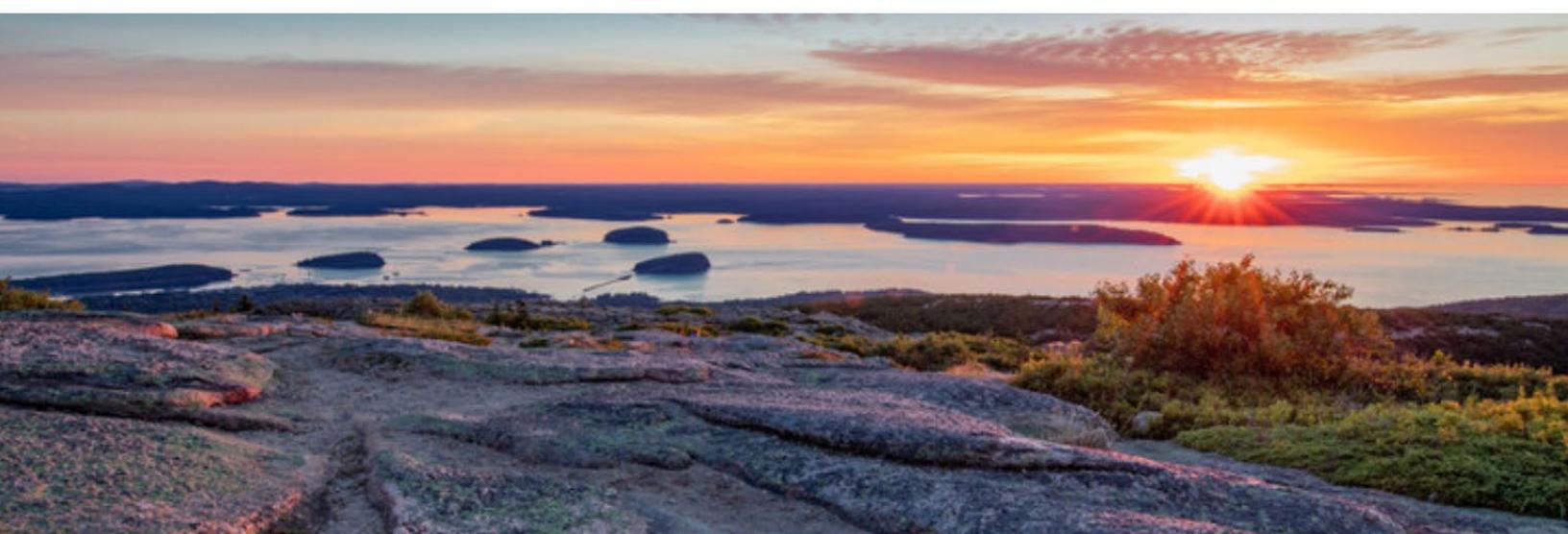


Annual Report of the Maine Commission on Public Defense Services

4 MRSA §1804(3)(H)



Presented to:
Governor Janet Mills

Chief Justice Valerie Stanfill
Maine Supreme Judicial Court

Senator Anne Carney
Senate Chair of the Judiciary Committee

Representative Amy Kuhn
House Chair of the Judiciary Committee



MAINE COMMISSION ON
PUBLIC DEFENSE
SERVICES

JANUARY 15, 2026

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Introduction

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

The Maine Commission on Public Defense Services (PDS), by and through its Executive Director, Frayla Tarpinian, respectfully presents its annual report pursuant to 4 MRS § 1804(3)(H).

In 2025, PDS focused its efforts on ameliorating Maine's Sixth Amendment crisis, expanding the build-out of the public defender system, recruiting and retaining competent assigned counsel, and identifying cost-saving measures. Those efforts have been highly successful. The number of unrepresented individuals saw a steady decline, the first five public defender offices are fully operational, PDS received more assigned counsel applications than in recent years, and PDS made changes that have reduced costs. However, there is still much work to be done. With sufficient resources and support from key stakeholders, PDS is confident that it will continue this progress in 2026.

Continuing Constitutional Crisis

Update on *Robbins, et al. v. State of Maine, et al.*

Former and current indigent criminal defendants alleged, on behalf of a certified class, that the Executive Director and Commissioners of the Maine Commission on Public Defense Services violated Plaintiffs' rights under the Sixth Amendment of the U.S. Constitution (42 U.S.C.A. § 1983) and Article 1, Section 6 of the Maine Constitution (5 MRS § 4682) by failing to provide attorneys to indigent defendants within a reasonable time after the commencement of the criminal prosecution.

On January 3, 2025, the Kennebec Superior Court (hereinafter "the Court") entered summary judgment in Plaintiffs' favor on Plaintiffs' federal constitutional claim for actual denial of counsel. The Court's ruling was based on a conclusion of law that the Sixth Amendment provides indigent criminal defendants with the right to continuous representation by defense counsel at all times between initial appearance and trial. The Court entered judgment in PDS' favor on Plaintiffs' state constitutional claims asserted pursuant to 5 MRS § 4682.

The parties presented evidence addressing Plaintiffs' entitlement to injunctive relief in a 3-day hearing in late January 2025. Following post-hearing briefing on remedies, the Court issued an order enjoining Defendants to provide continuous representation to all indigent criminal defendants from the conclusion of their initial appearance through to the conclusion of the criminal prosecution. The Court also mandated that Defendants "prioritize and to make good faith efforts to actually provide counsel for the unrepresented, incarcerated defendants who, as of this same date, are listed on the so-called 'without counsel' spreadsheet, and to do so by April 3, 2025." [Order after Phase One Trial, pg. 24.](#)¹ PDS complied with that mandate prior to April 3, 2025 by providing counsel, as ordered.

PDS, along with the State of Maine (party-in-interest to Plaintiffs' class-wide habeas corpus claim), timely appealed the Superior Court's March 7, 2025 Order. Briefs were filed, and the Law Court heard oral argument on October 7, 2025. PDS is awaiting the Court's decision. Pursuant to M. R. Civ. P. 62(d), the Superior Court is authorized to "modify" its injunction while an appeal is pending. Further action on Plaintiffs' habeas corpus claim, to which PDS is not a party but regarding which the Court sought to compel Defendants to provide representation to each individual habeas petitioner, is now stayed pending resolution of the appeal as a result of a Law Court decision on June 20th.

¹ <https://www.courts.maine.gov/news/robbins/order-after-phase-one-trial.pdf>

The Court had bifurcated the trial into two phases, so after the issue regarding a failure to provide counsel to indigent clients is addressed, the remaining issues relate to training and oversight of counsel. The Plaintiffs' original claim was that PDS is violating the Sixth Amendment of the Constitution by failing to maintain standards for the delivery of legal services, including qualifications of counsel, maximum caseloads, evaluation of counsel, and conflicts of interest; and a failure to adopt rules to ensure that the representation of indigent clients complies with constitutional standards. Since the suit was filed, PDS has addressed these issues with the help of additional office staff to increase oversight, improve the quality of trainings, and is working to improve and automate auditing capabilities. A new case management system will be rolled out at the beginning of 2026 for attorneys to use, which is expected to streamline several of these functions.

Current Efforts to Address *Robbins* Court Concerns

PDS has redeployed central office staff to assist the courts in identifying counsel for cases on the unrepresented list. A joint spreadsheet maintained by the Judicial Branch and PDS is continuously updated to reflect who is entitled to appointed counsel but who remains unrepresented because no attorney is available to represent them. PDS then sends names from the list to all assigned counsel and the District Defenders three times weekly to encourage attorneys to take the cases. PDS staff also call and email counsel daily to try to place cases individually. PDS prioritizes cases by directing efforts to place cases of individuals who are incarcerated and focusing on older cases. These efforts are paying off as the unrepresented list has fallen from a high of 1,053 cases in December 2024 to 252 cases on December 31, 2025. However, the redeployment of central office staff for this purpose has come at a cost. The two staff members who have primarily been responsible for assisting the courts with finding counsel are in the Audit Division. Time spent on case staffing means less time spent performing audit functions. PDS has extremely limited central office staff, and it is not sustainable for PDS to maintain these efforts indefinitely without adequate staffing and continue to appropriately supervise attorney billing to ensure accuracy. PDS has requested three additional staff positions to help with case placement in the FY26/27 supplemental budget.

Budget

Shortfall

Currently, PDS is projecting a \$12.3 million shortfall for FY26 and is on track to exhaust its funding to pay assigned counsel by the beginning of the fourth quarter. That shortfall will continue into FY27 as the baseline budget has not been adjusted to account for the hourly rate increase from \$80/hour to \$150/hour. This shortfall is known within the community of attorneys who provide indigent legal services. PDS is aware that attorneys are or plan to reduce the number of hours they make available for PDS cases as they reconfigure their practice to compensate for the expected inability of PDS to pay vouchers on time. Multiple attorneys have provided PDS with notice that they intend to pursue late fees and interest from PDS for vouchers that are not timely paid. This will compound the shortfall.

If PDS does not receive sufficient funding in time to pay these bills in the fourth quarter, it is very likely that the number of unrepresented individuals will soar. This will lead to cases becoming stagnant, bogging down court events, and causing prosecutor caseloads to rise. These unstaffed cases create inefficiencies within the system that impair all sides from resolving cases, which is costly both in terms of monetary resources, but also the burden placed on indigent clients and the human capital of overworked systems.

Cost Containment

In anticipation of the budget shortfall, PDS closely evaluated its programs to look for austerity measures.

Weapons Restriction Order and Involuntary Commitment Cases

Years ago, PDS took over payment of attorneys in cases where the statute explicitly states that the attorneys are to be paid by the court, most notably in cases involving weapons restriction orders and involuntary commitments. In the fall of 2025, PDS made the difficult decision to stop paying for counsel in these cases, opting instead to allocate funds to cases in which PDS is statutorily mandated to provide counsel. This placed a burden on the courts, which had not budgeted to pay counsel for these cases and did not have a system of payment set up to pay counsel.

Policy Regarding Geographic Limitations on Practice Areas

At the beginning of FY25, PDS implemented the [Policy Regarding Geographic Limitations on Practice Areas](#)². Previously, due to the shortage of available attorneys to meet the needs of cases initiated by the State, attorneys agreed to take cases that were significant distances from their normal practice areas. The travel time resulted in reduced attorney capacity and increased travel costs for PDS.

Since this policy became effective on July 16, 2025, and as it only applies to appointments made on or after that date, it is still premature to determine how this policy will affect travel costs. However, it may be notable that PDS was billed approximately \$620,125 for attorney travel time from July 16, 2025 to October 30, 2025. During that same period last year, PDS was billed approximately \$913,300.

² <https://www.maine.gov/pds/sites/maine.gov.pds/files/inline-files/20250821%20REVISED%20Policy%20on%20Geographic%20Limitations.pdf>

Audit Division

In 2025, the Audit Division continued to expand and refine its audit processes, implemented a new rule to increase cost predictability and the accuracy of attorney vouchers, and planned future improvements to PDS audit processes.

Amounts Paid by Case Type

The chart below demonstrates the amount PDS paid counsel by case type in calendar year 2025.

Case Type	New Cases	Vouchers Submitted	Submitted Amount	Vouchers Paid	Approved Paid	Average Voucher Amount
Appeal	196	523	\$1,207,211.33	491	1148077.81	\$2,338.24
Central Office Resource Counsel	0	24	\$24,841.86	22	23716.86	\$1,078.04
Child Protection Petition	1,914	7,492	\$9,400,271.13	7,342	9031517.6	\$1,230.12
Drug Court	73	204	\$426,091.86	197	404470.2	\$2,053.15
Emancipation	79	109	\$69,931.29	105	70136.06	\$667.96
Felony	7,342	15,300	\$17,893,803.00	14,731	17321762.89	\$1,175.87
Involuntary Civil Commitment	862	999	\$568,648.28	1,018	578567.95	\$568.34
Juvenile	1,079	1,788	\$1,840,796.92	1,706	1774478.53	\$1,040.14
Lawyer of the Day - Custody	3,542	3,444	\$2,304,273.75	3,370	2259684.74	\$670.53
Lawyer of the Day - Juvenile	37	37	\$15,832.62	35	15105.12	\$431.57
Lawyer of the Day - Walk-in	1,517	1,498	\$991,230.46	1,480	979051.9	\$661.52
MCILS Provided Training	929	859	\$1,003,425.18	800	950298.75	\$1,187.87
Misdemeanor	9,454	14,235	\$10,138,609.71	13,501	9619774.32	\$712.52
Petition for Modified Release Treatment	11	48	\$62,345.23	47	61055.23	\$1,299.05
Petition for Release or Discharge	1	8	\$27,093.99	9	37420.34	\$4,157.82
Petition for Termination of Parental Rights	0	29	\$70,505.12	28	42758.12	\$1,527.08
Post-Conviction Review	51	297	\$393,597.93	294	396687.23	\$1,349.28
Probate	12	37	\$61,336.08	35	46562.08	\$1,330.35
Probation Violation	1,812	2,539	\$1,918,175.56	2,445	1845031.36	\$754.61
Represent Witness on Fifth Amendment Issue	20	19	\$18,357.00	16	16770	\$1,048.13
Resource Counsel Criminal	5	56	\$42,214.78	55	37939.78	\$689.81
Resource Counsel Juvenile	2	16	\$4,997.76	15	4982.76	\$332.18
Resource Counsel Mental Health	0	5	\$2,445.00	5	2445	\$489.00
Resource Counsel NCR	0	0		0		
Resource Counsel Protective Custody	0	17	\$31,665.00	18	33600	\$1,866.67
Review of Child Protection Order	0	186	\$291,582.17	185	278513.17	\$1,505.48
Revocation of Administrative Release	6	12	\$5,422.50	12	5422.5	\$451.88
Weapons Restrictions Case	401	499	\$261,450.04	496	258954.29	\$522.09
Summary	29,345	50,280	\$49,076,155.55	48,458	\$47,244,784.59	\$974.96

Chapter 301 Changes

PDS wanted to incentivize assigned counsel to record and bill their time as close to the time the services are performed as possible. This method ensures accuracy and completeness in time-tracking. Additionally, if attorneys are employing less arrears billing, PDS can better anticipate its future payment liabilities.

Chapter 301³ of the PDS rules establishes the fee schedule and administrative procedures for payment of counsel. Under Chapter 301, an interim bill is any bill that is submitted before a case has finally resolved. Prior to 2022, Chapter 301 did not allow for interim billing. Attorneys would have to wait until the case fully resolved before submitting a bill to PDS. Because some cases would last 2-3 years, the bills would often contain time entries from previous fiscal years.

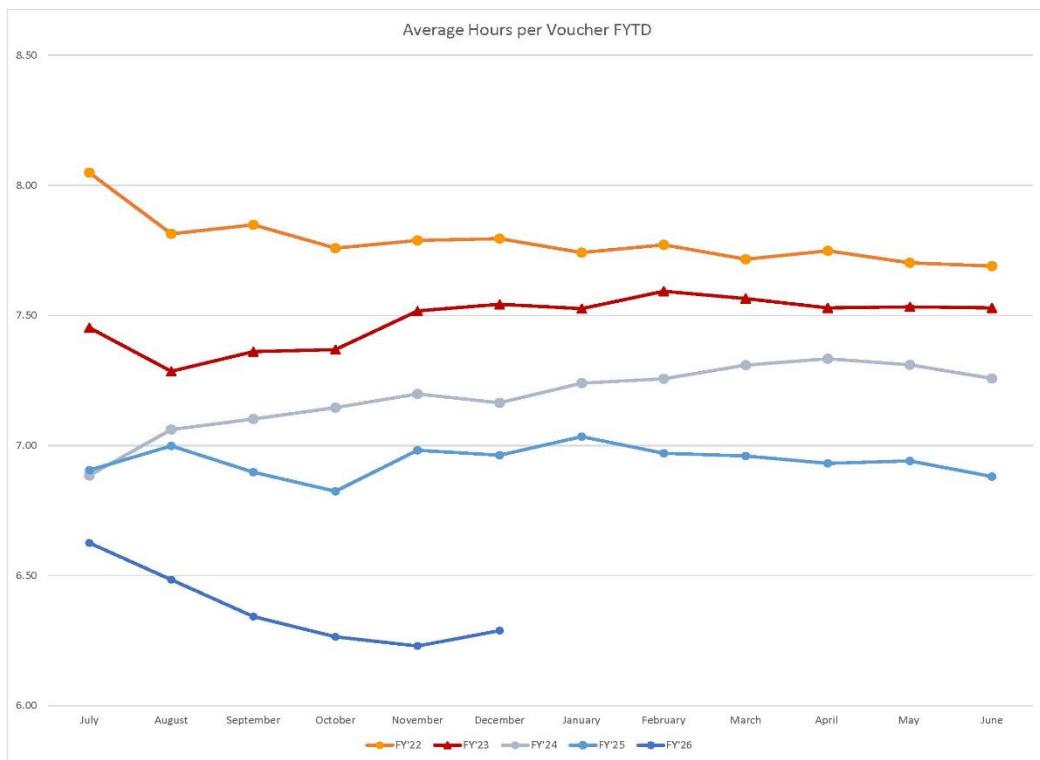
In 2022, Chapter 301 was amended to allow attorneys to submit an interim bill once every 90 days per case. In 2024, Chapter 301 was further amended to allow attorneys to submit an interim bill once per calendar month per case. Although it has taken some time for attorneys to alter their past billing habits, it appears that more attorneys are employing interim billing.

From FY23 (when interim billing was first incorporated in Chapter 301) to FY25, PDS saw a 23% increase in the total number of vouchers submitted. In FY25 (when attorneys were first able to submit an interim voucher once per calendar month), the average number of vouchers submitted per month was 3,803. In the first few months of FY26, that number jumped to an average of 4,504 vouchers per month. During the same period, the average hours per voucher continued to drop.

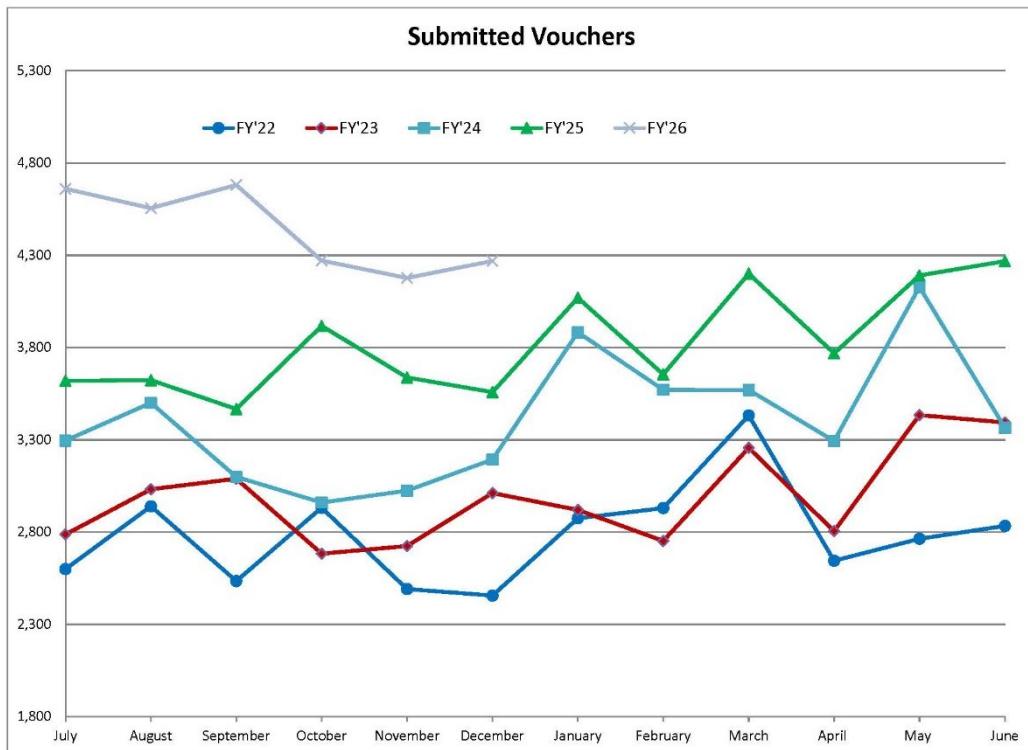
As voucher submissions have become more frequent and the hours per voucher have decreased, it is reasonable to conclude that a greater number of attorneys have implemented interim billing. If more attorneys are using this billing method, it would also be reasonable to conclude that arrears billing is slowly becoming a thing of the past. By incentivizing an increase in contemporaneous billing, PDS is also decreasing its past payment liabilities. With less such liability, PDS will be in a better position to anticipate its future budgeting needs.

³ <https://www.maine.gov/pds/sites/maine.gov.pds/files/inline-files/Chapter%20301%20Final.pdf>

The graph below illustrates the decrease in average hours per voucher since FY22.



The graph below illustrates the increase in the number of vouchers submitted.



New Case Management System

It is anticipated that PDS will deploy its new case management system in early 2026. PDS has been using the same case management system since 2010. The new system will be an improvement over the current system and will be customized in a way that will enhance PDS' auditing capabilities.

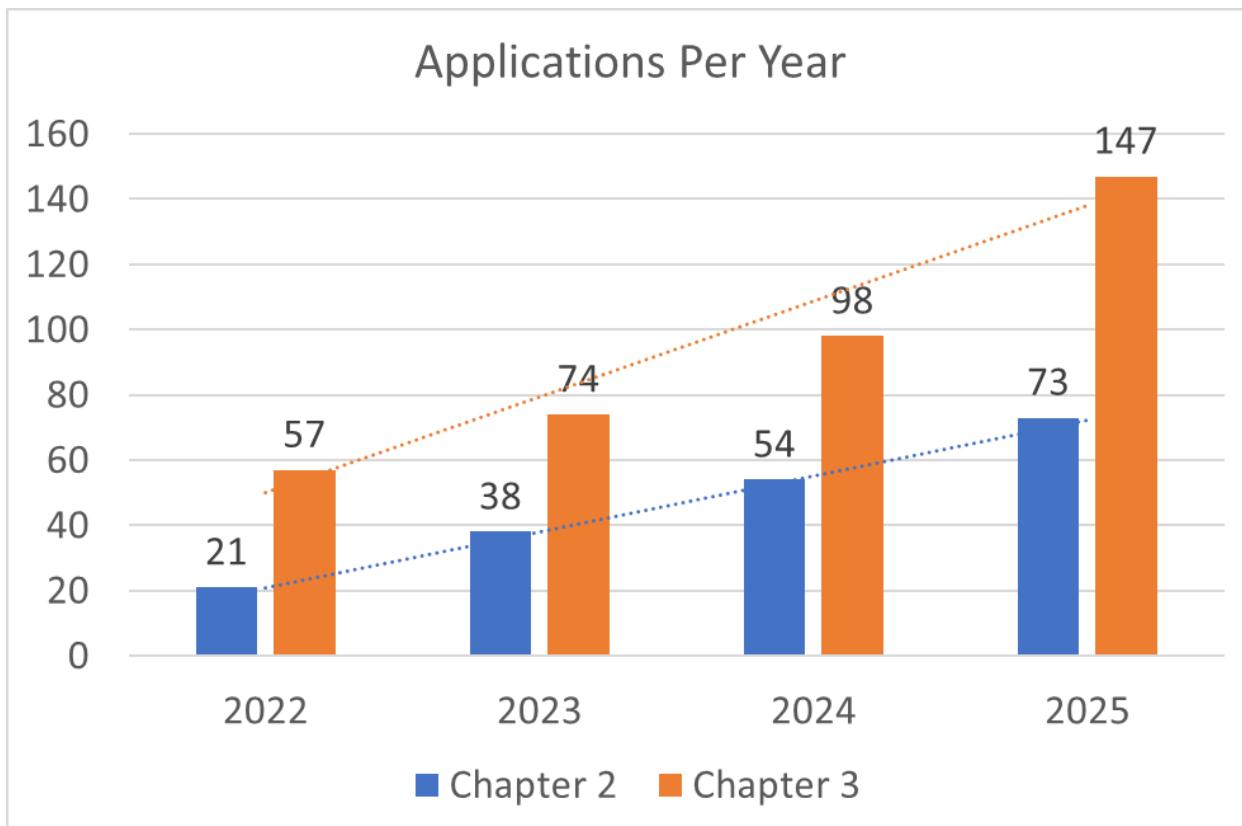
The new system will feature built-in automation that triggers alerts based on the attorneys' data entries. These alerts will occur in real-time as the attorneys enter data. As a result, many billing errors will be detected and corrected before a bill reaches PDS for initial review. These alerts will help to detect instances of unusually high daily billing, potential double billing across various bills, and anomalous time entries. It is anticipated that the enhanced auditing capabilities will aid PDS in gathering accurate data and containing costs.

Recruitment and Retention

Recruitment

Recruitment numbers continue to grow with increases in both new attorneys joining the program as assigned counsel and existing assigned counsel increasing their level of involvement by applying for specialized case types.

The graph below demonstrates a steady increase in new applicants (Chapter 2) and applications for specialized case type eligibility (Chapter 3).



Recruitment Activity

Targeted E-mail Outreach: On February 6, 2025, PDS sent an email to all attorneys who had ever been affiliated with the program. The email informed the attorneys of the updates and new benefits of accepting indigent case assignments, and urged them to renew with PDS. On March 25, 2025, PDS staff sent an email to a list of all attorneys currently associated with any pending criminal case in the state. PDS received 30 responses to that email. Fourteen responding attorneys engaged with PDS staff to get more information about joining, and seven have successfully become rostered.

Pro Bono Fairs: PDS has participated in pro bono fairs at both Maine Law and Suffolk University School of Law. PDS has also registered to participate in a virtual event hosted by the University of North Carolina School of Law.

Student Practice Authorization Externship Pilot Project: The pilot project, authorized by the Law Court through Administrative Order [JB-24-03](#)⁴, continues to progress. There was one student who participated in the summer of 2025, and four students have been granted student practice authorization pursuant to this project for the fall of 2025. The pilot project is set to expire on September 5, 2026. PDS intends to request that the Law Court make this project a permanent program.

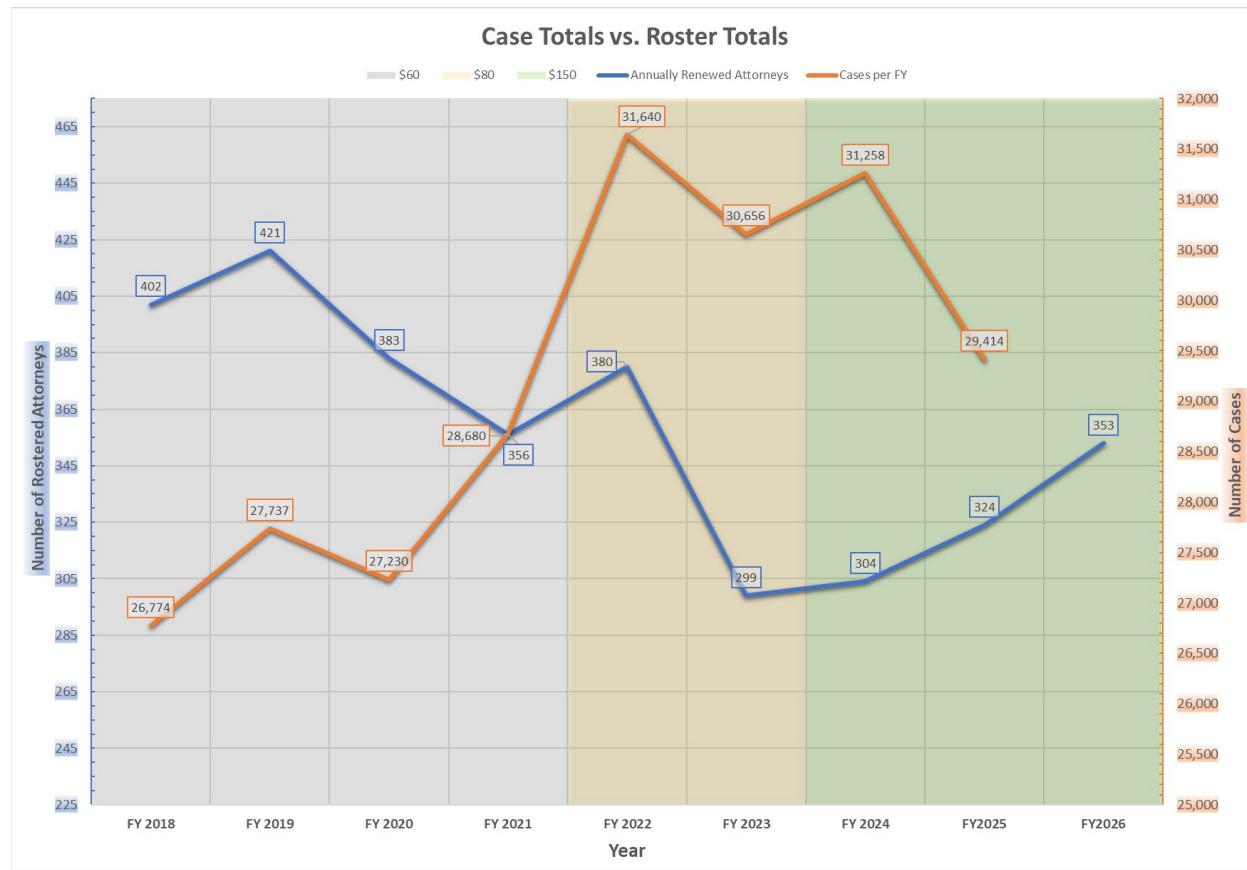
Intern and Externs Program: PDS hosted interns in the public defender offices in Caribou, Bangor, Augusta, and Lewiston this summer. Interns came from law schools in Maine, Massachusetts, North Carolina, and as far away as Ohio. Externs were hosted in the Augusta office from Maine Law in the Spring and from Maine Law and Northeastern School of Law in the fall. This program allows interested students to work at an office, see the life of a public defender, learn about criminal defense work, and become inspired to go into the field. One of the spring externs is now a public defender in the Caribou office.

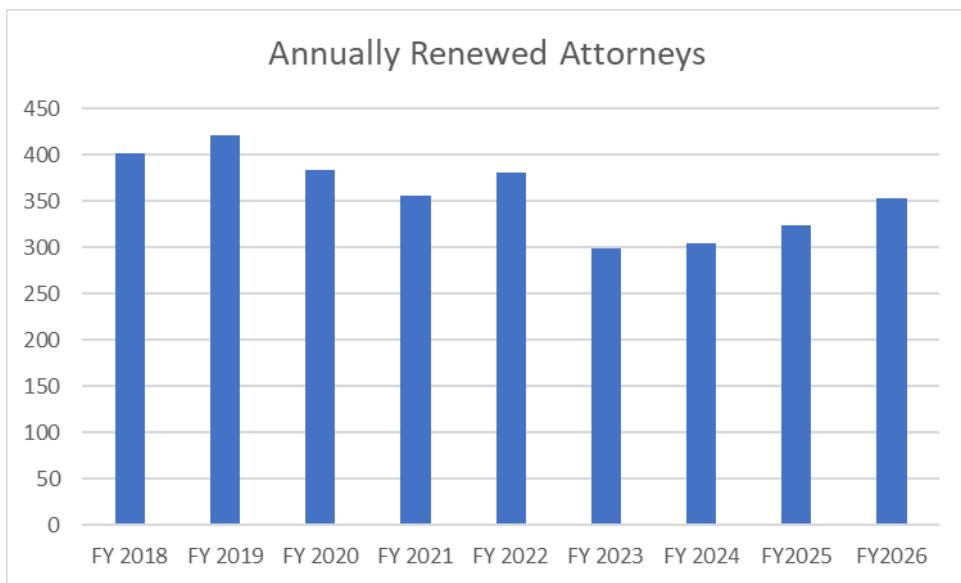
Out-of-State Interest: PDS continues to see significant recruitment interest from out-of-state. PDS has received interest from Massachusetts attorneys seeking to relocate to Maine due to the low hourly rates paid to assigned counsel in Massachusetts. Several of these attorneys attended PDS' Third Annual Public Defense Conference, which aided them in quickly securing the CLE credits needed for the admission by motion process. Applicants for employed defender positions frequently relocate from other states and bring a wealth of experience from other Public Defender systems with them.

⁴ <https://www.courts.maine.gov/adminorders/jb-24-03.pdf>

Retention

Each year, PDS requests that assigned counsel renew their eligibility to receive case assignments by completing a web form. The number of attorneys renewing their eligibility has increased steadily over the last few years. In FY24, 304 attorneys renewed, in FY25, 324 attorneys renewed, and in FY26, 353 attorneys renewed. PDS believes this upward trend is correlated with the increase in the hourly rate of pay and expansion of benefits available to counsel.

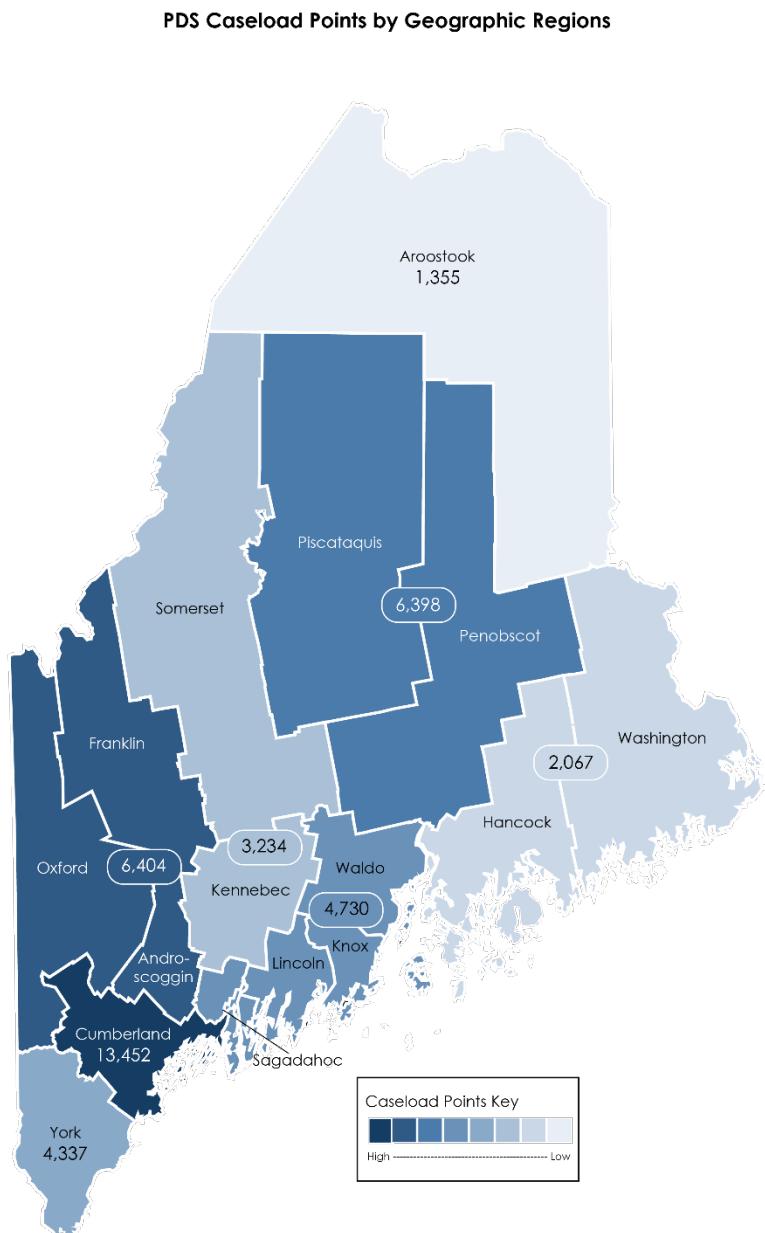




There were 31 attorneys who renewed in FY25 but not in FY26. Eight of these attorneys are now employed by PDS in public defender offices and the Parents Counsel Division. One attorney did not renew because they were suspended by PDS. Three more retired or otherwise exited the practice of law entirely.

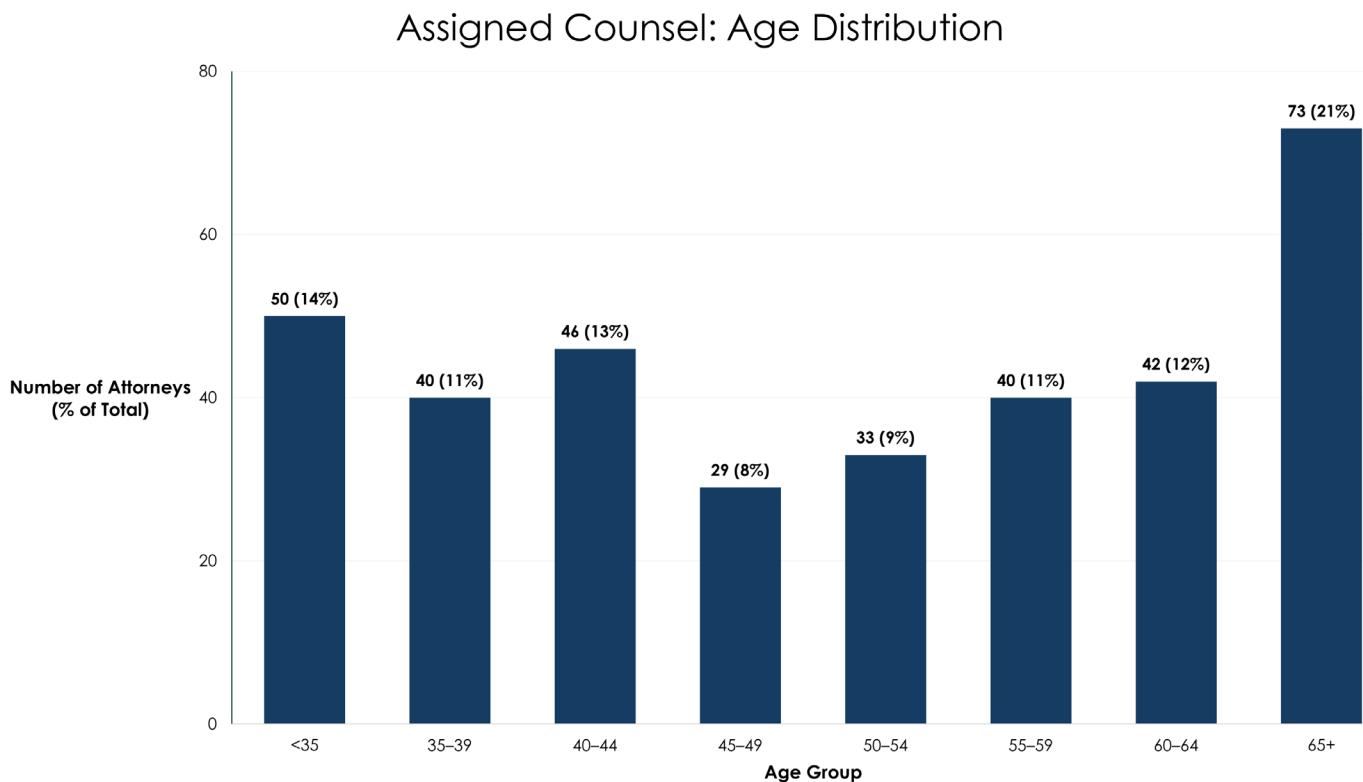
Analysis of Caseload Points and Attorney Ages by Geographic Regions

Caseload points serve as a standardized measure of an attorney's workload. This map illustrates how those workloads vary across Maine's geographic regions, which are composed of either single counties or groupings of two or three counties. Darker shading indicates regions with higher total caseload points, while lighter shading reflects comparatively lower workloads. The value shown within each outlined region represents the total caseload points that attorneys were carrying on October 9, 2025. This is significant because it demonstrates areas that are vulnerable to the loss of a single or small group of practitioners whose departure, especially if unplanned, can have a catastrophic impact on the ability of PDS to ensure counsel for cases in those areas. We had two such events in 2025.



An analysis of Maine's indigent defense attorney workforce shows a clear aging pattern, with a significant portion of practicing attorneys nearing or beyond traditional retirement age. The distribution skews older, with comparatively fewer early-career attorneys entering the field. This trend suggests potential challenges for long-term sustainability, particularly in regions where attorney capacity is already limited or caseloads are high. While years of experience bring deep institutional knowledge and stability, the current trajectory points to a shrinking pipeline, thus raising concerns about continuity, capacity, and access to justice across the state. Monitoring these demographic shifts and strengthening recruitment and retention strategies, especially in underserved judicial districts, will be essential to maintaining a stable and equitable legal service network in the years ahead.

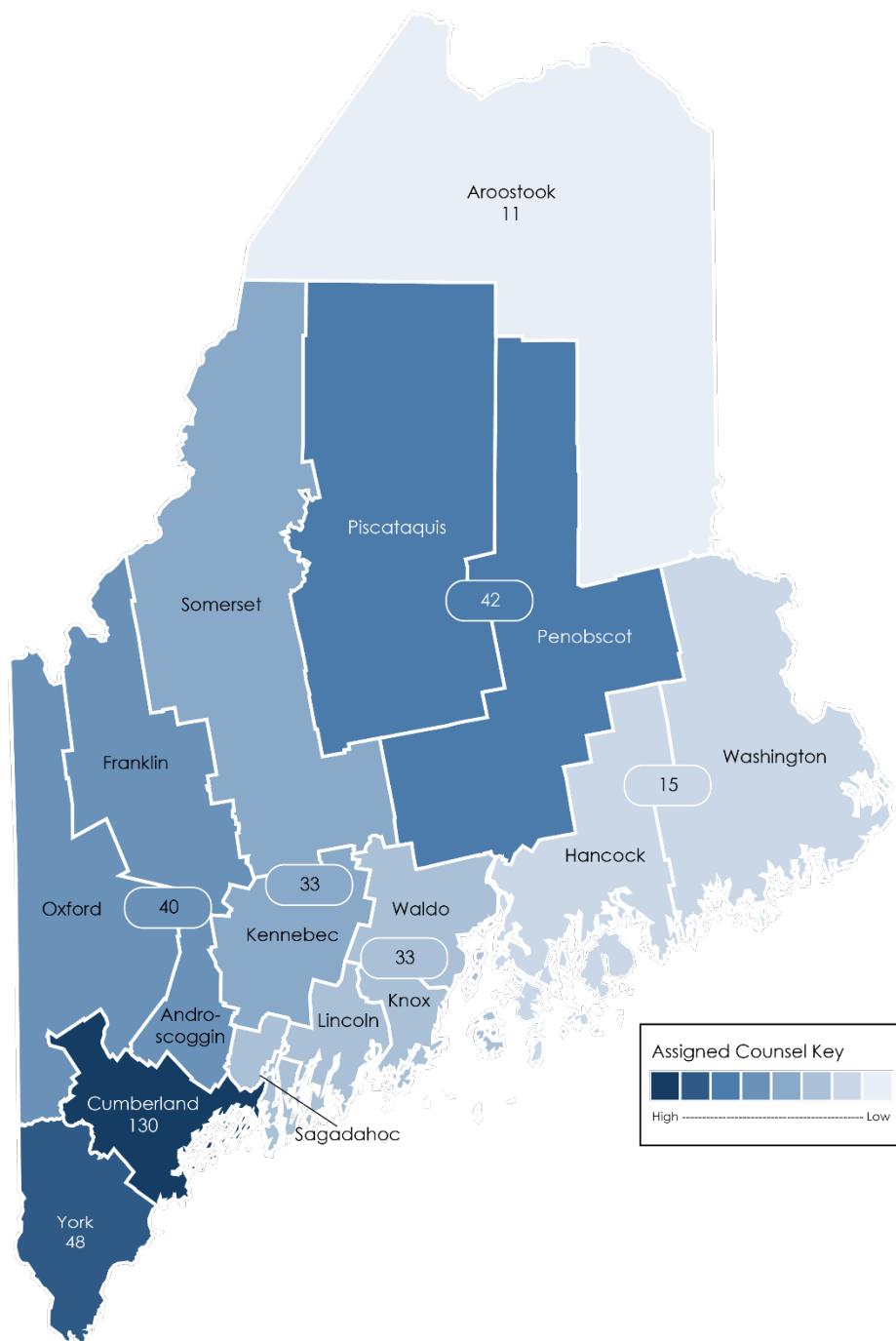
The age distribution of assigned counsel in Maine shows a workforce concentrated in mid- to late-career phases. The median age of assigned counsel is 52 years. Attorneys aged 55 and older make up 44% of the roster, while only 14% are under 35. With comparatively fewer younger attorneys entering the system, the data suggests a potential vulnerability in long-term staffing capacity and succession planning, particularly as experienced attorneys retire or reduce caseloads. A benefit of having employed public defenders is the ability to hire new attorneys and provide training and support, which may attract younger attorneys who are less willing or able to establish their own practices or find a firm that would support them doing this work.



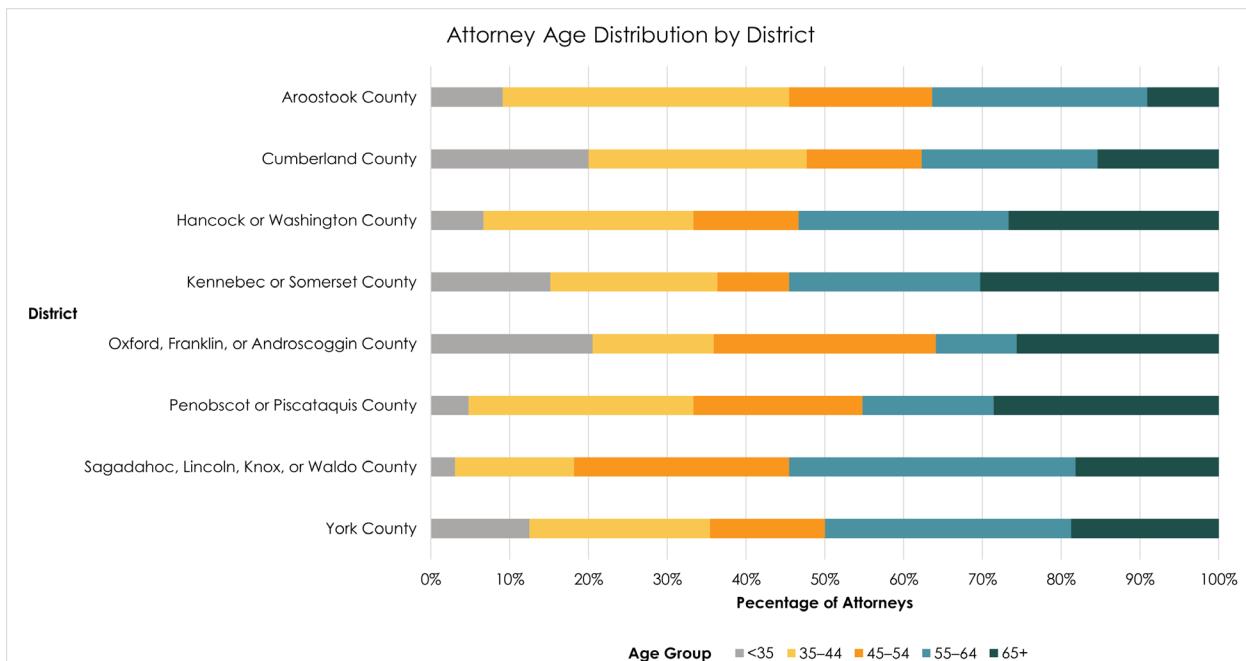
The challenges of attorney recruitment and retention are not limited to indigent defense work; they generally apply to attorneys in private practice, or working for civil legal services groups, or prosecutors – particularly for availability of attorney services in rural areas and in the so called “rim counties” outside the I-95 corridor from Kittery to Augusta. The issue may best be addressed by a cooperative effort across all segments of the Maine bar.

This map illustrates the geographic distribution of assigned counsel across Maine, based on the number of attorneys located in each region. Darker shading indicates regions with a higher concentration of attorneys, while lighter shading represents regions with fewer attorneys. Attorney concentrations are highest in southern and more densely populated regions of the state, with lower concentrations in more rural and geographically expansive regions.

Number of Assigned Counsel by Geographic Regions



This chart illustrates the percentage distribution of attorneys by age group within each district, highlighting regional differences in workforce age composition that may have implications for long-term attorney availability. The age distribution of attorneys varies by district, with most regions exhibiting a strong concentration of attorneys aged 45 and older. Cumberland County appears comparatively younger, while several other districts have higher proportions of attorneys aged 55 and above. The district containing Sagadahoc, Lincoln, Knox, and Waldo Counties shows the oldest attorney age profile, with the highest concentration of attorneys age 55 and older and minimal representation among younger age groups compared with other districts.



Supervision

In 2025, the Supervision Division initiated 56 investigations. Those investigations led to the suspension of five attorneys.

Training

Throughout 2025, the Training Division worked to expand the depth of curricular offerings through a diverse scope of programming. PDS offered both virtual and in-person training to employed counsel, assigned counsel, private investigators, law school students, and those interested in becoming eligible to receive PDS case assignments. In 2025, PDS hosted 27 trainings totaling 161.5 hours of new content.

In-Person Trainings

Second Annual Child Protective Defense Conference: PDS' Second Annual Child Protective Defense Conference included both national and Maine experts on parent defense. The conference explored systemic opportunities in child welfare through the lens of attorneys who defend parental rights and maintain intact families. Topics ranged from understanding the historical legal context of the child welfare system to practical considerations of attending family team meetings as parent counsel. In addition to the three-day conference, PDS co-sponsored an additional day of programming with the Maine Judicial Branch.

Third Annual Public Defense Conference: PDS' Third Annual Public Defense Conference was held in October of 2025. The four-day conference covered multiple sessions on the ever-evolving and expanding field of digital forensics, defining representation styles and understanding each representation style to identify strengths and opportunities to get the best outcomes for clients, and the fundamentals and importance of storytelling in the courtroom. Maine-specific content included how to maximize positive outcomes through Lawyer of the Day appointments, concurrent and collateral consequences of cases involving the Bureau of Motor Vehicles, and the importance of mitigation professionals in enhancing positive case and client success outcomes.

Youth Defender Conference: In 2025, the Training Division made progress toward developing a robust training curriculum for youth defenders. PDS hosted a full-day conference dedicated to the unique needs of youth clients and the youth-specific legal process. The conference welcomed both national and local experts who presented on issues related to youth competency, probable cause determinations, detention, and the pretrial process, including discovery and initial investigations.

Participants had the opportunity to engage in practical skills exercises led by certified trainers from the Youth Defender Advocacy Program.

Trial Skills Trainings: In addition to subject-specific conferences, PDS offered—for the first time—in-person, experiential learning opportunities that focused on trial advocacy skills. These were multi-day, intensive, skills-based trainings, including [Gideon's Promise](#)⁵ and [The Question Spectrum](#).⁶ Participants were given the opportunity to conduct a comprehensive case study and then actively litigate specific aspects of the case in a mock trial setting, where they received immediate and specific feedback on their trial strategy, delivery, and effectiveness.

Standard Field Sobriety Testing Training: This interactive training provided participants with the opportunity to learn about OUI standard field sobriety testing, including how it should be properly administered and various trial techniques to use in OUI cases.

Virtual Trainings

Remote training provided by PDS enables the delivery of accessible, topic-specific training to a broad statewide audience. Virtual training resulted in approximately 850 training credit hours being awarded to attendees in 2025.

On-Demand Trainings

In addition to live and virtual training, PDS maintains an online training platform, Talent LMS, which houses all of PDS' previously recorded trainings and training materials. Talent LMS is available to prospective, assigned, and employed counsel. There are 67 trainings available on Talent LMS, with more being added regularly.

⁵ [Gideon's Promise: Our Leading Public Defender Service](#)

⁶ www.mlstoutlaw.com/home/the-question-spectrum/

Grants

Enhancing Youth Defense Grant

In 2024, PDS applied for and was awarded the Enhancing Youth Defense grant from the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (U.S. DOJ OJJDP). PDS was awarded \$425,142.

The purpose of this three-year project is to strengthen Maine's youth defense system, which will result in improved outcomes for youth. To achieve this goal, this project aims to improve the quality and availability of counsel to represent youth in the juvenile legal system, build robust training for youth defenders, and recommend policy and practice reforms consistent with national best practices, the protection of constitutional rights, and the purposes of the Maine Juvenile Code. The project will track and analyze court and related system data, best practices, and information from youth and system professionals in order to evaluate the youth defense system in Maine. The project will identify areas for improvement, provide training to youth defenders, and make recommendations for revisions to standards of practice for youth defenders and system changes.

Report on Jail Call Issues, Stakeholder Meeting

In response to PDS' January 2025 annual report, the Judiciary Committee reported out LD 1825, An Act to Implement the Recommendations of the Maine Commission on Public Defense Services Regarding the Confidentiality of Attorney-Client Communications in Jails and Correctional Facilities. The Judiciary Committee voted to pass LD 1825, but wrote to PDS on June 18, 2025, to request that PDS work with stakeholders on the issue and provide an update in this report.

PDS met with representatives from the Maine Prosecutors' Association, Office of the Attorney General, Department of Corrections, and the Maine Sheriffs' Association to discuss PDS concerns related to the privacy and cost of communications between counsel and incarcerated clients. The stakeholders meeting was productive, and PDS thanks the stakeholders who participated.

PDS has also had discussions with Securus, which provides telecommunications services for most of the jails in Maine. While Securus has been very responsive to PDS, PDS still receives complaints from attorneys who are unable to receive confidential calls from facilities services provided by Securus.

PDS continues to receive reports of issues with attorneys receiving calls from at least one facility that does not use Securus and has followed up to address the issue.

PDS looks forward to continuing to work together with stakeholders to ensure that incarcerated clients have access to counsel.

Contact with Incarcerated Clients

PDS has received information from counsel that they often have difficulty locating their incarcerated clients pre-trial. This is caused by boarding agreements between jails, in which jails send individuals to other jails for temporary housing. There have been instances in which counsel and experts travel to a jail just to find out that the client has been relocated and defense counsel was not notified. There have also been instances in which a client is moved to a jail that is far away from where their case is. For example, a Lewiston attorney might represent a client who has a case in Lewiston but is ultimately transferred to the Penobscot County Jail. This incurs unnecessary travel costs because PDS pays for counsel's time and mileage to travel to a jail where their client isn't present, or to a jail that is far away from their office. To exacerbate the problem, counsel have reported to PDS that they have difficulty scheduling video calls with their clients. This also results in increased travel costs for PDS. These issues also reduce attorney capacity because attorneys are spending time driving unnecessarily.

Other states⁷ have a statewide database that allows the public to search for a person's name to find out where they are detained. PDS urges the Legislature to consider implementing such a database in Maine. This would support access to counsel and reduce unnecessary costs.

PDS also supports increased availability of and flexible access to video call options for attorneys to meet with their incarcerated clients, including for necessary meetings such as competency evaluations and family team meetings.

⁷ Vine Link is a website that hosts the inmate database for several states. Here is one example: <https://vinelink.vineapps.com/search/VA/Person>. There is also a database to search for the location of federal inmates: https://www.bop.gov/mobile/find_inmate/byname.jsp.

Contracts

In addition to services PDS receives directly from the State, PDS has several contracts with outside entities:

Ford Murray/Shannon McKinnon: This is a contract with an attorney skilled in immigration law. Immigration counsel is available to confer with PDS counsel on any case in which there may be immigration consequences. Because immigration law is complex and subject to frequent changes, this service is crucial to PDS operations. The services that immigration counsel provides vary from month to month, but the effective cost to PDS is significantly less than it would be to engage immigration counsel on an ad hoc basis at a typical hourly rate.

Justice Works: This contract is between PDS and Justice Works, an outside vendor that provides the PDS case management and billing system. After a competitive bidding process, PDS awarded a new multi-year contract to Justice Works to develop a new case management system and billing system to replace the current, outdated, and limited system. We anticipate the launch of that new system in January 2026. Public defender offices are already using an off-the-shelf version of the new system and will transition to the new PDS custom system when it launches.

Roisman Law: The contract with Roisman Law is for the consultant who is primarily responsible for implementing the Enhancing Youth Defense grant project. The contract was awarded as a result of an RFP and is fully funded by the federal grant.

Maine Pretrial Services: This is a contract with Maine Pretrial Services and was awarded as a result of an RFP. The contract is for the provision of case management services for indigent parents in child protection proceedings. The contract is designed to improve case outcomes, increase attorney capacity, and reduce costs. It is anticipated that the contract will contain costs by reducing the time to disposition, improving case outcomes (therefore reducing the need for further litigation), and acquiring services that have been performed by counsel for less than half the hourly rate paid to counsel.

Rebekah Smith: This is a low-cost service contract with Rebekah Smith, whereby Ms. Smith will serve as a presiding officer in administrative appeals pursuant to Chapter 201 of the Commission's rules.

Purdy Powers & Company: This is a contract with a forensic accountant to assist with the auditing of assigned counsel vouchers.

West Publishing Corporation: This is a contract with West Publishing Corporation for access to Westlaw, a legal research service used by counsel.

An Explanation of the Relevant Law Changes to Indigent Legal Services and the Effect of the Changes on the Representation and Costs (4 MRS § 1804(3)(H)(2))

4 MRS § 1807 Court Appointment of Private Attorney

4 MRS § 1807 was established in April 2025 to address the indigent defense crisis. The statute provides, in part, that:

“1. Notwithstanding any provision of this chapter to the contrary, a court may appoint a private attorney to represent a person who is eligible to receive indigent legal services in a matter pending before the District Court or Superior Court if the court finds the following:

- A. A public defender, assigned counsel, contract counsel or employed counsel is not available to represent the person;
- B. The private attorney is qualified to represent the person in the matter pending before the court, has not been disqualified by the commission and has at least 3 years of legal experience relevant to the pending matter; and
- C. The private attorney is willing to undertake the representation, which may be limited representation defined by the court in its appointment order.” 4 MRS § 1807(1).

This statute will be repealed on February 1, 2026. The impact of this new statute on the counsel needed list has been extremely limited, and the Commission urges the Legislature to allow the statute to be repealed on schedule.

During the eight months that the statute has been in effect, courts have attempted to use this statute 30 times. Of those 30 assignments, 22 were to attorneys who were already in the PDS program and available for assignment through the regular assignment process. Of the eight actual § 1807 assignments, four were protective custody Law Court appeals, three were adult criminal cases, and one was a protective custody case.

15 MRS § 458 Appearance of Counsel by Remote Methods

Creates a presumption that the court will schedule remote methods for the appearance of counsel. This reduces travel expenses and supports attorneys practicing across jurisdictions in handling court events without the need to continue matters when they can be addressed remotely.

17-A MRS § 19-A Election to Charge Class E Crime as a Civil Violation

Provides statutory authority for prosecutors to elect to charge a civil violation in cases where an eligible class “E” offense is brought. While it is expected that this may reduce the number of criminal filings, it is unlikely to have a significant impact on the number of cases that qualify for court-appointed counsel. It will reduce the number of pending criminal cases in the court.

L.D. 1801 An Act to Make Technical Changes to the Laws Governing the Maine Commission on Public Defense Services

This legislation made minor language changes to 4 MRS §§ 1802-1806 and made the Commission’s training and evaluation materials confidential.

L.D. 1650 An Act to Allow Paralegals to Be Paid by the Maine Commission on Public Defense Services

This bill was not voted out of Committee. PDS was already in the process of engaging in rulemaking regarding paralegal services. Through rulemaking, the Commission made changes permitting practitioners to bill for paralegal time, which should increase system capacity by allowing practitioners to do more substantive legal work and be compensated at a lower rate for some administrative tasks. *See* [Chapter 301-B](#)⁸.

L.D. 1378 An Act to Protect Maine Communities by Enacting the Extreme Risk Protection Order Act

On November 4, 2025, the voters approved a new law regarding weapons restrictions. The language of this bill indicates that in 34-B MRS § 2244 (2)(B), the respondent has a right to counsel and a court, in its discretion, may appoint an attorney for an indigent **party** at State expense. This means that court may, in its discretion, appoint an attorney for either a respondent or the petitioner, but does not indicate which State agency is responsible for providing the attorney(s). It is unknown how this new law will impact the regularity of other types of Weapons Restriction Orders pursuant to 34-B MRS § 3862-A (6)(A). The language of the new law with respect to the right to counsel for the respondent is identical to the existing statute where counsel is being provided to all eligible respondents.

⁸ <https://www.maine.gov/pds/sites/main.maine.gov.pds/files/inline-files/Chapter%20301-B%20Final%20SOS.pdf>

Pending Legislation Carried Over from the First Session

L.D. 340 An Act Regarding Speedy Trials

This bill creates a statutory speedy trial deadline in which cases must be brought to trial. The deadlines would be implemented slowly in phases. If this law goes into effect, it will have a significant impact on the number of pending cases and reduce the time they are pending, which would in turn reduce the number of hours spent on cases and thereby decrease the cost of defending them. This statute would have a beneficial effect of ensuring that cases are not languishing and would help prosecutors prioritize older cases and bring them to a timely resolution.

A major issue causing delays in scheduling trials, and also creating challenges for defense counsel and prosecutors for early case evaluations and consideration of early and alternative dispositions is the significant delays in discovery, particularly of electronic or digital discovery, and in getting returns of lab reports of tests for drugs, DNA, sexual assault test kits, and the like. Any resolution of speedy trial issues will also require resolution of concerns about the need to promptly provide discovery. While we may never return to the days, decades ago, when most discovery was quickly gathered by the prosecutor and handed to defense counsel at first appearance, some effort is needed now to help assure that police make prosecutors aware, promptly, of electronic and digital discovery in police possession, and that lab test results are completed and returned on a much faster schedule than occurs with many lab test results today.

L.D. 1796 An Act to Implement the Recommendations of the Maine Commission on Public Defense Services to Clarify the Types of Cases for Which the Commission is Responsible for Providing Counsel.

This bill amends 4 MRS § 1802 to clarify the definition of “indigent legal services” and explicitly prohibits the court from directly appointing employed counsel and public defenders to matters. It makes clear that the court is responsible for paying counsel fees in cases filed pursuant to the Probate Code, 18-C MRS § 5 and § 9 and 19-A MRS § 1658.

L.D. 534 An Act Clarifying the Rights of Crime Victims and Witnesses Regarding Professional Investigator Communications

This bill seeks to require a private investigator in a criminal case or an investigator employed by PDS to make specific disclosures to victims or witnesses in the course of their investigation. It would also require the Commission to hire only licensed private investigators. Not all employed

investigators are licensed, and some may not meet the eligibility requirements, but are employed subject to collective bargaining agreements, which may lead to employment grievances, reclassifications, or other implications from this attempt to regulate employed investigators. The Commission attached a fiscal note to cover the costs anticipated by this legislation. However, the Commission has received information that the Maine Prosecutors' Association has or intends to request that the requirement that PDS private investigators be licensed be removed from the bill. PDS supports that request.

L.D. 374 An Act to Provide Comparable Compensation and Benefits for Deputy and Assistant District Attorneys, Assistant Attorneys General, and Public Defenders

This bill seeks pay parity between assistant district attorneys, attorneys general, and public defenders. The Commission supports this bill in principle and currently applies the same pay scales as those of assistant district attorneys and attorneys general. Employed defenders are subject to collective bargaining agreements, which govern their compensation and benefits. Assistant district attorneys and assistant attorneys general are confidential employees whose pay is set by agreement of the district attorney and within the budget of the attorney general, subject to a financial order signed by the governor. They can set starting salaries and give pay increases at their discretion. They also have the authority to increase pay for assistant district attorneys and assistant attorneys general without this bill if they determine there is inequity. Since the benefits that assistant district attorneys and attorneys general receive are different—and in many cases more generous—than those outlined in the collective bargaining agreement of employed defenders, it is unclear how or if the bill could impact the benefits of employed defenders.

Further Legislative Changes Needed

At the start of the 133rd Legislative Session, PDS intends to pursue several legislative changes. Alternatively, PDS invites the Judiciary Committee to take up any of the following initiatives:

- Statutory prohibition on non-consensual direct assignment or appointment by the courts of private attorneys for indigent legal services, absent prior consent by the attorney to accept appointment to the case.
- PDS and the Judicial Branch met to discuss counsel payments and statutory language because there are several statutes from prior to PDS and MCILS' inception that specify that the court must pay for certain counsel costs. PDS and the Judicial Branch agree that

PDS is in the best position to train, supervise, and pay attorneys in appointed matters were in mental health and protective custody dockets.

- In mental health cases for involuntary hospitalization pursuant to 34-B MRS § 3864(10), the court is responsible for paying the cost of appointed counsel. PDS had been making these payments until August 2025, after the budget shortfall became known.
- In weapons restriction orders under 34-B MRS § 3862-A (6)(A), it is discretionary for the court to appoint counsel to indigent respondents. However, the practice is to appoint counsel in most cases due to the capacity issues of the respondent and the fundamental rights being challenged. PDS had been making these payments until August 2025, after the budget shortfall became known.
- In 22 MRS § 4005(1)(F), there is a rarely used provision for minors to have counsel appointed, which are distinct from guardians ad litem. PDS had been making these payments until August 2025, after the budget shortfall became known.

➤ Eyewitness Identification Procedures for Law Enforcement Agencies: to establish uniform procedures for eyewitness identification. The objectives are to reduce the likelihood of misidentification and increase the reliability of any eyewitness identifications made by incorporating best practices.

➤ Transcript Law: PDS intends to propose a law that would implement changes related to the cost of court transcripts.

➤ Allow a defendant the ability to have their bail reviewed without necessitating an appeal to the Law Court, if it has been previously set after a certain amount of time has passed, or as they can demonstrate a change in circumstance.

➤ Elimination of the crime of Violation of Condition of Release. Most states do not use new criminal charges to enforce bail restrictions on pre-conviction cases. It is the most common charge brought in the criminal justice system and contributes to delay and inefficiency in the system when there are alternative means to ensure community safety.

➤ Bail Reform is needed to ensure consistency with release conditions so that similarly situated individuals are being treated uniformly throughout the state. Pre-release programs are increasingly being taken over by sheriff's offices. This presents a serious conflict of interest in that the State agency that investigated and charged an individual is now creating

the terms under which they may be released and is requiring them to surrender many of their rights and legal protections as a condition of being out of jail, pre-conviction. This will likely generate higher incarceration rates and therefore will cost more in the long term. It also imperils the idea that pre-release contracts are neutral instruments of the court and instead present an opportunity for law enforcement to exploit the current VCR and bail revocation practice to hold more people for longer.

- Eliminate cash bail requirements for misdemeanor property or status crimes and for Class C burglary and theft. Allow a defendant to be held in jail on such charges only if a court determines, by clear and convincing evidence, that, if released, the defendant is (1) a threat to public safety, or (2) likely to leave the jurisdiction and fail to appear for future court appearances.
- Raise the value threshold for Class C theft, 17-A MRS § 353(1)(B)(4) & (5), from \$1,000 to \$4,000 to approximately acknowledge inflation since the \$1,000 threshold was adopted, effective May 1, 1976 – fifty years ago. PDS also recommends increasing the Class E threshold from \$500 to \$1,000.
- Financial Screening: PDS has identified several areas for improvement in the financial screening guidelines. Some of the changes PDS is considering will require rulemaking by the Commission, while some will require statutory changes.
 - The guidelines ([Chapter 401](#)⁹ of the PDS rules) do not appropriately take into consideration the cost of retaining a private attorney, as required by law. *See* 4 MRS § 1804(2)(A). For example, the guidelines provide that if a parent in a child protective case has more than \$2,500 in cash assets, they do not qualify for counsel. Child protective cases often last for years and are some of our highest attorney vouchers.
 - The guidelines are outdated. The guidelines also provide that an individual must be below 110% of the federal poverty level to qualify for counsel. For a household of one, a person making more than \$17,215 annually does not qualify for counsel.
 - PDS proposes to update the guidelines to incorporate a means-tested analysis in which someone who receives a benefit as a result of a financial

⁹ <https://www.maine.gov/pds/sites/main.maine.gov.pds/files/inline-files/Indigency%20Guidelines%20revised%20Appendix%20A%20July%202025.pdf>

eligibility determination by the government will be recommended as indigent.

- For those who do not qualify for a means-tested benefit, PDS proposes to increase the threshold to 200% of the federal poverty level, similar to other programs such as SNAP and hospital charity care.
- Partial indigency:
 - Is inconsistent with national best practices. [Principle 5 of the American Bar Association Ten Principles of a Public Defense Delivery System](#) provides that, “Public defense should be provided at no cost to any person who is financially unable to obtain adequate representation without substantial burden or undue hardship.” It also states that individuals who qualify for public defense should not be charged for these services.¹⁰
 - Is an inefficient use of resources. In FY25, PDS collected \$344,043 for counsel fees from partially indigent clients. Collection of counsel fee payments requires the time of Judicial Branch court clerks and PDS staff. PDS employs six full-time and two part-time financial screeners. If they did not need to dedicate time to collections, they would have increased capacity to expand the scope and geographic coverage for screenings.
 - PDS intends to propose a change to 4 MRS § 1804(2)(A) to eliminate the requirement to consider a person’s ability to make payments toward counsel fees. If that statutory change occurs, PDS would then eliminate partial indigency from the guidelines.
- 22 MRS § 4006 should be amended to permit appeals at all critical junctures of child protection cases.

¹⁰https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/standards-and-policies/ten-principles-pub-def/principle-5/

Conclusion

Until 2021, PDS only had three full-time central office employees to provide support, training, oversight, and payment to hundreds of attorneys statewide. Since 2021, PDS has received funding to support both central office operations and to build a public defender system. Tremendous progress has been made. PDS has created a robust training program; developed audit processes; created a process for investigating complaints about assigned counsel; built a public defender system; engaged in active and effective rulemaking; and created, streamlined, automated, and increased the efficiency of various processes. PDS did not achieve these successes on its own. Rather, it was made possible because of the support we have received from all branches of government.

Despite the progress that has been made, there is still much to be done. The Sixth Amendment crisis still exists, the magnitude of which cannot be overstated. There are Maine citizens in jail right now who are presumed innocent and are constitutionally entitled to counsel, but have not been assigned counsel. This is both a constitutional crisis and a humanitarian one. It will require continued support to ensure a robust, efficient, and effective public defense system is nurtured here. PDS will continue to require the support of the legislative branch, the judicial branch, and the executive branch to fulfill our important mission. The progress PDS has made generally, and on the Sixth Amendment crisis in particular, is threatened by the impending budget shortfall. If the shortfall happens, PDS anticipates running out of money to pay assigned counsel by early April 2026. Assigned counsel are keenly aware of that possibility, and some are planning accordingly by diversifying their caseloads to other areas of the law. That will directly take attorney hours away from PDS cases, thereby threatening the progress that has been made and increasing the number of individuals awaiting counsel that PDS is responsible for providing. This crisis presents a unique opportunity for Maine to fully fund a robust hybrid indigent defense system that will fulfill the State's constitutional and statutory mandates.

We appreciate your continued support and are hopeful of a productive legislative session that will enable us to continue building a hybrid system of employed public defenders and assigned counsel, capable of meeting the State's constitutional obligation to provide counsel to eligible parties.