

MCILS

**November 27, 2023
Commissioner's Meeting
Packet**

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

NOVEMBER 27, 2023
COMMISSION MEETING
AGENDA

- 1) Approval of the September 11, 2023 (corrected) and October 11, 2023 Commission Meeting Minutes
- 2) Executive session pursuant to 1 MRS § 405(6)(E) to discuss pending or contemplated litigation
- 3) Report of the Executive Director
 - a. Operations report
 - b. Case staffing status report
 - c. Hiring update
 - d. Budget update
 - e. Building update
 - f. Criminal/Juvenile Social Worker RFP
- 4) Rulemaking discussion – Chapters 3 and 301
- 5) Set Date, Time and Location of Next Regular Meeting of the Commission
- 6) Public Comment

Agenda Item	Discussion/Outcome
	<p>Defendants must pay money up front or commit to paying money to get indigent representation, so a lot of people elect not to have assigned counsel. He also claimed that experience as a prosecutor or civil litigant counts for nothing under the proposed rule. Commissioner Alexander believes that the appeal standards are insulting to the request the Chief Justice Stanfill has made to the Commission and to the bar to get private attorneys involved.</p> <p>Commissioner Cantera said that the Commission should not unnecessarily limit the people who can do this work. Someone with civil litigation or prosecutorial experience can do this work. Prosecutors know the rules of evidence, how to try a case, and how to stand up on their feet to defend one side or another. Commissioner Soucy pointed out that although the eligibility requirements are increased, the Commission is providing resource counsel and training to attorneys. He said that this is an opportunity to improve skills and that it should be acknowledged that the Commission is offering the resources to meet the eligibility requirements. Commissioner Burbank said there are people who may be able to do this work well who may not automatically be eligible, but they have opportunities under the proposed rule to be deemed eligible. Commissioner Burbank clarified that these requirements pertain to automatic eligibility and if someone does not meet all the requirements, they can apply for a waiver.</p> <p>Attorney Tina Nadeau, who was a subcommittee member, stated that the Chief Justice's letter is problematic because it insinuated that anyone could represent a client in a post-conviction review<u>child protection case</u> because they all get affirmed anyway. Attorney Nadeau reminded the Commission that is the Commission's job to provide effective counsel; not to make it easier for people to do this work.</p> <p>Commissioners Bates and Carey indicated that the rule should allow for criminal law experience and not be limited to criminal defense experience. Director Billings recommended a compromise of requiring a certain number of criminal law experience, some of which must include criminal law experience.</p> <p>The commissioners were split between requiring criminal law experience, criminal defense experience, or a hybrid requirement involving criminal law experience, some of which must be criminal defense experience.</p>

**Maine Commission on Indigent Legal Services – Commissioners Meeting
October 11, 2023**

Minutes

Commissioners Present: Donald Alexander, Randall Bates, Meegan Burbank, Michael Carey, David Soucy, Joshua Tardy

MCILS Staff Present: Jim Billings, Ellie Maciag

Agenda Item	Discussion/Outcome
Rulemaking: Public Hearings	<p>Chair Tardy announced that notice of these public hearings had been provided as required and that the deadline for written comment for both proposed rules is October 23, 2023 at 5:00PM. Written comments should be submitted to Jim.Billings@maine.gov.</p> <p><u>Public Hearing for Chapter 3:</u></p> <p>Director Billings highlighted some of the proposed rule changes, which include updating definitions, changing the eligibility requirements for appeals, requiring criminal defense experience instead of criminal law experience, and changing the eligibility for child protective cases. The current rule does not require an attorney to be eligible for appeals to represent a client in an appeal if they were trial counsel. The proposed rule eliminates that automatic eligibility for criminal cases. The proposed rule prohibits trial counsel from serving as appellate counsel in child protective cases because of the conflict that exists since ineffective assistance of counsel claims can be brought on direct appeal in those cases.</p> <p>Public Comment in Favor:</p> <ul style="list-style-type: none">• <u>Rob Ruffner, Esq.:</u> Attorney Ruffner is in favor of the rule. There has been discussion that these standards are causing the problem of not being able to find counsel for cases. The current standards and proposed standards are doing no such thing. There are hundreds if not thousands of cases that need lawyers for other felonies and other misdemeanors, which do not require any specialized eligibility. If there were a bunch of lawyers willing to take cases but for the specialized requirements, they would have already gone on the roster. This will not exacerbate the shortage of attorneys. For example, if there is an attorney who would no longer be eligible

Agenda Item	Discussion/Outcome
	<p>for major felonies, they would still have plenty of other cases they would be eligible for to stay busy fulltime.</p> <p>Public Comment Against: None.</p> <p>Public Comment Neither for Nor Against:</p> <ul style="list-style-type: none"> • <u>Taylor Kilgore, Esq.</u>: Attorney Kilgore supports trial counsel being prohibited from staying on as appellate counsel. Ineffective assistance of counsel claims are made on direct appeal or via 60(b)(6) motions, so it is important for someone with fresh eyes to look at the case. • <u>Julian Richter, Esq.</u>: 22 MRS § 4006 automatically continues representation for trial counsel once an appeal has been filed. We do not have enough attorneys on the child protective appellate roster to remove trial counsel from the pool of people who can handle the appeals. This proposed rule would also require trial counsel to withdraw anytime they litigate jeopardy and lose because the client could pursue an ineffective assistance of counsel claim. <p><u>Public Hearing for Chapter 301:</u></p> <p>Director Billings explained that the major substantive portion for the rate change has already passed, and that this rulemaking concerns the routine technical changes. Changes include clarifying definitions, raising the presumptive review amounts to be consistent with the increased rate change, allowing for payment of vouchers submitted between 90-180 days on a sliding scale, and encouraging monthly billing.</p> <p>Public Comment in Favor:</p> <ul style="list-style-type: none"> • <u>Rob Ruffner, Esq.</u>: The proposals regarding billing frequency and increased flexibility would be welcomed changes. Attorney Ruffner has tripled his attorney staff since the rate increase. Allowing monthly billing will reduce barriers to attorneys expanding capacity.
Approval of the September 11 & 18, 2023 Commission Meeting Minutes	Commissioner Alexander moved to approve the September 11 and September 18, 2023 minutes. Commissioner Carey seconded. All voted in favor. Approved.

Agenda Item	Discussion/Outcome
Executive Session	Commissioner Carey moved to go into executive session pursuant to 1 MRS § 405(6)(E) and 1 MRS § 405(6)(A). Commissioner Alexander seconded. All voted in favor.
Report of the Executive Director	<p>Director Billings provided the following report:</p> <p><u>Vouchers:</u> Year-to-date, new case numbers are trending up, but down month-to-month from August to September; the same with the number of vouchers and payments. The price of vouchers has increased by approximately 80%, which staff attributes largely to the increase in the hourly rate but are looking into it further to see if there has also been an increase in the number of billable hours. Staff are analyzing whether monthly billable hours are increasing month-to-month and will look at historical data.</p> <p><u>Case Staffing:</u> As of October 6, 2023, there were 187 rostered attorneys, of which approximately 132-133 were doing trial-level work. As of October 11, 2023, 42 attorneys were rostered for LOD only, 56 for child protective cases, and 58 for criminal cases. There has been a slight increase of about 8-10 attorneys on the criminal roster. A group of attorneys in Oxford agreed to all go on the roster at the same time to help staff some of the cases, which made a big impact. Of the 42 lawyers who are currently rostered for LOD only, only 2 are exclusively doing LOD work. The rest are also carrying a caseload but are just not opted onto the active rosters for cases. Data from the Judicial Branch indicates that year-to-year, there is a leveling off or lightening of case numbers, namely for civil violations and misdemeanors. There is still a significant increase of cases in 2023 compared to 2019. With the number of cases pending increased since 2019, this will have a significant budgetary impact.</p> <p><u>Hiring Update:</u> Executive Director Billings and Deputy Director Maciag have finished interviewing for the district defender position and have made a hiring decision. Postings for the assistant defender I and assistant defender II positions are open. MCILS has received some applications for those positions.</p> <p><u>Burnout Survey:</u> Staff completed a burnout survey and there is a memo summarizing the data included in the packet. A significant number of our attorneys are experiencing burnout. One of the top priorities for attorneys was having access to health insurance and mental health services. Staff are working with the Maine Assistance Program for Lawyers and Judges (MAP) on the mental health services side.</p>

Agenda Item	Discussion/Outcome
	<p>Commissioner Alexander suggested it may be possible to organize an affinity group to obtain group health insurance and that he would look into it.</p> <p><u>RFP Update:</u> There are two finalists on the computer software RFP to provide a vouchering and billing system for contract attorneys and case management services for employed attorneys. There was a demonstration from each of the two finalists. The RFP selection committee is meeting tomorrow to finish scoring based on the demonstrations. Director Billings hopes to have an intent to award within the next week. Both finalists very thoroughly answered the needs of the RFP and both offer an off-the-shelf product that could be used very soon internally.</p> <p><u>Supplemental Budget:</u> The Commission must have a budget request submitted by November 8, 2023. Staff have created an outline of what they think is needed, including the rollout of a more expanded public defender (PD) network. Staff ultimately want seven regional PD offices but asking for all seven offices in the supplemental budget would be a nonstarter. Director Billings is asking the Commission to approve locations for the seven desired offices so staff can begin trying to find offices, which can take approximately six months or more. There is a lot of need for counsel in Bangor and there is readily available commercial space there, so staff want to ask for Aroostook and Bangor offices in the supplemental budget. The other requested PD offices roughly correspond with prosecutorial districts except for York and Cumberland, which are proposed to be one office because the courts are not far from each other. In most instances, the cost to pay a contract attorney to handle a comparable caseload would far exceed the cost to pay for the whole PD office, including support staff. In the PD office, the paralegal and investigator expenses are included in the overhead, whereas those costs would be in addition to the contract attorney rates. Director Billings would like to ask for headcount for the PD offices now, get the locations approved for FY25, but not the money to start until the regular biennial budget. The Commission has done a lot to recruit more attorneys. Staff have gone to other states, are working with the Law School to get interns, and have sought permission from Law Court to permit student attorneys to practice under assigned counsel. If Maine has a PD system, people will come here and stay here and do this work. A hybrid system in which the PD offices handle roughly 1/3 of the cases makes sense.</p> <p>Commissioner Carey asked Director Billings to clarify that he is asking for a commitment from the legislature for headcount and money for leases for 2-3 offices per year, one year ahead of when he wants</p>

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	<p>those offices. Director Billings replied affirmatively. He explained that he wants to ask for Bangor and Aroostook offices in this supplemental budget cycle and then ask for the rest of the offices in the next biennium.</p> <p>Director Billings elaborated that staff are working to obtain a satellite office in Aroostook now because that has been approved. There is sufficient space at University of Maine Presque Isle to serve as the Aroostook PD office and house the RDU members. Eventually, the plan is to place RDU defenders in fixed offices and use the RDU positions for something else. The RDU is inefficient because of the travel time required for defenders to travel from southern Maine to various courts spread across Aroostook County.</p> <p>Commissioner Alexander asked Director Billings about whether there would be attorneys willing and available to work in the Bangor PD office. Director Billings responded that because there will be ample time to advertise and post the positions, there should be enough time to find attorneys to work there. Director Billings noted that attorneys from other states have applied for various public defender positions in Maine.</p> <p>Barbara Cardone, speaking in her personal capacity, commented that she is not certain the Commission can create positions without funding. She recommends asking the legislative analyst about whether that is possible. She further stated that, even if it is possible to authorize a position without funding, it is ripe for being cut.</p> <p>Commissioner Alexander proposed asking the legislature for a Bangor office for use by the RDU until the new PD positions are authorized. Director Billings replied that he does not think the Commission could justify asking for a space large enough to serve as a public defender office just for use by the RDU defenders.</p> <p>Commissioner Carey asked whether it would be possible to be in a position in May or June of 2024 to be hiring for one or two PD offices. He explained that it may be a way to get the headcount and still have existing money in the biennium for personal services. Director Billings responded that staff could be in a position operationally to start hiring in January or February of 2024.</p>

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	<p>Director Billings said that he is also asking for approximately \$500,000 for central office staff. Some of that money would fund a technological/data infrastructure position because MCILS is going to be reliant on automation. The Judicial Branch wants MCILS to take on assignment of counsel. To do so, MCILS will need a lot more headcount unless MCILS can get some automation. Director Billings is also asking for another attorney and a paralegal for the Training & Supervision Division.</p> <p>Chair Tardy moved to approve the budget request and authorize staff to move forward with it. Commissioner Soucy seconded. Director Billings asked for leeway with the request regarding central office staff because internal discussions about the budget request are ongoing. Commissioner Alexander commented that the estimated workload of the requested PD positions is based on what he perceives to be grossly inflated numbers used in determining the Chapter 4 caseload standards.</p> <p>Commissioner Alexander voted against. Commissioners Carey, Soucy, and Tardy voted in favor.</p>
Public Comment	<p><u>Attorney Ron Schneider:</u> Attorney Schneider supports the supplemental budget request. The plan was always for the Commission to take over the assignment of counsel function. Attorney Schneider read Commissioner Alexander's comment about judges assigning counsel based on who they thought were qualified instead of relying on the MCILS rosters. To the extent that was happening, that was not sanctioned by the Commission. Even the court rule requires assignment of counsel from the roster. Attorney Schneider does not believe it is the court's responsibility to find an attorney. By rule and law, it is the Commission's responsibility to provide lawyers and finally assign them; courts are only doing an initial assignment.</p> <p><u>Attorney Justin Andrus:</u> Attorney Andrus asked the Commission to disclaim Commissioner Alexander's memorandum. Attorney Andrus and other members of the bar are deeply troubled by what they read. Everything that MCILS staff, the Commission, and rostered attorneys have worked to improve would be eviscerated if the Commission adopted any of Commissioner Alexander's proposals. Attorney Andrus urges the Commission to communicate clearly to stakeholders, including, courts, prosecutors, the AG's Office, and the bar that the Commission does not view attorneys in the light described in Commissioner Alexander's memorandum. The memo presupposes that the practice of criminal law is so trivial that anyone can do it. To permit the fear that courts could make assignments to attorneys who</p>

Agenda Item	Discussion/Outcome
	<p>are not accepting assignments will drive away all attorneys who are willing to do the work. Attorney Andrus, who is the former MCILS Executive Director, refuses to go on any rosters because the situation is untenable. If the Commission requires LODs to keep cases, the Commission will drive away anyone who is willing to do that work. It should not be objectionable that attorneys should take the position that they need to review all discovery before advising client on a plea. These recommendations are triumphs of judicial efficiency and convenience over actual care for the individuals the Commission is charged with protecting.</p> <p><u>Attorney Ron Schneider:</u> Attorney Schneider agrees with everything Attorney Andrus said. Attorney Schneider did not take the memo seriously because the Commission does not have the power to alter a court rule (M.R.U. Crim. P. 44).</p> <p><u>Attorney Rob Ruffner:</u> Attorney Ruffner recommends at least one receptionist in each public defender office. There needs to be a way for district defenders to decline cases due to caseload. It should be made clear that although the hope is for PD offices to take on approximately 1/3 of all the cases in a particular area, that they are not required to take on that many cases.</p>
Adjournment	<p>Chair Tardy moved to adjourn the meeting. Seconded by Commissioner Soucy. Commissioner Alexander asked if he had an opportunity to respond to the public comments. Commissioner Carey (acting of speaker pro temp) explained that there was no opportunity for that during public comment. Commissioner Alexander explained that the observations in his memo were based on comments by the Chief Justice about the need to be more flexible in getting attorneys to do this work. Commissioners Alexander, Carey, and Soucy voted in favor to adjourn the meeting. Chair Tardy did not vote because his remote connection was lost. The meeting was adjourned.</p> <p>The next meeting will be held on November 14, 2023 at 1:00PM.</p>

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MCILS COMMISSIONERS

FROM: JIM BILLINGS, EXECUTIVE DIRECTOR

SUBJECT: OPERATIONS REPORTS

DATE: November 8, 2023

Attached you will find the October 2023, Operations Reports for your review and our discussion at the Commission meeting on November 27, 2023. A summary of the operations reports follows:

- 2,910 new cases were opened in the DefenderData system in October. This was a 65 case increase from September. Year to date, new cases are up 17% from last year from 10,079 at this time last year to 11,801 this year.
- The number of vouchers submitted electronically in October was 2,960, a decrease of 139 vouchers from September, totaling \$3,067,061, a decrease of \$77,584 from September. Year to date, the number of submitted vouchers is up by approximately 10%, from 11,455 at this time last year to 12,711 this year, with the total amount for submitted vouchers up approximately 84%, from \$6,676,973 at this time last year to \$12,308,917, this year.
- In October, we paid 3,512 electronic vouchers totaling \$3,551,587 representing an increase of 541 vouchers and an increase of \$636,846 compared to September. Year to date, the number of paid vouchers is up approximately 13%, from 11,632 at this time last year to 13,198 this year, and the total amount paid is up approximately 85%, from \$6,773,751 this time last year to \$12,552,099 this year.
- The average price per voucher in October was \$1,011 up \$30.21 per voucher from September. Year to date, the average price per voucher is up approximately 63%, from \$582.34 at this time last year to \$951.06 this year.
- Appeal and Post-Conviction Review had the highest average voucher in October. There were 23 vouchers exceeding \$7,500 paid in October. See attached addendum for details.
- In October, we issued 105 authorizations to expend funds: 54 for private investigators, 35 for experts, and 16 for miscellaneous services such as interpreters and transcriptionists. In August, we paid \$1385,215 for experts and investigators, etc.
- There were no attorney suspensions in October.
- In our All Other Account, the total expenses for the month of October were \$3,750,984. During October, approximately \$61,181 was devoted to the Commission's operating expenses.

- In the Personal Services Accounts, we had \$166,970 in expenses for the month of October.
- In the Revenue Account, we received no transfer of collected counsel fees from the Judicial Branch.
- Exceptional results – see attached addendum.
- As of November 8, 2023, there are 186 rostered attorneys of which 135 are available for trial court level work.
- Below is a table of submitted hours since FY21. For the first 4 months of this fiscal year, submitted hours are up approximately 10% over the same 4-month period last year. Submitted hours in FY23 were up approximately 5.6% over FY22 totals.

Submitted Hours													
	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Yearly Total
FY21	13,652	15,225	17,333	20,420	17,399	17,244	19,813	17,753	31,671	17,869	19,037	19,270	226,687
FY22	19,764	21,749	19,882	22,228	17,828	17,286	22,006	21,357	24,885	19,723	19,551	21,195	247,454
FY23	19,890	22,083	20,470	20,125	20,820	21,997	21,823	20,666	23,273	19,878	25,420	25,109	261,556
FY24	22,635	24,596	22,244	21,813									91,288

Good Outcomes

Review Date	Attorney	Charge(s)	Disposition
10/5/2023	Ferguson, Angus	Child Protection Petition	Dismissal
10/6/2023	Youngblood-Avery, Alec	Theft by Unauthorized Taking	Dismissal as de minimis
10/6/2023	Wilson, Jeffrey	Unlawful Possession of Scheduled Drug	Dismissal with Pressure from Motion to Suppress
10/6/2023	Day, Thaddeus	DV Assault	NG after Trial
10/12/2023	Gray, Mary	Child Protection Petition	Dismissal through Divorce Order
10/13/2023	Miller, Amber	Criminal Threatening	Dismissal
10/13/2023	McIntosh, Jeremiah	Child Protection Petition	Dismissal
10/13/2023	Reeves, Charles	Child Protection Petition	Dismissal
10/13/2023	Carey, Steven	Protection Order from Harassment Violation	Dismissal after Successful Deferred Disposition
10/13/2023	Saniuk-Heinig, Cheryl	1 ct. Assault, 1 ct. Disorderly Conduct, Fighting	Dismissal
10/13/2023	Fortin, Matthew	Theft by Unauthorized Taking	Dismissal
10/13/2023	LeBrasseur, Robert	Domestic Violence Assault	Dismissal
10/12/2023	Davidson, Jeffrey	USC (Felony)	Dismissal after Successful Deferred Disposition
10/13/2023	Connolly, Thomas	DV Assault	Dismissal at Jury Selection
10/13/2023	Rosenberg, Peter	Agg. Trafficking, Poss. Fentanyl Powder	Dismissal
10/13/2023	LeBrasseur, Robert	Unlawful Possession	Dismissal/Discovery Violation
10/13/2023	Perez-Saxon, La-Qiana	Child Protection Petition	Dismissal
10/18/2023	Hewes, James	Child Protection Petition	Dismissal
10/19/2023	Feagans, Deborah	Child Protection Petition	Dismissal
10/19/2023	McIntosh, Jeremiah	3 cts. Aggravated Trafficking of Scheduled Drugs, 1 ct. Unlawful Trafficking in Scheduled Drugs, 1 ct. Unlawful Possession of Scheduled Drug, 1 ct. Illegal Possession of a Firearm, 4 cts. VCR	Dismissal of drug-related charges with pressure from motion to suppress. Time Served of 1 day on the VCRs
10/19/2023	Angers, Stewart	2 cts. Unlawful Possession of Scheduled Drugs	Dismissal after Successful Deferred Disposition
10/19/2023	Hunter, Haley	1 ct. Aggravated Criminal Mischief, 1 ct. Criminal Mischief	Dismissal after Successful Deferred Disposition
10/19/2023	Pelletier, John	1 ct. Domestic Violence Aggravated Assault, 1 ct. Domestic Violence Assault	Dismissal
10/19/2023	Wright, Marcus	Theft by Unauthorized Taking	Dismissal after Successful Deferred Disposition

Good Outcomes

10/26/2023	Zirschky, David	Operating while License Suspended or Revoked	Dismissal
10/26/2023	Hoffman, Elizabeth	Child Protection Petition	Dismissal with Guardianship; No Finding of Jeopardy
10/27/2023	Roberge, Mitchel	1 ct. OAS, 1 ct. VCR, 1 ct. Operating without License	Dismissal

Vouchers over \$7,500

Comment	Voucher Total	Case Total
Homicide	\$15,328.96	\$15,328.96
Gross Sexual Assault	\$15,038.13	\$15,038.13
Sexual Exploitation of a Minor	\$14,817.00	\$14,817.00
Termination of Parental Rights	\$13,902.00	\$22,782.00
Manslaughter	\$12,829.00	\$12,829.00
Termination of Parental Rights	\$12,685.00	\$28,976.24
Aggravated Attempted Murder	\$10,850.96	\$10,850.96
Felony Murder	\$9,990.00	\$9,990.00
Theft By Deception	\$9,862.70	\$11,350.70
Domestic Violence Assault	\$9,839.00	\$9,839.00
Aggravated Trafficking	\$9,385.61	\$9,385.61
Aggravated Trafficking	\$9,257.67	\$9,257.67
Aggravated Assault	\$9,243.00	\$9,243.00
Gross Sexual Assault	\$8,991.00	\$8,991.00
Aggravated Trafficking	\$8,764.03	\$15,524.00
Appeal - Guardianship	\$8,725.86	\$8,725.86
Gross Sexual Assault	\$8,296.62	\$8,296.62
Termination of Parental Rights	\$8,179.00	\$8,179.00
Aggravated Trafficking	\$8,070.00	\$8,070.00
OUI	\$7,741.00	\$7,741.00
Refusing to Submit to Arrest/VCR	\$7,642.20	\$7,642.20
Domestic Violence Criminal Threatening	\$7,615.01	\$7,615.01
Aggravated Trafficking	\$7,584.00	\$7,584.00

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Case Type

10/31/2023

	Oct-23						Fiscal Year 2024			
DefenderData Case Type	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
Appeal	12	17	\$63,014.66	13	\$ 55,071.60	\$4,236.28	69	61	\$ 168,222.54	\$2,757.75
Central Office Resource Counsel	1	4	\$5,205.00	6	\$ 9,780.00	\$1,630.00	5	18	\$ 27,798.00	\$1,544.33
Child Protection Petition	185	327	\$413,324.86	390	\$ 500,971.37	\$1,284.54	705	1,437	\$ 1,693,177.00	\$1,178.27
Drug Court	6	15	\$26,815.86	18	\$ 38,091.40	\$2,116.19	20	63	\$ 142,045.28	\$2,254.69
Emancipation	7	3	\$525.00	4	\$ 2,493.00	\$623.25	33	21	\$ 16,774.24	\$798.77
Felony	688	647	\$938,301.10	753	\$ 1,103,153.63	\$1,465.01	2,908	3,075	\$ 4,185,476.34	\$1,361.13
Involuntary Civil Commitment	108	121	\$71,141.40	133	\$ 78,909.88	\$593.31	385	374	\$ 218,603.21	\$584.50
Juvenile	100	83	\$103,372.56	111	\$ 121,765.04	\$1,096.98	404	305	\$ 327,498.61	\$1,073.77
Lawyer of the Day - Custody	254	231	\$149,013.96	300	\$ 194,976.21	\$649.92	1,048	1,051	\$ 693,712.06	\$660.05
Lawyer of the Day - Juvenile	15	18	\$14,852.98	22	\$ 14,688.43	\$667.66	79	83	\$ 49,059.03	\$591.07
Lawyer of the Day - Walk-in	147	140	\$91,407.08	229	\$ 146,294.34	\$638.84	583	635	\$ 427,258.08	\$672.85
MCILS Provided Training	81	64	\$102,817.18	61	\$ 42,569.42	\$697.86	357	311	\$ 87,603.92	\$281.68
Misdemeanor	1,084	954	\$653,870.71	1,097	\$ 758,456.26	\$691.39	4,352	4,308	\$ 2,797,207.05	\$649.31
Petition, Modified Release Treatment	0	3	\$2,706.00	7	\$ 6,382.65	\$911.81	3	14	\$ 13,706.53	\$979.04
Petition, Release or Discharge	1	0		0			2	3	\$ 10,986.85	\$3,662.28
Petition, Termination of Parental Rights	24	47	\$96,219.58	59	\$ 133,015.96	\$2,254.51	78	231	\$ 409,029.42	\$1,770.69
Post Conviction Review	6	10	\$41,225.12	7	\$ 18,712.40	\$2,673.20	27	36	\$ 107,314.25	\$2,980.95
Probate	1	3	\$3,360.00	4	\$ 6,843.00	\$1,710.75	6	18	\$ 31,399.05	\$1,744.39
Probation Violation	129	135	\$134,069.83	140	\$ 129,833.05	\$927.38	557	569	\$ 482,044.07	\$847.18
Represent Witness on 5th Amendment	2	1	\$1,218.50	1	\$ 1,218.50	\$1,218.50	12	3	\$ 2,748.50	\$916.17
Resource Counsel Criminal	1	5	\$1,530.00	5	\$ 1,845.00	\$369.00	3	14	\$ 4,770.00	\$340.71
Resource Counsel Juvenile	1	1	\$225.00	2	\$ 405.00	\$202.50	1	3	\$ 525.00	\$175.00
Resource Counsel Mental Health	1	1	\$105.00	0			1	0		
Resource Counsel NCR	0	0		0			0	0		
Resource Counsel Protective Custody	1	3	\$1,935.00	3	\$ 1,935.00	\$645.00	2	11	\$ 17,314.50	\$1,574.05
Review of Child Protection Order	51	126	150115.52	146	183486.31	1256.755547	152	551	636401.02	1154.99278
Revocation of Administrative Release	4	1	\$690.00	1	\$ 690.00	\$690.00	9	3	\$ 1,425.00	\$475.00
DefenderData Sub-Total	2,910	2,960	\$3,067,061.90	3,512	\$3,551,587.45	\$1,011.27	11,801	13,198	\$12,552,099.55	\$951.06
TOTAL	2,910	2,960	\$3,067,061.90	3,512	\$3,551,587.45	\$ 1,011.27	11,801	13,198	\$ 12,552,099.55	\$ 951.06

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

Activity Report by Court

10/31/2023

Court	Oct-23						Fiscal Year 2024			
	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Amount	Average Amount	Cases Opened	Vouchers Paid	Amount Paid	Average Amount
ALFSC	2	1	\$412.50	1	\$ 412.50	\$412.50	4	7	\$ 6,216.90	\$888.13
AUBSC	0	1	\$345.00	2	\$ 2,895.00	\$1,447.50	1	6	\$ 6,514.00	\$1,085.67
AUGDC	57	58	\$57,885.95	88	\$ 91,498.45	\$1,039.76	200	270	\$ 303,813.17	\$1,125.23
AUGSC	1	1	\$666.00	5	\$ 5,227.65	\$1,045.53	7	17	\$ 28,788.58	\$1,693.45
BANDC	63	90	\$70,393.50	108	\$ 83,522.75	\$773.36	225	378	\$ 326,655.60	\$864.17
BANSC	0	1	\$974.50	0			0	3	\$ 1,991.66	\$663.89
BATSC	1	0		0			1	0		
BELDC	19	34	\$53,763.82	31	\$ 42,385.49	\$1,367.27	52	83	\$ 94,130.89	\$1,134.11
BELSC	1	0		0			2	0		
BIDDC	59	56	\$68,335.40	62	\$ 82,219.29	\$1,326.12	187	196	\$ 214,002.59	\$1,091.85
BRIDC	11	8	\$6,635.00	13	\$ 12,009.08	\$923.78	37	31	\$ 36,139.59	\$1,165.79
CALDC	5	9	\$12,219.30	8	\$ 12,376.80	\$1,547.10	16	27	\$ 28,705.54	\$1,063.17
CARDC	10	13	\$12,439.62	24	\$ 28,842.02	\$1,201.75	22	65	\$ 70,356.88	\$1,082.41
CARSC	0	0		0			5	1	\$ 2,970.00	\$2,970.00
DOVDC	6	16	\$17,157.84	16	\$ 17,161.88	\$1,072.62	20	50	\$ 45,013.88	\$900.28
DOVSC	0	0		0			1	0		
ELLDC	11	26	\$34,227.00	32	\$ 43,980.84	\$1,374.40	43	128	\$ 154,963.14	\$1,210.65
ELLSC	0	0		0			0	0		
FARDC	16	17	\$20,101.94	26	\$ 28,662.63	\$1,102.41	77	77	\$ 81,341.78	\$1,056.39
FARSC	0	0		0			0	1	\$ 1,605.00	\$1,605.00
FORDC	8	21	\$21,241.28	12	\$ 16,964.68	\$1,413.72	37	44	\$ 61,937.38	\$1,407.67
HOUDC	9	10	\$11,183.10	18	\$ 21,333.92	\$1,185.22	47	76	\$ 92,041.08	\$1,211.07
HOUSC	0	0		0			0	0		
LEWDC	75	69	\$73,388.22	77	\$ 84,257.56	\$1,094.25	232	341	\$ 368,574.95	\$1,080.86
LINDC	2	4	\$5,207.14	6	\$ 8,707.41	\$1,451.24	17	35	\$ 38,046.35	\$1,087.04
MACDC	6	10	\$13,579.86	11	\$ 15,569.79	\$1,415.44	23	23	\$ 28,286.31	\$1,229.84
MACSC	0	0		0			0	0		
MADDC	3	0		0			3	0		
MILDC	0	0		0			3	5	\$ 2,754.00	\$550.80
NEWDC	5	14	\$13,705.36	16	\$ 13,027.96	\$814.25	27	78	\$ 68,959.06	\$884.09
PORDC	64	96	\$127,838.57	88	\$ 120,175.27	\$1,365.63	263	362	\$ 430,271.27	\$1,188.59
PORSC	1	0		0			5	11	\$ 10,043.00	\$913.00
PREDC	5	5	\$6,428.94	8	\$ 10,010.74	\$1,251.34	39	70	\$ 107,084.57	\$1,529.78
RODC	13	20	\$30,580.59	27	\$ 46,132.23	\$1,708.60	64	77	\$ 82,735.80	\$1,074.49
ROCSC	0	1	\$390.00	2	\$ 840.00	\$420.00	2	2	\$ 840.00	\$420.00
RUMDC	12	11	\$13,524.44	17	\$ 29,578.56	\$1,739.92	34	68	\$ 96,860.82	\$1,424.42
SKODC	31	54	\$61,187.80	58	\$ 69,430.84	\$1,197.08	103	225	\$ 247,149.13	\$1,098.44
SKOSC	1	0		0			1	2	\$ 4,826.04	\$2,413.02
SOUDC	8	19	\$37,961.68	21	\$ 54,445.68	\$2,592.65	39	57	\$ 120,557.73	\$2,115.05
SOUSC	0	0		0			2	0		
SPRDC	6	27	\$27,834.52	37	\$ 35,269.22	\$953.22	40	109	\$ 123,819.47	\$1,135.96
Law Ct	7	12	\$48,974.48	8	\$ 41,715.42	\$5,214.43	49	41	\$ 122,362.38	\$2,984.45
Training	80	68	\$107,384.68	67	\$ 51,711.92	\$771.82	357	330	\$ 122,611.42	\$371.55
YORCD	327	355	\$345,397.05	378	\$ 365,555.06	\$967.08	1,491	1,492	\$ 1,445,376.15	\$968.75
AROCD	192	164	\$188,126.20	209	\$ 227,413.35	\$1,088.10	817	787	\$ 836,666.26	\$1,063.11
ANDCD	172	240	\$217,065.55	252	\$ 230,462.90	\$914.54	752	968	\$ 863,112.05	\$891.64
KENCD	218	238	\$203,065.00	327	\$ 248,189.46	\$758.99	1,055	1,086	\$ 785,516.87	\$723.31
PENCD	352	216	\$180,312.00	242	\$ 229,692.20	\$949.14	1,234	1,171	\$ 997,785.54	\$852.08
SAGCD	44	41	\$39,338.78	44	\$ 33,495.96	\$761.27	193	198	\$ 169,421.24	\$855.66
WALCD	85	71	\$59,544.54	70	\$ 64,260.87	\$918.01	291	226	\$ 192,996.05	\$853.96
PISCD	16	12	\$7,494.92	23	\$ 19,165.88	\$833.30	64	82	\$ 85,986.23	\$1,048.61
HANCD	80	70	\$67,522.74	87	\$ 62,265.74	\$715.70	290	284	\$ 259,158.92	\$912.53
FRACD	37	44	\$44,011.18	59	\$ 49,511.66	\$839.18	195	227	\$ 164,642.49	\$725.30
WASCD	85	33	\$67,932.36	43	\$ 81,695.42	\$1,899.89	243	197	\$ 300,665.72	\$1,526.22
CUMCD	355	351	\$387,759.51	441	\$ 493,080.16	\$1,118.10	1,517	1,532	\$ 1,514,554.39	\$988.61
KN OCD	65	55	\$53,805.14	66	\$ 60,843.66	\$921.87	211	236	\$ 230,258.68	\$975.67
SOMCD	85	79	\$63,390.23	91	\$ 74,110.15	\$814.40	373	418	\$ 347,555.10	\$831.47
OXFCD	94	108	\$65,818.88	140	\$ 86,371.25	\$616.94	415	509	\$ 335,505.00	\$659.15
LINCD	58	23	\$16,313.66	33	\$ 23,737.87	\$719.33	202	161	\$ 141,861.23	\$881.13
WATDC	25	44	\$41,511.74	62	\$ 61,550.96	\$992.76	81	174	\$ 158,127.85	\$908.78
WESDC	15	26	\$25,217.57	28	\$ 27,915.57	\$996.98	61	92	\$ 103,971.69	\$1,130.13
WISDC	2	6	\$3,971.00	10	\$ 11,989.29	\$1,198.93	16	35	\$ 47,390.49	\$1,354.01
WISSC	0	0		0			1	0		
YORDC	2	12	\$33,495.82	18	\$ 29,914.46	\$1,661.91	6	25	\$ 35,809.56	\$1,432.38
TOTAL	2,910	2,960	\$3,067,061.90	3,512	\$3,551,587.45	\$1,011.27	11,801	13,198	\$12,552,099.55	\$951.06

Statement of Revenue and Expenses for Maine Commission of Indigent Legal Services

As of November 21, 2023

<u>General Funds - 010-Z11201</u>	<u>QTR1</u>	<u>QTR2</u>	<u>QTR3</u>	<u>QTR4</u>	<u>TOTAL</u>
Personal Services Allotment	\$ 513,974	\$ 794,706	\$ 1,213,498	\$ 638,747	\$ 3,160,925
Payroll to date	(421,815)	(175,040)	-	-	(596,856)
Estimated payroll remaining	-	(179,263)	(418,280)	(358,526)	(956,069)
Total Personal Services available	\$ 92,159	\$ 440,403	\$ 795,218	\$ 280,221	\$ 1,608,001
All Other Allotment	\$ 6,334,259	\$ 7,766,921	\$ 4,218,630	\$ 849,379	\$ 19,169,189
Expenditures to date	(5,987,148)	(4,454,505)	-	-	(10,441,653)
Encumbrances	(347,109)	(20,986)	-	-	(368,095)
Total All Other Available	\$ 1	\$ 3,291,430	\$ 4,218,630	\$ 849,379	\$ 8,359,440

Unencumbered balance forward 0.01

<u>Other Special Revenue Funds - 014-Z11201</u>	<u>QTR1</u>	<u>QTR2</u>	<u>QTR3</u>	<u>QTR4</u>	<u>TOTAL</u>
Personal Services Allotment	\$ 199,948	\$ 183,210	\$ 199,948	\$ 98,063	\$ 681,169
Payroll to date	(177,188)	(77,635)	-	-	(254,823)
Estimated payroll remaining	-	(77,527)	(180,896)	(155,054)	(413,478)
Total Personal Services available	\$ 22,760	\$ 28,048	\$ 19,052	\$ (56,991)	\$ 12,868
All Other Allotment	\$ 3,050,247	\$ 9,138,920	\$ 4,991,638	\$ 4,991,638	\$ 22,172,443
Expenditures to date	(3,050,246)	(1,390,005)	-	-	(4,440,251)
Encumbrances	-	-	-	-	-
Total All Other Available	\$ 1	\$ 7,748,915	\$ 4,991,638	\$ 4,991,638	\$ 17,732,192

CASH ON HAND 11/21/2023 \$ 7,869,619.74

<u>Other Special Revenue Funds - 014-Z11202</u>	<u>QTR1</u>	<u>QTR2</u>	<u>QTR3</u>	<u>QTR4</u>	<u>TOTAL</u>
All Other Allotment	\$ -	\$ 30,333	\$ 13,333	\$ 13,334	\$ 57,000
Expenditures to date	-	(5,759)	-	-	(5,759)
Encumbrances	-	-	-	-	-
Total All Other Available	\$ -	\$ 24,574	\$ 13,333	\$ 13,334	\$ 51,241

CASH ON HAND 11/21/2023 \$ 15,473.58

<u>Other Special Revenue Funds - 014-Z25801</u>	<u>QTR1</u>	<u>QTR2</u>	<u>QTR3</u>	<u>QTR4</u>	<u>TOTAL</u>
All Other Allotment	\$ 3,250,195	\$ 9,352,463	\$ 5,204,919	\$ 5,103,035	\$ 22,910,612
Expenditures to date	-	-	-	-	-
Encumbrances	-	-	-	-	-
Total All Other Available	\$ 3,250,195	\$ 9,352,463	\$ 5,204,919	\$ 5,103,035	\$ 22,910,612

Cash on hand/UBF 11/21/2023 \$ -

<u>ARPA Funds - 023-Z11201</u>	<u>QTR1</u>	<u>QTR2</u>	<u>QTR3</u>	<u>QTR4</u>	<u>TOTAL</u>
All Other Allotment	\$ -	\$ 1,500,000	\$ -	\$ -	\$ 1,500,000
Expenditures to date	-	-	-	-	-
Encumbrances	-	-	-	-	-
Total All Other Available	\$ -	\$ 1,500,000	\$ -	\$ -	\$ 1,500,000

CASH ON HAND 11/21/2023 \$ -

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY24 FUND ACCOUNTING

AS OF 10/31/2023

Account 010 95F Z112 01 (All Other)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY24 Total
FY24 Professional Services Allotment		\$ 7,783,128.77		\$ 4,923,712.00		\$ 4,923,711.00		\$ 4,923,711.00	\$ 22,554,262.77
FY24 General Operations Allotment		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00		\$ 48,000.00	\$ 192,000.00
FY23 carry forward appropriation		\$ -		\$ -		\$ -		\$ -	\$ 1,255,608.01
Budget Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
Financial Order Adjustment		\$ -		\$ 42,731.00		\$ (753,081.00)		\$ (4,122,332.00)	\$ (4,832,682.00)
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
Total Budget Allotments		\$ 7,831,128.77		\$ 5,014,443.00		\$ 4,218,630.00		\$ 849,379.00	\$ 19,169,188.78
Total Expenses	1	\$ (2,941,048.40)	4	\$ (3,750,984.71)	7	\$ -	10	\$ -	
	2	\$ (2,953,206.21)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (92,893.88)	6	\$ -	9	\$ -	12	\$ -	
FY23 carry forward appropriation		\$ -		\$ -		\$ -		\$ -	\$ 1,255,608.01
FY23 carry forward encumbrances		\$ -		\$ -		\$ -		\$ -	\$ (587,542.77)
Encumbrances (Justice Works)		\$ (82,212.00)		\$ 8,517.00		\$ -		\$ -	\$ (73,695.00)
Encumbrances (B Taylor)		\$ (13,260.00)		\$ (66,300.00)		\$ -		\$ -	\$ (79,560.00)
Encumbrances (CTB for non attorney expenses)		\$ 179,235.71		\$ 10,916.25		\$ -		\$ -	\$ 190,151.96
Encumbrance (Legal Case Management Accelerator User assistance)		\$ (5,550.00)		\$ -		\$ -		\$ -	\$ (5,550.00)
Encumbrance (Justin Andrus contract for temp services)		\$ (125,693.60)		\$ 3,156.50		\$ -		\$ -	\$ (122,537.10)
Online Legal Research Services		\$ (46,979.20)		\$ 3,327.08		\$ -		\$ -	\$ (43,652.12)
Encumbrance (K. Guillory contract for website maintenance)		\$ (1,000.00)		\$ -		\$ -		\$ -	\$ (1,000.00)
FY22 CTB Balance Carry Forward		\$ (251,650.23)		\$ -		\$ -		\$ -	\$ (251,650.23)
TOTAL REMAINING		\$ 1,496,870.96		\$ 1,223,075.12		\$ 4,218,630.00		\$ 849,379.00	\$ 7,787,955.08

Q2 Month 4

INDIGENT LEGAL SERVICES

Counsel Payments	\$ (3,551,587.45)
Interpreters	\$ (653.87)
Private Investigators	\$ (24,676.36)
Mental Health Expert	\$ (57,000.50)
Misc Prof Fees & Serv	\$ -
Transcripts	\$ (20,811.45)
Other Expert	\$ (33,596.90)
Subpoena witness	\$ -
Process Servers	\$ (1,476.81)
SUB-TOTAL ILS	\$ (3,689,803.34)

OPERATING EXPENSES

Service Center	\$ -
Barbara Taylor monthly fees	\$ (4,420.00)
OIT/TELCO	\$ (20,862.00)
Mileage/Tolls/Parking	\$ (1,061.98)
Mailing/Postage/Freight	\$ (594.39)
West Publishing Corp	\$ (3,591.40)
Legal services for staff	\$ (1,462.50)
Office Supplies/Equip.	\$ (732.57)
Cellular Phones	\$ (948.02)
Periodicals/Books	\$ (2,171.00)
Employee lodging	\$ (192.69)
Justin Andrus contract payments	\$ (3,156.50)
Central fleet vehicle lease	\$ (679.54)
Legal ads	\$ (1,994.98)
Dues	\$ (585.00)
Registration fees	\$ (420.00)
Sales tax paid	\$ (31.64)

INDIGENT LEGAL SERVICES

Q2 Allotment	\$ 5,014,443.00
Encumbrances for Justice Works contract	\$ 8,517.00
Barbara Taylor Contract	\$ (66,300.00)
CTB Encumbrance for non attorney expenses	\$ 10,916.25
CTB Encumbrance for non attorney expenses carry forward	\$ -
Encumbrance for Justin Andrus contract for temp services	\$ 3,156.50
Legal Case Management Accelerator User Assistance	\$ -
Online Legal Research Services	\$ 3,327.08
Encumbrance (K. Guillory contract for website maintenance)	\$ -
Expenses to date	\$ (3,750,984.71)
Remaining Q2 Allotment	\$ 1,223,075.12

Non-Counsel Indigent Legal Services

Monthly Total	\$ (138,215.89)
Total Q1	\$ 386,083.19
Total Q2	\$ 138,215.89
Total Q3	\$ -
Total Q4	\$ -
Fiscal Year Total	\$ 524,299.08

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY24 FUND ACCOUNTING
AS OF 10/31/2023

Envelopes	\$	(196.00)
Justice Works	\$	(8,517.00)
Eye glasses - VDT	\$	(150.00)
Speaker fees	\$	(1,200.00)
Interpreter paid with procurement card	\$	(13.68)
AAG Legal Svcs Quarterly Payment	\$	(8,200.48)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY24 FUND ACCOUNTING

AS OF 10/31/2023

Account 010 95F Z112 01 (Personal Services)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY24 Total
FY24 Allotment		\$ 513,974.00		\$ 469,367.00		\$ 513,974.00		\$ 203,769.00	\$ 1,701,084.00
Financial Order Adjustments		\$ -		\$ 325,339.00		\$ 699,524.00		\$ 434,978.00	\$ 1,459,841.00
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	\$ -
Funding for additional staff		\$ -		\$ -		\$ -		\$ -	\$ -
Projected savings-increase in attrition rate		\$ -		\$ -		\$ -		\$ -	\$ -
Carry forward Q1, Q2 & Q3 Allotment		\$ -		\$ -		\$ -		\$ -	\$ -
Total Budget Allotments		\$ 513,974.00		\$ 794,706.00		\$ 1,213,498.00		\$ 638,747.00	\$ 3,160,925.00
Total Expenses	1	\$ (125,464.57)	4	\$ (115,285.80)	7	\$ -	10	\$ -	
	2	\$ (176,263.37)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (120,087.49)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 92,158.57		\$ 679,420.20		\$ 1,213,498.00		\$ 638,747.00	\$ 2,623,823.77

Q2 Month 4	
Retro lump sum pymt	\$ (226.80)
Permanent Regular	\$ (25,950.30)
Perm Vacation Pay	\$ (1,143.70)
Perm Holiday Pay	\$ (1,426.00)
Sick Pay	\$ -
Employee hlth svcs/workers comp	\$ (279.00)
Health Insurance	\$ (13,634.34)
Dental Insurance	\$ (350.40)
Employer Retiree Health	\$ (6,472.36)
Employer Retirement	\$ (4,602.84)
Employer Group Life	\$ (891.90)
Employer Medicare	\$ (1,053.31)
Retiree Unfunded Liability	\$ (12,257.57)
Longevity Pay	\$ (112.00)
Lim Perm Part Time Full Ben	\$ (4,225.14)
Limited Period Regular	\$ (35,768.33)
Limited Per Vacation Pay	\$ (2,657.27)
Limited Per Holiday Pay	\$ (2,322.04)
Limit Per Sick Pay	\$ (1,692.50)
Per diem	\$ (220.00)
TOTAL	\$ (115,285.80)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY24 FUND ACCOUNTING
AS OF 10/31/2023

Account 014 95F Z112 01 (OSR Personal Services Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY24 Total
FY24 Allotment	\$	199,948.00	\$	183,210.00	\$	199,948.00	\$	98,063.00	\$ 681,169.00
Financial Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Carry Forward Q1 & Q3 Allotment	\$	-	\$	-	\$	-	\$	-	
Budget Order Adjustments	\$	-	\$	-	\$	-	\$	-	
Total Budget Allotments	\$	199,948.00	\$	183,210.00	\$	199,948.00	\$	98,063.00	\$ 681,169.00
Total Expenses	1	\$ (51,673.18)	4	\$ (51,685.02)	7	\$ -	10	\$ -	
	2	\$ (73,802.05)	5	\$ -	8	\$ -	11	\$ -	
	3	\$ (51,713.22)	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 22,759.55		\$ 131,524.98		\$ 199,948.00		\$ 98,063.00	\$ 452,295.53

Q2 Month 4	
Standard Overtime	\$ -
Permanent Regular	\$ (23,443.24)
Perm Vacation Pay	\$ -
Perm Holiday Pay	\$ (1,282.24)
Perm Sick Pay	\$ (919.32)
Health Insurance	\$ (7,219.38)
Dental Insurance	\$ (146.00)
Employer Retiree Health	\$ (2,788.48)
Employer Retirement	\$ (2,805.74)
Employer Group Life	\$ (354.60)
Employer Medicare	\$ (444.36)
Retiree Unfunded Liability	\$ (5,280.86)
Limited Period Regular	\$ (5,514.24)
Limit Per Holiday Pay	\$ (344.64)
Limit Per Vacation Pay	\$ (861.60)
Limit Per Sick Pay	\$ (172.32)
Longevity Pay	\$ -
Employee Hlth SVS/Workers comp	\$ (108.00)
Perm Part Time Full Ben	\$ -
Retro Pay Contract	\$ -
Retro Lump Sum Pymt	\$ -
TOTAL	\$ (51,685.02)

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

FY24 FUND ACCOUNTING

As of 10/31/2023

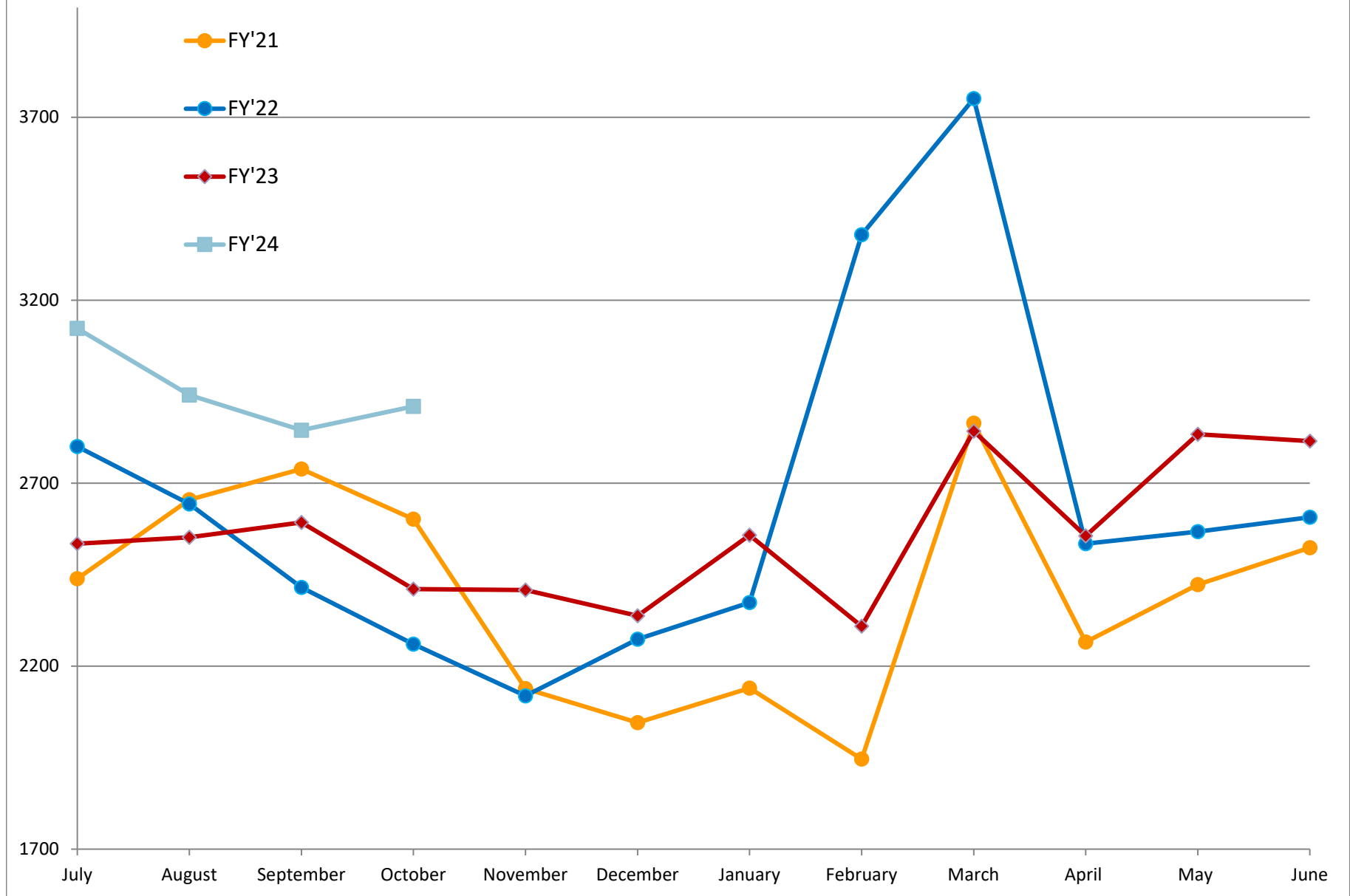
Account 014 95F Z112 01 (Revenue)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY24 Total
Original Total Budget Allotments		\$ 7,197,529.00		\$ 4,991,638.00		\$ 4,991,638.00		\$ 4,991,638.00	\$ 22,172,443.00
Financial Order Adjustment		\$ -		\$ -		\$ -		\$ -	\$ -
Financial Order Adjustment	1	\$ -	4	\$ -	7	\$ -	10	\$ -	
Budget Order Adjustment	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
Transfer from General Fund Surplus	3	\$ -	6	\$ -	9	\$ -	12	\$ -	\$ -
Total Budget Allotments		\$ 7,197,529.00		\$ 4,991,638.00		\$ 4,991,638.00		\$ 4,991,638.00	\$ 22,172,443.00
Cash Carryover from Prior Quarter		\$ -		\$ -		\$ -		\$ -	
Collected Revenue from JB	1	\$ 25,340.85	4	\$ -	7	\$ -	10	\$ -	
Collected Revenue from JB	2	\$ 40,622.70	5	\$ -	8	\$ -	11	\$ -	
Collected Revenue from JB	3	\$ 21,472.00	6	\$ -	9	\$ -	12	\$ -	
		\$ -		\$ -		\$ -		\$ -	
Collected for reimbursement of counsel fees	1	\$ -	4	\$ 1,151.20	7	\$ -	10	\$ -	
Collected for reimbursement of counsel fees	2	\$ 1,080.00	5	\$ -	8	\$ -	11	\$ -	
Collected for reimbursement of counsel fees	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL CASH PLUS REVENUE COLLECTED		\$ 88,515.55		\$ 1,151.20		\$ -		\$ -	\$ 89,666.75
Counsel Payments	1		4	\$ -	7	\$ -	10	\$ -	
Counsel Payments	2	\$ (93,716.08)	5	\$ -	8	\$ -	11	\$ -	
Counsel Payments	3	\$ (2,914,923.00)	6	\$ -	9	\$ -	12	\$ -	
				\$ -		\$ -		\$ -	
State Cap for periods 1 - 3		\$ (41,606.93)		\$ -		\$ -		\$ -	
State Cap for periods 4,5 & 6		\$ -		\$ -		\$ -		\$ -	
State Cap for periods 8, 9, 10, 11 & 12		\$ -		\$ -		\$ -		\$ -	
REMAINING ALLOTMENT		\$ 4,147,282.99		\$ 4,991,638.00		\$ 4,991,638.00		\$ 4,991,638.00	\$ 19,122,196.99

MAINE COMMISSION ON INDIGENT LEGAL SERVICES
FY24 FUND ACCOUNTING
AS OF 10/31/2023

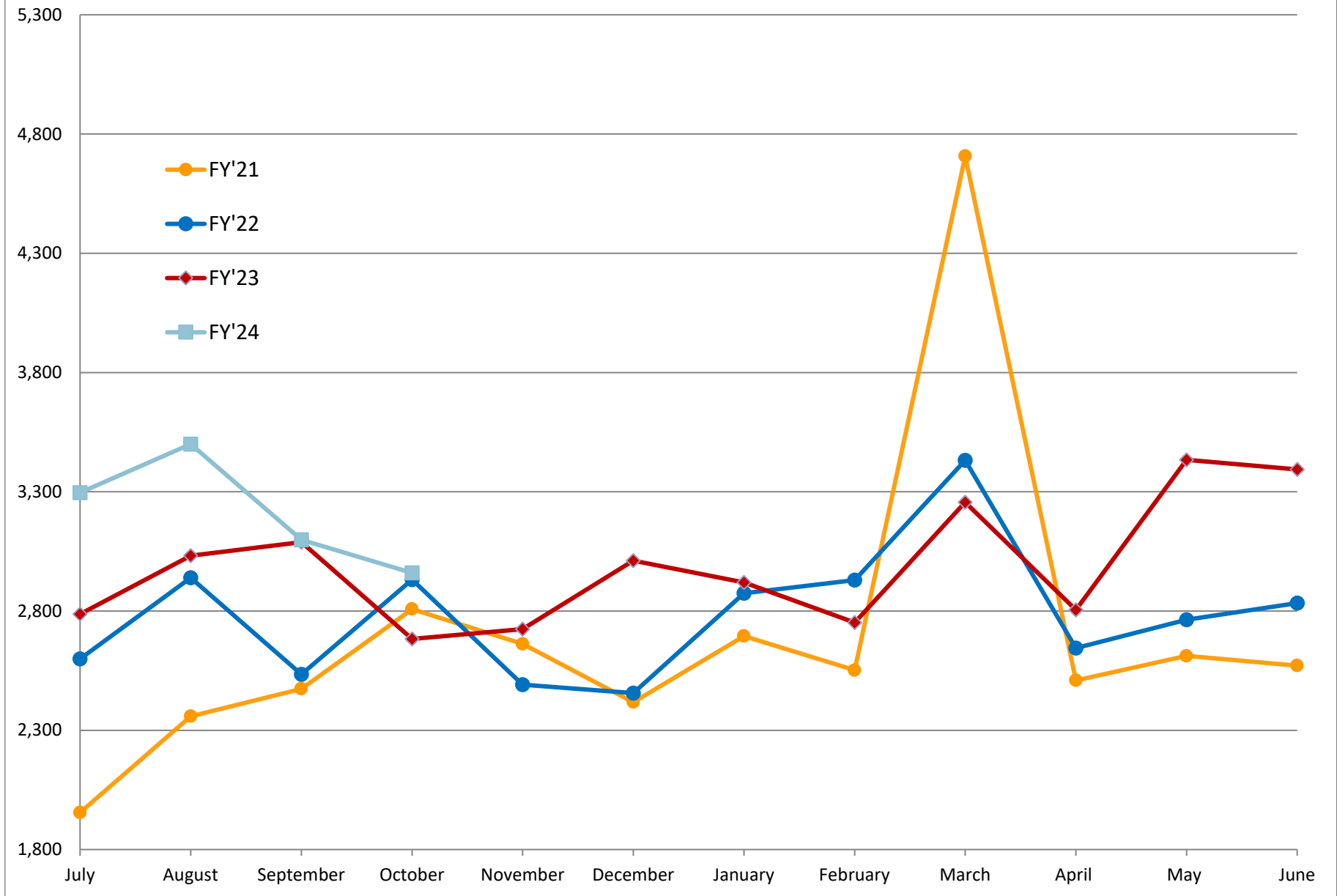
Account 014 95F Z112 02 (Conference Account)	Mo.	Q1	Mo.	Q2	Mo.	Q3	Mo.	Q4	FY24 Total
FY24 Allotment		\$ 13,333.00		\$ 17,000.00		\$ 13,333.00		\$ 13,334.00	\$ 57,000.00
Financial Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Budget Order Adjustments		\$ -		\$ -		\$ -		\$ -	
Contribution from private source-JJAG		\$ -		\$ 5,000.00		\$ -		\$ -	\$ 5,000.00
Total Budget Allotments		\$ 13,333.00		\$ 17,000.00		\$ 13,333.00		\$ 13,334.00	\$ 57,000.00
Total Expenses	1	\$ -	4	\$ (5,149.70)	7	\$ -	10	\$ -	
	2	\$ -	5	\$ -	8	\$ -	11	\$ -	
	3	\$ -	6	\$ -	9	\$ -	12	\$ -	
TOTAL REMAINING		\$ 13,333.00		\$ 11,850.30		\$ 13,333.00		\$ 13,334.00	\$ 51,850.30

Q2 Month 4	
Instructor & Speaker services	\$ (4,000.00)
Refreshments & Catered meals	\$ (1,149.70)
	\$ -
	\$ -
	\$ -
TOTAL	\$ (5,149.70)

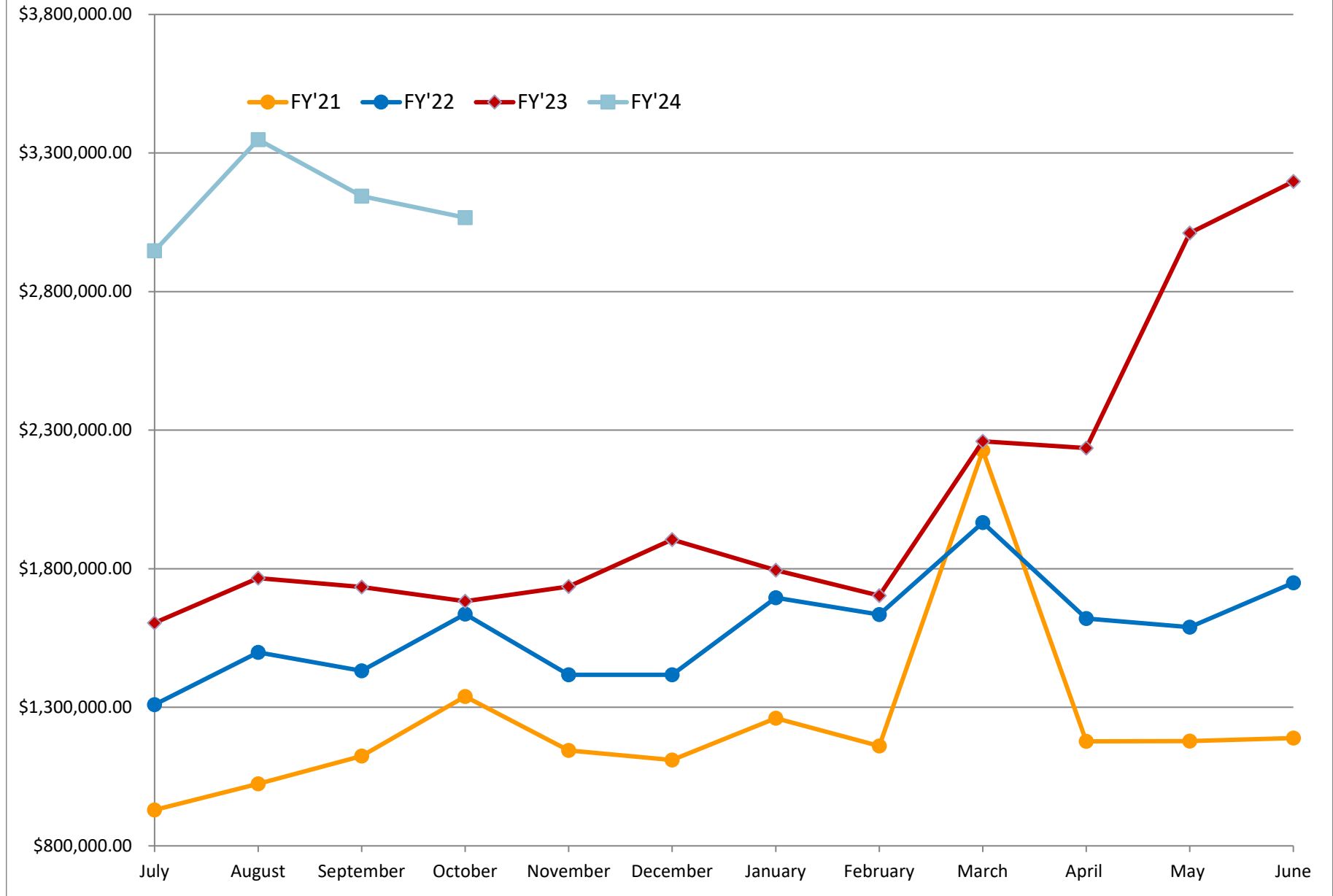
NEW CASES



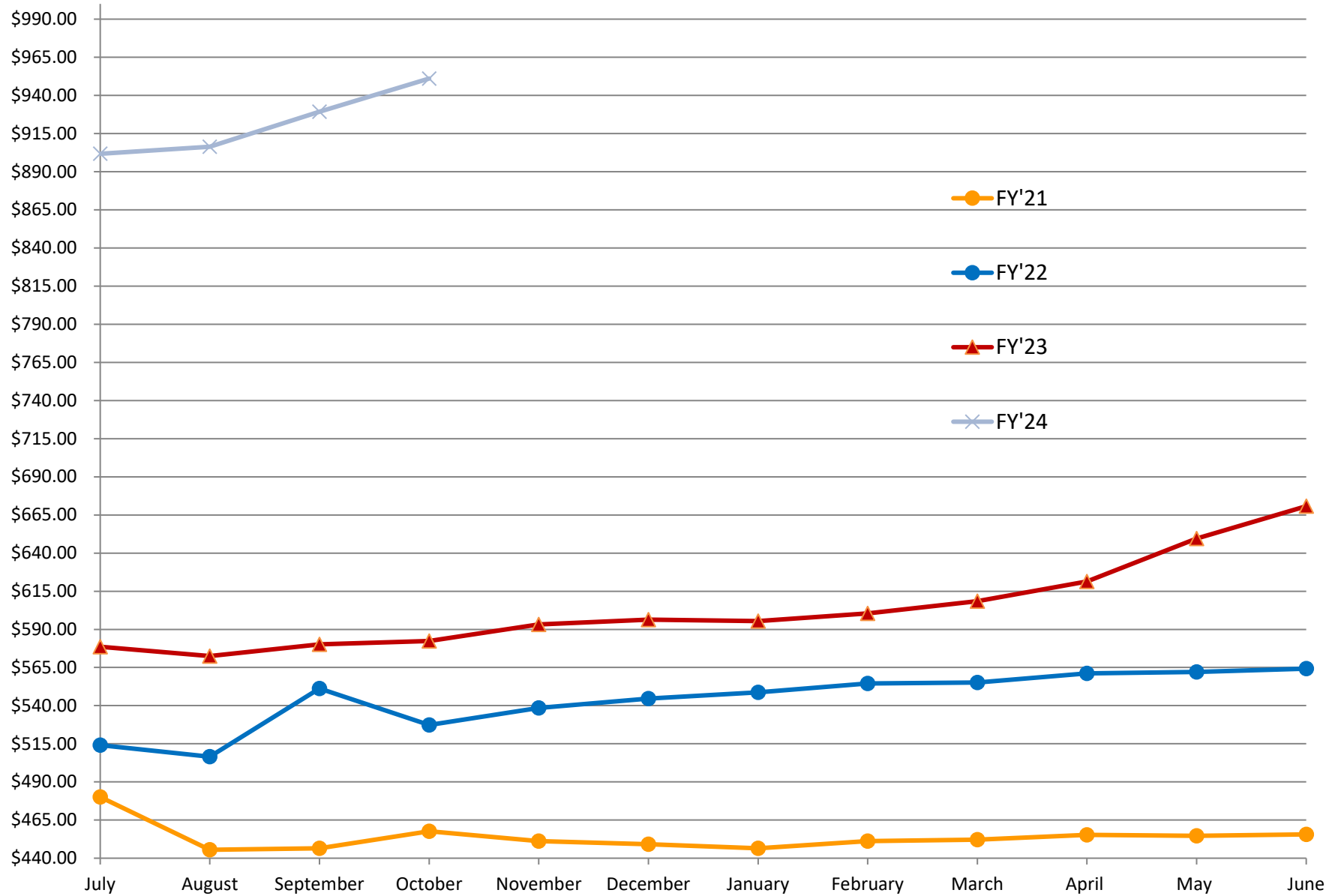
Submitted Vouchers



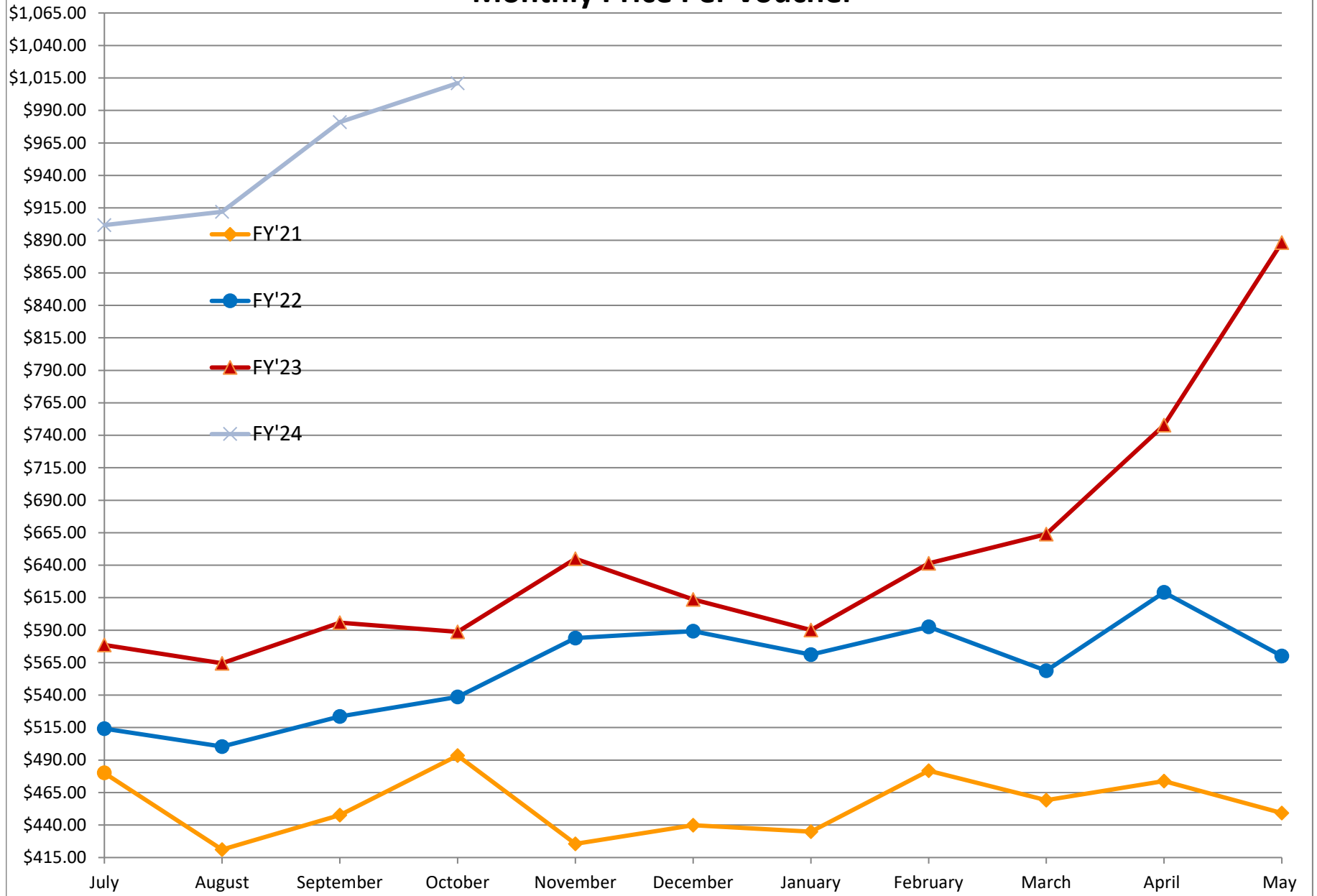
Submitted Voucher Amount

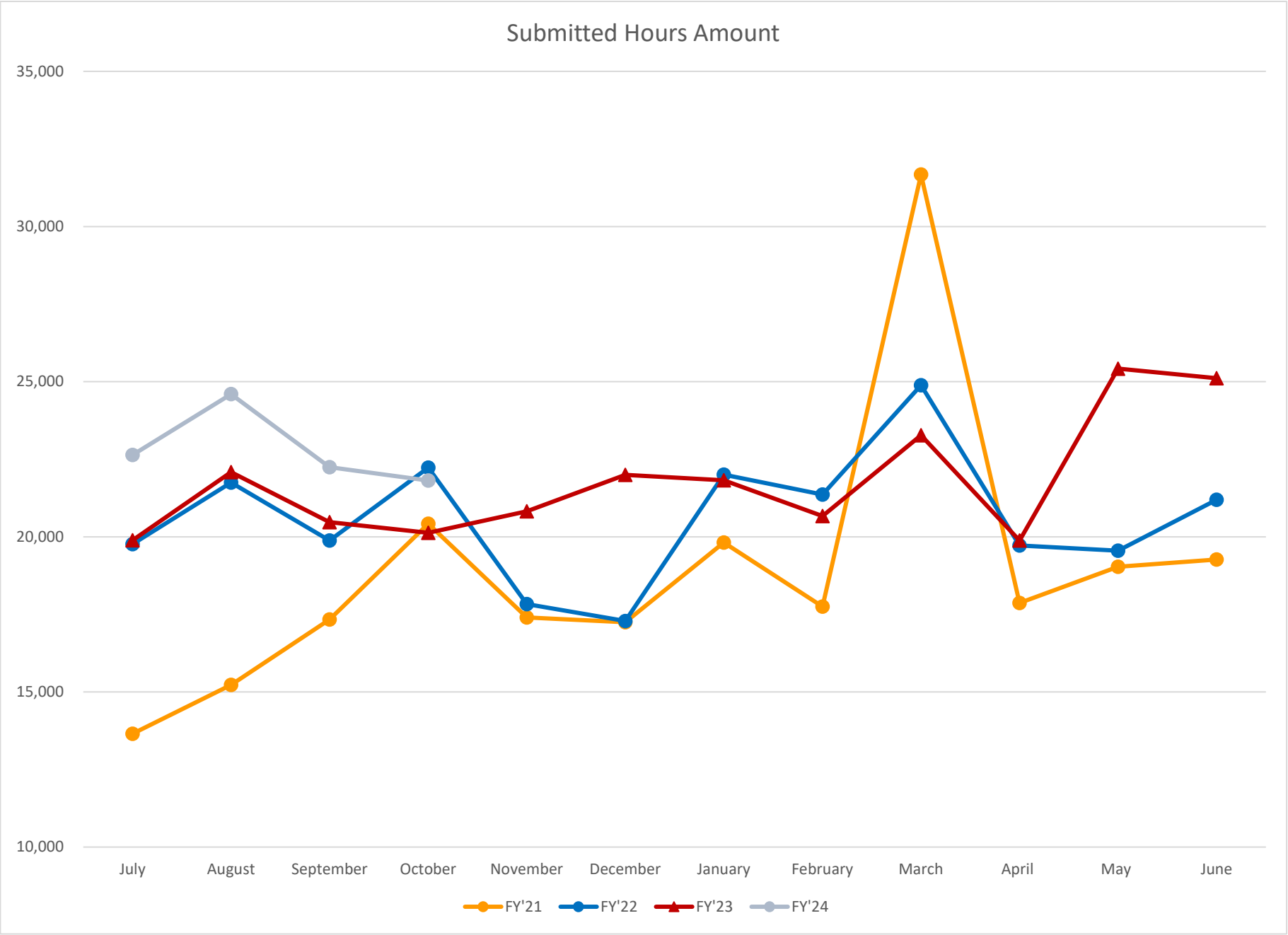


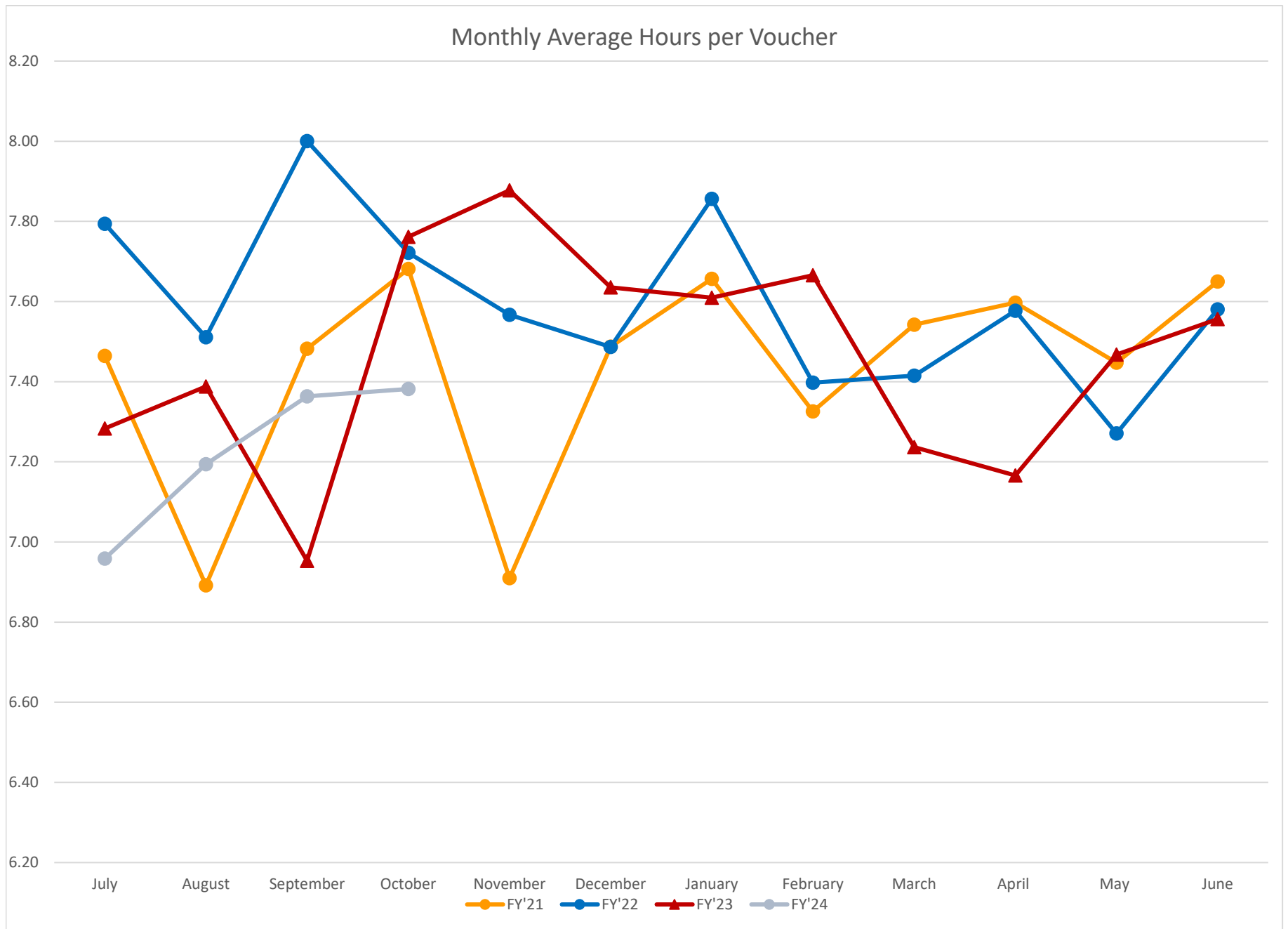
Average Voucher Price Fiscal Year to Date

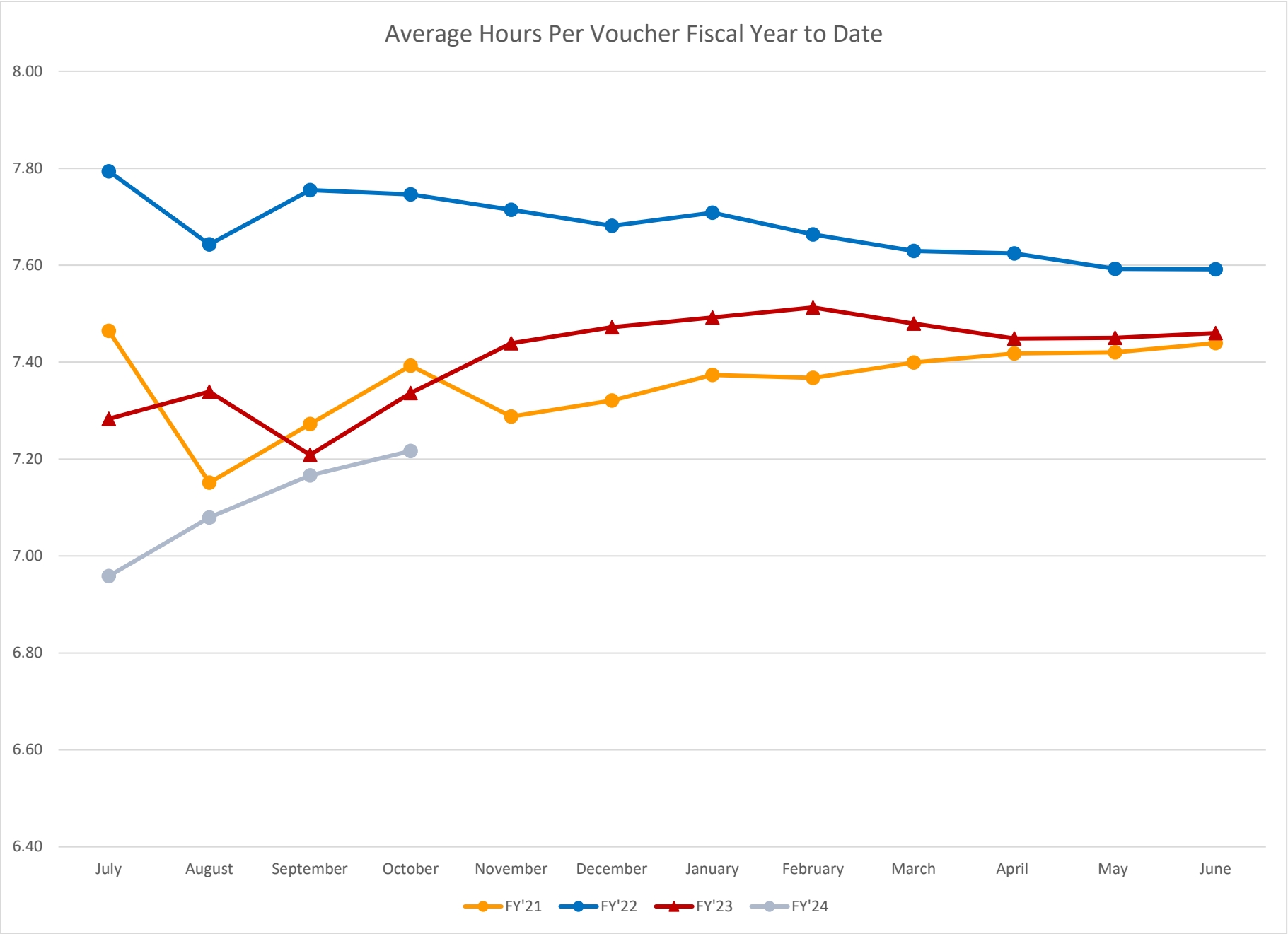


Monthly Price Per Voucher









Pending UCD Cases as of October 20, 2023

UCD	FELONY				MISDEMEANOR				CIVIL VIOLATION			ALL CASES			
	Pending	On DD	No IA	% No IA	Pending	On DD	No IA	% No IA	Pending	No IA	% No IA	Pending	On DD	No IA	% No IA
Androscoggin	750	100	64	8.5%	1,827	312	288	15.8%	12	6	50.0%	2,589	412	358	13.8%
Aroostook	647	105	47	7.3%	992	287	203	20.5%	24	15	62.5%	1,663	392	265	15.9%
Caribou	133	19	8	6.0%	196	75	31	15.8%	7	2	28.6%	336	94	41	12.2%
Fort Kent	88	17	5	5.7%	195	64	54	27.7%	7	6	85.7%	290	81	65	22.4%
Houlton	185	30	12	6.5%	246	70	55	22.4%	7	5	71.4%	438	100	72	16.4%
Presque Isle	241	39	22	9.1%	355	78	63	17.7%	3	2	66.7%	599	117	87	14.5%
Cumberland	1,357	197	138	10.2%	3,639	455	588	16.2%	86	38	44.2%	5,082	652	764	15.0%
Bridgton	23	8	1	4.3%	275	37	52	18.9%	15	8	53.3%	313	45	61	19.5%
Portland	1,311	184	136	10.4%	2,903	327	443	15.3%	55	26	47.3%	4,269	511	605	14.2%
West Bath	23	5	1	4.3%	461	91	93	20.2%	16	4	25.0%	500	96	98	19.6%
Franklin	153	36	7	4.6%	432	109	78	18.1%	9	4	44.4%	594	145	89	15.0%
Hancock	427	34	15	3.5%	663	61	111	16.7%	30	13	43.3%	1,120	95	139	12.4%
Kennebec	596	108	48	8.1%	1,500	351	379	25.3%	49	28	57.1%	2,145	459	455	21.2%
Augusta	569	97	43	7.6%	956	228	215	22.5%	31	23	74.2%	1,556	325	281	18.1%
Waterville	27	11	5	18.5%	544	123	164	30.1%	18	5	27.8%	589	134	174	29.5%
Knox	185	46	16	8.6%	428	121	86	20.1%	8	0	0.0%	621	167	102	16.4%
Lincoln	134	30	10	7.5%	372	134	41	11.0%	6	0	0.0%	512	164	51	10.0%
Oxford	442	91	39	8.8%	989	192	183	18.5%	17	8	47.1%	1,448	283	230	15.9%
Bridgton	39	8	1	2.6%	86	27	7	8.1%	0	0	#DIV/0!	125	35	8	6.4%
Rumford	157	34	12	7.6%	421	81	74	17.6%	4	2	50.0%	582	115	88	15.1%
South Paris	246	49	26	10.6%	482	84	102	21.2%	13	6	46.2%	741	133	134	18.1%
Penobscot	920	43	93	10.1%	1,574	43	416	26.4%	39	15	38.5%	2,533	86	524	20.7%
Bangor	892	42	85	9.5%	1,197	26	282	23.6%	15	1	6.7%	2,104	68	368	17.5%
Lincoln	11	0	4	36.4%	194	10	75	38.7%	17	12	70.6%	222	10	91	41.0%
Newport	17	1	4	23.5%	183	7	59	32.2%	7	2	28.6%	207	8	65	31.4%
Piscataquis	27	1	8	29.6%	112	3	57	50.9%	26	19	73.1%	165	4	84	50.9%
Sagadahoc	171	55	18	10.5%	416	167	84	20.2%	13	2	15.4%	600	222	104	17.3%
Somerset	259	50	15	5.8%	489	140	102	20.9%	15	11	73.3%	763	190	128	16.8%
Waldo	195	40	11	5.6%	301	98	47	15.6%	3	1	33.3%	499	138	59	11.8%
Washington	170	18	7	4.1%	289	54	57	19.7%	18	12	66.7%	477	72	76	15.9%
Calais	78	6	4	5.1%	132	20	25	18.9%	3	3	100.0%	213	26	32	15.0%
Machias	92	12	3	3.3%	157	34	32	20.4%	15	9	60.0%	264	46	44	16.7%
York	1,042	148	145	13.9%	3,552	807	671	18.9%	98	36	36.7%	4,692	955	852	18.2%
TOTAL	7,475	1,102	681	9.1%	17,575	3,334	3,391	19.3%	453	208	45.9%	25,503	4,436	4,280	16.8%

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

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

Change in Pending UCD Cases, October 2022 to October 2023

Pending cases as of October 20 of each year

UCD	FELONY			MISDEMEANOR			CIVIL VIOLATION			ALL CASES		
	2022	2023	% Diff	2022	2023	% Diff	2022	2023	% Diff	2022	2023	% Diff
Androscoggin	677	750	10.8%	2,036	1,827	-10.3%	12	12	0.0%	2,725	2,589	-5.0%
Aroostook	703	647	-8.0%	1,038	992	-4.4%	27	24	-11.1%	1,768	1,663	-5.9%
Caribou	166	133	-19.9%	225	196	-12.9%	4	7	75.0%	395	336	-14.9%
Fort Kent	109	88	-19.3%	201	195	-3.0%	4	7	75.0%	314	290	-7.6%
Houlton	214	185	-13.6%	305	246	-19.3%	10	7	-30.0%	529	438	-17.2%
Presque Isle	214	241	12.6%	307	355	15.6%	9	3	-66.7%	530	599	13.0%
Cumberland	1,287	1,357	5.4%	3,745	3,639	-2.8%	88	86	-2.3%	5,120	5,082	-0.7%
Bridgton	22	23	4.5%	294	275	-6.5%	16	15	-6.3%	332	313	-5.7%
Portland	1,242	1,311	5.6%	3,036	2,903	-4.4%	46	55	19.6%	4,324	4,269	-1.3%
West Bath	23	23	0.0%	415	461	11.1%	26	16	-38.5%	464	500	7.8%
Franklin	142	153	7.7%	431	432	0.2%	30	9	-70.0%	603	594	-1.5%
Hancock	339	427	26.0%	657	663	0.9%	42	30	-28.6%	1,038	1,120	7.9%
Kennebec	625	596	-4.6%	1,800	1,500	-16.7%	47	49	4.3%	2,472	2,145	-13.2%
Augusta	600	569	-5.2%	1,134	956	-15.7%	36	31	-13.9%	1,770	1,556	-12.1%
Waterville	25	27	8.0%	666	544	-18.3%	11	18	63.6%	702	589	-16.1%
Knox	218	185	-15.1%	511	428	-16.2%	16	8	-50.0%	745	621	-16.6%
Lincoln	126	134	6.3%	321	372	15.9%	5	6	20.0%	452	512	13.3%
Oxford	450	442	-1.8%	1,028	989	-3.8%	35	17	-51.4%	1,513	1,448	-4.3%
Bridgton	48	39	-18.8%	114	86	-24.6%	1	0	-100.0%	163	125	-23.3%
Rumford	168	157	-6.5%	408	421	3.2%	16	4	-75.0%	592	582	-1.7%
South Paris	234	246	5.1%	506	482	-4.7%	18	13	-27.8%	758	741	-2.2%
Penobscot	909	920	1.2%	2,143	1,574	-26.6%	52	39	-25.0%	3,104	2,533	-18.4%
Bangor	892	892	0.0%	1,657	1,197	-27.8%	23	15	-34.8%	2,572	2,104	-18.2%
Lincoln	4	11	175.0%	256	194	-24.2%	19	17	-10.5%	279	222	-20.4%
Newport	13	17	30.8%	230	183	-20.4%	10	7	-30.0%	253	207	-18.2%
Piscataquis	51	27	-47.1%	136	112	-17.6%	27	26	-3.7%	214	165	-22.9%
Sagadahoc	175	171	-2.3%	429	416	-3.0%	11	13	18.2%	615	600	-2.4%
Somerset	227	259	14.1%	518	489	-5.6%	9	15	66.7%	754	763	1.2%
Waldo	194	195	0.5%	297	301	1.3%	4	3	-25.0%	495	499	0.8%
Washington	187	170	-9.1%	350	289	-17.4%	30	18	-40.0%	567	477	-15.9%
Calais	83	78	-6.0%	142	132	-7.0%	12	3	-75.0%	237	213	-10.1%
Machias	104	92	-11.5%	208	157	-24.5%	18	15	-16.7%	330	264	-20.0%
York	1,191	1,042	-12.5%	4,324	3,552	-17.9%	151	98	-35.1%	5,666	4,692	-17.2%
TOTAL	7,501	7,475	-0.3%	19,764	17,575	-11.1%	586	453	-22.7%	27,851	25,503	-8.4%

Columns

2022	Number of cases having at least one charge without a disposition, and without a currently active warrant as of October 20, 2022
2023	Number of cases having at least one charge without a disposition, and without a currently active warrant as of October 20, 2023
% Diff	Percent change in pending cases from 2022 to 2023. Red percentages represent an increase, green percentages a decrease.

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

Change in Pending UCD Cases, October 2019 to October 2023

Pending cases as of October 20 of each year

UCD	FELONY			MISDEMEANOR			CIVIL VIOLATION			ALL CASES		
	2019	2023	% Diff	2019	2023	% Diff	2019	2023	% Diff	2019	2023	% Diff
Androscoggin	405	750	85.2%	1,299	1,827	40.6%	25	12	-52.0%	1,729	2,589	49.7%
Aroostook	415	647	55.9%	700	992	41.7%	19	24	26.3%	1,134	1,663	46.6%
Caribou	65	133	104.6%	171	196	14.6%	1	7	600.0%	237	336	41.8%
Fort Kent	47	88	87.2%	130	195	50.0%	5	7	40.0%	182	290	59.3%
Houlton	129	185	43.4%	155	246	58.7%	10	7	-30.0%	294	438	49.0%
Presque Isle	174	241	38.5%	244	355	45.5%	3	3	0.0%	421	599	42.3%
Cumberland	899	1,357	50.9%	2,501	3,639	45.5%	147	86	-41.5%	3,547	5,082	43.3%
Bridgton	12	23	91.7%	176	275	56.3%	49	15	-69.4%	237	313	32.1%
Portland	870	1,311	50.7%	2,026	2,903	43.3%	65	55	-15.4%	2,961	4,269	44.2%
West Bath	17	23	35.3%	299	461	54.2%	33	16	-51.5%	349	500	43.3%
Franklin	88	153	73.9%	294	432	46.9%	11	9	-18.2%	393	594	51.1%
Hancock	192	427	122.4%	466	663	42.3%	36	30	-16.7%	694	1,120	61.4%
Kennebec	379	596	57.3%	1,183	1,500	26.8%	41	49	19.5%	1,603	2,145	33.8%
Augusta	369	569	54.2%	644	956	48.4%	21	31	47.6%	1,034	1,556	50.5%
Waterville	10	27	170.0%	539	544	0.9%	20	18	-10.0%	569	589	3.5%
Knox	151	185	22.5%	333	428	28.5%	3	8	166.7%	487	621	27.5%
Lincoln	105	134	27.6%	238	372	56.3%	10	6	-40.0%	353	512	45.0%
Oxford	204	442	116.7%	484	989	104.3%	11	17	54.5%	699	1,448	107.2%
Bridgton	23	39	69.6%	63	86	36.5%	1	0	-100.0%	87	125	43.7%
Rumford	77	157	103.9%	208	421	102.4%	6	4	-33.3%	291	582	100.0%
South Paris	104	246	136.5%	213	482	126.3%	4	13	225.0%	321	741	130.8%
Penobscot	390	920	135.9%	1,124	1,574	40.0%	72	39	-45.8%	1,586	2,533	59.7%
Bangor	382	892	133.5%	902	1,197	32.7%	35	15	-57.1%	1,319	2,104	59.5%
Lincoln	3	11	266.7%	94	194	106.4%	21	17	-19.0%	118	222	88.1%
Newport	5	17	240.0%	128	183	43.0%	16	7	-56.3%	149	207	38.9%
Piscataquis	20	27	35.0%	53	112	111.3%	8	26	225.0%	81	165	103.7%
Sagadahoc	90	171	90.0%	296	416	40.5%	17	13	-23.5%	403	600	48.9%
Somerset	153	259	69.3%	469	489	4.3%	24	15	-37.5%	646	763	18.1%
Waldo	102	195	91.2%	277	301	8.7%	7	3	-57.1%	386	499	29.3%
Washington	107	170	58.9%	226	289	27.9%	24	18	-25.0%	357	477	33.6%
Calais	49	78	59.2%	104	132	26.9%	12	3	-75.0%	165	213	29.1%
Machias	58	92	58.6%	122	157	28.7%	12	15	25.0%	192	264	37.5%
York	715	1,042	45.7%	2,450	3,552	45.0%	101	98	-3.0%	3,266	4,692	43.7%
TOTAL	4,415	7,475	69.3%	12,393	17,575	41.8%	556	453	-18.5%	17,364	25,503	46.9%

Columns

2019	Number of cases having at least one charge without a disposition, and without a currently active warrant as of October 20, 2019
2023	Number of cases having at least one charge without a disposition, and without a currently active warrant as of October 20, 2023
% Diff	Percent change in pending cases from 2019 to 2023. Red percentages represent an increase, green percentages a decrease.

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

STATE OF MAINE
UNIFIED CRIMINAL DOCKET

STANDING ORDER ON INITIAL ASSIGNMENT OF COUNSEL

Effective November 3, 2023

Whereas, every criminal defendant has a right to counsel at every stage of the proceeding (U.S. Const. amend. VI; Me. Const. Art. 1 sec. 6; M.R.U. Crim. P. 44(a)(1));

Whereas, the Legislature has authorized the Maine Commission on Indigent Legal Services to develop and maintain a system for providing quality and efficient indigent legal services (4 M.R.S. § 1804(3)(A) (2023));

Whereas, counsel assigned by the court to indigent defendants must be designated by the Maine Commission on Indigent Legal Services as eligible to receive assignments for the type of case to which counsel is to be assigned (M.R.U. Crim. P. 44(a)(1));

Whereas, rosters of attorneys designated by the Maine Commission on Indigent Legal Services as eligible for assignment are frequently inadequate to timely ensure court-appointed counsel for indigent defendants at every stage of the proceeding;

Whereas, criminal proceedings may be delayed by the process of assigning court-appointed counsel because the Maine Commission on Indigent Legal Services is unable to meet its statutory obligation as set forth and required by 4 M.R.S. § 1804(3)(A) (2023), or may be delayed by a defendant's retention of counsel;

Whereas, the court has duties to protect a criminal defendant's constitutional rights and ensure the appointment of counsel to indigent defendants, and ensure the speedy administration of justice;

NOW, THEREFORE, it is ORDERED as follows:

To ensure no process for seeking an attorney causes undue delay in the proceedings, the court shall determine the status of a criminal defendant's constitutionally protected right to counsel by bringing before the court (A) any defendant who is entitled to an assigned attorney and remains in custody awaiting an assignment, or (B) any defendant who expressed an intent to retain counsel or seek an indigency determination.

A. In-Custody Defendants

When an in-custody defendant is entitled to court-appointed counsel, but counsel is unavailable for assignment at the time of the initial appearance, that person shall be brought before the court on the next convenient date on which in-custody arraignments

are held, but in no event later than seven (7) days after the date of the initial appearance. Such appearance may be by audiovisual device in the discretion of the court.

At the subsequent appearance, the court shall advise the defendant of the defendant's right to counsel and assign counsel if counsel is available for assignment. If counsel is unavailable for assignment, a lawyer for the day may be designated for the limited purpose of representing the person at that appearance. The court shall proceed to hear motions regarding bail and other matters as necessary and may take such action as the court deems appropriate.

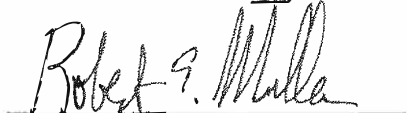
B. Defendants Not in Custody

When a defendant who is not in custody is unrepresented at the time of the initial appearance or arraignment and indicates an intent to seek a determination of indigency or to retain counsel, the court shall require the defendant to (1) file a financial affidavit for purposes of a determination of indigency the same day of the initial appearance or arraignment or (2) retain counsel and have the attorney file an entry of appearance within thirty (30) days of the initial appearance or arraignment. If no affidavit or entry of appearance is filed, the court shall require the defendant to appear at a conference not later than thirty (30) days before the dispositional conference.

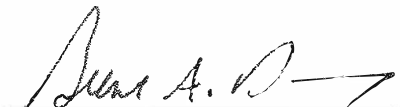
If a conference is held prior to a dispositional conference, the court shall determine whether the defendant has been assigned counsel or has retained counsel. If the defendant appears without counsel, the court shall advise the defendant of the defendant's right to counsel and inquire as to whether the defendant elects to proceed without counsel. The court will advise the defendant that unless the defendant files a financial affidavit for purposes of a determination of indigency before leaving the courthouse or retains counsel within two (2) weeks, the defendant risks the court finding that the defendant forfeited their right to assigned counsel by their noncompliance with this order.

SO ORDERED.

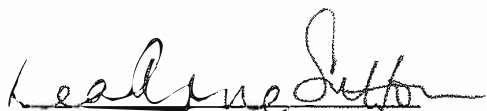
Dated: November 3, 2023



Robert E. Mullen, Chief Justice
Maine Superior Court



Brent A. Davis, Chief Judge
Maine District Court



Lea-Anne Sutton, Deputy Chief Judge
Maine District Court

STATE OF MAINE
SUPREME JUDICIAL COURT



VALERIE STANFILL
CHIEF JUSTICE

MAILING ADDRESS:
163 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0163
(207) 213-2951
EMAIL: chiefjustice@courts.maine.gov

October 12, 2023

Jim Billings, Esq.
Executive Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, Maine 04333

Dear Mr. Billings,

I write in response to your letter seeking approval under M.R.U. Crim. P. 56 and M.R. Civ. P. 90 for MCLIS to use eligible law students to provide legal services to the indigent. Obviously MCLIS is critical in ensuring availability of constitutionally required counsel to indigent persons in criminal, juvenile and child protective cases, and the shortage of such counsel is a crisis in this state. Your request has been carefully considered by the full Supreme Judicial Court.

Law students eligible under M.R. Civ. P. 90(b) may appear in court and file pleadings under the direction of a supervising attorney. You mentioned other activities such as conducting legal research, but of course certification is not necessary for law students to assist counsel outside of court.


Organizational approval of MCLIS under Rules 56(a) and 90(a) is different than that of other previously-approved legal services providers. When Pine Tree Legal Assistance, Cumberland Legal Aid Clinic, or other providers utilize eligible law students, the organizations and their attorney employees are directly responsible for the student supervision. In contrast, although MCLIS employs a small number of public defenders, most of the representation is contracted out to privately employed attorneys. Based on your letter, we understand you are seeking approval for both situations.

When MCLIS contracts with a private attorney in a particular case, MCLIS does not itself engage in direct representation. Rather, it is that attorney who would be required to provide the appropriate supervision of the student. Thus, if we were to approve MCLIS generally under Rules 56 and 90, it is unknown who will actually

supervise the student or how the attorney will go about it. The Court therefore has concerns about the standards for and effectiveness of supervision, and at this time denies the request with respect to contracted private attorneys. Again, with that said, nothing prevents those attorneys from utilizing law students for assistance outside of direct representation in court.

With respect to public defenders MCLIS directly employs, MCLIS is approved under M.R.U. Crim. P. 56 and M.R. Civ. P. 90(a) to use eligible law students to provide legal services to the indigent.

Thank you for reaching out on this issue, and I look forward to beginning to see the occasional student attorney. Please let me know if you have any questions.

Very truly yours,

Valerie Stanfill
Chief Justice

VS:lr

cc: Matthew Pollack, Esq., Clerk, Maine Supreme Judicial Court
Chief Justice Robert E. Mullen, Superior Court
Chief Judge Brent Davis, District Court
Deputy Chief Judge Lea-Anne Sutton, District Court

STATE OF MAINE
SUPREME JUDICIAL COURT



VALERIE STANFILL
CHIEF JUSTICE

MAILING ADDRESS:
163 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0163
(207) 213-2951
EMAIL: chiefjustice@courts.maine.gov

October 12, 2023

Jim Billings, Esq.
Executive Director
Maine Commission on Indigent Legal Services
154 State House Station
Augusta, Maine 04333

Dear Mr. Billings, *Jim*

I write in response to your letter requesting that MCILS be granted a position on four of the Rules Advisory Committees. Your request has been carefully considered by the full Supreme Judicial Court.

As you noted, the Attorney General's office has ex officio representation on each of the committees. With regard to the Advisory Committee on the Rules of Civil Procedure, the chair of the U.S.D.C. local rules committee also has a seat. Those are the only ex officio seats on the committees that you name. There are many worthy and interested organizations in Maine—Maine State Bar Association, Maine Trial Lawyers Association, Maine Association of Criminal Defense Lawyers, Maine Prosecutors Association—but none have standing seats on the rules advisory committees although I am sure many would like to. And, I suggest that the Attorney General is different, because that office is required to render any legal services required by the Judicial Branch, including advice. *See* 5 M.R.S. § 191. Given that background, the Supreme Judicial Court is not willing to grant MCILS an ex officio seat on the Rules Advisory Committees.

That said, we do want broad-based participation, and seats on the committees are frequently open. The voices of MCLIS and its contract attorneys are important. If individuals at MCLIS are interested in serving, or if there are attorneys you would like to see involved, we have a form for the expression of interest, which is <https://www.courts.maine.gov/about/committees/express-interest-court-committee-form.pdf>. You may also want to reach out to the chairs or the SJC judicial liaisons for each committee if you have suggestions for people who may be willing to

serve. Again, we are always looking for people and would love to hear any suggestions.

Thank you for your interest. Please let me know if you have any questions or concerns.

Very truly yours,


Valerie Stanfill
Chief Justice

VS:lr

cc: Justice Joseph M. Jabar, SJC liaison to Advisory Committee on the Rules of Unified Criminal Procedure and to Advisory Committee on the Rules of Evidence;
Justice Catherine R. Connors, SJC liaison to Advisory Committee on the Rules of Appellate Procedure;
Justice Wayne R. Douglas, SJC liaison to Advisory Committee on the Rules of Civil Procedure

STATE OF MAINE
Maine Commission on Indigent Legal Services



RFP# (Inserted by Procurement Services when assigned/approved)

Social Worker Services for Indigent Defendants & Juveniles

RFP Coordinator	<i>All communication regarding the RFP <u>must</u> be made through the RFP Coordinator identified below.</i> Name: Jim Billings Title: Executive Director Contact Information: MCILS@maine.gov
Bidders' Conference	Date: (Insert Date) Time: (Insert Time), local time Location: (Insert Location)
Submitted Questions Due	<i>All questions <u>must</u> be received by the RFP Coordinator identified above by:</i> Date: (Insert Date), no later than 11:59 p.m., local time
Proposal Submission	<i>Proposals <u>must</u> be received by the Division of Procurement Services by:</i> Submission Deadline: (Insert Date), no later than 11:59 p.m., local time. <i>Proposals <u>must</u> be submitted electronically to the following address:</i> Electronic (e-mail) Submission Address: Proposals@maine.gov

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PUBLIC NOTICE

State of Maine
Maine Commission on Indigent Legal Services
RFP# (Inserted by Procurement Services when assigned/approved)
Social Worker Services for Indigent Defendants & Juveniles

The State of Maine is seeking proposals for social worker services for indigent defendants in criminal cases and juveniles who are charged with offenses that, if committed by an adult, would be a criminal offense.

A copy of the RFP, as well as the Question & Answer Summary and all amendments related to the RFP, can be obtained at:

<https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps>

A Bidders' Conference will be held on (insert date) at (Insert time) at the following location:
(Insert address)

Proposals must be submitted to the State of Maine Division of Procurement Services, via e-mail, at: Proposals@maine.gov. Proposal submissions must be received no later than 11:59 p.m., local time, on (Insert date). Proposals will be opened the following business day. Proposals not submitted to the Division of Procurement Services' aforementioned e-mail address by the aforementioned deadline will not be considered for contract award.

RFP TERMS/ACRONYMS with DEFINITIONS

The following terms and acronyms, as referenced in the RFP, shall have the meanings indicated below:

<u>Term/Acronym</u>	<u>Definition</u>
Department	Maine Commission on Indigent Legal Services
RFP	Request for Proposal
State	State of Maine

State of Maine - Maine Commission on Indigent Legal Services
RFP# (Inserted by Procurement Services when assigned/approved)
Social Worker Services for Indigent Defendants & Juveniles

PART I INTRODUCTION

A. Purpose and Background

The Maine Commission on Indigent Legal Services (Department) is seeking social worker services for indigent defendants and juveniles as defined in this Request for Proposal (RFP) document. This document provides instructions for submitting proposals, the procedure and criteria by which the awarded Bidder will be selected, and the contractual terms which will govern the relationship between the State of Maine (State) and the awarded Bidder.

The Department is charged with providing high-quality representation consistent with constitutional and statutory obligations to defendants in criminal cases and juveniles who are charged with offenses that—if committed by an adult—would be crimes. 4 M.R.S.A. § 1801. The Department is also obligated to consider other programs which are necessary to achieve that objective. 4 M.R.S.A. § 1801(3)(A). In many criminal and juvenile cases, there are proactive steps a client can take that will help them achieve more favorable case outcomes. However, there are often barriers to the client accessing the resources needed to take those proactive steps. Additionally, individualized mitigation work by the defense can result in better dispositions and lower sentences.

The Department is seeking qualified bidders who are adept at assessing a client's strengths, challenges, and needs and are able to aid the client in getting connected with resources that could benefit them. Some resources include but are not limited to, mental health treatment, substance use treatment, medical care, case management, parenting classes, driver improvement courses, and anger management classes. This includes helping the client overcome barriers to accessing resources, including transportation, insurance, and lack of financial resources. The Department is seeking qualified bidders who are also skilled at conducting thorough mitigation investigations and reports. This includes meeting with the clients and their supports; obtaining photos, documents, and records through various means; and generating reports, videos, and/or presentations.

B. General Provisions

1. From the time the RFP is issued until award notification is made, all contact with the State regarding the RFP must be made through the RFP Coordinator. No other person/ State employee is empowered to make binding statements regarding the RFP. Violation of this provision may lead to disqualification from the bidding process, at the State's discretion.
2. Issuance of the RFP does not commit the Department to issue an award or to pay expenses incurred by a Bidder in the preparation of a response to the RFP. This includes attendance at personal interviews or other meetings and software or system demonstrations, where applicable.
3. All proposals must adhere to the instructions and format requirements outlined in the RFP and all written supplements and amendments (such as the Summary of Questions and Answers), issued by the Department. Proposals are to follow the format and respond to all questions and instructions specified below in the "Proposal Submission Requirements" section of the RFP.

4. Bidders will take careful note that in evaluating a proposal submitted in response to the RFP, the Department will consider materials provided in the proposal, information obtained through interviews/presentations (if any), and internal Departmental information of previous contract history with the Bidder (if any). The Department also reserves the right to consider other reliable references and publicly available information in evaluating a Bidder's experience and capabilities.
5. The proposal must be signed by a person authorized to legally bind the Bidder and must contain a statement that the proposal and the pricing contained therein will remain valid and binding for a period of 180 days from the date and time of the bid opening.
6. The RFP and the awarded Bidder's proposal, including all appendices or attachments, will be the basis for the final contract, as determined by the Department.
7. Following announcement of an award decision, all submissions in response to this RFP will be public records, available for public inspection pursuant to the State of Maine Freedom of Access Act (FOAA) ([1 M.R.S. § 401](#) et seq.).
8. The Department, at its sole discretion, reserves the right to recognize and waive minor informalities and irregularities found in proposals received in response to the RFP.
9. All applicable laws, whether or not herein contained, are included by this reference. It is the Bidder's responsibility to determine the applicability and requirements of any such laws and to abide by them.

C. Eligibility to Submit Bids

All interested parties are invited to submit bids in response to this Request for Proposals.

Bidder must have, at a minimum, a bachelor's degree in psychology, sociology, social and behavioral science, social work, or related field. Licensed clinical social workers are preferred.

D. Contract Term

The Department is seeking a cost-efficient proposal to provide services, as defined in the RFP, for the anticipated contract period defined in the table below. Please note, the dates below are estimated and may be adjusted, as necessary, in order to comply with all procedural requirements associated with the RFP and the contracting process. The actual contract start date will be established by a completed and approved contract.

Contract Renewal: Following the initial term of the contract, the Department may opt to renew the contract for **three (3) one (1) year** renewal periods, as shown in the table below, and subject to continued availability of funding and satisfactory performance.

The term of the anticipated contract, resulting from the RFP, is defined as follows:

Period	Start Date	End Date
Initial Period of Performance	(Insert date)	(Insert date)
Renewal Period #1	(Insert date)	(Insert date)
Renewal Period #2	(Insert date)	(Insert date)

E. Number of Awards

The Department anticipates making **multiple** awards as a result of the RFP process.

PART II SCOPE OF SERVICES TO BE PROVIDED

The successful Bidders will serve as social workers for indigent defendants and juveniles, upon the request of the defendants' attorneys. The specific tasks are outlined below. The work will be performed at the Bidders' offices or a State facility, at the Bidders' election. The work may require travel as outlined below. The Bidders will each be required to provide a minimum of 1,500 and a maximum of 2,000 hours of service annually

- A.** Meet and correspond with clients, their attorneys, their providers, or caseworkers, upon request of the client's attorney.
- B.** Aid clients with scheduling and attending appropriate evaluations.
- C.** Assist clients in getting connected with needed services which will help them achieve a favorable outcome in their criminal or juvenile cases, including but not limited to:
 - 1. Mental health treatment.
 - 2. Substance use treatment.
 - 3. Medical care.
 - 4. Case management.
 - 5. Parenting classes.
 - 6. Anger management classes.
 - 7. Childcare, or any other necessary services for children in their care.
 - 8. Driver improvement courses.
- D.** Assist clients with achieving goals which will help them achieve a favorable outcome in their criminal or juvenile cases, including but not limited to:
 - 1. Obtaining a driver's license.
 - 2. Securing stable housing.
 - 3. Enrolling in education programs.
 - 4. Securing employment.
 - 5. Paying restitution.
- E.** Assist clients with overcoming barriers to obtaining services and achieving goals that will help them achieve a favorable outcome in their criminal or juvenile cases, including but not limited to:
 - 1. Health insurance.
 - 2. Transportation.
 - 3. Lack of financial resources.
 - 4. Housing.
- F.** Attend meetings if requested by clients' attorneys.
- G.** Obtain releases of information and communicate with other service providers working with the client or their family.
- H.** Attend court proceedings, if requested by clients' attorneys.
- I.** Maintain a statewide list of service providers and resources for defendants and juveniles involved in the justice system cases. This includes keeping the contact and other information about the provider or resource current.
- J.** Provide trainings to eligible attorneys, at the request of the Department.
- K.** Provide mitigation services, including but not limited to:
 - 1. Interviewing clients, their supports, and potential witnesses.
 - 2. Gathering documents, photos, letters, and records using various means.
 - 3. Generating thorough mitigation reports.
 - 4. Creating videos or other demonstratives.
 - 5. Assisting attorneys in preparing their clients to testify.

PART III KEY RFP EVENTS

A. Questions

1. **General Instructions:** It is the responsibility of all Bidders and other interested parties to examine the entire RFP and to seek clarification, in writing, if they do not understand any information or instructions.
 - a. Bidders and other interested parties must use **Appendix E – Submitted Questions Form** – for submission of questions. The form is to be submitted as a WORD document.
 - b. The Submitted Questions Form must be submitted, by e-mail, and received by the RFP Coordinator, identified on the cover page of the RFP, as soon as possible but no later than the date and time specified on the RFP cover page.
 - c. Submitted Questions must include the RFP Number and Title in the subject line of the e-mail. The Department assumes no liability for assuring accurate/complete/on time e-mail transmission and receipt.
2. **Question & Answer Summary:** Responses to all questions will be compiled in writing and posted on the following website no later than seven (7) calendar days prior to the proposal due date: [Division of Procurement Services RFP Page](#). It is the responsibility of all interested parties to go to this website to obtain a copy of the Question & Answer Summary. Only those answers issued in writing on this website will be considered binding.

B. Amendments

All amendments released in regard to the RFP will also be posted on the following website: [Division of Procurement Services RFP Page](#). It is the responsibility of all interested parties to go to this website to obtain amendments. Only those amendments posted on this website are considered binding.

C. Submitting the Proposal

1. **Proposals Due:** Proposals must be received no later than 11:59 p.m. local time, on the date listed on the cover page of the RFP. E-mails containing original proposal submissions, or any additional or revised proposal files, received after the 11:59 p.m. deadline will be rejected without exception.
2. **Delivery Instructions:** E-mail proposal submissions are to be submitted to the State of Maine Division of Procurement Services at Proposals@maine.gov.
 - a. Only proposal submissions received by e-mail will be considered. The Department assumes no liability for assuring accurate/complete e-mail transmission and receipt.
 - b. E-mails containing links to file sharing sites or online file repositories will not be accepted as submissions. Only e-mail proposal submissions that have the actual requested files attached will be accepted.
 - c. Encrypted e-mails received which require opening attachments and logging into a proprietary system will not be accepted as submissions. Please check with your organization's Information Technology team to ensure that your security settings will not encrypt your proposal submission.
 - d. File size limits are 25MB per e-mail. Bidders may submit files separately across

multiple e-mails, as necessary, due to file size concerns. All e-mails and files must be received by the due date and time listed above.

- e. Bidders are to insert the following into the subject line of their e-mail proposal submission: “**RFP# (Inserted by Procurement Services when assigned/approved)**
Proposal Submission – [Bidder’s Name]”
- f. Bidder’s proposal submissions are to be broken down into multiple files, with each file named as it is titled in bold below, and include:

- **File 1 [Bidder’s Name] – Preliminary Information:**

PDF format preferred

Appendix A (Proposal Cover Page)

Appendix B (Debarment, Performance and Non-Collusion Certification)

All required eligibility documentation stated in PART IV, Section I

- **File 2 [Bidder’s Name] – Organization Qualifications and Experience:**

PDF format preferred

Appendix C (Organization Qualifications and Experience Form) and all required information and attachments stated in PART IV, Section II.

- **File 3 [Bidder’s Name] – Proposed Services:**

PDF format preferred

All required information and attachments stated in PART IV, Section III.

- **File 4 [Bidder’s Name] – Cost Proposal:**

PDF format preferred

Appendix D (Cost Proposal Form) and all required information and attachments stated in PART IV, Section IV.

PART IV PROPOSAL SUBMISSION REQUIREMENTS

This section contains instructions for Bidders to use in preparing their proposals. The Department seeks detailed yet succinct responses that demonstrate the Bidder's qualifications, experience, and ability to perform the requirements specified throughout the RFP.

The Bidder's proposal must follow the outline used below, including the numbering, section, and sub-section headings. Failure to use the outline specified in PART IV, or failure to respond to all questions and instructions throughout the RFP, may result in the proposal being disqualified as non-responsive or receiving a reduced score. The Department, and its evaluation team, has sole discretion to determine whether a variance from the RFP specifications will result either in disqualification or reduction in scoring of a proposal. Rephrasing of the content provided in the RFP will, at best, be considered minimally responsive.

Bidders are not to provide additional attachments beyond those specified in the RFP for the purpose of extending their response. Additional materials not requested will not be considered part of the proposal and will not be evaluated. Include any forms provided in the submission package or reproduce those forms as closely as possible. All information must be presented in the same order and format as described in the RFP.

Proposal Format and Contents

Section I Preliminary Information (File #1)

1. Proposal Cover Page

Bidders must complete **Appendix A** (Proposal Cover Page). It is critical that the cover page show the specific information requested, including Bidder address(es) and other details listed. The Proposal Cover Page must be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.

2. Debarment, Performance and Non-Collusion Certification

Bidders must complete **Appendix B** (Debarment, Performance and Non-Collusion Certification Form). The Debarment, Performance and Non-Collusion Certification Form must be dated and signed by a person authorized to enter into contracts on behalf of the Bidder.

3. Eligibility Requirements

Bidders must provide documentation to demonstrate meeting eligibility requirements stated in PART I, C. of the RFP. This documentation includes:

Proof of bachelor's degree in psychology, sociology, social and behavioral science, social work, or related field.

Section II Organization Qualifications and Experience (File #2)

1. Overview of the Organization

Bidders must complete **Appendix C** (Qualifications and Experience Form) describing their qualifications and skills to provide the requested services in the RFP. Bidders must include three examples of projects which demonstrate their experience and expertise in performing these services as well as highlighting the Bidder's stated qualifications and skills.

2. Subcontractors

If subcontractors are to be used, Bidders must provide a list that specifies the name, address, phone number, contact person, and a brief description of the subcontractors' organizational capacity and qualifications.

3. Organizational Chart

Bidders must provide an organizational chart. The organizational chart must include the project being proposed. Each position must be identified by position title and corresponding to the personnel job descriptions.

4. Litigation

Bidders must attach a list of all current litigation in which the Bidder is named and a list of all closed cases that have closed within the past five (5) years in which the Bidder paid the claimant either as part of a settlement or by decree. For each, list the entity bringing suit, the complaint, the accusation, amount, and outcome.

5. Licensure/Certification

Bidders may provide documentation of any applicable licensure/certification or specific credentials that are related to providing the proposed services of the RFP. This documentation may include:

If Bidder is a licensed clinical social worker, proof of licensure must be provided.

6. Certificate of Insurance

Bidders must provide a certificate of insurance on a standard ACORD form (or the equivalent) evidencing the Bidder's general liability, professional liability and any other relevant liability insurance policies that might be associated with the proposed services.

Section III Proposed Services (File #3)

1. Services to be Provided

Describe the Bidder's plan for providing effective, comprehensive, and prompt services as described in Part II of this RFP. The plan should address how Bidder will aid clients with each of the tasks outlined in Part II of this RFP. The successful Bidder will be required to provide monthly reporting to the Department, including the number of attorney referrals received, the number clients assisted, the number of hours spent providing direct client services, and an itemized list of the number of hours spent on other tasks (such as maintaining the list of available resources and providing trainings).

Section IV Cost Proposal (File #4)

1. General Instructions

- a. The Bidder must submit a cost proposal that covers the entire period of the initial contract and any optional renewal periods. Please use the expected "Initial Period of Performance" dates stated in PART I, D.**
- b. The cost proposal must include the costs necessary for the Bidder to fully comply with the contract terms, conditions, and RFP requirements.**
- c. No costs related to the preparation of the proposal for the RFP, or to the negotiation of the contract with the Department, may be included in the proposal. Only costs to be incurred after the contract effective date that are specifically related to the implementation or operation of contracted services may be included.**

2. Cost Proposal Form Instructions

The Department is seeking proposals for social worker services on a fixed annual cost basis. The successful bidder will be required to provide a minimum of 1,500 and a maximum of 2,000 hours of service annually.

Bidders must fill out **Appendix D** (Cost Proposal Form), following the instructions detailed here and in the form. Failure to provide the requested information, and to follow the required cost proposal format provided, may result in the exclusion of the proposal from consideration, at the discretion of the Department.

DRAFT

PART V PROPOSAL EVALUATION AND SELECTION

Evaluation of the submitted proposals will be accomplished as follows:

A. Evaluation Process - General Information

1. An evaluation team, composed of qualified reviewers, will judge the merits of the proposals received in accordance with the criteria defined in the RFP.
2. Officials responsible for making decisions on the award selection will ensure that the selection process accords equal opportunity and appropriate consideration to all who are capable of meeting the specifications. The goals of the evaluation process are to ensure fairness and objectivity in review of the proposals and to ensure that the contract is awarded to the Bidder whose proposal provides the best value to the State of Maine.
3. The Department reserves the right to communicate and/or schedule interviews/presentations with Bidders, if needed, to obtain clarification of information contained in the proposals received. The Department may revise the scores assigned in the initial evaluation to reflect those communications and/or interviews/presentations. Changes to proposals, including updating or adding information, will not be permitted during any interview/presentation process and, therefore, Bidders must submit proposals that present their rates and other requested information as clearly and completely as possible.

B. Scoring Weights and Process

1. **Scoring Weights:** The score will be based on a 100-point scale and will measure the degree to which each proposal meets the following criteria.

Section I. Preliminary Information (No Points – Eligibility Requirements)

Includes all elements addressed above in Part IV, Section I.

Section II. Organization Qualifications and Experience (50 points)

Includes all elements addressed above in Part IV, Section II.

Section III. Proposed Services (25 points)

Includes all elements addressed above in Part IV, Section III.

Section IV. Cost Proposal (25 points)

Includes all elements addressed above in Part IV, Section IV.

2. **Scoring Process:** For proposals that demonstrate meeting the eligibility requirements in Section I, the evaluation team will use a consensus approach to evaluate and score Sections II & III above. Members of the evaluation team will not score those sections individually but, instead, will arrive at a consensus as to assignment of points for each of those sections. Section IV, the Cost Proposal, will be scored as described below.
3. **Scoring the Cost Proposal:** The total cost proposed for conducting all the functions specified in the RFP will be assigned a score according to a mathematical formula. The lowest bid will be awarded 25 points. Proposals with higher bids values will be awarded proportionately fewer points calculated in comparison with the lowest bid.

The scoring formula is:

(Lowest submitted cost proposal / Cost of proposal being scored) x 25 = pro-rated score

No Best and Final Offers: The State of Maine will not seek or accept a best and final offer (BAFO) from any Bidder in this procurement process. All Bidders are expected to provide their best value pricing with the submission of their proposal.

4. **Negotiations:** The Department reserves the right to negotiate with the awarded Bidder to finalize a contract. Such negotiations may not significantly vary the content, nature or requirements of the proposal or the Department's Request for Proposal to an extent that may affect the price of goods or services requested. The Department reserves the right to terminate contract negotiations with an awarded Bidder who submits a proposed contract significantly different from the proposal they submitted in response to the advertised RFP. In the event that an acceptable contract cannot be negotiated with the highest ranked Bidder, the Department may withdraw its award and negotiate with the next-highest ranked Bidder, and so on, until an acceptable contract has been finalized. Alternatively, the Department may cancel the RFP, at its sole discretion.

C. Selection and Award

1. The final decision regarding the award of the contract will be made by representatives of the Department subject to approval by the State Procurement Review Committee.
2. Notification of conditional award selection or non-selection will be made in writing by the Department.
3. Issuance of the RFP in no way constitutes a commitment by the State of Maine to award a contract, to pay costs incurred in the preparation of a response to the RFP, or to pay costs incurred in procuring or contracting for services, supplies, physical space, personnel or any other costs incurred by the Bidder.
4. The Department reserves the right to reject any and all proposals or to make multiple awards.

D. Appeal of Contract Awards

Any person aggrieved by the award decision that results from the RFP may appeal the decision to the Director of the Bureau of General Services in the manner prescribed in [5 M.R.S.A. § 1825-E](#) and [18-554 Code of Maine Rules Chapter 120](#). The appeal must be in writing and filed with the Director of the Bureau of General Services, 9 State House Station, Augusta, Maine, 04333-0009 within 15 calendar days of receipt of notification of conditional contract award.

PART VI CONTRACT ADMINISTRATION AND CONDITIONS

A. Contract Document

1. The awarded Bidder will be required to execute a State of Maine **Service Contract** with appropriate riders as determined by the issuing department.

The complete set of standard State of Maine Service Contract documents, along with other forms and contract documents commonly used by the State, may be found on the Division of Procurement Services' website at the following link: [Division of Procurement Services Forms Page](#)

2. Allocation of funds is final upon successful negotiation and execution of the contract, subject to the review and approval of the State Procurement Review Committee. Contracts are not considered fully executed and valid until approved by the State Procurement Review Committee and funds are encumbered. No contract will be approved based on an RFP which has an effective date less than fourteen (14) calendar days after award notification to Bidders. (Referenced in the regulations of the Department of Administrative and Financial Services, [Chapter 110, § 3\(B\)\(i\).](#))

This provision means that a contract cannot be effective until at least 14 calendar days after award notification.

3. The State recognizes that the actual contract effective date depends upon completion of the RFP process, date of formal award notification, length of contract negotiation, and preparation and approval by the State Procurement Review Committee. Any appeals to the Department's award decision(s) may further postpone the actual contract effective date, depending upon the outcome. The contract effective date listed in the RFP may need to be adjusted, if necessary, to comply with mandated requirements.
4. In providing services and performing under the contract, the awarded Bidder must act as an independent contractor and not as an agent of the State of Maine.

B. Standard State Contract Provisions

1. Contract Administration

Following the award, a Contract Administrator from the Department will be appointed to assist with the development and administration of the contract and to act as administrator during the entire contract period. Department staff will be available after the award to consult with the awarded Bidder in the finalization of the contract.

2. Payments and Other Provisions

The State anticipates paying the Contractor on the basis of net 30 payment terms, upon the receipt of an accurate and acceptable invoice. An invoice will be considered accurate and acceptable if it contains a reference to the State of Maine contract number, contains correct pricing information relative to the contract, and provides any required supporting documents, as applicable, and any other specific and agreed-upon requirements listed within the contract that results from the RFP.

PART VII LIST OF RFP APPENDICES AND RELATED DOCUMENTS

Appendix A – Proposal Cover Page

Appendix B – Debarment, Performance, and Non-Collusion Certification

Appendix C – Qualifications and Experience Form

Appendix D – Cost Proposal Form

Appendix E – Submitted Question Form

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APPENDIX A

State of Maine
Department of Maine Commission on Indigent Legal Services
PROPOSAL COVER PAGE
RFP# (Inserted by Procurement Services when assigned/approved)

Social Worker Services for Indigent Defendants & Juveniles

Bidder's Organization Name:			
Chief Executive - Name/Title:			
Tel:		E-mail:	
Headquarters Street Address:			
Headquarters City/State/Zip:			
<i>(Provide information requested below if different from above)</i>			
Lead Point of Contact for Proposal - Name/Title:			
Tel:		E-mail:	
Headquarters Street Address:			
Headquarters City/State/Zip:			

- This proposal and the pricing structure contained herein will remain firm for a period of 180 days from the date and time of the bid opening.
- No personnel currently employed by the Department or any other State agency participated, either directly or indirectly, in any activities relating to the preparation of the Bidder's proposal.
- No attempt has been made, or will be made, by the Bidder to induce any other person or firm to submit or not to submit a proposal.
- The above-named organization is the legal entity entering into the resulting contract with the Department if they are awarded the contract.
- The undersigned is authorized to enter contractual obligations on behalf of the above-named organization.

To the best of my knowledge, all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.

Name (Print):	Title:
Authorized Signature:	Date:

APPENDIX B

State of Maine
Department of Maine Commission on Indigent Legal Services
DEBARMENT, PERFORMANCE, and NON-COLLUSION CERTIFICATION
RFP# (Inserted by Procurement Services when assigned/approved)

Social Worker Services for Indigent Defendants & Juveniles

Bidder's Organization Name:	
------------------------------------	--

By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this proposal:

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
 - i. Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or contract.*
 - ii. Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.*
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification.*
- d. Have not within a three (3) year period preceding this proposal had one or more federal, state, or local government transactions terminated for cause or default.*
- e. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

Name (Print):	Title:
Authorized Signature:	Date:

State of Maine
Department of Maine Commission on Indigent Legal Services
QUALIFICATIONS and EXPERIENCE FORM
RFP# (Inserted by Procurement Services when assigned/approved)

Social Worker Services for Indigent Defendants & Juveniles

Bidder's Organization Name:	
------------------------------------	--

Present a brief statement of qualifications. Describe the history of the Bidder's organization, especially regarding skills pertinent to the specific work required by the RFP and any special or unique characteristics of the organization which would make it especially qualified to perform the required work activities. You may expand this form and use additional pages to provide this information.
DRAFT

APPENDIX C (continued)

Provide a description of projects that occurred within the past five years which reflect experience and expertise needed in performing the functions described in the “Scope of Services” portion of the RFP. For each of the project examples provided, a contact person from the client organization involved should be listed, along with that person’s telephone number and e-mail address. Please note that contract history with the State of Maine, whether positive or negative, may be considered in rating proposals even if not provided by the Bidder.

If the Bidder has not provided similar services, note this, and describe experience with projects that highlight the Bidder’s general capabilities.

Project One	
Client Name:	
Client Contact Person:	
Telephone:	
E-Mail:	
Brief Description of Project	

Project Two	
Client Name:	
Client Contact Person:	
Telephone:	
E-Mail:	
Brief Description of Project	

APPENDIX C (continued)

Project Three	
Client Name:	
Client Contact Person:	
Telephone:	
E-Mail:	
Brief Description of Project	

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APPENDIX D

State of Maine
Department of Maine Commission on Indigent Legal Services
COST PROPOSAL FORM
RFP# (Inserted by Procurement Services when assigned/approved)

Social Worker Services for Indigent Defendants & Juveniles

Bidder's Organization Name:	
Proposed Cost:	\$

This fixed annual cost shall remain in effect should the Department opt for any of the renewal periods referenced in Part I, section D.

APPENDIX E

State of Maine
Department of Maine Commission on Indigent Legal Services
SUBMITTED QUESTIONS FORM
RFP# (Inserted by Procurement Services when assigned/approved)
Social Worker Services for Indigent Defendants & Juveniles

Organization Name:	
---------------------------	--

RFP Section & Page Number	Question

** If a question is not related to any section of the RFP, state “N/A” under “RFP Section & Page Number”.*
*** Add additional rows, if necessary.*

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: MAINE JUDICIAL BRANCH
FROM: JIM BILLINGS, EXECUTIVE DIRECTOR
CC: ALL ELIGIBLE COUNSEL
SUBJECT: STANDBY COUNSEL
DATE:

There is a history of courts appointing “standby counsel” to individuals who would be statutorily and/or constitutionally entitled to appointment of counsel after the individuals have waived their right to counsel. Standby counsel assist the clients without representing them. Some of these clients discharge standby counsel, who file motions to withdraw and then successor standby counsel is appointed. Sometimes the client requests that they have multiple attorneys serve as co-standby counsel.

MCILS is charged with providing, “...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.” 4 M.R.S.A. § 1801. Based upon the legal research I have reviewed, I have concluded that an individual is not constitutionally entitled to standby counsel if a court has found that they have knowingly, voluntarily, and intelligently waived their right to counsel.

Particularly given the shortage of attorneys available to provide indigent representation in Maine, MCILS does not have the resources to provide lawyers to those who have waived their right to counsel.

After October 31, 2023, MCILS will no longer provide or pay lawyers to serve as standby counsel to any person who has been found by a court to have waived their right to counsel in a particular docket. Attorneys who are or were at the time of appointment eligible to accept MCILS cases and were appointed as standby counsel prior to October 31, 2023 will still be paid for all billable work they have or will complete on the cases. If courts choose to make standby counsel appointments after October 31, 2023, the attorneys’ fees will need to be paid by the Judicial Branch or another source but will not be paid by MCILS.

As always, MCILS will do everything in its power to ensure that every indigent person who is constitutionally entitled to counsel receives high-quality representation.

The Right to Criminal Legal Defense in Maine



A Report of the
Maine Advisory Committee to the
U.S. Commission on Civil Rights

November 2023

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgments

The Maine Advisory Committee (Committee) deeply appreciates the contributions of each of the speakers who presented to the Committee during their public meetings in connection with this topic. The Committee is also grateful to members of the public who spoke during the selected periods of public comment, and those who shared testimony in writing. The Committee sincerely appreciates and recognizes the work of U.S. Commission on Civil Rights intern Jennifer Randall for her work on our report.

Maine Advisory Committee to the U.S. Commission on Civil Rights

The Maine Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding indigent legal services in Maine. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during public meetings held via videoconference on October 20, 2022; November 15, 2022; and December 15, 2022. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil rights concerns. This report is intended to focus on civil rights concerns regarding the right to legal defense for indigent persons. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

Maine Advisory Committee to the U.S. Commission on Civil Rights

Samantha Le, *Chair*, Bangor

Diane A. Khiel, *Vice Chair*, Orono

Mufalo Chitam, Old Orchard Beach

Gia Drew, Portland

Judith D. Jones, Camden

Eric M. Mehnert, Lincoln

Nicole Rancourt, Minot

Overview

On June 22, 2022, the Maine Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) adopted a proposal to undertake a study of indigent legal services for criminal defense in Maine. The focus of the Committee's inquiry was to examine the right to legal defense for indigent persons facing imprisonment, referring to individuals who are unable to afford a private attorney.¹ From a civil rights perspective, the Committee sought to consider whether Maine's current system of providing legal services for indigent persons has a disproportionate impact on people in the federally protected classes.

As part of this inquiry, the Committee heard testimony via videoconferences held on October 20, 2022; November 15, 2022; and December 15, 2022.² The following report results from a review of testimony provided at these meetings, combined with written testimony submitted during this timeframe. It begins with a brief background of the issues to be considered by the Committee. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. This report focuses on indigent legal services in Maine. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion. This report and the recommendations included within it were adopted unanimously by the Committee on September 14, 2023.

Background

The Committee took up this study to examine whether certain laws, policies, or practices in Maine restrict the right to criminal legal defense. Specifically, the Committee studied whether Maine's lack of a public criminal defender office impacts the civil rights of indigent criminal defendants under federal and Maine state criminal laws. This particular topic on indigent legal services is only one part of Maine's legal system and does not address Maine's court system, bail system, and other legal proceedings. The Committee conducted this study under the authority of the following federal civil rights and Maine state protections:

The right to counsel derives from:

- The Sixth Amendment of the U.S. Constitution

¹ U.S. DEP'T OF JUST., NCJ 250249, SPECIAL REPORT: STATE-ADMINISTERED INDIGENT DEFENSE SYSTEMS (May 3, 2013).

² Meeting records and transcripts are available in Appendix.

Briefing before the Maine Advisory Committee to the U.S. Commission on Civil Rights, October 20, 2022, (web-based), Transcript (hereinafter cited as "October 20, 2022 Briefing").

Briefing before the Maine Advisory Committee to the U.S. Commission on Civil Rights, November 15, 2022, (web-based), Transcript (hereinafter cited as "November 15, 2022 Briefing").

Briefing before the Maine Advisory Committee to the U.S. Commission on Civil Rights, December 15, 2022, (web-based), Transcript (hereinafter cited as "December 15, 2022 Briefing").

- Article 1, Section 6 of the Maine Constitution
- *Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963)
- *State v. Cook*, 1998 ME 40, ¶6, 70 A2d 603

The right to effective assistance of counsel derives from:

- *U.S. v. Cronin*, 466 U.S. 648, 659-660 (1984)
- *Strickland v. Washington*, 466 U.S. 668, (1984)
- *Theriacult v. State*, 125 A.3d 1163 (Me. 2015)

The right to counsel before trial derives from:

- *Rothgery v. Gillespie Cty.*, 554 U.S. 191, 217 (2008)

Maine is required by statute to establish standards governing the delivery of indigent legal services via the Maine Commission on Indigent Legal Services (MCILS):

Title 4 M.S.R.A. §1801 et. seq.³

The establishment of the Sixth Amendment in the U.S. Constitution guaranteed the constitutional right to the assistance of counsel and representation for the accused facing incarceration.⁴ If an accused individual cannot afford counsel, the state government is obligated to appoint legal counsel, at no cost to the defendant in order to ensure a fair and speedy trial.⁵ This right to legal counsel was further detailed in the *Gideon v. Wainwright* case, where defendant Clarence Earl Gideon, who was being charged in Florida with breaking and entering, was denied counsel by the state due to the minor nature of his crime. Gideon appealed to the Supreme Court, stating his Sixth Amendment right to representation was violated. The Supreme Court ruled in favor of Gideon and amended that regardless of the severity of the crime, all state courts must provide defendants with counsel.⁶

³ Title 4 M.R.S.A. §1802(4) defines “indigent legal services” as legal representation provided to: “A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; C. Juvenile defendants; and D. An indigent defendant or party or a juvenile for the purpose of filing, on behalf of that indigent defendant or party or juvenile, a petition for certiorari to the Supreme Court of the United States from an adverse decision of the Law Court on a case for which services were previously provided to that defendant or party or juvenile pursuant to paragraph A, B or C.” 4 M.R.S.A. §1802(4).

⁴ *Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963).

⁵ *Id.*

⁶ *Id.*

Not only is the state obligated to provide counsel, but the counsel must be deemed effective at supporting the defendant. In the U.S. Supreme Court case of *U.S. v. Cronin*, defendant Gary Cronin argued his attorney was ill-prepared for his trial and unable to provide proper and effective representation; therefore, violating his Sixth Amendment rights.⁷ This case pushed the U.S. Supreme Court to expand the scope of the Sixth Amendment and acknowledge legally when cases with poor representation hinder a defendant's ability to a fair and speedy trial.⁸ *Rothgery v. Gillespie County* is another key case that extended the definition of the Sixth Amendment right to counsel. In this case, the Supreme Court established that a defendant's right to representation begins immediately upon a defendant being charged with a crime. This clarification ensures that in every step of the legal proceedings, even before facing a judge, defendants have access to attorney support.⁹

Maine's own Constitution, under *State v. Cook*,¹⁰ guarantees that all indigent persons will be provided with effective criminal defense by the state. The Maine Commission on Indigent Legal Services (MCILS) was established by the Maine Legislature with the mandate to provide "high-quality representation to indigent criminal defendants, juvenile defendants, and children and parents in child protective cases" and the funding must be "managed in a fiscally responsible manner, free from undue political interference and conflicts of interest."¹¹ MCILS oversees "a system of assigned private counsel and contract counsel to provide quality and efficient indigent legal services."¹²

Yet, Maine is the only state that relies mostly on private contracted attorneys to provide indigent public defense instead of a public defender's office established by the state.

There is public concern that MCILS has not met its constitutional obligations. According to a 2019 report conducted by the non-profit organization, the Sixth Amendment Center,¹³ the services provided by MCILS are not adequately meeting the standards of the Sixth Amendment. The key findings of the report highlighted that MCILS lacks proper supervision and training for attorneys, fails to eliminate underqualified attorneys, encourages gaps in representation instead of comprehensive legal counsel from one attorney, and is unable to address excessive attorney caseloads.¹⁴ Another report, "Maine Commission on Indigent Legal Services (MCILS) – An evaluation of MCILS's structure of oversight and the adequacy of its systems and procedures to

⁷ *U.S. v. Cronin*, 466 U.S. 648, 659-660 (1984).

⁸ *Id.*

⁹ *Rothgery v. Gillespie County*, 554 U.S. 191, 194 (2008).

¹⁰ *State v. Cook*, 706 A.2d 603, 605 (Sup. Ct. Me.1998)

¹¹ ME. REV. STAT. ANN. tit. 4, § 1801 (2018)

¹² "About Us," Maine Commission on Indigent Legal Services," <https://www.maine.gov/mcils/about> (accessed July 31, 2023).

¹³ Sixth Amendment Center, *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services* (Boston, MA: 2019), 25-85, https://sixthamendment.org/6AC/6AC_me_report_2019.pdf.

¹⁴ *Ibid.*

administer payments and expenditures,” conducted by the Office of Program Evaluation & Government Accountability of the Maine State Legislature in 2020 for the Government Oversight Committee,¹⁵ also found issues with MCILS. The report identified that MCILS provides unclear policies and guidelines, lacks sufficient defender data, poorly monitors attorney vouchers, is understaffed, and does not provide enough financial support.¹⁶

In July 2022, the American Civil Liberties Union (ACLU) of Maine sued MCILS on behalf of low-income defendants in the case of *Robbins v. MCILS*.¹⁷ The lawsuit alleges that MCILS is failing to provide constitutionally adequate and effective legal indigent criminal representation in Maine.¹⁸ On August 21, 2023, MCILS and its Commissioners and the ACLU entered a proposed settlement agreement in *Robbins* which outlines specific recommendations for ensuring appropriate provision of indigent legal services.¹⁹ On September 13, 2023, Justice Michaela Murphy of the Maine Superior Court rejected the agreement, noting that it amounted to a four year stay of the proceedings during which the State and ACLU would work on a list of reforms which they “agreed to advocate for over the next four years.” The concern, expressed by Justice Murphy, was that during the four year stay, the agreement precluded an individual who suffered due process violations, due to a failure of Maine’s criminal defense system, from seeking redress by claiming systemic failure.²⁰ The ACLU of Maine is also actively engaging with the state legislature to pass legislation that allows for speedier trials.²¹ This call to action is meant to set clearer guidelines and timelines and to address the growing problem of court back log, all which may impact timely appointment of counsel.

In short, there is legitimate concern and evidence via the reports, current lawsuit, and legislative action that MCILS is not meeting its mandate stated in the state constitution and in the Sixth Amendment to provide effective indigent legal counsel. To address these problems, the Maine legislature in April 2022 created a pilot program: the Rural Defender Unit, consisting of five

¹⁵ Office of Program Evaluation & Government Accountability of the Maine State Legislature, Maine Commission on Indigent Legal Services (MCILS) – An Evaluation of MCILS’s Structure of Oversight and the Adequacy of its Systems and Procedures to Administer Payments and Expenditures., Report No. SR-MCILS-19 (Nov. 2020).

¹⁶ Ibid.

¹⁷ *Robbins v. MCILS*, No. KENSC-CV-22-54 (Me. Super. Jun. 2, 2022).

¹⁸ *Id.*

¹⁹ See Joint Motion, Exhibit 1 (August 21, 2023) in *Robbins et. al v. MCILS et. al*, Docket No. KENSC-CV-22-54, <https://themaine-monitor.org/wp-content/uploads/2023/08/Robbins-MCILS-23.08.21-Joint-Motion.pdf>; Samantha Hogan. “Settlement Reached by Maine and ACLU to Overhaul Indigent Legal Services.” The Maine Monitor. August 29, 2023. <https://themaine-monitor.org/settlement-reached-by-maine-and-aclu-to-overhaul-indigent-legal-services/> (accessed August 30, 2023).

²⁰ Samantha Hogan, “Justice rejects settlement to overhaul indigent defense in Maine.” The Maine Monitor, September 13, 2023. <https://themaine-monitor.org/justice-rejects-settlement-to-overhaul-indigent-defense-in-maine/>. (accessed September 14, 2023).

²¹ “Maine Lawmakers Must Act to Guarantee Constitutional Right to Speedy Trial,” ACLU Maine, April 5, 2023, <https://www.aclumaine.org/en/press-releases/maine-lawmakers-must-act-guarantee-constitutional-right-speedy-trial> (accessed July 31, 2023); 15 M.R.S.A §§1491-1493.

lawyers, at the cost of a little less than \$1 million.²² However, according to then executive director of MCILS, this is “not a solution, it’s a patch” and an estimated \$51 million is needed to open public defender offices in all 16 counties in Maine.²³ Without adequate funding and clear guidelines for MCILS, it is possible that indigent defendants may receive subpar legal representation compared to those who can afford an attorney. Because of potential subpar legal representation, indigent legal defendants may face the possibility of losing their liberties, which may result in barriers such as in obtaining housing and employment, that often follows a criminal conviction.²⁴ Due to these reasons, the Committee sought to investigate if the lack of proper defense in Maine for its indigent population is a denial of equal protection of the laws under the Constitution and in the administration of justice.

Methodology

As a matter of historical precedent, and in order to achieve transparency, Committee studies involve a collection of public, testimonial evidence and written comments from individuals directly impacted by the civil rights topic at hand; researchers and experts that have rigorously studied and reported on the topic; community organizations and advocates representing a broad range of backgrounds and perspectives related to the topic; and government officials tasked with related policy decisions and the administration of those policies.

Committee studies require Committee members to utilize their expertise in selecting a sample of panelists that is the most useful to the purposes of the study and will result in a broad and diverse understanding of the issue. This method of (non-probability) judgment sampling requires Committee members to draw from their own experiences, knowledge, opinions, and views to gain understanding of the issue and possible policy solutions. Committees are composed of volunteer professionals that are familiar with civil rights issues in their state or territory. Members represent a variety of political viewpoints, occupations, races, ages, and gender identities, as well as a variety of backgrounds, skills, and experiences. The intentional diversity of each Committee promotes vigorous debate and full exploration of the issues. It also serves to assist in offsetting biases that can result in oversight of nuances in the testimony.

In fulfillment of Committees’ responsibility to advise the Commission of civil rights matters in their locales, Committees conduct an in-depth review and thematic analysis of the testimony received and other data gathered throughout the course of their inquiry. Committee members use this publicly collected information, often from those directly impacted by the civil rights topic of study, or others with direct expert knowledge of such matters, to identify findings and

²² Samantha Hogan. “Lawmakers Approve Funding to Hire Maine’s First Public Defenders.” The Maine Monitor. April 25, 2022. <https://www.themainemonitor.org/lawmakers-approve-funding-to-hire-maines-first-public-defenders/> (accessed July 31, 2023).

²³ Ibid.

²⁴ “ACLU of Maine Files Lawsuit Challenging Maine’s Inadequate Indigent Defense System,” ACLU Maine, March 1, 2022. <https://www.aclumaine.org/en/press-releases/aclu-maine-files-lawsuit-challenging-maines-inadequate-indigent-defense-system> (accessed July 31, 2023).

recommendations to report to the Commission. Drafts of the Committee’s report are publicly available and shared with panelists and other contributors to ensure that their testimony was accurately captured. Reports are also shared with affected agencies to request for clarification regarding allegations noted in testimony.

For the purposes of this study, **Findings** are defined as what the testimony and other data *suggested, revealed, or indicated* based upon the data collected by the Committee. Findings refer to a synthesis of observations confirmed by majority vote of members, rather than conclusions drawn by any one member. **Recommendations** are specific actions or proposed policy interventions intended to address or alleviate the civil rights concerns raised in the related finding(s). Where findings indicate a lack of sufficient knowledge or available data to fully understand the civil rights issues at hand, recommendations may also target specific directed areas in need of further, more rigorous study. Recommendations are directed to the Commission; they request that the Commission itself take a specific action, or that the Commission forward recommendations to other federal or state agencies, policy makers, or stakeholders.

Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,²⁵ the Maine Advisory Committee submits the following findings to the Commission regarding indigent legal services in Maine. This report seeks to highlight the most salient civil rights themes as they emerged from the Committee’s inquiry. The complete meeting transcripts and written testimony received are included in Appendix A for further reference.

Finding I: Maine’s indigent public defense system is underfunded and unable to meet the state’s current legal representation demands for indigent clients.²⁶

A Stuck and Underfunded System

A lack of sufficient funding, structure, and administrative support negatively impacts those providing and receiving indigent legal services in Maine.²⁷ Sarah E. Branch, director of the

²⁵ 45 C.F.R. § 703.2

²⁶ Branch Testimony, *December 15, 2022 Briefing*, p. 6; Nadeau Testimony, *October 20, 2022 Briefing*, p. 5; Andrus Testimony, *November 15, 2022 Briefing*, p. 4; Nadeau Testimony, *October 20, 2022 Briefing*, p. 5; Andrus Testimony, *November 15, 2022 Briefing*, pp. 3-4; Anderson Testimony, *October 20, 2022 Briefing*, p. 17; Keim Testimony, *December 15, 2022 Briefing*, p. 5.

²⁷ Nadeau Testimony, *October 20, 2022 Briefing*, p. 6.

Youth Justice Clinic and visiting professor at the University of Maine School of Law, speaking in a personal capacity, described Maine’s current criminal justice system as chronically underfunded and limited.²⁸ Tina Nadeau, executive director of the Maine Association of Criminal Defense Lawyers, testifying in a personal capacity, shared that alongside a lack of funding for current public defense services, there is low motivation for political change to create a centralized or hybrid public defense system that is adequately funded.²⁹ Panelists shared that insufficient funding is largely due to a lack of political will to enact necessary legislation and provide adequate funding.³⁰ Justin Andrus, executive director of MCILS at the time of the Committee’s study, stressed that the lack of political will to address necessary changes results in a criminal justice system that relies on far too few attorneys to provide constitutionally mandated services.³¹ Over 400 rostered attorneys that were providing indigent legal services in Maine are down to 190, and only about 140 of those are taking cases as of December 2022.³²

A Design Never Intended to Support the Current Justice System

Mr. Andrus shared that Maine’s current criminal justice system was not designed to meet current demands; therefore, it perpetuates an outdated system with limited capacity.³³ The original function of Maine’s indigent legal services relied on a group of attorneys assigned by the state.³⁴ The current demand for indigent services far outweighs the capacity of available attorneys. Without a legal system that can adapt to the changing needs of its population, the state is often excluding those with lower incomes from receiving quality legal representation.³⁵

A Hybrid Public Defense System Consisting of Private and Public Defenders

The current system in Maine consists of a combination of public defender employees and private attorneys. Ms. Nadeau testified that the upside to the current system is to preserve attorney independence, flexibility, and choice between retained and appointed cases.³⁶ To improve the system of criminal defense, Prof. Branch testified that input should be sought from those who use indigent legal services, from legislators, from those who control the funding, from the courts, and from Maine’s law school.³⁷

²⁸ Branch Testimony, *December 15, 2022 Briefing*, p. 6.

²⁹ Nadeau Testimony, *October 20, 2022 Briefing*, p. 5; Andrus Testimony, *November 15, 2022 Briefing*, p. 4.

³⁰ Ibid.

³¹ Andrus Testimony, *November 15, 2022 Briefing*, p. 4.

³² Keim Testimony, *December 15, 2022 Briefing*, p. 3.

³³ Andrus Testimony, *November 15, 2022 Briefing*, p. 3.

³⁴ Ibid.

³⁵ Anderson Testimony, *October 20, 2022 Briefing*, p. 17; Keim Testimony, *December 15, 2022 Briefing*, p. 5.

³⁶ Nadeau Testimony, *October 20, 2022 Briefing*, p. 4.

³⁷ Branch Testimony, *December 15, 2022 Briefing*, p. 15.

Ms. Nadeau testified that an increase in funding for private attorneys would give those attorneys more flexibility in their schedule and allow them to take more cases.³⁸ Mr. Andrus testified in support of a hybrid system:

I believe, from my position as executive director, that a hybrid system relying on both employee defenders and assigned defenders who are present in every district, with a district defender who has the same sorts of authorities and influences and access to the courts as a district defender, is absolutely necessary to allow us to evolve to a place where we're able to ensure not only that an individual client gets an attorney and that the attorney provides good service, but that all of that is happening in the context of a system where there is parity in the political dynamic and allows that indigent defense system to support defendants, practitioners, parents and child protective cases....³⁹

Finding II: People of color, individuals with disabilities, and non-English speakers are disproportionately impacted by Maine's current system for providing indigent legal defense.⁴⁰

According to Mr. Andrus, those who are in federally protected classes are most likely to be disproportionately impacted by the lack of quality and capacity of indigent legal services in Maine.⁴¹ Wendy Allen, an advocate with Restorative Justice Institute with personal experience with Maine's public defense system, testified that in her experience, people who are historically marginalized often cannot pay for lawyers, and they are in turn assigned to court appointed attorneys that are overburdened with heavy caseloads.⁴²

Professor Branch highlighted the connection for the Committee, noting, "nationally, individuals of color and individuals with disabilities are disproportionately represented in the justice system. By the data alone, that's not up for debate. It is therefore safe to assume that in Maine those same individuals are impacted by the way we deliver justice here in our state."⁴³

Ms. Nadeau remarked that in her own work, she saw a disproportionately high number of clients who were Black, immigrants, youth, survivors of trauma, or individuals who were struggling

³⁸ Nadeau Testimony, *October 20, 2022 Briefing*, pp. 4-5.

³⁹ Andrus Testimony, *November 15, 2022 Briefing*, p. 4.

⁴⁰ Andrus Testimony, *November 15, 2022 Briefing*, pp. 4-5, 7; Nadeau Testimony, *October 20, 2022 Briefing*, p. 7; Davis Testimony, *November 15, 2022 Briefing*, pp. 10, 13; Branch Testimony, *December 15, 2022 Briefing*, pp. 7-8; Allen Testimony, *October 20, 2022 Briefing*, p. 13; Anderson Testimony, *October 20, 2022 Briefing*, p. 15.

⁴¹ Andrus Testimony, *November 15, 2022 Briefing*, pp. 4-5.

⁴² Allen Testimony, *October 20, 2022 Briefing*, p. 13.

⁴³ Branch Testimony, *December 15, 2022 Briefing*, p. 7.

with disabilities, mental health, or substance use.⁴⁴ She said “[t]his is purely anecdotal, because the Judiciary DA’s Office and the Commission are terrible at data keeping around these issues...we need data.”⁴⁵ Professor Branch noted her particular concern for youth and adults with mental health diagnoses who are charged with a crime, as their cases require the time and attention that attorneys currently providing indigent defense simply do not have.⁴⁶

Disproportionate Representation of and Disproportionate Impact for People of Color

People of color are disproportionately represented in the justice system and are therefore disproportionately impacted by Maine’s lack of effective and meaningful public defense. Zachary Heiden, chief counsel for the American Civil Liberties Union of Maine, shared testimony with the Committee regarding the right to counsel for indigent individuals.⁴⁷ He noted that in March 2022, the ACLU of Maine filed a lawsuit against the State of Maine and MCILS for its failure in complying with constitutional obligations to provide effective counsel to indigent individuals.⁴⁸ In his testimony, Mr. Heiden discussed the disproportional impacts on people of color through the *Powell v. Alabama* case,⁴⁹ where nine Black men were denied the right to counsel and sentenced to death after being accused of rape by two White women. The Supreme court later ruled they did not receive due process and fair representation; therefore, creating law requiring states to provide counsel.⁵⁰

Melissa Davis, professor and director of the Criminal Practice Clinic at the University of New Hampshire Franklin Pierce School of Law, discussed overrepresentation of people of color in the justice system.⁵¹ Professor Davis highlighted that many statistics struggle to track the representation of people of color, and that it would be worth tracking since communities of color continue to be disproportionately represented in and affected by the administration of justice.⁵² Marion Anderson, an advocate with the National Council for Incarcerated and Formerly Incarcerated Women and Girls who has direct experience with Maine’s public defense system, stated that in their opinion, Maine’s current criminal system ensures social control and oppression, especially in the marginalization of Black and Brown people.⁵³

Professor Davis noted that the more an individual has contact with the criminal justice system, particularly people of color who are disproportionately more impacted, the lower their future

⁴⁴ Nadeau Testimony, *October 20, 2022 Briefing*, p. 7.

⁴⁵ Ibid.

⁴⁶ Branch Testimony, *December 15, 2022 Briefing*, p. 8.

⁴⁷ Heiden Testimony, *October 20, 2022 Briefing*, p. 8.

⁴⁸ Ibid.

⁴⁹ *Powell v. Alabama*, 287 U.S. 45 (1932)

⁵⁰ Heiden Testimony, *October 20, 2022 Briefing*, p 10-11.

⁵¹ Davis Testimony, *November 15, 2022 Briefing*, p. 10.

⁵² Ibid.

⁵³ Anderson Testimony, *October 20, 2022 Briefing*, p. 15.

earning potential will be.⁵⁴ This earning potential impacts an individual's ability to provide for themselves and their own long-term wealth.⁵⁵ Mr. Andrus emphasized concerns he has around what he perceives as institutionalized racism in charging and bail decisions for men of color:

It's couched in terms of people being from away and being flight risks. But the reality is that if you're a person of color, especially a man of color, charged with a crime in Maine, you're much more likely to have a high bail or no bail, and you're much more likely to face a State wishing to prosecute you for top-level offenses on indictment, or to face, at least in my experience, greater prison times.⁵⁶

Inadequate Representation for Individuals with Disabilities

Individuals with disabilities are severely impacted by a lack of appropriate time and attention to their cases.⁵⁷ Nationally, clients with disabilities are more likely to be overrepresented in the justice system.⁵⁸ Professor Davis testified to the Committee that nationally, 38% of those who are currently incarcerated have at least one disability.⁵⁹ Professor Branch stated a client's disability may manifest more intensely while incarcerated, and could impact their understanding of why they are incarcerated and hinder their ability to receive treatment: "I have represented individuals whose disability has meant that they do not even know why they're in jail. They are terrified. Their disabilities are manifesting in the extreme while they're held in these cells."⁶⁰ Ms. Nadeau testified that "...incarceration is the most extreme de-stabilizer for my clients. It can completely derail their lives...[w]ithout counsel being promptly appointed, clients are not able to get back in court and fight for release on bail."⁶¹

Access to Quality Representation for Non-English Speakers is Hard

Language barriers impact access to quality services and representation. Mr. Andrus highlighted that protected classes with language barriers often struggle to access social service resources which may play a role in criminal charge outcomes.⁶² Mitigative services more specifically are less likely to be available and accessible to those with language barriers.⁶³ Mr. Andrus discussed

⁵⁴ Davis Testimony, *November 15, 2022 Briefing*, p. 13.

⁵⁵ Ibid.

⁵⁶ Andrus Testimony, *November 15, 2022 Briefing*, p. 5.

⁵⁷ Andrus Testimony, *November 15, 2022 Briefing*, p. 5; Branch Testimony, *December 15, 2022 Briefing*, p. 7; Davis Testimony, *November 15, 2022 Briefing*, p. 10.

⁵⁸ Branch Testimony, *December 15, 2022 Briefing*, p. 7.

⁵⁹ Davis Testimony, *November 15, 2022 Briefing*, p. 10.

⁶⁰ Branch Testimony, *December 15, 2022 Briefing*, p. 7.

⁶¹ Nadeau Testimony, *October 20, 2022 Briefing*, p. 7.

⁶² Andrus Testimony, *November 15, 2022 Briefing*, p. 5.

⁶³ Ibid.

that it is the duty of the defense counsel to accommodate clients, regardless of whether they have language challenges or other barriers.⁶⁴

Finding III: Attorneys assigned as public defenders need the same resources as prosecutors in order to effectively and meaningfully represent their indigent criminal defendants.⁶⁵

Public defense attorneys are not provided with technical knowledge or financial resources in the same manner as prosecutors, putting their clients at risk of sub-par representation.⁶⁶ Eligibility to become an attorney who accepts indigent clients mainly involves watching a six-hour training video on minimal standards, a bar card, and an email address.⁶⁷

Attorneys who are assigned as public defenders in Maine do not usually receive salaries, paid holidays, sick days, health insurance, or other benefits to support their full attention towards obtaining appropriate training and devoting substantial time to cases.⁶⁸ None of the overhead costs incurred by court appointed counsel is covered, unlike for state prosecutors.⁶⁹ Payment for their work is dependent on the number of cases closed and the amount of time spent on each case.⁷⁰ Mr. Heiden, Ms. Nadeau, and Professor Branch highlighted that the unequal financial burden for public defense attorneys is significant and should not be overlooked.⁷¹

Defining Parity

Professor Branch testified that currently in Maine, there is a lack of parity between the resources available to public defense and those available to the prosecutors, creating disparities that are affecting defense representation.⁷² Several factors in the current system lead to these disparities in resources. In addition to receiving funds from the state, prosecutors also receive funds from their respective counties; the MCILS receives only state funding.⁷³ Moreover, the MCILS must budget to provide representation for a wider array of indigent legal services than county prosecutors: the MCILS not only provides indigent legal services for criminal defendants (including juvenile defendants), but it also provides counsel for children and parents in protective

⁶⁴ Andrus Testimony, *November 15, 2022 Briefing*, p. 7.

⁶⁵ Andrus Testimony, *November 15, 2022 Briefing*, pp. 1, 16-17; Branch Testimony, *December 15, 2022 Briefing*, pp. 6, 9; Maloney Testimony, *November 15, 2022 Briefing*, p. 15; Nadeau Testimony, *October 20, 2022 Briefing*, pp. 3-4.

⁶⁶ Heiden Testimony, *October 20, 2022 Briefing*, p. 18; Nadeau Testimony, *October 20, 2022 Briefing*, pp. 3-4, 18; Branch Testimony, *December 15, 2022 Briefing*, p. 14; Andrus Testimony, *November 15, 2022 Briefing*, p. 21.

⁶⁷ Nadeau Testimony, *October 20, 2022 Briefing*, p. 4.

⁶⁸ *Ibid.*, 3.

⁶⁹ *Ibid.*, pp.3- 4.

⁷⁰ *Ibid.*, p. 4.

⁷¹ Heiden Testimony, *October 20, 2022 Briefing*, p. 18; Nadeau Testimony, *October 20, 2022 Briefing*, pp. 3-4; Branch Testimony, *December 15, 2022 Briefing*, p. 14.

⁷² Branch Testimony, *December 15, 2022 Briefing*, p. 6.

⁷³ *Ibid.*, p. 9.

custody cases, patients in involuntary (civil) commitment cases, and defendants in other civil cases, representation for which MCILS has to budget.⁷⁴ Thus, a comparison of funding does not capture these variables. Maeghan Maloney, district attorney for Maine’s Kennebec and Somerset Counties, described the need for parallel numbers of positions, similar salaries, trainings, and benefits for public defenders and prosecutors in order to achieve parity between the two roles.⁷⁵

Mr. Andrus described parity at its most basic level as matching public defense resources to that of a prosecutor’s office.⁷⁶ He highlighted the implications of what true parity means for the Committee, noting it starts with standing and respect for the defense function.⁷⁷ Robert Ruffner, an attorney who started the Maine Indigent Defense Center specifically to speak on the issue of public defense for the indigent, highlighted that the lack of anyone serving specifically as a public defender leads to an absence in representing the defense perspective and role in policy-making decisions within the state.⁷⁸ He shared that Vermont’s Defender General was able to advocate successfully for raising the age of majority for when an individual would be prosecuted in adult vs. juvenile court, as an example of what can result from having a seat in developing and informing policy.⁷⁹

The structure, support, caseload number and training of public defense attorneys needs to completely change beyond just financial resources to achieve true parity.⁸⁰ Mr. Andrus stated:

I think the most important thing to recognize when we're talking about parity is that numerical equality does not constitute equity. And the reality is that parity means much, much, much more than budget and head count. But I'll turn to that in a moment. Parity starts with standing. It starts with respect for the defense function. It starts with authority in the defense function equivalent to that of the prosecution function. It starts with statutory inclusion in every commission, in every arena in which the Office of the Attorney General has statutory inclusion, and starts with the seats on the Criminal Rules Advisory Committee. We're talking about criminal

⁷⁴ Title 4 M.R.S.A. §1802(4) defines “indigent legal services” as legal representation provided to: “A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; C. Juvenile defendants; and D. An indigent defendant or party or a juvenile for the purpose of filing, on behalf of that indigent defendant or party or juvenile, a petition for certiorari to the Supreme Court of the United States from an adverse decision of the Law Court on a case for which services were previously provided to that defendant or party or juvenile pursuant to paragraph A, B or C.”

⁷⁵Maloney Testimony, *November 15, 2022 Briefing*, p. 15; Nadeau Testimony, *October 20, 2022 Briefing*, pp. 3-4.

⁷⁶ Andrus Testimony, *November 15, 2022 Briefing*, p. 16.

⁷⁷ Ibid.

⁷⁸ Ruffner Testimony *November 15, 2022 Briefing*, p. 26.

⁷⁹ Ibid., pp. 26-27.

⁸⁰ Branch Testimony, *December 15, 2022 Briefing*, p. 9; Andrus Testimony, *November 15, 2022 Briefing*, pp. 1, 17.

stuff here, but also the Civil Rules Advisory Committee, because it impacts the civil folks we represent.

It starts with a seat on the Board of Overseers, because the rules of professional conduct, for example, constrain my ability to oversee the provision of adequate services. It starts with a permanent seat in the Criminal Rules Advisory Commission. It starts with seats at every table where a prosecutor is welcome....Prosecutors can eliminate all the cases they want on any given day. Tying defense caseloads to a number that is within the control of the prosecution to determine, I think, doesn't get you to a place of parity.⁸¹

Balance in the Criminal Justice System

Lisa Keim, Maine State Senator and formerly the chair of the Joint Standing Committee on Judiciary, stated that an increase in defense payment is one way to provide balance in the criminal justice system.⁸² Professor Branch also testified that “the core aspect of the justice system, for it to function properly, is in fact an adversarial process.”⁸³ Assigning defendants to attorneys with high caseloads or who are under-compensated is like “sending unarmed individuals into a ring to fight against gladiators.”⁸⁴ She went on to say, “[p]arity is more complicated than mere money...it’s about the quality of that representation, the structure, the support, the training.”⁸⁵

Lack of Incentives to Become Public Defenders in Maine

Nat Jordan, a law student at the University of Michigan originally from Maine, joined a Committee briefing to share testimony regarding challenges facing law students wanting to enter public defense as a profession.⁸⁶ He shared that he would like to return to Maine and pursue a career as a public defender for indigent clients in the state, however, under Maine’s current system he would be ineligible for public service loan forgiveness.⁸⁷

Law schools are becoming more and more expensive. I personally will graduate with probably over \$150,000 in debt, so I can't make moving back to Maine work because I plan to depend on something called Public Service Loan Forgiveness, or PSLF. For those who don't know, PSLF is a federal government program that forgives student loans after a person works in public service for 10 years.

⁸¹ Andrus Testimony, *November 15, 2022 Briefing*, pp. 16-17.

⁸² Keim Testimony, *December 15, 2022 Briefing*, p. 3.

⁸³ Branch Testimony, *December 15, 2022 Briefing*, p. 9.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Jordan Testimony, *November 15, 2022 Briefing*, pp. 27-28.

⁸⁷ Ibid.

I'm in a group for future public defenders at my law school, and almost all of us plan to rely on Public Service Loan Forgiveness, that is, we will only ever pay a small portion of our giant student loan balance because the federal government will forgive the balance of our loans after 10 years in public service. But the key problem for me as a law student who wants to move back to Maine is that, as I understand it, PSLF only applies to government and non-profit jobs. Under the current system, if I was to become a court appointed attorney and contract for the government, that wouldn't be covered under PSLF, so my loans would not be forgivable.

Finding IV: There is greater need for indigent representation than there are attorneys available in Maine.⁸⁸

Public defenders must choose between their goals of supporting indigent clients and the reality of being in an overworked and overburdened system.⁸⁹ Professor Branch stated that although defense attorneys may enter the public defense profession wanting to do good work for indigent clients in a functional justice system, current caseload demands are demoralizing.⁹⁰ Public defenders are put in the position of choosing more efficient case options to lighten their caseload over prioritizing the needs of the client.⁹¹ Ms. Allen highlighted that quality representation comes from attorneys collaborating with their clients, not from choosing the most efficient plea to lighten their caseload.⁹²

Cases are increasing at a faster rate than available attorneys.⁹³ Senator Keim shared that despite the increase in cases, the number of attorneys has dropped from 400 to only 140 attorneys who are taking on active cases.⁹⁴ The current available attorneys cannot meet the current demand of cases.⁹⁵ With attorneys deciding to leave the field of public defense, the burden of the caseload falls heavily on the remaining attorneys, leading to an increased rate of burnout.⁹⁶

Caseload standards need to be updated with national standards in mind.⁹⁷ Mr. Heiden discussed the importance of monitoring the number of cases an attorney has and comparing it against other

⁸⁸ Branch Testimony, *December 15, 2022 Briefing*, pp. 7-9; Allen Testimony, *October 20, 2022 Briefing*, p. 14; Keim Testimony, *December 15, 2022 Briefing*, p. 3; Heiden Testimony, *October 20, 2022 Briefing*, pp. 10, 19; Nadeau Testimony, *November 15, 2022 Briefing*, p. 28.

⁸⁹ Branch Testimony, *December 15, 2022 Briefing*, p. 7.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Allen Testimony, *October 20, 2022, Briefing*, p. 14.

⁹³ Keim Testimony, *December 15, 2022 Briefing*, p. 3.

⁹⁴ Ibid.

⁹⁵ Branch Testimony, *December 15, 2022 Briefing*, p. 8.

⁹⁶ Ibid., p. 9.

⁹⁷ Heiden Testimony, *October 20, 2022 Briefing*, p. 19.

states' caseload standards in order to find appropriate caseload goals.⁹⁸ Currently the state of Maine is using caseload standards established from the 1970s.⁹⁹ These state standards also do not represent the impacts of COVID-19 which increased caseloads to 60% higher levels than pre-pandemic times.¹⁰⁰

Mr. Andrus shared context on what is impacting the situation:

First, I have to say that I don't like to talk about a deficit of attorneys, because it implies that that default lies on the attorney's side. It is an imbalance, and a lot of it can be resolved with prosecutorial discretions and filings or other things. But putting that aside, in March of 2019...there were 410 attorneys accepting assignments in Maine. ...Last Thursday, there were 165. During that same period, the rate of new filings and new assignments we are required to help make has gone through the roof. The five-year historical average prior to the pandemic was 26,600 cases a year. That's criminal, child protective, mental health, juvenile. Some ones that are relatively small in account, like emancipation.

In fiscal year '21, that number was up to 28,000-and-a-half. In fiscal year '22, that number was almost 32,000. In fiscal year '[2]3, we're running, at the moment, at about a 32, 33,000-case-a-year rolling limit. We've seen it as high 35,000 annualized two weeks ago. Of course, it is really not just the overall count that matters, but rather also the rate at which we need to staff cases.... So we've seen a dramatic, dramatic decrease in the number of attorneys who are willing to subjugate their personal and professional lives to vitiate the state's ... obligation, without the support of the state to say to these attorneys, "please keep doing it," while the state itself continues to boost the number of cases being charged, and the rate at which cases are being cleared is not anywhere near what it needs to be in order to address that.¹⁰¹

Mr. Andrus also stressed that the Committee understand that the process for assigning clients typically depends on the court first making a determination regarding indigency, then reaching out to MCILS to make an assignment.¹⁰² However, the court does not always have the resources necessary to make those assignments, leading to delays.¹⁰³ He noted that delays in assignment to

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Nadeau Testimony, *November 15, 2022 Briefing*, p. 28.

¹⁰¹ Andrus Testimony, *November 15, 2022 Briefing*, pp. 22-23.

¹⁰² Ibid., p. 21.

¹⁰³ Ibid.

attorneys would be decreased by allowing MCILS access to data immediately when someone who might need indigent defense enters the criminal justice system.¹⁰⁴

Weakening the Sixth Amendment

Professor Branch cautions against weakening the Sixth Amendment as a solution to providing representation: “I am going to beg the people who are making the decisions to not answer our current challenges by watering down the Sixth Amendment...We need to lower barriers to representation but not the quality of that representation.”¹⁰⁵ Mr. Heiden testified that the Sixth Amendment not only enforces the right to counsel, but ensures the right to assistance through counsel.¹⁰⁶ If a lawyer is getting in the way of assistance, they are going against the Sixth Amendment.¹⁰⁷

Finding V: Justice is often delayed for those receiving indigent legal services because the parameters for determining indigency are not clear and consistent.¹⁰⁸ This results in life-altering consequences.

The current parameters for determining indigency and partial indigency should be streamlined, updated, and made clear, consistent, and uniform, which in turn would expedite assignment of attorneys.

Mr. Andrus noted that the court determines indigency in most cases, although MCILS can occasionally make a direct assignment of an attorney to a client if they determine the client is indigent.¹⁰⁹ He shared the following information in explaining how indigency is determined:

We have indigent and partially-indigent. Indigent is related to the federal poverty rate, and I think it's 110% at the moment, and then there's a very low cash component that somebody can have. Really, that should look more like social security disability or some other more generally-accepted provision. Also, it should be the case that if somebody qualifies for a means-tested benefits program, they don't need to be further screened. That's repeating work [that] doesn't need to be done.

¹⁰⁴ Andrus Testimony, *November 15, 2022 Briefing*, p. 21.

¹⁰⁵ Branch Testimony, *December 15, 2022 Briefing*, p. 10.

¹⁰⁶ Heiden Testimony, *October 20, 2022 Briefing*, p.10.

¹⁰⁷ *Ibid.*

¹⁰⁸ Keim Testimony, *December 15, 2022 Briefing*, p. 15; Allen Testimony, *October 20, 2022 Briefing*, p. 14; Nadeau Testimony, *October 20, 2022 Briefing*, p. 8; Branch Testimony, *December 15, 2022 Briefing*, p. 6; Andrus Testimony, *November 15, 2022 Briefing*, p. 6.

¹⁰⁹ Andrus Testimony, *November 15, 2022 Briefing*, p. 21.

Partially-indigent means that a judge has decided that the person doesn't have the present ability to retain counsel. Some judges set that ceiling very low. Some people set [it] very high. I've seen people with very large incomes, but not a lot of money in the bank, who are stuck in jail, qualify. That's probably right. Then I've seen other people who I thought would qualify, not qualify. So I think that establishing some real parameters around what does partially-indigent mean and who qualifies for that would be appropriate, in addition to raising the actual indigency level.¹¹⁰

If the court does not have the proper resources to determine indigency, there will be delays in assigning an attorney to an indigent client.¹¹¹ When assignments are made and attorneys are pushed beyond their limits, the client's representation is impacted.¹¹²

Effective and meaningful representation for indigent individuals is not a state priority.

Senator Keim shared that the required urgency of providing effective and meaningful defense is not widely shared among Maine's legislators, meaning that justice is not only delayed but often denied while people wait in jail or receive low quality representation.¹¹³ Ms. Allen reflected on the impact of delayed justice as she waited for representation in prison. Days spent waiting for an attorney influenced her ability to be with family, keep her housing, and even impacted Ms. Allen's sense of self.¹¹⁴ Ms. Nadeau remarks that if clients are not advised well, they may be forfeiting their own rights within the justice system.¹¹⁵ There are current delays in processing cases due to a lack of attorneys, and COVID-19 has added another layer of setback within the system.¹¹⁶ Mr. Andrus suggested that centralizing indigent services may help in getting clients better access and identify resources.¹¹⁷

The Court System is Backlogged

Senator Keim testified, "you can't just look at indigent legal services in Maine and not consider that it's part of a broader system, which is the court system. Terribly backlogged, a lot of difficulty there with scheduling."¹¹⁸ Professor Branch echoed the statements of Chief Justice of the Maine Supreme Judicial Court Valerie Stanfill, that Maine essentially has a convergence of a perfect storm of three things: a chronically underfunded justice system, the COVID-19

¹¹⁰ Andrus Testimony, *November 15, 2022 Briefing*, p. 22.

¹¹¹ *Ibid.* p. 21.

¹¹² Nadeau Testimony, *October 20, 2022 Briefing*, p. 18.

¹¹³ Keim Testimony, *December 15, 2022 Briefing*, p. 15.

¹¹⁴ Allen Testimony, *October 20, 2022 Briefing*, p. 14.

¹¹⁵ Nadeau Testimony, *October 20, 2022 Briefing*, p. 8.

¹¹⁶ Branch Testimony, *December 15, 2022 Briefing*, p. 6.

¹¹⁷ Andrus Testimony, *November 15, 2022 Briefing*, p. 6.

¹¹⁸ Keim Testimony, *December 15, 2022 Briefing*, p. 3.

pandemic, and the state's inability to find enough qualified attorneys to appoint to individuals accused of crimes.¹¹⁹ Senator Keim stated, "justice delayed is justice denied."¹²⁰

Finding VI: Low-quality representation impacts case outcomes for indigent clients.¹²¹

Ms. Nadeau remarked about the power dynamic between attorneys and clients and how a client's access to representation falls solely in the hands of the attorney and their capacity to provide high-quality representation.¹²² Without the security of salary, benefits, services, mentorship, and resources, it is hard to determine the quality of representation a client may receive from an attorney.¹²³ Quality representation should not be affected by attorneys' caseloads or their abilities to represent criminal defendants.¹²⁴

Appropriate and effective representation of clients is not possible when attorneys are overburdened.

Attorneys with the capacity to take on new cases and to properly collaborate with their clients would provide better representation, which in turn may reduce incarceration rates.¹²⁵ Poor quality legal representation can lead to clients being misinformed about their rights, or taking plea deals they later regret.¹²⁶

Ms. Allen reflected on the legal representation she received and questioned that maybe if she had the financial means to pay for her own lawyer, her outcome would have been different.¹²⁷ Ms. Allen stated that taking a plea deal came from a place of intimidation and fear:¹²⁸

I sat in jail for almost nine months waiting for court, which kept getting continued. I didn't get to meet with my lawyer until the day before court. During that time, going over the case in less than an hour, a lot of talk was about plea deals. "Well, plea out. You have a criminal history. They're going to nail you with double of what they're asking for." Although I had ample evidence that I wasn't at the place that they said I was at during this alleged incident, I wanted to take it to trial.

¹¹⁹ Branch Testimony, *December 15, 2022 Briefing*, p. 6-7.

¹²⁰ Keim Testimony, *December 15, 2022 Briefing*, p. 15, echoing Dr. Martin Luther King Jr.'s "Letter from a Birmingham Jail" in which he states, "justice too long delayed is justice denied."

¹²¹ Nadeau Testimony, *November 15, 2022 Briefing*, p. 28; Nadeau Testimony, *October 20, 2022 Briefing*, pp. 3, 5-6, 8, 18; Allen Testimony, *October 20, 2022, Briefing*, p. 14; Davis Testimony, *November 15, 2022 Briefing*, p. 10.

¹²² Nadeau Testimony, *November 15, 2022 Briefing*, p. 28.

¹²³ *Ibid.*, pp. 3, 6.

¹²⁴ *Ibid.*, p. 5.

¹²⁵ Allen Testimony, *October 20, 2022, Briefing*, p. 14.

¹²⁶ Nadeau Testimony, *October 20, 2022 Briefing*, p. 8.

¹²⁷ Allen Testimony, *October 20, 2022 Briefing*, pp. 13-14.

¹²⁸ *Ibid.*

But I almost felt forced to take a plea deal because I had a criminal history. So, it was instilled by fear, which happens to a lot of court-appointed representation. People that can't afford to pay lawyers, people that are minorities and are more or less have to go with the court-appointed attorneys, I feel a lot of times the attorneys are overloaded with cases, and so they don't put their whole heart into representing their clients....So, I sat in prison for six years, taking a plea deal, having to admit something that I wasn't guilty for. Had I been able to pay for a lawyer or maybe a public defender, where they are committed to working for their client, maybe things would've turned out a little bit different for me.¹²⁹

*Indigent individuals who do receive legal representation have very little control over the quality of their representation.*¹³⁰

Senator Keim discussed the importance of recognizing client autonomy over their access to quality representation and decision making regardless of their income.¹³¹ She testified that it is important for defendants to have some choice and more say in how they are being defended:¹³²

So that's one plug I put in there as you consider things is that you think about the bias that's built into the system of an assumption that these people, because they're low income and accused of a crime, that somehow they are not capable of making sound decisions on what their defense looks like or how could we introduce into our systems, in the state of Maine or across the United States where we are respecting people more and trying to give them a greater choice and advocacy over their own situation. I feel like we could have good outcomes for people if they were respected more through the process.¹³³

Assigning attorneys without proper communication by the state throughout the process may send a message that clients are unable to make decisions in their own best interests.¹³⁴ Ms. Nadeau articulated that in the current system, a client's autonomy in making decisions is often based on luck and whether they happen to be assigned to a qualified attorney.¹³⁵

The impacts of delayed or poor-quality representation are far reaching and lifelong.

¹²⁹ Allen Testimony, *October 20, 2022 Briefing*, p. 13.

¹³⁰ Keim Testimony, *December 15, 2022 Briefing*, p. 5; Branch Testimony, *December 15, 2022 Briefing*, p. 8; Nadeau Testimony, *October 20, 2022 Briefing*, p. 5; Allen Testimony, *October 20, 2022 Briefing*, p. 13; Anderson Testimony, *October 20, 2022 Briefing*, p. 16.

¹³¹ Keim Testimony, *December 15, 2022 Briefing*, p. 5.

¹³² *Ibid.*

¹³³ *Ibid.*

¹³⁴ Keim Testimony, *December 15, 2022 Briefing*, p. 5; Branch Testimony, *December 15, 2022 Briefing*, p. 8.

¹³⁵ Nadeau Testimony, *October 20, 2022 Briefing*, p. 5.

Delayed or poor-quality representation may lead to unfair and unsupported convictions and to unjust or longer incarceration than warranted. Panelists described the lifelong impacts of deficient legal representation. Conviction history impacts a client far beyond the time they spend in jail.¹³⁶ Ms. Allen shared the far-reaching impacts incarceration had on her family and personal life:

The court-appointed representation affects the clients in a lot of ways, especially sitting in jail. Every day you're sitting in jail, you are being pushed away from your family, the impacts that it has on your children.... I was unable to be there as a mother, but not only that. You walk out with your housing gone, your employment gone, everything gone. And then being almost misrepresented, your hope and your purpose gone as well.¹³⁷

Mx. Anderson stated that fines and incarceration impacted their ability to pay for housing, employment, transportation, and education, and continues to affect them now.¹³⁸

It impacts everything from housing to employment to families, transportation. And of course, coming out of jail or prison, you now have this label that follows you wherever you go.... This system was created to perpetuate harm. And without proper funding for legal defense, that agenda becomes easier for the state. The [prosecution is] properly equipped with all of the things, as everyone before me has stated, all of the benefits, all of the pay, all of the resources, all of the support. And meanwhile, I'm lucky to see my attorney three times in seven months, six months that I was waiting to be sentenced for a crime that I didn't commit. And I think it is a disservice to the folks like me in the State of Maine to continue on a system that does not grant the same opportunity to those without money, that it grants to those with money and that's really what it boils down to.¹³⁹

Finding VII: Poor representation harms a client's ability to trust that their attorney will provide effective and meaningful representation.¹⁴⁰

Trust and Case Outcomes

¹³⁶ Anderson Testimony, *October 20, 2022 Briefing*, p. 17.

¹³⁷ Allen Testimony, *October 20, 2022 Briefing*, p. 14.

¹³⁸ Anderson Testimony, *October 20, 2022 Briefing*, p. 17.

¹³⁹ *Ibid.*

¹⁴⁰ Davis Testimony, *November 15, 2022 Briefing*, p. 11; Andrus Testimony, *November 15, 2022 Briefing*, p. 7; Nadeau Testimony, *November 15, 2022 Briefing*, p. 28; Branch Testimony, *December 15, 2022 Briefing*, p. 16; Allen Testimony, *October 20, 2022 Briefing*, pp. 13-14; Anderson Testimony, *October 20, 2022 Briefing*, p. 17.

Professor Davis highlighted the importance of a trusting relationship between an attorney and client throughout the court process. She advocated for vertical representation, where the same lawyer would represent the client from start to finish.¹⁴¹ A decision made by the attorney and client may have ramifications for which a client may have to abide, pay, or serve time in prison. Knowing a decision was carefully thought out and having an attorney willing to properly advise a client based on their individual needs may empower the client to make a well-informed decision.¹⁴²

Trusting relationships not only help clients make better decisions, but they may also assist in resolving cases more quickly because clients may understand their options more clearly and spend less time questioning and delaying trials in court because of confusion.¹⁴³ Mr. Andrus stated that understanding a client and their needs can assist in their overall current and future wellbeing.¹⁴⁴ This understanding may help the attorneys look into the issues that led to criminality in the first place and provide services to assist their clients after they leave the court system to prevent recidivism.¹⁴⁵

Ms. Nadeau testified that high-quality representation was based on trust. Clients feel very acutely when they are not getting quality representation:

The trust in our current system, if ever any existed, has been broken and I fear that is irrevocably broken. Our clients do not trust us to work for them, to try hard, to fight, to listen to them. And we have to work hard to convince them each time that we do care and that we do try. They know the system is against them and they think we are part of that system...without that foundation of trust and respect, how can we effectively connect with much less represent our clients?¹⁴⁶

Power Dynamics Between Client and Attorney

Attorneys have the authority and knowledge to inform clients about case options and assist in determining a client's potential sentencing.¹⁴⁷ Professor Branch stressed the importance of including clients using indigent legal services and including those who are impacted by the current system to inform the Committee's work.¹⁴⁸ Not only does the attorney and client relationship impact access to resources and sentencing, it can also destroy a client's sense of self

¹⁴¹ Davis Testimony, *November 15, 2022 Briefing*, p. 11.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Andrus Testimony, *November 15, 2022 Briefing*, p. 7.

¹⁴⁵ *Ibid.*

¹⁴⁶ Nadeau Testimony, *October 20, 2022 Briefing*, p.7.

¹⁴⁷ *Ibid.*, p. 28.

¹⁴⁸ Branch Testimony, *December 15, 2022 Briefing*, p. 16.

and hope furthering their distrust for those working in the system and the system itself.¹⁴⁹ Mr. Andrus noted that attorneys need to accept clients as they are. This acceptance may allow attorneys to hear the needs of the client and have a candid conversation.¹⁵⁰

Finding VIII: Public defenders need mentorship and supervision to provide effective and meaningful representation to their indigent clients.¹⁵¹

Influence of Mentorship and Supervision

Professor Davis informed the Committee that access to mentorship played a key role in forming a trusting relationship with clients.¹⁵² Mentors also help by providing feedback and training to attorneys in order to best support their clients.¹⁵³ Supervisors provide support for the overall function of the office and help bring in committed counsel who will provide quality representation.¹⁵⁴ Mr. Heiden testified to the Committee that there are too many lawyers in the current system who are failing to provide quality representation and should not be working on behalf of the public.¹⁵⁵ When things go wrong in a case, which is common, there is nobody there to help them figure it out.¹⁵⁶ Mentorship is needed among lawyers. In the current system, there is no ongoing supervision, mentorship, or training.¹⁵⁷ In order to provide high quality representation, defense attorneys need the same support of any other state office.¹⁵⁸

Finding IX: There is disagreement between Maine prosecutors and criminal defense attorneys' positions regarding who is deciding, what criteria is being used to decide, and which defendants get court-appointed counsel.

Prosecutors maintain that this determination is made strictly by law, and that they do not have any discretion in this determination.¹⁵⁹

Ms. Nadeau noted:

¹⁴⁹ Allen Testimony, *October 20, 2022 Briefing*, p. 14.

¹⁵⁰ Andrus Testimony, *November 15, 2022 Briefing*, p. 7.

¹⁵¹ Davis Testimony, *November 15, 2022 Briefing*, p. 12; Heiden Testimony, *October 20, 2022 Briefing*, p. 12; Nadeau Testimony, *October 20, 2022 Briefing*, p. 3; Maloney Testimony, *November 15, 2022 Briefing*, p. 8; Branch Testimony, *December 15, 2022 Briefing*, p. 13.

¹⁵² Davis Testimony, *November 15, 2022 Briefing*, p. 12.

¹⁵³ Heiden Testimony, *October 20, 2022 Briefing*, p. 12; Nadeau Testimony, *October 20, 2022 Briefing*, p. 3.

¹⁵⁴ Maloney Testimony, *November 15, 2022 Briefing*, p. 8.

¹⁵⁵ Heiden Testimony, *October 20, 2022 Briefing*, pp. 9, 12.

¹⁵⁶ *Ibid.*, p. 12.

¹⁵⁷ Heiden Testimony, *October 20, 2022 Briefing*, pp. 9, 12.

¹⁵⁸ Branch Testimony, *December 15, 2022 Briefing*, p. 13.

¹⁵⁹ Nadeau Testimony, *November 15, 2022 Briefing*, p. 28.

[I]t is in the hands of prosecutors, largely, that people are determined in the criminal realm to be eligible for court appointed counsel because it is prosecutors who check a box or write on the complaint whether they are seeking jail. Without that determination by prosecutors, somebody does not qualify for court appointed representation. These are criminal offenses. By their nature, there is an inherent risk of jail. That's what makes them criminal. In Maine, we've somehow delegated that initial authority to prosecutors to determine who gets representation and who is left to the wolves, so I think those two points needed to be clarified for the committee.¹⁶⁰

Mr. Andrus shared that the process for determining indigency is generally in the hands of the court, with indigency determinations sometimes coming at the discretion of a judge:

In almost all instances, the court makes that determination. We [MCILS] do occasionally make a direct assignment. We're going to have to make a couple of other decisions, but we make our own determination. But in broad, you're correct. It happens with the court. The numbers are up-to-date and accurate in that they're correct under the existing schema, but they're not what they should be, which is how I really hear the question.¹⁶¹

Defense counsel, on the other hand, contend that a comprehensive evaluation of an individual defendants' potential criminal charges and their criminal history are factors that are often ignored in determining eligibility in court appointment; these factors may increase risk of incarceration which, in turn, should dictate appointment of counsel.¹⁶²

Guidance from the MCILS website states the following for the public in response to the question: "How do I apply for a commission assigned attorney?"

The judge will decide if you are eligible for an attorney paid for by the state based on your financial situation and based on the nature of your case. At the court, you will have to fill out a motion for assignment of counsel and a financial affidavit. This affidavit should be filled out with the assistance of a MCILS Financial Screener if your court has one. Then a judge will review your request. The judge or the clerk will tell you whether or not you qualify and if you qualify whether or not you will be ordered to repay some or all of the attorney fees. If you do, the judge or the clerk will give you the name of an attorney assigned to your case. It is possible, but

¹⁶⁰ Ibid.

¹⁶¹ Andrus Testimony, *November 15, 2022 Briefing*, pp. 21-22.

¹⁶² Branch Testimony, *December 15, 2022 Briefing*, p. 7-8.

unlikely, that later on the Commission will decide that a different attorney should represent you.¹⁶³

Further, guidance on the MCILS website for attorneys includes the following response to the question, “Who will decide if an individual is indigent and entitled to assigned counsel?”

The court. Whether a person is indigent and whether the nature of the case mandates that an indigent person receive representation at state expense are generally issues of constitutional dimension that are appropriately decided by the court. Accordingly, you should advise clients seeking assigned counsel to file an application with the court.¹⁶⁴

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹⁶⁵ In keeping with these responsibilities, and given the testimony heard on this topic, the Committee submits the following recommendations to the Commission:

The U.S. Commission on Civil Rights should issue the following recommendation to the United States Department of Justice and Maine’s Congressional Delegation:

1. Request an investigation by the U.S. Department of Justice as to whether Maine is providing effective and meaningful representation to indigent clients facing actual incarceration.

The U.S. Commission on Civil Rights should issue the following recommendations to the Maine Legislature’s leadership, the Committee on Judiciary, the Committee on Appropriations and Financial Affairs, and the Legislative Budget Subcommittee; to Governor Mills; to the Chief Justice of the Maine Supreme Judicial Court; and to the Maine Commission on Indigent Legal Services:

¹⁶³ “FAQs for the Public,” Maine Commission on Indigent Legal Services, accessed July 31, 2023, https://www.maine.gov/mcils/information_for_the_public/faq-public.

¹⁶⁴ Ibid.

¹⁶⁵ 45 C.F.R. § 703.2 (2018).

2. Urge the Maine Legislature and Governor Mills to provide adequate funding to indigent legal services for criminal defendants at the minimum recommended by MCILS, which would promote parity between defense counsel and prosecutors. **Until the Maine legislature adequately funds Maine's indigent legal defense system, this issue will not be solved.**
3. Research appropriate ratios to balance the number of defense cases to the number of cases per prosecutor by looking at other state examples and structures.
4. Develop a robust and well-structured hybrid public defender system, one that includes public defenders as well as private attorneys, and one that incentivizes attorneys to provide quality public defense services and is fully funded and well-staffed with well-trained counsel which could ensure more effective representation for clients.
5. Increase the number of criminal defense attorneys in order to reduce pressure on defendants who may feel pressure to take plea deals when they have genuine defenses and want to be heard in court. Workload and caseload standards should be updated accordingly.
6. Urge the governor to appoint a task force of relevant stakeholders to meet and create a system of public defense that has the capacity to provide effective and meaningful defense to indigent clients that includes a process for ensuring and monitoring that members of federally protected classes are not receiving delayed, sub-par, or inadequate legal services. Ensure the taskforce includes at least one member who is designated to represent public defense perspectives.
7. Allow individuals providing public defense services to qualify for student loan forgiveness.
8. Fund and monitor a hybrid system in every prosecutorial district to ensure clients are assigned an attorney in a timely manner and that the attorney provides effective and meaningful counsel.
9. Develop a record keeping system by MCILS that provides updated data regarding general indigent legal services and impacted federal protected classes in order to keep attorneys accountable, to increase data collection, and to ensure quality services are being provided for clients uniformly across the state. Provide a portal for indigent clients to voluntarily give feedback to services they have received as indigent clients. Include in data collection case outcomes for court-appointed counsel versus hired counsel.

10. Develop a system that enables the courts to track which counsel is available and promotes vertical representation (one attorney who can be with clients throughout their whole case) to save time and other efficiencies. Streamline information sharing between the Administrative Office of the Courts and MCILS to enable communication with MCILS on a real-time basis.
11. Clarify and streamline the parameters for indigency to make them uniform, fair, and consistent throughout the state.
12. Follow through with all additional recommendations provided by the Sixth Amendment Center, who identified multiple issues with the right to counsel in Maine's indigent defense system, to fulfill the state's constitutional obligations.
13. Ensure the Maine legislature provides all supports necessary to the Maine court system to alleviate the backlog, including consideration of proposed legislation to speed up criminal trials by establishing timelines for the commencement of a defendant's criminal trial, and providing remedies for when time limits have been violated.
14. Fund provision of supervision, mentorship, and training for attorneys to ensure quality representation. Develop trainings that emphasize the importance of client autonomy and of trusting relationships between attorneys and their clients when providing public defense legal services.
15. Encourage diversion programs (e.g. mental health, substance abuse, domestic violence) developed by prosecutors and public defenders, to lighten attorney caseloads and to provide support for clients before they enter the criminal justice system. Seek a funding source for cases involving mental health clients as these cases require more time and support than the average case.
16. Consider decriminalizing certain offenses in order to reduce delays in assigning public defense services.
17. Appoint an entity independent of MCILS to handle attorney timesheets and payments.

The U.S. Commission on Civil Rights should issue the following recommendation to Maine's Attorney General and District Attorneys:

18. Develop a public defense system that increases parity between prosecution and defense counsel, using a combination of public defenders and private attorneys for defense.

19. Ensure the public defense system is funded in parity with prosecutors' offices.

The U.S. Commission on Civil Rights should issue the following recommendation to the State of Maine Board of Overseers of the Bar and Maine Bar Association to:

20. Develop trainings emphasizing the importance of client autonomy and trusting relationships between attorneys and their clients when providing public defense legal services.
21. Support the development of a hybrid system that relies on both employee defenders and assigned defenders who are present in every prosecutorial district to ensure clients get an attorney and that the attorney provides good service.
22. Examine current policies and procedures to determine how to increase the number of attorneys that could provide public defense services. Examples for increasing Maine's attorney pool include expanding bar reciprocity to other states and countries, researching and addressing low pass rates for the Maine Bar Exam, and exploring how to provide loan forgiveness to individuals providing public defense services.

The U.S. Commission on Civil Rights should issue the following recommendation to the University of Maine School of Law:

23. Develop externship programs and clinics for law students and develop career pathways for legal support staff through the University of Maine School of Law and MCILS to provide indigent legal services to clients.
24. Develop part-time or night school programs that would train interested individuals appropriately in providing public defense.

Appendix

Materials related to the Committee's study are available at the following link:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L01FL0luZGlnZW50lFNlcnZpY2Vz

A. Briefing materials

- a. Transcripts
- b. Agendas
- c. Minutes
- d. Panelist Presentations (slides)

B. Written Testimony

- a. David Beaulieu
- b. Larry Dansinger

**Maine Advisory Committee to the
United States Commission on Civil Rights**



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Chapter 3: ELIGIBILITY REQUIREMENTS FOR SPECIALIZED ~~CASE TYPES~~ PANELS

Summary: Chapter 2 of the Commission's ~~Rules~~rules sets out the minimum eligibility requirements to be rostered to accept ~~appointments~~assignments from the ~~Maine Commission on Indigent Legal Services ("MCILS")~~. The ~~Rules~~rules in this Chapter are promulgated to establish the eligibility requirements ~~to be rostered on specialty~~for specialized panels ~~for specific types of cases~~.

SECTION 1. ~~Definitions.~~ For purposes of this Chapter, the following terms are defined as follows:

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. Co-counsel. "Co-counsel" means an attorney who works with another attorney on a particular case. Both attorneys must be counsel of record, professionally responsible for the case, and actively participate in the representation of the client.

3. Contested Hearing. "Contested Hearing" means a hearing at which a contested issue is submitted to the court for resolution after evidence is taken or witnesses are presented.

4. ~~Domestic Violence.~~ "Domestic ViolenceHomicide. "Homicide" means:

A. ~~Offenses denominated as Domestic Violence under 17-A M.R.S.A. §§ 207-A, 209-A, 210-B, 210-C, and 211-A;~~

B. ~~Any class D or E offense alleged to have been committed against a family or household member or dating partner;~~

A. C. ~~The class D offense of stalking under 17-A~~All offenses contained in 17-A M.R.S.A. § 201 (Murder), § 202 (Felony Murder), § 203 (Manslaughter), § 152 (Attempted Murder), and § 152-A (Aggravated Attempted Murder).

B. ~~29-A M.R.S.A. § 210-A; 2411(1-A)(D)(1-A) (Criminal OUI Causing Death).~~

D. ~~Violation of a protection order under 17-A M.R.S.A. § 506-B.~~

E. ~~"Domestic Violence" includes crimes involving substantially similar conduct in another jurisdiction.~~

C. F. ~~"Domestic Violence"~~Homicide also includes Criminal Conspiracy under 17-A

M.R.S.A. §_151, Criminal Attempt under 17-A M.R.S.A. §_152, and Criminal Solicitation under 17-A M.R.S.A. §_153 to commit any of the offenses listed above, , or to commit any crime involving substantially similar conduct.

~~3. **Serious Violent**~~Major Felony. ~~“Serious Violent”~~“Major Felony” means:

5. A. _____

DRAFT

A. An offense under 17-A M.R.S.A. §§ ~~152-A (Aggravated Attempted Murder)~~, 208 (Aggravated Assault), 208-B (Elevated Aggravated Assault), 208-C (Elevated Aggravated Assault on a Pregnant Person), 208-D (Domestic Violence Aggravated Assault), 301 (Kidnapping), 401(1)(B)(1), (2), or-
(3) (Burglary with a Firearm, Burglary with Intent to Inflict Bodily Harm, and Burglary with a Dangerous Weapon), 651 (Robbery), 802 (Arson), 803-A (Causing a Catastrophe), 1105-A (Aggravated Trafficking of Scheduled Drugs), 1105-B (Aggravated Trafficking of Counterfeit Drugs), and 1105-C (Aggravated Furnishing of Scheduled Drugs).-

B. ~~B.~~ —“~~Serious Violent~~“Major Felony” includes crimes involving substantially similar conduct ~~in another jurisdiction.~~

C. ~~C.~~ —“~~Serious Violent~~“Major Felony” also includes Criminal Conspiracy under 17-A M.R.S.A. §

§ 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above, or to commit a crime involving substantially similar conduct

4.6. Sex Offense. “Sex Offense” means:-

A. ~~A.~~ —An offense under 17-A M.R.S.A. §§ ~~251-259-A~~253-260 (Sexual Assaults), §§ 281-285 (Sexual Exploitation of Minors), § 556 (Incest), § 511(1)(D) (Violation of Privacy), § 852 (Aggravated Sex Trafficking), § 853 (Sex Trafficking), and § 855 (Patronizing Prostitution of Minor or Person with Mental Disability).-

B. ~~B.~~ —“Sex Offense” includes crimes involving substantially similar conduct ~~in another jurisdiction.~~

C. ~~C.~~ —“Sex Offense” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A-M.R.S.A. § 153 to commit any of the offenses listed above, or to commit a crime involving substantially similar conduct.

7. Operating Under the Influence (OUI). “OUI” means:

A. All offenses under 29-A M.R.S.A. § 2411 (Criminal OUI).

B. “OUI” includes crimes involving substantially similar conduct.

C. OUI also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above, or to commit a crime involving substantially similar conduct.

8. Domestic Violence (DV). “Domestic Violence” means:

A. Offenses denominated as Domestic Violence under 17-A M.R.S.A. § 207-A (Domestic Violence Assault), § 208-D (Domestic Violence Aggravated Assault), § 209-A (Domestic Violence Criminal Threatening), § 210-B (Domestic Violence Terrorizing), § 210-C (Domestic Violence Stalking), and § 211-A (Domestic

- Violence Reckless Conduct).
- B. Any offense alleged to have been committed against a family or household member or dating partner as defined by 19-A M.R.S.A. §4002.
- C. Any offense of stalking under 17-A M.R.S.A. § 210-A (Stalking)
- D. Violation of a protective order under 17-A M.R.S.A. § 506-B.
- E. “Domestic Violence” includes crimes involving substantially similar conduct.
- F. “Domestic Violence” also includes Criminal Conspiracy under 17-A M.R.S.A. § 151, Criminal Attempt under 17-A M.R.S.A. § 152, and Criminal Solicitation under 17-A M.R.S.A. § 153 to commit any of the offenses listed above, or to commit any crime involving substantially similar conduct.
- 9. Child Protective. “Child Protective” means a district court proceeding in which a parent is entitled to counsel pursuant to 22 M.R.S.A. § 4005(2).
- 10. Child Protective Appeal. “Child Protective Appeal” means an appeal to the Maine Supreme Judicial Court of any order terminating parental rights.
- 11. Homicide Appeal. “Homicide Appeal” means an appeal to the Maine Supreme Judicial Court of a conviction involving a homicide offense, as defined by section 1(4) herein.
- 12. Other Criminal Appeal. “Other Criminal Appeal” means an appeal to the Maine Supreme Judicial Court of any criminal conviction other than a conviction for a homicide offense, as defined by section 1(4) herein.
- 13. Lawyer of the Day (LOD). “LOD” means:
 - A. An attorney who has been designated by the Commission as eligible for case assignments and is designated by a court pursuant to M.R.U. Crim. P. 5(e) for the limited purpose of representing a defendant or defendants at their arraignment or initial appearance.
- 14. Proceeding Type. “Proceeding Type” means the type of proceeding for which an attorney may serve as LOD The three proceeding types are in-custody, walk-in, and juvenile.
 - A. In-Custody: arraignments or initial appearances for defendants in adult criminal cases who are incarcerated.
 - B. Walk-In: arraignments or initial appearances for defendants in adult criminal cases who are not incarcerated.
 - C. Juvenile: arraignments or initial appearances for juvenile defendants.
- 15. LOD Roster: the list of attorneys designated as eligible by the Commission to serve as LOD in a proceeding type for a particular court.
- 16. Shadow Session: an attorney applying for LOD eligibility “shadows” an eligible LOD for a complete session of the proceeding type for which the attorney is applying. The applicant must be present with the eligible LOD for the entire LOD appearance,

including in client interviews (with client consent), and in the courtroom. Rules of client confidentiality and privilege apply to all communications between the client, the LOD, and the attorney participating in a shadow session. If it is a morning LOD session that continues into the afternoon, the applicant must be present the entire time for what will be counted as one shadow session. If the shadowing attorney is eligible to receive Commission case assignments at the time of the shadow session, the shadowing attorney is eligible for payment in accordance with Commission Rule 301, Section 5.

17. Resource Counsel. “Resource Counsel” means an attorney who provides mentoring and other services to rostered counsel as delineated in Chapter 301 of the Commission rules.

18. Commission Liaison. “Commission Liaison” means the attorney who performs services for clients as part of a specialty court team but who has not otherwise been appointed to represent a specific client on a specific docket.

5.19. Specialized ~~Case-Types~~ Panels. “Specialized ~~Case-Types~~ Panels” means those ~~eases~~ types of assignments that are complex in nature ~~due to the allegations against the person as well as the severity of the consequences if a conviction occurs.~~ They include the following ~~ease-types~~ panels:

A. Homicide, including OUI ~~manslaughter~~ Manslaughter

B. Sex ~~offenses~~ Offenses

~~C. — Serious violent felonies~~

C. Major Felonies

D. Operating ~~under~~ Under the ~~influence~~ Influence

E. Domestic ~~violence~~ Violence

F. Juvenile ~~defense~~ Defense

G. Child Protective ~~custody matters~~

~~H. — [Repealed]~~

H. Child Protective Appeals

I. Homicide Appeals

J. Other Criminal Appeals

K. In-Custody Lawyer of the Day

L. Walk-In Lawyer of the Day

M. Juvenile Lawyer of the Day

N. Resource Counsel

O. Commission Liaison

SECTION 2. Powers and Duties of the Executive Director.

1. The Executive Director, ~~or his or her designee~~, shall develop an application process for an attorney seeking ~~appointment(s) in Specialized Case Types~~ eligibility for specialized panels to demonstrate the minimum qualifications necessary to be placed on ~~Specialized Case Type Rosters~~ a specialized panel. An applicant for a ~~Specialized Case Type Roster~~ specialized panel must present additional information or documents beyond the minimum requirements of this Chapter if requested by the Executive Director, ~~or his or her designee~~.
2. The Executive Director, ~~or his or her designee~~, shall have the sole discretion to make the determination if an attorney is qualified to be placed on a ~~Specialized Case Type Roster~~ specialized panel. In addition, the Executive Director, ~~or his or her designee~~, shall have the sole discretion, to grant or deny a waiver pursuant to, and in accordance with, Section 4.
3. The Executive Director, ~~or his or her designee~~, may, in ~~his or her~~ their sole discretion, remove an attorney from a ~~Specialized Case Type Roster~~ specialized panel at any time if there is reasonable grounds to believe the attorney is not meeting the minimum qualifications and standards as determined by the Executive Director, ~~or his or her designee~~.
4. This subsection does not exempt an attorney from satisfying the requirements of this Chapter at any time thereafter or limit the authority of the Executive Director, ~~or his or her designee~~, to remove an attorney from any ~~Specialized Case Type Roster~~ specialized panel at any time.

SECTION 3. Minimum Eligibility Requirements for Specialized ~~Case Types~~ Panels.

1. 1. Homicide. ~~In order to~~ To be rostered for homicide cases an attorney must:

- A. Have at least five years of criminal ~~law~~ defense practice experience;-
- B. Have tried before a ~~judge~~ jury, individually or ~~jury as first chair~~ co-counsel, at least five felony cases within the last ten years, at least two of which were ~~serious violent~~ major felony, homicide, or Class C or higher sex offense cases, ~~AND at least two of which were jury trials~~;
- C. Have tried before a jury, individually or as first chair ~~a homicide case in the last fifteen years, OR have tried as second chair~~ co-counsel, at least one homicide case ~~with an experienced homicide defense attorney within~~ in the ~~past five~~ last fifteen years;-
- D. Demonstrate a knowledge and familiarity with the evidentiary issues relevant to homicide cases, including but not limited to forensic and scientific issues relating to DNA testing and fingerprint analysis, mental health issues, and eyewitness identification;-
- E. Provide a letter explaining reasons for interest in and qualifications for representing

individuals charged with homicide; and

- F. Have submitted to the Commission three letters of reference from attorneys with whom the applicant does not practice, that assert that the applicant is qualified to represent individuals charged with homicide, including OUI manslaughter. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~ authors.

2. 2.—Sex Offenses. ~~In order to~~ To be rostered for sex offense cases an attorney must:

- A. Have at least three years of criminal ~~law~~ defense practice experience;
- B. Have tried before a ~~judge~~ jury, individually or ~~jury as first chair~~ co-counsel, at least three felony cases ~~in~~ within the last ten years, ~~at least two of which were jury trials~~;
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a sex offense; ~~and~~
- 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 charged with a sex offense. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~ authors; ~~and~~
- E. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

3. 3.—Serious Violent **Major Felonies.** ~~In order to~~ To be rostered for ~~serious violent~~ major felony cases an attorney must:

- A. Have at least two years of criminal ~~law~~ defense practice experience;
- B. Have tried before a jury, individually or ~~as first chair~~ co-counsel, at least four criminal ~~or civil~~ cases in the last ten years, ~~at least two of which were jury trials and at least two of which were criminal trials~~;
- C. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a ~~serious violent~~ major felony; and
- 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 charged with a ~~serious violent~~ major felony. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~ authors.
- E. ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

4. ~~4.~~ Operating Under the Influence. ~~In order to~~ To be rostered for OUI cases an attorney must:

- A. Have at least one year of criminal ~~law~~defense practice experience;
- B. Have tried before a ~~judge or jury~~-, individually or as first chair/co-counsel, at least two criminal cases, and conducted at least two contested hearings within ~~at least~~ the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics relevant particularly to OUI defense;-
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with an OUI; and-
- E. -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 charged with an OUI. The letters of reference must be submitted directly to the Executive Director,~~or his or her designee~~, by the ~~author~~authors.

~~F. — Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

5. ~~5.~~ Domestic Violence. ~~In order to~~ To be rostered for domestic violence cases an attorney must:

- A. Have at least one year of criminal ~~law~~defense practice experience;
- B. Have tried before a ~~judge or jury~~-, individually or as first chair/co-counsel, at least two criminal cases and conducted at least two contested hearings within ~~at least~~ the last ten years;
- C. Have obtained in the last three years at least four hours of CLE credit on topics related to domestic violence defense, which ~~included~~must include specific training on the collateral consequences of such convictions;-
- D. Provide a letter explaining reasons for interest in and qualifications for representing individuals charged with a domestic violence crime; and
- E. 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 charged with a domestic violence crime. The letters of reference must be submitted directly to the Executive Director,~~or his or her designee~~, by the ~~author~~authors.

~~F. — Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

6. ~~6.~~ **Juvenile Defense.** ~~In order to~~ To be rostered for felony, sex offense, and bind-over juvenile defense cases an attorney must:

A. ~~f~~Repealed~~f~~.

B. ~~B.~~ — For felony cases and sex offense cases:

- 1) ~~1)~~ Have at least one year of juvenile ~~law~~defense practice experience;
- 2) ~~2)~~ Have handled at least 10 juvenile cases to conclusion;-
- 3) ~~3)~~ Have tried at least 5 contested juvenile hearings (including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings); individually or as co-counsel, within the past ten years;
 - ~~4) — Have attended in the last three years at least four hours of CLE credit on two or more of the following topics related to juvenile defense including training and education regarding placement options and dispositions, child development, adolescent mental health diagnosis and treatment, and the collateral consequences of juvenile adjudications;~~
- 4) ~~5)~~ Have completed the Commission's Juvenile Law Minimum Standards Training;
- 5) Provide a letter explaining reasons for interest in and qualifications for representing juveniles in felony and sex offense cases; and
- 6) ~~6)~~ 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 juveniles in felony and sex offenses cases. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee,~~ by the ~~author~~authors.
- ~~7) — Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~
- ~~8) — Upon notice from the State, whether formal or informal, that it may be seeking bind-over in the case, the attorney must immediately notify the Executive Director.~~

C. ~~C.~~ — For Bind-over~~Over~~ Hearings:

- 1) ~~1)~~ Have at least two years of juvenile ~~law~~defense practice experience;
- 2) ~~2)~~ Have handled at least 20 juvenile cases to conclusion ~~in~~within the past ten years;

- 3) ~~3)~~ Have tried, individually or as co-counsel, at least 10 contested juvenile hearings ~~(including but not limited to: detention hearings, evidentiary hearings, adjudication hearings, and dispositional hearings in the past ten years)~~;
- 4) ~~4)~~ Have attended in the last three years at least eight hours of CLE credit that cover all ~~of~~ the following topics devoted to juvenile defense ~~including~~: training and education regarding placement options and dispositional alternatives; child and adolescent brain development; adolescent mental health diagnosis and treatment; and issues and case law related to competency, bind-over procedures, and the collateral consequences of juvenile adjudications;
- 5) ~~5)~~ Provide a letter explaining reasons for interest in and qualifications for representing juveniles in bind-over hearings; and
- 6) ~~6)~~ 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 juveniles in bind-over hearings. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~ authors.

7) ~~Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

D. 7.—For Bound Over Cases:

- 1) If a case is bound over, the assigned attorney must be eligible for the adult criminal case types implicated by the charges, or have eligible co-counsel appointed in the matter

7. **Child Protective Custody Matters.** In order to, To be rostered to represent parents in child protective ~~custody~~ cases an attorney must:

A. A.—~~/Repealed/.~~

B. B.—Satisfy one of the following litigation requirements:

- 1) Have ~~conducted~~ provided representation to parents in at least four contested hearings in civil or criminal three unrelated child protective cases from the preliminary protective order stage through disposition of the cases within the last five ~~past ten~~ years; or

C.—Have attended in the last three years at least four hours of CLE credit on topics related to the representation of parents in protective custody proceedings;

- 2) ~~D.~~ Serve as co-counsel with an attorney who is eligible to receive Commission child protective case assignments on two or more assigned child protective cases for at least twelve months prior to the date of the application.

C. Complete the Commission's Child Protective Minimum Standards Training;

D. Provide a letter explaining reasons for interest in and qualifications for representing parents in child protective ~~custody~~ proceedings; and

E. E.—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 parents in child protective ~~custody~~ cases. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee~~, by the ~~author~~authors.

~~E.1. Letters of reference shall also be submitted upon the request of the Executive Director, or his or her designee.~~

~~F. F.~~ If a Petition to Terminate Parental Rights is filed and the attorney of record has not previously tried ~~as a first or second chair~~ a termination of parental rights hearing, or has ~~less~~fewer than ~~6~~six months of child protection experience, then the attorney of record must file a request with the ~~MCILS~~Commission for a more experienced attorney to serve as ~~a second chair~~co-counsel to assist ~~the attorney of record~~them with the termination of parental rights hearing.

~~8. 8. /Repealed/.~~

~~9.~~

~~9. Law~~**Maine Supreme Judicial Court Appeals.** ~~In order to be rostered for To accept assignments to Law~~Maine Supreme Judicial Court appeals, an attorney must be eligible for the applicable appeal type as outlined below.

A. Child Protective Appeals. To be eligible to accept assignments to child protective appeals, an attorney must satisfy the below requirements. Even if an attorney is eligible for child protective appeals, the attorney is not eligible to represent a client in cases where a child protective appeal when the attorney was trial counsel is not continuing on appeal, an attorney must for that case. If a client wishes to appeal a child protective case, the attorney shall file a motion to withdraw as counsel simultaneously with the notice of appeal.

~~A. Have provided representation to the conclusion of six cases. "Conclusion" means:~~

~~1) 1) In criminal and juvenile cases, the entry of sentence or disposition in five or more child protective appeals in the Maine Supreme Judicial Court, either after plea or trial or the entry into a deferred disposition; individually or as co-counsel;~~

~~2) In child protective cases, the issuance of a jeopardy order or an order terminating parental rights;~~

~~B. Applicants who have provided representation in three or more appeals, including appeals to the Law Court and Rule 80B or Rule 80C appeals to the Superior Court, must submit copies of briefs that they have filed in the three appeals most closely pre-dating the date of their application for placement on the appellate roster.~~

~~C. Applicants who have not provided representation in three or more appeals must submit copies of any briefs that they have filed in an appeal, together with copies of a sufficient number of memoranda of law submitted to any court so that the submissions total three.~~

~~D.1) Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeals, including a description of the applicant's~~

~~experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and~~

- ~~2) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the five most recent appeals the attorney has handled;~~
- ~~3) Have been deemed eligible to accept PC case assignments pursuant to Section 3(7) of this Chapter;~~
- ~~4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills;~~
- ~~5) Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeals; including a description of the applicant's experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and~~
- ~~E.6) 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 provide representation in appeal cases. The letters of reference must be submitted directly to the Executive Director, or his or her designee, by the author, authors.~~

B. Homicide Appeals If trial counsel wants to continue representation on a homicide appeal, the attorney must either be eligible for homicide appeals by the time the notice of appeal is filed, or file a motion for co-counsel or motion to withdraw simultaneously with the notice of appeal. To be eligible to accept assignments to homicide appeals, an attorney must:

- 1) Have provided representation in seven or more criminal appeals in the Maine Supreme Judicial Court, either individually or as co-counsel, within the last ten years;
- 2) Have completed oral argument in at least two criminal appeals before the Maine Supreme Judicial Court;
- 3) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the seven most recent criminal appeals the attorney has handled;
- 4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills;
- 5) Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeals; including a description of the applicant's experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and
- 6) 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 provide representation in appeal cases. The letters of reference must be submitted directly to the Executive Director by the authors.

C. Other Criminal Appeals. If trial counsel wants to continue representation on an other criminal appeal, the attorney must either be eligible for other criminal appeals by the time the notice of appeal is filed, or file a motion for co-counsel or motion to withdraw simultaneously with the notice of appeal. To be eligible to accept assignments to other criminal appeals, an attorney must:

- 1) Have provided representation in five or more criminal appeals in the Maine Supreme Judicial Court, either individually or as co-counsel, within the last ten years;
- 2) Have completed oral argument in at least one criminal appeal before the Maine Supreme Judicial Court;
- 3) Provide copies of all briefs the attorney filed, and the opinions/decisions rendered in the five most recent criminal appeals the attorney has handled; and
- 4) Demonstrate, through application and submitted briefs, exceptional legal research, writing, and analytical skills.
- 5) Submit a letter explaining the applicant's interest in and qualifications for providing representation on appeals; including a description of the applicant's experience with appeals, representative examples of issues raised on appeal, and a summary of the results of those appeals; and

~~F.6) Letters~~ If the applicant seeks a waiver, the applicant shall submit three letters of reference shall from attorneys with whom the applicant does not practice asserting that the applicant is qualified to provide representation in appeal cases. The letters of reference must be submitted upon the request of directly to the Executive Director, or his or her designee, by the authors.

~~G. — This rule is not applicable to cases where trial counsel continues on appeal.~~

10. 10. — Post-Conviction Review. ~~In order to~~ To be rostered for post-conviction review cases an attorney must:

- A. Have at least three years of criminal ~~law~~ defense experience;
- B. Have previously qualified to be placed on the trial roster for the case type applicable to the conviction being challenged on post-conviction review;-
- C. Submit a letter explaining the applicant's interest in and qualifications for providing representation in post-conviction review cases, including a description of the applicant's criminal law experience generally and how that experience prepared the applicant to address the issues applicable to post-conviction review cases; and
- 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 provide representation in post-conviction cases. The letters of reference must be submitted directly to the Executive Director, ~~or his or her designee,~~ by the author.-
- ~~E. Letters of reference and writing~~ Writing samples shall also be submitted upon the request of the Executive Director.;

11. Lawyer of the Day (LOD).

A. LOD Specialized Panels:

- 1) **In-Custody.** To be rostered for LOD for in-custody proceedings, an attorney must:

- a. Complete the Commission's LOD Minimum Standards Training;
- b. Be currently eligible to accept Commission criminal case assignments;
- c. Have previously been deemed eligible for OUI and domestic violence cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full in-custody LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing to the Commission that the applicant completed each shadow session; and
- e. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

2) **Walk-In.** To be rostered for LOD for walk-in proceedings, an attorney must:

- a. Complete the Commission's LOD Minimum Standards Training;
- b. Be currently eligible to accept Commission criminal case assignments;
- c. Have previously been deemed eligible for OUI and domestic violence cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full walk-in LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing to the Commission that the applicant completed each shadow session; and
- e. Certify that they have read, understand, and agree to comply with all Commission standards of practice.

3) **Juvenile.** To be rostered for juvenile LOD proceedings, an attorney must:

- a. Complete the LOD Minimum Standards Training prior to or ~~his~~ within three months of being rostered for LOD assignments;
- b. Be currently eligible to accept Commission juvenile case assignments;
- c. Have previously been deemed eligible for juvenile felony cases in accordance with Chapter 3 of the Commission Rules;
- d. Complete three full juvenile walk-in LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing that the applicant completed each shadow session;
- e. Complete three full juvenile in-custody LOD shadow sessions on three separate days. The eligible LOD(s) who were shadowed must verify in writing that the applicant completed each shadow session; and
- f. Certify that they have read, understand, and agree to comply with all Commission LOD standards of practice.

12. Commission Liaison.

A. To be eligible to serve as a Commission Liaison, an attorney must:

- 1) Be eligible to accept Commission case assignments;
- 2) Have at least five years of experience practicing criminal defense;
- 3) Demonstrate a history of providing high quality legal services; and
- 4) Have experience practicing law in the court(s) in which counsel is seeking to serve as the Commission Liaison.

13. Resource Counsel.

A. To be eligible to serve as Resource Counsel, an attorney must:

- 1) Submit three letters of reference from attorneys with whom the attorney

applicant does not practice that address the attorney's ability to work with and advise other attorneys of varying experience levels;

- 2) Have at least five years' experience actively practicing in the area of law for which counsel is seeking eligibility as Resource Counsel;
- 3) Be currently eligible to accept Commission case assignments;
- 4) Demonstrate a history of providing high quality legal services;
- 5) Demonstrate exceptional litigation skills and experience;
- 6) Demonstrate high ethical standards; and
- E-7) Have no substantiated Commission assessments or her designee investigations or substantiated Board of Bar Overseers complaints within the three years immediately preceding counsel's Resource Counsel application.

B. Counsel must reapply to serve as Resource Counsel on an annual basis. That application is due at the same time as the Commission annual renewal.

C. Counsel serves as Resource Counsel at the discretion of the Executive Director. The Executive Director may terminate someone's eligibility to serve as Resource Counsel at any time, with or without cause.

SECTION 4. Waiver of Certain Eligibility Requirements

1. An attorney who wishes to receive assignments for one or more of the specialized ~~case types~~panels listed above but who does not meet both requirements of: ~~(4a)~~ years of practice experience; ~~and (2 or (b))~~ trial or litigation experience, may seek a waiver of either, but not both, requirements.

~~1.2.~~ An attorney seeking a waiver must provide the Executive Director, ~~or his or her designee,~~ with written information explaining the need for a waiver and the attorney's experience and qualifications to provide high-quality representation to the indigent people whose charges or litigation matters are covered by this rule.-

~~2.3.~~ An attorney may apply for a conditional waiver if additional time is needed to meet CLE requirements.-

~~3.4.~~ The Executive Director, ~~or his or her designee,~~ may consider other litigation experience, and total years of practice, ~~and regional conditions and needs~~ in granting or denying a waiver to any ~~particular~~ attorney.-

STATUTORY SECTION 5. Overlapping Offenses.

1. If a case involves multiple offenses that are categorized within specialty panels, counsel must be eligible for all specialty panels that are implicated to accept the case.
2. If an offense is categorized as multiple different specialty panels, the attorney must be eligible for all specialty panels implicated by the offenses to accept assignment the case.

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

EFFECTIVE DATE:

— July 8, 2011 — ~~filing 2011-181 (Final adoption, major substantive)~~

AMENDED:

— June 10, 2016 — filing 2016-091 — ~~(Final adoption, major substantive)~~

Detailed Basis Statement for Chapter 3

The Commission is charged with providing “...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.” 4 M.R.S. § 1801. MCILS is also statutorily obligated to develop standards for “minimum experience, training and other qualifications for contract counsel and assigned counsel...” 4 M.R.S. § 1804(B). The right to effective counsel is protected by the United States Constitution and the Constitution of Maine.

Chapter 3 is promulgated to ensure that the Commission fulfills its statutory and constitutional obligations to ensure the delivery of high-quality representation to indigent persons by setting eligibility standards for determining which attorneys are qualified to represent clients in specialized cases.

Maine Commission on Indigent Legal Services

Proposed Rule: Chapter 3, Eligibility Requirements for Specialized Cases

Response to Public Comments

Comment #1:

The rostering process is unduly burdensome and is one of the barriers to getting new attorneys in the rural areas. Barriers to rostering attorneys imposes a financial burden on new lawyers or their employers. It takes too long for an attorney to complete the core trainings for rostering.

Attorney Dennis Mahar

MCILS Response:

The Commission is statutorily obligated to develop standards for “minimum experience, training and other qualifications for contract counsel and assigned counsel...” 4 M.R.S. § 1804(B). The eligibility requirements contained within the proposed Chapter 3 are designed to fulfill that obligation in a meaningful way. The proposed eligibility requirements only apply to specialized panels. Chapter 2 provides the eligibility requirements for non-specialized cases and are minimal. For an attorney to be eligible for other misdemeanors, other felonies, drug offenses, and probation violations, they only need to submit a successful application and complete a two-day minimum standards training or apply for a waiver of the training requirement. The minimum standards training is offered multiple times per year for CLE credit. An attorney who is unable to attend scheduled minimum standards training can schedule an individually moderated replay of the training. Staff conduct moderated replays of the training several times per year. The Criminal Law Minimum Standards Training has been offered approximately twelve times in 2023.

The requirements specified in the proposed Chapter 3 pertain to automatic eligibility. The proposed Rule includes a provision for an attorney to request a waiver from the litigation or years of experience requirements. Thus, an attorney who does not satisfy all the enumerated rostering requirements may nonetheless be deemed eligible for a particular panel if they obtain a waiver.

With permission from MCILS, any attorney who is eligible to receive MCILS case assignments may represent a client in a specialized case if the attorney has co-counsel who is eligible for the applicable specialized panel. Thus, Chapter 3 is not a barrier to an attorney accepting cases of any type and encourages attorneys to gain the requisite experiencing by working with eligible co-counsel.

Comment #2:

Criminal defense experience is more relevant than criminal law experience.

Attorney Rory McNamara

MCILS Response:

The Commission has considered this comment. There are various perspectives on this point. Those who support the contention that criminal defense experience is more relevant than criminal law experience argue that representing a person is unique and requires a different skillset than representing the State. Criminal defense attorneys must have interpersonal skills, the ability to thoroughly investigate allegations, and the ability to prioritize and advocate for a client's preferences over their own. Those who support the requirement of criminal defense experience also point out that such a requirement does not render prosecutorial experience meaningless; rather, that experience may be a factor in determining whether the applicant receives a waiver. Those who support a criminal law experience requirement argue that the skills used by prosecutors, particularly trial skills, translate into defense work. Another point that has been made is that there are attorneys who have decades of prosecutorial experience who would not be facially eligible for some of the specialized panels under the proposed Rule.

Comment #3:

Automatic-qualification standards should be stringent.

Attorney Rory McNamara

MCILS Response:

The Commission agrees with this comment. The Commission believes that the proposed requirements for automatic qualification are appropriately stringent.

Comment #4:

There has been discussion that these proposed standards are causing the problem of not being able to find counsel for cases. The current standards and proposed standards are doing no such thing. There are hundreds if not thousands of cases that need lawyers for other felonies and other misdemeanors, which do not require any specialized eligibility. If there were a bunch of lawyers willing to take cases but for the specialized requirements, they would have already gone on the roster. This will not exacerbate the shortage of attorneys.

Attorney Robert Ruffner

MCILS Response:

The Commission agrees that the proposed Chapter 3 will not exacerbate the shortage of attorneys because: Chapter 3 does not apply to other felonies, other misdemeanors, drug offenses, probation violations, civil commitments, emancipations, or guardianships; an attorney who has been deemed eligible to accept case assignments may represent a client in a specialized case with eligible co-counsel; and, the Rule provides a waiver process for attorneys who cannot meet the automatic qualification standards.

Comment #5:

Trial counsel should be prohibited from staying on as appellate counsel in child protective cases. In child protective cases, ineffective assistance of counsel claims can be made on direct appeal so it is important for someone with fresh eyes to look at the case.

Attorney Taylor Kilgore

MCILS Response:

The Commission agrees with this comment because ineffective assistance of counsel claims may be raised on direct appeal in child protective cases. Because ineffective assistance claims in criminal cases are raised via post-conviction review (PCR) proceedings, and new counsel is appointed to the client in the PCR, the Commission does not think that Chapter 3 must require new counsel on appeal in a criminal case. The Commission encourages trial counsel in criminal cases to evaluate whether it is prudent to seek appointment of successor counsel in cases that are appealed.

Comment 6:

22 MRS § 4006 automatically continues representation for trial counsel once an appeal has been filed. We do not have enough attorneys on the child protective appellate roster to remove trial counsel from pool of people who can handle the appeals. This proposed rule would also require trial counsel to withdraw anytime they litigate jeopardy and lost because the client could pursue ineffective assistance of counsel.

Attorney Julian Richter

MCILS Response:

22 MRS § 4006 states that, “Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal *unless otherwise ordered by the court.*” Emphasis added. The proposed Chapter 3 would deem trial counsel ineligible for the appeal and require them to file a motion to withdraw, which would seek an order from the court permitting them to withdraw. The Commission’s position is that the proposed Chapter 3 is not in conflict with 22 MRS § 4006, but for purposes of clarity, the Commission should seek a statutory change to reflect that new counsel must be appointed to parents whose cases are appealed. The lack of available attorneys is a crisis but is not justification for lowering the standards of eligibility for counsel to represent indigent clients. The quality of representation cannot be sacrificed merely to increase the quantity of attorneys.

The proposed rule would not require trial counsel to withdraw if the client appealed a jeopardy order. The rule limits the definition of “child protective appeal” to an appeal of a termination of parental rights order.

Chapter 301: FEE SCHEDULE AND ADMINISTRATIVE PROCEDURES FOR PAYMENT OF COURT OR COMMISSION-ASSIGNED COUNSEL

Summary: This chapter establishes a fee schedule and administrative procedures for payment of private Court Assigned and/or Commission-Assigned counsel. The Chapter sets a standard hourly rate and fee amounts that trigger presumptive review for specific case types. The eChapter also establishes rules for the payment of mileage and other expenses that are eligible for reimbursement by the Commission. Finally, this Chapter requires Counsel that all vouchers for attorney fees and reimbursable expenses must be submitted using the MCILS electronic case management system.

SECTION 1. DEFINITIONS

1. **Court-Assigned Counsel.** “Court-Assigned Counsel” means private counsel licensed to practice law in Maine, designated eligible to receive an assignment to a particular case, and initially assigned by a Court to represent a particular client in a particular matter. For the purposes of this rule, “Court-Assigned Counsel” does not include any employee of MCILS.
2. **Commission-Assigned Counsel.** “Commission-Assigned Counsel” means private counsel licensed to practice in Maine, designated eligible to be assigned to provide a particular service or to represent a particular client in a particular matter, and assigned by MCILS to provide that service or represent a client. For the purposes of this rule, “Commission-Assigned Counsel” does not include any employee of MCILS.
3. **Counsel.** As used in this Chapter “Counsel” means a Court-Assigned Counsel or Commission-Assigned Counsel, or both.
4. **MCILS or Commission.** “MCILS” or “Commission” means the Commissioners of the Maine Commission on Indigent Legal Services.
5. **Executive Director.** “Executive Director” means the Executive Director of MCILS or the Executive Director’s decision-making designee.
6. **Commission-Employed Counsel.** “Commission-Employed Counsel” means counsel employed by the Commission to provide direct representation to indigent persons.
7. **Home Court.** “Home Court” means the physical location of the court in closest proximity to Counsel’s office or reasonably accessible private meeting space as contemplated by 94-649 C.M.R. ch. 2 § 3.
8. **MCILS Liaison.** “MCILS Liaison” means the attorney who performs services for clients as part of the specialty court team but who has not otherwise been appointed to represent a specific client in a specific docket.

9. **Interim Voucher.** “Interim Voucher” means any voucher submitted in a case before counsel’s professional responsibility in a matter ends.
10. **Particular Client Assignment.** “Particular Client Assignment” means an assignment of Counsel to represent a particular client in a particular matter either by MCILS or the Court under Rule 44 of the Maine Rules of Unified Criminal Procedure or Rule 88 of the Maine Rules of Civil Procedure. For the purpose of this rule a “particular matter” is a matter described by a particular docket number in a Court.
11. **Days.** “Days” means calendar days.
12. **Paralegal.** A “paralegal” is a person, qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.
13. **Paralegal services.** “Paralegal services” constitute specifically delegated substantive legal work for which a lawyer is responsible.
14. **Secretarial services.** “Secretarial services” means staff support services other than paralegal services.
15. **Resource Counsel.** Counsel designated eligible to serve as Resource Counsel pursuant to Chapter 3 of the Commission Rules.
16. **Final Voucher.** Final Voucher means and includes the voucher required by Section 6 of this Chapter to be submitted within 90 days of a terminal case event.
17. **Supplemental Voucher.** Supplemental Voucher means any voucher submitted for work performed by Counsel on behalf of their indigent client after the terminal case event has occurred.
- ~~5-18.~~ **Case.** Case means particular client assignment as defined by this Chapter.

SECTION 2. HOURLY RATE OF PAYMENT

Effective March 1, 2023:

A rate of One Hundred Fifty Dollars (\$150.00) per hour is authorized for time spent by Counsel, and billed using MCILS electronic case management system, on an assigned case on or after March 1, 2023. A rate of Eighty Dollars (\$80.00) per hour remains authorized for time spent on

an assigned case between July 1, 2021 and February 28, 2023. A rate of Sixty Dollars (\$60.00) per hour remains authorized for time spent on an assigned case between July 1, 2015 and June 30, 2021. A rate of Fifty-five Dollars (\$55.00) per hour remains authorized for time spent on an assigned case between July 1, 2014 and June 30, 2015. A rate of Fifty Dollars (\$50.00) per hour remains authorized for time spent on an assigned case between the inception of the Commission and June 30, 2014.

SECTION 3. EXPENSES

1. **Routine Office Expenses.** Routine Office expenses will not be paid by MCILS. Routine office expenses include, but are not limited to: postage other than overnight and express postage, regular telephone, cell telephone, fax, office overhead, utilities, secretarial services, the first 100 pages of any one print or copy job, local phone calls, parking (except as stated below), and office supplies. ~~etc.~~ Any and all requests for fees or reimbursement for Paralegal services and secretarial services may be submitted billed to MCILS only through the non-counsel cost procedures.
2. **Itemized Non-Routine Expenses.** Itemized non-routine expenses, such as discovery from the State or other agency, long distance calls (only if billed for long distance calls by your phone carrier), overnight and express postage, collect phone calls, copy costs for print or copy jobs in excess of 100 pages, beginning with the 101st page, printing/copying/binding of legal appeal brief(s), relevant in-state mileage (as outlined below), tolls (as outlined below), and fees paid to third parties, may be paid by MCILS after review. Necessary parking fees associated with multi-day trials and hearings will be reimbursed. Parking tickets, fines, and/or fees for other violations will not be reimbursed.
3. **Travel Reimbursement.** Mileage reimbursement shall be made at the State rate applicable to confidential state employees on the date of the travel. Mileage reimbursement will be paid for travel to and from courts other than Counsel's home ~~district and superior~~ court. Mileage reimbursement will not be paid for travel to and from a Counsel's home ~~district and superior~~ courts. Tolls will be reimbursed. ~~except that tolls will not be reimbursed for travel to and from Counsel's home district and superior court.~~ All out-of-state travel, ~~or any~~ overnight travel, and any other expense associated with such travel including but not limited to airfare, lodging, and food, must be approved by MCILS in writing prior to incurring the expense. Reimbursement will be subject to the State's per diem maximum rate policies with respect to the reimbursement of any expense must be approved by MCILS in writing prior to incurring the expense. Use of the telephone, video equipment, and email in lieu of travel is encouraged as appropriate.
4. **Itemization of Claims.** Claims for all expenses must be itemized and include documentation. All expense documentation must be attached to the voucher used to seek reimbursement for the expense claimed. Claims for mileage shall be itemized and include the start and end points for the travel in question.
5. **Discovery Materials.** MCILS will reimburse only for one set of discovery materials per assignment. If counsel is permitted to withdraw, appropriate copies of discovery materials must be forwarded to new counsel within one week of notice of new counsel's

assignment. Counsel may retain a copy of a file transferred to new counsel, or to a client. Counsel shall perform any scanning or make any copies necessary to retain a copy of the file at counsel's expense. The client owns the file. The original file shall be tendered to new counsel, or to the client, as directed.

6. **Expert and Investigator Expenses.** Other non-routine expenses for payment to third parties, (e.g., investigators, interpreters, medical and psychological experts, testing, depositions, etc.) shall be approved in advance by MCILS. Funds for third-party services will be provided by MCILS only upon written request and a sufficient demonstration of reasonableness, relevancy, and need in accordance with MCILS rules and procedures governing requests for funds for experts and investigators. See Chapter 302 Procedures Regarding Funds for Experts and Investigators.
7. **Witness, Subpoena, and Service Fees.** Witness, subpoena, and service fees will be reimbursed only pursuant to the Maine Rules of Court. ~~Counsel should not~~ ~~It is unnecessary for counsel to~~ advance these costs. ~~These costs and they~~ shall not be included as a voucher expense without prior consent from the Executive Director ~~or~~ ~~designee~~. Fees for service of process by persons other than the sheriff shall not exceed those allowed by 30-A M.R.S. §421. The same procedure shall be followed in civil cases.

SECTION 4. PRESUMPTIVE REVIEW

Vouchers submitted for amounts in excess of the applicable trigger for presumptive review will be considered for payment after review by the Executive Director or designee. Vouchers submitted in excess of the trigger for presumptive review must be accompanied by an explanation of the time spent on the matter. The explanation shall be set forth in the notes section of a voucher or invoice.

1. Trial Court Criminal Fees

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

- 1) **Murder.** All murder cases shall trigger presumptive review.

- 2) **Class A.** ~~\$5,000~~\$9,400

- 3) **Class B and C (against person).** ~~\$4,000~~\$7,500

- 4) **Class B and C (against property).** ~~\$2,500~~\$4,700

- 5) **Class D and E.** ~~\$2,500~~\$4,700

- 6) *[Repealed]*

- 7) **Post-Conviction Review.** ~~\$3,000~~\$5,600

- 8) **Probation Revocation.** ~~\$1,500~~\$2,800

9) **Miscellaneous (i.e. witness representation on 5th Amendment grounds, etc.).** ~~\$1,000~~900

10) **Juvenile.** ~~\$1,500~~2,800

11) **Bindover:** applicable criminal class trigger

B. In cases involving multiple counts against a single defendant, the triggering fee shall be that which applies to the ~~most-serious~~ count assigned with the highest class. In cases where a defendant is charged with ~~multiple a number of~~ unrelated offenses, counsel shall coordinate and consolidate services as much as possible.

C. Criminal and juvenile cases will include all proceedings through a terminal case event as defined in Section 6₂ below. Any subsequent proceedings, such as probation revocations_s, will require new application and appointment.

D. *[Repealed]*

E. Upon written request to MCILS, a second Counsel₇ may be assigned in a murder ~~case~~ or other complicated cases_s, to provide for mentorship, or for other good cause at the discretion of the Executive Director:

1) the duties of each Counsel must be clearly and specifically defined, and ~~e~~Counsel must avoid unnecessary duplication of effort;

2) each Counsel must submit a voucher to MCILS. Counsel should coordinate the submission of vouchers_s so that they can be reviewed together. ~~Co-counsel who practice in the same firm may submit a single voucher that reflects the work done by each Counsel.~~

2. **District Court Child Protection**

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

1) **Child protective cases** ~~(each stage).~~ ~~\$1,500~~10,200

2) *[Repealed]* **Termination of Parental Rights stage** (with a hearing). ~~\$~~2,500

B. *[Repealed]* Counsel must provide MCILS with written justification for any voucher that exceeds the triggering limit. Each child protective stage ends when a proceeding results in a Preliminary Protective Order, Judicial Review Order, Jeopardy Order, Order on Petition for Termination of Parental Rights, or entry of a Family Matter or other dispositional order. Each distinct stage in on-going child protective cases shall be considered a new appointment for purposes of the triggering fee for that case.

3. Other District Court Civil

- A. Triggering fees in District Court civil actions, excluding any itemized expenses, are set in accordance with this subsection. Counsel must provide MCILS with written justification for any voucher that exceeds the triggering fee.

- 1) Application for Involuntary Commitment. ~~\$1,000~~1,900
- 2) Petition for Emancipation. ~~\$1,500~~2,800
- 3) Petition for Modified Release Treatment. ~~\$1,000~~1,900
- 4) Petition for Release or Discharge. ~~\$1,000~~1,900

4. Law Court

- A. *[Repealed]*
- B. *[Repealed]*
- C. Appellate: ~~\$2,000~~3,750

SECTION 5: MINIMUM FEES

Counsel may bill a minimum fee of 3 hours for appearances as Lawyer of the Day, or MCILS Liaison in specialty or diversionary courts or programs. A single minimum fee may be charged for each appearance at which the Counsel serves. If Counsel serves as Lawyer of the Day for a morning session that continues into the afternoon, that will be one appearance. If Counsel serves as Lawyer for the Day for a morning session and then a subsequent afternoon session with a second appearance time and list, that will be two appearances. Vouchers seeking the minimum fee must show the actual time expended and the size of the minimum fee adjustment rather than simply stating that the minimum fee is claimed. In addition to previously scheduled representation at initial appearance sessions, Lawyer of the Day representation includes representation of otherwise unrepresented parties at the specific request of the court on a matter that concludes the same day. Only a single minimum fee may be charged per appearance regardless of the number of clients consulted at the request of the court.

SECTION 6: ADMINISTRATION

1. Timing

- A. Vouchers for payment of counsel fees and expenses associated with a particular client assignment shall be submitted within 90 (ninety) calendar days of a terminal case event. Lawyer of the Day, ~~and~~ specialty courts, Resource Counsel, and all other services rendered on behalf of the Commission and not associated with a particular client assignment shall be billed within 90 days of the service provided. ~~Vouchers not submitted within 90 days of a terminal case event cannot be paid, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel.~~

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

- B. The period for submitting a voucher established by subsection (1)(A) of this section shall run from the date that the terminal case event is docketed. Services are rendered on Lawyer of the Day assignments on the date Counsel appears in court and serves as Lawyer of the Day. Services in specialty courts as an MCILS liaison, Resource Counsel, or as part of any other MCILS-sponsored program are rendered on the date the individual tasks were performed as indicated by the date associated with the time entry recorded to account for that time.
- C. Vouchers not submitted within 90 days of a terminal case event or the timeframe otherwise established by this Chapter shall be reduced according to the schedule established by subsection (3)(C) of this section below, except on a showing by counsel that a voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel. If an exception decision is rendered by the Executive Director's decision-making designee, counsel may submit an appeal in writing to the Executive Director on this issue only, within 10 days of the designee's decision. A decision on an exception under this section is final agency action.
- D. Counsel may submit interim vouchers not more often than once every calendar month per case.
- E. Cases must be entered in the MCILS case management system within seven days upon receipt of the Notice of Appointment. If counsel has been informed that they have been assigned to a case but have not received the Notice of Appointment, counsel shall exercise due diligence in obtaining a copy of the Notice as soon as possible.

A.F. _____

4.2. Terminal Cease Events are:

A terminal case event is the order, decision or judgment that signifies the final resolution of a particular client assignment such that substantive appearances before the court are no longer necessary to resolve the issues raised by the complaint, indictment, petition, appeal or other initial pleading that provided the impetus of the case. There can be only one terminal case event in a particular client assignment. Terminal case events exclusively include:

- 1) The withdrawal of counsel;
- 2) The entry of dismissal of all charges or petitions; or
- 3) Judgment or other final order or decision of the court in a case, or
- 4) [Repealed] Final resolution of post-judgment proceedings for which counsel is responsible.

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

- ~~1. All vouchers must be submitted using MCILS electronic case management program and comply with all instructions for use of the system.~~
- ~~2. All time on vouchers shall be detailed and accounted for in .10 of an hour increments. The purpose for each time entry must be self-evident or specifically stated. Use of the comment section is recommended.~~
- ~~3. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and appended to the voucher.~~

3. Reduction for Untimely Voucher Submission

A. The total reduction applied to vouchers submitted after the 90-day deadline is calculated by multiplying the total voucher amount by the applicable percentage according to the schedule established by subsection (3)(C) of this section.

B. The days elapsed since the relevant terminal case event are calculated in the same manner as in determining compliance with the 90-day deadline.

C. Reduction Schedule:

<u>Days After Terminal Case Event</u>	<u>Reduction</u>
<u>91 – 104</u>	<u>10%</u>
<u>105 – 150</u>	<u>25%</u>
<u>151 – 180</u>	<u>50%</u>
<u>181 or more</u>	<u>100%</u>

D. Any reduction for the untimely submission of a voucher may only be applied after Counsel is provided with an opportunity to request an exception pursuant to subsection (1)(C) of this section.

4. Voucher Submission

1. All vouchers must be submitted using MCILS electronic case management system and comply with all instructions for use of the system.
2. All time on vouchers shall be detailed and accounted for in .10 of an hour increments rounding up to the nearest .10 of an hour. The purpose of each time entry must be specifically stated by using the most relevant time entry

category and providing a reasonably descriptive comment/note for each time entry.

3. Unless otherwise stated in this Chapter, Counsel may only record and seek payment for actual time spent working on Counsel's appointed or assigned cases using the MCILS electronic case management system. Counsel may not record a minimum amount for any time entries notwithstanding any previous policy or practice of the Commission.
4. All expenses claimed for reimbursement must be fully itemized on the voucher. Copies of receipts for payments to third parties shall be retained and appended to the voucher.
5. If a particular client assignment requires additional, supplemental work be performed by Counsel after the terminal case event occurs, Counsel may submit a supplemental voucher for the work performed after the final voucher is submitted. All time included on a supplemental voucher must be billed within a reasonable period of time after the task was completed. Notwithstanding any other provision of this Chapter, any time included on a supplemental voucher that is not submitted within a reasonable period of time is not payable except on a showing by counsel that the voucher could not have been timely submitted for reasons outside the actual or constructive control of counsel.
6. Time for work performed by Counsel before the terminal case event occurred may not be included on a supplemental voucher.
7. Time for work performed by Counsel after the terminal case event occurred may be included on a final voucher. If a final voucher is submitted greater than 90 days after a terminal case event, the entire voucher will be reduced according to the reduction schedule established by this Chapter including any time for work performed after the terminal case occurred.

5. Payments & Reimbursement of Expenses for Attending Training

- A. Payments to attend and reimbursement of expenses incurred incidental to attending trainings are governed by Chapter 301-A.
- B. Vouchers submitted in accordance with Chapter 301-A shall be submitted within 90 calendar days of attending the training.

Notwithstanding any other provision of this Chapter or other Commission rules, untimely vouchers for payment or reimbursement of expenses governed by Chapter 301-A will not be paid.

SECTION 7. RESOURCE COUNSEL

1. Resource Counsel may bill pursuant to Section 6(4), above, for any billable tasks outlined in subsection 2 and subject to the limitations in subsection 3 of this section.

2. Billable Tasks:

- a. Meeting with Court-Assigned, Commission-Assigned, and Commission-Employed counsel upon the written request of the Executive Director.
- b. Meetings and other communications with Court-Assigned, Commission-Assigned, and Commission-Employed counsel about the practice of law or ethical or legal issues related to assigned cases.
- c. Assisting Court-Assigned, Commission-Assigned, and Commission-Employed counsel with drafting documents and with litigation preparation for assigned cases.
- d. Meetings and other communications with members of the judiciary or prosecution about matters pertaining to indigent representation upon the written request of the Executive Director.
- e. Preparing and presenting trainings at the request of the Executive Director or Training & Supervision staff.
- f. In-court observation of Counsel if requested by the Executive Director or MCILS Training & Supervision staff.
- g. Responding to calls, emails, and/or webform submissions from individuals who contact MCILS through the MCILS hotline and/or website. This includes:
 - i. Communication with the person who called;
 - ii. Communication with others to address the individual's matter; and
 - iii. Limited scope representation undertaken to resolve urgent issues for indigent persons concerning matters for which the person would be entitled to appointment of counsel.
- h. Other tasks as deemed appropriate by the Executive Director and with prior written authorization of the Executive Director.

3. Limitations:

- a. Any services rendered as Resource Counsel must be strictly limited to matters relating to assigned—not retained or pro bono—cases.
- b. Resource Counsel may not bill for services rendered to an attorney who is not a Court-Assigned, Commission-Assigned, or Commission-Employed counsel.
- c. If Resource Counsel serves as co-counsel on an assigned case, then Resource Counsel must enter the case in the Commission's electronic case management system and bill for it as a typical case, not as Resource Counsel.
- d. Prior to preparing a training at the Commission's request, Resource Counsel must have prior written authorization from the Executive Director or MCILS Training &

- Supervision staff, which must include a cap on the maximum number of hours the Commission will pay Resource Counsel to prepare and present the training.
- e. Resource Counsel must be licensed to practice law in Maine and eligible to accept MCILS case assignments at all times while performing Resource Counsel duties. Resource Counsel will not be paid for work done unless Resource Counsel is licensed to practice law in Maine and eligible to accept MCILS case assignments.
 - f. As a condition of the opportunity to serve as Resource Counsel, Resource Counsel must maintain detailed records of the services they perform and provide copies of those records to MCILS upon request. At a minimum, those records must include:
 - i. The number of attorneys to whom Resource Counsel services are rendered; and
 - ii. A running log of the number of hours Resource Counsel spends on:
 - 1. Rendering general Resource Counsel services to attorneys;
 - 2. Rendering client-specific services; and
 - 3. Preparing and presenting trainings.
 - g. Resource Counsel will not be paid for billing more than 40 hours in one seven-day period.
 - h. Resource Counsel do not develop any property interest in the opportunity to serve in that role. There is no guarantee that MCILS will provide any number of hours to Resource Counsel.
 - i. Resource Counsel may not incur any expenses of any type on behalf of MCILS without prior written approval from the Executive Director.
4. Court-Assigned and Commission-Assigned Counsel may bill pursuant to Section 6(4), above, for time spent receiving the services of Resource Counsel.
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STATUTORY AUTHORITY:

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

EFFECTIVE DATE:

August 21, 2011 – filing 2011-283

AMENDED:

March 19, 2013 – filing 2013-062

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

October 5, 2013 – filing 2013-228

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

June 10, 2016 – filing 2016-092

July 21, 2021 – filing 2021-149 (EMERGENCY)

January 17, 2022 – filing 2022-007

June 23, 2022 – filing 2022-100 (Final adoption, major substantive)

February 24, 2023 – filing 2023-028 (Emergency adoption)
September 1, 2023 – filing 2023-122 (Final adoption, major substantive)

Detailed Basis Statement for Chapter 301

The Commission is statutorily obligated to “Establish rates of compensation for assigned counsel...” (4 M.R.S. §1804(3)(F)) and develop “Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel ...” 4 M.R.S. §1804(2)(F). Chapter 301 is promulgated to satisfy the Commission’s statutory duty to satisfy these obligations. Chapter 301 sets rates of compensation and procedures for payment to private assigned counsel, establishes rules for the reimbursement of eligible expenses, and sets fee amounts that trigger presumptive voucher review.

Maine Commission on Indigent Legal Services

Proposed Rule: Chapter 301, Fee Schedule

Response to Public Comments

Comment #1:

Change in billing frequency and increased flexibility will be welcomed changes by the bar. The ability to bill monthly will be greatly appreciated. Attorney Ruffner has tripled his attorney staff since the rate increase. Allowing monthly billing will reduce barriers to attorneys expanding capacity.

Attorney Robert Ruffner

MCILS Response:

The Commission accepts this comment.