

MCILS

**August 4, 2020
Commissioner's Meeting
Packet**

(1.)

**July 7, 2020
Commission Meeting
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting
July 7, 2020**

Minutes

Commissioners Present by Telephone: Michael Carey, Sarah Churchill, Robert Cummins, Roger Katz, Robert LeBrasseur, Ronald Schneider, Joshua Tardy, Mary Zmigrodski

MCILS Staff Present: Ellie Maciag, John Pelletier

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the June 3, 2020 Commission Meeting Minutes	No discussion of meeting minutes.	Commissioner Katz moved to approve. Chair Tardy seconded. All voted in favor. Approved.
Operations Reports	<u>June 2020 Operations Report:</u> 1,976 new cases were opened in the DefenderData system in June. This was a 537 case increase over May. The number of submitted vouchers in June was 2,126, an increase of 311 vouchers from May, totaling \$911,069, an increase of \$73,000 from May. The average price per voucher was \$428.63, down \$45.86 per voucher from May. Appeal and Post-Conviction Review cases had the highest average vouchers. There were 2 vouchers exceeding \$5,000 paid in June. 104 authorizations to expend funds were issued in June, and we paid \$62,978 for experts and investigators, etc. The monthly transfer from the Judicial Branch for counsel fees for June, which reflects May’s collections, totaled \$80,889, down approximately \$16,000 from May. Two attorney complaints were received in June. Director Pelletier noted that court closures resulted in costs being down but that the number of new cases has increased slightly. Director Pelletier stated that staff was able to make full use of the FY’20 budget and did not carry any costs into FY’21.	
Jail Recordings of Attorney/Client	Director Pelletier gave a status update on the progress made in determining the scope of the recording problem. Due to a lack of response to his informal requests, Director	

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Calls	<p>Pelletier issued formal FOAA requests for information to each jail. Four county responses showed attorney calls being recorded and two county responses showed no attorney calls being recorded. Director Pelletier is working with counsel for several counties to get the remaining phone data. Director Pelletier suggested that the number of recorded calls disclosed so far demonstrate the scope of the problem and that the processes currently in place are inadequate. Director Pelletier explained that the two phone providers put the onus on the attorney and inmate to make sure the attorney phone number is on the no-record list. Director Pelletier noted that Two Bridges jail does proactively find local attorneys' phone numbers and adds them to the no-record list. Director Pelletier added that staff is in the process of collecting additional phone numbers to include on the no-record list as part of the annual renewal application process. The Commissioners agreed that the onus should be on the jail to make sure attorney calls are not recorded. Commissioners Katz and Cummins agreed to work on draft language for a future bill prohibiting this practice. Commissioner LeBrasseur suggested staff implement an annual audit of attorney phone numbers. Commissioner Carey suggested an audit every three months. Commissioner Churchill agreed that a legislative fix is necessary, including a penalty with teeth. Commissioner Churchill also reiterated the need for inmates to have a confidential place to make calls to their attorneys. Commissioner Churchill also cautioned that tablets are increasingly being used by inmates to communicate and was unsure how these devices are being monitored. Commissioner Cummins believes that the Commission cannot wait for a legislative fix and urged the Commission to take immediate action in the form of a preliminary injunction. Chair Tardy questioned whether the Commission has standing and requested AAG Hudson research the issue and report back. Chair Tardy outlined what he would like to see in the proposed legislation: prohibits recording of attorney calls, requires inmates to have a private setting to make attorney calls, provides for civil penalties for violations, and provides for a private right of action. Representative Reckitt was on the call and added that LD 1067 might be a possible vehicle for an emergency fix. Commissioner Katz moved for the Commission to recommend legislation that would prohibit recording attorney phone calls, require corrections to provide a confidential</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	setting for attorney phone calls, provide civil penalties, and provide a private right of action. Commissioner Cummins seconded. Commissioner Carey moved to broaden to include any electronic communication. All voted in favor.	
Budget Update	Director Pelletier relayed that the Commission ended the fiscal year with an unspent balance of \$2.5 million. This money will remain in the Commission’s account as an unencumbered balance forward due to the Commission’s Other Special Revenue account status. Director Pelletier noted that there is an anticipated \$2.8 million shortfall in FY’21, provided it being a normal year. Director Pelletier noted that he does not see FY’21 costs returning to normal right away. Director Pelletier stated that the unencumbered balance forward will be available for use in FY’21.	
Proposed Legislation on MCILS Rulemaking	Director Pelletier reviewed the current status of the Commission’s rulemaking authority, namely that the Commission’s eligibility rules are major substantive rules requiring legislative approval. Director Pelletier informed the Commissioners of a proposed bill that would give the Commission a period where the eligibility rules would become minor technical rules and therefore not require legislative approval. The Judiciary Committee staff asked the Commissioners to decide whether a July 1, 2021 end date for the rule to revert to major substantive would allow them sufficient time to engage in the rulemaking it anticipates undertaking. Commissioner Carey suggested that the Commission ask for an additional three months for the end date. The Commissioners agreed on an October 1, 2021 date and Director Pelletier will communicate the Commission’s preference to the legislative staff.	
Prosecutor Interactions with Pro Se Defendants	Director Pelletier informed that Commissioners about a recent Informal Opinion issued by Bar Counsel concerning whether Maine’s ethical rules prohibit prosecutors from engaging in plea discussions with unrepresented defendants before those defendants have been advised of their right to counsel by the court. The Informal Opinion stated that Maine’s Rules of Professional Conduct do not prohibit such interactions. Director Pelletier stated that Maine went through the process of adopting the rules of professional conduct and decided to not adopt ABA Model	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>Rule 3.8(b) and (c). Director Pelletier told the Commissioners that they had several options to weigh in on this issue: (1) write a formal letter to the court’s advisory committee; (2) direct a letter to the Supreme Judicial Court; or (3) urge the Legislature to adopt a statute prohibiting the practice. Commissioner Cummins moved to suggest the Supreme Judicial Court amend Rule 3.8 to include subsections b and c. Commissioners Schneider and Churchill agreed to advocate for a rule change, with Commissioner Churchill noting that a letter to the court was not as quick as using the bill Rep. Ricketts mentioned as a faster fix. Commissioner Cummins countered that he does not believe the Legislature should be in charge of regulating lawyers and that it is the judiciary’s responsibility to change the rule. Commissioner Carey suggested pursuing both a legislative fix and rule change with the court at the same time. Commissioner Cummins suggested Commission staff ask each DA office about their practice with dealing with unrepresented defendants. Commissioner Cummins moved for the Commission to send a letter to the court’s advisory committee that the rule needs to be changed via a letter signed by Chair Tardy. Commissioner Carey seconded. All voted in favor. At the end of the meeting, the Commissioners circled back around to the next steps and Commissioner Churchill suggested pursuing a statutory solution to prohibit DAs from talking to unrepresented defendants. Commissioner LeBrasseur seconded. All voted in favor.</p>	
<p>Summary of Complaints about Attorneys</p>	<p>Director Pelletier gave an overview of how staff processes attorney complaints. Commissioner Schneider suggested the Commissioners have a greater input in handling attorney complaints by examining complaints in a de-identified way. Commissioner Carey asked staff to put together last year’s complaints that can be reviewed for Commission consideration.</p>	
<p>Training RFP Update</p>	<p>Director Pelletier gave a status update on the RFP for the new attorney training consultant. He explained that the next step is to assemble a review team to review the one proposal. Chair Tardy has designated himself, Commissioner Churchill, Director Pelletier, and Deputy Director Maciag as members of the review team. Director Pelletier expects the team to issue a recommendation at the August meeting.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Public Comment	<p><u>Attorney Tina Nadeau</u>: Attorney Nadeau urged the Commission to get involved and formally respond to the Aroostook County DA offer letter to pro se defendants seeking unconstitutional pleas. Attorney Nadeau relayed that there had been no response from either the DA’s office or the judiciary in response to the defense bar’s letter objecting to the practice.</p> <p><u>Attorney Cynthia Dill</u>: Attorney Dill informed the Commissioners that the rule about vouchers not being paid if they are submitted after 90 days following the case disposition is not being followed. Attorney Dill suggested that there was an appearance of conflict against fiscal stewardship and offered to follow up with Commissioner Carey and Katz about the issue.</p> <p><u>Attorney Robert Ruffner</u>: Attorney Ruffner stated that prosecutors talking to unrepresented defendants is not a new problem and that Maine missed an opportunity when the model rules were adopted. Attorney Ruffner asked that the Commission consider how vulnerable its rostered attorneys are during this pandemic and how they are not afforded the same stability as prosecutors. He explained that many attorneys, including himself, don’t have staff to hand off the billing task to and that if attorneys are submitting vouchers over the 90-day mark, it is symptom of the bare bones operations firms are running.</p> <p><u>Attorney Sarah Branch</u>: Attorney Branch raised an issue with the Commissioners about juveniles who have received a summons and are subject to conditions of release but who are not assigned counsel right away. Attorney Branch urged the Commission to request the Judicial Branch assign counsel to these juveniles when a complaint is filed. Director Pelletier added that he could explore the possibility of early assignment with the trial chiefs when he follows up with the court about the Region 3 pilot project.</p>	
Executive Session	None	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Adjournment of meeting	The next meeting will be held telephonically on August 4, 2020 at 8 am.	

(2.)

Operations Reports

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: JULY 2020 OPERATIONS REPORTS
DATE: AUGUST 3, 2020

Attached you will find the July, 2020, Operations Reports for your review and our discussion at the Commission meeting on August 4, 2020. A summary of the operations reports follows:

- 2,439 new cases were opened in the DefenderData system in July. This was a 463 case increase over June. Year to date, new cases are down 6%, from 2,591 at this time last year to 2,439 this year.
- The number of vouchers submitted electronically in July was 1,955, a decrease of 171 vouchers from June, totaling \$926,616.52, an increase of \$18,000 over June. Year to date, the number of submitted vouchers is down by approximately 7%, from 2,806 at this time last year to 1,955 this year, with the total amount for submitted vouchers down 37%, from \$1,489,000 at this time last year to \$927,000 this year.
- In July, we paid 1,502 electronic vouchers totaling \$721,139.00, representing a decrease of 1,098 vouchers and \$393,000 compared to June. Year to date, the number of paid vouchers is down approximately 12%, from 1,714 at this time last year to 1502 this year, and the total amount paid is down approximately 18%, from \$884,000 at this time last year to \$721,000 this year.
- We paid no paper vouchers in July.
- The average price per voucher in July was \$480.12, up \$51.49 per voucher from June. Year to date, the average price per voucher is down approximately 7%, from \$516.25 at this time last year to \$480.12 this year.
- Appeal and Drug Court vouchers had the highest average voucher in July. There were 9 vouchers exceeding \$5,000 paid in July. See attached addendum for details.
- In July, we issued 87 authorizations to expend funds: 52 for private investigators, 27 for experts, and 8 for miscellaneous services such as interpreters and transcriptionists. In July, we paid \$29,199.74 for experts and investigators, etc. Three requests for funds were modified to authorize a reduced amount.
- In July, we received two complaints about attorneys in the form of letters to the court seeking new counsel. The complaint letters were sent to the attorneys seeking a response. One satisfactory response was received requiring no further action, and staff is awaiting a response regarding the second complaint.

- In July, we approved three requests for co-counsel. These cases all involved serious charges of Robbery, Arson and Attempted Murder, respectively.

In our All Other Account, the total expenses for the month of July were \$765,783.81. Of that amount, just under \$15,500 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$72,711.24 in expenses for the month of July.

In the Revenue Account, the transfer for July, reflecting June's collections, totaled \$88,434.06, an increase of approximately \$8,000 from the previous month.

During July, we had no financial activity related to training.

VOUCHERS EXCEEDING \$5,000 PAID JULY 2020

	Voucher Total	Case Total
Voucher in a case involving numerous burglaries across multiple counties. This case involved extensive suppression litigation, including a multi-day <u>Franks</u> hearing, and use of cell phone location experts. Suppression was originally granted, but was overturned by the Law Court. This voucher is for work on the case after remand. Based on a plea agreement, the defendant pled guilty to 6 of 48 counts and received a sentence that was substantially (more than 20 years) less than the State's original position. Case began in 2015.	\$10,536	\$47,874 (interim vouchers of \$11,208 (appeal), \$11,862, and \$14,268 previously paid)
Voucher in a Criminal Threatening w/ a Dangerous Weapon/Domestic Violence Criminal Threatening case. Representation complicated by the defendant's mental health issues and by use of force in defense of property defense that gave rise to a dispute regarding the boundaries of defendant's land. Defendant entered into a deferred disposition based on a plea to reduced charges.	\$8,772	\$8,772
Voucher in a Murder case. Counsel withdrew on eve of trial at the defendant's request. Case involved consultation with numerous experts. Representation spanned 3 years with delay caused by processing of co-defendant's case.	\$7,210	\$7,210
Voucher in appeal from a Termination of Parental Rights order. Termination hearing lasted 11 days and gave rise to numerous issues on appeal. Termination affirmed.	\$6,701	\$6,701
Voucher after a review in a Child Protection case. Multiple discovery motions resulted in production of extensive discovery not previously supplied to counsel. Discovery disputes caused postponement of several scheduled review hearings, and hence, multiple preparations for hearing. Matter ultimately resolved by agreement.	\$6,588	\$6,588
Voucher for work involved in sentencing after an 8-day trial (incl. 2.5 days of deliberations) in a Murder case. Defendant found guilty.	\$6,186	\$35,869 (Prior interim vouchers of \$3,618, 14,222, \$12,049, and \$9,600 paid. 14K voucher paid after second trial where first trial commenced and was aborted due to alteration in testimony by the medical examiner)

Voucher after a 3-day Termination of Parental Rights hearing. Matter also involved written closing argument and proposed findings. Termination denied.	\$5,992	\$5,992
Voucher reflecting work on 6 felony cases involving Burglary and Receiving Stolen Property charges across several counties. Representation spanned two years and originally involved over 250 charges. Defendant pled guilty to a reduced number of charges.	\$5,311	\$5,311
Voucher in a Robbery/Aggravated Assault case involving suppression issues based on electronic tracking that required expert involvement. Ultimately, a plea agreement was reached, but the defendant later rejected the agreement and asked for new counsel.	\$5,101	\$5,101

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

7/31/2020

DefenderData Case Type	Jul-20						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	4	19	\$ 32,415.41	18	\$ 31,290.10	\$ 1,738.34	4	18	\$ 31,290.10	\$ 1,738.34
Child Protection Petition	197	343	\$ 210,631.61	252	\$ 161,902.00	\$ 642.47	197	252	\$ 161,902.00	\$ 642.47
Drug Court	0	7	\$ 11,316.00	5	\$ 8,586.00	\$ 1,717.20	0	5	\$ 8,586.00	\$ 1,717.20
Emancipation	7	5	\$ 1,348.80	4	\$ 908.40	\$ 227.10	7	4	\$ 908.40	\$ 227.10
Felony	532	345	\$ 264,521.24	285	\$ 215,151.51	\$ 754.92	532	285	\$ 215,151.51	\$ 754.92
Involuntary Civil Commitment	92	79	\$ 16,289.60	77	\$ 15,461.60	\$ 200.80	92	77	\$ 15,461.60	\$ 200.80
Juvenile	34	43	\$ 20,671.36	29	\$ 13,997.64	\$ 482.68	34	29	\$ 13,997.64	\$ 482.68
Lawyer of the Day - Custody	249	252	\$ 61,001.80	186	\$ 45,182.64	\$ 242.92	249	186	\$ 45,182.64	\$ 242.92
Lawyer of the Day - Juvenile	18	13	\$ 3,872.64	9	\$ 2,696.64	\$ 299.63	18	9	\$ 2,696.64	\$ 299.63
Lawyer of the Day - Walk-in	259	170	\$ 35,556.03	115	\$ 22,974.08	\$ 199.77	259	115	\$ 22,974.08	\$ 199.77
Misdemeanor	847	393	\$ 126,996.28	296	\$ 91,375.55	\$ 308.70	847	296	\$ 91,375.55	\$ 308.70
Petition, Modified Release Treatment	2	1	\$ 504.00	1	\$ 504.00	\$ 504.00	2	1	\$ 504.00	\$ 504.00
Petition, Release or Discharge	0	0		0			0	0		
Petition, Termination of Parental Rights	17	25	\$ 15,706.52	21	\$ 13,771.12	\$ 655.77	17	21	\$ 13,771.12	\$ 655.77
Post Conviction Review	6	6	\$ 4,988.22	3	\$ 1,055.92	\$ 351.97	6	3	\$ 1,055.92	\$ 351.97
Probate	0	0		0			0	0		
Probation Violation	129	87	\$ 43,326.92	70	\$ 35,639.84	\$ 509.14	129	70	\$ 35,639.84	\$ 509.14
Represent Witness on 5th Amendment	0	0		0			0	0		
Resource Counsel Criminal	0	2	\$ 306.00	1	\$ 144.00	\$ 144.00	0	1	\$ 144.00	\$ 144.00
Resource Counsel Juvenile	0	0		0			0	0		
Resource Counsel Protective Custody	0	0		0			0	0		
Review of Child Protection Order	45	165	\$ 80,164.09	130	\$ 60,497.96	\$ 465.37	45	130	\$ 60,497.96	\$ 465.37
Revocation of Administrative Release	1	0		0			1	0		
DefenderData Sub-Total	2,439	1,955	\$ 929,616.52	1,502	\$ 721,139.00	\$ 480.12	2,439	1,502	\$ 721,139.00	\$ 480.12
Paper Voucher Sub-Total	0	0	\$ -	0	\$ -	#DIV/0!	0	0	\$ -	#DIV/0!
TOTAL	2,439	1,955	\$929,616.52	1,502	\$721,139.00	\$ 480.12	2,439	1,502	\$ 721,139.00	\$ 480.12

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
AS OF 07/31/2020

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY21 Professional Services Allotment		\$ 4,372,000.00		\$ 4,312,000.00		\$ 4,452,000.00		\$ 2,113,725.00	
FY21 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY20 Encumbered Balance Forward		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Reduction due to encumbrance closure		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,420,000.00		\$ 4,360,000.00		\$ 4,500,000.00		\$ 2,161,725.00	\$ 15,441,725.00
Total Expenses	1	\$ (765,783.81)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (75,117.50)		\$ -		\$ -		\$ -	\$ (75,117.50)
Encumbrances (B Taylor)		\$ (75,140.00)		\$ -		\$ -		\$ -	\$ (75,140.00)
Encumbrances (Videographer & business cards)		\$ -		\$ -		\$ -		\$ -	\$ -
TOTAL REMAINING		\$ 3,503,958.69		\$ 4,360,000.00		\$ 4,500,000.00		\$ 2,161,725.00	\$ 14,525,683.69

Q1 Month 1	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (721,139.00)
Interpreters	\$ (752.00)
Private Investigators	\$ (5,547.57)
Mental Health Expert	\$ (14,643.40)
Misc Prof Fees & Serv	\$ (175.00)
Transcripts	\$ (3,369.70)
Other Expert	\$ (4,482.50)
Process Servers	\$ (229.57)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
SUB-TOTAL ILS	\$ (750,338.74)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (4,882.50)
Parking Permit Annual Fee	\$ (504.00)
Mileage/Tolls/Parking	\$ (629.10)
Mailing/Postage/Freight	\$ (0.58)
West Publishing Corp	\$ (198.09)
Risk Management Insurances	\$ (2,106.25)
Office Supplies/Equip.	\$ -
Cellular Phones	\$ (158.42)
OIT/TELCO	\$ (2,432.10)
Office Equipment Rental	\$ (98.03)
Training Videographer	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
Meter Postage Cards Printing	\$ (16.00)
Training Printing Fees	\$ -
SUB-TOTAL OE	\$ (15,445.07)
TOTAL	\$ (765,783.81)

INDIGENT LEGAL SERVICES	
Q1 Allotment	\$ 4,420,000.00
Q1 Encumbrances for Justice Works contract	\$ (75,117.50)
Barbara Taylor Contract	\$ (75,140.00)
Videographer	\$ -
Q1 Expenses to date	\$ (765,783.81)
Remaining Q1 Allotment	\$ 3,503,958.69

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (29,199.74)
Total Q1	\$ 29,199.74
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 29,199.74

Conference Account Transactions	
NSF Charges	\$ -
Training Facilities & Meals	\$ -
Printing/Binding	\$ -
Overseers of the Bar CLE fee	\$ -
Collected Registration Fees	\$ -
Current Month Total	\$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
As of 07/31/2020

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -	12	\$ -	\$ -
Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 88,434.06	4	\$ -	7	\$ -	10	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Court Ordered Counsel Fee		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 88,434.06		\$ -		\$ -		\$ -	\$ 88,434.06
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Other Expenses	*	\$ -	**	\$ -	***	\$ -		\$ -	
REMAINING ALLOTMENT		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 88,434.06		\$ -		\$ -		\$ -	\$ 88,434.06

Collections versus Allotment	
Monthly Total	\$ 88,434.06
Total Q1	\$ 88,434.06
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Allotment Expended to Date	\$ -
Fiscal Year Total	\$ 88,434.06

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
AS OF 07/31/2020

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY21 Allotment		\$ 236,986.00		\$ 245,444.00		\$ 216,987.00		\$ 197,826.00	\$ 897,243.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 236,986.00		\$ 245,444.00		\$ 216,987.00		\$ 197,826.00	\$ 897,243.00
Total Expenses	1	\$ (72,711.14)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 164,274.86		\$ 245,444.00		\$ 216,987.00		\$ 197,826.00	\$ 824,531.86

Q1 Month 1	
Per Diem	\$ (55.00)
Salary	\$ (36,595.40)
Vacation Pay	\$ (996.54)
Holiday Pay	\$ (2,238.17)
Sick Pay	\$ (789.88)
Empl Hlth SVS/Worker Comp	\$ (166.00)
Health Insurance	\$ (11,791.24)
Dental Insurance	\$ (321.20)
Employer Retiree Health	\$ (4,307.07)
Employer Retirement	\$ (2,673.22)
Employer Group Life	\$ (446.88)
Employer Medicare	\$ (597.28)
Retiree Unfunded Liability	\$ (7,812.45)
Longevity Pay	\$ (120.00)
Perm Part Time Full Ben	\$ (3,800.81)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (72,711.14)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

7/31/2020

Court	Jul-20						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	2	6	\$ 2,751.00	3	\$ 2,514.00	\$ 838.00	2	3	\$ 2,514.00	\$ 838.00
AUBSC	2	0		0			2	0		
AUGDC	42	42	\$ 27,731.16	30	\$ 17,996.56	\$ 599.89	42	30	\$ 17,996.56	\$ 599.89
AUGSC	3	7	\$ 1,734.00	6	\$ 1,614.00	\$ 269.00	3	6	\$ 1,614.00	\$ 269.00
BANDC	65	84	\$ 24,010.00	68	\$ 17,283.00	\$ 254.16	65	68	\$ 17,283.00	\$ 254.16
BANSC	1	0		0			1	0		
BATSC	0	0		0			0	0		
BELDC	12	15	\$ 9,838.14	13	\$ 8,344.69	\$ 641.90	12	13	\$ 8,344.69	\$ 641.90
BELSC	0	0		0			0	0		
BIDDC	39	57	\$ 34,328.90	42	\$ 24,971.90	\$ 594.57	39	42	\$ 24,971.90	\$ 594.57
BRIDC	17	19	\$ 10,891.30	14	\$ 7,598.82	\$ 542.77	17	14	\$ 7,598.82	\$ 542.77
CALDC	7	8	\$ 4,607.20	6	\$ 3,588.00	\$ 598.00	7	6	\$ 3,588.00	\$ 598.00
CARDC	5	33	\$ 16,763.51	23	\$ 11,984.11	\$ 521.05	5	23	\$ 11,984.11	\$ 521.05
CARSC	0	1	\$ 360.00	1	\$ 360.00	\$ 360.00	0	1	\$ 360.00	\$ 360.00
DOVDC	1	8	\$ 6,246.96	8	\$ 6,246.96	\$ 780.87	1	8	\$ 6,246.96	\$ 780.87
DOVSC	1	0		0			1	0		
ELLDC	7	27	\$ 22,873.92	21	\$ 17,521.06	\$ 834.34	7	21	\$ 17,521.06	\$ 834.34
ELLSC	0	0		0			0	0		
FARDC	4	8	\$ 11,737.81	7	\$ 11,587.81	\$ 1,655.40	4	7	\$ 11,587.81	\$ 1,655.40
FARSC	0	0		0			0	0		
FORDC	2	9	\$ 6,683.39	8	\$ 6,474.40	\$ 809.30	2	8	\$ 6,474.40	\$ 809.30
HOUDC	14	22	\$ 8,522.40	19	\$ 9,248.40	\$ 486.76	14	19	\$ 9,248.40	\$ 486.76
HOUSC	0	0		0			0	0		
LEWDC	56	90	\$ 35,852.84	74	\$ 29,681.84	\$ 401.11	56	74	\$ 29,681.84	\$ 401.11
LINDC	17	11	\$ 5,093.96	9	\$ 4,287.96	\$ 476.44	17	9	\$ 4,287.96	\$ 476.44
MACDC	2	6	\$ 7,134.91	5	\$ 6,093.31	\$ 1,218.66	2	5	\$ 6,093.31	\$ 1,218.66
MACSC	1	1	\$ 1,826.30	0			1	0		
MADDc	0	0		0			0	0		
MILDC	7	5	\$ 2,295.00	2	\$ 1,317.00	\$ 658.50	7	2	\$ 1,317.00	\$ 658.50
NEWDC	12	19	\$ 6,403.96	11	\$ 4,125.12	\$ 375.01	12	11	\$ 4,125.12	\$ 375.01
PORDC	50	65	\$ 29,441.00	64	\$ 27,663.00	\$ 432.23	50	64	\$ 27,663.00	\$ 432.23
PORSC	2	1	\$ 540.00	1	\$ 540.00	\$ 540.00	2	1	\$ 540.00	\$ 540.00
PREDC	11	25	\$ 9,417.00	14	\$ 5,907.00	\$ 421.93	11	14	\$ 5,907.00	\$ 421.93
ROCDc	16	19	\$ 8,930.50	12	\$ 6,519.30	\$ 543.28	16	12	\$ 6,519.30	\$ 543.28
ROCSC	1	1	\$ 216.00	2	\$ 372.00	\$ 186.00	1	2	\$ 372.00	\$ 186.00
RUMDC	11	14	\$ 12,729.00	13	\$ 12,561.00	\$ 966.23	11	13	\$ 12,561.00	\$ 966.23
SKODC	17	39	\$ 16,437.40	23	\$ 10,521.80	\$ 457.47	17	23	\$ 10,521.80	\$ 457.47
SKOSC	1	0		0			1	0		
SOUDC	7	18	\$ 8,129.72	16	\$ 6,701.72	\$ 418.86	7	16	\$ 6,701.72	\$ 418.86
SOUSC	0	0		0			0	0		
SPRDC	31	29	\$ 14,953.40	18	\$ 6,869.48	\$ 381.64	31	18	\$ 6,869.48	\$ 381.64
Law Ct	4	15	\$ 30,220.00	14	\$ 29,094.69	\$ 2,078.19	4	14	\$ 29,094.69	\$ 2,078.19
YORCD	169	92	\$ 46,863.90	64	\$ 35,976.90	\$ 562.14	169	64	\$ 35,976.90	\$ 562.14
AROCD	130	101	\$ 34,470.18	88	\$ 31,404.18	\$ 356.87	130	88	\$ 31,404.18	\$ 356.87
ANDCD	306	134	\$ 41,261.64	110	\$ 28,562.82	\$ 259.66	306	110	\$ 28,562.82	\$ 259.66
KENDC	133	103	\$ 59,845.31	84	\$ 48,418.91	\$ 576.42	133	84	\$ 48,418.91	\$ 576.42
PENCD	262	128	\$ 59,546.43	95	\$ 47,424.08	\$ 499.20	262	95	\$ 47,424.08	\$ 499.20
SAGCD	30	23	\$ 10,046.76	14	\$ 5,493.26	\$ 392.38	30	14	\$ 5,493.26	\$ 392.38
WALCD	48	45	\$ 15,092.50	12	\$ 4,379.60	\$ 364.97	48	12	\$ 4,379.60	\$ 364.97
PISCD	12	14	\$ 3,334.74	10	\$ 1,771.20	\$ 177.12	12	10	\$ 1,771.20	\$ 177.12
HANCD	46	23	\$ 14,874.32	20	\$ 5,348.00	\$ 267.40	46	20	\$ 5,348.00	\$ 267.40
FRACD	81	45	\$ 17,854.50	35	\$ 14,117.56	\$ 403.36	81	35	\$ 14,117.56	\$ 403.36
WASCD	57	33	\$ 18,096.56	21	\$ 13,589.56	\$ 647.12	57	21	\$ 13,589.56	\$ 647.12
CUMCD	298	201	\$ 131,007.27	149	\$ 100,538.71	\$ 674.76	298	149	\$ 100,538.71	\$ 674.76
KNODC	71	42	\$ 21,201.72	26	\$ 16,343.00	\$ 628.58	71	26	\$ 16,343.00	\$ 628.58
SOMCD	80	45	\$ 10,519.84	50	\$ 11,352.64	\$ 227.05	80	50	\$ 11,352.64	\$ 227.05
OXFCD	143	101	\$ 20,567.34	78	\$ 18,293.94	\$ 234.54	143	78	\$ 18,293.94	\$ 234.54
LINCD	40	39	\$ 13,366.64	36	\$ 13,283.76	\$ 368.99	40	36	\$ 13,283.76	\$ 368.99
WATDC	24	42	\$ 16,521.76	31	\$ 12,873.68	\$ 415.28	24	31	\$ 12,873.68	\$ 415.28
WESDC	29	24	\$ 8,274.56	21	\$ 6,860.40	\$ 326.69	29	21	\$ 6,860.40	\$ 326.69
WISDC	9	14	\$ 6,498.87	9	\$ 3,846.87	\$ 427.43	9	9	\$ 3,846.87	\$ 427.43
WISSC	0	0		0			0	0		
YORDC	1	2	\$ 1,671.00	2	\$ 1,671.00	\$ 835.50	1	2	\$ 1,671.00	\$ 835.50
TOTAL	2,439	1,955	\$ 929,616.52	1,502	\$ 721,139.00	\$ 480.12	2,439	1,502	\$ 721,139.00	\$ 480.12

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

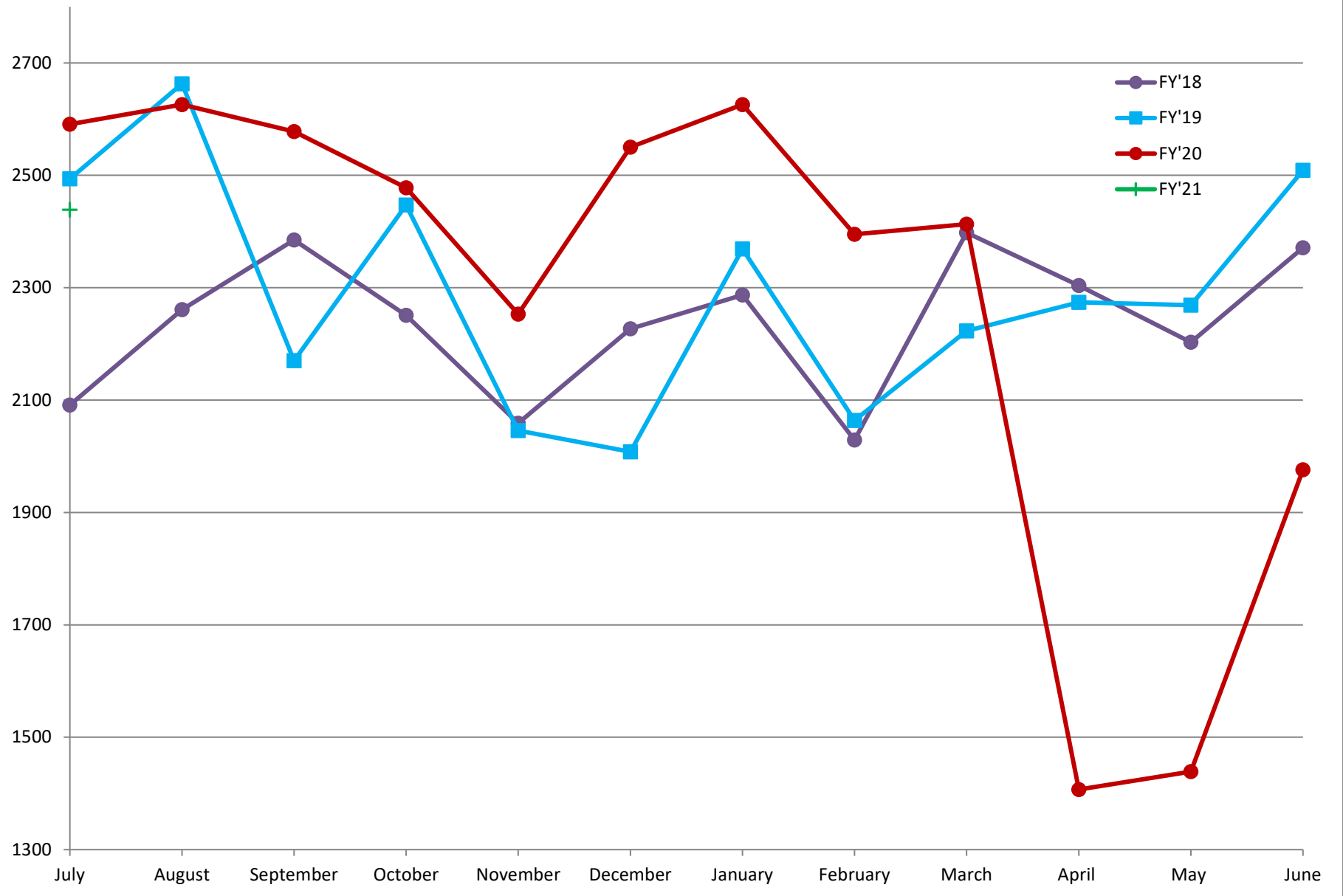
Number of Attorneys Rostered by Court

07/31/2020

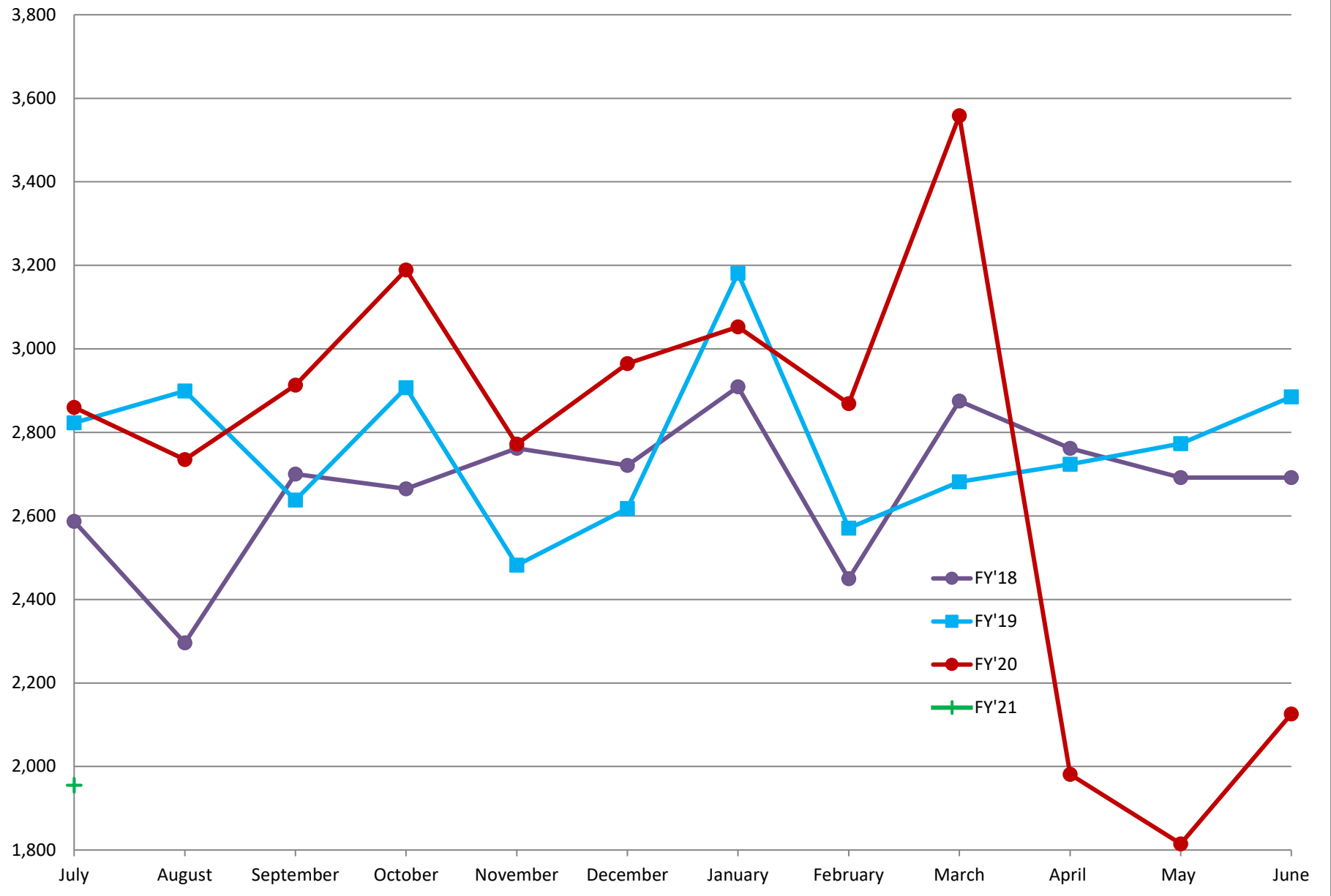
Court	Rostered Attorneys
Augusta District Court	71
Bangor District Court	40
Belfast District Court	38
Biddeford District Court	113
Bridgton District Court	72
Calais District Court	8
Caribou District Court	15
Dover-Foxcroft District Court	23
Ellsworth District Court	31
Farmington District Court	32
Fort Kent District Court	10
Houlton District Court	12
Lewiston District Court	110
Lincoln District Court	21
Machias District Court	12
Madawaska District Court	11
Millinocket District Court	14
Newport District Court	28
Portland District Court	136
Presque Isle District Court	13
Rockland District Court	29
Rumford District Court	23
Skowhegan District Court	23

Court	Rostered Attorneys
South Paris District Court	47
Springvale District Court	99
Unified Criminal Docket Alfred	98
Unified Criminal Docket Aroostook	21
Unified Criminal Docket Auburn	89
Unified Criminal Docket Augusta	69
Unified Criminal Docket Bangor	43
Unified Criminal Docket Bath	76
Unified Criminal Docket Belfast	38
Unified Criminal DocketDover Foxcroft	22
Unified Criminal Docket Ellsworth	34
Unified Criminal Docket Farmington	34
Unified Criminal Docket Machias	14
Unified Criminal Docket Portland	132
Unified Criminal Docket Rockland	24
Unified Criminal Docket Skowhegan	20
Unified Criminal Docket South Paris	40
Unified Criminal Docket Wiscasset	43
Waterville District Court	38
West Bath District Court	89
Wiscasset District Court	51
York District Court	86

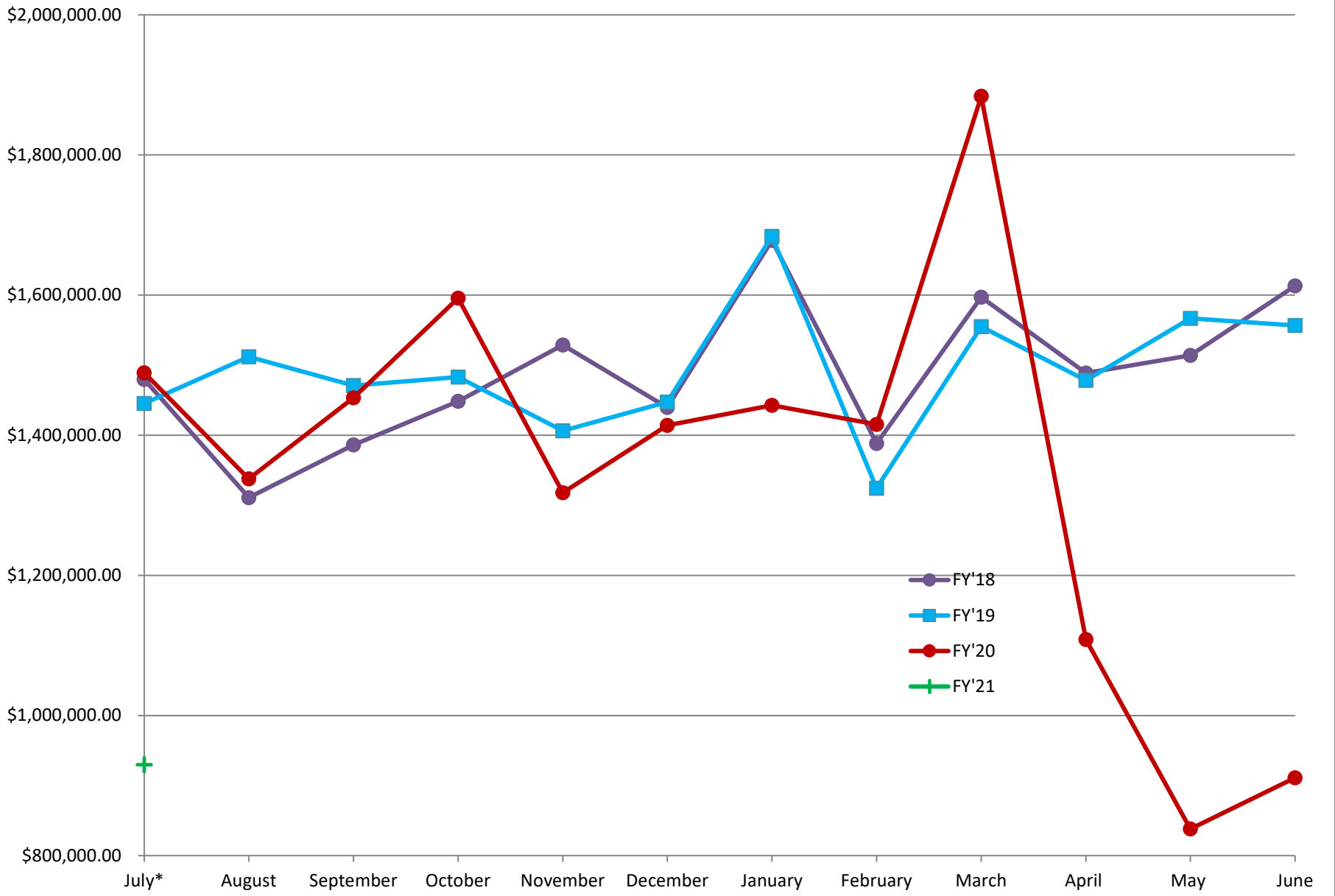
NEW CASES



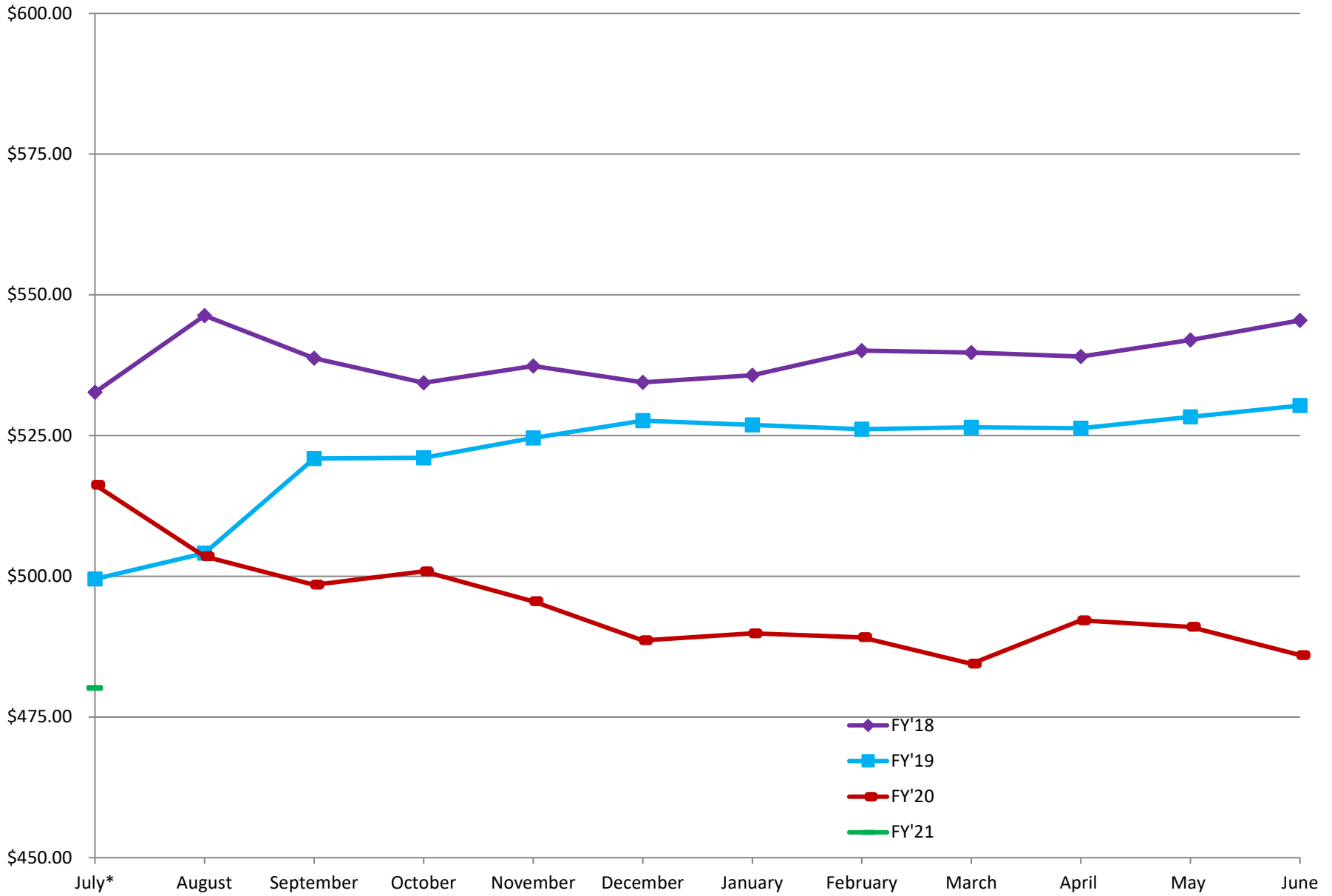
Submitted Vouchers



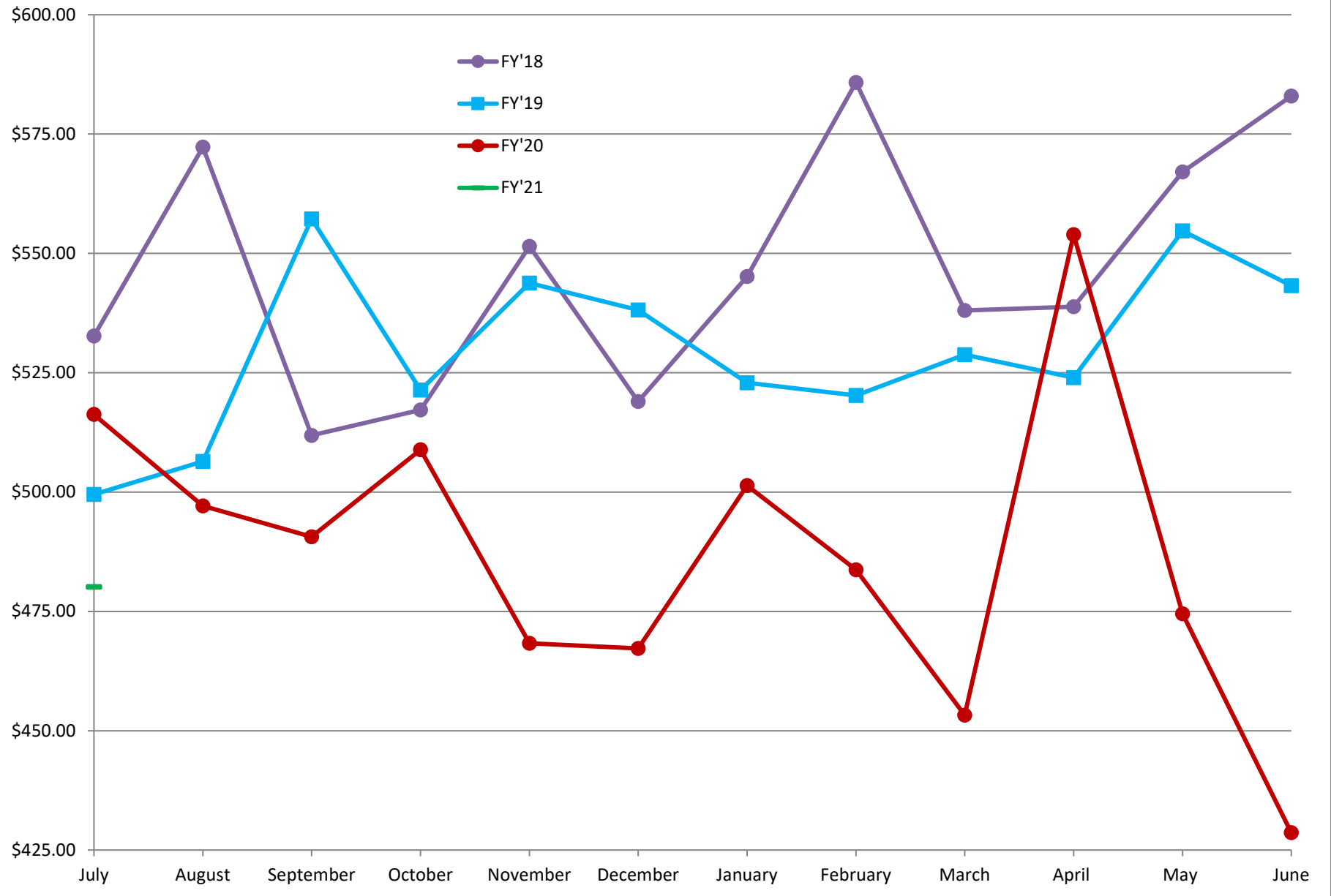
Submitted Voucher Amount



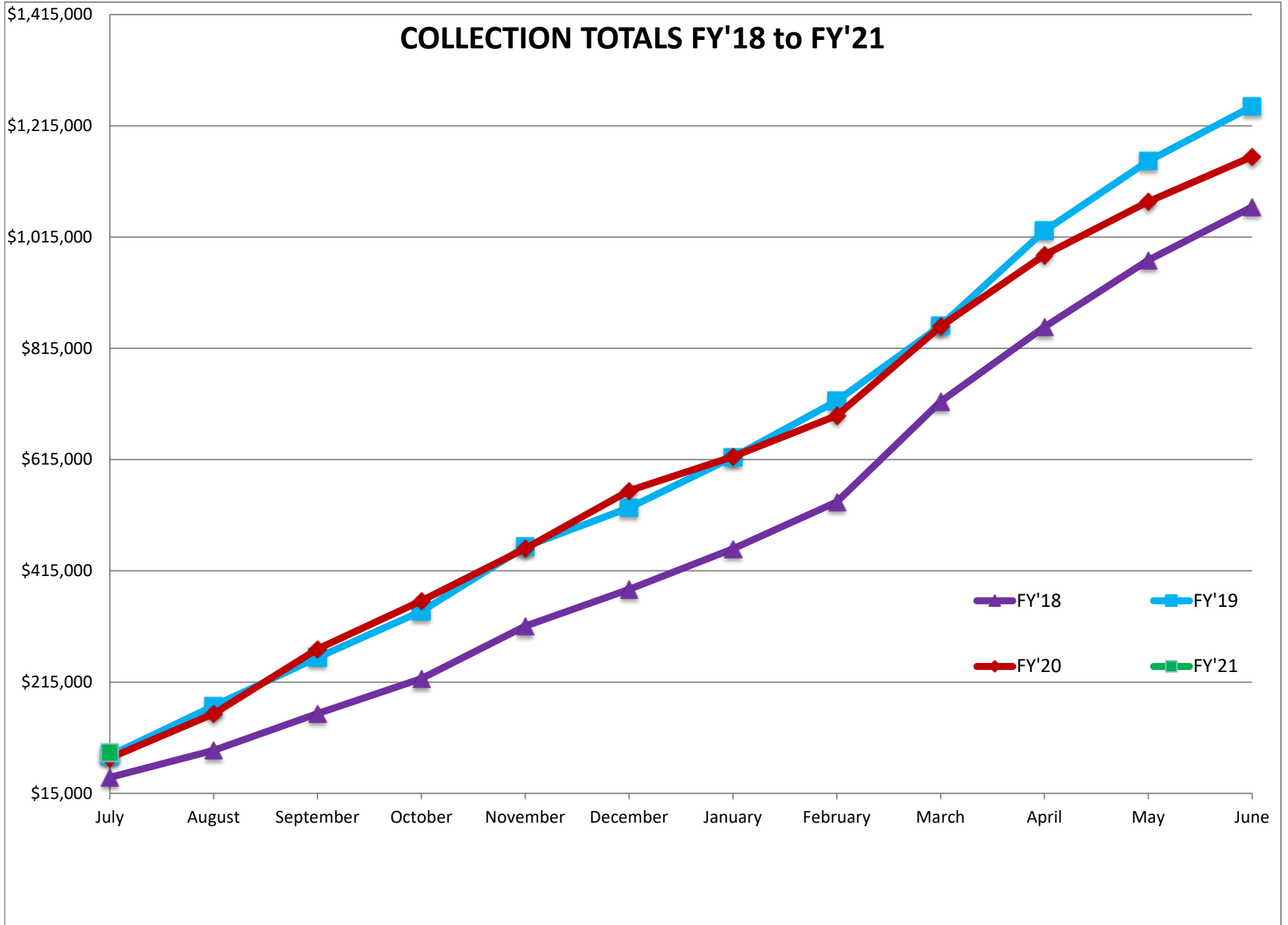
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'21



(3.)

**Jail Recordings of
Attorney/Client Calls**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: JAIL RECORDINGS OF ATTORNEY - CLIENT CALLS
DATE: JULY 30, 2020

At the last meeting, the Commission requested an opinion from counsel Megan Hudson, Esq. about the Commission's ability to undertake legal action to address this issue. It is expected that the Commission will move into executive session to hear from counsel.

(4.)

**Prosecutor Interactions
with Pro Se Defendants**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: PROSECUTOR INTERACTION WITH PRO SE DEFENDANTS
DATE: JULY 30, 2020

At its last meeting, the Commission discussed the informal opinion from Bar Counsel indicating that Maine's ethical rules provided only limited restrictions on the ability of prosecutors to interact and negotiate with pro se defendants. Bar counsel based this opinion on Maine's decision not to adopt ABA Model Rule 3.8 (b) & (c) as part of its Rules of professional conduct.

The Commission discussed preparing a letter to the Advisory Committee on the Rules of Professional Conduct urging adoption of those subsections. A copy of a draft letter to the Advisory Committee is attached for the Commission's review.

The Commission also requested that staff contact Maine's District Attorneys to learn how prosecutors interact with pro se defendants in their respective districts. We have received responses from all eight District Attorneys. Copies of the responses are attached.

Finally, the Sixth Amendment Center report urged the Legislature to pass a statute that bars prosecutors from negotiating with pro se defendants if the defendant has not been advised of their right to counsel by the court and waived that right. The Judiciary Committee has unanimously voted out LD 2171, a copy of which is attached, to do just that. Procedurally, this bill was discussed in committee and voted. I understand that it will proceed directly to the House and Senate for votes without further public hearing. Of course, it remains uncertain whether the current Legislature will re-convene, if it does, whether this bill will be addressed during the special session.

Advisory Committee on the Rules of Professional Conduct

The Maine Commission on Indigent Legal Services writes to strongly urge the Advisory Committee to recommend amending the Maine Rules of Profession Conduct to include ABA Model Rule 3.8 (b) & (c) regarding the special responsibilities of a prosecutor.

When current Rule 3.8 of the Rules of Professional Conduct was adopted, the Task Force specifically declined to recommend adoption of subsections (b) & (c) of Model Rule 3.8, concluding that subsections (b) & (c), among others, “were unnecessary, and in some cases not appropriate to Maine.” Maine Rule of Professional Conduct 3.8, reporter’s note (2019). Since that time, the Legislature commissioned a study of the delivery of indigent legal services in Maine by the Sixth Amendment Center. Among other things, the Center’s Report criticized Maine’s system based on the extent of contact between prosecutors and unrepresented defendants, stating:

The United States Supreme Court confirmed in Lafler v. Cooper and in Missouri v. Frye that a defendant has the right to “effective assistance of competent counsel” during plea negotiations. The plea negotiation is a critical stage of the case, meaning the negotiation cannot happen unless counsel is present or the defendant’s right to counsel has been knowingly, voluntarily, and intelligently waived. Despite this, throughout the sample counties, prosecutors talk to uncounseled defendants to negotiate guilty pleas. This was most prevalent in the south where larger court populations, and not enough lawyers of the day, exacerbate the problems.

Sixth Amendment Center, Right to Counsel in Maine p. 44, April 2019; https://sixthamendment.org/6AC/6AC_me_report_2019.pdf. Based on this finding, the Center recommended that:

The State of Maine should statutorily bar communication between prosecutors and unrepresented defendants, unless and until defendants have been informed of their right to appointed counsel, a judge has conducted the legally required colloquy, and a defendant has executed a written waiver of the right to counsel in each case to ensure that all waivers of the right to counsel are made knowingly and voluntarily.

Id. at 88.

In addition, on May 9, 2019, the American Bar Association issued Formal Opinion #486 that imposes significant restrictions on the circumstances under which a prosecutor may engage in plea negotiations with a pro se defendant based on subsections (b) & (c), stating:

The prosecutor must make reasonable efforts to assure that the accused has been advised of the right to counsel and the procedure for obtaining counsel, and has been given a reasonable opportunity to exercise that right and obtain counsel

Moreover, under Rule 3.8(b) and (c), a prosecutor may not pressure, advise, or induce acceptance of a plea or waiver of the right to counsel after an unrepresented accused has been informed of the right to counsel and is deciding whether to invoke or has initiated the process to invoke that right. Even asking an unrepresented accused if she wishes to waive the right to counsel or accept a plea is improper if it is clear from the circumstances that the accused does not understand the consequences of acceding to the request. This is so because legal advice may be necessary to clarify any such misunderstanding

ABA Formal Opinion #486, 12-13.

After the Sixth Amendment Center Report was published, many prosecutors altered their practices when dealing with pro se defendants, and the Maine Prosecutors Association sought guidance from Bar Counsel regarding the effect of ABA Formal Opinion #486 on Maine prosecutors dealing with pro se defendants. On May 27, 2020, Assistant Bar Counsel issued an informal opinion noting that Formal Opinion #486 imposed significant restrictions on a prosecutor's ability to plea bargain with a pro se defendant in a case where the right to counsel applied. Bar Counsel noted, however, that in doing so Formal Opinion #486 had focused on the application of Model Rule 3.8 (b) & (c). Noting that those subsections had not been adopted in Maine, Bar Counsel opined that there is no ethical prohibition on Maine prosecutors meeting with pro se defendants or making plea offers prior to the defendant having been advised of the right to counsel by the court and waived that right. Assistant Bar Counsel Informal Opinion Re: MPA Questions – Negotiating with Pro Se Defendants, May 27, 2020.

Based on the Sixth Amendment Center Report and the informal opinion from Assistant Bar Counsel, together with reports about the manner in which at least some prosecutors interact with unrepresented defendants, the Commission is concerned about the State of Maine's ethical rules governing such interactions. The Commission respectfully requests that the Advisory Committee consider whether to add subsections (b) & (c) of Model Rule 3.8 to Maine's Rules of Professional Conduct. As stated above, the Commission strongly urges the Advisory Committee to recommend adoption of these subsections and stands ready to provide additional information to assist the Committee's consideration of this issue.

Thank you for your consideration.

From: [Kathryn M Slattery](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#)
Subject: Re: Interactions with Pro Se Defendants
Date: Thursday, July 16, 2020 10:21:29 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear John,

York County delivers offer sheets and discovery to the LOD on the date of arraignment. The offer is conveyed by the LOD after arraignment.

Sincerely,

Kathy Slattery

[My email has changed to: kmslattery@yorkcountymaine.gov](mailto:kmslattery@yorkcountymaine.gov)

From: Pelletier, John <John.Pelletier@maine.gov>
Sent: Monday, July 13, 2020 4:37 PM
To: Kathryn M Slattery <kmslattery@yorkcountymaine.gov>
Cc: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: Interactions with Pro Se Defendants

District Attorney Slattery:

The Commission on Indigent Legal Services has recently become aware of the informal opinion issued by Assistant Bar Counsel on the issue of prosecutor interactions with pro se defendants. Despite this opinion, the Commission continues to have concerns about prosecutor interactions with pro se defendants before they have been advised of their rights, including the right to counsel, by a court.

The purpose of this email is to gather information to inform Commission deliberations on how to address this issue. Please provide a description of your current policy for prosecutors in your office interacting with pro se defendants.

Your cooperation is much appreciated. Thank you.

John

John D. Pelletier, Esq., Executive Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333

John.pelletier@maine.gov
(207) 287-3254

From: [Maeghan Maloney](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#); [Bailey, Donna](#); [Carpenter, Mike](#)
Subject: Re: Interactions with Pro Se Defendants
Date: Thursday, July 30, 2020 1:55:19 PM

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John,

We either need a public defenders office (or an equivalent organization that will accept anyone's phone call and answer questions) or the District Attorney's Office needs to speak to pro se defendants. There is no other moral and ethical way to proceed.

In my district, people are being given a summons for the end of November. That's over 4 months to wait. Four months for a person facing a class E theft or OAS (Operating after suspension) to think "I'm going to jail." That person is NOT going to jail. He or she should NOT be tormented for four months. They need someone to call. When they call the court, the court says to call the DA's Office. When they call a defense attorney, they have to pay money and they have no money. When they call my office they are told, "Show us proof of community service or your license being reinstated and we will decline or dismiss the charges. No matter what, this is not a charge where the DA's Office asks for jail." I have personally experienced a 60 year old woman burst into tears with relief when I told her she was not going to jail. It is unconscionable to leave people with NO ONE to talk to.

My policy is that my office NEVER calls defendants. But if pro se defendants call us, we will answer their questions. I don't know of any other moral and ethical way to proceed.

If you conclude that the District Attorneys Office has to refuse to speak to pro se defendants who call us before their arraignment date, please give pro se defendants someone else they can call. They need help. Leaving them with no one would be cruel.

My job is not to pursue convictions. My job is to pursue justice. Justice requires that indigent people have someone they can talk to before their arraignment date.

Thank you for your consideration,

Maeghan Maloney

District Attorney

Kennebec and Somerset Counties

From: Pelletier, John <John.Pelletier@maine.gov>
Sent: Monday, July 13, 2020 4:37:35 PM
To: Maeghan Maloney <mmaloney@kennebecda.com>
Cc: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: Interactions with Pro Se Defendants

District Attorney Maloney:

From: [Todd Collins](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#); [Carrie Linthicum](#); [Charles Fyler](#); [Christiana Rein](#); [Kari Wells-Puckett](#); [Matthew Hunter](#); [Todd Collins](#)
Subject: RE: Interactions with Pro Se Defendants
Date: Wednesday, July 15, 2020 3:28:13 PM

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We send plea offers out in the mail and or provide them before arraignment. If a defendant calls or approaches us prior to their arraignment we make sure that they understand that we are not their lawyer and that talking to us is like talking with a police officer – anything they say can be used as evidence in their case – and if they want to keep talking with us, we talk. We listen. And we respond appropriately. When they call the office with questions about what an offer means, bail conditions and process, restitution, deferred dispositions, admin releases, or concerns about their court date we answer their questions. We are the public lawyer in criminal cases for the people of Maine, sometimes those people are defendants. If a person wants to talk with us about things we are allowed to talk about, we will not push them away or ignore them. We will honor our Constitutional and ethical obligations and we do not build a wall around our Office. The First Amendment allows people to speak with whomever they want about whatever they want, even if all we do is listen.

Be Well and Stay Safe,

Todd R. Collins
District Attorney, Aroostook County
144 Sweden Street
Caribou, Maine 04736
(207) 498-2557

From: Pelletier, John <John.Pelletier@maine.gov>
Sent: Monday, July 13, 2020 4:38 PM
To: Todd Collins <todd@aroostook.me.us>
Cc: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: Interactions with Pro Se Defendants

District Attorney Collins:

The Commission on Indigent Legal Services has recently become aware of the informal opinion issued by Assistant Bar Counsel on the issue of prosecutor interactions with pro se defendants. Despite this opinion, the Commission continues to have concerns about prosecutor interactions with pro se defendants before they have been advised of their rights, including the right to counsel, by a court.

The purpose of this email is to gather information to inform Commission deliberations on how to address this issue. Please provide a description of your current policy for prosecutors in your office interacting with pro se defendants.

Your cooperation is much appreciated. Thank you.

John

From: [Matthew Foster](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#)
Subject: RE: Interactions with Pro Se Defendants
Date: Tuesday, July 14, 2020 10:23:55 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear John:

Thank you for your inquiry on District 7 policy related to contact with pro se defendants.

In District 7, we have implemented a policy of no contact with defendants prior to them being advised of their rights by the court. This was in response to the concerns raised about prosecutors having contact with unrepresented defendants.

We bring discovery materials to the arraignment date and distribute the materials, (typically along with an offer letter in misdemeanor cases) only after the defendants have been addressed by the Court and have watched the video explaining their rights. After the defendants have watched the video and have had their rights further explained to them by the Judge, the court affords the prosecution time to call out each name of the defendants present so that they can sign a receipt for their discovery materials.

My ADA's do not communicate in-person with unrepresented defendants other than at court at dispositional conferences or other hearings where a LOD or a judge is available to them. We occasionally send correspondence via letter in the U.S. Mail to pro se defendants to comply with the rules of procedure and our ethical obligations.

Additionally, we no longer send any correspondence to pro se defendants who are on a deferred disposition to confirm compliance or remind them of their obligations in order to prevent any issues arising from that contact.

Our office staff communicates with defendants who stop into the office to make restitution or DD supervision fee payments only to complete such transactions.

I would like to see the Court require defendants to sign a written waiver of counsel in every case for which no attorney is appointed or retained. I would like to have the Court or legislature provide us with guidance as to exactly what communications we are to have with pro se defendants. I would also like to see the LOD at arraignments be the one to distribute discovery and collect receipts for each defendant so that my ADA's are not having even that minimal interaction with defendants at arraignment.

One down-side to this inability to communicate with defendants prior to Arraignment will be that any type of pre-court diversion programs will be impossible to implement. That will be an unfortunate loss for those defendants who might otherwise benefit from having their case resolved outside the court system.

This procedure also makes it much more difficult for defendants who simply want to get the case over with and enter a guilty plea to accomplish that goal without multiple court appearances.

Please let me know if you need further information or if you have questions.

Sincerely,

Matt

Matthew J. Foster
District Attorney
Office of the District Attorney
Prosecutorial District VII (Hancock & Washington Counties)
70 State Street, Ellsworth, ME 04605
Ph. (207) 667-4621 - Fax (207) 667-0784

82 Court Street, P.O. Box 297, Machias, ME 04654
Ph. (207) 255-4425 - Fax (207) 255-6423

382 South Street, Suite A, Calais, ME 04619
Ph. (207) 454-3159 - Fax (207) 454-2665

matthew.foster@maineprosecutors.com

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From: Pelletier, John [mailto:John.Pelletier@maine.gov]
Sent: Monday, July 13, 2020 4:38 PM
To: Matthew Foster <matthew.foster@maineprosecutors.com>
Cc: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: Interactions with Pro Se Defendants

District Attorney Foster:

The Commission on Indigent Legal Services has recently become aware of the informal opinion issued by Assistant Bar Counsel on the issue of prosecutor interactions with pro se defendants. Despite this opinion, the Commission continues to have concerns about prosecutor interactions with pro se defendants before they have been advised of their rights, including the right to counsel, by a court.

The purpose of this email is to gather information to inform Commission deliberations on how to address this issue. Please provide a description of your current policy for prosecutors in your office interacting with pro se defendants.

From: [Natasha Irving](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#)
Subject: RE: Interactions with Pro Se Defendants
Date: Wednesday, July 15, 2020 9:42:05 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Attorney Pelletier,

In District 6 our practices vary slightly from county to county, but the interactions between my prosecutors and pro se defendants are as follows:

1. Discovery is handed out by a county employee, usually a legal assistant or a paralegal. In some counties, a coversheet with an offer is attached to the front of the discovery, in other counties an offer is written on the arraignment list that is posted by the clerk's window.
2. Prosecutors do not speak to pro se defendants before they are arraigned or see the video that is presented. In some counties, and this is my personal practice as well, the prosecutor will address the crowd after the video, introducing themselves, explaining that they are the prosecutor, and explaining that they cannot give legal advice, and encouraging all defendants to direct questions to the LOD. This is done either before or after the short presentation by the LOD.
3. If a pro se defendant then insists on speaking to the prosecutor, the prosecutor will again state that there is an LOD, they are entitled to counsel, and that they are the prosecutor for the state and cannot give legal advice. They then inquire as to whether they are applying for court appointed counsel, will retain counsel, or are planning to represent themselves in this matter. If the pro se defendant states that they plan to represent themselves, then the prosecutor will engage in a narrow conversation about their case. In some counties, the prosecutor will not engage in this conversation until they have been seen by the judge and indicate that they waive right to counsel.
4. Prosecutors will not engage in conversations or negotiations with pro se defendants charged with felonies unless directed to by a judge at a dispositional conference.

In District 6, we are dedicated to protecting the rights of all defendants. If MCILS has any best practices or requests that they would like to share with me in developing a policy that protects these rights, I am happy to speak with you anytime or consider a sample policy that you submit to our office. Please let me know if there is anything else I can do at this time.

Sincerely,

Natasha C. Irving
District Attorney
Prosecutorial District 6
Sagadahoc, Lincoln, Knox and Waldo Counties
P.O. Box 249
Wiscasset, ME 04578
(207) 882-7312 office
(207) 832-1595 cell

From: Pelletier, John [mailto:John.Pelletier@maine.gov]
Sent: Monday, July 13, 2020 4:38 PM
To: Natasha Irving

From: [Marianne Lynch](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#); [Marianne Lynch](#)
Subject: RE: Interactions with Pro Se Defendants
Date: Wednesday, July 15, 2020 9:36:40 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning Atty Pelleteir,

Thank you for the email regarding interactions with Pro Se Defendants for walk in arraignments.

Our Office has re-instituted sending out offers to them before the arraignment.

If someone calls the office or approaches us in the hallway we will speak with them, first explaining that we ARE NOT THEIR ATTORNEYS . We answer questions about process, for example, this is the courtroom you need to be in, there is the lawyer of the day you may speak with, you must listen to the video explaining your rights, there is the court screener's office where you can apply for counsel. If a defendant wants to speak with us about a plea we do so after confirming they are not represented by counsel. Before entering any plea they must watch the video explaining their rights or have spoken to a lawyer of the day. Our post COVID procedures are that the Lawyers of the Day have access to the discovery together with our offers in advance of the arraignments.

As my other colleagues articulated we honor both our ethical obligations and Constitutional obligations. Our Judges are also very good at reminding unrepresented defendants that the lawyers in my office are not representing them and always encourage them to speak with the lawyer of the day prior to entering a plea.

Regards,

Marianne Lynch

From: Pelletier, John [mailto:John.Pelletier@maine.gov]
Sent: Monday, July 13, 2020 4:37 PM
To: Marianne Lynch <marianne.lynch@maineprosecutors.com>
Cc: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: Interactions with Pro Se Defendants

District Attorney Lynch:

The Commission on Indigent Legal Services has recently become aware of the informal opinion issued by Assistant Bar Counsel on the issue of prosecutor interactions with pro se defendants. Despite this opinion, the Commission continues to have concerns about prosecutor interactions with pro se defendants before they have been advised of their rights, including the right to counsel, by a court.

From: [Andy Robinson](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#)
Subject: Re: Interactions with Pro Se Defendants
Date: Tuesday, July 14, 2020 3:21:52 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Director Pelletier,

We currently don't have any unrepresented defendants prior to arraignment, because we are participating in a project that provides counsel to all defendants for arraignment purposes. The project began in mid-June when we started having walk-in arraignments again. We provide discovery and an offer to the appointed attorney in advance of the arraignment day. After the arraignment and if the person is no longer represented, then we interact directly with the Defendant at the dispositional conference and for the remainder of the process. We haven't had to do this yet, because the Courts are still recovering from the suspension of certain court activities.

At the beginning of 2020, we began the following procedure which was formulated by the Court after consulting with me:

1. During the 8:30 remarks from the bench, the judge/justice briefly explains that: i) defendants will see a video regarding their rights; ii) after the video, the DA's office will hand out offers and discovery, but ADAs cannot discuss offers directly with defendants; iii) defendants are not required to accept the offers and are entitled to meet with LODs before deciding how to proceed with the offer; iv) if a defendant chooses to accept the offer without meeting with LOD, the bench must specifically confirm the defendant is waiving the right to the assistance of counsel before taking the plea and address the waiver of all of defendant's constitutional rights; and v) if a defendant wants to negotiate the offer, she or he must meet with LOD to do so, as ADAs will only discuss offers with the LOD.
2. The court shows the arraignment video.
3. After that a representative of my office hands out the offers and discovery.
4. Finally, the judge/justice retakes the bench, gives any remaining remarks about the arraignment process and then proceeds with the arraignments.

District 3's preference is that everyone is appointed an attorney for the duration of their case. If however a person does not qualify for court appointed counsel or chooses to represent themselves, then we will treat the person with respect, honor their constitutional rights, and comply with our constitutional, statutory, rule, and ethical obligations. This has always been our goal. I hope this helps.

Sincerely,

Andrew S. Robinson
District Attorney for District 3
(207)753-2545

From: Pelletier, John <John.Pelletier@maine.gov>
Sent: Monday, July 13, 2020 4:38 PM
To: Andy Robinson <andrew.robinson@maineprosecutors.com>
Cc: Maciag, Eleanor <Eleanor.Maciag@maine.gov>
Subject: Interactions with Pro Se Defendants

District Attorney Robinson:

The Commission on Indigent Legal Services has recently become aware of the informal opinion issued by Assistant Bar Counsel on the issue of prosecutor interactions with pro se defendants. Despite this opinion, the Commission continues to have concerns about prosecutor interactions with pro se defendants before they have been advised of their rights, including the right to counsel, by a court.

The purpose of this email is to gather information to inform Commission deliberations on how to address this issue. Please provide a description of your current policy for prosecutors in your office interacting with pro se defendants.

Your cooperation is much appreciated. Thank you.

John

John D. Pelletier, Esq., Executive Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333

John.pelletier@maine.gov
(207) 287-3254

From: [Jonathan Sahrbeck](#)
To: [Pelletier, John](#)
Cc: [Maciag, Eleanor](#)
Subject: Re: Interactions with Pro Se Defendants
Date: Wednesday, July 15, 2020 1:42:33 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon John,

Thanks for the email. I am going to break down your question into three categories: walk-in arraignments on summons, dispositional conferences, and our pre-arraignment diversion program. This way, you will understand the different procedures and policies that we follow in Cumberland County (District 2).

Walk-In Arraignments on Summons

In Cumberland County, walk-in arraignments on summons occur in Portland, Bridgton and West Bath. The current procedure regarding walk-in arraignments is the following:

- Discovery packets, including offer sheets, are made available to the “lawyers of the day” on the day before the arraignment (we do not provide earlier because lists often change).
- On the day of arraignment, the judge addresses the defendants in the courtroom at 8:30. The court video is shown and then the defendants have an opportunity to speak to the lawyers of the day.
- The prosecutors do not interact with the defendants until the defendant has heard from the judge, watched the video, and spoken to the lawyer of the day.
- At that point, the defendant has the opportunity to exercise his or her right to represent himself or herself and speak to the prosecutor to see if they can come to a modified agreement.

One caveat to this is that in West Bath, the judge does not speak to the defendants before the video is played and lawyers of the day do not receive the discovery a day ahead of the arraignments. The other procedures are followed.

Dispositional Conferences

Regarding pro se defendants at dispositional conferences, prior to the call of the list, the judge again informs defendants about their right to counsel and that they have the opportunity to consult an attorney or exercise their right to self-representation and speak to the prosecutor, and if they cannot come to an agreement to resolve the case that they will have a dispositional conference with the judge and the prosecutor.

Our office personnel policy specifically addresses “pro se defendants.” It reads:

- *“Employees are expected to work with pro se defendants in a manner that is courteous and respectful, but also within the confines of the ethical obligations on an attorney. Employees of the District Attorney’s Office cannot give legal advice to defendants even if they are representing themselves. Pro se defendants will not be given any favorable*

or unfavorable treatment compared to defendants who are represented by defense counsel.”

In practice when speaking to defendant’s who choose to exercise their right to self-representation, the procedure is as follows:

- (1) prosecutors identify themselves as prosecutors and ensure that the defendant knows that we represent the State of Maine and are NOT their attorney;
- (2) prosecutors inform the defendant that they will not discuss the facts of the case because the defendant has the right not to self-incriminate himself or herself;
- (3) prosecutors advise the defendant that we cannot offer any legal advice regarding the sentence recommendation; and
- (4) prosecutors then convey the offer in the case.

We then listen to information provided by the defendant regarding the offer and try to come to a resolution that both sides can agree. If we cannot, we proceed to a dispositional conference with the judge.

Pre-Arrest Diversion with Restorative Justice

After receiving the ethics opinion from Assistant Bar Counsel that the Maine Code of Ethics does not bar prosecutors from speaking to defendants who represent themselves, the Cumberland County District Attorney’s Office started a pre-arrest diversion program using restorative justice in the Spring of 2020. Pre-arrest diversion has been something that the community, including many members of the defense bar, has been clamoring to become a reality for many years. Thanks to the use of restorative justice, the Cumberland County District Attorney’s Office has come up with a program that allows a defendant to have a dialogue with members of the restorative justice community, and, upon successful completion of that dialogue, have their case dismissed prior to arrest. This avoids the defendant from having to come to court and risk possible exposure to Covid-19 and further criminal prosecution, including the chance that someone could end up with a permanent criminal conviction. I have previously provided you with the letter and agreement template. I have also spoken to numerous members of the defense bar who are in support of this program.

The program is as follows:

The Cumberland County DA’s Office identifies a defendant charged with a Class E misdemeanor or Civil Infraction and sends them a letter regarding the diversion program. In this letter, the following passages are written:

- *“First and foremost, since you have been accused of the crime of [INSERT CRIME] which is alleged to have taken place on [DATE] in [LOCATION]. You have the right to remain silent, meaning you do not have to speak to anybody, including law enforcement or my office, about this case. You have a right to an attorney. The District Attorney’s Office does not represent you, meaning we cannot provide you legal advice. On the contrary, the District Attorney’s Office represents the State of Maine in the prosecution against you. You have an absolute right to have someone assist you. You may want to exercise that right. We would urge you to speak to an attorney if you have legal questions or concerns regarding this offer.”*
- *“If you would like to participate, the opportunity is yours. If you have legal questions, I would urge you to contact an attorney who you can discuss this with. Participation or consultation with an attorney in no way jeopardizes your ability to utilize this program.*

In fact, we would urge you to consult an attorney if possible.”

- *“If you satisfactorily complete the restorative session(s) the charges against you will be dismissed and you will not be prosecuted. You also need to know that any statements that you make during this session will not be used against you and will be considered “off the record.” Contained in this letter is a copy of the ‘Restorative Justice Dialogue Agreement’ between my office and you, which lays out the parameters.”*

If the defendant contacts us that he or she wants to participate, the agreement is signed and we consult with our restorative justice partners and a dialogue is arranged. When the dialogue is completed satisfactorily, the State files a dismissal with the court and sends a copy of the dismissal form to the defendant.

As of this letter, approximately thirty defendants have chosen to participate in this diversion program and each of those cases have been dismissed.

Please let me know if you have any questions or concerns. Thanks again for reaching out.

Sincerely,
Jonathan

On Mon, Jul 13, 2020 at 4:37 PM Pelletier, John <John.Pelletier@maine.gov> wrote:

District Attorney Sahrbeck:

The Commission on Indigent Legal Services has recently become aware of the informal opinion issued by Assistant Bar Counsel on the issue of prosecutor interactions with pro se defendants. Despite this opinion, the Commission continues to have concerns about prosecutor interactions with pro se defendants before they have been advised of their rights, including the right to counsel, by a court.

The purpose of this email is to gather information to inform Commission deliberations on how to address this issue. Please provide a description of your current policy for prosecutors in your office interacting with pro se defendants.

Your cooperation is much appreciated. Thank you.

John

John D. Pelletier, Esq., Executive Director

Maine Commission on Indigent Legal Services



129th MAINE LEGISLATURE

SECOND SPECIAL SESSION-2020

Legislative Document

No. 2171

H.P. 1554

House of Representatives, July 28, 2020

**An Act Concerning Communication between Prosecutors and
Unrepresented Defendants**

Reported by Representative BAILEY of Saco for the Joint Standing Committee on
Judiciary pursuant to Joint Order 2019, H.P. 1541.

Robert B. Hunt
ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 15 MRSA §815** is enacted to read:

3 **§815. Communication between prosecutor and unrepresented defendant**

4 To ensure that all waivers of the right to counsel are made knowingly, voluntarily and
5 intelligently, a prosecutor may not communicate with an unrepresented defendant unless:

6 **1. Informed of right.** The defendant has been informed of the defendant's right to
7 court-appointed counsel;

8 **2. Statement by the court.** The court has provided to the defendant a statement of:

9 A. The substance of the charges against the defendant;

10 B. The defendant's right to retain counsel, to request the assignment of counsel and
11 to be allowed a reasonable time and opportunity to consult counsel before entering a
12 plea;

13 C. The defendant's right to remain silent and that the defendant is not required to
14 make a statement and that any statement made by the defendant may be used against
15 the defendant;

16 D. The maximum possible sentence and any applicable mandatory minimum
17 sentence; and

18 E. The defendant's right to trial by jury; and

19 **3. Written waiver.** The defendant has executed a written waiver of the right to
20 counsel in each case.

21 **SUMMARY**

22 This bill implements a recommendation of the Sixth Amendment Center. It prohibits
23 prosecutors from communicating with an unrepresented defendant unless the defendant
24 has been informed of the defendant's right to appointed counsel, the court has provided
25 the required statement of rights as specified in Maine Rules of Criminal Procedure, Rule
26 5(b) and the defendant has executed a written waiver of the right to counsel in each case.
27 A defendant's waiver of the right to counsel must be knowing, voluntary and intelligent.
28 Faretta v. California, 422 US 806 (1975).

(5.)

**Plan for MCILS
Rulemaking**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: PLAN FOR MCILS RULEMAKING PROCESS
DATE: JULY 30, 2020

At its last meeting, the Commission responded to a Judiciary Committee request about a bill to provide a window of time wherein the Commission can promulgate changes to its rules for attorney eligibility through the routine-technical rulemaking process that does not require Legislative review before a rule can become final. The bill to do so has been passed out of Committee and a copy is attached. Procedurally, this bill was discussed in committee and voted. I understand that it will proceed directly to the House and Senate for votes without further public hearing. Of course, it remains uncertain whether the current Legislature will re-convene, if it does, whether this bill will be addressed during the special session.

Nevertheless, should the bill become law, it will impose a deadline for routine-technical rulemaking. Accordingly, the Commission will need to determine a process whereby proposed rules can be finalized and the rulemaking process set in motion.



129th MAINE LEGISLATURE

SECOND SPECIAL SESSION-2020

Legislative Document

No. 2170

H.P. 1553

House of Representatives, July 28, 2020

**An Act Authorizing Rulemaking Concerning Attorney Training,
Standards and Qualifications by the Maine Commission on Indigent
Legal Services**

(EMERGENCY)

Reported by Representative BAILEY of Saco for the Joint Standing Committee on
Judiciary pursuant to Joint Order 2019, H.P. 1541.

Robert B. Hunt

ROBERT B. HUNT
Clerk

(6.)

Legislative Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: LEGISLATIVE UPDATE
DATE: JULY 30, 2020

As discussed, elsewhere in this packet, the Judiciary Committee has voted out bills addressing prosecutor interactions with pro se defendants and the Commission's rulemaking ability. The Judiciary Committee has also voted two additional items, a Resolve addressing a possible public defender office and a bill transferring the financial screener positions to the Judicial Branch. Neither item is in final form, but I am authorized to share them with the provision that they are not final documents.

The Resolve, LD 1067, creates a working group to look specifically at the creation of a public defender office. Of note, it provides for an appropriation of \$15,000 to contract for expert services to assist in the design of a public defender office. The report of the working group is due January 5, 2021. The attached copy is the majority report.

LD 182 transfers the financial screeners. A copy is attached as well.

Procedurally, these items were discussed in committee and voted. I understand that they will proceed directly to the House and Senate for votes without further public hearing. Of course, it remains uncertain whether the current Legislature will re-convene, if it does, whether these bills will be addressed during the special session. Should the Resolve be enacted by both chambers, it will then proceed to the "study table" for determination whether this study will receive the requested funding.

ROFS

L.D. 1067

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Date:

(Filing No. H-)

JUDICIARY

Majority

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT " " to H.P. 790, L.D. 1067, "An Act To Promote Fairness and Efficiency in the Delivery of Indigent Legal Services"

Amend the bill by striking out the title and substituting the following:

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

Amend the bill by striking out everything after the title and inserting the following:

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

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

Whereas, Maine is the only state in the nation that does not employ any state government public defender attorneys or staff or contract with any nonprofit public defense agencies; and

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

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

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

Appointments to the working group must take into consideration the racial and ethnic diversity of the State.

COMMITTEE AMENDMENT

ROFS

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

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

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

8 3. The chairs of the working group shall invite the Chief Justice to appoint as members
9 3 representatives from the Judicial Department and shall invite the Governor to appoint as
10 members 3 representatives from the executive branch. One of the executive branch
11 representatives may be a member of the Maine Commission on Indigent Legal Services.

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

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

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

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

32 1. The difficulties of providing effective representation in rural areas of the State,
33 including the shortage of lawyers in the State's rural counties;

34 2. The relative merits of systems using state-employed public defenders and staff,
35 contracting with nonprofit public defender agencies and employing a combination of public
36 defenders and private attorneys;

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

40 4. The establishment of a statewide appellate defender office.

41 Notwithstanding any provision of law to the contrary, the working group may access
42 data maintained by the Maine Commission on Indigent Legal Services and shall maintain

R.O.F.S

1 the confidentiality of any confidential information provided to the working group. The
2 working group may invite the participation and input of additional interested parties and
3 request information necessary to carry out its duties. Based on the information collected
4 pursuant to this section, the working group shall propose a public defender plan, including
5 an appellate division, for the State.

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

12 **Sec. 7. Report. Resolved:** That, no later than ~~November 4, 2020~~ ^{January 5, 2021}, the working
13 group shall submit a report that includes its proposed public defender plan for the State
14 under section 5, including suggested legislation, for presentation to the ~~Joint Standing~~
15 ~~Committee on Judiciary~~ and the ~~Joint Standing Committee on Appropriations and Financial~~
16 ~~Affairs.~~ *having jurisdiction over* *having jurisdiction over*

relevant matters

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

19 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
20 number to read consecutively.

21 **SUMMARY**
This amendment is the majority report of the JSC on Judiciary.

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

31 The working group consists of 7 Legislators, and the Chief Justice and the Governor
32 are invited to appoint 3 members each, for a total of 13 members. This amendment
33 authorizes the working group to contract with experts to provide technical assistance on the
34 development of a public defender system. *matters*

35 The working group is directed to report its recommendations to the ~~Joint Standing~~
36 ~~Committees on Judiciary and Appropriations and Financial Affairs~~ by ~~November 4, 2020~~.

having jurisdiction over

January 5, 2021.

FISCAL NOTE REQUIRED
(See Attached)

Appointments to the working group must take into account the racial and ethnic diversity of the State.

COMMITTEE AMENDMENT



129th MAINE LEGISLATURE

LD 1067

LR 61(02)

An Act To Promote Fairness and Efficiency in the Delivery of Indigent Legal Services

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Legislative Cost/Study

Legislative Cost/Study

The general operating expenses of this study are projected to be \$18,750 in fiscal year 2020-21, including \$15,000 for the one-time costs of a contract to provide technical assistance on the development of public defense systems. An estimated \$6,910 is available in fiscal year 2020-21 in the Legislature's budget for legislative studies as well as balances from prior years for this purpose. Whether these amounts are sufficient to fund all studies will depend on the number of studies authorized by the Legislative Council and the Legislature. The additional costs of providing staffing assistance to the study during the interim can be absorbed utilizing existing budgeted staff resources.

Final language
Unanimous OTPA

L.D. 182

Date:

(Filing No. H-)

NEED FISCAL

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 145, L.D. 182, Bill, “An Act To Amend the Maine Bail Code Regarding the Financial Capacity of a Defendant To Post Bond”

Amend the bill by striking out the title and substituting the following:

'An Act To Amend Maine Law Regarding the Assessment of Financial Capacity of Defendants and Other Parties'

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

'Sec. 1. 4 MRSA §8-D is enacted to read:

§8-D. Rules; assessment of indigency and ability to pay

1. Rules. The Supreme Judicial Court may prescribe, repeal, add to, amend or modify rules or orders providing for a procedure in all courts through which an individual's financial capacity is assessed for the following purposes:

A. To determine eligibility for a court-appointed attorney. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees;

B. To determine whether a party qualifies to proceed in forma pauperis and is thereby entitled to a waiver of filing fees and other fees; and

C. To determine, after a fine has been ordered in a criminal case, a party's ability to pay and the schedule for payments.

2. Partial indigency and reimbursement. This subsection applies to partial indigency and reimbursement of expenses incurred by assigned counsel or contract counsel.

A. If the court determines that a defendant or civil party is unable to pay to obtain private counsel but is able to contribute to payment of assigned counsel or contract counsel, the court shall order the defendant or civil party to make installment

1 payments up to the full cost of representation or to pay a fixed contribution. The
2 court shall remit payments received to the Maine Commission on Indigent Legal
3 Services under section 1801.

4 B. A defendant or civil party may not be required to pay for legal services in an
5 amount greater than the expenses actually incurred.

6 C. Upon petition of a defendant or civil party who is incarcerated, the court may
7 suspend an order for reimbursement issued pursuant to this subsection until the time
8 of the defendant's or civil party's release.

9 **Sec. 2. 4 MRSA §1804, sub-§2, ¶A,** as amended by PL 2017, c. 284, Pt. UUUU,
10 §1, is repealed.

11 **Sec. 3. 4 MRSA §1805-A, sub-§1, ¶A,** as enacted by PL 2017, c. 284, Pt.
12 UUUU, §14, is repealed.

13 **Sec. 4. 4 MRSA §1805-A, sub-§2,** as enacted by PL 2017, c. 284, Pt. UUUU,
14 §14, is repealed.

15 **Sec. 5. 4 MRSA §1805-A, sub-§3,** as enacted by PL 2017, c. 284, Pt. UUUU,
16 §14, is repealed.'

17 **SUMMARY**

18 This amendment replaces the bill. It transfers the financial screening function for
19 eligibility for indigent legal services from the Maine Commission on Indigent Legal
20 Services to the Judicial Branch and expands the screening to also provide information to
21 determine whether a party qualifies to proceed in forma pauperis and is thereby entitled to
22 a waiver of filing fees and other fees and to determine, after a fine has been ordered in a
23 criminal case, a party's ability to pay and the schedule for payments. The amendment
24 includes language concerning determinations of partial indigency and reimbursement of
25 counsel expenses that currently is within the Maine Commission on Indigent Legal
26 Services provisions and repeals current provisions requiring Maine Commission on
27 Indigent Legal Services' involvement in indigency determinations and collection efforts
28 including the authority to enter into contracts for collection.



129th MAINE LEGISLATURE

LD 182

LR 595(02)

An Act To Amend the Maine Bail Code Regarding the Financial Capacity of a Defendant To Post Bond

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	\$0	\$361,710	\$348,241	\$359,669
Appropriations/Allocations				
General Fund	\$0	\$361,710	\$348,241	\$359,669

Fiscal Detail and Notes

The bill transfers 6 full-time financial screener positions and 3 half-time financial screener positions responsible for determining a defendant's ability to pay for counsel from the Maine Commission on Indigent Legal Services (MCILS) to the Judicial Branch in fiscal year 2020-21. The bill includes offsetting General Fund deappropriations and appropriations of \$525,319, respectively, to the MCILS and the Judicial Branch for these transfers. The bill also includes an additional \$361,710 in fiscal year 2020-21 to the Judicial Branch to increase the 3 half-time positions to full-time and to establish one additional Financial Screener position and one Managing Staff Accountant to hire, train and supervise the financial screeners.

Sec. Appropriations and allocations. The following appropriations and allocations are made.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Transfers 6 full-time and 3 half-time Financial Screener positions from the Maine Commission on Indigent Legal Services to the Judicial Department.

	2019-20	2020-21
GENERAL FUND		
POSITIONS - LEGISLATIVE COUNT	0.000	(7.500)
Personal Services	\$0	(\$525,319)
GENERAL FUND TOTAL	\$0	(\$525,319)

**INDIGENT LEGAL SERVICES, MAINE COMMISSION ON
DEPARTMENT TOTALS**

	2019-20	2020-21
GENERAL FUND	\$0	(\$525,319)
DEPARTMENT TOTAL - ALL FUNDS	\$0	(\$525,319)

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

Initiative: Transfers 6 full-time and 3 half-time Financial Screener positions from the Maine Commission on Indigent Legal Services to the Judicial Department.

	2019-20	2020-21
GENERAL FUND		
POSITIONS - LEGISLATIVE COUNT	0.000	7.500
Personal Services	\$0	\$525,319
GENERAL FUND TOTAL	\$0	\$525,319

Courts - Supreme, Superior and District 0063

Initiative: Provides funding to increase the 3 half-time positions to full time. Also provides funding to establish one full-time Financial Screener position and one full-time Managing Staff Accountant position and provides funding for related All Other costs.

	2019-20	2020-21
GENERAL FUND		
POSITIONS - LEGISLATIVE COUNT	0.000	3.500
Personal Services	\$0	\$306,410
All Other	\$0	\$55,300
GENERAL FUND TOTAL	\$0	\$361,710

**JUDICIAL DEPARTMENT
DEPARTMENT TOTALS**

	2019-20	2020-21
GENERAL FUND	\$0	\$887,029
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$887,029

SECTION TOTALS

	2019-20	2020-21
GENERAL FUND	\$0	\$361,710
SECTION TOTAL - ALL FUNDS	\$0	\$361,710

(7.)

**Samples of Complaints
about Attorneys**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: COMPLAINT SAMPLE
DATE: JULY 30, 2020

At the last meeting, the Commission discussed the process for handling complaints about attorneys. To aid in determining whether changes should be implemented, the Commission requested that the staff put together a sample of complaints that have been resolved in the past, and hence, would not be generating appeals for review by the full Commission.

During July, in addition to its usual work flow, Commission staff managed the annual review process that involved tracking filings by hundreds of attorneys and dealing with associated questions and requests. As a result, staff did not have the time necessary to put together a meaningful response to the request regarding complaints.

In addition, from our review of meeting notes, the staff has additional questions regarding the scope of the request and the extent to which the Commissioners would like the information redacted, if at all. Staff would like further direction and will focus on this project for the next Commission meeting.

(8.)

Training RFP Update

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: TRAINING RFP
DATE: JULY 30, 2020

The review committee consisting of Chair Tardy, Commissioner Churchill, Executive Director and Deputy Executive Director has done a preliminary review of the RFP. Chair Tardy will brief the Commission on the status of the RFP and the process for the entire Commission to make a determination on the proposal.