



# **CPCS Fiscal Year 2025 Budget Request**

## **Testimony of Chief Counsel Anthony Benedetti**

The Joint Committee on Ways and Means

Worcester State University - Worcester, MA

March 19, 2024

Good afternoon, Chairman Moore, Chairman Blais, members of the Ways and Means Committee. Thank you very much for providing me the opportunity to speak to you today about the Committee for Public Counsel Services (CPCS) and our budget request. My name is Anthony Benedetti, and I am Chief Counsel for CPCS.

The Committee for Public Counsel Services stands as a cornerstone of the legal system in Massachusetts, ensuring equitable access to fair, zealous, and competent legal representation for all individuals, regardless of their financial circumstances. Our work not only upholds the constitutional rights of our clients but also reinforces the principles of justice and fairness for everyone in the Commonwealth. Your steadfast commitment to these ideals has been instrumental in our shared success.

Yesterday marked the 61st anniversary of the landmark *Gideon v. Wainwright* decision by the United States Supreme Court, a ruling that established the right to counsel nationwide. While many jurisdictions reflect on the promise of *Gideon* amidst the challenges they face, Massachusetts celebrates this anniversary with genuine pride. Our state boasts a public defender system that is the envy of many across the nation, thanks to the robust framework established through your support over the years.

In the past year, CPCS has achieved significant milestones that directly impact the lives of Massachusetts residents and the legal landscape at large. For instance, our Mental Health Division secured a crucial victory in the Supreme Judicial Court, establishing a constitutional right for defendants with suspected mental disabilities to have their competency evaluated in the least restrictive setting. This victory will mitigate unnecessary forensic admissions and alleviate the psychiatric bed shortage. It is an excellent example of CPCS collaborating with other advocacy groups to achieve a positive result for our client communities, in this case, the Disability Law Center, Center for Public Representation, Massachusetts Association for Mental Health, and the Mental Health Legal Advisors Committee.

Our Youth Advocacy Division, in conjunction with our Public Defender Division, launched an Emerging Adult Pilot Office in June 2023. The office has subsequently represented 60 young adults ages 18-25 using the developmental framework developed by Columbia University and helped them to achieve better legal and life outcomes. This approach, in turn, will result in lower recidivism rates and better public safety: A win for everyone involved.

Through our Private Counsel Division, the work of our Innocence Program has resulted in the exoneration of 21 individuals who had served a combined 514 years behind bars. There are 13 new trial motions pending and more exonerations likely on the way. Their work continues to shine a light on prosecutorial misconduct, biased policing, and faulty forensics – major, systemic flaws that have stolen years of freedom.

Our Children and Family Law Division has focused on working with people with lived experience through a newly established Client Advisory Board and hiring its first Parent Advocate in our Fall River office. This professional will serve as a model for the use of Parent Advocates in the future throughout the division.

Our ongoing efforts to enhance operations, including technological advancements and streamlined processes, underscore our commitment to efficiency and effectiveness in serving our clients.

Our IT department continues to deploy technologies to save attorneys time as they litigate cases. Nationally and here in Massachusetts, public defenders are miles behind the technological advancements of law enforcement, but our IT team is always working to close that gap. We are deploying laptops and leveraging Microsoft 365 collaboration technologies agencywide to enable staff the flexibility to work in the office, courtroom and to meet their clients where they are.

Our Finance Department within the last two weeks “soft launched” our new vendor application portal and have dozens of applicants to date. We are modernizing the process of onboarding new vendors including attorneys and court vendors to make it easier for those who want to do work for and get paid by CPCS.

Our Human Resource Department has become much more aggressive with staff recruitment, travelling across the state – and at times the nation – to meet lawyers and law students and explain who we are, what we do, and why they should join our mission. We have also created two positions to focus exclusively on attracting new attorneys to the private bar panels in all practice areas.

Lastly, while it's understandable that the spotlight often shines brightest on our exceptional attorneys, as a public defender agency, I feel compelled to highlight the remarkable contributions of our entire professional team. This includes the dedicated efforts of our social workers, investigators, and administrative assistants, who tirelessly support our attorneys and clients and elevate the quality of representation for individuals confronting the formidable power of the state.

All of this would not be possible without your ongoing support, which brings me to this year's budget request. The CPCS budget request each year is rooted with the promise of Gideon in mind. This year is no different. We are cognizant of the economic challenges facing Massachusetts and recognize the constraints on the state budget. However, it is imperative to emphasize the critical role played by CPCS in safeguarding the principles of justice and ensuring equal protection under the law for all citizens, regardless of their socioeconomic status. Our proposal continues to focus on the recruitment and retention of staff and private attorneys as we have during the last few years to ensure that we do not lose ground on the progress that has been made.

### **Fiscal Year 2025 Budget Request**

CPCS has submitted a budget request in the amount of **\$349,834,182** for FY 2025. This funding level is essential for maintaining current staffing levels and offering additional compensation to both staff and private bar attorneys. Specifically, the requested budget would cover the annualization of staff salary increases, including a legislated rise in our attorney starting salary to \$72,000, which allows us to keep pace with the starting salary of assistant district attorneys. Additionally, funding would be allocated for a modest FY25 half-year salary increase, pivotal for staff retention and minimizing attrition rates.

The proposal also includes provisions for a further increase in the hourly rates for private bar attorneys to counteract inflation and bolster ongoing recruitment efforts across all practice areas. Ensuring competitive compensation is integral to attracting new attorneys and encouraging current

private attorneys to take on more cases. Increasing the number of private attorneys to join our panels and take cases is the biggest challenge we currently have, and the hourly rates are critical.

Finally, the budget proposal would provide adequate funding for two of our newest offices in Western Massachusetts, a PDD Holyoke office and the CAFL Springfield conflict office, currently supported by federal ARPA monies. These offices are crucial to addressing ongoing counsel shortage issues in the western part of the state. The proposal would also fully fund all existing office leases and contracts with the bar advocate programs that administer the right to counsel locally for criminal and delinquency representation.

The full details of our request are in the attached materials.

Your commitment in recent years to funding our talented staff has had immediate and positive effects on both our agency and the broader legal system. Since the implementation of higher salaries, we have observed a significant reduction in attrition rates and a notable increase in our ability to recruit and retain skilled attorneys. Historically, we encountered challenges in attracting and retaining talented individuals due to compensation issues, which presented an even greater hurdle in hiring a diverse workforce reflective of the clientele we serve. This struggle resulted in high turnover rates, leading to a revolving door of lawyers within our offices and, consequently, disruptions in the continuity and quality of legal representation for our clients.

Your funding has been transformative. By offering more competitive compensation packages, we have been able to create a more stable, attractive, and diverse work environment for staff public defenders. Additionally, your support has been felt by our non-attorney professionals, including administrative assistants, social workers, and investigators. These individuals work tirelessly behind the scenes, often in challenging and emotionally demanding circumstances, to gather evidence, manage caseloads, and address the social and personal needs of our clients.

Since FY17, our starting attorney's salary has gone from \$47,500 to \$72,000. As a result, all attorney salaries have been meaningfully increased. In addition, salaries for all our professionals have gone up to where they are much more competitive. The top reason people give for leaving the agency is no longer the pay being too low.

Investing in our support staff directly translates into improved outcomes for our clients. Our investigators are better equipped to conduct thorough and timely investigations, uncovering critical evidence that strengthens our defense strategies. Meanwhile, our administrative assistants efficiently manage caseloads, ensuring that no client falls through the cracks and that our attorneys have the necessary resources at their disposal. Furthermore, our social workers provide comprehensive support services, addressing the underlying social, economic, and mental health challenges that often intersect with our clients' legal issues.

By investing in higher salaries for public defenders and all staff at CPCS, we are investing in the integrity and fairness of our justice system. This progress would be negatively affected if the Governor's funding level were to be adopted.

The recruitment and retention of private attorneys, who handle the majority of our cases, has been a priority, and the Legislature has responded with increases in the hourly rate twice over the last three years. Unfortunately, there remain serious challenges. Aging demographics within the bar

advocate population, coupled with economic factors, pose significant obstacles to ensuring adequate representation for our clients statewide. As of this March 12<sup>th</sup>, there were 138 clients waiting the appointment of counsel, 84 percent of which are in Western Massachusetts. Quite frankly, we are staring down at the stark reality that we need more case-taking attorneys - soon.

We are being proactive through a multi-faceted approach to tackle this issue. We created two new recruitment positions to promote awareness of CPCS throughout Massachusetts and beyond, highlighting our work across various practice areas to law students and attorneys in smaller firms. Additionally, we've initiated opportunities for law students to obtain certification while in school so that upon graduation, they are ready to join a panel and take cases. We are also working on the creation of externship programs, which would enable students to gain experience with existing private panel attorneys. Our goal is to introduce both initiatives to law schools statewide.

In conjunction with our friends at the Supreme Judicial Court, we have successfully argued that being a Bar Advocate should qualify attorneys for much-needed loan forgiveness through the federal government. We continue to advertise this welcome development, and to date there has been an enthusiastic response. Since its approval in the fall, we are aware of at least 10 attorneys who have had their debt forgiven, in some cases, in the amount of \$100K plus. The availability of loan forgiveness to Bar Advocates will undoubtedly be a lifeline to those doing this work, especially during challenging economic times.

Despite the implementation of these positive measures, many of which require time to yield results, we simply do not have enough attorneys currently joining the panels, or if they already take cases, not taking enough of them. Our private attorneys have always recognized that doing this line of work is demanding, and at times difficult, but the importance of the work outweighs the challenges. Unfortunately, factors such as lingering law school debt, the overall cost of practicing law, and the general cost of living in Massachusetts have diminished the perceived value of taking cases within our system. It is imperative to acknowledge that the importance of this work far outweighs these challenges. Hence, the reason why we are requesting additional increases in the hourly rate is to support our efforts in expanding the panel of attorneys.

### **Governor's Fiscal Year 2025 House 2 Proposal**

Governor's House 2 Budget jeopardizes the positive momentum our agency has achieved as well as the initiatives underway to expand the overall number of attorneys and would, in fact, inflict significant harm. It effectively amounts to a budget cut, severely hindering our ability to provide quality legal services to our clients. These cuts would compel us to make challenging decisions, potentially resulting in reduced staffing levels, limited resources for case investigation and preparation, and diminished access to essential support services for our clients. Considering the substantial progress we've made in each of these areas, it is disheartening to envision a scenario where this growth and development could be stalled or halted due to budget constraints.

Under House 2, the proposed funding level of \$336.2M falls short by more than \$18.5 million **compared to our available spending in the current fiscal year and \$13.6M less than our maintenance request.** Notably, our maintenance request across all three line-items seeks less funding than what is currently available in FY24. The Governor's budget fails to allocate funding for the annualization of current year salary increases or any additional increases in the next fiscal year.

Moreover, it does not provide adequate funding for the two western Mass offices which have been critical to significantly alleviating the ongoing counsel crisis in those regions.

The Governor's proposed budget represents a regression, undoing progress that will take time and resources to fix down the road. We have been mindful of the economic situation as we put together our ask, and we are not asking for more than we need.

Again, I want to thank you for the opportunity to testify, and for the support throughout the years. I want to thank you for your willingness to consider our budget request, and I urge you to recognize the positive impact that having an adequately funded public defender agency has had on our justice system. By continuing to prioritize and support our efforts, we can ensure that every individual has access to competent legal representation and that our system remains true to the principles of fairness and equality under the law.



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# OVERVIEW

• Who We Are & Our Mission.....	3
• Who We Serve.....	4
• FY23 Cases.....	5
• FY25 CPCS Line Items.....	6
• FY25 CPCS Budget Lines Items - Request.....	7
• FY25 0321-1500 – Full-time Staff - Detailed Request....	8-9
• FY25 0321-1510 - Private Bar - Detailed Request.....	10-11
• Staff Attorney Salary Charts.....	12-13
• Proposed Private Bar Rate Increases & History.....	14-15
• Decrease in Private Bar Panels & Challenges.....	16-17
• Impact of Aging Bar.....	18
• Impact of High Case Takers.....	19

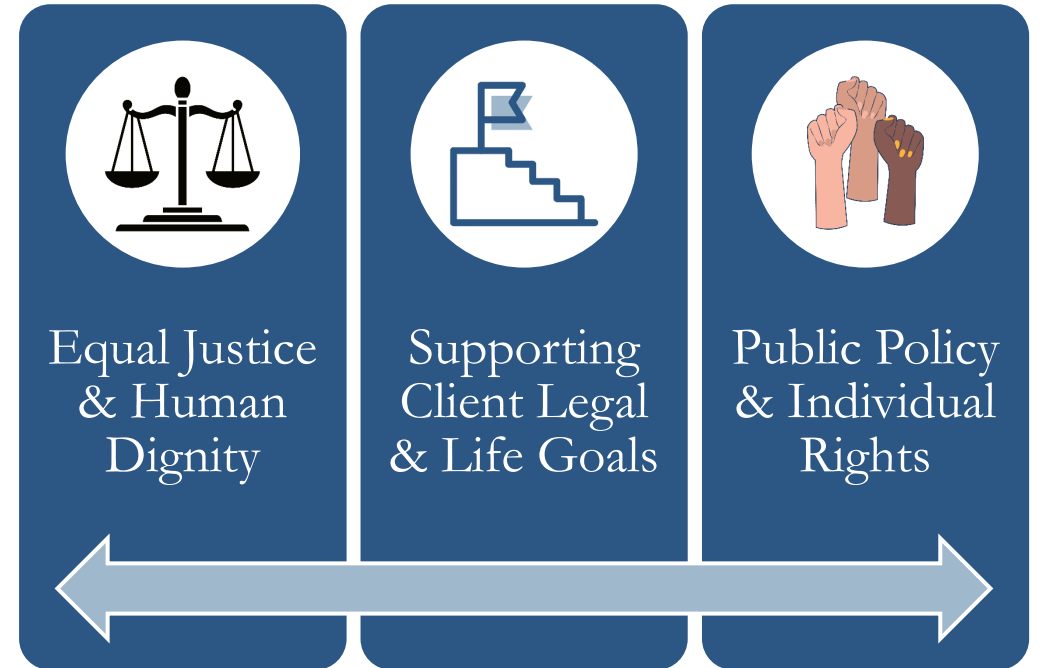






# WHO WE ARE & OUR MISSION

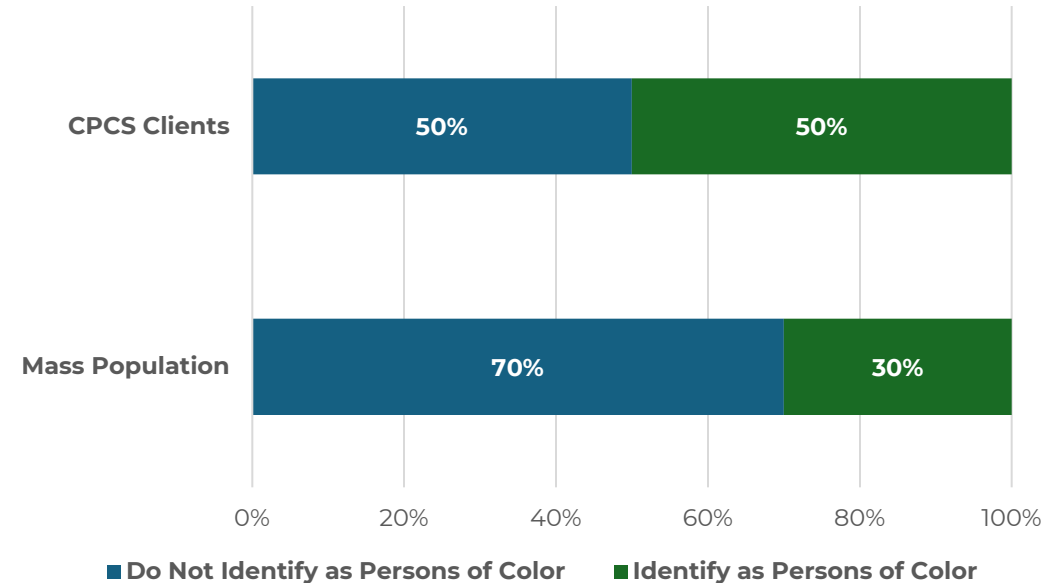
- The Committee for Public Counsel Services (CPCS) is a state agency.
- We are responsible for providing legal services to indigent persons in criminal and civil matters.
- We fight for equal justice and human dignity by supporting our clients in achieving their legal and life goals.
- We defend our assigned clients through zealous advocacy, community-oriented defense, and the fullness of excellent legal representation.





# WHO WE SERVE

- CPCS represents indigent clients.
- An individual who either (A) receives public assistance from a state program; or (B) has an income, after taxes, that does not exceed 125% of the current Federal Poverty Line is eligible for indigency.<sup>2</sup>
- As of 2022 10.4%<sup>1</sup> of the general population living in Massachusetts lives in poverty.
- According to the Center for American Progress (CAP), people of color are more likely to live in poverty or face economic hardships.
- Nearly 50% of our clients identify as people of color while only 30%<sup>1</sup> of the general population in Massachusetts identify as people of color.



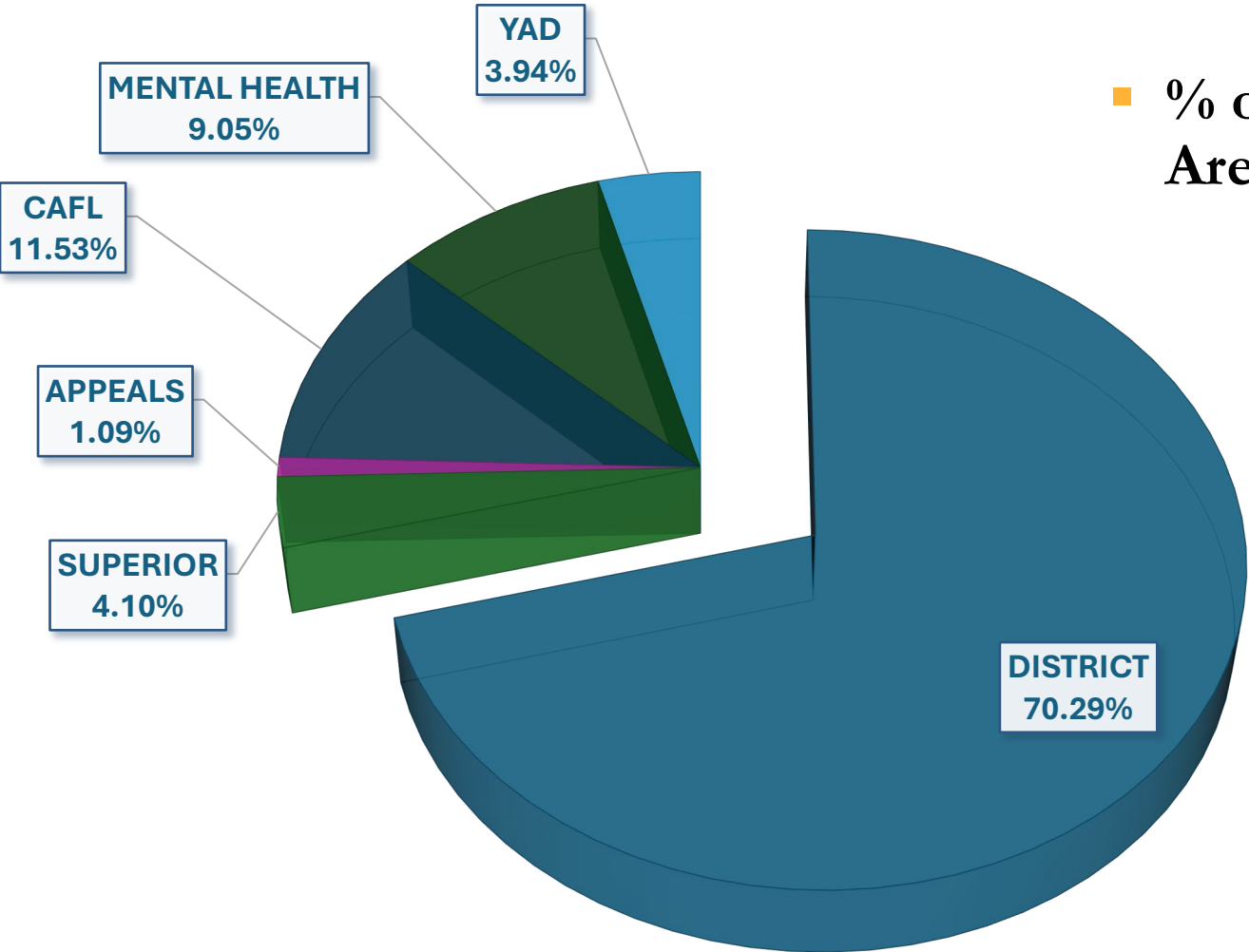
1. <https://www.census.gov/quickfacts/MA>

2. <https://www.mass.gov/info-details/eligibility-requirements-for-indigency-waiver-of-fees>





# FY23 NEWLY ASSIGNED CASES



■ % of Cases Assigned by Practice Area in FY23.

Practice Areas	
District	83,678
Superior/Murder	4,886
Appeals	1,299
CAFL	13,721
MH	10,774
YAD	4,689
Total	119,047

\*There are 308 open murder cases and 4,578 Superior Court cases.

\*These numbers are based on **new** assignments only.  
\*There are an additional **78,628** carryover cases from FY22 resulting in **197,675** open cases.





# FY25 CPCS BUDGET LINE ITEMS

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## 0321 - 1500 Operations & Oversight

CPCS staff, payroll, administrative, space, utilities, IT - software, and programming costs.

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## 0321 - 1510 Private Counsel

Hourly rate payments to the 2,800 private attorneys working with CPCS are completed through our electronic payment system.

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## 0321 - 1520 Court Costs & Experts

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Payments to court cost vendors & experts (e.g., social workers, investigators, forensic experts) through CPCS' electronic billing system.





# FISCAL IMPACT OF GOVERNOR'S BUDGET

APPROPRIATION		2024 AVAILABLE <sup>1</sup>	GOV H2 (01.24.24)	2025 CPCS MAINTENANCE REVISED REQUEST <sup>2</sup>	2025 CPCS INITIATIVE REQUEST <sup>3</sup>	GOV H2 vs. CPCS REVISED MAINT. REQUEST	GOV H2 vs. CPCS INITIATIVE REQUEST
03211500	CPCS - ADMINISTRATION / OVERSIGHT	87,314,359	86,828,810	94,834,182	94,834,182	(8,005,372)	(8,005,372)
03211510	CPCS - PRIVATE COUNSEL	222,247,656	214,378,853	220,000,000	232,320,536	(5,621,147)	(17,941,683)
03211520	CPCS - COURT COSTS / EXPERTS	45,225,387	35,000,000	35,000,000	35,000,000	-	-
GRAND TOTAL		354,787,402	336,207,663	349,834,182	362,154,718	(13,626,519)	(25,947,055)

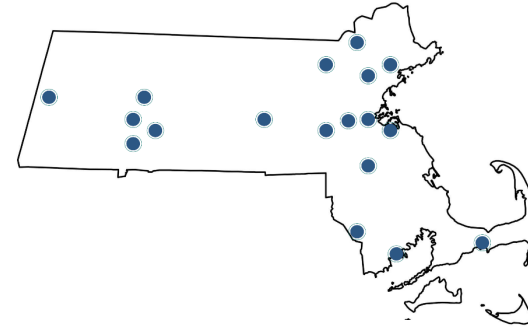
## Notes:

1. FY24 GAA included a PAC for 0321-1520 with a PAC for 0321-1500 and 0321-1510 rec'd later thru a supplemental budget.
2. A revised FY25 Maintenance Request based upon FY24 spending and FY25 expectations.
3. A revised FY25 Initiative Request which includes \$12.32M in Private Bar rate increases.



# WHAT LINE ITEM 0321-1500 FUNDS

**20** state offices in **eighteen** communities.

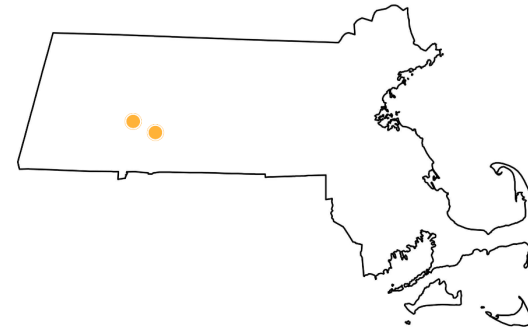


**795**FTEs\* including **twenty** new fall hires and **twenty-four** crisis response office staff.

\*Full-time employees



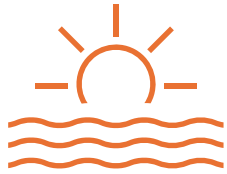
**3** brand new **Crisis Response** offices in Springfield & Holyoke with Worcester in process.





# Anticipated Increased Cost in FY25 Over FY24

## Line Item **0321-1500**



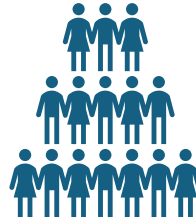
### ARPA Sunset

- In FY24, **\$3M** is available to fund 24 full-time jobs and three office leases.
- This money will expire in FY25.



### Fall Class Hires

- Additional funds to fulfill our commitment to 20 New Full-time Attorneys. **(\$1.4M)**
- NOTE: CPCS must extend offers early to remain competitive in law school graduate recruitment.



### Higher Salary Commitments

- Funds to annualize FY24 mid-year salary adjustment for existing staff halfway through FY24.



### Back-Fill Positions

- In FY24, 32 positions need to be filled to meet our mandate. 22 attorneys (not including new hires) are necessary to help alleviate the ongoing counsel crisis. **(\$2.0M)**



### Increase in Lease Obligations

- Acceleration clauses in existing lease agreements and pending office in Worcester to combat counsel crisis.





# MAINTENANCE REQUEST EXPLAINED

## FY25 0321-1510 (Private Bar Payments)

– \$2.2M

Maintenance request represents \$2.2M dollars less than the available appropriations for FY24 (GAA+PAC). Projections are based on updated billing trends.

197,675  
open cases

Private Attorneys represent 80% of all indigent cases in Massachusetts. A robust number of well-trained, zealous attorneys is essential to the protection of due process rights and a functioning court system.

0%

Does NOT include critical increase to Private Bar hourly rates to increase recruitment and retention to panels to combat ongoing counsel crises.







# INITIATIVE REQUEST EXPLAINED

## FY25 0321-1510

+ \$12.0M

Increase from Maintenance to fund hourly rate increase for approximately 2,800 attorneys.

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+ \$4-5/hr.

Increase for all practice groups to keep pace with rising costs and inflation.

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+ \$10/hr.

Adjustment to the Mental Health rate is needed to address the differential between the current rate and the Superior Court rate.

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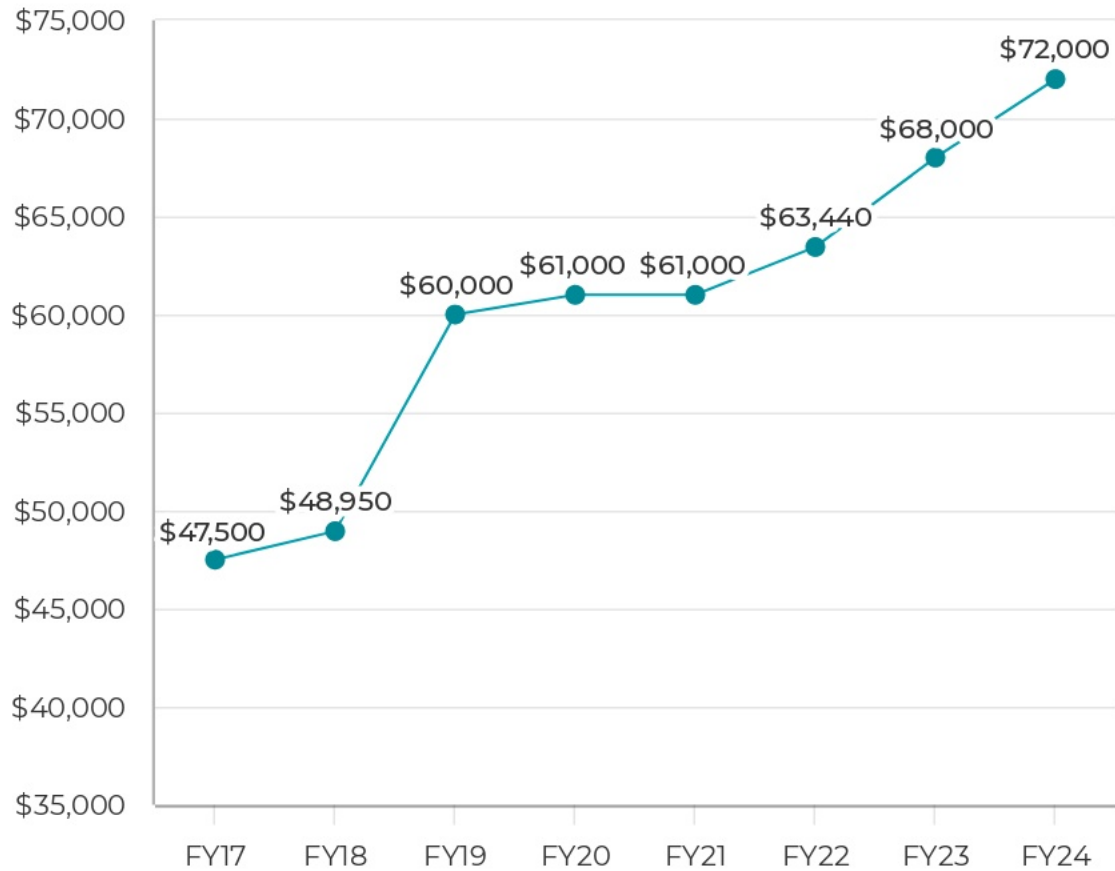
- 319 Attys

Since 2019, we have seen a steady decrease of private attorneys on our panels. Continuing to provide incremental hourly rate increases to counter the rising cost of living is essential to reverse this trend.

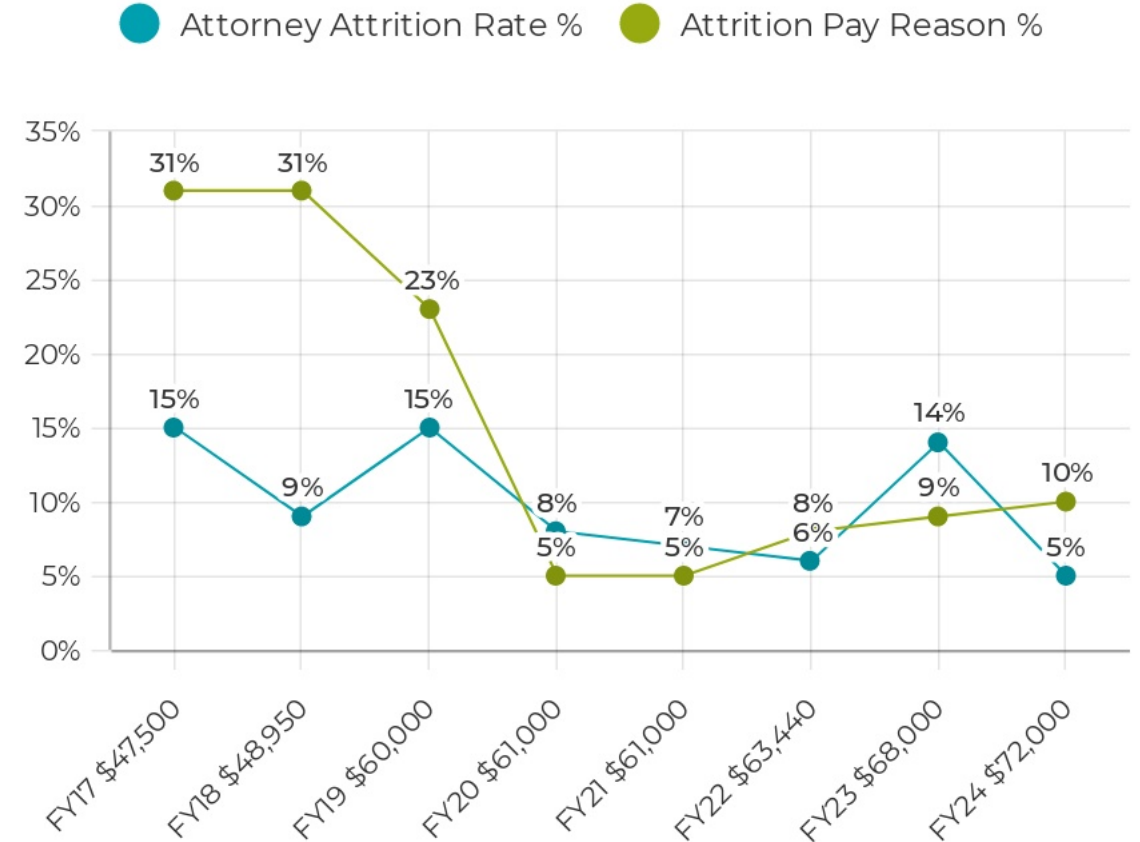


## Attorney Entry Level Salary Increases vs Attrition Rates & Reasons for Leaving FY17-FY24

### Attorney Entry Level Salary Increases

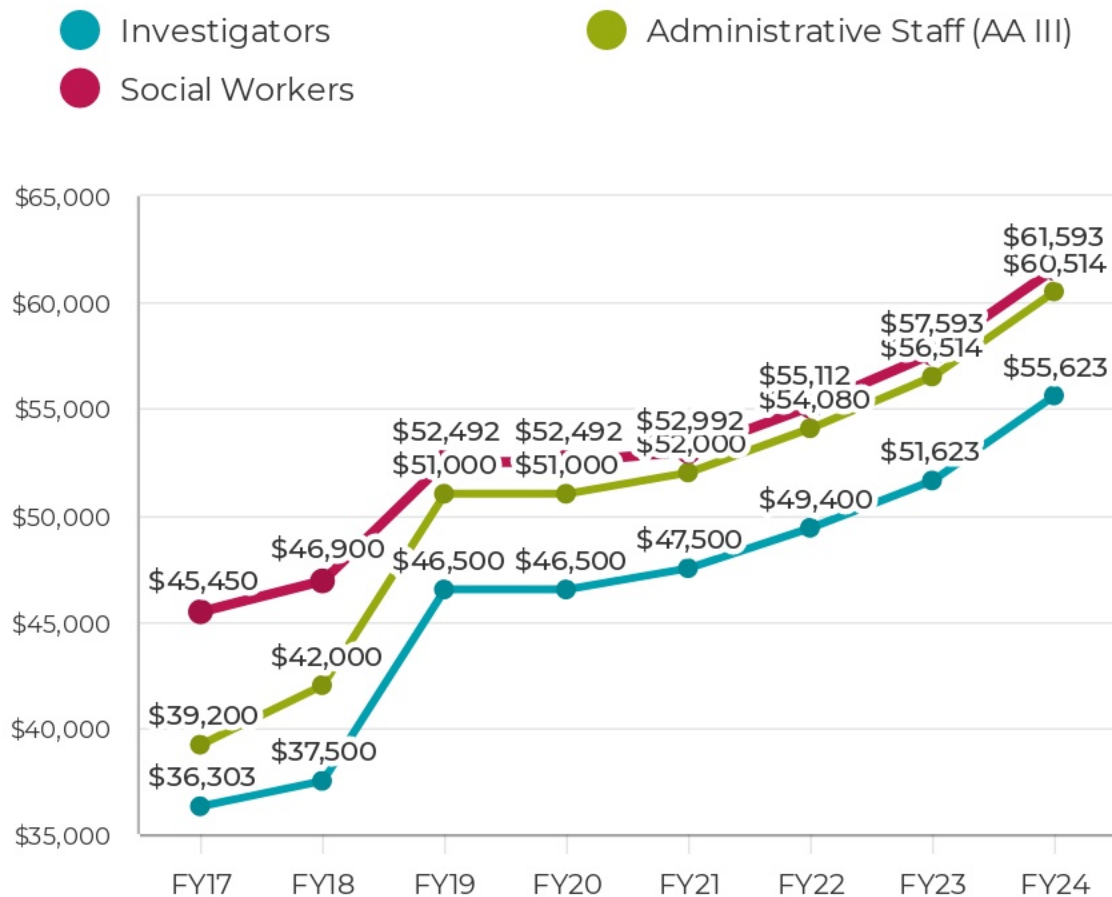


### Attorney Attrition Rate & Reasons for Leaving

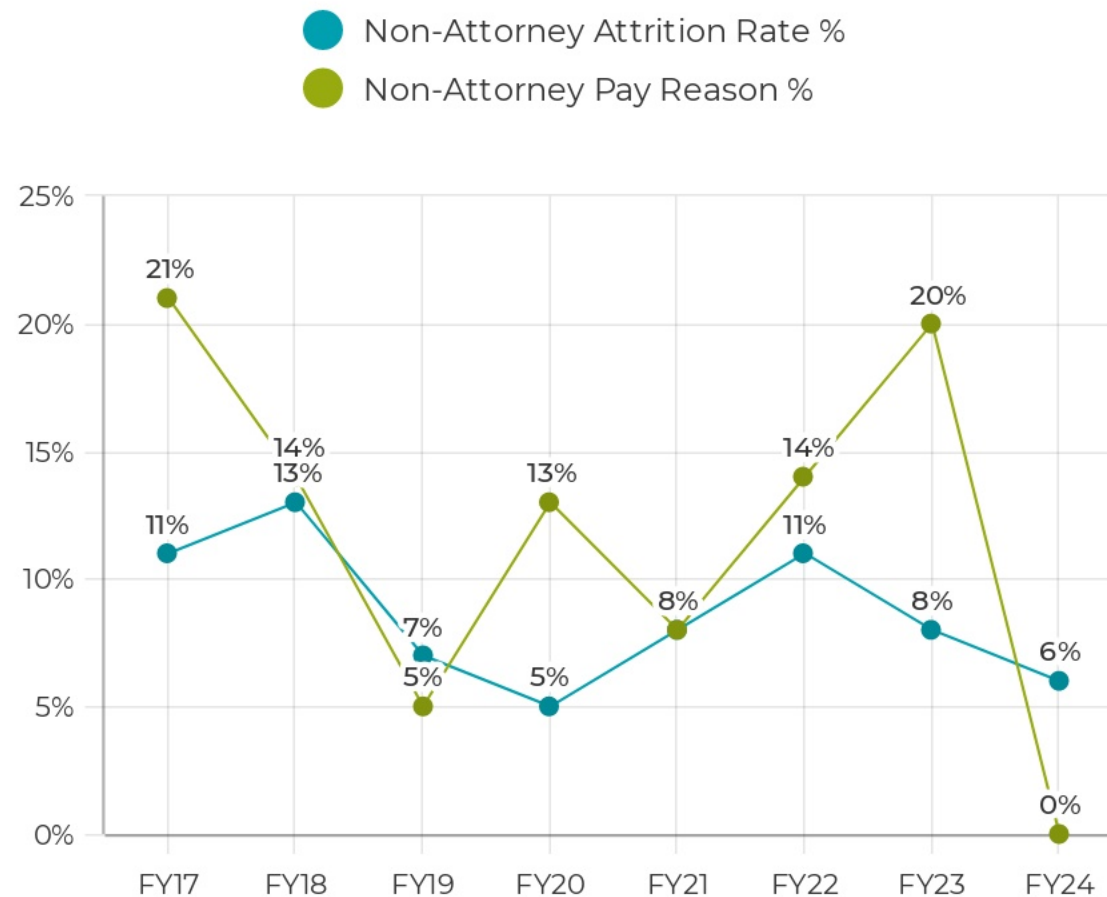


## Non-Attorney Entry Level Salary Increases vs Attrition Rates & Reasons for Leaving FY17-FY24

### Non-Attorney Salary Increases



### Non-Attorney Attrition Rate & Reasons for Leaving



Despite the increases in CPCS salaries, we still fall behind the Executive Branch in average salaries:

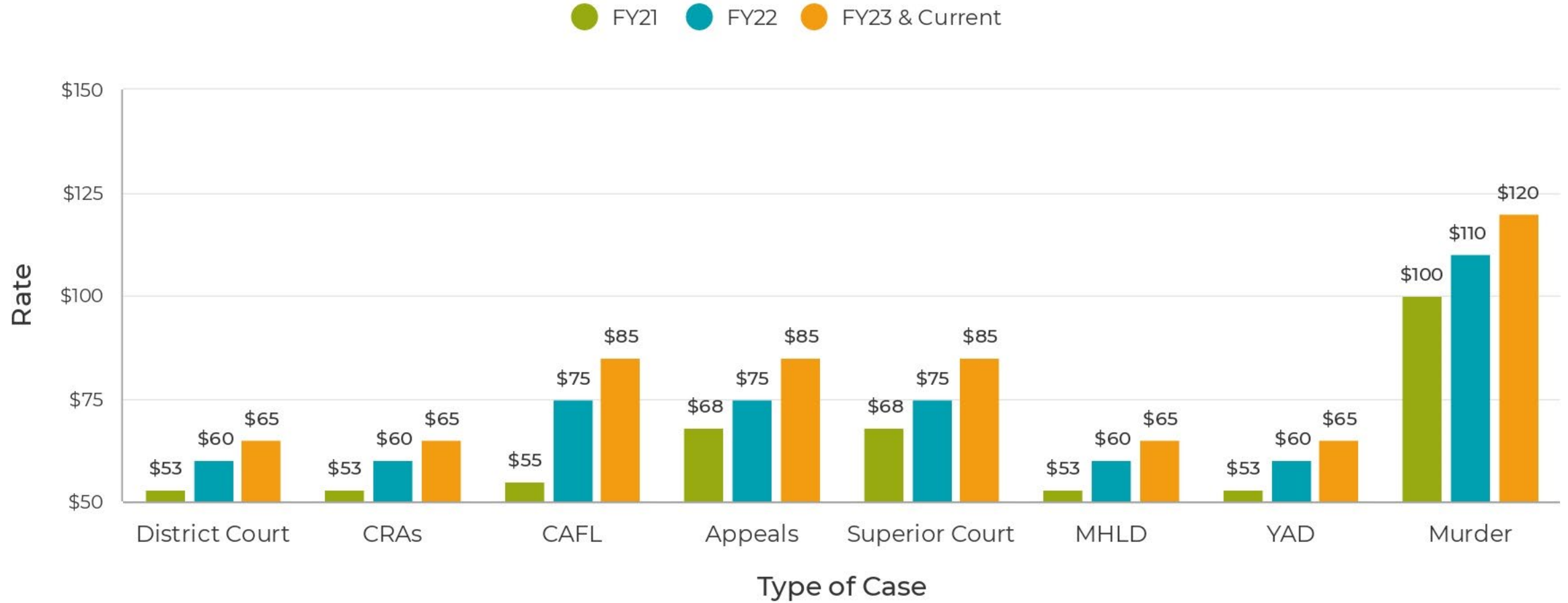
Compare Investigators \$87,000 v. \$76,203; Social Workers \$77,476 v. \$76,365; and Administrative Assistants \$73,928 v. \$69,507.



## Proposed Private Bar Rate Increases for FY25 (Year 1 of a 3-year initiative)

<u>Court</u>	<u>Current Rate</u>	<u>Proposed Rate</u>	<u>Total Impact</u>
District Court	\$65/hr	\$70/hr	6,063,355
CAFL excl CRAs	\$85/hr	\$89/hr	2,548,316
Appeals	\$85/hr	\$89/hr	742,484
Superior excl Murder	\$85/hr	\$89/hr	526,300
Mental Health	\$65/hr	\$75/hr	1,391,130
Juvenile	\$65/hr	\$70/hr	347,110
Murder	\$120/hr	\$124/hr	359,056
CRAs	\$65/hr	\$70/hr	342,785
<b>TOTAL ANNUAL IMPACT (0321-1510)</b>			<b>12,320,536</b>

# Private Bar Rate History





# ASSIGNED COUNSEL CHALLENGES

## Factors constraining our ability to deliver services:

### High Rates of Attrition in Private Bar

- A growing number of attorneys are retiring or leaving indigent representation for other lines of legal work.
- The rising cost of living makes it difficult to devote a substantial part of a law practice to appointed cases at the current hourly rates, without dependable incremental increases.
- All our practice areas are overly dependent on an aging population and lose attorneys to retirement every year without younger attorneys signing on to take their place.

### Heightened competition for recruitment of young attorneys

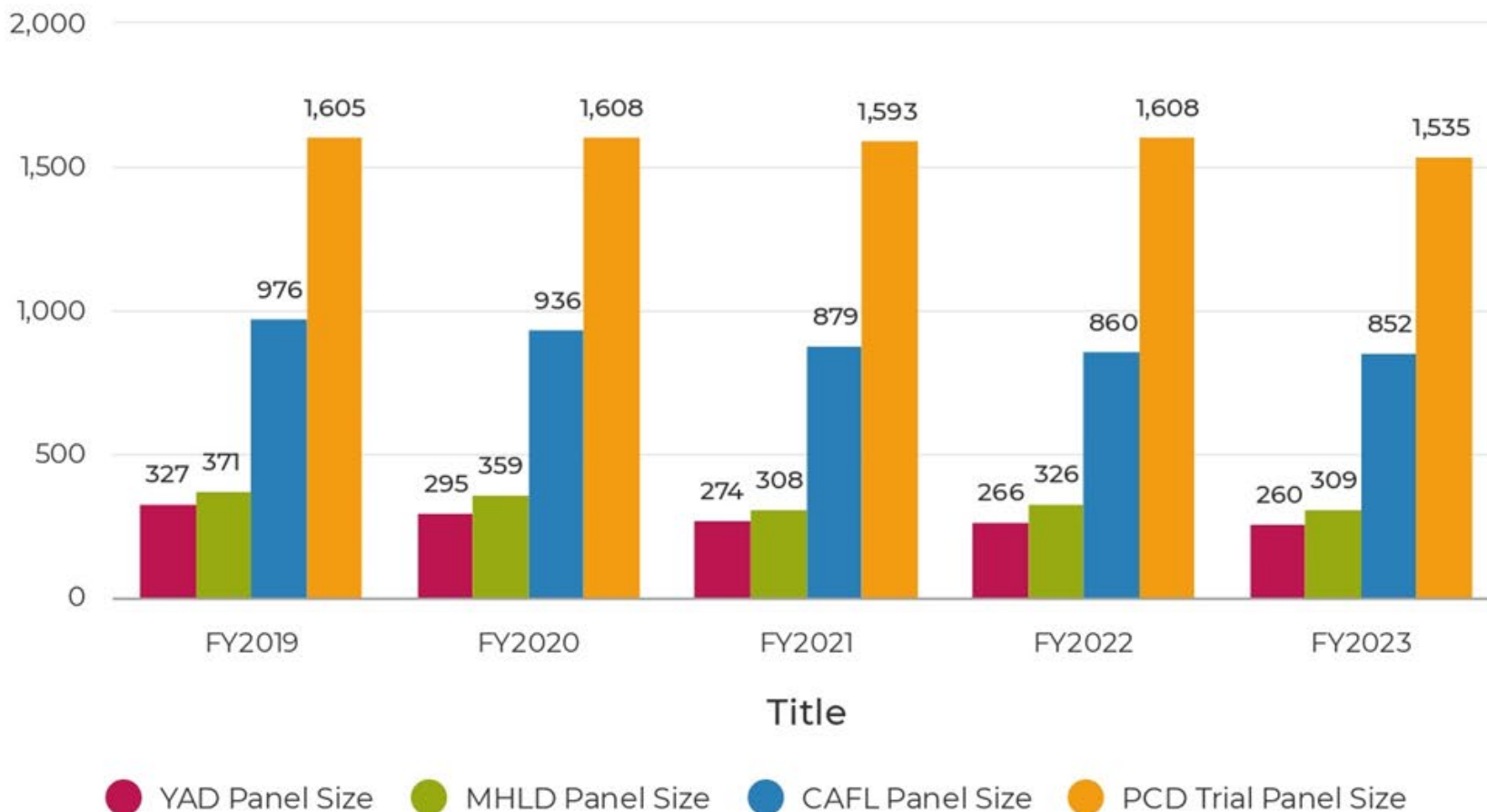
- Law school admissions are down over 20% since a peak in 2008.
- Average student debt is \$130K, with many new attorneys choosing more lucrative opportunities over public defense.
- The cost of living in Massachusetts is 50% higher than the national average, with housing costs being 111% higher.





# DECREASE IN PRIVATE BAR PANELS

Number of Attorneys on Panel

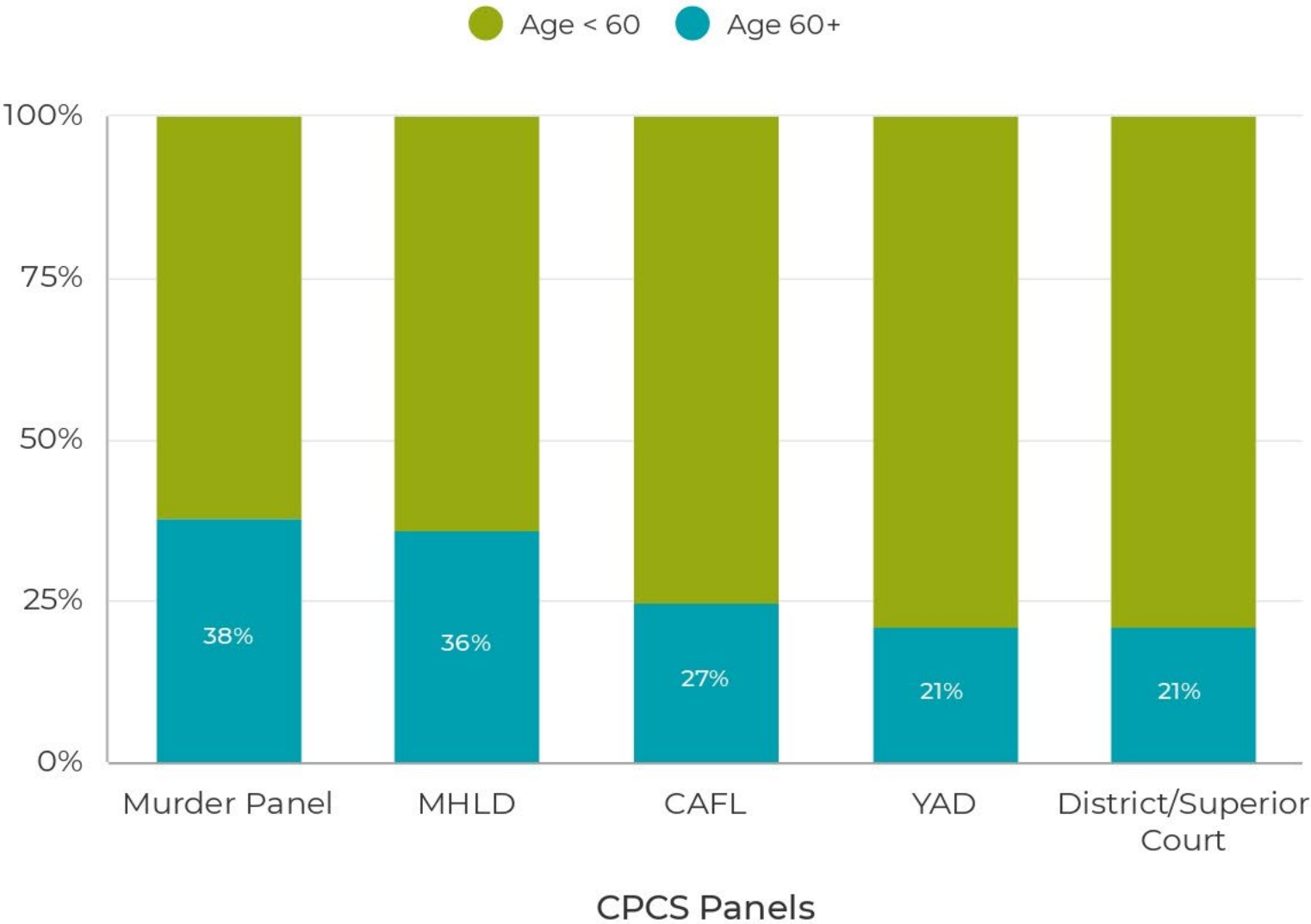


**Panels  
are  
shrinking  
across  
the  
board**

Panels are experiencing losses  
in every division

# Aging Bar

Percentage of Case  
Taking Attorneys over  
the Age of 60 in FY23

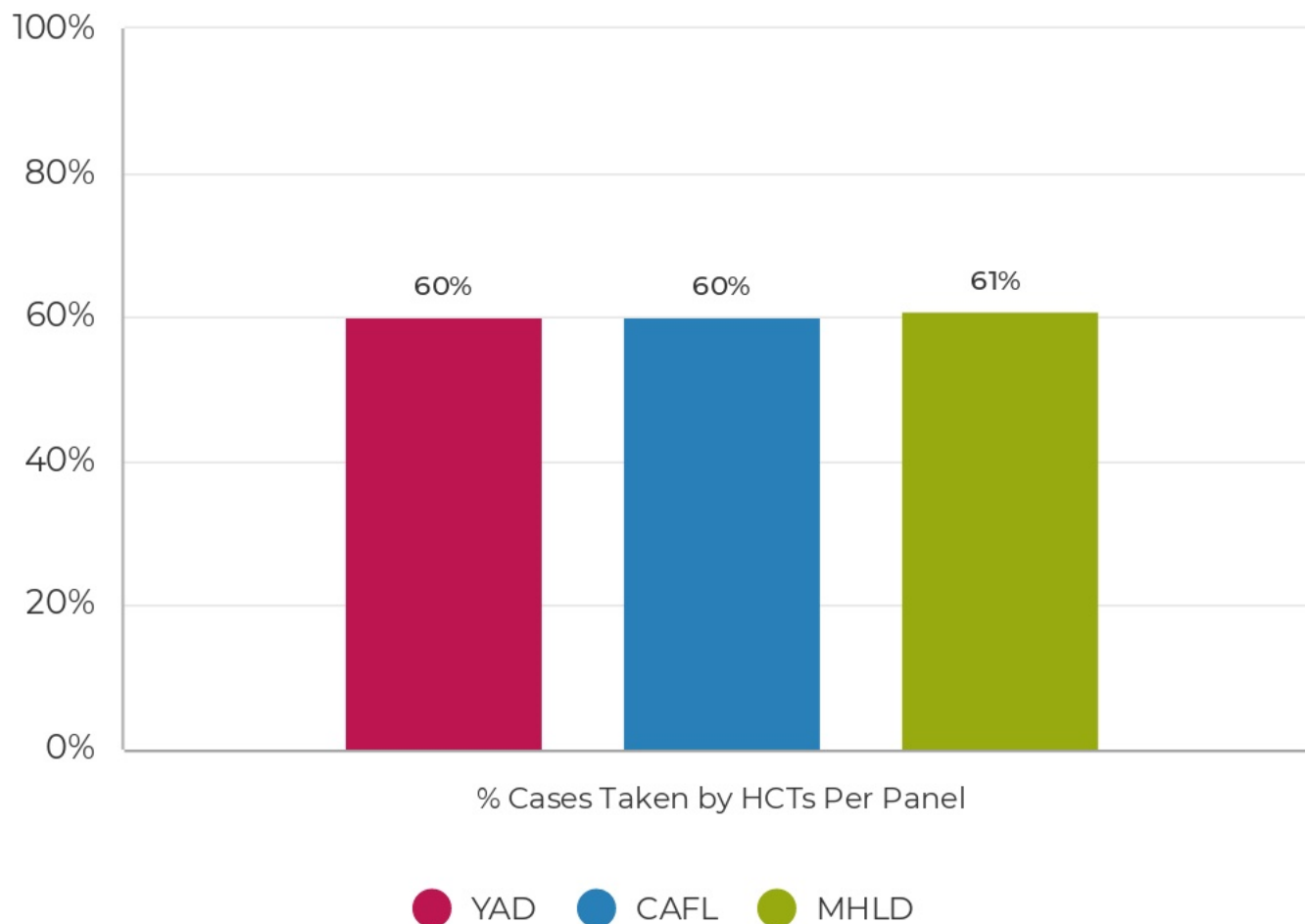




## Why This Matters

When HCTs leave a panel, this has a significant impact on our coverage capacity.

Percentage of Cases Taken by High Case-Takers (HCTs) by Panel FY23



\*HCTs defined as an attorney who takes an outsized number of cases compared to colleagues in the same practice area.