

MAINE STATE LEGISLATURE

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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.

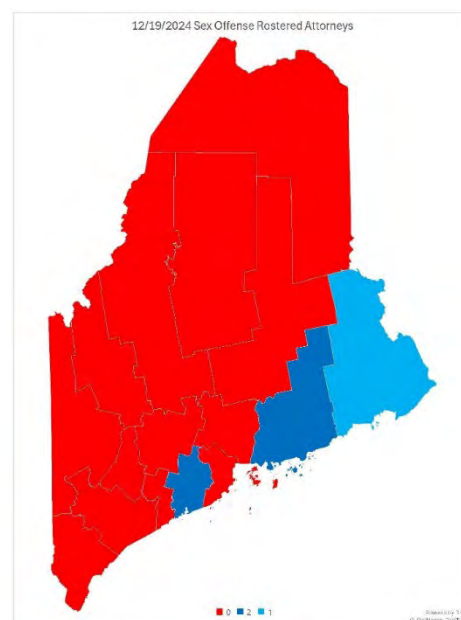
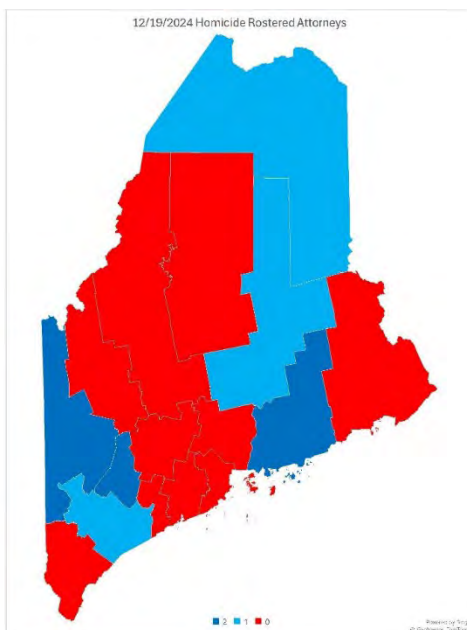
B. Private Counsel Participation

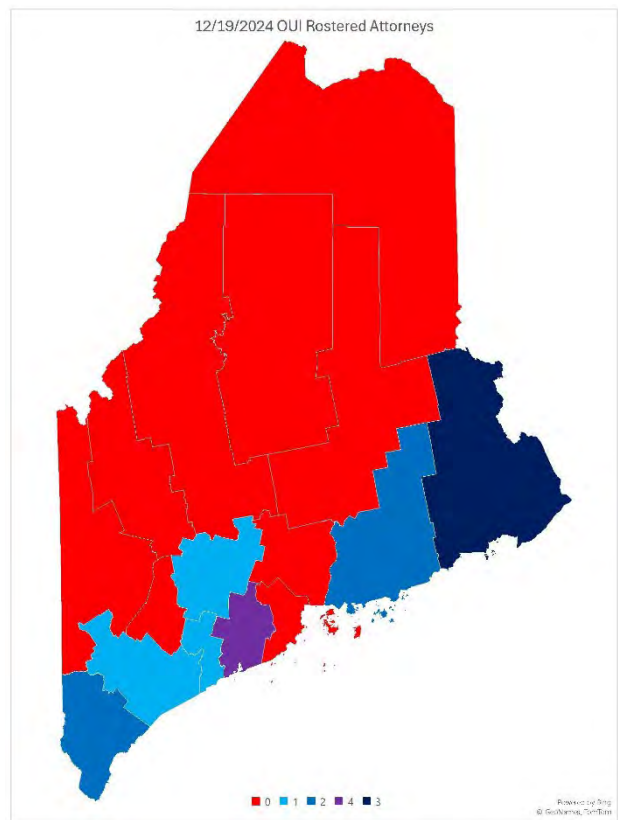
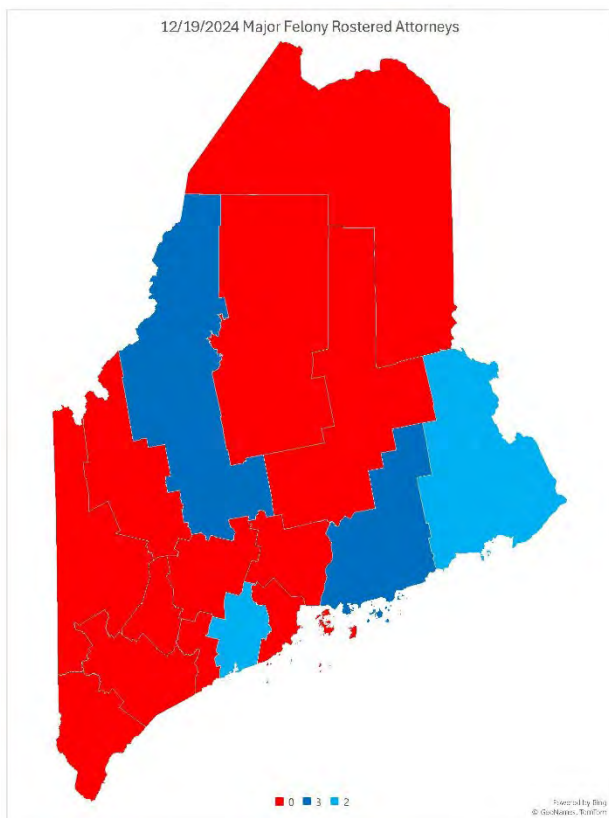
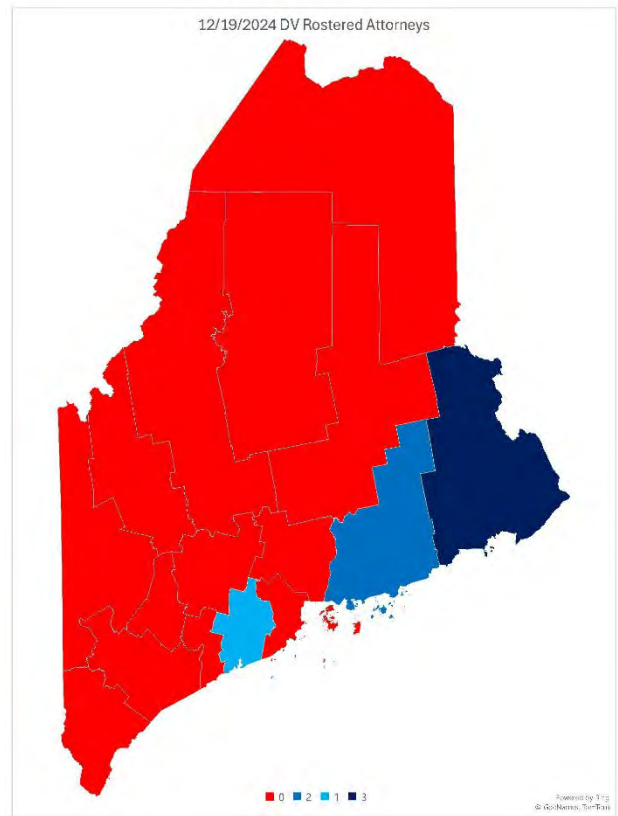
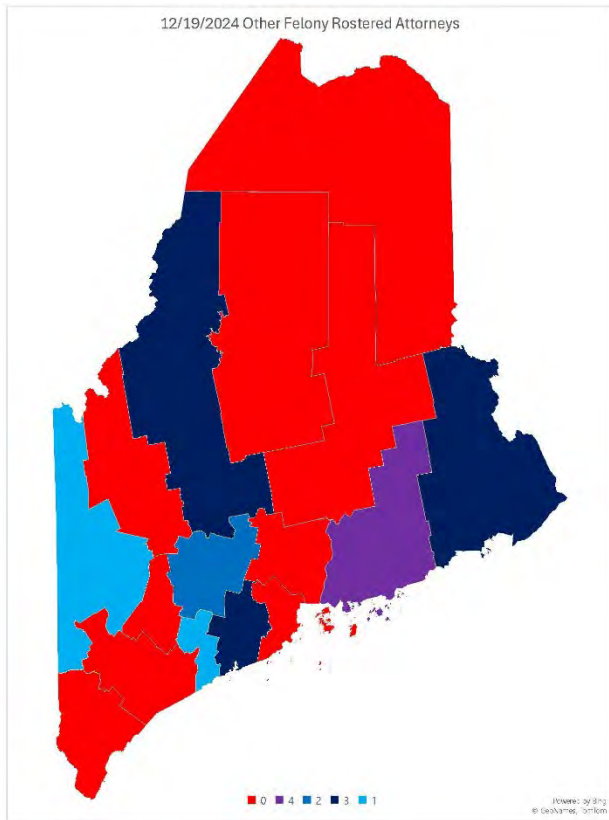
As of December 31, 2024, there were 333 eligible attorneys (attorneys who have submitted a renewal form or new application), of which 130 were rostered to accept new case assignments. Of the 130, 83 were on an active roster for trial-level work (excludes lawyer of the day): 29 for adult criminal and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

Throughout Maine there are currently:

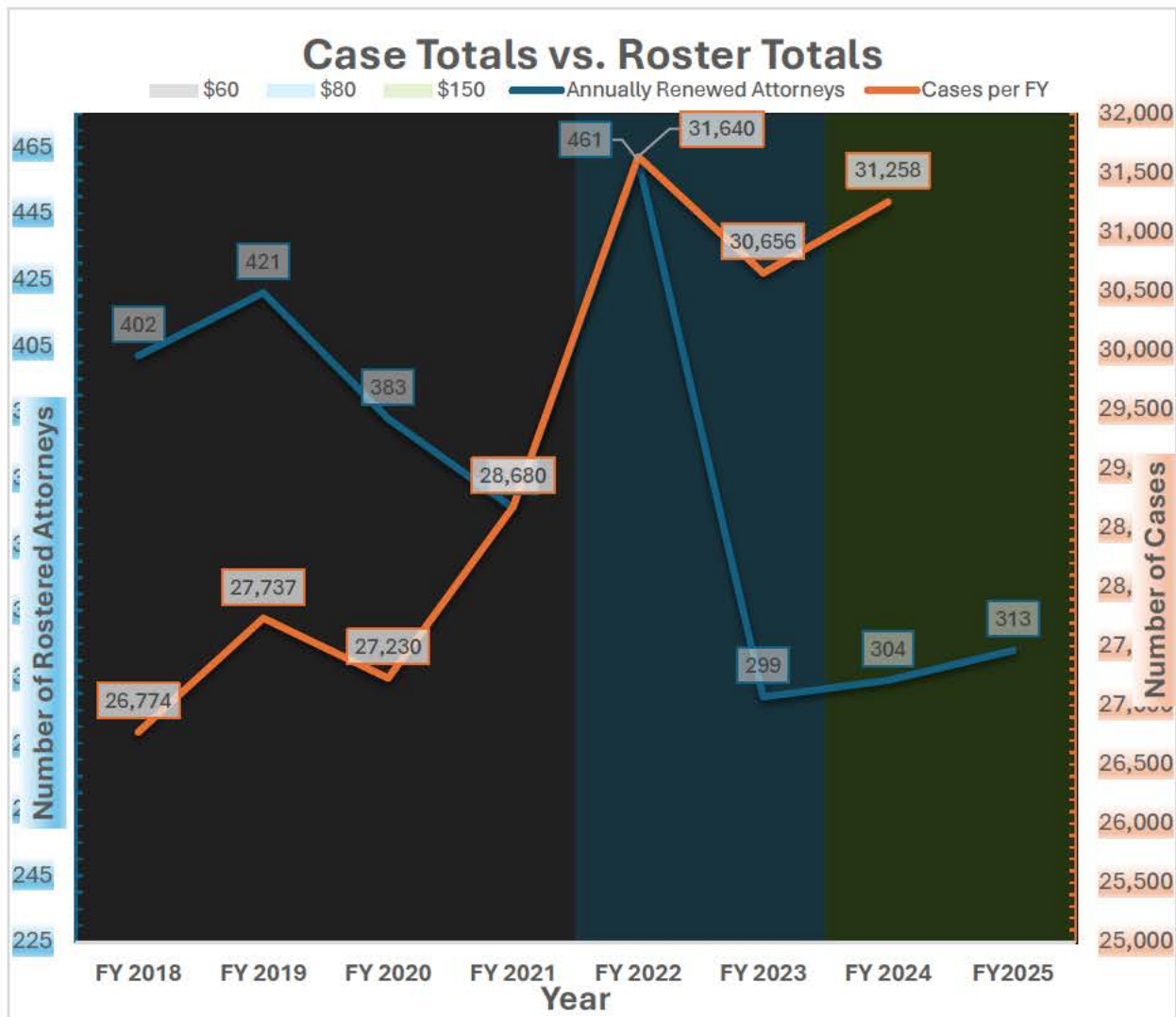
- 8 counties with no attorneys actively rostered to accept homicides cases
- 12 counties with no attorneys actively rostered to accept sex offense cases
- 11 counties with no attorneys actively rostered to accept major felony cases
- 8 counties with no attorneys actively rostered to accept other felony 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.





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 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)

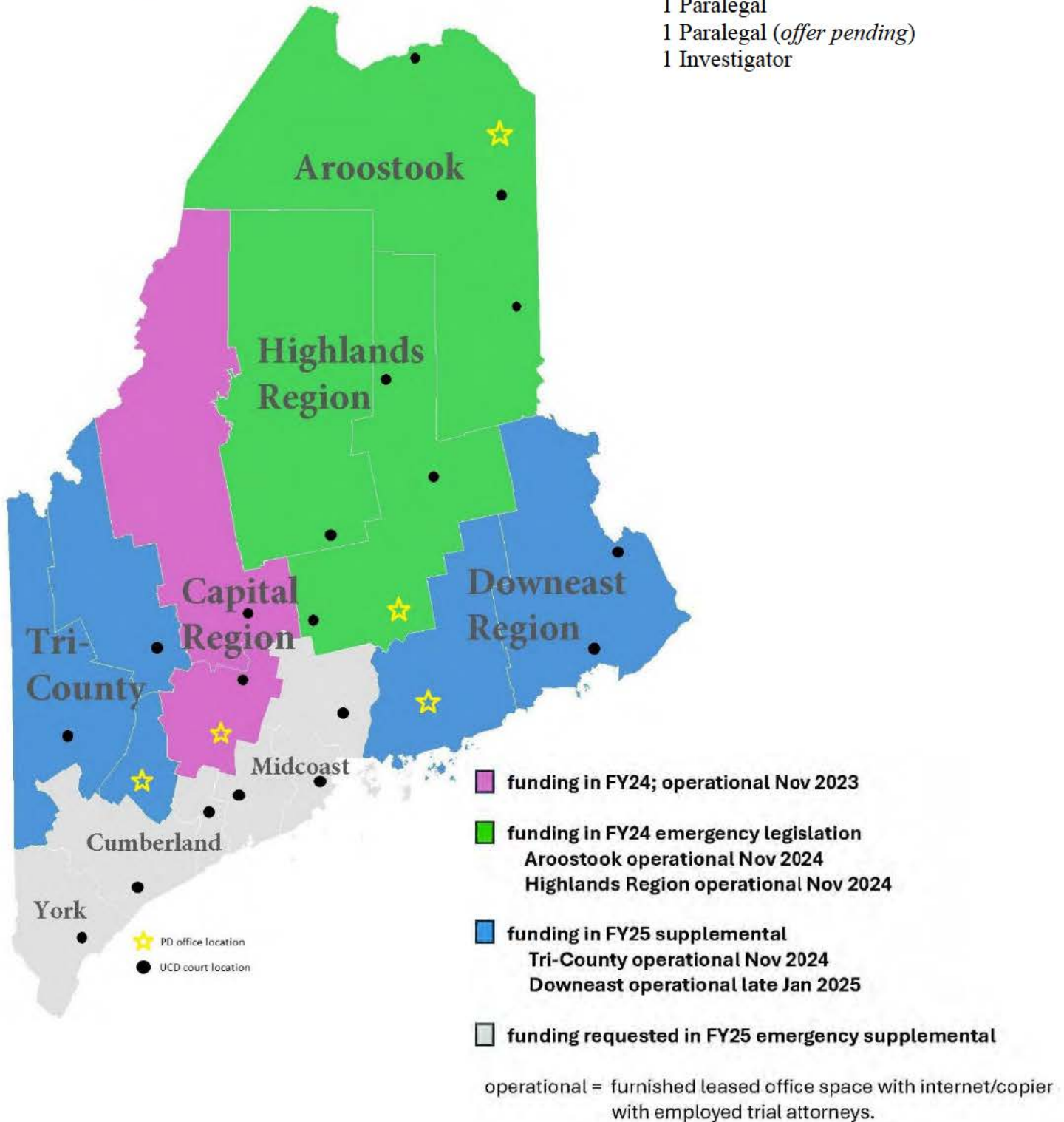
1 District Defender
 4 Assistant Defender I
 2 Assistant Defender II
 1 Legal Administrator
 2 Paralegal
 1 Investigator (*vacant*)

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



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.

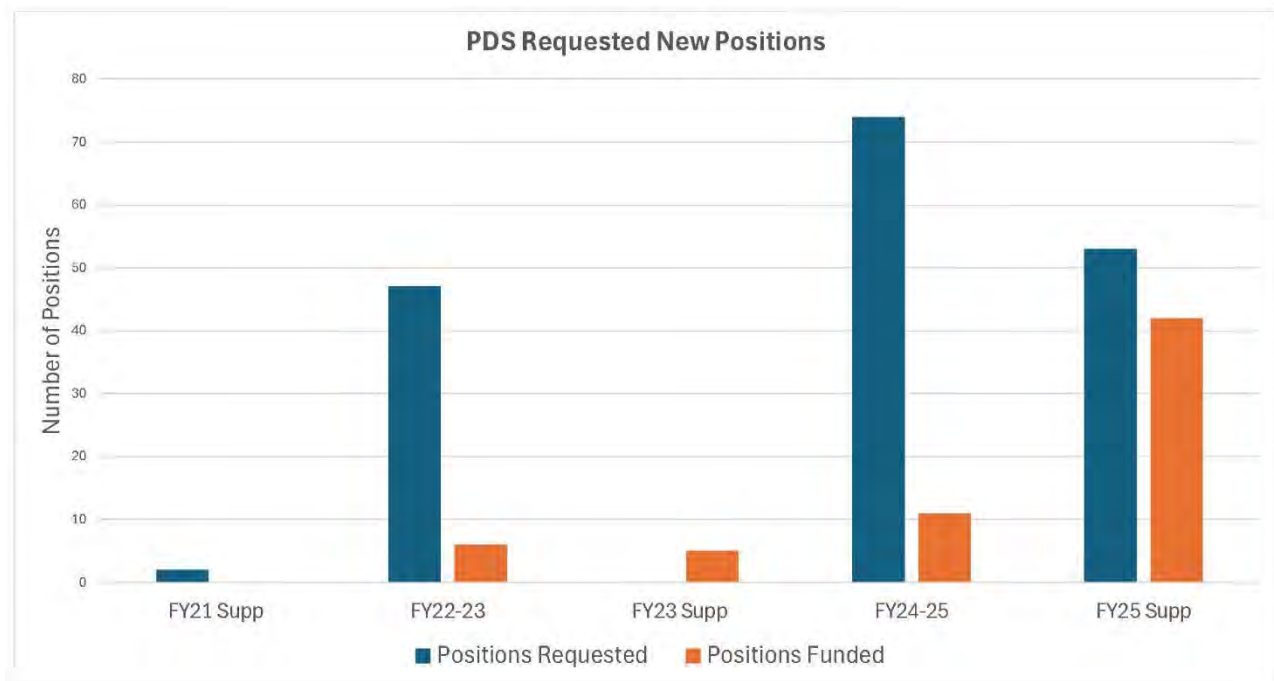
Unlike the CRPD office, the new offices in Caribou and Bangor opened up into spaces that needed significant build-out or alterations. The office in Lewiston did not need a lot of renovations to open up, but for all four new offices, there was significantly more time involved in getting the physical space 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.

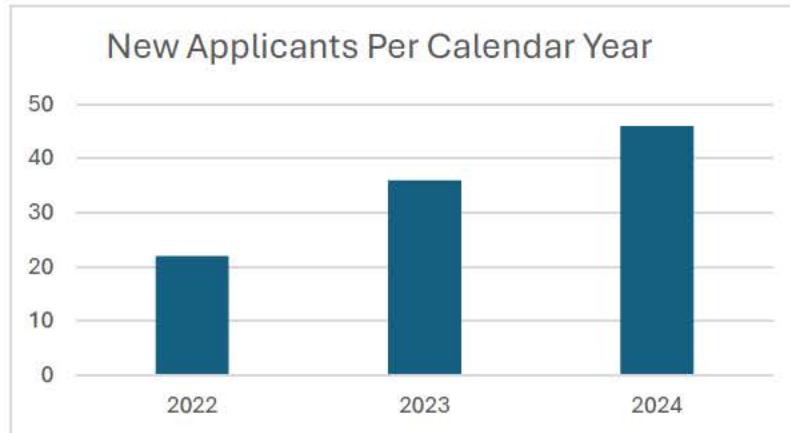
The bar graph below shows what PDS has requested for new employed positions over the past several fiscal years. If we had started the transition to a hybrid model when first requested in FY 22, we might have avoided the long list of people needing counsel that we have today.



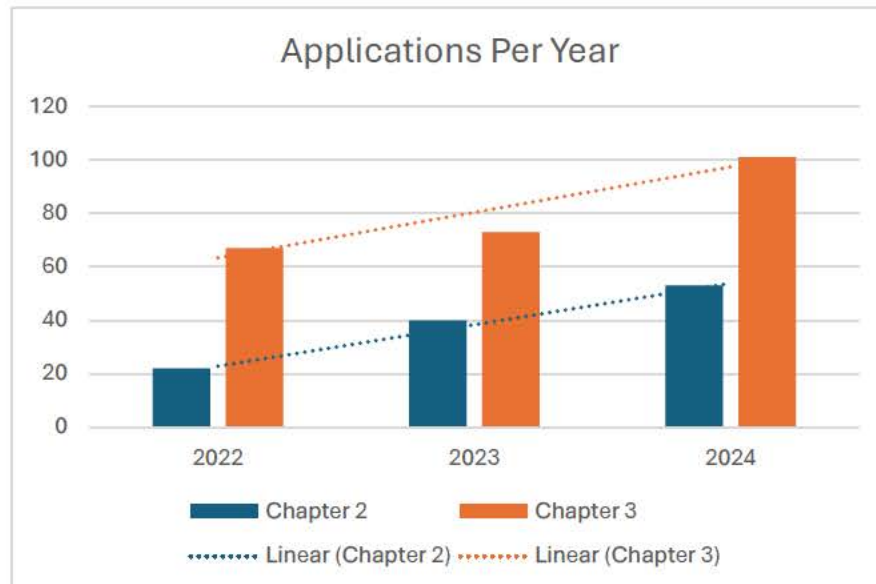
2. Recruitment

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 changes 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.

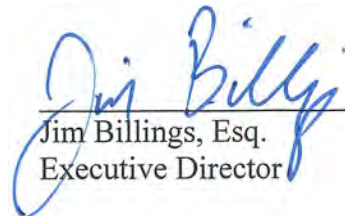
A review of Judicial Branch case data indicates that the top five currently pending charges in the UCD (as of mid-November) are the following:

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~~ 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).]

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; 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–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

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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§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).

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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 hours no new positions	300,000 hrs increase to 50%	240,000 hrs increase to 50%	210,000 hours 30% Statewide	150,000 hours 50% Statewide	300,000 hours Existing 6 Offices Only
ALL OTHER	FY25	FY26	FY26	FY27	FY28/FY29	FY28/FY29	FY28/FY29
Counsel costs at \$150/hr	\$44,714,448	\$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	\$1,932,230	\$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	
New office AO costs			\$1,253,720	\$1,116,750	\$721,083	\$1,172,587	
Projected AO need		\$49,189,638	\$50,943,358	\$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	\$10,538,029	\$10,538,029	\$10,538,029
additional positions			\$10,936,256	\$13,632,282	\$7,549,065	\$14,313,896	
Projected PS need			\$20,494,559	\$23,668,500	\$18,087,094	\$24,851,925	
TOTAL PS & AO for offices/outside counsel		\$58,747,941	\$71,437,917	\$65,717,480	\$55,533,177	\$53,749,512	\$57,763,029
ALL OTHER	FY25	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	\$36,750,000	\$26,250,000	\$52,500,000
PDS operating expenses			\$1,689,638	\$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	
New office AO costs			\$1,253,720	\$1,116,750	\$721,083	\$1,172,587	
Projected AO need			\$58,443,358	\$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	\$10,538,029	\$10,538,029	\$10,538,029
additional positions			\$10,936,256	\$13,632,282	\$7,549,065	\$14,313,896	
Projected PS need			\$20,494,559	\$23,668,500	\$18,087,094	\$24,851,925	
TOTAL PS & AO for offices/outside counsel		\$64,558,303	\$78,937,917	\$71,717,480	\$60,783,177	\$57,499,512	\$65,263,029
ALL OTHER	FY25	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	\$42,000,000	\$30,000,000	\$60,000,000
PDS operating expenses			\$1,689,638	\$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	
New office AO costs			\$1,253,720	\$1,116,750	\$721,083	\$1,172,587	
Projected AO need			\$65,943,358	\$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	\$10,538,029	\$10,538,029	\$10,538,029
additional positions			\$10,936,256	\$13,632,282	\$7,549,065	\$14,313,896	
Projected PS need			\$20,494,559	\$23,668,500	\$18,087,094	\$24,851,925	
TOTAL PS & AO for offices/outside counsel		\$72,058,303	\$86,437,917	\$77,717,480	\$66,033,177	\$61,249,512	\$72,763,029