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January 22, 2024

BY HAND-DELIVERY

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

Re: Andrew Robbins, et al. v. Maine Commission of Indigent Legal Services, et al.
Docket No. KENSC-CV-2022-54

Dear Ms. Rueda:

Enclosed for filing please find the Parties' Memorandum in Further Support of the Parties' Supplemental Joint Motion Regarding Settlement Approval.

Sincerely,

Sean D. Magenis
Assistant Attorney General

SDM/lsf
Enclosure
cc: Zachary L. Heiden, Esq. (via e-mail: zheiden@aclumaine.org)
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STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
DOCKET NO. KENSC-CV-22-54

ANDREW ROBBINS, ET AL.,

Plaintiffs,

v.

MAINE COMMISSION ON INDIGENT LEGAL SERVICES, ET AL.,

Defendants.

MEMORANDUM IN FURTHER SUPPORT OF THE PARTIES' SUPPLEMENTAL JOINT MOTION REGARDING SETTLEMENT APPROVAL

The Parties have moved the Court pursuant to M.R. Civ. P. 23(e) to preliminarily approve an amended settlement agreement ("Amended Proposed Settlement") in this certified class action. At the hearing on December 14, 2023, the Court questioned two aspects of the Amended Proposed Settlement. First, the Court questioned the constitutionality and enforceability of portions of the agreement requiring Defendants to undertake "good-faith efforts" or "best efforts" to advocate for certain legislative changes. Second, the Court questioned the Amended Proposed Settlement's provision for a four-year stay followed by an order of dismissal, rather than an immediate order and judgment.

The Parties submit this memorandum, at the Court's direction, to address the questions raised by the Court concerning these two aspects of the Amended Proposed Settlement. As explained in greater detail below, both aspects of the agreement are well within the Court's power. For these reasons, and those set forth in the Parties' Supplemental Joint Motion (Nov. 28, 2023), the Court should grant preliminary approval, direct notice to the class, and schedule a final fairness hearing.

ARGUMENT

I. Sections IV and VI of the Amended Proposed Settlement are constitutional and enforceable, and analogous agreements have employed similar language in the past.

Two provisions of the Amended Proposed Settlement require Defendants to advocate for legislative action. Under Section IV of the Parties' agreement, Defendants must "undertake a good-faith effort to advocate for the advancement of appropriate legislation," including specific legislative measures identified in subsections of that provision. And under Section VI of the agreement, Defendants must "continue to use their best efforts to identify and advocate for the enactment of any additional legislative measures necessary and appropriate to implement the terms of the Settlement," including, again, specific categories of measures identified in the provision's subsections.[1] At its December 14th hearing, the Court questioned whether these provisions posed constitutional problems—either on free-speech or separation-of-powers grounds—because they would require the Court to order state officials to take certain policy positions. The Court also questioned whether the standards in these provisions—"good-faith efforts" or "best efforts"—are too vague to enforce. The answer to both questions is "no."

A. The Amended Proposed Settlement does not implicate free-speech or separation-of-powers concerns.

With respect to the "best efforts" clauses, the Court will never find itself in the position of ordering MCILS or an executive branch official to adopt specific policy provisions or to advocate

[1] MCILS's recent Annual Report further highlights the importance of Defendants' commitment to use their best efforts advocate for legislative measures to roll out a statewide public defender system. Exhibit A. As the Annual Report explains, "Simply put, Maine needs to dramatically increase system capacity for defense attorneys. . .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." *Id.* at p. 10. "The [attorney burnout] 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." *Id.* at p. 4. To address these fundamental problems with the state's current indigent defense system, the Annual Report details MCILS's "proposed roll out of a statewide public defender system planned to handle approximately one-third of the adult criminal cases." *Id.* at pp. 8-9.

for particular legislative changes. That is because the Amended Proposed Settlement contemplates only one remedy in the event of a material and uncured breach of the Defendants' obligations: resumption of litigation. *See* Amended Proposed Settlement, §II.I:

> Lifting of Stay. If the Parties have not resolved an allegation of non-compliance raised as provided in Section II.H within thirty (30) days after Defendants' receipt of the notice of alleged non-compliance, Plaintiffs may seek leave from the Court to resume litigation in the Action based on a material and unremediated breach of §§VI – XII of this Agreement ("Performance Metrics").

In other words, a future administration will be free to change its policy priorities free from judicial intervention and to *not* advocate for legislative measures to implement the parties' settlement agreement. While such a change would constitute a breach of Defendants' obligations under the settlement agreement, the consequence that Defendants would face in those circumstances—needing to litigate Plaintiffs' claims—is no more than what Defendants already are facing. The Court would not be called upon to order Defendants to adopt any policy positions or to take any steps to lobby the legislature. And requiring Defendants to resume litigation does not pose any recognized First Amendment or separation-of-powers concern.

Settlement agreements in other cases have included commitments by state executive branch officials to advocate for legislative changes, confirming that such commitments do not raise constitutional concerns. For example, the settlement agreement in *Phillips v. California* (Fresno Superior Ct., Dock. No.15CEG02201) contained the following commitment:

> The State, through the Governor's Office, agrees to undertake a good-faith effort to advance appropriate legislation as described in Paragraph 3 carrying out the commitments made in Paragraph 1–2.

Exhibit B, at 2 (¶4). Similarly, the settlement agreement that resolved *Hurrell-Harring v. New York* (Albany County Supreme Ct. Dock No. 8866-07) contained the following obligation on behalf of "the parties," which included the defendant State of New York:

> The parties shall use their best efforts to obtain the enactment of all legislative

> measures necessary and appropriate to implement the terms of the Settlement Agreement.

Exhibit C, at 15 (§IX.A). Both *Phillips* and *Hurrell-Harring* involved allegations that mirror the Plaintiffs' allegations in this case: namely, that the state failed to provide adequate representation to indigent criminal defendants. The fact that these cases were resolved by agreements with provisions requiring the state's executive branch to support certain legislative changes demonstrates that the Amended Proposed Settlement does not present separation-of-powers or free-speech problems.

B. The "good-faith efforts" and "best efforts" standards that the Amended Proposed Settlement employs carry a definite meaning that is well-known in the law.

To the extent some dispute arises between the parties in the future as to whether the Defendants have exercised "good-faith efforts" or "best efforts," precedent supplies a framework for the Court to resolve that dispute. These phrases are "familiar term[s] to lawyers and not unusual to find in a contract." *Ramirez v. DeCoster*, 142 F. Supp. 2d 104, 110 (D. Me. 2001) (cataloguing agreements that have used the term "best efforts"). For this reason, "[c]ompliance with or breach of [a] 'best efforts' clause [can] be determined without further enumeration of what the parties contemplated." *Id.*; *see, e.g.*, *Olympia Hotels Corp. v. Johnson Wax Dev. Corp.*, 908 F.2d 1363, 1373 (7th Cir. 1990) ("[T]he term 'best efforts' is a familiar one in contract parlance[.]").

There are many examples of contracts or settlement agreements that require government agencies or officials to undertake "best efforts" to achieve a particular result. As discussed above, for example, the settlement agreements in *Phillips* and *Hurrell-Harring* required executive-branch officials to undertake "good-faith effort" and "best efforts," respectively, to advance certain legislation. *See supra*, p. 3. Similarly, in *Brewster v. Dukakis*, 675 F.2d 1 (1st Cir. 1982), the U.S. Court of Appeals for the First Circuit upheld a district court order enforcing a consent decree that

required the state's governor and attorney general and various cabinet officials to "use their best efforts to insure the full and timely financing of th[e] Decree." *Id.* at 2. As the First Circuit explained, the district court correctly "interpreted the consent decree to require appellants to make good faith efforts to secure funding before making cuts in services," and the court's determination "that appellants had not made best efforts as of the time of its ruling" was supported by substantial evidence. *Id.* at 4. The Fifth Circuit's decision in *In re Geisser*, 554 F.2d 698 (5th Cir. 1977), is of similar import. There, the U.S. State Department agreed to use its "use its best efforts to prevent the extradition of the [petitioners] to Switzerland or France." *Id.* at 699. After reviewing the government's conduct, the district court determined that the government had not used its best efforts, and the Fifth Circuit agreed. *Id.* at 703–704.

These examples show that, although the terms "good-faith efforts" and "best efforts" may require fact-intensive or case-specific inquiries, they are determinate standards that courts are accustomed to applying. As the cases above show, courts also have been able to apply these standards to agreements entered by government agencies or other executive-branch actors. Accordingly, their use here should not prevent this Court's approval of the Amended Proposed Settlement.

II. The Parties' agreement not to seek injunctive relief to effectuate the Proposed Settlement Agreement should not prevent approval of the Proposed Settlement Agreement.

A. Courts reviewing proposed class action settlements have routinely approved settlements that do not include consent decrees.

The Parties' Amended Proposed Settlement does not include a request that the Court incorporate the terms of the settlement into a consent decree. Instead, the Parties ask the Court to stay the litigation while the Parties perform their obligations under the agreement and permit

Plaintiffs to resume litigation on their underlying claims in the event of an unremediated breach. The Parties seek a stay of this litigation to preserve Plaintiffs' potential remedy of resuming the underlying litigation without needing to file a new complaint.

The Court has raised concerns that the Parties' agreement to resume litigation in the event of an unremediated breach is a departure from the practice of obtaining a consent decree to resolve class action litigation. However, "[a] consent decree is no more than a settlement that contains an injunction." *In re Masters Mates & Pilots Pension Plan & IRAP Litig.*, 957 F.2d 1020, 1025 (2d Cir. 1992); *see also Hook v. State of Ariz., Dep't of Corr.*, 972 F.2d 1012, 1014 (9th Cir. 1992) ("We begin our analysis of this issue by noting that consent decrees are essentially contractual agreements that are given the status of a judicial decree."). Public policy supports resolution of claims asserting constitutional violations against governmental entities. *See, e.g., A.L. Brown Const. Co. v. McGuire*, 495 A.2d 794, 797 (Me. 1985) ("Rather than being against public policy, the encouragement of litigation settlement is very much in the public interest."). Public policy is also served when branches of government other than the judicial branch address and resolve alleged constitutional violations asserted against them. *Spacco v. Bridgewater Sch. Dep't*, 739 F. Supp. 30 (D. Mass. 1990). As the Federal Court for the District of Massachusetts recognized:

> Courts [] should understand that in some cases the values to be protected by the Bill of Rights may best be served when other officials are required to recognize and wrestle with their responsibilities for constitutional interpretation. As a corollary of this, judges should realize that they may often best serve constitutional interests by encouraging the responsible public officials and their constituents to settle constitutional controversies on proper terms, rather than by deciding the questions such controversies present.

Id. at 35. Accordingly, there are multiple examples of class-action litigation, including litigation asserting constitutional violations against governmental defendants, which have been resolved through settlement, establish resumed litigation of the claims originally asserted as the remedy

for breach, and do not include a court-imposed injunction. *See, e.g., Disability L. Ctr. v. Massachusetts Dep't of Correction*, 960 F. Supp. 2d 271, 279 (D. Mass. 2012) (approving settlement, without consent decree, resolving suit to redress constitutional rights of mentally ill inmates); *Austin v. Hopper*, 15 F. Supp. 2d 1210, 1216 (M.D. Ala. 1998) (approving settlement, without consent decree, resolving suit challenging constitutionality of Alabama's use of chain gangs and "hitching posts"); *see also Benjamin v. Jacobson*, 172 F.3d 144, 157 (2d Cir. 1999) (settlement agreement allows enforcement of a claimed violation of a party's obligations through "a new lawsuit for breach of contract.").

B. The Court has the power and authority to stay this litigation and retain jurisdiction while the Parties perform their obligations under the Settlement Agreement.

The "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Courts have the "inherent power to stay pending litigation when the efficacious management of court dockets reasonably requires such intervention." *Marquis v. FDIC*, 965 F.2d 1148, 1154 (1st Cir. 1992). This Court can and should exercise its inherent power to approve the Parties' Amended Proposed Settlement, stay the case while the Parties perform their obligations under the agreement, and retain jurisdiction for the four-year period of the stay.

In a Section 1983 case alleging constitutional violations on behalf of prisoners with mental illnesses, the Federal Court for the District of Massachusetts granted the parties' request to "approve the settlement, stay the case while the parties perform the Agreement, and retain jurisdiction for at least three years and up to five years in certain circumstances." *Disability L. Ctr.*, 960 F. Supp. 2d at279; *see also* Exhibit D (Disability L. Ctr. Settlement Agreement).

Plaintiffs alleged "that the Department, and certain individuals sued only in their official capacities, violated the federal constitutional rights of mentally ill inmates by subjecting those inmates to disciplinary and other forms of segregation for prolonged periods of time." *Id.* at 273. In the context of the defendants' independent efforts to improve the conditions underlying the plaintiffs' claims, the parties engaged in a two-year long effort to settle the litigation with the court's assistance. *Id.* After reaching a proposed settlement agreement, the parties asked the court "to review the Agreement to ensure that it is fair, reasonable, and adequate, and if it is, stay the case while the parties perform under the Agreement." *Id.* at 274. The court granted the parties' request in full, finding it "permissible and appropriate to stay further proceedings and retain jurisdiction as requested by the parties," and further finding that the proposed settlement was "fair, reasonable, and adequate." *Id.* at 279; 280-82. Regarding the stay, the court noted that the Supreme Court has recognized that a district court may retain jurisdiction to enforce provisions of a private settlement agreement "even as it dismisses the litigation that the settlement resolves." *Id.* at 278 (citing *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381-82 (1994)). Therefore, "[a]s *Kokkonen* instructs that it is permissible for a federal court to retain jurisdiction to enforce a settlement agreement after a case has been dismissed, it follows that a court may also take the lesser step of staying the case while retaining jurisdiction over possible disputes concerning compliance with a settlement agreement." *Id.* at 279. Here, too, the Court has inherent authority to stay this litigation while the Parties perform their obligations under the agreement, and retain jurisdiction for the four-year period of the stay.

In addition, courts have approved class settlement agreements that contemplate enforcement of the agreement through reinstatement of the action in the event of a breach. A court, following approval of a settlement agreement, can address a claimed violation of a party's

obligations under the agreement in the underlying case, if it has not been dismissed. *See, e.g., McDermott v. Wilson*, No. 14-12801-MLW, 2016 WL 554777, at *2 (D. Mass. Feb. 10, 2016) ("However, [Plaintiff]'s suit was never dismissed. Therefore, the court retains jurisdiction to enforce the settlement agreement." (citing *Roman-Oliveras v. Puerto Rico Elec. Power Auth.*, 797 F.3d 83, 86 (1st Cir. 2015))). Similarly, in a class action lawsuit on behalf of children in foster care, asserting claims pursuant to 42 U.S.C. § 1983 and contending that the State of Minnesota, "violated Plaintiffs' substantive due process rights by maintaining a policy, pattern, practice or custom that amounts to deliberate indifference to Plaintiffs' constitutional rights to care and protection from harm," the court approved a settlement agreement detailing the settling Defendants' prospective obligations and dismissing the underlying lawsuit without prejudice to allow resumption of the underlying litigation in the event of an unremediated breach. *T.F. by Keller v. Hennepin Cnty.*, 2018 WL 940621, at *1 (D. Minn. Feb. 16, 2018). In approving the parties' settlement pursuant to Fed. R. Civ. P. 23, the court ordered:

> Plaintiffs' remaining claims . . . are **DISMISSED without prejudice**. Plaintiffs and all members of the Settlement Classes are barred from reasserting the remaining claims or substantially similar claims against the Hennepin County Defendants and/or the State Defendant for a period of four (4) years from the effective date of the settlement, January 1, 2020, unless the Court expressly permits after a determination that there has been a material and unremedied breach of the Settlement Agreement.

T.F. by Keller v. Hennepin Cnty., No. 0:17-cv-01826-PAM-BRT (D. Minn. Dec. 19, 2019) (ECF Doc. No. 260) (emphasis in original) (attached hereto as Exhibit E).

In a federal case in which a plaintiffs' class challenged Alabama's use of chain gangs and "hitching posts" as violations of "the first, fifth, eight, and fourteenth amendments to the United States Constitution as enforced through 42 U.S.C.A. § 1983," the court approved a settlement agreement without making its terms part of its order. *Austin*, 15 F. Supp. 2d at 1216. "The agreement does not require judicial enforcement of its terms, but rather contemplates

enforcement through . . . reinstatement of the action and state-court relief." *Id.* at 1218. Responding to objections raised by class members to the proposed settlement, objections based on the settlement's failure to address related claims of "shackling inmates on an individual basis," the court noted that, "the named plaintiffs did not even include the individual-chain practice in their complaint or any of their amended complaints." *Id.* at 1223. Accordingly, the court's approval of the parties' settlement agreement focused on the fact that, "the settlement agreement gives the plaintiffs more relief than they could have obtained by pursuing their claims in court in terms of longevity, and leaves open the possibility for future challenges to the DOC's use of individual chains." *Id.* at 1224 (approving settlement in connection with dismissal of claims without prejudice).

CONCLUSION

To address structural issues affecting the evolution of Maine's indigent defense system, the Parties have worked collaboratively for over a year—and with the benefit and input of two separate judicial settlement officers—to negotiate and reach the Amended Proposed Settlement. For the foregoing reasons, and as well as the reasons given in the Parties' previous briefing and at the hearing on December 14, the Court should grant preliminary approval, direct notice to the class, and schedule a final fairness hearing.

January 22, 2024

MAINE COMMISSION ON INDIGENT LEGAL SERVICES, et al.

By their attorney:

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Respectfully submitted.

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EXHIBIT A

January 16, 2024

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

Delivered via Email

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

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

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

> By January 15th of each year, [the Commission shall] submit to the Legislature, the Chief Justice of the Supreme Judicial Court and the Governor an annual report on the operation, needs and costs of the indigent legal services system. The report must include:
>
> (1) An evaluation of contracts; services provided by contract counsel and assigned counsel; any contracted professional services; and cost containment measures; and
>
> (2) An explanation of the relevant law changes to the indigent legal services covered by the commission and the effect of the changes on the quality of representation and costs.

Overview

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 810 improves the provision of representation by ensuring that 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.

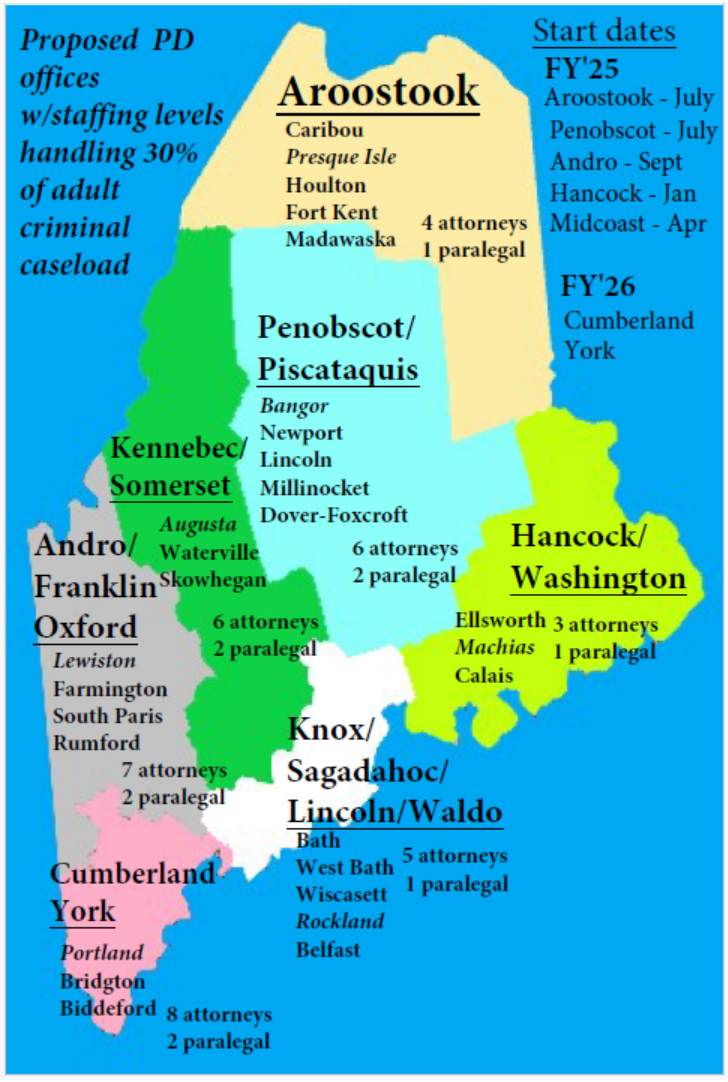
a. Budget

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 charges are set out in the attached Appendix B.

Broadly, the proposed changes include:

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

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

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

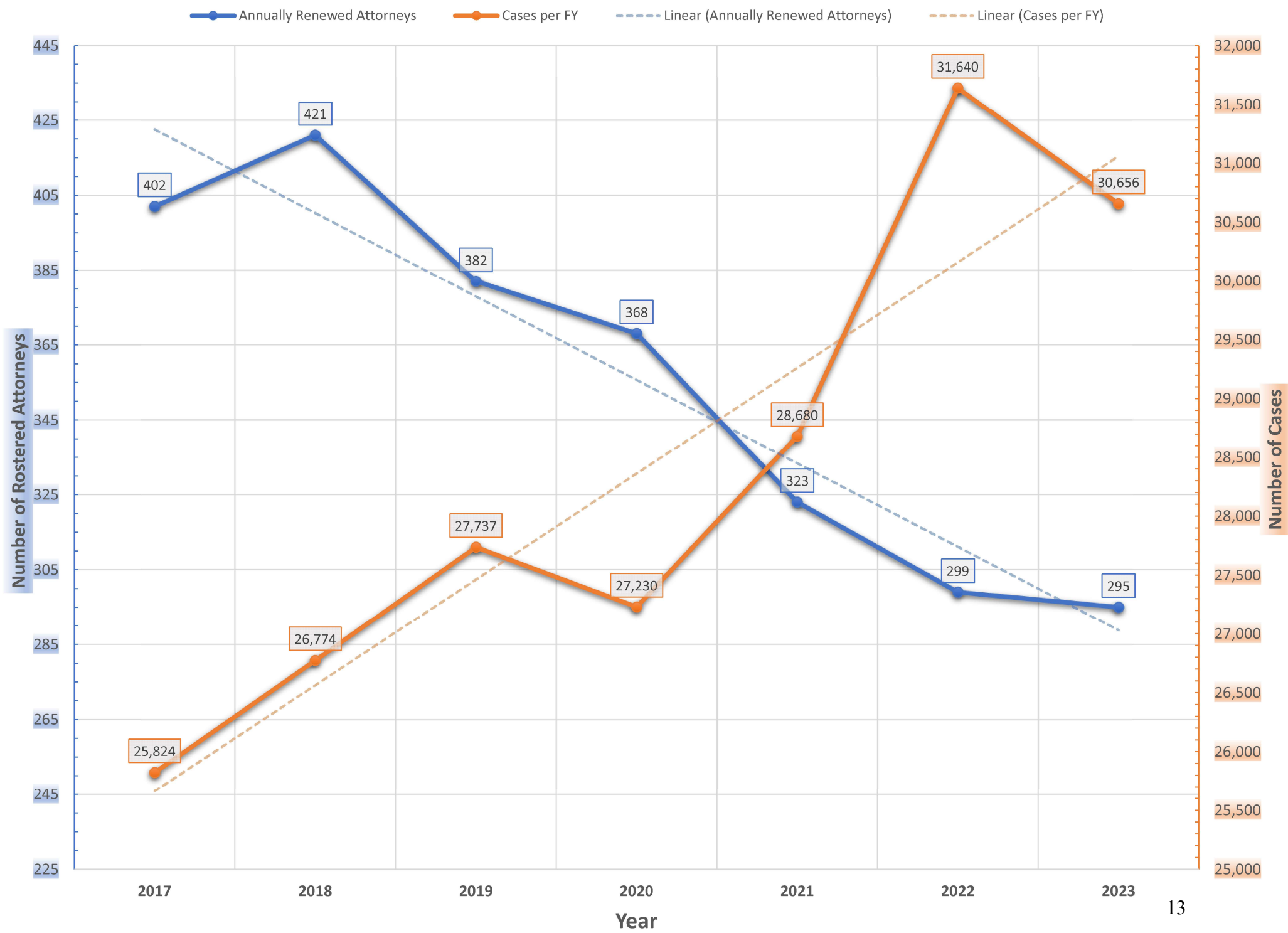
Respectfully submitted,

Jim Billings, Esq.
Executive Director

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

APPENDIX A

Case Totals vs. Roster Totals



APPENDIX B

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

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

CHAPTER 37

MAINE COMMISSION ON INDIGENT LEGAL SERVICES

§1801. Maine Commission on Indigent Legal Services; established

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

SECTION HISTORY

PL 2009, c. 419, §2 (NEW).

§1802. Definitions

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

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

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

[PL 2013, c. 159, §10 (NEW).]

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

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

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

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

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

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

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

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

"Indigent legal services" does not include the services of a guardian ad litem appointed pursuant to Title 22, section 4005, subsection 1.
[PL 2021, c. 676, Pt. A, §3 (AMD).]

SECTION HISTORY

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

§1803. Commission structure

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

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

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

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

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

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

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

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

In determining the appointments and recommendations under this subsection, the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Judicial Court, the president of the Maine State Bar Association and the president of the statewide organization that represents criminal defense attorneys shall consider input from individuals and organizations with an interest in the delivery of indigent legal services. Recommendations provided by the president of the Maine State Bar Association and the president of the statewide organization representing criminal defense attorneys must consist of attorneys providing indigent legal services as a majority of their law practices.
[PL 2017, c. 430, §1 (RPR).]

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

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

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

The limitations on members receiving compensation from the commission do not apply to any member serving on the commission as of April 1, 2018 for the duration of the member's term.
[PL 2017, c. 430, §2 (AMD).]

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

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

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

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

SECTION HISTORY

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

§1804. Commission responsibilities

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

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

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

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

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

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

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

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

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

3. Duties. The commission shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Whether an attorney meets the minimum eligibility requirements to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements;

(2) Whether an attorney previously found eligible is no longer eligible to receive assignments or to receive assignments in specialized case types pursuant to any commission rule setting forth eligibility requirements; and

(3) Whether to grant or withhold a waiver of the eligibility requirements set forth in any commission rule.

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

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

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

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

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

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

[PL 2021, c. 481, §§1-4 (AMD).]

4. Powers. The commission may:

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

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

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

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

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

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

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

SECTION HISTORY

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

§1806. Information not public record

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

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

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

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

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

D. "Case information" means:

(1) The court in which a case is brought;

(2) Any criminal charges or juvenile crime charges and the type, but not the contents, of any petition giving rise to a case;

(3) The docket number;

(4) The identity of assigned counsel and the date of assignment;

(5) The withdrawal of assigned counsel and the date of withdrawal; and

(6) Any order for reimbursement of assigned counsel fees. [PL 2011, c. 547, §1 (NEW).] [PL 2011, c. 547, §1 (AMD).]

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

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

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

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

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

E. A request for ~~funds for expert or investigative assistance~~non-counsel funds that is submitted by ~~an indigent party~~ or ~~by an attorney~~ on behalf of a consumer of indigent legal services, or a person otherwise seeking commission funding for non-counsel services~~n 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).

§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).

§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).

1. 2023. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

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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).

130th Maine Legislature and is current through October 1, 2022. The text is subject to change without notice. It is a version that has not been officially certified by the Secretary of State. Refer to the Maine Revised Statutes Annotated and supplements for certified text.

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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).

§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).

§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).

§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).

§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).

§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).

§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).

§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.

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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).

§4015. Privileged or confidential communications

A. Except as set out in paragraph B, ~~T~~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).

SETTLEMENT AGREEMENT

Carolyn Phillips et al. v. State of California et al.,
Fresno County Superior Court, Case No. 15CECG02201

This Settlement Agreement ("Agreement") is entered into by the following parties: Carolyn Phillips ("Phillips"), Ruthina Estrada ("Estrada") (together, "Plaintiffs"), and the State of California ("Defendant" or "State") (collectively, the "Parties").

RECITALS

A. Plaintiffs and Defendant are parties to the case titled *Carolyn Phillips et al. v. State of California et al.*, currently pending in the Superior Court of the State of California, County of Fresno, Case Number 15CECG02201 (the "Action").

B. In the Action, Plaintiffs allege that the State is failing to provide effective legal representation to indigent defendants in criminal court proceedings in California courts. Plaintiffs seek declaratory and injunctive relief under California Code of Civil Procedure section 526a to protect the rights of indigent persons charged with crimes in California.

C. Defendant denies Plaintiffs' allegations in this Action. Defendant specifically denies that the State has failed to carry out any constitutional or statutory duty whatsoever in relation to the claims and allegations asserted in this Action, and further denies that any act, omission, law, or policy of the State has caused or will cause any harm to Plaintiffs or those whose rights they claim to protect in this Action.

D. The Superior Court overruled Defendant's arguments at the demurrer stage, in relevant part, concluding that:

> The Sixth Amendment right to counsel is a provision of the Bill of Rights so "'fundamental and essential to a fair trial'" that it "is made obligatory upon the States by the Fourteenth Amendment." (*Gideon v. Wainwright* (1963) 372 U.S. 335, 342-43, emphasis added.) The Fourteenth Amendment's Due Process Clause in turn provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law." (US. Const, amend XIV (emphasis added). … The State cannot disclaim its constitutional responsibilities merely because it has delegated such responsibilities to its municipalities. … Nor can the State evade its constitutional obligation by passing statutes. … If the State created an indigent defense system that is systematically flawed and underfunded, [caselaw] indicates that the State remains responsible, even if it delegated this responsibility to political subdivisions.

Phillips et al. v. California et al., Superior Court of the State of California, County of Fresno, Case Number 15CECG02201, Ruling on Demurrers, April 13, 2016.

E. Without any admission of fault or wrongdoing, and without conceding or otherwise expressing any position on any legal issue or argument previously raised in this Action, the Parties wish to settle the Action and all disputes arising therein as among them, in order to avoid the cost, difficulty, and uncertainty associated with further litigation.

AGREEMENT

Now, therefore, in view of the foregoing recitals, and in consideration of the mutual promises contained in this Agreement, the Parties covenant and agree as follows.

1. The State shall expand the mission of the Office of the State Public Defender ("OSPD") such that OSPD shall, in addition to such other duties as may be consistent with state law, be authorized to provide support for California counties' provision of trial-level indigent criminal defense in non-capital cases.

2. The support authorized in accordance with Paragraph 1 may include, but need not be limited to, the provision of training to attorneys providing trial-level indigent criminal defense services on behalf of California counties; the provision of technical assistance to attorneys providing trial-level indigent criminal defense services on behalf of California counties; and efforts to identify further steps that could be taken to improve California counties' provision of trial-level indigent criminal defense.

3. The commitments made in Paragraphs 1–2 are contingent upon enactment by the California Legislature and the Governor of appropriate legislation—including, but not limited to, the enactment of an appropriations bill funding such commitments to such extent as the Legislature and the Governor may provide.

4. The State, through the Governor's Office, agrees to undertake a good-faith effort to advance appropriate legislation as described in Paragraph 3 carrying out the commitments made in Paragraph 1–2. This good-faith effort shall consist of the inclusion of the commitments made in Paragraphs 1–2 in the Governor's 2020–21 Budget proposal (to be released on or before January 10, 2020), as well as continued good-faith efforts by the Governor's Office to obtain the enactment of legislation during the 2019–20 legislative session that substantially conforms to the commitments made in Paragraphs 1–2. This good-faith effort shall continue until the enactment of such legislation or the conclusion of the 2019–20 legislative session, whichever is sooner.

5. On or before January 21, 2020, Plaintiffs shall file with the court and serve a dismissal, in writing, pursuant to Code of Civil Procedure section 581, subdivision (b)(1), requesting that the State be dismissed without prejudice from the Action, and that all claims and causes of action pled against the State in this Action be dismissed without prejudice in their entirety. In addition, Plaintiffs shall promptly take any further steps that may be necessary to cause the State and all claims and causes of action pled against the State to be dismissed without prejudice from the Action.

6. Plaintiffs agree that, if the State fulfills the commitments made in Paragraphs 1–4, they shall not re-file this Action against the State, and shall waive all claims against the State as provided for in Paragraph 9.

7. The Parties agree that they will not make, or cause to be made, any announcement or other public statement disclosing the terms of this Agreement prior to the release of the Governor's 2020–21 Budget proposal. Defendant agrees to promptly notify Plaintiffs' counsel as soon as the release time and date for the Governor's 2020–21 Budget proposal are announced. The Parties further agree to give each other no less than 24 hours' notice before making any public announcement of the terms of the settlement; this does not include the announcement, by the Office of the Governor, of the Governor's 2020–21 Budget proposal. Nothing in this Paragraph shall be construed to limit the authority of either Party to exercise sole control over the substance of any such announcement that it may choose to make; neither Party shall be required to seek the other Party's review or approval of the substance of any such announcement.

8. No Admission of Liability: This Agreement does not constitute, nor shall it be construed as, an admission or concession by any of the Parties for any purpose. By executing this Agreement, no Party admits liability or concedes any factual or legal allegation, claim, or contention asserted by any other Party in the Action.

9. Mutual Release of Claims: The Parties release and discharge each other Party to this Agreement and their agents, employees, attorneys, affiliates, representatives, heirs, executors, conservators, successors, assigns, and those who they represent or whose rights they seek to protect in this Action from all claims, causes of action, obligations, liabilities, damages, costs, expenses, and attorney fees of any nature whatsoever, whether they are known or unknown, suspected or not suspected to exist, claimed or not claimed, disputed or undisputed, that arose or that may arise, from the facts, claims, and contentions alleged in the Action. This release does not affect claims for acts or omissions that occur after the date of this Agreement.

10. Construction: This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. The Parties agree that this Agreement shall be construed and interpreted without regard to the identity of the party drafting this Agreement, as though all Parties hereto participated equally in the drafting of this Agreement.

11. Advice of Counsel: The Parties represent that they know and understand the contents of this Agreement, and that this Agreement has been executed voluntarily. The Parties each further represent that they have had an opportunity to consult with an attorney of their choosing and that they have been fully advised by the attorney with respect to their rights and obligations under this Agreement.

12. Entire Agreement: No promise, inducement, understanding, or agreement not expressly stated herein has been made by or on behalf of the Parties, and this Agreement contains the entire agreement of the Parties related to the subject matter of this Agreement.

13. Amendments in Writing: This Agreement may not be altered, amended, modified, or changed in any way except by a writing duly executed by all Parties hereto.

14. Attorneys' Fees and Costs: The Parties agree that the Parties to this Agreement shall bear their own respective attorneys' fees and costs incurred in the Action.

15. Choice of Law and Jurisdiction: This Agreement shall be governed by the laws of the State of California. If any party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Sacramento, California.

16. Counterparts: This Agreement may be executed electronically in counterparts, each of which is deemed an original and all of which together shall constitute this Agreement.

17. Effective Date: This Agreement shall become effective (the "Effective Date") on the date on which the last counterpart of this Agreement is executed such that the Agreement is executed in full by all Parties hereto and signed by all Parties' respective attorneys.

18. Representation and Warranties of Authority: Each Party to this Agreement has the authority to execute this Agreement, and this Agreement as so executed will be binding upon each Party and upon its agents, employees, attorneys, affiliates, representatives, heirs, executors, conservators, successors, assigns, and those who they represent or whose rights they seek to protect in this Action. Each person signing this Agreement represents and warrants that they have the authority to sign and execute this Agreement on behalf of the Party for which they sign.

This Agreement consists of Recitals A – E and Paragraphs 1 – 18.

DATED: 1/6/2020

CAROLYN PHILLIPS

By: _____

Carolyn Phillips

DATED: 1/7/2020

RUTHINA ESTRADA

By: _____

Ruthina Estrada

DATED: 1/6/2020

STATE OF CALIFORNIA

By: _____

Kelli Evans
Chief Deputy Legal Affairs Secretary
Office of Governor Gavin Newsom

Approved as to Form:

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.

By: _____

Kathleen Guneratne

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

By: _____

Emma Andersson

Attorneys for Plaintiffs Carolyn Phillips and Ruthina Estrada

Approved as to Form:

XAVIER BECERRA

Attorney General of California

By: _____

Aaron Jones
Deputy Attorney General
Attorneys for Defendant the State of California

EXHIBIT C

EXECUTION COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

KIMBERLY HURRELL-HARRING, et al., on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, -against- THE STATE OF NEW YORK, et al., Defendants.	Index No. 8866-07 (Connolly, J.)

STIPULATION AND ORDER OF SETTLEMENT

WHEREAS, Plaintiffs, on behalf of the Plaintiff Class, as defined by the Appellate Division, Third Department ("Plaintiffs"), commenced and are pursuing a class action lawsuit entitled *Hurrell-Harring, et al. v. State of New York, et al.*, Index No. 8866-07, in New York Supreme Court, Albany County, seeking declaratory and prospective injunctive relief for, among other things, the alleged deprivation by the State of New York and the Governor of the State of New York (the "State Defendants") of Plaintiffs' right to counsel in the counties of Onondaga, Ontario, Schuyler, Suffolk, and Washington (together the "Five Counties" and each a "County") guaranteed to Plaintiffs by the Sixth and Fourteenth Amendments to the United States Constitution, Article I, § 6 of the New York State Constitution, and various statutory provisions; and

WHEREAS, the parties have been engaged in litigation since November 2007 and the New York Court of Appeals has determined that Plaintiffs may proceed with their claims for actual and constructive denial of counsel, *Hurrell-Harring v. State of New York*, 15 NY3d 8 (2010); and

WHEREAS, the Appellate Division, Third Department determined that Plaintiffs could pursue

the litigation as a class action in accordance with Article 9 of the New York State Civil Procedure Law and Rules ("CPLR"), *Hurrell-Harring v. State of New York*, 81 AD3d 69 (3d Dept. 2011); and

WHEREAS, in 2010, the State established the Office of Indigent Legal Services ("ILS") and the Indigent Legal Services Board ("ILSB") (Executive Law Section 832 and Section 833, respectively) to, among other things, improve the quality of the delivery of legal services throughout the State for indigent criminal defendants; and

WHEREAS, the parties have conducted extensive fact and expert discovery, and have engaged in motion practice before the Court, and the Court has set the matter down for trial; and

WHEREAS, the parties have negotiated in good faith and have agreed to settle this Action on the terms and conditions set forth herein; and

WHEREAS, the parties agree that the terms of this settlement are in the public interest and the interests of the Plaintiff Class and that this settlement upon the order of the Court is the most appropriate means of resolving this action; and

WHEREAS, the parties understand that, prior to such Court order, the Court shall conduct a fairness hearing in accordance with CPLR Article 9 to determine whether the settlement contained herein should be approved as in the best interests of the Plaintiff Class; and

WHEREAS, ILS and the ILSB have the legal authority to monitor and study indigent legal services in the state, to recommend measures to improve those services, to award grant monies to counties to support their indigent representation capability, and to establish criteria for the distribution of such funds; and

WHEREAS, the parties agree that ILS is best suited to implementing, on behalf of the State, certain obligations arising under this Agreement; and

WHEREAS, the ILSB has reviewed those obligations contemplated under this Agreement for implementation by ILS and has directed ILS to implement such obligations in accordance with

the terms of this Agreement, and this direction is reflected in the *Authorization of the Indigent Legal Services Board and the New York State Office of Indigent Legal Services Concerning Settlement of the Hurrell-Harring Lawsuit*, appended hereto as Exhibit A and incorporated by reference herein; and

WHEREAS, ILS is legally required to execute this direction from the ILSB; and

WHEREAS, the Plaintiff Class entered into a settlement agreement with Ontario County dated June 20, 2014, and the Court approved the settlement and dismissed the Plaintiff Class's claims against Ontario County on September 2, 2014; and

WHEREAS, the Plaintiff Class entered into a settlement agreement with Schuyler County on September 29, 2014, which is currently scheduled for a fairness hearing on November 3, 2014; and

WHEREAS, Plaintiffs and the State intend that the terms and measures set forth in this Settlement Agreement will ensure counsel at arraignment for indigent defendants in the Five Counties, provide caseload relief for attorneys providing Mandated Representation in the Five Counties, improve the quality of Mandated Representation in the Five Counties, and lead to improved eligibility determinations;

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED as follows:

I. PARTIES TO THIS AGREEMENT

The parties to this Settlement Agreement are the parties named in the Second Amended Complaint in the Action, which are the Plaintiff Class, the State of New York, Governor Andrew Cuomo, Onondaga County, Ontario County, Schuyler County, Suffolk County, and Washington County. If a County fails to execute the Agreement, it shall not be considered a party to this Agreement.

II. DEFINITIONS

As used in this Agreement:

Action means *Hurrell-Harring v. State of New York*, Case No. 8866-07 (Supreme Court, Albany County), filed on November 8, 2007.

Agreement and **Settlement Agreement** mean this Stipulation and Order of Settlement dated as of October 21, 2014 between and among Plaintiffs, the State Defendants, and the Five Counties.

Arraignment means the first appearance by a person charged with a crime before a judge or magistrate, with the exception of an appearance where no prosecutor appears and no action occurs other than the adjournment of the criminal process and the unconditional release of the person charged (in which event Arraignment shall mean the person's next appearance before a judge or magistrate).

Effective Date means the date of entry of the order of Supreme Court, Albany County approving this Settlement Agreement.

Executive means the Office of the Governor.

Five Counties means Ontario, Onondaga, Schuyler, Suffolk, and Washington Counties, each of which was named as a defendant in the Second Amended Complaint filed on August 26, 2008 in *Hurrell-Harring v. State of New York*. Each of the Five Counties may also be referred to as a **County** in this Agreement.

Mandated Representation means constitutionally mandated publicly funded representation in criminal cases for people who are unable to afford counsel.

Plaintiffs or **Plaintiff Class** means the class of individuals certified by the Appellate Division on January 6, 2011 in *Hurrell-Harring v. State of New York*.

III. COUNSEL AT ARRAIGNMENT

(A) (1) The State of New York (the "State") shall ensure, within 20 months of the Effective Date and continuing thereafter, that each criminal defendant within the Five Counties who is eligible for publicly funded legal representation ("Indigent Defendant") is represented by counsel in person at his or her Arraignment. A timely Arraignment with counsel shall not be delayed pending a determination of a defendant's eligibility.

(2) Within 6 months of the Effective Date, the New York State Office of Indigent Legal Services ("ILS"), in consultation with the Executive, the Five Counties, and any other persons or entities it deems appropriate, shall develop a written plan to implement the obligations specified above in paragraph III(A)(1), which plan shall include interim steps for achieving compliance with those obligations. That plan shall be provided to the parties, who shall have 30 days to submit comments. Within 30 days of the end of such comment period (which will be no later than 8 months after the Effective Date), ILS shall finalize its plan and provide it to the parties. Starting within 6 months of finalization of the plan, the State shall undertake good faith efforts to begin implementing the plan, subject to legislative appropriations.

(3) The parties acknowledge that the State may seek to satisfy the obligations set forth in paragraph III(A)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for providing each Indigent Defendant with representation by counsel in person at his or her Arraignment. Nothing in this provision alters the State's obligations set forth in paragraph III(A)(1).

(4) Incidental or sporadic failures of counsel to appear at Arraignments within a County shall not constitute a breach of the State's obligations under paragraph III(A)(1).

(B) The Executive shall coordinate and work in good faith with the Office of Court Administration ("OCA") to ensure, on an ongoing basis, that each judge and magistrate within the Five Counties, including newly appointed judges and magistrates, is aware of the responsibility to provide counsel to Indigent Defendants at Arraignments, and, subject to constitutional and statutory limits regarding prompt arraignments, to consider adjustments to court calendars and Arraignment schedules to facilitate the presence of counsel at Arraignments. If, notwithstanding the Executive's satisfaction of the terms of this paragraph III(B), lack of cooperation from OCA prevents the provision of counsel at some Arraignments, the State shall not be deemed in breach of the settlement for such absence of counsel at those Arraignments.

(C) In accordance with paragraph IX(B), the State shall use $1 million in state fiscal year 2015/2016 for the purposes of paying any costs associated with the interim steps described in paragraph III(A)(2). The State shall use these funds in the first instance to pay the Five Counties for the costs, if any, incurred by them in connection with the interim steps described in paragraph III(A)(2), and thereafter any remaining amounts shall be used to pay costs incurred by ILS.

(D) ILS, in consultation with the Executive, OCA, the Five Counties, and any other individual or entity it deems appropriate, shall, on an ongoing basis, monitor the progress toward achieving the purposes set forth in paragraph III(A)(1) above. Such monitoring shall include regular, periodic reports regarding: (1) the sufficiency of any funding committed to those purposes; (2) the effectiveness of any system implemented in accordance with paragraph III(A)(3) in ensuring that all Indigent Defendants are represented by counsel at Arraignment; and (3) any remaining barriers to ensuring the representation of all Indigent Defendants at Arraignment. Such reports shall be made available to counsel for the Plaintiff Class and the public.

(E) In no event shall the Five Counties be obligated to undertake any steps to implement the State's obligations under Section III until funds have been appropriated by the State for paragraph III(A)(1) or paragraph III(A)(2). Nothing in this paragraph shall alter the Five Counties' obligations under Section VII.

IV. CASELOAD RELIEF

(A) Within 6 months of the Effective Date, ILS shall ensure that the caseload/workload of each attorney providing Mandated Representation in the Five Counties can be accurately tracked and reported on at least a quarterly basis, including private practice caseloads/workloads. In accordance with paragraph IX(B), the State shall provide $500,000 in state fiscal year 2015/2016 to ILS for the purposes of paying any costs associated with the obligations contained in this paragraph IV(A), and ILS shall use those funds for such purposes. To the extent practicable, and subject to the specific funding commitments in this Agreement, the tracking system developed by ILS should be readily deployable across the state.

(B) (1) Within 9 months of the Effective Date, ILS, in consultation with the Executive, OCA, the Five Counties, and any other persons or entities ILS deems appropriate, shall determine:

(i) the appropriate numerical caseload/workload standards for each provider of mandated representation, whether public defender, legal aid society, assigned counsel program, or conflict defender, in each County, for representation in both trial- and appellate-level cases; (ii) the means by which those standards will be implemented, monitored, and enforced on an ongoing basis; and (iii) to the extent necessary to comply with the caseload/workload standards, the number of additional attorneys (including supervisory attorneys), investigators, or other non-attorney staff, or the amount of other in-kind resources necessary for each provider

of Mandated Representation in the Five Counties.

(2) In reaching these determinations, ILS shall take into account, among other things, the types of cases attorneys handle, including the extent to which attorneys handle non-criminal cases; the private practice caseloads/workloads of attorneys; the qualifications and experiences of the attorneys; the distance between courts and attorney offices; the time needed to interview clients and witnesses, taking into account travel time and location of confidential interview facilities; whether attorneys work on a part-time basis; whether attorneys exercise supervisory responsibilities; whether attorneys are supervised; and whether attorneys have access to adequate staff investigators, other non-attorney staff, and in-kind resources.

(3) In no event shall numerical caseload/workload standards established under paragraph IV(B)(1) or paragraph IV(E) be deemed appropriate if they permit caseloads in excess of those permitted under standards established for criminal cases by the National Advisory Commission on Criminal Justice Standards and Goals (Task Force on Courts, 1973) Standard 13.12.

(C) Starting within 6 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B), the State shall take tangible steps to enable providers of Mandated Representation to start adding any staff and resources determined to be necessary to come into compliance with the standards.

(D) (1) Within 21 months of ILS having made the caseload/workload determinations specified above in paragraph IV(B) (which shall be no later than 30 months from the Effective Date) (the "Implementation Date") and continuing thereafter, the State shall ensure that the caseload/workload standards are implemented and adhered to by all providers of Mandated Representation in the Five Counties.

(2) The parties acknowledge that the State may delegate to ILS the primary responsibility for overseeing the implementation, monitoring, and enforcement of the caseload/workload standards required hereunder, provided, however, that nothing in this provision alters the State's obligations set forth in this Section IV.

(3) The parties acknowledge that the State may seek to satisfy the obligation in paragraph IV(D)(1) by ensuring the existence and maintenance within each of the Five Counties of an effective system for implementing and enforcing any caseload/workload standards adopted under this Section IV. Nothing in this provision alters the State's obligations set forth in this Section IV.

(E) Beginning approximately 18 months after the Implementation Date, and no less frequently than annually thereafter, ILS shall review the appropriateness of any such standards in light of any change in relevant circumstances in each of the Five Counties. Immediately following any such review, ILS shall recommend to the Executive whether and to what extent the established caseload/workload standards should be amended on the basis of changed circumstances. Any proposed change to a caseload/workload standard implemented hereunder by ILS shall be submitted by ILS for approval by the Executive, provided, however, that such approval shall not be unreasonably withheld. Nothing in this provision shall limit the authority of ILS or the ILSB pursuant to Executive Law Article 30, Sections 832 and 833.

(F) Incidental or sporadic noncompliance with the caseload/workload standards by individual attorneys providing Mandated Representation shall not constitute a breach of the State's obligations under this Section IV.

V. INITIATIVES TO IMPROVE THE QUALITY OF INDIGENT DEFENSE

(A) No later than 6 months following the Effective Date, ILS, in consultation with the Five Counties, the providers of Mandated Representation in the Five Counties, and any other individual or entity ILS deems appropriate, shall establish written plans to ensure that attorneys providing Mandated Representation in criminal cases in each of the Five Counties: (1) receive effective supervision and training in criminal defense law and procedure and professional practice standards; (2) have access to and appropriately utilize investigators, interpreters, and expert witnesses on behalf of clients; (3) communicate effectively with their clients (including by conducting in-person interviews of their clients promptly after being assigned) and have access to confidential meeting spaces; (4) have the qualifications and experience necessary to handle the criminal cases assigned to them; and (5) in the case of assigned counsel attorneys, are assigned to cases in accordance with County Law Article 18-B and in a manner that accounts for the attorney's level of experience and caseload/workload. At a minimum, such plans shall provide for specific, targeted progress toward each of the objectives listed in this paragraph V(A), within defined timeframes, and shall also provide for such monitoring and enforcement procedures as are deemed necessary by ILS.

(B) ILS shall thereafter implement the plans developed in accordance with paragraph V(A). To address costs associated with implementing these plans, ILS shall provide funding within each County through its existing program for quality improvement distributions, provided, however, that ILS shall take all necessary and appropriate steps to ensure that any distributions intended for use in accomplishing the objectives listed in paragraph V(A) are used exclusively for that purpose.

(C) In accordance with paragraphs IX(B) and IX(E), respectively, the State shall provide to ILS $2 million in each of state fiscal year 2015/2016 and state fiscal year 2016/2017 for the purposes of accomplishing the objectives set forth in

paragraph V(A), and ILS shall use such funds for those purposes. No portion of such funds shall be attributable to ILS's operating budget but shall instead be distributed by ILS to the Five Counties.

(D) The Five Counties may, but shall not be obligated to, pay all or a portion of the funds identified in paragraph V(C) to ILS to provide services designed to effectuate the objectives set forth in paragraph V(A), provided such services are rendered in state fiscal years 2015/2016 and 2016/2017 and pursuant to a written agreement between ILS and the relevant County.

VI. ELIGIBILITY STANDARDS FOR REPRESENTATION

(A) ILS shall, no later than 6 months following the Effective Date, issue criteria and procedures to guide courts in counties outside of New York City in determining whether a person is eligible for Mandated Representation. ILS may consult with OCA to develop and distribute such criteria and procedures. ILS shall be responsible for ensuring the distribution of such criteria and procedures to, at a minimum, every court in counties outside of New York City that makes determinations of eligibility (and may request OCA's assistance in doing so) and every provider of mandated representation in the Five Counties. The Five Counties shall undertake best efforts to implement such criteria and procedures as developed by ILS. Nothing in this paragraph otherwise obligates the Five Counties to develop such criteria and procedures.

(B) At a minimum, the criteria and procedures shall provide that: (1) eligibility determinations shall be made pursuant to written criteria; (2) confidentiality shall be maintained for all information submitted for purposes of assessing eligibility; (3) ability to post bond shall not be considering sufficient, standing alone, to deny eligibility; (4) eligibility determinations shall take into account the actual cost of retaining a private attorney in the relevant jurisdiction for the category of crime charged; (5) income needed to meet the reasonable living expenses of the

applicant and any dependent minors within his or her immediate family, or dependent parent or spouse, should not be considered available for purposes of determining eligibility; and (6) ownership of an automobile should not be considered sufficient, standing alone, to deny eligibility where the automobile is necessary for the applicant to maintain his or her employment. In addition, ILS shall set forth additional criteria or procedures as needed to address: (7) whether screening for eligibility should be performed by the primary provider of Mandated Representation in the county; (8) whether persons who receive public benefits, cannot post bond, reside in correctional or mental health facilities, or have incomes below a fixed multiple of federal poverty guidelines should be deemed presumed eligible and be represented by public defense counsel until that representation is waived or a determination is made that they are able to afford private counsel; (9) whether (a) non-liquid assets and (b) income and assets of family members should be considered available for purposes of determining eligibility; (10) whether debts and other financial obligations should be considered in determining eligibility; (11) whether ownership of a home and ownership of an automobile, other than an automobile necessary for the applicant to maintain his or her employment, should be considered sufficient, standing alone, to deny eligibility; and (12) whether there should be a process for appealing any denial of eligibility and notice of that process should be provided to any person denied counsel.

(C) ILS shall issue an annual report regarding the criteria and procedures used to determine whether a person is eligible to receive Mandated Representation in each of the Five Counties. Such report shall, at a minimum, analyze: (1) the criteria used to determine whether a person is eligible; (2) who makes such determinations; (3) what procedures are used to come to such determinations; (4) whether and to what extent decisions are reconsidered and/or appealed; and (5) whether and to what extent those criteria and procedures comply with the criteria and procedures referenced in paragraph VI(A). The first such report shall

be issued no later than 12 months following the establishment of the criteria and procedures discussed in paragraph VI(A).

VII. COUNTY COOPERATION

The Five Counties shall use best efforts to cooperate with the State and ILS to the extent necessary to facilitate the implementation of the terms of this Agreement. This obligation is in no way subject to or conditioned upon any obligations undertaken by Ontario and Schuyler Counties by virtue of their separate agreements to settle this Action. Such cooperation shall include, without limitation: (1) the timely provision of information requested by the State or ILS; (2) compliance with the terms of the plans implemented pursuant to paragraphs III(A)(2), IV(B)(1), and V(A); (3) assisting in the distribution of the eligibility standards referenced in part VI(A); (4) assisting in the monitoring, tracking, and reporting responsibilities set forth in parts III(D), IV(A), and VI(C); (5) ensuring that the providers of Mandated Representation and individual attorneys providing Mandated Representation in the Five Counties provide any necessary information, compliance, and assistance; (6) undertaking best efforts to ensure the passage of any legislation and/or legislative appropriations contemplated by this Agreement; and (7) any other measures necessary to ensure the implementation of the terms of this Agreement. County failure to cooperate does not relieve the State of any of its obligations under this Settlement Agreement.

VIII. MONITORING AND REPORTING

In order to permit Plaintiffs to assess compliance with all provisions of this Agreement, the State shall:

(A) Promptly provide to Plaintiffs copies of the following documents upon their finalization and subsequent to any amendment thereto:

(1) The plan(s) concerning counsel at arraignment referenced in paragraph III(A)(2);

(2) The reports concerning counsel at arraignment referenced in paragraph III(D);

(3) The determinations regarding caseload/workload referenced in paragraph IV(B)(1) and any changes proposed or made pursuant to paragraph IV(E);

(4) The plan(s) for quality improvement referenced in paragraph V(A);

(5) The eligibility criteria referenced in paragraph VI(A);

(6) The reports regarding eligibility determinations referenced in paragraph VI(C);

(7) The relevant portions of each Executive Budget submitted during the term of this Agreement.

(B) Provide written reports to Plaintiffs concerning the State's efforts to carry out its obligations under this Agreement and the results thereof, including, without limitation:

(8) Ensuring counsel at arraignment pursuant to paragraph III(A)(1);

(9) Coordinating with OCA pursuant to paragraph III(B);

(10) Implementing the tracking system referenced in paragraph IV(A);

(11) Implementing the caseload/workload standards referenced in paragraph IV(B) or paragraph IV(E) and ensuring that those caseload/workload standards are adhered to;

(12) Implementing the plans referenced in paragraph V(A).

Within 90 days of the Effective Date, the State and Plaintiffs shall meet and confer in good faith to identify the content and frequency of the specific reports

identified above that will be provided to Plaintiffs pursuant to this Section VIII.

IX. BEST EFFORTS AND APPROPRIATIONS

(A) The parties shall use their best efforts to obtain the enactment of all legislative measures necessary and appropriate to implement the terms of the Settlement Agreement.

(B) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for state fiscal year 2015/2016 sufficient appropriation authority to fund $3.5 million for purposes of implementing paragraphs III(C), IV(A), and V(C) of this Agreement.

(C) In order to prevent the obligation to provide counsel at Arraignment as set forth in Section III from imposing any additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity the Executive deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section III.

(D) In order to prevent the caseload/workload standards implemented under Section IV from imposing an additional financial burden on any County, the Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017, and for each state fiscal year thereafter, sufficient appropriation authority for such funds that it, in consultation with ILS, OCA, the Five Counties, and any other individual or entity it deems appropriate, determines, in its sole discretion, are necessary to accomplish the purposes set forth in Section IV. In the absence of such funds, the Five Counties shall not be required to implement the caseload/workload standards referenced in

Section IV; provided, however, that nothing in this provision alters the State's obligation to ensure that caseload/workload standards are implemented and adhered to.

(E) The Executive shall include in an Executive budget appropriation bill submitted to the Legislature for the state fiscal year 2016/2017 sufficient appropriation authority to fund $2 million to ILS for the purposes of implementing paragraph V(C).

(F) The Executive shall use best efforts to seek and secure the funding described in paragraphs IX(B), IX(C), IX(D), and IX(E), as well as any other funding or resources necessary, as determined in the sole discretion of the Executive, to implement the terms of this Agreement including, without limitation, funding and resources sufficient for ILS to carry out its responsibilities under the Agreement. Consistent with the State Constitution and the State Finance Law, this Agreement is subject to legislative appropriation of such funding. The State shall perform its obligations under this Agreement in each fiscal year for the term of the Agreement to the extent of the enacted appropriation therefor.

(G) Except as provided in paragraph XIII(A), nothing herein shall be construed to obligate the Five Counties to provide funding to implement any of the obligations under this Agreement.

X. LEGISLATIVE PROCESS AND OUTCOMES

(A) Upon the Effective Date, this Action shall be conditionally discontinued only as to the parties that execute this Agreement, pending the enactment of the budget for the state fiscal year 2015/2016 and, if required, the completion of the meet-and-confer process described in paragraph X(B) below.

(1) No later than 21 days after the enactment of the 2015/2016 budget, the State shall provide Plaintiffs with written notice stating whether or not the

State believes that it can fully implement its obligations under this Agreement in light of the amount of funding appropriated by the Legislature.

(2) If the written notice provided under X(A)(1) sets forth the State's determination that the State can fully implement all of its obligations under this Agreement, then this Action shall be discontinued with prejudice only as to the parties that execute this Agreement. Such discontinuance shall not preclude Plaintiffs from commencing any new action pursuant to paragraph X(C)(2) below.

(B) If at any time the State believes it cannot fully implement one or more of its obligations under this Agreement in light of the Legislature's action, the State shall notify Plaintiffs in writing of that fact and the parties shall meet and confer to determine whether they can mutually resolve the issue(s). If the parties are unable to resolve the matter within 45 days of the written notice provided by the State, the State within 10 days shall notify Plaintiffs in writing which obligation(s) the State is unable to fully implement. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section III, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for actual denial of counsel. If the State notifies Plaintiffs that it cannot fully implement one or more of its obligations in Section IV or V of this Agreement, Plaintiffs may pursue, as specified in paragraph X(C)(1) or X(C)(2), as appropriate, judicial remedies on their claims for constructive denial of counsel. The State shall remain obligated to comply with the relevant affected provision(s) of the Agreement to the extent it has funding to do so and shall remain obligated to implement all provisions not affected by legislative action unless the State notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it can implement no provision of Sections III, IV, and V of the Agreement, in which case the entire Agreement

shall be deemed null and void, and the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

(C) (1) State Fiscal Year 2015/2016. If the State, pursuant to paragraph X(B), notifies Plaintiffs within 90 days of enactment of the 2015/2016 budget that it cannot fully implement one or more of its obligations under the Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) by restoring this Action to the trial calendar by serving written notice upon the Court and the relevant parties that have signed the Agreement within 30 days after receiving such notice from the State, in which case the relevant parties shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014, with respect to the restored claim(s).

(2) State Fiscal Year 2016/2017 to the Expiration of this Agreement. In accordance with any notice pursuant to paragraph X(B) with respect to the 2016/2017 state fiscal year or any later state fiscal year through the expiration of this Agreement, Plaintiffs may pursue judicial remedies as allowed under paragraph X(B) only by filing a new action for declaratory and prospective injunctive relief. Nothing in the Stipulation of Discontinuance filed in this Action is intended to bar or shall have the effect of barring, by virtue of the doctrine of res judicata or other principles of preclusion, any new action as allowed under paragraph X(B) or any claims within such action. Neither the State nor any other defendant shall assert or argue that any such action or claim asserted therein is barred by virtue of the prior discontinuance of this Action.

(3) Nothing in this paragraph shall be construed to alter the parties' rights under paragraph XIII(S).

XI. DISPUTE RESOLUTION

(A) If Plaintiffs believe that the State is not in compliance with a provision of this Settlement Agreement, Plaintiffs shall give notice to all parties in writing, and shall state with specificity the alleged non-compliance. Upon receipt of such notice by the State, Plaintiffs and the State will promptly engage in good-faith negotiations concerning the alleged non-compliance and appropriate measures to cure any non-compliance. Any party may request the participation of ILS in such negotiations. If Plaintiffs and the State have not reached an agreement on the existence of the alleged non-compliance and curative measures within forty-five (45) days after receipt of such notice of alleged non-compliance, Plaintiffs may seek all appropriate judicial relief with respect to such alleged non-compliance, upon ten (10) days' prior notice in accordance with the Escalation Notice terms set forth in paragraph XI(B). The State and Plaintiffs may extend these time periods by written agreement. Nothing said by either party or counsel for either party during those meetings may be used by the other party in any subsequent litigation, including, without limitation, litigation in connection with this Agreement, for any purpose whatsoever.

(B) Plaintiffs shall provide notice ("Escalation Notice") to the individuals identified in paragraph XIII(G)(2) at least ten (10) business days before seeking judicial relief as described in paragraph XI(A), which notice shall inform such individuals that Plaintiffs intend to seek judicial relief and shall attach the notice provided under paragraph XI(A).

(C) Notwithstanding the dispute resolution procedures set forth above, if exigent circumstances arise, Plaintiffs shall be able to seek expedited judicial relief against the State based upon an alleged breach of this Agreement, upon five (5) business days' prior notice to the individuals identified in paragraphs XIII(G)(1) and XIII(G)(2).

(D) Plaintiffs shall not seek to enforce any provision of this Agreement against any County. No provision of this Agreement shall form the basis of any cause of action by Plaintiffs against any County. In no event shall County action or inaction relieve the State of any of its obligations under this Agreement.

(E) If the State believes that a County is not meeting its obligations under this Agreement, it may seek relief following the same procedures as set out above in paragraphs XI(A), XI(B), and XI(C).

(F) Venue over any disputes concerning enforcement of this Agreement (1) between Plaintiffs and the State, (2) involving all the parties to this Agreement, or (3) between the State and more than one County shall be in a court of competent jurisdiction in Albany County. Venue over any disputes concerning enforcement of this Agreement between the State and a single County shall be in a court of competent jurisdiction in that County.

XII. ATTORNEYS' FEES AND COSTS

(A) The State agrees to make a payment to Plaintiffs' counsel, the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, in the aggregate amount of $5.5 million, as follows:

(1) The sum of $2.5 million (Two Million Five Hundred Thousand Dollars) for which an I.R.S. Form 1099 shall be issued to the New York Civil Liberties Foundation, and the sum of $3.0 million (Three Million Dollars) for which an I.R.S. Form 1099 shall be issued to Schulte Roth & Zabel LLP in full and complete satisfaction of any claims against the State and the Five Counties for attorneys' fees, costs, and expenditures incurred by Plaintiffs for any and all counsel who have at any time represented Plaintiffs in the Action through the Effective Date.

(2) The payment of $2.5 million referred to in this paragraph shall be made payable and delivered to "New York Civil Liberties Union Foundation," 125 Broad Street, 19th Floor, New York, New York 10004. The payment of $3.0 million referred to in this paragraph shall be made payable and delivered to "Schulte Roth & Zabel LLP," 919 Third Avenue, New York, New York 10022.

(B) Any taxes on payments and/or interest or penalties on taxes on the payments referred to in paragraph XII(A) of this Agreement shall be the sole responsibility of the New York Civil Liberties Union Foundation and Schulte Roth & Zabel LLP, respectively, and Plaintiffs' attorneys shall have no claim, right, or cause of action against the State of New York or any of its agencies, departments, or subdivisions on account of such taxes, interests, or penalties.

(C) Payment of the amounts recited in paragraph XII(A) above will be made (1) after the filing of a stipulation of discontinuance as set forth in paragraph XIV(A), upon complete discontinuance of this Action, or paragraph XIV(B), in the case of a partial restoration of this Action, and (2) subject to the approval of all appropriate New York State officials in accordance with Section 17 of the New York State Public Officers Law. Plaintiffs' counsel agree to execute and deliver promptly to counsel for the State all payment vouchers and other documents necessary to process such payments, including, without limitation, a statement of the total attorney hours expended on this matter and the value thereof and all expenditures. Counsel for the State shall deliver promptly to the Comptroller such documents and any other papers required by the Comptroller with respect to such payments. Pursuant to CPLR 5003a(c), payment shall be made within ninety (90) days of the Comptroller's determination that all papers required to effectuate the settlement have been received by him. In the event that payment in full is not made within said ninety-day period, interest shall accrue on the outstanding balance at the rate set forth in CPLR 5004, beginning on the ninety-first day after

the Comptroller's determination.

(D) Upon receipt of and in consideration of the payment of the sums set forth in paragraph XII(A), Plaintiffs shall (1) in the case of a complete discontinuance of this Action pursuant to paragraph XIV(A), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date; or (2) in the case of a partial discontinuance of this Action pursuant to paragraph XIV(B), waive, release, and forever discharge the State Defendants, including the State of New York, and the Five Counties and each of their respective current and former employees in their individual capacities, and their heirs, executors, administrators, and assigns from any and all claims for attorneys' fees, costs, and expenditures incurred in connection with this Action through the Effective Date, it being specifically understood that, upon such restoration, Plaintiffs shall also be free to seek reimbursement for their attorneys' fees, costs, and expenditures incurred after the Effective Date.

(E) Plaintiffs' counsel agree to maintain their billing records and documents evidencing payment of expenses relating to this Action for the term of this Agreement.

(F) In the event that this Agreement becomes null and void pursuant to paragraph X(B) or Section XVI, then (1) the State shall be under no obligation to make the payments referred to in paragraph XII(A); and (2) Plaintiffs shall be free to seek reimbursement of their full attorneys' fees, costs, and expenditures incurred in connection with this Action (including those incurred both before and after the date of this Agreement).

XIII. GENERAL PROVISIONS

(A) Supplementation of Funds. State funds received by a County pursuant to this settlement shall be used to supplement and not supplant any local funds that such County currently spends for the provision of counsel and expert, investigative, and other services pursuant to County Law Article 18-B. All such state funds received by a County shall be used to improve the quality of Mandated Representation services provided pursuant to County Law Article 18-B.

(B) Modification. This Agreement may not be modified without the written consent of the parties and the approval of the Court. However, the parties agree that non-material modifications of this Settlement Agreement can be made, with the written consent of the parties, without approval of the Court. For purposes of this paragraph, written consent from a County shall be deemed to exist with respect to a modification of any provision of this Agreement other than Section VII if such County (1) has been notified in writing that Plaintiffs and the State have agreed upon such modification; and (2) does not, within ten (10) business days of receipt of such notice, object in writing to such modification.

(C) Expiration of Agreement. This Agreement shall expire 7.5 years after the Effective Date.

(D) Entire Agreement. This Agreement contains all the terms and conditions agreed upon by the parties with regard to the settlement contemplated herein, and supersedes all prior agreements, representations, statements, negotiations, and undertakings (whether oral or written) with regard to settlement, provided, however, that nothing herein shall be deemed to abrogate or modify the separate settlement agreements entered into between Plaintiffs and Ontario County, dated June 20, 2014, and between Plaintiffs and Schuyler County, dated September 29, 2014.

(E) Interpretation. The parties acknowledge that each party has participated in the drafting and preparation of this Agreement; consequently, any ambiguity shall not be construed for or against any party.

(F) Time Periods. If any of the dates or periods of time described in this Agreement fall or end on a public holiday or on a weekend, the date or period of time shall be extended to the next business day. A "day" shall mean a calendar day unless otherwise specifically noted.

(G) Notice.

(1) All notices required under or contemplated by this Agreement shall be sent by U.S. mail and electronic mail as follows (or to such other address as the recipient named below shall specify by notice in writing hereunder):

If to the State Defendants:

Adrienne Kerwin Assistant Attorney General The Capitol Albany, New York 12224 Adrienne.Kerwin@ag.ny.gov	Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov

If to Plaintiffs:

Corey Stoughton New York Civil Liberties Union Foundation 125 Broad Street New York, New York 10004 cstoughton@nyclu.org	Kristie M. Blase Schulte Roth & Zabel LLP 919 Third Avenue New York, New York 10022 kristie.blase@srz.com

If to Onondaga County:

Gordon Cuffy
Onondaga County Attorney
Department of Law
John H. Mulroy Civic Center
421 Montgomery Street, 10th Floor
Syracuse, New York 13202
GordonCuffy@ongov.net

If to Ontario County:

Michael Reinhardt
Ontario County Courthouse
27 North Main Street
Canandaigua, New York 14424
Michael.Reinhardt@co.ontario.ny.us

If to Schuyler County:

Geoffrey Rossi
Schuyler County Attorney
105 9th Street
Unit 5
Watkins Glen, New York 14891
grossi@schuyler.co.ny

If to Suffolk County:

Dennis Brown
Suffolk County Attorney
H. Lee Dennison Building
100 Veterans Memorial Highway
P.O. Box 6100, 6th Floor
Hauppauge, New York 11788
dennis.brown@suffolkcountyny.gov

If to Washington County:

William A. Scott
Fitzgerald Morris Baker Firth P.C.
16 Pearl Street
Glens Falls, New York 12801
WAS@fmbf-law.com

If to ILS:

Joseph Wierschem
Counsel
Office of Indigent Legal Services
Alfred E. Smith Building, 29th Floor
80 South Swan Street
Albany, New York 12224
Joseph.Wierschem@ils.ny.gov

(2) Any Escalation Notice shall be sent as follows:

If to the State Defendants:

Meg Levine Deputy Attorney General Division of State Counsel Office of the Attorney General The Capitol Albany, New York 12224 Meg.Levine@ag.ny.gov	Seth H. Agata Acting Counsel to the Governor New York State Capitol Building Albany, New York 12224 Seth.Agata@exec.ny.gov

(3) Each party shall provide notice to the other parties of any change in the individuals or addresses listed above within thirty (30) days of such change, and the new information so provided will replace the notice listed herein for such party.

(H) No Admission. Nothing in this Agreement shall be construed as an admission of law or fact or acknowledgement of liability, wrongdoing, or violation of law by the State or any Ratifying County regarding any of the allegations contained in the Second Amended Complaint in this Action, or as an admission or

acknowledgment by the State or any other defendant concerning whether Plaintiffs are the prevailing party in the Action by virtue of this settlement.

(I) Precedential Value. This Agreement and any Order entered thereon shall have no precedential value or effect whatsoever, and shall not be admissible, in any other action or proceeding as evidence or for any other purpose, except in an action or proceeding to enforce this Agreement.

(J) No Waiver for Failure to Enforce. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or other provision herein shall not be construed as a waiver of its right to enforce deadlines or provisions of this Agreement.

(K) Unforeseen Delay. If an unforeseen circumstance occurs that causes the State or ILS to fail to timely fulfill any requirement of this Agreement, the State shall notify the Plaintiff in writing within twenty (20) days after the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform and the measures taken to prevent or minimize the failure. The State shall take all reasonable measures to avoid or minimize any such failure. Nothing in this paragraph shall alter any of the State's obligations under this Agreement or Plaintiffs' remedies for a breach of this Agreement.

(L) No Third-Party Beneficiaries. No person or entity other than the parties hereto (a "third party") is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no such third party may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the rights of any third party to seek relief against the State, any County, or their officials, employees, or agents for their conduct; accordingly, this Agreement does not alter legal standards governing any such claims, including those under New York law.

(M) Ineffectiveness Claims Unimpaired. Nothing in this Agreement is intended to, or shall be construed to, impair, curtail, or operate as a waiver of the rights of any current or former member of the Plaintiff Class with respect to such member's individual criminal case, including, without limitation, any claim based on ineffective assistance of counsel.

(N) Confidential Information Relating to Plaintiff Class Members. The parties acknowledge that privileged and confidential information of Plaintiff Class members, including documents and deposition testimony designated as confidential, information protected by the attorney-client privilege and/or work product doctrine, and documents revealing individuals' social security numbers, private telephone numbers, financial information, and other private and sensitive personal information, was disclosed and obtained during the pendency of this Action. None of the State Defendants or the Five Counties shall use or disclose to any person such documents or information except as required by law. If any of the State Defendants or the Five Counties receives a subpoena, investigative demand, formal or informal request, or other judicial, administrative, or legal process (a "Subpoena") requesting such confidential information, that party shall (1) give notice and provide a copy of the request to Plaintiffs as soon as practicable after receipt and in any case prior to any disclosure; (2) reasonably cooperate in any effort by Plaintiffs to move to quash, move for protective order, narrow the scope of, or otherwise obtain relief with respect to the Subpoena; and (3) refrain from disclosing any privileged or confidential information before Plaintiffs' efforts to obtain relief have been exhausted.

(O) Binding Effect on Successors. The terms and conditions of this Agreement, and the commitments and obligations of the parties, shall inure to the benefit of, and be binding upon, the successors and assigns of each party.

(P) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law provisions thereof.

(Q) Signatories. The undersigned representative of each party to this Agreement certifies that each is authorized to enter into the terms and conditions of this Agreement and to execute and bind legally such party to this document.

(R) Counterparts. This Stipulation may be executed in counterparts, and each counterpart, when executed, shall have the full efficacy of a signed original. Photocopies and PDFs of such signed counterparts may be used in lieu of the originals for any purpose.

(S) Covenant Not to Sue. Plaintiffs agree not to sue the State Defendants during the duration of this Agreement on any cause of action based upon any statutory or constitutional claim set forth in the Second Amended Complaint, except that Plaintiffs retain their rights to (1) restore this Action pursuant to paragraph X(C)(1); (2) commence a new action pursuant to paragraph X(C)(2); and (3) enforce the terms of this Agreement.

(T) Authority of ILS. The parties acknowledge that the New York Office of Indigent Legal Services and the Board of Indigent Legal Services have the authority to monitor and study indigent legal services in the state, award grant money to counties to support their indigent representation capability, and establish criteria for the distribution of such funds.

(U) ILS as Signatory to this Agreement. ILS is a signatory to this Agreement for the limited purpose of acknowledging and accepting its responsibilities under this Agreement.

XIV. DISCONTINUANCE WITH PREJUDICE

(A) Without delay after the State provides the notice specified by paragraph X(A)(2), a Stipulation and Order of Discontinuance substantially in the form attached hereto as Exhibit B, shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, and filed with the Court. Nothing in the Stipulation and Order of Discontinuance so filed is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in the Stipulation and Order of Discontinuance prevent any party from enforcing this Agreement.

(B) In the event that the Action is partially restored pursuant to paragraph X(C)(1), without delay after Plaintiffs provide notice as required by paragraph X(C)(1), the relevant parties shall confer and draft a stipulation of discontinuance that discontinues with prejudice all claims that are not restored pursuant to paragraph X(C)(1). Such stipulation shall be executed by counsel for Plaintiffs, the State Defendants, and the relevant Ratifying Counties, as appropriate, and filed with the Court. Nothing in such stipulation is intended to bar or shall have the effect of barring, including by virtue of the doctrine of res judicata or other principles of preclusion, a new action, as permitted by paragraph X(C)(2), or any claims within that action. Nor shall anything in such stipulation prevent any party from enforcing this Agreement.

XV. COUNTY APPROVAL

This Agreement shall not be binding on any County unless and until the required legislative approval in that County has been obtained and the Agreement has been signed on behalf of the County (in which case, a County may be referred to as a "Ratifying County"). In the event that any County's legislature does not approve this Agreement (a "Non-Ratifying County") and, as a result, one or more of the Counties does not become a party to this Agreement, the Agreement

shall nonetheless remain in effect and binding upon all the parties that have signed it, each of which shall perform all obligations hereunder owed to the other parties that have signed the Agreement. In the event a Non-Ratifying County fails to become a party to this Agreement, (1) this Action shall not be discontinued as against any Non-Ratifying County and Plaintiffs shall be free to pursue any claims they may have against such Non-Ratifying County and seek any and all relief to which Plaintiffs may be entitled, except insofar as such claims have been or may be dismissed pursuant to Plaintiffs' separate settlement agreements with Ontario County and Schuyler County; (2) any stipulation of discontinuance filed hereunder (including the Stipulation and Order of Discontinuance attached as Exhibit B) shall be modified to exclude any Non-Ratifying County and make clear that Plaintiffs' claims against such Non-Ratifying County are not discontinued; (3) each Non-Ratifying County shall be considered a third party pursuant to paragraph XIII(L) for purposes of this Agreement; and (4) the releases in paragraph XII(D) shall be ineffective as to such Non-Ratifying County. For the avoidance of doubt, as between Plaintiffs and the State: (a) the benefits of this Agreement, including, without limitation, the releases referred to in Section XII and the covenant not to sue referred to in paragraph XIII(S), shall accrue to the State and Plaintiffs, and (b) the State's and ILS's obligations relating to Sections III, IV, V, and VI shall remain in effect as to all Five Counties independent of County ratification of this Agreement.

XVI. COURT REVIEW AND APPROVAL

This Settlement Agreement is subject to approval by the Court pursuant to CPLR 908. In the event that the Court does not approve the Settlement Agreement, then the parties shall meet and confer for a period of 30 days to determine whether to enter into a modified agreement prior to the resumption of litigation. If the parties have not entered into a modified agreement within such 30-day period, then this Agreement shall become null and void, and the relevant parties shall request the case be restored to the trial calendar and shall be restored to the same positions in the litigation that they had immediately prior to October 21, 2014.

Attorneys for Plaintiffs

By: _____
COREY STOUGHTON
CHRISTOPHER DUNN
MARIKO HIROSE
ERIN HARRIST
PHILIP DESGRANGES
DANA WOLFE

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

Dated: 10/21/2014

Attorneys for Plaintiffs

SCHULTE ROTH & ZABEL LLP

By: _____
GARY STEIN
DANIEL GREENBERG
KRISTIE BLASE
MATTHEW SCHMIDT
DANIEL COHEN
AMANDA JAWAD
NOAH GILLESPIE
PETER SHADZIK

Dated: 10/21/2014

Attorneys for Defendant New York State and Governor Andrew M. Cuomo

ERIC T. SCHNEIDERMAN,
Attorney General for the State of New York

By: _____
ADRIENNE J. KERWIN, *Assistant Attorney General*

Dated: 10/21/2014

For Defendant Governor Andrew M. Cuomo

ANDREW M. CUOMO,
Governor of the State of New York

By: _____
SETH H. AGATA, *Acting Counsel to the Governor*

Dated: 10/21/2014

New York State Office of Indigent Legal Services

WILLIAM LEAHY,
Director

_____

Dated: 10/21/2014

DOC ID - 22028239.1

Attorneys for Defendant Onondaga County

GORDON J. CUFFY, County Attorney

_____

Dated: _____

Attorneys for Defendant Suffolk County

DENNIS M. BROWN, County Attorney

_____

Dated: _____

For Defendant Washington County

JAMES T. LINDSAY,
Chairman of the Board of Supervisors

_____

Dated: _____

Attorneys for Ontario County

JOHN PARK, County Attorney

By: _____
MICHAEL REINHARDT

Dated: _____

Attorneys for Schuyler County

GEOFFREY ROSSI, County Attorney

_____

Dated: _____

So Ordered.

Dated: _____

_____
HON. GERALD W. CONNOLLY

AUTHORIZATION OF THE INDIGENT LEGAL SERVICES BOARD AND THE NEW YORK STATE OFFICE OF INDIGENT LEGAL SERVICES CONCERNING SETTLEMENT OF THE *HURRELL-HARRING V. STATE OF NEW YORK* LAWSUIT

Pursuant to New York State Executive Law §832, the Office of Indigent Legal Services ("ILS") has the authority to act in pursuit of its statutory responsibility to make efforts to improve the quality of mandated legal representation in the state of New York. See §832 (1) and (3) (a) through (k). ILS has the further responsibility under §832 (3) (l) "to make recommendations for consideration by the indigent legal services board." ("the Board"). The Board has the authority "to accept, reject or modify recommendations made by the office[,]" §833 (7) (c); and once it has done so, the Office has a duty under §832 (3) (m) to execute its decisions. The Board and ILS have reviewed the agreement settling the action of Hurrell-Harring, et al. v. State of New York, et al., Index No. 8866-07 ("the Agreement"), and the State's obligations contained therein that are expressly intended for implementation by ILS. The Board and ILS acknowledge that those obligations constitute measures that, once implemented, will improve the quality of indigent legal services. Consequently, the Board accepts the recommendation of ILS that ILS implement the obligations under the Agreement and hereby authorizes and directs ILS to implement those obligations in accordance with the terms of the Agreement. The Board represents and warrants that it is authorized to take this action. Moreover, ILS represents and warrants that it has reviewed the obligations contained in the Agreement, and agrees to implement the obligations identified in the Agreement. The Board hereby authorizes ILS to sign the Agreement.

Dated: October 21, 2014

INDIGENT LEGAL SERVICES BOARD

By: John R. Dunne

JOHN DUNNE, Board Member

Dated: October 21, 2014

OFFICE OF INDIGENT LEGAL SERVICES

By: William J. Leahy

WILLIAM LEAHY, Director

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DISABILITY LAW CENTER, INC., Plaintiff, v. MASSACHUSETTS DEPARTMENT OF CORRECTION, et. al., Defendants	CIVIL ACTION NO. 07-10463 (MLW)

SETTLEMENT AGREEMENT

Introduction

The Plaintiff Disability Law Center, Inc. filed the instant lawsuit, *Disability Law Center, Inc. v. Massachusetts Department of Correction, et al.*, Civ. No. 07-10463 (D. Mass.), seeking declaratory and injunctive relief on behalf of its constituents, inmates with mental illness in the custody of the Massachusetts Department of Correction, alleging, *inter alia*, that their confinement in Segregation is in violation of the Eighth and Fourteenth Amendments of the United States Constitution, 29 U.S.C. § 794 (the Rehabilitation Act) and 42 U.S.C. § 12132 (the Americans with Disabilities Act).

The Defendants deny that they have violated any such constitutional or statutory rights. The Defendants also state that prior to and since the initiation of this litigation, the Department had commenced significant initiatives to enhance the delivery of mental health services, and the process has been ongoing throughout the course of the litigation. To date, the Department's initiatives include the following: Implementation of a definition of Serious Mental Illness (SMI); Implementation of Mental Health Classification; Exclusion of SMI inmates from long-term Segregation; Operation of two maximum security mental health treatment units: the Secure Treatment Program (STP) and the Behavior Management Unit (BMU); Provision of weekly out-of-cell clinical contact to SMI inmates in short-term segregation units; Monthly review by the Central Office Segregation Review Committee of SMI inmates who are segregated more than

thirty (30) days; Establishment of a maximum security Residential Treatment Unit; Operation of three medium security Residential Treatment Units (RTUs) for general population inmates; Tasking Old Colony Correctional Center (OCCC) to serve as a special prison for inmates with mental illness; Incorporation of clinical mental health input into the disciplinary system; Enhancement of the Inmate Management System (IMS) to identify Mental Health Classification, SMI status, and incidents of self-injurious behavior by type; and Implementation of the suicide prevention recommendations of the Department's consultant.

The parties have conducted extensive discovery.

Without conceding any infirmity in their claims or defenses, the parties have engaged in extensive and arms length settlement negotiations to resolve the claims raised by this action.

Plaintiff and Defendants have reached an agreement for settling this litigation. The parties believe that this agreement is fair, reasonable, and adequate to protect the interests of all parties. The parties further believe that this Settlement Agreement will benefit inmates with Serious Mental Illness who are confined in correctional facilities under Defendants' control.

The parties will file this Settlement Agreement with the Court, and ask that the Court approve it, which approval is a condition precedent to the Agreement's effectiveness.

I. Definitions

Department – The Massachusetts Department of Correction ("Department").

Disability Law Center – The Disability Law Center, Inc. ("DLC").

Exigent Circumstances – Circumstances, including institutional emergencies as set forth in the Department's regulations, or emergencies in Segregation or a Secure Treatment Unit, under which the doing of an act otherwise required by this Settlement Agreement would create an unacceptable risk to the safety of any person.

Exigent Circumstances shall not include the opinion of a clinician that notwithstanding an inmate's Serious Mental Illness, the inmate may remain in Segregation.

Whenever an act otherwise required by this Settlement Agreement is excused on account of Exigent Circumstances, the Department shall attempt to resolve the Exigent Circumstances as soon as possible, and the act shall be performed as soon as possible after the Exigent Circumstances cease to exist.

Mental Health Classification – The Department's system that identifies and codes the level of mental health services that an inmate requires based upon his /her mental health need.

Qualified Mental Health Professional - Treatment providers who are psychiatrists, psychologists, psychiatric social workers, psychiatric nurses, and others who by virtue of their

education, credentials and experience are permitted by law to evaluate and care for the mental health needs of patients, and to perform each function otherwise required by this Settlement Agreement (e.g., diagnosis).

Secure Treatment Unit - The term Secure Treatment Unit ("STU") refers to any Department maximum security residential treatment program designed to provide an alternative to Segregation for inmates diagnosed with Serious Mental Illness who cannot be housed in general population due to safety and/or security concerns. The Department currently operates two STUs: the Secure Treatment Program ("STP") and the Behavioral Management Unit ("BMU"). The Department also operates Residential Treatment Units which are not deemed STUs because the Department operates them as general population units.

Segregation - The term Segregation refers to the confinement of an inmate in: (1) the Departmental Disciplinary Unit ("DDU"), (2) any Special Management Unit ("SMU"), or (3) any unit where the inmate is confined to his cell for approximately 23 hours per day. For purposes of this definition, Segregation shall not include any placement ordered by a medical or mental health provider, including but not limited to, the placement of an inmate in clinical seclusion or restraint at Bridgewater State Hospital, the placement of a civilly committed Treatment Center inmate in the Minimum Privilege Unit, the placement of a civilly committed Massachusetts Alcohol and Substance Abuse Center (MASAC) or a civilly committed MCI-Framingham inmate in an observation cell, the placement of an inmate in a Health Services Unit, the placement of an inmate in a hospital or the placement of an inmate on a mental health watch.

Serious Mental Illness (SMI) - For purposes of assessing whether Segregation may be clinically contraindicated, or whether an inmate in Segregation should be placed in a Specialized Treatment Unit, the term "Serious Mental Illness" shall be defined as the following:

a. Inmates determined by the Department's mental health vendor to have a current diagnosis or a recent significant history of any of the following types of DSM-IV-TR Axis I diagnoses:

(1) Schizophrenia (all sub-types)

(2) Delusional Disorder

(3) Schizophreniform Disorder

(4) Schizoaffective Disorder

(5) Brief Psychotic Disorder

6) Substance-Induced Psychotic Disorder (excluding intoxication and withdrawal)

(7) Psychotic Disorder Not Otherwise Specified

(8) Major Depressive Disorders

(9) Bipolar Disorder I and II

For purposes of this definition, "recent significant history" shall be defined as a diagnosis specified above in section (a)(1)-(9) upon discharge within the past year from an inpatient psychiatric hospital.

b. Inmates diagnosed by the Department's mental health vendor with other DSM-IV-TR Axis I disorders that are commonly characterized by breaks with reality, or perceptions of reality, that lead the individual to experience significant functional impairment involving acts of self-harm or other behaviors that have a seriously adverse effect on life or on mental or physical health.

c. Inmates diagnosed by the Department's medical or mental health vendor with a developmental disability, a dementia or other cognitive disorders that result in a significant functional impairment involving acts of self-harm or other behaviors that have a seriously adverse effect on life or on mental or physical health.

d. Inmates diagnosed by the Department's mental health vendor with a severe personality disorder that is manifested by episodes of psychosis or depression, and results in significant functional impairment involving acts of self-harm or other behaviors that have a seriously adverse effect on life or on mental or physical health.

Significant Functional Impairment

Factors for consideration when assessing significant functional impairment shall include the following:

1. The inmate has engaged in self harm which shall be defined as a deliberate act by the inmate that inflicts damage to, or threatens the integrity of one's own body. Such acts include but are not limited to the following behaviors: hanging, self-strangulation, asphyxiation, cutting, self-mutilation, ingestion of a foreign body, insertion of a foreign body, head banging, drug overdose, jumping and biting.

2. The inmate has demonstrated difficulty in his or her ability to engage in activities of daily living, including eating, grooming and personal hygiene, maintenance of housing area, participation in recreation, and ambulation, as a consequence of any DSM IV-TR Axis I or Axis II disorder.

3. The inmate has demonstrated a pervasive pattern of dysfunctional or disruptive social interactions including withdrawal, bizarre or disruptive behavior, etc. as a consequence of any DSM IV-TR Axis I or Axis II disorder.

II. Screening and Evaluation of Inmates in Segregation to Determine SMI

A. Screening Prior to Placement in Segregation

Prior to placement in Segregation, all inmates shall be screened by a qualified health care professional (e.g., a physician, physician assistant, nurse, or nurse practitioner) to determine (1) whether the inmate has a Serious Mental Illness, and/or (2) whether there are any acute mental health contraindications to Segregation. Acute mental health contraindications to Segregation include that the inmate appears acutely psychotic, is actively suicidal or has made a recent serious suicidal attempt, or is otherwise in need of immediate placement on mental health watch. If there is an acute mental health contraindication to Segregation, the inmate will immediately be placed in an alternative setting (e.g., mental health watch, inpatient hospitalization, or other appropriate healthcare setting).

B. Segregation Rounds

1. A Qualified Mental Health Professional shall make mental health rounds in the DDU and each Special Management Unit two (2) times a week. The Qualified Mental Health Professional shall arrange for an out-of-cell meeting with any inmate for whom a confidential meeting is warranted in the clinician's professional judgment. Custody staff shall provide escorts to facilitate out-of-cell meetings with clinicians, except in Exigent Circumstances and except where the inmate refuses.

C. Evaluation of Inmates in Segregation

1. Any inmate with an open mental health case who is placed in Segregation, must be assessed by a Qualified Mental Health Professional within seven (7) days of initial placement in Segregation, and not less than once every thirty (30) days thereafter, to determine if he has an SMI. If the inmate is currently designated as SMI, a clinical evaluation need not be performed.

2. Any inmate without an open mental health case who is placed in Segregation must be assessed by a Qualified Mental Health Professional within thirty (30) days of initial placement in Segregation, and not less than once every ninety (90) days thereafter, to determine if he has a Serious Mental Illness.

3. The assessments described in paragraphs (C)(1) and (2) above must include, absent Exigent Circumstances, a face-to-face interview with the inmate conducted in a private confidential setting. If an inmate refuses the face-to-face interview, the clinician shall document in the progress note all attempts made to engage the inmate in such a private interview.

4. When any inmate in Segregation is determined to have a Serious Mental Illness, he shall be removed from Segregation, referred to a Secure Treatment Unit Review Committee, referred to a Residential Treatment Unit, or provided with mental health services in accordance with Section III below.

5. If the clinical director of the Department's mental health provider determines that continued Segregation will pose an imminent risk of substantial deterioration to an inmate's

mental health, the inmate shall be removed from Segregation, referred to the Secure Treatment Unit Review Committee, referred to a Residential Treatment Unit, or provided with mental health services in accordance with Section III below.

D. Evaluation of Inmates Prior to DDU Placement

Prior to the placement of any inmate in the DDU, he shall be evaluated by a Qualified Mental Health Professional to determine whether he has an SMI. If the inmate is currently designated as SMI, a clinical evaluation need not be performed. Upon a determination that the inmate has an SMI, the clinician shall prepare a STU referral form and submit it to the Secure Treatment Unit Review Committee so that the inmate can be considered for placement in a STU.

III. Housing and Review of Inmates with Serious Mental Illness

A. Departmental Disciplinary Unit Housing

Inmates with SMI shall not be housed in the DDU except: (1) In Exigent Circumstances; or (2) In accordance with Section III(C). However, the parties understand that there may be times when the Department lacks an appropriate alternative placement for all SMI inmates with DDU sanctions. In that event, if the inmate has been approved for STU placement pursuant to Section III(D)(3), and after approval by the Deputy Commissioner of Classification, Programs, and Reentry and appropriate clinical staff, the Department may confine an SMI inmate in the DDU pending the availability of a Special Treatment Unit ("STU") bed. Such inmates shall be considered to be "pre-program inmates." The Department shall address the placement of such pre-program inmates on a case by case basis, taking into account the length of time that each such inmate has been awaiting STU placement and his clinical needs.

At a minimum, pre-program inmates in the DDU shall be offered additional mental health and other services, consisting of the following:

1. Less Than Thirty (30) Days

a. Two (2) out-of-cell sessions of structured individual or group activity per week shall be offered. These sessions shall be part of a treatment plan and shall include at least one session with a mental health clinician. The length of the out-of-cell clinical sessions shall be determined by the clinician on a case-by-case basis.

b. In addition to the five (5) hours of out-of-cell leisure activity already offered to DDU inmates, two (2) additional hours of out-of-cell leisure activity per week shall be offered. These extra hours may be provided either by offering additional out-of-cell sessions or by extending the period of existing out-of-cell sessions.

c. Upon entering the DDU from a Special Management Unit, pre-program inmates shall be offered the level of visitation, radio, and telephone privileges that had been provided in

Segregation prior to DDU placement. Pre-Program inmates shall also be eligible to earn all privileges available to DDU prisoners, contingent upon compliance with the Department's, institutional, and DDU rules.

2. Over Thirty (30) Days

After thirty (30) days in the DDU, the amount of weekly out-of-cell services offered to a pre-program inmate with a mental health classification of MH-4 shall be increased to four (4) sessions of structured out-of-cell individual or group activity and, in addition to the five (5) hours of out-of-cell leisure activity already offered to DDU inmates, four (4) additional hours of out-of-cell leisure activity. A Qualified Mental Health Professional will review the mental health classification of each pre-program inmate in the DDU every 30 days, and more frequently if dictated by the inmate's mental health needs to ensure that the inmate is appropriately classified. For purposes of this section, placement of the inmate on mental health watch shall not be deemed to interrupt the duration of time in the DDU.

3. DDU Transfer Policy

To maximize the effective utilization of the STU beds, within one year from the effective date of this agreement the Department will develop and implement a policy providing that, notwithstanding any outstanding DDU sanction, an STU inmate may be transferred to general population, including a residential treatment unit, if doing so would not be clinically inappropriate and would not pose a substantial threat to the safety of any person or the security of the institution.

B. Other Segregation Housing

Inmates with SMI shall not be housed in any other Segregation Unit as defined by this Settlement Agreement for more than thirty (30) days, except in Exigent Circumstances; provided however, that the parties understand that there may be times when the Department lacks an appropriate placement for all SMI inmates in Segregation. In that event, the Department will use all reasonable efforts to minimize the number of SMI inmates in Segregation and to remove them from Segregation as soon as possible.

At a minimum, SMI inmates held in Segregation shall be offered the following mental health and other services:

1. Less than Thirty (30) Days

a. If the SMI inmate has a Mental Health Classification of MH-1, MH-2 or MH-3, one (1) session of structured out-of-cell individual or group mental health per week, commencing in the first week of segregation, and which shall be part of a treatment plan; the opportunity to speak to a mental health clinician at least five (5) days per week, and in-cell programming. A Qualified Mental Health Professional will review the mental health classification of each SMI inmate in

Segregation every thirty (30) days, and more frequently if dictated by the inmate's mental health needs to ensure that the inmate is appropriately classified.

b. An SMI inmate with a Mental Health Classification of MH-4 shall be offered two (2) sessions of structured out-of-cell individual or group activity per week. These sessions shall be part of a treatment plan and shall include at least one session with a mental health clinician. The length of the out-of-cell clinical sessions shall be determined by the clinician on a case-by-case basis.

c. In addition to the five (5) hours of out-of-cell leisure activity already offered to inmates in segregation, an SMI inmate with a Mental Health Classification of MH-4 shall be offered two (2) additional hours of out-of-cell leisure activity per week. These extra hours may be provided either by offering additional out-of-cell sessions or by extending the period of existing out-of-cell session.

2. Over Thirty (30) Days

After thirty (30) days in Segregation, the amount of weekly out-of-cell services offered to an MH-4 SMI inmate shall be increased to four (4) sessions of structured out-of-cell individual or group activity per week and, in addition to the five (5) hours out-of-cell leisure activity already offered to inmates in segregation, four (4) additional hours of out-of-cell leisure activity. For purposes of this section, placement of the inmate on mental health watch shall not be deemed to interrupt the duration of time in Segregation.

C. Secure Treatment Unit Program Termination

Inmates with SMI shall not be returned to Segregation from an STU prior to completing the program, except in Exigent Circumstances or for program termination as follows:

1. Pursuant to the procedures established for review of Exigent Circumstances, the Department shall periodically reassess inmates who have been terminated from a STU and returned to Segregation. The inmate shall be referred to the same or a different STU if the inmate's behavior and motivation demonstrably improve. The inmate shall have a treatment plan designed to motivate him or her to participate in clinically-indicated therapeutic programming in an appropriate setting.

2. Inmates may be considered for termination from an STU prior to completing the program if the inmate engages in assaultive behavior or presents severe behavioral problem without demonstration of any effort to change and it is the consensus of the treatment team that the behavior has not improved and shows no indication of future change. Termination will not be considered without evidence and documentation of consistent refusal to engage in programs or chronic disruptive behavior that compromises the integrity of the program. The treatment team will meet to determine if further treatment interventions can be expected to produce no or

minimum behavior changes. The treatment team will also consider whether transfer to a different STU would be appropriate. If termination is decided, the treatment team will develop a discharge plan consistent with the inmate's needs. Final approval of termination shall be made by the STU Committee.

D. Segregation Review

1. Institutional Segregation Committee

At each facility at which inmates with SMI are held in Segregation, an Institutional Segregation Committee will meet at least weekly for the purpose of reviewing the status of such inmates to determine the reason(s) for Segregation and whether alternatives exist. Such review may include a review of pending investigation status, classification status, mental health developments, and disciplinary status. The membership of the Institutional Segregation Committee or such other designated committee shall include at least one Qualified Mental Health Professional.

2. Central Office Segregation Oversight Committee

Membership of the Central Office Segregation Oversight Committee shall include the Deputy Commissioner, Prison Division; the Deputy Commissioner, Classification, Program and Reentry Division; Assistant Deputy Commissioners for the Northern and Southern Sectors, the Director of the Central Inmate Disciplinary Unit; a mental health professional from the Health Service Division; and a mental health professional from the Department's mental health vendor, or if any member is unable to attend a meeting, his or her designee.

The role of the Central Office Segregation Oversight Committee shall include:

a. Developing strategies to reduce time spent in Segregation by inmates with SMI, including reducing time on awaiting action or identifying alternatives to Segregation for such inmates; and expansion of privileges for SMI inmates remaining in Segregation;

b. Conducting a monthly review of the circumstances of inmates with SMI, including pre-programs inmates, who has been in Segregation for a period exceeding thirty (30) days as of the date of the monthly review. The review shall include consideration of facilitating the inmates discharge from Segregation, assessment of the inmate's mental health classification level, and whether additional out-of-cell time is clinically indicated. For purposes of this review, placement of the inmate on mental health watch shall not be deemed to interrupt the duration of time in Segregation.

The Central Office Segregation Oversight Committee shall maintain minutes that document reviews and actions taken, with the reasons for the Committee's decision and the potential alternatives for Segregation considered.

3. Secure Treatment Review Committee

The Secure Treatment Review Committee shall review STU referrals regarding inmates with SMI in Segregation to determine whether the inmate should be placed in a STU. If STU placement is appropriate, the Committee shall recommend such placement to the Assistant Deputy Commissioner, Clinical Services and the Assistant Deputy Commissioners, Northern and Southern sections, who shall determine in which STU the inmate shall be placed. Any determination of Exigent Circumstance shall be made by the Deputy Commissioner for Prisons.

The members of the Committee shall include the Department's Mental Health and Substance Abuse Coordinator, the Clinical Director of the Department's mental health provider, and the Coordinators of any existing STUs, such as the STP and BMU, or if any member is unable to attend a meeting, his or her designee.

IV. Specialized Treatment Units and Other Methods to Reduce Placement of SMI Inmates in Segregation

A. Number of Secure Treatment Units and Beds

1. The Department currently operates a (19) nineteen bed Secure Treatment Program (STP) at the Souza Baranowski Correctional Center and a ten bed Behavioral Management Unit (BMU) at MCI Cedar Junction.

2. The Department agrees to maintain the current number of STU beds for the period set forth in Section X(B)(2) unless it determines that fewer beds are adequate to ensure that no inmate with SMI is housed in Segregation in violation of the time limitations set forth in this Settlement Agreement.

3. Subject to Section III, the Department retains discretion to decide on appropriate methods to most effectively ensure that inmates with SMI are not confined to the DDU, or held in other Segregation units for longer than thirty (30) days. Specifically, the Department, in its discretion, may opt to achieve this outcome by reducing the amount of time inmates are held on awaiting action status; reducing the length of DDU sentences; transferring clinically and behaviorally stable inmates from STUs to RTUs or general population; increasing clinical mental health input into the disciplinary and classification processes; developing more effective treatment modalities in general population through mental health classification or other strategies; creating short-term step-down high security treatment units; developing additional STUs; transferring clinically stable inmates from STUs to RTUs or population; or adopting any other method which will achieve the above-stated outcome.

B. STU Treatment and Programming

1. Programs

a. Each STU shall provide a variety of treatment programs and modalities to optimize the overall level of functioning of inmates with SMI within the correctional environment, and to prepare them for successful reentry into general population or the community.

b. Behavioral programming in the STUs shall include incentives to encourage positive behavior. These incentives may include, where appropriate, the opportunity to earn additional privileges and reduce disciplinary sanctions, including the opportunity to reduce sentences to the DDU. The Department may make earned good time available in the STUs within statutory limits to inmates who are not serving DDU or disciplinary detention.

2. Out-of-Cell Time

Inmates in an STU shall be scheduled for fifteen (15) hours of structured out-of-cell activity per week, with no fewer than ten (10) hours to be offered, and ten (10) hours per week of unstructured out-of-cell activity to be offered, including exercise but excluding showers, absent Exigent Circumstances.

For inmates assigned to a program phase that allows contact with other inmates, out-of-cell activities shall include opportunities for socialization including congregate exercise and dining, as determined by the treatment team.

3. Treatment Plans

Every inmate with SMI in an STU or Segregation shall have an individual treatment plan, developed by a clinician with participation from the inmate and from others, as appropriate (e.g., medical staff, security staff).

Treatment plans shall ordinarily be reviewed every ninety (90) days for the first year and then every six (6) months, but more frequently as needed. For example, if an inmate with SMI is returned to Segregation from an STU for programmatic or security reasons, the treatment plan shall indicate goals to effect the inmate's return to a STU or general population, as appropriate.

4. Staffing

Staffing of the STUs shall be adequate and appropriate to achieve the purposes of the unit and shall include:

Designated administrator and supervising clinician

Designated clinical staff;

Sufficient clinical and rehabilitative staff to provide required programming;

Sufficient correctional personnel to escort inmates to and from treatment activities;

Sufficient correctional personnel who are trained to work with inmates who have SMI.

V. Mental Health Watch

A mental health watch shall be no longer in duration than necessary to deal with the mental health crisis that caused the inmate to be placed under observation. The Department's goal is to safely discharge inmates from mental health watch to their housing units within ninety-six (96) hours; however, any decision to discharge the inmate from mental health watch is a clinical judgment.

In all cases in which an inmate is maintained on mental health watch for more than ninety-six (96) hours the clinical director or designee of the Department's mental health provider shall be consulted until the inmate is discharged from mental health watch.

An inmate who is discharged from mental health watch to Segregation shall be assessed by a Qualified Mental Health Professional upon the third and seventh day following discharge, or upon such greater frequency or longer duration as may be determined by a Qualified Mental Health Professional.

VI. Role of Mental Health Staff in the Disciplinary Process; Related Discipline Issues

A. Self-Injurious Behavior and Related Behavior

Disciplinary reports solely for self-injurious behavior are prohibited. Disciplinary reports for behavior directly and wholly related to self-injurious behavior, such as destruction of state property, are also prohibited. Likewise, disciplinary reports for reporting to the Department or contract staff feelings or intentions of self-injury or suicide are prohibited.

B. Notification to Mental Health –SMI Inmates

Mental Health staff will be notified prior to service of a disciplinary report on any inmate with SMI who is charged with a Category 1 or Category 2 offense, as defined by the Department of Correction Inmate Discipline regulation, 103 CMR 430.00, et seq.

C. Superintendent's Review of Disciplinary Reports

During regularly scheduled reviews of recently issued disciplinary reports, the Superintendent or designee shall receive consultation from a facility mental health staff member regarding mental health issues that may be implicated in the events described by the disciplinary report, and whether there are appropriate alternatives for addressing the matter by means other than the disciplinary process. Upon determination that the case should be managed by means other than the disciplinary process, the Superintendent may order that the disciplinary report be dismissed in whole or in part.

D. Mental Health Issues at the Disciplinary Hearing

1. Consultation on Disposition

Following the entry of a guilty finding on a Category 1 or Category 2 disciplinary offense for an inmate with a Mental Health Classification of MH-4, the hearing officer, if not recommending a DDU sanction, shall consult with mental health staff. Mental health staff will render an oral opinion, if pertinent, as to whether there are mental health considerations that may bear on the issues of mitigation and determination of an appropriate sanction. This may include an opinion on the effect of particular sanctions or combination of sanctions on the inmate's mental health (e.g., loss of visits, canteen, television, etc.). The hearing officer will indicate by "check off" on the disciplinary hearing form that he or she has received an opinion from mental health staff and document any change in the disposition of the case entered pursuant to that opinion.

2. Guilty Plea

In the event that an inmate with a Mental Health Classification of MH-4 charged with a Category 1 or 2 offense pleads guilty to disciplinary charges, prior to the imposition of disciplinary detention, other than a sanction of "time served," the hearing officer or disciplinary officer will consult with mental health staff with respect to dispositional recommendations and document any such change in disposition as provided in Section VI(D)(1).

E. Thirty Day Limit on Disciplinary Detention

The Department may impose a disciplinary detention sanction on an inmate with SMI of up to thirty (30) days unless there are acute clinical contraindications to such detention. However, no inmate shall be placed continuously in disciplinary detention for more than fifteen (15) days. Inmates with SMI placed on disciplinary detention must have access to all mental health services that are generally available (i.e., mental health rounds, opportunity to request mental health contact as needed, opportunity to see the inmate's primary care clinician when regularly scheduled if this falls within the time period that the inmate is serving disciplinary detention).

VII. Training

A. Pre-Service Mental Illness and Suicide Prevention Training

All new correctional, medical and mental health staff shall receive eight (8) hours of initial suicide prevention training. At a minimum, training should include avoiding negative attitudes to suicide prevention, prison suicide research, why correctional environments are conducive to suicidal behavior, potential predisposing factors to suicide, high-risk suicide periods, warning signs and symptoms, identifying suicidal inmates, and components of the Department's suicide prevention policy.

B. In-Service Mental Illness and Suicide Prevention Training

1. Annual Training for Correction Personnel

(a) Subject to collective bargaining agreements and bidding process, correction officers and correctional program officers shall receive annual in-service training, of at least two hours per year, on mental health issues.

(b) Such annual training for correction officers and correctional program officers shall include the identification and custodial care of inmates with mental illness and may include (i) interpreting and responding to symptomatic behaviors, and communication skills for interacting with inmates with mental illness with emphasis on SMI; (ii) recognizing and responding to indications of suicidal thoughts; (iii) conducting a proper suicide prevention observation; (iv) responding to mental health crises, including suicide intervention and cell extractions; (v) recognizing common side-effects of psychotropic medications; (vi) professional and humane treatment of inmates with mental illness; (vii) trauma informed care; (viii) de-escalation techniques; and (ix) alternatives to discipline and use of force when working with inmates with mental illness.

2. Secure Treatment Units

Subject to collective bargaining agreements and bidding process, there shall be initial pre-service and annual in-service training of all staff in the STUs regarding mental health and mental illness, medications, co-existing disorders, and programming needs. Training shall be as follows:

a. Upon the opening of any new STU, all security and treatment staff regularly assigned to the unit will receive forty (40) hours of training.

b. New security and treatment staff assigned to a STU after it is open and operational will receive eight (8) hours of orientation training at the time of assignment. The Department will endeavor to provide each new staff member with an additional thirty-two (32) hours of structured on-the-job training during the first seventy-five (75) days of assignment.

VIII. DLC's Designated Expert, Reports, Dispute Resolution and Enforcement

A. Designated Expert

1. DLC will retain Kathryn A. Burns, M.D. to serve as its designated expert to assess the Department's compliance with the terms of this Settlement Agreement. If Dr. Burns becomes unavailable, DLC will select a successor designated expert of its choice, after consultation with the Department. Within a reasonable time after its retention of a designated expert, DLC shall provide the Department with written assurance that the designated expert will avoid any conflict of interest in her activities in Massachusetts during the period set forth in Section X(B).

2. DLC shall pay all fees and costs incurred by the designated expert and any consultants retained by her.

3. The designated expert shall have access to all Department facilities that have a Segregation unit, with reasonable notice, to assess compliance with this Settlement Agreement. All site visits shall take place on consecutive days. There shall be no more than three site visits in each year that the Settlement Agreement is in effect. These visits may take up to three days each, and the designated expert may visit as many facilities as is practicable on each visit.

4. The designated expert shall have access to meet with and interview personnel whose duties pertain to the provision of mental health services and/or who work with inmates.

5. The designated expert shall have a reasonable opportunity to conduct confidential interviews of inmates to assess whether designations of SMI are being made in conformity with this Settlement Agreement.

6. The designated expert shall conduct an in person or telephonic "exit interview" with one or more Department representatives, designated by the Department, at a time mutually convenient to the designated expert and the Department before the conclusion of each monitoring visit. Unless otherwise stated by the designated expert, any opinions or observations shared with Department representatives during such exit interview shall be deemed to be preliminary and subject to revision.

7. The Department may retain Dr. Jeffrey Metzner or another mental health expert at its own expense to serve as the Department's designated expert.

B. Records and Reports

1. Three times per year during the course of this Settlement Agreement, at intervals to be agreed upon by the parties, the Department will provide DLC with data and documents collected by the Department and its mental health vendor to track compliance with the Settlement Agreement. This data will cover each Department of Correction facility that operates one or more STU or Segregation unit, but shall not include data pertaining to Bridgewater State Hospital patients, civil commitments at the Massachusetts Treatment Center, civil commitments at the Massachusetts Alcohol and Substance Abuse Center (MASAC), and civil commitments at MCI-Framingham. Specifically, the data and documents to be provided are set forth in Appendix A attached to this Settlement Agreement.

2. DLC and its designated expert may also request additional, relevant Department documents to track compliance with the Settlement Agreement, except documents protected by attorney-client or work product privileges, subject to the Court's August 12, 2010 Protective Order (Docket No. 133) and the September 13, 2011 Amended Protective Order (Docket No. 239), or any subsequent protective order entered by the Court. If these documents are requested in conjunction with a site visit, the Department will provide these documents to the extent feasible within ten (10) days prior to the visit.

3. During the site visits, DLC's designated expert shall have reasonable access to current inmate mental health records. If DLC requests copies of any inmate's mental health or other records, the Department shall provide copies within thirty (30) business days of the request, and DLC shall pay the Department twenty cents ($.20) per page within thirty (30) days of receipt. Within thirty (30) days of the effective date of this Settlement Agreement the parties shall agree to a procedure to ensure access to and the confidentiality of inmate records.

C. Designated Expert's Reports

The designated expert may prepare written reports on the Department's efforts to meet the terms of this Settlement Agreement, and may also include additional advice, suggestions or proposals in the nature of quality assurance or quality improvement as the designated expert deems appropriate. The designated expert shall make her written report, if any, available to the Department within thirty (30) days from the completion of her visit and the delivery by the Department of any documents requested by the designated expert, unless the time for submission is extended by agreement of the parties. Although the Department will give full consideration to advice, suggestions and proposals offered by a designated expert, all decisions concerning the provision of mental health services by the Department's mental health provider will be made by the Department in accordance with the terms of this Settlement Agreement and statutory and other legal responsibilities. If the designated expert reports that the Department had not met the terms of any provision or provisions of this Settlement Agreement, she shall make recommendations as to actions she believes to be necessary to meet the terms of the provision or provisions.

D. Dispute Resolution and Enforcement

1. If DLC believes the Department is not in substantial compliance, i.e., is in substantial non-compliance, with any provision of this Settlement Agreement, DLC shall provide the Department, in writing, specific reasons why it believes that the Department is not in substantial compliance with such provision or provisions, referencing the specific provision or provisions. DLC may not allege that the Department is not in Substantial Compliance based on minor or isolated delays in compliance. DLC may also not allege that the Department is not in substantial compliance without evidence of a pattern of substantial non-compliance with regard to that provision or provisions. To the extent DLC relies on observations or opinions of its designated expert to support an allegation that the Department is not in substantial compliance, DLC shall make reference to the written reports of the designated expert or to portions thereof which support DLC's belief. To the extent DLC relies upon documents provided by the Department to support an allegation that the Department is not in substantial compliance, DLC shall make reference to the specific performance measures which support DLC's belief.

The Department shall have the opportunity to consult its designated expert with respect to DLC's allegations that the Department is not in substantial compliance with such provision or

provisions. The Department shall provide DLC with a written response to the notification within thirty (30) days of its receipt. The Department's response shall contain a description of the steps it took to investigate the issues addressed in the DLC's notice, the results of the investigation, and, where the Department proposes corrective action, a specific plan for addressing the described issues. If no corrective action is proposed by reason of funding constraints (including the unavailability of appropriated funds), legal considerations or for other reasons, the Department's response shall specifically state those reasons and any statutes, regulations, expert opinion or technical bases upon which it is relying in reaching such conclusion.

DLC agrees to advise the Department of its acceptance or rejection of the Department's response within seven (7) business days of its receipt. Either the Department or DLC, in any of the written submissions pursuant to this paragraph, may request a meeting to discuss and attempt to resolve any matter addressed in the written submissions. The Department and DLC shall meet within fourteen (14) business days of the receipt of the request, unless a later meeting is agreed by both sides.

If the Department and DLC are not successful in their efforts to resolve the matter, they may jointly or individually seek relief from the Court to effect substantial compliance with the Settlement Agreement, but not through a petition for contempt.

2. The Court's jurisdiction shall terminate at the end of the three (3) year settlement period with respect to any provision or provisions of this Settlement Agreement for which there is no outstanding determination that the Department is not in substantial compliance, i.e., is in substantial non-compliance. If the Court determines that the Department is not in substantial compliance, i.e., in substantial non-compliance, with a provision or provisions of this Settlement Agreement at any time during the three (3) year period of the Settlement Agreement, the Court's jurisdiction with respect to such provision or provisions relating thereto shall continue for the remainder of the three (3) year period or for a period to be ordered by the Court of not more than two (2) years from the date of the Court's finding that the Department is not in substantial compliance.

3. If the Court finds that the Department is not in substantial compliance, i.e., is in substantial non-compliance, with a provision or provisions of this Settlement Agreement, it may enter an order consistent with equitable principles, but not an order of contempt, that is designed to achieve compliance.

4. If DLC contends that the Department has not complied with an order entered under the preceding paragraph, it may, after reasonable notice to the Department, move for further relief from the Court to obtain compliance with the Court's prior order. In ruling on such a motion, the Court may apply equitable principles and may use any appropriate equitable or remedial power then available to it.

IX. Implementation Timeline

A. Upon the effective date of this Settlement Agreement, the Department will not place an inmate with Serious Mental Illness in the DDU, except in accordance with Section III of this Settlement Agreement.

B. Within six (6) months from the effective date of this Settlement Agreement, the Department will have sufficient STU beds, or will have made other modifications to its policies and practices, to ensure that no inmate with SMI is placed in any other Segregation Unit for more than thirty (30) days, except in accordance with Section III of this Settlement Agreement.

C. The Department shall maintain written policies that are consistent with the terms of this Settlement Agreement.

X. Form of Agreement

A. Scope

1. The parties hereby memorialize the terms of their agreement in this Settlement Agreement.

2. This Settlement Agreement settles any and all claims against the defendants and shall be binding on the parties, their successors and assigns.

3. This Settlement Agreement constitutes the entire agreement of the parties and, except for any Protective Order entered by the Court, supersedes all prior agreements, representations, negotiations and undertakings in this litigation not set forth or incorporated herein.

B. Court Approval, Jurisdiction and Enforcement

1. The Settlement Agreement is not effective absent approval by the Court. All Parties and their counsel will use their best efforts to obtain Court approval of this Agreement.

2. The term of this Settlement Agreement and the jurisdiction of the Court shall commence upon the date of approval by the Court and shall extend for three (3) years from said date of approval, subject to paragraph VIII(C)(2) of this Settlement Agreement.

3. The Court shall be the sole forum for the enforcement of this Settlement Agreement. Any order to achieve compliance with the provisions of this Settlement Agreement shall be subject to the applicable provisions of the Prison Litigation Reform Act, 18 U.S.C. section 3626.

4. Subject to the provisions of Sections X(1) and (2) of this Settlement Agreement, in recognition of the time necessary for implementation of this Settlement Agreement, as provided in Section IX, the parties agree not to seek termination or otherwise challenge this Settlement Agreement or any order approving this Settlement Agreement during the period of time that the

Court retains jurisdiction pursuant to Section X(B)(2). Nothing in this paragraph shall limit the parties' rights to challenge or appeal any finding as to whether the Department is not in substantial compliance, i.e., in substantial non-compliance, or consequent order entered by the Court pursuant to Section VIII(C)(2) of this Settlement Agreement.

5. This Settlement Agreement may be enforced only by the parties hereto. Nothing contained in this Settlement Agreement is intended or shall be construed to evidence an intention to confer any rights or remedies upon any person other than the parties hereto.

6. This Settlement Agreement may not be relied on as precedent in any future claim. Nothing in this paragraph limits the parties' rights to bring claims arising out of paragraph VIII(D) of this Settlement Agreement.

7. Nothing in this Settlement Agreement shall be interpreted to diminish or otherwise restrict any authority granted to DLC as the protection and advocacy system for persons with disabilities in Massachusetts.

C. Amendments

1. By mutual agreement, the parties may change the terms of this Settlement Agreement, including, but not limited to, the timetables for taking specific actions, provided that such mutual agreement is memorialized in writing, signed by the parties and approved by the Court.

2. During the term provided in Section X(B) of this Settlement Agreement, the Department shall not make any changes to any policy provision implementing the provisions of this Settlement Agreement without providing DLC a written draft of such policy or policies, for its review and comment. DLC shall have fifteen (15) days to comment. Without prior agreement of the parties, no Department policy provision may be amended to conflict with the terms of this Settlement Agreement while the Settlement Agreement remains in effect. The Department shall not approve any changes to a policy maintained by its mental health provider that conflicts with the terms of this Settlement Agreement. During the term of this Settlement Agreement, the definition of Serious Mental Illness as defined herein shall not be amended without agreement of the parties.

XI. Funding

A. The parties acknowledge that implementation of this Settlement Agreement is subject to the availability and receipt of appropriated funds.

B. The parties further acknowledge that the lack of funding does not preclude the Court from entering any order to achieve compliance with this Settlement Agreement that comports with the applicable provisions of the Prison Litigation Reform Act, 18 U.S.C. section 3626 and with other applicable law, provided that the Department reserves the right to assert that the lack of funding should be taken into account in any remedial order.

C. The Department agrees to make all possible good faith efforts to seek all necessary funding to implement fully the terms of this Settlement Agreement.

D. In the event that the parties are unable to agree as to whether there is sufficient funding to implement fully this Settlement Agreement, the parties shall meet and confer, and if necessary, consult the Court. In the event that the parties continue to be unable to agree, either the Department or DLC may invoke the dispute resolution procedures in Section VIII(C) of this Settlement Agreement to seek the assistance of the Court.

XII. Attorneys' Fees

The Department and DLC do not agree as to the prevailing party in this case. Nevertheless, for the purpose of compromise and settlement, the Department, through the Commonwealth of Massachusetts, agrees to pay DLC a total of one million, two hundred and fifty thousand dollars ($1,250,000) to settle DLC's claim for attorneys' fees and costs. DLC agrees not to seek further fees and costs with respect to work incurred prior to the date of approval of this Settlement Agreement. However, DLC does not waive its right to seek reasonable attorneys' fees and costs for successful enforcement of this Settlement Agreement, and the Department, on behalf of the defendants, reserves its right to oppose any such petition for fees and costs, including all appellate rights.

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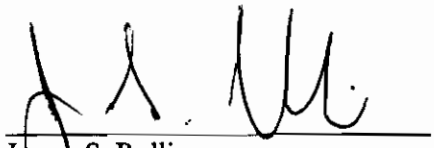

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EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

T.F., by his next friend Tracy Keller; K.D., by his next friend Laura Ferenci; C.O, by her next friend Laura Ferenci; L.L, by his next friend Gerald Kegler; T.T. and M.T., by their next friend Dr. Caryn Zembrosky; T.M., T.E., and A.T., by their next friend James Dorsey; A.W., by his next friend Margaret Shulman; I.W., D.W., and B.W., by their next friend Gloria Anderson; and J.W., by her next friend Margaret Schulman; individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Hennepin County; Hennepin County Department of Human Services and Public Health; David J. Hough, Hennepin County Administrator; Jennifer DeCubellis, Hennepin County Deputy Administrator for Health and Human Services; Jodi Wentland, Hennepin County Director of Human Services; Janine Moore, Director, Hennepin County Child and Family Services; and Jodi Harpstead, Commissioner, Minnesota Department of Human Services,

Defendants.

Civ. No. 17-1826 (PAM/BRT)

ORDER

This matter is before the Court on Plaintiffs' Motion for Final Approval of Settlement under Fed. R. Civ. P. 23(e), and for final class certification for settlement purposes. Plaintiffs previously filed an executed copy of the Stipulation and Settlement Agreement and a copy of the proposed Class Notice. (Docket Nos. 227-1, 228-1.) The

Court preliminarily approved the settlement and provisionally certified the settlement classes on July 31, 2019. (Docket No. 233.)

The parties provided notice of the settlement as set forth in the previously approved proposed Class Notice. The Court held a hearing on the Motion for Final Approval on December 19, 2019. No objections were received, and no person requested to appear at the hearing to object to the settlement.

Accordingly, **IT IS HEREBY ORDERED that**:

1. The Court finds that the settlement contained in the Stipulation and Settlement Agreement is fair, reasonable, and adequate. Therefore, the Motion (Docket No. 239) is **GRANTED** and the settlement contained in the Stipulation and Settlement Agreement is **APPROVED** effective January 1, 2020, and the four-year settlement period will thus extend through December 31, 2023.

2. The Court determines that Plaintiffs are members of the Settlement Classes and that, for purposes of settlement, they satisfy the requirements of typicality and the Plaintiffs and their Next Friends adequately represent the interests of the Settlement Classes. Plaintiffs are therefore confirmed as representatives of the Settlement Classes.

3. The Settlement Classes meet all applicable requirements of Fed. R. Civ. P. 23, and the following Settlement Classes for purposes of the Settlement are **CERTIFIED**:

    a. **Maltreatment Report Settlement Class**. All children who were the subject of maltreatment reports made or referred to Hennepin County during the Class Period that were or should have been investigated or assessed by Defendants pursuant to Minn. Stat. § 626.556.

    b. **Special Relationship Settlement Class**. All children for whom Hennepin County had legal responsibility and/or a special relationship in the context of the child protection system during the Class Period.

    The Court specifically finds that, in in addition to the findings related to the Named Plaintiffs and their Next Friends stated above, (a) the number of members in each Settlement Class is so numerous that joinder of all members

thereof is impracticable; (b) there are questions of law and fact common to each of the Settlement Classes; (c) the Defendants have acted or refused to act on grounds that apply generally to each of the Settlement Classes, so that final injunctive or declaratory relief would be appropriate respecting each Settlement Class as a whole; and (d) a class action settlement is superior to the other available methods for the fair and efficient adjudication of the controversy.

4. The Court previously appointed class counsel, and now confirms the appointment of Faegre Baker Daniels LLP; A Better Childhood, Inc.; and Cuti Hecker Wang LLP as Settlement Class Counsel pursuant to Fed. R. Civ. P. 23(g).

5. The Court finds that:

   a. The Class Notice was disseminated to persons in the Settlement Classes in accordance with the terms of the Stipulation and Settlement Agreement, and the Class Notice and its dissemination complied with the Court's Preliminary Approval Order;

   b. The Class Notice and Notice Plan (i) provided the best practicable notice under the circumstances to potential Settlement Class Members; (ii) were reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the litigation, their right to object to the proposed settlement, and their right to appear at the Final Approval Hearing; (iii) were reasonable and constituted due, adequate, and sufficient individual notice to all persons entitled to be provided with notice; and (iv) complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of this Court, and any other applicable law; and

   c. The settlement was entered into in good faith after arm's-length negotiations among competent, able counsel and was made based upon a record that is sufficiently developed and complete to have enabled the Class Representatives and the Defendants to adequately evaluate and consider their positions.

6. Plaintiffs' remaining claims, Counts I and IV of the Second Amended Complaint are **DISMISSED without prejudice**. Plaintiffs and all members of the Settlement Classes are barred from reasserting the remaining claims

or substantially similar claims against the Hennepin County Defendants and/or the State Defendant for a period of four (4) years from the effective date of the settlement, January 1, 2020, unless the Court expressly permits after a determination that there has been a material and unremedied breach of the Settlement Agreement.

7. Each party will bear its own fees and costs in connection with this lawsuit and the settlement thereof, except for the payment of fees by Defendants to A Better Childhood, Inc. and Cuti Hecker Wang LLP as set forth in the Stipulation and Settlement Agreement.

8. Any disputes regarding the construction and/or enforcement of the Stipulation and Settlement Agreement are referred to retired Magistrate Judge Arthur Boylan and former Minnesota Supreme Court Chief Justice Kathleen Blatz (or one of them if the other is unable or unwilling to participate) for resolution before bringing any such disputes to the Court. In the event the parties are unable to resolve any disputes regarding the construction and/or enforcement of the Stipulation and Settlement Agreement during the four-year period of the settlement, the Court will have the final authority to resolve any such dispute. The parties have consented to the jurisdiction of the Court solely and exclusively for the purpose of deciding and resolving any disputes among them regarding construction and/or enforcement of the Stipulation and Settlement Agreement and granting any necessary relief for that purpose alone, and not to order any other relief, including any relief sought by Plaintiffs in their Complaint but not expressly included as a term of the Stipulation and Settlement Agreement. The Court accordingly retains such jurisdiction.

9. Pursuant to Section 5.d.iv of the Stipulation and Settlement Agreement, John Stanoch, former Hennepin County District Court Judge, is **APPOINTED** as the chair of the Settlement Subcommittee and will serve as the independent Neutral under the Stipulation and Settlement Agreement.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: December 19, 2019

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge