



The Commonwealth of Massachusetts
Committee for Public Counsel Services

44 Bromfield Street, Boston, M.A. 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 DIVISION

Presentation of CPCS FY11 Budget Request
William J. Leahy, Chief Counsel
Joint Committee on Ways and Means
March 1, 2010

I present the Committee for Public Counsel Services (CPCS) budget request for FY11 to you today in fulfillment of the Commonwealth's obligation to provide counsel to indigent persons in cases where the assignment of counsel at public expense is required by law or rule of court. See Mass. G.L. chapter 211D, section 5. This fundamental constitutional right was established in the famous case of *Gideon v. Wainwright*, 372 U.S. 335 (1963), and it was powerfully reinforced 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 **\$167.9 million. The Governor's proposal calls for \$33.3 million less than CPCS FY10 spending obligations of \$201.2 million, and falls \$41.2 million below the CPCS budget request for FY11 of \$209.1 million.**

The FY11 budget request that we submitted to Governor Patrick on November 25, 2009, requested maintenance funding in the amount of \$210.2 million. That budget request incorporated millions of dollars in savings generated by eleven specific cost-reduction actions which CPCS implemented in FY09 and has continued to enforce in the current fiscal year. These steps include the elimination of compensation for attending continuing legal education (CLE), restrictions on court waiting time, attorney and expert witness travel reimbursements, reduced mileage reimbursement rates for all staff and private counsel, and reduced expert witness fees.

Please see the attachment, **Committee for Public Counsel Services FY 2011 Budget Request – In Response to House 2**. In that request, we have reduced our budget proposal by \$1.1 million, from \$210,215,249 in November, 2009, to \$209,131,788 today. Most of this reduction is accomplished by filling 27 staff attorney positions for which we have supervisory personnel and office support already in place, as illustrated in the attachment and as described in our 2010 Report to the Legislature on the Committee for Public Counsel Services (February 22, 2010) at page 8, thereby reducing the amount of funding required in our private counsel compensation line item.

Please keep the following important facts in mind as you consider this scaled-down budget request:

- 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.
- CPCS provides its representation, in accordance with recognized national norms, through a counsel assignment system which utilizes both a staff attorney component and “the active and substantial participation of the private bar.” *American Bar Association, Standards for Providing Defense Services*, Standard 5-1.2, Systems for Legal Representation.
- Where there exists no such mix of public attorney staff and assigned private counsel--as is currently the case for juvenile delinquency and youthful offender representation in most of the Commonwealth--CPCS advocates for the creation of an appropriate staff component to augment and support the private attorneys. This is the crux of our proposal to create three small juvenile delinquency defense offices to supplement our existing offices in Roxbury and Worcester.
- CPCS clients contributed a record total of **\$8,952,213** in counsel fees during FY09. Of this amount, all but \$750,000 was deposited into the Commonwealth’s General Fund. Thus the true cost of CPCS representation is more than eight million dollars lower than the amount appropriated.
- For the first time since the release of the April, 2005, **Report of the Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts**, new District Court criminal case assignments decreased in FY09, and have fallen further during the first half of the current fiscal year. In the first half of FY10, we have saved over \$600,000 via a decline of 3,600 assignments in cases which the Legislature either converted to civil infractions, or removed incarceration as a permissible punishment.

- In our **2010 Report to the Legislature on the Committee for Public Counsel Services**, filed on February 22, 2010, at pages 7 and 8, we advocated that the following steps be taken to reduce the number of case assignments and the resultant cost of counsel:
 1. The Permanent Commission On Civil Infractions Must be Activated
 2. The Conversion of Six Minor Misdemeanors to Civil Infractions, as Recommended by the Commission to Study the Provision of Counsel to Indigent Persons in Massachusetts, Must Be Completed
 3. The Effectiveness of Chapter 54's Indigency Verification Reforms Must be Assessed
 4. Funding Must be Provided to Hire CPCS Staff Counsel Authorized by Chapter 54
 5. The Private Counsel Hourly Compensation Rates Recommended by the Counsel Commission Cannot Be Indefinitely Ignored

- 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 provide CPCS the funding we have requested in this reduced budget proposal, so that 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 FY11 budget request.

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 |
| MAINTENANCE BUDGET REQUEST (11/25/09) | \$ 28,645,024 | \$ 750,000 | \$ 166,881,750 | \$ 13,938,475 | \$ 210,215,249 |

| 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) |
| TOTAL BUDGET REQUEST | \$ 30,466,420 | \$ 750,000 | \$ 13,838,475 | \$ 209,131,788 |
| Total Budget Request vs. 11/25/09 Maintenance Request % Increase / or (Decrease) | 6.36% | 0.00% | (0.72%) | (0.52%) |

* 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.