable cases for the past several years are as follows:

- ***State of Maine v. Nicholas Sexton and Randall Daluz*** – Sexton and Daluz were both charged with murder and arson in the deaths of Daniel Borders, Nicolle Lugdon and Lucas Tuscano in Bangor on August 13, 2012. The victims were shot to death and the car they were in was torched. On May 28, 2014, a jury found Sexton guilty of count 2 (death of Nicolle Lugdon) and count 4 (arson). On July 28, 2015, Justice Anderson sentenced Sexton to 70 years to the Department of Corrections as to the murder of Nicolle Lugden and 20 years to the Department of Corrections for the arson, to be served consecutive to the murder charge. On May 28, 2014, a jury found Daluz guilty of all four counts and on July 28, 2015, Justice Anderson sentenced Daluz to life imprisonment for the three counts of murder and twenty years imprisonment for arson. These cases were drug-related homicides.
- ***State of Maine v. Keith Coleman*** – Coleman was charged with the murder of his girlfriend, Christina Sargent, and her two children on December 20, 2014. On January 19, 2017, Coleman was sentenced to life in prison for the murder of Christina Sargent, Duwayne Coke and Destiny Sargent. He was also sentenced to 20 years for the gross sexual assault involving Destiny. This was a domestic violence homicide.
- ***State of Maine v. David Marble*** – On December 25, 2015, Marble murdered Eric Williams and Bonnie Royer. Marble was convicted by a Cumberland County jury for the murders of Eric Williams and Bonnie Royer. He was also convicted of possession of a firearm by a prohibited person. On November 13, 2018, Marble was sentenced to 75 years for the murder of Eric Williams, life for the murder of Bonnie Royer (who was shot and able to make a call to 9-1-1 but when Marble realized he forgot his phone at the scene and went back, he shot her again) and 5 years for the possession charge to be served concurrently. This was a drug-related homicide.
- ***State of Maine v. John Williams*** – on April 25, 2018, Corporal Cole was attempting to arrest John Williams for a previous offense when the defendant pulled out a handgun and shot Corporal Cole. The defendant then took Cpl. Cole's police vehicle and fled. After an extensive manhunt, John Williams was found and arrested. On June 18, 2019, a Cumberland County jury returned a verdict of guilty for the murder of Cpl. Cole, and he was subsequently sentenced to life imprisonment.

**Homicide Review Panel Coordinator:** The Homicide Review Panel Coordinator is a half-time position to support the work of the Homicide Review Panel which sits in the OAG and was established in 1997 pursuant to 19-A M.R.S. § 4013(4). The Panel is tasked with reviewing the deaths of persons killed by family or household members and generating a Biennial Report. The Coordinator drafts meeting notices, agendas, minutes and case file summaries; distributes national reports and studies on domestic abuse and sexual assault. The Coordinator also plans the domestic abuse homicide case review meetings by working with the Panel Chair to determine the cases to be reviewed and compiles and distributes all pertinent homicide case records to the Panel for each case review. The Panel meets approximately 10 times per year.

The Coordinator also maintains a database on domestic violence homicide cases reviewed by the panel and drafts observations and evidence-based recommendations emanating from case reviews. This results in the formalizing of observations and recommendations that result in the Biennial Report. Since 1997, the Panel has published 12 reports. The next report is due out in October of 2020. Lastly, the Coordinator collaborates with other entities, including the Maine Commission on Domestic and Sexual abuse to implement the Panel recommendations.

**Appeals:** The Division's attorneys also handle a number of appeals from defendants in both state and federal court. In 2018, 40 direct appeals, state post-conviction review petitions and federal habeas corpus petitions were filed in cases handled by the Criminal Division. During the same time period, 34 direct appeals, state post-conviction review petitions, or federal habeas corpus petitions were either disposed of by the courts or were withdrawn by the appellant/petitioners.

**Unsolved Homicides:** In Maine, detectives from the Maine State Police, Portland Police Department and Bangor Police Department work collaboratively with the prosecutors from the OAG, pathologists from the Office of the Chief Medical Examiner and scientists from the Maine State Police Crime Laboratory to investigate all homicide cases and successfully prosecute the offenders. When the homicides are recent, resources are massed to solve these cases. However, when cases remain unsolved, those resources by necessity are diverted to combat the constant influx of new cases of violent crime. Although the unsolved homicide cases remain assigned to a primary investigator, that detective's ability to investigate these cases is compromised by his or her responsibilities to investigate new cases as they occur.

In 2015, the Maine Legislature recognized the need to have professionals dedicated to solving unsolved homicide cases. It provided funding for two Maine State Police detectives and one forensic chemist to work exclusively on Maine's unsolved murders. These professionals work alongside a full-time AAG, who is devoted to working Maine's unsolved homicide cases. (5 M.R.S. § 200-J). In 2016, a Victim Advocate position was created within the OAG for the purpose of better addressing the needs of the families and loved ones of unsolved homicide victims within the context of the criminal justice system.

In practice, the Maine State Police continues to assign detectives to each of its unsolved murders, suspicious deaths and missing persons cases in which foul play is suspected. The two new detectives work alongside the primary detectives on select cases, follow up on tips and leads and conduct additional work on unsolved homicide cases as directed by the Major Crimes Unit Lieutenant. These detectives work with a dedicated forensic chemist at the Crime Lab as well as the AAG and the Victim Advocate.

From 2012 to 2019, 6 unsolved cases were successfully resolved. Collectively, the work of the unit has encompassed forensic examination and testing, out of state witness interviews, prison interviews, DNA and fingerprint collection, scene re-enactments, searches for remains, and evidence collection through search warrant and subpoena process. The

unsolved unit has collaborated with Canadian authorities and worked with law enforcement agencies outside Maine on cases of mutual concern.

**Department of Public Safety, Maine State Police and other representation:** Criminal Division AAGs represent the State in civil litigation associated with criminal prosecutions, including post-conviction review proceedings, federal habeas petitions, and petitions for release/discharge subsequent to judgments of not criminally responsible by reason of insanity.

The Criminal Division also advises the Office of the Chief Medical Examiner, as well as bureaus within the Department of Public Safety (DPS), including the Maine Drug Enforcement Agency, Office of the State Fire Marshal, the Maine State Police (MSP), and, within the Maine State Police, the State Bureau of Identification (SBI), the Maine Sex Offender Registry, Capitol Police, and the Computer Crimes Task Force with respect to their day-to-day operations, enforcement actions and records requests, and in litigation in these subject areas, including Rule 80C petitions and declaratory judgment actions challenging agency actions.

Criminal Division AAGs represent the State and State actors in litigation challenging the constitutionality of statutes enforced by those state actors, including the Sex Offender Registration and Notification Acts.

Support of the State Bureau of identification includes responses to record challenges and ongoing advice with respect to computer interface and data transmission between the prosecutors, courts, and the SBI with respect to criminal history, non-criminal firearms disqualifying events (involuntary commitment), and implementation of the Court's data management system, as well as the interface between the SBI and federal databases such as the National Instant Criminal Background Check System (NICS, for firearms purchases), NICS Indices, and the Interstate Identification Index (III; automated access to interstate criminal history record information).

Programs within the DPS and MSP supported by AAGs include licensing for the following programs and professions: concealed handgun permits (individual permits; interstate reciprocity), professional investigators, contract security companies, and polygraph examiners.

AAGs within the Criminal Division teach multiple classes at the Maine Criminal Justice Academy (MCJA) for new full-time law enforcement officers, and provide ongoing training for law enforcement officers and prosecutors on constitutional law, search warrant procedures, new statutes, firearms laws, the Freedom of Access Act and confidentiality of criminal history and investigative records.

Criminal Division AAGs chair the Sex Offender Risk Assessment Advisory Commission, and chair and serve as members of the Supreme Judicial Court's Advisory Committee on the Rules of Unified Criminal Procedure; and represent the Attorney General on ad hoc and

legislatively created Commissions, including the Commission on Domestic and Sexual Abuse, and serve on the Criminal Law Advisory Commission (members and clerk).

Criminal Division AAGs provide ongoing advice to prosecutors and law enforcement statewide concerning all aspects of prosecution, criminal law and legislation and criminal procedure.

**Drug Prosecutions:** The Drug Task Force within the Criminal Division employs 8 AAGs as drug prosecutors and one legal secretary. Of the 8 AAGs, one serves as Drug Prosecution Coordinator and seven serve as Drug Task Force Attorneys pursuant to 25 M.R.S. § 2955. The majority of these attorneys are assigned in District Attorney's offices around the State but report to the Drug Prosecution Coordinator. Attorneys work with federal, state, and local law enforcement agencies, supervising investigations and prosecuting the criminal cases that result. When appropriate, attorneys will identify cases appropriate for federal prosecution and refer them to the United States Attorney's Office. For the previous five years, the Drug Task Force has closed an average of 900 cases per year. Cases involving heroin and fentanyl have consistently made up approximately 40% of that case load. In addition to supervising the Task Force, the Drug Prosecution Coordinator is a member of the Adult Drug Treatment Court Steering Committee, as well as serving the Maine Prosecutors Association's representative on the Marijuana Advisory Commission.

**Opioid Epidemic:** The opioid epidemic, specifically the increase in overdose deaths associated with illegal drug use, is a priority for drug prosecutors and the OAG. Prosecutors receive notification following every suspected fatal overdose in the State. They then work with investigators to identify potential sources of supply, with the goal of building criminal cases that will hold those suppliers accountable. Additionally, prosecutors are working to identify those defendants that suffer from substance use disorder and using the criminal justice system to facilitate treatment with the goal of reducing recidivism. To increase their understanding of the subject, a number of prosecutors attended the 2019 State of Maine Opioid Summit. Additionally, prosecutors are working with members of the Legislature to review the current drug laws and identify ways in which they can be more effective in responding to the current drug crisis.

**Financial Crimes:** In the area of financial crimes enforcement, this office has and continues to get referrals for complex financial crimes from other agencies and the public. This office has charged 46 defendants with theft since 2012. This office has prosecuted public officials, including Claudia Viles, who misappropriated over \$500,000 over a period of five years from the Town of Anson in her capacity as the elected tax collector. Ms. Viles was ordered to serve five years in jail and pay \$566,257.65 in restitution. The office also prosecuted Yvonne Mitchell, a business manager for SAD 63, who stole over \$200,000 from the school district by issuing unauthorized checks to herself and her daughter and skimming the cash from the school lunch program. Ms. Mitchell was sentenced to six years all but 24 months in jail and paid \$215,866 in restitution at the time of her sentencing. This office has also prosecuted lawyers who stole funds from their clients. William Dawson embezzled nearly \$500,000 from two elderly incapacitated clients and pled guilty and was sentenced to five years all but two and a half years suspended. James Whittemore, a former Brunswick attorney, was sentenced to six all but two and a half years suspended for stealing over

\$130,000 from his clients. This office has several pending cases with defendants with theft, including indictments against a lawyer, a financial advisor and an administrative assistant for a law firm.

**Civil Rights:** This Division also directs enforcement actions under the Maine Civil Rights Act. From 2012 to October of 2018, there were 566 civil rights referrals to our office. Of the cases charged, 42 of them have had either consent orders or permanent injunction orders issued. During this time, most of the complaints were race based (19) and sexual orientation based (7). Other areas that the complaints encompassed were: national origin- race, ancestry, sex, national origin- religion, constitutional, national origin, ancestry- race, and ancestry. This office still has pending cases with the defendants having been charged with the violation of the Maine Civil Rights Act.

**Healthcare Crimes Unit (HCU):** The Healthcare Crimes Unit (HCU) is the State's federally designated Medicaid Fraud Control Unit. The HCU investigates and prosecutes cases involving MaineCare provider fraud as well as abuse and neglect of individuals in healthcare facilities. One of the HCU's significant accomplishments in the last year was the prosecution of a counseling agency, Facing Change, after a three-year state/federal investigation into a scheme involving false billing, kickbacks, and other fraud by the owner, Nancy Ludwig, her counseling agency, and the interpreters they worked with. Ludwig was charged with: conspiring to commit health care fraud, conspiring to receive and pay health care kickbacks, paying health care kickbacks, false statements relating to a health care benefit program, and obstruction of a federal audit. On June 14, a federal jury found Nancy Ludwig guilty of conspiracy to commit health care fraud, conspiracy to commit offenses against the United States, kickback offenses, false statements to a healthcare program, and obstruction of health care audit after a five-day trial at the U.S. District Court in Portland.

Within the last year, HCU has also obtained 18 other criminal convictions, including convictions for assault, endangering the welfare of a dependent person, falsifying records, forgery and theft arising from fraudulent MaineCare billings.

In addition, the HCU screened 1,646 referrals from citizens, agencies and health care facilities and recovered \$5,135,407.31 for the State from civil Medicaid settlements involving improper billing.

**Securities Fraud:** An AAG represents The Maine Office of Securities. The principal mission of the Maine Office of Securities (MOOS) is to protect Maine investors primarily by enforcing the Maine Uniform Securities Act, 32 M.R.S. 16101 *et seq.*, along with utilizing the criminal code (usually theft, income tax, and related financial or documentary offenses).

The AAG assists the MOOS, typically, by bringing criminal prosecutions and representing MOOS staff when they file administrative enforcement actions against broker-dealers and their agents and investment advisors and their representatives. The AAG also files civil complaints or petitions for TROs (seeking to prohibit an individual or company from engaging in certain conduct, working in the securities industry, obtaining restitution, imposing licensure discipline, and/or freezing assets).

The AAG also reviews Consent Agreements and Orders proposed by the MOOS Staff to resolve pending administrative actions and investigations; proposed rules/regulations and proposed statutory language; and provides legal guidance on a variety of securities related matters.

In 2018, the Securities AAG brought charges of theft, securities fraud and income tax offenses in the case of *State v. Lindell* in Penobscot County. The defendant was a former Maine state legislator and broker-dealer agent with his own firm. He stole approximately \$3.5 million from two elderly widows and a disabled Vietnam War veteran. After the jury found Lindell guilty, the Court sentenced him to 10 years in prison, (the maximum for a Class B theft), with a consecutive sentence of 7 years suspended, and 3 years of probation. This represents one of the highest jail sentences for a financial crimes case in the Attorney General's office. Approximately \$500,000 has been recovered thus far for the victims (primarily by outside civil counsel).

Also, in 2018, charges were brought in the case of *State v. Howarth* in Waldo County. The Defendant stole from and committed securities fraud victimizing 17 investors from the mid-coast area. After a contested sentencing hearing, the Defendant received a sentence of 10 years, with all but 6 years suspended, 3 years of probation, and restitution of \$575,000.

In 2019, the Securities AAG brought charges in *State v. Grady* in Cumberland County for theft and securities fraud of approximately \$250,000 from two investors. This case remains pending for likely trial in Spring 2020. Also in 2019 is *State v. Flynn* in Cumberland County for charges of theft and fraud from 5 victims of approximately \$1 million. This case remains pending for likely trial in early to mid-2020. Charges were also brought in *State v. Simpson* in York County for theft and securities fraud of \$50,000 from a single investor. The case was resolved by plea, which included 60 days incarceration and full payment of \$50,000 in restitution.

#### **Securities restitution actually collected**

	2018	2019
<b>Administrative</b>	<b>\$89,400</b>	<b>\$169,196.53</b>
<b>Criminal</b>	<b>\$13,150</b>	<b>\$59,480</b>

**\*one restitution collection matter is both civil and criminal, but the dollar amounts in the above columns are not altered by more than approx. \$500.**

**\*Administrative and civil collections are higher typically because the individual or entity remains in business or has access to assets. Criminal prosecutions usually result in the imposition of jail or prison sentences making restitution more difficult (and "the money is often long gone" having been spent by the defendant).**

**Criminal Tax:** From January 1 to October 31, 2019, the criminal tax prosecutor initiated 20 new criminal tax cases (10 felony cases and 10 misdemeanor cases) and resolved 14

pending cases through conviction. From January 1 to October 31, 2019, two convictions resulted in fines only. 11 convictions resulted in unsuspended terms of incarceration ranging from two days to four months. One conviction, against Robert Kenneth Lindell, involved both securities and tax charges. This resulted in a ten-year prison sentence but is now on appeal. Other significant cases were as follows: (1) Robert Quinn owner of Quinn's Jockey Cap, a Fryeburg general store, was sentenced to four years, all but three months suspended, and restitution of \$300,000 restitution for theft of sales tax, failure to collect, account for or pay over sales tax, and sales tax evasion; (2) Rachel Roux, owner of L & R Carpet, a carpet cleaning company in Alfred, was sentenced to three years, all but 60 days suspended, and restitution of \$61,353 for theft of withholding taxes, withholding tax evasion, failing to collect, account for, or pay over withholding tax, income tax evasion, failure to pay tax; and (3) Anna DiSanto, owner of DiSanto's Restaurant in Gray, was sentenced pursuant to a deferred disposition "good result" to four years, all but four months suspended, and restitution of \$198,460 for theft misapplication of sales tax, sales tax evasion, and failure to collect, account for or pay over sales tax.

During fiscal year 2018-2019, Maine Revenue Services collected \$310,260 in criminal restitution.

During calendar year 2018, this office initiated 13 new criminal tax cases (four felony cases and eight misdemeanor cases) and resolved 14 pending cases through conviction. One conviction resulted in administrative release with no jail time, and one resulted in a fully suspended term of incarceration. The remaining convictions resulted in unsuspended terms of incarceration ranging from four days to nine months. Significant cases included the following: (1) *State v. Michael Hashey*, a former police officer, was sentenced to four years, all but nine months suspended, and \$21,742 in restitution for theft of federal refunds, theft of state refunds, income tax evasion, failure to pay, failure to file, theft of evidence and theft from the Old Town Police Association; (2) *State v. Cynthia Brown*, owner of J's Oyster Bar in Portland, was sentenced to four years, all but four months suspended, and \$473,315 in restitution for theft by misapplication of sales tax, evasion of sales tax, failure to pay sales tax, failure to pay Maine income tax, and failure to pay Maine corporate tax; and (3) *State v. Brian Lowell*, a Sabattus paving contractor, was sentenced to 365 days, all but 45 days suspended, and restitution of \$255,829 for failure to pay Maine income tax and failure to file Maine income tax returns.

During calendar year 2018, Maine Revenue Services collected \$669,372 in criminal restitution.

**Welfare Fraud:** Title 22 M.R.S. § 13 establishes the Department of Health and Human Services (DHHS) Fraud Investigation unit (aka FIRU; Fraud Investigation and Recovery Unit). One of FIRU's responsibilities is to investigate instances of fraudulent acquisition of welfare benefits by individuals applying for and/or receiving such benefits; most commonly, food stamps (SNAP), MaineCare, Temporary Assistance for Needy Families (TANF), Additional support for People in Retraining and Employment (ASPIRE), as well as other miscellaneous programs for individuals and/or families in need of necessary assistance from the State of Maine. Upon investigating such instances, and upon findings of misconduct

and/or criminal activity, FIRU may recommend administrative action and/or criminal action. When criminal activity is believed to have occurred, Title 22 M.R.S. § 13(4), further tasks FIRU with the responsibility of providing a report, in writing, of all information concerning the underlying fraudulent activity to the OAG for review and action as may be deemed appropriate; to include possible criminal prosecution.

When those written reports are referred by FIRU to the OAG they are handled by the Welfare Fraud unit of the Criminal Division. In the several years prior to 2019, there had been a single AAG assigned to handle all welfare fraud cases. The single AAG left the welfare fraud unit in February of 2019, and two new AAGs were hired into the Welfare Fraud sub-division. In addition to the two AAGs, the unit has one Paralegal.

In 2015, Thomas Roth took over as Director of FIRU. That year, 105 cases were referred, with 46 cases charged and 36 pleas and/or convictions. \$467,300.65 restitution was ordered as part of the judgments.

In 2016, there were 93 cases referred, with 37 cases charged and 35 pleas and/or convictions. \$532,353.51 restitution was ordered as part of the judgments.

In 2017, there were 62 cases referred, with 24 cases charged and 25 pleas and/or convictions. \$394,129.78 restitution was ordered as part of the judgments. It was during this year that the Legislature approved funding for a second AAG, as well as a new paralegal position. A new Paralegal was hired in November 2017. The second AAG position remained unfilled until late 2018 due to a delay in necessary financial orders.

In 2018, there were 25 cases referred, with 1 case charged and 21 pleas and/or convictions. \$702,398.32 restitution was ordered as part of the judgments.

In 2019, there were 11 cases referred, with 3 cases charged and 6 pleas and/or convictions. In pursuit of judgments ordered, the OAG argued for as much as \$141,902.68 in restitution amounts. However, in one instance, when approximately \$107,000 was argued, a judge ordered only \$12,500 to be paid to a civilian victim, noting on the record that DHHS had other civil/administrative means of collection. The rationale cited against ordering the restitution for DHHS as part of the criminal case was the Defendant's ability to pay. In subsequent pleas, the OAG put an emphasis on collecting as much restitution up front as possible. To that end, \$20,937.00 in restitution was secured pre-sentencing.

What the numbers do not adequately show is that there continues to be a significant number of cases that are actively being pursued and investigated.

The OAG and The FIRU are collaborating to ensure these cases are successfully prosecuted.

Examples of a couple of recent notable cases are as follows:

*State v. Robin Cross-Snell (2018)* – Snell stole over \$250,000 in benefits from DHHS over the course of more than a decade by failing to report that her husband (who had a



\$70,000/year job) was living with her; failing to report her assets (she and her husband often had \$10,000-\$30,000 in their bank accounts); and failing to accurately report her employment and income (she worked multiple well-paid nursing jobs that were not reported to DHHS, including a job as a charge nurse with the Maine Department of Corrections; When she was indicted, she was the Director of Nursing for MDOC). In early 2018, during preparation for trial (which was expected to involve over 300 exhibits and dozens of witnesses), discovery issues were identified. On May 23, 2018, a fully agreed upon plea was presented to the court. The agreement was much more lenient than normal due to missing paperwork from DHHS and calculation errors by DHHS. The final disposition was a dismissal of Counts I, II, and III, with a plea of guilty to Count IV, Theft by Deception, Class D, and a 9-month straight sentence. The Defendant was ordered to pay \$229,157.00 in restitution. On Count V, Unsworn Falsification, Class D, the sentence was 364 days, fully suspended, and one-year probation consecutive to Count IV.

*State v. Christine Kaiser (2018/19)* - In early 2012, Kaiser's mother died of lung cancer, so Kaiser agreed to help her elderly father manage his finances. She immediately began to steal from him. She would forge distribution forms in order to fraudulently transfer money from his retirement account to his primary bank account and then spent money from his bank accounts without his authorization. She forged over 100 checks and made hundreds of unauthorized purchases with his debit card. In total, she stole over \$107,000 from him over a period of approximately two years. At the same time, she was collecting public assistance benefits from DHHS. She failed to report the money she was stealing from her father. She also failed to report that she was living with Edward Salunek, the father of her two children. (**Note:** Edward Salunek was also collecting public assistance on his own case. He pled guilty to welfare fraud and is currently on a deferred disposition.) On October 31, 2018, Kaiser pled guilty to stealing at least \$10,000 from her father, but denied it was over \$100,000 and requested a hearing to determine the amount of restitution. On January 7, 2019, Kaiser ended up agreeing to the full amount of restitution and pleading guilty to a slightly amended version of the welfare fraud charge. Ultimately, the presiding judge ordered only \$12,500 of the restitution total.

**Computer Crimes:** On October 17, 2014, an AAG was hired as the Computer Crimes Prosecutor for the Maine State Police Computer Crimes Unit. Since October 2014, 1,859 grand jury subpoenas have been issued on behalf of the computer crimes unit with the returns from the provider coming to the Attorney General's Office, disclosure notice sent to the court and the results going to the requesting investigator. Since March of 2015, the computer crimes AAG has reviewed and approved 290 search warrants for Computer Crimes Unit investigators, approximately 43 digital evidence search warrants for other agencies, and in the last year, approximately 20 search warrants for digital evidence in homicide cases.

In addition, the computer crimes AAG has worked with the Legislature since 2015 to clarify the criminal process and define the necessary requirements for obtaining content and location information from electronic communication service providers. Also in that regard, the prosecutor has traveled the state instructing officer and prosecutors (302 participants) on the requirements needed to obtain digital evidence either from a device or an electronic

communication service provider. There have also been additional separate sessions for the Maine State Police Major Crime Unit, the Computer Crimes Unit, or an offshoot of officers working on digital evidence.

Recently, the AAG has created sample warrants for searching digital devices, cellular providers, or electronic communication service providers (such as Google or Facebook) that can serve as a guide to officers with the material that the providers collect and will supply with proper legal process. In addition, the prosecutor has worked on policies and forms necessary to either return or destroy devices that have been collected as evidence for many years.

Finally, the computer crimes AAG has been the primary prosecutor on a case investigated by the CCU charging Eric Bard with several counts of sexual exploitation of a minor, gross sexual assault, unlawful sexual contact and assault. The case is presently awaiting trial. Other cases prosecuted involved a case referred by the District Attorney's Office when the defense requested discovery of a proprietary law enforcement software, electronic threats and harassment of a police officer, and most recently sexual exploitation of a young girl investigated by the CCU.

### **Health and Human Services Division**

**Division Profile:** The Health and Human Services Division is comprised of 16 positions.

- Jane Gregory, Chief
- 12 AAGs
- 1 Research Assistant
- 2 Secretaries

A description of HHS's various clients and job responsibilities for those clients follows:

**DHHS clients:** The Division provides legal counsel and representation to the Maine Department of Health and Human Services (DHHS) on all matters except for child protection and child support. The HHS Division represents the following DHHS clients: the two state psychiatric hospitals (Dorothea Dix Psychiatric Center and Riverview Psychiatric Center); the Office of Substance Abuse & Mental Health Services; the Office of Aging & Disability Services (including Long-Term Support Services, Developmental Disabilities and Brain Injury and Adult Protective Services); the Office of Child and Family Services (except for child protective services); the Maine Center for Disease Control and Prevention (including Division of Environmental & Community Health, the State Epidemiologist, Public Health Operations, Public Health Systems, Division of Disease Control, Division of Disease Prevention and Division of Public Health Nursing); the Office of Family Independence (including Support Enforcement and Recovery, Disability Determination, and Fraud Investigations & Recovery); the Office of MaineCare Services (OMS)(including Value-Based Purchasing, Provider Services, Contract Management, Policy, Rate Setting, Pharmacy Services, Audit and Program Integrity); and the Division of Licensing & Certification.

**Job Responsibilities:** HHS represents the two state psychiatric hospitals and seven community hospitals at involuntary commitment district court hearings and any appeals to Superior Court or the Law Court that might follow. HHS also represents the Department at involuntary medication administrative ("Harper") hearings, held pursuant to 15 M.R.S. § 107. Harper hearing decisions, as well as the decisions of clinical review panels on involuntary medication, pursuant to 34-B M.R.S. § 3861(3) can be appealed to the Superior Court and the Law Court, and the HHS Division represents the Department in those appeals as well. Representation includes giving advice on Maine forensic patients who receive treatment and residential placement in a South Carolina facility.

The HHS Division represents the Office of MaineCare Services (OMS) and the Office of Family Independence in its administration and oversight of all state and federal/state benefit or welfare programs. These include Maine Medicaid (known as "MaineCare"), TANF, ASPIRE, Food Supplement Program, and a number of state-funded services. Representation includes advising on eligibility, ensuring that the Maine programs are in compliance with federal laws and guidelines, and defending appeals and complaints at administrative hearings and in state and federal court.

MaineCare claims the lion's share of the annual Maine Budget, and HHS is responsible for representing and advising the Department in all MaineCare matters. Representation ranges from advising the Department on legislative and CMS initiatives, to eligibility and beneficiary appeals of coverage denials, to audit and provider reimbursement issues, to assisting the Department with filing State Plan Amendments with CMS and advising on "Tax and Match" matters.

In the aftermath of the Pineland Consent Decree (which involved services for intellectually disabled adults) and the continuing AMHI Consent Decree, HHS represents the Department at numerous administrative hearings of appeals of service denials or reductions. Many of these cases are appealed to the Superior Court or Law Court. Most recently, HHS has defended ADA claims or complaints brought against the Department by consumers.

The State of Maine is the public guardian (and sometimes conservator) of hundreds of vulnerable Maine citizens. HHS represents OADS in probate court matters involving emergency, temporary and permanent guardianships, as well as the day to day questions that arise out of such guardianships. Because HHS does not have the capacity to travel all over this large state to attend probate hearings, it manages and oversees a cadre of outside counsel who represent the Department in guardianship matters in probate courts (except for Kennebec and Somerset Probate Court matters, which are handled directly by HHS).

Representation of the Division of Licensing and Certification includes assisting the Department in its duty to enforce the licensing and certification laws regulating health facilities such as hospitals and nursing facilities, as well as Eating Establishments.

Rule review is a large part of HHS' practice, and HHS has also initiated rule training for our clients.

**Division Highlights:** In 2018, the total number of involuntary commitment court hearings scheduled for all state and community hospitals was 1,096; for 2019, that number is expected to increase by at least 10%.

In 2019, HHS partnered with the Litigation Division to represent the Department in a Superior Court case concerning the Medicaid Expansion.

Additionally, in 2017 through the present, HHS has partnered with the Litigation Division to represent the Department in the 2019 *Mabel Wadsworth* law court matter, which was a constitutional challenge to the MaineCare rule that prohibits abortions except in the case of incest, rape and life of the mother.

In 2019, HHS assisted the Department in amending its General Assistance program regulations, to better comport with the 2015 law concerning aid to non-citizens, and in a timely manner so that the Portland asylum seekers could be assisted.

In 2018, the HHS Division assisted in over 100 rulemakings for the Department, many of which were complex and required legal analysis of both Maine state law as well as federal law. Some of the more interesting rulemakings include the Death with Dignity, the Maine Background Check Center rule, and the Rules Governing Community-Based Drug Overdose Prevention Program.

In 2017 HHS represented the Department in a Superior Court case dissolving the ELR Care receivership case, which had languished for over seven years, and cost the Department hundreds of thousands of dollars in receivership costs.

In 2018 the Department, with the assistance of HHS counsel, prevailed in the Getchell bankruptcy case and was able to terminate Rena Getchell as a MaineCare provider.

### **Investigation Division**

**Division Profile:** The Investigation Division is comprised of 9 positions.

- Brian MacMaster, Chief
- 7 Investigators
- 1 Secretary

The Investigation Division carries out a wide variety of both criminal and civil investigations and serves as a resource for specialized assistance and advice for other agencies with respect to investigations. The Division carries out statutorily-required investigations of fraud against the State, and the use of deadly force by law enforcement officers. The Division is also responsible for enforcing the Maine Civil Rights Act and coordinating with law enforcement and prosecutors in such matters. The Division is the primary investigative agency in the State for any sort of public corruption. The Division provides investigative services for other divisions of the Attorney General's Office, several state licensing boards, and the eight District Attorneys in the State when the need arises. Members of the Division are often called upon to provide specialized training to other

members of Maine's law enforcement community, including police chiefs and sheriffs. The Division Chief serves as the Attorney General's liaison with the State's law enforcement community.

### **Litigation Division**

**Division Profile:** The Litigation Division is comprised of 23 positions.

- Susan Herman, Chief
- 18 AAGs
- 3 Paralegals
- 2 Secretaries

The Litigation Division has a wide variety of responsibilities, which can be roughly divided into three parts:

**General Litigation:** The Litigation Division is responsible for the defense of claims filed against the State or its officials under state and federal law, and when they are sued in civil rights actions, including employment related claims. This group also handles suits challenging the constitutionality of Maine statutes and rules, suits for money damages, injunctive or declaratory relief, or when the suit is particularly complex. Attorneys in the Litigation Division often collaborate, mentor or serve as co-counsel with attorneys in other divisions.

The Litigation Division also handles matters related to the federally recognized Indian tribes and oversees tribal matters on an office wide basis. The Public Access Ombudsman, a position created by the Legislature to address issues relating to Maine's Freedom of Access Law, is also part of the Litigation Division. This position provides training and education for requestors and responding agencies, informal dispute resolution of Freedom of Access conflicts, and recommendations for improvement to the Freedom of Access Act.

The Litigation Division also deals with unique matters not associated with a state agency, such as Opinion of the Justices requests, boundary disputes with other states, and attempting to recover an original copy of the Declaration of Independence. The Litigation Division oversees all civil appeals, sometimes assists with criminal appeals, oversees multi-state litigation and amicus matters, outside counsel requests, and serves as a resource for litigation-related issues within the Office.

**Tax Unit:** Within the Litigation Division, there is a Tax Unit, which handles all civil litigation and appeals involving Maine Revenue Services, including bankruptcy and collection work, and provides advice to the agency. The Tax Unit generates more revenues than it costs Maine Revenue Service to fund the unit.

**General Government:** Also within the Litigation Division is the General Government Unit, which provides legal advice and representation in administrative and judicial proceedings to a variety of state agencies, boards and commissions, including the Department of Education,

the Commission on Governmental Ethics and Election Practices, the Bureau of Corporations, election matters within the Secretary of State, the Department of Labor, the Department of Defense and Veterans Management, and the Department of Administrative and Financial Services, the Department of Corrections, the Department of Economic and Community Development, the Department of Secretary of State, the cultural agencies, the Office of Marijuana Policy, the Maine Health Data Organization, the State Treasurer and the State Auditor. This group is actively engaged in matters relating to child labor laws, unemployment compensation, payment of wages, state and school construction contracts, state leases, medical and adult use marijuana, the Maine Clean Election Act, election recounts, teacher certification, and special education.

### **Division Highlights:**

- We have successfully defended the constitutionality of a variety of state laws and regulations, including ranked choice voting, the Maine Civil Rights Act, a MaineCare rule related to pooled special needs trusts, the exclusive bargaining provisions of Maine's public-sector bargaining law, the Broadband Sustainability Fee, Maine Resident Income Tax Credit, and Medical Marijuana. We are currently defending Maine's school voucher program, which, for the third time, is being challenged in court based upon the exclusion of sectarian school from the public - school tuition program.
- We successfully defended a lawsuit against the State seeking \$7.5 million in alleged underpayments for medical services provided to students under the MaineCare program.
- We worked with the Consumer Division to finalize a multi-state settlement with the Participating Manufacturers resolving all disputes over diligent enforcement of Maine's tobacco laws for the years 2004 through 2017. As a result of the settlement, in 2018 and 2019, Maine received approximately \$35 million beyond its usual payments from the Participating Manufacturers. The settlement also results in Maine seeing increased payments in future years. The settlement saved the state the time and expense of burdensome, protracted litigation of the NPM adjustment dispute pertaining to all years from 2004 through 2017 (with the potential for future settlement of the 2018-2022 disputes as well); brought an immediate increase in revenue for two annual payments; established a more stable stream of annual revenue; and significantly reduced future withholding from the PMs' ongoing payments.
- We represented the State's interests in a number of lawsuits relating to Medicaid expansion, the Affordable Care Act, and the authority of the Attorney General.
- We have participated in a number of multi-state lawsuits relating to changes in federal immigration law, rule, and policies which impact the interests of the State of Maine.

## **Natural Resources Division**

**Division Profile:** The Natural Resources Division is comprised of 10 positions.

- Scott Boak, Chief
- 8 AAGs
- 1 Secretary

The Natural Resources Division provides legal services to the Department of Environmental Protection (DEP), including the Board of Environmental Protection (BEP) and the Board of Underground Storage Tank Installers; the Department of Agriculture, Conservation and Forestry (DACF), including the Bureau of Agriculture, Food and Rural Resources, the Bureau of Parks and Lands, the Bureau of Forestry, the Maine Geological Survey, the Animal Welfare Program, the Land Use Planning Commission, the Maine Milk Commission, the Board of Pesticide Control, the Land for Maine's Future Program, the Nutrient Management Board, and the Maine Potato Board; the Department of Inland Fisheries and Wildlife (IFW); the Department of Marine Resources (DMR), including the Coastal Zone Program; the Clean-up and Response Fund Review Board; the Baxter State Park Authority; the Saco River Corridor Commission; and the State's Soil and Water Conservation Commissions.

**Division Highlights:** The Division's attorneys actively advise and represent state agencies in connection with a variety of complex and controversial matters during both the administrative decision-making process and in the defense of those decisions on judicial appeal. This includes ongoing representation of DEP and other agencies in licensing matters such as New England Clean Energy Connect, Nordic Aquafarms, and Juniper Ridge Landfill, and past representation of DEP with permitting for the construction of an Amtrak layover station in Brunswick and a new Maine Turnpike Authority toll plaza in York, the proposed Fiberight solid waste processing facility in Hampden, and the Passadumkeag grid-scale wind energy project in Greenbush and Grand Falls Township. The Division successfully defended several of these permits in Superior Court and the Law Court. Division attorneys represented DEP in a series of ongoing matters involving Dubois Livestock's solid waste facility in Arundel, including litigation over DEP's authority to enter and inspect the facility and in defense of DEP's denial of requests for confidential informant information in Superior Court and the Law Court. The Division is now defending Superior Court appeals of DEP's revocation of Dubois' license based on violations posing serious risks to the environment and to human health, and DEP's clean-up order for a contaminated site beneath an apartment building in Auburn.

Division attorneys also represented DMR in complex negotiations resulting in a multi-party settlement for partial dam removal and improved fish passage at the Saccarappa dam in Westbrook, and advised DEP with respect to water quality certifications for this and other related hydro projects on the Presumpscot River. These efforts will open important fish habitat in the Presumpscot River above Saccarappa to anadromous fish runs for the first time in over 100 years and will further DMR's fish restoration plans for that watershed. The Division is also advising and representing DMR in connection with federal litigation and rulemaking involving regulation of the lobster industry consistent with protections for other species such as the Atlantic Right Whale under the Endangered Species and Marine Mammal Protection Acts. Division members

represented agencies such as BEP with respect to promulgation of numerous major substantive rules including rules pursuant to the Maine Metallic Mineral Mining Act and assisted the Town of Kennebunkport in defending its ownership of sand parcels at Goose Rocks Beach in the Superior Court and Law Court.

With respect to enforcement, Division members regularly work with client agencies and the regulated community and review and sign administrative consent agreements resolving civil violations of various environmental laws. Division attorneys advised the state natural resource trustee agencies (DEP, DMR, IFW, and DACF) in reaching a settlement for natural resources damages related to prohibited oil discharges associated with oil terminal facilities on the Penobscot River in Hampden, and are similarly advising the trustees on a natural resources damages claim against the owners of the former HoltraChem site in Orrington relating to mercury contamination in the Penobscot River resulting from discharges from the plant. The Division, on behalf of DEP and working with the Town of Lovell, tried an enforcement action in Superior Court and obtained injunctive relief for knowing violations of Maine's Shoreland Zoning Law and municipal ordinances on Kezar Lake. The Division also initiated and resolved multiple actions for violations of the Forest Practices Act and the Land Use Planning Commission's statutes and rules, and prosecuted criminal matters involving falsification of environmental monitoring data required to be reported to DEP and the intentional dumping of sewage in areas leading to State waters. Division attorneys continue to pursue an action against the owner of the Moose Mountain ski resort in Greenville for failure to comply with deed restrictions requiring maintenance of ski lifts and trails. The Division has also been defending in federal court Maine's jurisdiction over portions of the Penobscot River and the State's primary role in setting water quality standards for waters within its jurisdiction under the Clean Water Act. On a final note, Division attorneys filed a lawsuit against VW, Audi, and Porsche for violation of DEP rules on new motor vehicle standards related to installation of emission control "defeat devices" on certain 2009-2016 model year diesel vehicles that ultimately resulted in a settlement of approximately \$5 million.

### **Professional and Financial Regulation**

**Division Profile:** The Professional and Financial Regulation Division is comprised of 14 positions.

- Andrew Black, Chief
- 12 AAGs
- 1 Research Assistant
- 1 Secretary

The Division provides legal counsel and representation to the Department of Professional and Financial Regulation (PFR), as well as the Maine Public Employees Retirement System (MePERS), Maine Harness Racing Commission, Bureau of Alcoholic Beverages & Lottery Operation, State Board of Property Tax Review, Gambling Control Board, Emergency Medical Services Board, the Criminal Justice Academy Board of Trustees, and the Combat Sports Authority of Maine.



The Division provides legal advice to the broad spectrum of PFR bureaus and offices.<sup>1</sup> This includes the Office of Professional and Occupational Regulation (“OPOR”) which consists of 37 professional licensing boards, commissions, and registration programs dedicated to the protection of the public through licensure, inspection, enforcement/complaint handling and discipline of its over 100,000 active licensees. It also includes the 6 professional licensing boards that are affiliated with PFR. In addition to providing legal advice, Division attorneys actively assist in investigations, prosecute disciplinary actions before the boards, defend the decisions of the boards on appeal in court and defend the agencies in state or federal court.

**Division Highlights:** A large part of the Division’s work pertains to the investigation, resolution, and prosecution of the many complaints filed against persons licensed by the Division’s various clients. Since 2011 the number of new cases docketed by the Division’s professional licensing clients has risen by over 30%, going from approximately 1500 to 2000 new cases docketed annually. Yet, through emphasizing standardization, the adoption of best practices, and improved coordination with the boards, the number of OPOR cases that are open at any one time for more than 365 days has dropped from 200 to less than 50 during that same period. Although this rise in case volume has led to a corresponding increase in the number of adjudicatory hearings, the number of these adjudicated cases that have been appealed to superior court has decreased.

The Division’s attorneys have continued to defend important consumer protections that have come under attack by insurers. In order to implement a plan to automatically increase the automobile insurance rates for drivers over the age of 65, Progressive Ins. Co. challenged an insurance statute prohibiting premium increases based solely on the age of a driver. With legal assistance from the Division, the Superintendent was able to successfully disapprove Progressive’s proposed rating plan. Similarly, the Division successfully defended in state court a challenge by Providence Mutual Fire Ins. Co. to the Superintendent’s interpretation that a statute prohibits mid-term policy cancellation for a change of risk where the increased risk of loss pre-dated the policy renewal date and did not manifest during the current policy term. In a First Amendment challenge in federal court by an adjusters trade association—National Fire Adjustment Co., the Division won a partial victory. The court struck down the applicable statute’s complete prohibition on “soliciting” public adjuster services within the 36 hours after a loss, but upheld the prohibition on “offering” services for 36-hours, effectively keeping in place the consumer protection against adjusters contracting with consumers in the immediate aftermath of a stressful loss.

Misconduct related to controlled substances remains a major focus of the Division’s work. Prescription drug diversion and inappropriate prescribing of controlled substances continue to be major issues for the health care related licensing boards. In addition to investigating and prosecuting disciplinary actions before the boards, the Division led efforts to revise the protocols of the professional review committee recognized by the boards (the Medical Professionals Health Program) to help ensure more effective treatment and monitoring of health care professionals with substance abuse issues. The Division has also proactively worked to improve the relationship of the boards and the MPHP.

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<sup>1</sup> PFR regulates financial services, including insurance companies, state-chartered banks and credit unions, investment advisors, and mortgage companies. PFR also regulates numerous professions and occupations. The OAG’s PFR division supports the Office of Professional and Occupational Regulation, Bureau of Financial Institutions, Bureau of Consumer Credit Regulation, and Bureau of Insurance. The OAG’s Criminal Division provides support to the Office of Securities.

Resources expended to support gaming regulation have increased over the last 2 years and the prospect of legalized sports wagering in Maine suggests that the need for legal resources in this area will increase.

### **Office of the Chief Medical Examiner**

**Division Profile:** The Office of the Chief Medical Examiner (OCME) is comprised of 13 positions.

- Mark Flomenbaum, MD, PhD, Chief Medical Examiner
- 1 Deputy Chief Medical Examiner
- 1 Office Administrator
- 2 Medicolegal Death Investigators
- 1 Planning and Research Associate II
- 3 Planning and Research Associate I
- 1 Director of Laboratory and Mortuary Services
- 2 Medical Examiner Assistants.

The Chief Medical Examiner is appointed by the Governor. The office is administratively within the Department of the Attorney General and is empowered to take jurisdiction over all deaths that are not known to be due to exclusively natural processes. All violent, criminal, suspicious, in-custody and deaths of apparent undetermined causes or manners fall under the jurisdiction of the OCME pursuant to The Medical Examiner Act, Title 22, Chapter 711.

In 2016 the Office of Chief Medical Examiner submitted a functional job analysis (FJA) for all technical and professional positions in the office. The resulting reorganization was effective in 2017. This reorganization created the Planning and Research Associate II position who supervises the three Planning and Research Associate I positions. The reorganization also better defined the roles of the professional/technical staff.

**Cases Investigated:** The total number of deaths investigated continues to gradually increase. In order to investigate the increasing number of deaths due to drug overdoses, the OCME implemented a protocol change in 2016. This change dictates that a urine drug test may be requested during an external examination on a case-by-case basis. This allows the OCME to determine which suspected overdoses should be brought in for autopsy, lowering the number of required autopsies in suspected drug deaths.

Additionally, the OCME changed policy at the end of 2015 to take jurisdiction and conduct a records-review pursuant to 22 M.R.S. §3028(6) on all deaths resulting from axial skeletal fractures. This gave the OCME the ability to take jurisdiction and correctly certify more accidental deaths without the increased costs associated with external examinations and autopsies. Prior to this, pelvic and femur fractures not associated with any suspicious circumstances were released back to the treating physician and classified as natural deaths.

YEAR	2017	2018
TOTAL Deaths Reported	3,272	3,252
<b>OCME Jurisdiction</b>	<b>1,704</b>	<b>1,805</b>
AUTOPSIES	319	264
EXAM ONLY	1,185	1,084
Paper Reviews	200	457

#### Changes in the Office:

Over the past eight years several legislative changes have been made. These changes have made the OCME more efficient and able to better serve the people of Maine. Examples include, but are not limited to: increasing the pay for a field Medical Examiner to \$100 per examination. This compensation for service has led to higher satisfaction in our volunteer Medical Examiners and better prospects for recruitment. Amending 22 M.R.S. § 3028-A to allow the OCME to assume responsibility for the disposal of identified, unclaimed human remains that have been in the care of OCME for a period of thirty days. This allows the OCME to act as the authorized person in making final arrangements with local funeral homes.

In the most recent legislative session, several changes were enacted with the passing of LD 672 signed by Governor Mills. These changes include clearly stating that a natural death does not need to be reported to the OCME just because it occurs within 24 hours of a patient being admitted to a health-care facility, deaths due to the consequences of long-term alcohol use is no longer a reportable death, and Medicolegal Death Investigators are now authorized to sign cremation certificates.

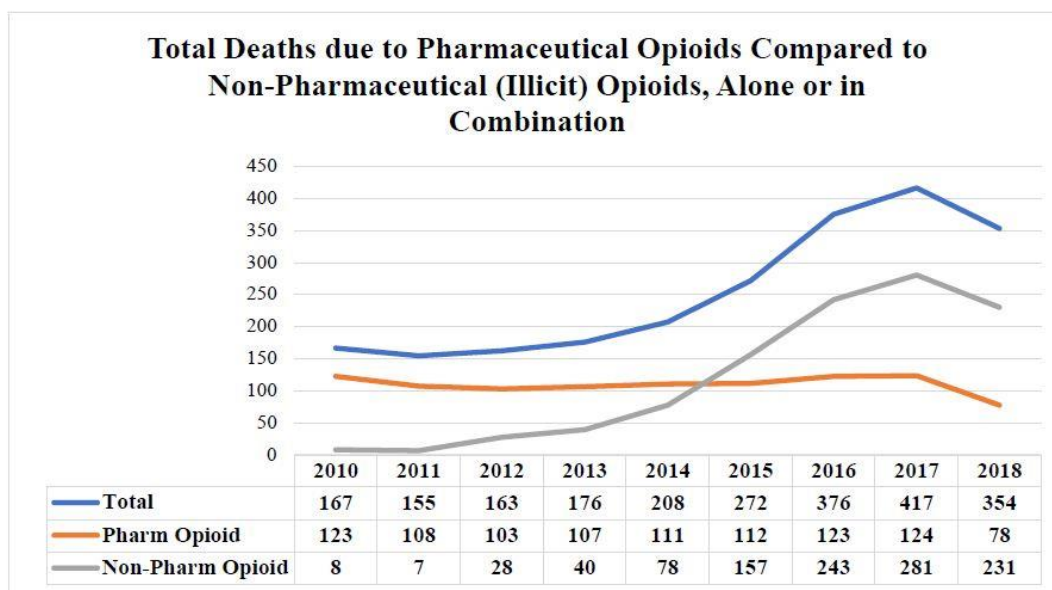
In 2017 the OCME was granted full accreditation by the National Association of Medical Examiners (NAME). This accreditation is awarded to Medical Examiner offices that meet or exceed a specific national standard. NAME accredited offices represent the highest quality of death investigations. A recommendation that came out of this accreditation process was a new facility. As the current office continues to grow, a larger facility will be required to meet the demands of the workflow. An architectural assessment was done on the existing building and found several areas that need attention. The OCME has met the capacity of the existing building.

The OCME has developed uniform statewide protocols for death investigations that meet national standards and trains medical examiners and other death investigators to use the protocols consistently. The purpose of these efforts is to improve the quality of the statewide medical examiner system to meet national standards. The following chart shows some overall numbers and compares them to the national averages.

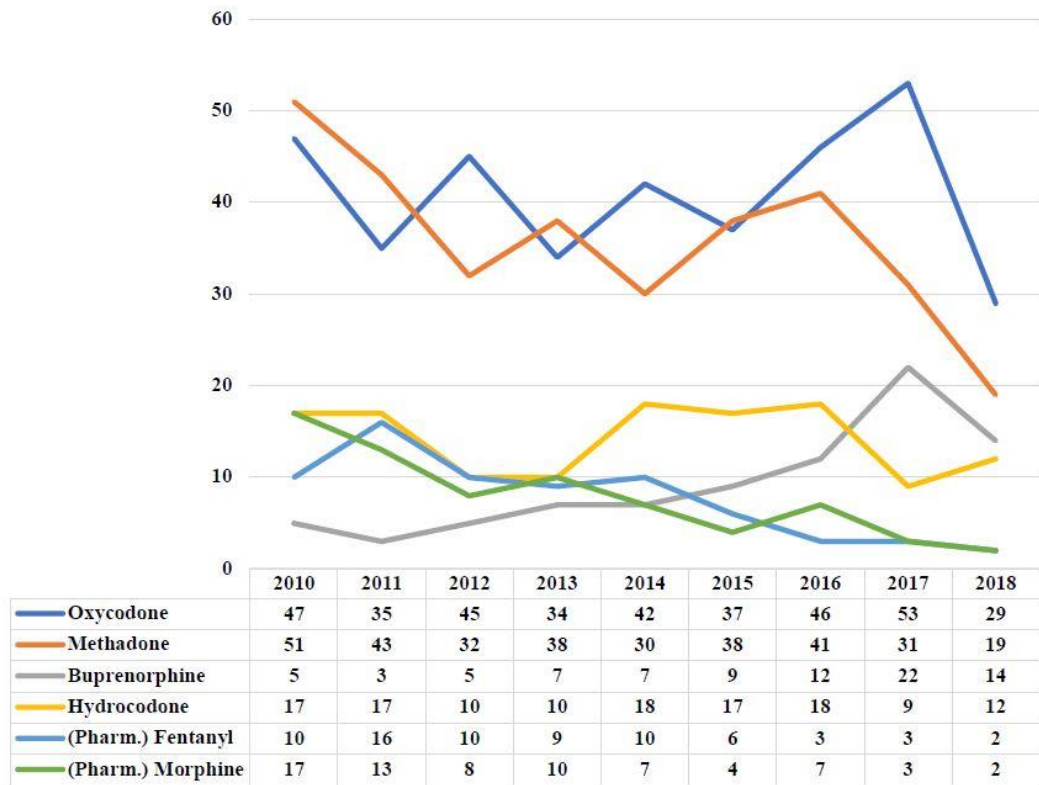
	2017 Actual	2018 Actual
# of reported deaths	3,272	3,252
# of reported deaths autopsied	319	264
Avg # months for processing autopsies	3.0	3.0
% deaths that become OCME cases	within range	within range
% ME cases autopsied Compared Nat'l Std. (40%)	18.7%	14.6%

Beginning in 2016 the OCME created and disseminated an Annual Report. This report is available to the public through the Maine State Library.

The OCME continues to assist Dr. Marcella Sorg in gathering data to provide statistics on the overwhelming problem of prescription drug abuse in Maine in an effort to provide legislators as well as other state and federal agencies with the data to be used in policy decisions related to this problem. This research is funded by the Maine OAG. Two charts are included to show the data that has been so important. Individual decedents often have more than one drug present attributed to the cause of death. Thus, numbers and percentages on the charts will be greater than 100%.



### Deaths due to Key Pharmaceutical Opioids, Alone or in Combination



## **District Attorneys**

The eight District Attorney offices are responsible for the prosecution of the majority of all criminal offenses occurring in their respective prosecutorial districts, with the exception of homicides, as well as traffic infractions and some civil violations. This caseload is carried statewide by eight popularly-elected District Attorneys and a total of 97.5 Assistant District Attorneys. Each District Attorney office spends many hours preparing criminal complaints, motions, memoranda of law, legal briefs, and other pleadings. A great deal of time is spent reviewing thousands of police reports and supporting evidence (such as cruiser and body camera videos) in order to determine whether sufficient evidence exists for the issuance of a criminal complaint.

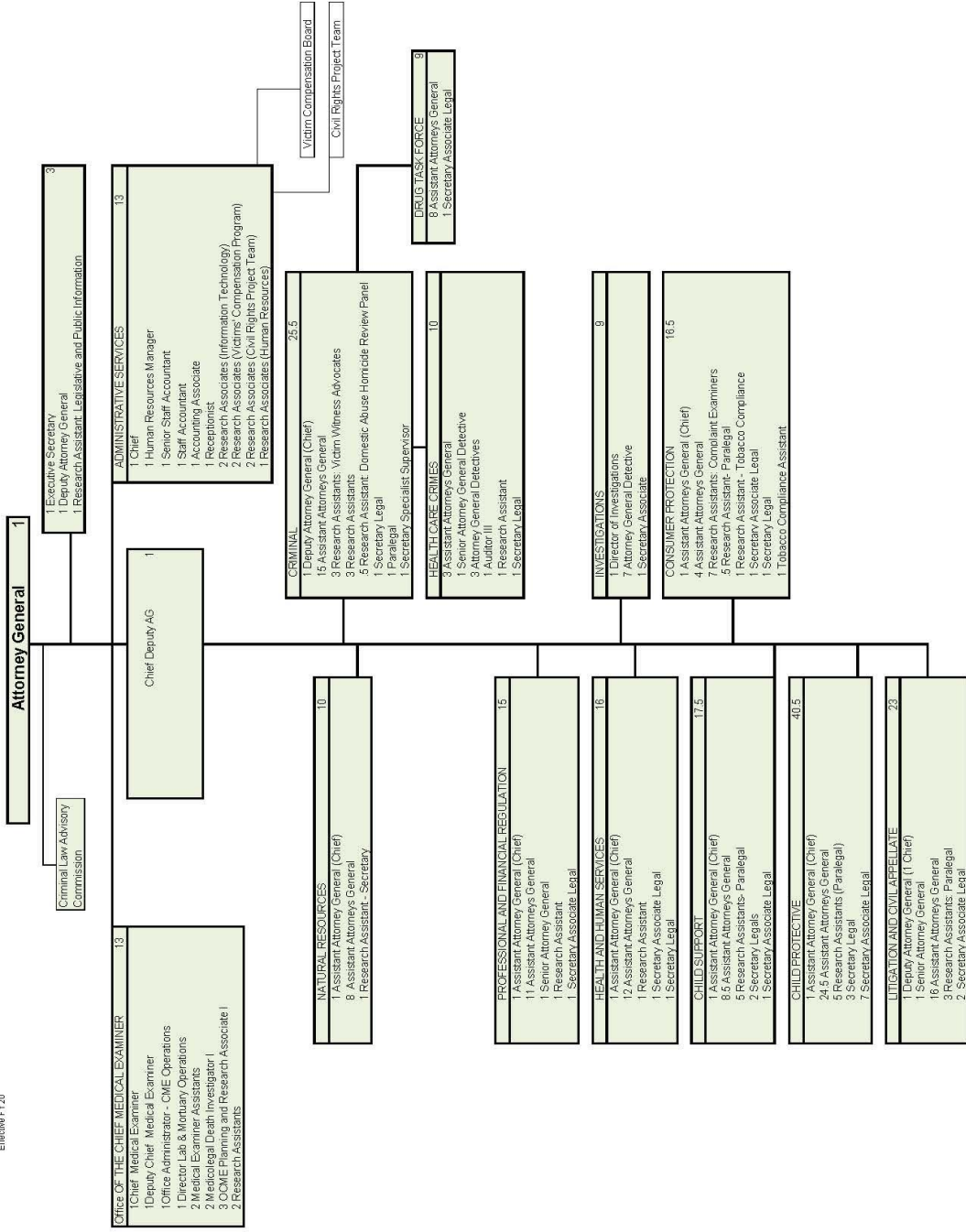
There are a number of time-consuming activities that keep all prosecutors extremely busy. Their activities include trial preparation and hearings; Grand Jury presentations; meetings with police officers, witnesses and victims; being on-call 24-hours-per-day; reviewing discovery; actively participating in treatment courts; and handling many criminal appeals. Furthermore, in many prosecutorial districts, District Attorney offices cover courts in several distant locations. District Attorney offices also sponsor police training classes and offer continuing legal education to law enforcement in order to enhance the quality of investigations to achieve successful prosecutions.

It has been an ongoing concern for many years that prosecutors have been required to maintain a high case load. The extraordinarily heavy workload of these offices are managed by way of long hours and hard work. While prosecutors have been able to successfully meet this challenge, it will be hard for prosecutors to maintain this high-level of pressure without more resources. The District Attorneys will continue to work with state and local governments, the Judicial Branch, and law enforcement to deal with the many challenges that face them and continue to pursue the goal of promoting public safety and justice for the people of Maine.

The District Attorney offices and the Criminal Division of the OAG actively engage in the Maine Prosecutors' Association. This association meets monthly, providing a meaningful opportunity for discussion on issues of mutual concern.

Finally, the Administrative Division of the OAG handles the payroll, benefits and other human-resource matters for all the District Attorneys and Assistant District Attorneys, while all other staff in the District Attorney offices are county employees.

**C.      Organizational Structure Organizational Chart**



\*This chart reflects headcount of 223: 210 for the Office of the Attorney General and 13 for the Office of the Chief Medical Examiner  
 \*\* This chart includes vacant positions



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**E. Financial Summary**

**Actual Expenditures by Program by Fund**  
**Fund as Percent of Total Expenditure**  
**Consolidated Financial Summary**  
**Expenditures by Fund**  
**Position Count by Account**

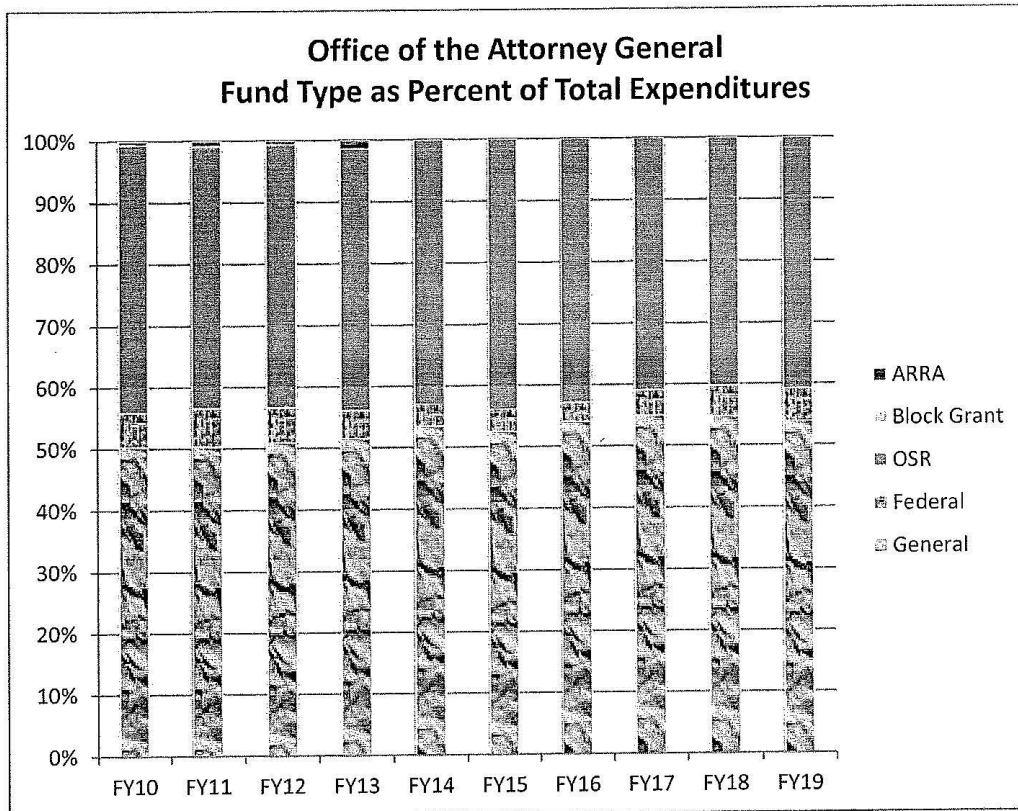
Office of the Attorney General  
Actual Expenditures by Program by Fund

FY	Program	FUND						Total
		General	Highway	Federal	OSR	Block Grant	ARRA	
2010	Civil Rights	\$202,723						\$202,723
	Attorney General	\$4,262,701		\$1,254,100	\$5,142,768		\$132,068	\$10,791,637
	District Attorneys	\$8,031,030		\$39,306				\$8,070,336
	Chief Medical Examiner	\$1,273,752		\$36,513	\$20			\$1,310,285
	AG - Human Services				\$5,837,204			\$5,837,204
	Victims' Compensation			\$191,396	\$790,429		\$42,289	\$1,024,114
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$136,130			\$136,130
	<b>Total FY10</b>	<b>\$13,770,206</b>	<b>\$0</b>	<b>\$1,521,315</b>	<b>\$11,906,551</b>	<b>\$0</b>	<b>\$174,357</b>	<b>\$27,372,429</b>
2011	Civil Rights	\$195,239						\$195,239
	Attorney General	\$3,945,849		\$1,236,878	\$4,750,822		\$231,187	\$10,164,736
	District Attorneys	\$7,836,006		\$64,207	\$81,653			\$7,981,866
	Chief Medical Examiner	\$1,254,847		\$79,943				\$1,334,790
	AG - Human Services				\$5,537,601			\$5,537,601
	Victims' Compensation			\$270,500	\$684,183			\$954,683
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$143,842			\$143,842
	<b>Total FY11</b>	<b>\$13,231,941</b>	<b>\$0</b>	<b>\$1,651,528</b>	<b>\$11,198,101</b>	<b>\$0</b>	<b>\$231,187</b>	<b>\$26,312,757</b>
2012	Civil Rights	\$189,346						\$189,346
	Attorney General	\$4,146,835		\$1,189,300	\$5,014,380		\$166,869	\$10,517,384
	District Attorneys	\$7,736,437		\$63,380	\$23,226			\$7,823,043
	Chief Medical Examiner	\$1,270,678		\$47,250	\$14,979			\$1,332,907
	AG - Human Services				\$5,392,618			\$5,392,618
	Victims' Compensation			\$202,698	\$645,719			\$848,417
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$107,869			\$107,869
	<b>Total FY12</b>	<b>\$13,343,296</b>	<b>\$0</b>	<b>\$1,502,628</b>	<b>\$11,198,791</b>	<b>\$0</b>	<b>\$166,869</b>	<b>\$26,211,584</b>
2013	Civil Rights	\$173,816						\$173,816
	Attorney General	\$4,470,157		\$868,887	\$4,957,414		\$372,287	\$10,668,745
	District Attorneys	\$7,513,686		\$57,629				\$7,571,315
	Chief Medical Examiner	\$1,317,921		\$45,001	\$14,823			\$1,377,745
	AG - Human Services				\$5,265,222			\$5,265,222
	Victims' Compensation			\$239,369	\$773,283			\$1,012,652
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$99,690			\$99,690
	<b>Total FY13</b>	<b>\$13,475,580</b>	<b>\$0</b>	<b>\$1,210,886</b>	<b>\$11,110,432</b>	<b>\$0</b>	<b>\$372,287</b>	<b>\$26,169,185</b>
2014	Civil Rights	\$187,182						\$187,182
	Attorney General	\$5,215,158		\$749,497	\$5,270,328			\$11,234,983
	District Attorneys	\$8,148,250		\$41,436	\$15,514			\$8,205,200
	Chief Medical Examiner	\$1,541,125		\$20,250	\$8,370			\$1,569,745
	AG - Human Services				\$5,994,302			\$5,994,302
	Victims' Compensation			\$206,068	\$715,127			\$921,195
	Contingent - Lawsuit							\$0
	Contingent - Lawsuit							\$0
	Fund for Healthy Maine				\$103,051			\$103,051
	<b>Total FY14</b>	<b>\$15,091,715</b>	<b>\$0</b>	<b>\$1,017,251</b>	<b>\$12,106,692</b>	<b>\$0</b>	<b>\$0</b>	<b>\$28,215,658</b>

Office of the Attorney General  
Actual Expenditures by Program by Fund

FY	Program	FUND					Total
		General	Highway	Federal	OSR	Block Grant	
2015	Civil Rights	\$194,538					\$194,538
	Attorney General	\$5,530,612		\$764,162	\$5,614,080		\$11,908,854
	District Attorneys	\$8,679,830		\$77,260	\$98,611		\$8,855,701
	Chief Medical Examiner	\$1,418,616		\$94,807	\$3,874		\$1,517,297
	AG - Human Services				\$6,644,948		\$6,644,948
	Victims' Compensation			\$168,807	\$715,947		\$884,754
	Contingent - Lawsuit						\$0
	Contingent - Lawsuit						\$0
	Fund for Healthy Maine				\$142,913		\$142,913
	<b>Total FY15</b>	<b>\$15,823,596</b>	<b>\$0</b>	<b>\$1,105,036</b>	<b>\$13,220,373</b>	<b>\$0</b>	<b>\$30,149,005</b>
2016	Civil Rights	\$232,409					\$232,409
	Attorney General	\$6,371,673		\$649,306	\$5,789,465		\$12,810,444
	District Attorneys	\$9,555,670		\$77,604	\$109,554		\$9,742,828
	Chief Medical Examiner	\$1,934,997		\$172,938	\$13,140		\$2,121,075
	AG - Human Services				\$7,552,453		\$7,552,453
	Victims' Compensation			\$137,284	\$769,859		\$907,143
	Contingent - Lawsuit						\$0
	Contingent - Lawsuit						\$0
	Fund for Healthy Maine				\$131,988		\$131,988
	<b>Total FY16</b>	<b>\$18,094,749</b>	<b>\$0</b>	<b>\$1,037,132</b>	<b>\$14,366,459</b>	<b>\$0</b>	<b>\$33,498,340</b>
2017	Civil Rights	\$183,269					\$183,269
	Attorney General	\$6,638,638		\$624,049	\$5,765,234		\$13,027,921
	District Attorneys	\$10,267,564		\$459,872	\$114,442		\$10,841,878
	Chief Medical Examiner	\$2,154,655		\$191,454	\$31,600		\$2,377,709
	AG - Human Services				\$7,583,526		\$7,583,526
	Victims' Compensation			\$164,724	\$723,211		\$887,935
	Contingent - Lawsuit						\$0
	Contingent - Lawsuit						\$0
	Fund for Healthy Maine				\$132,750		\$132,750
	<b>Total FY17</b>	<b>\$19,244,126</b>	<b>\$0</b>	<b>\$1,440,099</b>	<b>\$14,350,763</b>	<b>\$0</b>	<b>\$35,034,988</b>
2018	Civil Rights	\$227,135					\$227,135
	Attorney General	\$6,880,166		\$782,228	\$5,853,290		\$13,515,684
	District Attorneys	\$10,824,290		\$563,553	\$123,423		\$11,511,266
	Chief Medical Examiner	\$2,283,830		\$380,150	\$40,232		\$2,704,212
	AG - Human Services				\$8,017,176		\$8,017,176
	Victims' Compensation			\$134,573	\$741,408		\$875,981
	Contingent - Lawsuit						\$0
	Contingent - Lawsuit						\$0
	Fund for Healthy Maine				\$131,135		\$131,135
	<b>Total FY18</b>	<b>\$20,215,421</b>	<b>\$0</b>	<b>\$1,860,504</b>	<b>\$14,906,664</b>	<b>\$0</b>	<b>\$36,982,589</b>
2019	Civil Rights	\$232,508					\$232,508
	Attorney General	\$6,815,003		\$883,236	\$6,170,782		\$13,869,021
	District Attorneys	\$11,419,632		\$509,730	\$100,293		\$12,029,655
	Chief Medical Examiner	\$2,260,159		\$427,079	\$28,827		\$2,716,065
	AG - Human Services				\$8,465,439		\$8,465,439
	Victims' Compensation			\$222,428	\$832,394		\$1,054,822
	Contingent - Lawsuit						\$0
	Contingent - Lawsuit						\$0
	Fund for Healthy Maine				\$119,632		\$119,632
	<b>Total FY19</b>	<b>\$20,727,302</b>	<b>\$0</b>	<b>\$2,042,473</b>	<b>\$15,717,367</b>	<b>\$0</b>	<b>\$38,487,142</b>

Fiscal Yr	Fund				
	General	Federal	OSR	Block Grant	ARRA
FY02	59.79%	13.00%	24.25%	2.96%	0.00%
FY03	58.63%	12.38%	26.10%	2.89%	0.00%
FY04	55.43%	12.16%	29.21%	3.21%	0.00%
FY05	55.30%	12.08%	29.51%	3.12%	0.00%
FY06	56.25%	12.62%	28.06%	3.07%	0.00%
FY07	56.56%	12.86%	27.51%	3.07%	0.00%
FY08	52.64%	5.89%	41.41%	0.06%	0.00%
FY09	51.76%	4.93%	43.31%	0.00%	0.00%
FY10	50.31%	5.56%	43.50%	0.00%	0.64%
FY11	50.29%	6.28%	42.56%	0.00%	0.88%
FY12	50.91%	5.73%	42.72%	0.00%	0.64%
FY13	51.49%	4.63%	42.46%	0.00%	1.42%
FY14	53.49%	3.61%	42.91%	0.00%	0.00%
FY15	52.48%	3.67%	43.85%	0.00%	0.00%
FY16	54.02%	3.10%	42.89%	0.00%	0.00%
FY17	54.93%	4.11%	40.96%	0.00%	0.00%
FY18	54.66%	5.03%	40.31%	0.00%	0.00%
FY19	56.05%	5.52%	42.50%	0.00%	0.00%

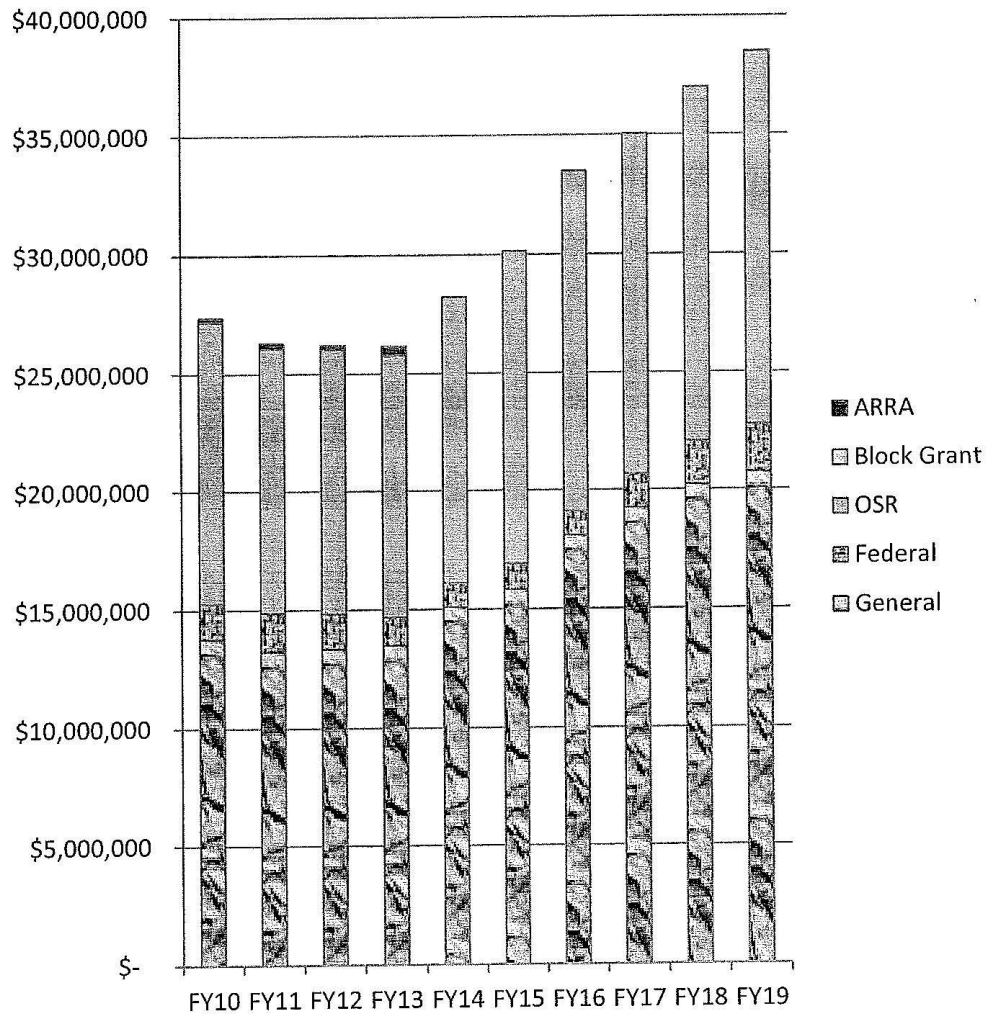


Office of the Attorney General

Consolidated Financial Summary  
Actual Expenditures by Fiscal Year

Fiscal Yr	Fund					Total
	General	Federal	OSR	Block Grant	ARRA	
FY10	\$ 13,770,206	\$ 1,521,315	\$ 11,906,551	\$ -	\$ 174,357	\$ 27,372,429
FY11	\$ 13,231,941	\$ 1,651,528	\$ 11,198,101	\$ -	\$ 231,187	\$ 26,312,757
FY12	\$ 13,343,296	\$ 1,502,629	\$ 11,198,791		\$ 166,869	\$ 26,211,585
FY13	\$ 13,475,579	\$ 1,210,886	\$ 11,110,431		\$ 372,287	\$ 26,169,183
FY14	\$ 15,091,714	\$ 1,017,250	\$ 12,106,692			\$ 28,215,657
FY15	\$ 15,823,596	\$ 1,105,037	\$ 13,220,373			\$ 30,149,006
FY16	\$ 18,094,749	\$ 1,037,132	\$ 14,366,460			\$ 33,498,340
FY17	\$ 19,244,126	\$ 1,440,098	\$ 14,350,763			\$ 35,034,988
FY18	\$ 20,215,422	\$ 1,860,505	\$ 14,906,664			\$ 36,982,590
FY19	\$ 20,727,302	\$ 2,042,473	\$ 15,717,368			\$ 38,487,142

## Office of the Attorney General Expenditures by Fund





State of Maine  
Budget & Financial Management System

Position Count by Account

		2020-S01 Prior Yr Actual FY 18	2020-S01 Total FY 20 (Cumulative)	2020-S01 Total FY 21 (Cumulative)
ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
01026A003901	CIVIL RIGHTS			
	LEGISLATIVE COUNT	2,000	2,000	2,000
	Account Total	2,000	2,000	2,000
01026A031001	ATTORNEY GENERAL			
	LEGISLATIVE COUNT	60,000	62,500	62,500
	Account Total	60,000	62,500	62,500
01026A040901	DIST ATTORNEYS SALARIES			
	LEGISLATIVE COUNT	93,500	97,500	97,500
	Account Total	93,500	97,500	97,500
01026A041201	CHIEF MEDICAL EXAMINER			
	LEGISLATIVE COUNT	12,000	12,000	12,000
	Account Total	12,000	12,000	12,000
	TOTAL 010 GENERAL FUND	167,500	174,000	174,000
	LEGISLATIVE COUNT	0,000	0,000	0,000
	FTE COUNT	167,500	174,000	174,000
	TOTAL 010 ATT00			
01326A031005	MEDICAID FRAUD CONTROL UNIT			
	LEGISLATIVE COUNT	10,000	10,000	10,000
	Account Total	10,000	10,000	10,000
01326A040902	DISTRICT ATTORNEYS'			
	LEGISLATIVE COUNT	6,000	6,000	6,000
	Account Total	6,000	6,000	6,000

State of Maine  
Budget & Financial Management System

Position Count by Account

		2020-S01 Prior Yr Actual FY 18	2020-S01 Total FY 20 (Cumulative)	2020-S01 Total FY 21 (Cumulative)
ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
01326A041201	CHIEF MEDICAL EXAMINER			
	LEGISLATIVE COUNT	0.500	1.000	1.000
	Account Total	0.500	1.000	1.000
TOTAL 013	FEDERAL EXPENDITURES FUND			
	LEGISLATIVE COUNT	16.500	17.000	17.000
	FTE COUNT	0.000	0.000	0.000
	TOTAL 013 ATT00	16.500	17.000	17.000
01426A031001	ATTORNEY GENERAL			
	LEGISLATIVE COUNT	12.500	12.500	12.500
	Account Total	12.500	12.500	12.500
01426A031002	LEGAL ASST TO OTHER AGENCIES			
	LEGISLATIVE COUNT	24.000	26.000	26.000
	Account Total	24.000	26.000	26.000
01426A031003	CONSUMER FRAUD DIV/RUST BOOK			
	LEGISLATIVE COUNT	2.000	5.000	5.000
	Account Total	2.000	5.000	5.000
01426A031007	LEGAL SERVICES			
	LEGISLATIVE COUNT	3.000	3.000	3.000
	Account Total	3.000	3.000	3.000
01426A031008	LEGAL SERVICES			
	LEGISLATIVE COUNT	4.000	4.000	4.000
	Account Total	4.000	4.000	4.000
01426A031010	PETROLEUM MARKETING FUND			
	LEGISLATIVE COUNT	1.000	1.000	1.000
	Account Total	1.000	1.000	1.000

Umbrella: DEPARTMENT OF THE ATTORNEY GENERAL  
Fund: All

Date: 10/24/2019 9:12  
Report Id: BIEN - 0021  
Page 3 of 4

State of Maine  
Budget & Financial Management System  
Position Count by Account

	2020-S01 Prior Yr Actual FY 18	2020-S01 Total FY 20 (Cumulative)	2020-S01 Total FY 21 (Cumulative)
ATT00 DEPARTMENT OF THE ATTORNEY GENERAL			
01426A040902 DISTRICT ATTORNEYS			
LEGISLATIVE COUNT 006000	1,500	1,500	1,500
Account Total	1,500	1,500	1,500
01426A069601 HUMAN SERVICES - DIVISION OF			
LEGISLATIVE COUNT 006000	74,500	80,000	80,000
Account Total	74,500	80,000	80,000
01426A071101 VICTIMS' COMPENSATION FUND			
LEGISLATIVE COUNT 006000	3,000	3,000	3,000
Account Total	3,000	3,000	3,000
TOTAL 014 OTHER SPECIAL REVENUE FUNDS	125,500	136,000	136,000
LEGISLATIVE COUNT 006000	0,000	0,000	0,000
FTE COUNT 006200	125,500	136,000	136,000
TOTAL 014 ATT00			

**State of Maine**  
**Budget & Financial Management System**  
Position Count by Account

		2020-S01 Prior Yr Actual FY 18	2020-S01 Total FY 20 (Cumulative)	2020-S01 Total FY 21 (Cumulative)
ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
02428A094701	FHM - ATTORNEY GENERAL			
	LEGISLATIVE COUNT	1,000	1,000	1,000
	Account Total	1,000	1,000	1,000
TOTAL 024	FUND FOR A HEALTHY MAINE			
	LEGISLATIVE COUNT	1,000	1,000	1,000
	FTE COUNT	0,000	0,000	0,000
	TOTAL 024 ATT00	1,000	1,000	1,000
TOTAL ATT00	DEPARTMENT OF THE ATTORNEY GENERAL			
	LEGISLATIVE COUNT	310,500	328,000	328,000
	FTE COUNT	0,000	0,000	0,000
	TOTAL ATT00	310,500	328,000	328,000
	TOTAL	310,500	328,000	328,000

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**G. Agency Coordination with Other State and Federal Agencies**

## **Coordination With Other State and Federal Agencies**

The Office of Attorney General and members of our staff work cooperatively with other state and federal agencies in an effort to make the most of our resources. Some examples follow.

**Administration-** The Victims' Compensation Program within the OAG and the Department of Corrections cooperate to collect restitution from convicted criminals for the benefit of crime victims and the Victims' Compensation Fund. The Victims' Compensation Program cooperates with reporting requirements of both federal and state agencies as an expectation of receiving grant funds.

**Child Protection** - Child Protection AAGs are engaged in restorative justice efforts with tribal child welfare agencies, serve on the ICWA Workgroup, and provide trainings to develop qualified expert witness resources for ICWA cases. Child Protection AAGs are members of the Child Death and Serious Injury Review Panel, the Justice for Children Task Force, the Domestic Violence Homicide Review Panel, and the Maine Child Welfare Advisory Panel. They are members of the Maine Supreme Judicial Court Advisory Committees on the Maine Rules of Appellate Procedure, Maine Family Rules, and Maine Rules of Professional Conduct. Child Protection AAGs promote justice for children and court improvement through involvement with the Family Recovery Courts, CASA program, Child Advocacy Centers, and other work dedicated to the prevention of and response to child abuse and neglect. They have attended meetings with federal Children's Bureau staff regarding the state's child welfare measures and program improvement planning. They interface with the services provided by DHHS divisions on children's behavioral health, substance abuse and mental health services, child support enforcement, foster care and child care licensing, and public health. The Child Protection Division AAGs interact with state and federal prosecutors in matters involving crimes against children, as well as civil litigators handling cases on behalf of children in DHHS custody, such as inheritance and personal injury claims.

**Health Care** - On the State level the Healthcare Crimes Unit is a member on the Maine Elder Death Review Team ("MEDART"). On the Federal level, staff of the Unit participate in the Healthcare Fraud Working Group of the District of Maine with the USAO, FBI, OIG-HHS, Postal Inspectors, IRS, HUD, etc. The Unit is a member of the National Association of Medicaid Fraud Control Units and currently the Director of the Unit is the regional representative to this group.

**Health and Human Services** - Pursuant to 18-A M.R.S. § 1-801(1)(E), the Attorney General appoints an HHS AAG to serve on the Probate and Trust Law Advisory Commission (PATLAC), which advises the Maine Legislature on the Maine probate and trust laws.

**Criminal and Investigation Divisions** - Members of these two Divisions participate in a wide variety of committee work and cooperative ventures. These are set forth below. The federal Office for Victims of Crime (OVC) has provided a grant to the Department of Human Services to develop a Victim Assistance Academy. A number of staff from the OAG is actively engaged in this effort. The goal is to create a self-sustaining, academically based, training academy at the conclusion of the three-year grant. Each academy will provide 40 hours of curriculum for professionals in various fields providing services to crime victims.

The Maine State Police Computer Crimes Unit provides computer investigation services and expertise to law enforcement agencies statewide. Legal support is provided by the Criminal Division of the Attorney General's Office.

Staff from the Investigation Division continue to take the lead in reviewing and revising the Death Investigation Protocol as needed, the most recent involving the drug overdose deaths of individuals, as well as suicides. The Investigation Division routinely works with a variety of other state agencies in all three branches of government on investigations and other matters. Members of the division also routinely interact with various federal law enforcement agencies, principally the FBI and the U.S. Attorney's Office. A detective in the division represents the Attorney General on the Maine Criminal Justice Academy Board of Trustees. The Chief also represents the Attorney General as a member of the Maine Chiefs of Police Association and the Maine Sheriffs Association.

Attorneys from the Criminal Division serve on the Criminal Law Advisory Committee, the Advisory Committee on Criminal Rules, and the Advisory Committee on Rules of Evidence.

The attorneys in the Criminal Division and the Investigation Division provide advice and assistance and collaboration to the eight District Attorneys on a daily basis, as well as the Office of the United States Attorney.

**Office of the Chief Medical Examiner** – the OCME works closely with the Maine Department of Public Safety (including Maine State Police, Maine Drug Enforcement Agency) and various law enforcement agencies across the state; provides lectures to the Criminal Justice Academy; works with DHHS, especially Vital Records; the Maine Emergency Management Agency; the federal Drug Enforcement Agency; New England HIDTA; Federal Aviation Administration; and the Consumer Product Safety Commission.

**Consumer Protection** - Staff of the Consumer Protection Division work with the NAAG Antitrust Task Force and its various subcommittees. In addition, the Division works with the Federal Trade Commission and the Department of Justice on antitrust investigations on an ad hoc basis.

The Tobacco Committee is a part of NAAG that oversees tobacco Master Settlement Agreement matters. Members of the Office have served on several subcommittees, including the Enforcement Committee, which oversees enforcement of the public health provisions of the MSA.

**Litigation Division** - The AAGs assigned to employment and discrimination matters work closely with the Department of Administrative and Financial Services, Bureau of Human Resources on employment and discrimination matters of state-wide significance, including minimum wage and overtime, non-discrimination, equal employment opportunity, family medical leave and reasonable accommodation. These staff members provide on-going legal assistance and training to Human Resources Managers, Equal Employment Opportunity Coordinators, employees and supervisors on a state-wide basis. These staff members also provide on-going legal advice relating to non-discrimination laws and requirements in the delivery of programs and services on a state-wide basis.



**Other Work** - Members of the Office serve on several Advisory Committees to the Supreme Judicial Court not mentioned above, including the Advisory Committees on Civil Rules, and Professional Ethics; the federal Local Rules Committee, the Maine State Bar Association Board of Governors and Continuing Legal Education Committee;

**H. Constituencies Served by the Agency**

**Constituencies Served by the Agency or Program**

## **Constituencies Served by the Agency or Program**

The constitutional office of Attorney General is charged with representing the public interest, through a variety of activities. The Office aids the victims of crime by enforcing criminal laws in the areas of homicides, securities and other white-collar crimes, as well as supporting the Victims' Compensation Fund.

The Office provides legal counsel and representation to the various departments and agencies of State government in many ways: providing legal advice, defending agencies and their officers and employees when sued, and bringing enforcement actions in the name of the agency and the State of Maine. The Office also assists agencies in the conduct of a myriad of administrative proceedings, and defends their decisions on appeal. Finally, the Attorney General provides legal advice to the Legislature and its committees upon request.

For many Maine citizens, the Consumer Mediation program is the face of the Office, as it provides direct assistance to consumers by attempting to mediate their complaints with businesses. As noted in the Programs section of this report (tab B), during the 2018-2019 fiscal year, 849 claims were mediated with a 57% resolution rate resulting in the recovery of \$533,957.00 for Maine consumers. The Attorney General's website is also a source of information and assistance to Maine citizens, providing a wealth of information and resources for victims of crime, for senior citizens, for people concerned about health issues, and for those looking for information on legal issues affecting consumers.

In all of this work the Attorney General represents, in a larger sense, the people of the State of Maine. The Attorney General and all of his staff are committed to the principle that fairness and justice for the people of Maine should be the foundation for the work of the Office.

## **I.      Alternative Delivery Systems**

## **Alternative Delivery Systems**

Section 956(2)(I) asks for a summary of efforts regarding the use of alternative delivery systems, including privatization, in meeting agency goals and objectives.

At the present time there do not appear to be alternative delivery systems that could provide the same level of high-quality, cost-effective legal services now provided by the Office of Attorney General. The most logical alternative, securing legal assistance from outside counsel in the private sector, does not appear to be cost-effective in that the average cost of outside counsel<sup>1</sup> is in the \$335 per hour range, while the average cost per assistant attorney general hour is approximately \$70 per hour.<sup>2</sup> In addition, centralization of legal services under the Attorney General maximizes oversight in the public interest and consistency in legal positions taken on behalf of the State.

The Office also is “lean” on support staff. At the present time the ratio of support staff to attorneys is approximately 3 attorneys for every legal/senior legal secretary. While the Office cannot cite a study, it is the observation of those attorneys coming to the Office from the private sector that the common ratio in the private sector is two to one.

Finally, Office administration is similarly lean. The Office of Attorney General has a total budget of approximately \$33 million per year, and must look to approximately sixty different funding sources. The Office must provide human resource services to 223 employees of the Office, and must provide payroll and benefit services to these employees and to the District Attorneys (eight) and the Assistant District Attorneys (101) of this state. Finally, it must deliver a full range of computer technical support to over 200 computers in four offices statewide. It does all of this, and more, with an administrative staff of nine: One Chief; one Human Resources Manager; one Senior Staff Accountant; one Staff Accountant; one Accounting Associate; two IT personnel; and two Administrative Assistants. The salaries of these seven staff members represents only 4% of the personnel in the Office, and only 3.2% of the salary costs of the office.

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<sup>1</sup> The Attorney General, pursuant to 5 M.R.S. § 191, must approve all requests by state agencies for outside counsel. Outside counsel is sometimes required when the Attorney General has a conflict in providing representation or does not have the necessary expertise (such as providing complicated bankruptcy legal advice).

<sup>2</sup> The Attorney General, pursuant to 5 M.R.S. § 191, must approve all requests by state agencies for outside counsel.

## **J.     Emerging Issues**

## **Emerging Issues**

**Electronic Discovery, Record Retention, Preservation and Production Issues:** There has been significant growth in more complex civil litigation matters, particularly cases involving electronic records. The complexity of preserving, retrieving, organizing, producing and preparing evidence for discovery and trial has evolved in recent years due to the rapid growth of electronic files. The federal courts in Maine changed to electronic filing in 2003. It is anticipated that the state courts will begin implementing electronic filing in the next one to two years. In addition to the increased use of electronic files, in recent years, there has been increased litigation requiring extensive historical research and a need to compile and organize this historical information. We anticipate that there will be a continuing need for lawyers, paralegals, and support staff experienced with all aspects of complex litigation, including litigation involving electronic records. We also anticipate that we will need to update and modernize OAG case management and electronic records software and hardware in order to accommodate changing legal requirements and technology. In addition, we anticipate that OAG input will be necessary in order to coordinate the states' IT systems with the states' record retention requirements and other legal requirements for record preservation.

**Medical Marijuana and Adult Use Marijuana:** Due to recent changes in state law relating to medical and adult use marijuana, and the tight time lines for implementation, we have devoted significant legal resources to providing legal advice and representation relating to new Maine laws and regulations and the relationship between state and federal law relating to marijuana. We anticipate that the need for legal assistance on these topics will continue to grow.

**Significant Growth of Health Care Legal Needs:** There has been tremendous growth in the area of health care law, which affects several areas of our practice. The Office has provided legal advice to state agencies and the Governor's Office regarding federal Medicaid requirements, including provider reimbursement issues. As the MaineCare, and other benefit/welfare programs have grown by number of beneficiaries and cost and complexity, the need for legal assistance and representation has increased. We anticipate more legal assistance will be required for CMS and OIG audits. ADA (Americans with Disabilities Act) complaints regarding MaineCare and other state services has increased exponentially over the past eighteen months and will require significant legal assistance. The number of scheduled involuntary commitment hearings has increased significantly (in 2018 1,096 hearings were scheduled) and is expected to continue to increase, in part because of a lack of sufficient mental health treatment and residential placement options. Responding to subpoenas and other requests for confidential medical information has taken additional legal assistance, and includes subpoenas from the U.S. Attorney's office for information from the Prescription Monitoring Program. We expect that bankruptcies involving MaineCare providers will continue to increase, especially as small rural hospitals continue to face fiscal pressure. The complexity of those cases, which involve not just dollar numbers but also the need for hospital services in far flung rural areas, require HHS to provide expert legal advice to the Department in order to assist the Department in its policy decisions. The need for experienced and expert legal counsel for the Department of Health and Human Services is expected to continue to grow.

**Child Protection:** DHHS has experienced a significant increase in reports of child abuse and neglect, assessments of those reports, and ultimately in the numbers of children court-ordered into state custody. State leadership in child welfare has engaged its staff, Child Protection AAGs, and the community to re-envision Maine's child welfare system and the continuum of services for children and families in the state. They have identified guiding principles and strategies. They have committed to strengthening child welfare practice through more timely response and meaningful engagement with families, which will require improving the infrastructure of formal and informal supports to children and families. Important data points for measuring the health of a state child welfare system are data about the children and families involved in the court cases handled by Child Protection AAGs e.g. efforts to prevent removal, appropriate foster care entry and exit points, safety in foster care, efforts by parents and DHHS to effectuate reunification, meaningful judicial oversight, and timely achievement of permanency. A highly skilled and dedicated team of Child Protection AAGs is critical to the process by which the child welfare system achieves the desired outcomes.

**Freedom of Access Requests:** The amount of time allocated to responding to FOIA requests in the Criminal Division has increased significantly in recent years. From media companies to civil attorneys to interested parties, the Criminal Division receives multiple requests for information informally and pursuant to FOIA monthly. Responding to these requests can be complex and time-consuming. The administrative burden to fulfill these requests in a timely manner is a serious issue.

**Complexity of Criminal Litigation:** The availability of technological improvements and digital evidence to investigate and solve criminal cases is both a curse and a blessing. Cellphone evidence, either the device itself or the tower evidence is integral evidence in most homicide cases. Sources such as Facebook, Google, Snap Chat and similar sites, as well as the fact that so many people have cell phones or other digital devices, provide a wealth of investigative information. Warrants for this type of digital evidence must be reviewed and approved by prosecutors for law enforcement. Once the information is obtained, it must be reviewed and analyzed for relevancy at trial. This process is very time consuming and can be complicated.

Prosecutors and law enforcement are constantly balancing the need to gather all the evidence against the resources needed to review all the evidence. It is anticipated that additional resources will be needed in the future to address digital evidence. This need could be filled by a paralegal.

**Attorney Manager and Share file** (software management and electronic discovery). The Courts are requiring that within the next couple of years, all filings with the Courts will be electronic. This has resulted in the Criminal Division joining the District Attorney's Offices in purchasing a software management program to comply with the Court's requirements. The software management will be purchased through Tyler Technology and will create a statewide database that will allow the sharing of information and the ease of processing paperwork. The Criminal Division is also contracting to allow discovery in criminal cases to be processed electronically which will lead to reduced costs and better efficiency.



**Specialty Courts:** The Drug Task Force attorneys have seen an increase in the number of specialty courts across the State. The Specialty Courts include, by way of example, Drug Courts, Veterans Court, Co-occurring Disorder Court and others. These Courts are known to be successful in addressing substance abuse disorder that lead to criminal conduct. It is anticipated that increased specialty courts will put increased demands on the drug task force prosecutors without sufficient resources to keep up with the pace of the Courts.

**Office of Chief Medical Examiner building:** The existing facility was built in 1992. The current staff and workload have met the capacity of the building. A recommendation from the National Association of Medical Examiners is to obtain a new facility or renovate the existing facility. An expansion feasibility study was conducted in 2018 and found that the HVAC system and roof are meeting or have exceeded the standard life expectancy. The need for more space and a more efficient building are urgent and directly impact the quality of Maine death investigations.

**K. Information Requested**

## **Other Information Requested by the Committee of Jurisdiction**

At the time of publication no request had been made by the Judiciary Committee for other information. The Office will promptly respond to any requests for additional information and will amend this document accordingly.

**L. Comparison of Related Federal/State Laws and Regulations**

## **Comparison of Related Federal Laws to the State Laws Governing the Agency or Program**

This requirement of §956 does not seem to be applicable to the Office of the Attorney General.  
Federal laws in common use within the Office are found in Tab R.

**M. Agency Policies for Collecting Personal Info**

## **Agency Policies for Collecting, Managing and Using Personal Information**

This requirement of §956 does not seem to be applicable to the Office of the Attorney General as it does not collect personal information in order to discharge its responsibilities to the State.

**N. Required Reporting by the Public**



## **Paperwork to be Filed with the Agency by the Public**

At the present time there is no report, application or other paperwork required to be filed by members of the public with the Office of the Attorney General.

## **O. Legislative Reports**

### **Administration Division**

Allocation of work: 5 M.R.S. § 203(3). Quarterly report detailing allocation of legal work billed to agencies with dedicated or federal revenues

### **Consumer Division**

Accounting of court ordered or settlement funds received by the Attorney General's Office. 5 M.R.S. § 203-A. As determined by the Office of Fiscal and Program Review.

Petroleum Market Share Act Report. 10 M.R.S. § 1677. Biennial Report.

### **Criminal Division**

Domestic Violence Data Report. 5 M.R.S. § 204-A. While not done annually these reports have been produced.

Domestic Abuse Homicide Review Panel. 19-A M.R.S. § 4013(4). Biennial report.

### **Litigation Division**

Public Access Ombudsmen Report. 5 M.R.S. § 200(I)(5). Annual report to the Legislature and the Right to Know Advisory Committee.

**P. List of Organizational Units and Programs**

## **List of Organizational Units and Programs**

Administrative Services Division

Victim Compensation Board

Civil Rights Team Project

Child Protection Division

Child Support Division

Consumer Protection Division

Tobacco Enforcement Program

Collections Program

Criminal Division

Drug Task Force

Health Care Crimes Unit

Health and Human Services Division

Investigations Division

Litigation Division

Natural Resources Division

Professional and Financial Regulation Division

Office of the Chief Medical Examiner

District Attorneys

**Q. Necessary Review of Authorized Statutes**

None identified.

**R.     Appendix**

- 1.   Statutory References and Duties of the Attorney General**
- 2.   Federal Laws**

## **Statutory References and Duties of the Attorney General**

### **1 M.R.S. § 8**

Before transfer of legislative jurisdiction over land areas to the United States, Governor, Attorney General must transmit comments and recommendations to the Legislature

### **1 M.R.S. § 353**

With the assistance of the Secretary of State, Attorney General shall prepare explanation of proposed amendments to the Constitution and statewide referendum for publication

### **1 M.R.S. § 411**

The Attorney General or the Attorney General's designee shall be a member of the Right To Know Advisory Committee which was created to serve as a resource and advisor about Maine's Freedom of Access laws

### **1 M.R.S. § 1006**

Shall assist the Ethics Commission when called upon for aid

### **1 M.R.S. § 1008**

Participate in an ethics seminar for Legislators before the convening of the Legislature, in every even-numbered year and provide each Legislator with a bound compilation of the laws of this State pertaining to legislative ethics and conduct

### **1 M.R.S. § 1013(F)**

Ethics Commission findings regarding possible criminal conduct by legislator referred to the Attorney General

### **1 M.R.S. §1016-G(3)(B)**

Ethics Commission findings of fact regarding

### **3 M.R.S. § 322**

Ethics Commission may request the Attorney General to investigate complaints regarding violations of Lobbyist disclosure requirements

### **3 M.R.S. 736**

Representation of the Maine Legislative Retirement System

### **3 M.R.S. § 994**

If the Joint legislative committee on program evaluation and government accountability matters determines that there is probable cause that a witness has committed perjury by testifying falsely, the committee may direct the Attorney General to institute legal proceedings as provided by law



**3 M.R.S. § 996**

The Department of the Attorney General shall assist the Legislative Oversight of Government Agencies and Programs with program evaluations if the committee and the director determine that such assistance is necessary

**4 M.R.S. § 421**

Attorney General and other prosecutorial offices shall collaborate with and, to the extent possible, provide financial assistance to the Judicial Department in establishing and maintaining alcohol and drug treatment programs

**4 M.R.S. § 433**

The Department of the Attorney General, along with the State Court Administrator, district attorneys, the Department of Corrections, the Department of Defense, Veterans and Emergency Management, the Department of Public Safety, the Department of Health and Human Services and private service agencies may seek federal funding as it becomes available for the establishment, maintenance and expansion of Veteran Treatment Courts and for the provision by participating agencies of treatment to participating veterans

**4 M.R.S. § 454**

Criminal Division attorneys of the Office made members of Maine Criminal Justice Sentencing Institute

**4 M.R.S. § 807-A.**

Employees of the Department of the Attorney General may serve civil process and represent the State in District Court in disclosure proceedings pursuant to Title 14, chapters 502 and 502-A

**4 M.R.S. § 807-B**

Whenever the Attorney General has reason to believe that a person within the State has engaged in or is engaging in activities that violate Authorized Immigration and Nationality Law Assistance, the Attorney General may initiate an action in the Superior Court to enforce this section. The Attorney General, by January 1, 2007, and every January 1st thereafter, shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters on the number and circumstances of all investigations that the Department of the Attorney General has initiated in the preceding year relating to violations of this section

**4 M.R.S. § 808**

Investigation and enforcement relative to the unauthorized practice of law

**4 M.R.S. § 960**

Enforcement of advertisement of services for notary publics

**4 M.R.S. § 1236**

Representation of the Maine Judicial Retirement System

**5 M.R.S. § 95-A**

Petition the Superior Court on behalf of the State Archivist for the recovery of public records

**5 M.R.S. § 96**

Attorney General shall recommend a member with expertise in legal requirements of records retention and public records law to the Archives Advisory Board

**5 M.R.S. § 126**

Shall prosecute the State Treasurer for any personal use of public moneys

**5 M.R.S. § 138**

Duties relative to the permanent trust funds of the State and guaranty funds required by statute

**5 M.R.S. §§ 191-205**

General duties and responsibilities of the Attorney General including the obligation to appear on behalf of the State, the head of any department or institution in all civil actions in which the state is a party

**5 M.R.S. §§ 205-A – 214**

Actions against unfair competition and unfair acts in trade or commerce

**5 M.R.S. § 1504**

Certification to State Controller of accounts receivable as impractical of realization

**5 M.R.S. § 1509**

Items of income or taxes owed to the State which are not paid within 90 days referred to the Attorney General for collection

**5 M.R.S. § 1541(9)**

Bureau of Accounts and Control report for such action, civil or criminal, all facts showing illegality in the expenditure of public moneys or the misappropriation of public properties

**5 M.R.S. § 1541-B**

Net neutrality, upon receipt of information or complaint from any person that an Internet service provider may be failing to meet the requirements of an agreement made under this section, the Attorney General may undertake an investigation and take any action the Attorney General determines appropriate, including, but not limited to, action pursuant to section 192

**5 M.R.S. § 1728-A**

Approval of property and liability insurance arrangements; representation in claims for personal injury and property damage against the State, and in claims against 3rd parties in all cases in which the State may be subrogated to the rights of injured employees or where damage to state property may have resulted from the negligence of a 3rd party

**5 M.R.S. § 1816-A**

Written approval of contracts for legal counsel required

**5 M.R.S. § 2041**

The Attorney General or the Attorney General's designee shall serve on the Maine Prescription Drug Affordability Board

**5 M.R.S. § 3307-D**

Recovery of penalties for violations of State petroleum set aside statute

**5 M.R.S. § 3360- 3360-M**

Victims' Compensation Board - duties regarding appointment of members, payment of claims and administration of fund

**5 M.R.S. § 3360-N - 3360-P**

Sexual Assault Forensic Examiner Advisory Board - administrative oversight for the board's policies and responsibilities; when necessary employ personnel necessary to carry out the purposes of the board; lease, rent or acquire adequate equipment and facilities; accept federal funds or grants that are available to carry out or implement the board's objectives; and provide technical assistance and training to sexual assault forensic examiners

**5 M.R.S. § 3372**

Attorney General or an assistant designated by the Attorney General is legal advisor to the Maine Length of Service Award Program

**5 M.R.S. § 4681**      Civil Rights Act, prosecution of violations of constitutional rights

**5 M.R.S. § 8056**      Review and approval of agency rules for form and legality

**5 M.R.S. § 9060**      Approval of agency subpoenas for certain administrative proceedings

**5 M.R.S. §§ 17102, 17103, 17105**

Representation of the Maine State Retirement System

**5 M.R.S. § 17436**

Legal representation and defense of trustees of the investment trust fund. The Attorney General is legal counsel to the trustees of the investment trust fund and shall represent and defend the trustees of the investment trust fund, as a group and individually, in connection with any claim, suit or action at law arising out of the performance or nonperformance of any actions related to the investment trust fund to the same extent as provided for governmental entities in the Maine Tort Claims Act

**7 M.R.S. § 158**

May institute an action to abate a nuisance or to enforce the Failure to Adopt Best Management Practices with respect to a farm, farm operations or agricultural composting operation

**7 M.R.S. § 2213**

Enforcement of State Horticulturist orders for proper treatment or destruction of infested or diseased plants

**7 M.R.S. § 3909**

Enforcement of the Animal Welfare Act

**8 M.R.S. § 282**

Representation of State Harness Racing Commission and enforcement of harness racing law

**8 M.R.S. § 532**

The Attorney General may bring an action in Superior Court to enjoin a mixed martial arts or boxing competition, exhibition or event from occurring for which the promoter's fee has not been paid or a participant who does not meet the qualifications from participating in the competition, exhibition or event

**8 M.R.S.A. § 1003**

Take action against violations of Gambling Control Board

**9-A M.R.S. § 6-104**

Enforcement of the Maine Consumer Credit Code

**9-B M.R.S. § 228, 466**

Representation of the Superintendent of Banking and enforcement of banking laws and regulations

**10 M.R.S. § 11**

Membership on the Citizen Trade Policy Commission

**10 M.R.S. § 1015**

Legal services relative to the implementation of a student financial assistance program

**10 M.R.S. §§ 1104, 1107**

Enforcement of antitrust and monopoly laws

**10 M.R.S. § 1159**

Restraining Prohibited Acts. Whenever the Attorney General or a district attorney has reason to believe that a person is promoting, advertising or conducting or is preparing to promote, advertise or conduct a live musical performance or production in violation of section 1158 and that proceedings would be in the public interest, the Attorney General or district attorney may bring an action in the name of the State against the person to restrain that practice by temporary or permanent injunction

**10 M.R.S. § 1169**

Promulgate rules regarding state-certified arbitration proceedings and arrange for arbitration of consumer complaints dealing with new motor vehicles

**10 M.R.S. §§ 1208-1209**

Investigation of unfair sales practices involving motor fuel and filing of written reports by wholesalers regarding certain motor fuel sales

**10 M.R.S. § 1273**

Enforcement of law for protection of social security numbers

**10 M.R.S. §§ 1347 – 1349, 3150-B**

Regulatory, enforcement and educational responsibilities in area of security breaches

**10 M.R.S. § 1495**

Enforcement of licensing of Payroll Processors

**10 M.R.S. § 1499**

Enforcement of telephone solicitation restrictions

**10 M.R.S. § 1660**

Enforcement of chapter regulating sales and labeling of internal combustion engine fuels, lubricating oils and other like products

**10 M.R.S. § 1671-1682**

Duties relative to the Petroleum Market Share Act including an annual report to the Legislature

**10 M.R.S. §§ 1704, 2368, 2506, 2655**

Enforcement of various weights and measures types of provisions

**10 M.R.S. § 8003-C**

Boards and commissions, prosecute unlicensed practice

**10 M.R.S. § 9011**

Enforcement of violations of Manufactured Housing Act

**10 M.R.S. § 9087**

May seek to enjoin further violation of any person who operates any manufactured housing community without first obtaining a license (Class E crime)

**12 M.R.S. § 901**

Member of Baxter State Park Authority

**12 M.R.S. § 6431**

Issue certain written certifications relative to lobster measurement and minimum size

**12 M.R.S. § 8003**

Investigate and approve the title to lands acquired for state forest purposes or as natural areas

**12 M.R.S. §12809**

Enforcement of violations of Fish and Wildlife Management and Research (Endangered Species)

**13 M.R.S. § 3061**

Filing of actions for the appointment of trustees for abandoned religious property

**13-A, 13-B, 13-C**

Corporations

**14 M.R.S. § 556**

The Attorney General on the Attorney General's behalf or on behalf of any government agency or subdivision to which the moving party's acts were directed may intervene to defend or otherwise support the moving party on a special motion to dismiss

**14 M.R.S. § 3138**

Judicial enforcement of administrative orders

**14 M.R.S. § 5963**

In declaratory judgment actions, if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall be served with a copy of the proceeding and be entitled to be heard

**14 M.R.S. § 6453**

With respect to Petitions for Declaration of Citizenship, the Attorney General shall be served with a copy of the proceeding and be entitled to be heard

**14 M.R.S. § 7202**

When directed by the Legislature or Governor, file an information for the recovery of certain lands and grants

**14 M.R.S. § 7209**

Recovery of Land Grants in all other cases where an inquest is necessary, the Attorney General, without order of the Legislature, may file an information in said court describing the estate claimed and stating the title asserted thereto by the State. Notice shall be given as before mentioned if there is any tenant in possession; if not, the notice shall be given as the court orders at least 90 days before the sitting of the court to which it is returnable

**14 M.R.S. § 7211**

Information to Recover Escheats: The Attorney General may file an information for recovering seizin by the State for any real estate supposed to have escheated to the State for want of legal heirs

**14 M.R.S. § 8107**

Copies of notices of tort claim filed with the Attorney General

**14 M.R.S. § 8109**

Approve settlement of tort claims against the State

**14 M.R.S. § 8601**

May bring an action to enjoin a violation by public employees and public officials for recordable instructions filed without a legal basis

**14 M.R.S. § 8701**

May bring an action to enjoin a violation of Actions for Bad Faith Assertion of Patent Infringement (any violation of Chapter 757 is a violation of the Maine Unfair Trade Practices Act)

**15 M.R.S. § 104-A**

Role in proceedings for release and discharge of committed persons acquitted in criminal cases on basis of mental disease or defect

**15 M.R.S. §§ 204-224**

Responsibilities relative to extradition matters

**15 M.R.S. § 710**

Any communications common carrier shall promptly report to the Attorney General illegal intercepts of wire or oral communications

**15 M.R.S. § 1462**

Receive notice of any summons for a prisoner to testify in another state

**15 M.R.S. § 2115-A**

Written approval of state's appeals in criminal cases

**15 M.R.S. § 2116**

Role in state court proceedings after a federal court finding that prisoner's constitutional rights have been violated

**15 M.R.S. § 3306 (Effective September 19, 2019)**

Shall represent the State in all petition, adjudication and disposition proceedings in juvenile matters

**15 M.R.S. § 5822**

Duties relative to forfeiture proceedings and adoption of rules providing standards for prosecution, settlement, and transfer of forfeited property

**16 M.R.S. § 633**

Member of the Maine Criminal Justice Information System Policy Board

**17 M.R.S. § 317-A**

Enforce subpoenas issued by Chief of MSP in beano/bingo license actions or investigations.

**17 M.R.S. § 1842**

Petition the Superior Court to find a witness in contempt involving investigations and actions on licenses and registrations associated with Games of Chance

**17 M.R.S. § 2701-B**

Improper manure handling cases referred in writing; may file an action to abate a nuisance

**17 M.R.S. § 3860**

Prosecute criminally or civilly upon complaint of a person being denied access to a great pond, any person who denies such right of access or egress

**17-A M.R.S. § 958**

File complaint to enjoin formation of any lottery or selling or otherwise distributing tickets, certificates, or shares

**17-A M.R.S. § 959**

File complain in the nature of a proceeding in rem to order forfeiture of an illegal gambling machine, any monetary contents and any associated proceeds

**17-A M.R.S. § 1352**

Appoint members of the Criminal Law Advisory Commission

**18-C M.R.S. § 1-801**

The Attorney General or designee to serve on the Probate and Trust Law Advisory Commission

**19-A M.R.S. § 2103**

Enforcement of child support obligations

**19-A M.R.S.A. § 4012**

Shall develop a written policy regarding prosecution of domestic abuse cases under the provisions of Title 17-A

**19-A M.R.S. § 4013**

Membership on Maine Commission on Domestic and the Sexual Abuse and Domestic Abuse Homicide Review Panel

**20-A M.R.S. § 6801-A**

Enforcement of educational reporting, program or other requirements if a school administrative unit is not in compliance

**20-A M.R.S. § 7206**

Failure to comply with requirements for serving exceptional students referred for action

**21-A M.R.S. § 33**

Designate a Deputy Attorney General or an Assistant Attorney General to investigate and prosecute alleged violations of the election laws



**21-A M.R.S. § 1003, 1004-B, 1127**

Shall aid in any investigation, provide advice, examine any witnesses or otherwise assist the Ethics Commission in the performance of its duties upon request of the commission and prosecute violations of law

**21-A M.R.S. § 1020-A**

After referral by the Ethics Commission, can prosecute a candidate that fails to file a campaign finance report

**22 M.R.S. § 2**

Shall furnish such legal assistance, counsel or advice as the Department of Human Services may require in the discharge of its duties

**22 M.R.S. § 13**

Referral of fraud or attempted fraud cases by Human Services Fraud Investigation Unit

**22 M.R.S. § 14**

Institute and prosecute legal proceedings against 3rd parties liable for medical care rendered to Medicaid assistance recipients

**22 M.R.S. § 349**

Upon the request of DHS, seek injunction or other appropriate action for any project for which a certificate of need as required by this chapter has not been obtained

**22 M.R.S. §§ 688, 690**

Duties under the Radiation Protection Act

**22 M.R.S. § 808**

Approve subpoenas requiring persons to disclose or provide to the DHS information or records in their possession that are relevant to an investigation of a report of a public health threat

**22 M.R.S. § 1322-F**

Enforcement of payment of Lead poisoning prevention fees

**22 M.R.S. § 1555-D**

Enforcement of statute governing illegal delivery of tobacco products

**22 M.R.S. § 1580-A (4-A)**

Enforcement of statute governing smoking in places of employment

**22 M.R.S. § 1580-I**

Tobacco Product Manufacturers Act; civil action against any tobacco product manufacturer failing to place required funds into escrow

**22 M.R.S. § 1580-L**

Enforcement of statute governing certification of tobacco product manufacturers

**22 M.R.S. § 1711-C**

Confidentiality of health care information; enjoin intentional and unlawful disclosure of health care information

**22 M.R.S. § 1715**

Enforcement of access to health care requirements applicable to certain health care providers

**22 M.R.S. § 1717 (5)-(6)**

Enforcement of registration requirements for personal health care and placement agencies

**22 M.R.S. §§ 1841-1852**

Duties under Hospital and Health Care Provider Cooperation Act

**22 M.R.S. § 2039**

Enforcement of Maine Medical Laboratory Act

**22 M.R.S. § 2054**

Approve surety bonds required for members and certain staff of the Maine Health and Higher Educational Facilities Authority

**22 M.R.S. § 2139**

Enforcement of background check requirements for temporary nurse agencies

**22 M.R.S. §§ 2619-2620**

Enforcement of safe drinking water requirements

**22 M.R.S. § 2697**

Enforcement of prohibition against profiteering in prescription drugs

**22 M.R.S. §§ 3021-3035**

Duties of the Office of Chief Medical Examiner with in the Office

**22 M.R.S. § 3184**

Recovery of illegal payments of aid to needy persons

**22 M.R.S. § 3280**

Actions to compel certain relatives to contribute to the support of recipients of state supplemental income

**22 M.R.S. § 4004**

Membership on child death and serious injury review panel

**22 M.R.S. § 4087-A**

Prosecutions for obstruction or hindrance of child welfare services ombudsman duties

**22 M.R.S. § 7702-B**

Enforcement in matters involving operation without a license

**22 M.R.S. § 8703, 8705-A**

Shall furnish legal assistance, counsel or advice to the Maine Health Data Organization

**22 M.R.S. § 8755**

Enforcement of sentinel events reporting requirements

**23 M.R.S. § 1965**

Approval of Maine Turnpike security bonds

**23 M.R.S. § 7002**

Enforcement of penalty against railroad corporations for disconnected cars left on tracks

**24 M.R.S. § 2301**

Participation in proceedings before the Superintendent of Insurance involving conversions of nonprofit hospital service plans, nonprofit medical service plans and nonprofit health care plans

**24 M.R.S. § 2321**

Participation in rate filings before the Superintendent of Insurance on individual subscriber and membership contracts

**24-A M.R.S. §§ 12-A, 214**

Enforcement of violations of the insurance laws, rule adopted by the superintendent or lawful orders of the Superintendent of Insurance

**24-A M.R.S. §§ 3307, 3310, 3481, 3489**

Duties relative to certificate of organization for insurers, amendments, mergers and consolidations

**24-A M.R.S. § 4326**

Health Insurance Consumer Assistance Program

The Attorney General shall contract with a nonprofit, independent health insurance consumer assistance entity, which may not be an insurer, to operate the consumer assistance program. The operator of the consumer assistance program shall report to the Attorney General, according to the requirements of the contract under subsection 1, on aggregate data relevant to the services provided by and activities of the consumer assistance program, and annually, by January 15th, the Attorney General shall report to the joint standing committee of the Legislature having jurisdiction over health insurance matters on the aggregate data

**24-A M.R.S. § 4360**

Commencement of delinquency proceeding against insurer

**24-A M.R.S. § 6908**

The Attorney General, when requested, shall furnish any legal assistance, counsel or advice Dirigo Health requires in the discharge of its duties

**25 M.R.S. § 1541**

Approval of rules, regulations and forms to be used by the commanding officer of the State Bureau of Identification

**25 M.R.S. § 1705**

Approval of criminal history records to ensure that the state statute explicitly authorizes national indices checks (National Crime Prevention and Privacy Compact)

**25 M.R.S. § 1707**

Appoint 15 members of the Compact Council that has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes

**25 M.R.S. § 2003**

Develop model forms for applications and permits for concealed firearms

**25 M.R.S. § 2802**

Serve on the Board of trustees for the Maine Criminal Justice Academy

**25 M.R.S. § 2954**

Serve on Maine Drug Enforcement Agency Advisory Board

**25 M.R.S. § 2955**

Shall appoint one Assistant Attorney General as a full-time coordinator of drug prosecution matters who is responsible to coordinate the efforts of each of the attorneys assigned to the Maine Drug Enforcement Agency

**25 M.R.S. § 2958**

The Attorney General, after consultation with the 8 district attorneys, the United States Attorney for the District of Maine and the board, shall establish by rule a protocol that governs the selection of the state or federal court system for prosecution of drug cases investigated by the agency

**26 M.R.S. § 53**

Enforcement of Bureau of Labor Standards violations

**26 M.R.S. § 588**

Enforcement of housing standards for agricultural labor

**26 M.R.S. §§ 602, 613, 664, 671**

Enforcement of employment practice laws

**26 M.R.S. § 777**

Approve form for minor work permits

**26 M.R.S. § 813**

May bring a civil action if any employer fails to comply with Sections 811 and 812 (Leave relating to Reserve Training or Military Service)

**26 M.R.S. 1082**

Represent the Department of Labor, the Unemployment Compensation Commission and the State in court action relating to unemployment compensation

**26 M.R.S. § 3502**

Enforcement of statute governing the requirements of constructions employers constructing a general facility employing apprentices

**27 M.R.S. § 375, 376**

Enforcement of prohibitions against unlawful excavation at archaeological sites, sale of state-owned artifacts and removal of state-owned artifacts from the state

**28-A M.R.S. § 2519**

Member of Server Education Advisory Committee which determines specific criteria that an alcohol server education course must contain to receive approval

**29-A M.R.S. § 2251**

Designate an Assistant Attorney General familiar with federal commercial vehicle laws and regulations to serve as a resource to any district attorney who initiates a prosecution arising from an accident involving a bus or truck with a gross vehicle weight rating or a registered weight in excess of 10,000 pounds that results in the death of any person

**29-A M.R.S. § 2421**

Adopt rules in accordance with Title 5, chapter 375, for the disposition to state, county and municipal agencies of forfeited motor vehicles

**30-A M.R.S. § 257**

File complaint for removal of any district attorney from office

**30-A M.R.S. § 372**

Civil action to recover forfeiture if sheriff fails to give required security

**30-A M.R.S. § 3010**

Receive notices and certifications regarding quality of service to subscribers of cable services

**30-A M.R.S. § 5951**

Approve surety bonds required for commissioners and executive director of the Maine Municipal Bond Bank

**30-A M.R.S. § 6111**

If Board of Emergency Municipal Finance takes control of a municipality under certain circumstances and believe that the municipality has incurred debts and obligations in excess of the debt limit fixed by the Constitution of Maine, the Attorney General may bring a complaint in the name of the inhabitants of the municipality in the Superior Court in the county in which the municipality is located against all of the known persons holding any debts or obligations against the inhabitants of the municipality, to have the validity of all the debts and obligations of the municipality determined

**31 M.R.S. § 405**

Enforce provisions governing use of assumed name by domestic or foreign limited partnerships

**31 M.R.S. § 805-A**

Enforce provisions governing use of assumed or fictitious name by limited liability partnerships or foreign limited liability partnerships

**31 M.R.S. § 1308**

Enforce provisions governing use of assumed name by limited partnership

**31 M.R.S. § 1415**

Enforce provisions governing use of a fictitious name by foreign limited liability partnership

**31 M.R.S. § 1418**

Maintain an action to restrain a foreign limited liability partnership from transacting business in the State in violation of the Uniform Limited Partnership Act

**31 M.R.S. § 1510**

Enforce provisions governing use of an assumed or fictitious name by limited liability company

**32 M.R.S. § 60-A**

Complaints received by an occupational and professional regulatory board regarding that board's administrative procedure must be filed by the board with the Attorney General

**32 M.R.S.**

Professions and Licensing Boards – disciplinary actions, hearings, consent decrees.

**32 M.R.S. § 11053**

Enforcement of Maine Fair Debt Collection Practices Act

**32 M.R.S. § 14504**

Enforcement of statute governing transient seller of home repair services licensing requirement

**32 M.R.S. § 14506**

Enforcement of statute governing disclosure of license number by transient seller of home repair services for a contract for door-to-door sales

**32 M.R.S. § 14512**

Door-to-Door Home Repair Transient Sellers; shall prepare a form contract for door-to-door sales, that fully meets the obligations of a transient seller of home repair services and provide these forms at no cost

**32 M.R.S. §§ 14709, 14710**

Advise on review and approval of waiver of security deposit applications for Door-to-Door Home Repair Transient Sellers

**32 M.R.S. §§ 16603, 16604, 16508**

Enforcement of Revised Maine Securities Act

**33 M.R.S. § 608**

Actions for removal of Register of Deeds for misconduct or incapacity

**33 M.R.S. § 1209**

Consultation and review of claims to coastal islands

**33 M.R.S. § 2193**

Action involving another state or foreign country: Action by Attorney General. On request of another state or foreign country, the Attorney General may commence an action on behalf of the other state or country to enforce in this State the law of the other state or country against a putative holder subject to a claim by the other state or country

**34-A M.R.S. § 11402**

The Attorney General appoints 7 members to the Sex Offender Management and Risk Assessment Advisory Commission

**34-B M.R.S. § 1301**

The Attorney General chooses a member to serve on the Dorothea Dix Award Committee

**34-B M.R.S. § 1409**

Payment for care and treatment of residents.

The Attorney General shall collect any claim which the State may have against the estate of any resident, and the estate of any liable person, for any amount due to the State at the date of death of the resident or the liable person, including any claim arising under an agreement entered into under this section, enforceable in the Probate Court

**34-B M.R.S. § 5606**

Receive reports of violation of the rights of a person receiving services from the Department of Behavioral and Developmental Services

**35-A M.R.S. § 115**

Aid in Public Utilities Commission investigation of violations of state laws and bring actions on its behalf

**35-A M.R.S. § 2904**

Approve surety bonds required of the commissioners and executive director of the Maine Public Utility Financing Bank

**35-A M.R.S. § 3155**

Authorized to intervene before the Public Utilities Commission to protect consumer interests

**35-A M.R.S. § 3203**

If the Public Utilities Commission believes that any competitive electricity provider or transmission and distribution utility has violated any provision of law for which criminal prosecution is provided and would be in order or any antitrust law of this State or the United States, the Commission shall notify the Attorney General who shall promptly institute any actions or proceedings considered appropriate

**35-A M.R.S. §§ 4356, 4359**

Provisions relating to the decommissioning of nuclear power generating facilities shall be enforced by the Department of the Attorney General, with the cost of enforcement paid from the decommissioning trust fund

**35-A M.R.S. § 7106**

If the Public Utilities Commission believes that any local or intrastate telecommunications carrier has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the Commission shall notify the Attorney General who shall promptly institute any actions or proceedings considered appropriate

**36 M.R.S. § 174**

Actions for collection of the taxes imposed by Title 36

**36 M.R.S. § 384**

Upon written request of the State Tax Assessor, the Attorney General and district attorneys, shall institute such legal proceedings as may be necessary to carry out Title 36 (investigation of valuation; actions and prosecutions; reassessment orders; appeals)

**36 M.R.S. § 1232**

Bring a civil action in the name of the State for proceedings on delinquency of property taxes

**36 M.R.S. § 1285**

Actions, at the request for the State Tax Assessor, for collection of taxes in unorganized territory

**37-B M.R.S. § 185**

Duty of the Attorney General to defend an officer or enlisted member of the state military forces in civil actions

**37-B M.R.S. § 394**

The Office of the Attorney General shall provide legal services for the Maine Military Authority, or, with the permission of the Adjutant General, retain outside counsel.



**38 M.R.S. §§ 347-A, 348, 413, 443-A, 444, 570, 967, 1296, 1310-F, 1316-C, 1318-A, 1319-J, 1319-U, 1365, 1367, 1371, 1610**

Examples - Enforcement of state's environmental laws

**39-A M.R.S. § 153**

Civil action for recovery of funds and criminal prosecution of a fraud, attempted fraud or violation of the Maine Workers' Compensation Act of 1992

**39-A M.R.S. §§ 355, 360- 361**

Provide legal representation for any claim made under this section which establishes the Employment Rehabilitation Fund including the enforcement of an assessment made under subsection 7 or the defense of an employer's appeal of that assessment

**39-A M.R.S. § 356**

Funding of Supplemental Benefits Fund; enforce payment by civil action against insurers for the amount of the assessment.

## Federal Laws

Federal law is important to many state agencies. Below is a list of federal laws that are often referred to by the staff of the Office of Attorney General. The list is not comprehensive, but provides a good idea of the interplay between state programs and federal law.

**Office of Chief Medical Examiner:** 45 C.F.R. 164.512(g) - Standard: Uses and disclosures about decedents. (1) Coroners and medical examiners. A covered entity may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. A covered entity that also performs the duties of a coroner or medical examiner may use protected health information for the purposes described in this paragraph.

**Child Protection Division:** The Adoption and Safe Families Act of 1997 (PL 105-89) ("ASFA"); The Adoption Assistance and Child Welfare Act, 42 U.S.C. sec. 622 et seq.; HHS Regulations relating to Title IV-E, 45 C.F.R. sec. 1356.21 et seq.; The Indian Child Welfare Act, 25 U.S.C. §§1901 et seq.; The Child Abuse Prevention and Treatment Act (CAPTA) 42 U.S.C. sec.5106a.

**Child Support Division:** Title IV-D of the Social Security Act – 42 U.S.C. §§ 651-669 (1994, Supp. IV 1998 & Supp. IV 1999); The Child Support Recovery Act, as amended by the Deadbeat Parents Punishment Act 18 U.S.C. § 228 (1994 & Supp. V 1999); Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1778(B) (1994 & Supp. 1999); Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 42 U.S.C. §666 (c) (Supp. V 1999); and the Servicemembers Civil Relief Act of 2003 (SCRA). 50 U.S.C. 3901 et seq. Amended by the Veterans Benefits Improvement Act of 2004.

**Consumer Protection Division:** Federal Fair Credit Reporting (in terms of accessing credit information); ECPA - Electronic Communications Privacy Act (in terms of getting information from ISP's and the like); The Sherman Act, 15 U.S.C. § 1 *et seq*; Federal Trade Commission Act, 15 U.S.C. § 45(a)(1); Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. §§ 6101 – 6106; and the Telephone Consumer Protection Act, 47 U.S.C. §227.

**Criminal Division:** The Criminal Division frequently cites federal firearms statutes and regulations, including 18 U.S.C. §§ 921-931; 27 C.F.R. Chapter 2. They also cite federal sex offender laws, such as the Adam Walsh Child Protection and Safety Act, as amended. See also: 18 U.S.C., Chapter 109B, Sex Offender and Crimes Against Children Registry. The division sometimes references federal regulations governing Criminal Justice Information Systems (CJIS) and access to/use of criminal history record information (28 C.F.R., Ch 1, Part 20). See also 18 U.S.C. 2721, Prohibition on release and use of certain personal information from state motor vehicle records.

The Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977 authorized the establishment and funding for State Medicaid Fraud Control Units ("MFCU"), to investigate and prosecute Medicaid provider fraud and patient abuse and neglect in Medicaid funded facilities. See 42 U.S.C. Section 1396b(q). See also, P. L. 95-142 and P. L. 96-499. In order for States to receive federal funding for their Medicaid Programs it must either certify that they have a MFCU

or meet the specific federal requirements that allow a State not to have a Unit. Currently 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have a MFCU and the Maine Healthcare Crimes Unit ("HCU") is the designated MFCU for the State of Maine. The MFCU's are operated under a federal grant with a 75 percent rate of federal funding, and oversight of the MFCU's rests with the Office of Inspector General for the Department of Health and Human Services. Accordingly, the HCU activities and functions are governed by strict federal regulatory and statutory requirements. *See* Title 42 C.F.R. Chapter V, Part 1007 State Medicaid Fraud Control Unit.

**Health and Human Services Division:** HIPAA; Federal Medicaid statutes and regulations; TANF; Food Stamps; Affordable Care Act; and the Immigration and Naturalization Act.

**Investigation Division:** Investigators for this Division utilize federal DEA, FDA and civil rights laws as well as full faith and credit statutes, federal laws pertaining to interstate crimes such as wire or mail fraud, laws regarding use of deadly force by federal officers, certain federal firearms statutes, in particular those dealing with prohibited possession, identity theft laws, federal domestic violence laws, and to a degree the anti-terrorism statutes and Patriot Act provisions.

**Litigation Division:** Federal non-discrimination laws, such as Title VII, the Americans with Disabilities Act, Rehabilitation Act, and Title IX; Family Medical Leave Act, Fair Labor Standards Act; Federal OSHA, Federal Civil Rights Act; Affordable Care Act, Medicaid, Social Security Act, Prison Litigation Reform Act, Religious Land Use and Institutionalized Persons Act, Individuals with Disabilities Act, Family Educational Rights and Privacy Act, Elementary and Secondary Education Act, Internal Revenue Code, National Voter Registration Act, Help America Vote Act, Uniformed and Overseas Citizens Absentee Voting Act, Military and Overseas Voter Empowerment Act, Maine Indian Claims Settlement Act of 1980, Internal Revenue Code, Bankruptcy Code, Emergency Planning and Right to Know Act and ERISA.

**Natural Resources Division:** Clean Air Act (CAA), Clean Water Act (CWA), Coastal Zone Management Act (CZMA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA/Superfund)), Endangered Species Act (ESA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Federal Meat Inspection Act (FMIA), Food Safety Modernization Act (FSMA), Magnuson-Stevens Fishery Conservation and Management Act (FCMA), Marine Mammal Protection Act (MMPA), Migrant and Seasonal Worker Protection Act (MSPA), National Environmental Policy Act (NEPA), Oil Pollution Act of 1990 (OPA), Poultry Products Inspection Act (PPIA), Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act (TSCA).

**Professional and Financial Regulation Division:** HIPAA PL104-191, 42 U.S.C. § 1320(d), and regulations 45 C.F.R. Parts 160, 162, 164; National Practitioners Data Base regulations 45 C.F.R. Part 60; Patient Protection and Affordable Care Act PL 111-148; Confidentiality of Substance Use Disorder Patient Records 42 C.F.R. Part 2; Controlled Substances Act 21 U.S.C. § 801 et seq.; Food and Drug Act with respect to prescription drugs and medical devices sections found in 21 C.F.R.