MCILS

August 22, 2022 Commissioner's Meeting Packet

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

AUGUST 22, 2022
COMMISSION MEETING
AGENDA

1) Approval of the July 19, 2022 Commission Meeting Minutes
2) Report of the Executive Director
    a. Operations Report
    b. Case Staffing Status Report
    c. *Winchester*
3) Biennial budget discussion and vote
    a. Significance of Budget Office Guidance
    b. Staff Budget Initiatives
    c. Commission Budget Initiatives (if any)
4) Rulemaking discussion
    a. proposed Chapter 303, *PROCEDURES REGARDING LEGAL RESEARCH ACCESS AND MATERIALS*
    b. *Caseload Standards*
5) Reimbursement request for civil matter defense representation
6) Set Date, Time and Location of Next Regular Meeting of the Commission
7) Public Comment
8) Executive Session

Maine Commission on Indigent Legal Services – Commissioners Meeting
July 19, 2022

Minutes

Commissioners Present: Donald Alexander, Ronald Schneider, Joshua Tardy, Roger Katz, Meegan Burbank

MCILS Staff Present: Justin Andrus, Ellie Maciag

Agenda Item	Discussion/Outcome
Approval of the June 28, 2022 Commission Meeting Minutes	No discussion. Chair Tardy moved to approve. Commissioner Schneider seconded. All voted in favor. Approved.
Review of Proposed Decision, *In re Patrick Gordon*	Commissioner Alexander moved to table the matter. Commissioner Schneider seconded. The matter was tabled.
Report of the Executive Director	Operation Report Director Andrus indicated that the number of cases for FY'22 was 31,640, which is just shy of the projected 32,000 that he was concerned about reaching. Director Andrus indicated that the voucher total for the year was roughly $17,000,900, with many vouchers still at the $60 per hour rate. This means that while MCILS came in at the budget that it had, it will have to consider the rate change in future budget planning. Director Andrus noted that the incoming revenue from collections is down to $24,797 last month. Director Andrus also reiterated that the tax offset change is something he would be happy to speak with Commissioners about offline, should they wish, as well as the changes to the way the Judicial Branch is collecting bail. Commissioner Alexander asked if the Commission is reaching a breaking point of costing more than it is making with regards to the management of bail. Director Andrus explained that while it is a risk, it is not at that point yet, and indicated that there is potentially more information to come from the Judicial Branch in the future, with regards to the handling of bail.

Agenda Item	Discussion/Outcome
	Year End Report Director Andrus briefly discussed the year-end report, indicating that MCILS did very well with conserving the budget, while making sure to provide for everything that attorneys asked for. Case Staffing Status Report 213 attorneys renewed by the annual renewal deadline, with a handful asking for extensions. Somerset County is at risk to have no local counsel available (much like Washington County). Chair Tardy asked if the rural defender unit would impact those at-risk counties, and a discussion ensued regarding placement and use of the rural defenders. Director Andrus indicated that there has been a level of interest from potential attorneys to apply for these positions, and that hopefully within the next few months, the positions will be open and available to be filled. A conversation took place regarding some technicalities of how the rural defender unit would work, with concern over the safety of the attorneys when going out to meet with clients. Mini-bid for Legal Research Services Bids went out to Westlaw and Lexis and are due by August 5th. Effect of *Robbins v MCILS* on prospective agency operations The Court did grant Class status. Director Andrus discussed the extensive document request that was issued to MCILS. He indicated that MCILS does not have enough staff to comply with the request and do more than maintain the daily matters of the Commission. Director Andrus indicated that MCILS will need interim hires to comply in a timely manner. A discussion ensued regarding the technicalities surrounding the fact that this request will effectively shut down any strategic planning and development, reducing its ability to follow through with updating and reworking rule and statutes of how the Commission is run, which is the primary cause of the lawsuit in the first place.
Approval of amicus Filing in *Winchester v State of Maine*	Commissioner Schneider moved to move forward with retaining outside counsel. Commissioner Katz seconded. A discussion ensued regarding concerns surrounding the hourly rate in comparison to the hourly rate that MCILS rostered attorneys are paid. Commissioner Alexander voted no. All others voted yes. The motion passed.

Agenda Item	Discussion/Outcome
Biennial Budget Discussion	Commissioner Schneider noted that he is in favor of all 12 initiatives, pointing out that if the State had Public Defender offices, MCILS would have access to federal money instead of needing to use state money for the attorney student loan payback proposal. Commissioner Katz asked for clarification regarding the data that shows that the creation of the public defender offices does not reduce the case loads of any attorneys; rostered or employed. Director Andrus explained, with data from one of the memos showing caseloads broken down by case type, that the issue is not where the attorneys are placed in the state, but that there are not enough attorneys on a whole. Director Andrus indicated that one of the key things about the creation of the public defender offices is that it will be an on-ramp for attorneys to get involved in the system and will provide the support structure necessary for attorneys new to the program to thrive and grow their abilities. Director Andrus stated that the number of attorneys that the State needs to be fully functioning and fit into the draft caseload standards is 805. Director Andrus explained that this number was arrived at by reviewing the data from 5 other states that have done statistical analysis of caseload standards. He indicated that the Maine standards for attorney caseloads are nearly an order of magnitude lower than those standards that other states have created. One example: MCILS determined the caseload hours for felonies is 29 hours. The SCLAID standard for felonies consistently comes out at roughly 260 hours. Commissioner Schneider made a motion to approve all 12 initiatives. Commissioner Katz seconded. Commissioner Alexander stated that he does not feel comfortable to make a vote one way or the other without additional information from other states and input from the absent Commissioners. Discussion ensued regarding the timeline, specifics, and additional data requested for approving the budget. Director Andrus pointed out that the budget needs to be submitted by the end of August. Commissioner Katz motioned to table the matter. Commissioner Alexander seconded. Commissioner Schneider voted no. All others voted yes. The motion to table passed.
Rulemaking Discussion	Caseload Standards Director Andrus gave a brief overview of how the caseload standards were created. He explained that the standards are based on an attorney working full time for MCILS, but that if an attorney were to only work 70% for MCILS, that the numbers are easy to scale down.

Agenda Item	Discussion/Outcome
	Chapter 303 – Legal Research Materials Director Andrus explained the intentions of Chapter 303 is to provide legal research materials and book reimbursement to rostered attorneys. He explained that use of the products would be limited to MCILS clients, but that all attorneys should have access to the resources in order to best serve indigent clients, regardless of the amount of work the attorney assigned to them typically does for MCILS.
Public Comment	Robert Cummins: Attorney Cummins expressed frustration regarding the continued discussion on the budget without coming to an agreement, and the general lack of action taken by the Commission to work through the Sixth Amendment Center report's suggestions, as well as the Commission's concern for what other states are doing comparative to Maine. Jeremy Pratt: Attorney Pratt requested the Commission's opinion regarding the difficulties that arise with being a long-distance attorney, and the requirements of the courts for the appointed attorney to be in the same location as their client for meetings with the court. He also suggested that MCILS provide laptops to the court specifically for clients to have zoom meetings with their attorneys. Robert Ruffner: Attorney Ruffner stated that MCILS may want to work with rostered attorneys in the locations that attorneys from away are getting sent to (as brought up by Attorney Pratt), as they may have space available for private meeting with clients. He also expressed the importance of the Commission requesting what it needs, with respect to the budget, as that will set a standard and blueprint for future budget requests. He also expressed that having a budget that reflects the needs of the agency may play a part in any settlement negotiations that may take place due to the pending ACLU lawsuit.
Executive Session	Commissioner Katz moved to go into executive session pursuant to 1 MRS section 405(6)(e) to discuss the Commission's legal rights and duties with counsel concerning pending or contemplated litigation. Commissioner Schneider seconded. No votes were taken.
Adjournment of meeting	The next meeting will be held on Monday, August 22, 2022 at 1 pm.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS

FROM: JUSTIN ANDRUS, EXECUTIVE DIRECTOR

SUBJECT: OPERATIONS REPORTS

DATE: August 16, 2022

Attached you will find the July 2022, Operations Reports for your review and our discussion at the Commission meeting on August 22, 2022. A summary of the operations reports follows:

- 2,535 new cases were opened in the DefenderData system in July. This was a 72 case decrease from June. Year to date, new cases are down by approximately 9.4% from 2,800 at this time last year to 2,535 this year.

- The number of vouchers submitted electronically in July was 2,787, a decrease of 46 vouchers from June, totaling $1,604,722, a decrease of $144,168 from June. Year to date, the number of submitted vouchers is up by approximately 7.2%, from 2,599 at this time last year to 2,787 this year, with the total amount for submitted vouchers up approximately 22.5%, from $1,309,611 at this time last year to $1,604,722 this year.

- In July, we paid 3,277 electronic vouchers totaling $1,896,252, representing an increase of 833 vouchers and an increase of $163,253 compared to June. Year to date, the number of paid vouchers is up approximately 48%, from 2,205 at this time last year to 3,277 this year, and the total amount paid is up approximately 67%, from $1,133,721 this time last year to $1,896,252 this year.

- We paid no paper vouchers in July.

- The average price per voucher in July was $578.66, down $11.24 per voucher from June. Year to date, the average price per voucher is up approximately 12.5%, from $514.16 at this time last year to $578.66 this year.

- Petition for Modified Release/Treatment and Appeal cases had the highest average voucher in July. There were 16 vouchers exceeding $5,000 paid in July. See attached addendum for details.

- In July, we issued 68 authorizations to expend funds: 32 for private investigators, 20 for experts, and 16 for miscellaneous services such as interpreters and transcriptionists. In June, we paid $19,792 for experts and investigators, etc. No requests for funds were denied.

- In July, we opened 1 attorney investigations and there were no attorney suspensions.

- In our All Other Account, the total expenses for the month of July were $1,935,083. During July, approximately $19,038 was devoted to the Commission's operating expenses.
- In the Personal Services Accounts, we had $114,543 in expenses for the month of July.
- No revenue was transferred by the Judicial Branch for June's collections.
- Exceptional results – see attached addendum.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY23 FUND ACCOUNTING
AS OF 07/31/2022

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Professional Services Allotment		$ 6,173,605.54		$ 3,080,749.00		$ 3,080,749.00		$ 3,080,747.00	$ 15,415,850.54
FY23 General Operations Allotment		$ 48,000.00		$ 48,000.00		$ 48,000.00		$ 48,000.00	$ 192,000.00
FY22 Encumbered Balance Carry Forward		$ 506,889.06		$ -		$ -		$ -	$ 506,889.06
Budget Order Adjustment		$ -		$ -		$ -		$ -	
Budget Order Adjustment		$ -		$ -		$ -		$ -	
Financial Order Unencumbered Balance Fwd		$ -		$ -		$ -		$ -	
Total Budget Allotments		**$ 6,221,605.54**		**$ 3,128,749.00**		**$ 3,128,749.00**		**$ 3,128,747.00**	**$ 16,114,739.60**
Total Expenses	1	$ (1,935,083.89)	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
Encumbrances (Justice Works)		$ -		$ -		$ -		$ -	$ -
Encumbrances (B Taylor)		$ (22,100.00)		$ -		$ -		$ -	$ (22,100.00)
Encumbrances (CTB for non attorney expenses)		$ (1,380,207.67)		$ -		$ -		$ -	$ (1,380,207.67)
Encumbrances (business cards,batteries & address stamps)		$ (17.14)		$ -		$ -		$ -	$ (17.14)
FY22 CTB Balance Carry Forward		$ (86,108.40)		$ -		$ -		$ -	$ -
TOTAL REMAINING		**$ 2,798,088.44**		**$ 3,128,749.00**		**$ 3,128,749.00**		**$ 3,128,747.00**	**$ 12,691,222.50**

Q1 Month 1		
INDIGENT LEGAL SERVICES		
Counsel Payments	$	(1,896,252.96)
Interpreters	$	(145.80)
Private Investigators	$	(11,921.31)
Mental Health Expert	$	(3,725.00)
Misc Prof Fees & Serv	$	(2,422.50)
Transcripts	$	(1,454.00)
Other Expert	$	-
Process Servers	$	(123.72)
Subpoena Witness Fees	$	-
Interpreter & Transcript on p-card	$	-
SUB-TOTAL ILS	**$**	**(1,916,045.29)**
OPERATING EXPENSES		
Tel/Com Prof Svcs(non state credit)	$	1,572.82
Justice Works	$	(6,460.00)
Risk Management Insurances	$	(3,618.31)
Mileage/Tolls/Parking	$	(553.95)
Mailing/Postage/Freight	$	(222.71)
West Publishing Corp	$	(226.80)
Office Equipment Rental	$	(213.71)
Office Supplies/Eqp.	$	(148.25)
Cellular Phones	$	(237.59)
OIT/TELCO	$	(4,352.66)
Parking Fees	$	(20.00)
Barbara Taylor monthly fees	$	(4,420.00)
Notary Fees	$	(100.00)
Interpreter by procurement card	$	(37.44)
AAG Legal Srvcs Quarterly Payment	$	-
SUB-TOTAL OE	**$**	**(19,038.60)**
TOTAL	**$**	**(1,935,083.89)**

INDIGENT LEGAL SERVICES		
Q1 Allotment	$	6,221,605.54
Q1 Encumbrances for Justice Works contract	$	-
Barbara Taylor Contract	$	(22,100.00)
CTB Encumbrance for non attorney expenses	$	(1,380,207.67)
Q1 Encumbrances for business cards. rubber stamps, ink, batteries	$	(17.14)
Q1 Expenses to date	$	(1,935,083.89)
FY22 CTB Balance Carry Forward	$	(86,108.40)
Remaining Q1 Allotment	**$**	**2,798,088.44**

Non-Counsel Indigent Legal Services		
Monthly Total	$	(19,792.33)
Total Q1	$	-
Total Q2	$	-
Total Q3	$	-
Total Q4	$	-
Fiscal Year Total	**$**	**-**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY23 FUND ACCOUNTING
AS OF 07/31/2022

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Allotment		$ 285,269.00		$ 263,599.00		$ 285,269.00		$ 115,478.00	$ 949,615.00
Financial Order Adjustments		$ -		$ -		$ -		$ -	
Budget Order Adjustments		$ -		$ -		$ -		$ -	
Budget Order Adjustments		$ -		$ -		$ -		$ -	
Total Budget Allotments		**$ 285,269.00**		**$ 263,599.00**		**$ 285,269.00**		**$ 115,478.00**	**$ 949,615.00**
Total Expenses	1	$ (65,524.90)	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
TOTAL REMAINING		**$ 219,744.10**		**$ 263,599.00**		**$ 285,269.00**		**$ 115,478.00**	**$ 884,090.10**

Q1 Month 1	
Per Diem	$ -
Salary	$ (33,676.82)
Vacation Pay	$ (1,699.24)
Holiday Pay	$ (4,320.96)
Sick Pay	$ (911.79)
Empl Hlth SVS/Worker Comp	$ -
Health Insurance	$ (6,595.13)
Dental Insurance	$ (160.60)
Employer Retiree Health	$ (3,873.77)
Employer Retirement	$ (2,691.98)
Employer Group Life	$ (283.08)
Employer Medicare	$ (605.98)
Retiree Unfunded Liability	$ (7,886.50)
Longevity Pay	$ (80.00)
Perm Part Time Full Ben	$ (2,739.05)
Retro Lump Sum Pymt Contract	$ -
Standard Overtime	$ -
TOTAL	**$ (65,524.90)**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY23

FUND ACCOUNTING

AS OF 07/31/2022

Account 014 95F Z112 01 (OSR Personal Services Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Allotment		$ 211,632.00		$ 194,116.00		$ 211,632.00		$ 105,856.00	$ 723,236.00
Financial Order Adjustments		$ -		$ -		$ -		$ -	
Financial Order Adjustments		$ -		$ -		$ -		$ -	
Budget Order Adjustments		$ -		$ -		$ -		$ -	
Total Budget Allotments		**$ 211,632.00**		**$ 194,116.00**		**$ 211,632.00**		**$ 105,856.00**	**$ 723,236.00**
Total Expenses	1	$ (49,018.85)	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
TOTAL REMAINING		**$ 162,613.15**		**$ 194,116.00**		**$ 211,632.00**		**$ 105,856.00**	**$ 674,217.15**

Q1 Month 1 PERMANENT		
Per Diem	$	-
Salary	$	(17,244.84)
Vacation Pay	$	(450.84)
Holiday Pay	$	(2,424.16)
Sick Pay	$	(3,884.16)
Limited Period Regular	$	-
Health Insurance	$	(7,074.24)
Dental Insurance	$	(146.00)
Employer Retiree Health	$	(2,715.74)
Employer Retirement	$	(2,394.38)
Employer Group Life	$	(302.40)
Employer Medicare	$	(411.59)
Retiree Unfunded Liability	$	(5,528.90)
Longevity Pay	$	-
Perm Part Time Full Ben	$	-
Retro Pay Contract	$	-
Retro Lump Sum Pymt	$	-
TOTAL	**$**	**(42,577.25)**

Q1 Month 1 LIMITED PERIOD		
Limited Period Regular	$	(5,956.88)
Limit Per Holiday Pay	$	(484.72)
Limit Per Sick Pay	$	-
TOTAL	**$**	**(6,441.60)**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY23 FUND ACCOUNTING

As of 07/31/2022

Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY22 Total
Original Total Budget Allotments		**$ 3,221,844.00**		**$ 2,147,897.00**		**$ 2,147,896.00**		**$ 2,147,896.00**	**$ 9,665,533.00**
Financial Order Adjustment		**$ -**		**$ -**		**$ -**		**$ -**	**$ -**
Financial Order Adjustment	1	$ -	4	$ -	7	$ -	10	$ -	
Budget Order Adjustment	2	$ -	5	$ -	8	$ -	11	$ -	
Budget Order Adjustment		$ -	6	$ -	9	$ -	12	$ -	
Budget Order Adjustment	3	$ -		$ -		$ -		$ -	
Total Budget Allotments		**$ 3,221,844.00**		**$ 2,147,897.00**		**$ 2,147,896.00**		**$ 2,147,896.00**	**$ 9,665,533.00**
Cash Carryover from Prior Quarter		$ -		$ -		$ -		$ -	
Collected Revenue from JB	1	$ -	4	$ -	7	$ -	10	$ -	
Collected Revenue from JB	2	$ -	5	$ -	8	$ -	11	$ -	
Collected Revenue from JB	3	$ -	6	$ -	9	$ -	12	$ -	
Collected for reimbursement of counsel fees		$ -		$ -		$ -		$ -	
Asset Forfeiture		$ -		$ -		$ -		$ -	
Victim Services Restitution		$ -		$ -		$ -		$ -	
Collected for reimbursement of counsel fees		$ -		$ -		$ -		$ -	
Refund to KENCD for bail to be applied to fines		$ -		$ -		$ -		$ -	
TOTAL CASH PLUS REVENUE COLLECTED		**$ -**		**$ -**		**$ -**		**$ -**	**$ -**
Counsel Payments	1	$ -	4	$ -	7	$ -	10	$ -	
Other Expenses		$ -		$ -		$ -	***	$ -	
Counsel Payments	2	$ -	5	$ -	8	$ -	11	$ -	
Other Expenses		$ -		$ -		$ -		$ -	
Counsel Payments	3	$ -	6	$ -	9	$ -	12	$ -	
State Cap for period 2	*	**$ -**	**	**$ -**	***	**$ -**		**$ -**	
State Cap for period 3	*	**$ -**	**	**$ -**	***	**$ -**		**$ -**	
State Cap for period 4	*	**$ -**	**	**$ -**	***	**$ -**		**$ -**	
REMAINING ALLOTMENT		**$ 3,221,844.00**		**$ 2,147,897.00**		**$ 2,147,896.00**		**$ 2,147,896.00**	**$ 9,665,533.00**
Overpayment Reimbursements	1	$ -	4		7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
REMAINING CASH Year to Date		**$ -**		**$ -**		**$ -**		**$ -**	**$ -**

Collections versus Allotment		
Monthly Total	$	-
Total Q1	$	-
Total Q2	$	-
Total Q3		#REF!
Total Q4	$	-
Expenses to Date	$	-
Cash Carryover from Prior Year	$	-
Fiscal Year Total		**#REF!**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY23

FUND ACCOUNTING

AS OF 07/31/2022

Account 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Allotment		$ -		$ 57,000.00		$ -		$ -	$ 57,000.00
Carry Forward		$ -		$ -		$ -		$ -	
Financial Order Adjustments		$ -		$ -		$ -		$ -	
Budget Order Adjustments		$ -		$ -		$ -		$ -	
Total Budget Allotments		**$ -**		**$ 57,000.00**		**$ -**		**$ -**	**$ 57,000.00**
Total Expenses	1	$ -	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
TOTAL REMAINING		**$ -**		**$ 57,000.00**		**$ -**		**$ -**	**$ 57,000.00**

Q1 Month 1	
	$ -
	$ -
	$ -
	$ -
	$ -
TOTAL	**$ -**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY23 FUND ACCOUNTING
AS OF 07/31/2022

Account 023 95F Z112 02 (ARA)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY23 Total
FY23 Allotment		$ 4,000,000.00		$ -		$ -		$ -	$ 4,000,000.00
Operating Transfer		$ -		$ -		$ -		$ -	$ 250,000.00
Financial Order Adjustments		$ -		$ -		$ -		$ -	
Budget Order Adjustments		$ -		$ -		$ -		$ -	
Total Budget Allotments		**$ 4,000,000.00**		**$ -**		**$ -**		**$ -**	**$ 4,000,000.00**
Total Expenses	1	$ -	4	$ -	7	$ -	10	$ -	
	2	$ -	5	$ -	8	$ -	11	$ -	
	3	$ -	6	$ -	9	$ -	12	$ -	
TOTAL REMAINING		**$ 4,000,000.00**		**$ -**		**$ -**		**$ -**	**$ 4,000,000.00**

Q1 Month 1	
	$ -
	$ -
	$ -
	$ -
	$ -
TOTAL	**$ -**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

7/31/2022

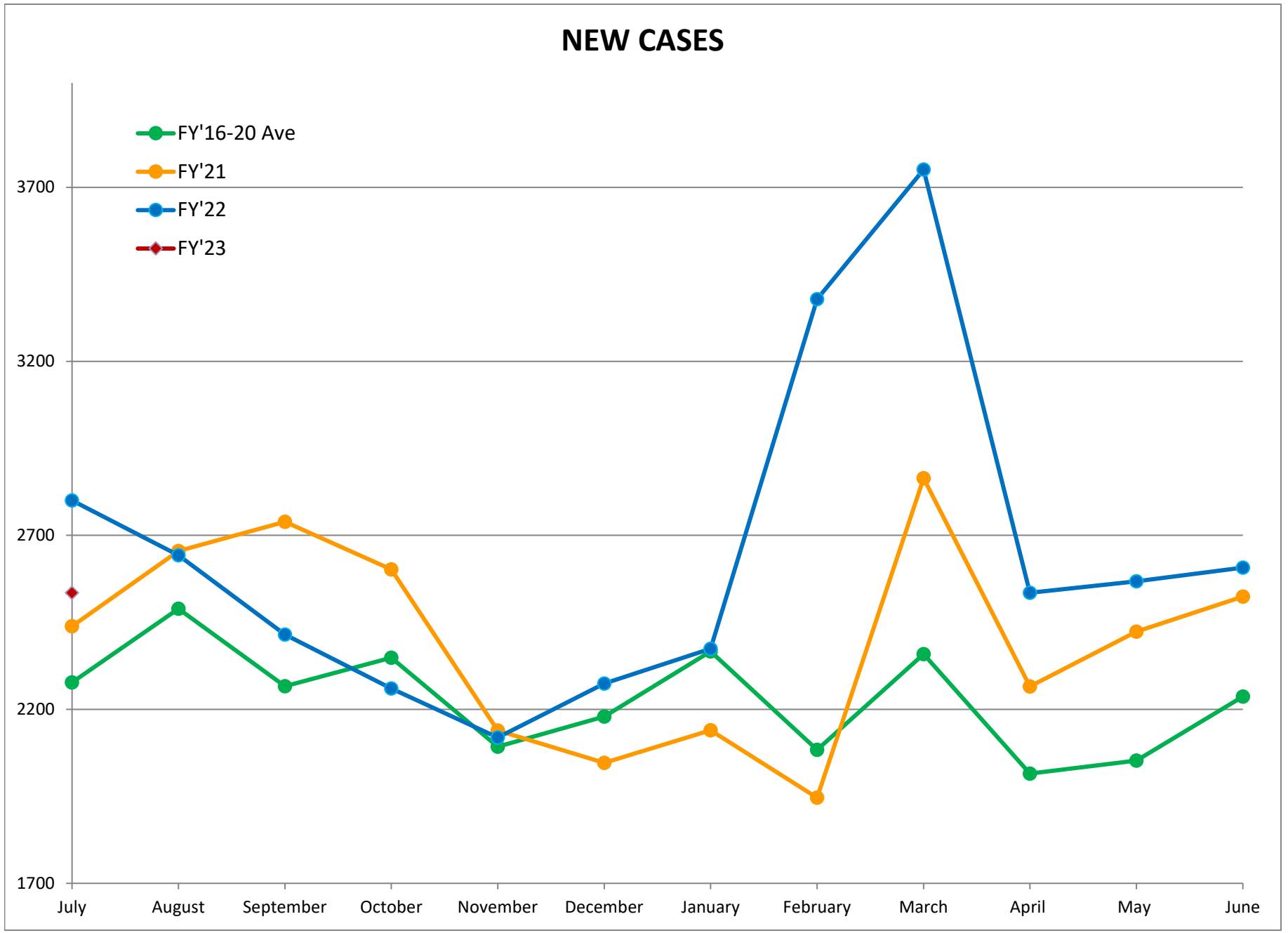
	Jul-22						Fiscal Year 2023			
DefenderData Case Type	**New Cases**	**Vouchers Submitted**	**Submitted Amount**	**Vouchers Paid**	**Approved Amount**	**Average Amount**	**Cases Opened**	**Vouchers Paid**	**Amount Paid**	**Average Amount**
Appeal	11	12	$28,182.67	13	$ 28,332.71	$2,179.44	11	13	$ 28,332.71	$2,179.44
Child Protection Petition	168	358	$265,477.91	385	$ 311,918.91	$810.18	168	385	$ 311,918.91	$810.18
Drug Court	6	12	$14,216.00	13	$ 15,630.00	$1,202.31	6	13	$ 15,630.00	$1,202.31
Emancipation	1	1	$752.00	2	$ 1,456.00	$728.00	1	2	$ 1,456.00	$728.00
Felony	636	585	$503,510.02	721	$ 595,735.04	$826.26	636	721	$ 595,735.04	$826.26
Involuntary Civil Commitment	86	103	$33,024.94	90	$ 31,027.40	$344.75	86	90	$ 31,027.40	$344.75
Juvenile	52	49	$43,633.34	74	$ 76,749.69	$1,037.16	52	74	$ 76,749.69	$1,037.16
Lawyer of the Day - Custody	226	230	$77,087.93	307	$ 103,998.33	$338.76	226	307	$ 103,998.33	$338.76
Lawyer of the Day - Juvenile	19	18	$6,696.23	30	$ 10,461.74	$348.72	19	30	$ 10,461.74	$348.72
Lawyer of the Day - Walk-in	173	157	$54,178.58	170	$ 59,318.39	$348.93	173	170	$ 59,318.39	$348.93
Misdemeanor	967	928	$344,413.13	1,093	$ 399,396.18	$365.41	967	1,093	$ 399,396.18	$365.41
Petition, Modified Release Treatment	2	3	$8,402.27	4	$ 10,047.12	$2,511.78	2	4	$ 10,047.12	$2,511.78
Petition, Release or Discharge	1	1	$ 779.80	1	$ 779.80	$ 779.80	1	1	$ 779.80	$779.80
Petition,Termination of Parental Rights	23	48	$54,614.20	52	$ 59,698.40	$1,148.05	23	52	$ 59,698.40	$1,148.05
Post Conviction Review	5	6	$6,687.00	4	$ 4,377.80	$1,094.45	5	4	$ 4,377.80	$1,094.45
Probate	4	3	$3,904.35	5	$ 6,722.35	$1,344.47	4	5	$ 6,722.35	$1,344.47
Probation Violation	102	107	$55,888.30	124	$ 72,224.16	$582.45	102	124	$ 72,224.16	$582.45
Represent Witness on 5th Amendment	0	2	$ 940.80	2	$ 940.80	$ 470.40	0	2	$ 940.80	$470.40
Resource Counsel Criminal	0	2	$232.00	3	$ 392.00	$130.67	0	3	$ 392.00	$130.67
Resource Counsel Juvenile	0	1	$32.00	1	$ 32.00	$32.00	0	1	$ 32.00	$32.00
Resource Counsel Protective Custody	0	0		0			0	0		
Review of Child Protection Order	51	157	$101,400.67	180	$ 106,562.14	$592.01	51	180	$ 106,562.14	$592.01
Revocation of Administrative Release	2	4	$ 668.00	3	$ 452.00	$ 150.67	2	3	$ 452.00	$150.67
DefenderData Sub-Total	**2,535**	**2,787**	**$1,604,722.14**	**3,277**	**$1,896,252.96**	**$578.66**	**2,535**	**3,277**	**$1,896,252.96**	**$578.66**
Paper Voucher Sub-Total										
TOTAL	**2,535**	**2,787**	**$1,604,722.14**	**3,277**	**$1,896,252.96**	**$ 578.66**	**2,535**	**3,277**	**$ 1,896,252.96**	**$ 578.66**

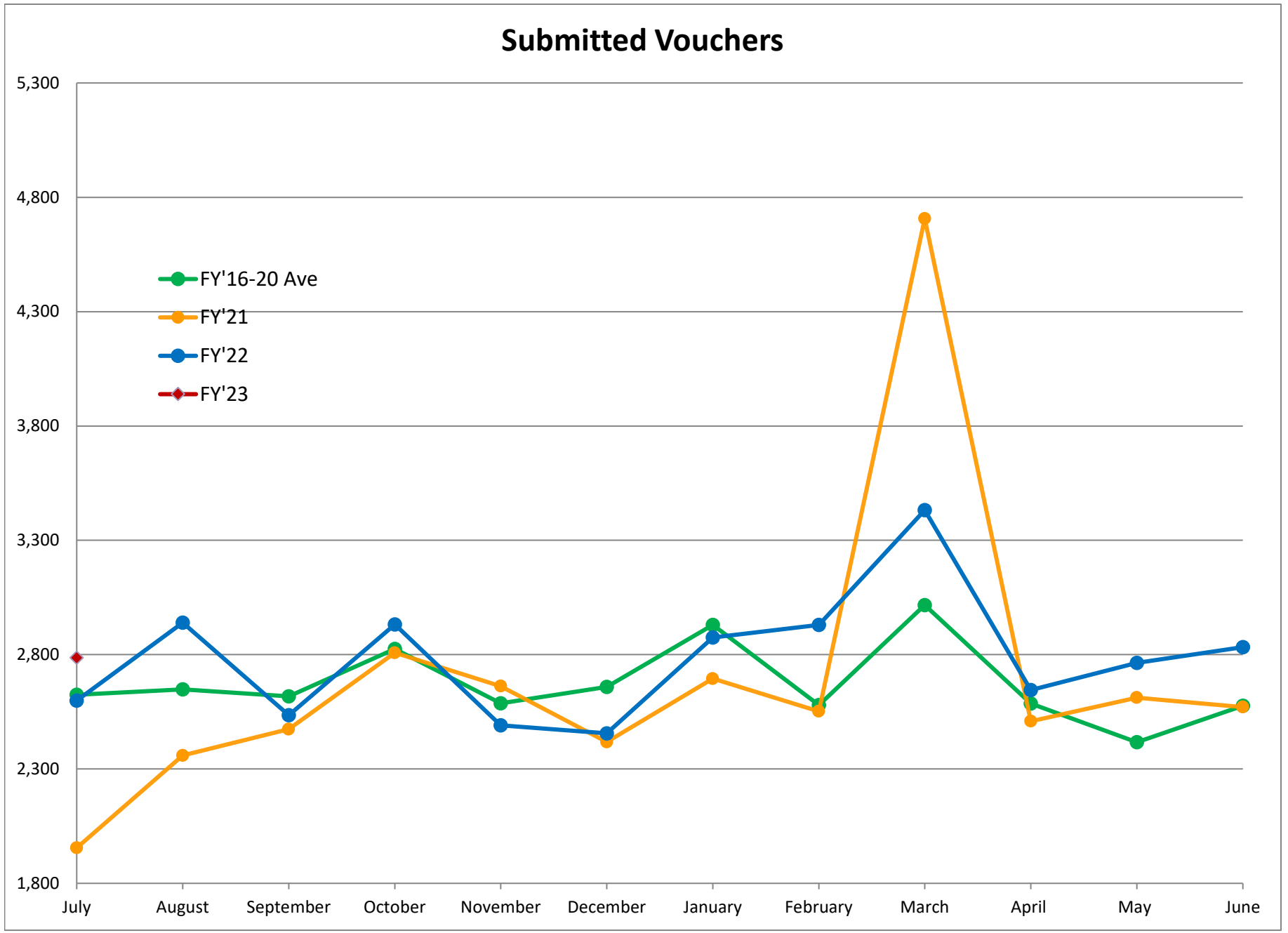
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

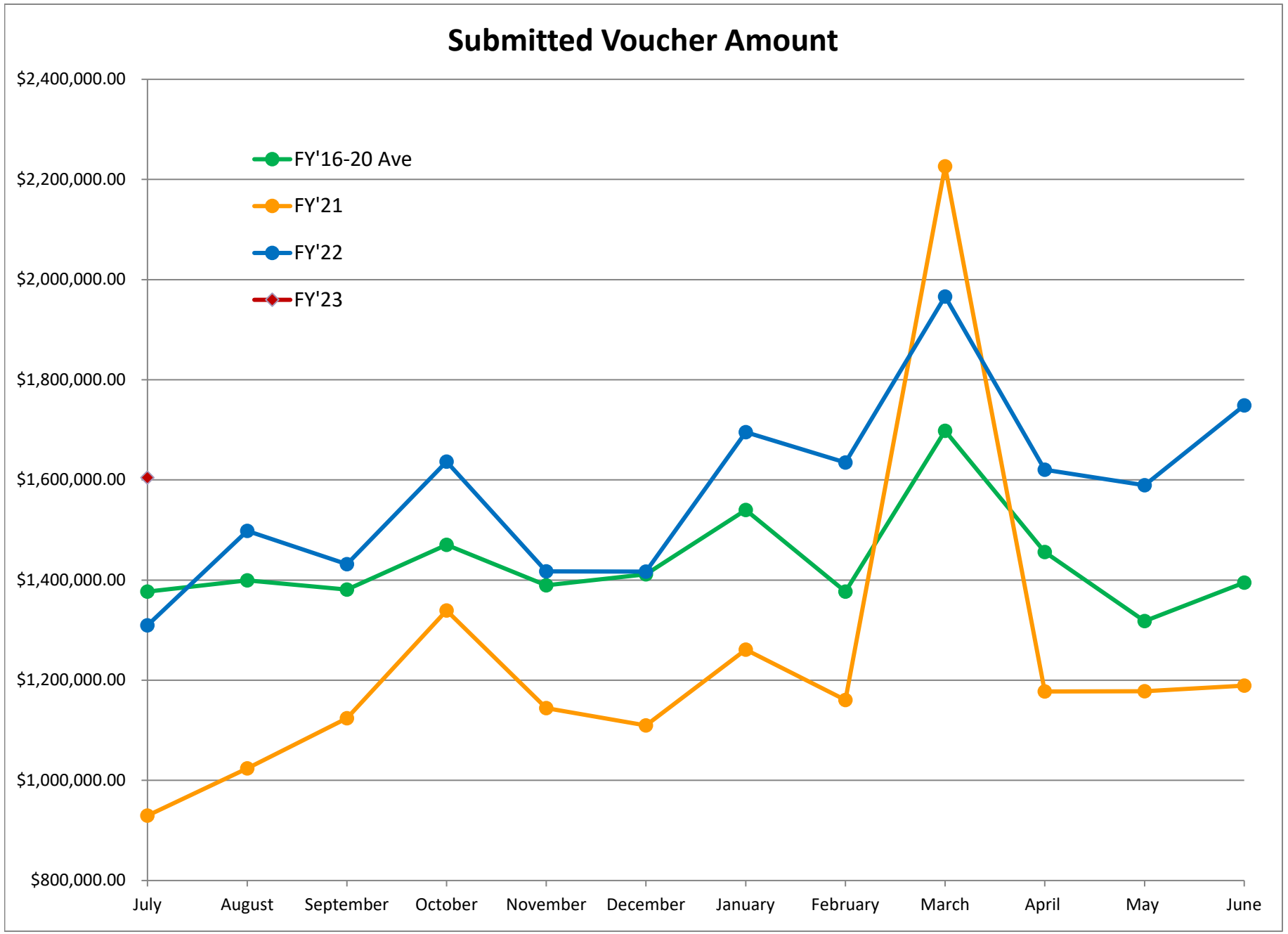
Activity Report by Court

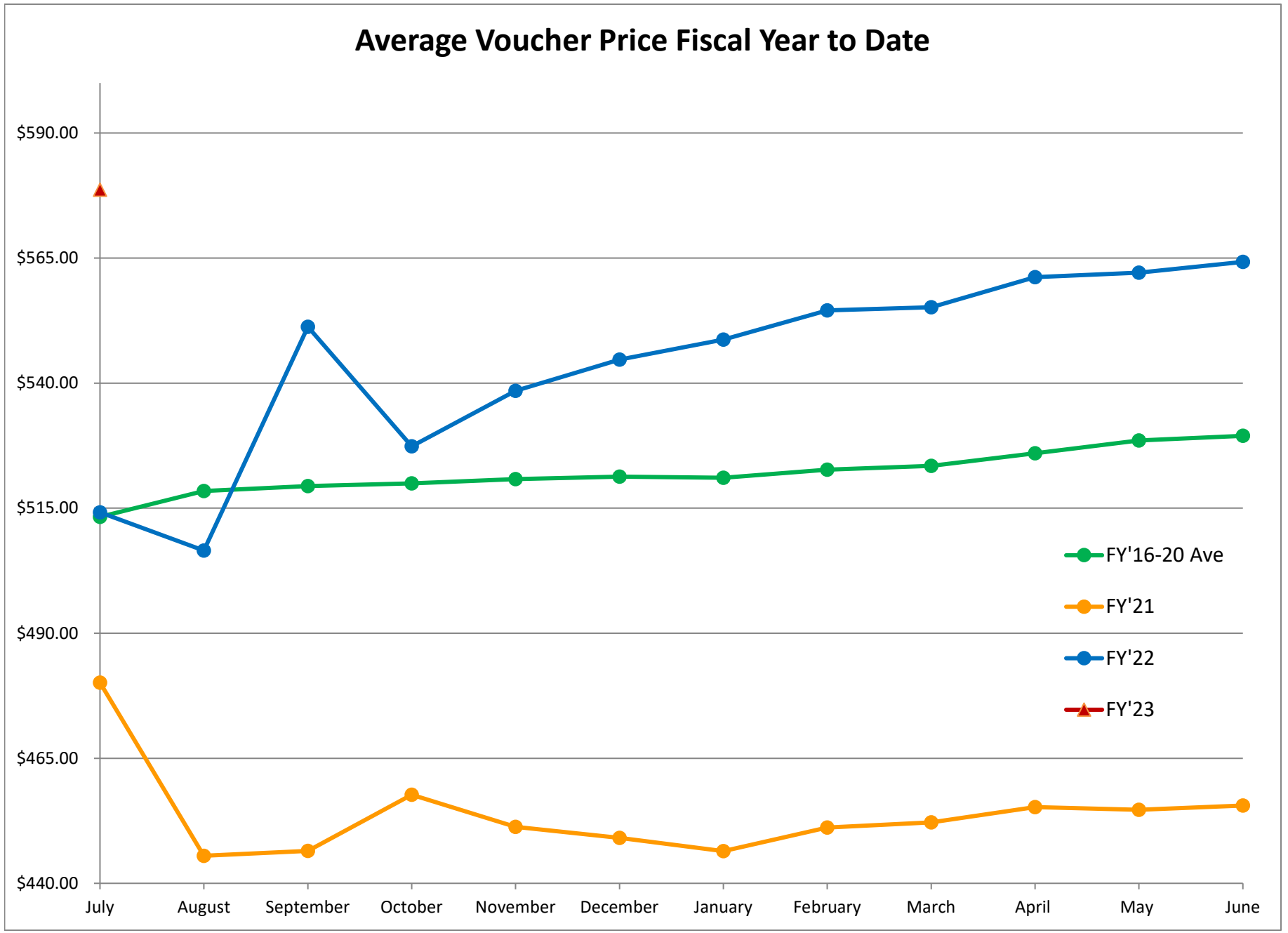
7/31/2022

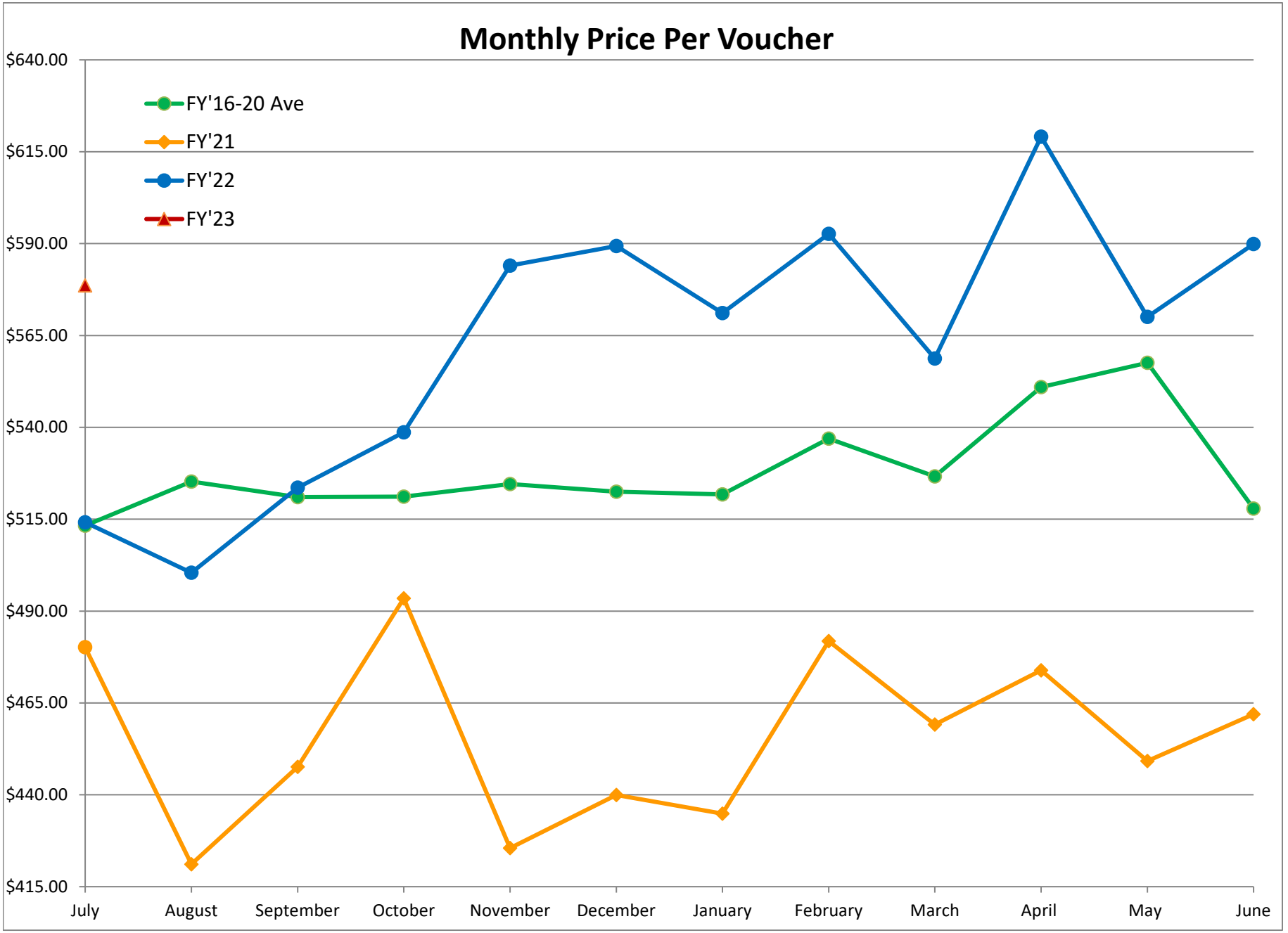
	Jul-22						Fiscal Year 2023			
Court	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	1	1	$ 1,054.00	2	$ 1,886.00	$ 943.00	1	2	$ 1,886.00	$943.00
AUBSC	0	1	$ 200.00	1	$ 200.00	$ 200.00	0	1	$ 200.00	$200.00
AUGDC	42	52	$ 43,562.02	50	$ 41,454.57	$ 829.09	42	50	$ 41,454.57	$829.09
AUGSC	3	4	$ 9,182.07	5	$ 10,826.92	$ 2,165.38	3	5	$ 10,826.92	$2,165.38
BANDC	38	76	$ 34,976.00	78	$ 33,261.00	$ 426.42	38	78	$ 33,261.00	$426.42
BANSC	0	1	$ 616.00	1	$ 616.00	$ 616.00	0	1	$ 616.00	$616.00
BATSC	1	0		0			1	0		
BELDC	17	12	$ 7,281.16	15	$ 10,618.89	$ 707.93	17	15	$ 10,618.89	$707.93
BELSC	0	0		0			0	0		
BIDDC	28	55	$ 31,184.85	65	$ 49,764.56	$ 765.61	28	65	$ 49,764.56	$765.61
BRIDC	5	10	$ 5,448.00	14	$ 6,959.49	$ 497.11	5	14	$ 6,959.49	$497.11
CALDC	1	5	$ 3,352.00	4	$ 1,704.00	$ 426.00	1	4	$ 1,704.00	$426.00
CARDC	3	10	$ 8,230.30	12	$ 9,690.30	$ 807.53	3	12	$ 9,690.30	$807.53
CARSC	1	0		0			1	0		
DOVDC	3	7	$ 2,736.50	8	$ 4,715.10	$ 589.39	3	8	$ 4,715.10	$589.39
DOVSC	0	0		0			0	0		
ELLDC	14	21	$ 22,856.30	23	$ 23,154.30	$ 1,006.71	14	23	$ 23,154.30	$1,006.71
ELLSC	0	0		0			0	0		
FARDC	6	15	$ 12,801.68	18	$ 14,415.88	$ 800.88	6	18	$ 14,415.88	$800.88
FARSC	0	1	$ 800.00	0			0	0		
FORDC	4	15	$ 9,188.10	16	$ 11,084.10	$ 692.76	4	16	$ 11,084.10	$692.76
HOUDC	9	20	$ 14,220.18	25	$ 17,860.18	$ 714.41	9	25	$ 17,860.18	$714.41
HOUSC	1	0		0			1	0		
LEWDC	51	96	$ 62,377.76	129	$ 82,412.00	$ 638.85	51	129	$ 82,412.00	$638.85
LINDC	11	15	$ 9,569.00	15	$ 11,158.40	$ 743.89	11	15	$ 11,158.40	$743.89
MACDC	1	7	$ 6,485.80	3	$ 1,596.00	$ 532.00	1	3	$ 1,596.00	$532.00
MACSC	0	0		0			0	0		
MADDC	1	0		0			1	0		
MILDC	3	8	$ 3,888.55	3	$ 984.00	$ 328.00	3	3	$ 984.00	$328.00
NEWDC	11	8	$ 4,571.70	9	$ 4,782.70	$ 531.41	11	9	$ 4,782.70	$531.41
PORDC	51	97	$ 60,630.36	108	$ 95,441.91	$ 883.72	51	108	$ 95,441.91	$883.72
PORSC	0	2	$ 904.00	2	$ 912.00	$ 456.00	0	2	$ 912.00	$456.00
PREDC	9	16	$ 9,204.00	16	$ 8,964.00	$ 560.25	9	16	$ 8,964.00	$560.25
ROCDC	7	13	$ 9,712.37	12	$ 10,352.97	$ 862.75	7	12	$ 10,352.97	$862.75
ROCSC	4	0		0			4	0		
RUMDC	15	23	$ 24,094.00	22	$ 19,690.95	$ 895.04	15	22	$ 19,690.95	$895.04
SKODC	30	52	$ 45,326.80	50	$ 40,134.50	$ 802.69	30	50	$ 40,134.50	$802.69
SKOSC	0	0		0			0	0		
SOUDC	11	22	$ 15,632.60	26	$ 18,046.40	$ 694.09	11	26	$ 18,046.40	$694.09
SOUSC	0	0		0			0	0		
SPRDC	11	28	$ 13,978.00	33	$ 30,429.16	$ 922.10	11	33	$ 30,429.16	$922.10
Law Ct	10	9	$ 25,412.71	11	$ 26,876.71	$ 2,443.34	10	11	$ 26,876.71	$2,443.34
YORCD	345	358	$ 180,671.79	432	$ 211,209.27	$ 488.91	345	432	$ 211,209.27	$488.91
AROCD	205	190	$ 70,595.46	197	$ 81,889.48	$ 415.68	205	197	$ 81,889.48	$415.68
ANDCD	196	161	$ 87,723.97	236	$ 130,725.30	$ 553.92	196	236	$ 130,725.30	$553.92
KENCD	195	166	$ 99,094.59	181	$ 107,343.92	$ 593.06	195	181	$ 107,343.92	$593.06
PENCD	283	259	$ 153,280.67	308	$ 158,364.63	$ 514.17	283	308	$ 158,364.63	$514.17
SAGCD	44	32	$ 17,533.17	38	$ 11,447.62	$ 301.25	44	38	$ 11,447.62	$301.25
WALCD	68	54	$ 22,282.96	72	$ 41,523.76	$ 576.72	68	72	$ 41,523.76	$576.72
PISCD	17	22	$ 7,141.08	16	$ 3,081.45	$ 192.59	17	16	$ 3,081.45	$192.59
HANCD	69	49	$ 36,315.34	61	$ 42,155.14	$ 691.07	69	61	$ 42,155.14	$691.07
FRACD	32	21	$ 11,358.16	29	$ 17,595.96	$ 606.76	32	29	$ 17,595.96	$606.76
WASCD	41	48	$ 26,952.85	53	$ 28,911.25	$ 545.50	41	53	$ 28,911.25	$545.50
CUMCD	319	363	$ 195,118.91	462	$ 244,026.19	$ 528.20	319	462	$ 244,026.19	$528.20
KNOCD	67	67	$ 35,396.06	80	$ 45,997.97	$ 574.97	67	80	$ 45,997.97	$574.97
SOMCD	85	87	$ 35,239.95	109	$ 50,382.24	$ 462.22	85	109	$ 50,382.24	$462.22
OXFCD	86	80	$ 49,298.44	77	$ 41,450.18	$ 538.31	86	77	$ 41,450.18	$538.31
LINCD	32	47	$ 20,216.66	49	$ 22,227.82	$ 453.63	32	49	$ 22,227.82	$453.63
WATDC	25	43	$ 26,897.51	51	$ 30,619.59	$ 600.38	25	51	$ 30,619.59	$600.38
WESDC	19	24	$ 11,457.50	33	$ 17,497.50	$ 530.23	19	33	$ 17,497.50	$530.23
WISDC	3	5	$ 6,407.66	6	$ 4,751.30	$ 791.88	3	6	$ 4,751.30	$791.88
WISSC	0	0		0			0	0		
YORDC	1	9	$ 12,262.60	11	$ 15,059.40	$ 1,369.04	1	11	$ 15,059.40	$1,369.04
TOTAL	**2,535**	**2,787**	**$ 1,604,722.14**	**3,277**	**$ 1,896,252.96**	**$ 578.66**	**2,535**	**3,277**	**$1,896,252.96**	**$578.66**


NEW CASES
FY'16-20 Ave
FY'21
FY'22
FY'23
3700
3200
2700
2200
1700
July
August
September
October
November
December
January
February
March
April
May
June


Submitted Vouchers
5,300
4,800
4,300
3,800
3,300
2,800
2,300
1,800
FY'16-20 Ave
FY'21
FY'22
FY'23
July
August
September
October
November
December
January
February
March
April
May
June


Submitted Voucher Amount
$2,400,000.00
$2,200,000.00
$2,000,000.00
$1,800,000.00
$1,600,000.00
$1,400,000.00
$1,200,000.00
$1,000,000.00
$800,000.00
FY'16-20 Ave
FY'21
FY'22
FY'23
July
August
September
October
November
December
January
February
March
April
May
June


Average Voucher Price Fiscal Year to Date
$590.00
$565.00
$540.00
$515.00
$490.00
$465.00
$440.00
July
August
September
October
November
December
January
February
March
April
May
June
FY'16-20 Ave
FY'21
FY'22
FY'23


Monthly Price Per Voucher
$640.00
$615.00
$590.00
$565.00
$540.00
$515.00
$490.00
$465.00
$440.00
$415.00
FY'16-20 Ave
FY'21
FY'22
FY'23
July
August
September
October
November
December
January
February
March
April
May
June

Vouchers over $5,000

Comment	Voucher Total	Case Total
Aggravated Trafficking	$ 16,780.36	$ 16,780.36
Gross Sexual Assault	$ 11,106.60	$ 11,106.60
JV assault	$ 10,258.32	$ 10,258.32
JV probation violation	$ 9,310.95	$ 9,310.95
Homicide	$ 7,590.00	$ 7,590.00
NCR release	$ 7,505.87	$ 14,330.65
Gross Sexual Assault	$ 7,123.16	$ 9,901.68
Gross Sexual Assault	$ 6,748.95	$ 6,748.95
Homicide	$ 6,104.78	$ 6,104.78
Elevated Aggravated Assault	$ 6,054.60	$ 6,054.60
Child Protection Petition	$ 5,848.00	$ 5,848.00
JV assault	$ 5,824.30	$ 5,824.30
Child Protection Petition	$ 5,768.00	$ 6,440.00
Elevated Aggravated Assault	$ 5,546.00	$ 5,546.00
Illegal Importation of Scheduled Drugs	$ 5,360.00	$ 5,360.00
Gross Sexual Assault	$ 5,298.20	$ 5,298.20

Good Outcomes

Review Date	Attorney	Charge	Disposition
7/7/2022	Hainke, Harold	Child Protection Petition	Dismissal
7/7/2022	Charest, Richard	Child Protection Petition	Dismissal
7/7/2022	Slaton, Ashley	1 ct. OAR (FEL), 1 ct. OAR (MIS)	Dismissal, Deferred- GO = Dismissal
7/7/2022	Hanly, Kristine	1 ct. DV reckless conduct, 1 ct. Theft by Unauthorized Taking	Deferred- GO = Dismissal, Dismissal
7/7/2022	Washington, Robert	Operate After Habitual Offender Revocation	Deferred- GO = Dismissal
7/7/2022	Charest, Richard	Child Protection Petition	Dismissal
7/7/2022	MacLean, Jason	Child Protection Petition	Dismissal through PRR
7/7/2022	Warren, Andrew	1 ct. VCR, 2 ct. OAS	Deferred- GO = Dismissal
7/13/2022	Miller, Amber	Assault	Dismissal
7/20/2022	Burbank, Meegan	Involutary Commitment	Dismissal after contested motion
7/22/2022	Wentworth, Daniel; Boyd, Dylan; Fey, Zachary	1ct. Unlawful Trafficking, 1 ct. Aggravated Unlawful Trafficking, 1 ct. Illegal Possession of Firearm, 2 cts. Criminal Forfeiture, 1 ct. Possession of Cocaine	22 yrs all but 8 yrs, 4 years probation; MA probation revocation resolved with 4 yr concurrent sentence in global resolution; appeal pending on suppression and discovery rulings. (included here for zealous advocacy)
7/22/2022	Gregory, Richard	Probation Violation	Admit - time served; deferred in underlying case extended to prevent bad outcome
7/22/2022	Leary, Justin	Terrorizing	Dismissed--Incompetent Finding
7/22/2022	Juskewitch, Steve	GSA	Not Guilty after Jury Trial
7/26/2022	Mekonis, Jospeh	Stealing Drugs	Dismissal
7/27/2022	Howaniec, James	Attempted Murder	Acquitted of Attempted Murder after jury trial; Convicted of 1 ct. Burglary and 1 ct. Reckless Conduct with a Firearm - anticipated sentence about 20 mos. time served and probation
7/28/2022	Bristol, Erika	Child Protection Petition	Dimissal through POA
7/31/2022	Wright, Andrew	Child Protection Petition	Dismissal
7/31/2022	Tzovarras, Hunter	3 cts. GSA	Dismissal
7/31/2022	Gorman, Kaleigh	Child Protection Petition	Dismissal through PRR

ATTORNEY AND CASE COUNTS

TO: COMMISION

FROM: JWA

SUBJECT: ATTORNEY AND CASE COUNTS

DATE: 8/16/2022

CC:

Attorney rosters have been falling since 2018, years before pandemic related case backlogs or the imposition of MCILS rules and standards. See Table 1. Excepting a very small dip during the pandemic, caseloads have been increasing since 2017. The change in the rate of attorney attrition mirrors the rate of change in the increase in caseload.

As of today, MCILS has 186 attorneys accepting assignments to represent consumers of indigent legal services excluding LOD only but including appellate and PCR. A total of 247 attorneys submitted complete applications to continue to participate in MCILS in some form, of which 61 are not accepting assignments.

Based on case counts and attorney availability, operational need exceeds operational capacity in nearly every court in every district. See Table 2.

Table 1: 2017 – 2022 Case Totals v Roster Totals

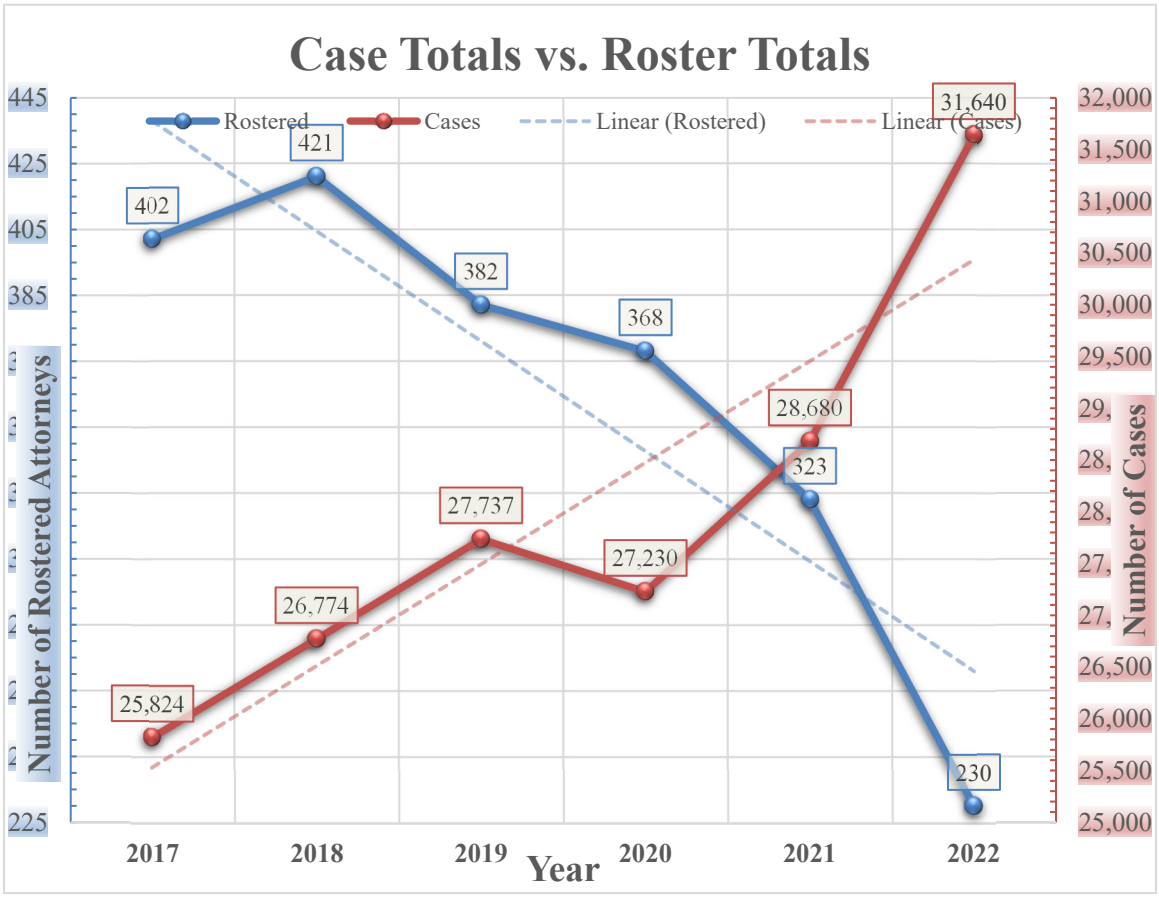
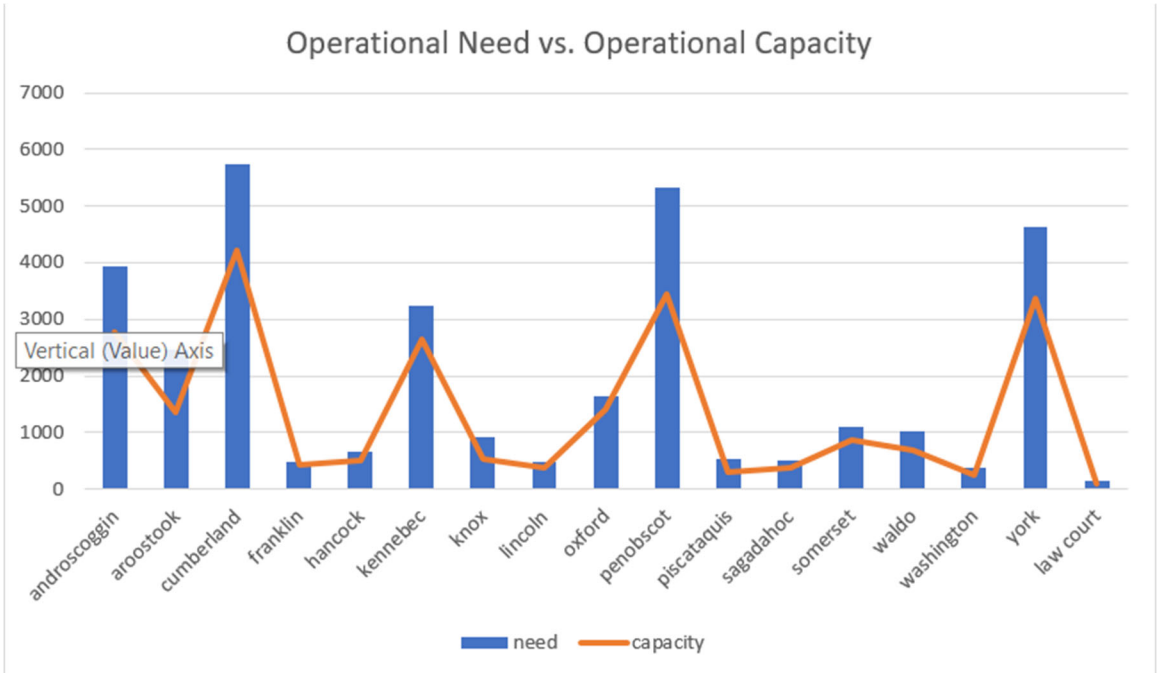


Table 2: Operational Need vs. Operational Capacity



Based on the Total Open Cases data:

1. 11 attorneys (4%) account for 26% (6,141) of the total cases currently open, each having 301+ cases currently open.

2. Nearly half (49%) of the total open cases are spread among 33 attorneys, who account for only 13% of the total eligible list.

3. Of the 244 attorneys from the raw data set, half of the attorneys (120 attorneys = 9%-0 cases, 13%-1 to 10 cases, 7%-11 to 20 cases, 21%-21 to 50 cases), have a total of 2,174 cases open amongst all of them, totaling only 9% of the total cases open.

Based on the Open Cases YTD data:

1. 7 attorneys (3%) have opened 201+ cases so far this year, amounting to 1,721 cases, or 13%.

2. 37 attorneys (15%) have opened 101 to 200 cases so far this year, amounting to 5,391 cases, or 41%.

3. 54% of the cases opened YTD (7,112 YTD cases = 13%-201+ cases, 41%-101 to 200 cases), were opened by 44 attorneys, or 18% of the total attorneys (3%-7 attorneys, 15% 37 attorneys).

Davidson Law Office, L.L.C.
Attorneys at Law

JEFFREY W. DAVIDSON

Admitted in LA and ME

86 Court Street

CYNTHIA DAVIDSON

Machias, Maine 04654

Admitted in LA, of counsel

(207) 259-3411

July 22, 2022

FOR DISTRIBUTION

Re: Current Status of Washington County Criminal Court

On July 22, 2022, I received a copy of the current "docket call" list from the Clerk of Court. The purpose of reviewing this current list was to see the extent of the backlog of cases which are currently awaiting trial and determine what time period it may take to return the case list to its pre-pandemic state. The criminal court in Washington County was shut down for over two years with the exception of one criminal trial term as a response to the covid outbreak. Whether that was wise or not could be debated for a long time. Because of the size of the courtrooms and the minimum distance requirements put in place by the judiciary, no jury trials could be held during those two years. The result of this decision was to create a huge backlog of criminal cases across the state. This is where we are in Washington County.

There are currently 228 cases on "docket call," and another 15 homicide cases specially assigned. The docket call cases represent those cases which are awaiting trial. There are several hundred other criminal and civil cases pending which have not reached this point. Every one of the defendants in these cases is entitled to have a trial by jury. Homicide cases usually take an average of five days to complete. Additionally, many of the pending cases will take more than one day to complete. The total number of trial days needed for all of the cases which are pending is approximately 300 days (228 + (15x5)). This number assumes that everyone on the docket call list takes their case to trial. While that is certainly not going to happen, it appears that a large number of these cases are headed to trial in their current posture.

Of the 228 cases which are pending, 38 cases are being handled pro se. The other 190 cases are being handled by 28 different attorneys. (See attached breakdown.) The four attorneys with the most cases have 120 cases awaiting trial combined. Any one of those four attorneys could take more than a year to clear their current caseload. The 15 homicide cases are being handled by six different attorneys, most of whom are handling multiple homicides in just Washington County.

Historically, Washington County has conducted criminal jury trials every third month. On average, each term has had five jury trial days. I cannot recall any jury term in the past two decades where more than five juries were picked during any single jury term. This means that Washington County averaged around 20 jury trial days per year in the pre-covid era.

Considering we currently need at least 300 days of criminal trial time to catch up with the backlog, it appears that if not a single extra case is added to the list we should be caught up in 15 years. Of course, new cases are added to the criminal docket constantly, thus it appears that Washington County will never work through the backlog unless something changes.

What is most disturbing about the backlog is that there appears to be no plan at all from either the Court or the District Attorney to address this issue. We are constantly told that the court is going to try to get more trial days, but other than that aspirational goal, it appears that no one is really in charge of addressing this issue in Washington County. We are one of the few counties who do not have a permanent Superior Court Justice assigned to be responsible for our docket. While the judges who visit us do their best, they each have home courts in another county and the time they spend here is limited. Lately, the idea of simply not conducting docket call days or skipping dipositional conferences because they are a "waste of time" has been how the court has reacted to the backlog.

I've heard no discussion at all from the District Attorney's Office about how they intend to address the backlog. It seems as if having assistant district attorneys who each have hundreds of cases ready for trial with victims waiting for years has just become acceptable. The current lack of leadership is disheartening at best. It creates a system which likely creates an unconstitutional denial of speedy trial rights. Not including homicides which follow a different track, there are currently fifteen cases on the docket call from 2019 or earlier. These defendants have waited for more than 2 ½ years to have their trial. Sixty cases are from 2020, meaning they have waited for at least 18 months for trial. Eighty-seven cases are from 2021 and the rest are from 2022.

Most defendants understand clearly that if they never go to trial, they will never have a risk of being found guilty, thus there is no incentive from the defense bar to remedy the backlog. Law enforcement officers haven't seen much of court in years. They all seem to think their case is the one that really requires a heavy sentence, but they seem to have no understanding of the importance of their cases in the scheme of what Washington County has on the docket. We have 15 homicides pending. There are seven sex offenses pending. There are thirty-four domestic violence, assault or protection order violations ready for trial. There are thirty-eight theft, burglary or criminal mischief cases and two arsons. These 96 cases have victims who have also been waiting for their cases to be resolved.

In the category of non-victim cases, we have 16 pending drug cases, twelve stand alone violations of conditions of release, sixty-two driving cases (including OUI/OAS and OAR), nineteen warden cases, eight marine patrol cases and five animal control cases. The other cases are a hodgepodge of non-violent, non-victim cases ranging from disorderly conduct and littering to tampering with a witness. These 147 cases (with the exception of the drug cases) are simply not as criminologically as important as the cases with direct victims, no matter what a warden or a marine patrol officer thinks about their own case. It appears that nobody is sufficiently concerned about this backlog to take a close look at how it can be fixed, but it must be fixed. Since no one has made any coherent plan or suggestion as to how this might happen, I have the following suggestions:

1. Have one justice officially appointed to oversee the reduction of the criminal docket in Washington County. Once we get back to the pre-pandemic docket call load of 30-50 cases, this position could be discontinued.

2. Set aside several days to have a judicial settlement discussion on each case currently on the docket call. It will probably take an entire week of court time. This will require multiple judges who do not mind spending the time and effort necessary to go through each case individually with both parties. The judges who conduct the settlement conferences should be prepared to engage both the State and defense with suggestions of appropriate remedies given the facts of the case and the current backlog.

3. Require all defendants to be present for these conferences. The reason dispositional conferences have not worked is because clients are not present because these conferences are handled by phone or zoom. It's past time that people actually had the solemnness of being in court to considering their cases, without hearing offers at some point in time after their counsel has gotten off zoom.

4. Require the District Attorney to bring a victim or the lead police officer on each case with them to the settlement conferences. Tough choices will have to be made. All parties should be present and should hear directly about what is reasonable in a case given the possible defenses and the significance of the case in the scheme of the hundreds of cases which are pending. If resolution can be reached, victims and officers should be present to conclude the case that day.

5. All parties should reassess each case. The District Attorney should be ready to hear and evaluate the guidance from the court and defense counsel should be prepared to report to clients what the court suggests would be a reasonable sentence if the case were lost after trial. Not all cases will be resolved, but the court, prosecutor and defense counsel should be prepared to make every effort to have the difficult discussions which need to occur.

6. All clients should file a Motion for Speedy Trial. Lack of judicial resources should not be prioritized over a constitutional right to a speedy trial. If headway cannot be reached to reduce the docket fairly through negotiations, defendants are the only ones in the criminal process who have this constitutional right. They should exercise it.

This plan is my suggestion, having practiced primarily in criminal defense exclusively here in Washington County for the past two decades. Other suggestions would be welcome because it would mean that someone is finally looking seriously at the problem. I'd be more than happy to participate in any meeting with the court or the District Attorney's Office to discuss this proposal.

Those of us who practice criminal law as either prosecutors or defense counsel know that the current backlog in unsustainable. The criminal court system in Washington County is broken. The judiciary and the District Attorney know this, and unfortunately they seems to have decided to take in inactive role in addressing the problem. Washington County defendants, victims and citizens deserve better than that. It's time for Nero to stop fiddling while Rome

burns.

Sincerely,

Jeffrey W. Davidson

Attorney roster (not including homicide cases)

Pro se		38
Will Ashe	3	
Joe Baldacci	1	
David Bate	2	
Don Brown	17	
Dawn Corbett	7	
Jeff Davidson	35	
Scott Fenstermaker	8	
Ben Fowler	13	
Rick Hartley	1	
Nate Hodgkins	18	
Steve Juskewitch	2	
Mary Gray	3	
Steve Largay	1	
Lynn Madison	11	
William McCartney	1	
Walt McKee	2	
Jade Murdick	1	
Molly Owens	1	
David Paris	1	
Jeremy Pratt	1	
Luke Rioux	2	
Beth Seaney	1	
Zack Smith	1	
Andrew Strosahi	1	
John Tebbetts	1	
Jeff Toothaker	49	
Hunter Tzovarras	2	
Robert Van Horn	4	

Case breakdown:

15 homicides, 218 criminal cases, 10 civil cases:

Murder/Manslaughter	15		
Sexual Offenses	7		
DV/Assault/PO	34		
Theft/Burglary/Mischief	38		
Drug Cases		16	
Arson			2
Stand alone VCR	12		
OUI/OAS/Driving	62		
Warden		19	
Marine Patrol		8	
Animal Control	5		
Other			25

Andrus, Justin

From: RJR <rjr@mainecriminaldefense.com>
Sent: Sunday, July 17, 2022 3:42 PM
To: MCILS
Subject: Re: July 19 MCILS Commission meeting materials

Public Pre-Comment RE: MCILS 7/19/2022 materials (Part 1)

RE: Agenda Item 6(b) Chapter 3

I ask that MCILS immediately initiate emergency rulemaking to amend Chapter 3 to create, and create the requirements for, the LOD specialized panel.
— As a stop-gap I would suggest MCILS require

"5A **Lawyer of the Day.** In order to be rostered for Lawyer of the Day an attorney must:

A.
Meet the requirements for Homicide, Sex Offenses or Serious Violent Felonies. An attorney need not be previously, nor actively, rostered for any of those case types to be rostered for Lawyer of the Day.
B.
Demonstrate a knowledge and familiarity with the MCILS Practice Standards, Maine Bail Code, Extradition Law and Procedures, and Pretrial Release programs in the area(s) the attorneys seeks to be rostered.
C.
Have attended, or agree to attend when developed, MCILS approved LOD training.
D.
If the applicant seeks a waiver, the applicant shall submit three letters of reference from attorneys with whom the applicant does not practice asserting that the applicant is qualified to represent individuals as Lawyer of the Day. The letters of reference must be submitted directly to the Executive Director, or their designee, by the author.
E.
Letters of reference shall also be submitted upon the request of the Executive Director, or their designee."

I acknowledge that this suggestion essentially sets the bar at SVF requirements. However, I included the 3 roster options as hopefully no matter how the 3 are strengthened in the future they should still require sufficient experience and knowledge to serve as a base until such time that MCILS can deliberatively create specific LOD standards.

At the same time I ask that MCILS immediately engage in emergency rulemaking to amend Chapter 102: Criminal Practice Standards, to add specific practice standards for Lawyers of the Day.

Respectfully,

Robert J. Ruffner, Esq.
Ruffner - Greenbaum
Attorneys At Law
148 Middle Street

Suite 1D
Portland, Maine 04101
(207) 221-5736
(866) 324-0606 (fax)
rjr@mainecriminaldefense.com
www.mainecriminaldefense.com

On Jul 13, 2022, at 5:25 PM, Maciag, Eleanor <Eleanor.Maciag@maine.gov> wrote:

Good afternoon,

The next MCILS Commission meeting will be held on Tuesday, July 19 at 1 pm. It will be a hybrid meeting in the AFA room in the State House and on Zoom. Meeting materials are attached.

https://mainestate.zoom.us/j/3966238156?pwd=M3lwM2JPdWtjOU5vOXh4TW9zb2l0Zz09

Meeting ID: 396 623 8156
Passcode: Mcils@2022

Ellie

Ellie Maciag
Deputy Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333
T – 207.287.3258
F – 207.287.3293

<Commission Packet July 19 2022.pdf>

THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. Aro-21-312

DENNIS WINCHESTER
Appellant

v.

STATE OF MAINE
Appellee

ON APPEAL from the Aroostook County
Unified Criminal Docket

BRIEF OF AMICUS CURIAE MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Jamesa J. Drake # 5194
DRAKE LAW LLC
P.O. Box 56
Auburn, ME 04212
(207) 330-5105

Rory A. McNamara # 5609
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
(207) 475-7810

Counsel for Amicus Curiae
MAINE COMMISSION ON INDIGENT LEGAL SERVICES

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INTEREST OF AMICUS CURIAE

The Maine Commission on Indigent Legal Services ("MCILS") is an independent commission whose purpose is to provide efficient, high-quality representation to consumers of indigent legal services, including criminal defendants, consistent with federal and state constitutional and statutory obligations. 4 M.R.S. § 1801.

INTRODUCTION

Momentarily, amicus curiae will turn its attention towards identifying the substantive parameters of the Maine Constitution's Speedy Trial Clause. Inherent in that undertaking, however, is recognition of the judicial prerogative to reach state constitutional questions before conducting – indeed, sometimes *entirely in lieu of* – any federal constitutional analysis. In other words, part and parcel of dissecting *the way* the Maine Constitution applies to an issue of law is an appreciation of *why* the Maine Constitution must come first.

In recent years, this Court has revived the primacy approach it first announced in 1984. *See, e.g., State v. Fleming*, 2020 ME 120, ¶ 17 n. 9, 239 A.3d 648; *State v. Chan*, 2020 ME 91, ¶¶ 32-36, 236 A.3d 471 (Connors, J., concurring). Now is thus an opportune time to remind ourselves of the vital interests served by a robust, state-constitution-first approach. This Court recently recognized three such interests. *State v. Athayde*, 2022 ME 41, ¶ 21, --- A.3d ---. Amicus concurs, and writes here only to add

another: Simply, *the primacy approach is the only way to ensure that Mainers' constitutional rights remain defined by Mainers.*

The Speedy Trial Clause of Article I, § 6 is an example. For the first 150 or so years of our state, its founders, the drafters of the Maine Constitution, this Court, and the citizens of Maine considered that provision first and, in fact, without reference to federal law. So construed, the Speedy Trial Clause of the Maine Constitution assiduously guarded against pretrial delay. In the 1960s, for reasons amicus will soon detail, this Court shifted its focus, analyzing the constitutional speedy-trial right according to the Sixth Amendment and United States Supreme Court decisions. As a result, Mainers lost control of the speedy-trial right, even, respectfully, erroneously equating the state- and federal constitutional speedy-trial rights.

The primacy approach, which this Court has rightly "adopted," *see* amicus-brief invitation of this Court, is the only way to ensure that, going forward, Mainers will retain the speedy-trial rights that Mainers deem appropriate.

ARGUMENT

I. Maine's state-constitutional speedy-trial provision is more protective than the federal analogue.

Article I, Section 6 of Maine Constitution guarantees that a criminal defendant be brought to trial no later than 12 months after arraignment or initial appearance. A case delayed beyond that time must be dismissed unless the defendant has caused the delay or consents to it, and without regard to prejudice to the defense. Whether a defendant has delayed or consented to a delay must account for the totality of the circumstances, but insufficient judicial, prosecutorial, or indigent-defense resources can never justify delay.

Consequently, Winchester's state-constitutional right to a speedy trial was violated. The delay far exceeded that permitted by the Maine Constitution – *years* after petitioner was charged. Under the simple test pursuant to the Maine Speedy Trial Clause, the sole remaining question is whether that delay was the result of permissible reasons. Because at least 15 months of that delay was not of petitioner's making, § 6 was necessarily violated.

To demonstrate the injury to Winchester, MCILS here details the history of the Maine constitutional speedy-trial right, illuminating its contours and rebutting the conclusion this Court reached in the early 1990s: that the speedy-trial provisions of § 6 and the Sixth Amendment are

"identical."[1] *State v. Joubert*, 603 A.2d 861, 863 (Me. 1992); *State v. Harper*, 613 A.2d 945, 946 (Me. 1992). Respectfully, that conclusion represents an erroneous and marked departure from the intent, history and policy-purposes of § 6's speedy-trial right.

A. History of Maine's state-constitutional speedy-trial provision

1. Pre-statehood: a discernible break from the Commonwealth

Section 6 was born at a time when residents of what is now Maine were displeased with the slow pace of courts in the Commonwealth of Massachusetts. In 1786, a prominent group of separatists published a list of grievances, including, according to a historian:

> The business of the Supreme Judicial Court is so great and the territory of the state so large that proper and expeditious justice is not always achieved. Especially grievous was the location of the clerk's office and all his records in Boston, a fact that necessitated costly and time-consuming trips to the capital.

Ronald F. Banks, *Maine Becomes a State*, 15 (1970). Anti-separatists thought this objection so inflammatory that, in 1797, they procured passage in Boston of legislation devolving some power to local shire courts in the District of Maine. *Id.* at 39; *see also* Richard M. Candee, *Chapter*, *Maine Towns, Maine People: Architecture and the Community*, 1783-1820 in

[1] The Court did not receive the benefit of briefing on this important point of constitutional law. Amicus has obtained and reviewed the briefs in both *Joubert* and *Harper*. In neither case did the parties debate which standard applied under the Maine Constitution. Amicus wishes to thank Nancy Rabasca, Librarian at the Cleaves Law Library, for her generous assistance in obtaining the old briefs.

Charles E. Clark et al. (eds.) *Maine in the Early Republic: From Revolution to Statehood*, 44 (1988) (noting that Massachusetts legislature established new courts in Maine "to undercut local sentiment for separation").

It was not until 1761 that the court began to hold trials in Maine;[2] previously, Maine-based matters were tried in either Boston or Charlestown, Massachusetts. William Willis, *A History of The Law, the Courts, and the Lawyers of Maine, From its First Colonization to the Early Part of the Present Century*, 39 (1863). And, during the Revolutionary War, the Supreme Judicial Court ceased its visits to Maine entirely. Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820*, 32 (1990). In the early years of the nineteenth century, Chief Justice Theophilus Parsons "usually declined to undertake the long journey" to far-flung Maine courthouses, leaving it to other justices to preside over matters in the district. *Id*. at 146.

Ultimately, the Commonwealth's attempts to ameliorate the slow pace of justice in the District of Maine were fruitless:

> [A]s the circuits extended and business increased, it was found that the court could not dispatch the constantly increasing business, it being impossible for the full court to travel into each county and dispose of all the actions. The consequence was, a large accumulation of causes on the dockets, and great delay in disposing of them.

---

[2] "Prior to the adoption of the Massachusetts Constitution in 1780, the Supreme Judicial Court [was] the only statewide court for jury trials...." Donald G. Alexander, *The Maine Supreme Judicial Court and the Maine Judiciary: The 200th Anniversary*, 9 n. 34 (2022) (citing Vincent L. McKusick, *History of the Maine Supreme Judicial Court and the Maine Judiciary*, 142 (Presentation at the 1968 Summer Meeting of the Maine State Bar Assoc.)).

Willis*, A History*, *supra*, 41. Mid-coast resident Orchard Cook, who served in the U.S. House of Representatives from 1805-1811, noted to prominent separatist and the later-first governor of Maine, William King, in 1806 Mainers' frustration with the judiciary:

> By a continuation of connexion [of the District of Maine with Massachusetts proper,] the judiciary of the whole state is distracted & operated with impracticable & neglected requisitions.

Letter from Orchard Cook to William King et al., 2, (Feb. 27, 1806) (Maine Historical Society artifact # 103678).

Complaints about the slow pace and inadequate resources of the courts were an enduring impetus for separation. In 1791, Daniel Davis, credited with writing "the first important publication to come out of the separation movement," Banks, *Maine*, *supra* at 28, wrote to the Massachusetts General Court:

> Another very important advantage that we shall enjoy by a separation from Massachusetts, will be the *sitting of a Supreme Judicial Court twice a year in some, and once at least in all the counties in the district*. At present we are indulged with but one term of that Court annually in each of the counties in York, Cumberland and Lincoln; and it is now holden in Lincoln but once a year for that, and the counties of Hancock and Washington.

Daniel Davis, *An Address to the Inhabitants of the District of Maine upon the Subject of Their Separation from the Present Government of Massachusetts by One of Their Fellow Citizens,* 16 (1791) (Maine Historical Society artifact # 103653) (emphasis in original). Davis went on to explain why more court-time was needed:

> It is not an unusual thing, for persons to be confined in the jails, at the publick expense, for nine or ten months together, waiting for nothing but the return of the Supreme Judicial court, to give them their trial.

Id. at 17-18. "[T]he injured prisoner may suffer the pains and horrors of a twelve months imprisonment, without any other satisfaction than what arises from a conscious innocence, and the pleasure of reproaching the government for its delay." *Id.* at 18. Davis' tract went on to discuss with disapproval specific instances of prisoners held approximately 10 to 11 months pending trial. *Id.* at 18 *.

Clearly, those in Boston understood that inhabitants of the district in Maine were discontented with the pace of court proceedings there. Thus, in the Act of Separation of 1819, lawmakers established a specific deadline for how soon matters would be heard in the courts of the new state:

> [A]ll actions, suits, and causes, civil and criminal…shall be respectively transferred, and returned to, have day in, and be heard, tried and determined in the highest Court of Law that shall be established in the said new State…and at the first term of such Court, that shall be held within the county in which such action, writ, process, or other matter or thing, may be so pending or returnable.

Articles of Separation § 7 (1819). Evidently, trial within one term was thought by Maine's founders to be essential to justice – even in civil cases.

The text of that year's § 6 Speedy Trial Clause – "In all criminal prosecutions, the accused shall have a right to…have a speedy trial" – closely resembles that of the Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy…trial…." Both eschewed the earlier

language of the Massachusetts corollary: "obtain right and justice…promptly, and without delay."[3] MA. CONST., Part First, art. XI.

Perhaps this departure from the text of Massachusetts Constitution was motivated by untimely trials and the Massachusetts Supreme Judicial Court's hands-off approach to its constitutional promise.[4] *See* Committee of the Constitutional Convention, *Prefix to the Constitution*, *"Address to the People"* (1819) (noting that drafters of the Maine Constitution "deviat[ed]" from Massachusetts and United States Constitutions "where the experience…seemed to justify and require it."). The Massachusetts Supreme Court itself did not discuss its speedy-trial-clause-equivalent until 1912, some 132 years after that court came into existence, and more than nine

[3] In fact, the Maine Constitution does contain this language – in Article I, 19. ME. CONST. Art. I, § 19 ("justice shall be administered…promptly and without delay"). Whatever that provision was intended to mean, the drafters' additional inclusion of the speedy-trial language in § 6 indicates a clear intent to exceed the guarantees of the 1780 Massachusetts Constitution.

This Court has given § 19 a civil construction. *See Nowlan v. Griffin*, 68 Me. 235 (1878).

[4] The Speedy Trial Clause of § 6 is not specifically identified as such a deviation in the Prefix to the Constitution. However, the Committee explained, "there are others," in the drafters' views, which were "wholesome and salutary" deviations. *Prefix to the Constitution*, *supra,* reprinted in Banks, *Maine*, *supra* at 280, 284. Where there is a textual departure from the constitution of those former citizens of the District of Maine, the departure should be construed as purposeful. *See also Letter from William Pitt Preble to William King*, 2, (Aug. 5, 1819) (Maine Historical Society artifact # 102199) (noting that Maine Constitution would be based on that of Massachusetts but with such "alterations, omissions and additions," as based on "long experience…would improve the instrument").

decades after the Maine court first discussed § 6.[5] *See In re Opinion of Justices*, 211 Mass. 618, 98 N.E. 337 (1912). It was not until 1958 that Massachusetts' article XI was finally construed to confer speedy-trial rights in criminal cases. *See Commonwealth v. Hanley*, 337 Mass. 384, 387 (1958). To Mainers at and near the time of statehood, the Massachusetts constitutional right must have seemed but a dead letter.

But that begs the question: What does § 6's resemblance to the Sixth Amendment likely say about the possibility of intended equivalency between the two? For one, the United States Constitution was, at best, an afterthought for most Mainers in the years prior to statehood. *See* Banks, *Maine*, *supra* at 9-10. According to the U.S. Attorney for Maine in the early days of the state, most Mainers knew little of the U.S. Constitution, notably excepting that the "objects of their concern are the sheriffs and justices of the peace – these are often looked upon with dread." *Ibid.* (citing *Letter from Silas Lee to George Thacher*, Feb 28, 1788, reprinted in George Thacher, *MSS* (Boston Public Library), Vol. I, No. 179). Moreover, in the years before Maine adopted its constitution, the Speedy Trial Clause of the Sixth Amendment was mentioned only once by the United States Supreme Court, and then only in a dissent. *See Ex parte Bollman*, 8 U.S. 75, 109 (1807)

[5] Perhaps for this reason, one author contends that the right to a speedy trial is not provided for in the Massachusetts Constitution of 1780. Marshall J. Tinkle, *The Maine State Constitution*, 38 (2d 2013). Given the Massachusetts court's more recent construction of article XI, *see*, *e.g.*, *Commonwealth v. Butler*, 464 Mass. 706, 707 (2013), however, it is more precise to say that, at the time of the creation of the Maine Constitution, the Massachusetts corollary had not yet been construed by courts to apply to criminal cases.

(Johnson, J., dissenting).[6] Even if the average resident of the District of Maine had kept abreast of the Supreme Court's construction of the Speedy Trial Clause, they would have known little about it because the Clause had not yet been substantively defined. It seems likely that the drafters of § 6 purposefully deviated from the Massachusetts speedy-trial provision, adopting text closely resembling the *tabula rasa* federal clause because both the Maine and United States provisions were meant to mean something different than the Massachusetts experience. If the United States Supreme Court never fulfilled that intent, early Mainers, including justices of the Law Court, surely did their part to do so.

2. Statehood to the early 1970s: A long, strong tradition of fixed deadlines

Maine's very first legislature enacted a rather finitely-bounded speedy-trial law. Here's what a speedy trial meant to "The First:"

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[6] Given the inclusion of contemporaneous speedy-trial provisions in habeas corpus laws, *see, e.g.,* The Habeas Corpus Act, 1784 Mass. Acts 72, § 1, if § 6's drafters understood anything about the Supreme Court's speedy-trial views, they would have believed it to be expansive. In *Ex parte Bollman*, the Court held that it had jurisdiction to grant a writ of habeas corpus to release prisoners, including alleged revolutionaries, from unlawful detention.

The shared lineage of Maine's speedy-trial guarantee and habeas corpus at common law is also noteworthy for a legal reason. ME. CONST. Art. I, § 10's Suspension Clause prohibits dilution of the writ of habeas corpus "unless when in cases of rebellion or invasion the public safety may require it." And, the statutory replacement for the Great Writ, the post-conviction review statute, must be construed to provide for all the same remedies available at common law. *See Kimball v. State*, 490 A.2d 653, 658-59 (Me. 1985); 15 M.R.S. § 2122; *see also Petgrave v. State*, 2019 ME 72, ¶¶ 18-26, 208 A.3d 371 (Alexander, J., concurring). In other words, the common-law quasi-speedy-trial provisions are vouchsafed by 15 M.R.S. § 2122 and § 10 of the Maine Constitution, in addition to § 6.

> [A]ny person who shall be held in prison upon suspicion of having committed a crime for which he may have sentence of death[7] passed upon him, shall be bailed or discharged, if he is not indicted at the second term of the sitting of the Supreme Judicial Court in the county where the crime is alleged to have been committed, when there are two terms a year in such a county. And in such counties as have but one Supreme Judicial Court in a year, the defendant shall be bailed or discharged, if he is not indicted at the first term: *Provided*, Such person shall have been held in prison for the space of six months next preceding the day of the siting of the Court. And when any person shall be held in prison under indictment, he shall be tried or bailed at the first term next after his indictment, if he demands the same, unless it shall appear to the Court that the witness, on behalf of the government, have either been enticed away or are detained by some inevitable accident from attending. And all persons under indictment for felony shall be bailed or tried at the second term after the bill shall be returned, if they demand it.

P.L. 1821, c. 59, § 44, (emphasis in original). Similar provisions were enacted in an unbroken chain for nearly the next century and a half. *See* R.S. 1841, c. 172, §§ 12-15; R.S. 1857, c. 134, §§ 9, 10; R.S. 1871, c. 134, §§ 9, 10; R.S. 1883, c. 134, § 10; R.S. 1903, c. 135, §§ 9, 10; R.S. 1916, c. 136, §§ 10, 11; R.S. 1930, c. 146, § 11; R.S. 1954, c. 148, §§ 8, 9; 15 M.R.S. § 1201 (1964); *see also* R.S. 1860, c. 157. This Court has observed that these statutes were "similar to the Habeas Corpus Act of 1679, 31 Charles II, c. 2." *State v. O'Clair*, 292 A.2d 186, 191 (Me. 1972).

The newly created Maine judiciary took a more robust approach to § 6 than had the Massachusetts Supreme Court taken to MA. CONST., Part First, art. XI. In an early decision contained in the very first Maine Reporter, the Court noted that § 6, including the right to a speedy trial, "is placed on a more

[7] Crimes punishable by death were not otherwise bailable. *Harnish v. State*, 531 A.2d 1264, 1266-67 (Me. 1987). In addition to homicide, this category included rape, arson, and burglary. *Id.* at 1268.

durable basis than the pleasure of the legislature." *Johnson's Case*, 1 Me. 230 (1821) (*per curiam*). The two supreme judicial courts' divergent treatment of their respective constitutional analogues is further evidence that Maine's provision meant something more than its Massachusetts counterpart meant to the court in Boston.

In one such decision in 1853, this Court cited the Maine state clause, striking down a statute as unconstitutional. *Saco v. Wentworth*, 37 Me. 165, 171-74 (1853). In *Saco*, the Law Court implied that Maine's statutory speedy-trial provisions were declarative of a constitutional bottom-line: "The inconvenience and hardship" of being held and subjected to bail conditions, Justice Tenney wrote, are not unconstitutional so long as they are in accordance with "statutes which are not in conflict with the constitution." *Id.* at 173. More broadly, § 6 guarantees the right to a trial "as soon as circumstances will render it expedient." *Id.* at 174. The *Saco* court explained that our state constitutional speedy-trial guarantee was encapsulated in pre-founding common law, *i.e.*, "the law of the land." *Id.* at 171.

Just six years after *Saco*, the Court again noted that the speedy-trial right tracked the law of the land, evoking the Magna Carta[8] as "the boast of the common law." *State v. Learned*, 47 Me. 426, 432 (1859). "[E]xercise of this right," the Court continued, "is limited and controlled by the paramount

[8] "Wee shall not . . . deny or delay Justice and right, neither the end, which is Justice, nor the meane, whereby we may attaine to the end, and that is the law." E. Coke, *The Second Part of the Institutes of the Laws of England 56* (Garland 1979 facsimile of 1642 ed.) (quoting Magna Carta ch. 40 (1215) and Magna Carta ch. 29 (1225)).

law in the Constitution." *Ibid.* And by that – "the Constitution" – the Court reiterated, it meant the "law of the land" as it had "remained untouched and unchanged," presumably since the Magna Carta, if not earlier. *Ibid.*

Such an interpretation was lasting in Maine jurisprudence. Nearly one hundred years after this line of speedy-trial statutes derived from "the law of the land" was first enacted, the Law Court described the then-in-effect version as having been "designed to carry out the general provisions of the constitution guaranteeing a 'speedy trial.'" *State v. Slorah*, 118 Me. 203, 207, 106 A.3d 768, 769 (1919). In fact, in *Slorah*, the Court suggested that if the statute was violated, Art. I, § 6 was necessarily violated. *Ibid.*

This paradigm of common law provisions and early Maine statutes embodying the constitutional guarantee of a speedy trial continued into the 1960s. *See State v. Couture*, 156 Me. 231, 247, 163 A.3d 646, 656 (1960) ("designed to implement the general provisions of the Constitution guaranteeing a speedy trial"). In 1961, the Law Court wrote that the Speedy Trial Clause of § 6 "has been implemented by statute by" the then-most-recent such enactment. *State v. Hale*, 157 Me. 361, 368-69, 172 A.2d 631, 636 (1961). A different iteration of the Court similarly suggested that the statutes did not represent merely the outer bounds of the state constitutional speedy-trial right; rather they were "intended by the Legislature to implement *in certain specific circumstances* the speedy trial provision of our own Constitution." *O'Clair*, 292 A.2d at 195 (emphasis added); *see also Couture*, 156 Me. at 246, 163 A.2d at 656 (noting that state constitutional

speedy-trial violation could occur even if the statutory deadlines "are not specifically applicable.").

The logic is clear: Those who authored the Speedy Trial Clause of § 6 presumably knew best what they meant by it, and they enacted specific statutory provisions to specify those limits. And many of those who authored the Maine Constitution – notably, John Chandler (first senate president), William King (Maine's first governor), William Pitt Prebble (one of the five original justices of this Court) – had plenty of opportunity to say otherwise from each vantage of government – legislative, executive and judicial. *See Maine State Legislature Legislators Biographical Database* available at: https://history.mainelegislature.org/Presto/home/home.aspx (search "Chandler, John"); *Governors of Maine, 1820-,* available at: https://legislature.maine.gov/9197/; *Cleaves Law Library, The Supreme Judicial Court of the State of Maine, 1820 to 2015*, available at: http://cleaves.org/sjcbios1.htm (webpages last accessed June 14, 2022).

In 1965, Maine adopted its first edition of the Rules of Criminal Procedure, repealing in the process the last in the long line of the statutory provisions implementing the state constitutional right to a speedy trial. P.L. 1965, c. 356, § 43 (repeal); *see O'Clair*, 292 A.2d at 195. Thus marked the end of a lengthy period – since founding – during which the Law Court was

never called to specify[9] a state-constitutional standard apart from the statutes that *were* the standard.

3. 1965 to the mid-1980s: The rise and fall of Rule 48(b)

Some context illuminates the environment in which the state-constitutional speedy-trial right was eroded. Nationally, the 1960s touched off two decades of a staggering increase in criminal prosecutions. Federal Bureau of Investigation, U.S. Dept. of Justice, *Uniform Crime Reporting Statistics*, available at: https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/about-cius (last accessed June 20, 2022); *see also* Alexander, *The Maine Supreme Judicial Court*, *supra*, 132-35 (noting that, from 1960s through 1980s, demands on Maine court-system increased). Not surprisingly, "speedy trial problems" became "the bane of the 1960s." Marc M. Arkin, *Speedy Criminal Appeal: A Right Without A Remedy*, 74 MINN. L. REV. 437, 438-39 n. 10 (1990) (collecting authorities); *see also* J.C. Gobold, *Speedy Trial -- Major Surgery for a National Ill*, 24 ALA. L. REV. 265, 265 (1972); *Barker v. Wingo*, 407 U.S. 514, 519 (1972).

No doubt influenced by the practical considerations of such an increase, "the framers of our rules of criminal procedure" effectuated the

[9] Except, arguably, for *Couture* in 1960. *See* 156 Me. at 245, 163 A.2d at 655 ("'The right to a speedy trial is necessarily relative; it is consistent with delays, and whether such a trial is afforded must be determined in the light of the circumstances of each particular case as a matter of judicial discretion.'") (quoting 22 C.J.S., Criminal Law, § 467 (b) (3)); *see also State v. Cadman*, 476 A.2d 1148, 1150 (Me. 1984) (citing *Couture* for notion that "[t]he right to a speedy trial under our Constitution is necessarily a relative matter; whether such a trial has been afforded must be determined from the circumstances of the particular case.").

watering down and eventual repeal of the speedy-trial statute in preference for a more "flexible standard" – Rule 48(b). *O'Clair*, 292 A.2d at 192. Commentators observe that such a "flexible standard" "gives" the speedy-trial right "little teeth." Andrew M. Siegel, *When Prosecutors Control Criminal Court Dockets: Dispatches on History and Policy from a Land Time Forgot,* 32 AM. J. CRIM. L. 325, 357 n. 118 (2005).

Early proponents of the Maine Rules of Criminal Procedure were keen to abandon common law in favor of uniform rules modeled on the federal rules of procedure. *See State v. Wedge*, 322 A.2d 328, 330-31 (Me. 1974); Alexander, *The Maine Supreme Judicial Court*, *supra*, 123-34. On the heels of the Warren Court, the Burger Court quickly filled the gap. In *Barker*, it explained, "We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate." 407 U.S. at 521. It criticized reliance on a "fixed point in the criminal process," *ibid.*, while leaving it to the states to impose deadlines based on their own laws. 407 U.S. at 530 n. 29.

In *O'Clair*, the Law Court described its view of the state-constitutional standard in light of these developments:

> Although the specific statutory time limits, as heretofore obtained and which tended to safeguard an accused's constitutional right to a speedy trial, were discarded and replaced by the more flexible standard of "unnecessary delay" imposed by Rule 48(b) of the Maine Rules of Criminal Procedure, which has the force of law, the change-over was not intended as a repudiation of the long-standing judicial construction of the speedy trial provision. Rather, it manifests on the part of the framers of our rules of criminal procedure a desire to substitute for the former definite term limitations a formula adaptable to a

> judicial system respecting which the existence or expiration of terms of court as such was meant to be phased out.

292 A.2d at 192. Maine judges were suddenly to enforce the constitutional speedy-trial right – which, until then, had been measured according to dates certain – without reference to any fixed deadlines.

Respectfully, the Law Court permitted rules of procedure to effectively supplant the core state-constitutional provisions that the Court had long recognized were embodied by the former speedy-trial statutes. Rather than reiterate the state-constitutional standard, the Court looked elsewhere – to the federal courts. *See* Alexander, *The Maine Supreme Judicial Court*, *supra*, 124 ("The changes proved timely, as opinions of the United States Supreme Court, during the 1960s, mandated significant reform of criminal practice in recognition of criminal defendants' [federal] constitutional rights. Adoption of the Maine Rules of Criminal Procedure, drawing on the Federal Rules, allowed relatively seamless accommodation in Maine practice of the *more rigorous* consideration of [federal] constitutional rights required by the U.S. Supreme Court opinions."). (emphasis added).

On one hand, the Law Court confirmed that Rule 48(b) "implemented" the state-constitutional speedy-trial right, but, in practice, the rule provided no standard except a vague notion of whether a delay was "unnecessary." *See Dow v. State*, 295 A.2d 436, 440 (Me. 1972); *see also State v. Wells*, 443 A.2d 60, 64 (Me. 1982) (stating that "the proper inquiry under Rule 48(b) goes not only to the *length* of the delay but necessarily also addresses the

reasons for the delay.")[10] (emphasis in original). On more than one occasion, too, the Court interpreted Rule 48 narrowly; while it left open the possibility that "there might" be discretion for a judge to find a Rule-48 violation that would otherwise not constitute a constitutional speedy-trial violation, the Court never explained how the two standards differed. *State v. Brann*, 292 A.2d 173, 176 (Me. 1972); *see also Wells*, 443 A.2d at 63 (noting that Rule 48 theoretically means something more than the Sixth Amendment speedy-trial right but not explaining how the two differ, other than Rule 48 also exists to ease court "congestion"[11]); *State v. Lemar*, 483 A.2d 702, 704 n. 5 (Me. 1985) (again noting possibility of different meanings but declining to "expand" on what that means). By combining the two ineffable standards into one, the Court effectively made dismissal for constitutional speedy-trial violations a matter of a judge's *discretion*.[12] *See Brann*, 292 A.2d at 176-77

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[10] This formulation, of course, does not differ from the crux of *Barker,* 407 U.S. at 531, nor, for that matter, from the speedy-trial provisions which were the state-constitutional standard as early as 1821. *See* P.L. 1821, c. 59, § 44 (exceptions for certain delays not to be charged to prosecution).

[11] Considering the unprecedented, seemingly intractable "congestion" in many Maine state courts today, it is difficult to understand why more trial judges have not resorted to exercising such discretion, as Rule 48(b) is still on the books. *See, e.g.*, Judy Harrison, Bangor Daily News, Article, *It will take 15 years to clear case backlog in Washington County if pace continues*, (July 29, 2022) available at:
https://www.bangordailynews.com/2022/07/29/news/down-east/washington-county-backlog-joam40zk0w/ (last accessed August 2, 2022).

[12] The Court's most recent decision on the matter, *State v. Hofland*, 2012 ME 129, ¶ 11, 58 A.3d 1023 ("We review for abuse of discretion a court's judgment on a motion to dismiss a charge for failure to provide a speedy trial."), reiterates this line of cases, contrary to courts' reasoning elsewhere.

(reviewing for abuse of discretion); *State v. Murphy*, 496 A.2d 623, 629 (Me. 1985) (same); *Lemar*, 483 A.2d 704-05 (same). Given the constitutional remedy of dismissal with prejudice upon deprivation of a speedy trial, this case-law was akin to making exercise of the Bill of Rights discretionary. *See Barker*, 407 U.S. at 522 (dismissal is "the only possible remedy"); *Strunk v. United States*, 412 U.S. 434, 439-40 (1973) ("In light of the policies which underlie the right to a speedy trial, dismissal must remain, as *Barker* noted, 'the only possible remedy.'") (*citing ibid.*).

Such disorder quickly caused judges to erroneously seek standards elsewhere rather than returning to the state constitutional analysis that this Court worked to develop for nearly a century and a half. Federal law readily obliged as, in 1967, the Supreme Court incorporated the Speedy Trial Clause of the Sixth Amendment. *Klopfer v. North Carolina*, 386 U.S. 213 (1967). Incorporation was followed, five years later, by the announcement of a multi-part standard for evaluating federal speedy-trial claims, which still predominates today. *Barker*, 407 U.S. 514. The Law Court recognized those

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See United States v. Molina-Solorio, 577 F.3d 300, 304 (5th Cir. 2009) (de novo); *United States v. Mitchell*, 625 Fed. Appx. 113, 118 (3d Cir. 2015) (bifurcated: de novo and clear error); *United States v. Burgess*, 684 F.3d 445, 451 (4th Cir. 2012) (same)*; United States v. Williams*, 753 F.3d 626 (6th Cir. 2014) (same); *United States, v. Arceo*, 535 F.3d 679, 684 (7th Cir. 2008) (same); *United States v. Aldaco*, 477 F.3d 1008, 1016 (8th Cir. 2007); *United States v. Sutcliffe*, 505 F.3d 944, 956 (9th Cir. 2007) (same); *United States v. Knight*, 562 F.3d 1314, 1321 (11th Cir. 2009) (same); *but see United States v. Irizarry-Colón*, 848 F.3d 61, 68 (1st Cir. 2017) (noting that its traditional standard of review – abuse of discretion – is "in tension" with other courts, but holding that it "need not resolve" that tension in this case because there was error regardless); *United States v. Cabral*, 979 F.3d 150, 156 (2d Cir. 2020) (a rather idiosyncratic exemplar of abuse of discretion).

opinions within months of their issuance. *See State v. Coty*, 229 A.2d 205, 215 (Me. 1967) (noting "the very recent case of *Klopfer*" and suggesting that defendant, on remand, renew his motion based on federal law); *State v. Carlson*, 308 A.2d 294, 298 (Me. 1973) (applying "recent" decision in *Barker* to a Sixth Amendment claim).

4. New judicial federalism: *State v. Cadman* and the primacy approach

In 1984, citing to decisions of other state supreme courts that had recently taken a robust approach to their respective state constitutions, the *Cadman* court announced what would become known as the primacy approach: Before analyzing federal constitutional rights, the Court stated, it would first analyze state-constitutional arguments. *State v. Cadman*, 476 A.2d 1148, 1150 (Me. 1984).

Unfortunately, *Cadman* was an awful speedy-trial case from an appellate standpoint: Because defendant had failed to raise speedy-trial arguments below, the Court was "left to speculate as to what caused the delay and as to whether it was a normal or exceptional circumstance." *Id.* at 1150-51. The lack of record denied the *Cadman* court occasion to consider an important question: What, precisely, was the state-constitutional speedy-trial standard? The closest the *Cadman* court got was its identification of a truism: "The right to a speedy trial under our Constitution is necessarily a relative matter; whether such a trial has been afforded must be determined from the circumstances of the particular case." *Id.* at 1150 (citing *Couture*, 156 Me. at 245, 163 A.2d at 655). The Court reserved for another day the

question "whether the speedy trial guarantee of the Maine Constitution affords broader protection or less protection than its federal counterpart." *Cadman*, 476 A.2d at 1152.

5. 1984-1992: 180 degrees in eight years

In the very next speedy-trial case – decided just six days after *Cadman* – the Law Court conducted no state-constitutional analysis, jumping right into the federal-constitutional analysis. *State v. Spearin*, 477 A.2d 1147, 1154-55 (Me. 1984). While that analysis may seem incongruous with the primacy approach just announced in *Cadman,* the discrepancy is likely the product of the two opinions having been written nearly simultaneously. Nonetheless, it was missed opportunity, again, to pin down the state standard in the post-statute and post-common-law context.

A few months later, Justice Nichols, who had authored *Cadman*, took another tentative step towards clarifying the state-constitutional standard, writing that "Rule 48(b) primarily concerns a defendant's right to a speedy trial," but declining to "expand" on the contours of that standard. *Lemar*, 483 A.2d 704 n. 6.

Fourteen months after *Cadman*, Chief Justice McKusick cited *Cadman's* conclusory statement about the state-constitutional standard – it "takes into account all the circumstances of the case at hand" – and then immediately proceeded to apply the federal *Barker* factors. *Murphy*, 496 A.3d at 627. The *Murphy* court treated Rule 48(b) as if it were a separate standard, but not saying how the two differed, in denying a speedy-trial argument. *Id*. at 629.

Then came *State v. Willoughby*, 507 A.2d 1060 (Me. 1986), in which the Court repeated *Murphy's* citation to *Cadman's* barebones statement of the state-constitutional standard: "[W]hether an accused has been deprived of his right to a speedy trial 'can be determined only through the use of a delicate balancing test that takes into account all of the circumstances of the case at hand.'" 507 A.2d at 1064 (quoting *Murphy*, 496 A.2d at 627). Just as in *Murphy*, the Court then immediately pivoted to the factors enumerated in *Barker*, as if they *were* the state-constitutional standard but without so holding. *Willoughby*, 507 A.2d at 1064.

Next, in *State v. Beauchene*, 541 A.2d 914 (Me. 1988), Chief Justice McKusick cited directly to *Willoughby*: Suddenly, "we *must*" consider the *Barker* factors. 541 A.2d at 918 (emphasis added). The primacy approach, in this way, was short-circuited, substituting the federal-constitutional analysis for that of the state constitution without explanation why the latter merely mimicked the former. After all, just four years earlier and specifically in the context of the Speedy Trial Clause of § 6, the *Cadman* court implicitly held otherwise.

A month after *Beauchene*, Justice Nichols retired. *See Cleaves Law Library, The Supreme Judicial Court of the State of Maine, 1820 to 2015, supra*. The next speedy-trial decision deftly described the applicable analysis: "We *have used* the balancing test of *Barker v. Wingo*, 407 U.S. 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972) to analyze speedy trial cases under both our state and federal constitutions." *State v. Carisio*, 552 A.2d 23, 26 (Me. 1988) (emphasis added) (citing to *Murphy*, 496 A.2d at 627). That was

correct, to a point: *Barker's* wide-ranging factors had, of course, been "used;" however, increasingly, they were starting to more closely resemble *the only* factors comprising the state-constitutional standard rather than just some of those, among others, that the Court *had used* previously.

The Law Court's next substantive discussion of constitutional speedy-trial rights explicitly took the final step: "The analysis of a speedy trial claim is identical under both the Federal and the State Constitutions." *State v. Joubert*, 603 A.3d 861, 863 (Me. 1992) (citing *Beauchene*, 541 A.2d at 918). The *Joubert* court had not enjoyed the benefit of briefing on the issue. *See supra* n. 1.

The timeline is worth repeating: In 1984, the Court identified two distinct constitutional analyses, one state, the other federal. *See* 476 A.2d at 1150-52. The next year, in *Murphy*, the Court again noted the existence of a separate state-constitutional standard, but, in the next sentence, proceeded to apply the federal *Barker* test without explaining the basis for doing so. Then, with each subsequent decision, the state-constitutional standard faded farther, and the federal standard embodied by *Barker* became increasingly entrenched. *Compare Willoughby*, 507 A.2d at 1064 (identifying state-constitutional standard by citing to *Murphy*, then applying federal-constitutional standard after implying that *Murphy* had equated the two standards) *with Beauchene*, 541 A.2d at 918 (stating that state-constitutional standard "must" equate to federal analysis by citing to *Willoughby*) *and Joubert*, 603 A.3d at 863 (stating that state and federal analysis were "identical" with unadorned citation to *Beauchene*). Within the

span of eight years, the Law Court went from identifying two separate standards to saying that there was only one. As detailed here, the string of decisions leading to that conclusion was hardly unassailable. Nevertheless, it is the basis for decades of this Court's jurisprudence treating our separate state guarantee as if it were merely "identical" to the federal one as construed in Washington, D.C.

Amicus stresses that *Cadman's* downfall was not the result of the primacy approach. Far from it, primacy, doctrinally, is the only way to ensure Mainers' baseline constitutional rights remain defined by Mainers. *See, supra,* INTRODUCTION. Rather, the problem with *Cadman* was that it did not identify the appropriate state-constitutional standard before announcing that it would start each case by analyzing that standard – whatever it was.

As a result, inertia took over. On one side, a black hole, caused by the repeal of the statute which had embodied the state-constitutional standard since founding and the Court's subsequent omission of a defined standard via Rule 48(b), let the long-recognized state right fade to oblivion. At the same time, powerful federal forces – incorporation of the Speedy Trial Clause and profusion of the *Barker* standard – provided a clear alternative. The result was equivalency. The correct standard, however, has been there all along.

II. Identifying the state-constitutional standard: Lessons from our speedy-trial tradition

The defining qualities of the Maine constitutional speedy trial were embodied in the first 150 years or so of our state. In the five or six decades since, Maine courts have deviated from those qualities, favoring federal jurisprudence. To return to our state standard after a substantial period of mistaken equivalency, the Law Court must begin by looking back to that history, to the distinct purpose and expectations of § 6, and to notions of fairness.[13]

The lessons from Maine's history are strong evidence that Maine's speedy-trial right means something more than under the Massachusetts and United States Constitutions. The Law Court's earlier and consistent discussion of § 6 staked a claim to a speedy-trial provision distinct from the federal and Massachusetts versions. Trends emerge from those early decades to reveal how § 6 differs: (A) Maine's right hinges on deadlines on the order of less than a year; (B) those deadlines shall not be enlarged

[13] Insofar as the speedy-trial right is concerned, this historical approach is a fitting method of constitutional interpretation because it demonstrates that subsequent judicial decision-making has diminished the breadth of the state-individual rights of Mainers. Of course, other methods of constitutional interpretation are worthy of confidence; amicus does not intend to endorse historical, textual, or originalist analysis as the exclusive way to derive constitutional meaning.

An illustrative counter-point to amicus's originalist bent in this brief is the example of Maine's constitutional voluntariness guarantee, which is derived from "public policy." *See State v. Collins*, 297 A.2d 620, 626 (Me. 1972); *State v. Rees*, 2000 ME 55, ¶ 7, 748 A.2d 976. The brief of fellow Amicus Curiae American Civil Liberties Union of Maine aptly arrives at the same conclusion as does MCILS vis-à-vis speedy trials by way of a policy-centered argument.

because of insufficient system resources; (C) it is much more likely for a meaningful delay to violate the speedy-trial provision of the Maine Constitution, regardless of whether the delay "prejudiced" the defendant, than it is under the Speedy Trial Clause of the Sixth Amendment. Taken together, relief is meant to be more liberally accorded than it has been since the 1960s.

None of this, however, is meant to supplant the totality-of-the-circumstances analysis that, traditionally, has defined the Maine standard. See *Cadman*, 476 A.2d at 1150 (citing *Couture*, 156 Me. at 245, 163 A.2d at 655). Evaluating the totality of the circumstances is the only way to discern which entity – the defendant, the prosecution, or the court – has caused a delay.

A. Presumptively fixed deadlines on the order of 6-12 months

Maine's state-constitutional provision was repeatedly equated with fixed deadlines: For the five or so first decades of the state, as seen in *Saco*, 37 Me. at 171-74 and *Learned*, 47 Me. at 432, the source of those deadlines was primarily[14] compared to the "law of the land," common law. Among the most prominent fonts of common law are the Magna Carta and the Habeas Corpus Act of 1679, both of which the Law Court has said *were* the state-constitutional standard. *Saco*, 37 Me. at 171-72; *Learned*, 47 Me. at 432;

[14] *Saco*, in 1853, also tied the state-constitutional right to the statutes. 37 Me. at 173.

O'Clair, 292 A.2d at 191. Fixed, presumptive deadlines *are* part of the state constitution.

Moreover, we know what those deadlines are, albeit roughly. The "terms" of the Supreme Judicial Court occurred at least yearly, varying by county and year. *See* P.L. 1821, c. 59, § 44 (noting that some counties have two terms a year, others have one); R.S. 1871, c. 134, § 9 (same); *see also* R.S. 1857, c. 134, § 13 (provision if term is not held within six months); *Slorah*, 118 Me. at 206, 106 A. at 769 (noting at least three terms in year). Thus, Maine's Speedy Trial Clause – as defined by nearly 150 years of historical interpretation – envisions a trial within six to twelve months (if not sooner, *see ibid.*), absent intervening circumstances.

Maine's turn away from deadlines in the latter half of the twentieth century was a step away from both common law and statute which, this Court had repeatedly reaffirmed, embody the Constitution of Maine's speedy-trial right. Were Maine to restore its pre-1960s state-constitutional law, it would effectively reimpose such presumptive deadlines. That is the essence of the Maine guarantee.

In these calculations, the speedy-trial clock begins with charging.[15] That is required by the text of § 6 itself: "*In all criminal prosecutions*, the accused shall have a right to…a speedy…trial…." (emphasis added).

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[15] In substance, this does not meaningfully differ from ACLU-Maine's proposed starting-point: "the moment in which the right to counsel attaches." ACLU-Maine's Brief at 12 n. 13. To the extent the right to counsel commences with initial charging – and it does, generally, *see Rothgery v. Gillespie County*, 554 U.S. 191, 198 (2008) – the distinction is without

B. A lack of systemic resources is not a permissible ground to enlarge those deadlines.

One of the reasons this brief is addressed to the Maine rather than Massachusetts Supreme Judicial Court, is separatists' frustration with the delays in their courts. Citizens of the District of Maine repeatedly complained of the slow pace of justice. Faster access to trials was among the motivations for the sustained push to statehood. And drafters of the Maine Constitution added the guarantee of a speedy trial in a rebuke of the Massachusetts Constitution, which contained no such provision. The Maine Constitution's Speedy Trial Clause thus rejects delay past six to 12 months when such delay is based on inadequate resources.

The speedy-trial imperative was realized over the first century and a half of the state. In those years, the statutory provisions that expressed the state-constitutional right to speedy trials brooked no delay for lack of resources. The first link in the nearly-150-year statutory chain delineated only two permissible reasons for enlarging the pre-trial period: If it "appear[s] to the Court that the witness, on behalf of the government, have either been enticed away or are detained by some inevitable accident from attending." P.L. 1821, c. 59, § 44. Amicus assumes that implicitly added to this short "list" are delays caused by the efforts of the defense, *i.e.*, appropriate time to dispose of defendants' motions, analyze evidence, and

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difference. However, there are occasions in which speedy-trial rights commence even when there is no right to counsel (*e.g.*, when there is no risk of incarceration) and, conversely, there are occasions in which the right to counsel commences but no speedy-trial right has commenced (*e.g.*, *Miranda*-type interrogations prior to charging).

prepare a trial-defense. Having too few suitable courtrooms, too few marshals, too few judges, too few prosecutors, too few defense attorneys,[16] etc. are not permissible bases for delay under Maine's Speedy Trial Clause.

Over time, the Court's decisions have deviated from the intent and history of § 6. *See State v. Hider*, 1998 ME 203, ¶ 18, 715 A.3d 942 ("[W]e have been reluctant to find violations of the right to a speedy trial unless the delay is *solely* attributable to the State's conduct….") (emphasis in original); *State v. Drewry*, 2008 ME 76, ¶ 14, 946 A.2d 981 (because "[t]here was no deliberate attempt to hamper Drewry's defense," delays by court, "an infectious disease quarantine at the jail," and succession of court-appointed attorneys, not counted against State); *State v. Lewis*, 373 A.2d 603, 609 (Me. 1977) (delay caused on unavailability of trial judge and other "circumstances beyond the control of the prosecution is not counted against the State).[17] In fact, the court below repeated this reasoning. *See* A81 (court declines to attribute certain delay to State because it is not the prosecution's "fault").

A return to recognizing the vigor of § 6 is essential to the rights of defendants, especially light of the back-log of cases currently clogging our

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16 *See* Emily Rose, *Note*, *Speedy Trial as a Viable Challenge to Chronic Underfunding in Indigent-Defense Systems*, 113 MICH. L. REV. 279 (2014) (proposing that underfunding of criminal justice system be counted against the government for speedy-trial purposes).

17 Tellingly, the Massachusetts state-constitutional speedy-trial provision accords less weight to delay caused by "other public actors (whether law enforcement or the courts)" than it does to delay caused by the prosecutors, particularly. *See Commonwealth v. Butler*, 464 Mass. 706, 716 (2013). This is the sort of practice which, at least in part, the State of Maine was literally created to forestall.

under-resourced courts, straining our under-resourced prosecutors, and decimating the ranks of defense counsel. *See* Sixth Amendment Center, *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services*, 98, 102 (April 2019) ("the prosecutorial function in Maine is under-resourced"); Chief Justice Stanfill, *A Report to the Joint Convention of the Second Regular Session of the 130th Maine Legislature*, 6 (2022) ("[W]e simply lack the capacity to just 'catch up' or to schedule and hear more cases with our existing workforce."); Justin Andrus, *Assessment of MCILS Adherence to the American Bar Association's Ten Principles of Public Defense Delivery*, 7-9 (2022) (a "long way to go" until MCILS is properly resourced).

C. Prejudice is irrelevant under the Maine Constitution.

Prior to the 1960s, the Maine Constitution's speedy-trial right was not tied to "prejudice." "The law of the land" – which this Court repeatedly reaffirmed was the Maine constitutional guarantee – did not tie relief to "prejudice." Rather "prejudice" was a factor introduced in Maine under the influence of federal and extra-jurisdictional jurisprudence.

Maine's first legislature, including several of the drafters of the Maine Constitution, understood "speedy trial" to mean that an indicted and imprisoned defendant must be tried by the end of the following term – no proof of "prejudice" required. *See* P.L. 1821, c. 59, § 44; R.S. 1841, c. 172, §§ 14, 15 (same); R.S. 1857, c. 134, § 10 (same); R.S. 1871, c. 134, § 10 (same); R.S. 1903, c. 135, § 10 (after two terms); R.S. 1916, c. 136, § 11 (next term); R.S. 1954, c. 148, § 9 (two terms). Prominent common law ("law of

the land") authorities similarly required no hint of "prejudice." *See* Habeas Corpus Act of 1679, 31 Charles II, c. 2.

The Law Court has interpreted § 6 in accord with this notion of speedy trials. In *Brann*, the Court described its jurisprudence about "prejudice:" A "sufficiently long" – specifically, it was referring to "a delay between indictment and trial of approximately *eight months*" – creates either "a rebuttable presumption" of prejudice or constitutes proof of "actual prejudice to [a] defendant so strong that the ultimate burden is placed upon the State to establish the absence of such prejudice to defendant." 292 A.2d at 179, 182 (emphasis in original). Indeed, in *Couture*,[18] unambiguously analyzing the defendant's state-constitutional speedy-trial right, this Court wrote,

> It can readily be seen that long delay, such as existed in this case, might well be prejudicial to a person charged with crime, because during the interval existing between the time of the return of the indictment and the time when such person learns of its existence, witnesses essential to his defense might have died or become otherwise unavailable.

156 Me. at 247-48. The watering down of this principle came only with the conflation of the federal and state analyses.[19]

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[18] *Couture* also held that the remedy for a state-constitutional speedy-trial violation is dismissal. 156 Me. at 244. In *Brann*, the Law Court seemed to reaffirm that principle, explaining that because of jurisdictional idiosyncrasies, the Court in *Couture* was deprived of the ability to order dismissal (it ordered only a new trial). 292 A.2d at 181-82.

[19] The *Brann* court, which was describing its pre-Rule 48(b) decision in *Couture*, declined to follow *Couture* some twelve years after that decision, instead favoring federal benchmarks.

This is a significant distinction from federal constitutional law, which holds that what it calls "presumptive prejudice" – that is, the ill effects inherent in being held without trial for a significantly lengthy period – "cannot alone carry" a violation of the Speedy Trial Clause of the Sixth Amendment. *Doggett v. United States*, 505 U.S. 647, 656 (1992). In *Couture*, that is exactly what "carried" the violation. 156 Me. at 247-48. The federal standard has been subject to criticism. *See* Arkin, *Speedy Criminal Appeal*, *supra*, at 442 ("The inadequacy of the speedy trial standard is largely due to its requirement that the defendant demonstrate prejudice arising from the delay in order to establish a [federal] constitutional violation."). Indeed, turning the constitutional right to a speedy trial into merely the right to a trial delayed until the onset of sufficient "prejudice" is akin to turning the right to a public trial into a right to a trial in the public *only if* the defendant can establish "prejudice" resulting from their exclusion. *But see Weaver v. Massachusetts*, 137 S.Ct. 1899, 1910 (2017) (noting that violation of public-trial right is structural error); *see* Blue Brief at 13 ("[T]he problem with this federal speedy trial law is that is mixes together and confuses the right to a *speedy* trial and the right to a *fair* trial. Those are two different rights.") (emphasis in original). Section 6's guarantee is a right to be free from pretrial limbo. It is not merely a right to a speedy trial only if prejudice would ensue from delay.

D. Fairness and the totality of the circumstances

Above, amicus indicated that the totality-of-the-circumstances are relevant in the § 6 analysis. *See Cadman*, 476 A.2d at 1150; *Couture*, 156

Me. at 245, 163 A.2d at 655. Primarily, the circumstances are relevant in determining whether a defendant has consented to or caused a delay, which is effectively the manner in which the *Barker* standard and its analogues consider "the circumstances."

For instance, the former statutes that defined Maine's constitutional speedy-trial right often set deadlines from indictment. *See*, *e.g.*, P.L. 1821, c. 59, § 44. It would not be fair, considering the circumstances, to start that clock ticking if, rather than appearing for an arraignment or initial appearance, a just-indicted defendant goes on the lam, making his timely prosecution difficult or impossible. *See Beauchene*, 541 A.2d at 918 (the defendant's whereabouts were unknown when indicted). The Maine Constitution ascribes such delay to the absent defendant.

Another thorny issue in federal case-law is what a defendant has done to "invoke" the Speedy Trial Clause. Under the Maine Constitution the right exists whether it is explicitly asserted or not. The facts of Mr. Winchester's case suggest that, in the totality of the circumstances, it is both unfair and unwise to hold the lack of such an invocation against a defendant. The court below "conclude[d] that factually no request for a speedy trial was made," despite the fact that "[a] clerk with initials 'CMH'" made a notation that petitioner's counsel had "in fact filed the motions." (A81). Under the *Barker* analysis, this would be an important omission.

In Maine, however, the 12-month (or less, depending on severity of the charges), deadline is fixed in law. Perhaps, in certain circumstances, a defendant's express speedy-trial demand might shorten that deadline. But

absent other indicia of an intent or consent to delay trial, there is no basis for anyone to believe that such a delay is intended or agreed to. A person cannot acquiesce to the deprivation of fundamental constitutional rights; those rights must be waived.

What about preparation for trial? Certainly, delays beyond the fixed deadlines which are attributable to lack of resources result in constitutional violation. Again, the lack of judicial resources was *the* impetus behind Maine's constitutional speedy-trial provision in the first instance.

There will be occasions, no doubt, when judges must plumb the depths of gray to determine on which side a delay falls. For instance, indigent Maine defendants are often in need of the assistance of private investigators and other "litigation supports" such as psychiatric experts. *See* Sixth Amendment Center, *The Right to Counsel in Maine*, *supra*, 60. To the extent a trial is delayed by rates of remuneration too low to timely procure such reasonably necessary assistance, constitutional violation is at hand. If the delay is due to a defense attorney's pace of work apart from any resource concerns, then post-conviction procedures will reveal whether the delay is attributable to the defendant, personally, or to ineffectiveness of counsel.

There are countless examples beyond the scope of this brief. Amicus simply suggests that these issues will be rightly decided in future cases so long as here, in this case, this Court properly highlights the pillars of § 6's Speedy Trial Clause, as discussed above. By fairly construing that right to ensure timely trials without regard to "prejudice," and without brooking

delay resulting from underfunding the system, the essential Maine Constitution will be implemented.

III. Petitioner's right to a speedy trial per § 6 was violated.

Amicus relies on the findings of the court below, applying them to the state-constitutional standard it has just sketched.

The first step in the analysis is to evaluate whether the delay is greater than 12 months. Here, only one finding is necessary to dispose of this question: Hearing and disposing of motions "regarding the return of seized items to the owners" "took 15 months to be resolved." (A83). In other words, yes, the delay exceeded 12 months.

The next – and only other – question that needs to be answered is whether Mr. Winchester occasioned that delay. The lower court found:

> The motions were filed August 3, 2015, and decided by the court on October 27, 2016. The court does not know why these motions took 15 months to be resolved, and agrees that seems excessive. But in no way does it appear it was due to fault of the State.

(A81). This finding does not support the conclusion that petitioner consented to the delay, certainly not to one of such an "excessive" duration. Further, it does not matter whether the prosecutor bears responsibility for the delay; it is enough that the court was not able to dispose of such a non-complex[20] motion within a constitutionally adequate timeframe. Because

[20] A copy of the resulting "Order on Motion to Suppress" is available at: https://apps.maine.edu/SuperiorCourt/show_detail.jsp?case_id=4871

there was a delay in excess of 12 months not of his making, Mr. Winchester's speedy-trial right was violated.

Following the primacy approach, then, it is not necessary to analyze petitioner's claim under the United States Constitution.

CONCLUSION

In many ways, we are again in a time like that experienced by citizens of the District of Maine in the late-eighteenth and early-nineteenth centuries. Justice is moving too slowly. Defendants awaiting trial are in jail or are subject to restrictive bail conditions; they are unable to plan for their future so long as criminal charges remain unresolved over their heads; and, even with the help of competent counsel, delays are causing witnesses' memories to fade and helpful evidence to disappear. The pressure to plead guilty, just to get it over with, is increasing by the day. These are precisely the sort of times which § 6's drafters had in mind when they conceived of the speedy-trial provision. This Court should return the Speedy Trial Clause to its rightful place assiduously guarding Mainers against the tyranny of pre-trial limbo.

August 8, 2022

Respectfully submitted,

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
By its counsel:

/s/ Rory A. McNamara
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
(207) 475-7810

/s/ Jamesa J. Drake
DRAKE LAW LLC
P.O. Box 56
Auburn, ME 04212
(207) 330-5105

CERTIFICATE OF SERVICE

I sent a native PDF version of this brief to the Clerk of this Court and to the parties' counsel at the email addresses provided in the Board of Bar Overseers' Attorney Directory. I mailed 10 paper copies of this brief to this Court's Clerk's office via U.S. Mail, and I sent 2 copies to each party's counsel at the addresses provided by that same Directory.

/s/ Rory A. McNamara
DRAKE LAW LLC
P.O. Box 143
York, ME 03909
(207) 475-7810

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Aro-21-312

Dennis Winchester

v.

CERTIFICATE OF SIGNATURE

State of Maine

I am filing the electronic copy of this brief with this certificate. I will file the paper copies as required by M.R.App.P. 7A(i). I certify that I have prepared the brief and that the brief and associated documents are filed in good faith, conform to the page or word limits in M.R.App.P. 7A(f), and conform to the form and formatting requirements of M.R.App.P. 7A(g).

Name of party on whose behalf the brief is filed: **Maine Commission on Indigent Legal Services**

Attorney's name: **Rory A. McNamara, *Esq.***

Attorney's Maine Bar No.: **5609**

Attorney's email address: **rory@drakelawllc.com**

Attorney's street address: **P.O. Box 143, York, ME 03909**

Attorney's business telephone number: **207-475-7810**

Date: **8/6/2022**

Table 1: *A comparison of the states: speedy-trial provisions other than the Sixth Amendment* *see* M.R.App.P. 7A(f)(2)

State	Fixed/Definite Period?	Maximum remedy:	Provision	State Const. Provision:	State constitutional test:
Alabama	No	N/A	N/A	Art. I, sec. 6	Adopted Barker. Ex parte Hamilton, 970 So. 2d 285, 287 (Ala. 2006)
Alaska	120 days post-charge	Dismissal w/ prejudice	Alaska R. Crim. P. 45	Art. I, sec 11	Modified Barker: "While the presence of a demand or a showing of prejudice to one's case can only help the claim, their absence alone will not necessarily frustrate the right to a speedy trial, including the right to a dismissal of the charges with prejudice when there has been a clear denial of this constitutional right. We reach this conclusion on the basis of our interpretation of article I, section 11, of the Alaska Constitution rather than upon any dispositive holding in Hooey and Klopfer." Glasgow v. State, 469 P.2d 682, 686 (Alaska 1970).
Arizona	150 days post-arraignment if in custody; 180 days if on bail conditions; 270 days if complex offense	Dismissal w/ prejudice	Ariz.R.Crim.P. 8	Art. II, sec. 24	Adopted Barker. State v. Miller, 234 Ariz. 31 (Ariz. 2013).
Arkansas	12 months post-charge (if on bail)	Dismissal w/ prejudice	Ark.R.Crim.P. 28.1(d)(3)	Art. II, sec. 10	State: "A criminal defendant's constitutional right to a speedy trial is protected by Article VIII of the Arkansas Rules of Criminal Procedure (Rules 27 - 30). This court adopted Rule 28 for the purpose of enforcing the constitutional right to a speedy trial." Archer v. Benton County Circuit Court, 872 S.W.2d 397, 398 (Ark. 1994).
California	60 days post-indictment/arraigment (felony); 30 days arraignment/plea (misdemeanor)	Dismissal	Pen. Code, § 1382	Art. I. sec. 15	Modified Barker: "The state constitutional right to speedy trial attaches when a criminal complaint has been filed. (People v. Hannon, (1977) 19 Cal.3d 588, 608 [138 Cal.Rptr. 885, 564 P.2d 1203].) However, it is not until "either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge" that the federal constitutional right to speedy trial is engaged. (United States v. Marion (1971) 404 U.S. 307, 320 [30 L.Ed.2d 468, 478, 92 S.Ct. 455].)." People v. Hill, 691 P.2d 989, 991 n. 3 (Calif. 1989).
Colorado	6 months post-charge/indictment	Dismissal w/ prejudice	CO Rev Stat § 18-1-405 (2016)	Art. II, sec. 16	Full parity: "Colorado constitution, art. II, § 16, is congruent with the United States Constitution, amendment VI." Lucero v. People, 476 P.2d 257, 259 (Colo. 1970).
Connecticut	12 months later of post-charge or arrest (if in custody)	Dismissal w/ prejudie. (See Conn. Practice Book § 43-41)	Conn. Practice Book § 43-39	Art. I, sec. 8	Adopted Barker: State v. McCarthy, 425 A.2d 924, 927-28 (Conn. 1979) ("The Connecticut constitution, article first, § 8, provides a comparable safeguard).
Delaware	None	N/A	N/A	Art. I sec. 7	Harsher than *Barker*: *Key v. State* , 463 A.2d 633, 638 (Del. 1983) ("Our analysis of Key's state constitutional challenge parallels that of his federal claim. *See also Shockley v. State, Del. Supr* ., 269 A.2d 778 (1970) (state speedy trial right interpreted in light of federal precedents); *State v. Cunningham* , Del. Super., 405 A.2d 706 (1979), *rev'd and remanded on other grounds* , Del. Supr., 414 A.2d 822 (1980) (table) (same); *State v. Walker* , Del. Super., 48 Del. 190, 100 A.2d 413 (1953) (same). The only difference in determining Key's state rights is that his own actions weigh more heavily against him.")
D.C.	100 days post-arrest (if in custody)	Discharge from custody & conditions	DC Code 23-1322	None	N/A
Florida	90 days post-arrest if subject to bail conditions or in custody (misdemeanor); 175 days (felony)	Dismissal w/ prejudice	Fla. R. Crim. P. 3.191	Art. I, sec. 16	Adopted Barker. Ferris v. State, 475 So. 2d 201, 203-04 (Fla. 1985).
Georgia	By end of next regular term post-demand	Acquittal	O.C.G.A. § 17-7-170	Art. I, sec. I, para. XI	Adopted Barker. Simmons v. State, 659 S.E.2d 721, 723-24 (Ga. App. 2008).
Hawaii	6 months post-arrest (if subject to bail conditions)	Dismissal w/ prejudice	Haw. R. Penal P. Rule 48	Art I sec. 16	Adopted Barker. State v. Visintin, 426 P.3d 367, 380 (Haw. 2018)
Idaho	6 months post-charge	Dismissal	I.C. § 19-3501	Art. I, sec. 18	Adopted Barker: State v. Russell, 696 P.2d 909, 913 (Idaho 1985) ("While the state constitutional right to a speedy trial is not necessarily identical to the federal constitutional right, the Barker balancing test issue is utilized for determining whether the Idaho Constitution speedy trial right has been violated.").
Illinois	120 days post-taken into custody (if in custody); 160 days post-imposition of bail conditions	Discharge from custody & conditions	725 ILCS 5/103-5	Art. I, sec. 8	Adopted Barker. People v. Lacy, 996 N.E.2d 1, 5 (Ill. 2013).
Indiana	6 months from later of arrest or charge	Discharge from custody & conditions	Ind. R. Crim. P. 4	Art. I sec. 12	Adopted Barker -- Probably. Watson v. State, 155 N.E.3d 608, 614 n. 2 (Ind. 2020) ("Since Fortson—the first time this Court confronted a speedy trial claim brought under both constitutions—Indiana courts have used the federal Barker factors when evaluating a defendant's state constitutional claim. See, e.g., Sweeney v. State, 704 N.E.2d 86, 102 (Ind. 1998). But these factors—particularly, the defendant's assertion of the speedy trial right—may not account for the difference in language between the Sixth Amendment and Article 1, Section 12. The former states a right, "[T]he accused shall enjoy the right to a speedy and public trial," U.S. Const. amend. VI, but the latter gives a directive, "Justice shall be administered . . . speedily, and without delay," Ind. Const. art. 1, § 12. So, while the Sixth Amendment invites analysis into whether and how defendants assert their right to a speedy trial, Article 1, Section 12 seemingly does not. In fact, prior to Fortson, this Court recognized that Article 1, Section 12 "casts no burden upon the defendant, but does cast an imperative duty upon the state and its officers, the trial courts and prosecuting attorneys, to see that a defendant" receives a speedy trial. Zehrlaut v. State, 230 Ind. 175, 183-84, 102 N.E.2d 203, 207 (1951). Therefore, under our state constitution, a defendant's speedy trial "demand is effectively made for him." Id. at 184, 102 N.E.3d. at 207; see also Barker, 407 U.S. at 524 & n.21 (citing Zehrlaut in recognizing Indiana as one of eight states to reject a demand rule). Yet, in Fortson, there was no reference to Zehrlaut or to the disparity in language between the two provisions. See Fortson, 269 Ind. at 169, 379 N.E.2d at 152. And thus, for a speedy trial claim brought under Article 1, Section 12, an analysis distinct from Barker may be more suitable. Cf. State v. Harberts, 331 Ore. 72, 11 P.3d 641, 648, 650-51 (Or. 2000) (rejecting the Barker factors for analyzing speedy trial claims brought under the Oregon Constitution, which was modeled after Indiana's). But because neither party asks us to undertake this separate analysis, we use only the federal test.").

Table 1: *A comparison of the states: speedy-trial provisions other than the Sixth Amendment* *see* M.R.App.P. 7A(f)(2)

Iowa	90 days post-indictment; 1 year post-initial appearance	Dismissal w/ prejudice	Iowa R. Crim. P. 2.33	Art. I, sec. 9	Adopted Barker. State v. Smith, 957 N.W.2d 669, 686 (Iowa 2021)
Kansas	150 days post-arraignment if in custody; 180 days if on bail conditions	Dismissal w/ prejudice	K.S.A. § 22-3402	Bill of Rights, sec. 10	Adopted Barker. State v. Green, 252 Kan. 548, 551-52 (Kan. 1993).
Kentucky	None	N/A	N/A	Sec. 11	Adopted Barker. Gabow v. Commonwealth, 34 S.W.3d 63, 69-70 (Ky. 2000).
Louisiana	1 year post-"initiation of prosecution" (misdemeanor); 2 years (felony)	Dismissal w/ prejudice	La. C.Cr.P. Art. 578; see also La. C.Cr.P. Art. 701 (for discharge from jail and bail conditions)	Art. I, sec. 16	Adopted Barker. State v. Harris, 857 So. 2d 16, 18-19 (La. 4th Ct. App. 2003)
Maine	None	N/A	N/A	Art. I, sec. 6	Full parity. "The analysis of a speedy trial claim is identical under both the Federal and the State Constitutions." State v. Joubert, 603 A.3d 861, 863 (Me. 1992)
Maryland	180 days post-earlier of appearance of counsel or initial appearance	Dismissal w/ prejudice (See State v. Hicks, 403 A.2d 356, 360 (Md. 1979))	Md. Criminal Procedure Code Ann. § 6-103	Dec. of Rights, sec. 21	Full parity: "The "speedy trial" right under the Maryland Constitution is "coterminous with its Federal counterpart" and any resolution of a claim under the Sixth Amendment will be dispositive of a parallel claim under Article 21. State v. Lawless, 13 Md. App. 220, 225." *Erbe v. State* , 336 A.2d 129, 132 (Md. App. 1975).
Massachusetts	12 months post-"return day"	Dismissal	Mass.R.Crim.P. 36	Part First, sec. XI	Adopted Barker -- Probably . Commonwealth v. Dirico, 106 N.E.3d 603, 617-18 (Mass. 2018) ("We interpret art. 11 through the lens of Sixth Amendment analysis.").
Michigan	28 days post-arrest if in custody (misdemeanor); 180 days in custody (felony)	Discharge from custody & conditions	MCR 6.004	Art. I, sec. 20	Adopted Barker. People v. Collins, 202 N.W.2d 769, 771-73 (Mich. 1972).
Minnesota	60 days post-plea	Discharge from custody & conditions	Minn. R. Crim. P. 6.06 (misdemeanor) ; Minn. R. Crim. P. 11.09 (felony)	Art. I, sec. 6	Full parity. *State v. Windish* , 590 N.W.2d 311, 315 (Minn. 1999) ("Article 1, Section 6 of the Minnesota Constitution also provides the same guarantee.").
Mississippi	270 days post-arraignment (felony)	Dismissal w/ prejudice (See Johnson v. State, 666 So. 2d 784, 791 (Miss. 1995))	Miss. Code Ann. § 99-17-1	Art. III, sec. 26	Adopted Barker. One 1970 Mercury Cougar v. Tunica County, 115 So. 3d 792, 795-96 (Miss. 2013).
Missouri	180 days post-demand	Dismissal w/ prejudice	§ 217.460 R.S.Mo.	Art. I, sec. 18(a)	Full parity. *State ex rel. McKee v. Riley* , 240 S.W.3d 720 (Mo. 2007) (en banc) ("The United States and Missouri Constitutions provide equivalent protection for a defendant's right to a speedy trial. See Bolin, 643 S.W.2d at 810 n.5 (the "Missouri constitutional provision" protecting the right to a speedy trial is not "any broader in scope than is the sixth amendment").).
Montana	6 months post-plea (misdemeanor)	Dismissal w/ prejudice	46-13-401, MCA	Art. I, sec. 24	Modified Barker. State v. Ariegwe, 167 P.3d 815, 827 (Mont. 2007) ("Twenty-six years after Barker was decided, we observed that the four-factor balancing test had, unfortunately, led to "seemingly inconsistent results" nationwide. Bruce, P20; see also Bruce, PP21-49 (identifying varied and inconsistent applications of the test in our own caselaw). Therefore, seeking to achieve more consistent dispositions of speedy trial claims in Montana, we articulated a more structured method for analyzing such claims. As described below, we retained the four factors identified in Barker, but we incorporated objective, bright-line criteria into three of them, and we modified the function and importance each factor plays in the overall balancing.").
Nebraska	6 months post-charge	Dismissal w/ prejudice (R.R.S. Neb. § 29-1208)	R.R.S. Neb. § 29-1207	Art. I, sec. 11	Adopted Barker. State v. Feldhacker, 672 N.W.2d 627, 631-32 (Neb. 2004)
Nevada	60 days post-arraignment	Dismissal w/ prejudice (Nev. Rev. Stat. Ann. § 178.562)	Nev. Rev. Stat. Ann. § 178.556	None	N/A
New Hampshire	6 months post-plea (misdemeanor); 9 months (felony); 4 months (if in custody)	Dismissal (*deadlines trigger show-cause hearings at which prosecution must satisfy Barker at penalty of dismissal)	Superior Court Speedy Trial Policy, https://www.courts.nh.gov/superior-court-speedy-trial-policy	Pt. First, Art. 14	Adopted Barker. State v. Griffin, 2022 N.H. LEXIS 3 * 6 (N.H. 2022).
New Jersey	180 days post-arrest or charge (if indictable)	Dismissal	N.J. Court Rules, R. 3:25-4	Art. I para. 10	Adopted Barker. State v. Cahill, 61 A.3d 1278, 1281 (N.J. 2013).
New Mexico	182 days post-arraignment (on complaint)	Dismissal w/ prejudice	6-506 NMRA	Art II, sec 14	Adopted Barker -- Probably. State v. Garza, 212 P.3d 387, 392 n.1 (N.M. 2009)
New York	6 months post-charge (felony); 90 days (misdemeanor punishable more than 3 mos.' prison); 60 days (misdemeanor punishable no more than 3 mos.)	Dismissal w/ prejudice	NY CLS CPL § 30.30	Not explicit	Modified Barker. People v. Romeo, 904 N.E.2d 802, 805-06 (N.Y. 2009) ("The five factors to be considered are: (1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charges; [4] (4) any extended period of pretrial incarceration; and (5) any impairment of defendant's defense (see Taranovich, 37 NY2d at 445). The balancing of these factors must be performed carefully in light of the particular facts in each case (see People v Vernace, 96 NY2d 886, 887, 756 NE2d 66, 730 NYS2d 778 [2001])..").

Table 1: *A comparison of the states: speedy-trial provisions other than the Sixth Amendment* *see* M.R.App.P. 7A(f)(2)

North Carolina	Within 2 following terms (felony) so long as at least 4 mos.	Discharge from custody and conditions	N.C. Gen. Stat. § 15-10	Art. I, sec. 18(a)	Adopted Barker. State v. Tindall, 242 S.E.2d 806, 809 (N.C. 1978).
North Dakota	90 days post-demand (certain felonies)	Dismissal	N.D.C.C. § 29-19-02	Art. I, sec. 12	Adopted Barker. State v. Moran, 711 N.W.2d 915, 919 (N.D. 2006).
Ohio	30-90 days post-summons (misdemeanor); 270 days (felony)	Dismissal	ORC Ann. 2945.71	Art. I, sec. 10	Adopted Barker. State v. Long, 168 N.E.3d 1163, 1167 (Ohio 2020).
Oklahoma	1 year post-arrest (if in custody); 18 months (if on bail conditions)	Dismissal (*deadlines trigger show-cause hearings at which prosecution must satisfy Barker at penalty of dismissal)	22 Okl. St. § 812.1	Art. II, sec. 20	Adopted Barker. Lott v. State, 98 P.3d 318, 327 (Ok. Crim. App. 2004).
Oregon	90 days post-custody	Dismissal w/ prejudice	ORS 135.763	Art. I, sec. 10	Modified Barker. State v. Harberts, 11 P.3d 641, 650-51 (Or. 2000) ("This court has held thatdelay in and of itself may be sufficient to establish a speedy-trial violation if the delay is so long "that the thought of ordering [a] defendant to trial 'shocks the imagination and the conscience,'" Vawter, 236 Ore. at 96 (quoting United States v. Chase, 135 F. Supp. 230, 233 (ND Ill 1955)), or if the delay is caused purposely to hamper the defense, Ivory, 278 Ore. at 506."); ("Although this court endorsed the Barker analysis in Ivory, it subsequently acknowledged that not all the Barker analysis is appropriate for evaluating claims under Article I, section 10. In State v. Dykast, 300 Ore. 368, 375 n 6, 712 P.2d 79 (1985), for example, this court explained that it had been "mistaken" in adopting the requirement that a defendant demand a speedy trial. That is so because, as noted, the requirement that a defendant be brought to trial "without delay" is not a "right" of a criminal defendant. Rather, it is a mandatory directive to the state. See Clark, 86 Ore. at 471 (so stating). Accordingly, the burden to proceed promptly is on the state. Vawter, 236 Ore. at 87. Because Article I, section 10, does not guarantee an individual a "right" to a speedy trial, the second Barker factor is inapplicable under the Oregon Constitution. Emery, 318 Ore. at 468 n 13; State v. Mende, 304 Ore. 18, 21, 741 P.2d 496 (1987); Dykast, 300 Ore. at 375 n 6."); ("This court also has declined to follow the federal practice of balancing the conduct of the defendant against the conduct of the state in evaluating speedy-trial claims. Mende, 304 Ore. at 22. Rather, this court considers all the relevant factors, Haynes, 290 Ore. at 81, and assigns "weight" to them, Mende, 304 Ore. at 24.").
Pennsylvania	365 days post-complaint; 180 days post-complaint if in custody and granted bail	Dismissal w/ prejudice	234 Pa. Code Rule 600	Art. I, sec. 9	Adopted Barker. Commonwealth v. Hailey, 368 A.2d 1261, 1264 (Penn. 1977).
Rhode Island	None	N/A	N/A	Art. I, sec. 10	Adopted Barker. State v. Oliveira, 127 A.3d 65, 73 (R.I. 2015).
South Carolina	None	N/A	N/A	Art. I, sec. 14	Adopted Barker. State v. Brazell, 480 S.E.2d 64, 70 (S.C. 1997).
South Dakota	180 days post-first appearance	Dismissal w/ prejudice (unless prosecution can rebut presumed prejudice)	S.D. Codified Laws § 23A-44-5.1	Art. VI, sec. 7	Adopted Barker. State v. Tiegen, 744 N.W.2d 578, 585 (S.D. 2008).
Tennessee	None	N/A	Tenn. Code Ann. § 40-14-101	Art. I, sec. 9	Adopted Barker. State v. Utley, 956 S.W.2d 489, 491 (Tenn. 1997).
Texas	None	N/A	N/A	Art. I, sec. 10	Full parity. *State v. Lopez* , 631 S.W.3d 107, 113 (Tex. Crim. App. 2021) ("The Texas Constitution provides the same guarantee.").
Utah	None	N/A	Utah Code Ann. § 77-1-6	Art. I, sec. 12	Adopted Barker -- Probably. State v. Younge, 321 P.3d 1127, 1133 n. 21 (Utah 2013) ("evaluated similarly").
Vermont	60 days post-denial of bail	Discharge from custody	13 V.S.A. § 7553b	Art. I, sec. 10	Full parity. *State v. Reynolds* , 95 A.3d 973, 978-80 (Vt. 2014).
Virginia	5 months post-probable cause determination (if in custody); 9 months (if on bail conditions)	Dismissal w/ prejudice	Va. Code Ann. § 19.2-243	Art. I, sec. 8	Full parity. *Jones v. Commonwealth* , 2008 Va. App. LEXIS 84 * 5 n. 10 (Va. App. 2008)("The speedy trial guarantees in the United States and Virginia Constitutions are reviewed without distinction.").
Washington	60 days (if in custody); 90 days (if not in custody)	Dismissal w/ prejudice	Wash. CrRLJ 3.3	Art. I, sec. 12	Adopted Barker. State v. Ollivier, 312 P.3d 1, 10 (Wash. 2013) ("substantially the same").
West Virginia	3 terms post-indictment	Dismissal w/ prejudice	W. Va. Code § 62-3-21	Art. III, sec. 14	Adopted Barker. State v. Drachman, 358 S.E.2d 603, 607 (W.V. 1987) ("essentially adopted").
Wisconsin	60 days post-initial appearance (misdemeanor); 90 days post-demand (felony)	Discharge from custody	Wis. Stat. § 971.10(2)(a)	Art. I, sec. 7	Adopted Barker. State v. Urdahl, 704 N.W.2d 324, 329 (Wis. App. 2005).
Wyoming	180 days post-arraignment	Dismissal w/o prejudice	W.R.Cr.P. 48	Art. I, sec. 10	Adopted Barker. Berry v. State, 93 P.3d 222, 230 (Wyo. 2004)..

STATE OF MAINE
AROOSTOOK, ss.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. ARO-21-312

STATE OF MAINE,
Appellee

v.

DENNIS WINCHESTER,
Appellant

ON APPEAL FROM THE UNIFIED CRIMINAL DOCKET

BRIEF OF AMICUS CURIAE, MAINE OFFICE OF THE ATTORNEY GENERAL

AARON M. FREY
Attorney General

DONALD W. MACOMBER
Assistant Attorney General
Criminal Division
6 State House Station
Augusta, Maine 04333
(207) 626-8507

LISA J. MARCHESE
Deputy Attorney General
LAURA A. YUSTAK
Assistant Attorney General
Of Counsel

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STATEMENT OF THE ISSUES

I. **Whether Winchester's right to speedy trial was violated under either the Maine or United States Constitutions.**

II. **Whether this case is a proper vehicle to announce a change in the scope of the right to a speedy trial under the Maine Constitution.**

SUMMARY OF THE ARGUMENT

1. Winchester's right to speedy trial was not violated under either the Maine or United States Constitutions. For thirty years this Court has held the analysis of such claims under both constitutions is identical, and for fifty years has followed the Supreme Court's four-part balancing test to decide such claims. While the 2.5 to 3.5 years between charges and trial/plea in Winchester's many cases was presumptively prejudicial, it was not so long as to constitute a *per se* violation of the right to speedy trial. Winchester's multiple changes of counsel and protracted litigation of a motion to suppress were the causes of the delay. Winchester never filed a demand for speedy trial, nor did he move to dismiss the indictments based on an alleged violation of his right to speedy trial, nor did he show any actual prejudice to his defense, such as missing witnesses or diminished memory, as a result of the delay.

2. This case is a poor vehicle to announce a change in the scope of the right to a speedy trial under the Maine Constitution. As a discretionary appeal in a post-conviction matter, the only matter for the Court to be deciding is whether the post-conviction court properly decided that counsel were not ineffective for not filing motions for speedy trial and for not raising the issue on direct appeal. If this Court is considering expanding the protection of the Maine Constitution's right to speedy trial for the first time since statehood, it should wait for a case on direct appeal where the issue has been preserved and litigated below.

STATEMENT OF THE CASE

On March 31, 2014, the State filed a criminal complaint charging Winchester with burglary. *CR-14-147.* Counsel was appointed. On May 9, 2014, the Aroostook County Grand Jury returned an indictment on the burglary charge in CR-14-147.

On June 3, 2014, the State filed a criminal complaint charging Winchester with burglary and theft. *CR-14-267.* The same counsel on

CR-14-147 was appointed on this case. On July 11, 2014, the Aroostook County Grand Jury returned an indictment on the burglary charge in CR-14-267.

On November 10 and 25, 2014, the State filed additional criminal complaints charging Winchester with burglary, theft, and other charges. *CR-14-515, CR-14-545, CR-547.* The same counsel on CR-14-147 was appointed on these cases.

In November 2014, less than nine months after the complaint was filed, Winchester went to trial on the CR-14-147 burglary charge, but a mistrial was declared. At a retrial in January 2015, the jury returned a guilty verdict.

On January 9, 2015, the Aroostook County Grand Jury returned an indictment on the charges in CR-14-515, [1] CR-14-545, and CR-14-547, and also returned an indictment charging yet another burglary count and another theft count. *CR-15-3.* The same counsel on CR-14-147 and the other cases was appointed on CR-15-3.

[1] According to the docket record, the Grand Jury did not return an indictment on the burglary count in CR-14-515 that had initially been charged by complaint. (App. 104).

On February 18, 2015, the Superior Court (*Stewart, J.*) sentenced Winchester to a five-year term of imprisonment on CR-14-147, with all but three-years suspended.[2] On October 27, 2015, the Law Court affirmed Winchester's judgment of conviction in CR-14-147 in a memorandum of decision on direct appeal. *State v. Winchester,* Mem-15-82 (Oct. 27, 2015).

On March 6, 2015, the Aroostook County Grand Jury returned an indictment charging another burglary count and another theft count. *CR-15-67.*

Shortly thereafter, Winchester's appointed counsel moved to withdraw, and new counsel was appointed on all the pending charges. On April 12, 2015, Winchester himself wrote a letter to the clerk of courts inquiring whether his former counsel had filed, *inter alia,* motions for speedy trial on the pending charges.[3] An assistant clerk,

[2] Winchester was in execution of this sentence until May 2017. (App. 22).

[3] The letter identified the pending charges as docket numbers CR-14-515, CR-14-545, CR-14-547, and CR-15-3. The letter did not mention docket numbers CR-14-267 or CR-15-67. The letter also mentioned a docket number CR-14-546 that is not included in the appendix nor identified in the Superior Court's post-conviction decision.

identified only by initials, replied that he had filed the motions.[4]

On February 28, 2017, a jury was selected for the charges pending in CR-15-67, but trial was not held. Although the docket record does not reflect the reasons for this, the Superior Court issued an order on March 1, 2017 suggesting that Winchester was "trying to control the docket" by firing his lawyer.

In April 2017, at Winchester's request, his lawyer withdrew, and new counsel was appointed. In August 2017, that lawyer withdrew when he accepted employment in a different part of the state, and yet another lawyer was appointed to represent Winchester.

On November 9, 2017, Winchester was convicted after a jury trial on CR-14-545. On December 6, 2017, the Superior Court (*Stewart, J.*) sentenced Winchester to a straight five-year term of imprisonment in CR-14-545.

That same date, Winchester entered conditional *nolo* pleas on the remaining charges, preserving his ability to assert, among other issues, a denial of his right to speedy trial. *CR-14-267, CR-14-515, CR-14-547, CR-15-3, CR-15-67.* The court imposed five-year terms of imprisonment

[4] Regarding a motion to suppress in CR-15-3, the assistant clerk was correct. (App. 134); Regarding motions for speedy trial in any of the pending cases, the assistant clerk was wrong. (App. 103-105; 114-115; 123-124; 132-134).

to be served concurrently with each other but consecutive to the five-year term imposed in CR-14-545.

On September 13, 2018, the Law Court affirmed Winchester's judgments of conviction in a reported decision. *State v. Winchester,* 2018 ME 142, 195 A.3d 506*.* Although the speedy trial issue had been preserved as part of the conditional plea, Winchester's counsel elected not to raise the issue on appeal because no motion for speedy trial had ever been filed in any of the cases.

On January 28, 2019, Winchester filed six petitions for post-conviction review to challenge the convictions in CR-15-67 (*PCR CR-19-129*), CR-14-515 (*PCR CR-19-130*), CR-14-547 (*PCR CR-19-131*), CR-15-3 (*PCR CR-19-132*), CR-14-267 (*PCR CR-19-133*), and CR-14-545 (*PCR CR-19-134*). The petitions each asserted in part that counsel were ineffective for not filing motions for speedy trial and for not raising the speedy trial issue on direct appeal.

No amended petitions were filed, and on June 8, 2021 an evidentiary hearing was held. On July 28, 2022, the Superior Court (*Stewart, J.*) denied the petitions in a written decision. The court found, in part, that counsel were not ineffective for not filing motions for speedy trial as Winchester was responsible for the bulk of the delay

through his repeated changes of counsel and protracted litigation of motions to suppress, motions for return of property, including motions for reconsideration and for further findings. The post-conviction court specifically found that it "would have been more prejudicial to proceed to trial without rulings" on the various motions or "with an attorney representing him that he was in conflict with and wanted to fire." (App. 41).

On August 5, 2021, Winchester filed a notice of discretionary appeal to this Court. Following submission of a memorandum, the Court granted a certificate of probable cause on the speedy trial issue.

On April 14, 2022, the Clerk of this Court invited the undersigned to submit an amicus brief to address the following:

1. Was Winchester's right to a speedy trial violated under article 1, section 6 of the Maine Constitution? Your response should include a discussion of the proper test Maine courts should apply in analyzing claims of speedy-trial violations under the Maine Constitution.

2. If Winchester's right to a speedy trial was not violated under the Maine Constitution, was it violated under the Sixth Amendment of the United States Constitution?

ARGUMENT

I. Winchester's right to speedy trial was not violated under either the Maine or United States Constitutions.

Winchester's right to speedy trial was not violated under either the Maine or United States Constitutions. The undersigned includes both constitutions in this section because for the last thirty years this Court has stated that "the analysis of a speedy trial claim is identical under both the Federal and State Constitutions." *State v. Joubert,* 603 A.2d 861 (Me. 1992); *See also State v. Harper,* 613 A.2d 945 (Me. 1992). Indeed, for the past fifty years this Court has been applying the four-part balancing test announced in the United States Supreme Court's landmark decision in *Barker v. Wingo,* 407 U.S. 514 (1972) to claims under both the Maine and United States Constitutions.

The Court has considered speedy trial claims in 44 cases since statehood – *not one* has held that the Maine Constitution provides broader protection than is required under the Sixth Amendment.

A. Maine Constitution

Article I, section 6 of the Maine Constitution provides in part that "in all criminal prosecutions, the accused shall have a right … to a speedy, public and impartial trial." Me. Const. art. I § 6. From statehood

to 1967, when the United States Supreme Court incorporated the Sixth Amendment right to speedy trial against the states through the Fourteenth Amendment due process clause, *Klopfer v. North Carolina,* 386 U.S. 213 (1967), the only right to speedy trial a criminal defendant had was under the Maine Constitution.

The first mention of this right in a Maine case was in 1853 in *Inhabitants of Saco v. Wentworth,* in which the Court held that a statute adding fees and conditions to appeal a judgment of a municipal court was unconstitutional because it restricted the right to speedy trial. 37 Me. 165, 173 (1853). Over the course of the next 110 years, the Court only decided five more speedy trial cases. In the first three, the Court found no speedy trial violation because the defendants had made no demand for speedy trial; the Court determined that inaction on the part of a defendant could constitute a waiver of the right. *State v. Slorah,* 118 Me. 203, 106 A. 768, 769-770 (1919); *State v. Kopelow,* 126 Me. 384, 138 A. 625, 626 (1927); *State v. Boynton,* 143 Me. 313, 62 A.2d 182, 188-189 (1948).

In 1960, the Court held for the first time that a defendant's right to speedy trial had been violated. *State v. Couture,* 156 Me. 231, 163 A.2d 646, 656-657 (1960). In that case, a defendant who was in prison for

one offense was charged with a new offense, but had not been provided a copy of the new indictment for 8 months, thus preventing him from making a demand for speedy trial. *Id.* at 649-650. The Court stated that such a long delay could have been prejudicial to the defendant because favorable witnesses could have died or otherwise become unavailable. *Id.* at 657. *Couture* was notable because it did not require the defendant to show actual prejudice. The decision's precedential impact was substantially undercut the following year in *State v. Hale,* 157 Me. 361, 172 A.2d 631 (1961), when the Court held that *Couture* was limited to its facts. *Id.* at 635. Indeed, the Court later held that *Couture*'s language about prejudice was merely dictum. *State v. Brann,* 292 A.2d 173, 180 (Me. 1972).

In 1967, the Court recognized that the Supreme Court had incorporated the Sixth Amendment speedy trial provision against the states in *Klopfer. State v. Coty,* 229 A.2d 205, 215 (Me. 1967). In several cases decided soon thereafter, the Law Court began incorporating language from Supreme Court decisions interpreting the Sixth Amendment's speedy trial provision to address speedy trial claims. *See, e.g., State v. Castonguay,* 240 A.2d 747, 750 (Me. 1968), *citing United States v. Elwell,* 383 U.S. 116, 120 (1966)("the right of a speedy trial is

necessarily relative. It is consistent with delays and depends on the circumstances."); *State v. O'Clair,* 292 A.2d 186, 193 (Me. 1972), *citing Elwell* (right to speedy trial "is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of the accused to defend himself.").

In 1972, in *State v. Brann,* the defendant argued (as Winchester's attorney does here) that Maine's speedy trial provision provided more protection than the Sixth Amendment, relying on the Law Court's language in *Couture* about prejudice. 292 A.2d at 179. The Law Court's decision noted that Maine's speedy trial provision, at a minimum, guarantees no less protection than that guaranteed by the Sixth Amendment. *Id.* at 176. The Court addressed the claim under the Sixth Amendment first and found no violation because the defendant did not show that a nine-month delay between indictment and trial would trigger a presumption of prejudice, nor did he show actual prejudice. *Id.* at 177-179. The Court also rejected the state constitutional claim, specifically finding that *Couture's* language about prejudice was dictum and reiterating that a showing of prejudice was required to make out a speedy trial violation. *Id.* at 179-185.

Late that same year in *Dow v. State,* 295 A.2d 436 (Me. 1972), the Court cited *Brann*'s prejudice requirement in finding that a five-month delay between indictment and trial would not establish prejudice or trigger a presumption of prejudice. *Id.* at 439-440. The Court also noted that the defendant had not made a demand for speedy trial and had not filed a motion to dismiss because of a speedy trial violation. *Id.* Additionally, the Court found that the State was not responsible for the delay and that the delay was attributable to the defendant's pretrial motions and requests. *Id.*

In 1973, the Law Court recognized that the Supreme Court had decided *Barker v. Wingo* the previous year.[5] *State v. Carlson,* 308 A.2d 294, 298 (Me. 1973). The Court later described *Barker* as a "landmark" decision. *State v. Dudley,* 433 A.2d 711, 713 (Me. 1981). Over the next eleven years (and thereafter), the Law Court consistently applied the *Barker* test when addressing speedy trial claims, whether it was interpreting the U.S. Constitution, the Maine constitution, or both.[6]

[5] The Barker test will be discussed in the next section.

[6] *State v. Bessey,* 328 A.2d 807 (Me. 1974); *State v. Lewis,* 373 A.2d 603 (Me. 1977); *State v. Steeves,* 383 A.2d 1370 (Me. 1978); *State v. Catlin,* 392 A.2d 27 (Me. 1978); *State v. Fernald,* 397 A.2d 194 (Me. 1979); *State v. Smith,* 400 A.2d 749 (Me. 1979); *State v. Lee,* 404 A.2d 983 (Me. 1979); *State v. Goodall,* 407 A.2d 268 (Me. 1979);

In 1984, however, the Law Court signaled that it was going to be adopting a new approach to constitutional analysis called the "primacy" method. *State v. Cadman,* 476 A.2d 1148, 1150 (Me. 1984). Under this approach, the Court would assess claims under the Maine Constitution first and would only address claims under the U.S. Constitution if there was no remedy under the state constitution. *Id.*

Since the defendant in *Cadman* was making a speedy trial claim, the Court first assessed it under article I section 6. *Id.* at 1150-51. The Court stated that the right to speedy trial under the state constitution was "necessarily a relative matter," and "must be determined from the circumstances of the particular case." *Id.* at 1150. The court rejected the state constitutional claim finding that the defense had to show something more than a mere delay, noting that the defendant had only made a demand for speedy trial one month before trial began and that he had not shown prejudice. *Id.* at 1151

The Court then applied the *Barker* test under the Sixth Amendment and rejected the claim for similar reasons (no demand, no prejudice). *Id.* at 1151-52. The Court added a cautionary note: "we need

State v. Dudley, 433 A.2d 711 (Me. 1981); *State v. Mahaney,* 437 A.2d 613 (Me. 1981).

not, and do not, at this time express an opinion on whether the speedy trial guarantee of the Maine Constitution affords broader protection or less protection than its federal counterpart." *Id.* at 1152. To this date, the Court still has not expressed an opinion that Maine's speedy trial guarantee affords broader protection than the Sixth Amendment. All of the Law Court's speedy trial cases decided since *Cadman* implicitly suggest that the speedy trial provision in Article I section 6 provides coextensive protection, because the Court has utilized the same test to assess such claims under both constitutions.

Despite the language in *Cadman*, the Court almost immediately stopped using the primacy approach in speedy trial cases and went back to the four-part *Barker* test. *See, e.g., State v. Spearin,* 477 A.2d 1147, 1154 (Me. 1984). Indeed, in 1985 the Court stated that the *Barker* test had been used "under both our state and federal constitutions." *State v. Murphy,* 496 A.2d 623, 627 (Me. 1985). Over the next seven years, the Court decided six additional speedy trial cases, all using the *Barker* test under both constitutions.[7] In 1992, the Court explicitly stated that "the

[7] *State v. Willoughby,* 507 A.2d 1060 (Me. 1986); *State v. Beauchene,* 541 A.2d 914 (Me. 1988); *State v. Carisio,* 552 A.2d 23 (Me. 1988); *State v. McLaughlin,* 567 A.2d 82 (Me. 1989); *State v. Michaud,* 590 A.2d 538 (Me. 1991); *State v. Hunnewell,* 593 A.2d 216 (Me. 1991).

analysis of a speedy trial claim is identical under both the Federal and the State Constitution." *Joubert,* 603 A.2d 861, 863 (Me. 1992); *Harper,* 613 A.2d 945, 946 (Me. 1992).

Since 1992, in seven additional cases addressing speedy trial claims, whether under the U.S. or Maine Constitution, the Law Court has consistently applied *Barker's* four-part test.[8] The Court last addressed a speedy trial claim in 2012. "[B]ased on the court's most recent pronouncements, it is questionable whether this provision (art. I sec. 6's speedy trial clause] retains any independent jural significance today." Tinkle, *The Maine Constitution: A Reference Guide,* at 34 (1992).

The consistent threads throughout the Maine cases from the beginning have been the necessity for a *demand* for speedy trial, and, for the last fifty years, a showing of actual prejudice.

B. United States Constitution

The Sixth Amendment to the United States Constitution provides in pertinent part, "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial…" U.S. Const. amend VI. As

[8] *State v. Rippy,* 626 A.2d 334 (Me. 1993); *State v. Uffelman,* 626 A.2d 340 (Me. 1993); *State v. Wilson,* 671 A.2d 958 (Me. 1996); *State v. Hider,* 715 A.2d 942 (Me. 1998); *State v. Drewry,* 2008 ME 76, 946 A.2d 981; *State v. Christen,* 2009 ME 78, 976 A.2d 980; *State v. Hofland,* 2012 ME 129, 58 A.3d 1023.

referenced previously, the United States Supreme Court incorporated the Sixth Amendment's right to speedy trial against the states in 1967 and five years later decided *Barker v. Wingo,* which established the ad hoc balancing test the Supreme Court, and this Court, use in speedy trial cases. The test weighs four factors on a case-by-case basis: "length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." 407 U.S. at 530.

The first factor, length of delay, is a "triggering mechanism." *Id.* "Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Id.* There is no hard and fast rule about the length of time required to trigger a presumption of prejudice. "Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year." *Doggett v. United States,* 505 U.S. 647, 652 n. 1 (1992)(*citing* 2 W. LaFave & J. Israel, *Criminal Procedure* § 18.2, p. 405 (1984); Joseph, *Speedy Trial Rights in Application*, 48 Ford.L.Rev. 611, 623, n. 71 (1980)(citing cases)).

The second factor, reasons for the delay, assigns different weights in the balance depending on the cause of the delay – a deliberate

attempt to delay the trial by the government to hamper the defense weighs heavily against the government; negligence or overcrowded courts are neutral factors that weigh less heavily against the government; valid reasons, such as missing witnesses, should justify delay and not weigh against the government at all. *Barker,* 407 U.S. at 531. In contrast, delay caused by the defense weighs against the defendant. *Vermont v. Brillon,* 556 U.S. 81, 90 (2009).

The third factor, the defendant's assertion of his speedy trial right, "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker,* 407 U.S. at 531-532. "[F]ailure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *Id.* at 532.

Finally, the fourth factor, prejudice to the defendant, assesses three interests that the speedy trial right is designed to protect, "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Id.*

C. Winchester's case

Assessed under the identical test applied under the Supreme Court's and this Court's speedy trial precedents, the record readily establishes that Winchester's right to a speedy trial was not violated.

First, while Winchester was charged with multiple offenses at different times, the length of delay between charge and trial/plea in the cases that were at issue in the post-conviction proceedings ranged between 2.5 to 3.5 years.[9] This would be presumptively prejudicial, but not *per se* prejudicial. *State v. Joubert,* 603 A.2d 861, 863 (Me. 1992)(57 months not *per se* prejudicial); *State v. Michaud,* 590 A.2d 538, 540 (Me. 1991)(32 months not *per se* prejudicial). "The mere lapse of time, however, does not establish a *per se* violation of that right."[10] *State v. Beauchene,* 541 A.2d 914, 918 (Me. 1988)(8 year delay between indictment and trial not presumptively prejudicial). Since the length of

[9] In Winchester's first case, CR-14-147, the time between charge and first trial was only eight months, and retrial two months after that. He was sentenced on that charge in February 2015 and was in execution of that sentence until May 2017. His remaining charges were all resolved by trial or plea less than seven months after he completed his sentence in CR-14-147.

[10] Petitioner's present counsel advocates for a new constitutional rule that would establish a *per se* speedy trial violation based solely on passage of time without regard to the other *Barker* factors such as prejudice. *Blue Brief* at 9-10, 16. Given the toll of the pandemic and limited judicial resources, and if even a portion of these defendants committed the offenses, this would have the net effect of allowing hundreds, if not thousands, avoid responsibility for their crimes and cause untold pain to victims.

delay in Winchester's case is presumptively prejudicial, inquiry must be made into the other three *Barker* factors.

It is these three remaining factors that doom Winchester's speedy trial claims. Examination of the second factor, reasons for the delay, establishes that none of the delay was attributable to the State. *State v. Goodall,* 407 A.2d 268, 281 (Me. 1979)(finding it significant in rejecting speedy trial claim that the record did not show "any bad faith or improper motive on the State's part" to delay the trial). Rather, the lengthy delay was prompted by Winchester's multiple changes of counsel as well as his protracted litigation of motions to suppress and for return of property. *State v. Beauchene,* 541 A.2d 914, 919 (Me. 1988)(time spent litigating defense motions counts against defendant); *State v. Spearin,* 477 A.2d 1147, 1154 (Me. 1984)(citing multiple changes of defense counsel as factor in rejecting speedy trial claim). "Defendant was free to take whatever actions he felt were necessary to protect his rights prior to trial. He may not, however, use the delaying consequences of those actions as a basis for claiming that his trial was improperly delayed." *Id.* at 1154-55. This factor weighs heavily against Winchester.

The third factor, defendant's assertion of the right, also weighs against Winchester as formal demands for speedy trial were never filed in any of his cases, nor were motions to dismiss the charges based on an alleged violation of his speedy trial rights. As outlined above, under this Court's pre-*Barker* precedents, this factor alone would have foreclosed Winchester's speedy trial claim under the Maine Constitution, as such a demand was a necessary prerequisite for such claims. Even if his *pro se* letter to the clerk inquiring whether his prior attorney had filed a speedy trial motion could be considered a demand for speedy trial, the other *Barker* factors (the fact that Winchester's changes in counsel and multiple motions were the reasons for the delay, no actual prejudice) would clearly have outweighed this factor. *See, e.g., Hofland,* 2012 ME 129, ¶ 12, 58 A.3d 1023 (early demand for speedy trial outweighed by defendant's motions causing delay and no actual prejudice in finding no speedy trial violation).

Finally, Winchester showed no actual prejudice. *Goodall,* 407 A.2d at 281 (no actual prejudice, no speedy trial violation); *State v. Brann,* 292 A.2d 173, 184 (Me. 1972)(same). For much of the time between charges and trial/plea, Winchester was already in execution of a sentence for a previous burglary conviction, so "oppressive pretrial

incarceration" was minimally implicated. Moreover, Winchester never claimed that his defense was in any way hindered by the delay, such as through missing witnesses or diminished memory. Indeed, the delay allowed Winchester to litigate motions that, if successful, could have significantly enhanced his defense, and enabled him to proceed to resolution represented by counsel with whom he was satisfied. (App. 41, noting potential prejudice if motions and counsel issues were not resolved).

Since Winchester was responsible for the delay through his motions and changes in counsel, made no actual demand for speedy trial, and showed no actual prejudice from the delay, Winchester's speedy trial claims were not viable. Accordingly, the post-conviction court properly determined that trial and appellate counsel were not ineffective for not filing motions for speedy trial or for not raising the issue on direct appeal.

II. This case is a poor vehicle to announce a change in the scope of the right to a speedy trial under the Maine Constitution.

Since this is a discretionary appeal from the denial of a post-conviction review petition and not a direct appeal following conviction

where a speedy trial motion had actually been litigated, it is a particularly poor vehicle to announce a change in the scope of the right to a speedy trial under the Maine Constitution. In an appeal such as this, the only matter for the Court to consider is whether the post-conviction court properly determined that trial and appellate counsel did not provide constitutionally ineffective representation to Petitioner Winchester by not filing a motion to dismiss for violating his right to speedy trial or by not raising that issue on direct appeal. In other words, what would "ordinary, fallible" lawyers have done under the circumstances?

Since this Court has been applying the *Barker v. Wingo* four-factor balancing test for fifty years and has repeatedly held for over thirty years that the analysis of a right to speedy trial claim is identical under both the federal and state constitutions, an "ordinary, fallible" lawyer would reasonably have believed that the *Barker* test was the test that would have been applied to such a claim. Under this test, a motion to dismiss grounded in a violation of the right to speedy trial was doomed to fail.

An "ordinary, fallible" lawyer would have no basis, given this Court's many precedents, to assert that the right to speedy trial under

the Maine Constitution provides more protection to Petitioner Winchester than the same right under the Sixth and Fourteenth Amendments of the United States Constitution.[11]

If the Law Court is contemplating an expansion of this right under the Maine Constitution for the first time, it should consider the issue only in a case where the issue is properly preserved in the trial court and raised on direct appeal.

[11] The existence of the federal Speedy Trial Act does not invalidate the constitutional parameters established by the Supreme Court. *Cf. Blue Brief at 15.*

CONCLUSION

For the foregoing reasons, Winchester's right to speedy trial was not violated under either the Maine or United States constitutions. Given the facts and procedural history of this case, it is an inappropriate vehicle to formulate and announce a change in the scope of the right under the Maine Constitution. Accordingly, the order denying Winchester's petition for post-conviction review should be affirmed.

Respectfully submitted,

AARON M. FREY
Attorney General

DATED: August 10, 2022

/s/ Donald W. Macomber
DONALD W. MACOMBER
Assistant Attorney General
Criminal Division
Maine Bar No. 6883
6 State House Station
Augusta, Maine 04333
(207) 626-8507

Lisa J. Marchese
Deputy Attorney General
Laura A. Yustak
Assistant Attorney General
Of Counsel

CERTIFICATE OF SERVICE

I, Donald W. Macomber, Assistant Attorney General, certify that I have mailed two copies of the foregoing "BRIEF OF AMICUS CURIAE, MAINE OFFICE OF THE ATTORNEY GENERAL" to the Winchester's attorney of record, Lawrence Winger, Esq. and to the State's attorney of record, District Attorney Todd Collins.

DATED: August 10, 2022

/s/ Donald W. Macomber
DONALD W. MACOMBER
Assistant Attorney General
Criminal Division
Maine Bar No. 6883

MCILS Master Budget Worksheet
Draft 7/8/2022

Init.		2023-24	2024-25
	Baseline	$ 26,946,234.00	$ 27,013,148.04
	All Other	$ 25,273,383.00	$ 25,273,383.00
	Personal Services	$ 1,672,851.00	$ 1,739,765.04
	2022 Supplemental Budget	$ 1,240,897.00	$ 1,269,076.28
	RDU Personal Services	$ 704,482.00	$ 732,661.28
	RUD All Other	$ 261,415.00	$ 261,415.00
	Legal Research	$ 275,000.00	$ 275,000.00
	Gross Baseline Budget	**$ 28,187,131.00**	**$ 28,282,224.32**
1	Hourly Rate	$ 21,457,780.00	$ 21,457,780.00
2	Public Defense Office North	$ 3,031,798.00	$ 3,058,965.00
3	Public Defense Office Central	$ 3,031,798.00	$ 3,058,965.00
4	Appellate Public Defender (5)	$ 897,776.00	$ 912,324.00
5	Post-Conviction Office	$ 1,380,192.00	$ 1,391,175.00
6	Training and Supervision Staff	$ 1,633,181.00	$ 1,659,573.00
7	Assignment and Screening Staff	$ 1,069,283.00	$ 1,059,327.00
8	Training Budget	$ 300,000.00	$ 300,000.00
9	Specialist Contracts Budget	$ 240,000.00	$ 240,000.00
10	Internship Program	$ 186,000.00	$ 186,000.00
11	Loan Mitigation	$ 500,000.00	$ 500,000.00
12	Technology Upgrades	$ 186,625.00	$ -
	Total Budget	**$ 62,101,564.00**	**$ 62,106,333.32**

INITIATIVE 1 – ATTORNEY BILLING RATE

TO: COMMISSION

FROM: JWA

SUBJECT: INITIATIVE 1

DATE: 7/5/2022

CC: INTERESTED PARTIES

Initiative 1 – Attorney Billing Rate: Provides funding to increase the billing rate for assigned counsel to $150 effective July 1, 2023, based on the five-year historical average billing history.

General Fund	2023-24	2024-25
All Other	$ 21,457,780.00	$ 21,457,780.00
Total	$ 21,457,780.00	$ 21,457,780.00

Staff recommend that the hourly rate for assigned counsel be increased to $150 per hour effective July 1, 2023, and that the projected total cost for assigned counsel services be based on the five-year average of total hours worked by assigned counsel while serving consumers of indigent legal services.

Using those assumptions, the total cost for assigned counsel would be $40,213,966.00 per year, and the increase over FY2022 assigned counsel vouchers would be $21,457,780. (Note that for vouchers submitting in FY2022, attorney-hours cost MCILS $60 or $80 per hour, depending on when the work was performed.)

The following table sets out the hours and billings for the fiver immediate previous fiscal years, together with the projected cost for those hours had the billing rate been $150 per hour:

	Billed	Hours	Projected
FY 2022	$ 18,756,186.00	256,939	$ 38,540,850.00
FY 2021	$ 14,622,901.00	243,715	$ 36,557,252.50
FY 2020	$ 15,738,226.00	262,304	$ 39,345,565.00
FY 2019	$ 17,363,481.00	289,391	$ 43,408,702.50
FY 2018	$ 17,286,984.00	288,116	$ 43,217,460.00
		268,093	$ 40,213,966.00

Staff recommend the following additional assumptions:

1. Where the MCILS caseload standard project suggests that many attorneys serving consumers of indigent legal services are either at or over any reasonably anticipated caseload limit, the Commission should not assume that assigned counsel hours will decrease in relation to any staff attorneys added through public defender programs.

PROJECTED STAFF COSTS

TO: COMMISSION

FROM: JWA

SUBJECT: STAFF COSTS

DATE: 7/7/2022

CC:

Commissioners, the tables set out in this memorandum show the basis for the projected staff costs we are using to develop budget initiatives. These numbers are accurate for the 2022 legislative session. We have not yet received the data that we need to update the numbers and may not receive that data on a timeframe that will allow us to prepare the budget. We believe that these numbers are sufficiently precise to allow us to make informed budget projections. We also believe that to the extent that any initiative is authorized there will be a lag in hiring. That lag will provide vacancy savings that we project will exceed any cost increase from 2022 to 2023.

Table of ancillary costs:

Ancillary Costs	per person cost year 1	per person cost year 2
Bar dues	$265	$265
Case management software	$433	$433
Cell phone	$378	$378
Eyeglass reimbursement	$150	$150
Legal research subscription	$672	$672
Monitor, mouse, keyboard*	$600	
Office furniture*	$2,480	
Office supplies	$750	$750
OIT/TELCO	$2,638	$2,638
TELCO installation costs*	$320	
Service center (Payroll processing)	$563	$563
Subscriptions (rule and statute books)	$70	$70
Total cost per person	**$9,319**	**$5,919**
***denotes first-year only cost**		

Table of total position costs:

Position	Unit Cost (salary/benefits @ step 3 + ancillary costs) Year 1	Unit Cost (salary/benefits @ step 4 + ancillary costs) Year 2	Step 3 (6%)	Step 4 (6%)	Step 8 (6%)
District Defender	$182,919	$186,999	108,123	$113,547	$134,117
Elected DA			65,477	$67,533	$75,332
Grade 90			**$173,600**	**$181,080**	**$209,449**
Assistant Public Defender II	$168,925	$172,279	97,981	$102,875	$121,329
ADA Grade 38			61,625	$63,485	$70,480
			159,606	**$166,360**	**$191,809**
Assistant Public Defender I	$137,183	$139,137	74,963	$78,842	$93,130
ADA Grade 30			52,901	$54,376	$59,791
			127,864	**$133,218**	**$152,921**
Investigator	$101,393	$101,397	49,012	$51,482	$60,852
			43,062	$43,996	$47,551
			92,074	**$95,478**	**$108,403**
Social Worker	$108,874	$108,937	54,436	$56,949	$67,157
			45,119	$46,069	$49,945
			99,555	**$103,018**	**$117,102**
Paralegal	$93,210	$92,019	43,081	$44,757	$52,849
			40,810	$41,343	$44,524
			83,891	**$86,100**	**$97,373**
Office Manager	$102,641	$102,493	49,963	$52,274	$62,329
			43,359	$44,300	$48,108
			93,322	**$96,574**	**$110,437**
Legal Secretary	$100,096	$98,815	$47,611	$49,969	$59,616
			$43,166	$42,927	$46,654
			$90,777	**$92,896**	**$106,270**

INITIATIVE 2 – PUBLIC DEFENDER OFFICE (NORTH)

TO: COMMISSION

FROM: JWA

SUBJECT: INITIATIVE 2 – PUBLIC DEFENDER OFFICE (NORTH)

DATE: 7/8/2022

This initiative represents one of the two public defender offices the Commission authorized staff to propose for the Commission budget. The staff costs include payroll, benefits, and ancillary costs, as set out in the Projected Staff Costs memorandum. NB: The anticipated cost for the physical office is an estimate, as we were not able to identify an appropriate proposed location in Aroostook County.

		2023-2024	2024-2025
Unit Costs			
District Defender		$ 182,919.00	$ 186,999.00
Asst DD II		$ 168,925.00	$ 172,279.00
Asst DD I		$ 137,183.00	$ 139,137.00
Office Manager		$ 102,641.00	$ 102,493.00
Paralegal		$ 93,210.00	$ 92,019.00
Social Worker		$ 108,874.00	$ 108,937.00
Investigator		$ 101,393.00	$ 101,397.00
Extended Costs			
District Defender	1	$ 182,919.00	$ 186,999.00
Asst DD II	5	$ 844,625.00	$ 861,395.00
Asst DD I	5	$ 685,915.00	$ 695,685.00
Office Manager	1	$ 102,641.00	$ 102,493.00
Paralegal	3	$ 279,630.00	$ 276,057.00
Social Worker	4	$ 435,496.00	$ 435,748.00
Investigator	4	$ 405,572.00	$ 405,588.00
Total Staff Cost		$ 2,936,798.00	$ 2,963,965.00
Office Space (Est)		$ 75,000.00	$ 75,000.00
Miscellaneous		$ 20,000.00	$ 20,000.00
Total		$ 3,031,798.00	$ 3,058,965.00

INITIATIVE 3 – PUBLIC DEFENDER OFFICE (CENTRAL)

TO: COMMISSION

FROM: JWA

SUBJECT: INITIATIVE 3 – PUBLIC DEFENDER OFFICE (CENTRAL)

DATE: 7/8/2022

This initiative represents one of the two public defender offices the Commission authorized staff to propose for the Commission budget. The staff costs include payroll, benefits, and ancillary costs, as set out in the Projected Staff Costs memorandum. NB: The anticipated cost for the physical office is an estimate, as we were not able to identify an appropriate proposed location in Kennebec or Androscoggin County.

		2023-2024	2024-2025
Unit Costs			
District Defender		$ 182,919.00	$ 186,999.00
Asst DD II		$ 168,925.00	$ 172,279.00
Asst DD I		$ 137,183.00	$ 139,137.00
Office Manager		$ 102,641.00	$ 102,493.00
Paralegal		$ 93,210.00	$ 92,019.00
Social Worker		$ 108,874.00	$ 108,937.00
Investigator		$ 101,393.00	$ 101,397.00
Extended Costs			
District Defender	1	$ 182,919.00	$ 186,999.00
Asst DD II	5	$ 844,625.00	$ 861,395.00
Asst DD I	5	$ 685,915.00	$ 695,685.00
Office Manager	1	$ 102,641.00	$ 102,493.00
Paralegal	3	$ 279,630.00	$ 276,057.00
Social Worker	4	$ 435,496.00	$ 435,748.00
Investigator	4	$ 405,572.00	$ 405,588.00
Total Staff Cost		$ 2,936,798.00	$ 2,963,965.00
Office Space (Est)		$ 75,000.00	$ 75,000.00
Miscellaneous		$ 20,000.00	$ 20,000.00
Total		$ 3,031,798.00	$ 3,058,965.00

INITIATIVES 4 AND 5 – APPELLATE AND PCR UNITS

TO: COMMISSION

FROM: JWA

SUBJECT: INITIATIVES 4 AND 5 – APPELLATE AND PCR UNITS

DATE: 7/8/2022

CC:

Staff recommend renewing the request for internal appellate and PCR counsel. Because CPR counsel will be called on to review the work of appellate counsel, those units should be separate. Staff anticipate that these units would be housed in Augusta, and do not anticipate that rented space will be a requirement.

Appellate Defender Unit

		2023-2024	2024-2025
Unit Costs			
Appellate Defender		$ 182,919.00	$ 186,999.00
Asst AD II		$ 168,925.00	$ 172,279.00
Asst AD I		$ 137,183.00	$ 139,137.00
Office Manager		$ 102,641.00	$ 102,493.00
Extended Costs			
District Defender	1	$ 182,919.00	$ 186,999.00
Asst DD II	2	$ 337,850.00	$ 344,558.00
Asst DD I	2	$ 274,366.00	$ 278,274.00
Office Manager	1	$ 102,641.00	$ 102,493.00
Total		$ 897,776.00	$ 912,324.00

Post-Conviction Defender Unit

		2023-2024	2024-2025
Unit Costs			
PCR Unit Head		$ 182,919.00	$ 186,999.00
Asst PCR-C II		$ 168,925.00	$ 172,279.00
Asst PCR-C I		$ 137,183.00	$ 139,137.00
Office Manager		$ 102,641.00	$ 102,493.00
Paralegal		$ 93,210.00	$ 92,019.00
Investigator		$ 101,393.00	$ 101,397.00
Extended Costs			
District Defender	1	$ 182,919.00	$ 186,999.00
Asst DD II	2	$ 337,850.00	$ 344,558.00
Asst DD I	2	$ 274,366.00	$ 278,274.00
Office Manager	1	$ 102,641.00	$ 102,493.00
Paralegal	3	$ 279,630.00	$ 276,057.00
Investigator	2	$ 202,786.00	$ 202,794.00
Total		$ 1,380,192.00	$ 1,391,175.00

INITIATIVES 6 AND 7 – T&S AND ASSIGNMENT STAFF

TO: COMMISSION

FROM: JWA

SUBJECT: INTIATIVES 6 AND 7 – TRAINING AND SUPERVISION AND ASSIGNMENT STAFF

DATE: 7/8/2022

CC:

Staff recommend renewing the request for field supervision staff to promote training, mentorship, support and oversight for assigned and employed counsel. Staff recommend ten attorney members of that team, working with the assistance and support of an office manager.

Staff also recommend that MCILS move to assume responsibility for more consistent screening, and for early assignment of counsel to alleviate issues related to the LOD programs. Assignment staff will also be able to provide legal information to consumers of indigent legal services. Staff recommend a staff of 10 paralegals for that role, supervised by an attorney.

Training and Supervision Staff:

		2023-24	2024-2025
Unit Costs			
Asst SS II		$ 168,925.00	$ 172,279.00
Ass SS I		$ 137,183.00	$ 139,137.00
Office Manager		$ 102,641.00	$ 102,493.00
Extended Costs			
Asst SS II	5	$ 844,625.00	$ 861,395.00
Ass SS I	5	$ 685,915.00	$ 695,685.00
Office Manager	1	$ 102,641.00	$ 102,493.00
Total		$ 1,633,181.00	$ 1,659,573.00

Assignment and Screening Staff:

		2023-24	2024-25
Unit Costs			
Paralegal		$ 93,210.00	$ 92,019.00
Asst DD 1		$ 137,183.00	$ 139,137.00
Extended Costs			
Paralegal	10	$ 932,100.00	$ 920,190.00
Asst DD 1	1	$ 137,183.00	$ 139,137.00
Total		$ 1,069,283.00	$ 1,059,327.00

INITIATIVE 8 – TRAINING BUDGET

TO: COMMISSION

FROM: JWA

SUBJECT: INITIATIVE 8 – TRAINING BUDGET

DATE: 7/7/2022

CC:

During the last budget cycle, MCILS staff asked the legislature to appropriate a budget to pay for facilities, food, and honoraria in support of training for MCILS counsel. While the Judiciary Committee supported that initiative, the initiative did not survive the appropriations process, and was not part of the package passed off the table. Staff recommend renewing that initiative.

Training

Initiative: Provides funds for MCILS to provide up to 4, 2-day in-person trainings per year, including the costs of facilities, food and honoraria for expert trainings.

GENERAL FUND

All Other	$300,000

Estimate for the facilities and food for four, two-day in-person trainings per year is $250,000.

Honoraria for expert teachers is estimated at $50,000 per year.

Option: Offer training as hybrid or fully remote, and locate in-person training in different locations so easy for attorneys located around the State to attend at in-person without traveling far or spending the night.

INITIATIVE 9 – SPECIALIST CONRACTS

TO: COMMISSION

FROM: JWA

SUBJECT: INITIATIVE 9 – SPECIALIST

DATE: 7/7/2022

During the last budget cycle, MCILS staff asked the legislature to appropriate a budget to pay for contracts with specific service providers. While the Judiciary Committee supported that initiative, the initiative did not survive the appropriations process, and was not part of the package passed off the table. Staff recommend renewing that initiative.

Contracts to specialists

Initiative: Provides funds and authority for MCILS to contract with attorneys and other providers and subject matter experts to support indigent legal services by providing targeted support concerning diversion and mitigation, appellate assistance, mentoring of new attorneys and serving co-counsel or lead counsel with a new attorney

GENERAL FUND

All Other	$240,000

MCILS would like to contract with attorneys, and potentially other providers such as social workers and subject matter experts, to support indigent legal services. To begin trial that process, MCILS hopes to contract with four attorneys who are already otherwise eligible to provide indigent legal services. When those attorneys are providing direct support for specific clients in specific cases, the expectation is that they would bill for that time through the MCILS case management system, as they would in the ordinary course. Those attorneys will have time that cannot be billed to a specific case, however. MCILS seeks an appropriation and authority to enter into those contracts, subject to the RFP and procurement process. MCILS would begin with the following four specialties and would permit up to one-third time to support these services.

Diversion and mitigation specialist	$60,000
Appellate assistance	$60,000
Mentoring new lawyers	$60,000
Available co-counsel/counsel with new attorney	$60,000

INITIATIVE 10 – INTERNSHIPS

TO: COMMISISON

FROM: JWA

SUBJECT: MCILS INTERNSHIP PROGRAM

DATE: 7/7/2022

CC:

Staff propose that MCILS develop an internship program to help promote the development of new legal talent the serve consumers of indigent legal services. The need for this program is informed by our observation that few new attorneys are able to join our program. During a recent meeting with summer students at the Cumberland Legal Aid Clinic, we learned that those interested in pursuing criminal law were leaving Maine to practice due to the lack of on-boarding resources. This program is intended to help alleviate that issue by providing students with training and experience in criminal or child protective law, and by promoting relationships among the members of the young bar and the existing bar.

Staff propose that interns be paid $25 per hour. Summer interns would work a 40-hour week. School year interns would work up to 20 hours per week and be paid for actual time work. Student interns would work directly with practitioners learning and providing appropriate clerk-level services in support of consumers. Interns would also engage in group sessions with MCILS internal staff for education and teambuilding.

The projected cost is $186,000, as set out in the following table:

Hourly Rate	$25
Summer Interns	
Weekly Hours	40
Working Weeks	12
Cost per intern	$12,000
Summer Interns	6
Extended Summer Cost	$72,000
School Year Interns	
Weekly Hours	20
Working Weeks	38
Cost per intern	$19,000
School Year Interns	**6**
Extended School Year Cost	$114,000
Extended Summer Cost	$ 72,000.00
Extended School Year Cost	$ 114,000.00
Program Cost	**$ 186,000.00**

INITIATIVE 11 – LOAN MITIGATION

TO: COMMISSION

FROM: JWA

SUBJECT: INITIATIVE 11 – LOAN MITIGATION

DATE: 7/8/2022

CC:

Staff recommend that the Commission adopt or endorse a loan mitigation program for assigned counsel, to provide a step toward parity with employed attorneys. One option is attached. The proposed bill was created through the Judiciary Committee with input from the Finance Authority of Maine.

Staff recommend MCILS request an initial appropriation of $500,000 to that program.

Committee: JUD
Drafter: RO
File Name:
LR (item)#:
New Title?:
Add Emergency?:
Date: July 8, 2022~~March 23, 2022~~~~March 22, 2022~~

Amendment for JUD
Loan Repayment Program

New Title: An Act To Create the Maine Indigent Legal Services Attorney Loan Repayment Program

Amend the bill be striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 20-A~~XX~~ MRSA is enacted to read:

MAINE INDIGENT LEGAL SERVICES ATTORNEY LOAN REPAYMENT PROGRAM

§1. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Assigned counsel. "Assigned counsel" has the same meaning as in Title 4, section 1802, subsection 1.

2. Authority. "Authority" means the Finance Authority of Maine.

3. Commission. "Commission" means the Maine Commission on Indigent Legal Services established under Title 4, section 1801.

4. Contract counsel. "Contract counsel" has the same meaning as in Title 4, section 1802, subsection 3.

5. Executive Director. "Executive Director" means the executive director of the Maine Commission on Indigent Legal Services.

6. Fund. "Fund" means the Maine Indigent Legal Services Attorney Loan Repayment Fund established under section 3.

7. Indigent legal services attorney. "Indigent Legal Services Attorney" means an

attorney acting as assigned counsel or contract counsel with the Maine Commission on Indigent Legal Services.

8. Indigent legal services. "Indigent legal services" has the same meaning as in Title 4, section 1802, subsection 4.

9. Program. "Program" means the Maine Indigent Legal Services Attorney Loan Repayment Program established under section 2, subsection 1.

§2. Maine Indigent Legal Services Attorney Loan Repayment Program

1. Establishment. The Maine Indigent Legal Services Attorney Loan Repayment Program, referred to in this chapter as "the program", is established for the purpose of attracting and retaining qualified attorneys to provide indigent legal services within the State. The authority shall administer the program.

2. Eligibility. For an applicant to participate in the program established under subsection 1, the applicant must, at a minimum:

A. Be licensed to practice law in the State of Maine and be in good standing with the Maine Board of Overseers of the Bar;

B. Be (in good standing) on the roster of attorneys eligible to receive assignments maintained by the commission;

C. Possess an outstanding student loan (relating to a law degree or any student loan?); and

D. Sign a statement of intent in a form acceptable to the authority to work a minimum number of hours, as determined by the authority in consultation with the executive director, as an indigent legal services attorney per year for a minimum of 3 years after acceptance into the program.

3. Application. An application to the program must be made directly to the authority at a time and in a format to be determined by the authority.

4. Loan repayment. The authority shall repay the loan of an applicant who is eligible under subsection 2 in the amount of ~~up to $50,000~~up to $16,666.66 per year or $50,000 in the aggregate.

§3. Maine Indigent Legal Services Attorney Loan Repayment Fund

The Maine Indigent Legal Services Attorney Loan Repayment Fund is established in the authority as a nonlapsing, interest-earning, revolving fund to carry out the purposes of this chapter. The authority may receive, invest and expend on behalf of the fund money from gifts, grants, bequests and donations in addition to money appropriated or allocated by the State.

Money in the fund must be used for the designated purposes of the fund and for the payment of administrative costs incurred by the authority for the operation of the program. Any unexpended balance in the fund carries forward for continued use under this chapter.

§4. Rules

The authority shall adopt rules to carry out the purposes of this chapter. In developing rules, the authority may ~~/shall~~ consult with the executive director or the commission. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

SUMMARY

This amendment establishes the Maine Indigent Legal Services Attorney Loan Repayment Program in the Finance Authority of Maine. The program will provide student loan repayment in an amount up to $50,000 to eligible attorneys who agree to work a minimum number of hours a year, for at least 3~~2~~ years, as an indigent legal services attorney with the Maine Indigent Legal Services Commission. The amendment establishes a fund for the program.

Andrus, Justin

From: Andrus, Justin
Sent: Thursday, July 7, 2022 11:24 AM
To: MCILS
Cc: Hudson, Megan
Subject: Initiative 12: Technology Upgrades
Attachments: ME_MCILS_dD7UpgradeProposal.pdf

Commissioners, Initiative 12 on the Draft MCILS Master Budget Worksheet is for "Technology Upgrades."

The most important technology upgrade we need to undertake is rolling our case management system forward from the existing Defender Data deployment to the current production distribution. The JusticeWorks upgrade proposal is attached. The proposed cost is $186,625. The master budget sheet has been revised downward from the draft of July 5th to accurately reflect the anticipated cost.

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

JUSTICE WORKS
MAINE COMMISSION ON INDIGENT LEGAL SERVICES
DEFENDERDATA™ CASE MANAGEMENT SYSTEM
SYSTEM UPGRADE PROPOSAL

Proposal Date: APRIL 21, 2022

OVERVIEW

Justice Works is pleased to submit this proposal for services to support Maine Commission on Indigent Legal Services in achieving its goals for improving system efficiencies, information access, and data collection standards.

We are pleased to have the opportunity to implement your defenderData™ Case Management System. Our goal throughout this process is to provide the base system and necessary enhancements to meet MCILS's system requirements, improve user efficiency by implementing new features and to further enhance available security features to control user access to case information.

Please note that Justice Works is the sole-source provider of the defenderData™ Case Management System.

Contents

Project Deliverables

Below is a high-level list of project deliverables (please see Appendix A for an itemized breakdown of system requirements):

Deliverable	Description
Database Configuration	Convert existing system data format into latest version of defenderData encoding and standards, and add encryption at rest as required.
defenderData Standard Feature Set	Implementation of the core set of features for defenderData with minimal customization. These include client centric case management features screens and workflows, scheduling screens, time entry screens, expense entry screens, searching screens, and reporting.
Project Tailored Workflows and Screens	All project custom features that were published in the requirements. Some project meetings will be necessary to discuss the scope and add more detail to the requirements during project implementation.
Merge Fields	A feature that allows specified data fields stored in defenderData to be projected into document templates. MCILS will be responsible for converting their existing documents to use defenderData merge fields.
Custom Business Rules	Rules that will be integrated into the UI or business logic layers of the system that will enhance user experience and reduce data entry error. This is intended for MCILS to replace the current process of running reports to cleanse data in their current system.
Business Intelligence and Reporting Features	Existing reports to be migrated to latest version of defenderData, estimated 48 reports.
Documents	No new document features were identified, however can be discussed in scoping and requirement meetings.
Enhancements and Data Integrations	Integrations with 3rd party systems such as Court Information Systems. Importing data from XML files provided by courts or other agencies.

Project Specific Risks

1. We will be working with third parties such as Court Information Systems for data integrations. This could cause project delays as we cannot control the timeline of the third-party development source.
2. Some requirements may have been forgotten or missed in the published requirements. This could cause project delays and additional costs if the requirements are large enough. Project change requests will be used and agreed upon by both parties involved.

Deliverable Category Resource Allocation by Hours

Category	Hours
defenderData Standard Feature Set	560
Project Tailored Workflows and Screens	156
Merge Fields	58
Custom Business Rules	58
Reports	429
Documents	0
Enhancements and Data Integrations	231
Total	1,493

Timeline for Execution

Key project dates are outlined below. Dates are best estimates and are subject to change until a contract is executed.

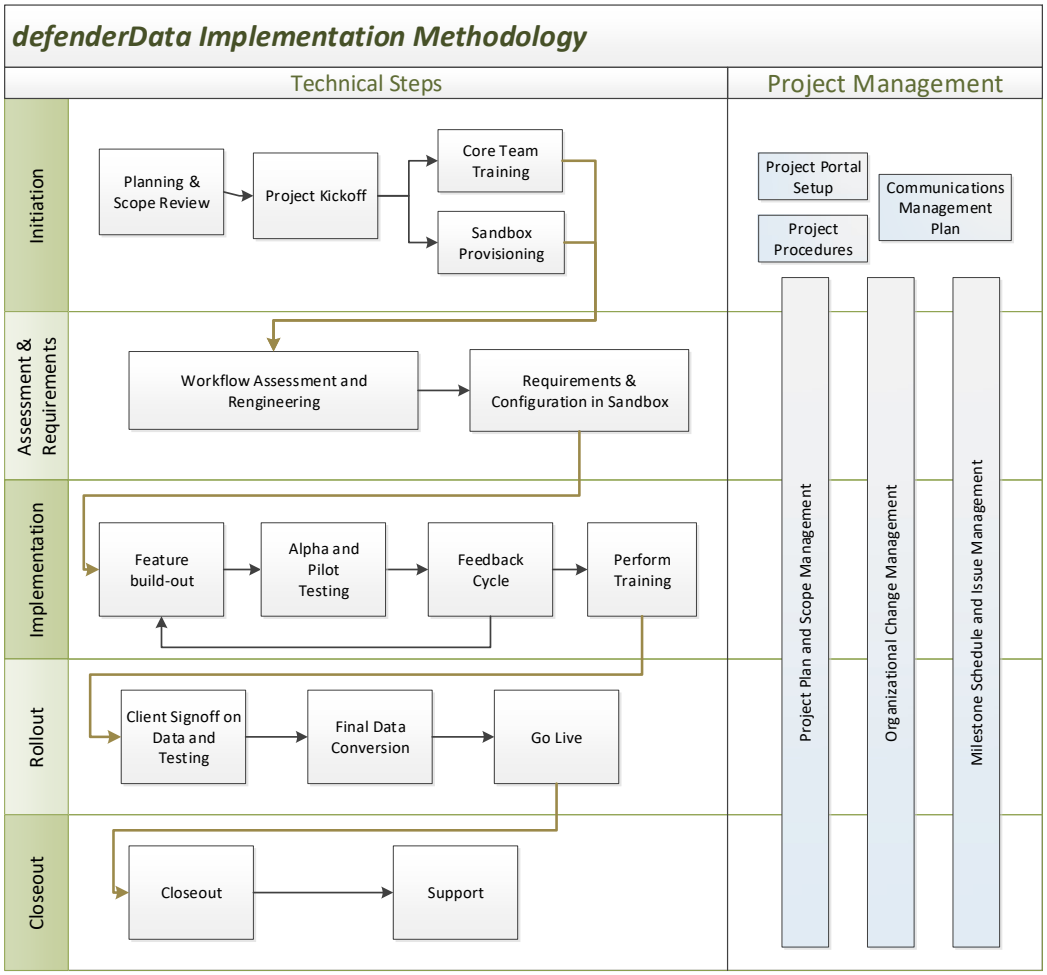
Description	Date
Proposal Accepted By	06/30/2022
Project Kickoff	03/01/2023
Start of Development	03/01/2023
Prototyped	07/10/2023
Alpha Testing	07/10/2023
Beta Testing	08/14/2023
Code Freeze	08/14/2023
Final Deliverable Signoff	10/02/2023
Project Launch	12/04/2023
Project Close	01/08/2024

IMPLEMENTATION STRATEGY

The following plans and suggested timelines are very preliminary pending further discussion with your internal project team. We have performed many successful implementations and have learned that no two projects are the same. As such, we anticipate changes to these plans as further communication and information come to light.

Overview of the Implementation Methodology

Justice Works prioritizes establishing a beta or "sandbox" installation of defenderData available as early as possible. This allows the team to use the actual product in design and configuration sessions, applying the changes as identified. The Client project team will be able to work with the system early and often during this process. We have found that this interactive and agile approach results in a faster and successful implementation. An overview of the implementation approach is depicted below.



Project Phase Summary

Initiation	During initiation, the leadership team will review and confirm the project scope, identify key stakeholders and the steering committee, establish project procedures, settle logistics for site visits, and conduct a full team kickoff meeting. During the initiation, our technical team will be establishing the hosting environment and starting preliminary data conversion activities to provide realistic data content for the assessment phase.
Planning, Assessment & Requirements	This phase manages ongoing analysis of workflows and alternatives to determine and document different methods in which defenderData can be customized to meet the client needs. A model workflow is refined with each division and case type to identify needs, exceptions, and nuances in system requirements. The sandbox is used to continually refine the configuration with each group. During each step of this process, the team will start with the system requirements grid and expand it into a working requirements list. This will become the Work Breakdown Structure (WBS) for later phases. Existing processes are evaluated for streamlining opportunities prior to mapping them to system features.
Execution / Implementation	This phase executes the design and development of any enhancements, configuration of settings and workflow, and the ongoing development of data conversion and data interface programs. System and user acceptance testing will use scenarios and the Work Breakdown Structure (WBS) from the assessment phase to validate the system.
Rollout	During the rollout, a final data conversion is implemented, legacy case management sources are locked down, and the client's new case management system goes live. User training sessions continue throughout this period.
Closeout	The final phase, closeout, completes the administrative closure of the project. System support is activated as soon as the system has gone live.

Project Implementation Plan

Project Overview

The MCILS seeks to implement a Case Management System suitable to handling the needs of the Public Defender Office. Justice Works proposes customizing and enhancing our defenderData product to meet the current and future needs of the MCILS Case Management System.

Purpose, Scope, and Objectives

- Purpose
  - The purpose of this project is to design, develop, and implement an upgrade to the Case Management System to support MCILS in many of its goals and initiatives.
- Scope
  - To provide a Case Management System (CMS) including software, IT infrastructure support and services, including installation, support, maintenance, and training.
- Objectives
  - To ensure a timely and smooth transition to latest version of defenderData.

Assumptions, Constraints, and Risks

1) Assumptions

a) Based on an initial evaluation of the project requirements and Justice Works' experience, it is assumed that the project can be completed within 12 months or less after project kickoff.
b) Primary work effort areas required to complete the project include customizations to the defenderData CMS system for screen layout, workflow configuration, reporting and administrative functions.
c) Bandwidth necessary to access defenderData services in our Utah hosting center will be available.
d) Monies in current contract are sufficient to cover all requirements.
e) Pilots will run smoothly which will allow for enough time to adjust before final rollout.

2) Constraints

a) The CMS must be implemented by a date to be determined.
b) defenderData will be capable of hosting the data presently contained in the current CMS.
c) CMS must meet all the requirements set out by MCILS.
d) MCILS will be prepared to establish a pilot team of users to work with Justice Works to finalize preparations prior to final rollout.

3) Risks

Project Risks	Monitoring or Mitigation Approach
Users may not have sufficient time to adequately review the new system during the development/test/pilot phases.	Generate reports detailing the amount of system activity each test user has. Work with MCILS management to help users set aside time for system review.

Project Risks	Monitoring or Mitigation Approach
Poor internet performance in some locations may affect usability of the system.	Identify sites with higher latency and determine if upgrades are possible. Instruct sites with poor performance on alternatives to the dD Windows platform that will perform better on slower connections (i.e. web/mobile versions of dD)
If the feedback and results of the pilot bring to light additional requirements or excessive defects, the overall project schedule could be compromised.	Depending on time constraints and severity of issues, identify features that can be phased in after initial launch as part of the ongoing maintenance services.
The new Software-as-a-Service (SaaS) product is unfamiliar technology for the users.	Introductory training will be provided to relevant stakeholders and consulting services will be acquired to provide practical guidance on an as needed basis.

Project Management Process

1) **Initiation and Planning Activities**
   a) **Estimation Method**
      i) Estimates are all provided based on the top-down approach established by Justice Works' considerable experience in deploying case management systems.

2) **Staffing Strategy**
   a) Staffing for the project will be managed internally by Justice Works. Throughout the project plan, those employees of Justice Works responsible for meeting the delivery timeline are named. It is not anticipated that any additional contract/consultants will be necessary to meet the deliverable schedule.

3) **Project Team Training**
   a) The project team will need to become familiar with defenderData (the CMS itself), as well as the Justice Works issue tracker. The issue tracker will be used to track and prioritize enhancements, customizations, and defects within the CMS. It is anticipated that this training can be done as part of our weekly status meetings.
   b) defenderData training will also be provided to members of the project team during the weekly status meetings, however more detailed system administrator training will be provided through the formal training plan.

4) **Project Schedule Development**
   a) The schedule is broken down into these four primary phases:
      i) Initiation Phase
      ii) Planning Phase
      iii) Execution Phase
      iv) Closeout Phase

5) **Project Monitoring and Control**
   a) Throughout the course of the project, metrics will be used to monitor project performance and health. Weekly project team meetings will be held to address deviations from the project plan.

6) **Requirements Control**
   a) Requirements Gathering
      i) Justice Works will perform an initial system review to identify any other areas within defenderData that will need alteration to preserve existing functionality while also delivering on the enhancements and requirements desired by the user community.
   b) Requirements Management
      i) Change requests will be used during the project and will be agreed upon by both parties. Change requests can affect the timeline and cost of the project.

7) **Tools, Methods & Techniques**
   a) Requirements and issues will be prioritized and tracked within the Justice Works issue tracker web tool. During weekly status meetings, progress on individual tasks will be reviewed and priorities adjusted as needed. Ultimately, MCILS will have control over the priorities assigned to each task, and Justice Works will communicate timeline, work effort estimates and work progress within the issue tracker.

8) **Schedule Control**
   a) The Justice Works issue tracker will maintain a granular listing of individual development tasks. This will be a key tool to track and record communication between developers, project management, and end-users regarding enhancements, defects, and customization requests. Priorities and progress on active items in the issue tracker will be reviewed weekly to adjust for estimate variations and changes in priorities.

9) **Cost Control**
   a) System change requests will be reviewed by both parties and agreed upon before any changes to the cost of the project take place.

10) **Communications and Reporting**
   a) Throughout system development and implementation: The primary communication medium for the project will be via weekly teleconference meetings with the project team to review and update the issue tracker and the project schedule regarding project performance, status, and risks.
   b) After implementation: Communication to end-users will be handled via a news bulletin that will display at the time of login to the system when changes have been posted.

Project Management Team

	Physical Address: 1216 West Legacy Crossing Suite 200 Centerville, UT 84014	Technical Team: 888-696-9357 support@justiceworks.com Finance/Legal: 866-387-6260 sales@justiceworks.com
Hasan Gulenc	Director of Web Development	Hasan@justiceworks.com
Tony Hayward	Application Development Manager	Tony@justiceworks.com
Ian Ericson	Web Development Manager	Ian@justiceworks.com
Sheldon Mills	Team Lead	Sheldon@justiceworks.com
Abe Raigne	Project Manager	Abe@justiceworks.com

Training Plan

Training sessions will be conducted by Justice Works staff during the pilot phase of the defenderData case management system implementation. During the execution phase, Justice Works staff will conduct training sessions for targeted end-users.

This plan document details the methods and tools which will be used to conduct training sessions during each phase. Trainees will receive instruction in all areas of the system, including but not limited to:

- Software installation and login
- Browser-based/mobile device access
- Case management
- Document management
- Event scheduling and calendaring
- Connections with external systems
- Administrative tools
- Account maintenance and security

Training Objectives

1) **Primary**
   a) A primary objective of all training sessions will be to ensure that all administrators and end-users receive quality and comprehensive instruction. At the end of each session trainees should find that the course has met or exceeded all their expectations and that all questions were answered accurately.

2) **Secondary**
   a) The secondary objective of training will be to provide all of the necessary post-training reference material, including:
      i) User manuals
      ii) Recorded tutorials
      iii) Recorded training webinars
      iv) Written responses to Frequently Asked Questions (FAQs)

Roles and Responsibilities

Justice Works

- Schedule and conduct all pilot phase training sessions
- Schedule and conduct all training sessions during the execution phase

Maine Commission on Indigent Legal Services

- Review and approve all user manuals and training materials
- Assist Justice Works with coordinating and scheduling all end-user training sessions
- Verify that all end-users have had an opportunity to receive training

Training Database

A mock database will be created containing fictitious data for the purpose of training the system.

Pilot Phase Training

The pilot training session will be conducted using the GoToWebinar online meeting system for Maine Commission on Indigent Legal Services staff and the users selected for pilot phase access. This webinar will be held on a date to be determined later.

The webinar will be scheduled for a duration of 1 to 2 hours. The webinar will also be recorded in Microsoft mp4 format. A link to the recording will be provided to attendees for future review and to anyone who was unable to attend.

Execution Phase Training

All training sessions will be conducted using the GoToWebinar online meeting system for Maine Commission on Indigent Legal Services staff. Training sessions will be broken out by functional area of the system including:

- Software installation and login
- Browser-based/mobile device access
- Case management
- Document management
- Event scheduling and calendaring
- Connections with external systems
- Administrative tools
- Account maintenance and security

Multiple opportunities to attend training webinars will be communicated to office staff so that they can work the training into their schedules. Separate training sessions will be held for the Public and Alternate Defender staff.

Pilot Acceptance

A key artifact that will be generated to support project acceptance will be the pilot survey which will be defined in cooperation with all team members. The survey will be utilized to gather feedback from users to determine if the system is ready for full-scale rollout. The survey will address such issues as performance, stability, and completeness for effectively managing cases.

Once the system has been deployed, a final survey will be submitted to all users requesting feedback. The feedback provided will be used in ongoing improvements and modifications to the system based on the ongoing service agreement.

Project Closeout

Once the execution phase for this project has been completed, and the system has been deployed to all users, the following closeout steps will take place:

- The ongoing support of the system will transition to the ongoing service agreement wherein additional reporting, custom development, and training will be performed.
- Any remaining payments due for the development phase of the project will be paid at the time of project closeout.
- Ongoing review of the system performance and user feedback may be performed quarterly for the 1st year after implementation and annually thereafter.

Test and Change Management Plan

Test Plan Overview

Software Quality Assurance (SQA) will be conducted throughout all implementation phases of the defenderData system by Justice Works staff, Maine Commission on Indigent Legal Services staff and pilot phase participants. Feedback on issues and errors will also be provided by Maine Commission on Indigent Legal Services.

This document describes the appropriate SQA strategies, processes, workflows, and methodologies used to plan, organize, execute, and manage testing of the defenderData case management system.

The test scope includes the following:

- Testing of all functional, application performance, security and requirements listed in the design specification documents.
- End-to-end testing and testing of interfaces with all external systems which interact with the defenderData system.

1) **Quality Objectives**
   a) **Primary**
      i) The primary objectives of testing application systems are to assure that the system meets the full requirements, satisfies the test case scenarios, and maintain the quality of the product. At the end of the project development cycle, the client should find that the project has met or exceeded all their expectations as detailed in the project specifications.
      ii) Any changes, additions or deletions to the requirements documents, functional specification or design specification will be tested at the highest level of quality and documented within the Justice Works tracker application.

   b) **Secondary**
      i) The secondary objectives of testing application systems are to identify and expose all issues and associated risks, communicate all known issues to the project team, and ensure that all issues are addressed in an appropriate manner before release. These objectives require careful and methodical testing of the application to first ensure all areas of the system are scrutinized and, consequently, all issues found are dealt with appropriately.

2) **Roles and Responsibilities**
   a) **Justice Works**
      i) Develop the system/application.
      ii) Develop test cases in collaboration with Maine Commission on Indigent Legal Services.
      iii) Conduct unit, system, regression, and integration testing.
      iv) Support user acceptance testing during the pilot phases.

   b) **Maine Commission on Indigent Legal Services**
      i) Review and provide feedback on test cases and product requirement specifications during all stages of development.
      ii) Users participating in the pilot will provide feedback on experiences, issues and errors encountered using an online, web-based tracking system provided by Justice Works.
      iii) Maine Commission on Indigent Legal Services will review the issue tracker with Justice Works to prioritize each entry before reporting back to users.

4) Test Execution

The pilot period of the defenderData implementation is the single most critical phase of the entire project. During the pilot, several users will perform a subset of their day-to-day operations within dD. Analysis of the results from the pilot may determine when the final implementation will occur.

In preparation for user acceptance testing during the pilot phases, the Justice Works team will complete unit, system and integration testing which meets all requirements (including quality requirements) based on design and functionality specifications.

i) User acceptance testing will be conducted by pilot users.
ii) Test results will be reported in the Justice Works tracker application by SQA staff and pilot users participating in the pilot phases.
iii) Test cases are developed by Justice Works with approval by the SQA manager and Maine Commission on Indigent Legal Services team.
iv) The SQA team will train, support, and provide appropriate guidance to pilot users.

5) Test Methodologies

The purpose of the various testing methodologies is to achieve the following:

i) Define testing strategies for each area and sub-area to include all the functional and quality (non-functional) requirements.
ii) Divide product specifications into testable areas and sub-areas.
iii) Define bug-tracking procedures.
iv) Identify testing risks.
v) Identify required resources.
vi) Establish a testing schedule with respect to software updates as well as basic user interface customizations.

Usability Testing

The purpose of usability testing is to observe and report the experiences of users who are not familiar with the system or are using the system for the first time. The primary objective is to identify areas where users commonly have difficulty which may otherwise go undiscovered by the QA team.

Usability testing will be performed by pilot phase participants. Participants will provide the project team with their evaluation of the impact the user experience will have on the project.

Unit Testing

Unit Testing is conducted by Justice Works software development staff during the code development process to ensure that proper functionality and code coverage has been achieved by each developer during coding and in preparation for acceptance into iterations testing.

The following are the example areas of the project which must be unit-tested and signed-off before being passed on to regression Testing:

- Databases, Stored Procedures, Functions, Triggers, Tables, and Indexes
- .OCX, .DLL, .EXE and other binary formatted executables

Performance Testing

Client and server-side performance will be monitored by Justice Works staff throughout the development phase to isolate any areas where the system is not performing within expected boundaries in respect to the total concurrent users. These tests will also be conducted under high CPU usage as well as high latency conditions to identify areas of the system which are most adversely affected when the system (server-side) is under load or when low-bandwidth connections are used (client-side).

Regression Testing

During the repeated cycles of identifying bugs and taking receipt of new builds (containing bug fix code changes), there are several processes which are common to this phase across all projects. These include the various types of tests: functionality, performance, stress, configuration, etc. There is also the process of communicating results from testing and ensuring that new iterations contain stable fixes (regression).

Final Release Testing

The purpose of this test phase is to verify that the product is ready for distribution, acceptable to the customer and addresses any potential operational or workflow issues. Once all priority 0 (critical) and 1 (high) issues are resolved during previous iterations testing phases, bug fixes during the final release phase will be focused on minor and trivial issues (priority 2, 3, 4 and 5). The SQA team will also continue the process of verifying the stability of the application through regression testing (existing known bugs as well as existing test cases).

The milestone target of this phase is to establish that the system has reached a level of functionality and stability appropriate for day-to-day usage.

6) Item Tracking – Change Management

All enhancements, customizations, reports, and defects should be logged using the Justice Works tracker system. All tracker items will be visible to members of the MCILS and Justice Works teams. Each team member will have access to create, update, comment on or include attachments for individual tracker items. When status updates are made to each item, team members will receive an email notification.

Justice Works tracker URL: http://yankee.defenderdata.com/tracker

The following Priority levels will be tracked:

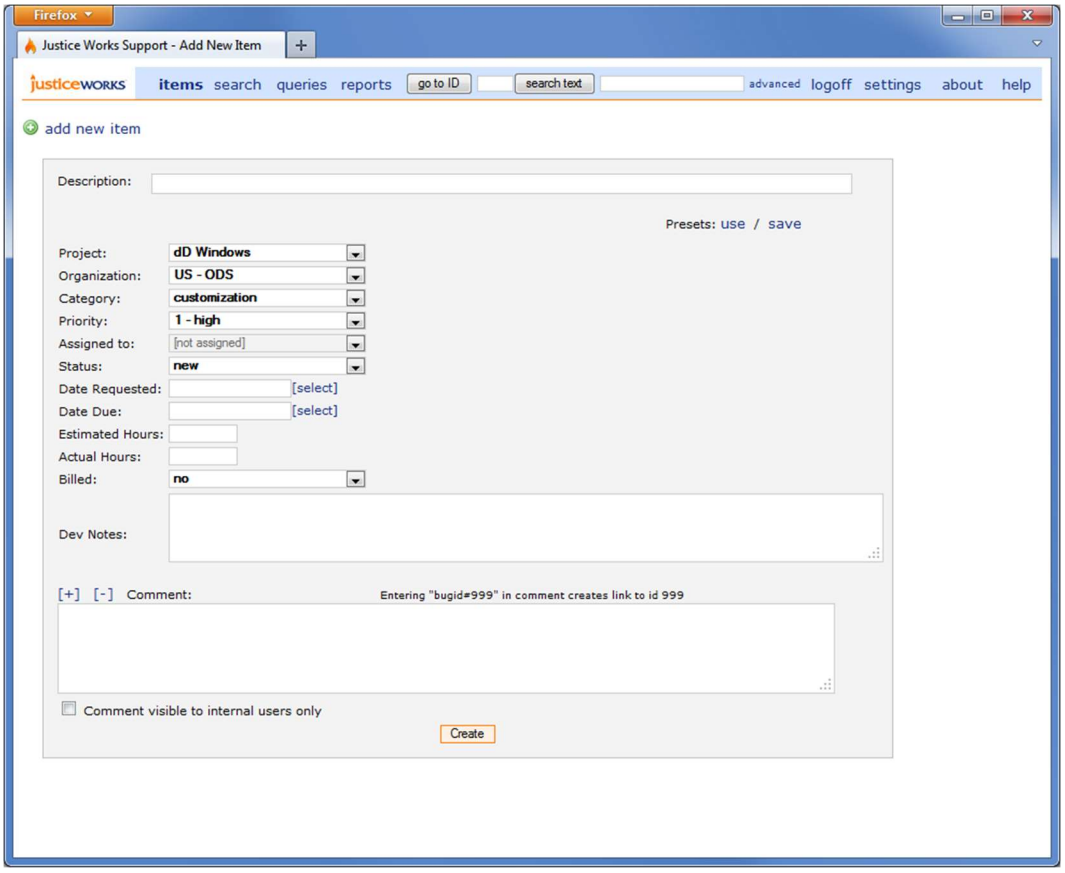
- 0 – critical
- 1 – high
- 2 – med
- 3 – low
- 4 – next release
- 5 – later release

The following item Categories will be tracked:

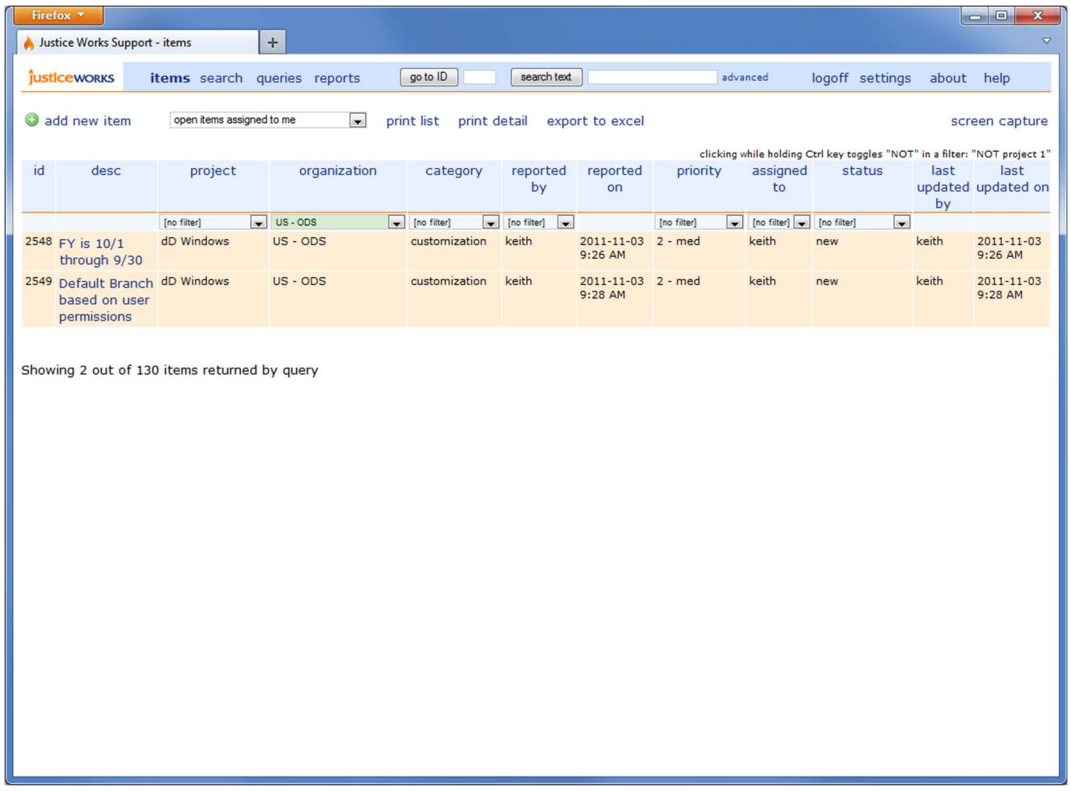
- Customization
- Data Conversion
- Defect
- Duplicate
- Enhancement
- Question
- Report
- Task
- Ticket

- Cosmetic

The below screen capture displays the “add new item” screen.



Users may use a set of filters to find and sort all items in the Tracker:



After login, users can select “settings” to configure their password and email notification preferences.

7) Tracker Review

Review meetings will be held throughout all phases of the development cycle. Scheduling of meetings will be the responsibility of the Project Managers. Tracker reviews will be held on a regular basis throughout the project schedule.

The Product Managers, SQA Lead, and Lead Developers should all be involved in these review meetings. The Justice Works tracker system will be utilized for prioritization and collaboration on all items under review. The purpose of review meetings is to determine the type of resolution for each item and to prioritize and determine a schedule for all pending items. Development will then assign the items to the appropriate person for completion.

8) Testing Completeness

Testing will be considered complete when the following conditions have been met:

- When the Maine Commission on Indigent Legal Services and Justice Works teams agree that testing is complete, the app is stable, and the application meets functional requirements.
- Test cases in all areas have passed.
- All priority 0 and 1 bugs have been resolved and closed.
- Each test area has been signed off as completed by the SQA team lead.
- Ad hoc testing in all areas has been completed.

ON-GOING SERVICE AND SUPPORT

The transition from the development and pilot phases of the project into the final release will continue with much of the same processes already established in previous phases. Any outstanding, low priority issues in the Justice Works tracker system will continue to receive development and testing attention with changes to the system occurring periodically.

Our Support Technicians are available between standard business hours, 6 am and 6 pm Mountain Time (8 am - 8 pm Eastern Time).

We want to also clarify that our support services are not limited to troubleshooting and defect repairs in the software. Ongoing changes to business logic, screen interfaces, and reports are provided as an included part of our support offering.

Service Level Agreement

Option 1: Revision 1.0

The agreement covers the provision and support of defenderData, which provides access to Justice Works' servers for access to legal case information.

This agreement remains as valid until revised, and will be reviewed annually, with further reviews in the case of a breach of this agreement. There is a section for mutually endorsed minor changes at the end of this document.

Service Description

defenderData consists of software and supporting infrastructure for end-user personal computers running the Windows operating systems.

Service Support Hours

Customers can expect support for the service to be available during all regular business hours.

Regular hours: Monday - Friday, 6:00 A.M. to 6:00 P.M. Mountain time (8:00 A.M. to 8:00 P.M. Eastern time).

Support cannot be expected on weekends or on all holidays that the federal government observes.

If these detailed service times are found to be unacceptable, the Customer may request an SLA review for re-evaluation.

Customer Support

The point of contact for users will be through the Support Group.

Internal Issue Tracker Web: http://yankee.defenderdata.com/tracker/

Phone: 888-696-9357

E-mail: support@justiceworks.com

Outside of normal operating hours, the following e-mail will be monitored:

support@justiceworks.com

If all Support Group agents are unavailable, an effort to return all messages (with a telephone call) within 30 minutes will be made.

Service Availability

Required availability for these services is 99 percent uptime, not counting planned maintenance times.

The 99 percent availability metric will be measured by a rolling 6-month period.

Change Management Procedures

Any proposed changes by the Customer must be submitted through the Support Group for review. A notice of acceptance/denial and reason for such must be within five business days. Emergency changes will be dealt with immediately by the Support Manager.

Service Reviews

Reviews of the service may be conducted by Service Level Management in conjunction with the Customer at least annually, as well as after a major outage or change.

PRICING

The following table details the pricing for delivery of the services outlined in this proposal. This pricing is valid for 60 days from the date of this proposal:

Services Cost	Hours	Price
dD7 system upgrade and customizations	1493	$186,625
Total	**1493**	**$186,625**

PAYMENT TERMS

Implementation Services Costs

$125.00 an hour for 1493 hours for a total of $186,625 (discounted hourly rate from current rate of $150/hour)

dD7 Upgrade

50% upon Project Start: $93,312.5
50% upon Final Delivery: $93,312.5

Ongoing usage fees - dD7 Cost Per Case

Price Per Case: $3.50

DATA OWNERSHIP

All data remains the property of Maine Commission on Indigent Legal Services. Justice Works holds no ownership interest in the data at any point and will not disclose the information to any party without written consent of Maine Commission on Indigent Legal Services. A backup copy of the data can be requested at any time and the Maine Commission on Indigent Legal Services would only be billed for the time taken to gather and deliver the data.

CONCLUSION

We look forward to working with Maine Commission on Indigent Legal Services and supporting your efforts to improve your Case Management capabilities. We are confident that we can meet the challenges ahead and stand ready to partner with you in delivering an effective solution. If you have questions on this proposal, feel free to contact me at your convenience by email at carl@justiceworks.com or by phone at 801-294-2848.

ACCEPTANCE

_____	_____
Maine Commission on Indigent Legal Services	Carl Richey Founder, CEO Justice Works, LLC
_____	_____
Date	Date

Andrus, Justin

From: Andrus, Justin
Sent: Tuesday, August 16, 2022 1:44 PM
To: MCILS
Cc: Hudson, Megan
Subject: FW: FW: Staff Proposed Initiatives
Attachments: Alexander State Survey Binder.pdf; Alexander State Survey Links.pdf; Alexander State Survey Results.pdf

Good afternoon, Commissioners.

On July 9th, Commissioner Alexander asked for information related to the staff budget recommendations. Attached to this email is the product of our research. We have found a lot of information, albeit not everything.

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

-----Original Message-----
From: Donald Alexander <donald.g.alexander@gmail.com>
Sent: Saturday, July 9, 2022 1:53 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Cc: MCILS <MCILS@maine.gov>; Hudson, Megan <Megan.Hudson@maine.gov>
Subject: Re: FW: Staff Proposed Initiatives

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Justin:
Thank you for these detailed staff initiative proposals and the updated master budget page. As I have indicated previously, before we can address these proposals in detail, we will need comparative data from public defender and contract attorney programs in some demographically similar states. Such information will be essential to support MCILS budget increase initiatives with the public, the Legislature, and the Executive.
For the states of New Hampshire, Vermont, Iowa, South Dakota, Montana, and Idaho, the following information about each state's public defender system may be important:
1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?

6. What is the hourly rate of compensation for contract attorneys?
Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most decent fiscal year?
Any information you can provide on these questions will be much appreciated and very important to move our budget discussions forward.
Thank you. DGA

On Fri, Jul 8, 2022 at 2:32 PM Andrus, Justin <Justin.Andrus@maine.gov> wrote:
>
> Commissioners, I had intended to include the updated draft master budget page with my last email. It is attached now.
>
>
>
> ___
>
> Justin W. Andrus
>
> Executive Director
>
> Maine Commission on Indigent Legal Services
>
> (207) 287-3254
>
> Justin.andrus@maine.gov
>
>
>
> From: Andrus, Justin <Justin.Andrus@maine.gov>
> Sent: Friday, July 8, 2022 1:36 PM
> To: MCILS <MCILS@maine.gov>
> Cc: Hudson, Megan <Megan.Hudson@maine.gov>
> Subject: Staff Proposed Initiatives
>
>
>
> Good afternoon, Commissioners.
>
>
>
> Attached is a package of 11 initiatives staff propose you take up at the next meeting for inclusion in the MCILS budget. I would be happy to try to obtain or generate any information any of you would like in anticipation of that meeting. If there are initiatives you would like to propose, please let me know by Wednesday next at noon so that we have time to develop some information on them and present them to the group.
>
>
>
> Have a great weekend. Your Executive Director is taking the afternoon.

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

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS Commissioners

FROM: Training and Supervision Director Chris Guillory

SUBJECT: Commissioner requested information

DATE: August 16, 2022

On July 9th, 2022 commission staff received the following request for information:

Thank you for these detailed staff initiative proposals and the updated master budget page. As I have indicated previously, before we can address these proposals in detail, we will need comparative data from public defender and contract attorney programs in some demographically similar states. Such information will be essential to support MCILS budget increase initiatives with the public, the Legislature, and the Executive.

For the states of New Hampshire, Vermont, Iowa, South Dakota, Montana, and Idaho, the following information about each state's public defender system may be important:

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?

2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?

3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?

4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years of experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?

5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?

6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?

7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?

Commission Staff produce the following along with attached references and resources.

COLORADO:

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		State funded. However, their statute only enables them to do criminal cases. They do not do civil litigation (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		FY 2020-21 is $108,256,486. However, due to the State's budget balance mandate, the budget for FY2020-21 was reduced by an estimated 10 million. For FY23, their total budget request is approximately $134,695,857. (36) Additionally, to support OSPD clients in the digital age, the OSPD was appropriated $4,110,754 in IT capital to address the proliferation of electronic records and digital media that has impacted the workload, storage costs, and strategies across the criminal legal system.
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		1050 FTE. 577 attorneys, 173 investigators, 69 paralegals, 23 social workers, 154 administrative assistants and 54 centralized management and support positions. (37) However please note there is a variety of Investigators, Social workers, and support staff available. Their investigators, social workers and admin staff are all FTE's They will soon have several paralegals in the central admin office.
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years' experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) $180K b) $84,489 c) $5,355 per month upon licensure.
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		The Office of Alternate Defense Counsel currently contracts with over 900 private lawyers and other processionals across CO to represent Indigent adults and youth where the OSPD has an ethical conflict of interest.

6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		Hourly compensation for contracted attorneys is currently $80. Paralegals/ Legal administrative assistance are $33 an hour. (38) Currently, the rate for varying case types/ services are as follows: $80/hour for Child Protective
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		Newly hired attorneys are required to participate in basic lawyer training, which is compromised of six segments each one to two days in duration (2)
Caseload standards		Currently, data regarding current caseload standards is not available. However, according to their FINAL FY22 budget, backlogged cases due to COVID placed a significant strain on their attorneys. Ultimately causing concern that the agency would not be able to fulfill their constitutionally- mandated mission under such constraints. (11)
Application process and Assignment expectations		Newly hired attorneys are assigned to handle misdemeanor and traffic cases in county court. Caseloads will vary by regional office depending on the size of the office and whether the office covers multiple counties. Assignment to more serious cases occurs once an attorney has demonstrated the necessary skill to conduct a felony jury trial and manage a full docket of felony cases. (1)
Notes		

IDAHO

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		Mixed state and local funding. However, most of the funding is predominantly from counties. (32) The state provides supplemental funding through PDC financial assistance. The current system includes appointment in child protective cases. However, appointment in guardianships varies by county. The Idaho Legislature adopted legislation in 2022 relieving counties from funding indigent defense and indigent care. Additionally, the State will need to adopt legislation to provide the structure for public defense. (52)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		Total county indigent defense expenditures for FY21: $43,815,289 (52)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		a) 421 b) 394 154 Admin Assistants 118 Paralegals 100 Secretary 19 Investigator 3 Social Worker (52)
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) ~ $100K b) $82K c) $41K (52)(54)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		For FY21 there were 211 contract public defender's (primary and conflict) providing representation. However, attorneys can contract with multiple counties resulting in a total of 376 reported positions across the states counties. Additionally, the total number of reported cases by type are as follows: a) 63,333 b) 14,025 The exact number of contract attorneys providing representation in criminal and child protective/ other legal services was not disclosed. (52)

6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		$65/hour-$135/hour. The agency does not have a report on other rate variables. (52)
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		The PDC has one position partially dedicated to managing PDC training opportunities and scholarships. The PDC's expenses for training in the most recent fiscal year (July 1, 2021-June 30, 2022) was $30,538.90. This paid for 26 PDC virtual CLEs, PDC Public Defense Trial College, PDC/NAPD Leadership Institute and scholarship registrations for other defending attorney training opportunities. Some counties provide training/training funds for defending attorneys in their county. (52)
Caseload standards		If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards. Please note the maximum caseload by active case type standard per reporting period: Two (2) Capital Cases at a time; Two hundred ten (210) non-capital felony Cases; Five hundred twenty (520) misdemeanor Cases; Two hundred thirty-two (232) juvenile Cases; One hundred five (105) child protection or parent representation Cases; Six hundred eight (608) civil contempt or mental health Cases; and Thirty-five (35) non-capital substantive appeal Cases. Maximum caseload is 210 FCEs per year Assumes: Average case complexity, Adequate support, Even distribution of cases throughout the year, No supervisory responsibilities. (53)(52)

Application process and Assignment expectations		If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards. Please note the maximum caseload by active case type standard per reporting period: Two (2) Capital Cases at a time; Two hundred ten (210) non-capital felony Cases; Five hundred twenty (520) misdemeanor Cases; Two hundred thirty-two (232) juvenile Cases; One hundred five (105) child protection or parent representation Cases; Six hundred eight (608) civil contempt or mental health Cases; and Thirty-five (35) non-capital substantive appeal Cases. Maximum caseload is 210 FCEs per year Assumes: Average case complexity, Adequate support, Even distribution of cases throughout the year, No supervisory responsibilities. (53)(52)
Notes		The SAPD strives to provide superb representation to all of its capital clients and all indigent defendants on appeal from a judgment of conviction or denial of a petition for post-conviction relief. However, the SAPD can only provide representation to indigent defendants who were convicted in counties that participate in the state's capital crimes defense fund; as of 2017, this included all counties except Jefferson County. (34) Idaho's counties are authorized by Idaho Code Section 19-863A to create a voluntary capital crimes defense fund (CCDF) to ease the burden of the cost of trials for death penalty cases. The CCDF is created through a Joint Powers Agreement authorized by chapter 23, title 67, Idaho Code, and is administered by a seven-member Board of Directors elected by the counties. The counties on a per capita basis pay the cost of operating the CCDF. (35) "The State of Idaho is robbing its people of their Sixth Amendment rights—and Idaho's public defenders are given an impossible task because the Idaho government has failed to set up a constitutional system and get them all the support they deserve. We now look forward to proving the crisis that system continues to wreak for Idaho families, communities, and local economies." (49)

IOWA

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		State funded. two budgets, one supports the public defender office and employees of the state public defender and a separate budget that supports payment of contract attorneys. Contract attorneys are contracted with the public defender to take conflict, overflow, and lack of staff cases. (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		SPD Indigent Defense Fund appropriation for FY22 is $41,160,374, SPD Operations appropriation for FY22: $29,483,120 IDF is contract attorneys and Operations is public defender employees. (per conversation/emails with Jacob Mason)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		Public Defender Employees totaled 233 in FY22, 162 are attorneys and the remaining are investigators, secretaries, and admin staff. (per conversation with Jacob Mason) 25 investigators, at least one per field office (18 field offices) and 45 full-time and one part-time admin staff (these are classified as Secretary 1,2,3 or Admin Assistant 1 or 2). Currently there are no paralegal positions, however, there are several staff that have paralegal training. Please note the following: The agency does not provide any office support other than the administrative support associated with submitting claims and completing contracts.
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) 112K b) 84K. However, the highest paid supervisors make 150K c) 66k (13) Per email correspondence with Jacob Mason, Assistant Public Defender: Supervisors and public defenders are paid between and range depending on their classification. There is no specific rate based on years of experience. Attorneys are hired at a salary commensurate with their experience, within the range for the open position. Contract attorneys are paid per hour, by case type

5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		Approximately 600 attorneys actively contracted with their office to provide representation. Contract attorneys are paid per hour, by case type. In FY22 the rate was: Class A felony - $76 Class B felony - $71 Class C felony through Simple Misdemeanor - $66 Juvenile(CINA/TPR/Delinquency) - $66 Appeals - $66 PCR - $66 (45)
6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		Per Iowa Code § 815.7 For appointments made on or after July 1, 2021, the reasonable compensation shall be calculated on the basis of seventy-six dollars per hour for class "A" felonies, seventy-one dollars per hour for class "B" felonies, and sixty-six dollars per hour for all other cases. Paralegal time: $25/hour. Paralegals are not allowed to bill except in a Class A felony case where only one attorney has been appointed. (4)
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		No cost trainings. Twice a year. PCR and Appellate training. Every month they have two trainings one for criminal and one for juvenile. Additionally, they have a full time CLE coordinator and produce 100 hours of CLE a year. 24 or more are offered over the lunch hour (12) There are two attorneys in the administrative office that provide training opportunities throughout the year as part of their job duties. The expenses related to the trial practicums run about $12,000 per year. All other training expenses are nominal. All trainings are free to the participant.
Caseload standards		Do not have defined caseload limits. Employee public defenders tend to hover around 150 active cases at one time, but that is an average. Additionally, the agency tracks total number of claims submitted for contract counsel in order to monitor an approximation of cases handled. Typically, only one claim per case may be submitted. In FY21 they closed 57,107 cases and paid 61,970 claims. Each contractor handles about 100 cases per year while the PD had 57107/162=352.5 cases per year, per PD.

Application process and Assignment expectations		To be eligible to contract with the state public defender for a type of case after January 1, 2015, the attorney must meet the minimum qualification requirements established by this rule for the particular type of case. Prior to contracting with the state public defender, an attorney shall certify the attorney's compliance with these requirements and, prior to renewal of the contract, shall certify compliance with any ongoing requirements. Satisfying these minimum requirements does not guarantee an attorney a contract with the state public defender. The state public defender retains the discretion to deny or terminate contracts if the state public defender determines that such action is in the best interests of the state. (14)
Notes		The agency uses a mixture on in/out house for CLE trainings and support. May 06,2022: "The Iowa Public Defender's Buena Vista County office is no longer accepting probation violation cases due to overload, according to a filing the office submitted last week."(50)

Massachusetts

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		Organized and funded statewide. The funding does include representation for certain civil matters, such as the civil commitments to mental health institutions and care and protection (or child protective/guardianship) cases. (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		$265,209,857 (28)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		Assigned attorneys may engage in the services of a paralegal when necessary and CPCS will reimburse for the services of paralegals at the maximum rate of $25 an hour for the following tasks only: legal research, investigation, client interview, and trial assistance. CPCS will not reimburse for more than 10 hours of paralegal services per day. Attorneys must keep appropriate documentation of payments to paralegals
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) $110,192.34 b) c) (55)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		

6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		**Murder Cases**	$110.00/hour
		Cases Requiring Superior Court Certification	$75.00/hour
		Cases (Not Bail-Only Assignments) Requiring Youthful Offender Certification	$75.00/hour
		Substantive Criminal Cases Heard in Superior Court	$75.00/hour
		Criminal Cases not requiring Superior Court Certification Heard in District Court	$60.00/hour
		Juvenile Delinquency Cases not requiring Youthful Offender Certification and GCL Cases	$60.00/hour
		Bail-Only Assignments in District Court	$60.00/hour
		Bail-Only Assignments in Superior Court	$75.00/hour
		District Court Bail Reviews	$60.00/hour
		Bail Petitions in the Superior Court	$75.00/hour
		Mentors in all cases	$75.00/hour
		Petitions for Review of Sex Offender Designation in Superior Court	$75.00/hour
		Mary Moe cases (G.L. c. 112, § 12S)	$75.00/hour
		SDP Commitments & Reviews	$75.00/hour
		Writs of Apprehension (G.L. c. 123, § 12(e)) - 5.41 -	$60.00/hour
		Commitment for Alcohol- or Substance Abuse (G.L. c. 123, § 35)	$60.00/hour
		Concurrent felonies if substantive case heard in Superior Court	$75.00/hour
		Concurrent felonies if substantive case heard in District Court	$60.00/hour

		Children and Family Law cases, excluding CRA Cases	$75.00/hour
		Mental Health Cases and SORB Administrative Hearings	$60.00/hour
		Other Criminal Cases not mentioned above	$60.00/hour
		CRA Cases	$60.00/hour
		Continuing Legal Education	$75.00/hour
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		The Committee for Public Counsel Services provides representation in a variety of contexts, not judge criminal defense, and training opportunities exist for the attorneys practicing in each of these areas. Inquiry regarding expenses for trainings was not returned. For attorneys handling adult criminal defense, new private attorneys must take a 2-week training in order to be certified to take appointments to these cases. New full time staff attorneys attend "new lawyer training," which is approximately one month.	
Caseload standards		Staff attorneys who represent adult criminal defendants are expected to maintain a weighted caseload of between 50-70 cases. However, not every case carries equal weight, so it would not be accurate to say that each attorney carries 50-70 cases. The state has a two-pronged control system. They have weighted caseloads where attorneys can only receive so many assignments of new cases per year based on weighted values of the case types they are receiving. Additionally, there is a limit on the number of hours they can bill to CPCS annually.	
Application process and Assignment expectations		Assignment Expectations: District Court cases are assigned through the county bar advocate programs. However, under the provisions of G.L. c. 211D, § 8, Indigents accused of murder, the chief counsel or his designee may assign the case to either the public defender division or the private counsel division, subject to the approval of the justice making the determination of indigency. Application Process: Attorneys must be eligible for the case type they are applying to represent. Experience requirements can be found within the assigned counsel manual. Attorneys must complete the application and corresponding instructions that are found on the CPCS website	

Notes		There are “significant” concerns in Springfield, Massachusetts, and other parts of Hampden County as public defenders scramble to cover shortages in other offices, according to a letter the state Committee for Public Counsel Services filed in court Sept. 21 to request an evidentiary hearing about the shortages. The letter indicates Worcester's public defender office can no longer take other offices' cases because it is "on the cusp of its own counsel crisis." (51)

Montana

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		State funded (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		total expenditures July 1, 2021 through May 31 , 2022: $38,497,597 (17)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		169 Attorneys FTE 202 Attorneys Contract 121 Staff (non attorney)
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) $103,219.20 *please be advised that the chief/ director position for the agency is currently vacant. The salary amount disclosed above was for the previous director in FY20. b) 3+ years experience is $89,718.35. attorneys above this cap are eligible to receive a .35 cent an hour raise on base. c) $76,855.60 (16)(56)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		There were a total of 202 contractors FY21 (33)
6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		Rate paid to contracted attorneys is $71/ per hour. Data regarding whether pay rates vary by case type was not available. (17)

7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		For FY21, there were approximately 34 different trainings that were available to attorneys. A majority of trainings were hosted by internal personnel and one was hosted by NACDL. (39) The exact number of staff positions dedicated to training as well as the total expenses for training in the most recent fiscal year could not be determined. Correspondence with MT personnel regarding this inquiry was not returned.
Caseload standards		Currently, there are no specific limits on caseload standards. However, the following was found within their caseload management archive: When a contract attorney's workload will not allow time to adequately represent a client, the client's case shall be assigned to another contract public defender. If another local contract attorney cannot be found, the Contract/Quality Control Manager shall be so advised and assist in locating counsel for the client. When a public defender expresses a problem with his/her workload, the supervising attorney shall work with the public defender to alleviate the workload. (18)
Application process and Assignment expectations		Assignment expectations: All FTE attorneys must review their assigned open and inactive cases within the first week of the month using the Open and Inactive Cases by Attorney Report. Support staff will document each change made to case status, certifying that the database has been updated, and/or that notations were made to the case status notes on the file and return the report to the attorney. On a quarterly basis, supervisors must meet with each FTE attorney to review their monthly reports. This review is intended to ensure that the status of each case is current in the database. (19) Application process: Attorneys must be eligible for the case type they are applying to represent. Experience requirements can be found within the assigned cousnsel manual. Attorneys must complete the application and corresponding instructions.

Notes		"Twice in the past year District Court Judge Donald Harris held the Office of the State Public Defender in contempt for failing to assign attorneys to defendants quickly enough. In the 7-0 opinion signed Tuesday by Chief Justice Mike McGrath, the high court wrote Harris erred in his second contempt order when he ordered the Office of the State Public Defender to assign counsel to indigent defendants within three days, a rate not specified in state law." (25) Please note the following: Before wages for attorneys were raised this year, it was previously reduced from its original amount in an effort to save money in the state's annual budget. Unfortunately, the wage deduction potentially contributed to the decision mentioned above.

New Hampshire

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		The state provides 100% of the funding for the state's entire indigent defense system, through a general fund appropriation in the state's operating budget that is appropriated to the judicial council. The entire indigent defense system in New Hampshire is provided and overseen by the New Hampshire Judicial Council, except the judicial council is not responsible for rules governing financial eligibility for appointed counsel and recoupment of indigent defense expenditures. Attorneys in the DHHS cases are paid out of the Judicial Council budget. They are paid out of the same line as the assigned counsel in criminal cases. (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		$31,732,906 (29)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		239 Employees total: Administration: 10 IT department: 4 Staff Attorneys: 116 Managing Attorneys: 11 Investigators: 27 Social Workers: 3 Support Staff: 64 Appellate defender department has 1 managing attorney, 2 staff attorneys and 1 office administrator (5) The program employs all necessary staff and support personnel needed. Currently, the program employs a minimum ratio of 1:5 investigators per attorney.
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) $120,966.04 b) $72,122 +benefits c) $58,245 +benefits (per conversation with head of the judicial council and executive director)

5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		No role in CPP appointments or staffing. Currently, there are no practice standards or roster requirements for CPP cases. Thus, data regarding number of contracted attorneys providing representation is not available. However, please note the following: For FY22 case appointments, assigned counsel handled 1442 and contract counsel handled 3154, approximately. Additionally, 106 private attorneys accepted assigned cases and the agency had 32 contract attorneys. Although staffing fluctuated throughout the year, NHPD had approximately 125 attorneys on staff. Criminal expenditures for FY22: Assigned counsel: $661,326 Contract attorneys: $1,810,799 Public Defender: $24,212,260 Services other than counsel: $1,889,447 (per conversation with head of the judicial council and executive director)
6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		$60-100 an hour contingent upon the charges severity (22) There ARE fee-caps for case types. To see caps please view the corresponding PDF (41)
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		New staff attorneys begin their career in a 5 week training program. Training begins the last Monday in August and continues roughly through the first week of October. There is also CLE opportunities twice a year for attorneys. Attorneys are paid during training and each new lawyer is paired with a mentor. (40) Inquiry regarding expenses and number of positions dedicated to training was not returned.
Caseload standards		FTE attorneys providing general felony, misdemeanor and juvenile delinquency representation shall maintain a caseload of not more than 70 open and active cases. However when caseloads are a mixture, there will be acknowledged maximums. According to Berry Dunn, a company that did a system analysis of department functions, in 2020 lawyers averaged 100 cases per attorney. Please note that this is more than the recommended caseload limit. (5)

Application process and Assignment expectations		Assignment expectations: Managing Attorneys take care to match an attorney's skill and experience with the appropriate level of case assignments. The Program regularly conducts trial skills training programs to gauge attorney performance, evaluate professional development, and to prepare attorneys for more difficult cases. Additionally, frequent and intense evaluations and feedback are provided to attorneys during their first year. The director of legal services reviews each evaluation to ensure that all attorneys are meeting expectations. Application process: All applicants must be J.D. degree candidates attending an ABA approved law school. Newly hired Public Defenders must either be members of the New Hampshire Bar or pass the next available Bar examination. Prior to being admitted to the NH Bar, new hires qualify to practice under the provisions of N.H. Supreme Court Rule 36. They are at-will employees who will be expected to work full-time in one of the Program's regional offices. The performance of new lawyers is evaluated at three months, and annually for three years to assure that each attorney's professional development is meeting program expectations. (5)

Notes		Please note that the state currently is ""treading water"" in regards to retention of counsel and parity in representation. According to an article posted in the NH bulletin: ""The state Supreme Court, New Hampshire Judicial Council, and New Hampshire Public Defender program say it's critical the state increase the hourly rates and caps on payments and make permanent the temporary pay raises public defenders received"" (Timmins, '22) (48) The state does not have a CPP roster or required training/ qualifications to do those cases other than when they appoint counsel. ""Tracy Scavarelli, NHPD's Director of Legal Services, recently told N.H. Bulletin that 49 of its staff attorneys — with a combined 450 years of legal experience — had resigned since the pandemic's onset, and burnout and low compensation clearly drove the departures. The danger for those entitled to effective representation is apparent. Despite the public defenders' dedication, the crushing caseload risks causing "the legal equivalent of medical malpractice," the local office's managing attorney Alex Parsons told The Sentinel last fall."" (Timmins, '22) (48) "New Hampshire started a "hold list" of cases in December 2021 after state public defenders reached their maximum caseloads, and contract and private counsel's workloads hit capacity as well. At times, as many as2,000 cases had not been assigned a lawyer in the past year. While that number has decreased, it remains at an unacceptable level, Blodgett said."" (Hogan,'22) (60)"

New Mexico

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		State appropriated funding and a centralized administration The Law Offices of the Public Defender strictly represent clients in criminal cases. However, please note that other state agencies are able to provide representation regarding CYFD cases, guardianships, or other civil legal services programs through contract funding. (6) (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		$52,032,394 *Please note that the agency is required to pay rent on their office spaces out of general fund revenues, while prosecutors do not. (8)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		43 administrative staff serving the 439 FTE and 130 contractors, while also auditing and monitoring invoicing by contract defenders. Administrative staff includes fiscal, human resources, information technology, and statewide administrative support staff AODA and the district attorney's offices have a total of 687 core staff f. FTE and 352.5 attorney FTE (23) Support staff is available at the choice of the attorney. LOPD NM has 43 administrative staff dedicated to serving the 439 FTE and 150 contractors, while also auditing and monitoring invoicing by contract defenders. Administrative staff includes fiscal, human resources, information technology, and administrative support staff. (9)
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) $84,748-$219,648 b) $70,992.09-$86K c) $59,857.40 (24)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		In FY 2022 there were approximately 100-130 contract lawyers representing clients in criminal cases. An exact number cannot be quantified due to the agency gaining and losing contractors throughout the year. In addition, the New Mexico Procurement Code allows the agency to enter contracts with contractors, for contracts less than $60,000.00 per fiscal year (i.e., non-competitive/non-RFP contracts). This also fluctuates throughout the year. (8)

6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		The current base rate compensation for contract defenders is $750 for first degree felonies (except capital crime which are compensated at $5,400), $700 for second degree felonies, $645 for third degree felonies, $540 for fourth degree felonies, $300 for juvenile cases, and $300 for misdemeanor driving while intoxicated and domestic violence cases. The State of New Mexico pays contract lawyers in civil cases $95 (for those with zero to two years of experience) to $165 (for over ten years of experience) per hour to defend it through the Risk Management Division's contracts. (7) *However, please note that it is becoming more difficult to recruit Contract Counsel, especially to the rural areas of New Mexico at the funded base rates. (23)
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		Contractor agrees to participate in at least seven (7) hours of training, during each year of the term of this contract, in those areas of the criminal law in which Contractor performs services pursuant to this contract. Contractor shall provide copies of the CLE certificates, MCLE annual reports, or written confirmation of attendance by the provider or the New Mexico State Bar to the Director on or before November 1 of each year. (8)
Caseload standards		Contractor shall not accept the assignment of new cases, if the fees for those cases would exceed the amount of funds under their contract. Contractor shall be responsible for tracking case assignments and may also contact the Director to reconcile records of cases assigned and funds expended. The size of a contract may be increased or decreased by the Agency based solely on the needs of the Agency. If a Contractor accepts cases exceeding the amount of funds available to them, the Agency does not guarantee payment on the accepted cases. (8) Additionally, please also consider that at current caseloads and staffing, LOPD attorneys must handle 203 new cases per attorney per year, regardless of whether those cases are misdemeanor cases or serious felony cases. Also, given current caseloads, LOPD lawyers, have, on average, about 10 hours to take all the steps necessary to provide each client with this assistance (57)

Application process and Assignment expectations		Assignment expectations: The Director will periodically evaluate and monitor whether Contractors are performing the following tasks when they first meet with a client following a new case Assignment. Application Process: there is a point system (/20) for applicants. Score and points that are awarded are contingent upon a variety of factors including but not limited to: the applicants ability toe meet the performance standards for Criminal Defense Representation, criminal law experience, relevant jury and bench trial experience, and their office organization; calendaring/ docketing system. Each Contractor in non-district office jurisdictions must submit orders of appointment and application fees on all assigned cases. If the application fee has not been waived or collected by the court, Contractor shall collect the $10 application fee from the client[cash or money order only] and shall remit those fees, receipts and monthly logs to the Agency's CCLS's mailing address (8)
Notes		In a study published by the ABA in January 2022, shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment. In other words, with a consistent annual workload, New Mexico has only 33% of the public defense attorneys it needs to handle its adult and juvenile caseloads. "Chronic underfunding predictably led to increasingly unmanageable caseloads. In an effort to address the overload and ensure ethical representation for LOPD clients, public defense attorneys sought to limit appointments. In 2017, in *New Mexico v. Shoobridge*, LOPD asserted that public defense attorneys in Lea County were not able to meet their professional obligations of competency and diligence due to excessive caseloads." (LOPD, '22) (57) "In FY2018, the Legislature provided funding to support a 6.5% salary increase for LOPD employees. Then again in FY2019, the Legislature provided funding for a 4% salary increase for LOPD employees. Similar increases were afforded to the District Attorney offices and other public safety related agencies. While the raises were welcome and greatly appreciated, that did not address ongoing insufficiencies in base funding. (LOPD,'21) (58)"

South Dakota

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		91% local funding 9% – assessment on criminal convictions (31)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		$5,640,327 (21) Minnehaha County is the largest county in South Dakota by population with 191k people or roughly 21% of the states total population with ~181k residing in Sioux Falls. Public Advocate Office: $1,308,108 PD office: $4,332,219 Please also consider the following: the DA budget for the most recent FY is $6,713,766 (47)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		Public advocates office has 7 attorneys including the public advocate, opened 2515 cases in 2021. Closed 2504. They had 1083mids, 939 felonies, 109 DHHS, 17 appeals and 72 juvenile cases. Minnehaha County Public Defender, which is the largest county in the state has an estimated 27 attorneys, 5 paralegals and 5 legal officers (secretaries). (per email response from Minnehaha County managing public defender
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) $116,292 b) Start at $97,864 c) $82,347 Please also note that the department head starts at $128,398.40 (per email response from Minnehaha County managing public defender
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		There is an estimated 15 lawyers in the community that obtain assignments from the court when both the PD and Advocates are conflicted. (per email response from Minnehaha County managing public defender

6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		Hourly rate is $101/hour for contracted attorneys. $30/hour for paralegal services. Services of a paralegal or investigator must comply with the section entitled "Experts". Additionally, court-appointed attorney fees will increase annually in an amount equal to the cost-of-living increase that state employees receive each year from the legislature. If the attorney is dissatisfied with the amount of compensation allowed by the judge presiding in the case, the attorney may request that a three-judge panel of circuit and/or magistrate judges appointed by the presiding judge, or the next most senior judge in the event the presiding judge was the judge presiding in the case, in that circuit review the claim for compensation and hold a hearing thereon. (20)
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		No dedicated training staff and no dedicated training budget. Please note the following: The state has robust recruitment and retention statistics due to their participation in the law school indigent defense program, which places their law students in their office as part of their practicum- this practice has proved to be a lucrative tool for the agency. They also participate in Gideon's Promise and their law school partnership. (per email response from Minnehaha County managing public defender)
Caseload standards		Currently, there are no standards for caseloads or limits. (per email response from Minnehaha County managing public defender
Application process and Assignment expectations		*Assignment expectations:* Each court appointed defense attorney shall receive training on mental illness, available mental health services, eligibility criteria and referral processes, and forensic evaluations in order to be eligible for court appointments. SDCL 23A-40-21. This training is available on the UJS website. Counsel appointed to represent abused or neglected children, including as guardian ad litem, shall certify that they have viewed and completed the A&N attorney training developed by the UJS. Upon completion of the training, counsel information is submitted to the State Court Administrator's Office and added to the list of certified A&N attorneys. UJS Policy 1-PJ-19. This training is available on the UJS website. **(20)**

Notes		Please note the following: Based on agency structure and how the agency receives funds, every defendant MUST repay the county the hourly rate designated by legislature. Fees are collected through the court ordering judicial liens when the case is disposed based on affidavits/reports filed by the public defenders in each case. Currently, the repayment rate for defendants is $101/hour and $30/hour for paralegal time. (per conversation with SDPD Executive Assistant) Also, please note that their employees, though county level, do qualify for federal public service loan forgiveness. They also are fully staffed and have no issues with recruitment or retention of counsel. (per conversation with SDPD Executive Assistant) This past March, attorneys received COLA and a 7% raise.

Vermont

1. Is the public defender system organized and funded statewide or on a county-by-county basis? Does the funding include support for representation in child protective and guardianship work, or is representation in those civil legal services programs separately funded?		State funded. (31) There are three tiers of service provision, with the first being county public defense offices. When there are conflicts with public defense, the case is then assigned to an assigned counsel contractor. And when there are conflicts with both public defenders and assigned counsel contractors, the court assigns an attorney on an ad hoc basis. (10)
2. What were the total expenditures for the public defender/contract attorney program in each state for the most recent fiscal year?		The proposed FY23 Budget is $21,091,329 . FY22 Budget Request was $18,498,175. (30)
3. What were the total number of (a) attorney, and (b) non-attorney employees of the public defender program in the most recent fiscal year?		There are seven county staff offices with 35 attorneys and a variety of support staff, including investigators, secretaries, case managers and case aides. In addition, the Office manages over 100 contractors under both programs, and more than 100 ad hoc counsel handling conflict cases. In total, the Office handles approximately 20,000 cases each year. (27)
4. What was the rate of compensation for (a) the chief public defender, (b) an attorney with 5 years experience, and (c) an entry level attorney in the public defender program in the most recent fiscal year?		a) $148,000 per year plus benefits b) $85K c) $74K (26) (30)
5. How many contract attorneys provided representation in (a) criminal defense and (if separately calculated) (b) child protective and other civil legal services in the most recent fiscal year?		Cost of Legal services for FY20-21 are as follows: AC Contractors: $120k PD Contractors: $136,786 The data above includes operating expenses but does not include third-party services. There are 7 staff attorneys and 5 staff in the PRO and JD offices. There are approximately 40 juvenile contracts in the system. They have a total of 130 contracts statewide, but some attorneys hold multiple contracts. The majority of the contracts are conflict contracts, but approximately 25% of the contracts are Serious Felony Units, Caseload relief, or special projects contracts. Because the firms allocate their personnel as they see fit, that they have approximately 60 LECs (FTE) of attorneys working in the contract system NOTE: Ad hoc counsel is the most expensive way the ODG provides service. for FY21 actual expenditures for contract counsel were $5,412,406. (42)

6. What is the hourly rate of compensation for contract attorneys? Does the rate vary by type of case? If the rate varies by type of case, what are the varying rates? Is there a separate hourly rate paid for paralegal and administrative support services?		Contract attorneys do not get paid hourly. They are paid on an annual payment per ABA-Lawyer Equivalent Caseload Standard – that is, the annual payment that a public defender working 40 hours per week handling either (400 added misdemeanors per year; or 150 added felonies per year; or 200 added other cases per year (juvenile: CHINS, Delinquency, truancy; or probation or post-conviction relief cases). Caseloads are closely monitored and payments per LEC are adjusted annually based upon an algorithm. The standard minimum payment for contracts is $150K per LEC. Juvenile and PCR attorneys are harder to attract, so they tend to make about $200K/LEC, but again their minimum payment is $150K/LEC. Many of these contracts are fractional in nature, handling from .25 up to 1.0 LEC. The rate does vary for SFUs. maximum rate for investigators up to $75/hour, but with an average of around $45/hour. Paralegal services range from $30-40/per hour. (per conversation with the Defender General)
7. For attorney training programs, (a) how many staff positions are dedicated to training? (b) what were the expenses for training in the most recent fiscal year?		The Office of the Defender General conducts several trainings each year in criminal and juvenile law. They are usually held in December and June, although these times may vary. They have one dedicated director of training under contract. She is the former Deputy Defender General who retired a few years ago. She is paid $24K/year. They have at least 10 people who have part of their job providing training – including the Defender General. Normal training budget is about $50K per year, not including the coordinator. Due to COVID restraints, they offer ZOOM training every other week throughout the year, which has helped in reducing training costs. However, please be aware: Once they get back to more out-of-state training and in-person training those costs will go back to the $50K per year. (per conversation with the Defender General)

Caseload standards		Public defenders routinely represent significantly more clients than is recommended under guidelines developed in 1973 to assure competent representation by the National Advisory Commission on Criminal Justice Standards and Goals. This Lawyer Equivalency Caseload (LEC) Guideline provides that no single lawyer should accept more than either 150 added felony clients, 400 added misdemeanor clients or 200 juvenile clients in a year, or some combination of the three categories. For many years, the ODG has utilized this LEC formula as a measure of the workload of its staff. (43) Contract counsel has no more than 20 pending cases and usually toggles around 10-15. Every one of their classes is a life in prison case, or a murder (or attempted murder). They get paid $130K per year, with hopes of raising pay to a $150K minimum, then $175K the following year. (per conversation with the Defender General) NOTE: Their attorneys have a pending caseload of 50-100 cases on average. Usually, they are around 70 cases. If the Defender General sees cases getting above 100, they will deploy a caseload relief contractor to that county (for staff office), or reassign cases from a conflict contractor to a caseload relief contractor. (per conversation with the Defender General)
Application process and Assignment expectations		Application Process: Qualifications for public defense and assigned counsel contracts are current admission to the Vermont Bar, handicap accessibility to the practice, and a demonstrated ability to provide high quality representation with an emphasis on trial practice and courtroom skills while managing a heavy caseload. The contracts are performance based and provide for a monthly payment based on historical caseload. Contractor is required to carry professional liability insurance in the amount of $500,000 per occurrence. Assignment Expectations: First obligation upon appointment as Assigned Counsel is to notify the Defender General of your appointment. (27)

Notes		The Office of the Defender General has evolved into a complex service delivery system consisting of two separate programs, Public Defense and Assigned Counsel. There are three tiers of service provision, with the first being the local public defense staff offices. When there are conflicts with public defense, the case is then assigned to a local assigned counsel contractor. And when there are conflicts with both the public defenders and the assigned counsel contractors, the court assigns an attorney on an ad hoc basis. Additionally, eight Serious Felony Units are available to cost-effectively handle life in prison and other serious felony cases. (43) Per conversation with the Defender General: "they have been unable to hire an entry level attorney at Step 1 for a few years now. They are now having to convince lawyers to take positions in rural counties by paying them more than they pay plan would typically warrant for entry level attorneys."

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Andrus, Justin

From: Andrus, Justin
Sent: Wednesday, August 10, 2022 1:48 PM
To: MCILS
Cc: Hudson, Megan
Subject: FW: Budget Thoughts

Good afternoon, Commissioners. Attached below please find Commissioner Morgan's comments on the budget.

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

From: Matthew Morgan <MMorgan@McKeeLawMaine.com>
Sent: Tuesday, August 9, 2022 9:42 PM
To: Andrus, Justin <Justin.Andrus@maine.gov>
Subject: Budget Thoughts

Justin,

As promised, I'm sending along my thoughts on the budget.

As a starting place, I would say that my ideas are pretty general and you and your staff are much more versed in the details. So excuse my ignorance up front.

I previously approved of the hourly rate and PD offices when discussed in June and still do now. The hourly rate increase should take precedent, but I'm entirely convinced that both are necessary having seen the rate of attrition on the rosters and the ever-rising number of cases. This is even more so the case after understanding the impact of case load standards, which need to be imposed. I have concerns about only two costs:

(1) the social worker cost. If we are expecting many attorneys to work more hours on cases (by virtue of imposing case load standards forcing them to handle fewer cases) and there are social work programs available in the community outside MCILS, then I do not see the need for such a high cost for the social workers. I also think providing resources to PD attorneys that are not also readily available to rostered attorneys creates many problems. There are no social workers rostered attorneys can hire as far as I am aware.

(2) paralegal costs: if MCILS plans to provide paralegals to PD attorneys, then we should be sure that the hourly rate rostered attorneys actually end up with means they can afford paralegals and/or we allow billing for paralegal time. I again do not think there should be any differences in resources between the PD offices and rostered attorneys.

I do not see Initiative 6 as necessary, especially given how much money we will be seeking elsewhere. Case load standards, roster requirements, outside oversight, and training requirements should be sufficient and should not cost $1.6M. I realize I am in the minority with this view.

Those are my off-the-cuff thoughts. Ultimately the budget proposal looks great to me and I would support everything other than Initiative 6. I appreciate the amount of time staff has put into this and I'm sorry I was so slow in getting these thoughts back to you.

Thanks,
Matt

Matthew D. Morgan
Attorney at Law
McKee Law, LLC, PA
133 State St., Augusta, ME 04330
mmorgan@mckeelawmaine.com
(207)620-8294 (phone)/(207)620-8297 (fax)
www.mckeelawmaine.com

LIKE US ON FACEBOOK: http://www.facebook.com/#!/McKeeLawLlcPa

From: Donald Alexander
To: Andrus, Justin
Cc: MCILS; Hudson, Megan
Subject: Re: FW: MCILS Budget Initiatives
Date: Sunday, August 14, 2022 9:42:08 PM

Justin:

Thank you for circulating your email exchange with the State Budget Officer. Anticipating the Commission discussion on the 22nd and Matt Morgan's suggestions that have already been circulated, - thank you Matt - i offer the following comments on the staff proposed budget.

First, we must recognize that our attrition of attorneys doesn't relate just to the rate of pay. In some of our public meetings some attorneys have suggested that even a $150 an hour rate would not be enough to get them back. They indicate the primary problems they face are court delays and scheduling difficulties that make practice difficult, particularly for the many attorneys whose practices include more than just criminal defense and try to serve private paying clients in a variety of civil actions. MCILS should increase efforts - and I know you are already doing a lot - to improve the efficiency and predictability of court scheduling to meet the needs of attorneys who have a diverse litigation practice.

Second, presenting a budget, as proposed by the staff, that would appear to more than double the most recent biennial budget, which itself included a large increase, may cause some in the legislature to not take the request seriously. I think we need to more narrowly focus on the most important and achievable needs. The proposed budget would add nearly 40 employed attorneys at once. Doing so would make us have about 1 employed attorney for every 5 contract attorneys, assuming we can keep approximately 200 contract attorneys. That would make Maine have a more dominant employed attorney ratio than Massachusetts, which has 1 employed attorney for every 9 contract attorneys, or Oregon, which has 1 employed attorney for every 7 contract attorneys.

I do agree that we should raise the hourly rate for contract attorneys, perhaps looking to the top rates in other states as a starting point for discussion. And perhaps we should consider a variable rate system with higher rates for the most serious cases, once it is apparent that the case will not have an early disposition. In addition to increasing the hourly rate, we might aid attorney concerns about lack of overhead support by (a) raising the paralegal rate to perhaps $40 to $45 an hour, if that rate could be justified, and (b) seeing if there might be some way to provide administrative support for attorney billing tasks.

As the Commission has already discussed, it may be worth considering again a contract attorney program to provide upfront annual payments, but avoid the alleged deterrence to necessary work by allowing attorneys to keep half the hourly rate, while the other half goes to repay the annual upfront payment. I say "alleged" because in my experience with the Skowhegan program, which was considerable, I perceived the contracted firms to be doing excellent work taking the

time needed for effective representation.

As you are aware from prior conversations, I do support establishing two PD offices, one likely in Aroostook County to serve Aroostook and Washington counties and perhaps some of Penobscot county, and the other somewhere in Central Maine to serve Androscoggin, Oxford, Franklin, and Somerset Counties. I would like to see more justification for the number of attorneys, and like Matt Morgan, I would not support a social worker program as part of those offices. Such a program could duplicate and perhaps confuse work already done by social workers and mental health professionals in family reunification, early diversion, alternative disposition, and specialty court programs, among others.

At this time, I could not support entirely separate programs for handling appeals, post-conviction reviews, and close supervision and training for attorneys. I am concerned that promoting these proposals diverts attention from our most urgent needs to increase attorney compensation and support getting employed attorneys for defendants in areas where, due to many conditions, providing enough contract attorneys is proving difficult.

I look forward to our further discussion of these issues and hope that we can have some input and ideas from the attorneys in the field who are competently representing criminal and child protective case defendants every day.

Because I am in moving, I may be difficult to reach and slow to respond in the next week, though I do hope to remotely attend the Commission meeting on the 22nd. Hope everyone's late summer is going well. Best. DGA

On Sat, Aug 13, 2022 at 10:27 AM Andrus, Justin <Justin.Andrus@maine.gov> wrote:

> Good morning, Commissioners. Please see Beth Ashcroft's email below, in which she provided guidance about what we may include in our budget requests. Based on this guidance, the staff recommendations will remain the same as have been produced to you previously. In addition, staff recommend an initiative for the supplemental budget that will increase the attorney compensation rate and appropriate for that increase. The staff recommendation for the supplemental budget will be $150 per hour, as it is in the proposed initiative for the biennial budget.
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> At the meeting on the 22nd the Commission will need to vote initiates in or out of the proposed budget. There will not be an opportunity for further work or deliberation. We will shortly deliver the information Commissioner Alexander asked for about other systems. We do not have other pending information requests. If there is information you would like to have prior to August 22nd we need to know immediately or we will not have time to produce it. I have not received any proposed changes to the staff initiatives, nor have I received any Commissioner initiatives. If any of you intend to propose initiatives or request consideration of modified staff initiatives we will need that information early this coming week or will be unable to promise to be able to research and prepare them.
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> Justin W. Andrus
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> Executive Director
>
> Maine Commission on Indigent Legal Services
>
> (207) 287-3254
>
> Justin.andrus@maine.gov
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>
> From: Ashcroft, Beth <Beth.Ashcroft@maine.gov>
> Sent: Friday, August 12, 2022 10:33 AM
> To: Andrus, Justin <Justin.Andrus@maine.gov>; Chen, Yingmei <Yingmei.Chen@maine.gov>; Looman, Ron <Ron.Looman@maine.gov>
> Cc: MCILS <MCILS@maine.gov>; Joshua A. Tardy <jtardy@rudmanwinchell.com>; mcarey <mcarey@brannlaw.com>
> Subject: RE: MCILS Budget Initiatives
>
>
>
> Hi Justin,
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>
> Thanks for the questions. Please see my responses below in blue text. My responses are based on my understanding from what you described is that MCILS is unable to fully meet demand for the current services authorized in law due to inability to attract sufficient resources. In other words, unable to meet reasonable current expectations for service provision.
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> Beth L. Ashcroft
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> State Budget Officer
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> State of Maine
>
> Bureau of the Budget
>
> 58 SHS
>
> Augusta, ME 04333
>
> 207-458-3837 (mobile – primary)
>
> 207-624-7806 (office)
>
>
>
> From: Andrus, Justin <Justin.Andrus@maine.gov>
> Sent: Friday, August 12, 2022 8:52 AM
> To: Ashcroft, Beth <Beth.Ashcroft@maine.gov>; Chen, Yingmei <Yingmei.Chen@maine.gov>; Looman, Ron <Ron.Looman@maine.gov>

> Cc: MCILS <MCILS@maine.gov>; Joshua A. Tardy <jtardy@rudmanwinchell.com>; mcarey <mcarey@brannlaw.com>
> Subject: RE: MCILS Budget Initiatives
>
>
>
> Good morning, everyone. I am writing in follow up to this email from yesterday because our process for approving a budget for submission is cumbersome. If it is possible receive any insight today, we would appreciate it.
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> ___
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> Justin W. Andrus
>
> Executive Director
>
> Maine Commission on Indigent Legal Services
>
> (207) 287-3254
>
> Justin.andrus@maine.gov
>
>
>
> From: Andrus, Justin
> Sent: Thursday, August 11, 2022 2:22 PM
> To: Ashcroft, Beth <Beth.Ashcroft@maine.gov>; Chen, Yingmei <Yingmei.Chen@maine.gov>; Looman, Ron <Ron.Looman@maine.gov>
> Cc: MCILS <MCILS@maine.gov>; Joshua A. Tardy <jtardy@rudmanwinchell.com>; Michael Carey <MCarey@brannlaw.com>
> Subject: MCILS Budget Initiatives
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>
> Good afternoon. I am writing to all of you because I am not clear on where best to address this issue. I am hoping one or more of you can provide us with insight into how we may proceed under the instructions we have received. We understand that no one on this email has the ability to authorize funding itself. My questions are procedural.
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> The issue that MCILS is not able to perform its function at its current levels of authorization and funding. By statute, the purpose of MCILS is to provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases, consistent with federal and state constitutional and statutory obligations. Our currently authorized modes of achieving that goal is to engage assigned outside counsel and, when BHR signs off, to employ five defenders. We are not able to fulfill our obligations under our current operating parameters. Specifically, we are not able to attract sufficient outside vendors of legal services within our current constraints.
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> MCILS had intended to submit new initiatives that requested funds and authority to do a number of things. These included, without limitation, increasing the rate of attorney pay, with an appropriation; adding additional employed attorneys; and, adding ancillary services necessary the execution of our mission. Based on our read of the guidance, and the information we just received at the briefing, we now believe that we may not be permitted to do so.
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> So – questions:
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> Where we are currently funded to an adequate level to support the provision of indigent legal services through outside counsel, but we are unable to attract vendors at the current rate, may we request additional funds and a rate change to support our operations consistent with the current services budget directive? This is a current services initiative and should be entered in BFMS. It could possibly go in both the FY23 Supplemental and the Biennial depending on whether you have a backlog that really needs to get addressed in FY23 that is due to not having enough outside counsel (vs other court-related reasons). If the situation is more that you won't be able to meet projected demand in FY24 and FY25 then it should probably only go in the biennial budget.
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> Where our current authority is to utilize outside counsel for all but five defenders, and to use five employed defenders as a marginal supplement; and, where we may not be able to operate with assigned counsel without more employed counsel, may we request additional headcount in the form of defenders and support staff to meet our statutorily defined mission consistent with the current services budget? This seems related to the current services and can be entered. I think it is an initiative that is more appropriate for the biennial budget since the timing on when positions could get added for FY23 will be iffy anyway depending on when Legislature enacts the Supplemental and it sounds like there would need to be a statute change to the authority to have more staff?
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> Where our statutory mandate includes robust training and supervision, but where our current operations do not include the functions because we have not received headcount to do so, may we request additional headcount in the form of training and supervisions staff? (And so, as to our other initiatives) Since the training and supervision requirement is in statute, resources needed to effectively meet that requirement would be considered current services. Put in an initiative. Again it may be more appropriate for the biennial budget but your call on whether you want to enter it for FY23 Supplemental also.
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> Finally, and without any conflict among us, should the Commission deem it necessary to request additional funding and headcount that might be deemed an expansion rather than a current services budget, what happens next? We would set up a meeting with you to discuss the "new and expanded" ideas sometime in Sept – Oct timeframe. Anything that needs to be entered to BFMS following that would be done by the Bureau of the Budget in coordination with you.
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> I should make clear here that I do not believe the supplemental budget is the solution, at least as I understand. The issue is not that we do not have the funding to perform the tasks we've been allocated, at least insofar as those tasks relate to direct client services. If we had the attorneys to serve the clients at the currently authorized rate, then our budget would be ok, at least as to that aspect of our performance. Because that is so, I don't see how I can justify a supplemental budget request alleging that we are underfunded to current operations.
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> Any insight you can provide would be very helpful. We are really scared here.
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> JWA
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> ___
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> Justin W. Andrus
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> Executive Director
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> Maine Commission on Indigent Legal Services
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> (207) 287-3254
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> Justin.andrus@maine.gov
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94-649 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Chapter 303: PROCEDURES REGARDING LEGAL RESEARCH ACCESS AND MATERIALS

Summary: This Chapter establishes the procedures for attorneys to request access to legal research services and to request reimbursement for the purchase of legal research materials.

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.

3. **Legal Research Services**. "Legal Research Services" means a subscription based online provider of access to primary and/or secondary legal research materials. For the purpose of this rule, "Legal Research Services" are limited to the provider(s), if any, with which MCILS has contracted to provide those materials.

4. **Legal Research Materials**. "Legal Research Materials" means other written or electronic materials an eligible attorney deems necessary to support the representation of a consumer of indigent legal services.

5. **Eligible Attorney**. For the purpose of this rule, "Eligible Attorney" means a Maine licensed attorney in good standing with the Board of Overseers of the Bar, to whom is or was assigned a consumer of indigent legal services in a matter approved by MCILS.

6. **Consumer of Indigent Legal Services**. "Consumer of Indigent Legal Services" means a person entitled to representation at state expense under the United States Constitution or the Constitution or laws of Maine and who has been found indigent or partially indigent by a state court or by MCILS.

SECTION 2. ACCESS TO LEGAL RESEARCH SERVICES

1. Any eligible attorney may apply to MCILS for access to legal research services. If MCILS grants that eligible attorney access to legal research services, those services shall be used exclusively for the benefit of consumers of indigent legal services.

2. Access to legal research services may be granted from month to month and shall be limited to those eligible attorneys who bear present professional responsibility for one or more matters on behalf of at least one consumer of indigent legal services.

3. Eligible attorneys shall not access MCILS contracted legal research services when an attorney does not bear present professional responsibility for one or more matters on behalf of at least one consumer of indigent legal services.

4. Eligible attorneys who have received access to MCILS contracted legal research services shall inform MCILS if an attorney no longer bears present professional responsibility for one or more matters on behalf of at least one consumer of indigent legal services within seven calendar days. At that time, MCILS may terminate access to its legal research provider for that attorney.

5. As a condition of use of MCILS contracted legal research services, each eligible attorney agrees to log the client for whom that attorney accesses that service in the manner prescribed by MCILS, including through the service itself, if so directed.

6. Eligible attorneys who wish to be granted access to MCILS contracted legal research services shall apply in the manner directed by the Executive Director, which may include a prescribed form and may also include a directive to apply through the MCILS secure website.

SECTION 3. APPLICATION FOR REIMBURSMENT OF LEGAL RESEARCH MATERIALS

1. Any eligible attorney may apply to MCILS in the manner prescribed by the Executive Director for permission to purchase legal research materials that attorney deems necessary to support the representation of a consumer of indigent legal services.

2. The Executive Director may approve the purchase of legal research materials by an eligible attorney if the Executive Director finds that that proposed purchase is reasonably necessary to support the representation of a consumer of indigent legal services.

3. The application for permission to purchase legal research materials shall be made in writing in the manner directed by the Executive Director, which may include a prescribed form and may also include a directive to apply through the MCILS secure website.

4. 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 Court or 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.

5. Eligible attorney who wish to be reimbursed for the purchase of legal research materials for which permission has been granted by the Executive Director shall seek reimbursement by providing the following documents in .pdf form:

    a. The request upon which the Executive Director acted;
    b. The decision of the Executive Director;
    c. Either payment confirmation from the vendor specifying the product purchased and the amount paid; or an invoice and proof of payment.

6. Retroactive requests for reimbursement shall not granted except in extraordinary circumstance on a showing that for reasons outside of that attorney's control a timely request could not be made.

7. Purchases made prior to the effective date of this rule shall not be subject to reimbursement.

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

EFFECTIVE DATE:

Andrus, Justin

From: RJR <rjr@mainecriminaldefense.com>
Sent: Sunday, July 17, 2022 4:42 PM
To: MCILS
Subject: Re: July 19 MCILS Commission meeting materials
Attachments: Commission Packet July 19 2022 (dragged).pdf

Public Pre-Comment RE: MCILS 7/19/2022 materials (Part II)

RE: Agenda Item 6(a) Caseload Standards

The table on page 102 of the packet is clear evidence that caseload standards are long long overdue. It is not evidence that the proposed standards are too strict. Any argument or suggestion to the contrary is mistaken.

However, it is unclear to me what exactly the table depicts.

1) Does it show the number of attorneys who are rostered for a case type who are estimated to be over the proposed limit based on their caseload for all MCILS case types? Or just the Case limit for the type specified in that row? If it is the case that an attorney who's estimated total caseload exceeds the overall limit is listed in each row for which they are rostered, then there is some number of attorneys less than 496 (total from each row) who are estimated to be over the limit.

2) However, the table does not indicate how many attorneys, total, are estimated to be over the limit. It is a minimum of 49, but what is the actual figure? 49 out of 224 (# from last months meeting) is very different than 112 or 168 out of 224.

3) How many attorneys listed would no longer be listed as over the limit if their LOD shifts were not included (i.e. they no longer did LOD shifts)?

4) How would these calculations change if MCILS attorneys were allowed to bill for staff time at $80/hour **as a part of their contract with MCILS** the same way outside counsel does in contracts***** for Representing Adult Protective Services in guardianship and conservator matters (line 3 of table on page 46 of the packet)?

***** Said contracts provide "Attorney shall furnish the legal services described herein at the rate of NinetyDollars ($90) per hour up to the amount of the Funding Total included herein. Incidental services, such as research, preparation of documents and notices that are done by Attorney's staff under the supervision of the Attorney may be charged at the $90/hour rate."

There is no reason why the above provision, used with the Attorney General's approval by the State of Maine Adult Protective Services, at $80/hour would not be within the Commission's authority. Notably, it would not run afoul of §1804(4)(D) as it does not change the rate to counsel under §1804(3)(F).

Additionally, allowing for staff time would presumably result in less attorneys being over the caseload limits while reducing costs per case. The ability to integrate staff for appropriate tasks would increase the total number of cases an attorney could carry, as compared to what they could without staff. While simultaneously improving quality and reducing costs as staff can perform many tasks more efficiently and expeditiously than attorneys.

The failure of MCILS to allow for staff time also contributes to attorney attrition. Virtually **every other** sector of the legal profession better integrates support staff into their model making them more attractive from both a business, and a quality of life, perspective.

In light of the serious attorney retention, recruitment and capacity issues facing our system, the failure of the Commission to implement such a basic method of addressing those issues is simply inexplicable.

Respectfully,

Robert J. Ruffner, Esq.
Ruffner - Greenbaum
Attorneys At Law
148 Middle Street
Suite 1D
Portland, Maine 04101
(207) 221-5736
(866) 324-0606 (fax)
rjr@mainecriminaldefense.com
www.mainecriminaldefense.com

> On Jul 13, 2022, at 5:25 PM, Maciag, Eleanor <Eleanor.Maciag@maine.gov> wrote:
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> Good afternoon,
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> The next MCILS Commission meeting will be held on Tuesday, July 19 at 1 pm. It will be a hybrid meeting in the AFA room in the State House and on Zoom. Meeting materials are attached.
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> https://mainestate.zoom.us/j/3966238156?pwd=M3lwM2JPdWtjOU5vOXh4TW9zb2l0Zz09
>
> Meeting ID: 396 623 8156
> Passcode: Mcils@2022
>
> Ellie

Ellie Maciag
Deputy Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, ME 04333
T – 207.287.3258
F – 207.287.3293

<Commission Packet July 19 2022.pdf>