

The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Brimfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212
FAX: (617) 988-8495

WILLIAM J. LEAHY
CHIEF COUNSEL

ANDREW SILVERMAN
DEPUTY CHIEF COUNSEL
PUBLIC DEFENDER DIVISION

NANCY T. BENNETT
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

MICHAEL DSIDA
DEPUTY CHIEF COUNSEL
CHILDREN AND FAMILY LAW PROGRAM

Presentation of CPCS FY10 Budget Request
William J. Leahy, Chief Counsel
Joint Committee on Ways and Means
March 16, 2009

I present the Committee for Public Counsel Services (CPCS) budget request for FY10 to you at a moment of imminent crisis which threatens our Commonwealth's ability to fulfill its obligation to provide counsel to indigent persons; a fundamental right established in the famous case of *Gideon v. Wainwright*, 372 U.S. 335 (1963), recently reaffirmed unanimously by the Supreme Judicial Court in *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228 (2004).

Our ability to provide these constitutionally mandated services is threatened in general by the dire financial circumstances of which we are all painfully aware; but it is threatened much more immediately and specifically by the Governor's budget recommendation of **\$158.3 million, or \$34.5 million less than CPCS FY09 spending obligations of \$192.8 million.**

The FY10 budget request that we submitted to Governor Patrick on December 11, 2008, requested maintenance funding in the amount of \$202.41 million. It also included two requests for additional funding in the amount of \$1.8 million whose implementation would have been delayed until near the end of the fiscal year. That budget request incorporated \$2.3 million in estimated savings generated by eleven specific cost-reducing actions, including restrictions on court waiting time, attorney travel reimbursements, and expert witness fees which the Committee for Public Counsel Services approved in November, 2008. These savings are noted in Appendix A, **CPCS FY 2010 Budget Request to Governor, December 11, 2008.** Subsequently, in January, we transferred \$500,000 from our staff and agency operations line item to the General Fund as a

“voluntary 9C” contribution. At this moment, salaries are frozen and only the most essential position vacancies are being filled.

Also in January, we reduced travel reimbursement for all CPCS staff and private counsel by 25%, to thirty cents per mile. Now, in March, in recognition of the continuing decline in state revenues, we present a reduced budget request for FY10 that is almost ten million dollars less than the maintenance budget proposal we submitted to the Governor in December. Instead, we request funding exactly level with our anticipated FY09 payment obligations, in the amount of **\$192,807,019**. Please see Appendix B, **CPCS FY 2010 Budget Request, Revised March 16, 2009.**

Here are some important facts about the CPCS budget which I hope you will keep in mind as you consider this scaled-down budget request.

- CPCS clients contributed a total of \$8,782,389 in counsel fees during FY08. Of this amount, all but \$750,000 went directly into the Commonwealth’s General Fund. Thus the true cost of the CPCS appropriation is at least eight million dollars less than the appropriated amount.
- CPCS is responsible not only for adult and juvenile criminal and delinquency defense at trial and on appeal, and collateral criminal proceedings such as probation revocation hearings, but also for a wide array of civil representation such as Care and Protection cases, CHINS petitions, civil commitments, guardianships, sexually dangerous person commitments and sex offender registration cases.
- While criminal cases were more numerous than civil cases in FY08 (81% criminal, 19% civil), civil cases are significantly more expensive than criminal cases (average cost per case was \$583.25 for criminal cases, versus \$933.22 for civil).
- The cost per case increased by a modest 2.05% in FY08.
- The number of cases, however, increased by 4.5% in FY08, the third consecutive year of significant case increases.
- It is not the cost per case but the unceasing increase in the number of cases assigned to CPCS which drives costs up. As shown on Appendix C, **CPCS Case Representation FY 2002–FY 2008**, assignments to CPCS by the courts decreased by almost 7% from FY02 to FY05, but increased by almost 14% from FY05 through FY08.
- This problem is particularly acute with respect to District and Municipal Court criminal assignments. As shown on Appendix D, **New District and Municipal Court Assignments FY 2001–FY 2008**, those assignments declined by 16.4 % from FY01- FY05, but have risen by 20.5%--over 20,000 cases--since FY05.

- The problem of increasing assignments to CPCS was squarely addressed in April, 2005, by the **Report of the Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts**. That authoritative report called for the conversion of court-clogging minor misdemeanor offenses that required the assignment of counsel into civil infractions (pages 16-18); for tighter and more frequent review of the determination of indigency (pages 20-21); for an increase in public counsel staffing to provide balance in the counsel assignment system (pages 15-16); and for the Trial Court “to reduce waiting time by scheduling multiple hearing sessions each day or dividing proceedings...between a morning session and an afternoon session.” (page 15).
- Many of these proposed reforms were included in the July, 2005, enactment of **Chapter 54 of the Acts of 2005**. For example, a **Civil Infraction Commission** was enacted--but its members were never named (Section 6). The District Attorneys were required to file a report every six months to the House and Senate Committees on Ways and Means detailing the number of written objections the Commonwealth had made to the conversion of minor misdemeanors to civil infractions--but the existence of any such report is unknown (Section 3). CPCS was required to hire 110 public defenders--but has never received sufficient funding to retain more than 80 (Section 5). The effectiveness of the numerous indigency verification reforms (Section 1) is called into question by the relentless increase in counsel assignments since 2005. A nine-member commission to study the feasibility of dedicated fees to support the right to counsel (Section 8) was enacted, yet, like the Civil Infraction Commission, its members were never named.
- In our **2009 Report to the Legislature on the Committee for Public Counsel Services**, filed on February 24, 2009, at pages 7 and 8, we advocated that the following steps be taken to help control the flood of case assignments and the resultant increased cost of counsel:
 1. The Permanent Commission on Civil Infractions Must be Activated
 2. The Effectiveness of Chapter 54’s Indigency Verification Measures Must be Assessed
 3. Funding Must be Provided to Hire CPCS Staff Counsel Authorized by Chapter 54
 4. The Conversion of Six Minor Misdemeanors to Civil Infractions, as Recommended by [the Commission] Must be Enacted.

Finally, we added a reminder that the modest additional hourly rate increases for private counsel which the Commission recommended are years overdue and cannot be

indefinitely ignored. Indeed, they must be implemented just as soon as fiscal circumstances permit.

- No one wants to see a return to the embarrassing era of 2004-2005, when hundreds of indigent unrepresented defendants languished in jail cells due to a systemic breakdown resulting from a lack of funding. It took a landmark lawsuit, a high-powered Commission Report, and a major piece of legislation to rescue this Commonwealth from “an unconstitutional state of affairs [which] cannot be tolerated.” *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228, 245 (2004). We should not and we must not go down that road again. Please fund CPCS at least at the level of our FY09 fiscal obligations, so we may have a fighting chance to deliver the legal representation that the laws and Article 12 of the Declaration of Rights of this Commonwealth require.

Thank you for your consideration and your support of our budget request.

Appendix A

COMMITTEE FOR PUBLIC COUNSEL SERVICES

FY 2010 BUDGET REQUEST

Request to Governor, December 11, 2008

Appropriation Line 0321	1500	1518	1510	1520	Total
	Agency Operations incl. Staff Representation; Bar Advocate Programs; Private Counsel Oversight	Indigent Client Fees (Revenue)	Private Counsel Compensation	Indigent Court Costs	
FY 2009 Appropriation	\$ 29,294,603	\$ 750,000	\$ 140,345,728	\$ 11,456,513	\$ 181,846,844
FY 2009 Estimated Deficiency			11,450,000	2,240,000	13,690,000
FY 2009 Estimated Spending (Approp. + Deficiency)	29,294,603	750,000	151,795,728	13,696,513	195,536,844
Estimated Savings from Cost Savings Initiatives			(2,065,812)	(164,013)	(2,229,825)
FY 2009 Adjusted Estimated Spending	\$ 29,294,603	\$ 750,000	\$ 149,729,916	\$ 13,532,500	\$ 193,307,019
MAINTENANCE BUDGET REQUEST FY 2010	\$ 29,651,915	\$ 750,000	\$ 157,750,126	\$ 14,255,500	\$ 202,407,541
Governor's FY 2010 House 1 Budget	\$ 25,480,533	\$ 750,000	\$ 122,100,783	\$ 9,967,165	\$ 158,298,481
Increase (Budget Request 2010 minus Adjusted 2009 Spending)	\$ 357,312	\$ 0	\$ 8,020,210	\$ 723,000	\$ 9,100,522
% Increase (FY 2010 Budget Request vs. FY 09 Spending)	1.2%	0.0%	5.4%	5.3%	4.7%
Additional Budget Proposals	1500		1510		Net Cost
Juvenile Defender Department and Springfield Juvenile Defenders Office (Effective 5/1/2010)	\$ 67,938		\$ (40,413)		\$ 27,525
Increase 1510 Rates to Rogers FY 07, Year 2 and Add 1 Auditor to Audit & Oversight Unit @ \$50,000 Annual, 2 mo. Cost \$9,643 (Effective 5/1/2010)	\$ 9,643		\$ 1,768,592		\$ 1,778,235
TOTAL BUDGET REQUEST FY 2010	\$ 29,729,496	\$ 750,000	\$ 159,478,305	\$ 14,255,500	\$ 204,213,301

Appendix B
COMMITTEE FOR PUBLIC COUNSEL SERVICES

FY 2010 BUDGET REQUEST

Revised March 16, 2009

Appropriation Line 0321	1500	1518	1510	1520	Total
	Agency Operations incl. Staff Representation; Bar Advocate Programs; Private Counsel Oversight	Indigent Client Fees (Revenue)	Private Counsel Compensation	Indigent Court Costs	
FY 2009 Appropriation	\$ 29,294,603	\$ 750,000	\$ 140,345,728	\$ 11,456,513	\$ 181,846,844
FY 2009 Estimated Deficiency			11,450,000	2,240,000	13,690,000
FY 2009 Estimated Spending (Approp. + Deficiency)	29,294,603	750,000	151,795,728	13,696,513	195,536,844
Estimated Savings from Voluntary 9C Cuts and Cost Savings Initiatives	(500,000)		(2,065,812)	(164,013)	(2,729,825)
FY 2009 Adjusted Estimated Spending	\$ 28,794,603	\$ 750,000	\$ 149,729,916	\$ 13,532,500	\$ 192,807,019
BUDGET REQUEST FY 2010 (Level Funding)	\$ 28,794,603 *	\$ 750,000	\$ 149,729,916 *	\$ 13,532,500	\$ 192,807,019
Governor's FY 2010 House 1 Budget	\$ 25,480,533	\$ 750,000	\$ 122,100,783	\$ 9,967,165	\$ 158,298,481

* If the 39 vacant CPCs staff attorney positions were filled in our District Court and Superior Court offices, the 0321-1500 line item would increase by \$1,791,300, and the 0321-1510 line item would decrease by \$2,680,650. The total budget request would thereby be reduced by \$889,350, to a total of \$191,917,669.

Appendix C

CPCS CASE REPRESENTATION

FY 2002 - FY 2008

FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
247,350	239,503	236,706	230,318	237,949	250,653	261,845

Change FY 02 - FY 08

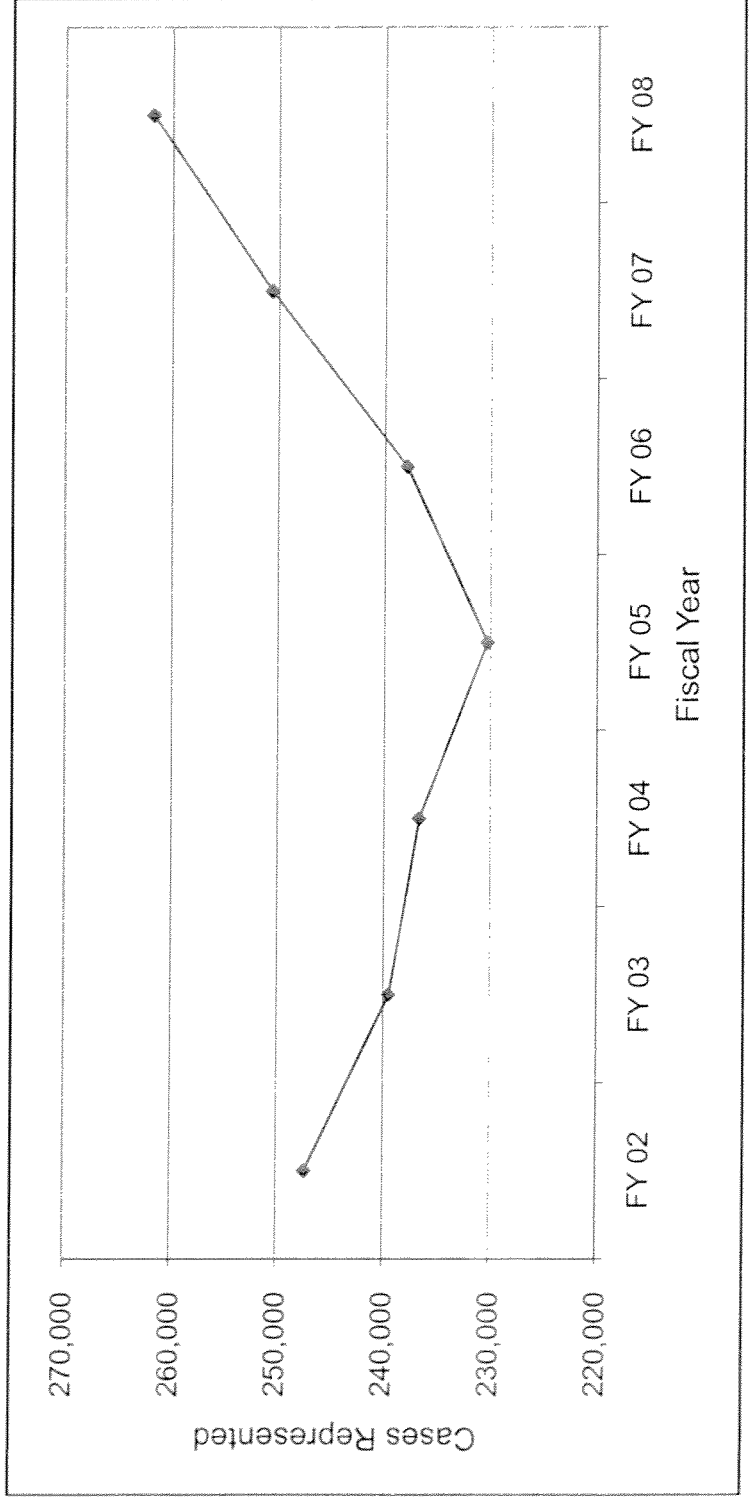
14,495 5.9%

Change FY 02 - FY 05

-17,032 (-6.9%)

Change FY 05 - FY 08

+31,527 +13.7%



Appendix D

NEW DISTRICT AND MUNICIPAL COURT ASSIGNMENTS

FY 2001 - FY 2008

FY 01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08
122,332	121,178	110,885	107,614	102,236	108,349	119,045	123,144

Change FY 01 - FY 05

-20,096 (-16.4%)

Change FY 05 - FY 08

+20,908 +20.5%

