

**Testimony of Jim Billings, Executive Director
Maine Commission on Indigent Legal Services**

**Before the Joint Standing Committees on
Appropriations and Financial Affairs and Judiciary**

“An Act to Make Supplemental Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds and to Change Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2024 and June 30, 2025”

February 28, 2024

Good afternoon, Senator Rotundo, Representative Sachs, and members of the Joint Standing Committee on Appropriations and Financial Affairs; Senator Carney, Representative Moonen and members of the Joint Standing Committee on Judiciary. I am Jim Billings, the Executive Director of the Maine Commission on Indigent Legal Services and I am here today to testify in support of the fiscal year 2024-25 supplemental budget bill, LD 2214, and to urge you to support passing a more robust funding package to help Maine forge a path out of its current constitutional crisis.

Brief Overview of Commission Operations

As a quick refresher, MCILS is an independent commission whose purpose is to provide high-quality, efficient representation to indigent individuals who are entitled to counsel at state expense under the United States Constitution or under the Constitution or statutes of Maine. These case types include adult criminal, juvenile, child protective, involuntary commitment to psychiatric hospitals, involuntary medication, weapons restrictions orders, and emancipation.

With the creation of the Rural Defender Unit (or the RDU) in December 2022 and the Capital Region Public Defender Office in November 2023, Maine now has a hybrid system that utilizes both private attorneys and employed public defenders to discharge the State’s constitutional obligations. The RDU currently consists of a District Defender, 5 trial attorneys, and no support staff. The RDU handles adult criminal cases in rural parts of the state. The Capital Region Public Defender’s Office is the first brick-and-mortar public defender office in the state and is located in Augusta. The CRPDO consists of a District Defender, 5 trial attorneys, and 3 support staff members. This office exclusively handles adult criminal cases out of Kennebec County. The office intends to also handle adult criminal cases in Somerset County once support staff hiring and onboarding is complete.

Roster Health

We continue to see a decrease in participation by the private bar on the published rosters that MCILS provides to the Judicial Branch to use for the assignment of counsel. Here are the statewide MCILS roster numbers from earlier this week:

Trial-level (no appeal, PCR, or lawyer of the day)	98 attorneys
Adult criminal	36 attorneys
Child protective	29 attorneys
Total participation for all case types	148 attorneys

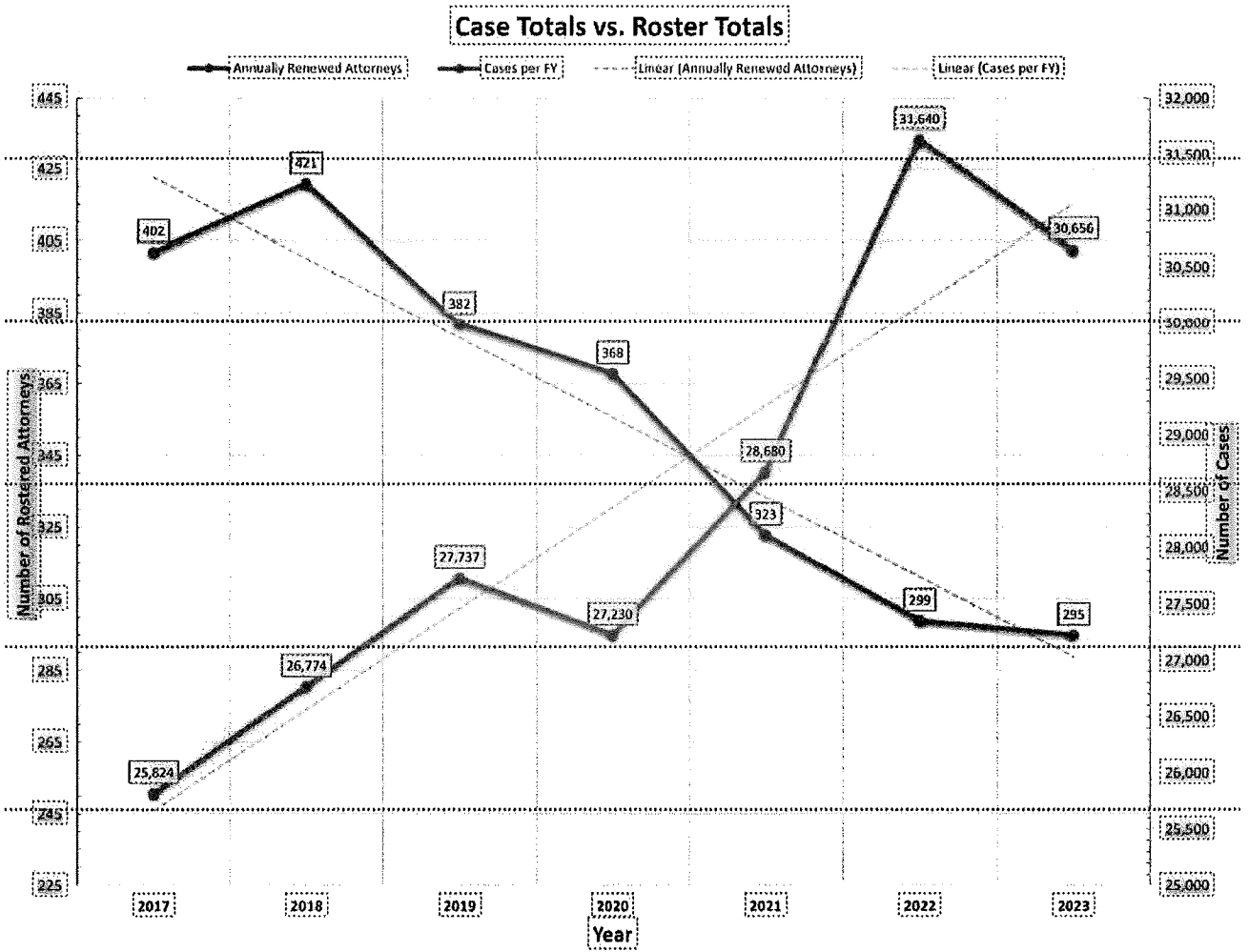
These numbers reflect any attorney rostered for any of the case types no matter if MCILS work comprises 100% of their practice or 10% of their practice. By comparison, there are 100 Assistant District Attorneys and 140 Assistant Attorneys General for a total of 240 full-time attorneys for the State. These offices also have robust staffing levels, compared to MCILS, with a total of 47 support staff members.

To give you a glimpse into the crisis that MCILS and the Judicial Branch are currently grappling with, here are some recent roster statuses:

- 6 counties have zero rostered attorneys for any trial-level adult criminal case type except Homicide (York, Androscoggin, Kennebec, Penobscot, Waldo, and Franklin).
- 2 counties have 1 rostered attorney for just 1 case type other than homicide (Aroostook, OUI; Knox, drug offense).
- Cumberland County has 1 attorney rostered for both OUI and Other Misdemeanors, and no other attorneys for any case type other than homicide.
- Lewiston and Bridgton district courts have zero child protection attorneys.
- 9 district courts have only 1 actively rostered attorney for child protective matters (Ellsworth, Farmington, Fort Kent, Houlton, Portland, Rockland, Rumford, South Paris, Waterville).
- 10 district courts have zero attorneys for juvenile felony matters.

From January 1, 2023 to January 1, 2024, MCILS assigned counsel billed 272,708 hours, a 7.3% increase over calendar year 2022. This increase comes against a backdrop of a continuing substantial backlog of cases in the court 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 of attorneys available to provide indigent legal services, these trends yield an unsustainable result. And we have seen the decline in roster numbers starting as far back as 2019 when case numbers were much lower.

From 2022 to 2023, the roster numbers leveled out, instead of continuing to decline at the fast pace seen in previous years. We believe this is in large part due to the hourly rate increase to \$150. We thank the Legislature for that. MCILS has continued to work toward achieving parity with prosecutors. MCILS now provides free legal research access, a vast array of free trainings, and pays attorneys to attend a limited number of trainings. MCILS believes that all this support has made it possible for attorneys to continue doing this work. However, attorneys only have so much capacity, which is currently exhausted by the excessive number of cases.



One troubling trend we have observed is that MCILS counsel continue to experience stress and burnout related to indigent defense work. In September 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 at page 58.

Earlier this week, the Judicial Branch reported to MCILS that there were 564 cases where a defendant or parent or juvenile was constitutionally entitled to counsel and yet there was no lawyer available. Some of those people are sitting in jail, pre-trial, presumed innocent, waiting for a lawyer to be assigned to represent them. 1 case is unacceptable; 564 cases is a constitutional crisis. Unfortunately, there is no end in sight to the trend of that number increasing.

Some of the charges on that list include: operating after suspension, violation of probation on an underlying misdemeanor drug possession conviction, class E theft, class E VCR, obstructing a public way, drug possession, displaying a fictitious inspection sticker, obscuring motor vehicle plates, failure to register a motor vehicle, and improper plates.

The State has a math problem on its hands. There are more cases in which a party is constitutionally entitled to counsel than there are lawyers to provide those constitutionally required services. Part of the solution is to continue recruiting and retaining the number of attorneys who are doing this work full-time. MCILS is committed to continuing those efforts.

But the solution 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. Neither MCILS nor any assigned counsel controls how many cases are fed into the legal system. I welcome any discussion with the Judicial Branch and the Prosecution on how Maine can best expand its early diversion programs and I urge these two committees to encourage the stakeholders with the control over these cases to be part of the solution.

Public Defender Office Expansion Plan

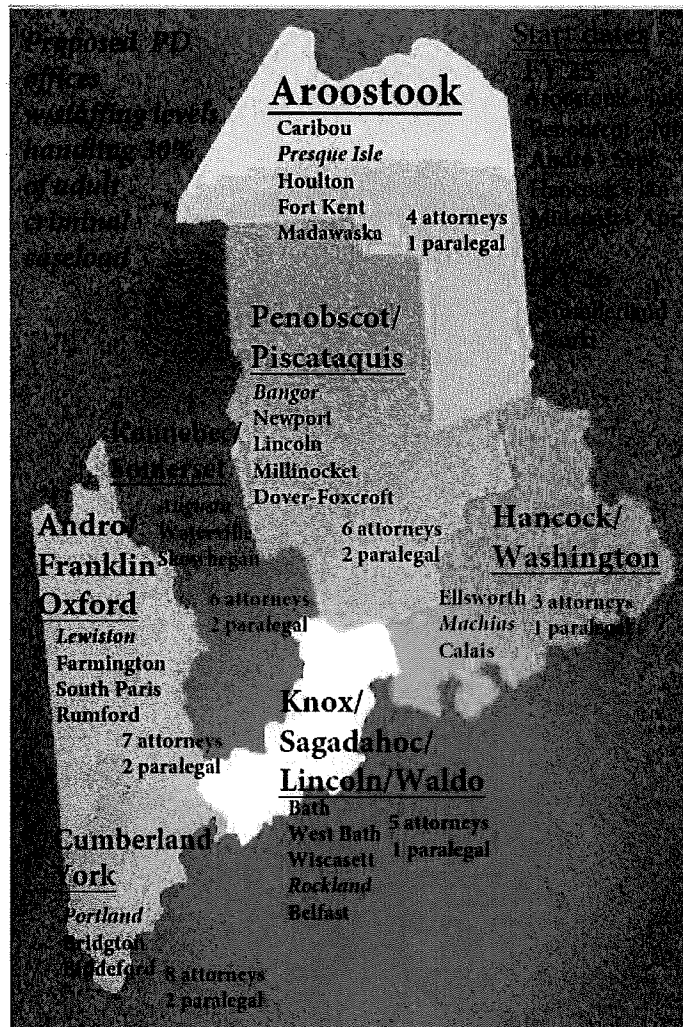
While the initiatives in the Governor's proposal are a start, they do not go far enough to get Maine out of the current predicament it finds itself in from relying almost entirely on the willingness of private attorneys to participate in the system to help the State discharge its constitutional obligations. Maine must diversify its system of delivering these constitutionally mandated services and needs to implement a statewide public defender structure to stabilize the system.

I have included the full breakdown of the 8 initiatives at the end of my written remarks at page 10. We believe that an additional 53 positions, and not the 22 that are included in the current LD 2241, is the next step in the evolution of indigent defense in Maine.

We propose the following rollout of brick-and-mortar public defender offices:

1. Aroostook County (early FY25)
2. Combined office for Penobscot and Piscataquis counties, 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).

Offices for Cumberland and York Counties are not included in this initial requested rollout. I anticipate MCILS will be requesting that these offices be included in the next biennial budget for FY2026.



These proposed 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.

Simply put, Maine needs to dramatically increase system capacity for defense attorneys. That can be accomplished in three related but distinct ways: (a) increasing the total numbers of attorneys providing our constitutionally required services, (b) increasing the percentage of attorneys doing this work full-time rather than part-time, and (c) fully staffing the public defender offices. 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 legal system. In addition, fully staffing these PD offices is critical. Attorneys cannot operate at full capacity without support staff, and at a time when there is a shortage of lawyers willing to perform this work, adequately staffing PD offices is a way to increase capacity without depending entirely on adding lawyers alone.

This new generation of lawyers coming out of law school are graduating 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 support and benefits that entails.

Budget Request

As proposed, the current budget language does not authorize an additional appropriation to fund the 22 new positions. Instead, the positions would be funded out of existing All Other resources. I will outline why it would be imprudent for MCILS to fund out of existing resources.

Based on our latest budget projections, we may face an \$8 million dollar shortfall in FY2025 due to the one-time \$5 million dollar reduction to our FY2025 baseline budget (which accompanied another one-time \$5 million reduction for FY2024) and the continued trend of higher than average submitted hours. In the last two months alone, we have seen nearly 55,000 submitted hours. And total yearly submitted hours are on pace to be 30,000 more hours than in FY2023.

That \$8 million shortfall should be mitigated by the anticipated FY2024 carryover of \$10 million dollars, provided that submitted voucher hours continue to remain at the 25,000 hours per month rate for the next 4 months. That would leave approximately \$2 million that could be transferred to Personal Services for public defender staffing. However, if submitted hours continue to hold steady at these higher monthly amounts, that projected \$2 million dollar surplus could never materialize and instead be needed to pay assigned counsel vouchers. If that happens, there is a danger that MCILS would be unable to pay private attorneys until additional funding is appropriated or the new fiscal year begins. I would caution the Committee that it would be catastrophic to the system if MCILS ran out of money and was unable to pay our assigned counsel in a timely manner. Private counsel bill us in arrears, sometimes for a case that has been pending for a year or more, so there will not be any immediate savings once a public defender office is opened.

Due to this uncertainty and the critical need to open all the proposed offices during this biennium, I am requesting that this Committee appropriate new money for these public defenders' offices. As noted on page 10, all 8 requested initiatives total \$5,591,063.

I would also like to mention that we are on track to have roughly \$1 million in unused Personal Services for FY'2024. We would request that these unused funds not lapse at the end of the fiscal year and instead be used for new public defender offices.

All Other/OSR expended to date (192,368 hours)	\$26,953,230	
Current All Other/OSR funds	\$25,915,754	
Anticipated Operating costs for remainder of the year	\$300,000	
Anticipated Non-Counsel costs for remainder of year	\$500,000	
Anticipated Counsel costs for remainder of year (at \$150 rate) at 100,000 hours	\$15,000,000	
Amount Needed to End FY24	\$15,800,000	
Projected All Other Carryover to FY25	-\$10,115,754	
<i>Projected Personal Services Surplus (won't carry)</i>	<i>\$1,000,000</i>	
FY25 baseline All Other budget	\$38,362,565	<i>includes one-time \$5 million reduction</i>
Projected FY25 non-counsel costs	\$1,550,000	
Projected FY25 commission operating costs	\$600,000	
Projected FY25 counsel expenditures (at \$150 rate) at 295,000 hours	\$44,250,000	
Amount Needed for FY25 to cover above projections	\$46,400,000	
Needed FY24 carryover to cover FY25 shortfall	\$8,037,435	
Projected FY24 carryover to FY25	\$10,115,754	
Anticipated FY24 carryover amount that could be used for PD offices	\$2,078,319	

Submitted Hours													
	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Yearly Total
FY21	13,652	15,225	17,333	20,420	17,399	17,244	19,813	17,753	31,671	17,869	19,037	19,270	226,687
FY22	19,764	21,749	19,882	22,228	17,828	17,286	22,006	21,357	24,885	19,723	19,551	21,195	247,454
FY23	19,890	22,083	20,470	20,125	20,820	21,997	21,823	20,666	23,273	19,878	25,420	25,109	261,556
FY24	22,635	24,596	22,244	21,813	22,643	23,608	28,859	25,970					192,368

Child Protection Challenges

While the focus of the public defender office rollout plan so far has been on adult criminal cases, equally as important is the need to address the crisis with the lack of private attorneys available to provide representation in child protection cases. Earlier this week, there were 49 cases in which a parent or guardian was not appointed an attorney because none were available.

Prior to our caseload standards rule being implemented on January 1st we had between 50 and 60 parents' attorneys on the rosters. After January 1st, that number dropped into the low 20's since most attorneys exceeded the caseload point totals based on their MCILS workload percentage. The number has since rebounded to the low 30's. Over the past several weeks, I have reached out to many PC attorneys and all of those I have spoken to declined my invitation to apply for a waiver, citing already high caseloads and a lack of capacity to take on new cases.

The immediate plan to address this problem depends on whether new funding can be provided to establish an Aroostook public defender office to handle adult criminal cases. Once that office is up and running, the RDU positions can then be repurposed to handle child protection matters. This would provide a small measure of relief since the RDU only consists of 6 attorney positions.

The average number of MCILS PC cases for the past three years totals 2,278. In most PC cases, at least 2 attorneys are needed since each parent/guardian requires their own counsel. I anticipate MCILS requesting in the next biennium enough PC employed public defenders to handle one-third of those cases, which would be around 14 attorneys.

This concludes my testimony. I am happy to answer any questions you may have or gather any additional information that you may need.

Initiative	Description	Justification	Position #	Appropriations	
				Line Category	FY25
F-A-15	Establishes 2 Public Service Manager II positions, one Paralegal position and 2 Office Specialist II positions, reduces All Other funding in fiscal year 2023-24 only to fund these positions and provides ongoing funding for related All Other costs beginning in fiscal year 2024-25.	This initiative expands the public defenders Central Office by establishing 2 Public Service Manager II positions, one Paralegal position, and 2 Office Specialist II positions and by providing funding for related All Other costs. Expanding the Central Office will enable the formation, training, and management of district offices across the state that will reduce the need to fund these services with contractors and will save General Fund in subsequent fiscal years. For fiscal year 2023-24 this initiative transfers All Other to Personal Services to fund these positions.	6	Personal Services	\$ 657,804
				All Other	\$ 46,595
F-A-16	Establishes one District Defender position, one Assistant Defender II position, 2 Assistant Defender I positions, one Paralegal position, one Public Service Coordinator I position and one Office Specialist II Supervisor position, reduces All Other funding in fiscal year 2023-24 only to fund these positions and provides ongoing funding for related All Other costs and rent beginning in fiscal year 2024-25.	This initiative creates a public defenders office in Aroostook County by establishing one District Defender position, one Assistant Defender II position, 2 Assistant Defender I positions, one Paralegal position, one Public Service Coordinator I position and one Office Specialist II Supervisor position and by providing funding for related All Other costs and rent. Once this office is established, this initiative will reduce the need to fund these services through contractors and will save General Fund in subsequent fiscal years. For fiscal year 2023-24 this initiative transfers All Other to Personal Services to fund these positions.	7	Personal Services	\$ 896,905
				All Other	\$ 90,233
F-A-17	Establishes one District Defender position, 3 Assistant Defender II positions, 2 Assistant Defender I positions, 2 Paralegal positions, 2 Public Service Coordinator I positions and one Office Specialist II Supervisor position effective July 1, 2024 and provides funding for related All Other costs. This initiative also provides funding for rent for a new office.	This initiative creates a public defenders office in Penobscot and Piscataquis counties by establishing one District Defender position, 3 Assistant Defender II positions, 2 Assistant Defender I positions, 2 Paralegal positions, 2 Public Service Coordinator I positions and one Office Specialist II Supervisor position and by providing funding for related All Other costs and rent. Once this office is established, this initiative will reduce the need to fund these services through contractors and will save General Fund in subsequent fiscal years.	11	Personal Services	\$ 1,325,548
				All Other	\$ 177,509
F-A-18	Establishes one District Defender position, one Assistant Defender II position, one Assistant Defender I position, one Paralegal position, one Public Service Coordinator I position and one Office Specialist II Supervisor position effective January 1, 2025 and provides funding for related All Other costs. This initiative also provides funding for rent for a new office for 6 months.	This initiative creates a public defenders office in Hancock and Washington counties by establishing one District Defender position, one Assistant Defender II position, one Assistant Defender I position, one Paralegal position, one Public Service Coordinator I position, and one Office Specialist II Supervisor position and by providing prorated funding for related All Other costs and rent based on an anticipated start date of January 1, 2025. Once this office is established, this initiative will reduce the need to fund these services through contractors and will save General Fund in subsequent fiscal years.	6	Personal Services	\$ 365,150
				All Other	\$ 40,457

F-A-19	Establishes one Paralegal position and one Public Service Coordinator I position, reduces All Other funding in fiscal year 2023-24 only to fund these positions and provides ongoing funding for related All Other costs beginning in fiscal year 2024-25.	This initiative expands the rural defenders unit by establishing one Paralegal position and one Public Service Coordinator I position and by providing funding for related All Other costs. Expanding this unit will directly reduce the need to fund these services with contractors and will save General Fund in subsequent fiscal years. For fiscal year 2023-24 this initiative transfers All Other to Personal Services to fund these positions.	2	Personal Services	\$ 179,169
				All Other	\$ 18,638
F-A-20	Establishes one Public Service Coordinator I position, reduces All Other funding in fiscal year 2023-24 only to fund the position and provides ongoing funding for related All Other costs beginning in fiscal year 2024-25.	This initiative expands the public defenders Kennebec County office by establishing one Public Service Coordinator I position and by providing funding for related All Other costs. Expanding this office will directly reduce the need to fund these services with contractors and will save General Fund in subsequent fiscal years. For fiscal year 2023-24 this initiative transfers All Other to Personal Services to fund these positions.	1	Personal Services	\$ 95,167
				All Other	\$ 9,319
F-A-21	Establishes one District Defender position, 3 Assistant Defender II positions, 3 Assistant Defender I positions, 2 Paralegal positions, 2 Public Service Coordinator I positions and one Office Specialist II Supervisor position effective September 1, 2024 and provides funding for related All Other costs. This initiative also provides funding for rent for a new office for 10 months.	This initiative creates a public defenders office in Androscoggin, Franklin and Oxford counties by establishing one District Defender position, 3 Assistant Defender II positions, 3 Assistant Defender I positions, 2 Paralegal positions, 2 Public Service Coordinator I positions and one Office Specialist II Supervisor position and by providing funding for related All Other costs and rent based on an anticipated start date of September 1, 2024. Once this office is established, this initiative will reduce the need to fund these services through contractors and will save General Fund in subsequent fiscal years.	12	Personal Services	\$ 1,240,597
				All Other	\$ 155,690
F-A-22	Establishes one District Defender position, 2 Assistant Defender II positions, 2 Assistant Defender I positions, one Paralegal position, one Public Service Coordinator I position and one Office Specialist II Supervisor position effective April 1, 2025 and provides funding for related All Other costs. This initiative also provides funding for rent for a new office for 3 months.	This initiative creates a public defenders office in Sagadahoc, Lincoln, Knox and Waldo counties by establishing one District Defender position, 2 Assistant Defender II positions, 2 Assistant Defender I positions, one Paralegal position, one Public Service Coordinator I position and one Office Specialist II Supervisor position and by providing prorated funding for related All Other costs and rent based on an anticipated start date of April 1, 2025. Once this office is established, this initiative will reduce the need to fund these services through contractors and will save General Fund in subsequent fiscal years.	8	Personal Services	\$ 254,894
				All Other	\$ 37,388

\$ 5,591,063