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STATE OF MAINE
ONE HUNDRED AND THIRTY-FIRST LEGISLATURE
COMMITTEE ON JUDICIARY

TO: Senator Peggy Rotundo, Senate Chair
Representative Melanie F. Sachs, House Chair
Joint Standing Committee on Appropriations and Financial Affairs

FROM: Senator Anne M. Carney, Senate Chair AC
Representative Matthew W. Moonen, House Chair MM
Joint Standing Committee on Judiciary

DATE: January 31, 2023

RE: Recommendations on the Governor’s Proposed Supplemental Budget, LD 206,
An Act to Make Supplemental Appropriations and Allocations from the General
Fund and Other Funds for the Expenditures of State Government and to Change
Certain Provisions of the Law Necessary to the Proper Operations of State
Government for the Fiscal Year Ending June 30, 2023

On Thursday, January 26, 2023, the Joint Standing Committee on Judiciary met to review the items in the Governor’s Proposed Supplemental Budget (LD 206) pertaining to the agencies under the Judiciary Committee’s jurisdiction.

The committee voted to accept all of the initiatives set forth within its portion of the proposed supplemental budget, with one notable exception: The committee strongly and unanimously believes that the initiative proposed in the Governor’s supplemental budget for the Maine Commission on Indigent Legal Services (MCILS), Reference No. 161, is inadequate to fulfill the State’s legal and moral obligation to appoint counsel to represent indigent litigants at State expense in situations in which the United States and Maine Constitutions and laws require the State to provide such counsel at state expense.

Urgent Problem: Lack of Attorneys Willing to Accept Court Appointments

As you know, the State is responsible for providing attorneys to represent certain criminal defendants, juvenile defendants, juveniles seeking emancipation, parents in child protective cases and individuals facing involuntary commitment to a psychiatric hospital if these persons are indigent.

- In 2018, there were a total of approximately 410 qualified attorneys willing to accept court appointments in these cases. However, the number of qualified attorneys who

remain willing to accept court appointments has declined precipitously since that time. As of January 25, 2023, Executive Director Justin Andrus reported that there were only 190 qualified attorneys willing to accept court appointments of any kind. Of these, only 59 qualified attorneys were willing to accept criminal case assignments and only 72 attorneys were willing to accept child protection case assignments.

- At the same time, as is demonstrated in the most recent annual report from MCILS, the number of cases in which the State is obligated to provide counsel for indigent litigants has increased from approximately 27,000 total cases in 2018 to approximately 32,000 total cases in 2022.
- Not only has the raw number of cases increased, but their complexity has increased as well. Both the Chief Justice of the Supreme Judicial Court and the Maine Prosecutors' Association reported to our committee earlier this month that, since 2019, there has been a 84.9% increase in the number of pending felony cases in the State.
- Based on the caseload standards being proposed by MCILS for attorneys who accept court appointments, Executive Director Andrus estimates that, as of January 25, 2023, the State needed approximately 146 new attorneys who are willing to work full-time on MCILS cases to absorb the current caseload.

Constitutional Crisis

The State is facing a constitutional crisis due to the severe shortage of attorneys available to accept court appointments. The lack of attorneys willing to accept appointments not only affects criminal defendants and other indigent litigants whose constitutional rights are at stake, but it also has tremendous negative effects throughout the criminal justice system. These effects are felt by crime victims who experience real and serious safety concerns while their cases remain unresolved, prosecutors whose ability to meet their burden of proof declines as time elapses between arrest and trial, and court clerks who must now dedicate substantial additional time and effort securing attorneys for each case as well as rescheduling cases that have to be continued due to lack of counsel, seriously hindering their ability to complete their other full-time job responsibilities. While there are undoubtedly many factors contributing to the current situation, we were struck by the fact that the Maine Prosecutor's Association, Maine Judicial Branch, Maine Association of Criminal Defense Attorneys and Maine State Bar Association all agree that raising the compensation rate for court-appointed counsel is the most important short-term step that the State can take to address this crisis.

MCILS Initiative in Proposed Supplemental Budget Is Inadequate

Unfortunately, we have learned that the proposal to create a tiered billing rate for counsel of between \$80 per hour and \$150 per hour effective May 1, 2023 is an untenable solution. Not only will it require a significant amount of careful time and consideration to develop an appropriate tiered-fee structure, but a tiered system is also administratively unmanageable given the current software utilized by MCILS. Even if it were possible to implement a new tiered fee structure by May 1, 2023, we are deeply concerned that, given the current shortage of and downward trend of qualified attorneys willing to accept court appointments, the system will be irretrievably broken well before May 1, 2023. MCILS Staff has calculated that a billing rate of \$150 per hour will both meet the expenses incurred by attorneys who perform indigent defense

work and bring parity between the cost to the State of a typical assistant district attorney and an attorney who accepts court-appointments in MCILS cases full time.


For all of these reasons, we unanimously recommend that the Appropriations Committee replace the proposal in Reference No. 161 of the Governor's proposed supplemental budget with the attached new initiative that will allow MCILS to increase the billing rate for court-appointed legal counsel to a new rate of no more than \$150 per hour effective March 1, 2023.

In addition to the new initiative language, please find attached the report-back template prepared by the Office of Fiscal and Program Review, upon which we have recorded the committee's votes on each initiative. All votes were unanimous of those physically present at the time of the vote, including our tribal representative member. In addition, the four committee members who had permission from their respective Presiding Officer to participate electronically also unanimously supported each of the committee's recommendations.

Sincerely,



Sen. Anne M. Carney
Senate Chair



Rep. Matthew W. Moonen
House Chair

c:

Judiciary Committee -- Supplemental Budget Report-Back Template

Sec. A-3. Appropriations and allocations. The following appropriations and allocations are made.

ATTORNEY GENERAL, DEPARTMENT OF THE

Administration - Attorney General 0310

** See 1st initiative on budget page A-5 **

Initiative: Provides funding for annual case management software maintenance.

Ref. #: 34 One Time Committee Vote: 14-0 IN AFA Vote: _____

GENERAL FUND	2022-23	2023-24	2024-25
All Other	\$35,000	\$0	\$0
GENERAL FUND TOTAL	\$35,000	\$0	\$0

Justification:

Maine prosecutors statewide have adopted the use of Odyssey Attorney Manager. Administered and managed by the Maine Prosecutors Association's Information Technology group, the platform is allocated across all prosecutorial districts and the Attorney General's Criminal Division.

Chief Medical Examiner - Office of 0412

** See 2nd initiative on budget page A-5 **

Initiative: Provides funding for the after hours telephone answering service contract with the Office of the Chief Medical Examiner.

Ref. #: 36 One Time Committee Vote: 14-0 IN AFA Vote: _____

GENERAL FUND	2022-23	2023-24	2024-25
All Other	\$77,000	\$0	\$0
GENERAL FUND TOTAL	\$77,000	\$0	\$0

Justification:

This contract was rebid in the summer of 2021. The successful bidder resulted in a contract price increase of approximately \$77,000 per year for the five year contract. The current appropriation level for this account is insufficient to absorb the change for this critical after hours service.

Chief Medical Examiner - Office of 0412

** See 3rd initiative on budget page A-5 **

Initiative: Provides funding for annual maintenance, usage and hosting services for the MDI Log case management system.

Ref. #: 37 One Time Committee Vote: 14-0 IN AFA Vote: _____

GENERAL FUND	2022-23	2023-24	2024-25
All Other	\$28,000	\$0	\$0
GENERAL FUND TOTAL	\$28,000	\$0	\$0

Justification:

This initiative provides funding for the MDI log case management system hosted by Occupational Research and Assessment. This software has previously been funded by the Office of Chief Medical Examiner document account, which charges for cremation releases and death reports. Because cremation releases have become electronic per the Maine Center for Disease Control and Prevention, revenue in this account has declined. Additionally, annual increases have been over ten percent as the amount of data being maintained increases.

ATTORNEY GENERAL, DEPARTMENT OF THE

DEPARTMENT TOTALS	2022-23	2023-24	2024-25
GENERAL FUND	\$140,000	\$0	\$0
DEPARTMENT TOTAL - ALL FUNDS	\$140,000	\$0	\$0

Sec. A-16. Appropriations and allocations. The following appropriations and allocations are made.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

** This is the only initiative on budget page A-30 **

Maine Commission on Indigent Legal Services Z112

Initiative: Provides funding to establish a tiered billing rate for assigned legal counsel effective May 1, 2023. This rate will be no less than \$80 and no more than \$150 per hour. These tiers will be defined by the Commission in their major substantive rules. The rates must be tied to the type of case or the nature of criminal charges faced.

Ref. #: 161 One Time Committee Vote: 14-0 OUT AFA Vote: _____

GENERAL FUND	* Please replace with new proposed initiative supported 14-0 by Judiciary Committee	2022-23	2023-24	2024-25
All Other		\$1,000,000	\$0	\$0
GENERAL FUND TOTAL		\$1,000,000	\$0	\$0

Justification:

This initiative addresses the emergent need to attract and retain counsel to serve consumers of indigent legal services by establishing a tiered billing rate that will increase rates for the more challenging cases. The tiered rates and criteria will be determined by the Commission and defined in rules.

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

DEPARTMENT TOTALS	2022-23	2023-24	2024-25
GENERAL FUND	\$1,000,000	\$0	\$0
DEPARTMENT TOTAL - ALL FUNDS	\$1,000,000	\$0	\$0

Sec. A-18. Appropriations and allocations. The following appropriations and allocations are made.

JUDICIAL DEPARTMENT

Courts - Supreme, Superior and District 0063

** See 1st initiative on budget page A-32 **

Initiative: Provides funding for operational costs for the York Judicial Center.

Ref. #: 167 One Time Committee Vote: 14-0 IN AFA Vote: _____

GENERAL FUND	2022-23	2023-24	2024-25
All Other	\$200,000	\$0	\$0
GENERAL FUND TOTAL	\$200,000	\$0	\$0

Justification:

This initiative provides funding for the facility operation costs of the York Judicial Center set to open in April of 2023. This request is for costs associated with operating the York Judicial Center for one quarter in fiscal year 2022-23. An initiative was submitted in the 2024-2025 Biennial for full annual ongoing operational costs. These costs include snow removal, janitorial, utilities and landscaping costs.

Courts - Supreme, Superior and District 0063

** See 3rd initiative on budget page A-32 **

Initiative: Provides one-time funding for increased Maine Judicial Information System (MEJIS) support costs.

Ref. #: 168 One Time Committee Vote: 14-0 IN AFA Vote: _____

GENERAL FUND	2022-23	2023-24	2024-25
All Other	\$250,000	\$0	\$0
GENERAL FUND TOTAL	\$250,000	\$0	\$0

Justification:

This initiative provides one-time funding for the increased Maine Judicial Information System (MEJIS) costs associated with the remaining period of use before the system is sunset. The new case management system (CMS), Odyssey (ODY), has experienced delays. Consequently, MEJIS will need to be maintained up to an estimated 3 additional years. Furthermore, the cost for continuing support services has recently increased. This is an existing contracted system and service.

Courts - Supreme, Superior and District 0063

** See 2nd initiative on budget page A-32 **

Also see Reference #170 on next page

Initiative: Provides funding for the approved reclassification of one Civil Process and FDP Manager position from range 20 to range 21.

Ref. #: 169 One Time Committee Vote: * 14-0 IN AFA Vote: _____

GENERAL FUND	2022-23	2023-24	2024-25
Personal Services	\$3,127	\$0	\$0
GENERAL FUND TOTAL	\$3,127	\$0	\$0

* Voted in joint motion
with ref. # 170

Ref. #: 170 One Time Committee Vote: * 14-0 IN AFA Vote: _____

OTHER SPECIAL REVENUE FUNDS	<i>* Voted in joint motion with Ref. # 169</i>	2022-23	2023-24	2024-25
Personal Services		\$5,810	\$0	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL		<u>\$5,810</u>	<u>\$0</u>	<u>\$0</u>

Justification:

This initiative provides funding for the approved reclassification of one Civil Process and FDP Manager from a range 20 to range 21.

Courts - Supreme, Superior and District 0063 ** See 4th initiative on budget page A-32 **

Initiative: Provides funding for mediation service rate increases.

Ref. #: 171 One Time Committee Vote: 14-0 IN AFA Vote: _____

GENERAL FUND	2022-23	2023-24	2024-25
All Other	\$130,000	\$0	\$0
GENERAL FUND TOTAL	<u>\$130,000</u>	<u>\$0</u>	<u>\$0</u>

Justification:

This request provides funding for mediation service rate increases. Mediation for dispute resolution is an effective way to divert and resolve certain types of cases, and is mandated in certain cases. With recent legislative changes, the need for mediation services is increasing and a rate increase is necessary to continue to be able to get these services. This initiative provides General Fund support to increase family mediation rates by \$10 per mediation session to a rate of \$100 per session and increase small claims mediation fee by \$10 per session to a rate of \$80 per session. These rates are per session rates not per hour. This initiative requests General Fund appropriation for this core court function because the revenue level in the Other Special Revenue, Court Alternative Dispute Resolution Account is too low to cover the increase. Mediation fees are waived in some instances when parties cannot afford to pay, so raising fees could just result in more parties being unable to afford the cost.

JUDICIAL DEPARTMENT

DEPARTMENT TOTALS	2022-23	2023-24	2024-25
GENERAL FUND	\$583,127	\$0	\$0
OTHER SPECIAL REVENUE FUNDS	\$5,810	\$0	\$0
DEPARTMENT TOTAL - ALL FUNDS	<u>\$588,937</u>	<u>\$0</u>	<u>\$0</u>