

Committee to Ensure Constitutionally Adequate Contact with Counsel – Compiled Questions and Answers from the Second Meeting

Wednesday, October 5, 2022

Committee Questions

- For MCILS
 1. **Committee members were interested in learning what space was available in each courthouse for attorneys to meet with their clients. .**

Our response to this request is in process. We will share responses we get.

2. **Does MCILS track caseload statistics? The Committee asked for caseload data for each court.**

MCILS has access to data that allows us to generate certain reports about some caseload data. We do not necessarily routinely produce reports on all data. We can break out data out by the court in which a case was pending. We would be happy to produce information on request. Information may be subject to redaction to comply with the requirements of our statute.

MCILS does not track court specific data other than that contained in our case management and billing software.

In the context of our last conversation, I understood that one specific request was for data showing the number of people involved in each lawyer of the day program. This is not information to which MCILS has access outside of a few limited instances in which someone has happened to share a list with us.

3. **Do you have access to lists of protected phone numbers from Securus and GTL or any idea how we might obtain these lists.? Also, I was hoping you could confirm (or correct) my understanding of the process for an attorney to protect her number from surveillance. My understanding is that an attorney wishing to add a number to the list of protected numbers needs to contact the jail in which her client is residing, speak to whomever that particular jail has designated as a point person, and provide her number. The point person in the jail works with the vendor to add the number to the list, and the number is then protected from surveillance regardless of the inmate. Is that an accurate description of the process? An attorney would need to contact each individual courthouse to make sure her number is on that courthouse's list, correct?**

We do not have access to a list or lists of protected telephone numbers from any telecom provider or client facility. Past MCILS efforts to obtain data from the facilities was only partially successful. In my view, the Committee should request that each facility provide these lists. (See my request of 9/28/2022 regarding proposed information requests from the facilities.)

I am not able to provide you with the process by which an attorney may successfully protect a telephone number from being recorded. MCILS has attempted to participate in that process, most recently by providing each facility with a list of then known to MCILS attorney numbers on May 3, 2022. I can tell you that the York County Jail has accepted a list of numbers from MCILS with a commitment to enter those numbers into its telephony account. We appreciate the ability to work with that facility on this issue.

Attorneys have had varying experiences in trying to make safe their telephone numbers.

Our perspective is that there should be one statutorily defined process by which attorneys register their numbers for blocking; by which those numbers are in fact blocked; and by which there is produced an auditable record of that process.

- 4. As far as you know, is there any way for an attorney to confirm that her number is protected, aside from calling the jail and asking?**

Not to my knowledge

- For Courts

- 1. For each courthouse, what space is available for attorneys to meet privately with clients?**
- 2. Are current arraignment caseload statistics available for each court (walk in and in custody arraignments) and if so, can these statistics be shared with the committee?**
- 3. Can you describe the process each courthouse uses to determine whether appearances will be in person or remote?**

- For Sheriffs' Association

- 1. Do you have access to lists of protected phone numbers from Securus and GTL or any idea how we might obtain these lists.? Also, I was hoping you could confirm (or correct) my understanding of the process for an attorney to protect her number from surveillance. My understanding is that an attorney wishing to add a number to the list of protected numbers needs to contact the jail in which her client is residing, speak to whomever that particular jail has designated as a point person, and provide her number. The point person in the jail works with the vendor to add the number to the list, and the number is then protected from surveillance regardless of the inmate. Is that an accurate description of the process? An attorney would need to contact each individual courthouse to make sure her number is on that courthouse's list, correct?**
- 2. As far as you know, is there any way for an attorney to confirm that her number is protected, aside from calling the jail and asking?**

We will endeavor to ascertain the answers to your questions. We would like to have the following questions answered and respectfully request they be added to the next meeting agenda as discussion items:

- 1, What is State's annual budget for legal defense for indigent people?*
- 2. What is the number of individuals that the legal defense fund has represented in the last fiscal year?*
- 3. What percentage of indigent people vs non-indigent people are obtaining defense legal services in the last fiscal year?*
- 4. How many practicing defense attorneys are currently practicing in the State of Maine?*
- 5. How many complaints have been lodged from defense lawyers referencing phone call conversations being erroneously captured from registered phone numbers while their client has been incarcerated?*
- 6. How many criminal cases have been developed in the State of Maine from conversations between a defense attorney and client?*
- 7. How many convictions have there been from a lawyer/ client incarcerated erroneously captured conversations?*
- 8. How many crimes have been prevented from properly captured communication in Maine's eight prosecutorial districts?*

It is extremely important that we protect the lawyer/ client privilege. I believe to address their concerns, we need to be cognitive of the scope of the concern.

Questions from Sheriffs Association

- For MCILS

1. What is State's annual budget for legal defense for indigent people?

For Fiscal Year 2022, MCILS spent \$20,358,402 on direct and indirect costs associated with providing legal services to consumers of indigent legal services. On that, \$18,616,677 was spent on the direct cost of legal fees to attorneys serving those consumers across our program.

2. What is the number of individuals that the legal defense fund has represented in the last fiscal year?

Assuming for the purpose of this answer that "legal defense fund" means "Maine Commission on Indigent Legal Services," during the period July 1, 2021 to June 30, 2022

MCILS assigned counsel provided legal services to 36,880 uniquely identified people. This number includes those whose cases were open on July 1, 2021, and those whose cases were opened during the window. Some people have more than one matter. Those people have not been counted more than once. This number excludes those people who were served by lawyers for the day, but who were not then represented by assigned counsel in the remainder of a substantive matter.

3. What percentage of indigent people vs non-indigent people are obtaining defense legal services in the last fiscal year?

MCILS does not have the ability to answer this question directly because the information we would need to do so resides with the Court. The last best information MCILS has in its possession on this issue was received from then Judicial Branch staff person Anne Jordan in mid-2021. The following table is excerpted from her communication

TOTAL CR	Original Adult CR Filings (excludes Class T, V & X)	# of Filings with Retained Counsel	# of Filings with Court-Appointed Counsel	# of Filings without Counsel
FY19	44,319	6,378	14,095	23,846
FY20	39,084	5,585	14,488	19,011
FY21	35,615	4,493	12,792	18,330

TOTAL CR	Original Adult CR Filings (excludes Class T, V & X)	% of Filings with Retained Counsel	% of Filings with Court-Appointed Counsel	% of Filings without Counsel
FY19	44,319	14.4%	31.8%	53.8%
FY20	39,084	14.3%	37.1%	48.6%
FY21	35,615	12.6%	35.9%	51.5%

4. How many practicing defense attorneys are currently practicing in the State of Maine?

MCILS does not have the ability to identify those attorneys who may practice criminal defense in whole or in part, but who are not part of the MCILS ecosystem. As of September 28, 2022, there are a total of 209 individual attorneys available to serve consumers of indigent legal services. Of those, 24 serve only as lawyers for the day. 164 attorneys currently serving consumers indicate at least the limited availability to serve additional clients. 8 attorneys appear to be available but do not appear to be actually accepting cases.

5. How many complaints have been lodged from defense lawyers referencing phone call conversations being erroneously captured from registered phone numbers while their client has been incarcerated?

For clarity, no defense lawyers have lodged formal complaints with MCILS around this issue, because we are not the authority able to address it outside of our efforts in the legislative arena. The information we have has been anecdotal to date. We have asked our counsel to report their experiences to us so that we can share that information with the group. We will do that as the information arrives.

Our understanding is that for the bulk of the history of MCILS, properly blocking attorney phone numbers from recording depended on the prisoner to designate the attorney's number, and a jail staff person to enter that number. We do not have the ability to know how or when that happened.

The most useful information on this issue would come from an analysis of jail recording logs after MCILS promulgated its list of known attorney telephone numbers on May 3, 2022.

6. How many criminal cases have been developed in the State of Maine from conversations between a defense attorney and client?

MCILS does not have the ability to answer this question because the information we would need to do so resides with law enforcement or in the offices of prosecutors. The fact that no one in the defense function can assess the prevalence of this issue is a primary driver of the need for a system level solution to the issues. I would note that privilege extends to members of the defense team, and that the analysis should thus include calls with investigators and others inside the defense privilege.

7. How many convictions have there been from a lawyer/ client incarcerated erroneously captured conversations?

Again, MCILS does not have the ability to answer this question because the information we would need to do so resides with law enforcement or in the offices of prosecutors. The fact that no one in the defense function can assess the prevalence of this issue is a primary driver of the need for a system level solution to the issues. I would note that privilege extends to members of

the defense team, and that the analysis should thus include calls with investigators and others inside the defense privilege.

8. How many crimes have been prevented from properly captured communication in Maine's eight prosecutorial districts?

MCILS does not have the ability to answer this question because the information we would need to do so resides with law enforcement or in the offices of prosecutors. MCILS does not question that some crimes have been prevented through recorded conversations. A comparison of the relative counts of instances of improper recording and playback against the instances of proper recording and subsequent proper law enforcement deployment of that intelligence would be grounded in a false equivalency, however. Law enforcement enjoys no constitutional prerogative to record prisoner communications, while prisoners do enjoy a fundamental right to adequate privileged contact with counsel.