

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

Suffolk, ss.

No. SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
on behalf of unrepresented defendants in Middlesex and Suffolk Counties  
Petitioner,

v.

MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS and  
BOSTON MUNICIPAL COURT,  
Respondents

EMERGENCY PETITION PURSUANT TO G. L. c. 211, § 3

Now comes the Committee for Public Counsel Services (CPCS) on behalf of current and future unrepresented defendants in Middlesex and Suffolk Counties,<sup>1</sup> and respectfully requests that this Honorable Court, pursuant to *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367 (2020), and its superintendence authority under G. L. c. 211, § 3, implement the *Lavallee* protocol. Despite CPCS’s best efforts, and the cooperation of the courts, “a substantial number of indigent defendants remain unrepresented due to a shortage of defense counsel.” *Carrasquillo*, 484 Mass. at 389. CPCS files this petition because the “strong medicine” of the *Lavallee* protocol is needed to protect the constitutional rights of indigent criminal defendants. *Id.*

As of June 13, 2025, there were over 850 defendants without counsel. The *Lavallee* protocol is only a “temporary remedy” that cannot address the underlying cause of this untenable situation. *Id.* at 391. Given the large number of people without counsel, a number that grows every day, CPCS requests that this Court go further than it did in *Lavallee* and *Carrasquillo* and provide “preliminary relief in the form of increased compensation rates” until the Legislature is able to

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<sup>1</sup> See *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 389-390 (2020) (CPCS may bring “the petition ... on behalf of the unrepresented defendants and name the courts affected by the shortage as respondents”).

address the shortage of counsel on a more permanent basis. *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228, 242 (2004). See also *Carrasquillo*, 484 Mass. at 394.

## FACTUAL BACKGROUND

CPCS has the statutory authority to “plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by salaried public counsel, bar advocate and other assigned counsel programs and private attorneys serving on a per case basis.” G. L. c. 211D, § 1. Staff attorneys are employed by CPCS in the Public Defender Division (PDD) and bar advocates are provided by the local bar advocate programs (BAP) under contract with CPCS through its Private Counsel Division (PCD). Affidavit of Holly Smith, Deputy Chief Counsel, CPCS Private Counsel Division, ¶3; Affidavit of Arnie Lucinda Stewart, Deputy Chief Counsel, CPCS Public Defender Division, ¶2. The local BAPs pertinent to the instant petition are Middlesex Defense Attorneys, Inc. (MDA) in Middlesex County and Suffolk Lawyers for Justice (SLJ) in Suffolk County. Smith Aff. at ¶4. There are three PDD trial offices in Middlesex County—located in Framingham, Lowell, and Malden—and two PDD trial offices in Suffolk County—the Boston Trial Office and the Roxbury Defenders Unit. Stewart Aff. at ¶2.

By statute, district court bar advocates are paid \$65 per hour. G. L. c. 211D, § 11(a). This hourly rate is lower than in neighboring states; the attorney compensation rate is \$150 per hour in Maine, \$125 per hour for misdemeanors in New Hampshire, and \$112 per hour for misdemeanors in Rhode Island. See Ex. A (Letter from the Sixth Amendment Center to Chief Counsel Anthony J. Benedetti (June 9, 2025)).<sup>2</sup> It is also lower than the compensation rate recommended in the Report of the Special Master in *Carrasquillo v. Hampden County District Courts*, SJ-2019-0247. See *id.*, Paper No. 74 at 35-36 (March 22, 2022) (recommending \$120 per hour for bar advocates in the Springfield and Holyoke District Courts in addition to a \$480 appearance fee).

### *Assignment of Counsel*

CPCS strives to provide counsel to indigent defendants at arraignment, by which time the right to counsel has attached. This is accomplished through a duty day system, whereby a bar advocate or PDD staff attorney goes to a particular court, represents indigent individuals at arraignment, and then accepts assignment of those cases. Smith Aff. at ¶9. Unfortunately, it has

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<sup>2</sup> See also 94-649-301 Me. Code R. § 2; N.H. Sup. Ct. R. 47(2)(a); R.I. Sup. Ct. Exec. Ord. No. 2025-02 (Apr. 4, 2025).

been difficult in recent years for SLJ and MDA to find attorneys willing to take duty days. Smith Aff. at ¶11. Across the Commonwealth, there are almost 200 fewer bar advocates than there were in 2018. Smith Aff. at ¶8. While the number of bar advocates in Middlesex County is only slightly lower than it was in 2018, SLJ has 88 fewer attorneys in the program than there were seven years ago. Smith Aff. at ¶8. Indeed, SLJ has lost attorneys every year since 2018. Smith Aff. at ¶8.

As the number of attorneys participating in bar advocate programs has dwindled, fewer bar advocates have signed up for duty days, and district court arraignment sessions have been frequently unstaffed or understaffed. Smith Aff. at ¶11. For example, in March and April of this year, 32 percent of the duty days in Middlesex County courts were unfilled, while in Suffolk County courts, 24 percent of the duty days in March and 40 percent of the duty days in April were unfilled. Smith Aff. at ¶11. Duty day coverage has dropped even more precipitously in recent weeks. For the current month of June, 86 percent of the Middlesex County duty day slots and 75 percent of the Suffolk County duty day slots remain unfilled. Smith Aff. at ¶15.

#### ***Steps Taken to Mitigate the Impact of the Work Stoppage***

Aware that, after Memorial Day, some bar advocates would no longer be willing to take duty days or accept new cases, CPCS sent a letter on May 22, 2025, to Chief Justice of the Trial Courts Heidi Brieger, to inform the courts of the potential work stoppage. See Ex. B (Letter to Chief Justice Heidi E. Brieger from Chief Counsel Anthony J. Benedetti (May 22, 2025)). In that letter, CPCS stated that because bar advocates take the vast majority of all court-appointed cases, it was expecting there to be a shortage of court-appointed defense counsel. *Id.* at 1. CPCS explained that it would be prioritizing those cases “where counsel are most urgently needed,” *Carrasquillo*, 484 Mass. at 389, and described the process it would be employing to do so. *Id.* at 2.

In order to prioritize cases, as instructed in *Carrasquillo*, CPCS has implemented the process described in Chief Counsel Benedetti’s letter as follows: Until such time as a PDD office has reached capacity, staff attorneys from that office are continuing to appear for the office’s scheduled duty days, are representing defendants at their arraignments, and are keeping those cases where the defendant remains in custody and CPCS does not have a conflict of interest. Stewart Aff. at ¶5. Those cases where the defendant is not in custody are being sent to the PCD for assignment of counsel. Stewart Aff. at ¶5. The PDD is also continuing to accept new cases for its current clients. Stewart Aff. at ¶5.

CPCS has asked the courts for their assistance to ensure that CPCS receives the necessary information about unrepresented indigent defendants so that it can seek counsel for them. See Ex. B. For those days where there is no duty day attorney, the courts have been advised to assign the cases to CPCS and send them to the PCD and the local BAP for assignment of counsel. See Ex. B. The PCD and BAP then attempt to find counsel, prioritizing those cases where the defendant is held, and particularly those cases where the PDD has a conflict. Smith Aff. at ¶13. If counsel is not located within seven days for an incarcerated defendant, CPCS will assign the case to the local PDD if there is not a conflict of interest and the local office still has capacity. Smith Aff. at ¶13. CPCS has also informed the courts that the PDD offices will be available to cover G. L. c. 123, § 35 commitment hearings in courts where there is no duty day attorney. Stewart Aff. at ¶6.

The courts have been working collaboratively with CPCS to help “mitigat[e] the effects of a shortage of available defense counsel.” *Carrasquillo*, 484 Mass. at 389. Both the district courts and the Boston Municipal Court (BMC) approved the distribution of CPCS’s notice to unrepresented defendants. Smith Aff. at ¶14. The courts distributed a spreadsheet for clerks to fill out and send to CPCS with relevant information about people needing representation. Smith Aff. at ¶16. In line with that cooperative spirit, some courts have been sending CPCS police reports for incarcerated defendants, which allows the PDD offices to conduct conflict checks. Smith Aff. at ¶16. Some courts have also been helpfully scheduling the cases of out-of-custody defendants forty-five days out so that CPCS has more time to try to find counsel. Smith Aff. at ¶16.

### ***Unrepresented Defendants as a Result of the Work Stoppage***

On May 27, 2025, many bar advocates stopped appearing for duty days due to inadequate compensation rates. Smith Aff. at ¶15. By the end of the first week, Friday, May 30, CPCS had received information that there were approximately 238 unrepresented defendants, 33 of whom were incarcerated. Smith Aff. at ¶17. By the end of the second week, Friday, June 6, there were approximately 538 unrepresented indigent defendants, 59 of whom were in custody. Smith Aff. at ¶17. Of these, the overwhelming majority were out of Middlesex and Suffolk Counties; Middlesex County had 255 unrepresented indigent defendants, 19 of whom were in custody and Suffolk County had 238 unrepresented indigent defendants, 30 of whom were in custody. Smith Aff. at ¶17. Meanwhile, the list continues to grow. As of Friday, June 13, 2025, there were approximately 858 unrepresented indigent defendants across the Commonwealth (387 in Middlesex, 394 in Suffolk), 77 of whom (16 in Middlesex, 56 in Suffolk) were in custody. Smith Aff. at ¶18.

Overall, in just the past three weeks, 1,063 unrepresented defendants were sent to CPCS for assignment. Smith Aff. at ¶19. The PCD and local BAP programs were able to find private counsel attorneys for 205 defendants—152 of whom were incarcerated—including cases where the PDD has a conflict. Smith Aff. at ¶19. The PDD offices accepted assignment of 72 defendants off the list, all of whom were incarcerated. Stewart Aff. at ¶9. The Middlesex County PDD offices were assigned 19 defendants off the list and the Suffolk County PDD offices were assigned 50 defendants off the list. Stewart Aff. at ¶9.

The PDD offices also picked up cases on their duty days. Overall, in just the past three weeks and including the cases picked up off the list, the three Middlesex County PDD offices were assigned 262 cases and the two Suffolk County PDD offices were assigned 254 cases. Stewart Aff. at ¶10. This is a significant increase from operations in the normal course. Stewart Aff. at ¶10. All five Middlesex and Suffolk County offices still have some ability to pick up new cases, but if they continue to take cases at the current rate, they will be at capacity in the very near future, likely one to two weeks, if not sooner. Stewart Aff. at ¶15.

Should a defendant be held for more than seven days without counsel and the PDD cannot accept assignment, the PCD is coordinating with private attorneys who are willing to represent these individuals for the limited purpose of filing a motion for their release. Smith Aff. at ¶20. As of the filing of this petition, because the PDD has focused on taking custody cases, most incarcerated defendants have been assigned counsel within seven days and the PCD has not yet had occasion to file any motions for release. Smith Aff. at ¶20. CPCS is not aware of any releases for lack of counsel or delay in the assignment of counsel. Smith Aff. at ¶20.

CPCS has informed the Legislature of the shortage of defense counsel and continues to advocate for increased compensation. Affidavit of Lisa M. Hewitt, CPCS General Counsel, ¶2-3. However, it is unknown at this time what the Legislature's response will be and whether it will be sufficient. Hewitt Aff. at ¶3. Given the ongoing work stoppage by bar advocates in Middlesex and Suffolk Counties, and the PDD's limited remaining capacity, CPCS anticipates that this situation is only going to get worse. Smith Aff. ¶21. This petition follows.

## ARGUMENT

### **I. Implementation of the *Lavallee* protocol is necessary at this time given the substantial number of defendants without counsel.**

We have been here before. As in 2004, when *Lavallee* was decided, there are an insufficient number of certified bar advocates willing to accept assignments. As in 2004, “[t]hat shortage has been caused by the low rate of attorney compensation authorized by the annual budget appropriation.” *Lavallee*, 442 Mass. at 229. And, as in 2004, without this Court’s intervention, the burden of this systemic lapse will unlawfully be borne by defendants who “are being deprived of their right to counsel under art. 12 of the Massachusetts Declaration of Rights, a deprivation that has resulted in severe restrictions on their liberty and other constitutional interests.” *Id.* at 232.

In *Lavallee*, this Court held that the failure to provide counsel at a bail or preventive detention hearing violates due process and the failure to assign counsel promptly violates the right to counsel at trial. *Id.* at 234-237. The importance of the prompt assignment of counsel has not abated in the past 20 years. Counsel is still needed for bail hearings and preventive detention hearings. See *Carrasquillo*, 484 Mass. at 380; *Lavallee*, 442 Mass. at 234.

Even if a defendant is represented at arraignment for purposes of bail only, the “constitutional right to the assistance of counsel is not being honored.” *Lavallee*, 442 Mass. at 237. The prompt assignment of counsel is necessary because, to be effective, counsel must undertake “myriad responsibilities” to ensure that defendants “benefit meaningfully” from the right to counsel, such as interviewing the defendant, interviewing witnesses while their memories are still fresh, and preserving physical evidence. *Carrasquillo*, 484 Mass. at 380; *Lavallee*, 442 Mass. at 235. Moreover, as this Court held in *Lavallee* and reaffirmed in *Carrasquillo*, without counsel, “critical stage opportunities may pass without a defendant’s knowledge, and even if they can be revisited, the opportunity to develop them as fully had counsel been available may be impaired.” *Carrasquillo*, 484 Mass. at 380; *Lavallee*, 442 Mass. at 236. For these reasons, the current delay in appointing counsel is an unconstitutional state of affairs.

In order to address the “ongoing denial of counsel in the early stages of a case,” *Lavallee*, 442 Mass. at 237, this Court “established presumptive time limits for the assignment of counsel,” ruling that “‘an indigent defendant who is held in lieu of bail or under an order of preventive detention may not be held for more than seven days without counsel,’ and that ‘no defendant

entitled to court-appointed counsel may be required to wait more than forty-five days for counsel to file an appearance.” *Carrasquillo*, 484 Mass. at 382, quoting *Lavallee*, 442 Mass. at 246. In *Carrasquillo*, this Court outlined the process to trigger the implementation of these presumptive time limits, as well as the other protections of the *Lavallee* protocol, requiring a determination by a single justice that “despite good faith efforts by CPCS and the local bar advocate organization, there is an ongoing systemic violation of indigent criminal defendants’ constitutional rights to effective assistance of counsel due to CPCS’s incapacity to provide such assistance through its staff attorneys or through bar advocates.” *Carrasquillo*, 484 Mass. at 390-391.

Such a finding should be made here. In anticipation of the work stoppage, CPCS reached out to the courts, and the parties have been working collaboratively to keep up-to-date lists of unrepresented individuals, allowing CPCS to identify those who are incarcerated and most urgently need counsel. The PCD and local BAPs have worked tirelessly to find attorneys for unrepresented defendants with a particular emphasis on those cases where the defendant is incarcerated and the PDD has a conflict or the local PDD office is at capacity. CPCS has long advocated for increased compensation rates with the Legislature and continues to do so.

At the same time, the PDD offices began prioritizing those cases where counsel was most “urgently needed,” specifically those cases where the defendant was in custody and otherwise eligible for release. *Carrasquillo*, 484 Mass. at 389. The PDD has continued to staff its duty days, has accepted over 500 cases over the past three weeks in just Middlesex and Suffolk Counties alone, and has made itself available for § 35 hearings where there was no duty day attorney. The PDD will continue on this path until it reaches capacity. Unfortunately, that point is fast approaching.

Despite CPCS’s best efforts and the cooperation of the courts, “a substantial number of indigent defendants remain unrepresented due to a shortage of defense counsel.” *Carrasquillo*, 484 Mass. at 389. As a result, there are hundreds of people who have not received counsel in a timely manner because they are too poor to hire a lawyer and the Commonwealth has failed to uphold its obligation to provide one at arraignment. For those people who are not incarcerated, the chances of CPCS finding them an attorney under the current circumstances are slim to none.

Because the *Lavallee* protocol has not yet been implemented, unrepresented defendants who were not released on personal recognizance at arraignment are able to obtain pretrial release only if a judge makes an individualized determination that such an outcome is constitutionally

required in their case. See *Carrasquillo*, 484 Mass. at 391 (making clear that, separate and apart from the *Lavallee* protocol, “nothing herein prohibits a judge in his or her court room session from deciding that ordering release of a defendant who has been held in pretrial detention without counsel, or ordering dismissal of the charges without prejudice where a defendant has been unrepresented, is constitutionally required in the particular circumstances of an individual case”). Such a showing is difficult to make without counsel; unrepresented defendants are unlikely to know what information they need to provide to prove they are entitled to relief. As such, the PCD is coordinating with the private bar to provide counsel to make a limited appearance on a motion for release and there are attorneys who are willing to appear for this purpose. Smith Aff. at ¶20. As of the filing of this petition, CPCS is not aware of any case in which a motion was filed or a judge has, in accord with the above-quoted language in *Carrasquillo*, ordered a defendant’s release for lack of counsel. Smith Aff. at ¶20.

Once all of the PDD offices reach case capacity, however, the number of incarcerated individuals without representation will quickly exceed the ability of CPCS to find counsel for them. Smith Aff. at ¶21. It will also likely exceed the ability of CPCS to find counsel to help effectuate their release one defendant at a time. Smith Aff. at ¶21. Furthermore, in about a month, approximately 180 people will have been unrepresented for 45 days and be eligible to have their cases dismissed without prejudice. Smith Aff. at ¶22. There are not enough attorneys available to request dismissal on behalf of this number of individuals and explain why dismissal is constitutionally compelled under the circumstances of each case. See *Carrasquillo*, 484 Mass. at 391. Given this context, implementation of *Lavallee*’s presumptive time limits is essential.

The number of unrepresented defendants as of June 13, 2025 in Middlesex and Suffolk Counties alone (781 unrepresented defendants, 72 of whom are in custody) far exceeds the number of unrepresented defendants in 2004 when the *Lavallee* protocol was first implemented (58 unrepresented defendants, 31 of whom were in custody), and the number of unrepresented defendants when the *Lavallee* protocol was last applied in 2019 (155 unrepresented defendants, five of whom were in pretrial detention). See *Carrasquillo*, 484 Mass. at 389 n.27, citing *Lavallee* 442 Mass. at 230, 232 n.10. The “strong medicine” of the *Lavallee* protocol is necessary to protect the fundamental constitutional rights of current and future unrepresented indigent defendants in Middlesex and Suffolk Counties. *Carrasquillo*, 484 Mass. at 389. “The continuation of what is now an unconstitutional state of affairs cannot be tolerated.” *Lavallee*, 442 Mass. at 245.



**II. A temporary rate increase is necessary to ensure that the constitutional rights of indigent defendants are being honored.**

CPCS has informed the Legislature of the shortage of defense counsel and the need for increased compensation rates, but it is unknown when the Legislature will respond, what that response will be, or whether it will be sufficient. In the meantime, defendants who are presumed innocent are languishing in jail and their cases continue to age without investigation or progress on a defense. Just as in 2004, it remains true that “[t]he harm from inaction over a period of time is cumulative.” *Lavallee*, 442 Mass. at 236.

This Court must act to reduce the cumulative harm that accrues every day a defendant is unrepresented. Specifically, this Court must find a way to provide attorneys. Indigent defendants “cannot be required to wait on their right to counsel while the State solves its administrative problems.” *Lavallee*, 442 Mass. at 240.

Fortunately, it is clear what needs to be done and this Court has the authority to do it. First, compensation for court-appointed counsel needs to be increased so that bar advocates will be willing to accept appointments. See *Carrasquillo*, 484 Mass. at 393 (“Experience demonstrates that increases in compensation ... remedy counsel shortages.”). Accordingly, CPCS asks this Court to set a reasonable rate, looking to neighboring states and the Report of the Special Master in *Carrasquillo* for guidance, that will be sufficient to ensure the Commonwealth is honoring the constitutional right to counsel.

Second, this Court has the authority to increase rates until the Legislature acts to resolve the problem, just as other State courts of last resort have done in similar circumstances.<sup>3</sup> This Court has acknowledged its inherent authority “to ensure the proper operations of the courts and

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<sup>3</sup> See *Lavallee*, 442 Mass. at 242 (“In other circumstances State courts of last resort have granted preliminary relief in the form of increased compensation rates, but have simultaneously directed their Legislatures to amend permanently the compensation rates for indigent representation. See, e.g., *State ex rel. Wolff v. Ruddy*, 617 S.W.2d 64, 67-68 (Mo. 1981), cert. denied, 454 U.S. 1142, 102 S.Ct. 1000, 71 L.Ed.2d 293 (1982) (court established temporary guidelines pending solution); *State v. Lynch*, 796 P.2d 1150, 1164 (Okla. 1990) (guidelines set by court effective until Legislature acts). A New York trial court recently issued a permanent injunction directing that counsel be paid ninety dollars per hour, and removed the statutory fee cap until the Legislature changed the rates and increased its appropriation for compensation for indigent representation. See *New York County Lawyers’ Ass’n v. State*, 196 Misc.2d 761, 778, 763 N.Y.S.2d 397 (N.Y. Sup. Ct. 2003).”)

to protect them from impairment resulting from a lack of supporting personnel.” *Carrasquillo*, 484 Mass. at 394, quoting *O’Coins, Inc. v. Treasurer of the County of Worcester*, 362 Mass. 507, 510 (1972). The presence of court-appointed counsel is necessary for a properly functioning judiciary. *See, e.g., People v. Jones*, 186 Cal. App. 4th 216, 242 (2010) (excessive caseloads bear on the integrity of the judicial system itself); *Wilson v. State*, 574 So. 2d 1338, 1342 (Miss. 1990) (Robertson, J., concurring) (“If an adequate courthouse is essential to the administration of justice, so are competent counsel.”). Without counsel, the courts cannot lawfully conduct § 35 or § 58A hearings. Without counsel, cases cannot be adjudicated. Without counsel, constitutional rights may be ignored and government power can go unchecked. “The purpose for which courts are established is to do justice,” *Crocker v. Justices of Superior Court*, 208 Mass. 162, 179 (1911), and justice cannot be done without defense counsel.

In the past, this Court has deferred to the Legislature, as the branch responsible for enacting laws and appropriating funds, to choose the way forward. *See Carrasquillo*, 484 Mass. at 393-394; *Lavallee*, 442 Mass. at 242-243. CPCS understands and appreciates the need for the Legislature to make the long-term determination regarding how the Commonwealth will fulfill its obligations to indigent criminal defendants. The rate increase sought by this petition would be in effect only for as long as it takes for the Legislature to devise a long-term solution. But the immediate need for court-appointed counsel is overwhelming. Accordingly, CPCS requests that this Court temporarily order increased compensation rates sufficient to bring certified panel attorneys into court to accept appointments, looking to neighboring states and the Report of the Special Master in *Carrasquillo* for guidance as to what that rate may be.

## REQUESTED RELIEF

Due to the ongoing systemic violation of the right to counsel as a result of the shortage of available bar advocates, CPCS requests the implementation of the *Lavallee* protocol in the Middlesex and Suffolk County District Courts and the Boston Municipal Court and a temporary rate increase until the Legislature has the opportunity to devise a long-term solution.

Respectfully submitted,

*Rebecca Jacobstein*

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Date: June 18, 2025

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
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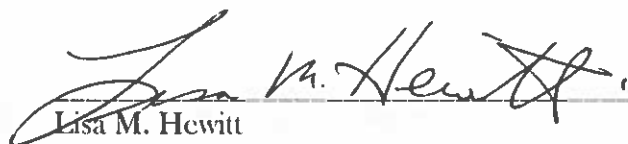
MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS and  
BOSTON MUNICIPAL COURT,  
Respondents

**AFFIDAVIT OF LISA M. HEWITT**

I, Lisa M. Hewitt, state the following to the best of my information and belief:

1. I am General Counsel for the Committee for Public Counsel Services (CPCS). I have been in this role from 1986-1998 and from 2011 to the present. Some of my responsibilities include administrative and budgetary liaison duties with the Legislature, the Judiciary, and the Executive branches of the Commonwealth.
2. CPCS has long been advocating for, and continues to advocate for, increased compensation rates with the Legislature. CPCS's budget testimony before the Legislature and compensation requests are available on CPCS's website:  
<https://www.publiccounsel.net/ppa/budget-advocacy/>.
3. CPCS has informed the Legislature of the shortage of defense counsel for indigent criminal defendants. It is unknown what the Legislature's response will be or if it will be sufficient to persuade bar advocates to start taking duty days.

Signed under the pains and penalties of perjury this 16<sup>th</sup> day of June, 2025.

  
Lisa M. Hewitt

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

SJ-2025-

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**AFFIDAVIT OF HOLLY SMITH**

I, Holly Smith, state the following to the best of my information and belief:

1. I am Deputy Chief Counsel of the Private Counsel Division (PCD) of the Committee for Public Counsel Services (CPCS). I have been in this role full-time since April 17, 2025. Some of my main responsibilities include:
  - a. The PCD utilizes the services of private assigned counsel statewide to provide legal representation in criminal and civil cases. I am responsible for the leadership, support, training, and oversight of private bar panels in criminal, parole, sexually dangerous person, and sex offender registry cases, and in appeals and post-conviction cases related to those matters in all courts of the Commonwealth. There are approximately 1,417 private attorneys who accept cases in the district and superior courts at the trial level.
  - b. My unit ensures compliance by private attorneys with relevant CPCS Performance Standards and other agency policies and procedures, investigates complaints, and assists, as necessary, CPCS's Audit & Oversight Department in its review of billings in PCD matters.
  - c. I supervise the following PCD units: Criminal Trial Support Unit (CTSU), Post-Conviction, Alternative Commitment and Registration Support, Parole Advocacy, Immigration Impact, and the Innocence Program. I also supervise the Director of Private Social Work Services.
  - d. As a member of CPCS's senior management team, I am involved in developing and implementing agency fiscal, operational, human resource, and legislative policies.

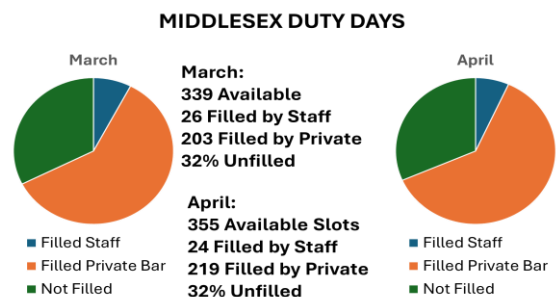
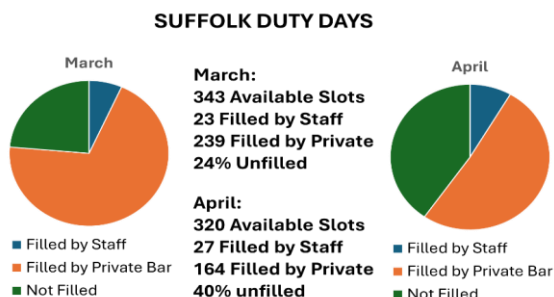
2. The CTSU provides oversight and support to private assigned counsel statewide to ensure client-centered zealous representation. Attorney Rose King is the Director of the CTSU.
3. County bar advocate programs (BAPs) contract with CPCS, through the PCD, to provide certified private defense attorneys, also known as bar advocates, to represent indigent defendants in criminal cases.
4. Attorney King supervises five staff attorneys within the CTSU and three administrative staff. Four of the staff attorneys are assigned to work with various counties across the Commonwealth to ensure that indigent defendants receive the zealous representation to which they are entitled. Attorney Matt Gilbertson works with and supports Middlesex County's bar advocate program, Middlesex Defense Attorneys, Inc. (MDA), and Attorney Christie Charles works with and supports Suffolk County's bar advocate program, Suffolk Lawyers for Justice (SLJ).
5. Attorney King and her staff also work collaboratively with attorneys in the Middlesex and Suffolk County Public Defender Division (PDD) offices to address the plethora of issues that arise daily as a result of the shortage of attorneys in these counties.
6. Current rates of compensation are \$65 per hour for district court assignments, \$85 per hour for superior court assignments, and \$120 per hour for murder assignments. Table 1, below, provides a recent history of compensation rates.

Table 1 – Compensation rates in criminal cases as of July 1, for each year by panel						
Panel	2019	2020	2021	2022	2023	2024
District Court	\$53	\$53	\$60	\$65	\$65	\$65
Superior Court	\$68	\$68	\$75	\$85	\$85	\$85
Murder Cases	\$100	\$100	\$110	\$120	\$120	\$120

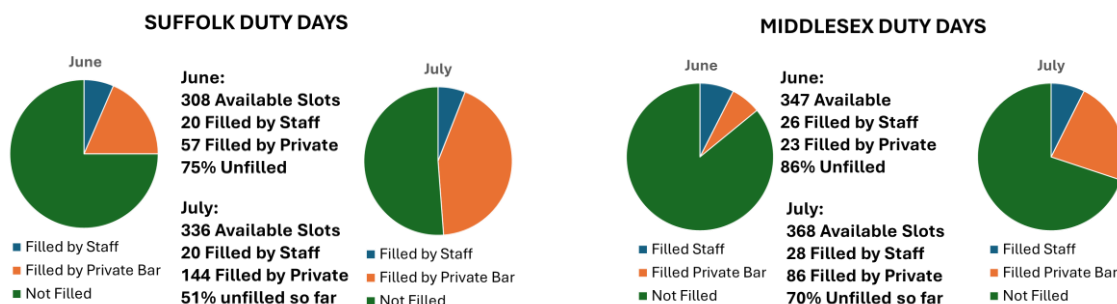
7. CPCS has made, and continues to make, significant efforts to attract and certify attorneys to take court-appointed cases. However, although there have been some rate increases over the past six years, recruitment continues to be difficult given the attorney compensation rates.
8. The number of bar advocates has declined every year since 2018. Table 2, below, provides the number of members in each BAP since 2018. There are almost 200 fewer bar advocates now than there were in 2018. While the number of bar advocates in Middlesex County is about the same as it was in 2018, SLJ has lost attorneys every year since then, resulting in 88 fewer attorneys in the program than there were seven years ago.

Table 2 - Bar Advocate Program Membership by County, 2018 - June 13, 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
Pilgrim	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
Totals	1774	1774	1727	1659	1552	1507	1562	1575

9. The bar advocates and PDD staff attorneys are responsible for covering the “duty days” in the county’s courts. A duty day is a day an attorney is assigned to a particular court to represent indigent individuals at arraignment and usually accept assignment of those cases. Some high-volume courts, such as the Boston Municipal Court (BMC) – Central Division and Lowell District Court, have multiple duty day attorneys assigned to cover their arraignment sessions.
10. Sometimes, duty day attorneys will represent defendants at arraignment for purposes of bail only, such as when there are too many arraignments on one day or the case involves an offense that the attorney is not certified to handle.
11. Due to the loss of bar advocates, district court arraignment sessions are frequently unstaffed or understaffed. Even back in 2021, Suffolk and Middlesex Counties were struggling to fill their duty days and the BMC, which historically had no problem filling duty days, was experiencing a near crisis with attorney coverage and had a list of clients without counsel. The two charts below illustrate the inadequate duty day staffing levels in Suffolk and Middlesex Counties prior to the work stoppage.



12. On May 22, 2025, CPCS Chief Counsel Anthony Benedetti sent a letter to the chief justices of the various courts to notify them of the likely work stoppage and CPCS's plans for handling the anticipated spike in the shortage of defense counsel.
13. Specifically, for those days when there was no duty day attorney, the courts were asked to assign the cases to CPCS and send them to the PCD and the local BAP for assignment of counsel. The PCD and BAP then attempt to find counsel, prioritizing those cases where the defendant is held, and particularly those cases where the PDD has a conflict. If counsel is not located within seven days for an incarcerated defendant, CPCS assigns the case to the PDD as long as there is no conflict and the local office has capacity.
14. CPCS composed a notice for clerks to give to unrepresented defendants at their arraignment so that those individuals would have their docket number, next court date, and CPCS's contact information in writing. Both the district courts and the BMC approved the distribution of CPCS's notice to unrepresented defendants.
15. On May 27, 2025, many bar advocates stopped accepting duty days due to inadequate attorney compensation rates. The work stoppage was most acute in Middlesex and Suffolk Counties. The majority of bar advocates in Middlesex and Suffolk counties are no longer taking district court duty days or accepting new district court cases due to the low hourly rate. The two charts below show the impact of the work stoppage on duty day participation in Suffolk and Middlesex Counties.



16. In order to keep track of unrepresented defendants, the courts distributed a spreadsheet for clerks to fill out and send to CPCS with relevant information about people needing representation. Some courts have been sending CPCS police reports for incarcerated defendants. This allows the PDD offices to conduct conflict checks so that the PCD knows which cases the PDD cannot accept regardless of capacity. Some courts have also been scheduling the cases of out-of-custody defendants forty-five days out which gives CPCS more time to try to find counsel.



17. Tables 3 and 4, below, list the number of unrepresented defendants and their custody status as of Friday, May 30, 2025, and Friday, June 6, 2025, the first two weeks of the work stoppage.

Table 3 - Unrepresented Defendants as of May 30, 2025			
County	Unrepresented Defendants		
	In Custody	Out	Total
Barnstable	1	4	5
Middlesex	14	114	128
Norfolk	0	11	11
Plymouth	1	0	1
Suffolk	17	76	93
<b>Totals</b>	33	205	238

Table 4 - Unrepresented Defendants as of June 6, 2025			
County	Unrepresented Defendants		
	In Custody	Out	Total
Barnstable	0	12	12
Essex	4	16	20
Franklin	1	1	2
Hampden	4	2	6
Middlesex	19	236	255
Norfolk	0	4	4
Plymouth	1	0	1
Suffolk	30	208	238
<b>Totals</b>	59	479	538

18. Table 5, below, lists the number of unrepresented defendants and their custody status as of Friday, June 13, 2025, almost three weeks after the work stoppage began.

Table 5 - Unrepresented Defendants as of June 13, 2025			
County	Unrepresented Defendants		
	In Custody	Out	Total
Barnstable	1	23	24
Essex	1	23	24
Franklin	0	3	3
Hampden	1	4	5
Middlesex	16	371	387
Norfolk	2	17	19
Plymouth	0	2	2
Suffolk	56	338	394
Totals	77	779	858

19. Since May 27<sup>th</sup>, 1,063 unrepresented defendants have been sent to CPCS for assignment. The PCD and local BAP programs were able to find private counsel attorneys for some unrepresented defendants, including cases where the PDD has a conflict. Of the 1,063 people sent to CPCS, approximately 205 of them (152 of whom were incarcerated) now have counsel, either through assignment by CPCS or directly by the court.
20. Should a defendant be held for more than seven days without counsel and the PDD cannot accept assignment, the PCD is coordinating with private attorneys who are willing to represent these individuals for the limited purpose of filing a motion for their release. As of the filing of this petition, because the PDD has focused on taking custody cases, most incarcerated defendants have been assigned counsel within the seven days and the PCD has not yet had occasion to file any motions for release. I am not aware of any releases for lack of counsel or delay in the assignment of counsel.
21. Once the PDD offices reach case capacity, the number of incarcerated individuals without representation will quickly exceed the ability of my unit to find counsel for them. It is also unlikely that the PCD will be able to enough private attorneys to file motions for release in all of their cases.

22. There are approximately 180 defendants who are not in custody and whose cases will have been pending for 45 days without counsel by the middle of July. The PCD does not have enough private attorneys to file motions to dismiss in all of their cases, either.

Signed under the pains and penalties of perjury this 17<sup>th</sup> day of June, 2025.

A handwritten signature in black ink, reading "Holly T. Smith". The signature is written in a cursive, flowing style. The "H" is large and loops around the "T". The "S" is also large and loops around the "M".

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Holly Smith

# EXHIBIT A



June 9, 2025

Anthony J. Benedetti  
Chief Counsel  
Committee for Public Counsel Services  
75 Federal Street, 6<sup>th</sup> Floor  
Boston, MA 02110  
abenedetti@publiccounsel.net

RE: Private Attorney Compensation Rates in 50 States

The **Sixth Amendment Center (6AC)** is a 501 (c)(3) non-profit non-partisan organization that provides technical assistance and evaluation services to policymakers on fulfilling government's Sixth and Fourteenth Amendment obligations to ensure effective assistance of counsel to indigent defendants facing a potential loss of liberty.

This letter summarizes national standards on compensating private attorneys in appointed cases and provides the appointed private attorney compensation rates in all 50 states. It is submitted at the request of Anthony Benedetti, Chief Counsel of the Committee for Public Counsel Services.

## **I. National standards on private attorney compensation**

The Sixth Amendment and the due process clause of the Fourteenth Amendment require each state to ensure effective assistance of counsel to every indigent defendant.<sup>1</sup> To meet this obligation, government must provide an appointed attorney with the resources necessary to put the prosecution's case through the "crucible of meaningful adversarial testing."<sup>2</sup>

For this reason, national standards, such as the American Bar Association's *Standards for Criminal Justice* and *Ten Principles of a Public Defense Delivery System*, state that an appointed private attorney should be paid a "reasonable hourly rate" for "all hours necessary to provide quality legal representation" that factors in overhead costs and out-of-pocket expenses to "encourage vigorous defense representation[.]"<sup>3</sup> Certain payment models should be avoided

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<sup>1</sup> Gideon v. Wainwright, 372 U.S. 335, 341-45 (1963).

<sup>2</sup> United States v. Cronin, 466 U.S. 648, 656-57 (1984).

<sup>3</sup> AMERICAN BAR ASS'N, STANDARDS FOR CRIMINAL JUSTICE -- PROVIDING DEFENSE SERVICES, standard 5-2.4 & cmt. (3d ed. 1992); AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 2 (2023).

because they create conflicts of interests between a defendant's right to effective assistance of counsel and the attorney's ability to earn a living, including:<sup>4</sup>

- a flat fee;
- an hourly rate that imposes a maximum compensation on a case (flat fee equivalent);
- an hourly rate too low to cover actual overhead costs and attorney pay; and
- any method that requires an attorney to pay for case-related expenses out of the compensation package.

## **II. Private attorney compensation rates in 50 states**

Private attorney compensation in appointed cases schemes are nuanced and complex. The rate set by a state is impacted by various factors, such as the number of law schools and available lawyers in a jurisdiction, cost of living, the number of cases requiring appointed counsel, portion of representation provided by private attorneys, and geographic diversity. Therefore, this information is intended to be a broad overview only.

The rates in the chart below are applicable in adult criminal trial-level case types only and are in effect as of this letter's date.<sup>5</sup>

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*See also* Wright v. Childree, 972 So. 2d 771, 780-81 (Ala. 2006) (determining assigned counsel are entitled to a reasonable fee in addition to overhead expenses); DeLisio v. Alaska Superior Court, 740 P.2d 437, 443 (Alaska 1987) (concluding that "requiring an attorney to represent an indigent criminal defendant for only nominal compensation unfairly burdens the attorney by disproportionately placing the cost of a program intended to benefit the public upon the attorney rather than upon the citizenry as a whole;" and that Alaska's constitution "does not permit the state to deny reasonable compensation to an attorney who is appointed to assist the state in discharging its constitutional burden," because doing so would be taking "private property for a public purpose without just compensation"); Kansas *ex rel.* Stephan v. Smith, 747 P.2d 816, 849 (Kan. 1987) (the state "has an obligation to pay appointed counsel such sums as will fairly compensate the attorney, not at the top rate an attorney might charge, but at a rate which is not confiscatory, considering overhead and expenses."); Louisiana v. Wigley, 624 So.2d 425, 429 (La. 1993) (finding that "in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out-of-pocket expenses and overhead costs."); Wilson v. Mississippi, 574 So.2d 1338, 1340 (Miss. 1990) (holding indigent defense attorneys are entitled to "reimbursement of actual expenses" including "all actual costs to the lawyer for the purpose of keeping his or her door open to handle this case," in addition to a reasonable sum); Oklahoma v. Lynch, 796 P.2d 1150, 1161 (Okla. 1990) (finding that the state government "has an obligation to pay appointed lawyers sums which will fairly compensate the lawyer, not at the top rate which a lawyer might charge, but at a rate which is not confiscatory, after considering overhead and expenses."); Jewell v. Maynard, 383 S.E.2d 536, 540 (W. Va. 1989) (finding that, because compensation rates did not cover attorney overhead, court appointed attorneys were forced to "involuntarily subsidize the State with out-of-pocket cash;" "[p]erhaps the most serious defect of the present system is that the low hourly fee may prompt an appointed lawyer to advise a client to plead guilty, although the same lawyer would advise a paying client in a similar case to demand a jury trial.").

<sup>4</sup> AMERICAN BAR ASS'N, ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, principle 2 (2023).

<sup>5</sup> 6AC collects this information on an ongoing basis through a combination of research and direct outreach to states, and can provide this information in appeal and juvenile delinquency case types upon request.

**Attorney Compensation Rates  
in Adult Criminal Trial-Level Case Types**

State	Statewide Hourly Rate	Statewide Capital Rate	Imposes Maximum Compensation on Case
Alabama	\$55 – 100	\$120	Yes
Alaska	\$125 – 175	No death penalty	Yes
Arizona	No state-set hourly rate		
Arkansas	\$45 – 90	\$110	No
California	No state-set hourly rate		
Colorado	\$100 – 110	No death penalty	Yes
Connecticut	\$88 – 102	No death penalty	No
Delaware	\$105 – 115	No death penalty	No
Florida	No state-set hourly rate		
Georgia	No state-set hourly rate		
Hawai'i	\$90	No death penalty	Yes
Idaho	\$100	\$125 – 150	No
Illinois	No state-set hourly rate		
Indiana	\$110	\$151	No
Iowa	\$76 – 86	No death penalty	Yes
Kansas	\$120	\$120	Yes
Kentucky	No state-set hourly rate	\$75	Yes
Louisiana	No state-set hourly rate		
Maine	\$150	No death penalty	No
Maryland	\$60 – 75	No death penalty	Yes
Massachusetts	\$65 – 120	No death penalty	No
Michigan	\$100 – 120	No death penalty	No
Minnesota	\$90	No death penalty	Yes
Mississippi	No state-set hourly rate		
Missouri	No state-set hourly rate		
Montana	\$71	\$195	No
Nebraska	No state-set hourly rate		
Nevada	\$100 – 175	\$125 – 223	No
New Hampshire	\$125 – 150	No death penalty	Yes
New Jersey	\$100	No death penalty	No
New Mexico	No state-set hourly rate		
New York	\$158	No death penalty	Yes
North Carolina	\$65 – 100	\$85 – 100	No
North Dakota	\$80	No death penalty	Yes
Ohio	\$75	\$140	Yes
Oklahoma	\$100 – 120	\$100 – 120	Yes
Oregon	\$130 – 200	No death penalty	Yes
Pennsylvania	No state-set hourly rate		
Rhode Island	\$112 – 142	No death penalty	Yes
South Carolina	\$40 – 60	\$50 – 75	Yes
South Dakota	\$120	\$120	No
Tennessee	\$60	\$90 – 110	Yes

Texas	No state-set hourly rate		
Utah	No state-set hourly rate		
Vermont	\$100	No death penalty	Yes
Virginia	\$90	No death penalty	Yes
Washington	No state-set hourly rate		
West Virginia	\$60 – 80	No death penalty	Yes
Wisconsin	\$100	No death penalty	No
Wyoming	\$35 – 100	\$35 – 100	No

6AC is available to provide further technical assistance upon request. Thank you for your leadership on this issue.

Sincerely,



Aditi Goel, Executive Director  
Sixth Amendment Center  
[aditi.goel@6AC.org](mailto:aditi.goel@6AC.org)  
(617) 581-8136



# EXHIBIT B



**Committee for Public Counsel Services**

75 Federal Street, 6<sup>th</sup> Floor, Boston, MA 02110

Tel: (617) 482-6212 – Fax: (617) 502-6326

**ANTHONY J. BENEDETTI**  
CHIEF COUNSEL

May 22, 2025

Honorable Heidi E. Brieger  
Chief Justice of the Trial Court  
Executive Office of the Trial Court  
1 Pemberton Square  
Boston, MA 02114

Dear Chief Justice Brieger:

As you may have heard, some bar advocates plan to stop taking duty days, starting next week. If this occurs—and by all accounts it is probable that it will—it will impact CPCS’s ability to provide counsel at arraignment, and possibly to provide counsel at all. I therefore write to inform the court of CPCS’s plans should this happen and to open up the lines of communication “among the courts, CPCS, and district attorneys . . . [to] mitigat[e] the effects of a shortage of available defense counsel whenever it arises.” *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 389 (2020). As the Supreme Judicial Court stated in *Carrasquillo*, we must all work together “to manage the impact of a shortage of defense counsel before it becomes constitutionally intolerable.” *Id.*

The Committee for Public Counsel Services (CPCS) has the statutory responsibility to “plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by salaried public counsel, bar advocate and other assigned counsel programs and private attorneys serving on a per case basis.” G. L. c. 211D, § 1. For criminal cases, CPCS provides representation to indigent individuals through its Public Defender Division (PDD) and Private Counsel Division (PCD). The PDD provides staff attorneys to indigent persons in criminal proceedings in the district, superior, and appellate courts, and the Boston Municipal Court. The PCD provides bar advocates to indigent defendants in criminal proceedings who are not represented by the PDD. Additionally, CPCS provides representation to youth through its Youth Advocacy Division (YAD), which provides staff attorneys and bar advocates, through the YAD Trial Panel, in delinquency and youthful offender cases in juvenile courts statewide.

Pursuant to “the clear dictates of G. L. c. 211D and S.J.C. Rule 3:10,” CPCS is vested “with sole and independent authority to assign counsel for indigent defendants” among its divisions. *Deputy Chief Counsel for the Pub. Defender Div. of the Comm. for Pub. Counsel*

*Servs. v. Acting First Justice of the Lowell Div. of the Dist. Court Dep't*, 477 Mass. 178, 187 (2017). Under G. L. c. 211D, § 5, judges must assign cases to CPCS; they cannot assign cases to an individual attorney or group of attorneys. *Carrasquillo*, 484 Mass. at 384, citing *Deputy Chief Counsel*, 477 Mass. at 179. Accordingly, if there is a day where there is no duty day attorney in the arraignment session, the case must be sent to CPCS-PCD or the YAD Trial Panel for assignment, not to the local PDD or YAD staff office. See *Carrasquillo*, 484 Mass. at 384-385. By statute, CPCS is required to “maintain a system in which not less than [twenty percent] of indigent clients,” across all practice areas, “shall be represented by public defenders.” St. 2024, c. 140, § 2, line item 0321-1500. CPCS offices are not staffed to handle more than this. Especially in the district courts, CPCS relies on bar advocates to provide representation in the vast majority of the cases in which it assigns counsel. All of this is to say that the PDD and YAD staff offices are not sufficiently staffed to handle all indigent criminal and juvenile cases.

In the past, judges have asked the PDD and YAD offices to staff arraignment sessions for bail only. While the PDD and YAD are more than willing to step up when this happens occasionally, this is untenable during times of acute counsel shortages. PDD and YAD staff cannot provide the requisite effective assistance of counsel and meet their obligations to their current clients if they are always in court. It is also our understanding that, in some courts, the clerks and court officers ask attorneys who are in court if they are able to take cases. Our staff attorneys do not know the capacity of the office to take cases and, therefore, we respectfully request that judges send the courts to PCD or YAD Trial Panel for assignment, as discussed below.

Instead, CPCS will implement the following system: first, as long as PDD and YAD staff have the capacity to take additional cases, the PDD and YAD will continue to appear for their scheduled duty days and accept the cases assigned to CPCS on those days, except for those cases in which there is a conflict of interest. The PDD and YAD will also continue to accept new cases for its current clients, even if those cases are arraigned on a day that the PDD or YAD is not on duty.

All other cases arraigned without counsel will be assigned to CPCS and sent to the local bar advocate program (BAP), as well as the PCD or YAD Trial Panel, as appropriate. The PCD or YAD Trial Panel, in conjunction with the local BAP, will attempt to find counsel, prioritizing those cases where the individual is held. If counsel is not located within seven days for an incarcerated individual, CPCS will assign that case to the PDD or YAD as long as there is no conflict and the PDD or YAD office has the capacity to accept that case. CPCS will not be assigning all cases to the PDD or YAD in order to ensure that we maintain the ability to comply with the SJC’s mandate in *Carrasquillo* that we prioritize cases “where counsel are most urgently needed.” *Id.* at 389.

The courts play an integral role in ensuring that no indigent person falls through the cracks. In those courts where there are days in which there is no attorney in the arraignment session, we need the court to send us a list of unrepresented indigent defendants and youth so that we can look for counsel. It is helpful if the court sends us not only the name and docket number of

unrepresented indigent individuals, but also the written docket, the police report, the amount of bail (if any), and the next court date.

In *Carrasquillo*, the SJC noted that judges are authorized to release incarcerated defendants who are held in pretrial detention without counsel, and dismiss without prejudice cases where a defendant has been unrepresented, “if constitutionally required in the particular circumstances of an individual case.” *Id.* at 391. In *Lavallee v. Justices in Hampden Superior Court*, 442 Mass. 228 (2004), the SJC held that defendants held in pretrial detention “may not be held for more than seven days without counsel,” and that no defendant “may be required to wait more than forty-five days for counsel to file an appearance.” *Id.* at 246. Based on our experience in Hampden County, we have found that it is helpful if unrepresented incarcerated individuals are brought back to court within seven days and unrepresented released individuals are given a court date within forty-five days to make sure that their constitutional rights are respected and that everyone is accounted for.

Mitigating the damage of a counsel crisis will necessitate significant coordination between the courts, district attorneys, and CPCS. It will also require patience and understanding on all sides as we grapple with the increased administrative efforts needed to deal with the situation. We hope to meet with you, as well as judges and clerks in the impacted courts, to discuss how we can work together to efficiently assign counsel and avoid a constitutional crisis.

Sincerely,



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Anthony J. Benedetti

cc: Hon. Stacey J. Fortes  
Hon. Dana M. Gershengorn  
Hon. Tracey-Lee Lyons  
Hon. Michael D. Ricciuti  
District Attorney Timothy J. Cruz  
District Attorney Joseph E. Early, Jr.  
District Attorney Robert J. Galibois  
District Attorney Anthony D. Gulluni  
District Attorney Kevin R. Hayden  
District Attorney Michael Morrissey  
District Attorney Thomas M. Quinn, III  
District Attorney Marian Ryan  
District Attorney Timothy J. Shugrue  
District Attorney David E. Sullivan

District Attorney Paul F. Tucker  
Probation Commissioner Pamerson O. Ifill

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Suffolk, ss.

SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
on behalf of unrepresented defendants in Middlesex and Suffolk Counties  
Petitioner,

v.

MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS and  
BOSTON MUNICIPAL COURT,  
Respondents

**AFFIDAVIT OF ARNIE LUCINDA STEWART**

I, Arnie Lucinda Stewart, state the following to the best of my information and belief:

1. I am Deputy Chief Counsel of the Public Defender Division (PDD) of the Committee for Public Counsel Services (CPCS). My responsibilities include: oversight of all PDD trial offices located throughout the state; participation as a full member of the CPCS senior management team that develops and implements agency-wide fiscal, operational, human resource, and legislative policies; ensuring compliance by staff with CPCS criminal defense performance standards and other agency policies and procedures; and internal and external leadership of and advocacy for the PDD and its clients.
2. The PDD employs staff attorneys to represent indigent defendants in the district and superior courts. The PDD has 17 trial court offices across the Commonwealth. There are three PDD trial offices in Middlesex County—located in Framingham, Lowell, and Malden—and two PDD trial offices in Suffolk County—the Boston Trial Office and Roxbury Defenders Unit.
3. PDD staff attorneys take duty days in the courts that their offices cover. This includes both district and superior courts. When PDD staff attorneys are on duty, they take all cases at arraignment that are not a conflict for the office, unless bar advocates are also on duty.
4. When I became aware of the potential work stoppage, I put a plan in place to prioritize those cases where counsel was most “urgently needed,” as required by the Supreme


Judicial Court in *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367 (2020).

5. If a PDD office is not at capacity, each PDD office is to continue to appear for their duty days and keep only those cases where the defendant remains in custody and the office does not have a conflict. Where the defendants are not in custody, staff attorneys represent the defendant bail only and send the cases(s) to the Private Counsel Division (PCD) for assignment of counsel. The PDD will also continue to accept new cases for its current clients.
6. We informed the courts that PDD staff attorneys would be available to cover commitment hearings under G. L. c. 123, § 35 in courts where there was no duty day attorney.
7. Unrepresented defendants who are arraigned on a day when PDD staff is not on duty are sent to the PCD for assignment. The PDD runs conflict checks on all cases where the defendant is in custody as soon as we get the police reports so that the PCD knows which defendants we will not be able to pick up.
8. If, seven days later, a defendant remains unrepresented, the PDD will accept assignment of the defendant's case(s) if there is no conflict. The PDD does not accept assignment immediately. In these first few days, some defendants post bail and therefore are no longer a top priority. Some defendants retain counsel, and other defendants may be assigned an attorney by the court or PCD. If a person is no longer in custody, and/or can be represented by another attorney, the PDD will have the capacity to represent people who are still in custody and who do not have a lawyer.
9. Since May 27, the statewide PDD offices have accepted assignment of 72 unrepresented defendants from the list, all of whom were incarcerated. The Middlesex PDD offices were assigned 19 defendants from the list and the Suffolk PDD offices were assigned 50 defendants from the list. Some defendants have more than one case, so the total number of cases taken from the list is likely higher.
10. The PDD offices also picked up cases on their duty days. Overall, in just the past three weeks and including the cases picked up off the list, the three Middlesex County PDD offices were assigned 262 cases and the two Suffolk County PDD offices were assigned 254 cases. This is a significant increase from operations in the normal course.
11. Some courts have begun rescheduling all in-custody arraignments for the next date the PDD is on duty in that court. This practice has led to a significant increase in custody cases on PDD duty days, and the PDD offices are not always able to pick up a large number of in-custody clients on the same day, particularly if many of those clients have

pending § 58A hearings. Accordingly, people represented bail only, and sent to the PCD for assignment, may be incarcerated.

12. For example, today, June 17, 2025, the Roxbury Defenders Unit is on duty in both the Roxbury Division of the BMC and the Dorchester Division of the BMC and there are no bar advocates on duty in either court. I have been told that there are 33 defendants in lock-up in the Roxbury Division. Thirteen are new arrests and 20 are holdovers who remain unrepresented after their initial appearance. In the Dorchester Division, I am told that there are 21 defendants in lock-up, 11 new arrests and 10 holdovers.
13. Caseload capacity is reached when an attorney is unable to meet CPCS Performance Standards and therefore unable to comply with their professional and ethical obligations and their responsibility to provide effective representation to each and every client. If and when that point is reached, there is a systemic conflict of interest because not all clients receive the effective representation to which they are entitled. Thus, caseload capacity is an individualized determination based on each attorney's experience, volume of cases, types and severity of cases (an attorney handling a murder case, for example, will likely have fewer cases than an attorney who is not), and other case-specific demands of those cases.
14. The PDD offices are constantly reviewing the caseloads of their attorneys. By way of example, last week, there were unrepresented individuals in Newton and Waltham District Courts who either reached or passed seven days in jail without counsel. At that time, the Framingham PDD office, which covers those courts, was at capacity and unable to take cases. However, on Thursday, an attorney in the Framingham office had a client who had ten cases with Superior Court jurisdiction dismissed. Once that happened, the Framingham PDD office immediately reassessed their capacity and on Friday picked up three incarcerated defendants from the list of unrepresented defendants who were held seven or more days without a lawyer.
15. All five offices in Middlesex and Suffolk Counties still have some ability to pick up new cases but, if they continue to take cases at the current rate, they will likely be at capacity within one to two weeks, if not sooner.

Signed under the pains and penalties of perjury this 17<sup>th</sup> day of June, 2025.

  
Arnie Lucinda Stewart



**COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY**

Suffolk, ss.

No. SJ-2025-

**COMMITTEE FOR PUBLIC COUNSEL SERVICES,**  
on behalf of unrepresented defendants in Middlesex and Suffolk Counties  
Petitioner,

v.

**MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS and  
BOSTON MUNICIPAL COURT,**  
Respondents

**CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2025, I served a copy of the Emergency Petition Pursuant to G. L. c. 211, § 3, and accompanying documents to:

Emily O. Cannon, Esq.  
Chief Legal Counsel  
Assistant Deputy Court Administrator  
Administrative Office of Hon. Tracy-  
Lee Lyons, Chief Justice  
Boston Municipal Court Department  
24 New Chardon Street, 6<sup>th</sup> Floor  
Boston, MA 02114  
emily.cannon@jud.state.ma.us

Janis DiLoreto Smith  
Chief Legal Counsel & Asst. Deputy Court Admin.  
Office of Chief Justice Stacey J. Fortes  
Administrative Office of the District Court  
Edward W. Brooke Courthouse  
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Daniel P. Sullivan  
Office Trial Court Admin. & Mgmt.  
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Attorney General Andrea Campbell  
Attorney General's Office  
One Ashburton Place  
Boston, MA 02108

/s/ Rebecca Jacobstein  
Rebecca Jacobstein