

MCILS

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

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

**FEBRUARY 22, 2021
ZOOM COMMISSION MEETING
AGENDA**

- 1) Approval of January 27, 2021 Commission Meeting Minutes
- 2) Report of the Executive Director
- 3) Rulemaking Update
- 4) Legislative Update
- 5) LD 320
- 6) Retention/Recruitment Subcommittee Update
- 7) Comment from Commissioner Zmigrodski regarding Child Protective Applications
- 8) Comment from Commissioner Cummins regarding Kennebec County Public Defender initiative
- 9) Set Date, Time and Location of Next Regular Meeting of the Commission
- 10) Public Comment
- 11) Executive Session, if needed (Closed to Public)

(1.)

**Approval of
January 27, 2021
Commission Meeting
Minutes**

**Maine Commission on Indigent Legal Services – Commissioners Meeting
January 27, 2021**

Minutes

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

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Introduction of Justin Andrus	Chair Tardy introduced the Commission’s new interim Executive Director, Justin Andrus.	
Executive Director Search Update	Chair Tardy gave a brief update on the search for a permanent executive director, explaining that it’s a rolling application and that search subcommittee anticipates meeting at the beginning of February to hold an initial round of interviews in mid to late February.	
Approval of January 4 and 8 2021 Commission meeting minutes	No discussion of the meeting minutes.	Commissioner Cummins moved to approve. Commissioner Katz seconded. All voted in favor. Approved.
Operations Reports	Commissioner Carey noted that the Somerset County averages are consistently the lowest in the State and requested that staff examine why the numbers are consistently low.	
Rulemaking Discussion	Executive Director Andrus relayed that notification was sent to all rostered attorneys about Chapter 3 enforcement going forward. A discussion ensued about whether to move forward in the rulemaking process with Chapter 2 eligibility	

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	<p>rules. Commissioner Cummins argued that the rule is improvident and supported starting from scratch. Commissioner Schneider countered that a lot of good work has been done on the rule and does not see the need to start over. Chair Tardy asked Director Andrus to work with Commissioners LeBrasseur and Zmigrodski on revising Chapter 2 for Commission consideration at the next meeting. Commissioner Carey suggested adding a definition of “triggering event” to Chapter 301, section 6(1) and inquired about the good cause language giving the authority to the executive director. Director Andrus explained that the function should lie with the executive director and not the Commission. Commissioner Carey moved to approve Chapter 301 as written with one change to the triggering event definition and send out to public comment. Commissioner Churchill seconded. All voted in favor except Commissioner Cummins who abstained. The discussion then turned to Chapter 302. Commissioner Carey moved to strike existing section 4 and replace with the first sentence of the new section 5 and the last sentence of section 5 and to put out for public comment. Commissioner Churchill seconded. All voted in favor except Commissioner Cummins who abstained.</p>	
Budget Update	<p>Chair Tardy reviewed the upcoming legislative appearances at Appropriations and Judiciary. Commissioner Carey suggested that the Commission ask that the change to rulemaking authority proposed in the biennial budget get moved to the supplemental budget. Chair Tardy asked staff to follow up with the Judiciary Committee.</p>	
Financial Subcommittee Update	<p>Commissioner Carey gave an update on the financial oversight subcommittee’s recent work. The subcommittee has focused on three questions: which projects should the Commission consider to improve financial review process; which risk factors should the Commission use to identify higher risk vouchers for further review; and what actions should be taken with the next three months to improve financial oversight. Commissioner Katz added that the subcommittee agreed with</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
	Director Andrus' suggestion that it is not effective or efficient to review every voucher. Chair Tardy thanked the non-Commission members for their time and expertise. Commissioner Carey concurred and also thanked the members the public who offered very helpful public comment.	
Attorney Shortage Discussion	Commissioner Zmigrodski gave a brief update on the new subcommittee on retention and recruitment. The kickoff meeting will be on Friday, January 29.	
Protective Custody Rostering Discussion	Director Andrus updated the Commissioners on the status of the PC specialized panel application. The application has been finalized and a request has been made to add it to the Commission's website. The due date for the application for currently rostered PC attorneys to remain on the roster and on current PC cases is February 28.	
New Attorney Rostering Discussion	The Commissioner discussed the next steps for allowing new attorneys onto the rosters. Commissioner Carey moved to allow the staff to offer a virtual training for criminal and juvenile law and to further communicate that a subsequent training maybe required. Commissioner Katz seconded. All voted in favor. A discussion ensued about the PC minimum standards training. Commissioner Carey moved to allow staff to offer a virtual training option for child protection as well. Commissioner Zmigrodski seconded. All voted in favor except Commissioner Cummins who abstained.	
Bureau of Justice Assistance TTA Application	The Commission had a brief discussion about the draft application for the BJA TTA program.	
Commissioner Sarah Churchill	Chair Tardy thanked Commissioner Churchill for her service on the Commission since this will most likely be leaving us given her judicial nomination and	

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	<p>upcoming confirmation hearing. Chair Tardy thanked Commissioner Churchill for her incredible input and dedication to the Commission’s mission.</p>	
<p>Public Comment</p>	<p><u>Attorney Robert Ruffner</u>: Attorney Ruffner urged the Commission to look at the rules in a broader sense. He also urged the Commission to look at other areas to make staff time more efficient and to prioritize what is mission critical. Attorney Ruffner reminded the Commission to not forget that the individual client is the consumer.</p> <p><u>Attorney Zach Heiden</u>: Attorney Heiden thanked the Commission and subcommittees for their work. Attorney Heiden expressed disappointment in the governor’s decision regarding the Commission’s budget. He noted that it is impossible to do what the statute and Constitution requires without more funding.</p> <p><u>Attorney Chris Guillory</u>: Attorney Guillory flagged Bar Rule 6.2 as a possible conflict with the guidance from the Commission about not authorizing off-roster assignments. Attorney Guillory also flagged issues with the lawyer of the day program in the coming months in terms of capacity and costs when dockets start resuming.</p> <p><u>Representative Jeffrey Evangelos</u>: Rep. Evangelos cautioned that the public at large is most likely unaware of the issues that are going on with the Commission. Rep. Evangelos suggested penning an editorial in the newspaper about our constitutional shortcomings and the consequences seen in other states who faced similar challenges and the litigation that ensued. That way the decisionmakers will know that inaction will come with a cost.</p> <p><u>Attorney Kristine Hanly</u>: Attorney Hanly asked the Commission to consider a way to allow attorneys to better manage the amount of cases they are assigned in a given period of time.</p>	

Agenda Item	Discussion	Outcome/Action Item/Responsible Party
Executive Session	Commissioner Carey moved to go into executive session pursuant to 1 MRS 405(6)(F) to discuss information contained in the records made, maintained or received by the Commission when access to by the general public to those records is prohibited by 4 MRS 1806(2)(F). Commissioner Churchill seconded. No votes were taken.	
Adjournment of meeting	The next meeting will be held by Zoom on February 22, 2021 at 1:00 pm.	

(2.)

**Report of the
Executive Director**

REPORT OF THE EXECUTIVE DIRECTOR

TO: COMMISSIONERS
FROM: JWA
SUBJECT: FEBRUARY RPORT
DATE: 2/19/2021
CC: DD MACIAG

I completed my first month at MCILS on Friday, February 19, 2021. During that month we have become current in operations, and have implemented practice and/or policy changes to foster compliance with existing rules and Commission directives; have begun a comprehensive review of our relationship to our attorney-contractors; and, have worked with legislators and executive branch representatives to promote our need for adequate funding.

We have had a very successful month. The agency is at or near current in operations. We have addressed, or are in the process of addressing, most of the shortcomings identified in the OPEGA report from November 2020 and are now transitioning to a focus on addressing the substantive shortcomings identified in the 6AC report. We are happy for the assistance of that group with our process.

We are nearing a point at which further progress will be impossible without additional staff resources, however. I appreciate the support of the Judiciary Committee to include two additional staff positions in the supplemental budget and pray that Appropriations support that inclusion. While two staff positions are ultimately insufficient to the agency's needs, we can make some progress if we receive that help. Without those positions, the current gains toward compliance are unsustainable, and meaningful progress from this point is impossible.

My priorities for month-one were to:

1. Achieve operational currency at a sustainable tempo.
2. Implement the existing rules consistently.
3. Address and modify existing practice and policy to improve quality of service and oversight and gain operational efficiency.
4. Demonstrate responsible stewardship of MCILS to permit credible requests for additional necessary funding.

I. Billing practices

The OPEGA report identified a lack of adequately specific and appropriately communicated billing standards as the source of both practical operational issues, and of data integrity issues that make meaningful review of historical data problematic. To address this threshold issue, we sought input through our financial accountability sub-committee, and have drafted billing standards for publication to our rostered attorneys. The proposed standards are appended.

II. Voucher Review

The OPEGA report identified the voucher review process as flawed, and inefficient. We have undertaken several initiatives to improve data input, including the billing standards referenced above, and appended below. In addition, we have engaged Justice Works to update Defender Data in several important aspects, and to provide us direct read access to our database.

With respect to voucher review specifically, it quickly became apparent to me that review of individual vouchers will not reveal fraud, though it may reveal waste. What we see when we engage in voucher review is the occasional time entry that is substantially longer than we would expect for the task in question. For example, a call that should have been billed as 0.3 hours is billed as 3 hours. When we see that issue, we send a note to the attorney and ask for review. The attorney reviews the entry and either confirms that it is correct or changes it. In this way we catch and correct errors. What we cannot identify that way is fraud. If a person is entering time greater than that actually worked, we cannot identify that issue without reference to collateral documents to which we do not have access. Justice Works is updating Defender Data to contain an error check function that will prompt attorneys to confirm that an entry is correct at the time of entry, eliminating most errors, and eliminating the need to return the voucher with a note.

III. Non-counsel invoices

I have begun a review of non-counsel invoice practices and policies from other jurisdictions and expect to be able to report on this issue at the next meeting. I have prepared a new workflow that will streamline the request and approval process. A rule change to permit that workflow is in process, with public hearing to be held in March. I am working with OIT to implement a database system to collect MCILS data, including non-counsel funds requests.

IV. Quality Assurance

QA initiatives cover a lot of area. We have requested two new staff members as immediately necessary to meeting our duties to provide quality of service oversight and training to our rostered attorneys, and to provide financial information gathering and assessment services. The former should be an attorney. The latter should have paralegal skills.

To date, there has been no formalized quality assurance operation through MCILS. There are standards for attorney conduct, but they are spare as to record keeping requirements and there is not formalized mechanism for checking for quality. We need to update our standards to call for specific record keeping. This should include, without limitation, the implementation of timesheet keeping requirements, and requirements for running logs of attorney activity and for checklists for basic functions. Attorneys should be required to produce files with those documents on request. We should have a standard that calls for our attorney QA staff person to request that information on receipt of criticism of an attorney. The QA person should also randomly select cases for review. This review process should not necessarily lead to adverse action against attorney. Instead, it

should primarily work to identify people in need of training or mentoring. The QA person would also be responsible for overseeing training provided to rostered attorneys.

In addition, there must be a more robust investigation mechanism for complaints, I have opened investigations into every communication I have received that could be considered a complaint and involves an attorney who is rostered to accept cases. I have implemented for the first time a performance standard that calls for a reply within 21 days as a condition of remaining rostered. While every determination of whether to alter a person's roster status is subject to the discretion of the executive director by rule, I have developed standards to guide that discretion. They are appended. The decision to remove an attorney from our roster lies with the Executive Director, but the QA attorney would assist with generation of the record for review.

We have also begun to engage in review of financial conduct. This has included implementation of new protocols for the High Hour triggers, as set forth below; development of new risk-based triggers; and, reviews of allegations or concerns of misconduct. Our enabling statute and our rules contain ambiguity as to the remedies that may be available through our internal review system. Legislation to permit review even if an attorney chooses to leave our rosters, and permitting the desired remedies is needed. The second new staff person would work as an adjunct to the Executive Director, preparing and receiving documents related to financial reviews. That person would engage in data analysis and prepare reports to assist the Executive Director in exercising the discretion of that office as to outcomes and remedies.

Further development of these capabilities is dependent on staffing.

V. Compliance with Specialized Panel Requirements

As required by our enabling statute and rules, and as directed by the Commission, we are enforcing, and where necessary, implementing the specialized panel requirements. That has resulted in two specific initiatives. The first has been to implement the specialized panel application requirement for the Protective Custody bar. The second has been to address appointments to attorneys not yet certified to receive the case-type.

As previously reported, MCILS had no application for certification to receive Protective Custody cases before my tenure. I created a two-page application and sent email to our bar on January 29th asking those attorneys who want to continue to receive appointments to complete and return the application. Response has been mixed, with many attorneys returning completed applications, but with many other preferring to express objection to the process. As of Friday, February 19, 2021 there were 175 attorneys actively rostered to receive child protective cases. At noon on that date we had received 86 applications to remain rostered representing 49% of that bar. The deadline to apply is February 28th.

I have received feedback from one county that all but one attorney now accepting Protective Custody cases may plan to not apply to remain rostered. The Commission should stand prepared to invoke its authority pursuant to 4 M.R.S.A. §1804(3)(A) to contract with attorneys as necessary to meet the needs of the parents in that county. I have informed the judiciary of the issue.

Below is my January 29th email:

Member of the Child Protective Bar:

As you may be aware, the Commission has directed its executive staff to implement the specialized case-type qualifications contained in Chapter 3 of the MCILS Rules. This includes implementing the qualification standards for attorneys who wish to receive appointments in child protective matters. There is now an application for qualification as child protective counsel on the MCILS website <link>. To remain eligible for child protective matters, you must download, complete, and return the application on or before February 28, 2021.

Applications for qualification in child protective matters must be made using the specified PDF and must include the letter called for by Chapter 3, Section 3(7)(D) in PDF form <link>. Applications must be submitted to mcils@maine.gov. The subject line of your email must comport to the following standard: PC APPLICATION: First_Name Last_Name. If the subject line of your email is not in that format, then we will not receive the application.

I am confident that our protective custody bar is qualified, and that your applications will demonstrate that. Because we are required to implement qualification screening, however, we will be unable to permit attorneys who have not qualified to retain protective custody cases. If we have not received your application on or before February 28, 2021, then we may appoint new counsel into your cases. I do not want to disrupt any attorney-client relationships, so please help me make that unnecessary by submitting your application in time.

The Protective Custody panel application may be found here:

<https://www.maine.gov/mcils/procedures/docs/Protective-Custody-Panel-Application-final.pdf>

In other case-types, as directed by the Commission, and consistent with the MCILS ruleset, we are actively enforcing the specialized panel requirements. For the moment, I am personally responsible for reviewing and approving or rejecting off-roster appointments. This is a task I perform approximately once weekly. The process takes most of a morning, in part because Defender Data does not automate some of the tasks involved.

A case is flagged for review by Defender Data based on two triggers, either or both of which may present in any one case. The first trigger is an instance in which an attorney is not presently on the roster maintained for use in the Court in which the case is pending. The second trigger is an instance in which an attorney is not presently on any roster for the case type. Both things may be true.

Our policy is to reject appointments if the attorney is not, and has never been, certified to represent MCILS clients in that case-type. Our policy is to generally approve appointments if the attorney has been certified to represent clients in that case-type, even if not presently listed in the subject county. We consider travel distance and other factors in exercising discretion on the county issue.

There are issues with the current data presentation. For example, if an attorney has been certified to represent defendants in OUI cases, but has decided to be de-listed for a period of time to control case volume, for example, then that person will be flagged, even though there person remains qualified to represent people in OUI cases based on that prior certification.

In addition, the available data does not allow a reviewer to identify instances in which an attorney who was not previously certified was appointed as second chair; or post-conviction review counsel; or as interim counsel while permanent counsel was identified and appointed, or immediately withdrew for example.

For an example of workflow, I addressed the then outstanding unapproved exceptions on Thursday, February 18, 2021. On that day there were 73 cases in the preload exception status, each representing a matter in which Defender Data could not match the attorney, case type and court.

Three cases were marked as closed and were approved for payment.

33 cases were “drug offense,” “other felony” or “other misdemeanor” disconnects. These are cases in which the attorney has opted out of receiving those case-types for the moment but received such an appointment from a court. Because there are no specific requirements for these case categories, there is not actual qualification or certification issue with these cases.

21 cases presented county-match issues and were approved.

1 case was a post-conviction review in which the attorney assigned is certified for the case, but not on the underlying panel.

After reviewing and approving those matters, individual emails were sent for the remaining 15 cases. Three of those cases were assigned to one of those attorneys. Emails were sent through the Defender Data system, and read:

Counsel,

Defender Data has flagged this case as an appointment you received, but for which you are not eligible. In this instance, this case involves the Domestic Violence panel. Please file a motion to withdraw from this matter so that it can be transferred to certified counsel. MCILS will not be permitted to pay you for this matter if you retain it. MCILS will pay you for work performed to this date; for filing the motion to withdraw; and, for work done while that motion is pending. You remain responsible for this client in the interval.

If you would like to receive and retain appoints of this type in the future, please file the correct application. If you have been previously certified for this case type and believe you are eligible now for that reason, please reply directly to this email explaining that circumstance.

—

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

VI. 12-hour warning emails

We have implemented improved procedures to address the High Daily Hours email response issue identify in the OPEGA report. We have also found that the 70.6% no-response rate specified at page 13 of that report is consistent with, but under-reports, our observation. Of 99 High Daily Hour emails attorneys received between January 22, 2021 and February 18, 2021, we received only 21 responses, resulting in a 78% no-response rate over that period. Some of those emails had been received late in the period, and it may be reasonable to assume that some might have been answered.

We have developed an internal workflow that allows for reasonable tracking of incoming High Daily Hour emails, and responses. We have not yet been able to bring e-mail warning sent prior to my tenure into the system due to staff limitations.

To improve on this issue, I have implemented the procedure set out in the following email, sent to all rostered attorneys on Thursday, February 18, 2021.

Good afternoon, counsel. As you all know, the Commission determined that when a person bills 12 or more hours in one day, that event represents a circumstance that requires additional investigation. That task falls to me. I realize that there are many reasons a person might bill 12 or more hours in a day, the vast majority of them entirely appropriate. I received at least one 12-hour notice when I was in private practice, and addressed it with the Commission successfully. Unfortunately, many people are not responding to the notice emails. Since I joined the agency one month ago, we have receive copies of 99 12-hour notices. We have received 21 responses. This is consistent with the findings of OPEGA in its review of MCILS operations, but it is not acceptable.

To address the issue, this email lays out the practice we will be following and our expectations for counsel after receiving a 12-hour notice email. That email represents notice that MCILS is investigating a billing concern, and is a request that you cooperate in that investigation. Your response to the email is due to MCILS@maine.gov within 21 days. If you do not respond to the email, then you will deemed to be not cooperating, and may be suspended from the rosters without further warning. In that event, you will receive notice of suspension from the roster, and you may invoke the review procedures available to you through the rules.

On receipt of a 12-hour notice, you must review your time entries for all of the cases listed for the day in question. We have asked Defender Data to develop a report that you will be able to use to review entries by the day, rather than the case. When that report becomes available, we will alert you. In light of the nearly 80% of notices that are being ignored, however, I am implementing the process now.

Your answer to a 12-hour notice constitutes your certification that you have reviewed all of the cases at issue. If your response is that all of the time entries are correct, then you may simply say so by email. If you discover entries that are incorrect, it is your obligation to address the issue. In cases that have not yet been billed to MCILS you must make the changes to your entries, and then list the changes you made in your email. In cases that have already been billed, you must identify the case at issue, the erroneous entry, what the corrected entry should have

been, and the amount you have been overpaid. In that instance your check or money order reimbursing MCILS for the overpayment must be received within the same 21 day window. You should make your check payable to Treasurer, State of Maine, and sent it to us at:

Maine Commission on Indigent Legal Services
154 State House Station
Augusta, Maine 04333

I anticipate following up with you shortly to provide a form for your responses.

JWA

We will be following up and may suspend from our rosters any attorney who does not respond to a warning email, or whose response is inadequate.

BILLING STANDARDS

TO: MCILS ROSTERED AND ROSTER ELIGIBLE COUNSEL
FROM: JUSTIN ANDRUS
SUBJECT: BILLING STANDARDS
DATE:
CC: COMMISSION

To comply with the accountability standards recommended by the 6AC and OPEGA reports, and as directed by the Commission, the following billing standards are implemented with immediate effect. Development of these standards is authorized by 4 M.R.S.A. §1805(2 and 8) and is necessary for compliance with §1805(1, 3, and 4).

Standards for Attorney Billing

1. The MCILS hourly fee set out in Chapter 301, Section 2 is the hourly rate, approved by the Legislature, at which any attorney who is MCILS rostered, or who has been MCILS rostered, may bill the Commission for work done in service to an assigned and approved indigent client.
2. No other person or entity may bill MCILS at the rate set out in Chapter 301, Section 2. This prohibition extends to, but is not limited to, billing for any services performed by a paralegal or by an attorney who is not MCILS rostered at the time the service was provided.
3. MCILS will pay for work done in service to people who have been assigned counsel and approved as indigent or partially indigent only.
4. Every attorney that will bill for work done in service to an assigned and approved indigent client must be an individual identified in Defender Data.
5. All time entries in Defender Data shall reflect the name of the person who performed the work, without exception.
6. Each separate event submitted for billing shall be entered as an individual event in Defender Data. Similarly, the work of multiple attorneys shall be represented by separate entries.
7. By entering time or submitting a voucher that attorney certifies the accuracy of that submission.
8. If an attorney allows any other person to enter time on behalf of that attorney, that attorney is nevertheless responsible to MCILS for the accuracy of that submission.

9. The person to whom a Defender Data account is registered is the only person who may operate that account. This means in part that any staff person who operates a Defender Data account must have an account registered in that staff person's name.
10. Time entries represent an attorney's certified statement of time spent.
11. Time shall be billed in increments of 0.1 hours, rounded up to the nearest tenth.
12. The entry of voucher notes or comments will not modify an attorney's duties under these standards.
13. Attorneys may request payment of authorized itemized expenses pursuant to Chapter 301, Section 3. Routine office expenses will not be reimbursed. Itemized non-routine expenses as defined by rule will be reimbursed with proper documentation. An attorney may seek guidance from the Executive Director or designee as to whether an anticipated expense is subject to reimbursement.
14. Attorneys must maintain contemporaneous time records in a form that permits them to produce daily time sheets on request and must produce those sheets when so requested. Such records must be maintained for seven years.

Date:

Justin W. Andrus
Executive Director
MCILS

INVESTIGATIVE PROCEDURES / CRIMES AND BOARD ACTION

TO: COMMISSIONERS

FROM: JWA

SUBJECT: INVESTIGATIVE PROCEDURES / CRIMES AND BOARD ACTIONS

DATE: 2/8/2021

CC: DDM

These procedures were drafted by the Executive Director pursuant to 4 M.R.S.A. §1805(8) for implementation by the Commission pursuant to §1804(2)(B, D, and G), and (3)(A and E). This procedure implements the authority of the Executive Director pursuant to §1805(1 and 3).

This procedure guides the Executive Director in the implementation of MCILS Rules Chapter 2, Section 6:

The Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations for any failure to comply with this or any other Commission rule. In addition, the Executive Director may remove indefinitely or suspend an attorney from the roster completely or from the roster for certain case types and court locations if the Executive Director determines that the attorney is no longer qualified to provide quality indigent legal services based on the nature of any criminal charge or on investigation by the Executive Director or the Executive Director's designee of any complaint or other information. The Executive Director's decision to remove or suspend an attorney from the roster shall be in writing and shall reflect the Executive Director's reasoning in a manner sufficient to inform the attorney and the public of the basis for the Executive Director's action.

Attorneys removed indefinitely must re-apply to the Commission if they wish to receive assignments in the future. Attorneys suspended from the roster need not re-apply but must demonstrate compliance with any conditions made part of a suspension. Removal or suspension may also include a requirement that the attorney immediately identify to the Commission all open assigned cases and file a motion to withdraw in each case.

The Executive Director's decision to remove or suspend an attorney may be appealed to the full Commission pursuant to 4 M.R.S.A. § 1804(3)(J) and Commission Rule 94-649 Chapter 201.

The Executive Director shall consider the following provisions in the exercise of the discretion of that office, and shall articulate in writing deviations from this guidance.

I. **Criminal actions and convictions**

1. An attorney convicted of any crime in which any client or former client is a target, victim, co-conspirator, or co-defendant may not be rostered.
2. An attorney convicted of any crime in which any person to whom the attorney has or had any fiduciary obligation or other protective duty is a target, victim, co-conspirator, or co-defendant may not be rostered. For purposes of this paragraph, family members of the attorney are included in the definition of those to whom the attorney has a protective duty.
3. An attorney convicted of a serious crime may not be rostered. A "serious crime" is any felony or any lesser crime that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime." The Executive Director shall provide a written explanation of as to why a conviction is being treated as a serious crime.
4. In each instance in which an attorney is convicted of a crime that does not fall within one of the categories above, the Executive Director shall determine whether that crime should disqualify that attorney from being rostered and shall articulate the basis in writing for that determination.
5. The Executive Director may condition an attorney's eligibility to be rostered in any manner reasonably calculated to promote and protect the mission of MCILS, including promoting the safety of indigent clients. An attorney need not accept the Executive Director's conditions but may be found ineligible if the attorney does not accept those conditions.
6. An attorney may apply to be re-rostered. If five or more years have passed since any disqualifying conviction, the Executive Director may consider rostering an attorney previously disqualified. The burden shall be on the attorney to demonstrate why a disqualifying conviction should no longer act as a bar.
7. An attorney who fails to report a conviction within 72 hours to the Executive Director shall be immediately suspended from all rosters, pending a final determination by the Executive Director.
8. Upon receipt of evidence demonstrating that a lawyer subject to the rules of MCILS has committed a crime and by reason of that evidence appears to threaten imminent injury to a client, to the public, or to the administration of justice, the Executive Director shall suspend an attorney from the rosters.
9. Upon disqualification or suspension under this procedure, an attorney shall immediately identify to the Commission through the Executive Director all open assigned cases and file a motion to withdraw in each case.

10. The requirement remains that an attorney must inform the Commission, in writing, within 5 days of any criminal charge filed against the attorney in any jurisdiction.

II. Bar Disciplinary Actions

1. For purposes of this procedure, an Admonition from the Board of Overseers is not discipline.
2. An attorney who has been Reprimanded by the Board of Overseers may presumptively remain rostered, except that if the facts underlying the Reprimand reflect adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or constitute or could constitute any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy or solicitation of another to commit a "serious crime," then the attorney shall be disqualified from being rostered.
3. An attorney who has received a disciplinary Suspension from the Court, or is disbarred, shall be disqualified from the rosters.
4. An attorney may apply to be re-rostered. The burden shall be on the attorney to demonstrate why disqualifying discipline should no longer act as a bar. The Executive Director may condition an attorney's eligibility to be rostered in any manner reasonably calculated to promote and protect the mission of MCILS, including promoting the safety of indigent clients. An attorney need not accept the Executive Director's conditions but may be found ineligible if the attorney does not accept those conditions.
5. An attorney who fails to report discipline of any kind within 72 hours to the Executive Director shall be immediately suspended from all rosters, pending a final determination by the Executive Director.
6. Upon receipt of evidence demonstrating that a lawyer subject to the rule of MCILS has committed a violation of the Maine Rules of Professional Conduct or is incapacitated; and by reason of that violation or incapacity threatens imminent injury to a client, to the public, or to the administration of justice, the Executive Director shall suspend an attorney from the rosters.
7. Upon disqualification or suspension under this procedure, an attorney shall immediately identify to the Commission through the Executive Director all open assigned cases and file a motion to withdraw in each case.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS
FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR
SUBJECT: OPERATIONS REPORTS
DATE: FEBRUARY 18, 2021

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

- 2,140 new cases were opened in the DefenderData system in January. This was a 94 case increase from December. Year to date, new cases are down 5%, from 17,650 at this time last year to 16,708 this year. The new case data may mask an issue with active cases, however. The Judicial Branch reported to us earlier this week that the year-over-year open case count is up by approximately 53%.
- The number of vouchers submitted electronically in January was 2,695, an increase of 277 vouchers from December, totaling \$1,260,974, an increase of \$151,183 from December. Year to date, the number of submitted vouchers is down by approximately 15.3%, from 20,329 at this time last year to 17,215 this year, with the total amount for submitted vouchers down 21.5%, from \$9,905,811 at this time last year to \$7,774,453 this year.
- In January, we paid 3,095 electronic vouchers totaling \$1,345,993, representing an increase of 503 vouchers and an increase of \$205,700 compared to December. Year to date, the number of paid vouchers is down approximately 13%, from 19,131 at this time last year to 16,617 this year, and the total amount paid is down approximately 21%, from \$9,371,039 at this time last year to \$7,418,678 this year.
- We paid no paper vouchers in January.
- The average price per voucher in January was \$434.89, down \$5.04 per voucher from December. Year to date, the average price per voucher is down approximately 8.9%, from \$489.84 at this time last year to \$446.45 this year.
- Appeal and Probate cases had the highest average voucher in January. There were 4 vouchers exceeding \$5,000 paid in January. See attached addendum for details.
- In January, we issued 86 authorizations to expend funds: 55 for private investigators, 26 for experts, and 5 for miscellaneous services such as interpreters and transcriptionists. In January, we paid \$68,039 for experts and investigators, etc.
- In January, we received two attorney complaints.

- In January, we approved no requests for co-counsel.

In our All Other Account, the total expenses for the month of January were \$1,426,842. During January, approximately \$12,809 was devoted to the Commission's operating expenses.

In the Personal Services Account, we had \$60,718 in expenses for the month of January.

In the Revenue Account, the transfer from the Judicial Branch for January, reflecting December's collections, totaled \$74,019, an increase of approximately \$4,300 from the previous month.

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

VOUCHERS EXCEEDING \$5,000 PAID JANURY 2021

	Voucher Total	Case Total
PC case where attorney was the third appointed counsel. Extensive discovery and required trial prep for anticipated 2-day hearing with 15 witnesses.	\$6,456	\$6,456
Five Class B robberies each separately investigated with extensive discovery.	\$6,422	\$6,422
Counsel appointed for sentencing portion of the case following successful PCR appeal.	\$5,349	\$5,349
PC case involving six days of TPR hearing.	\$5,000	\$9,431 (\$4,430 on 6 previous vouchers)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
AS OF 01/31/2021

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY21 Professional Services Allotment		\$ 4,372,000.00		\$ 4,312,000.00		\$ 4,452,000.00		\$ 2,113,725.00	
FY21 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	
FY20 Encumbered Balance Forward		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustment		\$ 80,000.00		\$ -		\$ -		\$ -	
Supplemental Budget Allotment		\$ -		\$ -		\$ -		\$ -	
Reduction due to encumbrance closure		\$ -		\$ -		\$ -		\$ -	
Financial Order Unencumbered Balance Fwd		\$ -		\$ -		\$ -		\$ -	
Total Budget Allotments		\$ 4,500,000.00		\$ 4,360,000.00		\$ 4,500,000.00		\$ 2,161,725.00	\$ 15,521,725.00
Total Expenses	1	\$ (765,783.81)	4	\$ (1,102,607.41)	7	\$ (1,426,842.35)	10	\$ -	
	2	\$ (940,166.23)	5	\$ (1,007,967.84)	8	\$ -	11	\$ -	
	3	\$ (1,428,757.76)	6	\$ (1,221,776.56)	9	\$ -	12	\$ -	
Encumbrances (Justice Works)		\$ (62,405.00)		\$ 13,277.00		\$ 5,062.50		\$ -	\$ (44,065.50)
Encumbrances (B Taylor)		\$ (66,300.00)		\$ 13,260.00		\$ 4,420.00		\$ -	\$ (48,620.00)
Encumbrance (Jamesa Drake training contract)		\$ -		\$ (92,400.00)		\$ -		\$ -	\$ (92,400.00)
TOTAL REMAINING		\$ 1,236,587.20		\$ 961,785.19		\$ 3,082,640.15		\$ 2,161,725.00	\$ 7,442,737.54

Q3 Month 7

INDIGENT LEGAL SERVICES

Counsel Payments	\$ (1,345,993.28)
Interpreters	\$ (527.98)
Private Investigators	\$ (10,318.44)
Mental Health Expert	\$ (21,650.00)
Misc Prof Fees & Serv	\$ (250.00)
Transcripts	\$ (7,784.70)
Other Expert	\$ (26,987.50)
Process Servers	\$ (521.15)
Subpoena Witness Fees	\$ -
Out of State Witness Travel	\$ -
SUB-TOTAL ILS	\$ (1,414,033.05)
OPERATING EXPENSES	
Service Center	\$ -
DefenderData	\$ (5,062.50)
Parking Fees in Biddeford	\$ -
Mileage/Tolls/Parking	\$ (628.20)
Mailing/Postage/Freight	\$ (2.55)
West Publishing Corp	\$ (211.96)
Safety/Protective Supplies	\$ -
Office Supplies/Equip.	\$ -
Cellular Phones	\$ (172.90)
OIT/TELCO	\$ (2,213.64)
Office Equipment Rental	\$ (97.55)
Training Videographer	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
Dues	\$ -
AAG Legal Svcs Quarterly Payment	\$ -
SUB-TOTAL OE	\$ (12,809.30)
TOTAL	\$ (1,426,842.35)

INDIGENT LEGAL SERVICES

Q3 Allotment	\$ 4,500,000.00
Q3 Encumbrances for Justice Works contract	\$ 5,062.50
Barbara Taylor Contract	\$ 4,420.00
James Drake training contract	\$ -
Q3 Expenses to date	\$ (1,426,842.35)
Remaining Q3 Allotment	\$ 3,082,640.15

Non-Counsel Indigent Legal Services

Monthly Total	\$ (68,039.77)
Total Q1	\$ 110,837.23
Total Q2	\$ 175,002.15
Total Q3	\$ 68,039.77
Total Q4	\$ -
Fiscal Year Total	\$ 353,879.15

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
AS OF 01/31/2021

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
FY21 Allotment		\$ 236,986.00		\$ 245,444.00		\$ 216,987.00		\$ 197,826.00	\$ 897,243.00
Financial Order Adjustments		\$ 20,000.00		\$ (20,000.00)		\$ -		\$ -	
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ (8,758.00)		\$ 8,758.00		\$ -		\$ -	
Total Budget Allotments		\$ 248,228.00		\$ 234,202.00		\$ 216,987.00		\$ 197,826.00	\$ 897,243.00
Total Expenses	1	\$ (72,711.14)	4	\$ (72,760.83)	7	\$ (60,718.90)	10	\$ -	
	2	\$ (72,775.12)	5	\$ (72,759.89)	8	\$ -	11	\$ -	
	3	\$ (102,741.37)	6	\$ (87,292.61)	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 0.37		\$ 1,388.67		\$ 156,268.10		\$ 197,826.00	\$ 355,483.14

Q3 Month 7	
Per Diem	\$ (165.00)
Salary	\$ (25,069.55)
Vacation Pay	\$ (3,095.55)
Holiday Pay	\$ (3,642.72)
Sick Pay	\$ (809.87)
Empl Hlth SVS/Worker Comp	\$ -
Health Insurance	\$ (10,362.84)
Dental Insurance	\$ (292.00)
Employer Retiree Health	\$ (3,578.35)
Employer Retirement	\$ (1,958.05)
Employer Group Life	\$ (368.60)
Employer Medicare	\$ (498.57)
Retiree Unfunded Liability	\$ (6,490.65)
Longevity Pay	\$ (160.00)
Perm Part Time Full Ben	\$ (4,227.15)
Premium & Standard OT	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (60,718.90)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY21 FUND ACCOUNTING
As of 01/31/2021

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY20 Total
Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Financial Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Budget Order Adjustment	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Budget Order Adjustment		\$ -		\$ -		\$ -	12	\$ -	\$ -
Total Budget Allotments		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 88,434.06	4	\$ 57,481.90	7	\$ 74,019.18	10	\$ -	
Promissory Note Payments		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	2	\$ 72,639.44	5	\$ 77,875.90	8	\$ -	11	\$ -	
Court Ordered Counsel Fee		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB (late transfer)		\$ -		\$ -		\$ -		\$ -	
Collected from ██████████	3	\$ -	6	\$ 9,000.00	9	\$ -	12	\$ -	
Collected from ME Ctr Public Int Reporting	3	\$ -	6	\$ 5,333.00	9	\$ -	12	\$ -	
Collected Revenue from JB	3	\$ 74,498.74	6	\$ 69,647.82	9	\$ -	12	\$ -	
Returned Checks-stopped payments		\$ -		\$ -		\$ -		\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 235,572.24		\$ 219,338.62		\$ 74,019.18		\$ -	\$ 528,930.04
Counsel Payments	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Other Expenses		\$ -		\$ -		\$ -	***	\$ -	
Counsel Payments	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Other Expenses		\$ -		\$ -		\$ -		\$ -	
Counsel Payments	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
Other Expenses	*	\$ -	**	\$ -	***	\$ -		\$ -	
REMAINING ALLOTMENT		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00		\$ 275,000.00	\$ 1,100,000.00
Overpayment Reimbursements	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
REMAINING CASH Year to Date		\$ 235,572.24		\$ 219,338.62		\$ 74,019.18		\$ -	\$ 528,930.04

Collections versus Allotment	
Monthly Total	\$ 74,019.18
Total Q1	\$ 235,572.24
Total Q2	\$ 219,338.62
Total Q3	\$ 74,019.18
Total Q4	\$ -
Allotment Expended to Date	\$ -
Fiscal Year Total	\$ 528,930.04

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

1/31/2021

DefenderData Case Type	Jan-21						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	5	15	\$ 28,578.25	16	\$ 27,429.37	\$ 1,714.34	46	84	\$ 140,450.99	\$ 1,672.04
Child Protection Petition	177	497	\$ 282,043.33	546	\$ 284,060.69	\$ 520.26	1,281	2,724	\$ 1,533,706.49	\$ 563.03
Drug Court	1	9	\$ 17,144.00	14	\$ 20,606.00	\$ 1,471.86	3	57	\$ 75,440.00	\$ 1,323.51
Emancipation	10	3	\$ 1,510.82	4	\$ 867.82	\$ 216.96	43	29	\$ 7,290.73	\$ 251.40
Felony	524	508	\$ 326,966.38	592	\$ 371,198.36	\$ 627.02	3,849	3,108	\$ 2,012,188.99	\$ 647.42
Involuntary Civil Commitment	110	91	\$ 18,455.15	120	\$ 21,375.00	\$ 178.13	631	552	\$ 108,441.44	\$ 196.45
Juvenile	47	79	\$ 41,901.20	74	\$ 31,204.31	\$ 421.68	418	454	\$ 211,169.08	\$ 465.13
Lawyer of the Day - Custody	247	213	\$ 49,368.36	266	\$ 62,400.36	\$ 234.59	1,694	1,583	\$ 376,953.20	\$ 238.13
Lawyer of the Day - Juvenile	36	18	\$ 3,531.00	19	\$ 3,213.00	\$ 169.11	183	145	\$ 30,876.09	\$ 212.94
Lawyer of the Day - Walk-in	97	61	\$ 14,849.20	83	\$ 20,161.12	\$ 242.91	1,115	1,042	\$ 245,611.92	\$ 235.71
Misdemeanor	692	713	\$ 231,922.11	839	\$ 254,631.46	\$ 303.49	6,024	4,206	\$ 1,301,592.24	\$ 309.46
Petition, Modified Release Treatment	0	9	\$ 4,532.75	3	\$ 1,669.75	\$ 556.58	5	29	\$ 13,774.02	\$ 474.97
Petition, Release or Discharge	0	1	\$ 1,928.20	1	\$ 162.00	\$ 162.00	1	7	\$ 3,731.43	\$ 533.06
Petition, Termination of Parental Rights	25	61	\$ 47,482.57	77	\$ 55,767.20	\$ 724.25	175	363	\$ 256,408.13	\$ 706.36
Post Conviction Review	8	6	\$ 7,169.78	5	\$ 6,149.78	\$ 1,229.96	46	50	\$ 74,168.50	\$ 1,483.37
Probate	4	2	\$ 6,876.00	2	\$ 6,876.00	\$ 3,438.00	14	7	\$ 12,368.80	\$ 1,766.97
Probation Violation	92	146	\$ 56,756.69	145	\$ 58,837.87	\$ 405.78	795	772	\$ 316,657.86	\$ 410.18
Represent Witness on 5th Amendment	1	0		0			3	2	\$ 1,134.00	\$ 567.00
Resource Counsel Criminal	0	3	\$ 468.00	3	\$ 360.00	\$ 120.00	0	13	\$ 1,992.00	\$ 153.23
Resource Counsel Juvenile	0	0		1	\$ 18.00	\$ 18.00	0	4	\$ 456.00	\$ 114.00
Resource Counsel Protective Custody	2	1	\$ 300.00	1	\$ 300.00	\$ 300.00	2	2	\$ 708.00	\$ 354.00
Review of Child Protection Order	60	257	\$ 118,308.49	283	\$ 118,345.19	\$ 418.18	370	1,381	\$ 693,087.48	\$ 501.87
Revocation of Administrative Release	2	2	\$ 882.00	1	\$ 360.00	\$ 360.00	10	3	\$ 471.52	\$ 157.17
DefenderData Sub-Total	2,140	2,695	\$ 1,260,974.28	3,095	\$ 1,345,993.28	\$ 434.89	16,708	16,617	\$ 7,418,678.91	\$ 446.45
Paper Voucher Sub-Total	0	0	\$ -	0	\$ -		0	0		
TOTAL	2,140	2,695	\$1,260,974.28	3,095	\$1,345,993.28	\$ 434.89	16,708	16,617	\$ 7,418,678.91	\$ 446.45

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

1/31/2021

Court	Jan-21						Fiscal Year 2021			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	3	2	\$ 768.00	1	\$ 168.00	\$ 168.00	24	25	\$ 9,942.00	\$ 397.68
AUBSC	0	2	\$ 2,956.00	2	\$ 3,198.00	\$ 1,599.00	4	4	\$ 3,456.00	\$ 864.00
AUGDC	31	73	\$ 51,855.07	79	\$ 38,891.18	\$ 492.29	248	368	\$ 196,642.88	\$ 534.36
AUGSC	1	12	\$ 7,355.95	5	\$ 2,131.75	\$ 426.35	15	48	\$ 24,463.52	\$ 509.66
BANDC	53	100	\$ 30,276.29	116	\$ 29,323.14	\$ 252.79	396	633	\$ 175,330.75	\$ 276.98
BANSC	2	0		0			2	0		
BATSC	0	0		0			1	0		
BELDC	2	15	\$ 5,631.24	24	\$ 10,542.07	\$ 439.25	67	192	\$ 97,879.61	\$ 509.79
BELSC	0	0		0			1	0		
BIDDC	36	86	\$ 66,491.32	95	\$ 68,309.69	\$ 719.05	286	434	\$ 263,394.61	\$ 606.90
BRIDC	13	21	\$ 13,102.43	13	\$ 6,856.43	\$ 527.42	70	129	\$ 61,004.24	\$ 472.90
CALDC	2	6	\$ 2,726.88	9	\$ 3,031.04	\$ 336.78	26	46	\$ 21,374.08	\$ 464.65
CARDC	3	35	\$ 13,924.50	42	\$ 15,022.50	\$ 357.68	43	170	\$ 66,482.92	\$ 391.08
CARSC	0	0		0			0	1	\$ 360.00	\$ 360.00
DOVDC	9	8	\$ 1,176.00	16	\$ 7,913.20	\$ 494.58	47	101	\$ 43,310.24	\$ 428.81
DOVSC	0	0		0			0	0		
ELLDC	15	26	\$ 13,704.00	19	\$ 8,292.00	\$ 436.42	80	195	\$ 131,469.70	\$ 674.20
ELLSC	2	0		0			2	0		
FARDC	2	22	\$ 13,252.06	28	\$ 12,427.80	\$ 443.85	43	101	\$ 61,183.53	\$ 605.78
FARSC	0	0		0			0	3	\$ 2,173.35	\$ 724.45
FORDC	11	6	\$ 4,750.72	4	\$ 2,028.00	\$ 507.00	55	68	\$ 40,062.59	\$ 589.16
HOUDC	10	13	\$ 5,014.77	32	\$ 13,995.49	\$ 437.36	65	157	\$ 86,802.96	\$ 552.89
HOUSC	0	0		0			1	0		
LEWDC	62	159	\$ 70,719.45	164	\$ 70,081.53	\$ 427.33	444	646	\$ 324,988.65	\$ 503.08
LINDC	3	13	\$ 4,634.84	23	\$ 9,431.88	\$ 410.08	66	82	\$ 40,240.56	\$ 490.74
MACDC	1	2	\$ 576.00	3	\$ 780.00	\$ 260.00	10	37	\$ 24,673.63	\$ 666.85
MACSC	1	0		0			3	3	\$ 2,336.30	\$ 778.77
MADDC	1	1	\$ 324.56	1	\$ 324.56	\$ 324.56	4	4	\$ 1,600.08	\$ 400.02
MILDC	1	8	\$ 2,579.92	14	\$ 3,386.88	\$ 241.92	35	49	\$ 15,064.72	\$ 307.44
NEWDC	17	24	\$ 7,918.24	26	\$ 8,512.24	\$ 327.39	83	180	\$ 60,983.24	\$ 338.80
PORDC	99	150	\$ 80,942.94	155	\$ 75,798.27	\$ 489.02	507	701	\$ 342,992.80	\$ 489.29
PORSC	1	0		0			7	4	\$ 3,259.52	\$ 814.88
PREDC	7	23	\$ 8,418.00	27	\$ 11,150.02	\$ 412.96	72	161	\$ 73,646.26	\$ 457.43
RODC	18	21	\$ 9,878.52	21	\$ 8,723.52	\$ 415.41	96	159	\$ 73,877.89	\$ 464.64
ROCSC	0	1	\$ 192.00	1	\$ 192.00	\$ 192.00	3	7	\$ 1,422.00	\$ 203.14
RUMDC	10	22	\$ 10,917.35	19	\$ 9,168.96	\$ 482.58	65	145	\$ 109,318.14	\$ 753.92
SKODC	30	69	\$ 34,036.71	75	\$ 36,223.61	\$ 482.98	164	386	\$ 178,814.89	\$ 463.25
SKOSC	0	0		0			2	1	\$ 330.00	\$ 330.00
SOUDC	10	24	\$ 10,943.52	25	\$ 10,440.82	\$ 417.63	48	107	\$ 59,909.89	\$ 559.91
SOUSC	0	0		0			1	0		
SPRDC	31	52	\$ 31,745.40	55	\$ 35,837.32	\$ 651.59	186	275	\$ 164,938.44	\$ 599.78
Law Ct	5	12	\$ 25,716.25	12	\$ 23,481.04	\$ 1,956.75	42	67	\$ 119,956.83	\$ 1,790.40
YORCD	182	219	\$ 134,828.93	233	\$ 123,196.30	\$ 528.74	1,319	1,074	\$ 577,182.80	\$ 537.41
ARODC	128	89	\$ 30,173.59	136	\$ 45,344.38	\$ 333.41	953	757	\$ 272,944.41	\$ 360.56
ANDCD	134	191	\$ 75,896.45	232	\$ 83,637.88	\$ 360.51	1,358	1,200	\$ 421,001.53	\$ 350.83
KENCD	149	144	\$ 59,938.60	183	\$ 68,983.76	\$ 376.96	1,238	990	\$ 405,015.12	\$ 409.11
PENCD	252	209	\$ 67,643.78	226	\$ 87,581.67	\$ 387.53	1,627	1,166	\$ 485,308.75	\$ 416.22
SAGCD	29	25	\$ 8,075.00	39	\$ 12,163.20	\$ 311.88	252	219	\$ 83,848.28	\$ 382.87
WALCD	54	51	\$ 19,343.30	61	\$ 24,067.72	\$ 394.55	444	313	\$ 117,186.39	\$ 374.40
PISDC	10	17	\$ 6,642.78	32	\$ 11,265.62	\$ 352.05	143	120	\$ 38,500.43	\$ 320.84
HANCD	109	57	\$ 35,476.76	57	\$ 35,629.76	\$ 625.08	392	306	\$ 136,165.10	\$ 444.98
FRACD	32	20	\$ 10,271.88	37	\$ 19,492.74	\$ 526.83	316	278	\$ 106,555.43	\$ 383.29
WASCD	36	34	\$ 9,899.68	31	\$ 10,838.00	\$ 349.61	341	246	\$ 114,563.92	\$ 465.71
CUMCD	243	308	\$ 137,305.67	378	\$ 171,890.91	\$ 454.74	2,592	2,084	\$ 960,959.04	\$ 461.11
KNOCD	68	55	\$ 22,088.80	52	\$ 20,921.84	\$ 402.34	488	326	\$ 129,734.97	\$ 397.96
SOMCD	83	80	\$ 24,457.69	86	\$ 25,401.96	\$ 295.37	595	449	\$ 120,747.92	\$ 268.93
OXFCD	60	79	\$ 33,234.00	71	\$ 20,919.76	\$ 294.64	657	560	\$ 186,940.61	\$ 333.82
LINCD	29	30	\$ 14,000.83	37	\$ 15,877.23	\$ 429.11	283	252	\$ 94,009.15	\$ 373.05
WATDC	17	36	\$ 20,025.56	48	\$ 25,066.81	\$ 522.23	161	278	\$ 138,059.00	\$ 496.62
WESDC	21	17	\$ 5,702.80	27	\$ 8,366.80	\$ 309.88	145	176	\$ 78,498.68	\$ 446.02
WISDC	3	8	\$ 4,475.25	6	\$ 2,184.00	\$ 364.00	41	63	\$ 35,748.10	\$ 567.43
WISSC	0	0		0			1	0		
YORDC	9	18	\$ 8,964.00	17	\$ 7,500.00	\$ 441.18	48	71	\$ 32,022.46	\$ 451.02
TOTAL	2,140	2,695	\$ 1,260,974.28	3,095	\$ 1,345,993.28	\$ 434.89	16,708	16,617	\$ 7,418,678.91	\$ 446.45

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

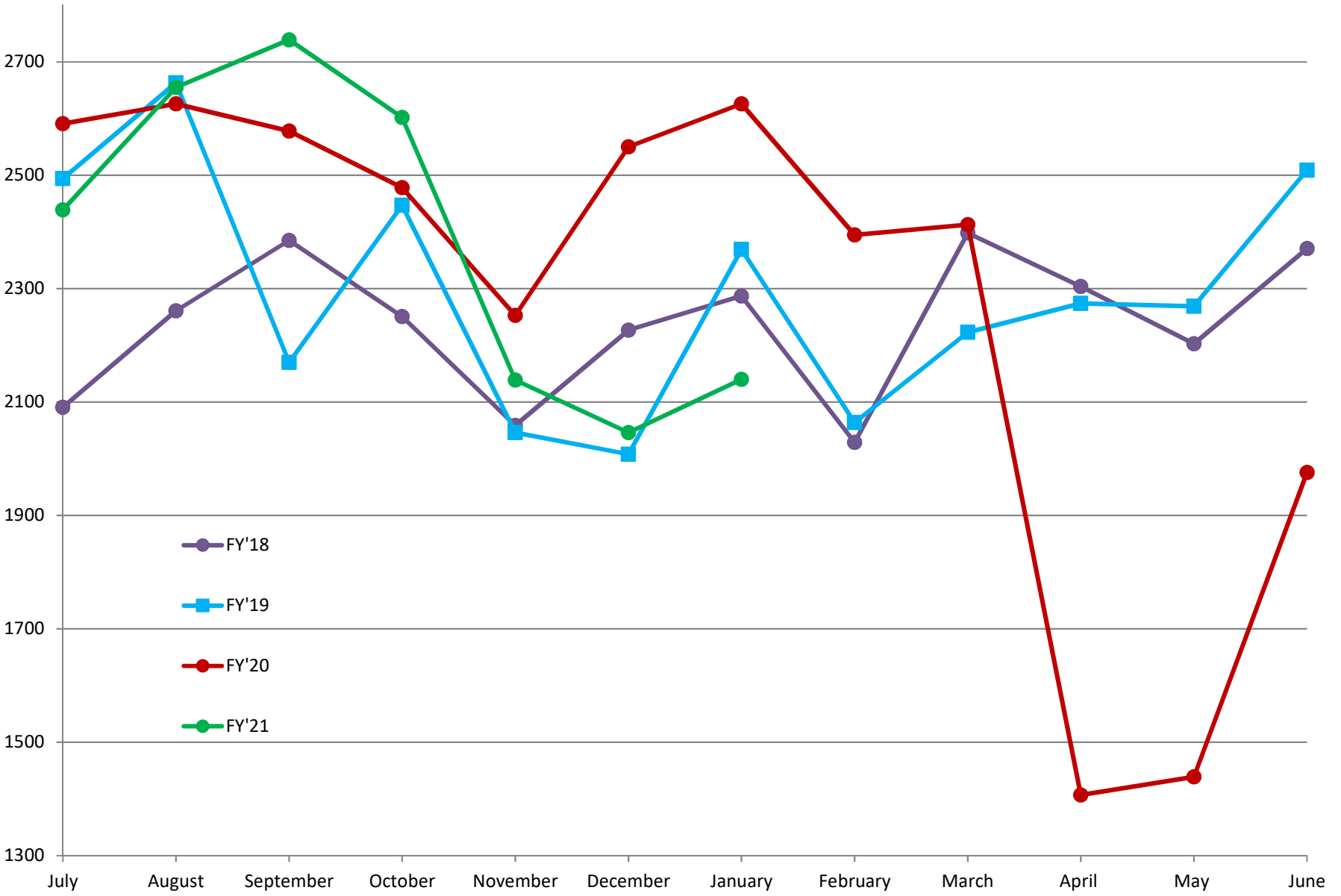
Number of Attorneys Rostered by Court

01/31/2021

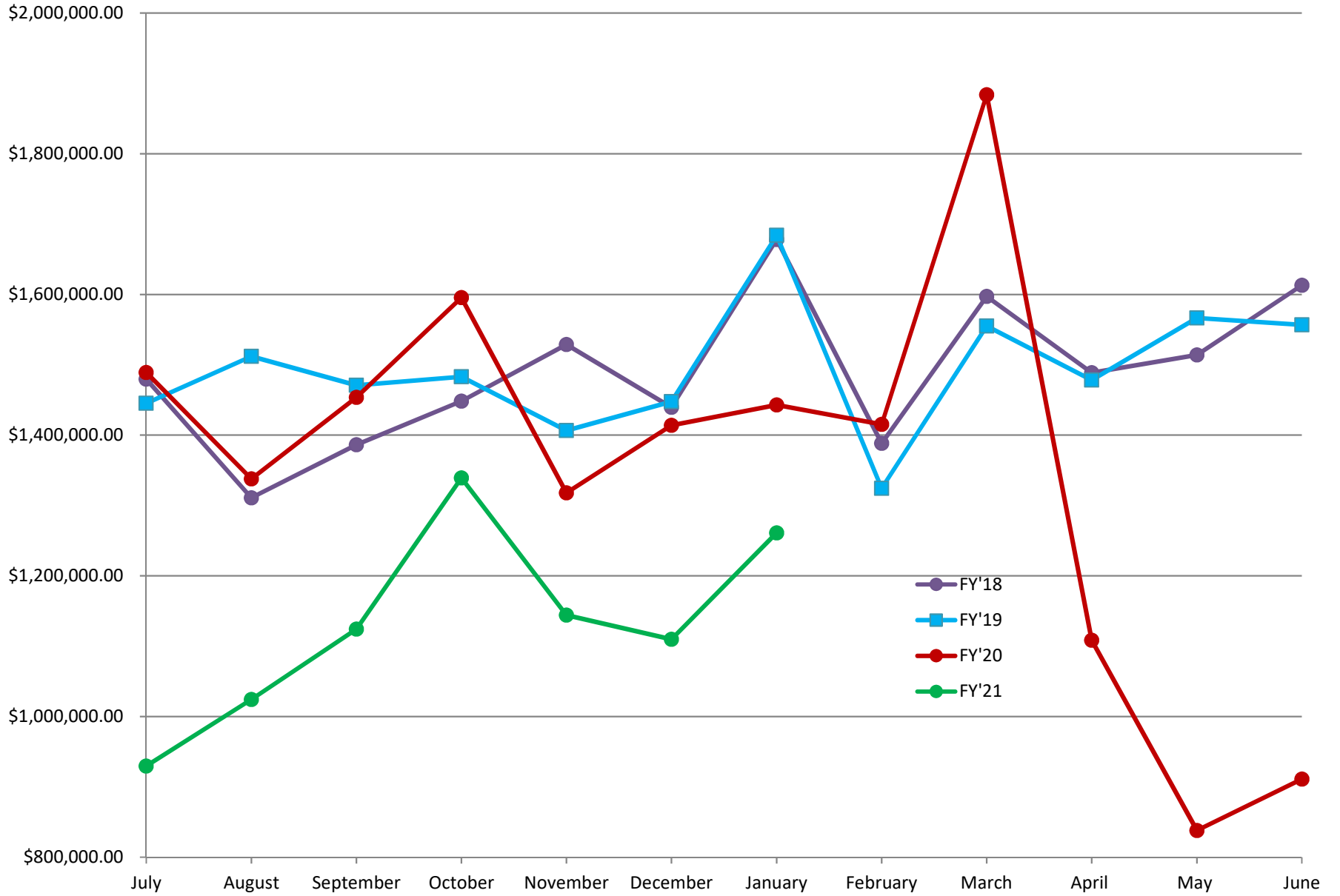
Court	Rostered Attorneys
Augusta District Court	64
Bangor District Court	35
Belfast District Court	32
Biddeford District Court	107
Bridgton District Court	63
Calais District Court	9
Caribou District Court	14
Dover-Foxcroft District Court	21
Ellsworth District Court	28
Farmington District Court	28
Fort Kent District Court	9
Houlton District Court	11
Lewiston District Court	94
Lincoln District Court	19
Machias District Court	13
Madawaska District Court	10
Millinocket District Court	13
Newport District Court	24
Portland District Court	122
Presque Isle District Court	12
Rockland District Court	26
Rumford District Court	17
Skowhegan District Court	18

Court	Rostered Attorneys
South Paris District Court	40
Springvale District Court	93
Unified Criminal Docket Alfred	88
Unified Criminal Docket Aroostook	20
Unified Criminal Docket Auburn	76
Unified Criminal Docket Augusta	61
Unified Criminal Docket Bangor	35
Unified Criminal Docket Bath	69
Unified Criminal Docket Belfast	30
Unified Criminal Docket Dover Foxcroft	19
Unified Criminal Docket Ellsworth	30
Unified Criminal Docket Farmington	30
Unified Criminal Docket Machias	15
Unified Criminal Docket Portland	117
Unified Criminal Docket Rockland	19
Unified Criminal Docket Skowhegan	16
Unified Criminal Docket South Paris	35
Unified Criminal Docket Wiscasset	41
Waterville District Court	32
West Bath District Court	81
Wiscasset District Court	48
York District Court	82

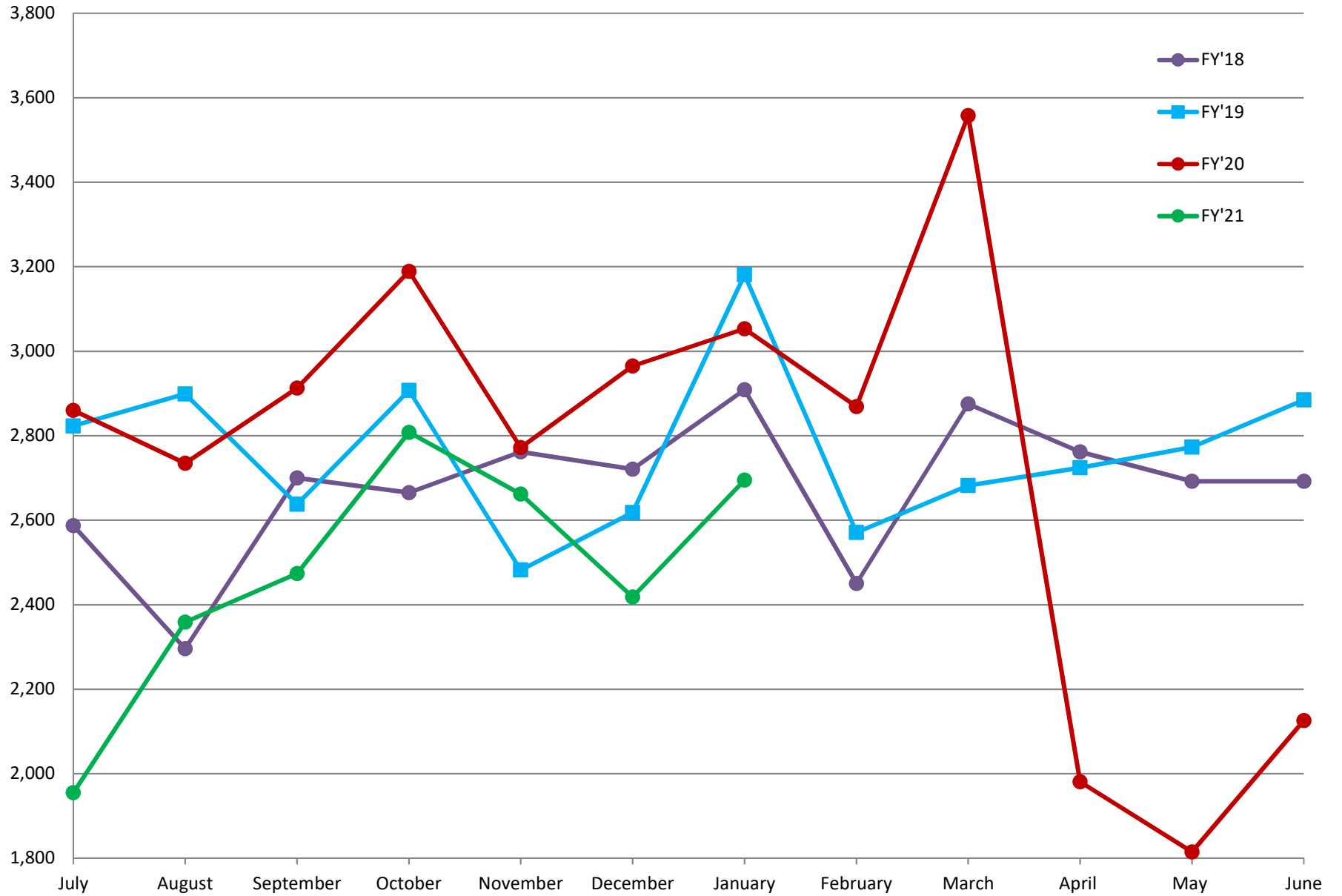
NEW CASES



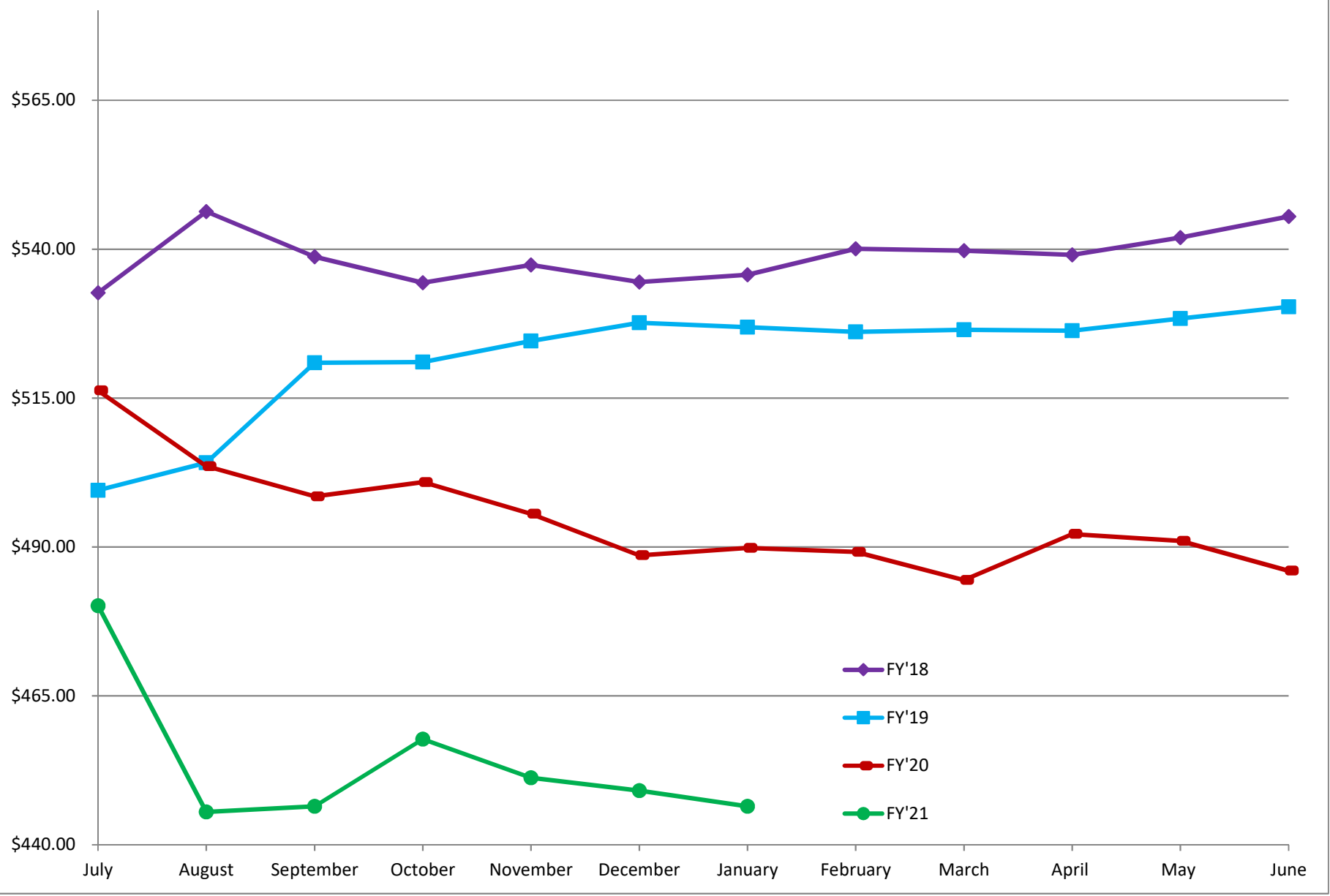
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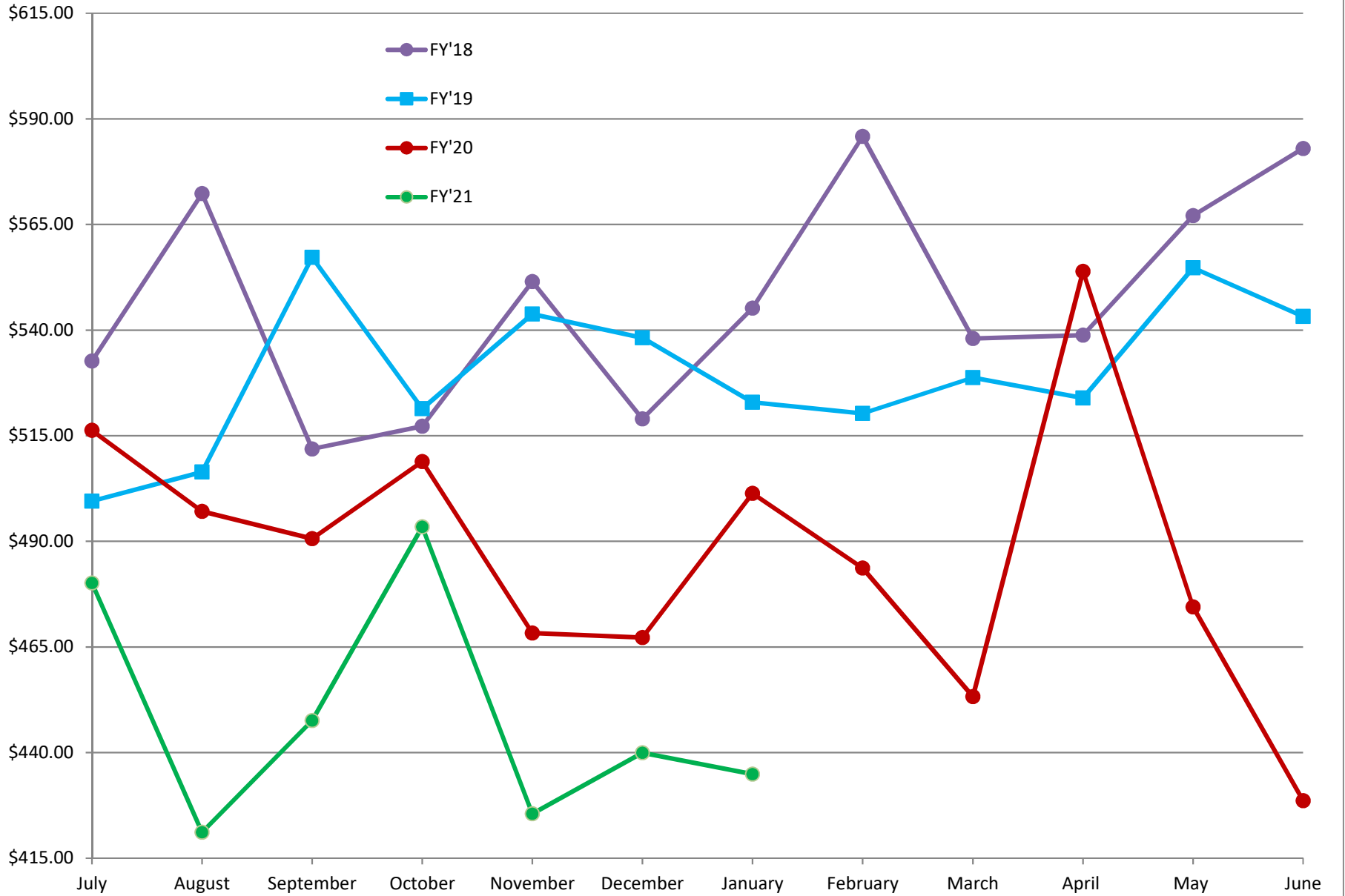
Submitted Vouchers



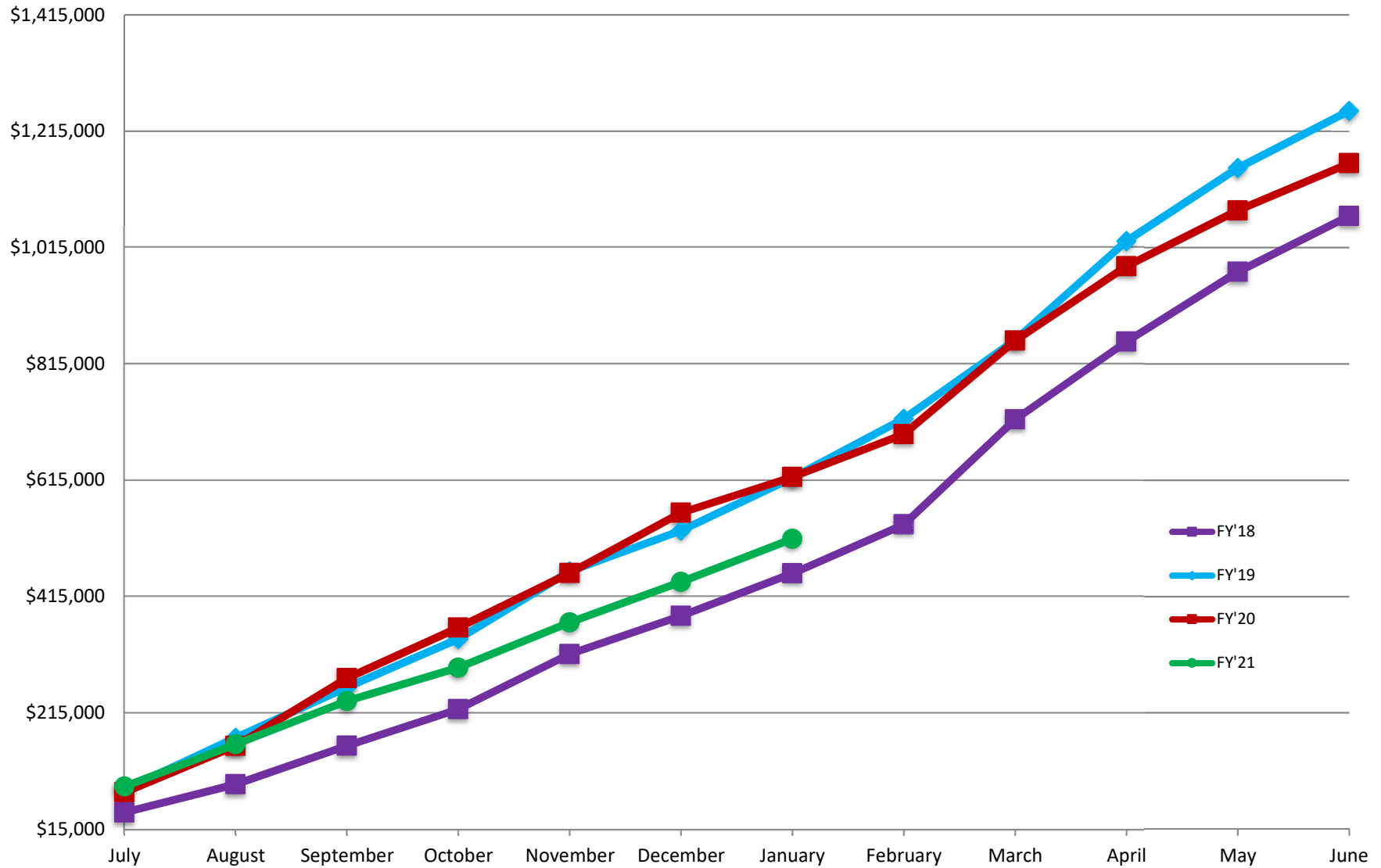
Average Voucher Price Fiscal Year to Date



Monthly Price Per Voucher



COLLECTION TOTALS FY'18 to FY'21



(3.)

Rulemaking Update

is94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES**Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COMMISSION ASSIGNED COUNSEL**

Summary: This Chapter establishes a fee schedule and administrative procedures for payment of Commission assigned counsel. The Chapter sets a standard hourly rate and maximum fee amounts 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. Attorney. "Attorney" means an attorney licensed to practice law in the State of Maine.
2. MCILS or Commission. "MCILS" or "Commission" means the Commissioners of the Maine Commission on Indigent Legal Services.
3. Executive Director. "Executive Director" means the Executive Director of MCILS or the Executive Director's decision-making designee.
4. Triggering event. "Triggering event" means the date of disposition of a criminal, juvenile or appeals case; completion of a stage of a child protection case resulting in a substantive order; or, in any other case or matter the entry of any substantive order. An order granting withdrawal, or the filing of a notice of withdrawal where appropriate. For attorneys serving as counsel to ongoing roles, including CODC and drug courts, March 31, June 30, September 30, and December 31 of each year shall be trigger events.

SECTION 2. HOURLY RATE OF PAYMENT

Effective July 1, 2015:

A rate of Sixty Dollars (\$60.00) per hour is authorized for time spent on an assigned case.

SECTION 3. EXPENSES

1. **Routine Office Expenses.** Routine Office expenses are considered to be included in the hourly rate. 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, other than same day travel to meet with a client or witness in custody in another jurisdiction, 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 documented.
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

Vouchers submitted for amounts greater than the applicable maximum fees outlined in this section will not be approved for payment, except as approved by the Executive Director:

1. **Trial Court Criminal Fees**
 - 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) **Murder.** Fee to be set by the Executive Director on a case by case basis.

- 2) **Class A.** \$3,000
- 3) **Class B and C (against person).** \$2,250
- 4) **Class B and C (against property).** \$1,500
- 5) **Class D and E (Superior or Unified Criminal Court).** \$750
- 6) **Class D and E (District Court).** \$540
- 7) **Post-Conviction Review.** \$1,200
- 8) **Probation Revocation.** \$540
- 9) **Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.)** \$540
- 10) **Juvenile.** \$540

- B. 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 coordinate and consolidate services as much as possible.
- C. 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. 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 non-testimonial motions, instead of having all Commission-assigned counsel in an area appear.
- E. Upon written request to MCILS, assistant counsel may be appointed in a murder case or other complicated cases, or to provide mentorship:
 - 1) the duties of each attorney must be clearly and specifically defined and counsel must ~~avoid not unnecessary duplication duplicate~~ 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
- 2) **Petition for Emancipation.** \$420
- 3) **Petition for Modified Release Treatment.** \$420
- 4) **Petition for Release or Discharge.** \$420

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. 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.

SECTION 5: MINIMUM FEES

Effective July 1, 2015:

1. Attorneys may charge a minimum fee of \$150.00 for appearance as Lawyer of the Day. Vouchers seeking the minimum fee shall 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 regardless of the number of clients consulted at the request of the court.

SECTION 6: ADMINISTRATION

1. ~~1. —~~ Vouchers for payment of counsel fees and expenses shall be submitted within ninety days of the event triggering the right to submit a voucher. ~~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 except at the discretion of the Executive Director on a showing of good cause. Good cause shall be found only where exigencies actually prevent an attorney from timely filing a request for payment; for illness; or for parental or family medical leave. Excess case load shall not support a finding of exigency.

Counsel may request leave to submit an interim voucher and the Executive Director may grant that leave if the request is reasonable, except that the Executive Director may not authorize submission of an interim voucher more often than once every 90 days; and, an interim voucher shall not be used to claim payment that would have been waived due to late submission.

- 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
- 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 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.
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.

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

Chapter 302: PROCEDURES REGARDING FUNDS FOR EXPERTS AND INVESTIGATORS

Summary: This Chapter establishes the procedures for attorneys and pro se ~~defendants-parties~~ to request funds for experts and investigators from the Commission and provides that the Executive Director shall make the determination to grant or deny the request. It also establishes the procedures for payment of expert and investigator services authorized in this Chapter.

SECTION 1. DEFINITIONS

1. **Executive Director.** "Executive Director" means the Executive Director of the Maine Commission on Indigent Legal Services or the Executive Director's decision-making designee.
2. **MCILS or Commission.** "MCILS" or "Commission" means the Maine Commission on Indigent Legal Services.

SECTION 2. APPLICATION FOR FUNDS FOR EXPERT AND INVESTIGATIVE ASSISTANCE

1. **Who May Apply.** ~~Defendants, respondents, petitioners or patients who are~~ Any person who is entitled to representation at state expense under the United States Constitution or the Constitution or laws of Maine and who ~~have~~ has been found indigent by a state court or who claims to be without sufficient funds to employ necessary expert or investigative assistance may file, on his or her own or through his or her attorney, applications to MCILS for funds to obtain expert or investigative assistance or both.
2. **Application Directed to the Executive Director.** An application for funds to obtain necessary expert or investigative assistance or both shall be directed to the Executive Director.
3. **Form and Contents of Application.** The application shall:
 - A. Be in writing and include a case caption setting forth the court in which the case is pending, the docket number, and the parties;
 - B. Set forth the date on which the applicant was found indigent or, if the applicant has not been found indigent, set forth the basis on which the applicant claims to be without sufficient funds. For persons not found

indigent by a court, the application shall be supported by an affidavit demonstrating financial need;

- C. Describe the nature of the proceeding for which assistance is sought, and in proceedings with respect to adult or juvenile crimes, specifically identify each pending charge and class of each pending charge;
 - D. Set forth a clear and concise statement of the reasons why the assistance is necessary for adequate presentation of the applicant's claim or defense;
and
 - E. Set forth a clear and concise statement as to the work that will be done by the expert and/or investigator.
4. **Electronic Filing Permitted.** ~~The application may be filed with MCILS by email or facsimile. must be filed with MCILS according to the procedure directed by the Executive Director. Any procedure developed by the Executive Director shall be designed to protect privileged information from disclosure, and to promote the efficient handling of funds requests by Commission staff.~~
- A. **Email.** Applications filed by email shall be directed to the Executive Director at the email address for the Executive Director listed on the MCILS website. The application shall be transmitted as an attached document and not set forth in the body of the email. Electronic documents that reflect the signature of the applicant or the applicant's attorney are preferred; but are not required.
 - B. Repealed.
 - ~~B. — **Facsimile.** Applications filed by facsimile shall be directed to the Executive Director at the "Fax" number listed on the MCILS website. The application shall be accompanied by a separate cover page that identifies the sender and sets forth the sender's address, telephone number and email address, if any. Applications filed by facsimile shall bear the signature of the applicant or the applicant's attorney. Repealed~~
 - ~~C. **Exception: Affidavits.** Applications supported by affidavit as set forth above, may be filed electronically for prompt review, but no action will be taken thereon until an original signed copy of the affidavit is filed with the Commission, either in person or by mail. Repealed.~~

SECTION 3. DETERMINATION BY THE EXECUTIVE DIRECTOR

The Executive Director shall review the application and the grounds therefore and, in the Executive Director's sole discretion, shall either grant the funds applied for, in whole or

in part, or deny the application. When granting an application in whole or in part, the Executive Director may condition the expenditure of funds as set forth in MCILS Rule Chapter 301, Fee Schedule and Administrative Procedures for Payment of Commission Assigned Counsel, and other MCILS procedures. The determination of the Executive Director shall be in writing and may be communicated to the applicant by electronic means ~~as set forth in Section 2.~~

SECTION 4. PAYMENT FOR EXPERT OR INVESTIGATIVE ASSISTANCE

Upon receipt of an invoice for services for which the expenditure of funds has previously been authorized, the applicant or the applicant's attorney shall forward the invoice to MCILS for processing and payment, together with the relevant authorization. Attorneys shall comply with any procedures established by the Executive Director. The applicant or the applicant's attorney must state that the services were satisfactory and that all applicable reports and other information have been received. The applicant or the applicant's attorney should review the invoice to verify that it conforms to MCILS requirements and that the appropriate rates for services and mileage were billed. The applicant or the applicant's attorney is not required by the Commission to advance funds to investigators or other service providers, subject to any professional conduct requirements. The applicant should make every effort to ensure that the service providers include a State of Maine Vendor Code number on each invoice.

SECTION 5. Transition

~~Repealed. Invoices for expert and investigative services authorized by a court prior to July 1, 2010 and not submitted to the court for payment before that date shall be submitted to MCILS for processing and payment. All invoices submitted must be accompanied by a copy of the court order authorizing expenditure of the funds.~~

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

EFFECTIVE DATE:

(5.)

LD 320



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 320

H.P. 224

House of Representatives, February 8, 2021

**An Act To Provide the Right to Counsel for Juveniles and Improve
Due Process for Juveniles**

Received by the Clerk of the House on February 4, 2021. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MORALES of South Portland.
Cosponsored by Senator KEIM of Oxford.

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

2 **Sec. 1. 15 MRSA §3003, sub-§14**, as enacted by PL 1977, c. 520, §1, is amended
3 to read:

4 **14. Juvenile.** "Juvenile" means ~~any~~ a person who has not attained ~~the age of~~ 18 years
5 of age and a person 18 years of age or older during the period of a disposition that includes
6 probation or commitment to a Department of Corrections juvenile facility who was
7 adjudicated before 18 years of age.

8 **Sec. 2. 15 MRSA §3101, sub-§2**, as amended by PL 2019, c. 525, §9, is further
9 amended to read:

10 **2. Juvenile Court jurisdiction.**

11 A. The Juvenile Court ~~shall have~~ has exclusive original jurisdiction, subject to waiver
12 of jurisdiction as provided in subsection 4, of proceedings in which a juvenile is alleged
13 to have committed a juvenile crime, as defined in section 3103.

14 This paragraph is repealed October 1, 2022.

15 A-1. Beginning October 1, 2022, the Juvenile Court has exclusive original jurisdiction,
16 subject to waiver of jurisdiction as provided in subsection 4, of proceedings in which
17 a juvenile is alleged to have committed a juvenile crime, as defined in section 3103,
18 and the juvenile had attained 12 years of age at the time the juvenile crime is alleged
19 to have been committed.

20 C. ~~The Juvenile Courts have~~ Court has jurisdiction over all petitions brought under
21 Title 34-A, chapter 9, subchapter 7 pertaining to juveniles who have been adjudicated
22 as having committed juvenile crimes in other states, but who are found within the
23 territorial jurisdiction of the State.

24 D. ~~The Juvenile Courts have~~ Court has exclusive original jurisdiction over proceedings
25 in which an adult is alleged to have committed a juvenile crime before attaining 18
26 years of age. For purposes of a proceeding under this paragraph, the adult is ~~considered~~
27 deemed a juvenile.

28 This paragraph is repealed October 1, 2022.

29 D-1. Beginning October 1, 2022, the Juvenile Court has exclusive original jurisdiction
30 over proceedings in which an adult is alleged to have committed a juvenile crime after
31 having attained 12 years of age and before attaining 18 years of age. For purposes of
32 a proceeding under this paragraph, the adult is deemed a juvenile.

33 E. ~~The Juvenile Courts shall have~~ Court has jurisdiction concurrent with the District
34 Courts over petitions for emancipation brought under section 3506-A.

35 F. Beginning October 1, 2022, a juvenile who had not attained 12 years of age at the
36 time of the juvenile's alleged juvenile crime is not subject to the jurisdiction of the
37 Juvenile Court. Notwithstanding Title 17-A, section 10-A, subsection 1, a criminal
38 proceeding may not be commenced based on conduct committed by a juvenile who had
39 not attained 12 years of age.

40 **Sec. 3. 15 MRSA §3203-A, sub-§5**, as amended by PL 2003, c. 706, Pt. A, §§2
41 and 3, is further amended to read:

1 **5. Detention hearing.** Upon petition by a juvenile community corrections officer who
2 ordered the detention or an attorney for the State who ordered the detention, the Juvenile
3 Court shall review the decision to detain a juvenile within 48 hours following the detention,
4 excluding Saturday, Sunday and legal holidays, except that if a juvenile is detained
5 pursuant to subsection 7, paragraph B-5, the Juvenile Court shall review the decision to
6 detain the juvenile within 24 hours following the detention, excluding Saturday, Sunday
7 and legal holidays. When a petition to review detention is filed, the Juvenile Court shall
8 assign counsel to represent the juvenile. The assignment must be reviewed at the juvenile's
9 first appearance before the Juvenile Court. If a juvenile petition with charges based on the
10 conduct at issue in the detention hearing is filed, the assignment continues with respect to
11 the juvenile petition but must be reviewed at the juvenile's first appearance on the juvenile
12 petition.

13 A. A detention hearing must precede and must be separate from a bind-over or
14 adjudicatory hearing. Evidence presented at a detention hearing may include
15 testimony, affidavits and other reliable hearsay evidence as permitted by the ~~court~~
16 Juvenile Court and may be considered in making any determination in that hearing.

17 B. Following a detention hearing, a ~~court~~ the Juvenile Court shall order a juvenile's
18 release, in accordance with subsection 4, unless it finds, by a preponderance of the
19 evidence, that continued detention is necessary to meet one of the purposes of detention
20 provided in that subsection. The Juvenile Court shall ensure, by appropriate order, that
21 any such continued detention is otherwise in accordance with the requirements of
22 subsection 4. The ~~court~~ Juvenile Court may order that detention be continued pending
23 further appearances before the ~~court~~ Juvenile Court or pending conditional release to a
24 setting satisfactory to the juvenile community corrections officer.

25 C. Continued detention or conditional release may not be ordered unless a Juvenile
26 Court Judge or justice of the peace has determined pursuant to subsection 4-A or the
27 Juvenile Court determines at the detention hearing that there is probable cause to
28 believe that the juvenile has committed a juvenile crime.

29 D. When a ~~court~~ the Juvenile Court orders detention or a conditional release that
30 authorizes, even temporarily, the juvenile's removal from the juvenile's home, the ~~court~~
31 Juvenile Court shall determine whether reasonable efforts have been made to prevent
32 or eliminate the need for removal of the juvenile from the juvenile's home or that no
33 reasonable efforts are necessary because of the existence of an aggravating factor as
34 defined in Title 22, section 4002, subsection 1-B, and whether continuation in the
35 juvenile's home would be contrary to the welfare of the juvenile. This determination
36 does not affect whether the ~~court~~ Juvenile Court orders detention or a conditional
37 release, which continues to be governed by the other provisions of this section.

38 **Sec. 4. 15 MRSA §3301, sub-§6**, as amended by PL 2011, c. 580, §1, is further
39 amended by enacting a new 3rd blocked paragraph to read:

40 If the attorney for the State files a petition, the court, upon the motion of the attorney for
41 the State, the motion of the juvenile or the court's own motion, may assign counsel for the
42 juvenile. The assignment must be reviewed at the juvenile's first appearance before the
43 court.

44 **Sec. 5. 15 MRSA §3306, sub-§1**, as amended by PL 2019, c. 525, §15, is further
45 amended to read:

1 **1. Notice and appointment.** The provisions of this subsection address a juvenile's
2 right to counsel.

3 A. At a juvenile's first appearance before the court, the juvenile and the juvenile's
4 parent or parents, guardian or legal custodian must be fully advised by the court of their
5 constitutional and legal rights, including the juvenile's right to be represented by
6 counsel at every stage of the proceedings. At every subsequent appearance before the
7 court, the juvenile must be advised of the juvenile's right to be represented by counsel.

8 B. If the juvenile requests an attorney and if the juvenile and the juvenile's parent or
9 parents, guardian or legal custodian are found to be without sufficient financial means,
10 counsel must be appointed by the court.

11 C. The court may appoint counsel without a request under paragraph B if the court
12 determines representation by counsel necessary to protect the interests of the juvenile.

13 D. The court shall appoint counsel to represent the juvenile upon the entry of a
14 dispositional order that includes commitment to a Department of Corrections juvenile
15 correctional facility. A juvenile's right to counsel under this paragraph continues until
16 the juvenile is discharged from the disposition. Counsel appointed under this
17 paragraph may be in addition to the juvenile's primary counsel.

18 This subsection does not limit the court's authority to appoint counsel for a juvenile at any
19 time beginning with the detention of the juvenile under this Part.

20 **Sec. 6. 15 MRSA §3313, sub-§2, ¶F**, as amended by PL 2019, c. 474, §1 and c.
21 525, §26, is repealed and the following enacted in its place:

22 F. The juvenile has made or has agreed to pay restitution to the victim of the juvenile's
23 conduct for the damage or injury that the victim sustained in an amount that the court
24 has determined is within the juvenile's ability to pay pursuant to section 3314-C;

25 **Sec. 7. 15 MRSA §3313, sub-§2, ¶J**, as amended by PL 1979, c. 663, §119, is
26 further amended to read:

27 J. The juvenile is particularly likely to respond affirmatively to probation; ~~and~~

28 **Sec. 8. 15 MRSA §3313, sub-§2, ¶K**, as amended by PL 2019, c. 525, §26, is
29 further amended to read:

30 K. The confinement of the juvenile would entail excessive hardship to the juvenile or
31 the juvenile's dependents-;

32 **Sec. 9. 15 MRSA §3313, sub-§2, ¶L** is enacted to read:

33 L. The juvenile had not attained 14 years of age at the time of the alleged conduct; and

34 **Sec. 10. 15 MRSA §3313, sub-§2, ¶M** is enacted to read:

35 M. The juvenile crime would be considered a Class D or Class E crime if committed
36 by an adult and, based upon both the written agreement of the parties and a court
37 finding, the facts and circumstances of the underlying criminal episode giving rise to
38 the conviction did not generate probable cause to believe the juvenile had committed
39 what would be considered a Class A, Class B or Class C crime if committed by an
40 adult.

1 **Sec. 11. 15 MRSA §3315, sub-§3**, as amended by PL 2003, c. 503, §3, is further
2 amended to read:

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

13 A. A juvenile who has not attained 21 years of age must be represented by counsel at
14 a judicial review of the juvenile's commitment.

15 B. If an appropriate treatment or appropriate and less restrictive placement is not being
16 provided or offered to the juvenile, the court may order the Department of Corrections
17 or the Department of Health and Human Services, or both, to demonstrate the
18 reasonableness of the current treatment or placement provided or offered.

19 **Sec. 12. 15 MRSA §3316, sub-§2, ¶A**, as repealed and replaced by PL 1999, c.
20 127, Pt. B, §6, is amended to read:

21 A. A commitment of a juvenile to a Department of Corrections juvenile ~~corrections~~
22 correctional facility pursuant to section 3314 must be for an indeterminate period not
23 to extend beyond the juvenile's 18th birthday unless the court expressly further limits
24 or extends the indeterminate commitment, as long as the court does not ~~limit the~~
25 ~~commitment to less than one year nor~~ extend the commitment beyond a juvenile's 21st
26 birthday ~~and as long as an order does not result in a commitment of less than one year,~~
27 ~~unless the commitment is for an indeterminate period not to extend beyond the~~
28 ~~juvenile's 21st birthday.~~ Nothing in this Part may be construed to prohibit the provision
29 to a juvenile following the expiration of the juvenile's term of commitment of services
30 voluntarily accepted by the juvenile and the juvenile's parent or parents, guardian or
31 legal custodian if the juvenile is not emancipated; except that these services may not
32 be extended beyond the juvenile's 21st birthday.

33 **Sec. 13. 15 MRSA §3317**, as amended by PL 1997, c. 752, §26 and PL 2003, c.
34 689, Pt. B, §§6 and 7, is further amended to read:

35 **§3317. Disposition after return to Juvenile Court**

36 In instances of commitment of a juvenile to the Department of Health and Human
37 Services or a Department of Corrections juvenile correctional facility or when the juvenile
38 is under a specified period of probation, the Commissioner of Health and Human Services
39 or the commissioner's designee or the Commissioner of Corrections or the commissioner's
40 designee, or the juvenile following the disposition may for good cause petition the Juvenile
41 Court having original jurisdiction in the case for a judicial review of the disposition,
42 including extension or reduction of the period of commitment or period of probation. For
43 a petition initiated by the juvenile, the Department of Health and Human Services or the
44 Department of Corrections shall provide information including, but not limited to, the

1 information in reports required for periodic review pursuant to section 3315. In all cases
2 in which a the juvenile is returned to a Juvenile Court, the Juvenile Court may make any of
3 the dispositions otherwise provided in section 3314, including a reduction of the period of
4 commitment or probation, and Title 34-A, section 3805, subsection 2. When reviewing a
5 commitment to the Department of Health and Human Services, the court shall consider
6 efforts made by the Department of Corrections and the Department of Health and Human
7 Services to reunify the juvenile with the juvenile's parents or custodians, shall make a
8 finding regarding those efforts and shall return custody of the juvenile to a parent or legal
9 custodian if the return of the juvenile is not contrary to the welfare of the juvenile. A
10 petition for judicial review of a disposition committing the ~~child~~ juvenile to the Department
11 of Health and Human Services must be served on the parents at least 7 days prior to the
12 hearing. Absent extraordinary circumstances, the juvenile may file a petition no more than
13 once every 180 days.

14 **Sec. 14. 15 MRSA §3402, sub-§1,** as amended by PL 2015, c. 100, §3, is further
15 amended to read:

16 **1. Matters for appeal.** Appeals of the following matters may be taken from the
17 ~~juvenile court~~ Juvenile Court to the Supreme Judicial Court by a party specified in
18 subsection 2:

- 19 A. An adjudication, as long as the appeal is taken after an order of disposition;
20 B. An order of disposition, or of any subsequent order modifying disposition, for an
21 abuse of discretion; ~~and~~
22 D. A detention order entered pursuant to section 3203-A, subsection 5 or any refusal
23 to alter a detention order upon petition of the juvenile pursuant to section 3203-A,
24 subsection 11, for abuse of discretion, ~~provided that the~~ The appeal must be handled
25 expeditiously; ~~and~~
26 H. A judicial review decision pursuant to section 3317.

27 **Sec. 15. 15 MRSA §3405, sub-§2,** as amended by PL 2015, c. 100, §5, is further
28 amended to read:

29 **2. Record on appeals.** In appeals taken pursuant to section 3402, subsection 1,
30 paragraphs A ~~and~~ B and H, review must be on the basis of the record of the proceedings
31 in ~~juvenile court~~ the Juvenile Court. In the interest of justice, the Supreme Judicial Court
32 may order that the record consist of:

- 33 A. The untranscribed sound recording of the proceedings; or
34 B. An agreed or settled statement of facts with the consent of the parties.

35 **Sec. 16. 34-A MRSA §3805, sub-§1,** as amended by PL 1999, c. 583, §31, is
36 further amended by enacting a new first blocked paragraph to read:

37 This subsection is repealed October 1, 2022.

38 **Sec. 17. 34-A MRSA §3805, sub-§1-A** is enacted to read:

39 **1-A. Eligibility.** Beginning October 1, 2022, only a juvenile, as defined in Title 15,
40 section 3003, subsection 14, who is 12 years of age or older at the time of commitment may
41 be committed to the facility pursuant to this subchapter and Title 15, Part 6.

SUMMARY

1
2 Currently, Maine has no minimum age at which a child may be prosecuted for a crime.
3 The purpose of this bill is to prevent children under 12 years of age from being prosecuted
4 for crimes, to prevent children under 14 years of age from being incarcerated, to eliminate
5 the current requirement that, if committed, a juvenile must be committed for at least a year
6 and to prevent courts from imposing dispositions against juveniles that involve
7 commitment without exhausting all other less restrictive alternatives. The bill also
8 mandates regular opportunities for judicial review of a juvenile's commitment in addition
9 to providing an appellate avenue for relief from unfavorable reviews.

10 The overarching goal of the bill is to ensure that fewer children are in the juvenile
11 justice system and that, if and when they do become involved in the system, there is a
12 presumption against incarceration and a requirement for the regular review of any
13 commitment imposed, in order to minimize the harm that incarceration can cause children.

14 The bill amends the statute governing a juvenile's right to counsel to specify that the
15 right to counsel attaches at the juvenile's initial appearance and continues until the court no
16 longer has jurisdiction over the juvenile, including all post-dispositional hearings and
17 during the time of commitment. The bill also requires counsel appointed by the court to
18 continue to represent the juvenile throughout all proceedings concerning the juvenile,
19 unless relieved by the court. The Juvenile Court must assign counsel to a juvenile when a
20 detention order is reviewed.

21 The bill amends the definition of "juvenile" as used in the Maine Juvenile Code to
22 include a person 18 years of age or older who had been adjudicated as a juvenile during the
23 period of a disposition that includes probation and commitment to the Department of
24 Corrections beyond that person's 18th birthday.

25 The bill establishes that the Juvenile Court has jurisdiction over proceedings in which
26 a juvenile had attained 12 years of age at the time of the offense, effective October 1, 2022.

27 The bill authorizes the Juvenile Court to appoint counsel for a juvenile upon the filing
28 of a petition. The bill requires the Juvenile Court to appoint counsel upon a disposition
29 ordering a juvenile to the Department of Corrections juvenile correctional facility; counsel
30 may be in addition to the juvenile's primary counsel.

31 The bill adds 2 considerations that must be accorded weight against ordering placement
32 in a secure facility: whether the juvenile was under 14 years of age at the time of the crime
33 and whether the adjudication is for a juvenile crime that would be a Class D or E crime if
34 it were an adult crime and was not reduced from a crime that was charged as Class A, B or
35 C.

36 The bill adds to the already existing review in the Maine Revised Statutes, Title 15,
37 section 3315 a requirement that the juvenile have counsel. It allows courts to require the
38 Department of Corrections, the Department of Health and Human Services, or both, to
39 demonstrate the reasonableness of the current treatment or placement provided or offered
40 if an appropriate treatment or an appropriate less restrictive alternative placement is not
41 being provided. It also allows such judicial reviews for individuals who are 18 to 20 years
42 of age.

43 The bill allows a juvenile to request a hearing under Title 15, section 3317 and to
44 petition for a reduction of a period of commitment and authorizes the court to reduce the

1 period of commitment or probation. A juvenile may request this hearing only once every
2 180 days absent extraordinary circumstances.

3 The bill allows a court to limit commitment to less than one year.

4 The bill allows for appeal of hearings pursuant to Title 15, section 3317.

5 The bill raises the age at which a juvenile may be committed to Long Creek Youth
6 Development Center to 12 years of age beginning October 1, 2022.