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**CPCS Chief Criticizes Underfunding and Unworkable
Restructuring in Governor's Budget Recommendation,
and Rallies Support for Adoption of CPCS Budget Proposal**

The Governor's fiscal year 2011 budget proposal which was released late this morning recommends an appropriation of \$167,964,898 for CPCS in FY11. This is very close to the \$168.2 million appropriation under which we are operating in the current fiscal year. The budget detail may be seen by following the links at <http://www.mass.gov/?pageID=mg2homepage&L=1&L0=Home&sid=massgov2>

There are two significant flaws in the Governor's proposal. First, the proposal falls dramatically short of the \$210.2 million which we requested as the amount needed to fulfill the right to counsel in FY11, and which we expect to expend. The recommendation repeats the grave underfunding of the right to counsel which marred this year's appropriation, and which has left an unusually large \$34.5 million deficiency in our FY10 private counsel compensation line item (0321-1510). Second, the Governor's proposal recommends the transfer of almost \$35 million from that same underfunded private counsel compensation line item, to the main CPCS staff, operations, support and oversight line item (0321-1500).

We understand and we appreciate that the Governor's budget proposal has, for the second consecutive year, been crafted in a fiscal environment defined by inadequate state revenues which are insufficient to support the full provision of many state services. Thus, we appreciate that the Governor did not recommend reducing our overall FY11 appropriation significantly from its FY10 total. Nevertheless, we must state that this proposal is not responsive to the CPCS budget request of \$210.2 million which we submitted in November, 2009. First, contrary to our explicit request that the right to counsel be fully funded in the main appropriation, this proposal underfunds this bedrock

Constitutional right to a degree which threatens our ability to provide the representation which the laws of the Commonwealth and the Constitutions of both the commonwealth and the nation require. As we warned in our budget submission in November:

To leave any significant portion of CPCS funding to the uncertain prospect of a supplemental appropriation...is to threaten the interruption of our services and a return to the indigent counsel crisis which required the intervention of the Supreme Judicial Court in *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228 (2004) in order to remedy “an unconstitutional state of affairs [which] cannot be tolerated.” *Id.* at 245.

The second major flaw, the proposal to shift almost thirty-five million dollars from assigned private counsel representation to public counsel staff representation, threatens the ability of CPCS to deliver high-quality legal services under its mixed public-private partnership which has served both indigent parties facing state intervention, and the Commonwealth itself, very well for over twenty-five years. CPCS has always advocated the advantages of a counsel assignment system which is comprised of both a full-time public defender component **and** “the active and substantial participation of the private bar.” *American Bar Association Standards, Providing Defense Services, Standard 5-1.2, Systems for Legal Representation*. In geographical or practice areas where there is no such mix, as currently exists in many areas of Massachusetts for juvenile delinquency and youthful offender representation, CPCS advocates as it has in this year’s budget request for modest and targeted increases in staffing. But this proposal is neither modest not targeted to a specific area of need. It is simply not a workable proposal, and therefore we will resist it in the legislative budget process.

People can fairly argue what the ratio of public and private counsel ought to be, and it is true as the Rogers Commission noted in its 2005 report that Massachusetts relies comparatively heavily on assigned private counsel. But the reality is that Massachusetts and CPCS have been and continue to be recognized across the nation for our high professional standards which apply to **both** staff attorneys and private counsel, and which provide a uniform assurance of competent and professional representation which is unmatched by any other statewide system.

Let me be clear: we do not support the Governor’s budget proposal. What we will do, and what we urge everyone who cares deeply about the right to counsel to do, is to argue vigorously and effectively in the Legislature for approval of the CPCS budget request for FY11. That budget request calls for total funding in the amount of \$210,175,586. It includes 1) full funding of the private counsel compensation line item, in the amount of \$166,078,893; 2) modest expansion of public counsel staffing to open three juvenile delinquency staff offices and the addition of one audit position to monitor the new vendor payment system (VBill), as recommended by the State Auditor, for a total staff and operations budget (including bar advocate programs, private counsel training, support and payments) of \$30,258,218; and 3) full funding of the indigent court cost account in the amount of \$13,838,475. This is the proposal which the Legislature should approve. This is the proposal for which we will work every day. We hope that every attorney, every bar association and every citizen who values the right to counsel will join us in this effort.

Working together, we will continue our notably successful record of fulfilling the promise made by the court in *Gideon*, and doing so in a cost-effective and responsible manner.

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