

March 2022

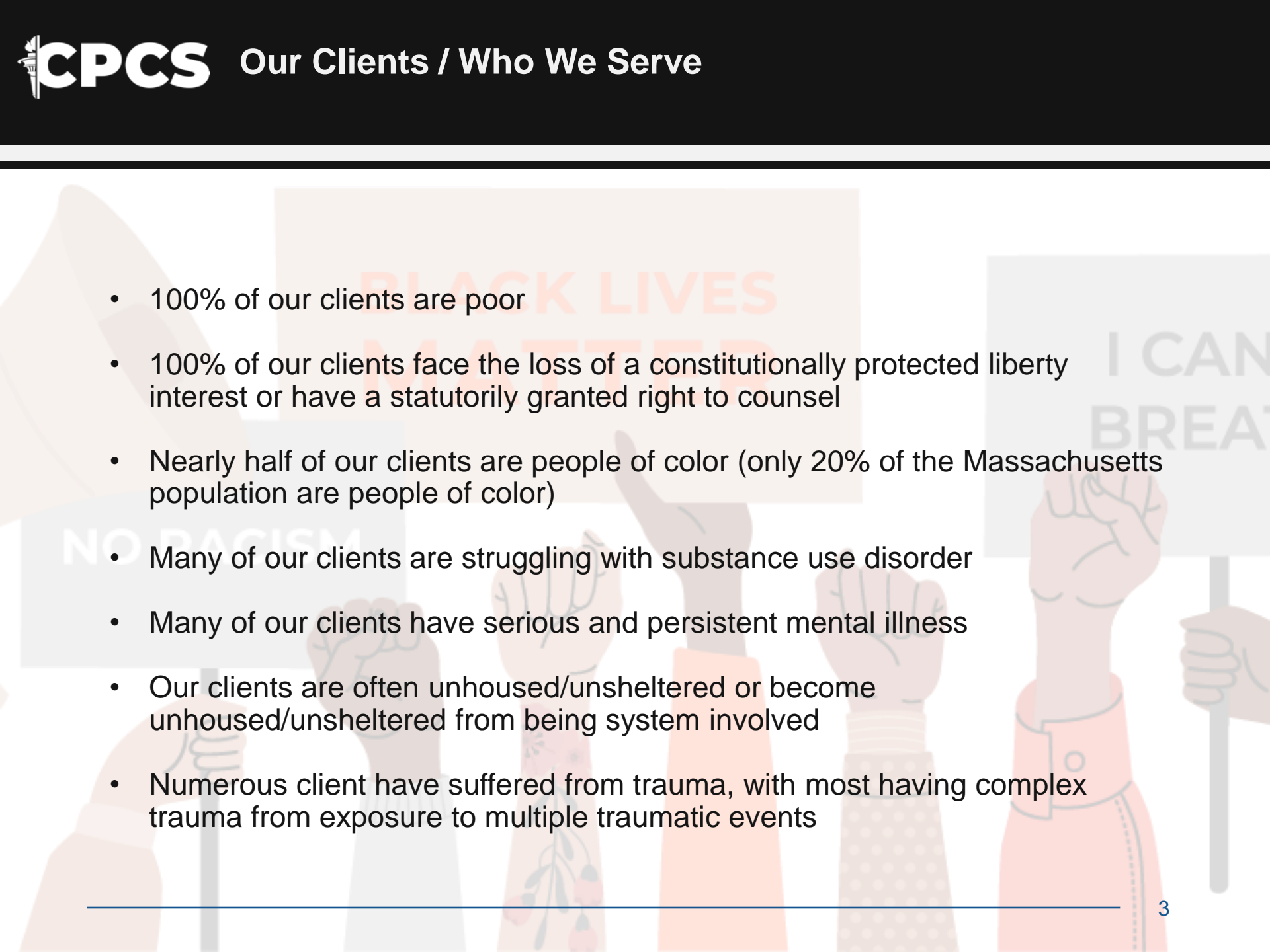
# Committee for Public Counsel Services The Public Defender Agency of Massachusetts

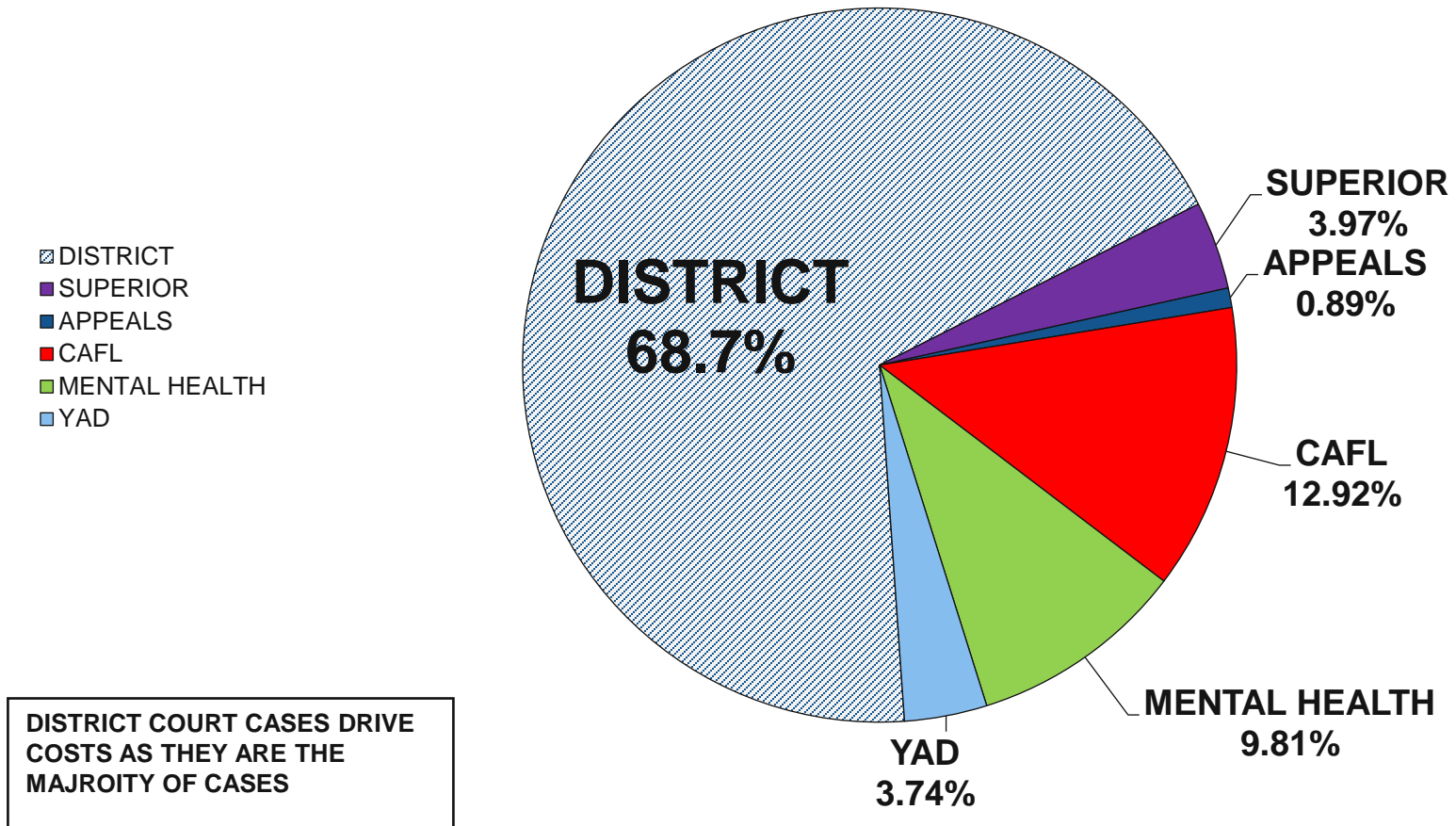
FY2023 Budget Request  
Anthony J. Benedetti, Chief Counsel



Committee for Public Counsel Services  
*Defending the People of Massachusetts*

- **0321-1500 Operations & Oversight**  
Includes all CPCS staff and payroll related costs, administrative costs space & utility costs, IT/software/programming costs
- **0321-1510 Private Counsel**  
100% payments to 2,900 private attorneys thru CPCS' electronic billing system (E-Bill) – no administrative costs
- **0321-1520 Court Costs / Experts**  
100% payments to court cost vendors & experts (i.e. psychologists, investigators, social workers) through CPCS' electronic billing system (V-Bill) – no administrative costs

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- 100% of our clients are poor
  - 100% of our clients face the loss of a constitutionally protected liberty interest or have a statutorily granted right to counsel
  - Nearly half of our clients are people of color (only 20% of the Massachusetts population are people of color)
  - Many of our clients are struggling with substance use disorder
  - Many of our clients have serious and persistent mental illness
  - Our clients are often unhoused/unsheltered or become unhoused/unsheltered from being system involved
  - Numerous client have suffered from trauma, with most having complex trauma from exposure to multiple traumatic events



### **Criminal Matters**

- Defendants in criminal matters where incarceration is possible

### **Juvenile Matters**

- Juveniles in delinquency, youthful offender, revocation of grants of conditional liberty in DYS proceedings and juvenile parole matters

### **Child Welfare/State Intervention and Family Law Matters**

- Parents and children in care and protection cases (G.L. c. 119, § 29)
- Parents and children and in other proceedings regarding child custody in which DCF or a licensed placement agency is a party (G.L. c. 119, § 29)
- Parents and children in divorce or paternity actions in which the court is contemplating giving custody of a child to DCF (*Balboni v. Balboni*, 39 Mass. App. Ct. 210 (1995))
- Parents and children in permanency hearings (G.L. c. 119, §§ 29B, 29C)
- Children in all child requiring assistance cases (G.L. c. 119, § 39F) and parents in such cases if the court is considering taking custody of the child or if there is a hearing or proceeding regarding custody of the child
- Children who are the subjects of guardianship petitions (if counsel is requested or if the court determines counsel is warranted under G.L. c. 190B, § 5-106) and parents who contest the entry of or seek modifications of guardianship
- Young adults between the ages of 18 and 22 who are under the continued responsibility of DCF (G.L. c. 119, § 23(f))
- Parents and children in termination of parental rights actions brought by the Commonwealth or a licensed child care agency (G.L. c. 210, § 3) and parents contesting such actions brought by others
- Minors under 16 seeking judicial consent for abortions (G.L. c. 112, § 12S)
- Certain guardians in proceedings to remove a guardian (G.L. c. 190B § 5-212(d))

### **Mental Health Matters**

- Guardianship and acceptance of foreign guardianship (G.L. c. 190B, § 5-106), validation of healthcare proxy (G.L. c. 201D, § 17), authorization to admit to a nursing home for less than 60 days (G.L. c. 190B, § 5-309 (g))
- Substituted judgment guardianship for extraordinary treatment (for example, anti-psychotic medication, or Rogers cases)(G.L. c. 190B, § 5-106), Persons being held involuntarily (G.L. c. 123, §12b), Respondents in petitions to commit as mentally ill (G.L. c. 123, §§ 7, 8, 16, 18)
- Respondents in petitions for authorization to treat for mental illness (G. L. c. 123, § 8B), Persons appealing from commitment orders and authorizations to treat (G.L. c. 123, § 9(a)), Persons committed as mentally ill petitioning for discharge (G.L. c. 123, § 9b) Respondents in Warrants of Apprehension (G. L. c. 123, § 12(e)), Respondents in petitions to commit for alcohol or substance abuse (G. L. c. 123, § 35)

### **Sex Offender Civil Matters**

- Sexually Dangerous Person Matters - Respondents in petitions to commit as sexually dangerous (G.L. c. 123A, §§ 12-15), Persons declared sexually dangerous petitioning for release (G.L. c. 123A, § 9)
- Sex Offender Registry Matters - Individuals at classification hearings before the Sex Offender Registry Board (G.L. c. 6, § 178L, Individuals appealing classification decisions of the Sex Offender Registry Board (G.L. c. 6, § 178M; G.L. c. 211D, § 16

### **Appellate Matters**

- We provide representation in all of the above matters which carry a right to an appeal

The ***Bar Advocate system is facing an existential crisis***, and additional meaningful rate increases are critical to our mission to provide representation to every client who is constitutionally or statutorily entitled to it.

Other challenges:

- **BACKLOG OF PENDING CASES** – CPCS attorneys are facing historically high caseloads, and the COVID-19 pandemic has caused a massive backlog of cases that will take time, lawyers and resources to address
- **OVERDEPENDENCE ON AGING BAR** - CPCS continually needs to recruit new attorneys to all panels, especially those panels that currently have a strong dependence on an aging bar. Without higher rates, attorneys who are just entering the practice of law will not have sufficient incentive to work with CPCS due to the high cost of opening and running a practice, and increasing student loan debt, while our older attorneys begin to take less and less cases
- **FIGHTING AGAINST RACIAL AND ETHNIC DISPARITY** - Without substantial rate increases the quality and quantity of the defense bar will suffer. This fast-approaching reality will disproportionately affect people of color who make up the overwhelming number of our clients
- **INCREASING DIVERSITY** - CPCS is committed to increasing the diversity of our panels; meaningful rate increases should incentivize a more diverse pool of applicants
- **BETTER INCENTIVES FOR COMPLEX CASES** - Care and Protection, Superior Court and murder cases are extremely complex and time-consuming cases; unless hourly rates are increased significantly over other practice areas, attorneys will continue to choose cases that pay less but are in many respects easier to manage

## Voices of the Bar Advocates\*

- “[T]his problem will only continue and we will face the prospect of not being able to provide counsel to those who qualify. In a state that has been a leader in protecting the constitutional rights of the indigent, this would be a travesty.”  
Attorney , Franklin County
- “The laws of Massachusetts are there to protect my clients and value their lives. I think my clients also entitled to representation where that representation is also valued. The current rate of pay is so woefully low, that it is difficult to recruit attorneys for this work.”  
Attorney, Franklin County
- “I am a mentor attorney to several talented bar advocates, and compensation is a constant concern. To be sure, our main focus is to address injustice, but if justice for all can be achieved, I sincerely hope appropriate compensation for the staunchest of its defenders might be achieved as well.”  
Attorney , Norfolk County
- “I definitely do not expect to get overpaid for representing indigent clients - I have always considered myself fortunate to be able to do so - but I do believe that the current rates for murder panel work and superior court panel work are grossly insufficient.”  
Attorney, Bristol County

*\*Bar Advocates provided the commentary during a public hearing about the hourly rates. This is a non-exhaustive list of the statements made.*





# CPCS Request vs. Governor's Recommendation

## **0321-1500 –**

- CPCS requested \$79,011.13 for FY23 maintenance.
- Funds are necessary to cover annualizing cost of raises, filling vacancies for needed attorneys and supporting professionals; and acceleration clauses on office leases.
- Governor's recommendation of \$76,705,125 is not sufficient to cover these expenses. We are requesting an additional \$2,305,888 in this line item.

## **0321-1510 –**

- CPCS requested \$217,486,045 for FY23 which includes maintenance and to cover the cost increasing hourly rates in every practice area.
- Governor adopted CPCS request to increase the rates by including outside sections 65-69 which statutorily change the rates in Chapter 211D.
- Governor's recommendation for funding is lower than what will be needed to fully implement these increased rates. The Governor's recommendation provides for an appropriation of \$207,565,150.

## **0321-1520 –**

- CPCS requested \$24,165,014 for FY23 to administer the Indigent Court Cost fund which pays for experts.
- Governor's recommendation of \$30,165,014 would allow for the first increase in fees paid to experts in 14 years.
- Current levels were set in 2008 when CPCS like all state agencies cutting costs, made major cuts to the level of payment to vendors.
- We have been increasingly experiencing shortages in the availability of experts because of existing fee rates.

# CPCS MAINTENANCE REQUEST

## FULL COMMITTEE APPROVED – NOVEMBER 2021

ACCOUNT	2021	2022 GAA	2022 EST <sup>2</sup>	2023 MAINT <sup>3</sup>	\$ CHG v '22	% CHG
Admin / Operations / Oversight	69,996,479	73,844,843	73,844,843	79,011,013	5,166,170	7.0%
Private Counsel <sup>1</sup>	144,958,732	188,497,005	188,497,005	198,417,900	9,920,895	5.3%
Court Costs / Experts <sup>1</sup>	17,347,801	23,365,014	23,365,014	24,165,014	800,000	3.4%
<b>Subtotal - 1510 / 1520</b>	<b>162,306,533</b>	<b>211,862,019</b>	<b>211,862,019</b>	<b>222,582,914</b>	<b>10,720,895</b>	<b>5.1%</b>
<b>TOTAL</b>	<b>232,303,012</b>	<b>285,706,862</b>	<b>285,706,862</b>	<b>301,593,927</b>	<b>15,887,065</b>	<b>5.6%</b>

### **0321-1500**

10.09.21 Payroll Annualized with 710.94 FTEs including Backfill/In process positions.

Estimated FY22 COLA is included at \$1.47M / \$2.94M annualized.

**\$5.2M over FY22 Est. Spending**

### **0321-1510**

Assumes 200,000 total cases in FY23 with an avg. cost per case of \$992.

**\$9.9M over FY22 Est. Spending**

### **0321-1520**

Derived directly from cost per expert along with a review change from historical method of cost per case

**\$800K over FY22 Est. Spending**

#### Notes:

1. These are expenses as recorded in MMARS and do not reflect expenses based on service dates.
2. FY22 Estimate is as reported to the Committee November 2021

# LAST FISCAL YEAR RECOMMENDATION

## PRIVATE BAR RATE INITIATIVE

		CURRENT RATES		
Court	FY21 (07.01.20)	FY22 (07.01.21)	FY23 (07.01.22)	FY24 (07.01.23)
District Court	\$53/hr	\$60/hr	\$62/hr	\$65/hr
CAFL	\$55/hr	\$75/hr	\$80/hr	\$85/hr
Appeals	\$68/hr	\$75/hr	\$80/hr	\$85/hr
Superior Court	\$68/hr	\$75/hr	\$80/hr	\$85/hr
Mental Health	\$53/hr	\$60/hr	\$62/hr	\$65/hr
Juvenile Court	\$53/hr	\$60/hr	\$62/hr	\$65/hr
Murder	\$100/hr	\$110/hr	\$115/hr	\$120/hr
CRAs	\$53/hr	\$60/hr	\$62/hr	\$65/hr
<b>GROSS EST. IMPACT</b>	-	-	<b>\$8,766,002</b>	<b>\$10,302,143</b>

### Important Notes & Assumptions:

1. Gross Estimate Impact is an estimated cost using 2019 Hours by Court type
2. Actual cost will change as court volume and/or the total volume of cases change
3. Rates changes effective at the beginning of each Fiscal Year (July 1<sup>st</sup>)

# UPDATED BUDGET RECOMMENDATION

## PRIVATE BAR RATE INITIATIVE

		CURRENT RATES		
Court	FY21 (07.01.20)	FY22 (07.01.21)	FY23 (07.01.22)	FY24 (07.01.23)
District Court	\$53/hr	\$60/hr	\$65/hr	\$65/hr
CAFL	\$55/hr	\$75/hr	\$85/hr	\$85/hr
Appeals	\$68/hr	\$75/hr	\$85/hr	\$85/hr
Superior Court	\$68/hr	\$75/hr	\$85/hr	\$85/hr
Mental Health	\$53/hr	\$60/hr	\$65/hr	\$65/hr
Juvenile Court	\$53/hr	\$60/hr	\$65/hr	\$65/hr
Murder	\$100/hr	\$110/hr	\$120/hr	\$120/hr
CRAs	\$53/hr	\$60/hr	\$65/hr	\$65/hr
<b>GROSS EST. IMPACT</b>	-	-	<b>\$19,068,145</b>	-

### Important Notes & Assumptions:

1. Gross Estimate Impact is an estimated cost using 2019 Hours by Court type
2. Actual cost will change as court volume and/or the total volume of cases change
3. Rates changes effective at the beginning of each Fiscal Year (July 1<sup>st</sup>)

## TOTAL CPCS FY 23 REQUEST

ACCOUNT	2022 ESTIMATE	2023 MAINTENANCE	LEGAL & EXPERT RATE INCREASE	2023 TOTAL
0321-1500 Admin/Operations/oversight	73,844,843	79,011,013	-	79,011,013
0321-1510 Private Counsel	188,497,005	198,417,900	19,068,145	217,486,045
0321-1520 Court Costs/Experts	23,365,014	24,165,014	6,000,000	30,165,014
<b>Subtotal – 1510/1520</b>	<b>211,862,019</b>	<b>222,582,914</b>	<b>25,068,145</b>	<b>247,651,059</b>
<b>TOTAL</b>	<b>285,706,862</b>	<b>301,593,927</b>	<b>35,068,145</b>	<b>326,662,072</b>

NOTE: FY 22 spending is artificially low due to impact of COVID



**We thank you for your continued support.**

Please contact Lisa M. Hewitt, General Counsel,  
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