



*The Commonwealth of Massachusetts*  
*Committee for Public Counsel Services*  
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**REPORT OF THE COMMITTEE FOR PUBLIC COUNSEL SERVICES**  
**REGARDING THE PROGRESS OF THE PUBLIC DEFENDER DIVISION**

The Committee for Public Counsel Services (CPCS) submits this report in compliance with the directive of the Legislature, set forth in line item 0321-1500 of the FY2010 General Appropriation Act, that CPCS provide the House and Senate Committees on Ways and Means with information regarding "the progress of the public defender division[.]"

1. Introduction

In Lavallee v. Justices in the Hampden Superior Court, 442 Mass 228 (2004), the Supreme Judicial Court declared that decades of underfunding of Massachusetts' assigned counsel system had resulted in an "unconstitutional state of affairs [that could] not be tolerated," *id.* at 245, and urged the executive and legislative branches, in the strongest possible terms, to fashion a "permanent remedy for what" had become "a systemic problem of constitutional dimension." *Id.* at 244. As part of its response to the Lavallee decision, the Legislature enacted Chapter 54 of the Acts of 2005, section five of which directed CPCS to establish staff offices around the Commonwealth to provide representation to indigent persons charged with criminal offenses in the District Courts. Further, the legislation followed by several months the April, 2005, *Report of the Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts* (the "Rogers Commission report"). In accord with the Rogers Commission report's recommendation, Chapter 54 authorized a significant increase in the hourly rates for assigned private counsel. Likewise, the legislation heeded the Rogers Commission's finding of "a disproportionate reliance on private attorneys," and its recommendation that "affirmative steps should be taken to provide a more effective balance between the use of public staff attorneys and private attorneys." Report at 8-9.

Notwithstanding the enactment of Chapter 54 in July, 2005, it was not until a full year later, in July, 2006, that funding to implement the District Court “pilot program” was appropriated. In September, 2006--less than two months after that initial appropriation was made--CPCS began an intensive training program for its first class of new District Court attorneys, most of whom were recent law-school graduates. Those attorneys, along with their supervising attorneys, investigators, and support staff, have since been assigned to 14 District Court offices which CPCS has opened across the Commonwealth.

By July, 2009,--i.e., the end of its second full fiscal year of operation--CPCS’s District Court program had established itself as a critical component of the Commonwealth’s commitment to fulfill the constitutional promise of Gideon. Over that relatively short period of time, CPCS’s District Court staff attorneys have provided representation to indigent persons in more than 25,000 cases. As the program has matured, once-new attorneys have gained the experience needed to effectively handle larger caseloads; office managers have implemented systems and procedures designed to provide high quality and constitutionally effective representation; and the number of clients represented has risen steadily each year.

Working with judges, prosecutors, and social workers, the District Court staff has, in appropriate cases, helped steer defendants toward treatment programs that offer a realistic prospect of long-term rehabilitation. Working cooperatively with the bar advocate programs in their counties, CPCS District Court staff attorneys have provided a measure of stability and predictability for judges seeking to ensure that every person who is entitled to a lawyer will have one. And working with and for their clients, the District Court staff has helped give meaning to the language of the Sixth Amendment, which states that “in all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defence.”

Available funding has never been sufficient to permit full staffing of our District Court offices. The initial appropriation for the District Court offices in Fiscal Year 2007 fell nearly \$3.1 million short of what CPCS had requested to implement the significant additional district court staffing--110 additional staff attorneys, plus investigative and other support staff--that Chapter 54 mandated. Although CPCS has continued each year to request an appropriation adequate to fill the additional staff attorney positions mandated by the Legislature over four and one-half years ago in the wake of a constitutional crisis, the annual amount originally appropriated to fund Chapter 54 has not increased. As a result, CPCS has been able to fill only 79 of the 110 District Court staff attorney positions created by the statute. At present, District Court staff offices have available office space for 20 additional staff attorneys. A modest increase in the staff appropriation for Fiscal Year 2011 would enable the District Court offices to come closer to fulfilling the mandate of Chapter 54. Because the office infrastructure is already paid for and in place for those 20 additional staff attorneys (i.e., the space is rented, and the supervisory staff is already at work), the cost to the Commonwealth of funding 20 additional staff attorney positions would be more than offset by the savings in private counsel compensation. Please see **Committee for Public Counsel Services FY 2011 Budget Request – In Response to House 2** (March 1, 2010) (copy attached hereto).

## 2. Data Requested

The Legislature has requested the following information in regard to the District Court offices:

- “(a) the number of offices that are in operation;
- (b) the number of staff hired to work in the district offices; and
- (c) the estimated savings the commonwealth has realized from having cases assigned to public defenders as opposed to being assigned to private bar advocates.”

St. 2009, c.27, §2, line item 0321-1500.

We submit the following responses to the Legislature’s three specific inquiries:

### (a) The number of offices that are in operation:

Thirty Public Defender Division offices are currently in operation in various locations around the Commonwealth. Fourteen of these are District Court offices; i.e., offices whose staff attorneys represent indigent clients charged with offenses within the final jurisdiction of the District Court; 13 are Superior Court offices; two are juvenile defender offices; and one office represents persons being petitioned against as sexually dangerous persons under G.L. c.123A.

### (b) The number of staff hired to work in the District Court offices:

As of the date of this report, there are 79 staff attorneys hired by the Public Defender Division of CPCS to represent indigent clients charged with offenses within the final jurisdiction of the District Court.

### (c) The estimated savings from having cases assigned to District Court public defenders rather than to private attorneys in the bar advocate programs:

In FY2009, District Court public defenders handled a total of 13,323 cases (including violation of probation matters and “bail only” representations). Had those cases been assigned instead to private attorneys in the bar advocate programs, we estimate that the cost to the Commonwealth at the prevailing hourly rate schedule would have been \$5,349,562. These savings do not equal the cost of operating the District Court offices, which was \$7,131,134. One of the reasons is that, as noted above, the District Court offices are operating far below their full staffing capacity. An appropriation which fills the vacant District Court staff attorney positions mandated by Chapter 54 would save money relative to the current

assignment structure in FY11, and would permit a more informed assessment of the cost of providing counsel in future years.

Respectfully submitted:

A handwritten signature in cursive script that reads "William J. Leahy". The signature is written in black ink and is positioned above the typed name.

William J. Leahy  
Chief Counsel

March 9, 2010

**COMMITTEE FOR PUBLIC COUNSEL SERVICES**

**FY 2011 Budget Request - In Response to House 2**

March 1, 2010

Appropriation Line 0321	1500	1518	1510	1520	Total
	Admin & Operations	Indigent Client Fees (Revenue)	Private Counsel Compensation	Indigent Court Costs	
FY 2010 Appropriation	\$ 28,645,024	\$ 750,000	\$ 125,370,957	\$ 13,532,500	\$ 168,298,481
Estimated Deficiency 11/25/09			\$ 34,564,043	\$ 0	\$ 34,564,043
Revised Estimated Deficiency 2/4/10			\$ 32,947,234		\$ 32,947,234
PROJECTED FY 2010 SPENDING (as revised 2/4/10)	\$ 28,645,024	\$ 750,000	\$ 158,318,191	\$ 13,532,500	\$ 201,245,715
<b>MAINTENANCE BUDGET REQUEST (11/25/09)</b>	<b>\$ 28,645,024</b>	<b>\$ 750,000</b>	<b>\$ 166,881,750</b>	<b>\$ 13,938,475</b>	<b>\$ 210,215,249</b>

Additional Budget Proposals	1500	1510	1520	Net Cost
Juvenile Defender Offices (Springfield/Holyoke, New Bedford/Fall River, Lowell/Lawrence) 10 months	\$ 811,194	\$ (802,857)		\$ 8,337 *
Add 1 Auditor to Audit & Oversight Unit @ \$50,000 Annual Salary	\$ 52,000		(100,000)	\$ (48,000)
Fill Attorney Positions to Occupy Current Vacant Office Space (20 District Court & 7 Superior Court Attorneys)	\$ 958,202	\$ (2,002,000)		\$ (1,043,798)
<b>TOTAL BUDGET REQUEST</b>	<b>\$ 30,466,420</b>	<b>\$ 750,000</b>	<b>\$ 164,076,893</b>	<b>\$ 209,131,788</b>
Total Budget Request vs. 11/25/09 Maintenance Request % Increase / or (Decrease)	6.36%	0.00%	(1.68%)	(0.72%)

\* The Net Cost in the first year is related to one-time startup costs (e.g. computers, phone systems, etc.) that do not occur in future years. In FY 2012 and future years net savings of \$51,550 annually are expected.