

AARON M. FREY
ATTORNEY GENERAL



STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

TEL: (207) 626-8800
TTY USERS CALL MAINE RELAY 711

REGIONAL OFFICES
84 HARLOW ST. 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

125 PRESUMPSHOT ST., SUITE 26
PORTLAND, MAINE 04103
TEL: (207) 822-0260
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

April 3, 2025

VIA HAND DELIVERY

Tamara Rueda, Clerk
Kennebec County Superior Court
1 Court Street, Suite 101
Augusta, ME 04330

Re: Andrew Robbins, et al. v. State of Maine, et al.
Docket No. KENSC-CV-2022-54

Dear Ms. Rueda:

Enclosed for filing, please find the following documents for the above-referenced matter:

1. Defendants' Response to Injunctive Order After Phase One Trial (Count I).

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean D. Magenis".

Sean D. Magenis
Assistant Attorney General

SDM/tet
Enc.

cc: Zachary L. Heiden, Esq. (via e-mail: zheiden@aclumaine.org)
Anahita Sotoohi, Esq. (via e-mail: asotoohi@aclumaine.org)
Matthew Warner, Esq. (via e-mail: mwarner@preti.com)
Alexandra Harriman, Esq. (via e-mail: AHarriman@preti.com)
Jordan Bock, Esq. (via e-mail: jbock@goodwinlaw.com)
Kevin Martin, Esq. (via e-mail: kmartin@goodwinlaw.com)
Samantha Jandl, Esq. (via e-mail: SJandl@goodwinlaw.com)
Michael Lichtenstein, Esq. (MLichtenstein@wheelerlegal.com)
Erica Johanson, Esq. (ejohanson@jensenbaird.com)
John K. Hamer, Esq. (jhamer@rudmanwinchell.com)

AUGUSTA COURTS
APR 3 '25 PM3:52

Tyler Smith, Esq. (tsmith@lokllc.com)

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
Docket No. KENSC-CV-22-54

ANDREW ROBBINS, et al.,

Plaintiffs,

v.

STATE OF MAINE, et al.,

Defendants

**DEFENDANTS' RESPONSE TO INJUNCTIVE ORDER AFTER PHASE ONE TRIAL
(COUNT I)**

Defendants, the Executive Director of the Maine Commission on Public Defense Services, in his official capacity, and each of the Commissioners of the Maine Commission on Public Defense Services in their official capacities (collectively "Defendants"), hereby respond to this Court's March 7, 2025 Order adjudicating Count I of Plaintiffs' Amended Complaint as follows:

PROCEDURAL POSTURE

The March 7, 2025 Order enjoins Defendants to complete two tasks: (1) "prioritize and [] make good faith efforts to actually provide counsel for the unrepresented, incarcerated defendants who, as of this same date, are listed on the so-called 'without counsel' spreadsheet, and to do so by April 3, 2025," and, by April 3, 2025, "advise the Court as to how successful [Defendants] have been in these efforts." Order After Phase One Trial, 24 (Mar. 7, 2025) and (2) "[C]reate and file with the Court a written plan on how they intend to remedy the ongoing violations of the Sixth Amendment for all Subclass members, whether they are in-custody or in the community subject to bail conditions, and to do so by April 3, 2025".

REPORT OF RESULTS OF DEFENDANTS' CURRENT EFFORTS (COUNT I)

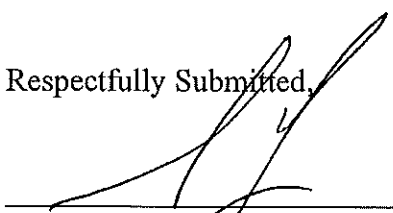
As reflected in the "so-called 'without counsel' spreadsheet," as of March 7, 2025, there were 124 cases in which criminal defendants are identified as incarcerated and without assigned counsel. Those cases involve 85 unique defendants. The largest number of cases associated with those defendants are pending in Penobscot County (31 cases), Cumberland County (29 cases), and Aroostook County (17 cases). The remaining cases relative to the 85 defendants are pending in Androscoggin (13), York (13), Oxford (11), Franklin (5), Kennebec (2), Knox (2), and Somerset (1). There are now six (6) in-custody defendants appearing on the March 7, 2025 "without counsel list" who remain without counsel. The cases associated with those six (6) defendants are pending in: Penobscot (3 cases), Cumberland (2 cases), and Oxford (1 case). *See* Exhibit A (attached hereto). That reduction resulted from the continuing efforts of MCPDS staff, primarily District Defenders, along with reallocation of efforts by MCPDS central office staff to place incarcerated defendants with defense counsel in areas of Maine in which there is currently no public defender office: Cumberland, York, and Knox counties.

WRITTEN PLAN (COUNT I)

Defendants' written plan is attached hereto as Exhibit B.

Dated: April 3, 2025

Respectfully Submitted,



Sean D. Magenis
Maine Bar No. 9495
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333-0006
Tel. (207) 626-8800
sean.d.magenis@maine.gov

EXHIBIT A

Original Docket No.	Name	PD office will take	Notes
ANDCD-CR-25-472	Vincent Voye	Yes	
ANDCD-CR-24-3089	Kelsey Duprey	No	not in custody
ANDCD-CR-24-3108	Richard Goulet	Yes	
ANDCD-CR-25-149	Wuisman Jarquin	No	not in custody
ANDCD-CR-25-199	Prince Benjamin	Yes	
ANDCD-CR-25-455	David Kenney	No	Akiniola appointed per MEJIS, 3/27/25
AROD-CR-2024-20245	Steven Belleau	No	Conflict
AROD-CR-2024-20296	Sebastian Nieves	No	Conflict and Not in Custody 3/21/25 TDJ Defendant listed as AV in currently APD appointed case-SM
AROD-CR-2024-40711	Steven Belleau	No	conflict
CUMCD-CR-2022-1988	John Aboda*	No	Peter Cyr accepted 3/31/25; not yet in MEJIS
CUMCD-CR-24-1641	Orlin Guerra-Aquilar	No	Cumerland case
CUMCD-CR-25-665	Drew Hanks	No	Temma Donnahue appointed per MEJIS, 3/28/25
CUMCD-CR-25-69	Aime Mucyo	No	Matthew Crocket appointed per MEJIS, 3/28/25
CUMCD-CR-25-693	Samuel Johnson	No	Temma Donnahue appointed per MEJIS, 3/28/25
CUMCD-CR-25-750	Ernest Phillips	No	Stephen Shea appointed per MEJIS, 3/28/25
KENCD-CR-24-2130	Brian Charette	No	PCR Docket #, Not in custody & Matt Fortin appointed 11/22/24 to different docket, case still active
OXFCD-CR-22-20033	DUSTY OBRIEN	Yes	
OXFCD-CR-23-20115	Alexander Brooks	No	Conflicted
OXFCD-CR-24-20150	DUSTY OBRIEN	Yes	
OXFCD-CR-24-674	JAROD DONATHAN*	Yes	
OXFCD-CR-25-20002	Mark Obrien	Yes	
OXFCD-CR-25-20007	DUSTY OBRIEN	Yes	
PENCD-CR-2024-2775	Jonathan Rodriguez	Yes	
PENCD-CR-2025-20068	WILLIAM BROOKER	No	Case is over
PENCD-CR-2025-249	Steven Sprague*	Yes	
PENCD-CR-2025-30049	Galen Thibodeau	Yes	
PENCD-CR-2025-357	tyrell Monroe	Yes	
PENCD-CR-2025-485	Michaela Sargent	Yes	
PENCD-CR-2025-69	Antoine Pratt*	Yes	
YRKCD-CR-2016-41293	MCMANUS	No	York case - Not in Custody according to list
YRKCD-CR-24-4826	NICHOLAS HINDS	No	York case - Not in Custody according to list
YRKCD-CR-24-4960	STEVEN MARTIN	No	York case - Not in custody according to list
YRKCD-CR-25-18	PATRICK BLACKWELL	No	York case - Not in Custody according to list
YRKCD-CR-25-432	JASON ROBERTS	No	York case - Not in custody according to list
YRKCD-CR-25-462	MAXWELL FOWLER	No	Leslie Wilson appointed per MEJIS, 2/25/25
YRKCD-CR-25-581	DURAY SHERROD	No	York case - Not in custody according to list
YRKCD-CR-25-677	BRANDON CABANA	No	York case - Not in custody according to list
YRKCD-CR-25-736	Chrystal Alexander	No	Rick Winling appointed per MEJIS, 3/25/25



I. WRITTEN PLAN TO REMEDY VIOLATIONS**A. Immediate Short-Term Efforts**

In addition to the long-term solution described in section B below, MCPDS has or is implementing the following measures to attempt to alleviate the crisis.

1. Increased outreach

MCPDS has identified two groups of attorneys to solicit to take cases. First, attorneys who were previously in the MCPDS program but have not renewed. Second, based on information shared by the judicial branch, MCPDS has identified all attorneys working on criminal cases throughout the Unified Criminal Docket (UCD) and not participating in our program. MCPDS sent communications to these two groups, urging them to help (Feb. 6 and March 25). MCPDS has received mixed responses with a few attorneys expressing a willingness to join MCPDS and take cases, some of whom have submitted materials to join MCPDS since March 25th. MCPDS plans to continue similar outreach efforts.

2. Recruiting update

There are currently two interns from Maine Law working in the Capital Region Public Defenders Office. This summer, four of the five existing public defender offices¹ will have two student interns each. In addition to Maine Law, we have interns coming from Case Western, University of North Carolina, and Cornell University. The District Defenders are working on externships for the fall semester for all five existing public defender offices. MCPDS is also working with multiple private law firms and several universities to facilitate placing externs in MCPDS rostered private counsel offices with oversight from law schools and MCPDS under a pilot program in development with the involvement of the Maine Supreme Judicial Court.

3. Redeploy central office staff

Training, Supervision, and Audit personnel will be reassigned from some core tasks to assist in placing cases consistent with the Court's March 7, 2025 Order. The Training Division Director and staff consisting of two office associates, will cut back on time spent on planning new trainings for FY 25 and FY 26 and will pause scheduling any new in-person trainings for these two fiscal years until: 1) MCPDS has complied with the Court's March 7, 2025 Order and 2) MCPDS is fully funded for FY 26.

The Supervision Division Director and division staff will prioritize recruitment efforts and processing of specialty panel and new attorney applications. The Supervision Director will continue to process new complaints about attorney performance that can be resolved expediently. As a consequence of the reprioritization, more complex or in-depth evaluations and investigations will likely

¹ The Downeast Region office will not have sufficient leased space available to accommodate interns until July 2025.

be delayed until MCPDS has complied with the Court's March 7, 2025 Order or receives legislative approval to hire additional staff².

Audit Division staff will reduce the hours they are spending on voucher review or other billing and audit functions and will adjust the level of scrutiny given to vouchers to prioritize processing vouchers in a timely manner. The Audit Division will have to develop a system for randomly auditing attorney vouchers or focusing on vouchers that have a demonstrable need for closer inspection.

The position of Audit Counsel has been re-designated as the MCPDS Case Placement Lead (CPL). The CPL will coordinate with the District Defenders (DDs), financial screeners (repurposed as described below), Director of System/Data Infrastructure, the court clerks, and the criminal defense bar to place cases. The CPL will oversee comparing the unrepresented lists against information received from the DDs, jails, courts, Director of System/Data Infrastructure, and others to determine which of the *Robbins* Subclass members on the unrepresented list are actually: a) still unrepresented and b) still in custody. The CPL will convey this information to the DDs and the criminal defense bar. The CPL will spend the remaining hours of her day assisting support staff from the Audit and Training Divisions in calling criminal defense lawyers to place unrepresented defendants with counsel, prioritizing in-custody defendants.

4. Migrate unrepresented list to a real time shared document

MCPDS cannot rely on timely updating of the unrepresented lists currently used by the courts to make sure MCPDS' efforts are aimed at the subclass members who are without counsel and are still in custody. If both court clerks and MCPDS central office staff share responsibility for staffing cases with counsel, then exchanging static daily lists would lead to wasted effort. For instance, if a clerk found an attorney for a defendant right after the list was emailed to MCPDS for that day, an MCPDS central office staff person could spend time trying to place the same case before learning of the earlier placement.

MCPDS and the Judicial Branch are developing a new shared "live" document to replace the existing "without counsel" spreadsheet. The new list will allow both MCPDS and the clerks to review and edit the spreadsheet in real time as (a) cases are added by clerks or (b) when counsel is found by MCPDS or the clerks. When MCPDS finds an attorney, MCPDS can fill in the name of the attorney and when they are found. Then the clerks can coordinate formal appointment paperwork and get that out to counsel and update the list in real time. If the clerks have reached out to counsel and are awaiting communication back from counsel about whether counsel can accept an assignment, that info could be noted for MCPDS staff to have a starting point.

There are bound to be remaining fact issues that need to be tracked down to confirm whether someone is both unrepresented and still in custody to generate the lists for the habeas hearings. There are also likely to be some factual issues concerning what date to use to start the 60-day dismissal clock, because some cases have multiple date entries for initial appearance, and in some instances, defendants defer applying for court appointed counsel until they have exhausted efforts to retain counsel. The eight financial screeners will be available to be assigned to some number of courts and jails to gain up

² MCPDS's budget initiative to add more supervision staff to MCPDS's central office that was submitted this year was not advanced out of the Judiciary Committee for further consideration.

to date information about unrepresented subclass members from the unrepresented list who remain in custody, and they will convey this information to the CPL. The screeners will be deployed to continue providing information to the CPL about new subclass members held in custody without counsel as necessary to supplement the information that MCPDS is receiving in the "live" unrepresented list document from the court, and the information MCPDS is receiving from the county jails.

5. Incentives to go back on the roster

Although some attorneys are still taking cases off the unrepresented list, many attorneys are not responding to the emails that go out three days a week containing the unrepresented list. Attorneys have expressed frustration that they have asked for several specific cases off the list only to be told later by the clerk that another attorney was already appointed. A shared "live" list will help cut down on this issue.

The number of adult criminal cases on the list has gone down from around 1,000 in December 2024 to 487 based on the April 2, 2025 list. This is a combination of the public defender offices and private assigned counsel prioritizing taking cases off the list. However, the existence of the list and MCPDS policy up to now actually facilitates counsel getting cases without having to be on any active court roster; counsel can take cases of their own choice at the \$150/hour rate no matter the complexity of the case. They also are sometimes taking cases from far-flung areas of the state that are significant distances from their offices. This is possible because MCPDS policy up to now has been that to take cases off the list, the attorney emails the clerk of court to make the assignment, and copies MCPDS on that email.

First, we addressed lawyers' hesitancy to go on the roster by announcing a new agreement with the judicial branch on March 27 whereby counsel who put themselves on a roster will not get any more than five cases in a day from a single court. Many attorneys state as a reason for not going on rosters the fear that they will be assigned 20, 30 or more cases in a few days. This has happened to multiple attorneys, in multiple parts of the state, multiple times, and the defense bar is keenly aware of these occurrences. The five-case cap has been negotiated with the judicial branch and is being implemented by AOC and the trial chiefs to incentivize counsel returning to the rosters. If someone wants five cases a day, they can leave themselves on the roster; if they want five cases a week, they can go on for one day, opt out, then only go back on a roster the following week and know they are only getting five cases assigned that week.

Second, we need to reinstitute the geographic limitations on taking assignments within some rational distance of counsels' geographic practice area. These limits were suspended during and after COVID to deal with counsel shortages in some rural areas of the state, but this problem is now statewide. Additionally, MCPDS has received many reports that attorneys practicing across multiple counties are encountering inconsistent court scheduling practices which result in significant difficulty managing their schedules and a general loss of efficiency due to chronic scheduling conflicts between different courts. If attorneys are encouraged to take cases within some rational geographic distance of their offices, it will cut down on travel costs, increase the hours counsel can actually work cases, decrease scheduling conflicts, and improve roster numbers in courts like Bangor, Portland, and Lewiston where, despite the presence of many lawyers in those locations, rosters are seriously depleted.

Third, MCPDS needs to rethink how the list is used; we need to stop letting attorneys pick cases without regard to the priorities identified in the *Robbins* Order. Going forward, MCPDS will exercise more control over which cases are available to take off the unrepresented list—circulating a list of cases that need to be prioritized. MCPDS should inform counsel what cases are available based on MCPDS' determination of which cases should be a priority to place with counsel, and while there is a list of unrepresented people entitled to counsel, if an attorney wants to take one of those cases, MCPDS will work with counsel to find cases that suits counsel's expertise and also satisfies MCPDS' goals and meets the priorities of the *Robbins* Order.

6. Increasing attorney capacity

MCPDS staff are in the process of scoring two separate Requests for Proposals (RFP) that seek a third party (or parties) to contract with MCPDS for the provision of case management services for criminal and juvenile cases (and also for protective custody cases). Once the scoring is complete and DAFS procurement personnel have approved the MCPDS process, an intent to award letter will be sent to the apparent award winner. MCPDS anticipates some period of time will be necessary to negotiate a contract with the recipient; this is likely to take some matter of weeks to accomplish. MCPDS expects that by late spring, case management services will be available to assigned and employed counsel to allow counsel to focus their efforts on attorney tasks.

MCPDS staff are also working on a draft rule to expand the use of paralegals by assigned counsel. Currently, rostered attorneys must apply for approval to bill for paralegal services on a case-by-case basis under chapter 302 of MCPDS's rules. A new rule devoted to paralegal use will streamline the process so individual case approvals won't be necessary. MCPDS has heard from assigned counsel that the ability to bill for paralegal time would increase their capacity to take more cases. This rulemaking process is likely to take several months.

7. Emergency rulemaking

The Commission is considering emergency rulemaking to remove some perceived barriers to practice. Discussions about changes to the specialized panel rule in particular have been ongoing, and the Commission will have this as an agenda item for its April 29 monthly meeting. The Commission desires to address perceived barriers to participation in its program and balance those concerns with the need to ensure quality representation.

8. Communication with prosecutors about cases on the list that should be reevaluated

On March 25, 2025, MCPDS sent a letter to all prosecution offices in the state, a copy of which is attached hereto as Exhibit 1, imploring them to reexamine lower-level offenses like drug possession, driving offenses, VCRs, and some title 12 offenses included on the March 24 unrepresented list. There have been mixed responses to this effort as well, and MCPDS will continue to seek progress by working collaboratively with prosecutors. While MCPDS can examine its modes of operation to try and improve things it controls directly that impact the availability of indigent legal services, other

stakeholders, including prosecutors and the judicial branch, control how many cases are brought and the time it takes to resolve them.

B. Long-Term

The long-term plan for MCPDS to provide counsel for each case from inception to conclusion is set forth in MCPDS's last two annual reports. The 2023 Annual Report, attached hereto as Exhibit 2, identified the growing crisis with 312 cases without a lawyer (page 3 and appendix A depicting increasing case numbers and decreasing attorney participation), the backlog of cases pending in the courts (page 2, noting the increase in pending prosecutions between December 2019 and December 2023: felonies (+63%) and misdemeanors (+37%)). The 2023 Report also highlighted the legislative approval, creation, and status of the Rural Defender Unit (RDU) and the Capital Region Public Defender office. The 2023 Annual Report indicated that the Commission had approved creation of brick-and-mortar public defender offices serving every county in Maine, staffed to handle 30% of the adult criminal caseload as a modest but attainable beginning (page 9) to subsequently be staffed to cover 50% of the adult criminal cases (page 10). The 2023 Report also cited Maine's need to improve attorney recruitment and stem the tide of lawyers interested in indigent criminal defense from leaving Maine to take employed public defender positions in other states.

The 2024 Annual Report, attached hereto as Exhibit 3, reported the creation of four (4) additional public defender offices by the legislature, and reported on other Commission efforts to increase both the quality and availability of indigent legal service providers in Maine. However, in parallel with the roll out of four more public defender offices, the number of cases with an unrepresented adult criminal defendant spiked to 980 as of December 30, 2024 (page 3). The 2024 Annual Report made the case for the additional three public defender offices for York, Cumberland, and the Mid-Coast Counties, and for an increase in staffing in all offices to carry 50% of adult criminal cases statewide (page 15). The 2024 Annual Report pointed out that by fiscal years 2028 and 2029, increasing public defender capacity to 50% would reduce assigned counsel billable hours by an amount that more than covers the increased costs for the new positions: resulting in a net savings compared to FY 2025 (Ex. 3, appendix B).

Exhibit 4 to this Plan document is a spreadsheet containing all of the PDS FY 26-27 budget requests. In addition to the three new public defender offices and increase in existing public defender office personnel to carry 50% of adult criminal cases referenced above, these budget initiatives included ideas that had shown promise in Oregon in dealing with its unrepresented crisis: 3 clerical positions dedicated to placing cases on the unrepresented list and an additional stipend for assigned contract counsel taking cases off the unrepresented list (Exhibit 3, page 14 and Exhibit 4, initiatives 4 & 17). The budget requests included increasing central office staff responsible for supervision, technology, billing and audit; and providing parity with the Office of the Attorney General by creating a legislative liaison/grant writing position currently enjoyed by state prosecutors. Other FY 26-27 budget proposals included a small appellate unit; a small PCR unit; extending the Rural Practice Clinic to Farmington, Machias, and Bangor; creating head count to allow rotating internships; and a sufficient increase in "All Other" funding over baseline to pay assigned contract counsel (about \$13 million for

FY 26 and about \$3.6 million for FY 27).³ These proposals were not included in the administration's proposed budget.

Nevertheless, like last session, MCPDS has asked the legislature to fund its FY 26-27 initiatives. MCPDS initiatives that the judiciary committee approved to report back to appropriations for the budget are highlighted in Exhibit 4 in yellow and are underlined in the paragraph above. MCPDS awaits its upcoming opportunity to appear before the appropriations committee to make its case for these initiatives.

Over the past few weeks, LD 1101 has been amended to include an emergency preamble and includes several new positions for PDS. This bill, if recommended by the judiciary committee, would likely go to appropriations and both chambers of the legislature to seek the two-thirds passage needed to take effect immediately upon the Governor's signature (similar to LD 653 last March, which created the Bangor and Caribou public defender offices). The latest version of LD 1101 creates a new unit of public defenders: five AD I positions (attorneys with five or more years criminal defense experience preferred), two paralegals, and an office administrator. It is envisioned that this unit would be deployed to assist in addressing the delays in identifying counsel to represent indigent adult criminal defendants.

MCPDS is optimistic that it will be able to provide counsel for all Subclass members if the budget requests submitted by MCPDS and reported out of the Judiciary Committee are approved, and the months-long trend of additional new assigned counsel joining the MCPDS program continues.

³ There is a more than \$9 million decrease in MCPDS's requests for "All Other" funding between FY 26 and FY 27 because MCPDS calculates that by FY 27 representation provided by employed public defenders will significantly reduce private assigned counsel billable hours. If the legislature does not fund the three new public defender offices and increase personnel to handle 50% of the adult criminal cases this session, then MCPDS will need approximately \$8.5 million in "All Other" in FY 27 instead of \$3.6 million (due to the commensurate higher hours from private assigned counsel if PD office capacity is not increased in FY 26). The projected cost of increasing statewide public defender capacity to 50% is \$5 million (initiative 7 from Exhibit 4). Thus, the cost of increasing public defender capacity to handle 50% of all adult criminal prosecutions is offset and paid for in one fiscal year.



MAINE COMMISSION ON
**PUBLIC DEFENSE
SERVICES**

Executive Director Jim Billings

March 25, 2025

SENT VIA EMAIL

Attorney General Aaron Frey
District Attorney Kathryn Slattery
District Attorney Jackie Sartoris
District Attorney Neil McLean, Jr.
District Attorney Maeghan Maloney
District Attorney R. Christopher Almy
District Attorney Natasha Irving
District Attorney Robert Granger
District Attorney Todd Collins

Re: Maine's Sixth Amendment Crisis

Dear Attorney General and District Attorneys:

As of March 24, 2025, there were 587 criminal cases for which an indigent defendant had not been assigned counsel. Those 587 cases involved approximately 465 defendants. Of those 465 unrepresented people, approximately 89 were in custody. The *Robbins* decision provides that it will adopt a procedure to hold hearings in April to determine if PDS has made good faith efforts to provide counsel, and if there is no counsel available to represent defendants despite good faith efforts, *Robbins* class members will be released on bail, or their cases will be dismissed. Based on this, it is in the best interest of Maine if all stakeholders work together to address this constitutional crisis.

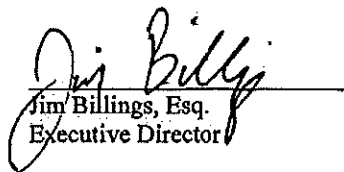
To that end, PDS respectfully requests that each of your respective offices review their case files to evaluate whether any of the cases from the attached list from March 24th can be dismissed or otherwise expediently resolved. Such an exercise of prosecutorial discretion would aid all stakeholders in focusing their limited resources where they are needed most. This would also allow prosecutors to decide which defendants should be released on bail and which cases should be dismissed because the alternative is for a court to make those determinations.

PDS does not purport to represent any particular defendant in a specific case but merely suggests that a realistic review of these matters now may help alleviate the stress on the system. PDS respectfully suggests that prosecutors consider dismissing low-level cases. Broadly, PDS recommends prosecutors consider dismissing drug possession offenses, nonviolent offenses, offenses without named victims, non-OUI driving offenses, and Title 12 offenses. PDS also urges you to ask your attorneys to evaluate each of their cases to ensure they can be proven beyond a reasonable doubt. If there are proof problems, missing witnesses, or other issues with the State's case, then consider dismissing those or making offers reflective of the current circumstances.

I do not make the suggestions in this letter lightly. No one wants us to be in this situation. It is unacceptable that the State is failing to meet its constitutional obligations. This is a constitutional crisis, but if we work together where possible to prioritize resources and make tough decisions, we can improve the way the criminal justice system is currently functioning in Maine.

Thank you for your time and consideration of this request. Please do not hesitate to contact me with any questions or if you would like to discuss this further.

Sincerely,


Jim Billings, Esq.
Executive Director

cc: Josh Tardy, Esq., Chair PDS
Sen. Anne Carney, Co-Chair Joint Standing Committee on the Judiciary
Rep. Amy Kuhn, Co-Chair Joint Standing Committee on the Judiciary

Enc.:
Robbins Order, March 7, 2025
Unrepresented Spreadsheet, March 24, 2025

EXHIBIT 2

January 16, 2024

Governor Janet Mills
Chief Justice Valerie Stanfill, Maine Supreme Judicial Court
Senator Anne Carney, Senate Chair of the Judiciary Committee
Representative Matthew Moonen, House Chair of the Judiciary Committee

Delivered via Email

Re: Annual Report of the Maine Commission on Indigent Legal Services
4 M.R.S.A. §1804(3)(H)

Governor Mills, Chief Justice Stanfill, Senator Carney, and Representative Moonen:

The Maine Commission on Indigent Legal Services, ("MCILS"), by and through its Executive Director, Jim Billings, respectfully presents its annual report pursuant to 4 M.R.S.A. §1804(3)(H):

By January 15th of each year, [the Commission shall] submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

- (1) An evaluation of contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures;
and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

Overview

The Maine Commission on Indigent Legal Services provides indigent legal services through a hybrid system of private assigned counsel and employed defenders representing indigent people facing a loss of liberty in cases brought by the State of Maine. MCILS sets standards for attorneys providing indigent legal services, and attorneys are assigned to individual cases by the court from lists of eligible counsel created and maintained by MCILS. MCILS also provides funds for investigative and expert services necessary for the representation of indigent clients. The work of MCILS is funded by an annual appropriation from the Legislature.

MCILS has continued its work and its evolution during calendar year 2023. During the year, 295 MCILS-approved assigned counsel opened 32,528 cases. For the first time in its history, MCILS has been able to provide support to assigned counsel to a degree that approaches parity with attorneys representing the State. Significant changes that benefit consumers of indigent legal services by supporting assigned counsel include an increase in rate of pay to \$150 per hour, to help address the costs of overhead, benefits, and staff; a reasonably limited number of paid training hours, to help equalize the benefit prosecutors enjoy by drawing their salaries during trainings; and access to legal research services and reimbursement of necessary printed materials.

MCILS has also been able to deploy its first employed public defenders through its Rural Defender Unit (“RDU”).¹ The RDU has successfully represented consumers of indigent legal services across rural areas of the State, where assigned counsel were not available to do so in sufficient numbers. In addition to providing excellence in representation, the RDU is working appropriate systemic change in the areas it services through its institutional persistence and the application of consistent practices. The RDU is directed by an experienced criminal defense attorney with long-term experience practicing in rural Aroostook County.

In late 2023, MCILS began staffing its first geographically fixed defender office in Kennebec County, the Capital Region Public Defender Office. The Capital Region District Defender is a long-term member of the Kennebec County bar, most recently as the Deputy District Attorney, with substantial prior experience as defense counsel. That office has completed its hiring cycle for attorney staff and began taking cases within approximately 30 days of the Part B budget becoming effective on October 25, 2023. MCILS expects that through this office it will be possible to ameliorate the threat that legal services are not being rendered in an effective and efficient way in Kennebec County for criminal matters.

As of January 1, 2024, MCILS assigned counsel had billed 272,708 hours since January 1, 2023, a 7.3% increase over calendar year 2022. This increase comes against a backdrop of a continuing substantial backlog of cases in the judicial system. As of December 22, 2023, there were *still* 63% more felony matters pending in the Unified Criminal Docket than had been pending on that date in 2019, and 36.8% more misdemeanors. For context, that means 2,839 additional felonies, and 4,746 additional misdemeanors. In combination with dwindling numbers

¹ The Rural Defender Unit was first staffed in December 2022 and came up to speed in early 2023. This has effectively been its first year of operation.

of attorneys available to provide indigent legal services, these trends yield an unsustainable result. See *Appendix A Attorney/Case X graph*.

An evaluation on a county-by-county basis shows that while every single county shows a continuing backlog of felonies, four – Hancock, Oxford, Penobscot, and Waldo – have more than twice the number of pre-pandemic felonies pending. With respect to misdemeanors, only the Waterville District Court (by 6.1%) and Caribou District Court (by 6.7%) have fewer misdemeanors pending. Every other court in the State also shows a backlog of misdemeanors, albeit to a lesser extent than with felonies.

And yet, MCILS counsel – assigned and employed – are making the system function. As of January 12, 2024, the Judicial Branch reported to MCILS that there were 312 cases where a defendant was constitutionally entitled to counsel and yet there was no lawyer available. 312 cases is unacceptable. That number should be zero. The people in need of counsel, however, represent one percent of the pending criminal matters. Consistently framing the issue of the availability of counsel as a failure by the defense bar subverts the reality that MCILS and its counsel are doing an astonishingly good job of meeting the needs. Their capacity, however, is not unlimited. The solution to the issue of counsel availability does involve continued work recruiting and retaining both assigned and employed counsel but must absolutely include work on the part of outside stakeholders to reduce unnecessary charges; resolve matters through early diversion, treatment, and education; and to dismiss those cases that may be reasonably dismissed.

MCILS, its staff, employed defenders, and the assigned bar appreciate the work that the Legislature and Executive have done to improve the availability of counsel services in Maine. That work has only begun, however. As set out below, more changes are necessary for MCILS, and throughout the justice system.

1. An evaluation of contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures.

In calendar year 2023, MCILS for the first time no longer relied exclusively on services provided by assigned counsel to provide direct client services. MCILS continued to see a decline in the number of counsel seeking assignments to serve indigent clients through the rosters. MCILS was able to preserve the availability of assigned counsel through its hourly rate increase, including through the return of many counsel to the rosters, before counsel became saturated with cases and could not take additional matters. It is clear to MCILS that those attorneys currently staffing cases, even where they are not accepting additional cases at this time, can do so only because it is now more cost efficient for them to do so.

MCILS counsel continue to experience stress and burnout related to indigent defense work. On September 19, 2023, MCILS surveyed its assigned counsel bar. 78 attorneys responded to the survey. From those results:

- 74% of attorneys who responded feel overwhelmed with work.
- 76% of attorneys have experienced burnout in the last 12 months.

- 62% of attorneys have contemplated a career change in the last 12 months.
- 49% of attorneys reported that returning to in-court proceedings contributes to their feelings of burnout.
- 40% of attorneys indicated that burnout has negatively impacted their professional work.
- 69% of attorneys said that burnout has negatively impacted their personal lives.

The survey results demonstrate that if MCILS is to meet the needs of consumers of indigent legal services, the overall workload must be decreased to manageable levels. See *Memorandum from Commission Staff to Commissioners – Attorney Burnout* dated October 2, 2023, available [here](#) at page 58.

Attorney Costs: With respect to existing operations, MCILS is meeting its immediate task of providing services within its budget. As of January 9, 2024, there were 134 attorneys actively seeking assignments. There were no counties in which there were no attorneys seeking adult criminal cases. There are, however, four district courts where there are no attorneys seeking child protection cases and two district courts where there are no attorneys seeking juvenile cases. There are periods, including the present, in which there is one or more county in which there are no local attorneys seeking cases of specific types.

The following table sets out the case statistics by case-type for 2023:

Case Type	New Cases	Vouchers Paid	Approved Paid	Average Amount
Appeal	173	214	\$558,544.33	\$2,610.02
Central Office Resource Counsel	13	29	\$45,215.00	\$1,559.14
Child Protection Petition	2,195	3,826	\$4,122,690.00	\$1,077.55
Drug Court	48	176	\$368,210.25	\$2,092.10
Emancipation	99	76	\$59,695.71	\$785.47
Felony	7,921	8,592	\$10,596,461.80	\$1,233.29
Involuntary Civil Commitment	1,230	1,157	\$558,356.99	\$482.59
Juvenile	965	923	\$911,795.24	\$987.86
Lawyer of the Day - Custody	2,981	2,981	\$1,744,365.13	\$585.16
Lawyer of the Day - Juvenile	221	224	\$117,066.48	\$522.62
Lawyer of the Day - Walk-in	1,734	1,771	\$1,059,178.51	\$598.07
MCILS Provided Training	942	779	\$515,534.14	\$661.79
Misdemeanor	11,498	12,214	\$7,174,088.80	\$587.37
Petition for Modified Release Treatment	8	52	\$40,321.59	\$775.42
Petition for Release or Discharge	3	15	\$33,244.58	\$2,216.31
Petition for Termination of Parental Rights	276	792	\$1,125,399.82	\$1,420.96
Post-Conviction Review	61	96	\$308,933.54	\$3,218.06
Probate	21	51	\$76,709.48	\$1,504.11
Probation Violation	1,548	1,530	\$1,095,281.95	\$715.87
Represent Witness on Fifth Amendment Issue	31	24	\$20,211.26	\$842.14
Resource Counsel Criminal	12	46	\$19,878.00	\$432.13
Resource Counsel Juvenile	1	7	\$2,240.00	\$320.00
Resource Counsel Mental Health	1	1	\$105.00	\$105.00
Resource Counsel NCR	0	0		
Resource Counsel Protective Custody	4	27	\$70,656.29	\$2,616.90
Review of Child Protection Order	523	1,642	\$1,680,284.90	\$1,023.32
Revocation of Administrative Release	12	6	\$2,232.00	\$372.00
Summary	32,521	37,251	\$32,306,700.79	\$867.27

The total cost of direct payments to attorneys of \$32,306,700 is an increase from \$19,715,155 in 2022. As set out above, the total increase of 63% substantially exceeds the 46% hourly rate increase, reflecting an increase in the hours spent working, not simply the rate increase itself. MCILS expects to see the total of payments to attorneys continue to rise in 2024 as the result of the hourly rate increase. Because the rate did not go into effect until March 2023, and because counsel bill MCILS in arrears, the impact of the rate change is not yet fully captured.

Contracts: Other than services MCILS receives from the State directly, there are two outside contracts. The first is a contract with an attorney skilled in immigration law. Immigration counsel is available to confer with MCILS counsel on any case in which there may be immigration consequences. Because immigration law is complicated, and changes frequently, this service is essential to MCILS operations. The services immigration counsel provides vary from month to month, but the effective cost to MCILS is much less than it would cost to engage immigration counsel on an *ad hoc* basis at a typical hourly rate.

The second contract is between MCILS and Justice Works, an outside vendor that provides the MCILS case management and billing system. This contract was the product of competitive bidding in 2016 and is in an extension. MCILS relies on this service for the core of its financial relationship with assigned counsel. After a competitive bidding process, MCILS has recently awarded a contract to Justice Works to update and upgrade the Justice Works product to provide additional case management services. In the interim, MCILS is working with Justice Works toward implementation of a short-term off the shelf product for employed defenders.

Cost Containment: Cost containment measures in 2023 have focused on enforcing previously published detailed expectations for attorney billing and ensuring that attorney vouchers and non-counsel invoices receive effective review, including, payment timing rules. Audit staff members provided detailed financial review of billing and expenses. Because adequate services both from counsel and from non-counsel providers is a constitutional guarantee, cost containment for MCILS means ensuring that payments are appropriate, rather than trying to eliminate services to reduce the overall cost.

Audit staff manually records all attorney billing errors that are detected during weekly voucher review. In fiscal year 2023, implementing this method alone, audit staff detected attorney billing errors translating to approximately 419 attorney hours.

Additionally, the implementation of several automated processes has freed up staff-hours and has created more efficient methods of detecting and investigating attorney billing errors. Any attorney who has billed an amount greater than 12 hours in a single day will receive an automated email alert. This email will identify the cases in defenderData that contain time entries for the date in question. Attorneys are required to respond to these emails to confirm the time entries are accurate. An additional automated process has been devised which records all dates and recorded

hours associated with each alert, as well as the attorneys' responses. This process enables audit staff to prioritize the follow-up with the attorneys based on the risk associated with the number of hours recorded. This overall process has been effective in identifying actual billing errors.

Audit staff has also devised an automated process which allows for the compilation of time entries from multiple vouchers into one spreadsheet. This process enables audit staff to view instances of suspected double billing more easily. This process had identified actual instances of double billing by attorneys.

Audit staff has also devised automated processes which allow for the creation of various reports such as caseload reports, daily roster reports, and historical roster report numbers. Again, this automation has freed up staff-hours which would have otherwise been spent creating these reports manually.

Finally, due to ongoing labor shortages, the need has arisen to assign MCILS attorneys to cases that are significant distances from their work/home area. As a result, audit staff has seen a significant increase in lodging/per diem requests. Staff has created a policy which manages and controls those costs.

2. An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

There were two major statutory changes impacting the indigent legal services covered by the Commission:

15 M.R.S.A. § 810 – (LD 1625) – The existing section 810 was repealed and replaced with a section that requires the Court to provide copies of an Indictment to a Defendant without charge, unless that Indictment is sealed. The section further requires the assignment of counsel before arraignment on felony charges and expands the availability of counsel to those who have a physical, mental, or emotional disability or who face adverse immigration consequences.

Section 810 improves the provision of representation by ensuring that those most at risk in criminal matters, the disabled and those facing removal, are eligible for counsel even where the State may certify that there is no risk of jail. Any additional cost to MCILS for providing these services has not yet been realized. No data is available from which to report on that cost.

P.L. 2023, Chapter 394 - (LD 1603), *An Act to Implement the Recommendations of the Committee to Ensure Constitutionally Adequate Contact with Counsel*. The bill enacted a series of provisions that will improve the provision of indigent legal services by ensuring that clients may communicate effectively with their attorneys, including:

- a. The development and implementation of a registry of attorney telephone numbers that may not be recorded or monitored.
- b. The development of policies and procedures for the protection of client-attorney communications.
- c. Exclusionary remedies in instances when the State improperly intercepts protected client-attorney communications.
- d. The addition of a defense attorney to the board of the Maine Criminal Justice Academy.

3. Needs of the Indigent Defense System

There are many things that still need to be addressed for Mainers to benefit from the promise of a fully functioning indigent defense system. These may be broken down generally into two categories: budget and authorization; and external statutory changes. For the purpose of this report, proposed external statutory changes are limited to those that directly impact MCILS operations.

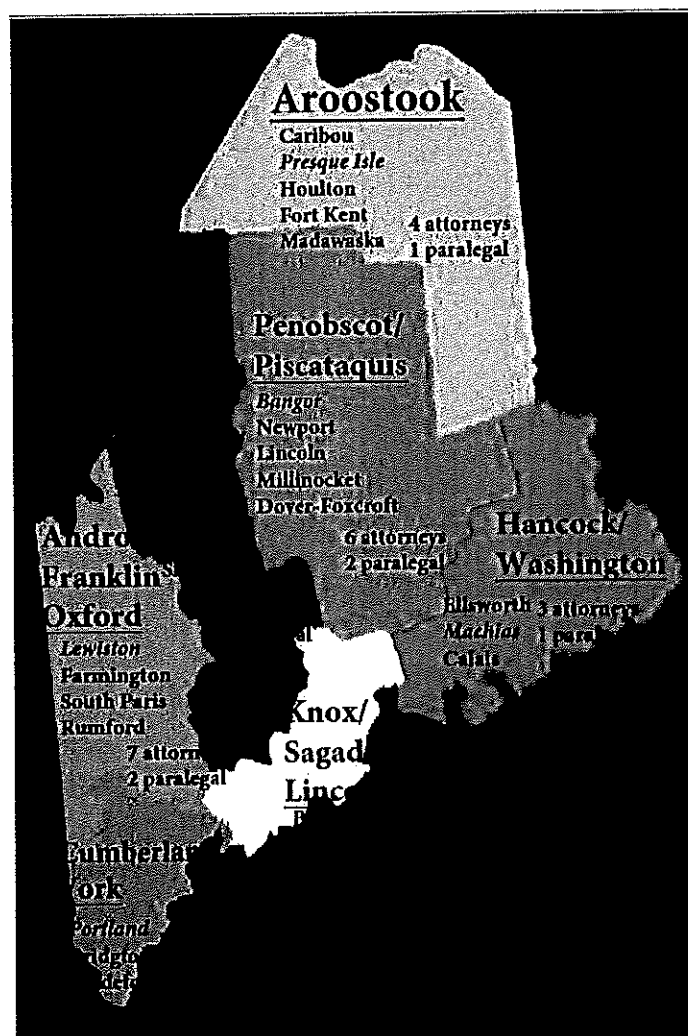
a. Budget

The most significant budgeting development has been establishing two separate public defender units, and the proposed roll out of a statewide public defender system planned to handle approximately one-third of the adult criminal cases. First, the development of the RDU has reinforced and confirmed the perceived benefits of deploying employed public defenders to service consumers of indigent legal services. Employed defenders cannot be reasonably deployed to service the entire statewide demand for representation, but offices of employed defenders can offer increases in efficiency and a system-level voice for the defense function, promoting the ability of all counsel to provide appropriate representation. In addition, committing to a hybrid system with both a healthy number of outside contract counsel with manageable caseloads and a robust group of employed public defenders serving every county and prosecutorial district throughout the state helps with recruiting and retention. One thing that has become clear in advertising, interviewing, and hiring for employed defender positions, is that there are attorneys and law students in and outside of Maine who are very interested in (1) choosing indigent defense as a career and (2) being able to do so as an employed defender rather than having to turn into a small business person and hang out their own shingle to do this work. Having both forms of defense delivery will increase system capacity by allowing Maine to tap into a labor market it has abdicated for decades.

MCILS has approved and submitted a supplemental budget request for the remainder of FY24, and for FY25. The request would provide the funding, and seeks the necessary authorization, to create additional regional public defender offices in this order:

1. Aroostook County (early FY25)
2. Combined office for Penobscot and Piscataquis counties, likely located in Bangor (early FY25)
3. Combined office for Androscoggin, Franklin, and Oxford counties, likely located in Lewiston (mid FY25)
4. Combined office for Washington and Hancock, located in Machias and/or Ellsworth (mid FY25)
5. Combined office for the 4 mid-coast counties of Lincoln, Knox, Sagadahoc, and Waldo, likely located in Rockland with a satellite office in Bath (late FY25).

These offices are anticipated to absorb 30% of the adult criminal trial-level caseload in each location, at a lower cost than would be incurred by assigned counsel, while providing regional support to the entire defense function. See *Memorandum from the Executive Director to the Commission – Supplemental Budget Request*, available [here](#) at page 88.



Simply put, Maine needs to dramatically increase system capacity for defense attorneys. That should happen in both the total numbers of attorneys providing a constitutionally required defense function along with an increase in the percentage of attorneys doing this work full-time. The private attorneys who have historically provided indigent legal services, and who continue to do this work, are dedicated and hard-working attorneys. There are, however, simply not enough of them for the number of cases we see pouring into the justice system.

This new generation of lawyers coming out of law school are coming out with crushing amounts of student loan debt. There are not enough jobs waiting for them in the private sector at firms doing our work to capture them all. And they cannot just be told to go hang out a shingle and be a small businessperson on day one right out of law school as the only other possible way to do this work. They need to have the option of becoming employed public defenders in a public defender's office as state employees doing this work, with all the benefits that entails.

The kind of dedication that we see in people that do this work is exemplified by a person from Massachusetts we interviewed for one of our public defender positions. This woman wanted to be a public defender and left Maine to do that work in Massachusetts because we had no employed public defender positions at the key decision point in her career—coming out of law school and passing the bar exam. So she went to Massachusetts, and she wanted to do this work so much that she was willing to work nights as a bartender so that she could keep her Massachusetts public defender day job and pay her bills, which she couldn't do on her starting salary alone. That sort of calling to do this work is something that is exciting to see in some of the students inside our own University of Maine School of Law—where the students have started their own group, Students for the Sixth, and they have held meetings and hosted an event with the U.S. Department of Justice dealing with rural access to justice issues.

We have current UMaine Law School students who have expressed an interest in doing internships and externships in the one fixed location public defender's office that we've now established. If we build out public defender offices around the state at some reasonable level of capacity, we will get students from Maine and outside of Maine. We have already had interest from multiple Boston law schools in having students come up for internships and externships. We will start to draw on an exciting new labor pool from graduating students and other attorneys from out of state who want to do this work but have never been able to do it in the state of Maine in this way: employed in a public defender's office with adequate resources, a sense of camaraderie and mentorship, and the ability to be part of a team doing this work.

The plan that we have rolled out is a modest plan which only addresses adult criminal trial-level cases. It is intended to try and capture about a third of the cases in the various courts in the proposed offices around the state. Ultimately, more capacity would be ideal, with more of a 50/50 caseload split between contract attorneys and employed public defenders. But we have to start somewhere, and this plan is a realistic starting point. It is better to start with this one-third capacity in each of the several offices necessary to cover the state, and to get all the offices up and running, than it would be to instead try and come up with one or two large offices with 10-20 attorneys. The needs of the system are now statewide and the shortage of attorneys doing this critical work is no longer limited to rural areas. So, the plan we have devised is to locate offices,

identify the courts that are within roughly an hour drive of them, and identify the personnel necessary to carry one-third the caseload for the courts within that geographic region. With seven or eight offices around the state, we can cover the whole state and cut down on some of the inefficiencies we have seen with the long distance driving necessary for our RDU attorneys and the private bar.

At this point, most if not all the participants in the justice system recognize we have a serious problem: we don't have enough capacity, we don't have enough experienced attorneys willing to do this work. This is a specialty area. There are many pitfalls to the uninitiated. The level of service that is required is also a part of the constitutional guarantee. The attorneys must be effective. So, solving the capacity problem is not as simple as just asking for volunteers or asking people who have never done this work to take a few cases; it is a systemic problem that requires a well-planned, long-term solution. The solution is to expand the public defender offices around the state and to then try and draw from a labor pool that we have been losing out on for decades. In this way, we can start to address the shortage of attorneys and improve our overall system.

b. Legislation

The proper function of MCILS requires a number of statutory changes that will enhance, and in some instances properly enable, its activities. Those proposed statutory changes are set out in the attached Appendix B.

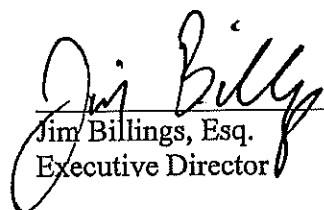
Broadly, the proposed changes include:

1. Changes to the MCILS enabling statute set to match current and proposed operations, and to clarify confidentiality for certain protected client information and for confidential information received from the judicial branch.
2. The addition of a public defense immunity for public defense employees, similar to that enjoyed by prosecutors pursuant to 14 M.R.S.A. section 8111.
3. Protected access to juvenile history record information.
4. Adequate counsel to parents on appeals from child protective decisions.
5. Commission access to certain child protective proceedings for the purpose of quality assurance.
6. Modification of mandated reporting requirements for defense social workers or other experts.
7. All juveniles to be considered indigent for the purposes of appointment of counsel.

In three years, since early 2021, MCILS has undergone a fundamental transformation. We have addressed the concerns of the Government Oversight Committee, expressed through its OPEGA's report; we have addressed those aspects of the Sixth Amendment Center report that are within our control; we have added meaningful training and supervision functions; we have implemented effective financial controls; we have achieved near parity in resources for assigned counsel – though there remains work to be done with respect to parity in practice; and we have begun the move into modern public defense through the implementation of a hybrid employed/assigned defense system.

However, much remains to be accomplished. We appreciate your support and look forward to working with you to continue the evolution.

Respectfully submitted,

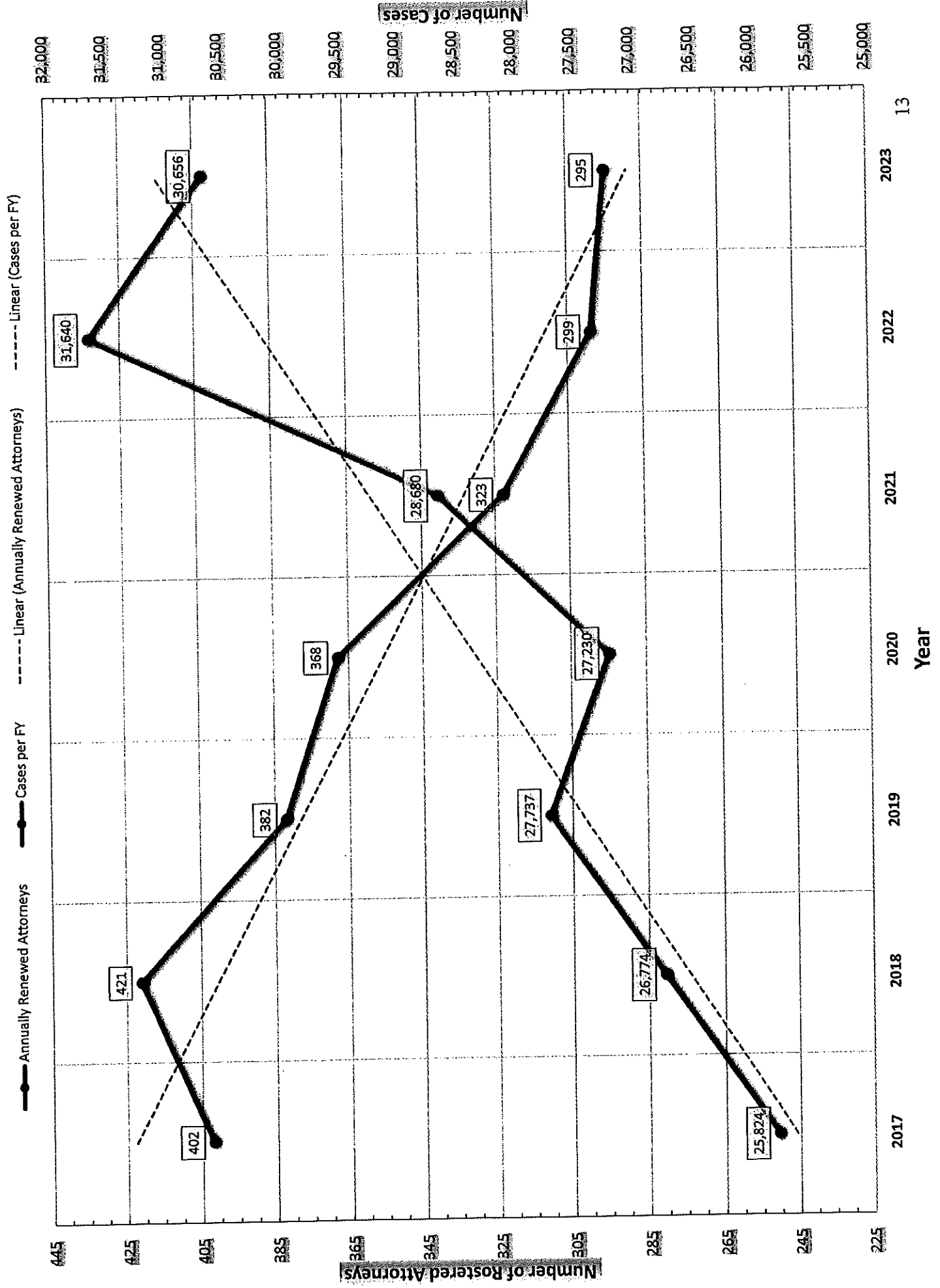


Jim Billings, Esq.
Executive Director

cc: Commissioners
MCILS Staff
MCILS Eligible Counsel
MCILS Interested Party Distribution List

APPENDIX A

Case Totals vs. Roster Totals



APPENDIX B

Proposed Statutory Changes for the Second Regular Session of the 131st Legislature

1. 4 MRS §1801, Maine Commission on Indigent Legal Services; established
2. 4 MRS §1802, Definitions
3. 4 MRS §1803, Commission structure
4. 4 MRS §1804, Commission responsibilities
5. 4 MRS §1806, Information not public record
6. 14 MRS §8104-B, Immunity notwithstanding waiver
7. 14 MRS §8111, Personal immunity for employees; procedure
8. 15 MRS §3010, Dissemination of juvenile history record information by a Maine criminal justice agency
9. 15 MRS §3306, Right to counsel
10. 15 MRS §3308-C, Confidentiality of juvenile case records
11. 22 MRS §4005, Parties' rights to representation; legal counsel
12. 22 MRS §4005-D, Access to and participating in proceedings
13. 22 MRS §4006, Appeals
14. 22 MRS §4007, Conducting proceedings
15. 22 MRS §4008, Records; confidentiality; disclosure
16. 22 MRS §4011-A, Reporting of suspected abuse or neglect
17. 22 MRS §4015, Privileged or confidential communications

CHAPTER 37

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

§1801. Maine Commission on Indigent Legal Services; established

The Maine Commission on Indigent Legal Services, established by Title 5, section 12004-G, subsection 25-A, is an independent commission whose purpose is to promote high-quality, effective, efficient representation and due process to consumers of indigent legal services, in parity with the resources of the State, ~~provide efficient, high-quality representation to indigent criminal defendants, juvenile defendants and children and parents in child protective cases,~~ consistent with federal and state constitutional and statutory obligations. The commission shall work to ensure the delivery of indigent legal services by qualified and competent counsel in a manner that is fair and consistent throughout the State and to ensure adequate funding of a statewide system of indigent legal services, which must be provided and managed in a fiscally responsible manner, free from undue political interference and conflicts of interest. [PL 2009, c. 419, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW).

§1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2009, c. 419, §2 (NEW).]

1. Assigned counsel. "Assigned counsel" means a private attorney designated by the commission to provide indigent legal services at public expense.
[PL 2009, c. 419, §2 (NEW).]

1-A. Appellate counsel. "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.

[PL 2013, c. 159, §10 (NEW).]

2. Commission. "Commission" means the Maine Commission on Indigent Legal Services under section 1801.
[PL 2009, c. 419, §2 (NEW).]

3. Contract counsel. "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services.
[PL 2009, c. 419, §2 (NEW).]

3-A. Employed counsel. "Employed counsel" means a person employed by the State of Maine though the commission to provide direct client services to consumers of indigent legal services. "Employed counsel" include district defenders, deputy district defenders, and assistant defenders. "Employed counsel" does not include those commission staff members who may be licensed attorneys but who are not employed to provide direct client services to consumers of indigent legal services.

4. Indigent legal services. "Indigent legal services" means 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; [PL 2009, c. 419, §2 (NEW).]

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; [PL 2019, c. 427, §1 (AMD).]

C. Juvenile defendants; and [PL 2019, c. 427, §1 (AMD).]

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. [PL 2019, c. 427, §2 (NEW).]

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4005, subsection 1.

[PL 2021, c. 676, Pt. A, §3 (AMD).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2013, c. 159, §10 (AMD). PL 2019, c. 427, §§1, 2 (AMD). PL 2021, c. 676, Pt. A, §3 (AMD).

§1803. Commission structure

1. **Members; appointment; chair.** The commission consists of 9 members appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and confirmation by the Legislature. The Governor shall designate one member to serve as chair of the commission. The membership consists of the following:

A. One member from a list of qualified potential appointees, provided by the President of the Senate; [PL 2017, c. 430, §1 (NEW).]

B. One member from a list of qualified potential appointees, provided by the Speaker of the House of Representatives; [PL 2017, c. 430, §1 (NEW).]

C. Three members from a list of qualified potential appointees, provided by the Chief Justice of the Supreme Judicial Court; [PL 2017, c. 430, §1 (NEW).]

D. One member with experience in administration and finance; [PL 2017, c. 430, §1 (NEW).]

E. One member with experience providing representation in child protection proceedings; [PL 2017, c. 430, §1 (NEW).]

F. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of the Maine State Bar Association. ~~This member is a nonvoting member of the commission;~~ and [PL 2017, c. 430, §1 (NEW).]

G. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of a statewide organization, other than the Maine State Bar Association, that represents criminal defense attorneys. ~~This member is a nonvoting member of the commission.~~ [PL 2017, c. 430, §1 (NEW).]

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Judicial Court, the president of the Maine State Bar Association and the president of the statewide organization that represents criminal defense attorneys shall consider input from individuals and organizations with an interest in the delivery of indigent legal services. Recommendations provided by the president of the Maine State Bar Association and the president of the statewide organization representing criminal defense attorneys must consist of attorneys providing indigent legal services as a majority of their law practices.

[PL 2017, c. 430, §1 (RPR).]

2. **Qualifications.** Individuals appointed to the commission must have demonstrated a commitment to quality representation for persons who are indigent and have the knowledge required to ensure that quality of representation is provided in each area of law. No more than 7 members may be attorneys engaged in the active practice of law. A person who is a sitting judge, prosecutor or law enforcement official, or an employee of such a person, may not be appointed to the commission.

A. A ~~voting~~ member and the immediate family members living in the same household as the member may not receive compensation from the commission, other than that authorized in Title 5, section 12004-G, subsection 25-A, while the member is serving on the commission.

B. Notwithstanding subsection (2)(A), above, members appointed pursuant to subsections (1)(F) and (G) may be compensated by the Commission for their services as assigned counsel pursuant to Commission rules.

The limitations on members receiving compensation from the commission do not apply to any member serving on the commission as of April 1, 2018 for the duration of the member's term.

[PL 2017, c. 430, §2 (AMD).]

3. Terms. Members of the commission are appointed for terms of 3 years each, except that of those first appointed the Governor shall designate 2 whose terms are only one year, 2 whose terms are only 2 years and one whose term is 3 years. A member may not serve more than 2 consecutive 3-year terms plus any initial term of less than 3 years.

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.
[PL 2009, c. 419, §2 (NEW).]

4. Quorum. A quorum is a majority of the current ~~voting~~ members of the commission. A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.
[PL 2017, c. 430, §2 (AMD).]

5. Compensation. Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.
[PL 2009, c. 419, §2 (NEW).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2017, c. 430, §§1, 2 (AMD).

§1804. Commission responsibilities

1. **Executive director.** The commission shall hire an executive director. The executive director must have experience in the legal field, including, but not limited to, the provision of indigent legal services. The executive director must be an attorney licensed in the State of Maine and in good standing with the Maine Board of Overseers of the Bar. [PL 2009, c. 419, §2 (NEW).]

2. **Standards.** The commission shall develop standards governing the delivery of indigent legal services, including:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees; [PL 2017, c. 284, Pt. UUUU, §1 (AMD).]

B. Standards prescribing minimum experience, training and other qualifications for contract counsel and assigned counsel; [PL 2009, c. 419, §2 (NEW).]

C. Standards for assigned counsel and contract counsel ~~case load~~caseloads; [PL 2009, c. 419, §2 (NEW).]

D. Develop training and evaluation programs for attorneys throughout the state who provide representation in criminal, juvenile, child protective, and mental health cases and any other cases in which the Commission is charged with providing indigent legal representation to a person. ~~Standards for the evaluation of assigned counsel and contract counsel. The commission shall review the standards developed pursuant to this paragraph every 5 years or upon the earlier recommendation of the executive director;~~ [PL 2017, c. 284, Pt. UUUU, §2 (AMD).]

E. Standards for independent, quality and efficient representation of clients whose cases present conflicts of interest; [PL 2009, c. 419, §2 (NEW).]

F. Standards for the reimbursement of expenses incurred by assigned counsel and contract counsel, including attendance at training events provided by the commission; and [PL 2021, c. 720, §1 (AMD).]

G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services. [PL 2009, c. 419, §2 (NEW).]

[PL 2021, c. 720, §1 (AMD).]

3. **Duties.** The commission shall:

A. Develop and maintain a system that may employ attorneys, use appointed private attorneys and contract with individual attorneys or groups of attorneys. The commission shall consider other programs necessary to provide quality and efficient indigent legal services; [PL 2021, c. 481, §1 (AMD).]

B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information; [PL 2017, c. 284, Pt. UUUU, §3 (AMD).]

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and ~~case load~~caseload management systems so that detailed expenditure and ~~indigent case load~~caseload data are accurately collected, recorded and reported; [PL 2011, c. 420, Pt. C, §1 (AMD).]

D. Develop criminal defense, child protective and involuntary commitment representation training and evaluation programs for attorneys throughout the State to ensure an adequate pool of qualified eligible attorneys; [PL 2009, c. 419, §2 (NEW).]

E. Establish minimum qualifications to ensure that attorneys are qualified and capable of providing quality representation in the case types to which they are assigned, recognizing that quality

representation in each of these types of cases requires counsel with experience and specialized training in that field; [PL 2009, c. 419, §2 (NEW).]

F. Establish rates of compensation for assigned counsel; [PL 2009, c. 419, §2 (NEW).]

G. Establish a method for accurately tracking and monitoring ~~case load~~caseloads of assigned counsel and contract counsel; [PL 2009, c. 419, §2 (NEW).]

H. By January 15th of each year, submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

- (1) An evaluation of: contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report; [PL 2017, c. 284, Pt. UUUU, §4 (AMD).]

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary; [PL 2013, c. 159, §11 (AMD).]

J. Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:

- (1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;
- (2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and
- (3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action; [PL 2017, c. 284, Pt. UUUU, §5 (AMD).]

K. Pay appellate counsel; [PL 2017, c. 284, Pt. UUUU, §6 (AMD).]

L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services; [PL 2019, c. 427, §3 (AMD).]

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services; [PL 2021, c. 481, §2 (AMD).]

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; and [PL 2021, c. 481, §3 (AMD).]

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court. [PL 2021, c. 481, §4 (NEW).]

[PL 2021, c. 481, §§1-4 (AMD).]

4. Powers. The commission may:

A. Establish and maintain a principal office and other offices within the State as it considers necessary; [PL 2009, c. 419, §2 (NEW).]

B. Meet and conduct business at any place within the State; [PL 2009, c. 419, §2 (NEW).]

C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed; [PL 2009, c. 419, §2 (NEW).]

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish rates of compensation for assigned counsel and contract counsel under subsection 3, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; ~~and~~ [PL 2021, c. 398, Pt. FFF, §1 (AMD); PL 2021, c. 481, §5 (AMD).]

E. Appear in court and before other administrative bodies represented by its own attorneys; and. [PL 2009, c. 419, §2 (NEW).]

F. Through employed or contract counsel, have full power to retain experts, including investigators, reasonably necessary for case-specific services to the client. The purchase of services, supplies, materials and equipment for noncase-specific purposes must be made through the State Purchasing Agent as provided by law. For the purposes of this section, unless the context otherwise indicates, "case-specific" means relating to a specific case for its duration, as opposed to perennial, noncase-specific activities of the commission or its employees.

[PL 2021, c. 398, Pt. FFF, §1 (AMD); PL 2021, c. 481, §5 (AMD).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2011, c. 141, §1 (AMD). PL 2011, c. 420, Pt. C, §1 (AMD). PL 2013, c. 159, §§11-13 (AMD). PL 2013, c. 368, Pt. RRR, §1 (AMD). PL 2013, c. 368, Pt. RRR, §4 (AFF). PL 2017, c. 284, Pt. UUUU, §§1-7 (AMD). PL 2019, c. 427, §§3, 4 (AMD). PL 2021, c. 398, Pt. FFF, §1 (AMD). PL 2021, c. 481, §§1-5 (AMD). PL 2021, c. 720, §1 (AMD).

§1806. Information not public record

Disclosure of information and records in the possession of the commission is governed by this section. [PL 2011, c. 260, §1 (NEW).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Individual client information" means name, date of birth, social security number, gender, ethnicity, home, ~~work, school or other~~-address, ~~home~~-telephone number, ~~home~~-facsimile number, ~~home~~-e-mail address, ~~personal~~-cellular telephone number, ~~personal~~-pager number and any information protected under Maine Rules of Evidence 501 – 509, Maine Rule of Professional Conduct 1.6, or otherwise the-protected by an attorney-client relationship. [PL 2011, c. 260, §1 (NEW).]

B. "~~Personal contact~~Contact information" means ~~home~~-any address, ~~home~~-telephone number, ~~home~~-facsimile number, ~~home~~-e-mail address, ~~personal~~-cellular telephone number, ~~personal~~-pager number, date of birth and social security number. [PL 2011, c. 260, §1 (NEW).]

C. "Request for ~~funds for expert or investigative assistance~~non-counsel funds" means a request submitted to the commission by an indigent party or by an attorney on behalf of an indigent client seeking authorization to expend funds for ~~expert or investigative~~non-counsel assistance, which includes, but is not limited to, the assistance of a private investigator, interpreter or translator, psychiatrist, psychologist or other mental health expert, medical expert and scientific expert. [PL 2011, c. 260, §1 (NEW).]

D. "Case information" means:

- (1) The court in which a case is brought;
- (2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;
- (3) The docket number;
- (4) The identity of assigned counsel and the date of assignment;
- (5) The withdrawal of assigned counsel and the date of withdrawal; and
- (6) Any order for reimbursement of assigned counsel fees. [PL 2011, c. 547, §1 (NEW).]

[PL 2011, c. 547, §1 (AMD).]

2. Confidential information. The following information and records in the possession of the commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.

A. Individual client information ~~that is submitted by a commission-rostered attorney or a court in the possession, or under the control, of the commission~~ is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential. [PL 2011, c. 260, §1 (NEW).]

B. Information protected under Maine Rules of Evidence 501 – 509, Maine Rule of Professional Conduct 1.6, or otherwise protected by an attorney-client relationship ~~subject to the lawyer-client privilege set forth in the Maine Rules of Evidence, Rule 502 or that constitutes a confidence or secret under the Maine Rules of Professional Conduct, Rule 1.6~~ is remains confidential. [PL 2011, c. 260, §1 (NEW).]

C. Personal contact information of ~~a commission-rostered attorney~~ assigned and contract counsel is confidential. [PL 2011, c. 260, §1 (NEW).]

D. Personal contact information of a member of the commission or a commission staff member is confidential. [PL 2011, c. 260, §1 (NEW).]

E. A request for ~~funds for expert or investigative assistance~~non-counsel funds that is submitted by ~~an indigent party or by an attorney~~ on behalf of a consumer of indigent legal services, or a person otherwise seeking commission funding for non-counsel services~~an indigent client~~ is confidential. The decision of the executive director of the commission hired pursuant to section 1804, subsection 1, or the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired. [PL 2011, c. 260, §1 (NEW).]

F. Any information obtained or gathered by the commission in or through a complaint, whether formal or informal, or when performing an evaluation or investigation of an attorney is confidential, subject to the following exceptions:

(1) ~~except that if~~Information— that would be confidential under subsection F may be disclosed to the attorney being evaluated or investigated.

(2) The commission, through its executive director or designee, may disclose information that would be confidential under subsection F to the Maine Assistance Program for Lawyers and Judges and/or the Maine Board of Overseers of the Bar.

(3) If the attorney who was evaluated or investigated is suspended or removed from eligibility to accept MCILS case assignments and appeals that decision, information that would be confidential under subsection F is no longer confidential if the Commission holds a full public hearing on the appeal, except that information which is protected by attorney-client privilege or is confidential by statute, the Maine Rules of Evidence, or the Maine Rules of Professional Conduct remains confidential.

[PL 2015, c. 290, §1 (AMD).]

[PL 2015, c. 290, §1 (AMD).]

3. Confidential information disclosed by the Judicial Department. The Judicial Department may disclose to the commission confidential information necessary for the commission to carry out its functions, including, without limitation, the collection of amounts owed to reimburse the State for the cost of assigned counsel, as follows:

A. Case information and individual client information with respect to court proceedings that are confidential by statute or court rule in which one or more parties are represented by assigned counsel; and [PL 2011, c. 547, §2 (NEW).]

B. The name, address, date of birth and social security number of any person ordered by the court to reimburse the State for some or all of the cost of assigned counsel. [PL 2011, c. 547, §2 (NEW).]

This information received from the Judicial Department remains confidential in the possession of the commission and is not open to public inspection, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential.
[PL 2011, c. 547, §2 (NEW).]

4. Confidential or Privileged Client Information in the possession of Employed Counsel. All material created, received, obtained, maintained, or stored by, or on behalf of, any Employed Counsel, that is protected under— Maine Rules of Evidence –501 – 509, Maine Rule of Professional Conduct 1.6, or otherwise protected by an attorney-client relationship remains confidential.

SECTION HISTORY

PL 2011, c. 260, §1 (NEW). PL 2011, c. 547, §§1, 2 (AMD). PL 2015, c. 290, §1 (AMD).

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§8104-B. Immunity notwithstanding waiver

Notwithstanding section 8104-A, a governmental entity is not liable for any claim which results from: [PL 1987, c. 740, §4 (NEW).]

1. Undertaking of legislative act. Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve;
[PL 1987, c. 740, §4 (NEW).]

2. Undertaking of judicial act. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial;
[PL 1987, c. 740, §4 (NEW).]

3. Performing discretionary function. Performing or failing to perform a discretionary function or duty, whether or not the discretion is abused and whether or not any statute, charter, ordinance, order, resolution or policy under which the discretionary function or duty is performed is valid or invalid, except that if the discretionary function involves the operation of a motor vehicle, as defined in Title 29-A, section 101, subsection 42, this section does not provide immunity for the governmental entity for an employee's negligent operation of the motor vehicle resulting in a collision, regardless of whether the employee has immunity under this chapter;
[PL 2005, c. 448, §1 (AMD).]

4. Performing prosecutorial function. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement;

4-A. Performing public defense function. Performing or failing to perform any indigent legal services as an employee of the Maine Commission on Indigent Legal Services, as defined in Title 4, section 1804, subsection 4.

[PL 1987, c. 740, §4 (NEW).]

5. Activities of state military forces. The activities of the state military forces when on duty pursuant to Title 37-B or 32 United States Code;
[PL 1995, c. 196, Pt. D, §2 (AMD).]

6. Leasing of governmental property. The leasing of governmental property, including buildings, to other organizations;
[PL 1999, c. 456, §1 (AMD).]

7. Certain services. A decision not to provide communications, heat, light, water, electricity or solid or liquid waste collection, disposal or treatment services; and
[PL 1999, c. 456, §1 (AMD).]

8. Failure or malfunction of computer. The direct or indirect failure or malfunction of computer hardware, computer software or any device containing a computer processor or chip that fails to accurately or properly recognize, calculate, display, sort or otherwise process dates or times as a result of the Year 2000 problem. This provision applies to failures or malfunctions occurring before January 2, 2001.

For purposes of this section, the "Year 2000 problem" means complications associated with using a 2-digit field to represent a year and its result on the year change from 1999 to 2000. These complications may include, but are not limited to:

A. Erroneous date calculations; [PL 1999, c. 456, §2 (NEW).]

B. An ambiguous interpretation of the term "00"; [PL 1999, c. 456, §2 (NEW).]

- C. The failure to recognize the year 2000 as a leap year; [PL 1999, c. 456, §2 (NEW).]
 - D. The use of algorithms that use the term "99" or "00" as a flag for another function; [PL 1999, c. 456, §2 (NEW).]
 - E. Problems arising from the use of applications, software or hardware that are date sensitive; and [PL 1999, c. 456, §2 (NEW).]
 - F. The inability to distinguish between centuries. [PL 1999, c. 456, §2 (NEW).]
- [PL 1999, c. 456, §2 (NEW).]

SECTION HISTORY

PL 1987, c. 740, §4 (NEW). PL 1995, c. 196, §D2 (AMD). PL 1999, c. 456, §§1,2 (AMD). PL 2005, c. 448, §1 (AMD).

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§8111. Personal immunity for employees; procedure

1. Immunity. Notwithstanding any liability that may have existed at common law, employees of governmental entities shall be absolutely immune from personal civil liability for the following:

A. Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve; [PL 1987, c. 740, §8 (RPR).]

B. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial; [PL 1987, c. 740, §8 (RPR).]

C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid; [PL 1987, c. 740, §8 (RPR).]

D. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement; [PL 2001, c. 662, §7 (AMD).]

E. Any intentional act or omission within the course and scope of employment; provided that such immunity does not exist in any case in which an employee's actions are found to have been in bad faith; or [PL 2001, c. 662, §8 (AMD).]

F. Any act by a member of the Maine National Guard within the course and scope of employment; except that immunity does not exist when an employee's actions are in bad faith or in violation of military orders while the employee is performing active state service pursuant to Title 37-B. [PL 2001, c. 662, §9 (NEW).]

G. Performing or failing to perform any defense function as an employee of the Maine Commission on Indigent Legal Services.

The absolute immunity provided by paragraph C shall be applicable whenever a discretionary act is reasonably encompassed by the duties of the governmental employee in question, regardless of whether the exercise of discretion is specifically authorized by statute, charter, ordinance, order, resolution, rule or resolve and shall be available to all governmental employees, including police officers and governmental employees involved in child welfare cases, who are required to exercise judgment or discretion in performing their official duties.

[PL 2001, c. 662, §§7-9 (AMD).]

2. Attachment and trustee process. Attachment, pursuant to Rule 4A, Maine Rules of Civil Procedure, and trustee process, pursuant to Rule 4B, Maine Rules of Civil Procedure, shall not be used in connection with the commencement of a civil action against an employee of a governmental entity based on any act or omission of the employee in the course and scope of employment.

[PL 1987, c. 740, §9 (AMD).]

SECTION HISTORY

PL 1977, c. 2, §§2,5 (NEW). PL 1977, c. 591, §6 (AMD). PL 1979, c. 68, §5 (AMD). PL 1987, c. 427, §§1,2 (AMD). PL 1987, c. 740, §§8,9 (AMD). PL 1989, c. 502, §A40 (AMD). PL 2001, c. 662, §§7-9 (AMD).

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§3010. Dissemination of juvenile history record information by a Maine criminal justice agency

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Confidential juvenile history record information" means all juvenile history record information except public juvenile history record information. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

B. "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

C. "Dissemination" has the same meaning as in Title 16, section 703, subsection 6. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

D. "Executive order" has the same meaning as in Title 16, section 703, subsection 7. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

E. "Juvenile history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency or kept in the custody of a criminal justice agency that connects a specific, identifiable juvenile with formal involvement in the juvenile justice system either as a person accused of or adjudicated as having committed a juvenile crime. "Juvenile history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; petitions charging a juvenile with a juvenile crime or any disposition stemming from such charges; post-plea or post-adjudication disposition; execution of and completion of any disposition alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals; collateral attacks; and petitions for and warrants of pardons, commutations, reprieves and amnesties. "Juvenile history record information" does not include information of record of civil proceedings, including traffic infractions and other civil violations or juvenile intelligence and investigative record information as defined in section 3308-A, subsection 1, paragraph E. As used in this paragraph, "formal involvement in the juvenile justice system either as a person accused of or adjudicated as having committed a juvenile crime" means being within the jurisdiction of the juvenile justice system commencing with arrest, summons, referral to a juvenile community corrections officer, preliminary investigation or filing of a juvenile petition with the Juvenile Court and concluding with the completion of any informal adjustment agreement or the completion of any disposition entered by the Juvenile Court. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

F. "Public juvenile history record information" means information indicating that a juvenile has been adjudicated as having committed a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile adjudicated were an adult and any resulting disposition imposed. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]
[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Juvenile history record information confidential. Except as provided in subsection 3, juvenile history record information is confidential and not open to public inspection, and does not constitute public records as defined in Title 1, section 402, subsection 3.
[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

3. Juvenile history record information pertaining to adjudications. Notwithstanding subsection 2, if a juvenile has been adjudicated as having committed a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile adjudicated were an adult, then that adjudication and any resulting disposition imposed, but no other related juvenile history record information, may be disclosed publicly.
[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

4. Dissemination of juvenile history record information by Maine criminal justice agency. A Maine criminal justice agency, whether directly or through any intermediary, may disseminate confidential juvenile history record information only to:

A. Another criminal justice agency for the purpose of the administration of juvenile justice, the administration of criminal justice or criminal justice agency employment; [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Any person for any purpose when expressly authorized by a statute, court rule, court decision or court order containing language specifically referring to confidential juvenile history record information or one or more of the types of confidential juvenile history record information; or [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

C. A public entity for purposes of international travel, such as issuing visas and granting of citizenship. [PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

D. The Maine Commission on Indigent Legal services for the purposes of assigning, evaluating, or supervising counsel.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

5. Required inquiry to State Bureau of Identification. A Maine criminal justice agency, other than a court, shall query the Department of Public Safety, State Bureau of Identification before disseminating any confidential juvenile history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. For purposes of this subsection, "noncriminal justice purpose" means a purpose other than for the administration of juvenile justice, the administration of criminal justice or criminal justice agency employment.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

6. Unlawful dissemination of confidential juvenile history record information. Any person who intentionally disseminates confidential juvenile history record information knowing it to be in violation of any provision of this chapter commits a civil violation for which a fine of not more than \$1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.

[PL 2021, c. 365, §9 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2021, c. 365, §9 (NEW). PL 2021, c. 365, §37 (AFF).

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§3306. Right to counsel

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

A. At a juvenile's first appearance before the court, the juvenile and the juvenile's parent or parents, guardian or legal custodian must be fully advised by the court of their constitutional and legal rights, including the juvenile's right to be represented by counsel at every stage of the proceedings. At every subsequent appearance before the court, the juvenile must be advised of the juvenile's right to be represented by counsel. [PL 2019, c. 525, §15 (AMD).]

B. If the juvenile requests an attorney ~~and if the juvenile and the juvenile's parent or parents, guardian or legal custodian are found to be without sufficient financial means~~, counsel must be appointed by the court. All juveniles shall be considered indigent for the purposes of appointment of counsel.

1. If, after counsel is appointed, a juvenile seeks to retain private counsel, appointed counsel shall file a motion to withdraw after private counsel has entered an appearance. [PL 2019, c. 525, §15 (AMD).]

C. The court may appoint counsel without a request under paragraph B if the court determines representation by counsel necessary to protect the interests of the juvenile. [PL 2019, c. 525, §15 (AMD).]

D. The court shall appoint counsel to represent the juvenile upon the entry of a dispositional order that includes commitment to a Department of Corrections juvenile correctional facility. A juvenile's right to counsel under this paragraph continues until the juvenile is discharged from the disposition. Counsel appointed under this paragraph may be in addition to any other counsel representing the juvenile. [PL 2021, c. 326, §5 (NEW).]

This subsection does not limit the court's authority to appoint counsel for a juvenile at any time beginning with the detention of the juvenile under this Part.
[PL 2021, c. 326, §5 (AMD).]

2. State's attorney. The district attorney or the attorney general shall represent the State in all proceedings under this chapter.

[PL 1977, c. 520, §1 (NEW).]

SECTION HISTORY

PL 1977, c. 520, §1 (NEW). PL 1977, c. 664, §25 (AMD). PL 2019, c. 525, §15 (AMD). PL 2021, c. 326, §5 (AMD).

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§3308-C. Confidentiality of juvenile case records

1. Confidentiality. Juvenile case records are confidential and may not be disclosed, disseminated or inspected except as expressly authorized by this Part. Juvenile case records open to public inspection may be inspected only at the courthouse. The court may not disseminate any juvenile case records, including those open to public inspection, to the public in any manner, including by any paper or electronic means.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

2. Juvenile petitions open to public inspection. Unless Juvenile Court proceedings are suspended pursuant to section 3318-A, subsection 5, the following juvenile petitions are open to public inspection:

A. Any juvenile petition alleging a violation of Title 17-A, section 201, 202 or 203 if the juvenile charged had attained 13 years of age at the time of the alleged juvenile crime, if the Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would be a violation of Title 17-A, section 201, 202 or 203 if the juvenile involved were an adult.

If the juvenile had not attained 13 years of age at the time of the alleged violation of Title 17-A, section 201, 202 or 203, the Juvenile Court may allow public inspection of the juvenile petition pursuant to paragraph C; [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Any juvenile petition alleging a juvenile crime that would constitute a Class A crime if committed by an adult if the juvenile charged had attained 13 years of age at the time of the alleged juvenile crime if the Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would be a Class A crime if the juvenile involved were an adult.

If the juvenile had not attained 13 years of age at the time of the juvenile crime that would constitute a Class A crime if committed by an adult, the Juvenile Court may allow public inspection of the juvenile petition pursuant to paragraph C.

A petition open to public inspection under this paragraph may be made confidential and not open to public inspection if, upon written request by a person to the Juvenile Court, and after notice to the juvenile and the juvenile's parent or parents, guardian or legal custodian, the attorney for the juvenile and the office of the prosecuting attorney, and after a hearing in which the Juvenile Court considers the purposes of this Part, the juvenile's interest in privacy, the alleged victim's interest in privacy, the nature of the juvenile crime alleged and the characteristics of the juvenile and public safety concerns as outlined in section 3101, subsection 4, paragraph D, the court determines that the general public's right to information does not substantially outweigh the juvenile's interest in privacy or the alleged victim's interest in privacy; and [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. Any petition alleging a juvenile crime that would constitute murder or a Class A crime if committed by an adult and the juvenile charged had not attained 13 years of age at the time of the alleged juvenile crime, or any petition alleging a juvenile of any age committed a juvenile crime that would constitute a Class B or C crime if committed by an adult, if:

- (1) A written request is filed by any person with the Juvenile Court requesting that the juvenile petition be open to public inspection;
- (2) The Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would constitute murder, a violation of Title 17-A, section 204 or a Class A, B or C crime if the juvenile involved were an adult; and
- (3) After notice to the juvenile and the juvenile's parent or parents, guardian or legal custodian, the attorney for the juvenile, the office of the prosecuting attorney and the individual or entity requesting the juvenile petition be open to public inspection and a hearing in which the Juvenile

Court considers the purposes of this Part, the juvenile's interest in privacy, the alleged victim's interest in privacy, the nature of the juvenile crime alleged and the characteristics of the juvenile and public safety concerns as outlined in section 3101, subsection 4, paragraph D, the court determines that the general public's right to information substantially outweighs the juvenile's interest in privacy and the alleged victim's interest in privacy. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. In a juvenile petition alleging multiple juvenile crimes, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether the petition is open to public inspection. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

The prosecuting attorney shall ensure that names and identifying information of any alleged victims are redacted before a petition is filed with the Juvenile Court.

If a request to allow public inspection of a petition under this subsection has been filed, the Juvenile Court shall advise the juvenile and the juvenile's parent or parents, guardian or legal custodian that the request has been made and shall advise them of the juvenile's right to be represented by counsel. The court may not allow the public to inspect a juvenile petition pursuant to paragraph C until authorized by court order.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

3. Orders of adjudication open to public inspection. Orders of adjudication for any juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult are open to public inspection. Orders of adjudication for all other juvenile crimes are confidential and not open to public inspection. When an order of adjudication reflects adjudications for both a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult and another juvenile crime or crimes not constituting murder or a Class A, B or C crime if the juvenile involved were an adult, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether the order of adjudication is open to public inspection. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

4. Dissemination of information contained in juvenile case records. The following provisions apply to the dissemination of information contained in juvenile case records.

A. For purposes of this subsection, unless the context otherwise indicates, the following terms have the following meanings.

- (1) "Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.
- (2) "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.
- (3) "Juvenile intelligence and investigative record information" has the same meaning as in section 3308-A, subsection 1, paragraph E. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. Nothing in this section precludes sharing of any information contained in juvenile case records by one criminal justice agency with another criminal justice agency for the purpose of administration of criminal justice, administration of juvenile justice or criminal justice agency employment. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. Nothing in this section precludes dissemination of any information contained in juvenile case records if:

- (1) The juvenile has been adjudicated as having committed a juvenile crime;
- (2) The information is disseminated by and to persons who directly supervise or report on the health, behavior or progress of the juvenile, the superintendent of the juvenile's school and the superintendent's designees, criminal justice agencies or agencies that are or might become

responsible for the health or welfare of the juvenile as a result of a court order or by agreement with the Department of Corrections or the Department of Health and Human Services; and

(3) The information is relevant to and disseminated only for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into a school.

Any information received under this paragraph is confidential and may not be further disclosed or disseminated, except as otherwise provided by law. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. Nothing in this section precludes dissemination of any information in the juvenile case records in the possession of the Department of Corrections if the person concerning whom the juvenile case records are sought, the juvenile, the person's legal guardian, if any, and, if the person is a minor, the person's parent or parents, guardian or legal custodian have given informed written consent to the dissemination of the juvenile case records. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

E. Except as expressly authorized by this section, juvenile intelligence and investigative record information, juvenile community corrections officers' records and all other reports of social and clinical studies contained in juvenile case records may not be open to inspection and may not be disclosed or disseminated except with the consent of the Juvenile Court. The names and identifying information regarding any alleged victims and minors contained in the juvenile case records must be redacted prior to disclosure, dissemination or inspection.

The Juvenile Court may not order the disclosure, dissemination or inspection of juvenile case records unless the juvenile, the juvenile's parent or parents, guardian or legal custodian and either the juvenile's attorney or, if the juvenile does not have an attorney, the juvenile's attorney of record and the prosecuting attorney are given notice of the request and an opportunity to be heard regarding the request. In deciding whether to allow the disclosure, dissemination or inspection of any portion of juvenile case records under this paragraph, the Juvenile Court shall consider the purposes of this Part and the reasons for which the request is being made and may restrict the disclosure, dissemination or inspection of the juvenile case records in any manner the court determines necessary or appropriate. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

F. When a juvenile who is adjudicated as having committed a juvenile crime that if committed by an adult would be gross sexual assault under Title 17-A, section 253, subsection 1 is committed to a Department of Corrections juvenile correctional facility or placed on probation, the Department of Corrections shall provide, while the juvenile is committed or on probation, a copy of the juvenile's judgment and commitment to the Department of Health and Human Services, to all law enforcement agencies that have jurisdiction in those areas where the juvenile resides, works or attends school and to the superintendent of any school in which the juvenile attends school during the period of commitment or probation. The Department of Corrections shall provide a copy of the juvenile's judgment and commitment to all licensed day care facility operators located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. Upon request, the Department of Corrections shall also provide a copy of the juvenile's judgment and commitment to other entities that are involved in the care of children and are located in the municipality where the juvenile resides, works or attends school during the period of commitment or probation. The Department of Corrections may provide a copy of the juvenile's judgment and commitment to any other agency or person that the Department of Corrections determines is appropriate to ensure public safety. Neither the failure of the Department of Corrections to perform the requirements of this paragraph nor compliance with this paragraph subjects the Department of Corrections or its employees to liability in a civil action. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

G. Juvenile case records must be open to inspection by and, upon request, be disseminated to the juvenile, the juvenile's parent or parents, guardian or legal custodian, the juvenile's attorney, the prosecuting attorney and any agency to which legal custody of the juvenile was transferred as a result of an adjudication. Juvenile case records must also be open to inspection by and, upon request, be disseminated to the Department of Health and Human Services prior to adjudication if commitment to the Department of Health and Human Services is a proposed disposition. Juvenile case records must also be open to inspection by and, upon request, be disseminated to the Maine Commission on Indigent Legal Services as necessary to assign, evaluate, or supervise counsel. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

5. Victim access to juvenile case records. Notwithstanding confidentiality provisions of this section, the juvenile petition and order of adjudication may be inspected by:

A. The victim; [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. If the victim is a minor, the parent or parents, guardian or legal custodian of the victim; or [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. If the victim cannot act on the victim's own behalf due to death, age, physical or mental disease or disorder or intellectual disability or autism or other reason, an immediate family member, guardian, legal custodian or attorney representing the victim. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

Notwithstanding any provision of this section to the contrary, juvenile case records must be open to inspection by or may be disseminated to the Victims' Compensation Board established in Title 5, section 12004-J, subsection 11 if a juvenile is alleged to have committed an offense upon which an application to the board is based.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

6. Access to juvenile case records by other persons. With the consent of the Juvenile Court and subject to reasonable limitations to protect the identity, privacy and safety of 3rd parties, including, but not limited to, victims and other accused or adjudicated juveniles, and the interests of justice, juvenile case records, excluding the names of the juvenile and the juvenile's parent or parents, guardian or legal custodian, the juvenile's attorney or any other parties, may be inspected by or disseminated to persons having a legitimate interest in the proceedings or by persons conducting pertinent research studies.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

7. Order following determination that juvenile case records are open to public inspection, disclosure or dissemination. Following a determination that a juvenile petition, order of adjudication or other juvenile case records are open to public inspection, disclosure or dissemination under this section, the Juvenile Court shall enter an order specifying which juvenile case records may be inspected, disclosed or disseminated and identifying the individual or agency granted access to those juvenile case records. The Juvenile Court may restrict the further disclosure, dissemination or inspection of the juvenile case records in any manner the court determines necessary or appropriate.
[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

8. Records to Secretary of State. Whenever a juvenile has been adjudicated as having committed a juvenile crime involving the operation of a motor vehicle, or when the Juvenile Court has ordered a disposition pursuant to section 3314, subsection 3, 3-A, or 3-B that includes suspension of the juvenile's right to operate a motor vehicle, the court shall transmit to the Secretary of State an abstract, duly certified, setting forth the name of the juvenile, the offense, the date of the offense, the date of the adjudicatory hearing and any other pertinent facts. These juvenile case records are admissible in

evidence in hearings conducted by the Secretary of State or any of the Secretary of State's deputies and are open to public inspection.

Nothing in this Part may be construed to limit the authority of the Secretary of State, pursuant to Title 29-A, to suspend a person's driver's license or permit to operate a motor vehicle, right to operate a motor vehicle or right to apply for or obtain a driver's license.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

9. Transmission of information about a committed juvenile. Information regarding a juvenile committed to the custody of the Department of Corrections or the custody of the Department of Health and Human Services must be provided as follows.

A. The Juvenile Court shall transmit with the commitment order a copy of the petition, the order of adjudication, copies of any social studies, any clinical or educational reports and information pertinent to the care and treatment of the juvenile. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. The Department of Corrections or the Department of Health and Human Services shall provide the Juvenile Court with any information concerning the juvenile committed to either department's custody that the court at any time may request. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

10. Juvenile case records sealed. This subsection governs the sealing of juvenile case records of a person adjudicated as having committed a juvenile crime.

A. A person adjudicated as having committed a juvenile crime that, if the juvenile were an adult, would constitute murder or a Class A, B or C crime or operating under the influence as defined in Title 29-A, section 2411 may petition the Juvenile Court to seal from public inspection all juvenile case records pertaining to the juvenile crime and its disposition and any prior juvenile case records and their dispositions if:

(1) At least 3 years have passed since the person's discharge from the disposition ordered for that juvenile crime;

(2) Since the date of disposition, the person has not been adjudicated as having committed a juvenile crime and has not been convicted of committing a crime; and

(3) There are no current adjudicatory proceedings pending for a juvenile or other crime. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

B. The Juvenile Court may grant the petition filed under paragraph A if the court finds that the requirements of paragraph A are satisfied, unless the court finds that the general public's right to information substantially outweighs the juvenile's interest in privacy. The juvenile has a right to appeal the court's denial of the juvenile's petition to seal as provided in chapter 509. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

C. At the time a person adjudicated to have committed a juvenile crime other than a crime listed in paragraph A is finally discharged from the disposition imposed for that juvenile crime, the court, upon receipt of appropriate notice of the discharge, shall within 5 business days enter an order sealing from public inspection all records pertaining to the juvenile crime and its disposition. Appropriate notice that the juvenile is discharged from the disposition:

(1) Must be provided to the court by the Department of Corrections if the juvenile's disposition involved either commitment to the custody of a Department of Corrections juvenile correctional facility, a period of confinement not to exceed 30 days or any suspended disposition with a period of probation;

(2) Must be provided to the court by the office of the prosecuting attorney if disposition included restitution, community service or a restorative justice event and the court ordered that proof of completion of the obligation be provided to the office of the prosecuting attorney; or

(3) May be provided to the court by the juvenile or the juvenile's attorney. If the notice is provided by the juvenile or the juvenile's attorney, the juvenile or the juvenile's attorney shall serve a copy of the notice on the office of the prosecuting attorney before the court may enter the order sealing the juvenile case records. In all juvenile cases adjudicated subsequent to January 1, 2000, but prior to January 1, 2022, the Juvenile Court may grant the request of the juvenile or the juvenile's attorney for automatic sealing of all juvenile case records pertaining to the juvenile crime and its disposition when notice is provided to the court and the prosecuting attorney pursuant to this subparagraph.

When an order of adjudication includes multiple juvenile crimes, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether a petition for sealing of juvenile records must be filed pursuant to paragraph A and a finding made pursuant to paragraph B before all juvenile case records pertaining to all of the juvenile crimes adjudicated may be ordered sealed.

When a juvenile petition alleges multiple juvenile crimes and the court holds separate hearings resulting in multiple orders of adjudication, the order of adjudication with the highest class of crime if the juvenile were an adult determines whether a petition for sealing of juvenile records must be filed pursuant to paragraph A and a finding made pursuant to paragraph B before all juvenile case records pertaining to all of the juvenile crimes adjudicated may be ordered sealed. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

D. Notwithstanding subsections 2 and 3, subsection 4, paragraphs C, D and F and subsections 5 and 6, a court order sealing juvenile case records pursuant to this subsection permits only the following persons to have access to the sealed juvenile case records:

(1) The courts and criminal justice agencies as provided by this section; and

(2) The person whose juvenile case records are sealed or that person's designee. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

E. Notice of the court's order certifying its granting of the juvenile's petition to seal juvenile case records pursuant to paragraph B or notice of the court's order of automatic sealing pursuant to paragraph C must be provided to the Department of Public Safety, Bureau of State Police, State Bureau of Identification if the adjudication is for a juvenile crime the criminal records of which are maintained by the State Bureau of Identification pursuant to Title 25, section 1541. Notice of the order may be sent by electronic transmission. The State Bureau of Identification or the appropriate agency upon receipt of the notice shall promptly update its records relating to each of the juvenile adjudications included in the notice. [PL 2021, c. 701, §1 (AMD).]

F. A person whose juvenile case records are sealed pursuant to this subsection may respond to inquiries from other than the courts and criminal justice agencies about that person's juvenile crimes, the juvenile case records of which have been sealed, as if the juvenile crimes had never occurred, without being subject to any sanctions. The sealing of a person's juvenile case records does not remove or otherwise affect the prohibition against that person's possessing a firearm pursuant to section 393. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]
[PL 2021, c. 701, §1 (AMD).]

11. Unlawful dissemination of confidential juvenile case record information. Any person who intentionally disseminates information contained in confidential juvenile case records knowing it to be in violation of any provisions of this chapter commits a civil violation for which a fine of not more than \$1,000 may be adjudged. The District Court has jurisdiction over violations under this subsection.

[PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

SECTION HISTORY

PL 2021, c. 365, §19 (NEW). PL 2021, c. 365, §37 (AFF). PL 2021, c. 701, §1 (AMD).

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§4005. Parties' rights to representation; legal counsel

1. Child; guardian ad litem. The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court. [PL 1999, c. 251, §2 (AMD).]

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate, the following:

- (1) Review of relevant mental health records and materials;
- (2) Review of relevant medical records;
- (3) Review of relevant school records and other pertinent materials;
- (4) Interviews with the child with or without other persons present; and
- (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest. [PL 1997, c. 715, Pt. A, §1 (AMD).]

C. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the court. [PL 1983, c. 183 (NEW).]

D. The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence. [PL 2001, c. 696, §12 (AMD).]

E. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed the child's wishes, regardless of the recommendation of the guardian ad litem. [RR 2021, c. 2, Pt. B, §180 (COR).]

F. The guardian ad litem or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel. [PL 1995, c. 405, §20 (AMD).]

G. A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem. [PL 2001, c. 253, §4 (NEW).]

[RR 2021, c. 2, Pt. B, §180 (COR).]

2. Parents. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel. To ensure the proper evaluation of ineffective assistance claims, the court shall—upon filing of a notice of appeal—appoint new counsel for a parent who appeals from an order terminating their parental rights.
[PL 1983, c. 783, §2 (AMD).]

3. Wishes of child. The District Court shall consider the wishes of the child, in a manner appropriate to the age of the child, including, but not limited to, whether the child wishes to participate or be heard in court. In addition, when a child's expressed views are inconsistent with those of the guardian ad litem, the court shall consider whether to consult with the child directly, when the child's age is appropriate.
[PL 2009, c. 557, §1 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 183 (AMD). PL 1983, c. 783, §§1,2 (AMD). PL 1985, c. 581, §2 (AMD). PL 1995, c. 405, §§18-20 (AMD). PL 1997, c. 257, §5 (AMD). PL 1997, c. 715, §§A1,2 (AMD). PL 1999, c. 251, §2 (AMD). PL 2001, c. 253, §4 (AMD). PL 2001, c. 696, §12 (AMD). PL 2009, c. 557, §1 (AMD). RR 2021, c. 2, Pt. B, §180 (COR).

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§4005-D. Access to and participating in proceedings

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Foster parent" means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom a child lives pursuant to a court order or agreement of the department. [PL 2007, c. 255, §2 (AMD).]

B. "Grandparent," in addition to the meaning set forth in section 4002, subsection 5-C, includes a parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption. [PL 2017, c. 411, §8 (AMD).]

C. "Interested person" means a person the court has determined as having a substantial relationship with a child or a substantial interest in the child's well-being, based on the type, strength and duration of the relationship or interest. A person may request interested person status in a child protection proceeding either orally or in writing. [PL 2001, c. 696, §16 (NEW).]

D. "Intervenor" means a person who is granted intervenor status in a child protective proceeding pursuant to the Maine Rules of Civil Procedure, Rule 24, as long as intervention is consistent with section 4003. [PL 2001, c. 696, §16 (NEW).]

E. "Participant" means a person who is designated as an interested person under paragraph C and who demonstrates to the court that designation as a participant is in the best interests of the child and consistent with section 4003. A person may request participant status in a child protection proceeding either orally or in writing. [PL 2001, c. 696, §16 (NEW).]

[PL 2017, c. 411, §8 (AMD).]

2. Interested persons. Upon request, the court shall designate a foster parent, grandparent, preadoptive parent or a relative of a child as an interested person unless the court finds good cause not to do so. The court may also grant interested person status to other individuals who have a significant relationship to the child, including, but not limited to, teachers, coaches, counselors or a person who has provided or is providing care for the child.
[PL 2017, c. 411, §9 (AMD).]

3. Access to proceedings. An interested person, participant or intervenor may attend and observe all court proceedings under this chapter unless the court finds good cause to exclude the person. The opportunity to attend court proceedings does not include the right to be heard or the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

3A. Access to proceedings by the Maine Commission on Indigent Legal Services. The executive director of the Maine Commission on Indigent Legal Services, or designee, may attend and observe all court proceedings under this Chapter for any proper purpose related to assigning, evaluating, or supervising counsel. Any such attendance shall not convey standing to or qualify the commission as an interceding party.

[PL 2001, c. 696, §16 (NEW).]

4. Right to be heard. A participant or an intervenor has the right to be heard in any court proceeding under this chapter. The right to be heard does not include the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.
[PL 2001, c. 696, §16 (NEW).]

5. Intervention. An intervenor may participate in any court proceeding under this chapter as a party as provided by the court when granting intervenor status under Maine Rules of Civil Procedure, Rule 24. An intervenor has the rights of a party as ordered by the court in granting intervenor status,

including the right to present or cross-examine witnesses, present evidence and have access to pleadings and records.

[PL 2001, c. 696, §16 (NEW).]

6. Foster parents, preadoptive parents and relatives providing care. The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child must be provided notice of and the right to be heard in any proceeding to be held with respect to the child. The right to be heard includes the right to testify but does not include the right to present other witnesses or evidence, to attend any other portion of the proceeding or to have access to pleadings or records. This subsection may not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to the proceeding solely on the basis of the notice and right to be heard.

The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child may attend a proceeding in its entirety under this subsection unless specifically excluded by decision of the presiding judge.

[PL 2007, c. 255, §3 (AMD).]

7. Confidentiality and disclosure limitations. Interested persons, participants, and intervenors are subject to the confidentiality and disclosure limitations of section 4008.

[PL 2001, c. 696, §16 (NEW).]

SECTION HISTORY

PL 2001, c. 696, §16 (NEW). PL 2007, c. 255, §§2, 3 (AMD). PL 2017, c. 411, §§8, 9 (AMD).

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§4006. Appeals

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court and such appeals are governed by the Maine Rules of Civil Procedure, chapter 9. [PL 1997, c. 715, Pt. A, §3 (RPR).]

Appeals from any order under section 4035, 4054 or 4071 must be expedited. ~~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.~~ [PL 1997, c. 715, Pt. A, §3 (RPR).]

Orders entered under this chapter under sections other than section 4035, 4054 or 4071 are interlocutory and are not appealable. [PL 1997, c. 715, Pt. A, §3 (RPR).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 772, §3 (AMD). PL 1997, c. 715, §A3 (RPR).

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§4007. Conducting proceedings

1. Procedures. All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.
[PL 1985, c. 495, §17 (AMD).]

1-A. Nondisclosure of certain identifying information. This subsection governs the disclosure of certain identifying information.

A. At each proceeding, the court shall inquire whether there are any court orders in effect at the time of the proceeding that prohibit contact between the parties and participants. If such an order is in effect at the time of the proceeding, the court shall keep records that pertain to the protected person's current or intended address or location confidential, subject to disclosure only as authorized in this section. Any records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the protected person and determines that the disclosure is in the interests of justice. [PL 2007, c. 351, §2 (NEW).]

B. If, at any stage of the proceedings, a party or a participant alleges in an affidavit or a pleading under oath that the health, safety or liberty of the person would be jeopardized by disclosure of information pertaining to the person's current or intended address or location, the court shall keep records that contain the information confidential, subject to disclosure only as authorized in this section. Upon receipt of the affidavit or pleading, the records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or participants or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the person seeking protection and determines that the disclosure is in the interests of justice. [PL 2007, c. 351, §2 (NEW).]

C. If the current or intended address or location of a party or participant is required to be kept confidential under paragraph A or B, and the current or intended address or location of that person is a material fact necessary to the proceeding, the court shall hear the evidence outside of the presence of the person and the person's attorney from whom the information is being kept confidential unless the court determines after a hearing that takes into consideration the health, safety or liberty of the protected person that the exclusion of the party or participant is not in the interests of justice. If such evidence is taken outside the presence of a party or participant, the court shall take measures to prevent the excluded person and the person's attorney from accessing the recorded information and the information must be redacted in printed transcripts. [PL 2007, c. 351, §2 (NEW).]

D. Records that are required to be maintained by the court as confidential under this subsection may be disclosed to:

- (1) A state agency if necessary to carry out the statutory function of that agency;
- (2) A guardian ad litem appointed to the case; or
- (3) A criminal justice agency, as defined by Title 16, section 703, subsection 4, if necessary to carry out the administration of criminal justice or the administration of juvenile justice, and such disclosure is otherwise permitted pursuant to section 4008.

In making such disclosure, the court shall order the party receiving the information to maintain the information as confidential. [PL 2013, c. 267, Pt. B, §18 (AMD).]

[PL 2013, c. 267, Pt. B, §18 (AMD).]

E. Records that are required to be maintained by the court as confidential under this subsection shall be disclosed upon request to the Maine Commission on Indigent Legal Services for the purposes of assigning, evaluating, or supervising counsel.

2. Interviewing children. The court may interview a child witness in chambers, with only the guardian ad litem and counsel present, provided that the statements made are a matter of record. The court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.
[PL 1979, c. 733, §18 (NEW).]

3. Motion for examination. At any time during the proceeding, the court may order that a child, parent, alleged parent, person frequenting the household or having custody at the time of the alleged abuse or neglect, any other party to the action or person seeking care or custody of the child be examined pursuant to the Maine Rules of Civil Procedure, Rule 35.
[PL 1989, c. 270, §1 (AMD).]

3-A. Report of licensed mental health professional. In any hearing held in connection with a child protection proceeding under this chapter, the written report of a licensed mental health professional who has treated or evaluated the child shall be admitted as evidence, provided that the party seeking admission of the written report has furnished a copy of the report to all parties at least 21 days prior to the hearing. The report shall not be admitted as evidence without the testimony of the mental health professional if a party objects at least 7 days prior to the hearing. This subsection does not apply to the caseworker assigned to the child.
[PL 1989, c. 226 (NEW).]

4. Interstate compact. The provisions of the Interstate Compact for the Placement of Children, sections 4251 to 4269, if in effect and ratified by the other state involved, apply to proceedings under this chapter; otherwise, the provisions of the Interstate Compact on Placement of Children, sections 4191 to 4247, apply to proceedings under this chapter. Any report submitted pursuant to the compact is admissible in evidence for purposes of indicating compliance with the compact and the court may rely on evidence to the extent of its probative value.
[PL 2007, c. 255, §4 (AMD).]

5. Records.
[PL 2005, c. 300, §1 (RP).]

6. Benefits and support for children in custody of department. When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title 19-A, chapter 55, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits and shall provide any necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title 19-A, sections 2002 and 2004 unless current information is already on file with the court. If a child is placed in the custody of the department, the court shall order child support from each parent according to the guidelines pursuant to Title 19-A, chapter 63, designate each parent as a nonprimary care provider and apportion the obligation accordingly.

Income affidavits and instructions must be provided to each parent by the department at the time of service of the petition or motion. The court may order a deviation pursuant to Title 19-A, section 2007. Support ordered pursuant to this section must be paid directly to the department pursuant to Title 19-A, chapter 65, subchapter IV. The failure of a parent to file an affidavit does not prevent the entry of a protection order. A parent may be subject to Title 19-A, section 2004, subsection 1, paragraph D for failure to complete and file income affidavits.

[PL 1995, c. 694, Pt. D, §37 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 772, §4 (AMD). PL 1983, c. 783, §3 (AMD). PL 1985, c. 495, §17 (AMD). PL 1985, c. 506, §§A41,42 (AMD). PL 1989, c. 226 (AMD). PL 1989, c. 270, §1 (AMD). PL 1991, c. 840, §6 (AMD). PL 1993, c. 248, §1 (AMD). PL 1995, c. 694, §D37 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2005, c. 300, §1 (AMD). PL 2007, c. 255, §4 (AMD). PL 2007, c. 351, §2 (AMD). PL 2013, c. 267, Pt. B, §18 (AMD).

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§4008. Records; confidentiality; disclosure

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. Confidentiality of records and information. All department records that contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department, and all information contained in those records, are confidential and subject to release only under the conditions of subsections 2 and 3.

Within the department, the records are available only to and may be used only by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended.
[PL 2007, c. 485, §1 (AMD); PL 2007, c. 485, §2 (AFF).]

1-A. Disclosure. The department may determine that for the purposes of disclosure under this section records are limited to only records created by the department in connection with its duties under this chapter.
[PL 2021, c. 176, §5 (NEW).]

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department; [PL 1987, c. 511, Pt. B, §1 (RPR).]

A-1. A law enforcement agency, to the extent necessary for reporting, investigating and prosecuting an alleged crime, the victim of which is a department employee, an employee of the Attorney General's Office, an employee of any court or court system, a person mandated to report suspected abuse or neglect, a person who has made a report to the department, a person who has provided information to the department or an attorney, guardian ad litem, party, participant, witness or prospective witness in a child protection proceeding; [PL 2005, c. 300, §3 (NEW).]

A-2. An administrator of a social media service, to the extent authorized by a court for reporting, investigating or removing a threat or serious intimidation attempt directed against an employee of the department, an employee of the Attorney General's office, a guardian ad litem or an officer of any court or court system. The information remains confidential and the social media service may not redisclose any of the information provided by the department. For the purposes of this subsection, "social media service" means an electronic medium or service through which users create, share and view user-generated content; [PL 2021, c. 148, §1 (NEW).]

B. [PL 1983, c. 327, §3 (RP).]

C. A physician treating a child who the physician reasonably suspects may be abused or neglected; [RR 2021, c. 2, Pt. B, §181 (COR).]

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate; [PL 1987, c. 744, §3 (AMD).]

D-1. A parent, custodian or caretaker of a child when the department believes the child may be at risk of harm from the person who is the subject of the records or information, with protection for identity of reporters and other persons when appropriate; [PL 2005, c. 300, §4 (NEW).]

D-2. A party to a child protection proceeding, when the records or information is relevant to the proceeding, with protection for identity of reporters and other persons when appropriate; [PL 2005, c. 300, §4 (NEW).]

E. **(TEXT EFFECTIVE UNTIL 1/01/23)** A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4013, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [PL 2005, c. 300, §5 (AMD).]

E. **(TEXT EFFECTIVE 1/01/23)** A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4115, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [PL 2021, c. 647, Pt. B, §50 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

E-1. [PL 2007, c. 371, §3 (RP).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; [PL 1989, c. 270, §2 (RPR).]

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reporters and other persons when appropriate; [PL 1989, c. 270, §3 (RPR).]

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; [PL 1989, c. 270, §4 (RPR); PL 1989, c. 502, Pt. A, §76 (RPR); PL 1989, c. 878, Pt. A, §62 (RPR).]

I. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the federal Indian Child Welfare Act, 25 United States Code, Section 1903, or a representative designated to provide child welfare services by an Indian tribe of Canada; [PL 2007, c. 140, §5 (AMD).]

J. A person making a report of suspected abuse or neglect. The department may only disclose that it has not accepted the report for investigation, unless other disclosure provisions of this section apply; [PL 2015, c. 194, §1 (AMD); PL 2015, c. 198, §1 (AMD).]

K. The local animal control officer or the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902 when there is a reasonable suspicion of animal cruelty, abuse or neglect. For purposes of this paragraph, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B; [PL 2015, c. 494, Pt. A, §21 (AMD).]

L. A person, organization, employer or agency for the purpose of carrying out background or employment-related screening of an individual who is or may be engaged in:

(1) Child-related activities or employment; or

(2) Activities or employment relating to adults with intellectual disabilities, autism, related conditions as set out in 42 Code of Federal Regulations, Section 435.1010 or acquired brain injury; and [PL 2015, c. 494, Pt. A, §22 (RPR).]

M. The personal representative of the estate of a child named in a record who is reported to be abused or neglected. [PL 2015, c. 494, Pt. A, §23 (NEW).]
[RR 2021, c. 2, Pt. B, §181 (COR).]

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child, appointed pursuant to section 4005, subsection 1; [PL 2005, c. 300, §8 (AMD).]

A-1. The court-appointed guardian ad litem or attorney of a child who is the subject of a court proceeding involving parental rights and responsibilities, grandparent visitation, custody, guardianship or involuntary commitment. The access of the guardian ad litem or attorney to the records or information under this paragraph is limited to reviewing the records in the offices of the department. Any other use of the information or records during the proceeding in which the guardian ad litem or attorney is appointed is governed by paragraph B; [PL 2009, c. 38, §1 (AMD).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-C, section 9-304 or Title 19-A, section 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court; [PL 2017, c. 402, Pt. C, §60 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [PL 1983, c. 327, §4 (AMD); PL 1983, c. 470, §12 (AMD).]

D. An appropriate state executive or legislative official with responsibility for child protection services, provided that no personally identifying information may be made available unless necessary to that official's functions; [PL 2001, c. 439, Pt. X, §2 (AMD).]

E. The protection and advocacy agency for persons with disabilities, as designated pursuant to Title 5, section 19502, in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; [PL 1991, c. 630, §2 (AMD).]

F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; [PL 2001, c. 696, §18 (AMD).]

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-C, section 9-304, subsection 3 and section 8205; [PL 2017, c. 402, Pt. C, §61 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

H. Upon written request, a person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; [PL 2003, c. 673, Pt. Z, §3 (AMD).]

I. Any government entity that needs such information in order to carry out its responsibilities under law to protect children from abuse and neglect. For purposes of this paragraph, "government entity" means a federal entity, a state entity of any state, a local government entity of any state or locality or an agent of a federal, state or local government entity; [PL 2007, c. 371, §4 (AMD).]

J. To a juvenile court when the child who is the subject of the records has been brought before the court pursuant to Title 15, Part 6; [PL 2013, c. 293, §1 (AMD).]

K. A relative or other person whom the department is investigating for possible custody or placement of the child; [PL 2015, c. 381, §1 (AMD).]

L. To a licensing board of a mandated reporter, in the case of a mandated reporter under section 4011-A, subsection 1 who appears from the record or relevant circumstances to have failed to make a required report. Any information disclosed by the department personally identifying a licensee's client or patient remains confidential and may be used only in a proceeding as provided by Title 5, section 9057, subsection 6; and [PL 2015, c. 381, §2 (AMD).]

M. Law enforcement authorities for entry into the National Crime Information Center database of the Federal Bureau of Investigation and to a national information clearinghouse for missing and exploited children operated pursuant to 42 United States Code, Section 5773(b). Information disclosed pursuant to this paragraph is limited to information on missing or abducted children or youth that is required to be disclosed pursuant to 42 United States Code, Section 671(a)(35)(B). [PL 2015, c. 381, §3 (NEW).]

J. The Maine Commission on Indigent Legal Services for the purposes of assigning, evaluating, or supervising counsel, provided that no personally identifying information may be made available unless necessary to that official's functions.

[PL 2017, c. 402, Pt. C, §§60, 61 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

3-A. Confidentiality. The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request and recommendations pursuant to section 4004, subsection 1, paragraph E, but may not disclose data that is otherwise classified as confidential.
[PL 2021, c. 550, §2 (AMD).]

4. Unlawful dissemination; penalty. A person is guilty of unlawful dissemination if the person knowingly disseminates records that are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime that, notwithstanding Title 17-A, section 1604, subsection 1, paragraph E, is punishable by a fine of not more than \$500 or by imprisonment for not more than 30 days.
[PL 2019, c. 113, Pt. C, §67 (AMD).]

5. Retention of unsubstantiated child protective services records. Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 5 years following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 5-year retention period. An expunged record or unsubstantiated record that should have been expunged under this subsection may not be used for any purpose, including admission into evidence in any administrative or judicial proceeding.
[PL 2017, c. 472, §1 (AMD).]

6. Disclosing information; establishment of fees; rules. The department may charge fees for searching and disclosing information in its records as provided in this subsection.

A. The department may charge fees for the services listed in paragraph B to any person except the following:

- (1) A parent in a child protection proceeding, an attorney who represents a parent in a child protection proceeding or a guardian ad litem in a child protection proceeding when the parent, attorney or guardian ad litem requests the service for the purposes of the child protection proceeding;
- (2) An adoptive parent or prospective adoptive parent who requests information in the department's records relating to the child who has been or might be adopted;
- (3) A person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record, including a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; the information in the record must be requested for the purpose of evaluating or treating the child, parent or custodian who is the subject of the record;
- (4) Governmental entities of this State that are not engaged in licensing; and
- (5) Governmental entities of any county or municipality of this State that are not engaged in licensing.

An order by a court for disclosure of information in records pursuant to subsection 3, paragraph B must be deemed to have been made by the person requesting that the court order the disclosure. [PL 2015, c. 194, §4 (AMD).]

B. The department may charge fees for the following services:

- (1) Searching its records to determine whether a particular person is named in the records;
- (2) Receiving and responding to a request for disclosure of information in department records, whether or not the department grants the request; and
- (3) Disclosing information in department records. [PL 2015, c. 194, §4 (AMD).]

C. The department shall adopt rules governing requests for the services listed in paragraph B. Those rules may provide for a mechanism for making a request, the information required in making a request, the circumstances under which requests will be granted or denied and any other matter that the department determines necessary to efficiently respond to requests for disclosure of information in the records. The rules must establish a list of specified categories of activities or employment for which the department may provide information for background or employment-related screening pursuant to subsection 2, paragraph L. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 194, §4 (AMD).]

D. The department shall establish a schedule of fees by rule. The schedule of fees may provide that certain classes of persons are exempt from the fees, and it may establish different fees for different classes of persons. All fees collected by the department must be deposited in the General Fund. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [PL 2003, c. 673, Pt. W, §1 (NEW).]

E. A governmental entity that is engaged in licensing may charge an applicant for the fees imposed on it by the department for searching and disclosing information in its records. [PL 2015, c. 194, §4 (AMD).]

F. This subsection may not be construed to permit or require the department to make a disclosure in any particular case. [PL 2003, c. 673, Pt. W, §1 (NEW).]
[PL 2015, c. 194, §4 (AMD).]

7. Appeal of denial of disclosure of records. A parent, legal guardian, custodian or caretaker of a child who requests disclosure of information in records under subsection 2 and whose request is denied may request an administrative hearing to contest the denial of disclosure. The request for hearing must be made in writing to the department. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter 4. The issues that may be determined at hearing are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person. The department shall render after hearing without undue delay a decision as to whether some or all of the information requested should be disclosed. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the requester that the requester may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send a copy of the decision to the requester by regular mail to the requester's most recent address of record.
[PL 2015, c. 501, §2 (NEW).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 327, §§3-5 (AMD). PL 1983, c. 354, §§1,2 (AMD). PL 1983, c. 470, §§12,13 (AMD). PL 1983, c. 783, §4 (AMD). PL 1985, c. 495, §18 (AMD). PL 1985, c. 506, §§A43-45 (AMD). PL 1985, c. 739, §§5,6 (AMD). PL 1987, c. 511, §§A3,B1 (AMD). PL 1987, c. 714, §§5-7 (AMD). PL 1987, c. 744, §§3-7 (AMD). PL 1989, c. 118 (AMD). PL 1989, c. 270, §§2-5 (AMD). PL 1989, c. 483, §A33 (AMD). PL 1989, c. 502, §§A76,77,D18 (AMD). PL 1989, c. 700, §A89 (AMD). PL 1989, c. 857, §58 (AMD). PL 1989, c. 878, §§A62,63 (AMD). PL 1991, c. 630, §§2-4 (AMD). PL 1993, c. 294, §§3, 4 (AMD). PL 1993, c. 686, §8 (AMD). PL 1993, c. 686, §13 (AFF). PL 1995, c. 391, §2 (AMD). PL 1995, c. 694, §§D38,39 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2001, c. 439, §X2 (AMD). PL 2001, c. 696, §§17-20 (AMD). PL 2003, c. 673, §§W1,Z2-4 (AMD). PL 2005, c. 300, §§2-9 (AMD). PL 2007, c. 140, §§5-7 (AMD). PL 2007, c. 335, §1-3 (AMD). PL 2007, c. 335, §5 (AFF). PL 2007, c. 371, §§3-6 (AMD). PL 2007, c. 473, §1 (AFF). PL 2007, c. 485, §1 (AMD). PL 2007, c. 485, §2 (AFF). PL 2009, c. 38, §1 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2013, c. 293, §§1-3 (AMD). PL 2015, c. 194, §§1-4 (AMD). PL 2015, c. 198, §§1-3 (AMD). PL 2015, c. 381, §§1-3 (AMD). PL 2015, c. 494, Pt. A, §§21-23 (AMD). PL 2015, c. 501, §§1, 2 (AMD). PL 2017, c. 402, Pt. C, §§60, 61 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2017, c. 472, §1 (AMD). PL 2019, c. 113, Pt. C, §67 (AMD). PL 2019, c. 417, Pt. B, §14 (AFF). PL 2021, c. 148, §1 (AMD). PL 2021, c. 176, §5 (AMD). PL 2021, c. 550, §2 (AMD). PL 2021, c. 647, Pt. B, §50 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF). RR 2021, c. 2, Pt. B, §181 (COR).

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§4011-A. Reporting of suspected abuse or neglect

1. Required report to department. The following adult persons enumerated in subsection A herein shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred except that statements and/or information relayed to or received by attorneys providing legal assistance to a client and persons who are contracted or employed by or on behalf of such attorneys, including without limitation, medical, substance abuse, mental health, or social work providers is subject to privilege and not, therefore, subject to reporting unless the provisions of Maine Rule of Professional Conduct 1.6 are met. For purposes of this section, "client" refers only to a person who is a parent and party to a proceeding under this Chapter or a person who is charged with a criminal or juvenile offense.

A. When acting in a professional capacity:

- (1) An allopathic or osteopathic physician, resident or intern;
- (2) An emergency medical services person;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A dental hygienist;
- (7) A dental assistant;
- (8) A chiropractor;
- (9) A podiatrist;
- (10) A registered or licensed practical nurse;
- (11) A teacher;
- (12) A guidance counselor;
- (13) A school official;
- (14) A youth camp administrator or counselor;
- (15) A social worker;
- (16) A court-appointed special advocate or guardian ad litem for the child;
- (17) A homemaker;
- (18) A home health aide;
- (19) A medical or social service worker;
- (20) A psychologist;
- (21) Child care personnel;
- (22) A mental health professional;
- (23) A law enforcement official;
- (24) A state or municipal fire inspector;
- (25) A municipal code enforcement official;
- (26) A commercial film and photographic print processor;

- (27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;
- (28) A chair of a professional licensing board that has jurisdiction over mandated reporters;
- (29) A humane agent employed by the Department of Agriculture, Conservation and Forestry;
- (30) A sexual assault counselor;
- (31) A family or domestic violence victim advocate; and
- (32) A school bus driver or school bus attendant; [PL 2009, c. 211, Pt. B, §18 (AMD); PL 2011, c. 657, Pt. W, §5 (REV).]

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, regardless of whether the person receives compensation; and [PL 2003, c. 210, §3 (AMD).]

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation. [PL 2003, c. 210, §4 (NEW).]

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the department.

If a person required to report notifies either the person in charge of the institution, agency or facility or the designated agent, the notifying person shall acknowledge in writing that the institution, agency or facility has provided confirmation to the notifying person that another individual from the institution, agency or facility has made a report to the department. The confirmation must include, at a minimum, the name of the individual making the report to the department, the date and time of the report and a summary of the information conveyed. If the notifying person does not receive the confirmation from the institution, agency or facility within 24 hours of the notification, the notifying person immediately shall make a report directly to the department.

An employer may not take any action to prevent or discourage an employee from making a report. [PL 2015, c. 117, §1 (AMD).]

1-A. Permitted reporters. An animal control officer, as defined in Title 7, section 3907, subsection 4, may report to the department when that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected. [PL 2007, c. 139, §2 (NEW).]

2. Required report to district attorney. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child or that a suspicious child death has been caused by a person not responsible for the child, the person immediately shall report or cause a report to be made to the appropriate district attorney's office.

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the appropriate district attorney's office.

If a person required to report notifies either the person in charge of the institution, agency or facility or the designated agent, the notifying person shall acknowledge in writing that the institution, agency or

facility has provided confirmation to the notifying person that another individual from the institution, agency or facility has made a report to the appropriate district attorney's office. The confirmation must include, at a minimum, the name of the individual making the report to the appropriate district attorney's office, the date and time of the report and a summary of the information conveyed. If the notifying person does not receive the confirmation from the institution, agency or facility within 24 hours of the notification, the notifying person immediately shall make a report directly to the appropriate district attorney's office.

An employer may not take any action to prevent or discourage an employee from making a report. [PL 2015, c. 117, §2 (AMD).]

2-A. Disclosure to law enforcement officer. Upon request of a law enforcement officer investigating a report of child abuse or neglect, a member of the staff of a public or private medical institution, agency or facility or person in charge of the institution, agency or facility or the designated agent who made a report pursuant to subsection 1 shall disclose to the law enforcement officer the same information the member or person reported to the department. [PL 2023, c. 146, §1 (NEW).]

3. Optional report. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that there has been a suspicious child death. [PL 2007, c. 586, §12 (AMD).]

4. Mental health treatment. When a licensed mental health professional is required to report under subsection 1 and the knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred comes from treatment of a person responsible for the abuse, neglect or death, the licensed mental health professional shall report to the department in accordance with subsection 1 and under the following conditions.

A. The department shall consult with the licensed mental health professional who has made the report and shall attempt to reach agreement with the mental health professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B. [PL 2001, c. 345, §5 (NEW).]

B. Upon the request of the licensed mental health professional who has made the report, after the department has completed its investigation of the report under section 4021 or has received a preliminary protection order under section 4034 and when the department plans to initiate or has initiated a jeopardy order under section 4035 or plans to refer or has referred the report to law enforcement officials, the department shall convene at least one meeting of the licensed mental health professional who made the report, at least one representative from the department, a licensed mental health professional with expertise in child abuse or neglect and a representative of the district attorney's office having jurisdiction over the report, unless that office indicates that prosecution is unlikely. [PL 2001, c. 345, §5 (NEW).]

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse, neglect or death. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community and needs of the child and other family members for treatment of the effects of the abuse or neglect and the willingness of the person responsible for the abuse, neglect or death to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion. [PL 2007, c. 586, §13 (AMD).]

The intent of this subsection is to encourage offenders to seek and effectively utilize treatment and, at the same time, provide any necessary protection and treatment for the child and other family members. [PL 2007, c. 586, §13 (AMD).]

5. Photographs of visible trauma. Whenever a person is required to report as a staff member of a law enforcement agency or a hospital, that person shall make reasonable efforts to take, or cause to be taken, color photographs of any areas of trauma visible on a child.

A. The taking of photographs must be done with minimal trauma to the child and in a manner consistent with professional standards. The parent's or custodian's consent to the taking of photographs is not required. [PL 2001, c. 345, §5 (NEW).]

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for child welfare services. [PL 2001, c. 345, §5 (NEW).]

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs. [PL 2001, c. 345, §5 (NEW).]

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect or to subsequent child protection proceedings. [PL 2001, c. 345, §5 (NEW).]
[PL 2001, c. 345, §5 (NEW).]

6. Permissive reporting of animal cruelty, abuse or neglect. Notwithstanding any other provision of state law imposing a duty of confidentiality, a person listed in subsection 1 may report a reasonable suspicion of animal cruelty, abuse or neglect to the local animal control officer or to the animal welfare program of the Department of Agriculture, Conservation and Forestry established pursuant to Title 7, section 3902. For purposes of this subsection, the reporter shall disclose only such limited confidential information as is necessary for the local animal control officer or animal welfare program employee to identify the animal's location and status and the owner's name and address. For purposes of this subsection, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B. A reporter under this subsection may assert immunity from civil and criminal liability under Title 34-B, chapter 1, subchapter 6.
[PL 2007, c. 140, §8 (NEW); PL 2011, c. 657, Pt. W, §5 (REV).]

7. Children under 6 months of age or otherwise nonambulatory. A person required to make a report under subsection 1 shall report to the department if a child who is under 6 months of age or otherwise nonambulatory exhibits evidence of the following:

A. Fracture of a bone; [PL 2013, c. 268, §1 (NEW).]

B. Substantial bruising or multiple bruises; [PL 2013, c. 268, §1 (NEW).]

C. Subdural hematoma; [PL 2013, c. 268, §1 (NEW).]

D. Burns; [PL 2013, c. 268, §1 (NEW).]

E. Poisoning; or [PL 2013, c. 268, §1 (NEW).]

F. Injury resulting in substantial bleeding, soft tissue swelling or impairment of an organ. [PL 2013, c. 268, §1 (NEW).]

This subsection does not require the reporting of injuries occurring as a result of the delivery of a child attended by a licensed medical practitioner or the reporting of burns or other injuries occurring as a result of medical treatment following the delivery of the child while the child remains hospitalized following the delivery.

[PL 2015, c. 178, §1 (AMD).]

8. Required report of residence with nonfamily. A person required to make a report under subsection 1 shall report to the department if the person knows or has reasonable cause to suspect that a child is not living with the child's family. Although a report may be made at any time, a report must be made immediately if there is reason to suspect that a child has been living with someone other than

the child's family for more than 6 months or if there is reason to suspect that a child has been living with someone other than the child's family for more than 12 months pursuant to a power of attorney or other nonjudicial authorization.
[PL 2015, c. 274, §7 (NEW).]

9. Training requirement. A person required to make a report under subsection 1 shall complete at least once every 4 years mandated reporter training approved by the department.
[PL 2015, c. 407, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 345, §5 (NEW). PL 2003, c. 145, §2 (AMD). PL 2003, c. 210, §§3,4 (AMD). PL 2003, c. 510, §E3 (AMD). PL 2003, c. 510, §E4 (AFF). PL 2003, c. 599, §8 (AMD). PL 2003, c. 599, §§9,14 (AFF). PL 2007, c. 139, §2 (AMD). PL 2007, c. 140, §8 (AMD). PL 2007, c. 577, §6 (AMD). PL 2007, c. 586, §§10-13 (AMD). PL 2009, c. 41, §1 (AMD). PL 2009, c. 211, Pt. B, §18 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). PL 2013, c. 268, §1 (AMD). PL 2015, c. 117, §§1, 2 (AMD). PL 2015, c. 178, §1 (AMD). PL 2015, c. 274, §7 (AMD). PL 2015, c. 407, §1 (AMD). PL 2023, c. 146, §1 (AMD).

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§4015. Privileged or confidential communications

A. Except as set out in paragraph B, The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 16, section 53-B; Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 7005 and 18393; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 4008. [PL 2015, c. 429, §7 (AMD).]

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.

B. The attorney-client privilege is not abrogated by this section. Statements and/or information relayed to or received by attorneys providing legal assistance to a client and persons who are contracted or employed by or on behalf of such attorneys, including, without limitation, medical substance abuse, mental health, or social work providers, is subject to privilege and not, therefore, subject to reporting unless the provisions of Maine Rule of Professional Conduct 1.6 are met. For purposes of this section, "client" refers only to a person who is a parent and party to a proceeding under this Chapter or a person who is charged with a criminal or juvenile offense.

[PL 2001, c. 696, §22 (AMD).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1981, c. 211, §1 (AMD). PL 1983, c. 781, §2 (AMD). PL 1985, c. 495, §21 (AMD). PL 2001, c. 696, §22 (AMD). PL 2015, c. 429, §7 (AMD).

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January 14, 2025

Governor Janet Mills
Chief Justice Valerie Stanfill, Maine Supreme Judicial Court
Senator Anne Carney, Senate Chair of the Judiciary Committee
Representative Amy Kuhn, House Chair of the Judiciary Committee

Delivered via Email

Re: Annual Report of the Maine Commission on Public Defense Services

4 MRSA §1804(3)(H)

Governor Mills, Chief Justice Stanfill, Senator Carney, and Representative Kuhn:

The Maine Commission on Public Defense Services¹, (PDS), by and through its Executive Director, Jim Billings, respectfully presents its annual report pursuant to 4 MRSA § 1804(3)(H):

By January 15th of each year, [the Commission shall] submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

- (1) An evaluation of contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

These statutorily required components are near the end of this report. The bulk of the report involves a discussion of the unrepresented crisis facing the state, what is being done about it now, what PDS hopes to be able to do going forward to address the unrepresented crisis, and PDS' continuing efforts at quality assurance.

¹ In March 2024, the Commission's name was changed from the Maine Commission on Indigent Legal Services to the Maine Commission on Public Defense Services following the passage of LD 653, PL 2023, c. 558, §3.

PDS provides indigent legal services through a hybrid system of private assigned counsel and employed defenders representing indigent people facing a loss of liberty in cases brought by the State of Maine. Simply put, Maine either is failing to meet its constitutional obligations to its people, or it is so close to failing that it's a distinction without any real difference to our constituents. A court order issued January 3, 2025, in *Robbins, et al. v. Billings, Tardy, et al.*, cv-22-054 (Kennebec County Superior Court) (Murphy, J.), granted summary judgment for the plaintiff subclass against the Commissioners and Executive Director of PDS, ruling that the Sixth Amendment rights of the subclass are being violated in Maine.² The matter is set for further proceedings in January to determine what remedies the court will order. The subclass is a subset of the larger *Robbins* class action plaintiffs, and consists of people who "currently are, or in the future will be, eligible for appointment of counsel . . . as required by the Sixth Amendment to the United States Constitution or Article I, Section 6 of the Maine Constitution, but who remain unrepresented after arraignment or first appearance on any criminal charge punishable by incarceration or imprisonment." *Robbins* Order at 1-2. The subclass is basically those who are either on, or who could be placed on, the unrepresented lists discussed below.

² In its order, the court repeatedly referred to positions that PDS took in the litigation regarding various Sixth Amendment issues. Most notably, that PDS' position was that unrepresented defendants were not entitled to counsel except at discrete court events (Order at 15), not during pretrial investigation (Order at 19), not during plea negotiations (Order at 24), and not at bail hearings (Order at 26). Although counsel for PDS, from the Office of the Attorney General, made multiple arguments on behalf of PDS in the litigation, the court recognized that counsel for PDS was working under the premise that the real party in interest in the litigation was the State of Maine (Order at 41). Sixth Amendment law is not well-developed in Maine and has limited, sometimes conflicting caselaw nationwide. These arguments of counsel in the litigation based on a contested record in an area where the law is not fully developed on behalf of the State of Maine do not reflect any policy formally adopted by PDS. For example, PDS has never formally adopted a position that there is no Sixth Amendment right to counsel between initial appearance and dispositional conference. In fact, PDS is actively engaged in compensating lawyers of the day around the state to make the exact *opposite* argument—that the failure of the state to provide counsel to members of the subclass is a constitutional violation deserving of dismissal or, at the very least, release on bail. There is a distinct difference between lawyers arguing and disagreeing about *what the law ought to be* and *what the law is* (or, in this case, *may be*). It is also important to recognize that individual PDS Commissioners likely hold divergent views on both what the Sixth Amendment case law says and what the state's Sixth Amendment obligations ought to be. It is PDS' position that the State, including the courts, needs to do more to discharge its Sixth Amendment obligations, that there ought to be a remedy for when the state falls short of its obligations, and that Maine should not take a cramped view of the Sixth Amendment when putting in place a system of indigent legal services. PDS is dedicated to advancing the defense of indigent constituents in Maine.

I. Continuing Constitutional Crisis

A. Background

As of December 30, 2024, there were 1,150 matters pending without counsel.³ The breakdown of cases needing counsel is as follows:

- 980 adult criminal
- 12 post-conviction review
- 40 direct appeals to the Maine Supreme Judicial Court
- 6 juvenile
- 112 protective custody (some of which need counsel for both parents)

Three times each week, the Judicial Branch sends PDS an Excel spreadsheet of cases needing counsel, across all case types covered by PDS. PDS in turn emails this spreadsheet to all eligible counsel. We refer to this spreadsheet as the “counsel needed” or “unrepresented” list.

The five trial-level public defender offices established in 2023 and 2024 were funded to handle 30% of the adult criminal caseload in their locations, assuming the remaining 70% of cases would be handled by the private assigned bar. While enrollment in the program of the private bar shows signs of improvement as noted in the Recruitment section below, active participation on rosters (demonstrating an availability to the courts that they will take cases) and volunteering to be assigned to cases on the counsel needed list is simply not at sufficient enough levels to carry 70% of cases where there are public defender offices or to carry 100% of the cases where there are no public defender offices.

Approximately 50% of the cases on the counsel needed list only require eligibility under Chapter 2 of our rules. This means that an attorney fresh out of law school who has completed the on-demand 2-day minimum standards training and a short application form is eligible to take the case. The idea that PDS standards are too high and are driving people away is simply not supported. The more stringent chapter 3 requirements about specialized panels only took effect in March 2024 and this problem preceded that rule change. We’ve seen a decrease in the number of attorneys over a period of years. This is shown on the line graph on page 6. Moreover, following emergency rulemaking in July 2024 to loosen waiver requirements for attorneys seeking specialized panel eligibility, only one attorney applied for a waiver under the emergency rule that they would not have been able to get under the rule adopted in March 2024.

PDS contends that the best way forward to address this crisis is to: (a) continue the buildout of the public defender offices to geographically cover the remainder of the state, (b) increase to at least a

³ These numbers may include cases where a motion to withdraw has been filed and/or acted upon by the court, but no successor attorney has yet been assigned.

50% public defender-private counsel ratio, and (c) continue with recruitment efforts at the law school level—both in Maine and elsewhere. These efforts are discussed in greater detail in Part II below.

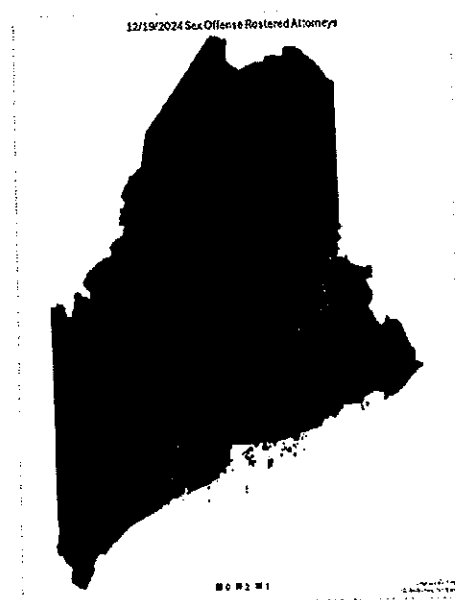
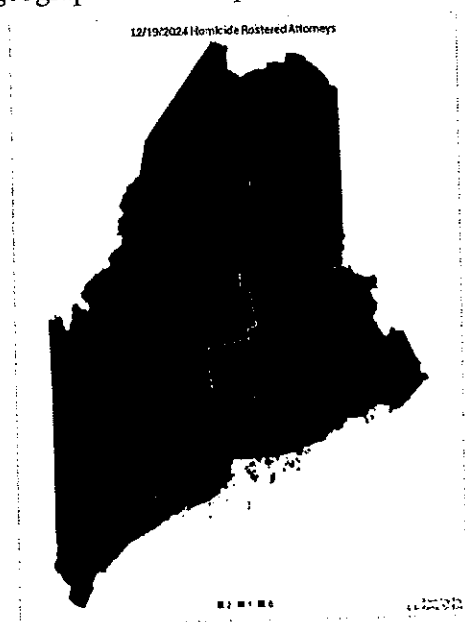
B. Private Counsel Participation

As of December 31, 2024, there were 333 eligible attorneys (attorneys who have submitted a renewal form or new application), of which 130 were rostered to accept new case assignments. Of the 130, 83 were on an active roster for trial-level work (excludes lawyer of the day): 29 for adult criminal and 25 for child protection.

Throughout Maine there are currently:

- 8 counties with no attorneys actively rostered to accept homicides cases
- 12 counties with no attorneys actively rostered to accept sex offense cases
- 11 counties with no attorneys actively rostered to accept major felony cases
- 8 counties with no attorneys actively rostered to accept other felony cases
- 12 counties with no attorneys actively rostered to accept domestic violence cases
- 9 counties with no attorneys actively rostered to accept OUI cases
- 7 counties with no attorneys actively rostered to accept other misdemeanor cases
- 3 counties with no attorneys actively rostered to accept protective custody cases

The six colored charts below illustrate the problem with a particular emphasis on the chapter 3 specialized panel case types. Red is a county (counties) with no lawyer on the roster for the specified case in that (those) court(s). But the other colors do not indicate a healthy system. A close look reveals that those courts have a single digit number of attorneys rostered for the specific case type—with 4 attorneys being the highest number of attorneys on a specific subject matter in the geographic areas depicted.



12/19/2024 Other Felony Rostered Attorneys



圖0 圖4 圖2 圖3 圖1

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12/19/2024 DV Rostered Attorneys



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12/19/2024 Major Felony Rostered Attorneys



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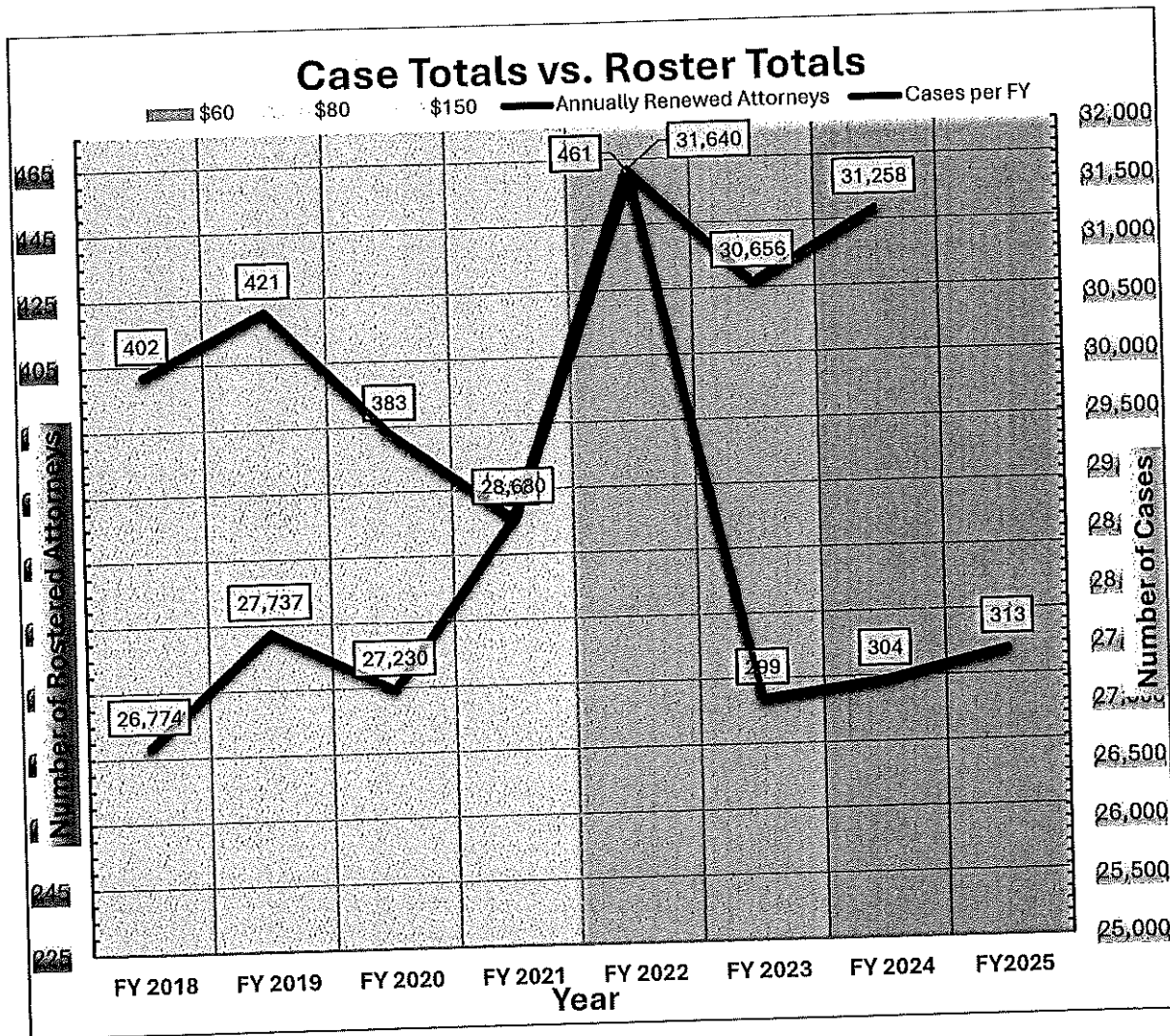
12/19/2024 OUI Rostered Attorneys



圖0 圖1 圖2 圖4 圖3

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Despite reports that new case filings are down, that's only compared to historic highs. If the tide comes in over your forehead one day while you're stuck in the mud but only comes in up to your eyes the next, it's not really good news and you're still in a heap of trouble if you breathe through your mouth and nose! If we look at the number of new filings from four or five years ago compared to recent years, one can easily see why we continue to struggle to find counsel for every case. See the line graph below for the interplay between case numbers and roster numbers.



In order to gather data on what could be depressing roster participation, PDS staff conducted a market rate survey among members of the bar to gain information on what attorneys are charging retained clients for legal work.

105 responses were submitted and the statewide average rate charged by counsel was:

- \$300.26 per hour for misdemeanor criminal cases
- \$323.29 per hour for felony-level criminal cases
- \$314.72 per hour for other non-PDS case types
- \$113.31 per hour was the average rate charged to clients for paralegal services

The bottom line from the survey suggests that private assigned counsel providing indigent legal services are doing so at a roughly 50% discount from the rate for retained cases. As can be seen in our later discussion about the budget, the state will need to authorize an increase to the rate of \$150 per hour in the FY 28-29 biennial budget cycle. By then, the \$150 per hour rate will be five years old and reduced significantly in real dollars due to inflation. Failing to have a frank discussion about increasing the rate risks further erosion of the roster we have now.

Attorney Burnout:

PDS has conducted multiple surveys over the past couple of years to try to get at the causes of the erosion of the roster, and one of the primary causes is clearly attorney burnout. This was set out in last year's annual report at pages 3-4.

On September 19, 2023, PDS surveyed its assigned counsel bar. 78 attorneys responded to the survey. From those results:

- 74% of attorneys who responded felt overwhelmed with work.
- 76% of attorneys had experienced burnout in the preceding 12 months.
- 62% of attorneys had contemplated a career change in the preceding 12 months.
- 49% of attorneys reported that returning to in-court proceedings contributed to their feelings of burnout.
- 40% of attorneys indicated that burnout had negatively impacted their professional work.
- 69% of attorneys said that burnout had negatively impacted their personal lives.

At our Second Annual Public Defense Conference in October 2024, District Defender Logan Perkins and Resource Counsel Justin Andrus led an interactive ethics presentation. During that presentation, participants were asked to answer questions about attorney burnout anonymously. Below are some important points from the results:

- 73% of attorneys sometimes or often feel emotionally numb.
- 78% of attorneys responded that sometimes, often, or always, their heart starts pounding when they think about their work with clients.
- 50% of attorneys sometimes or often feel as though they are reliving the trauma experienced by their clients.
- 83% of attorneys sometimes, often, or always have difficulty sleeping.
- 75% of attorneys sometimes, often, or always feel discouraged about the future.

- 91% of attorneys sometimes, often, or always think about their work with clients when they do not intend to.
- 78% of attorneys sometimes, often, or always expect something bad to happen.
- When asked to reflect on their own criminal law practice, attorneys used words such as: overwhelmed, isolated, guilty, flustered, stressed, busy, fear, confused, anxious, chaotic, hectic, discouraged, nonstop, scared, and burnout.

As discussed later in this report, PDS is working with the Maine Assistance Program for Lawyers and Judges (MAP) to provide trainings and resources on attorney burnout to try and address it. PDS and MAP co-hosted an attorney wellbeing training series in 2024. As part of that series, we offered eight trainings on attorney wellbeing and are continuing the series in 2025. The impact of attorney burnout on the quality and availability of counsel is significant.

II. Solutions

A. Current Efforts

1. Public Defenders

During this past year, PDS experienced rapid expansion in the form of four new brick-and-mortar public defender offices and the establishment of a Parents Counsel Division, bringing the total number of physical offices to five. The Parents Counsel Division was created because of the urgent need for parents' counsel and made possible by phasing out the Rural Defender Unit (RDU) as new physical offices began to open. As RDU members joined public defender offices, those positions were reclassified to parents' counsel positions. There are currently two remaining RDU members who have been embedded in the Aroostook and Highlands Region offices.

The list below gives a snapshot of where we are in the hiring process for all five offices and the Parents Counsel Division. We are over 85% staffed and all five physical offices are on pace to be operational (in leased, furnished office space with internet) by the end of this month. The Parents Counsel Division does not yet have a physical location. If, as requested, the PC Division expands, a standalone office situated in Augusta, Lewiston, and/or Portland will be needed. In the meantime, Parents Counsel attorneys will be able to use space at a public defender office.

The public defender offices were funded to handle 30% of the adult criminal caseload in the geographic areas they cover.

Aroostook (Caribou)	Downeast Region (Ellsworth)	Capital Region (Augusta)
1 District Defender	1 District Defender	1 District Defender
2 Assistant Defender I	1 Assistant Defender I	2 Assistant Defender I
1 Assistant Defender I (RDU)	1 Assistant Defender II	3 Assistant Defender II
1 Assistant Defender II (<i>vacant</i>)	1 Legal Administrator	1 Legal Administrator
1 Legal Administrator	1 Paralegal (<i>vacant</i>)	2 Paralegal
1 Paralegal	1 Investigator (<i>vacant</i>)	1 Investigator
1 Investigator		

Tri-County (Lewiston)

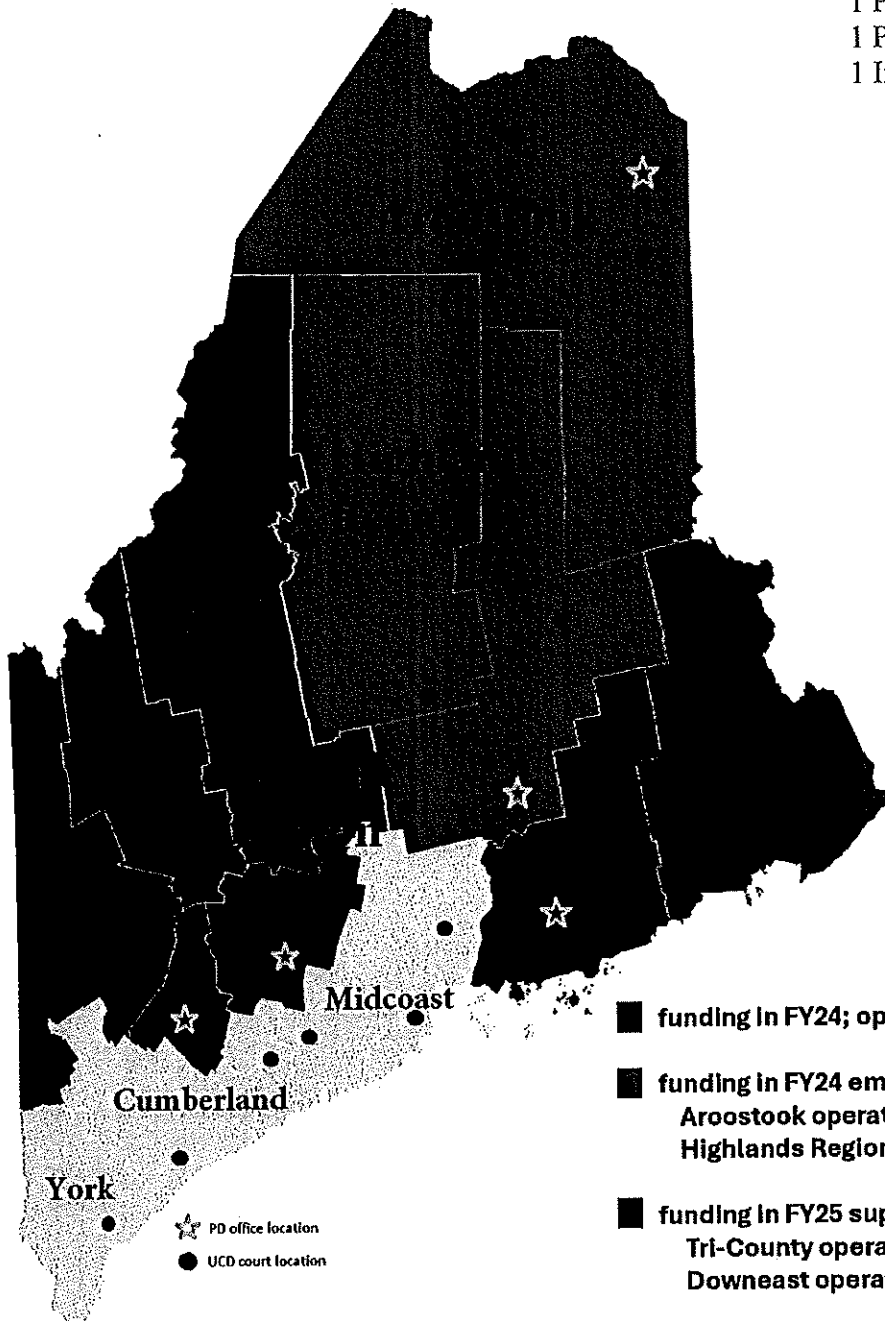
1 District Defender
 4 Assistant Defender I
 2 Assistant Defender II
 1 Legal Administrator
 2 Paralegal
 1 Investigator (*vacant*)

Parents Counsel Division

1 Division Chief
 1 Parents Counsel I (*offer accepted*)
 1 Parents Counsel I (*vacant*)
 1 Parents Counsel II (*vacant*)

Highlands Region (Bangor)

1 District Defender
 1 Assistant Defender I
 1 Assistant Defender I (*vacant*)
 3 Assistant Defender II
 1 Assistant Defender II (RDU)
 1 Legal Administrator
 1 Paralegal
 1 Paralegal (*offer pending*)
 1 Investigator



■ funding in FY24; operational Nov 2023

■ funding in FY24 emergency legislation
 Aroostook operational Nov 2024
 Highlands Region operational Nov 2024

■ funding in FY25 supplemental
 Tri-County operational Nov 2024
 Downeast operational late Jan 2025

■ funding requested in FY25 emergency supplemental

operational = furnished leased office space with internet/copier
 with employed trial attorneys.

The lag time between authorizing new offices/positions and seeing a decrease in the unrepresented lists is also something we need to discuss.⁴ We were very fortunate in rolling out the Capital Region Public Defenders office in late 2023. There was office space available that was already set up with a lot of infrastructure—like internet wiring. We had furniture already purchased and available from central office. Most important though, when we opened the CRPD office, there was no long unrepresented list in that region. This allowed that office to focus on a process for accepting new cases in an orderly way that has kept the unrepresented lists to a minimum in Kennebec and Somerset Counties. In addition, the rosters in those two counties were such that the PD office wasn't relied on to do more than it was designed to do.

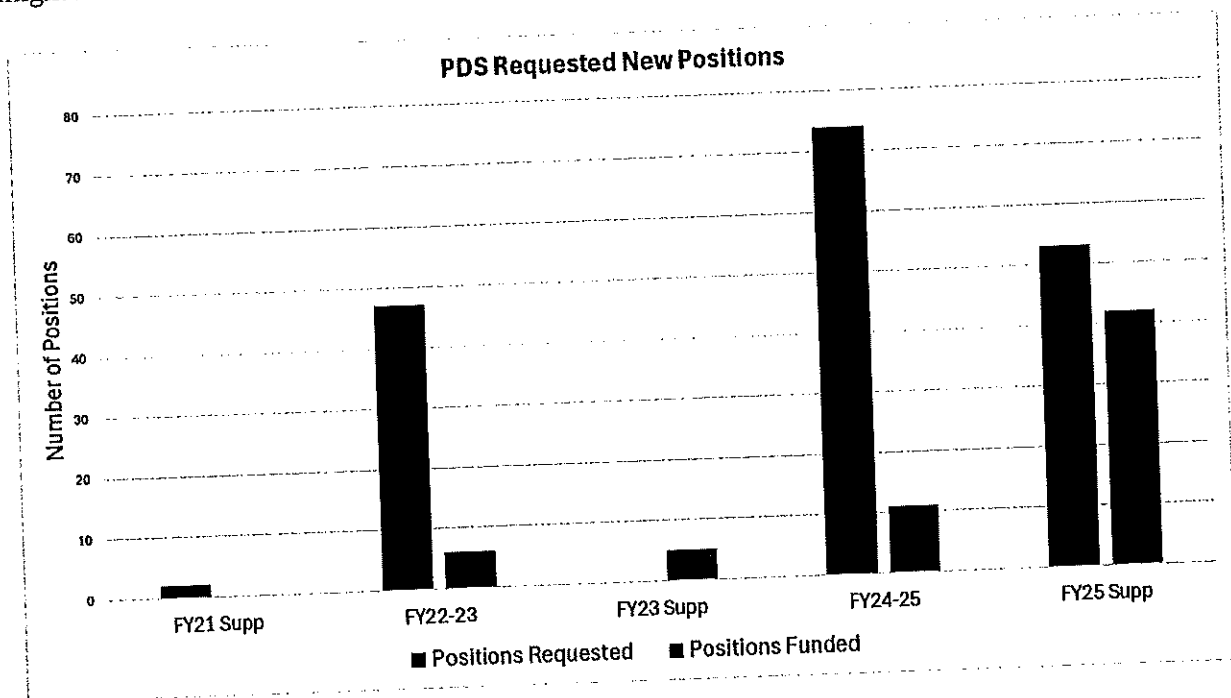
Unlike the CRPD office, the new offices in Caribou and Bangor opened up into spaces that needed significant build-out or alterations. The office in Lewiston did not need a lot of renovations to open up, but for all four new offices, there was significantly more time involved in getting the physical space set up to be operational than we experienced in Augusta. OIT, for example, had multiple steps and subcontractors involved in setting up internet for each office. Ellsworth took longer than expected to gain possession of leased space because the initial office location fell through. Once in physical possession of built out offices, we learned that the acquisition of furniture through the state procurement process was taking 6-8 weeks. Luckily, we were able to obtain some temporary furniture for some locations to cut down on delay.

The hiring for Caribou and Bangor also has been prolonged. We've been through several cycles of posting, extending postings, receiving few or no applicants, and reposting again. We still have one attorney vacancy in each of these two offices. The Bangor office just had two attorneys start in December after nearly six months of job postings.

Finally, the Caribou, Bangor, and Lewiston offices walked into a completely different situation than what awaited the Augusta office. As indicated above, there was no long unrepresented list in Kennebec or Somerset when CRPD opened. On the other hand, as each of the offices in Caribou, Bangor, and Lewiston opened and began to be in a position to take on a significant caseload, there were between 100 and 300 cases on the unrepresented list *in each location*. To further exacerbate the situations in Bangor and Lewiston, most categories of cases, especially serious felony matters, simply have nobody on the roster in those courts. That throws the 70/30 private roster/public defender formula out the window. Unfortunately, what this means is that there is a limit to the dent those offices can make in the unrepresented list numbers. We can focus those offices on taking in-custody unrepresented cases off the list, taking the oldest cases off the list, etc., to triage or prioritize cases, but if those offices only take cases off the list, the best they could hope for with a 30% capacity is to "freshen" up the list by getting the oldest cases off to be replaced with some new matter where there is no attorney available to be assigned. Although removing the oldest cases off the unrepresented list is still a good thing, this formula produces no visible reduction in the unrepresented list.

⁴ This is also true for seeing any net reduction in the "all other" billable hours totals. Given the lag time in getting an office operational and the attorneys up to full caseloads, combined with the arrearage billing we see from the private assigned counsel bar (where up to 1/3 are still only submitting a voucher at the end of a case), there is an additional significant delay between the time a PD office is opened in an area and the time it takes to see a reduction in the billable hours in proportion to the carrying capacity of the PD office.

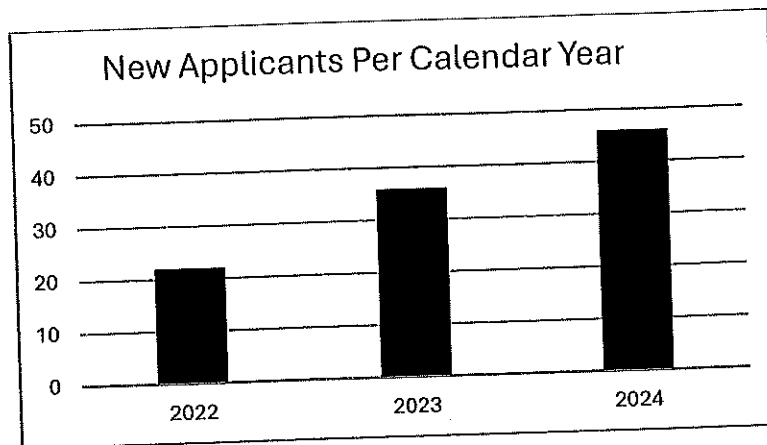
The bar graph below shows what PDS has requested for new employed positions over the past several fiscal years. If we had started the transition to a hybrid model when first requested in FY 22, we might have avoided the long list of people needing counsel that we have today.



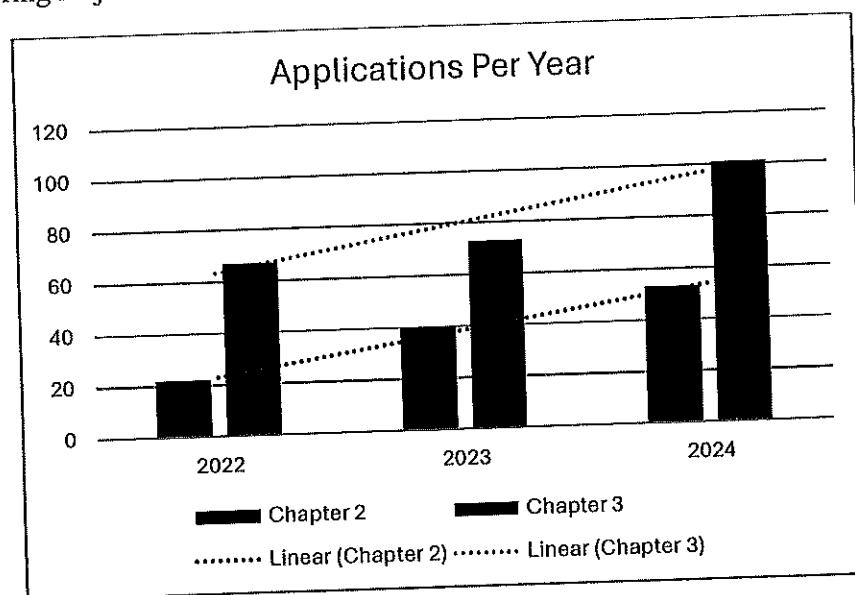
2. Recruitment

While the annual renewal cycle for fiscal year 2025 is still open, current renewals of attorneys participating in the PDS program have already slightly exceeded those of FY 24. While case totals for FY 25 cannot yet be finalized we can make a year-end projection to our graph contrasting case totals with renewals, reflecting the slight increase in the number of attorneys participating in the PDS program.

This increase is explained by the overall number of new attorneys who have applied to the PDS program in calendar year 2024 compared to previous years. In calendar year 2024, PDS received applications from 46 new attorneys wanting to participate in the program, 16 of whom indicated they intended to make PDS work 90% or more of their practice.



PDS also continues to see the number of applications for various case types go up year over year with 53 applications to join chapter 2 panels and 101 applications to join chapter 3 specialized panels (typically covering major felonies or other more demanding cases).



While the number of new attorneys joining PDS and the increased chapter 3 specialized panel participation are good news, those gains are offset by the number of people still leaving the program altogether or failing to renew. That is why the totals remain nearly flat, with only a slight uptick. In addition, when someone retires or fails to renew, we're typically losing experienced counsel as opposed to when someone new joins us for the first time.

PDS is trying to get demographic information from the Board of Bar Overseers that would help predict any future drop off in roster numbers related to attorney retirements. PDS is aware that Maine has an aging bar. We're seeking year of birth data for the Maine bar at large so we can cross-reference that age-related data against attorneys in our program. It is important that we see if we have a wave of further retirements coming and if our roster make up is any different than the bar at large. Given the current state of the rosters, we cannot afford any unpleasant surprises.

PDS also saw the first report back on the progress of the Public Service Loan Forgiveness program, as applied to rostered attorneys. Of the ten attorneys willing to discuss receiving discharges (out of a total of 11), those forgiven loan amounts totaled \$1,663,822.86. Two attorneys reported overpayments to the Department of Education that should result in \$40,000 being returned to one and 60 months of overpayments to the other.

On October 12, 2023, PDS received approval from the Law Court for law students working with members of an employed defender office to practice under Rule 56 of the Maine Rules of Criminal Procedure. In the summer of 2024, the Capital Region Defenders office had two student interns from the University of Maine School of Law. Both of those students were rising second year law students and will be returning to that office in the coming year, one as an extern and one as a summer intern. Both students will be fully sworn and able to practice under Rule 56.

Later this past fall, the Law Court expanded the Rule 56 permissions to allow law students to work in private assigned counsel offices providing indigent legal services through PDS. PDS plans to launch a pilot program based on this approval in the summer of 2025.

PDS staff have participated in several recruitment events this year and attended two in-person events in the greater Boston area. One of these was held at Suffolk University Law School and another was at Boston College. Staff also attended an event with the Maine State Bar Association New Lawyers section in Portland.

To facilitate future recruiting efforts, PDS has begun a process to generate new branding materials and development of marketing tools to help reach potential new recruits.

B. The Way Forward

There are many things that still need to be addressed for Mainers to benefit from the promise of a fully functioning indigent defense system. PDS urges the executive and legislative branches to make indigent defense a top priority this legislative session and fully fund our transition to a robust hybrid system that relies on a combination of a fully deployed array of public defender offices together with our private assigned counsel at a 50-50 ratio.

Thankfully, we have an example to follow in dealing with this crisis. The State of Oregon has been dealing with lists of unrepresented individuals both in and out of custody for longer than Maine. Some may question comparing Oregon's situation to Maine's, but there are some compelling reasons to do so. First, although the states are different in size and population, they are side by side on the U.S. population density statistics charts: Maine is 38th and Oregon is 39th. Although Oregon's population is about three times Maine's, it is also about three times as large as Maine. Oregon has been dealing with issues with rural access to justice similar to Maine. Also, there has been court involvement in Oregon on this unrepresented issue. There, a federal court has ordered anyone who has been in custody waiting for a lawyer to be assigned for 7 days after initial appearance to be released from custody. PDS will be in court in January in the *Robbins* litigation, and the trial judge will decide on a remedy for Maine's violation of the constitutional right to counsel.

Until recently, Oregon did not have a state employed public defender system. Oregon relied on a mixture of other delivery methods, including non-profits under contract to perform services (40% of cases) and reliance on contracts with for profit private attorneys (60% of cases) to provide services. Finally, Oregon, like Maine, pays an hourly rate for indigent legal defense work that is about 50% of the rates being charged in retained cases.

In July of this year, the Oregon Public Defense Commission issued an in-depth report dealing with their unrepresented crisis. This report can be found [here](#). The Oregon Unrepresented Crisis Plan recounts the varying levels of success Oregon has had in dealing with its unrepresented crisis and details some of the strategies they have used. PDS has proposed adopting some of the Oregon responses in its FY 26-27 budget ask. PDS is seeking to increase the number of public defender offices (Oregon's report echoes the PDS concerns with the inefficiencies of having attorneys travel great distances), PDS is seeking to increase the number of public defender positions statewide, PDS is proposing a tiered compensation system to encourage members of the private bar to take cases off the unrepresented list, and PDS is seeking to directly hire three positions to be devoted full-time to placing cases off the unrepresented list with counsel.

A final note regarding Oregon that is germane to our situation here in Maine. Even with Oregon's earlier start to address the crisis, emergency legislation to allow increased rates for counsel for taking cases off the unrepresented lists, and three full-time employees devoted to placing cases off the unrepresented lists, Oregon's plan predicts it will not have all in-custody unrepresented list cases placed with counsel until March 2025 (eight months after the date of their report), and it will not place all cases off the unrepresented list until March 2026. PDS asks that the Administration, Legislature, and Judicial Branch bear these timetables in mind when setting expectations for Maine and PDS.

a. Budget

Our baseline budget of \$43 million from FY 23-24 is now a thing of the past. The reality is that we are being billed 300,000 annual hours by private assigned counsel, trending upward. This means that "all other" budget line item alone is \$45 million. When we add in the office overhead, chapter 302 expenses for experts and investigators for employed counsel and the private assigned bar, and the personal services for all of PDS, including all the public defender offices, our actual costs for FY 25 are likely to exceed \$57 million.⁵ Meeting our obligations for FY 25 is only possible because PDS had approximately \$12.5 million "all other" carry over from FY 23 into FY 24, and approximately \$9.5 million "all other" carry-over from FY 24 into FY 25. Also, we've been able to move unused personal services dollars (due to vacancies) to "all other" through financial orders, totaling approximately \$2.5 million. Currently, even with the FY 23-24 carry-over and unused personal service transfers to date, we are too close for comfort for FY 25 with our remaining available funds. Billable hours have been rising yearly, average voucher amounts are up, and we simply cannot afford to run short of "all other." The impact of not paying the rostered attorneys on further eroding our ability to cover the number of cases we have cannot be overstated. That is why we are seeking to have new budget language added in the emergency supplemental for FY 25 that allows us to tap into an additional \$3 million in unused personal services funds due to vacancies.

⁵ Please see Attachment B for various budget projection scenarios.

Submitted Hours - yearly total	
FY 21	226,687
FY 22	247,454
FY 23	261,556
FY 24	302,875
FY 25	158,090

We're at a critical juncture both as to the (a) need for counsel and (b) future budget impact. PDS recognizes its biennial budget asks for FY 26-27 are a hard pill to swallow. But not taking that medicine now just leads to more pain later, again, in both the number of unrepresented cases and financial impact. For FY 26-27 Maine is essentially paying for two public defender systems: the traditional private assigned counsel billable hours at the \$150 per hour rate, and for the beginning stages of an employed public defender system that has increased the PDS personal services budget from \$1.7 million in FY 23, to \$3.8 million in FY 24, to over \$9 million in FY 25.

PDS has run some basic budget numbers for FY 28-29 to project the following scenarios: our budget carrying on as we are now; our budget if we get the three new offices for Cumberland, York and the Mid-Coast and remaining at 30% capacity for all offices; and our budget if we gain the three new offices and increase personnel to carry 50% of the cases. See Appendix B. It's important to understand how the decisions made in FY 26-27 impact the state down the road. The analysis for FY 28-29 and beyond is based on carrying forward the annual hourly billable hours by private assigned counsel at 300,000 hours (adjusted in the varying scenarios by what impact the PD offices have on that figure).

What we see is that failing to continue to support an increase in the public defender office capacity actually costs the state more money each and every year starting in FY 28. Yes, there is pain in FY 26-27 while we build out more offices, add employed public defenders, and wait for the private assigned counsel billable hours to decline to roughly 50%, but if we act now that pain is temporary. As our preliminary FY 28-29 numbers show, the more we invest in expanding public defenders now, the more stable, predictable and contained the numbers are. In fact, FY 29 shows our overall budget numbers decreasing from current 2025 costs, even after adding all the positions we're seeking.

If we add in a rate increase for private assigned counsel in the FY 28-29 budget cycle, going to either \$175 or \$200 per hour, we see annual cost differences in our proposed plan versus where we are now of \$8 to \$10 million per year. Also, that assumes that the 300,000 hours in annual billing from private assigned counsel remains flat for FY 28-29. Our numbers show a trend of increasing billable hours, such that for FY 28-29, the gap only increases between the system we're asking for (employed public defenders doing 50% of the cases) on the one hand versus continuing to pay the billable hours at the current ratio where we have only about 30 public defenders and employed counsel total statewide.

PDS is also in discussions with DHHS (specifically OCFS) about tapping into federal funds that reimburse states for certain costs incurred in child protective matters. Under the federal Title IV-E program, we think we can increase the federal funding coming to Maine. That program reimburses states for up to 50% of eligible costs. One of the eligible costs is counsel fees for expenses related to protective custody cases—including counsel fees for parents' counsel. PDS had approximately \$9

million in counsel fees for the private assigned bar over the past twelve-month period for child protective cases. In addition, there are formulas to recoup costs attributable to employed counsel. We cannot represent that every task one of the assigned counsel or our employed counsel perform count as eligible costs for full reimbursement, but we are hoping to enter into an MOU with DHHS/OCFS that will allow Maine to increase its receipt of federal money under this program.

III. Continuing Quality Assurance

A. Supervision

The following is the report of the activities of the Supervision Division for 2024.

Suspensions

In 2024, the Supervision Division initiated 71 attorney investigations based on constituent or other complaints. Six attorney suspensions were issued in 2024 for five attorneys. Three suspensions were for investigations that had been initiated in 2023 and concluded in 2024, and the remainder were initiated and resolved in 2024.

Appeals

There were two de novo appeal hearings of PDS suspensions in 2024. One appeal resulted in a decision by the presiding officer to uphold the suspension. This decision was then affirmed by the Commission and the further appeal was dismissed by the court. The second hearing has concluded, and a decision is expected shortly but it is not final yet, pending further Commission action. There are currently two additional suspensions with appeals pending.

In August the Law Court released a decision in *Patrick Gordon v. Maine Commission on Public Defense Services*, 2024 ME 59, upholding an attorney suspension from 2021 and finding that the Commission acted within its authority and the Commission's rules were enforceable.

In-Court Observations

Supervision staff have been observing via Zoom traditional in-custody LOD sessions throughout the year as well as proceedings pursuant to the Unified Criminal Docket's November 3, 2023, Standing Order on Assignment of Counsel. Supervision staff also conducted one in-person observation of live court proceedings.

Hotline Calls

In 2024, Supervision staff received and resolved 917 calls or emails from members of the public. Some of these calls are complaints about counsel but many more are simply inquiries into services or requests for procedural information. Staff still receive dozens of calls about services that PDS simply does not provide. Staff is in the process of setting up live answering for constituent calls to better facilitate receiving and distributing information to and from the public.

Caseload Analysis

On January 1, 2024, Chapter 4, which set caseload standards for assigned counsel, became effective. This is the first time in PDS' history that caseload standards have been in place for assigned counsel. Caseload standards are critical to ensuring that attorneys have sufficient time to dedicate to each client's matter and provide high-quality representation.

As of December 19, 2024, there were only 14 rostered attorneys with waivers allowing them to exceed the maximum caseload limit established by Chapter 4; this is down from 19 attorneys with such waivers in March of 2024. There are currently only 28 attorneys carrying over 270 points. This is down from 38 attorneys exceeding that number in March of 2024.

The cumulative maximum point capacity of the attorneys participating in PDS cases is 61,970 points. The assigned counsel bar is currently collectively carrying a total of 41,440 points. The current number of unused or unallocated point capacity among the bar is 20,530 points.⁶

As of December 30, 2024, there were 980 adult criminal cases on the unrepresented list. Even assuming each of those cases were a Class A non-homicide offense, worth 4 points each (which they are not, there is a mix of misdemeanors and felonies), there is enough unused point capacity in the system to staff that list in its entirety more than five times over. Based on case averages, this list also represents approximately \$2 million in as yet unbilled attorney fees.

The consistent number of unallocated points, along with the decrease in attorneys exceeding and seeking to exceed maximum caseload limits, strongly indicate that assigned counsel are self-regulating their caseloads and are not restricted by Chapter 4.

B. Training

PDS continued to expand its training program in 2024. This past year, PDS hosted 23 in-person trainings totaling 171 hours of new material. We opened attendance at our trainings to students at the University of Maine School of Law, which has proven to be an effective recruitment strategy. By attending PDS trainings, students can learn more about specific areas of law that interest them, and they have an opportunity to network with assigned counsel, public defenders, and PDS staff.

Some of the highlights of the 2024 trainings include:

- *Racial Justice Series*: As discussed in further detail below, PDS was awarded a grant from the Maine Justice Fund to host trainings dedicated to fighting racial injustice in the courtroom. PDS was able to host five racial justice trainings this year.
- *Inaugural Child Protective Defense Conference*: For the first time ever, PDS hosted a conference that was specifically designed for attorneys representing parents in child protective proceedings. This three-day training provided an opportunity for parents' attorneys to learn about a variety of topics and brainstorm ways to improve outcomes for parents in child protective proceedings. This conference also offered an opportunity to expose law students to this important area of law.

⁶ These figures on point capacity do not include the public defender office attorneys—further reinforcing the conclusion that the number of unrepresented persons is not a chapter 4 issue.

- *Pozner on Cross*: Larry Pozner, a nationally recognized expert on cross-examination, came to Portland to give a 6-hour lecture on effective cross-examination. 100 attorneys attended this event.
- *NHTSA's DWI Detection & Standard Field Sobriety Testing Student Course*: This was a three-day interactive workshop in which attorneys learned how to conduct field sobriety testing. This equipped attorneys with the knowledge they need to know whether field sobriety tests are administered accurately in their cases. There was an overwhelming demand for this training, so we will be hosting it again in 2025.
- *Public Defender Onboarding Training*: This was a two-day training provided to all public defender office employees. The training involved lectures, practical exercises, and an opportunity to build community among defenders across the state.
- *PDS' Annual Public Defense Conference*: This was the second annual weeklong conference for criminal defense. This year, the first four days were about criminal defense, and the fifth day was dedicated to youth defense. In addition to local presenters, we were able to bring in national speakers from across the country. 168 attorneys attended some or all of the conference. The conference had 38 hours of instructional time, which included more than enough general, ethics, and H&D CLE credits for attorneys to satisfy their annual Board of Overseers CLE requirements.
- *Bridging the Gap*: For the third consecutive year, PDS presented an all-day training at Bridging the Gap, which is an event new bar admittees are invited to attend. This has been an excellent opportunity for PDS to showcase the multiple areas of law PDS covers and recruit new attorneys to do this work.
- *Attorney Wellbeing Series*: In response to survey results which indicated that a high number of attorneys doing assigned cases were experiencing burnout, PDS partnered with the Maine Assistance Program for Lawyers and Judges (MAP) to host bimonthly trainings about attorney mental health, wellbeing, and burnout prevention. The trainings have been well-received, and PDS and MAP plan to continue jointly delivering this series in 2025.

Talent Learning Management System:

With all the training content PDS produced this year, it was time to build an online training library. PDS secured a subscription to Talent LMS through the National Association of Public Defense (NAPD). Talent LMS is an online learning management platform where PDS stores its trainings. With the assistance of an intern through the Margaret Chase Smith program, PDS was able to upload its prior recorded trainings and materials to Talent LMS. PDS continues to upload new trainings to Talent LMS. Now attorneys can view free trainings on demand.

Because PDS obtained Talent LMS through NAPD, we have the ability to receive trainings from other jurisdictions. This is significant because, if we are aware that another jurisdiction has done a

training that would benefit our attorneys, we can ask that jurisdiction to share the training with us through Talent LMS so we do not need to reinvent the wheel.

Prior to Talent LMS, attorneys who were interested in accepting PDS case assignments would have to schedule a time to conduct a moderated replay of one or more minimum standards trainings with one of our staff. This approach cost a lot of staff time and did not allow attorneys to view the trainings outside of business hours. Now, attorneys can view the minimum standards trainings at their leisure. Talent LMS monitors their progress and issues a certificate of completion.

Grants:

PDS was awarded two grants this year, the Racial Justice Fund grant and the OJJDP FY 24 Enhancing Youth Defense grant.

Racial Justice Fund Grant

PDS was awarded a \$10,000 Racial Justice Fund grant provided through the generosity of the Maine Justice Fund. The grant funds were used to host a 5-part training series focused on fighting racial injustice in the courtroom. The trainings were well attended and had an immediate impact. After the first training, attorneys contacted the presenter about applying what they learned to their cases and potentially using experts on racial justice issues. Attorneys must be culturally competent to be effective and racial justice is a fight that is ongoing. Therefore, PDS hopes to continue to offer trainings on this topic in the future. PDS is eligible to reapply for the grant up to two more times, and we intend to do so. PDS thanks the Maine Justice Fund for their generosity.

OJJDP FY 24 Enhancing Youth Defense Grant

The second grant was a \$425,142.00 federal grant awarded by the United States Department of Justice Office of Juvenile Justice Delinquency Prevention (US DOJ OJJDP). PDS' proposal, the Youth Access to Counsel Project, is designed to enhance the representation of youth charged with juvenile or criminal offenses by updating the standards of practice for assigned counsel representing youth, working towards the establishment and implementation of Maine's first juvenile public defender office, creating trainings for counsel who represent youth, identifying and working to resolve systemic access to counsel barriers, and reviewing youth commitments to detention centers with a goal of improving the quality and effectiveness of counsel as well as proposing any system-level changes which reduce youth incarceration and reduce the disparate impact of incarceration on African American children. This grant is scheduled to end on September 30, 2027. PDS' goals with this grant are ambitious but achievable. Staff are working hard to begin implementing the project.

C. Audit and Cost Containment

Since this agency increased staff capacity in late 2021, it has sought to improve its ability to provide high-quality legal representation to indigent Maine citizens and increase accountability. Audit staff have encouraged counsel to more accurately describe and better capture the work they are doing and have implemented several rule changes to better achieve that end.

Over the past 12 months, the hours submitted by contract counsel have increased and, consequently, costs have risen. It is believed that this increase is largely a combination of the following factors:

1. Emphasis on Counsel Doing Better Work and Accurately Capturing that Work

With increased supervision capacity, the agency has been able to more closely monitor contract counsels' performance on their cases. Chapter 4 sets the caseload standards that counsel must abide by. The objective is to ensure that attorneys are not overscheduled or overworked and are able to provide effective, high-quality, representation to each client. It is believed that these supervisory factors have contributed to counsels' ability to perform better quality work and, consequently, more work for each client.

Audit staff have worked with counsel to ensure that the time that they put into each case is captured accurately. Counsel have greatly improved their billing practices by employing granular billing. We have also emphasized the need for more timely billing. In other words, we have encouraged and enabled counsel to enter their time into our case management system much closer in time to the actual billing event than they had previously done.

Prior to 2022, with rare exception, counsel could only bill for a case when that case had either finished or when some other triggering event had occurred. Since these cases typically last several months to multiple years, counsel could be submitting a bill that included time entries from the distant past. Audit staff had significant concerns that this billing scheme did not allow the agency to accurately report the amount of work that was being performed by counsel.

In 2022, the concept of interim billing was incorporated into our rules. This change allowed counsel to bill every 90 days per case regardless of whether the case had concluded. In 2024, the rules were amended further to allow counsel to submit a bill once every calendar month per case. It is believed that allowing monthly billing has improved the ability of counsel to better capture all the time that they are working on a case. For the most part, counsel have embraced this change. Audit staff have seen a significant increase in the use of interim billing and monthly billing schemes.

2. Expansion of Training Program and Other Projects

In 2024, the agency's training program expanded. The purpose of this program is to provide counsel with continuing legal education that is specific to the cases that they handle. The hope is that with better training, counsel will employ better case strategies and will take advantage of the resources that the agency provides. Those resources include experts who will assist with documentary and testimonial evidence and includes other resources.

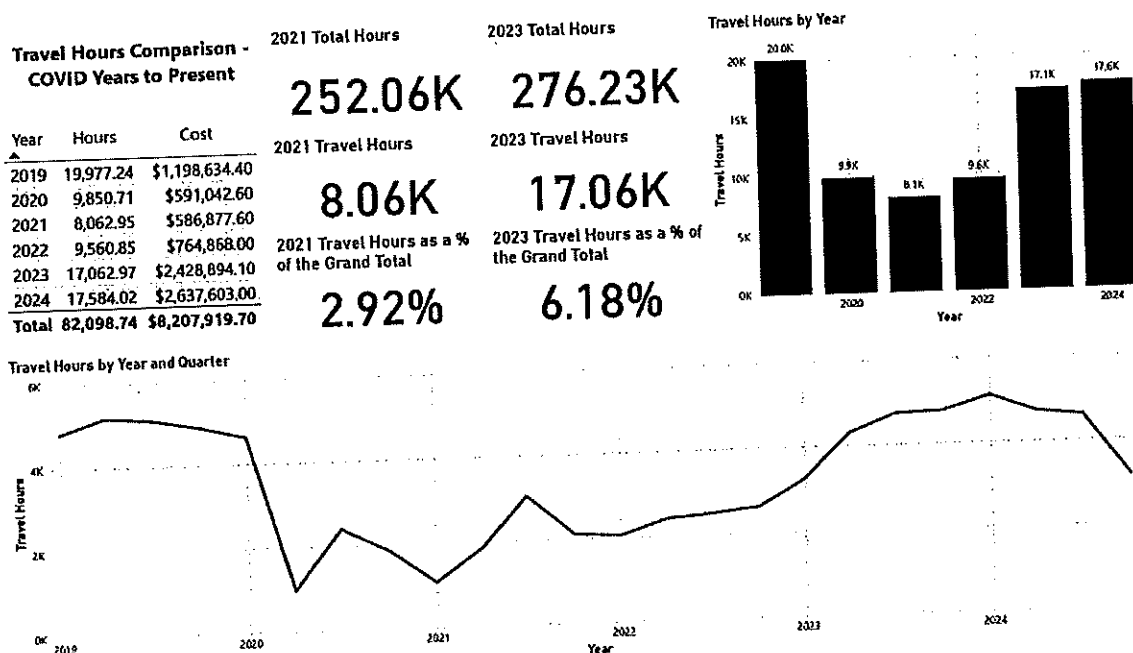
Chapter 301-A establishes the eligibility for payment to attend PDS-sponsored trainings. With certain limitations, including an annual cap of 40 hours, counsel can bill the agency at their hourly

rate (\$150.00) for attending these trainings. This factor alone has increased costs. Additionally, it is believed that counsel have been taking the information they have learned at these trainings and applied that to their cases. As a result, counsel have been exploring a different variety of strategies, working with various experts, and, overall, putting more time into their cases.

Another factor that has been increasing attorney hours is the use of co-counsel. In 2024, PDS began to develop protocols for when it would pay for co-counsel in a case. Rulemaking for the use of co-counsel is underway. PDS determined that co-counsel would be allowed either (a) when a case is of such a magnitude and complexity that additional assistance is necessary, or (b) when a less-experienced attorney is requesting to assist an experienced attorney on a case. In that scenario, one of the goals is to expose the less experienced attorney to cases that they are not presently qualified to handle, with the expectation that they will be qualified to take on those cases in the future. In either scenario, the allowance of co-counsel improves PDS' ability to provide high quality legal representation. Without this program, PDS would be handicapped in preparing new lawyers joining our ranks. However, it does increase the attorney hours that are worked on a case.

3. Increased Travel

As the data depicted below indicates, the amount of money PDS has spent on private assigned counsel travel has increased approximately five-fold since the pandemic. It must be noted that the pre-2023 figures are at older, lesser hourly rates. However, even considering the rate change from \$80 to \$150 per hour, there is still a large difference to be accounted for. PDS believes this further increase can largely be explained by the Judicial Branch's transition back to in-person proceedings.



4. Acceleration of Payment Obligations

Finally, it should be noted that the attorney hours at issue are taken from bills that have been submitted in 2024. As was detailed above, these bills often contain events that occurred in previous years. However, in 2024, due to the increased use of interim billing, we are paying for attorney work much faster than we had previously. In other words, the dramatic increase in *billed* hours is not necessarily because there is a commensurately dramatic increase in *performed* hours for 2024. For example, for previous billing cycles, we would typically see a significant amount of work performed in the current year show up on bills submitted in the following years. We anticipate that we will see far less of that lag in the future (meaning less work performed in 2024 showing up in post-2024 vouchers).

Based on a survey conducted in 2024, approximately 1/3 of private assigned counsel are billing monthly, about 1/3 are billing approximately every 90 days, and the remaining 1/3 are billing at some other interval with the bulk of this category still billing at the conclusion of a case. We believe this transition to monthly billing helps reduce the unquantifiable unbilled liability the state has for services performed but not yet billed. The accuracy and predictability benefits of this trend are obvious.

IV. Statutorily Required Information

A. An Evaluation of Contracts; Services Provided by Assigned Counsel; Any Contracted Professional Services

1. Attorney Costs

The following table sets out the case statistics by case type for 2024:

Case Type	New Cases	Vouchers Paid	Approved Paid	Average Amount
Appeal	165	324	\$825,862.36	\$2,548.96
Central Office Resource Counsel	2	35	\$43,617.63	\$1,246.22
Child Protection	2,029	6,904	\$9,126,982.28	\$1,307.39
Drug Court	78	191	\$395,195.58	\$2,069.09
Emancipation	84	78	\$60,791.50	\$779.38
Felony	6,782	11,619	\$16,343,561.04	\$1,406.62
Involuntary Civil Commitment	1,440	1,375	\$751,274.82	\$546.38
Juvenile	1,088	1,632	\$1,774,313.32	\$1,087.20
Lawyer of the Day - Custody	3,350	3,238	\$2,194,195.51	\$677.64
Lawyer of the Day - Juvenile	111	116	\$62,271.75	\$536.83
Lawyer of the Day - Walk-in	1,560	1,553	\$1,046,651.21	\$673.95
PDS Provided Training	803	772	\$891,959.40	\$1,155.39

Misdemeanor	9,445	12,984	\$9,584,880.86	\$738.21
Petition for Modified Release Treatment	22	46	\$60,838.98	\$1,322.59
Petition for Release or Discharge	1	13	\$34,409.27	\$2,646.87
Post-Conviction Review	29	212	\$500,767.77	\$2,362.11
Probate	16	43	\$106,487.27	\$2,476.45
Probation Violation	1,560	1,886	\$1,531,352.60	\$811.96
Represent Witness on Fifth Amendment Issue	32	31	\$33,512.71	\$1,081.06
Resource Counsel Criminal	6	48	\$24,600.00	\$512.50
Resource Counsel Juvenile	1	13	\$2,010.00	\$154.62
Resource Counsel Mental Health	0	8	\$1,470.00	\$183.75
Resource Counsel NCR	0	0		
Resource Counsel Protective Custody	4	33	\$48,563.31	\$1,471.62
Revocation of Administrative Release	6	9	\$8,633.00	\$959.22
Weapons Restrictions Case	310	220	\$122,645.74	\$557.48
Summary	28,924	43,383	\$45,576,847.91	\$1,050.57

The total cost of direct payments to attorneys of \$45,576,847 is an increase from \$32,306,700 in 2023.

2. Contracts

Other than services PDS receives from the State directly, there are two outside contracts. The first is a contract with an attorney skilled in immigration law. Immigration counsel is available to confer with PDS counsel on any case in which there may be immigration consequences. Because immigration law is complicated, and changes frequently, this service is essential to PDS operations. The services immigration counsel provides vary from month-to-month, but the effective cost to PDS is much less than it would cost to engage immigration counsel on an *ad hoc* basis at a typical hourly rate.

The second contract is between PDS and Justice Works, an outside vendor that provides the PDS case management and billing system. This contract was the product of competitive bidding in 2016 and is in its final extension. PDS relies on this service for the core of its financial relationship with assigned counsel. After a competitive bidding process, PDS awarded a new multi-year contract to Justice Works to develop a new case management system and billing system to replace the current outdated and limited system. We anticipate the launch of that new system in December 2025. Public defender offices are already using an off-the-shelf version of the new system and will transition to the new PDS custom system when it launches.

B. An Explanation of the Relevant Law Changes to Indigent Legal Services and the Effect of the Changes on the Quality of Representation and Costs.

There were four major statutory changes impacting the indigent legal services covered by the Commission:

4 MRSA §1806 PL 2023 Chapter 638, §17 – allows the executive director or their designee to report potential professional misconduct under the Maine Rules of Professional Conduct to the Board of Overseers of the Bar and provide information and records related to the potential professional misconduct to the Board.

15 MRSA §§ 3010 & 3308-C PL 2023 Chapter 638 §§20, 22 – allows PDS staff to have access to juvenile case records and juvenile criminal history information for the purpose of assigning, evaluating or supervising counsel.

15 MRSA § 3306 PL 2023 Chapter 638 §21 – all juveniles are presumed to be indigent and entitled to counsel.

22 MRSA §§ 4005-D, 4007, 4008 PL 2023 Chapter 638 §§ 24, 26, 29 – allows the executive director or their designee to attend and observe child protective court proceedings and access child protective records for the purpose of assigning, evaluating or supervising counsel.

V. Further Legislative Changes Needed

The proper function of PDS requires several statutory changes that will enhance, and in some instances properly enable, its activities. Those proposed statutory charges are set out in the attached Appendix A.

Broadly, the proposed changes include:

1. Revisions to the PDS enabling statute definitions for indigent legal services, employed counsel, and public defender;
2. Removal of guardianship, adoption, and emancipation from PDS' scope of services;
3. Prohibits direct assignment or appointment by the courts to employed counsel and public defenders;
4. Makes PDS training materials confidential;
5. Addresses continuing issues concerning attorney-client communications in correctional facilities; and
6. Revises language in the confidentiality section of 22 MRSA § 4007 to encompass records under the chapter and not merely the subsection.

In addition, PDS also urges the Legislature to revisit LD 1134 and consider moving to what most states⁷ do and not make violating conditions of bail a separate criminal offense. This would free up court, prosecutor, and defense counsel resources in a time when we're all stretched thin.

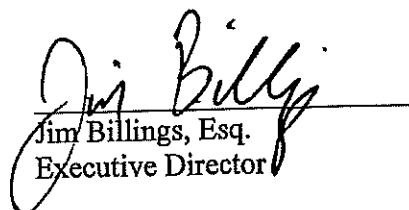
A review of Judicial Branch case data indicates that the top five currently pending charges in the UCD (as of mid-November) are the following:

Violating Condition of Release	13.2%
Theft By Unauthorized Taking or Transfer	5.8%
OUI (Alcohol)	4.5%
Domestic Violence Assault	4.4%
Unlawful Possession of Scheduled Drug	4.3%

Leaving aside domestic violence assault from the above table, the remaining relatively minor misdemeanor charges represent 30% of the cases pending in the courts.

We appreciate your continued support and look forward to a productive legislative session that works to solve the constitutional crisis facing the State of Maine today.

Respectfully submitted,


Jim Billings, Esq.
Executive Director

cc: PDS Commissioners
PDS Staff
PDS Eligible Counsel
PDS Interested Party Distribution List

⁷ "Only a handful of states—including Alaska, Colorado, Connecticut, Delaware, Illinois, Maine, and Wisconsin—also have a separate crime for conditions violations other than nonappearance. Generally, a conditions violation results in sanctions, such as new or increased conditions or increased bail. If the violation of release conditions is commission of a new offense, common penalties include revocation of current release, denial of release for new offense, or upon conviction, enhanced or consecutive sentencing." <https://www.ncsl.org/civil-and-criminal-justice/pretrial-release-violations-bail-forfeiture>

APPENDIX A

Proposed Statutory Changes for the Frist Regular Session of the 132nd Legislature

1. 4 MRSA §1802, Definitions
2. 4 MRSA §1802-A, Employed counsel and public defender
3. 4 MRSA §1804, Commission responsibilities
4. 4 MRSA §1806, Information not public record
5. 15 MRSA §810, Copy of indictment furnished; assignment of counsel
6. New proposed statute concerning attorney-client communications in correctional facilities
7. 4 MRSA §1804, Commission responsibilities

§1802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 2009, c. 419, §2 (NEW).]

1. **Assigned counsel.** "Assigned counsel" means a private attorney designated by the commission to provide indigent legal services at public expense.
[PL 2009, c. 419, §2 (NEW).]

1-A. **Appellate counsel.** "Appellate counsel" means an attorney who is entitled to payment under Title 15, section 2115-A, subsection 8 or 9.
[PL 2013, c. 159, §10 (NEW).]

2. **Commission.** "Commission" means the Maine Commission on Public Defense Services under section 1801.
[PL 2023, c. 558, §4 (AMD).]

3. **Contract counsel.** "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services.
[PL 2009, c. 419, §2 (NEW).]

3-A. **Employed counsel.** "Employed counsel" means an attorney employed by the commission to provide indigent legal services directly to persons who are eligible to receive indigent legal services in civil proceedings.
[PL 2023, c. 638, §2 (NEW).]

4. **Indigent legal services.** "Indigent legal services" means:

a. ~~Legal representation provided to:~~

i. ~~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; [PL 2009, c. 419, §2 (NEW).]~~

ii. ~~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; [PL 2019, c. 427, §1 (AMD).]~~

iii. ~~C. Juvenile defendants; and [PL 2019, c. 427, §1 (AMD).]~~

iv. ~~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 i, ii or iii. [PL 2019, c. 427, §2 (NEW).]~~

b. Services performed by an attorney at the direction of the Commission that aids the Commission in fulfilling its purpose under Title 4 section 1801.

~~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; [PL 2009, c. 419, §2 (NEW).]~~

~~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; [PL 2019, c. 427, §1 (AMD).]~~

~~C. Juvenile defendants; and [PL 2019, c. 427, §1 (AMD).]~~

~~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. [PL 2019, c. 427, §2 (NEW).]~~

"Indigent legal services" does not include assignments of counsel pursuant to: any Section of Title 18-C, Title 15, section 3506-A, subsection 1, or the services of a guardian ad litem appointed pursuant to Title 22, section 4005, subsection 1.
[PL 2021, c. 676, Pt. A, §3 (AMD).]

5. Public defender. "Public defender" means an attorney employed by the commission to provide indigent legal services directly to persons who are eligible to receive indigent legal services in criminal and juvenile proceedings.
[PL 2023, c. 638, §3 (NEW).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2013, c. 159, §10 (AMD). PL 2019, c. 427, §§1, 2 (AMD). PL 2021, c. 676, Pt. A, §3 (AMD). PL 2023, c. 558, §4 (AMD). PL 2023, c. 638, §§2, 3 (AMD).

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§1802-A. Employed counsel and public defender

1. An attorney may be employed by the commission ~~both either~~ as "employed counsel" ~~and or~~ as a "public defender." [PL 2023, c. 638, §4 (NEW).]
- ~~1-2. Employed counsel and public defenders are not subject to direct assignment or appointment by the courts.~~

SECTION HISTORY

PL 2023, c. 638, §4 (NEW).

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§1804. ~~Commission~~Commission responsibilities

1. **Executive director.** The ~~commission~~Commission shall hire an executive director. The executive director must be an attorney licensed to practice law in this State; be a member in good standing of the bar of the State; and have experience in the legal field, including, but not limited to, the provision of indigent legal services. [PL 2023, c. 638, §5 (AMD).]

2. **Rulemaking.** The ~~commission~~Commission shall adopt rules governing the delivery of indigent legal services by assigned counsel, contract counsel, employed counsel and public defenders. The rules adopted by the ~~commission~~Commission must include:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees and the cost of private legal services in the relevant geographic area; [PL 2023, c. 344, §1 (AMD).]

B. Standards prescribing minimum experience, training and other eligibility requirements for attorneys to be eligible to serve as assigned counsel, contract counsel, employed counsel and public defenders; [PL 2023, c. 638, §6 (AMD).]

C. Standards for assigned counsel, contract counsel, employed counsel and public defender caseloads; [PL 2023, c. 638, §6 (AMD).]

D. Standards for the evaluation of assigned counsel, contract counsel, employed counsel and public defenders. The ~~commission~~Commission shall review the standards developed pursuant to this paragraph at least every 5 years, or earlier upon the recommendation of the executive director; [PL 2023, c. 638, §6 (AMD).]

E. Standards for independent, high-quality, effective and efficient representation of clients whose cases present conflicts of interest; [PL 2023, c. 638, §6 (AMD).]

F. Standards for the reimbursement of expenses incurred by assigned counsel, contract counsel, employed counsel and public defenders, including attendance at training events provided by the ~~commission~~Commission; and [PL 2023, c. 638, §6 (AMD).]

G. Other standards considered necessary and appropriate to ensure the delivery of high-quality, effective and efficient indigent legal services. [PL 2023, c. 638, §6 (AMD).]
[PL 2023, c. 638, §6 (AMD).]

3. **Duties.** The ~~commission~~Commission shall:

A. Develop and maintain a system that employs employed counsel and public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys to provide high-quality, effective and efficient indigent legal services. The ~~commission~~Commission shall consider other programs necessary to provide high-quality, effective and efficient indigent legal services; [PL 2023, c. 638, §7 (AMD).]

B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information; [PL 2017, c. 284, Pt. UUUU, §3 (AMD).]

C. Establish processes and procedures consistent with ~~commission~~Commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and indigent legal services caseload data are accurately collected, recorded and reported; [PL 2023, c. 638, §8 (AMD).]

D. To ensure an adequate pool of qualified attorneys, develop training and evaluation programs for attorneys throughout the State to provide representation in criminal, juvenile, child protective,

involuntary commitment and all other types of proceedings for which parties may be eligible to receive indigent legal services; [PL 2023, c. 638, §9 (RPR).]

E. Establish minimum eligibility standards to ensure that attorneys who provide indigent legal services are capable of providing high-quality, effective and efficient representation in the case types to which they are assigned, recognizing that high-quality, effective and efficient representation in each of these types of cases requires counsel with experience and specialized training in that field; [PL 2023, c. 638, §10 (AMD).]

F. Establish rates of compensation for assigned counsel and contract counsel; [PL 2023, c. 344, §3 (AMD).]

G. Establish a method for accurately tracking, monitoring and enforcing caseload standards for assigned counsel, contract counsel, employed counsel and public defenders; [PL 2023, c. 638, §11 (AMD).]

H. By January 15th of each year, submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

- (1) An evaluation of contracts; services provided by contract counsel, assigned counsel, employed counsel and public defenders; any contracted professional services; and cost containment measures; and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the ~~commission~~Commission and the effect of the changes on the quality of representation and costs.

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report; [PL 2023, c. 638, §12 (AMD).]

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary; [PL 2013, c. 159, §11 (AMD).]

J. Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:

- (1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any ~~commission~~Commission rule setting forth eligibility requirements;
- (2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any ~~commission~~Commission rule setting forth eligibility requirements; and
- (3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any ~~commission~~Commission rule.

All decisions of the ~~commission~~Commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action; [PL 2017, c. 284, Pt. UUUU, §5 (AMD).]

K. Pay appellate counsel; [PL 2017, c. 284, Pt. UUUU, §6 (AMD).]

L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services; [PL 2019, c. 427, §3 (AMD).]

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services; [PL 2021, c. 481, §2 (AMD).]

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; [PL 2023, c. 394, Pt. A, §1 (AMD).]

O. Establish a system to audit financial requests and payments that includes the authority to recoup payments when necessary. The ~~commission~~Commission may summon persons and subpoena witnesses and compel their attendance, require production of evidence, administer oaths and examine any person under oath as part of an audit. Any summons or subpoena may be served by registered mail with return receipt. Subpoenas issued under this paragraph may be enforced by the Superior Court; and [PL 2023, c. 394, Pt. A, §2 (AMD).]

P. Develop and maintain a registry of names, telephone numbers and other contact information for attorneys who provide legal services to persons who are incarcerated. The ~~commission~~Commission shall on a weekly basis provide these names, telephone numbers and other contact information to all sheriffs' offices and to the Department of Corrections. On the Monday following transmission of the information, the sheriffs' offices and the Department of Corrections have constructive notice that communications to and from these attorneys by residents of jails and correctional facilities are subject to the attorney-client privilege. The attorneys' names, telephone numbers and other contact information are confidential. [PL 2023, c. 394, Pt. A, §3 (NEW).]
[PL 2023, c. 638, §§7-12 (AMD).]

4. Powers. The ~~commission~~Commission may:

A. Establish and maintain a principal office and other offices within the State as it considers necessary; [PL 2009, c. 419, §2 (NEW).]

B. Meet and conduct business at any place within the State; [PL 2009, c. 419, §2 (NEW).]

C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed; [PL 2009, c. 419, §2 (NEW).]

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish rates of compensation for assigned counsel and contract counsel under subsection 3, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; [PL 2023, c. 638, §13 (AMD).]

E. Appear in court and before other administrative bodies represented by its own attorneys; and [PL 2023, c. 638, §14 (AMD).]

F. Notwithstanding Title 5, chapter 155, through employed counsel and public defenders, retain investigative and expert services that are reasonably necessary for case-specific purposes. For purposes of this paragraph, investigative and expert services are for case-specific purposes if the services relate to a specific case and not to the ongoing activities of the ~~commission~~Commission, or its employees, that do not relate to a specific case. Nothing in this paragraph affects the applicability of Title 5, chapter 155 to the purchase of services, supplies, materials and equipment by the ~~commission~~Commission or its employees for purposes that are not case-specific purposes.
[PL 2023, c. 638, §15 (NEW).]

[PL 2023, c. 638, §§13-15 (AMD).]

SECTION HISTORY

PL 2009, c. 419, §2 (NEW). PL 2011, c. 141, §1 (AMD). PL 2011, c. 420, Pt. C, §1 (AMD). PL 2013, c. 159, §§11-13 (AMD). PL 2013, c. 368, Pt. RRR, §1 (AMD). PL 2013, c. 368, Pt. RRR, §4 (AFF). PL 2017, c. 284, Pt. UUUU, §§1-7 (AMD). PL 2019, c. 427, §§3, 4 (AMD). PL 2021, c. 398, Pt. FFF, §1 (AMD). PL 2021, c. 481, §§1-5 (AMD). PL 2021, c. 720, §1 (AMD). PL

2023, c. 344, §§1-5 (AMD). PL 2023, c. 394, Pt. A, §§1-3 (AMD). PL 2023, c. 638, §§5-15 (AMD).

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§1806. Information not public record

Disclosure of information and records in the possession of the ~~commission~~Commission is governed by this section. [PL 2011, c. 260, §1 (NEW).]

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Individual client information" means name; date of birth; social security number; gender; ethnicity; home, work, school or other address; home telephone number; fax number; e-mail address; cellular telephone number; pager number; and any information protected under the Maine Rules of Evidence, Rules 501 to 509 or the Maine Rules of Professional Conduct, Rule 1.6 or otherwise protected by the attorney-client relationship. [PL 2023, c. 638, §17 (AMD).]

B. "Personal contact information" means home address, home telephone number, home fax number, home e-mail address, personal cellular telephone number, personal pager number, date of birth and social security number. [PL 2023, c. 638, §17 (AMD).]

C. "Request for funds for expert or investigative assistance" means a request submitted to the ~~commission~~Commission by or on behalf of a person eligible for indigent legal services seeking authorization to expend funds for expert or investigative assistance, which includes, but is not limited to, the assistance of a private investigator, interpreter or translator, psychiatrist, psychologist or other mental health expert, medical expert and scientific expert. [PL 2023, c. 638, §17 (AMD).]

D. "Case information" means:

- (1) The court in which a case is brought;
- (2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;
- (3) The docket number;
- (4) The identity of assigned counsel and the date of assignment;
- (5) The withdrawal of assigned counsel and the date of withdrawal; and
- (6) Any order for reimbursement of assigned counsel fees. [PL 2011, c. 547, §1 (NEW).]

[PL 2023, c. 638, §17 (AMD).]

2. Confidential information. The following information and records in the possession of the ~~commission~~Commission are not open to public inspection and do not constitute public records as defined in Title 1, section 402, subsection 3.

A. Individual client information is confidential, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential. [PL 2023, c. 638, §17 (AMD).]

B. [PL 2023, c. 638, §17 (RP).]

C. Personal contact information of a ~~commission~~Commission-rostered attorney is confidential. [PL 2011, c. 260, §1 (NEW).]

D. Personal contact information of a member of the ~~commission~~Commission or a ~~commission~~Commission employee, including employed counsel and public defenders, is confidential. [PL 2023, c. 638, §17 (AMD).]

E. A request for funds for expert or investigative assistance is confidential. The decision of the executive director of the ~~commission~~Commission hired pursuant to section 1804, subsection 1, or

the executive director's designee, to grant or deny such a request is not confidential after a case has been completed. A case is completed when the judgment is affirmed on appeal or the period for appeal has expired. [PL 2023, c. 638, §17 (AMD).]

F. Any information obtained or gathered by the ~~commission~~Commission through a formal or informal complaint or when performing an evaluation or investigation of an attorney is confidential, except:

- (1) The ~~commission~~Commission may disclose the information to the attorney who is the subject of the formal or informal complaint, evaluation or investigation;
- (2) The executive director of the ~~commission~~Commission hired pursuant to section 1804, subsection 1, or the executive director's designee, may disclose the information to the Maine Assistance Program for Lawyers described in Title 14, section 164-A;
- (3) If the attorney who is subject to an evaluation or investigation appeals a decision of the executive director or the executive director's designee, in accordance with the process established under section 1804, subsection 3, paragraph J, the information may be disclosed at a public hearing conducted by the ~~commission~~Commission on the appeal, except that information that is protected by the attorney-client privilege or that is confidential under any provision of law, the Maine Rules of Evidence or the Maine Rules of Professional Conduct remains confidential; and
- (4) As provided in subsection 4. [PL 2023, c. 638, §17 (AMD).]

[PL 2023, c. 638, §17 (AMD).]

G. Handouts, materials, recordings, or other documents obtained, gathered, generated or otherwise acquired by the Commission or for the benefit of the Commission as part of any training or in contemplation of any future trainings or CLE's held for the benefit of anyone providing indigent legal services, or attorneys employed or contracted with the Commission, are confidential, except:

- (1) The Commission may distribute such material, without waiving confidentiality, as it deems necessary to meet its duties under this chapter.

3. Confidential information disclosed by Judicial Department. The Judicial Department may disclose to the ~~commission~~Commission confidential information necessary for the ~~commission~~Commission to carry out its functions, including, but not limited to, the collection of amounts owed to reimburse the State for the cost of assigned counsel, as follows:

- A. Case information and individual client information with respect to court proceedings that are confidential by statute or court rule in which one or more parties are represented by assigned counsel; and [PL 2011, c. 547, §2 (NEW).]
- B. The name, address, date of birth and social security number of any person ordered by the court to reimburse the State for some or all of the cost of assigned counsel. [PL 2011, c. 547, §2 (NEW).]

Information received by the ~~commission~~Commission from the Judicial Department under this subsection remains confidential in the possession of the ~~commission~~Commission and is not open to public inspection, except that the names of criminal defendants and the names of juvenile defendants charged with offenses that if committed by an adult would constitute murder or a Class A, Class B or Class C crime are not confidential. [RR 2023, c. 2, Pt. A, §3 (COR).]

4. Rules of professional conduct. Nothing in this section prohibits the executive director of the ~~commission~~Commission hired pursuant to section 1804, subsection 1, or the executive director's designee, from reporting potential professional misconduct under the Maine Rules of Professional

Conduct to the Board of Overseers of the Bar or from disclosing information and records related to potential professional misconduct to the board.
[PL 2023, c. 638, §17 (AMD).]

5. Confidential information possessed by employed counsel and public defenders. Records, information and materials created, received, obtained, maintained or stored by or on behalf of employed counsel and public defenders that are protected under the Maine Rules of Evidence, Rules 501 to 509 or the Maine Rules of Professional Conduct, Rule 1.6 or otherwise protected by the attorney-client relationship are confidential.
[PL 2023, c. 638, §17 (NEW).]

SECTION HISTORY

PL 2011, c. 260, §1 (NEW). PL 2011, c. 547, §§1, 2 (AMD). PL 2015, c. 290, §1 (AMD). PL 2023, c. 344, §6 (AMD). PL 2023, c. 638, §17 (AMD). RR 2023, c. 2, Pt. A, §3 (COR).

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§810. Copy of indictment furnished; assignment of counsel

1. Copy of indictment furnished. The clerk shall, without charge, furnish to any person indicted for a crime a copy of the indictment unless the indictment is sealed.
[PL 2023, c. 485, §1 (NEW).]

2. Assignment of counsel before arraignment. Before arraignment, competent defense counsel must be assigned by the court unless waived by the accused after being fully advised of the accused's rights by the court if the court determines that the accused is indigent and the accused is charged with murder or a Class A, B or C crime, except when the accused has not had an initial appearance on the complaint.
[PL 2023, c. 485, §1 (NEW).]

3. Assignment of counsel at arraignment. Competent defense counsel must be assigned by the court unless waived by the accused after being fully advised of the accused's rights by the court if the court determines that the accused is indigent and that:

A. There is a risk upon conviction that the accused may be sentenced to a term of imprisonment;
[PL 2023, c. 485, §1 (NEW).]

i. For the purposes of determining if an accused is eligible for assignment of defense counsel, a risk upon conviction that the accused may be sentenced to a term of imprisonment shall be found if:

a. The accused has been incarcerated for longer than 24 hours in relation to the matter before the Court; or;

b. The accused is in custody at the time of their initial appearance or arraignment; or;

b.c. A risk of jail has been found in any other concurrently pending matter involving the accused.

B. The accused has a physical, mental or emotional disability preventing the accused from fairly participating in the criminal proceeding without counsel; or [PL 2023, c. 485, §1 (NEW).]

C. The accused is a noncitizen for whom the criminal proceeding poses a risk of adverse immigration consequences. [PL 2023, c. 485, §1 (NEW).]

[PL 2023, c. 485, §1 (NEW).]

SECTION HISTORY

PL 1965, c. 352, §§1,2 (AMD). PL 1965, c. 356, §31 (AMD). PL 1971, c. 544, §50 (AMD). P&SL 1975, c. 147, Pt. C, §14 (AMD). PL 2023, c. 485, §1 (RPR).

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Procedure for ensuring access to free and confidential legal communications in correctional facilities.

1. Pursuant to Title 4, section 1804, subsection 3, paragraph P, the Maine Commission on Public Defense shall transmit a list of attorney names, phone numbers, and other contact information to all sheriffs' offices and the Department of Corrections.
 - A. For purposes of this subsection, the inclusion of the attorney's name and telephone number on a list transmitted by the Maine Commission on Public Defense Services pursuant to Title 4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of Corrections constitutes constructive notice to a jail in the same county as the sheriff's office or to all correctional facilities administered by the Department of Corrections, respectively, beginning on the Monday following the transmission. If the jail or correctional facility contracts with a third party for the provision of communications services, the third party is deemed to have notice at the time the sheriff's office or Department of Corrections is on notice pursuant to this subparagraph.
 - B. By the Monday following a transmission pursuant to Title 4, section 1804, subsection 3, paragraph P, each jail and correctional facility must designate all phone numbers on the list as attorney numbers so that calls made to or from that phone number may not be intercepted, as defined by Title 15, Chapter 102.
 - C. A jail or correctional facility that has actual or constructive notice of an attorney's name and phone number is prohibited from charging for phone calls made to or from the attorney's phone number. If the jail or correctional facility contracts with a third party for the provision of communication services, the jail or correctional facility is responsible for any communication fees charged by that entity for phone calls to or from phone numbers which the jail or correctional facility has actual or constructive notice belong to attorneys.
 - D. When a phone number appears on the list provided by the Maine Commission on Public Defense Services for the first time, by the Monday following transmission of the list, the sheriffs' offices and Department of Corrections must send email confirmation to the attorney.
 - a. The email must include, at a minimum:
 - i. A statement that the phone number was successfully added to the list of attorney phone numbers.
 - ii. A certification that calls made between that phone number and the jail or correctional facility will not be intercepted and no fee will be charged for such phone calls.

- iii. The name, email address, and phone number for the person at the facility who is responsible for ensuring that the phone number was designated appropriately.
- b. Failure of the jail or correctional facility to email the attorney does not serve as notice to the attorney that their phone number was not added to the list.

2. **Penalties.** Penalties for a violation of this section are provided below. These penalties apply to each jail or correctional facility which commits the violation. These penalties are fines and do not limit any person's causes of action or other remedies.

- a. For a violation of subparagraph 1(B), a fine of \$5,000 per offense shall be imposed, in addition to penalties provided by title 15, section 714. It need not be proven that a phone call was, in fact, intercepted to establish a violation of this subsection. The fact that the phone number was not designated as an attorney number so that private calls could be made is sufficient to establish a violation of this subsection.
- b. For a violation of subparagraph 1(C), a fine of \$500 per offense shall be imposed.
- c. For a violation of subparagraph 1(D), a fine of \$250 per offense shall be imposed.

§1804. Commission responsibilities

1. Executive director. The commission shall hire an executive director. The executive director must be an attorney licensed to practice law in this State; be a member in good standing of the bar of the State; and have experience in the legal field, including, but not limited to, the provision of indigent legal services.
[PL 2023, c. 638, §5 (AMD).]

2. Rulemaking. The commission shall adopt rules governing the delivery of indigent legal services by assigned counsel, contract counsel, employed counsel and public defenders. The rules adopted by the commission must include:

A. Standards governing eligibility for indigent legal services. The eligibility standards must take into account the possibility of a defendant's or civil party's ability to make periodic installment payments toward counsel fees and the cost of private legal services in the relevant geographic area; [PL 2023, c. 344, §1 (AMD).]

B. Standards prescribing minimum experience, training and other eligibility requirements for attorneys to be eligible to serve as assigned counsel, contract counsel, employed counsel and public defenders; [PL 2023, c. 638, §6 (AMD).]

C. Standards for assigned counsel, contract counsel, employed counsel and public defender caseloads; [PL 2023, c. 638, §6 (AMD).]

D. Standards for the evaluation of assigned counsel, contract counsel, employed counsel and public defenders. The commission shall review the standards developed pursuant to this paragraph at least every 5 years, or earlier upon the recommendation of the executive director; [PL 2023, c. 638, §6 (AMD).]

E. Standards for independent, high-quality, effective and efficient representation of clients whose cases present conflicts of interest; [PL 2023, c. 638, §6 (AMD).]

F. Standards for the reimbursement of expenses incurred by assigned counsel, contract counsel, employed counsel and public defenders, including attendance at training events provided by the commission; and [PL 2023, c. 638, §6 (AMD).]

G. Other standards considered necessary and appropriate to ensure the delivery of high-quality, effective and efficient indigent legal services. [PL 2023, c. 638, §6 (AMD).]
[PL 2023, c. 638, §6 (AMD).]

3. Duties. The commission shall:

A. Develop and maintain a system that employs employed counsel and public defenders, uses appointed private attorneys and contracts with individual attorneys or groups of attorneys. The commission shall consider other programs necessary to provide high-quality, effective and efficient indigent legal services; [PL 2023, c. 638, §7 (AMD).]

B. Develop and maintain an assigned counsel voucher review and payment authorization system that includes disposition information; [PL 2017, c. 284, Pt. UUUU, §3 (AMD).]

C. Establish processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and indigent legal services caseload data are accurately collected, recorded and reported; [PL 2023, c. 638, §8 (AMD).]

D. To ensure an adequate pool of qualified attorneys, develop training and evaluation programs for attorneys throughout the State to provide representation in criminal, juvenile, child protective, involuntary commitment and all other types of proceedings for which parties may be eligible to receive indigent legal services; [PL 2023, c. 638, §9 (RPR).]

E. Establish minimum eligibility standards to ensure that attorneys who provide indigent legal services are capable of providing high-quality, effective and efficient representation in the case types to which they are assigned, recognizing that high-quality, effective and efficient representation in each of these types of cases requires counsel with experience and specialized training in that field; [PL 2023, c. 638, §10 (AMD).]

F. Establish rates of compensation for assigned counsel and contract counsel; [PL 2023, c. 344, §3 (AMD).]

G. Establish a method for accurately tracking, monitoring and enforcing caseload standards for assigned counsel, contract counsel, employed counsel and public defenders; [PL 2023, c. 638, §11 (AMD).]

H. By January 15th of each year, submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:

- (1) An evaluation of contracts; services provided by contract counsel, assigned counsel, employed counsel and public defenders; any contracted professional services; and cost containment measures; and
- (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation on matters related to the report; [PL 2023, c. 638, §12 (AMD).]

I. Approve and submit a biennial budget request to the Department of Administrative and Financial Services, Bureau of the Budget, including supplemental budget requests as necessary; [PL 2013, c. 159, §11 (AMD).]

J. Develop an administrative review and appeal process for attorneys who are aggrieved by a decision of the executive director, or the executive director's designee, determining:

- (1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;
- (2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and
- (3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

All decisions of the commission, including decisions on appeals under subparagraphs (1), (2) and (3), constitute final agency action. All decisions of the executive director, or the executive director's designee, other than decisions appealable under subparagraphs (1), (2) and (3), constitute final agency action; [PL 2017, c. 284, Pt. UUUU, §5 (AMD).]

K. Pay appellate counsel; [PL 2017, c. 284, Pt. UUUU, §6 (AMD).]

L. Establish processes and procedures to acquire investigative and expert services that may be necessary for a case, including contracting for such services; [PL 2019, c. 427, §3 (AMD).]

M. Establish procedures for handling complaints about the performance of counsel providing indigent legal services; [PL 2021, c. 481, §2 (AMD).]

N. Develop a procedure for approving requests by counsel for authorization to file a petition as described in section 1802, subsection 4, paragraph D; [PL 2023, c. 394, Pt. A, §1 (AMD).]

P. Develop and maintain a registry of names, telephone numbers and other contact information for attorneys who provide legal-public defense services to persons who are incarcerated. The commission shall on a weekly basis provide these names, telephone numbers and other contact information to all sheriffs' offices and to the Department of Corrections. On the Monday following transmission of the information, the sheriffs' offices and the Department of Corrections have constructive notice that communications to and from these attorneys by residents of jails and correctional facilities are subject to the attorney-client privilege and shall not be intercepted. The attorneys' names, telephone numbers and other contact information are confidential. [PL 2023, c. 394, Pt. A, §3 (NEW).]

[PL 2023, c. 638, §§7-12 (AMD).]

4. Powers. The commission may:

A. Establish and maintain a principal office and other offices within the State as it considers necessary; [PL 2009, c. 419, §2 (NEW).]

B. Meet and conduct business at any place within the State; [PL 2009, c. 419, §2 (NEW).]

C. Use voluntary and uncompensated services of private individuals and organizations as may from time to time be offered and needed; [PL 2009, c. 419, §2 (NEW).]

D. Adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted to establish rates of compensation for assigned counsel and contract counsel under subsection 3, paragraph F are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A; [PL 2023, c. 638, §13 (AMD).]

E. Appear in court and before other administrative bodies represented by its own attorneys; and
[PL 2023, c. 638, §14 (AMD).]

F. Notwithstanding Title 5, chapter 155, through employed counsel and public defenders, retain investigative and expert services that are reasonably necessary for case-specific purposes. For purposes of this paragraph, investigative and expert services are for case-specific purposes if the services relate to a specific case and not to the ongoing activities of the commission, or its employees, that do not relate to a specific case. Nothing in this paragraph affects the applicability of Title 5, chapter 155 to the purchase of services, supplies, materials and equipment by the commission or its employees for purposes that are not case-specific purposes. [PL 2023, c. 638, §15 (NEW).]

[PL 2023, c. 638, §§13-15 (AMD).]

SECTION HISTORY

[illegible]

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§714. Intercepted attorney-client communications of jail and correctional facility residents

1. Intercepted attorney-client communications of jail and correctional facility residents. If the sender or the recipient of an intercepted oral communication or wire communication was, at the time the communication was made, a resident in either a jail or an adult or juvenile correctional facility administered by the Department of Corrections and the other party was an attorney or an employee of a law office—and if the resident demonstrates that the jail or correctional facility had actual or constructive notice at the time the communication was made of the attorney's name and, if the communication involved the use of a telephone, the jail or correctional facility had actual or constructive notice at the time that the communication was made of the attorney's telephone number and the communication was made directly to or from that telephone number:

A. The contents of the intercepted oral communication or wire communication and the fact and circumstances of the communication are not admissible in a criminal proceeding, including a proceeding under chapter 305-A; [PL 2023, c. 394, Pt. A, §5 (NEW).]

B. A person who viewed or listened to the intercepted communication and did not immediately discontinue viewing or listening to the communication as soon as the person had sufficient information to determine that the sender or the recipient of the communication was, at the time the communication was made, a resident in a jail or correctional facility and the other party was an attorney, is disqualified from participating in an investigation of the resident and from appearing as a witness in a criminal proceeding in which the resident is a defendant, including a proceeding under chapter 305-A; and [RR 2023, c. 2, Pt. A, §23 (COR).]

C. A person who viewed or listened to the intercepted communication and saw or heard information that may be relevant to a pending or anticipated charge against the resident or a defense the resident may assert, or may lead to the discovery of that evidence, is disqualified from participating in the investigation of the resident and from appearing as a witness in the pending or anticipated criminal proceeding in which the resident is a defendant, including a subsequent proceeding under chapter 305-A on the pending or anticipated charge. [PL 2023, c. 394, Pt. A, §5 (NEW).]

For purposes of this subsection, the inclusion of the attorney's name and telephone number on a list transmitted by the Maine Commission on Public Defense Services pursuant to Title 4, section 1804, subsection 3, paragraph P to a sheriff's office or to the Department of Corrections constitutes constructive notice to a jail in the same county as the sheriff's office or to all correctional facilities administered by the Department of Corrections, respectively, beginning on the Monday following the transmission. If the jail or correctional facility contracts with a third party for the provision of communications services, the third party is deemed to have notice at the time the sheriff's office or Department of Corrections is on notice pursuant to this subparagraph.

[RR 2023, c. 2, Pt. A, §23 (COR).]

2. Application of other law or rule. This section does not limit the applicability of any other provision of law or of the Maine Rules of Evidence regarding the admissibility or inadmissibility in evidence of attorney-client communications that do not meet the requirements of this section. [PL 2023, c. 394, Pt. A, §5 (NEW).]

SECTION HISTORY

PL 2023, c. 394, Pt. A, §5 (NEW). PL 2023, c. 558, §13 (REV). RR 2023, c. 2, Pt. A, §23 (COR).

MRS Title 15, §714. INTERCEPTED ATTORNEY-CLIENT COMMUNICATIONS OF JAIL AND CORRECTIONAL FACILITY
RESIDENTS

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§4007. Conducting proceedings

1. Procedures. All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.

[PL 1985, c. 495, §17 (AMD).]

1-A. Nondisclosure of certain identifying information. This subsection governs the disclosure of certain identifying information.

A. At each proceeding, the court shall inquire whether there are any court orders in effect at the time of the proceeding that prohibit contact between the parties and participants. If such an order is in effect at the time of the proceeding, the court shall keep records that pertain to the protected person's current or intended address or location confidential, subject to disclosure only as authorized in this section. Any records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the protected person and determines that the disclosure is in the interests of justice. [PL 2007, c. 351, §2 (NEW).]

B. If, at any stage of the proceedings, a party or a participant alleges in an affidavit or a pleading under oath that the health, safety or liberty of the person would be jeopardized by disclosure of information pertaining to the person's current or intended address or location, the court shall keep records that contain the information confidential, subject to disclosure only as authorized in this section. Upon receipt of the affidavit or pleading, the records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or participants or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the person seeking protection and determines that the disclosure is in the interests of justice. [PL 2007, c. 351, §2 (NEW).]

C. If the current or intended address or location of a party or participant is required to be kept confidential under paragraph A or B, and the current or intended address or location of that person is a material fact necessary to the proceeding, the court shall hear the evidence outside of the presence of the person and the person's attorney from whom the information is being kept confidential unless the court determines after a hearing that takes into consideration the health, safety or liberty of the protected person that the exclusion of the party or participant is not in the interests of justice. If such evidence is taken outside the presence of a party or participant, the court shall take measures to prevent the excluded person and the person's attorney from accessing the recorded information and the information must be redacted in printed transcripts. [PL 2007, c. 351, §2 (NEW).]

D. Records that are required to be maintained by the court as confidential under this subsection may be disclosed to:

- (1) A state agency if necessary to carry out the statutory function of that agency;
- (2) A guardian ad litem appointed to the case; or
- (3) A criminal justice agency, as defined by Title 16, section 703, subsection 4, if necessary to carry out the administration of criminal justice or the administration of juvenile justice, and such disclosure is otherwise permitted pursuant to section 4008.

In making such disclosure, the court shall order the party receiving the information to maintain the information as confidential. [PL 2013, c. 267, Pt. B, §18 (AMD).]

E. The court shall disclose records that are confidential under this ~~subsection~~ chapter to the Maine Commission on Public Defense Services established by Title 5, section 12004-G, subsection 25-A for the purpose of assigning, evaluating or supervising counsel. [PL 2023, c. 638, §26 (NEW).] [PL 2023, c. 638, §26 (AMD).]

2. Interviewing children. The court may interview a child witness in chambers, with only the guardian ad litem and counsel present, provided that the statements made are a matter of record. The court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value. [PL 1979, c. 733, §18 (NEW).]

3. Motion for examination. At any time during the proceeding, the court may order that a child, parent, alleged parent, person frequenting the household or having custody at the time of the alleged abuse or neglect, any other party to the action or person seeking care or custody of the child be examined pursuant to the Maine Rules of Civil Procedure, Rule 35. [PL 1989, c. 270, §1 (AMD).]

3-A. Report of licensed mental health professional. In any hearing held in connection with a child protection proceeding under this chapter, the written report of a licensed mental health professional who has treated or evaluated the child shall be admitted as evidence, provided that the party seeking admission of the written report has furnished a copy of the report to all parties at least 21 days prior to the hearing. The report shall not be admitted as evidence without the testimony of the mental health professional if a party objects at least 7 days prior to the hearing. This subsection does not apply to the caseworker assigned to the child. [PL 1989, c. 226 (NEW).]

4. Interstate compact. The provisions of the Interstate Compact for the Placement of Children, sections 4251 to 4269, if in effect and ratified by the other state involved, apply to proceedings under this chapter; otherwise, the provisions of the Interstate Compact on Placement of Children, sections 4191 to 4247, apply to proceedings under this chapter. Any report submitted pursuant to the compact is admissible in evidence for purposes of indicating compliance with the compact and the court may rely on evidence to the extent of its probative value. [PL 2007, c. 255, §4 (AMD).]

5. Records.
[PL 2005, c. 300, §1 (RP).]

6. Benefits and support for children in custody of department. When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title 19-A, chapter 55, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits and shall provide any necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title 19-A, sections 2002 and 2004 unless current information is already on file with the court. If a child is placed in the custody of the department, the court shall order child support from each parent according to the guidelines pursuant to Title 19-A, chapter 63, designate each parent as a nonprimary care provider and apportion the obligation accordingly.

Income affidavits and instructions must be provided to each parent by the department at the time of service of the petition or motion. The court may order a deviation pursuant to Title 19-A, section 2007. Support ordered pursuant to this section must be paid directly to the department pursuant to Title 19-A, chapter 65, subchapter IV. The failure of a parent to file an affidavit does not prevent the entry of a protection order. A parent may be subject to Title 19-A, section 2004, subsection 1, paragraph D for failure to complete and file income affidavits.

[PL 1995, c. 694, Pt. D, §37 (AMD); PL 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

PL 1979, c. 733, §18 (NEW). PL 1983, c. 772, §4 (AMD). PL 1983, c. 783, §3 (AMD). PL 1985, c. 495, §17 (AMD). PL 1985, c. 506, §§A41,42 (AMD). PL 1989, c. 226 (AMD). PL 1989, c. 270, §1 (AMD). PL 1991, c. 840, §6 (AMD). PL 1993, c. 248, §1 (AMD). PL 1995, c. 694, §D37 (AMD). PL 1995, c. 694, §E2 (AFF). PL 2005, c. 300, §1 (AMD). PL 2007, c. 255, §4 (AMD). PL 2007, c. 351, §2 (AMD). PL 2013, c. 267, Pt. B, §18 (AMD). PL 2023, c. 638, §26 (AMD).

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Appendix B – FY26-29 Budget Projections

	298,096.32 hours 12/1/23-11/30/24	300,000 hrs no new positions	300,000 hrs increase to 50%	240,000 hrs increase to 50%	FY27	210,000 hours 30% Statewide	150,000 hours 50% Statewide	300,000 hours Existing 6 Offices Only
ALL OTHER	FY25	FY26	FY26	FY26	FY27	FY28/FY29	FY28/FY29	FY28/FY29
Counsel costs at \$150/hr	\$44,714,448	\$45,000,000	\$45,000,000	\$45,000,000	\$36,000,000	\$31,500,000	\$22,500,000	\$45,000,000
PDS operating expenses	\$1,689,638	\$1,689,638	\$1,689,638	\$1,689,638	\$1,932,230	\$2,225,000	\$2,225,000	\$2,225,000
Non-counsel costs via Ch 302	\$2,250,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
New office AO costs		\$1,253,720	\$1,253,720	\$1,116,750	\$1,116,750	\$721,083	\$1,172,587	\$1,172,587
Projected AO need		\$50,943,358	\$50,943,358	\$42,048,980	\$42,048,980	\$37,446,083	\$28,897,587	\$47,225,000
PERSONAL SERVICES								
current staffing totals (no new positions)	\$9,103,146	\$9,558,303	\$9,558,303	\$10,036,218	\$10,036,218	\$10,538,029	\$10,538,029	\$10,538,029
additional positions			\$10,936,256	\$13,632,282	\$13,632,282	\$7,549,065	\$14,313,896	\$14,313,896
Projected PS need			\$20,494,559	\$23,668,500	\$23,668,500	\$18,087,094	\$24,851,925	\$24,851,925
TOTAL PS & AO for offices/outside counsel		\$58,747,941	\$71,437,917	\$65,717,480	\$65,717,480	\$55,533,177	\$53,749,512	\$57,763,029
ALL OTHER	FY25	FY26	FY26	FY26	FY27	FY28/FY29	FY28/FY29	FY28/FY29
Counsel costs at \$175/hr	\$52,166,856	\$52,500,000	\$52,500,000	\$42,000,000	\$42,000,000	\$36,750,000	\$26,250,000	\$52,500,000
PDS operating expenses			\$1,689,638	\$1,932,230	\$1,932,230	\$2,225,000	\$2,225,000	\$2,225,000
Non-counsel costs via Ch 302	\$2,250,000	\$2,500,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
New office AO costs			\$1,253,720	\$1,116,750	\$1,116,750	\$721,083	\$1,172,587	\$1,172,587
Projected AO need			\$58,443,358	\$48,048,980	\$48,048,980	\$42,696,083	\$32,647,587	\$54,725,000
PERSONAL SERVICES								
current staffing totals (no new positions)	\$9,103,146	\$9,558,303	\$9,558,303	\$10,036,218	\$10,036,218	\$10,538,029	\$10,538,029	\$10,538,029
additional positions			\$10,936,256	\$13,632,282	\$13,632,282	\$7,549,065	\$14,313,896	\$14,313,896
Projected PS need			\$20,494,559	\$23,668,500	\$23,668,500	\$18,087,094	\$24,851,925	\$24,851,925
TOTAL PS & AO for offices/outside counsel		\$64,558,303	\$78,937,917	\$71,717,480	\$71,717,480	\$60,783,177	\$57,499,512	\$65,263,029
ALL OTHER	FY25	FY26	FY26	FY26	FY27	FY28/FY29	FY28/FY29	FY28/FY29
Counsel costs at \$200/hr	\$49,185,893	\$60,000,000	\$60,000,000	\$48,000,000	\$48,000,000	\$42,000,000	\$30,000,000	\$60,000,000
PDS operating expenses			\$1,689,638	\$1,932,230	\$1,932,230	\$2,225,000	\$2,225,000	\$2,225,000
Non-counsel costs via Ch 302	\$2,250,000	\$2,500,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000
New office AO costs			\$1,253,720	\$1,116,750	\$1,116,750	\$721,083	\$1,172,587	\$1,172,587
Projected AO need			\$65,943,358	\$54,048,980	\$54,048,980	\$47,946,083	\$36,397,587	\$62,225,000
PERSONAL SERVICES								
current staffing totals (no new positions)	\$9,103,146	\$9,558,303	\$9,558,303	\$10,036,218	\$10,036,218	\$10,538,029	\$10,538,029	\$10,538,029
additional positions			\$10,936,256	\$13,632,282	\$13,632,282	\$7,549,065	\$14,313,896	\$14,313,896
Projected PS need			\$20,494,559	\$23,668,500	\$23,668,500	\$18,087,094	\$24,851,925	\$24,851,925
TOTAL PS & AO for offices/outside counsel		\$77,058,303	\$86,437,917	\$77,717,480	\$77,717,480	\$66,033,177	\$61,249,512	\$72,763,029

EXHIBIT 4

Initiative	Bill Type	Location	Start Date	Justification	Position #	Appropriations		
						Line Category	FY26	FY27
1	Cumberland County PD Office at 30% adult criminal	Cumberland	FY25	This initiative creates a new public defender office by establishing District Defender - 1 AD I - 4 AD II - 3 Legal Admin - 1 Paralegal - 2 Case Manager - 1 Investigator - 1	13	Personal Services	\$1,979,981	\$1,999,370
						All Other	\$252,900	\$160,950
2	York County PD Office at 30% adult criminal	York	FY25	This initiative creates a new public defender office by establishing District Defender - 1 AD I - 3 AD II - 3 Legal Admin - 1 Paralegal - 2 Case Manager - 1 Investigator - 1	12	Personal Services	\$1,796,146	\$1,814,225
						All Other	\$243,300	\$156,500
3	Midcoast PD Office at 30% adult criminal	Midcoast	FY25	This initiative creates a new public defender office by establishing District Defender - 1 AD I - 2 AD II - 2 Legal Admin - 1 Paralegal - 2 Case Manager - 1 Investigator - 1	10	Personal Services	\$1,428,477	\$1,443,935
						All Other	\$242,100	\$157,600
4	Central Office Staff	Augusta	FY25	This initiative creates 3 central office staff positions to be responsible for coordinating/facilitating the assignment of counsel to indigent clients who lack counsel and by providing funding for related All Other costs.	3	Personal Services	\$258,756	\$268,005
						All Other	\$26,739	\$26,739

Initiative	Bill Type	Location	Start Date	Justification	Position #	Appropriations		
						Line Category	FY26	FY27
5	Additional personnel for Parents Counsel Division Biennial Budget	Parents Counsel Division	FY26	This initiative creates additional employed defenders in the Parents Counsel Division in order to handle one parent in one-third of the PC cases by establishing AD I – 5 AD II – 5 Paralegal – 3 Case Manager – 3	16	Personal Services	2,060,315	2,227,622
						All Other	277,080	180,480
7	Increase personnel to handle 50% criminal cases in every office Biennial Budget	Statewide Criminal Division	FY26	This initiative creates additional employed defenders in the adult criminal division to increase attorney capacity in each public defender office by establishing Aroostook – 1 AD I and 1 Case Manager Capital Region – 1 Deputy DD, 1 AD I and 1 AD II, and 1 Case Manager Highlands – 1 AD I and 1 Case Manager Downeast – 1 AD II and 1 Case Manager Tri-County – 1 Deputy DD, 2 AD I, 2 AD II, 1 Paralegal, and 1 Case Manager Portland – 1 Deputy DD, 2 AD I, 2 AD II, 1 Paralegal York – 1 Deputy DD, 2 AD I and 1 AD II Midcoast – 1 Deputy DD, 1 AD I and 1 AD II	30	Personal Services	\$5,057,815	\$5,099,400
						All Other	\$238,340	\$206,640
8	Central Office Staff Biennial Budget	Augusta	FY26	This initiative seeks to increase attorney oversight and supervision capacity, and seeks to achieve parity with the prosecution's legislative and grant capabilities by creating 3 Supervision Division staff positions (2 PSM III and one Office Specialist II); one PSM III position working as a legislative liaison/grant writer; one Audit Division staff positions (Fraud Investigator); one Office Specialist II position supporting the Data/Systems Division; and one Assistant Defender I working as an in-house immigration specialist and provides funding for related All Other costs.	7	Personal Services	\$904,090	\$1,091,484
						All Other	\$62,391	\$62,391
	Additional personnel	Parents		This initiative creates additional employed defenders in the Parents Counsel Division in order to handle one parent in one-half of the PC cases by establishing		Personal Services		1,801,239

Initiative	Bill Type	Location	Start Date	Justification	Position #	Appropriations		
						Line Category	FY26	FY27
9	for Parents Counsel Division	Counsel Division	FY27	AD I - 5 AD II - 3 Paralegal - 2 Case Manager - 3	13	All Other		254,580
10	Creation of an Appeals Unit	Augusta	FY26	This initiative creates a new Appellate office by establishing District Defender - 1 AD I - 2 AD II - 1 Paralegal - 1	5	Personal Services	\$864,031	\$870,385
						All Other	\$120,620	\$77,770
11	Creation of a Post-Conviction Review Unit	Augusta	FY26	This initiative creates a new Post-Conviction Review office by establishing District Defender - 1 AD I - 1 Paralegal - 1 Investigator - 1	4	Personal Services	\$590,590	\$595,280
						All Other	\$113,640	\$72,340
12	Law student summer internships	Augusta	FY26	This initiative creates 20 law student summer intern positions, 10 in FY26 and 10 in FY27. This will allow for enhanced law student engagement and a pathway for becoming employed defenders or private assigned counsel.	20	Personal Services	\$78,000	\$156,000
13	Maine Law Rural Practice Clinic		FY26	This initiative provides funding to maintain the Rural Practice Clinic in Fort Kent and to expand to other regions that have universities, including Bangor, Farmington, and Machias.		All Other	\$250,000	\$1,000,000
14	All Other appropriation over baseline		FY26	This initiative provides funding to cover an anticipated increase in private counsel and non-counsel costs above baseline.				
						All Other	\$12,888,384	\$3,630,976

Initiative	Bill Type	Location	Start Date	Justification	Position #	Appropriations		
						Line Category	FY26	FY27
15	Language change: Make Personal Services a permeant carrying account		FY26	This initiative provides authorization to make the Personal Services account a carrying account for the next two fiscal years with the ability to move funds via financial order to All Other.				
16	Increase to AD II salary		FY26	This initiative provides additional personal services allocation to support the reclassification of the Assistant Defender II position from a Spec 47, Grade 30 to a Grade 32 for current defenders.		Personal Services	\$63,837	\$65,331
17	Stipends for case staffing		FY26	This initiative provides for an allocation to pay for up to \$50/hr for 100,000 attorney hours for case types and/or geographic locations in need of counsel.				
						All Other	\$2,500,000	\$2,500,000

total excludes intern positions 133 TOTAL \$32,297,532 \$25,919,242

Personal Services \$15,082,038 \$17,432,276
All Other \$17,215,494 \$8,486,966