
COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

SUFFOLK, SS.

No. SJC-13824

COMMITTEE FOR PUBLIC COUNSEL SERVICES, ON BEHALF OF UNREPRESENTED
DEFENDANTS IN MIDDLESEX AND SUFFOLK COUNTIES,
Petitioner-Appellant,

v.

MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS
AND BOSTON MUNICIPAL COURT,
Respondents-Appellees.

ON RESERVATION AND REPORT FROM THE
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

**BRIEF OF APPELLEES MIDDLESEX AND SUFFOLK COUNTY
DISTRICT COURTS AND BOSTON MUNICIPAL COURT**

ANDREA JOY CAMPBELL

Attorney General

Marina Pullerits, BBO # 704163

Jennifer Zalnasky, BBO # 650762

Assistant Attorneys General

One Ashburton Place

Boston, Massachusetts 02108

(617) 963-2968

marina.pullerits2@mass.gov

October 20, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES	4
INTRODUCTION	8
STATEMENT OF THE ISSUE	9
STATEMENT OF THE CASE.....	10
I. Nature of the Appeal.	10
II. Procedural History.....	10
STATEMENT OF FACTS	13
I. The Statutory Appointment Scheme for Indigent Criminal Defendants.....	13
II. The System Established by <i>Lavallee</i> and <i>Carrasquillo</i>	14
III. The Ongoing Work Stoppage, the Resulting Counsel Shortage, and the Institution of the <i>Lavallee</i> Protocol.	18
IV. The Legislature’s Action to Raise Bar Advocates’ Compensation Rates To Levels Beyond Those for Which CPCS Advocated, and to Begin to Restructure Indigent Criminal Defense in Massachusetts.....	21
V. Recent Judge-Imposed Rate Increases.	23
SUMMARY OF THE ARGUMENT	24
ARGUMENT	25
I. Judge-Imposed Compensation Rate Increases Would Violate the Separation of Powers.....	25
A. The Legislature Has Exclusive Power to Set Bar Advocates’ Statutory Compensation Rates.....	26

B.	The Cases Cited by CPCS Do Not Support Its Arguments in Favor of Judge-Imposed Rate Increases.	31
II.	If Judge-Imposed Rate Increases Were Ever Appropriate, They Would Need to Be Ordered by the SJC or Perhaps a Single Justice Thereof, Apply Across-the-Board, Be in Effect Only Temporarily, And Not Second-Guess Existing Legislative Action.	39
A.	If Any Court Can Order Increased Compensation Rates for Bar Advocates, It Must Be the SJC, or Perhaps a Single Justice Thereof.	40
B.	Any Increases to Bar Advocates’ Compensation Rates Must Be Implemented Across-the-Board.	42
C.	Any Increases to Bar Advocates’ Compensation Rates Must Be Implemented Only Temporarily, Pending Legislative Action.	46
D.	Even if Judicial Intervention Were Ever Appropriate, It Would Not Be Appropriate Where, As Here, the Legislature Has Already Acted.	47
III.	This Court Should Deny CPCS’s Requests for Modification of the <i>Lavallee</i> Protocol.	51
	CONCLUSION	55
	CERTIFICATE OF COMPLIANCE	57
	CERTIFICATE OF SERVICE	58
	ADDENDUM	59

TABLE OF AUTHORITIES

Cases

<i>Abodeely v. County of Worcester</i> , 352 Mass. 719 (1967)	38
<i>Arnold v. Kemp</i> , 306 Ark. 294 (1991)	37, 38
<i>Bates v. Director of Office of Campaign & Political Finance</i> , 436 Mass. 144 (2002).....	32, 33
<i>Bromfield v. Treasurer & Receiver General</i> , 390 Mass. 665 (1983)	26, 27, 28
<i>Carrasquillo v. Hampden County District Courts</i> , 484 Mass. 367 (2020)	passim
<i>Casey v. Massachusetts Elec. Co.</i> , 392 Mass. 876 (1984).....	52
<i>Cedeno v. Commonwealth</i> , 404 Mass. 190 (1989)	54
<i>Commonwealth v. Dame</i> , 473 Mass. 524 (2016).....	54
<i>Commonwealth v. Gonsalves</i> , 432 Mass. 613 (2000).....	26, 32, 49
<i>Commonwealth v. O'Brien</i> , 432 Mass. 578 (2000)	31
<i>County of Barnstable v. Commonwealth</i> , 410 Mass. 326 (1991)	34, 41, 48
<i>County of Barnstable v. Commonwealth</i> , 422 Mass. 33 (1996)	35
<i>Fadden v. Commonwealth</i> , 376 Mass. 604 (1978)	40
<i>First Justice of the Bristol Div. of the Juvenile Court Dep't v.</i> <i>Clerk Magistrate of the Bristol Div. of the Juvenile Court Dep't</i> , 438 Mass. 387 (2003).....	36
<i>Gray v. Commissioner of Revenue</i> , 422 Mass. 666 (1996)	27, 28
<i>Hancock v. Commissioner of Educ.</i> , 443 Mass. 428 (2005).....	28

<i>K.J. v. Superintendent of Bridgewater State Hosp.</i> , 488 Mass. 362 (2021).....	28
<i>Knox County Council v. State ex rel. McCormick</i> , 217 Ind. 493 (1940).....	37
<i>Lavallee v. Justices in Hampden Superior Court</i> , 442 Mass. 228 (2004).....	passim
<i>Michaud v. Sheriff of Essex County</i> , 390 Mass. 523 (1983).....	32
<i>O’Coin’s, Inc. v. Treasurer of Worcester County</i> , 362 Mass. 507 (1972).....	29, 35, 36, 41
<i>People ex rel. Conn v. Randolph</i> , 35 Ill. 2d 24 (1966).....	37, 38
<i>Raytheon Co. v. Commissioner of Revenue</i> , 455 Mass. 334 (2009).....	37
<i>State v. Lynch</i> , 796 P.2d 1150 (Okla. 1990)	37, 38, 46
<i>Town of Milton v. Commonwealth</i> , 416 Mass. 471 (1993).....	28
<i>Walsh v. Commonwealth</i> , 485 Mass. 567 (2020)	42

Statutes

G.L. c. 29, § 6E	29
G.L. c. 211, § 3.....	passim
G.L. c. 211, § 6.....	52
G.L. c. 211D, § 1.....	13
G.L. c. 211D, § 11(a)	passim
G.L. c. 211D, § 5.....	13
G.L. c. 211D, § 6.....	13

G.L. c. 213, § 8.....	44
-----------------------	----

Session Laws

St. 2005, c. 54, § 2.....	15, 22
St. 2015, c. 46, § 119.....	22
St. 2021, c. 24, § 61.....	17, 22
St. 2022, c. 126, § 98.....	17, 21, 22
St. 2025, c. 9, § 2.....	14, 48
St. 2025, c. 14, § 2A.....	22, 48, 49
St. 2025, c. 14, § 48.....	23
St. 2025, c. 14, § 49.....	22, 23, 39, 47
St. 2025, c. 14, § 50.....	22, 47
St. 2025, c. 14, § 82.....	23, 48, 49
St. 2025, c. 14, § 104.....	22, 47
St. 2025, c. 14, § 105.....	22, 47

Constitutional Provisions

Art. 30 of the Massachusetts Declaration of Rights	passim
Art. 48 of the Massachusetts Constitution.....	32
Art. 63 of the Massachusetts Constitution.....	26, 29

Rules

Massachusetts Rule of Professional Conduct 6.1	13
SJC Rule 3:10(6)	45

Miscellaneous

Governor Healey Signs \$60.9 Billion Fiscal Year 2026 Budget (July 4, 2025), available at https://www.mass.gov/news/governor-healey-signs-609-billion-fiscal-year-2026-budget	48
Testimony of Chief Counsel Anthony J. Benedetti (Mar. 28, 2025), available at https://www.publiccounsel.net/wp-content/uploads/2025/05/Final-FY26-Budget-Testimony-5.23.25.pdf	22, 47

INTRODUCTION

An ongoing work stoppage by bar advocates in Suffolk and Middlesex Counties has left thousands of indigent criminal defendants without counsel. The parties agree that this presents a problem of constitutional dimension, and they also agree that the scale of the present counsel shortage—and the resulting number of unrepresented defendants—is unprecedented. The parties disagree, however, as to whether it is constitutionally permissible for this or any other court to perform the legislative function of raising bar-advocate compensation rates. Appellees, the Middlesex and Suffolk County District Courts and the Boston Municipal Court (the “Courts” or “Respondent Courts”), assert that courts may not raise bar advocates’ pay rates without violating art. 30 of the Massachusetts Declaration of Rights.

On July 3, 2025, promptly after the Committee for Public Counsel Services (“CPCS”) filed an Emergency Petition outlining the impacts of the ongoing counsel shortage, a Single Justice of the Supreme Judicial Court for Suffolk County (Wendlandt, J.) instituted the protocol devised by this Court to address a counsel shortage in *Lavallee v. Justices in Hampden Superior Court*, 442 Mass. 228 (2004) (the “*Lavallee* protocol”). That protocol, in short, provides for the release of defendants who are held in custody for more than seven days without a lawyer, and for the dismissal, without prejudice, of cases pending for more than forty-five days

against defendants without a lawyer, if a judge concludes that, despite good faith efforts by CPCS and bar advocate organizations, there is no attorney willing and available to represent a given defendant. That protocol has remained in effect ever since, resulting in the release of hundreds of defendants and the dismissal, without prejudice, of many more hundreds of cases.

In August 2025, the Legislature took action to address the underlying cause of the work stoppage by passing a supplemental budget which, among other things, raised bar advocates' compensation rates by \$10/hour in fiscal year 2026, and another \$10/hour in fiscal year 2027—the largest rate increases for bar advocates since the Legislature acted in the wake of *Lavallee*—and allocated \$40 million for CPCS to hire 320 additional staff attorneys over two years. The work stoppage nevertheless continues, and the Single Justice has reserved and reported the question of whether judges might, under any circumstances, be authorized to increase bar advocates' compensation rates to levels beyond those set by the Legislature. The Respondent Courts request that this Court answer that question in the negative.

STATEMENT OF THE ISSUE

In light of the scope of the present shortage of available defense counsel in the District Courts of Middlesex and Suffolk County and in the Boston Municipal Court, whether and under what circumstances the Supreme Judicial Court, a single

justice of the Supreme Judicial Court, or any justice of any trial court department is authorized to order increased compensation rates beyond those provided in G.L. c. 211D, § 11(a), for attorneys accepting representation of indigent criminal defendants.

STATEMENT OF THE CASE

I. Nature of the Appeal.

This case is before the Court on a reservation and report, without decision, from the Single Justice (Wendlandt, J.). RA:481-84; A:61-64.¹ On September 18, 2025, the Single Justice reported the question reproduced in full above. RA:483; A:63.

II. Procedural History.

On June 18, 2025, CPCS filed an Emergency Petition requesting that the Supreme Judicial Court for Suffolk County, pursuant to its superintendence authority under G.L. c. 211, § 3: (1) institute the *Lavallee* protocol in the Respondent

¹ The Record Appendix will be cited in this brief as “RA:[page number(s)].” The Addendum will be cited as “A:[page number(s)].” Appellant’s brief, submitted on October 6, 2025, will be cited as “Br:[page number(s)].”

Courts;² and (2) temporarily increase bar advocates' hourly compensation rates. RA:32-42.

Following a preliminary hearing, the Single Justice scheduled the case for an evidentiary hearing on July 2, 2025. RA:10-11. Leading up to and during that evidentiary hearing, neither the Courts nor the Suffolk County District Attorney's Office—an Intervenor in the case before the Single Justice and an Appellee here—opposed institution of the *Lavallee* protocol, acknowledging the magnitude of the counsel shortage. RA:195. The Courts noted, however, that further information regarding the good-faith efforts of CPCS and the bar advocate organizations was warranted, and should be provided via regular status updates to the Single Justice. RA:89-90. The Courts also opposed, on separation-of-powers grounds, CPCS's request that the Single Justice unilaterally increase bar advocates' hourly compensation rates. RA:194.

On July 3, 2025, the Single Justice issued an Order (1) instituting the *Lavallee* protocol in each of the Respondent Courts; and (2) denying, without prejudice,

² The twelve District Courts located in Middlesex County are the Ayer, Cambridge, Concord, Framingham, Lowell, Malden, Marlborough, Natick, Newton, Somerville, Waltham, and Woburn District Courts. The only District Court located in Suffolk County is the Chelsea District Court. The Boston Municipal Court Department, located in Suffolk County, is comprised of eight divisions: Brighton, Central, Charlestown, Dorchester, East Boston, Roxbury, South Boston, and West Roxbury.

CPCS’s request for a temporary increase to bar advocates’ hourly rates. RA:190-214; A:65-89. Since then, consistent with the Single Justice’s Order, each of the Respondent Courts has been holding *Lavallee* release and dismissal hearings. *See* RA:280.

On August 18, 2025, the Courts requested that the Single Justice issue an order clarifying that, in the course of *Lavallee* hearings, individual judges cannot—consistent with the separation of powers—order rate increases in particular cases for attorneys who agree to take on a given appointment. RA:256. In response to this request, the Single Justice ordered all parties to file briefing addressing whether the Single Justice “should reserve and report to the full court the question . . . of whether and under what circumstances courts addressing the present attorney shortage are authorized to order increased compensation rates for attorneys representing indigent criminal defendants.” *Id.* The Courts and the Suffolk County District Attorney’s Office opposed the reservation and report, reasoning that judge-imposed rate increases were plainly inconsistent with the separation of powers. RA:29. CPCS, in turn, argued that the question should be reserved and reported. *Id.* The Single Justice, without final decision, reserved and reported the question to this Court. RA:481-84; A:61-64.

STATEMENT OF FACTS

I. The Statutory Appointment Scheme for Indigent Criminal Defendants.

CPCS is charged, by statute, with “plan[ning], oversee[ing], and coordinat[ing] 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. *See also id.* § 5 (CPCS “shall establish, supervise and maintain a system for the appointment or assignment of counsel at any stage” of proceedings where indigent defendants are entitled to counsel).

Two CPCS divisions are primarily responsible for the representation of criminal defendants: (1) the Public Defender Division (“PDD”), which consists of salaried employees of CPCS; and (2) the Private Counsel Division (“PCD”), which consists of private bar advocates who contract with CPCS through a local bar organization. *Id.* § 6(a) (PDD); *id.* § 6(b) (PCD); RA:33.³ In Suffolk County, the bar advocate organization that contracts with CPCS is Suffolk Lawyers for Justice; in Middlesex County, it is Middlesex Defense Attorneys. RA:33. The Legislature requires CPCS to “maintain a system in which not less than 20 [percent] of indigent

³ The Massachusetts Rules of Professional Conduct also encourage *all* attorneys to “provide annually at least 25 hours of *pro bono publico* legal services for the benefit of persons of limited means.” Professional Conduct Rule 6.1.

clients shall be represented by public defenders.” St. 2025, c. 9, § 2, line item 0321-1500. Accordingly, up to 80 percent of the indigent criminal defendants in Massachusetts are represented by private bar advocates.

II. The System Established by *Lavallee* and *Carrasquillo*.

More than two decades ago, in *Lavallee*, this Court considered a G.L. c. 211, § 3 petition brought by CPCS on behalf of indigent criminal defendants who lacked appointed counsel due to a shortage of lawyers in the Hampden County bar advocates program. *See* 442 Mass. at 229-30. The Court concluded that the unrepresented defendants were being deprived of their constitutional right to counsel and, in response, crafted a system to “remedy [the] ongoing violation . . . consistently with the government’s legitimate right to protect the public’s safety.” *Id.* at 246.

The system devised by the Court—*i.e.*, the *Lavallee* protocol—required hearings to be held for defendants who were in custody awaiting trial for longer than seven days, or had criminal charges pending for longer than forty-five days after arraignment, and remained unrepresented. *Id.* at 247-48. At those hearings, if a judge determined that, “despite good faith efforts of CPCS and any efforts by others to secure representation for any such defendant, there is still no counsel willing and available to represent a defendant,” the judge was required to release from custody (with conditions if necessary) any defendant who had been held for longer than seven

days, and to dismiss without prejudice any charges that had been pending for longer than forty-five days “until such time as counsel is made available.” *Id.* at 248-49. The *Lavallee* protocol thereby “balanced the constitutional rights of indigent defendants with due concern for public safety, by focusing first on obtaining counsel for unrepresented defendants, and authorizing release from pretrial detention, or dismissal of charges without prejudice, only as a last resort when all efforts to obtain counsel had failed.” *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367, 383 (2020).

This Court also acknowledged in *Lavallee* that the availability of defense attorneys was impacted by the low rates of compensation for private bar counsel (then \$30/hour for district court cases, *see* 442 Mass. at 229), but declined to increase those statutory rates itself, recognizing that the Legislature is “the representative branch in charge of making laws and appropriating funds.” *Id.* at 243-44. The Court did, however, urge the Legislature to cooperate with the other branches of government in “fashioning a permanent remedy” for the counsel shortage, which had become “a systemic problem of constitutional dimension.” *Id.* at 244.⁴

⁴ Thereafter, the Legislature raised bar advocates’ compensation rates to \$50/hour. St. 2005, c. 54, § 2.

This Court next applied the *Lavallee* protocol a decade and a half later, when it was confronted once again with a shortage of available counsel in Hampden County. See *Carrasquillo*, 484 Mass. at 368-69. In *Carrasquillo*, this Court “outline[d] a process through which CPCS, or the [regional administrative justice] who oversees a court affected by such a shortage, may seek to trigger the *Lavallee* protocol by filing a petition in the county court pursuant to G. L. c. 211, § 3.” *Id.* at 370. The next step, as described in *Carrasquillo*, is the prompt scheduling of an evidentiary hearing for the purpose of making findings regarding:

the number of unrepresented indigent defendants; the length of time for which they have been unrepresented; the current caseloads of local CPCS staff attorneys and bar advocates; whether CPCS and the local bar advocate organization have engaged in good faith efforts to provide counsel for unrepresented indigent defendants; whether there is a shortage of available defense counsel and, if so, what has caused the shortage; how long the shortage has continued and is likely to continue; the prospects for remedying the problem; and such other issues as the single justice or the presiding judge may deem pertinent.

Id. at 390. Following the evidentiary hearing, the Single Justice must consider these factors and 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 rights to effective assistance of counsel due to CPCS’s incapacity to provide such assistance through its staff attorneys or through bar

advocates.” *Id.* at 390-91. If so, “an order imposing the *Lavallee* protocol is warranted.” *Id.* at 391.

The *Carrasquillo* Court, like the *Lavallee* Court, acknowledged widespread agreement that the hourly rates paid to bar advocates (then \$53/hour for district court cases, *see* 484 Mass. at 392) were insufficient, but “defer[red] to the Legislature’s authority, as the governmental branch vested with the power to make laws and appropriate funds, to devise an appropriate solution.” *Id.* at 370-71.⁵

Following the institution of the *Lavallee* protocol and various efforts by CPCS to secure counsel for indigent defendants in Hampden County (including recruiting attorneys from other locations and imposing an “emergency duty day rate” that compensated defense attorneys for eight hours of court time regardless of the actual length of their appearances), the constitutional crisis receded and the *Lavallee* protocol was lifted. *Id.* at 378, 379 n.16. *See also Carrasquillo v. Hampden County District Courts*, No. SJ-2019-0247, Paper Nos. 85, 101 (lifting protocol and dismissing case).

⁵ On two occasions since *Carrasquillo* and prior to the present work stoppage, the Legislature has raised bar advocates’ compensation rates. *See* St. 2021, c. 24, § 61 (\$60/hour); St. 2022, c. 126, § 98 (\$65/hour).

III. The Ongoing Work Stoppage, the Resulting Counsel Shortage, and the Institution of the *Lavallee* Protocol.

Beginning on May 27, 2025, a substantial number of bar advocates in Suffolk and Middlesex Counties began participating in a work stoppage, opting not to accept new indigent criminal defense cases in an effort to persuade the Legislature to raise their compensation rates. RA:35, 205-06; A:80-81. As a result of the work stoppage, by June 13, 2025, CPCS reported that there were approximately 394 indigent criminal defendants without representation in Suffolk County, and 387 in Middlesex County. RA:49. Of these unrepresented defendants, 56 were in custody in Suffolk County, and 16 were in custody in Middlesex County. *Id.*

As noted above, on July 3, 2025, the Single Justice—with the assent of the Courts and the Suffolk County District Attorney’s Office—instituted the *Lavallee* protocol in each of the Respondent Courts. RA:191; A:66. The Single Justice denied without prejudice, however, CPCS’s request for a judge-imposed increase to the compensation rate for bar advocates, “‘defer[ring] to the Legislature’s authority, as the governmental branch vested with the power to make laws and appropriate funds, to devise an appropriate solution,’ and to choose the best policy course for resolving the systemic issue described herein.” RA:210; A:85 (quoting *Carrasquillo*, 484 Mass. at 370-71).

Consistent with the Single Justice’s Order, the Respondent Courts began conducting *Lavallee* hearings for eligible defendants. Between July 3, 2025 and September 12, 2025, the Boston Municipal Court Department scheduled a total of 529 *Lavallee* hearings, resulting in 252 cases being dismissed without prejudice and 101 defendants being released from custody. RA:280. During the same time period, the Chelsea District Court in Suffolk County scheduled a total of 93 *Lavallee* hearings, resulting in 39 cases being dismissed without prejudice and 12 defendants being released from custody. *Id.* And the District Courts of Middlesex County scheduled a total of 1,085 *Lavallee* hearings, resulting in 566 cases being dismissed without prejudice and 60 defendants being released from custody. *Id.*

Although the Courts and CPCS have worked diligently and collaboratively to undertake the substantial administrative steps associated with the operation of the protocol and to ensure that unrepresented defendants receive *Lavallee* hearings, the number of unrepresented defendants has continued to grow as the work stoppage has drawn on. As of October 2, 2025, per CPCS, there were approximately 1,329 unrepresented indigent defendants in Suffolk County (58 of whom were in custody), and approximately 1,133 unrepresented indigent defendants in Middlesex County

(seven of whom were in custody). Oct. 2, 2025 Affidavit of Holly Smith (“Smith Aff.”), ¶¶7-12.^{6,7}

Per CPCS, however, “[t]he number of unrepresented defendants being reported to CPCS by the courts on a weekly basis has been decreasing over the past few weeks, presumably because more bar advocates are accepting assignments at arraignment.” Br.16. Moreover, the duty day calendars for both Suffolk and Middlesex County have improved in the weeks since the Legislature increased bar advocates’ compensation rates. *Id.*

Consistent with the Single Justice’s Order instituting the *Lavallee* protocol, RA:213-14; A:88-89, the parties have been providing the Single Justice with

⁶ The Courts have been working closely with CPCS to determine the number of defendants eligible for *Lavallee* hearings, and understand that the numbers presented by CPCS are generally accurate.

⁷ The numbers provided by CPCS exclude defendants whose cases have been dismissed without prejudice following a *Lavallee* hearing. Br.16 (“This number . . . does not include over 800 individuals whose cases were dismissed without prejudice”); RA:280. Defendants whose cases have been dismissed for the time being are relevant to a comprehensive understanding of the scope of the counsel shortage, however, because the dismissed cases may be reopened at “such time as counsel is made available.” *Lavallee*, 442 Mass. at 249. *See also* Smith Aff., ¶ 23 (“I am aware that the Suffolk County District Attorney’s office has filed motions to reopen some of these dismissed cases. I am also aware that the Middlesex District Attorney’s office has taken out new complaints after these 45-day dismissals.”). Accordingly, some defendants whose cases have been dismissed will eventually require representation from CPCS staff attorneys or bar advocates.

periodic updates concerning the state of the counsel shortage. *See, e.g.*, RA:20, 22, 213, 218-21. Although CPCS’s periodic updates have consistently addressed the efforts of its own staff attorneys, *see, e.g.*, RA:219-20, CPCS has been unable to “provide an update that would meaningfully assist the Court” with respect to the efforts of the bar advocate organizations, including their plans for the future of the work stoppage. RA:298 (“With respect to bar advocates’ intentions going forward, responses vary significantly among bar advocates, and most of the information CPCS has received is second-hand. CPCS therefore cannot provide an update that would meaningfully assist the Court in determining what will happen going forward. We consider the combination of duty day calendars along with the weekly assignment numbers the best evidence of bar advocate intentions.”).⁸

IV. The Legislature’s Action to Raise Bar Advocates’ Compensation Rates To Levels Beyond Those for Which CPCS Advocated, and to Begin to Restructure Indigent Criminal Defense in Massachusetts.

At the time that the work stoppage began in May 2025, bar advocates were being paid \$65/hour for district court work, a rate set by law. St. 2022, c. 126, § 98;

⁸ On August 18, 2025, the Courts requested that the Single Justice invite the two relevant bar advocate organizations to intervene or otherwise participate in the matter pending before the Single Justice. RA:255, 272-73. The Single Justice denied the Courts’ request without prejudice, ordering that CPCS (rather than the bar advocate organizations) “provide detailed information concerning the efforts of bar advocate organizations.” RA:273-74. In response to that directive, CPCS provided the update quoted in text above. RA:298.

RA:266. On March 28, 2025, CPCS advocated before the Legislature for a rate increase, specifically requesting that district court bar advocates be paid \$68/hour in Fiscal Year 2026, and \$73/hour in Fiscal Year 2027.⁹ The Fiscal Year 2026 budget signed into law in July 2025 did not include any such rate increases. RA:184-85.

On August 5, 2025, however, Governor Maura Healey signed into law legislation that, among other things, raised district court bar advocates' pay rates to \$75/hour effective August 1, 2025, and to \$85/hour effective August 1, 2026. St. 2025, c. 14, §§ 49-50, 104-105. This represented the largest rate increase for bar advocates since *Lavallee*.¹⁰ The legislation also appropriated \$40 million to CPCS for the purpose of hiring 160 salaried PDD attorneys by the end of Fiscal Year 2026, and an additional 160 by the end of Fiscal Year 2027. St. 2025, c. 14, § 2A, line item 0321-1599.¹¹

⁹ The relevant testimony is available at <https://www.publiccounsel.net/wp-content/uploads/2025/05/Final-FY26-Budget-Testimony-5.23.25.pdf>.

¹⁰ In *Lavallee*, this Court noted that there had been “little change” in bar advocates’ pay rates (then \$30/hour for district court cases) since 1986. 442 Mass. at 229-30. Shortly thereafter, the Legislature acted to raise hourly rates. *See* St. 2005, c. 54, § 2 (raising rates to \$50/hour). *See also* St. 2015, c. 46, § 119 (\$53/hour); St. 2021, c. 24, § 61 (\$60/hour); St. 2022, c. 126, § 98 (\$65/hour).

¹¹ The legislation further provides that “[a]n agreement between private bar advocates to refuse to compete for or accept new appointments or assignments unless the rates of pay under this section are increased shall be evidence of” an antitrust (footnote continued)

V. Recent Judge-Imposed Rate Increases.

On five occasions since the institution of the *Lavallee* protocol, a district court judge has, in the course of *Lavallee* release hearings, ordered that an increased compensation rate (\$100/hour) be paid to individual bar advocates who agreed to take on representation of particular indigent defendants. RA:382, 389, 394, 399, 404.

In ordering these rate increases, the district court judge issued five largely-identical orders stating: “Neither *Lavallee* nor *Carrasquillo*, nor Justice Wendlandt’s order [imposing the protocol,] forecloses a Court from ordering an increase in pay for defense counsel when the other two branches of government have failed to act in order to ensure a defendant’s rights are not violated.” *Id.* The judge

violation; that CPCS “shall require all contractual agreements for the appointment of private counsel to prescribe requirements for the minimum coverage and availability to be required for private counsel” and to be renewed biannually; and that the Inspector General, by June 2026, shall prepare a report that includes “(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.” St. 2025, c. 14, §§ 48-49, 82.

also ordered that “[b]illing for services provided under this order are to be sent to [CPCS].” *Id.*

After these orders issued, CPCS was able to find counsel for all five defendants at the \$100/hour rate. RA:290, 292, 294-96.

SUMMARY OF THE ARGUMENT

This Court should answer the reported question in the negative, and conclude that judges cannot, consistent with the separation of powers, increase bar advocates’ hourly compensation rates beyond those established by the Legislature. This holding should apply to all judges, including this Court, the Single Justices thereof, and individual trial court judges. Because the Legislature has exclusive power to set bar advocates’ statutory compensation rates and to appropriate funds, judicial rate-setting would necessarily violate art. 30 of the Massachusetts Declaration of Rights. The power of the purse is the quintessential legislative power, and judicial rate-setting would impermissibly interfere with that core legislative power, which is “the essence” of what this Court’s art. 30 cases forbid. Pp. 25-39.

If this Court disagrees that judicial rate-setting is never appropriate, however, it should hold that attorney compensation rates inconsistent with those set by the Legislature may be ordered only by the full SJC, or perhaps a Single Justice thereof. Pp. 39-42. Further, it should hold that any increases to bar advocates’ compensation

rates must be implemented across-the-board for all bar advocates, pp. 42-45, only temporarily pending legislative action, p. 46, and not in the wake of existing legislative action, pp. 47-51. Where, as here, the Legislature has already increased bar advocates' compensation rates and, more broadly, begun to restructure the system of indigent criminal defense in Massachusetts, judicial intervention is particularly inappropriate. Pp. 47-51.

Finally, this Court should deny CPCS's requests for modification of the *Lavallee* protocol. These requests fall outside the scope of the reported question, and in any event are contrary to this Court's precedent. Pp. 51-55.

ARGUMENT

I. Judge-Imposed Compensation Rate Increases Would Violate the Separation of Powers.

The Courts agree with CPCS that the right to the assistance of counsel in a criminal proceeding is a fundamental constitutional right, and that the duty to provide counsel to indigent criminal defendants lies squarely with the government. Br.20. The Courts do not agree, however, that this problem can or should be solved by permitting judges to raise bar advocates' rates of pay, because such judicial rate-setting would violate the separation of powers.

A. The Legislature Has Exclusive Power to Set Bar Advocates' Statutory Compensation Rates.

Judge-imposed compensation rate increases, regardless of whether they are ordered by this Court, the Single Justice, or any individual judge in any lower court, would necessarily encroach upon the Legislature's role as the "representative branch in charge of making laws and appropriating funds." *Carrasquillo*, 484 Mass. at 393 (citation omitted). *See also Lavallee*, 442 Mass. at 241 ("The power to direct the spending of State funds is a quintessential prerogative of the Legislature.") (citation omitted); *Bromfield v. Treasurer & Receiver General*, 390 Mass. 665, 670 n.9 (1983) ("The power to appropriate money of the Commonwealth is a legislative power" that "can be exercised only by the General Court and in the particular manner prescribed") (citation omitted); art. 63 of the Massachusetts Constitution (describing budgeting/appropriation process as involving Legislature and Governor, without reference to judiciary).

Therefore, if this Court were to conclude that judges are authorized, in any circumstance, to order compensation rates inconsistent with those defined by statute, its holding would conflict with the Massachusetts Declaration of Rights, which states that the judiciary "shall *never* exercise the legislative and executive powers, or either of them." Art. 30 of the Massachusetts Declaration of Rights (emphasis added). *See also Commonwealth v. Gonsalves*, 432 Mass. 613, 619 (2000) ("The essence of what

cannot be tolerated is the creation of interference by one department with the power of another department.”) (citation omitted); *Bromfield*, 390 Mass. at 668, 670 n.9 (although the Commonwealth is constitutionally required to provide compensation for land seized through eminent domain, “[o]bviously, this court cannot compel . . . an appropriation [for such payment] without violating art. 30”). Such a holding would also upset the delicate balance that exists among the branches of government, which must necessarily work together—each fulfilling its own role—to address problems such as the one presented by the ongoing attorney work stoppage. *See, e.g., Lavallee*, 442 Mass. at 245 (encouraging “all branches” to “work diligently and cooperatively to implement our decision in a manner that safeguards the public’s interests”).

To be sure, this Court has noted that “some overlap” of the legislative, judicial, and executive functions is “inevitable,” and that “absolute division of the three general types of functions is neither possible nor always desirable.” *Gray v. Commissioner of Revenue*, 422 Mass. 666, 671 (1996) (quotations and citation omitted). The Court’s focus, therefore, is on “the essence of what cannot be tolerated under art. 30,” *i.e.*, “interference by one department with the functions of another.” *Id.* (citation omitted). So, for example, the Legislature would impermissibly interfere with the judicial function if it were to “restrict or abolish a court’s inherent

powers,” or “reverse, modify, or contravene a court order.” *Id.* See also, e.g., *K.J. v. Superintendent of Bridgewater State Hosp.*, 488 Mass. 362, 370-71 (2021) (statute authorizing Commissioner of Correction to override judicial civil commitment orders violated art. 30). Likewise, it is hard to imagine a more fundamental power of the legislative branch than the power to make appropriations. See, e.g., *Bromfield*, 390 Mass. at 670 n.9.

The Court may neither appropriate money itself nor order the Legislature to do so. See *id.*; *Hancock v. Commissioner of Educ.*, 443 Mass. 428, 467 (2005) (Cowin, J., concurring) (where “the remedy for an alleged deprivation would require a court to order the Commonwealth to spend money that the Legislature has not appropriated, judicial intervention is not permitted”).¹² And any appropriations made by the Legislature would need to be drawn from elsewhere in the Commonwealth’s already-stretched budget,¹³ implicating the Legislature’s

¹² Indeed, the Legislature must make annual decisions with respect to the amount of money to be appropriated for bar advocate compensation, regardless of even its own prior laws and appropriations. See *Town of Milton v. Commonwealth*, 416 Mass. 471, 474 (1993) (“one Legislature may not bind a successor Legislature (or even itself) to make an appropriation”).

¹³ Here, across-the-board rate increases would require the Legislature to appropriate many millions of dollars for the compensation of bar advocates, in addition to the many millions already appropriated in the recent supplemental budget. As discussed further below, this is one reason that the current situation is vastly different from the

(footnote continued)

constitutional and statutory duty to pass and maintain a balanced budget. *See* art. 63 of the Massachusetts Constitution (special appropriation bills “shall provide the specific means for defraying the appropriations therein contained”); G.L. c. 29, § 6E (“The governor shall recommend, the general court shall enact and the governor shall approve a general appropriation bill which shall constitute a balanced budget for the commonwealth. No supplementary appropriation bill shall be approved by the governor which would cause the state budget for any fiscal year not to be balanced.”). The discharge of these obligations requires balancing complicated policy and financial considerations—considerations that rest with the Legislature and not the judiciary.¹⁴

In recognition of these separation-of-powers principles, in both *Lavallee* and *Carrasquillo*, this Court declined to raise the statutory compensation rates for bar

\$86 spent by the court on a tape recorder and tapes in *O’Coin’s, Inc. v. Treasurer of Worcester County*, 362 Mass. 507, 508 (1972).

¹⁴ It is telling that, although CPCS advocates for this Court to raise bar advocates’ rates, nowhere does it take a position on what *particular* rate would, in its view, be constitutionally adequate. The same was true at the time that CPCS filed its Emergency Petition. *See* RA:40 (asking Single Justice 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”). This omission is an implicit concession that any decision about appropriate compensation rates is laden with policy and financial implications, which neither CPCS nor the judiciary is best equipped to address.

advocates, and instead encouraged the Legislature to formulate a solution to the counsel shortage. *See Lavallee*, 442 Mass. at 243-44 (noting that the Legislature is “the representative branch in charge of making laws and appropriating funds” and urging “cooperation” from the Legislature in fashioning a “permanent remedy”); *Carrasquillo*, 484 Mass. at 393 (deferring to Legislature “to determine the best approach to increase compensation rates for bar advocates”).

Likewise, when initially presented with CPCS’s Emergency Petition requesting a temporary rate increase for bar advocates, RA:40-41, the Single Justice denied the request without prejudice, reasoning that the Court’s “‘inherent power to ensure the proper operations of the courts and protect them from impairment resulting from a lack of supporting personnel’” is a “‘duty which must be borne responsibly,’ and ‘with due consideration for the prerogatives of the executive department and the Legislature, whenever the exercise of an inherent judicial power would bring [the Court] near the sphere of another department.’” RA:210; A:85 (quoting *Carrasquillo*, 484 Mass. at 394 (quoting *O’Coin’s, Inc. v. Treasurer of Worcester County*, 362 Mass. 507, 515-16 (1972))). *See also id.* (“‘defer[ring] to the Legislature’s authority, as the governmental branch vested with the power to make laws and appropriate funds, to devise an appropriate solution,’ and to choose the best policy course for resolving the systemic issue described herein”) (quoting

Carrasquillo, 484 Mass. at 370-71). Shortly thereafter, as further described in Section II(D) below, the Legislature acted—consistent with its constitutional role—to address the attorney shortage, including by increasing bar advocates’ hourly rates and by appropriating funding for CPCS to hire additional staff attorneys. This Court should not second-guess the Legislature’s chosen policy course.

B. The Cases Cited by CPCS Do Not Support Its Arguments in Favor of Judge-Imposed Rate Increases.

CPCS’s argument that courts are authorized to raise bar advocates’ compensation rates, despite the principles outlined above, depends largely on out-of-context citations to six cases. Each is inapposite.

In *Commonwealth v. O’Brien*, this Court considered whether it has authority under G.L. c. 211, § 3, to “order the reassignment of judges,” and concluded that “[r]emoval of a judge from a case is a serious matter that falls squarely within our broader inherent common law and constitutional powers to supervise the administration of justice.” 432 Mass. 578, 583 (2000) (quotations and citation omitted). *O’Brien* therefore implicated the operation and administration of the courts, and not funding, policymaking, or other roles reserved for the Legislature.

In *Michaud v. Sheriff of Essex County*, this Court considered whether certain sanitary conditions at a jail violated the Eighth Amendment to the United States Constitution and art. 26 of the Massachusetts Declaration of Rights. *See* 390 Mass.

523, 524 (1983). In concluding that they did, this Court rejected the defendant’s argument that the existing conditions—which violated regulations governing confinement—were defensible because the defendants “had difficulty raising revenues to install plumbing.” *Id.* at 531-32. But at no point did this Court require the legislative appropriation of any money in connection with its decision, nor did it require any expenditures inconsistent with existing law. To the contrary, the holding was consistent with existing regulations. *Contrast* G.L. c. 211D, § 11(a) (setting specific compensation rates for bar advocates). *See also Gonsalves*, 432 Mass. at 619 (“Of course, any attempt by this court to compel the Legislature to make a particular appropriation . . . would violate art. 30.”).

In *Bates v. Director of Office of Campaign & Political Finance*, which arose out of an initiative petition voted into law by the citizens of Massachusetts, this Court held that so long as a law enacted by way of voter initiative has not been repealed, the Massachusetts Constitution requires that the Legislature appropriate the funds necessary to its operation. 436 Mass. 144, 148, 155 (2002). The Court’s holding was based on the “plain and unambiguous” language of art. 48 of the Massachusetts Constitution, which provides that, “if a law approved by the people is not repealed, the general court *shall raise by taxation or otherwise and shall appropriate* such money as may be necessary to carry such law into effect.” *Id.* at 146, 148 (emphasis

added). And, it bears mentioning that the case concerned an initiative petition, where the *people* are performing the legislative function in accordance with the State Constitution, instead of a separate branch of government interfering with that function.

CPCS cites to no analogous constitutional language in support of its argument that judges may order bar advocate compensation rates inconsistent with those enacted by the Legislature. Instead, CPCS suggests that, because bar advocates have not returned to work despite recent increases to their pay rates, those rates must themselves be unconstitutional. *See, e.g.*, Br.9, 17-19, 26-30. This is a far cry from the unambiguous constitutional language cited in *Bates*. Moreover, even in *Bates*, this Court did not specifically order any particular expenditure. Rather, the Court stated that it was “confident that the Legislature will act to meet its constitutional responsibilities” by *itself* choosing among “available constitutional options,” including the option to appropriate funds in whichever manner it deemed appropriate, or the option to repeal the newly-enacted law altogether, thereby avoiding the need for appropriations. *Id.* at 164, 175-76. If this Court were to hold that judges may essentially rewrite the text of an existing statute by ordering increased compensation rates for bar advocates, it would venture far beyond *Bates*.

County of Barnstable v. Commonwealth arose out of the Legislature's decision not to appropriate full funding for the lease of certain courthouse facilities across various Massachusetts counties. *See* 410 Mass. 326, 327 (1991). The counties filed a complaint requesting that this Court, pursuant to G.L. c. 211, § 3, exercise its "supervisory power to order the Commonwealth to pay the full amount of rent owed or, in the alternative, to require the judiciary to vacate that portion of the space leased for which it has not paid." *Id.*

This Court denied the requested relief, reasoning that "oversight of the public fisc is a responsibility that, in the normal scheme of things, is within the Legislature's sole province," and that, in these circumstances, "the Legislature implicitly has determined that partial funding for courthouse facilities is to come from the counties." *Id.* at 335. The Court further held that only in circumstances where "one or more counties are or will become financially incapable of continuing to provide these facilities without adequate State reimbursement," such that "the legislative underfunding of the rental account may threaten the continued viability of the judicial branch of government," would the SJC be "obliged to intervene." *Id.* at 329-30. *See also id.* at 330 ("When the funds provided for the judicial branch are not enough to maintain a minimally adequate court system, the judiciary has the power to order the provision of such funds, with or without legislative appropriation.").

Although the scale and impact of the current counsel shortage should not be understated, no party has suggested that it has eroded the Commonwealth's ability to "maintain a minimally adequate court system." *Id.* at 330. Rather, the Courts have consistently maintained their obligation to conduct the hearings required by *Lavallee* and *Carrasquillo*, which contemplated the unfortunate reality that attorney shortages may recur and therefore devised a system for addressing their implications.

O'Coin's, the case cited most frequently by CPCS, *see* Br.9, 24, 25, 36, involved a court's purchase, from a retail appliance store, of a single tape recorder and three tapes for the total sum of \$86. *See* 362 Mass. at 508. This purchase survived a separation-of-powers challenge because the purchased recording technology was essential to the operation of a county's criminal proceedings. *See id.* at 517 ("Clearly, the purchase of a tape recorder and tapes was warranted where the only alternative to purchase was to suspend the criminal sitting indefinitely until a stenographer could be obtained."). The purchase of a few affordable items—without which the operation of a court would come to a halt—is in no way analogous to across-the-board increases of hourly compensation rates paid to bar advocates. *See County of Barnstable v. Commonwealth*, 422 Mass. 33, 46 (1996) (noting that the *O'Coin's* decision is "instructive" because it "establishes that an exercise of inherent power is proper when, by means of a *relatively minor expenditure*, the

indefinite suspension of a criminal court session is avoided”) (emphasis added). Moreover, in *O’Coin’s*, the separation-of-powers challenge was based on “the *absence* of a clearly applicable statute,” and not the existence of a clearly contrary one. 362 Mass. at 510 (emphasis added).

And *First Justice of the Bristol Div. of the Juvenile Court Dep’t v. Clerk Magistrate of the Bristol Div. of the Juvenile Court Dep’t*, which CPCS cites for one passing statement—that the “scope of inherent judicial authority reaches beyond traditional adjudicatory powers and encompasses (but is not limited to) the court’s power to commit the fiscal resources of the Commonwealth and other governmental agencies necessary to ensure the proper operation of the courts,” Br.25—cites only *O’Coin’s* for this general proposition, and in no way suggests that the judiciary may act inconsistently with existing law or the separation of powers. *See* 438 Mass. 387, 397 (2003). Regardless, *Bristol* did not involve any claim of judicial intrusion into the role of the Legislature. *See id.* at 388 (considering whether certain statutes enacted by the Legislature, rather than any acts of the judiciary, were unconstitutional).

CPCS also cites certain out-of-state cases to argue that, because other state courts have found attorney-compensation schemes unconstitutional in certain limited circumstances, this Court should do the same here. *See* Br.27 (citing *Arnold*

v. Kemp, 306 Ark. 294 (1991); *State v. Lynch*, 796 P.2d 1150 (Okla. 1990); *People ex rel. Conn v. Randolph*, 35 Ill. 2d 24 (1966); *Knox County Council v. State ex rel. McCormick*, 217 Ind. 493 (1940)). These decisions are not binding, and therefore need not be followed—particularly given the on-point precedent set by this Court in *Lavallee* and *Carrasquillo*. Cf. *Raytheon Co. v. Commissioner of Revenue*, 455 Mass. 334, 342-45 (2009) (declining to follow other state courts’ interpretations of similar statutory language, where those courts had adopted different approach to statute than had the SJC). All of CPCS’s cited cases were decided years prior to *Lavallee*, and were therefore available to this Court when it considered whether to raise rates in *Lavallee* and *Carrasquillo*. The Court declined to do so then, and it should decline to do so now. See, e.g., *Lavallee*, 442 Mass. at 242 (acknowledging *Lynch*, among other out-of-state cases, before declining to raise rates).

But even considered on their merits, the out-of-state cases are distinguishable. In *Knox*, the court concluded that it was unconstitutional for an attorney to receive *no compensation whatsoever* for representing an indigent criminal defendant. See 217 Ind. at 511 (“members of the bar may not be compelled to defend or assist in prosecution without compensation”). This Court has already held, decades ago and consistent with *Knox*, that court-appointed attorneys are entitled to financial

compensation from the government. *Abodeely v. County of Worcester*, 352 Mass. 719, 722-24 (1967).

And in *Arnold*, *Lynch*, and *Randolph*, out-of-state courts considered the constitutionality of statutes establishing inflexible “caps” on the total amount an attorney could earn in connection with a single case, concluding that such caps were unconstitutional when they were drastically out of sync with the amount of time, effort, and funds expended. *See Lynch*, 796 P.2d at 1153-56 (“maximum statutory fee of \$3,200.00” was “inadequate” to compensate lawyers who had spent approximately 280 hours on first-degree murder case); *Arnold*, 306 Ark. at 304 (\$1,000 fee capped by statute was “wholly inadequate” for “serious, complex criminal litigation”); *Randolph*, 35 Ill. 2d at 30 (although \$500 statutory cap on fees and costs “is not unconstitutional on its face,” it is unconstitutional where “appointed counsel cannot continue to serve because they are suffering an extreme, if not ruinous, loss of practice and income and must expend large out-of-pocket sums in the course of trial”). The Massachusetts Legislature has not established a compensation “cap,” but rather an hourly rate ensuring that compensation is commensurate with time spent. *See* G.L. c. 211D, § 11(a). Moreover, the Legislature has created a graduated compensation scheme which ensures that lawyers who handle the most complex cases are compensated at a higher rate. *See, e.g., St.*

2025, c. 14, § 49 (homicide cases compensated at \$130/hour). Accordingly, none of these cases supports CPCS's argument that judge-imposed rate increases are constitutionally permissible here.

II. If Judge-Imposed Rate Increases Were Ever Appropriate, They Would Need to Be Ordered by the SJC or Perhaps a Single Justice Thereof, Apply Across-the-Board, Be in Effect Only Temporarily, And Not Second-Guess Existing Legislative Action.

For the reasons stated above, this Court should answer the reported question in the negative, and hold that under no circumstances may judges, consistent with the separation of powers, order compensation rates beyond those provided in G.L. c. 211D, § 11(a).

If this Court disagrees, however, and determines that judge-imposed rate increases can be appropriate in certain exceptional circumstances, it should hold that: (1) only the SJC, or perhaps a Single Justice thereof, is authorized to order rate increases inconsistent with those enacted by the Legislature; (2) any rate increases must apply across-the-board to all bar advocates; (3) any rate increases must be in effect only temporarily, until the Legislature can devise a more permanent solution; and (4) rate increases may not follow where, as here, the Legislature has already acted.

A. If Any Court Can Order Increased Compensation Rates for Bar Advocates, It Must Be the SJC, or Perhaps a Single Justice Thereof.

Because it is the SJC that has “general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided,” G.L. c. 211, § 3, any judicial action raising the compensation rates of bar advocates should be taken only by this Court.¹⁵ *Cf. Fadden v. Commonwealth*, 376 Mass. 604, 608 (1978) (SJC cannot “delegate [its] power of general superintendence”). This conclusion is generally consistent with CPCS’s own arguments, which rely in substantial part on this Court’s superintendence powers. *See, e.g.*, Br.17, 21-22, 24, 28.

Further, if this Court holds that it can ever increase compensation rates beyond those set by statute, it should also hold that its superintendence power permits this only where rate increases are essential to the continued operation of the courts (*i.e.*, if and when a constitutional crisis results in the judiciary’s inability to perform its

¹⁵ Although the Single Justice is authorized to exercise the superintendence powers described in G.L. c. 211, § 3, the Courts respectfully suggest that if this Court is inclined to hold—over the Courts’ objection—that judges can raise compensation rates, any rate increase associated with the pending case should be considered by the full Court. Where this Court has twice declined to raise bar advocates’ compensation rates, it would be incongruous for a Single Justice to now do so unilaterally. And given the momentous impact that such action would have on the entire criminal-justice system, the Courts respectfully suggest that any further rate increase for bar advocates should reflect the considered judgment of the full SJC.

key functions). *See, e.g., County of Barnstable*, 410 Mass. at 329-30 (only where “legislative underfunding . . . may threaten the continued viability of the judicial branch of government” is the SJC “obliged to intervene”); *id.* at 330 (“When the funds provided for the judicial branch are not enough to maintain a *minimally adequate* court system, the judiciary has the power to order the provision of such funds, with or without legislative appropriation.”) (emphasis added); *O’Coin’s*, 362 Mass. at 517 (court’s purchase was warranted in “emergency” circumstances “where the only alternative . . . was to suspend the criminal sitting indefinitely”).

These exceptional circumstances do not exist here. Although there is no dispute that the scale of the ongoing counsel shortage is deeply concerning, there is also no argument (from CPCS or otherwise) that the Respondent Courts have been unable to maintain a “minimally adequate” or “viable” court system.¹⁶ Therefore, even based on the case law cited by CPCS, the present situation should not trigger this Court’s exercise of its superintendence powers. Indeed, though all parties agree that the *Lavallee* protocol cannot, by itself, end the counsel shortage, *see*

¹⁶ Indeed, a substantial contributing factor to the defense counsel shortage has been a work stoppage—wherein a significant number of bar advocates have not appeared for duty days despite recent legislative action increasing their pay rates—rather than any deficiency inherent in the operation of the Courts. *Compare Carrasquillo*, 484 Mass. at 391 (noting that CPCS and some *amici* suggested changes to the operation of the Springfield District Court to remedy the counsel shortage).

Carrasquillo, 484 Mass. at 391 (*Lavallee* is “not a panacea for solving the underlying shortage of defense counsel”), that protocol is designed to address the constitutional violations that stem from the shortage, to allow courts to continue operating as efficiently as practicable, and to facilitate the prioritization of the most serious cases. *See Walsh v. Commonwealth*, 485 Mass. 567, 575-76 (2020) (*Lavallee* protocol serves to “triage assignments so as to provide counsel to those accused of the most serious crimes”). The *Lavallee* protocol therefore serves to address the constitutional impacts of the counsel shortage, while recognizing the limits of judicial authority and preventing the need for more drastic judicial action violative of the separation of powers.

B. Any Increases to Bar Advocates’ Compensation Rates Must Be Implemented Across-the-Board.

Assuming that it were ever permissible for judges to increase bar advocates’ compensation rates, such increases should occur *only* if they apply across-the-board to all bar advocates. Any alternative system allowing rates to be increased on a case-by-case basis would result in inconsistent pay rates for attorneys performing the same work. This would create perverse incentives for bar advocates to hold off on accepting appointments until they could obtain additional compensation from a judge, or to accept duty days only in those counties where rate increases were being ordered. *Cf.* RA:290, 292, 294-96 (CPCS was able to find bar-advocate

representation for five defendants only after compensation rates were raised to \$100/hour for their individual cases). Such a result would inevitably interfere with defendants' constitutional right to the prompt appointment of counsel.

Moreover, allowing judges to increase pay rates for individual cases would introduce substantially more variance into a process that should, consistent with the universal right to counsel in certain criminal cases, be as uniform as possible. *See Carrasquillo*, 484 Mass. at 393 n.37 (observing that “piecemeal regional or temporary solutions may not be sufficient to avoid future instability in providing counsel for indigent defendants,” and noting that CPCS’s temporary rate increase in Hampden County created risk of shortages in surrounding counties).

In asserting that trial court judges have authority to raise compensation rates in some “exceptional individual cases,” CPCS relies on the fact that “this Court has acknowledged that a trial court judge has the authority, in an individual case, to release an unrepresented defendant or dismiss the case of an unrepresented defendant if constitutionally required in that case.” Br.32-33 (citing *Carrasquillo*, 484 Mass. at 391). But one does not “follow[]” from the other. Br.33. Evaluating whether the constitutional rights of an individual defendant require release or dismissal is a standard judicial function, and does not—like rate-setting—implicate the quintessential functions of the Legislature.

In further support of its argument, CPCS cites to the fact that “[h]istorically, the trial courts have had the authority to appoint counsel where constitutionally required,” and to “approve compensation for court-appointed counsel.” Br.33-34. This is a curious argument for CPCS to make, since it would undoubtedly object strenuously—as it did in *Carrasquillo*, see 484 Mass. at 378-79, 383-87—to judges appointing particular counsel in particular cases, instead of appointing CPCS to a case, and then allowing CPCS to assign a particular lawyer. Indeed, CPCS’s own brief reflects its awareness that such a system would be neither desirable nor constitutionally appropriate. See Br.36-37 (permitting judges to appoint counsel directly would harm the quality of representation, decrease monitoring and performance standards, threaten CPCS’s independence, and risk a return to judicial patronage). And in any event, each of the cases cited by CPCS for this proposition precedes the creation of CPCS, which—as CPCS itself acknowledges—now has “sole and independent authority to assign counsel for indigent criminal defendants,” subject to the compensation rates outlined in G.L. c. 211D, § 11(a). Br.34-35 (quotation omitted). Accordingly, CPCS’s reliance on a now-outdated system is neither relevant nor persuasive.

Nor is it persuasive for CPCS to rely on G.L. c. 213, § 8, which states that the SJC and the Superior Court “shall, respectively, receive, examine and allow accounts

for services and expenses incident to their sittings and order payment thereof out of the state treasury.” As a preliminary matter, this statute does not apply to the Respondent Courts (all of which are District Courts and divisions of the Boston Municipal Court Department). And more broadly, it pertains to the payment of regular expenses associated with court business, and does not contemplate payment of an increased rate inconsistent with G.L. c. 211D, § 11(a).

CPCS’s final argument is that, although judges must generally assign cases to CPCS, there are “exceptional circumstances” where SJC Rule 3:10(6) “permits a trial judge to utilize a different procedure to appoint counsel.” Br.35. CPCS relies on this language to assert that, if alternative appointment schemes are possible, so are alternative payment schemes. *Id.* This argument fails to mention, however, that Rule 3:10(6) expressly requires that the “different procedure” be “consistent with G.L. c. 211D.” Because increasing bar advocates’ compensation rates would be plainly inconsistent with G.L. c. 211D, § 11(a), this argument also fails.

Accordingly, to the extent that this Court is inclined to hold that the SJC or a Single Justice thereof is authorized to order rate increases in exceptional circumstances, it should also hold that any such rate increases must apply to all bar advocates accepting representation.

C. Any Increases to Bar Advocates' Compensation Rates Must Be Implemented Only Temporarily, Pending Legislative Action.

Further, if this Court concludes that this Court or a Single Justice thereof may order increased compensation rates, it should also hold that these compensation rates can be in effect only temporarily, to allow the Legislature time to devise a permanent solution. This “stop-gap” approach acknowledges that the power to set compensation rates lies with the Legislature, while simultaneously allowing this Court to act if necessary to address constitutional crises threatening the fundamental operations of the courts.

This approach is also consistent with the relief requested by CPCS in its own Emergency Petition, and with the relief ordered in its own cited case. *See* RA:41 (“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,” and therefore seeks a rate increase that “would be in effect only for as long as it takes for the Legislature to devise a long-term solution.”); *Lynch*, 796 P.2d at 1158, 1161 (noting that “[p]roviding for adequate funding for indigent representation is a matter for legislative action” and “invit[ing] legislative attention to this problem,” while simultaneously providing guidelines to operate “in the interim”); *id.* at 1164 (Hodges, J., concurring) (“today’s decision is merely a stopgap measure”).

D. Even if Judicial Intervention Were Ever Appropriate, It Would Not Be Appropriate Where, As Here, the Legislature Has Already Acted.

One month after the Single Justice issued her Order declining to raise bar advocates' hourly rates, RA:210; A:85, the Legislature—consistent with its constitutional role—passed legislation that increased bar advocates' compensation and made other important changes to indigent criminal representation in the Commonwealth, all in an effort to end the counsel shortage precipitated by the bar-advocate work stoppage. Given that the Legislature has already begun to exercise its constitutional role to address the present situation, judicial intervention would be particularly inappropriate here.

As stated, the Legislature raised bar advocates' compensation rates from \$65 to \$75/hour effective August 1, 2025, and from \$75 to \$85/hour effective August 1, 2026. St. 2025, c. 14, §§ 49-50, 104-105. CPCS's argument in this Court that these rates are "unconstitutionally low," Br.18, 25, is undermined by the fact that they are meaningfully higher than those for which CPCS *itself* advocated on March 28, 2025.¹⁷ Indeed, a \$20/hour rate increase over two years is substantially higher than any increase enacted by the Legislature since *Lavallee*. See n.10, *supra*.

¹⁷ See <https://www.publiccounsel.net/wp-content/uploads/2025/05/Final-FY26-Budget-Testimony-5.23.25.pdf>.

Simultaneously, the Legislature appropriated \$40 million to CPCS, earmarked for hiring 320 additional salaried attorneys over the course of two years—a step intended to reduce the system’s present reliance on private bar advocates for the vast majority of indigent criminal representation. *See* St. 2025, c. 14, § 2A, line item 0321-1599. *See also* St. 2025, c. 9, § 2, line item 0321-1500 (requiring only 20 percent of indigent clients to be represented by CPCS staff attorneys).¹⁸

The Legislature passed this supplemental budget in the midst of a difficult budgetary climate, and in the face of many competing fiscal demands, widespread funding cuts, and hiring freezes elsewhere in government.¹⁹ *See County of Barnstable*, 410 Mass. at 329 (“Allocation of taxpayer dollars, especially in times of

¹⁸ Although, in its supplemental appropriation, the Legislature did not change the line item requiring that not less than 20 percent of indigent defendants be represented by salaried CPCS attorneys, the substantial amount appropriated for CPCS to hire more public defenders suggests that the Legislature may take additional action in the future to increase the percentage of cases handled by salaried CPCS attorneys. *See* St. 2025, c. 14, § 2A, line item 0321-1599 (appropriating \$40 million for hiring additional public defenders); *see also, e.g., id.* § 82 (providing that Inspector General shall conduct “an analysis of the fiscal impact of increasing the proportion of indigent clients represented by public defenders on the total cost of indigent defense”). Indeed, the Legislature’s supplemental budget suggests that, although the Legislature believed it necessary to raise bar-advocate rates this year and next, it may be interested in other, structural and long-term solutions to the problem.

¹⁹ *See* <https://www.mass.gov/news/governor-healey-signs-609-billion-fiscal-year-2026-budget>.

limited fiscal resources, is the quintessential responsibility of the popularly-elected Legislature, not the courts.”).

The Legislature’s recent actions seeking to address the ongoing counsel shortage confirm that it is “keenly aware of the defendants’ constitutional right to counsel, and of the demands that right makes on the public treasury.” *Lavallee*, 442 Mass. at 243. Indeed, the recent legislation reflects policy choices made as a part of a multi-faceted budgetary process; in appropriating finite state resources, the Legislature is acutely aware of the current budgetary climate and the many competing demands for state funding. In addition, the supplemental budget reflects the Legislature’s continued assessment of the challenges associated with the representation of indigent criminal defendants, and its recognition that a long-term solution may require additional salaried CPCS counsel. *See, e.g.*, St. 2025, c. 14, § 2A, line item 0321-1599 (funding to hire additional public defenders); *id.* § 82 (Inspector General to prepare report assessing current system of indigent criminal representation).

Second-guessing the approach selected by the branch of government best positioned to choose among various policy and financial options would be inconsistent with the requirement that “the limitations of art. 30 . . . be scrupulously observed.” *Gonsalves*, 432 Mass. at 619. *See also Lavallee*, 442 Mass. at 243-44

(noting that, although the Legislature’s chosen response—at that time, “augmenting the public counsel division” rather than raising compensation rates for private bar advocates—might not immediately address the problem, the approach was “one that [was] properly and plainly within its prerogative” as the branch responsible for “exercis[ing] prudence and flexibility in choosing among competing policy options to address the rights of indigent defendants to counsel”).

And although it remains to be seen whether the increased hourly rates will suffice to bring enough bar advocates back into courtrooms,²⁰ CPCS notes some positive developments since the legislation went into effect. *See, e.g.*, Br.16 (“The number of unrepresented defendants being reported to CPCS by the courts on a weekly basis has been decreasing over the past few weeks, presumably because more bar advocates are accepting assignments at arraignment.”); *id.* (“The duty day calendars for Middlesex County have improved slightly since the increased

²⁰ It is possible that some bar advocates are choosing to continue the work stoppage not because the legislative response was insufficient, but rather because there remains the prospect that this Court will order further increased rates. An unequivocal holding that judges may not order rate increases inconsistent with G.L. c. 211D, § 11(a), would address this possibility, and would prevent bar advocates from holding out for solutions inconsistent with the separation of powers. And relatedly, given the layered policy considerations underlying the ongoing work stoppage, it is not guaranteed that if this Court *were* to order a further rate increase, such increase would resolve the work stoppage. *See* RA:298 (“With respect to bar advocates’ intentions,” CPCS “cannot provide an update that would meaningfully assist the Court in determining what will happen going forward.”).

compensation rates went into effect,” and the “duty day calendars for Suffolk County have seen more improvement than those in Middlesex County”). Only time will tell whether such developments are lasting, and whether they are sufficient to mitigate or resolve the ongoing work stoppage. The Legislature—in the exercise of its constitutional role—is best positioned to evaluate these developments on an ongoing basis, and to determine its continuing response.

III. This Court Should Deny CPCS’s Requests for Modification of the *Lavallee* Protocol.

In addition to addressing the reported question regarding judge-imposed rate increases, CPCS requests that this Court “strengthen the *Lavallee* protocol to provide greater protections for unrepresented defendants.” Br.31. Specifically, CPCS requests: (1) that this Court reduce the presumptive time limits for the assignment of counsel “so that no indigent defendant is held under an order of preventive detention for more than *three* days without counsel and no defendant waits more than *thirty* days for counsel to file an appearance before the case is dismissed”; (2) that this Court require that “[a]t forty-five days or soon thereafter,” cases be dismissed “*with* prejudice”; and (3) in the alternative, if this Court “does not amend the *Lavallee* protocol to require dismissal with prejudice, the Court . . . order that no cases may be refiled or reopened upon motion until the single justice finds that a

defendant is likely to get counsel if the case is brought forward.” Br.32 (emphases added).

Because CPCS’s requests for modification of the *Lavallee* protocol fall far outside the scope of the reported question, this Court need not consider them. *Cf.* G.L. c. 211, § 6 (“Questions of law arising upon a trial or other proceeding . . . may be reserved for the consideration of the full court, and *so much of the case as is necessary for understanding the question* shall be reported”) (emphasis added); *Casey v. Massachusetts Elec. Co.*, 392 Mass. 876, 882 n.11 (1984) (where an issue was “not included among the questions reported by the judge,” it “need not be considered on appeal”). If, however, this Court is inclined to consider the substance of CPCS’s requests for modification of the *Lavallee* protocol, those requests should be denied.²¹

First, with respect to CPCS’s request to modify the timeframes for presumptive release (from seven to three days) and presumptive dismissal without prejudice (from forty-five to thirty days), this request is inconsistent with the specific timeframes established by *Lavallee*. Those timeframes were based on a careful

²¹ As stated below, the Courts do not take a position on CPCS’s third request, which relates to *when* prosecutors should be permitted to refile or reopen cases. The Suffolk County District Attorney’s Office is best positioned to address this question, if this Court is inclined to consider it.

analysis conducted by this Court to determine the point at which a release or dismissal hearing is constitutionally required despite the potential public safety consequences of releasing defendants who would otherwise remain held, or dismissing charges that would otherwise remain pending. *See Lavallee*, 442 Mass. at 246 (“Our duty is to remedy an ongoing violation of a fundamental constitutional right to counsel consistently with the government’s legitimate right to protect the public’s safety.”); *id.* at 246-47 (a seven-day limit on detention “recognizes the public’s strong interest in bringing serious criminals to justice swiftly, but it also recognizes society’s vital interest in the fair conduct of criminal proceedings”); *id.* at 246 (“no defendant entitled to court-appointed counsel may be required to wait more than forty-five days for counsel to file an appearance, a period of time that approximates the outer limits contemplated by the rules of criminal procedure for the completion of discovery and making decisions about specific defenses in routine cases where counsel is actively involved”).

Moreover, shortening the timeframes for release or dismissal alone would do nothing to address the problems identified by CPCS, *i.e.*, that “[s]ome unrepresented defendants now find themselves in an interminable merry-go-round where charges come and go yet they have to keep coming back to court and remain subject to harsh pretrial conditions as their cases continue to go uninvestigated, witnesses’ memories

continue to fade, and physical evidence continues to disappear because there are still not enough attorneys willing to work at the current rates.” Br.31-32. Because CPCS’s request for shorter timeframes would require this Court to diverge from its own well-reasoned precedent, and would not serve to resolve the particular concerns identified by CPCS, it should be denied.

Second, with respect to CPCS’s request that cases be dismissed *with prejudice*, this request should be denied because it is plainly inconsistent with *Lavallee* and *Carrasquillo*, both of which describe dismissal *without* prejudice. *See Lavallee*, 442 Mass. at 246; *Carrasquillo*, 484 Mass. at 383. Moreover, because CPCS’s request would inhibit prosecutors’ ability to decide which cases to pursue, it should be denied as an improper attempt to interfere with the exercise of prosecutorial discretion. *See Cedeno v. Commonwealth*, 404 Mass. 190, 196-97 (1989) (“Prosecutors have wide ranges of discretion in deciding whether to bring criminal charges and in deciding what specific charges to bring.”).

CPCS’s final request—that prosecutors be barred from refiling or moving to reopen cases until the Single Justice finds that a defendant is likely to obtain counsel—was not contemplated by *Lavallee* or *Carrasquillo*, and implicates prosecutors’ discretion to determine *when* to file new charges or move to reopen cases dismissed under the *Lavallee* protocol. *Cf. Commonwealth v. Dame*, 473

Mass. 524, 534-35 & n.18 (2016) (prosecutorial discretion extends to timing of charges). The Courts take no position on this particular request (which, again, need not be addressed). To the extent that the Court is inclined to consider this proposal, the Suffolk County District Attorney's Office is best positioned to address it.

CONCLUSION

For the reasons set forth above, this Court should answer the reported question in the negative, and hold that judges may not order bar advocate compensation rates inconsistent with those set by the Legislature. In the alternative, this Court should conclude that only the SJC, in the exercise of its superintendence authority, can order compensation rates beyond those provided in G.L. c. 211D, § 11(a), and that it can only do so if rate increases apply across-the-board to all bar advocates, operate only temporarily, and do not follow existing action by the Legislature.

Respectfully submitted,

MIDDLESEX AND SUFFOLK COUNTY
DISTRICT COURTS AND BOSTON
MUNICIPAL COURT

By their attorneys,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

/s/ Marina Pullerits
Marina Pullerits, BBO No. 704163
Assistant Attorney General

Jennifer K. Zalnasky, BBO. No. 650762
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2968
Marina.Pullerits2@mass.gov

Dated: October 20, 2025

CERTIFICATE OF COMPLIANCE

I, Marina Pullerits, hereby certify that the foregoing brief complies with all of the rules of court that pertain to the filing of briefs, including, but not limited to, the requirements imposed by Rules 16 and 20 of the Massachusetts Rules of Appellate Procedure. The brief complies with the applicable length limit in Rule 20 because it contains 10,947 words in 14-point Times New Roman font (not including the portions of the brief excluded under Rule 20), as counted in Microsoft Word (Microsoft 365 Version 2502).

Marina Pullerits

Marina Pullerits

Assistant Attorney General

CERTIFICATE OF SERVICE

I, Marina Pullerits, hereby certify that this document, filed electronically on October 20, 2025, will be sent via email to:

Rebecca A. Jacobstein
Benjamin H. Keehn
Holly T. Smith
Committee for Public Counsel Services
75 Federal Street, 6th Floor
Boston, MA 02110
rjacobstein@publiccounsel.net
bkeehn@publiccounsel.net
hsmith@publiccounsel.net

Elisabeth Martino
David D. McGowan
Suffolk County District Attorney's Office
One Bulfinch Place
Boston, MA 02114
elisabeth.martino@mass.gov
david.mcgowan@mass.gov

/s/ Marina Pullerits
Marina Pullerits, BBO No. 704163
Assistant Attorney General

ADDENDUM

Orders

Reservation and Report (Sept. 18, 2025)	61
Order Implementing <i>Lavallee</i> Protocol (July 3, 2025).....	65

Statutes

G.L. c. 29, § 6E	90
G.L. c. 211, § 3.....	91
G.L. c. 211, § 6.....	93
G.L. c. 211D, § 1.....	94
G.L. c. 211D, § 5.....	97
G.L. c. 211D, § 6.....	98
G.L. c. 211D, § 11.....	100
G.L. c. 213, § 8.....	102

Session Laws

St. 2005, c. 54, § 2.....	103
St. 2015, c. 46, § 119.....	106
St. 2021, c. 24, § 61.....	108
St. 2022, c. 126, § 98.....	110
St. 2025, c. 9, § 2.....	112

St. 2025, c. 14, §§ 2A, 48-50, 82, 104-105.....	117
---	-----

Constitutional Provisions

Art. 30 of the Massachusetts Declaration of Rights	127
--	-----

Art. 48 of the Massachusetts Constitution.....	128
--	-----

Art. 63 of the Massachusetts Constitution.....	141
--	-----

Rules

Massachusetts Rule of Professional Conduct 6.1	143
--	-----

SJC Rule 3:10.....	150
--------------------	-----

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2025-0244

COMMITTEE FOR PUBLIC COUNSEL SERVICES

v.

MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS and another¹

INTERIM ORDER AND RESERVATION AND REPORT

This matter came before the court, Wendlandt, J., on the petition of the Committee for Public Counsel Services (CPCS), brought on behalf of unrepresented indigent criminal defendants with cases pending in the Middlesex and Suffolk County District Courts and in the Boston Municipal Court (Courts), which petition was filed on June 18, 2025. At the time CPCS filed the petition, it requested that, in light of the shortage of defense counsel, I order an increased rate of attorney compensation until the Legislature could devise a long-term solution. See Emergency Pet., No. SJ-2025-0244, Dkt. 2, at 9-11 (June 18, 2025). The Courts opposed this request. See Resp. to Emergency Pet., No. SJ-2025-0244, Dkt. 13, at 11-15 (June 25, 2025).

On July 3, 2025, following an evidentiary hearing at which each of the parties and the intervenor Suffolk County District

¹ The Boston Municipal Court.

Attorney (SCDA) agreed that the evidence, which was presented by affidavit and by live testimony, warranted the imposition in the Courts of the protocol described in Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 247-249 (2004), I ordered the imposition of the Lavallee protocol in the Courts. See Order, No. SJ-2025-0244, Dkt. 23, at 22 (July 3, 2025). In deference to the Legislature, however, I denied without prejudice CPCS's request to increase attorney compensation rates. See id. at 21.

The Legislature has since responded. On August 5, 2025, the Governor signed a supplemental budget package that provided for increasing the rate of attorney compensation for district court cases by \$20 per hour over the next two years and appropriating funds for the hiring of 320 additional CPCS staff attorneys over that same time period. See c. 14 of the Acts of 2025, §§ 2A, 48-50, 104-105.

Nevertheless, it is not clear from the record before me whether this legislation will cure the current shortage of defense counsel, and if so, on what timetable. The number of unrepresented indigent criminal defendants remains substantial. Consequently, on August 22, 2025, I ordered the parties, including the SCDA, to file briefs and a joint statement of undisputed facts addressing whether I should reserve and report to the full court the issue of the permissibility of judicial

rate setting. See Mem. of Decision & Order, No. SJ-2025-0244, Dkt. 47, at 22-24 (Aug. 22, 2025). I received those filings on September 15, 2025.

Upon review and consideration of those filings, I conclude that this case raises an important question of law, and I hereby reserve and report that question to the full court as follows for its determination: In light of the scope of the present shortage of available defense counsel in the District Courts of Middlesex and Suffolk County and in the Boston Municipal Court, whether and under what circumstances the Supreme Judicial Court, a single justice of the Supreme Judicial Court, or any justice of any trial court department is authorized to order increased compensation rates beyond those provided in G. L. c. 211D, § 11 (a), for attorneys accepting representation of indigent criminal defendants.² See G. L. c. 211, §§ 3, 6. See also Carrasquillo v. Hampden County Dist. Courts, 484 Mass. 367, 394 (2020) (noting "inherent power to ensure the proper operations of the courts").

The record shall consist of the following:

² In its Brief, filed on September 15, 2025, CPCS requested that I additionally reserve and report the question of whether a district court judge erred in declining to order the release of five defendants on the ground that CPCS had not made good faith efforts to obtain counsel for them. See Brief of CPCS, No. SJ-2025-0244, Dkt. 56, at 7 (Sept. 15, 2025). I hereby deny that request and decline to reserve and report that issue.

1. All papers filed before the single justice in this case as of the date of this reservation and report, including the Joint Statement of Undisputed Facts, filed in this case on September 15, 2025;
2. The docket sheet for this case; and
3. This reservation and report.

The matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure. CPCS shall be deemed the appellant, and the Courts and the SCDA shall be deemed the appellees.³ CPCS's brief shall be filed no later than October 2, 2025. The Courts' brief and the SCDA's brief shall be filed no later than October 17, 2025. CPCS's reply brief, if any, and any amicus briefs, shall be filed no later than October 24, 2025. Enlargements of time should not be anticipated. Oral argument shall take place in November 2025.

By the court,

/s/ Dalila Arguez Wendlandt

Dalila Arguez Wendlandt
Associate Justice

Dated: September 18, 2025

³ In their Memorandum of Law, filed on September 15, 2025, the Courts renew their earlier request that I invite the relevant bar advocate organizations, Middlesex Defense Attorneys, Inc., and Suffolk Lawyers for Justice, to intervene or otherwise participate in this case. See Courts' Mem. of Law, No SJ-2025-0244, Dkt. 54, at 4-5 n.1 (Sept. 15, 2025). I hereby deny that request.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2025-0244

COMMITTEE FOR PUBLIC COUNSEL SERVICES

v.

MIDDLESEX AND SUFFOLK COUNTY DISTRICT COURTS and another¹

ORDER

This matter came before the court, Wendlandt, J., on the petition of the Committee for Public Counsel Services (CPCS), brought on behalf of unrepresented indigent criminal defendants in Middlesex and Suffolk Counties and filed on June 18, 2025. The petition sought relief pursuant to G. L. c. 211, § 3. Specifically, it sought the implementation of the protocol described in Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 247-249 (2004) (the Lavallee protocol),² in the

¹ The Boston Municipal Court.

² In Lavallee v. Justices in the Hampden Superior Court, 442 Mass. 228, 246-249 (2004), the full court established a protocol to protect the rights of indigent criminal defendants when a shortage of available attorneys interferes with the prompt appointment of defense counsel to represent those defendants. First, the full court established presumptive time limits for the assignment of counsel. Id. at 246 ("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 "no defendant entitled to court-appointed counsel may be required to wait more than forty-five days for counsel to file an appearance"). Second, the full court outlined a system

Middlesex and Suffolk County District Courts and in the Boston Municipal Court (Courts), and further, it asked this court to impose increased compensation rates for attorneys representing indigent criminal defendants.

For the reasons set forth infra, I conclude that "despite good faith efforts by CPCS and the local bar advocate organization[s], 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 v. Hampden County Dist. Courts, 484 Mass. 367, 390-391 (2020). As requested in the petition, this order imposes the Lavallee protocol on the Courts and provides conditions for the ongoing monitoring of the shortage of counsel. See Lavallee, 442 Mass. at 247-249. I deny without prejudice CPCS's additional request that I set rates of compensation for counsel representing indigent defendants.

Background. "CPCS is responsible for 'plan[ning], oversee[ing], and coordinat[ing] the delivery of criminal and certain noncriminal legal services by salaried public counsel,

for implementing these time limits, subject to further refinement. Id. at 247-248 (discussing, inter alia, designated judge's obligation to schedule prompt status hearing for each unrepresented indigent defendant who has been held in pretrial detention for more than seven days, or whose case had been pending for more than forty-five days).

bar advocate and other assigned counsel programs and private attorneys serving on a per case basis' on behalf of indigent criminal defendants and other litigants who are entitled to counsel." Carrasquillo, 484 Mass. at 373, quoting G. L.

c. 211D, § 1. CPCS's public defender division (PDD) "provides salaried staff attorneys to represent indigent defendants in criminal proceedings." Carrasquillo, supra at 374. Relevant to the present dispute, CPCS has five PDD offices in Middlesex and Suffolk Counties: in Middlesex County, (1) the Framingham PDD office, (2) the Lowell PDD office, and (3) the Malden PDD office; and in Suffolk County, (4) the Boston Trial Office, and (5) the Roxbury Defenders Unit. See Aff. of A. Stewart, ¶ 2 (June 17, 2025) (Stewart Aff.).

In addition, "[t]hrough [its] private counsel division" (PCD), "CPCS . . . enters into contractual agreements with bar advocate groups and other organizations for the purpose of providing private defense attorneys to indigent persons who are not represented by PDD attorneys." Carrasquillo, 484 Mass. at 374. The bar advocate organizations relevant to the instant petition are Middlesex Defense Attorneys, Inc., (MDA) in Middlesex County and Suffolk Lawyers for Justice (SLJ) in Suffolk County. See Aff. of H. Smith, ¶ 4 (June 17, 2025) (Smith Aff.).

Commencing on May 27, 2025, many bar advocates began refusing to accept either duty day assignments³ or new cases for the representation of indigent criminal defendants (work stoppage). See *Smith Aff.*, ¶ 15. Approximately three weeks after the work stoppage, CPCS filed the present petition in this court, which it supplemented on June 20, 2025. In its filings, CPCS maintained that the inability to secure counsel for indigent criminal defendants amounted to an ongoing systemic violation of defendants' rights to counsel requiring resolution by this court pursuant to G. L. c. 211, § 3. See *Carrasquillo*, 484 Mass. at 389-390 (describing procedural mechanism for, inter alia, CPCS to seek to implement *Lavallee* protocol). On June 23, 2025, the Suffolk County District Attorney (SCDA) timely filed a motion to intervene, which was allowed.⁴

On June 25, 2025, the Courts filed their response. The Courts did not dispute "that the root cause of the work stoppage

³ Under the duty day system, CPCS staff attorneys or bar advocates "are assigned to a particular court for the day, represent indigent individuals at arraignment, and ordinarily accept assignment of those individuals' cases." *Carrasquillo*, 484 Mass. at 369.

⁴ On June 23, 2025, the Massachusetts Association of Criminal Defense Lawyers (MACDL) filed a motion for leave to file an amicus curiae letter and a proposed letter. That motion is allowed.

The Middlesex County District Attorney was invited to intervene on the same timetable as the Suffolk County District Attorney (SCDA), but did not do so.

[was] the low rates of compensation for bar advocates, and that the result . . . [was] a significant shortage of counsel willing to represent indigent criminal defendants" in the Courts. Resp'ts' Resp. to Emergency Pet'n, Dkt. 13, at 10-11 (June 25, 2025) (Courts' Resp.). Further, "[i]n light of the vital challenges created by the current defense counsel shortage, the Courts request[ed] that an evidentiary hearing be scheduled" pursuant to the procedure described in Carrasquillo, 484 Mass. at 389-390. Courts' Resp., at 2, 7, 9-10. The Courts expressed that "an evidentiary hearing may well demonstrate that institution of the protocol is appropriate here." Id. at 11. The Courts, however, opposed CPCS's request that this court set rates of compensation. See id. at 11-15.

Also on June 25, 2025, the SCDA filed a response, agreeing that an evidentiary hearing, as described in Carrasquillo, 484 Mass. at 389-390, was warranted.⁵ SCDA Resp., Dkt. 15, at 1-2, 6 (June 25, 2025).

A preliminary hearing was held on June 26, 2025. The parties and the SCDA agreed to proceed by affidavits, and further agreed to submit a joint statement of disputed and

⁵ On June 25, 2025, the Plymouth County District Attorney moved to intervene, which motion the court denied without prejudice on the ground that the petition sought to invoke the Lavallee protocol only in the Middlesex and Suffolk County District Courts and the Boston Municipal Court.

undisputed facts.⁶ I directed the parties and the SCDA to focus the affidavits and joint statement on the unrepresented indigent criminal defendants whose cases are pending in the Courts.

I scheduled an evidentiary hearing for July 2, 2025. On July 1, 2025, the parties provided a detailed statement of facts; the representations therein were supported by affidavits and other exhibits simultaneously provided by the parties.⁷

On July 2, 2025, I held an evidentiary hearing. As anticipated by the parties and the SCDA, I took evidence by affidavit. Specifically, in connection with the hearing, the court considered all affidavits filed to date in this case, as well as the parties' joint statement of facts and the supporting exhibits. In addition, two witnesses were sworn at the hearing and provided testimony: the General Counsel for CPCS and the Deputy Chief Counsel of CPCS's PDD. See Aff. of L. Hewitt, ¶ 1 (June 16, 2025) (Hewitt Aff.); Stewart Aff., ¶ 1. At the hearing, as in the joint statement of facts, the parties and the SCDA represented that they agreed that imposition of the Lavallee protocol was warranted. See Statement of Facts, Dkt.

⁶ As Carrasquillo provides "[t]he single justice . . . may rely on affidavits or hear testimony as he or she deems appropriate." Carrasquillo, 484 Mass. at 390 n.30.

⁷ At the July 2, 2025, evidentiary hearing, the SCDA represented that he joined the parties' statement of undisputed facts.

20, at ¶ 65 (July 1, 2025) (SoF). I agree, and pursuant to the terms described below, hereby impose the Lavallee protocol with respect to the Courts at issue, that is, the District Courts in Middlesex and Suffolk Counties and the Boston Municipal Court.

Discussion. Legal Standard. "The government of the Commonwealth . . . has a constitutional obligation to ensure that there is an adequate supply of publicly funded defense attorneys available to represent eligible indigent criminal defendants." Carrasquillo, 484 Mass. at 368. When it appears that the government has failed to meet that obligation, the full court set forth procedures to invoke the Lavallee protocol. See Carrasquillo, 484 Mass. at 389-390.

In particular, where a substantial number of indigent criminal defendants are deprived of representation, and where cooperative efforts among the courts, CPCS, and district attorneys have failed to mitigate the problem, a request to invoke the Lavallee protocol is properly brought pursuant to G. L. c. 211, § 3. See Carrasquillo, 484 Mass. at 389-390.

When such a request is made:

"the single justice must determine whether, despite good faith efforts by CPCS and the local bar advocate organization[s], 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. . . . If the single justice determines that there is such an ongoing systemic

violation, then an order imposing the Lavallee protocol is warranted."

Carrasquillo, 484 Mass. at 390-391.

In reaching that determination, the single justice is directed to make findings regarding the following factors:

(1) "the number of unrepresented indigent defendants"; (2) "the length of time for which they have been unrepresented"; (3) "the current caseloads of local CPCS staff attorneys and bar advocates"; (4) "whether CPCS and the local bar advocate organization[s] have engaged in good faith efforts to provide counsel for unrepresented indigent defendants"; (5) "whether there is a shortage of available defense counsel and, if so, what has caused the shortage"; (6) "how long the shortage has continued and is likely to continue"; (7) "the prospects for remedying the problem"; and (8) "such other issues as the single justice . . . may deem pertinent." Id. at 390. In making these factual findings, "[t]he single justice . . . may rely on affidavits or hear testimony as he or she deems appropriate."

Id. at 390 n.30.

Findings. As to each of these factors, I make the following findings:

1. The number of unrepresented indigent defendants. On June 29, 2025, there were at least 587 unrepresented indigent defendants in the District Courts of Middlesex County, and at

least twenty-five of those defendants were in custody. See SoF, ¶¶ 1-2. At least six of those defendants in custody have been held for longer than seven days. See id. at ¶ 7.

On that same date, there were at least forty-six unrepresented indigent defendants in the Chelsea District Court, which is in Suffolk County, and at least nine of those defendants were in custody. See SoF, ¶¶ 5-6. And there were at least 557 unrepresented indigent defendants in the divisions of the Boston Municipal Court, and at least thirty-six of those defendants were in custody. See id. at ¶¶ 3-4. At least twenty-one unrepresented defendants in custody in Suffolk County have been held for longer than seven days. See id. at ¶ 8.

The current numbers far exceed the totals of unrepresented indigent defendants, including defendants held in custody, that gave rise to the ultimate applications of the Lavallee protocol in the Lavallee and Carrasquillo cases. See Carrasquillo, 484 Mass. at 389 n.27 (while no specific number of unrepresented indigent defendants is dispositive, noting that in Lavallee, the single justice petitions were filed on behalf of twenty-four defendants, with numbers rising to fifty-eight defendants with thirty-one held in custody, while in Carrasquillo, 155 defendants were unrepresented, including five who were being held in pretrial detention).

The number of unrepresented indigent defendants has broadly increased since the beginning of the work stoppage. In the Middlesex County District Courts, on May 30, 2025, there were approximately 128 unrepresented indigent defendants, including fourteen in custody. See Smith Aff., ¶ 17. As of June 6, 2025, there were approximately 255 unrepresented defendants, including nineteen in custody; and as of June 13, 2025, there were approximately 387 unrepresented defendants, including sixteen in custody. See Smith Aff., ¶¶ 17-18. On June 20, 2025, there were twenty-two unrepresented defendants held in custody in connection with cases in the Middlesex District Courts. See Supp. Aff. of H. Smith, ¶ 1 (June 20, 2025) (Supp. Smith Aff.). On June 24, that number rose to twenty-four. See Second Supp. Aff. of H. Smith, ¶¶ 1-2 (June 25, 2025) (2nd Supp. Smith Aff.). By June 29, as set forth supra, there were at least 587 unrepresented indigent defendants in Middlesex District Courts, including twenty-five who were in custody. See SoF, ¶¶ 1-2.

In Suffolk County, in Chelsea District Court and the Boston Municipal Court, as of May 30, 2025, there were approximately ninety-three unrepresented indigent defendants, including seventeen in custody. See Smith Aff., ¶ 17. As of June 6, 2025, there were approximately 238 unrepresented indigent defendants, including thirty in custody; and as of June 13, 2025, there were approximately 394 unrepresented indigent

defendants, including fifty-six in custody. See id. at ¶¶ 17-18. On June 20, 2025, there were seventy-five unrepresented defendants held in custody in connection with cases in Chelsea District Court and the Boston Municipal Court. See Supp. Smith Aff., ¶ 1. And on June 24, that number was fifty-six. See 2nd Supp. Smith Aff., ¶¶ 1-2. By June 29, as set forth supra, there were at least 603 unrepresented indigent defendants in Chelsea District Court and the divisions of the Boston Municipal Court, including forty-five in custody. See SoF, ¶¶ 3-6.

2. The length of time for which they have been unrepresented. On June 29, 2025, there were at least six unrepresented indigent defendants in Middlesex County who had been in custody for longer than seven days, and there were at least twenty-one unrepresented indigent defendants in the Chelsea District Court and the Boston Municipal Court who had been in custody for longer than seven days. See SoF, ¶¶ 7-8.

As to unrepresented indigent defendants who are out of custody, it is expected that, in the absence of any remedial measures to alter the current situation, by the end of July, hundreds of them will have been without representation for forty-five days. See SoF, ¶ 9. See also Smith Aff., ¶ 22. Specifically, it is expected that by July 25, approximately 145 unrepresented indigent defendants in the Middlesex County District Courts will have had their cases pending for at least

forty-five days. See Third Supp. Aff. of H. Smith, ¶ 16 (June 30, 2025) (3rd Supp. Smith Aff.). For the Chelsea District Court and the Boston Municipal Court, that number is expected to be approximately 126. See id.

3. The current caseloads of local CPCS staff attorneys and bar advocates. While the situation is necessarily fluid in light of the changing status of ongoing criminal cases, most of the five PDD offices at issue are at or will soon be approaching their respective capacities for taking on new criminal cases.⁸ As of June 20, 2025, the staff attorneys employed in CPCS's two PDD offices in Suffolk County, i.e., the Boston Trial Office and the Roxbury Defenders Unit, were at or beyond their capacities and could not accept new cases. See Supp. Smith Aff., ¶ 2; Supp. Aff. of A. Stewart, ¶ 3 (June 20, 2025) (Supp. Stewart Aff.); Stewart Aff., ¶ 2. At the July 2 hearing, the Deputy Chief Counsel of CPCS's PDD testified that the Roxbury Defenders Unit reached its capacity again on July 1, and further, that while the three PDD offices in Middlesex County presently have some capacity remaining, they are approaching their respective capacity limits. As an example with respect to caseloads, the Deputy Chief Counsel testified that the Roxbury Defenders Unit

⁸ For PDD attorneys, caseload capacity is an individualized determination based on multiple factors including experience, volume of cases, types of cases, and case-specific demands. See SoF, ¶ 10; Stewart Aff., ¶ 13.

took on over 250 more cases in May and June of this year than it did during May and June of 2024.

There appears to be capacity for bar advocates to take the cases of unrepresented indigent defendants. For bar advocates, CPCS sets an annual caseload cap of 250 weighted cases (with various types of cases counting for different amounts toward that total). See SoF, ¶¶ 17, 18 n.4; 3rd Supp. Smith Aff., ¶¶ 17, 19-22. No bar advocates from Middlesex or Suffolk Counties have reached this cap, and it reset on July 1, 2025. See SoF, ¶¶ 18-19; 3rd Supp. Smith Aff., ¶¶ 18, 23.

Moreover, there is a statutory cap on the number of hours that may be billed annually by bar advocate attorneys, which is set by G. L. c. 211D, § 11 (b), at 1,650 hours. See SoF, ¶ 20; 3rd Supp. Smith Aff., ¶ 24. Pursuant to its authority under G. L. c. 211D, § 11 (c), for fiscal year 2025, CPCS raised that cap to the maximum number allowed by law, 2,000 hours. See SoF, ¶ 21; 3rd Supp. Smith Aff., ¶ 25. As of June 25, 2025, only five bar advocates working through MDA had reached this cap and only ten bar advocates working through SLJ had reached it. See SoF, ¶ 22; 3rd Supp. Smith Aff., ¶ 26.

Unfortunately, as described infra, despite this apparent capacity, bar advocates are currently engaged in a work stoppage in view of the compensation rates set by the Legislature, which have not increased for years. In addition, the numbers of bar

advocates have declined steadily in Suffolk County in recent years. See SoF, ¶ 82; Smith Aff., ¶ 8. In 2018, there were 371 bar advocates working in Suffolk County. In 2019, there were 365; in 2020, 341; in 2021, 321; in 2022, 307; in 2023, 293; in 2024, 285. See id. In 2025, there were 283 bar advocates in Suffolk County, eighty-eight fewer than in 2018. See id.

4. Whether CPCS and the local bar advocate organizations have engaged in good faith efforts to provide counsel for unrepresented indigent defendants. CPCS, including its PDD and PCD divisions, and the local bar advocate organizations, MDA and SLJ, have engaged in good faith efforts to provide counsel to indigent defendants.

Prior to the beginning of the work stoppage, CPCS sent a letter to the chief justices of various courts to notify them of the anticipated work stoppage by bar advocates and of CPCS's plans to address the anticipated shortage of counsel. See SoF, ¶ 24; Smith Aff., ¶ 12. In accordance with that plan, for days where there was no duty day attorney in a particular court:

"[T]he courts were asked to assign the cases to CPCS and send them to the PCD and the local [bar advocate program] for assignment of counsel. The PCD and [bar advocate program] then [would] attempt to find counsel, prioritizing those cases where the defendant [was] held, and particularly those cases where the PDD ha[d] a conflict. If counsel [was] not located within seven days for an incarcerated defendant, CPCS assign[ed] the case to the PDD as long as there [was] no conflict and the local office ha[d] capacity."

SoF, ¶ 25; Smith Aff., ¶ 13. Consistent with this plan, CPCS prioritized PDD's representation in cases where a defendant was held in custody. See SoF, ¶¶ 29-33; Stewart Aff., ¶¶ 4-8. These efforts met with some success in securing counsel for incarcerated defendants. See Smith Aff., ¶¶ 19-20. Indeed, as of the filing of CPCS's petition, most incarcerated defendants had been assigned counsel within seven days. See id. at ¶ 20.

Moreover, CPCS crafted notices for courtroom clerks to provide to unrepresented indigent defendants at their arraignments, which notices would provide those defendants their docket numbers, next court dates, and contact information for CPCS. See SoF, ¶ 26; Smith Aff., ¶ 14.

CPCS continues to advocate for increased compensation rates with the Legislature, including for increased rates for bar advocates. See Hewitt Aff., ¶ 2. At the July 2 hearing, the General Counsel for CPCS testified that CPCS has been in constant communication with the Legislature, providing it with frequent updates regarding, *inter alia*, the numbers of unrepresented indigent defendants currently incarcerated. While CPCS believes that the issue is receiving serious attention and that the Legislature will take action, CPCS's General Counsel testified that it is presently unclear whether, when, and how the Legislature will act. See SoF, ¶ 52. See also 3rd Supp. Smith Aff., ¶ 67.

For their part, the relevant bar advocate organizations, MDA and SLJ, "call and email attorneys on a daily basis" to secure counsel for unrepresented indigent defendants. SoF, ¶ 35; 3rd Supp. Smith Aff., ¶ 31. These efforts have had some success, as there are still some bar advocates willing to take certain cases, including, for example, cases involving current or former clients. SoF, ¶ 36; 3rd Supp. Smith Aff., ¶ 32.

5. Whether there is a shortage of available defense counsel and, if so, what has caused the shortage. There is a shortage of available defense counsel caused in large part by inadequate compensation rates. The Courts do not dispute that "low rates of compensation" caused the work stoppage, which then resulted in "a significant shortage of counsel willing to represent indigent criminal defendants" in the courts at issue. Courts' Resp., at 10-11.

Current compensation rates are set by State statute, and for district court assignments, the statutory compensation rate is sixty-five dollars per hour. See G. L. c. 211D, § 11 (a); SoF, ¶ 81; Smith Aff., ¶ 6. These rates have proven inadequate to secure the representation by bar advocates of indigent defendants in the Courts. See 3rd Supp. Smith Aff., ¶ 56; Smith Aff., ¶¶ 7, 15.

On May 27, 2025, the work stoppage commenced when many bar advocates began refusing on the basis of these rates to accept

either duty day assignments or new cases for the representation of indigent criminal defendants. See Smith Aff., ¶ 15. Even before the work stoppage, large percentages of duty day slots went unfilled in the Courts. See SoF, ¶ 57; Smith Aff., ¶ 11. In March 2025, thirty-two percent of duty day slots went unfilled in Middlesex County, and in Suffolk County, twenty-four percent went unfilled. See id. In April, that number remained thirty-two percent in Middlesex County and rose to forty percent in Suffolk County. See id.

The majority of bar advocates in Middlesex and Suffolk Counties are now no longer taking district court duty days or accepting new district court cases. See SoF, ¶ 59; Smith Aff., ¶ 15. This work stoppage significantly exacerbated the above-described shortage in duty day coverage, and Middlesex and Suffolk counties were most affected. See SoF, ¶¶ 58-59; Smith Aff., ¶ 15. Due to the lack of bar advocates, arraignment sessions in the Courts are often understaffed or unstaffed. See SoF, ¶ 59; Smith Aff., ¶ 11. For June 2025, eighty-six percent of duty day slots went unfilled in Middlesex County and seventy-five percent went unfilled in Suffolk County. See SoF, ¶ 59; Smith Aff., ¶ 15. For July, seventy-seven percent of duty day slots remain unfilled in Middlesex County, fifty-two percent remain unfilled in Chelsea District Court, and seventy-two percent remain unfilled in the Boston Municipal Court. See SoF,

¶¶ 60-62; 3rd Supp. Smith Aff., ¶¶ 63-65. For August, sixty-six percent of duty day slots remain unfilled in Middlesex County, forty-seven percent remain unfilled in Chelsea District Court, and sixty-five percent remain unfilled for the Boston Municipal Court. See id. See also Carrasquillo, 484 Mass. at 377 (noting duty day coverage issues).

Also, as noted supra, the number of bar advocates working in Suffolk County has decreased steadily by a total of eighty-eight in the years since 2018. See SoF, ¶ 82; Smith Aff., ¶ 8.

6. How long the shortage has continued and is likely to continue. The present shortage of counsel began in the Courts in May 2025, as described supra. It will likely continue for the foreseeable future because there are at present no apparent prospects for a significant remediation of the problem. First, the numbers of unrepresented indigent defendants in the Courts have grown significantly since the beginning of the shortage, which suggests that these numbers will continue to rise, particularly as the relevant PDD offices are at or approaching their capacities for criminal case work. Second, there is no information before the court regarding any expected end to the work stoppage. See SoF, ¶ 64; 3rd Supp. Smith Aff., ¶ 67. Third, as the underlying problem is the low compensation rate for district court work set by statute, it is likely that Legislative action will be required to remediate the problem.

See G. L. c. 211D, § 11 (a). While CPCS has expressed confidence in a Legislative solution, the testimony of its General Counsel at the July 2 hearing established only that the Legislature is aware of the problem but not that it has taken or will immediately take any concrete steps to resolve it. See SoF, ¶ 52. See also 3rd Supp. Smith Aff. ¶ 67.

7. The prospects of remedying the problem. For these same reasons, there do not appear to be any concrete present prospects for remedying the problem, which is ultimately caused by the rates of pay set for bar advocates.

8. Such other issues as the single justice may deem pertinent. The Courts have requested that the Lavallee protocol be modified such that the status hearings provided for in Lavallee should be conducted by the Chief Justice of the District Court, or her designee, and the Chief Justice of the Boston Municipal Court, or her designee. At the July 2 hearing, CPCS asked that these hearings be conducted, as in Lavallee and Carrasquillo, by regional administrative justices of the Superior Court, arguing that this would be more efficient, as the Superior Courts would have more room for holding defendants in custody and would provide central locations for the hearings. Where the Superior Courts are not presently the subject of the Lavallee protocol, and where the cases at issue are already in the Courts, I adopt the Courts' recommendation, as described

infra. See Lavallee, 442 Mass. at 247 (tasking single justice with "refining that system, or modifying it, after consultation with those who will be affected"). I also adopt CPCS's recommendation to modify the protocol such that the Courts will continue, in good faith, to provide daily lists, as described infra, as this closely approximates the current practice.

Application of Lavallee Protocol. "The constitutional right to counsel in a criminal prosecution, guaranteed by art. 12 and the Sixth and Fourteenth Amendments, entails the right of indigent defendants charged with serious crimes to have counsel appointed at public expense" at all critical stages of the prosecution (quotation and citation omitted). Carrasquillo, 484 Mass. at 379-380 & n.17. Significant delay after arraignment in assigning counsel endangers this right. See id. at 381.

Based on the foregoing findings, and with particular emphasis on the number of unrepresented indigent defendants, I agree with the parties and the intervenor that the Lavallee protocol should be and hereby is applied to the Middlesex and Suffolk County District Courts and to the Boston Municipal Court, as described infra. Specifically, I find that "despite good faith efforts by CPCS and the local bar advocate organization[s]" -- here, MDA and SLJ -- "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.

Rate-setting request. For the reasons articulated in Lavallee and Carrasquillo, I deny without prejudice the request of CPCS that this court set rates of compensation for bar advocates. Although the court has "inherent power to ensure the proper operations of the courts and protect them from impairment resulting from a lack of supporting personnel . . . 'this inherent power is a duty which must be borne responsibly,' and 'with due consideration for the prerogatives of the executive department and the Legislature, whenever the exercise of an inherent judicial power would bring us near the sphere of another department.'" Carrasquillo, 484 Mass. at 394, quoting O'Coin's, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507, 515-516 (1972). I therefore "defer to the Legislature's authority, as the governmental branch vested with the power to make laws and appropriate funds, to devise an appropriate solution," and to choose the best policy course for resolving the systemic issue described herein. Carrasquillo, supra at 370-371.

The Lavallee protocol is "strong medicine." Carrasquillo, 484 Mass. at 389. It is designed to balance the government's

legitimate right to protect the public's safety, well-articulated by the SCDA at the evidentiary hearing, with the duty of this court "to remedy an ongoing violation of a fundamental constitutional right to counsel." Id. at 383 n.19.

Conclusion. For the foregoing reasons, it is **ORDERED** that the Lavallee protocol shall be and hereby is implemented with respect to the Courts. As requested by the Courts, the protocol will be modified such that the hearing with respect to any case in the District Court will be held by the Chief Justice of the District Court or a single justice of that department designated by the Chief Justice thereof, and the hearing with respect to any case in any division of the Boston Municipal Court will be held by the Chief Justice of the Boston Municipal Court or a single justice of that court designated by the Chief Justice thereof (Chief Justice). With that modification, as directed in Lavallee, 442 Mass. at 247-249 & n.18, it is hereby ordered that:

"The clerk-magistrate of each District Court in [Middlesex and Suffolk] Count[ies] [and each Division of the Boston Municipal Court] . . . shall, [in good faith] on a [daily] basis, prepare a list of all unrepresented criminal defendants facing charges in their respective courts and shall forward that list to the [Chief Justice] . . . , the district attorney, the Attorney General, and chief counsel for CPCS. Such list shall contain the name of each defendant; the pending charges and docket numbers; the date of arraignment; the defendant's bail status; and whether the defendant is being held under an order of preventive detention. If there are no such unrepresented defendants, the clerk-magistrate's report shall so indicate.

On receipt of that list . . . , the [Chief Justice] shall schedule a prompt status hearing with respect to each defendant who has been held for more than seven days, or each defendant whose case has been pending for more than forty-five days. If, as of the time of that hearing, any defendant on that list is still unrepresented by counsel, the [Chief Justice] shall determine whether CPCS has made a good faith effort to secure representation for each such defendant.⁹ If the [Chief Justice] determines that, despite good faith efforts of CPCS and any efforts by others to secure representation for any such defendant, there is still no counsel willing and available to represent a defendant, then the [Chief Justice] must order the following: (1) with respect to any defendant who has been held in lieu of bail or pursuant to an order of preventive detention for more than seven days, the [Chief Justice] shall order that the defendant be released on personal recognizance and may, in view of the emergency nature of this remedy, treat this as an exception to Commonwealth v. Dodge, 428 Mass. 860, 864-866, 705 N.E.2d 612 (1999), and impose probationary conditions pursuant to G. L. c. 276, § 87, without the defendant's consent; (2) with respect to any defendant who has been facing a felony charge for more than forty-five days without counsel, or a misdemeanor or municipal ordinance violation charge for more than forty-five days without counsel on which a judge has not declared, pursuant to G. L. c. 211D, § [2B], an intention to impose no sentence of incarceration, the [Chief Justice] shall order that the charge or charges be dismissed without prejudice until such time as counsel is made available to provide representation to that defendant."

⁹ "[I] expect that CPCS, pursuant to its authority under G. L. c. 211D, § 6 (b), will take all reasonable measures to expand the list of attorneys available to accept assignments in criminal cases in [Middlesex and Suffolk] Count[ies], who are not members of [Middlesex Defense Attorneys, Inc., or Suffolk Lawyers for Justice]. In addition, the [Chief Justice] . . . , may pursue all reasonable means to develop [her] own list of qualified and available attorneys from which [she] may make assignments, consistent with S.J.C. Rule 1:07, as amended, 431 Mass. 1301 (2000), whenever CPCS certifies that it has no available attorney. Such attorneys shall be entitled to compensation from CPCS appropriated funds at the rates approved by the Legislature." Lavallee, 442 Mass. at 248 n.18.

I note additionally that, as the court explained in Carrasquillo, release or dismissal is not automatic:

"The remedies of release from pretrial detention or dismissal of charges become available only if, at the time of [the] subsequent status hearing before the [Chief Justice], the defendant remains unrepresented and, despite the good faith efforts of CPCS, there is no attorney willing and available to represent the defendant."

Carrasquillo, 484 Mass. at 391 n.31. Moreover:

"[N]othing 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."

Id. at 391.

Further, so that the court periodically can assess the continuing need for the protocol, it shall be and hereby is **ORDERED** that the parties shall provide the court with an update to the information as to each of the factors described in Carrasquillo, 484 Mass. at 390, and considered supra, which update is to be provided at least every thirty days, beginning on August 4, 2025 (periodic update); provided, however, that any party may provide the court with an earlier update as circumstances warrant or seek termination of the Lavallee protocol at any time. For each periodic update, CPCS shall provide its update first; within seven days thereafter, the Courts shall submit their response, and the SCDA is invited to

file a response.¹⁰ Alternatively, a joint status report containing the information may be submitted. After receipt of a periodic update or any other updates, I will assess the need for any further information or a hearing.

So ordered.

By the court,

/Dalila Argaez Wendlandt/

Dalila Argaez Wendlandt
Associate Justice

Entered: July 3, 2025

¹⁰ See note 4, supra (discussing Middlesex County District Attorney).

Part I ADMINISTRATION OF THE GOVERNMENT**Title III** LAWS RELATING TO STATE OFFICERS**Chapter 29** STATE FINANCE**Section 6E** GENERAL APPROPRIATION BILL; BALANCED BUDGET

Section 6E. The governor shall recommend, the general court shall enact and the governor shall approve a general appropriation bill which shall constitute a balanced budget for the commonwealth. No supplementary appropriation bill shall be approved by the governor which would cause the state budget for any fiscal year not to be balanced.

Part III	COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
Title I	COURTS AND JUDICIAL OFFICERS
Chapter 211	THE SUPREME JUDICIAL COURT
Section 3	SUPERINTENDENCE OF INFERIOR COURTS; POWER TO ISSUE WRITS AND PROCESS

Section 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; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general

or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL
CASES

Title I COURTS AND JUDICIAL OFFICERS

Chapter 211 THE SUPREME JUDICIAL COURT

Section 6 QUESTIONS OF LAW; RESERVATION

Section 6. Questions of law arising upon a trial or other proceeding, or upon a motion for a new trial by reason of an opinion, direction, order or refusal of one justice in matter of law, may be reserved for the consideration of the full court, and so much of the case as is necessary for understanding the question shall be reported.

Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

Title I COURTS AND JUDICIAL OFFICERS

Chapter 211D COMMITTEE FOR PUBLIC COUNSEL SERVICES

Section 1 COMMITTEE FOR PUBLIC COUNSEL SERVICES;
ESTABLISHMENT

Section 1. There shall be a committee for public counsel services, hereinafter referred to as the committee, 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. The committee shall consist of 15 persons: 2 of whom shall be appointed by the governor; 2 of whom shall be appointed by the president of the senate; 2 of whom shall be appointed by the speaker of the house of representatives; and 9 of whom shall be appointed by the justices of the supreme judicial court, 1 of whom shall have experience as a public defender, 1 of whom shall have experience as a private bar advocate, 1 of whom shall have criminal appellate experience, 1 shall have a background in public administration and public finance, and 1 of whom shall be a current or former dean or faculty member of a law school. The court shall request and give appropriate consideration to nominees for the 9 positions from the Massachusetts Bar Association, county bar associations, the Boston Bar

Association and other appropriate bar groups including, but not limited to, the Massachusetts Black Lawyers' Association, Inc., Women's Bar Association of Massachusetts, Inc., and the Massachusetts Association of Women Lawyers, Inc.

All members of the committee shall have a strong commitment to quality representation in indigent defense matters or have significant experience with issues related to indigent defense. The committee shall not include presently serving judges, elected state, county or local officials, district attorneys, state or local law enforcement officials or public defenders employed by the commonwealth. The term of office of each member of the committee shall be 4 years. Members of the committee may be removed for cause by the justices of the supreme judicial court. Vacancies shall be filled by the appointing authority that made the initial appointment to the unexpired term of the appointee within 60 days of the occurrence of the vacancy. 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. No member shall receive any compensation for service on the committee, but each member shall be reimbursed for actual expenses incurred in attending the committee meetings.

Chapter 268A shall apply to all members, officers and employees of the committee, except that the committee may provide representation or enter into a contract pursuant to section 3 or section 6, although a member of the committee may have an interest or involvement in any such matter if such interest and involvement is disclosed in advance to the other members of the committee and recorded in the minutes of the committee; provided, however, that no member having an interest or involvement in any contract under section 3 may participate in any particular matter, as defined in section 1 of chapter 268A, relating to such contract.

Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

Title I COURTS AND JUDICIAL OFFICERS

Chapter 211D COMMITTEE FOR PUBLIC COUNSEL SERVICES

Section 5 APPOINTMENT OR ASSIGNMENT OF COUNSEL

Section 5. Said committee 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. The committee may also establish a system for the provision of counsel in any pre-arraignment procedure. A justice or associate justice shall assign a case to the committee, as hereafter provided, after receiving from the probation officer a written report containing the probation officer's opinion as to the defendant's ability to pay for counsel, based on the standards and procedures provided for in section two.

Part III COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

Title I COURTS AND JUDICIAL OFFICERS

Chapter 211D COMMITTEE FOR PUBLIC COUNSEL SERVICES

Section 6 PUBLIC DEFENDER AND PRIVATE COUNSEL DIVISIONS;
DUTIES

Section 6. (a) In carrying out its duties as prescribed in section 5, the committee shall utilize its staff of attorneys, which shall be known hereafter as the public defender division. The division shall include a unit to be known as the Roxbury defenders unit, which shall represent clients as assigned pursuant to this chapter in the Roxbury division of the district court department. The public defender division shall be assigned to represent indigent defendants in all criminal cases, except that: (i) the public defender division shall not be assigned to represent more than 1 defendant in any matter before any court on the same case or arising out of the same incident; (ii) the public defender division shall not be assigned to represent a defendant in any case in which there is a conflict of interest with any of its clients; (iii) notwithstanding any general or special law to the contrary, the public defender division shall be assigned in any civil or criminal matter described in subsection (b) if the chief counsel determines in writing that insufficient numbers of qualified attorneys are available for assignment by the private counsel division.

(b) In carrying out its duties as prescribed in section 5, the committee shall establish, supervise and maintain a system for the appointment of private counsel, hereafter called the private counsel division, which shall include a children and family law program and a mental health unit. The committee shall enter into contractual agreements with any state, county or local bar association or voluntary charitable group, corporation or association, including bar advocate groups, for the purpose of providing such counsel. The committee may also contract with such other organized groups of attorneys as may be formed to afford representation to indigent defendants and may appoint and compensate private attorneys, on a case-by-case basis, as counsel for indigents entitled to representation. No individual, member or participant in a group, corporation or association with whom the committee may contract under this paragraph shall be considered to be or have any rights as a state employee.

The private counsel division shall be assigned for all persons accused of crimes entitled to counsel who, through their inability to pay for counsel, shall have counsel appointed to them, but who, pursuant to subsection (a) shall not be represented by the public counsel division.

The private counsel division shall also be assigned to represent persons in such other proceedings as the chief counsel shall determine to be necessary.

Part III	COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
Title I	COURTS AND JUDICIAL OFFICERS
Chapter 211D	COMMITTEE FOR PUBLIC COUNSEL SERVICES
Section 11	COMPENSATION RATES; LIMITATION ON ANNUAL BILLABLE HOURS PAYABLE; LIMITATION ON NEW APPOINTMENTS

Section 11. (a) The rates of compensation payable to all counsel, who are appointed or assigned to represent indigents within the private counsel division of the committee in accordance with the provisions of paragraph (b) of section 6, shall, subject to appropriation, be as follows: for homicide cases the rate of compensation shall be \$120 per hour; for superior court non-homicide cases, including sexually dangerous person cases, the rate of compensation shall be \$85 per hour; for district court cases and children in need of services cases the rate of compensation shall be \$65 per hour; for children and family law cases and care and protection cases the rate of compensation shall be \$85 per hour; for sex offender registry cases and mental health cases the rate of compensation shall be \$65 per hour. These rates of compensation shall be reviewed periodically at public hearings held by the committee at appropriate locations throughout the state, and notice shall be given to all state,

county and local bar associations and other interested groups, of such hearings by letter and publication in advance of such hearings. This periodic review shall take place not less than once every 3 years.

(b) The committee shall set an annual cap on billable hours not in excess of 1,650 hours. Counsel appointed or assigned to represent indigents within the private counsel division shall not be paid for any time billed in excess of the annual limit of billable hours. It shall be the responsibility of private counsel to manage their billable hours.

(c) Notwithstanding the billable hour limitation in subsection (b), the chief counsel of the committee may waive the annual cap on billable hours for private counsel appointed or assigned to indigent cases if the chief counsel finds that: (i) there is limited availability of qualified counsel in that practice area; (ii) there is limited availability of qualified counsel in a geographic area; or (iii) increasing the limit would improve efficiency and quality of service; provided, however, that counsel appointed or assigned to such cases within the private counsel division shall not be paid for any time billed in excess of 2,000 billable hours. It shall be the responsibility of private counsel to manage their billable hours.

Part III	COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
Title I	COURTS AND JUDICIAL OFFICERS
Chapter 213	PROVISIONS COMMON TO THE SUPREME JUDICIAL AND SUPERIOR COURTS
Section 8	ACCOUNTS AND EXPENSES; ALLOWANCE

Section 8. The courts shall, respectively, receive, examine and allow accounts for services and expenses incident to their sittings and order payment thereof out of the state treasury.

Acts (2005)

Chapter 54

AN ACT PROVIDING COUNSEL TO INDIGENT PERSONS.

Whereas , The deferred operation of this act would tend to defeat its purpose, which is to improve providing counsel to indigent persons, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 211D of the General Laws is hereby amended by striking out section 2 1/2, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 2 1/2. (a) Notwithstanding any general or special law to the contrary, a person claiming indigency under the provisions of section 2 must execute a waiver authorizing the court's chief probation officer or his designee, to obtain the person's wage and tax information from the department of revenue and any other information from the registry of motor vehicles that the court may find useful in verifying the person's claim of indigency. The waiver shall authorize the chief probation officer, or his designee, to conduct any further re-assessment required by this section.

(i) The office of the commissioner of probation shall submit quarterly reports to the house and senate committees on ways and means detailing the effectiveness of any procedures implemented pursuant to this section to verify an individual's claim of indigency. The report shall include, but not limited to, the number of individuals determined to be indigent, number of individuals determined not to be indigent, number of individuals found to have concealed or otherwise misrepresented information relevant to his financial status, number of individuals found to no longer qualify for appointment of counsel upon any re-assessment of indigency required by this section, revenue generated through collection of indigent client fees, the average indigent client fee that each court division collects per case, recommendations to improve the procedures for verifying eligibility for counsel and other pertinent information to ascertain the effectiveness of verification procedures. The information within such report shall be delineated by court division.

SECTION 1A. Section 2A of said chapter 211D, as so appearing, is hereby amended by striking out the words "need not be appointed", in line 3, and inserting in place thereof the following words:- , on motion of the commonwealth, the defendant, or on the court's own motion, shall not be appointed.

SECTION 2. Said chapter 211D is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:-

Section 11. The rates of compensation payable to all counsel, who are appointed or assigned to represent indigents within the private counsel division of the committee in accordance with the provisions of

paragraph (b) of section 6, shall, subject to appropriation, be as follows: for homicide cases the rate of compensation shall be \$100 per hour; for superior court non-homicide cases, including sexually dangerous person cases, the rate of compensation shall be \$60; for district court cases and children in need of services cases the rate of compensation shall be \$50 per hour; for children and family law cases, care and protection cases, sex offender registry cases and mental health cases the rate of compensation shall be \$50 per hour. These rates of compensation shall be reviewed periodically at public hearings held by the committee at appropriate locations throughout the state, and notice shall be given to all state, county and local bar associations and other interested groups, of such hearings by letter and publication in advance of such hearings. This periodic review shall take place not less than once every 3 years.

Any counsel who is appointed or assigned to represent indigents within the private counsel division is prohibited from accepting any new appointment or assignment to represent indigents after he has billed 1400 billable hours during any fiscal year.

SECTION 3. Chapter 277 of the General Laws is hereby amended by striking out section 70C, as so appearing, and inserting in place thereof the following section:-

Section 70C. Upon oral motion by the commonwealth or the defendant at arraignment or pretrial conference, or upon the court's own motion at any time, the court may, unless the commonwealth objects, in writing, stating the reasons for such objection, treat a violation of a municipal ordinance, or by-law or a misdemeanor offense as a civil infraction. The provisions of this section shall not

Acts (2015)

Chapter 46

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2016 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make appropriations for the fiscal year beginning July 1, 2015, and to make certain changes in law, each of which is immediately necessary or appropriate to effectuate said appropriations or for other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. To provide for the maintenance of the several departments, boards, commissions and institutions and other services, and for certain permanent improvements and to meet certain requirements of law, the sums set forth in sections 2, 2B, 2D, 2E and 3, for the several purposes and subject to the conditions specified in said sections 2, 2B, 2D, 2E and 3, are hereby appropriated from the General Fund unless specifically designated otherwise, subject to the

section 50 of chapter 93, while an internal or external review under this section is pending or for 30 days following the resolution of a grievance. No health care provider and no agent or employee of a health care provider, including a debt collector as defined in section 24 of said chapter 93, shall initiate debt collection activities relative to unpaid charges for health care services while an internal or external review under this section is pending or for 30 days following the resolution of a grievance.

Governor disapproved of the following section, for message see House, No. 3675

The Legislature overrode the Governor's action.

SECTION 119. Section 11 of chapter 211D of the General Laws, as so appearing, is hereby amended by striking out, in lines 9 and 10, the words “\$50 per hour; for children and family law cases, care and protection cases,” and inserting in place thereof the following words:- \$53 per hour; for children and family law cases and care and protection cases the rate of compensation shall be \$55 per hour; for.

SECTION 120. Section 10 of chapter 218 of the General Laws, as so appearing, is hereby amended by striking out, in line 20, the words “district court of eastern Hampshire;”.

SECTION 121. Said section 10 of said chapter 218, as so appearing, is hereby further amended by inserting after line 38, the following line:- district court of eastern Hampshire;.

SECTION 122. Section 7 of chapter 221 of the General Laws, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words “of the several counties except Suffolk”.

Governor disapproved of the following section, for message see House, No. 3675

Acts (2021)

Chapter 24

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2022 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make appropriations for the fiscal year beginning July 1, 2021, and to make certain changes in law, each of which is immediately necessary or appropriate to effectuate said appropriations or for other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. To provide for the maintenance of the several departments, boards, commissions and institutions of the commonwealth and other services of the commonwealth, and for certain permanent improvements and to meet certain requirements of law, the sums set forth in this act, for the several purposes and subject

them through the connector. Any interagency agreement between the connector and the department of revenue shall specify the operational requirements necessary to implement this subsection.

(c) The connector may receive and use any information provided pursuant to section 23 of chapter 118E as necessary for the connector to perform the duties under this chapter, including the determination of an individual's eligibility for federal advanced premium tax credits and federal point-of-service cost-sharing reductions and adjudication of appeals arising from such determinations.

SECTION 59. Section 11 of chapter 211D of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the figure "\$100" and inserting in place thereof the following figure:- \$110.

SECTION 60. Said section 11 of said chapter 211D, as so appearing, is hereby further amended by striking out, in line 7, the figure "\$68" and inserting in place thereof the following figure:- \$75.

SECTION 61. Said section 11 of said chapter 211D, as so appearing, is hereby further amended by striking out, in line 9, the figure "\$53" and inserting in place thereof the following figure:- \$60.

SECTION 62. Said section 11 of said chapter 211D, as so appearing, is hereby further amended by striking out, in line 11, the figure "\$55" and inserting in place thereof the following figure:- \$75.

SECTION 63. Said section 11 of said chapter 211D, as so appearing, is hereby further amended by striking out, in line 12, the figure "\$53" and inserting in place thereof the following figure:- \$60.

Acts (2022)

Chapter 126

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2023 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS, AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS, AND FOR CERTAIN PERMANENT IMPROVEMENTS

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make appropriations for the fiscal year beginning July 1, 2022, and to make certain changes in law, each of which is immediately necessary or appropriate to effectuate said appropriations or for other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same,s as follows:

SECTION 1. To provide for the operations of the several departments, boards, commissions and institutions of the commonwealth and other services of the commonwealth and for certain permanent improvements and to meet certain requirements of law, the sums set forth in this act, for the several purposes and subject

SECTION 96. Subsection (a) of section 11 of chapter 211D of the General Laws is hereby amended by striking out the figure “\$110”, inserted by section 59 of chapter 24 of the acts of 2021, and inserting in place thereof the following figure:- \$120.

SECTION 97. Said subsection (a) of said section 11 of said chapter 211D is hereby further amended by striking out the figure “\$75”, inserted by section 60 of said chapter 24, and inserting in place thereof the following figure:- \$85.

SECTION 98. Said subsection (a) of said section 11 of said chapter 211D is hereby further amended by striking out the figure “\$60”, inserted by section 61 of said chapter 24, and inserting in place thereof the following figure:- \$65.

SECTION 99. Said subsection (a) of said section 11 of said chapter 211D is hereby further amended by striking out the figure “\$75”, inserted by section 62 of said chapter 24, and inserting in place thereof the following figure:- \$85.

SECTION 100. Said subsection (a) of said section 11 of said chapter 211D is hereby further amended by striking out the figure “\$60”, inserted by section 63 of said chapter 24, and inserting in place thereof the following figure:- \$65.

The Governor returned the following section with recommendation of amendment, for message see House, No. 5119.

~~SECTION 101. Said chapter 211D is hereby further amended by adding the following section:-~~

Acts (2025)

Chapter 9

This document is still being worked on to include the Governor's actions and any subsequent legislative action.

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2026 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS, AND FOR CERTAIN PERMANENT IMPROVEMENTS

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make appropriations for the fiscal year beginning July 1, 2025, and to make certain changes in law, each of which is immediately necessary or appropriate to effectuate said appropriations or for other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Franklin Sheriff's Office	\$86,200	\$7,000	\$0	\$93,200	\$0
Essex Sheriff's Office	\$41,000	\$1,858,115	\$0	\$49,115	\$1,850,000
Barnstable Sheriff's Office	\$0	\$1,552,970	\$0	\$2,970	\$1,550,000
Bristol Sheriff's Office	\$82,712	\$20,000	\$0	\$102,712	\$0
Dukes Sheriff's Office	\$0	\$330,656	\$0	\$30,656	\$300,000
Norfolk Sheriff's Office	\$576,000	\$215,430	\$0	\$576,000	\$215,430
Plymouth Sheriff's Office	\$25,620,000	\$300,000	\$0	\$25,620,000	\$300,000
Suffolk Sheriff's Office	\$0	\$2,000,000	\$0	\$200,000	\$1,800,000
TOTAL:	\$27,281,512	\$11,818,693	\$0	\$27,678,524	\$11,421,681

Massachusetts Department of**Transportation**

Massachusetts Department of

Transportation	\$0	\$628,727,105	\$51,335,200	\$680,062,305	\$0
TOTAL:	\$0	\$628,727,105	\$51,335,200	\$680,062,305	\$0

Total Non-Tax Revenue	\$15,609,541,326	\$6,503,191,437	\$5,481,092,011	\$26,842,755,205	\$751,069,569
------------------------------	-------------------------	------------------------	------------------------	-------------------------	----------------------

SECTION 2.**JUDICIARY.****Supreme Judicial Court.**

0320-0003 For the operation of the supreme judicial court, including the salaries of the chief justice and the 6 associate justices\$12,314,981

0320-0010 For the operation of the clerk's office of the supreme judicial court for Suffolk county..... \$2,428,095

0321-0001 For the operation of the commission on judicial conduct \$1,187,392

0321-0100 For the services of the board of bar examiners \$2,349,408

Committee for Public Counsel Services.

0321-1500 For the operation of the committee for public counsel services under chapter 211D of the General Laws, including, but not limited to, payroll costs of the committee's public defenders, attorneys in charge and appeals attorneys, including fringe benefit costs; provided, that the committee shall maintain a system in which not less than 20 per cent of indigent clients shall be represented by public defenders; provided further, that to the extent feasible, the committee shall assign public defenders to district and superior courts; provided further, that the committee shall approve by majority vote any increase in the base salary or rate of compensation for employees holding management positions, including, but not limited to, chiefs, deputy chiefs, directors, assistant directors and managers; provided further, that not later than

December 2, 2025, the committee shall submit a report to the executive office for administration and finance and the house and senate committees on ways and means that shall include, but not be limited to, the expected surplus or deficiency of items 0321-1500, 0321-1510 and 0321-1520 for fiscal year 2026; provided further, that not later than March 3, 2026, the committee shall submit an annual report to the house and senate committees on ways and means which shall be compared with data from the current period to the previous 2 fiscal years; and provided further, that the report shall include, but not be limited to: (i) the caseload of attorneys in charge compared to the caseload of public defenders; (ii) the number of cases handled by the committee in each reporting period, delineated by public defender and private bar advocate; (iii) the average number of hours spent per case by public defenders; (iv) 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; (v) the number of public defender vacancies to be filled; (vi) the average cost for public defender services rendered per case in the prior fiscal year; (vii) the number of cases assigned to private bar advocates; (viii) the average number of hours billed by private bar advocates; (ix) the average cost for private bar advocate services rendered per case in the prior fiscal year; (x) 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; (xi) any

changes to the private bar billing system and any billing improvements that have been made; (xii) 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 2 fiscal years; and (xiii) 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\$89,000,000

0321-1510 For compensation paid to private counsel assigned to criminal and civil cases under subsection (b) of section 6 of chapter 211D of the General Laws and under section 11 of said chapter 211D; provided, that not more than \$2,000,000 from this item shall be expended for services rendered prior to fiscal year 2026 \$213,827,979

0321-1520 For fees and costs as defined in section 27A of chapter 261 of the General Laws, as ordered by a justice of the appeals court or a justice of a department of the trial court on behalf of persons who are indigent as defined in said section 27A of said chapter 261; provided, that not more than \$2,000,000 from this item shall be expended for services rendered prior to fiscal year 2026 \$25,172,236

Massachusetts Legal Assistance Corporation.

Acts (2025)

Chapter 14

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2025 TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to make supplemental appropriations for fiscal year 2025 and to make certain changes in law, each of which is immediately necessary to carry out those appropriations or to accomplish other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2025, the sums set forth in section 2 are hereby appropriated from the General Fund unless specifically designated otherwise in this act or in those appropriation acts, for the several purposes and subject to the conditions specified in this act or in those appropriation acts, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2025. These sums shall be in addition to

any amounts previously appropriated and made available for the purposes of those items. These sums shall be made available through the fiscal year ending June 30, 2026.

SECTION 2.

EXECUTIVE OFFICE OF VETERANS' SERVICES

1410-0400 Veterans' Benefits \$5,800,000

OFFICE OF THE COMPTROLLER

1599-3384 Settlements and Judgments
\$28,917,460

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

Department of Transitional Assistance

4400-1004 Healthy Incentives Program \$7,500,000

4405-2000 State Supplement to the Social Security Income program
..... \$3,000,000

4408-1000 Emergency Aid to Elderly, Disabled and Children
..... \$1,000,000

Department of Public Health

4513-1012 Women Infants and Children Program Manufacturer
Rebates \$400,000

4590-0912 Western Massachusetts Hospital Retained Revenue
..... \$1,200,000

Executive Office of Aging and Independence

9110-1630 Home Care Services \$60,000,000

EXECUTIVE OFFICE OF HOUSING AND LIVABLE COMMUNITIES

Office of the Secretary of Housing and Livable Communities

7004-9316 Residential Assistance for Families in Transition
..... \$42,910,506

EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

State Police

8100-0006 Private Detail Retained Revenue
\$7,750,000

8100-1004 State Police Crime Laboratory
\$4,193,083

Military Division

8700-0001 Military Division \$593,539

SECTION 2A. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth in this section are hereby appropriated from the General Fund or the Transitional Escrow Fund established in section 16 of chapter 76 of the acts of 2021, as amended by section 4 of chapter 98 of the acts of 2022, unless specifically designated otherwise in this section, for the several purposes and subject to the conditions specified in this section, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2025. Except as otherwise stated, these sums shall be made available through the fiscal year ending June 30, 2026.

JUDICIARY

Committee for Public Counsel Services

0321-1599 For a reserve to expand the number of public defenders employed by the committee for public counsel services established in chapter 211D of the General Laws; provided, that the expansion shall prioritize increasing the proportion of indigent clients represented by public defenders in a manner that ensures clients are timely represented by counsel; provided further, that the committee 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; provided further, that the committee shall use best efforts to hire approximately 160 new attorneys in the public defender division by the end of fiscal year 2026 and an additional 160 new attorneys in said division by the end of fiscal year 2027; provided further, that the committee may transfer funds from this item to item 0321-1500 of section 2 of the general appropriations acts for fiscal years 2026 and 2027; provided further, that not later than September 1, 2025, the committee shall submit a hiring plan to the clerks of the senate and house of representatives, the joint committee on the judiciary and the senate and house committees on ways and means, which shall include an update on hiring activity under this item to date of the plan's submission and outline the committee's plan to hire attorneys in a manner that ensures clients are timely represented by counsel; provided further, that not later than July 15, 2026, the committee shall submit a report to the

clerks of the senate and house of representatives, 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) the total number of public defenders employed by the committee; (ii) the number of public defenders hired under this item, delineated by county served; (iii) the total number of cases handled by the committee in fiscal year 2026, delineated by whether the case was handled by a public defender or a private bar advocate and the type of case; (iv) the average caseload per public defender; (v) the change to the proportion of indigent clients represented by public defenders due to new public defenders hired under this item; (vi) the estimated reduction in hours billed by private bar advocates due to the increase in public defenders hired under this item and the savings associated with that reduction in hours billed; and (vii) recommendations on the future balance of cases between public defenders and private bar advocates; and provided further, that the funds appropriated in this item shall be made available through June 30, 2027
 \$40,000,000

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Reserves

1599-1778 For a reserve to support the creation of the Brooke House in Mattapan by 2Life Development Inc.; provided, that the Brooke House shall create and maintain not less than 127 units of senior housing; provided further, that the housing shall be reserved for seniors with incomes of not more than 60 per cent of the area median income; provided further, that the

the regulations promulgated thereunder; (iii) a federal, state or local law enforcement agency; or (iv) a federally licensed manufacturer solely for sale or transfer in another state or for export.

SECTION 46. Section 63 of chapter 175 of the General Laws is hereby amended by inserting after the word “thereof”, in line 398, as appearing in the 2022 Official Edition, the following words: - or shares of an exchange-traded fund.

SECTION 47. Said section 63 of said chapter 175 is hereby further amended by inserting after the word “money”, in line 402, as so appearing, the following words:- or shares of an exchange-traded fund.

SECTION 48. Subsection (b) of section 6 of chapter 211D of the General Laws, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

The committee shall require all contractual agreements for the appointment of private counsel to prescribe requirements for the minimum coverage and availability to be required for private counsel. Private counsel contractual agreements shall be required to be renewed biannually.

SECTION 49. Section 11 of said chapter 211D, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:- (a)(1) The rates of compensation payable to all counsel, who are appointed or assigned to represent indigents within the private counsel division of the committee in accordance with the provisions of paragraph (b) of section 6, shall, subject to appropriation, be as follows: for homicide cases the rate of compensation shall be \$130 per hour; for superior court non-homicide

cases, including sexually dangerous person cases, the rate of compensation shall be \$95 per hour; for district court cases and children in need of services cases the rate of compensation shall be \$75 per hour; for children and family law cases and care and protection cases the rate of compensation shall be \$95 per hour; for sex offender registry cases and mental health cases the rate of compensation shall be \$75 per hour. These rates of compensation shall be reviewed periodically at public hearings held by the committee at appropriate locations throughout the commonwealth, and notice shall be given to all state, county and local bar associations and other interested groups, of such hearings by letter and publication in advance of such hearings. This periodic review shall take place not less than once every 3 years.

(2) An agreement between private bar advocates to refuse to compete for or accept new appointments or assignments unless the rates of pay under this section are increased shall be evidence of a violation of section 4 of chapter 93; provided, that evidence of an agreement between private bar advocates to refuse to compete for or accept new appointments or assignments unless the rates of pay under this section are increased shall include, but shall not be limited to, any county where not less than 25 per cent of private bar advocates are refusing to compete for or accept new appointments or assignments.

SECTION 50. Subsection (a) of said section 11 of said chapter 211D, as amended by section 49, is hereby further amended by striking out paragraph (1) and inserting in place thereof the following paragraph:-

(a)(1) The rates of compensation payable to all counsel, who are appointed or assigned to represent indigents within the private counsel

division of the committee in accordance with the provisions of paragraph (b) of section 6, shall, subject to appropriation, be as follows: for homicide cases the rate of compensation shall be \$140 per hour; for superior court non-homicide cases, including sexually dangerous person cases, the rate of compensation shall be \$105 per hour; for district court cases and children in need of services cases the rate of compensation shall be \$85 per hour; for children and family law cases and care and protection cases the rate of compensation shall be \$105 per hour; for sex offender registry cases and mental health cases the rate of compensation shall be \$85 per hour. These rates of compensation shall be reviewed periodically at public hearings held by the committee at appropriate locations throughout the commonwealth, and notice shall be given to all state, county and local bar associations and other interested groups, of such hearings by letter and publication in advance of such hearings. This periodic review shall take place not less than once every 3 years.

SECTION 51. Subsection (j) of section 10 of chapter 269 of the General Laws, as most recently amended by section 123 of chapter 135 of the acts of 2024, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

Whoever, not being a qualified law enforcement officer, a qualified retired law enforcement officer, as defined in the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. sections 926B and 926C, respectively, as amended, or a law enforcement officer as defined in section 1 of chapter 6E who is currently certified pursuant to section 4 of said chapter 6E and notwithstanding any license obtained by the person pursuant to chapter 140, carries on their person

Yarmouth; provided, however, that said vessel shall be trucked by a professional licensed boat hauler. For the purposes of this section, public ways shall not include roadways owned or within the control of the Massachusetts Department of Transportation.

SECTION 81. Item 0321-1510 of section 2 of chapter 9 of the acts of 2025 is hereby amended by striking out the figure “\$213,827,979” and inserting in place thereof the following figure:- \$241,147,979.

SECTION 82. Item 0910-0200 of said section 2 of said chapter 9 is hereby amended by inserting the following words:- ; provided, that not 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 Professional Staff Union/Massachusetts Teachers Association/NEA Unit B (Non-Exempt Supervisory Unit), Unit A15, effective from July 1, 2024 through June 30, 2027;

(28) the agreement between the University of Massachusetts and the University Staff Association/MTA/NEA, Unit A08, effective from July 1, 2024 through June 30, 2027;

(29) the agreement between the Sheriff of Hampshire County and the National Correctional Employee Union (NCEU), Unit SH5, effective from July 1, 2024 through June 30, 2027; and

(30) the agreement between the University of Massachusetts and the Massachusetts Society of Professors / UMass Lowell, MTA/NEA (“MSP”), Unit L90, effective from July 1, 2024 through June 30, 2027.

SECTION 102. Notwithstanding any general or special law to the contrary, the comptroller shall transfer all funds currently in the inspector general expendable trust to the Office of the Inspector General Recovery Fund established in section 2LLLLLL of chapter 29 of the General Laws not later than 90 days from the effective date of this act.

SECTION 103. The department of elementary and secondary education and the board of education shall update regulations, as necessary, consistent with sections 25, and 27 to 31, inclusive.

SECTION 104. Section 49 shall take effect on August 1, 2025.

SECTION 105. Section 50 shall take effect on August 1, 2026.

Approved, August 5, 2025.

In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

Article XXVIII.

No person can in any case be subject to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature. [See Amendments, Art. XLVIII, The Initiative, II, sec. 2.]

Article XXIX.

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws. [See Amendments, Arts. XLVIII, The Initiative, II, sec. 2, and The Referendum, III, sec. 2, LXVIII and XCVIII.]

Article XXX.

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.

Article XLVIII.

I. Definition.

Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

The Initiative.

II. Initiative Petitions

Section 1. *Contents.* An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure, which is proposed by the petition.

Section 2. *Excluded Matters.* - No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution , as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

[Section 3. *Mode of Originating.* - Such petition shall first be signed by ten qualified voters of the commonwealth and shall then be submitted to the attorney-general, and if he shall certify that the measure is in proper form for submission to the people, and that it is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people within three years of the succeeding first Wednesday in December and that it contains only subjects not excluded from the popular initiative and which are related or

which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed measure as such description will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.] [Section 3 superseded by section 1 of Amendments, Art. LXXIV.]

Section 4. *Transmission to the General Court.* - If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the secretary of the commonwealth shall, upon the assembling of the general court, transmit it to the clerk of the house of representatives, and the proposed measure shall then be deemed to be introduced and pending.

III. Legislative Action. General Provisions

Section 1. *Reference to Committee.* - If a measure is introduced into the general court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

Section 2. *Legislative Substitutes.* - The general court may, by resolution passed by yea and nay vote, either by the two houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

IV. Legislative Action on Proposed Constitutional Amendments

[Section 1. *Definition.* - A proposal for amendment to the constitution introduced into the general court by initiative petition shall be designated an initiative amendment, and an amendment introduced by a member of either house shall be designated a legislative substitute or a legislative amendment.

Section 2. *Joint Session.* - If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.] [Section 2 superseded by section 1 of Amendments, Art. LXXXI.]

Section 3. *Amendment of Proposed Amendments.* - A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

Section 4. *Legislative Action.* - Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.

Section 5. *Submission to the People.* If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of a least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

V. Legislative Action on Proposed Laws.

[Section 1. *Legislative Procedure*. - If an initiative petition for a law is introduced into the general court, signed by not less than twenty thousand qualified voters, a vote shall be taken by yeas and nays in both houses before the first Wednesday of June upon the enactment of such law in the form in which it stands in such petition. If the general court fails to enact such law before the first Wednesday of June, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit such proposed law to the people at the next state election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such state election or at such time after such election as may be provided in such law.] [Section 1 superseded by section 2 of Amendments, Art. LXXXI.]

[Section 2. *Amendment by Petitioners*. If the general court fails to pass a proposed law before the first Wednesday of June, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the attorney-general filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the secretary of the commonwealth before the first Wednesday of the

following July, together with a certificate signed by the attorney-general to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following July nor later than the first Wednesday of the following August, not less than five thousand signatures of qualified voters, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of June aforesaid, then the secretary of the commonwealth shall submit the measure to the people in its amended form.] [Section 2 superseded by section 3 of Amendments, Art. LXXXI.]

VI. Conflicting and Alternative Measures.

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The general court, by resolution passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: provided, that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of

the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

The Referendum.

I. When Statutes shall take Effect.

No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

II. Emergency Measures.

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. [A separate vote shall be taken on the preamble by call of the yeas and nays, which shall be recorded, and unless the preamble is adopted by two-thirds of the members of each house voting thereon, the law shall not be an emergency law; but] if the governor, at any time before the election at which it is to be submitted to the people on referendum, files with the secretary of the commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect: but no grant of any

franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law. [See Amendments, Art. [See Amendments, Art. LXVII.]

III. Referendum Petitions.

Section 1. *Contents.* - A referendum petition may ask for a referendum to the people upon any law enacted by the general court which is not herein expressly excluded.

Section 2. *Excluded Matters.* No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

Section 3. *Mode of Petitioning for the Suspension of a Law and a Referendum Thereon.* - A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall first be signed by ten qualified voters and shall then be filed with the secretary of the commonwealth not later than thirty days after the law that is the subject of the petition has become law. [The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the secretary of the commonwealth not later than ninety days after

the law which is the subject of the petition has become law the signatures of not less than fifteen thousand qualified voters of the commonwealth, then the operation of such law shall be suspended, and the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election; if thirty days do not so intervene, then such law shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.] [Section 3 amended by section 2 of Amendments, Art.LXXIV and section 4 of Amendments, Art. LXXXI]

Section 4. *Petitions for Referendum on an Emergency Law or a Law the Suspension of Which is Not Asked for.* - A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. Such petition shall first be signed by ten qualified voters of the commonwealth, and shall then be filed with the secretary of the commonwealth not later than thirty days after the law which is the subject of the petition has become law. [The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a description of the proposed law as such description will appear on the ballot together with the names and residences of the first

ten signers. If such petition filed as aforesaid is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law the signatures of not less than ten thousand qualified voters of the commonwealth protesting against such law and asking for a referendum thereon, then the secretary of the commonwealth shall submit such law to the people at the next state election, if thirty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election. If thirty days do not so intervene, then it shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall not be approved by a majority of the qualified voters voting thereon, it shall, at the expiration of thirty days after such election, be thereby repealed; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.] [Section 4 superseded by section 3 of Amendments, ArtLXXIV and section 5 of Amendments, Art. LXXXI.]

General Provisions.

I. Identification and Certification of Signatures.

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for state offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein

referred to. The general court may provide by law that no co-partnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

II. Limitation on Signatures.

Not more than one-fourth of the certified signatures on any petition shall be those of registered voters of any one county.

III. Form of Ballot.

Each proposed amendment to the constitution, and each law submitted to the people, shall be described on the ballots by a description to be determined by the attorney-general, subject to such provision as may be made by law, and the secretary of the commonwealth shall give each question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:-

In the case of an amendment to the constitution: Shall an amendment to the constitution (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

In the case of a law: Shall a law (here insert description, and state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon) be approved?

IV. Information for Voters.

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative

committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a description of the measure as such description will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent to the voters other information and arguments for and against the measure.]

[Subheadings *III* and *IV* superseded by section 4 of Amendments, Art. LXXIV.][Subheading *IV* superseded by Amendments, Art. CVIII.]

V. The Veto Power of the Governor.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VI. The General Court's Power of Repeal.

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

VII. Amendment Declared to be Self-executing.

This article of amendment to the constitution is self-executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

VIII. Articles IX and XLII of Amendments of the Constitution Annulled.

Article IX and Article XLII of the amendments of the constitution are hereby annulled.

receipts from taxes or other sources, such loan to be paid out of the revenue of the year in which it is created.

Section 3. In addition to the loans which may be contracted as before provided, the commonwealth may borrow money only by a vote, taken by the yeas and nays, of two-thirds of each house of the general court present and voting thereon. The governor shall recommend to the general court the term for which any loan shall be contracted.

Section 4. Borrowed money shall not be expended for any other purpose than that for which it was borrowed or for the reduction or discharge of the principal of the loan.

Article LXIII.

Section 1. *Collection of Revenue.* - All money received on account of the commonwealth from any source whatsoever shall be paid into the treasury thereof.

Section 2. *The Budget.* - Within three weeks after the convening of the general court the governor shall recommend to the general court a budget which shall contain a statement of all proposed expenditures of the commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed. This shall be arranged in such form as the general court may by law prescribe, or, in default thereof, as the governor shall determine. For the purpose of preparing his budget, the governor shall have power to require any board, commission, officer, or department to furnish him with any information which he may deem necessary.] [See Amendments, Arts. LXXII and LXXV.] [Annulled by Amendments, Art. CVII.]

Section 3. *The General Appropriation Bill.* - All appropriations based upon the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill. The general court may increase, decrease, add or omit items in the budget. The general court may provide for its salaries, mileage, and expenses and for necessary expenditures in anticipation of appropriations, but before final action on the general appropriation bill it shall not enact any other appropriation bill except on recommendation of the governor. The governor may at any time recommend to the general court supplementary budgets which shall be subject to the same procedures as the original budget.

Section 4. *Special Appropriation Bills.* - After final action on the general appropriation bill or on recommendation of the governor, special appropriation bills may be enacted. Such bills shall provide the specific means for defraying the appropriations therein contained.

Section 5. [*Submission to the Governor.* - The governor may disapprove or reduce items or parts of items in any bill appropriating money. So much of such bill as he approves shall upon his signing the same become law. As to each item disapproved or reduced, he shall transmit to the house in which the bill originated his reason for such disapproval or reduction, and the procedure shall then be the same as in the case of a bill disapproved as a whole. In case he shall fail so to transmit his reasons for such disapproval or reduction within five days after the bill shall have been presented to him, such items shall have the force of law unless the general court by adjournment shall prevent such transmission, in which case they shall not be law.] [See Amendments, Art.XC, Sec. 4..]



OFFERED BY [Massachusetts Supreme Judicial Court](#) | [Trial Court Law Libraries](#) |
[Massachusetts Court System](#)

SUPREME JUDICIAL COURT RULES

Rules of Professional Conduct

Rules of Professional Conduct Rule 6.1: Voluntary pro bono publico service

EFFECTIVE DATE: 07/01/2015

UPDATES: Adopted March 26, 2015, effective July 1, 2015

CONTACT

Trial Court Law Libraries

Online

[Library locations and phone numbers](#)

[\(/trial-court-law-library-locations\)](#)

[Chat with a law librarian online](#)

[\(/info-details/chat-or-text-with-a-law-librarian\)](#)

Email a reference librarian:

lawlibraries@jud.state.ma.us

- Rule 6.1
- Comment
- Downloads
- Contact

Rule 6.1

A lawyer should provide annually at least 25 hours of *pro bono publico* legal services for the benefit of persons of limited means. In providing these professional services, the lawyer should:

- (a) provide all or most of the 25 hours of *pro bono publico* legal services without compensation or expectation of compensation to persons of limited means, or to charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means. The lawyer may provide any remaining hours by delivering legal services at substantially reduced compensation to persons of limited means or by participating in activities for improving the law, the legal system, or the legal profession that are primarily intended to benefit persons of limited means; or,
- (b) contribute from \$250 to 1% of the lawyer's annual taxable, professional income to one or more organizations that provide or support legal services to persons of limited means.

Comment

[1]

Every lawyer, regardless of professional prominence or professional work load, should provide legal services to persons of limited means. This Rule sets forth a standard which the court believes each member of the Bar of the Commonwealth

can and should fulfill. Because the Rule is aspirational, failure to provide the *pro bono publico* services stated in this Rule will not subject a lawyer to discipline. The Rule calls on all lawyers to provide a minimum of 25 hours of *pro bono publico* legal services annually. Twenty-five hours is one-half of the number of hours specified in the ABA Model Rule 6.1 because this Massachusetts rule focuses only on legal activity that benefits those unable to afford access to the system of justice. In some years a lawyer may render greater or fewer than 25 hours, but during the course of his or her legal career, each lawyer should render annually, on average, 25 hours. Also, it may be more feasible to act collectively, for example, by a firm's providing through one or more lawyers an amount of *pro bono publico* legal services sufficient to satisfy the aggregate amount of hours expected from all lawyers in the firm. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation.

[2]

The purpose of this Rule is to make the system of justice more open to all by increasing the *pro bono publico* legal services available to persons of limited means. Because this Rule calls for the provision of 25 hours of *pro bono publico* legal services annually, instead of the 50 hours per year specified in ABA Model Rule 6.1, the provision of the ABA Model Rule regarding service to non-profit organizations was omitted. This omission should not be read as denigrating the value of the voluntary service provided to non-profit community and civil rights organizations by many lawyers. Such services are valuable to the community as a whole and should be continued. Service on the boards of non-profit arts and civic organizations, on school committees, and in local public office are but a few examples of public service by lawyers. Such activities, to the extent they are not directed at meeting the legal needs of persons of limited means, are not within the scope of this Rule. While the American Bar Association Model Rule 6.1 also does not credit general civic activities, it explicitly provides that some of a lawyer's *pro bono publico* obligation may be met by legal services provided to vindicate "civil rights, civil liberties and public rights." Such activities, when undertaken on behalf of persons of limited means, are within the scope of this Rule.

[2A]

Paragraph (a) describes the nature of the *pro bono publico* legal services to be rendered annually under the Rule. Such legal services consist of a full range of activities on behalf of persons of limited means, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making, community legal education, and the provision of free training or mentoring to those who represent persons of limited means.

[3]

Persons eligible for *pro bono publico* legal services under this Rule are those who qualify for publicly-funded legal service programs and those whose incomes and financial resources are above the guidelines used by such programs but who, nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations composed of low-income people, to organizations that serve those of limited means such as homeless shelters, battered women's centers, and food pantries or to those organizations which pursue civil rights, civil liberties, and public rights on behalf of persons of limited means. Providing legal advice, counsel and assistance to an organization consisting of or serving persons of limited means while a member of its board of directors would be *pro bono publico* legal services under this Rule.

[4]

In order to be *pro bono publico* services under the first sentence of Rule 6.1(a), services must be provided without compensation or expectation of compensation. The intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of this paragraph. Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected. The award of statutory attorney's fees in a case accepted as a pro bono case, however, would not disqualify such services from inclusion under this Rule.

[5]

A lawyer should perform *pro bono publico* services exclusively or primarily through activities described in the first sentence of paragraph (a). Any remaining hours can be provided in the ways set forth in the second sentence of that paragraph, including instances in which an attorney agrees to receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments and provision of services to individuals when the fee is substantially below a lawyer's usual rate are encouraged under this sentence.

[6]

The variety of activities described in Comment 3 should facilitate participation by government and corporate attorneys, even when restrictions exist on their engaging in the outside practice of law. Lawyers who by the nature of their positions are prohibited from participating in the activities described in the first sentence of paragraph (a) may engage in the activities described in the second sentence of paragraph (a) or make a financial contribution pursuant to paragraph (b).

[7]

The second sentence of paragraph (a) also recognizes the value of lawyers engaging in activities, on behalf of persons of limited means, that improve the law, the legal system, or the legal profession. Examples of the many activities that fall within this sentence, when primarily intended to benefit persons of limited means, include: serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator, and engaging in legislative lobbying to improve the law, the legal system, or the profession.

[8]

Lawyers who choose to make financial contributions pursuant to paragraph (b) should contribute from \$250 to 1% of the lawyer's adjusted net Massachusetts income from legal professional activities. Each lawyer should take into account his or her own specific circumstances and obligations in determining his or her contribution.

[9]

Reserved

[10]

Reserved

[11]

Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

Downloads

[Massachusetts Supreme Judicial Court Rules and Orders](https://www.mass.gov/doc/massachusetts-supreme-judicial-court-rules-and-orders/download)

(<https://www.mass.gov/doc/massachusetts-supreme-judicial-court-rules-and-orders/download>)

(English, PDF 2.86 MB)

Contact

Trial Court Law Libraries

Online

[Library locations and phone numbers](/trial-court-law-library-locations) (/trial-court-law-library-locations)

[Chat with a law librarian online](/info-details/chat-or-text-with-a-law-librarian) (/info-details/chat-or-text-with-a-law-librarian)

Email a reference librarian: lawlibraries@jud.state.ma.us

UPDATES:

Adopted March 26, 2015, effective July 1, 2015

RELATED

Rules of Professional Conduct (SJC Rule 3:07) Table of contents

(/supreme-judicial-court-rules/supreme-judicial-court-rule-307-rules-of-professional-c

Previous rule

(/supreme-judicial-court-rules/rules-of-professional-conduct-rule-57-responsibilities-r

Next rule

(/supreme-judicial-court-rules/rules-of-professional-conduct-rule-62-accepting-appoir

© 2025 Commonwealth of Massachusetts.

Mass.gov® is a registered service mark of the Commonwealth of Massachusetts. [Mass.gov Privacy](#)

[Policy](#) (/privacypolicy)



OFFERED BY [Massachusetts Supreme Judicial Court](#) | [Trial Court Law Libraries](#) |
[Massachusetts Court System](#)

SUPREME JUDICIAL COURT RULES

Supreme Judicial Court Rule 3:10: Assignment of counsel

EFFECTIVE DATE: 11/01/2016

UPDATES: Amended July 1, 1993, effective October 1, 1993
Amended July 20, 2016, effective November 1, 2016

CONTACT

Trial Court Law Libraries

Online

[Library locations and phone numbers](#)

[\(/trial-court-law-library-locations\)](#)

[Chat with a law librarian online](#)

[\(/info-details/chat-or-text-with-a-law-librarian\)](#)

Email a reference librarian:

lawlibraries@jud.state.ma.us

[➤ Section 1. Definitions](#)

- **Section 2. Advice as to Right to Counsel**
- **Section 3. Waiver of counsel**
- **Section 4. Standby counsel**
- **Section 5. Determination of indigency status**
- **Section 6. Assignment of counsel/notice of assignment**
- **Section 6A. Assignment of counsel for juveniles**
- **Section 7. Review of indigency determination**
- **Section 8. Inadmissibility of information obtained from a party**
- **Section 9. Counsel for parties who are indigent or indigent but able to contribute**
- **Section 10. Contribution toward cost of counsel**
- **Section 11. Collection of fees and contributions**
- **Downloads**
- **Contact**

Section 1. Definitions

The following definitions apply in this rule:

(a) Available funds

A party's liquid assets and disposable net monthly income calculated after providing for the party's bail obligations. 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.

(b) Basic living costs

The average monthly amount spent for reasonable payments toward living costs, such as shelter, food, utilities, health care, transportation, clothing, education, child care, alimony and child support payments, and payments and interest on loans for such living costs.

(c) Child welfare proceeding

Where the party is a juvenile, a care and protection proceeding, termination of parental rights proceeding, child requiring assistance proceeding, adoption, guardianship of a minor, or permanency hearing. Where the party is a young adult, a permanency hearing.

(d) Contribution fee

A fee imposed by a judge pursuant to Section 10 on a party who has been determined to be indigent but able to contribute. The contribution fee shall not include the indigent counsel fee, but shall be an amount above and beyond the indigent counsel fee that the party is able to pay without substantial financial hardship for the cost of any attorney appointed to represent the party.

(e) Disposable net monthly income

The income remaining each month after deducting income taxes, social security and Medicare taxes, ordinary retirement contributions, union dues, and basic living costs.

(f) Income

Salary, wages, interest, dividends, rental income, and other earnings and regular cash payments, such as amounts received from pensions, annuities, social security, alimony, and child support. Irregular or infrequent income (e.g., earnings from day labor, seasonal, or on-call work) that a party can reasonably be expected to receive

shall count as income under this rule. Irregular or infrequent income that cannot reasonably be anticipated to continue shall not count as income.

(g) Indigency verification process

The attempt by probation to verify a claim of indigency, in accordance with [G. L. c. 211D, § 2A\(c\)](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D/Section2A) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D/Section2A>), by a party or, where appropriate, a parent or guardian, by accessing wage, tax, and asset information in the possession of the Department of Revenue, information regarding benefits received from the Department of Transitional Assistance, and any information relevant to the determination of indigency in the possession of the Registry of Motor Vehicles.

(h) Indigent

A party who is:

- (i) receiving one of the following types of public assistance: Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to Elderly, Disabled and Children (EAEDC), need-based veterans' benefits, Supplemental Nutrition Assistance Program (SNAP) benefits, Refugee Cash Assistance, or SSI State Supplemental Program;
- (ii) receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current poverty guidelines referred to in [G. L. c. 261, § 27A\(b\)](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter261/Section27A) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter261/Section27A>);
- (iii) (1) residing in a tuberculosis treatment center, a mental health facility or a facility for individuals with intellectual or developmental disabilities, including the Bridgewater State Hospital and Massachusetts Treatment Center; or (2) the subject of a proceeding regarding admission or commitment to such a center or facility, a proceeding to make a substituted judgment determination concerning treatment, a proceeding under [G. L. c. 190B, § 5-309\(g\)](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter190B/Section5-309) ([/info-details/mass-general-laws-c190b-ss-5-309](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter190B/Section5-309)) to admit to a nursing facility defined in [G. L. c. 190B, § 5-101\(15\)](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter190B/Section5-101) ([/info-details/mass-general-laws-c190b-ss-5-101](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter190B/Section5-101)), or a

civil commitment proceeding under [G. L. c. 123, §](#)

[35](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123/Section35) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123/Section35>);

provided, however, that when the judge has reason to believe that the party is not indigent, a determination of indigency shall be made in accordance with Section 5 and other applicable provisions of this rule; or

- (iv) a juvenile, a child who is in the care or custody of the Department of Children and Families, or a young adult provided, however, that when a judge has reason to believe that the juvenile or young adult is not indigent, a determination of indigency shall be made in accordance with Section 5 and other applicable provisions of this rule.

(i) Indigent but able to contribute

A party who:

- (i) has an annual income, after taxes, of more than one hundred twenty five percent and less than two hundred fifty percent of the current poverty guidelines referred to in [G. L. c. 261, §](#)
[27A\(b\)](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter261/Section27A) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter261/Section27A>), or
- (ii) (1) is charged with a felony solely within the jurisdiction of the Superior Court or is the parent, guardian, or custodian of a juvenile or young adult who is the subject of a child welfare proceeding, subject to the exception in Section 6A for a parent or guardian who has had custody of the juvenile removed by a court of competent jurisdiction, or who has an interest adverse to the juvenile or young adult, and (2) has an annual income, after taxes, of more than two hundred fifty percent of the current poverty guidelines referred to in [G. L. c. 261, §](#)
[27A\(b\)](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter261/Section27A) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleVI/Chapter261/Section27A>); and (3) whose available funds are insufficient to pay the anticipated cost of counsel for this representation, but are sufficient to pay part of that cost. The anticipated cost of counsel shall be the cost of retaining private counsel for, as applicable, the defense of a felony charge within the jurisdiction of the Superior

Court, or a child welfare proceeding, as estimated and published from time to time by the Committee for Public Counsel Services; or

- (iii) is over the age of eighteen and is claimed as a dependent for tax purposes by a parent or guardian who is not indigent.

(j) Indigent counsel fee

A fee assessed on a person provided counsel pursuant to [G. L. c. 211D, § 2A\(f\)](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D/Section2A) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D/Section2A>).

(k) Intake report

The report provided to the judge by probation regarding the party's or, where appropriate, the party's parents' or guardians', responses to biographical and financial questions asked by probation.

(l) Juvenile

A child under the age of 18 who is the subject of a child welfare proceeding or a delinquency or youthful offender proceeding.

(m) Juvenile legal fee

The fee assessed on a parent or guardian to pay for the cost of any attorney appointed to represent a party under the age of 18. The fee shall not exceed the fee set forth in [G.L. c. 119, §](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section29A)

[29A](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section29A) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section29A>) or [G.L. c. 119, § 39F](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section39F) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section39F>).

(n) Liquid assets

Cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a motor vehicle or other tangible property,

provided that any equity in real or personal property is reasonably convertible to cash. Any motor vehicle necessary to maintain employment, including travel to and from the party's employment, shall not be considered a liquid asset. Expenses associated with the liquidation of assets, including penalties for early withdrawal and tax burdens, shall not be included as available funds.

(o) Party

Any person who may be entitled to the appointment of counsel in relation to any court proceeding on the basis of indigency under the law of the Commonwealth.

(p) Probation

The Office of the Commissioner of Probation or any member of its staff.

(q) Young adult

A person between the ages of 18 and 22 who is the subject of a child welfare proceeding.

Section 2. Advice as to Right to Counsel

If any party to a proceeding appears in court without counsel where the party has a right to be represented by counsel under the law of the Commonwealth, the judge shall advise the party or, if the party is a juvenile, the party and a parent or legal guardian, where appropriate, that: (a) the party may be entitled to the appointment of counsel at public expense; and (b) the Committee for Public Counsel Services will provide counsel to the party at no cost or at a reduced cost if the court finds that the party wants but cannot afford counsel.

Section 3. Waiver of counsel

If the party elects to proceed without counsel, the party shall sign a written waiver and the judge shall certify in writing that the party executed the waiver in the judge's presence after the judge informed the party of the right of counsel. If the party elects to proceed without counsel but refuses to sign the written waiver, the judge shall so certify in writing.

Before allowing a waiver of counsel, the judge, after conducting a colloquy with the party, shall make written findings that the party is competent to waive counsel and that the party has knowingly and voluntarily elected to proceed without counsel.

Section 4. Standby counsel

Notwithstanding a party's waiver of counsel, where the interests of justice so require, the judge may assign standby counsel to assist the party in the course of the proceedings regardless of whether the party is indigent.

Section 5. Determination of indigency status

(a)

If the party requests appointment of counsel, or if counsel is appointed under Section 6 or 6A of this rule, or if the judge for any reason finds that the party has not knowingly and voluntarily elected to proceed without counsel, probation shall provide the judge with an intake report. Probation shall attempt to verify the self-reported information on the intake report through the indigency verification process.

(b)

Unless the party is a juvenile, or is a person over eighteen who is claimed as a dependent for tax purposes, probation shall make a recommendation as to the indigency of the party. Where the party is a juvenile, probation shall make a

recommendation as to the indigency of the parents or guardian in accordance with Sections 1, 6 and 6A of this rule and [G.L. c. 119, § 29A](#) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section29A>) and [39F](#) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter119/Section39F>). Where a person over eighteen is claimed as a dependent for tax purposes, probation shall make a recommendation as to the indigency of the parents or guardian.

(c)

After reviewing the intake report and recommendation and questioning the party, as appropriate, the judge shall make a determination that:

- (i) the party is indigent,
- (ii) the party is indigent but able to contribute, or
- (iii) the party is not indigent.

The clerk shall enter the judge's determination on the court docket.

(d)

In order to determine a party's current financial status, the judge shall evaluate (1) the party's income in the current calendar quarter (i.e., January-March, April-June, July-September, October-December), and (2) the party's income in the three preceding calendar quarters.

(e)

Any party seeking appointment of counsel shall bear the burden of proving indigency by a preponderance of the evidence.

(f)

Even where a party meets or fails to meet the definitions of “indigent” or “indigent but able to contribute,” the judge retains the discretion to determine that the interests of justice require a different determination based on the party's available funds in relation to the party's basic living costs, or special circumstances, or both. A judge may consider, for example, receipt of Medicaid benefits as one factor in assessing whether the interests of justice would require a different determination. Where a judge exercises this discretion, the judge shall set forth on the record the reason for doing so.

Section 6. Assignment of counsel/notice of assignment

If under Section 5 the judge finds that a party is indigent or indigent but able to contribute, the judge shall assign the Committee for Public Counsel Services to provide representation for the party, unless exceptional circumstances, supported by written findings, necessitate a different procedure that is consistent with [G. L. c. 211D](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D>) and the rules of the Supreme Judicial Court. The clerk or register shall promptly notify the party of the assignment of counsel.

If a judge has determined that a party is not indigent, and the party after a reasonable time has not waived counsel, procured counsel, or petitioned for the appointment of counsel on the ground that, despite reasonable efforts, the party has been unable to afford the cost of counsel, the case may be ordered to proceed without appointed counsel. In proceedings where there is an entitlement to the appointment of counsel pursuant to General Laws, [chapter 111](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section94C), (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section94C>) [§§ 94C](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section94C) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section94C>) and [94G](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section94G) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section94G>), [chapter 123](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123>), [chapter 123A](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123A) (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVII/Chapter123A>), and [chapter 190B](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVIII/Chapter190B) ([/law-library/mass-general-laws-c190b](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVIII/Chapter190B)), the judge shall appoint counsel immediately upon the filing of a petition and entry of any requisite findings. If, before the

hearing, the judge determines that the party is not indigent, assigned counsel may be dismissed, and the party shall be advised to retain private counsel without delay; provided, however, that the judge shall authorize the continued services of appointed counsel at public expense where the interests of justice so require. The interests of justice may require such appointment if, for example, the party is incompetent to obtain counsel, unable to access funds, or unable to retain counsel. If, after the hearing has commenced, the judge determines that the party is not indigent, appointed counsel shall continue to represent the party and the judge may order the party to reimburse the Commonwealth for the cost of counsel.

Section 6A. Assignment of counsel for juveniles

All juveniles, regardless of the financial status of their parents or guardians, shall be entitled to the appointment of counsel. Unless the juvenile is represented by retained private counsel, the judge shall assign the Committee for Public Counsel Services to represent the juvenile in accordance with Section 6. If the juvenile is provided with appointed counsel and the judge determines that the juvenile's parent or legal guardian is not indigent, the judge shall assess the juvenile legal fee against the parent or guardian as payment toward the cost of counsel supplied by the Committee for Public Counsel Services. If the parent or guardian is determined to be indigent but able to contribute, the court shall order the parent or guardian to pay a reasonable amount toward the cost of appointed counsel, provided that the amount shall not exceed the juvenile legal fee and shall not cause substantial financial hardship. This section shall not apply to a parent or guardian who has had custody of the juvenile removed by a court of competent jurisdiction, or who has an interest adverse to the juvenile. The failure of a juvenile's parent or guardian to pay any fee assessed under this Section shall not be grounds for withholding or revoking the juvenile's appointed counsel.

Section 7. Review of indigency determination

(a)

The judge may review indigency status at any stage of a proceeding if information regarding a change in financial circumstances is obtained by probation through the indigency verification process or from some other source, including the party.

(b)

There shall be a right to an evidentiary hearing to reconsider the judge's findings and determination as to the party's entitlement to appointed counsel. The judge shall schedule the evidentiary hearing promptly after it is requested. If requested by the party, the judge shall appoint counsel to represent the party at the evidentiary hearing. Before the hearing, the judge shall provide the party with a copy of probation's intake report and recommendation described in Section 5(a) and any records in the court's possession relating to the party's financial status. The judge may issue any protective orders needed to protect the privacy of the party or any third parties. The party shall have the opportunity to introduce any relevant evidence and to call witnesses to testify. The party shall bear the burden of proving indigency by a preponderance of the evidence. At the conclusion of the hearing, the judge shall make written findings regarding whether the party is entitled to appointed counsel. These findings shall be part of the case record and maintained in the official file of the case.

Section 8. Inadmissibility of information obtained from a party

(a)

No information provided by a party pursuant to this rule may be used in any proceeding against the party except in a prosecution for perjury or contempt committed in providing such information or at an evidentiary hearing conducted under Section 7(b).

(b)

No party shall be asked or required to provide any information regarding his or her immigration or citizenship status as part of intake, indigency determination, or verification.

Section 9. Counsel for parties who are indigent or indigent but able to contribute

(a) Appearance of Counsel.

Counsel assigned by the Committee for Public Counsel Services to represent a party pursuant to this rule shall file an appearance within forty-eight hours after receipt of notification of the assignment.

(b) Withdrawal of Appearance.

If counsel assigned by the Committee for Public Counsel Services has filed an appearance and is unable or unwilling to represent a party, counsel shall move to withdraw the appearance. If the judge allows the motion for withdrawal, the clerk or register shall immediately notify the Committee for Public Counsel Services to make a new assignment of counsel.

Section 10. Contribution toward cost of counsel

(a)

If a judge determines that a party is indigent, the judge may not order, require, or solicit the party to make any payment toward the cost of counsel, except for an indigent counsel fee. The indigent counsel fee shall be waived where a judge, after the indigency verification process, determines that the party is unable without substantial financial hardship to pay the indigent counsel fee within 180 days. Where the indigent counsel fee is not waived, the judge may authorize the party to perform community service in lieu of payment of the indigent counsel fee in accordance with [G. L. c. 211D, §](#)

2A(g) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D/Section2A>). The clerk shall enter the judge's determination on the court docket.

(b)

If a judge determines that a party is indigent but able to contribute, the judge shall order the party to pay the indigent counsel fee plus a contribution fee based on the financial circumstances of the party, provided that the amount of the contribution fee shall not cause substantial financial hardship. The party shall be given an opportunity to be heard and to present information, including witness affidavits or testimony, regarding whether the contribution fee would cause substantial financial hardship.

(c)

If a party over the age of eighteen is determined to be indigent but able to contribute under Section 1(h)(iii) because the party is claimed as a dependent for tax purposes by a parent or guardian who is not indigent, the contribution fee shall be based on the financial circumstances of the parent or guardian. The parent or guardian shall be solely responsible for paying any contribution fee assessed under this subsection.

Section 11. Collection of fees and contributions

(a)

All payments toward the cost of counsel, including the indigent counsel fee, the contribution fee, and the juvenile legal fee, shall be made to the office of the clerk of court and shall be deposited with the State Treasurer in accordance with law.

(b)

The clerk shall inform the judge at each court event for a case whether the party has failed to pay an indigent counsel fee or contribution fee. If the party has failed to pay an indigent counsel fee or contribution fee within sixty days of appointment of counsel, the clerk, unless otherwise ordered by the judge, shall report the unpaid amount to the Department of Revenue, the Department of Transitional Assistance, and the Registry of Motor Vehicles as required by [G. L. c. 211D, § 2A](https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D/Section2A) (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211D/Section2A>).

(c)

The failure of a party, parent, or guardian to pay an indigent counsel fee, a contribution fee, or a juvenile legal fee shall not be grounds for withholding or revoking appointed counsel.

(d)

Probation shall not be responsible for monitoring or enforcing payment of any indigent counsel fee, contribution fee, or juvenile legal fee.

(e)

No party may be subject to incarceration for failing to pay an indigent counsel fee or a contribution fee.

Downloads

[Massachusetts Supreme Judicial Court Rules and Orders](https://www.mass.gov/doc/massachusetts-supreme-judicial-court-rules-and-orders/download)

(<https://www.mass.gov/doc/massachusetts-supreme-judicial-court-rules-and-orders/download>)

(English, PDF 2.86 MB)

Contact

Trial Court Law Libraries

Online

[Library locations and phone numbers \(/trial-court-law-library-locations\)](/trial-court-law-library-locations)

[Chat with a law librarian online \(/info-details/chat-or-text-with-a-law-librarian\)](/info-details/chat-or-text-with-a-law-librarian)

Email a reference librarian: lawlibraries@jud.state.ma.us

UPDATES:

Amended July 1, 1993, effective October 1, 1993

Amended July 20, 2016, effective November 1, 2016

RELATED

Court rules eBooks available from the Trial Court Law Libraries

[\(/lists/court-rules-ebooks-available-from-the-trial-court-law-libraries\)](/lists/court-rules-ebooks-available-from-the-trial-court-law-libraries)

© 2025 Commonwealth of Massachusetts.

Mass.gov® is a registered service mark of the Commonwealth of Massachusetts. [Mass.gov Privacy Policy \(/privacypolicy\)](#)