

MCILS

**September 23, 2020
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

SEPTEMBER 23, 2020
TELEPHONIC COMMISSION MEETING
AGENDA

- 1) Budget Discussion
- 2) Public Comment

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR
CC: ELLIE MACIAG, DEPUTY EXECUTIVE DIRECTOR
SUBJECT: BUDGET DISCUSSION
DATE: SEPTEMBER 21, 2020

Attached are materials for the Commission's budget discussion at its upcoming meeting on September 23, 2020. First some good news. The Commission was not included in the Governor's curtailment order. As a result, our current allotment, together with our carry-over balance from the last fiscal year, should be sufficient to cover current operations for the balance of this fiscal year.

As discussed at the last meeting, the Commission's biennial budget proposal is due to be submitted to the Budget Office on October 29, 2020. To facilitate discussion about that proposal, attached are the budget discussion portion of the Sixth Amendment Center report's recommendation for creation of a public defender office. In addition, attached is an excerpt from the minutes of the Commission's December 19, 2019 meeting at which the report's author, David Carroll, Esq., discussed creation of a public defender office, Commission staffing, and overall budget recommendations.

Also attached is information requested by Commissioner Cummins about amounts expended in Kennebec County for the past three years. These numbers include adult criminal and juvenile voucher costs, but do not include sums for experts and investigators, etc.

I also requested information from the prosecutors about the pay range for attorney staff in the District Attorney offices. Annual salaries start at \$54,963.50, with a maximum \$110,905.60 for long serving Deputy District Attorneys.

Finally, I have attached the Biennial Budget Memo prepared for the September 9, 2020 meeting with the Commissioner of DAFS and the Budget Office. Chair Tardy related that the Commission would be meeting during September and October to frame a Biennial Budget request.

Furthermore, the South Dakota Supreme Court set public counsel compensation hourly rates at \$67 per hour in 2000. To ensure that attorneys are perpetually paid both a reasonable fee and overhead, the court also mandated that “court-appointed attorney fees will increase annually in an amount equal to the cost of living increase that state employees receive each year from the legislature.” Assigned counsel compensation in South Dakota now stands at \$95 per hour.³²⁸ For comparison purposes, a \$95 hourly fee in South Dakota in 2019 is equivalent to a \$114.95 hourly fee in Maine in 2019.³²⁹ We recommend that the State of Maine adopt similar statutory language to ensure that Maine’s assigned counsel compensation rate stays current.

RECOMMENDATION 7: The State of Maine should authorize and fund MCILS at an appropriate level to employ state government attorneys and support staff to operate a statewide appellate defender office and a Cumberland County trial level public defender office.

MCILS does not currently have the statutory authority to establish governmentally employed public defender offices. The relevant part of the statute says: “The commission shall [d]evelop and maintain a system that uses appointed private attorneys, contracts with individual attorneys or groups of attorneys *and consider other programs* necessary to provide quality and efficient indigent legal services.”³³⁰ The statute needs to be amended to give MCILS express authority to create staffed public defender offices.

To be clear, there is no pre-existing, uniform “cookie-cutter” indigent defense services delivery model that states *must* apply. The question for Maine policymakers, in conjunction with criminal justice stakeholders and the broader citizenry of the state, is simply how best to do so given the uniqueness of the state.

The 6AC does not presume that the full-time public defender offices recommended here are the *only* jurisdictions or case types best served by public defender offices in Maine. Indeed, we were struck that, as far back as 1971, the Institute of Judicial Administration, the Supreme Judicial Court, and the Superior Court of the State of Maine recommended a “hybrid public defender/assigned counsel delivery model” with

Maine has a 24% higher cost of living than Birmingham, Alabama.

³²⁸ See Letter from Greg Sattizahn, State Court Administrator, South Dakota Unified Judicial System, to Andrew Fergel, State Bar of South Dakota, RE: 2019 Court-Appointed Attorney Fees and Mileage (Nov. 15, 2018), *available at* <https://ujs.sd.gov/uploads/docs/2019CourtAppointedAttorneyFees.pdf>.

³²⁹ For comparison purposes, the cost of living in Portland, Maine, is 21% higher than in Sioux Falls, South Dakota. See *Attorney/Lawyer Cost of Living Portland, Maine vs. Sioux Falls, South Dakota*, Payscale, <https://www.payscale.com/cost-of-living-calculator/Maine-Portland/South-Dakota-Sioux-Falls/Attorney--Lawyer> (last visited Feb. 28, 2019). Thus, a \$95 hourly wage in South Dakota is equivalent to \$114.95 in Maine.

³³⁰ ME. REV. STAT. ANN. tit. 4, § 1804(3)(a) (2018) (emphasis added).

public defender offices located in Portland, Augusta, and Bangor.³³¹ We note that both Kennebec County (Augusta) and Penobscot County (Bangor) appear to have enough adult criminal cases to justify public defender offices, but because we did not conduct site visits in those two counties we refrain from making that recommendation at this time.³³² That said, MCILS and Maine policymakers should consider expanding public defender office to these two counties once the state appellate defender and Cumberland County public defender offices are created and operating.

State appellate defender office

Many states have found it appropriate to separate the public defense appeals system from the public defense trial system to ensure that the direct appeal is a check against potentially ineffective trial representation. For example:

- *Florida*. Each of the state's 20 judicial circuits (together covering the state's 67 counties) has a public defender office, overseen by an elected chief public defender, with full-time attorneys who provide representation to indigent defendants at trial. Five independent state appellate defender offices provide representation in all appeals.
- *Louisiana*. Each of Louisiana's 42 judicial districts (together comprising the state's 64 parishes) has a local chief defender who oversees the public defender office or the contract defenders that provide representation to indigent defendants at trial. For all indigent appeals, the Louisiana Public Defender Board contracts with a non-profit that itself contracts with individual attorneys to provide representation.
- *Michigan*. The State Appellate Defender Office, overseen by the Appellate Defender Commission, provides appellate representation to indigent defendants statewide. Separately and independently, the Michigan Indigent Defense Commission oversees trial representation.
- *North Carolina*. The North Carolina Office of Indigent Defense Services oversees the provision of right to counsel services throughout the state. Staff public defenders are employed in a centralized unit to provide appellate representation, separate and apart from the trial services.

³³¹ See INSTITUTE OF JUDICIAL ADMINISTRATION, THE SUPREME JUDICIAL COURT AND THE SUPERIOR COURT OF THE STATE OF MAINE 57-58 (1971).

³³² Based on MCILS data, Penobscot County and Kennebec County had the second and third highest indigent defense caseloads after Cumberland County.

- *Oregon.* Oregon provides trial level indigent defense services entirely through contracts with private attorneys. The Office of Public Defense Services has an appellate division of full-time staff attorneys to provide representation in most direct appeals.

Appendix B sets out a budget and budget narrative for a state appellate public defender office that assumes 80% of direct appeals and post-conviction cases statewide will be represented by the new state appellate defender office (based on FY2018 caseloads). The total projected cost of the office in the first year is \$2,369,659.22, including \$55,100 in one-time capital outlay (furniture, computers, and phones).³³³

Cumberland County trial level public defender office

The American Bar Association states in its *ABA Ten Principles of a Public Defense Delivery System* that, wherever there is a “sufficiently high” caseload, the public defense delivery system should consist of “both a public defender office and the active participation of the private bar.”³³⁴ Although the ABA has never defined what it means by “sufficiently high,” there is little doubt that the number of cases arising in Cumberland County meets this threshold.

Appendix C sets out a budget and budget narrative for a Cumberland County trial level public defender office that assumes the office will provide representation in 80% of all adult criminal and juvenile crime cases (based on FY2018 caseloads). The public defender office would not handle any civil cases; those would continue to be handled by appointed private attorneys. The projected annual cost of the office is \$3,042,048. The 2018 cost for providing trial level representation in 80% of Cumberland County’s adult criminal and juvenile crime cases was \$1,921,804, so creation of a public defender office to handle these cases will cost an additional \$1,120,244 over 2018 cost.

³³³ The current cost for representation in 80% of the appellate cases is \$622,215.

³³⁴ AMERICAN BAR ASS’N, *ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM*, Principle 2 (Feb. 2002).

APPENDIX A

MCILS ADMINISTRATION

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Executive Director	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Training Director	\$72,418.42	\$38,994.53	1	\$111,412.95
	Family Law Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Delinquency Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Adult Trial Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Mental Health Resource Atty	\$72,418.42	\$38,994.53	1	\$111,412.95
	Audit Director	\$70,675.00	\$39,578.00	1	\$110,253.00
	Training staff	\$37,408.00	\$20,948.48	2	\$116,712.96
	Auditing staff	\$37,408.00	\$20,948.48	2	\$116,712.96
Sub-Total					\$1,207,304.98

NON-PERSONNEL EXPENSES	CURRENT	PROJECTED
Risk management insurances	\$1,795.39	\$7,181.56
Mailing/postage/freight	\$4,675.71	\$18,702.84
Cellular phones service	\$1,406.69	\$5,626.76
Service center	\$3,095.00	\$12,380.00
Office supplies & equipment	\$2,062.61	\$8,250.44
Office equipment rental	\$1,274.45	\$5,097.80
Eyeglasses reimbursement	\$300.00	\$1,200.00
OIT/TELCO	\$27,774.75	\$111,099.00
Subscriptions	\$327.75	\$1,311.00
Dues	\$585.00	\$2,340.00
Annual report prorated	\$9.58	\$38.32
Annual parking permit fee	\$1,140.00	\$4,560.00
Printing/binding	\$22.00	\$88.00
InforME annual fee	\$2,640.00	\$10,560.00
Sub-Total		\$188,435.72

CAPITAL EXPENDITURES	RATE	NUMBER	TOTAL
Laptop computer	\$1,400.00	10	\$14,000.00
Furniture	\$1,200.00	10	\$12,000.00
Cell phones	\$300.00	10	\$3,000.00
Sub-Total			\$29,000.00

GRAND TOTAL	\$1,424,740.70
--------------------	-----------------------

BUDGET NARRATIVE

In addition to the current Director and Deputy Director, the 6AC recommends the addition of five attorney positions: Training Director, Family Law Resource Attorney, Juvenile Resource Attorney, Mental Health Resource Attorney, and Adult Trial Resource Attorney. Each of the Resource Attorneys will provide direct supervision and provide help desk assistance to attorneys in the field. The Training Director will be responsible for developing and instituting new attorney and on-going training programs, as well as periodic topic-specific trainings to be delivered regionally and remotely. The Training Director will oversee a staff of two to help with logistics and training development. MCILS should also have a dedicated professional with an auditing background to oversee all financial auditing functions, supported by two professional staff members.

With the additional staff, the 6AC recommend that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³³⁵ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³³⁶ The new attorney positions are paid salaries and benefits at the rate paid to assistant district attorneys (\$111,412.95).³³⁷ Although the 6AC are not experts in the prosecution function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine is under-resourced, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison.

The Auditing Director is projected at the salary and compensation of the current MCILS Deputy Director (\$110,253). The four training and auditing staff are compensated at the current salary and benefits package of the existing rate for the Accounting Technician (\$58,356.48).³³⁸

Non-personnel expenses reflect the current MCILS budget,³³⁹ less line items dedicated specifically for financial screeners. Each expense was prorated based on the existing three MCILS staff members (excluding financial screeners and costs associated

³³⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³³⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³³⁷ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³³⁸ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³³⁹ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

primarily for screening) and then multiplied by the recommended staff of twelve. Capital outlay expenses for new computers, furniture, and cell phones are calculated at available retail rates.

APPENDIX B

STATE APPELLATE DEFENDER OFFICE

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Chief Public Defender	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Public Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Assistant Public Defender	\$72,418.42	\$38,994.53	11	\$1,225,542.45
	Investigator	\$43,068.00	\$24,118.08	1	\$67,186.08
	Social Worker	\$43,068.00	\$24,118.08	1	\$67,186.08
	Paralegal	\$38,500.00	\$21,560.00	3	\$180,180.00
	Office Manager	\$43,068.00	\$24,118.08	1	\$67,186.08
Sub-Total					\$1,913,842.00
NON-PERSONNEL EXPENSES				COST/STAFF	PROJECTED
Risk Management Insurances				\$598.46	\$11,370.80
Mailing/Postage/Freight				\$1,558.57	\$29,612.83
Cellular Phones				\$468.90	\$8,909.04
Service Center (payroll processing, etc.)				\$1,031.67	\$19,601.67
Office Supplies/Equip.				\$687.54	\$13,063.20
Office Equipment Rental				\$424.82	\$8,071.52
Eyeglasses reimbursement				\$100.00	\$1,900.00
OIT/TELCO				\$9,258.25	\$175,906.75
Subscriptions				\$109.25	\$2,075.75
Dues				\$195.00	\$3,705.00
Annual report prorated				\$3.19	\$60.67
Annual parking permit fee				\$380.00	\$7,220.00
Printing/Binding				\$7.33	\$7,500.00
InforME Annual Fee (webhosting, etc.)				\$880.00	\$16,720.00
Rent				\$5,000.00	\$95,000.00
Sub-Total					\$400,717.22
CAPITAL EXPENDITURES			RATE	NUMBER	TOTAL
Laptop computer			\$1,400.00	19	\$26,600.00
Furniture			\$1,200.00	19	\$22,800.00
Cell phones			\$300.00	19	\$5,700.00
Sub-Total					\$55,100.00
GRAND TOTAL					\$2,369,659.22

BUDGET NARRATIVE

For 2018, MCILS reports that there were 235 direct appeal cases and 96 post-conviction cases statewide. Assuming 80% are handled in-house, that means a new statewide appellate office will handle approximately 265 direct appeal and post-conviction cases. The NAC standards are nationally recognized as the absolute upper limit of cases that a defense attorney can be expected to handle and still provide effective, zealous representation to each and every client. For appellate services, the NAC Standards prescribe that attorneys should handle no more than 25 appeals in a single year.³⁴⁰ Thus eleven attorneys are needed to staff the office.

National standards require one supervising attorney for every ten attorneys carrying a full caseload.³⁴¹ Therefore, in addition to a Chief Appellate Defender, a Deputy Chief Defender is required for supervision.

Although national standards require one investigator for every three staff attorneys³⁴² and one social worker for every three attorneys,³⁴³ these standards are generally seen as applying to trial practice. Therefore, we are recommending one investigator and one social worker for the appellate office to assist on the post-conviction workload. National standards also require one paralegal for every four staff attorneys.³⁴⁴

The 6AC recommends that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³⁴⁵ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³⁴⁶ The new attorney positions are paid salaries and benefits at the rate paid to assistant district attorneys (\$111,412.95).³⁴⁷ Again, although the 6AC are not experts in the prosecution

³⁴⁰ NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), Std. 13.12 (1973).

³⁴¹ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) ("Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers.").

³⁴² NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) ("Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.").

³⁴³ NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES § VII.F, available at <http://www.nlada.org/defender-standards/model-contract/black-letter>

³⁴⁴ U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE PUB. NO. NCJ185632, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001).

³⁴⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁴⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³⁴⁷ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine is under-resourced, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison. Support staff salaries and benefits are based on support staff compensation in the Cumberland County District Attorney Office.

Non-personnel expenses reflect the current MCILS budget, less line items dedicated specifically for financial screeners. The rent projection is based on \$25 per square foot charged against 200 square feet per staff (or \$5,000 per staff member). Capital outlay expenses for new computers, furniture, and cell phones were calculated at available retail rates.

APPENDIX C

CUMBERLAND COUNTY TRIAL LEVEL PUBLIC DEFENDER OFFICE

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Chief Public Defender	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Public Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Assistant Public Defender	\$72,418.42	\$38,994.53	12	\$1,336,955.40
	Investigator	\$43,068.00	\$24,118.08	4	\$268,744.32
	Social Worker	\$43,068.00	\$24,118.08	4	\$268,744.32
	Paralegal	\$38,500.00	\$21,560.00	3	\$180,180.00
	Office Manager	\$43,068.00	\$24,118.08	1	\$67,186.08
Sub-Total					\$2,428,371.43

NON-PERSONNEL EXPENSES	CURRENT	PROJECTED
Risk Management Insurances	\$598.46	\$15,560.05
Mailing/Postage/Freight	\$1,558.57	\$40,522.82
Cellular phones service	\$468.90	\$12,191.31
Service Center (payroll processing, etc.)	\$1,031.67	\$26,823.33
Office Supplies/Equip.	\$687.54	\$17,875.95
Office Equipment Rental	\$424.82	\$11,045.23
Eyeglasses reimbursement	\$100.00	\$2,600.00
OIT/TELCO	\$9,258.25	\$240,714.50
Subscriptions	\$109.25	\$2,840.50
Dues	\$195.00	\$5,070.00
Annual report prorated	\$3.19	\$83.03
Annual parking permit fee	\$380.00	\$9,880.00
Printing/Binding	\$7.33	\$190.67
InforME Annual Fee (webhosting, etc.)	\$880.00	\$22,880.00
Rent	\$5,000.00	\$130,000.00
Sub-Total		\$538,277.39

CAPITAL EXPENDITURES	RATE	NUMBER	TOTAL
Laptop computer	\$1,400.00	26	\$36,400.00
Furniture	\$1,200.00	26	\$31,200.00
Cell phones	\$300.00	26	\$7,800.00
Sub-Total			\$75,400.00

GRAND TOTAL	\$3,042,048.82
--------------------	-----------------------

BUDGET NARRATIVE

For 2018, MCILS reports 1,232 murder, class A, B, and C cases, 2,022 class D and E cases, and 329 juvenile crime cases in Cumberland County. Assuming 80% are handled in-house, that means a new trial level public defender office would handle 985 felony cases, 1,618 misdemeanor cases, and 263 delinquency cases. The NAC standards are nationally recognized as the absolute upper limit of cases that a defense attorney can be expected to handle and still provide effective, zealous representation to each and every client. For adult trial level services, the NAC standards prescribe that attorneys should handle no more than 150 felonies in a single year, or 400 misdemeanors, or 200 delinquency cases.³⁴⁸ Thus twelve attorneys are needed to staff the office.

National standards require one supervising attorney for every ten attorneys carrying a full caseload.³⁴⁹ Therefore, in addition to a Chief Public Defender, a Deputy Chief Defender is required for supervision.

National standards require one investigator for every three staff attorneys³⁵⁰ and one social worker for every three attorneys.³⁵¹ This means that the new Cumberland County public defender office will need four investigators and four social workers. National standards also require one paralegal for every four staff attorneys,³⁵² requiring the new office to have three paralegals.

The 6AC recommend that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³⁵³ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³⁵⁴ The new attorney positions are paid salaries and benefits at the rate paid to assistant district

³⁴⁸ NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), Std. 13.12 (1973).

³⁴⁹ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers.”).

³⁵⁰ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.”).

³⁵¹ NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES § VII.F, *available at* <http://www.nlada.org/defender-standards/model-contract/black-letter>.

³⁵² U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE PUB. NO. NCJ185632, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001).

³⁵³ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁵⁴ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

attorneys (\$111,412.95).³⁵⁵ Again, although the 6AC are not experts in the prosecution function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine lacks adequate funding, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison. Support staff salaries and benefits are based on support staff compensation in the Cumberland County District Attorney Office.

Non-personnel expenses reflect the current MCILS budget, less line items dedicated specifically for financial screeners. Each expense³⁵⁶ was prorated based on the existing three MCILS staff members and then multiplied by the recommended staff of eleven. The rent projection is based on \$25 per square foot charged against 200 square feet per staff (or \$5,000 per staff member). Capital outlay expenses for new computers, furniture and cell phones were calculated at available retail rates.

³⁵⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁵⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

**Maine Commission on Indigent Legal Services – Commissioners Meeting
December 16, 2019**

Minutes

Agenda Item	Discussion
Discussion: Next Steps - Sixth Amendment Center Report	<p>David Carroll of the Sixth Amendment Center was in attendance and offered some guidance about what the next steps Maine should take in light of the Center’s report. Mr. Carroll urged the Commission to not only look at changes to the financial oversight, but also at changes to the quality oversight, since that lack of quality oversight is what exposes the Commission to outside litigation. Mr. Carroll’s solution to the lack of quality oversight under the current model is to implement a public defender model in the highly populated areas, including a statewide appellate defender office. He noted that a full-time public defender office would create cost certainty and build in supervision. He did not think that a public defender office in every county would work, however. Mr. Carroll suggested looking at the Massachusetts system as a guide for Maine for both financial and quality oversight, including how to revamp the current lawyer of the day program. Under that model, the lawyer of the day would be appointed to all the cases handled that day at initial appearance. Mr. Carroll gave a rough cost estimate of spending between \$20 to \$34/per capita (\$26-\$45 million) on indigent defense to meet <i>Gideon</i>’s requirements. Mr. Carroll cautioned the Commissioners from pursuing a contract model since most other states are banning those types of contracts. When asked how many supervising attorneys Maine would need to hire if it kept the current private assigned counsel model, Mr. Carroll noted that between 18 and 25 new positions would be needed and that people providing the supervision should not be on the rosters. He recommended a rate of \$100 per hour, \$125/hr for serious case types, in order to attract qualified attorneys to the rosters and noted that paying lawyers a reasonable fee plus overhead is essential to reform. He cautioned that by not raising the hourly rate, more attorneys will leave the rosters. When asked about the timeframe for a roll out of a public defender office, Mr. Carroll thought that 9 months to one year for a Cumberland County and appellate PD office would be realistic. He noted that he saw no value in a pilot program and that attorneys should either be state employees or employees of a non-profit, similar to the New Hampshire model. Mr. Carroll recommended keeping the current model for Child Protection cases, explaining that due to so many conflicts the current system is the better model. Mr. Carroll also urged the Commission to inquire about non-indigent caseloads when determining whether hours worked on MCILS cases are justified.</p>

Voucher Costs for Kennebec County

Adult Criminal

07/01/2017 – 06/30/2018 \$1,227,470.74

07/01/2018 – 06/30/2019 \$926,794.42

07/01/2019 – 06/30/2020 \$836,024.99

The numbers above are for adult criminal cases. We cannot segregate appeal costs by county, but I've included one-tenth of statewide appeal costs in these numbers (we have 16 counties, but Kennebec is a larger county so I used one-tenth instead of one-sixteenth of total appeal costs).

Juvenile

07/01/2017 – 06/30/2018 \$20,775.72

07/01/2018 – 06/30/2019 \$24,808.55

07/01/2019 – 06/30/2020 \$28,784.51

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: KIRSTEN FIGUEROA, COMMISSIONER, DAFS
BETH ASHCROFT, STATE BUDGET OFFICER

FROM: JOHN D. PELLETIER, EXECUTIVE DIRECTOR

SUBJECT: MCILS BIENNIAL BUDGET

DATE: SEPTEMBER 9, 2020

	FY'22	FY'23
Baseline All Other Budget (for current operations)	\$15,521,725	\$15,521,725
Actual All Other Need (for current operations)	\$18,326,705	\$18,326,705
Supplemental Need (for current operations)	\$2,804,980	\$2,804,980

The MCILS budget is devoted exclusively¹ to providing constitutionally required indigent legal services. The cost of these services is driven by the number of cases requiring representation at state expense and the nature of those cases, not matters that are within the Commission's control. Because providing these services is the single program funded by the All Other budget, and because these services are a constitutional obligation of the State, funding the anticipated cost of these services is essential and not amenable to any proposed reduction intended to meet a budget target.

Moreover, the Commission's staff is small² and broadly acknowledged to be insufficient to meet the Commission's current needs. Accordingly, personal services savings are not available to meet any cost reduction target.

¹The Commission's All Other budget is used to pay attorneys for services provided to people who are entitled to representation as State expense, as well as to pay for experts, investigators, and other services necessary to the provision of adequate representation. The budget also pays for operational costs such as office supplies and equipment and information technology, including a customized attorney voucher system. Operational costs constitute just under 1.1% of the Commission's All Other expenditures.

² The Commission has 10 full-time and 3 part-time staff. Of these, only four are devoted to managing Commission operations. Six full-time and 3 part-time financial screeners assist the courts with determining an applicant's entitlement to representation at state expense and collect reimbursement for counsel costs expended from those who are adjudged able to pay. These positions generate revenues that are then applied to the cost of indigent legal services.

Need to Enhance, Not Reduce, Current Operations.

Note that the baseline All Other need of \$18.3 million discussed above reflects the cost to maintain the Commission's current operations. At the request of the Legislature, the Sixth Amendment Center conducted a study of indigent legal services in Maine and recommended, among other things, a substantial increase in the size of the Commission's staff, the creation of a Public Defender Office in southern Maine, and an increase in the hourly rate paid to private assigned counsel. Policy-makers, stakeholders, and the Commission itself remain interested in implementing at least some of the Sixth Amendment Center's recommendations, which would increase, not lessen, costs. The Commission plans a series of meetings between now and the October 29, 2020 deadline for submission of the biennial budget proposal to determine additional initiatives needed to improve the quality of indigent legal services in Maine.

One initiative previously proposed as part this spring's supplemental budget process aimed at beginning to address some of the needs identified by the Sixth Amendment Center was the creation of two new permanent positions. These positions are needed to enhance the Commission's capability to train, supervise and evaluate attorneys in the field and to provide financial oversight. Again, the Commission continues to meet to finalize its Biennial Budget proposal, which may include other initiatives in addition to, or in lieu of, this proposal. For illustration purposes, however, a copy of the initiative previously submitted is attached and the new positions are described below.

The Commission would hire an additional attorney to enhance capacity for training and supervision of attorneys. For this hire, the Commission seeks to establish a Public Service Manager I position. Among State positions, the job description for a Public Service Manager best comports with the varied tasks performed by Commission attorneys. Note that the Deputy Director position is currently established as Public Service Manager II.

The Commission would also hire a person with financial and audit skills to develop a program for detailed review of individual attorney billing, as well as to provide financial analysis with respect to ongoing Commission operations. For this position, the Commission seeks to establish Field Examiner II position.