

Presentation of CPCS FY09 Budget Request
William J. Leahy, Chief Counsel
Joint Committee on Ways and Means
February 25, 2008

The Governor's FY09 budget recommendation for the Committee for Public Counsel Services (CPCS) is \$185,905,395. This amount falls \$20,293,046 short of the CPCS full budget request [Budget Request (A)] of \$206,198,441, which assumes funding for all the staff positions authorized by Chapter 54 of the Acts of 2005, and compensation for assigned private counsel at the rates recommended for FY08 in the Report of the Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts (Rogers Commission Report) (April, 2005). The Governor's recommendation also falls short by almost seven million dollars (\$6,991,982) of the alternative CPCS budget request [Budget Request (B)], which includes only the Rogers Commission's second-year increase for Superior Court criminal and Children and Family Law (CAFL) cases.

CPCS understands that this year's budget deliberations take place in the shadow of considerable economic uncertainty. It was with this uncertainty in mind that we submitted our alternative, reduced budget request of **\$192,897,377**. It is that reduced budget request which we today urge the members of this Joint Committee to endorse, in the event that the Commonwealth's economic circumstances are judged as not sufficiently favorable to permit approval of our full request. Our reduced request provides for **\$32,073,564 in line items 0321-1500** (\$19,813,452 in former line item 1500, and \$11,510,112 in former line item 0321-1513) **and 0321-1518** (renewal of \$750,000 in counsel fee retained revenue, as in previous years). This amount covers all CPCS operations, including the certification, training, assignment, support, performance oversight, payment and auditing with respect to private counsel representation, and all CPCS staff counsel representation.

Please see **CPCS FY 2009 Budget Analysis: Full Chapter 54 Staffing**. This funding would also allow us to create a small Immigration Impact Unit and add one auditor position, as described in my December 14, 2007, letter to Governor Patrick, also attached. However, if funding is not available to fill the Chapter 54 positions, we have recently submitted a maintenance estimate of **\$30,769,530** for all CPCS operations to the Ways and Means budget staff. Please see **CPCS FY2009 Budget Analysis: Current Staffing**.

CPCS strongly supports an increase in hourly rates for assigned private counsel in all CPCS cases, as recommended almost three years ago in the Rogers Commission Report. Please see my written testimony of February 7, 2008, in support of S. 999 (Senator Panagiotakos) and S. 868 (Senator Creedon). However, as described above, at a minimum the rates for Superior Court and Children and Family Law cases should be increased now, at least to the second (FY07) level recommended by the Rogers Commission. This modest and targeted increase is essential in order to sustain an adequate availability of assigned private counsel in these critical areas of CPCS responsibility. Therefore, our reduced budget request seeks **\$144,418,193 in line item 0321-1510** for private counsel compensation under the Full Staffing model; or **\$145,625,160** under current staffing conditions. In order to implement the five dollar hourly rate increases, G.L. c.211D, §11 must be amended in an outside budget section. A current version of §11 with the necessary changes identified is attached. In addition, we ask that this statute be amended to authorize the chief counsel to waive the prohibition against new assignments after an attorney has billed for 1,400 hours of service; when necessary to ensure the availability of counsel for the indigent.

Finally, we request **\$16,405,620 in line item 0321-1520** to pay for anticipated court-ordered Indigent Party Costs under c.261, §27A-D, in FY09. These costs have been increasing in recent fiscal years, as prosecutors rely ever more frequently upon forensic evidence, and as ultra-expensive Sexually Dangerous Commitment petitions are filed more frequently.

I close with a request that you give careful attention to the CPCS Cost Savings Initiatives for FY09 which we submitted very recently, in response to this Committee's invitation, as part of our FY09 spending plan filing. Note the \$5 million which could be saved annually in CPCS counsel costs alone, in addition to other savings, by taking appropriate action to convert minor misdemeanor offenses to civil infractions; the many more millions of state spending which could be saved by responsible reform of our outmoded and draconian mandatory drug sentencing laws; the waste which could be curtailed by adopting our proposed reforms to the Sexually Dangerous Person commitment laws; and the substantial savings and improved quality of justice which would flow from requiring the recording of custodial interrogation of suspects by the police. Please see **CPCS Cost Savings Initiatives, FY 09**.

Thank you for your consideration and your support of these requests.