

**MCILS**

**September 22, 2021  
Commissioner's Meeting  
Packet**

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**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

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**SEPTEMBER 22, 2021  
COMMISSION MEETING  
AGENDA**

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- 1) Approval of August 30, 2021 Commission Meeting Minutes
- 2) Report of the Executive Director
- 3) Staffing Update
- 4) GOC/OPEGA Update
- 5) Legislative Update
- 6) Chapter 301 Rulemaking Discussion
- 7) Strategic Planning Discussion (supplemental budget request)
- 8) Training RFP
- 9) Case Management Software RFP
- 10) Set Date, Time and Location of Next Regular Meeting of the Commission
- 11) Public Comment
- 12) Executive Session (if needed)

**Maine Commission on Indigent Legal Services – Commissioners Meeting  
August 30, 2021**

**Minutes**

**Commissioners Present:** Donald Alexander, Michael Carey, Robert Cummins, Ronald Schneider, Joshua Tardy

**MCILS Staff Present:** Justin Andrus, Ellie Maciag

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Approval of the corrected June 28 and July 27, 2021 Commission meeting minutes	No discussion.	Commissioner Schneider moved to approve. Commissioner Cummins seconded. All voted in favor. Approved.
Operations Report	Director Andrus reported that he had no concerns about the Commission’s current budget but did have serious concerns about having the resources available to staff all cases going forward. Director Andrus is still working on how best to provide weighted averages in the monthly operation statistics. Chair Tardy inquired about staff’s review process of the over \$5,000 vouchers and Director Andrus stated that he reviews each one in detail.	
Attorney Attrition and Survey Results	Director Andrus relayed that rostered attorneys are really struggling, especially with the return to in-person court appearances. Director Andrus noted that attorneys are facing tremendous inefficiencies with being back in person, including increase travel and court wait times. Change in USPS performance expectations to five business days have also contributed to inefficiencies. Director Andrus relayed that attorneys who have taken themselves off the roster are nevertheless still getting case assignments. Chair Tardy appreciated the attorney responses to the survey and asked what role the Commission should play with the Judiciary on these issues. Director Andrus suggested the	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	<p>Commissioners engage with the Judiciary, specifically with the Trial Chiefs, along with him to try to address these issues. Commissioner Schneider noted that many survey responses were from experienced attorneys who noted exhaustion of this work as a factor and that they felt alone in dealing with the courts and clerks offices. Commissioner Schneider believes it is up to the Commission to address these issues with the court and provide counsel for cases and Director Andrus must play the role of chief public defender. Director Andrus suggested that there should be an ongoing dialogue between the defense function and the judiciary and that the Chief Justice asked him to bring issues to the Trial Chiefs but that he has not received any response to repeated requests for dialogue. Commissioner Cummins requested the Commission hold a special meeting in the near term to delve into these issues more deeply and formulate a plan for addressing these issues. Commissioner Cummins also publicly apologized for previous comments he made that angered many attorneys, noting that he did not realize the stress our attorneys are under. Commissioner Schneider asked Director Andrus for thoughts on how to get more attorneys to join the rosters. Director Andrus commented that it is hard to ask people to return to an organization in crisis and indicated that it will probably become necessary to offer employment in order to adequately staff cases, noting that there will always be a need for the private bar to participate in a public defender system. Commissioner Carey suggested engaging with the other two branches of government about these court issues and that the next GOC quarterly update will be a great opportunity to do so. Commissioner Schneider suggested reaching out to the law school and Commissioner Cummins suggested engaging with the MSBA and MACDL to enlist their support. The discussion then turned to the delay in appointments and the Commissioners inquired about possible solutions. Director Andrus suggested revamping the lawyer of the day program to address this problem. Director Andrus explained that pro se defendants have been instructed to call the Commission with their questions since the district attorneys are no longer permitted to talk to unrepresented persons until they are</p>	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	informed of their rights and Director Andrus suggested the possible creation of early intervention counsel to take over this function. Commissioner Alexander asked about how to address the eligibility issue at this stage since some individuals are not entitled to counsel where there is no risk of jail. Director Andrus suggested that the system should do away with the DA designation of no risk of jail since every criminal offense carries a risk of jail.	
MCILS/AOC Memo of Understanding	Director Andrus outlined additional impasses with the court on issues of data access and collection responsibilities and suggested that legislation might be needed to resolve the collection issue. Director Andrus explained that in addition to the conflict of interest issue, the Commission does not have the infrastructure in place to immediately take over the collection function.	
Oversight	Director Andrus explained that since additional staff have not yet been hired, no additional oversight measures have been implemented. Director Andrus has not received a response yet from the Court or Board of Bar Overseers about whether each would be amenable to providing information to the Commission on attorney misconduct and disciplinary issues.	
Retained v Appointed Cases	Director Andrus provided the data on the percentage of retained and appointed criminal cases. A discussion ensued about what level of engagement the Commission should have with outside groups including the MSBA and MACDL on shared interests and issues.	
Policy as to Appointments, Billing System & Payment	Director Andrus gave an overview of his proposed billing policy for instances when attorneys change firms and remain on the roster.	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
Staffing Update	Director Andrus gave a brief update on the status of the six newly created central office positions. There has been a delay on HR's end and staff has not been authorized to post the positions yet.	
Budget Update	At this point in the fiscal year, the Commission appears to be on track to meet all its financial obligations for the year.	
OPEGA Quarterly Update Discussion	Director Andrus will be presenting the Commission's next quarterly update at next week's Government Oversight Committee meeting.	
Chapter 301 Rulemaking Discussion	Director Andrus relayed that he plans to revise Chapter 301 and would like Commissioner input on changes. He intends to have a draft for Commission consideration at the next meeting.	
Remote Attendance Policy Discussion	The Commissioners conducted a public hearing on the proposed remote attendance policy. Several written public comments were received but no members of the public spoke at the public hearing. Commissioner Alexander moved to adopt the proposed policy. Commissioner Carey seconded. All voted in favor.	
Strategic Planning Discussion	Director Andrus intends to complete an overhaul of all Commission rules and asked for input on changes.	
RFP for Case Management Software Update	Director Andrus relayed that the Case Management Software RFP was currently being reviewed by the IT department and was not approved for publication yet.	
Recruitment & Retention Subcommittee Update	Director Andrus noted that the Retention & Recruitment Subcommittee findings were quite similar to the attorney survey responses. Commissioner Alexander suggested focusing attention towards the PC attorney bar and rural practitioners.	

<b>Agenda Item</b>	<b>Discussion</b>	<b>Outcome/Action Item/Responsible Party</b>
	Director Andrus relayed that the PC bar has started an attorney organization similar to MACDL.	
NACDL survey	The TTA grant work has commenced and NACDL has published a survey of all licensed Maine attorneys. Director Andrus thanked the Board of Bar Overseers for their help in distributing that survey to the bar.	
Public Comment	None	
Executive Session	Commissioner Carey moved to go into executive session pursuant to 1 MRS section 405(6)(e) to discuss the Commission's legal rights and duties. Commissioner Alexander seconded. No votes taken.	
Adjournment of meeting	The next meeting will be held in person on Wednesday, September 22, 2021 at 9:00 am.	

## MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**TO:** MCILS COMMISSIONERS

**FROM:** JUSTIN ANDRUS, EXECUTIVE DIRECTOR

**SUBJECT:** OPERATIONS REPORTS

**DATE:** September 16, 2021

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Attached you will find the August 2021, Operations Reports for your review and our discussion at the Commission meeting on August 22, 2021. A summary of the operations reports follows:

- 2,643 new cases were opened in the DefenderData system in August. This was a 157 case decrease from July. Year to date, new cases are up 6.7% from 5,092 at this time last year to 5,438 this year.
- The number of vouchers submitted electronically in August was 2,940 an increase of 341 vouchers from July, totaling \$1,498,038, an increase of \$188,427 over July. Year to date, the number of submitted vouchers is up by approximately 29%, from 4,293 at this time last year to 5,536 this year, with the total amount for submitted vouchers up approximately 45%, from \$1,923,873 at this time last year to \$2,804,364 this year.
- In August, we paid 2,681 electronic vouchers totaling \$1,341,663 representing an increase of 476 vouchers and an increase of \$207,912 compared to July. Year to date, the number of paid vouchers is up approximately 34%, from 3,633 at this time last year to 4,887 this year, and the total amount paid is up approximately 53%, from \$1,618,548 this time last year to \$2,475,415 this year.
- We paid no paper vouchers in August.
- The average price per voucher in August was \$500.43, down \$13.73 per voucher from July. Year to date, the average price per voucher is up approximately 13.6%, from \$445.51 at this time last year to \$506.53 this year.
- Drug Court and Appeal cases had the highest average voucher in August. There were 6 vouchers exceeding \$5,000 paid in August. See attached addendum for details.
- In August, we issued 95 authorizations to expend funds: 53 for private investigators, 31 for experts, and 11 for miscellaneous services such as interpreters and transcriptionists. In August, we paid \$123,788 for experts and investigators, etc. One request for funds was denied.
- In August, we opened 1 attorney investigation.
- In August, we approved 3 requests for co-counsel.



In our All Other Account, the total expenses for the month of August were \$1,606,900. During August, approximately \$14,232 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$103,991 in expenses for the month of August.

In the Revenue Account, the transfer from the Judicial Branch for August, reflecting July's collections, totaled \$77,387, a decrease of approximately \$22,819 from the previous month.

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

## Vouchers over \$5,000

<b>Comment</b>	<b>Voucher Total</b>	<b>Case Total</b>
Reckless Conduct	\$ 8,710.00	\$ 8,710.00
Appeal (Homicide)	\$ 6,994.98	\$ 6,994.98
Child Protection	\$ 6,915.92	\$ 9,314.48
Domestic Violence Aggravated Assault	\$ 6,214.00	\$ 6,214.00
Gross Sexual Assault	\$ 6,141.75	\$ 7,869.91
Elevated Aggravated Assault	\$ 5,342.65	\$ 5,342.65

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**FY22 FUND ACCOUNTING**

AS OF 08/31/2021

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
FY22 Professional Services Allotment		\$ 5,153,983.00		\$ 4,940,737.00		\$ 4,940,737.00		\$ 423,013.00	
FY22 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY21 Encumbered Balance Forward		\$ 128,745.00		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
FY21 Unobligated Carry Forward		\$ 495,733.30		\$ -		\$ -		\$ -	\$ 495,733.30
<b>Total Budget Allotments</b>		<b>\$ 5,201,983.00</b>		<b>\$ 4,988,737.00</b>		<b>\$ 4,988,737.00</b>		<b>\$ 471,013.00</b>	<b>\$ 16,146,203.30</b>
Total Expenses	1	\$ (1,188,459.32)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (1,479,685.13)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (76,565.00)		\$ -		\$ -		\$ -	\$ (76,565.00)
Encumbrances (B Taylor)		\$ (17,680.00)		\$ -		\$ -		\$ -	\$ (17,680.00)
Encumbrances (CTB for non attorney expenses)		\$ (740,293.16)		\$ -		\$ -		\$ -	\$ (740,293.16)
Encumbrance (Jamesa Drake training contract)		\$ (92,400.00)		\$ -		\$ -		\$ -	\$ (92,400.00)
<b>TOTAL REMAINING</b>		<b>\$ 1,606,900.39</b>		<b>\$ 4,988,737.00</b>		<b>\$ 4,988,737.00</b>		<b>\$ 471,013.00</b>	<b>\$ 12,551,120.69</b>

**Q1 Month 2**

<b>INDIGENT LEGAL SERVICES</b>	
Counsel Payments	\$ (1,341,663.85)
Interpreters	\$ (620.00)
Private Investigators	\$ (15,790.18)
Mental Health Expert	\$ (30,117.50)
Misc Prof Fees & Serv	\$ (194.24)
Transcripts	\$ (10,098.94)
Other Expert	\$ (66,388.87)
Process Servers	\$ (578.98)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
<b>SUB-TOTAL ILS</b>	<b>\$ (1,465,452.56)</b>
<b>OPERATING EXPENSES</b>	
Service Center	
DefenderData	\$ (6,987.50)
Parking Permit Annual Fee	\$ -
Mileage/Tolls/Parking	\$ (809.55)
Mailing/Postage/Freight	\$ (1,337.87)
West Publishing Corp	\$ (211.96)
Risk Management Insurances	\$ -
Office Supplies/Equip.	\$ -
Cellular Phones	\$ -
OIT/TELCO	\$ -
Office Equipment Rental	\$ (100.69)
Training Videographer	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
notary renewals	\$ (100.00)
Dues	\$ (265.00)
<b>SUB-TOTAL OE</b>	<b>\$ (14,232.57)</b>
<b>TOTAL</b>	<b>\$ (1,479,685.13)</b>

<b>INDIGENT LEGAL SERVICES</b>	
Q1 Allotment	\$ 5,201,983.00
Q1 Encumbrances for Justice Works contract	\$ (76,565.00)
Barbara Taylor Contract	\$ (17,680.00)
CTB Encumbrance for non attorney expenses	\$ (740,293.16)
Q1 Jamesa Drake training contract	\$ (92,400.00)
Q1 Expenses to date	\$ (2,668,144.45)
Remaining Q1 Allotment	<b>\$ 1,606,900.39</b>

<b>Non-Counsel Indigent Legal Services</b>	
Monthly Total	\$ (123,788.71)
Total Q1	\$ 159,706.84
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	<b>\$ 159,706.84</b>

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

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**  
**FY22 FUND ACCOUNTING**  
AS OF 08/31/2021

<b>Account 010 95F Z112 01 (Personal Services)</b>	<b>Mo.</b>	<b>Q1</b>	<b>Mo.</b>	<b>Q2</b>	<b>Mo.</b>	<b>Q3</b>	<b>Mo.</b>	<b>Q4</b>	<b>FY20 Total</b>
FY22 Allotment		\$ 285,846.00		\$ 223,990.00		\$ 254,914.00		\$ 162,917.00	\$ 927,667.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
<b>Total Budget Allotments</b>		<b>\$ 285,846.00</b>		<b>\$ 223,990.00</b>		<b>\$ 254,914.00</b>		<b>\$ 162,917.00</b>	<b>\$ 927,667.00</b>
Total Expenses	1	\$ (74,728.63)	4	\$ -	7	\$ -	10	\$ -	
	2	\$ (103,991.70)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>TOTAL REMAINING</b>		<b>\$ 107,125.67</b>		<b>\$ 223,990.00</b>		<b>\$ 254,914.00</b>		<b>\$ 162,917.00</b>	<b>\$ 748,946.67</b>

<b>Q1 Month 2</b>	
Per Diem	\$ -
Salary	\$ (50,309.81)
Vacation Pay	\$ (9,431.56)
Holiday Pay	\$ -
Sick Pay	\$ (2,771.76)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (11,294.95)
Dental Insurance	\$ (445.30)
Employer Retiree Health	\$ (6,201.53)
Employer Retirement	\$ (3,945.89)
Employer Group Life	\$ (551.46)
Employer Medicare	\$ (939.25)
Retiree Unfunded Liability	\$ (12,314.31)
Longevity Pay	\$ (240.00)
Perm Part Time Full Ben	\$ (5,445.40)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ (100.48)
<b>TOTAL</b>	<b>\$ (103,991.70)</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY22 FUND ACCOUNTING

As of 08/31/2021

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
<b>Original Total Budget Allotments</b>		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment		\$ 5,294,080.00		\$ 3,276,305.00		\$ 7,324.00		\$ 7,324.00	\$ 8,585,033.00
Funds for new positions, etc		\$ 708,658.00		\$ -		\$ -		\$ -	\$ 708,658.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment		\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment	3	\$ -		\$ -		\$ -		\$ -	\$ -
<b>Total Budget Allotments</b>		\$ 6,277,738.00		\$ 3,551,305.00		\$ 282,324.00		\$ 282,324.00	\$ 10,393,691.00
Cash Carryover from Prior Quarter		\$ 884,522.69		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 100,206.73	4	\$ -	7	\$ -	10	\$ -	
Collected from McIntosh Law		\$ 6,000.00		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees		\$ 2,167.00	5	\$ -	8	\$ -		\$ -	
Asset Forfeiture		\$ 3,334.00		\$ -		\$ -		\$ -	
Victim Services Restitution		\$ 1,020.00		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ -		\$ -		\$ -	11	\$ -	
Collected from McIntosh Law		\$ -		\$ -		\$ -		\$ -	
Collected from McIntosh Law	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Collected for reimbursement of counsel fees		\$ -		\$ -		\$ -		\$ -	
Collected from ME Ctr Public Int Reporting		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB		\$ -		\$ -		\$ -		\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
<b>TOTAL CASH PLUS REVENUE COLLECTED</b>		\$ 997,250.42		\$ -		\$ -		\$ -	\$ 997,250.42
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
State Cap for period 11 expenses	*	\$ -	**	\$ -	***	\$ -		\$ -	
<b>REMAINING ALLOTMENT</b>		\$ 6,277,738.00		\$ 3,551,305.00		\$ 282,324.00		\$ 282,324.00	\$ 10,393,691.00
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
<b>REMAINING CASH Year to Date</b>		\$ 997,250.42		\$ -		\$ -		\$ -	\$ 997,250.42

\*\* NO COLLECTED REVENUE IN AUGUST

Collections versus Allotment	
Monthly Total	\$ -
Total Q1	\$ 112,727.73
Total Q2	\$ -
Total Q3	\$ -
Total Q4	\$ -
Expenses to Date	\$ -
Fiscal Year Total	\$ 112,727.73

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Activity Report by Case Type**

8/31/2021

DefenderData Case Type	Aug-21						Fiscal Year 2022			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	13	18	\$ 31,596.86	16	\$ 29,986.92	\$ 1,874.18	24	25	\$ 40,730.05	\$ 1,629.20
Child Protection Petition	212	360	\$ 227,674.52	362	\$ 222,004.83	\$ 613.27	436	694	\$ 460,802.69	\$ 663.98
Drug Court	1	10	\$ 17,182.00	7	\$ 14,594.00	\$ 2,084.86	3	15	\$ 25,888.00	\$ 1,725.87
Emancipation	8	1	\$ 442.00	2	\$ 858.00	\$ 429.00	12	3	\$ 910.00	\$ 303.33
Felony	575	642	\$ 493,236.27	618	\$ 445,892.88	\$ 721.51	1,329	1,069	\$ 811,672.96	\$ 759.28
Involuntary Civil Commitment	71	110	\$ 24,186.65	99	\$ 23,034.67	\$ 232.67	175	207	\$ 44,386.83	\$ 214.43
Juvenile	69	44	\$ 13,727.00	32	\$ 11,067.00	\$ 345.84	100	82	\$ 41,966.26	\$ 511.78
Lawyer of the Day - Custody	251	255	\$ 79,099.36	187	\$ 55,551.52	\$ 297.07	493	433	\$ 127,772.20	\$ 295.09
Lawyer of the Day - Juvenile	29	21	\$ 5,556.70	16	\$ 3,898.88	\$ 243.68	48	40	\$ 9,555.62	\$ 238.89
Lawyer of the Day - Walk-in	162	162	\$ 51,320.78	115	\$ 34,545.71	\$ 300.40	316	279	\$ 80,982.05	\$ 290.26
Misdemeanor	1,048	913	\$ 339,032.44	861	\$ 312,408.19	\$ 362.84	2,077	1,415	\$ 506,787.06	\$ 358.15
Petition, Modified Release Treatment	0	0		0			0	6	\$ 2,441.62	\$ 406.94
Petition, Release or Discharge	0	0		0			0	1	\$ 546.05	\$ 546.05
Petition, Termination of Parental Rights	28	60	\$ 34,955.67	54	\$ 32,087.29	\$ 594.21	51	88	\$ 64,459.88	\$ 732.50
Post Conviction Review	8	9	\$ 5,388.86	10	\$ 10,167.70	\$ 1,016.77	17	12	\$ 17,962.63	\$ 1,496.89
Probate	1	0		1	\$ 488.00	\$ 488.00	6	1	\$ 488.00	\$ 488.00
Probation Violation	118	142	\$ 63,457.02	124	\$ 47,114.41	\$ 379.95	258	215	\$ 80,845.27	\$ 376.02
Represent Witness on 5th Amendment	1	1	\$ 416.00	4	\$ 1,657.36	\$ 414.34	4	4	\$ 1,657.36	\$ 414.34
Resource Counsel Criminal	0	2	\$ 352.00	2	\$ 312.00	\$ 156.00	0	4	\$ 624.00	\$ 156.00
Resource Counsel Juvenile	0	1	\$ 40.00	1	\$ 40.00	\$ 40.00	0	2	\$ 106.00	\$ 53.00
Resource Counsel Protective Custody	0	0		0			0	0		
Review of Child Protection Order	45	187	\$ 110,063.75	169	\$ 95,825.41	\$ 567.01	84	291	\$ 154,701.83	\$ 531.62
Revocation of Administrative Release	3	2	\$ 310.56	1	\$ 129.08	\$ 129.08	5	1	\$ 129.08	\$ 129.08
<b>DefenderData Sub-Total</b>	<b>2,643</b>	<b>2,940</b>	<b>\$ 1,498,038.44</b>	<b>2,681</b>	<b>\$ 1,341,663.85</b>	<b>\$ 500.43</b>	<b>5,438</b>	<b>4,887</b>	<b>\$ 2,475,415.44</b>	<b>\$ 506.53</b>
<b>Paper Voucher Sub-Total</b>										
<b>TOTAL</b>	<b>2,643</b>	<b>2,940</b>	<b>\$1,498,038.44</b>	<b>2,681</b>	<b>\$1,341,663.85</b>	<b>\$ 500.43</b>	<b>5,438</b>	<b>4,887</b>	<b>\$ 2,475,415.44</b>	<b>\$ 506.53</b>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

8/31/2021

Court	Aug-21						Fiscal Year 2022			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	13	8	\$ 3,144.00	5	\$ 1,596.00	\$ 319.20	20	10	\$ 4,907.00	\$490.70
AUBSC	1	3	\$ 854.00	3	\$ 854.00	\$ 284.67	4	4	\$ 1,206.00	\$301.50
AUGDC	33	83	\$ 55,580.24	68	\$ 44,561.60	\$ 655.32	71	110	\$ 72,921.43	\$662.92
AUGSC	13	9	\$ 9,230.00	0			16	7	\$ 2,987.67	\$426.81
BANDC	44	75	\$ 28,295.40	79	\$ 29,327.80	\$ 371.24	104	162	\$ 48,031.80	\$296.49
BANSC	1	0		0			2	0		
BATSC	0	1	\$ 514.00	1	\$ 514.00	\$ 514.00	0	1	\$ 514.00	\$514.00
BELDC	15	27	\$ 15,326.44	21	\$ 12,570.20	\$ 598.58	24	47	\$ 32,141.14	\$683.85
BELSC	0	0		0			0	0		
BIDDC	55	65	\$ 28,950.22	70	\$ 37,234.43	\$ 531.92	96	128	\$ 61,617.26	\$481.38
BRIDC	13	23	\$ 8,880.18	19	\$ 7,751.20	\$ 407.96	31	31	\$ 12,525.12	\$404.04
CALDC	4	3	\$ 1,122.00	3	\$ 852.00	\$ 284.00	4	9	\$ 3,250.00	\$361.11
CARDC	9	23	\$ 11,809.00	28	\$ 16,496.00	\$ 589.14	15	53	\$ 32,610.41	\$615.29
CARSC	0	0		0			2	0		
DOVDC	5	4	\$ 2,312.96	5	\$ 3,559.52	\$ 711.90	13	15	\$ 6,800.24	\$453.35
DOVSC	0	0		0			0	0		
ELLDC	17	33	\$ 23,749.84	37	\$ 22,527.52	\$ 608.85	28	62	\$ 51,547.52	\$831.41
ELLSC	0	0		0			0	0		
FARDC	10	12	\$ 6,155.46	8	\$ 5,761.60	\$ 720.20	16	17	\$ 9,385.46	\$552.09
FARSC	0	1	\$ 212.00	1	\$ 212.00	\$ 212.00	0	1	\$ 212.00	\$212.00
FORDC	6	10	\$ 6,712.00	9	\$ 4,417.90	\$ 490.88	14	17	\$ 7,560.89	\$444.76
HOUDC	8	21	\$ 16,083.04	13	\$ 9,066.00	\$ 697.38	13	29	\$ 17,616.90	\$607.48
HOUSC	0	0		0			0	0		
LEWDC	68	83	\$ 42,404.48	71	\$ 41,728.48	\$ 587.73	111	150	\$ 82,520.60	\$550.14
LINDC	15	18	\$ 9,509.37	13	\$ 6,790.17	\$ 522.32	24	25	\$ 10,439.85	\$417.59
MACDC	0	2	\$ 722.00	1	\$ 556.00	\$ 556.00	1	6	\$ 5,846.00	\$974.33
MACSC	1	0		0			1	0		
MADDC	1	0		0			1	0		
MILDC	5	7	\$ 1,356.00	5	\$ 1,238.00	\$ 247.60	9	10	\$ 3,570.00	\$357.00
NEWDC	10	23	\$ 7,507.83	24	\$ 7,865.83	\$ 327.74	21	47	\$ 16,608.47	\$353.37
PORDC	89	104	\$ 53,130.12	94	\$ 48,002.61	\$ 510.67	158	195	\$ 111,379.63	\$571.18
PORSC	11	10	\$ 4,300.00	10	\$ 3,960.00	\$ 396.00	17	15	\$ 5,530.00	\$368.67
PREDC	7	9	\$ 3,333.00	11	\$ 6,044.68	\$ 549.52	15	34	\$ 18,617.25	\$547.57
RODC	16	19	\$ 7,779.16	16	\$ 6,507.16	\$ 406.70	36	26	\$ 13,312.20	\$512.01
ROSC	1	0		1	\$ 266.56	\$ 266.56	5	1	\$ 266.56	\$266.56
RUMDC	13	15	\$ 5,620.40	20	\$ 11,420.04	\$ 571.00	19	38	\$ 30,761.28	\$809.51
SKODC	35	60	\$ 34,573.87	52	\$ 25,618.72	\$ 492.67	54	85	\$ 45,620.75	\$536.71
SKOSC	0	3	\$ 1,247.60	3	\$ 1,247.60	\$ 415.87	4	3	\$ 1,247.60	\$415.87
SOUDC	11	19	\$ 11,080.32	23	\$ 13,776.90	\$ 599.00	27	34	\$ 41,294.09	\$1,214.53
SOUSC	0	3	\$ 884.00	1	\$ 476.00	\$ 476.00	0	1	\$ 476.00	\$476.00
SPRDC	14	25	\$ 15,544.00	28	\$ 16,793.00	\$ 599.75	33	52	\$ 30,226.10	\$581.27
Law Ct	7	12	\$ 23,436.60	12	\$ 26,282.02	\$ 2,190.17	13	19	\$ 35,895.45	\$1,889.23
YORCD	322	262	\$ 142,360.35	217	\$ 125,657.14	\$ 579.07	730	429	\$ 241,376.09	\$562.65
ARODC	157	133	\$ 61,813.34	129	\$ 51,192.97	\$ 396.84	270	206	\$ 82,587.45	\$400.91
ANDCD	174	150	\$ 89,261.90	132	\$ 74,974.79	\$ 567.99	373	242	\$ 131,244.75	\$542.33
KENCD	168	189	\$ 90,287.28	172	\$ 78,700.45	\$ 457.56	401	307	\$ 151,317.80	\$492.89
PENCD	295	330	\$ 122,040.73	326	\$ 107,353.67	\$ 329.31	545	501	\$ 193,096.73	\$385.42
SAGCD	42	34	\$ 13,828.42	35	\$ 12,943.60	\$ 369.82	85	61	\$ 23,448.30	\$384.40
WALCD	43	58	\$ 22,245.45	46	\$ 13,533.72	\$ 294.21	129	92	\$ 31,773.22	\$345.36
PISDC	22	15	\$ 4,199.09	15	\$ 4,016.74	\$ 267.78	34	25	\$ 11,130.62	\$445.22
HANCD	46	57	\$ 32,820.10	53	\$ 27,916.10	\$ 526.72	89	83	\$ 39,454.10	\$475.35
FRACD	28	34	\$ 20,803.10	34	\$ 17,347.45	\$ 510.22	42	58	\$ 29,448.81	\$507.74
WASCD	49	47	\$ 23,913.60	47	\$ 28,929.60	\$ 615.52	76	85	\$ 40,495.44	\$476.42
CUMCD	463	472	\$ 275,113.71	409	\$ 239,707.37	\$ 586.08	986	749	\$ 425,067.65	\$567.51
KNOCD	69	101	\$ 42,111.81	82	\$ 28,751.22	\$ 350.62	150	132	\$ 48,007.57	\$363.69
SOMCD	53	87	\$ 29,576.63	84	\$ 32,916.17	\$ 391.86	150	145	\$ 50,194.05	\$346.17
OXFCD	74	52	\$ 35,465.59	57	\$ 40,659.23	\$ 713.32	162	142	\$ 77,703.51	\$547.21
LINCD	43	29	\$ 11,218.30	24	\$ 11,031.36	\$ 459.64	91	63	\$ 25,069.35	\$397.93
WATDC	25	47	\$ 25,316.71	31	\$ 14,277.93	\$ 460.58	44	56	\$ 25,946.95	\$463.34
WESDC	8	16	\$ 6,222.16	17	\$ 6,600.16	\$ 388.24	23	36	\$ 14,323.84	\$397.88
WISDC	4	8	\$ 5,686.64	11	\$ 7,262.64	\$ 660.24	11	16	\$ 9,194.24	\$574.64
WISSC	1	0		0			2	0		
YORDC	6	6	\$ 2,394.00	5	\$ 2,016.00	\$ 403.20	23	15	\$ 5,088.30	\$339.22
<b>TOTAL</b>	<b>2,643</b>	<b>2,940</b>	<b>\$ 1,498,038.44</b>	<b>2,681</b>	<b>\$ 1,341,663.85</b>	<b>\$ 500.43</b>	<b>5,438</b>	<b>4,887</b>	<b>\$2,475,415.44</b>	<b>\$506.53</b>

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES**

**Number of Attorneys Rostered by Court**

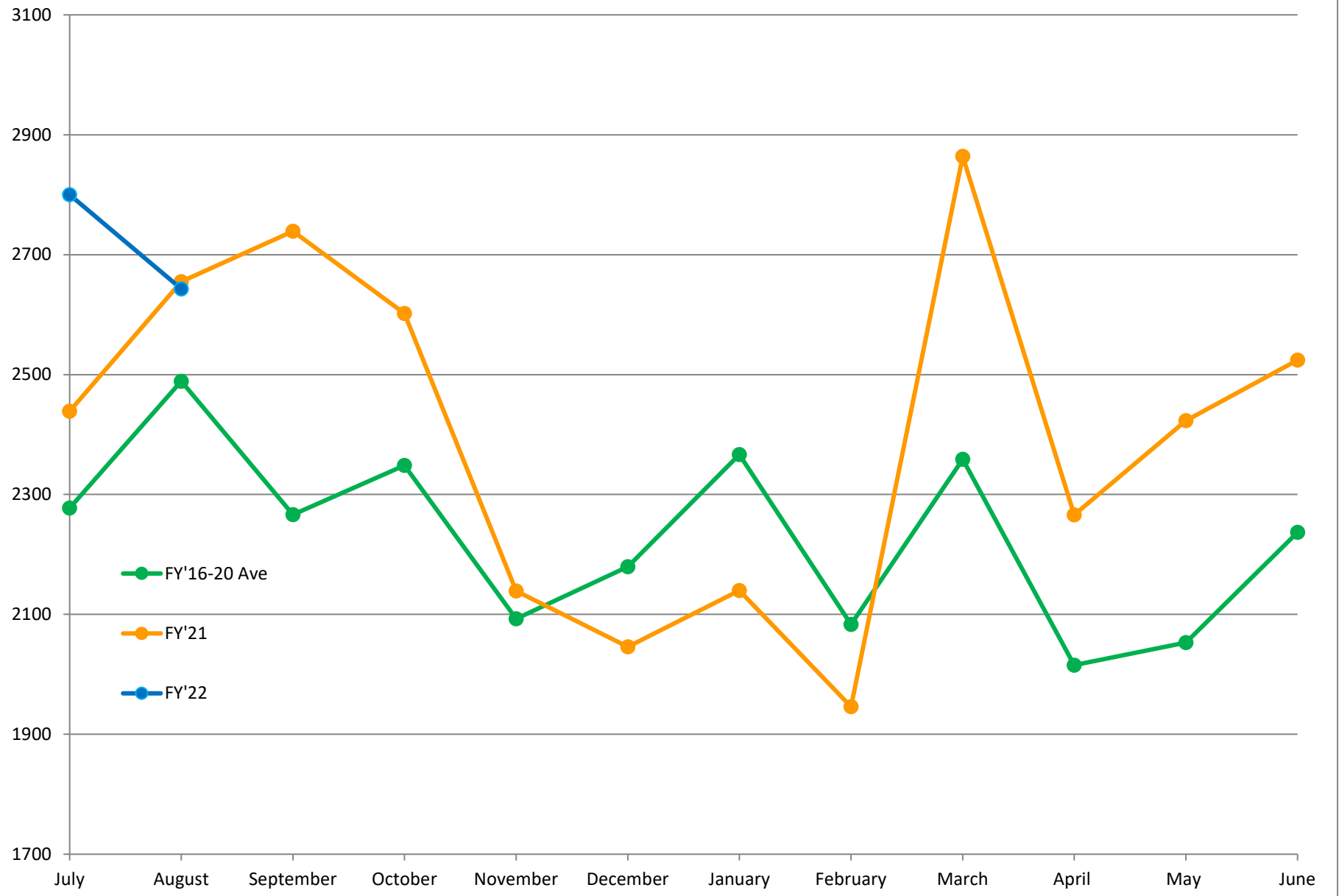
**9/6/2021**

<b>Court</b>	<b>Rostered Attorneys</b>
Augusta District Court	73
Bangor District Court	38
Belfast District Court	36
Biddeford District Court	101
Bridgton District Court	64
Calais District Court	9
Caribou District Court	15
Dover-Foxcroft District Court	24
Ellsworth District Court	29
Farmington District Court	30
Fort Kent District Court	11
Houlton District Court	12
Lewiston District Court	100
Lincoln District Court	21
Machias District Court	14
Madawaska District Court	11
Millinocket District Court	15
Newport District Court	27
Portland District Court	121
Presque Isle District Court	13
Rockland District Court	28
Rumford District Court	21
Skowhegan District Court	21

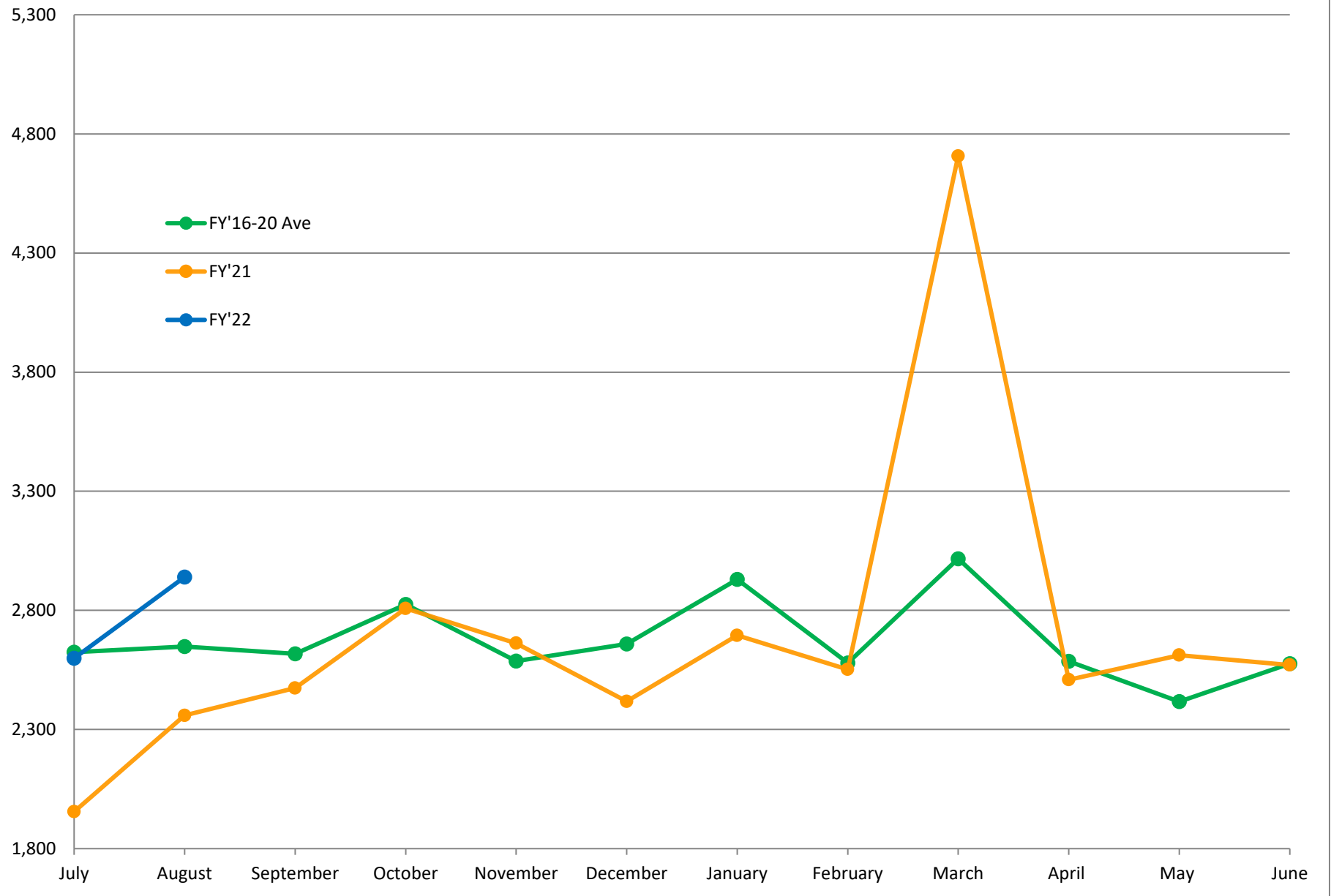
<b>Court</b>	<b>Rostered Attorneys</b>
South Paris District Court	42
Springvale District Court	86
Unified Criminal Docket Alfred	84
Unified Criminal Docket Aroostook	22
Unified Criminal Docket Auburn	82
Unified Criminal Docket Augusta	69
Unified Criminal Docket Bangor	37
Unified Criminal Docket Bath	72
Unified Criminal Docket Belfast	33
Unified Criminal Docket Dover Foxcroft	21
Unified Criminal Docket Ellsworth	31
Unified Criminal Docket Farmington	34
Unified Criminal Docket Machias	15
Unified Criminal Docket Portland	118
Unified Criminal Docket Rockland	23
Unified Criminal Docket Skowhegan	23
Unified Criminal Docket South Paris	39
Unified Criminal Docket Wiscasset	44
Waterville District Court	35
West Bath District Court	84
Wiscasset District Court	49
York District Court	79



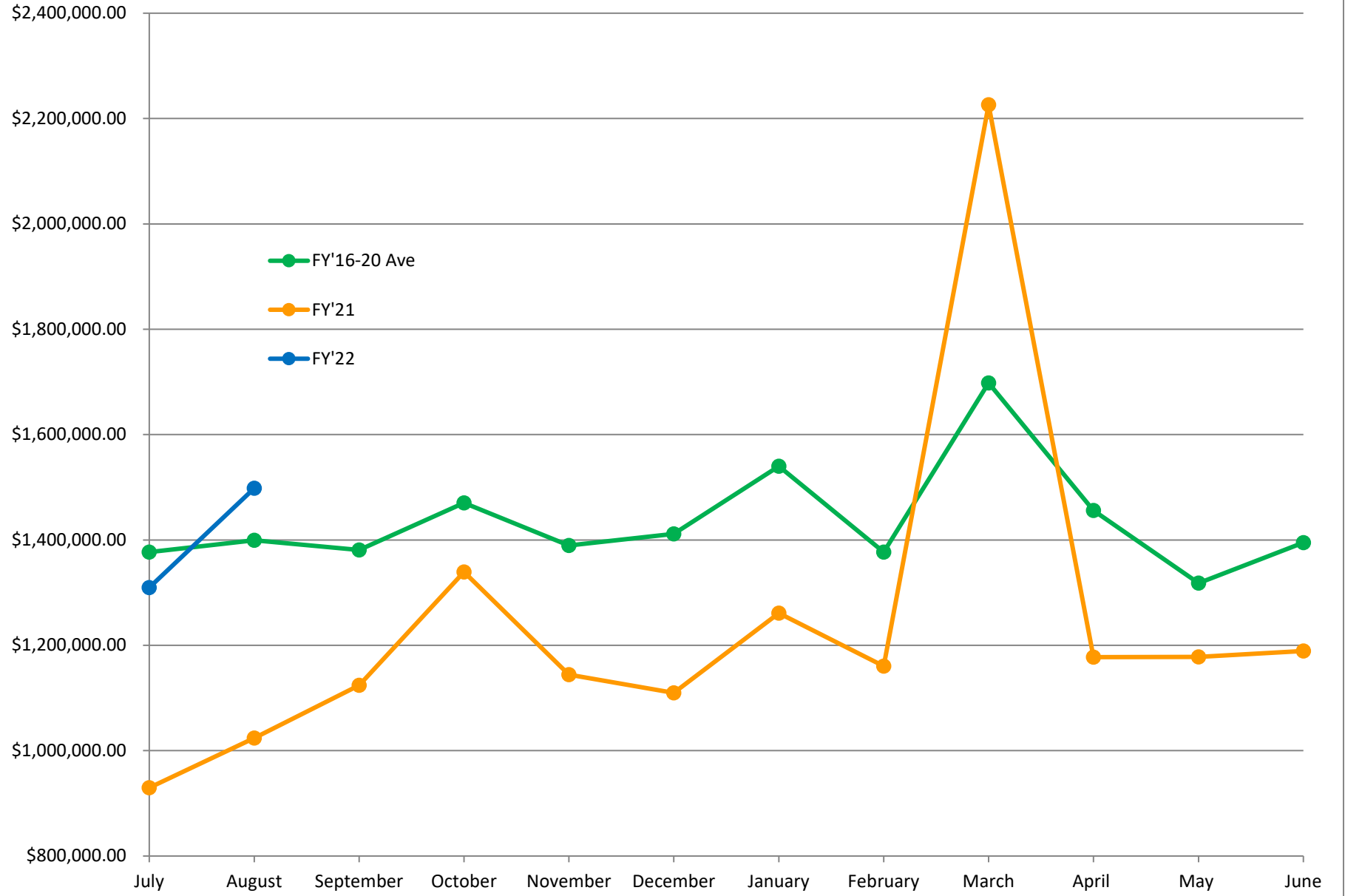
# NEW CASES



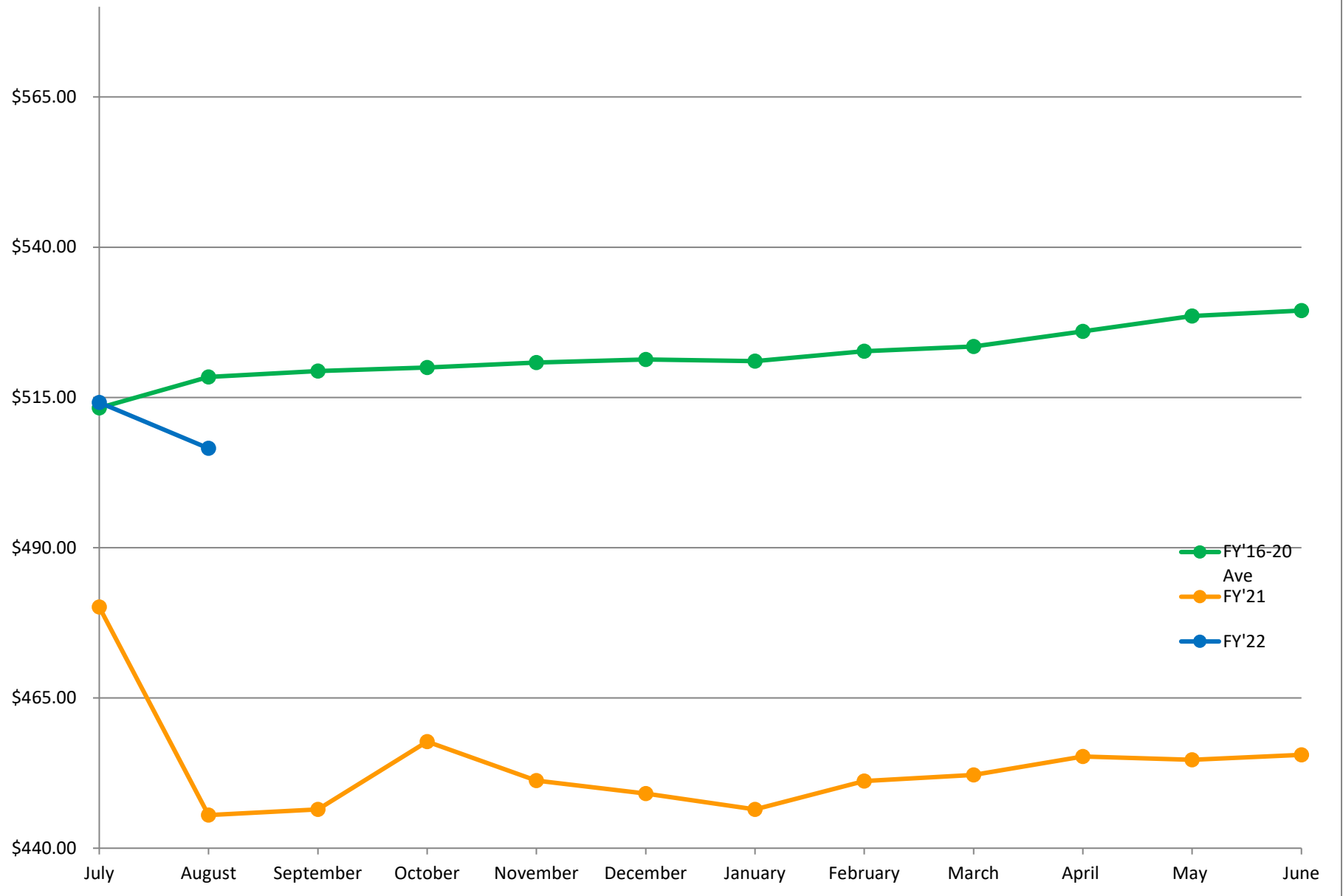
# Submitted Vouchers



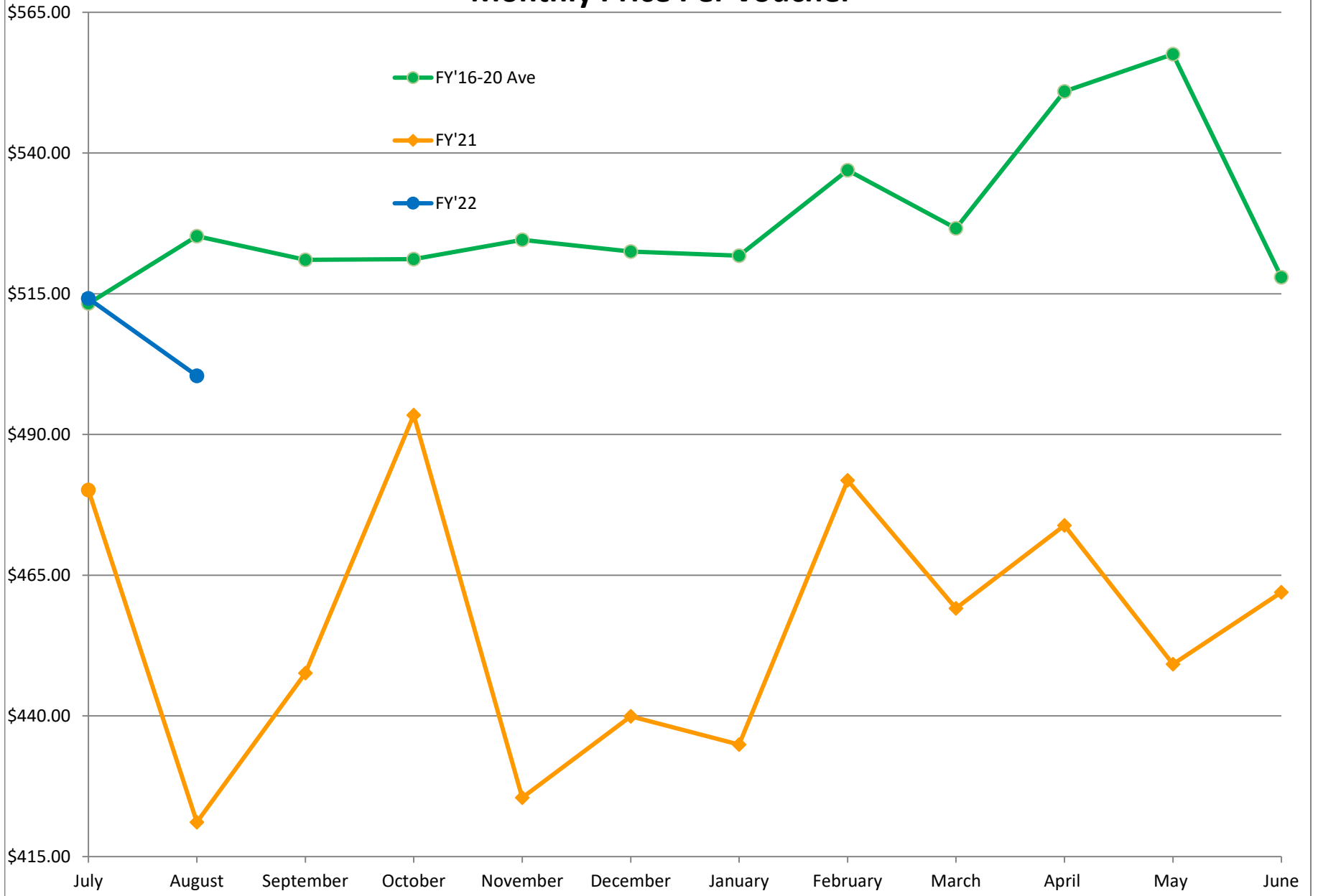
# Submitted Voucher Amount



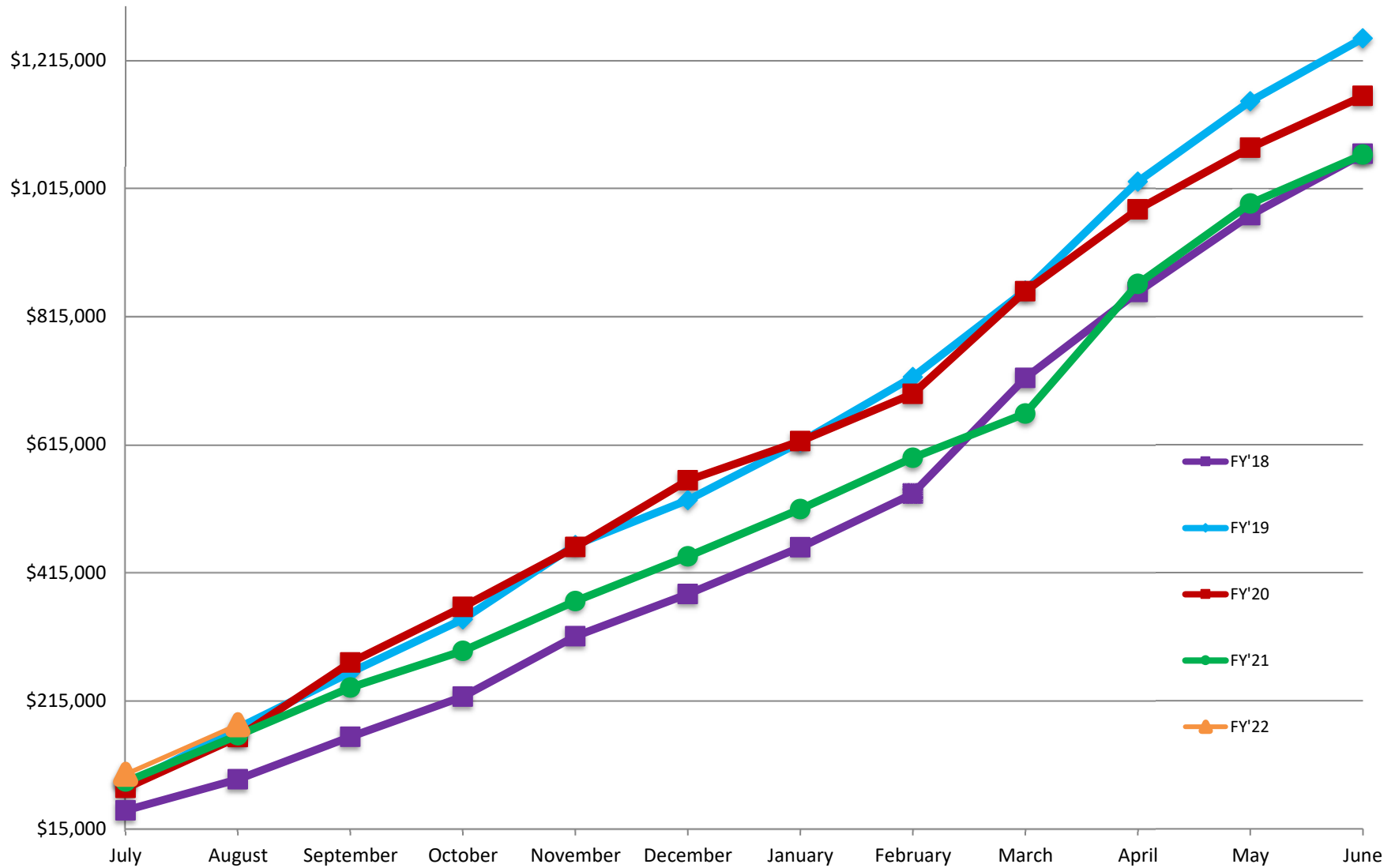
# Average Voucher Price Fiscal Year to Date



# Monthly Price Per Voucher



# COLLECTION TOTALS FY'18 to FY'22



# Change in Pending UCD Cases, September 2019 to September 2021

Pending cases as of September 10 of each year

UCD	FELONY			MISDEMEANOR			CIVIL VIOLATION			ALL CASES		
	2019	2021	% Diff	2019	2021	% Diff	2019	2021	% Diff	2019	2021	% Diff
<b>Androscoggin</b>	398	583	46.5%	1,367	1,965	43.7%	25	17	-32.0%	1,790	2,565	43.3%
<b>Aroostook</b>	421	800	90.0%	727	1,251	72.1%	34	50	47.1%	1,182	2,101	77.7%
Caribou	70	204	191.4%	170	339	99.4%	4	6	50.0%	244	549	125.0%
Fort Kent	49	94	91.8%	153	212	38.6%	15	17	13.3%	217	323	48.8%
Houlton	139	246	77.0%	141	355	151.8%	8	15	87.5%	288	616	113.9%
Presque Isle	163	256	57.1%	263	345	31.2%	7	12	71.4%	433	613	41.6%
<b>Cumberland</b>	893	1,286	44.0%	2,600	3,742	43.9%	170	237	39.4%	3,663	5,265	43.7%
Bridgton	11	17	54.5%	209	332	58.9%	58	119	105.2%	278	468	68.3%
Portland	865	1,242	43.6%	2,069	3,075	48.6%	72	87	20.8%	3,006	4,404	46.5%
West Bath	17	27	58.8%	322	335	4.0%	40	31	-22.5%	379	393	3.7%
<b>Franklin</b>	90	101	12.2%	248	274	10.5%	5	23	360.0%	343	398	16.0%
<b>Hancock</b>	197	301	52.8%	468	617	31.8%	45	54	20.0%	710	972	36.9%
<b>Kennebec</b>	383	569	48.6%	1,174	1,687	43.7%	65	42	-35.4%	1,622	2,298	41.7%
Augusta	370	550	48.6%	587	1,078	83.6%	38	24	-36.8%	995	1,652	66.0%
Waterville	13	19	46.2%	587	609	3.7%	27	18	-33.3%	627	646	3.0%
<b>Knox</b>	135	223	65.2%	311	445	43.1%	3	21	600.0%	449	689	53.5%
<b>Lincoln</b>	94	141	50.0%	259	270	4.2%	10	10	0.0%	363	421	16.0%
<b>Oxford</b>	203	355	74.9%	477	845	77.1%	31	24	-22.6%	711	1,224	72.2%
Bridgton	21	39	85.7%	73	123	68.5%	11	4	-63.6%	105	166	58.1%
Rumford	82	130	58.5%	185	353	90.8%	13	10	-23.1%	280	493	76.1%
South Paris	100	186	86.0%	219	369	68.5%	7	10	42.9%	326	565	73.3%
<b>Penobscot</b>	386	1,085	181.1%	1,080	2,279	111.0%	66	74	12.1%	1,532	3,438	124.4%
Bangor	378	1,055	179.1%	844	1,875	122.2%	36	36	0.0%	1,258	2,966	135.8%
Lincoln	4	12	200.0%	75	186	148.0%	11	25	127.3%	90	223	147.8%
Newport	4	18	350.0%	161	218	35.4%	19	13	-31.6%	184	249	35.3%
<b>Piscataquis</b>	25	66	164.0%	38	130	242.1%	18	42	133.3%	81	238	193.8%
<b>Sagadahoc</b>	86	133	54.7%	312	348	11.5%	21	21	0.0%	419	502	19.8%
<b>Somerset</b>	146	187	28.1%	480	431	-10.2%	31	14	-54.8%	657	632	-3.8%
<b>Waldo</b>	95	219	130.5%	286	367	28.3%	16	10	-37.5%	397	596	50.1%
<b>Washington</b>	117	144	23.1%	202	315	55.9%	36	24	-33.3%	355	483	36.1%
Calais	54	70	29.6%	100	141	41.0%	16	8	-50.0%	170	219	28.8%
Machias	63	74	17.5%	102	174	70.6%	20	16	-20.0%	185	264	42.7%
<b>York</b>	721	1,135	57.4%	2,611	4,226	61.9%	133	144	8.3%	3,465	5,505	58.9%
Alfred	671	1,083	61.4%	84	89	6.0%	1	0	-100.0%	756	1,172	55.0%
Biddeford	23	23	0.0%	1,281	2,212	72.7%	56	97	73.2%	1,360	2,332	71.5%
Springvale	18	19	5.6%	750	1,318	75.7%	50	41	-18.0%	818	1,378	68.5%
York	9	10	11.1%	496	607	22.4%	26	6	-76.9%	531	623	17.3%
<b>TOTAL</b>	<b>4,390</b>	<b>7,328</b>	<b>66.9%</b>	<b>12,640</b>	<b>19,192</b>	<b>51.8%</b>	<b>709</b>	<b>807</b>	<b>13.8%</b>	<b>17,739</b>	<b>27,327</b>	<b>54.1%</b>

## Columns

- 2019** Number of cases having at least one charge without a disposition, and without a currently active warrant as of September 10, 2019
- 2021** Number of cases having at least one charge without a disposition, and without a currently active warrant as of September 10, 2021
- % Diff** Percent change in pending cases from 2019 to 2021. Red percentages represent an increase, green percentages a decrease.

Cases are categorized based on the most serious offense charged. Local ordinance violations filed with the courts are not included in the reported counts.

# Pending UCD Cases as of September 10, 2021

UCD	FELONY				MISDEMEANOR				CIVIL VIOLATION			ALL CASES			
	Pending	On DD	No IA	% No IA	Pending	On DD	No IA	% No IA	Pending	No IA	% No IA	Pending	On DD	No IA	% No IA
<b>Androscoggin</b>	<b>583</b>	<b>81</b>	<b>58</b>	<b>9.9%</b>	<b>1,965</b>	<b>314</b>	<b>481</b>	<b>24.5%</b>	<b>17</b>	<b>6</b>	<b>35.3%</b>	<b>2,565</b>	<b>395</b>	<b>545</b>	<b>21.2%</b>
<b>Aroostook</b>	<b>800</b>	<b>82</b>	<b>106</b>	<b>13.3%</b>	<b>1,251</b>	<b>197</b>	<b>280</b>	<b>22.4%</b>	<b>50</b>	<b>32</b>	<b>64.0%</b>	<b>2,101</b>	<b>279</b>	<b>418</b>	<b>19.9%</b>
Caribou	204	17	39	19.1%	339	52	72	21.2%	6	2	33.3%	549	69	113	20.6%
Fort Kent	94	8	11	11.7%	212	52	34	16.0%	17	14	82.4%	323	60	59	18.3%
Houlton	246	23	11	4.5%	355	60	56	15.8%	15	8	53.3%	616	83	75	12.2%
Presque Isle	256	34	45	17.6%	345	33	118	34.2%	12	8	66.7%	613	67	171	27.9%
<b>Cumberland</b>	<b>1,286</b>	<b>138</b>	<b>112</b>	<b>8.7%</b>	<b>3,742</b>	<b>331</b>	<b>822</b>	<b>22.0%</b>	<b>237</b>	<b>161</b>	<b>67.9%</b>	<b>5,265</b>	<b>469</b>	<b>1,095</b>	<b>20.8%</b>
Bridgton	17	0	5	29.4%	332	26	89	26.8%	119	109	91.6%	468	26	203	43.4%
Portland	1,242	132	105	8.5%	3,075	277	650	21.1%	87	42	48.3%	4,404	409	797	18.1%
West Bath	27	6	2	7.4%	335	28	83	24.8%	31	10	32.3%	393	34	95	24.2%
<b>Franklin</b>	<b>101</b>	<b>20</b>	<b>9</b>	<b>8.9%</b>	<b>274</b>	<b>86</b>	<b>60</b>	<b>21.9%</b>	<b>23</b>	<b>20</b>	<b>87.0%</b>	<b>398</b>	<b>106</b>	<b>89</b>	<b>22.4%</b>
<b>Hancock</b>	<b>301</b>	<b>31</b>	<b>26</b>	<b>8.6%</b>	<b>617</b>	<b>107</b>	<b>142</b>	<b>23.0%</b>	<b>54</b>	<b>18</b>	<b>33.3%</b>	<b>972</b>	<b>138</b>	<b>186</b>	<b>19.1%</b>
<b>Kennebec</b>	<b>569</b>	<b>69</b>	<b>47</b>	<b>8.3%</b>	<b>1,687</b>	<b>267</b>	<b>323</b>	<b>19.1%</b>	<b>42</b>	<b>9</b>	<b>21.4%</b>	<b>2,298</b>	<b>336</b>	<b>379</b>	<b>16.5%</b>
Augusta	550	64	44	8.0%	1,078	145	204	18.9%	24	7	29.2%	1,652	209	255	15.4%
Waterville	19	5	3	15.8%	609	122	119	19.5%	18	2	11.1%	646	127	124	19.2%
<b>Knox</b>	<b>223</b>	<b>42</b>	<b>19</b>	<b>8.5%</b>	<b>445</b>	<b>149</b>	<b>106</b>	<b>23.8%</b>	<b>21</b>	<b>7</b>	<b>33.3%</b>	<b>689</b>	<b>191</b>	<b>132</b>	<b>19.2%</b>
<b>Lincoln</b>	<b>141</b>	<b>48</b>	<b>10</b>	<b>7.1%</b>	<b>270</b>	<b>120</b>	<b>53</b>	<b>19.6%</b>	<b>10</b>	<b>2</b>	<b>20.0%</b>	<b>421</b>	<b>168</b>	<b>65</b>	<b>15.4%</b>
<b>Oxford</b>	<b>355</b>	<b>50</b>	<b>55</b>	<b>15.5%</b>	<b>845</b>	<b>167</b>	<b>197</b>	<b>23.3%</b>	<b>24</b>	<b>10</b>	<b>41.7%</b>	<b>1,224</b>	<b>217</b>	<b>262</b>	<b>21.4%</b>
Bridgton	39	5	5	12.8%	123	28	16	13.0%	4	1	25.0%	166	33	22	13.3%
Rumford	130	15	18	13.8%	353	62	102	28.9%	10	2	20.0%	493	77	122	24.7%
South Paris	186	30	32	17.2%	369	77	79	21.4%	10	7	70.0%	565	107	118	20.9%
<b>Penobscot</b>	<b>1,085</b>	<b>20</b>	<b>184</b>	<b>17.0%</b>	<b>2,279</b>	<b>56</b>	<b>831</b>	<b>36.5%</b>	<b>74</b>	<b>56</b>	<b>75.7%</b>	<b>3,438</b>	<b>76</b>	<b>1,071</b>	<b>31.2%</b>
Bangor	1,055	19	174	16.5%	1,875	33	640	34.1%	36	23	63.9%	2,966	52	837	28.2%
Lincoln	12	0	5	41.7%	186	3	105	56.5%	25	24	96.0%	223	3	134	60.1%
Newport	18	1	5	27.8%	218	20	86	39.4%	13	9	69.2%	249	21	100	40.2%
<b>Piscataquis</b>	<b>66</b>	<b>4</b>	<b>12</b>	<b>18.2%</b>	<b>130</b>	<b>2</b>	<b>80</b>	<b>61.5%</b>	<b>42</b>	<b>37</b>	<b>88.1%</b>	<b>238</b>	<b>6</b>	<b>129</b>	<b>54.2%</b>
<b>Sagadahoc</b>	<b>133</b>	<b>26</b>	<b>15</b>	<b>11.3%</b>	<b>348</b>	<b>95</b>	<b>100</b>	<b>28.7%</b>	<b>21</b>	<b>3</b>	<b>14.3%</b>	<b>502</b>	<b>121</b>	<b>118</b>	<b>23.5%</b>
<b>Somerset</b>	<b>187</b>	<b>39</b>	<b>19</b>	<b>10.2%</b>	<b>431</b>	<b>85</b>	<b>142</b>	<b>32.9%</b>	<b>14</b>	<b>5</b>	<b>35.7%</b>	<b>632</b>	<b>124</b>	<b>166</b>	<b>26.3%</b>
<b>Waldo</b>	<b>219</b>	<b>55</b>	<b>19</b>	<b>8.7%</b>	<b>367</b>	<b>132</b>	<b>68</b>	<b>18.5%</b>	<b>10</b>	<b>1</b>	<b>10.0%</b>	<b>596</b>	<b>187</b>	<b>88</b>	<b>14.8%</b>
<b>Washington</b>	<b>144</b>	<b>9</b>	<b>8</b>	<b>5.6%</b>	<b>315</b>	<b>40</b>	<b>56</b>	<b>17.8%</b>	<b>24</b>	<b>12</b>	<b>50.0%</b>	<b>483</b>	<b>49</b>	<b>76</b>	<b>15.7%</b>
Calais	70	4	2	2.9%	141	19	30	21.3%	8	4	50.0%	219	23	36	16.4%
Machias	74	5	6	8.1%	174	21	26	14.9%	16	8	50.0%	264	26	40	15.2%
<b>York</b>	<b>1,135</b>	<b>111</b>	<b>225</b>	<b>19.8%</b>	<b>4,226</b>	<b>673</b>	<b>1,487</b>	<b>35.2%</b>	<b>144</b>	<b>74</b>	<b>51.4%</b>	<b>5,505</b>	<b>784</b>	<b>1,786</b>	<b>32.4%</b>
Alfred	1,083	104	210	19.4%	89	17	22	24.7%	0	0	--	1,172	121	232	19.8%
Biddeford	23	1	7	30.4%	2,212	359	728	32.9%	97	40	41.2%	2,332	360	775	33.2%
Springvale	19	5	5	26.3%	1,318	188	578	43.9%	41	32	78.0%	1,378	193	615	44.6%
York	10	1	3	30.0%	607	109	159	26.2%	6	2	33.3%	623	110	164	26.3%
<b>TOTAL</b>	<b>7,328</b>	<b>825</b>	<b>924</b>	<b>12.6%</b>	<b>19,192</b>	<b>2,821</b>	<b>5,228</b>	<b>27.2%</b>	<b>807</b>	<b>453</b>	<b>56.1%</b>	<b>27,327</b>	<b>3,646</b>	<b>6,605</b>	<b>24.2%</b>

## Columns

- Pending** Number of cases having at least one charge without a disposition, and without a currently active warrant.
- On DD** Number of pending cases with an Order of Deferred Disposition entered.
- No IA** Number of pending cases with a complaint filed, but not having an initial appearance or arraignment held or waived.
- % No IA** Percent of pending cases without an initial appearance/arraignment.

Cases are categorized based on the most serious offense charged. Local ordinance violations filed with the court are not included in the reported counts.



# Change in Pending UCD Cases, September 2020 to September 2021

Pending cases as of September 10 of each year

UCD	FELONY			MISDEMEANOR			CIVIL VIOLATION			ALL CASES		
	2020	2021	% Diff	2020	2021	% Diff	2020	2021	% Diff	2020	2021	% Diff
<b>Androscoggin</b>	550	583	6.0%	1,693	1,965	16.1%	33	17	-48.5%	2,276	2,565	12.7%
<b>Aroostook</b>	610	800	31.1%	1,134	1,251	10.3%	46	50	8.7%	1,790	2,101	17.4%
Caribou	137	204	48.9%	271	339	25.1%	12	6	-50.0%	420	549	30.7%
Fort Kent	68	94	38.2%	195	212	8.7%	7	17	142.9%	270	323	19.6%
Houlton	194	246	26.8%	314	355	13.1%	13	15	15.4%	521	616	18.2%
Presque Isle	211	256	21.3%	354	345	-2.5%	14	12	-14.3%	579	613	5.9%
<b>Cumberland</b>	1,180	1,286	9.0%	3,466	3,742	8.0%	178	237	33.1%	4,824	5,265	9.1%
Bridgton	13	17	30.8%	299	332	11.0%	60	119	98.3%	372	468	25.8%
Portland	1,147	1,242	8.3%	2,818	3,075	9.1%	106	87	-17.9%	4,071	4,404	8.2%
West Bath	20	27	35.0%	349	335	-4.0%	12	31	158.3%	381	393	3.1%
<b>Franklin</b>	98	101	3.1%	273	274	0.4%	9	23	155.6%	380	398	4.7%
<b>Hancock</b>	241	301	24.9%	645	617	-4.3%	69	54	-21.7%	955	972	1.8%
<b>Kennebec</b>	566	569	0.5%	1,609	1,687	4.8%	49	42	-14.3%	2,224	2,298	3.3%
Augusta	550	550	0.0%	1,012	1,078	6.5%	28	24	-14.3%	1,590	1,652	3.9%
Waterville	16	19	18.8%	597	609	2.0%	21	18	-14.3%	634	646	1.9%
<b>Knox</b>	216	223	3.2%	497	445	-10.5%	13	21	61.5%	726	689	-5.1%
<b>Lincoln</b>	127	141	11.0%	288	270	-6.3%	16	10	-37.5%	431	421	-2.3%
<b>Oxford</b>	292	355	21.6%	720	845	17.4%	33	24	-27.3%	1,045	1,224	17.1%
Bridgton	27	39	44.4%	89	123	38.2%	7	4	-42.9%	123	166	35.0%
Rumford	107	130	21.5%	295	353	19.7%	16	10	-37.5%	418	493	17.9%
South Paris	158	186	17.7%	336	369	9.8%	10	10	0.0%	504	565	12.1%
<b>Penobscot</b>	675	1,085	60.7%	2,087	2,279	9.2%	119	74	-37.8%	2,881	3,438	19.3%
Bangor	654	1,055	61.3%	1,644	1,875	14.1%	49	36	-26.5%	2,347	2,966	26.4%
Lincoln	8	12	50.0%	227	186	-18.1%	46	25	-45.7%	281	223	-20.6%
Newport	13	18	38.5%	216	218	0.9%	24	13	-45.8%	253	249	-1.6%
<b>Piscataquis</b>	47	66	40.4%	122	130	6.6%	23	42	82.6%	192	238	24.0%
<b>Sagadahoc</b>	116	133	14.7%	330	348	5.5%	5	21	320.0%	451	502	11.3%
<b>Somerset</b>	180	187	3.9%	508	431	-15.2%	10	14	40.0%	698	632	-9.5%
<b>Waldo</b>	127	219	72.4%	386	367	-4.9%	16	10	-37.5%	529	596	12.7%
<b>Washington</b>	126	144	14.3%	358	315	-12.0%	45	24	-46.7%	529	483	-8.7%
Calais	60	70	16.7%	155	141	-9.0%	15	8	-46.7%	230	219	-4.8%
Machias	66	74	12.1%	203	174	-14.3%	30	16	-46.7%	299	264	-11.7%
<b>York</b>	986	1,135	15.1%	4,231	4,226	-0.1%	191	144	-24.6%	5,408	5,505	1.8%
Alfred	928	1,083	16.7%	83	89	7.2%	0	0	0.0%	1,011	1,172	15.9%
Biddeford	28	23	-17.9%	2,233	2,212	-0.9%	125	97	-22.4%	2,386	2,332	-2.3%
Springvale	19	19	0.0%	1,227	1,318	7.4%	33	41	24.2%	1,279	1,378	7.7%
York	11	10	-9.1%	688	607	-11.8%	33	6	-81.8%	732	623	-14.9%
<b>TOTAL</b>	<b>6,137</b>	<b>7,328</b>	<b>19.4%</b>	<b>18,347</b>	<b>19,192</b>	<b>4.6%</b>	<b>855</b>	<b>807</b>	<b>-5.6%</b>	<b>25,339</b>	<b>27,327</b>	<b>7.8%</b>

## Columns

- 2020** Number of cases having at least one charge without a disposition, and without a currently active warrant as of September 10, 2020
- 2021** Number of cases having at least one charge without a disposition, and without a currently active warrant as of September 10, 2021
- % Diff** Percent change in pending cases from 2020 to 2021. Red percentages represent an increase, green percentages a decrease.

Cases are categorized based on the most serious offense charged. Local ordinance violations filed with the courts are not included in the reported counts.

**From:** [Andrus, Justin](#)  
**To:** [Aria Eee](#); [Julia Sheridan](#)  
**Cc:** [MCILS](#)  
**Subject:** MCILS / Rules  
**Date:** Tuesday, September 14, 2021 12:12:05 PM

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Good afternoon, both of you. I hope you're both doing well and enjoying the last days of summer. I have two areas in which it might be useful to integrate with the Board before proceeding. I'm not sure either is quite an ethics opinion. If so, I can reframe this. I thought starting with both of you might be the most efficient approach. The two areas are:

1. MCILS counsel reporting requirements and Rule 1.6; and,
2. MCILS contract counsel (as opposed to appointed counsel), and third-party payments.

One of my charges has been to oversee the performance of MCILS counsel under our appointed system. This does not tread into attorney regulation. Nothing I do relates to licensure at any direct level (except to the extent that a loss of license leads to action on my part; see e.g. the CLE suspensions). I am charged with considering whether to maintain eligibility for appointments when there are performance or behavioral issues. To discharge this duty, I sometimes have to request information from counsel. I anticipate that MCILS will request legislation that directly requires the disclosure of some client confidential information in the course of our investigative function. In my view, this would slot into the exception to confidentiality set out at MRPC 1.6(b)(7). We have statutory confidentiality, as well as professional responsibility for those of us who are attorneys. I would be happy to discuss our plans with whomever at the Board is the appropriate person, if you'd like to engage in that conversation. I think that would be more effective to discharging our responsibilities than simply change the statute and then obtaining an ethics commission decision, and perhaps amending again.

With respect to the second issue, there is a gap between our statute and the Court rules. We are empowered to provide appointed counsel. We are also empowered to contract counsel. The Court appoints counsel, and in doing so decides who to appoint. The Court rules do not provide oversight of our contract authority, however. I anticipate that we will begin to use our contract counsel prerogative more often to allow us to address the needs of indigent clients. In doing that, I anticipate next that we will develop an engagement agreement for use by MCILS and those contracted counsel. I have addressed the issue of third-party payors from the perspective of counsel, and when I was at the Board. I have not addressed the issue from the payor side however. If either of you has time to play this process out with me, I'd appreciate that opportunity. Again, my goal is to make sure we do something workable and that we don't need to keep changing policies in response to retrospective evaluations.

I appreciate your consideration.

JWA

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Justin W. Andrus  
Executive Director  
Maine Commission on Indigent Legal Services  
(207) 287-3254  
[Justin.andrus@maine.gov](mailto:Justin.andrus@maine.gov)

## An Act to Ensure Constitutionally Adequate Contact with Counsel

To safeguard the attorney-client privilege and the right to adequate counsel, no facility shall intercept, record, monitor, disseminate, or otherwise divulge an oral communication, written communication, electronic communication or wire communication between an inmate and an attorney. Every facility shall ensure that every client has adequate contact with counsel in person and by video.

### I. Calls and Conversations

Every inmate shall have the absolute right to telephone communication with counsel at all necessary times. To facilitate that contact, the following provisions shall be observed:

#### A. Facilities shall not monitor calls or conversations.

1. Within 90 days of the effective date of this statute, every facility shall establish, and thereafter maintain, a policy that provides for telephonic contact between every person in the custody of that facility and that person's counsel that is free from monitoring or recording of any kind, for any reason, and is available at no charge to that person.
2. Within 90 days of the effective date of this statute, every facility to publish publicly and to the Maine Commission on Indigent Legal Services, a copy of its policy.
3. Not less often than once annually, every facility shall review, amend if necessary, and ratify its policy, and republish it publicly and to the Maine Commission on Indigent Legal Services.
4. The policy of each facility shall mandate that any agent, employee, contractor, or vendor of communication services, and any other person or entity for whom the facility is responsible or to whom the facility delegates any obligation shall not record or monitor any client – attorney communication of any kind.
5. Without limiting the liability of any other person or entity, the facility, and its directors, managers, and/or commissioners shall be liable for any breach committed by that agent, employee, contractor, or vendor of communication services, and any other person or entity for whom the facility is responsible or to whom the facility delegates any obligation.

#### B. Client right to unmonitored contact

1. Every facility shall provide the opportunity and venue for each person to have communication with counsel that cannot be monitored or overheard by any other person.

2. Every facility shall provide notice in writing to each person in custody in each instance in which that person's counsel has contacted the facility to request that the client call the counsel. The facility shall maintain a copy of the notice. The failure to maintain a record that notice was provided to the client shall be *prima facie* evidence that notice was not provided.
3. Every person in the custody of a facility shall be afforded the opportunity to contact counsel on request not less frequently than twice daily.
4. Every person in the custody of the State shall be afforded the opportunity to have any in person contact with counsel be unmonitored including, without limitation, in the any courthouse.

C. Documents

1. Every person in the custody of the State shall have the opportunity to review documents with counsel without monitoring.
2. Every person in the custody of the State shall have the opportunity to receive documents from counsel, including, without limitation letters, pleadings, and discovery, and to provide documents to counsel, without interception, monitoring, copying, redaction, or action or review of any kind by the State.

D. Electronic documents

1. An ever-increasing number of documents exist in electronic form exclusively. Clients shall have the right to receive and review electronic documents from counsel without interception, copying, or monitoring.

E. Exclusionary Remedy

1. Any document, information, recording, or any other information of any type, and existing in or on any medium that was obtained in violation of this statute shall be categorically inadmissible in any proceeding, and suppressed and excluded from use or mention by any State actor in any context to any individual, as well as the fruits or any subsequent investigation predicated on the information. The doctrine of inevitable discovery shall not apply to information that has at any point been gathered or obtained in violation of this statute. The doctrine of exigency shall not apply to render harmless any violation of this statute. Inadvertence, negligence, reckless, or mistake shall not excuse a violation of this statute with respect to the exclusionary remedy.

F. Taint

1. Any person who has accessed or received any document, information, recording, or any other information of any type, and existing in or on any medium, that was obtained in violation of this statute, whether or not that person has reviewed the substance of the information, shall be categorically prohibited from participating further in any investigation, prosecution, mental health proceeding, child protective proceeding, or any other matter of any kind, including through formal or informal communications of any kind, except that:
  - a. A person who has the exclusive ability to provide factual information in a proceeding, may provide that information, and only that information at that proceeding subject to an order of a judicial officer other than the judicial officer that will preside over the proceeding that includes a finding as the scope and exclusivity of that testimony.
  - b. Within 90 days of the effective date of this statute, each prosecutorial district, and the Office of the Attorney General, shall establish and publish to the public and to the Maine Commission on Indigent Legal Services its policy for ensuring compliance with the screening requirements of this statute.

#### G. Auditing and Reporting

1. Each facility shall create and retain records of all calls to or from that facility to which a person in the custody of that facility is a party, and shall require all vendors or contractors to whom the facility delegates the communication function to do the same.
2. The records shall at minimum contain the date and time of the call; telephone numbers involved; client name; and, duration.
3. The records shall be maintained for not less than seven years.
4. All records related to a particular person who is, or has been, in custody shall be released to that person or to that person's authorized representative within 30 days on request.
5. All records related to an attorney who has spoken to any person who is, or has been, in custody shall be released to that attorney or to that attorney's authorized representative within 30 days on request.
6. Every facility shall release to the Maine Commission on Indigent Legal Services all call records required to be created or maintained by this statute within 30 days of a written or emailed request made by the Commission.
7. Each facility shall audit its records of telephone calls to or from attorney-listed telephone numbers, and any records of video communications to or from any attorney, not less often

than every 90-days, and shall produce the product of that audit to the Maine Commission on Indigent Legal Services quarterly.

8. In the event that any State actor discovers that any recording or document exists, or that any information has been obtained or gathered in violation of this statute, that State actor must so inform the effected attorney and client, and the Maine Commission on Indigent Legal Services within three business days.

#### H. Initial Appearances, Arraignments, and Specialty Courts

1. Each facility must provide a confidential space in which each client in custody may communicate with counsel prior to any appearance, including any Lawyer for the Day appearances.
2. The duty to provide a confidential space continues during the proceeding to the extent necessary for the client to confer with counsel privately.

#### I. Duty to Engage in Retrospective Review

1. Within 90 days of the effective date of this statute, the Maine Commission on Indigent Legal Services will produce a list of those telephone numbers it can identify to which client calls may have been placed from facilities holding persons in custody for the previous six calendar years.
2. Within 180 days of the effective date of this statute, each facility that has held people in custody in the previous six calendar years shall perform an audit of its call records to determine whether any calls to any numbers on the list provide by the Maine Commission on Indigent Legal Services have been recorded. Each facility shall provide the product of that audit to the Maine Commission on Indigent Legal Services. Each product shall contain sufficient detail to allow the Maine Commission on Indigent Legal Services to identify the attorney telephone number at issue, the client impacted, the date and time of the call, and the duration of the call.
3. The Maine Commission on Indigent Legal Services shall then inform each impacted attorney, who shall then have the duty to advise the impacted client.

#### J. PCR

1. In addition to any existing remedy on post-conviction review, and in addition to any remedy that may be recognized in the future, any person who has had a communication with counsel that was intercepted in any way by the State shall be permitted a two-year

period in which to file a Petition for Post-Conviction Review. The two-year period shall commence on the date that counsel provides notice to the client.

This section shall not be construed to limit existing remedies.

#### K. Penalties

1. Every person or entity who, without permission from all parties to the conversation, eavesdrops on records, transmits, a conversation or communication, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney is guilty of a felony punishable by imprisonment.
2. Every person entity who, without permission from all parties to the conversation, eavesdrops on records, transmits, a conversation or communication, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney is subject to a civil penalty of not more than \$10,000 per occurrence, payable to the Maine Commission on Indigent Legal Services to be applied to non-counsel costs associated with promoting effective representation of indigent clients.
3. Every person aggrieved by the action of any other person who, without permission from all parties to the conversation, eavesdrops on records, transmits, a conversation or communication, or any portion thereof, between a person who is in the physical custody of a law enforcement officer or other public officer, or who is on the property of a law enforcement agency or other public agency, and that person's attorney, shall have a private cause of action against that person or entity, for which attorney's fees and costs shall be awarded to the aggrieved person.



## 94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COURT APPOINTED AND COMMISSION ASSIGNED COUNSEL**

**Summary:** This Chapter establishes a fee schedule and administrative procedures for payment of Court Appointed and Commission assigned counsel. The Chapter sets a standard hourly rate and maximum-fee amounts that trigger presumptive review for specific case types. The Chapter also establishes rules for the payment of mileage and other expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires that, unless an attorney has received prior authorization to do otherwise, all vouchers must be submitted using the MCILS electronic case management system.

**SECTION 1. DEFINITIONS**

1. Court Appointed Attorney. "Court Appointed Attorney" means an attorney licensed to practice law in Maine, designated eligible to receive an appoint to a particular case, and appointed by a Court to represent a particular client in a particular matter.
2. Commission Assigned Counsel. "Commission Assigned Counsel" means an attorney licensed to practice in Maine, designated eligible to be assigned to provide a particular service or to represent a particular client in a particular matter, and assigned to provide that service or represent a client.
- ~~1-3.~~ Attorney. As used in this Chapter "Attorney" means ~~an attorney licensed to practice law in the State of Maine, a Court Appointed Attorney or Commission Assigned Counsel, or both.~~
- ~~2-4.~~ MCILS or Commission. "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
- ~~3-5.~~ Executive Director. "Executive Director" means the Executive Director of MCILS or the Executive Director's decision making designee.

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**SECTION 2. HOURLY RATE OF PAYMENT**

Effective July 1, ~~2015~~2021:

A rate of ~~Sixty-Eighty~~ Dollars (~~\$6080~~.00) per hour is authorized for time spent on an assigned case by an Attorney and billed using the MCILS electronic case management system.

**SECTION 3. EXPENSES**

1. **Routine Office Expenses.** Routine Office expenses are ~~considered to be included in the hourly rate~~will not be paid by MCILS. Routine office expenses, including but not limited to postage, express postage, regular telephone, cell telephone, fax, office overhead,

utilities, secretarial services, routine copying (under 100 pages), local phone calls, parking (except as stated below), and office supplies, etc., will not be reimbursed.

2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), collect phone calls, extensive copying (over 100 pages), printing/copying/ binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties. Necessary parking fees associated with multi-day trials and hearings will be reimbursed, but must be approved in advance by the Executive Director.
3. **Travel Reimbursement.** Mileage reimbursement shall not exceed the applicable State rate. Mileage reimbursement will be paid for travel to and from courts other than an attorney's home district and superior court. Mileage reimbursement will not be paid for travel to and from an attorney's home district and superior courts. Tolls will be reimbursed, except that tolls will not be reimbursed for travel to and from attorney's home district and superior court. All out-of-state travel or any overnight travel must be approved by the MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.
4. **Itemization of Claims.** Claims for all expenses must be itemized and include documentation. Claims for mileage shall be itemized and include the start and end points for the travel in question.
5. **Discovery Materials.** The MCILS will reimburse only for one set of discovery materials. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel forthwith.
6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, which historically required preapproval by the Court before July 1, 2010 (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) are required to be approved in advance by MCILS. Funds for third-party services will be provided by the MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with the MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** In criminal and juvenile cases, witness, subpoena, and service fees will be reimbursed only pursuant to M.R. Crim. P. 17(b). It is unnecessary for counsel to advance these costs, and they shall not be included as a voucher expense. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. § 421. The same procedure shall be followed in civil cases.

#### **SECTION 4. ~~MAXIMUM FEES~~ PRESUMPTIVE REVIEW**

Vouchers submitted for amounts greater than the applicable maximum in excess of the applicable trigger for presumptive review fees outlined in this section will not be approved for payment, except as approved by after review by the Executive Director or designee. Vouchers submitted in

excess of the trigger for presumptive review must be accompanied by an explanation of the time spent on the matter. The explanation shall be set forth in the notes section of a voucher or invoice.

## 1. Trial Court Criminal Fees

A. Maximum fees Triggers for presumptive review, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the ~~maximum fee~~ trigger limit.

A.B. The following triggers for presumptive review shall be in force on the date this rule becomes effective as amended. Thereafter, the trigger limits may be amended by memorandum from the Executive Director or designee. Amended trigger limits will become effective upon posting to the MCILS website.

Effective July 1, 2015:

- 1) **Murder.** ~~Fee to be set by the Executive Director on a case-by-case basis.~~ All murder cases shall trigger presumptive review.
- 2) **Class A.** ~~\$3,000~~ 4,000
- 3) **Class B and C (against person).** ~~\$2,250~~ 3,500
- 4) **Class B and C (against property).** ~~\$1,500~~ 2,500
- 5) **Class D and E (Superior or Unified Criminal Court).** ~~\$750~~ 1,500
- 6) **Class D and E (District Court).** ~~\$540~~ 100
- 7) **Post-Conviction Review.** ~~\$1,200~~ 3,000
- 8) **Probation Revocation.** ~~\$540~~ 1,500
- 9) **Miscellaneous (i.e. witness representation on 5<sup>th</sup> Amendment grounds, etc.)** ~~\$540~~ 1,000
- 10) **Juvenile.** ~~\$540~~ 1,500

B.C. In cases involving multiple counts against a single defendant, the maximum fee shall be that which applies to the most serious count. In cases where a defendant is charged with a number of unrelated offenses, Counsel ~~is expected to~~ shall coordinate and consolidate services as much as possible.

C.D. Criminal and juvenile cases will include all proceedings through disposition as defined in Section 5.1 ~~A~~ below. Any subsequent proceedings, such as probation revocation, will require new application and appointment.

~~D.E.~~ When doing so will not adversely affect the attorney-client relationship, Commission assigned counsel are urged to limit travel and waiting time by cooperating with each other to stand in at routine, non-dispositive matters by having one attorney appear at such things as arraignments and routine nontestimonial motions, instead of having all Commission assigned counsel in an area appear.

E.F. Upon written request to MCILS, ~~assistant co-~~counsel may be appointed in a murder case or other complicated cases, or to provide for mentorship:

- 1) the duties of each attorney must be clearly and specifically defined and counsel must avoid unnecessary duplication of effort;
- 2) each attorney must submit a voucher to MCILS. Counsel should coordinate the submission of voucher so that they can be reviewed together. Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each attorney.

## 2. District Court Child Protection

- A. Maximum fees, excluding any itemized expenses, for Commission-assigned counsel in child protective cases are set in accordance with the following schedule:

Effective July 1, 2015:

- 1) **Child protective cases** (each stage). \$900
- 2) **Termination of Parental Rights** (with a hearing). \$ 1,260

- B. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit. Each child protective stage ends when a proceeding results in a court order as defined in Section 5.1.B below. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the maximum fee. A separate voucher must be submitted at the end of each stage.

## 3. Other District Court Civil

- A. Maximum fees, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the maximum fee limit.

Effective July 1, 2015:

- 1) **Application for Involuntary Commitment.** ~~\$420~~1,000
- 2) **Petition for Emancipation.** ~~\$420~~1,500

3) **Petition for Modified Release Treatment.** ~~\$420-1,000~~

4) **Petition for Release or Discharge.** ~~\$420-1,000~~

4. **Law Court**

~~A. Maximum fees, excluding any itemized expenses, for Commission assigned counsel are set in accordance with the following schedule:~~

~~Effective July 1, 2015:~~

~~1) Appellate work following the grant of petition for certificate of probable cause. \$1,200~~

~~B.A. Expenses shall be reimbursed for printing costs and mileage to oral argument at the applicable state rate. Vouchers for payment of counsel fees and expenses must be submitted, including an itemization of time spent. All appeals shall trigger presumptive review.~~

**SECTION 5: MINIMUM FEES**

~~Effective July 1, 2015:~~

1. Attorneys may charge a minimum fee of ~~\$150.00~~ 2.5 hours for appearances as Lawyer of the Day in specialty or diversionary courts or programs, or for serving as Commission Assigned Counsel. A single minimum fee may be charged of each sessions for which the attorney serves. If an attorney serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one session. If an attorney serves as Lawyer for the Day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two session. Vouchers seeking the minimum fee ~~shall~~ must show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged per session regardless of the number of clients consulted at the request of the court.

**SECTION 6: ADMINISTRATION**

1. Vouchers for payment of counsel fees and expenses shall be submitted within ninety days of a terminal case event . Lawyer of the Day and specialty courts shall be billed within 90 days of the service provided. Vouchers not submitted within 90-days of a terminal event cannot be paid, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of

counsel. Counsel are encouraged to submit interim vouchers not more often than once every 90 days per case. Counsel may request reconsideration of a voucher rejected between April 1, 2021 and the effective date of this rule if that voucher would be payable under this rule.

Terminal case events are:

- 1) The withdrawal of counsel
- 2) The entry of dismissal of all charges or petitions
- 3) Judgment in a case, or
- 4) Final resolution of post-judgment proceedings

The 90 day period for submitting a voucher shall run from the date that a Order, Judgement, or Dismissal is docketed.

~~1. Vouchers for payment of counsel fees and expenses shall be submitted within ninety days after the date of disposition of a criminal, juvenile or appeals case, or completion of a stage of a child protection case resulting in an order. Vouchers submitted more than ninety days after final disposition, or completion of a stage of a child protection case, shall not be paid.~~

~~A. For purposes of this rule, "disposition" of a criminal or juvenile case shall be at the following times:~~

- ~~1) entry of judgment (sentencing, acquittal, dismissal, or filing);~~
- ~~2) upon entry of a deferred disposition;~~
- ~~3) upon issuance of a warrant of arrest for failure to appear;~~
- ~~4) upon granting of leave to withdraw;~~
- ~~5) upon decision of any post trial motions;~~
- ~~6) upon completion of the services the attorney was assigned to provide (e.g., mental health hearings, "lawyer of the day," bail hearings, etc.); or~~
- ~~7) specific authorization of the Executive Director to submit an interim voucher.~~

~~B. For purposes of this rule, "each stage" of a child protection case shall be:~~

- ~~1) Order after Summary Preliminary hearing or Agreement~~
- ~~2) Order after Jeopardy Hearing~~
- ~~3) Order after each Judicial Review~~

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- ~~4) Order after a Cease Reunification Hearing~~
- ~~5) Order after Permanency Hearing~~
- ~~6) Order after Termination of Parental Rights Hearing~~
- ~~7) Law Court Appeal~~

2. ~~Unless otherwise authorized in advance, all~~All vouchers must be submitted using the MCILS electronic case management program and comply with all instructions for use of the system.
3. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.
4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and ~~supplied upon request, appended to the voucher.~~
5. Legal services provided in the district court for cases subsequently transferred to the superior court shall be included in the voucher submitted to the MCILS at disposition of the case.

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STATUTORY AUTHORITY: 4 M.R.S. §§ 1804(2)(F), (3)(B), (3)(F) and (4)(D)

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

July 1, 2013 – filing 2013-150 (EMERGENCY)

October 5, 2013 – filing 2013-228

July 1, 2015 – filing 2015-121 (EMERGENCY)

June 10, 2016 – filing 2016-092

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2021 ME 43

Docket: Yor-20-314

Argued: June 3, 2021

Decided: September 14, 2021

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

STATE OF MAINE

v.

BRUCE AKERS

PER CURIAM

[¶1] Bruce Akers appeals from a judgment of conviction of intentional or knowing murder, 17-A M.R.S. § 201(1)(A) (2021), entered in the trial court (York County, *Douglas, J.*) following a jury trial. He argues that the court erred when it denied his motion to suppress physical evidence and statements that were obtained in violation of his rights under the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and article I, sections 6 and 6-A of the Maine Constitution. We agree with Akers and vacate the judgment and remand for further proceedings.



## I. BACKGROUND

[¶2] Viewing the evidence in the light most favorable to the court's order on the motion to suppress, the record supports the following facts. *See State v. Prescott*, 2012 ME 96, ¶ 2, 48 A.3d 218.

[¶3] On June 9, 2016, Akers called his local sheriff's office and spoke with a sergeant. Akers reported that he was missing some items and suspected that his neighbor had stolen them; Akers rejected the sergeant's offer to come out to his property. On June 10, at around 6:45 p.m., the sergeant learned that Akers's neighbor—whom we will refer to as “the victim”—had been reported as missing. The sergeant and a deputy went out to the victim's home and spoke with multiple family members. The officers learned that the family had been unable to contact the victim since the evening before and were worried because he had been depressed and possibly suicidal. The victim's daughter reported that he and Akers had a longstanding feud related to their properties.

[¶4] The sergeant and deputy searched the victim's house and conducted a grid search of the surrounding woods; in doing so, they came within sight of the abutting properties owned by Akers and another neighbor. The victim and Akers shared a common driveway near the road, but the driveway eventually split off onto their respective properties. Where the driveway split off toward

Akers's property, there was a sign reading "Private Driveway Please Do Not Enter."

[¶5] After walking the victim's property, the officers walked along a footpath through brush to Akers's property and called out for Akers but received no response. The path led them to two structures—a red trailer and a white camper—close to one another and surrounded by piles of scrap metal and other materials. A red truck was parked in the driveway. The sergeant heard a noise coming from the camper but the noise stopped; he noticed that the camper was padlocked from the outside and had a tarp hanging over the door. He knocked on the door and no one responded, and he peered in through a window but could not see anything.

[¶6] Meanwhile, the deputy inspected the red trailer and noticed that it was also padlocked from the outside; he looked inside but could not see anything. The sergeant knew that Akers raised dogs, so he and the deputy walked down another footpath to look for the dogs, thinking that Akers might be with the dogs, and they continued to call out for Akers. They found the dogs alone, so they returned to the trailer and camper. Although the sergeant thought that he heard a noise, similar to the noise he had heard before, coming

from the camper, the deputy did not hear it. The officers returned to the victim's property, put police tape on the door, and left to attend to other calls.

[¶7] Approximately five hours later, just after midnight on June 11, the sergeant and deputy returned to check on the victim's property, where they encountered an upset family member. After they called another officer for assistance, and also called the family member's girlfriend to pick him up, the family member left. The officers noted that the police tape was still intact, indicating that the victim had not returned. Next, the three officers walked to Akers's property along the footpath using flashlights to light the way, announcing their presence and calling out for Akers. The officers heard no response, but saw that the red truck was still parked in the driveway.

[¶8] The sergeant again heard a noise coming from the camper, but this time it was a loud "thud" that the sergeant testified sounded like it was made by "something bigger than any small animal" and may have been caused by a person. The deputy also heard the noise. At this point, the officers did not know that the sound came from Akers, they had not located the victim, and the door was still padlocked from the outside. The sergeant and officer were at the front of the camper where there was a large window with a hinged cover over the window. They lifted the cover and shined a flashlight to illuminate the interior

of the camper. The sergeant saw a person in a sleeping bag inside the camper begin to get up.

[¶9] The sergeant recognized the man inside as Akers; he called Akers by name, identified himself, told Akers “I need to talk to you,” and asked Akers to come outside. Akers acceded to the directive to come outside and talk but told the officers that he first needed to get dressed and gather some items and told them he was unarmed. Akers was unable to find the keys to unlock the padlock and said he would have to force the door open by prying it with a hammer from the inside. After that attempt proved unsuccessful, Akers asked the sergeant to help, and the sergeant successfully pried off the padlock. The officers lifted the tarp from the door and Akers came outside.

[¶10] At this point, the sergeant initiated an audio recording with his cell phone. He asked Akers which way Akers wanted to go and used the flashlight to light the way to a flatbed trailer. Akers sat down on the trailer, and the sergeant sat next to him as the other two uniformed officers remained standing about ten feet away. Portions of the exchange are as follows:

- The sergeant asked, “Bruce, where can we have a seat and talk for a minute? We got some business to take care of, right?” Akers responded, “I guess so.”

- The sergeant asked if he knew why they were there, and Akers replied, “Yeah. Probably. Yeah.”
- The sergeant asked, “Where is he?” Akers did not respond, so the sergeant asked, “Can I ask you something?” and Akers said, “Yeah.”
- The sergeant asked, “Is he alive?” and Akers shook his head no. The sergeant followed up, “Can you bring us to him?” and Akers said, “I can.”
- The sergeant told Akers they would not ask any more questions and asked Akers to stand to be searched for weapons.
- Akers stated, “The guy just wouldn’t leave me alone.”

[¶11] The sergeant told Akers they were going to take him to the police substation where an investigator would speak further with him. The sergeant read Akers his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), and confirmed that Akers understood. After that, Akers stated that he did not want to answer any questions. The sergeant and the deputy left to retrieve their car while the other officer stayed with Akers. While the others were gone, the remaining officer initiated a conversation with Akers:

- The officer stated, “We’ll get you through this, man, I promise, OK?” to which Akers responded, “Yep. Thank you. It’s nothing I wanted to ever happen. I’m the most peaceful guy you ever met.”

- The officer said, “Sometimes people put situations in our court and we have no choice but to . . . how we handle them. I get it. I totally get it.”

The sergeant and deputy returned with the car, and Akers and the deputy sat in the backseat.

[¶12] At one point, Akers said, without prompting, “It’s not the best day of my life.” During the car ride, the three discussed Akers’s dogs and what they might need. Then Akers said, again without prompting, “I actually would have called you guys right away but I wanted a few hours of freedom, and [to] enjoy it. I can’t say that I enjoyed it that much . . . .” After they arrived at the substation, a detective came and read Akers his *Miranda* rights again, and Akers asked for a lawyer before answering questions.

[¶13] Later that morning, a search warrant authorizing a search of Akers’s residence, property, and vehicles was issued based on an affidavit prepared by the detective. The affidavit relied in part on statements Akers made to the officers. A search of Akers’s property resulted in the discovery of the victim’s body and a machete with traces of the victim’s blood on it.

[¶14] A grand jury indicted Akers for intentional or knowing murder in violation of 17-A M.R.S. § 201(1)(A). Akers filed a motion to suppress, asserting that evidence, including the statements he made to the officers after exiting the

camper, had been unlawfully obtained as a result of the officers' warrantless search of his property. At the motion hearing, both the sergeant and the deputy testified. The court admitted in evidence a map depicting the victim's and Akers's properties, the search warrant affidavit, the evidence log, a portion of the June 11 audio recording, and several photographs of Akers's property.

[¶15] On April 2, 2019, the court denied Akers's motion to suppress. The court determined that the searches around 7:00 p.m. on June 10 and midnight on June 11 were not unreasonable, that suppression would not be justified even if they were, and that Akers's statements were made voluntarily. It also determined that the emergency aid doctrine supported the searches because the officers were looking for a missing person, believed Akers might have had pertinent information, and heard a noise inside the camper that was reasonable to investigate. Moreover, the court concluded that, even if the searches were unlawful, suppression was not justified because it would not serve the purposes of the exclusionary rule.

[¶16] Next, with respect to Akers's arguments that his statements should be suppressed, the court determined that he was not in custody when he made the first statements to the sergeant upon leaving his camper, that his later statements after he was in custody were made spontaneously, and that his

statements were not the product of coercive or deceptive practices by the officers. The court also concluded that, even if Akers had been in custody at the time of the initial statements, the questions did not violate *Miranda* because they fell within the public safety exception. Finally, it concluded that based on the totality of the circumstances Akers's statements were made voluntarily.

[¶17] In December 2019, Akers filed a motion for sanctions and to reopen the suppression hearing. He argued that the State failed to disclose potential impeachment information about the three officers who came to his property on June 11, as well as a fourth officer involved in the investigation, in violation of its obligations pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). Akers highlighted an email the sergeant wrote to other officers regarding the suppression hearing. He requested access to personnel records, internal affairs investigation records, sealed exhibits from a Maine Labor Relations Board case, and correspondence regarding the truthfulness of the officers. He also asked to reopen the suppression hearing to cross-examine the testifying officers regarding their truthfulness.

[¶18] Only the email correspondence is relevant to this appeal. In 2017, the sergeant sent an email to other officers to schedule a meeting to “prep



together” for a hearing on the motion to suppress in this case. The sergeant’s email included links to webpages discussing *Miranda* and the Bill of Rights “as a reminder,” and stated, “If the defense wins this the entire case could get dismissed.”

[¶19] The court held a nontestimonial hearing on Akers’s motion for sanctions and to reopen the suppression hearing, and ultimately denied the motion in relevant part. It determined that most of the requested information was not material subject to *Giglio*; some information might be subject to disclosure depending on how the State proceeded; and finally that the sealed exhibits would be submitted for *in camera* review.

[¶20] Regarding the sergeant’s email, the court found that no meeting had occurred between the officers and that “[t]here [was] no basis in the record before the court to support a different conclusion,” and thus the email did not amount to *Giglio* material. Its finding was based on an affidavit from the sergeant. Moreover, orally on the record at the motion hearing, the court stated that “[a]ny inconsistencies between the [police] reports and [the officers’] testimony at the suppression hearing would have . . . and could have . . . and most likely was, to some extent, explored at that hearing through cross-examination. Counsel had all that information.”

[¶21] After a five-day trial in January 2020, a jury found Akers guilty of intentional or knowing murder. In November 2020, the court sentenced him to thirty-eight years' imprisonment. Akers timely appealed from the judgment. *See* 15 M.R.S. § 2115 (2021); M.R. App. P. 2B(b)(1).

## II. DISCUSSION

### A. The Searches

[¶22] Akers argues that the trial court erred when it denied his motion to suppress based on the Fourth Amendment to the U.S. Constitution. He claims that the officers twice conducted illegal, warrantless searches: first when they entered the curtilage of his home around midnight on June 11, and again moments later when they lifted the window cover on his camper to peer inside. He asserts that the fruits of these unlawful searches, including his statements and the physical evidence later discovered, should be suppressed because their discovery was not attenuated from the violation of his rights. The State argues that the officers' entry into Akers's curtilage was lawful and that the emergency aid doctrine permitted them to lift the window cover on the camper.

[¶23] We apply two standards of review to the denial of a motion to suppress; we review the factual findings for clear error and the legal issues *de novo*. *State v. Cote*, 2015 ME 78, ¶ 9, 118 A.3d 805. Where, as here, the facts

are not in dispute, we review the court's denial of a motion to suppress de novo. *State v. Bennett-Roberson*, 2019 ME 49, ¶ 9, 206 A.3d 303.

[¶24] The Fourth Amendment provides in relevant part that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. “The very core of this guarantee is the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Caniglia v. Strom*, 593 U.S. \_\_\_, 141 S. Ct. 1596, 1599 (2021) (quoting *Florida v. Jardines*, 569 U.S. 1, 6 (2013)). This protection extends to the curtilage of a home. *Collins v. Virginia*, 584 U.S. \_\_\_, 138 S. Ct. 1663, 1670 (2018).

[¶25] A violation of the Fourth Amendment occurs when a search by the government “violates a subjective expectation of privacy that society recognizes as reasonable.” *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring)). “When the Government obtains information by physically intruding on persons, houses, papers, or effects, a search within the original meaning of the Fourth Amendment has undoubtedly occurred.” *Jardines*, 569 U.S. at 5 (quotation marks omitted).

[¶26] The language of the Fourth Amendment expressly requires that all searches and seizures be reasonable and that any warrants permitting searches be based on probable cause and be limited in scope. *Kentucky v. King*, 563 U.S. 452, 459 (2011). The Fourth Amendment does not explicitly state when a search warrant must be obtained, but the United States Supreme Court has “often said that searches and seizures inside a home without a warrant are presumptively unreasonable.” *Id.* (quotation marks omitted). Nonetheless, the Court has also recognized that “the ultimate touchstone of the Fourth Amendment is reasonableness.” *Id.* (quotation marks omitted). “In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.” *Riley v. California*, 573 U.S. 373, 382 (2014).

[¶27] As an initial matter, it is clear that the officers’ actions amounted to a warrantless search of Akers’s property because their entry into the curtilage of his home and thereafter lifting the window cover were intrusions into areas where Akers had a subjective expectation of privacy that society would recognize as reasonable. *See Kylo*, 533 U.S. at 33. However, the Fourth Amendment proscribes only *unreasonable* searches, *see* U.S. Const. amend. IV; *King*, 563 U.S. at 459, and thus we must consider whether those

searches were unreasonable, and, if so, whether suppression of the evidence is warranted.

### **1. Curtilage**

[¶28] The circumstances of the officers' visit to Akers's property were unusual and concerning: three officers arrived in the middle of the night, followed a footpath rather than walking up the driveway, and did not immediately attempt to knock on the door to the camper to contact Akers. We conclude that this conduct, absent a warrant, was not reasonable. The officers were investigating a missing person who, importantly, lived elsewhere, and there is no explanation for why the officers took a footpath around midnight in order to have a conversation with the missing person's neighbor. They could have waited until the morning and come down the driveway to knock on Akers's door to speak with him, especially given that the officers had left the missing person's home to address other matters for several hours earlier that day. The time delay also suggests that, had they had probable cause to believe that searching Akers's property would provide information about criminal activity, the officers had ample time to obtain a warrant. It is further unclear why they did not approach the door of the camper and knock in their efforts to reach Akers, but instead approached from different sides of the camper.

Considering the circumstances objectively, we conclude that the officers conducted an unlawful and unreasonable search of the curtilage of Akers's home.

[¶29] The State argues that the officers' entry into Akers's curtilage was reasonable, asserting that their actions were an extension of their search for a missing person, which included an attempt to speak with Akers about his missing neighbor.

[¶30] Two analogous cases show that the officers' actions in purportedly searching for a missing person were unreasonable. In the first, the United States Supreme Court held that officers may not ordinarily search the home of a third party when executing an arrest warrant. *See Steagald v. United States*, 451 U.S. 204, 220-22 (1981). In the second, the Massachusetts Appeals Court determined that the emergency aid doctrine did not apply where officers entered the apartment of a missing woman. *Commonwealth v. Bates*, 548 N.E.2d 889, 890-93 (Mass. App. Ct. 1990). In that case, the police received a report of a missing person and more than three hours later officers went to her apartment to look for her. *Id.* at 891. There was no response when they knocked on the door but hearing the television on inside, and finding that the door was unlocked, they let themselves in. *Id.* Upon entry, they saw the

defendant lying on the couch on top of a handgun and ammunition. *Id.* He was subsequently convicted on charges of unlawful possession of a firearm and ammunition. *Id.* at 890. The court determined that the passage of time plus the lack of a reason for the officers' failure to obtain a warrant prevented the application of the emergency aid doctrine. *Id.* at 892.

[¶31] The circumstances here, where the officers were not searching the property of the missing person and were not looking for the missing person—recall that they were calling out for Akers—present a stronger case that the search of Akers's curtilage was unreasonable. Officers are not permitted to enter upon and conduct a warrantless search of property that they would otherwise be unlicensed to enter merely because they are trying to locate a missing person.

[¶32] We also reject the State's argument that the officers' entry was supported by an implied invitation because they used a "recognized access route[] reasonable under the circumstances." *State v. Trusiani*, 2004 ME 107, ¶ 17, 854 A.2d 860 (quotation marks omitted). In fact, when entering onto Akers's property, the officers used a footpath between the two private properties. Their entry occurred after Akers had expressly declined an offer from the sergeant to come out to his property during their June 9 phone call

and there were no indications that visitors were welcome at the property—rather, a sign on Akers’s driveway read “Private Driveway Please Do Not Enter.” Likewise, their entry cannot be justified as a so-called “knock-and-talk” because they did not approach and knock on the door to request to speak, and their conduct amounted to “more than any private citizen might do.” *King*, 563 U.S. at 469-70. The State concedes that the officers’ actions cannot be justified by the exigent circumstances doctrine because they lacked probable cause. *See Kirk v. Louisiana*, 536 U.S. 635, 638 (2002).

[¶33] Because the officers had no warrant and because no exceptions to the warrant requirement apply, the search of Akers’s curtilage was unreasonable. *See Riley*, 573 U.S. at 382. We next consider whether the officers’ lifting of the window cover was also a violation of Akers’s Fourth Amendment rights.

## **2. Window Cover**

[¶34] For the same reasons discussed above with respect to the entry into the curtilage, the officers’ lifting of the window cover was a warrantless search. Thus, unless some exception to the warrant requirement applies, their conduct must be viewed as a violation of Akers’s constitutional right to be free from unreasonable searches.



[¶35] Akers asserts that no exception to the warrant requirement exists and that it was unreasonable for the officers to lift the window cover to allow them to peer inside his home. The State argues that the officers' actions were not unreasonable and that they were permitted to gaze into the otherwise private space pursuant to the emergency aid doctrine.

[¶36] “[L]aw enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *Brigham City v. Stuart*, 547 U.S. 390, 403 (2006). However, officers cannot rely on the emergency aid doctrine when they are not lawfully within the area where the alleged emergency arises. *See King*, 563 U.S. at 462-63. “Th[e] emergency aid exception does not depend on the officers’ subjective intent or the seriousness of any crime they are investigating when the emergency arises. It requires only an objectively reasonable basis for believing that a person within the house is in need of immediate aid.” *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) (alterations, citations, and quotation marks omitted).

[¶37] After the officers completed their unprivileged entry into the curtilage of Akers’s home for the purpose of questioning him, and not for the purpose of conducting a visual search for the victim, they heard a thud from

inside the camper. At that time, the officers were aware of the following information: the camper was padlocked from the outside, the victim was still missing, and Akers and the victim had a somewhat contentious relationship at times.

[¶38] The only fact at that time giving rise to the alleged emergency was the sound of a thud—a sound that is generally not unusual coming from inside a residence or other structure, and does not, by itself, suggest the existence of an emergency. The officers did not observe an altercation or injured person inside, and did not describe the sound as any sort of a cry for assistance. *See, e.g., Fisher*, 558 U.S. at 48; *Brigham City*, 547 U.S. at 406. We conclude that the officers did not have an objectively reasonable basis for believing that a person inside the camper needed immediate aid. *See Fisher*, 558 U.S. at 47. Accordingly, the officers' act of lifting the window cover and looking inside was not justified by the emergency aid doctrine and therefore was an unreasonable search under the Fourth Amendment.

### **3. Suppression**

[¶39] Having determined that the officers acted unreasonably in searching Akers's home and curtilage, we must decide whether suppression of the evidence was warranted. Akers argues that the statements he made to the

officers after exiting his camper as well as the later physical evidence discovered after a warrant was obtained to search his property should be suppressed.

[¶40] “The exclusionary rule . . . excludes from a criminal trial any evidence seized from the defendant in violation of his Fourth Amendment rights. Fruits of such evidence are excluded as well.” *Alderman v. United States*, 394 U.S. 165, 171 (1969) (citations omitted). The exclusionary rule “is a prudential doctrine created by th[e] [United States Supreme] Court to compel respect for the constitutional guaranty.” *Davis v. United States*, 564 U.S. 229, 236 (2011) (citation and quotation marks omitted). The rule’s purpose “is to deter future Fourth Amendment violations,” and it will be applied “to situations in which this purpose is thought most efficaciously served.” *Id.* at 236-37 (quotation marks omitted). Exclusion may effectively “compel respect for the constitutional guaranty,” but we also must consider “the substantial social costs” of exclusion, both on “the judicial system and society at large.” *Id.* (quotation marks omitted). “For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs.” *Id.* at 237.

[¶41] In *Brown v. Illinois*, the United States Supreme Court discussed at length the application of the exclusionary rule. 422 U.S. 590 (1975). It

explained that *Miranda* warnings preceding a defendant's statement do not necessarily, and cannot alone, purge the taint of an illegal search or seizure under the Fourth Amendment but that such warnings are "an important factor . . . in determining whether the confession is obtained by exploitation of an illegal arrest." *Id.* at 602-03. Rather, "[t]he voluntariness of the statement is a threshold requirement," and then courts must consider "[t]he temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct." *Id.* at 603-04 (citation and footnotes omitted).

[¶42] Here, the court erred when it determined that suppression of evidence obtained as a result of the investigatory search of Akers's curtilage and camper was not warranted. All three of the *Brown* factors support suppression of Akers's confession, as well as the searches. Certainly there is close temporal proximity between the searches and the statements Akers made to the officers—only a matter of minutes passed between the searches and the original statements, which formed part of the basis for the issuance of the search warrant. Likewise, there were essentially no intervening circumstances: the officers intruded upon Akers's curtilage and peered inside his home and instructed him to come out and speak with them. Akers complied and made the

incriminating statements in response to questions posed by the sergeant. He was immediately taken to a substation where he was interviewed by a detective whose affidavit supported the issuance of the warrant to search Akers's property.<sup>1</sup> The entire sequence of events during which Akers made the inculpatory statements—from leaving his home until he arrived at the substation—took less than thirty minutes.

[¶43] The third factor also favors suppression. “The exclusionary rule exists to deter police misconduct” and “favor[s] exclusion only when the police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant.” *Utah v. Strieff*, 579 U.S. \_\_\_, 136 S. Ct. 2056, 2063 (2016). There is significant deterrence value in this case because the officers entered upon Akers's posted property on repeat occasions—he had told a sergeant the previous day that he did not want officers coming to his property—over the course of their investigation of a missing person who did not live on Akers's property. Without explanation, they again entered upon his property around midnight and searched his property for investigatory purposes.

[¶44] To be sure, the societal and judicial costs of suppression are significant here. If the officers' conduct in conducting nonconsensual

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<sup>1</sup> Akers made no additional inculpatory statements to the detective at the substation.

investigatory searches of Akers's curtilage and camper without probable cause after midnight and insisting on Akers coming out of his residence to be interviewed was not flagrant, it was undoubtedly purposeful and it cannot be excused, and the deterrence benefits outweigh the costs of suppression. *See Davis*, 564 U.S. at 237. We therefore conclude that suppression was warranted under the circumstances, and the court erred when it denied Akers's motion on this ground.

#### **B. Voluntariness of Statements**

[¶45] A separate ground for suppressing evidence of Akers's inculpatory statements, apart from the searches, is that they were not voluntary. Akers asserts that the trial court erred when it denied his motion to suppress based on the Fifth and Fourteenth Amendments to the U.S. Constitution and sections 6 and 6-A of article I of the Maine Constitution. He asserts that the court misapplied the law and that the totality of the circumstances favors suppressing his statements because they were involuntary.

[¶46] "A confession is admissible in evidence only if voluntary." *State v. Coombs*, 1998 ME 1, ¶ 10, 704 A.2d 387. "The determination of whether a statement is voluntary is a mixed question of fact and law, such that the court's factual findings are reviewed for clear error and its application of legal

principles to those findings is reviewed de novo.” *State v. Bryant*, 2014 ME 94, ¶ 15, 97 A.3d 595. “Although findings of fact are reviewed deferentially, the application of legal principles to those findings is reviewed independently.” *Coombs*, 1998 ME 1, ¶ 8, 704 A.2d 387. Accordingly, “the dispositive issue of the voluntariness of a confession, although based on all the facts and circumstances surrounding the confession, is a legal issue warranting independent appellate review.” *Id.* ¶ 9.

[¶47] The Maine Constitution requires the State to meet a higher standard for demonstrating voluntariness than does the federal constitution. *See State v. Rees*, 2000 ME 55, ¶¶ 5-7, 748 A.2d 976; *see also* Me. Const. art. I, §§ 6, 6-A; U.S. Const. amends. V, XIV, § 1. The Maine Constitution reflects “the primacy of the value . . . of safeguarding the right of an individual . . . not to be compelled to condemn himself by his own utterances.” *Rees*, 2000 ME 55, ¶ 8, 748 A.2d 976 (alteration and quotation marks omitted). Based upon this higher standard, the State has the burden to establish beyond a reasonable doubt that Akers’s statements were voluntary. *State v. Carrillo*, 2021 ME 18, ¶ 14, 248 A.3d 193.

To be voluntary, a confession must be the free choice of a rational mind, fundamentally fair, and not a product of coercive police conduct. In deciding whether a statement was voluntary, we consider the totality of the circumstances, including both external

and internal factors, such as: the details of the interrogation; duration of the interrogation; location of the interrogation; whether the interrogation was custodial; the recitation of *Miranda* warnings; the number of officers involved; the persistence of the officers; police trickery; threats, promises or inducements made to the defendant; and the defendant's age, physical and mental health, emotional stability, and conduct.

*Bryant*, 2014 ME 94, ¶ 16, 97 A.3d 595 (citation and quotation marks omitted).

[¶48] Considering the totality of the circumstances, *see id.*, we conclude that the State has failed to establish beyond a reasonable doubt that Akers's self-incriminating statements were made voluntarily. The court found that Akers's statements were voluntary because he presented in the audio recording as "alert, composed, stable, aware of his situation, and oriented to time and place." The court's findings, however, neglected to consider that three officers approached Akers after midnight, after having visited his property multiple times over the course of the day, peered into his home, and roused him from his sleeping bag. Although Akers was in a familiar and noncustodial setting, there were three uniformed and armed officers outside his home in the middle of the night, one of whom was directing him to come outside. *See id.* ¶ 17. The court failed to take account of the lateness of the hour and the manner of his awakening. *See Kaupp v. Texas*, 538 U.S. 626, 631-33 (2003) (explaining that officers "rousing an adolescent out of bed in the middle of the night with the



words ‘we need to go and talk’” favored suppressing the defendant’s confession); *United States v. Reeves*, 524 F.3d 1161, 1168-69 (10th Cir. 2008) (stating that the time of a police encounter being between 2:30 and 3:00 in the morning “must be taken into consideration when analyzing the coerciveness of the encounter”); *United States v. Jerez*, 108 F.3d 684, 690 (7th Cir. 1997) (recognizing that “police encounters at a person’s dwelling in the middle of the night are especially intrusive” and that there is a “special vulnerability of the individual awakened at the privacy of his place of repose during the nighttime hours to face a nocturnal confrontation with the police”).

[¶49] Furthermore, the sergeant’s line of questioning—“We got some business to take care of, right?”; “You know why we’re over here, right?”; “We gotta find him”; “Where is he?”; “Is he alive?”—was pointed from the very outset. The sergeant was not inquiring if Akers had seen the missing person or knew where he was. Rather, his questions were predicated from the beginning upon the assumption that Akers knew where the victim was located. While the sergeant eventually provided *Miranda* warnings, they came only after the officers had elicited incriminating statements from Akers. *See Bryant*, 2014 ME 94, ¶ 16, 97 A.3d 595. Thus, the court erred when it found that that the totality of the circumstances supported a determination beyond a

reasonable doubt that Akers's statements were the free choice of a rational mind, were fundamentally fair, and were not a product of coercive police conduct. *See id.*

[¶50] Finally, it is clear that the court's errors in denying Akers's motion to suppress were not harmless given that the search warrant was granted in part on Akers's statements, which were obtained as a result of the officers' illegal searches and were made involuntarily, and that those statements were presented to the jury. *See State v. Fleming*, 2020 ME 120, ¶ 34, 239 A.3d 648 ("A constitutional error made at trial may be deemed harmless if we are satisfied beyond a reasonable doubt, based on the trial record as a whole, that the error did not contribute to the verdict obtained." (quotation marks omitted)). Accordingly, Akers's conviction must be vacated.<sup>2</sup>

The entry is:

Judgment of conviction vacated. Remanded for further proceedings consistent with this opinion.<sup>3</sup>

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<sup>2</sup> We conclude that the court did not abuse its discretion when it denied Akers's motion to reopen the suppression hearing. *See State v. Dolloff*, 2012 ME 130, ¶ 24, 58 A.3d 1032.

<sup>3</sup> Upon remand, the Superior Court may address the State's argument regarding inevitable discovery that was expressly not reached in its April 1, 2019, decision. Additionally, the court on remand may also consider whether Akers's spontaneous statements were sufficiently attenuated from the constitutional violations that we have noted herein as to render them admissible.

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