



**OFFICE OF THE  
INSPECTOR GENERAL  
MASSACHUSETTS**

# An Analysis of Indigent Defense in Massachusetts

**Balancing Accountability with  
Indigent Defendants' Right to Counsel**

**June 10, 2026**

**Jeffrey S. Shapiro, Esq., CIG  
Inspector General  
Office of the Inspector General  
Commonwealth of Massachusetts**

June 10, 2026

Via Electronic Mail

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**Re: An Analysis of Indigent Defense in Massachusetts**

Dear Chairs Rodrigues and Michlewitz, Ranking Members O'Connor and Smola:

Pursuant to Section 82 of Chapter 14 of the Acts of 2025 (Section 82), the Office of the Inspector General (OIG) herein presents An Analysis of Indigent Defense in Massachusetts. Section 82 directed the OIG to review the indigent defense system in Massachusetts, including existing practices, rules and requirements related to determining indigency, billing by and oversight of private “bar advocates,” attorney caseloads, and best practices from other jurisdictions to provide adequate and cost-effective representation of indigent defendants.

The OIG’s findings respond to the specific directives posed by the Legislature and also address related matters that arose during its investigation. This holistic assessment provides a more complete picture of the state of the indigent defense system in the Commonwealth. The OIG’s findings include:

- The Committee for Public Counsel Services (CPCS) does not meet a legislative mandate to assign 20% of cases to its own staff attorneys;
- During the 2025 bar advocate work stoppage, CPCS could have assigned its staff attorneys to take over in many, if not all, of the hearings that resulted in 1,689 dismissed cases and 213 released defendants, and still would have come short of the 20% mandate;
- CPCS staff attorneys carry low caseloads compared to neighboring states and Massachusetts district attorneys;
- Massachusetts sets a maximum annual limit of 2,000 hours for bar advocates, but sets no cap on the amount paid in given cases, making it an outlier among states that regulate the fees paid to private appointed counsel;
- CPCS does not effectively notify the Legislature that CPCS staff attorneys do not handle 20% of indigent cases;

- The Commonwealth’s system to determine if a defendant is indigent and qualifies for appointed counsel is broken, making it likely that a significant number of defendants have received state-funded attorneys without a verified need; and
- The Commonwealth’s public defender system is one of the most expensive in the nation per new case taken.

The Commonwealth’s expensive indigent defense system is inefficient and operates with impunity. The failings of the status quo came to a head in May of 2025, when many bar advocates stopped accepting new case assignments and sought an increase in the hourly rates set by law. CPCS filed a petition with the Massachusetts Supreme Judicial Court (SJC), asking the SJC to use its authority to unilaterally increase bar advocate pay. While that litigation proceeded, and to address the work stoppage, a single justice of the SJC implemented a practice called the “Lavallee protocol,” which set hearings (known as Lavallee hearings) at which a defendant who went unrepresented for 45 days could have their case dismissed and a defendant who was held in custody for 7 days could be released from jail. Over the course of the summer and fall of 2025, 2,345 Lavallee hearings resulted in 1,689 dismissed cases and 213 defendants being released from custody. All the while, CPCS filed reports with the SJC saying that its staff attorneys were “at capacity.”

The public outcry around the crisis resulted in the Legislature passing a law increasing bar advocate hourly rates, which Governor Healey signed in August 2025. The hourly rates increased by \$10 in August 2025 and will increase by an additional \$10 in August 2026. The law also gave CPCS \$40 million to hire 320 new staff attorneys. As a result of these changes, the general appropriation for CPCS will grow from \$339 million in Fiscal Year 2025 to a projected \$380 million in Fiscal Year 2027.

Based upon the OIG’s investigation, it is clear that the increased hourly rate and increased number of CPCS staff attorneys, by themselves, will not correct the crisis in the indigent defense system that boiled over in the 2025 work stoppage. For one thing, Massachusetts has seen this story before. Bar advocate work stoppages in 2004 and 2018 followed an almost identical pattern: bar advocates stop taking assignments, CPCS files a petition with the SJC, the SJC implements the Lavallee protocol, public outcry continues, and the Legislature issues a pay raise and tells CPCS to hire more staff attorneys.

There are two major underlying issues that the Commonwealth must address if it is going to balance the right to appointed counsel within the constraints of a fixed annual budget, while also avoiding future crises.

First, bar advocates are not sufficiently incentivized to take on additional cases. While the OIG found that their hourly pay rate is less than neighboring states, the OIG also found that Massachusetts is an outlier by setting an annual hour limit, but not setting a fee cap for the amount that appointed counsel can bill on individual cases. Most other states set fee caps that range based on the type of case. The OIG found many instances of high bills on even the most straightforward cases, which CPCS pays without any significant oversight.

Second, CPCS operates a public defender system that has too many supervisors and doesn't assign enough cases to staff attorneys. The OIG found that CPCS employs more support staff than it says it needs in hiring plan proposals and many of its staff attorneys do not handle caseloads that meet internal expectations. The Legislature requires that CPCS assign a mandated percentage of cases to its staff attorneys, but CPCS has not come close to reaching that percentage in the last 10 years. Indeed, the OIG found that CPCS staff attorneys work the lowest number of cases of any statewide public defender system for which the OIG could find comparable data, including Connecticut, New Hampshire, and Vermont.

The result is a highly expensive and highly inefficient indigent defense system. Among statewide systems for which the OIG could find sufficient data, the OIG found that Massachusetts was the most expensive system on a cost-per-new-case basis.

It is also a system that does not respond well to crisis. The OIG found that if CPCS assigned 20% of cases to its staff attorneys (as it is legislatively mandated to do) during the 2025 work stoppage and Lavallee protocol, those staff attorneys would have been assigned thousands of additional cases. The staff attorneys responsible for adult criminal cases – the cases primarily affected by the work stoppage – would have been assigned over 3,000 additional cases, well in excess of the 2,345 Lavallee hearings that resulted in 1,689 dismissed cases and 213 defendants being released from custody.

Stakeholders have the opportunity to correct this problem but must understand that simply raising the bar advocate hourly rate will not prevent future crises. Bar advocates should receive fair pay, but should also be subject to reasonable fee caps, based on acceptable ranges of hours billed by case that also incentivize taking additional cases. Low CPCS staff attorney caseloads and high rates of support staff (including higher-salary supervising attorneys) drive significant costs for CPCS. Lastly, a culture reset is needed within the CPCS organization. The OIG found that CPCS has created two different systems, one for public defenders and one for bar advocates. CPCS must address the ways that bar advocates and CPCS staff attorneys are treated differently and work to improve bar advocate retention and increase their ranks.

Finally, the OIG made deeply troubling findings that the system by which indigency is determined is broken. The methods used to verify indigency are outdated or not consistently used to validate indigency status. The OIG found that the Massachusetts Probation Service (Probation), an independent division within the Administrative Office of the Trial Court charged with reviewing the income and assets of a defendant and recommending whether a defendant qualifies for appointed counsel, often fails to complete the required initial steps and frequently fails to complete required follow-up checks during the course of the representation. In almost all circumstances, Probation makes a recommendation about indigency status without verifying spousal income and, with some frequency, does not verify indigency against a single government source. It would be wrong to believe most individuals who receive appointed counsel in Massachusetts have been properly screened. Additionally, the current indigency verification process should be strengthened and modernized, such as by checking additional government sources of information or by implementing screening processes much like those that would be completed by any merchant seeking to conduct a credit check.

While this report is thorough and fulfills the OIG's legislative mandate, it is not complete. As part of its investigation, the OIG sought to match case disposition data held by the Trial Court with CPCS data, which could only be accomplished using docket numbers. CPCS refused to produce the requested docket numbers, citing client confidentiality. The OIG informed CPCS that its concerns were misplaced considering that OIG records are confidential and that the OIG planned to aggregate the information for data analysis purposes. The OIG also offered additional protective measures – comparable to those used in the courts to protect trade secrets and other highly confidential information – to address CPCS's concerns. When CPCS still refused to produce the docket numbers, the OIG filed a motion to compel in Suffolk County Superior Court, which was allowed. Rather than comply with this order, CPCS filed an appeal.

If CPCS had produced the docket information as ordered, the OIG would have performed an analysis and comparison identifying general trends in case disposition among bar advocates and CPCS staff attorneys. This analysis would have been the best indicator of the quantity and quality of representation provided by CPCS staff attorneys and bar advocates. The OIG is concerned that CPCS is confusing fiscal responsibility and oversight with a denial of a defendant's right to counsel. While CPCS has an obligation to indigent defendants and the court, the OIG and the Legislature have an obligation to all residents of the Commonwealth. The Commonwealth can afford nothing less than mandated fiscal responsibility and oversight.

In closing, the OIG emphasizes that fiscal accountability and oversight is not inconsistent with the right to counsel and, indeed, is necessary for any public entity. An indigent defense system is a use of public dollars, and Massachusetts deserves to have a system that protects the Massachusetts residents who rely on its counsel at times of their greatest need while also appropriately protecting the expenditure of public dollars. CPCS must prioritize its mandate to provide appointed counsel while also living within its prescribed annual budget, like all state agencies.

Sincerely,



Jeffrey S. Shapiro, Esq., CIG  
Inspector General

cc (via email):

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## EXECUTIVE SUMMARY

“Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.”

*United States v. Cronin*, 466 U.S. 648, 654 (1984)

In 1983, the Massachusetts Legislature created the Committee for Public Counsel Services (CPCS) as an independent Commonwealth agency housed within the court system to provide an attorney to people who have a right to appointed counsel under Massachusetts law. This right has expanded beyond criminal proceedings and now covers a wide array of civil proceedings in specialized areas of the law, such as family law and mental health law. To manage this mandate, CPCS has separate divisions that (1) hire, supervise, and assign CPCS staff attorneys, sometimes called “public defenders,” and (2) oversee private attorneys, known as “bar advocates,” who are paid by the Commonwealth to provide appointed counsel for those not represented by CPCS staff attorneys. At present, the OIG found that bar advocates take over 80% of appointed counsel assignments statewide and CPCS staff attorneys take less than 20% of the assignments.

Bar advocates have occasionally refused to accept new assignments in protest of the hourly pay rates set by the Legislature. In 2004, one of these “work stoppages” resulted in the Massachusetts Supreme Judicial Court (SJC) ordering the implementation of emergency judicial supervision of pending criminal cases, a mechanism now known as the “Lavallee protocol.” The Lavallee protocol requires courts to conduct hearings at which defendants who have been held without bail for more than seven days without representation may be released and hearings at which defendants who have been unrepresented for 45 days may have their case dismissed without prejudice (“Lavallee hearings”). A 2018 work stoppage resulted in the SJC implementing the Lavallee protocol in Hampden County courts.

In May 2025, many bar advocates began refusing new criminal assignments and declined to appear for “duty days” in district courts in Middlesex County and Suffolk County.<sup>1</sup> In July 2025, a single justice of the SJC ordered the Lavallee protocol to be implemented over courts in Middlesex and Suffolk counties. Since the work stoppage began, over 9,000 criminal defendants have been reported to be without representation, and the Lavallee protocol has so far resulted in 2,345 hearings that dismissed 1,689 cases and released 213 defendants from custody without bail.<sup>2</sup>

In late July 2025, the Legislature approved \$40 million in supplemental funding for CPCS to hire 320 additional staff attorneys as part of its Public Defender Division (PDD), the division of CPCS that handles adult criminal cases. The supplemental budget also increased bar advocate pay rates by \$10 per hour starting in August 2025 and another \$10 per hour starting in August 2026. The Legislature also

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<sup>1</sup> “Duty day” is a term used by CPCS to refer to the day on which either a CPCS staff attorney or a bar advocate is scheduled to be available at a particular court to receive new assignments, typically based on new arrests.

<sup>2</sup> A case that is dismissed “without prejudice” can be refiled by the district attorney. The OIG understands that most of the cases that were dismissed after 45-day hearings have been refiled and that DA offices moved to detain most of the defendants who were released from custody.

mandated that the Office of Inspector General (OIG) prepare this report, which examines assigned counsel practices and caseloads and recommends best steps forward.

The OIG's investigation reviewed documents and data from the Trial Court, CPCS,<sup>3</sup> Probation, and district attorneys. The OIG also conducted interviews with Trial Court chief judges, the Massachusetts Commissioner of Probation, Trial Court judges (including sitting First Justices of courts where the work stoppage occurred), court staff, CPCS leadership, bar advocates, constitutional scholars, and district attorneys.

While the pay raise and a temporary financial incentive program offered by CPCS to the bar advocates in October 2025 reduced the backlog, bar advocate participation has not returned to pre-May 2025 levels and the Lavallee protocol remains in place as of the date of this report. This is because hourly rates for bar advocates are only a symptom of the problem, not the cure.

The problem confronting the provision of appointed counsel is twofold.

First, bar advocates are not incentivized to take additional assignments due to the rate of pay and the fact that there is currently no limit on the amount bar advocates can bill on cases they already have been assigned. The OIG found that most states control fees by setting a range of caps on the amount that can be paid to private attorneys on a particular case, based on the type of offense, rather than an annual hour limit. This is a much more effective fiscal control than in Massachusetts, which only limits the total number of hours a private attorney can bill over a given year. In theory, a bar advocate could work only one case for the full year, regardless of its complexity. The Massachusetts annual hour limit does not restrict the number of hours that are billed on an individual case.

Second, the OIG found that CPCS staff attorneys do not take 20% of new case assignments that the Legislature requires<sup>4</sup> them to take and do not even meet internal CPCS caseload expectations. Indeed, the OIG found that CPCS staff attorneys work the lowest number of cases of any statewide public defender system for which the OIG could find comparable data, including Connecticut, New Hampshire, and

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<sup>3</sup> The OIG review of CPCS data is ongoing as of this report. The OIG lawfully requested that CPCS provide case docket numbers for the purpose of conducting anonymized data analysis concerning the effectiveness of indigent defense among bar advocates and CPCS staff attorneys. CPCS refused to provide the docket numbers, claiming that producing such data would disclose confidential client information. The OIG filed a motion to compel CPCS to produce the docket numbers, subject to a protective order, which was granted in Suffolk County Superior Court on January 27, 2026. This report's Appendix A presents the text of the court's order.

CPCS filed an appeal with the Massachusetts Appeals Court. As of the date of this report, the matter is pending. CPCS sent a notice to bar advocates directing them to consider filing a motion to intervene in the matter on behalf of their clients. The notice stated that CPCS would compensate bar advocates for work related to intervening in the litigation at an hourly rate of \$95 (which is the current approved rate for Superior Court assignments). The OIG makes no comment about whether there is a right to appointed counsel with regard to the pending litigation. This report's Appendix B reproduces the notice.

While this data is important to fully understand the efficacy of CPCS and bar advocate caseloads, this report reflects that the OIG has nevertheless been able to make a number of significant observations and conclusions. If the OIG receives the docket numbers, the OIG will complete its review and release a supplemental report. Any supplemental report will contain anonymized data analysis and will not contain information related to specific individuals. Docket numbers will never be released by the OIG and will be subject to the OIG's statutory protection from public records law.

<sup>4</sup> See, e.g., 2024 Mass. Acts c. 140, § 2, line item 0321-1500 ("[CPCS] shall maintain a system in which not less than 20 per cent of indigent clients shall be represented by public defenders.").

Vermont. The Chief Counsel for CPCS has stated that calls for CPCS staff attorneys to take on cases above its internal caseload expectations would “undermine the integrity of the justice system.”<sup>5</sup> The OIG found that the integrity of the justice system has already been undermined by the repeated cycle of bar advocate work stoppages, the refusal of CPCS to assign additional cases to its staff attorneys, and the implementation of the Lavallee protocol, which has resulted in thousands of hearings to dismiss cases and hundreds of defendants being released from custody.

During its investigation, the OIG also found systemic issues underlying CPCS and its relationship with bar advocates. CPCS in effect has two systems: one for staff attorneys and one for bar advocates. This bifurcated system has different ways of assigning cases, managing caseloads, conducting fiscal oversight, providing training, determining conflicts, and maintaining communication. One notable result of this bifurcated system is a concern by bar advocates that they are viewed by CPCS and the courts as “second class citizens.” Indeed, some Massachusetts bar advocates are so dissatisfied that they obtained certification to take assignments in Maine, New Hampshire, and Rhode Island. The Legislature must understand that the 2025 work stoppage crisis was not solely related to the hourly pay rate, but also largely to these other factors that make working as a bar advocate less appealing. Adjusting the hourly rate alone does not address these concerns.

As reflected in this report, the OIG’s investigation led to several significant fiscal findings. Above all, the OIG found that CPCS staff attorneys are substantially more expensive than bar advocates on a per-new-case basis. In fact, unless CPCS staff attorneys increase their caseload, it would be more cost effective for the Commonwealth to continue to rely on bar advocates (and even to further increase bar advocate fees) than to hire additional CPCS staff attorneys. Regarding the 2025 legislation, the OIG found that CPCS plans to hire 100 fewer staff attorneys than requested by the Legislature and that the total cost of this expansion will depend largely on the number of support staff CPCS hires. However, the OIG found there could be enough money in the budget to hire 80 additional attorneys, because CPCS currently employs more support staff than its hiring plan says it needs.

The OIG also examined the processes for determining indigency and assessing indigency fees in the Commonwealth, as well as the oversight systems employed by CPCS to monitor bar advocates and staff attorneys. The OIG found that the indigency process is outdated and no longer functions as intended, under a policy that often is not followed. The OIG found that bar advocates and CPCS staff attorneys face starkly different oversight systems with significant gaps. Oversight of bar advocate performance is limited, while financial oversight of CPCS staff attorney case costs is almost nonexistent.

Additionally, the OIG found that CPCS did not provide badly needed leadership or resources to unstaffed or understaffed court sessions following the 2025 work stoppage. Middlesex District Court and Boston Municipal Court judges told the OIG in interviews that CPCS staff attorneys were absent during peak hours, did not answer phone calls from court staff looking to assign counsel, and failed to ensure

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<sup>5</sup> See Brittany Johnson & Jenny Barron, *DA calls for scrutiny of public defender agency as Mass. court crisis drags on*, WCVB (last updated Dec. 3, 2025), available at <https://www.wcvb.com/article/da-calls-for-scrutiny-of-public-defender-agency-as-mass-court-crisis-drags-on/69611599>.

attorney staffing for “duty days,” further contributing to the detrimental effects of the work stoppage. The OIG also found that the difference between the number of cases that the Legislature expects CPCS to assign to its staff attorneys and the number of cases staff attorneys actually work is greater than the number of defendants who proceeded to Lavallee hearings. Thus, the OIG found that, in all likelihood, CPCS staff attorneys would not have significantly increased their caseloads by taking over in the 2,345 Lavallee hearings that resulted in 1,689 dismissed cases and 213 defendants released from custody.

From the beginning of the 2025 work stoppage, Trial Court judges and their staff worked heroically to secure counsel for indigent defendants. The work stoppage and uncovered “duty days” required court personnel to scramble on a daily basis from early morning to late into the evenings to find lawyers willing to take court assignments, often relying on personal relationships with individual bar advocates to secure counsel for indigent defendants. Without the efforts of these Trial Court employees, the number of unrepresented defendants would have been much higher. CPCS was largely absent and let the gap in coverage play out between the courts and the bar advocates, to the detriment of the public and the unrepresented defendants.

The OIG emphasizes that the findings and recommendations in this report need not conflict with the right to effective counsel. An indigent defense system is a use of public dollars, and Massachusetts deserves to have a system that protects the Massachusetts residents who rely on its counsel at times of their greatest need while also appropriately protecting the expenditure of public dollars. Like all state agencies, CPCS must live within its prescribed annual budget and must prioritize its mandate –providing appointed counsel – before spending public dollars on other efforts.

While other studies and investigations have tried to understand the dynamics of this periodic pay dispute, CPCS has largely continued to seek additional public dollars while shunning oversight. Despite the litigation over information that the OIG is lawfully entitled to, the OIG investigation has dug deep into the indigent defense system and worked to provide greater clarity on those issues through the findings of this report. Based upon the outcome of the litigation, the OIG, if successful, will use the sought-after data to complete its review and update the parties of this report.

## LEGISLATIVE MANDATE

Section 82 of Chapter 14 of the Acts of 2025 (Section 82) amends Section 2 of Chapter 9 of the Acts of 2025 to direct the OIG to review the indigent defense system in Massachusetts. Section 82 provides, in relevant part, that:

[N]ot later than June 30, 2026, the inspector general shall submit a report to the senate and house clerks, the joint committee on the judiciary and the senate and house committees on ways and means that shall include, but not be limited to: (i) an examination of existing practices, rules and requirements relative to the determination of indigency and the assignment of counsel by the trial court, including an analysis and examination of reimbursement practices and requirements for defendants receiving public representation but who are found not to be indigent; (ii) a review of billing practices and procedures by bar advocates and the oversight thereof; (iii) an examination of the caseload of counsel involved in representation of indigent defendants and the efficacy thereof; (iv) an analysis of the fiscal impact of increasing the proportion of indigent clients represented by public defenders on the total cost of indigent defense; and (v) best practices from other jurisdictions to provide adequate and cost-effective representation of indigent defendants.

The OIG submits its report herein. The OIG's findings respond to the specific directives posed by the Legislature in the above statute. Additionally, during its investigation, the OIG, by necessity, investigated other issues in an effort to provide the Legislature, stakeholders, and the public as complete a picture as possible of the funding and oversight of the indigent defense system in Massachusetts.

## METHODOLOGY AND ACKNOWLEDGMENTS

In conducting this legislatively mandated study of indigent representation, the OIG assembled a core team of investigators, data analysts, legislative analysts, attorneys, and other members of its professional staff. The OIG also consulted with the Honorable Timothy S. Hillman, a retired federal judge from the U.S. District Court for the District of Massachusetts. Judge Hillman has extensive experience with the Massachusetts court system, having served as an assistant district attorney in Worcester County, as a Massachusetts District Court judge in Gardner, Winchendon, and Worcester district courts, and as a Massachusetts Superior Court judge. The OIG contracted with Judge Hillman to assist in research, data gathering and interpretation, and interviews. Throughout this study, work attributed to “the OIG” will be understood to include work done by and in conjunction with Judge Hillman.

### Interviews

The OIG interviewed stakeholders to capture a variety of perspectives on case assignments, court operations, determination and verification of indigency, attorney oversight, caseload, and cost drivers across a range of regional and market contexts. The stakeholders included CPCS leadership, current and former members of CPCS’s governing committee, bar advocates and bar advocate panel leadership from multiple counties, legislators, the Executive Office of the Trial Court (Trial Court), chief justices of the District Court, Juvenile Court, and Superior Court departments, judges from District Courts subject to the Lavallee protocol, the Massachusetts Probation Service (MPS), the Office of the Governor, current and past leadership of the Massachusetts Association of Criminal Defense Lawyers, the Massachusetts District Attorneys Association, and the Sixth Amendment Center.

### Public Defender State Survey

The OIG identified public defender organizations in 47 states and asked them to complete a survey. The survey was open from March 5, 2026, through May 1, 2026, and collected qualitative and quantitative data on indigent representation practices and delivery structures. The OIG also interviewed leadership in indigent defense offices in several states.

### Document Requests

Pursuant to the OIG’s statutory authority, the OIG requested records from CPCS, the Trial Court, MPS, and district attorney’s offices. The OIG also requested docket numbers for cases handled by CPCS staff attorneys and bar advocates. CPCS claims that producing such data would disclose confidential client information, even though the OIG informed CPCS that OIG records are confidential under law and offered additional protective measures to address CPCS’s concerns.<sup>6</sup> The OIG filed a motion to compel CPCS to

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<sup>6</sup> The OIG notes that docket numbers are publicly available on the MassCourts website and on court calendars in most cases. The OIG received docket numbers in response to its request to the Trial Court. While the requested information could have been collected by visiting individual courts, due to the limited time to produce this report, the burden of such an undertaking, and the fact that this information can be produced by CPCS alongside the other data provided, the OIG requested such information directly from CPCS in the interest of efficiency and conservation of public resources.

produce the docket numbers, which was granted in Suffolk County Superior Court. Instead of producing the docket numbers, CPCS filed an appeal.<sup>7</sup> While the OIG is required by statute to produce this report at this time, the OIG seeks to have this matter litigated as access to the docket numbers continues to be essential to portions of the OIG's analysis.

The OIG is not required to divulge its rationale for data requested under its statutory authority, but felt it was appropriate in this case to explain the OIG's intention to continue to pursue this matter to complete its mandate.

### **Docket Numbers and the OIG's Analysis**

To conduct its review of the indigent defense system, the OIG planned to match Trial Court data with CPCS data. The data provided by the Trial Court is organized by docket numbers. CPCS data is organized by docket numbers as well as internal identifiers that are not present in the Trial Court data. CPCS agreed to produce datasets containing only the internal identifiers, refusing to produce the docket numbers. Because the OIG could not match Trial Court data with CPCS data, the OIG was prevented from completing the following analyses:

- Trial Court data contains case disposition and case duration information that is not present in the CPCS data. The OIG would have used this information in its caseload analysis to compare the outcomes of advocacy among bar advocates and CPCS staff attorneys.
- CPCS expressed concerns regarding the "closed date" in their bar advocate data. The OIG received "closed date" data from the Trial Court and could have matched that data with bar advocate cases had CPCS produced the docket numbers. This lack of data prevented the OIG from including open cases in its caseload analyses for bar advocates.
- CPCS data includes the individual charges for each case. While this is valuable information, Trial Court data also aggregates like charges into "charge groups" (e.g., "Misdemeanor - motor vehicle"). The OIG would have used these charge groups to stratify its case assignment and caseload analyses. The OIG attempted to recreate this field using publicly available data on charges and Trial Court data, but it resulted in missing information.
- CPCS data does not identify the primary or most serious charge for a case, while Trial Court data does provide this information. Without docket numbers, the OIG was unable to leverage this field from Trial Court data, which could serve as a proxy for the complexity of a case.

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<sup>7</sup> In the event that the OIG receives the docket numbers, the OIG will complete its review and release a supplemental report. Any supplemental report will contain anonymized data analysis and will not contain information related to specific individuals. Docket numbers will never be released by the OIG and will be subject to the OIG's statutory protection from public records law as well as by a protective order.

- There may be instances where multiple bar advocates are assigned to a single case, such as when a new bar advocate is assigned after another bar advocate's departure. These instances would result in two internal identifiers for a single bar advocate case. Without docket numbers, the OIG had to assume that each internal identifier represents a unique case, likely overcounting the number of bar advocate cases.
- CPCS uses one internal identifier for its staff attorney cases and a different internal identifier for bar advocate data. There is no relationship between these two fields. Without docket numbers, the OIG cannot identify instances where a bar advocate and CPCS attorney served on the same case at different points in time. Again, this likely resulted in an overcount of the total number of cases.
- CPCS data does not contain information on fees assessed by the court, while the Trial Court did provide this data. The OIG could not connect these two data files without the docket numbers.

No study of the Massachusetts indigent defense system to date has been able to answer the critical questions that the OIG sought to answer. Although the OIG made clear to CPCS that individual defendant names were never at risk of disclosure, CPCS has refused to provide the data that would allow a more robust OIG analysis. The OIG firmly believes that accountability for public funds is not inconsistent with indigent defendants' right to counsel and is therefore seeking a remedy in court. As of the date of this report, CPCS's appeal of the order compelling it to produce the docket numbers is pending.

### **Acknowledgments**

The OIG extends its thanks to the many organizations and individuals which spoke with OIG investigators and gathered documents in response to the OIG's requests. This subject was researched, investigated, analyzed, and documented in this report in a relatively short period of time, from when the law was enacted on August 5, 2025, to delivery by June 30, 2026. The OIG appreciates the time that it takes to respond to detailed requests within this schedule. The assistance provided by organizations and individuals made this review and the accompanying recommendations possible.

# Timeline of Events Related to CPCS

## Legend

Events related to work stoppages

State budget creates indigent counsel fee of \$40, which may be waived at the discretion of the court.

Suffolk Lawyers for Justice begin a protest that clogs Boston's 11 courts. Other lawyers around the state also stage similar protests.

After Hampden bar advocates refuse new case assignments to protest pay rates, CPCS files a petition with the Supreme Judicial Court (SJC) on behalf of 19 indigent defendants held without counsel.

Commission report recommends increasing hourly rates for private attorneys over 3 years, from FY06-FY08.

Patrick administration proposes dissolving CPCS and transferring services to an independent executive branch agency and eliminating contracts with bar advocates.

FY17 budget establishes a waiver process for bar advocates to bill up to 1,800 hours in areas with limited qualified counsel.

After decline in duty days filled by Hampden bar advocates, CPCS files a petition on behalf of unrepresented defendants with the SJC, which implements Lavallee protocol.

After Middlesex and Suffolk bar advocates refuse new case assignments to protest pay rates, CPCS files petition with the SJC, which implements Lavallee protocol.

CPCS creates financial incentive for bar advocates to take new case assignments in Middlesex County and Suffolk County. 169 bar advocates collect nearly \$1 million.

1980s

1983

Several public defense organizations are consolidated into an independent state agency, the Committee for Public Counsel Services (CPCS).

1990s

1990

1994

Report recommends increase in bar advocate compensation (\$50 for district court; \$65 for superior court, juvenile court, and appeals; and \$85 per hour for all murder cases and murder appeals).

2000s

July 2003

Governor Romney line-item vetoes \$13 million from CPCS's FY04 budget and \$2 million for indigent defendant court costs.

August 2003

August 2003

FY03 "deficiency budget" includes \$15 million in back wages for bar advocates.

May 2004

July 2004

**SJC establishes the "Lavallee protocol."**

August 2004

Legislature approves a \$7.50 increase per hour (first increase in 20 years).

April 2005

July 2005

Legislature raises bar advocate rates, authorizes increased CPCS hiring, and **mandates indigency verifications.**

2010s

January 2011

July 2011

FY12 budget:

- Increases CPCS budget appropriation by 40% and cuts funding for bar advocates by 20.6%;
- Requires CPCS to handle 25% of indigent defense;
- Mandates indigency verification using DOR, DTA, and RMV data;
- Establishes a yearly cap on billable hours for private bar advocates at 1,650 total hours;
- Prevents bar advocates from accepting new cases after billing 1,350 hours; and
- Reforms appointing powers of the CPCS board.

July 2016

July 2017

**FY18 budget decreases required CPCS share of indigent cases from 25% to 20%.**

July 2018

2020s

July 2020

FY21 budget eliminates 1,350 hour restriction for accepting new clients and increases allowed billable hours for those receiving a waiver to 2,000.

May 2025

July 2025

Legislature passes supplemental budget providing \$40 million to CPCS for hiring 320 additional staff attorneys, increases bar advocate rates \$20 per hour over 2 years, and assigns OIG to study public defense system.

October 2025

January 2026

Suffolk Superior Court judge grants OIG motion to compel CPCS to produce docket numbers. CPCS files appeal.

### I. The Office of the Inspector General

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The Office of the Inspector General for the Commonwealth of Massachusetts (OIG) is an independent state agency charged with preventing and detecting fraud, waste, and abuse of public funds and assets. The OIG investigates allegations of fraud, waste, and abuse at all levels of government and reviews programs and practices in state agencies and municipalities to identify systemic vulnerabilities and opportunities for improvement. The OIG strives to enhance or restore public confidence in government, ensure accountability, and promote the best interests of the people of the Commonwealth in the use of public funds and property.

The Legislature established the OIG in 1980 as the first state-level inspector general's office in the country. Today, the OIG has a budget of over \$10 million and a staff of about 90 employees. The OIG has oversight of more than \$120 billion in spending and the work of over 300,000 public employees across all state and municipal public entities throughout the Commonwealth, plus suppliers, vendors, contractors, and nonprofits that receive public funds.

### II. Indigent Defense Systems in the United States

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#### A. From the 6th Amendment to *Gideon v. Wainwright*

The right to appointed counsel in criminal cases has evolved as a constitutional right since the founding of the United States. Language that was later interpreted to provide this right was originally enshrined in the United States Constitution by the Sixth Amendment.<sup>8</sup> After the Civil War, the Fourteenth Amendment began the process of extending the umbrella of federal constitutional protection to actions by state governments.<sup>9</sup>

Over the course of the 20th century, the right to counsel in criminal cases developed into a guarantee of representation for “indigent” defendants – those who cannot afford to hire an attorney. Ultimately, in 1963, the Supreme Court ruled in *Gideon v. Wainwright* that all state governments must provide counsel in felony criminal cases to defendants who could not otherwise afford counsel.<sup>10</sup>

One year after *Gideon*, Congress passed the Criminal Justice Act of 1964 (CJA), which established “a comprehensive system for appointing and compensating legal representation for accused persons who

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<sup>8</sup> U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.”).

<sup>9</sup> U.S. Const. amend. XIV, § 1 (prohibiting states from “depriv[ing] any person of life, liberty, or property, without due process of law” or “deny[ing] to any person within its jurisdiction the equal protection of the laws”).

<sup>10</sup> See generally *Gideon v. Wainwright*, 372 U.S. 335 (1963).

are financially unable to retain counsel in federal criminal proceedings.”<sup>11</sup> Under the CJA, representation is provided to individuals who are “financially unable to obtain adequate representation.”<sup>12</sup> In 1972, the Supreme Court in *Argersinger v. Hamlin* extended the right to counsel to indigent defendants accused of misdemeanor crimes in state courts with the possibility of incarceration.<sup>13</sup>

Indigent defense plays a critical role in the country’s justice system. In 2025, the United States Courts reported that more than 90% of defendants in federal criminal cases were appointed counsel due to indigency, 60% of which were handled by federal public defenders and the remaining 40% assigned to private counsel under the CJA.<sup>14</sup> In Massachusetts, by comparison, CPCS represents less than 20% of appointed counsel cases while private bar advocates are assigned over 80% of cases.

Indigent defense also carries a cost. In 2023, the Sixth Amendment Center estimated that state and local governments spent approximately \$6.5 billion annually on indigent defense.<sup>15</sup> As shown in Figure 1 below, the legislative appropriation in Massachusetts has nearly doubled from \$172.8 million in Fiscal Year 2018 to \$328 million in Fiscal Year 2026. Notably, CPCS received supplemental budget funding in six of the past eight fiscal years.<sup>16</sup> Figure 1 below shows the amount of funding for CPCS in each fiscal year since Fiscal Year 2018, broken down by funding in the annual General Appropriations Act (GAA) and funding included in supplemental budgets.

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<sup>11</sup> *Criminal Justice Act (CJA) Guidelines*, U.S. CTS., available at <https://www.uscourts.gov/administration-policies/judiciary-policies/criminal-justice-act-cja-guidelines>.

<sup>12</sup> See generally 18 U.S.C. § 3006A(a).

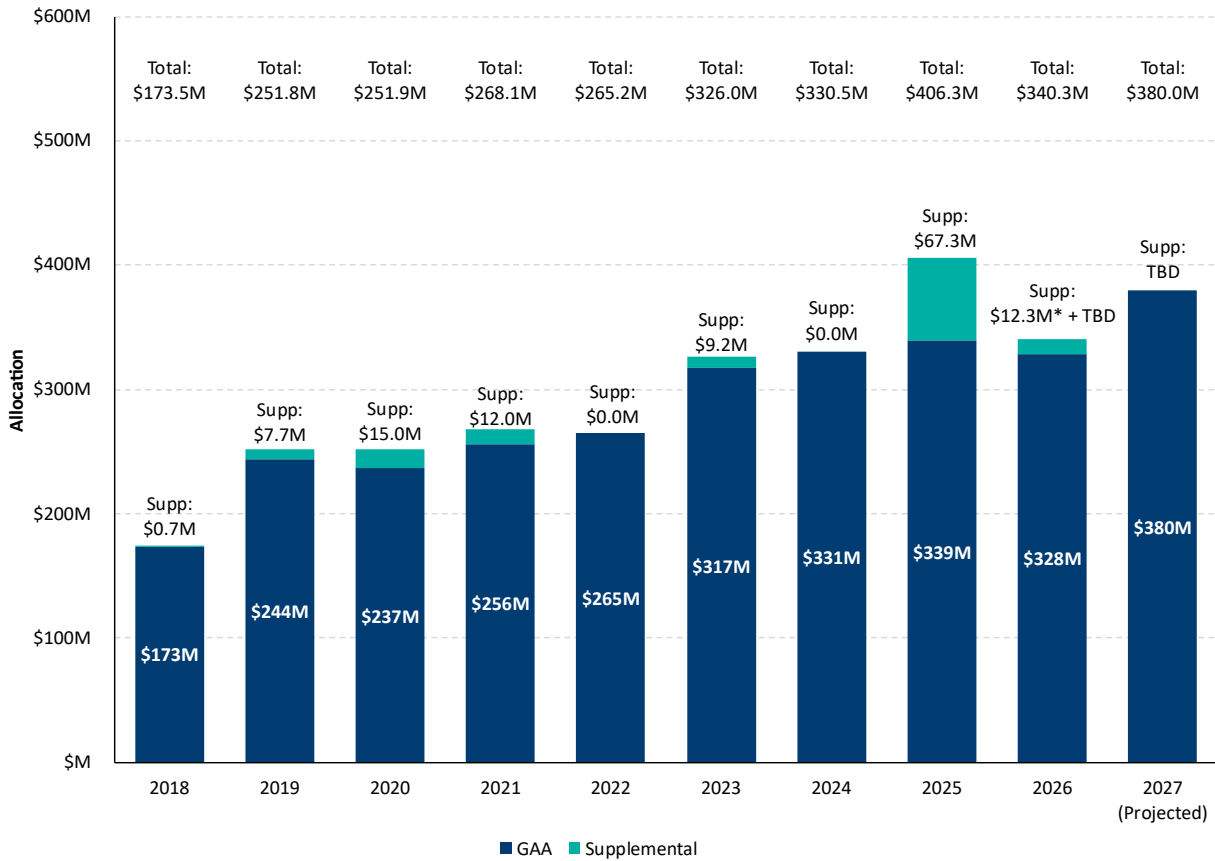
<sup>13</sup> See generally *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>14</sup> See *Funding Crisis Leaves Defense Lawyers Working Without Pay*, USCOURTS.GOV (July 15, 2025), available at <https://www.uscourts.gov/data-news/judiciary-news/2025/07/15/funding-crisis-leaves-defense-lawyers-working-without-pay>.

<sup>15</sup> David Carroll & Aditi Goel, *The State of the Nation on Gideon’s 60<sup>th</sup> Anniversary*, SIXTH AMENDMENT CENTER (March 14, 2023), available at <https://6ac.org/the-state-of-the-nation-on-gideons-60th-anniversary/>.

<sup>16</sup> On June 4, 2026, the Legislature passed a supplemental budget that includes \$12.3 million for CPCS. See H. 5450 (Mass. 2026). The bill is awaiting signature from Governor Healey as of the date of this report. Fiscal Year 2026 has not concluded as of the date of this report and the OIG does not know whether CPCS will request additional supplemental funding for Fiscal Year 2026.

**Figure 1. CPCS general and supplemental appropriations (FY18 – FY27).**



\*Pending signature from Governor Healey as of June 10, 2026

## B. Types of Indigent Defense Systems

Since *Gideon* and *Argersinger* were decided, states have been trying to balance providing effective counsel with budget and staffing constraints, and have adopted three general methods for providing representation for indigent defendants: (1) flat-fee contracts; (2) assigned counsel; and (3) public defender’s offices.<sup>17</sup> Each state system has its own unique structure, many of which utilize more than one of the three methods in a “hybrid” system. States also vary on whether indigent defense is administered and funded at the state, county, or local level.

### 1. Flat-Fee Contracts

Under flat-fee contracts, the state, county, or local government contracts with a lawyer, law firm, or group of lawyers who are paid a negotiated fee to handle a particular number or particular types of cases.

<sup>17</sup> For an expansive discussion of different models of indigent representation, see Eve Brensike Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 MICH. L. REV. 207, 214-240 (2023). Unless otherwise noted, the OIG relied on this resource for background information concerning models of indigent representation.

These systems can be categorized based on how the fee is calculated and what the fee covers. In some jurisdictions, the government pays a single lump sum to an attorney, group of attorneys, or law firm to handle all indigent cases they are assigned during the contract period.<sup>18</sup> For example, Carson City, Nevada, entered three-year contracts in 2017 with three private attorneys to handle all cases for which the state public defenders had a conflict of interest.<sup>19</sup> The attorneys received a fixed annual rate of \$120,000 in return.

In some jurisdictions, the government pays the attorney a set amount in exchange for the attorney agreeing to accept a specific number or category of cases during the contract period, such as a set fee for handling all misdemeanor cases in the jurisdiction.<sup>20</sup> In other jurisdictions, the government establishes a fee based on case type and the attorney is paid the fee for each case they take.

The commonality between each of these flat-fee arrangements is that attorney compensation is unaffected by the amount of time and effort spent on a case. Criminal justice experts and scholars criticize flat-fee contracts because they create “an inherent conflict between contract attorneys’ financial interests and their ethical obligations to competently defend their clients.”<sup>21</sup> Critics argue that because attorneys are paid the same amount regardless of the amount of work they put into a case, attorneys under flat-fee contracts are financially incentivized to dispose of cases quickly.

The American Bar Association discourages the use of flat payment rates, noting in a 1992 publication that the “possible effect of such rates is to discourage lawyers from doing more than what is

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<sup>18</sup> See ROBERT L. SPANGENBERG ET AL., THE SPANGENBERG GROUP, CONTRACTING FOR INDIGENT DEFENSE SERVICES A SPECIAL REPORT 1, 4 (2000), available at <http://www.ncjrs.gov/pdffiles1/bja/181160.pdf>.

<sup>19</sup> See SIXTH AMEND. CTR., THE RIGHT TO COUNSEL IN RURAL NEVADA EVALUATION OF INDIGENT DEFENSE SERVICES 1, 48 (2018), available at [https://6ac.org/wp-content/uploads/2024/02/6AC\\_NV\\_report\\_2018.pdf](https://6ac.org/wp-content/uploads/2024/02/6AC_NV_report_2018.pdf) [perma.cc/3HV8-QG8D].

<sup>20</sup> SPANGENBERG, *supra* note 18, at 1, 4.

<sup>21</sup> Primus, *supra* note 17, at 214. See also Maybell Romero, *Lowball Rural Defense*, 99 WASH. U.L. REV. 1081, 1112-14 (2021); SIXTH AMEND. CTR., THE RIGHT TO COUNSEL IN UTAH: AN ASSESSMENT OF TRIAL-LEVEL INDIGENT DEFENSE SERVICES 66 (2015), available at [https://6ac.org/wp-content/uploads/2024/02/6AC\\_utahreport.pdf](https://6ac.org/wp-content/uploads/2024/02/6AC_utahreport.pdf) (“The attorney is not rewarded with additional pay for the additional work involved in zealous advocacy. Rather, the attorney is hurt financially the more he does for his clients. Put another way, the government’s compensation structure creates a conflict between the lawyer’s financial interests and the case-related interests of each of his court-appointed clients. As a result of that conflict, the lawyer may triage the time and energy he puts into his cases.”).

minimally necessary to qualify for the flat payment.”<sup>22</sup> Several states have limited or banned flat-fee indigent defense contracts.<sup>23</sup>

## 2. Assigned Counsel

Assigned counsel programs involve the designation of private attorneys to take on specific indigent defense cases. The administration of assigned counsel programs vary across the country. In some jurisdictions, assigned counsel are appointed by the court. The attorney’s selection may be based on a neutral rotation system or the judge may be allowed to use their discretion in selecting an attorney. In other systems, an appointment system is administered by an independent agency without court involvement.

Scholars and experts warn that judicial involvement in assigning counsel creates inherent risks and biases.<sup>24</sup> In a survey by the Texas Bar Association of judges in Harris County, Texas, 46.4% of surveyed judges reported that “their peers sometimes appoint counsel because they have a reputation for moving cases, regardless of the quality of the defense they provide,” 35.1% of judges “sometimes consider whether the attorney is a political supporter,” and 30.3% of judges sometimes consider whether an attorney “has contributed to their campaign.”<sup>25</sup> These potential conflicts and biases are mitigated in assigned counsel systems that are administered by independent agencies without court involvement.

While some assigned counsel programs pay per case or event, similar to flat-fee contracts, most programs pay an hourly rate. The American Bar Association recommends that assigned counsel receive “prompt compensation at a reasonable hourly rate” to encourage quality legal representation.<sup>26</sup>

In systems that pay attorneys an hourly rate, many set maximum fee caps with an upper limit on what an attorney can earn per case.<sup>27</sup> Setting a cap too low can create an incentive structure similar to

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<sup>22</sup> See AM. BAR ASS’N, ABA STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES 40 (3rd ed. 1992), available at [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/providing\\_defense\\_services.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf); See also *Principle 2: Funding, Structure, and Oversight* n.6, AM. BAR ASS’N STANDING COMM. ON LEGAL AID AND INDIGENT DEF. (Aug. 23, 2023), available at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/indigent\\_defense\\_systems\\_improvement/standards-and-policies/ten-principles-pub-def/principle-2/#:~:text=of%20experienced%20counsel,-,ABA%20Criminal%20Justice%20Standards:%20Providing%20Defense%20Services%2C%20Standard%205%2D,the%20venture%20unprofitable.%22](https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/standards-and-policies/ten-principles-pub-def/principle-2/#:~:text=of%20experienced%20counsel,-,ABA%20Criminal%20Justice%20Standards:%20Providing%20Defense%20Services%2C%20Standard%205%2D,the%20venture%20unprofitable.%22) (“Counsel should not be paid on a flat fee basis, as such payment structures reward counsel for doing as little work as possible.”).

<sup>23</sup> For example, Idaho passed a law banning all flat fee contracting for indigent representation in 2014. See David Carroll, *Idaho Governor signs public defense commission bill into law*, SIXTH AMEND. CTR. (April 1, 2014), available at <https://6ac.org/idaho-governor-signs-public-defense-commission-bill-into-law/>.

<sup>24</sup> See Stephen B. Bright, *Independence of Counsel: An Essential Requirement for Competent Counsel and a Working Adversary System*, 55 HOUS. L. REV. 853, 882 (2018).

<sup>25</sup> Charlie Gerstein, *Dependent Counsel*, 16 STAN. J. CIV. RTS. & CIV. LIBERTIES 147, 161-63, n. 60 (2020) (citing ALLAN K. BUTCHER & STEPHEN K. MOORE, STATE BAR OF TEXAS, MUTING GIDEON’S TRUMPET: THE CRISIS IN INDIGENT CRIMINAL DEFENSE IN TEXAS 12 (2000)).

<sup>26</sup> See AM. BAR ASS’N, ABA STANDARDS FOR CRIMINAL JUSTICE PROVIDING DEFENSE SERVICES 39 (3rd ed. 1992), available at [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/providing\\_defense\\_services.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.authcheckdam.pdf).

<sup>27</sup> Findings 18 and 19 compare Massachusetts’s payment model with the hourly rates and fee caps in other states.

flat-fee contract systems. Like contract attorneys, assigned counsel are tasked with paying for their own benefits, malpractice insurance, and other costs related to running a legal business. Many states have maintained the same hourly rate for years, failing to account for inflation or rising costs of living.

Some assigned counsel programs also suffer from a lack of internal controls surrounding overbilling. For example, a 2020 audit investigated significant billing irregularities among Maine’s assigned private attorneys and found many examples of attorneys billing more than 24 hours in a day.<sup>28</sup>

### 3. Public Defender Offices

Public defender offices are government-funded agencies staffed with salaried attorneys who represent indigent defendants assigned to them.

Salaries and caseloads vary across different public defender systems. According to survey data obtained in 2021, the average starting annual salary for public defenders was \$66,193.<sup>29</sup> In Massachusetts, the starting salary for a CPCS staff attorney is \$79,000. Some public defenders have been forced to handle large caseloads. For example, according to a 2014 lawsuit brought by the ACLU against Fresno County, California, public defenders were assigned, on average, over 400 felony cases a year or over 1,300 misdemeanor cases a year.<sup>30</sup> A hybrid system can allow a public defender office to cap their case intake before it becomes overwhelming, pushing overflow cases onto flat-fee contract attorneys or assigned counsel.

Supporters of public defender systems point to studies showing that public defender offices reliably achieve more positive outcomes for their clients and are more cost-effective than contract and assigned counsel systems. For example, a study of state court cases in San Francisco found that defendants represented by public defenders, as opposed to private assigned counsel, were less likely to be convicted, less likely to receive a prison sentence, and received shorter prison sentences when they were given.<sup>31</sup>

Proponents also argue that public defender offices save money through economies of scale and budget predictability. Operating as an office with salaried attorneys and support staff, such as investigators and social workers, allows a public defender office to pool resources. The office can divide work strategically, develop model briefs and pleadings, and systematically train and supervise new

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<sup>28</sup> See Primus, *supra* note 17, at 232 nn. 148-49 (citing ME. COMM’N ON INDIGENT LEGAL SERVS., AN EVALUATION OF MCILS’S STRUCTURE OF OVERSIGHT AND THE ADEQUACY OF ITS SYSTEMS AND PROCEDURES TO ADMINISTER PAYMENTS AND EXPENDITURES 10-12 (2020), available at <https://legislature.maine.gov/doc/4769>).

<sup>29</sup> See Matt Perez, *Low Pay A Deterrent To Would-Be Public Defenders*, LAW360 (Oct. 17, 2021, 8:02 PM), <https://www.law360.com/articles/1430492/low-pay-a-deterrent-to-would-be-public-defenders>. Among public defender’s offices identified in the 2021 data, San Francisco paid entry-level attorneys the most at \$131,000, while Tulsa and Oklahoma City, Oklahoma, and Louisville, Kentucky, paid the least at \$45,000.

<sup>30</sup> See Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief at 2, *Phillips v. State*, No. 15CECG02201, 2015 WL 10711177 (Cal. Super. Ct. July 14, 2015).

<sup>31</sup> YOTAM SHEM-TOV, UC BERKELEY, MAKE-OR-BUY? THE PROVISION OF INDIGENT DEFENSE SERVICES IN THE U.S. 2-3 (2017), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2816622](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2816622) (“[D]efendants assigned to a [public defender] in San Francisco obtain more favorable sentencing outcomes in a range of measures including a lower probability of conviction (6.4%) or prison sentence (22%), as well as a shorter expected imprisonment term (10.4%).”).

attorneys. A study conducted in Kansas determined that if the public defender office had taken half of the assigned-counsel caseload for Fiscal Year 2020, the state would have saved \$1.3 million.<sup>32</sup>

### III. History of Appointed Counsel in Massachusetts

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While the United States Supreme Court dictates the constitutional “floor” for indigent representation, Massachusetts law and Massachusetts courts have expanded the right to indigent representation in Massachusetts.

The Massachusetts Constitution provides that an accused has the right to be defended by counsel in a criminal prosecution.<sup>33</sup> The Commonwealth has a long history of appointing defense counsel for defendants in capital cases, dating back to the 1790s.<sup>34</sup> Most of these attorneys received no compensation for these appointments until 1893, when the Legislature formally “authorized payment of reasonable compensation and expenses to court-appointed attorneys defending persons indicted for murder who were otherwise unable to procure counsel.”<sup>35</sup> The SJC expanded this right to all Superior Court noncapital felony cases in 1958, and amended it to require counsel for all indigent defendants facing imprisonment in 1964.<sup>36</sup> Today, Section 5 of Chapter 211D of the Massachusetts General Laws provides, in relevant part, that:

[CPCS] shall establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding, either criminal or noncriminal in nature, provided, however, that the laws of the commonwealth or the rules of the supreme judicial court require that a person in such proceeding be represented by counsel; and, provided further, that such person is unable to obtain counsel by reason of his indigency.

Massachusetts statutes and Massachusetts courts have expanded the right to appointed counsel into areas beyond criminal prosecution, including child custody proceedings involving the Department of

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<sup>32</sup> BD. OF INDIGENTS’ DEF. SERVS., A REPORT ON THE STATUS OF PUBLIC DEFENSE IN KANSAS 310 (2020), available at <https://static1.squarespace.com/static/618ead816ec5644390747026/t/6243e8418267d679b8d59a99/1648617705769/A+Report+on+the+Status+of+Public+Defense>.

<sup>33</sup> Mass. Const. art. XII (“No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, *and to be fully heard in his defense by himself, or his council at his election*. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.”) (emphasis added).

<sup>34</sup> For more on this history, see *Carrasquillo v. Hampden Cnty. Dist. Cts.*, 484 Mass. 367, 371 n. 4 (2020) (collecting sources).

<sup>35</sup> *Carrasquillo*, 484 Mass. at 371.

<sup>36</sup> See S.J.C. Rule 10, 337 Mass. 813 (1958), *as amended*, 347 Mass. 809 (1964) (current version available at S.J.C. Rule 3:10); See also *Commonwealth v. O’Leary*, 347 Mass. 387, 390 (1964) (“[I]t would be wise to offer to appoint counsel except for the most trifling of offences for which no sentence of imprisonment may be imposed.”). For further discussion of this history, see *Carrasquillo*, 484 Mass. at 371-73; *Commonwealth v. Barrett*, 3 Mass. App. Ct. 8, 11-12 (1975).

Children and Families,<sup>37</sup> civil mental health commitment proceedings, proceedings involving the administration of antipsychotic medication,<sup>38</sup> and youthful offender cases involving the Department of Youth Services.<sup>39</sup> This report's Appendix C collects Massachusetts laws and court cases that require or allow for appointment of counsel in Massachusetts.

## A. Creation and Organization of CPCS

In 1960, the Legislature formed the Massachusetts Defenders Committee to provide counsel to defendants who could not afford representation “at any stage of a criminal proceeding, other than capital, in any court of the commonwealth” if counsel was required by law or court rule.<sup>40</sup> Separately, the County Bar Advocate Program, which was affiliated with county bar associations, provided counsel in most counties of the Commonwealth, and the Roxbury Defenders Committee (RDC), a private nonprofit corporation, provided representation to indigent defendants in the Roxbury District Court and the Suffolk Superior Court.<sup>41</sup>

In 1983, the Legislature consolidated these programs into the Committee for Public Counsel Services (CPCS), established to “plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by all salaried public counsel, bar advocate and other assigned counsel programs, and private attorneys serving on a per case basis” throughout the Commonwealth.<sup>42</sup> The Legislature originally provided for a 15-member governing committee appointed solely by the Supreme Judicial Court (SJC).<sup>43</sup> The Legislature also made CPCS responsible for defining indigency as well as creating uniform procedures for determining indigency across courts, subject to the approval of the SJC.<sup>44</sup>

Today, CPCS falls organizationally within the court system but is an independent state agency governed by a committee of 15 people (Committee). Committee members serve four-year terms without compensation, and are appointed as follows:

- Governor: two appointments
- Senate President: two appointments

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<sup>37</sup> M.G.L. c. 119, § 29.

<sup>38</sup> M.G.L. c. 123, § 5.

<sup>39</sup> M.G.L. c. 120, § 18.

<sup>40</sup> 1960 Mass. Acts c. 565.

<sup>41</sup> For further discussion of the history of CPCS, see COMM. FOR PUB. COUNS. SERVICES, FIRST ANNUAL REPORT (1985), available at <https://archives.lib.state.ma.us/server/api/core/bitstreams/98f6b62b-8421-4316-8382-da9884b86df9/content>.

<sup>42</sup> 1983 Mass. Acts. c. 673, § 1.

<sup>43</sup> 1983 Mass. Acts. c. 673, § 1; M.G.L. c. 211D, § 1. For a list of current Committee members, see *Committee Members*, COMM. FOR PUB. COUNS. SERVICES, available at <https://www.publiccounsel.net/committee/> (last visited April 29, 2026). The appointment dates of Committee members are identified in Finding 36.

<sup>44</sup> 1983 Mass. Acts c. 673, § 2. The failings of this process are discussed in Finding 37.

- House Speaker: two appointments
- Supreme Judicial Court: nine appointments<sup>45</sup>

The Committee appoints a chief counsel to oversee CPCS. CPCS has four divisions of staff attorneys: the Public Defender Division (PDD) that represents adult criminal defendants, the Children and Family Law Division (CAFL), the Mental Health Litigation Division (MHL), and the Youth Advocacy Division (YAD). CPCS also has a Private Counsel Division that oversees the appointment of private counsel to case assignments, otherwise known as “bar advocates.”<sup>46</sup> This report’s Appendix D provides the full organizational chart of CPCS.

In the interest of simplicity, this report refers to all private counsel who submit bills to CPCS for payment as “bar advocates.”

## B. Early CPCS Funding Challenges

In a 1994 report, the Massachusetts Bar Association’s Commission on Criminal Justice Attorney Compensation recommended that the Legislature increase bar advocates’ hourly rates.<sup>47</sup> By 2003, Massachusetts was tied for the third-lowest hourly rates for bar advocates in the country, with wages remaining largely stagnant since 1986.<sup>48</sup>

Bar advocates continue to face funding challenges despite earning low hourly rates. For example, in July 2003, when signing the Fiscal Year 2004 budget, Governor Mitt Romney cut \$13 million from the CPCS budget for bar advocates and \$2 million in funding that covered court costs for indigent defendants.<sup>49</sup> Bar advocates across the Commonwealth staged protests and refused to work.<sup>50</sup> Ultimately, on August 20, 2003, the governor approved a Fiscal Year 2004 supplemental budget providing more than \$15 million in additional funding for CPCS, some of which was dedicated to bar advocates.<sup>51</sup>

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<sup>45</sup> M.G.L. c. 211D, § 1. Of the 9 appointments made by the SJC, 1 shall have public defender experience, 1 shall have bar advocate experience, 1 shall have criminal appellate experience, 1 shall have a public administration and public finance background, and 1 shall be a current or former dean or member of a law school. *Id.*

<sup>46</sup> M.G.L. c. 211D, § 13. The OIG notes that under statute, CPCS consists of two overarching divisions, the Public Defender Division and the Private Counsel Division, each overseen by a deputy chief counsel. The Private Counsel Division “shall include a child and family law program and a mental health unit.” M.G.L. c. 211D, § 6.

<sup>47</sup> *Striking a Balance: Adequate Compensation—Effective Representation 22–29*, MASS. BAR ASS’N (Nov. 1994), available at <https://www.massbar.org/docs/default-source/mba-reports/massbar-striking-a-balance-adequate-compensation-effective-representation-1994-januar-11.pdf?sfvrsn=2>.

<sup>48</sup> See Thanassis Cambanis, *Low pay is blamed, as lawyers for poor dwindle in state*, BOSTON GLOBE, Nov. 18, 2003.

<sup>49</sup> See Michael Kunzleman, *House leaves legal aid hanging*, MILFORD DAILY NEWS (July 22, 2003, 10:00 PM), available at <https://www.milforddailynews.com/story/news/2003/07/22/house-leaves-legal-aid-hanging/41256778007/>.

<sup>50</sup> See Thanassis Cambanis, *Low pay is blamed, as lawyers for poor dwindle in state*, BOSTON GLOBE Nov. 18, 2003.

<sup>51</sup> 2003 Mass. Acts c. 55, § 2, line items 0321-1510, 0321-1512, 0321-1520.

### C. 2004 – 2005: Creation of the Lavallee Protocol and Legislative Response

As of April 2004, bar advocate compensation rates were set at \$30 per hour for District Court cases, \$39 per hour for Superior Court cases, and \$54 per hour for murder cases.<sup>52</sup>

On May 3 and 4, 2004, no Hampden County bar advocates appeared in Springfield District Court to accept assignments.<sup>53</sup> On those two days, many indigent defendants were arraigned without counsel, and a judge set bail or issued an order of preventive detention for some of them.<sup>54</sup> The presiding judge assigned the chief counsel of CPCS to represent the defendants. Instead, on May 6, 2004, CPCS filed a petition with a single justice of the Supreme Judicial Court (SJC) seeking relief on behalf of 19 of those defendants being held in custody.<sup>55</sup> On the same day, the American Civil Liberties Union of Massachusetts filed a petition on behalf of five other defendants being held without counsel by order of judges in the Holyoke District Court. The cases were consolidated and made their way to the full SJC.

The petitioners alleged that the Commonwealth’s “chronic underfunding of the assigned counsel system administered by CPCS” led to an insufficient number of bar advocates willing to take indigent cases and asked the SJC to either (1) allow judges to order higher compensation for assigned bar advocates; or (2) set fair compensation rates itself.

The SJC found that the petitioners were deprived of their constitutional right to counsel but declined to grant the precise remedy requested by the petitioners. Instead, the SJC created a different remedy, subsequently known as the “Lavallee protocol.” When the protocol is in effect, the Trial Court will schedule status hearings for defendants whose cases have been pending for 45 days or who have been held without bail for 7 days (“Lavallee hearings”). At a Lavallee hearing, the judge is required to determine if CPCS has made “good faith efforts” to obtain counsel. If the judge makes this determination, the judge is required to release any defendant held in custody for longer than 7 days and dismiss without prejudice any charges pending for longer than 45 days.

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<sup>52</sup> JOHN H. ROGERS ET AL., REPORT OF THE COMMISSION TO STUDY THE PROVISION OF COUNSEL TO INDIGENT PERSONS IN MASSACHUSETTS 5 (2005), available at <https://perma.cc/8SC6-AEXA>.

<sup>53</sup> Unless otherwise noted, the OIG gathered information in this section from *Lavallee v. Justs. in Hampden Superior Ct.*, 442 Mass. 228 (2004).

<sup>54</sup> The OIG has relied on court documents to identify the number of unrepresented defendants in 2004. See *Lavallee*, 442 Mass. at 232 n.10 (stating that as of July 8, 2004, 58 defendants were without representation and 31 were held in custody).

<sup>55</sup> The single justice session is a part of the SJC’s practice that allows a wide range of matters to be brought to a single justice of the SJC, sitting in Boston. See generally *Supreme Judicial Court Single Justice Practice and Procedure*, Mass.gov, available at <https://www.mass.gov/guides/supreme-judicial-court-single-justice-practice-and-procedure> (last visited May 28, 2026). Relevant here, the single justice receives petitions brought under the authority of the SJC’s general supervisory power over the lower courts. See M.G.L. c. 211, § 3 (“The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided.”). After reviewing the petition, the single justice may deny relief, issue an order to the lower court, or reserve and report the matter to the full SJC for further consideration.

The SJC deferred to the Legislature for a longer-term resolution of the constitutional violation posed by such circumstances, saying that “[a]s the representative branch in charge of making laws and appropriating funds, [the Legislature] will no doubt continue to exercise prudence and flexibility in choosing among competing policy options to address the rights of indigent defendants to counsel.”

**Lavallee protocol:** Named after a 2004 court case, *Lavallee v. Justices in the Hampden Superior Court*, the Lavallee protocol is a judge-made procedure for supervising cases after an established breakdown in the normal process for appointing counsel. Once implemented by the Supreme Judicial Court, the Lavallee protocol creates temporary new rules in impacted courts, including:

- Hearings that require a defendant who has been detained without bail for more than 7 days without representation to be released on personal recognizance; and
- Hearings that require a defendant who has been unrepresented for more than 45 days to have their charges dismissed without prejudice.

In August 2004, largely in response to the *Lavallee* crisis, the Legislature authorized a \$7.50 per hour raise in bar advocate rates and established a commission to study the provision of counsel to indigent persons in Massachusetts.<sup>56</sup> In April 2005, the commission released a report with several recommendations, including one to increase bar advocates’ hourly rates substantially further over the next three fiscal years.<sup>57</sup> In July 2005, the Legislature passed a law that increased bar advocates hourly rates, authorized CPCS to hire additional personnel, and restricted bar advocates from taking additional assignments after billing 1,400 hours.<sup>58</sup> The law also refined the indigency verification process and allowed certain municipal ordinances, bylaws, and misdemeanors to be treated as civil infractions. In addition, it established two commissions: one to study the reclassification of certain misdemeanor offenses to eliminate the possibility of incarceration, and another to study measures to raise revenue for indigent legal services.

#### **D. 2011: Expansion of CPCS and Changes to Controls**

In 2011, CPCS employed 230 public defenders and contracted with nearly 3,000 private bar advocates who were responsible for about 90% of indigent defense cases.<sup>59</sup> In his Fiscal Year 2012 budget proposal, Governor Deval Patrick proposed transferring CPCS from the judiciary to the executive

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<sup>56</sup> 2004 Mass. Acts c. 253.

<sup>57</sup> JOHN H. ROGERS ET AL., REPORT OF THE COMMISSION TO STUDY THE PROVISION OF COUNSEL TO INDIGENT PERSONS IN MASSACHUSETTS 11, 19 (2005), available at <https://perma.cc/8SC6-AEXA>. The Commission noted that after the August 2004 increases, bar advocate rates were \$37.50 per hour for District Court cases, \$46.50 per hour for Superior Court cases, and \$61.50 per hour for murder cases. The Commission recommended those rates be increased to \$55, \$70, and \$110 per hour, respectively, by Fiscal Year 2008.

<sup>58</sup> 2005 Mass. Acts c. 54. The law increased bar advocate rates to \$50 for CAFL, MHL, YAD, and District Court cases, \$60 for Superior Court cases, and \$100 for murder cases.

<sup>59</sup> See Kathleen Joyce, *Budget and Policy*, BOSTON BAR ASS’N (July 7, 2011), available at <https://bostonbar.org/policies/budget-and-policy/>.

branch and eliminating the bar advocate system.<sup>60</sup> Instead of adopting this measure, the Fiscal Year 2012 budget increased the CPCS budget by over 40% (\$13 million), cut funding for bar advocates by over 20% (\$24 million), required public defenders to take 25% of indigent defense cases, and capped bar advocates' total billable hours at 1,650 hours annually.<sup>61</sup> In addition, the law required individuals claiming indigency to sign a waiver that permits the probation officer to verify their wage, tax, and asset information using data from state government agencies.<sup>62</sup> The law also changed the makeup of the 15-member Committee to include of appointments by the Speaker of the House of Representatives, the Senate President, and the Governor.<sup>63</sup>

### **E. 2016 – 2022: Bar Advocate Adjustments and *Carrasquillo v. Hampden County District Courts*.**

The Fiscal Year 2017 budget established a waiver process on the annual hour limit, allowing bar advocates working on child and family law cases to bill up to 1,800 hours annually.<sup>64</sup> The law also decreased the percentage of indigent defense cases required to be represented by CPCS attorneys from 25% to 20%.<sup>65</sup>

In 2018, the Springfield District Court had numerous days when an insufficient number of bar advocates signed up to accept new appointments.<sup>66</sup> As a result, staff attorneys from CPCS were assigned additional cases, quickly exceeding caseload limits set by internal CPCS policy. Supervising CPCS attorneys met with the First Justice of the Springfield Court and informed him that the office could not fill in for bar advocates. In response, the First Justice ordered CPCS to provide counsel in the Springfield District Court. Two days after the order, CPCS filed an emergency petition, asking a single justice of the SJC to vacate the First Justice's order. The single justice adopted the protocol outlined in *Lavallee* and reported the case for consideration by the full SJC.

In March 2020, the SJC decided *Carrasquillo v. Hampden County District Court*, holding that the First Justice's appointment of CPCS staff attorneys infringed on CPCS's authority to control assignments and set caseload limits for its staff attorneys. The SJC clarified how the *Lavallee* protocol can be

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<sup>60</sup> *Budget Narrative*, GOVERNOR'S BUDGET FY2012, available at [https://budget.digital.mass.gov/bb/h1/fy12h1/exec\\_12/hdefault.htm](https://budget.digital.mass.gov/bb/h1/fy12h1/exec_12/hdefault.htm) (last visited March 24, 2026).

<sup>61</sup> *Compare* 2010 Mass. Acts c. 131, § 2, line items 0321-1500 and 0321-1510, with 2011 Mass. Acts c. 68, § 2, line items 0321-1500 and 0321-1510 (setting budget and 25% requirement). *See also* 2011 Mass. Acts c. 68, § 115 (capping annual billable hours).

<sup>62</sup> 2011 Mass. Acts c. 68, § 112.

<sup>63</sup> 2011 Mass. Acts c. 68, §§ 112, 173.

<sup>64</sup> 2016 Mass. Acts c. 133, § 119. The Chief Counsel of CPCS was required to find that there is limited availability of qualified counsel in the practice area, that private counsel would provide cost efficiencies, or that private counsel would improve the quality of service. *Id.*

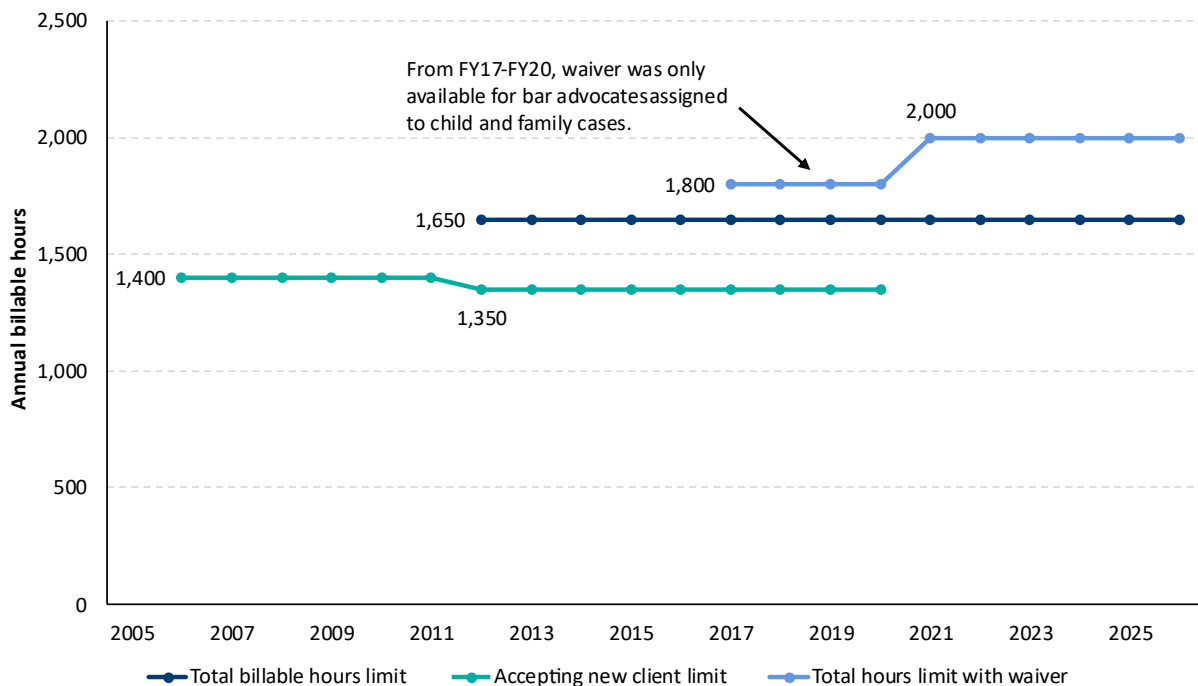
<sup>65</sup> 2017 Mass. Acts c. 47, § 2. This 20% requirement has been present in each general appropriation for CPCS since Fiscal Year 2018.

<sup>66</sup> Unless otherwise noted, the OIG gathered information in this section from *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367 (2020).

implemented: “[a] single justice must determine whether, despite good faith efforts by CPCS and the local bar advocate organization, there is an ongoing systemic violation of indigent criminal defendants’ constitutional right to effective assistance of counsel due to CPCS’s incapacity to provide such assistance through its staff attorneys or through bar advocates.”<sup>67</sup> While the First Justice exceeded his authority, the SJC noted that the high court holds “supervisory authority over the administration of justice,” which includes “the power to review CPCS’s decisions” concerning caseloads.<sup>68</sup>

The Fiscal Year 2021 budget extended the waiver process to all practice areas and increased the cap on billable hours for bar advocates who had received a waiver to 2,000 hours, essentially a 40-hour work week, without imposing any limits on the amount that could be billed per case.<sup>69</sup> Figure 2 below shows the annual billable hour caps for bar advocates since their origination in Fiscal Year 2005.

**Figure 2: Statutory annual billable hour limits for bar advocates (FY05 – FY26).**



## F. 2025: Work Stoppage and Lavallee Protocol Reimplemented

On May 27, 2025, many bar advocates began refusing to accept new cases or duty day assignments, citing low pay.<sup>70</sup> Approximately three weeks later, CPCS filed an emergency petition with the

<sup>67</sup> *Carrasquillo* at 390-91.

<sup>68</sup> *Carrasquillo*, 484 Mass. at 385 (“That is not to say that CPCS’s caseload determinations are exempt from judicial scrutiny. This court, in the exercise of its supervisory authority over the administration of justice, has the power to review CPCS’s decisions in that area.”).

<sup>69</sup> 2020 Mass. Acts c. 227, § 53. Finding 30 discusses how the annual limit fails to control against high bills on individual cases.

<sup>70</sup> *Comm. for Pub. Couns. Servs. v. Middlesex & Suffolk Cnty. Dist. Cts.*, No. SJ-2025-0244, 2025 WL 2048501 (Mass. July 3, 2025).

SJC, asking the SJC to resolve the problem by using its supervisory authority to increase bar advocate compensation. A single justice of the SJC, Justice Wendlandt, declined CPCS's request for the court to set a new rate of compensation for bar advocates, but the parties ultimately agreed that the Lavallee protocol should be imposed.

On July 3, 2025, Justice Wendlandt implemented the Lavallee protocol for all District Courts in Middlesex County and Suffolk County, as well as for the Boston Municipal Courts. The Lavallee protocol remains in place as of this writing and will remain in place until the single justice orders otherwise.

The single justice ordered the parties to file periodic updates with the SJC. Among other things, these updates require CPCS to report the caseloads of CPCS staff attorneys.

In an interview with the OIG, staff with the Executive Office of the Trial Court stated that the most impacted District Courts in Middlesex County and Suffolk County were Ayer District Court, Cambridge District Court, Concord District Court, Framingham District Court, Lowell District Court, Malden District Court, Marlborough District Court, Natick District Court, Newton District Court, Somerville District Court, Waltham District Court, Woburn District Court, and Chelsea District Court.

In late July 2025, the Legislature passed a supplemental budget which 1) provided \$40 million to CPCS for the hiring of additional CPCS staff attorneys and 2) increased rates for bar advocates by \$20 per hour over a period of two years, resulting in pay of \$85 per hour in District Court by Fiscal Year 2027.<sup>71</sup>

Both of these provisions were clearly directed to address the work stoppage. CPCS was instructed to prioritize hiring in counties affected by the work stoppage.<sup>72</sup> While the Legislature increased bar advocate hourly rates across the board, that provision also included a clause which, on its face, appears to make it easier for a future work stoppage to be charged as a violation of Massachusetts antitrust law.<sup>73</sup>

In October 2025, CPCS offered bar advocates a financial incentive of \$2,500 for every five new cases they accepted, with a maximum of \$7,500 for accepting 15 cases.<sup>74</sup>

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<sup>71</sup> See *generally* Press Release, MASS. SENATE PRESS ROOM (July 30, 2025), available at <https://malegislature.gov/PressRoom/Detail?pressReleaseId=232>. The supplemental budget was approved in August 2025. See 2025 Mass. Acts c. 14.

<sup>72</sup> See 2025 Mass. Acts c. 14, § 2, line item 0321-1599 (CPCS "shall prioritize hiring of public defenders that serve areas with unrepresented individuals awaiting counsel assignment, including counties with a recent history of private bar advocate work stoppages").

<sup>73</sup> See 2025 Mass. Acts c. 14, § 49 (adding a provision to Chapter 211D that would permit a work stoppage of 25% or more bar advocates in a given county to constitute evidence of a violation of the Massachusetts Antitrust Act). A group of bar advocates has filed a lawsuit with the SJC seeking an injunction against the antitrust provision. See Complaint, *MAPAC Inc. et al. v. Att'y Gen. of the Commonwealth of Mass.*, SJ-2026-0195 (Mass. May 6, 2026).

<sup>74</sup> See Trajan Warren, *A new incentive program aims to reduce backlog of defendants in Mass. Will it be enough?*, WGBH.ORG (Oct. 21, 2025), available at <https://www.wgbh.org/news/local/2025-10-21/a-new-incentive-program-aims-to-reduce-backlog-of-defendants-in-mass-will-it-be-enough>. The OIG's analysis of this incentive program is discussed in Finding 22 and Finding 23.

In November 2025, CPCS again asked the SJC to order increased compensation rates for bar advocates.<sup>75</sup> Ultimately, the SJC declined to set increased rates and deferred pay increases to the Legislature. In its March 16, 2026 decision, the Court explained, “we refrain from interfering with the Legislature’s funding decisions in the *absence of extraordinary circumstances*, such as where the available funds are insufficient to maintain a constitutionally adequate court system, and even then, we would consider such action only after we exhausted all established methods of remediation.”<sup>76</sup>

In December 2025, in response to a statement by the Plymouth County district attorney that CPCS staff attorneys are not assigned enough cases due to “arbitrary” caseload limits, the Chief Counsel for CPCS issued the following statement:

The DA’s suggestion that our attorneys should simply ‘take more cases’ is reckless. It would violate ethical caseload limits, increase the risk of wrongful convictions, and undermine the integrity of the justice system.<sup>77</sup>

According to a CPCS report to the SJC, 9,022 unrepresented indigent defendants were reported under the Lavallee protocol between May 27, 2025, and April 27, 2026.<sup>78</sup> According to staff with the District Court administrative office and the Boston Municipal Courts, between July 3, 2025, and early December 2025, the courts held 2,345 Lavallee hearings which resulted in 1,689 dismissed cases and the release of 213 defendants held in-custody. The OIG understands that DA offices refiled many of the dismissed cases and moved to detain many of the defendants who were released from custody.

In interviews with judges and the Trial Court, the OIG was told that the 2025 work stoppage imposed a far greater strain on the court system than either of the prior two work stoppages.

To convey the scope of the 2025 work stoppage, Figure 3 below shows the number of unrepresented defendants, the number of Lavallee hearings, the number of cases dismissed, and the number of defendants released from custody in each of the three instances in which the SJC implemented the Lavallee protocol.<sup>79</sup>

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<sup>75</sup> *Comm. for Pub. Couns. Servs. v. Middlesex & Suffolk Cty. Dist. Cts.*, 497 Mass. 287, 288 (2026).

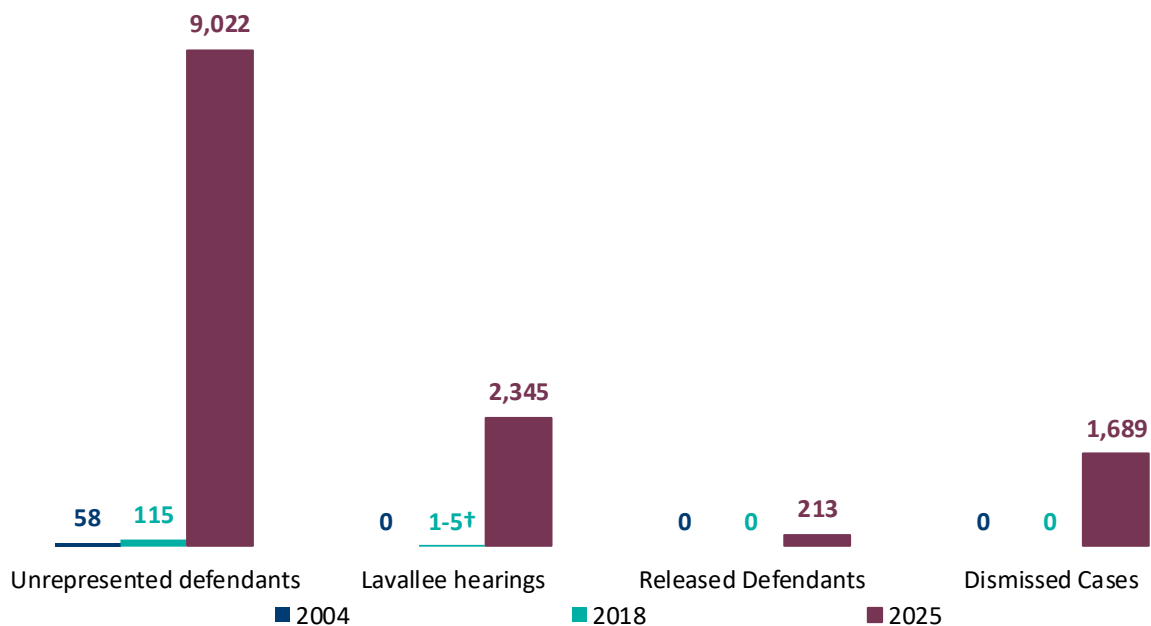
<sup>76</sup> *Comm. for Pub. Couns. Servs.*, 497 Mass. at 297 (internal quotations and citations omitted).

<sup>77</sup> See Brittany Johnson & Jenny Barron, *DA calls for scrutiny of public defender agency as Mass. court crisis drags on*, WCVB (last updated Dec. 3, 2025), available at <https://www.wcvb.com/article/da-calls-for-scrutiny-of-public-defender-agency-as-mass-court-crisis-drags-on/69611599>.

<sup>78</sup> See Committee for Public Counsel Services’ Periodic Update, April 2026, Affidavit of Holly Smith ¶ 2, *Comm. for Pub. Couns. Servs. v. Middlesex & Suffolk Cty. Dist. Cts.*, No. SJ-2025-0244 (Mass. Apr. 27, 2026). The OIG notes that some of these defendants had multiple charged cases.

<sup>79</sup> See *Carrasquillo v. Hampden Cty. Dist. Cts.*, 484 Mass 367, 389 n.27 (2020).

**Figure 3: Implementations of Lavallee protocol.**



†Based on interview with the Regional Administrative Justice assigned to hear cases when the Lavallee protocol was put in place as part of the *Carrasquillo* litigation.

#### IV. CPCS Operations

##### A. Duty Days

On any given day that a District Court or the Boston Municipal Court is in session, there are newly charged criminal cases for which defendants must be processed, arraigned, and considered for bail.<sup>80</sup>

CPCS has organized a “duty day” system, whereby a bar advocate or CPCS staff attorney is scheduled to be at the court to be available to represent indigent defendants at these arraignments and bail hearings. The assigned duty day attorney often continues to represent a defendant throughout the criminal process. The duty day system is critical to both the court and the defendant – without a bar advocate or CPCS staff attorney available to represent an indigent defendant, the arraignment and bail hearing cannot proceed. Bar advocates contract with CPCS for the majority of duty days.

CPCS policy states that CPCS staff attorneys in the Public Defender Division (PDD) who take duty days are only assigned duty days through their sixth year of experience, after which the attorney-in-charge (AIC) retains discretion to assign staff attorneys duty days as needed. CPCS staff attorneys who generally

<sup>80</sup> Some defendants are arraigned in Superior Court following a grand jury indictment and a summons or arrest warrant. See Mass. R. Crim. P. 6. Appointment of counsel for arraignment in Superior Court is not handled through the duty day system.

work in Superior Court may still be expected to take District Court duty days. The AIC is responsible for scheduling duty days for staff attorneys.

The number of duty day attorneys assigned to a specific court on any given day depends on the day of the week and the court's schedule. For example, most courts schedule criminal trials, case hearings, pre-trial conferences, and arraignments on different days of the week in order to better manage their business.

The OIG learned from interviews that CPCS provides staff attorney coverage for a regular schedule of duty days. Courts will input CPCS coverage to the duty day schedule and provide this draft to their county bar advocate panel, which is expected to fill in the gaps with bar advocates.

Unlike CPCS staff attorneys, who work on a team and have the support of a supervisor to reallocate cases and moderate workflow, bar advocates are typically solely responsible for assigned cases on their duty day. Additionally, bar advocates do not get paid on duty days for waiting time that cannot be billed to a specific case. Many people the OIG interviewed, including court staff, suggested that adding a flat fee for bar advocate duty days and covering incidentals such as parking costs would encourage bar advocates to sign up for duty days.

## **B. Conflicts of Interest**

The Massachusetts Rules of Professional Conduct, promulgated and maintained by the SJC, set the ethical standards for the practice of law in the Commonwealth that all attorneys, judges, and clerks of court must follow.<sup>81</sup> The Rules of Professional Conduct include rules governing conflicts of interest.

Separately, CPCS has created a "Conflict Resolution Policy" that sets policy for CPCS staff attorneys concerning conflicts of interest involving current and former clients.<sup>82</sup> The Conflict Resolution Policy uses procedural guidelines and examples to identify the internal CPCS process for determining whether a conflict of interest exists and whether that conflict is disqualifying.

The Conflict Resolution Policy instructs CPCS attorneys to conduct a conflicts check regarding "every potential client's name and the names of any known co-defendants, witnesses, or complainants, cooperating individuals, and parties to the case." The policy prescribes a step-by-step conflict check process with accompanying forms and examples of potential conflicts.

When CPCS staff attorneys do not take a case because of a conflict, the case is reassigned to a bar advocate. The OIG heard in interviews with sitting judges that once a conflict is raised, the process of hearing from the putative conflicted counsel, dismissing the conflicted counsel, finding new counsel, and getting new counsel up to speed on the case causes significant delays.

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<sup>81</sup> See S.J.C. R. 3.07 (Massachusetts Rules of Professional Conduct).

<sup>82</sup> This report's Appendix E provides the CPCS Conflict Resolution Policy, last revised in January 2020.

Throughout this review, court personnel, judges, and bar advocates repeatedly told the OIG that CPCS staff attorneys liberally claim that a conflict of interest precludes CPCS from taking an appointment. In a court record, CPCS stated that between May 27, 2025, and July 1, 2025, CPCS conducted 450 conflict checks of defendants held in custody, of which 23% resulted in a conflict and prompted CPCS to reject the appointment.<sup>83</sup>

In interviews with the OIG, CPCS staff stated that CPCS is seeking to set up two “conflict offices” that would be separated from CPCS’s case management system. Staff attorneys in these offices could accept conflict cases to help reduce the frequency in which those cases have to be assigned to bar advocates.

### C. Non-Core Mission Work

CPCS assigns staff attorneys to work in several CPCS units where the attorneys perform work other than representing clients in matters where there is a right to appointed counsel. This work includes providing training and advice to other attorneys, as well as conducting litigation intended to impact issues related to indigent defense.

For example, CPCS’s EdLaw Project provides direct representation to students related to access to educational services, including representation before the Bureau of Special Education Appeals.<sup>84</sup> In Fiscal Year 2025, EdLaw Project staff attorneys represented 201 students. The EdLaw Project also provides training and indirect case support, records review, and legal research in an advisory capacity to attorneys representing youth. In Fiscal Year 2025, EdLaw Project staff attorneys provided advisory support in 100 cases and offered 29 training programs that reached over 1,000 participants. According to CPCS, it spent \$815,354.91 on the EdLaw Project in Fiscal Year 2025. Of that amount, \$276,638 was funded through the Children and Family Legal Representation Trust Fund established by Section 17 of Chapter 211D of the Massachusetts General Laws, which receives federal reimbursement funds pursuant to Title IV-E of the Social Security Act. CPCS staffs the EdLaw Project with eight attorneys and one administrative assistant.

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<sup>83</sup> See Statement of Facts, Exhibit 8, Supplemental Affidavit of Arnie Lucinda Stewart ¶ 21, *Comm. for Pub. Couns. Servs. v. Middlesex and Suffolk Cnty. Dist. Cts. et al.*, SJ-2025-0244 (Mass. July 1, 2025).

Though few statewide public defender systems release information on the frequency of their conflicts, some comparisons are available. Colorado’s statewide public defender reported that in Fiscal Year 2025, 11% of new criminal cases were assigned to private counsel because of a conflict. See OFF. OF THE COLO. STATE PUB. DEF., FISCAL YEAR 2026-2027 BUDGET REQUEST (2025), available at <https://www.coloradodefenders.us/wp-content/uploads/FINAL-FY27-Budget-Request.pdf>. New Hampshire’s statewide public defender reported that roughly 15% of indigent defense cases cannot be accepted due to conflicts. See THE STATE OF N.H. JUD. COUNCIL, 25<sup>TH</sup> BIENNIAL REPORT JULY 1, 2023 – JUNE 30, 2025 (2025), available at <https://www.transparentnh.das.nh.gov/sites/g/files/ehbemt1071/files/documents/judicial-council-biennial-fy24-25.pdf>. Kentucky’s statewide public defender reported 6,584 “total conflict cases” in Fiscal Year 2025 and reported 130,600 new cases (roughly 5%). See KY. DEP’T OF PUB. ADVOC., ANNUAL REPORT - FISCAL YEAR 2025 (2025), available at <https://dpa.ky.gov/wp-content/uploads/2025/10/AR-2025-Final-Report-clc.pdf>.

<sup>84</sup> There is no law concerning appointment of counsel for hearings before the Bureau of Special Education Appeals. See M.G.L. c. 71B, § 2A (identifying hearing procedures for the Bureau of Special Education Appeals).

In another example, CPCS's Strategic Litigation Unit conducts impact litigation related to CPCS practice areas and issues such as the right to counsel and criminal justice. In Fiscal Year 2025, CPCS spent \$389,990 on the Strategic Litigation Unit, which was staffed by a director, one staff attorney, one data analyst, and one paralegal.

#### **D. External Reporting**

As discussed further in Finding 5, CPCS is required to report annually to the House and Senate Committees on Ways and Means. Much of the reporting concerns caseload and cost-per-case for CPCS staff attorneys and bar advocates. For example, in its annual report for Fiscal Year 2025, CPCS was required to provide the following information:

1. The caseload of attorneys in charge compared to the caseload of public defenders;
2. The number of cases handled by the committee in each reporting period, delineated by public defender and private bar advocate;
3. The average number of hours spent per case by public defenders;
4. The number of public defenders currently employed by the committee and the total number employed by the committee at the end of each fiscal year, delineated by division;
5. The number of public defender vacancies to be filled;
6. The average cost for public defender services rendered per case in the prior fiscal year;
7. The number of cases assigned to private bar advocates;
8. The average number of hours billed by private bar advocates;
9. The average cost for private bar advocate services rendered per case in the prior fiscal year;
10. The billable hours of private counsel, delineated by travel time and time spent in court (including wait time) and trial preparation time (including interview time, investigating time, and research time);
11. Any changes to the private bar billing system and any billing improvements that have been made;
12. The total number of support staff, investigators, attorneys in charge, and management personnel currently employed by the committee, and the total number employed by the committee at the end of each fiscal year for the previous two fiscal years; and

13. A summary of all spending for psychologists, psychiatrists, and investigators, including the total number of hours billed, the number of unique vendors, and the average number of hours billed.<sup>85</sup>

## **V. Bar Advocate Oversight**

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Bar advocates are subject to explicit, transaction-level fiscal controls, including hourly rate ceilings, waiting-time limits, daily billing caps, caseload restrictions, documentation requirements, and audit-based repayment authority. These controls apply at the individual billing-entry and case-assignment levels. These controls do not restrict the total number of hours that bar advocates can bill on individual cases.

The OIG reviewed the system of internal controls for bar advocate billing identified in two documents created by CPCS: the Assigned Counsel Manual and the Court Cost Vendor Manual.<sup>86</sup>

### **A. Certification, Training, and Evaluations**

County bar advocate panels contract with CPCS to provide indigent defense in their respective counties and contract with bar advocates to perform said work. According to CPCS, private attorneys complete “zealous advocacy” training conducted by CPCS in order to receive initial certification to join a bar advocate program. Most panels offer a compensated mentorship program for experienced bar advocates to train, provide feedback, and evaluate new bar advocates. Bar advocates are required to complete eight hours of continuing legal education annually.

Initial certification is provisional subject to a performance evaluation by a supervising attorney with the county bar advocate panel, which typically occurs within the attorney’s first 12 to 24 months in the program.<sup>87</sup> The performance evaluation can result in the attorney being required to receive remedial mentoring.

The OIG interviewed leaders of two county bar advocate panels, the Suffolk Lawyers for Justice (SLJ) in Suffolk County and Middlesex Defense Attorneys (MDA) in Middlesex County. In those county bar advocate panels, recent graduates hired as bar advocates sign a one-year contract, while more experienced attorneys typically sign a three-year contract. Attorneys who do not meet standards set out in the Assigned Counsel Manual are subject to non-renewal of their contract. One panel leader stated that their evaluation committee and board of directors conduct bar advocate performance reviews every two years. This is consistent with the performance standards outlined in sample contracts between CPCS and

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<sup>85</sup> 2024 Mass. Acts c. 140, § 2, line item 0321-1500.

<sup>86</sup> COMM. FOR PUB. COUNS. SERV., ASSIGNED COUNSEL MANUAL (2026), available at <https://www.publiccounsel.net/wp-content/uploads/2025/12/Assigned-Counsel-Manual.pdf>; COMM. FOR PUB. COUNS. SERV., COURT COST VENDOR MANUAL (2024), available at <https://www.publiccounsel.net/wp-content/uploads/2023/02/Court-Cost-Vendor-Manual.pdf>. Unless otherwise noted, the internal controls described in this section are found in these CPCS materials.

<sup>87</sup> CPCS contracts with experienced attorneys to supervise bar advocates in each district court.

county bar advocate panels reviewed by the OIG, which state that the panels “shall routinely monitor the performance of assigned attorneys” and “investigate complaints regarding the performance or conduct of assigned counsel.”

## **B. Annual and Daily Billing Limits**

Pursuant to Massachusetts law, CPCS imposes an annual billing limit of 1,650 compensable hours per fiscal year for bar advocates. Under certain circumstances, CPCS may authorize an increase to 2,000 hours, but attorneys must seek approval from CPCS.<sup>88</sup>

Bar advocates can monitor how many hours they have billed through their electronic billing (E-Bill) system account. According to CPCS, bar advocates also receive automated notifications when their processed hours reach the thresholds of 1,000 hours, 1,200 hours, 1,675 hours, 1,850 hours, and 2,000 hours. Bar advocates are responsible for tracking their own hours and should not accept new case assignments after they have reached the limit for the current fiscal year.

In addition to the annual limit, CPCS enforces a daily billing limit of 10 hours per day across cases. Bar advocates who exceed this limit must request a waiver; without a preapproved waiver, CPCS reduces the billable hours to the maximum allowable amount.

CPCS also regulates the use of associates and support staff by bar advocates. Associates are generally limited to \$50 per hour (unless a higher rate is authorized) and are limited to 10 billable hours per day. Associates may not bill for certain activities such as negotiating with opposing counsel, travel, or waiting time. Paralegal services may be reimbursed at up to \$35 per hour, subject to a 10-hour daily limit. Bar advocates who have reached their annual billing limit may not continue to submit bills for associates or paralegals to avoid the limit.

Other than the annual and daily billing limits, the OIG identified no limit or oversight concerning the number of hours that a bar advocate could bill on an individual case. Nor did the OIG identify any range of hours that would be considered reasonable to work on particular types of cases. The absence of this critical control allows high bills on individual bar advocate cases.<sup>89</sup>

## **C. Billing Requirements and Restrictions**

CPCS requires bar advocates to submit bills through its E-Bill system. Attorneys may submit one bill per case per month per Notice of Assigned Counsel (NAC) number, and billing entries must reflect the actual date the services were performed. Time must be recorded in tenth-hour increments (six minutes).

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<sup>88</sup> Figure 2 depicts how the bar advocate annual limits have changed over time. From interviews with bar advocates, the OIG understands that it is not difficult to receive a waiver of the annual billing limit.

<sup>89</sup> For more information concerning high bills on individual cases, see Finding 30.

CPCS imposes strict billing deadlines. Case-closed bills must be submitted within 30 days of the final date of service for full payment, which is recognized as the date the case concluded. Similarly, because bills cannot include costs from a prior fiscal year, an end-of-year bill must be received by July 31 for full payment (*i.e.*, 30 days after the start of the new fiscal year). Case-closed bills and end-of-year bills received less than 60 days “late” are reduced by 10%. Case-closed bills and end-of-year bills received after 60 days will not be paid unless the Chief Counsel finds that the circumstances meet the criteria of Section 12(a) of Chapter 211D of the Massachusetts General Laws. The E-Bill system will automatically notify an attorney when it determines that a bill has been submitted late.

CPCS policies prohibit bar advocate billing for activities considered part of normal law office overhead or administrative work. For example, bar advocates may not bill CPCS for office management activities (such as recordkeeping), clerical tasks (such as typing and secretarial services), routine law office expenses (such as law books or legal research tools), or managerial work.

Additional limits apply to waiting time and travel. Bar advocates may bill for up to two hours per client for waiting time in court but may not bill for a total of more than three hours of waiting time in court per day. Certain local travel to court may be non-compensable. An example is local travel to court where the round-trip distance is less than 30 miles.

#### **D. Audits and Complex Case Reviews**

CPCS maintains an Audit and Oversight Department responsible for monitoring bar advocate billing practices and investigating potential irregularities. Bar advocates must maintain complete case files and billing documentation and must provide those materials upon request. Failure to provide documentation or cooperate with an audit may result in administrative sanctions, including suspending assignments or withholding payments.

The audit process begins with a preliminary investigation examining billing records and supporting documentation. If concerns remain, CPCS may issue an audit letter requesting additional documentation from the bar advocate. The bar advocate typically has 30 days to respond and may request a limited extension.

After reviewing the response, CPCS may issue a recommendation, such as a reduction or rejection of bills, repayment of funds to the Commonwealth, suspension or removal from CPCS panels, or referral to disciplinary or law enforcement authorities (such as the Board of Bar Overseers, Attorney General’s Office, or local district attorney’s office). Attorneys may challenge the recommendation by submitting a written rebuttal, requesting a hearing before a CPCS hearing officer, or both.

In addition to formal audits, CPCS conducts complex case reviews (CCRs) when billing on an assignment exceeds certain thresholds. CCRs serve as a pre-payment review mechanism designed to identify unusual billing patterns before payment is issued. See related Findings 32 and 33.

The E-Bill system automatically flags excessive billing submissions and requires attorneys to submit documentation supporting the billed services. CPCS reviewers may request additional information and may approve, reduce, or reject billing claims. A CCR can have several results, including a reduction or rejection of billed hours, referral for performance evaluation, referral for a formal audit, or suspension from new assignments.

## **E. Vendor Oversight**

CPCS also regulates billing by vendors such as investigators and expert witnesses. Vendors are not subject to any set payment rate but must comply with billing policies similar to those applicable to bar advocates. For example, vendors are subject to an annual billing cap of 1,650 hours and a 12-hour daily billing limit. Vendors can only submit one bill per assignment per month and must submit all bills for services provided in a fiscal year on or before one month following that fiscal year's close.

Vendors are also subject to audits by the CPCS Audit and Oversight Department. According to CPCS, the department receives an automated report of vendor hours on April 1, May 1, and June 1. They also receive an automated report when a vendor's hours reach the thresholds of 1,050, 1,200, and 1,350 hours. Audit and Oversight staff review the report and inform the vendor directly via email that they are close to the annual limit of 1,650 hours.

Vendors must maintain documentation for seven years and must produce those records upon request. Failure to comply may result in actions such as payment reductions, suspension from CPCS assignments, or referral to licensing authorities.

According to CPCS, the judge on the case must approve submissions for expert costs for indigent defendants and has the authority to approve a lesser amount. The judicial system therefore provides a separate control mechanism for vendor costs.<sup>90</sup> CPCS informed the OIG that it does not track information that would allow a substantive analysis of judicial reductions to fee submissions.

## **VI. CPCS Staff Attorney Oversight**

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Unlike bar advocates, who are regulated through a variety of external administrative controls, CPCS staff attorneys are governed by an internal supervisory structure.<sup>91</sup>

CPCS staff attorneys are employees, and their time, work, and caseload are directed by supervising attorneys. Supervising attorneys offer guidance and mentorship. CPCS staff attorneys are also governed by personnel policies, performance evaluations, and employee discipline.

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<sup>90</sup> See Mass. R. Crim. P. 41 ("The judge may appoint an interpreter or expert if justice so requires and may determine the reasonable compensation for such services and direct payment therefor.").

<sup>91</sup> Unless otherwise noted, the information concerning oversight of CPCS staff attorneys is derived from the OIG's review of internal policy documents provided by CPCS.

According to an organizational chart provided to the OIG by CPCS, each of the four staff attorney divisions are divided into offices.<sup>92</sup> This report’s Appendix D contains the CPCS organizational chart. Staff attorneys are overseen by supervising attorneys, who report to the office’s AIC. According to CPCS, each office’s attorney-in-charge reports to a managing director who oversees offices within a geographical region. Managing directors report to the deputy chief counsel of the respective division, who reports to CPCS’s chief counsel.

### A. Assignment of Cases

Supervising attorneys and attorneys-in-charge are responsible for assigning cases and monitoring attorney caseloads. Case assignment is based on a subjective “highly individualized assessment” at the discretion of the supervising attorney and attorney-in-charge, taking into account attorney experience, case complexity, the consequences faced by the client, and the attorney’s existing workload.

CPCS assigns cases based on a progressive model that tracks the attorney’s years of comparable experience. Figure 4 below shows how case assignments are determined in the Public Defender Division.

**Figure 4: Case assignments in Public Defender Division.**

Attorney Experience	Case Assignments
Year 1	<ul style="list-style-type: none"> <li>• A small caseload of District Court cases</li> <li>• Shadowing more experienced attorneys</li> </ul>
Year 2	<ul style="list-style-type: none"> <li>• Full District Court caseload</li> <li>• Assigned some more serious cases (e.g., Superior Court Probation Violation, second seat at trial)</li> </ul>
Year 3	<ul style="list-style-type: none"> <li>• Full District Court caseload</li> <li>• Co-counsel with a more experienced attorney</li> <li>• Start to be assigned Superior Court cases</li> </ul>
Years 4-6	<ul style="list-style-type: none"> <li>• Fewer District Court cases</li> <li>• Increased Superior Court cases</li> </ul>
Years 7-10	<ul style="list-style-type: none"> <li>• More serious Superior Court cases</li> <li>• District Court cases depending on regional counsel capacity</li> <li>• Assist in training (e.g., have an attorney as a second seat)</li> </ul>

The deputy chief counsel and regional managing directors review and analyze staff caseloads at monthly meetings. The chief of administration and operations and the chief counsel review caseload data at quarterly and end-of-year meetings. These statistical reports track a variety of caseload metrics, including open cases, newly assigned cases, and cases “touched.”

<sup>92</sup> The Public Defender Division (PDD) has 17 offices, the Children and Family Law Division (CAFL) has 10 offices, the Youth Advocacy Division (YAD) has 9 offices, and the Mental Health Litigation Division (MHLD) has 4 offices.

CPCS policies state that tracking attorney caseload data allows management to examine workloads, help define priorities, identify opportunities to raise standards, and ensure accountability in representation.

## **B. CPCS Staff Attorney Supervision**

Staff attorney performance (as well as the performance of bar advocates) is guided by the Assigned Counsel Manual. CPCS staff attorneys who operate in specialty courts (*e.g.*, drug courts, mental health courts, homeless courts, veterans court) are also subject to performance standards that depart from the adversarial system of the criminal courts.

Attorneys-in-charge utilize a standardized checklist to ensure consistent and objective expectations and performance evaluations of staff attorneys. The checklist facilitates communication with regional managing directors about identified areas for improvement and plans for professional growth and support.

Regional managing directors oversee the performance management of offices in their region. Supervising attorneys conduct annual performance reviews for staff attorneys each fiscal year and send those reviews to the Human Resources Department.

According to internal policy, CPCS hires and assigns support staff to offices based on need, available resources, and in accordance with attorney-to-staff ratios set by CPCS.<sup>93</sup> Staff investigators and social workers are assigned to an office and record their activities in “run sheets.” CPCS told the OIG that when an attorney requires the assistance of a staff investigator or social worker, they detail their request in an email and the next staff investigator or social worker available in a rotation picks up the case.

According to CPCS, staff investigators and social workers or investigators are supervised day-to-day by the attorney-in-charge of their assigned office, while a regional supervising investigator or a regional supervising social worker provides professional advice, mentorship, and training. In the past year, the PDD launched an investigator case tracking system to track the caseload of staff investigators.

## **C. Case Management and Data Tracking**

CPCS informed the OIG that case assignment data for CPCS staff attorneys is stored in a proprietary case management system called Zelly. Data in Zelly can be broken out by division and by attorney, can be searched by year or by a specified reporting period, and can show the count of existing cases, new cases, and cases closed during a particular period.

According to CPCS internal procedures, a client’s file consists of data in both the Zelly case management system and an electronic file in a shared local drive on CPCS’s server. After being assigned a

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<sup>93</sup> Finding 21 examines the current ratio of support staff to attorneys employed in the PDD.

new case, attorneys are required to open the case in both locations. The electronic file includes folders for opening documents, pleadings/motions, releases, correspondence, notes, and discovery.

When a case is closed, the CPCS staff attorney is required to close the case in Zelly and move the electronic file to a designated “Closed Case” folder, organized by fiscal year, in the shared local drive.

CPCS shared with the OIG that its offices also maintain caseload spreadsheets to record open and closed cases, as well as the assigned attorney. The attorney information must be updated if the case assignment changes.

Case assignment data for bar advocates is stored in a D3/PICK database as part of a transfer system that inputs data from MassCourts (the Trial Court’s electronic docket system), including an automatically generated Notice of Assigned Counsel (NAC) number. CPCS uses aggregated NAC numbers to review bar advocate caseload data. D3/PICK also shares information with E-Bill, the billing system for bar advocates. These connected systems allow CPCS to readily calculate both caseload and cost-per-case for individual bar advocates.

Despite routine requests from the Legislature about CPCS staff attorney caseload, and despite CPCS’s own caseload policies being based on the number of hours required to work a case, CPCS does not require staff attorneys to record their hours worked on each case. As a result, it is not possible to conduct a cost-per-case analysis for CPCS staff attorneys with the same level of granularity as for individual bar advocates.

#### **D. Vendor Oversight**

In communications with the OIG, CPCS stated that staff attorneys utilize external vendors and experts less than bar advocates due to the availability of CPCS staff investigators and social workers, as well as the constraints of a set budget. CPCS maintains a list of preauthorized vendors and the use of a vendor must be approved by the Deputy Chief Counsel. As with bar advocates, CPCS staff attorneys must seek court approval for a vendor by filing a Motion for Funds.

The OIG requested data from CPCS to review vendor expenditures on a case-by-case basis. While CPCS maintains vendor data on individual bar advocate cases, CPCS aggregates vendor data across CPCS staff attorney cases and does not link vendor bills with a specific case.

### **VII. Public Defender Caseloads**

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Different organizations have developed metrics to evaluate whether public defense attorneys are being assigned too many cases. The OIG reviewed two national standards as well as internal CPCS assessments and policies.

## A. National Standards

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals issued a report identifying maximum caseloads that a defense attorney could handle per year (NAC standards).<sup>94</sup> The NAC standards are the most widely recognized measure of caseload capacity for criminal defense attorneys. The NAC standards identify annual caseload capacities of no more than 400 misdemeanor cases, no more than 150 felony cases, no more than 200 mental health cases, no more than 200 juvenile cases, and no more than 25 appeal cases. The NAC standards have not been updated since they were adopted and are criticized as outdated, poorly developed, and higher than reasonable to achieve quality representation.<sup>95</sup> Despite these criticisms, the NAC standards have had a significant impact on public policy and continue to be the foundation for caseload assignments in several states.<sup>96</sup>

In 2023, the RAND Corporation published a National Public Defense Workload Study (NPDWS) in collaboration with the American Bar Association Standing Committee on Legal Aid and Indigent Defense.<sup>97</sup> The goal of the NPDWS was to revisit the NAC standards, taking into consideration more recent caseload studies conducted in various states, and recommend a set of case weights for adult criminal matters that could be used as default workload metrics for indigent defense in state trial courts across the country. The authors produced caseload standards for different categories of cases, identifying the maximum number of new cases that a public defender should be assigned in a given year. For example, the study recommends a maximum of seven felonies with the possibility of a sentence of life without parole, a maximum of 59 low-level felonies, a maximum of 93 more serious misdemeanors, and a maximum of 150 less serious misdemeanors per year.

Figure 5 below, included in the NPDWS, compares NPDWS caseload recommendations with the NAC standards.

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<sup>94</sup> NAT'L ADVISORY COMM'N ON CRIM. JUST. STANDARDS AND GOALS, COURTS (1973).

<sup>95</sup> See NICHOLAS M. PACE ET AL., RAND CORP., NATIONAL PUBLIC DEFENSE WORKLOAD STUDY 20-22 (2023), available at [https://www.rand.org/pubs/research\\_reports/RRA2559-1.html](https://www.rand.org/pubs/research_reports/RRA2559-1.html).

<sup>96</sup> See PACE, *supra* note 95, at 18-20 (identifying several states that reaffirmed or adopted similar felony and misdemeanor caseload limits within the last decade, including Washington (2015), Indiana (2016), Wyoming (2016), Ohio (2019), Oregon (2021), Michigan (2021), and New York (2021)).

<sup>97</sup> See PACE, *supra* note 95 at iii.

Figure 5: 2023 National Public Defense Workload Study comparing caseload standards.

Table 7.2. Caseload Standards Comparison

Case Type	NAC Standards (maximum cases per year)	State-Level Study Medians (illustrative maximum cases per year) <sup>a, b</sup>	NPDWS Results (illustrative maximum cases per year) <sup>a</sup>
Felony–High–LWOP		8	7
Felony–High–Murder		7	8
Felony–High–Sex	150 (all felonies)	13	12
Felony–High–Other		27	21
Felony–Mid		30	36
Felony–Low		84	59
DUI–High	N/A	83	63
DUI–Low		171	109
Misdemeanor–High	400 (all misdemeanors)	100	93
Misdemeanor–Low		260	150
Probation and Parole Violations	N/A	346	154

<sup>a</sup> Effective caseload standard based on 2,080 annual case-related duty hours assumption and result rounded down to the nearest whole number.

<sup>b</sup> Categorizations of the case types used in the 17 state-level workload studies for the purpose of comparison with the NPDWS case types are subject to the limitations described in the discussion accompanying Table 4.3 and Table 4.4.

## B. CPCS Internal Assessments and Policies

In 2014, CPCS conducted a workload assessment using advisory groups of CPCS staff attorneys and bar advocate billing data. The resulting report, which CPCS provided to the OIG, identified “a range of case weight time to incorporate how much time attorneys should allocate for each case type.” This workload assessment determined that 1,662 hours is the full-time equivalent of a year of attorney time “by summing the number of work hours available in each year for direct case related work.”

The report included information shown in Figure 6 below that “shows the number of new cases an attorney could be assigned” based on 1,662 full-time equivalent (FTE) hours, as indicated in the “Annual New Cases” column. For example, a staff attorney in the PDD working a full caseload solely in District Court should be able to take 143 new cases in a year. Figure 6 also identifies the number of new cases that could be assigned based on a separate “quality adjusted” workload assessment, determined through discussions held with attorney advisory groups.

**Figure 6: 2014 CPCS workload assessment identifying recommended caseloads.**

<b>Available Hours for a Full Caseload Attorney (FCA): 1,662 Hours</b>		
<b>Practice Area</b>	<b>Prelim. Case Weight (based on FY13 case ratios)</b>	<b>Annual New Cases/FCA</b>
CAFL	43.26 hours	38
Mental Health	10.16 hours	164
PDD District	11.61 hours	143
PDD Superior	31.54 hours	53
YAD	14.98 hours	111
<b>Practice Area</b>	<b>Quality Adjusted Case Weight (based on FY13 case ratios)</b>	<b>Annual New Cases/FCA</b>
CAFL	58.95 hours	28
Mental Health	16.97 hours	98
PDD District	18.03 hours	92
PDD Superior	53.57 hours	31
YAD	33.35 hours	50

**1. Bar advocates**

Bar advocate caseloads are set forth in the Assigned Counsel Manual and are identified as “limits” on the number of cases a bar advocate may be assigned in a given fiscal year.<sup>98</sup> The Assigned Counsel Manual identifies “an absolute limit of 250 cases per year.” Each bar advocate is required to keep track of their own caseload and attorneys “will not be compensated for services provided” in excess of the caseload limit. CPCS will reassign cases that exceed the caseload limit, though the bar advocate may request to keep the case for the benefit of the client.

In addition, the Assigned Counsel Manual applies a weighted scale to bar advocate caseloads. For example, a District Court criminal case has a weight of 1, while a Superior Court criminal case has a weight of 2. Accordingly, if a bar advocate had 200 District Court criminal cases, they could only take 25 Superior Court criminal cases before exceeding the caseload limit of 250 cases.

The Assigned Counsel Manual identifies additional caseload restrictions for particular types of difficult cases, including Superior Court cases, youthful offender cases, juvenile delinquency cases, sexually dangerous person (SDP) cases, children and family law cases, and children requiring assistance (CRA) cases. Some cases, such as bail review cases, do not count toward the bar advocate caseload limit.

<sup>98</sup> See COMM. FOR PUB. COUNS. SERVS., ASSIGNED COUNSEL MANUAL (2026), available at <https://www.publiccounsel.net/wp-content/uploads/2025/12/Assigned-Counsel-Manual.pdf>.

Despite the caseload limit, a bar advocate can exceed the limit with approval from the appropriate Deputy Chief Counsel. Separately, a bar advocate may submit a request to the appropriate Deputy Chief Counsel that CPCS assign co-counsel to assist in representation on “particularly complex cases.”

## **2. CPCS staff attorneys**

Almost all CPCS staff attorneys work in one of four divisions: (1) the Public Defender Division (PDD), (2) the Youth Advocacy Division (YAD), (3) the Children and Family Law Division (CAFL), and (4) the Mental Health Litigation Division (MHLD). Across these divisions, CPCS has set different expectations for the number of cases a staff attorney is expected to work on, or “touch,” in a given fiscal year. The number of cases “touched” includes both cases that remained open from the prior fiscal year and new cases assigned in the fiscal year.<sup>99</sup>

### **a. Public Defender Division (PDD)**

CPCS policy concerning caseload for staff attorneys in the PDD is set forth in the Guidelines for the Public Defender Division (PDD Guidelines), which was provided to the OIG. The PDD Guidelines describe a caseload system in which attorneys are expected to “touch” 190 weighted cases in a fiscal year. The PDD Guidelines define the term “cases touched” to include the following: (1) cases pending at the start of the fiscal year; (2) cases assigned during the fiscal year (including probation violations and witness representation); (3) “second-seat” cases; (4) bail purposes only cases; (5) post-conviction representation; (6) advice-only cases; (7) witness representation cases; (8) clerk’s hearing cases; and (9) “other cases in which the attorney performed necessary miscellaneous services.”

In addition, the PDD Guidelines apply a weighted scale to CPCS attorney caseloads. District Court cases are weighted as a 1, Superior Court cases are weighted as a 2, and all murder charge cases are weighted as a 5.<sup>100</sup> All second-seat cases (regardless of severity) are weighted as a 1.

The PDD Guidelines also state that “a trial attorney will generally carry a weighted open caseload of approximately 50-70 weighted cases.”

### **b. Youth Advocacy Division (YAD)**

According to CPCS, attorneys in YAD do not have a weighted case system. All attorneys with over one year of experience are expected to “touch” 110 cases a year with a goal of working on 35 cases at any given time.

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<sup>99</sup> The term “touch” can be confusing. CPCS does not count multiple interactions with the same case (for example, a staff attorney who takes an arraignment and a motion hearing) as multiple “touches.” It may be easier to think of the term “touch” as a case assigned to a staff attorney.

<sup>100</sup> In response to a request for a list of charges that would receive a weight of 5, CPCS stated that the attorney-in-charge for the office would be aware if a PDD staff attorney was working on a murder case.

### **c. Children and Family Law Division (CAFL)**

According to CPCS, attorneys in CAFL do not have a weighted case system. Newer attorneys must have 12 cases at their six-month mark and 20 cases at their one-year mark. Attorneys must have 38 cases by their second-year mark. AICs and supervisors are expected to have half of a full caseload, with a target of 19 cases.

### **d. Mental Health Litigation Division (MHLA)**

According to CPCS, attorneys in MHLA do not have a weighted case system. Attorneys are expected to “touch” 100 cases a year, while new attorneys carry half the caseload of other attorneys during an approximately one-year long “training period.”

## **VIII. Indigency Procedures**

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SJC Rule 3:10 and Chapter 211D of the Massachusetts General Laws set forth most of the rules and requirements concerning procedures surrounding indigency, including categories of indigency status, determination and verification of indigency, and fines and fees.<sup>101</sup>

### **A. Categories of Indigency Status**

There are two categories of indigency status: “indigent” and “indigent but able to contribute.”

A person is considered “indigent” in five general scenarios: (1) they receive certain forms of public assistance; (2) their income is less than 125% of federal poverty guidelines; (3) they are in consideration for certain civil commitments; (4) they reside in certain medical facilities; or (5) they are in the custody of the Department of Children and Families. The only payment that a judge may order an indigent defendant to pay toward the cost of counsel is a prescribed \$150 indigent counsel fee.

A person is considered “indigent but able to contribute” in three general scenarios: (1) they have an annual income of more than 125% but less than 250% of federal poverty guidelines; (2) they are claimed as a dependent by a parent or guardian who is not indigent; or (3) they are facing more serious consequences (such as Superior Court criminal charges or a child removal proceeding) and cannot afford full representation. If the judge determines the indigent defendant is able to contribute, the judge is required to order the defendant to pay the \$150 indigent counsel fee plus a contribution fee set by the judge.<sup>102</sup>

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<sup>101</sup> See S.J.C. Rule 3:10; M.G.L. c. 211D, § 2A. Unless otherwise noted, the rules and requirements described in this section are found in Rule 3:10 or § 2A.

<sup>102</sup> The contribution should not cause “substantial financial hardship,” and the defendant has the opportunity for a hearing. S.J.C. Rule 3:10 § 10(b).

## B. Indigency Determination and Verification

If a party appears in court without counsel, and that party has a right to be represented by counsel, the judge must inform the party that they are entitled to appointment of counsel and that CPCS can provide the counsel at no cost or reduced cost. Under Massachusetts law, the earliest court appearance at which the right to representation occurs is during arraignment.<sup>103</sup>

While the determination of indigency is made by the judge on the case, the Massachusetts Probation Service (MPS), a Commonwealth agency within the Trial Court, is responsible for much of the process. First, MPS conducts an intake with the party prior to their first court appearance.<sup>104</sup> This initial intake enables the probation office to verify the defendant's identity, address, and whether there are outstanding warrants. The MPS intake is often the first opportunity a party has to request counsel or indicate that they intend to waive their right to counsel.

If a party chooses to waive their right to counsel, a judge must conduct a colloquy to ensure that the party is competent to waive counsel and is doing so knowingly and voluntarily. Then, the party must sign a waiver in front of the judge, who certifies the waiver. In limited circumstances, the judge may assign standby counsel to the waiving party "where the interests of justice so require."

If a party requests counsel, the party bears the burden of proving indigency by a preponderance of the evidence.<sup>105</sup> MPS conducts an indigency verification process and is tasked with a variety of requirements before, during, and after the appointment of counsel.

In interviews with MPS officials, the OIG learned that during the initial intake, MPS completes an indigency report form with the party in the court's probation department. The form asks a defendant to provide relevant financial information, such as the party's employment status, whether the party receives public financial assistance, the party's monthly income and expenses, and the party's liquid assets. MPS provided the OIG with a random sample of over 2,500 indigency report forms from District Court cases.

A party claiming indigency must sign a consent form authorizing MPS to obtain the party's wage, tax, and asset information from the Department of Revenue (DOR), Department of Transitional Assistance (DTA), and the Registry of Motor Vehicles (RMV).

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<sup>103</sup> See *Commonwealth v. White*, 362 Mass. 193, 195 (1972).

<sup>104</sup> See Mass. R. Crim. P. 7 (requiring that the probation department interview the defendant on the day of arraignment and report information to the court concerning bail and indigency).

<sup>105</sup> S.J.C. Rule 3:10 § 5(e). See also *Commonwealth v. Porter*, 462 Mass. 724 (2012) (affirming decision to find defendant not indigent and holding that defendant bears burden of proving indigency).

If the party shares a household with a spouse, the calculation of a party's available funds must include the spouse's liquid assets and net monthly income (barring certain circumstances).<sup>106</sup> MPS has created a separate consent form for a spouse to complete and return. MPS is required to review the reported information and run the same wage, tax, and asset checks on the party's spouse.

A party claiming indigency signs under oath an "affidavit of indigency" form that is set by the Chief Justice of the SJC.<sup>107</sup> MPS verifies the party's reported income against data from one or more of the three governmental sources (DOR, DTA, RMV) and then compares that income against the affidavit of indigency to determine whether their income meets the criteria for indigency. MPS then makes a recommendation about the party's indigency status.

At the party's arraignment, MPS reports its recommendation to the judge. As required by court rules, after receiving MPS's recommendation and questioning the party, the judge makes an initial determination as to whether the party is indigent, not indigent, or indigent but able to contribute to the cost of representation. Judges may adopt or reject MPS's recommendations in whole or in part, but must identify their reason on the record.

If the judge reviews the intake form and decides that the party is eligible for appointed counsel, the chief probation officer then has seven business days to complete a final report about the party's financial circumstances, including wage, tax, and asset information. The report is filed with the case papers and presented to the judge at the party's next court appearance.

MPS is required by law to conduct reassessments every six months during the representation to determine if there has been a change in the party's financial status. MPS provides this biannual reassessment to the presiding judge in the same manner as the initial verification.

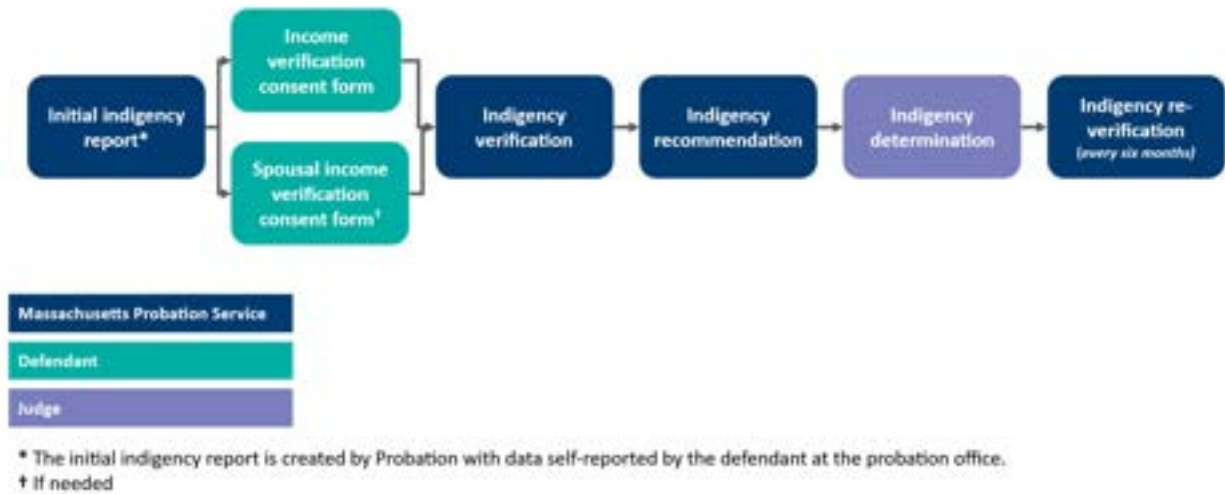
If the follow-up verification shows that the party may no longer meet the definition of indigency, MPS will prepare a report and a court appearance will be scheduled. If the judge finds that the party no longer meets the definition of indigency, the judge must revoke the appointment of counsel and give the party a reasonable continuance to find new counsel.

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<sup>106</sup> See S.J.C. Rule 3:10 § 1(a) ("A party's available funds shall include the liquid assets and disposable net monthly income of the party's spouse (or person in substantially the same relationship), provided that person lives in the same residence as the party and contributes substantially towards the household's basic living costs, unless that person has an adverse interest in the proceeding (*e.g.*, is the victim, complainant, or petitioning party, is a prospective prosecution witness, or, in a civil matter, is a party) or unless the inclusion of the income of the party's spouse would be contrary to the interests of justice.").

<sup>107</sup> See *Poverty Guidelines for Affidavits of Indigency*, MASS. SUPREME JUDICIAL COURT (Jan. 16, 2026), available at <https://www.mass.gov/guidance/poverty-guidelines-for-affidavits-of-indigency-g-l-c-261-ss-27a-applicable-under-sjc-rule-310>.

**Figure 7: Indigency verification process.**



### C. Fees and Fines

The court is required to assess an indigent counsel fee of \$150 for indigent representation. However, the court may waive the indigent counsel fee if the initial report from MPS shows that the party would be unable to pay the fee within 180 days. The court can also authorize community service instead of payment of the fee. In the biannual reassessment, MPS will report whether the individual is able to pay the \$150 counsel fee, and the court is permitted to revoke the waiver and reimpose the \$150 fee.

In interviews with bar advocates and sitting judges, the OIG was told that when an indigent party’s case is concluded, counsel routinely asks the judge to “waive” any assigned counsel fee that may have been assessed rather than leaving the case open in order to collect the fee. This process does not typically involve a formal reassessment of the party’s indigency status but is a practical decision to prevent the collection of outstanding counsel fees from keeping a case open.<sup>108</sup>

If the judge finds that a party materially misrepresented or omitted information concerning their indigency and the party is not actually indigent, the judge is required by law to immediately revoke appointment of counsel and charge the party for costs equaling at least \$1,000. Any fines or fees collected by the court are remitted to the State Treasury.

<sup>108</sup> See M.G.L. c. 211D § 2A(g) (“[A] court proceeding shall not be terminated and the person shall not be discharged if the person owes any portion of the legal counsel fee imposed by this section.”).

## FINDINGS

The Legislature tasked the OIG with (1) examining practices surrounding the indigency determination process; (2) reviewing billing and oversight of bar advocates; (3) examining the efficacy of caseloads for bar advocates and CPCS staff attorneys; (4) analyzing the fiscal impact of adjusting the assignment of cases to CPCS staff attorneys; and (5) comparing best practices in other jurisdictions for adequate and cost-effective representation.

The last three of these five issues derive in no small part from an evaluation of attorney caseloads. In this report the OIG addresses these three issues first, along with three additional issues related to attorney caseloads: the effect of attorney caseloads on the 2025 work stoppage, the expected cost of the CPCS expansion plan, and the results of a bar advocate financial incentive plan. The OIG then addresses attorney oversight and the indigency determination process.

### I. Caseload Efficacy

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The Legislature instructed the OIG to examine the “efficacy” of caseloads for bar advocates and CPCS staff attorneys. In other words, are the current caseloads effective at producing the desired result or effect?<sup>109</sup>

There are two obvious criteria for evaluating the effectiveness of caseloads. The first is evaluating the quality of representation. The second is calculating the quantity of defendants that a given advocate is able to represent. These two criteria can conflict. At some point, if a given attorney takes on too many cases, the attorney will have greater difficulty providing quality representation to each of those clients.

Indigent defense organizations have responded to this dilemma by assessing caseloads among appointed attorneys and developing caseload standards.<sup>110</sup> The Legislature has also set requirements for case assignments to CPCS staff attorneys. To evaluate caseload efficacy, the OIG compared caseloads for CPCS staff attorneys and bar advocates against CPCS caseload standards and legislative requirements.

#### **Finding 1. CPCS hindered the OIG’s investigation into attorney caseloads by refusing to produce docket numbers.**

As discussed in the Methodology section of this report, the OIG learned early in its investigation that the Trial Court holds detailed case information (such as the disposition and duration of the case) but does not readily organize that information by the attorney’s affiliation, whereas CPCS holds detailed attorney information but does not readily organize its information by case details. In order to evaluate

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<sup>109</sup> *Efficacy*, MERRIAM-WEBSTER.COM, available at <https://www.merriam-webster.com/dictionary/efficacy>.

<sup>110</sup> Another means of evaluating quality representation is to look at case outcomes. In the aggregate, higher quality representation should result in improved outcomes for defendants relative to lower quality representation. As discussed in Finding 1, the OIG has not been able to compare case outcomes among bar advocates and CPCS staff attorneys.

the effectiveness and efficiency of both bar advocates and CPCS staff attorneys, the OIG intended to marry the Trial Court data with the CPCS data. The unifying link between the two sources of data is the case docket number. The Trial Court provided specific case information associated with docket numbers. CPCS, however, refused to provide docket numbers for cases worked by bar advocates and CPCS staff attorneys. CPCS claims that producing such data would disclose confidential client information, even though the OIG informed CPCS that OIG records are confidential under law and offered to take additional protective measures in response to CPCS's concerns.<sup>111</sup>

The OIG filed a motion to compel CPCS to produce docket numbers for cases assigned to CPCS staff attorneys and bar advocates. The Superior Court judge granted the OIG's motion and ordered CPCS to produce the docket numbers.<sup>112</sup> Instead of producing the docket numbers, CPCS filed an appeal which remains pending as of the date of this report.

Without this docket information, the OIG was unable to match case disposition data held by the Trial Court with attorney information held by CPCS. If CPCS had produced the docket information as ordered, the OIG could have performed various analyses identifying general trends in case disposition and case duration among bar advocates and CPCS attorneys.

The OIG found that CPCS hindered the OIG's investigation into the efficacy of bar advocate and CPCS staff attorney caseloads by refusing to produce the docket numbers.<sup>113</sup>

## **Finding 2. CPCS has created two separate case weight systems for bar advocates and CPCS attorneys, obfuscating caseload comparisons.**

Under Massachusetts law, CPCS establishes the "specified caseload limitation levels" for both CPCS attorneys and bar advocates.<sup>114</sup> These caseload decisions are not exempt from judicial scrutiny; the SJC has "supervisory authority over the administration of justice" which extends to "the power to review CPCS's decisions" concerning caseloads.<sup>115</sup>

The OIG found that CPCS has created two different sets of caseload rules for CPCS staff attorneys and for the bar advocates. The lack of uniformity between these rule sets makes it difficult to compare the data compiled by CPCS concerning the number of cases handled by CPCS and bar advocates. The OIG

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<sup>111</sup> Many docket numbers are publicly available in several locations. See *supra* footnote 6.

<sup>112</sup> *In re Investigation by the Off. of the Inspector Gen.*, Mass. Super. Ct. No. 2584CV3580 (Suffolk County Dec. 5, 2025). This report's Appendix A contains the Superior Court order in full.

<sup>113</sup> See the Methodology section of this report for a further discussion of how the OIG intended to use docket numbers to conduct its investigation.

<sup>114</sup> M.G.L. c. 211D, § 9(c).

<sup>115</sup> See *Carrasquillo v. Hampden Cnty. Dist. Cts.*, 484 Mass. 367, 385 (2020). Finding 15 addresses the SJC's use of its supervisory authority.

found that these separate systems obfuscate the comparison of caseload efficacy between CPCS attorneys and bar advocates.

CPCS policy evaluates staff attorney caseloads based on the number of cases “touched,” which represents the number of new cases an attorney is assigned during the fiscal year, plus the number of cases an attorney was assigned during prior fiscal years that are still open.<sup>116</sup> This policy is fundamentally different from CPCS policy concerning bar advocate caseload, which places a limit on the number of new cases a bar advocate may be assigned within a given year.

CPCS policy also includes a variety of matters within the definition of cases “touched” for CPCS staff attorneys that are not considered part of a bar advocate’s caseload. For example, bail review cases, post-conviction representation, advice-only cases, witness representation cases, and clerk’s hearing cases may count as a case “touched” by a PDD staff attorney but would not count toward a bar advocate’s caseload. Furthermore, bar advocates are hired as lead counsel and do not “second seat” on cases.<sup>117</sup>

The OIG also found that CPCS has created two different scales for weighting cases assigned to CPCS staff attorneys and bar advocates. The OIG believes this lack of uniformity is unnecessarily confusing and has hindered CPCS’s ability to provide meaningful caseload information despite repeated requests from the Legislature to provide such information.

These differences in the definition of “caseload” among CPCS staff attorneys and bar advocates – both of which are set by CPCS – make it difficult to compare and evaluate the effectiveness of their respective caseloads. CPCS should institute the same weighting system for CPCS staff attorneys and bar advocates and use the same definition for standard terms, such as “case.” For example, if a bail case does not count toward a bar advocate’s new case limit, nor should a bail case count as a case “touched” by a CPCS staff attorney. These changes may result in CPCS moving away from internal expectations focused on cases “touched.”

Figure 8 below compares CPCS internal policy requirements and expectations concerning caseloads for bar advocates and CPCS staff attorneys.

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<sup>116</sup> Cases “touched” does not refer to individual events associated with a case.

<sup>117</sup> The OIG notes that bar advocates are permitted to request assignment of co-counsel. The assigned case would presumably count toward the caseload of both the lead bar advocate and the bar advocate assigned as co-counsel.

The OIG also notes that in a response to a request for information, CPCS stated that only the primary CPCS attorney is considered to “touch” the case in which there is a “second seat” attorney. This contradiction with CPCS internal policies provides further example of the data quality issues that the OIG encountered during this investigation.

**Figure 8: Comparison of bar advocate caseload limits and CPCS staff attorney caseload expectations.**

Bar Advocate Caseload Limits <sup>118</sup>				CPCS Case Targets <sup>119</sup>			
Court Type	Open Cases	New Unweighted Cases	Weight	CPCS Division	Weighted Caseload	Weighted Cases Touched	Weight
District Court	N/A	250	1	PDD <sup>120</sup>	50-70	190	1
Superior Court	100	125	2	PDD <sup>121</sup>			2
				PDD <sup>122</sup>			5
Youthful Offender	100	125	2	YAD	35	110	N/A
Juvenile Delinquency	75-100	165	1.5				
Revocation Advocacy cases	N/A	250	1				
Children and Family Law	75-100	125	2	CAFL	38	N/A	N/A
Children Requiring Assistance cases	100	250	1				
Mental Health cases	N/A	250 <sup>123</sup>	1 <sup>124</sup>	MHLD	N/A	100	N/A
Sex Offender Registry Board cases	N/A	165	1.5	ACRSU <sup>125</sup>	N/A	N/A	N/A
Sexually Dangerous Person cases	20	125	2	ACRSU	10	15	N/A

<sup>118</sup> The OIG identified this information concerning bar advocate case limits and “court type” in the Assigned Counsel Manual and confirmed the information with CPCS. See *Assigned Counsel Manual*, COMM. FOR PUB. COUNS. SERVICES (last updated Sept. 10, 2025), available at <https://www.publiccounsel.net/wp-content/uploads/2025/12/Assigned-Counsel-Manual.pdf>.

<sup>119</sup> The OIG identified this information in CPCS policies and communications with CPCS. The OIG uses the term “target” to refer to both the “expected” (PDD Guidelines, page 22) number of cases an attorney will actively handle at any one time (“Caseload”) or will “touch” in a fiscal year (“Cases Touched”).

<sup>120</sup> District Court misdemeanor or concurrent felony.

<sup>121</sup> Superior Court nonconcurrent felonies.

<sup>122</sup> Murder cases.

<sup>123</sup> According to the Assigned Counsel Manual, the case limit for mental health cases is 165. In response to a request for information from the OIG, CPCS stated that the actual case limit is 250. CPCS also stated that mental health civil commitments are weighted as 0.

<sup>124</sup> According to the Assigned Counsel Manual, the case weight for mental health cases is 1.5. In response to a request for information from the OIG, CPCS stated that the actual case weight is 1.

<sup>125</sup> The Alternative Commitment and Registration Support Unit (ACRSU) is a specialized unit of CPCS staff attorneys. The ACRSU assigns Sexual Offender Registry Board cases to bar advocates.

**Finding 3. CPCS attorneys take less than 16% of all case assignments despite being legislatively required to take 20% of all assignments.**

The Legislature requires CPCS to take 20% of all indigent representation cases.<sup>126</sup> The OIG analyzed case management data provided by CPCS to identify new cases assigned to bar advocates and CPCS staff attorneys.

The OIG found that the share of cases handled by CPCS staff attorneys has increased year-over-year, peaking in Fiscal Year 2025 at approximately 16%.<sup>127</sup> Figure 9 below compares total new unweighted assignments to CPCS staff attorneys and bar advocates over each of the last three fiscal years.

**Figure 9: CPCS staff attorney and bar advocate new case assignments (FY23 – FY25).**

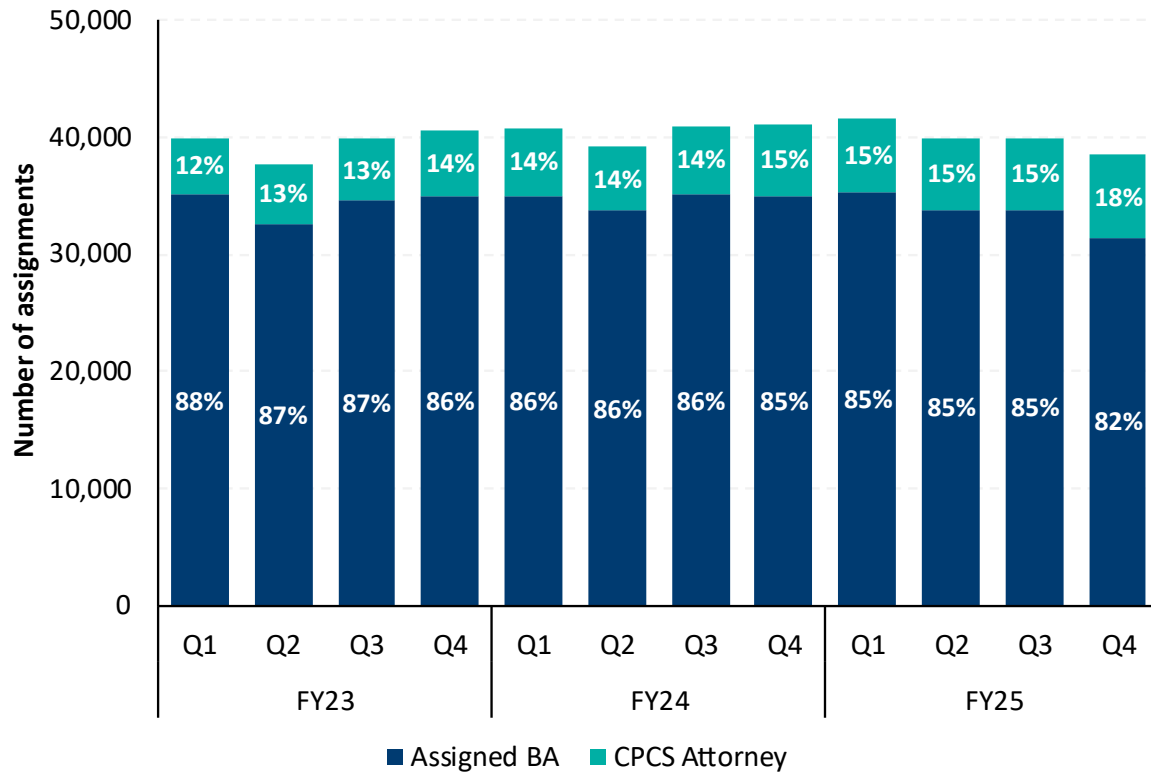
	2023	2024	2025
<b>Total assignments</b>	<b>158,347</b>	<b>162,286</b>	<b>159,936</b>
CPCS assignments	20,957	23,367	25,492
<i>CPCS % of total</i>	<i>13.2%</i>	<i>14.4%</i>	<i>15.9%</i>
Bar advocate assignments	137,390	138,919	134,444
<i>Bar advocate % of total</i>	<i>86.8%</i>	<i>85.6%</i>	<i>84.1%</i>

Looking at case assignments by quarter, the OIG found that the share of cases handled by CPCS attorneys peaked at 18% in the fourth quarter of Fiscal Year 2025. The trend shows a slow increase in the percentage of cases handled by CPCS attorneys and a relatively steady number of total cases. Figure 10 below compares total new unweighted assignments to CPCS staff attorneys and bar advocates over each of the last three fiscal years, by quarter.

<sup>126</sup> See, e.g., 2024 Mass. Acts c. 140, § 2, line item 0321-1500 (“[CPCS] shall maintain a system in which not less than 20 per cent of indigent clients shall be represented by public defenders.”). This language has been in every general appropriation for CPCS since Fiscal Year 2017. Between Fiscal Year 2012 and Fiscal Year 2017, the Legislature required CPCS staff attorneys to take 25% of all cases.

<sup>127</sup> Finding 8 identifies how many more cases CPCS staff attorneys would have taken if they were assigned 20% of new cases.

**Figure 10: CPCS and bar advocate share of total assignments by quarter.**

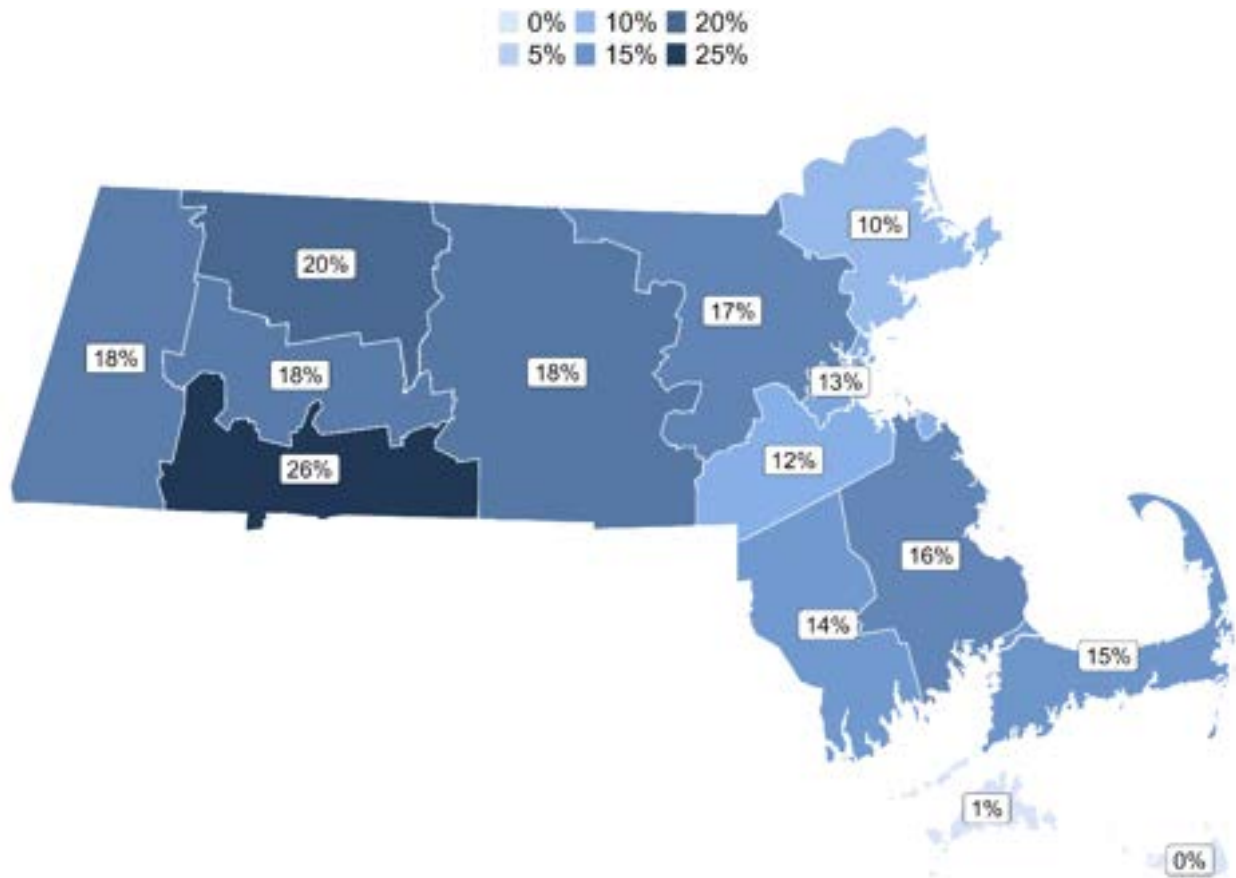


The OIG found that the rate at which cases are assigned to CPCS staff attorneys varies significantly in different regions of the state. For example, CPCS attorneys cover the highest share of new cases in Hampden County<sup>128</sup> and the lowest share of cases in Nantucket and Dukes counties.<sup>129</sup> Figure 11 below shows the percentage of new cases covered by CPCS attorneys, broken out by the county of the courthouse where the case was assigned.

<sup>128</sup> In interviews with bar advocates, the OIG was told that the Hampden Bar Association regularly asks for attorneys to travel to Hampden County to represent indigent defendants.

<sup>129</sup> The OIG recognizes that time and costs likely explain why CPCS staff attorneys are assigned few cases on the islands.

Figure 11: CPCS share of total assignments by county (FY23 – FY25).



**Finding 4. CPCS attorneys take only a slightly higher percentage of the more complex Superior Court cases than the more straightforward District Court cases.**

CPCS attorneys and bar advocates cover cases in six courts: District Court, Superior Court, Juvenile Court, Probate Court, Appeals Court, and the Supreme Judicial Court (SJC).

The OIG found that CPCS attorneys only cover approximately 15% of cases in the District and Juvenile courts, and slightly more cases in Superior Court, which is where more complex cases are typically resolved. CPCS attorneys handle a much smaller percentage of Probate Court cases, and a number of appeals that fluctuates from year to year. Figure 12 below identifies the percentage of the total number of cases assigned to CPCS staff attorneys by court type over the past three fiscal years.<sup>130</sup>

<sup>130</sup> Note that comparing caseloads for CPCS attorneys and bar advocates requires comparing new assignments in a given fiscal year. Accordingly, the OIG was not able to estimate the number of cases carried into the year by a bar advocate.

**Figure 12: CPCS assignments and share of total assignments by court type.**

Court type		2023	2024	2025
Appeals	CPCS assignments	30	11	11
	Share of total	30.3%	12.4%	12.1%
District	CPCS assignments	16,261	18,378	20,146
	Share of total	13.4%	14.6%	16.2%
Juvenile	CPCS assignments	2,944	3,200	3,571
	Share of total	12.7%	14.1%	16.7%
Probate	CPCS assignments	68	82	110
	Share of total	1.3%	1.5%	1.8%
SJC	CPCS assignments	1	2	1
	Share of total	2.8%	4.8%	2.7%
Superior	CPCS assignments	1,165	1,222	1,269
	Share of total	15.6%	16.8%	17.7%
Other Courts*	CPCS assignments	488	472	384
	Share of total	100.0%	100.0%	100.0%

\* "Other Courts" include case assignments in the Zelly data that could not be readily classified into one of the six court categories due to data quality issues.

The OIG also attempted to perform an analysis to identify the types of offenses associated with cases assigned to CPCS staff attorneys and bar advocates to determine whether particular types of cases are assigned more or less frequently to bar advocates. The OIG could not satisfactorily complete this analysis because CPCS data concerning charges did not match against "charge group" case designations in the Trial Court data. Thus, the data being withheld by CPCS again prevented the OIG from conducting a comprehensive analysis of the caseloads of CPCS staff attorneys and bar advocates. If the OIG receives the docket numbers, the OIG will conduct a supplemental analysis to evaluate trends in the types of cases assigned to each group.

**Finding 5. CPCS does not effectively notify the Legislature that CPCS is failing to handle its required percentage of cases.**

The budget line item for CPCS requires that it report on several metrics, including the number of cases handled by CPCS staff attorneys and bar advocates. The OIG found that while CPCS has included responsive information to the reporting requirement in its annual reports to the House and Senate Committees on Ways and Means, such information does not clearly state CPCS's failure to meet the required caseload percentage.

After reviewing data contained in the annual reports from the last five fiscal years, the OIG found that CPCS did not meet the required percentage of case assignments in any of the last 10 fiscal years (Fiscal Years 2016 to 2025). Although this data is presented in the annual reports, considering that the Legislature requires CPCS to reach this percentage of assigned cases and has even reduced the required percentage from 25% to 20%, the OIG found that CPCS does not effectively convey to the Legislature that it fails meet that requirement.

Figure 13 below presents information contained in CPCS’s annual reports, including the number of cases “touched” by CPCS staff attorneys and bar advocates. The OIG calculated the relative percentage of CPCS staff attorney cases with the percentage required by the Legislature.

**Figure 13: CPCS and bar advocate cases ‘touched’ reported to Legislature (FY16 – FY25).<sup>131</sup>**

FY	Cases reported by CPCS			OIG calculations	
	CPCS	Bar advocates	Total	CPCS % of total	% required by Legislature
2016	51,668	226,172	277,840	18.6%	25%
2017	46,407	222,470	268,877	17.3%	25%
2018	45,346	217,558	262,904	17.2%	20%
2019	42,224	214,919	257,143	16.4%	20%
2020	35,575	190,342	225,917	15.7%	20%
2021	28,080	172,756	200,836	14.0%	20%
2022	28,031	197,766	225,797	12.4%	20%
2023	28,966	195,202	224,168	12.9%	20%
2024	29,902	187,536	217,438	13.8%	20%
2025	31,128	185,288	216,416	14.4%	20%

**Finding 6. Bar advocates are taking on caseloads well below the maximum limits.**

The OIG found that the vast majority of bar advocates take on a caseload that is less than the caseload limit identified in the Assigned Counsel Manual, with bar advocates each taking on an average of 56 new weighted cases in recent years. Figure 14 below provides a multi-year summary of new cases assigned to bar advocates. The OIG calculated the column weighted assignments by applying weights to cases based on the guidelines in the Assigned Counsel Manual and communications with CPCS.

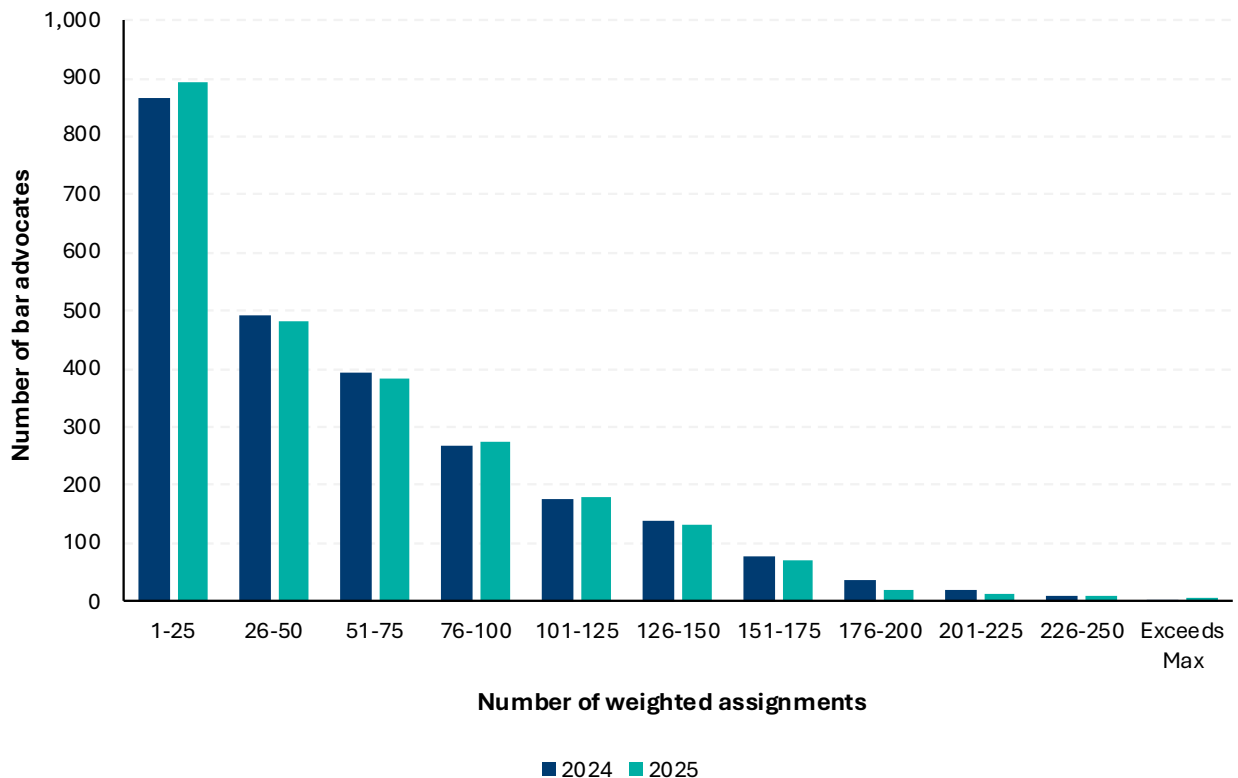
<sup>131</sup> The information in Figure 13 is derived from CPCS annual reports to the Legislature.

**Figure 14: Bar advocate assignment summary (FY23 – FY25).**

	2023	2024	2025
<b>Unweighted assignments</b>	137,390	138,919	134,444
<b>Weighted assignments</b>	140,283	140,100	135,344
<b>Bar advocates with assignments</b>	2,497	2,478	2,465
<i>Weighted assignments per bar advocate</i>	56.2	56.5	54.9

The OIG found that around one-third of bar advocates take fewer than 25 weighted cases, that more than 80% take fewer than 100 weighted cases, and that very few exceed the caseload limit of 250 weighted cases. Figure 15 below shows the number of bar advocates that took on particular ranges of weighted caseloads over Fiscal Years 2024 and 2025.

**Figure 15: Number of weighted assignments assigned to bar advocates (FY24 – FY25).**



**Finding 7. Bar advocates membership has significantly declined.**

The ability of Massachusetts’s system to function, as currently designed, relies on maintaining a high number of qualified attorneys to take on bar advocate cases. This is not happening. The OIG found that bar advocate membership has significantly declined in recent years. Figure 16 below, with

information that CPCS produced in a court filing, shows that bar advocate panel membership has declined by 200 members between 2018 and 2025, an 11% decrease.<sup>132</sup>

**Figure 16: Bar advocate program membership by county, 2018 – 2025.**

County	2018	2019	2020	2021	2022	2023	2024	2025
Barnstable	65	66	67	64	62	59	58	57
Berkshire	28	28	28	27	27	27	30	30
Bristol	147	148	151	135	139	147	150	154
Essex	182	190	193	191	185	183	174	180
Franklin	36	30	33	31	33	34	36	36
Hampshire	44	43	37	43	42	34	34	34
Hampden	150	145	146	143	146	132	131	131
Middlesex	246	248	238	236	222	229	244	244
Norfolk	160	162	164	149	140	135	134	135
Plymouth <sup>133</sup>	174	174	166	164	111	95	147	152
Suffolk	371	365	341	321	307	293	285	283
Worcester	171	175	163	155	138	139	139	139
<b>Totals</b>	<b>1,774</b>	<b>1,774</b>	<b>1,727</b>	<b>1,659</b>	<b>1,552</b>	<b>1,507</b>	<b>1,562</b>	<b>1,575</b>

In an interview with the OIG, the president of the Middlesex County bar advocate association expressed concern that the number of bar advocates is down even more significantly from levels in prior decades. Figure 17 below, based on information provided to the OIG during this interview, shows that bar advocate panel membership in Middlesex County alone has declined by 96 members in the last 20 years, a 28% decrease. The OIG notes that bar advocate panel membership varies from county to county. Some counties may have even greater declines in membership.

<sup>132</sup> See Statement of Facts, Exhibit 2, Affidavit of Holly Smith ¶ 8, *Comm. for Pub. Couns. Services v. Middlesex and Suffolk Cnty. Dist. Cts. et al.*, SJ-2025-0244 (Mass. July 1, 2025).

<sup>133</sup> The original table refers to “Pilgrim” County when it should refer to Plymouth County. *See id.*

**Figure 17: Middlesex County decline in bar advocate panel membership.**

Date	Panel Membership
2006	338
2007	332
2008	335
2010	326
6/30/2013	254
2014	235
1/30/2017	255
6/1/2018	256
1/1/2019	258
8/1/2021	239
9/1/2022	221
8/21/2025	242

**Finding 8. CPCS staff attorneys would have taken over 6,000 additional cases in Fiscal Year 2025 if they were assigned 20% of all new cases.**

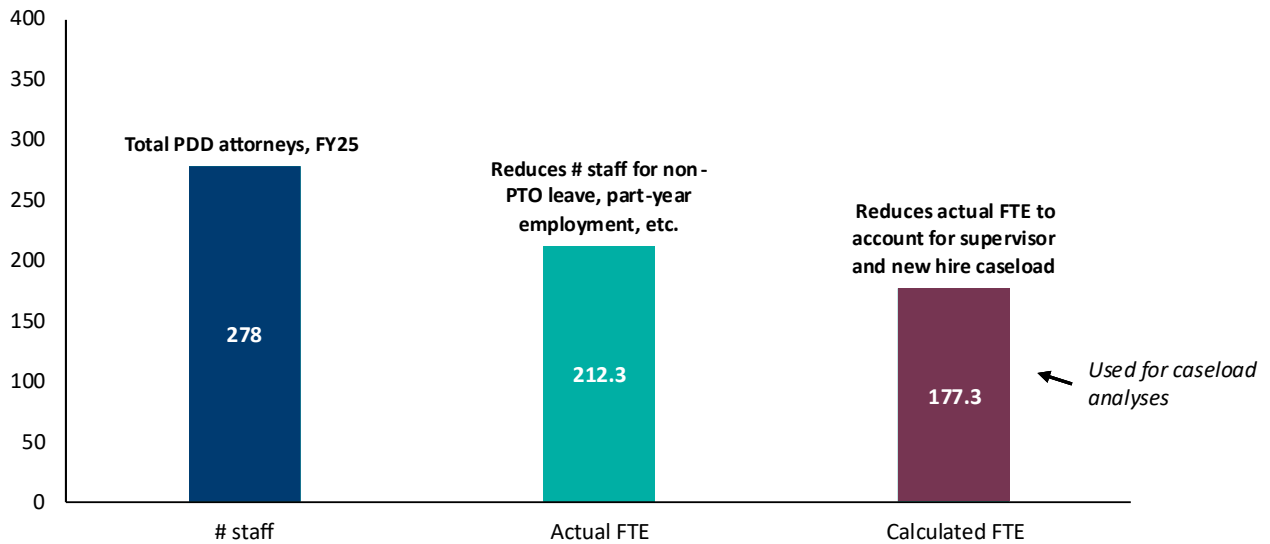
CPCS calculates staff attorney caseloads using the full-time equivalent (FTE) value of each staff attorney to account for staff attorneys who may be on leave or working part time. Furthermore, CPCS expects staff attorneys who supervise other staff attorneys to take half as many cases as nonsupervisory staff attorneys, and new attorneys are not expected to carry a full caseload.

As a result, the total number of CPCS staff attorneys is significantly higher than the number of FTE attorneys that CPCS calculates. As an example, Figure 18 below compares the total number of PDD staff attorneys with the calculated number of FTE attorneys in Fiscal Year 2025.<sup>134</sup>

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<sup>134</sup> This report's Appendix F provides the OIG's data methodology. The OIG notes that the FTE calculations made by CPCS contained multiple notes and caveats explaining why particular employees worked less than the 1,662 direct case hours recommended in an internal CPCS workload assessment.

**Figure 18: CPCS’s process for arriving at calculated FTE to compute caseload.**



Since Fiscal Year 2018, the Legislature has funded CPCS with the requirement that CPCS staff attorneys represent at least 20% of indigent defendants. As discussed in Finding 5, CPCS has not met this requirement in any fiscal year. The OIG is concerned that CPCS has consistently failed to represent 20% of indigent defendants.

Significantly, as shown in Figure 9, the OIG found that CPCS staff attorneys have not represented more than 15.9% of all new assigned cases in any of the last three fiscal years. The OIG found that only the YAD represented more than 20% of all cases assigned to that division. Figure 19 below shows the total number of unweighted new case assignments in each of the last three fiscal years, broken down by the number and percentage of those cases assigned to bar advocates or CPCS staff attorneys within each respective CPCS division.

Figure 19: CPCS staff attorney and bar advocate assignment distribution, by division (FY23 – FY25).

Division FY	Total assignments (unweighted)	Bar advocates		CPCS	
		# assignments	% total	# assignments	% total
<b>CAFL</b>					
2023	16,799	15,626	93.0%	1,173	7.0%
2024	15,823	14,423	91.2%	1,400	8.8%
2025	14,740	13,349	90.6%	1,391	9.4%
<b>MHLD</b>					
2023	14,402	13,092	90.9%	1,310	9.1%
2024	15,020	13,375	89.0%	1,645	11.0%
2025	15,566	13,944	89.6%	1,622	10.4%
<b>PDD</b>					
2023	119,212	102,907	86.3%	16,305	13.7%
2024	123,344	105,181	85.3%	18,163	14.7%
2025	121,617	101,683	83.6%	19,934	16.4%
<b>YAD</b>					
2023	7,742	5,765	74.5%	1,977	25.5%
2024	7,902	5,940	75.2%	1,962	24.8%
2025	7,637	5,468	71.6%	2,169	28.4%
<b>Conflicts</b>					
2023	192	-	-	192	100.0%
2024	197	-	-	197	100.0%
2025	376	-	-	376	100.0%
<b>Total</b>					
2023	158,347	137,390	86.8%	20,957	13.2%
2024	162,286	138,919	85.6%	23,367	14.4%
2025	159,936	134,444	84.1%	25,492	15.9%

CPCS would have taken a significant number of additional cases each year if its staff attorneys were assigned 20% of new cases. The second column in Figure 20 below shows the number of new unweighted cases, by division, that CPCS staff attorneys would have been assigned in Fiscal Year 2025 to reach the 20% legislative requirement. The number of cases that CPCS staff attorneys actually took is then subtracted to determine that those attorneys would have taken an additional 6,795 new cases across CPCS’s four divisions in Fiscal Year 2025 to meet the 20% target.<sup>135</sup> The OIG notes that YAD attorneys took more than 20% of cases.

<sup>135</sup> This total does not include the 376 Conflicts cases noted in Figure 19.

**Figure 20: Number of assignments that CPCS divisions would have taken to meet 20% requirement (FY25).**

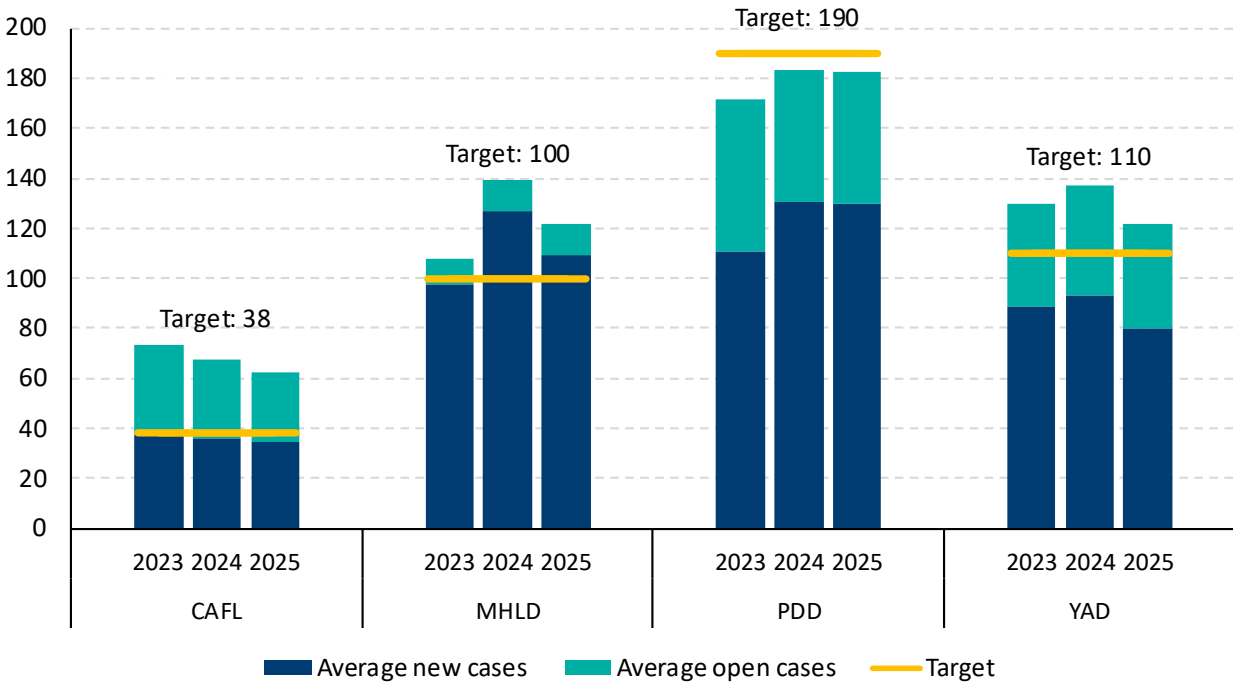
Division	Total assignments (A)	CPCS expected assignments (20% * A) (B)	CPCS actual assignments (C)	# of assignments that CPCS could have taken (B-C)
CAFL	14,740	2,948	1,391	1,557
MHLD	15,566	3,113	1,622	1,491
PDD	121,617	24,323	19,934	4,389
YAD	7,637	1,527	2,169	(642)
<b>Total*</b>	<b>159,560</b>	<b>31,912</b>	<b>25,116</b>	<b>6,796</b>

\* Excludes 376 cases assigned to the CPCS Conflicts Division.

**Finding 9. CPCS staff attorneys in the PDD failed to meet internal CPCS case targets in each of the last three fiscal years.**

As previously discussed, CPCS has internal expectations about the number of weighted cases that its staff attorneys should “touch” in a given fiscal year, which vary according to division. The OIG found that the average staff attorney in the CAFL, YAD, and MHLD divisions met the internal expectations in each of the last three fiscal years, while the average staff attorney in the PDD did not meet the internal expectations in any of the last three fiscal years. Figure 21 below compares the average number of weighted cases “touched” by CPCS FTE staff attorneys – calculated by the OIG using data from internal CPCS caseload spreadsheets – with the “target” number of cases that CPCS expects staff attorneys to “touch.” The data covers the past three fiscal years and is broken out by division.

**Figure 21: CPCS average cases ‘touched’ and case touch target, by division (FY23 – FY25).**



Since PDD is the largest division in CPCS, the impact of its staff attorneys failing to meet expected numbers of “touched” cases is substantial. The OIG found that, overall, CPCS staff attorneys only met internal CPCS expectations regarding the number of total “touched” cases in Fiscal Year 2024, despite staff attorneys in CAFL, MHL, and YAD regularly exceeding their targets. Figure 22 below compares the actual number of weighted cases assigned to CPCS staff attorneys over the past three fiscal years, overall and by division, with the total “target” number of cases as determined by CPCS internal expectations. Figure 22 also identifies the number of staff attorneys (both total attorneys and calculated FTEs) in each division for each fiscal year.

**Figure 22: Summary of CPCS cases ‘touched’ and targeted cases touched, by division (FY23 – FY25).**

Division FY	Total attorneys	Calculated FTE	Open cases, FY start	Assigned cases	Cases touched	Targeted cases touched	% target achieved
<b>CAFL</b>							
2023	100	52	1,854	1,976	3,830	3,347	114%
2024	112	59	1,852	2,158	4,010	3,923	102%
2025	111	65	1,813	2,220	4,033	4,158	97%
<b>MHLD</b>							
2023	20	13	136	1,314	1,450	1,347	108%
2024	21	13	166	1,629	1,795	1,288	139%
2025	26	16	198	1,696	1,894	1,555	122%
<b>PDD</b>							
2023	286	176	10,633	19,553	30,186	33,348	91%
2024	269	178	9,343	23,126	32,469	33,727	96%
2025	278	177	9,290	23,014	32,304	33,679	95%
<b>YAD</b>							
2023	45	26	1,058	2,273	3,331	2,822	118%
2024	39	26	1,156	2,442	3,598	2,881	125%
2025	44	32	1,320	2,531	3,851	3,487	110%
<b>Total</b>							
2023	451	268	13,681	25,116	38,797	40,864	95%
2024	441	276	12,517	29,355	41,872	41,818	100%
2025	459	289	12,621	29,461	42,082	42,879	98%

**Finding 10. CPCS staff attorneys can achieve internal caseload expectations yet still fail to take 20% of assigned cases.**

The OIG found that CPCS can meet their internal caseload expectations without meeting the Legislature’s requirement that CPCS staff attorneys accept 20% of all indigent cases. As shown in Figures 19 and 22 above, CPCS staff attorneys in MHLD and CAFL exceeded their internal targets but failed to accept 20% of cases.

Similarly, as reflected in Figure 22, in Fiscal Year 2025 PDD staff attorneys “touched” 32,304 weighted cases and would have needed to “touch” 33,679 weighted cases in order to meet internal CPCS caseload expectations. PDD staff attorneys therefore needed 1,375 additional weighted cases to meet their case target. But, as shown in Figure 20 above, if PDD staff attorneys were assigned 20% of cases in Fiscal Year 2025, they would have taken 4,389 additional unweighted cases.

**Finding 11. YAD is the only CPCS division to meet both internal caseload expectations and the legislative 20% requirement.**

As shown in Figures 19 and 22 above, the OIG found that only CPCS staff attorneys in YAD met internal caseload expectations and accepted more than 20% of cases in any of the last three fiscal years. YAD attorneys met those metrics in all three years.

**Finding 12. ADAs have larger caseloads than CPCS staff attorneys, driven by significantly higher case assignments in District Courts.**

The OIG requested information from the 11 Massachusetts District Attorney (DA) offices concerning assistant district attorney (ADA) caseloads in 2025. Unlike CPCS, DA offices generally do not maintain internal reporting concerning ADA caseloads, do not have policies restricting the number of cases that may be assigned to an ADA, do not set expected “target” caseloads, do not track FTEs for their ADAs, and have not created weighting systems concerning the assignment of cases. These differences between the operations of CPCS and DA offices make it challenging for the OIG to draw direct comparisons between CPCS staff attorney caseloads and ADA caseloads.

The DA offices do, however, utilize the same case management software for tracking the cases that they prosecute.<sup>136</sup> Because all DA offices rely on the same case management software, the OIG is confident that data quality is consistent across the different offices.

DA offices queried their case management system and provided the OIG with the number of cases worked for each of the last three calendar years, along with the number of full-time ADAs employed for each of the last three calendar years. The cases and the ADAs were identified as assigned to District Court or Superior Court.<sup>137</sup> With this information, the OIG was able to calculate the average ADA caseload at seven DA offices.

The OIG highlights that different methods of assigning cases (horizontal prosecution versus vertical prosecution) may mean that the “average” ADA caseload will not resemble the number of cases worked on by different ADAs, even within the same courthouse. DA offices also emphasized that ADAs have a wide range of responsibilities beyond prosecution of docketed criminal cases. For example, ADAs work with victims and victim advocates, assist with investigations, present material to the grand jury, and appear before parole boards. Accordingly, the representation of an average ADA caseload should not be understood as encompassing all the work that is performed by the average ADA.

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<sup>136</sup> The OIG notes that each DA office does not use the case management software in the same way; namely, several offices did not identify cases carried over from the prior year(s). To provide a consistent analysis, the OIG does not include data provided by those DA offices.

<sup>137</sup> The OIG included Juvenile Court cases with the District Court cases because many DA offices track the number of Juvenile Court cases but identify Juvenile Court ADAs as assigned to District Court. The OIG did not include data for DA offices if the office did not distinguish between new cases and cases assigned in prior fiscal years or was otherwise not readily comparable.

Finally, the OIG stresses that there are differences that suggest caution when comparing average ADA caseloads with the average caseloads for indigent representation, whether CPCS staff attorney or bar advocate. The right to effective counsel is a constitutional right for which there is no counterpart among prosecutors with attendant duties stemming from the attorney-client relationship. At the same time, prosecutors have duties which appointed defense attorneys do not, such as work that precedes formal criminal charges.

All of that said, the OIG finds some value in comparing the relative caseloads of full-time ADAs and CPCS staff attorneys. The OIG found that, overall, ADAs have caseloads that are significantly higher than CPCS staff attorney caseloads. CPCS expects PDD staff attorneys to “touch” 190 weighted cases each year. Figure 23 below identifies the number of docketed cases worked on by a DA office in 2025, including new cases and cases carried over from the prior year or years; the number of ADAs identified as full-time; and the average ADA caseload.

**Figure 23: District attorney caseload in 2025.**

DA office	Docketed cases	Full-time ADAs	Average caseload
Berkshire	4,688	23	204
Bristol	23,133	51	454
Cape and Islands	6,925	19	362
Essex	23,916	84	285
Middlesex	21,737	102	213
Northwest	7,755	28	277
Worcester	35,065	59	594

A closer analysis, however, shows that ADA caseloads differ significantly among District Court and Superior Court cases. The OIG found that, overall, District Court ADAs have caseloads that are substantially higher than the caseload of CPCS staff attorneys, while Superior Court ADAs have caseloads that are somewhat lower than the expected caseload of CPCS staff attorneys. Figure 24 below identifies the average caseloads for District Court ADAs and Superior Court ADAS in 2025. It specifies the number of docketed cases for each DA office in 2025, as well as the number of ADAs identified as full-time, broken out for the District and Superior courts. Under the CPCS weighting system, a PDD staff attorney could be expected to “touch” 190 District Court cases or 95 Superior Court cases.

**Figure 24: Average district attorney caseloads for District Court and Superior Court (2025).**

DA office	District Court			Superior Court		
	Docketed cases	ADAs	Average caseload	Docketed cases	ADAs	Average caseload
Berkshire	4,512	15	301	176	8	22
Bristol	22,350	26	868	783	25	31
Cape and Islands	6,726	12	561	199	7	28
Essex	22,812	56	407	1,104	28	40
Middlesex	21,407	59	364	330	43	8
Northwest	7,519	13	578	236	12	20
Worcester	34,165	33	1,035	900	22	41

While it is difficult to draw any hard conclusions, this data suggests that there is room for growth in the number of District Court cases assigned to CPCS staff attorneys. By this same logic, it follows that any caps on the bills submitted by bar advocates should be at a lower dollar amount or number of hours for District Court cases relative to Superior Court cases.

## II. Response to 2025 Work Stoppage

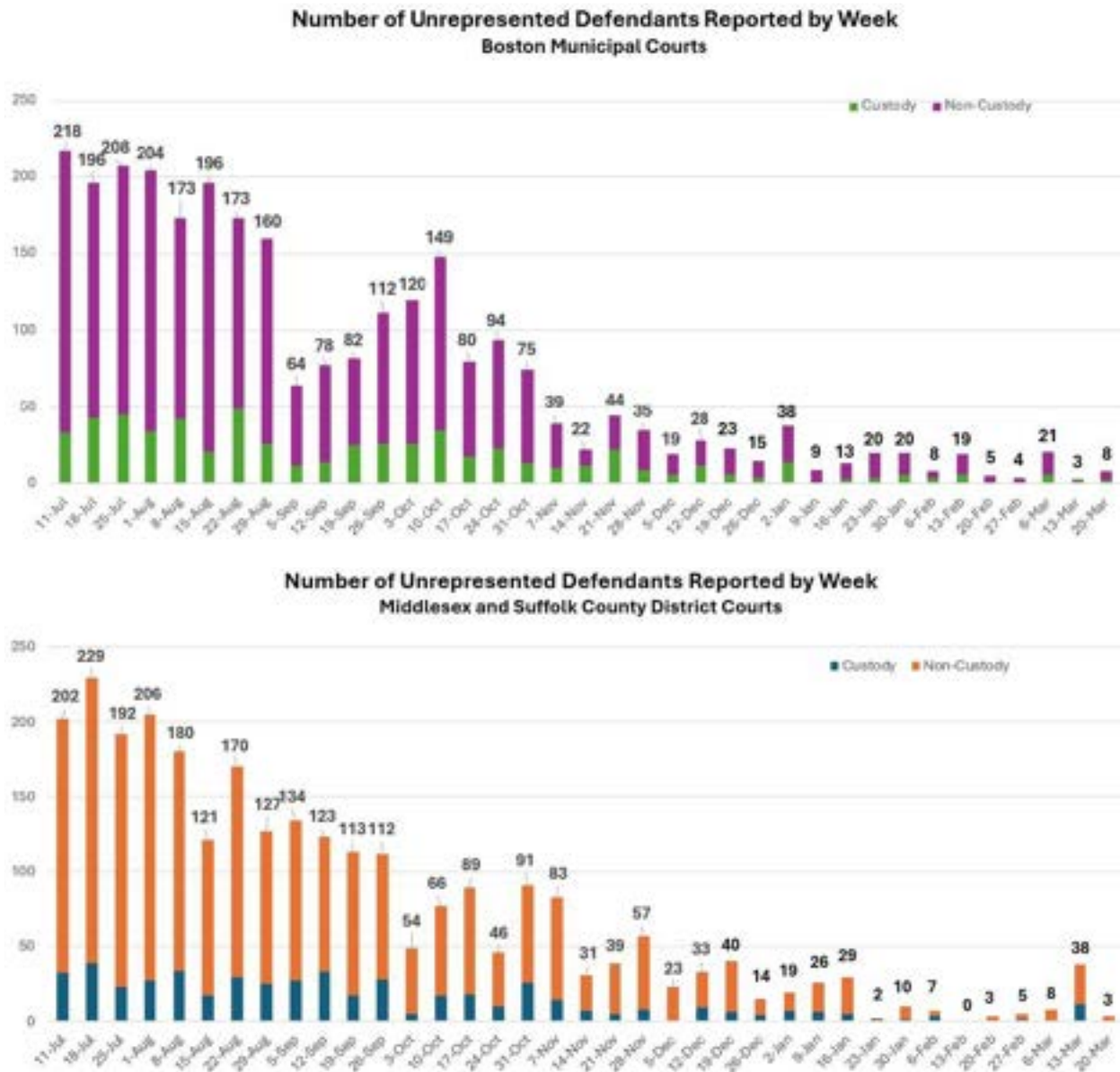
Another means of evaluating a system is to examine how the system responds to crisis. During the 2025 work stoppage and resulting Lavallee protocol, the Massachusetts indigent defense system was in crisis. Strong leadership is required from all levels of a system to resolve a crisis. The OIG looked at CPCS case assignments during the 2025 work stoppage to examine how CPCS responded to the work stoppage. The OIG also evaluated the SJC’s role in exercising its “supervisory authority” over CPCS staff attorney caseloads during the crisis.

### **Finding 13. PDD staff attorneys increased their new assignments during the work stoppage but still did not take 20% of new cases.**

The 2025 work stoppage primarily affected the assignment of adult criminal cases in Middlesex County and Suffolk County District Courts, as well as the Boston Municipal Courts. After the implementation of the Lavallee protocol, between July 3, 2025, and early December 2025, these courts held 2,345 Lavallee hearings which resulted in 1,689 dismissed cases and the release of 213 defendants held in-custody. The OIG understands that most of the dismissed cases have been refiled and that DA offices moved to detain most of the defendants who were released from custody.

Figure 25 below, produced by CPCS in a court filing, identifies the number of unrepresented defendants in Middlesex and Suffolk District Courts, as well as in the Boston Municipal Courts, during the Lavallee protocol, designating which defendants were held in custody.<sup>138</sup>

**Figure 25: Unrepresented defendants in Boston Municipal Courts and Middlesex and Suffolk County District Courts (July 2025 – March 2026).**



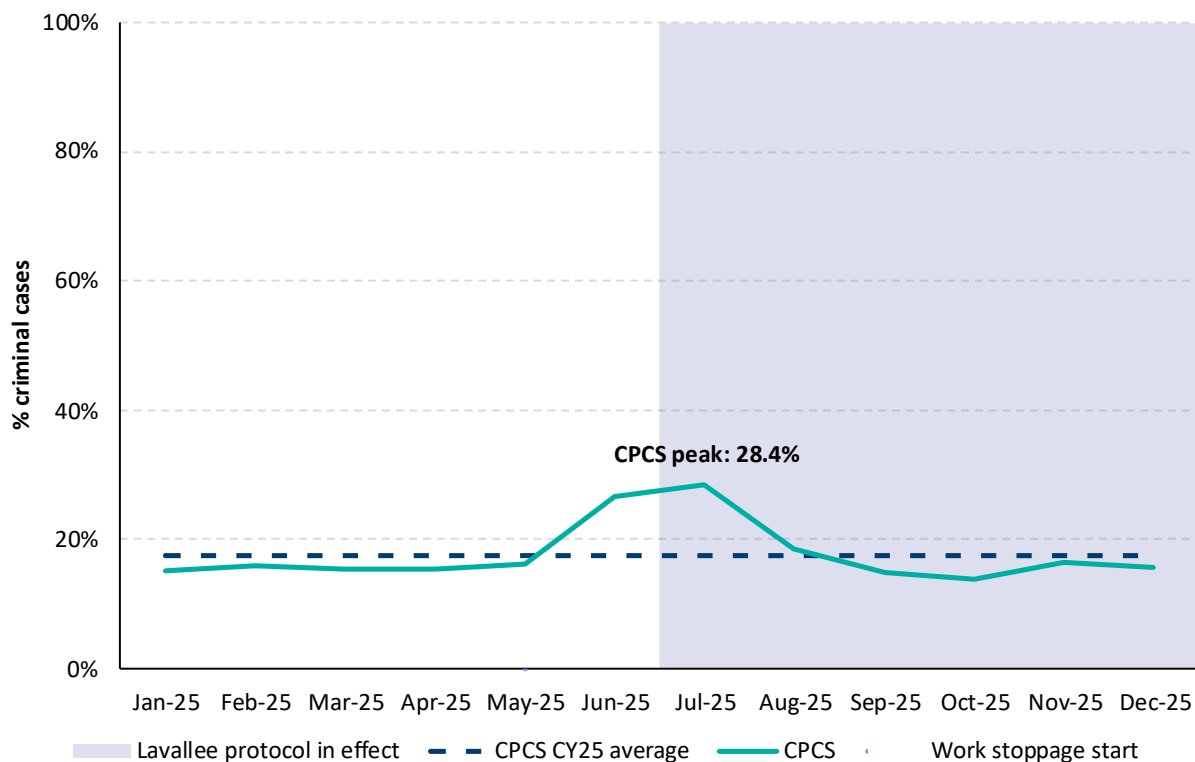
<sup>138</sup> See Committee for Public Counsel Services’ Periodic Update, March 2026, Affidavit of Holly Smith ¶ 25, *Comm. for Pub. Couns. Servs. v. Middlesex & Suffolk Cnty. Dist. Cts.*, No. SJ-2025-0244 (Mar. 26, 2026).

As noted in Finding 8, CPCS staff attorneys could have taken an additional 6,795 cases in Fiscal Year 2025 if they were assigned 20% of all new cases, with more than 4,000 of those new cases being in the PDD.

In order to evaluate how CPCS responded to the 2025 work stoppage, the OIG looked at new case assignments in calendar year 2025, which includes the months preceding the work stoppage and the months during the height of the work stoppage. The OIG focused on case assignments in the PDD, as that division handled the bulk of the crisis.

The OIG found that while PDD case assignments increased significantly during a two-month period in July and August of 2025 (maxing out at 28.4%), the overall rate of case assignments over calendar year 2025 was 17.3%. Figure 26 below shows the percentage of all new unweighted cases assigned to PDD attorneys over the course of calendar year 2025, identifying the start of the work stoppage and the implementation of the Lavallee protocol.

**Figure 26: Percentage of total criminal cases assigned to CPCS in CY25.**



**Finding 14. If PDD staff attorneys took 20% of new cases, they likely could have taken many, if not all, of the cases that resulted in Lavallee hearings.**

The 2025 work stoppage was centered on Middlesex and Suffolk counties, and the Lavallee protocol was implemented only in those district courts. The OIG evaluated the number of cases that PDD staff attorneys would have taken if they were assigned 20% of new criminal cases during the 2025 work stoppage, focusing on regional differences in case assignments. The OIG found PDD staff attorneys overall

would have taken an additional 3,090 cases in 2025 if they were assigned 20% of new criminal cases. Accordingly, it is likely that if PDD staff attorneys took 20% of all case assignments, the PDD could have assigned staff attorneys to accept many, if not all, of the cases that advanced to the 2,345 Lavallee hearings.

The OIG also found that while PDD staff attorneys in Middlesex County took more than 20% of new cases, PDD staff attorneys in Suffolk County would have been assigned an additional 1,186 cases if they took 20% of new criminal case assignments during the 2025 work stoppage. It is possible that if PDD staff attorneys in Suffolk County and Middlesex County alone took 20% of new criminal case assignments in calendar year 2025, the PDD could have assigned staff attorneys to represent at least half of the defendants who advanced to Lavallee hearings.

Figure 27 below shows the number of new criminal cases, by county, that CPCS staff attorneys would have been assigned if they took 20% of new cases. It then subtracts the number of cases that CPCS attorneys actually took to determine the number of additional criminal cases CPCS would have taken in calendar year 2025 to reach the 20% target. Negative values in parentheses indicate where CPCS staff attorneys took more than 20% of the assigned criminal cases. The OIG notes that CPCS staff attorneys took 20% or more of the assigned criminal cases in only four counties (Berkshire, Franklin, Hampden, and Middlesex).

**Figure 27: Number of criminal cases CPCS could have taken in 2025, by county.**

County	Total assignments (A)	CPCS expected assignments (20% * A) (B)	CPCS actual assignments (C)	# of additional assignments that CPCS could have taken (B-C)
Barnstable	3,570	714	659	55
Berkshire	3,115	623	778	(155)
Bristol	13,195	2,639	1,873	766
Dukes	324	65	0	65
Essex	13,361	2,672	1,486	1,186
Franklin	1,808	362	483	(121)
Hampden	12,284	2,457	3,511	(1,054)
Hampshire	2,330	466	418	48
Middlesex	15,785	3,157	3,317	(160)
Nantucket	98	20	0	20
Norfolk	7,350	1,470	940	530
Plymouth	8,307	1,661	1,106	555
Suffolk	19,184	3,837	2,651	1,186
Worcester	16,429	3,286	3,116	170
<b>Total</b>	<b>117,140</b>	<b>23,428</b>	<b>20,338</b>	<b>3,090</b>

## **Finding 15. The SJC permitted CPCS to report that staff attorney caseloads were “at capacity” without identifying the number of total case assignments.**

Since the implementation of the Lavallee protocol in July 2025, the SJC has required CPCS to provide the court with periodic updates that report the caseload of CPCS staff attorneys, among other information. The OIG reviewed the seven periodic updates that CPCS filed with the SJC between August 2025 and March 2026. The OIG found that in each of these periodic updates, CPCS reported that PDD offices in Middlesex and Suffolk counties were “at or near capacity” but did not identify the actual caseloads or average caseload of staff attorneys in those offices. The OIG also found that CPCS did not report the caseloads of staff attorneys in other PDD offices, or whether CPCS considered requiring staff attorneys in other PDD offices to take cases in Middlesex and Suffolk counties.

The OIG also reviewed the supplemental affidavits accompanying the periodic updates, which contained more detailed information about case assignments and duty day staffing. The OIG found that in each of these supplemental affidavits, the CPCS representative reported that PDD staff attorneys in Middlesex and Suffolk counties took increased numbers of duty days or increased numbers of cases in comparison to prior time periods. The supplemental affidavits did not, however, identify the actual number of cases assigned to staff attorneys in those offices. Nor did they identify how many cases particular PDD offices were above or below “capacity.”

The SJC has “supervisory authority” to scrutinize CPCS’s determinations with respect to staff attorney caseloads.<sup>139</sup> The OIG found that the SJC permitted CPCS to report that PDD staff attorneys in Middlesex and Suffolk counties were “at or near capacity” without requiring CPCS to report how many total cases were assigned to those attorneys during the reporting period and how close those total caseloads were to internal CPCS expectations or legislative requirements. The SJC should have taken further action to require more specific and accurate reporting from CPCS during this time of crisis.

### **III. State Comparisons – Caseloads and Costs**

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In order to identify best practices in providing cost-effective indigent representation, the OIG identified relevant and comparable data from other states. Many states do not operate a statewide system for providing indigent representation and as a result do not publicly compile relevant data on a statewide basis. Of the states that operate a statewide system, many either do not publicly compile relevant data or release data that does not indicate the cost-effectiveness of the system. Figure 28 below represents this information. States shaded gray are those that do not operate a statewide system, states shaded green have statewide systems that did not publicly release data relevant to the OIG’s purpose,

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<sup>139</sup> *Carrasquillo v. Hampden Cnty. Dist. Cts.*, 484 Mass. 367, 385 (2020) (“That is not to say that CPCS’s caseload determinations are exempt from judicial scrutiny. This court, in the exercise of its supervisory authority over the administration of justice, has the power to review CPCS’s decisions in that area.”).



of the cost per new case (total spend divided by total new cases). This report’s Appendix G provides more information prepared by the OIG and identifies underlying sources.

**Figure 29: Total spend and case summary for comparable statewide indigent defense systems.**

Fiscal Year	State	Total Spend	Number of Total New Cases	Cost per new case
2025	Massachusetts	\$336,207,663	122,187	\$2,752
2025	Colorado	\$192,835,367	97,057	\$2,170
2025	Connecticut	\$89,492,117	70,688	\$1,266
2024	Iowa	\$74,764,577	166,956	\$448
2025	Kentucky	\$99,471,900	130,600	\$762
2025 calendar	Louisiana	\$80,994,334	134,064	\$604
2025	Maryland	\$155,292,881	116,330	\$1,335
2025	Minnesota	\$165,310,000	135,030	\$1,224
2025	Missouri	\$76,363,938	74,045	\$1,031
2025	Montana	\$53,972,914	33,963	\$1,589
2025	New Hampshire	\$44,561,468	22,863	\$1,949
2024	New Mexico	\$69,500,000	85,654	\$811
2024	Vermont	\$23,915,775	9,393	\$2,546
2023	Virginia	\$126,900,000	90,559	\$1,401

**Finding 17. Massachusetts’s public defenders have the lowest caseloads among eight comparable statewide systems.**

Among the eight comparable statewide systems with sufficient data, the OIG found that Massachusetts public defenders (*i.e.*, CPCS staff attorneys) had the lowest average number of new assigned cases, calculated by dividing the total number of new case assignments by total number of staff attorneys (including supervising attorneys).<sup>141</sup> In Massachusetts, the average number of new assigned cases for staff attorneys was 72, while the next lowest number of average new assigned cases for staff attorneys was around 140 in Vermont.

Figure 30 below shows the comparable statewide systems, the most recent year that relevant data was publicly released (or provided by survey), the number of new cases, the number of staff attorneys (including supervising attorneys), and the OIG’s calculation of the average number of new cases for staff attorneys. Where a state identified the number of attorneys in executive roles, the OIG did not include those in the total number of staff attorneys. This report’s Appendix G provides more information prepared by the OIG and identifies underlying sources.

<sup>141</sup> The OIG notes that the comparison of statewide systems varies in terms of the types of cases that are assigned, the year of the most recent available public data, and the completeness of the data.

**Figure 30: Staffing levels and case totals for comparable statewide indigent defense systems.**

Fiscal Year	State	Number of New Cases Assigned to Staff Attorneys	Number of Staff Attorneys	Average New Cases Per Staff Attorney
2025	Massachusetts	25,492	354 (actual FTEs) 290 (calculated FTEs)	72 (actual FTEs) 88 (calculated FTEs)
2025	Colorado	N/A	621	N/A (does not identify staff attorney cases)
2025	Connecticut	51,048	253	202
2024	Iowa	94,756	176	538
2025	Kentucky	124,016	363	342
2025 calendar	Louisiana	134,064	N/A	N/A
2025	Maryland	N/A	623	N/A (does not identify staff attorney cases)
2025	Minnesota	135,030	590	229
2025	Missouri	59,427	~395	~150
2025	Montana	N/A	214	N/A (does not identify staff attorney cases)
2025	New Hampshire	22,863	~125 (plus 18 contract attorneys)	~160 (staff attorneys and contract attorneys)
2024	New Mexico	55,712	240	232
2024	Vermont	9,393	~42	~140 (staff attorneys and contract attorneys)
2023	Virginia	N/A	“over 300”	N/A (does not identify staff attorney cases)

#### IV. State Comparisons – Hourly Rates and Fee Caps

The OIG surveyed laws in 50 states (and the District of Columbia) for statewide practices concerning hourly rates for private assigned counsel and caps on the amount that private assigned counsel can be paid for a particular case (fee cap). For 35 jurisdictions, the OIG identified statewide hourly rates that are paid to private assigned counsel, while in 28 jurisdictions, the OIG identified statewide fee caps for private assigned counsel.<sup>142</sup> In many of the remaining jurisdictions, the hourly fee and/or the fee cap is set by the county, another governmental authority (such as the court or a state public defender), or by contract (such as a flat fee). The OIG also identified examples of local hourly rates and fee caps from several counties representing major metropolitan areas (Seattle, Pittsburgh, and Houston).

<sup>142</sup> There is considerable variation in the hourly rate and fee cap categories employed by different jurisdictions. For example, in many jurisdictions that use a fee cap, assigned counsel can request a waiver of the cap from an authority such as the statewide public defense agency or the court.

For the findings in this section, the OIG will refer to Figure 31 below which summarizes the OIG’s review of state laws. This report’s Appendix H provides more information prepared by the OIG and identifies underlying sources.

**Figure 31: Hourly rates and fee caps across all 50 states.**

State	Range of Hourly Rates	Range of Fee Caps
Massachusetts	\$75-\$130 (Effective August 1, 2025) \$85-\$140 (Effective August 1, 2026)	No fee cap Annual limit on billed hours: 1,650 hours
Alabama	\$55-\$120	\$2,000-\$6,000
Alaska	Set by Office of Public Advocacy	\$1,000-\$30,000
Arizona	Varies (Judicial discretion)	Varies (Judicial discretion)
Arkansas	\$70-\$120	Set by the Arkansas Public Defender Commission.
California	Varies	Varies
Colorado	\$105-\$115	\$2,596-\$41,536
Connecticut	\$98-\$113	\$675-\$6,750
Delaware	\$50-\$60	\$1,000-\$2,000
District of Columbia	\$110	\$2,000-\$7,000
Florida	N/A (flat fees)	\$1,000-\$25,000 (flat fees)
Georgia	N/A (flat fees)	\$1,000-\$7,500
Hawaii	\$150	\$1,800-\$12,000
Idaho	\$125-\$150	Set by Office of State Public Defender
Illinois	\$150 (or more if set by local rule)	\$750-\$10,000
Indiana	\$110-\$151	Varies (Judicial discretion)
Iowa	\$78-\$88	\$390-\$22,704 (Calculated by OIG) <sup>143</sup>
Kansas	No less than \$120/hour and not more than \$140/hour	\$427-\$8,000
Kentucky	Set by contract by the Department of Public Advocacy	Set by the Department of Public Advocacy
Louisiana	Flat fee contracts	Flat fee contracts
Maine	\$150	\$1,900-\$9,400
Maryland	\$60-\$75	Set by Maryland Public Defender
Michigan	\$125-\$153	Set by local funding source.
Minnesota	Set by State Public Defender	Set by State Public Defender
Mississippi	Set by the Court	\$200-\$2,000
Missouri	Flat fee contracts	\$375-\$10,000
Montana	\$71	N/A
Nebraska	Set by Court: range from \$50-\$125	Set by court
Nevada	\$100-\$125	N/A
New Hampshire	\$125-\$150	\$3,000-\$30,000

<sup>143</sup> Iowa applies caps to the number of hours that can be billed for particular cases. The OIG calculated fee caps by multiplying the applicable hourly rate by the hour caps.

State	Range of Hourly Rates	Range of Fee Caps
New Jersey	\$100	\$3,500-\$25,000 (Calculated by OIG) <sup>144</sup>
New Mexico	N/A (flat fees)	\$220-\$6,500 (Varies by district)
New York	\$158	\$10,000
North Carolina	\$65-\$100	No fee caps
North Dakota	\$90	\$500-\$2,000
Ohio	\$75-\$140	\$500-\$15,000
Oklahoma	N/A (flat fees)	\$800-\$3,500
Oregon	\$140-\$155	Determined by the Public Defense Services Commission
Pennsylvania (e.g., Alleghany County - Pittsburgh)	Set by the court (e.g., \$80-\$110)	Set by the Court (e.g., \$750-\$20,000)
Rhode Island	\$112-\$142	\$3,111-\$42,600
South Carolina	\$40-\$60	\$1,000-\$3,500
South Dakota	\$122	Set by the court
Tennessee	\$60	\$600-\$3,600
Texas (e.g., Harris County - Houston)	Set by the court (e.g., \$125-\$225)	Set by the court (e.g., no fee caps)
Utah	Set by the county or municipality	Set by the county or municipality
Vermont	\$100	\$1,000-\$25,000
Virginia	\$90	\$330-\$1,692
Washington (e.g., King County - Seattle)	Set by the county or city (e.g., \$115-\$117)	Set by the county or city (e.g., N/A)
West Virginia	\$60-\$80	\$4,500
Wisconsin	\$100 (\$50/hr for travel time)	N/A
Wyoming	\$150	Set by the court

**Finding 18. Even with the full increase, Massachusetts’s bar advocate rates will continue to be lower than neighboring states.**

The OIG found that once the Massachusetts pay raise is fully implemented in August 2026, 9 states will have a higher top hourly rate than Massachusetts (\$140), while 13 states will have a lower bottom hourly rate than Massachusetts (\$85), putting Massachusetts in the middle of the spectrum. Among the Northeastern states of Connecticut, New York, Vermont, New Hampshire, Maine, and Rhode Island, however, each state has a minimum hourly rate that is greater than the minimum hourly rate in Massachusetts. Maine, New York, and Rhode Island also have maximum hourly rates that are greater than the maximum hourly rate in Massachusetts.

<sup>144</sup> New Jersey provides caps (which it calls “guidance”) on the number of hours that can be billed for particular cases. The OIG calculated fee caps by multiplying the applicable hourly rate by the hour caps.

## **Finding 19. Massachusetts is the only state that enforces an annual limit on billed hours, whereas other states create a fee cap on individual cases.**

The OIG found that Massachusetts is the only jurisdiction that employs a limit on the total number of hours that private assigned counsel can bill in a year across all cases. Such a limit has no relationship to caseload. All other states that have created a cap on private assigned counsel fees have instead created a fee cap on the amount that private counsel can bill on individual cases. Most states with such a system have created fee caps that vary according to the case type. A fee cap system incentivizes private assigned counsel to take additional cases, rather than bill more hours on the cases they have already been assigned. Most fee cap systems allow the private assigned counsel to request a waiver of the fee cap if a particular need arises for additional work on a given case.

## **V. CPCS Expansion Plan and Bar Advocate Incentive Program**

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### **Finding 20. The CPCS expansion hiring plan does not reflect the mandate and priorities identified by the Legislature.**

In late July 2025, the Legislature passed a supplemental budget giving CPCS an additional \$40 million to “use best efforts to hire approximately” 320 new attorneys over the next two fiscal years, which was signed by Governor Healey on August 5, 2025.<sup>145</sup> According to the budget language, CPCS “shall prioritize the hiring of public defenders that serve areas with unrepresented individuals awaiting counsel assignment, including counties with a recent history of private bar advocate work stoppages.” The budget language also required that these new attorneys be hired in the PDD. The budget language also required CPCS to submit a hiring plan to the Legislature.

CPCS submitted its hiring plan in August 2025. For Fiscal Year 2026, the CPCS hiring plan “expects roughly 120 new attorneys on board . . . across staff counsel and private bar advocates,” but does not identify how many of those new attorneys will be CPCS staff attorneys.<sup>146</sup> While the hiring plan states that 36 new PDD attorneys had been confirmed at the time of submission, the hiring plan does not state whether new staff attorneys will be hired to the PDD or to counties with a recent history of work stoppages.

The hiring plan also states that CPCS will “implement a coordinated increase in support professionals,” including the following positions:

- Supervisors to “maintain the mandated 1:5 attorney-to-supervisor ratio”<sup>147</sup>

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<sup>145</sup> 2025 Mass. Acts c. 14, § 2, line item 0321-1599.

<sup>146</sup> *CPCS Staffing Expansion Plan Summary*, COMM. FOR PUB. COUNS. SERVS. (Aug. 2025).

<sup>147</sup> The OIG notes that no such mandate exists outside of CPCS’s own policies. The OIG also notes that the hiring plan does not state whether the ratios are related to total number of attorneys or FTE attorneys.

- Investigators at a ratio of 1 per 10 attorneys
- Paralegals at a ratio of 1 per 5-6 attorneys
- Social service advocates at a ratio of 1 per 10 attorneys

In Fiscal Year 2027, the hiring plan states that CPCS plans to hire 100 new attorneys as well as “proportional expansion in supervisory and operational support roles,” which the OIG understands to be the same rates identified for Fiscal Year 2026. The hiring plan does not state whether new staff attorneys will be hired to the PDD or to counties with a recent history of work stoppages. The hiring plan also identifies a “total projected expansion . . . between 120 and 160 full-time equivalents,” including attorneys and support staff.

In sum, while the budget language called for CPCS to hire 320 new attorneys to the PDD, the hiring plan states that CPCS expects to hire fewer than 220 new attorneys without specifying which division they will work in. The hiring plan also states that CPCS intends to hire support staff not discussed in the line item.<sup>148</sup>

The OIG found that while the Legislature provided funding to CPCS with direction on how to use the funds, CPCS submitted a hiring plan that significantly deviated from the Legislature’s direction. In reviewing the public record, including legislative hearings, the OIG found that legislators did not ask any questions regarding the hiring plan.

**Finding 21: The total cost of expanding CPCS fluctuates based on the number of support staff hired per additional staff attorney.**

As discussed above, the Legislature allocated \$40 million for CPCS to make best efforts to hire 320 new staff attorneys to the PDD. In its hiring plan for the expansion, CPCS told the Legislature that it plans to hire no more than 220 new attorneys and that it plans to hire additional support staff at particular ratios to new staff attorneys.

The OIG found that CPCS currently employs more support staff in the PDD than the ratios that CPCS claims to need, as identified in the hiring plan. Figure 32 below shows the ratio of various categories of PDD support staff employed by CPCS in Fiscal Year 2025, based on the OIG’s review of Massachusetts HR/CMS data maintained by the Office of the Comptroller, relative to the number of “full time equivalent” PDD staff attorneys in Fiscal Year 2025. Figure 32 also contains, for comparison, the support staff hiring ratios identified in the hiring plan.

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<sup>148</sup> The OIG makes no comment on the number of support staff needed for each new attorney.

**Figure 32: Comparison of FY25 support staff hiring in the PDD with hiring ratios identified in the 2025 hiring plan.**

Support staff category	FY25 – PDD support staff (# FTE attorneys to 1 FTE staff)	2025 Hiring Plan – Support staff ratios (# new attorneys to 1 staff) <sup>149</sup>
Supervising Attorney	3.2 <sup>150</sup>	5
Paralegals/Admin Assistant	3.8	5.5
Investigator	5.6	10
Social Services Advocate	6.2	10

The OIG found that the cost of expanding the PDD with new staff attorneys will vary considerably based on the ratio of support staff to new attorneys that CPCS follows. If CPCS hires 220 new staff attorneys plus new support staff at the ratios identified in the hiring plan, the OIG estimates the total cost to be over \$34 million.<sup>151</sup> Alternatively, if CPCS hires 220 new staff attorneys plus new support staff at staffing ratios that are currently present in the PDD, the OIG estimates the total cost to be nearly \$42 million. Figure 33 below shows estimates of the total cost of hiring 220 new staff attorneys plus support staff at the ratio indicated in the hiring plan or at current staffing levels.

**Figure 33: CPCS estimated expansion plan costs including support staff, hiring plan vs. current levels.**

Position	Est. new hire costs	Hiring plan ratios		Current staffing levels	
		Hires	Total cost	Hires	Total cost
Attorney	\$94,635	220	\$20,819,647	220	\$20,819,647
Supervising Attorney	\$138,196	44	\$6,080,621	69	\$9,575,726
Paralegals/Admin Assistant	\$77,358	42	\$3,233,567	58	\$4,480,468
Investigator	\$89,554	22	\$1,970,195	39	\$3,501,467
Social services advocate	\$93,012	22	\$2,046,271	35	\$3,299,682
<b>Total</b>	-	<b>349.8</b>	<b>\$34,150,301</b>	<b>421.8</b>	<b>\$41,676,990</b>

<sup>149</sup> The OIG notes that the hiring plan does not specify whether the support staff ratios are based on the total number of employees or based on FTEs.

<sup>150</sup> For its calculation, the OIG included supervising attorneys and attorneys-in-charge.

<sup>151</sup> The OIG calculated the cost per hire by adding an averaged starting salary for each position to a flat amount (\$17,181) that represents non-salary costs associated with hiring new employees. These non-salary costs include fringe benefits, IT costs, and office space costs that the OIG identified among CPCS financial data. This report’s Appendix F provides the OIG’s data methodology.

As noted above, the OIG found that CPCS currently employs more support staff in the PDD than it claims to need in the hiring plan. Accordingly, the OIG found that if CPCS only hires as many support staff as needed to align the PDD as a whole with the support staff ratios identified in the hiring plan, then CPCS could hire nearly 300 new staff attorneys for \$40 million. Figure 34 below estimates how a \$40 million budget could have been allocated if CPCS only hires enough support staff to bring the overall number of support staff in PDD to the ratios identified in the hiring plan.

**Figure 34: CPCS estimated expansion plan costs when only hiring sufficient support staff to achieve ratios stated in hiring plan.**

Position	Est. new hire costs	Hires	Total cost
Case-taking attorneys	\$94,635	297	\$28,072,506
Supervisor	\$138,196	40	\$5,527,469
Paralegals + admin assistants	\$77,358	40	\$3,112,798
Investigators	\$89,554	17	\$1,486,138
Social service advocate	\$93,012	19	\$1,801,095
	-	<b>412.8</b>	<b>\$40,000,007</b>

**Finding 22. CPCS’s financial incentive program attracted only 16 new bar advocates and paid out nearly \$1 million primarily to bar advocates with high existing caseloads.**

As discussed above, in fall 2025 CPCS implemented a financial incentive program to “assist in the prompt assignment of attorneys to criminal defendants . . . who are currently unrepresented.” The incentive program was designed to assign cases “in groups of 5” and pay \$2,500 for every 5 cases assigned, up to 15 new cases per bar advocate. The OIG received payment totals concerning the incentive program from CPCS. In total, CPCS paid out nearly \$1 million to 169 bar advocates for accepting 1,976 new case assignments. By those figures, the average bar advocate received \$5,500 or \$6,000 in financial incentives to take on 11 or 12 new case assignments.

The 2025 work stoppage occurred in part because bar advocate panel memberships have been declining. The OIG found that of the 169 bar advocates who received incentive payments, 16 had not previously accepted any case assignments in Fiscal Year 2025. The OIG finds that spending nearly \$1 million to attract only 16 new bar advocates was not effective.

Of the remaining 153 bar advocates, the OIG found that nearly all (152 out of 153) of the bar advocates who received incentive payments had already accepted District Court case assignments in Fiscal Year 2025 and that those bar advocates, on average, accepted significantly more case assignments (around 85 cases) than all bar advocates (around 65 cases) in Fiscal Year 2025. Figure 35 below compares the average number of case assignments among all bar advocates with the bar advocates who received incentive payments.

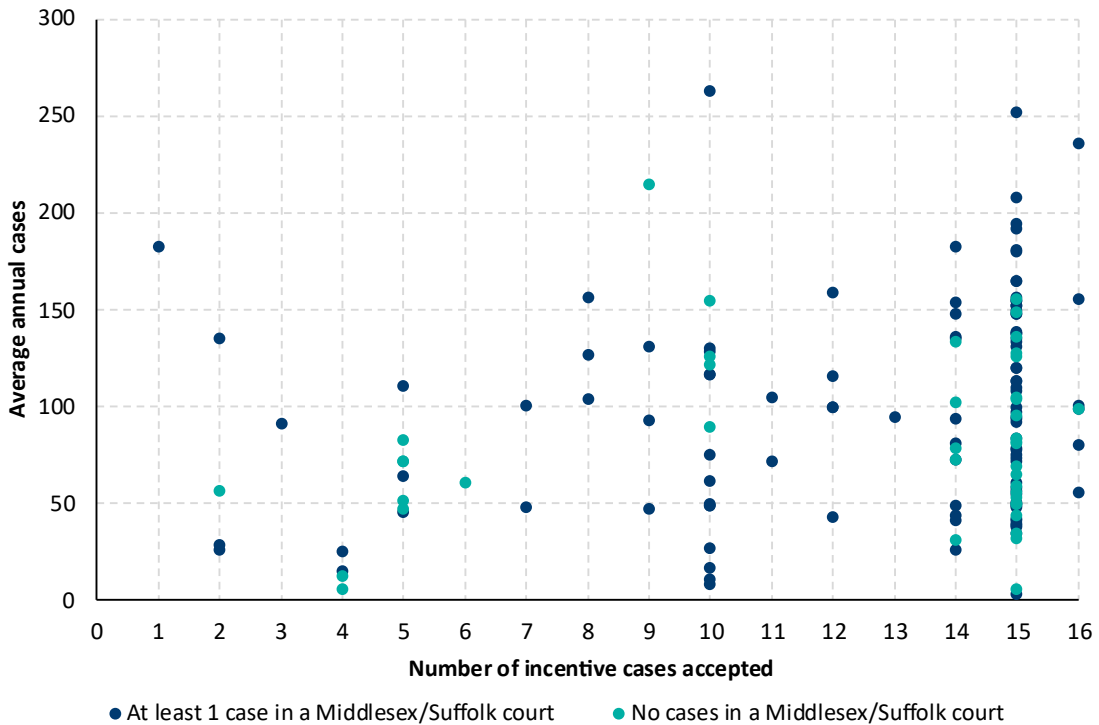
**Figure 35: District Court case assignments and assignments per bar advocate for all bar advocates and those that received incentive payments.**

	All bar advocates	Received incentive payment
Number of bar advocates with District Court assignments	1,464	152
Assignments per bar advocate (unweighted)	65.3	84.8

**Finding 23. The CPCS financial incentive program went to many bar advocates who do not typically take cases in Middlesex or Suffolk counties.**

The 2025 work stoppage occurred in part because bar advocates who worked primarily within Middlesex and Suffolk counties refused to accept new case assignments. The OIG found that of the 153 bar advocates who received financial incentives and previously accepted cases, 41 bar advocates had not accepted any case assignments in Middlesex or Suffolk counties in the last three fiscal years.<sup>152</sup> Figure 36 below shows the distribution of new case assignments among bar advocates receiving the financial incentive.

**Figure 36: Average annual case assignments (FY23 – FY25) and number of Middlesex County and Suffolk County incentive cases taken for bar advocates that accepted incentive payment.**



<sup>152</sup> This is perhaps because the incentive program was satisfied by simply taking a new assignment, rather than incentivizing bar advocates to take challenging cases or to take additional duty days. Under the incentive program, a bar advocate could take the case, enter a plea, and collect the incentive payment.

The OIG notes that it does not have bar advocate case assignment data beyond December 2025 from which to evaluate how many of these 41 bar advocates accepted additional assignments in Middlesex and Suffolk counties.

In sum, while the financial incentive program helped reduce the number of unrepresented defendants in Middlesex and Suffolk counties, the cost of the program was high and primarily benefited bar advocates who already accept significantly more cases than the average bar advocate. In interviews with sitting judges from district courts in Middlesex and Suffolk counties, the OIG was told that the incentive program has not meaningfully improved the scheduling of bar advocates for duty days. Overall, the OIG found that the incentive program was not well designed or specifically tailored to address the acute problem in Middlesex and Suffolk counties.

## **VI. Fiscal Impact**

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The Legislature asked the OIG to prepare an analysis of the fiscal impact on the total costs of indigent defense if the proportion of indigent clients represented by public defenders was increased. In approaching this task, the OIG calculated average values from the last three fiscal years: the average proportion of new case assignments among CPCS staff attorneys and bar advocates, ratios of CPCS support staff to attorneys, CPCS expenses and employee salaries, and bar advocate payments. With these calculations, the OIG estimated (1) the fiscal impact of increasing the percentage of overall cases assigned to CPCS staff attorneys; (2) the fiscal impact of increasing the average caseload of CPCS staff attorneys; and (3) the fiscal impact of raising bar advocate hourly rates. Finally, the OIG estimated the fiscal impact of changing all three factors. These estimates are reflected in Figure 37 below. This report's Appendix F contains the OIG's data methodology.

The OIG notes that its findings are estimates based on current policies and laws concerning case assignments and bar advocate billing. A more robust oversight system and fee caps on bar advocate cases would likely reduce bar advocate costs, while an increased caseload for supervising attorneys would likely reduce CPCS staff attorney costs.

The findings in this section are based on the OIG estimates reflected in Figure 37. The OIG estimated the number of FTE staff attorneys that CPCS would need to employ in order to accept a particular percentage of assigned cases, based on a given caseload.<sup>153</sup> The OIG then estimated the cost of employing that number of FTE staff attorneys.<sup>154</sup> The OIG then estimated the cost of paying bar advocates

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<sup>153</sup> The OIG notes that increasing CPCS staff attorney caseload by 20% reflects figures that are roughly in line with current CPCS caseload policy. CPCS staff attorneys in the PDD, on average, received 117 new weighted cases in Fiscal Year 2025. The PDD guidelines state that a staff attorney is expected to "touch" 190 weighted cases in a fiscal year, with roughly 50-70 weighted cases carrying over from the prior fiscal year. Subtracting 70 cases from 190 cases suggests that a CPCS staff attorney could be expected to be assigned 120 new weighted cases in a fiscal year (roughly equal to 117 cases). Subtracting 50 cases from 190 cases suggests that a CPCS staff attorney could be expected to be assigned 140 new weighted cases in a fiscal year (a roughly 20% increase over 117 cases). Further, CPCS's 2014 workload assessment estimated that a PDD staff attorney could expect to take 143 new district court cases in a given year. A 40% increase over 117 cases would be roughly equal to 160 weighted new assignments for PDD staff attorneys.

<sup>154</sup> The cost of employing FTE staff employees includes flat overhead costs that the OIG does not anticipate will increase with additional staff, direct costs associated with those FTEs (such as attorney salaries plus the salaries of support staff hired at the

to take the cases not assigned to staff attorneys. The top line of Figure 37 reflects actual financial figures from the last three fiscal years (prior to the 2025 bar advocate pay increase), while the remainder of Figure 37 reflects estimated bar advocate costs based on the full 2025 bar advocate pay increase which will go into effect on August 1, 2026.

For an illustration of how to read Figure 37, start with the top row. This row shows an average fiscal year, calculated with data from the last three fiscal years. CPCS staff attorneys are assigned 14.5% of new cases, which translates to 23,272 new cases. Those new cases are assigned to 278 CPCS staff attorney FTEs, and the cost to employ and support those staff attorneys is \$79,872,326. The cost to CPCS relative to each new case accepted by CPCS staff attorneys is \$3,432. Bar advocates accepted 136,918 new case assignments and the cost to hire those bar advocates was \$246,243,392, which is \$1,798 on a per new case basis. The total cost is \$326,115,718.

The second line of Figure 37 takes the same scenario but estimates the cost of including the 2025 bar advocate pay raise (\$387,402,796). Looking further down Figure 37, the OIG estimates that increasing the number of cases assigned to CPCS staff attorneys to 30%, increasing staff attorney caseload by 40%, and keeping bar advocate pay steady (0% increase) would result in a total cost of \$362,797,723. With 409 FTE staff attorneys, this scenario is a possible outcome to result from the expansion plan.

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levels identified by CPCS in the hiring plan), and less direct expenses the OIG anticipates will increase with additional staff, including office space, technology costs, and supplies.

The fiscal analysis that the OIG prepared does not scale all CPCS costs. There are certain costs that the OIG was not able to adjust with sufficient certainty. Some agency-wide expenses, such as legal costs, training costs, and human resources costs, would likely increase with a larger headcount, but at rates that are difficult to estimate.

The OIG emphasizes that these figures are estimates. Some estimates are more definite, such as the salary cost of adding an additional CPCS staff attorney. Other estimates are less definite. For example, to estimate the cost of additional real estate, the OIG calculated a “per capita” cost, based on CPCS’s current lease payments. This estimate attempts to recognize that increasing the number of CPCS staff attorneys will require additional office space. Because changes in real estate footprint do not happen on a “per capita” basis, this estimate must be recognized as a placeholder for business decisions that are appropriately made by CPCS.

**Figure 37: Estimated indigent defense system costs.**

Scenario			CPCS				Bar advocates			
CPCS		BA	# new asgn.	FTEs	CPCS cost	Cost / new asgn. ‡	# new asgn.	BA cost	Cost / new asgn.	Total cost
% asgn.*	Asgn. inc.	Rate inc. †								
14.5%	0%	Pre 8/1/25	23,272	278	\$79,872,326	\$3,432	136,918	\$246,243,392	\$1,798	\$326,115,718
14.5%	0%	Post 8/1/26	23,272	278	\$79,872,326	\$3,432	136,918	\$307,530,470	\$2,246	\$387,402,796
14.5%	0%	20%	23,272	278	\$79,872,333	\$3,432	136,918	\$361,896,886	\$2,643	\$441,769,219
		40%						\$416,263,307	\$3,040	\$496,135,640
	20%	0%						\$307,530,465	\$2,246	\$376,543,735
		20%	23,272	231	\$69,013,270	\$2,966	136,918	\$361,896,886	\$2,643	\$430,910,156
	40%	40%						\$416,263,307	\$3,040	\$485,276,577
		0%						\$307,530,465	\$2,246	\$368,787,261
20%	0%	20%	32,038	381	\$104,213,831	\$3,253	128,152	\$287,958,101	\$2,247	\$392,171,932
		40%						\$338,843,800	\$2,644	\$443,057,631
	20%	0%						\$389,729,499	\$3,041	\$493,943,330
		20%	32,038	318	\$89,297,852	\$2,787	128,152	\$287,958,101	\$2,247	\$377,255,953
	40%	40%						\$338,843,800	\$2,644	\$428,141,652
		0%						\$389,729,499	\$3,041	\$479,027,351
30%	0%	20%	48,057	572	\$148,961,770	\$3,100	112,133	\$287,958,101	\$2,247	\$366,601,681
		40%						\$252,191,329	\$2,249	\$401,153,099
	20%	0%						\$296,716,316	\$2,646	\$445,678,085
		20%	48,057	477	\$126,587,800	\$2,634	112,133	\$341,241,302	\$3,043	\$490,203,072
	40%	40%						\$252,191,329	\$2,249	\$378,779,129
		0%						\$296,716,316	\$2,646	\$423,304,116
40%	0%	20%	64,076	763	\$193,709,708	\$3,023	96,114	\$341,241,302	\$3,043	\$467,829,103
		40%						\$252,191,329	\$2,249	\$362,797,723
	20%	0%						\$296,716,316	\$2,646	\$407,322,710
		20%	64,076	636	\$163,877,749	\$2,558	96,114	\$341,241,302	\$3,043	\$451,847,696
	40%	40%						\$216,424,557	\$2,252	\$410,134,265
		0%						\$254,588,831	\$2,649	\$448,298,540
40%	20%	20%	64,076	636	\$163,877,749	\$2,558	96,114	\$292,753,106	\$3,046	\$486,462,814
		40%						\$216,424,557	\$2,252	\$380,302,306
	40%	0%						\$254,588,831	\$2,649	\$418,466,581
		20%	64,076	545	\$142,569,207	\$2,225	96,114	\$292,753,106	\$3,046	\$456,630,855
	40%	40%						\$216,424,557	\$2,252	\$358,993,764
		0%						\$254,588,831	\$2,649	\$397,158,038
							\$292,753,106	\$3,046	\$435,322,313	

**Represents CPCS's current assignments per FTE and assignment share.**  
**Adjusts current scenario to account for 8/2026 bar advocate rate increase (~30% increase from FY25 rate).**

\*Asgn refers to "assignment" or "assignments."  
 † The 0% rate increase reflects bar advocate rates after August 1, 2026. The 20% and 40% rate increases reflect changes to this rate. For district court cases, this is \$85, \$102, and \$119, respectively.  
 ‡ This calculation only considers new cases assigned in a fiscal year and should not be interpreted as the cost per case.

**Finding 24. The 2025 bar advocate pay raise will significantly increase the CPCS budget but may not meaningfully address bar advocate case capacity.**

The OIG found that the 2025 bar advocate pay increase will substantially increase the total cost of indigent representation in Massachusetts, all else being equal. As shown by comparing the top two lines in Figure 37 above, the OIG expects the total cost to rise more than \$60 million (from \$326,115,718 to \$387,402,796). Because bar advocates take so many cases, a relatively small increase in the cost per new case (under \$500) has a substantial impact on the total cost. The rate of bar advocate pay is not restricted by any fee cap, so it is possible that Massachusetts could continue to face the problem of bar advocates refusing to take additional cases while submitting high bills on the cases they are already assigned.

**Finding 25. Costs can only be lowered if CPCS staff attorneys increase their caseloads.**

The OIG found that costs can only be lowered if CPCS staff attorneys increase their caseloads. As shown in Figure 37 above, if staff attorney caseloads increased 40% and the total number of assignments to CPCS stayed the same, the Commonwealth could expect to save around \$20 million (from \$387,402,796 to \$368,787,261). Alternatively, if assignments to CPCS increased to 40% of all indigent cases and CPCS staff attorney caseloads stayed the same, the Commonwealth could expect to spend around \$22 million more (from \$387,402,796 to \$410,134,265).

As the data shows, internal CPCS caseload expectations, which as reported in Finding 10 are not high enough to meet the 20% case assignment requirement, have a significant impact on the current predicament. More money from the Legislature does not necessarily mean that CPCS staff attorneys take more cases. The Legislature should carefully study how CPCS sets internal caseload expectations for staff attorneys, if those expectations are met, and if the Legislature agrees with those expectations.

**Finding 26. Costs can be lowered the most by increasing both CPCS staff attorney caseloads and total case assignments.**

The OIG found that costs will go down the most by increasing both CPCS staff attorney caseloads and total case assignments. As shown in Figure 37 above, if staff attorney caseloads increased 40% and the number of assignments to CPCS increased to 40% of all indigent cases, the Commonwealth could expect to save around \$30 million (from \$387,402,796 to \$358,993,764). As noted in Finding 25, the Commonwealth could only expect to save around \$20 million by increasing staff attorney caseloads 40% but not increasing total case assignments to CPCS.

**Finding 27. At current caseload levels, CPCS staff attorneys are more expensive than bar advocates on a per-new-case basis.**

The OIG found that the cost of bar advocates is significantly lower than the cost of CPCS staff attorneys at their current caseload, on a per-new-case basis. As shown in Figure 37 above, prior to the 2025 bar advocate pay raise, CPCS staff attorneys cost nearly twice as much as bar advocates on a per-new-case basis (compare \$3,432 with \$1,798). Following the 2025 bar advocate pay raise, CPCS staff attorneys cost only 1.5 times as much as bar advocates, on a per-new-case basis (compare \$3,432 with \$2,246). Indeed, CPCS staff attorneys would cost more than bar advocates, on a per-new-case basis, even if bar advocates received an additional 40% pay raise (compare \$3,432 with \$3,040).

**Finding 28. Increasing both CPCS staff attorney caseloads and case assignments could help pay for additional raises for bar advocates.**

The OIG found that increasing bar advocate pay an additional 20% would increase total costs, but increasing both total CPCS case assignments and staff attorney caseloads could offset those costs. As shown in Figure 37 above, increasing bar advocate pay by an additional 20% would only cost around \$10 million more than the cost of the 2025 bar advocate pay raise if CPCS takes 40% of all indigent cases and CPCS staff attorneys caseloads increased 40% (compare \$397,158,038 with \$387,402,796). Alternatively, increasing bar advocate pay by an additional 20% would cost around \$54 million more than the cost of the 2025 bar advocate pay raise if total case assignments to CPCS and CPCS staff attorney caseloads stayed the same (compare \$441,769,219 with \$387,402,796).

## **VII. Oversight**

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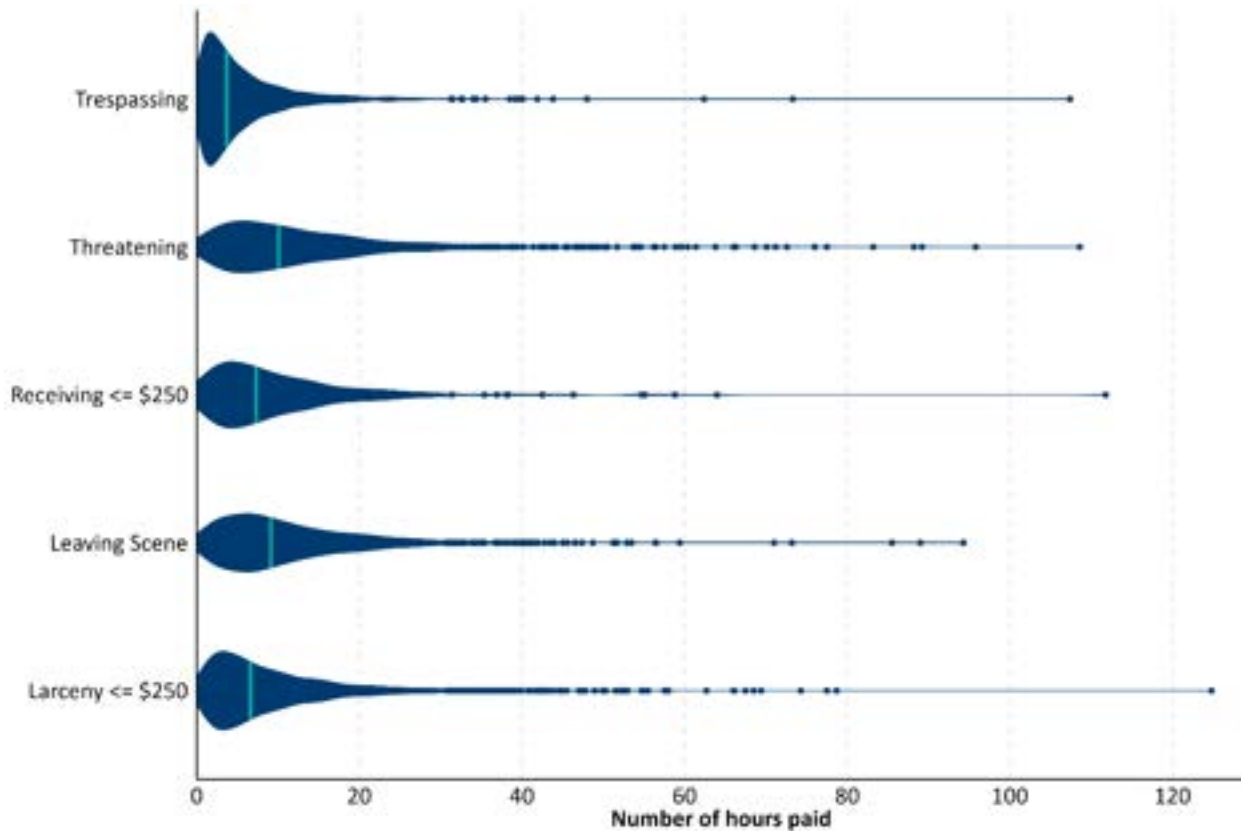
**Finding 29. Existing CPCS controls on bar advocate billing and the annual limit on bar advocate hours fail to prevent high bills on individual cases.**

The OIG conducted a review of all bar advocate bills between July 1, 2022, and June 30, 2025, for certain single-charge misdemeanor offenses that are typically straightforward District Court cases, including trespass, threats, receiving stolen property of under \$250, leaving the scene, and larceny of under \$250. The OIG found that the vast majority of the bills for these offenses contain a limited number of hours paid; however, a number of bills for each offense were many multiples greater than the average bill. This is possible because the annual limit on total bar advocate hours does not limit the number of hours that a bar advocate can bill on a particular case.

Figure 38 below shows a grouping of all individual bills for each offense by number of hours paid. The vertical line indicates the median number of hours. The shape of each grouping shows a large number of bills with only a few hours, followed by a long “tail” that indicates a relatively smaller number of bills with a high number of hours. For the offense categories examined, the median number of hours paid

ranged from approximately 3.7 to 10.1 hours, while maximum hours ranged from approximately 94.3 to 124.8 hours.<sup>155</sup>

**Figure 38: Distribution of hours paid for select single-charge misdemeanors (FY23 – FY25).**



The OIG found that bar advocates have submitted bills for numbers of hours on single charge misdemeanor offenses that are between 10 and 29 times the median number of hours paid for the offense.<sup>156</sup> Figure 39 below shows the range of number of hours paid on a particular case, including the lowest number of hours, the median number of hours, the highest number of hours, and the number of multiples between the median and the highest number of hours.

<sup>155</sup> See *Median*, MERRIAM-WEBSTER.COM, available at <https://www.merriam-webster.com/dictionary/median> (last visited April 17, 2026) (“[A] value in an ordered set of values below and above which there is an equal number of values.”).

<sup>156</sup> The OIG notes that it is not possible to compare these metrics against CPCS staff attorneys, because CPCS does not require its staff attorneys log the amount of time spent on particular cases.

**Figure 39: Range of hours paid for select single-charge misdemeanors (FY23 – FY25).**

Charge	Hours paid					# of multiples between median and highest
	Lowest (excl. 0)	25th percentile	Median	75th percentile	Highest	
Larceny <= \$250	0.1	3.4	6.6	12.6	124.8	18.9
Leaving Scene	0.1	5.1	9.1	15.6	94.3	10.4
Receiving <= \$250	0.1	3.8	7.3	13.3	111.8	15.3
Threatening	0.1	5.3	10.1	17.3	108.6	10.8
Trespassing	0.1	1.7	3.7	7.3	107.4	29.0

While these high-hour bills may be justified, the current CPCS billing environment does not have any automatic controls that flag outlier bills for further review or audit. CPCS should implement a statistical exception framework in which automated review is triggered for cases exceeding several multiples of the median. A control framework that does not include targeted statistical triggers risks missing this type of outlier. Furthermore, as previously stated, the statutory limit on the number of annual bar advocate hours does not prevent high bills on individual cases. As discussed in Finding 19, many states impose limits on the amount that assigned counsel can bill on individual cases (fee cap), with those limits varying according to the difficulty of the case type.

The structure of bar advocate payments, particularly prior to the 2025 hourly fee increase, in which bar advocates received below-market fees on cases without any fee cap could certainly have incentivized bar advocates to bill higher numbers of hours on existing cases rather than taking new assignments.

**Finding 30. CPCS controls on bar advocate billing do not provide oversight for subjective tasks that can drive bills higher.**

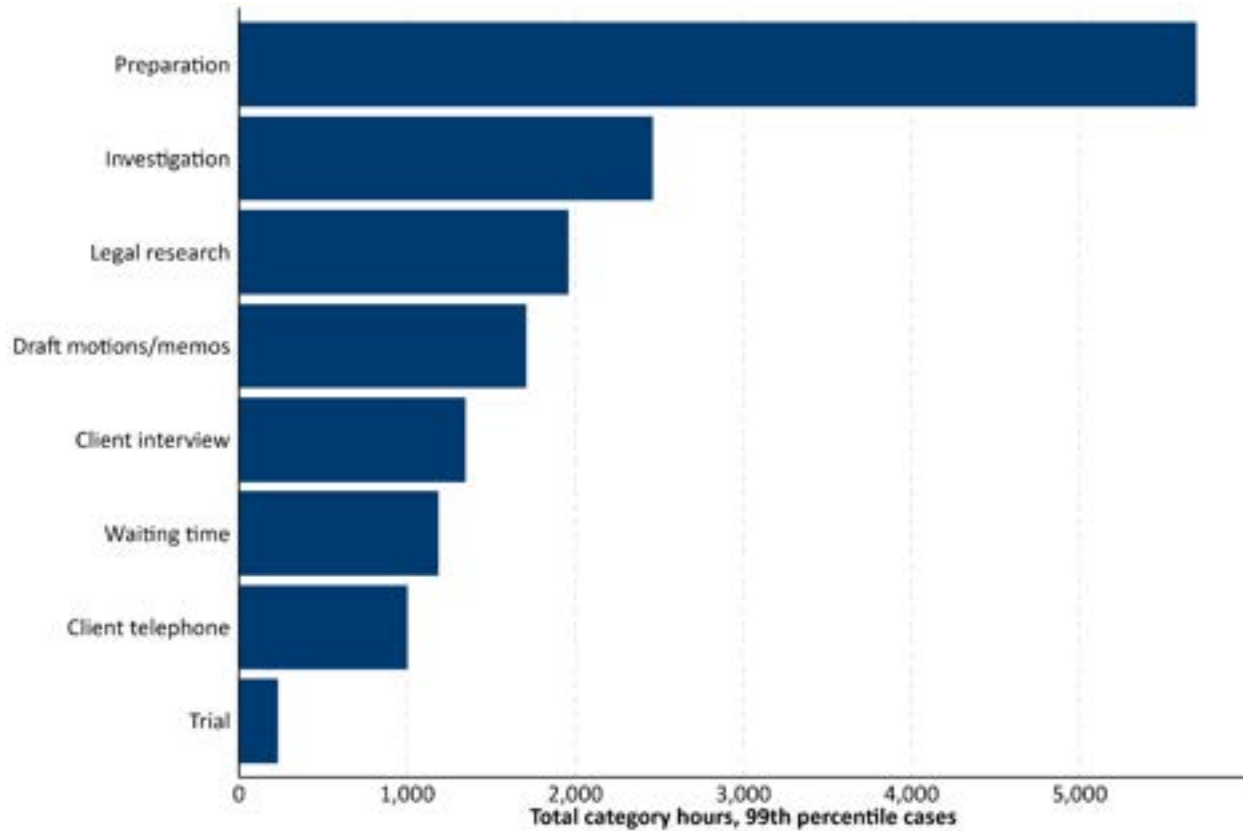
To determine the kinds of activities that drive up bills among high-hour cases, the OIG identified outlier cases (99th percentile) among the dataset of single-charge misdemeanor offenses and analyzed the types of bills submitted. The OIG found that the high bills paid in these outlier cases are more likely to be driven by subjective tasks such as preparation, investigation, and legal research and writing than the average case. The OIG found these bills are likely to include relatively less time on objective tasks such as court appearances (trial and hearings) or travel. Figure 40 below shows bar advocate billing categories as a percentage of the entire paid bill among the outlier cases (99th percentile) and non-outlier cases (45th-55th percentile) and compares those groups of cases.

**Figure 40: Percentage of total hours paid by billing category for outlier and non-outlier single-charge misdemeanors (FY23 – FY25).**

	<b>% total hours paid, outliers</b>	<b>% total hours paid, non-outliers</b>	<b>Difference</b>
Preparation	33%	24%	9%
Investigation	14%	14%	0%
Legal Research	11%	5%	6%
Draft motions/memo	10%	6%	4%
Client interview	8%	14%	(6%)
Waiting time	7%	15%	(8%)
Other	6%	6%	0%
Client telephone	6%	7%	(1%)
Pre-trial hearing	2%	6%	(4%)
Travel	2%	2%	0%
Trial	1%	0%	1%
Plea hearing	0%	1%	(1%)
Post-conviction hearing	0%	0%	0%

The impact of these high bills in subjective areas (preparation, investigation, legal research and writing, etc.) is accumulative. Figure 41 below shows the aggregated hours paid among the outlier cases, broken out by bill category. The OIG found that preparation time accounted for over 5,000 hours paid among the outlier cases, while court-related time (waiting time and trial) accounted for less than 2,000 hours paid.

**Figure 41: Total hours paid by billing category for select single-charge misdemeanors, limited to the cases in the 99th percentile of total hours paid (FY23 – FY25).**



High-bill cases are not driven primarily by non-discretionary tasks such as client interactions and courtroom activities, but by categories that are inherently more discretionary and less susceptible to objective verification. CPCS should consider implementing a statistical exception framework that triggers an automated review when discretionary tasks exceed multiples of non-discretionary tasks or otherwise exceed the average percentage of hours spent on discretionary tasks in non-outlier cases. At a minimum, chronic outliers from bar advocates should trigger questioning.

**Finding 31. Waiting times, which vary considerably from court to court, can drive high bar advocate bills.**

The OIG reviewed bar advocate bills to determine how much money is paid to bar advocates for time spent on necessary, but non-productive, activities – particularly travel to and from court and waiting for their case to be called. For lack of a better term, the OIG will refer to these bills as “non-productive court costs.”

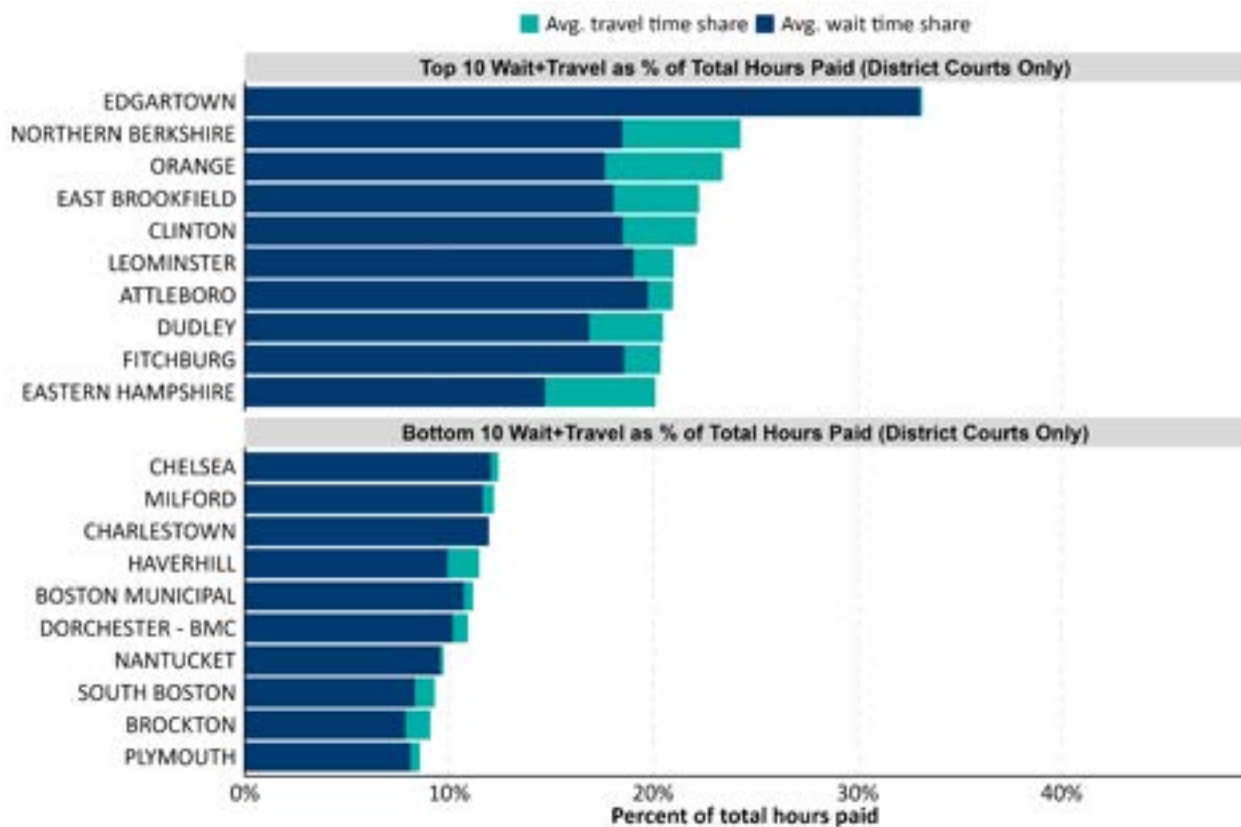
The OIG found that non-productive court costs are a larger percentage of bar advocate bills in District Court than in Superior Court. Across all District Court assignments, travel represented about 1.4% of total bar advocate payments and waiting time about 13.4%. As a result, approximately 14.8% of money paid to bar advocates on District Court cases is for these non-productive court costs. Across all Superior

Court assignments, travel represented about 3.1% and waiting time about 9.9%, for a combined share of approximately 13%.

In some courts, however, the percentage of total bar advocate bills based on non-productive court costs is even higher. In the 10 District Courts with the highest percentage of payments for non-productive court costs, the OIG found that more than 20% of bar advocate payments were for non-productive court costs. The wide range of non-productive court costs suggests that travel-time and wait-time billing does not behave uniformly statewide.

The OIG also found that waiting time is the primary driver of bills for non-productive court costs at both the District Courts associated with the highest percentage billed for non-productive court-time and the District Courts with the lowest percentage billed for non-productive court-time. Figure 42 below shows the top 10 and the bottom 10 District Courts, based on the percentage of total money paid to bar advocates for non-productive court costs. The percentage of the money billed based on waiting time is shaded in dark blue.

**Figure 42: Wait and travel time as a share of total hours paid (FY23 – FY25).**



Large bills associated with waiting time likely reflect staffing and scheduling realities with District Court calendars in smaller jurisdictions rather than a billing problem. CPCS should consider aggregating bar advocate bills for waiting time by court and annually submitting that information to the Executive Office of the Trial Court, the chief justices of those courts, and the presiding justices. The fact that so much

money is paid for waiting costs on assigned cases, while no waiting time is paid for duty days (before any case is assigned), is a factor in why duty days are hard to fill. The policy concerning waiting time reimbursement should be revisited to increase controls for waiting time on assigned cases and allow controlled reimbursement for waiting time on duty days.

**Finding 32. CPCS conducts minimal audits and complex case reviews relative to new bar advocate assignments.**

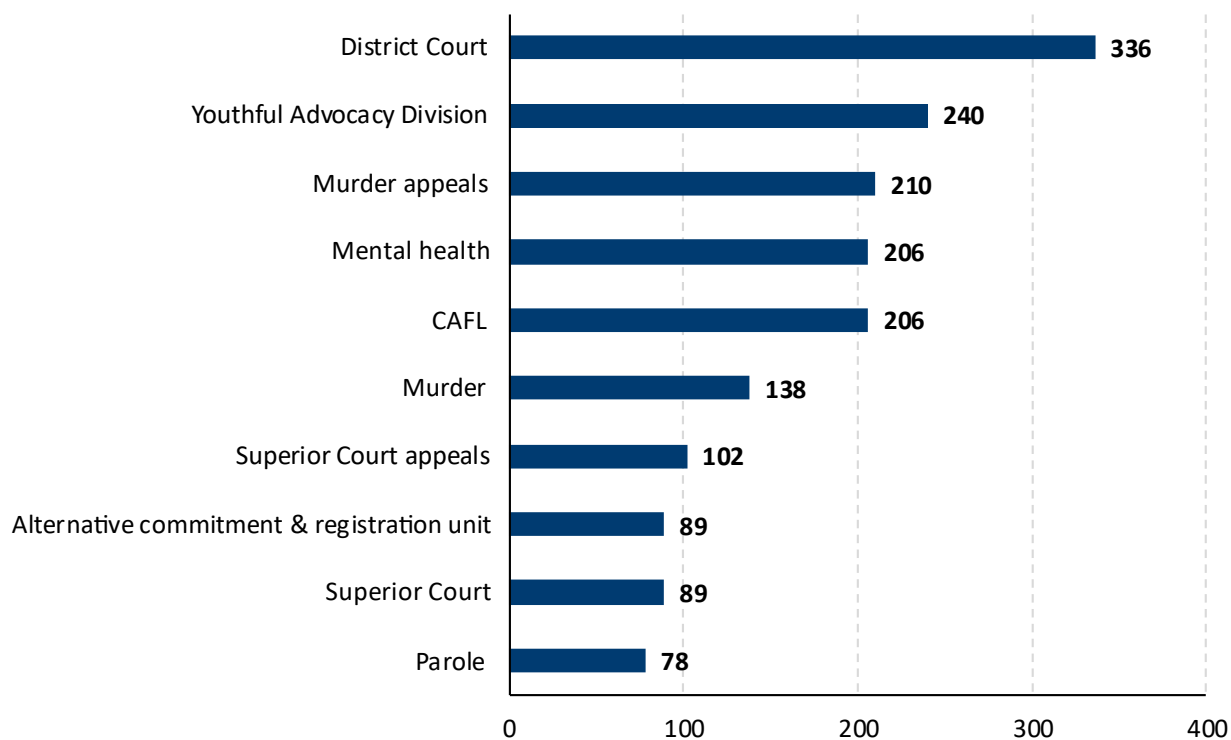
The OIG reviewed data from audits and complex case reviews (CCRs) conducted by CPCS over the last three fiscal years. The OIG found that CPCS conducted a smaller number of audits and CCRs relative to the large number of new cases assigned to bar advocates – fewer than 6 reviews per 1,000 (0.6%) assignments. Figure 43 compares the total number of CCRs with the total number of new bar advocate case assignments, by fiscal year.

**Figure 43: Frequency of CPCS complex case reviews (FY23 – FY25).**

FY	CCRs	Bar advocate assignments	CCR per 1,000 bar assignments	CCR as % of bar assignments
2023	595	137,390	4.33	0.43%
2024	634	138,919	4.56	0.46%
2025	681	134,444	5.07	0.51%

These CCRs were not evenly distributed among bar advocate cases. The OIG found that complex cases – such as murders and murder appeals – were highly represented despite being uncommon cases handled by some of the most experienced attorneys. Figure 44 shows the categories of cases in which CCRs most frequently occurred over the past three fiscal years.

**Figure 44: Complex case reviews by case category (FY23 – FY25).**



CPCS conducts audits of bar advocate bills far less frequently than it conducts CCRs. The OIG found that CPCS engaged in 10 full audits over the last three fiscal years. Of those, eight audits were resolved and two audits remain open. The audits resulted in two bar advocates being removed from the panel, though CPCS made no referrals to outside authorities. From these audits, CPCS recovered only \$11,485.75 in funds returned after payment was made to the bar advocate and blocked payments on only \$54,919.25 in requested funds. These results suggest that CPCS does not truly invest in its fiscal audits and compliance oversight role. This may be related to the fact that compliance with its rules and the effective use of funds are not related to its request for supplemental funding.

**Finding 33. CPCS exercises primarily fiscal oversight for bar advocates and performance oversight for staff attorneys, with neither group adequately receiving both.**

Whereas the E-Bill system used by CPCS to manage bar advocate billing tracks the amount of time that bar advocates spend on particular cases assigned to them, CPCS does not use its case management system (Zelly) to capture the amount of time that staff attorneys or CPCS support staff spend on individual cases. CPCS thus has access to granular metrics that allow for detailed fiscal audits of bar advocates but does not have similar insight into cases worked by its own staff attorneys.

Conversely, CPCS staff attorneys are subject to regular performance evaluations and case reviews with multiple layers of supervision, including supervising attorneys and attorneys-in-charge (AICs). CPCS

provides more limited supervision of bar advocate performance, namely through biennial recertification to the bar advocate panel.

The OIG found that CPCS conducts moderate fiscal and performance oversight for bar advocates but primarily conducts performance oversight for staff attorneys. The OIG found that CPCS does not have strong fiscal controls and strong performance controls in place for either the bar advocates or CPCS staff attorneys. Figure 45 below compares the oversight exercised over bar advocates and CPCS staff attorneys, broken out by fiscal controls and performance controls.

**Figure 45: Comparison of CPCS fiscal and performance controls for bar advocates and CPCS staff.**

	Fiscal controls	Performance controls
<b>Bar Advocates</b>	Moderate: <ul style="list-style-type: none"> <li>• Annual limit on total bills</li> <li>• CCRs around known billing thresholds</li> <li>• Infrequent audits</li> <li>• Vendor bills approved by judge</li> </ul>	Moderate: <ul style="list-style-type: none"> <li>• Biennial bar panel evaluations (not performed by CPCS)</li> <li>• Initial training</li> <li>• 8 hours annual continuing legal education</li> <li>• Assigned Counsel Manual</li> </ul>
<b>CPCS Staff Attorneys</b>	Weak: <ul style="list-style-type: none"> <li>• Vendor bills approved by judge</li> </ul>	Strong: <ul style="list-style-type: none"> <li>• Annual performance evaluations (by supervisors and AICs)</li> <li>• Case reviews</li> <li>• Initial and ongoing training</li> <li>• Assigned Counsel Manual</li> </ul>

**Finding 34. CPCS does not use its data tracking systems to track hours and other key performance indicators for CPCS staff attorneys.**

During its investigation, the OIG requested information from CPCS concerning the evaluation of CPCS staff attorneys. The information that the OIG received in response indicated that CPCS’s evaluation process for staff attorneys functions similarly to its oversight model: through performance evaluations and case file reviews conducted by supervising attorneys and AICs. Evaluation forms and procedures vary considerably across CPCS divisions, further increasing the difficulty of organizing and conveying this data.

CPCS did not provide information which suggests that CPCS tracks performance indicators (other than caseload) across staff attorneys, such as hours spent on a case, expert costs, or case resolutions. Furthermore, OIG review of data provided from CPCS’s case management system, Zelly, did not indicate that CPCS tracks such performance indicators in its officewide system.

The OIG also requested that CPCS provide any internal reports about attorney caseload, a data point that is regularly requested by the Legislature. CPCS directed the OIG to the Zelly case management

database and the quarterly caseload spreadsheets, which contain voluminous information about individual cases and individual attorneys but do not summarize staff attorney caseloads across divisions or offices. Accordingly, the OIG found that CPCS does not appear to consistently create summary reports that identify the overall caseload of staff attorneys in its divisions or offices.

**Finding 35. Despite significant vendor spending, CPCS does not capture vendor cost data in a way that allows a clear comparison between bar advocate and CPCS attorney cases.**

CPCS records the payment of essentially all case-related vendor costs (such as experts and private investigators) in the Commonwealth’s accounting system under the CPCS line item appropriation for court-approved fees and costs. The OIG found that CPCS does not identify whether these vendor costs are associated with bar advocate cases or CPCS staff attorney cases. The OIG also found that internal records maintained by CPCS track vendor costs for particular bar advocate cases, but only aggregate vendor costs for CPCS staff attorney cases.<sup>157</sup>

Accordingly, it was not possible for the OIG to compare vendor costs between specific cases worked by bar advocates and CPCS staff attorneys, using either CPCS internal records or payment information in the Commonwealth’s accounting system.

The OIG reviewed CPCS internal records for the period of July 2022 through December 2025. The OIG found that CPCS paid \$62,922,975 in vendor costs on bar advocate cases and \$14,797,134 in vendor costs on CPCS staff attorney cases in that time span. These figures evidence significant spending for vendor costs on both bar advocate cases and CPCS staff attorney cases. CPCS should have strong uniform controls for all vendor costs.

Figure 46 below, based on CPCS internal records, shows the top 15 vendors used on bar advocate cases, including the total number of bills and total amounts paid between July 2022 and December 2025. Figure 47 shows the top 15 vendors used on CPCS staff attorney cases in the same time period.

**Figure 46: Top 15 bar advocate vendors by total amount paid (July 2022 – December 2025).**

Vendor name	Number of bills	Total amount paid
PSYCHOLOGICAL CONSULTING SERVICES LLC	1,154	\$1,433,179
J PIONEER VALLEY INVESTIGATIVE SERVICES AGENCY	1,002	\$1,074,439
INVESTIGATORS LLC	1,432	\$803,837
IVY E SOHN	515	\$760,178
LARISA KOUPERSCHMIDT MD LLC	639	\$728,234
PAUL P PETELL II	801	\$709,546
EMILY R PRINZO PSY. D	197	\$705,460
HELEN M FARRELL	603	\$663,728

<sup>157</sup> CPCS informed the OIG that it is working to implement a system that will track vendor costs for particular CPCS staff attorney cases.

Vendor name	Number of bills	Total amount paid
MARK N RUDOLPH	636	\$621,773
PAUL D ZEIZEL	463	\$614,220
ERIC L BROWN	208	\$610,722
CREW INVESTIGATIONS INC	1,764	\$582,393
TECHSMART SOLUTIONS LLC	240	\$549,266
MWV MULTI-MEDIA FORENSIC INVESTIGATIVE SRVS INC	637	\$521,984
SEAN P BURKE	345	\$514,987

**Figure 47: Top 15 CPCS vendors by total amount paid (July 2022 – December 2025).**

Vendor name	Number of bills	Total amount paid
ROBERT J WELCH	357	\$518,495
PSYCHOLOGICAL CONSULTING SERVICES LLC	398	\$493,492
MARK N RUDOLPH	328	\$421,923
EMILY R PRINZO PSY. D	130	\$394,500
Caleb Newman-Polk	244	\$347,015
TOWNLEY INTEGRATED PSYCHOLOGICAL SCV LLC	213	\$304,567
QUINONES ASSOCIATES INC	149	\$295,527
JONES PSYCHOLOGICAL CONSULTING, LLC	227	\$286,044
PAUL D ZEIZEL	210	\$270,657
ACE FORENSIC CONSULTING SERVICES	157	\$270,575
CENTER FOR INTEGRATIVE PSYCHOLOGICAL SVS	83	\$242,304
POLYMATH PSYCHIATRIC PHYSICIANS PLLC	109	\$204,788
BOSTON FORENSIC ASSOCIATES LLC	164	\$203,881
PAUL G NESTOR	69	\$175,123
ELAINE K WALEN	46	\$168,405

**Finding 36. Two CPCS Committee members have been in holdover status since 2013.**

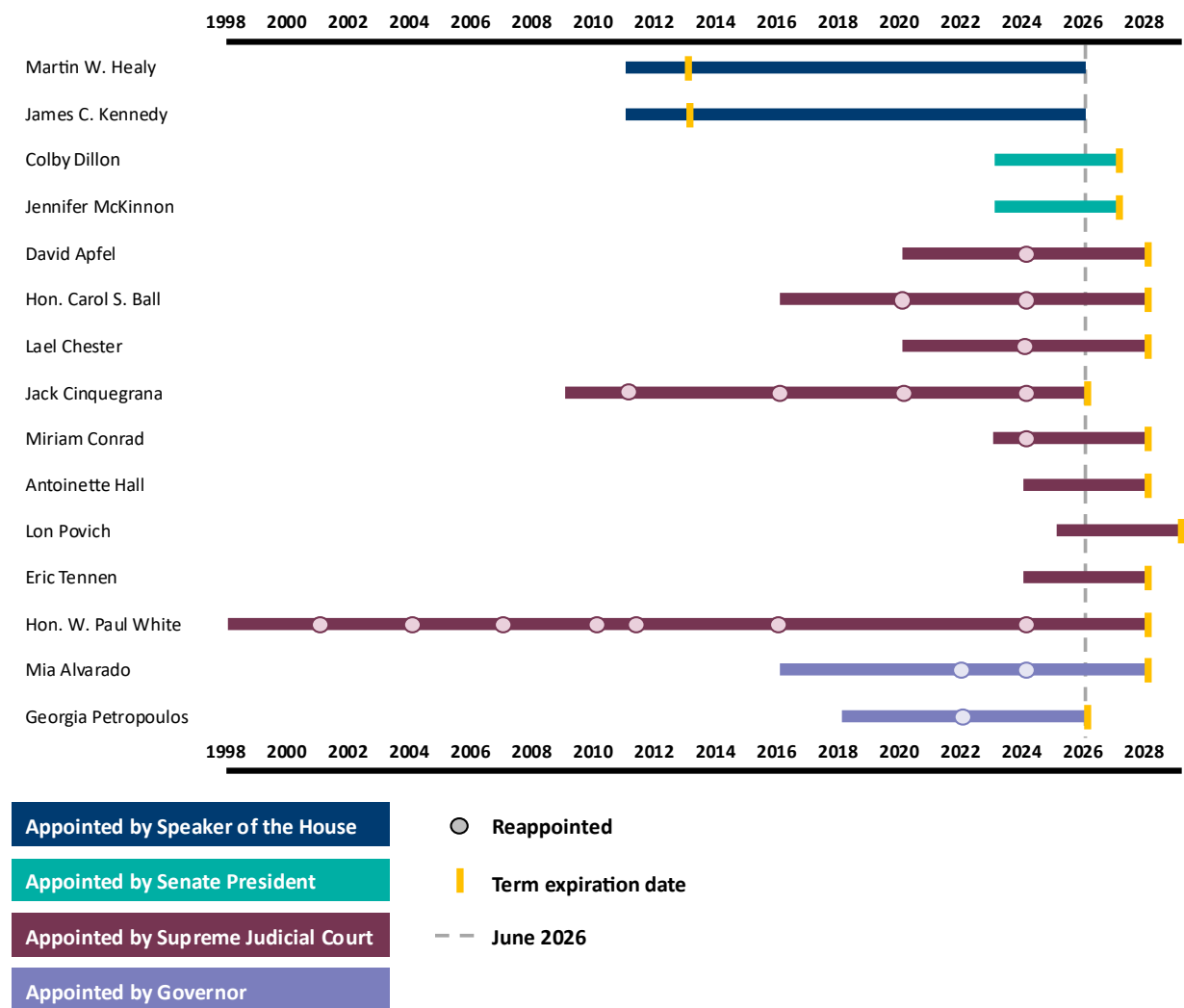
As discussed in the Background section of this report, CPCS is managed by a 15-member committee, with 2 members appointed by the governor, 2 members appointed by the Speaker of the House of Representatives, 2 members appointed by the President of the Senate, and 9 members appointed by the SJC. While committee members serve four-year terms, the law states that “an appointee

shall continue in office beyond the expiration date of the appointee’s term until a successor in office has been appointed and qualified.”<sup>158</sup>

The OIG requested information from CPCS concerning the appointment history of the committee members. The OIG found that while there are no vacancies on the committee, the appointments of the two members appointed by the Speaker of the House of Representatives expired in 2013, with those members in holdover status.<sup>159</sup>

Figure 48 below shows the period of appointment, dates of reappointment, the appointing authority, and the term expiration for the current committee members.

**Figure 48: Timeline of current committee members’ appointments and reappointments.**



<sup>158</sup> M.G.L. c. 211D, § 1.

<sup>159</sup> Although the law permits an appointee to remain in the position beyond the expiration date, these two members have remained on the committee for 13 years beyond the expiration of their original terms without reappointment. This is not in the spirit of the law.

## VIII. Indigency Review

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### **Finding 37. The indigency review process is outdated, receives insufficient attention, and fails to adequately control for misuse of public dollars.**

The OIG observed Massachusetts Probation Service (MPS) indigency review procedures at a division of the Boston Municipal Court and conducted interviews with MPS staff. The OIG observed that MPS staff conduct the initial intake interviews, which take approximately 20 minutes to complete. The OIG also observed that court clerical staff conduct the income verification checks the same day as the intake interview. The OIG was told that MPS officers do not have access to the income verification systems.

The OIG was told that spousal consent forms are rarely returned to the probation office, which prevents an income verification for the spouse. MPS staff also stated that many defendants have a partner who is not their legal spouse and is not subject to the spousal indigency verification.

The OIG analyzed a sample of income verification forms for defendants and spouses deemed indigent or indigent but able to contribute. The OIG found only one completed spousal consent form among the 104 instances in which the income verification form indicated that the defendant was married. This shows that MPS only rarely verifies the assets and income of a defendant's spouse when making a recommendation concerning indigency status, as is required by law in most circumstances.

Figure 49 below shows that, among the sample, nearly a quarter of respondents did not indicate whether they were employed or unemployed.

**Figure 49: Employment status indicated in sample income verification forms reviewed by the OIG.**

Employment status	# of sampled forms	% of total
Employed	700	40%
Unemployed	649	37%
Not provided, not answered, or NA	408	23%
<b>Total</b>	<b>1,757</b>	<b>-</b>

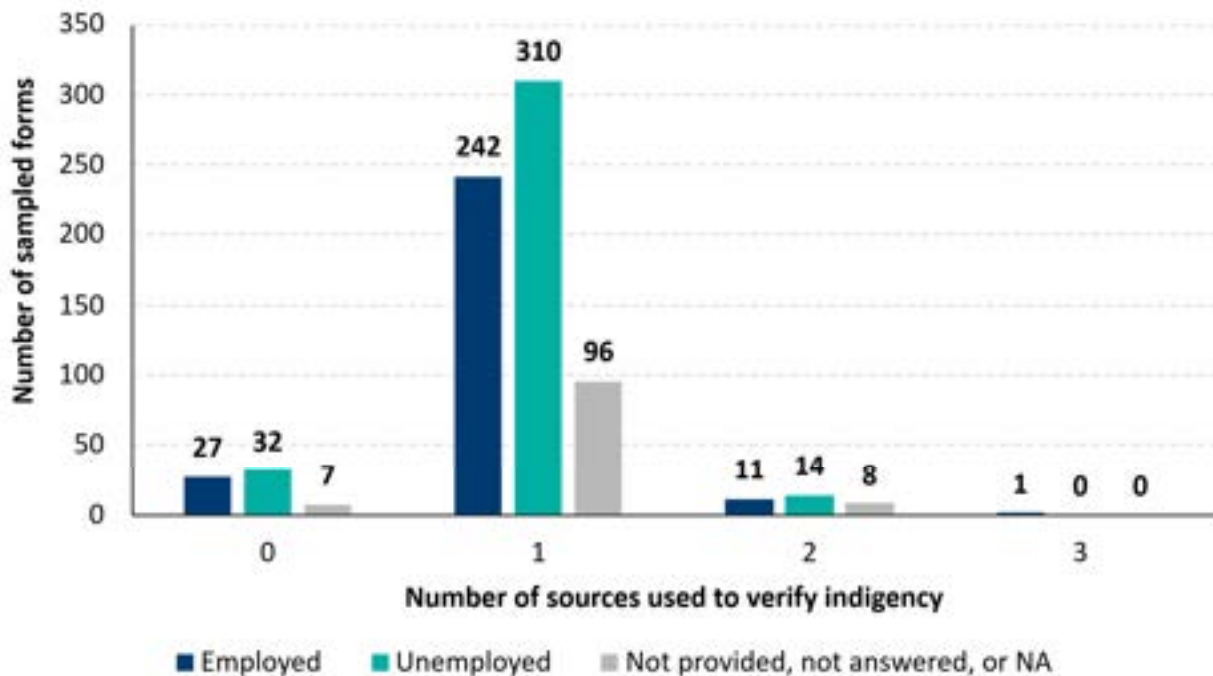
The indigency verification forms identify a list of only three government sources (DOR, DTA, and RMV) that the reviewer may use to verify the indigency status of the defendant or spouse.<sup>160</sup> The OIG suggests that other government sources that contain relevant income and asset data, such as the Massachusetts State Employee Retirement System (MSERS), should be considered as verification tools.

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<sup>160</sup> The OIG was unable to determine whether MPS *accessed* all three government sources, as is required by law, because the indigency verification forms do not provide such information. See M.G.L. c. 211D, § 2A(c) (“[MPS] shall access . . . wage, tax and asset information in the possession of the department of revenue and the department of transitional assistance, and any other information relevant to the verification of indigency in the possession of the registry of motor vehicles.”).

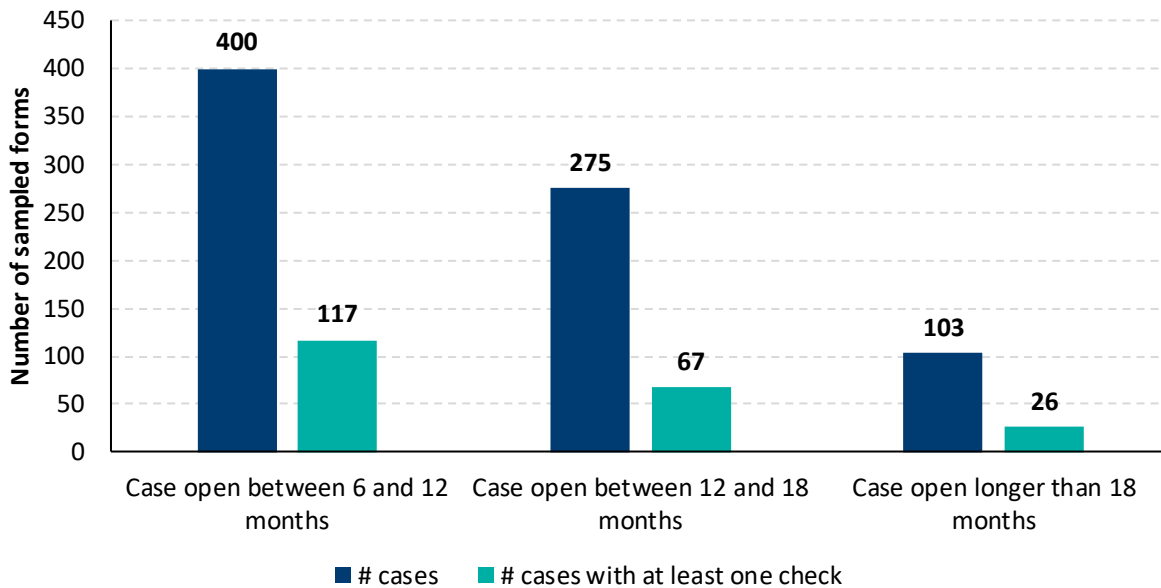
The OIG also suggests that other tools used to conduct a background check or credit report would unquestionably address the issue of indigency more accurately. The OIG found that while most of the forms reflected that the reviewer confirmed the indigency status with at least one government source, nearly 10% of the forms did not appear to be verified against any government source. Figure 50 below shows the number of government sources that the reviewer used to verify indigency status, broken out by the employment status of the defendant or spouse.

**Figure 50: Number of sources used to verify indigency on reviewed forms, by employment status.**



MPS is required to reassess a defendant’s indigency status every six months during the course of the representation by conducting a new indigency verification check. The OIG found that MPS failed to run the required check on approximately 75% of the sampled cases that were open for more than six months. Notably, this failure rate remained relatively constant across cases, regardless of how long the case had been open. Figure 51 below compares the total number of sampled cases that were open for longer than six months with the number of sampled cases that received at least one verification check, breaking out the cases by length of time open.

**Figure 51: Number of cases with at least one indigency verification check, by length of time open.**



In sum, the indigency determination and verification process is outdated and fails to properly or consistently validate indigency status. The spousal indigency form is an essentially unused means of identifying other sources of income in a household besides the defendant. Probation makes a recommendation about indigency status without requiring completion and consideration of a spouse’s income in almost all circumstances. With some frequency, probation makes a recommendation about indigency status without verifying indigency against a single government source. Follow-up checks of the defendant’s indigency status are also infrequently completed. These failures almost certainly result in determinations of indigency status that are based on incomplete information.

The OIG also notes that verification against the government sources relies on the accuracy of the underlying data. Fraud that exists in the verification source is baked into the current indigency process.

MPS and the Legislature must take steps to improve the indigency determination process to ensure that only those who qualify receive the benefit, which is the equivalent of thousands of public dollars. That is not the case under the current failed approach. There should be a strong and functioning process in place to guard against improper use of those funds, coupled with independent audit and oversight.

The OIG concludes that it would be wrong to suggest that the indigency verification system regularly and properly assesses a defendant’s ability to afford private counsel or contribute to the cost of assigned counsel. The current system is broken and not a reliable gatekeeper. As a result, it is likely that a significant number of individuals receive public counsel who should not qualify.

**Finding 38. Judges are rarely asked to issue fines for misrepresentation of financial status.**

The OIG’s data requests revealed no instances of fines collected from a defendant for misrepresenting their indigency status under M.G.L. c. 211D, § 2A(e).

In interviews with the OIG, staff at both the Executive Office of the Trial Court and the Probation Office at Boston Municipal Court stated that they were unaware of these fines ever being collected. This is perhaps to be expected, given the condition of the indigency determination and verification process discussed in Finding 37. The OIG found that judges rarely, if ever, are asked by Probation to assess fines for misrepresentation of indigency status and that such fines are rarely, if ever, collected. Based upon the factors described in Finding 37, it would be very difficult to prove cases of misrepresentation given the condition of the indigency determination and verification process. The idea that a penalty even exists provides a false level of comfort as a safeguard to program integrity.

**Finding 39. Judges dismiss more than half of all assessed indigency fees.**

The OIG conducted a review of fees assessed by judges within the Trial Court for all indigent clients assigned counsel between July 1, 2022, and June 30, 2025.<sup>161</sup> During this period, the OIG found that courts assessed nearly \$22 million in indigent defendant fees across 133,539 cases and dismissed more than half of those assessed fees (over \$11 million). Figure 52 specifies the status of the fees assessed.

**Figure 52: Total fees assessed by payment status (FY23 – FY25).**

Payment status	Amount
Dismissed	\$11,102,520
Paid	\$7,929,262
Outstanding	\$2,820,537
<b>Total</b>	<b>\$21,852,319</b>

**Finding 40. ‘Indigent but able to contribute’ fees make up an outsized proportion of total fees paid.**

As this report has described, judges can determine whether to find a defendant “indigent” or “indigent but able to contribute.” While the standard indigency fee is \$150, defendants designated as “indigent but able to contribute” can be ordered to pay a higher fee set by the judge. The OIG found that while only 3% of the number of fee payments came from defendants likely designated as “indigent but

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<sup>161</sup> The OIG was told that the Trial Court has found instances where the assessment and waiver of fees is only recorded on the paper docket but not recorded in MassCourts. This is another indication that the fee system is outdated and merits attention.

able to contribute,” those fees made up 5% of the total amount paid. The OIG also found that a subset (around 36%) of fees from defendants likely designated as “indigent but able to contribute” exceeded \$300 but made up an outsized proportion of those payments (around 45%). Figure 53 below compares the fee payments associated with defendants likely designated as “indigent” (\$150 or less) with fee payments associated with defendants likely designated as “indigent but able to contribute” (more than \$150) in the last three fiscal years.

**Figure 53: Number of fee payments and total amount paid by amount assessed (FY23 – FY25).**

Amount assessed	Number of fee payments	Percentage of all fee payments	Total payments	Percentage of total paid
<b>\$150 and under</b>	<b>48,085</b>	<b>97%</b>	<b>\$7,498,901</b>	<b>95%</b>
<b>Over \$150</b>	<b>1,371</b>	<b>3%</b>	<b>\$430,362</b>	<b>5%</b>
<i>\$151-\$300</i>	877	64%	\$235,486	55%
<i>Over \$300</i>	494	36%	\$194,876	45%
<b>Total</b>	<b>49,456</b>	-	<b>\$7,929,262</b>	-

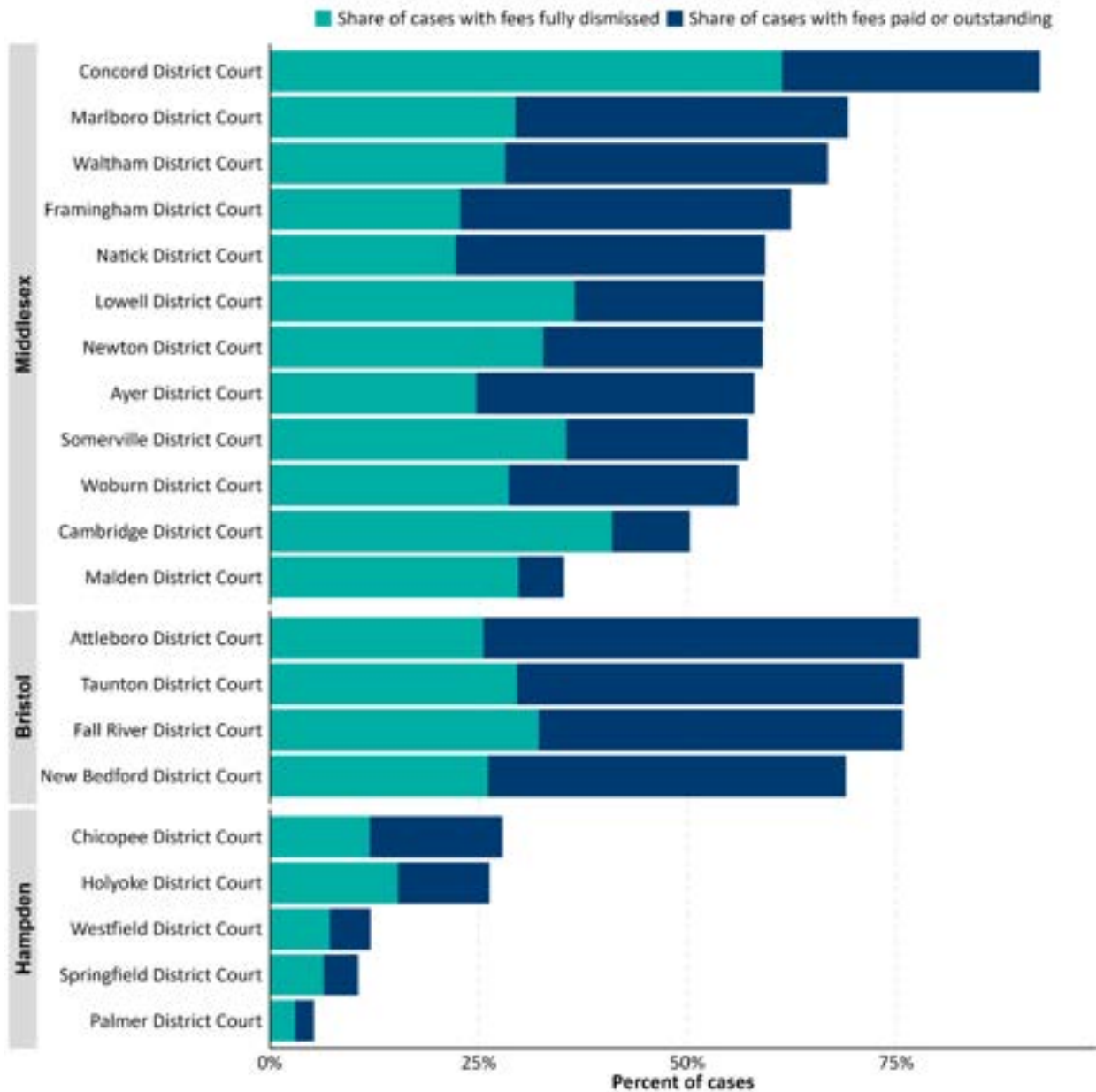
**Finding 41. District Court judges assess and dismiss fees at different rates.**

Judges determine whether to waive fees for indigent defendants. The OIG found that judges in District Courts across the Commonwealth tend to assess and dismiss fees at different rates.<sup>162</sup> Some patterns emerged. For example, judges in all Hampden County District Courts assessed the smallest percentage of indigency fees. Figure 54 below shows the payment status of indigency cases, broken down by the percentage of cases with the fee dismissed and the percentage of cases with the fee either paid or still outstanding, among District Courts in three counties (Bristol, Hampden, and Middlesex) in the last three fiscal years. This report’s Appendix I reviews fees owed and fees dismissed in all District Courts in Massachusetts.

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<sup>162</sup> This analysis focuses on District Courts because District Court judges are assigned to specific District Courts. Superior Court judges, on the other hand, rotate through different counties every six months. Furthermore, many Superior Court cases begin with an initial appearance and indigency assessment in District Court.

**Figure 54: Payment status of indigency cases for select District Courts (FY23 – FY25).**



Massachusetts municipalities vary widely in population size. To evaluate whether courts in larger or smaller communities are more likely to assess fees or dismiss assessed fees, the OIG compared nine courts from across the Commonwealth based on the jurisdiction’s population size. The OIG found no discernible pattern or correlation between population size (or other metrics such as location or demographic background) and fee assessment or fee dismissal. Figure 55 below compares the percentage of cases with fees assessed with the percentage of fees that were dismissed among the nine courts in comparably sized jurisdictions with similar numbers of indigent cases.

**Figure 55: Comparison of fee assessment and dismissal rates for courts serving similar population sizes (FY23 – FY25).**

Population Size	Court	Number of indigent cases	Percentage of cases with fees	Percentage of fees dismissed
Over 150K	BMC Central	10,743	56%	72%
	Springfield District Court	11,332	11%	61%
	Worcester District Court	12,272	59%	61%
75K-150K	Brockton District Court	8,112	77%	49%
	Lowell District Court	10,308	59%	61%
	New Bedford District Court	9,343	69%	38%
Under 75K	Leominster District Court	2,278	43%	28%
	Pittsfield District Court	3,820	8%	69%
	Taunton District Court	4,947	76%	38%

**Finding 42. In most counties, judges rarely assign community service in lieu of assessed indigency fees.**

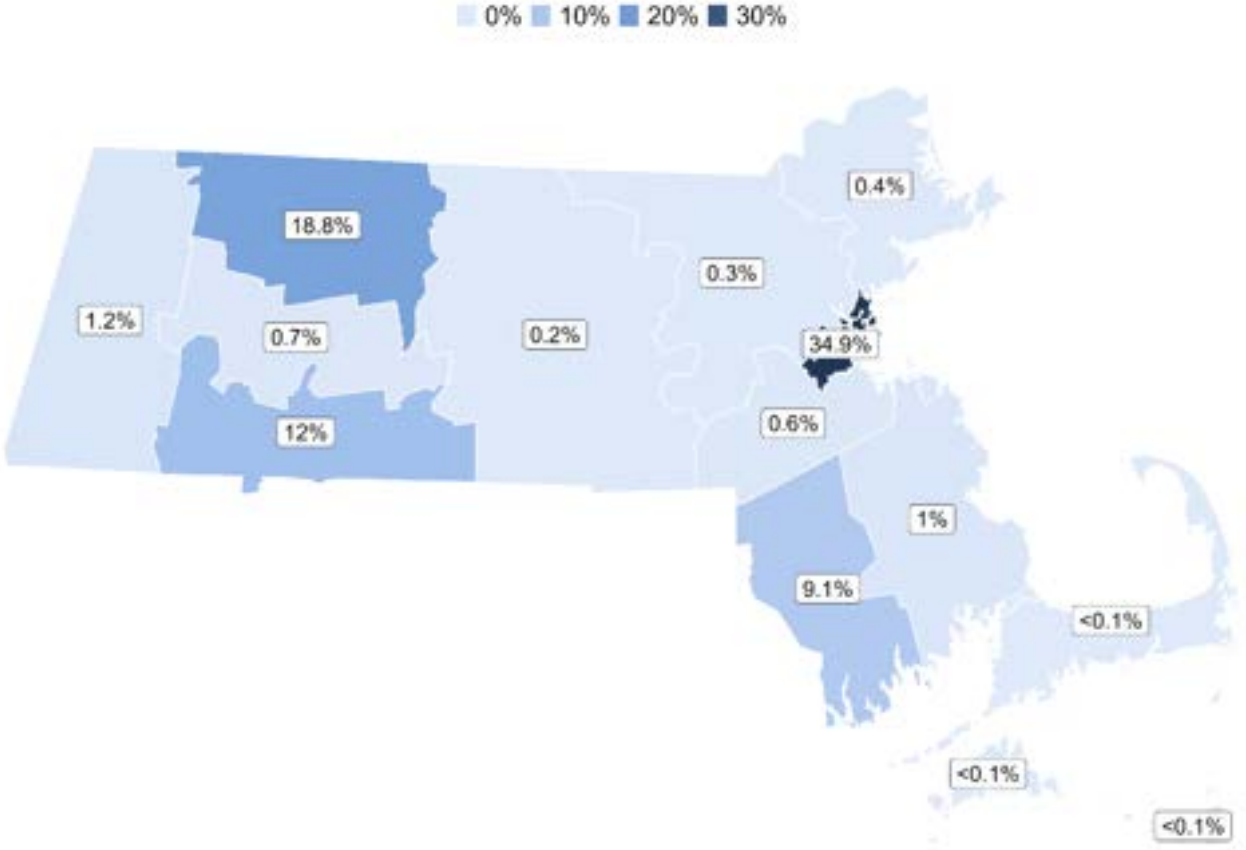
The OIG also identified cases in which the judge required the defendant to complete community service instead of paying an assessed indigency fee.<sup>163</sup> The OIG found that judges rarely assign community service in place of indigency fees and found that community service does not appear to be a viable disposition option.

Judges in Bristol, Franklin, Hampden, and Suffolk counties assign community service with more frequency. In Suffolk County, more than a third of cases were assigned community service.

Figure 56 below shows the county-by-county percentage of all appointed cases in the last three fiscal years where the judge assessed an indigency fee but assigned community service instead of requiring payment of the fee.

<sup>163</sup> The OIG recognizes that the community service option presents administrative challenges for the Probation staff, who are charged with setting up and monitoring those who are assessed community service in lieu of the indigency fee. The dataset did not reflect whether the community service was completed.

Figure 56: Percentage of cases with community service in lieu of assessed indigency fee, by county (FY23 – FY25).



## RECOMMENDATIONS

CPCS staff attorneys and bar advocates provide a cornerstone of the legal system in Massachusetts which should not be taken for granted. The OIG recognizes the potential for conflict between the duty to provide quality representation and the mandate to provide representation within budget constraints. Nonetheless, quality representation can – and must – coexist with Commonwealth laws, as well as effective controls and guardrails against fraud, waste, and abuse of public dollars. *Gideon* does not exempt CPCS from its obligations as a state agency.

The OIG found that CPCS has developed a two-class system in managing and overseeing staff attorneys and bar advocates.

CPCS prioritizes the demands and interests of its own employees, permitting staff attorneys to (1) take fewer than 20% of case assignments despite a legislative directive to take 20%, and (2) fall short of internal caseload expectations. CPCS has developed a top-heavy structure of supervising attorneys, who are permitted to take half as many cases as fully trained staff attorneys, and support staff (investigators, social workers, and administrative assistants). CPCS has allowed its mission to creep in several areas. For example, even absent any right to appointed counsel for education matters in Massachusetts, CPCS has established an education law division, as well as a division that conducts impact litigation. Meanwhile, CPCS has relied heavily on supplemental budget funding.

CPCS takes a hands-off approach to overseeing bar advocate funding. While it is true that bar advocate hourly rates have not grown commensurate with some other states, it is also true that CPCS has not introduced controls on the amount that bar advocates are permitted to bill on individual case assignments. CPCS conducts very few audits of bar advocate billing practices and instead relies on automatic bill restrictions that allow bar advocates to bill high amounts on straightforward cases. Massachusetts is an outlier in relying on an annual billing limit – which is not a safeguard against excessive hours billed on individual cases. Most states create fee caps, set by case type, which counsel can only exceed with permission from an authority.

CPCS and the Legislature have the opportunity to fix these problems. CPCS can enforce its internal expectations for staff attorneys and increase caseloads while still providing effective counsel. CPCS can adjust its caseload expectations for supervising attorneys if it intends to keep a large supervisory presence in place. CPCS can also introduce additional bar advocate billing controls and extend training opportunities to bar advocates. The Legislature, meanwhile, has the opportunity to create a bar advocate coordination office, which would help provide a more unified voice for bar advocates with CPCS and the Legislature. The Legislature should also consider increasing bar advocate hourly rates coupled with reasonable fee caps on individual cases (presented as expected ranges, with a process for exceptions), while also committing to an indigent defense model that balances zealous advocacy with appropriate budgetary oversight.

Finally, the entire process for indigency determination and verification must be redesigned. The current system has failed the public that funds this program.

The stakeholders in Massachusetts's indigent defense system must acknowledge how the current model fails at many stages and work to correct the model as soon as possible. Most importantly, the stakeholders must acknowledge the following:

- CPCS staff attorneys do not come close to taking the 20% of cases the Legislature requires them to take or to meeting their internal caseload expectations, even during crisis;
- The Legislature rewards CPCS by regularly including CPCS in supplemental budgets;
- Bar advocates can be paid more for resolving a case in Massachusetts than in neighboring states due to the absence of fee caps;
- The SJC has created a protocol that dismisses cases and releases defendants held in custody without critically examining CPCS staff attorney caseloads; and
- Probation oversees an indigency verification process that often does not run the income verification checks required by law.

The OIG respectfully presents solid, common-sense recommendations below that these stakeholders should implement to avoid the recurrence of further crises leading to the implementation of the Lavallee protocol. The OIG has organized the recommendations by Fiscal Year 2027, Fiscal Year 2028, and Fiscal Year 2029 and beyond.

## **Short-Term Recommendations – Fiscal Year 2027**

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### **CPCS**

1. CPCS should reevaluate internal caseload expectations for staff attorneys to ensure that CPCS takes into consideration:
  - a. The legislatively required percentage of case assignments;
  - b. The caseloads of other state indigent defense organizations; and
  - c. The 2023 National Public Defender Workload Study.
2. CPCS should revise internal controls and staff attorney caseload expectations to allow for adjustments in providing indigent representation during work stoppages or other crises.
3. CPCS should explore introducing bar advocate billing controls on the hours billed for a single case. For example, CPCS could trigger a CCR when bar advocates submit bills on a case that exceed a multiple of the median bill on cases from the same court type from the prior fiscal year. As a result, the threshold for triggering a CCR on a District Court case would be different from a Superior Court case or an Appeals Court case.

4. CPCS should evaluate oversight for bar advocates and staff attorneys to ensure more uniformity of fiscal controls and performance evaluations.
5. CPCS should eliminate the “new case” financial incentive.
6. CPCS should explore creating a “duty day” financial incentive for bar advocates and CPCS staff attorneys.
7. CPCS should permit reimbursements of certain expenses of “duty day” attorneys (for example, reimbursement for parking fees).
8. CPCS should reevaluate its conflict of interest policy and align it with other relevant agencies, such as other state indigent defense organizations and federal defenders.
9. CPCS should take actions to handle as many cases as practicable, including continuing to investigate the creation of conflict offices.

### The Legislature

1. The Legislature should hold oversight hearings regarding CPCS’s compliance with legislative requirements and use of funds. These hearings should include topics such as the CPCS hiring plan that does not meet the Legislature’s requirement to hire 320 staff attorneys, CPCS’s response to the 2025 work stoppage, and CPCS’s failure for multiple years to meet the legislatively mandated percentage of cases.
2. The Legislature should hold CPCS accountable when it fails to take the legislatively mandated percentage of cases, and, as it would do for any other state agency, consider the failure to meet the mandate when addressing any of CPCS’s supplemental budget requests.
3. The Legislature should introduce a fee cap system to supplement the current annual hourly billing limit for bar advocates. The current annual hourly billing limit does not prevent bar advocates from overbilling on individual cases, and as Figures 38 and 39 demonstrate, under the current system there are significant outliers that should raise questions and concerns.
4. The Legislature should ensure that CPCS tracks and reports information required and requested in the manner best suited to the Legislature’s needs (*i.e.*, bar advocate and staff attorney caseloads, vendor costs for staff attorneys).
5. The Legislature should require Probation to submit annual reports to the House and Senate Committees on Ways and Means and the House and Senate clerks detailing the number of indigency verifications performed, the number of indigency verification audits conducted, and the uniformity of indigency verification across probation offices.
6. The Legislature should create a flat fee for each duty day worked by a bar advocate.

## Bar Advocates

1. Leaders of the county bar advocate associations should meet regularly to identify common concerns among bar advocates that could be addressed by CPCS under the existing statutory framework.
2. Bar advocate associations should work with CPCS to identify reasonable ranges of hours that a bar advocate could expect to bill on particular types of cases.

## Massachusetts Supreme Judicial Court

1. The SJC should perform meaningful oversight over CPCS caseload determinations by ensuring that CPCS is at capacity when it reports its staff attorney caseloads to the SJC.
2. The SJC should explore amending SJC Rule 3:10 to encourage the judge to make a finding of “no incarceration” at arraignment, when appropriate, which in some cases would eliminate the basis to appoint counsel.

## Executive Office of the Trial Court

1. The Trial Court should encourage the collection of indigency fees at the beginning of the public representation, rather than at the resolution of the case, so that outstanding fees are not waived for the purpose of closing the case.
2. The Trial Court should discourage the waiver of indigency fees at the beginning of the public representation, except in extraordinary circumstances.
3. The Trial Court should work with the Trial Court departments to explore increasing the availability of remote video conference hearings for non-substantive or non-testimonial court events, such as Rule 11 conferences and hearings, where appropriate.
4. The Trial Court should create reserved parking for “duty day” attorneys where available.

## Probation

1. Within 45 days, Probation should ascertain what needs to be done to comply with the current requirements of the indigency process and commit to doing such.
2. Probation should create an independent division to oversee and audit the indigency recommendation and indigency verification processes.
3. Probation should electronically store all forms related to indigency review and verification to ensure that such forms are readily available within the judicial system.

## Medium-Term Recommendations – Fiscal Year 2028

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### CPCS

1. CPCS should create a uniform case weighting and tracking system for staff attorneys and bar advocates so that attorney caseload can be compared among private and public attorneys.
2. CPCS should establish consequences for bar advocates and CPCS staff attorneys who miss scheduled duty days or refuse to take new case assignments.
3. CPCS should work with bar advocate associations to improve bar advocate retention and increase membership rolls. The following actions could improve the relationship between bar advocates and CPCS:
  - a. CPCS should regularly attend bar advocate panel meetings;
  - b. CPCS should regularly inform bar advocates of changes in the law and internal policies that are circulated to CPCS staff attorneys;
  - c. CPCS should ensure that bar advocates have equal access to training and materials as CPCS staff attorneys; and
  - d. CPCS should consider instituting a referral bonus program for bar advocates.
4. CPCS should ensure that staffing plans, attorney and support staff ratios, legislative funding, and statutory requirements are reconciled to ensure compliance.

### The Legislature

1. The Legislature should consider increasing bar advocate fees to be commensurate with neighboring jurisdictions and introduce presumptive fee caps according to the type of case that CPCS can waive with justifiable reason.
2. The Legislature should review and update the indigency determination and verification process, codified in M.G.L. c. 261, § 27(b) and M.G.L. c. 211D, § 2(a). For example, the Legislature should consider expanding the number of sources of income verification and recognizing modern changes in household makeup.
3. The Legislature should study how private sector credit assessments are conducted to determine how these tools and procedures can be introduced into the indigency determination assessment.
4. The Legislature should consider creating an Office of Assigned Counsel Coordination, with a separate line item, to coordinate with bar advocate associations, CPCS, and the courts about bar advocate concerns; host regular meetings with bar advocate organizations; organize CPCS-led training for bar advocates; encourage growth in the bar advocate program; and report to the Legislature about bar advocate issues and membership levels.

5. The Legislature should increase the number of committee members who have bar advocate experience.
6. The Legislature should require Probation to submit an annual report to the House and Senate Committees on Ways and Means and the House and Senate clerks on the rate of assignment of indigency fees by court and the total number of fees paid, fees dismissed, and community service hours assigned. This report should contain a compilation of the reasons that bar advocate fees were waived by the courts.
7. The Legislature should require CPCS to include the percentage of new cases assigned to CPCS staff attorneys and the average number of new cases assigned to CPCS staff attorney FTEs, broken down by division, in its annual report.

### Bar Advocates

1. Bar advocate associations should work with CPCS to improve bar advocate retention and expand membership rolls. For example, bar advocate associations should encourage bar advocates to join membership rolls in bar advocate associations of other counties.

### Executive Office of the Trial Court

1. The Trial Court should create a judicial roundtable to discuss indigency fee reform to encourage greater uniformity concerning the waiver, assessment, collection, and dismissal of indigency fees and the assessment of additional fees for parties determined to be indigent but able to contribute.
2. The Trial Court should establish internal uniform standards for the waiver, assessment, collection, and dismissal of indigency fees.
3. The Trial Court should sponsor trainings with the affected court departments that inform judges on the updated procedures for waiver, assessment, collection, and dismissal of indigency fees.
4. The Trial Court should evaluate standard procedures for waiving fees, identifying reasons for waivers, and tracking the results.

## Long-Term Recommendations – Fiscal Year 2029

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### CPCS

1. CPCS should work with partners, such as bar advocate organizations, the Trial Court, law schools, and law firms, to encourage growth in bar advocate panel membership and should also work to increase case assignments to Rule 3:03 student attorneys and pro bono attorneys.

## The Legislature

1. The Legislature should determine the percentage of new cases to be assigned to CPCS staff attorneys, balancing budgetary constraints with the need for a robust public defender system that trains new attorneys, and adjust CPCS funding when staff attorneys fail to meet this requirement.
2. The Legislature should review the bifurcated indigent defense system and consider systemwide changes which will ensure that both CPCS staff attorneys and bar advocates provide quality representation subject to effective fiscal oversight.

## Bar Advocates

1. Bar advocate associations should review the combinations of hourly rates and fee caps used in other states and work with CPCS to recommend a new bar advocate payment model to the Legislature that combines fair pay that grows over time with reasonable fiscal controls.

## Massachusetts Supreme Judicial Court

1. In the event that the Lavallee protocol is implemented again, the SJC should actively exercise its supervisory authority to review CPCS staff attorney caseload determinations.

**NOTIFY**

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2584CV3580

IN RE INVESTIGATION BY THE OFFICE OF THE INSPECTOR GENERAL

**MEMORANDUM OF DECISION AND ORDER ON  
THE OFFICE OF THE INSPECTOR GENERAL'S MOTION TO COMPEL  
PRODUCTION OF MATERIAL PURSUANT TO M.G.L.c.12A, § 9**

On August 5, 2025, Governor Maura Healey signed into law Chapter 14 of the Acts of 2025. Such law provided supplemental appropriations, Section 2A, 0321-1599, for “a reserve to expand the number of public defenders employed by the Committee for Public Counsel Services (“CPCS”),” which would provide an expansion of the number of public defenders available to represent indigent clients. The supplemental reserve was in response to “recent history of private bar advocate work stoppages.” Section 82 of the new law ordered the Office of the Inspector General (“OIG”) to

submit a report to the senate and house clerks, the joint committee on the judiciary and the senate and house committees on ways and means that shall include, but not be limited to: (i) an examination of existing practices rules and requirements relative to the determination of indigency and the assignment of counsel by the trial court, including an analysis and examination of reimbursement practices and requirements for defendants receiving public representation but who are found not to be indigent; (ii) a review of billing practices and procedures by bar advocates and the oversight thereof; (iii) an examination of the caseload of counsel involved in representation of indigent defendants and the efficacy thereof; (iv) an analysis of the fiscal impact of increasing the proportion of indigent clients represented by public defenders on the total cost of indigent defense; and (v) best practices from other jurisdictions to provide adequate and cost-effective representation of indigent defendants.

Such report shall be provided no later than June 30, 2026. Pursuant to M.G.L.c.12A, §9, OIG summonsed CPCS to produce documents from January 1, 2023 to present of the following<sup>1</sup>:

1. A spreadsheet listing all cases where counsel was requested and/or assigned, which includes the following information:
  - a. Docket number assigned to each case by the Massachusetts Court System.
  - b. If an attorney is assigned to the case:
    - a. The name of the attorney assigned.
    - b. Whether said attorney is a bar advocate or CPCS staff attorney.
    - c. The date of the case was assigned to the attorney.
    - d. The name and location of the court where the case is being heard.
    - e. List of the charges associated with the docket number.

CPCS has complied with all requests except for “(a) Docket number assigned to each case by the Massachusetts Court System.” Despite efforts by both parties to resolve the issue, including OIG’s proposed protection of the docket numbers with an internal firewalled team and an agreement to not specifically disclose the docket numbers in any public report, OIG filed its motion to compel, which CPCS opposes on grounds the Court will discuss.

After hearing and review, and for the reasons stated below, the Motion is **ALLOWED**, subject to an agreed upon protective order to be approved by the Court within 20 days of this order.

## **DISCUSSION**

### **I. The Authority of OIG to Access Relevant Information**

Pursuant to M.G.L.c.12A, § 9, OIG may request such information from CPCS “as may be necessary for carrying out [OIG’s] duties and responsibilities.” OIG “may require by summons, the production of all records, reports, audits, reviews, papers, books, documents, recommendations, correspondence and any other data and material relevant to any matter under

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<sup>1</sup> Other requests exist but CPCS complied with such requests, and those requests are not subject of this motion to compel.

audit or investigation.” Upon CPCS’s refusal to comply with such summons, any justice of the superior court may issue an order to compel the production of records.

The docket numbers assigned to each cases are relevant and material to OIG’s investigation. When investigating the total number of cases handled by CPCS for the expansion of public defenders, docket numbers are critical to assess an attorney’s caseload. In an example of Attorney A who has only 25 cases compared to Attorney B who has 75 cases, Attorney B’s caseload is not necessarily heavier. Just relying on the number of cases does not justify an attorney’s real time and effort on each case. In reviewing the court proceedings of a docket number, it may reveal lengthy and complicated litigation which may require much more time and effort from an attorney than what one case may represent. In another example, a docket sheet of court proceedings may depict that the case has been stalled for some reason and does not require any time and effort from an attorney for some period of time. Although a docket number is not the only source of billable hours for an attorney (i.e., the court proceedings do not indicate traveling to prisons and visiting a client or prepping a witness), it is a very good tool to cross-reference the actual “caseload” of an attorney, rather than relying on the sheer number of cases an attorney has. In addition, docket numbers show how the courts determine indigency of clients and assignments to CPCS attorneys and bar advocates.

## **II. CPCS’s Objections**

### **a. MA Rules of Professional Conduct Rule 1.6**

CPCS relies on Rule 1.6(a) in opposing the motion to compel, in that “a lawyer shall not reveal confidential information relating to the representation of a client unless the client gives informed consent[...].” “Confidential information” consists of:

Information gained during or relating to the representation of a client, whatever its source, that is (i) protected by the attorney-client privilege, (ii) likely to be embarrassing or detrimental to the client if disclosed, or (iii) information that the lawyer has agreed to keep confidential. 'Confidential information' does not ordinarily include (A) a lawyer's legal knowledge or legal research or (B) information that is generally known in the local community or in the trade, field, or profession to which the information relates.

Rule 1.6(a). First, the Court addresses whether a docket number constitutes "confidential information." Answering such question requires parsing out the types of cases CPCS attorneys and bar advocates represent. In general, the docket number of an adult criminal case is public record that is not protected by the attorney-client privilege and is not likely to be embarrassing or determinantal to the client as charges and dockets are of public record within Massachusetts Courts system. Every day, adult criminal cases are announced with their docket numbers in open court. Even so, the Court finds that a docket number is not "generally known." Comment 3A of Rule 1.6 defines what is "generally known."

Information that is 'generally known in the local community or in the trade, field or profession to which the information relates' includes information that is widely known. Information about a client contained in a public record that has received widespread publicity would fall within this category. On the other hand, a client's disclosure of conviction of a crime in a different state a long time ago or disclosure of a secret marriage would be protected even if a matter of public record because such information was not 'generally known in the local community.' [...]

"The rule is concerned with whether information is *known*, not whether it is *knowable*." *In the Matter of Kelley*, 489 Mass. 300, 304 (2022)(emphasis in original). That the docket number itself can be viewed by the public is not dispositive; "rather, the focus is on how many people in the relevant community, trade, field or profession actually have learned the information." *Id.*

A different appropriate analysis focuses upon whether the revelation of docket numbers to someone other than the lawyer amounts to the impermissible disclosure of privileged communication or information relating to the relationship. This Court broadly finds that it does. A docket number identifies an individual's name, his date of birth, and his indigency

necessitating legal services, thus revealing his financial status. See *In re Advisory Opinion No. 544 of N.J. Supreme Court Advisory Comm. on Prof'l Ethics*, 103 N.J. 399 (1986). The Court broadly views a docket number as “Confidential Information” in that such disclosure of an individual’s financial status could be embarrassing or detrimental to the client if disclosed and such information is not “generally known.”

Juvenile, mental health civil commitment, and Child and Family law dockets are not open to the public and kept private. The Court agrees with CPCS that in these types of cases, disclosure is likely to be embarrassing or detrimental to the client. Docket numbers of juvenile, mental health civil commitments and Child and Family law cases are, therefore, “Confidential Information” under Rule 1.6(a).

Although the Court now defines docket numbers as “Confidential Information,” the Court still orders CPSC to disclose the docket numbers under Rule 1.6(b)(6) where “[a] lawyer may reveal confidential information...to the extent permitted or required under these Rules or to comply with other law or a court order.”

**b. Criminal Offender Record Information (“CORI”)**

Providing or being ordered to provide docket numbers is not inconsistent with CORI under M.G.L.c.6, §167 and 803 CMR §7.00. CORI, often used by law enforcement agencies to view the nature and disposition of an individual’s criminal charge, an arrest, a pre-trial proceeding, and other judicial proceedings, is already restricted to information recorded in criminal proceedings that are public record for adult criminal defendants. “CORI may be provided to another criminal justice agency for authorized criminal justice purposes.” 803 CMR §7.10(1). OIG is a criminal justice agency who has been ordered to investigate billing practices and procedures by bar advocates and to examine the caseload of counsel representing indigent

clients. No statute, regulation, policy, or Criminal Justice Information System User Agreement is violated when giving OIG access to CORI records. See *id.* at §7.09(3).

**c. Article 30 of the MA Declaration of Rights**

CPCS argues that the Court's order compelling docket numbers would violate Article 30.

Article 30 states that:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

CPCS's argument fails on this issue. The judiciary retains the ultimate authority to control the lawyer's conduct in the practice of law. "Only the court can determine whether any member of the bar is guilty of improper conduct, and only the court can decide what consequences shall be visited upon him." *Collins v. Godfrey*, 324 Mass. 574, 578 (1949). The court compelling CPCS to disclose docket numbers falls clearly under the judiciary power under Rule 1.6 (b)(6)—"to the extent permitted or required under these Rules or to comply with other law or a court order." (emphasis added). Where OIG is asking the court to compel production of records pursuant to M.G.L.c.12A, §9 and pursuant to Rule 1.6(b)(6), there is no such legislative interference with the judiciary core functions.

**d. OIG's Authority versus Rule 1.6**

OIG's authority, which is enumerated in M.G.L.c.12A, §9, allows for the Superior Court judge to make a determination to compel or not to compel production of documents. Comment 12 of Rule 1.6 states that where "[o]ther law may require that a lawyer disclose a confidential information about a client, [w]hether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules." In reviewing the totality of the circumstances, there is no such law

that supersedes Rule 1.6. The Court finds that docket numbers are necessary, relevant and material to OIG's investigation, and the Court makes a determination to compel production of such documents. See Rule 1.6(b)(6).

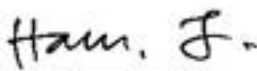
**e. Not for Public Use or General Public**

OIG is not seeking docket numbers to publish to the general public. The distinction is crucial in OIG's proposed protective agreement to preserve anonymity and privacy of parties tied to the docket numbers. First, OIG is not the general public. Second, OIG's authority to summons records from CPCS is consistent with not being able to disclose any records to the general public—"[...]nor shall any documents provided pursuant to this section be made public until such time as it is necessary for the inspector general to do so in the performance of his duties." M.G.L.c.12A, §9. Third, with an agreement and assurance from OIG, to isolate the docket numbers to an internal firewalled team and to refrain from any disclosure in any public report, there are no competing laws, statutes, regulations or rules that are inconsistent with the Court granting this motion to compel.

**ORDER**

For the above stated reasons, OIG's Motion to Compel is **ALLOWED**, subject to an agreed upon protective order to be approved by the Court within 20 days of this order.

Date: 1/27/26

  
\_\_\_\_\_  
Catherine H. Ham  
Justice of the Superior Court



COMMITTEE FOR PUBLIC COUNSEL SERVICES  
75 Federal Street, 6th Floor  
Boston, MA 02110  
(617) 482-6212

**MESSAGE FROM THE COMMITTEE FOR PUBLIC COUNSEL SERVICES**

You are receiving this notice because our records indicate that you may currently represent a client assigned to you by CPCS between January 1, 2023 and January 27, 2026. The purpose of this communication is to inform you of litigation that CPCS has undertaken regarding an ongoing review by the Office of the Inspector General (OIG) that may impact one or more of your clients.

In August 2025, the Legislature passed supplemental budgetary language<sup>[1]</sup> directing the Office of the Inspector General (OIG) to submit a report to the Legislature on CPCS regarding the following:

- (i) an examination of existing practices, rules and requirements relative to the determination of indigency and the assignment of counsel by the trial court, including an analysis and examination of reimbursement practices and requirements for defendants receiving public representation but who are found not to be indigent;
- (ii) a review of billing practices and procedures by bar advocates and the oversight thereof;
- (iii) an examination of the caseload of counsel involved in representation of indigent defendants and the efficacy thereof;
- (iv) an analysis of the fiscal impact of increasing the proportion of indigent clients represented by public defenders on the total cost of indigent defense; and
- (v) best practices from other jurisdictions to provide adequate and cost-effective representation of indigent defendants.

As a result, in September 2025, the OIG began its review. As part of that review, the OIG requested that CPCS disclose case information for all the cases between January 1, 2023 and January 27, 2026 where CPCS provided direct representation or representation through assigned private counsel. CPCS provided only anonymized case information and objected to providing docket numbers sought by the OIG which would have disclosed the identity of over 100,000 clients. CPCS objected on the grounds that this would require CPCS to disclose the name and other confidential client information of thousands of clients without their informed consent, contrary to the professional obligations set forth in Massachusetts Rules of Professional Conduct Rule 1.6 as well as other statutory provisions that require impoundment of specific types of cases.

In response to CPCS' objection, the OIG filed litigation in Suffolk Superior Court pursuant to M.G.L. c. 12A, § 9, which authorizes the OIG to compel production via a [Motion to Compel](#) and [Memorandum](#). Thereafter CPCS filed its [Opposition to OIG Motion to Compel](#) and the OIG responded filing a [Reply](#).

After briefing and a hearing in Suffolk Superior Court, on January 27, 2026, Judge Catherine Ham found that docket numbers do constitute confidential information under Mass. R. Prof. C. Rule 1.6(a). See Judge Ham's [Memorandum of Decision and order](#). However, the Court ultimately determined that G.L. c. 12A, § 9, constitutes "other law" that supersedes the operation of Mass. R. Prof. C. Rule 1.6(a). See Comment [12] to Mass. R. Prof. C. 1.6.

CPCS filed a timely notice of appeal and intends to apply for Direct Appellate Review in the Supreme Judicial Court. CPCS also takes the position that the Superior Court erred in finding that G. L. c. 12A, § 9, supersedes a lawyer's obligation under Rule 1.6 to maintain client confidentiality and the agency's plan is to argue that issue on appeal. CPCS also filed a motion to terminate the impoundment order relating to the Superior Court litigation, and this was later granted by the Court.

This Superior Court order relating to the disclosure of docket numbers applies to all clients represented by appointed counsel between January 1, 2023 and January 27, 2026. Comment 12 to Mass. R. Prof. C. 1.6 advises that, "[w]hen disclosure of confidential information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4." Rule 1.4 sets forth a lawyer's obligations to keep **current** clients reasonably informed about the status of the client's current matter(s) and to explain a matter "to the extent reasonably necessary to permit the client to make informed decisions about the case."

#### WHAT SHOULD ATTORNEYS DO?

If you are **currently** representing a client that was assigned to you by CPCS between January 1, 2023 and January 27, 2026, Mass. R. Prof. C. Rule 1.4 imposes an obligation on counsel to advise current clients about this litigation and that it could result in the disclosure of the case docket number to the OIG. Disclosing the docket number would permit the OIG access to the following information:

- 1) the identity of your client;
- 2) the nature of the representation, e.g. criminal, mental health litigation, DCF-involved matters;
- 3) the amount billed on your client's case;[2] and,
- 4) expert and vendor billing on your client's case.

The OIG has stated that it does not currently intend to disclose the names of any represented clients and that access to the information would be limited to a small number of OIG employees and would be subject to a protective order. However, M.G.L. c. 12A, Section 9 authorizes the OIG to disclose this information "to assist him in the performance of his duties and responsibilities under this chapter..." As noted above, the OIG has been charged by the Legislature to provide a report about its review of CPCS, and thus there is a risk that the information cited above could be disclosed in that report or otherwise be made available to the public.

CPCS has attached several **sample template letters** which can be sent to your clients, inviting them to discuss this matter with you. Links to these letters appear below.

[Sample-Notice-to-Clients-Private-Counsel](#)

[Sample-Notice-to-Clients-CAFL](#)

[Sample-Notice-to-Clients-Staff](#)

[Sample-Notice-to-Clients-MHLD](#)

[Sample-Notice-to-Clients-Youth](#)

These letters are designed to meet the various communication needs of a client. Please provide the applicable letter and communicate with your clients as appropriate, depending upon the circumstances, to maximize their

understanding. For example, if you have an older child client, you might send notice via email and then follow up with a telephone call. Also, if your client is a juvenile or has a cognitive disability, best practices dictate that you meet them in person, if possible, to explain the current situation, in addition to providing written notice.

#### **WHAT OPTIONS ARE AVAILABLE IF MY CLIENT IS CONCERNED ABOUT THE DISCLOSURE OF DOCKET NUMBERS ASSOCIATED WITH THEIR CASE?**

As noted above, CPCS has appealed the Superior Court's decision compelling CPCS to disclose docket numbers. If the appeal is unsuccessful and CPCS is compelled to disclose docket numbers, that disclosure will likely be subject to a protective order as contemplated by the Superior Court. The specifics regarding that order and the safeguards that will be put in place to protect this information from further disclosure are not yet known. CPCS will continue to provide updates regarding the pending appeal and, if necessary, any possible protective orders.

Your client may have standing to object to the disclosure of their case's docket number(s) to the OIG. If your client(s) have specific concerns about the potential disclosure of the docket number(s) in their case, counsel should consider filing a motion to intervene for the purpose of objecting to the docket number disclosure in the Superior Court matter, pursuant to Mass. Rules of Civil Procedure Rule 24 and Superior Court Civil Rule 9A. It is not possible for CPCS to know how this disclosure will impact your client, but it is conceivable that its impact could include, but not be limited to, their employment, housing or immigration status.

#### **WILL CPCS COMPENSATE ATTORNEYS FOR THEIR WORK RELATED TO NOTIFYING THEIR CLIENTS?**

Yes, CPCS will allow private attorneys to bill for services related to advising current clients with open matters of the litigation with the Office of the Inspector General at a rate of **\$95.00 per hour**. CPCS will be issuing a single NAC "OIG Docket Litigation" which will be available in Ebill shortly. Please be aware that it is imperative that CPCS separately track the hours spent by private counsel related to this matter. As such, please bill for all work related to identifying current clients, sending letters, telephone conferences, any intervention in the litigation, and time spent tracking the appeal, etc, for all current clients on the one (1) NAC provided. Please also be sure to maintain a time record of the services provided by identifying the client and legal services provided in keeping with CPCS billing policy. Please choose the most appropriate Ebill category for services provided.

#### **WILL CPCS COMPENSATE ATTORNEYS FOR THEIR WORK RELATED TO INTERVENING IN THE LITIGATION?**

Yes, CPCS will allow attorneys to bill for legal services if, after consulting with their client, the client directs counsel to intervene in this litigation.

#### **DO ATTORNEYS NEED TO CONTACT FORMER CLIENTS?**

Private counsel are not required to contact former clients.

#### **IS THERE A DEADLINE FOR ATTORNEYS TO GIVE NOTICE TO THEIR CLIENTS?**

There is no specific deadline for providing notice to clients, but attorneys should consult with their client as soon as possible to discuss what steps, if any, the client wishes to take. CPCS has filed a notice of appeal and intends to file an application for Direct Appellate Review in the Supreme Judicial Court, which is at the discretion of the Court to grant. Therefore, attorneys should monitor the appellate court dockets to track any relevant litigation deadlines or notices that might impact their clients. CPCS will also provide updates to attorneys regarding the status of the appeal.

Should you have any questions please send an email to [DocketLitigation@publiccounsel.net](mailto:DocketLitigation@publiccounsel.net)

[1] See Section 82 of Chapter 14 of the Acts of 2025

[2] Anonymized attorney, expert and vendor billing has already been provided to the OIG.

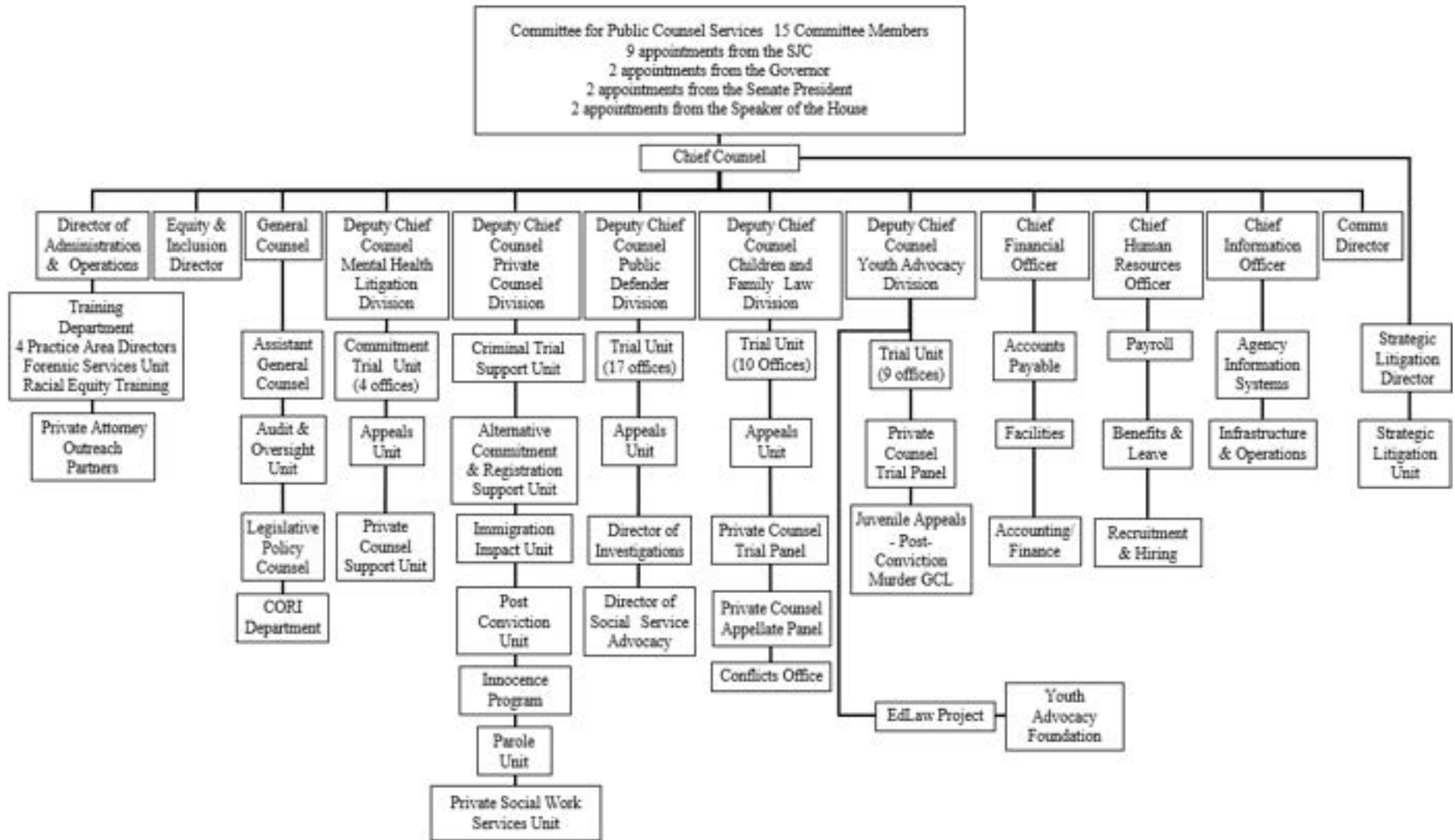
## APPENDIX C. RIGHT TO APPOINTED COUNSEL IN MASSACHUSETTS

	Massachusetts Law or Statute	Right to Appointed Counsel
Criminal	M.G.L. c. 6, §§ 178L (2013) and 178M (2013)	Sex offenders at Sex Offender Registry Board classification hearings and judicial appeals.
	M.G.L. c. 6, § 178K (2020)	Subject of a report by the Sex Offender Registry Board to a sentencing court recommending that a sex offender be designated a sexually violent predator.
	<i>Noe v. Sex Offender Registry Bd.</i> , 480 Mass. 195, 102 N.E.3d 409 (2018)	Level two or three sex offender who seeks a downward re-classification.
	M.G.L. c. 127, § 145 (2018)	Subject of a hearing to commit the person to a correctional facility for non-payment of money owed.
	Mass. R. Crim. P. 8 (1986)	Defendants for any offense in which a sentence of imprisonment or commitment to the custody of the Department of Youth Services may be imposed.
Civil: Minors, Children, and Families	M.G.L. c. 112, § 12R (2020)	Minor at judicial hearing on consent for abortion by minor under age 16 when patient is unable to obtain consent of parent or guardian.
	M.G.L. c. 119, § 29 (2011); extended by <i>In re Guardianship of V.V.</i> , 470 Mass. 590, 24 N.E.3d 1022 (2015); <i>In re Adoption of Meaghan</i> , 961 N.E.2d 110 (Mass. 2012); <i>Ryan v. Lovendale</i> , 105 Mass. App. Ct. 564 (2025)	<p>Statute: Adults under the responsibility of Massachusetts Department of Children and Families (DCF) under M.G.L. c. 119, § 23(a)(1); children who are before the court under M.G.L. c. 119, §§ 23(a)(1), (3), 24-27, or 29B; children in a custody proceeding where DCF or a licensed placement agency is a party; any young adult eligible under M.G.L. c. 119, § 23(f); and the parent/guardian/custodian of a child or adult who is the responsibility of DCF whenever the department or a licensed child placement agency is a party to child custody proceedings.</p> <p><i>In re Guardianship of VV</i>: Parents of a minor child where someone other than the parent seeks to be appointed as the child’s guardian.</p> <p><i>In re Adoption of Meaghan</i>: Parents and children in adoption proceedings initiated by a private person(s) with care and custody of the child (as opposed to DCF).</p>

	Massachusetts Law or Statute	Right to Appointed Counsel
		<i>Ryan v. Lovendale</i> : Parties in child custody actions where the court may grant custody to a nonparent and the birth parents do not consent.
	<i>Balboni v. Balboni</i> , 39 Mass. App. Ct. 210, 654 N.E.2d 937 (1995)	Children in divorce proceedings when the Probate Court judge contemplates awarding custody to DCF.
	M.G.L. c. 119, § 29A (2003)	Children in criminal proceedings when their parent/guardian is indigent or the alleged victim.
	M.G.L. c. 119, § 29B (2017)	Children and young adults at annual DCF permanency hearings.
	M.G.L. c. 119, § 39F (2012)	Children and the parents/legal guardians/custodians of the child at hearings for a child requiring assistance.
	M.G.L. c. 120, § 18 (1996)	Subject of court hearing on an extension of commitment to the Department of Youth Services for a person who is physically dangerous to the public.
	M.G.L. c. 208, § 16 (1986)	Investigation, reporting, and defense of a divorce action, when ordered by the court.
	M.G.L. c. 209C, § 7 (2025)	Parties in parentage actions where custody or visitation are contested.
	M.G.L. c. 210, § 3 (2012); <i>Dept. of Public Welfare v. J.K.B.</i> , 379 Mass. 1 (1979)	Child and parents in proceeding to dispense with need for consent for adoption of child in care or custody of DCF or an agency.
Civil: Mental and Physical Health	M.G.L. c. 19A, § 20 (2025)	An older adult who is the subject of a petition by the Department of Elder Affairs for a court finding that the older adult is incapable of consenting to the provision of protective services or a petition for an emergency order of protective services.
	M.G.L. c. 19C, § 7 (1997)	Disabled person who is the subject of a petition by the Disabled Persons Protection Commission for a court finding that the person is incapable of consenting to the provision of protective services.
	M.G.L. c. 111, § 94C (1964)	Subject of hearing regarding commitment to tuberculosis treatment center.
	M.G.L. c. 123, § 5 (1986)	Subject of hearing for commitment or further retention to a facility or Bridgewater State Hospital, or for medical treatment including antipsychotic medication.

	Massachusetts Law or Statute	Right to Appointed Counsel
	M.G.L. c. 123, § 9 (1992)	An applicant to a justice of a superior court stating that a person who remains in a facility after being civilly committed should no longer be retained or should no longer receive medical treatment.
	M.G.L. c. 123, § 12 (2021)	Hospitalized person who was determined to otherwise create a likelihood of serious harm by reason of mental illness.
	M.G.L. c. 123, § 35 (2025)	Subject of hearing regarding a petition for commitment for alcohol or substance use disorder.
	M.G.L. c. 123A, § 9 (2010)	Any person deemed sexually dangerous and committed for treatment, upon motion for examination and discharge.
	M.G.L. c. 123A, §§ 12-14 (2004)	The subject of a petition by the district attorney or attorney general that the prisoner or youth in the custody of the Department of Youth Services is likely to be a sexually dangerous person, at the probable cause hearing, during commitment for the purpose of examination and diagnosis, and at trial.
	<i>In re Guardianship of Zaltman</i> , 65 Mass. App. Ct. 678 (2006)	Ward who has been judged incompetent to make their own medical decisions at proceedings to challenge their guardianship where there is evidence that the interests of the guardian and ward are adverse and the ward may have recovered their competency.
	M.G.L. c. 190B, § 5-106 (2012)	Subject of a petition for appointment of a guardian, conservator, or other protective order, when the person or someone on their behalf requests counsel or if the court determines that the interests of the person are or may be inadequately represented.
	M.G.L. c. 190B, § 5-212 (2021)	Guardian at proceedings pursuant to a petition to remove a guardian of a ward who is a minor when the guardian has been the primary caretaker for 2 or more years or an otherwise significant period of time.
	M.G.L. c. 190B, § 5-306A (2012)	Indigent minor or incapacitated person at substituted judgment determination hearing regarding treatment.

## APPENDIX D. CPCS ORGANIZATIONAL CHART



## THE CPCS PUBLIC DIVISION CONFLICT RESOLUTION POLICY

### Revised 1/10/20

The CPCS Public Division Conflict Resolution Policy ("Policy") was drafted in accordance with the Massachusetts Rules of Professional Conduct (the "Mass.R.Prof.C." or the "Rules") and CPCS's commitment to zealous advocacy and client centered representation. The Policy primarily references Rules 1.6, 1.7, 1.9, and 1.10, which govern privilege, confidentiality, conflicts of interest involving current and former clients, as well as imputed disqualifications. The Rules set forth specific requirements that Massachusetts attorneys must consider and follow when determining whether to represent a client in a particular matter. Where necessary, the Policy cites to other relevant Rules. In addition to the requirements of the Rules, the CPCS Performance Guidelines require that in all cases, "Counsel must be alert to all potential and actual conflicts of interest that would impair the ability to represent a client."

For the purposes of this Policy, **the "Public Division" of CPCS** includes all staff who provide direct client representation in the Children and Family Law Division (CAFL), the Mental Health Litigation Division (MHL), the Public Defender Division (PDD) and the Youth Advocacy Division (YAD) through the Trial and Appeals Unit offices. It **excludes** direct representation by attorneys in Private Counsel Appeals, the Immigration Impact Unit, the Innocence Program, the Alternative Commitment and Registration Support Unit and all Administrative Units. For the purposes of determining whether a conflict of interest exists, all staff members in the Public Division are considered members of one law firm. See Mass.R.Prof.C. 1.0(d); 1.10.

### GUIDELINES FOR RUNNING CONFLICT CHECKS

**It is the attorney's responsibility to ensure that a conflict check is conducted as soon as possible.** Offices must make every effort to ensure that a person trained in conflicts is available to check names and dates of birth of prospective clients and any other known individuals involved in a case before representation begins so that the Public Division accepts and continues to represent clients in the maximum number of cases without compromising the rights of existing or former clients or disrupting the continuity of representation in any given case.

When the Public Division is to be appointed to a defendant or juvenile in a co-defendant case or to a party in a multi-party case and any co-defendant or party (defined below) is a current or past CPCS client, **the attorney should request appointment of the current or past CPCS client.**

Whenever possible, **before a case is accepted**, every potential client's name and the names of any known co-defendants, witnesses, complainants, cooperating individuals and parties to the case must be checked for conflicts.

**If a conflict check cannot be run before the case is assigned**, the attorney must submit a completed Conflict Form (see Appendix) to a support staff member who will run a conflict check **within two (2) business days** of appointment.

Whether the initial conflict check is completed before or after appointment, the attorney has a continuing duty to ensure that additional conflict checks are conducted as soon as, and no more than two (2) business days after, the attorney receives discovery, notice, or information from any source that identifies additional witnesses and/or parties to a case.

**Role of the AIC and Supervisor in Ongoing Conflict Checks:**

The Attorney-in-Charge and any Supervising Attorneys of the office shall be responsible for assuring that attorneys are promptly and thoroughly conducting conflict checks, especially ongoing conflict checks in cases where discovery continues throughout the pendency of the case.

**Definition of Party:** Party includes a parent and guardian of a client with an open delinquency or youthful offender matter.

**CAUTION ON ACCESSING FORMER CLIENT FILES**

Even if there is no conflict in taking a new case, a Public Division attorney cannot review a former Public Division client's file to see if there is information about a co-defendant, witness, complainant, cooperating individual or party. Nor can the newly assigned attorney use any of the information in the former case without a proper analysis of whether the information is confidential. If it is confidential, its use is governed by Rules 1.6, 1.9, 3.3 and 4.1 and this Conflict Policy. Only the attorney who is resolving the potential conflict, the former client's attorney, or the Attorney-in-Charge (AIC) of the former attorney's office can review the former client's file to complete the analysis.

**CPCS PUBLIC DIVISION ATTORNEY WHO FORMERLY PRACTICED IN MASSACHUSETTS**

If an attorney practiced in Massachusetts prior to becoming a CPCS Public Division attorney, the attorney may not participate in any case in which the attorney participated while in private practice, and the attorney should be screened from any information about the Public Division case. So long as the attorney is screened, the attorney's personal disqualification will not be imputed to other Public Division attorneys. See Rule 1.11(d) and Comment 2.

**CPCS PUBLIC DIVISION ATTORNEY WHO FORMERLY SERVED AS A LAW CLERK OR AN INTERN TO A MASSACHUSETTS JUDGE**

If an attorney was a law clerk or intern to a Massachusetts judge prior to becoming a CPCS Public Division attorney, the attorney may not represent anyone in connection with a matter in which the attorney participated personally and substantially as a law

clerk or intern unless all parties are provided informed consent, confirmed in writing. See Rule 1.12(a).

Furthermore, all other Public Division attorneys are disqualified from the matter unless

- (a) The former law clerk or intern is screened from any participation in the matter and
- (b) Written notice is promptly given to all parties and the tribunal. See Rule 1.2(c).

**WHAT DOES THE CONFLICT CHECK ATTORNEY NEED TO KNOW IN ORDER TO DETERMINE IF REPRESENTATION OF A PROSPECTIVE CLIENT WILL RESULT IN A CONFLICT OF INTEREST?**

The attorney will need answers to at least some of the following questions in order to determine whether the Public Division has a conflict of interest prohibiting it from accepting appointment or continuing to provide representation in a matter:

1. What is the client's name?
2. Does the client have any known aliases?
3. Are there alternative spellings to the client's name?
4. What is the client's date of birth?
5. If the name is common, it may be necessary to ask the client's address or residence.
6. What is the name and date(s) of birth of the complainant(s) in the case?
7. What is the name and date(s) of birth of the co-defendant(s) in the case?
8. What is the name and date(s) of birth of the known witnesses in the case? (Police Officers are not considered witnesses for the purpose of conflict checks.)
9. If it is a CAFL case, what are the names and date(s) of birth of the parties in the case?
10. If it is a YAD case, what are the names and date(s) of birth of the parent(s) or guardian in the case?

## THE CONFLICT CHECK PROCESS – STEP BY STEP

1. Attorney is assigned a new case and completes a Conflict Check Form.
2. Attorney copies the Conflict Check Form for the file and gives the original to a support staff member.
3. Support staff member enters the names on the Form into the Case Management System.
4. If the names entered are not in the Case Management System, the support staff member dates the Conflict Form, checks the box(es) labeled "No Information Found in Case Management System" to indicate that the names have been entered, and returns the original Form to the requesting attorney.
5. If one or more of the names are in the Case Management System, the support staff member prints the relevant Case Management system page(s), dates the Conflict Form, checks the "See Attached Case Management System Information" box(es) as appropriate, attaches the printed Case Management System page(s) to the Conflict Form, and gives the package to an AIC, Supervising Attorney or trained attorney for resolution.
6. The supervisor or trained attorney ordinarily resolves the conflict and directs the attorney as to whether the attorney may represent the new client. In some circumstances, detailed below, only an AIC, Managing Director, Assistant Director, Deputy Chief or Division Director may resolve a conflict.
7. The AIC, Supervising Attorney or trained attorney (or Managing Director, Assistant Director, Deputy Chief or Division Director) may need to ask additional questions of the attorney to resolve the conflict.
8. If the attorney is directed to withdraw from the case, the attorney must do so immediately so as to limit any delay in the client's case.
9. The attorney should avoid any further direct contact with the client, but should take whatever steps are necessary to ensure that the court is notified and private counsel is appointed as soon as possible.
10. Whenever possible, AICS, Supervising Attorneys and trained attorneys should avoid resolving potential conflicts in their own cases.

## **WHO DETERMINES IF A CONFLICT EXISTS?**

1. Straight forward resolutions where a withdrawal is not necessary can be handled by a trained attorney in the office;
2. Conflicts that necessitate a withdrawal should be handled by an AIC or Supervising Attorney;
3. Conflicts that involve two offices within the Agency should be resolved by the AICs of the offices;
4. In cases where the resolution may necessitate the gathering of additional information or a decision that may seriously impact an existing client or clients, the Managing or Assistant Director, or Deputy Chief/Director of the Division(s) must be consulted to ensure a fair and consistent outcome for all Public Division clients.

## **WHAT IS THE ROLE OF SUPPORT STAFF IN FACILITATING CONFLICT CHECKS?**

Support staff must enter into the Case Management System the names and the associated information included on a completed Conflict Form.

## CONFLICT CHECKS: GUIDANCE BY EXAMPLES

In order to avoid and/or minimize a conflict of interest that necessitates withdrawing from an existing case, the conflict check attorney must analyze the potential conflicts of each individual using the scenarios set forth below. It is important to note that, in some circumstances, an analysis will have to be done under more than one scenario.

### Scenario 1 – Current Client of the Public Division

- If the prospective new client is a **co-defendant or a complainant in any current OPEN case**, we **cannot** accept the case. (Rule 1.7)
- In most instances, if the prospective new client is a **witness or other party** in a current open case, we cannot accept the new case. In rare circumstances, however, Rule 1.7 allows for the witness or other party to waive the conflict of interest if,

“(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after the consultation.”

Note, however, that 1.7 (b) defines the parameters and limitations of such waivers, and any scenario where such a waiver is sought must be referred to and evaluated by the Managing or Assistant Director, or Deputy Chief or Division Director of the respective Division(s). **The Rule does lay out scenarios where a conflict is so clearly adverse to the interest of a client that it cannot be waived.**

#### Example:

*You pick up John Doe’s case on a Duty Day. Upon receiving discovery, you fill out the Conflict Form and include the name, Jane Smith, date of birth, October 15, 1970, as a witness listed in one of the police reports. Jane Smith is revealed to be a current client of the Public Division.*

*Ask: Is Jane Smith an adverse or potentially adverse witness against your client?*

- ➔ *If your answer is YES, you may not represent John;*
- ➔ *If your answer is NO, you probably cannot represent John, but may, in rare circumstances, reach out to your Managing or Assistant Director, or Deputy Chief or Division Director for further analysis under Rule 1.7 to determine if a waiver of the conflict is at all appropriate or permitted by the Rule.*

## Scenario 2 – New Client is a Former Co-Defendant in a Public Division Case

- If the prospective new client was a **co-defendant in a former unrelated case** that is now **closed**, we **can** represent the new client. (Rules 1.7 and 1.9)

### Example:

*John Doe is a new client. Your conflict check reveals that five years ago, John Doe was a co-defendant in Bob Jones' case. Bob was a former Public Division client and his case is now closed.*

*Ask: Is John Doe's case the same or substantially related to Bob's closed case?*

- ➔ *If the answer is YES, you may not represent John;*
- ➔ *If the answer is NO, you may represent John.*

## Scenario 3 – New Client Was a Complainant in a Closed Public Division Case

- If the prospective new client was a **former complainant in an unrelated case** that is now **closed**, you **may** represent the new client. (Rules 1.7 and 1.9)

### Example:

*Jane Smith is a new client. A conflict check of her name reveals that the Public Division represented Mary Hill in an assault case three years ago in which Jane was the complainant. That case is now closed.*

*Ask: Is Jane Smith's current case the same or substantially related to Mary's closed case?*

- ➔ *If the answer is YES, you may not represent Jane;*
- ➔ *If the answer is NO, you may represent Jane.*

#### Scenario 4 – New Client Was a Witness in a Closed Public Division Case

- If the prospective new client was a **former witness in an unrelated case** that is now **closed**, you **may** represent the new client. (Rule 1.9)

##### Example:

*Bob Smith is a new client. A conflict check reveals that Bob was a witness against Mark Jones in a robbery case in 2011. Mark Jones was represented by the Public Division. His case is now closed.*

*Ask: Is Bob's current case the same or substantially related to Mark Jones' now closed case?*

- ➔ *If the answer is YES, you may not represent Bob;*
- ➔ *If the answer is NO, you may represent Bob.*

#### Scenario 5 – New Client Was a Former Party in a Public Division Case

- If the prospective new client is a **former party in an unrelated case that is now closed**, you may represent the new client. (Rule 1.9)

##### Examples:

*Mavis Peterson is a new client. She is also the parent of a former juvenile client whose delinquency matter is now closed.*

*Ask: Is Mavis' current case the same or substantially related to her child's former case? Is the former YAD client involved in any way in Mavis' current case?*

- ➔ *If the answer to **either** question is YES, you may not represent Mavis;*
- ➔ *If the answer to **both** questions is NO, you may represent Mavis.*

*John Jones is a prospective new client in an assault and battery case. He is the father of Jane Jones, the subject child of a now closed care and protection case. Jane was represented by the Public Division in the former care and protection case.*

*Ask: Is John's current case the same or substantially related to the former care and protection case?*

- ➔ *If the answer to the question is YES, you may not represent John;*
- ➔ *If the answer to the question is NO, you may represent John*

## Scenario 6 - Former Client in New Public Division Case

What do you do if a conflict check in a new case reveals a former Public Division client?

If the former client is the **complainant, an adverse party, a co-defendant or an witness in the new case**, an AIC or Supervising Attorney must do an analysis under Rule 1.9 to determine whether there is a conflict.

Rule 1.9 prohibits representation of a new client if the new case is “substantially related” to the prior case of the former client. Comment 3 defines matters as substantially related “if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the [new case].” (emphasis added)

If the former client was a client of the MHL, then we cannot accept the case. Because civil commitment proceedings under all sections of Chapter 123 are confidential and not available to the general public, prior representation by a CPCS attorney results in a conflict under Rule 1.9. The nature of the representation in civil commitment cases is such that the information in the file, such as psychiatric evaluations, mental health records and substance use disorder evaluations could be used to the benefit of a new client and to disadvantage the former client.

If the former client was a client of the PDD, CAFL or YAD, an AIC or Supervising Attorney must determine whether the new case is “substantially related” to the prior representation of the witness. The analysis should include consideration of the following factors:

- What was the nature of the prior representation – are there common factual issues – is there a clear connection between the matters? Is there a substantial risk that confidential information in the former client’s file would be useful to the new client or, if revealed, be harmful to the former client? If so, you cannot represent the new client.
- How long ago was the prior representation? Time may be a factor in the analysis if the prior representation was so long ago that any information obtained from the former client’s file would no longer be relevant to or admissible in a trial on the new case. This is much less likely if the former client was a YAD or CAFL client.
  - YAD and CAFL files ordinarily contain extensive client and family histories which are likely to be relevant long after the representation of the former client has ended;
  - In a CAFL care and protection case, relevant facts typically extend back to the birth of a child and forward through events that occur during the representation, making it much more likely that facts in a former client’s file

will remain relevant long after the representation of the former client has ended. CAFL cases are generally closed proceedings, the files of which are impounded. As a result, representation of a new client where a former CAFL client is involved in the proceedings will likely be precluded by the duty of confidentiality to the former client.

- How lengthy and involved was the prior representation? A longer and more in-depth representation of the former client would suggest that more information was obtained, thereby increasing the risk that information relevant to the new case may have been acquired. For example, representation lasting one day that entailed arraignment and a bail hearing with information obtained only from a criminal client in lock up will likely produce less information that may be relevant in a future case of a new client than would representation continuing through plea or disposition.
- What confidential information would normally be obtained in the prior representation of the former client?
- Is there a significant risk that the confidential information would materially advance the position of the new client?

In the ordinary course, the conflict determination should be made without reviewing the former client's file. Reviewing the file of a former client may **only** occur in extraordinary circumstances. For example, if an attorney discovers a possible conflict with a former client after having represented the new client for a significant period of time, the attorney may ask the AIC of the former client's office to check the file of the former client as a last resort before withdrawing.

If the AIC or Supervising Attorney conducting the conflict analysis determines that the Public Division **may** represent the new client, then the AIC or Supervising Attorney **must** attach to the conflict form a written explanation of why the Public Division is not required to withdraw from the case. If the AIC or Supervising Attorney determines that the Public Division has a conflict with the new case, no written explanation is necessary.

## Scenario 7 – Complainant in New Public Division Case Was Party in Closed CAFL Case

### Example:

*Mr. and Mrs. Smith's children were the subject of a care and protection matter which was closed 18 months ago. Mr. Smith was represented by a CAFL staff attorney. Mrs. Smith was represented by private counsel. Mr. and Mrs. Smith had the same position in the care and protection case. A Public Defender District Court office is asked to represent Mr. Jones, who has been charged with assault and battery on Mrs. Smith.*

- ➔ The Public Division staff office may only represent Mr. Jones if the care and protection and assault and battery cases are not “substantially related” as defined in Rule 1.9. Before accepting representation of Mr. Jones, an AIC, Managing Director and/or Deputy Chief or Division Head must first make a determination that there is **not** a substantial risk that confidential information as would normally have been obtained in the representation of Mr. Smith in the care and protection matter would materially advance Mr. Jones’ position in the assault and battery matter. If it is determined that the cases are not substantially related and the Public Division accepts representation of Mr. Jones, Mr. Jones’ attorney may not review Mr. Smith’s file in connection with the representation of Mr. Jones.

## **APPENDIX: Conflict Form**

**CPCS Conflict Check Form - Updated 1/10/20**

Before participating in an arraignment or accepting an assignment, all efforts must be made to run a conflict check. This conflict check is to be completed within **two** business days from case assignment, first meeting, arraignment, receipt of discovery or additional discovery or receiving new information. **Additional conflict checks must be completed within two (2) business days after the attorney receives discovery, notice, or information from any source that identifies additional witnesses and/or parties to the case.**

Date of request	Division - Office	Attorney making the request:
-----------------	-------------------	------------------------------

Client Name:	DOB:	Held: Yes <input type="checkbox"/> No <input type="checkbox"/>
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Client Alias(es):

Have you met with client? Yes  No

Are you aware of any potential conflict? Yes  No

If you aware of any potential conflicts, explain:

Person who ran the check:	Date check was performed:
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**Types: W-Witness; AV-Alleged Victim or CW-Complaining witness; CD-Codefendant; CI-Cooperating Individual; F-Family Members; OP-Other Party; O-Other (describe in CASEY)**

Type	Name (last, first, middle) and/or known aliases	DOB	Last four digits of SSN (if available)	See Attached CASEY information	No information found in CASEY

**\*Whenever CPCS ACCEPTS representation, a completed copy of this form must be placed in the CPCS case file. This Conflict Check form is an administrative document completed solely to determine whether CPCS has a conflict with a case, and is therefore NOT a part of the client's file.**

**ADDITIONAL CHECKS MUST BE RUN EVERY TIME DISCOVERY REVEALS A NEW WITNESS OR PARTY.**

## APPENDIX F: DATA METHODOLOGY

### **Indigency Fee and Indigency Verification Analysis**

The OIG's analysis of indigency fees is based on Trial Court data that identifies fees assessed, fees dismissed, and community service assigned. The Trial Court informed the OIG that in some cases the fee and waiver are only recorded on the official paper docket and not consistently entered into the Trial Court data. The OIG's analysis of indigency verification (including employment status, income verification, and spousal consent) is based on a sample of indigency recommendation forms provided by Massachusetts Probation Service.

### **Billing Oversight Analysis**

The OIG's analysis of bar advocate billing oversight is based on CPCS data from the D3/Pick billing program (D3/Pick) as well as summary information concerning reviews and audits conducted by CPCS.

### **Case Assignment and Caseload Analysis**

The OIG's analysis of case assignments and caseloads is based on several CPCS data sources. CPCS tracks staff attorney case assignments on the Zelly case management program (Zelly) and tracks bar advocate billing information and case assignments on D3/Pick. CPCS produced datasets on these two programs in response to OIG requests. CPCS also produced Excel spreadsheets that compile caseload metrics for CPCS staff attorneys.

CPCS expects staff attorneys to work on a particular number of weighted cases in a fiscal year ("cases touched"). This metric includes both cases carried over from a prior year and newly assigned cases, and therefore requires knowledge of whether a case closed in the prior fiscal year or is still open. CPCS told the OIG that its record of the "case closed" date for CPCS staff attorneys indicates when the staff attorney closed the case in the case management system, whereas its record of the "case closed" date for bar advocates indicates when the bar advocate submitted an E-Bill, indicating that the assigned counsel arrangement closed. CPCS told the OIG that these records of the "case closed" date may differ from the "case closed" date recorded in MassCourts. Therefore, CPCS records do not uniformly identify the "case closed" date between CPCS staff attorneys and bar advocates. Because CPCS did not provide docket numbers, the OIG was not able to match CPCS data with Trial Court data that would provide a consistent closed date.

Due to the OIG not being able to consistently determine when a case was closed, along with the differences in how CPCS weights cases for staff attorneys and bar advocates, the OIG focused the case assignment analysis between CPCS staff attorneys and bar advocates on new case assignments, rather than the number of "cases touched" or weighted cases.

The OIG used information present in Zelly and D3/Pick to compare new assigned cases between CPCS staff attorneys and bar advocates. The data that CPCS provided to the OIG did not contain case

weighting. For analysis that identified bar advocate weighted assignments, the OIG applied weighting to those cases according to the weighting scale confirmed through communications with CPCS.

The OIG used the Excel spreadsheets to evaluate whether CPCS staff attorneys met internal CPCS caseload expectations. The Excel spreadsheets provided the only source of reliable records for case weighting and full-time equivalent (FTE) value for CPCS staff attorneys. The OIG did not make any changes to values in the Excel spreadsheets to account for case weighting, because CPCS informed the OIG that the case weighting had already been applied.

### **Fiscal Analysis**

The OIG's fiscal analysis is based on CPCS accounts payable data and HR/CMS data in the Commonwealth Information Warehouse (CIW). The OIG limited CPCS accounts payable data to appropriation line items 3211500, 3211510, and 3211520.

To evaluate the effect of adjusting the number of CPCS employees, the OIG identified the average starting salary for relevant job titles from HR/CMS. The OIG then identified the per capita average sum of three categories of non-salary costs that could be expected to scale with changes to headcount from the CPCS accounts payable data: non-salary employee costs (including fringe benefits and conference costs), operational IT costs (including computer hardware, software, and licenses), and space rental costs. By combining the salary cost and the non-salary cost (\$17,181 per employee), the OIG identified the expected cost of adjusting the number of CPCS employees. The OIG also identified costs that were not expected to scale with adjustments to the number of CPCS employees, which the OIG added as a lump sum (approximately \$14.72 million) regardless of the number of CPCS employees.

To evaluate the effect of adjusting the number of assignments to bar advocates, the OIG identified an average bar advocate "cost per new case." The OIG then identified the expected total cost of adjusting the number of new cases assigned to bar advocates.

### **State Comparison Analysis**

The OIG reviewed state statutes, state policy documents, and annual reports from state (and county) indigent defense organizations to identify public defender caseloads, case assignment totals, state public defense budgets, assigned counsel hourly rates, and limits on assigned counsel fees. The OIG also reviewed survey results from responding state organizations. This analysis is subject to several limitations. The state comparison review relied heavily on publicly available data, the availability and clarity of which varied by state. As a result, portions of the OIG's state comparison analysis, particularly concerning public defense budgets and public defender caseloads, focused on statewide public defender organizations that release comparable data.

## APPENDIX G. COMPARISON OF STATEWIDE PUBLIC DEFENDER SYSTEMS

Fiscal Year	State	Budget	Number of Total New Cases	Number of Attorneys	Cost per new case (new cases divided by budget)	Caseload (new cases divided by number of attorneys)
2025	Massachusetts <sup>164</sup>	Total: \$336,207,663 <sup>165</sup> PD: \$86,828,810 AC: \$214,378,853	Total: 122,187 PD: 25,495 AC: 134,444	354 PDs (actual FTEs) 290 PDs (calculated FTEs) 2465 bar advocates	\$2,752 per case	72 (PD: actual FTEs) 88 (PD: calculated FTEs) 55 (AC)
2025	Colorado <sup>166</sup>	Total: \$192,835,367 <sup>167</sup>	Total: 130,131 97,057 cases <sup>168</sup> 33,074 “other proceedings” <sup>169</sup>	621 PDs “over 900” contract attorneys	\$2,170 per case  \$1,482 per case + “other proceeding”	N/A (does not break out cases assigned to PD)

<sup>164</sup> *Governor’s Budget FY2025 Recommendation Commission for Public Counsel Services*, OFF. OF THE GOVERNOR COMMONWEALTH OF MASS. (Jan. 24, 2024), available at <https://budget.digital.mass.gov/govbudget/fy25/appropriations/judiciary/public-counsel/?tab=historical-budget>. The OIG determined Massachusetts cases and attorneys based on information received from CPCS.

<sup>165</sup> Includes CPCS (\$86,828,810), bar advocates (\$214,378,853), and indigency fees and court costs (\$35,000,000).

<sup>166</sup> OFF. OF THE COLO. STATE PUB. DEF., FISCAL YEAR 2026-2027 BUDGET REQUEST (2025), available at <https://www.coloradodefenders.us/wp-content/uploads/FINAL-FY27-Budget-Request.pdf>; OFF. OF THE COLO. STATE PUB. DEF., PERFORMANCE PLAN (2024), available at <https://drive.google.com/file/d/1Wr35bhjkS36O-HumGUd-jk7n-XcFqJV-/view>; OFF. OF THE ALTERNATE DEF. COUNS., PERFORMANCE PLAN (2022), available at [https://coloradoadc.org/wp-content/uploads/2025/11/Performance\\_Plan\\_FY23\\_-\\_OADC\\_-\\_07-01-22.pdf](https://coloradoadc.org/wp-content/uploads/2025/11/Performance_Plan_FY23_-_OADC_-_07-01-22.pdf).

<sup>167</sup> Does not include Special Bill 25-024 (\$621,337), Annualizations (\$1,715,404), Common Policy (\$15,486,815).

<sup>168</sup> Includes felonies (32,235), misdemeanors (60,407), and juvenile (4415).

<sup>169</sup> Includes felony “other proceedings” (17,122), misdemeanor “other proceedings” (14,612), and juvenile “other proceedings” (1340).

Fiscal Year	State	Budget	Number of Total New Cases	Number of Attorneys	Cost per new case (new cases divided by budget)	Caseload (new cases divided by number of attorneys)
2025	Connecticut <sup>170</sup>	Total: \$89,492,117 <sup>171</sup> PD: \$51,267,598 AC: \$33,764,004	Total: 70,688 <sup>172</sup> PD: 51,048 AC: 19,640	253 PDs “just under 340” AC	\$1,266 per case	209 (PD) 58 (AC)
2024	Iowa <sup>173</sup>	Total: \$74,764,577 PD: \$30,718,203 Contract: \$42,160,374	Total: 166,956 <sup>174</sup> PD: 94,756 Contract: 72,200	176 PDs 492 contract attorneys	\$448 per case	538 (PD) 147 (AC)
2025	Kentucky <sup>175</sup>	Total: \$99,471,900 <sup>176</sup> PD: \$93,915,900	Total: 130,600 <sup>177</sup> PD: 124,016	363 PDs <sup>179</sup>	\$762 per case	342 (PD) 39 (contract)

<sup>170</sup> CONN. DIV. OF PUB. DEF. SERV., THE ANNUAL REPORT OF THE CHIEF PUBLIC DEFENDER (2024), available at <https://portal.ct.gov/-/media/ocpd/publications/annual-reports/annual-report-fy-2024.pdf?rev=4e377c77dee74e73aeceb9218e539a78>; CONN. DIV. OF PUB. DEF. SERV., 2025 ANNUAL REPORT OF THE CHIEF PUBLIC DEFENDER (2025), available at <https://portal.ct.gov/-/media/ocpd/publications/2025-annual-report.pdf?rev=bff157fc5d042798e8012fea2d1034c&hash=4D9C3154EAEDA5FB02A3046290F99352>.

<sup>171</sup> Includes personal services (\$51,267,598), other (operating) expenses (\$1,565,163), assigned counsel (\$33,764,004), expert witnesses (\$2,775,604), and training and education (\$119,748).

<sup>172</sup> Includes A and B felony charges (47,435 PD, 7296 AC), other felony charges and misdemeanors (1586 PD, 826 AC), juvenile delinquency (1800 PD, 712 AC), child protection (123 PD, 10,806 AC), juvenile post-conviction (52 PD), housing courts (10 PD), parole revocation unit (482 PD). Does not include guardian ad litem (654), innocence/post-conviction (41), habeas (193), juvenile parole (7), PA-23-169 (9), or legal services unit appeals (222).

<sup>173</sup> OFF. OF THE IOWA STATE PUB. DEF., LEGISLATIVE BUDGET PRESENTATION (2025), available at <https://www.legis.iowa.gov/docs/publications/SD/1521903.pdf>.

<sup>174</sup> Identified as “caseload,” may reflect cases from prior year(s).

<sup>175</sup> KY. OFF. OF THE STATE BUDGET DIR., 2024-2026 BUDGET OF THE COMMONWEALTH (2024), available at [2024-2026 Budget of the Commonwealth - Volume 1 \(Full Version\)](https://dpa.ky.gov/wp-content/uploads/2025/10/AR-2025-Final-Report-clc.pdf); KY. DEP’T OF PUB. ADVOC., ANNUAL REPORT - FISCAL YEAR 2025 (2025), available at <https://dpa.ky.gov/wp-content/uploads/2025/10/AR-2025-Final-Report-clc.pdf>. Kentucky also responded to the OIG survey.

<sup>176</sup> Includes defense services (\$93,915,900), conflict services (\$313,700), law operations (\$2,531,100), Office of the Public Advocate (\$2,711,200). Survey results identified a budget of \$99,885,675.

<sup>177</sup> Includes circuit court felonies (25,065), district court felonies (33,144), misdemeanors (38,359), revocations (13,236), juvenile (6,473), involuntary commitment (3,662), conflict cases (6,584), parole revocation (746), and other cases (13). Survey results identified 103,954 total cases.

<sup>179</sup> Survey results identified 398 attorneys representing clients.

Fiscal Year	State	Budget	Number of Total New Cases	Number of Attorneys	Cost per new case (new cases divided by budget)	Caseload (new cases divided by number of attorneys)
		Contract: \$313,700	Contract: 6,498 <sup>178</sup>	170 contract attorneys		
2025 calendar year	Louisiana <sup>180</sup>	Total: \$80,994,334 <sup>181</sup>	Total: 134,064 <sup>182</sup>	Unknown	\$604 per case	Unknown
2025	Maryland <sup>183</sup>	Total: \$155,292,881 <sup>184</sup>	Total: 116,330 <sup>185</sup>	623 PDs  No available info about contract attorneys	\$1,335	N/A (does not identify cases assigned to PD)

<sup>178</sup> Contract attorneys are assigned to conflict-of-interest cases in Kentucky. Kentucky identified 6,584 “total conflict cases,” which could include cases assigned in prior years.

<sup>180</sup> STATE OF LA. OFF. OF THE STATE PUB. DEF., OSPD 2025 ANNUAL REPORT (2026), available at <https://www.statepublicdefender.la.gov/wp-content/uploads/2026/02/2025-OSPD-Annual-Report-FLASH-Version-FINAL-1.30.26.pdf>.

<sup>181</sup> Includes state funds (\$40,055,381.51), local funds (\$12,705,731), conviction and user fees (\$26,290,613), and other funds (\$1,942,608).

<sup>182</sup> Includes child support (1,269), CINC-parent (4,108), termination (299), FINS (1,963), delinquency misdemeanor (4,494), delinquency felony (2,696), delinquency life (38), juvenile revocations (123), adult misdemeanor (55,966), adult felony non-LWOP (59,859), adult LWOP (646), capital (4), revocations (2,589), and PCR (10).

<sup>183</sup> OFF. OF THE PUB. DEF., ANALYSIS OF THE FY 2025 MARYLAND EXECUTIVE BUDGET (2024), available at <https://mgaleg.maryland.gov/Pubs/BudgetFiscal/2025fy-budget-docs-operating-C80B00-Office-of-the-Public-Defender.pdf>; MD. OFF. OF THE PUB. DEF., 2025 ANNUAL REPORT (2025), available at [https://c026acbc-bc5d-4cef-8584-0a0bde77d83b.filesusr.com/ugd/8cb54c\\_c7171e8d48484259841a478afeaf9201.pdf](https://c026acbc-bc5d-4cef-8584-0a0bde77d83b.filesusr.com/ugd/8cb54c_c7171e8d48484259841a478afeaf9201.pdf).

<sup>184</sup> Includes district operations: \$127,900,000 (82%), general admin: \$14,600,000 (10%), appellate and inmate services: \$9,700,000 (6%), and Involuntary and institutionalization services: \$3,100,000 (2%).

<sup>185</sup> Includes adult criminal (99,622 total, 29,979 incarcerable traffic, 327 VOP, 19,821 low misdemeanor, 15,177 high misdemeanor, 4,271 low DUI, 84 high DUI, 16,422 mid felony, 8,944 high felony, 525 high sex felony, 838 high felony murder) parental defense (1,016), post-conviction (1,507), mental health (9,045), juvenile (4,497 total, 1,108 misdemeanor and traffic, 2,329 mid-felony and DUI, 1,060 high felony), and appellate (643).

Fiscal Year	State	Budget	Number of Total New Cases	Number of Attorneys	Cost per new case (new cases divided by budget)	Caseload (new cases divided by number of attorneys)
2025	Minnesota <sup>186</sup>	Total: \$165,310,000 <sup>187</sup>	Total: 135,030 <sup>188</sup>	590 PDs <sup>189</sup>	\$1,224 per case	229 (PD)
2025	Missouri <sup>190</sup>	Total: \$76,363,938 <sup>191</sup>	Total: 74,045 <sup>192</sup> PD: 59,427 Contract: 14,618	“approximately” 395 PDs  No available info about contract attorneys	\$1,031 per case	150 (PD)

<sup>186</sup> STATE OF MINN. BD. OF PUB. DEF., ENACTED 2024-25 BIENNIAL BUDGET BOOKS (2023), available at <https://mn.gov/mmb-stat/documents/budget/2024-25-biennial-budget-books/enacted-budget/public-defense-board.pdf>; Minn. Bd. of Pub. Def., *About Us*, MINN. BD. OF PUB. DEF., available at <https://www.pubdef.state.mn.us/about-us>. Minnesota also responded to the OIG survey.

<sup>187</sup> Survey results identified a budget of \$167,000,000.

<sup>188</sup> Survey results identified misdemeanors (66,500), felonies (33,000), appellate (6,500), juvenile (9,500), mental health (1,530), and other (18,000). Website results identified a total of “over 150,000 cases per year,” which may include cases from prior year(s).

<sup>189</sup> Survey results identified 575 attorneys representing indigent clients.

<sup>190</sup> MO. STATE PUB. DEF., ANNUAL REPORT 2025 (2025), available at <https://publicdefender.mo.gov/wp-content/uploads/2025/10/MSPD-Annual-Report-Web-Copy-Reduced-Size-10.30.25.pdf>.

<sup>191</sup> Includes general revenue (\$62,584,900), PD reinvestment fund (\$9,098,619), LDDF (\$3,555,419), and federal and other funds (\$1,125,000).

<sup>192</sup> Includes trial division (58,920 total, 35% CDE felony other, 17% CDE felony drug, 7% A-B felony, 22% probation violation, 16% misdemeanor, 1% juvenile, 1% homicide, 1% felony sex), parole revocation defense team (507), and contract counsel (14,618). Does not include case numbers for commitment defense unit, capital litigation offices, appellate and post-conviction relief offices, holistic defense services program, children’s defense team, and strike force team.

Fiscal Year	State	Budget	Number of Total New Cases	Number of Attorneys	Cost per new case (new cases divided by budget)	Caseload (new cases divided by number of attorneys)
2025	Montana <sup>193</sup>	Total: \$53,972,914 <sup>194</sup>	Total: 33,963 <sup>195</sup>	214 PDs <sup>196</sup>  “a couple of hundred” contract attorneys	\$1,589 per case	N/A (does not identify PD cases)
2025	New Hampshire <sup>197</sup>	Total: \$44,561,468 <sup>198</sup> PD: \$28,403,050 AC: \$5,167,817 Contract: \$2,029,061	Total: 22,863 <sup>199</sup>	~125 PDs 18 contract attorneys 45 AC <sup>200</sup>	\$1,949 per case	~160 (PD +contract attorneys)
2024	New Mexico <sup>201</sup>	Total: \$69,500,000	Total: 85,654 PD: 55,712	240 PDs	\$811 per case	232 (PD) 315 (Contract)

<sup>193</sup> Montana responded to the OIG survey.

<sup>194</sup> Survey results identified budget of \$60,000,000.

<sup>195</sup> Survey results identified 33,862 total cases, including misdemeanors (20,564), felonies (8,913), appellate (263), juvenile (789), mental health (913), and other (2,420).

<sup>196</sup> Survey results includes 39 in supervisory roles.

<sup>197</sup> THE STATE OF N.H. JUD. COUNCIL, 25TH BIENNIAL REPORT (2025), available at <https://www.transparentnh.das.nh.gov/sites/g/files/ehbemt1071/files/documents/judicial-council-biennial-fy24-25.pdf>; N.H. Pub. Def., *Employment & Internships*, N.H. PUB. DEF., available at <https://www.nhpd.org/employment/>. New Hampshire also responded to the OIG survey.

<sup>198</sup> Also includes \$6,060,605 for “non-counsel services in delinquency and criminal cases” and “civil legal services for the poor,” which may not involve appointment of counsel. Survey results identified a budget of \$33,244,414.

<sup>199</sup> Survey results identified misdemeanors (10,419), felonies (8,533), appellate (36), juvenile (1,561), mental health (2), and other (2,312).

<sup>200</sup> NH uses assigned counsel when there is a conflict with public defenders and contract attorneys, or when contract attorneys are unavailable.

<sup>201</sup> N.M. DEP’T OF FIN. AND ADMIN., STATE OF NEW MEXICO BUDGET IN BRIEF: FISCAL YEAR 2024 (2023), available at <https://www.nmdfa.state.nm.us/wp-content/uploads/2023/04/FY24-Budget-in-Brief-FINAL.pdf>; N.M. L. OFF. OF THE PUB. DEF., FISCAL YEAR 2026 ANNUAL REPORT AND STRATEGIC PLAN (2024), available at <https://www.lodnm.us/wp-content/uploads/2024/09/LOPD-FISCAL-YEAR-2026-STRATEGIC-PLAN-and-ANNUAL-REPORT-FINAL-8-20-2024.pdf>.

Fiscal Year	State	Budget	Number of Total New Cases	Number of Attorneys	Cost per new case (new cases divided by budget)	Caseload (new cases divided by number of attorneys)
			Contract: 29,942	95 contract attorneys		
2024	Vermont <sup>202</sup>	Total: \$23,915,775 <sup>203</sup>	Total: 9,393	42 PDs <sup>204</sup> 25 contract attorneys	\$2,546 per case	140 (PD + contract attorneys)
2023	Virginia <sup>205</sup>	Total: \$126,900,000 PD: \$72,200,000 AC: \$54,700,000	Total: 90,559 <sup>206</sup>	“over 300” PDs  Approximately 1900 AC as of FY23	\$1,401 per case	Unknown (does not specify number of PD)

<sup>202</sup> OFF. OF THE DEF. GEN., FISCAL YEAR 2025 BUDGET: NARRATIVE AND BUDGET DEVELOPMENT FORMS (2024), available at <https://lifo.vermont.gov/assets/Uploads/e00d31a3ed/WMatthew-ValerioODG-FY25-Budget-Packet-Final2-9-2024.pdf>; OFF. OF THE DEF. GEN., FISCAL YEAR 2026 BUDGET (2025), available at <https://lifo.vermont.gov/assets/Uploads/WMatthew-ValerioDefender-General-FY26-Budget2-11-2025.pdf>; OFF. OF THE DEF. GEN., PUBLIC DEFENSE STAFF AND PUBLIC DEFENSE CONTRACTORS (2026), available at <https://vodgsearc.org/DG%20files%2024/Staff%20%20PD%20Contractor%20List%203-25-26.pdf>.

<sup>203</sup>Includes general (\$23,176,122), special (\$589,653), and interdepartmental (\$150,000).

<sup>204</sup> Includes 10 supervising attorneys.

<sup>205</sup> JOINT LEGIS. AUDIT AND REV. COMM’N, INDIGENT CRIMINAL DEFENSE AND COMMONWEALTH’S ATTORNEYS (Jessica Sabbath ed., Report 581, 2023), available at <https://ilarc.virginia.gov/pdfs/reports/Rpt581.pdf>; VA. INDIGENT DEF. COMM’N, 2025 ANNUAL REPORT (2025), available at [https://www.vadefenders.org/wp-content/uploads/2025/12/VIDC\\_Annual-Report-2025.pdf](https://www.vadefenders.org/wp-content/uploads/2025/12/VIDC_Annual-Report-2025.pdf); Va. Indigent Def. Comm’n, *About Us*, VA. DEF., available at <https://www.vadefenders.org/about-us/>; JOINT LEGIS. AUDIT AND REV. COMM’N, SUMMARY: INDIGENT CRIMINAL DEFENSE AND COMMONWEALTH’S ATTORNEYS (2023), available at <https://ilarc.virginia.gov/pdfs/summary/Rpt581Sum.pdf>.

<sup>206</sup> Described as “caseload.” May include cases from prior year(s). Does not identify cases by charge type.

**APPENDIX H. ASSIGNED COUNSEL CASE FEES AND FEE CAPS<sup>207</sup>**

<b>State</b>	<b>Hourly Rate</b>	<b>Caps</b>	<b>Authority Notes</b>
<b>Alabama</b>	Capital Case: \$120 Class A Felony: \$100 Class B Felony: \$80 Class C or D Felony: \$80 Juvenile: \$70 All other cases: \$55 Appeals: \$85	Capital Case: No cap Class A Felony: \$6,000 Class B Felony: \$4,000 Class C or D Felony: \$3,500 Juvenile: \$4,500 All other cases: \$2,000 Appeals: \$5,000	ALA. CODE §§ 15-12-21, 15-12-22 (2024).
<b>Alaska</b>	Set by Office of Public Advocacy	Unclassified Felony: \$30,000 Class A Felony: \$15,000 Class B Felony: \$8,300 Class C Felony: \$6,800 Misdemeanor: \$3,000 Probation or Parole Revocation - Felony: \$2,500 Probation or Parole Revocation - Misdemeanor: \$1,000 Appeals: \$3,500 - \$9,000	ALASKA ADMIN. CODE tit. 2, § 60.010 (2026). Statute sets fee caps and grants the authority to set hourly rates to the Office of Public Advocacy. ALASKA R. APP. PRO. 209. Rule sets costs to be assessed to defendant on appeal.
<b>Arizona</b>	Varies (Judicial discretion)	Varies (Judicial discretion)	ARIZ. REV. STAT. § 13-4013 (2005) ("Compensation for services rendered to the defendant shall be in an amount that the court in its discretion deems reasonable, considering the services performed."). ARIZ. REV. STAT. § 13-4041 (2025)

<sup>207</sup> The OIG compiled this chart based on a similar resource prepared by the Virginia Indigent Defense Commission, available at [https://www.vadefenders.org/wp-content/uploads/2025/12/VIDC\\_Annual-Report-2025.pdf](https://www.vadefenders.org/wp-content/uploads/2025/12/VIDC_Annual-Report-2025.pdf).

State	Hourly Rate	Caps	Authority Notes
			("Compensation for services rendered on appeal shall be in an amount as the supreme court in its discretion deems reasonable, considering the services performed.")
<b>Arkansas</b>	Capital: \$120 All other cases: \$70	Set by the Arkansas Public Defender Commission.	ARK. CODE ANN. § 16-87-211 (2001). Statute directs the Arkansas Public Defender Commission to set guidelines for court-appointed attorney compensation. Hourly rates provided by the Arkansas Public Defender Commission.
<b>California</b>	Varies by county	Varies by county	CAL. PENAL CODE §§ 987.2 (2021), 987.3 (1973).
<b>Colorado</b>	Class A Felony: \$115 Type B Felony: \$110 Juvenile felonies: \$110 Misdemeanor, Traffic (Adult and Juvenile): \$105 Travel: \$105	Class 1 Felony: \$41,536 (trial); \$20,768 (no trial) Class 2 and DFI Felony: \$18,172 (trial); \$9,086 (no trial) Class 3-6 and DF 2--4 Felony: \$11,682 (trial); \$5,842 (no trial) DF (drug) 1 Felony: 18,172 (trial); \$9,086 (no trial) DF 2-4 Felony: \$11,682 (trial); \$5,842 (no trial) Misdemeanors, Traffic, & Petty Offenses: \$5,192 (trial); \$2,596 (no trial) Juvenile: \$9,086 (trial); \$4,544 (no trial) Appeals: \$2,596 - \$11,682	COLO. REV. STAT. §§ 21-2-101 (2025), 21-2-103 (2026). Statute describes when alternate defense counsel, as opposed to a public defender, would be appointed to represent an indigent defendant. Colo. Chief Justice Directive 04-04 (Amended July 2024). Directive provides alternate defense counsel hourly rates and fee caps.
<b>Connecticut</b>	\$98 Possibility of \$113 for more difficult matters	Set by Connecticut Assigned Counsel Unit	CONN. GEN. STAT. § 51-291 (2012). Statute provides that the Chief Public Defender establishes the compensation for court-appointed attorneys. All assigned counsel must enter into a contract with the Assigned Counsel Unit of the Division of Public Defender Services.  Dir. of Assigned Couns., <i>Assigned Counsel National Rates Chart</i> , CONNECTICUT GENERAL ASSEMBLY, available at

State	Hourly Rate	Caps	Authority Notes
			<a href="https://www.cga.ct.gov/app/related/20260226_2026%20Subcommittee%20Documents/20260224_Judicial%20&amp;%20Corrections/PDS%20-%20Assigned%20Counsel%20National%20Rates%20Chart,%20Director%20of%20Assigned%20Counsel.%20Updated%20Feb%202026.docx.pdf">https://www.cga.ct.gov/app/related/20260226_2026%20Subcommittee%20Documents/20260224_Judicial%20&amp;%20Corrections/PDS%20-%20Assigned%20Counsel%20National%20Rates%20Chart,%20Director%20of%20Assigned%20Counsel.%20Updated%20Feb%202026.docx.pdf</a> . Report showing hourly rates for assigned counsel.
<b>Delaware</b>	Superior Court: \$60  Common Pleas, Family Court, appeals: \$50	Felony: \$2,000 Misdemeanor: \$1,000 Appeals: \$1,000-\$2,000	DEL. R. CRIM. P. 44 (2024). Rule sets fees appointment of counsel by trial court DEL. R. CRIM. P. 26 (2024). Rule sets fees appointment of counsel on appeal. Rules includes provisions for exceeding caps.
<b>District of Columbia</b>	\$110	Felony: \$7000 Misdemeanor: \$2,000 Appeals: \$5,000	D.C. CODE § 11-2604 (2022). Statute sets maximum rate as that set for CJA at 18 U.S.C. § 3006A (2025). D.C. Admin. Order No. 23-06 (May 2, 2023). Order sets rate for Statute includes provisions for exceeding caps.
<b>Florida</b>	Flat fees for each case type dictated by the legislature.	<u>Flat fees</u> Misdemeanors and juvenile at trial level: \$1000 Noncapital, nonlife felonies at trial level: \$6000 Life felonies at trial level: \$9000 Capital cases at trial level: \$25,000 Representation on appeal: \$9000	FLA. STAT. § 27.5304 (2025). Statute includes provisions for exceeding caps on "rare occasions," requires approval by Justice Administration Commission (JAC), and evidentiary hearing for approval by court if JAC objects.  <i>CAC Flat Fee Rates</i> , FL. JUSTICE ADMIN. COMM'N, available at <a href="https://www.justiceadmin.org/court_app_counsel/CAC%20Flat%20Fee%20Rates%20(7%201%2025)Updated070825.pdf">https://www.justiceadmin.org/court_app_counsel/CAC%20Flat%20Fee%20Rates%20(7%201%2025)Updated070825.pdf</a> . Chart lists flat fees for July 1, 2024-June 30, 2026.
<b>Georgia</b>	Flat fees (by contract)	<u>Flat fees</u> Most Serious Felony: \$7,500 Felony: \$3,000 Misdemeanor: \$1,000 Juvenile: \$1,500	GA. CODE ANN. § 17-12-22 (2011). Statute sets procedure for appointing counsel when there is a conflict of interest for the public defender.

State	Hourly Rate	Caps	Authority Notes
			<p>Georgia Public Defender Standards Council contracts with individual attorneys for conflict appointment. Localities which have opted out of the state system set their own compensation rates for court-appointed attorneys.</p> <p>Ga. Pub. Def. Council, <i>GPDC Releases New C3 Per-Case Rates</i>, GDPC NEWS (Nov. 1, 2022), available at <a href="https://gapubdef.org/gpdc-releases-new-c3-per-case-rates/">https://gapubdef.org/gpdc-releases-new-c3-per-case-rates/</a>. Schedule sets per-case rates.</p>
<b>Hawaii</b>	\$150	Felony: \$12,000 Misdemeanor (jury trial): \$6,000 Misdemeanor (jurv waived): \$3,000 Petty Misdemeanor: \$1,800 Any other type case: \$6,000 Appeals: \$9,000	HAW. REV. STAT. § 802-5 (2025). Statute lists hourly rate and fee caps, and includes provisions for exceeding caps.
<b>Idaho</b>	Non-capital cases: \$125 Capital cases: \$150 (lead counsel) or \$125 (second chair/co-counsel)	Set by contract by the Office of State Public Defender	IDAHO CODE § 19-6019 (2024). Statute outlines the hiring of contract and conflict attorneys.  Effective July 1, 2024, the new Idaho Office of the State Public Defender was created. The State Public Defender has the power to enter into contracts with defending attorneys to provide indigent defense services. <i>FAQ</i> , IDAHO STATE PUB. DEF., available at <a href="https://spd.idaho.gov/faq/">https://spd.idaho.gov/faq/</a> . Website provides information on hourly rates.
<b>Illinois</b>	\$150 (or more if set by local rule)	Felony: \$10,000 Misdemeanor: \$750 Appeals: \$10,000	ILL. SUP. CT. R. 299 (2023). Rule includes provisions for exceeding caps.

State	Hourly Rate	Caps	Authority Notes
<b>Indiana</b>	Non-capital cases: \$110 (in Commission counties) Capital cases: \$151 (in all counties)	Varies (Judicial discretion)	<p>IND. CODE ANN. § 33-40-8-2 (2004) ("[A] judge shall establish the fee to be paid to an attorney or attorneys for providing services to poor people.").</p> <p>IND. CRI. R. 6.1 (2024). Rule provides for an hourly rate in capital cases.</p> <p><i>In re Minimum Fees for Legal Servs. Of the State Pub. Def. &amp; Appointed Pub. Def.</i>, No. 22S-MS-261 (Ind. July 29, 2022). Order provides that all work in non-capital cases must be compensated at an hourly rate not less than 75% of the capital rate, rounded to the nearest \$10/hour.</p> <p><i>Reimbursement Forms &amp; Due Dates, Salary &amp; Wage Requirements, Attorney Qualification Forms</i>, IND. COMM’N ON CT. APPOINTED ATTY’S, available at <a href="https://www.in.gov/ccaa/reimbursement-and-qualifications-forms-instructions/">https://www.in.gov/ccaa/reimbursement-and-qualifications-forms-instructions/</a>. The Indiana Public Defender Commission recommends an hourly rate for non-capital cases. 69 of 92 counties participate in the Commission’s program.</p>
<b>Iowa</b>	Class A Felony: \$88 Class B Felony: \$83 All other cases: \$78	Calculated by OIG <b>Adult Cases:</b> Class A Felony: \$22,704 Class B Felony: \$4,648 Class C Felony: \$2,340 Class D Felony: \$1,560 Aggravated Misdemeanors: \$1,560 Serious Misdemeanors: \$780 Simple Misdemeanors: \$390 Misdemeanor appeals to District Court: \$390 Contempt/Show Cause: \$390 Probation/Parole violations: \$390	<p>IOWA CODE § 13B.4 (2017). Statute permits flat fee contracts.</p> <p>IOWA CODE § 815.7 (2025). Statute sets hourly rates.</p> <p>IOWA CODE § 815.10A (2013). Statute includes provisions for exceeding caps.</p> <p>IOWA ADMIN. CODE. R. 493-12.6 (2025). Rule sets attorney fee caps based on maximum hours of combined attorney time and paralegal time that may be claimed for categories of cases.</p>

State	Hourly Rate	Caps	Authority Notes
		<b>Juvenile Cases:</b> Delinquency: \$1,560 Juvenile Petition on Appeal: \$780 <b>Appeals:</b> No limit	
<b>Kansas</b>	No less than \$120/hour and not more than \$140/hour	<b>Non-tried cases:</b> Felony 1-5: \$1,600 Felony 6-10: \$1,200 Probation Revocations/Misc: \$427 <b>Tried cases:</b> Felony 1-3, off-grid felony offenses, felony drug offenses level 1: \$8,000 Felony 4, felony drug offenses 2-5: \$3,200 Felony 5-10: \$2,560  Appeals: \$1,920	KAN. STAT. ANN. § 22-4507 (2024). Statute provides for payment of court-appointed counsel other than public defenders and contract counsel.  KAN. ADMIN. REGS. § 105-5-2 (2019), -6 (2019), -7 (2019), -8 (2019). Regulations provide generally for the hourly rates and caps, as well as provisions for exceeding caps in "exceptional cases."  Localities set fees and caps for misdemeanor cases. <i>See, e.g. Court Appointment Fee Schedule</i> , JOHNSON CNTY. DIST. CT., available at <a href="https://courts.jocogov.org/forms/AttyFeeSched2025.pdf">https://courts.jocogov.org/forms/AttyFeeSched2025.pdf</a> .
<b>Kentucky</b>	Set by contract by the Department of Public Advocacy	Limited by fees established by the Department of Public Advocacy	KY. REV. STAT. ANN. § 31.235 (2024). Statute provides that the public advocate is authorized to pay reasonable and necessary fees but not in excess of fees established by the Department of Public Advocacy.
<b>Louisiana</b>	Flat fee contracts	Flat fee contracts	LA. R.S. 15:147(C)(1) (2017). Statute provides Louisiana Public Defender Board with the authority to enter into contracts with attorneys to provide indigent defense services.
<b>Maine</b>	\$150	Murder: Fee approved by Exec. Dir. Maine Comm. on Ind. Legal Services Class A: \$9,400 Class B and C (against person): \$7,500 Class B and C (against property): \$4,700	ME. REV. STAT. ANN. tit. 4 §1804(3) (2025). Statute gives the Maine Commission on Indigent Legal Services the authority to set rate for court appointed counsel.

State	Hourly Rate	Caps	Authority Notes
		Class D and E: \$4,700 Probation Revocations: \$2,800 Juvenile: \$2,800 Miscellaneous: \$1,900 Appeals: \$3,000	Code of Maine Rules § 94-649, Chapter 301 (2023). Rule provides the hourly rates and caps.
<b>Maryland</b>	Life offenses: \$75 All others: \$60	Set by Maryland Public Defender	MD. CRIM. PROC. CODE ANN. § 16-207(B)(2) (2025). (“The Maryland Public Defender shall: . . . prepare schedules of professional fees and expenses for panel attorneys and other professional and technical services rendered to indigent individuals other than by the Public Defender's staff, taking into consideration the nature of the services, the time spent, the skill or experience required, and any other pertinent factor.”)  MD. CODE REGS 14.06.02.06. Regulation permits the Public Defender to match the federal public defender/CJA panel rate.  <i>Become a Panel Attorney</i> , MD. OFF. OF THE PUB. DEF., available at <a href="https://opd.state.md.us/panel-attorneys">https://opd.state.md.us/panel-attorneys</a> . Website provides hourly rates of compensation.
<b>Massachusetts</b>	(Effective August 1, 2025) Homicide: \$130 Superior Court non-homicide: \$95 District Court: \$75 Children in need: \$75 Children and family: \$95 Mental health: \$75	Annual cap on billable hours: 1,650 Cap may be waived for payment up to 2,000 billable hours	MASS. GEN. LAWS ch. 211D, § 11 (2025). Chief counsel of the Committee for Public Counsel Services may waive the annual cap on billable hours for private counsel.

State	Hourly Rate	Caps	Authority Notes
	(Effective August 1, 2026) Homicide: \$140 Superior Court non-homicide: \$105 District Court: \$85 Children in need: \$85 Children and family: \$105 Mental health: \$85		
<b>Michigan</b>	Trial (Effective October 2026): Life felonies: \$157.98 Non-life felonies: \$144.85 Misdemeanors: \$131.68  Appeals: Capital felony: \$154 Noncapital felony: \$141	Determined by local funding source operating pursuant to plan approved by the MIDC.	<p>MICH. COMP. LAWS § 780.985 (2018). Statute gives authority to the Michigan Indigent Defense Commission to propose minimum standards for the delivery of indigent criminal defense services throughout the state.</p> <p>MIDC Standard 8: "Assigned counsel should receive prompt compensation at a reasonable rate and should be reimbursed for their reasonable out-of-pocket, case-related expenses. Assigned counsel should be compensated for all work necessary to provide quality legal representation."</p> <p><i>Grant Manual</i>, MICH. INDIGENT DEF. COMM’N., available at <a href="https://michiganidc.gov/wp-content/uploads/2026/02/Grant-Manual-FINAL-Revised-February-2026-with-appendices.pdf">https://michiganidc.gov/wp-content/uploads/2026/02/Grant-Manual-FINAL-Revised-February-2026-with-appendices.pdf</a>. Manual lists hourly rates of pay.</p> <p><i>Michigan Appellate Assigned Counsel System Attorney Fee and Reimbursement Policy</i>, MICH. APPELLATE ASSIGNED COUNSEL SYS., available at <a href="https://www.sado.org/content/temporary/12512_MAACS-Attorney-Fee-and-Billing-Policy.pdf">https://www.sado.org/content/temporary/12512_MAACS-Attorney-Fee-and-Billing-Policy.pdf</a>. Document lists hourly rates</p>

State	Hourly Rate	Caps	Authority Notes
			of pay for appeals, set by the Michigan Appellate Defender Commission.
<b>Minnesota</b>	State Public Defender determines rates.	State Public Defender determines fee.	MINN. STAT. § 611.27(11)(a)-(b) (2024). Statute provides that the chief district public defender shall appoint other counsel if he finds that "the provision of adequate legal representation, including associated services, is beyond the ability of the district public defender to provide."
<b>Mississippi</b>	Set by the Court	Circuit Court: \$3,000 Court not of record: \$600 Capital Cases: \$6,000 per case Appeals to State Supreme Court: \$3,000 per case	MISS. CODE ANN. § 99-15-17 (2025).
<b>Missouri</b>	Flat fee contracts	Murder first degree: \$10,000 Other homicide: \$7,500 Felony Class A/B - Drugs: \$1,000 Felony Class A/B- Other: \$3,000 Felony Class A/B - Sex: \$3,000 Felony Class C/D/E - Drugs: \$750 Felony Class C/D/E - Other: \$1,000 Felony Class C/D/E - Sex: \$2,000 Probation Violation: \$500 felony, \$375 misdemeanor Misdemeanor - Traffic: \$375 Misdemeanor – Other Than Traffic, Sex: \$500 Juvenile Murder first degree: \$2,000 Juvenile other homicide: \$1,500 Juvenile Felony Class A/B - Drugs: \$500 Juvenile Felony Class A/B- Other: \$750 Juvenile Felony Class A/B - Sex: \$1,250 Juvenile Felony Class C/D/E - Drugs: \$500	MO. REV. STAT. § 600.042 (2024). Statute grants the state Public Defender the authority to contract with private attorneys for legal services.  MO. REV. STAT. § 600.021 (1986). Statute grants the Public Defender Commission the authority to contract with private attorneys to provide defense services.  <i>Panel Attorney Opportunities and Contract Rates</i> , MO. STATE PUB. DEF., available at <a href="https://publicdefender.mo.gov/private-counsel-opportunities/mspd-contracting/panel-rates/">https://publicdefender.mo.gov/private-counsel-opportunities/mspd-contracting/panel-rates/</a> . Website lists contract attorney fee schedule.

State	Hourly Rate	Caps	Authority Notes
		Juvenile Felony Class C/D/E - Other: \$500 Juvenile Felony Class C/D/E -Sex: \$1,000 Juvenile Misdemeanor: \$375 Direct Appeal Felony: \$5,000	
<b>Montana</b>	\$71	N/A	<p>MONT. CODE ANN. § 47-1-105. Statute grants the director of the public defender system the authority to establish reasonable compensation for contract attorneys.</p> <p>MONT. OFF. OF THE PUB. DEF., OPD FY 2025 Annual Performance Report 9, available at <a href="https://opd.mt.gov/Resources/Reports1/FY25/20250925_OPD-FY-25-Performance-Report.pdf">https://opd.mt.gov/Resources/Reports1/FY25/20250925_OPD-FY-25-Performance-Report.pdf</a>. Report provides hourly rate for contract attorneys.</p>
<b>Nebraska</b>	Set by Court: range from \$70-\$125; majority of courts set rate of \$95-\$100	Set by court	<p>NEB. REV. STAT. § 29-3905 (1990). Statute dictates that appointing court "shall fix reasonable expenses and fees."</p> <p><i>Nebraska Court Appointed Counsel Rates by County</i>, NEB. STATE BAR ASS'N, available at <a href="https://nebarhub.com/resource/nebraska-state-bar-association-nebraska-court-appointed-counsel-rates-by-county-2025">https://nebarhub.com/resource/nebraska-state-bar-association-nebraska-court-appointed-counsel-rates-by-county-2025</a>. Report lists hourly rate for courts across all counties.</p>
<b>Nevada</b>	Capital: \$125 Noncapital: \$100	N/A	NEV. REV. STAT. ANN. § 7.125 (2023).
<b>New Hampshire</b>	Major Crimes (capital murder, homicide, aggravated felonious sexual assault, felonious sexual assault first degree assault, class A felony robbery, felony arson, and	Capital Murder (per co-counsel): \$30,000  Aggravated felonious sexual assault, felonious sexual assault first degree assault, class A felony robbery, felony arson, and any offense punishable, as charged, by life imprisonment: \$19,000	N.H. SUP. CT. R. 47 (2025). Rule lists hourly rates, fee caps, and provisions for exceeding caps.

State	Hourly Rate	Caps	Authority Notes
	any felony punishable by life imprisonment): \$150  All other cases: \$125  Appeals: \$150	All other felonies: \$8,000. Misdemeanors: \$3,000  Supreme Court Appeals: \$14,000	
New Jersey	In-court: \$100 Out-of-court: \$100	Hours per case guidance: High level murder cases: 250 hours High level sex cases: 167 hours Other high level indictable offenses: 99 hours Medium level indictable offense cases: 57 hours Low level indictable offense cases: 35 hours	N.J. REV. STAT. § 2A:158A-7 (1994). Statute grants the Public Defender authority to establish compensation for contract attorneys.  <i>Pool Attorney Guidelines &amp; Application Process</i> , N.J. OFF. OF THE PUB. DEF. (2024), available at <a href="https://www.nj.gov/defender/documents/Revised%20Pool%20Guidelines_August%202024.pdf">https://www.nj.gov/defender/documents/Revised%20Pool%20Guidelines_August%202024.pdf</a> . Manual provides hourly rates and case hours guidance.
New Mexico	Flat-fee contracts	Can vary by district 1st Degree Murder: \$6,500 1st Degree Felony (Life): \$6,500 1st Degree Felony: \$900 or \$950 2nd Degree Felony: \$850 or 930 3rd Degree Felony: \$775 or 900 4th Degree Felony: \$650 or \$780 Juvenile: \$360 or \$420 Misdemeanor: \$220 Prob Violation: \$650 or \$780 Appeals (General Calendar): -Opening Brief: \$1,300 to \$3,900 -Reply Brief: \$200 to \$650 cert. Pet. to NM SCt: \$200 to \$650	N.M. STAT. ANN. § 31-15-7 (2014). Statute grants Chief Public Defender authority to establish fee schedule for court appointed counsel.  Moss Adams LLP, <i>Transition Plan: Contractor Hourly Rate Model</i> , available at <a href="https://www.lopdnm.us/wp-content/uploads/2024/11/LOPD-2024-Transition-Plan_Hourly-Rate-Model-11.21.24.pdf">https://www.lopdnm.us/wp-content/uploads/2024/11/LOPD-2024-Transition-Plan_Hourly-Rate-Model-11.21.24.pdf</a> (prepared for N.M. Law Offs. of the Pub. Def.). Report lists contract rates.

State	Hourly Rate	Caps	Authority Notes
		Oral Argument: \$2000 to \$3200	
<b>New York</b>	\$158	\$10,000 for all matters including appeals	<p>N.Y. COUNTY LAW § 722-b (Consol. 2023). Statute lists hourly rates, fee caps, and provisions for exceeding caps.</p> <p>N.Y. JUD. LAW § 35 (Consol. 2023). Law grants the court the authority to fix compensation for assigned counsel.</p>
<b>North Carolina</b>	Capital and life without parole: \$100 Class A-D felony: \$85 Class E-I felony or felony probation violations: \$65 All other cases resolved in Superior Court: \$65 Misdemeanors: \$65 Appeals: \$75-\$100	No fee caps	<p>N.C. GEN. STAT. § 7A-498.5 (2015). Statute grants the Commission on Indigent Defense Services authority to set rates of compensation for appointed counsel.</p> <p><i>Current Hourly Assigned Counsel Rates</i>, N.C. OFF. OF INDIGENT DEF. SERVS., available at <a href="https://www.ncids.org/wp-content/uploads/2024/01/PAC-Rate-Chart-2024.01.01v3.pdf">https://www.ncids.org/wp-content/uploads/2024/01/PAC-Rate-Chart-2024.01.01v3.pdf</a>. Chart provides hourly rates.</p>
<b>North Dakota</b>	\$90	Felony: \$2,000 Misdemeanor: \$850 Juvenile: \$850 Post-conviction: \$1,500 Any other matter: \$500 Appeal: \$2,000	<p>N.D. CENT. CODE § 54-61-02 (2017). Statute grants Commission on Legal Counsel authority to establish and implement a process of contracting for legal counsel services.</p> <p>N.D. CENT. CODE § 29-07-01.1 (2013). (“Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents.”)</p> <p>ND Comm. on Legal Counsel for Indigents enters into flat fee contracts with providers and pays others based on hourly rate and fee caps.</p> <p><i>Payment of Extraordinary Attorney Fees</i>, N. D. COMM’N ON LEGAL COUNS. FOR INDIGENTS (2006) available at <a href="https://www.indigents.nd.gov/sites/www/files/documents/Policies">https://www.indigents.nd.gov/sites/www/files/documents/Policies</a></p>

State	Hourly Rate	Caps	Authority Notes
			2025/Payment%20of%20Extraordinary%20Attorney%20Fees%20Final.pdf.
<b>Ohio</b>	Death penalty: \$140  All other cases: \$75	<p><u>Adult</u>            Aggravated Murder (w/ specs): no fee maximum            Aggravated Murder (w/o specs): \$15,000/attorney            Murder: \$10,000            Felony with Possible Life Sentence/Repeat Violent Offender /Major Drug Offender: \$10,000            Felony (degrees 1-2): \$8,000            Felony (degree 3): \$5,000            Felony (degrees 4-5): \$3,500            Misdemeanor (degrees 1-4): \$2,000            Misdemeanor OVI/BAC: \$2,500            Contempt: \$500            Probation violations: \$750</p> <p><u>Juvenile</u>            Aggravated Murder (w/ specs): no fee maximum            Aggravated Murder (w/o specs): \$7,500/attorney            Murder: \$6,000            Felony (degrees 1-2): \$5,000            Felony (degrees 3-5): \$3,500            Misdemeanor: \$2,000            Misdemeanor OVI/BAC: \$2,500            Contempt: \$500            Probation violations: \$750</p>	OHIO REV. CODE ANN. § 120.33 (2019). Statute grants the Board of County Commissioners authority to establish a schedule of fees to pay indigent counsel.  OFF. OF THE OHIO PUB. DEF., STATE MAXIMUM FEE SCHEDULE FOR APPOINTED COUNSEL REIMBURSEMENT (2024), available at <a href="#">2024 State Maximum Fee Schedule for Appointed Counsel.pdf</a> . Schedule includes hourly rates and fee caps.

State	Hourly Rate	Caps	Authority Notes
		<u>Appellate Level Proceedings</u> Death Sentence: no fee maximum Cumulative Minimum Sentence exceeds 25 Years: \$8,000 Felony (degrees 1-2): \$5,000 Felony (degree 3): \$3,500 Felony (degrees 4-5): \$2,500 Felony Plea : \$1,500 Misdemeanors: \$2,000 Misdemeanor plea: \$1,000	
<b>Oklahoma</b>	Flat-fee contracts	Felony: \$3,500 Misdemeanor, Juvenile, Traffic: \$800 Appeals: \$3,500 (felony); \$800 (misdemeanor)	OKLA. STAT. tit. 22, 1355.8 (2001).
<b>Oregon</b>	Tier 1 (Murder, JLaw, Measure 11, AFEL, BFEL, Appeals, Habeas Corpus, Mandamus, Post Conviction Relief and all Juvenile cases): \$155  Tier 2 (All other case types): \$140	Determined by the Public Defense Services Commission	OR. REV. STAT. § 151.216 (2025). Statute grants Public Defense Services Commission authority to adopts policies and procedures regarding the fair compensation of appointed counsel.  <i>Hourly Service and Expense Rates</i> , OR. PUB. DEF. COMM’N, available at <a href="https://www.oregon.gov/opdc/SiteAssets/Lists/General%20Accordions/Policies/404.060.002%20Schedule%20of%20Guideline%20Amounts%20ED%2020250801.pdf">https://www.oregon.gov/opdc/SiteAssets/Lists/General%20Accordions/Policies/404.060.002%20Schedule%20of%20Guideline%20Amounts%20ED%2020250801.pdf</a> . Schedule lists hourly rates.
<b>Pennsylvania</b>	Set by the Court  <i>e.g., Allegheny County:</i> Capital murder/homicide/1st degree felony/violent	Set by the Court  <i>e.g., Allegheny County:</i> Capital murder: \$20,000 Homicide: \$10,000 1st degree felony/violent felony/SOC: \$7500 2nd degree felony/PWID: \$4500	16 PA. CONS. STAT. § 9960.7 (1969) Statute provides that appointed counsel other than the public defender shall be rewarded reasonable compensation to be fixed by the Court.

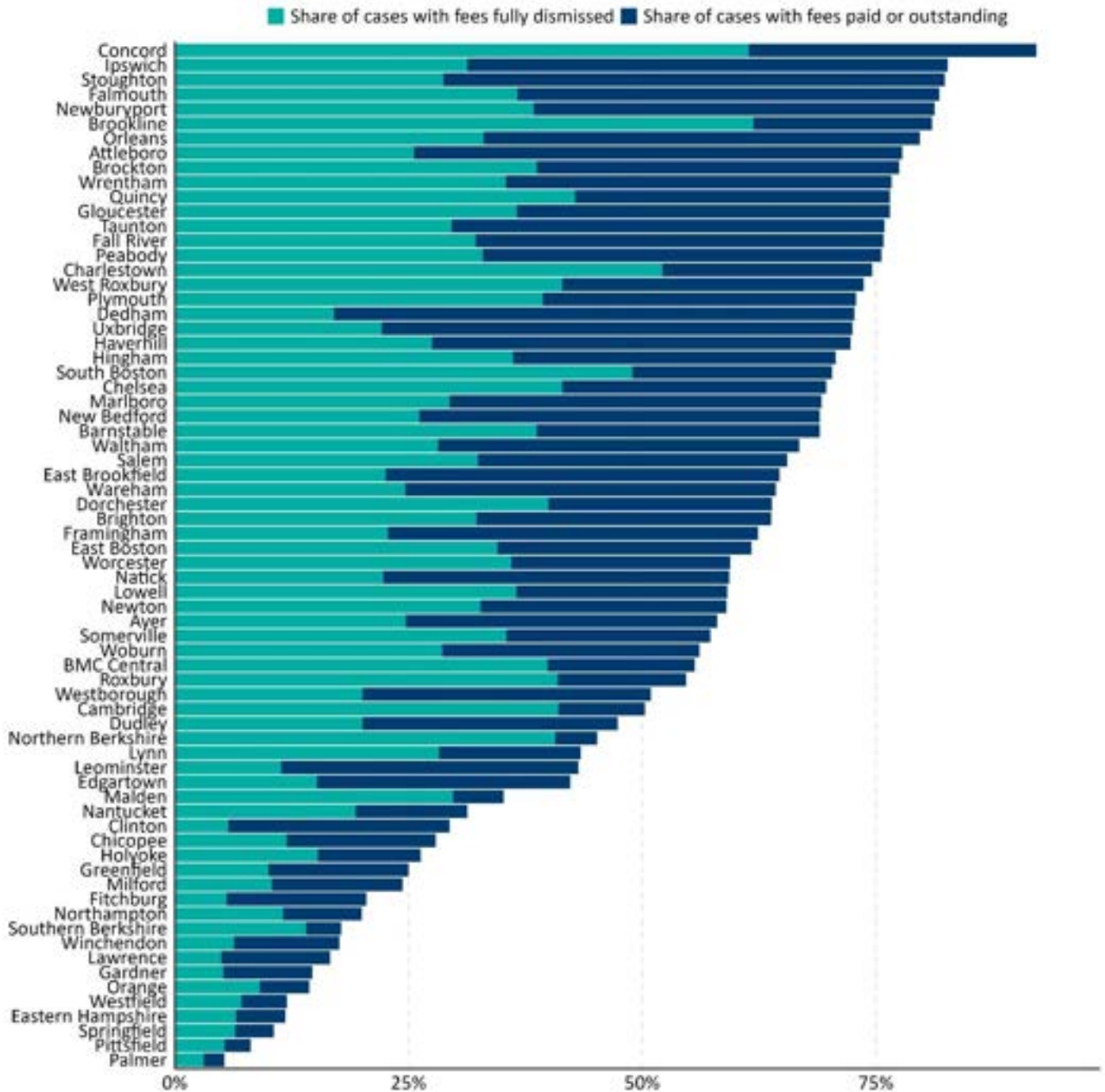
State	Hourly Rate	Caps	Authority Notes
	felony/SOC/2nd degree felony/PWID: \$110 3rd degree felony: \$100 Misdemeanor: \$90 Phoenix case/Miscellaneous: \$80	3rd degree felony: \$2,500 Misdemeanor: \$2,000 Phoenix case: \$750 Representation of a witness/miscellaneous: \$1,000	16 PA CONS. STAT. § 9960.3 (1969) Statute provides that all counties except Philadelphia are required to create and fund a public defender's system.  <i>e.g., Allegheny County:</i>  Fifth Judicial Dist. Of Pa., <i>Criminal Case Court Appointed Attorney Fee Policy</i> , Order of Court, No. AD-2024-268-PJ (Allegheny Cnty. Ct. Com. Pl. Sept. 27, 2025) available at <a href="https://www.alleghenycourts.us/wp-content/uploads/2024/09/Updated-Court-Order.pdf">https://www.alleghenycourts.us/wp-content/uploads/2024/09/Updated-Court-Order.pdf</a> . Table lists hourly rates and case maximums.
<b>Rhode Island</b>	Capital or life offense: \$142 All other matters: \$112	Capital or Life offense: \$42,600 All other felonies: \$12,444 Misdemeanor: \$4,032 Juvenile: \$3,111 Criminal Appeal: \$6,852	R.I. GEN. LAWS § 8-15-2 (1969) Statute provides that the Chief Justice of Supreme Court is the head of the judicial system. Supreme Court Executive Order 2025-02 entered April 4, 2025 provides the revised hourly rates and caps.
<b>South Carolina</b>	In-court: \$60 Out-of-court: \$40	Felony: \$3,500 Misdemeanor: \$1,000	S.C. CODE ANN. § 17-3-50 (2007). Statute provides hourly rates, fee caps, and provisions for exceeding hourly rates and caps.  <i>Indigent Defense Contract Attorney Program</i> , S.C. Comm'n on Indigent Def., available at <a href="https://sccid.sc.gov/608-contract">https://sccid.sc.gov/608-contract</a> . In 2013, SC created a contract program which authorizes the SC Committee on Indigent Defense to enter into contracts with private attorneys to handle non-capital criminal conflict cases for a flat fee. Sample contract online provides for flat fee of \$900/case.
<b>South Dakota</b>	\$122	Set by Court ( <i>e.g.</i> , Fifth Circuit) Misdemeanors: \$1,500	S.D. CODIFIED LAWS § 23A-40-8 (2024). Statute provides that appointed counsel shall be paid a reasonable and just amount based

State	Hourly Rate	Caps	Authority Notes
		Felony: \$2,000 Juvenile: \$5,000 All cases up to appeal: \$25,000	<p>upon guidelines established by the presiding judge of the circuit court.</p> <p>Letter from S.D. Unified Judicial Sys., Off. Of the State Ct. Adm’r, to Paul Cremer, State Bar of S.D., (Nov. 19, 2025) available at <a href="https://uj.s.sd.gov/media/3tflpbk5/court-appointed-attorney-fees-2026.pdf">https://uj.s.sd.gov/media/3tflpbk5/court-appointed-attorney-fees-2026.pdf</a>. Letter announces 2026 court-appointed attorneys fees.</p> <p><i>COURT APPOINTED ATTORNEY GUIDELINES</i>, S.D. UNIFIED JUDICIAL SYS., available at <a href="https://uj.s.sd.gov/media/lirm3tcm/court-appointed-attorney-guidelines.pdf">https://uj.s.sd.gov/media/lirm3tcm/court-appointed-attorney-guidelines.pdf</a>. Guidelines provide examples of fee caps.</p>
<b>Tennessee</b>	Non-Capital Cases: \$60 Capital: \$110 (lead counsel), \$90 (co-counsel), post-conviction counsel (\$90).	First Degree Murder or Class A or B felony in trial court: \$3,600 Felony other than First Degree Murder or Class A or B felony: \$2,400 Preliminary hearings for felonies, juvenile charged w/non-capital felony: \$1,800  Misdemeanor (adult or juvenile), probation violation: \$1,200  Contempt of Court, parole revocation: \$600  Appeals: \$1,200	TENN. SUP. CT. R. 13, § 2. Rule includes hourly rate, fee caps, and provisions for exceeding caps for complex or extended cases (see specifically section 2(e)(1)).
<b>Texas</b>	Set by Court	Set by Court	TEX. CODE CRIM. PROC. ANN. art. 26.05 (2025).

State	Hourly Rate	Caps	Authority Notes
	<p>e.g., Harris County:</p> <p>Capital, 1<sup>st</sup> chair: \$225  Capital, 2<sup>nd</sup> chair: \$200  First degree: \$175  Second degree: \$150  Third-degree: \$125  Non-capital pretrial hearing with testimony and PSI hearing: \$125-175  Specialty court hours: \$125-175</p>	<p>e.g., Harris County:</p> <p>“no presumptive maximums”</p>	<p>Statute provides that counsel must be paid a reasonable fee as set by the court. Judges of the county courts, statutory county courts, and district courts trying criminal cases in each county must establish a schedule of fees.</p> <p>e.g., Harris County:</p> <p><i>Amended Fee Schedule</i>, HARRIS CNTY. DIST. CTS., FAIR DEFENSE ACT ALTERNATIVE PLAN FOR APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS, available at <a href="https://tidc.tamu.edu/IDPlanDocuments/Harris/Harris%20District%20Court%20Attorney%20Fee%20Schedule.pdf">https://tidc.tamu.edu/IDPlanDocuments/Harris/Harris%20District%20Court%20Attorney%20Fee%20Schedule.pdf</a>. Schedule provides hourly rates for Harris County courts.</p>
<b>Utah</b>	Rate per guidelines set by the county or municipality	Rate per guidelines set by the county or municipality	UTAH CODE ANN. § 78B-22-203 (2019), 302 (2023).
<b>Vermont</b>	\$100	<p>Felony with possible life sentence or death penalty: \$25,000</p> <p>Other major felony: \$5,000</p> <p>Minor felony or Juvenile: \$2,000  Misdemeanors &amp; all other proceedings: \$1,000  Appeals: \$2,000</p>	<p>VT. STAT. ANN. tit. 13, § 5205 (1971). Statute holds that the Supreme Court shall set reasonable rates of compensation.</p> <p>Vt. Adm. Ord. S.Ct. No. 4, § 6 (effective 7/1/23). Administrative order sets the hourly rates and caps, as well as provisions for exceeding the caps.</p>
<b>Virginia</b>	\$90	<p>Felony with sentence of more than 20 years: \$1,692  Other felony: \$834  DUI: \$448  Misdemeanor: \$330  Juvenile: \$680</p>	<p>VA. CODE ANN. § 19.2-163 (2025). Statute states that appointed counsel shall be compensated on an hourly basis determined by the Supreme Court, sets fee caps, and provides provisions for exceeding the caps.</p>

State	Hourly Rate	Caps	Authority Notes
		Appeals: Set by appellate court	<p>VA. CODE ANN. § 19.2-326 (2025). Statute provides for payment of appointed attorney in appeals for indigent defendants.</p> <p><i>Chart of Allowances</i>, VA. SUPREME CT. OFF. OF THE EXEC. SEC’Y, available at <a href="https://www.vacourts.gov/static/courtadmin/aoc/fiscal/chart.pdf">https://www.vacourts.gov/static/courtadmin/aoc/fiscal/chart.pdf</a>. Chart provides statutory and per diem allowances.</p>
<b>Washington</b>	<p>Set by each county or city</p> <p><i>e.g.</i>, King County: \$115-\$117</p>	Set by each county or city	<p>WASH. REV. CODE § 10.101.030 (2005). Statute provides that each county or city must establish standards for the delivery of indigent defense services, including compensation. Standards adopted by the Washington State Bar Association serve as guidelines.</p> <p><i>e.g.</i>, King County:</p> <p><i>Assigned Counsel Panel Payment Rates</i>, KING CNTY. DEP’T OF PUB. DEF., available at <a href="https://cdn.kingcounty.gov/-/media/king-county/depts/dpd/documents/assigned-counsel-policy/2025-dpd-assigned-counsel-payment-rates.pdf?rev=eaccdb5f4a9b450391c8da41ec115da5&amp;hash=2F80426FBA07C7A3B473A8A91AA16EB6">https://cdn.kingcounty.gov/-/media/king-county/depts/dpd/documents/assigned-counsel-policy/2025-dpd-assigned-counsel-payment-rates.pdf?rev=eaccdb5f4a9b450391c8da41ec115da5&amp;hash=2F80426FBA07C7A3B473A8A91AA16EB6</a>. Chart provides assigned counsel rates for King County.</p>
<b>West Virginia</b>	<p>In-court: \$80 Out-of-court: \$60</p>	<p>Felony offenses with possibility of life in prison: court discretion All other cases: \$4,500 Appeals: \$4,500</p>	W. VA. CODE §29-21-13a (2023).
<b>Wisconsin</b>	<p>\$100 Travel time: \$50</p>	N/A	WIS. STAT. § 977.08 (2023).
<b>Wyoming</b>	\$150	Court Discretion	WYO. R. CRIM. P. 44(e).

# APPENDIX I. FEES DISMISSED AND FEES PAID OR OUTSTANDING IN MASSACHUSETTS DISTRICT COURTS



## APPENDIX J: BUDGET FOR THIS STUDY

On August 4, 2025, the Governor signed Chapter 14 of the Acts of 2025, *An Act Making Appropriations for the Fiscal Year 2025 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects*. The Legislature appropriated \$100,000 for the OIG to review the Commonwealth's indigent defense system, specifically indigency determination, billing practices, oversight, caseload efficacy, the fiscal impact of increasing representation by public defenders, and a review of indigent defense systems in other states.<sup>208</sup>

The OIG assembled a seven-member core team including investigators, data analysts, legislative analysts, and attorneys, with other professional staff assisting, to complete this legislatively mandated review. The OIG estimates the cost of the internal work performed on this matter to be approximately \$210,000.

In addition, the OIG contracted with a consultant, the Honorable Timothy S. Hillman, a retired federal judge from the U.S. District Court for the District of Massachusetts, for a not-to-exceed price of \$80,000.

As of April 16, 2026, the OIG received invoices totaling \$37,500 from the consultant. The OIG expects to receive additional invoices from the consultant for services rendered during May and June 2026, which, combined with internal costs, will bring the total spent on this study to approximately \$285,000.

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<sup>208</sup> See 2025 Mass. Acts c. 14, §§ 82–83.



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