

MCILS

May 24, 2021

**Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

MAY 24, 2021
ZOOM COMMISSION MEETING
AGENDA

- 1) Approval of April 26, 2021 Commission Meeting Minutes
- 2) Report of the Executive Director
- 3) Budget Update, Projected Shortfall, New Positions
- 4) OPEGA Update
- 5) Legislative Update
- 6) Rulemaking Discussion
- 7) Attorney Billing Discussion
- 8) Record Retention
- 9) Juvenile Grant Opportunity
- 10) Set Date, Time and Location of Next Regular Meeting of the Commission
- 11) Executive Session
- 12) Public Comment

**Maine Commission on Indigent Legal Services – Commissioners Meeting
April 26, 2021**

Minutes

Commissioners Present by Zoom: Donald Alexander, Michael Carey, Robert Cummins, Roger Katz, Ronald Schneider, Joshua Tardy, Mary Zmigrodski

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of March 18, April 1, and April 7, 2021 Commission meeting minutes	Commissioner Cummins identified a typographical error on the penultimate sentence on the first page of the April 7 th minutes. No further discussion of the meeting minutes.	Commissioner Cummins moved to approve as amended. Commissioner Carey seconded. All voted in favor except for Commissioner Alexander who was not present at the prior meetings. Approved.
Rulemaking Discussion – Chapters 301 and 302	The Commissioners discussed the one public comment received concerning Chapter 301. Commissioner Carey moved to reject the public comment and adopt the draft written response with minor non-substantive changes. Commissioner Katz seconded. All voted in favor. Commissioner Alexander moved to adopt Chapters 301 and 302. Commissioner Katz seconded. All voted in favor.	
Report of Executive Director	Director Andrus relayed that there had been an increase in voucher submissions prior to the March 1 deadline for enforcement of the 90-day rule and an overall surge in case costs. A financial order and budget order are being finalized to get Commission accounts in order.	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
New Positions/Budget Update	<p>Director Andrus explained that the governor has given the Commission permission to hire four limited period positions, up to two years, with funding for those positions coming from the All Other account. Director Andrus sought Commission approval for hiring two attorneys and two support staff positions covering supervision/training and financial accountability. Commissioner Cummins moved to authorize the executive director to perform a functional job analysis of up to 4 temporary positions and to conduct the hiring process as needed. Commissioner Carey seconded. Following a discussion about the scope and roles of these proposed employees, all voted in favor. Director Andrus suggested doing a functional job analysis for a current financial screener to potentially add financial oversight to the position's existing job duties and report back to the Commission. Director Andrus then gave a summary of the budget process to date and asked for Commission input on which Judiciary Committee initiative to ask the budget office to submit for consideration in the supplemental budget. Commissioner Katz voiced support for requesting funding in the second year of the biennium for the Kennebec public defender office. Commissioner Alexander explained that he is not supportive of a public defender office in one county, and instead supports a focus on an hourly rate increase and on increased attorney training and supervision. Commissioners Cummins and Schneider both voiced support for pursuing funding for a public defender office. Director Andrus gave a summary of the Judiciary Committee funding initiatives and Commissioner Katz moved to include the Judiciary Committee's initiatives 1-5 and 8 in the Commission's budget submission. Chair Tardy seconded. A discussion ensued followed by a straw poll on the eight initiatives. For the Kennebec public defender office, all Commissioners supported requesting funding for the second year of the biennium, except Commissioner Alexander who does not support public defender funding. For the appellate public defender office, Commissioner Cummins supported full funding, Commissioner Alexander supported no funding, and the remaining Commissioners supported two staff positions in the first year and 2 additional</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	<p>staff positions in the second year. The straw poll vote on the remaining initiatives 1-5 and 8 was unanimous in favor of including all in the budget submission request. Director Andrus reviewed the other statutory language changes and a straw poll was unanimous to support the statutory language changes voted by the Judiciary Committee. Commissioner Carey moved that the Commission support each of the initiatives that prevailed at the Judiciary Committee level with the exception of the Kennebec public defender office where there was no prevailing side and that the Commission support Report A and include the language portions that the Judiciary Committee supported that the Commission has not yet supported. Commissioner Katz seconded. All voted in favor except for Commissioner Alexander who voted against due to the support for the public defender office.</p>	
OPEGA Update	<p>Director Andrus gave a brief update on the status of the OPEGA investigation. Director Andrus met with representatives from OPEGA, members of the State Auditor’s office, and Commissioner Carey to discuss whether those entities could offer the Commission financial auditing assistance. OPEGA is unable to offer any resources and the State Auditor will offer some guidance on best practices and have offered to review any proposed Commission policies.</p>	
Legislation for protecting attorney-client jail conversations	<p>Director Andrus renewed this issue for Commission consideration. Commissioner Cummins stated that he will alert Director Andrus on the status of the pending litigation involving Securus and several Maine attorneys whose attorney-client jail phone calls were recorded.</p>	
TTA Update	<p>Director Andrus gave a brief status update on the TTA grant. A kick-off meeting of stakeholder groups has taken place and Commission staff will be meeting again in a few weeks with the NACDL representatives to get the project started.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Executive Session	Commissioner Carey moved to go into executive session pursuant to 1 MRS 405(6)(A) to discuss personnel matters related to the executive director search. Commissioner Cummins seconded. No votes were taken.	
Public Comment	<p><u>Attorney Cory McKenna</u>: Attorney McKenna requested that the Commission give attorneys some guidance on case approvals. Attorney McKenna suggested the Commission take public comment before a vote. Attorney McKenna expressed concern about increasing caseloads for attorneys and what resuming in-person appearances will mean for attorney scheduling since many rostered attorneys are rostered in more than one county.</p> <p><u>Attorney Tina Nadeau</u>: Attorney Nadeau suggested that public comment come at the end of the meeting.</p> <p><u>Attorney Robert Ruffner</u>: Attorney Ruffner concurred with Attorney's Nadeau's suggestion that public comment come at the end of the meeting. Attorney Ruffner alerted the Commission about LD 1175, which addressed the exorbitant cost of inmate collect calls, among other issues.</p>	
Adjournment of meeting	The next meeting will be held by Zoom on May 24, 2021 at 1:00 pm.	

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JUSTIN ANDRUS, (INTERIM) EXECUTIVE DIRECTOR
SUBJECT: OPERATIONS REPORTS
DATE: May 20, 2021

Attached you will find the April 2021, Operations Reports for your review and our discussion at the Commission meeting on May 24, 2021. A summary of the operations reports follows:

- 2,266 new cases were opened in the DefenderData system in April. This was a 598 case decrease from March. Year to date, new cases are flat from 23,826 at this time last year to 23,756 this year.
- The number of vouchers submitted electronically in April was 2,509 a decrease of 2,198 vouchers from March, totaling \$1,177,338, a decrease of \$1,048,638 from March. Year to date, the number of submitted vouchers is down by approximately 5.4%, from 28,515 at this time last year to 26,962 this year, with the total amount for submitted vouchers down 12.5%, from \$14,093,413 at this time last year to \$12,325,703 this year.
- In April, we paid 3,611 electronic vouchers totaling \$1,711,057, representing an increase of 713 vouchers and an increase of \$380,596 compared to March. Year to date, the number of paid vouchers is down approximately 7.6%, from 27,793 at this time last year to 25,678 this year, and the total amount paid is down approximately 14.5%, from \$13,678,781 at this time last year to \$11,689,818 this year.
- We paid no paper vouchers in April.
- The average price per voucher in April was \$473.85, up \$14.75 per voucher from March. Year to date, the average price per voucher is down approximately 7.5%, from \$492.16 at this time last year to \$455.25 this year.
- Appeal and Probate cases had the highest average voucher in April. There were 10 vouchers exceeding \$5,000 paid in April. See attached addendum for details.
- In April, we issued 96 authorizations to expend funds: 49 for private investigators, 32 for experts, and 15 for miscellaneous services such as interpreters and transcriptionists. In April, we paid \$103,021 for experts and investigators, etc. No requests for funds were denied.
- In April, we opened 1 attorney investigation.
- In April, we approved 6 requests for co-counsel.

In our All Other Account, the total expenses for the month of April were \$2,115,293. During April, approximately \$22,461 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$72,541 in expenses for the month of April.

In the Revenue Account, the transfer from the Judicial Branch for April, reflecting March's collections, totaled \$202,458, an increase of approximately \$133,381 from the previous month.

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

Vouchers over \$5,000

Comment	Voucher Total	Case Total
Murder (Appeal)	\$ 13,035.06	\$ 13,035.06
Murder	\$ 11,460.00	\$ 11,460.00
Child Protection	\$ 6,910.08	\$ 25,845.16
Aggravated Trafficking	\$ 6,888.76	\$ 6,888.76
Child Protection	\$ 6,648.00	\$ 9,948.00
Aggravated Trafficking	\$ 6,212.37	\$ 6,212.37
Murder (Appeal)	\$ 6,133.41	\$ 6,133.41
Assault/Aggravated Criminal Trespass	\$ 5,897.60	\$ 5,897.60
Child Protection	\$ 5,528.00	\$ 5,528.00
Gross Sexual Assault	\$ 5,472.16	\$ 5,472.16

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
AS OF 04/30/2021

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		\$ 80,000.00		\$ -		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Reduction due to encumbrance closure		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,500,000.00		\$ 4,360,000.00		\$ 4,500,000.00		\$ 2,161,725.00	\$ 15,521,725.00
Total Expenses	1	\$ (765,783.81)	4	\$ (1,102,607.41)	7	\$ (1,426,842.35)	10	\$ (2,115,293.17)	
	2	\$ (940,166.23)	5	\$ (1,007,967.84)	8	\$ (1,298,739.59)	11	\$ -	
	3	\$ (1,428,757.76)	6	\$ (1,221,776.56)	9	\$ (1,403,907.03)	12	\$ -	
Encumbrances (Justice Works)		\$ (62,405.00)		\$ 13,277.00		\$ 20,550.50		\$ 7,127.50	\$ (21,450.00)
Encumbrances (B Taylor)		\$ (66,300.00)		\$ 13,260.00		\$ 13,260.00		\$ 4,420.00	\$ (35,360.00)
Encumbrance (Jamesa Drake training contract)		\$ -		\$ (92,400.00)		\$ -		\$ -	\$ (92,400.00)
TOTAL REMAINING		\$ 1,236,587.20		\$ 961,785.19		\$ 404,321.53		\$ 57,979.33	\$ 2,660,673.25

Q4 Month 10	
INDIGENT LEGAL SERVICES	
Counsel Payments	\$ (1,989,810.41)
Interpreters	\$ (1,371.08)
Private Investigators	\$ (15,466.37)
Mental Health Expert	\$ (23,699.17)
Misc Prof Fees & Serv	\$ (178.00)
Transcripts	\$ (20,401.95)
Other Expert	\$ (41,310.00)
Process Servers	\$ (595.11)
Subpoena Witness Fees	\$ -
Counsel Payments Prior FY	
SUB-TOTAL ILS	\$ (2,092,832.09)
OPERATING EXPENSES	
Service Center	\$ (1,829.25)
DefenderData	\$ (7,127.50)
Parking Fees in Auburn	\$ (540.00)
Mileage/Tolls/Parking	\$ (475.20)
Mailing/Postage/Freight	\$ (197.06)
West Publishing Corp	\$ (211.96)
Safety/Protective Supplies	\$ -
Office Supplies/Equip.	\$ (104.37)
Cellular Phones	\$ (376.37)
OIT/TELCO	\$ (4,563.97)
Office Equipment Rental	\$ (251.83)
Risk Mngmnt Employee bonds in:	\$ (26.00)
Barbara Taylor monthly fees	\$ (4,420.00)
Legal Ads	\$ (2,337.57)
AAG Legal Srvc Quarterly Payment	\$ -
SUB-TOTAL OE	\$ (22,461.08)
TOTAL	\$ (2,115,293.17)

INDIGENT LEGAL SERVICES	
Q4 Allotment	\$ 2,161,725.00
Q4 Encumbrances for Justice Works contract	\$ 7,127.50
Barbara Taylor Contract	\$ 4,420.00
James Drake training contract	\$ -
Q4 Expenses to date	\$ (2,115,293.17)
Remaining Q4 Allotment	\$ 57,979.33

Non-Counsel Indigent Legal Services	
Monthly Total	\$ (103,021.68)
Total Q1	\$ 110,837.23
Total Q2	\$ 175,002.15
Total Q3	\$ 173,104.66
Total Q4	\$ 103,021.68
Fiscal Year Total	\$ 561,965.72

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
As of 04/30/2021

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	\$ 2,635,396.00	
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		\$ 2,910,396.00	\$ 3,735,396.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 88,434.06	4	\$ 57,481.90	7	\$ 74,019.18	10	\$ 202,458.22	
Collected from McIntosh Law		\$ -		\$ -		\$ -		\$ 3,000.00	
Collected for reimbursement of counsel fees	2	\$ 72,639.44	5	\$ 77,875.90	8	\$ 80,173.48		\$ 24.00	
Collected Revenue from JB	2	\$ 72,639.44	5	\$ 77,875.90	8	\$ 80,173.48	11	\$ -	
Collected from McIntosh Law		\$ -		\$ -	8	\$ 6,000.00		\$ -	
Collected from McIntosh Law	3	\$ -	6	\$ 9,000.00	9	\$ 3,000.00	12	\$ -	
Collected for reimbursement of counsel fees	3	\$ -	6		9	\$ 1,127.04	12	\$ -	
Collected from ME Ctr Public Int Reporting	3	\$ -	6	\$ 5,333.00		\$ -	12	\$ -	
Collected Revenue from JB	3	\$ 74,498.74	6	\$ 69,647.82	9	\$ 69,077.69	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 308,211.68		\$ 297,214.52		\$ 313,570.87		\$ 205,482.22	\$ 1,124,479.29
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		\$ 2,910,396.00	\$ 3,735,396.00
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ (272.00)	11	\$ -	
	3	\$ -	6	\$ -	9	\$ (1,667.00)	12	\$ -	
REMAINING CASH Year to Date		\$ 308,211.68		\$ 297,214.52		\$ 311,631.87		\$ 205,482.22	\$ 1,122,540.29

Collections versus Allotment	
Monthly Total	\$ 202,458.22
Total Q1	\$ 235,572.24
Total Q2	\$ 219,338.62
Total Q3	\$ 233,397.39
Total Q4	\$ 202,458.22
Expenses to Date	\$ (1,939.00)
Fiscal Year Total	\$ 888,827.47

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
AS OF 04/30/2021

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		\$ 20,000.00		\$ (20,000.00)		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ (8,758.00)		\$ 7,370.00		\$ 1,388.00		\$ -	
Total Budget Allotments		\$ 248,228.00		\$ 232,814.00		\$ 218,375.00		\$ 197,826.00	\$ 897,243.00
Total Expenses	1	\$ (72,711.14)	4	\$ (72,760.83)	7	\$ (60,718.90)	10	\$ (72,541.59)	
	2	\$ (72,775.12)	5	\$ (72,759.89)	8	\$ (70,186.39)	11	\$ -	
	3	\$ (102,741.37)	6	\$ (87,292.61)	9	\$ (105,718.04)	12	\$ -	
TOTAL REMAINING		\$ 0.37		\$ 0.67		\$ (18,248.33)		\$ 125,284.41	\$ 107,037.12

Q4 Month 10	
Per Diem	\$ (440.00)
Salary	\$ (36,895.56)
Vacation Pay	\$ (3,121.16)
Holiday Pay	\$ -
Sick Pay	\$ (1,505.00)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (11,791.24)
Dental Insurance	\$ (306.60)
Employer Retiree Health	\$ (4,284.66)
Employer Retirement	\$ (2,671.56)
Employer Group Life	\$ (371.64)
Employer Medicare	\$ (595.35)
Retiree Unfunded Liability	\$ (7,771.74)
Longevity Pay	\$ (160.00)
Perm Part Time Full Ben	\$ (2,627.08)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (72,541.59)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

4/30/2021

DefenderData Case Type	Apr-21						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	8	16	\$ 32,910.22	30	\$ 42,443.10	\$ 1,414.77	77	136	\$ 216,944.44	\$ 1,595.18
Child Protection Petition	190	371	\$ 233,350.35	675	\$ 390,687.33	\$ 578.80	1,890	4,145	\$ 2,363,192.38	\$ 570.13
Drug Court	0	8	\$ 9,461.00	23	\$ 22,951.00	\$ 997.87	6	91	\$ 111,531.00	\$ 1,225.62
Emancipation	5	6	\$ 1,329.90	8	\$ 2,034.90	\$ 254.36	56	50	\$ 14,198.88	\$ 283.98
Felony	516	506	\$ 326,382.69	688	\$ 429,375.49	\$ 624.09	5,514	4,867	\$ 3,111,640.23	\$ 639.33
Involuntary Civil Commitment	96	98	\$ 21,231.36	162	\$ 24,048.60	\$ 148.45	932	849	\$ 164,554.95	\$ 193.82
Juvenile	39	77	\$ 31,749.68	80	\$ 37,243.62	\$ 465.55	580	666	\$ 319,437.88	\$ 479.64
Lawyer of the Day - Custody	232	215	\$ 49,438.35	170	\$ 38,728.40	\$ 227.81	2,424	2,208	\$ 519,902.81	\$ 235.46
Lawyer of the Day - Juvenile	17	22	\$ 4,474.86	13	\$ 2,273.26	\$ 174.87	247	196	\$ 40,701.67	\$ 207.66
Lawyer of the Day - Walk-in	137	138	\$ 32,550.45	101	\$ 23,108.19	\$ 228.79	1,490	1,344	\$ 317,040.12	\$ 235.89
Misdemeanor	843	694	\$ 225,731.42	1,011	\$ 351,088.10	\$ 347.27	8,420	6,823	\$ 2,249,149.73	\$ 329.64
Petition, Modified Release Treatment	0	7	\$ 4,648.92	10	\$ 5,003.00	\$ 500.30	5	52	\$ 23,796.57	\$ 457.63
Petition, Release or Discharge	0	0		0			1	8	\$ 5,659.63	\$ 707.45
Petition, Termination of Parental Rights	23	53	\$ 51,716.64	91	\$ 48,910.25	\$ 537.48	272	654	\$ 418,268.92	\$ 639.55
Post Conviction Review	3	5	\$ 10,751.20	5	\$ 4,711.68	\$ 942.34	59	74	\$ 103,517.25	\$ 1,398.88
Probate	2	4	\$ 4,828.40	3	\$ 3,285.60	\$ 1,095.20	25	15	\$ 25,533.40	\$ 1,702.23
Probation Violation	120	105	\$ 45,673.19	170	\$ 74,028.11	\$ 435.46	1,133	1,185	\$ 499,047.07	\$ 421.14
Represent Witness on 5th Amendment	1	0		0			4	4	\$ 1,794.00	\$ 448.50
Resource Counsel Criminal	0	2	\$ 324.00	2	\$ 276.00	\$ 138.00	0	19	\$ 2,796.00	\$ 147.16
Resource Counsel Juvenile	0	0		0			0	5	\$ 468.00	\$ 93.60
Resource Counsel Protective Custody	0	0		1	\$ 96.00	\$ 96.00	2	4	\$ 1,002.00	\$ 250.50
Review of Child Protection Order	34	179	\$ 89,723.54	368	\$ 210,764.95	\$ 572.73	608	2,276	\$ 1,177,243.01	\$ 517.24
Revocation of Administrative Release	0	3	\$ 1,062.00	0			11	7	\$ 2,398.52	\$ 342.65
DefenderData Sub-Total	2,266	2,509	\$ 1,177,338.17	3,611	\$ 1,711,057.58	\$ 473.85	23,756	25,678	\$ 11,689,818.46	\$ 455.25
Paper Voucher Sub-Total										
TOTAL	2,266	2,509	\$1,177,338.17	3,611	\$1,711,057.58	\$ 473.85	23,756	25,678	\$ 11,689,818.46	\$ 455.25

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

4/30/2021

Court	Apr-21						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	11	14	\$ 5,085.00	12	\$ 6,043.00	\$ 503.58	41	46	\$ 20,037.50	\$ 435.60
AUBSC	4	2	\$ 1,463.01	2	\$ 1,002.00	\$ 501.00	7	7	\$ 4,654.00	\$ 664.86
AUGDC	33	61	\$ 28,294.21	67	\$ 39,904.35	\$ 595.59	355	557	\$ 315,102.61	\$ 565.71
AUGSC	18	20	\$ 12,818.47	14	\$ 6,338.55	\$ 452.75	56	98	\$ 52,663.82	\$ 537.39
BANDC	79	84	\$ 25,514.17	247	\$ 61,000.17	\$ 246.96	632	1,080	\$ 310,091.19	\$ 287.12
BANSC	0	0		7	\$ 3,423.70	\$ 489.10	1	8	\$ 4,254.70	\$ 531.84
BATSC	0	0		2	\$ 1,080.00	\$ 540.00	1	3	\$ 1,695.00	\$ 565.00
BELDC	5	39	\$ 16,561.56	115	\$ 59,806.40	\$ 520.06	97	340	\$ 182,370.66	\$ 536.38
BELSC	0	0		0			2	1	\$ 126.00	\$ 126.00
BIDDC	43	77	\$ 45,454.01	103	\$ 77,016.70	\$ 747.73	422	643	\$ 404,582.01	\$ 629.21
BRIDC	2	16	\$ 5,991.79	40	\$ 20,652.33	\$ 516.31	100	231	\$ 114,432.77	\$ 495.38
CALDC	2	9	\$ 5,680.05	9	\$ 4,873.05	\$ 541.45	37	76	\$ 39,754.15	\$ 523.08
CARDC	7	22	\$ 15,232.06	15	\$ 5,730.26	\$ 382.02	68	220	\$ 85,564.83	\$ 388.93
CARSC	0	0		0			1	1	\$ 360.00	\$ 360.00
DOVDC	5	9	\$ 4,374.00	9	\$ 5,869.20	\$ 652.13	65	135	\$ 61,623.08	\$ 456.47
DOVSC	0	1	\$ 2,676.00	0			1	0		
ELLDC	12	40	\$ 30,324.00	68	\$ 35,244.00	\$ 518.29	151	350	\$ 212,993.70	\$ 608.55
ELLSC	0	2	\$ 330.00	0			2	0		
FARDC	5	8	\$ 5,353.72	11	\$ 6,702.58	\$ 609.33	54	141	\$ 83,944.04	\$ 595.35
FARSC	0	1	\$ 174.00	0			1	3	\$ 2,173.35	\$ 724.45
FORDC	7	9	\$ 3,717.55	26	\$ 10,641.55	\$ 409.29	83	127	\$ 66,748.54	\$ 525.58
HOUDC	13	22	\$ 14,865.93	19	\$ 12,718.62	\$ 669.40	91	216	\$ 125,161.03	\$ 579.45
HOUSC	1	1	\$ 570.00	0			2	0		
LEWDC	57	99	\$ 63,127.68	122	\$ 67,771.63	\$ 555.51	627	958	\$ 497,603.93	\$ 519.42
LINDC	4	8	\$ 3,146.92	16	\$ 6,153.44	\$ 384.59	88	126	\$ 60,168.56	\$ 477.53
MACDC	2	7	\$ 3,710.00	7	\$ 4,598.00	\$ 656.86	14	53	\$ 35,127.63	\$ 662.79
MACSC	0	1	\$ 270.00	0			3	3	\$ 2,336.30	\$ 778.77
MADDC	1	0		0			7	4	\$ 1,600.08	\$ 400.02
MILDC	9	10	\$ 3,474.00	9	\$ 2,748.00	\$ 305.33	51	70	\$ 20,715.60	\$ 295.94
NEWDC	12	13	\$ 8,995.04	39	\$ 12,437.08	\$ 318.90	123	271	\$ 92,018.76	\$ 339.55
PORDC	57	106	\$ 57,131.69	169	\$ 97,278.55	\$ 575.61	733	1,154	\$ 591,202.74	\$ 512.31
PORSC	2	1	\$ 385.00	0			10	4	\$ 3,259.52	\$ 814.88
PREDC	7	15	\$ 5,820.00	22	\$ 5,092.00	\$ 231.45	101	218	\$ 92,928.26	\$ 426.28
RODC	13	15	\$ 5,147.76	45	\$ 19,510.74	\$ 433.57	160	251	\$ 118,012.47	\$ 470.17
ROSC	0	0		0			5	9	\$ 2,148.00	\$ 238.67
RUMDC	2	16	\$ 6,843.00	13	\$ 6,198.00	\$ 476.77	88	227	\$ 160,947.70	\$ 709.02
SKODC	28	55	\$ 24,193.44	53	\$ 23,276.65	\$ 439.18	248	518	\$ 230,733.93	\$ 445.43
SKOSC	0	0		0			2	1	\$ 330.00	\$ 330.00
SOUDC	7	14	\$ 8,472.00	20	\$ 9,070.36	\$ 453.52	71	165	\$ 85,292.77	\$ 516.93
SOUSC	0	0		1	\$ 240.00	\$ 240.00	4	3	\$ 477.50	\$ 159.17
SPRDC	19	41	\$ 26,080.36	69	\$ 35,498.66	\$ 514.47	269	425	\$ 247,643.04	\$ 582.69
Law Ct	7	13	\$ 28,120.17	18	\$ 33,745.48	\$ 1,874.75	65	106	\$ 186,137.30	\$ 1,756.01
YORCD	246	188	\$ 112,082.56	221	\$ 135,025.60	\$ 610.98	1,912	1,705	\$ 936,929.14	\$ 549.52
ARODC	109	110	\$ 32,586.56	131	\$ 42,539.35	\$ 324.73	1,271	1,058	\$ 369,387.05	\$ 349.14
ANDCD	138	133	\$ 57,220.00	235	\$ 92,530.51	\$ 393.75	1,806	1,716	\$ 649,252.67	\$ 378.35
KENCD	204	159	\$ 59,909.87	220	\$ 87,623.07	\$ 398.29	1,762	1,600	\$ 654,448.29	\$ 409.03
PENCD	230	155	\$ 64,548.18	226	\$ 104,512.88	\$ 462.45	2,365	1,771	\$ 716,448.47	\$ 404.54
SAGCD	38	24	\$ 10,521.50	25	\$ 10,844.44	\$ 433.78	348	319	\$ 118,136.15	\$ 370.33
WALCD	68	69	\$ 27,549.60	58	\$ 22,194.08	\$ 382.66	638	451	\$ 174,551.12	\$ 387.03
PISCD	16	17	\$ 3,317.74	25	\$ 5,068.88	\$ 202.76	201	178	\$ 52,087.88	\$ 292.63
HANCD	52	64	\$ 32,676.00	65	\$ 32,887.28	\$ 505.96	568	468	\$ 207,239.78	\$ 442.82
FRACD	38	27	\$ 8,154.35	49	\$ 11,443.92	\$ 233.55	413	474	\$ 196,595.77	\$ 414.76
WASCD	38	68	\$ 26,071.40	53	\$ 20,932.60	\$ 394.95	480	391	\$ 160,128.50	\$ 409.54
CUMCD	352	354	\$ 143,007.12	419	\$ 200,646.04	\$ 478.87	3,760	3,236	\$ 1,520,797.52	\$ 469.96
KNOCD	39	76	\$ 26,455.36	100	\$ 37,163.54	\$ 371.64	694	554	\$ 215,331.41	\$ 388.68
SOMCD	67	42	\$ 16,537.28	90	\$ 37,074.70	\$ 411.94	778	686	\$ 204,760.30	\$ 298.48
OXFCD	86	73	\$ 34,817.47	112	\$ 41,023.19	\$ 366.28	864	867	\$ 325,850.62	\$ 375.84
LINCD	29	21	\$ 5,503.40	51	\$ 25,863.51	\$ 507.13	390	408	\$ 160,509.48	\$ 393.41
WATDC	19	36	\$ 17,540.24	83	\$ 62,857.56	\$ 757.32	222	444	\$ 242,755.56	\$ 546.75
WESDC	11	22	\$ 16,672.40	40	\$ 36,760.25	\$ 919.01	201	284	\$ 141,013.91	\$ 496.53
WISDC	5	9	\$ 6,789.50	22	\$ 14,683.98	\$ 667.45	69	115	\$ 74,850.16	\$ 650.87
WISSC	0	3	\$ 4,367.05	5	\$ 3,655.15	\$ 731.03	1	5	\$ 3,655.15	\$ 731.03
YORDC	7	8	\$ 1,614.00	12	\$ 4,062.00	\$ 338.50	74	99	\$ 48,072.46	\$ 485.58
TOTAL	2,266	2,509	\$ 1,177,338.17	3,611	\$ 1,711,057.58	\$ 473.85	23,756	25,678	\$ 11,689,818.46	\$ 455.25

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

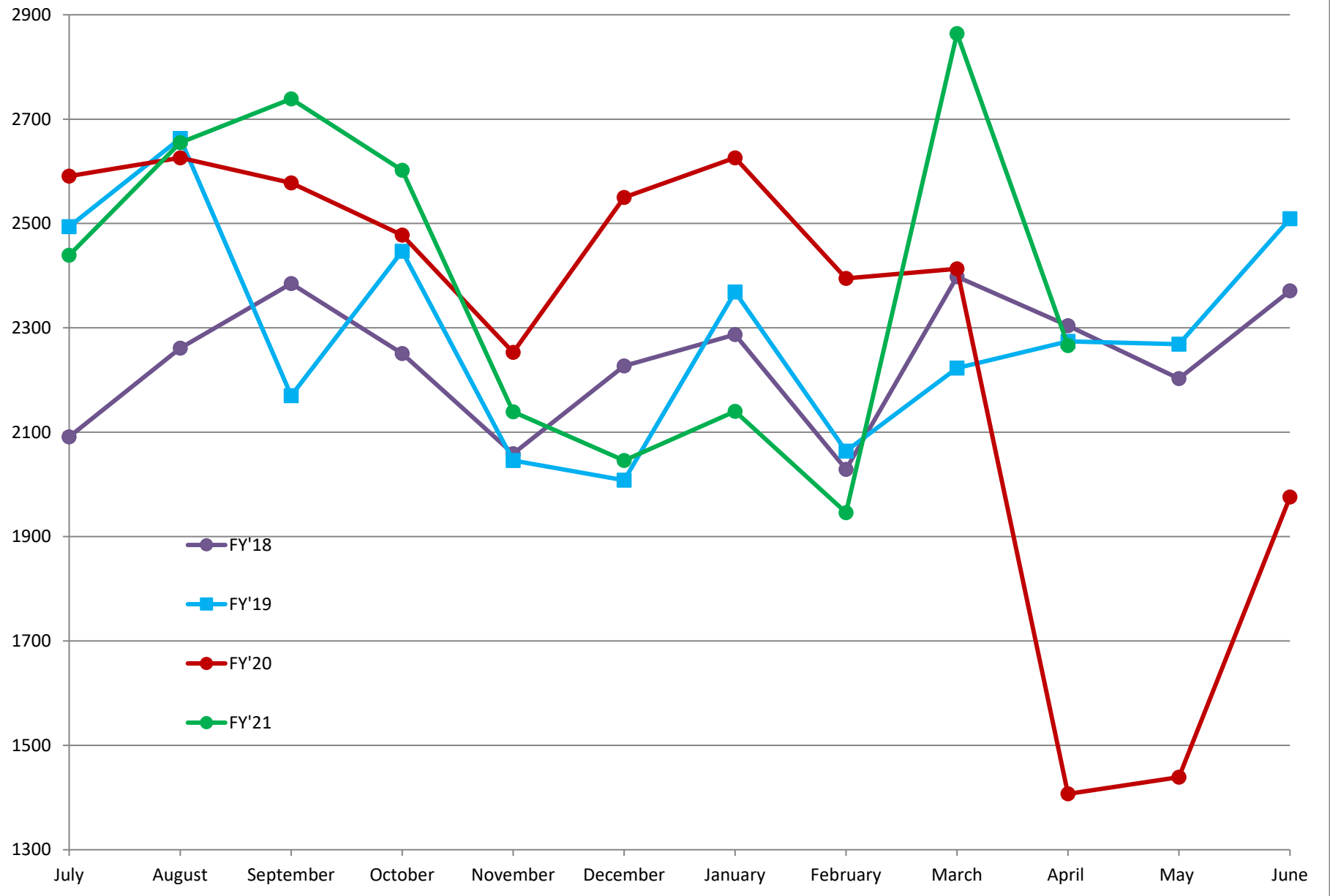
Number of Attorneys Rostered by Court

04/30/2021

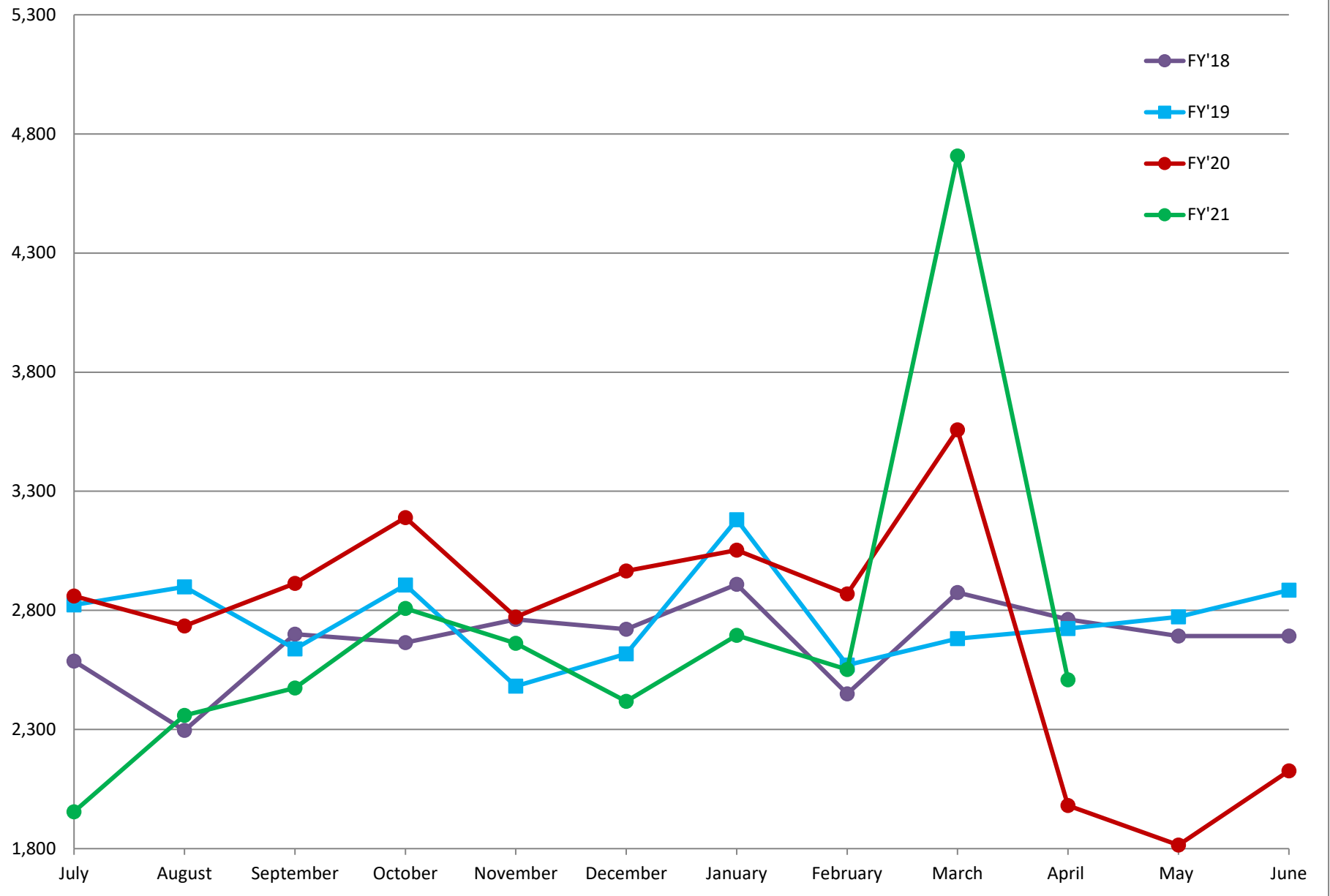
Court	Rostered Attorneys
Augusta District Court	71
Bangor District Court	37
Belfast District Court	34
Biddeford District Court	106
Bridgton District Court	63
Calais District Court	9
Caribou District Court	14
Dover-Foxcroft District Court	23
Ellsworth District Court	28
Farmington District Court	28
Fort Kent District Court	10
Houlton District Court	11
Lewiston District Court	99
Lincoln District Court	20
Machias District Court	13
Madawaska District Court	10
Millinocket District Court	14
Newport District Court	26
Portland District Court	123
Presque Isle District Court	12
Rockland District Court	27
Rumford District Court	18
Skowhegan District Court	19

Court	Rostered Attorneys
South Paris District Court	41
Springvale District Court	91
Unified Criminal Docket Alfred	88
Unified Criminal Docket Aroostook	20
Unified Criminal Docket Auburn	81
Unified Criminal Docket Augusta	67
Unified Criminal Docket Bangor	36
Unified Criminal Docket Bath	73
Unified Criminal Docket Belfast	32
Unified Criminal Docket Dover Foxcroft	20
Unified Criminal Docket Ellsworth	30
Unified Criminal Docket Farmington	31
Unified Criminal Docket Machias	14
Unified Criminal Docket Portland	122
Unified Criminal Docket Rockland	22
Unified Criminal Docket Skowhegan	18
Unified Criminal Docket South Paris	37
Unified Criminal Docket Wiscasset	43
Waterville District Court	34
West Bath District Court	82
Wiscasset District Court	48
York District Court	84

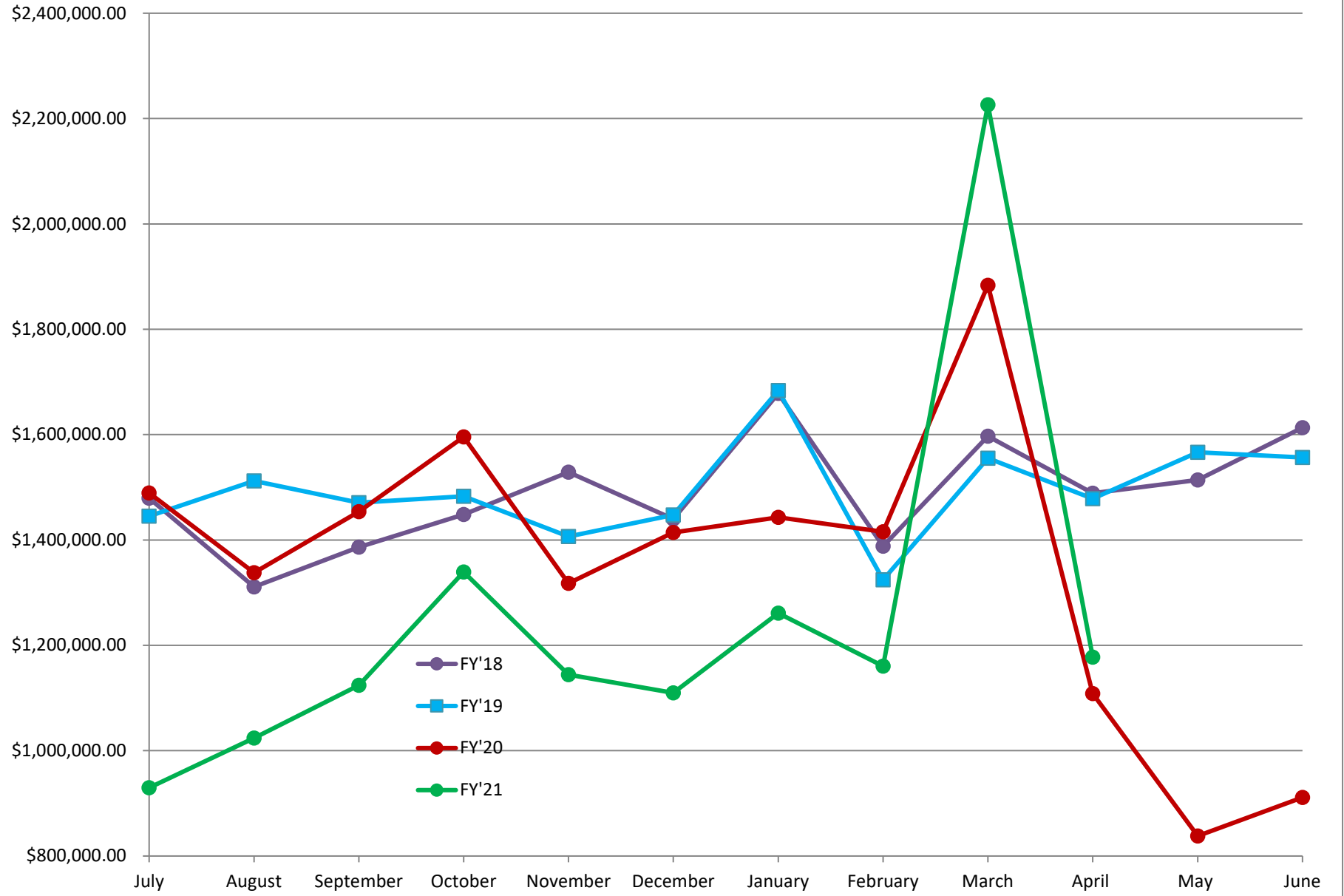
NEW CASES



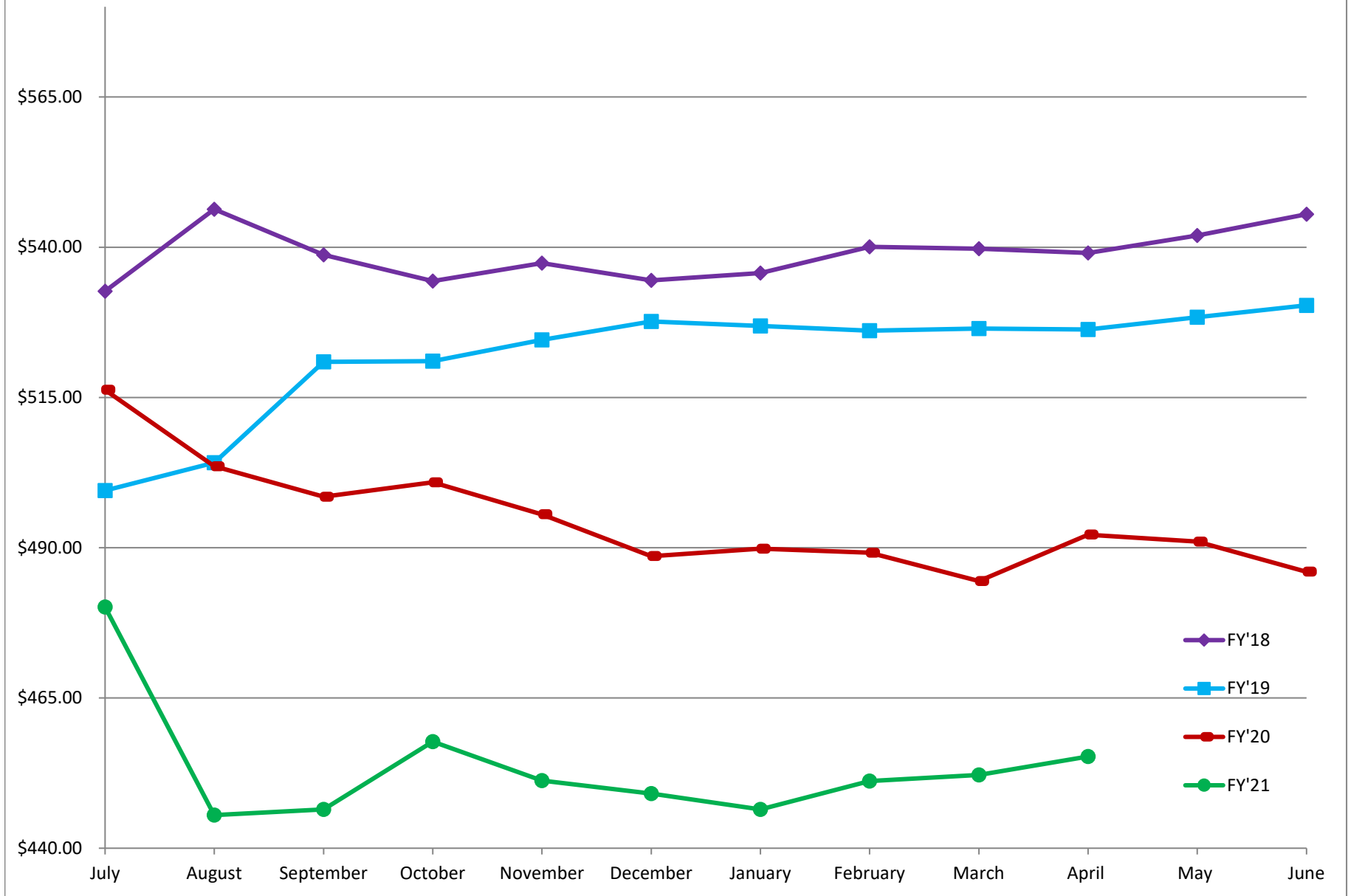
Submitted Vouchers



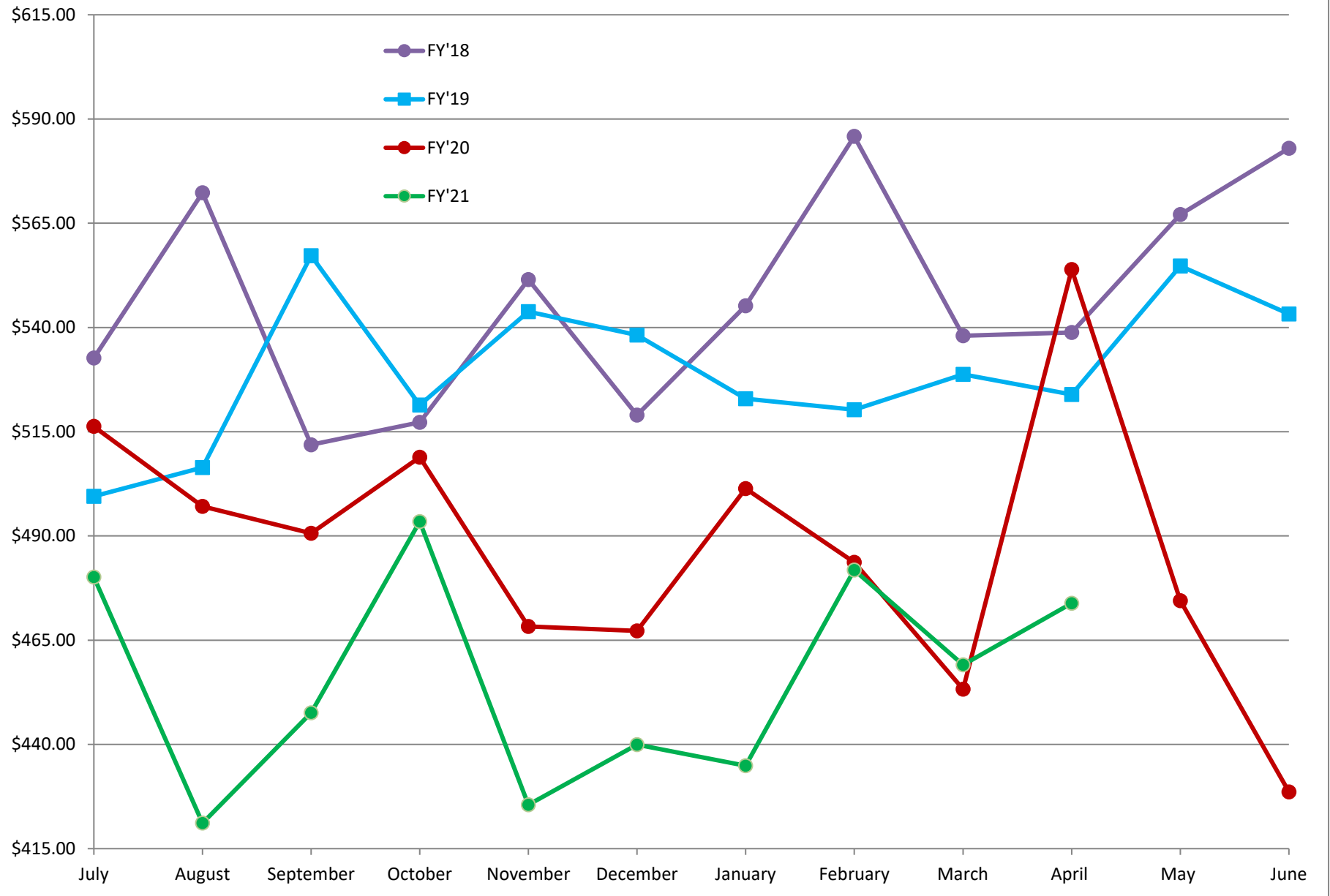
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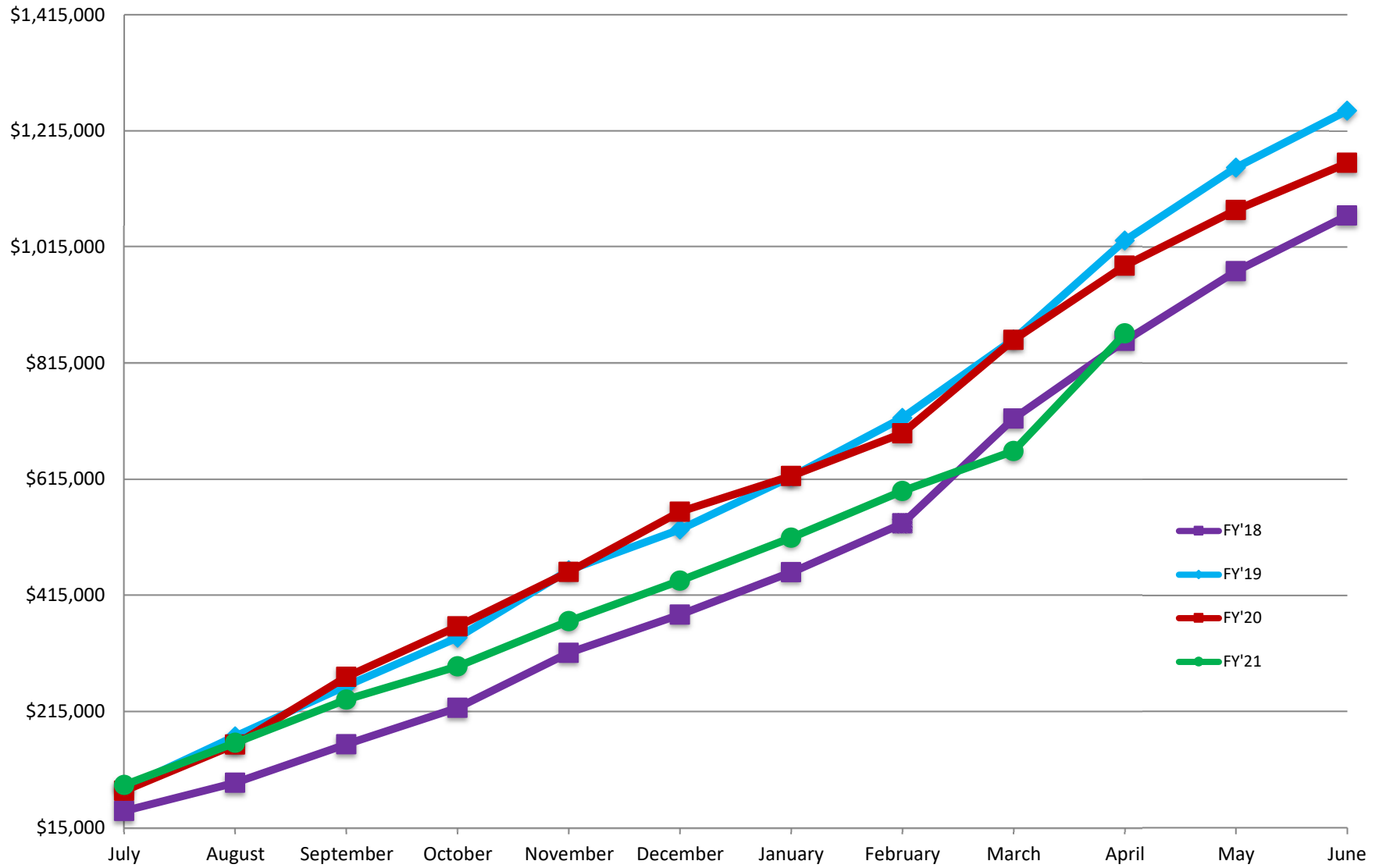
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'21



MCILS FINANCIAL STATUS

TO: REPRESENTATIVE BARBARA CARDONE

FROM: JUSTIN W. ANDRUS

SUBJECT: MCILS FINANCIAL STATUS

DATE: MAY 21, 2021

CC:

This memorandum was prepared in this form at the request of Representative Barbara Cardone. It will be provided in substantially similar form as part of the MCILS quarterly report to the Government Oversight Committee, though it may be updated to reflect changes in the balances and expectations before that report.

1. Introduction

The current and expected financial health of MCILS is set out below in several stages. These include explanations of MCILS historical funding levels and operating costs; currently available resources, including the expected carry-forward balance at the end of FY21; a projection of MCILS financial performance based on historic trends; and, the expected impact of the existing backlog of cases now pending in the courts.

This analysis of the amount of the available surplus and the scale of anticipated needs must begin with an analysis of historical spending and appropriations. Between FY16 and FY20, the Commission's payments for rostered attorneys and non-attorney expenses have averaged \$18,203,621 per fiscal year. Between FY16 and FY19, the Legislature appropriated an average of \$19,814,823 per year in All Other funds, which the Commission used almost exclusively to pay rostered attorneys and non-attorney expenses such as expert witnesses and investigators. In the FY20 biennial budget, however, the Legislature appropriated \$15,521,725 per year for the Commission's All Other expenses. Until COVID closed down the courts, the Commission was on a path to again spend about \$18 million to pay rostered attorneys and non-attorney expenses. As we will discuss below, we consider the lower payments during the pandemic to be delayed payments, rather than savings. As a result, this analysis begins with a \$8,586,196 shortfall, when compared what the Commission's historical costs, as captured by the pre-FY20 All Other baseline.

In producing this analysis, actual historic expenditure levels have been used to project expected future costs. This permits a direct comparison between current resources

and projected needs. Although MCILS continues to work with the Judiciary and AFA Committees to promote more robust funding, this analysis assumes that MCILS does not receive funding beyond that currently supported by the Governor's proposed change package and her agreement to issue financial orders to use existing resources to fund four limited period positions to support and enhance Commission operations, as discussed below.

In using the historic expenses incurred by MCILS to project future baseline expenses, it is important to note that due to the effect the pandemic has had on the courts, expenses in FY20 and FY21 were substantially less than they would have otherwise been. The reduction in cost was the result of the suspension of many types of judicial proceedings. It is useful to consider both historic averages that include those years, and averages that exclude them. MCILS projects that its baseline needs will be more in line with averages through FY19 rather than with FY20 or FY21.

It is also essential to consider the very significant backlog of cases that has accumulated in the courts during the pandemic. MCILS anticipates a surge in work performed by appointed attorneys as the courts work to clear that backlog. This surge will result in an increase in costs to MCILS.

This analysis excludes the effect that the initiatives advanced by the Judiciary Committee and adopted by MCILS would have if ratified.

2. Expenses and Funding

MCILS pays private contract attorneys to provide legal services to indigent legal consumers. Paying those attorneys consumes most of the MCILS budget. MCILS also pays non-counsel providers to support those legal services. Non-counsel providers include translators, investigators, transcriptionists, and expert witnesses, among others. MCILS expenses for both counsel and non-counsel services scale with both the number of cases in which MCILS contract counsel are appointed, and with the rate at which those cases are being processed by the courts. When more cases are pulled into the courts for action during any period, the expenses for that period increase accordingly. A period in which there are both more cases pending, and in which the courts are calling more cases forward for action, will be a period in which expenses will be substantially more than average.

MCILS also pays payroll and benefits for its employees, and operating expenses. These expenses are relatively consistent, and do not scale directly with caseload or case activity. The overall budget is more substantially impacted by changes in case costs than it is by fixed employee and operating costs.

MCILS maintains four primary accounts through the budget office. They are a Personal Services account, from which MCILS pays payroll and benefits to its employees; an All Other account, from which MCILS pays counsel and non-counsel expenses, as well as its operating expenses; a Revenue account, which provides a secondary source of

payments when an allotment in the All Other account is threatened or exceeded; and, a Conference account, which pays for expenses associated with training attorneys.

The Personal Services and All Other accounts are funded through by the State through the budget process. The Revenue account is funded through payments received through the Judicial Branch. Those payments in turn are collected from clients who have had legal services paid for by MCILS. (One time only, in the FY21 Supplemental Budget, the Legislature ordered that money that MCILS saved in FY20 shall be moved from an MCILS reserve account to its Revenue Account. Although that money has not landed, this memorandum assumes that it will be deposited to that account. This funding will not recur.) The Conference account was funded from payments lawyers made to MCILS to attend trainings.

As of May 21, 2021, the balances in the MCILS accounts (including the expected carry-forward from FY20) are:

Personal Services	\$ 70,984.00
All Other	\$ 2,701,284.00
Revenue	\$ 3,186,396.00
Conference	\$ 16,232.00
Total	\$ 5,974,896.00

MCILS projects the following expenses through the close of FY21 on June 30, 2021:

Payroll	\$ (144,209.16)
Non-Counsel / Operations	\$ (76,000.00)
Attorney Fees	\$ (1,500,000.00)
Total	\$ (1,720,209.16)

From this information, MCILS expects to carry \$4,254,687 forward into FY22.

3. Baseline funding and shortfall.

MCILS has been provided with funding for FY22 and FY23 in both its Personal Services and All Other accounts. Personal Services funding is \$954,855 and \$977,284 in FY22 and FY23, respectively. All Other funding is \$15,521,725 in each year.

Between FY16 and FY20, MCILS spent an average of \$18,203,621 per year, excluding personal services expenses. Excluding FY20 to account for the unusual pandemic-related decrease in expenses results in a slightly higher average of \$18,524,743. Non-counsel payments have averaged \$970,035 per year. Operations expenses have averaged \$169,393 per year. Together, those costs average \$1,139,428 per year.

MCILS is presently averaging approximately \$1.5 million per month in attorney payments, suggesting an annualized cost at the traditional operational tempo of \$18 million per year. If non-counsel and operations costs remain consistent, MCILS would require approximately \$19.2 million per year to meet its outside expenses.

Assuming that MCILS expenses were consistent with historic averages, in FY22 the Commission could meet its obligations. In FY23, however, there will be no available carry-forward. MCILS would be \$3,675,000 short of the funding necessary to meet its obligations. At the current rate of expenditure MCILS would be unable to pay its contract attorneys, non-counsel providers, and operating costs in or about the second week of April 2023.

It bears note that in addition to its baseline operational costs, MCILS anticipates that it will hire four limited duration employees as supported by the Governor. Expenses associated with those employees would be paid from the carry-forward. Human Resources is presently reviewing the proposed jobs to classify them, and so precise costs are not now available. MCILS anticipates that those four employees and their associated operational costs will total approximately \$500,000 in each of FY22 and 23. That expense could result in a period of approximately one month at the end of FY22 in which MCILS could not pay its expenses, and would likely move the date on which MCILS was forced to stop making payments in 2023 into mid-March.

4. Case backlog, analyzed with historical spending

The foregoing analysis projects the MCILS budget under historic conditions. MCILS does not expect case volume to remain constant, however. There is a serious backlog of cases in the Courts. Addressing those cases will mean adding volume on top of the ordinary case volume in each of the coming two fiscal years. The Courts do not have unlimited capacity, however. As a result, it is not possible to determine over precisely what period the case volume will need to be made up. The cases exist, however, and the cost of servicing those cases should be considered a booked liability.

The latest information that MCILS has shows pre-trial cases in the Unified Criminal Docket (“UCD”) were up 53% year over year, as of February 2021, according to the Courts. In FY20, those cases carried a total cost of \$7,973,500, suggesting a minimum of \$4,225,955 in increase. The increase in criminal case cost could be as much as \$5,019,908 if the comparison were made to FY2019 as more typical than FY20. Non-counsel case costs should be expected to increase proportionately by \$514,118.

In addition, cases aged six months or older have increased from 2,600 to 9,300 year over year, an increase of 358%. Not all of these cases will progress to jury selection and trial, but those cases that will reach at least jury selection typically come from within this pool. The MCILS billing system does not have a time entry selection for “jury trial.” As a result, we do not have available data on the number of cases that go to jury trial. The system does have a selection for “court/jury selection,” however. That selection is a good indicator of the high cost cases MCILS addresses.

The following table shows the count for cases that reached jury selection in the specified fiscal year:

FY21 (YTD)	131
FY20	475
FY19	494
FY18	663
FY17	517

The average cost for each of these cases was \$3,233.

These numbers suggest that as the Court comes fully back online it will have a surplus of between 1425 and 1773 high-cost cases. At the average cost of those cases, this represents a prospective cost to MCILS of between \$4,697,025 and \$5,732,109, or between 30% and 37% of its budget from which to pay attorneys.

5. Possible effects of COVID-19 protocol on court practices and Commission costs

The foregoing assumes a neutral case cost. At this time the cost for cases going to jury trial is substantially enhanced, however. Jury selection is frequently taking as much as three times as long as in the past. Over 2,657 entries for jury selection between July 1, 2016 and the present, the average jury selection time entry was \$197.26. Were jury selection to continue to occur over three days, rather than one, that per-case cost would increase to \$591, representing a potential additional cost to MCILS of \$1,049,207.

The instances in which a case went to jury selection would come from the same set of cases driving the overall increase in case count. The cases that went to jury selection are a small subset of the total number of cases, however. The total number of cases that went to jury selection during the period FY17 through FY21 was 2,280 from a total criminal case count of 73,239. In other words, 3% of the criminal case volume went to jury selection, and the total cost of increased case volume should be discounted accordingly.

We also expect trials, themselves, to cost more due to COVID protocols. For example, we expect trials to be delayed just before or during trial because a Defendant, attorney, courtroom personnel, or juror becomes sick or is required to quarantine. Additionally, as we all know, complying with COVID protocols sometimes simply takes longer than before. We have no data to quantify this but would estimate the additional average cost of a trial/case to be between 5% and 25%. In total, MCILS anticipates an increase in its costs over the period it takes for the courts to become current of between \$4,225,955 and \$12,164,744. At the low end, this would result in the suspension of payments to counsel in mid-April 2022 at the latest. We expect that the experience will be closer to the higher end. Counsel could be paid on July 1st from the new allotment available at that time, but approximately \$4.25 million would be spent from the FY23 budget to bring counsel current. Payments would be suspended again in December 2022 or January 2023. At the high end, MCILS could exhaust its ability to pay counsel in late 2022.

SPECIALIZED CASE TYPE CONTROL

TO: COMMISSION

FROM: JWA

SUBJECT: SPECIALIZED CASE TYPE CONTROL

DATE: MAY 21, 2021

CC:

MCILS Rules Chapter 3 sets out the requirements for attorneys to be considered eligible to receive certain types of cases. “Chapter 2 of the Commission’s Rules sets out the minimum eligibility requirements to be rostered to accept appointments from the Maine Commission on Indigent Legal Services (“MCILS”). The Rules in this Chapter are promulgated to establish the eligibility requirements to be rostered on specialty panels for specific types of cases.” Summary, Chapter 3.

MCILS Rules Chapter 3 is implemented in the Court through Maine Rule of Unified Criminal Procedure 44(a)(1), which states in part:

If the defendant in a proceeding in which the crime charged is murder or a Class A, Class B, or Class C crime appears in any court without counsel, the court shall advise the defendant of the defendant’s right to counsel and assign counsel to represent the defendant at every stage of the proceeding unless the defendant elects to proceed without counsel. If the defendant is without sufficient means to employ counsel, the court shall make an initial assignment of counsel. Assigned counsel must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments for the type of case to which counsel is assigned. The Maine Commission on Indigent Legal Service will, pursuant to procedures established by the Commission, accept the initial assignment made by the court or substitute other counsel for counsel assigned by the court. Counsel initially assigned by the court shall remain counsel of record unless the Commission does not accept the assignment and provides notice of substitution of counsel and counsel files a notice of withdrawal pursuant to Rule 44B, or counsel is otherwise granted leave to withdraw pursuant to Rule 44B

(Emphasis added) A similar provision for class D & E cases follows.

MCILS had historically deviated from the requirements of Chapter 3 of its rules in two material ways. First, the Commission had not promulgated an application for attorneys who wanted to represent parents in child protective matters. Second, attorneys were approved to represent indigent defendants in some cases even when those attorneys had not been designated as eligible to receive assignments for the type of case in question. On January 4, 2021, the Commission resolved to enforce Chapter 3. MCILS began enforcing the rule not later than January 19, 2021, with the commencement of the tenure of its interim Executive Director.

MCILS has no information to suggest that any client received ineffective assistance of counsel through the appointment of an attorney who had not been designated as eligible for that case. MCILS will investigate any allegation of ineffective assistance of counsel on receipt of information raising the issues, irrespective of whether the attorney in question had been designated as eligible.

With respect to the Child Protective bar, MCILS now requires attorneys to apply and be designated as eligible to represent parents as a condition of approval. On January 29, 2021, MCILS attorneys were notified by broadcast email that the application for designation as eligible in child protective cases was online at a specified link to the MCILS website, and that the application must be returned by February 28, 2021. After initial reluctance, most attorneys who had represented parents in child protective cases in the past filed applications and were approved to continue. There were some exceptions, particularly in Aroostook County. Issues of attorney retention and the ability of MCILS to meet its mission are addressed elsewhere in this letter. Appointments to child protective cases are now addressed in the same manner as all of the other specialized panels.

MCILS approves attorneys to represent clients through its Defender Data software. Initial case information is obtained from the courts and from our attorneys. That information includes the docket number, from which the court location can be derived; the client name; and, the charges, from which any applicable specialized panel can be derived. That information is input into the software by the attorney.

An attorney may have established eligibility to accept cases of a specialized type. That attorney may or may not have been listed on the roster of eligible attorneys for a specific case type in a specific court during a specific period. In other words, it is possible for an attorney to have been designated as eligible as contemplated by Rule 44, and for that attorney to be not presently rostered simultaneously. As discussed elsewhere, it is not uncommon for attorneys to place themselves on or off rosters to control caseloads.

For cases in which the case type and attorney eligibility designations match, and in which the attorney is presently rostered to accept cases of the specified type in the court in question, approval is simple. If there is a mismatch between either the case type and the attorney eligibility, or between the court location and the attorney's roster status, or both, then manual review is required. The Executive Director presently performs that function.

Between 50 and 70 cases per week require manual review by the Executive Director. Some of those cases are legacies of prior MCILS policy in which an attorney was appointed without the correct eligibility designation under the prior administration. Those cases have tapered off substantially and should be effectively eliminated in the near future. The majority of the remaining cases are instances in which an attorney has been properly designated as eligible but has been appointed by a court in which that attorney does not routinely accept cases of that type. These cases satisfy both Chapter 3 and Rule 44 and are approved. MCILS is sensitive to attorney travel time, and the cost associated with that time, and tries to have reasonably local counsel on its cases. This is not always possible, however. Sometimes a client has matters in multiple counties, and consistent counsel is necessary for adequate client service. Frequently, courts cannot identify local counsel willing and able to serve, and thus must look further afield.

After eliminating the legacy matters and the eligible case type matters, there remain a subset of cases in which the assigned attorney has not been designated as eligible for the case type associated with the file. From this set there are several additional grounds for approval consistent with the MCILS rules. For example, if the attorney seeking approval is co-counsel to another eligible attorney, then the case may be approved. The eligible attorney would serve as lead counsel in that instance. Another example is post-conviction review. An attorney may be eligible to perform post-conviction review of a case type for which that attorney has not sought a designation of eligibility to serve as trial counsel.

After approving matters as set forth above, there remain the matters that cannot be approved. MCILS contacts the attorneys in those matters to direct them to withdraw. If an attorney failed to withdraw, MCILS would use the substitution provision of Rule 44 to appoint eligible counsel. MCILS has not yet been called on to take that action because counsel have been responsive to the withdrawal requirement.

The current process is cumbersome, but required both by the limitations of Defender Data, and because MCILS has had no information management system that would permit even partial automation of the reviews. Information pulled from Defender Data regarding the approval of cases for which an attorney appears to be ineligible may be accurate and misleading, because the system does not communicate the basis for the approval. A secondary logging and reporting system would eliminate the ambiguity but is impracticable with current staffing levels.

Improving the Defense of Young People in Public Defense Contract Systems

CALL FOR APPLICATIONS

The National Juvenile Defender Center (NJDC) is inviting applications from public defense contract or appointed counsel systems to participate in a project to improve the defense of young people. The NJDC *Improving the Defense of Young People in Public Defense Contract Systems* project will include two sites with an expressed interest and readiness to examine and strengthen their provision of defense services to young people facing arrest and prosecution in delinquency courts.

Background

A young person's constitutional right to high-quality defense counsel should not depend upon the system used to provide indigent defense services in the county or state in which they live. However, while talented lawyers practice in each type of defense system, studies that compare the results achieved by public defenders versus appointed counsel consistently find that people represented by appointed counsel fare worse, both in terms of cases outcomes and sentencing, than those represented by public defenders or retained counsel.¹ Youth are represented by contract/appointed counsel in every state, even those with robust public defense systems, so we must find ways to improve the performance of attorneys working in contract systems.

Recognizing the need to improve the quality of legal representation provided to youth in contract and appointed systems, in May 2018, NJDC convened juvenile defense experts from across the country and undertook identifying best practices and creating resources contract counsel systems could use to improve their structures and the quality of representation they provide. In January 2020, NJDC published [Broken Contracts: Reimagining High-Quality Representation of Youth in Contract and Appointed Counsel Systems](#). Accompanying the report is a [Toolkit](#) that provides a path forward for those in contract counsel systems who want to improve access to and quality of defense counsel for youth.

¹ See Cyn Yamashiro et al., *Kids, Counsel and Costs: An Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts* (Loy. Law Sch. L.A., Working Paper No. 2013-9, 2013); Miriam S. Gohara et al., *The Disparate Impact of an Under-funded, Patchwork Indigent Defense System on Mississippi's African Americans: The Civil Rights Case for Establishing a Statewide, Fully Funded Public Defender System*, 49 How. L.J. 81, 88-89, 94-95 (2005); Radha Iyengar, *An Analysis of the Performance of Federal Indigent Counsel* (Nat'l Bureau of Econ. Research, Working Paper No. 13187 2007); James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J. 154 (2012); Thomas H. Cohen, *Who is Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes*, 25 CRIM. JUST. POL'Y REV. 29 (2014); Michael Roach, *Explaining the Outcome Gap between Different Types of Indigent Defense Counsel: Adverse Selection and Moral Hazard* (2010).

The vision for reform is to develop youth defense contract and appointed counsel systems that ensure and uphold the due process rights of young people throughout the duration of the juvenile court process. In such systems, youth have early and timely access to competent, well-trained, and well-resourced counsel, and youth defenders have the ability and capacity to provide comprehensive and thorough legal representation to the children they serve.

Project Overview

NJDC will select two sites to participate in the *Improving the Defense of Young People in Public Defense Contract Systems* project. The sites will receive targeted training, technical assistance, and support from NJDC staff over an 18-month period to address identified gaps in their system based on the six key components of effective contract counsel systems NJDC identified in *Broken Contracts*:²

1. **Independent Appointment of Defenders.** To ensure that defense attorneys are able to meet their professional duty to exercise independent judgment on behalf of their clients, contract counsel systems must be free from political and judicial influence. The fear of losing a contract or appointment has a chilling effect on zealous defense advocacy.
2. **Oversight of Contract Systems.** While the appointment of defenders must ensure independence, the contract system must also be subject to oversight to ensure that contract and appointed counsel systems afford constitutionally sound defense services.
3. **Standardized Professional Obligations.** Juvenile defense contracts and oversight should hold defenders to clearly established standards of practice that include knowledge of juvenile court, ongoing youth defense-specific training, knowledge of and commitment to raising issues of racial and other disparities for young people, and continuity of holistic representation for children.
4. **Qualified Counsel.** Juvenile court should never be used as a training ground for new attorneys; through contractual obligations, oversight, and evaluation, contract counsel systems must ensure that youth defenders have the time, training, experience, and expertise necessary to represent young people in juvenile court.
5. **Just Compensation & Funding.** Defenders working in contract counsel systems must be paid for the full scope of the work necessary to provide zealous representation to youth, not just at court hearings, and must have access to funding for needed resources and supports, such as investigators, experts, paralegals, and social workers.
6. **Data Collection & Analysis.** Contract counsel systems should collect comprehensive data about cases, clients, outcomes, and attorney activities to evaluate the impact and effectiveness of the system and individual attorneys, identify areas of improvement, support budget requests and policy reform, and improve the protection of children's constitutional rights.

² NAT'L JUV. DEF. CTR., *BROKEN CONTRACTS: REIMAGINING HIGH-QUALITY REPRESENTATION OF YOUTH IN CONTRACT AND APPOINTED COUNSEL SYSTEMS* 15-20 (2019).

The project will be divided into two phases:

Phase One – Assessment and Planning (Months 1-3)

During Phase One, the selected sites will, in consultation with their NJDC Liaison, assess their contract counsel system against the six components above, identify gaps, and develop an action plan.

Activities in Phase One will include:

- Initial site visit and meeting with NJDC (likely virtual)
- System self-assessment
- Develop goals and action plan
- Regular meetings with NJDC Liaison

Phase Two – Implementation (Months 4-18)

Phase Two will focus on prioritizing and implementing goals identified in the action plan developed in Phase One.

Phase Two activities will include:

- Tailored training and technical assistance
- Site visit(s)
- Sustainability planning
- Regular meetings with NJDC Liaison

Benefits & Expectations

The selected sites will engage in individualized assessments, training, and technical assistance as they implement strategies set forth in *Broken Contracts* and work toward improving practices and outcomes. NJDC will designate a liaison to work with and support each site. The NJDC Liaison will work closely with each site to develop, prioritize, and achieve goals; to provide thorough, timely, and tailored technical assistance; and to facilitate systems change efforts.

Site Visits

Site visits give NJDC Liaisons the opportunity to identify the strengths, challenges, and technical assistance needs of the sites, and to provide a continuum of analysis and feedback to system leaders.

During site visits, NJDC Liaisons will engage in:

- Court hearing observations
- Stakeholder interviews
- Data reviews
- Stakeholder meetings

Technical Assistance

The NJDC Liaison will work with the project lead to understand what is needed to support the site's goals. NJDC can offer information on a wide range of topics related to court and agency reform initiatives, including legal issues, policy issues, programmatic and practice issues, and resource and funding issues.

Expectations

- Sites are expected to participate in the project for 18 months.
- Sites must be willing to build and expand on their capacity to use data to assess contract/appointed counsel processes.
- Sites must identify a stakeholder collaborative.
- Sites must select a project lead.
- The project lead must participate in monthly meetings with their NJDC liaison.
- The project lead must commit to active development, facilitation, and participation in assessments, action planning, site visits, and on-site trainings and meetings.
- Sites are encouraged to share their successes and challenges with other project sites.

Eligibility

NJDC is seeking applications from local and/or state contract or appointed counsel systems that provide defense services to young people in delinquency hearings. If there is no system in your jurisdiction, the application must include details about how the project could support the development of a system.

NJDC will select the sites based on the following criteria:

- Readiness for change (ability to assess current contract/appointed counsel practices and infrastructure, the existence of collaborative efforts and/or a willingness to form collaborative structures, and the readiness of decisionmakers to participate in the change process)
- Capacity to expand on the use of data and performance indicators to monitor contract/appointed counsel practices
- Intended impact of reforms
- Type of system (contract counsel, appointed counsel, other)
- Location and size of system

Application Process

Interested sites should complete the [online application](#) by June 14, 2021. Please note that we welcome letters of support from partners, collaborators, and decisionmakers.

Timeline

Application opens: Monday, **May 17, 2021**.

Application closes: Monday, **June 14, 2021**.

Applicants notified of selection decision: Monday, **July 12, 2021**.

If you have questions about this project or the application process, please contact NJDC at inquiries@njdc.info.

APPLICATION QUESTIONS

****The application for this project must be completed and submitted [online](#).****

The application questions are provided here so applicants can prepare answers prior to completing the online form.

The Basics

1. Contract/Appointed Counsel System Name and Location
2. Contact (person filling out application)
 - Name
 - Title
 - Email
 - Phone
 - Address
 - City, State, Zip
3. Project Lead
 - Name
 - Title
 - Email
 - Phone
 - Address
 - City, State, Zip
4. Type of System:
 - Contract Counsel
 - Appointed Counsel
 - Both
 - Other (Please describe)
5. Scope of System:
 - State
 - County
 - Local
 - Other (Please describe)

Data

If you have access to the following information, please respond accordingly, otherwise please type "NA." Please use most recent data where available.

6. Approximately how many delinquency cases are assigned to contract/appointed defenders in your system each year?
7. On average, what percentage of contract/appointed defenders' caseloads are delinquency cases?
8. Are the contract/appointed defenders in this system required to use a case management system? If yes, what is the name of the system, and can it provide case- and system-level data? If no, what type of system is in place to collect data on attorneys' activities and outcomes?

Narrative Questions

9. Please describe why your site is interested in participating in NJDC's *Improving the Defense of Young People in Public Defense Contract Systems* project.
10. Please describe your site's preliminary goals and how you hope NJDC can support these goals.
11. Please provide your impressions of the strengths of your current system and areas for improvement.
12. Please describe the system's readiness to change (e.g. indicators of readiness to change may include but are not limited to an interest from multiple stakeholders and/or groups to improve the system, access to contract counsel data, available funding, etc.).
13. Please describe your impression of whether key decisionmakers (e.g. chief defender, county council members, judges, etc.) are supportive of this project.

Letters of Support

14. Please include letters of support from key partners or decisionmakers.