
By Mr. Walsh, a petition (accompanied by bill, Senate, No. 1101) of Joseph B. Walsh and the Massachusetts Bar Association, by Edward J. Smith, Esq., for legislation to create the Massachusetts public counsel system. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

AN ACT CREATING THE MASSACHUSETTS PUBLIC COUNSEL SYSTEM.

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

1 SECTION 1. DECLARATION OF PURPOSE — It is hereby
2 declared to be the policy of the Commonwealth to provide
3 uniform, high-quality and early legal representation to every
4 individual for whom, by reason of his inability to pay, coun-
5 sel must be appointed under the law of the Commonwealth,
6 the law of the United States, or pursuant to the order of any
7 court of the Commonwealth.

1 SECTION 2. The General Laws are hereby amended by in-
2 serting after Chapter 211C the following chapter: —

3 CHAPTER 211D

4 *Section 1.* There is hereby created a Massachusetts public
5 counsel board, hereinafter referred to as the board, to plan
6 for, oversee, and coordinate the delivery of criminal and cer-
7 tain noncriminal legal services by all salaried public counsel,
8 bar advocate and other assigned counsel programs, and pri-
9 vate attorneys serving on a per case basis.

10 The board shall consist of fifteen (15) members appointed
11 by the Justices of the Supreme Judicial Court, five (5) of
12 whom shall hold office for an initial term of three (3) years,
13 five (5) for an initial term of two (2) years, and five (5)
14 for an initial term of one year. Upon completion of a mem-
15 ber's term, a successor shall be appointed for a term of three
16 (3) years, provided, however, that a member may succeed
17 himself. Vacancies shall be filled through appointment of the

18 Justices of the Supreme Judicial Court for the unexpired
19 term.

20 Seven (7) of the members of the board to be appointed by
21 the Justices of the Supreme Judicial Court shall be selected
22 from nominations, three (3) of whom shall be appointed
23 from nominations submitted by the President of the Massa-
24 chusetts Bar Association, three (3) of whom shall be ap-
25 pointed from nominations submitted by the County Bar Asso-
26 ciations for the Counties of Barnstable, Berkshire, Bristol,
27 Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex,
28 Nantucket, Norfolk, Plymouth and Worcester, acting through
29 their presidents and by a majority of those county bar asso-
30 ciation presidents, present and voting at a meeting called for
31 that purpose by the president of the Massachusetts Bar
32 Association, and one of whom shall be appointed from
33 nominations submitted by the President of the Boston Bar
34 Association. The names of the nominees shall be transmitted
35 to the Justices of the Supreme Judicial Court who shall
36 determine from among the nominees those persons who shall
37 be appointed to the Board. The Justices of the Supreme
38 Judicial Court shall make such selections within thirty (30)
39 days from receipt of the names of the nominees. If said Jus-
40 tices fail to make a selection within said thirty (30) days,
41 the Presidents of the Massachusetts, Boston, and County Bar
42 Associations shall resubmit additional nominees to the Jus-
43 tices of the Supreme Judicial Court as hereinbefore provided
44 in this section.

45 A majority of the members of the board shall select a
46 chairperson who shall serve in that capacity for a term of
47 one year and until his successor is chosen and qualified.

48 Members of said board may be removed by the Justices of
49 the Supreme Judicial Court for cause. Judges, prosecutors
50 and law enforcement personnel shall not be eligible to serve
51 on the board.

52 No member of the board shall receive any compensation
53 for his services, but each member shall be reimbursed for
54 actual travelling expenses incurred by him in attending board
55 meetings.

56 *Section 1A.* Eight (8) of the initial appointments by the

57 Justices of the Supreme Judicial Court to the Public Counsel
58 shall be those persons presently serving on the Massachusetts
59 Defenders Committee as established under General Laws,
60 Chapter 221, Section 34D. Upon completion of a member's
61 term from the above eight (8) positions, a successor shall be
62 appointed by the Justices of the Supreme Judicial Court for
63 a term of three (3) years. Upon occurrence of a vacancy in
64 the above eight (8) positions, a successor shall be appointed
65 by the Justices of the Supreme Judicial Court for the re-
66 mainder of the unexpired term. Section 1A of Chapter 211D
67 is hereby repealed effective July 1, 1985.

68 *Section 2.* The board may accept gifts, grants or contribu-
69 tions from any source, whether public or private, and may
70 enter into contracts to provide or receive services with any
71 federal, state, county or municipal entity, with any group or
72 individual, whether profit or non-profit, or with any non-
73 profit or voluntary charitable group, corporation, association
74 or organization, including any bar association, to effectuate
75 the intent of this section.

76 *Section 3.* The board shall adopt such rules and regulations
77 as may be necessary for the conduct of its affairs and may
78 from time to time amend or revise the same. The board shall
79 prepare an annual report which report shall be a public docu-
80 ment. The board shall establish guidelines for the qualifica-
81 tion and removal of private attorneys who accept assignments
82 and shall establish guidelines for the hiring and removal of
83 salaried public counsel.

84 *Section 4.* The board shall establish, supervise and main-
85 tain a system for the appointment or assignment of counsel at
86 any stage of a proceeding, either criminal or noncriminal in
87 nature in any court in the Commonwealth, provided the laws
88 of the Commonwealth, the laws of the United States, or the
89 order or rule of any court of the Commonwealth require that
90 a person in such proceeding be represented by counsel and
91 provided further that such person is unable to obtain counsel
92 by reason of his inability to pay. The board may also estab-
93 lish a system for the provision of counsel in any pre-arraign-
94 ment procedure. A justice or associate justice of the Trial
95 Court of the Commonwealth shall be responsible for making

96 the final determination of indigency after receiving from the
97 probation officer a written report containing the probation
98 officer's opinion as to the ability of the person to pay for
99 counsel. The board shall provide representation, as herein-
100 after set forth, for persons determined to be indigent.

101 *Section 5.* In carrying out its duties as prescribed in section
102 four, the board shall:

- 103 a. Utilize its staff of attorneys, which shall be known here-
104 after as the "public defender division". Said division
105 shall be assigned to represent indigent defendants in all
106 criminal cases, except that:
 - 107 1. Such division shall not be assigned to represent more than
108 one defendant in any matters before any court on the
109 same case or arising out of the same incident;
 - 110 2. Such division shall not be assigned to represent any de-
111 fendant in which there is a conflict of interest with any
112 of its clients;
 - 113 3. Such divisions shall not be assigned to represent individ-
114 uals charged with matters classified as "children in need
115 of services" under chapter one hundred and nineteen,
116 section thirty-nine E, or "care and protection", under
117 chapter one hundred and nineteen, section twenty-four;
 - 118 4. Such division shall not be assigned to those cases where
119 an individual is before the Probate and Family Court De-
120 partment or the Housing Court Department for con-
121 tempt;
 - 122 5. Such division shall not be assigned to represent any child
123 alleged to be delinquent, except in cases as may result
124 in transfer hearings under section sixty-one of chapter
125 one hundred and nineteen and except in the Juvenile
126 Court Department and the juvenile session of the Rox-
127 bury Division of the District Court Department.
 - 128 6. Such division shall not be assigned to represent any per-
129 son charged with a misdemeanor unless in conjunction
130 with a felony charge for which such division has been as-
131 signed.
- 132 b. Establish, supervise, and maintain a system for the ap-
133 pointment of private counsel, hereafter called the "private
134 counsel division". The board shall give preference to pro-

135 viding such counsel by entering into contractual agree-
136 ments with any state, county or local bar association or
137 voluntary charitable group, corporation or association,
138 including bar advocate groups; the board may also con-
139 tract with such other organized groups of attorneys as
140 may be formed to afford indigent representation. Neither
141 individuals nor members or participants in any group,
142 corporation or association with whom the board may
143 contract under this section or section twelve shall be
144 considered to be or have any rights as state employees.

145 1. Such division shall be assigned for all persons accused
146 of crimes entitled to counsel who, through their inabil-
147 ity to pay for counsel, must have counsel appointed to
148 them, but who, pursuant to the provisions of paragraph
149 a are not to be represented by the public defender di-
150 vision.

151 2. Such division shall be assigned to represent any person
152 entitled to counsel in any proceeding arising out of a pe-
153 tition brought under section twenty-four or section
154 thirty-nine E of chapter one hundred and nineteen.

155 3. Said division shall be assigned to represent a person who
156 is before the Probate and Family Court Department or
157 the Housing Court Department in contempt proceed-
158 ing.

159 4. Said division shall also be assigned to represent persons
160 in such other cases, either criminal or non-criminal in
161 nature, in any court in the Commonwealth where rep-
162 resentation is not provided by the public defender divi-
163 sion, provided that the laws of the Commonwealth, the
164 laws of the United States, or the order or rule of any
165 court of the Commonwealth require such representation
166 by counsel and provided such person is unable to obtain
167 counsel by reason of his inability to pay.

168 *Section 6.* Said divisions shall be assigned to represent per-
169 sons charged in the District Court Department with concurrent
170 felonies under section twenty-six of chapter two hundred and
171 eighteen as further defined by the board.

172 *Section 7.* The board shall, through the chief counsel or his
173 designee, upon a determination by a court that a person ac-

174 cused of murder in the first or second degree is indigent, and
175 upon a request by a justice of the Trial Court of the Common-
176 wealth, assign counsel from either the public defender or the
177 private counsel division, except that the assignment of said
178 counsel shall be subject to the approval of the said justice.

179 *Section 8.* The board shall establish standards for the public
180 defender division and the private counsel division which shall
181 include but not be limited to:

- 182 a. vertical or continuous representation at the pre-trial and
183 trial stages by the attorney either assigned or appoint-
184 ed, whenever possible;
- 185 b. required participation by each attorney in an approved
186 course of training in the fundamentals of criminal and
187 certain non-criminal trial practice, unless the attorney
188 has a level of ability which makes such participation un-
189 necessary;
- 190 c. specified caseload limitation levels;
- 191 d. investigative services;
- 192 e. a method for the provision of social services or social
193 service referrals;
- 194 f. availability of expert witnesses to participating counsel;
- 195 g. clerical assistance, interview facilities, and the availabil-
196 ity of a law library and model forms to participating
197 counsel;
- 198 h. adequate supervision shall be provided by experienced at-
199 torneys who shall be readily available to less experienced
200 attorneys.
- 201 i. ultimate superintendence for training, education, and
202 qualification of counsel representing indigent clients shall
203 rest with the justices of the Supreme Judicial Court, how-
204 ever, responsibility for implementation of such training
205 and education shall be the responsibility of the board.

206 *Section 9.* The board shall monitor and evaluate compliance
207 with the standards and the performance of counsel in its di-
208 visions in order to insure the competent representation of de-
209 fendants in all courts of the Commonwealth and shall establish
210 a procedure for the review and disposition of client complaints.

211 *Section 10.* The board shall establish rates of compensation
212 payable to the private counsel division and those attorneys

213 appointed pursuant to section twelve, subject to appropriation,
214 that shall be paid to all counsel who are appointed or assigned
215 to represent indigents in accordance with the provisions of sec-
216 tions five through seven. Such rates of compensation shall be
217 reviewed periodically at public hearings held by the board at
218 appropriate locations throughout the state, and notice shall be
219 given to all state, county and local bar associations and other
220 interested groups of such hearings by letter and publication
221 in advance of such hearings. Such periodic reviews shall take
222 place not less than once every two years.

223 *Section 11.* All invoices regarding the services of counsel
224 from the private counsel division, when counsel is to be com-
225 pensated at an hourly rate of payment, shall be duly certified
226 by the justice hearing a particular matter. The board shall
227 establish policies and procedures to provide fair compensation
228 to private counsel, which shall include a remedy for any
229 private attorney aggrieved by the amount of payment certified
230 by any justice. All invoices shall be processed for payments
231 within thirty days of receipts by the chief counsel. The board
232 may prescribe such other policies and procedures for pay-
233 ments as it deems appropriate.

234 *Section 12.* The board shall appoint a chief counsel, whose
235 responsibilities and duties shall be defined by the board and
236 shall include, but not be limited to the overall supervision of
237 the workings of the various divisions of the board. The board
238 shall further appoint two deputy chief counsel, with duties de-
239 fined by the board, one of whom shall supervise the public de-
240 fender division, and the other shall supervise the private coun-
241 sel division. The board shall also prescribe the procedures for
242 the appointment of all legal and non-legal staff of the public
243 defender division and for the procurement of suitable accom-
244 modations as may be required. All legal and non-legal staff of
245 the public defender division shall be full-time. The chief coun-
246 sel and deputy chief counsel shall likewise devote full-time to
247 their duties. The chief counsel shall be paid at a rate com-
248 mensurate with the several district attorneys throughout the
249 state. The salary of the deputy chief counsel shall be estab-
250 lished by the board. All other legal staff of the public de-
251 fenders division shall be paid at a rate commensurate with as-

252 sistant district attorneys throughout the state. The counsel
253 and other employees appointed by the board shall not be sub-
254 ject to the provisions of chapter thirty-one.

255 *Section 13.* For the purpose of making assignments of coun-
256 sel under the provisions of this Act, the Massachusetts Public
257 Counsel Board shall file with the Supreme Judicial Court, on or
258 before December 1, 1983, and with the clerks of the House of
259 Representatives and the Senate, a report proposing uniform
260 standards for the determination by the courts of the Common-
261 wealth that (1) a person is indigent and is unable to provide
262 private counsel and (2) said indigent person either has the
263 ability to pay a reduced fee for the appointment of counsel or
264 is unable to pay any fee. Said report shall be accompanied by
265 recommendations, which may include legislation, to implement
266 the goal of the application of said uniform standards.

1 SECTION 3. Section 34D of Chapter 221 of the General Laws
2 is hereby repealed.