



FY25 Private Bar Hourly Rate Budget Proposal

February 14, 2024

Challenges with timely assignment in several practice areas

Factors constraining our ability to deliver services:

High Rates of Attrition in Private Bar

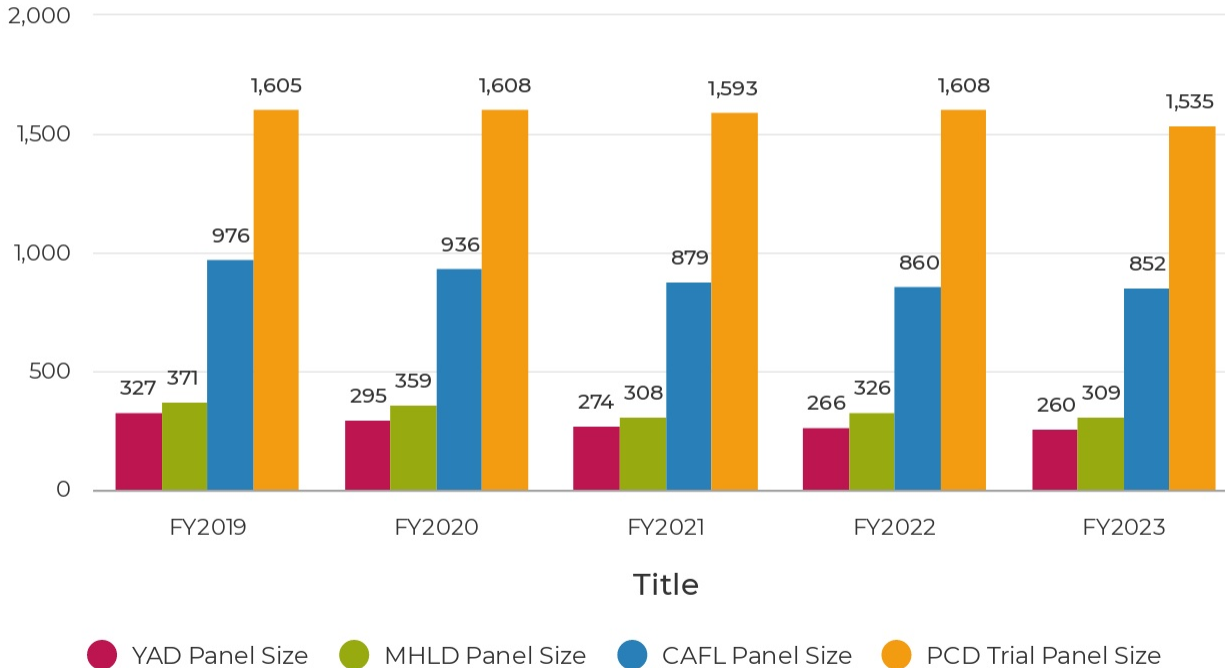
- A growing number of attorneys are retiring or leaving indigent representation for other lines of legal work.
- The rising cost of living makes it difficult to devote a substantial part of a law practice to appointed cases at the current hourly rates, without dependable incremental increases.
- All 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.

Panel Sizes by Year

Number of Attorneys on Panel



**Panels
are
shrinking
across
the
board**

Panels are experiencing losses
in every division

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
TOTAL ANNUAL IMPACT (0321-1510)			12,320,536

Murder	Current \$120/hr	Proposed \$124/hr	\$359,056
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- The hourly rate for public defenders in the federal system (CJA panel) is **\$164** or 36% higher than the current highest CPCS rate (murder).
- Most murder panel attorneys are over 50 years of age, and 47 attorneys of the active panelists are 60+ years of age and close to retirement.
- Applications for the murder list panel are down since 2019 despite a change in the requirements intended to broaden the potential pool of eligibility.
- A shortage of murder certified attorneys has forced those taking cases to carry a historically high number of cases.

Superior Court	Current \$85/hr	Proposed \$89/hr	\$526,300
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- CPCS is experiencing a shortage of superior court attorneys in most counties across the state. The delay in appointments affects everyone in the system, including victims. The largest problems presently are in Suffolk County, Worcester County, Middlesex County, Bristol County, and Hampden County.
- The Superior Court panel lost 41 superior court certified attorneys who had not accepted assignments in the past four years.

District Court	Current \$65/hr	Proposed \$70/hr	\$6,063,355
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- District Court is the entry point for most attorneys joining CPCS practice; a competitive hourly rate is needed that will increase new attorneys' interest in joining the panel to do work full-time or as a supplement to their law practice.
- The District Court panel lost 164 district court certified attorneys who had not accepted assignments during the past four years.
- The counties with the most significant loss of bar advocates are where we are experiencing the most need: Suffolk, Middlesex, Hampden, and Worcester.

Appeals	Current \$85/hr	Proposed \$89/hr	\$742,484
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- The Criminal Appeals (Adult) panel lost 300 certified attorneys who had not accepted assignments during the past four years.
- The Private Counsel Division - Criminal Appeals Unit currently has 19 unassigned murder direct appeals, with 6 being over 3 months old. This is an increase from September 2022 when there were "only" 6 unassigned murder appeals.
- Juvenile YAD Panel - currently has 32 panel members. Since certifying the formal panel in 2019, 12 attorneys have left the panel. We have added only 5 new panelists.

CAFL C&P	Current \$85/hr	Proposed \$89/hr	\$2,548,316
CRAs	\$65/hr	\$70/hr	\$342,785

- Despite significant increases in the hourly rate in two of the three last fiscal years, the Children and Family Law Division still is experiencing a serious shortage in available counsel, especially in certain counties.
- It is much harder to recruit for this panel as the work is extremely challenging and very different from practicing criminal law, and cases can last years. Also, it is not the type of practice that lends itself to being hired privately.
- The number of panelists available to accept appointments has decreased by 10% since FY19 and despite increased recruitment and available trainings, the additions to the panel have not kept pace.

Juvenile Court	Current \$65/hr	Proposed \$70/hr	\$347,110
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- The Youth Advocacy Division (YAD) currently has 260 private panel attorneys. This number has decreased and continues to trend downward despite increased recruitment and training opportunities.
- Within YAD, a significant amount of Delinquency and Youthful Offenders cases are handled by a small proportion of our attorneys. Statewide most counties have at least 60% of cases represented by a small group of attorneys. In Hampden County high case takers represented more than 80% of cases.
- Of the roughly 128 attorneys who have left the YAD list since 2019, over 100 left to either take a new job or to focus on representing clients on other panels.

Mental Health	Current \$65/hr	Proposed \$75/hr	\$1,391,130
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- The Mental Health Litigation Division (MHL) is dependent upon a small number of private panel attorneys to represent most clients. In every county, at least 30% and as high as 90% of cases in the Mental Health Litigation Division are dependent on a small group of practitioners.
- MHL cases are very difficult, in part because of the very short turnaround times. By statute, attorneys are given two days to prepare for a commitment case and are required to see clients in a psychiatric unit within 24 hours because the trial is scheduled so quickly. The attorney must establish trust with the client quickly because the hearing is imminent which often necessitates repeat and weekend visits to the hospital.
- The MHL panel is an aging bar and within the past year, this panel has lost approximately 36% of certified panel members.