

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

Suffolk, ss.

No. SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
on behalf of unrepresented juvenile defendants in Essex, Franklin, Hampden, Middlesex,  
Norfolk, and Suffolk Counties,  
Petitioner,

v.

ESSEX COUNTY, FRANKLIN COUNTY, HAMPDEN COUNTY, MIDDLESEX COUNTY,  
NORFOLK COUNTY, AND SUFFOLK COUNTY JUVENILE COURTS,  
Respondents

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

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

As of July 18, 2025, there are 101 unrepresented children charged with crimes in the above-named Juvenile Courts. Affidavit of Dulcinea Goncalves, Deputy Chief Counsel, YAD,

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

¶32. One of these unrepresented youth is detained in the Department of Youth Services (DYS) without counsel. *Goncalves Aff.* ¶32. While this number may appear insubstantial compared to the numbers of unrepresented adult defendants,<sup>2</sup> proportionally the shortages are equally concerning. In FY24, the Juvenile Court had a total of 6,765 new delinquency and youthful offender case filings,<sup>3</sup> compared to over 558,000 new criminal filings in the District Court and Boston Municipal Court in FY24.<sup>4</sup> It also exceeds the number of unrepresented adult defendants when the *Lavallee* protocol was first implemented in 2004. *Commonwealth v. Lavallee*, 442 Mass. 228, 232 n.10 (2004) (58 unrepresented defendants).

As in District Court, there is a chronic shortage of private counsel in juvenile courts across the Commonwealth which has been exacerbated by the work stoppage. Without a specific end date to the work stoppage combined with the ongoing counsel shortages in Juvenile Court, increasing numbers of children will face criminal charges and detention unrepresented. The “strong medicine” of *Lavallee*<sup>5</sup> is now urgently needed in Juvenile Court.

At the outset, *Lavallee* and *Carrasquillo* apply to children charged with crimes in Juvenile Court. Youth charged with crimes are presumptively indigent, Supreme Judicial Court Rule 3:10, Section 6A, and are constitutionally entitled to appointed, effective counsel. *In Re Gault*, 387 U.S. 1, 41 (1967). *Commonwealth v. Ogden O.*, 448 Mass. 798, 806 (2007). G. L. c. 211D, § 5. The concerns that gave rise to the *Lavallee* protocol for adult court defendants are just as present, if not more so, for youth charged with crimes in Juvenile Court. A “child ‘requires the guiding hand of counsel at every step in the proceedings against [them].’” *In Re Gault*, 387 U.S. at 36, quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932). See also *Lavallee*,

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<sup>2</sup> YAD incorporates by reference the petition filed in related litigation currently pending in *CPCS v. Middlesex and Suffolk County District Courts and Boston Municipal Court*, SJ-2025-244, and respectfully requests the Single Justice take judicial notice of the contents of that petition. See *Jarosz v. Palmer*, 436 Mass. 526, 530 (2002) (judge “may take judicial notice of the court’s records in a related a related action”) (citation omitted).

<sup>3</sup> Juvenile Court: New Case Filings by Division and Case Type, FY2024, available at <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtFY2024Year-EndCaseFilings/TabSCFY24FilingsType>. Data for FY2025 is not yet available on the trial court data dashboard.

<sup>4</sup> New Case Filings by Fiscal Year and Case Type, Filter by Department, available at <https://public.tableau.com/app/profile/drap4687/viz/MassachusettsTrialCourtFY2024Year-EndCaseFilings/TabSCFY24FilingsType>. Data for FY2025 is not yet available on the trial court data dashboard.

<sup>5</sup> *Carrasquillo*, 484 Mass. at 389.

442 Mass. at 236 (lack of counsel impairs trial investigation and preparation and strategic decisions “that are themselves critical stages”; unrepresented “petitioners currently are being deprived of counsel to an extent that raises serious concerns about whether they will ultimately receive the effective assistance of trial counsel”).

However, because youth are different, and Juvenile Court is different, the *Lavallee* protocol must recognize and accommodate those differences. See *Commonwealth v. Walczak*, 463 Mass. 808, 823–24 (2012) (juveniles are “a class of defendants long given special consideration” and protection) and *Commonwealth v. Magnus M.*, 461 Mass. 459, 461 (2012) (Juvenile Courts are “primarily rehabilitative, cognizant of the inherent differences between juvenile and adult offenders”). As set forth more fully below, YAD asks this Court to recognize the first appearance/pre-arraignment hearing as a critical stage in Juvenile Court at which the right to counsel attaches, such that an unrepresented child cannot be arraigned. YAD asks this court to modify the *Lavallee* protocol in that regard, as well as by reducing the presumptive periods from 7 calendar days to 3 for release from custody, and from 45 calendar days to 15 for dismissal, with discretion to dismiss with prejudice, and in other ways described below.

#### FACTUAL BACKGROUND

CPCS is statutorily responsible for providing defense counsel for youth charged with crimes in the Juvenile Court. G. L. c. 211D, §§ 1, 5. *In Re Gault*, 387 U.S. at 41. *Commonwealth v. Ogden O.*, 448 Mass. at 806. Supreme Judicial Court Rule 3:10, Section 6A. CPCS has statutory authority to “plan, oversee, and coordinate the delivery of criminal and certain noncriminal legal services by salaried public counsel, bar advocate and other assigned counsel programs and private attorneys serving on a per case basis.” G. L. c. 211D, § 1.

The Youth Advocacy Division within CPCS provides representation for youth charged with crimes. See *Carrasquillo*, 484 Mass. at 374 n.13. The system of appointment is similar to that of adult cases. YAD both employs staff attorneys in regional offices and contracts with local bar advocate programs (BAP) to supply private defense attorneys, also known as bar advocates, to represent indigent youth who are not represented by CPCS staff attorneys. See G. L. c. 211D, § 6 (b). *Goncalves Aff.* ¶¶2, 14; *Affidavit of Erica Cushna*, Trial Panel Director, YAD, ¶3. YAD staff attorneys are salaried employees of CPCS. *Goncalves Aff.* ¶2. See G. L. c. 211D, §§ 1, 6 (a). Bar advocates for youth are supervised by Juvenile Supervising Attorneys (JSA) within the local BAP. *Cushna Aff.* ¶2.

Of the 101 youth without counsel as July 18, 2025, 1 is in Essex County; 1 is in Franklin County; 1 is in Hampden County; 24 are in Middlesex County; 18 are in Norfolk County; and 53 are in Suffolk County (1 in custody). *Goncalves Aff.* ¶32. The local BAPs pertinent to the instant petition are Essex County Bar Association Advocates, Inc. (ECBAA) in Essex County; Franklin County Bar Association Advocates, Inc. (FCBAA) in Franklin County; Hampden County Lawyers for Justice, Inc. (HCLJ) in Hampden County; Middlesex Defense Attorneys, Inc. (MDA) in Middlesex County; Norfolk County Bar Advocates, Inc. (NCBA) in Norfolk County; and Suffolk Lawyers for Justice (SLJ) in Suffolk County. *Goncalves Aff.* ¶13.

YAD has a total of nine trial offices. *Goncalves Aff.* ¶7. There are six YAD trial offices that represent youth in the impacted juvenile courts: Lowell (Middlesex and Essex counties); Malden (Middlesex and Suffolk counties); Quincy (Norfolk County);<sup>6</sup> Roxbury (Suffolk County); Salem (Essex County); and Springfield (Hampden and Franklin counties).<sup>7</sup> *Goncalves Aff.* ¶¶8-12.

By statute, Juvenile Court bar advocates are paid \$65 per hour for delinquency cases and \$85 per hour for youthful offender cases. G. L. c. 211D, § 11(a).<sup>8</sup> Of the 101 youth charged with crimes who currently have no counsel, 100% of their cases are delinquency cases, paid at \$65 per hour. *Goncalves Aff.* ¶¶19, 35. As with District Court bar advocates, this rate is lower than the rate paid to juvenile defenders in neighboring states. See 94 ME Code Rules § 649-301-94-649, Maine Commission on Public Defense Services (PDS), Chapter 301, section 2 (2) (\$150 per hour)<sup>9</sup>; N.H. Supreme Ct. R., Admin. R. 48 (\$125 per hour)<sup>10</sup>; Exec. Order No. 25-02, R.I. Supreme Court (2025) (\$112 per hour)<sup>11</sup>; Vermont Supreme Court Administrative Order No. 4,

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<sup>6</sup> The Quincy YAD office also covers Brockton Juvenile Court (Plymouth County). *Goncalves Aff.* ¶11. Brockton Juvenile Court is not a named defendant in this petition.

<sup>7</sup> The Springfield YAD office covers every Juvenile Court in Western Massachusetts, including courts in Hampden, Hampshire, Franklin, and Berkshire counties. *Goncalves Aff.* ¶9. Juvenile courts in Hampshire and Berkshire counties are not named defendants in this petition.

<sup>8</sup> While § 11(a) does not explicitly reference delinquency and youthful offender matters, the rate for delinquency cases is tied to the district court rate. *Goncalves Aff.* ¶19. CPCS Assigned Counsel Manual 5.GG.3.d. The rate for youthful offender cases is tied to the superior court rate. *Goncalves Aff.* ¶19. CPCS Assigned Counsel Manual 5.GG.1.a.

<sup>9</sup> Available at <https://www.maine.gov/sos/rulemaking/agency-rules/independent-agencies-rules#649>.

<sup>10</sup> Available at <https://www.courts.nh.gov/rules-supreme-court-state-new-hampshire/rule-48-counsel-fees-and-expenses-other-indigent-cases-and>

<sup>11</sup> Available at <https://www.courts.ri.gov/Executive%20Orders/Supreme-2025-02.pdf>

Rules Governing the Assignment of Counsel and Payment Therefor by the Defender General, § 6: Compensation for Assigned Counsel and Reimbursement for Expenses (\$100/hour).<sup>12</sup>

### **Assignment of Juvenile Defenders**

YAD strives to provide counsel to indigent youth prior to arraignment because the first appearance is a critical stage for young clients facing charges in Juvenile Court. *Goncalves Aff.* ¶14. New clients are identified and assigned counsel through close collaboration between YAD, DYS (which facilitates the overnight arrest (ONA) process), and Juvenile Court clerks, who frequently provide case information to YAD prior to summons arraignments to enable counsel to be appointed before the first appearance. *Goncalves Aff.* ¶14.

The overnight arrest process for juveniles differs from the process for adult defendants. *Goncalves Aff.* ¶17. By statute, children between the ages of 14 and 18 who are arrested when Juvenile Court is not in session cannot be held in a lockup where they would be in contact with adults.<sup>13</sup> G. L. c. 119, §§ 66, 67(c). When a youth is arrested, the police either release them to a parent, guardian, or custodian, or a worker from the Department of Children and Families, G. L. c. 119, § 67(b), or detain the youth in a detention facility approved by DYS. G. L. c. 119, § 67(c). DYS provides YAD and Juvenile Court clerks with a statewide ONA list every morning via email. *Goncalves Aff.* ¶17. YAD then collaborates with court personnel, YAD staff attorneys, and duty day bar advocates across the Commonwealth to ensure a youth being brought into Juvenile Court in custody will be appointed counsel at their first appearance in court, before they are arraigned. *Goncalves Aff.* ¶17. *Cushna Aff.* ¶7.

Duty days in Juvenile Court are organized differently as well. *Goncalves Aff.* ¶15. For duty days in Juvenile Court, the hourly rate is based on the case type. *Cushna Aff.* ¶8. Youth advocates are paid \$65 per hour for delinquency cases and \$85 per hour for youthful offender cases. *Goncalves Aff.* ¶19. *Cushna Aff.* ¶8. Almost every case picked up by bar advocates on a duty day are delinquencies, paid at \$65/hour. *Cushna Aff.* ¶8. In addition, because Juvenile Courts hear a variety of different case types, some courts have specific “delinquency days” during which all delinquency and youthful offender matters are scheduled. *Goncalves Aff.* ¶15.

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<sup>12</sup> Available at <https://www.vermontjudiciary.org/attorneys/rules>.

<sup>13</sup> Federal law requires youth be kept “sight and sound” separate from adult offenders. Juvenile Justice and Delinquency Prevention Act of 1974, as amended through December 2018. 34 U.S.C. §11133(a)(12)(A).

Consequently, some courts only schedule duty attorneys for delinquency days; other courts schedule duty attorneys every day. *Goncalves Aff.* ¶15. Scheduling duty day coverage for each court is a collaborative effort between YAD and the local BAPs; either YAD staff will cover the duty day, or a bar advocate will accept a duty day assignment. *Goncalves Aff.* ¶15; *Cushna Aff.* ¶7. As in adult court, the assigned duty day attorney goes to a particular Juvenile Court, represents indigent youth at their first appearance, and then accepts assignment of those cases. *Goncalves Aff.* ¶¶16, 18. *Cushna Aff.* ¶6.

Unfortunately, as in adult court, it has become increasingly difficult to find bar advocates willing to take duty days, particularly in Suffolk and Middlesex county juvenile courts. *Goncalves Aff.* ¶20. *Cushna Aff.* ¶17. See *CPCS v. Middlesex and Suffolk County District Courts and Boston Municipal Court*, SJ-2025-244 (“CPCS adult petition”) at pp. 2-3. The overall number of private attorneys certified to represent youth has remained relatively constant statewide, but the number of attorneys in Middlesex and Suffolk counties has declined. *Cushna Aff.* ¶¶9, 17. In addition, statewide, fewer bar advocates are taking juvenile cases and those who do take cases are taking fewer of them, for various reasons. *Cushna Aff.* ¶¶10, 11. Until very recently, YAD had been able to manage the ongoing shortages by having YAD staff cover duty days so that every duty date had coverage. *Goncalves Aff.* ¶20. *Cushna Aff.* ¶17. A YAD staff attorney would appear in court, and as long as the local YAD office had caseload capacity and did not have a conflict, YAD staff would assume representation of the youth. *Goncalves Aff.* ¶¶18, 21.

### **Steps Taken to Mitigate the Impact of Chronic Shortages and the Work Stoppage**

To mitigate the chronic shortages of bar advocates in Juvenile Court, particularly in Suffolk and Middlesex counties, YAD’s Trial Panel Unit (TPU) has taken myriad steps to attract, certify and retain more juvenile defenders. *Cushna Aff.* ¶13. In addition, YAD has increased staffing levels in its offices by 20% over the last five years to increase caseload capacity. *Goncalves Aff.* ¶¶21-22. “The Legislature currently requires CPCS ‘to maintain a system in which not less than [twenty percent] of indigent clients shall be represented by public defenders.’” *Carrasquillo*, 484 Mass. at 374. In FY24, YAD represented 29% of indigent youth charged with crimes. *Goncalves Aff.* ¶22. CPCS has also continually advocated for increased rates for District Court bar advocates, which would also raise the rate for delinquency cases. Affidavit of Lisa M. Hewitt, CPCS General Counsel, ¶2.

In addition, when CPCS became aware that some bar advocates would no longer be willing to take duty days or accept new cases in adult court after Memorial Day, CPCS sent a letter on May 22, 2025, to Chief Justice of the Trial Courts Heidi Brieger. See CPCS adult petition, Ex. B. At that time, YAD was not aware of a coordinated work stoppage in Juvenile Court but preemptively addressed possible impacts in Juvenile Court and copied Chief Justice of the Juvenile Court Dana Gershengorn on the letter. *Goncalves Aff.* ¶23. In that letter, CPCS stated that because bar advocates take the vast majority of court-appointed cases, it was expecting shortages of court-appointed defense counsel. See CPCS adult petition, Ex. B at 1. CPCS explained it would be prioritizing those cases “where counsel are most urgently needed,” *Carrasquillo*, 484 Mass. at 389, and described the process it would be employing to do so. *Id.* at 2.

In order to prioritize cases, as instructed in *Carrasquillo*, YAD has implemented the process described in Chief Counsel Benedetti’s letter as follows: Until such time as a YAD office has reached capacity, staff attorneys from that office are continuing to appear for scheduled duty days, are representing youth at their first appearance, and are keeping those cases where the youth remains in custody and YAD does not have a conflict of interest. *Goncalves Aff.* ¶23. In cases where the youth is not in custody, the clerks are notifying YAD TPU for assignment of counsel. *Cushna Aff.* ¶22. YAD is also continuing to accept new cases for its current clients. *Goncalves Aff.* ¶23.

When YAD TPU receives notice that a youth is unrepresented, it prioritizes youth in custody. *Cushna Aff.* ¶19. YAD TPU emails the local BAP, requesting outreach to their panel and neighboring county panels to find representation. *Cushna Aff.* ¶19. If no attorney accepts the assignment, YAD TPU checks the internal CPCS attorney assignment database for prior representation and contacts the identified attorney directly. *Cushna Aff.* ¶19. If there is no prior attorney or the attorney declines, YAD TPU sends a targeted request to a list of private counsel known to accept urgent assignments. *Cushna Aff.* ¶19. Until this week, those efforts had been able to secure counsel for every detained youth. *Cushna Aff.* ¶19. Unfortunately, as of July 18, 2025, there is currently one youth detained without counsel in Suffolk County Juvenile Court. *Goncalves Aff.* ¶32.

The Juvenile Courts have been working collaboratively with YAD to help “mitigat[e] the effects of a shortage of available defense counsel.” *Carrasquillo*, 484 Mass. at 389. Clerks have

been increasingly consistent with returning a data collection form on unrepresented youth to YAD TPU. Cushna Aff. ¶17. In addition, Suffolk, Middlesex, and Norfolk county juvenile court clerks are providing lists of unassigned cases; lists of detained youth are sent every day while lists of unassigned, undetained youth are sent weekly. Goncalves Aff. ¶25. The courts have been advised to assign the youth to CPCS and send the cases to YAD TPU and the local BAP for assignment of counsel. Goncalves Aff. ¶23. In addition, the Juvenile Court approved the distribution of YAD's notice to unrepresented youth. Cushna Aff. ¶16. Many courts are also sua sponte rescheduling summons arraignments so that YAD has more time to try to assign counsel. Goncalves Aff. ¶25.

### **Unrepresented Youth as a Result of the Ongoing Shortages and Work Stoppage**

Before the May 2025, work stoppage, from time to time due to the ongoing shortages of juvenile bar advocates there would be a delay in appointing counsel for youth in certain courts when YAD staff either had a conflict or the office was at caseload capacity. Goncalves Aff. ¶20. Cushna Aff. ¶10. YAD TPU would email the local BAP, requesting outreach to their panel and neighboring county panels to find representation. Cushna Aff. ¶12. If no attorney accepted the assignment, YAD TPU would contact any prior counsel as well as local attorneys known to accept assignments upon request. Cushna Aff. ¶12. Those efforts were typically successful in securing counsel for every youth. Cushna Aff. ¶12. However, in the past few months, those efforts have been less successful and there are currently unrepresented youth in multiple courts that do not appear to be related to the work stoppage. Cushna Aff. ¶12. This untenable situation is the result of a combination of factors, including the inadequate rates paid for delinquency cases. Goncalves Aff. ¶20. Cushna Aff. ¶¶11, 13.

As of July 18, 2025, there are 18 unrepresented youth in Norfolk County juvenile courts; 1 unrepresented youth in Franklin County juvenile courts; 3 unrepresented youth in Hampden County juvenile courts; and 1 unrepresented youth in Essex County juvenile courts. Goncalves Aff. ¶32. Of these youth, all of those with cases pending in Franklin and Hampden county juvenile courts have been without counsel for at least 15 days. Goncalves Aff. ¶33. Fortunately, none of these youth are detained. Goncalves Aff. ¶32.

Compounding the ongoing shortages statewide, after bar advocates in District Court stopped appearing for scheduled duty days on May 27, 2025, due to inadequate compensation

rates, many bar advocates in Suffolk and Middlesex juvenile courts have recently stopped taking duty day assignments as well. Goncalves Aff. ¶24. Cushna Aff. ¶18.

In Suffolk County, only 5 out of 30 juvenile bar advocates are taking duty days in July. Goncalves Aff. ¶24. Because the Roxbury YAD office is at capacity and many bar advocates are not accepting duty day assignments, approximately 50% of the duty days for July and August in the Boston Juvenile Court are unassigned. Goncalves Aff. ¶24. As of July 18, 2025, there are 53 youth without counsel in Suffolk County. Goncalves Aff. ¶53. Thirty-four of those youth have been unrepresented for at least 15 days. Goncalves Aff. ¶33. Four of them have been unrepresented for at least 45 days. Goncalves Aff. ¶34. One youth has been detained in DYS for at least 3 days as of July 18, 2025. Goncalves Aff. ¶32.

In Middlesex County, just 2 out of 34 juvenile bar advocates are taking duty days in July. Goncalves Aff. ¶24. The Malden YAD office is at capacity, and the Lowell YAD office will be at capacity soon. Goncalves Aff. ¶26. Because many bar advocates are not accepting duty day assignments, over 75% of duty days for July and August in the Middlesex County juvenile courts are unassigned. Goncalves Aff. ¶24. As of July 18, 2025, there are 24 youth without counsel in Middlesex County. Goncalves Aff. ¶32. Sixteen of them have been unrepresented for at least 15 days. Goncalves Aff. ¶33. Four of them have been unrepresented for at least 45 days. Goncalves Aff. ¶34. Fortunately, none of these youth are detained. Goncalves Aff. ¶32.

CPCS has informed the Legislature of the shortage of defense counsel and continues to advocate for increased compensation. Hewitt Aff. ¶2-3. However, it is unknown at this time what the Legislature's response will be and whether it will be sufficient. Hewitt Aff. ¶3. In addition, the FY26 budget recently signed by Governor Healey did not include a rate increase for bar advocates. Hewitt Aff. ¶4. Given the chronic shortages of counsel in Juvenile Court and the ongoing work stoppage by bar advocates in Middlesex and Suffolk juvenile courts, combined with YAD offices in the impacted counties being at or near caseload capacity, YAD anticipates that more youth will face charges without the guiding hand of counsel. Goncalves Aff. ¶36.

## ARGUMENT

### **Implementation of a modified, youth-specific *Lavallee* protocol is necessary given the substantial number of unrepresented children charged with crimes in Juvenile Court.**

For all the reasons set forth in the CPCS adult petition, “the current delay in appointing counsel [for children] is an unconstitutional state of affairs.” CPCS adult petition at pp. 6-8. Through this petition, CPCS YAD requests the Single Justice determine that “despite good faith efforts by CPCS and the local bar advocate organization, there is an ongoing systemic violation of indigent [youth]s’ 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.

As in the CPCS adult petition, a finding of good faith efforts should be made in this case as well. Well before this past May, YAD aggressively recruited new attorneys to the juvenile bar, increased staffing in its local offices by 20%, and diligently worked to obtain counsel for each and every youth charged with a crime in the Commonwealth. In May, even though there did not appear to be a coordinated work stoppage in Juvenile Courts, CPCS YAD alerted the Chief Justice of the Juvenile Court, made intensive efforts to triage unassigned duty days, and bolstered collaboration with the parties to identify and track every unassigned case in Juvenile Court. YAD TPU and local BAPs continue to assiduously search for counsel able and willing to represent youth, particularly when that youth is detained and YAD has a conflict or the local office is at capacity. And, as noted in the CPCS adult petition, “CPCS has long advocated for increased compensation rates with the Legislature and continues to do so.” CPCS adult petition at p. 7.

Despite CPCS YAD’s best efforts and the cooperation of the courts, “a substantial number of indigent [youth] remain unrepresented due to a shortage of defense counsel.” *Carrasquillo*, 484 Mass. at 389. 101 children, presumptively indigent and entitled to zealous representation, face criminal charges without the assistance of counsel. In light of the ongoing shortages even before the recent work stoppage, the situation is unlikely to improve without intervention. Even if an individual judge decided to release an unrepresented youth from DYS detention or dismiss pending charges, *Id.* at 391, such isolated relief would not stem the rising tide of unrepresented youth in Suffolk and Middlesex counties. “The continuation of what is

now an unconstitutional state of affairs cannot be tolerated.” *Lavallee*, 442 Mass. at 245. Implementation of a modified, youth-specific *Lavallee* protocol is necessary to protect the fundamental constitutional rights of current and future unrepresented children charged with crimes in Essex, Franklin, Hampden, Middlesex, Norfolk and Suffolk Counties. *Carrasquillo*, 484 Mass. at 389.

This modified protocol is necessary to accommodate the ways in which youth are different from adults, and the ways in which Juvenile Court is different from adult court.

**A. Children are categorically different than adults, as Massachusetts has long recognized.**

“[O]ur history is replete with laws and judicial recognition” that children are not miniature adults. *J.D.B. v. North Carolina*, 564 U.S. 261, 274 (2011). They have a “lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (internal citations omitted). They are “more vulnerable to negative influences and outside pressures” and “have limited control over their own environment.” *Id.* Scientific developments in psychology and brain science have conclusively shown “fundamental differences between juvenile and adult minds.” *Graham v. Florida*, 560 U.S. 48, 68 (2010). The rational parts of their brains are not fully developed. Teen Brain: Behavior, Problem Solving, and Decision Making, American Academy of Child & Adolescent Psychiatry, No. 95 (September 2017).<sup>14</sup> They process information with the amygdala rather than the prefrontal cortex, which leads to more emotional decisions. *Id.*

In recognition of those differences, G. L. c. 119, § 53, requires that “the care, custody, and discipline of the children brought before the juvenile court shall approximate as nearly as possible that which the juveniles should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance.” This statutory mandate is a substantive command that applies to all stages of delinquency proceedings. *Metcalf v. Commonwealth*, 338 Mass. 648, 650 (1959). As such, Juvenile Court is “primarily rehabilitative, cognizant of the inherent differences between juvenile and adult offenders, and geared toward the correction and redemption to society of delinquent children.” *Magnus M.*, 461 Mass. at 461 (citations omitted).

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<sup>14</sup> Available at [https://www.aacap.org/AACAP/Families\\_and\\_Youth/Facts\\_for\\_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx](https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx).

In accordance with this rehabilitative purpose, and in recognition of the differences between children and adults, youth are afforded rights and privileges not afforded to adults. They are entitled to the opportunity to consult with an interested adult prior to any police interrogation. *Commonwealth v. A Juvenile*, 389 Mass. 128, 134 (1983). Youth, unlike adults, can request their cases be dismissed prior to arraignment. *Commonwealth v. Humberto H.*, 466 Mass. 562, 575-76 (2013). Contrast *Commonwealth v. Moore*, 93 Mass. App. Ct. 73, 79 (2018). They have the right to return to court every fifteen days; adult defendants only have the right to return to court every thirty days. G. L. c. 119, § 56; G. L. c. 276, § 35. When not in custody, the general practice is for youth to return to court every thirty days. See Juvenile Court Standing Order 2-18: Time standards (effective November 5, 2018) (pretrial conference must occur within 30 days of arraignment).<sup>15</sup> Contrast District/Municipal Court Rules Joint Standing Order 3-04: Time standards for criminal cases (effective November 1, 2004) (pretrial conference must occur within forty-five days of arraignment). They can receive a continuance without a finding as a disposition after a jury trial. *Magnus M.*, 461 Mass. at 465.

These differences reflect repeated legal acknowledgement that children deserve to be treated with the solicitude that befits their vulnerability. They, more than any other population, require the “guiding hand” of counsel to ensure their rights are protected at every critical stage. *In re Gault*, 387 U.S. at 36. Accordingly, youth are uniquely harmed by the lack of representation from the very beginning of their cases. To ensure youth are given the “special consideration” and protections they are entitled to, *Walczak*, 463 Mass. at 823–24, and to further the Juvenile Court’s rehabilitative mandate, YAD requests this court modify the *Lavallee* protocol as follows.

*First*, no child shall be arraigned without counsel, because the right to counsel attaches at the initial appearance in Juvenile Court. *Second*, Juvenile Court clerks and judges shall continue to review all charges for dismissal of first offense minor misdemeanors and shall dismiss all charges as required by law. *Third*, no child may be placed on prearraignment judicial or District Attorney diversion without counsel. *Fourth*, a child who is held in lieu of bail pursuant to G. L. c. 276, § 58, or under an order of preventive detention pursuant to G. L. c. 276, § 58A, may not

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<sup>15</sup> The Juvenile Court has promulgated an updated standing order for time standards, effective August 4, 2025. Juvenile Court Standing Order 3-25: Time standards (effective August 4, 2025). The new order does not change the thirty-day rule. *Id.*

be detained at DYS more than 3 calendar days without counsel due to the well-documented dangers of detention. *Fifth*, if, despite good faith efforts by CPCS and any efforts by others, no attorney has filed an appearance on behalf of the youth within 15 calendar days of the first appearance, the judge must dismiss without prejudice and may dismiss with prejudice in light of all the facts and circumstances and in the best interests of the youth. *Sixth*, *Lavallee* hearings will be held in the Juvenile Court in which the case is pending, to minimize the disruption to the youth and their family. *Seventh*, juvenile court clerks are to provide daily lists of all unrepresented youth, or a statement there are no unrepresented youth, which will contain information sufficient for YAD to run conflicts checks and identify cases that should be dismissed with prejudice.

**1. No child shall be arraigned without counsel, because the right to counsel attaches at the initial appearance in Juvenile Court.**

“The Sixth Amendment and art. 12 provide criminal defendants the right to counsel at all ‘critical stages’ of the prosecution.” *Commonwealth v. Neary-French*, 475 Mass. 167, 170 (2016) (citations omitted). Under either the Massachusetts or federal constitution, that right to counsel “attaches at the time judicial proceedings are commenced,” *Id.* at 172, which is “at least by time of arraignment.” *Lavallee*, 442 Mass. at 234–235. In Juvenile Court, that critical stage occurs sooner, before arraignment at the initial appearance. At the initial appearance, the “adversary judicial process has been initiated.” *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009), citing *United States v. Wade*, 388 U.S. 218, 227-228 (1967) and *Powell*, 287 U.S. at 57. See also *Commonwealth v. Preston P.*, 483 Mass. 759, 769 (2020) (“stigma and [detrimental] collateral consequences associated with a delinquency adjudication . . . attach[] when the initial charges [are] brought”).

For over a decade, it has been clear that, in Juvenile Court, the initial appearance required by Mass. R. Crim. P. 7 and the arraignment can be distinct events. *Humberto H.*, 466 Mass. at 575. See also *Commonwealth v. Powell*, 468 Mass. 272, 273 (2014) (“It is irrelevant that arraignments do not always happen at the initial appearance where counsel is often appointed and bail is set”). In Juvenile Court, at the first appearance, the youth “finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law.” *Commonwealth v. Simmonds*, 386 Mass. 234, 237-238 (1982), quoting *Kirby v. Illinois*, 406 U.S. 682, 689 (1972). At that first appearance, robust prearraignment

litigation on motions to dismiss occurs. See, e.g., *Humberto H.*, 466 Mass. at 576 (prearraignment motion to dismiss complaint for lack of probable cause); *Wallace W. v. Commonwealth*, 482 Mass. 789, 800 (2019) (prearraignment motion to dismiss first offense of a minor misdemeanor); *Commonwealth v. Carson C.*, 489 Mass. 54, 58 (2022) (motion to continue arraignment for competency evaluation); *Commonwealth v. A Juvenile*, SJ-2024-0090 (prearraignment motion to dismiss where youth found incompetent and not likely to attain competency). In addition, in Juvenile Court, judicial diversion pursuant to G. L. c. 119, § 54A, must be prearraignment. *Commonwealth v. Newberry*, 483 Mass. 186, 194–95 (2019) (§ 54A “explicitly requires prearraignment diversion” in Juvenile Court). Section 54A requires a continuance for the completion of an assessment, the creation and approval of a diversion agreement, and waivers of constitutional rights.

A child as young as 12 years old<sup>16</sup> cannot be expected to navigate these legal complexities alone. See *United States v. Ash*, 413 U.S. 300, 313 (1973) (whether an event constitutes critical stage turns on “whether the accused required aid in coping with legal problems or assistance in meeting his adversary”). The prearraignment procedural and substantive rights created to ensure children are given special consideration and protection “would be for naught if the [child] were left to fend for him- or herself without the assistance of counsel to navigate and exercise his or her rights.” *Commonwealth v. Dew*, 492 Mass. 254, 261 (2023), citing *Gideon v. Wainwright*, 372 U.S. 335, 344-345 (1963).

Cases holding that the right to counsel does not attach “prior to arraignment” are distinguishable because they all involve the investigatory, rather than adjudicatory, phase of a criminal case. See *Commonwealth v. Beland*, 436 Mass. 273, 285 (2002) (Sixth Amendment and art. 12 right to counsel did not attach during interrogation); *Commonwealth v. Ortiz*, 422 Mass. 64, 67 n. 1 (1996) (same, “even though a criminal complaint and an arrest warrant have issued”); *Commonwealth v. Jones*, 403 Mass. 279, 286 (1988) (same; issuance of complaint and arrest warrant “does not constitute the commencement of ‘adversary proceedings’”). By the time of the first appearance in Juvenile Court, however, adversary judicial proceedings have undoubtedly commenced. The youth faces the “intricacies of substantive and procedural law” and requires the assistance of counsel to exercise rights to dismissal and diversion. “[T]he Bill

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<sup>16</sup> See G. L. c. 119, § 52.

of Rights is [not] for adults alone.” *In Re Gault*, 387 U.S. at 13. Children charged with crimes are constitutionally entitled to zealous, appointed counsel at least by the initial appearance.

Accordingly, no unrepresented child can be arraigned. Arraignment carries significant consequences, including the creation of a CARI. See *Carson C.*, 489 Mass. at 62. Although a youth’s CARI is not a public record, it is still available to significant classes of people, including, but not limited to, “the justices and probation officers of the courts, to the police commissioner for the city of Boston, to all chiefs of police and city marshals, and to such departments of the state and local governments as the commissioner [of probation] may determine.” G. L. c. 276, § 100. A wrongful arraignment can also affect access to public housing, G. L. c. 121B, § 32; access to immigration benefits for noncitizens, see, e.g., 8 U.S.C. § 1182; and the ability to provide a foster home for a child in need, G. L. c. 6, § 172B, among other consequences. And arraignments may be used to “enhance future sentencing or affect charging or probation decisions.” *Commonwealth v. Manolo M.*, 486 Mass. 678, 686 (2021). These consequences cannot be remedied post-arraignment.<sup>17</sup>

**2. Juvenile Court clerks and judges shall review all complaints for dismissal of first offense minor misdemeanors and shall dismiss all charges as required by law.**

Rules 3A and 3B of the Juvenile Court Rules for First Offense Determinations and Hearings Held Pursuant to *Commonwealth v. Wallace W.*, 482 Mass. 789 (2019), require Juvenile Court clerks to review each application for complaint to determine if dismissal is required. However, because of the “analytical complexities,” *Manolo M.*, 486 Mass. at 682, *S.C.*, 496 Mass. 244 (2025), in this “difficult area of law,” *Commonwealth v. Fayad F.*, 495 Mass. 266, 274 (2025), Juvenile Court judges must also be required to review any complaint pending against an unrepresented youth for dismissal pursuant to *Wallace W.* and its progeny. In

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<sup>17</sup> A wrongful arraignment can only be expunged in certain limited circumstances. There are twenty categories of offenses excluded from the possibility of expungement. G. L. c. 276, § 100J. The petitioner must also not have any more than two records. G. L. c. 276, § 100H. Moreover, expungement is not automatic for those who qualify. The Commonwealth may file an objection, and ultimately, the trial court decides whether to grant or deny the petition, in the interest of justice. *Id.* But even if the arraignment does qualify for expungement, and even if the arraignment is ultimately expungable, the child must wait three years from the conclusion of the case to expunge a misdemeanor, and seven years to expunge a felony, to even begin the process. G. L. c. 276, § 100I. During this time, the child will face all the consequences of a wrongful arraignment, some of which cannot be remedied with a three- to seven-year delay.

the absence of counsel, judges must assume a greater responsibility for determining whether the court has jurisdiction over the matter. See *Wallace W.*, 482 Mass. at 792.

**3. No child may be placed on prearrest judicial or District Attorney diversion without counsel.**

Unlike in adult court, youth, via counsel, can request prearrest judicial diversion, see G. L. c. 119, § 54A(a), and G. L. c. 119, § 54B, or negotiate for prearrest diversion with the prosecutor, see G. L. c. 119, § 54A(d). Prearrest diversion serves many salutary purposes. *Newberry*, 483 Mass. at 196. Without counsel youth cannot benefit from them because a child entering prearrest diversion is required to sign an agreement and waive substantive, constitutional rights including the right to counsel and the right to a speedy trial. G. L. c. 119, § 54A(c)(2). Representation by counsel is required for those waivers to be valid: § 54A(c)(2) expressly provides that “[c]onsent shall be given only upon the advice of counsel.” And if the conditions of diversion are not met, notice is required to be given to the child’s attorney “prior to the termination of the child from diversion.” G. L. c. 119, § 54A(f)(3). Placing an unrepresented child on diversion would violate both the constitutional right to counsel at the critical stage of the first appearance and the provisions of § 54A.

**4. A child who is held in lieu of bail pursuant to G. L. c. 276, § 58, or under an order of preventive detention pursuant to G. L. c. 276, § 58A, may not be detained at DYS more than 3 calendar days without counsel due to the well-documented dangers of detention.**

*Lavallee* recognized even a short, seven-day loss of liberty would cause “cumulative” harm for unrepresented indigent adults, “who are virtually powerless to obtain a lawyer on their own or to begin working on their own defense.” 442 Mass. at 237. Detention is uniquely harmful to youth - to their defense, their education, and their development. A modified *Lavallee* protocol requiring release after three calendar days in detention will help mitigate the particular danger of detaining unrepresented youth.

In 2024, the Commonwealth saw an increase in the use of physical custody against youth, including arrest and pretrial detention. Juvenile Justice Policy and Data Board, 2024 Annual Report.<sup>18</sup> “Specifically, the number of pretrial detention admissions increased 17% between FY23 and FY24, and the number of arrests increased 7%, while there was no increase in

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<sup>18</sup> Available at: <https://www.mass.gov/doc/jjpad-2024-annual-report/download>

applications initiated by summons.” The increase in the use of physical custody was driven by arrests and detentions for low-level offenses. *Id.* Nonetheless, “[t]he vast majority of youth held in a locked detention facility are not found to be dangerous and not ultimately committed to DYS. Research on the negative long-term impact that even a short stay in a locked detention facility can have on youth is clear – and yet our system regularly holds youth for a variety of reasons that, the data suggests, have little to do with their potential threat to public safety, but rather are due to other circumstances surrounding the youth.” *Id.*

These negative long-term impacts of detention are myriad. One is worsening behavior and an increase in the likelihood of recidivism. Justice Policy Institute, Holman and Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006), at 4.<sup>19</sup> As the Juvenile Court has itself acknowledged, “[u]nnecessary institutional confinement, even for one night, may lead to harmful exposure to negative peer influences, and may have the unintended consequence of an adolescent self-identifying as an offender, and may actually increase recidivism rates among juvenile offenders.” Juvenile Court Department of Mass., *Juvenile Court Dispositional and Sentencing Best Practices*, at 27 (internal citations omitted).<sup>20</sup>

Second, detention is destabilizing. Detained youth are isolated from their families, schools, and communities, disrupting the community support that improves outcomes. Telzer, van Hoorn, Rogers, & Do, *Social Influence on Positive Youth Development: A Developmental Neuroscience Perspective*. *Advances in child development and behavior* 54, 215–258 (2018).<sup>21</sup> In the context of sentencing, the Juvenile Court Committee on Sentencing Best Practices emphasized, “judges will likely wish to consider that any disposition that takes a youth out of his community, interferes with his schooling or his ability to get a job, or interferes with his development of positive peer and adult/family relationships will have a negative effect on his healthy development and, in turn, the desistance process, and will not enhance the goal of public safety.” *Sentencing Best Practices* at 18. Community support is even more crucial for a child at the outset of a stigmatizing, traumatizing legal proceeding.

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<sup>19</sup> Available at: [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf)

<sup>20</sup> Available at: <https://www.mass.gov/doc/juvenile-court-dispositional-and-sentencing-best-practices/download>

<sup>21</sup> Available at: <https://doi.org/10.1016/bs.acdb.2017.10.003>

Third, detention increases negative case outcomes. “Youth who are detained while awaiting resolution of their delinquency case are 3 times more likely to ultimately be committed than a youth who was in the community pending the outcome of their case.” Detention: Research, Utilization and Trends. Massachusetts Juvenile Detention Alternatives Initiative (JDAI) Research and Policy Series, 2019 (internal citations omitted).<sup>22</sup> This is true even though the vast majority of youth held in a locked detention facility are not found to be dangerous as a result of a court hearing. JJPAD 2024 Annual Report, at 27.

Fourth, detention devastates access to education. Sixty percent of detained youth do not return to school after their release or drop out shortly thereafter. *Id.* Youth who do not return to school face compounding risks: high school dropouts “face higher unemployment, poorer health (and a shorter life), and earn substantially less than youth who do successfully return and complete school.” Dangers of Detention at 9.

DYS is required to provide educational services to detained youth, G. L. c. 18A, § 2, but the Department of Elementary and Secondary Education (DESE) is responsible for the education of resident children with disabilities. G. L. c. 71B, § 1. If a detained youth’s IEP requires services the DESE does not provide, those services are the responsibility of the youth’s school district. Affidavit of Marlies Spanjaard, Director of Education Advocacy, YAD, ¶10. The lack of coordinated oversight often delays the provision of services for committed youth. This is particularly true for young people facing short term detention, as the protocol to gather the records necessary to provide special education services generally takes about ten days to implement, preventing some youth from receiving their special education services entirely. Spanjaard Aff. ¶10.

Fifth, detention increases racial disparities. “At virtually every stage of the juvenile justice process, youth of color—Latinos and African Americans, particularly—receive harsher treatment than their white counterparts, even when they enter the justice system with identical charges and offending histories.” Mendel, No Place for Kids: The Case for Reducing Juvenile Incarceration (2011), The Annie E. Casey Foundation, at 23.<sup>23</sup> Black adolescents in Massachusetts are “3 times more likely to be arrested, and of those arrested 1.3 times more likely to be arraigned, and of those arraigned 1.5 times more likely to be detained . . .” Sentencing Best

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<sup>22</sup> Available at: <https://www.mass.gov/doc/detention-research-utilization-and-trends-1>

<sup>23</sup> Available at: <https://www.aecf.org/resources/no-place-for-kids-full-report>

Practices at 21. If a Black youth were represented, counsel could argue against detention by highlighting the staggering racial disparities in arrest, charge and detention decisions, which undermines the integrity of the juvenile legal system and defies its mission to do justice. See Letter from the Seven Justices of the Supreme Judicial Court to Members of the Judiciary and the Bar (June 3, 2020) (“As judges, we must look afresh at what we are doing, or failing to do, to root out any conscious and unconscious bias in our courtrooms; to ensure that the justice provided to African-Americans is the same that is provided to white Americans; to create in our courtrooms, our corner of the world, a place where all are truly equal”).

Sixth, detention is costly and ineffective. The daily cost for hardware secure detention in Massachusetts was approximately \$300-350 per bed in 2014. Detention: Research, Utilization and Trends. The indirect costs, in the form of negative impacts on a youth’s life and recidivist outcomes, make detention the most expensive and least effective of the available alternatives. *Id.*; Justice Policy Institute, Sticker Shock: Calculating the Full Price Tag for Youth Incarceration (2014), at 36.<sup>24</sup>

Lastly, detention causes trauma and exacerbates mental illness. As DYS’s Juvenile Detention Alternatives Initiative notes, “[f]or a third of incarcerated youth diagnosed with depression, the onset of the depression occurred after they were detained. Youth in detention have a suicide rate 2-4 times that of youth in the community.” Detention: Research, Utilization and Trends (internal citations omitted).

Where the conditions of detention are so uniquely harmful to youth, access to counsel to address those conditions, navigate the stress and trauma of detention, and reduce the length of detention is necessary. Goncalves Aff. ¶37. CPCS Performance Standards require counsel to meet with a detained client within three business days, but many juvenile defenders meet their clients sooner, including on the weekends. CPCS Assigned Counsel Manual, at Perf. Standard 4.C.1.C.ii.<sup>25</sup> Cushna Aff. ¶4. Recognizing the importance of counsel in navigating the conditions of detention and time-sensitive nature of the relationship, DYS allows detained youth unlimited calls to their attorneys. Goncalves Aff. ¶37. While detention “even for one night” is harmful, Sentencing Best Practices at 27, presumptive release after 3 calendar days instead of 7 would limit the harm that counsel would otherwise address.

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<sup>24</sup> Available at: <http://www.justicepolicy.org/research/8477>

<sup>25</sup> Available at: <https://www.publiccounsel.net/assigned-counsel-manual/>

Release of a youth detained longer than 3 calendar days should be required unless a youth expressly chooses to remain in DYS custody instead of being released. Sadly, for some youth, DYS detention, harmful as it is, is a safer or more stable placement option in some limited circumstances. *Goncalves Aff.* ¶38. A judge, however, could only grant such a waiver of the right to be released after the child has consulted with counsel. YAD anticipates that staff attorneys will be entering limited appearances solely for the purpose of implementing the modified *Lavallee* protocol at a hearing in Juvenile Court. For certain youth in limited circumstances and in accordance with their expressed wishes, the harm of being unrepresented should not be compounded by being forced to leave a place they want to stay.

- 5. If, despite good faith efforts by CPCS and any efforts by others, no attorney has filed an appearance on behalf of the youth within 15 calendar days of the first appearance, the judge must dismiss without prejudice and may dismiss with prejudice in light of all the facts and circumstances and in the best interests of the youth.**

As set forth above, youth have the right to return to court every 15 days. G. L. c. 119, § 56. While the general practice is for out of custody youth to return to court every 30 days, see Juvenile Court Standing Order 2-18: Time standards, under the dire circumstances currently facing the Massachusetts juvenile legal system, dismissal after 15 calendar days with the discretion to dismiss with prejudice would better serve to mitigate the harm to unrepresented youth and further the Juvenile Court’s rehabilitative mandate.

First, the school year will be starting shortly. Upon mere issuance of a criminal complaint, children charged with a felony may be excluded from school for the duration of the case. G. L. c. 71, § 37H½. *Spanjaard Aff.* ¶6. Prompt dismissal of those cases will help ensure that youth will not be in educational as well as legal limbo “while the State solves its administrative problems.” *Lavallee*, 442 Mass. at 240. Were counsel available to represent the youth, that representation would include educational as well as legal advocacy. *Spanjaard Aff.* ¶¶5,7. The youth defender would represent their client at any pending school disciplinary hearing as well as at any court hearing. *Spanjaard Aff.* ¶7. Youth defenders regularly attend these hearings to advocate for their clients with disabilities—who are disproportionately disciplined—to remain in school. Citizens for Juvenile Justice, *The School-to-Prison Pipeline*, <https://www.cfjj.org/school-to-prison-pipeline> (“Students with disabilities are suspended at three times the rate of their non-disabled peers.”) *Spanjaard Aff.* ¶¶7, 9.

School participation is instrumental to positive youth development, and countless studies have shown that success in school reduces recidivism and improves life outcomes. See, e.g., Office of Juvenile Justice and Delinquency Prevention Literature Review, Education for Youth Under Formal Supervision of the Juvenile Justice System (January 2019).<sup>26</sup> The longer a case is pending without counsel, the longer the child may be excluded from school. Allowing a judge the discretion to dismiss with prejudice after 15 days will enable the judge to minimize disruption to a child’s education due to the systemic inability to appoint counsel. Spanjaard Aff. ¶8.

Second, allowing such an exercise of judicial discretion would also recognize the disruption that repeated court appearances have on the youth and their family, even if it does not fully mitigate the consequences. General Laws c. 119, § 55, requires parents or guardians to be summonsed to Juvenile Court to accompany their children to their court dates. Parents miss work and youth miss school, work, and other prosocial activities. Giving judges the discretion to dismiss a matter with prejudice will allow the judge to make individualized determinations balancing the harms caused by lack of counsel to the child and their family against the harms caused to the Commonwealth by an inability to refile charges.

Third, delays in accountability for youth affect their rehabilitation. Accountability for youth works best when it is immediate. “To be effective in shaping future behavior, punishment has to be prompt. If not, individuals are less likely to attribute their receipt of punishment to the offending behavior and legal sanctions will be less effective in reducing future offending.” Jeffrey A. Butts et al, Delays in Youth Justice, U.S. Department of Justice Grant Report No. 2005-IJ-CX-0041, at 9 (October 2009).<sup>27</sup> This is particularly important for youth, whose psychosocial immaturity leads them to focus on the short-term rather than the long-term. *Id.* As a result, studies have shown that “the effectiveness of the juvenile justice process depends at least in part on its timeliness.” *Id.* at 9-11. If a child’s case could be delayed for 45 days with no remedy, or dismissed but then refiled at any time, it could have negative impacts on the youth and the community at large. Delaying accountability will only serve to undercut the effectiveness of any remedy that might at some point be imposed.

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<sup>26</sup> Available at [https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education\\_for\\_youth\\_under\\_formal\\_supervision\\_of\\_the\\_juvenile\\_justice\\_system.pdf](https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/education_for_youth_under_formal_supervision_of_the_juvenile_justice_system.pdf).

<sup>27</sup> Available at <https://www.ojp.gov/pdffiles1/nij/grants/228493.pdf>.

Finally, and perhaps most significantly, youth outcomes are particularly influenced by their perceptions of the fairness of the system that is punishing them. Jay D. Blitzman et al., *Juvenile Court Dispositional and Sentencing Best Practices*, at 27 (2019) (“If youth feel they have been treated fairly by the court, they respond better to intervention and recidivism is reduced.”) (internal citations omitted).<sup>28</sup> Currently, children are bearing the consequences of the Legislature’s inability to adequately fund the lawyers to which they are constitutionally entitled. They are dealing with the stress, anxiety, and stigma of a court case hanging over their head, and they have no lawyer to answer their questions or relieve some of their concerns. All unrepresented defendants are suffering, but for children, these consequences are inherently unfair—no child under eighteen can vote for a different Legislature—and, as discussed, potentially life-changing. Modifying the *Lavellee* protocol to allow for dismissal with prejudice after 15 calendar days will not address all of the harms to children caused by lack of representation, but it will at least signal to these youth that the adults in the room are being held accountable for our shortcomings, too. See *Lavellee*, 442 Mass. at 246 (“the burden of a systemic lapse is not to be borne by defendant”). And while dismissal with prejudice over the Commonwealth’s objection does admittedly not occur in the normal course of proceedings, “[t]he course of the proceedings in these cases is per se not normal.” *Id.* at 240.

**6. *Lavellee* hearings will be held in the Juvenile Court in which the case is pending, to minimize the disruption to the youth and their family.**

*Lavellee* contemplated that release and dismissal hearings would occur in centralized Superior Courts with Regional Administrative Justices presiding, presumably to lessen administrative burdens on the government. *Id.* at 247. However, due to the specialized nature of Juvenile Court and the specialized expertise of Juvenile Court judges, hearings for unrepresented youth must occur in the Juvenile Court in which the case is pending. Juvenile Court judges are in the best position to weigh all relevant factors to fulfill the court’s “broad mandate to act in furtherance of a child’s welfare.” *Magnus M.*, 461 Mass. at 467. Further, unrepresented youth and their parents or guardians, who must appear with them at each court date, should not bear the burdens of this systemic failure of constitutional proportion by being required to drive, or sort out spotty public transportation, to a distant courthouse over and over again while the case

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<sup>28</sup> Available at <https://www.mass.gov/doc/juvenile-court-dispositional-and-sentencing-best-practices/download>.

lingers unassigned. See *Lavallee*, 442 Mass. at 246. For these reasons, the First Justice of the local Juvenile Courts should be responsible for scheduling and conducting release and dismissal hearings under the *Lavallee* protocol for cases pending in their individual courts.

**7. The juvenile court clerks are to provide daily lists of unrepresented youth which contain information sufficient for YAD to run conflicts checks and identify cases that should be dismissed with prejudice.**

Similarly, the administrative aspects of the *Lavallee* protocol should be modified as well. The affected parties would be: the Administrative Office of the Juvenile Court, the first justices and clerk magistrates of the named defendant Juvenile Courts, the district attorneys prosecuting cases in the named defendant Juvenile Courts, the Attorney General, CPCS, and DYS.

The clerk magistrates should prepare a daily list of all unrepresented youth or a statement that there are no unrepresented youth in the court. The list should contain: name, date of birth, docket number, pending charges, date of complaint, date of summons arraignment or date of arrest, custody status, and next scheduled court date. This information would enable YAD to determine promptly, as caseload capacities fluctuate, whether YAD staff could assume representation of a client or if there is a conflict. It would also enable the litigants to argue, and the first justice to determine, whether to dismiss with or without prejudice at the *Lavallee* hearing.

Finally, at that hearing, as set forth above, a Juvenile Court judge must release any youth detained 3 calendar days or longer unless the youth expressly requests to remain at DYS after consultation with counsel at the *Lavallee* protocol release hearing. The judge must also dismiss, either with or without prejudice, any case in which counsel has not filed an appearance after 15 calendar days.

REQUESTED RELIEF

Due to the ongoing systemic violation of the right to counsel as a result of the shortage of available youth defender bar advocates, CPCS YAD requests the implementation of a modified, youth-specific *Lavallee* protocol in Essex County, Franklin County, Hampden County, Middlesex County, Norfolk County, and Suffolk County Juvenile Courts.

Respectfully submitted,



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Date: July 18, 2025

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

Suffolk, ss.

No. SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
on behalf of unrepresented juvenile defendants in Essex, Franklin, Hampden, Middlesex,  
Norfolk, and Suffolk Counties,  
Petitioner,

v.

ESSEX, FRANKLIN, HAMPDEN, MIDDLESEX, NORFOLK, AND SUFFOLK  
JUVENILE COURTS,  
Respondents

**AFFIDAVIT OF DULCINEIA GONCALVES**

I, Dulcinea Goncalves, state the following to the best of my information and belief:

1. I am the Deputy Chief Counsel of the Youth Advocacy Division (YAD) of the Committee for Public Counsel Services (CPCS). I have served in this role since November 2021. Prior to becoming Deputy Chief Counsel, I served as the Attorney in Charge of the Quincy YAD office for over 10 years.

**Purpose and Structure of YAD**

2. YAD both employs staff attorneys in YAD offices and oversees bar advocates provided by the local bar advocate programs (BAP) under contract with CPCS.
3. YAD is tasked with ensuring that every child in Massachusetts has access to zealous legal representation that incorporates a Youth Development Approach resulting in both legal and life success. Accordingly, YAD leads, trains, supports, and oversees a diverse and collaborative juvenile defense bar across the state. Through individual representation and systemic advocacy, YAD also partners with community organizations and local agencies to work toward creating safer and healthier communities.
4. Working as a team, YAD staff attorneys, bar advocates, social services advocates, and support staff provide clients with holistic representation, including providing

legal advocacy in court and educational advocacy at school, advocating for alternatives to detention and confinement, and supporting youth throughout the court process and beyond.

5. CPCS YAD has promulgated performance standards with which all juvenile defenders must comply.
6. CPCS also has a conflict policy, in adherence with the Rules of Professional Conduct, which prohibits YAD staff attorneys from accepting an assignment when there is a conflict of interest arising under Rule 1.7 or 1.9.
7. YAD has nine trial court offices across the Commonwealth.
8. There is one YAD office in Essex County, located in Salem. The YAD Salem office covers the Salem, Lynn, and Newburyport Juvenile Courts and has three trial attorneys, including one Attorney-in-Charge.
9. There is one YAD office in Hampden County, located in Springfield. The YAD Springfield office covers the Holyoke, Palmer, and Springfield Juvenile Courts and has nine trial attorneys, including one supervising attorney and one Attorney-in-Charge. The office is in the process of hiring a tenth trial attorney. The YAD office in Springfield also serves youth in Franklin, Berkshire and Hampshire counties.
10. There are two YAD trial offices in Middlesex County, located in Lowell and Malden. The YAD Lowell office covers the Lowell Juvenile Court and has four trial attorneys, including one Attorney-in-Charge. The YAD Lowell office also covers the Lawrence Juvenile Court in Essex County. The YAD Malden office covers the Cambridge, Waltham, and Framingham Juvenile Courts and also covers the Chelsea Juvenile Court in Suffolk County. It has four trial attorneys at present, including one Attorney-in-Charge. A fifth trial attorney is scheduled to begin employment on August 11, 2025.
11. There is one YAD office in Norfolk County, located in Quincy. The YAD Quincy office covers the Quincy, Stoughton, and Dedham Juvenile Courts and has four trial attorneys, including one Attorney-in-Charge. YAD Quincy also covers the Brockton and Hingham Juvenile Courts in Plymouth County.
12. There is one YAD office in Suffolk County, located in Roxbury. The YAD Roxbury office covers the Boston, Dorchester, and West Roxbury Juvenile Courts and has five trial attorneys, including one Attorney-in-Charge.
13. YAD also contracts with local bar advocate programs (BAP) across the Commonwealth to assign counsel to youth. The local BAPs pertinent to the instant

petition are Essex County Bar Association Advocates, Inc. (ECBAA) in Essex County; Franklin County Bar Association Advocates, Inc. (FCBAA) in Franklin County; Hampden County Lawyers for Justice, Inc. (HCLJ) in Hampden County; Middlesex Defense Attorneys, Inc. (MDA) in Middlesex County; Norfolk County Bar Advocates, Inc. (NCBA) in Norfolk County; and Suffolk Lawyers for Justice (SLJ) in Suffolk County. Other BAPs include the Barnstable County Bar Advocates, Inc., in Barnstable County; Berkshire County Bar Advocates, Inc. in Berkshire County; Bristol County Bar Advocates, Inc., in Bristol County; Hampshire County Bar Advocates, Inc. in Hampshire County; Island Bar Advocates, Inc. for Dukes County; Pilgrim Advocates, Inc., in Plymouth County; and Bar Advocates of Worcester County, Inc., in Worcester County.

### **Duty Days in Juvenile Court**

14. YAD strives to provide counsel to indigent youth prior to arraignment. Due to robust prearraignment litigation and diversion opportunities in Juvenile Court, the first appearance is a critical stage of any delinquency matter. This is accomplished both through a duty day system and through close collaboration with the Juvenile Court clerks' offices for summons arraignments, and the Department of Youth Services (DYS) for overnight arrests.
15. The duty day system in Juvenile Courts differs slightly from adult court. Because Juvenile Courts hear a variety of different cases, including delinquency, youthful offender, care and protection, and child requiring assistance petitions, some courts have specific "delinquency days" during which all delinquency and youthful offender matters are scheduled. Consequently, some courts only schedule duty attorneys for delinquency days. Other courts schedule duty attorneys every day. Both YAD staff and bar advocates cover duty days in Juvenile Court.
16. During a duty day in a Juvenile Court, attorneys are assigned clients who have been arrested overnight or day-of, or who have been released by police to appear in court, as well as clients who have been summonsed to appear on that particular date. For courts that employ the delinquency day system, summons arraignments are generally only scheduled for those delinquency days. In courts that use a delinquency day system, the only cases that come in on non-delinquency days are overnight/day-of arrests, warrant removals, and cases for youth who were recently released by police to appear in court as soon as possible.
17. The overnight arrest process for juveniles also differs from the process for adult defendants. Because youth, by law, cannot be held in the same lockup as adults, DHS overnight arrest beds provide a temporary placement for youth arrested outside of court business hours who are held awaiting an appearance in court. DHS sends out a

statewide list of overnight arrests every morning via email. This process ensures that YAD administration knows how many children are coming into court in custody which enables us to collaborate with court staff as well as staff attorneys and bar advocates to ensure representation of detained youth, even on non-delinquency days when no delinquency attorney is scheduled to appear. Typically, the number of overnight arrests ranges from 5-10 per week, statewide.

18. YAD offices take duty dates in almost every court in which they cover cases. When YAD staff attorneys are on duty in one of the courts that their office covers, they take all cases at arraignment that are not a conflict for the office.

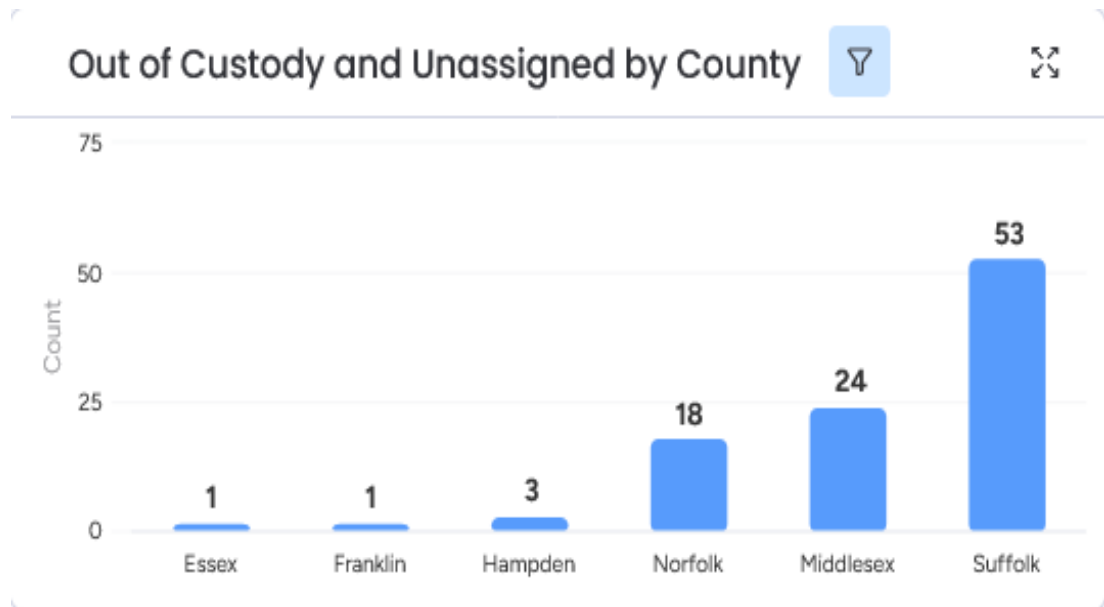
### **Ongoing Counsel Shortages Before the Work Stoppage**

19. The current statutory rate for delinquency cases for bar advocates is \$65 per hour. For youthful offender cases, the rate is \$85 per hour. The rate for delinquency cases is tied to the district court rate. The rate for youthful offender cases is tied to the superior court rate.
20. Juvenile practice is demanding. It is a specialized practice requiring knowledge of substantive and procedural criminal law and myriad juvenile distinctions, as well as an understanding of adolescent development and a desire to work with adolescent clients and their families. YAD staff and juvenile defender bar advocates are dedicated, zealous advocates, but the lower volume of cases in Juvenile Court and other concerns unique to the juvenile bar have caused ongoing shortages of bar advocates willing to accept duty days in Juvenile Court. Occasionally, there have been individual cases where there would be a delay in the appointment of counsel because the local YAD office was either at capacity, or, more frequently, conflicted out.
21. YAD has attempted to mitigate these shortages by hiring additional staff attorneys. In the last five years, YAD has added eight staff attorney positions statewide and one Senior Trial Counsel position, for an increase of over 20%. As a result, YAD staff have been able to pick up additional duty days to ensure coverage.
22. Additional staff have also enabled YAD to increase office case-carrying capacity as well. As a result, while YAD staff handled approximately 20% of all Juvenile Court delinquency and youthful offender cases in FY22, by FY24, YAD staff handled approximately 29% of all delinquency and youthful offender cases. Bar advocates represented the remaining youth.

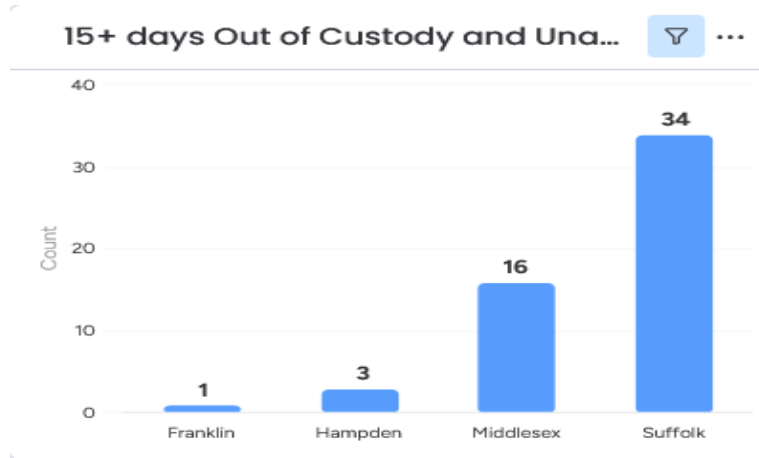
### **Consequences of the Bar Advocate Work Stoppage**

23. CPCS became aware that starting May 27, 2025, District Court bar advocates would begin a work stoppage. Although it did not appear there would be a coordinated work stoppage in Juvenile Court impacting YAD's clients, CPCS sent notice to the Chief Justice of the Juvenile Court Dana Gershengorn. Courts were advised to assign the youth to CPCS and refer the cases to YAD for assignment. YAD staff would continue appearing for scheduled duty days until such time as the office reached capacity, representing youth at their first appearance, and keeping those cases where the youth remains in custody and YAD does not have a conflict of interest. In addition, YAD staff would continue to accept new cases for existing clients.
24. In July, many bar advocates in Suffolk and Middlesex county juvenile courts stopped taking duty days. In Suffolk County, only 5 out of 30 juvenile bar advocates are taking duty days in July. In Middlesex County, just 2 out of 34 juvenile bar advocates are taking duty days in July. As a result, 51% of July duty days in Suffolk County are unstaffed and 76% of July duty days in Middlesex are unstaffed. The situation is similar for August. Currently, half of Suffolk County duty days are unstaffed as are three-quarters of Middlesex duty days.
25. I have been working collaboratively with Chief Justice Gershengorn and have been in contact with the presiding justices and clerk magistrates in Suffolk and Middlesex juvenile court. Those courts have been more consistently providing us with updated data, including weekly lists of unassigned cases and daily lists of detained youth. In other impacted courts, local YAD leadership has been working closely with the courts. Many courts are also pushing summons arraignments further out to provide more time for the assignment of counsel.
26. YAD staff had been covering unassigned duty days, but as of today's date, with the exception of the Lowell office, the YAD offices in all impacted counties are at caseload capacity and cannot take new cases. I anticipate YAD Lowell will reach capacity shortly.
27. YAD office heads and regional managers are constantly reviewing the caseloads of their attorneys. Caseload capacity is an individualized determination based on multiple factors, including but not limited to an attorney's experience, volume of cases, types and severity of cases (an attorney handling a number of youthful offender cases, for example, will likely carry fewer cases), and other case-specific demands.
28. Other considerations include how many clients are in custody, the number of courts the attorney must cover and their distance from the office, and whether any trials or evidentiary hearings are scheduled or in progress.

29. Caseload capacity is reached when an attorney is unable to meet CPCS Performance Standards and is therefore unable to comply with their professional and ethical obligations and their responsibility to provide effective representation to every client. If and when that point is reached, there is a systemic conflict of interest because not all clients receive the effective representation to which they are entitled.
30. YAD runs conflict checks on all cases assigned to staff. YAD tends to have more conflicts than in adult cases, because many juvenile cases involve larger groups, and youths tend to be involved with peers, either at school or in the community.
31. Since the work stoppage began, YAD has prioritized those cases where counsel was most “urgently needed,” as required by the Supreme Judicial Court in *Carrasquillo v. Hampden County District Courts*, 484 Mass. 367 (2020), by assigning staff, when there is capacity and no conflict, to detained youth and youth facing serious charges.
32. As of today’s date, there are currently 101 youth facing charges without counsel. One of these children (Suffolk County) is detained. He has been held since July 15, 2025.



33. Of these 101 unrepresented youth, 54 of them have been without counsel for at least 15 days.



34. Ten of them have been without counsel for at least 45 days.



35. Of the 101 unrepresented youth, 100% of their cases are delinquency cases.
36. Without a specific end date to the ongoing work stoppage in Suffolk and Middlesex in combination with the ongoing counsel shortages in Juvenile Court, more children will face delinquency charges without the guiding hand of counsel.

**Specific Harms to Unrepresented Youth**

37. The harms to unrepresented youth are particularly acute given the unique practices and procedures of the Juvenile Courts. In particular, recognizing the importance of counsel in navigating the conditions of detention, DYS facilities allow detained youth

to call their attorneys and receive calls from their attorneys at any reasonable time, with no time limits.

38. In my experience, there are some youth, in very limited circumstances, that do want to stay at a DYS facility, either to complete a program, obtain their HiSET, or remain in a stable placement for a period of time. YAD's model of representation is client centered and client directed. We advocate for what a client wants, not what we think might be in that client's best interests. Accordingly, if a client tells their lawyer they want to stay at DYS, that is the outcome the lawyer is expected to advocate for.
39. The immediate access to legal counsel for youth held in detention is critical to safeguarding their constitutional rights and ensuring they understand the nature and implications of the delinquency proceedings against them. Such early access to counsel is consistent with nationally recognized best practices in juvenile justice and reflects a developmentally appropriate approach.

Signed under the pains and penalties of perjury this 18<sup>th</sup> day of July, 2025.



Dulcineia Goncalves

Deputy Chief Counsel, Youth Advocacy Division  
BBO No. 664525

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

Suffolk, ss.

No. SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
on behalf of unrepresented juvenile defendants in Essex, Franklin, Hampden, Middlesex,  
Norfolk, and Suffolk Counties,  
Petitioner,

v.

ESSEX, FRANKLIN, HAMPDEN, MIDDLESEX, NORFOLK, AND SUFFOLK  
JUVENILE COURTS,  
Respondents

**AFFIDAVIT OF ERICA CUSHNA**

I, Erica Cushna, state the following to the best of my information and belief:

1. I am the Trial Panel Director for the CPCS Youth Advocacy Division (YAD). I have served as Trial Panel Director since 2010. Before then, I served as a bar advocate in Western Massachusetts juvenile courts for over two decades.

**YAD's Trial Panel Unit and Bar Advocate Programs**

2. I manage YAD's Trial Panel Unit (TPU), which provides oversight and support to private assigned counsel statewide to ensure client-centered zealous representation to youth charged with crimes. I supervise one staff counsel and one administrator to ensure that indigent youth receive the zealous representation to which they are entitled. My unit also supports the 17 Juvenile Supervising Attorneys (JSAs) who oversee private assigned counsel within their local bar advocate programs (BAPs).
3. Thirteen BAPs contract with CPCS, through YAD, to certify the 260 private juvenile defenders, also known as bar advocates, who are currently eligible to accept appointments to represent indigent youth in delinquency and youthful offender (YO) cases.
4. Bar advocates are expected to abide by the Assigned Counsel Manual, which sets forth the performance standards for attorneys taking delinquency and youthful offender cases pursuant to G.L. c. 211D. The performance standards enumerate the duties of counsel upon accepting a new assignment, including, inter alia, meeting with a detained client

within three business days. Perf. Standard 4.C.1.C.ii. Many attorneys meet with detained clients sooner, including on weekends.

5. In addition to collaborating with local BAPs to assign cases, YAD TPU ensures private attorneys comply with the relevant performance standards as well as other agency policies and procedures; investigates complaints; and assists, as necessary, CPCS’s Audit and Oversight Department in its review of billings in YAD-assigned matters.

**YAD Duty Day Assignments**

6. “Duty days” are the process by which attorneys are assigned new cases in Juvenile Court. As in adult court, the assigned duty day attorney goes to a particular Juvenile Court, represents indigent youth at their first appearance, and then accepts assignment of those cases.
7. Scheduling duty day coverage for each court is a collaborative effort between YAD and the local BAPs; either YAD staff will cover the duty day, or bar advocates will accept a duty day assignment.
8. Duty day attorneys in Juvenile Court are paid at the case-type rate. Current rates of compensation are \$65 per hour for delinquency matters and \$85 per hour for youthful offender matters. Duty day cases are almost exclusively delinquency matters, because it is exceedingly rare for a youth to be indicted as a youthful offender without a delinquency complaint being filed first. Accordingly, attorneys are paid at the rate of \$65 per hour for duty days.

**Chronic Shortages in Coverage**

9. The overall, statewide number of private attorneys certified to represent youth has remained relatively constant in recent years after declining in FY19 and FY20.

<b>Number of Private Counsel</b>	<b>FY21</b>	<b>FY22</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>
Barnstable	12	12	8	14	14
Berkshire	7	6	6	6	7
Bristol	32	32	36	38	43
Essex	38	38	43	42	44
Franklin	3	4	7	7	5
Hampden	22	22	19	18	19
Hampshire	5	5	4	4	4
Middlesex	38	38	31	32	34
Norfolk	27	27	28	31	22
Plymouth	17	17	17	18	15
Suffolk	36	36	27	27	29
Worcester	22	22	22	23	24

<b>STATEWIDE TOTAL</b>	259	259	248	260	260
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10. Notwithstanding the relatively consistent number of private panel attorneys in recent years, the numbers fluctuate during the fiscal year as attorneys leave the panel and new ones are recruited. In Middlesex and Suffolk counties, in particular, panel numbers have dropped.
11. There have been chronic challenges assigning Juvenile Court trial work. YAD has ongoing difficulty in assigning counsel for multiple co-defendant cases and often needs to utilize district court bar advocates or advocates from other counties. Multiple co-defendant cases are not infrequent in Juvenile Court, due to the role peer influence plays in typical adolescent behavior.
12. In addition, fewer attorneys have been taking juvenile cases in recent years, and those who do take cases are taking fewer of them. Some of the reasons for these declines include:
  - a. Juvenile Court is lower in volume, requires more waiting during duty days and pays less per hour than other panels. As a result, most attorneys maintain certifications on other panels as well, which make up significant portions of their practice.
  - b. In 2024, of the 260 attorneys currently taking YO and delinquency cases, only 192 of them took at least one case. By contrast, 85% of delinquency cases were taken by 33% of certified attorneys. As a small panel, we are especially affected when these “heavy hitters” leave the practice. In FY25, we lost 3 “heavy hitters” in Essex (2) and Worcester (1) counties. In FY24, we lost 3 “heavy hitters”, 1 each in Middlesex, Worcester and Essex counties.
13. When a child was unrepresented as a result of the ongoing counsel shortages, if the local YAD staff office was unable to accept the case, I would contact the local BAP and request they contact their panel and neighboring panels to locate an attorney. I would also contact any prior counsel and local attorneys who have historically accepted urgent appointments upon request. Until recently, those efforts were typically successful in finding counsel. Now, however, there are growing numbers of unrepresented children charged with crimes.
14. YAD TPU provides exit surveys for our attorneys to determine why they are leaving. The most noted reason is inadequate compensation.
15. YAD has undertaken many initiatives to attract, certify and retain juvenile defenders, including:
  - a. Hiring two private counsel outreach coordinators to assist all private panel directors with recruitment;

- b. Working with the federal government to qualify bar advocates for Public Service Loan Forgiveness;
- c. Working with the Criminal Trial Support Unit, Hampden County Lawyers for Justice and WNEU Law School to create a zealous certification course to increase the number of attorneys in Western Massachusetts;
- d. Participating in other recruitment events at area law schools;
- e. Encouraging JSAs and current panel attorneys to refer colleagues to us to take our certification trainings and maintaining a list of lawyers who express an interest in joining our panel between our scheduled certification trainings;
- f. Distributing recruitment materials to other CPCS panels, county, state, and affinity bar associations, bar advocate programs, and area law schools;
- g. Reviewing efficiency of duty day assignments and eliminating coverage in certain courts that had no DA assigned;
- h. Recruiting and utilizing other certified attorneys to handle bail only cases and codefendant and conflict issues; and
- i. Working with DYS and other stakeholders to better utilize diversion to reduce the number of cases that require court hearings.

**Efforts to Provide Appointed Counsel During Work Stoppage**

- 16. In May, YAD became aware District Court bar advocates were planning a work stoppage. While it was unclear whether there would be a coordinated work stoppage in Juvenile Court, YAD TPU sent a letter to the juvenile court clerks, along with a form, requesting the following information for every unrepresented client:
  - a. Client name
  - b. Docket number
  - c. Charges
  - d. Custody status (held or released)
  - e. Next scheduled court date
- 17. To facilitate data collection, we sent a follow-up letter with fillable fields to streamline submissions by court clerks. Clerks have been sending the completed forms with more consistency recently.
- 18. YAD TPU also drafted and distributed a bilingual (English and Spanish) notice for the juvenile courts to provide directly to unrepresented youth. The notice informed youth of their legal rights and named me as the primary contact for assistance.
- 19. As reflected in the above table, the number of attorneys available to take cases in Suffolk and Middlesex county juvenile courts has dropped. This has caused a chronic shortage of attorneys willing to take duty days in recent years in those counties. Until recently, YAD had been able to coordinate duty day coverage so that no session was unstaffed. However, many bar advocates in Suffolk and Middlesex juvenile courts are not accepting duty days for July and August. Two of the impacted YAD offices are at capacity, and a third is nearing capacity. As a result, there are now many unrepresented youth in Suffolk and Middlesex counties.

20. Since the onset of the work stoppage, we have been tracking unrepresented youth, and continuing to search for counsel to appoint. YAD has been prioritizing youth in custody.
21. When YAD TPU receives notice, whether from the courts, JSAs, or another sources, that a youth is unrepresented, we prioritize finding counsel for detained youth. YAD TPU emails the relevant BAP, requesting outreach to their panel and neighboring county panels to find representation. If no attorney accepts the assignment, YAD TPU checks the CPCS internal attorney assignment database for prior representation and contacts the identified attorney directly. If there is no prior attorney or the attorney declines, YAD TPU sends a targeted request to a list of attorneys known to accept urgent assignments. Until earlier this week, that system had worked to ensure all youth in custody had counsel.
22. Upon notification that a youth has appeared in court or been released without counsel, YAD TPU records the details and sends a weekly updated list to the county BAP, requesting that they contact their panel and nearby counties to identify counsel. If no attorney accepts, we follow the same process of checking prior representation and making direct outreach. Unfortunately, we have been unable to assign counsel for a number of youth and I anticipate the situation will only worsen over time.

Signed under the pains and penalties of perjury this 18<sup>th</sup> day of July, 2025.



Erica Cushna, BBO 561226

YAD Trial Panel Director

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

Suffolk, ss.

No. SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
on behalf of unrepresented juvenile defendants in Essex, Franklin, Hampden, Middlesex,  
Norfolk, and Suffolk Counties  
Petitioner,

v.

ESSEX, FRANKLIN, HAMPDEN, MIDDLESEX, NORFOLK, AND SUFFOLK JUVENILE  
COURTS,  
Respondents

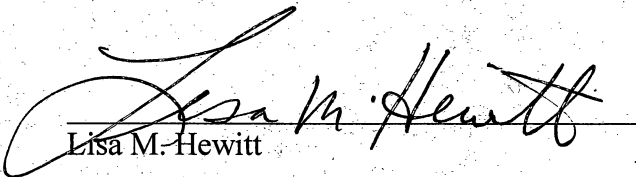
**AFFIDAVIT OF LISA M. HEWITT**

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

1. I am General Counsel for the Committee for Public Counsel Services (CPCS). I have been in this role from 1986-1998 and from 2011 to the present. Some of my responsibilities include administrative and budgetary liaison duties with the Legislature, the Judiciary, and the Executive branches of the Commonwealth.
2. CPCS has long been advocating for, and continues to advocate for, increased compensation rates with the Legislature. CPCS's budget testimony before the Legislature and compensation requests are available on CPCS's website: <https://www.publiccounsel.net/ppa/budget-advocacy/>.
3. CPCS has recently informed the Legislature of an emerging shortage of defense counsel for indigent youth charged with crimes in Juvenile Court, an issue that has more recently become a concern.
4. The state budget signed by Governor Healey on July 4, 2025, did not include increased compensation rates for private counsel.

5. It is unknown what the Legislature's response will be or if it will be sufficient to persuade juvenile bar advocates to start taking duty days and accepting assignments to represent youth.

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

  
Lisa M. Hewitt

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

Suffolk, ss.

No. SJ-2025-

COMMITTEE FOR PUBLIC COUNSEL SERVICES,  
on behalf of unrepresented juvenile defendants in Essex, Franklin, Hampden, Middlesex,  
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v.

ESSEX, FRANKLIN, HAMPDEN, MIDDLESEX, NORFOLK, AND SUFFOLK  
JUVENILE COURTS,  
Respondents

**AFFIDAVIT OF MARLIES SPANJAARD**

I, Marlies Spanjaard, state the following to the best of my information and belief:

1. I have been the Director of Education Advocacy at the Committee for Public Counsel Services (CPCS) since 2008. In my role as Director of Education Advocacy, I oversee the EdLaw Project, an education advocacy unit within CPCS.
2. Before becoming Director of Education Advocacy, I was a staff attorney with the EdLaw Project since 2001.
3. For over twenty years, the EdLaw Project has advocated for the educational rights of over 2,500 low-income youth in Massachusetts. The EdLaw Project works to address education equity and to disrupt the school to prison pipeline by providing expert education advocacy for children and youth most at risk of involvement with the juvenile court due to unmet educational needs and the overuse of school discipline and court referral as a response to typical adolescent behavior.
4. The EdLaw Project provides direct representation to children and young people and provides training and technical assistance on education law to court-appointed attorneys representing children across the state.
5. It is the expectation of the Committee for Public Counsel Services, through our performance standards, that upon assignment in a delinquency case, counsel will explore the educational situation of their clients and provide education advocacy to support them.

6. Young people facing delinquency charges are very often also facing school discipline consequences for their court-involvement. G.L. c. 71, § 37H½ specifically allows for a school district to suspend a student for having pending felony charges and expel them if they are adjudicated or plead guilty to the charges if the school determines that their presence in school will have a detrimental effect on the general welfare of the school. The suspension and expulsion are based solely on the presence of the charges / adjudication and the alleged incident does not need to have occurred at school. The student is eligible for a suspension the minute the complaint is issued pursuant to G.L. c. 71, § 37H½.
7. An attorney appointed to represent a young person in a delinquency would be expected to also represent them in any pending school discipline hearing resulting from the same alleged behavior.
8. When students are suspended, not only do they miss classroom instruction, which can lead them to fall behind and feel unwanted by and disengaged from the school community. Research has found that suspended students are more likely to drop out. Students who are suspended or expelled are three times more likely to drop out of school than their peers. Those who do not complete high school are 3.5 times more likely than high school graduates to be arrested in their lifetime and 63% more likely to be incarcerated than their peers with four-year college degrees. See Andrew Sum, Ishwar Khatiwada & Joseph McLaughlin, *The Consequences of Dropping Out of High School: Joblessness and Jailing for High School Dropouts and the High Cost for Taxpayers* (Ctr. for Lab. Mkt. Stud., Northeastern Univ., Oct. 2009), <https://repository.library.northeastern.edu/downloads/neu:376324>.
9. Massachusetts disproportionately suspends low-income students, students of color and students with disabilities. Melanie Leung Gagné, Jennifer McCombs, Caitlin Scott & Daniel J. Losen, *Pushed Out: Trends and Disparities in Out of School Suspension* (Learning Policy Institute Sept. 30, 2022), available at <https://learningpolicyinstitute.org/product/crdc-school-suspension-report>.
10. Students who are detained face additional educational barriers. The Department of Youth Services is required to provide educational services to detained youth, G.L. c. 18A, § 2, but the Department of Elementary and Secondary Education is responsible for the education of detained children with disabilities. G.L. c. 71B, § 1. If a detained youth's individualized education plan (IEP) requires services the DESE does not provide, those services are the responsibility of the youth's school district. This system involving three separate responsible entities that are expected to coordinate often results in delays in the provision of services. This is particularly true for young people facing short term detention as the protocol to gather the records necessary to provide special education services generally takes about ten days to implement, preventing some youth from receiving their special education services entirely.

11. It is our experience that special education students in custody rarely receive the full spectrum of the services that they are entitled to receive. This is especially for true for students who require any services beyond math and English support.

Signed under the pains and penalties of perjury this 18 day of July, 2025.

*/s/ Marlies Spanjaard*

Marlies Spanjaard  
Director of Education Advocacy, Committee for Public Counsel Services

# CPCS PERFORMANCE STANDARDS

## What do they say about education advocacy?

### PERFORMANCE STANDARDS GOVERNING THE REPRESENTATION OF INDIGENT JUVENILES IN DELINQUENCY, YOUTHFUL OFFENDER, AND CRIMINAL CASES

- I(B): “Counsel should have a working knowledge of the law regarding: DYS classification procedures, Child Requiring Assistance (CRA), Care and Protection, school suspension and expulsion, special education, and DCF Fair Hearings. Counsel should be aware that each of these other areas of law and social service systems has a potential overlap with the delinquency/youthful offender proceedings.”
- II(A)(C)(4): Bail or Detention Hearing - Counsel should consider and advocate for reasonable conditions of release...
- II(B)(3): If the client may be detained, the focus of the initial interview and investigation will be to obtain information relevant to the determination of bail and/or pretrial conditions of release. Such information should generally include: (i) client's school placement, (G.L. c.71B); status, attendance, special ed. designation;
- II(B)(6): Counsel should obtain signed releases by the client and parent for mental health records, school records, DCF records, DYS records, employment records, etc. Counsel should advise the client of the potential use of this information and the privileges that attach to this information.
- II(E)(5): Counsel should consider obtaining funds for an interpreter, investigator, social worker, expert (e.g., psychologist or educational specialist) at arraignment if the client does not speak English, immediate investigation of the allegations is necessary, or immediate psychological/psychiatric/biopsychosocial evaluation of the client is warranted. Otherwise, these motions may be filed at the pre-trial hearing date.
- III(C): Counsel should be aware of the statutory findings (protection and interests of the public) that G.L.c. 119, § 72A requires the judge to make. Counsel should be prepared to argue that the judge should consider, but is not limited to, the following factors: (i) the seriousness of the alleged offense; (ii) the child's family, school and social history, including his court and juvenile delinquency record, if any; (iii) adequate protection of the public; (iv) the nature of any past treatment efforts for the child; and (v) the likelihood of rehabilitation of the child. Commonwealth v. A Juvenile, 16 Mass. App. Ct. 251 (1983).
- V(L): Counsel should begin gathering information relative to possible sentencing as soon as possible. This should include, but not be limited to, obtaining any and all relevant school records, background information, psychological evaluations, and the like.

- VI(A): Where negotiations are begun, counsel should attempt to obtain the most favorable disposition possible for the client. The client shall be kept informed of the status of the plea negotiations.
- VI(D)(12): Counsel must also fully advise the client of the consequences of a conviction, including (13) potential school suspension or expulsion consequences (G.L. c. 71, §§ 37H and 37H1/2);
- VIII(A): Defense counsel should be familiar with and consider (10) Available school placements and services that could aid in disposition
- VIII(B): Counsel should advocate in advance of trial or sentencing for a favorable recommendation from both the prosecutor and the representative of the probation department.
- VIII(D)(1): Counsel should carefully consider and discuss with the client any sentencing recommendations to be made by the defense and the reasons for them. If appropriate, counsel should discuss any recommendations with other experienced defense counsel. Counsel should explore all reasonable alternatives to commitment to DYS or incarceration as an adult, e.g., community services, educational services, rehabilitative programs, DCF services, including shelter care, foster placement, or residential placement, DMH or DDS services, outpatient counseling, inpatient drug treatment, and restitution.