

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).