

January 16, 2024

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

**Delivered via Email**

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

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

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

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

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

## Overview

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3. Needs of the Indigent Defense System**

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

#### **a. Budget**

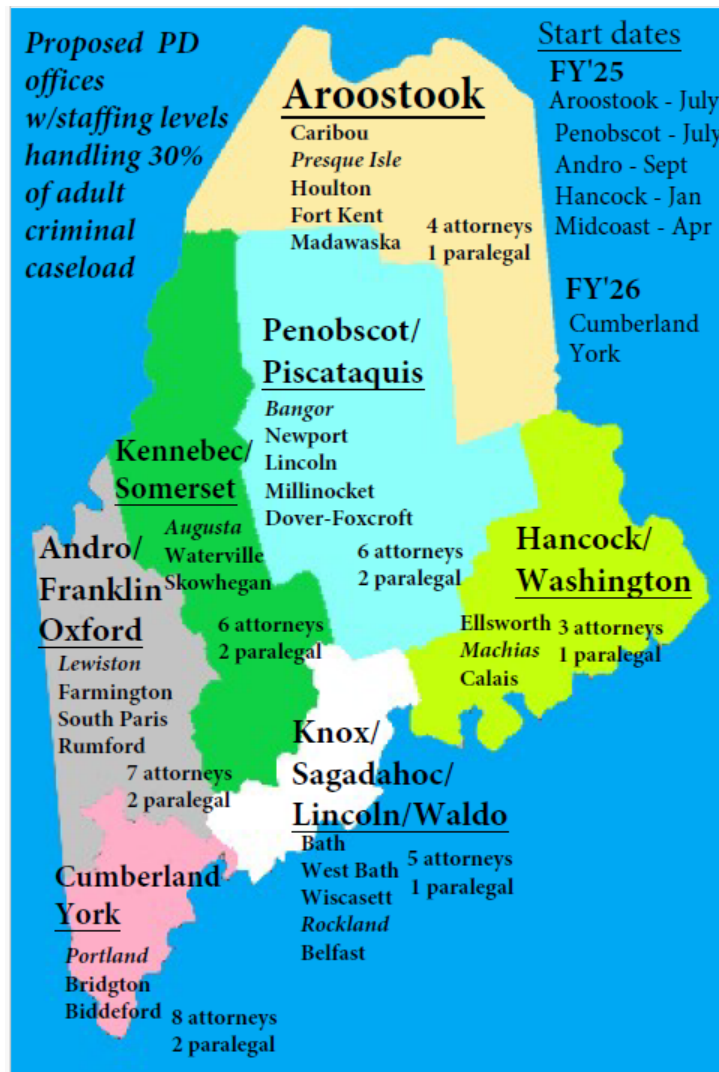
The most significant budgeting development has been establishing two separate public defender units, and the proposed roll out of a statewide public defender system planned to handle approximately one-third of the adult criminal cases. First, the development of the RDU has reinforced and confirmed the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

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



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

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



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

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

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

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

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

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

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

b. Legislation

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

Broadly, the proposed changes include:

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

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

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

Respectfully submitted,



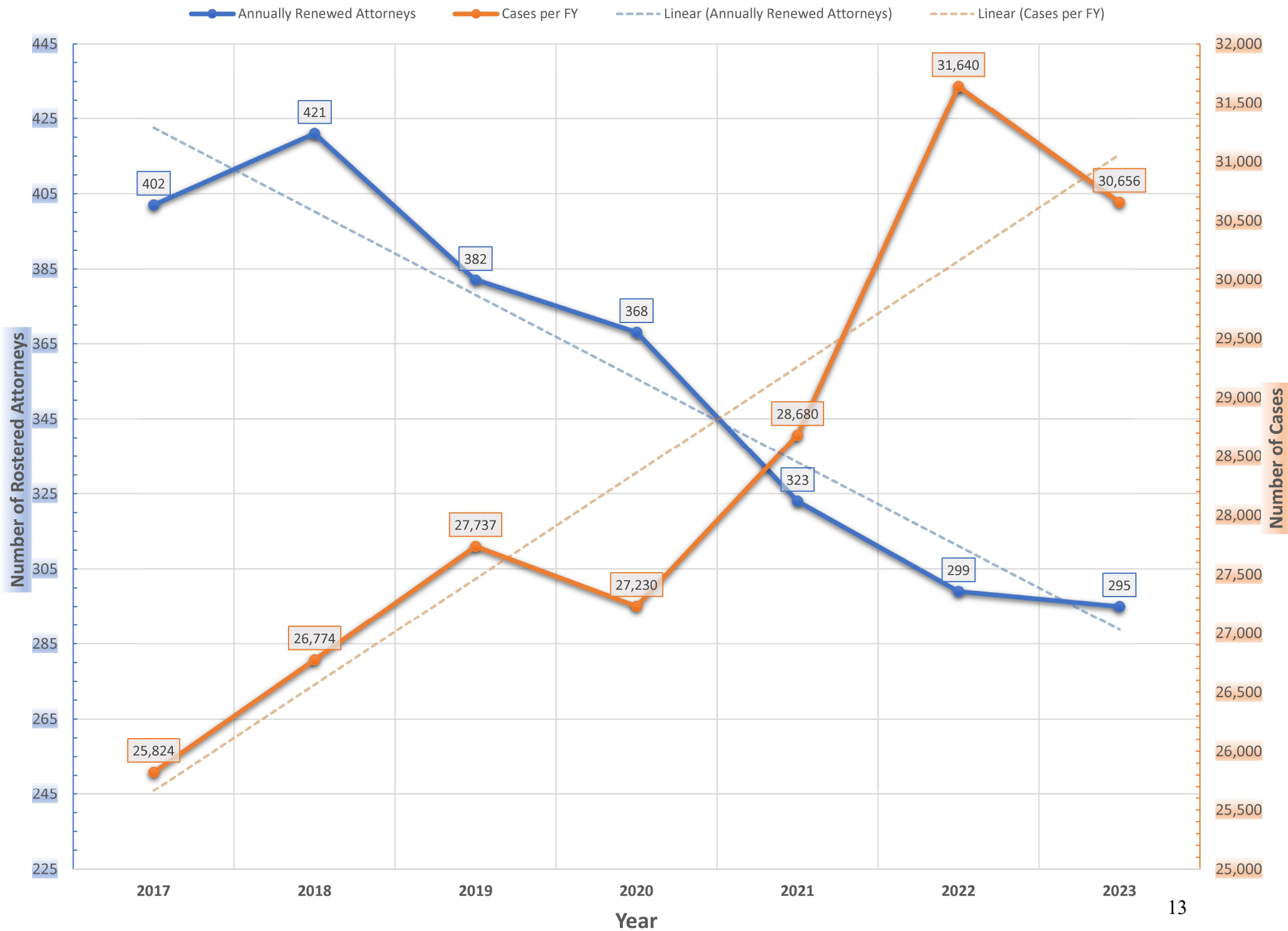
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Jim Billings, Esq.  
Executive Director

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

# APPENDIX A

## Case Totals vs. Roster Totals



## APPENDIX B

### *Proposed Statutory Changes for the Second Regular Session of the 131<sup>st</sup> Legislature*

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

## CHAPTER 37

### MAINE COMMISSION ON INDIGENT LEGAL SERVICES

#### **§1801. Maine Commission on Indigent Legal Services; established**

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

#### SECTION HISTORY

PL 2009, c. 419, §2 (NEW).

## §1802. Definitions

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

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

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

[PL 2013, c. 159, §10 (NEW).]

**2. Commission.** "Commission" means the Maine Commission on Indigent Legal Services under section 1801.

[PL 2009, c. 419, §2 (NEW).]

**3. Contract counsel.** "Contract counsel" means a private attorney under contract with the commission to provide indigent legal services.

[PL 2009, c. 419, §2 (NEW).]

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

**4. Indigent legal services.** "Indigent legal services" means legal representation provided to:

A. An indigent defendant in a criminal case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; [PL 2009, c. 419, §2 (NEW).]

B. An indigent party in a civil case in which the United States Constitution or the Constitution of Maine or federal or state law requires that the State provide representation; [PL 2019, c. 427, §1 (AMD).]

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

D. An indigent defendant or party or a juvenile for the purpose of filing, on behalf of that indigent defendant or party or juvenile, a petition for certiorari to the Supreme Court of the United States from an adverse decision of the Law Court on a case for which services were previously provided to that defendant or party or juvenile pursuant to paragraph A, B or C. [PL 2019, c. 427, §2 (NEW).]

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

[PL 2021, c. 676, Pt. A, §3 (AMD).]

### SECTION HISTORY

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



### §1803. Commission structure

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

- A. One member from a list of qualified potential appointees, provided by the President of the Senate; [PL 2017, c. 430, §1 (NEW).]
- B. One member from a list of qualified potential appointees, provided by the Speaker of the House of Representatives; [PL 2017, c. 430, §1 (NEW).]
- C. Three members from a list of qualified potential appointees, provided by the Chief Justice of the Supreme Judicial Court; [PL 2017, c. 430, §1 (NEW).]
- D. One member with experience in administration and finance; [PL 2017, c. 430, §1 (NEW).]
- E. One member with experience providing representation in child protection proceedings; [PL 2017, c. 430, §1 (NEW).]
- F. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of the Maine State Bar Association. ~~This member is a nonvoting member of the commission;~~ and [PL 2017, c. 430, §1 (NEW).]
- G. One member from a list of qualified potential appointees who are attorneys engaged in the active practice of law and provide indigent legal services, provided by the president of a statewide organization, other than the Maine State Bar Association, that represents criminal defense attorneys. ~~This member is a nonvoting member of the commission.~~ [PL 2017, c. 430, §1 (NEW).]

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

[PL 2017, c. 430, §1 (RPR).]

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

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

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

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

[PL 2017, c. 430, §2 (AMD).]

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

A member of the commission appointed to fill a vacancy occurring otherwise than by expiration of term is appointed only for the unexpired term of the member succeeded.

[PL 2009, c. 419, §2 (NEW).]

**4. Quorum.** A quorum is a majority of the current ~~voting~~ members of the commission. A vacancy in the commission does not impair the power of the remaining members to exercise all the powers of the commission.

[PL 2017, c. 430, §2 (AMD).]

**5. Compensation.** Each member of the commission is eligible to be compensated as provided in Title 5, chapter 379.

[PL 2009, c. 419, §2 (NEW).]

#### SECTION HISTORY

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

## §1804. Commission responsibilities

**1. Executive director.** The commission shall hire an executive director. The executive director must have experience in the legal field, including, but not limited to, the provision of indigent legal services. The executive director must be an attorney licensed in the State of Maine and in good standing with the Maine Board of Overseers of the Bar.

[PL 2009, c. 419, §2 (NEW).]

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

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

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

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

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

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

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

G. Other standards considered necessary and appropriate to ensure the delivery of adequate indigent legal services. [PL 2009, c. 419, §2 (NEW).]  
[PL 2021, c. 720, §1 (AMD).]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[PL 2021, c. 481, §§1-4 (AMD).]

**4. Powers.** The commission may:

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

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

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

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

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

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

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

#### SECTION HISTORY

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

## §1806. Information not public record

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

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

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

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

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

D. "Case information" means:

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

[PL 2011, c. 547, §1 (AMD).]

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

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

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

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

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

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

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

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

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

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

[PL 2015, c. 290, §1 (AMD).]

[PL 2015, c. 290, §1 (AMD).]

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

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

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

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

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

## SECTION HISTORY

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

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## **§8104-B. Immunity notwithstanding waiver**

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

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

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

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

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

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

[PL 1987, c. 740, §4 (NEW).]

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

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

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

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

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

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

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

C. The failure to recognize the year 2000 as a leap year; [PL 1999, c. 456, §2 (NEW).]

D. The use of algorithms that use the term "99" or "00" as a flag for another function; [PL 1999, c. 456, §2 (NEW).]

E. Problems arising from the use of applications, software or hardware that are date sensitive; and [PL 1999, c. 456, §2 (NEW).]

F. The inability to distinguish between centuries. [PL 1999, c. 456, §2 (NEW).]  
[PL 1999, c. 456, §2 (NEW).]

#### SECTION HISTORY

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

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## §8111. Personal immunity for employees; procedure

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

- A. Undertaking or failing to undertake any legislative or quasi-legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, rule, policy, resolution or resolve; [PL 1987, c. 740, §8 (RPR).]
- B. Undertaking or failing to undertake any judicial or quasi-judicial act, including, but not limited to, the granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial; [PL 1987, c. 740, §8 (RPR).]
- C. Performing or failing to perform any discretionary function or duty, whether or not the discretion is abused; and whether or not any statute, charter, ordinance, order, resolution, rule or resolve under which the discretionary function or duty is performed is valid; [PL 1987, c. 740, §8 (RPR).]
- D. Performing or failing to perform any prosecutorial function involving civil, criminal or administrative enforcement; [PL 2001, c. 662, §7 (AMD).]
- E. Any intentional act or omission within the course and scope of employment; provided that such immunity does not exist in any case in which an employee's actions are found to have been in bad faith; or [PL 2001, c. 662, §8 (AMD).]
- F. Any act by a member of the Maine National Guard within the course and scope of employment; except that immunity does not exist when an employee's actions are in bad faith or in violation of military orders while the employee is performing active state service pursuant to Title 37-B. [PL 2001, c. 662, §9 (NEW).]

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

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

[PL 2001, c. 662, §§7-9 (AMD).]

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

[PL 1987, c. 740, §9 (AMD).]

### SECTION HISTORY

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

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

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

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

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

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

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

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

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

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

**3. Juvenile history record information pertaining to adjudications.** Notwithstanding subsection 2, if a juvenile has been adjudicated as having committed a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile adjudicated were an adult, then that adjudication and any resulting disposition imposed, but no other related juvenile history record information, may be disclosed publicly.

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

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

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

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

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

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

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

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

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

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

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

## SECTION HISTORY

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

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### §3306. Right to counsel

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

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

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

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

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

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

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

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

[PL 1977, c. 520, §1 (NEW).]

#### SECTION HISTORY

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

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### **§3308-C. Confidentiality of juvenile case records**

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

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

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

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

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

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

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

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

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

(1) A written request is filed by any person with the Juvenile Court requesting that the juvenile petition be open to public inspection;

(2) The Juvenile Court has found there is probable cause to believe the juvenile committed a juvenile crime that would constitute murder, a violation of Title 17-A, section 204 or a Class A, B or C crime if the juvenile involved were an adult; and

(3) After notice to the juvenile and the juvenile's parent or parents, guardian or legal custodian, the attorney for the juvenile, the office of the prosecuting attorney and the individual or entity requesting the juvenile petition be open to public inspection and a hearing in which the Juvenile

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

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

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

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

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

**3. Orders of adjudication open to public inspection.** Orders of adjudication for any juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult are open to public inspection. Orders of adjudication for all other juvenile crimes are confidential and not open to public inspection. When an order of adjudication reflects adjudications for both a juvenile crime that would constitute murder or a Class A, B or C crime if the juvenile involved were an adult and another juvenile crime or crimes not constituting murder or a Class A, B or C crime if the juvenile involved were an adult, the juvenile crime that would constitute the highest class of crime if the juvenile were an adult determines whether the order of adjudication is open to public inspection.

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

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

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

(1) "Administration of criminal justice" has the same meaning as in Title 16, section 703, subsection 1.

(2) "Criminal justice agency" has the same meaning as in Title 16, section 703, subsection 4.

(3) "Juvenile intelligence and investigative record information" has the same meaning as in section 3308-A, subsection 1, paragraph E. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

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

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

(1) The juvenile has been adjudicated as having committed a juvenile crime;

(2) The information is disseminated by and to persons who directly supervise or report on the health, behavior or progress of the juvenile, the superintendent of the juvenile's school and the superintendent's designees, criminal justice agencies or agencies that are or might become

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (2) Must be provided to the court by the office of the prosecuting attorney if disposition included restitution, community service or a restorative justice event and the court ordered that proof of completion of the obligation be provided to the office of the prosecuting attorney; or
- (3) May be provided to the court by the juvenile or the juvenile's attorney. If the notice is provided by the juvenile or the juvenile's attorney, the juvenile or the juvenile's attorney shall serve a copy of the notice on the office of the prosecuting attorney before the court may enter the order sealing the juvenile case records. In all juvenile cases adjudicated subsequent to January 1, 2000, but prior to January 1, 2022, the Juvenile Court may grant the request of the juvenile or the juvenile's attorney for automatic sealing of all juvenile case records pertaining to the juvenile crime and its disposition when notice is provided to the court and the prosecuting attorney pursuant to this subparagraph.

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

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

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

- (1) The courts and criminal justice agencies as provided by this section; and
- (2) The person whose juvenile case records are sealed or that person's designee. [PL 2021, c. 365, §19 (NEW); PL 2021, c. 365, §37 (AFF).]

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

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

[PL 2021, c. 701, §1 (AMD).]

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

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

#### SECTION HISTORY

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

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#### **§4005. Parties' rights to representation; legal counsel**

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

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

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

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

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

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

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

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

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

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

[RR 2021, c. 2, Pt. B, §180 (COR).]



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

[PL 1983, c. 783, §2 (AMD).]

**3. Wishes of child.** The District Court shall consider the wishes of the child, in a manner appropriate to the age of the child, including, but not limited to, whether the child wishes to participate or be heard in court. In addition, when a child's expressed views are inconsistent with those of the guardian ad litem, the court shall consider whether to consult with the child directly, when the child's age is appropriate.

[PL 2009, c. 557, §1 (NEW).]

#### SECTION HISTORY

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

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#### **§4005-D. Access to and participating in proceedings**

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

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

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

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

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

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

[PL 2017, c. 411, §8 (AMD).]

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

[PL 2017, c. 411, §9 (AMD).]

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

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

[PL 2001, c. 696, §16 (NEW).]

**4. Right to be heard.** A participant or an intervenor has the right to be heard in any court proceeding under this chapter. The right to be heard does not include the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

[PL 2001, c. 696, §16 (NEW).]

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

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

[PL 2001, c. 696, §16 (NEW).]

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

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

[PL 2007, c. 255, §3 (AMD).]

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

[PL 2001, c. 696, §16 (NEW).]

#### SECTION HISTORY

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

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## §4006. Appeals

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

Appeals from any order under section 4035, 4054 or 4071 must be expedited. ~~Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court.~~ [PL 1997, c. 715, Pt. A, §3 (RPR).]

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

### SECTION HISTORY

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

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## **§4007. Conducting proceedings**

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

[PL 1985, c. 495, §17 (AMD).]

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

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

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

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

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

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

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

[PL 2013, c. 267, Pt. B, §18 (AMD).]

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

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

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

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

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

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

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

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

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

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

## SECTION HISTORY

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

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## **§4008. Records; confidentiality; disclosure**

### **(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

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

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

Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended.

[PL 2007, c. 485, §1 (AMD); PL 2007, c. 485, §2 (AFF).]

**1-A. Disclosure.** The department may determine that for the purposes of disclosure under this section records are limited to only records created by the department in connection with its duties under this chapter.

[PL 2021, c. 176, §5 (NEW).]

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

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

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

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

B. [PL 1983, c. 327, §3 (RP).]

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

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

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



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

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

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

E-1. [PL 2007, c. 371, §3 (RP).]

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

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

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

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

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

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

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

- (1) Child-related activities or employment; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[PL 2021, c. 550, §2 (AMD).]

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

[PL 2019, c. 113, Pt. C, §67 (AMD).]

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

[PL 2017, c. 472, §1 (AMD).]

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

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

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

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

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

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

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

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

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

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

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

[PL 2015, c. 501, §2 (NEW).]

#### SECTION HISTORY

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

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## §4011-A. Reporting of suspected abuse or neglect

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

### A. When acting in a professional capacity:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

[PL 2001, c. 345, §5 (NEW).]

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

[PL 2007, c. 140, §8 (NEW); PL 2011, c. 657, Pt. W, §5 (REV).]

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

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

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

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

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

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

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

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

[PL 2015, c. 178, §1 (AMD).]

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

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

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

#### SECTION HISTORY

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

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## §4015. Privileged or confidential communications

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

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

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

[PL 2001, c. 696, §22 (AMD).]

### SECTION HISTORY

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

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