

MCILS

**October 8, 2019
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

OCTOBER 8, 2019

COMMISSION MEETING

JUDICIARY COMMITTEE ROOM, ROOM 438, STATEHOUSE, AUGUSTA
AGENDA

- 1) Approval of September 10, 2019, Commission Meeting Minutes
- 2) Consent Agenda
- 3) Operations Reports
- 4) Next Steps in Light of the Sixth Amendment Center Report
- 5) Supplemental Budget Request
- 6) Proposal for Enhanced Representation for Juveniles at Long Creek
- 7) Lawyer of the Day/Timely Assignment of Counsel
- 8) Public Comment
- 9) Set Date, Time and Location of Next Regular Meeting of the Commission
- 10) Executive Session, if needed (Closed to Public)

(1.)

**September 10, 2019
Commission Meeting
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting
September 10, 2019**

Minutes

Commissioners Present: Michael Carey, Sarah Churchill, Robert Cummins, Roger Katz, Joshua Tardy, Mary Zmigrodski
MCILS Staff Present: Ellie Maciag, John Pelletier

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Approval of the August 13, 2019 Commission Meeting Minutes	No discussion of meeting minutes.	All voted in favor. Approved.
Operations Reports Review	<u>August 2019 Operations Report:</u> 2,626 new cases were opened in the DefenderData system in August. This was a 35 case increase over July. The number of submitted vouchers in August was 2,735, a decrease of 125 vouchers from July, totaling \$1,337,915, a decrease of \$151,000 from July. The average price per voucher was \$497.09, down \$19.16 per voucher from July. Post-Conviction Review and vouchers submitted by representatives to the various Drug Courts had the highest average vouchers. There were 9 vouchers exceeding \$5,000 paid in August. 120 authorizations to expend funds were issued in August, and we paid \$140,377 for experts and investigators, etc. The monthly transfer from the Judicial Branch for counsel fees for August, which reflects July's collections, totaled \$79,457, up approximately \$1,000 from July. One attorney complaint was received in August. Chair Tardy inquired about the Commissioners' obligation to review attorney complaints. Director Pelletier reviewed the Commission's rule on appeals of the decisions of the Executive Director.	
Next Steps in Light of the Sixth Amendment Center	The Commissioners discussed its next steps for addressing issues outlined in the Sixth Amendment Center report. Commissioner Cummins suggested an entire meeting devoted solely to the report or	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Report	<p>to hold a special meeting. He requested staff get access to the data gathered by the Sixth Amendment Center underlying its recommendation for a public defender office in Portland and an appellate defender office. Commissioner Katz suggested holding a public hearing on the report. Chair Tardy suggested that attorney qualification, evaluation, and training could be accomplished without much additional funding. He also suggested breakout groups to tackle various issues (training and quality, reviewing complaints, financial accountability, future of public defender/representing indigent clients). Chair Tardy also offered the idea of hiring a consultant for six months to advise on training and attorney qualifications and developing a claw back mechanism for overbilling. Director Pelletier informed the Commissioners of the October 18th supplemental budget request deadline and that any request for additional staff should be included in that request. Director Pelletier also informed the Commissioners that the attorney qualification rule is a major substantive rule that will require legislature approval of any changes made by the Commission. Chair Tardy requested a memo on the need for additional staff for the Commissioners to review before the next meeting. Commissioner Carey liked Chair Tardy's suggestions and Commissioner Katz's public hearing suggestion. Commissioner Churchill thought a public hearing would be helpful, but does not think we need to hire a consultant and believes that the Commission should request two additional staff members now based on the Sixth Amendment Center report and the rules that are currently in place. Commissioner Katz requested that the memo on the need for additional staff also address hiring a consultant for training. Commissioner Katz urged the Commissioners to wait to hear from people before prioritizing money and staff time. At the end of the meeting, a November 19th public meeting date was set. Commissioner Carey suggested extending an invitation to the judicial branch to participate.</p>	
Proposed Amendment to Fee Schedule Rule	<p>After a brief discussion on the proposed amendments to the fee schedule rule, the consensus was that the new Commissioners should review the data relied upon by the former Commissioners in drafting the proposed changes before making any decision about whether to move forward in the rulemaking</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	process. It was agreed that the Commissioners would revisit the rule at a later date.	
Proposal for Enhanced Representation for Juveniles at Long Creek	<p>Director Pelletier relayed Representative Morales request for the Commission's participation in juvenile justice reform while the legislature is out of session. Rep. Morales suggested the following ways for the Commission to be involved: (1) enter into an 18-month memorandum of understanding with the judicial branch about getting ongoing legal representation for youth committed to Long Creek; (2) provide legal representation to committed youth at periodic judicial reviews through a pilot project for youth from Cumberland County; and (3) for juveniles detained or committed to Long Creek who are not from York or Cumberland Counties to have local co-counsel appointed from Cumberland County.</p> <p>Chair Tardy thanked Rep. Morales for her proposals and requested staff draft a memo about the request for the Commissioners to review before the next meeting. Commissioner Carey questioned why the 18-month length for the MOU verses 9 or 6 months. Commissioner Katz remarked that the proposals make a huge amount of sense but cautioned that they might not be necessary at this point since the bill advocating for these changes will be before the legislature during the next session.</p>	
Budget Update	Director Pelletier informed the Commissioners that he submitted a Financial Order to the Bureau of the Budget for the Governor's consideration to provide additional allotment to spend our unencumbered balance forward of \$768,000.	
OPEGA Investigation	Director Pelletier gave an update on the OPEGA investigation, noting that the the OPEGA team has conducted interviews of several staff members, including the accounting technician, the deputy director, and several financial screeners. The team requested the names of several attorneys who work on assigned cases that they might interview. Director Pelletier indicated that no feedback or initial findings or recommendations have been made and that he	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	will keep the Commissioners informed of any developments.	
Public Comment	<p><u>Robert Ruffner, Esq.</u>: Attorney Ruffner urged the Commission to ask for additional staff, increase the number of hours and duties of Resource Counsel, and to reach out to stakeholders and ask for help. He argued that the increase in revenue from bail offsets mostly affect fully indigent people. Attorney Ruffner provided copies to each Commissioner of the 2015 report authored by a Commission summer intern about developing a system of performance evaluations.</p> <p><u>Tina Nadeau, Esq.</u>: Attorney Nadeau noted that the focus of the meeting packet is on the financial numbers. She noted several issues that arose out of those numbers, including too few requests for funds being made and the low amount for the Somerset County average voucher amount as opposed to the average voucher cost.</p> <p><u>Zachary Heiden, Esq.</u>: Attorney Heiden thought that the public hearing is a great idea and that a focus on training is a good one to start with. He contended that the Commission has not done enough to meet its constitutional obligation and hopes that the Commission will take the necessary steps to make the juvenile justice changes happen soon.</p>	
Executive Session	None	
Adjournment of meeting	The next meeting will be on October 8, 2019, at 1:00 p.m. The Commission also set the November meeting for 11/19 with the public hearing to start at 9 am, and the December meeting for 12/10 with a 1 pm start time.	

(3.)

Operations Reports

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
SUBJECT: SEPTEMBER 2019 OPERATIONS REPORTS
DATE: OCTOBER 1, 2019

Attached you will find the September, 2019, Operations Reports for your review and our discussion at the Commission meeting on October 8, 2019. A summary of the operations reports follows:

- 2,578 new cases were opened in the DefenderData system in September. This was a 48 case decrease from August.
- The number of vouchers submitted electronically in September was 2,913, an increase of 178 vouchers over August, totaling \$1,453,579.89, an increase of \$116,000 over August. In September, we paid 3,288 electronic vouchers totaling \$1,613,223.23, representing a decrease of 92 vouchers and \$67,000 compared to August.
- The average price per voucher in September was \$490.64, down \$6.45 per voucher from August.
- Appeal and Probate cases had the highest average vouchers in September. There were 8 vouchers exceeding \$5,000 paid in September. See attached addendum for details.
- Important upcoming dates: Supplemental Budget Request due October 18, 2019; Annual Report due January 15, 2020, with draft to Commissioners by December 15, 2019; Biennial Budget Request due September 2020.
- In September, we issued 118 authorizations to expend funds: 78 for private investigators, 33 for experts, and 7 for miscellaneous services such as interpreters and transcriptionists. In September, we paid \$84,938.97 for experts and investigators, etc. One request for funds was modified in September. See attached addendum for details.
- We received one attorney complaint in the form of a letter attached to a feedback form. The letter was from the Medical Director of a psychiatric hospital and concerned the conduct of an attorney representing people subject to involuntary commitment hearings. The complaint was forwarded to the attorney and a response has been received. Any action to be taken in response to the complaint is currently under advisement.

- We approved three requests for co-counsel in September. One involved a charge of Gross Sexual Assault, and another involved a charge of Aggravated Assault that has since evolved into a Manslaughter charge. The third case involved a juvenile charged with manslaughter who was recently bound over for trial as an adult.

In our All Other Account, the total expenses for the month of September were \$1,715,368.33. Of that amount, just over \$17,000 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$68,346.25 in expenses for the month of September.

In the Revenue Account, the transfer for September, reflecting August's collections, totaled \$116,652.22 an increase of approximately \$37,000 over the previous month.

During September, we paid expenses and collected registration fees related to video replays of Domestic Violence and OUI trainings that took place on September 26th and 27th.

VOUCHERS EXCEEDING \$5,000 PAID SEPTEMBER 2019

	Voucher Total	Case total
Voucher after an 11-day Termination of Parental Rights hearing. The case involved 10 children, generating numerous witnesses and voluminous materials. Counsel traveled from Lewiston to Rumford for court proceedings. Matter under advisement.	\$13,628	\$13,628
Voucher after a 5-day trial in a Gross Sexual Assault case. Defendant found guilty. Pre-trial litigation involved suppression, statutory interpretation, and evidentiary issues. Sentencing remains.	\$8,064	\$14,088 (Interim voucher of \$6,024 paid 7 months into the case.)
Voucher after a 3-day trial in a Vehicular Manslaughter case. Sentencing took place 8 months after trial, in part due to extended consideration of a motion for acquittal/new trial.	\$7,337	\$7,337
Interim voucher in a Murder case. Matter has been pending for 11 months.	\$6,607	\$6,607
Voucher in an Unlawful Sexual contact case. Resolved by plea at jury selection to misdemeanor charges that do not have registry implications.	\$6,503	\$6,503
Voucher after a 3-day trial in a Domestic Violence case. Defendant was a law enforcement officer when charged, resulting in voluminous video from the numerous officers who responded, as well as discovery generated by an internal affairs process. Defendant found not guilty.	\$6,314	\$6,314
Voucher after an appeal from a 7-day trial resulting in a Manslaughter conviction. Numerous issues raised, which resulted in a dissent that would have granted a new trial based on cumulative error.	\$6,276	\$6,276
Voucher covering work on 5 separate cases, including two Class A Aggravated Trafficking charges, as well as charges of drug possession, assault and theft. Class A drug charges dismissed in return for plea to Class B Trafficking.	\$5,226	\$5,226

FUNDS REQUESTS DENIED/MODIFIED SEPTEMBER 2019

- One request for funds was modified in September to authorize a reduced amount.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

9/30/2019

DefenderData Case Type	Sep-19						Fiscal Year 2020			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	6	25	\$ 43,065.77	32	\$ 52,320.95	\$ 1,635.03	43	67	\$ 88,398.81	\$ 1,319.39
Child Protection Petition	195	499	\$ 281,593.10	548	\$ 301,793.27	\$ 550.72	756	1,421	\$ 793,339.52	\$ 558.30
Drug Court	0	6	\$ 4,680.00	5	\$ 3,180.00	\$ 636.00	2	17	\$ 15,333.46	\$ 901.97
Emancipation	11	8	\$ 1,600.36	12	\$ 2,752.60	\$ 229.38	19	18	\$ 4,966.60	\$ 275.92
Felony	636	644	\$ 479,707.43	701	\$ 518,986.13	\$ 740.35	1,857	1,749	\$ 1,352,386.57	\$ 773.23
Involuntary Civil Commitment	90	72	\$ 16,862.10	85	\$ 19,415.51	\$ 228.42	248	213	\$ 50,485.81	\$ 237.02
Juvenile	95	68	\$ 30,807.32	78	\$ 32,768.05	\$ 420.10	241	231	\$ 101,666.84	\$ 440.12
Lawyer of the Day - Custody	277	237	\$ 52,040.86	267	\$ 60,294.64	\$ 225.82	784	713	\$ 165,244.47	\$ 231.76
Lawyer of the Day - Juvenile	41	44	\$ 8,169.60	43	\$ 7,869.60	\$ 183.01	119	113	\$ 21,785.52	\$ 192.79
Lawyer of the Day - Walk-in	117	119	\$ 29,892.22	139	\$ 34,808.32	\$ 250.42	362	329	\$ 80,678.07	\$ 245.22
Misdemeanor	843	751	\$ 281,355.79	868	\$ 318,945.67	\$ 367.45	2,520	2,219	\$ 848,057.43	\$ 382.18
Petition, Modified Release Treatment	1	11	\$ 4,551.45	8	\$ 2,815.69	\$ 351.96	3	13	\$ 5,285.06	\$ 406.54
Petition, Release or Discharge	0	0		0			0	2	\$ 918.00	\$ 459.00
Petition, Termination of Parental Rights	16	39	\$ 38,207.51	48	\$ 45,723.83	\$ 952.58	64	126	\$ 111,000.39	\$ 880.96
Post Conviction Review	10	8	\$ 5,596.96	12	\$ 9,258.32	\$ 771.53	34	31	\$ 47,305.02	\$ 1,525.97
Probate	5	2	\$ 2,588.72	3	\$ 3,716.72	\$ 1,238.91	7	8	\$ 10,253.32	\$ 1,281.67
Probation Violation	188	169	\$ 68,953.04	190	\$ 75,493.54	\$ 397.33	553	495	\$ 194,212.93	\$ 392.35
Represent Witness on 5th Amendment	1	1	\$ 162.00	1	\$ 162.00	\$ 162.00	1	3	\$ 525.00	\$ 175.00
Resource Counsel Criminal	1	5	\$ 342.00	3	\$ 306.00	\$ 102.00	1	8	\$ 768.00	\$ 96.00
Resource Counsel Juvenile	0	0		0			0	1	\$ 30.00	\$ 30.00
Resource Counsel Protective Custody	0	1	\$ 18.00	1	\$ 18.00	\$ 18.00	0	4	\$ 378.00	\$ 94.50
Review of Child Protection Order	43	204	\$ 103,385.66	244	\$ 122,594.39	\$ 502.44	167	599	\$ 283,984.02	\$ 474.10
Revocation of Administrative Release	2	0		0			3	2	\$ 1,239.28	\$ 619.64
DefenderData Sub-Total	2,578	2,913	\$ 1,453,579.89	3,288	\$ 1,613,223.23	\$ 490.64	7,784	8,382	\$ 4,178,242.12	\$ 498.48
Paper Voucher Sub-Total		0		0	\$ -	#DIV/0!		0		#DIV/0!
TOTAL	2,578	2,913	\$1,453,579.89	3,288	\$1,613,223.23	\$ 490.64	7,784	8,382	\$ 4,178,242.12	\$ 498.48

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY20 FUND ACCOUNTING
AS OF 09/30/2019

Account 014 95F Z258 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY20 Professional Services Allotment		\$ 4,727,001.00		\$ 4,597,001.00		\$ 4,737,477.00		\$ 2,413,246.00	
FY20 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY19 Encumbered Balance Forward		\$ 32,712.53		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,807,713.53		\$ 4,645,001.00		\$ 4,785,477.00		\$ 2,461,246.00	\$ 16,699,437.53
Total Expenses	1	\$ (947,049.13)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (1,849,796.47)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (1,715,368.33)	6	\$ -	9	\$ -	12	\$ -	
				\$ -		\$ -		\$ -	\$ -
Encumbrances (Justice Works)		\$ (52,720.00)		\$ -		\$ -		\$ -	\$ (52,720.00)
Encumbrances (B Taylor)		\$ (13,000.04)		\$ -		\$ -		\$ -	\$ (13,000.04)
Encumbrances (Videographer)		\$ (4,800.00)		\$ -		\$ -		\$ -	\$ (4,800.00)
TOTAL REMAINING		\$ 224,979.56		\$ 4,645,001.00		\$ 4,785,477.00		\$ 2,461,246.00	\$ 12,116,703.56

Q1 Month 3

INDIGENT LEGAL SERVICES

Counsel Payments	\$ (1,613,223.23)
Interpreters	\$ (82.95)
Private Investigators	\$ (24,136.11)
Mental Health Expert	\$ (23,403.71)
Misc Prof Fees & Serv	\$ -
Transcripts	\$ (18,502.65)
Other Expert	\$ (17,896.60)
Process Servers	\$ (899.03)
Subpoena Witness Fees	\$ (17.92)
	\$ -
SUB-TOTAL ILS	\$ (1,698,162.20)

OPERATING EXPENSES

Ergonomic Office Equipment	\$ (110.15)
DefenderData	\$ (6,517.50)
Notary Fees	\$ (50.00)
Mileage/Tolls/Parking	\$ (1,073.60)
Mailing/Postage/Freight	\$ (52.43)
West Publishing Corp	\$ (185.13)
Risk Management	\$ (94.05)
Office Supplies/Equip.	\$ (878.66)
Cellular Phones	\$ (151.35)
OIT/TELCO	\$ (2,480.19)
Office Equipment Rental	\$ (119.03)
Legal Ads	\$ (492.44)
Barbara Taylor monthly fees	\$ (4,333.33)
Periodicals	\$ (244.75)
Registration fees	\$ (65.00)
Training meals & refreshments	\$ (358.52)
SUB-TOTAL OE	\$ (17,206.13)
TOTAL	\$ (1,715,368.33)

INDIGENT LEGAL SERVICES

Q1 Allotment	\$ 4,807,713.53
Q1 Encumbrances for Justice Works contract	\$ (52,720.00)
Barbara Taylor Contract	\$ (13,000.04)
Videographer Contract	\$ (4,800.00)
Q1 Expenses to date	\$ (4,512,213.93)
Remaining Q1 Allotment	\$ 224,979.56

Non-Counsel Indigent Legal Services

Monthly Total	\$ (84,938.97)
Total Q1	\$ 276,360.62
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 276,360.62

Conference Account Transactions

Training Videographer	\$ -
Training Facilities & Meals	\$ (358.52)
Printing/Binding	\$ -
Overseers of the Bar CLE fee	\$ (70.00)
Collected Registration Fees	\$ 1,765.00
Current Month Total	\$ 1,336.48

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY20 FUND ACCOUNTING
As of 09/30/19

Account 014 95F Z258 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	\$ 78,559.60	4	\$ -	7	\$ -	10	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 79,457.90	5	\$ -	8	\$ -	11	\$ -	
Court Ordered Counsel Fee		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -	9	\$ -		\$ -	
Collected Revenue from JB	3	\$ 116,652.22	6	\$ -	9	\$ -	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 274,669.72		\$ -		\$ -		\$ -	\$ 274,669.72
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	\$ (168.00)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (904.00)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 273,597.72		\$ -		\$ -		\$ -	\$ 273,597.72

Collections versus Allotment	
Monthly Total	\$ 116,652.22
Total Q1	\$ 274,669.72
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Allotment Expended to Date	\$ -
Fiscal Year Total	\$ 274,669.72

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY20 FUND ACCOUNTING
AS OF 09/30/2019

Account 014 95F Z258 01 (Personal Services)		Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY20 Allotment		\$	326,128.00	\$	242,565.00	\$	214,283.00	\$	233,702.00	\$ -
Financial Order Adjustments		\$	-	\$	-	\$	-	\$	-	
Financial Order Adjustments		\$	-	\$	-	\$	-	\$	-	
Budget Order Adjustments				\$	-	\$	-			
Total Budget Allotments		\$	326,128.00	\$	242,565.00	\$	214,283.00	\$	233,702.00	\$ 1,016,678.00
Total Expenses	1	\$	(62,240.56)	4	\$	-	7	\$	-	
	2	\$	(174,797.03)	5	\$	-	8	\$	-	
	3	\$	(68,346.25)	6	\$	-	9	\$	-	
TOTAL REMAINING		\$	20,744.16	\$	242,565.00	\$	214,283.00	\$	233,702.00	\$ 711,294.16

Q1 Month 3	
Interest Due Employees	\$ -
Salary	\$ (34,018.92)
Vacation Pay	\$ (2,035.66)
Holiday Pay	\$ (2,154.02)
Sick Pay	\$ (610.57)
Empl Hlth SVS/Worker Comp	\$ (166.00)
Health Insurance	\$ (11,256.96)
Dental Insurance	\$ (366.88)
Employer Retiree Health	\$ (4,176.08)
Employer Retirement	\$ (2,529.06)
Employer Group Life	\$ (349.84)
Employer Medicare	\$ (562.40)
Retiree Unfunded Liability	\$ (7,302.99)
Retro lump sums pymts	\$ -
Perm Part Time Full Ben	\$ (2,816.87)
TOTAL	\$ (68,346.25)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

9/30/2019

Court	Sep-19						Fiscal Year 2020			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	7	1	\$ 306.00	2	\$ 456.00	\$ 228.00	14	16	\$ 10,846.73	\$ 677.92
AUBSC	3	2	\$ 1,239.00	4	\$ 2,654.40	\$ 663.60	7	6	\$ 5,518.20	\$ 919.70
AUGDC	53	69	\$ 35,636.33	80	\$ 35,706.81	\$ 446.34	150	177	\$ 90,161.38	\$ 509.39
AUGSC	6	18	\$ 8,421.45	16	\$ 7,885.69	\$ 492.86	17	33	\$ 15,767.05	\$ 477.79
BANDC	44	67	\$ 22,788.88	108	\$ 35,017.20	\$ 324.23	194	308	\$ 98,786.01	\$ 320.73
BANSC	0	0		0			1	4	\$ 450.00	\$ 112.50
BATSC	0	0		0			0	0		
BELDC	19	36	\$ 12,373.91	30	\$ 10,430.57	\$ 347.69	46	70	\$ 29,881.27	\$ 426.88
BELSC	0	0		0			0	1	\$ 1,530.64	\$ 1,530.64
BIDDC	58	84	\$ 44,275.73	96	\$ 53,697.89	\$ 559.35	195	262	\$ 142,775.14	\$ 544.94
BRIDC	9	16	\$ 7,914.71	23	\$ 12,161.15	\$ 528.75	31	60	\$ 30,504.92	\$ 508.42
CALDC	13	18	\$ 3,963.68	15	\$ 3,393.68	\$ 226.25	30	29	\$ 11,411.12	\$ 393.49
CARDC	10	33	\$ 12,549.55	35	\$ 13,869.55	\$ 396.27	40	83	\$ 35,450.65	\$ 427.12
CARSC	4	0		1	\$ 1,272.00	\$ 1,272.00	10	1	\$ 1,272.00	\$ 1,272.00
DOVDC	13	10	\$ 4,410.66	12	\$ 5,675.58	\$ 472.97	17	31	\$ 11,649.66	\$ 375.80
DOVSC	0	0		0			0	0		
ELLDC	15	48	\$ 24,279.92	63	\$ 35,993.23	\$ 571.32	47	115	\$ 68,023.79	\$ 591.51
ELLSC	1	1	\$ 381.00	1	\$ 381.00	\$ 381.00	2	2	\$ 831.00	\$ 415.50
FARDC	9	24	\$ 14,720.31	29	\$ 16,406.77	\$ 565.75	24	63	\$ 44,594.68	\$ 707.85
FARSC	1	1	\$ 150.00	1	\$ 150.00	\$ 150.00	2	1	\$ 150.00	\$ 150.00
FORDC	4	13	\$ 8,217.80	11	\$ 6,977.24	\$ 634.29	12	23	\$ 13,335.60	\$ 579.81
HOUDC	36	37	\$ 13,349.92	48	\$ 16,868.05	\$ 351.42	96	101	\$ 42,490.12	\$ 420.69
HOUSC	0	0		0			1	1	\$ 354.00	\$ 354.00
LEWDC	79	131	\$ 55,809.27	129	\$ 57,273.52	\$ 443.98	218	316	\$ 139,079.62	\$ 440.13
LINDC	6	9	\$ 3,639.28	14	\$ 5,381.88	\$ 384.42	37	38	\$ 19,111.72	\$ 502.94
MACDC	15	15	\$ 3,204.00	15	\$ 2,472.00	\$ 164.80	38	61	\$ 32,219.32	\$ 528.19
MACSC	0	0		0			0	2	\$ 360.00	\$ 180.00
MADDC	4	1	\$ 491.36	2	\$ 1,337.36	\$ 668.68	8	6	\$ 2,093.64	\$ 348.94
MILDC	5	3	\$ 1,394.44	2	\$ 1,010.84	\$ 505.42	18	18	\$ 5,768.76	\$ 320.49
NEWDC	15	29	\$ 10,149.02	32	\$ 10,872.78	\$ 339.77	59	100	\$ 36,560.74	\$ 365.61
PORDC	69	112	\$ 61,502.06	114	\$ 60,308.46	\$ 529.02	221	322	\$ 152,560.02	\$ 473.79
PORSC	3	1	\$ 15.00	1	\$ 15.00	\$ 15.00	7	3	\$ 483.00	\$ 161.00
PREDC	13	30	\$ 14,020.36	28	\$ 12,706.36	\$ 453.80	62	71	\$ 32,114.24	\$ 452.31
ROCD	14	36	\$ 17,217.92	39	\$ 17,806.77	\$ 456.58	59	92	\$ 43,048.45	\$ 467.92
ROCSC	2	2	\$ 857.94	2	\$ 857.94	\$ 428.97	5	5	\$ 1,940.22	\$ 388.04
RUMDC	8	14	\$ 23,425.52	17	\$ 25,485.28	\$ 1,499.13	35	33	\$ 37,774.97	\$ 1,144.70
SKODC	33	73	\$ 25,356.28	84	\$ 33,435.28	\$ 398.04	118	216	\$ 84,516.55	\$ 391.28
SKOSC	0	0		0			1	0		
SOUDC	25	30	\$ 18,959.95	31	\$ 16,469.82	\$ 531.28	61	65	\$ 32,570.69	\$ 501.09
SOUSC	0	1	\$ 354.00	1	\$ 354.00	\$ 354.00	1	4	\$ 3,383.75	\$ 845.94
SPRDC	23	50	\$ 33,181.75	60	\$ 37,492.83	\$ 624.88	131	172	\$ 98,674.70	\$ 573.69
Law Ct	3	18	\$ 32,497.11	23	\$ 41,099.58	\$ 1,786.94	32	51	\$ 72,128.78	\$ 1,414.29
YORCD	237	228	\$ 160,923.88	236	\$ 158,437.89	\$ 671.35	665	683	\$ 469,047.19	\$ 686.75
AROCD	120	108	\$ 33,441.17	110	\$ 34,502.37	\$ 313.66	405	382	\$ 214,294.68	\$ 560.98
ANDCD	192	167	\$ 70,840.32	197	\$ 81,754.19	\$ 415.00	497	415	\$ 187,164.14	\$ 451.00
KENCD	175	177	\$ 77,866.67	211	\$ 90,736.83	\$ 430.03	554	482	\$ 215,603.57	\$ 447.31
PENCD	276	247	\$ 114,406.68	282	\$ 126,558.15	\$ 448.79	759	694	\$ 262,113.91	\$ 377.69
SAGCD	43	31	\$ 12,432.02	36	\$ 20,258.67	\$ 562.74	98	72	\$ 32,114.29	\$ 446.03
WALCD	40	32	\$ 12,839.43	34	\$ 20,160.63	\$ 592.96	97	115	\$ 49,243.73	\$ 428.21
PISCD	18	24	\$ 10,941.21	30	\$ 12,087.61	\$ 402.92	61	62	\$ 19,273.44	\$ 310.86
HANCD	56	65	\$ 30,054.40	73	\$ 33,297.40	\$ 456.13	153	163	\$ 97,203.48	\$ 596.34
FRACD	38	52	\$ 32,022.86	66	\$ 36,899.56	\$ 559.08	112	148	\$ 85,450.79	\$ 577.37
WASCD	37	40	\$ 22,894.68	37	\$ 20,866.68	\$ 563.96	106	125	\$ 53,394.04	\$ 427.15
CUMCD	410	369	\$ 220,772.67	415	\$ 237,872.80	\$ 573.19	1,143	1,088	\$ 636,220.86	\$ 584.76
KNOCD	49	48	\$ 27,337.41	59	\$ 33,244.65	\$ 563.47	171	186	\$ 87,009.07	\$ 467.79
SOMCD	85	67	\$ 13,301.72	74	\$ 17,273.66	\$ 233.43	353	154	\$ 35,088.26	\$ 227.85
OXFCD	76	97	\$ 36,603.61	115	\$ 42,899.90	\$ 373.04	224	249	\$ 94,641.51	\$ 380.09
LINCD	30	33	\$ 13,352.74	40	\$ 14,936.98	\$ 373.42	127	110	\$ 43,846.71	\$ 398.61
WATDC	36	49	\$ 26,010.75	53	\$ 28,006.73	\$ 528.43	90	146	\$ 71,247.22	\$ 487.99
WESDC	19	31	\$ 11,779.00	32	\$ 10,402.76	\$ 325.09	76	91	\$ 45,724.31	\$ 502.46
WISDC	8	11	\$ 7,402.56	16	\$ 8,983.26	\$ 561.45	21	35	\$ 19,435.88	\$ 555.31
WISSC	1	0		0			2	1	\$ 767.50	\$ 767.50
YORDC	10	4	\$ 1,302.00	3	\$ 666.00	\$ 222.00	23	19	\$ 9,184.40	\$ 483.39
TOTAL	2,578	2,913	\$ 1,453,579.89	3,288	\$ 1,613,223.23	\$ 490.64	7,784	8,382	\$ 4,178,242.12	\$ 498.48

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

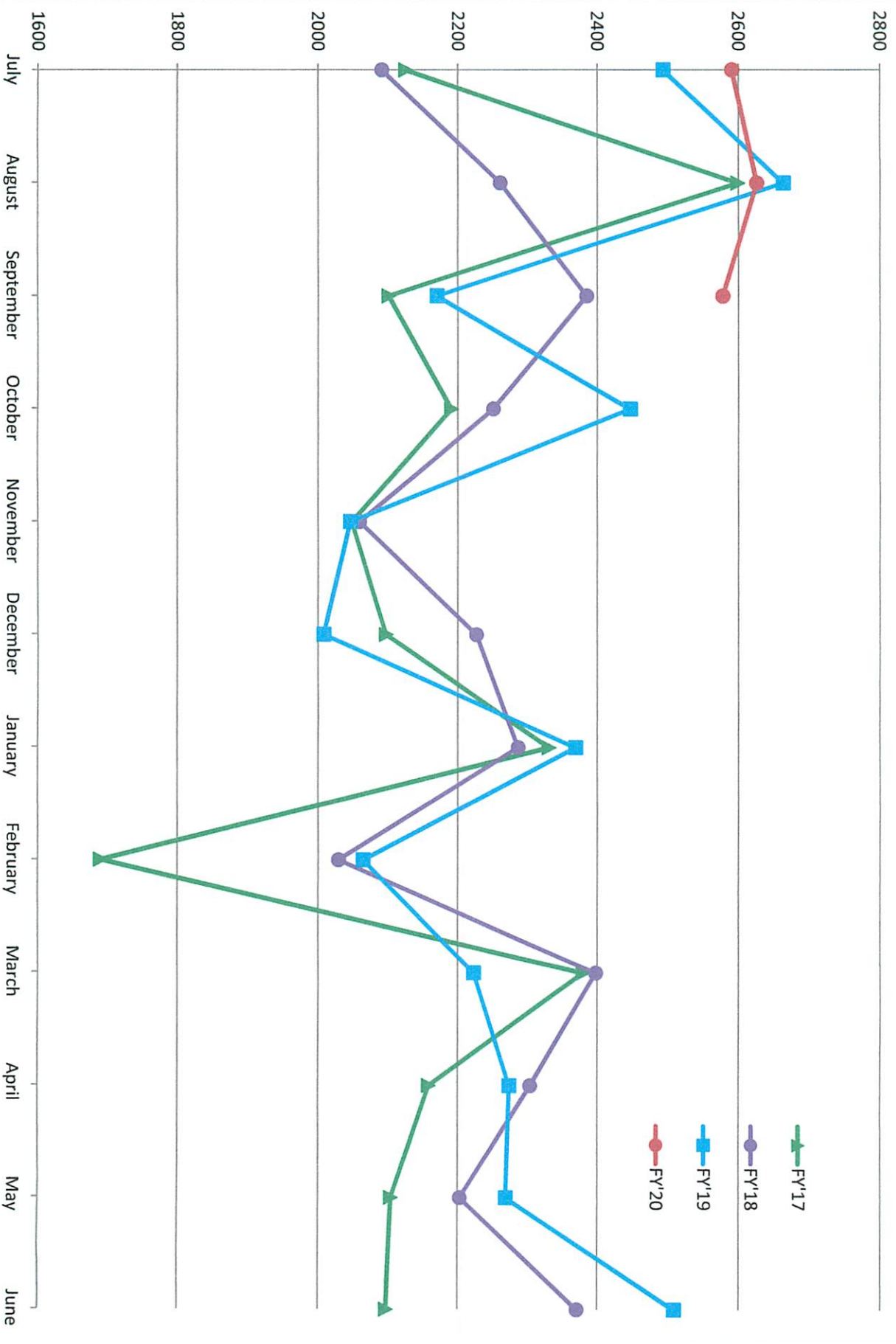
Number of Attorneys Rostered by Court

09/30/2019

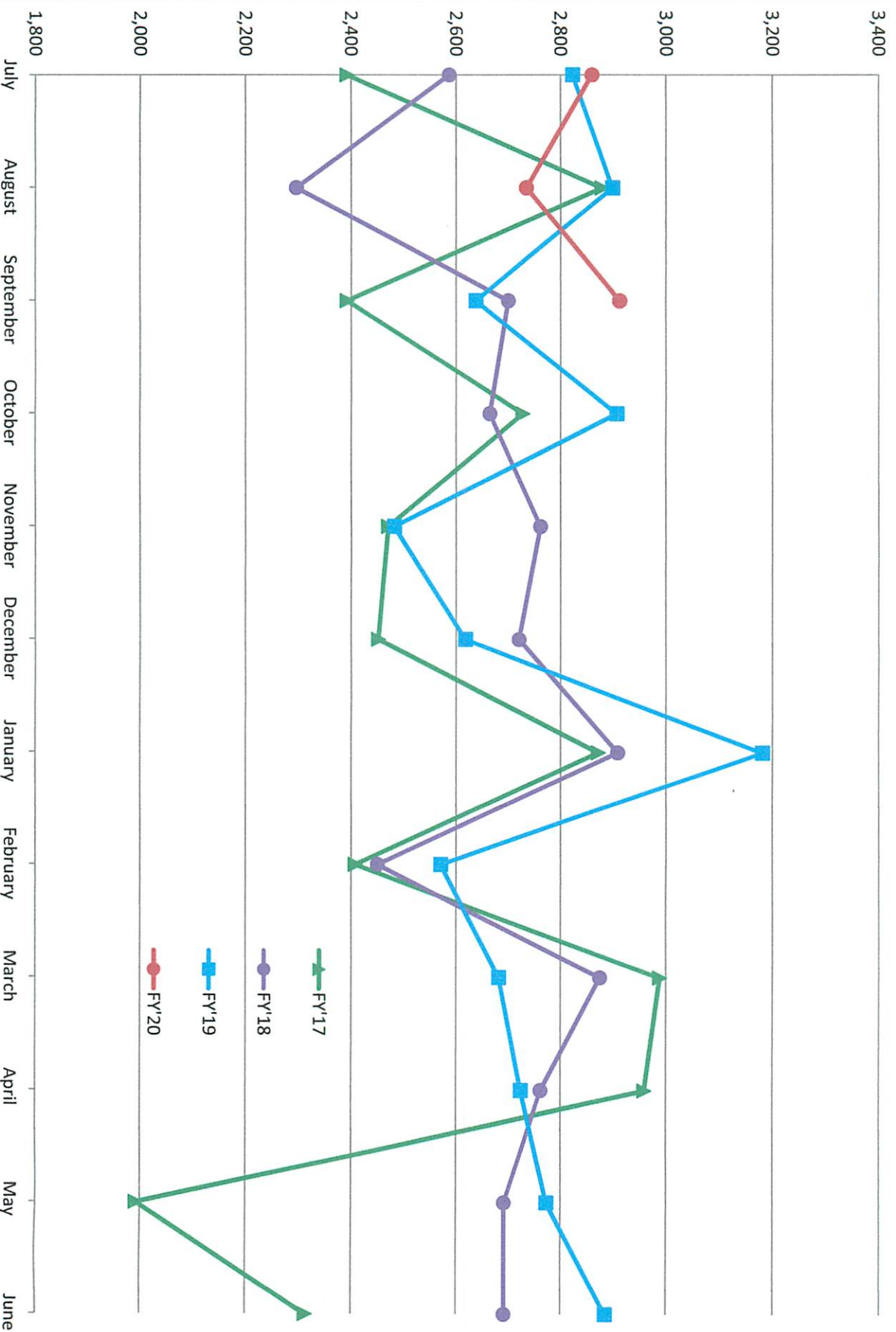
Court	Rostered Attorneys
Augusta District Court	78
Bangor District Court	42
Belfast District Court	8
Biddeford District Court	39
Bridgton District Court	117
Calais District Court	73
Caribou District Court	9
Dover-Foxcroft District Court	16
Ellsworth District Court	23
Farmington District Court	31
Fort Kent District Court	33
Houlton District Court	9
Lewiston District Court	13
Lincoln District Court	111
Machias District Court	20
Madawaska District Court	14
Millinocket District Court	10
Newport District Court	13
Portland District Court	29
Presque Isle District Court	140
Rockland District Court	14
Rumford District Court	30
Skowhegan District Court	24

Court	Rostered Attorneys
South Paris District Court	46
Springvale District Court	103
Unified Criminal Docket Alfred	102
Unified Criminal Docket Aroostook	21
Unified Criminal Docket Auburn	90
Unified Criminal Docket Augusta	76
Unified Criminal Docket Bangor	41
Unified Criminal Docket Bath	78
Unified Criminal Docket Belfast	39
Unified Criminal Docket Dover Foxcroft	22
Unified Criminal Docket Ellsworth	35
Unified Criminal Docket Farmington	35
Unified Criminal Docket Machias	16
Unified Criminal Docket Portland	137
Unified Criminal Docket Rockland	25
Unified Criminal Docket Skowhegan	25
Unified Criminal Docket South Paris	35
Unified Criminal Docket Wiscasset	45
Waterville District Court	39
West Bath District Court	93
Wiscasset District Court	50
York District Court	87

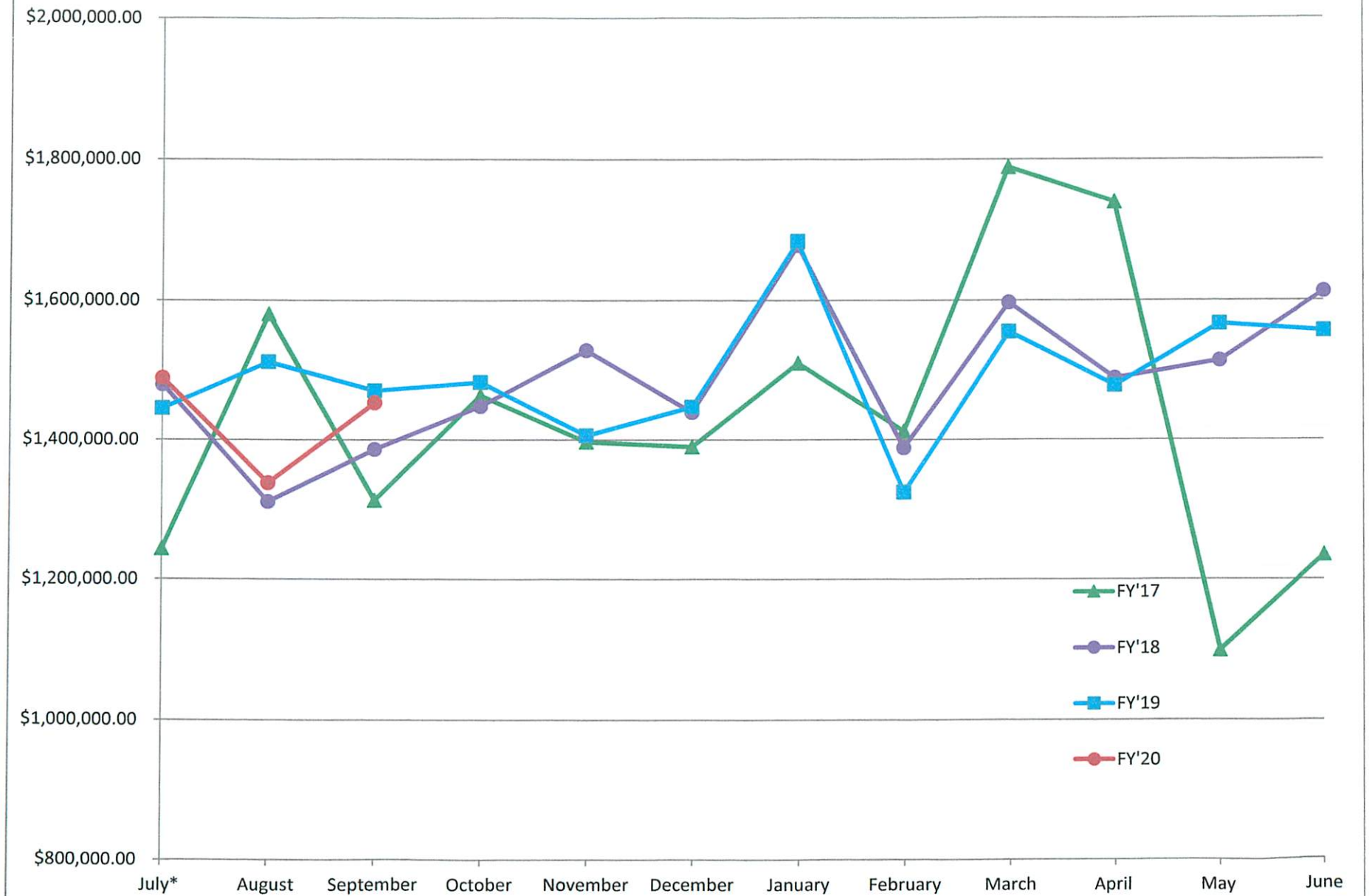
NEW CASES

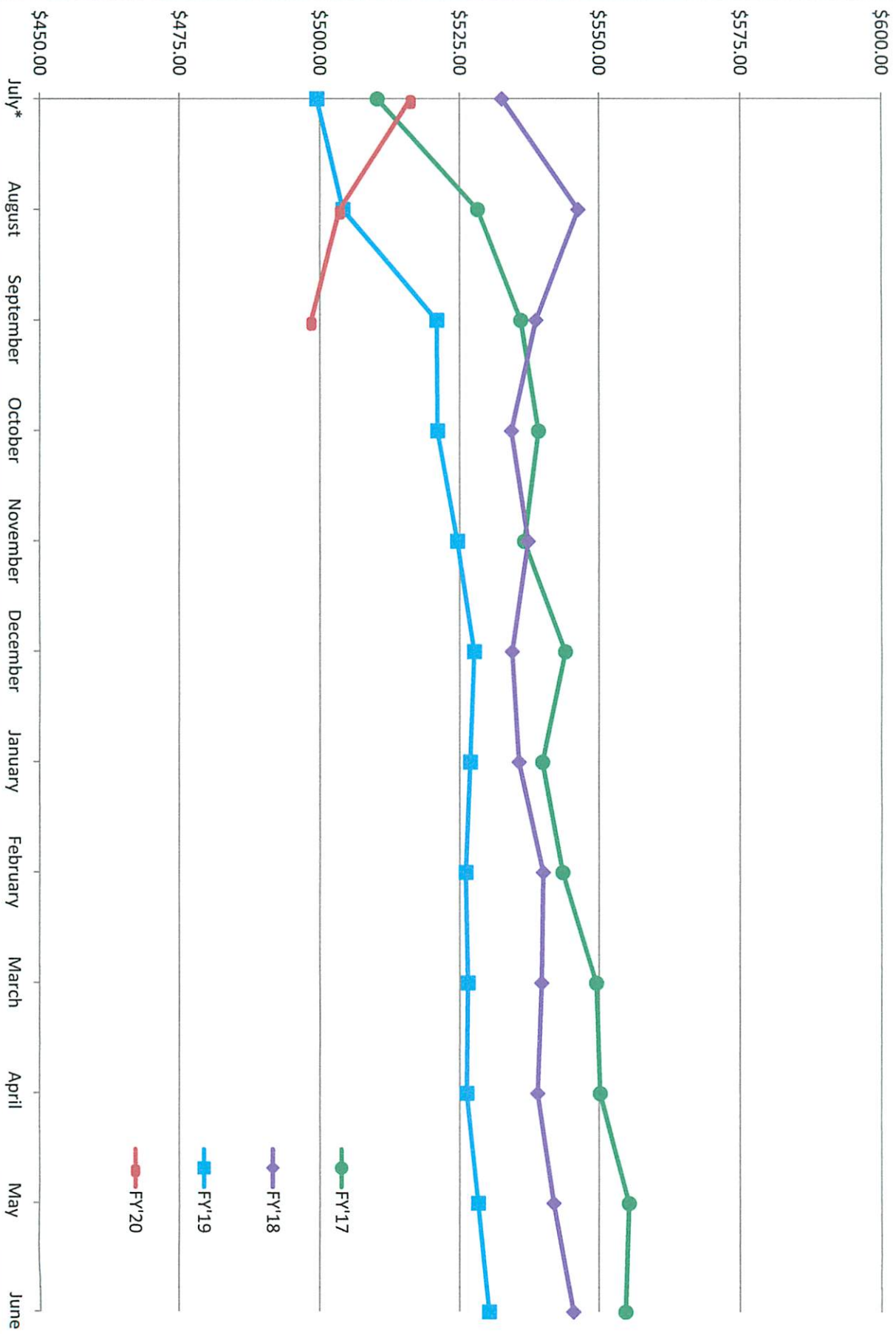


Submitted Vouchers

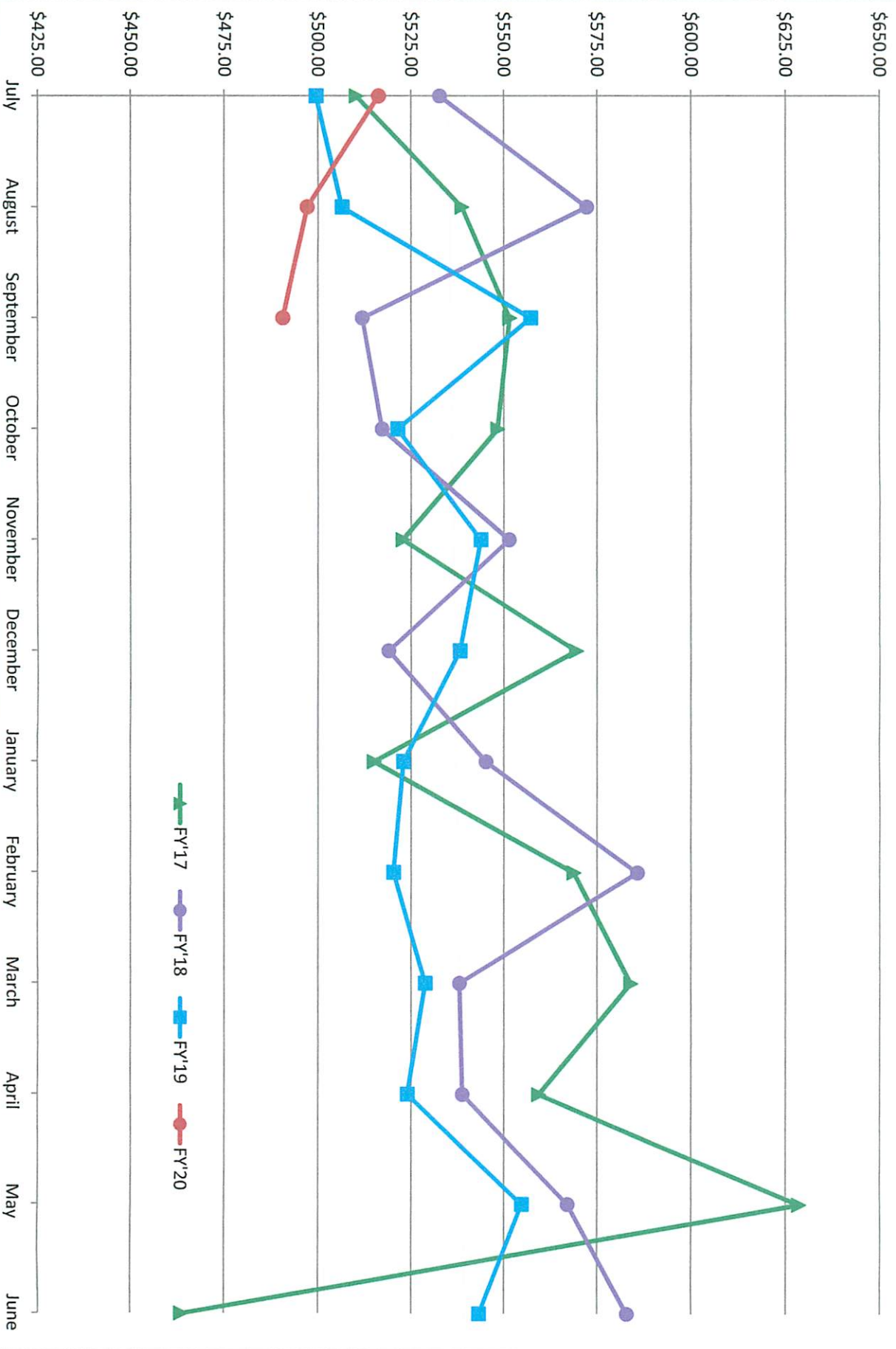


Submitted Voucher Amount

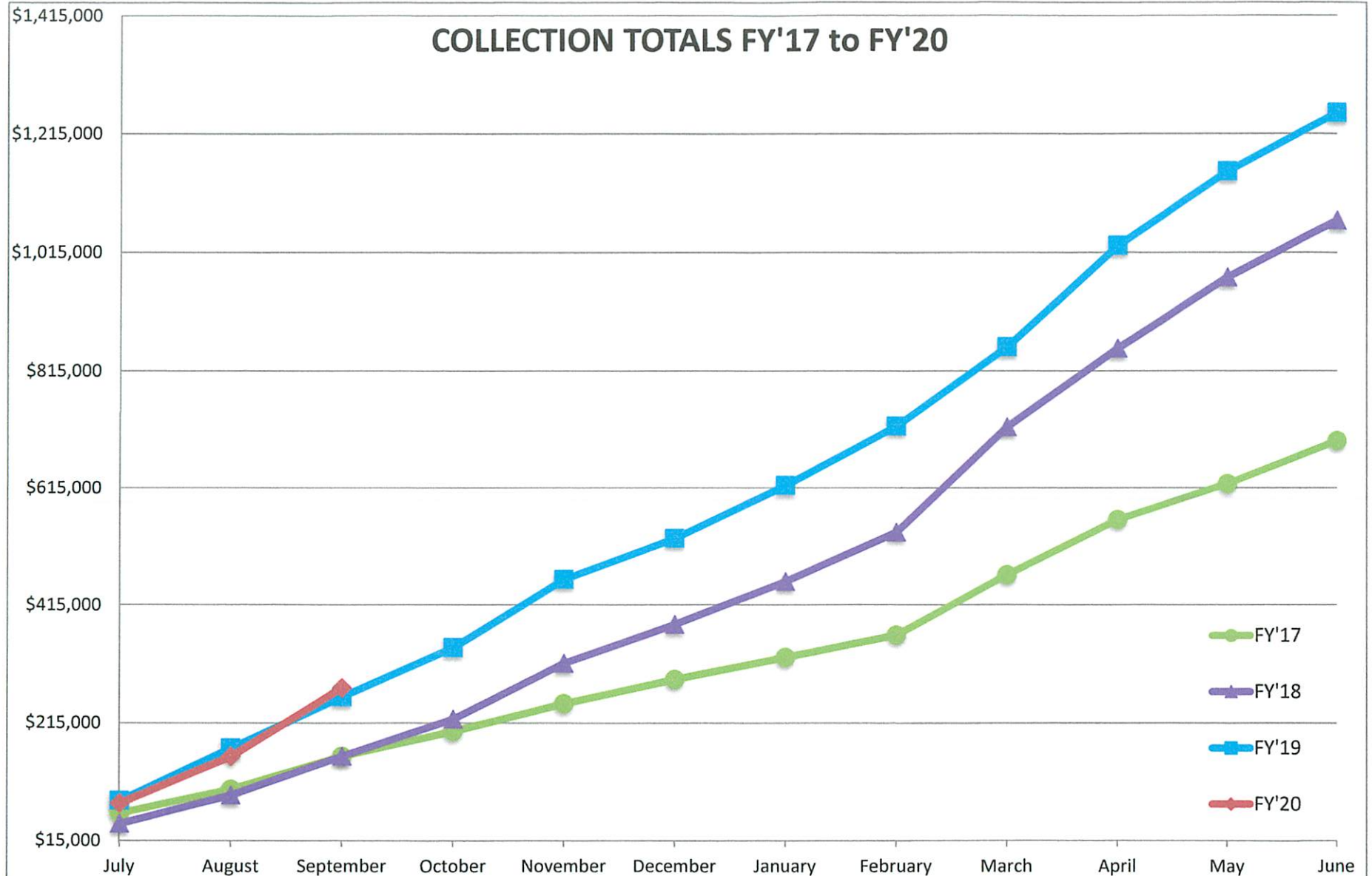


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Monthly Price Per Voucher



COLLECTION TOTALS FY'17 to FY'20



(4.)

Next Steps discussion

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: NEXT STEPS DISCUSSION
DATE: OCTOBER 2, 2019

As part of the Next Steps discussion at the last meeting, I was asked to obtain from the Sixth Amendment Center data and other information underlying its recommendation for a Public Defender Office in Cumberland County and for an Appellate Defender Office. I reached out to the Sixth Amendment Center, and attached is the response from its director, David Carroll.

I was also asked to identify the statutory changes that would be necessary to convert the Commission's attorney eligibility rules from major substantive rules to minor technical rules. I have attached the relevant section with a strikeout indicating the deletion of language needed to accomplish this change.

From: David Carroll [mailto:david.carroll@sixthamendment.org]
Sent: Tuesday, October 01, 2019 11:23 AM
To: Pelletier, John

Subject: Re: Recommendation for Public Defender Office

John –

I write to memorialize for the legislative leaders our phone conversation from this morning.

The Sixth Amendment Center (6AC) developed the recommendations to create a state appellate public defender office and a trial-level public defender office in Cumberland County based on caseload data provided by MCILS, prevailing national standards, and current U.S. Supreme Court Sixth Amendment caselaw. The report provides all of the data, and details 6AC's analysis and underlying rationale for recommending the creation of these offices; there is no other data or standards to make available to you apart from the information detailed in the report.

That said, I do acknowledge that the report is very detailed and some people may need a guide to walk through specific parts. Toward that end I am happy to make myself available to testify before MCILS or to have telephone conversations with individual commission members and legislative leaders.

The bottom line is that the decision to employ state government attorneys to provide indigent defense services or to continue providing such services through private appointed counsel is a policy choice. Over my career I have seen very good and very bad examples of both private and public defense systems. However, with all things being equal, the public defender model – when appropriately staffed and funded – generally offers better monitoring and supervision of lawyers at a more efficient cost than the private defender model.

In my opinion, the Maine indigent defense system we were asked to review was defined by its lack of accountability – both in regard to quality of services and to the efficient use of limited tax-payer dollars.

That lack of oversight has led to an inability on the part of the State of Maine to ensure that each and every poor person facing a potential loss of liberty is provided effective representation at every critical stage of a case as is the state's constitutional obligation under the Sixth and Fourteenth Amendments to the U.S. Constitution. The American Bar Association Ten Principles of a Public Defense Delivery System recommends that "[w]here the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar." Based upon our analysis of data provided by MCILS, which is documented in the report, the 6AC determined that the appellate caseload and the trial-level caseload in Cumberland County are "sufficiently high" to merit recommending public defender offices. We strongly suspect that the caseloads in Kennebec and Penobscot are also sufficiently high for MCILS and the Maine Legislature to consider creating public defender offices, but because we were not asked to study those counties specifically we refrained from making that specific recommendation as well (see page 95 of the report).

Thank you for the call this morning. Please let me know what more we can do to assist the citizenry of Maine remedy the existing indigent defense deficiencies.

Sincerely,

David Carroll, Executive Director
Sixth Amendment Center
P.O. Box 15556
Boston, MA 02215
(617) 512-4946

On 9/30/19, 10:50 AM, "Pelletier, John" <John.Pelletier@maine.gov> wrote:

Good morning David:

Our Commissioners have asked that I obtain from the Sixth Amendment Center copies of all of the data or other information relied upon by the Center in making its recommendations for a Public Defender Office in Cumberland County and for an Appellate Defender Office.

Thanks for your help.

John

Maine Revised Statutes

Title 4: JUDICIARY

Chapter 37: MAINE COMMISSION ON INDIGENT LEGAL SERVICES

§1804. COMMISSION RESPONSIBILITIES

1. Executive director. The commission shall hire an executive director. The executive director must have experience in the legal field, including, but not limited to, the provision of indigent legal services.

2. Standards. The commission shall develop standards governing the delivery of indigent legal services, including:

- A. Standards governing eligibility for indigent legal services. 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. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel;
- C. Standards for assigned counsel and contract counsel case loads;
- D. Standards for the evaluation of assigned counsel and contract counsel. The commission shall review the standards developed pursuant to this paragraph every 5 years or upon the earlier recommendation of the executive director;
- E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest;
- F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel; and
- G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services.

3. Duties. The commission shall:

- A. Develop and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys and consider other programs necessary to provide quality and efficient indigent legal services;
- B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information;
- C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and case load management systems so that detailed expenditure and case load data are accurately collected, recorded and reported;
- D. Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified attorneys;
- E. Establish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality representation in each of these types of cases requires counsel with experience and specialized training in that field;
- F. Establish rates of compensation for assigned counsel;
- G. Establish a method for accurately tracking and monitoring case loads of assigned counsel and contract counsel;

H. By January 15th of each year, submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

- (1) An evaluation of: contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report;

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary;

J. Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:

- (1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;
- (2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and
- (3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action;

K. Pay appellate counsel;

L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services; and

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services.

4. Powers. The commission may:

A. Establish and maintain a principal office and other offices within the State as it considers necessary;

B. Meet and conduct business at any place within the State; [2009, c. 419, §2 (NEW).]

C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed;

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish ~~standards under subsection 2, paragraph B~~ and rates of compensation for assigned counsel and contract counsel under subsection 2, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; and

E. Appear in court and before other administrative bodies represented by its own attorneys.

(5.)

**Supplemental Budget
Discussion**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: PROPOSED SUPPLEMENTAL BUDGET REQUEST
DATE: SEPTEMBER 30, 2019

As discussed at prior meetings, the current biennial budget is insufficient to cover the anticipated cost of indigent legal services in both FY'20, the current fiscal year, and in FY'21. Accordingly, the Commission is in need of supplemental funding from the Legislature. Requests for supplemental funding are due to be submitted to the Bureau of the Budget on or before October 18, 2019.

ALL OTHER BUDGET

The Commission's All Other funding in FY'19 totaled \$18,314,705. The Commission's request for the current biennium sought flat funding in the All Other line; that is \$18,314,705 for each year of the biennium. The current biennial budget provides \$15,509,725 in All Other funding in each year of the biennium, leaving a shortfall of \$2,804,980 in each year.

FY'20

For FY'19, the Commission's All Other funding was placed in an Other Special Revenue account that ended the year with an unencumbered balance of \$768,744. Because the funds were in an Other Special Revenue account, the Governor has authority to execute a financial order that provides allotment to spend that balance in FY'20. The financial order request has been submitted to the Governor and I am told that it has been signed and is pending the standard 30-day waiting period for financial orders. On the assumption that these funds will be available in the current fiscal year, **the supplemental All Other need for FY'20 is reduced to \$2,036,206.**

FY'21

As stated above, the Commission projected an All Other need of \$18,314,705 for both years of the biennium. As this is written nearing the end of the first quarter of FY'20, costs are coming in on track projections, so the current year cost trend does not provide any basis for altering the projection for FY'21. Accordingly, **the supplemental All Other need for FY'21 is \$2,804,980.**

PERSONAL SERVICES BUDGET – STAFF RECOMMENDATION

The current staff is working at capacity. In light of Commission discussions of potential short-term initiatives, the staff is recommending a supplemental budget request to create and fund two new positions.

The staff perceives the Commission's short-term focus to be on expanded training for attorneys, expanded evaluation and supervision of attorney performance, and expanded financial oversight of attorney billing, including both targeted and random audits of individual attorneys. As stated above, the existing staff is working at capacity and does not have the ability provide meaningful enhancement in these areas.

Additional Attorney Position

With regards to training, the Sixth Amendment Center notes that while the Commission has created specialized panels for serious and complex cases, it does not provide systematic ongoing training to attorneys on these panels or seeking to join these panels. An additional attorney could, in part, coordinate expanded trainings such as separate trainings on topics related to each specialized panel each year. The additional attorney position could also take some of the burden of voucher review. This would free up time the Executive Director and Deputy Director could, with Commission direction, devote to enhanced evaluation and supervision of attorney performance.

As stated above, the demands of managing the current system would not allow the existing legal staff to meaningfully expand training or evaluation and supervision of attorney performance. The staff recommends a supplemental budget request for an additional attorney position. The cost estimate for this position, including benefits, is \$87,000 for FY'20 and \$95,000 for FY'21.

Financial Examiner Position

To bolster the Commission's financial oversight of attorney billing and other Commission costs, the staff recommends seeking a new financial examiner position. This person would have the time and skills to perform audits of individual attorney billing. These could be both targeted based on concerns raised by an attorney's billing or random. In addition, this person would have the time and skills to examine the wealth of financial data generated by the DefenderData system to identify cost disparities among, for example, court locations or case types. Such "number crunching" could identify ways to reduce costs either through Commission action or in cooperation with the courts.

This position would provide the Commission with a skill set and resource that it currently lacks and greatly expand the Commission's ability to exercise financial oversight. The estimated cost of this position, including benefits, is \$58,000 for FY'20 and \$64,000 for FY'21.

Timing

Should the Commission decide to seek additional positions, it would also need to decide on timing with respect to the request. The Commission could seek to have the positions authorized upon enactment of the supplemental budget, in which case, the FY'20 request would be pro-rated based on an estimate of when the position could be filled. Alternatively, the Commission could seek to have the positions authorized at the beginning of FY'21, this coming July 1st, in which case, only supplemental funds for FY'21 would be requested.

Finally, at the last meeting, the staff was asked to consider whether the Commission could expand

capacity through the hiring of a consultant. The staff has concerns about this approach. First, hiring a consultant would be a labor intensive process. The staff would have to determine what type(s) of consulting services existed that might meet the Commission's needs. Then an RFP would have to be drafted and approved by the Bureau of Purchases, bids evaluated, and a contract formalized. Moreover, a consultant connotes someone who would help the staff design a plan to meet the Commission's objectives. The staff believes that with direction from the Commission, it can implement the measures the Commission seeks to accomplish. We simply need more staff resources to get the work done.

(6.)

**Enhanced Representation
for Juveniles**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: ENHANCED REPRESENTATION FOR JUVENILES AT LONG CREEK
DATE: SEPTEMBER 30, 2019

During its last meeting, the Commission discussed a proposal for expanding representation provided to juveniles at Long Creek. I was asked to research whether the Commission currently has statutory authority to provide the representation suggested. As described below, I believe that the Commission does have statutory authority to provide expanded representation to juveniles at Long Creek.

Post Disposition Representation for Committed Juveniles

The Legislature established the Commission to “provide efficient, high-quality representation to . . . juvenile defendants . . . consistent with federal and state constitutional and statutory obligations.” 4 M.R.S.A. § 1801. Interestingly, the statutory definition of indigent legal services conditions representation in adult criminal and civil cases to cases “in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation.” 4 M.R.S.A. § 1802(4). With respect to juveniles, however, indigent legal services are defined simply as “legal representation provided to juvenile defendants.”

Nevertheless, the Juvenile Code provides statutory authority for providing representation to juveniles committed to Long Creek. Regarding a juvenile’s right to counsel, the Juvenile Code states:

- A. At his first appearance before the court, the juvenile and his parents, guardian or legal custodian shall be fully advised by the court of their constitutional and legal rights, including the juvenile's right to be represented by counsel at every stage of the proceedings. At every subsequent appearance before the court, the juvenile shall be advised of his right to be represented by counsel.
- B. If the juvenile requests an attorney and if he and his parents, guardian or legal custodian are found to be without sufficient financial means, counsel shall be appointed by the court.
- C. The court may appoint counsel without such request if it deems representation by counsel necessary to protect the interests of the juvenile.

15 M.R.S.A. §3306. The statute makes clear that an indigent juvenile has a right to representation by appointed counsel at every appearance before the court.

The Juvenile Code provides that juveniles committed to Long Creek have a right to a review of that commitment every 12 months. 15 M.R.S.A. § 3315(3).¹ Despite this statutory provision, these reviews almost never take place. Certainly, part of the reason the reviews are neglected is the ambiguous nature of the statute that fails to make clear what the court can do as a result of the review. Another reason, however, is the current practice of ending the juvenile's representation by appointed counsel when the juvenile is committed. Without counsel, the juvenile is unlikely to be aware of the right to review or to have a means of enforcing that right.

In sum, the Juvenile Code provides that a juvenile has a right to appointed counsel at any appearance before the court and that the juvenile has a right to periodic review by the court of the juvenile's commitment. Providing appointed counsel to committed juveniles is authorized by the Juvenile Code with respect to these review hearings, and it appears that failure to do so has resulted in the inability of juveniles to effectuate their right to periodic review.

Moreover, providing ongoing representation to committed juveniles could further efficiency by avoiding the need to involve the court. The Department of Corrections has broad discretion with respect to the treatment provided to committed juveniles. Oversight by experienced counsel, who would be familiar with the treatment needs of committed juveniles as well as the staff at Long Creek who design and oversee that treatment, would assist the juvenile to ensure that needed treatment is provided in a manner best suited to the needs of the juvenile. Issues that arise may be addressed informally without the need for judicial intervention, but when issues persist, counsel could assert the right to review and seek judicial intervention for assistance in remedying any perceived deficiencies.

Finally, I envision creation of a small team of experienced lawyers who practice close to Long Creek. Each of the relatively few juveniles committed to Long Creek would be assigned representation by a member of this team. I believe that for relatively little added cost, this team of lawyers could enhance the treatment of juveniles at Long Creek and, when needed, effectuate the juvenile's statutory right to judicial review of that treatment.

¹ This subsection reads:

Court review of determination. Whenever a court makes a determination pursuant to section 3314, subsection 1, paragraph F or section 3314, subsection 2 that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B and that continuation in the juvenile's home would be contrary to the welfare of the juvenile, that determination must be reviewed by the court not less than once every 12 months until the juvenile is discharged or no longer residing outside the juvenile's home or attains 18 years of age. This review does not affect a juvenile's commitment to a Department of Corrections juvenile correctional facility.

The statute calls for a review of the circumstances requiring that the juvenile be removed from the juvenile's home, a predicate finding to any commitment to Long Creek. As mentioned in the text, it is unclear what actions the court can take based upon the findings of the review.

Co-Counsel for Juveniles Detained by Order of Distant Courts

Indigent juveniles who are detained at Long Creek prior to adjudication have the right to representation by appointed counsel and, in fact, are almost always represented by assigned counsel. Until several years ago, the Department of Corrections operated a juvenile detention facility in Charleston, not far from Bangor. Since that facility closed, however, all detained juveniles are housed at Long Creek in South Portland. As a result, juveniles from northern and eastern Maine may be detained hundreds of miles from where they live and where their attorney practices. This makes ongoing attorney-client contact difficult, particularly face to face meetings between lawyer and client.

Juveniles detained at Long Creek are particularly vulnerable. At MCILS trainings for juvenile attorneys, judges routinely point out that they strive to avoid detaining juveniles because research has documented the negative effects of pre-adjudication detention for juveniles. Nevertheless, juveniles continue to be detained, and some for long periods while the parties try to determine what treatment is appropriate and then arrange for that treatment in a community setting. Moreover, while detained, juveniles do not receive treatment at Long Creek. Juveniles in such “limbo” should have ready access to their assigned counsel.

As far as I can tell, the assignment of co-counsel is not governed by rule or statute. Nevertheless, the assignment of co-counsel, particularly with respect to murder cases but also in other types of cases, took place before the Commission was created and continues to this day. And as stated above, the Commission’s purpose is to provide “high-quality” representation to its clients. It is difficult for even the most diligent and energetic attorney to maintain the level of attorney-client communication required when a young person is incarcerated a great distance from where the attorney practices. Co-counsel situated near Long Creek could meet with the juvenile regularly and, based on communication with the juvenile’s local counsel, keep the juvenile apprised of the progress of the juvenile’s case, as well as relaying the juvenile’s desires and concerns to local counsel.

Again, the most efficient way to meet this need would be for the Commission to designate a team of experienced local attorneys. When a juvenile is detained and not released in short order, a team member would coordinate with the Commission, counsel assigned by the sending court, and the court to have co-counsel assigned. I believe that such a program would enhance the representation of particularly vulnerable young people at a relatively small cost that could be met within existing resources.

(7.)

**Lawyer of the Day/
Timely Assignment of
Counsel**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: REQUESTED ITEMS DISCUSSION
DATE: OCTOBER 2, 2019

Since the last meeting, I have received two requests from Commissioners to add items to the agenda for discussion at the October meeting.

From one Commissioner:

I would ask that we place a discussion about the Lawyer of the Day program on the October agenda. Specifically, discussing a work flow or check list or list of expectations for the Lawyers of the Day. I recognize that this program is one that we may drastically alter based on the 6th Amendment Center Report but we need to tighten up that ship in the short term until that happens based on some things I saw this week.

From another:

Can we please to add to the next commissioners meeting the timely assignment of court appointed counsel? No individual should be leaving court/initial appearance/arraignment without knowing who their attorney is. I have an attorney calling complaining that more than 30 days are going by in various counties without attorneys being appointed and these clients are in custody. MCILS lawyers need to be making sure attorneys are appointed that day!