

Chg Pkg Approp/Alloc & Position Count by Reporting Level

Change Group: C Change Type:A Change Number:All Include:Yes One Time:Included

IND00 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

01095FZ11201 MAINE COMMISSION - INDIGENT LEGAL SVCS

Change Package: C-A-1 Priority: Include: Yes

Description: Establishes 5 Public Service Manager II positions, one Public Service Coordinator I position, one Auditor III position, one Auditor I position, and 2 Field Examiner II positions within the Commission on Indigent Legal Services plus associated All Other costs.

Justification: This initiative implements the recommendation of the Sixth Amendment Center to expand Commission staff that was provided to the Legislature after a study of indigent legal services in Maine was performed at the request of the Legislature. The positions established by this initiative will provide for one attorney to oversee attorney evaluation and performance, one attorney to oversee training of attorneys, one non-attorney training staff supervised by the attorney, one attorney to oversee the Commission's internal financial operations and payment of attorney vouchers, one Auditor I position focused on financial operations and voucher payment supervised by the attorney, one Audit Director position and two Field Examiner II positions focused on reviewing the billing practices of attorneys in the field, one trial resource attorney position and one resource attorney for sentencing issues including mental health and substance abuse.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
LEGISLATIVE COUNT	10.000	10.000
TOTAL	10.000	10.000
Appropriations and Allocations		
PERSONAL SVCS	991,329	1,038,589
ALL OTHER	87,729	53,729
TOTAL	1,079,058	1,092,318

Change Package: C-A-2 Priority: Include: Yes

Description: Establishes 4 Public Service Manager III positions, 5 Public Service Manager II positions, 2 Public Service Coordinator positions, 2 Clinical Social Worker positions, 3 Paralegal positions, and one Office Specialist II position, plus associated All Other costs to create a Public Defender Office in a single county.

Justification: This initiative establishes positions to create a Public Defender Office pilot project in Kennebec County. The positions established by this initiative will provide for a District Defender, a Deputy District Defender, two Homicide and Serious Felony Defenders, two Senior Assistant Public Defenders, three Assistant Public Defenders, three Paralegals, two Investigators, two Social Workers, and one Office Manager. The number of attorney positions is based on national caseload standards. This initiative also provides for associated All Other costs. This initiative is necessary to implement the recommendation of the Sixth Amendment Center to explore a transition to a Public Defender system through a pilot project in a single county. This recommendation was provided to the Legislature after a study of indigent legal services in Maine performed at the request of the Legislature.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
LEGISLATIVE COUNT	17.000	17.000
TOTAL	17.000	17.000
Appropriations and Allocations		
PERSONAL SVCS	1,878,484	1,971,053
ALL OTHER	165,724	107,924
TOTAL	2,044,208	2,078,977

Chg Pkg Approp/Alloc & Position Count by Reporting Level

Change Group: C Change Type:A Change Number:All Include:Yes One Time:Included

IND00 MAINE COMMISSION ON INDIGENT LEGAL SERVICES

01095FZ11201 MAINE COMMISSION - INDIGENT LEGAL SVCS

Change Package: C-A-3 Priority: Include: Yes

Description: Establishes 3 Public Service Manager III Positions, 11 Public Service Manager II positions, 2 Public Service Coordinator I positions, and 4 Paralegal positions, plus associated All Other costs to create a statewide Appellate and Post-Conviction Review Defender Office.

Justification: This initiative establishes positions to create a statewide Public Defender Office to handle Appeals and Post-Conviction Review Cases. The positions established by this initiative will provide for a Director of Appeals and Post-Conviction Review, a Deputy Director of Appeals, a Deputy Director for Post-Conviction Review, three Senior Assistant Appellate Defenders, five Assistant Appellate Defenders, one Senior Post-Conviction Defender, two Assistant Post-Conviction Defenders, four Paralegals, one Post-Conviction Mitigation Specialist, and one Post-Conviction Investigator. The number of attorney positions is based on national caseload standards. This initiative also provides for associated All Other costs. This initiative is necessary to implement the recommendation of the Sixth Amendment Center to create a statewide Appellate Defender Office that was provided to the Legislature after a study of indigent legal services in Maine performed at the request of the Legislature.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
LEGISLATIVE COUNT	20.000	20.000
TOTAL	20.000	20.000
Appropriations and Allocations		
PERSONAL SVCS	2,316,794	2,431,949
ALL OTHER	210,647	142,647
TOTAL	2,527,441	2,574,596

Change Package: C-A-4 Priority: Include: Yes

Description: Provides additional funding for Indigent Legal Services.

Justification: This initiative provides funding necessary to cover the cost of Commission operations at their current level during the 22-23 Biennium. Since fiscal year 2016-2017, the Commission has routinely received All Other funding of \$18.3 million. This amount has been sufficient to cover the cost of Indigent Legal Services, and the Commission has operated with this flat-funding amount for a number of years now. The Commission continues to project that it will require \$18.3 million per year to fund current operations. Because of one-time funding in fiscal year 2019-2020, the All Other baseline budget for each year of the current biennium equals \$15.5 million per fiscal year. This initiative is necessary to meet the State's Constitutional obligation to provide representation at State expense to indigent clients.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Appropriations and Allocations		
ALL OTHER	2,804,980	2,804,980
TOTAL	2,804,980	2,804,980

Change Package: C-A-5 Priority: Include: Yes

Description: Provides additional funding for Indigent Legal Services.

Justification: This initiative provides funding to raise the hourly rate paid to attorneys representing indigent clients who are entitled to representation at State expense from \$60.00 per hour to \$100.00 per hour. This initiative implements the recommendation of the Sixth Amendment Center provided to the Legislature after a study of indigent legal services in Maine performed at the request of the Legislature. This initiative is necessary to ensure the provision of quality legal services to indigent clients.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Appropriations and Allocations		
ALL OTHER	11,465,959	11,465,959
TOTAL	11,465,959	11,465,959

Sec. A-38. Appropriations and allocations. The following appropriations and allocations are made.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: BASELINE BUDGET

	History 2019-20	History 2020-21	2021-22	2022-23
GENERAL FUND				
POSITIONS - LEGISLATIVE COUNT	0.000	11.500	11.500	11.500
Personal Services	\$0	\$899,599	\$954,855	\$977,284
All Other	\$9,000	\$15,521,725	\$15,521,725	\$15,521,725
GENERAL FUND TOTAL	\$9,000	\$16,421,324	\$16,476,580	\$16,499,009
	History 2019-20	History 2020-21	2021-22	2022-23
OTHER SPECIAL REVENUE FUNDS				
All Other	\$0	\$1,157,000	\$1,157,000	\$1,157,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$1,157,000	\$1,157,000	\$1,157,000

**MAINE COMMISSION ON INDIGENT LEGAL SERVICES Z112
PROGRAM SUMMARY**

	History 2019-20	History 2020-21	2021-22	2022-23
GENERAL FUND				
POSITIONS - LEGISLATIVE COUNT	0.000	11.500	11.500	11.500
Personal Services	\$0	\$899,599	\$954,855	\$977,284
All Other	\$9,000	\$15,521,725	\$15,521,725	\$15,521,725
GENERAL FUND TOTAL	\$9,000	\$16,421,324	\$16,476,580	\$16,499,009
	History 2019-20	History 2020-21	2021-22	2022-23
OTHER SPECIAL REVENUE FUNDS				
All Other	\$0	\$1,157,000	\$1,157,000	\$1,157,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$1,157,000	\$1,157,000	\$1,157,000

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

DEPARTMENT TOTALS	2021-22	2022-23
GENERAL FUND	\$16,476,580	\$16,499,009
OTHER SPECIAL REVENUE FUNDS	\$1,157,000	\$1,157,000
DEPARTMENT TOTAL - ALL FUNDS	\$17,633,580	\$17,656,009

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: HON. CHAIRS OF THE JOINT STANDING COMMITTEE ON
APPROPRIATIONS AND FINANCIAL AFFAIRS

HON. CHAIRS OF THE JOINT STANDING COMMITTEE ON JUDICIARY

FROM: JUSTIN W. ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: TESTIMONY WITH RESPECT TO THE PROPOSED FY'22 – FY'23
BIENNIAL BUDGET

DATE: MARCH 1, 2021

Honorable Chairs, Senators and Representatives, I am Justin W. Andrus, (Interim) Executive Director of the Maine Commission on Indigent Legal Services (Commission or MCILS). I appear before you today to testify in support of the proposed budget submitted by the Commission, as amended herein, and to correct an oversight in summary of SECTION FFF.

BRIEF OVERVIEW OF COMMISSION OPERATIONS

The Maine Commission on Indigent Legal Services is an independent commission whose purpose is to provide efficient, high-quality representation to indigent individuals who are entitled to counsel at state expense under the United States Constitution or under the Constitution or statutes of Maine. The Commission uses assigned private attorneys to provide representation to criminal defendants, juvenile defendants, parents in child protective cases, and people facing involuntary commitment to a psychiatric hospital who are indigent. The Commission may also use contract counsel but does not currently do so. The Commission's office staff consists of an (Interim) Executive Director, a Deputy Executive Director, an

Accounting Technician, and an Office Associate I. The Commission also employs nine (9) Financial Screeners, six (6) full time and three (3) part time, who work in courthouses assisting courts in the determination of whether a person is indigent, and if so, whether the person can reimburse the State for some or all of the cost of their representation. With respect to people ordered to make reimbursement, the Financial Screeners track payments and pursue collection efforts. Currently, Commission operations are overseen by six serving Commissioners.

In 2017, the Maine Legislature created the Working Group to Improve the Provision of Indigent Legal Services. That working group determined that the Commission did not provide systemic oversight and evaluation of attorneys, and was in need of stronger fiscal management and recommended an independent assessment. In March 2018, the Maine Legislative Council contracted the Sixth Amendment Center (6AC) to evaluate right to counsel services provided by MCILS and to recommend any needed changes.¹

The 6AC issued its report in April 2019. The report makes seven specific recommendations, five of which provide specific impetus to the Commission's budget initiatives²:

RECOMMENDATION 3: Except for ministerial, non-substantive tasks, the State of Maine and the Maine Commission on Indigent Legal Services should require that the same properly qualified defense counsel continuously represents the client in each case, from appointment through disposition, and personally appears at every court appearance throughout the pendency of an assigned case.

RECOMMENDATION 4: MCILS should use its current statutory power to promulgate more rigorous attorney qualification, recertification, training, supervision, and workload standards. The State of Maine should statutorily require financial oversight by requiring that MCILS limit the number of permissible billable hours, subject to

¹ Excepted from *The Right to Counsel in Maine: Evaluation of Services Provided by the Maine Commission on Indigent Legal Services*, Sixth Amendment Center, April 2019, at page IV, with permission. (the "6AC Report")

² The two recommendations not listed here require action from the legislature outside the direct ambit of the Commission.

waiver only upon a finding of need for additional capacity. The State of Maine should fund MCILS at a level to ensure rigorous training and effective substantive and financial oversight of attorneys.

RECOMMENDATION 5: The State of Maine should statutorily ban all public defense contracts that provide financial disincentives to or that otherwise interfere with zealously advocating on behalf of the defendants' stated interests, including the use of fixed fee contracts. Maine should require that any public defense contract include reasonable caseload limits, reporting requirements on any private legal work permitted, and substantial performance oversight, among other protections.

RECOMMENDATION 6: The State of Maine should fund MCILS at a level that allows private attorneys to be compensated for overhead expenses plus a reasonable fee (i.e., \$100 per hour). MCILS should be authorized to provide additional compensation of \$25 per hour for designated case types such as murder, sexual assaults, and postconviction review.

RECOMMENDATION 7: The State of Maine should authorize and fund MCILS at an appropriate level to employ state government attorneys and support staff to operate a statewide appellate defender office and a Cumberland County trial level public defender office.³

The depth and scope of the 6AC's investigation are detailed in its report, but its findings direct Commission operations at two distinct levels. The first was a renewed imperative to ensure that Commission operations are compliant with existing statutes and rules. The second was to chart a course toward actual compliance with the strictures of the Sixth Amendment, and the law of the State of Maine. Our budget initiatives are necessary to both sets of tasks.

Following the publication of the 6AC Report, the 129th Legislature's Government Oversight Committee ("GOC") directed the Office of Program Evaluation and Government Accountability ("OPEGA") to review Commission operations. From five initial evaluation areas listed in the project direction statement, GOC directed OPEGA to expedite the review of two:

³ *Id.*, p. IX – X.

- Adequacy of systems and procedures used by MCILS staff to process payments and expenditures associated with providing legal representation to clients who have been determined to be indigent or partially indigent; and
- Adequacy of the oversight structure of MCILS in ensuring that operations align with and accomplish the organization’s purpose.⁴

The OPEGA Report identified nine issues and provided guidance as to how those issues might be addressed. In its report, OPEGA also noted, however, that it:

observed a lack of sufficient staff to adequately meet the full responsibilities of the agency. When we asked the Executive Director about review or improvements to specific agency operations, the Executive Director described that the current MCILS staff is the minimum necessary to allow the system to continue to function. Thus, there was little time available to consider new initiatives, or improvements, to wider substantive structural issues such as quality of representation, the lawyer-of- the-day program, or the use of single-source contracts to provide legal services.⁵

The OPEGA findings are consistent with the 6AC findings. The Commission has substantial work to do to adequately meet its obligations to its indigent client-base, while providing appropriate oversight of both quality and finances; and, the Commission cannot meet those obligations and goals as currently resourced.

The Commission and its staff are justifiably proud of the attorneys who serve our clients and are enthusiastic for the opportunity to further promote the ability and integrity of that bar. The Commission and staff are also pleased to report that we have been able to begin to address nearly all the OPEGA recommendations in whole or part. Now, we are ready move forward in our evolution.

⁴ *Maine Commission on Indigent Legal Services (MCILS) – An evaluation of MCILS’s structure of oversight and the adequacy of its systems and procedures to administer payments and expenditures*, OPEGA, November 9, 2020 at overleaf. (the “OPEGA Report”)

⁵ OPEGA Report, p.23.

BUDGET OVERVIEW

The Commission proposes significant changes to its operations to promote compliance with the Sixth Amendment, Maine State law, and sound principles of agency oversight, all consistent with and considering the 6AC and OPEGA reports. Those changes cannot be made without additional resources. Where the Commission proposes hiring employee attorneys to serve clients, a legislative change will be required.

INITIATIVES AND BUDGET REQUEST

The Commission's budget initiatives are intended to address the shortcomings and adopt the recommendations of both the 6AC Report and the OPEGA Report. Without budget support for the Commission's proposals, it is not possible to make the progress we agree is necessary to meeting our legal charge. In the appendices to its report, the 6AC made specific recommendations to support constitutionally consistent operations.⁶ Those appendices are attached to this testimony. Rather than restate the Budget Narrative made part of those documents, I incorporate them here, except to the extent that we have updated certain numbers.

⁶ 6AC Report, p.97 *et seq.*

1. Change package C-A-1 / Commission Staff

The Commission asks that the Legislature include ten additional Commission staff positions, as recommended by the 6AC in its report, and as described at Appendix A to that report. The budget request of October 23, 2020 excludes from this initiative the Executive Director and Deputy Director positions because they already exist. We have recalculated the cost of this initiative in preparation for this hearing and conclude that the FY'22 cost for this initiative is \$1,113,607.40. The calculations supporting that conclusion are set out below beginning at page 9.

2. Change package C-A-2 / Kennebec County Defender Office

The Commission asks that the Legislature permit us to fund a single-county public defender office as recommended by the 6AC in its report, and as described at Appendix C to that report. The Commission has concluded that although the 6AC Report recommended opening a defender office in Cumberland County, doing so in Kennebec County presents an improved opportunity. We have recalculated the cost of this initiative in preparation for this hearing and conclude that the FY'22 cost for this initiative is \$2,094,911.28. The calculations supporting that conclusion are set out below beginning at page 11.

3. Change package C-A-3 / Appellate and Post-Conviction Review Office

The Commission asks that the Legislature permit us to fund an appellate and post-conviction review office as recommended by the 6AC in its report, and as described at Appendix B to that report. We have recalculated the cost of this initiative in preparation for this hearing and conclude that the FY'22 cost for this initiative is \$2,623,610.80. The calculations supporting that conclusion are set out below beginning at page 14.

4. Change package C-A-4 / Additional Funding

The Commission asks that the Legislature allocate an additional \$2,804,980 in each year of the biennium. This allocation would maintain the current level of Commission funding.

5. Change package C-A-5 / Additional Funding

The Commission asks that the Legislature provide an additional \$11,465,959 in each year of the biennium to implement the attorney rate increase identified by the 6AC as necessary to ensure the provision of quality legal services to indigent clients.

PART FFF

At section FFF-1 of the Executive’s Proposed Budget, 4 MRSA §1804(4)(D) is amended to enhance the Commission’s responsiveness to evolutions in operating conditions by changing rules that establish certain standards from major substantive rules to routine technical rules. The amendment to the statute does not change the status of the rules setting rates of compensation for assigned or contract counsel. In the summary, however, the inverse is described. The Commission recommends that the part FFF Summary read:

This Part allows the Maine Indigent Legal Services Commission to establish standards for assigned counsel and contract counsel through routine technical, rather than major substantive, rulemaking, enabling the Commission to make these changes more quickly and efficiently.

CONCLUSION

The Commission asks the Legislature to recognize the need for additional resources to permit it to provide the services and oversight that it is mandated to provide. The 2017 Working Group; the 6th Amendment Center; OPEGA; and the Commission itself agree that change must be implemented. Both the 6AC and OPEGA reports show that to implement that change without additional resources is impossible, however. For that reason, the Commission asks that you consider its budget request in full, as updated:

	FY’22	FY’23
Baseline Budget	\$ 16,476,580.00	\$ 16,499,009.00
Initiative: Commission Staff	\$ 1,113,607.40	\$ 1,113,607.40
Initiative: Defender Office	\$ 2,094,911.28	\$ 2,094,911.28
Initiative: Appellate Office	\$ 2,623,610.80	\$ 2,623,610.80
Initiative: Restoration of Baseline	\$ 2,804,980.00	\$ 2,804,980.00
Initiative: Fees adjustment	\$ 11,465,959.00	\$ 11,465,959.00
Totals	\$ 36,579,648.48	\$ 36,602,077.48

Package C-A-1 / Commission Staff

Position	Classification	Spec/grade		Step 3
Training Director	Public Service Coordinator II	47-31	Salary	\$ 70,720.00
			Fringe	\$ 49,907.00
Practice Standards/Quality Assurance Attorney	Public Service Coordinator II	47-31	Salary	\$ 70,720.00
			Fringe	\$ 49,907.00
Finance/Voucher Attorney	Public Service Coordinator II	47-31	Salary	\$ 70,720.00
			Fringe	\$ 49,907.00
Trial Resource Attorney	Public Service Coordinator II	47-31	Salary	\$ 70,720.00
			Fringe	\$ 49,907.00
Mental Health/SA/Sentencing Resource Attorney	Public Service Coordinator II	47-31	Salary	\$ 70,720.00
			Fringe	\$ 49,907.00
Audit Director	Auditor III	09-25	salary	\$ 54,641.00
			fringe	\$ 43,810.00
Field Examiner	Field Examiner II	04-20	salary	\$ 40,643.00
			fringe	\$ 38,500.00
Field Examiner	Field Examiner II	04-20	salary	\$ 40,643.00
			fringe	\$ 38,500.00
Voucher Review Staff	Auditor I	04-20	salary	\$ 40,643.00
			fringe	\$ 38,500.00

Training Staff	Public Service Coordinator I	47-21	salary	\$	46,238.00
			fringe	\$	40,625.00
			Salary total	\$	1,025,878.00

Bar dues	\$1,325.00
Cell phone	\$3,780.00
Eyeglass reimbursement	\$600.00
Legal research subscription	\$3,360.00
Monitor, mouse, keyboard*	\$6,000.00
Mileage	\$4,800.00
Office furniture*	\$24,800.00
Office supplies	\$7,500.00
OIT/TELCO	\$26,386.00
TELCO installation costs*	\$3,200.00
Service center (Payroll processing)	\$5,628.40
Subscriptions (rule and statute books)	\$350.00
<i>*notes a one-time first year cost</i>	
Ancillary Cost Total	\$87,729.40
Salary total	1,025,878.00
Total	\$1,113,607.40

Package C-A-2 / Kennebec County Defender Office

11	Classification	Spec/grade		Step 3
District Defender	Public Service Manager III	47-39	salary	102,003
			fringe	61,771
Deputy District Defender	Public Service Manager III	47-38	salary	97,052
			fringe	59,892
Serious Felony Defender	Public Service Manager III	47-37	salary	92,435
			fringe	58,137
Serious Felony Defender	Public Service Manager III	47-37	salary	92,435
			fringe	58,137
Senior Assistant Public Defender	Public Service Manager II	47-33	salary	77,001
			fringe	52,287
Senior Assistant Public Defender	Public Service Manager II	47-33	salary	77,001
			fringe	52,287
Assistant Public Defender	Public Service Manager II	47-31	Salary	70,720
			Fringe	49,907
Assistant Public Defender	Public Service Manager II	47-31	Salary	70,720
			Fringe	49,907
Assistant Public Defender	Public Service Manager II	47-31	Salary	70,720
			Fringe	49,907
Investigator	Public Service Coordinator I	47-21	salary	46,238
			fringe	40,625
Investigator	Public Service Coordinator I	47-21	salary	46,238

			fringe	40,625
Social Worker	Clinical Social Worker	04-25	salary	51,355
			fringe	42,566
Social Worker	Clinical Social Worker	04-25	salary	51,355
			fringe	42,566
Paralegal	Paralegal	04-20	salary	40,643
			fringe	38,500
Paralegal	Paralegal	04-20	salary	40,643
			fringe	38,500
Paralegal	Paralegal	04-20	salary	40,643
			fringe	38,500
Office Manager	Office Specialist II SUPV	81-22	salary	46,966
			fringe	40,905
		Salary Totals		\$1,929,187

Bar dues	\$2,385.00
Case management software	\$3,900.00
Cell phone	\$4,800.00
Eyeglass reimbursement	\$1,000.00
Legal research subscription	\$4,320.00
Monitor, mouse, keyboard*	\$10,200.00
Mileage	\$4,500.00
Office furniture*	\$42,160.00
Office supplies	\$12,750.00
OIT/TELCO	\$64,071.00
TELCO installation costs*	\$5,440.00
Service center (Payroll processing)	\$9,568.28
Subscriptions (rule and statute books)	\$630.00
<i>*notes a one-time first year cost</i>	
Ancillary Cost Total	\$165,724.28
Salary Totals	\$1,929,187
Total	\$2,094,911.28

Package C-A-3 / Appellate and Post-Conviction Review Office

Position	Classification	Spec/grade		Step 3
<i>Appellate Division</i>				
Appeal and Post-Conviction Review Director	Public Service Manager III	47-39	salary	102,003
			fringe	61,771
Appellate Division Deputy Director	Public Service Manager III	47-38	salary	97,052
			fringe	59,892
Senior Assistant Appellate Defender	Public Service Manager II	47-37	salary	92,435
			fringe	58,137
Senior Assistant Appellate Defender	Public Service Manager II	47-37	salary	92,435
			fringe	58,137
Senior Assistant Appellate Defender	Public Service Manager II	47-37	salary	92,435
			fringe	58,137
Assistant Appellate Defender	Public Service Manager II	47-33	salary	77,001
			fringe	52,287
Assistant Appellate Defender	Public Service Manager II	47-33	salary	77,001

			fringe	52,287
Assistant Appellate Defender	Public Service Manager II	47-33	salary	77,001
			fringe	52,287
Assistant Appellate Defender	Public Service Manager II	47-31	Salary	70,720
			Fringe	49,907
Assistant Appellate Defender	Public Service Manager II	47-31	Salary	70,720
			Fringe	49,907
Paralegal	Paralegal	04-20	salary	40,643
			fringe	38,500
Paralegal	Paralegal	04-20	salary	40,643
			fringe	38,500
Paralegal	Paralegal	04-20	salary	40,643
			fringe	38,500
Post-Conviction Review Division Deputy Director	Public Service Manager III	47-37	salary	92,435
			fringe	58,137
Senior Assistant Post-Conviction Defender	Public Service Manager II	47-33	salary	77,001
			fringe	52,287
Assistant Post-	Public Service Manager II	47-31	Salary	70,720

Conviction Defender			Fringe	49,907
Assistant Post- Conviction Defender	Public Service Manager II	47-31	Salary	70,720
			Fringe	49,907
Paralegal	Paralegal	04-20	salary	40,643
			fringe	38,500
Mitigation Specialist	Public Service Coordinator I	47-21	salary	46,238
			fringe	40,625
Investigator	Public Service Coordinator I	47-21	salary	46,238
			fringe	40,625
			Salary Totals	\$2,412,964

Bar dues	\$3,710.00
Case management software	\$5,400.00
Cell phone	\$7,908.00
Eyeglass reimbursement	\$1,200.00
Legal research subscription	\$6,720.00
Monitor, mouse, keyboard*	\$12,000.00
Mileage	\$500.00
Office furniture*	\$49,600.00
Office supplies	\$15,000.00
OIT/TELCO	\$59,972.00
TELCO installation costs*	\$6,400.00
Printing/Binding/Mailing	\$30,000.00
Service center (Payroll processing)	\$11,256.80
Subscriptions (rule and statute books)	\$980.00
<i>*notes a one-time first year cost</i>	
Ancillary Cost Total	\$210,646.80
Salary Totals	\$2,412,964.00
Total	\$2,623,610.80

APPENDIX A

MCILS ADMINISTRATION

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Executive Director	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Training Director	\$72,418.42	\$38,994.53	1	\$111,412.95
	Family Law Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Delinquency Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Adult Trial Resource Attorney	\$72,418.42	\$38,994.53	1	\$111,412.95
	Mental Health Resource Atty	\$72,418.42	\$38,994.53	1	\$111,412.95
	Audit Director	\$70,675.00	\$39,578.00	1	\$110,253.00
	Training staff	\$37,408.00	\$20,948.48	2	\$116,712.96
	Auditing staff	\$37,408.00	\$20,948.48	2	\$116,712.96
Sub-Total					\$1,207,304.98

NON-PERSONNEL EXPENSES	CURRENT	PROJECTED
Risk management insurances	\$1,795.39	\$7,181.56
Mailing/postage/freight	\$4,675.71	\$18,702.84
Cellular phones service	\$1,406.69	\$5,626.76
Service center	\$3,095.00	\$12,380.00
Office supplies & equipment	\$2,062.61	\$8,250.44
Office equipment rental	\$1,274.45	\$5,097.80
Eyeglasses reimbursement	\$300.00	\$1,200.00
OIT/TELCO	\$27,774.75	\$111,099.00
Subscriptions	\$327.75	\$1,311.00
Dues	\$585.00	\$2,340.00
Annual report prorated	\$9.58	\$38.32
Annual parking permit fee	\$1,140.00	\$4,560.00
Printing/binding	\$22.00	\$88.00
InforME annual fee	\$2,640.00	\$10,560.00
Sub-Total		\$188,435.72

CAPITAL EXPENDITURES	RATE	NUMBER	TOTAL
Laptop computer	\$1,400.00	10	\$14,000.00
Furniture	\$1,200.00	10	\$12,000.00
Cell phones	\$300.00	10	\$3,000.00
Sub-Total			\$29,000.00

GRAND TOTAL	\$1,424,740.70		
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BUDGET NARRATIVE

In addition to the current Director and Deputy Director, the 6AC recommends the addition of five attorney positions: Training Director, Family Law Resource Attorney, Juvenile Resource Attorney, Mental Health Resource Attorney, and Adult Trial Resource Attorney. Each of the Resource Attorneys will provide direct supervision and provide help desk assistance to attorneys in the field. The Training Director will be responsible for developing and instituting new attorney and on-going training programs, as well as periodic topic-specific trainings to be delivered regionally and remotely. The Training Director will oversee a staff of two to help with logistics and training development. MCILS should also have a dedicated professional with an auditing background to oversee all financial auditing functions, supported by two professional staff members.

With the additional staff, the 6AC recommend that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³³⁵ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³³⁶ The new attorney positions are paid salaries and benefits at the rate paid to assistant district attorneys (\$111,412.95).³³⁷ Although the 6AC are not experts in the prosecution function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine is under-resourced, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison.

The Auditing Director is projected at the salary and compensation of the current MCILS Deputy Director (\$110,253). The four training and auditing staff are compensated at the current salary and benefits package of the existing rate for the Accounting Technician (\$58,356.48).³³⁸

Non-personnel expenses reflect the current MCILS budget,³³⁹ less line items dedicated specifically for financial screeners. Each expense was prorated based on the existing three MCILS staff members (excluding financial screeners and costs associated

³³⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³³⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³³⁷ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³³⁸ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³³⁹ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

primarily for screening) and then multiplied by the recommended staff of twelve. Capital outlay expenses for new computers, furniture, and cell phones are calculated at available retail rates.

APPENDIX B

STATE APPELLATE DEFENDER OFFICE

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Chief Public Defender	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Public Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Assistant Public Defender	\$72,418.42	\$38,994.53	11	\$1,225,542.45
	Investigator	\$43,068.00	\$24,118.08	1	\$67,186.08
	Social Worker	\$43,068.00	\$24,118.08	1	\$67,186.08
	Paralegal	\$38,500.00	\$21,560.00	3	\$180,180.00
	Office Manager	\$43,068.00	\$24,118.08	1	\$67,186.08
Sub-Total					\$1,913,842.00
NON-PERSONNEL EXPENSES				COST/STAFF	PROJECTED
Risk Management Insurances				\$598.46	\$11,370.80
Mailing/Postage/Freight				\$1,558.57	\$29,612.83
Cellular Phones				\$468.90	\$8,909.04
Service Center (payroll processing, etc.)				\$1,031.67	\$19,601.67
Office Supplies/Equip.				\$687.54	\$13,063.20
Office Equipment Rental				\$424.82	\$8,071.52
Eyeglasses reimbursement				\$100.00	\$1,900.00
OIT/TELCO				\$9,258.25	\$175,906.75
Subscriptions				\$109.25	\$2,075.75
Dues				\$195.00	\$3,705.00
Annual report prorated				\$3.19	\$60.67
Annual parking permit fee				\$380.00	\$7,220.00
Printing/Binding				\$7.33	\$7,500.00
InforME Annual Fee (webhosting, etc.)				\$880.00	\$16,720.00
Rent				\$5,000.00	\$95,000.00
Sub-Total					\$400,717.22
CAPITAL EXPENDITURES			RATE	NUMBER	TOTAL
Laptop computer			\$1,400.00	19	\$26,600.00
Furniture			\$1,200.00	19	\$22,800.00
Cell phones			\$300.00	19	\$5,700.00
Sub-Total					\$55,100.00
GRAND TOTAL					\$2,369,659.22

BUDGET NARRATIVE

For 2018, MCILS reports that there were 235 direct appeal cases and 96 post-conviction cases statewide. Assuming 80% are handled in-house, that means a new statewide appellate office will handle approximately 265 direct appeal and post-conviction cases. The NAC standards are nationally recognized as the absolute upper limit of cases that a defense attorney can be expected to handle and still provide effective, zealous representation to each and every client. For appellate services, the NAC Standards prescribe that attorneys should handle no more than 25 appeals in a single year.³⁴⁰ Thus eleven attorneys are needed to staff the office.

National standards require one supervising attorney for every ten attorneys carrying a full caseload.³⁴¹ Therefore, in addition to a Chief Appellate Defender, a Deputy Chief Defender is required for supervision.

Although national standards require one investigator for every three staff attorneys³⁴² and one social worker for every three attorneys,³⁴³ these standards are generally seen as applying to trial practice. Therefore, we are recommending one investigator and one social worker for the appellate office to assist on the post-conviction workload. National standards also require one paralegal for every four staff attorneys.³⁴⁴

The 6AC recommends that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³⁴⁵ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³⁴⁶ The new attorney positions are paid salaries and benefits at the rate paid to assistant district attorneys (\$111,412.95).³⁴⁷ Again, although the 6AC are not experts in the prosecution

³⁴⁰ NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), Std. 13.12 (1973).

³⁴¹ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers.”).

³⁴² NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.”).

³⁴³ NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES § VII.F, available at <http://www.nlada.org/defender-standards/model-contract/black-letter>

³⁴⁴ U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE PUB. NO. NCJ185632, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001).

³⁴⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁴⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

³⁴⁷ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine is under-resourced, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison. Support staff salaries and benefits are based on support staff compensation in the Cumberland County District Attorney Office.

Non-personnel expenses reflect the current MCILS budget, less line items dedicated specifically for financial screeners. The rent projection is based on \$25 per square foot charged against 200 square feet per staff (or \$5,000 per staff member). Capital outlay expenses for new computers, furniture, and cell phones were calculated at available retail rates.

APPENDIX C

CUMBERLAND COUNTY TRIAL LEVEL PUBLIC DEFENDER OFFICE

PERSONNEL	TITLE	SALARY	BENEFITS	POSITIONS	TOTAL
ATTORNEYS	Chief Public Defender	\$101,002.17	\$54,385.78	1	\$155,387.95
	Deputy Public Director	\$96,906.00	\$54,267.36	1	\$151,173.36
	Assistant Public Defender	\$72,418.42	\$38,994.53	12	\$1,336,955.40
	Investigator	\$43,068.00	\$24,118.08	4	\$268,744.32
	Social Worker	\$43,068.00	\$24,118.08	4	\$268,744.32
	Paralegal	\$38,500.00	\$21,560.00	3	\$180,180.00
	Office Manager	\$43,068.00	\$24,118.08	1	\$67,186.08
Sub-Total					\$2,428,371.43

NON-PERSONNEL EXPENSES	CURRENT	PROJECTED
Risk Management Insurances	\$598.46	\$15,560.05
Mailing/Postage/Freight	\$1,558.57	\$40,522.82
Cellular phones service	\$468.90	\$12,191.31
Service Center (payroll processing, etc.)	\$1,031.67	\$26,823.33
Office Supplies/Equip.	\$687.54	\$17,875.95
Office Equipment Rental	\$424.82	\$11,045.23
Eyeglasses reimbursement	\$100.00	\$2,600.00
OIT/TELCO	\$9,258.25	\$240,714.50
Subscriptions	\$109.25	\$2,840.50
Dues	\$195.00	\$5,070.00
Annual report prorated	\$3.19	\$83.03
Annual parking permit fee	\$380.00	\$9,880.00
Printing/Binding	\$7.33	\$190.67
InforME Annual Fee (webhosting, etc.)	\$880.00	\$22,880.00
Rent	\$5,000.00	\$130,000.00
Sub-Total		\$538,277.39

CAPITAL EXPENDITURES	RATE	NUMBER	TOTAL
Laptop computer	\$1,400.00	26	\$36,400.00
Furniture	\$1,200.00	26	\$31,200.00
Cell phones	\$300.00	26	\$7,800.00
Sub-Total			\$75,400.00

GRAND TOTAL	\$3,042,048.82
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BUDGET NARRATIVE

For 2018, MCILS reports 1,232 murder, class A, B, and C cases, 2,022 class D and E cases, and 329 juvenile crime cases in Cumberland County. Assuming 80% are handled in-house, that means a new trial level public defender office would handle 985 felony cases, 1,618 misdemeanor cases, and 263 delinquency cases. The NAC standards are nationally recognized as the absolute upper limit of cases that a defense attorney can be expected to handle and still provide effective, zealous representation to each and every client. For adult trial level services, the NAC standards prescribe that attorneys should handle no more than 150 felonies in a single year, or 400 misdemeanors, or 200 delinquency cases.³⁴⁸ Thus twelve attorneys are needed to staff the office.

National standards require one supervising attorney for every ten attorneys carrying a full caseload.³⁴⁹ Therefore, in addition to a Chief Public Defender, a Deputy Chief Defender is required for supervision.

National standards require one investigator for every three staff attorneys³⁵⁰ and one social worker for every three attorneys.³⁵¹ This means that the new Cumberland County public defender office will need four investigators and four social workers. National standards also require one paralegal for every four staff attorneys,³⁵² requiring the new office to have three paralegals.

The 6AC recommend that the Director position be paid on par with the salary and compensation of a District Attorney (\$155,387.95)³⁵³ and that the Deputy Director be paid what the MCILS Director is currently being paid (\$151,173.36).³⁵⁴ The new attorney positions are paid salaries and benefits at the rate paid to assistant district

³⁴⁸ NATIONAL ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON THE COURTS, ch. 13 (The Defense), Std. 13.12 (1973).

³⁴⁹ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Proper attorney supervision in a defender office requires one full-time supervisor for every ten staff lawyers, or one part-time supervisor for every five lawyers.”).

³⁵⁰ NATIONAL STUDY COMM'N ON DEFENSE SERVICES, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES 4.1 (1976) (“Defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office. Every defender office should employ at least one investigator.”).

³⁵¹ NATIONAL LEGAL AID & DEFENDER ASS'N, MODEL CONTRACT FOR PUBLIC DEFENSE SERVICES § VII.F, *available at* <http://www.nlada.org/defender-standards/model-contract/black-letter>.

³⁵² U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE PUB. NO. NCJ185632, KEEPING DEFENDER WORKLOADS MANAGEABLE (2001).

³⁵³ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁵⁴ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

attorneys (\$111,412.95).³⁵⁵ Again, although the 6AC are not experts in the prosecution function, 6AC staff has travelled all across the country and interacted with numerous prosecutors, and it is our general observation that the prosecution function in Maine lacks adequate funding, especially in relation to salaries and compensation. Still, we present these recommendations because the prosecution function offers the best current comparison. Support staff salaries and benefits are based on support staff compensation in the Cumberland County District Attorney Office.

Non-personnel expenses reflect the current MCILS budget, less line items dedicated specifically for financial screeners. Each expense³⁵⁶ was prorated based on the existing three MCILS staff members and then multiplied by the recommended staff of eleven. The rent projection is based on \$25 per square foot charged against 200 square feet per staff (or \$5,000 per staff member). Capital outlay expenses for new computers, furniture and cell phones were calculated at available retail rates.

³⁵⁵ Email from Mark A. Toulouse, Division Chief – Finance & Administrative Services, Office of the Attorney General State of Maine, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 12, 2019). This amount reflects salary plus benefits calculated at approximately 35% of salary.

³⁵⁶ Email from John Pelletier, Director, Maine Commission on Indigent Legal Services, to David Carroll, Executive Director of Sixth Amendment Center (Mar. 7, 2019).

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: SENATOR LISA KEIM

FROM: JUSTIN W. ANDRUS (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: UTILITY OF INCREASED STAFF AT DIFFERENT STAFFING LEVELS

DATE: 3/5/2021

Senator Keim, this memorandum responds to your email of Thursday, March 4, 2021. Thank you for the opportunity to provide our input. The Commission appreciates your attention to our budget needs. In follow up to your email, I have prepared the following material. I have also been asked to consider what the Commission might accomplish with what I see as the minimum incremental cost that would have a substantial positive effect on adherence to the Sixth Amendment and have prepared a memorandum on that subject as well. The ideas set forth in that memorandum represent my best ideas for what could be accomplished at staff increases of six, seven, and ten.

In reviewing this material, please consider that I believe the following steps would be helpful from my desk as (Interim) Executive Director, but that the MCILS budget proposal must come from the Commission itself. These elements thus reflect my individual professional perspective on how to achieve the most with the least. It remains my perspective that the Commission must be fully funded to a degree exceeding these steps to achieve full compliance with the Sixth Amendment and State of Maine Constitutional and Statutory mandates.

I have worked as quickly as possible to prepare this material. In preparing this memorandum, I have relied on my own experience and observation at the Commission. My opinions as to how to meet the Commission's obligations are informed by the Sixth Amendment Center Report; the OPEGA Report; the ABA Principles; and, other sources. I have relied heavily on the Massachusetts Committee for Public Counsel Services standards and policies as representing a gold-standard for public defense systems. The information and ideas I share with you represent my best effort at a clean sheet look at meeting Commission obligations. I will beg your forbearance if we identify additional information for presentation to you at the work session.

I. Effective application of additional staff resources

As I consider how I would apply additional staffing resources, I start by thinking about areas in which the Commission should improve its performance. In broad terms, Commission operations can be reasonably divided between administrative and operational functions performed by the central office staff now, and attorney management functions that have historically been performed by central office staff but that should be performed by additional staff members in the future. Those attorney management functions can be further subdivided into training; supervision; quality assurance; and, audit functions. If the Commission were to receive the resources necessary to add central office staff, those resources would be best applied first to the attorney supervision functions. Ultimately, more staff members are required to provide adequate training, supervision, and performance quality assurance then are required to provide the audit function. At the outset, however, I would provision the attorney quality functions roughly equally to the audit function to ensure that both elements were being addressed. This would hold true from two through six new positions. The seventh new position I would assign to improve the tempo of the administrative and operation functions. The eight through tenth positions I would assign to the quality assurance functions.

I would allocate additional staff as follows:

Total Additional Staff	Audit	Q/A	Office
2	1	1	
4	2	2	
6	3	3	
7	3	3	1
8	3	4	1
9	3	5	1
10	3	6	1

The audit function is the easiest to quantify from a staffing perspective. With respect to the audit function, the fiscal year 2018 to fiscal year 2020 average case volume was 27,083 cases per year. A genuine audit of an attorney's financial compliance in a specific case would require obtaining and reviewing documents directly related to the case; potentially obtaining collateral documents to determine whether the attorney invoice accurately reflects work done; and, would also likely involve communication with collateral contacts. I anticipate that a meaningful audit of a single case would likely occupy one full work day of hours, even though those hours might not all be worked on the same day. At the average case rate described above, it would take 1.35 staff per 1% of the total case volume to provide the audit function on a random basis. It would require an additional 5 staff per 4% of the caseload for each additional volume of random auditing to be performed. Based on my experience to date, which is limited in time, I anticipate up to 26 audits triggered by complaints in any given year. I anticipate that complaint generated audits would lead to full audits of an attorney's practice over a given period of time, rather than remaining limited to a single case. To perform a reasonable audit of an attorney's entire practice would, I estimate, take between one and three weeks per attorney. In addition to random audits and complete triggered audits, we would also have audit activity related to the risk triggers. I cannot yet quantify the extent to which risk triggers will impact the audit function in full because our software vendor has not yet updated our software to permit me to assess that need. Altogether, however, I anticipate that a fully staffed audit office would require 4 full time employees at a 1% random audit density.

The following table represents the number of random case audits possible at a range of staffing levels consistent with adequately supporting Commission quality oversight, but excludes any in-depth attorney audits:

Total staff increase	Audit Function Increase	Random audits as percentage of total
2	1	0.74
	1.35	1.00
4	2	1.48
6	3	2.22
8	3	2.22
10	3	2.22

If the audit staff performed full time attorney practice audits, each staff person could be assumed to perform between 15 and 52 audits per year, representing 16% of the attorneys serving MCILS clients at the high end, to 4.6% at the low end. These might include random audits or complaint driven audits, as well as risk-trigger audits once Justice Works updates Defender Data. Attorney audits would reduce the outstanding cases to be audited, but I am unable to express that relationship mathematically because each attorney has a different share of the total case volume.

I would note that I anticipate, but cannot prove to a certainty, that attorney practice audits will be more efficient than individual case audits because a similar number of communications will occur but will net differing amounts of data. There will be time saved by acquiring aggregated data during practice audits.

On the quality assurance side, the precise work performed by newly added staff members at differing staff levels is harder to quantify. The work done will be informed by both the staff count and the direction that staff is given. Ultimately, any number of new staff members between two and is ten may struggle to provide adequate training, supervision, and performance quality assurance.

Additional q/a staff: 1

The most effective use of a single addition to the q/a division would likely be to organize and present quality training opportunities to MCILS contract attorneys. That single individual would reach the most attorneys, and thus have the largest impact for the investment in that arena. Investigation of complaints would remain in the Executive Director's office. It would not be possible implement meaningful review of even a sample of compliance documentation with one additional staff person.

Additional q/a staff: 2

The second q/a staff should focus on implementing and the evaluating ongoing performance documentation. These should include a requirement that counsel provide a working log of tasks performed in their cases, together with a standardized case conclusion form. This person could not review all of this material, but could randomly sample.

This person should also observe attorney performance from time to time on a randomized basis, or if there is a particularized concern about a certain attorney or firm.

Additional q/a staff: 3

The third q/a staff person should be tasked to investigate performance and conduct complaints. That person should present investigative material and opinions to the Executive Director for decision making.

Additional q/a staff: 4 / 5

The fourth and fifth staff people would not be attorneys, but support professionals who would participate in the training and performance supervision functions with their supervising attorneys. I would staff the performance supervision role first.

Additional q/a staff: 6

With a total of six people in the q/a division, one should be the division lead, leaving one attorney for each of the training, supervision, and investigation functions. The training and supervision staff functions would be supported by paralegal staff.

II. Incremental cost of statewide Appellate Defender office

In your email you asked me to calculate the incremental cost of a statewide appellate defender office. The table below shows the total value of the attorney vouchers paid for appeals and post-conviction review matters for fiscal years 2018 through 2020. The average total cost over that period was \$640,585 per year. In the testimony I submitted earlier this week I found that the cost for an appellate public defender office would be \$2,623,610 per year. The increase would thus be \$1,983,054.00 per year

	FY20	FY19	FY18	Average
Appeals	384,368.25	378,316.03	465,612.14	409,432.14
PCR	164,620.22	193,233.16	335,607.72	231,153.7
Total	548,988.47	571,549.19	801,219.86	640,585.84
			App/PCR Office	2,623,640.8
			Average Atty cost	640,585.84
			Expert costs	
			Net increase FY22	1,983,054.96

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

TO: SENTATOR ANNE CARNEY

FROM: JUSTIN W. ANDRUS, (INTERIM) EXECUTIVE DIRECTOR

SUBJECT: MCILS INITIATIVES

DATE: 3/9/2021

Senator Carney, this memorandum follows our conversation of Friday morning, as updated after our conversation of this morning. The Commission appreciates your attention to our budget needs. In follow up to that conversation, I have prepared the following material. I believe it reflects the substance of our discussion about the minimum steps that would have the maximal positive impact on Commission operations. I have also been asked to consider what the Commission might accomplish with staff increases in other increments and will address that question in another memorandum. The ideas set forth here represent my best ideas for what could be accomplished at staff increases of six, seven, and fourteen.

In reviewing this material, please consider that I believe the following steps would be helpful from my desk as (Interim) Executive Director, but that the MCILS budget proposal must come from the Commission itself. These elements thus reflect my individual professional perspective on how to achieve the most with the least. It remains my perspective that the Commission must be fully funded to a degree exceeding these steps to achieve full compliance with the Sixth Amendment and State of Maine Constitutional and Statutory mandates.

Deputy Director Maciag and I have worked as quickly as possible to prepare this material for the Committee. In preparing for our conversation, and then in preparing this memorandum, I have relied on my own experience and observation at the Commission. My opinions as to how to meet the Commission's obligations are informed by the Sixth Amendment Center Report; the OPEGA Report; the ABA Principles; and, other sources. I have relied heavily on the Massachusetts Committee for Public Counsel Services standards and policies as representing a gold-standard for public defense systems. The information and ideas I have shared with you represent my best effort at a clean sheet look at meeting Commission obligations. I will beg your forbearance if we identify additional information for presentation to you at the work session.

The current central office staff of the Commission consists of four people: Executive Director; Deputy Director; Accounting Technician; and, an Office Associate. The Commission is also supported by nine Financial Screeners who work outside the office and report to the Deputy Director. The three initiatives presented here would support the ability of the Commission to provide constitutionally and statutorily required services by expanding both the scope of oversight it could provide, and the depth of its engagement with its contract attorneys.

The first proposed element adds six staff to the Commission. Four would be attorneys. Two would be paralegals. Those six individuals would be divided into three teams of two, each with a lead attorney, a second attorney, and a paralegal. We have determined the cost of this element assuming that each lead attorney is senior to each second attorney.

National standards for defense attorney supervision calls for a ratio of no more than ten defense attorneys working under one supervisor. There are currently approximately 325 attorneys providing representation on behalf of the Commission. Deputy Director Maciag and I proctored the minimum standards training for approximately 25 individuals seeking to become rostered attorneys on March 4th and, for approximately 20 individuals seeking to become rostered attorneys in child protective cases on March 5th. There was some overlap between those groups. Assuming that we would thus have between 325 and 350 rostered attorneys in the near future the standards would call for us to have 32 - 35 supervisors.

Element one of the proposal we discussed provides two attorney supervisors and a paralegal to fulfill all of the supervision and quality assurance functions necessary to the provision of constitutionally acceptable representation. Those attorneys would be responsible for preparing and presenting training; maintaining rosters of eligibility for specialized case types; ensuring compliance with documentation standards; reviewing documentation and attorney work product, together with any necessary interviewing, to ensure that attorneys are providing constitutionally adequate representation; and, investigating complaints.

At the staffing level specified in element one, it will be possible to provide significantly improved training; to properly maintain the rosters; and, to have a meaningful investigation process to address complaints regarding an attorney's performance. It would not be reasonably possible to provide acceptable supervision in or out of the courtroom, or to ensure full compliance with documentation and performance standards.

With respect to the audit function, the fiscal year 2018 to fiscal year 2020 average case volume was 27,083 cases per year. A genuine audit of an attorney's financial compliance in a specific case would require obtaining and reviewing documents directly related to the case; potentially obtaining collateral documents to determine whether the attorney invoice accurately reflects work done; and, would also likely involve communication with collateral contacts. I anticipate that a meaningful audit of a single case would likely occupy one full workday of hours, even though those hours might not all be worked on the same day. At the average case rate described above, it would take 1.35 staff per 1% of the total case volume to provide the audit function on a random basis. It would require an additional 5 staff per 4% of the caseload for each additional volume of random auditing to be performed. Based on my experience to date, which is limited in time, I anticipate up to 26 audits triggered by complaints in any given year. I anticipate that complaint generated audits would lead to full audits of an attorney's practice over a given period of time, rather than remaining limited to a single case. To perform a reasonable audit of an attorney's entire practice would, I estimate, take between one and three weeks per attorney. In addition to random audits and complete triggered audits, we would also have audit activity related to the risk triggers. I cannot yet quantify the extent to which risk triggers will impact the audit function in full because our software vendor has not yet updated our software to permit me to assess that need. Altogether, however, I anticipate that a fully staffed audit office would require 4 full time employees at a 1% random audit density. Element one of this proposal does provide a better audit function than we have today but would fall short of meeting our full audit needs in the future.

Element 1:

Description: Establishes six positions: four Public Service Manager II attorney positions; and, two paralegal positions within the Commission plus associated all other costs.

Justification: This initiative establishes positions to support and enhance the ability of the Commission to provide constitutionally and statutorily required services by expanding both the scope of oversight it could provide, and the depth of its engagement with its contract attorneys. These six positions would be divided into two divisions within the Commission. Each would consist of two attorneys and one paralegal. One division would be responsible for performing audits of attorney billing and non-counsel invoicing. The other would be responsible for providing supervision, training, and quality assurance investigation.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
Legislative Count	6.00	6.00
Total	6.00	6.00
Appropriations and Allocations		
Personal Services	658,116.00	682,868.00
All other	47,073.44	27,573.44
Total	705,189.44	710,441.44

Element 2 is designed to increase the operational efficiency and tempo of the Commission executive staff by providing direct support to the executive director and the deputy director. At this time communication and information distribution duties occupy a disproportionately high number of executive staff hours. The office specialist contemplated at element 2 could receive communications from outside the Commission; research the needs of those calling and emailing executive staff; and, after discussion and under direction from the executive staff could communicate responses and decisions back out. As many of the communications the Commission receives are simultaneously necessary to the ability of an individual attorney to represent an individual client and disruptive to the ability of the Commission staff to engage in projects uninterrupted, adding an individual in this role would result in a significant net savings of time, exceeding the actual time the communications require by illuminating the time required to resume interrupted tasks.

Element 2:

Description: Establishes one position: Office Specialist II position within the Commission plus associated all other costs.

Justification: This initiative establishes one position to support and enhance the ability of the Commission to provide constitutionally and statutorily required services by assisting the Executive Director and Deputy Director with the communication and implementation of management activities permitting the executive staff to ensure timely attention to operational needs.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
Legislative Count	1.00	1.00
Total	1.00	1.00
Appropriations and Allocations		
Personal Services	87,871.00	91,109.00
All other	7,642.24	4,392.24
Total	95,513.24	95,501.24

Element 3 builds on element one by making the quality assurance function of the Commission more robust. With the addition of the staff members contemplated by element 3, the attorney supervision elements described above would be restructured. There would be one attorney staff member responsible for the supervision division. The supervision division would then be divided into 3 subdivisions. Two would consist of an attorney working with a paralegal. One would consist of an attorney working individually. The first subdivision would be responsible for training period and the second subdivision would be responsible for quality assurance through direct supervision and monitoring. The third subdivision would be responsible for investigating complaints regarding attorney performance.

Element 3:

Description: Establishes seven positions: four Public Service Manager II attorney positions; and, three paralegal position within the Commission plus associated all other costs.

Justification: This initiative establishes positions to support and enhance the ability of the Commission to provide constitutionally and statutorily required services by expanding both the scope of oversight it could provide, and the depth of its engagement with its contract attorneys. These seven positions would, with the six positions described in element one, further enhance the two proposed divisions within the Commission. The audit division would consist of two attorneys and two paralegals. The oversight division would be further divided into three subdivisions. The training subdivision would consist of one attorney and one staff person. The supervision subdivision would consist of three attorneys and two paralegals. The investigation subdivision would consist of one attorney and one paralegal.

	Part A Initiatives & Other FY 22	Part A Initiatives & Other FY 23
Positions		
Legislative Count	7.00	7.00
Total	7.00	7.00
Appropriations and Allocations		
Personal Services	658116.00	682868.00
All other	54715.68	31965.68
Total	712831.68	714833.68